15 YEARS' DIGEST

1951–65

(INCLUDING CASE-LAW OF 1950)

VOL.
14

D. V. CHITALEY
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BY

D. V. CHITALEY, B.A., LL.B., *Advocate.*

AND

S. APPU RAO, B.A., B.L.,
Advocate, High Court of Madras,
Chief Editor, "The All India Reporter"

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Volume 14

TENANCY LAWS — RAJASTHAN TENANCY ACT (3 OF 1955)

TO

ZOROASTRIANS

AND

SUPPLEMENT

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ABBREVIATIONS

(i) Relating to Journals and Reports.

A. I. R. 1914 All., Bom., etc. ... All India Reporter, Allahabad, Bombay, etc., sections of the respective years.
A. M. L. J. ... Ajmer-Merwara Law Journal.
All. or I.L.R. All. ... Indian Law Reports, Allahabad Series.
All. L. Jour. ... Allahabad Law Journal.
All. W. R. ...Allahabad Weekly Reporter.
I. L. R. Andhra (Andh. Pra.) ... Indian Law Reports, Andhra (Andhra Pradesh) Series.
Andh. L. T. ... Andhra Law Times.
Andhra (or Andh.) W. R. ... Andhra Weekly Reporter.
I. L. R. Assam ... Indian Law Reports, Assam Series.
B. L. J. or Bihar L. J. R. ... Bihar Law Journal Reports.
Bom. or I. L. R. Bom. ... Indian Law Reports, Bombay Series.
Bom. L. R. ... Bombay Law Reporter.
Cal. or I. L. R. Cal. ... Indian Law Reports, Calcutta Series.
Cal. L. Jour. ... Calcutta Law Journal.
Cal. L. R. ... Calcutta Law Reports.
Cal. W. N. ... Calcutta Weekly Notes.
Com. Cas. ... Company Cases.
Com. L. J. ... Company Law Journal.
Cr. or Cri. L. Jour. ... Criminal Law Journal.
Cur. L. J. ... Current Law Journal.
I. L. R. Cut. ... Indian Law Reports, Cuttack Series.
Cut. L. T. ... Cuttack Law Times.
E. P. or East Punj. ... East Punjab.
I. L. R. E. P. or East Punj. ... Indian Law Reports, East Punjab Series.
F. C. R. ... Federal Court Reports.
F. L. J. ... Federal Law Journal.
F. J. R. ... Factories Journal Reports.
I. L. R. Guj. ... Indian Law Reports, Gujarat Series.
Guj. H. C. R. ... Gujarat High Court Reporter.
Guj. L. R. ... Gujarat Law Reports.
Him. Pra. ... Himachal Pradesh.
Hyd. ... Hyderabad.
I. L. R. Hyd. ... Indian Law Reports Hyderabad Series.
Ind. App. ...Law Reports, Indian Appeals.
Ind. Cas. ... Indian Cases.
I. T. J. ... Income-Tax Journal.
I. T. R. ... Income-Tax Reports.
Jab. L. J. ... Jabalpur Law Journal.
J. & K. ... Jammu & Kashmir.
J. & K. L. R. ... Jammu & Kashmir Law Reports.
J. L. R. or Jaipur L. R. ... Jaipur Law Reports.
Kar. L. J. ... Karnatak Law Journal.
I. L. R. Ker. (or Kerala) ... Indian Law Reports, Kerala Series.
Ker. L. J. ... Kerala Law Journal.
Ker. L. R. ... Kerala Law Reports.
K. L. T. or Ker. L. T. ... Kerala Law Times.
Lab. L. J. ... Labour Law Journal.
Law Rep. ... Law Reports (Mys).
Luck. or I. L. R. Luck. ... Indian Law Reports, Lucknow Series.
Madh. B. or M. B. ... Madhya Bharat.
I. L. R. Madh. B. ... Indian Law Reports, Madhya Bharat Series.
Madh. B. L. J. ... Madhya Bharat Law Journal.
Madh. B. L. R. ... Madhya Bharat Law Reporter.
I. L. R. Madh. Pra. or M. P. ... Indian Law Reports, Madhya Pradesh Series.
M. P. C. ... Madhya Pradesh Cases.
M. P. L. J. ... Madhya Pradesh Law Journal.
Mad. or I. L. R. Mad. ... Indian Law Reports, Madras Series.
Mad. L. Jour. ... Madras Law Journal.
Mad. L. Tim. ... Madras Law Times.
Mad. L. W. ... Madras Law Weekly.
Mad. W. N. ... Madras Weekly Notes.
Mah. L. J. ... Maharashtra Law Journal.
M. L. R. or Marwar L. R. ... Marwar Law Reporter.
Mys. ... Mysore.
I. L. R. Mys. ... Indian Law Reports, Mysore Series.

Mys. H. C. R. ... Mysore High Court Reports.
Mys. L. J. ... Mysore Law Journal.
I. L. R. Nag. ... Indian Law Reports, Nagpur Series.
Nag. L. Jour. ... Nagpur Law Journal.
Orissa J. D. ... Orissa Judicial Decisions.
I. L. R. Patiala ... Indian Law Reports, Patiala Series.
Pat. or I. L. R. Pat. ... Indian Law Reports, Patna Series.
Pepsu L. R. ... Pepsu Law Reports.
I. L. R. Punj. ... Indian Law Reports, Punjab Series.
Pun. L. R. ... Punjab Law Reporter.
Raj. ... Rajasthan.
I. L. R. Raj. ... Indian Law Reports Rajasthan Series.
R. L. W. or Raj. L. W. ... Rajasthan Law Weekly.
R. D. ... Revenue Decisions.
Sau. ... Saurashtra.
Sau. L. R. ... Saurashtra Law Reporter.
S. C. A. ... Supreme Court Appeals.
S. C. C. ... Supreme Court Cases.
S. C. D. ... Supreme Court Decisions.
S. C. J. ... Supreme Court Journal.
S. C. R. ... Supreme Court Reports.
S. C. W. R.... Supreme Court Weekly Reports.
Trav..Co. or T. C. ... Travancore.Cochin
I. L. R. Trav..Co. or T. C. ... Indian Law Reports, Travancore.Cochin Series.
T. C. L. R. or Trav.Co. L. R. ... Travancore.Cochin Law Reports.
T. L. J. or Trav. L. J. ... Travancore Law Journal.
Vind. Pra. or V. P. ... Vindhya Pradesh

(ii) Other Abbreviations.

App. ... Appeal.
Appln. ... Application.
Appr. ... Approved.
Art. or A. ... Article.
B. R. ... Board of Revenue.
Ch. ... Chapter.
Civ. ... Civil.
Cl. ... Clause.
C. N. ... Case Number.
Cons. ... Considered.
Cr. ... Criminal.
Diss. ... Dissented.
Dist. ... Distinguished.
D. B. ... Division Bench.
Expl. ... Explained.
Expln. ... Explanation.
F. A. ... First Appeal.
F. B. ... Full Bench.
F. C. ... Federal Court.
Foll. ... Followed.
Illus. ... Illustrations.
Jour. ... Journal.
L. P. A. ... Letters Patent Appeal.
O. ... Order.
Over. ... Overruled.
P. ... Page.
Pr. or P ... Para.
Pt. ... Point.
P. C. ... Privy Council.
Pre. ... Preamble.
R. ... Rule.
Ref. ... Referred or Reference.
Regn. ... Regulation.
Rel. on. ... Relied on.
Rev. ... Revenue.
Revn. ... Revision.
S. ... Section.
S. A. ... Second Appeal.
S. B. ... Special Bench.
S. C. ... Supreme Court.
Sch. ... Schedule.

■ Black dot at the beginning of a point indicates that the decision is of the Supreme Court, the Federal Court, the Privy Council, a Full Bench or a Special Bench of a High Court.

✠ In the Contents indicates that the Heading has a cross-reference only and has no case law.

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—RAJASTHAN TENANCY ACT (3 of 1955)

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——S. 1 — Decree for pre-emption passed under Alwar Act 7 of 1946 prior to coming into force of Rajasthan Zamindari Abolition Act — Decree not affected in any way by the latter Act and was executable—Rajasthan Act 8 of 1959 not retrospective in operation. See Alwar State Pre-emption Act (7 of 1946), S. 31 (2). 1964 Raj L W 189.

SECTION 5

——S. 5 (28)—Pasture land—Question of fact—High Court will not exercise its jurisdiction — Allottee has other remedy by way of suit. See Constitution of India, Art. 226. 1965 Raj L W 537 : ILR (1965) 15 Raj 880 (DB).

——S. 5 (36)—'Revenue Officer' — Who is—Reader of Colonisation Tahsildar and Irrigation Patwari, held to be revenue officers. See Representation of the People Act (1951), S. 123 (7)(f). A I R 1958 Raj 324 (DB).

——S. 5 (44) — Expression 'without authority' means without any right — Landlord entering his land after expiry of lease cannot be without authority — Words and Phrases—'Without authority'. 1962 Raj LW 406 : ILR (1962) 12 Raj 498.

——Ss. 5 (44), 183, 207 and Sch. 3, Items 17, 18 and 23—Scope—Lease—Agreement to pay rent in kind — Lessee deprived of possession by own employee—Suit for possession and mesne profits—Jurisdiction of Civil Court. 1958 Raj L W 189 : I L R (1958) 8 Raj 105.

SECTION 9

——Ss. 9, 13 and 37 — Jagirdar's khudkasht— Liability to attachment and sale — (Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 10).

Reading Rajasthan Tenancy Act and Land Reforms and Resumption of Jagirs Act together, it is clear that what was khudkasht land of a jagirdar has now become his khatedar tenant and in view of S. 37 of the Tenancy Act, it is not open to a creditor to attack or sell the rights of the jagirdar in the khudkasht which has become his khatedari holding. 1958 Raj L W 337 : ILR (1958) 8 Raj 622.

SECTION 15

——S. 15—Petitioner held became Khatedar tenant upon coming into force of the Act. ILR (1962) 12 Raj 900 : AIR 1963 Raj 72 (75) (Pt A) (Pr 11) (DB).

——Ss. 15 and 15-A— Acquisition of khatedari rights under S. 15—Subsequent enactment of S. 15-A taking away these rights — No provision for compensation— S. 15-A offends Art. 31 (2). See Constitution of India, Art. 31 (2). AIR 1963 Raj 72 (DB).

——S. 15—Period of tenancy expired—Tenant wrongfully dispossessed—Effect of — Remedy for tenant — Landlord taking law in hands —Tenant may exercise right of self-defence — Landlord, not a trespasser under Civil Law—Damage to property of tenant— Liability of landlord in tort — Penal Code (1860), S. 97 — Tort — Liability of landlord in tort against tenant. 1962 R L W 406 : ILR (1962) 12 Raj 498.

——S. 15—Benefit under — Orders in reinstatement proceeding quashed — Possession thereunder could not be relied—Day when Act came in force — Person not in possession as tenant — Held could not claim possession on ground of khatedari—Rajasthan Protection of Tenants Ordinance (9 of 1949), S. 7. 1962 R L W 406 : ILR (1962) 12 Raj 498.

——Ss. 15, 201—Grant of tenancy rights by order of Bharatpur Government for term —Term expiring after Rajasthan Tenancy Act came into force — Grantee, if can be ejected as trespasser—(Rajasthan Land Revenue Act, S. 91). ILR (1958) 8 Raj 825.

SECTION 15-A

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SECTION 37

——S. 37—Sale by process of any Civil Court — Civil Court decree—Transferred to collector for execution under S. 68, Civil P. C. — Sale of tenancy holding by collector cannot be treated as sale under process of civil Court within S. 37 and as such cannot be challenged — (Civil P. C. (1908)), Ss. 68 to 71 (prior to its repeal by Act 66 of 1956)). 1960 Raj L W 458 : ILR (1960) 10 Raj 497.

SECTION 42

——S. 42—Rajasthan Tenancy (Second Amendment) Act (28 of 1956), S. 4—Validity—S. 4 violates Art. 19 (1) (b) and is not saved by Art. 19 (1) (f)—Section not validated by S. 3 of Rajasthan Tenancy (Amendment) Act (12 of 1964). See Constitution of India, Art. 19 (1) (f). AIR 1965 Raj 54 (DB).

——S. 42 — Agreement of sale of Khatedari right is enforceable — Such agreement is not illegal under S. 42 of Rajasthan Tenancy Act — Plaintiff's failure to bring on record vendor's assignee pendente lite does not disentitle him to the relief of specific performance. See Specific Relief Act (1877), S. 12. 1964 Raj L W 423.

SECTION 43

——S. 43—Wrongful dispossession of usufructuary mortgagee by third party—Suit by mortgagee for recovery of possession or for mesne profits, cannot be said to be adversely affected by anything contained in S. 43. 1966 Raj L W 21 : ILR (1965) 15 Raj 503.

——Ss. 43 and 43-A—Suit for redemption of mortgage of agricultural land—Suit is exclusively triable by revenue Courts. See Tenancy Laws—Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 7. ILR (1960) 10 Raj 485.

——Ss. 43, 43-A and 207 (1) and Sch. 1, Serial No. 35 and Sch. 3, Serial No. 85—Suit or application for redemption of mortgage of agricultural land—Exclusive jurisdiction of revenue Court—(Civil P. C. (1908), S. 9).

Suits arising out of mortgages with respect to agricultural land are certainly matters provided for under Ss. 43 and 43-A of the Rajasthan Tenancy Act. Under Serials 53 and 85 together with Ss. 43 and 43-A and sub-s. (1) of S. 207, a suit or application for redemption of a mortgage with respect to agricultural land is a matter arising under the said Act and though it has not been specifically provided for elsewhere in the Schedule, it is still generally provided for within the meaning of Serial No. 35 of the Schedule and is therefore a matter with respect to which no Court other than a revenue Court can take cognizance as provided under sub-s. (2) of S. 207. 1958 Raj L W 300 : ILR (1958) 8 Raj 100.

SECTION 43-A

——S. 43-A — Suit for redemption of mortgage of agricultural land — Suit is exclusively triable by Revenue Court. See Tenancy Laws—Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 7. ILR (1960) 10 Raj 485.

——S. 43-A—Suit or application for redemption of mortgage of agricultural land—Jurisdiction of revenue Court is exclusive. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 43. ILR (1958) 8 Raj 100.

SECTION 88

——Ss. 88, 207 and Sch. II, Serial No. 5 — Exclusive jurisdiction of Revenue Court — Tests indicated — (Tenancy Laws—Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 7, Sch. I, Group B, Serial No. 12). 1958 R L W 426 : ILR (1958) 8 Raj 659.

SECTION 91

——S. 91—Pre-emption suits—S. 91 is not applicable —Suit triable only by Civil Courts—Question of conflict of jurisdiction—Courts should make reference to High Court. (1960) Raj L W 190: ILR (1960) 10 Raj 806.

——Ss. 91, 251—Suit for declaration that villagers have exclusive right to graze their cattle and for perpetual injunction restraining State Officials from selling grass—Suit is cognizable by Civil Court. (Civil P. C. (1908), S. 9). 1960 Raj L W 248 : ILR (1960) 10 Raj 622.

SECTION 180

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SECTION 181

——S. 181—Provision under, not mandatory—Provision could be waived — Inference of waiver—Breach of provision does not call for interference under S. 9 of Land Revenue Act by the Board. 1962 Raj L W 178 : I L R (1961) 11 Raj 708.

SECTION 183

——Ss. 183, 207 and Sch. 3, Item 23 — Usufructuary mortgage of agricultural land—Dispossession of mortgagee by alleged heir of mortgagor's husband — Suit for possession and mesne profits — Alternative prayer for mortgage amount — Suit held was exclusively within jurisdiction of Revenue Court — Suit filed in Civil Court—Dismissal of, not proper—Proper course was to return plaint for presentation to Revenue Court — Civil P. C. (1908), S. 9 and O. 7, R. 10—AIR 1946 All 486, Rel. on. 1963 Raj L W 310 : I L R (1963) 13 Raj 808.

——Ss. 183 and 207 — Agricultural holdings — Suit under S. 9, Specific Relief Act not expressly barred by Tenancy Act—Civil Court has jurisdiction to entertain suit — Plaint allegations determine whether suit lies within its jurisdiction. See Civil P. C. (1908), S. 9. 1961 Raj L W 636.

——Ss. 183, 207, 239 and Sch. 3, Serial No. 23—Scope —Suit for restoration of possession of agricultural land on basis that defendant was trespasser — Latter declared to be in possession under S. 145, Criminal P. C. — S. 183 applies and Revenue Court has exclusive jurisdiction—Jurisdiction of Civil Court is barred —Limitation Act (1908), S. 29(2) and Art. 47. I L R (1959) 9 Raj 614 : A I R 1960 Raj 196 (200) (Pt B) (Pr 14).

——S. 183 — Board of Revenue taking a particular view — Remedy by way of suit though open, not availed of — Order cannot be quashed. See Constitution of India, Art. 226. 1961 Raj L W 42: I L R (1960) 10 Raj 1638.

——Ss. 183, 207 and 239—Suit for ejectment of trespasser—Jurisdiction—Civil or Revenue Court—(Civil P. C. (1908), S. 9).

Where in a suit for possession of land the plaintiff averred that the land in dispute belonged to his ancestors and that the defendants have taken possession thereof illegally the case discloses a cause of action in respect of which a relief may be given by the revenue Court and as such it is exclusively triable by it under S 183 read with S. 207 of Rajasthan Tenancy Act. Even if at any time, the revenue Court feels that a question of proprietary right is involved, it may proceed under S. 239 of the Act. 1959 Raj L W 402.

——S. 183 and Sch. 3, Serial No. 23—Applicability—Unregistered mortgage deed for Rs. 230 — Mortgagee entering into possession—Mortgagor demanding possession and willing to pay mortgage money — Mortgagee declining—Mortgagors, held to be trespassers—Suit by mortgagor for possession—Suit must be held to be governed by item No. 23 — (T. P. Act (1882), Ss. 59 and 60) — (Registration Act (1908), S. 49) — (Civil P. C. (1908), O. 6, R. 2). I L R (1957) 7 Raj 432 : 1958 Raj L W 52 : AIR 1957 Raj 362 (364, 365) (Pt B) (Prs 5, 6).

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SECTION 187

——S. 187 (1)—Suit for compensation for wrongful ejectment and possession of holding against tenant—Suit is exclusively triable by Revenue Court — Suit under S. 187 (1) (ii) for compensation alone is maintainable. See Tenancy Laws — Rajasthan Tenancy Act (1955), S. 188 (1). 1964 Raj L W 170 : I L R (1964) 14 Raj 733.

SECTION 188

——Ss. 188 (1), 187 (1) (as amended by Raj. Act 22 of 1960)—Maintainability of suit—Suit for compensation for wrongful ejectment and possession of the holding against the tenant — Suit exclusively triable by Revenue Court — Even a suit under S. 187 (1) (ii) for compensation alone is also maintainable. 1958 Raj L W (Rev. Suppl.) 105, held no longer good law. 1964 Raj L W 170 : I L R (1964) 14 Raj 733.

——S. 188—Order by Revenue Secretary — Suit for perpetual injunction against enforcement of order—Civil Court has no jurisdiction—Revenue Court alone can try it. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 207(2). 1960 Raj L W 664 : I L R (1960) 10 Raj 1490.

——S. 188 and Sch. 3, Item 23-A (as amended by Raj. Tenancy (Amendment) Act (27 of 1956) — Suit for perpetual injunction — Forum — Court of Assistant Collector—Jurisdiction of. 1957 Raj L W 438 : I L R (1957) 7 Raj 788.

SECTION 206

——Ss. 206, 207, 246 and Sch. 3, Item 31 — Suit for profits of agricultural land or for share therein — Exclusive jurisdiction of Revenue Court—Suit pendinh in Civil Court at commencement of Act — Suit must be transferred to Revenue Court — Civil P. C. (1908), S. 9. 1963 Raj LW 284 : I L R (1963) 13 Raj 652.

——S. 206—Act applicable to Ajmer area with retrospective effect —.Certain pending suits in Civil Courts to be transferred to Revenue Courts. 1960 Raj L W 357 : I L R (1960) 10 Raj 870.

——S. 206 — Retrospective operation — Act coming into force during pendency of revision under S. 10(2) of Rajasthan (Protection of Tenants) Ordinance — Revision cannot be treated as appeal. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 186. I L R (1957) 7 Raj 194.

——S. 206: (3), (4)—Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 7 (2) and Sch I, Group B, Item 25 — Suit filed falling under item 25 of Group B of Sch. 1 — Additional prayer for permanent injunction—Jurisdiction of Revenue Court is not ousted—(Civil P. C. (1908), S. 9). 1957 Raj L W 124 : I L R (1957) 7 Raj 141.

SECTION 207

——Ss. 207 and 246—Suit filed in revenue Court prior to Act transferred to Civil Court at instance of defendant after Act came into force — Suit exclusively triable by revenue Court — Defendant not estopped from contending that suit is not triable by Civil Court because there is no estoppel against statute and parties cannot by consent confer jurisdiction on Court when there is none — Question of jurisdiction must be decided in accordance with provisions of Act—Evidence Act (1872), S 115 - Civil P. C (1908), S. 9. 1963 Raj L W 284 : ILR (1963) 13 Raj 652.

——S. 207 — Suit for profits of agricultural land or for share therein — Exclusive jurisdiction of revenue Court—Suit pending in Civil Court at commencement of Act — Suit must be transferred to revenue Court. See Tenancy Laws — Rajasthan Tenancy Act (1955), S. 206. 1963 Raj L W 284 : ILR (1963) 13 Raj 652.

——S. 207 — Usufructuary mortgage of agricultural land — Dispossession of mortgagee by alleged heir of mortgagor's husband—Suit for possession and mesne profits — Alternative prayer for mortgage amount — Suit held was exclusively within jurisdiction of revenue Court. See Tenancy Laws — Rajasthan Tenancy Act, S. 183. 1963 Raj L W 310 : ILR (1963) 13 Raj 808.

——S. 207 — Suit under S. 9, Specific Relief Act, not expressly barred by Rajasthan Tenancy Act — Civil Court has jurisdiction to entertain suit—Plaint allegations determine whether suit lies within its jurisdiction. See Civil P. C. (1908), S. 9. 1961 Raj LW 636.

——Ss. 207, 183, 239 and Sch. 3 Serial No. 23—Suit for restoration of possession of agricultural land on basis that defendant was trespasser even though declared to be in possession under S. 145, Criminal P. C. — Section 183 applies and Revenue Court has exclusive jurisdiction — Jurisdiction of Civil Court is barred. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 183. AIR 1960 Raj 196.

——S. 207 read with S. 183, Sch. 3, S. No. 22 — Suit regarding use of water from a common well in agricultural laod. Suit triable exclusively by revenue Courts. See Tenancy Laws—Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 7 (1). ILR (1960) 10 Raj 1589.

——Ss. 207 (2), 188 — Order by Revenue Secretary—Suit for perpetual injunction against enforcement of order — Civil Court has no jurisdiction — Revenue Court alone can try it.

A revenue Court has jurisdiction to consider and adjudicate whether an order passed by the Revenue Secretary is without jurisdiction and whether it offends principles of natural justice. A Civil Court has no jurisdiction to try a suit for perpetual injunction against the enforcement of the order. 1960 Raj L W 664 : ILR (1960) 10 Raj 1490.

——S. 207 — Suit for declaration that defendant lost her right in Biswedari on re-marriage — Jurisdiction of Civil Court. 1959 Raj L W 304.

——S. 207 (1) — Suit or application for redemption of mortgage of agricultural land — Jurisdiction of revenue Court is exclusive. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 43. ILR (1958) 8 Raj 100

——S. 207—Suit for redemption of mortgage of agricultural land—Revenue Court's jurisdiction to try.

A suit for redemption of mortgage with respect to agricultural land is undoubtedly a suit of a revenue nature and would be triable by a revenue Court. ILR (1957) 7 Raj 432 : 1958 Raj L W 52 : AIR 1957 Raj 362 (363) (Pt A) (Pr 4).

——Ss. 207, 251—Scope—S. 251 (2) overrides S. 207. See Tenancy Laws - Rajasthan Tenancy Act (3 of 1955), S. 251. 1957 Raj L W 188.

SECTION 214

——S. 214—Proceedings under—Section makes S. 5 of Limitation Act applicable. See Limitation Act (1908), S. 5. AIR 1959 Raj 290 (DB).

SECTION 220

——Ss. 220 and 242—Suit for declaration that decree of revenue Court was void against plaintiff — No provision in Rajasthan Tenancy Act or Rajasthan Land Revenue Act for bringing such suit — Held, suit could be tried by Civil Court. See Civil P. C. (1908), S. 9. 1963 Raj L W 516.

SECTION 224

——Ss. 224, 225, 230 — Second appeal — Scope of jurisdiction of Rajasthan Revenue Board — Rajasthan Land Revenue Act (1956), S. 9 — Powers of Superintendence of Revenue Board under—Circumscribed by other provisions of the Act and cannot be exercised where appeal lies to the Board. ILR 5 Raj 55, Foll. 1962 Raj L W 178 : ILR (1961) 11 Raj 708

SECTION 225

——S. 225—Second Appeal—Scope of jurisdiction of Rajasthan Revenue Board. See Tenancy Laws — Rajasthan Tenancy Act (1955), S. 224. ILR (1961) 11 Raj 708.

——S. 225 — Retrospective operation — Act coming into force during pendency of revision under S. 10 (2) of Rajasthan (Protection of Tenants) Ordinance — Revision cannot be treated as appeal. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955). S. 186. ILR (1957) 7 Raj 194.

SECTION 228

——S. 228 — Appeal to revenue appellate authority under Rajasthan Tenancy Act — Appeal filed beyond limitation prescribed by S. 228 of Rajasthan Act — Ss. 29 (2) and 3, Limitation Act, apply — Appeal liable to be dismissed though limitation not set up as defence. See Limitation Act (1908), S. 29 (2). AIR 1965 Raj 38 (DB).

SECTION 229

——S. 229—Revenue Board—Powers of review are not unlimited—They are subject to conditions contained in C. P. C. as provided by S. 229. See Tenancy Laws —Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 40. AIR 1960 Raj 72 (DB).

SECTION 230

——S. 230—Second Appeal—Scope of jurisdiction of Rajasthan Revenue Board. See Tenancy Laws — Rajasthan Tenancy Act (1955), S. 224. ILR (1961) 11 Raj 708.

——S. 230 — Retrospective operation — Act coming into force during pendency of revision under S. 10(2) of Rajasthan (Protection of Tenants) Ordinance — Revision cannot be treated as appeal. See Tenancy Laws—Rajasthan Tenancy Act (3 of 1955), S. 186. ILR (1957) 7 Raj 194.

SECTION 231

——S. 231—Question, not relating to jurisdiction of Revenue Court — Reference to High Court, not competent — Remedy of appeal from preliminary decree available — Revisional powers under S. 231 cannot be exercised. See Tenancy Laws—Rajasthan Tenancy Act (1955), S. 243. 1960 Raj L W 395 : ILR (1960) 10 Raj 941.

SECTION 239

—— S. 239 — Reference under, to civil Courts at the instance of the Collector—Civil Judge accepting the reference—District Judge in appeal, holding the reference entirely wrong in law remanding the case to Tahsildar for being further proceeded with — Order not proper, as the Tahsildar had before making the reference already decided the case — Quashing of all proceedings subsequent to filing of appeal before the Collector, including his order of remand — Collector directed to decide the appeal de novo on merits, treating it as still pending. 1963 Raj L W 186 : ILR (1963) 13 Raj 319.

——S. 239 — Reference to civil Court ordered by Collector in appeal in a mutation proceeding —Order of Collector not appealed from—Parties not estopped from raising objections to the reference, in civil Court — Evidence Act (1872), S. 115. 1963 Raj L W 186 : ILR (1963) 13 Raj 319.

——S. 239 — Reference to civil Court on question of proprietary right — Civil Court not bound to answer the same, if it is of opinion that reference did not arise or did not involve any such question. 1963 Raj L W 186 : ILR (1963) 13 Raj 319.

——S. 239 — Rajasthan Land Revenue Act (15 of 1956), Ss. 125 (3) and 21 (a)—Mutation proceedings — Nature of proceedings — No question of proprietary rights is involved in—Reference to civil Court under S. 239, not contemplated. 1963 Raj L W 186 : ILR (1963) 13 Raj 319.

——S. 239 — Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 36 — Suit by Bapidar for possession of certain portion of land — Status of Bapidar cannot be equated with that of proprietor with respect to agricultural land — Question as to status of parties — Revenue Court has no jurisdiction to remit the case to civil Court—Neither S. 239 nor S. 36 attracted — Civil Court in appeal is entitled to re-examine question as to whether an issue as to proprietary right at all arose in the case—C. A. No. 9 of 1953, D/- 21-11-1954 (Raj) and 1956 R L W 420, Foll. — Civil P. C. (1908), S. 96. 1962 Raj L W 349 : ILR (1961) 11 Raj 746.

——S. 239 — Suit for restoration of possession of agricultural land on basis that defendant was trespasser even though declared to be in possession under S. 145, Criminal P. C. — Section 183 applies and Revenue Court has exclusive jurisdiction—Jurisdiction of civil Court is barred. See Tenancy Laws—Rajasthan Tenancy Act (3 of 1955), S. 183. AIR 1960 Raj 196.

SECTION 243

——S. 243 (2) — Appeal to Commissioner—Commissioner holding that the suit under appeal was one triable by the Civil Court, ordering the return of the suit for being instituted in that Court — Held, order of the Commissioner was not proper in view of S. 243 (2), under which he was bound to refer the matter to the High Court for orders in such contingency. 1964 Raj L W 170 : ILR (1964) 14 Raj 733.

——S. 243 (3) — Suit for right of pre-emption of agricultural land filed in civil Court transferred to Revenue Court — Collector for sanction for reference to Revenue Court makes report to the Collector for sanction for reference to High Court under S. 243 (3) — Held Collector ought not to send report direct to District Judge for transferring case to civil Court. ILR (1960) 10 Raj 619.

——Ss. 243, 231—Reference of certain issues to Civil Court by Collector whether proper—Question does not relate to jurisdiction of revenue Court—Reference to High Court not competent — Remedy of appeal from preliminary decree available — Revisional powers under S. 231 cannot be exercised—Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), Ss. 7, 36. 1960 Raj L W 395 : ILR (1960) 10 Raj 941.

SECTION 244

——Ss. 244 and 245 — Applicability — When in a suit instituted in a civil or Revenue Court, an appeal lies to civil Court — Meaning of.

The words "when in a suit instituted in a civil or revenue Court an appeal lies to a civil Court" in S. 244 of the Act only refer to that class of suits where no matter that it is filed in a civil or a revenue Court, an appeal "properly" lies to a civil Court. Such a case arises, where, for example, a question of proprietary right is raised in the suit within the meaning of S. 239 of the Act, for in such a case an

appeal from the decree of a revenue Court lies to a civil Court and not to a revenue Court at all in view of sub-s. (4) of the section.

Neither S. 244 nor S. 245 of the Act applies to a case where a suit exclusively triable by a revenue Court is wrongly filed in a civil Court. **1963 Raj L W 284 : ILR (1963) 13 Raj 652.**

——Ss. 244 and 245 — Scope of — Civil Court holding that it has jurisdiction to try suit — Revision against is not incompetent under S. 115, Civil P. C. in view of Ss. 244 and 245 of Rajasthan Tenancy Act. See Civil P. C. (1908), S. 115. **AIR 1960 Raj 196.**

——Ss. 244 and 245 — When applicable — Sections carry same interpretation as Ss. 41 and 42 of Raj. Act 1 of 1951. See Tenancy Laws — Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 41. **ILR (1960) 10 Raj 485.**

SECTION 245

——S. 245 — Applicability — The words "when in suit instituted in a civil or Revenue Court, an appeal lies to civil Court" refer to that class of suits where no matter that it is filed in a civil or a Revenue Court, an appeal "properly" lies to a civil Court. See Tenancy Laws — Rajasthan Tenancy Act (1955), S. 244. **1963 Raj L W 284 : ILR (1963) 13 Raj 652.**

——S. 245—Appeal under — Case not involving any issue as to proprietary title—Course open to Appellate Court.

Once the civil appellate Court comes to the conclusion that in a suit by bapidar for possession, the revenue Court had no jurisdiction to make any reference to the civil Court, the case not involving any issue as to proprietary title, then that Court will cease to have jurisdiction to dispose of the case on the merits and all it should do is to quash the proceedings and send the case back to the competent revenue Court for disposing of the case according to law. **1962 Raj L W 349 : ILR (1961) 11 Raj 746.**

——Ss. 245, 294 — Sections carry same interpretation as Ss. 41 and 42 of Raj. Act 1 of 1951. See Tenancy Laws — Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 41. **ILR (1960) 10 Raj 485.**

SECTION 246

——S. 246—Suit for profits of agricultural land or for share therein — Jurisdiction of Revenue Court is exclusive. See Tenancy Laws—Rajasthan Tenancy Act (1955), S. 206. **1963 Raj L W 284.**

SECTION 251

——S. 251 — Dispute relating to right of way — Civil Court — Jurisdiction to try suit.

The mere fact that the Tahsildar has jurisdiction to decide in a summary manner, a dispute relating to the right of way does not oust the jurisdiction of the civil Courts in respect of declaration of rights with regard to easement. **1960 Raj L W 376 : ILR (1960) 10 Raj 848.**

——S. 251 — Suit for declaration that villagers have exclusive right to graze their cattle and for perpetual injunction restraining State Officials from selling grass—Suit is cognizable by Civil Court. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 91. **1960 Raj L W 248.**

——S. 251 — Applicability — Determination of right to easement — Procedure — (Easements Act (1882), Ss. 15, 18, 22).

The words 'with due regard to the convenience of all parties concerned' occurring in S. 251 have been incorporated to give effect to the provision of law contained in S. 22 of the Easements Act. Section 251 does not purport to lay down any substantive law relating to easements different from that contained in the Easements Act. **ILR (1959) 9 Raj 1195.**

——S. 251 — Applicability — Application to establish right of irrigation from another's tank — Order by Collector — Revision by Board of Revenue. See Tenancy Laws — Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), Sch. 1, Group B, Item 27. **ILR (1959) 9 Raj 1195.**

——Ss. 251, 207, Sch. 3, Item 81 — Scope — (Civil P. C. (1908), S. 9).

The remedy referred to in S. 251 is a summary one and does not debar a suit in a competent civil Court. Sub-section (2) of S. 251 overrides S. 207 and if an unsuccessful party can ultimately go to a civil Court there is no reason why the plaintiffs should not also in the first instance go to a civil Court. **1957 Raj L W 188 : ILR (1957) 7 Raj 566.**

SCHEDULE 1, ITEM 35

——Sch. 1, Item 35 — Suit or application for redemption of mortgage of agricultural land — Jurisdiction of revenue Court is exclusive. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 43. **ILR (1958) 8 Raj 100.**

SCHEDULE 3, ITEM 6

——Sch. 3, Part 1, Item 6 — Rajasthan Produce Rents Regulating (Second Amendment) Act (22 of 1953), Ss. 4A, 4B — Jurisdiction to determine share of landlord — Nature of decree — Procedure pointed. See Tenancy Laws — Rajasthan Produce Rents Regulating (Second Amendment) Act (22 of 1953), S. 4A. **AIR 1957 Raj 343 (DB).**

SCHEDULE 3, ITEM 23

——Sch. 3, Item 23 — Usufructuary mortgage of agricultural land — Dispossession of mortgage by alleged heir of mortgagor's husband — Suit for possession and mesne profits — Alternative prayer for mortgage amount — Suit held was exclusively within jurisdiction of Revenue Court. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 183. **1963 Raj L W 310.**

——Sch. 3, Item 23 — Suit for restoration of possession of agricultural land on basis that defendant was trespasser even though declared to be in possession under S. 145, Criminal P. C. — Section 183 applies and Revenue Court has exclusive jurisdiction — Jurisdiction of Civil Court is barred. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 183. **AIR 1960 Raj 196.**

——Sch. 3, Item 23 — Suit for declaration and possession on basis of title — Defendant not trespasser — Suit is triable by Civil Court — (Civil P. C. (1908), S. 9 — Exclusive jurisdiction of revenue Courts. **ILR (1958) 8 Raj 664 : 1958 Raj L W 397.**

——Sch. 3, Item 23, S. 183 — Applicability — Unregistered mortgage deed for Rs. 230/ — Mortgagee entering into possession — Mortgagor demanding possession and willing to pay mortgage money — Mortgagee declining to do so — Mortgagor if trespasser — Suit by mortgagor for possession if governed by Sch. 3 serial No. 23 — (T. P. Act (1882), Ss. 59 and 60) — (Registration Act (1908), S. 49) — (Civil P. C. (1908), O. 6, R. 2). See Tenancy Laws—Rajasthan Tenancy Act (3 of 1955), S. 183. **AIR 1957 Raj 362.**

SCHEDULE 3, ITEM 31

——Sch. III, Item 31 — Suit for profits of agricultural land or for share therein — Jurisdiction of Revenue Court is exclusive. See Tenancy Laws — Rajasthan Tenancy Act (1955), S. 206. **1963 Raj L W 284.**

SCHEDULE 3, ITEM 81

——Sch. III, Item 81, Ss. 251, 207 — Scope — S. 251 (2) overrides S. 207. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 251. **1957 Raj L W 188.**

SCHEDULE 3, ITEM 85

——Sch. 3, Item 85—Suit or application for redemption of mortgage of agricultural land — Jurisdiction of revenue Court is exclusive. See Tenancy Laws — Rajasthan Tenancy Act (3 of 1955), S. 43. ILR (1958) 8 Raj 100.

—RAJASTHAN TENANCY (SECOND AMENDMENT) ACT (28 of 1956)

SECTION 4

——S. 4 — Validity — Section 4, violates Art. 19 (1) (b) and is not saved by Art. 19 (1) (f) — Section not validated by S. 3 of Rajasthan Tenancy (Amendment) Act (12 of 1964). See Constitution of India, Art. 19 (1) (f). **AIR 1965 Raj 54 (DB).**

—RAJASTHAN ZAMINDARI AND BISWEDARI ABOLITION ACT (3 of 1954)

SECTION 4

——Ss. 4 (1), 5 (2), Cl. (1) and 36 –Rajasthan Zamindari and Biswedari Abolition Rules (1959), R. 5 — Vesting of estate – Effect on — Appeal pending — Entire suit abates — (Tenancy Laws — Rajasthan Zamindari and Biswedari Abolition Rules 1959, R. 5). **1960 Raj L W 244 : ILR (1960) 10 Raj 636.**

—RAJASTHAN ZAMINDARI AND BISWEDARI ABOLITION ACT (8 of 1959)

SECTION 1

——S. 1 — Decree for pre-emption passed under Alwar Act 7 of 1946 prior to coming into force of Rajasthan Zamindari Abolition Act — Decree not affected in any way by the latter Act and was executable — Rajasthan Act 8 of 1959 not retrospective in operation. See Alwar State Pre-emption Act (7 of 1946), S. 31 (2). **1964 Raj L W 189.**

SECTION 5

——S. 5 (2) (1) — Rajasthan Zamindari and Biswedari Abolition Rules (1959), R. 5 — "All proceedings consequent upon any decree or order passed in any such suit or proceeding" — Interpretation of — Stay of appeal — Entire suit also abates. **1961 Raj L W 599 : ILR (1962) 12 Raj 195.**

——S. 5 — Applicability — Suit in respect of declaration of cultivatory possession and injunction — Proprietary interest already gifted — Section 5 held did not apply. **1961 Raj L W 259 : ILR (1961) 11 Raj 255.**

——S. 5 (2) (i) — Tenancy Laws—Rajasthan Zamindari and Biswedari Abolition Rules (1959), R. 5 (11)—Validity — Retrospective operation of the rule — Rule making authority following the mandate given in S. 5 (2) (i) of the Act—Rule therefore not ultra vires. See Tenancy Laws—Rajasthan Zamindari and Biswedari Abolition Rules (1959), R. 5 (11). **1961 Raj L W 599.**

SECTION 7

——Ss. 7 (2) and 9—Grant of lease after 1st January, 1953 of forest in Zamindari estate for a period not exceeding 3 years — Vesting of estate in the State on Abolition of Zamindari — Dispute regarding forest not settled — Lessee cannot be prosecuted under S. 379, I. P. C. — Penal Code (1860), S. 379. **1962 Raj L W 605 : ILR (1962) 12 Raj 866.**

SECTION 9

——Ss. 9 and 7 (2)—Grant of lease after 1.1.1953 of forest in Zamindari estate for a period not exceeding 3 years — Vesting of estate in the State on Abolition of Zamindari—Dispute regarding forest not settled — Lessee cannot be prosecuted under S. 379, I. P. C. See Tenancy Laws—Rajasthan Zamindari and Biswedari Abolition Act (8 of 1959), S. 7 (2). **1962 Raj L W 605.**

SECTION 29

——S. 29 (as amended by Act 35 of 1960)—Effect of amending Act — Status of khatedar tenants or jurisdiction of Revenue Courts—If affected.

Under the principal Act of 1959 the position of a landholder became that of a khatedar tenant. Section 5 of the Amending Act does not bring about any substantial change in the status of the landholder who will have the rights and liabilities of a khatedar tenant. The position relating to forum of suits by Zamindars and Biswedars affected by the principal Act continues to remain the same and does not warrant a transfer of cases pending before revenue Courts to civil Courts. **1960 Raj L W 231.**

—RAJASTHAN ZAMINDARI AND BISWEDARI ABOLITION RULES (1959)

RULE 5

——R. 5 (11) — Validity—Retrospective operation of the rule — Rule-making authority following the mandate given in S. 5 (2) (i) of the Act — Rule therefore not ultra vires. **1961 Raj L W 599 : ILR (1962) 12 Raj 195.**

——R. 5 (before its amendment) — Abatement of — Suit or proceeding—Abatement means putting under some kind of suspension — Word abatement not used in the sense as it has under O. 22, Rr. 1 to 4, Civil P. C. **1961 Raj L W 599 : ILR (1962) 12 Raj 195.**

——R. 5 — Scope and effect of, stated. See Tenancy Laws—Rajasthan Zamindari and Biswedari Abolition Act (8 of 1959), S. 5 (2), Cl. (1). **1960 Raj L W 244.**

—RAMPUR THEKEDARI AND PATTEDARI ABOLITION ACT, 1953 (U. P. Act 10 of 1954)

See Tenancy Laws—(U. P.) Rampur Thekedari and Pattedari Abolition Act, 1953 (10 of 1954).

—REWA STATE LAND REVENUE AND TENANCY CODE (1935)

PREAMBLE

——Pre.—Forfeiture. See T. P. Act (1882), S. 111 (g). **AIR 1955 N U C (Vindh Pra) 1674.**

——Pre. — Person cannot become tenant unless he is recognised as such—State accepting rent from plaintiff and not defendant—Plaintiff held tenant of land. **AIR 1955 N U C (Vindh Pra) 1674.**

——Pre. — Sub-letting for more than three years is not permitted except in case of pachpan-paintalis tenants. **AIR 1955 N U C (Vindh Pra) 1674.**

——Pre. — Applicability—Suit for ejectment of trespasser wrongly instituted under Ajaigarh Tenancy Laws Act and pending in Civil Court. See V. P. Application of Laws Amendment Act (1953). **A I R 1954 Vindh Pra 40.**

SECTION 2

——S. 2 — Effect of S. 2—Law governing inheritance and succession to agricultural lands — Darbar Order, dated 7th June, 1934 is a territorial law — Held inconsistent with personal law as provided in S. 323 — Latter will prevail over former. See Tenancy Taws — Rewa Land Revenue and Tenancy Code (1935), S. 323. **1962 M P L J 30.**

SECTION 3

——Ss. 3, 18 and 28 — Sub-pawai coming in direct relation with Darbar –Effect—Revenue Department Notification No. 222, dated 30th June, 1953.

Held, that the jagir in suit which formerly was a sub-pawai of a bigger jagir known as Sidhi-illaqa and used to pay jama to it continued to be a sub-pawai relating to Sidhi illaqa even after it came in direct relations with the Darbar in 1934 and therefore stood resumed with effect from 1st July, 1953 under Revenue Department Notification No. 222, dated 30th June, 1953. **AIR 1954 Vindh Pra 13 (14) (Pt A) (Prs 6, 6a).**

SECTION 4

——Ss. 4, 57, 85—Ghairhaqdar tenant can be assessed under S. 85. 1959 Jab L J 373 : 1959 M P L J 796 : 1959 M P C 469.

——Ss. 4 and 341—Sub-tenants.

Section 341 is applicable to sub-tenants of land. The word 'tenant' used in S. 341 has been used in the ordinary sense and not in the restricted sense imparted to it by the definition given in S. 4. S. 341 uses the expression 'tenant' of the plaintiff or of a person holding from the plaintiff and not the words 'tenant of the land.' Where the defendants claimed to be the sub-tenants of the land but claimed to be the tenants of the plaintiff S. 341 applies. **AIR 1954 Vindh Pra 15 (16) (Pt B) (Prs 4, 5).**

SECTION 18

——S. 18—Sub-pawai coming in direct relation with Darbar — Effect. See Tenancy Laws — Rewa Land Revenue and Tenancy Code (1935), S. 3. **A I R 1954 Vindh Pra 13.**

SECTION 25

——S. 25 — Calculation of net income— Liability to render sewa — Deduction of two per cent from gross income has been made. See Tenancy Laws—Vindhya Pradesh Abolition of Jagir and Land Reforms Act (11 of 1952), S. 10. **(1964) Jab L J 135.**

SECTION 28

——S. 28—Sub-pawai coming in direct relation with Darbar — Effect. See Tenancy Laws — Rewa Land Revenue and Tenancy Code (1935), S. 3. **A I R 1954 Vindh Pra 13.**

SECTION 41

——S. 41 — Calculation of gross income — Valuable consideration received for transferring possession of Bandhs is not either a rent or other item of income — It cannot be taken into account. See Tenancy Laws — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 10. **(1964) Jab L J 135.**

SECTION 49

——S. 49 — Suit for pre-emption by non-Rewa resident without obtaining necessary sanction — Decree conditional on obtaining such sanction can be passed. See Rewa Pre-emption Act, S. 6. **A I R 1952 Vindh Pra 17.**

——S. 49 — Section is repugnant to Art. 15, Constitution of India and has become void — Constitution of India, Arts. 13, 15.

Section 49 which prohibits a non-Rewa resident from acquiring a pattadari tenancy within the Rewa State makes a discrimination only on the ground of residence and as such it has become void under Art. 13 of the Constitution of India as being repugnant to Art. 15 of the Constitution. **A I R 1952 Vindh Pra 17.**

SECTION 76

——S. 76—Adverse possession of inalienable property — Right, transfer of which is prohibited by Act, can still be possessed adversely — (Tenancy Laws — Vindhya Pradesh Land Revenue and Tenancy Act (1953), S. 159. See Limitation Act (1908), Art. 144. **AIR 1956 Vindh Pra 34.**

SECTION 99

——S. 99 (2)—Applicability of S. 6, Limitation Act to Reva Tenancy Code. See Limitation Act (1908), S. 6. **AIR 1955 Vindh Pra 43.**

SECTION 136

——Ss. 136 and 238 — Suit coming under S. 136 — Jurisdiction of Civil Court — Bar of — (Civil P. C. (1908), S. 9).

A suit for possession over a holding by a person who claims to be its tenant on behalf of the Pawaidar and who has been dispossessed by a person who claims to be in possession on behalf of the same Pawaidar, lies under S. 136, Rewa Tenancy Code and in view of S. 338 of the same Code the Civil Court has no jurisdiction to try it. **A I R 1955 Vindh Pra 28 (29) (Pt A) (Pr 4).**

——S. 136 — Possession delivered to defendant in proceedings under S. 145, Criminal P. C. — Suit for possession by plaintiff under provisions of Rewa Tenancy Code — Plaintiff is unable to take advantage of Art. 47. See Limitation Act (1908), S. 29 (2). **A I R 1955 Vind Pra 28.**

——S. 136 — Suit for ejectment of trespasser lies in Civil Court—(Civil. P. C. (1908), S. 9—Determination of Forum). **AIR 1955 NUC (Vindh Pra) 5118.**

SECTION 160

——S. 160 (4)—Applicability.

Section 160 (4) applies to assessments made during settlement operations and does not control assessment of rent which is a ghairhaqdar tenant is required to pay under S. 85 of the Code. **1959 Jab L J 373 : 1959 M P L J 796: 1959 M P C 469.**

SECTION 238

——S. 238—Suit coming under S. 136 of Code—Jurisdiction of Civil Court — Bar of. See Tenancy Laws — Rewa Land Revenue and Tenancy Code (1935), S. 136. **AIR 1955 Vindh Pra 28.**

SECTION 239

——S. 239 (g) — Conflict of jurisdiction between Civil and Revenue Courts — Power of Judicial Commissioner's Court of V. P. to resolve conflict—(Civil P. C. (1908), S. 9). See Constitution of India, Art. 227. **AIR 1952 Vindh Pra 74.**

SECTION 305

——S. 305—Scope indicated—Powers exercised under section are judicial. **A I R 1955 N U C (Vindh Pra) 767.**

——S. 305 — V. P. Government Revenue Department Order No. 115 dated 8th April 1953 and 22nd April, 1953 — Validity—Executive order depriving property rights of petitioner without adequate reasons. See Constitution of India, Art. 31. **AIR 1955 NUC (Vindh Pra) 767.**

SECTION 322

——S. 322 — V. P. Government Revenue Department Order No. 115 dated 8th April, 1953 and 22nd April, 1953—Validity — Executive order depriving property rights of petitioner without adequate reasons. See Constitution of India, Art. 31. **AIR 1955 NUC (Vindh Pra) 767.**

SECTION 323

——Ss. 323 and 2 — Effect of S. 2 — Law governing inheritance and succession to agricultural lands — Darbar Order, dated 7th June, 1934 is a territorial law —Held, inconsistent with personal law as provided in S. 323—Latter will prevail over former — Interpretation of statutes. **1962 Jab L J 286: 1962 M P L J 30.**

SECTION 324

——S. 324—Scope—Joinder of parties—Applicability of Civil P. C.

Held on facts that the procedure prescribed by the Code of Civil P. C., could be followed only 'so far as may be'. The technical and strict rules as to impleading of parties could have no application to proceedings not originating in a suit and it was not necessary to implead those persons or parties to the appeal who did not take active part or even appear in the Tribunal of first instance. **1961 M P L J (Notes) 146.**

SECTION 325

——S. 325 — V. P. Government Revenue Department Order No. 115 dated 8th April, 1953 and 22nd April, 1953—Validity — Executive order depriving property rights of petitioner without adequate reesons. See Constitution of India, Art. 31. **AIR 1955 N U C (Vin Pra) 767.**

SECTION 338

——S. 338 — Suit for possession on ground 'that plaintiff is tenant — Defendant setting up rival claim to tenancy — Only civil Court has jurisdiction to decide as to who is tenant-in-chief of land. **AIR 1955 N U C (Vin Pra) 1674.**

SECTION 341

——S. 341—Jurisdiction — Suit relating to agricultural land in civil Court — Plea by defendant that he holds land as tenant of plaintiff — Civil Court must frame issue on plea of tenancy and submit record to appropriate revenue Court for decision of that issue only—It is not competent for civil court to decide the issue. **AIR 1955 N U C (Vin Pra) 1674.**

——S. 341— Jurisdiction of Civil Court—(C. P. Code (1908), S. 9).

Howsoever untenable a plea of tenancy raised by the defendant might have appeared to the Court it has no jurisdiction to decide the issue itself. No discretion is left to the Civil Court under the section. The decision of the issue by the Court is without jurisdiction. **AIR 1954 Vind Pra 15 (16) (Pt A) (Pr 3).**

——S. 341—Sub-tenants. See Tenancy Laws—Rewa Land Revenue and Tenancy Code (1935), S. 4. **AIR 1954 Vind Pra 15.**

—SALSETTE ESTATES (LAND REVENUE EXEMPTION ABOLITION) ACT (Bom. Act 47 of 1951)

SECTION 2

●——Ss. 2 (b), 2 (d), 3 (1) (a), 3 (3) — Right to recover revenue—Nature of—Grant of land by State—Not exempt from liability to revenue in absence of express provision—Grant of certain villages to appellant in 1847—On construction held, did not amount to lease or farm but an agreement with the State—Villages held to be estates under S. 2 (b) and consequently liable to pay land revenue under S. 3 (1) (a) —Exemption under S. 3 (3) held not applicable to estate-holder. See Tenancy Laws—Salsette Estates (Land Revenue Exemption Abolition) Act (47 of 1951), S. 3 (1) (a). **AIR 1965 S C 590.**

SECTION 3

●——Ss. 3 (1) (a), 3 (3), 2 (b), 2 (d), — Right to recover revenue—Nature of—Grant of land by State—Not exempt from liability to revenue in absence of express provision—Grant of certain villages to appellant in 1847 — On construction held, did not amount to lease or farm but an agreement with the State—Villages held to be estates under S. 2 (b) and consequently liable to pay land revenue under S. 3 (1) (a) — Exemption under S. 3 (3) held not applicable to estate-holder. Byramjee Jeejeebhoy (P.), Ltd. v. State of Maharashtra, **(1964) 2 S C R 737 : (1965) I S C J 65 : A I R 1965 S C 590 (594, 595) (Prs 8, 9, 11, 12).**

—SAURASHTRA BARKHALI ABOLITION ACT (26 of 1951)

SECTION 1

——S. 1 — Constitution of India, Art. 31 (2) and Sch. VII, List II, Entry 36 and List III, Entry 42—"Subject to" in Entry 36, explained—Saurashtra Barkhali Abolition Act—Validity of, cannot be challenged on ground that there has been no valid exercise of legislative power under Entry 42. See Constitution of India, Art. 31 (2). **AIR 1955 Sau 80 (DB).**

SECTION 2

——S. 2—'Barkhalidar'—Grant of land by Talukdar in 'jiwai'—Tenants of such grantor — Right to occupancy certificates. **(1959) 61 Bom L R 939 : I L R (1959) Bom 1329.**

——S. 2 (iv) — Tenant — Meaning of—Includes agriculturist holding land from Barkhalidar's mortgagee. **(1960) 1 Guj L R 18 : (1960) Guj H C R 5.**

——S. 2 (iv)—Interpretation of Statutes — Statutes in pari materia — Interpretation by comparison — Principles stated. See Interpretation of Statutes. **(1960) 1 Guj L R 18 : 1960 Guj H C R 5.**

——S. 2 (1) — Petitioner owning lands under jerait tenure — Income of lands enjoyed by petitioner — Some lands mortgaged in part — Lands descending from mother-in-law to daughter-in-law—No salami or quit rent paid — Petitioner held was Barkhalidar and not Girasdar—(Tenancy Laws - Saurashtra Land Reforms Act (25 of 1951), S. 2 (15)). **8 Sau L R 70 : AIR 1955 Sau 80 (85) (Pt F) (Pr 12) (DB).**

SECTION 3

——S. 3 - Overriding effect to provisions under Act—Still Bombay Land Revenue Code (5 of 1879) and rules thereunder are not irrelevant for purposes of Act—See Tenancy Laws—Saurashtra Barkhali Abolition Act (26 of 1951), S. 18. **ILR (1965) Guj 1039 : (1965) 6 Guj L R 978 : AIR 1966 Guj 200 (DB).**

SECTION 7

——Ss. 7, 12 (1), 15 and 35—Scope — Issue of occupancy certificate — If essential for acquisition of. **(1958) 60 Bom L R 815 : ILR (1958) Bom 309.**

SECTION 8

——S. 8 (1) and (2) (a)—Construction and scope.

A tenant who is deprived of possession of land under sub-section (1), whether it is the entire area of the land in his occupation or a part of the land may pre-empt a purchaser of the land from the barkhalidar, if the purchase or the lease is within ten years from the date on which the order allotting the land under sub-section (1) is passed. There is nothing in sub-section (2) which supports the view that the right which a tenant has for pre-empting a sale or lease by barkhalidar is restricted to those cases in which the tenant is allowed to remain in possession of land adjacent to the land to be pre-empted. **(1959) 61 Bom L R 50 : ILR (1959) Bom 1207.**

——S. 8 (1) (a)—'Khalsa land'—Meaning of.

The expression "Khalsa land" used in S. 8 (1) (a) clearly refers to land other than the Barkhali land which has vested in the State by virtue of section 5 of the Act. It refers to such land as was regarded as Khalsa land immediately prior to the commencement of the Act. **(1958) 60 Bom L R 815 : ILR (1958) Bom 309.**

—S. 8 (2) (a)— Saurashtra Barkhali Abolition Rules (1951), R. 82B — Validity — Right of pre-emption under S. 8 (2) (a) — Incidents of — R. 82B depriving pre-emptor of his secondary right to follow land sold to third person — Rule to that extent is void. (1962) 3 Guj L R 159.

—S. 8—Section if infringes Art. 14 of Constitution —(Constitution of India, Arts. 14 and 31-A).

Even if S. 8 is discriminatory Art. 31-A is conclusive answer since under that Article no law can be rendered void on the ground that it infringes any of the fundamental right guaranteed by Part III of the Constitution. 8 Sau L R 70 : AIR 1955 Sau 80 (85) (Pt E) (Pr 11) (DB).

SECTION 16

—S. 16—Overriding effect to provisions under Act —Still Bombay Land Revenue Code (5 of 1879) and rules thereunder are not irrelevant for purposes of Act—See Tenancy Laws— Saurashtra Barkhaii Abolition Act (26 of 1951), S. 18. I L R (1965) Guj 1039 : (1965) 6 Guj LR 973 : A I R 1966 Guj 200 (DB).

—S. 16 — Assessment of annuity need not be only under Chapter 8. See Tenancy Laws — Saurashtra Barkhali Abolition Act (26 of 1951), S. 18. (1965) 6 Guj L R 978 : ILR (1965) Guj 1039 : AIR 1966 Guj 200 (DB).

SECTION 18

—Ss. 18, 19, 16 and 3 — Bombay Land Revenue Code, 1878 (5 of 1879), Chapters 8 and 8-A and S. 52 — Bombay Land Revenue Rules (1921), R. 17 (as introduced by Bombay Government Notification dated 20-5-1959) — Saurashtra Agricultural Debtors' Relief Act (23 of 1954), S. 28 — Constitution of India, Arts. 19 (1) (f) and 31 (3)—Cash Annuity to Barkhalidar fixed by Mamlatdar — Annuity is liable to change —Assessment of annuity — Government is competent to modify assessment — Survey and settlement contemplated by S. 19 of Act 26 of 1951 — Survey and Settlement need not be only under Chapters 8 and 8-A of Act 5 of 1879 — Survey and Settlement can be under S. 52 of Act 5 of 1879 and under R. 17, Bombay Land Revenue Rules, 1921 — Reduction of annuity without hearing Barkhalidar — No right to property is affected by reduction — R. 17 must be presumed to have received President's assent and hence valid provision. I L R (1965) Guj 1039 : (1965) 6 Guj L R 978 : AIR 1966 Guj 200 (207 to 217) (Prs 12, 14, 17, 20, 21, 22, 25, 26, 27) (DB).

—S. 18—Constitution of India, Arts. 31 (2) and 31A —Adequacy of compensation is not justiciable—Validity of Saurashtra Barkhali Abolition Act cannot be challenged on ground of inadequacy of compensation —Compensation is not illusory — See Constitution of India, Art. 31 (2). AIR 1955 Sau 80 (DB).

SECTION 19

—S. 19—Assessment of annuity — Government is competent to modify assessment — Survey and settlement contemplated by S. 19 need not be only under Chapters 8 and 8-A of Bombay Land Revenue Code, 1878—See Tenancy Laws—Saurashtra Barkhali Abolition Act (26 of 1951), S. 18. I L R (1965) Guj 1039 : (1965) 6 Guj L R 978 : AIR 1966 Guj 200 (DB).

SECTION 40

—S. 40 (2) — Jurisdiction under — When can be exercised.

It is clear from the language of the proviso at the foot of sub-section (2) that if an application has been made by an aggrieved party to the Revenue Tribunal the jurisdiction vested by sub-section (2) of S. 40 in the Government cannot be exercised by them. Once an application in revision is made from an order of the Deputy Collector to the Revenue Tribunal the proceedings before the Deputy Collector including the order passed by the Deputy Collector merge into the proceedings before the Revenue Tribunal and the Government has no power under sub-section (2) of S. 40 to call for and examine those proceedings. Thus upon a proper construction of the proviso to sub-s. (2) of S. 40 it is clear that in cases where a party has not applied in revision to the Revenue Tribunal and where his right to apply in revision has become time barred only in those cases the Government can exercise the power vested in them by sub-s. (2) of S. 40. (1958) 60 Bom L R 794 : I L R (1958) Bom 879.

—SAURASHTRA BARKHALI ABOLITION RULES (1951)

RULE 82-B

—R. 82-B — Tenancy Laws — Saurashtra Barkhali Abolition Act (26 of 1951), S. 8 (2) (a) — Validity —Right of pre-emption under S. 8 (2) (a) — Incidents of — R. 82-B depriving pre-emptor of his secondary right to fallow land sold to third person—Rule to that extent is void — See Tenancy Laws — Saurashtra Barkhali Abolition Act (26 of 1951), S. 8 (2) (a). (1962) 3 Guj L R 159.

—SAURASHTRA ESTATES ACQUISITION ACT (3 of 1952)

SECTION 7

—S. 7 (1) (b), (ii) — 'Reclamation bund or other structure on the land' — Interpretation — Irrigation embankment or bund —If included.

Considering the words "reclamation bund or other structure on the land" in S. 7 (1) (b) (vii) contextually, structurally and in their collocation they must be accorded a wide coverage. An irrigation embankment or an irrigation bund is within the ambit and scope of the language of clause (b) (vii) of S. 7 (1) of the Act. (1960) 1 Guj L R 173 : (1960) 1 Guj H C R 232 : AIR 1960 Guj 31 (34) (Pt B) (Pr 13) (DB).

—SAURASHTRA GHARKHED TENANCY SETTLEMENT AND AGRICULTURAL LANDS (AMENDMENT) ACT (30 of 1950)

SECTION 2

—S. 2—Scope—(Saurashtra Land Reforms Act (25 of 1951), Ss. 3 and 65).

Act 30 of 1950 is subject to the same overriding provisions of S. 3 of the Land Reforms Act and to the extent to which it prohibits execution of an order of allotment of the Gharkhed land the right to which is saved by the proviso to S. 65 (1) it is inconsistent with the provisions of that Act and the proviso to S. 65 (1) must be given effect in spite of Act 30 of 1950. 6 Sau L R 272: AIR 1953 Sau 195 (197) (Pt C) (Pr 7) (DB).

—SAURASHTRA GHARKHED TENANCY SETTLEMENT AND AGRICULTURAL LANDS ORDINANCE (41 of 1949)

SECTION 2

—S. 2 (r)—Suit to recover 'Sakar' — Sakar is rent— See Limitation Act (1908), Art. 110. A I R 1964 Guj 122.

SECTION 29

—Ss. 29 (2) and 76 — Applicability — Voluntary relinquishment by tenant — Suit by landlord to restrain interference with his possession—Jurisdiction of Civil Court not barred—(Civil P. C. (1908), S. 9). AIR 1955 N U C (Sau) 410.

—S. 29—Obtaining possession—Meaning of.

The applicants had taken possession of the lands from their tenants without obtaining the necessary

orders of the Mamlatdar. They had given notices on 18-4-1950 mentioning that if the tenants did not part with the lands the applicants would enter upon the lands on 27-4-1950, the applicant actually entered upon the lands. They cultivated portions of their respective fields and also removed some dry cotton stalks.

Held, these acts undoubtedly amounted to obtaining possession. ('51) 4 Sau L R 234 (DB).

——S. 29— Though landlord is debarred from taking possession except under an order of the mamlatdar even when his tenant is willing to surrender possession to him, this discrimination between the rights of tenants and landlords does not amount to denying equality before the law and therefore S. 29 is not void under Art. 13 of the Constitution being repugnant to Art. 14 which guarantees equality before the law. See Constitution of India, Art. 14. ('51) 4 Sau L R 234 (DB).

SECTION 35

——S. 35—As the ordinance contains provisions disabling landholders, whose estates are taken under management for contracting etc., their names should always be mentioned in the notification of assumption of management under S. 35 of the ordinance for the benefit of the public. AIR 1953 Sau 77 (78) (Pt A) (Pr 3) (DB).

——S. 35 — S. 35 is unconstitutional and void—Constitution of India, Arts. 13 (1), 19 (1) (f), (g) and 5, 31-A. Jayantilal Laxmi Shankar v. State of Saurashtra, AIR 1952 Sau 59 (62 to 64) (Pt A) (Prs 8, 10, 11, 12, 14) (SB).

SECTION 37

——S. 37—Proceedings—Meaning of — (Words and Phrases—Proceedings).

Considering the scheme of the Gharkhed Ordinance and the concluding provisions barring the jurisdiction of the Civil Courts it is definite that the word 'proceedings' contained in S. 37 must necessarily include 'appeals'. Case law discussed. AIR Com. on Civil P. C. (1950) Edn. Relied on. AIR 1953 Sau 77 (80) (Pt B) (Pr 8) (DB).

——Ss. 37, 80 (2)—Notification under S. 35—Effect of, on pending appeal.

As the word 'proceedings' in S. 37 of the Gharkhed Ordinance, has to be construed to include an appeal there is such exclusion of the right of appeal by necessary intendment, if not by express words of the section which affects the appeals pending at the time of issuing the notification under S. 35, taking over the management of the estate concerned. Such an appeal has, therefore, either to be stayed or dismissed under S. 37.

Where the debt for the recovery of which a suit is filed is realisable from the estate taken under management under the Gharkhed Ordinance, the mere fact that the debt is recoverable also from the person and the moveable property of the deceased debtor in the hands of his heirs and legal representatives is not sufficient to remove the bar imposed by S. 37 of the Ordinance in respect of continuing the proceeding pending in Civil Court. The words of the section are quite clear. Since the word 'proceedings' in S. 37 includes 'appeals', the operation of S. 80 (2) is saved by the express provision contained in S. 37 including appeals and all proceedings pending in Courts have to be stayed or dismissed. AIR 1953 Sau 77 (79, 80) (Pt C) (Prs 5, 8) (DB).

SECTION 61

——S. 61—Words 'or not'—Expression means 'or not a tenant' and does not include every possible relationship—(Words and Phrases—'Or not'). AIR 1955 NUC (Sau) 974 (DB).

——S. 61—Tenancy Laws—Saurashtra Protection of Tenants Ordinance (22 of 1948), S. 4—Notice under to vacate land by 1-4-1949 — Effect of subsequent Ordinances (28 of 1949) and (41 of 1949) — Tenant continues in lawful possession for the purposes of ordinance (41 of 1948)—Saurashtra Mamlatdars Courts Ordinance, 1948, does not apply to proceedings to recover possession of land — Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949) S. 61, applies—Mamlatdar cannot act under Mamlatdars' Courts Ordinance 1948. See Tenancy Laws — Saurashtra Protection of Tenants Ordinance (22 of 1948), S. 4. AIR 1951 Sau 23 (DB).

SECTION 75

——S. 75—Scope—Jurisdiction of Collector to order summary eviction is discretionary and is not exclusive to bar jurisdiction of civil Court. AIR 1955 NUC (Sau) 974 (DB).

SECTION 76

——S. 76—Applicability — Voluntary relinquishment by tenant—Suit by landlord to restrain interference with his possession—Jurisdiction of Civil Court not barred. See Tenancy Laws — Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 29 (2). AIR 1955 NUC (Sau) 4101.

——S. 76—Bar of Civil Court's jurisdiction—Proceedings under old Ordinance 22 of 1948 not complete when new Ordinance 41 of 1948 came into force — S. 76 bars Civil Court's jurisdiction—Only remedy is to continue proceedings under Ordinance—(Tenancy Laws— Saurashtra Protection of Tenants Ordinance (22 of 1948), S. 7)—(C. P. Code 1908), S. 9). AIR 1955 NUC (Sau) 974 (DB).

——S. 76—Suit by landlord for eviction of tenant holding over without the consent of the landlord and for possession instituted in Mamlatdar's Court after coming into force of Saurashtra Gharkhed Ordinance —Mamlatdar has no jurisdiction to make order under Ordinance 22 of 1948 nor has the jurisdiction to decide the question by virtue of S. 76 of Gharkhed Ordinance — Saurashtra Mamlatdars Courts Ordinance (52 of 1948), S. 61 (1). (1952) 5 Sau L R 67 (DB).

SECTION 80

——S. 80 (3) — Effect of, indicated. See Saurashtra Land Reforms Act (25 of 1951), S. 1. AIR 1955 NUC (Sau) 974 (DB).

——S. 80 (2)—Notification under S. 35—Effect of, on pending appeal—Appeal has got to be stayed or dismissed. See Tenancy Laws — Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 37. AIR 1953 Sau 77 (DB).

— SAURASHTRA LAND REFORMS ACT (25 of 1951)

PREAMBLE

——Pre. — Constitution of India, Art. 31-A — Absence of express provision for vesting of estate in State —Ss. 31, 38 and 39 of Saurashtra Land Reforms Act, 1951 show that the estate of Girasidar is acquired by the State and vests in the State—The law is covered and saved under Art. 31-A of the Constitution. See Constitution of India, Art. 31A. A I R 1952 Sau 114 (SB).

——Pre.—Constitution of India, Art. 31-A—Acquisitions of estate contemplated by Saurashtra Land Reforms Act, 1951 is of whole estate — The abolition of Girasi system and vesting the lands in the occupants under the State and extinguishment of Girasdar's rights on payment of compensation provided for under the Act makes it a valid law under Art. 31-A of the Constitution. See Constitution of India, Art. 31A. A I R 1952 Sau 114 (SB).

●——Pre. — Constitution of India, Arts. 31 (2) and 31-A — Saurashtra Land Reforms Act, 1951, is for public purpose. See Constitution of India, Art. 31 (2). **A I R 1952 Sau 114 (SB).**

SECTION 1

——S. 1 — Suit for ejectment on the ground that tenancy ceased before the Ordinance 41 of 1949 came into force—Jurisdiction of Civil Court cannot be barred only by showing that the case falls within the Gharkhed Ordinance—Civil Courts are entitled to enter into the question whether on the date of the Ordinance the defendant was a tenant and consequently whether their jurisdiction was barred. See Tenancy Laws—Saurashtra Gharkhed (Tenancy Settlement and Agricultural Lands) Ordinance (41 of 1949), S. 80 (3) —Effect of. **A I R 1955 N U C (Sau) 974 (DB).**

SECTION 2

——S. 2—Bombay Mamlatdar Courts Act (2 of 1906), S. 5—Question falling under Land Revenue Act—No jurisdiction in Mamlatdar's Court — Person not entitled to possession under Land Revenue Code — Bar of jurisdiction of Civil Court and Mamlatdar's Court does not operate. See Bombay Mamlatdar Courts Act (2 of 1906), S. 5. **(1963) 4 Guj L R 182.**

——S. 2 (15)—Status similar to that of Girasdar does not exist. **8 Sau L R 70 : AIR 1955 Sau 80 (82) (Pt A) (Pr 5) (DB).**

——S. 2 (15)—Tenancy Laws — Saurashtra Barkhali Abolition Act (1951), S. 2 (i)—Petitioner owning lands under jerait tenure — Income of lands enjoyed by petitioner — Some lands mortgaged in part — Lands descending from mother-in-law to daughter-in-law—No Salami or quit rent paid — Petitioner held was Barkhalidar and not Girasdar. See Tenancy Laws — Saurashtra Barkhali Abolition Act (26 of 1951), S. 2 (i). **A I R 1955 Sau 80 (DB).**

——S. 2 (15)—Definition of girasdar if ultra vires as offending Art. 14 of Constitution — (Constitution of India, Art. 14).

It is not true that S. 2 (15) vests in the Government unfettered power to make arbitrary discrimination, nor again it is true to say that it results in making arbitrary discrimination, and for that reason infringes Art. 14 of the Constitution. The definition of Girasdar in S. 2 (15) is not therefore ultra vires. **8 Sau L R 70 : A I R 1955 Sau 80 (85) (Pt G) (Pr 12) (DB).**

——Ss. 2 (30), 46 (b), 62 — Jurisdiction of Civil Court — Simply because person calls himself tenant, does not give Mamlatdar jurisdiction—There must be something prima facie to show that he satisfies definition. **A I R 1955 N U C (Sau) 4691.**

SECTION 3

——S. 3—Error of law relating to — No interference. See Constitution of India, Art. 226. **A I R 1953 Sau 195 (DB).**

——S. 3—Scope—Overrides Act 30 of 1950 — Proviso to S. 65 (1) must be given effect in spite of Act 30 of 1950. See Tenancy Laws — Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands (Amendment) Act (30 of 1950), S. 2. **AIR 1953 Sau 195 (DB).**

SECTION 5

——S. 5, Proviso—'Girasdar'—Meaning.

A Girasdar as used in S. 5 proviso must mean an individual owning a village or more villages and not members of a family divided from each other in food, estate and worship though the properties held by them are jointly held and not divided by metes and bounds on or before February 1, 1951 as mentioned in S. 23. **59 Bom L R 287 : ILR (1957) Bom 459 : A I R 1957 Bom 182 (185) (Pt D) (Pr 15) (DB).**

SECTION 12

——Ss. 12, 13 and 46 (e)—Applicability—'Terminated under S. 12 in S. 46 (e)—Meaning'.

The institution of a proceeding is provided for by S. 13 and not by S. 12 which merely prescribes the conditions on which the tenancy may be terminated. The words "terminated under S. 12" in S. 46 (e) simply mean that it may be terminated on the grounds stated in S. 12 and not that the termination is to place under the said section. The proceeding is a composite proceeding and it cannot be said that two proceedings are contemplated, one under S. 12 and the other under S. 13. **9 Sau L R 126 : A I R 1956 Sau 44 (45) (Pt A) (Pr 2) (DB).**

——Ss. 12, 13, 18, 46 — Writ of certiorari against order of Revenue Tribunal lies only when it is without jurisdiction or when there is manifest error on record—(Constitution of India, Art. 226—Certiorari). **A I R 1955 N U C (Sau) 4695.**

——Ss. 12, 13, 18, 46 — Relief against forfeiture of tenancy for non-payment of rent—Power of Mamlatdar and Revenue Tribunal indicated. **A I R 1955 N U C (Sau) 4695.**

SECTION 13

——Ss. 13, 13-A — Applicability—Mamlatdar calling upon tenant to pay arrears of rent within fifteen days —Arrears not paid—Application for ejectment—Payment of arrears during pendency of application — Discretion of Mamlatdar—Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29). **(1958) 60 Bom L R 1200 : ILR (1959) Bom 50.**

——Ss. 13, 12 and 46 (e) — Institution of proceeding is provided for by S. 13 and not by S. 12—Words "Terminated under S. 12" in S. 46 (e) — Meaning — (Words and Phrases). See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 12. **A I R 1956 Sau 44 (DB).**

——S. 13—Non-payment of arrears within 15 days—Mamlatdar's duty to make order of ejectment.

Section 13 empowers the Mamlatdar to require the tenant to pay the arrears within 15 days, and if such payment is made, the Mamlatdar will not pass an order determining the tenancy and will say that the tenancy had not been terminated with the result that the Girasdar will not be permitted to eject the tenant, But, if such payment is not made, the Mamlatdar has no option and it is incumbent upon him to make an order of ejectment. **1954 S C J 290 ; 9 Sau L R 126 : AIR 1956 Sau 44 (45) (Pt B) (Pr 2) (DB).**

——S. 13—Power of condonation of termination of tenancy by giving notice of payment within fifteen days of rent and cost to the appellate Court, whether can be exercised by appellate authority. **AIR 1956 Sau 44 (45, 46) (Pt C) (Pr 3) (DB).**

——S. 13—Non-payment of arrears within 15 days — Mamlatdar not making order of ejectment—Appeal—Arrears of rent paid during pendency of appeal—Appeal dismissed and decision confirmed by Revenue Tribunal—High Court should not interfere with order of Revenue Tribunal. See Constitution of India, Art. 226. **AIR 1956 Sau 44 (46) (Pt D) (Pr 4) (DB).**

——S. 13—Writ of certiorari against order of Revenue Tribunal lies only when it is without jurisdiction or when there is manifest error on record. See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 12. **AIR 1955 N U C (Sau) 4695.**

——S. 13—Relief against forfeiture of tenancy for non-payment of rent—Power of mamlatdar and Revenue Tribunal indicated. See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 12. **AIR 1955 N U C (Sau) 4695.**

SECTION 13-B

——Ss. 13-B and 62 — Debt coming within scope of S. 3 (h) must not have been barred by limitation. See Debt Laws—Saurashtra Agricultural Debtors' Relief Act (23 of 1954), S. 3 (h). **AIR 1964 Guj 122.**

SECTION 14

——Ss. 14 and 16 — Applies to dwelling house occupied by agricultural labourer—Notification No. R. D./10/1354, dated 14-5.1952. **AIR 1955 N U C (Sau) 5044.**

SECTION 16

——S. 16—Applicability to agricultural labourer—Agricultural labourer is distinct from a tenant contemplated by S. 16 and reading Ss. 16 and 14 together it is clear that agricultural labourer need not also be a tenant to claim the benefit of the Act. Notification No. R. D./10/1354. dated 14-5-1952 makes S. 14 applicable to cases of dwelling houses occupied by mere agricultural labourer. **A I R 1955 NUC (Sau) 5044.**

SECTION 18

——Ss. 18, 19, 32 (b) and 39—Landlord declared girasdar—Rights of tenants if preserved—Girasdar applying for Gharkhed land—Rights of tenants, if extinguished—Right of Government to impose conditions on girasdar. **(1959) 61 Bom L R 44 : ILR (1959) Bom 662.**

——S. 18—Relief against forfeiture of tenancy for non-payment of rent — Power of Mamlatdar and Revenue Tribunal. See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 12. **AIR 1955 NUC (Sau) 4695.**

——S. 18—Writ of certiorari against order of Revenue Tribunal—When lies. See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 12. **AIR 1955 N U C (Sau) 4695.**

SECTION 19

——S. 19—Allotment of gharkhed land to girasdar — His undivided interest has to be taken into account. **AIR 1955 N U C (Sau) 739 (DB).**

SECTION 21

——Ss. 21, 22, 24—Constituton of India, Art. 14 — Classification of Girasdars into A, B and C class—Allotment of lands to them is not discriminatory. See Constitution of India, Art. 14. **A I R 1952 Sau 114 (SB).**

SECTION 22

——S. 22—Rules under Act, Rr. 51 and 52—S. 22 (d) and Rr. 51 (2) and 52 are subject to S. 22 (b) and come into operation only on requirements of S. 22 (b) being fulfilled. **AIR 1955 N U C (Sau) 4360.**

——S. 22 (b)—Admission of tenant which offends against S. 22 (b), Saurashtra Land Reforms Act itself cannot operate against him — Court cannot act upon such decision—It it does so act its order is contrary to law. See Evidence Act (1872), S. 17. **A I R 1955 N U C (Sau) 4360.**

——Ss. 22, 21, 24—Constitution of India, Art. 14—Classification of Girasdars into A, B and C class—Allotment of lands to them is not discriminatory. See Constitution of India, Art. 14. **AIR 1952 Sau 114 (SB).**

SECTION 23

——S. 23 (c)—Decision of Revenue Tribunal under S. 23(c)—Ordering Gharkhed to be allotted to parties separately on the ground that partition by metes and bounds was proved — Case does not call for interference. See Constitution of India, Art. 226. **A I R 1955 N U C (Sau) 1459 (DB).**

SECTION 24

——Ss. 24, 21, 22—Constitution of India, Art. 14 — Classification of Girasdars into A, B and C class—Allotment of lands to them is not discriminatory. See Constitution of India, Art. 14. **AIR 1952 Sau 114 (SB).**

SECTION 39

——S. 39—Not ultra vires as contravening Art. 31 of the Constitution—(Constitution of India, Art. 31). **60 Bom L R 1191 : ILR (1958) Bom 41 : AIR 1959 Bom 43 (45) (Pt A) (Pr 6) (D B).**

SECTION 44

——S. 44 (3) and Notification of Bombay Government D/- 12-12-1958 — Notification operating retrospectively—Clear evidence of intention of Legislature—Notification not ultra vires—S. 44 (3) does not confer unlimited and unfettered powers — Not ultra vires—Constitution of India, Art. 14 — Interpretation of Statutes—Principles of. **(1960) 1 Guj H C R 9 : (1960) 1 Guj L R 45.**

SECTION 46

——Ss. 46 (e) and 12, 13 — Institution of proceeding is provided for by S. 13 and not by S. 12—Words "Terminated under S. 12" in S. 46 (e). See Tenancy Laws — Saurashtra Land Reforms Act (25 of 1951), S. 12. **AIR 1956 Sau 44 (DB).**

——S. 46—Writ of certiorari against order of Revenue Tribunal—When lies. See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 12. **AIR 1955 N U C (Sau) 4695.**

——S. 46 — Relief against forfeiture of tenancy for non-payment of rent — Power of Mamlatdar and Revenue Tribunal. See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 12. **AIR 1955 N U C (Sau) 4695.**

——S. 46 (b) — Jurisdiction of Civil Court when barred. See Tenancy Laws — Saurashtra Land Reforms Act (25 of 1951), S. 2 (30). **AIR 1955 N U C (Sau) 4691.**

SECTION 52

——S. 52 (1) (a)—Admission of tenant which offends against S. 22 (b), Saurashtra Land Reforms Act itself cannot operate against him — Court cannot act upon such decision—If it does so act his order is contrary to law. See Evidence Act (1872), S. 17. **AIR 1955 N U C (Sau) 4360.**

——S. 52—Powers of the Revenue Tribunal — It can revise orders of Collector or Deputy Collector when they are contrary to law or when there is failure to determine material issue—Order of remand by Tribunal — Order of Deputy Commissioner set aside. **AIR 1955 N U C (Sau) 3457.**

SECTION 61

——S. 61 — Bombay Mamlatdars' Courts Act (2 of 1906), S. 5 — Question falling under Land Revenue Act—No jurisdiction in Mamlatdars' Court — Person not entitled to possession under Land Revenue Code —Bar of jurisdiction of Civil Court and Mamlatdars' Court does not operate. See Bombay Mamlatdar Courts Act (2 of 1906), S. 5. **(1963) 4 Guj L R 182.**

SECTION 62

——S. 62—Mamlatdars' Courts Act (2 of 1906), S. 5—Question falling under Land Revenue Act—No jurisdiction in Mamlatdars' Court—Person not entitled to possession under Land Revenue Code — Bar of jurisdiction of Civil Court and Mamlatdars' Court does not operate. See Mamlatdars' Courts Act (2 of 1906), S. 5. **(1963) 4 Guj L R 182.**

—S. 62 — Jurisdiction of Civil Court when barred. See Tenancy Laws — Saurashtra Land Reforms Act (25 of 1951), S. 2 (30). AIR 1955 N U C (Sau) 4691.

SECTION 65

—S. 65 — Error of law relating to S. 3 — No interference. See Constitution of India, Art. 226. AIR 1953 Sau 195 (DB).

—S. 65—Proviso—Effect of. See Tenancy Laws—Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands (Amendment) Act (30 of 1950), S. 2. AIR 1953 Sau 195 (DB).

—SAURASHTRA PROHIBITION OF LEASES OF AGRICULTURAL LANDS ACT (23 of 1953)

SECTION 4

—Ss. 4 (1), 4 (2), 5 and 6 — Scope of S. 4 (2)—Lease not registered under S. 4 (1)—Lease not rendered void for all purposes—Penalty in S. 6, however attracted. (1960) 1 Guj L R 5.

SECTION 5

—Ss. 5, 4 (1), 4 (2) and 6 — Scope of S. 4 (2) — Lease not registered under S. 4 (1) — Lease not rendered void for all purposes—Lease granted or renewed in contravention of S. 5 is only void—Penalty in S. 6, however, attracted. See Tenancy Laws — Saurashtra Prohibition of Leases of Agricultural Lands Act (23 of 1953), S. 4 (1). (1960) 1 Guj L R 5.

SECTION 6

—Ss. 6, 4 (1), 4 (2), 5 — Scope of S. 4 (2) — Lease not registered under S. 4 (1) — Lease not rendered void for all purposes — Lease granted or renewed in contravention of S. 5 is only void — Penalty in S. 6, however, attracted. See Tenancy Laws — Saurashtra Prohibition of Leases of Agricultural Lands Act (23 of 1953), S. 4 (1). (1960) 1 Guj L R 5.

SECTION 8

—Ss. 8 and 17 — Scope — Lease — Termination by efflux of time—Right of occupant to evict tenant by law suit not barred — S. 17 does not apply in such case—(Civil P.C (1908), S. 9; T. P. Act (1882), S. 117). (1960) 1 Guj L R 5.

SECTION 17

—Ss. 17 and 8 — Scope — Lease — Termination by efflux of time—Right of occupant to evict tenant by law suit not barred — S. 17 does not apply in such case. See Tenancy Laws — Saurashtra Prohibition of Leases of Agricultural Lands Act (23 of 1953), S. 8. (1960) 1 Guj L R 5.

—SAURASHTRA PROTECTION OF TENANTS ORDINANCE (22 of 1948)

SECTION 4

—S. 4—Notice under, to vacate land by 1-4-1949—Effect of subsequent Ordinances 28 of 1949 and 41 of 1949—Applicability of Mamlatdars' Courts Ordinance, 1948 to proceedings to recover possession of the land — Tenancy Laws — Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 61.

Where a notice under the Saurashtra Ordinance (22 of 1948) to hand over possession of certain land on 1st April 1949 was given to a tenant who had taken it on lease for a fixed period and the notice could not have the effect of terminating the tenancy as the Saurashtra Temporary Postponement of Eviction Ordinance (28 of 1949) had come into force, the tenant continues to be in lawful possession of the land even for the purpose of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949) and the proceedings to recover land from the tenant are, therefore, governed by the provisions of the latter Ordinance and not by the Mamlatdars' Courts Ordinance 1948. Under S. 61 of the Ordinance 41 of 1949 though the Mamlatdar can decide all questions mentioned in that section, he cannot act under the Mamlatdars' Courts Ordinance, 1948, in such proceedings. AIR 1951 Sau 23 (23) (Pr 2) (DB).

SECTION 7

—S. 7—Tenancy Laws—Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 76—Bar of Civil Court jurisdiction — Proceedings under old Ordinance 22 of 1948 not complete when new Ordinance 41 of 1948 came into force—S. 76 bars Civil Court's jurisdiction— Only remedy is to continue proceedings under Ordinance. See Tenancy Laws — Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 76 — Bar of Civil Court's Jurisdiction. AIR 1955 N U C (Sau) 974 (DB).

—S. 7 (2)—Appeal lies to Collector—No revision is provided. AIR 1955 N U C (Sau) 974 (DB).

—SONEPUR STATE BHUMI BIDHI

SECTION 5

—Ss. 5 (4) and 15—Alienations enumerated in sections are not illegal and void from its very inception—Until actual eviction is made or order is passed by Ruler, transaction is valid — AIR 1962 Madh Pra 117, Foll.—AIR 1950 Orissa 213, Rel. on. ILR (1964) Cut 978.

SECTION 9

—Ss. 9, 20 — Lease by gauntia without protected status—Whether, illegal—Suit for title and possession —Plea under S. 3 (1) (a) of Orissa Tenants Relief Act —Plaintiff whether gauntia with protected status—Onus of proof. See Tenancy Laws — Orissa Tenants Relief Act (5 of 1955), S. 3 (1) (a) — Evidence Act (1872), S. 101. (1963) 29 Cut L T 85 : I L R (1963) Cut 44.

SECTION 15

—S. 15—Alienation enumerated in sections are not illegal and void from its very inception—Until actual eviction is made or order is passed by Ruler, transaction is valid. Tenancy Laws—Sonepur Bhumi-Bidhi (Orissa), S. 5 (4). I L R (1964) Cut 978.

SECTION 20

—S. 20—Lease by gauntia without protected status —Whether, illegal — Suit for title and possession—Plea under S. 3 (1) (a), Orissa Tenants Relief Act—Plaintiff whether gauntia with protected status—Onus of proof. See Tenancy Laws — Sonepur State Bhumi-Bidhi, S. 9. (1963) 29 Cut L T 85 : I L R (1963) Cut 44.

SECTION 21

—S. 21 (1) (b) — Suit for declaration of title and recovery of possession of land—Land was Jagir land —Outright sale prohibited — Any transfer also required sanction of State or consent of superior landlord—Such sanction or consent not obtained — Sale held void. (1964) 30 Cut L T 404.

SECTION 22

—S. 22 (b)—Defendants obtaining possession under mortgage invalid under S. 22 (b) and claiming absolute right in respect of suit land for 12 years—Defendants acquire not limited interest of mortgages but absolute title, by adverse possession. See Limitation Act (1908), Art. 144. A I R 1964 Orissa 258.

——S. 22 (b) — Conveyance of occupancy tenancy required to be signed by two persons — Consent of Gountia also required — Transaction held void for non-compliance with the conditions. **(1964) 30 Cut L T 404.**

SECTION 23

——S. 23—Applicability and scope.

Under S. 23 of the Bhumi-Bidhi the plea of special limitation will arise only if a suit is brought by the heirs or successors of the man who surrenders the holding. Where the plaintiffs impeached the transaction on their own independent rights which they had from their birth—the property being ancestral property in the hands of one who executed the deed of surrender—the plaintiffs being neither the heirs nor the successors of such person the special limitation will not apply. **(1957) 23 Cut L T 408.**

——S. 23—"Violating the provisions of law provided in the Act" — For applicability of special period of limitation, the transfer must be voidable as contravening provisions of Bhumi-Bidhi—Transfer contravening law of Registration or transfer by Hindu father when there is no legal necessity — Special period of limitation has no application — (Hindu law —Alienation — Legal necessity). **A I R 1955 N U C (Orissa) 221.**

—SONEPUR STATE BHUMI-BIDHI RULES

RULE 10

——Rr. 10, 12 — Effect — Tenancy Laws regarding transfer of occupancy holding already in force, how far affected by Order — Pending suits — Law governing.

Suits pending on 31-12-1947 must be decided in accordance with the laws continued in force under sub-para. (b) of para. 4 of S. 12 of the order. This means that the occupancy holding which is the subject-matter of such suit shall be taken to be one free to be transferred in an ordinary manner. See Administration of Orissa States Order (1948), Paras. 10, 12. **A I R 1951 Orissa 101 (DB).**

RULE 22

——Rr. 22 and 23—(Corrected up to August 1939)—Transfer of occupancy holding without consent of Gountia—Validity of transfer—Rights of transferee —Tenancy Laws — Orissa Tenancy Act (2 of 1913), S. 31.

Occupancy holdings are not inalienable, but are alienable under limited and specified circumstances, namely, for reasonable cause, as defined in note (1) to Clause (b) of R. 22. If such reasonable cause exists, the other deficiencies of validating circumstances, such as consent, signature of Gountia or certificate by the Revenue Department as to its fitness, can be removed on the mere asking for it. On the whole, till the transaction is set aside for absence of such reasonable cause in a suit at the instance of either the Gountia or the successor of an occupancy tenant or till so declared by the Revenue Department in a proceeding specifically drawn up for the purposes and carried on in the presence of the transferor, the transferee and the person entitled to avoid a transfer, the transaction binds the whole world including the parties or privies to it. This right of avoidance is exercisable by a suit within the period of limitation of two years, even though the person entitled to sue, be a minor at the time fixed for instituting the suit. **17 Cut L T 27 : A I R 1951 Orissa 101 (103) (Pt A) (Prs 6, 7) (DB).**

—SONTHAL PARGANAS CIVIL RULES

RULE 53

——R. 53 — Transfer of tenancy — Mutution fee not paid—Property sold in execution of rent decree—Old tenant can maintain petition for setting aside sale. A I R 1955 N U C (Pat) 1860 (DB).

—SONTHAL PARGANAS SETTLEMENT REGULATION (3 of 1872)

SECTION 3

——S. 3 — Repeal — (Constitution of India, Sch. V, Cl. 5 (2)).

The provisions of S. 3 of Regulation III of 1872 are impliedly repealed as a result of the enactment of the fifth Schedule of the Constitution. The jurisdiction of the Bihar Legislature to legislate for the scheduled area of Sonthal Parganas cannot therefore be doubted. The Bihar Land Reforms Act is validly applicable to all portions of the Sonthal Parganas District, which have been declared to be Scheduled Area. **1953 B L J R 77 : I L R 32 Pat 119 : A I R 1954 Pat 159 (159, 160) (Pt A) (Prs 3, 4) (DB).**

SECTION 9

——S. 9—Scope—S. 9 contained merely the power of the State Court to order that a settlement be made and did not contain any power to transfer any area to municipality or to modify any record of rights prepared during the settlement. See Sonthal Parganas Settlement Regulation (3 of 1872), S. 25. **AIR 1962 Pat 168 (DB).**

SECTION 11

——Ss. 11 and 25-A—Decision of settlement Court—How far conclusive — Transfer of land by Hindu widow — Question of legal necessity or benefit not raised before Settlement Court — Question raised in subsequent suit not barred by res judicata. See Civil P. C. (1908), S. 11. **AIR 1964 Pat 254 (DB).**

SECTION 24

——S. 24—Scope — The true effect of a record of rights under S. 24 of the Regulation is not to create rights where none existed but simply to afford conclusive proof, under S. 25 (1) of the Regulation, that such rights exist, by providing that the record, recording such rights, shall be the conclusive proof of them. **1957 B L J R 461 : I L R 36 Pat 439.**

SECTION 25

——Ss. 25, 27, 9 — Held, that S. 9 contained merely the power of the State Government to order that a settlement be made and did not contain any power to transfer any area to the municipality or to modify any record-of-rights prepared during the settlement. In the absence of any notification or any provision of law to show that the lands became transferable subsequent to their inclusion in Madhupur Municipality area, it must be held that they remained non-transferable. **AIR 1962 Pat 168 (175) (Pt H) (Prs 14, 15) (DB).**

——S. 25 —Record of rights — Conclusive — Nature and extent of—(Evidence Act (1872), Ss. 13, 35).

The true scope and effect of S. 25 is that the rights and customs incident to the land as recorded in the record-of-rights shall be conclusive and shall not be called in question until a fresh settlement takes place. While the record-of-rights must be regarded as conclusive to show the character of the land, it does not purport to determine the legal capacity in which the person for the time being in possession holds the land whether as a limited owner or as an absolute owner. It is purely a question of fact depending upon the circumstances of each case. **I L R 36 Pat 715 : 1957 Pat L R 187 : 1957 B L J R 364 : AIR 1957 Pat 482 (484) (Pt B) (Pr 8) (DB).**

——S. 25 (1) and (3)—Conflict between two records of rights.

Section 25 (1) has to be read with S. 25 (3) of the Regulation. The true import of S. 25 (3), is that if a revision of such Record of Rights, published under S. 24, and which has become final under S. 25 (1), is undertaken, as contemplated by, and in terms of S. 25 (3) then the previous record of rights automatically stands cancelled, if a contrary record appears in the revision record, and, the revision Survey Record of Rights will be taken to be correct in every respect, and thus it prevails over the earlier record of Rights and will be conclusive proof of the rights therein recorded.

Held, that on reading S. 25 (3), along with paras. 3 and 19 of Gantzer's Final Report the record of 1904 which represented the original settlement by Mr. Mopherson in 1904, must yield to the record of 1932 which was the Record of Rights of the revision settlement by Mr. Gantzer, and, which was based on the inter partes judgment of the Assistant Settlement Officer. 1955 B L J R 293, Disting. 1957 B L J R 461 : I L R 36 Pat 439.

——S. 25—Record of rights—Entries in — If conclusive proof as to the rights and customs recorded therein—(Evidence Act (1872), S. 35).

The combined effect of sub-ss. (1) and (3) of S. 25 is that after a period of six months from the date of the publication of the record of rights of any village under S. 24, such record shall be conclusive proof of the rights and customs therein recorded and that it shall not be reopened until fresh settlement is made without the previous sanction of the Governor. No fresh settlement has been made since after the Revision Survey and settlement made by Mr Gantzar, and therefore the record of rights published under S. 24 in that settlement, namely, the abstract khatian jamabandi must be regarded as conclusive on the question of the rights the plaintiffs have in the disputed lands. Hence the entry Lakiraj Jagirdar in serial No. 15 of the Abstract Khatian Jamabandi must be taken as conclusive. 1957 Pat L R 288.

——S. 25 — Settlement record — Conflict between previous and current record — Which prevails — (Evidence Act (1872), S. 35).

As a matter of law, in the event of conflict, the current record of rights must prevail upon the previous ones. On a proper construction of sub-ss. (1) and (3) of S. 25, the statutory conclusiveness attaching to the record-of rights shall continue until a fresh settlement is made. The legal consequence flowing from sub-s. (3) is that the last published records will be regarded as conclusive and the previous records will be deemed to have been superseded by it. 1957 Pat L R 288.

——Ss. 25 and 27—Scope — Holder of Raiyati land purchasing Lakhraj interest in village — In next settlement land recorded as bakasht Malil — Presumption — No merger of rights — Bar to alienate interest—Evidence Act (1872), S. 114.

The lands were originally held by S as raiyati in character. Later on he purchased the Lakhraj interest in the village. During the next settlement operations he desired that the lands should be bakshat lands but the lands though recorded as baksht did not cease to be raiyati lands, and the village community had the usual rights over them, On alienation of the land by his discendants a suit was brought for declaration of title and for possession after declaring the alienation illegal, and the question was whether the alienation offended against the provisions of S. 27.

Held (i) that S held a double character; he was the landlord in possession and he was also the raiyat of the land. So far as the raiyati interest was concerned, he could not sell it so far as the landlord's interest viz., the right to receive rent, was concerned, he could sell it.

(ii) that considering the intention or the benefit of S the raiyati interest and the landlords' interest did not merge.

(iii) that S. 27 contained an absolute bar against alienation and the mere fact that previously certain other alienations were made would not remove that bar. 1956 B L J R 587 : 1956 Pat L R 480.

——S. 25 (1) – Entries in record of rights in Sonthal Parganas — Inference from — One of law not of fact. See Civil P. C. (1908), S. 100. AIR 1955 N U C (Pat) 3987.

——S. 25—Record of rights—Entry as raiyati lands—Entry as bakasht malik in subsequent record—Entry did not create any right separate from that under earlier settlement. AIR 1955 N U C (Pat) 3987.

SECTION 25-A

——S. 25-A — Civil P. C. (1908), S. 11 — Decision of settlement Court – How far conclusive — Transfer of land by Hindu widow—Question of legal necessity or benefit not raised before Settlement Court — Question raised in subsequent suit not barred by res judicata. See Civil P. C. (1908), S. 11. AIR 1964 Pat 254 (DB).

SECTION 27

——S. 27—Landlord and tenant—Tenant acquiring entire superior landlord's interest—Doctrine of merger —When operative—Applicability to case of raiyati holders in Santhal Parganas—Whether raiyati interest subsists after purchase is mixed question of law and fact—Civil P. C. (1908), Ss. 100 and 101.

While the union of the superior and subordinate interests will not automatically cause a merger, merger will be held to have taken place if the intention to merger is clear and not otherwise. In the absence of any express indication of intention, the Courts will proceed on the basis that the party had no intention to merge if it was to his interest not to merge and also if a duty lay on him to keep the interests separate. In deciding the intention of the party the Court will have regard also to his conduct. There are special features in the land tenure in Santhal Parganas which make it difficult for the law of merger to apply there.

An entry of 'Bakasht Malik' in the subsequent record of rights does not amount to a negation of the raiyati interest and is a neutral expression as regards the continuance or otherwise of raiyati interests. There is in effect no conflict between the earlier settlement entry and the subsequent entries and no question as to which should prevail arises.

The question whether the raiyati interest continued to subsist after the raiyati purchase of the proprietary interest is a mixed question of law and fact. And it is open to the High Court in second appeal to go behind the conclusions of the Courts below. Jyotish Thakur v. Tarakant Jha, 1963 B L J R 267 : (1963) Supp 1 S C R 13 : I L R 43 Pat 139 : AIR 1963 S C 605 (608 to 610) (Prs 11, 12, 16, 18 to 20, 22).

——S. 27 (3) — Scope and applicability — Jurisdiction of Civil Court to grant relief against invalid transfer -C. P. Code (1908), S. 9.

Sub-s. (3) of S 27 gives a Deputy Commissioner of the District the right to evict the transfer-e and either restore the transferred land to the raiyat or any of his heirs or to re-settle the land with another raiyat according to the village custom, if at any time it comes to his notice that a transfer in contravention of sub-s. (1) of S. 27 had taken place. The provisions of sub-s. (2) of S. 27 that no transfer in contravention of sub-s. (1) shall be in any way recognized as valid by any Court, make it obligatory for the Civil Court when a dispute arises as regards the title to lands to ignore transfers made in contravention of S. 27 (1).

For the proper exercise of that obligation it is necessary for the Court to decide whether in fact the transfer on the basis of which one of the parties to the litigation bases his claim was really made in contravention of S. 27 (1). If the Court is satisfied that there was such contravention the Court must necessarily proceed to dispose of the case on the basis that no title accrued to the transferee by such transfer. The objection that S. 27 (3) stands in the way of the plaintiff's getting relief in the civil Court cannot therefore succeed. Jyotish Thakur v. Tarakant Jha, 1963 B L J R 267 : (1963) Supp 1 S C R 13 : ILR 43 Pat 139 : AIR 1963 S C 605 (611) (Pt B) (Pr 24).

——S. 27 — Transfer by a Raiyat—Plea of invalidity based on S. 27 of Santhal Parganas Settlement Regulation — Plea involves investigation of facts—Cannot be raised for the first time in second appeal. See C. P. Code (1908), Ss. 100-101. AIR 1964 Pat 254 (DB).

——S. 27 — Scope. See Sonthal Parganas Settlement Regulation (3 of 1872), S. 25. AIR 1962 Pat 168 (DB).

——S. 27—Scope — If ultra vires — Constitution of India, Arts. 19 (1) (f), 19 (5).

The restrictions regarding transfer of holdings laid down in S. 27 of Regulation 3 of 1872, were reasonable. The section is not therefore ultra vires and is not opposed to Art. 19 (1) (f) read with Art. 19 (5). A I R 1961 Pat 276 (276, 277) (Prs. 11, 12).

——S. 27 (1) —Grant of lease expressly prohibited by S. 27 —Possession of lessee is that of trespasser—Possession for twelve years in open assertion of permanent tenancy rights—Lessee acquires rights of permanent tenancy by prescription — Payment of rent by lessee—No bar to acquisition of rights by prescription. 1961 B L J R 714.

——S. 27—Order of eviction—Validity — Declaration as to—Jurisdiction of civil Court. See Tenancy Laws —Sonthal Parganas Tenancy (Supplementary Provisions) Act (14 of 1949), Ss. 20 (5) and 63. 1957 BLJR 820.

——S. 27—Possession under invalid lease—Character of—If adverse. See Transfer of Property Act (1882), S. 105. 1957 BLJR 820.

——S. 27—Suit for possession of lands based on title on the ground that sale of it was in contravention of S. 27 of Santhal Paraganas Settlement Regulations and defendants were mere trespassers — Held the plaintiffs were not estopped from pleading that sale was contrary to law — There can be no estoppal against statute. See Evidence Act (1872), S. 115. 1957 Pat L R 288.

——S. 27 (3) — Scope — Jurisdiction of Civil Court to evict transferee — If ousted — (C. P. Code (1908), S. 9).

Sub-section (3) of S. 27 of the Regulation only vests a discretion in the Deputy Commissioner to evict the transferee. It is not at all obligatory upon him to evict all transferees. A statute which invests the Deputy Commissioner with limited power which may or may not in his discretion be exercised having regard to the circumstances of each case cannot take away the jurisdiction of the Civil Court under the general law. 1957 Pat L R 288.

——S. 27—Scope—Holder of Raiyati land purchasing lakhraj interest in village — In next settlement land recorded as bakasht Malik — Presumption — No merger of rights—Bar to alienate interest. See Tenancy Laws—Santhal Parganas Settlement Regulation (3 of 1872), S. 25. 1956 BLJR 587.

——S. 27—Transfer of Property Act (1882), S. 111 (d)—Doctrine of merger—Doctrine may be applied to Santal Parganas — Raiyat acquiring landlord's right —There can be no merger—Merger takes place where tenant acquires immediate reversion—Santal Parganas Settlement Regulation (3 of 1872)—(Merger—Doctrine of). See Transfer of Property Act (1882), S. 111 (d). AIR 1955 NUC (Pat) 3987.

—SONTHAL PARGANAS TENANCY (SUPPLEMENTARY PROVISIONS) ACT (14 of 1949)

SECTION 5

——S. 5—Applicability.

Section 5 which relates to the appointment of a Pradhan for first time with respect to any khas village does not apply to the case of a subsequent appointment. 1965 BLJR 674 : ILR 45 Pat 668.

SECTION 12

——Ss. 12, 20 (4)—Applicability— Classification of raiyats—Not exhaustive— Kamat land settled under S. 6 of Bihar Act of 1950—Holders are raiyats. 1958 Pat L R 237.

SECTION 20

——S. 20—Possession under invalid lease—If adverse. See Transfer of Property Act (1882), S. 105. 1957 BLJR 820.

——S. 20 (5)—Scope of — Deputy Commissioner's powers.

By enacting S. 20 (5) the Act purports to enlarge the powers of the Deputy Commissioner by vesting in him a discretion to evict transferee even when he has been in possession for more than 12 years which, under the Regulation No. 3 of 1872, he was not competent to do. 1957 BLJR 820 : 1957 Pat L R 441.

——Ss. 20 (5) and 63—Order of eviction.

Validity—Declaration as to—Jurisdiction of civil Court—(Tenancy Laws—Santhal Parganas Settlement Regulation (3 of 1872), S. 27). 1957 BLJR 820 : 1957 Pat L R 441.

SECTION 32

——S. 32 — Land settled by landlord with defendant first party—Order made by Commissioner not to settle land with plaintiff —Suit by plaintiff for declaration without praying for consequential relief — Suit held barred — Civil P. C., O. 7, R. 7 held not applicable—Circle officer held could no more settle land with plaintiff. See Specific Relief Act (1877), S. 42, Proviso. 1961 Pat L R 83.

SECTION 53

——S. 53 (6)—Retrospective operation—Settlement of land acquired under S. 25 of Regulation II of 1886 prior to coming into force of Act — Power to order restoration. 1959 B L J R 95.

—SONTHAL PARGANAS TENANCY (SUPPLEMENTARY) RULES (1950)

RULE 3

——Rule 3, Form A and Sch. V, Para. 1 — Appointment of Pradhan—Deputy Commissioner must satisfy himself whether appointee was acceptable to jamabandi raiyats.

The appointment of a pradhan has to be made by the Deputy Commissioner in conformity with the opinion of the jamabandi raiyats.

Before appointing a Pradhan, therefore, the most important thing for him is to satisfy himself whether the man who was going to be appointed as a pradhan was acceptable to the jamabandi raiyats or not.

The lands of a village consisted of only of two Jamabandis. All the Jamabandi raiyats belonged to a family the members of which were appointed Pradhans in succession. The respondent who sought appointment as a pradhan was the son of the last deceased pradhan, while the petitioner was the son of the second Pradhan. All jamabandi raiyats gave

their consent in favour of the petitioner. The Deputy Commissioner, however, appointed the respondent as the pradhan.

The use of the words "elect a village Headman" in R. 3, Form A gave a clear indication that the appointment of the headman was by way of election by the raiyats of the village. Inasmuch as the Deputy Commissioner never cared to take into consideration the views of the Jamabandi raiyats who were in favour of the petitioner and against the respondent, his order was bad in law. **1965 B L J R 674 : I L R 45 Pat 668.**

—SOUTH CANARA CULTIVATING TENANTS PROTECTION ACT (Mad. Act 6 of 1954)

SECTION 2

——S. 2 (c)—Land found appurtenant to building — Claim to benefit — Debt Laws — Madras Indebted Agriculturists Temporary Relief Act (5 of 1954), S. 2 (c).

The claims under both Acts 5 and 6 depend upon the question whether the debtor was cultivating 'land' within the meaning of that term as defined by those Acts. The crux of that question would in both cases depend upon whether the building in the land was appurtenant to the land or the land was appurtenant to the building. Therefore, where the land is found appurtenant to the building as regards Act 5 of 1954, the debtor cannot claim the benefit of Act 6 of 1954 either. **1957 Ker L T 1030.**

SECTION 3

——S. 3 (3) (a)—Deposit of 'Rent'—Rent payable in instalments — Single deposit after all instalments — Single deposit after all instalments have fallen due—Sufficiency.

Section 3 (3) (a) of the Act speaks of the deposit of 'rent' and does not speak of each instalment thereof. The clause contemplates again a single deposit and not a series of deposits. It would appear therefore that a single deposit alone is called for even when there are more than one instalment of rent due and such deposit should be after the date of the last instalment i.e., when all the instalments have accrued due. **1957 Ker L J 531 : 1957 Ker L T 548 : A I R 1957 Ker 143 (143) (Pr 2).**

—SUNDERGARH STATE RULES

——Bhogra land—Transfer of — Arrangement by co-sharers for exclusive possession amongst themselves permissible. AIR 1955 N U C (Orissa) 6083.

——Bhogra land attached to office — Sons have no interest in land. AIR 1955 NUC (Orissa) 6083.

—SYLHET NON-AGRICULTURAL URBAN AREAS TENANCY ACT (10 of 1947)

SECTION 4

——S. 4—Suit for rejectment against tenant—Tenant setting up occupancy right in house must prove that he was in continuous possession of the same for a period of 12 years prior to institution of suit — Mere statement of tenant that he was in such possession without any independent testimony is not sufficient to discharge the burden. I L R (1952) 4 Assam 487 : AIR 1953 Assam 191 (192) (Pt B) (Pr 5).

—SYLHET TENANCY ACT (11 of 1936)

SECTION 3

——Ss. 3 (16) and 201 — Raiyat holding Homestead Land — (Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 182) — (Transfer of Property Act (1882), S. 105)—(Contract Act (1872), S. 73). I L R (1957) 9 Assam 192.

SECTION 33

——Ss. 33, 202—Application presented before issue of notice — All landlords not impleaded — On receipt of notice application amended within two months—Original application held validated. I L R (1955) 7 Assam 475 : AIR 1956 Assam 97 (98) (Pr 5) (DB).

——Ss. 33 and 147 (1) (e)—"Incident of tenancy" — Dispute covered by S. 33, if relates to incident of tenancy.

Section 33 deals with the pre-emptive right of a landlord. That right can be exercised against a transferee. The disputes directly covered by S. 33 would not normally relate to any incident of the tenancy. It is however possible that in cases covered by S. 33 some question as to the incident of a tenancy may crop up incidentally. Even that need not necessarily convert the entire dispute into a matter which sub-cl. (e) of cl. (1) of S. 147 would cover. **ILR (1950) 2 Assam 441 : AIR 1950 Assam 168 (169) (Pt A) (Pr 4) (DB).**

SECTION 34

——S. 34 as amended in 1943 — Applies only to usufructuary mortgages — Usufructuary mortgage with personal covenant—Held it is anomalous mortgage — Suit for redemption on mortgage money under T. P. Act maintainable if redumption not barred—Agreement of sale in favour of mortgagee — Effect—Mortgagee could sue for sale of property at any time after the expiry of the period fixed for repayment (T. P. Act (1882), Ss. 58, 60). ILR (1955) 7 Assam 489 : AIR 1956 Assam 17 (18, 19) (Pt B) (Prs 8, 10) (DB).

SECTION 147

——S. 147 — Second appeal.

Obiter.—No second appeal can be competent when the order not being a decree within the meaning of S. 147 is not appealable at all. **I L R (1950) 2 Assam 441 : AIR 1950 Assam 168 (169) (Pt B) (Pr 6) (DB).**

SECTION 202

——Ss. 202, 33—Application presented before issue of notice — All landlords not impleaded—On receipt of notice application amended within two months — Original application held validated on date of amendment. See Tenancy Laws—Sylhet Tenancy Act (11 of 1936), S. 33. AIR 1956 Assam 97 (DB).

—TANJORE TENANTS AND PANNAIYAL (PROTECTION) ACT (14 of 1952)

PREAMBLE

——Pre. — Tenant dispossessed from land to which Madras Act (14 of 1952) applied before amendment of S. 4 of Madras Act (25 of 1955) by Act (14 of 1956)—Right to claim benefit of S. 4. If dispossession was on 6-9-1956, i e., sometime before coming into operation of the Madras Act 14 of 1956 in regard to areas to which Madras Act 14 of 1952 applied the tenant cannot claim benefit of S. 4 (5) of Act 25 of 1955. See Madras Cultivating Tenants Protection Act (25 of 1955) (as amended by Act (14 of 1956)), S. 4, Expl. 2. (1958) 71 Mad L W 686.

——Pre. — Scope and effect of — Does not impliedly repeal Ss. 9 and 151 of Madras Estates Land Act—Object and territorial operation. See Tenancy Laws—Madras Cultivating Tenants Protection Act (25 of 1955). (1957) 2 Mad L J 369.

——Pre. — Act is not ultra vires — (Constitution of India, Sch. 7, List 2, Entry 18).

Act is directly covered by Entry 18 in List 2 of the Constitution. The provisions of the Constitution should be construed not in a narrow or pedantic sense but as extending to all ancillary or subsidiary

matters which could fairly and reasonably be said to be comprehended in it. Tenants continuing in possession after the termination of the lease are termed tenants at will and with reference to them the legislation falls within the terms of Entry 18 even strictly construed. Even as regards tenants who had vacated, the right to reinstatement will be ancillary or a subsidiary matter arising out of tenancy and would be within the terms of the Entry, liberally interpreted. In any event, that will be legislation relating to land. **(1953) 2 ML J 325 : 66 Mad L W 714 : ILR (1953) Mad 1114 : AIR 1954 Mad 51 (62) (Pt D) (Pr 25) (DB).**

SECTION 2

——S. 2 (d) and (g)—Expressions 'cultivating tenant' or 'tenant'—(Words and Phrases—'Cultivating tenant' or 'tenant').

In order that a person should be a 'cultivating tenant' or a 'tenant', firstly he should not be the owner of land and secondly he should hold the land under a tenancy agreement express or implied. It is not absolutely necessary for the application of the section that the tenancy agreement express or implied should be directly with the owner of the land. In view of the definition of the word 'landowner' given in S. 2 (g), it may be that the tenancy agreement might be with some one who claims under the owner. A person who is in possession of land on 1st December 1951, without a tenancy agreement, express or implied, but is a trespasser does not come under the definition cultivating 'tenant' or 'tenant', Therefore, to say that tenancy agreement express or implied must be with the person who owns lands is not correct. **1954 Mad W N 68 : (1954) 1 M L J 277 : 67 Mad L W 88 : AIR 1954 Mad 805 (806) (Pr 4).**

SECTION 3

——S. 3 (b)—'Land held by a landowner'—Meaning of—Words and phrases—'Held'.

Though the enjoyment of certain property is one of the incidents or ingredients constituting some of the bundle of rights flowing from holding property, still if a person has merely the right of enjoyment it would not be correct to say that he holds property.

The phrase 'land held by a landowner' in S. 3 (b) has reference to land over which the land owner has ownership and not land which he holds in a fiduciary or other capacity, such as a trustee; or a guardian of an infant or committee of a lunatic. Case law reviewed. **AIR 1955 NUC (Mad) 694.**

SECTION 6

——S. 6 (1) — Material date for determination of rights.

The material date for the determination of the rights of the tenant and the land owner under S. 6 (1) of the Act is the date on which the Tanjore Tenants and Pannaiyal Protection Act No. 2 of 1952 came into force, namely, 23rd August 1952, i. e., the same date on which the subsequent Act is deemed to have come into force. **(1956) 69 Mad L W 143 : (1956) 1 M L J 373.**

——S. 6 (1) and (3) (b) — Once tenant is restored to possession, subsequent event does not affect his right. (1956) 69 Mad L W 143 : (1956) 1 M L J 373.

——Ss. 6 and 12—No contravention of Art. 19 (1) (f) — Provisions can be upheld under Art. 19 (5) — (Constitution of India, Arts. 19 (1) (f) and 19 (5)).

In judging the reasonableness of Ss. 6 and 12 of the Act, it is necessary to bear in mind the state of emergency existing before the passing of the Act. (Growing tension between landowners, tenants and Pannaiyals in Tanjore, before the Act, traced).

If what would otherwise be an invasion of the rights of a citizen under Art. 19 (1) (g) is reasonable and in the interests of the public, then all the requirements of Art. 19 (5) are satisfied. It is not permissible to read into it a further restriction based on a scholastic interpretation of the meaning of the word 'restriction' that the legislation should be negative in character.

Ss. 6 and 12 are, having regard to their character as an emergency legislation of a temporary nature, not unreasonable and can be upheld under Art. 19 (5) of the Constitution and do not contravene Art. 19 (1) (f). Case law referred.

The legislation is intended to benefit generally the cultivating tenants and farm labourers. In an agricultural country like India, the tenants and farm labourers form an important section of the public and therefore, a legislation intended to benefit them as a class must be held to be for the benefit of the general public as required by Art. 19 (5). A public purpose does not cease to be such because it ultimately benefits individuals. **(1953) 2 M L J 325 : 66 Mad L W 714 : ILR (1953) Mad 1114 : AIR 1954 Mad 51 (57, 58, 60) (Pt A) (Prs 14, 15, 20) (DB).**

——S. 6 — There is no contravention of Art. 31 (2) of the Constitution—(Constitution of India, Art. 31(2) —Law conferring ownership on individuals).

Art. 31 (2) of the Constitution prohibits acquisition of title or taking of possession for a public purpose without payment of compensation. But the acquisition or taking of possession by whom, it does not mention. A reference to the relevant provisions of the Constitution clearly shows that it was only acquisition of title or taking of possession by the State, or Union that is dealt with in Art. 31 (2).

Any law which confers rights of ownership or possession on individuals, the State itself not acquiring it, is not within the operation of Art. 31 (2) and its validity must be determined only with reference to the terms of Art. 19 (1) (f) and Art. 19 (5).

Section 6 of the Act does not contravene Art. 31(2). **(1953) 2 M L J 325 : 66 Mad L W 714 : ILR (1953) Mad 1114 : A I R 1954 Mad 51 (60, 61) (Pt B) (Prs 22, 23) (DB).**

——Ss. 6 and 12—Are not arbitrary and discriminatory—(Constitution of India, Art. 14).

Held, after examining the provision of Ss. 6 and 12 that they are neither arbitrary nor discriminatory. **(1953) 2 MLJ 325 : 66 Mad L W 714 : ILR (1953) Mad 1114 : AIR 1954 Mad 51 (62) (Pt C) (Pr 24) (DB).**

SECTION 7

——S. 7 — Constitution of India, Arts. 14, 19 (1) (f) and 5, 246; Sch. 7, List 2, Entry 18 — Extension of term of tenant of land beyond period fixed by contract — Is reasonable restriction on landlord's right to hold property —Tenancy Laws —Tanjore Tenants and Pannaiyal Protection Act (14 of 1952), Ss. 7 and 8 is valid—(Tenancy Laws—Madras Cultivating Tenants Protection Act (25 of 1955) (as amended by Act 14 of 1956)—Validity)—(Tenancy Laws—Madras Cultivating Tenants (Payment of Fair Rent) Act (24 of 1956)—Validity. See Constitution of India, Art. 14. AIR 1958 Mad 608 (FB).

——Ss. 7, 6, 13 — Applicability — Tenants inducted subsequent to 23-8-1952—Rights of.

The Act is applicable to and governs the rights as much of cultivating tenants in possession of their holdings on 23-8-1952 as of those who were inducted subsequently. There is no reason why, when the statute enacts terms in respect of persons, who are cultivating tenants between 1952-53 and 1957-58, persons who come in at an intermediate period of

time should not have the benefit of the statutory terms subject, of course, to the termination of the statutory term after 1957.53. Tne primary purpose of the legislation was to put fetters upon the contractual rights of the landholder, which according to the framers of the enactment, were being misused. The opening words of S. 7, viz , "every cultivating tenant" afford statutory protection to every cultivating tenant and a tenant is not the less a cultivating tenant within those words, because he was not in possession of the land on 23-8.1952 The language employed is perfectly general and is by no means restricted to conferring rights upon cultivating tenants in possession on any particular date. **(1957) 70 Mad L W 52 : (1957) 1 Mad L J 211.**

SECTION 8

——S. 8 (2)—Bar of jurisdiction of civil Court—Suit for arrears of rent against tenant — Tenant claiming benefits and remissions under the Act — Remedies provided by the Act not availed of — Civil Court had no jurisdiction to grant the reliefs claimed — Civil P. C. (1908), S. 9. See Tenancy Laws — Tanjore Pannaiyal Protection Act (14 of 1952), S. 14 read with S. 3. **1962 Mad W N 334.**

● ——S. 8 — Is valid. See Constitution of India, Art. 14, **A I R 1958 Mad 608 (FB).**

SECTION 10

——S. 10—Proceedings under—Applicability of Ss. 3 (1) and 4 (1) of Madras Act 1 of 1955 — Do not apply to proceedings under S. 10 of Madras Act (14 of 1952) — But operation of S. 4 (1) could not be excluded from the "debt" constituted by the arrears of rent due by a tenant under Act (14 of 1952). See Debt Laws—Madras Indebted Agriculturists (Repayment of Debts) Act (1 of 1955), S. 3 (1). **(1957) 2 Mad L J 108.**

——S. 10 (2) (c)—Application for eviction on ground of non-payment of rent—Procedure.

There are two stages in the disposal of an application for eviction on the ground of non-payment of rent. The first stage is an inquiry into the objections raised on behalf of the tenant, followed by a decision by the revenue Court. If the decision is against the landowner, the application is dismissed straightway. But if the decision is in favour of the landowner, a notice is issued calling upon the tenant to tender the rent in arrear and costs. Then the next stage is after the expiry of thirty days from the date of the notice. If by that date, the tenant does not comply with the notice, that is, does not pay up the arrears of rent and costs, the revenue Court shall pass an order for his eviction. But before the issue of a notice, there should be a decision by a revenue Court of the exact amount of arrears due.

A notice issued before the determination of the question of arrears cannot be said to have been intended as a final order impliedly holding that the amount claimed by the landowner is lawfully due. The order of eviction passed on non-compliance of such a notice is in disregard of the provisions of S. 10 (2) (c) and therefore is liable to be quashed. **A I R 1955 N U C (Mad) 4332 (DB).**

——S. 10 (1) (f)—'Has been'—Meaning of—Conduct of tenant prior to Act — No ground for eviction—(Words and Phrases — Interpretation of Statutes)—(Civil P. C. (1908), Preamble — Retrospective operation).

Though the expression 'has been' in Cl. (f) of S. 10 (1) of the Madras Act may include past conduct also the proper construction of the clause read along with the other clauses and in the context would be to confine it only to conduct or behaviour of the tenant subsequent to the passing of the Act.

The mere fact that certain rights are conferred upon the tenants as from 1st December 1951 does not lead to the conclusion that the acts of those tenants subsequent to that date and prior to the passing of the Ordinance or the Act should afford grounds for eviction. That certainly is not the object of the Legislature and the terms of S. 10 read with S. 6 do not warrant such construction. It is only the acts done by the tenants subsequent to the Act that entitle the landlord to invoke the terms of S. 10. **A I R 1955 N U C (Mad) 1570 (DB).**

SECTION 12

——Ss. 12, 13—Order by Conciliation Officer under S 12 (3) — Not appealable — Order not covered by provisions of S. 13 (2).

There is no right of appeal conferred against an order under S. 12. Section 12 is an express provision in regard to particular class of disputes between landlord and a pannaiyal, namely, that relating to his dismissal. That category of disputes between a landlord and pannaiyal is taken out of the ambit of the authority given to the Conciliation Officer under S. 13, by the expression 'save as otherwise expressly provided in the Act' occurring in it. And, therefore, S. 13 does not apply to cases covered by S. 12. **(1962) 75 Mad L W 152 : I L R (1962) Mad 719 : (1962) 2 Mad L J 164.**

——Ss. 12 (1) and 13 (1) — Power of Conciliation Officer to decide incidental questions — Appealable orders.

It is no doubt ture that S 12 (1) does not specifically enable a Conciliation Officer to decide the questions whether a particular person is a pannaiyal or not and whether a landlord is entitled to the exemption under the Act. Those questions could nevertheless be considered as incidental or collateral but only as incidental to the adjudication of the question of re-instatement of the dismissed pannaiyal under S. 12 (1) of the Act. If, however, the question of such relationship is a substantial point in dispute, the jurisdiction of the Conciliation Officer could be exercised only under S. 13 (1) of the Act and any order made under that sub-section will be appealable under S. 13 (2) of the Act. **(1959) 2 Mad L J 418 : 72 Mad L W 721.**

——S. 12 (1) — Landowner, in contemplation of S. 12 (1)—Who is—(Obiter).

Obiter —The landowner contemplated by S. 12 (1) is the landowner to whom the Act applied on the date of the commencement of the Act and his assignees, heirs or other legal representatives. **(1956) 69 Mad L W 143 : (1956) 1 Mad L J 373.**

——S. 12—No contravention of Art. 19 (1) (f) of the Constitution—Provisions can be upheld under Art. 19 (5). See Tenancy Laws — Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1950), S. 6. **A I R 1954 Mad 51 (DB).**

——S. 12 — Sections 6 and 12 are not arbitrary and discriminatory. See Tenancy Laws—Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1950), S. 6. **A I R 1954 Mad 51 (DB).**

SECTION 13

——S. 13 — Section 12 is an express provision in regard to particular class of disputes between landlord and a pannaiyal, namely, that relating to his dismissal. That category of disputes between a landlord and pannaiyal is taken out of the ambit of the authority given to the Conciliation Officer by the expression 'save as otherwise expressly provided in the Act' occurring in it. And therefore, S. 13 does not apply to cases covered by S. 12. **(1962) 2 Mad L J 164 : I L R (1962) Mad 719.**

——S. 13 — Bar of jurisdiction of civil Court — Suit for arrears of rent against tenant — Tenant claiming benefits and remissions under the Act — Remedies provided by the Act not availed of — Civil Court had no jurisdiction to grant the reliefs claimed — Civil P. C. (1908), S. 9. See Tenancy Laws—Tanjore Pannaiyal Protection Act (14 of 1952), S. 14 read with S. 3. **1962 Mad W N 334.**

——**S. 13 (1) and (2) — Scope — Madras Cultivating Tenants Protection Amendment Act (14 of 1956), Ss. 10 and 11—Effect of on proceedings under earlier Act.**

Since the provisions of S. 13 (2) of the Tanjore Act are not overriden by any contrary provision of the Cultivating Tenants Protection Act the provisions of Ss. 10 and 11 of the Amending Act of 1956 relating to transfer of proceedings cannot apply to cases under S. 13 (2) of the Tanjore Act as there is no provision in the Act of 1955 corresponding to S. 13 (2) of the Act of 1952. The appellate jurisdiction of the Revenue Court under S. 13 (2) of the Tanjore Act is not therefore in any way affected by the Madras Act (14 of 1956). Similarly a vested right of appeal under S. 13 (2) of the Tanjore Act to the Revenue Court from a decision of the Conciliation Officer, is a vested right which cannot be taken away by the mere fact that S. 11 (2) of the Madras Cultivating Tenants Protection (Amendment) Act (14 of 1956) superseded the powers of the Conciliation Officer under S. 13 (1) of the Tanjore Act. If, at the commencement of the Amending Act, any proceedings under S. 13 (1) of the Tanjore Act were pending, they would be disposed of by the Revenue Divisional Officer under the later Act. But where no such proceedings were pending but were disposed of before the new Act, the right of appeal under the original Act cannot be taken away, though the claim as to restoration to possession by a cultivating tenant under S. 13 (1) of the Tanjore Act is also covered by S. 4 of the Cultivating Tenants Protection Act. **71 Mad L W 272 : (1958) 1 Mad L J 317.**

—— S. 13 (2) — Principles of natural justice—Violation of — In an appeal under S. 13 (2) the petitioner is given an ample opportunity, (which he avails himself of) to participate in the further enquiry held by conciliation officer — Order that further evidence be taken — It is not violation of principles of natural justice. See Constitution of India. Art. 226. **A I R 1955 N U C (Mad) 3197.**

——S. 13 (2)—Petitioner submitting to jurisdiction of revenue Court—Bar of grant of relief under Art. 226 of Constitution. See Constitution of India, Art. 226. **A I R 1955 N U C (Mad) 3197.**

——**S. 13 (2) — Appeal under S. 13 (2) — Power of Revenue Court to call for further evidence — (Civil P. C. (1908), O. 41, R. 27).**

There is nothing in the Act or in the rules framed thereunder to indicate that when the revenue Court calls for further evidence and had that evidence recorded by the conciliation officer, the revenue Court acts without jurisdiction.

Even under R. 5 (b), the power given to civil Courts for the examination of parties and witnesses would be sufficient to clothe the revenue Court as an appellate Court with power to provide for the examination of witnesses by the tribunal inferior to it. **AIR 1955 N U C (Mad) 3197.**

SECTION 14

——S. 14 read with Ss. 3, 8 (2) and 13—Bar of jurisdiction of Civil Court—Suit for arrears of rent against tenant — Tenant claiming benefits and remissions under the Act — Remedies provided by the Act not availed of — Civil Court had no jurisdiction to grant the reliefs claimed — Civil P. C. (1908), S. 9. **(1962) Mad W N 334 : 75 Mad L W 423 : (1962) 2 Mad L J 203 : ILR (1962) Mad 1028.**

—THIRUCHIRAPALLI KAIERUWARAMDAR AND MATTUWARAMDAR ACT (36 of 1958)

SECTION 1

——Ss. 1, 5 — Constitutional validity—Provisions are not unconstitutional as being unworkable — The classification between Kaieruwaramdar and Mattuwaramdar is reasonable classification is not discriminatory — Provisions are within the legislative competence of the legislature. 1953 (2) M L J 325; 1958 A C 541; 1940 A C 1014; 1954 (1) W L R 1410, Ref; (Constitution of India, Arts. 14 and 19 (1) (f)). **ILR (1964) 2 Mad 173.**

SECTION 5

——**Ss. 5 and 13** — Appointment of Tahsildar having jurisdiction over the area — Empowering the Tahsildar as special authority to adjudicate under the Act is not ultra vires, the rule making power of the Government—In the absence of any special definition of a Tahsildar in other statutes, it cannot be said that by defining Tahsildar in a particular manner in the rules, the Government have assumed power which was not conferred on them under S. 13. **ILR (1964) 2 Mad 173.**

—TRAVANCORE COCHIN COMPENSATION FOR TENANTS IMPROVEMENTS ACT (10 of 1956)

SECTION 1

——**S. 1—Applicability—Eviction or surrender prior to Acts—Law applicable.**

Where a claim for compensation for improvements made by the tenant is concerned the law governing the matter shall be taken as on the date of eviction or surrender of the property. Where the defendant has surrendered the property to the plaintiff by 1125 M. E., long before the Tenants' Compensation for Improvements Act 10 of 1956 or Act 29 of 1958 came into being, the tenant was absolutely bound by the terms of his agreement with landlord. **1960 Ker L J 936 : 1960 Ker L T 901.**

——**S. 1—Appeal pending—Applicability of the Act.**

The appellate Court is bound to decide the question of value of improvements in the light of Act 10 of 1956 if the appeal from the decree is pending on the date of the Act. The fact that the trial Court had already passed a decree by the time Act 10 of 1956 was passed is therefore of no consequence. **1958 Ker L T 973 : 1958 Ker L J 1057 : A I R 1959 Ker 178 (179, 180) (Pt B) (Pr 9) (DB).**

SECTION 5

——**S. 5 (3)** — Compensation for improvements adjudged in decree — No subsequent improvement — Executing Court has no power to reopen question of compensation. **1959 Ker L J 530 : 1959 Ker L R 539 : 1959 Ker L T 578.**

——**S. 5 (1)—Scope—If retrospective.**

A reading of sub-s. (1) of S. 5 makes it clear that its operation is intended to be prospective. The subsection does not contemplate the reopening of a decree which is final and conclusive. **1958 Ker L J 1 : 1957 Ker L T 1274 : ILR (1958) Ker 366 : AIR 1958 Ker 105 (106) (Pt A) (Pr 2) (DB).**

[Overruled on another point in A I R 1963 Ker 179 (FB)].

——**S. 5 (3) — Subsequent improvements—Compensation for.**

Normally a decree will be deemed to have settled the rights and liabilities of the parties as they stood on the date it bears, but sub-s. (3) of S. 5 contemp-

renment is the kanam tenant—In the case of verum-pattom tenant it is the landlord who is liable to pay. See Tenancy Laws—T. C Kanam Tenancy Act (24 of 1955), S. 3 (1). 1957 Ker L J 237 : 1957 Ker L T 225.

—(TRAVANCORE-COCHIN) KILIMANOOR AND EDAPALLI ESTATE ACT (4 of 1068 M. E.)

SECTION 2

——Ss. 2 and 4 — Registry of lands by Government and Edavagai should be treated alike. I L R (1956) Trav-Co 452 : A I R 1957 Trav-Co 14 (17) (Pt C) (Pr 14) (DB).

SECTION 4

——Ss. 4 and 2 — Registry of lands by Government and Edavagai should be treated alike. See Tenancy Laws — T. C. (Kilimanoor and Edappali) Estate Act (4 of 1068), S. 2. AIR 1957 Trav-Co 14 (DB).

SECTION 6

——Ss. 6 and 8 — 'Encumbrance'—Meaning – Claim developed by adverse possessor is included. See Travancore Revenue Recovery Act (1 of 1068), S. 35. AIR 1957 Trav-Co 14 (DB).

SECTION 8

——Ss. 8 and 6 — Sale of land for arrears of rent — 'Free of all encumbrances' — Meaning — Included claim developed by adverse possessor. See Travancore Revenue Recovery Act (1 of 1068), S. 35. AIR 1957 Trav-Co 14 (DB).

—TRAVANCORE-COCHIN PREVENTION OF EVICTION OF KUDIKIDAPPUKARAN ACT (13 of 1955).

SECTION 2

——Ss. 2 (c), 4 (2), 6—Kudikidappukaran — Permission to occupy—Who can grant—Person put in possession by lessee or assignee of Kudikidappukaran—Right to protection—(Interpretation of statutes.)

In order to satisfy the test of a kudikidappukaran a party must be able to establish that he comes within all the tests laid down by the definition in Cl. (c) to S. 2. Applying the test contained in S. 2, Cl. (c), the only interpretation that could be placed upon sub-clause (2) of S. 4 is that the legislature takes in all those cases of persons who would have been in possession of a portion of the property and who have constructed buildings or other homesteads on a portion of the property in the actual possession of the owner. Further, S 6 imposes an embargo upon the right of a kudikidappukaran to alienate the rights That gives an indication that the right is conferred and intended to be conferred by the Act is a personal right of a kudikidappukaran as such who is able to satisfy the test laid down in that Act and it does not recognise any such right in the transferees. Under the new Act neither the person put in possession by the lessee nor the transferee from such person is entitled to claim protection on the basis of being a kudikidappukaran and they cannot effectively challenge the right of the owner to get a decree for eviction in his favour. 1959 Ker L R 1151 : 1959 Ker L T 1287 ; 1960 Ker L J 1 : ILR (1960) Ker 24 : AIR 1960 Ker 158 (162, 163) (Pt C) (Prs 20, 22, 23).

——S 2 (c) — Permission to occupy hut as part of contractual obligations – He cannot claim to be 'kudikidappukaran' within the scope of the statute. See Tenancy Laws —Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2 (3). ILR (1958) Ker 978.

—— S. 2 (3) and (4)— 'Kudikidappukaran and Kudiyiruppu'—Meaning of. A person who has a homestead or a land of his own and the hut or shade in question is not used as a place of residence but is used as a workman for his business of carpentry is not a kudikidappukaran and the hut is not a kudiyiruppu. See Tenanacy Laws—Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2. ILR (1958) Ker 696,

——S. 2 (c) read with Cl. (e)—Land belonging to two cosharer landlords — Person let into property subsequent to partition suit by one cosharer landlord — Person is not kudikidappukar. 1956 Ker L T 611.

SECTION 3

——Ss. 3, 12 and 14 — Decree for eviction of kudikidappukaran passed under Travancore Act (22 of 1124) — Not effected by T. C. Act (13 of 1955) — (General Clauses Act (1897), S. 6). 1956 Ker L T 534.

SECTION 4

——Ss. 4 (2), 2 (c) and 6 — Kudikidappukaran — Permission to occupy — Owner can grant — Person put in possestion by lessee or assignee of kudikidappukaran—Not entitled to protection—Scope of S. 4 (2)—Expression defined in Act — Interpretation — Takes in all those cases of persons who would have been in possession of a portion of property and who have constructed buildings or other homestead on a portion of the property in actual possession of the owner. See Tenancy Laws—Travancore-Cochin Prevention of Eviction of Kudikidappukaran Act (13 of 1955), S. 2 (c). AIR 1960 Ker 158 (DB).

——S. 4 — Kudikidappukaran — Cannot claim any right over adjacent land by way of accessory licence or otherwise. See Tenancy Laws—Cochin Verumpattamdars Act (8 of 1118 M. E.) S. 2 (a), (b) and (d). 1956 Ker L T 287.

SECTION 6

——Ss. 6, 2 (c) and 4 (2)—Kudikidappukaran—Permission to occupy—Who can grant—Person put in possession by lessee or assignee of kudikidappukaran —Not entitled to protection— Scope of S. 4 (2)—Expression defined in Act—Interpretation — Takes in all those cases of persons who would have been in possession of a portion of property and who have constructed buildings or other homesteads on a portion of the property in actual possession of the owner — S. 6 imposes an embargo upon the right of kudikidappukaran to alienate the rights. AIR 1958 Ker 158 (Pt C) (DB).

SECTION 12

——S. 12—Scope.

The benefits of Act 13 of 1955 are available only to those kudikidappukars who have applied within the time specified in section 12 of the Act and got their names registered as kudikidappukars. Where the appellants have not contended that they have so applied and got themselves registered as kudikidappukars the matter cannot be enquired into. 1956 Ker L T 618.

——S. 12—Decree for eviction of kudikidappukaran passed under Travancore Act (22 of 1124) - Not effected by T. C. Act (13 of 1955). 1956 Ker L T 534.

SECTION 14

——S. 14 — Decree for eviction of kudikidappukaran passed under Travancore Act (22 of 1124) — Not effected by T. C. Act (13 of 1955). 1956 Ker L T 534.

—TRAVANCORE EDAVAGAI ACT (3 of 1109 M. E.)

SECTION 1

——S. 1—Applicability of the Act—Travancore Jenmi and Kudiyan Act does not apply to freehold lands of an Edvaga chief — To such land Travancore Edavagai Act 3 of 1109, M. E. is applicable. See Tenancy Laws—Travancore Jenmi and Kudiyan Act (5 of 1071), S. 1. AIR 1955 NUC (Trav-Co) 5110.

SECTION 2

—Ss. 2 (ix) and 2 (x) — Jenmom tenure — What is stated — Land held Thanathu land as defined in the Edavagai Act—See Tenancy Laws—Travancore Jenmi and Kudiyan Act (5 of 1071), S. 2). AIR 1955 N U C (Trav-Co) 682.

SECTION 5

—S. 5 (2) (1) (9)—Levy of Melvarom is authorised by S. 5. AIR 1955 N U C (Trav-Co) 6039 (DB).

—S. 5 (2) (iii) — Thanathu lands witnin Edavagai of vanjipuzha Chief—Act does not apply. See Tenancy Laws — Travancore Jenmi and Kudiyan Act (5 of 1071). A I R 1953 Trav-Co 437.

—S. 5 (2) (ix)—'Over and above the rent otherwise payable'.

Word 'rent' is used in the clause in wider sense — The clause imposes a new assessment payable in respect of not only jenmom Cherikkal lands but also holdings held on permanent or irredeemable titles — Held, that the melvaram that was originally payable to the Chief in respect of the plaint properties was of the nature of rent and that the melvaram imposed under S. 5(2) (ix) was over and above the melwaram that was originally payable — There could be no objection to the two dues being shown separately in the patta. 1953 Ker L T 267 : I L R (1954) Trav-Co 109 : A I R 1953 Trav-Co 408 (415, 416) (Pt B) (Prs 22, 26 to 28) (DB).

SECTION 17

—S. 17(2) —Settlement officer deciding that melvaram would be assessed on properties claimed by Devaswom according to the Provisions of S. 5 (2) (IX) of Edavagati Act—Suit by Devaswom for declaration that it was not liable to certain amount of Devaswom —Held, it was not necessary to set aside order of settlement officer — Suit held was governed by Art. 120 and not by Art. 14, Limitation Act. See Limitation Act (1908), Art. 14. AIR 1953 Trav Co 408 (DB).

—TRAVANCORE JENMI AND KUDIYAN ACT (5 of 1071 M.E.)

—(As Amended in 1108)—Mortgage of michavarom prior to 1108 — Right of mortgagee to recover michavarom from mortgagor after properties were assessed to jenmikarom under amending Act— (T. P. Act, 1882, Ss. 68, 73).

Held, that the plaintiff's remedy must be limited to recovery of mortgage money and interest thereon at the rate of 6 per cent. per annum from 1117. It was true that michavarom was also taken into account in fixing the Jenmikarom of Jenmom properties coming within the purview of the Jenmi and Kudiyan Act. But this did not mean that michavarom as such continued to exist after the date of the amending Act of 1108. The property mortgaged was the michavarom payable by the Kanom tenants and such michavarom formed one of the several items of payment due from kanom tenants. It could not be said that michavarom was due from the tenants after the Jenmikarom due on the property was settled. The liability sought to be imposed on the defendant was not one arising under the mortgage in which case alone the question of accounting would arise. 1958 Ker L T 39 : 1958 Ker L J 191.

—Lease of non-jenmom lands—Property — If irredeemable—Document has to be considered—Stipulation for renewal and payment of renewal fees cannot by itself be treated as sufficient in law to raise presumption being drawn in favour of irredeemability — Transfer of Property Act (1882), S. 105. AIR 1955 N U C (Trav-Co) 5110.

—Michavaram dues—Jenmi is entitled to according to terms of contract. A I R 1955 N U C (Trav-Co) 5089 (DB).

—Kudi-jenmom Inam Land falls under category of 'Jenmom land' and is governed by Act. A I R 1955 N U C (Trav-Co) 5056 (DB).

—Kanapattam held fell within purview of Act. AIR 1955 N U C (Trav-Co) 1095 (DB).

—Thanatu lands within Edavagai of Vanjipuzha chief — Act does not apply—Travancore Edavagai Act (III of 1109), S. 5 (2) (iii).

The thanatu lands within the Edavagai belonging to Vanjipuzha Chief do not come under the category of jenmom land as defined in the Jenmi and Kudiyan Act and that therefore the Jenmi and Kudiyan Act has no application to the demise of such lands. The tenure in respect of such lands must be determined by the terms of the document under which they are held.

Deed held to be a redeemable mortgage and the settlement of land by Settlement Authorities under S. 5 (2) (iii) of Edavagai Act (III of 1109) held not to be incorrect. 1953 Ker LT 439 : AIR 1953 Trav-Co 437 (438) (Pr 2).

● —(As amended by Act 12 of 1108)—Capacity of Agrasal Para is 800 cubic inches of water 1953 Ker L T 125 : ILR (1953) Trav Co 214 : A I R 1953 Trav Co 338 (340) (Pr 4) (FB).

—Tenure entered as thanathu land in document—Incidents of Kanapattom would not govern document —Document styled as kanapattom deed—Incidents of irredeemability would not govern document if landlord was not proclamation Jenmi or lands held by by him were not Jenmom lands. A I R 1953 Trav Co 295 (296) (Pr 4).

—Kanom—Essential condition to be satisfied.

In order that a demise may be said to be a kanom the essential condition to be satisfied is that the property demised must be jenmom property as defined in the Act. AIR 1953 Trav Co 294 (295) (Pt A) (Pr 2) (DB).

—Demise not amounting to kanom — Claim for arrears can be enforced only on basis of agreement. AIR 1953 Trav-Co 294 (295) (Pt B) (Pr 5) (DB).

—(As amended by 12 of 1108) — Kanom Deeds—Incidents of—Fixing of Jenmikaram.

The fixing of jenmikaram covered by kanom documents in the absence of kanom deeds is an inevitable incident of such demises The jenmi could resist such settlement in respect of the plaint property only if he is able to conclusively establish that the plaint property was not jenmom property even at the time of the original demies and that this happened to be included in the document and treated as jenmom property as the result of a bona fide mistake. A I R 1952 Trav Co 382 (382) (Pr 2) (DB).

SECTION 1

—S. 1 — Applicability of the Act — Act does not apply to freehold lands of an Edvaga chief —To such land Edvagai Act is applicable— Travancore Edavagai Act (3 of 1109). AIR 1955 N U C (Trav-Co) 5110.

SECTION 2

—S. 2 (1)—Property entered in Sircar accounts as Veloravattom Devaswom Pattom Property entirely tax-free — Occupancy right in property created for money consideration — Land subject to payment of michavaram and other customary dues and also renewal fees —Land is jenmom land falling under S. 2 (1). AIR 1955 N U C (Trav-Co) 5077.

—S. 2 — Jenmom tenure — What is — Land held Thanathu Land as defined in Edavagai Act. See Tenancy Laws—Travancore Edavagai Act (3 of 1109), S. 2 (ix). AIR 1955 N U C (Trav-Co) 682.

SECTION 3

—S. 3—Jenmi land—Does not comprise of freehold lands of Edavagai chieftains. Vanjipuzha Chief v. Thommi Thoma, **1954 Ker L T 588 : I L R (1954) Trav-Co 1148 : A I R 1955 Trav-Co 1 (2) (Prs 4, 5) (FB).**

—S. 3—Jenmon land—The properties were gifted to the Devaswom by the potti—It was not a transter for consideration and no tax was imposed on the properties by reason of transfer—Held the properties in question came within the category of Jenmon lands to be assessed to jenmikaram under the Jenmi and Kudiyan (Amendment) Act of 1108—Case on facts. **AIR 1955 N U C (Trav-Co) 1095 (DB).**

—S. 3—Deed purporting to be kanom document—Provision for payment of Michavaram, customary dues etc. would not confer right of permanent occupancy on the tenant if the executant is not a proclamation Jenmi and land is not of Jenmom tenure as understood in the Jenmi and Kudiyan Act. **AIR 1955 N U C (Trav-Co) 682.**

—S. 3, (as amended in 1108)—Creation of irredeemable tenure—Property not forming Jenmon land—Payment of customary dues and renewal fees — Irredeemable tenure is not thereby created—(Transfer of Property Act (1882), S. 60). **AIR 1955 NUC (Trav-Co) 543.**

—S. 3 (as amended in 1108)—Creation of irredeemable mortgage—Nomenclature of document is not the guide—(Transfer of Property Act (1882), S. 8). **A I R 1955 NUC (Trav-Co) 543.**

—S. 3 (as amended in 1108)—Creation of irredeemable mortgage — Payment of customary dues and renewal fees does not lead to inference in favour of irredeemability — (Transfer of Property Act (1882), Ss. 58, 60, 98). **AIR 1955 N U C (Trav-Co) 543.**

—S. 3 (1) (as amended in 1108)—Jenmom property—Property described as Sree Pandara Jenmom is Jenmom property. **AIR 1955 N U C (Trav-Co) 543.**

—S. 3 (1) (as amended in 1108)—Jenmom property—'Kadama' dues realised in respect of property — Property held not Jenmom property. **A I R 1955 N U C (Trav-Co) 543.**

—S. 3 (1) — Pandaravagai Kudi Jenmon.

To constitute a demise as a kanom demise coming under the Jenmi and Kudiyan Act, it is necessary that the property must retain the character of jenmom land even at the time of the demise. Where even prior to the date of the documents the properties had become Pandaravagai Kudi Jenmom lands falling outside the definition of 'jenmom land' the demise under the documents cannot amount to a kanom demise coming under the Travancore Jenmi and Kudiyan Act. **1954 Ker L T 679 : A I R 1954 Trav-Co 443 (443) (Pt A) (Pr 5).**

—S. 3 (1)—Demise outside the Act—Provision for renewal—(Deed—Construction) — [Transfer of Property Act (1882), S. 60.]

The provision for renewal will not by itself be sufficient to create an irredeemable tenure. That provision will be satisfied and exhausted with the grant of one renewal and thereafter the owner of the property will be entitled to enforce his right of redemption. **1954 Ker L T 679 : AIR 1954 Trav-Co 443 (443) (Pt B) (Pr 5).**

—S. 3—Kanapattom — To constitute kanapattom, land should be subject to payment of renewal fees. **AIR 1952 Trav-Co 438 (438) (Pt A) (Pr 2) (DB).**

—S. 3—Grant of Patta—No inference that properties are being enjoyed under Kanom tenure can be drawn from such Patta. **AIR 1952 Trav-Co 438 (439) (Pt C) (Pr 5) (DB).**

—S. 3—Scope of Travancore Royal proclamation Cl. 8 was intended to apply to jenmom lands held subject to the payment of renewal fees and other customary dues. Travancore Jenmi and Kudiyan Act 1071 which superseded the proclamation also dealt with such demises. See Tenancy Laws—Travancore Royal Proclamation (1042), Cl. 8. **AIR 1952 Trav-Co 431 (DB).**

—S. 3—Wrong registry of property as if it were Puthuval land—Fixing of Jenmikaram.

The fixing of Jenmikaram is an inevitable incident of a Kanam demise. A Jenmi can resist such settlement only if he is able to conclusively establish that the property was not Jenmom property and that it happened to be included in the kanom deed as a result of a bona fide mistake. A subsequent wrong registry of the property by the Sirkar as if it were a Puthuval land will not in any way affect the pre-existing rights as between the Jenmi and his Kanom tenant if the property was really Jenmon property at the time of the demise. What really matters is the nature of the property at the time of the original demise in favour of the tenant. 4 TL J 117 : 5 T L J 258 and 32 T L J 164. **AIR 1952 Trav-Co 382 (382) (Pr 2) (DB).**

● —S. 3 (4)—According to the definition in S. 3 (4) Jenmi and Kudiyan Act Kanapattom case relate only to jenmom lands demised an a tenure which is subject to periodical renewal. Kanapattom mentioned in explanations in S. 2 of the Act (8 of 1950) must be kanapattam not coming within the purview of the Jenmi and Kudiyan Act. See Debt Laws—Travancore Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950) S. 2. Expl. **AIR 1952 Trav-Co 333 (FB).**

—S. 3—Suit to enforce mischavaram — Necessary parties—Civil P. C. (1908), O. 1, R. 10.

Though the Michavaram to the Jenmi is declared to be a first charge on the property it is necessary to implead all persons interested in that property before the date of suit to enforce that charge. **('51) 1951 Ker L T 654 : ILR (1951) Trav 63.**

—S. 3—as amended by Act (12 of 1108) — Applicability—Jenmon lands—Essential characteristics of —Test to decide.

The question whether a property is jenmom land or not has to be decided, for purposes of the Jenmi and Kudiyan Act, with reference entirely to the definition of the term 'Jenmom land' in that Act.

The mere fact that the lands comprised in the deed are stated to be 'Theetam' makes no difference and cannot derogate from the rights of the proprietor or owner who has full rights. **1950 Ker L T 327.**

SECTION 4

● —Ss. 4 and 5—Jenmikaran Payment (Abolition) Act (3 of 1961) — Validity — Act does not deal with Jenmon right—Protection under Art. 31-A, Constitution of India, not available—Act contravens Art. 14. See Constitution of India, Art. 31-A. **A I R 1964 Ker 171 (FB).**

● —S. 42—Section 42 Jenmi and Kudiyan Act shows that kanapattom need not be necessarily an irredeemable tenure—The Jenmi and Kudiyan Act purported to bring within its purview only certain classes of Kanapattom—That does not mean there could be no other Kanapattom—Definition of that expression in Jenmi and Kudiyan Act— Unsafe to adopt for all purposes. See Debt Laws — Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950) S. 2, Expl. **AIR 1952 Trav-Co 333 (FB).**

SECTION 5

—S. 5—Applicability — Holder of Kanom right — 'If jenmi'—Mortgagee if kanomdar—Right to benefit of S. 5.

The holder of a Kanom right cannot be treated as a jenmi within the definition of that term in S. 5 and therefore his mortgagee cannot claim the benefit of S. 5 of the Act and resist a suit for redemption. 37 T L R 252 (FB), Rel. on. 1957 Ker L T 458.

——Ss. 5 (2), 42—Kanom of Jenmon property—Right to demand surrender of holding for jenmi's own cultivation—Redeemability—(T. P. Act (1882), S. 60).

Where a kanom demise of jenmom property of a non-Malyalee Brahmin Jenmi, contains a provision as to redemption conditional on the jenmi kovilakom requiring the land for its own cultivation and what is stated is that if it be not so needed, the tenant shall take a renewal as per the custom and practice of the kovilakom to entitle the jenmi to get surrender of the holding, it must prima facie be shown that the Jenmi bona fide requires the property for his own use. 1956 Ker L T 529 : ILR (1956) Trav-Co 533.

——S. 5 — S. 5 applies to demise granted by non-Malayalee Brahmin Jenmi granted before Act 5 of 1071 — Demises granted after Act came into force being governed by S. 43. 30 Trav L J 596, Not foll. AIR 1955 N U C (Trav-Co) 6033 (DB).

——S. 5 (as amended by Act 12 of 1108) — Irredeemable tenure — Can be created under michavara pattadharam only if it is found that tenure created under instrument amounts to kanom. AIR 1955 N U C (Trav-Co) 2210 (DB).

——S. 5 (as amended by Act 12 of 1108) — Permanent tenancy is conferred only in respect of kanom holding. AIR 1955 N U C (Trav-Co) 2210 (DB).

——S. 5 — Essential condition for creation of Kanom demise, stated. AIR 1955 N U C (Trav-Co) 2210 (DB).

——S. 5, Cl. (2)—'Period of 25 years' refers to period prior to coming into force of Act. AIR 1955 N U C (Trav-Co) 2210 (DB).

——S. 5—S. 5 does not apply where express provision for surrender is made. AIR 1952 Trav-Co 447 (448) (Pt A) (Pr 3) (DB).

——Ss. 5 and 42 — Applicability — Kanom pattom granted when Act of 1071 was in force — Kudiyan given option to take renewal or to surrender — No right in jenmi to resume or redeem—Effect Kudiyan holding over and paying Michawaram—Act 12 of 1108 coming into force—Effect —Right to redeem.

Where in the case of a kanom granted by a Jenmi to a kudiyan when the Act of 1071 was in force, the kudiyan or tenant is given an option to take a renewal or to surrender the property to the Jenmi or landlord if he so chose, but no right is given to the Jenmi to redeem the property after 12 years, the document does not fall within the exception contemplated by S. 42 of the Act. If in such a case there has neither been a renewal nor any offer from the kudiyan to surrender the property on payment of the kanarthan and the value of the improvements, and the kudiyan continues to hold the properties, the presumption is that he holds on the same terms as are contained in the deed of demise. If during that holding by the tenant, paying the michawaram stipulated in that deed to the landlord, the amending Act of 1108, comes into force, the provisions of S. 1 of the Act as amended are attracted to the tenure. From and after the date of the amended Act the kudiyan becomes the owner of the property subject only to the liability to pay Jenmikaram. The Jenmi has no longer any right to seek redemption of the property and no question of any further renewal can arise. The properties become irredeemable under S. 5 of Act 5 of 1071 as amended by Act 12 of 1108. 1950 Ker L T 327.

SECTION 9

——S. 9—Compulsory sale for arrears of Jenmikarom —Doctrine of lis pendens does not apply. See T. P. Act (1882), S. 52. AIR 1954 Trav-Co 122 (DB).

——Ss. 9, 17 — Liability of one parcel of land in holding for other parcels.

A holding under the Jenmi and Kudiyan Act, was defined to mean a parcel of land or parcels of land held under one Kanapattom instrument and one set of conditions. Section 9 has to be read with cl. (1) of S. 17. So if a holding consisted of more parcels of land than one, the Jenmi's right would be only to receive the Jenmikaram fixed for each parcel of land. That would not entitle him to claim a charge on one parcel of land for the Jenmikaram due from another parcel of land in the same holding. ('51) 1951 Ker L T 236 (DB).

SECTION 17

——Ss. 17 and 9 — Liability of one parcel of land in holding for other parcels.

A holding, under the Jenmi and Kudiyan Act, was defined to mean a parcel of land or parcels of land held under one kanapattom instrument and one set of conditions. Section 9 has to be read with Cl. (1) of S. 17. So if a holding consisted of more parcels of land than one, the Jenmi's right would be only to receive the Jenmikaram fixed for each parcel of land. That would not entitle him to claim a charge on one parcel of land for the Jenmikaram due from another parcel of land in the same holding. 1951 Ker L T 236 (DB).

SECTION 19

——S. 19—Partition by metes and bounds among co-sharers of immovable property is transfer — Transfer of Property Act (1882), S. 5. AIR 1959 Ker 235.

SECTION 26-A

——S. 26-A — Compulsory sale for arrears of Jenmikarom—Doctrine of lis pendens does not apply. See T. P. Act (1882), S. 52. AIR 1954 Trav-Co 122 (DB).

SECTION 33

——Ss. 33, 34 — Decree for jenmi dues — Appeal against order in execution—(Travancore Civil Courts Act (2 of 1951))—Travancore Civil Courts Act (2 of 1084), S. 14 (e) — (Civil Procedure Code (1908), S. 7 and O. 21, R. 89)—(Travancore Civil Procedure Code (8 of 1100, M. E.), O. 21, R 87.)

An order rejecting an application under O. 21, R. 87, Travancore Civil Procedure Code, to set aside a sale in execution of a decree for jenmi dues passed in a suit filed under S. 33, Travancore Jenmi and Kudiyan Act, is not appealable after the enactment of the Civil Courts Act (12 of 1951) or under the Civil Procedure Code (1908), which has been extended to the State by the Civil Courts Act (2 of 1951). Therefore where the sale had taken place before the Civil Courts Act was passed and before the C. P. Code came into force in the State and the application to set aside the sale also was filed before those statutes came into force the question whether an appeal will lie against the order of rejection must be determined with reference to the provisions of S. 14 (e), Travancore Civil Courts Act (2 of 1084) which was the law then in force and thus the order passed is appealable. 1953 Ker L T 557 : ILR (1953) Trav Co 776 : AIR 1954:Trav-Co 125 (126) (Prs 3, 4) (DB).

——S. 33 — Entertainment of claims under, as original suits — (Travancore Civil Courts Act (II (2) of 1084), S. 12.

Section 33 only prescribes a summary procedure for recovery of claim on account of the Jenmikarams not exceeding Rs. 100 and does not expressly

prohibit the entertaining of such claims as original suits. The exercise of ordinary jurisdiction in respect of such claims is only an irregularity which can be set right by directing a retrial in an appeal or revision against the decree passed. But where there has been no such appeal or revision and the decree has become final the executing court cannot ignore that decree as a nullity since it cannot be said that there was a total absence of jurisdiction for the Court to pass the decree. **I L R (1952) Trav-Co 256 : 1952 Ker L T 298 : A I R 1952 Trav-Co 439 (440) (Pr 2) (DB).**

SECTION 34

——S. 34 — Execution of decree for jenmi dues—Appeal against order dismissing application under O. 21, R. 87, Travancore Civil Procedure Code—Maintainablility is to be determined with reference to the provisions of S. 14 (e) Travancore Civil Courts Act which was the law then in force and thus the order passed is appealable. See Tenancy Laws — Travancore Jenmi and Kudiyan Act (5 of 1071), S. 33. **AIR 1954 Trav-Co 125 (DB).**

SECTION 42

——S. 42 — **Express stipulation by jenmi reserving right to redeem—Subsequent acceptance of renewal fee—Effect of, on right to redeem.**

Where the jenmi demising his property makes an express stipulation in the document reserving his right to redeem the property at any time after the specified date, the statutory provision of S. 42 which preserves this right of the jenmi has to prevail and it is no answer to such a right that the jenmi had accepted Adukkuvathu or renewal fees subsequent to the date of the document. Such a conduct by itself is not sufficient to replace the contract of redeemability as embodied in the document or to nullify the effect of the statutory provisions. The subsequent conduct of the parties is not relevant in gathering the intention of the parties clearly expressed in the document. **1955 Ker L T 649.**

——S. 42—Kanom granted by Jenmi to a kudiyan or tenant when the Act of 1071 was in force—Tenant given option of renewal or to surrender to the landlord as per landlord's option - No right to the Jenmi to redeem after 12 years — Document does not fall within the exception contemplated by S. 42 of the Act — No surrender nor renewal and the kudiyan continues to hold the property - Presumption is that he holds properties on terms in the deed of demise. After coming into force of Act of 1908 kudiyan becomes the owner of the property. The properties become irredeemable under S. 5 of Act 5 of 1071 as amended by Act 12 of 1908. **1950 Ker L T 327.**

——S. 42 — Kanom of jenmon property of non-Malyalee Brahmin Jenmi — Right to demand surrender of holding for jenmi's cultivation — If no demand for surrender the property is irredeemable. See Tenancy Laws — Jenmi and Kudiyan Act (5 of 1071) (Travancore), S. 5 (2). **I L R (1956) Trav-Co 533.**

——S. 42—S. 42 applies to Kanapattoms and not to mortgages. **A I R 1952 Trav-Co 447 (448) (Pt B) (Pr 4) (DB).**

SECTION 43

——S. 43 — Contract entered into before Act—S. 43 has no application. **A I R 1955 N U C (Trav-Co.) 5077.**

SECTION 44

——S. 44—Scope.

Under S. 44 a kudiyan can be absolved from liability to pay jenmi-karam only if he or his predecessor-in-interest has held the holding for more than fifty years preceding the date of the Travancore Jenmi Kudiyan Act of 1071 (and not for more than 50 years preceding the date of the Travancore Jenmi and Kudiyan (Amendment) Act of 1108) without paying michavaram and other dues or without taking any renewal within the said period of fifty years. **A I R 1954 Trav-Co. 287 (288) (Pr 2).**

SECTION 46

——S. 46 — Mandamus — In discretionary mutation rates of Jenmikaram in accordance with S. 46—High Court can issue at least to exercise that discretion. See Constitution of India, Art. 226. **A I R 1961 Ker 133.**

—TRAVANCORE PREVENTION OF EVICTION ACT (22 of 1124 M. E.)

SECTION 1

——S. 1 — Question relating to execution—A tenant against whom a decree for possession is passed—Question whether he is a kudikidappukaran within the meaning of the Travancore Prevention of Eviction Act "22 of 1124" and liable to be evicted only under that Act or whether the Holdings (Stay of Execution Proceedings) Act 8 of 1950 would apply and hence not liable to be evicted—Question should be raised before the executing court. See Civil P. C. (1908), S. 47. **AIR 1953 Trav-Co. 427.**

SECTION 2

——S. 2 (b) and (c) — 'For the purpose of creating a homestead'—Purpose lacking in case of mortgagee—Mortgagee is not kudikidappukaran. **1952 Ker L T 630 : AIR 1953 Trav-Co 88 (88, 89) (Prs 3, 4) (DB).**

SECTION 9

——S. 9—S. 9 is no bar of Civil suit if the question of existence of a kudiyirippu in any suit for recovery of possession is raised by any of the parties and is thus a complete answer to the question of jurisdiction. See Civil P. C. (1908), S. 9. **AIR 1955 N U C (Trav-Co.) 2204.**

SECTION 12

——S. 12—S. 12 is no Bar of civil suit to consider the claim of kudikidappukaran if any when rules have not been framed and registers have not been prepared. See Civil P. C. (1908), S. 9. **AIR 1955 N U C (Trav-Co.) 2204.**

—TRAVANCORE ROYAL PROCLAMATION (1042 M. E.)

CLAUSE 8

——Cl. 8—Applicability — Lease held did not come within the clause and was redeemable. **AIR 1955 NUC (TC) 1911.**

——Cl. 8—Clause applied only to fresh leases granted after proclamation and not to renewals of old leases —Clause had reference only to Jenmam land, held on payment of renewal fees and customary dues by tenants. **AIR 1955 N U C (Trav-Co.) 1095.**

——Cl. 8 — **Applicability—Travancore Jenmi and Kudiyan Act (5 of 1071 M. E.), S. 3—Scope of.**

The Proclamation of 1042 which purports to lay emphasis on and elucidate the Royal Edicts 1005 and 1007 will make it obvious that the Proclamation of 1042 and the previous Edicts dealt with only demises of Jenmi's lands in respect of which renewal fees and customary fees were payable. Cl. 8 of the Royal Proclamation of 1042 has therefore application only to such demises. The Jenmi and Kudiyan Act which was enacted in supersession of the Royal Proclamation of 1042 also dealt with only such demises. This is clear from the definition of the term "Jenmon lands" in S 3 (1) and the term "Kanapattom" in S. 3 (4) of the Jenmi and Kudiyan Act (1071 M. E). **ILR (1952) T C 29 : AIR 1952 T C 431 (431) (Pr 4) (DB).**

—TRIPURA LAND REVENUE AND LAND REFORMS ACT (43 of 1960)

PREAMBLE

——Preamble—Jurisdiction—Tripura J. C.'s Court has jurisdiction to issue writ in respect of Tripura Act passed by Parliament—Writ against Administrator in respect of enforcement of Tripura Land Revenue and Land Reforms Act (43 of 1960). See Constitution of India, Art. 226. AIR 1963 Tripura 1.

SECTION 1

——S. 1 (3)—Act can be brought into force piecemeal by successive notifications — Interpretation of statutes — Cogent and coherent meaning should be given — General Clauses Act (1897), S. 14. AIR 1963 Tripura 1 (12) (Pt F) (Pr 32).

——Ss. 1 (3), 134 (1) — Notification issued on 13th April, 1961, under S. 134 when section had not come into force, is not valid. AIR 1963 Tripura 1 (12 to 14) (Pt H) (Prs 35, 38, 39).

——Ss. 1 (3), 134 (2)—Notification under—Manner of publication is one as provided for, under R. 170 of Tripura Land Revenue and Land Reforms Rules, 1961—It must be published in at least two issues, of each of two newspapers, one of which must be in Bengali language—Publication of news item regarding abolition of intermediaries in particular subdivision, with substance of the notification, is not an authorised publication of the notification as contemplated by R. 170 — But this will not affect validity of notification itself but only its effect — It is relevant only on question whether such publication would amount to conclusive evidence. AIR 1963 Tripura 1 (13) (Pt I) (Pr 37).

SECTION 108

——S. 108 (2) — Fixity of tenure of under-raiyati — Right not available to tenant who never obtained possession of land. AIR 1964 Tripura 36 (40) (Pt E) (Pr 18).

SECTION 123

——Ss. 123 and 167 — Sections 123 and 167 cannot be challenged on ground that they are made retrospective so as to operate from date of Bill — Constitution of India, Arts. 31, 31-A. AIR 1963 Tripura 1 (11) (Pt E) (Pr 31).

SECTION 134

——S. 134 (1) — Notification issued on 13th April, 1961 under S. 134 when section had not come into force is not valid. See Tenancy Laws—Tripura Land Revenue and Land Reforms Act (43 of 1960), S. 1(3), AIR 1963 Tripura 1.

——S. 134 (2)—Notification under—Manner of publication is one as provided for, under R. 170 of Tripura Land Revenue and Land Reforms Rules, 1961 — It must be published in at least two issues, of each of two newspapers, one of which must be in Bengali language—Publication of news item regarding abolition of intermediaries in particular subdivision, with substance of the notification, is not an authorised publication of the notification as contemplated by R. 170. But this will not affect validity of notification itself but only its effect—It is relevant only on question whether such publication would amount to conclusive evidence. See Tenancy Laws — Tripura Land Revenue and Land Reforms Act (43 of 1960), S. 1(3). AIR 1963 Tripura 1.

——S. 134 (1), Chap XI — Violation of Arts. 14, 19 and 31 of Constitution cannot be urged in view of Art. 31-A — Constitution of India, Arts. 31-A, 14, 19, 31. AIR 1963 Tripura 1 (8) (Pt C) (Pr 21).

——S. 134 (1) — Section is not discriminatory — Administrator given discretion to implement Act in respect of estates in any area — There is no excessive delegation—Constitution of India, Arts. 245, 14. AIR 1963 Tripura 1 (9 to 11) (Pt D) (Prs 23, 24, 29).

SECTION 167

——S. 167—S. 167 cannot be challenged on ground that they are made retrospective so as to operate from date of Bill. See Tenancy Laws — Tripura Land Revenue and Land Reforms Act (43 of 1960), S. 123. AIR 1963 Tripura 1.

—TRIPURA LAND REVENUE AND LAND REFORMS RULES (1961)

RULE 170

——R. 170—Notification under—Manner of publication is one as provided for, under R. 170 of Tripura Land Revenue and Land Reforms Rules, 1961 — It must be published in at least two issues, of each of two newspapers, one of which must be in Bengali language—Publication of news item regarding abolition of intermediaries in particular subdivision, with substance of the notification, is not an authorised publication of the notification as contemplated by R. 170. But this will not affect validity of notification itself but only its effect — It is relevant only on question whether such publication would amount to conclusive evidence. See Tenancy Laws — Tripura Land Revenue and Land Reforms Act (43 of 1960), S. 1(3). AIR 1963 Tripura 1.

—TRIPURA TENANCY ACT (1 of 1296 T. E.)

PREAMBLE

——Preamble — Under-raiyati for fixed period — Under-raiyati has no permanent right in land—Provision in lease that grantee may possess land with his sons, grandsons and other heirs in succession — Not sufficient to confer permanent title. AIR 1964 Tripura 36 (38) (Pt C) (Pr 11).

——Preamble, S. 78 — The law (1 of 1296, T. E.) applies to agricultural land and not to land situated in Main Bazaar in Agartala Town—S. 78 of the Act has no application to such a case. A I R 1954 Tripura 8 (9, 10) (Pt B) (Prs 12, 13).

——Preamble — Eviction of tenant — That tenant is refractory tenant and habitual defaulter, is no ground under Act. A I R 1953 Tripura 11 (11) (Pt D) (Pr 7).

SECTION 1

——S. 1, Cls. 4 and 5 — Jotedar (tenant) cannot be deemed to be a Bhumyadhikari under S. 1(4) — He is not entitled to eject a korfa praja under S. 48 of the Act. AIR 1955 N U C (Tripura) 1915.

SECTION 5

——S. 5 (as amended in 1355 T. E.) — Jote or rayati right—Section does not confer the status on Madhyabarti Praja. AIR 1952 Tripura 11 (12) (Pt A) (Pr 12).

SECTION 6

——S. 6 (as amended in 1355 T. E.) — "Kole Jote tenancy"—Nature of.

The section does not intend that the "Kole Jote" must be a tenancy under a cultivating tenant or a rayat. It is immaterial whether the Proja under whom it is held is a rayat or a Madhyabaratt. A I R 1952 Tripura 11 (13) (Pt B) (Pr 15).

——S. 6 (as amended in 1355 T. E.) — Korfa—Incidents of tenancy — Liability of tenant for eviction—Burden of proof — (Bengal Tenancy Act (8 of 1885), Chap. 7)—(Evidence Act (1872), Ss. 101-103).

The Tripura Tenancy Act does not define either the status or incidents of the Korfa Tenancy. Since no specific legal rights are provided by the Act itself they are to be governed by the agreed terms of the

tenancy and the tenant can be evicted according to those terms.

When the plaintiff seeks to evict alleging that the tenancy is one at will according to a long established custom the onus would be on him to prove the custom and that heavily when the tenant sought to be evicted had admittedly been in long possesion.

Where the local law is silent on any point the practice in the Tripura State permits the law in West Bengal being followed. The Korfa tenant would under the Bengal Tenancy Act (8 of 1885) be an under-rayat when the plaintiff seeking his eviction is a rayat but not when he is found to be otherwise. Nevertheless where the plaintiff claims rayati right the nearest approximation of the Korfa's right would be that of an under-rayat under Chapter VII of the Bengal Tenancy Act. He cannot be evicted, by the plaintiff who can claim no better right than that of a rayat under the Act, when there is nothing on record to show that he had rendered himself liable on any of the grounds on which an under-rayat can be evicted under the Bengal Act. **AIR 1952 Tripura 11 (13, 14) (Pt C) (Prs 15 to 23).**

——S. 6 (as amended in 1355 T.E.)—(Korfa Tenancy —Heritability—Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 48-G (2).

The Tripura Tenancy Act itself is silent on the question of the heritability or otherwise of a Korfa Tenancy. Therefore when a contract or custom is not proved either way a korfa tenancy with an occupancy right must be held heritable, following the provisions of S. 48-G (2), Bengal Tenancy Act, by virtue of which the tenancy of an under-rayat with an occupancy right is inherited by his heirs exactly as the heirs of a rayat inherit under S. 26 of that Act. **AIR 1952 Tripura 11 (14) (Pt D) (Pr 25).**

SECTION 9

——Ss. 9 and 10 — Applicability — S. 10 does not apply to case covered by S. 9 — Landlord cannot claim more than year's rent as mazar. **A I R 1955 N U C (Tripura) 4367.**

——Ss 9 and 10 — Scope of — Drafting is defective — Drafting of new Tenancy Act recognising the legitimate rights of tenants recommended. **AIR 1955 N U C (Tripura) 4367.**

SECTION 10

——Ss. 10, 9 — Scope of — Drafting is defective — Drafting of new Tenancy Act recognising the legitimate rights of tenants recommended. See Tenancy Laws — Tripura Tenancy Act (1 of 1296 T. E.), S. 9. **AIR 1955 N U C (Tripura) 4367.**

——Ss. 10, 9 — Applicability — Section 10 does not apply to case covered by S. 9 — Landlord cannot claim more than year's rent as mazar. See Tenancy Laws — Tripura Tenancy Act (1 of 1296 T. E.), S. 9. **AIR 1955 N U C (Tripura) 4367.**

SECTION 11

——S. 11 — 'Korfa' tenancy is not attracted by S. 11. **AIR 1953 Tripura 11 (11) (Pt C) (Pr 7).**

SECTION 12

——S. 12 (as amended by Act 1 of 1355 T. E.) — Consent of landlord—Custom.

A custom is a rule which, in a particular family or in a particular district, has from long usage obtained the force of law. It must be ancient, certain and reasonable and being in derogation to the general rules of law, must be construed strictly. It is essential that the alleged custom should be established to be prevalent by clear and unambiguous evidence.

Held, that the custom set up by the defendants that a tenant could execute a sale-deed without the consent of the landlord was not proved to be prevailing an Alepasa mouza. The mere fact that a person did not take consent of the landlord and the latter did npt raise any objection on account of his being a lawyer will not prove the alleged custom. **AIR 1955 Tripura 13 (16) (Pt D) (Pr 15).**

——S. 12 — Tenancy holding—Gift—Validity — Not valid against the landlord when it is not executed after obtaining his permission as required by S. 12, Tripura Tenancy Act and when there is no custom proved to the contrary. See T. P. Act (1882), S. 6 (i). **AIR 1955 N U C (Tripura) 4701.**

SECTION 32

——S. 32—Rent decree in respect of leasehold not in accordance with judgment — Execution can be taken out by virtue of S. 32 of the Tripura Tenancy Act — Proper course for judgment-debtor if he objects to execution. See Civil P. C. (1908), S. 47. **A I R 1963 Tripura 55.**

SECTION 48

——S. 48 — Jotedar (tenant) cannot be deemed to be Bhumyadhikari under S. 1 (4) — He is not entitled to elect a Korfa praja under S. 48 of the Act. See Tenancy Laws — Tripura Tenancy Act (1296), S. 1, Cl. 4. **AIR 1955 N U C (Tripura) 1915.**

SECTION 53

——Ss. 53, 68 to 76 (as amended in 1355 T. E.) — Right to acquire tenancy land — (Bengal Tenancy Act (8 of 1885), S. 84.

Under Ss. 68 to 76 of the Tripura Tenancy Act it is only the Sirkar or Bhumyadhikari who can acquire the lands of any tenancy. A person who, within the definition of S. 4, is neither, has no right to acquire the tenancy land unless he can prove a contract or custom in support of his claim. Section 84, Bengal Tenancy Act (8 of 1885) also cannot help when he has not framed his plaint in accordance with the provisions of that section and has not obtained the necessary certificate from the Collector.

He cannot also invoke the provisions of S. 53, Tripura Tenancy Act. **A I R 1952 Tripura 11 (14) (Pt E) (Pr 27).**

SECTION 67

——S. 67 — Arrears of rent deposited — Decree for eviction cannot be passed — Eviction cannot be ordered on ground of damages suffered due to rent arrears. **AIR 1953 Tripura 11 (11) (Pt B) (Pr 7).**

SECTION 68

——S. 68 — Authorises only a 'Bhumyadhikari' to evict certain non-occupancy tenants at his will — Bhumyadhikari has been defined clearly in S. 4 and a Jotedar has been specifically excluded from this category by the exception—The expression 'Bhumyadhikari' cannot be liberally used — Section has no application when eviction is by Jotedar. **A I R 1953 Tripura 11 (12) (Pt E) (Prs 8, 9).**

——Ss. 68 to 76 and 53 — Right to acquire tenancy land—Only the Sirkar or Bhumyadhikari can acquire — (Bengal Tenancy Act (8 of 1885), S. 84. See Tenancy Laws — Tripura Tenancy Act (1296), S. 53. **AIR 1952 Tripura 11.**

SECTION 72

——S. 72—Land acquisition—Compensation—Apportionment between landlord and tenants — Right conferred on tenant by S. 72 cannot be restricted by patta executed by landlord alone. **AIR 1962 Tripura 1 (5) (Pt A) (Prs 24, 26).**

SECTION 78

—S. 78 — Suit under S. 9, Specific Relief Act, by tenant dispossessed by landlord is not barred — Nature of suit under Tenancy Act and S. 9, Specific Relief Act.

The basis for a suit under S 9, Specific Relief Act is the fact of possession and the Courts are not concerned with the right of the person dispossessed to be in possession of the property. The fact that the plaintiff raises a plea that he was a korfa tenant under the defendant is besides point. In a suit under S. 9, Specific Relief Act, the only question is whether the plaintiff was in possession. Such a suit is not barred by S. 78 of the Tripura Tenancy Act (1 of 1296, T. E.).

The suits provided under the two sections are quite different in their character and civil Courts can entertain both suits. A I R 1955 Tripura 13 and A I R 1956 Tripura 26, Dissented from. A I R 1962 Tripura 58 (60, 61) (Prs 10, 11, 12).

—S. 78 — Scope of.

Section 78 of the Tripura Tenancy Act, 1296, T. E. provides that if a tenant enjoying any right be dispossessed unjustly and illegally, he shall be entitled to recover possession of the land within 2 years from the date of dispossession by recourse to a Civil Court. That is the period of limitation for a tenant who is outside to get back possession. The section does not prescribe the period of limitation of 2 years for a landlord to file a suit for eviction against the tenant in possession. And that section cannot be availed of in holding that no landlord can evict a tenant after a period of two years. A I R 1962 Tripura 1 (7) (Pt C) (Prs 43, 47).

—S. 78—Dispossession of tenant by landlord—Proper remedy is that provided under S. 78 — Suit under S. 9, Specific Relief Act should not be entertained — (Specific Relief Act (1877), S. 9). A I R 1955 Tripura 13 and AIR 1949 All 510, Rel. on. AIR 1956 Tripura 26 (27) (Pt B) (Pr 5).

—S. 78—Applicability. See Tenancy Laws—Tripura Tenancy Act (1 of 1296), Preamble. A I R 1954 Tripura 8.

—S. 78—Applicability.

Section 78 has no application to auction-purchaser in certificate proceedings. A I R 1954 Tripura 8 (10) (Pt C) (Pr 14).

SECTION 79

—S. 79—Suit for ejectment by jotedar tenant against his sub-tenant holding over after expiry of lease—Tenant can be ejected by jotedar under S. 108, T. P. Act read with S. 79, Tripura Tenancy Act. See T. P. Act (1882), S. 108 (q). A I R 1955 N U C (Tripura) 1915.

—U. P. AGRICULTURAL TENANTS (ACQUISITION OF PRIVILEGES) ACT (10 of 1949)

SECTION 3

—Ss. 3 and 6—U. P. Tenancy Act (17 of 1939), S. 3 (10)—Bhumidhari right — Lessees of land, which was never used for growing of crops or for purposes of agriculture or animal husbandry are not competent to apply under S. 6 for obtaining bhumidhari rights inasmuch as they are not tenant of land within meaning of S. 3—Sanad granted to such persons, held, as a nullity and unenforceable at law. 1965 All W R (HC) 424 : 1965 All L J 811.

—S. 3—Zamindari Abolition and Land Reforms Act (1951), Ss. 18 (2) and 28B — Acquisition of Bhumidari right — Land proved to be Khudkasht of evacuee at time of migration to Pakistan must be deemed to be khudkasht of evacuee on 31.6.1952 — Person in possession of it does not become an occupier and does not acquire Bhumidari rights under S. 18 (2). See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) S. 18 (2). AIR 1955 All 538.

SECTION 3-B

—S. 3-B (as amended by Act 7 of 1950) — Expression, "Claiming to be entitled as a co-tenant'—Covers case of a person who claims to be a co-tenant but who in fact is not a co-tenant. 1963 All W R (HC) 312 : 1963 All L J 385.

SECTION 4

—Ss. 4 (2) and 7 (b) — Rent to be deposited under S. 7 (b)—What is, stated. AIR 1955 N U C (All) 3288.

SECTION 6

— Ss. 6, 7 (c) and 180—Erroneous decision resulting in refusal to exercise jurisdiction properly vested —Question of jurisdiction is involved — Issue of writ of certiorari quashing the wrong orders—Error manifest and apparent on the face of the record. See Constitution of India, Art. 226. 1962 All L J 596.

—Ss. 6 and 7 (c)—Suit by tenant who had obtained a declaration of his tenancy rights under S. 6 of U. P. Agricultural Tenants (Acquisition of Privileges) Act of 1949—Death of plaintiff pending suit—Application for substitution by heir on the basis of will bequeathing his rights to the petitioner — U. P. Act 10 of 1949 amended by addition of cl. (c) to S. 7—Given retrospective operation by S. 340 of the U. P. Zamindari Abolition and Land Reforms Act — Devisee acquires rights under the will and entitled to be impleaded as legal representative. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. 1962 All L J 596.

—Ss. 6 and 12—Res judicata—Decisions of Ravenue Officers — Do not operate as res judicata. See Civil P. C. (1908), S. 11. A I R 1957 All 719 (DB).

—S. 6 — U. P. Zamindari Abolition and Land Reforms Act (1951), Ss. 18 (2) and 28B — Acquisition of Bhumidari right — Land proved to be Khudkasht of evacuee at time of migration to Pakistan must be deemed to be khudkasht of evacuee on 31-6-1952—Person in possession of it does not become an occupier and does not acquire Bhumidari rights under S. 18 (2). See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18 (2). A I R 1955 All 538.

—Ss. 6, 12 and 13 — Order of commissioner dismissing appeal against order by Assistant Collector cancelling declaration under S. 6 is final—Revision to Revenue Board does not lie — (Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950, (1 of 1951), S. 339) — (Tenancy Laws—U. P. Land Tenures Legal Proceedings (Removal and Difficulties) Order 1952) — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 275). A I R 1955 N U C (All) 2653.

—S. 6—Sub-Divisional Officer granting declaration under S. 6 under Act (10 of 1949) also ordering that records be corrected — Order directing correction of entries is without jurisdiction without following procedure as laid down in U. P. Land Revenue Act — Order may be revised under U. P. Tenancy Act. See U. P. Land Revenue Act (3 of 1901), S. 219. ('52) 1952 R D (B R) 147 (DB).

—Ss. 6 and 7—Bhumidari rights—Acquisition of — Declaration under S. 6—Effect.

By virtue of a declaration under S. 6 of Act (10 of 1949), a party does not become a bhumidar and is not protected under S. 7 of the Act from ejectment from the land in respect of which the declaration has been obtained. The tenures provided in the U. P. Zamindari Abolition and Land Reforms Act, 1951 will come into being only on the repeal of the U. P. Tenancy Act of 1939. So long as this latter Act remains in

force, the tenures provided in it shall continue. The U. P. Tenancy Act shall be repealed with effect from the date of publication of the Notification prescribed under S. 4 of the Act of 1951. 1951 All W R (Rev) 207 : 1951 R D 211.

——Ss. 6, 7 — Grant of declaration under S. 6 is no bar to determination of suit or appeal. 1951 All W R (Rev) 207 : 1951 R D 211.

——Ss. 6, 7, 12 — Sanad obtained under—Effect.

A mere production of the Sanad embodying the declaration obtained under S. 6 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act, is no ground for the dismissal of the application, proceeding, suits, appeal or revision that may have been filed before a competent Court by the opposite party.

If a party against whom this declaration is produced wants to get it cancelled, the Court should grant him an opportunity to do so.

This declaration does not oust the jurisdiction of competent Court to adjudicate upon the rights of the persons concerned.

The persons holding the declaration will not be ejected from his land merely because a decree or order for his ejectment already exists or has been passed after the declaration has been granted.

On the basis of such a decree or order for ejectment it will be proper for the S. D. O. to cancel the declaration.

The decree or order for ejectment of the person holding the declaration will be executed after it has been cancelled. 1951 A W R (Rev) 131 : 1951 R D 172.

——S. 6 — Obtaining of a declaration under pending an appeal by the defendant against a decree for ejectment in a suit under S. 180 of the Tenancy Act — If bars hearing of appeal.

Where a plaintiff who claimed to be an expropriatary tenant obtains a decree against the defendant in a suit under S. 180 of the Tenancy Act and pending an appeal by the defendant obtains a declaration under S. 6 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act, that would not by itself bar the hearing of the appeal. A tenant who is out of possession cannot by merely making the deposit and obtaining a declaration under S. 6 be entitled to recover possession automatically, except by decree or order of competent Court. 1951 R D 165 : 1951 A W R (Rev) 192.

SECTION 7

——S. 7 (c)—Transfer of Property Act (1882), S. 122 — Applicability — Section applies to bhumidari rights — There can be no gift of such rights unless acceptance is proved. 1963 All W R (H C) 655 : 1963 All L J 1088 : ILR (1964) 1 All 375 : AIR 1964 All 419 (420) (Pr 2) (DB).

——S. 7 (c) — Grant of joint Sanad — Joint Sanadholder can transfer his tenancy rights. 1963 All W R (HC) 312 : 1963 All L J 385.

——Ss. 7 (c), 180—Erroneous decision resulting in refusal to exercise jurisdiction properly vested—Question of jurisdiction is involved —Issue of writ of certiorari quashing the wrong orders — Error manifest and apparent on the face of the record. 1962 All L J 596.

——S. 7 (1) (b) — Compensation to be paid to intermediary — Assessment — Enhanced rate of rent required to be paid on grant of bhumidari sanad — If to be taken into consideraiion. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 39 (1) (a). 1959 All L J 526.

——S. 7 (1) (b) — Validity of Act—Act if repugnant to Contract Act — (Contract Act (1872), S. 37) — (Government of India Act (1935), S. 107 (2) and Sch. 7, List 2, Entry 21 and List 3, Entry 10).

A reference to S. 37 of the Contract Act, would indicate that there is no repugnancy between the provisions of the Contract Act and the provisions of U. P. Act 10 of 1949. The fresh liability that is imposed or the right that is conferred by the U. P. Act 10 of 1949 is not by virtue of any new contract, nor does it derive its force from any agreement between the parties. It owes its origin to the orders of a Court acting under a statute. An agreement for payment of rent between landlord and tenant in respect of an agricultural holding would be a contract relating to agricultural land. It would, therefore, fall outside the sphere of entry No, 10 of List III. Applying the principle of pith and substance, the Act would more naturally fall within the range of entry No. 21 of List II than of entry No. 10 of List III. The Act could not, therefore be impugned on the ground that it was not reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure as required by S. 107 (2), Government of India Act. 1957 All L J 712 : AIR 1957 All 644 (646) (Prs 8 to 10) (DB).

——S. 7 (a) — Section 7 (a) does not apply to proceedings under S 9 of Specific Relief Act — Suit decreed under S. 9 — Question of title cannot be raised in execution. See Civil P. C. (1908), S. 47. AIR 1955 N U C (All) 3294.

——Ss. 7 (b), 4 (2) — Rent to be deposited under S. 7 (b) — What is stated. AIR 1955 N U C (All) 3288.

——S. 7 — Declaration under — If makes the person a bhumidar — When a person obtaining a declaration becomes a bhumidar.

If a person obtains a declaration under S. 6 of the U. P. Act 10 of 1949, he does not become a bhumidar by virtue of the declaration and is not protected under S. 7 of the Act from ejectment from the land in respect of which the declaration has been obtained. The tenures provided in the U. P. Zamindari Abolition and Land Reforms Act, 1951, will come into being only on the repeal of the U. P. Tenancy Act of 1939 and that can be repealed with effect from the date of publication of the notification prescribed under S. 4 of the Act of 1951. 1951 A W R (Rev) 207 : 1951 R D 211.

——S. 7 — The declaration under S. 6 does not oust the jurisdiction of the competent court to adjudicate upon the rights of parties concerned. A person holding declaration will not be ejected merely because a decree or order for ejectment has been passed already or after the grant of declaration. Such a decree or order for ejectment will be executed after the declaration has been cancelled. See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (1949), S. 6. 1951 All W R (Rev) 131 : 1951 R D 172.

SECTION 10

——S. 10 (as amended by Act 7 of 1950)—Suit under S. 180, U. P. Tenancy Act, by Zamindar — Decree and appeal filed before law staying the proceedings was promulgated—After promulgation of law regarding stay, appeal must be stayed under S. 10. 1951 All W R (Rev) 207 : 1951 R D 211.

——S. 10 (as amended by Act 7 of 1950) — Applicability—It is the pleadings of the parties which would determine whether a suit or proceeding falls within the provisions of S. 10 of Act 7 of 1950. The entry in the records is necessary only in respect of the occupation of the land by another person. The absence of an entry about khudkasht does not affect the application of S. 10, if the plaintiff claims the land to be his khudkasht, and the defendant is recorded as an occupier of it in the records of 1356F. 1951 All W R (Rev) 207 : 1951 R D 211.

SECTION 12

—S. 12 — Decisions on questions of title — Final only as regards the preparation of consolidation scheme — Such decisions cannot operate as res judicata so far as applications under S 12 of U. P. Act 10 of 1949 are overruled. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), S. 12. 1961 All W R (HC) 683.

—S. 12 — U. P. Consolidation of Holdings Act (5 of 1954), S. 49 — Application for cancellation of a sanad of Bhumidhari rights — Not a matter arising out of consolidation proceeding — Applications not barred by S. 49. of U P. Act (5 of 1954) — An application under S. 12 of Act 10 of 1949, for cancellation of a sanad of Bhumidhari right is not a matter arising out of consolidation proceedings. Nor is it a matter, in regard to which a suit or application could be filed under the provisions of the U. P. Consolidation of Holdings Act, 1954, as the latter Act contains no provision for cancellation of a sanad for Bhumidhari rights. Such an application is not barred by either of the parts of S. 49 of the Act. 1961 All W R (HC) 683.

—Ss. 12, 13—Order refusing cancellation of Sanad — Appeal.

The language of S. 13 shows that any order passed by the Assistant Collector under S. 12 is appealable. It was not intended to make only orders cancelling a sanad appealable. An appeal lies against an order passed by the Assistant Collector under S. 12 refusing to cancel the sanad. 1958 All L J 843.

—S. 12 — Civil P. C, S. 11 — Plea of res judicata based on general principles — Essentials — Decisions of Revenue Officers under U. P. Act (10 of 1949) — Do not operate as res judicata. See Civil P. C. (1908), S. 11. AIR 1957 All 719 (DB).

—S. 12 — Order of Commissioner dismissing appeal against order by Assistant Collector cancelling declaration under S. 6 — Revision to Revenue Board. See Tenancy Laws — U. P. Tenants (Acquisition of Privileges) Act (10 of 1949), S. 6. AIR 1955 N U C (All) 2653.

—S. 12 (1) (a) (c)—Applicability—Concealment of facts of pending ejectment case is ground for cancellation of certificate under S. 12 (1) (a) and not S. 12 (1) (c) — Cancellation under S. 12 (1) (a) — Appellate Court considering cancellation under S. 12 (1) (c) — Order of first Court held merged in that of appellate Court—Order might be right or wrong—This cannot however be taken into account under writ petition under Art. 226 — Order not having been challenged on ground of jurisdiction and not having been corrected must be treated as binding — Order must be held to be one under S. 12 (1) (c) —Subsequent order of Commissioner setting aside order under S. 6 (3) of Act (23 of 1951) is valid — (Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act (23 of 1951), S. 6 (3))—(Constitution of India, Art. 226). AIR 1955 NUC (All) 176.

—Ss. 12, 6, and 7—Declaration under S. 6—Effect on pending proceeding — Jurisdiction to adjudicate on rights of persons concerned if ousted.

If the party against whom this declaration under S. 6 is produced wants to get it cancelled under S. 12, it is only fair that the Court should grant him an opportunity to do so.

This declaration does not oust the jurisdiction of competent Courts to adjudicate upon the rights of the persons concerned.

The person holding the declaration will not be ejected from his land merely because a decree or order for his ejectment already exists or has been passed after the declaration has been granted.

On the basis of this decree or order of ejectment, it will be proper for the S. D. O. to cancel the declaration.

The decree or order for the ejectment of the person holding the declaration will be executed after it has been cancelled. 1951 R D 172 : 1951 All W R (Rev) 131.

SECTION 13

—S. 13 — Order of confirmation of Sanad under S. 12—Appeal.

An appeal lies against an order under S. 12 though it was not a modification or cancellation of the sanad, but a confirmation of it. 1960 All W R (H C) 321 : 1960 All L J 444.

—S. 13 — Order of the Assistant Collector refusing cancellation of sanad — Appeal lies. See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 12. 1958 All L J 843.

—S. 13—Order of Commissioner dismissing appeal against order by Assistant Collector cancelling declaration under S. 6 — Revision to Revenue Board. See Tenancy Laws — U P. Tenants (Acquisition of Privileges Act (10 of 1949), S. 6. AIR 1955 N U C (All) 2653.

—S. 13—Revision—No revision lies to Board under Act. 1952 R D 276 : 1951 All W R (Rev) 212.

—S. 13—No revision lies to the Board under S. 275 of the Tenancy Act as against an order passed by the Commissioner under S. 13 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 275. 1952 R D (BR) 191.

—S. 13—Order under—Revision under C. P. C.—Maintainability—Civil P. C. (1908), S. 115.

U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949) lays down special procedure according to the rules framed by the Provincial Government under S. 16 of the Act. Therefore, the general procedure laid down in the Code of Civil Procedure would not apply to a proceeding under the Act which it self-contained.

Therefore, the Code of Civil Procedure would not apply to U. P. Act 10 of 1949 and consequently S. 115 of the Code.

Hence, no revision lies under S. 115 of the Code against an order passed under S. 13 of the Act. 1944 R D 325, Dist. 1952 All L J (Rev) 145 : 1952 R D (BR) 191.

—S. 13—Order under—Revision—Maintainability—(Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 333 and 340.

Section 333 of the U. P. Act 1 of 1951 empowers the Board to revise an order passed by a subordinate Court in a suit or proceeding referred to in Sch. II of the Act. Section 340 of the Act provides for the amendment made in U. P. Act 10 of 1949 to apply with retrospective effect by sub s. (1), and sub-s. (2) of S. 340 also validates retrospectively all orders made, proceedings taken, declarations granted and jurisdiction exercised under Act 10 of 1949. None of the above two sections is an authority for the Board to interfere in revision against an order of the Commissioner passed under S. 13 of U. P. Act 10 of 1949. 1952 All L J (Rev) 145 : 1952 R D (BR) 191.

—S. 13 (as amended in 1950)—Order under is not revisable under S. 275, U. P. Tenancy Act—Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 275.

The U. P. Agricultural Tenants (Acquisition of Privileges) Act of 1949, amended by Act 7 of 1950, although it refers to tenancy matter is not a part of the U. P. Tenancy Act of 1939 but an independent Act, and the procedure is provided in the Act in-

dependently of the Tenancy Act. Therefore the argument, that the order of the Additional Commissioner passed in an appeal under S. 13 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act should be deemed to be an order under the U. P. Tenancy Act to which S. 275 applies is untenable. **1952 All L J (Rev) 50 : 1952 All W R (Rev) 5 : 1951 R D 263.**

SECTION 180

——**Ss. 180, 7 (c)** — Suit by tenant who had obtained declaration of his tenancy rights under S. 6 of Act 10 of 1949—Death of plaintiff pending suit—Application for substitution by heirs on the basis of will—S. 7 (c) added to Act 10 of 1949 and given retrospective operation — Devisee is entitled to be impleaded as legal representatives. See Tenancy Laws —U. P. Tenancy Act (17 of 1939), S. 180. **1962 All L J 596.**

—U. P. AGRICULTURAL TENANTS (ACQUISITION OF PRIVILEGES) AMENDMENT AND MISCELLANEOUS PROVISIONS ACT (7 of 1950)

PREAMBLE

——**Preamble — Commissioner's order staying relief of ejectment under S. 180 but granting declaration under S. 63 in a suit under Ss. 63/180 of U. P. Tenancy Act — Passed before coming into force of Act 7 of 1950—Validity.**

Where an order staying relief of ejectment under S. 180 but granting the relief of declaration under S. 63 of U. P. Tenancy Act was passed by the Commissioner in an appeal from the decree in a suit under Ss. 63/180 of the U. P. Tenancy Act on 30-12-1949 and Act 7 of 1950 (as well as the Ordinance of 1950 which it replaced) came into force later, the order and decree, dated 30-12-1949 cannot be set aside for want of jurisdiction. **1952 A L J (Rev) 87 : 1952 R D 161.**

SECTION 10

——**S. 10**—Tenancy Laws—U. P. Tenancy Act (17 of 1939), Ss. 183, Proviso and 175 — Suit for ejectment under S. 183 by sub-tenant — Sub-tenant liable for ejectment under S. 175 — S. 10 of U. P. Act 7 of 1950 held did not apply — Proviso to S. 183 was attracted and suit could not be decreed. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 183, Proviso. **1965 All L J 290.**

——**S. 10 — Banaras State Tenancy Act (3 of 1949) if continues to apply after merger of Banaras State —Ejectment suit by tenant in chief against sub-tenant — Applicability of Ss. 154 and 159, Act (3 of 1949) — Stay of suit under S. 10, U. P. Act 7 of 1950.**

In the absence of any notification extending the U. P. Tenancy Act, 1939, to the erstwhile Banaras State, it would appear, that in the territory of the erstwhile Banaras State, the Banaras State Tenancy Act (3 of 1949) is still in force, as it is referred to in the schedule attached to the U. P. Agricultural Tenants (Acquisition of Privileges) Act 1949 as amended in 1950 and Ordinance No. 3 of 1951.

From S. 10 of the U. P. Act 7 of 1950 it appears that so far as the proceedings under the Banaras State Tenancy Act, 1949, are concerned, only those under Ss. 97, 99, 154 and 159 of that Act have been stayed subject to the Proviso that cases under S. 159 have been stayed only where the plaintiffs are proprietors. But where in a suit under S. 159, the plaintiffs are tenants then they are not to be stayed. **1952 R D (B R) 27 : 1952 All W R (H C) 131 : 1952 All L J 104 : AIR 1952 All 940 (941) (Pt B) (Prs 7, 8, 9, 10).**

——S. 10—Case under S. 63/180, U. P. Tenancy Act (1939) for declaration — Additional Commissioner passing decree on 30-12-1949 but staying appeal so far as it related to relief of ejectment under S. 180—Order and decree are not in contravention of S. 10 of U. P. Act 7 of 1950. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 63. **1952 All L J (Rev) 87.**

——**S. 10—'Suit' includes appeal.**

The word 'suit' in S. 10 of U. P. Act 7 of 1950 includes an appeal which is merely a continuation of the suit and in any case the words "suits, applications and proceedings" are wide enough to include appeals. Hence a pending appeal in a suit for ejectment under S. 175 of the U. P. Tenancy Act must be stayed under that section. Even if it be held that it cannot be stayed it would be useless to hear the appeal as the decree eventually passed cannot be executed under the provisions of that Act. **1951 All W R (H C) 56 (DB).**

——**S. 10 — Applicability — Absence of entry about Khudkhast—If affects.**

The absence of an entry about khudkhast cannot affect the applicability of Act 7 of 1950 if the plaintiff claims the land to be his khudkhast and the defendant is recorded as an occupier of it in the records of 1356-F. **1951 All W R (Rev) 207 : 1951 R D 211.**

—U. P. AGRICULTURAL TENANTS (ACQUISITION OF PRIVILEGES) AMENDMENT AND MISCELLANEOUS PROVISIONS ACT (23 of 1951)

SECTION 5

——**S. 5—Applicability—Stay of revision proceedings before Board.**

Where no revision lies in law from an order in a proceeding under U. P. Act 10 of 1949, the proceedings before the board for revision cannot be a proceeding in law and cannot be stayed under S. 5.

Moreover, S. 5 provides for the stay of a proceeding against an occupier and sub-s. (2) of the section indicates that sub-s. (1) applies to a proceeding in the Court of the Assistant Collector. The section cannot apply to a proceeding before the Board where no valid proceeding lies. **1952 All L J (Rev) 145 : 1952 R D (B R) 191.**

——**Ss. 5 and 6—Scope.**

Sections 5 and 6 of the Act do not at all justify the stay of an appeal from a decree passed under S. 63/180 of the U. P. Tenancy Act. Section 5 provides for the stay of a proceeding against an occupier on any ground mentioned in Clause (c) of sub-s. (1) of S. 12 of the Act and S. 6 provides for the revival of a declaration which has been cancelled under the above provisions of the Act. They do not refer to any other proceeding. **1952 All L J (Rev) 87 : 1952 R D (B R) 161.**

SECTION 6

——**S. 6 (3)**—Applicability — Order for cancellation of certificate under S. 12 (1) (c)—Subsequent order of Commissioner setting aside order under S. 6 (3) of Act (23 of 1951) is valid. See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 12 (1) (a) (c). **A I R 1955 N U C (All) 176.**

——**S. 6** — Section 6 provides for the revival of a declaration which has been cancelled under the provisions of the Act. It does not refer to any other proceeding. See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Amendment and Miscellaneous Provisions Act (1951), S. 5. **1952 R D (B R) 161 : 1952 All L J (Rev) 87.**

—U. P. CONSOLIDATION OF HOLDINGS ACT (5 of 1954)

PREAMBLE

——Preamble—Validity—Does not contravene Art. 14 of the Constitution. See Constitution of India, Art. 14. A I R 1957 All 297 (DB).

——Preamble—Scope and effect of—Procedural provisions — Violation of principles of natural justice. See Constitution of India, Art. 226. A I R 1957 All 297 (DB).

——Preamble—Object of.

The object of the U. P. Consolidation of Holdings Act is to allot a compact area in lieu of scattered holdings so that large scale cultivation be made possible and all its attendant advantages may accrue to tenure holders. The consolidation of holdings is intended to encourage the development of agriculture. 1956 All W R (H C) 643 : 1956 All L J 878 : A I R 1957 All 297 (299) (Pt A) (Pr 5) (DB).

SECTION 3

——S. 3 (as amended by U. P. Act 38 of 1958), Ss 15 (1) (a), 42 (4)) (as amended by U. P. Act 24 of 1956) —Permission granted by Assistant Commissioner, at Mathura—Validity of—Assistant Director at Mathura, made ex-officio Deputy Director — Still permission granted by him is not valid in view of specific provision of S. 15 (1) (a).

Under the provisions Clause (a) of sub-s. (1) of S. 15 of the Consolidation of Holdings Act it is the Director of Consolidation who is authorised to grant permission and since the permission in question was granted by the Deputy Director of Consolidation it had no validity and was not a permission as required by law.

A notification issued by the Government under S. 42 (1) of the Act appointing the Assistant Director concerned as ex-officio Deputy Director of Consolidation does not cure the inherent infirmity for the simple reason that the notification has not been issued under S. 42 (4) which authorises the Government to empower Deputy Director to discharge the functions of the Director of Consolidation as may be specified in the notification.

Even if it be assumed that the use of the word ex officio in the notification dated 21.9.1956 was intended to confer upon the Deputy Director, Consolidation of Mathura the powers of the Director under S. 15 (1) (a) of the Act which hitherto were enjoyed by the Assistant Director, Consolidation, Mathura by virtue of the notification dated 28-7-1955, it would fail to achieve that object for the same reason that the notification dated 21-9-1956 was not a notification under sub-s. (4) of S. 42 of the Act. 1965 All W R (H C) 716 : I L R (1965) 2 All 879.

——S. 3 (4)—'Director'—Definition requires appointment as Director and not conferment of powers of Director. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 11 (2). 1965 All W R (H C) 666 : 1965 All L J 718.

——S. 3 (2), (5), Explanation (4) (c) (as added by U. P. Act 38 of 1958)—Grove land is land as defined in S. 3 (5)—Act applies to such land.

The expression 'land' as defined in Cl. (5) of S. 3 means 'land held or occupied for purposes connected with agriculture, horticulture and animal husbandry'. Grove land is thus land for the purposes of the Act. A holding as defined in Clause (4) (c) of the section means a parcel or parcels of land and therefore includes a grove land except for the purposes of consolidation, i. e., rearrangement of holdings. Thus all that is meant by Explanation to Cl. (2) is that though a grove land is land (as defined in Cl. 5) and therefore, may be included in a holding when holdings of tenure-holders are rearranged for consolidation, grove land forming part of them will be left out and only the remaining lands of the holdings will be arranged. This is not the same thing as saying that the Act does not apply to grove lands; only the provision regarding rearrangement will not apply to them and the rest will apply. 1962 All W R (H C) 506, Overruled. 1962 All L J 584 : 1962 All W R (H C) 391 ; I L R (1962) 2 All 359.

——Ss. 3 (2), 16, 12, 141, 19 and 20 (2) — Inclusion of grove in Scheme—Failure to object in time effect. 1962 All W R (H C) 727 : 1962 All L J 888.

CHAPTER 2

● ——Chaps. 2 and 3, Ss. 29-B and 49, S. 6 (as amended by U. P. Act 16 of 1957)—Constitutionality —Act does not offend Art. 14 or Art. 31 (2) of the Constitution. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), S. 6. A I R 1959 S C 564.

SECTION 4

● ——Ss. 4, 5 (b) (ii) and 49 (as amended by Act 38 of 1958)—Effect of amendment—Suits under S. 175, U. P. Tenancy Act decreed prior to consolidation operation in 1954 — Appeals to Supreme Court—If become infructuous. Baljee Sing v. Risal Singh, 1964 All L J 604 : 1962 All W R (H C) 534 : 1962 Supp 3 S C R 217.

——S. 4—Notification under S. 4 — Applicability of S. 5 (b)—Section applies only to proceedings pending on the date when notification comes into effect and not to proceedings instituted thereafter. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), S. 5 (b). 1965 All W R (H C) 248.

——S. 4 — Single Judge deciding appeal on merits in ignorance of notifications issued under S. 4 — Effect of S. 5—Special appeal—Consolidation officer having decided dispute matter pending in High Court in form of writ petition — Held, case be remanded to Single Judge to keep it stayed. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 5. 1964 All W R (H C) 625 : 1964 All L J 1050.

——Ss. 4, 5, 52—Stay of suit—Suit partly for specific performance of contract of sale and partly for possession—Suit in respect of latter relief had to be stayed. A I R 1963 All 194 (200) (Pt I) (Prs 33, 34).

——Ss. 4, 11—Consolidation proceedings — Starting point of — Limitation to be counted up to date of declaration under S. 4. 1960 All W R (H C) 503 : 1960 All L J 639.

SECTION 5

● ——S. 5 (b) (ii) (as amended by Act 38 of 1958) — Effect of amendment — Suits under S. 175 U. P. Tenancy Act decreed prior to consolidation operation in 1954—Appeals to Supreme Court—If become infructuous. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 4. 1964 All L J 604 : 1962 All W R (HC) 534 : 1962 Supp 3 S C R 217.

——S. 5 — Suit to declare sale deed void on ground that it was not for legal necessity—Initiation of consolidation proceedings — Suit should not be stayed. 1965 All W R (HC) 441 : 1965 All L J 1147.

——Ss. 5 (b) and 4—Application of S. 5 (b)—Section applies only to proceedings pending on the date when notification under S. 4 comes into effect and not to proceedings instituted thereafter. 1965 All W R (HC) 248.

——Ss. 5 and 4 —Single Judge deciding appeal on merits in ignorance of notification issued under S. 4 —Effect of S. 5 —Special appeal — Consolidation authorities having decided dispute, matter pending in High Court in form of writ petition — Held, case be remanded to Single Judge to keep it stayed till finality of orders of Consolidation authorities and then

to pass orders in terms of their decision. 1964 All L J 1050 : 1964 All W R (HC) 625.

——S. 5—Word "Suits"—Meaning—"Suit" does not include execution proceedings — Execution of decree cannot be stayed—Object of Act — ILR 30 Bom 101 ; ILR 22 Mad 256, Rel. AIR 1925 All 276 ; AIR 1955 All 353 (FB), Disting. 1964 All L J 718.

——S. 5 (b) (1) — Expression "all proceedings" — Scope of—The words "all proceedings" occurring in S. 5 (b) (i) have reference only to proceedings for correction of record and do not relate to proceedings for declaration of rights and interest over land or for possession of land or for partition. 1964 All L J 718.

——Ss. 5, 4 and 52 — Stay of suit — Suit partly for specific performance of contract of sale and partly for possession—Suit in respect of latter relief had to be stayed. AIR 1963 All 194 (200) (Pt I) (Prs 33, 34).

SECTION 6

●——S. 6, Chs. 2 and 3, Ss. 29-B and 49)—(as amended by U. P. Act 16 of 1957) — Constitutionality. Held that the impugned provisions did not contravene Art. 14 or Art. 31 (2) of the Constitution (as it was before the Fourth Amendment). Attar Singh v. State of U.P., (1959) S C J 474 ; 1959 All W R (HC) 300 : 1959 All L J 601 : (1959) Supp (1) S C R 928 : AIR 1959 SC 564 (566 to 568) (Prs 7, 9, 10, 12).

SECTION 7

——Ss. 7, 8, 11 and 12—U. P. Consolidation of Holdings (Amendment) Act (38 of 1958), S. 49 — Scope — S. 49 of Act 38 of 1958 refers only to complete proceedings — Effect — Proceedings pending on 27th November, 1958—Those under S. 7 to be disposed of according to Amended Act and those under S. 8 and subsequent sections to be disposed according to unamended Act—Proceedings for preparation of statement of tenure-holders to be conducted according to unamended S. 12. ILR (1963) 2 All 805.

SECTION 8

——S. 8 — Proceedings pending on 27th November 1958—Those under S. 8 and subsequent sections to be disposed of according to unamended Act. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 7. ILR (1963) 2 All 805.

——Ss. 8, 11, 12 and 49 (as it stood prior to its amendment in 1958) — Name of A recorded under S. 8 and in statement prepared under S. 11 —Objection by B that he was sirdar of plot—Though recorded as occupant in 1356 F. A was found not in possession till 1366F — Notification under S. 4 made in March 1954 and statement under S. 11 published in July 1958—Held that S. 49 did not prevent filing of suit for recovery of possession by A in revenue Courts —A had a right to file suit under S. 209, U. P. Zamindari Abolition and Land Reforms Act and having failed to do so his right in plot was extinguished—(1960) A L J 639 and (1965) All W R (HC) 248, Dissented from. 1963 All L J 1161.

SECTION 9

——S. 9 (3)—Reference under — Non-appearance of party whose name was sought to be expunged from record by applicant — Case can still be treated as disputed case—Reference is valid. 1965 All L J 945 : 1965 All W R (HC) 708 : AIR 1966 All 156 (157) (Pt A) (Pr 2).

——S. 9 — Consolidation authority holding that the question of fact decided in earlier consolidation proceeding between same parties is res judicata — Proceedings under U. P. Consolidation of Holdings Act are judicial proceedings — Principles of res judicata would govern consolidation proceedings. See Constitution of India, Art. 226. AIR 1965 All 296.

——Ss. 9, 49 (as amended in 1958) — Bar under — Proceedings under S. 9 are permutation proceedings —Regular suit for declaration and possession barred—Suit for injunction not maintainable. 1965 All L J 627.

——S. 9 (as amended in 1958) — Compromise decree obtained before consolidation operations—No objection filed under S. 9 within prescribed period—Decree ceased to be effective. 1965 All L J 627.

SECTION 10

——S. 10 — Orders "under any other law" include orders passed in execution of decree. 1964 All L J 718.

SECTION 10-A

——Ss. 10-A and 20 — Proceedings contemplated under S. 10-A are not administrative but judicial — —Order passed under S. 10-A by the Consolidation Officer would be final and binding between the parties if no appeal is preferred from that order — Order passed under S. 10-A cannot be questioned by filing objection under S. 20. 1962 A L J 888, Rel. on. 1962 R D 107 and 1965 R D 12, Disting. 1965 All W R (HC) 349.

SECTION 11

——S. 11—Name of A recorded under S. 8 and in statement prepared under S. 11—Objection by B that he was sirdar of plot—Though recorded as occupant in 1356 F. A was found not in possession till 1366 F —Notification under S. 4 made in March 1954 and statement under S. 11 published in July 1958—Held that S. 49 did not prevent filing of suit for recovery of possession by A in revenue Courts—A had a right to file suit under S. 209, U. P. Zamindari Abolition and Land Reforms Act and having failed to do so his right in plot was extinguished. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 8. 1965 All L J 1161.

——Ss. 11, 42 — Deputy Director, Consolidation, hearing appeal though having no jurisdiction — His order confirmed by director in revision, on merits — Order of Deputy Director having merged in order of director which was valid, cannot be challenged. See Constitution of India, Art. 226. 1965 All W R (HC) 666 : 1965 All L J 718.

——Ss. 11 (2), 3 (4), 42 and 44 (ii) —' The Director' in S. 11 (2)—Expression does not include person on whom Director's powers have been conferred—1960 A L J 549 and 1964 A L J 145, Rel. on. 1965 All W R (HC) 666 : 1965 All L J 718.

——S. 11—Amendment of statement of plots — On appellant's objection to published statement, Deputy Director, Consolidation ordering republication of it —Republication of—Statement with amendment only to extent of objection—Held that there was sufficient compliance with order of Deputy Director, Consolidation. 1965 All W R (HC) 167 : 1965 All L J 374.

——Ss. 11, 12, 20 to 24, 29, 31, 33, 34 and 36 (after amendment by Act 16 of 1957)—Scope and construction — Necessity for the aggrieved party to file an objection at each stage — Reference under S. 12 (4), if not finally decided, has to be stayed — Consideration as to inconvenience or expenses to party not material. 1962 All W R 450 held Overruled on one point by 1964 All W R 424 (DB).

Once the statement of proposals is confirmed under S. 23 of the U. P. Consolidation of Holdings Act, the Civil Judge hearing a reference under S. 12 (4) in respect of the same subject-matter, must decide it in accordance with the statement of proposals so confirmed, especially when no objection has been filed

under S. 20 (2) of the Act. However, a reference made under S. 12 (4), if not finally decided will have to be stayed on the publication of the statement of proposals even though the stay may cause unnecessary inconvenience and expenses to the parties.

It is so for the reason that provisions under Ss. 12 (7) and (1), 22 (4), 20 (2) and 34 (1) compel an inference that the aggrieved party has got to file an objection at each stage, irrespective of whether the question of title had earlier been determined or finally determined or not, if the entry in the statement published under S. 11, or Statement of Proposals, or the order passed under Ss. 29, 31 and 33 of the Act is against him.

Similarly, the difference in the phraseology of Ss. 12 (4), 22 (1) and 36 (1) of the Act also suggest that a party filing an objection under S. 12 (1) should make an objection under S. 20 (2) and 34 (1) also if the entry in the statement of proposals, or order contemplated under S. 34 (1) of the Act is against him. 1963 All L J 957, Foll; 1962 All W R 450, held Overruled on one point by 1964 All W R 424 (DB). **1965 All W R (HC) 245.**

——**Ss. 11 and 12** — Adhivasi out of possession — Failure to apply for recovery of possession within prescribed period — Claim to be sirdar by virtue of declaration under S. 240-A — Limitation — Starting point—"Date of occupation"—Interpretation of. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. **1964 All L J 1045.**

——**S. 11** — Proceedings pending on 27th November 1958—Those under S. 7 to be disposed of according to Amended Act and those under S. 8 and subsequent sections to be disposed of according to unamended S. 12. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 7. **ILR (1963) 2 All 805.**

——**Ss. 11 and 12** — Grovelands included in consolidation operations — S. 11 applies — Objection in respect of entry regarding grovelands in statement of plots and tenure holders to be disposed of according to S. 12. 1962 All L J 564, Rel. on. **ILR (1963) 2 All 805.**

——**S. 11** — Consolidation proceedings — Starting point of — Limitation to be counted upto date of declaration under S. 4. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 4. **1960 All W R (HC) 503.**

SECTION 12

SYNOPSIS

(U. P. Consolidation of Holdings Act (1954), S. 12.)

1. Scope and applicability.
2. Filing of objection—Sub-s. (1).
3. Decision of Consolidating Officer—Sub-s. (3).
4. Reference to Arbitrator—Sub-s. (4).
5. Decision by Arbitrator—Sub-s. (6).

1. Scope and applicability.

——**Ss. 12 and 27** — U. P. Consolidation of Holdings Rules (1954), Rr. 74 to 80 — Proceedings under S. 27 —No jurisdiction to decide questions of title—Rr. 74 to 80 ultra vires of Ss. 12 and 27. W. P. No. 307 of 1960, dated 23-1-1964 (All), Affirmed; 1965 All L J 938, Rel. on. **1965 All W R (HC) 416 : 1965 All L J 516.**

——**Ss. 12, 20 (1) and 22 (2) (as amended by U P. Act 38 of 1958)**—Question of title involved in objection under S. 12 — Objection referred to Civil Judge who referred it to arbitrator—Award by latter — Section amended by the time reference was sent back to Civil Judge—Civil Judge passing order staying further proceedings—Objection held had to be conducted and concluded according to unamended S. 12 — Civil Judge held misapplied S. 22 (2) — S. 22 (2) applies only when an application is filed under S. 20 and not prior to filing of such objection—Since no objection had been filed under S. 20 by either party S. 22 (2) could not be applied at all. **1964 All L J 919.**

——S. 12 — Proceedings pending on 27th November 1958—Proceedings for preparation of statement of tenure holders to be conducted according to unamended S. 12. See Tenancy laws — U. P. Consolidation of Holdings Act (1954), S. 7. **ILR (1963) 2 All 805.**

——**S. 12** — Objections in respect of entry regarding grovelands in statement of plots and tenure holders to be disposed of according to S. 12. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 11. **ILR (1963) 2 All 805.**

——**S. 12** — Scope and object of — Objection under S. 12 not presented by the objector himself or by duly authorised agent—Mere irregularity in presentation—Order of Deputy Director sending case back to the Courts below to consider objection after curing irregularity—Order not vitiated by error of law or defect of jurisdiction. See Civil P. C. (1908), O. 4, R. 1. **AIR 1959 All 487 (DB).**

2. Filing of objection—Sub-s. (1).

——**S. 12** — Name of A recorded under S. 8 and in statement prepared under S. 11—Objection by B that he was sirdar of plot— Though recorded as occupant in 1356 F. A was found not in possession till 1366F —Notification under S. 4 made in March 1954 and statement under S. 11 published in July 1958—Held that S. 49 did not prevent filing of suit for recovery of possession by A in revenue Courts—A had a right to file suit under S. 209, U. P. Zamindari Abolition and Land Reforms Act and having failed to do so his right in plot was extinguished. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 8. **1965 All L J 1161.**

——**Ss. 12, 38** — Clerical or apparent error on face of record—Failure to file objection under S. 12 held no bar to the error being corrected under S. 38. **1965 All W R (HC) 583 : 1965 All L J 888.**

——**S. 12**—Entry in statement due to clerical or arithmetical mistake — No objection under S. 12—High Court will quash it. See Constitution of India. Art. 226. **1965 All L J 790 : 1965 All W R (HC) 279.**

——**Ss. 12, 16, 19, 20(2) and 141** — Inclusion of grove in Scheme—Failure to object in time — Effect. See Tenancy Laws—U. P. Consolidation of Holdings Act, 1953 (5 of 1954), S. 3 (2). **1962 All L J 888.**

——**S. 12** — Objections to statements — Commencement of limitation—Time begins to run from date of publication of statement and not of publication of notice. **1962 All W R (HC) 114 : 1962 All L J 145.**

——**S. 12 (4)—Question of title.**

When notice is published, it is open to a tenure-holder under S. 12 (1) to file objections as to the correctness or nature of the entry or pointing out any omission therefrom. The objections under S 12 may be of the nature of a declaration under Ss. 59 to 63 of the U. P. Tenancy Act and their decision cannot be refused on the basis of orders relating to correction of records under S. 8 of the Consolidation of Holdings Act. **1956 All L J 929 : 1956 All W R (HC) 862.**

3. Decision of the Consolidation Officer—Sub-s. (3).

——**Ss. 12, 42**—Rules under the Act. R. 34—Scope — Objection under S. 12 (1) — Jurisdiction to decide — Provisions of S. 12 (2) are mandatory — Consolidation Officer has no jurisdiction to decide objections under

S. 12 (1)—Objector is not given a choice to prefer any of the officers mentioned in S. 42 (1) 1959 All L J 209, Approved. **1964 All L J 487 : 1964 All W R (HC) 371 : ILR (1964) 2 All 548 : AIR 1964 All 360 (362) (Pt A) (Prs 4, 5) (DB).**

——Ss. 12, 20, 23 — Objection under S. 20 — Appeal against dismissal of earlier objection under S. 12 pending — Held as decision under S. 12 had not attained finality, objection under S. 20 was competent. Civil P C. (1908), S. 11— Finality of appealable decision. **1964 All W R (HC) 589 (DB).**

——S. 12 — Rules framed under the Act, R. 34 — Views of Consolidation Committee are not irrelevant for disposal of objection under S. 12. **1963 All W R (H C) 667.**

——Ss. 12, 20 (2) and 22 (2)— Decision under S. 12, when becomes final — Objections under S. 20 (2) — Same grounds as urged under S. 12 could be raised, if they have not become final — Nature of objections under S. 20.

Section 20 (2) is one of the provisions which prevents the decision of Consolidation Officer from becoming final under S. 12 (3). There is nothing in S. 20 (2) to show that the objection under it must be confined to some particular matter or that the objection cannot raise the same point which has already been raised under S. 12 but in respect of which the decision has not become final; and in view of the provisions of S 22 (2) it cannot be said that this involves unnecessary duplication of proceedings, which provides for automatic staying of suits or proceedings after the publication of statement of proposals under S. 20 (1). **1962 All W R (H C) 450.**

——S. 12—Writ of certiorari — Nature of jurisdiction of the High Court — High Court does not act as a court of appeal but only sees that the inferior Court has acted within the limits of its jurisdiction and has not refused to exercise jurisdiction vested in it — Consolidation officer refusing to extend time under S. 5, Limitation Act—Settlement officer also in appeal refusing to extend time — Writ of certiorari will not be issued. See Constitution of India Art. 226. **1962 All W R (H C) 114 : 1962 All L J 145.**

——S. 12 — Writ Petition — Practice — Interference by High Court — No interference with directions by Revenve Courts for correction of papers. See Constitution of India, Art. 226. **1961 All W R (H C) 683.**

——Ss. 12 and 54—Rules under S. 54, R. 34 (3) — If ultra vires— (U. P. Consolidation of Holdings Rules, R. 34 (3)).

Rule 34 (3) of the U. P. Consolidation of Holdings Rules framed under S. 54 of the Act, providing for an appeal from an order of a Consolidation Officer under S. 12 (2), is a rule for the purpose of carrying into effect the provisions of the Act and is not ultra vires the rule making power of the State Government under the Act and therefore it is valid. Under S. 12 (3) of the Act the Consolidation Officer's order is not necessarily final; it will be final only if provision to the contrary is not made "by or under this Act" A provision for appeal from the order would come within the expression "otherwise provided" within the meaning of the sub-section. The phrase 'under the Act' means 'by the Act or under rules made under the Act.' AIR 1952 Orissa 11, Rel. on; 10 H L C 704 and AIR 1941 Mad 235; (1941) 1 Mad L J 164, Dist. **1960 All W R (H C) 85 : 1960 All L J 92.**

——S. 12 (2)—Scope — Non-compliance — Effect — Rules under Act, R. 34 (1)—Scope.

Where the Assistant Consolidation Officer neither consulted the Land Management Committee before preparing his report under S. 12 (2) of the Act nor did he forward the views of the Committee to the Consolidation Officer, this is a breach of the mandatory provisions of S. 12 as well as of rules made under that Act. The non-compliance vitiates the entire proceedings and the order passed by the Consolidation Officer is contrary to law. **1959 All L J 209.**

4. Reference to arbitrator — Sub-s. (4).

——S. 12 (4) — District Judge erroneously taking view that civil Judge had no jurisdiction to decide reference under S. 12 (4) and failing to hear appeal on merits — District Judge does not exercise jurisdiction vested in him — High Court can in revision, remand appeal for hearing on merits. See Civil P. C. (1908), S. 115. **1965 All L J 741 : 1965 All W R (HC) 374.**

——Ss. 12 (4) and 36-A — U. P. Consolidation of Holdings (Amendment) Act (16 of 1957), Ss. 18 and 21 — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 332-A — Object of enacting S. 36 A—Reference under S. 12 (4) in disregard of S. 332-A—Civil Judge's jurisdiction to decide reference — District Judge can hear appeal against order of civil Judge.

Section 36-A was introduced to make it clear to the consolidation authorities that the provision applies to proceedings under the Consolidation Act also. The incorporation of a saving clause in S. 21 of the Amending Act, was apparently made to ensure that matters already finally determined may not become a nullity and without jurisdiction and references already made, wrongly, be disposed of by the authority to whom already referred. The courts can assume that the saving clause in S. 21 of the Amending Act was meant to protect the disregard of S. 332-A of the Zamindari Abolition Act also. In this view of the matter a reference already made to the civil Judge under S. 12 (4) of the Consolidation Act in disregard of the provisions of S. 332-A of the Zamindari Abolition Act, though initially invalid, can be heard and decided by the civil Judge in accordance with the law, i. e. after making a reference to the Arbitrator. The civil Judge, therefore, has the jurisdiction to decide the reference after disposal of the objections to the award of the Arbitrator, and the District Judge can hear an appeal against the order of the civil Judge setting aside or refusing to set aside the award. **1965 All W R (HC) 374: 1965 All L J 741.**

——S. 12 (4) — Misconduct — Absence of finding — Failure to express opinion, on reference to Arbitration under S. 12 (4) of U. P. Consolidation of Holdings Act, 1953, whether the applicant was the heir of the recorded occupancy tenant—Error apparent on face of award—Award set aside. See Arbitration Act (1940), S. 30. **1965 All W R (H C) 206.**

——S. 12 (4) — Controversy over the status of "bhumidars" can be a question of title and the Consolidation Officer can make a reference to Arbitrator. **1965 All W R (H C) 206.**

——S. 12 (4)— Scope — Question of title — What is.

What is required by sub-s. (4) of S. 12 is not that the objection should itself raise a question of title but that it should "involve" a question of title; and so an objection against an entry which is an entry about title is an objection involving a question of title within the meaning of sub-s. (4). In the instant case entry was of Sirdari rights and was, therefore, not an entry of title and the appellant himself did not claim Bhumidhari rights; so neither aspect of his objection raised a question of title and the objection could not be said to be one which involved a question of title. **1964 All L J 487 : 1964 All W R (H C) 371 : ILR (1964) 2 All 548 : AIR 1964 All 360 (362) (Pt B) (Pr 6) (DB).**

—— Ss. 12 and 36-A— Objection under — Authorities need not refer matter to civil Judge for referring it

to arbitrator — Question regarding sirdari rights — Does not involve question of title — Provisions of S. 332-A applicable to consolidation proceedings. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) (as amended in 1956), S. 332-A. 1962 All L J 483.

——S. 12 (4)—Question of title.

Reading R 32 (4) of the Rules framed under the Act along with Ss. 10A and 12 of the Act the question as to the extent of a tenure-holder's share in the case of two or more joint tenure-holders relates to a question of title within the meaning of sub-s. (4) of S. 12. The Settlement Officer, therefore has jurisdiction to refer the question to the civil Judge. 1956 All L J 901 : 1957 All W R (H C) 83.

5. Decision by arbitrators—Sub-s. (6).

——Ss. 12, 21, 22 and 23 — Decisions on questions of title — Final only as regards the preparation of consolidation scheme — Such decisions cannot operate as res judicata so far as applications under S. 12 of U. P. Act 10 of 1949 are concerned—Tenancy Laws—U. P. Agricultural Tenants (Acquisition oi Privileges (Act 10 of 1949), S 12—Civil P. C. (1908), S. 11. 1961 All W R (H C) 683.

——S. 12 (6)—Award under — Refusal to set aside — Order is appealable under S. 39, Arbitration Act — The word 'final' in S. 12 (6) means that the award will not be directly open to appeal or revision. See Arbitration Act (1940), S. 39. AIR 1959 All 717 (DB).

——S. 12 and sub-s. (6)— Award under — Refusal to set aside — Appeal available — Writ petition not maintainable. See Arbitration Act (1940), S. 39. AIR 1959 All 330.

CHAPTER III

● ——Chapters III and II, Ss. 29-B and 49, S. 6—Constitutionality — Act does offend Art. 14 or Art. 31 (2) of the Constitution. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954) (as amended by U. P. Act 16 of 1957), S. 6. AIR 1959 S C 564.

SECTION 13

● ——Ss. 13 and 16-A (1) and (2) — Application for transfer by way of exchange of certain plots—Rejection by the Settlement Officer — Whether reasons given for rejection contravene S. 13 (a), (b) or (c) — High Court on special appeal setting aside the order of the Settlement Officer.

It is only where the Settlement Officer is satisfied that either 'the principles' formulated under S. 14 of the U. P. Consolidation of Holdings Act, 1953, or 'the proposals' under S. 19 or some other matters prescribed to be taken into account under S. 13 (c) are contravened by allowing the proposed transfer, that he could reject an application and besides he is enjoined to record the reasons which induce him to do so in writing. Where the application was rejected for reasons not germane or pertinent for rejecting the application for exchange under S. 16-A (2) of the Act, the learned Judges of the High Court can set aside the order of the Settlement Officer. The Deputy Director of Consolidation, Azamgarh v. Deen Bandhu Rai, (1964) 4 S C R 560 : (1965) 1 S C J 360 : 1964 All L J 247 : ILR (1964) 1 All 355 : A I R 1965 S C 484 (489) (Pt A) (Prs 12, 13, 14).

SECTION 14

● ——Ss. 13 and 16-A (2)—Application for permission to transfer — Grounds for rejection—Scheme of consolidation—Meaning of — Scheme when defeated — Application rejected on ground that it would entail considerable work on department or that the applicant would be a bigger land holder — Rejection held invalid. See Tenancy Laws — U. P Consolidation of Holdings Act (5 of 1954), S. 16-A (2). AIR 1965 S C 484.

——S. 14—Inclusion of grove in scheme—Failure to object in time — Effect. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954) S. 3 (2). 1962 All W R (HC) 727 : 1962 All L J 888.

——S. 14 (1) (ee)—Validity—'Common utility' in S. 14 (1) (ee) means "public utility"—Non-payment of compensation to tenure-holder. Section 14 (1) (ee) of the Act and rules thereunder are invalid as they contravene the provisions of Art. 31. See Constitution of India, Art. 31 (2). AIR 1957 All 297 (DB).

——S. 14 (1) (ee)—Validity — Land taken away from tenure-holders without payment of compensation — Effect—First part of Clause invalid. See Constitution of India, Art. 31. AIR 1957 All 153 (DB).

——S. 14 (1) (ee)—Scope—Is not saved by Art. 31-A of Constitution. See Constitution of India, Art. 31-A (2) (b). AIR 1957 All 153 (DB).

SECTION 15

——S. 15 (1) (a) (as amended by U. P. Act 38 of 1958) —Permission granted by Assistant Commissioner, at Mathura—Validity of—Assistant Director at Mathura, made ex-officio Deputy Director — Still permission granted by him is not valid in view of specific provision of S. 15 (1) (a). See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 3. 1965 All W R (HC) 716 : ILR (1965) 2 All 879.

——S. 15—Validity—(Constitution of India, Art. 14). Section 15 of the U. P. Consolidation of Holdings Act, 1954, is not unconstitutional on the ground that it vests arbitrary power in the Consolidation Officer. 1959 All W R (HC) 218 : 1959 All L J 438 : A I R 1959 All 525 (525, 526) (Pt A) (Pr 2).

SECTION 16

● ——S. 16-A (2) — Application for permission to transfer holding — Grounds for rejection — Jurisdiction of Settlement Officer — Court will interfere only when there is an error on the face of the record a similar infirmity in his order. Deputy Director of Consolidation Azamgarh v. Deen Bandhu, 1964 All L J 247 : ILR (1964) 1 All 355 : (1965) 1 S C J 360 : A I R 1965 S C 484 (490) (Pt B) (Pr 17).

——S. 16—Inclusion of grove in scheme — Failure to object in time — Effect—See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 3 (2). 1962 All W R (HC) 727 : 1962 All L J 888.

SECTION 16-A

● ——Ss. 16-A (2), 13 — Application for permission to transfer—Grounds for rejection — Scheme of consolidation — Meaning of — Scheme when defeated—Application rejected on ground that it would entail considerable work on department or that the applicant would be a bigger land holder held invalid. Deputy Director of Consolidation, Azamgarh v. Deen Bandhu, 1964 All L J 247 : ILR (1964) 1 All 355 : (1965) 1 S C J 360 : A I R 1965 S C 484 (489) (Pt A) (Prs 12, 13, 14).

——S. 16-A—Transfer of plots without prior permission—Illegal and void. 1963 All W R (HC) 20.

SECTION 19

——S. 19—Inclusion of grove in scheme—Failure to object in time — Effect. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 3 (2). (1962) All W R (HC) 727 : 1962 All L J 888.

SECTION 20

——S. 20 (2) — Objections under — Delay in filing — Consolidation authorities can condone delay and entertain objections even after the expiry of the prescribed period — Sufficient cause to be shown to

the satisfaction of the authorities. **1965 All W R (HC) 245.**

——S. 20 (1) (as amended by U. P. Act 1958) — Section 22 (2) applies only when an objection is filed under S. 20 and not prior to the filing of such objection. Since no objection has been filed under S. 20 by either party, S. 22 (2) could not be applied at all. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 12. **1964 All L J 919.**

——Ss. 20, 12 and 23—Objection under S. 20—Appeal against dismissal of earlier objection under S. 12 pending — Held as decision under S. 12 had not attained finality, objection under S. 20 was competent. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 12. **1964 All W R (HC) 589.**

——Ss. 20, 23, 52, 21 (as amended in 1958)—Confirmation of statement of proposals—Finality not affected by pendency of proceedings in the nature of revision. **1963 All L J 975.**

——Ss. 20, 22 (1) — Objection under S. 20—Referred by Consolidation Officer to Civil Judge — Latter referring it to arbitrator — Reference not without jurisdiction — U. P. Consolidation of Holdings Act (5 of 1954), Ss. 20, 22 (1), 36-A (as amended by U. P. Act 16 of 1957) — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 332-A (as amended by U. P. Act 17 of 1956). **1963 All W R (HC) 327.**

——S. 20 (2)—Inclusion of grove in scheme—Failure to object in time - Effect. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 3 (2). **1962 All W R (HC) 727 : 1962 All L J 888.**

——S. 20 (2) — There is nothing in S. 20 (2) to show that the objection under it must be confined to some particular matter or that the objector cannot raise the same point which has already been raised under S. 12 but in respect of which the decision has not become final. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 12. **1962 All W R (H C) 450.**

——S. 20 (2) — Any order by Assistant Consolidation Officer rejecting or dismissing objection raised under S. 20 (2) is without jurisdiction. He is bound to submit them to Consolidation Officer who alone is entitled to dispose them of under S. 21 (1). See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 21 (1). **1961 All L J 612 : 1961 All W R (HC) 505.**

SECTION 21

——Ss. 21 (2) and 53-B — Appeal filed on 20th April, 1963 against order of Consolidation Officer passed under S. 21 (1) on 24th January, 1963, dismissed as time barred and refusing benefit of S. 53-B—Appellant pleading, for first time in petition for certiorari, that revised extract served on appellant on 16th April, 1963 constituted sufficient cause—Held, certiorari for quashing orders cannot be granted on ground taken for first time in certiorari. See Constitution of India, Art. 226. **1965 All W R (H C) 58 : 1965 All L J 172 : ILR (1965) 1 All 354.**

——Ss. 21 and 54 — Rules framed under, R. 49—Words 'of the date of the order' used in S. 21 (2) are plain and meaning given to them cannot be varied by Government through its rule-making power under S. 54—'Disposed' meaning of. **1965 All W R (HC) 58 : 1965 All L J 172 : ILR (1965) 1 All 354.**

——Ss. 21 (5) and 48 — Proceedings under Ss. 21 (5) and 48—Constitution of India, Art. 226—Certiorari—Grant of relief discretionary — Party having chosen a particular mode of relief cannot be allowed to re-agitate against it—See Constitution of India, Art. 226. **AIR 1963 All 421.**

—S. 21—Writ petition—Practice — Interference by High Court — No interference with directions, by Revenue Courts for correction of papers. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 12. **1961 All W R (H C) 683.**

——Ss. 21 (1), 20 (2) — Objections under S. 20 (2)—Asst. Consolidation Officer has no jurisdiction to decide — Must forward them to consolidation officer who alone is entitled to dispose them of under S. 21 (1). **1961 All W R (HC) 505 : 1961 All L J 612.**

——S. 21 (3) — Alteration of "chaks" by Settlement Officer without giving notices to parties — Objection not raised before Deputy Director of Consolidation—High Court cannot entertain it. **1960 All W R (HC) 318 : 1960 All L J 427.**

SECTION 22

——Ss. 22 (1) and 53-B — Provisions are cumulative and not in alternative — Benefit of S. 22 (1) only is barred if statement of proposal is confirmed—If sufficient cause is made out, time-barred appeal can be entertained under S. 53-B. **1965 All W R (HC) 58 : 1965 All L J 172 : ILR (1965) 1 All 354.**

——Ss. 22 (2) (as it stood prior to 1959), 20, 12, 49, 17, 21, 38 & 41 — "Court"—Expression does not include consolidation authorities under the Act since they are not 'Courts' within the strict meaning of the term, 1962 R. D. (H. C.) 107 Overruled—(Words and Phrases—'Court.')

Though the several provisions of the Act give the consolidation Authorities the trappings of a Court, these are not 'Courts' in the strict and accepted meaning of the term and hence, proceedings before consolidation authorities under S. 12 are not to be stayed under S. 22 (2) upon publication of the statement of proposals under S. 20 (1).

This is so firstly because nowhere in the Act the authorities are described as 'Courts' and the reference to 'suit' in S. 49 is an improper and loose user of the term. Further, provisions such as Ss. 12, 17, 20 21 amply make it clear that the views of the Consolidation Committee which is a purely executive body, have to be taken into account and given due weight by the Consolidation authorities in making decisions about a number of controversies under the Act. This circumstance strongly militates against the contention that they are Courts. 1959 A L J R 209, Foll.

Under S. 38 the authorities are invested with only certain of the 'powers, rights and privileges as are vested in a Civil Court' so much so the restricted form of the power makes it manifest that those authorities cannot be construed to be Courts in the proper sense of that term.

The mere fact that under S. 41 the procedure which the authorities constituted under the Act have to follow is the same which is to be followed by revenue Courts, does not necessarily mean that those authorities have the status of Courts. 1960 R D (HC) 75, Civil Misc. Writ No. 382 of 1960 D/-13-11-1961 (All) and Civil Misc. Writ No. 1110 of 1957 D/- 10-9-1959 (All) Foll.; 1962 R D (H C) 107 Overruled; A I R 1956 S C 153, 1931 A C 275, AIR 1961 S C 1669, (1892) 1 Q B 431, A I R 1963 S C 416, AIR 1962 S C 1621, AIR 1963 S C 677, AIR 1950 S C 188 and A I R 1963 S C 874, Rel. on. **(1964) All W R (HC) 424 (DB).**

——S. 22 (2) (as amended by U. P. Act 1958) — S. 22 (2) applies only when an objection is filed under S. 20. Since no objection has been filed under S 20 by either party S. 22 (2) could not be applied at all. What is to be stayed under S. 22 (2) is to be stayed is a suit or proceeding in the court of first instance, appeals, reference or revision and not a proceeding under the Consolidation of Holdings Act which cannot be said to be a proceeding in Court—

See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 12. 1964 All L J 919.

——Ss. 22 (1) and 36-A — Sirdari Rights—Question of reference does not arise. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 20. 1963 All W R (HC) 327.

——S. 22 (2) — Court Consolidation Officer functioning under S. 12 is a Court—Civil Procedure Code (1908), S. 2 (8); S. 115. 1962 All W R (HC) 450.

——S. 22 (2)—In view of the provisions of S. 22 (2), it cannot be said that raising of objection under S. 20 (2) again which was raised under S. 12 but in respect of which decision has not become final, involves unnecessary duplication of proceedings. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 12. 1962 All W R (HC) 450.

——S. 22 read with S. 36-A — Statutory Reference to arbitration — Reference invalid — No objection to jurisdiction raised—No question of acquiescence or estoppel arises—Evidence Act (1872), S. 115—Estoppel — Acquiescence — Civil P. C. (1908), S. 9—Jurisdiction — Consent if can confer. 1963 Andh W R (H C) 38, Disting. 1962 All W R (HC) 25.

——S. 22—Reference on question of title— Existence on the date of reference essential—S. 36-A added before the reference to Civil Court—Effect.

For a reference under S. 22, existence of a question of title on the date the reference is made is essential and unless there is such a subsisting question, a reference which did not involve a question of title is an invalid reference.

Where, therefore, the reference under the section was in respect of Sirdari rights, which under the newly added S. 36-A had ceased to be a question of title before the date of reference the reference was held as illegal and without jurisdiction. 1962 All W R (HC) 25.

——S. 22—Writ petition — Practice—Interference by High Court — No interference with directions by Revenue Courts for correction of papers—See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 12. 1961 All W R (HC) 683.

——S. 22 (2)—Effect of — High Court's or Supreme Court's jurisdiction—If taken away.

The provisions that appeals and revisions in pending proceedings relating to title to tenure shall be stayed during consolidation proceedings and that the decision of the Consolidation Officer shall be final do not take away the jurisdiction of the High Court or the Supreme Court. They may not interfere with the decision arrived at in consolidation proceedings but their jurisdiction is thereby not affected. 1956 All W R (HC) 643 : 1956 All L J 878 : AIR 1957 All 297 (305) (Pt M) (Pr 34) (DB).

SECTION 23

——Ss. 23, 22 (1)—Expression "reference" in S. 23—Expression, though used generally must be held as confining itself to Reference under S. 22 (1). 1963 A L J 957, Ref. 1965 All W R (HC) 245.

——Ss. 23 (2) and 42-A (as amended by U. P. Act 38 of 1958) — Order under S. 42-A is one contemplated by S. 23 (2).

An order under S. 42-A is one of those orders which are contemplated under the expression 'except as otherwise provided by, or under, this Act' in S. 23 (2). 1965 All W R (H C) 207 : 1965 All L J 361 : ILR (1965) 1 All 734.

——S. 23 (1) and (2) and S. 48 (as amended by U. P. Act 38 of 1958) — Order under S. 48 is one within jurisdiction of Deputy Director—Order affects finality of settlement of proposal confirmed under S. 23 (1). 1963 A L J 973, Disting. 1965 All W R (H C) 207 : 1965 All L J 361 : ILR (1965) 1 All 734.

——Ss. 23, 20 and 12—Objection under S. 20—Appeal against dismissal of earlier objection under S. 12 pending — Held, as decision under S. 12 had not attained finality objection under S. 20 was competent. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 12. 1964 All W R (HC) 589.

——S. 23 — Writ petition — Practice — Interference by High Court — No interference with directions by Revenue Court for correction of papers. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 12. 1961 All W R (HC) 683.

SECTION 24

——Ss. 24 to 27 (as amended in 1958) — Finality of statement of proposal — Subsequent proceedings cannot be challenged.

Proceedings under Ss. 24 to 27 and under subsequent sections up to S. 52 can be taken on the basis of the statement of proposals finalised under S. 23 and unless there be any irregularity or illegality in those proceedings themselves those proceedings would not be invalidated on the ground of pendency of proceedings under S. 21— Only the finality of the statement of proposals could be challenged and not those subsequent proceedings. 1963 All L J 975.

SECTION 27

——Ss. 27, 48 — Concurrent finding of consolidation officer and settlement officer in proceedings under S. 27 — Finding cannot be upset in revision on ground that it was based on oral evidence. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 48. 1965 All L J 938.

——S. 27—Question of possession to be decided only (Obiter).

At the stage of consolidation proceeding, a consolidation authority is concerned solely with the question of possession. If any erroneous finding regardidg Sirdari rights has been given by the consolidation Court that would merely be treated as an observation and would have no binding force in law. 1965 All L J 938.

——Ss. 27, 49—Proceedings under S. 27 — Decision on question of title, during proceedings — Decision not binding on Courts of law—Title can be established by regular suit rather than by way of writ petition—S. 49 is no bar to such suit — Constitution of India, Art. 226. 1965 All W R (HC) 416 : 1965 All L J 516.

——S. 27—Proceedings under S. 27— No jurisdiction to decide question of title—Rr. 74 to 80 ultra vires of Ss. 12 and 27. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954) S. 12. 1965 All L J 516.

——S. 27 — Object of — Questions of title — Consolidation authorities cannot decide under S. 27.

The purpose of S. 27 is to give effect to the consolidation scheme in the revenue papers and also to record any changes which might have become necessary on account of any transfer or succession or the like taking place in the meantime. An objection raising a question of title cannot be inquired into in these proceedings. 1961 All W R (HC) 526 : 1961 All L J 698.

[Overruled on another point in I L R (1962) 2 All 359.]

SECTION 29-B

——S. 29-B (as amended by U. P. Act 16 of 1957) —Constitutionality—Does not offend Art. 31 (2) of the Constitution. See Tenancy Laws—U.P. Consolidation of Holdings Act (5 of 1954), S. 6. AIR 1959 S C 564.

SECTION 30

——S. 30 — "Private source" of irrigation includes source previously owned by former tenure-holder — Interpretation of Statutes—Intention of legislature.

"A private source" of irrigation as contemplated in S. 30 includes a source proviously owned by the former tenure-holder The word 'private' has been used in the aforesaid section in contradistinction to the word "public". The language in which S. 30 is couched does not indicate that the intention of the Legislature was that if the former tenure holder was the owner of the source of irrigation he would not have the benefit of irrigating his field from that well on the allotment of the plot in which the well lay to another tenure-holder.

The intention of the Legislature has to be gathered from the words used and such words are normally to be given their ordinary and etymological meaning. 1964 All WR (HC) 594.

——S. 30—Former tenure-holder need not specifically claim benefit of irrigation at time of consolidation proceedings.

By virtue of S. 30 of the Act the benefit of irrigation which was previously enjoyed by the former tenure-holder has been expressly saved and there is thus no necessity for him specifically to claim such a right during the course of the consolidation proceedings. 1964 All W R (HC) 594.

SECTION 36-A

——S. 36-A—Object of enactment S. 36A—Reference under—Civil Judge's jurisdiction to decide reference under S. 12(4)—District Judge can hear appeal against order of Civil Judge. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 12 (4). 1965 All W R (HC) 374 : 1965 All L J 741.

——S. 36-A — Objection under S. 20 — Referred by Consolidation Officer to civil judge—Latter referring it to arbitrator - Reference not without jurisdiction. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 20. 1963 All W R (HC) 327.

——S. 36-A—Objection under S. 12—Authorities need not refer matter to civil judge for referring it to arbitrator — Question regarding sirdari rights —Does not involve question of title — Provisions of S 332-A applicable to consolidation proceedings. See Tenancy Laws - U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 332-A. 1962 All L J 483.

——S 36-A—Acquisition of Sirdari rights— Question not one of title—Decision by consolidation authorities held not beyond jurisdiction. 1961 All W R (H C) 449 : 1961 All L J 526.

SECTION 37

——S. 37 — Award under — Refusal to set aside — Writ Petition not maintainable. See Arbitration Act (1940), S. 39. AIR 1959 All 330.

SECTION 38

——S. 38 (1) (as amended in 1963)—U. P. Consolidation of Holdings Rules (1954), R. 110 —Words "subordinate" and "proceedings" in S. 48 — Meaning of — Deputy Director of Consolidation continues to be subordinate to Director of Consolidation even after amendment—Revision from order of the former in second appeal lies to the latter authority. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 48. AIR 1965 All 172.

——S. 38 (2)—Power to correct clerical or arithmetical mistake — Settlement Officer (Consolidation) has jurisdiction to order correction of disputed entry under S. 38 (2). See Constitution of India, Art. 226. 1965 All W R (HC) 279 : 1965 All L J 790.

SECTION 41

——S. 41 — Land Revenue Act (3 of 1901), S. 205—Arbitration Act (1940), S. 2 (c)—Consolidation officer is not empowered to refer dispute pending before him to arbitration under Consolidation Act or by S. 205 of Land Revenue Act or by Arbitration Act — Consolidation Officer even assuming that he is a Court, is not a civil Court within meaning of S. 2 (c) of Arbitration Act. 1964 All W R (H C) 89.

——Ss. 41, 48 — Power to review his own order not conferred on Deputy Director of Consolidation—U.P. Land Revenue Act (1901), S. 220.

Section 220 of the U. P. Land Revenue Act specifically confers the power to review its own decision on the Board of Revenue and on no other authority and the view that under S 220 read with S. 41 of the U. P. Consolidation of Holdings Act a power to review its own decision is conferred upon all Deputy Directors of Consolidation is wrong. Section 48 does not expressly nor by implication confer upon him the power to set aside his earlier order and pass another order in its place. Further subject to certain qulifications, a Court has no inherent power to review its own decisions. AIR 1957 All 67, Foll. 1960 All W R (HC) 580 ;1960 All L J 836.

SECTION 42

——S. 42 (4) (as amended by U. P. Act 38 of 1958 and by U. P. Act 24 of 1956) — Permission granted by Assistant Commissioner, at Mathura — Validity of — Assistant-Director at Mathura, made ex-officio Dy. Director — Still permission granted by him is not valid in view of specific provision of S. 15 (1) (a). See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), S. 3. 1965 All W R (HC) 716 : ILR (1965) 2 All 879.

——S. 42 — Rules under the Act, R. 34 — Scope — The procedure laid down in S. 12 (2) and R. 34 has to be followed by the Assistant Consolidation Officer only — Jurisdiction of the consolidating officer — Confined to passing orders on the report of the Assistant Consolidation Officer vide R. 34 — Rule 34 makes it clear that in every case the Land Management committee's opinion has to be obtained. See Tenancy Laws—U. P. Consolidation of Holdings Act (1954), S. 12. AIR 1964 All 360 (DB).

SECTION 44

——S. 44 (ii) — Powers of Director of Consolidation — Conferment of — Power of State Government.

Even though according to the definitions contained in sub-ss. (4 A) and (4 B) of S. 3 of the Act, the Collector of the District is only District Deputy Director, Consolidation, this does not in any manner restrict the power of the State Government to confer on the Deputy Commissioner or the Collector the powers of a Director of Consolidation under S. 44 (ii). 1964 All W R (HC) 716 : 1964 All L J 906.

SECTION 48

——Ss. 48, 38 (1) (as amended in 1963) — U. P. Consolidation of Holdings Rules (1954), R. 110 — Words 'subordinate' and 'proceedings' in S. 48 — Meaning of — Deputy Director of Consolidation continues to be subordinate to Director of Consolidation even after amendment — Revision from order of the former in second appeal lies to the latter authority. 1964 All W R (HC) 247 : AIR 1965 All 172 (173 to 175) (Pt A) (Prs 4, 13, 15).

——Ss. 48 and 27 — Concurrent finding of consolidation officer and Settlement Officer in proceedings under S. 27 — Finding cannot be upset in revision under S. 48 on ground that it was based on oral evidence. 1965 All L J 938.

ment of the constitution — Under the present constitution they are hit by Article 14 of the Constitution. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954) (as amended by U. P. Act (16 of 1957)), Section 6. **AIR 1959 SC 564.**

——**S. 49 (as it stood prior to its amendment in 1958)** — Name of A recorded under S. 8 and statement proposed under Section 11 — Objection by D that he was sirdar of plot — Though recorded as occupant in 1356-F. A was found not in possession till 1366 F — Notification under Section 4 made in March 1954 and statement under Section 11 published in July 1958 — **Held,** that Section 49 did not prevent filing of suit for recovery of possession by A in Revenue Courts — A had a right to file suit under Section 209, U. P. Zamindari Abolition and Land Reforms Act and having failed to do so his right in plot was extinguished. See U. P. Consolidation of Holdings Act (5 of 1954), S. 8. **1965 All LJ 1161.**

——**S. 49 (as amended in 1958)** — Declaration under Section 4 — Bar under Section 49 applies to area for which declaration is made — Bar applies to suits filed prior or after notification under Section 52 — Party having no right to property cannot get injunction. **1965 All LJ 627.**

——**S. 49 (as amended in 1958)** — Bar under — Proceedings under Section 9 are not mutation proceedings — Regular suit for declaration and possession barred — Suit for injunction not maintainable. See U. P. Consolidation of Holdings Act (5 of 1954) (as amended in 1958), Section 9. **1965 All LJ 627.**

——**S. 49** — Proceedings under Section 27 — Decision on question of title during proceedings — Decision not binding on Court of law — Title can be established by regular suit rather than by way of writ petition — S. 49 is no bar to such a suit. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), Section 27. **1965 All LJ 516: 1965 All WR (HC) 416.**

——**S. 49** — Section does not bar jurisdiction of civil Court in respect of matters about which criminal Courts under Section 133, Criminal P. C. exercise a jurisdiction and civil Courts too can exercise their jurisdiction. See Criminal P. C. (1898), Section 133. **1964 All WR (HC) 142: 1965 All LJ 117.**

——**S. 49** — Suits under Section 175 U. P. Tenancy Act decreed prior to consolidation operation in 1954 — Appeals to Supreme Court — If become infructuous. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), Section 4. **1964 All LJ 604: (1962) AWR 934.**

——**S. 49** — Rights in land or matters dealt with by the Act — Jurisdiction of civil or Revenue Courts is barred — Civil P. C. (1908), Section 9. 1961 RD 310 and 1961 RD 334, **Overruled. 1962 All LJ 564: 1962 All WR (HC) 391: ILR (1962) 2 All 359.**

——**S. 49** — Application for cancellation of a sanad of Bhumidhari rights — Not a matter arising out of consolidation proceedings — Application not barred by Section 49. See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), Section 12. **1961 All WR (HC) 683.**

[**Overruled** in ILR (1962) 2 All 359.]

——**S. 49 — Trespasser — Ejectment of.**

It is true that in the Consolidation of Holdings Act, there is no provision under which a suit or application can lie for the ejectment of a trespasser; but by virtue of the various provisions contained in the Act, the status of a trespasser can, at the stage of Sections 11 and 12, be declared and later on he can be dispossessed by not being allotted any chak. It is thus by implication that under the provisions of the U. P. Consolidation of Holdings Act, a trespasser can during the consolidation proceedings be ejected. **1960 All WR (HC) 503: 1960 All LJ 639.**

SECTION 52

——**Ss. 52, 4, 5** — Stay of suit — Suit partly for specific performance of contract of sale and partly for possession — Suit in respect of latter relief had to be stayed. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), Section 4. **AIR 1963 All 194.**

SECTION 54

——**S. 54** — Rules framed under, Rule 49 — Words 'of the date of the order' used in S. 21 (2) are plain and meaning given to them cannot be varied by Government through its rule making-power under Section 54. See Tenancy Laws — U. P. Consolidation of Holdings Act (1954), Section 21. **1965 All WR (HC) 58: 1965 All LJ 172: ILR (1965) 1 All 354.**

——**S. 54 (2) (rr) and (rrr) and rules under U. P. Consolidation of Holdings Rules (1954), Rule 63 (3), (4) and (7) — Arbitration Act (1940), Section 14 — Conflict between Rule 63 and Section 14 Arbitration Act — Harmonious construction — That part of Rule 63 which enables civil judge to pass decree etc., without serving notice on absentee parties is not valid — Interpretation of statutes — Civil P. C. (1908), Preamble.**

Section 14 of the Arbitration Act makes it clear that the notice of the making and signing of the award, and also of the filing of the award, has to be given in one case by the Arbitrators or the Umpire and in the other by the Court to all the parties to the arbitration agreement and not merely to those who had put in appearance before the Arbitrators or Umpire. Under sub-rules (3), (4) and (7) of Rule 63 U. P. Consolidation of Holdings Rules, the intimation of the date of appearance before the Civil Judge, Arbitrator and the Civil Judge again, as the case may be, has to be given to the parties present and it is not necessary to serve a notice on the parties not present.

The two provisions can be barmonised by laying down that the rules strictly falling within Clauses (rr) and (rrr) of Section 54 (2) of U. P. Consolidation of Holdings Act shall prevail over the corresponding provisions of the Arbitration Act and such rules shall govern the arbitration proceedings, and in other respects the arbitration shall be governed by the provisions of the Arbitration Act. Therefore, that part of Rule 63 of the U. P. Consolidation of Holdings Rules which enables the Civil Judge to pass a decree on the basis of the award or to set aside the award or remit it for reconsideration without serving notice of the filing of the award, on absentee parties is not valid; and it is necessary for the Civil Judge to serve a notice of the filing of the award on the absentee parties also. **1965 All WR (HC) 620: 1965 All LJ 1097.**

—U. P. CONSOLIDATION OF HOLDINGS (AMENDMENT) ACT (16 of 1957)

SECTION 18

——**Ss. 18, 21** — Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), Sections 12 (4) and 36-A — U. P. Zamindari Abolition and Land

Reforms Act, 1950 (1 of 1951), Section 332-A — Object of enactment Section 36-A — Reference under Section 12 (4) in disregard of Section 332-A — Civil Judge's jurisdiction to decide reference — District Judge can hear appeal against order of Civil Judge. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), Section 12 (4). **1965 All LJ 741: 1965 All WR (HC) 374.**

——**Ss. 18, 21** — Courts to give effect to intention of legislature — Rule applicable in interpreting Sections 18 and 21. See Interpretation of Statutes. **1965 All LJ 741: 1965 All WR (HC) 374.**

——**S. 18 — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), Section 332-A — Retrospective operation — Sections cannot apply retrospectively — Interpretation of Statutes — Civil P. C. (1908), Preamble.**

A procedural law applies retrospectively, even to pending suits or proceedings, but amendments affecting vested rights apply prospectively. The amendment introduced by Section 332-A of Zamindari Abolition Act or Section 18 of the Amending Act cannot apply retrospectively and pending proceedings can continue to be heard and decided by that Court or authority, though after the commencement of the Amending Act no fresh proceeding can be entertained by it or by him. Where cognizance of a proceeding is taken of a reference being made, reference already made can be decided by the Court or authority though after the amendment no such reference can be made. **1965 All WR (HC) 374: 1965 All LJ 741.**

SECTION 21

——**S. 21** — U. P. Consolidation of Holdings Act (5 of 1954), Sections 12 (4) and 36-A — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), Section 332-A — Object of enactment — Section 36-A — Reference under Section 12 (4) in disregard of Section 332-A — Civil Judge's jurisdiction to decide reference — District Judge can hear appeal against order of Civil Judge. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), Section 12 (4). **1965 All LJ 741: 1965 All WR (HC) 374.**

——**Ss. 21 and 18** — Interpretation of Statutes — Courts to give effect to intention of legislature — Rule applicable in interpreting Ss. 18 and 21. See Interpretation of Statutes. **1965 All WR (HC) 374: 1965 All LJ 741.**

—U. P. CONSOLIDATION OF HOLDINGS (AMENDMENT) ACT (38 of 1958)

PREAMBLE

——**Pre.** — Scope — Section 49 of Act 38 of 1958 refers only to complete proceedings — Effect — Proceedings pending on 27th November, 1958 — Those under Section 7 to be disposed according to Amended Act and those under Section 8 and subsequent sections according to unamended Act — Proceedings for preparation of statement of tenure-holders to be conducted according to unamended Section 12. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), Section 7. **ILR (1963) 2 All 805.**

—U. P. CONSOLIDATION OF HOLDINGS RULES (1954)

RULE 34

——**R. 34 (3)** — Scope — Not ultra vires the rule-making powers of the State Government under the Act. **1960 All WR (HC) 85: 1960 All LJ 92.**

RULE 63

——**R. 63 (3)** — Conflict between Rule 63 and Section 14, Arbitration Act — Harmonious construction — Part of Rule 63 enabling civil Judge to pass decree etc., without serving notice on absentee parties is not valid. See Tenancy Laws —U. P. Consolidation of Holdings Act (5 of 1954), Section 54 (2) (rr). **1965 All LJ 1097: 1965 All WR (HC) 620.**

——**R. 63 (7)** — Conflict between Rule 63 and Section 14, Arbitration Act — Harmonious construction — Part of Rule 63 enabling civil Judge to pass decree etc., without serving notice on absentee parties is not valid. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), S. 54 (2) (rr). **1965 All LJ 1097: 1965 All WR (HC) 620.**

RULE 74

——**Rr. 74 to 79** — Rule not ultra vires of Sections 12 and 27 of U. P. Consolidation of Holdings Act (5 of 1954). See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), Section 12. **1965 All WR (HC) 416: 1965 All LJ 516.**

RULE 110

——**R. 110** — Deputy Director of Consolidation continues to be subordinate to Director of Consolidation even after amendment — Revision from order of the former in second appeal lies to the latter authority. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), Section 48. **AIR 1965 All 172.**

—U. P. GOVERNMENT LAND (EVICTION AND RENT RECOVERY) ACT (29 of 1953)

PREAMBLE

●——**Pre.** — Validity of Act — Act is not unconstitutional — Distinction made between recovery of possession of Government and Public lands and private lands in unauthorised occupation, held reasonable— Act does not offend against Article 14. See Constitution of India, Article 14. **AIR 1963 All 528 (FB).**

——**Pre.** — Validity of Act—No reasonable basis for classification — Act is unconstitutional. See Constitution of India, Art. 14. **1960 All LJ 52.**

[Overruled in AIR 1963 All 528.]

SECTION 4

——**S. 4 — Procedure provided under, is quasi-judicial — (Houses and Rents — U. P. Government Premises (Rent, Recovery and Eviction) Act (39 of 1952), Sections 7, 8, 9 and 10) — (Constitution of India, Article 226).**

It is evident from the implication of the whole scheme of adjudication envisaged by Sections 7 to 10 of U. P. Act (39 of 1952), incorporated in Section 4 of the U. P. Act (29 of 1953), that the legislature has required that there should be quasi-judicial approach to the matter and that it considers that there is a lis in which there was to be a hearing of both the parties interested at all stages except the initial one. The procedure provided under Section 4 is, therefore, quasi-judicial. (Note: U. P. Act 29 of 1953 is now repealed by U. P. Act 13 of 1959). **1960 All WR (HC) 77: 1960 All LJ 52.**

—U. P. IMPOSITION OF CEILING ON LAND HOLDINGS ACT 1960 (1 of 1961)

PREAMBLE

——**Pre.** — Act satisfies requirements of Article 31 (2) of the Constitution and is valid. See Consti-

tution of India, Article 31 (2). **AIR 1965 All 175 (DB).**

——**Pre. — Validity.**

The statute imposes reasonable restrictions on a person's rights in the interest of the general public. The statute is saved by Clause (5) of Article 19 of the Constitution. **1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (181) (Pt G) (Pr 28) (DB).**

——**Pre** — No provision in the Act delegates unguided legislative power on the executive. **1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (181) (Pt I) (Pr 31) (DB).**

——**Pre.** — Provisions in so far as they do not apply to sugar plantation violate Article 14 — Provisions can be separated from other portion of the Act. See Constitution of India, Art. 14. **AIR 1965 All 175 (DB).**

——**Pre.** — Exemption of sugar-cane plantations under Section 6 (6) is in discretionary powers of State — Writ cannot be issued. See Constitution of India, Art. 226. **AIR 1965 All 175 (DB).**

——**Pre.** — Object of Act is to carve out land from large holdings and to provide land to those who have not got it or who have very little of it. **1965 All WR (HC) 491: 1965 All LJ 852: ILR (1965) 2 All 683.**

SECTION 3

——**S. 3 (b)** — 'Tenure-holder' includes unrecorded tenure-holder also. See U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961), Section 10 (2). **1965 All LJ 756.**

SECTION 4

——**Ss. 4 (1) and (2) (a) and (b)** — Strength of family has to be considered at the stage of calculating the ceiling area — Son born to tenure-holder on 7th May, 1962 — Tenure-holder required to calculate ceiling area only on 1st August, 1962 — Tenure-holder is entitled to concession under Clause (b) of Section 4 (2) on account of birth of a son — Order of Board rejecting his claim on the ground that ceiling area has to be fixed only with reference to 3rd January, 1961, the date on which the Act came into force, is erroneous. **1963 All WR (HC) 697: 1963 All LJ 960.**

SECTION 5

——**S. 5 (2)** — Proceeding for determining ceiling area and proceeding for declaring surplus land are integral parts of same proceeding — Transfers or partitions made after 20-8-1959 are to be ignored for purposes of determining 'ceiling area' as also for declaring 'surplus land' — Words 'shall be ignored and not taken into account' in Section 5 (2) relate both to 'ceiling area' and 'surplus land'. **1965 All WR (HC) 491: 1965 All LJ 852: ILR (1965) 2 All 683.**

——**S. 5 (2)** — 'For the purpose of determining the ceiling area' — Expression cannot be equated with 'in determining the ceiling area' — Expression means 'while determining the ceiling area' or 'in the proceedings relating to the determination of the ceiling area' — Words and Phrases — 'For the purpose of determining the ceiling area'. **1965 All WR (HC) 491: 1965 All LJ 852: ILR (1965) 2 All 683.**

——**Ss. 5, 9, 10 — Determination of ceiling area — Relevant date is of enforcement of Act — Subsequent addition of family of tenure-holder to be disregarded.**

In determining the ceiling area to which a tenure-holder is entitled the relevant date should be the date of the enforcement of the Act, viz., the 3rd January, 1961 and not any subsequent date. Any issue born to the tenure-holder or any addition in the membership of the family after the said date should, therefore, be disregarded for the purpose of determining the ceiling area of a tenure-holder. **1964 All LJ 558: ILR (1964) 2 All 651: AIR 1964 All 451 (452) (Pr 8) (DB).**

——**S. 5 (2) — Scope and object of.**

The concept of 'ceiling area' is directly and inseparably co-related to the concept of 'surplus land'. The determination of the ceiling area inevitably results in the determination of the surplus land. Indeed the two things are the parts of one and the same process. If that is so, then it would appear that the legislature intended that the post-August 20 transfer should be ignored both for ascertaining the ceiling area and the surplus land.

Section 5 (2) does not confine itself to a transfer of land only; it also eclipses a partition of land, if made after August 20. A post-August 20 partition is made ineffective because the legislature has raised a presumption that it has been brought about for the purpose of defeating the provisions of the Act. The legislature has likewise presumed that a post-August 20 transfer has been made for the same purpose. The object of Section 5 (2) thus is to frustrate shifts and contrivances to defeat the beneficent provisions of the Act. **1964 All WR (HC) 430: 1964 All LJ 311.**

——**S. 5**—Plots in question not recorded in the name of the society at the commencement of the Act i.e., on 3-1-1961 — Recorded later in Jan. Feb. 1962 — But the plots stood transferred to and held by society on 28-11-1959, the date of its registration by virtue of the provisions of Section 298 of the Act — **Held,** that the Clause (15) of Section 6 applied to the case — The view that the clause would only apply to a case where the land of a tenure holder has been recorded in the name of the society at the commencement of the Act was erroneous. See Tenancy Laws — U. P. Imposition of Ceiling on Land Holdings Act (1961), S. 6 (15). **1964 All WR (HC) 240.**

——**S. 5 (2)** — In view of Sections 308 and 309 the words be deemed to be transferred to' occurring in Section 298 cannot be construed to mean 'as effecting a transfer of members' interest in the land. See Tenancy Laws—U. P. Imposition of Ceiling on Land Holdings Act (1961), Section 298. **1964 All WR (HC) 240.**

SECTION 6

——**S. 6 (6) —Violates Article 14 of Constitution — Hence invalid under Art. 13 of Constitution.**

To exempt tea, coffee and rubber plantations without granting exemption to sugar-cane plantations amounts to unconstitutional discrimination. Clause (vi) of Section 6, violates Article 14 of the Constitution. The clause is, therefore, invalid under Article 13 of the Constitution. **1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (180) (Pt B) (Pr 25) (DB).**

——**S. 6 (7)** — Production of medicinal plants is a public purpose — Exemption granted under Clause (7) of Section 6 is reasonable. **1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (180) (Pt C) (Pr 25) (DB).**

——**S. 6 (18) — Exemption under is reasonable.**

The object of Cl. (18) of Section 6 is to encourage people to bring uncultivated land under cultivation. The exemption under Clause (18) appears to be reasonable. The exemption is confined to land let out after the enforcement of

the Act. If land has already been reclaimed, there is little point in granting exemption to such people for the purpose of increased agricultural production. Some date had to be fixed for differentiating land already brought under cultivation and land yet to be brought under cultivation. There should be no objection in fixing the date of enforcement of the Act as the line of demarcation. **1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (180) (Pt D) (Pr 26) (DB).**

——Ss. 6 (xv), 298, 5 — Interpretation of Section 6 (xv).

The opening of Clause (xv) of Section 6 is 'land held by and in its own name by a co-operative society'. It is a compound clause consisting of two parts namely (1) land held by a co-operative society and (2) land held in its own name by a co-operative society. Land 'held in its own name' is land held not on permission from the real owner but by virtue of law. The word 'held' does not mean 'recorded'; it means possessed lawfully.

Where the plots in question were not recorded in the name of the society at the commencement of the Act, that is on 3rd January 1961 and they were recorded in its name much later in January/February, 1962 but however the plots stood transferred to and held by the society on 28th November, 1959, the date of its registration, by virtue of the provisions of Section 298 of the Act.

Held, that the Clause (xv) of Section 6 applied to the case. The view, that the clause would only apply to a case where the land of a tenure holder has been recorded in the name of the society at the commencement of the Act was erroneous. **1964 All WR (HC) 240.**

SECTION 7

——S. 7 — Violates Article 14 of the Constitution.

Exemption for Keora, Bela, Chameli and Gulab appears to be arbitrary. To this extent, Section 7 violates Article 14 of the Constitution. So, under Article 13, that part of Section 7 is invalid. **1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (181) (Pt E) (Pr 27) (DB).**

SECTION 9

——Ss. 9, 5, 10 — Determination of ceiling area — Relevant date is of enforcement of Act — Subsequent addition to family of tenure-holder to be disregarded. See U. P. Imposition of ceiling on Land Holdings Act 1960 (1 of 1961), Section 5. **AIR 1964 All 451 (DB).**

——S. 9 — Tenure-holder filing no statement in response to general notice under Section 9 — Authority preparing statement under Section 10 (1) and serving its copy on tenure holder — Tenure-holder filing objection under Section 10 (2) claiming certain plots to be included in ceiling area — Onus is on him to prove the choice of the authority, to be incorrect. See Tenancy Laws — U. P. Imposition of Ceiling on Land Holdings Act (1961), S. 10. **1964 All WR (HC) 555.**

SECTION 10

——Ss. 10 (2), 3 (b), 14 (3) and 42 — Notice under Section 10 (2) entitling every tenure holder to file objection against statement prepared under Section 10 (1) for determining surplus land — 'Tenure-holder' shall include unrecorded tenure-holder also — Every tenure holder, whether recorded or not, is entitled to file objection under Section 10 (2) irrespective of whether he has been served with notice or not — View that unrecorded tenure-holder can file objection under Section 14 (3) after determination of surplus land, and not under Section 10 (2), is inequitable and unreasonable and therefore, can be repelled — Though objection under Section 10 (2) should be filed within prescribed period, by virtue of Section 42, delay in filing objection can be condoned in appropriate case. **1965 All LJ 756.**

——Ss. 10, 5, 9 — Determination of ceiling area — Relevant date is of enforcement of Act — Subsequent addition to family of tenure-holder to be disregarded. See U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961), Section 5. **AIR 1964 All 451 (DB).**

——Ss. 10, 9 — Tenure-holder filing no statement in response to general notice under Section 9 — Authority preparing statement under Section 10 (1) and serving its copy on tenure-holder to show cause why statement be not taken as correct — Tenure-holder filing objection under Section 10 (2) claiming certain plots be included in his ceiling area and not in surplus land — Onus is on him to prove that choice made by authority is incorrect. 1964 RD 54, **Overruled. 1964 All WR (HC) 555: 1964 All LJ 896.**

——S. 10 (2) — Objection by tenure-holder under, that certain plots formed part of mechanised farm and prescribed Authority was wrong in excluding them from his ceiling area — Tenure-holder asserting that he had tractor and plots could be cultivated with it but not asserting that he cultivated plots three successive years with tractor — Authority held just in rejecting vague claim — Evidence Act (1872). Sections 101 to 104 and Section 114. **1964 All WR (HC) 555: 1964 All LJ 896.**

——S. 10 — State Government's authority under Section 44 (2) (a) is limited to prescribing mode and manner of service under Section 10 (2) — Direction to contents of notice in C. L. H. Form 4 is ultra vires. See Tenancy Laws — U. P. Imposition of Ceiling on Land Holdings Act (1961), Section 44 (2) (a). **1964 All WR (HC) 555.**

——Ss. 10 and 9 — Objection by tenure-holder under Section 10 — Objector has merely to point out mistakes in the statement prepared under Section 10 (1) — He cannot be allowed to raise the point that he should be permitted to select his plots under Section 9. **1963 All LJ 960: 1963 All WR (HC) 697.**

SECTION 13

——S. 13 (1) — Limitation for appeal — Computation of — Period of limitation is to be computed from date of order and not from date when appellant knew about order — Law treats date fixed for delivery of order as date on which parties acquire knowledge of its contents. **1964 All WR (HC) 555: 1964 All LJ 896.**

SECTION 14

——S. 14 (3) — Unrecorded tenure-holder can file objection under Section 10 (2) and not under Section 14 (3). See U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961), Section 10 (2). **1965 All LJ 756.**

SECTION 24

——S. 24 — Does not defeat objects of Act — Legislature was competent to provide for management of mechanised farms by State. **1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (181) (Pt F) (Pr 27) (DB).**

SECTION 25

——S. 25 — Provision not discriminatory.

The provision permitting the State Government to utilize land acquired under the impugned Act in the ordinary course for a purpose recognized under the Land Acquisition Act does not involve discrimination. **1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (181) (Pt H) (Pr 29) (DB).**

SECTION 42

——**S. 42** — Delay in filing objection under Section 10 (2) can be condoned. See U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961), Section 10 (2). **1965 All LJ 756.**

SECTION 44

——**Ss. 44 (2) (a), 10** — U. P. Imposition of Ceiling on Land Holdings Rules, Rules 8 and 9, C. L. H. Form 4 — State Government's authority under Section 44 (2) (a) is limited to prescribing mode and manner of service under Section 10 (2) — Direction as to contents of notice, viz., giving tenure holder right to choose plots to be included in his ceiling area or surplus area, in C. L. H. Form 4 is ultra vires. **1964 All WR (HC) 555: 1964 All LJ 896.**

SECTION 298

——**Ss. 298, 308, 309 and 5 (2) — Scope.**

In view of Sections 308 and 309 the words 'be deemed to be transferred to' occurring in Section 298 cannot be construed to mean as effecting a transfer of members' interest in the land. **1964 All WR (HC) 240.**

——**S. 298** — The plots in question not recorded in the name of the society at the commencement of the Act i e., on 3-1-1961 — Registration in its name later in January-February 1962 — But the plots stood transferred to and held by the society on 28-11-1959 the date of its registration, by virtue of the provisions of Section 298 of the Act — **Held,** that Clause (xv) of Section 6 applied to the case. See Tenancy Laws — U. P. Imposition of Ceiling on Land Holdings Act (1961), Section 6 (xv). **1964 All WR (HC) 240.**

SECTION 308

——**S. 308** — In view of Sections 308 and 309 the words 'be deemed to be transferred to' occurring in Section 298 cannot be construed to mean as effecting a transfer of members' interest in the land. See Tenancy Laws — U. P. Imposition of Ceiling on Land Holdings Act (1961), Section 298. **1964 All WR (HC) 240.**

SECTION 309

——**S. 309** — In view of Sections 308 and 309 the words 'be deemed to be transferred to' occurring in Section 298 cannot be construed to mean as effecting a transfer of members' interest in the land. See Tenancy Laws — U. P. Imposition of Ceiling on Land Holdings Act (1961), Sec. 298. **1964 All WR (HC) 240.**

—U. P. JOT CHAKABANDI (SANSHODHAN) ADHINIYAM (8 of 1963)

SECTION 22

——**S. 22 (3)** — Validity of — Section taking away right to appeal under Section 21 (5) of the principal Act, accrued earlier but not exercised till the Act, taking it away came into force — Second appeals filed before the commencement of the Act allowed to be continued — Section not discriminatory and was not hit by Art. 14 of the Constitution. **1965 All WR (HC) 106 (DB).**

—(U. P.) KUMAON TENANCY RULES (1894)

See under Tenancy Laws — Kumaon Tenancy Rules (1894).

—U. P. LAND REFORMS (AMENDMENT) ACT (18 of 1956)

PREAMBLE

——**Pre.** — Ejectment of an assami — Jurisdiction to try suit by civil Court — Law amended during pendency of appeal — Amendment not made retrospective — Amendment cannot be given effect to in appeal. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 202 (c). **AIR 1963 All 535.**

SECTION 23

——**S. 23 (i)** — Applicability of Amendment to pending suits — Suit for possession and eviction instituted in Civil Court prior to amendment — Amendment does not affect jurisdiction of Civil Court to further decide suit. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 209. **ILR (1963) 2 All 261.**

——**S. 23** — Effect — Civil suit relating to land pending in Civil Court at commencement of amending Act — Effect of Section 23 (1) of amending Act — No bar to reference — Remission of issue about sirdari rights to Revenue Court obligatory — Proceeding in S. 23 (1) — The proceedings in S. 23 (1) must be proceedings apart from those arising out of a suit. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 332-B (as amended by Act 18 of 1956). **AIR 1962 All 248 (DB).**

—U. P. LAND REFORMS (AMENDMENT) ACT (37 of 1958)

SECTION 79

——**S. 79** — Repeal of Section 332-B — Issues regarding Sirdari rights — To be decided by Civil Courts — Change in law of procedure acts retrospectively — Suit though filed before amendment is governed by amended procedure. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 332-B. **1962 All LJ 384.**

SECTION 87

——**S. 87 (1) — Word 'proceeding' is wide enough to include a suit.**

The word 'proceeding' is wide enough to include a suit and does not mean a proceeding other than a suit, and even if the word 'proceeding' in Section 87 (1) did not include a suit, it only meant that the second clause of it was not applicable in the suit. **1963 All WR (HC) 785: 1964 All LJ 54.**

——**S. 87 (1)** — Issue regarding bhumidari right framed by Revenue Court and referred to civil Court under Section 332 — Deletion of Section 332 by Amendment in 1958 — Decision of issue by civil Court after amendment — Decision is binding on Revenue Court under Section 87 (1) of latter Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 332. **1963 All WR (HC) 785.**

——**S. 87 (1)** — Scope — Suit involving question of Sirdari rights filed in Munsiff's Court — Jurisdiction of Court remaining undisturbed by Amending Act — Application of Section 87 (1) does not arise. **1962 All WR (HC) 252: 1962 All LJ 384.**

—U. P. LAND REFORMS (SUPPLEMENTARY) ACT (31 of 1952)

PREAMBLE

——**Pre.** — Right to be adhivasi was created by U. P. Zamindari Abolition and Land Reforms Act

(1 of 1951) Act 31 of 1952 merely added another ground on which person could claim to be adhivasi. See Civil P. C. (1908), Section 11, Expl. **1965 All WR (HC) 348: 1965 All LJ 714.**

——**Pre., S. 3** — Object of Act indicated — Persons in forcible possession — Act not applicable. **(1963) All WR (HC) 72.**

——**Pre.** — Validity — Not discriminatory. See Constitution of India, Article 14. **AIR 1957 All 549 (DB).**

[**Overruled** on another point in AIR 1963 SC 1019.]

——**Pre.** — Power of review — As a general rule unless authorised by a statute a Court or Judge has no inherent power to set aside or modify a final order once made merely because it is wrong. See Civil P. C. (1908), Section 141. **AIR 1957 All 67 (DB).**

SECTION 1

——**Ss. 1 (3), 3** — Act is not applicable to Benaras State in absence of Government notification — A person cannot acquire adhivasi rights of a plot there, on account of having been in cultivatory possession of it in 1959. **1964 All WR (HC) 273.**

——**S. 1** — Validity — Provision for compensation — Not necessary — U. P. Acts 15 and 31 of 1952 are valid. See Constitution of India, Article 31 (as amended by Fourth Amendment). **AIR 1957 All 549 (DB).**

[**Overruled** in AIR 1963 SC 1019 in so far as All. case held Act 15 of 1952 valid.]

——**S. 1** — Validity — Deprivation of property permissible if provided by a Statute which statute is not unconstitutional. See Constitution of India, Article 19 (As Amended by Fourth Amendment). **AIR 1957 All 549 (DB).**

[**Overruled** on another point in AIR 1963 SC 1019.]

SECTION 3

——**S. 3** — Scope — Expression "during 1359-Fasli" in section — Meaning of — Cultivatory possession implies both possession and cultivatory nature of possession — Submersion of land — Presumption as to possession. **AIR 1965 All 313 (318, 319) (Pt D) (Prs 17, 18).**

●——**S. 3 — A trespasser can be in cultivatory possession — Possession taken by force — Animus for possession is present.**

Section 3 of the Supplementary Act does not take into consideration the right or title behind cultivatory possession: if a person was in cultivatory possession in 1359-F he got adhivasi rights (if he has not acquired bhumidari, sirdari or asami rights under the main Act) regardless of whether his possession was lawful or unlawful. A trespasser can be as much in cultivatory possession as the owner of the land. Animus that is required for possession is present when a person forcibly takes possession with an intention to use physical power over the land on his own behalf. All that is required is an intention to use physical power and not a lawful right to use it. 1961 All LJ 301, **Overruled.** Manhoo Mal v. Mulloo, **1963 All WR (HC) 498: 1963 All LJ 731: ILR (1963) 2 All 751: AIR 1964 All 213 (217, 218) (Pt B) (Prs 9, 10) (FB).**

[**Overruled** in AIR 1968 SC 466.]

●——**S. 3** — State's granting adhivasi rights to trespasser — Articles 19 and 31 of Constitution not infringed. Manhoo Mal v. Mulloo, **1963 All WR (HC) 498: 1963 All LJ 731: ILR (1963) 2 All 751: AIR 1964 All 213 (218) (Pt C) (Pr 10) (FB).**

[**Overruled** on another point in AIR 1968 SC 466.]

——**S. 3** — Act is not applicable to Benaras State in absence of Government notification — A person cannot acquire adhivasi rights of a plot there, on account of having been in cultivatory possession of it in 1959. See Tenancy Laws — U. P. Land Reforms (Supplementary) Act 1952, Section 1 (3). **1964 All WR (HC) 273.**

——**S. 3** — Creditor in possession of debtor's land in lieu of interest under oral agreement cannot acquire adhivasi rights. See Tenancy Laws — Zamindari Abolition and Land Reforms Act (1 of 1951), Section 20 (b). **1963 All LJ 456.**

——**S. 3** — Adhivasi rights cannot be claimed by trespasser — Scope of Section 3. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 20. **1963 All WR (HC) 118.**

——**S. 3** — Claim to rights of adhivasi — Conditions precedent — Person recorded as subtenant in 1356-F — Cannot acquire adhivasi rights. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 20 (b). **1963 All WR (HC) 97.**

——**Ss. 3 and 6** — Adhivasi rights obtained under Section 3 of 1952 Act override those obtained under S. 20 of 1950 Act — Latter rights not protected by Section 6 (a) (ii) of the 1952 Act — Section 6 (a) (ii) applies only in cases of decree for possession against persons obtaining Adhivasi rights under Section 3. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 20. **(1962) All LJ 870.**

——**S. 3** — A trespasser cannot be said to be in cultivatory possession — Cannot claim any rights under Section 3. 1961 ALJ 301, Followed. **1962 All WR (HC) 584.**

——**S. 3 — Possession — What constitutes — Occupation of land by trespasser — Does not constitute cultivatory possession — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 4.**

Possession does not consist in mere acts of user or of occupation alone, but the occupation must be with the intention of exercising some claim or right in respect of the property occupied. AIR 1942 Cal 233, Rel. on.

Where the appellant who held a lease of the land from the landlord was in cultivatory possession of the plots until he was thrown out by the respondent by effecting a forcible entry. **Held,** that the occupation of the respondent could not be said to constitute his cultivatory possession so as to confer on him Adhivasi rights. **1961 All WR (HC) 260: 1961 All LJ 301.**

[**Overruled** in AIR 1964 All 213 (FB).]

SECTION 4

——**S. 4** — Scope — The enquiry under the Act 31 of 1952 affects the rights of parties — An order by a Sub-Divisional Magistrate reviewing previous order and holding that an equiry shall be done on an application under Section 4 of Act 31 of 1952 can be challenged by means of writ petition. See Constitution of India, Article 226. **AIR 1957 All 67 (DB).**

SECTION 6

——**S. 6** — Adhivasi rights obtained under Section 3 of 1952 Act override those obtained under Section 20 of 1950 Act — Latter right not protected by Section 6 (a) (ii) of 1952 Act — Section 6 (a) (ii) applies only in cases of decree for possession against persons obtaining Adhivasi rights under Section 3. See Tenancy Laws —

U. P. Zamindari Abolition and Land Reforms Act (1951), Section 20. **1962 All LJ 870.**

——**S. 6** — Scope and effect — Right accrued under decree passed before Act not affected. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 4. **AIR 1958 All 544.**

—U. P. LAND REFORMS RULES (1952)

RULE 22

——**R. 22** — Section 15 of U. P. Act 1 of 1951 does not apply to joint sir holders and khudkasht holders. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 15. **1965 All LJ 1037: 1965 All WR (HC) 603.**

—U. P. LAND TENURES (LEGAL PROCEEDINGS) REMOVAL OF DIFFICULTIES ORDER (1952)

CLAUSE 1

——**Cl. 1** — Repeal of U. P. Tenancy Act — Effect of, on suit prior to its commencement — They are to be decided in accordance with the provisions of U. P. Tenancy Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 339. **1957 All LJ 544: (1957) AWR 536.**

——**Cl. 1 — Scope.**

The order lays down valid law which has to be administered by Courts until modified or rescinded. **1952 All WR (Rev) 192: 1952 RD (BR) 366: 1952 All LJ (Rev) 242.**

CLAUSE 2

——**Cl. 2** — Plaint presented in Civil Court in 1949 — Declaration of right to possession or decree for possession claimed as main relief — Civil Court directing return of plaint for presentation to proper Court — Suit instituted in Revenue Court in 1953 — Jurisdiction to entertain suit held continued to vest in Revenue Court by reason of Clause 2 and Revenue Court would be wrong in returning plaint for presentation to proper Court. **1960 All WR (HC) 350: 1960 All LJ 479.**

——**Cl. 2** — Tenant suing trespasser for ejectment in civil Court — Section 180, U. P. Tenancy Act, amended pending suit — Suit triable by Revenue Court — Retrospective effect of Section 180 — Civil Court bound to return plaint to Revenue Court — High Court in second appeal has power to direct the plaint to be returned for presentation to a Revenue Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939) (as amended by U. P. Act 10 of 1947), S. 180. **AIR 1957 All 257 (DB).**

——**Cl. 2** — Proceeding under Section 10, U. P. Tenancy Act pending on 30th June, 1952 — Proceeding, to be decided with reference to any right accrued under U. P. Zamindari Abolition Act. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 180. **AIR 1955 All 432 (FB).**

——**Cl. 2 (made under S. 342, U. P. Zamindari Abolition and Land Reforms Act 1 of 1951) — Object of order — Proceedings to which Clause (2) relates — How to be decided.**

The order was made for one purpose only, as an aid to the transition from the old system to the new, and it must, if possible, be so construed as to be in harmony with the Act under which it is made and not as an Order which confers upon a plaintiff rights which have been taken from him or which deprives a defendant of the benefit of rights with which he has been invested. In other words, the proceedings to which Cl. (2) of this Order refers are to be decided in accordance with the provisions of the Land Revenue Act or the Tenancy Act, as the case may be, read with the provisions of the Zamindari Abolition Act. Jagannath v. Board of Revenue, U. P., **1955 All LJ 276: 1955 All WR (HC) 297: ILR (1955) 1 All 611: AIR 1955 All 432 (434, 435) (Pt C) (Pr 14) (FB).**

——**Cl. 2** — Rules under, Rule 5 (3) — Pending suits are governed by U. P. Tenancy Act, 1939. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Rules under, Rule 5 (3). **AIR 1955 NUC (All) 4168.**

——**Cl. 2** — Order of Commissioner dismissing appeal against order by Assistant Collector cancelling declaration under Section 6 — Revision to Revenue Board. See U. P. Tenants (Acquisition of Privileges) Act (10 of 1949), Section 6. **AIR 1955 NUC (All) 2653.**

——**Cl. 2** — Operation of, is limited to suits appeals or legal proceedings instituted under either the U. P. Land Revenue Act or the U. P. Tenancy Act; it does not extend to legal proceedings instituted under any other Act such as U. P. Agricultural Tenants (Acquisition of Privileges) Act. See Tenancy Laws — U. P. Tenants (Acquisition of Privileges) Act (10 of 1949), S. 6. **AIR 1955 NUC (All) 2653.**

——**Cl. 2** — Suit for ejectment of trespasser — Jurisdiction of Civil Courts is barred — The suit in view of Para 2 continues in Revenue Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 242. **AIR 1955 NUC (All) 177.**

——**Cl. 2** — Section 20, Zamindari Abolition and Land Reforms Act do not affect the rights of parties pending proceedings. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 20. **AIR 1954 All 434 (DB).**

[Overruled in AIR 1955 All 432.]

——**Cl. 2** — Proceedings under Section 36 of the Land Reforms Act does not affect the rights of U. P. Act 1 of 1951 — Effect on where ex-proprietory Tenancy has been specified or demanded already or does not require specification the rent can be fixed—vide Section 26 (5) of the Act—by the Collector. See U. P. Tenancy Act (1939), Section 26 (5). **1952 ALJ (Rev) 252.**

——**Cl. 2 — Order by the Governor under Section 342 of the Zamindari Abolition Act — Validity of the law laid down by it — Application of Section 2 — Subject to U. P. Z. A. and L. R. Act and Rules — Rules 4 and 5 not rendered infructuous.**

A second appeal arising out of a suit under Section 180 of U. P. Tenancy Act was pending in the Board and it was stayed under Rule 4 (v) of the Rules under the Zamindari Abolition and Land Reforms Act. Application under Rule 5 (3) was made to restart the same.

Held: No question relating to the competence of the Governor to pass the order of 1952, having been raised by either side, the order lay down valid law which has to be administered by Courts until it is modified or rescinded.

Clause 2 of the Order is subject to the express provisions of the U. P. Z. A. and L. R. Act or the rules thereunder. The second appeal has to remain stayed so long as Rule 4 (v) remains in the rules and until it is allowed to be restarted under Rule 5 (3). When so restarted the appeal can be heard under the provisions of U. P. Tenancy Act, 1939, as provided for by Cl. 2 of the

Order. The question of restarting under Rule 5 (3) were adjourned for inquiry as the rules were being reconsidered as a matter of expediency. **1952 AWR (Rev) 192: 1952 ALJ (Rev) 242: 1952 RD 366.**

——Cl. 2 — Effect of — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules, Rules 4 and 5).

The section makes it competent for the Court to hear and decide proceedings pending before it on 30-6-1952 according to the provisions of the U. P. Tenancy Act only when there is no express provision to the contrary either in the U. P. Zamindari Abolition and Land Reforms Act or the Rules made thereunder. It does not abrogate Rules 4 and 5 of the U. P. Zamindari Abolition Land Reforms Rules and therefore, where an appeal before the Board has been stayed under Rule 4 (5) of those rules, Clause 2 cannot make it competent for the Board to hear the appeal until the issue has been allowed to be restarted under Rule 5 (3) of those rules. **1952 All WR (Rev) 192: 1952 RD (BR) 366: 1952 All LJ (Rev) 242.**

——Cl. 2 — Proceeding under Section 36, U. P. Land Revenue Act — Deletion of Section 36 during pendency by U.P. Zamindari Abolition and Land Reforms Act does not render proceedings incompetent and liable to be quashed — Act does not contain provision directing quashing of proceedings — Right involved should be determined according to provisions of Section 36 of U. P. Land Revenue Act in view of Clause 2 of the order — U. P. Land Revenue Act (3 of 1901). **1952 RD (BR) 367: 1952 All WR (Rev) 233: 1952 All LJ (Rev) 252.**

—U. P. LAND TENURES (REGULATION OF TRANSFERS) ACT (15 of 1952)

SECTION 1

——S. 1 — Not valid. See Constitution of India, Preamble. **AIR 1963 SC 1019.**

——S. 1 — Validity — Provision for compensation — Effect — U. P. Acts 15 and 31 of 1952 are valid. See Constitution of India, Article 31. **AIR 1957 All 549 (DB).**

[Overruled in AIR 1963 SC 1019 in so far as it held Act 15 of 1952 valid.]

——S. 1 — Valid — Deprivation of property under law is permissible if the statute is not unconstitutional. See Constitution of India, Article 19. **AIR 1957 All 549 (DB).**

[Overruled in AIR 1963 SC 1019 in so far as it held Act 15 of 1952 valid.]

—U. P. LAND UTILISATION ACT, 1947 (5 of 1948)

PREAMBLE

——Pre. — Right and duty of Collector to allot Land. See Tenancy Laws — U. P. Land Utilisation Act (1948), Section 3. **AIR 1955 NUC (All) 2720.**

SECTION 3

——S. 3 (1) — Case under — No finding that notice was sent to landlord and any inquiry was made from him — Collector in executing lease deed in favour of defendants acts beyond powers, conferred by S. 3 (1). **1965 All WR (HC) 611: 1965 All LJ 1089.**

——S. 3 — Orders passed by Collector without jurisdiction — Not covered by Section 6 of the Act. See U. P. Land Utilization Act (5 of 1948), Section 6. **AIR 1955 NUC (All) 2757.**

——S. 3 — Order allotting certain land without notice to Zamindar and tenants is illegal — Delay in filing writ petitions — Petition filed within 90 days, held not belated — (Constitution of India, Article 226). **AIR 1955 NUC (All) 2755.**

——S. 3 — Decision in suit under Section 59, U. P. Tenancy Act is not binding on Assistant Collector — (Tenancy Laws — U. P. Tenancy Laws (17 of 1939), Section 59)). **AIR 1955 NUC (All) 2724.**

——S. 3 — Additional Collector — His status as Collector. See U. P. Land Revenue Act (12 of 1901), Section 14-A (4). **AIR 1955 NUC (All) 2724.**

——S. 3 — Power of Assistant Collector to pass order — General Notification confers powers — (U. P. Land Revenue Act (12 of 1901), Section 14-A (3)). **AIR 1955 NUC (All) 2724.**

——S. 3 — Effect of, on the rights of Landlords. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951). **AIR 1955 NUC (All) 2720.**

——S. 3, Preamble — Right and duty of Collector to allot land pointed out. **AIR 1955 NUC (All) 2720.**

——S. 3 — 'Landlord' does not include lambardar — Notice has to be sent to co-sharer landlords — There is no discretion — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 3 (12)). **AIR 1955 NUC (All) 2647.**

——S. 3 — Orders on application under — Collector can review his own orders. **AIR 1955 NUC (All) 2647.**

——S. 3 — Notice to Lambardar only—Proceedings consequent upon such notice are illegal and unenforceable — Notice should issue on entire body of co-sharers. **AIR 1955 NUC (All) 161.**

——S. 3 — Validity of order of allotment made without proper service of notice — (Constitution of India, Article 226).

An order of allotment of land passed under Section 3, U. P. Land Utilization Act without effecting a proper service of notice on the landlord concerned as required by S. 3 (2) in consequence of which the landlord was prevented from showing that the land had already been let to tenants and was being utilized for cultivation, is without jurisdiction and can be quashed by a writ of certiorari at the instance of tenants of the landlord who are adversely affected by it. The fact that there was a subsequent representation made by the landlord and that a report was put up by the planning officer and an order passed thereon could not wipe off the effect of the failure to give notice under Section 3 (2) according to law. **1953 All LJ 278: AIR 1953 All 585 (DB).**

——S. 3 — Notice to landlord — Essentials of — Landlord not served with proper notice — Ex parte order of allotment against landlord — Order is without jurisdiction and should be quashed — Constitution of India, Article 226. **1952 All WR (HC) 174: 1952 RD (HC) 122: 1952 All LJ 380: 1952 RD (HC) 245: ILR (1953) 2 All 184: AIR 1952 All 822 (DB).**

——Ss. 3 and 6 — Ex parte order under Section 3 on finding proper service of notice on landlord — No legal evidence — Order made without jurisdiction — Provisions of S. 6 — Effect on the powers of High Court under Arts. 226 and 227.

An ex parte order under S. 3 of the U. P. Land Utilisation Act (5 of 1948) was passed by the Collector after finding that notices prescribed under S. 2 had been served on the landholders properly in the absence of a verified report of the process server as provided under Rule 78 of the Revenue Manual. The process server was not examined on oath by the Court to supply the

omission. The application of the landholders for review of the order was also refused.

Held,: 1. The finding of the Collector of the due service of notices issued under Section 2 of the Act 5 of 1948 based on the unverified report of the process server is not sustainable in law.

2. The order passed ex parte consequent on that finding is made without jurisdiction. The omission to serve the notices under Section 2 a necessary preliminary requisite to proceed under Section 3 of the Act is fatal.

3. The provisions of Section 6 cannot affect the jurisdiction of the High Court under Articles 226 and 227 of the Constitution or curtail, modify or otherwise affect its powers thereunder. The powers are granted by the Constitution and can only be altered in the manner provided by the Constitution itself and not by any enactment of a State Legislature or even by the Parliament. **1952 ALJ 380: 1952 AWR (HC) 174: ILR (1953) 2 All 184: AIR 1952 All 822.**

——**S. 3** — Deputy Commissioner rejecting the landlord's assertions and holding the plots to be vacant — Petitioners objecting afresh on the basis of certain leases alleging that they were holding some of the lands and cultivating them before notice under Section 3, U. P. Land Utilization Act — Deputy Commissioner rejecting the assertion — **Held,** that the question of fact which was sought to be agitated by the petitioners must be deemed in view of Section 6 U. P. L. Utilization Act to be concluded by the decision of the Deputy Commissioner — Circumstances when High Court's prerogative of interference exercised stated. See Constitution of India, Article 227. **AIR 1952 All 750 (DB).**

——**Ss. 3 and 6** — Decision of Collector as to whether or not land has been let out — Decision not open to challenge by virtue of Section 6. **1952 All WR (Rev) 179: 1952 RD (BR) 273.**

SECTION 6

——**S. 6** — Orders passed by Collector without jurisdiction — Not covered by Section 6. **AIR 1955 NUC (All) 2757.**

——**S. 6** — Bar under Section 6, U. P. Land Utilization Act — Effect of. See Criminal P. C. (1898), Section 145 (4). **AIR 1955 NUC (All) 2757.**

——**S. 6** — Deputy Commissioner rejecting landlord's assertion and holding plots to be vacant — Petitioners objecting afresh on the basis of certain leases alleging that they were holding some of the lands and cultivating them before notice under Section 3, U. P. Land Utilization Act — Deputy Commissioner rejecting the assertion — **Held,** the question of fact sought to be agitated by the petitioners must be deemed in view of S. 6 U. P. Land Utilization Act to be concluded by the decision of the Deputy Commissioner — Circumstances under which High Court's power of interference exercised stated. See Constitution of India, Art. 227. **AIR 1952 All 750 (DB).**

——**S. 6** — The question whether a land was let out for cultivation or not is the question to be determined by the Collector and is not open to be challenged in any Court by virtue of Section 6 Land Utilizations Act. See U. P. Land Utilization Act (5 of 1948), Section 3. **1952 All WR (Rev) 179.**

—U. P. PARTITION MANUAL

RULE 26

——Rr. 26 and 28 (2) (d) — Partition by the parties themselves— Lots to be signed by every one of them — One not signing — Partition Officer to effect a partition.

B the appellant before the Board contended that he did not agree to have the partition made between the parties including himself nor did he sign the lots of properties before the partition officer and so the lots should not have been accepted and the orders of the Courts below were wrong in confirming the partition so made.

Held,: Rule 28 (2) (d) of the rules lays down that all the parties must sign the lots, prepared by the parties themselves, before the Partition Officer and that the lots could be accepted only if they had been so signed.

The Partition Officer should have proceeded, under the circumstances, to make the partition himself under Rule 26; it was the only course open under the law. **1952 ALJ (Rev) 317.**

RULE 28

——**R. 28 (2) (d)** — Rule 28 (2) (d) of the rules lays down that all the parties to partition must sign the lots, prepared by the parties themselves, before the partition officer, and the lots could be accepted only if they had been so signed. The general proclamation issued inviting objections and one party not raising any objection to the lots filed signed by others alone cannot validate the acceptance by the partition officer as against the rule. See Tenancy Laws — U. P. Partition Mannual, Rule 26. **1952 All LJ (Rev) 317.**

—U. P. PUBLIC LAND EVICTION AND RECOVERY OF RENT AND DAMAGES ACT (13 of 1959)

SECTION 2

——**S. 2 (e)** — Public land does not include land which was never occupied or used or is capable of being used for agricultural purposes. **ILR (1963) 2 All 400: AIR 1964 All 236 (241) (Pt B) (Pr 12a) (DB).**

SECTION 16

●——**S. 16** — Orders passed under Act of 1953 repealed by Section 16 — Writ petition challenging them filed before the Act was repealed — Petition pending not a proceeding or appeal under the Act of 1953 — S. 17 (b) is therefore, not applicable — In view of provisions of Section 17 (a) no question of any non-compliance with the provisions of the Act of 1959 can arise in such a petition. See Tenancy Laws — U. P Public Land (Eviction and Recovery of Rent and Damages) Act (13 of 1959), Section 17. **AIR 1963 All 528 (FB).**

SECTION 17

●——**Ss. 17, 16** — Orders passed under Act of 1953 repealed by Section 16 — Writ petition challenging them filed before the Act was repealed — Petition pending not a proceeding or appeal under the Act of 1953 — Section 17 (b) is therefore, not applicable — In view of provisions of Section 17 (a) no question of any non-compliance with the provisions of the Act of 1959 can arise in such a petition. Sucha Singh v. Administrative Officer, Afzalgarh Colonization Scheme, Bijnar, **1963 All LJ 311: 1963 All WR (HC) 264: ILR (1963) 2 All 932: AIR 1963 All 528 (532) (Pt B) (Pr 9) (FB).**

—U. P. RAMPUR THEKEDARI AND PATTEDARI ABOLITION ACT, 1953 (U. P. ACT 10 of 1954)

SECTION 1

——S. 1 — Validity — Question whether Act contravenes para 8 of States Merger (Governor's Provinces) Order, 1949 — Jurisdiction of Court to decide — (Constitution of India, Article 363) — (States Merger (Governor's Provinces) Order, 1949, Para. 8).

The Court has, no jurisdiction to decide whether the U. P. Act 10 of 1954 is invalid on the ground that it constitutes a breach of the terms of the agreement between the Government of India and the Nawab of Rampur by virtue of Article 363 of the Constitution. **1955 All LJ 398: AIR 1955 All 518 (520) (Pt A) (Prs 10, 11) (DB).**

SECTION 2

●——**S. 2 (6)** — Validity — Leases granted by Ruler of erstwhile Rampur State to Thekedars and Pattedars — If affected — (Constitution of India, Sch. 7, List 2, Entry 18, Art. 31 (2)). Reghubar Sarup v. State of U. P., **AIR 1959 SC 909 (914) (Pt B) (Pr 10).**

SECTION 3

——**S. 3 — Validity of the Act — Question whether it contravenes Articles 14 and 31 — Article 31-A — Bar of — (Constitution of India, Articles 14, 31 and 31-A).**

Even assuming that the compensation provided for in the U. P. Act 10 of 1954 on account of the determination of leases and thekas is contrary to the provisions of Articles 14 and 31 of the Constitution, the Act comes within the ambit of Article 31-A (1). S. 3 of the U. P. Act 10 of 1954 empowers the State Government to determine any lease.

The leases under the Notification, dated 12th March 1949, created an intermediary between the State and the tenants and the lessees do not become tenants themselves. The leases being of proprietary rights in land, they are covered by expression 'rights in an estate' as mentioned in Cl. 2 (b) of Article 31-A. **1955 All LJ 398: AIR 1955 All 518 (520) (Pt B) (Prs 12, 13) (DB).**

—U. P. REGULARISATION OF REMISSIONS ACT (14 of 1938)

SECTION 2

——**S. 2 — Remission to tenants — Thekedar whether can claim remission of theka money.**

Where the rent payable by the tenants to the Zamindar is remitted but no order for remission of theka money payable by a thekadar to the Zamindar is made by the executive authority, the thekadar cannot claim a remission of theka money in suit for recovering of the same, under Section 2 of the Act. **1948 OACC 8: 1958 All WR CC 822 Luck 396: AIR 1948 Oudh 110 (DB).**

—U. P. TENANCY ACT (17 of 1939)

PREAMBLE

——**Pre.** — U. P. Zamindari Abolition and Land Reforms Rules (1952), Rules 4, 5 — Abatement of suit under — Appeal against joint decree passed in suit under Section 180 of U. P. Tenancy Act, neither stayed nor pending when Rule 5 came into force and had long before abated — No order directing abatement of suit which had given rise to appeal could be passed. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), Rule 4. **AIR 1954 All 436 (DB).**

——**Pre.** — Rules under, Rule 104 — Delivery of possession effected by Amin without notice to judgment-debtor — Delivery is not invalidated — (Civil P. C. (1908), Order 21, Rule 35). **1953 All WR (HC) 381: 1953 All LJ 430: 1954 Cr LJ 26: AIR 1954 All 39 (41) (Pt A) (Pr 10) (DB).**

——**Pre.** — Proceedings pending on 1-7-52 — Proceedings should be decided in accordance with provisions of U. P. Tenancy Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Preamble. **1952 All LJ (Rev) 279: 1952 RD 400: 1952 AWR 240.**

——**Pre. — Co-sharers — Sir plot— Proprietary dispute — Suit pending in Civil Court — Sale of his proprietary share by the recorded sole sirholder — Ex-proprietary rights — Rent also fixed — Surrender of the right to another sharer — Validity — Effect of Civil Court's decrees and orders in the suit.**

Where the land was recorded as the sole sir of Y, was treated and dealt with as solely belonging to him and he finally surrendered even the ex-proprietary rights to A and all this when the dispute as to the proprietary right to the sir plot was in question before a Civil Court and that Court held it was a joint sir holding of some co-sharers and possession was delivered to the co-sharers by the Civil Court.

Held, (1) Civil Court decree must be given effect to in the land records.

(2) A surrender by a sharer must be in favour of all co-sharers.

(3) The whole plot became the sir of the remaining co-sharers excepting Y. **1952 RD 168: 1952 ALJ (Rev) 233.**

——**Pre. — Co-tenants — Widow succeeding to her husband's share — Her name not entered in patwari papers — Effect on her rights.**

The rights of a co-tenant are not extinguished merely on account of his name not being entered in the patwari papers or even in the settlement record.

Where a widow succeeded to her husband's interest in the tenancy she is a co-tenant along with others and the mere fact her name does not appear in the patwari papers does not deprive her rights of co-tenancy on the principle that the possession of a co-tenant is the possession of all. **1952 AWR (Rev) 177.**

——**Pre. — Powers of lambardar to act on behalf of other co-sharers — If extends to land let out or held for building purposes.**

The powers of a lambardar to act on behalf of the co-sharers are confined under the U. P. Tenancy Act to land as defined in the Act and so he has no right to act on behalf of the proprietary body owning the land which is let out or held for building purposes and which ceases to be land as defined in U. P. Tenancy Act. The right to realise rent in respect of such land cannot vest in the lambardar. **1951 AWR (HC) 84.**

SECTION 2

——**S. 2 (23) (as amended by Act 10 of 1947) —** 'Tenant' — If includes sub-tenant. See Tenancy Laws — U. P. Tenancy Act (17 of 1939) (as amended by Act 10 of 1957), Section 180 (1), Expl. II. **ILR (1957) 2 All 185.**

SECTION 3

SYNOPSIS

(Tenancy Laws — U. P. Tenancy Act (1939), Section 3.)

1. Applicability.
2. Grove land.
3. Holding.
4. Improvements.
5. Khudkasta.
6. Land.
7. Landholder.
8. Landlord.
9. Registered.
10. Rent.
11. Sub-tenant.
12. Tenant.

1. Applicability.

——Ss. 3 (1), 231 — Assignee of right to recover profits — Suit for share of profits.

Section 3 (1) does not explicitly say that an assignee shall be in the same position as a co-sharer, but the terms of the sub-section are sufficiently wide to include assignees. A successor must be the successor in the whole of the right, title or interest of a co-sharer. An assignee of the right to recover profits, is a co-sharer within the meaning of Section 231 of the U. P. Tenancy Act of 1939 and a suit by him for recovery of his share of profits should be instituted in the Revenue Court. in view of group A serial No. 15 of the 4th Schedule of the U. P. Tenancy Act. C. R. No. 10 of 1947 (All), **Overruled. 1958 All WR (HC) 536: 1958 All LJ 407.**

——S. 3 (1) — Restoration condition — Land in possession of successor in interest of the landlord who acquired it — Liability. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), Section 28. **('52) 1952 All LJ (Rev) 51 (DB).**

2. Groveland.

——S. 3 (6) — Grove-land — What is.

The land containing 13 mango trees fully grown and big in size and covering the major portion of the land is grove-land within the definition contained in Section 3 (6), in spite of the fact, that there had been some cultivation on the land. The definition of grove-land in the Act does not exclude cultivation altogether but merely says that the number of trees should be large enough to prevent the land from being used primarily for any other purpose. **1963 All WR (HC) 518: AIR 1963 All 413 (415) (Pt C) (Pr 7).**

——S. 3 — Grove-land — 'Considerable portion' — Meaning of — Ex-proprietary rights, if can be acquired in (Section 26 (9)) — Decision of Courts — Right to third appeal — (Section 213, Land Revenue Act).

Where M sold his proprietary rights in 2 plots of lands and claimed ex-proprietary rights therein and in the second appeal arising out of the proceeding under Section 36 of the Land Revenue Act the Commissioner held that one of the plots was a grove-land wherein ex-proprietary tenancy could not be acquired—Vide Section 26 (9) of the Tenancy Act—and the other being khudkast at the time of transfer ex-proprietary tenancy had accrued to M. M preferred a third appeal and R the respondent a cross-objection.

Held,: The decision against R in second appeal does not offend any specified law or usage or custom having the force of law and, therefore, it cannot be challenged in a third appeal even by way of cross-objection. (Vide Section 213, Land Revenue Act). Nor the decision that the other plot was grove land, accepting the finding of the Collector in appeal is appealable in third appeal as there is no question of offending any usage or custom having the force of law.

'Considerable portion' in the definition of 'Grove land' in Section 3 (3). Tenancy Act, does not necessarily mean major portion. **1951 AWR (Rev) 205: 1951 RD 228.**

——S. 3 — "Considerable portion" — Meaning of.

"Considerable portion" does not necessarily mean major portion. The word "considerable" indicates that the nature and the location of the trees are also to be considered to arrive at a conclusion whether they preclude, or when full grown will preclude, the entire land or any considerable portion thereof from being used primarily for any other purpose. Crops may be grown even under the shade of the trees and the bulk of the land may be used for cultivation in this way. But it would not prevent the land being grove-land if the primary purpose is not cultivation. **('51) 1951 RD 228: 1951 All WR (Rev) 205.**

——S. 3 — Grove-land — Complete absence of cultivation, if contemplated.

The definition of grove-land does not contemplate complete absence of cultivation. Therefore, the presence of certain crops in whole or in any portion of the land cannot prevent the land from being grove-land if the primary use is for the purpose of growing trees. **('51) 1951 RD 228: 1951 All WR (Rev) 205.**

3. Holding.

——S. 3 (7) — 'Holding' — Definition must be understood as subject to anything repugnant in the subject or context — The word 'holding' has to be understood in a broad sense — In case of trespasser the word 'holding' means the land previously occupied by him. Kedar Nath v. Jamuna, **1964 All WR (HC) 219: 1964 All LJ 442: ILR (1964) 2 All 398: AIR 1965 All 116 (118) (Pt B) (Pr 8) (FB).**

——S. 3 (7) — Word "Land" in U. P. Act (1 of 1951) has been used not as synonym for "Holding" but to distinguish it from "holding" as defined in U. P. Tenancy Act (17 of 1939), Section 3 (7). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 134. **1964 All LJ 1017.**

4. Improvements.

——Ss. 3 (7) (8) (c) and 10 — Application for reinstatement by tenant evicted under S. 171 of the U. P. Tenancy Act — House standing on the land at the time of eviction — Land not converted into Abadi — Reinstatement over the area covered by the House also. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (1). **('52) 1952 RD (BR) 241.**

——S. 3 (8) (i) — Extension of a dwelling house which is situated on abadi plot by an occupancy tenant on a portion of adjoining holding is improvement — Section 3 (8) (i) is not limited to construction made exclusively on the holding. **AIR 1950 All 505 (506) (Pt A) (Pr 7).**

5. Khudkashta.

——S. 3 (a) — Khudkashta Rights — Source of — Cultivatory possession and not possession over proprietary rights can be source of khudkashta rights — Only that co-proprietor who is in cultivatory possession becomes khudkashta holder — Possession over proprietary rights by itself does not confer khudkashta holders rights. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 18. **1965 All WR (HC) 125: 1965 All LJ 313: AIR 1966 All 173 (DB).**

6. Land.

——S. 3 (10) — Bhumidhari right — Lessees of land, which was never used for growing of crops or for purposes of agricultural or animal husbandry are not competent to apply under S. 6 for obtaining bhumidhari rights inasmuch as they are not tenants of land within meaning of Section 3 — Sanad granted to such persons, held, as a nullity and unenforceable at law. See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), Section 3. **1965 All LJ 654: 1965 All WR (HC) 429.**

——S. 3 (10) — Occupancy tenancy — Lease giving right to lessee to use land as the liked and

for purposes of building houses etc. — Benefit of Section 33 (1). See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 33. **AIR 1955 NUC (All) 2686 (DB).**

——**S. 3 (10)** — Portion of holding converted into Abadi — Reinstatement in such area cannot be granted. See Tenancy Laws — U. P. Tenancy Amendment Act (10 of 1947), S. 27. **1952 RD (BR) 353.**

——**S. 3 (10)** — Reinstatement — Holding — Portion — Converted to Abadi — Not "land" — Excepted. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), Section 27 (3) and (4). **('52) 1952 RD (BR) 150.**

——**S. 3 (10)** — Tenant ejected — Application for reinstatement — Holding let out by Zamindar to objector primarily for cultivation — Also for planting trees and building houses — Trees planted, well constructed, a house under construction — Continues to be land as defined in S. 3 (10) — Liability to pay compensation for improvements. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), Section 27 (3) and (4). **('52) 1952 All LJ (Rev) 102.**

——**Ss. 3 (10) and 94 — Land let out for building purposes — Right of lambardar to realize rent.**

The powers of a lambardar to act on behalf of the co-sharers are confined, under the U. P. Tenancy Act, to 'land' as defined under that Act. A lambardar has no right to act on behalf of the proprietary body owning the land which is let out or held for building purposes and which ceases to be land as defined in the U. P. Tenancy Act. Therefore, in such a case the right to realise rent cannot vest in the lambardar. **('51) 1951 AWR HC 84.**

7. Landholder.

——**S. 3 (11)** — Definition of "Landholder" is applicable to U. P. Zamindari Abolition and Land Reforms Act — Sirdar and bhumidhar are included in definition. **1964 All LJ 910: ILR (1965) 1 All 309.**

——**S. 3** — 'Landholder, in Section 183 — Suit for possession by tenant against co-sharers not entitled to eject — Whole body of cosharers would constitute the "landholder" and any one of the co-sharers cannot claim to be landholder as he is not person to whom the rent is payable — A suit for possession against some of the co-sharers woulld not lie under Section 183. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 183. **AIR 1955 NUC (All) 4161 (DB).**

8. Landlord.

——**S. 3 (12)** — 'Landlord' does not include lambardar — Notice has to be sent to co-sharer landlords — There is no discretion. See Tenancy Laws — U. P. Land Utilisation Act (5 of 1948), Section 3. **AIR 1955 NUC (All) 2647 (DB).**

9. Registered.

——**Ss. 3 (17) and 57—Lease attested under Section 57 when takes effect — Registration Act (1908), Section 47.**

The definition of the word 'registered' in Section 3 (17), U. P. Tenancy Act includes attestation under Section 57 of that Act. Hence, the principle of Section 47, Registration Act, would apply to a lease duly attested under Section 57, U. P. Tenancy Act and the lease would take effect from the date of its execution and would prevail over a perpetual lease executed subsequent to the date of its execution. **AIR 1951 All 622 (622, 623) (Pra 2, 3) (DB).**

10. Rent.

——**S. 3 (18)** — Occupancy tenancy — Lease giving right to lessee to use land as he liked and for purposes of building house etc. — Benefit of Section 33 (1) — **Held,** that it was not land as defined in the Act and the sum payable by him was not rent. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 33. **AIR 1955 NUC (All) 2686 (DB).**

——**S. 3 (18) — Requm sewai if cess or rent.**

There can be no hard and fast rule that requm sewai must in all cases be regarded as a cess. It may, however, be said that where an agreement to pay a sum (whether it be in cash or in kind) is intended by the parties to constitute recompense to the landlord for the use and occupation of agricultural land by a tenant, it would constitute 'rent' notwithstanding that it is called by the parties by a different name. **('50) 1950 AWR 693: ILR (1951) All 656 (DB).**

11. Sub-tenant.

——**Ss. 3 (22) and 192 — Retrospective effect, if any — Holder of land from a rent-free grantee under Oudh Rent Act — Difference between Agra Tenancy Act and oudh Rent Act — If becomes a sub-tenant under U. P. Tenancy Act.**

The Assistant Collector decreed the suit by P under Section 59/183 of the U. P. Tenancy Act; it was set aside by the Additional Commissioner in appeal holding that P was only a sub-tenant as holding the land from a rent-free grantee under Section 3 (22) of the U. P. Tenancy Act until rent is fixed on the land held rent-free under Section 192. Second appeal under Section 267, U. P. Act was preferred.

Held,: No doubt a person holding land under a rent-free grantee, as P was is only a sub-tenant under Section 3 (22) and he becomes a hereditary tenant only when the rent or revenue is fixed on the rent-free grant. But under the Oudh Reet Act, P was a statutory tenant and not a sub-tenant as in Agra Tenancy Act. Section 6 (c) of U. P. General Clauses Act saves the rights of P and U. P. Tenancy Act is not retrospective to affect the rights acquired under the Oudh Act prior to the passing of the U. P. Tenancy Act. The statutory tenant becomes a hereditary tenant unde S. 29 (a), U. P. Tenancy Act. **1952 ALJ (Rev) 308 (2).**

——**Ss. 3 (22), 3 (23), 175 — Tenant of maufidar — Position of — Liability of ejectment.**

The actual payment of rent was not the test of tenancy under Section 3 (10) of the Oudh Rent Act. All that was necessary under that Act was the existence of a potential liability for payment. The present definition of 'tenant' in Section 3 (23) of the U. P. Tenancy Act contains the same conception in clearer language and further, Section 3 (22) expressly includes persons holding land from rent-free grantees within the definition of a sub-tenant. Under the Oudh Rent Act, a rent free maufi holder was never immune from the liability for fixation of rent in view of Section 107-A. A maufidar must, therefore, be regarded as being a tenant before the passing of the Act (17 of 1939), and having acquired the rights of hereditary tenant under Section 29-A of the new Act. In this view a person holding under him is only a sub-tenant and is liabile to be ejected under Section 175 as a non-occupancy tenant. Case law reviewed. **('51) 1951 All WR (HC) 643 (DB).**

12. Tenant.

●——**S. 3 (23)** — **Tenant includes sub-tenant — AIR 1947 Oudh 104 (FB), Overruled.**

A sub-tenant would be included within the meaning of the word "tenant" for the purposes of the Act unless a contrary intention appears from the context where the word is used. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 180 (before amended in 1947). **AIR 1958 All 403 (FB).**

——Ss. 3 (23), 242 and 288 — Question in civil suit whether party is grove holder — Power to refer issue.

The definition of "tenant" contained in Section 3 would show that unless there is some other provision in the U. P. Tenancy Act which has the effect of conferring upon a grove-holder the same status as a tenant, he would not be regarded as a tenant, and his rights could not be the same as the right of a tenant. The rights and liabilities of grove-holders are set out in Section 206 of the Tenancy Act and sub-sections (e) and (f) thereof make certain provisions of the U. P. Tenancy Act applicable to him as if he were a tenant. In neither of these two sections is there any reference to Section 288. All that those sub-sections say is that for matters covered by the specific section mentioned therein a grove-holder is to be regarded as a tenant. In other words, he is to be regarded as a tenant for the limited purposes stated therein and no other. It is obvious therefore, that when one of the issues in a suit is whether a party is a grove-holder or not the Civil Court cannot refer that to the revenue Court, but must decide the same itself. AIR 1951 All 358, Dist. from. **1957 All LJ 809: 1957 All WR (HC) 798.**

——S. 3 (23) — Occupancy tenancy — Lease giving right to lessee to use land as he liked and for purposes of building house, etc.—Benefit of Section 33 (1) — **Held,** that it was not 'land' as defined in the U. P. Tenancy Act and the sum payable by him was not rent and would not make the lessee a tenant — He would not be called "non-occupancy tenant" and would not be entitled to the benefits of Section 33 (1). See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 33. **AIR 1955 NUC (All) 2686 (DB).**

——S. 3 (23) — Trespasser — Person taking or retaining possession of land without being entitled to such possession — Not liable to pay rent unless treated as a tenant by the landlord — Till the option was exercised by the landlord, he could not be covered by the definition of the word "tenant" in Section 3 (23) of the Act. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 29. **AIR 1954 All 359.**

——S. 3 (23) — Sir plots given to halwaha in lieu of his wages.

Where a Zamindar gives his sir plots to cultivate to a halwaha in lieu of wages due to him as a halwaha such person becomes a sub-tenant of the plots, if there is no satisfactory proof that he surrendered them on the expiry of his service as a halwaha. **('52) 1952 All LJ (Rev) 93: 1952 All WR (Rev) 66: 1952 RD (BR) 79.**

——S. 3 (23) — Tenant of Muafidar — Position of — Liability to ejectment — A Muafidar must be regarded as being a tenant before passing of the U. P. Tenancy Act — A person holding under him is thus only a sub-tenant and is liable to be ejected under Section 175 as a non-occupancy tenant. **1951 All WR (HC) 643.**

——S. 3 (23) — Tenant — Proof — Entry by patwari as sajhi.

A person does not ipso facto become a tenant the moment he is entered as sajhi by the patwari and he has to prove his tenancy otherwise. **1951 RD 161: 1951 AWR (Rev) 147.**

SECTION 4

——S. 4 — Occupancy tenancy — Lease giving right to lessee to use land as he liked and for purposes of building house, etc. — **Benefit of Section 33 (1).** See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 33. **AIR 1955 NUC (All) 2686 (DB).**

——S. 4 — Agreement not to claim commutation under Section 113 — Void under Section 4 for it is the tenant's right to have the rent commuted under S. 113, which is sought to be prevented by the agreement. See U. P. Tenancy Act, Section 113. **1952 RD 189: 1952 ALJ (Rev) 225.**

——Ss. 4 and 113 — Agreement not to commute rent — Agreement is void — Decision to contrary cannot operate as res judicata — (Civil P. C. (1908), Section 11).

Principle of res judicata is only a form of estoppel and there can be no estoppel against a statute. An agreement that the rent of the land would never be commuted from grain to cash is mainfestly void under Section 4 of the U. P. Tenancy Act. For under Section 113 it is tenant's right to get grain rent commuted into cash and the Court shall decree the suit if the tenant sues for commutation. No option is left to the Court to refuse commutation. Therefore, no agreement in contravention of the provisions of Section 113 is enforceable in law and any decision to the contrary cannot operate as res judicata. **('52) 1952 RD (BR) 189.**

——S. 4 — Section 11 is not exhaustive — Creation of perpetual lessee's right in sir — A perpetual lease of sir land is perfectly valid and enforceable under Section 4 (4). See Tenancy Laws — U. P. Tenancy Act (1939), Section 11. **('52) 1952 RD (BR) 71 (DB).**

——S. 4 (1) — Scope and applicability.

The scope of Section 4 (1) of the U. P. Tenancy Act is not restricted to agreements between land-holders and tenants only but extends also to agreements between tenants themselves. Hence, the rights of division in a joint holding secured to a tenant by Section 49 of the Tenancy Act cannot be opted out of by one co-tenant permanently and any agreement that purports to restrict him in enforcing that right should be held to be void under Section 4 (1) of the Act. **1951 AWR (Rev) 136: 1951 RD 69.**

——Ss. 4, 180 — Mortgage of sir plots— Acquisition of exproprietary rights.

One G mortgaged his sir plots and transferred the actual possession to the mortgagee without claiming exproprietary rights. The mortgagee also held a proprietary share in the mahal in which the plots lay and the entry in the village records was made as a proprietor's Khudkasht and not mortgagee's khudkasht when the mortgagee sold his proprietary rights the land in dispute, as it was declared sir, was carved out into an exproprietary holding of the mortgagee. After redemption the mortgagor came into possession.

Held, that the entry made in the record in favour of the mortgagee was incorrect and declaration of exproprietary rights in his favour on sale of his rights was clearly illegal. The declaration was not binding on G. The latter regained possession on redemption on specific plots and was entitled to cultivate them as proprietor thereof and the mortgagee could not question G's lawful occupation on the ground that the other co-sharer's consent was needed for this occupation. 1941 RD 864 and 1940 RD 150, Disting.; 1938 RD 391, Rel. on. **('51) 1951 RD 115.**

——S. 4 (4) — Agreement relating to transfer of zamindar's proprietary rights is valid but if it is intended to transfer tenancy rights, it would be void — If it is intended to confer occupancy right, S. 4 (4) has no application. ('51) 1951 RD 236: 1951 All WR (Rev) 218.

SECTION 5

——S. 5 — Agent — Karinda if agent.

The very word 'karinda' in the common parlance means a person who simply carries on work from day to day; while mukhtar-i-am means a person to whom some power or authority has been delegated by a person appointing him as his agent. The mere fact that a person supervises the cultivation of the Zamindar, collects rents on his behalf from his tenants or even accepts surrenders of land from them does not necessarily mean that the Zamindar has given him the authority to settle land with tenants, enhance their rents or eject them from their holdings. Any tenant taking land from any person on behalf of the Zamindar must find out whether that person has or has not the authority of the Zamindar to settle that land with anybody. If he does not take even this ordinary precaution, he must suffer the consequences. ('51) 1951 RD 181: 1951 All WR (Rev) 179.

——Ss. 5, 45 (f), 183 — Right barred by limitation prior to coming into force of Act — No revival of right — Suit under S. 183 does not lie.

Where the right of a tenant to recover possession is extinguished under Section 38 (1) (f) of the Agra Tenancy Act before the U. P. Tenancy Act, 1939, came into force which repeals the same provision in its Section 45 (f), there is no provision in the latter Act which can revive the tenant's right and hence no suit lies under S. 183 for recovery of possession. 1951 All WR (Rev) 58.

SECTION 6

——Ss. 6 and 9 — Nature and accrual of Sir right.

The right of a Sir holder is a personal right, acquired in certain circumstances mentioned in the definition of Sir in Section 6. It is not a right which can accrue except on a gift to a donee of the proprietary right or on exchange. The transferee from a Sir holder's cannot acquire any Sir rights in the plots transferred. 1951 AWR (HC) 228: 1951 ALJ 459: AIR 1952 All 308 (308, 309) (Pt A) (Pr 6).

——S. 6 (a) and 26 — Sir under S. 4 (d) of Agra Tenancy Act — Sale by the recorded Sir holder and another— Creation of ex-proprietary tenancy — Ejectment proceedings against the recorded tenant — Binding on the co-tenant. 1952 RD 61: 1952 AWR (Rev) 72: 1952 ALJ (Rev) 58.

SECTION 9

——S. 9 (2) (a) — Section 9 (2) (a) does not bar application of Section 8, T. P. Act. See Transfer of Property Act (1882), S. 8. 1965 All LJ 637: 1965 All WR (HC) 389.

——S. 9 — Tenant acquiring status of Bhumidar — Alienation by — His adopted son cannot challenge — Section 9 cannot apply to such case. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 35 (a). 1965 All LJ 665: 1965 All WR (HC) 365.

——S. 9 — Landlord and Tenant — Sir plots — Transfer (Muhammadan Law — Sharers). Transfer of joint Sir plots by Muhammadan widow — She not obtaining possession of ex-proprietary rights in such plots over six months — Share of the widow ceased to be Sir and became khalsa land over which the transferees could remain in possession only as khudkasht holders — Other heirs were entitled to joint possession along with the transferees over the entire Sir plots with a right to have their shares demarcated in the revenue Court. 1953 All WR (HC) 192: 1953 All LJ 271: AIR 1953 All 522 (523) (Pr 6).

SECTION 10

●——Ss. 10, 16, 20 — Applicability to persons who are not tenants.

Sections 10, 16 and 20 of the U. P. Tenancy Act presuppose that the person claiming rights thereunder is a tenant, and when the Court finds that the parties are not tenants, there is no scope for invoking the said provision. 1959 All WR (HC) 440: 1959 All LJ 557: 1959 All Cr R 337: 1959 Cri LJ 1223: (1959) Supp (2) SCR 798: 1960 SCJ 892: AIR 1959 SC 960 (963) (Pt B) (Pr 9).

——S. 10 — Void mortgage — Mortgagor's right to recover possession on payment of money — Claim in respect of exproprietary tenancy and occupancy tenancy land — Jurisdiction of Civil Court — It cannot be contended that the claim being for recovery of possession of an under-proprietary tenancy land and occupancy tenancy land, the Civil Court has no jurisdiction — The Court in granting relief adjusts equities between the parties and this can be done only by the Civil Court and not Revenue Court — Sections 59, 10 and 182 of the Tenancy Act have, therefore, no application to the case. See Transfer of Property Act (1882), S. 60. AIR 1956 All 639.

SECTION 11

——S. 11 — Co-sharers partitioning Sir plots as between themselves — Widow of one transferring plots — Sir rights, if pass on to the surviving co-sharer.

Where after a complete partition of the Sir plots between the two co-sharers each has been accepted as the exclusive owner of the Sir plots in his sole occupation, and on the death of one of the co-sharers his widow transfers the plots in her husband's possession it cannot be regarded as a transfer by a 'joint Sir holder' with the result that Sir rights would not pass on to the other co-sharer. 1951 AWR (HC) 228: 1951 ALJ 459: AIR 1952 All 308 (308, 309) (Pt A) (Pr 6).

——Ss. 11 and 26— Ex-proprietary rights under S. 10 of the Agra Tenancy Act, 1901 — Not claimed within the period — Effect — Distinction between the Acts of 1901 and 1926 —Land alleged to be let by mortgagee on the eve of redemption — Tenancy rights if acquired by lessee.

Sir land was mortgaged with possession by the proprietor prior to 1926 Act. The mortgagee was in possession of the land keeping it under her own cultivation for about 20 years. Suit for redemption was filed in July, 1944 and redemption allowed. The suit for a declaration under Section 59 of the U. P. Tenancy Act, 1939, on the allegation that the land was settled with the plaintiff's by the mortgagee under an unregistered lease dated 22nd October 1943 was dismissed by the Collector and the Additional Commissioner in appeal decreed the suit. The mortgagor appealed therefrom.

Held: The land lost its character of sir as the mortgagor did not exercise his rights of

ex-proprietary tenancy under Section 10 of the Agra Tenancy Act, 1901, therein; the land became khalsa and sir right could not revive on redemption as there was no provision in the Act corresponding to sub-section (5) of S. 15 of the Agra Tenancy Act, 1926.

But in the circumstances of the case the conclusion of the trial Court that the alleged lease on the eve of redemption to the plaintiffs-respondents was not in the usual course of prudent management of the property but to prevent the land from passing to mortgagor on redemption without encumbrance was fully justified; no tenancy rights were acquired by them. **1952 RD 203: 1952 ALJ (Rev) 226.**

——**Ss. 11 and 26** — Usufructuary mortgage of Sir plots before Agra Tenancy Act (3 of 1926) came into force — Exproprietor not claiming within or continuing in possession of sir plots for six months from date of transfer — Exproprietary rights held were extinguished and land became khalsa and sir rights could not revive subsequently on redemption — Fact that mortgagee kept the land under his own cultivation until it was let to some other person held would not change nature of land. **('52) 1952 RD (BR) 203.**

——**Ss. 11, 29 and 180** — Mortgagee of Sir land letting it to plaintiff not in usual course of prudent management of property but when redemption suit is pending or in any case imminent to prevent land passing to mortgagor without encumbrance — Plaintiff acquires no tenancy rights which can enure after redemption — Plaintiff is a mere trespasser who can be ejected by mortgagor after redemption — (T. P. Act (1882), S. 76 (a)). **('52) 1952 RD (BR) 203.**

——**Ss. 11 and 29** — Plaintiffs claiming to be occupancy tenants of sir plots under permanent lease executed in favour of their ancestor — Contesting defendants failing to produce evidence whatsoever regarding any subsequent settlement of land with plaintiffs on present recorded rent — Plaintiffs held were in law hereditary tenants with special rights in accordance with perpetual lease and not non-occupancy tenants — Present entries regarding plaintiffs' status and rent held wrong. **('52) 1952 RD (BR) 182.**

——**Ss. 11 and 4 — Section 11 not exhaustive — Creation of perpetual lessee's right in sir.**

Section 11 of the U. P. Tenancy Act is by no means exhaustive as regards the ways in which sir rights may be extinguished. There is nothing to prevent a landholder from conferring a perpetual lessee's rights in his sir land on a tenant. A perpetual lease of sir land is perfectly valid and enforceable under sub-section (4) of section 4 of the Act. **('52) 1952 All LJ (Rev) 47: 1952 All WR (Rev) 73: 1952 RD (BR) 71.**

——**S. 11** — Person holding sir making endowment of his property in favour of Deity — Land shall cease to be sir. **('52) 1952 All WR (Rev) 55: 1952 All LJ (Rev) 73: 1952 RD (BR) 62.**

——**Ss. 11 and 180 — Mortgagee of Sir plots admitting tenant — Status and rights of such a tenant on redemption.**

It is not correct to think that a tenant admitted by a mortgagee of Sir plots becomes a tenant of Sir land. He is a tenant of the land in possession of the mortgagee and when on redemption Sir rights revive, it would be wrong to deprive a Sir holder of the rights of possession by holding that such a person, admitted by the mortgagee was a tenant of Sir lands, whom the redeemer was bound to recognize. The mortgagee has only a right to keep this land with himself or settle it with some one for that period. If the tenant remained in possession for more than 12 years, and if the Sir right could not revive, only in that case would be Sir holder lose his right. In other cases the tenant is liable to ejectment as trespasser on redemption. **1951 RD 100: 1951 AWR (Rev) 115.**

——**S. 11 — Joint Sir — Rights of co-sharers inter se — Transfer by mortgage of proprietary rights by some without claiming ex-proprietary rights — Effect — Mortgagor's right to recover Sir on redemption.**

Where Sir is jointly held by a number of co-sharers their interests extend to every part of it and if some of the co-sharers transfer their proprietary interests and do not claim ex-proprietary rights or get the area to which their rights extend demarcated, the Sir character of the whole Sir is retained and it remains the Sir of the co-sharer or cosharers who have not transferred their share or shares. Sir jointly held shall only cease to be Sir when and if joint Sir holders get their shares demarcated out by formal proceedings and to that extent only, otherwise the whole land retains its character of Sir. As the rights of each Sir holder extend to every inch of it, there is no reason why a mortgage of his share by one of them should put an end to the rights of the remaining co-sharers.

It follows that a mortgagor co-sharer who has failed to claim ex-proprietary rights cannot recover his Sir rights on redemption if he does not get the relevant area demarcated. **1951 AWR (Rev) 127: 1951 RD 94 (2).**

SECTION 16

●——**S. 16 — Apply only to tenants.**

Sections 10, 16 and 20 of the Act presuppose that the person claiming rights thereunder is a tenant, and when the Court finds that the parties are not tenants, there is no scope for invoking the said provisions. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 10. **1959 Cri LJ 1223: AIR 1959 SC 960.**

——**S. 16 (1)** — Tenants of sir lands— Hereditary rights not acquired — Right to apply to be reinstated. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (2). **('52) 1952 RD (BR) 210.**

SECTION 19

●——**Ss. 19, 175 (as amended by U. P. Act 10 of 1947)** — Amendment of S. 19 — Effect of — No real change in substantive law — Amended section applied to pending ejectment proceedings under Section 175 — **Held,** on facts that provisions of amended Section 19 and Rules 239-A and 239-B framed thereunder were substantially complied with in the case. Shyam Kartik Singh v. Mathura Koeri, **(1963) 3 SCR 904: 1963 All LJ 343: 1963 SCD 593: AIR 1967 SC 732 (734, 735, 737) (Prs 12, 15, 21 and 22).**

——**Ss. 19 and 175** — Omission to mention amount of local rate payable by sir holder in proceeding under Section 175 in 1944 — No fraud — (Contract Act (1872), S. 17 (2)). **('52) 1952 All LJ (Rev) 152: 1952 RD (BR) 211.**

SECTION 20

●——**S. 20** — Apply only to tenants — When the Court finds that the parties are not tenants there is no scope for invoking the provision. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 10. **1959 Cri LJ 1223: AIR 1959 SC 960.**

SECTION 26

——S. 26 — Exproprietary right — How and when arises — Claim for such rights — If and when necessary.

Exproprietary right accrue to a proprietor in his Sir land automatically as he transfers his proprietary rights and in case even after the transfer, the proprietor continues in possession of the land, his exproprietary rights cannot get extinguished. It is only in those cases where the person acquiring exproprietary rights is out of possession that it is necessary for him to put in a claim in respect of his exproprietary rights. **1952 AWR (HC) 55: AIR 1953 All 508 (509) (Pr 4).**

——S. 26 (5) — Ex-proprietary tenancy— Fixation of rent — Power of Collector — (U. P. Land Revenue Act (3 of 1801), S. 36).

Where an ex-proprietary tenancy has been specified or demarcated already or where it does not require specification or demarcation the rent can be fixed vide Section 26 (5) of the Act by the Collector who is the officer empowered to do so under Section 36 of the U. P. Land Revenue Act. Where the applicant claims possession and that is admitted by the other Sir and Khudkasht holders and the applicant's prayer is only that he should be recorded as exproprietary tenant and the rent fixed thereon. no question of specification or demaration of the land in which exproprietary right has accrued arises and the Collector can therefore fix the rent under Section 26 (5) of the Act. **1952 RD (BR) 367: 1952 All WR (Rev) 233: 1952 All LJ (Rev) 252.**

——S. 26 — Ex-proprietary rights under S. 10 of the Agra Tenancy Act 1901 — Not claimed within the period — Effect — Distinction between the Acts of 1901 and 1926 — Land alleged to be let by mortgagee on the eve of redemption — Tenancy rights if acquired by lessee. See Tenancy Laws — U. P. Tenancy Act (1939), S. 11. **1952 ALJ (Rev) 226: 1952 RD 203.**

——S. 26 — Exproprietary rights — Mortgage of Sir land — S. 7-A of Oudh Rent Act — Sir rights subsist and revive on redemption — Property in possession of transferee at the time of redemption — Accrual of rights.

In the case of a mortgage of sir land the sir rights subsisted under Section 7-A of the Oudh Rent Act so long as the mortgagee remained in possession and the rights revived on redemption. Hence ex-proprietary rights arose if, at the time of redemption the proprietary and under-proprietary rights of the sir holder are in the possession of a transferee. **1952 AWR (Rev) 130: 1952 RD 321: 1952 ALJ (Rev) 207.**

——S. 26 — Sir under Section 4 (d) of Agra Tenancy Act — Sale by the recorded sir holder and another — Creation of exproprietary tenancy — Ejectment proceedings against the recorded tenant — Binding on the co-tenant. See Tenancy Laws — U. P. Tenancy Act (1939), S. 6 (a). **1952 ALJ (Rev) 58.**

——S. 26 — Khudkasht rights — Nature of — Transferee of proprietary rights, if can tack on period of khudkasht of transferor.

Khudkasht rights are not transferable and on the transfer of proprietary rights, the transferee cannot tack on the period of Khudkasht of his transferor even if he gets into possession and so if he in turn makes a voluntary transfer of his proprietary share within three years he cannot claim ex-proprietary rights. **1951 AWR (Rev) 161: 1951 RD 121.**

——S. 26 — Applicability — Transfer of khudkasht land in partition proceedings.

Section 26 of the U. P. Tenancy Act has no applicability in cases of transfer of khudkasht land in partition proceedings. This section relates clearly to voluntary alienation of proprietary right by landholders as laid down in S. 26 (1). **1951 RD 7.**

——S. 26 (1) — Applicability— Mortgage under Section 25, Encumbered Estates Act by order of Court — Document directing mortgage to take effect from specified date — Mortgagee becomes proprietor from specified date — Mortgagor completing 3 years kudhkast by then — Section applies to mortgage made under order of Court also and ex-proprietary rights. **('50) 1950 AWR (Rev) 54: 1950 RD 201 (204).**

——S. 26 — Applicability — U. P. Land Revenue Act (1901), S. 126.

Section 26, U. P. Tenancy Act, has no applicability in cases of transfer of khudkasht land in partition proceedings.

When there is a partition all co-sharers and the land of one co-sharer is allotted to the share of another, if any, superior rights to be are claimed by the person, so allotted he should do so in the partition proceedings and not after it has been confirmed. **('50) 1950 AWR (Rev) 62 (64).**

SECTION 27

——Ss. 27 and 171 — Suit for ejectment under Section 171 — Tenant surrendering land to Zamindar in lieu of compensation before decree — Tenant not entitled to benefit of S. 27. ('52) 1952 All LJ (Rev) 23: 1952 All WR (Rev) 32: 1952 RD (BR) 51: 1952 RD (BR) 56.

SECTION 29

——S. 29 (a) — Scope — Agricultural lease not protected by S. 76 (a), T. P. Act — Acquisition of — Rights of hereditary tenant under — (T. P. Act (1882), S. 76 (a)).

The true scope of sub-section (a) of S. 29 is that it posits that there is on the date of the commencement of the Act a person who is lawfully a tenant and proceeds to confer on him certain rights. Where, however, the person who purports to grant the lease has no authority to do so, whatever the rights inter se between the lessor and the lessee, as against the true owner the latter does not, in law, acquire the status of a tenant, and Section 29 (a) has no application to him. But where the transaction is not one which could be upheld under Section 76 (a), then there is no admission of tenant by any person having authority to do so, and such a transaction though valid as between the mortgagee and the lessee, cannot form the foundation on which any rights under Section 29, subsection (a) of the Act could be based. AIR 1952 SC 205; 1952 SCJ 292, Rel. on.; 1955 All LJ 834, Disting. Asa Ram v. Mst. Ram Kali. **1958 SCJ 575: 1958 All WR (HC) 598: (1958) 2 Mad LJ (SC) 32: (1958) 2 An WR (SC) 32: 1958 SCR 986: AIR 1958 SC 183 (187) (Pt C) (Pr 13).**

——Ss. 29, 3 (23) — Trespasser — Oudh Rent Act (27 of 1886), S. 127).

Every person who was at the commencement of the U. P. Tenancy Act of 1939, that is, on the 1st January, 1940, a tenant of land became a hereditary tenant.

A person taking or retaining possession of land without being entitled to such possession could become liable for rent under Section 127, Oudh Rent Act as it stood on 1st January, 1940, only after he had been treated as a tenant by the landlord. So long as that option was not

exercised by the landlord that person in occupation could not be held liable for payment of rent, and so long as he was not liable under the law for payment of rent, he could not be covered by the definition of the word 'tenant' in Section 3 (23) of this Act. The fact that the person was in possession of the land even before Section 127, Oudh Rent Act, was amended in 1921 would not affect the result since even before the amendment the section by implication, required the landlord to recognize a person as a tenant, before he could be made liable for rent, and the amendment of 1921 only amplified this implication in explicit terms. **1954 All WR (HC) 16: 1954 All LJ 149: AIR 1954 All 359 (359, 360) (Prs 6, 7, 8).**

——S. 29, Explanation — Holder of Sir lands — Wakf by him — Lease to sons — Qabuliyat by N to S — Status of — Hereditary rights not acquired.

A Sir holder executed a wakf of his properties and constituted himself a Mutwalli. He then as Mutwalli leased the properties to his son S. S leased the same to N. S sued N for arrears of rent due under the qabuliyat executed by N. N raised the plea he was the tenant of the father of S and not of N and the suit was not maintainable.

Held, that S's father was the registered Sir holder as per the village records. N could not therefore, acquire tenancy rights in Sir lands. If the wakf is believed the father become the exproprietary tenant and N could not become hereditary tenant. In any view the lease to S cannot be held to be for preventing the acquisition of rights by N as contemplated by S. 29, Explanation.

Further N is estopped by S. 116, Evidence Act from challenging that the plaintiff is his landholder for the reason he had executed the qabuliyat when the transaction is not otherwise invalid in law, as offending S. 29, Explanation. **1952 ALJ (Rev) 329.**

——S. 29, Explanation — Finding based on Explanation to S. 29 — Finding can be questioned in revision under S. 275. See Tenancy Laws — U. P. Tenancy Act (1939), S. 275. **1952 All LJ (Rev) 329: 1952 RD (BR) 372.**

——S. 29 — Hereditary tenancy in Sir — If can be created.

Under S. 26 of the Agra Tenancy Act and under S. 29 of the U. P. Tenancy Act hereditary tenancy can be created in the Sir. **1952 RD 71: 1952 ALJ (Rev) 47: 1952 AWR (Rev) 73.**

——S. 29 — Explanation — Land settled with Zamindar's relation — Actual occupiers of land not servants of Zamindar — Occupiers must be deemed to be holding as tenants-in-chief direct from zamindar — They are entitled to be declared as sub-tenants not liable to ejectment until after expiry of three years from date of declaration. (Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (3), Proviso). **('52) 1952 RD (BR) 236.**

——S. 29 — Plaintiff claiming to be occupancy tenants of sir plots under permanent lease executed in favour of their ancestor — Contesting defendants failing to produce evidence regarding subsequent settlement of land with recorded rent — Plaintiffs held hereditary tenants with special rights in accordance with perpetual lease. See Tenancy Laws — U. P. Tenancy Act (1939), S. 11. **('52) 1952 RD (BR) 182.**

——S. 29, Expln. (as added by Act (10 of 1947)) — Lease by Zamindar in favour of Mukhtar-e-am — Latter creating sub-tenancies — Lease in favour of Mukhtar-e-am found to be fictitious — Sub-tenants become hereditary tenants — They cannot be ousted by persons superimposed by zamindar and are entitled to benefit of Explanation to S. 29. **('52) 1952 RD (BR) 1.**

——Ss. 29, 180(2) — Acquisition of hereditary rights in sir land by trespasser.

A person who is in possession of sir land as trespasser without consent for over two years can acquire hereditary right by prescription in sir land under S. 180 (2). Section 29 does not bar accrual of hereditary rights in such a case: 1950 RD 71, Rel. on. **('51) 1951 All WR (Rev) 140: 1951 RD 119.**

——Ss. 29, 30, 180 (2) — Accrual of hereditary rights.

Hereditary rights cannot accrue in Sir land until sir rights are extinguished. The provisions of S. 180 (2) cannot be construed to confer hereditary rights where such rights are barred under S. 29 or S. 30. The accrual of hereditary rights under S. 180 would be subject to the admissibility of such rights under S. 29 read with S. 30. **('51) 1951 RD 36 (1): 1951 AWR (Rev) 31.**

——S. 29 — Acquisition of hereditary Tenant admitted by a mortgagee from one of the joint Sir holders none of whom claimed ex-proprietary rights.

Where the land is a joint Sir of several persons and one of the Sir holders alone mortgages his proprietary rights in the land and none of the Sir holders including the mortgagor claim ex-proprietary rights, there is no extinguishment of Sir rights and a tenant admitted by the mortgage from one of the Sir holders cannot acquire hereditary rights under S. 29 of the U. P. Tenancy Act. **1951 RD 30: 1951 AWR (Rev) 25.**

——S. 29, Expln. (added by Amendment Act of 1947) — Onus — Suit for declaration that plaintiff is hereditary tenant though recorded as sub-tenant against defendants recorded as tenants who are relations of Zamindari.

Where a suit is for a declaration that the plaintiff is hereditary tenant though recorded as sub-tenants against defendants recorded tenants who are the relatives of the zamindar, the defendants have to show that they are genuine tenants of the land and had not been admited by their relation to zamindar to prevent the accrual of hereditary rights in favour of the plaintiff. **1950 RD 204.**

SECTION 30

——S. 30 (2) — Land — Suit for possession of land in river-bed used for casual or occasional cultivation is entertainable. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180 (1). **AIR 1965 All 514.**

——Ss. 30 (1), 31, 180 (2), 206 (a) — Scope — Claim of defendants to be grove-holders negatived — Defendants held liable to be ejected. **AIR 1955 NUC (All) 4168.**

——S. 30 — Applicability — Suit for ejectment by assami — A suit by assamis of certain tank land for recovery of possession and for damages is a suit under S. 180 and as such as cognisable by Revenue Court, as assamis can be classified only as non-occupancy tenants of tank land — Suit is not cognizable by Civil Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1955 NUC (All) 2732 (DB).**

——S. 30 — Sir or Khudkasht land — Hereditary rights in, can accrue—Such lands are not included in the category of land in which hereditary rights cannot accrue. **AIR 1955 NUC (All) 1148 (DB).**

SECTION 31

——S. 31 — Scope — Claim of defendants to be grove-holders negatived — Defendants held could not claim hereditary tenancy under S. 206 (a) — Defendants held liable to be ejected. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 30. **AIR 1955 NUC (All) 4168.**

——S. 31 — Occupancy tenancy — Lease giving right to lessee to use land as he liked and for purposes of building etc. — It was not 'land' as defined in the Act—Lessee would not therefore, be entitled to the benefit under S. 33 (1). See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 33. **AIR 1955 NUC (All) 2686 (DB).**

——S. 31 — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (3).

A person declared as a sub-tenant under S. 27 (3) is a non-occupancy tenant under S. 31 and cannot be ejected without a suit under S. 175. **1952 All WR (Rev) 198: 1952 All LJ (Rev) 261: 1952 RD (BR) 350.**

——S. 31, Proviso 4 — Interpretation.

If a person was entered in the ordinary course in an annual register without that record being either revised under Ch. IV or corrected by an officer specially appointed, he would not be entitled to claim the benefit of the proviso. But if besides being recorded as occupant, that entry was relating to record revised under Ch. IV he must get the benefit. **('51) 1951-21 AWR (Rev) 37 (41).**

SECTION 33

——S. 33 — Agra Tenancy Act (3 of 1926), Section 23 — Acquisition of co-tenancy by estoppel is not opposed to any statute — Neither S. 33 of U. P. Tenancy Act nor S. 23 Agra Tenancy Act exhaustively lay down mode of acquisition of co-tenancy — Evidence Act (1872), S. 115. **1964 All WR (HC) 458.**

——Ss. 33, 31, 3 (10), 3 (18), 3 (23) and 4 — Occupancy tenancy — Lease giving right to lessee to use land as he liked and for purposes of building house etc. — Lessee is not non-occupancy tenant, land being not one as defined in Tenancy Act — Lessee is not entitled to benefit of S. 33 (1). **AIR 1955 NUC (All) 2686 (DB).**

——S. 33 — Admission of existing co-tenancy — Not contrary to S. 33 — Operates estoppel. See Evidence Act (1872), S. 115. **1952 RD (BR) 269.**

——S. 33 — Creation of tenancy — Person recorded as occupancy tenant in violation of law.

It is true that Section 33 of the U. P. Tenancy Act 1939 and Section 23 of the Agra Tenancy Act 1926 do not provide for all cases of co-tenancy and cases may arise in which a person becomes a co-tenant by estoppel but where a person is recorded as a co-tenant of the land in dispute in violation of the law it cannot inevitably lead to the conclusion that he has become a co-tenant. **('52) 1952 RD (BR) 199.**

——S. 33 — Rights of co-tenancy— Person not a legal heir to the deceased tenant — Recorded as co-tenant — Joint institution of suit along with the real heir against the recorded sub-tenants — If rights accrued.

Where the plaintiff claimed one half of the holding in a suit under Section 49 of the U. P. Tenancy Act on the ground that he had succeeded to the same on the death of the previous tenant, he has been recorded as such, and that he had filed suit against the sub-tenants along with the legal successor or to the tenancy and the suit was decreed to the extent of a third share of the holding, a section appeal was filed against the same.

Held: Under Section 22 of the Agra Tenancy Act (2 of 1901) then in force, neither the daughter nor the husband can succeed to the holding acquired by the tenant deceased; it devolves not on the heirs under the personal law, but under the special line of succession provided under the section. The plaintiff whose name was wrongly entered as a co-tenant and as such was also joined as plaintiffs in the suit against sub-tenants in possession, as under law it should be done does not thereby acquire the rights to be a co-tenant. Though a co-tenancy can accrue outside the scope of Section 33 of the U. P. Tenancy Act or Section 22 of the Agra Tenancy Act by the principle of estoppel still on the facts of the case it has not accrued to the plaintiff; there can be no estoppel against statute. **1952 RD 199: 1952 ALJ (Rev) 290.**

——S. 33 — Co-tenancy can arise by estoppel or acquiescence — **Held,** on facts there was no co-tenancy by estoppel. **('52) 1952 RD (BR) 113.**

——S. 33 — Entry in Khasra or Khatauni — Value of.

The Khasra or Khatauni entries are not required to be attested by the zamindars at the settlement and so the entry therein that a particular person is a co-tenant is not proof that the requirement of law was fulfilled. **('52) 1952 RD (BR) 105: 1952 All WR (Rev) 67: 1952 All LJ (Rev) 82.**

——S. 33 (2) — Power to recognize a co-tenant under — Agent of landlord having general power of attorney — Person recognized as co-tenant — If should attest the recognition.

An agent of the landlord possessing a general power of attorney must be presumed to have the power to recognize a co-tenant under sub-section (2) of Section 33. It is for the person denying the specific authority to prove that he has no such power.

The law does not require that the person recognized should attest the recognition. The absence of any such attestation cannot be raised as an objection by another co-tenant. **1951 RD 72: 1951 AWR (Rev) 55.**

——S. 33 (2) — Co-tenancy — Admission to, by widow with the consent of the landholder — Effect.

The admission to co-tenancy even though with the consent of the landholder, by a life tenant of a widow will not survive after death. The extinction of the tenancy, however, will not prevent the landholder from allowing the co-tenant to continue in possession of the holding as tenant-in-chief with or without making a fresh admission and no body can challenge this right of the Zamindar except the rightful heir of the widow. **1951 RD 16: 1951 AWR (Rev) 15.**

——S. 33, Proviso — Applicability— Parties who have become co-tenants by succession.

Where the parties have become co-tenants by succession, the co-tenancy cannot be questioned on the basis of the proviso to Section 33 of the U. P. Tenancy Act. **1951 AWR (Rev) 123: 1951 RD 102.**

——S. 33 (2), Proviso — Sajhis of tenant — Rights of — Liability to ejectment.

Where a tenant makes another his shajhi for a term, the latter does not become thereby a co-tenant and it is open to the tenant to terminate the relationship at his will. 1942 RD 798, Rel. on. **1950 RD 170.**

SECTION 34

——S. 34 — Widow takes not widow's limited estate, but absolute estate after death of husband

— There is no reversionary interest — After her, heirs and not husband's succeed. See Hindu Succession Act (30 of 1956), S. 14. **1958 All LJ 275.**

——S. 34 — Fixed-rate tenancy Khata held under permanent lease and hereditary tenancy Khata — Succession to — Law governing —Tenancy Laws — Agra Tenancy Act (3 of 1926).

A fixed rate tenancy khata held under a permanent lease is heritable and transferable tenancy and, therefore, succession to it should be governed by personal law and, therefore, a daughter's son takes precedence over a brother.

As regards the hereditary tenancy Khata, under Section 24 (5) of the Agra Tenancy Act (3 of 1926) a brother succeeds to the tenancy before a daughter's son. **1952 All LJ (Rev) 55: 1952 All WR (Rev) 74: 1952 RD (BR) 55.**

SECTION 35

——Ss. 35, 38 and 45 — Death of occupancy tenant — Succession — Daughter's posthumous son can inherit — 1956 All LJ 693 and 1963 All WR 354, Overruled — Hindu Law — Inheritance — Mohammadan Law — Inheritance.

Upon the death of an occupancy tenant, his daughter's son, who was in the womb of his mother at the death of his maternal grandfather, can inherit the latter's tenancy rights. The rule of general jurisprudence that a child in embryo at the death of the holder of a proprietary interest, if born alive after his death is deemed to be living at his death applies to Sections 38 and 45 and so also to S. 35. Irrational hardships would follow if that rule is excluded from the material provisions of the Act. Since the words of Sections 35, 38 and 45 are quite wide to admit of the application of the rule, the Court should prefer that rule to avoid hardships. 1956 All LJ 693 and 1963 All WR 354, **Overruled.** AIR 1954 SC 379, Rel. on. **1965 All LJ 1142: 1965 WR (HC) 755.**

——Ss. 35 (a), 38 and 9 — Acquisition of rights in occupancy tenancy — Holding possessed by joint H. Family — Adopted son of one of members cannot acquire rights — Tenant acquiring status of Bhumidar — Alienation by — His adopted son cannot challenge — Section 9 cannot apply to such case — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 18 and 151. **1965 All WR (HC) 365: 1965 All LJ 665.**

——Ss. 35, 36 — Succession under — Principles of Hindu Law — Not applicable — Legal personality does not commence until birth — Hindu Law — Succession — Unborn child — Status of.

The general rule seems to be that, legal personality does not commence until birth. The U. P. Tenancy Act lays down a special rule of succession, and the principles of Hindu Law cannot be made to govern the provisions of the U. P. Tenancy Act. Therefore where a person was in womb when a succession to tenancy opened, that circumstance would not invest him with a right of succession under Sections 35 and 36 of the U. P. Tenancy Act. 1956 AWR (HC) 752, Rel. on. **1963 All WR (HC) 354: ILR (1963) 2 All 572.**

[**Overruled** in 1965 All WR (HC) 755.]

——S. 35 — Applicability — Widow inheriting as a widow of her deceased husband — Where she is in possession in her own right under a fresh contract and not as widow of her husband — In such a case upon her death tenancy does not devolve in order of succession laid down in Section 35 on heir of last tenant. See Tenancy Laws — U. P. Tenancy Act (1939), S. 36. **AIR 1953 All 256 (DB).**

——Ss. 35 and 36 — Widow inheriting husband's tenancy rights under Section 24 of Agra Tenancy Act — Death after U. P. Tenancy Act — Succession governed by Sections 35 and 36 — Admission to co-tenancy by widow of her son-in-law in share allotted to her — Recognition by landholder — Effect — Admission to co-tenancy cannot enure after her death and so the rights of the heir of the last male tenant are not affected. **1952 RD 226: 1952 ALJ (Rev) 336.**

——S. 35 (a), Proviso — Scope — Law laid down by the proviso.

The proviso to Section 35 (a) of the Tenancy Act only embodies the principle laid down by the decisions of the Board in 1935 RD 424 and 1936 RD 568 that the grandson of a deceased tenant would not succeed along with his father to a holding left by his grandfather and so long as the father is alive he has no vested interest but only a contingent interest and it does not lay down the rule of Hindu Law that an uncle would exclude the nephew. **1951 All WR (Rev) 202: 1951 RD 187.**

——S. 35 — Sister's son, if, an heir under.

A sister's son is no heir under S. 35 of the U. P. Tenancy Act. **1951 AWR (Rev) 65: 1951 RD 42.**

——Ss. 35, 36 and 45 (a) — Succession to tenancy — Daughter's son in the womb when succession opened — Right to succeed — Tenancy rights if extinguished under S. 45 (a).

It is true that inheritance cannot remain in abeyance in expectation of the birth of an heir but in the case of Hindu this doctrine applies only where an heir was not conceived at the time when succession opened. This rule of Hindu law entitling a son in the womb to inherit is not inconsistent with the devolution of tenancy rights under Sections 35 and 36 of the Tenancy Act and so a daughter's son who though not born when the tenancy opened for succession but who had been conceived at that time would be a rightful heir and successor to his mother's father's tenancy. In such a case there is no extinguishment of tenancy rights under S. 45 (a) of the Tenancy Act, the succession remaining in abeyance till the birth of the daughter's son. **1951 AWR (Rev) 120: 1951 RD 67.**

——Ss. 35 and 36 — Mother of last male tenant succeeding —Right of daughter's (posthumous) son of last tenant to succeed on death of the monther.

Where on the death of the last male tenant, the tenancy reverts to his mother, on her death a daughter's posthumous son of the last male tenant will be entitled to succeed to the tenancy when the succession opens on the death of the mother of the last male tenant. **1951 RD 29: 1950 AWR (Rev) 3.**

——Ss. 35, 36 —Admission to co-tenancy by life-tenant.

A person cannot confer on another any right higher than what he or she possesses and the admission to co-tenancy, even though with the consent of the landholder, by a life tenant, a widow will not survive after her death. Extinction of the tenancy, however, will not prevent the landholder from allowing the co-tenant to continue in possession of the holding as a tenant in-chief with or without making a fresh admission and no third person can challenge this right of zamindar except a rightful heir of the widow under the U. P. Tenancy Act. **1951 RD 16: 1951 All WR (Rev) 15.**

SECTION 36

—S. 36 — Succession under — Principle of Hindu Law not applicable — Legal personality does not commence until birth— (Hindu Law— Succession — Unborn child — Status of). See Tenancy Laws — U. P. Tenancy Act (1939). S. 35. **1963 All WR (HC) 354: ILR (1963) 2 All 572.**

—Ss. 36 and 37 — Applicability — Death of female while in possession of holding in her own right — Succession is governed by S. 37 and not by Section 36. **AIR 1955 NUC (All) 1751 (DB).**

—Ss. 36 and 37 — Applicability — Death of tenancy in 1921 before amendment of Oudh Rent Act leaving tenancy plot to widow — Widow obtaining lease for ten years renewable after expiry of that period — Death of widow — Section 37 and not Section 36 held governed inheritance to widow — (Tenancy Laws — Oudh Rent Act (22 of 1886), S. 48). **AIR 1955 NUC (All) 182 (DB).**

—Ss. 36, 37 — Applicability.

Section 36 applies when a female tenant (other than a tenant mentioned in Section 34) held the property in her capacity as a widow or other female mentioned in the section. It does not apply to the case of a female holding a tenancy in her own right. Succession to a female tenant holding a tenancy in her own right is governed by Section 37. **1953 All LJ 516: 1953 All WR (HC) 523: AIR 1954 All 70 (70, 71) (Pr 4).**

—Ss. 36, 37 — Succession to holding as widow.

In order to find out whether the woman succeeded to an interest in the land in suit as a widow, one has to go back to the law as it stood on the date when the husband died and the succession opened. **Held,** that the law, as it applied when the husband died (Avadh Rent Act (1886)) granted no tenancy rights to the widow in the land of which the husband had been the tenant and the execution of the new lease in her favour was that the conferment of new rights of tenancy on her. Consequently, S. 36 was not applicable and the succession must be governed by Section 37. **1953 All WR (HC) 502: 1953 All LJ 569: AIR 1954 All 66 (66) (Pr 3).**

—Ss. 36 and 35 — Section 36 applies only where widow inherits as a widow of her deceased husband— It has no application where she is in possession in her own right under a fresh contract and not as widow of her husband — In such a case upon her death tenancy does not devolve in order of succession laid down in Section 35 on heir of last male tenant. **('51) ILR (1951) 2 All 28 (35): AIR 1953 All 256 (257) (Pr 6) (DB).**

—Ss. 36, 37 — Scope — Widow, meaning of — Widow of a pre-deceased son succeeding to a statutory tenant — Subsequent surrender by her in favour of her daughter's son — Succession is governed by S. 36 and not by S. 37. **1952 All LJ 370: AIR 1953 All 48 (49) (Prs 5, 6) (DB).**

—S. 36 — Applicability — Ordinary tenant under Oudh Rent Act (22 of 1886 as amended in 1921) is entitled to remain in possession for seven years from date when tenancy began — After that, it ceases to exist — Death before seven years — His heir (widow) remaining in possession for unexpired portion — No question of renewal — Widow's right ceasing in 1901 — Widow, however, continuing in possession and landlord accepting rent — Widow's possession after 1901 is in her own right — Oudh Rent Amending Act 4 of 1921 coming into force — Death of widow in 1939 — S. 48 as amended in 1921 applies and the widow had become statutory tenant when she died — After her death, it is her heir and not the heir of her husband who was ordinary tenant under Act 22 of 1886. who is entitled to remain in occupation — Sections 36, 37, U. P. Tenancy Act (17 of 1939) which came into force on 1-1-1940 have no application. See Tenancy Laws — Oudh Rent Act (1886) (as amended by Act 4 of 1921), S. 48. **AIR 1952 All 854 (DB).**

—Ss. 36, 37 — Applicability — Death of statutory tenant in 1923 — Widow entering into possession as heir and continuing in possession till her death in 1944 — Succession to the widow would be governed by S. 36 and not by S. 37. **1952 RD (BR) 315: 1952 All WR (HC) 373: 1952 All LJ 366: AIR 1952 All 852 (853) (Pr 3) (DB).**

—S. 36 — Widow inheriting husband's tenancy rights under Section 24 of Agra Tenancy Act — Death after U. P. Tenancy Act — Succession governed by Sections 35 and 36 — Admission to co-tenancy by widow — Recognition by landholder — Effect on the rights of the heir of the last male tenant. See Tenancy Laws — U. P. Tenancy Act (1939), S. 35. **1952 ALJ (Rev) 336: 1952 RD 226.**

—S. 36 — Applicability — Death of the statutory tenant before 1914 in Oudh — Tenancy succeeded by his widow — Surrender of tenancy in 1950 —Succession under the section —Daughter's son in preference to brother's son of the husband.

W came into possession of the tenancy plots as the widow of the deceased tenant T prior to 1914 (under Section 48 of the Avadh Rent Act). She surrendered the holding in 1950 and the plots were settled on K found to be the daughter's son of T. R and another brother's sons of T claimed to be in possession and entitled to it under Section 36 Tenancy Act.

Held: K's right to the plots in question cannot be maintained as the heir to the widow because W succeeded to the property as the widow of the deceased T and not in her own right.

The contention of R that the succession on the surrender by W is governed by Section 36 and therefore, Section 36 applies is no doubt correct. But K being the daughter's son is to be preferred to the brother's sons of the last male tenant. **1952 ALJ (Rev) 232.**

—S. 36 — Oudh Rent Act, S. 48 — Widow coming into possession of holding as such — Oudh Rent Act in force — Possession for more than 8 years before U. P. Tenancy Act — Widow, if entitled in her own right as hereditary tenant — Admission under O. 10, C. P. Code — Conclusive for that proceeding.

The suit by a widow under Section 183 of U. P. Tenancy Act was decreed by the trial Court; she had succeeded, as heir to her husband, to the holding under Section 48 of the Oudh Rent Act in 1930 and she had remarried 12 years before suit which remarriage did not extinguish her rights. But on appeal the Additional Commissioner dismissed the suit holding she had remarried two years before suit and had thereby extinguished her rights in the holding (of her former husband) under Section 36 of the U. P. Act.

She had also stated under O. 10, Civil P. C. that she got herself remarried two years before suit and had filed an application during trial that it was by inadvertence and really she remarried 12

years prior to suit; but no order was passed on the application. She preferred a second appeal.

Held: Her possession of the holding for 8 years prior to the U. P. Act had not resulted in the acquisition of the hereditary tenancy in her own right; but having succeeded to the holding as heir of her former husband Section 36 of the U. P. Tenancy Act is applicable and she had lost her right to the holding by her remarriage after the said Act and 2 years prior to suit.

She could not contend against the admission made by her under O. 10, Civil P. C., that she had remarried 2 years before suit; a statement under Order 10, C. P. Code, is not an admission relevant under Section 3 of the Evidence Act but is a part of the pleadings and is conclusive and no more evidence need be adduced to prove it. Any finding contrary to such admission by the trial Court was outside its jurisdiction. **1952 ALJ (Rev) 205.**

——**Ss. 36 and 37 — Scope of — Female inheriting tenancy from her husband — Re-marriage — Effect on succession.**

It is only when a female tenant acquires tenancy rights which do not have their origin in inheritance that the case can be taken out of the ambit of Section 36 and be governed by Section 37. Case law referred to.

Thus where a female tenant inherits the tenancy of her husband and her interest is revived by the landlord after her re-marriage, succession to her is governed by Section 36 as her interest had originated from her first husband and the heirs of the first husband and not those of the second are entitled to succeed. **('52) 1952 RD (BR) 59: 1952 All LJ (Rev) 27: 1952 AWR (Rev) 175.**

——**Ss. 36 and 37** — Applicability — Death of statutory tenant under Agra Tenancy Act — Widow inheriting tenancy — Not ejected on expiry of five years — Continuing in possession till her death after enforcement of U. P. Tenancy Act — Succession to the tenancy, governed by S. 36— S. 37 is not applicable. **1952 RD 234: 1952 ALJ (Rev) 235: 1952 AWR (Rev) 218.**

——**Ss. 36 and 37 — Applicability — Succession to widow who had succeeded her husband as heir for a definite period who had not been ejected by the zamindar during that period.**

Where a widow who had originally succeeded to the tenancy from her husband as an heir and as a widow with life interest only acquires any specific hereditary tenancy she cannot be held to have acquired such rights independently in her own capacity and in such cases succession to her would be governed by Section 36 and not by Section 37 of the U. P. Land Revenue Act. **1951 RD 233: 1951 AWR (Rev) 222.**

——**Ss. 36 and 37 — Widow succeeding to tenancy from husband — Succession after her death.**

The acquisition of any specific rights in hereditary tenancy by a widow originally succeeding to the tenancy from her husband as an heir and as a widow with life interest only cannot be held to have acquired such rights independently in her own capacity and after her death, in such cases, succession must be governed by S. 36 and not by Section 37. 1945 RD 549, Disting. **('51) 1951 RD 232: 1951 All WR (Rev) 222.**

——**S. 36** — Succession to tenancy — Daughter's son in the womb when succession opened — Right to succeed — Tenancy rights if extinguished under Section 45 (a). See Tenancy Laws — U. P. Tenancy Act (1939), S. 35. **1951 AWR (Rev) 120.**

SECTION 37

——**Ss. 37 and 36** — Applicability — Death of female while in possession of holding in her own right — Succession is governed by S. 37 and not by S. 36. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 36. **AIR 1955 NUC (All) 1751 (DB).**

——**Ss. 37 and 36** — Applicability — Death of tenant in 1921 before amendment of Oudh Rent Act leaving tenancy plot to widow — Widow obtaining lease for ten years renewable after expiry of that period — Death of widow — Section 37 and not S. 36 held governed inheritance to widow — (Tenancy Laws — Oudh Rent Act (22 of 1886), S. 48). See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 36. **AIR 1955 NUC (All) 182 (DB).**

——**S. 37** — Applicability — Succession to a female tenant holding a tenancy in her own right is governed by 37. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 36. **AIR 1954 All 70.**

——**S. 37** — Succession to holding as widow — **Held,** Section 36 was not applicable and the succession must be governed by S. 37. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 36. **AIR 1954 All 66.**

——**Ss. 37, 36** — Scope — 'Widow', meaning of — Widow of a pre-deceased son succeeding to a statutory tenant — Subsequent surrender by her in favour of her daughter's son — Succession is governed by Section 36 and not by Section 37. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 36. **AIR 1953 All 48 (DB).**

——**S. 37** — Applicability — Ordinary tenant under Oudh Rent Act (22 of 1886 as amended in 1921) is entitled to remain in possession for seven years from date when tenancy began — After that, it ceases to exist — Death before seven years — His heir (widow) remaining in possession for unexpired portion — No question of renewal — Widow's right ceasing in 1901 — Widow, however, continuing in possession and landlord accepting rent — Widow's possession after 1901 is in her own right — Oudh Rent Amending Act 4 of 1921 coming into force — Death of widow in 1939 Section 48 as amended in 1921 applies and the widow had become statutory tenant when she died — After her death it is her heir and not the heir of her husband who is entitled to remain in occupation — Sections 36, 37, U. P. Tenancy Act (17 of 1939) which came into force on 1-1-1940 have no application. See Tenancy Laws — Oudh Rent Act (22 of 1886) (as amended by Oudh Rent Amendment) Act (4 of 1921) S. 48. **('52) 1952 All LJ 386: AIR 1952 All 854 (DB).**

——**Ss. 37, 36** — Applicability — Death of statutory tenant in 1923 — Widow entering into possession as heir and continuing in possession till her death in 1944 — Succession to the widow was governed by Section 36 and not by S. 37. See Tenancy Laws — U. P. Tenancy Act (1939), S. 36. **AIR 1952 All 852 (DB).**

——**S. 37 — Right to succeed — Daughter's sons of mother recorded as co-tenant in 1929.**

Where a mother is recorded as a co-tenant in 1929 after the passing of the Tenancy Act of 1926, which gave the right of inheritance to "widow" and "mother", being "widow" such admission is in her own right and therefore her daughter's sons have the right to succeed her under Section 37 of the Tenancy Act. **1951 RD 206: 1951 AWR (Rev) 183: 1952 ALJ (Rev) 48.**

——**S. 37** — Applicability — Death of statutory tenant under Agra Tenancy Act — Widow

inheriting tenancy — Not ejected on expiry of five years — Continuing in possession till her death after enforcement of U. P. Tenancy Act — Succession to the tenancy governed by S. 36. See Tenancy Laws — U. P. Tenancy Act (1939), S. 36. **1952 AWR (Rev) 218: 1952 RD 234: 1952 ALJ (Rev) 295.**

——**S. 37** — Succession — A and B co-tenants — B succeeded by his son C — C dying when tenancy Act of 1901 was in force — Hence C's mother D, not being heir, not recorded as co-tenant of A — A admitting D as co-tenant in 1929 after passing of Tenancy Act of 1826 —D's admission to tenancy held could only be in her own right — Holding divided — D's daughter's sons are entitled to succeed to D's interest in holding under Section 37 and not A's daughter's sons. **1952 All LJ (Rev) 48: 1951 RD 206: 1951 All WR (Rev) 183.**

——**S. 37** — Scope of — Female inheriting tenancy from her husband — Re-marriage —Effect on succession. See Tenancy Laws — U. P. Tenancy Act (1939), S. 36. **('52) 1952 All LJ (Rev) 27.**

——**S. 37** — Applicability — Death of statutory tenant under Agra Tenancy Act — Widow inheriting tenancy — Not ejected on expiry of 5 years — Succession to the tenancy governed by Section 36. See Tenancy Laws — U. P. Tenancy Act (1939), S. 36. **('52) 1952 RD (BR) 234.**

——**S. 37** — Widow succeeding to tenancy from husband — Succession after her death. See Tenancy Laws — U. P. Tenancy Act (1939), S. 36. **('51) 1951 All WR (Rev) 222.**

——**Ss. 37, 38** — Widow of co-tenant recognised as tenant in her own right — Death of widow — Her brother is rightful successor under Section 37 — On his failure to claim, widow's interest passes by survivorship to other co-tenants equally. **('51) AWR (Rev) 71: 1951 RD 55.**

——**S. 37 — Female admitted to co-tenancy — Succession.**

Where a daughter is admitted to co-tenancy in her own right and the co-tenancy does not devolve on her as an heir, her husband is a rightful successor after her death. **('51) 1951 RD 72: 1951 AWR (Rev) 55.**

SECTION 38

——**Ss. 38 and 45** — Death of occupancy tenant — Succession— Daughter's posthumous son can inherit. See Tenancy Laws— U. P. Tenancy Act (17 of 1939), Section 35. **1965 All WR (HC) 755: 1965 All LJ 1142.**

——**S. 38 — Successor to widow co-tenant not claiming her share — Effect.**

Where after the death of a co-tenant widow, her successor does not care to claim her share, her interest would pass by survivorship to the other co-tenants. **1951 AWR (Rev) 71: 1951 RD 55.**

SECTION 41

——**S. 41** — Computation — Hindu widow, tenant of disputed land — Sub-lease by her before 1946 — Widow died on 31-1-1952 — Her interest, inherited by A — Suit by A for ejectment of sub-tenants filed on 11-7-1952 — Suit held barred by time. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 202 (1). **ILR (1963) 2 All 271.**

SECTION 43

——**S. 43 — Applicability.**

Section 43 does not deal either with void or voidable or illegal transfers or sub-leases. By reason of that section it is only those leases which are consistent with the provisions of the Act that can be held binding upon the successor. **1952 RD (BR) 30: 1952 All LJ 29: AIR 1953 All 216 (216) (Pr 9) (DB).**

SECTION 44

——**S. 44** — Muafidar — Right to sub-lease — Act only forbids leases by tenants of Sir Lands and sub-tenants — There is nothing in the Act preventing other class of persons in possession of land from granting sub-leases — A muafidar can grant a sub-lease — He is also entitled to admit another person to occupy plot of land of which he has possession. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1954 All 355.**

——**S. 44** — In a suit for establishing the right, the decision regarding possession under S. 40 (1) is also open to retrial and is not binding even on a revenue Court under S. 44 of the Tenancy Act. See U. P. Land Revenue Act (3 of 1901), S. 40 (1) and (3). **('51) 1951 All WR (Rev) 214.**

SECTION 45

●——**S. 45 (as amended by U. P. Act 10 of 1947)** — Sub-lease of land by fixed rate tenant on 14-5-1946 for five years — Rights of sub-tenant on expiry of period — Effect of U. P. Zamindari Abolition and Land Reforms Act, 1950 repealing U. P. Tenancy Act — Suit for ejectment of sub-tenant filed on 31-8-1951 — Sub-tenant not liable to ejectment — He becomes adhivasi and then sirdar under U. P. Act of 1951 — T. P. Act (1882), Ss. 105, 111. 1963 All LJ 288, **Overruled.** See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) (as amended by U. P. Act 20 of 1954), S. 20 (a) (ii). **AIR 1964 All 498 (FB).**

——**S. 45 — Scope of S. 45.**

All other provisions of S. 45 except those of Cls. (b), (e) state the circumstances for the extinction of an interest of a tenant as cannot give rise to any revival of tenancy later on. A tenancy extinguished in accordance with the provisions of Cl. (b) or Cl. (e) is however, liable to be revived. **1958 All LJ 904: ILR (1958) 2 All 912.**

——**S. 45 (b) — Ejectment decree against tenant obtained and executed — Appeal pending against decree — Status of tenant for purposes of U. P. Zamindari Abolition and Land Reforms Act — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 3 (26) and S. 16).**

The provisions of Cl. (b) of S. 45 contemplate ejectment of a tenant under a decree which has become final not merely in the sense that it is effective and liable to be obeyed but in the sense that it is no more open to being set aside by a superior Court. So long as it is open to be set aside, any ejectment of a tenant in execution of that decree will not lead to the extinction of his tenancy though it leads to his being dispossessed of the land in suit. And such a tenant against whom a decree for ejectment is made and executed but against which decree an appeal is pending cannot be said to have lost his subtenancy status by the time the U. P. Zamindari Abolition and Land Reforms Act came into force. **1958 All LJ 904: ILR (1958) 2 All 912.**

——**S. 45 (f) — Partition between co-sharers — Interest of co-tenants — When adverse.**

The possession of one co-tenant is the possession of other co-tenants only when the co-tenancy is admitted.

Thus where in a partition between two co-tenants A and B the holding is held to be of

A exclusively and the Partition officer rejects B's objection for inclusion of his name as co-tenant, A's possession becomes adverse from the date of the partition Officer's order and under S. 45 (f). B's interest of co-tenancy is extinguished thereafter on his right to recover possession becoming barred by limitation. 1947 RD 29 and 1948 RD 400, Ref. **('52) 1952 All WR (Rev) 39: 1952 RD (BR) 54: 1952 All LJ (Rev) 29.**

——S. 45 (f) — Co-tenancy — Adverse possession — Extinction of tenancy.

Though possession of one co-tenant is the possession of all, where one holds possession adversely to another and the latter's right to recover possession is barred by limitation, his co-tenancy is extinguished under S. 45 (f) of the U. P. Tenancy Act. **1952 AWR (Rev) 39: 1952 RD 54: 1952 ALJ (Rev) 29.**

——S. 45 (a) — Applicability — Daughter's son in womb when tenancy opened for succession — Tenancy rights, not extinguished. See U. P. Tenancy Act (17 of 1939), Ss. 35, 36. **1951 RD 67: 1957 All WR (Rev) 120.**

SECTION 47

——S. 47 — Oral agreement between debtor and creditor that creditor shall remain in possession of debtor's land in lieu of interest — Transaction is not mortgage—Position of creditor is also not that of sub-tenant but that of mere licensee — Licensee can be revoked by demand for possession on payment of money or by suit for possession. See T. P. Act (1882), S. 59. **1963 All LJ 456.**

——S. 47 (4) — Benefit of — When available.

When a sub-tenant is not able to prove that there is an unexpired period of tenancy, he cannot get the benefit of S. 47 (4) of the U. P Tenancy Act. **1952 ALJ 92: AIR 1953 All 254 (255) (Pt A) (Pr 3).**

[**Overruled** on another point in AIR 1955 NUC (All) 2689.]

——Ss. 47 (4), 295-A — Sub-tenant — Meaning of.

A person who has been allowed to continue in possession on the extinction of the tenancy-in-chief under S. 47, sub-section (4) is not entitled to the benefit of S. 26 of Act 10 of 1947, or Section 295-A of the U. P. Tenancy Act, as the sub-tenant contemplated in S. 295-A is one where the tenant-in-chief is also in existence. **('51) 1951 RD 93: 1951 AWR (Rev) 89.**

——Ss. 47 (4) and 180 — Suit for ejectment of sub-tenant under S. 180 dismissed as premature by both lower Courts in view of S. 47 (4) — Second appeal to Board — Maximum period of 5 years allowed to tenant under S. 47 (4) expiring during pendency of second appeal — Decree for ejectment can be passed. **('51) 1951 RD 39: 1951 AWR (Rev) 52.**

SECTION 49

SYNOPSIS

(Tenancy Laws — U. P. Tenancy Act (1939), S. 49.)

1. Division of holding — Suit for.
2. Necessary parties.
3. Nature of final decree.
4. Settlement of record — Evidentiary value of.
5. Appeal.

1. Division of holding — Suit for.

——S. 49 — Division of holding — No written consent of landholder — Binding nature as between tenants inter se.

The suit under S. 183 of the U. P. Tenancy Act was filed by a person who at one time was a co-tenant with the defendants on the allegation that he was the tenant entitled to the suit plots allotted to his share on partition in pursuance of a decree in a suit for division of the holding under S. 37 of Act 3 of 1926; it was contested by the defendants on the ground that the landlord had taken delivery of the properties in proceedings under S. 163 of the Act and subsequently let it to the defendants. But finally in the said proceedings the parties to this suit and others had taken redelivery of the entire holding the subject-matter of the suit for partition under S. 37 aforesaid.

Held, that status quo was restored by the redelivery and as between the tenants inter se the parties were bound by the prior division though the landholder might not be bound because of the want of consent and the suit plots having been allotted to the plaintiff he was entitled to a decree. **1952 ALJ (Rev) 200.**

——S. 49 — Division of holding — Suit for — Paper entries — Presumptions — Estoppel — If created.

Mere paper entries without proof of possession or title cannot create an estoppel. **1952 RD 142: 1952 ALJ (Rev) 121: 1952 AWR (Rev) 104.**

——S. 49 — Suit for division of holding — Co-tenancy existence — Necessary — 12 years rule of limitation — When applies.

Suit by plaintiff against defendant for division of a holding once recorded as held by them as co-tenants but recorded in the name of the defendant as the sole tenant after the "dakkal" through Court secured by the Zamindar in execution of a decree for arrears due by the parties jointly and severally. The Additional Commissioner in appeal set aside the decree in favour of the plaintiff holding that the 'decree' and 'dakkal' were perfectly legal and the 'co-tenancy was thereby determined and dismissed the suits.

Held, on second appeal, confirming the decree in appeal, the co-tenancy was legally determined on "dakkal" in 1940 secured by the landlord. Nothing is shown as payment of rent by the plaintiff subsequently or that he had been in possession of the holding or part thereof or any other facts for assuming that the co-tenancy continued in spite of the said proceedings. There is no warrant for the application of the rule of 12 years limitation where co-tenancy has not been proved to exist. **1952 ALJ (Rev) 104: 1952 RD 154.**

——S. 49 — Division of holding between co-tenants inter se without Zamindar's consent — Effect — Zamindar not objecting to division for over 30 years — Presumption of acquiescence.

In the case of a division of a holding between co-tenants inter se without the Zamindar's consent, though because of the absence of such consent it may not bind the Zamindar or the tenants in their relation to him, it would be binding on the tenants inter se. Further, where the Zamindar does not object to the groups of fields as separate holdings for 30 years he will be presumed to have acquiesced in the division made by the co-tenants inter se. **1952 ALJ (Rev) 59: 1952 RD 97: 1952 AWR (Rev) 200.**

——S. 49 — Claim to co-tenancy on the ground of land being ancestral — Essentials.

In order to entitle a party to claim co-tenancy in a holding on the ground of its being ancestral it is essential that the identity of the holding must have remained unchanged throughout the period. If the identity has changed by sub-

division of the holding, the claim cannot succeed. **1952 RD 83: 1952 ALJ (Rev.) 45: 1952 AWR (Rev) 109.**

——**S. 49** — Right of division — Agreement between co-tenants not to enforce — Rights of division in a joint holding secured to a tenant by S. 49 of the Tenancy Act cannot be opted out by one co-tenant permanently — Any agreement that purports to restrict him from enforcing that right should be held to be void under S. 4 (1) of the Act. See U. P. Tenancy Act (17 of 1939), Ss. 4 (1) and 49. **1951 RD 69.**

2. Necessary parties.

——**S. 49 (2)** — Suit under Tenancy Act — Necessary parties — Addition of Government as respondent in appeal. See Tenancy Laws — Banaras State Tenancy Act (3 of 1949), S. 32 (2). **1956 All LJ 760.**

——**S. 49 — Suit under — Minor plaintiff (the son of a co-tenant presumed to be dead) — Presumption under S. 108, Evidence Act — Zamindar — Necessary party — Not joined in appeal — Appeal abates.**

As suit under S. 49, Tenancy Act by a minor represented his mother alleging that the father disappeared and was not heard of for over 7 years and the uncle had performed the death ceremonies of the father was decreed in spite of the objection of the co-tenants. Patwari had stated as a witness that he was heard of 5 years previously and he was a lunatic and died 4 or 5 years ago, in appeal the question of presumption as to death alone was argued and found against the objectors and the decree of the Court of 1st instance confirmed. Hence the second appal.

Held: The dead man's wife or any other near relation is the person "who would have naturally heard about him if he were alive" rather than the patwari. When she had stated he was not heard of as alive within 7 years the presumption of death arises.

Zamindar is a necessary party to the suit under S. 49. Though he was a party to the suit he had not been made a party to the first appeal or in the second appeal. The appeal had abated. **1952 ALJ (Rev) 324.**

——**S. 49 — Suit under — Appeal — Heirs of land-holder not brought on record within time on death of land-holder — If fatal.**

In a suit under S. 49 of the U. P. Tenancy Act the land holder is a necessary party and the failure to implead on his death his heirs within time is a fatal defect. It cannot be cured by the heirs themselves applying for substitution of their names beyond time. **1952 RD 94: 1952 All WR (Rev) 165: 1952 All LJ (Rev) 231.**

——**S. 49 — Suit under — Appeal — Zamindar impleaded in trial Court not impleaded in appeal — Defect — If fatal.**

In a suit under S. 49 of the U. P. Tenancy Act, the Zamindar's interest is in most cases concerned only with the division of rent. Though he may be a necessary party, if he has been impleaded in the suit and he is indifferent to the controversy about the shares between the tenants, a failure to implead him in the appeal is not fatal to the appeal. **1952 RD 64: 1952 All LJ (Rev) 35.**

——**S. 49** — Suit under S. 49 — Compromise — Landlord not party to compromise — Suit cannot be decreed under O. 23, R. 3, Civil P. C. — (Civil P. C. (1908), O. 23, R. 3). **('52) 1952 RD (BR) 253.**

——**S. 49 — Sub-tenancy — Suit for division by sub-tenant — Zamindar if necessary party.**

A sub-tenant can maintain a suit for division of sub-tenancy holding against his co-tenant if he makes his landholder, who is the tenant-in-chief, a party. It is needless to say that the zamindar has no concern with this division among the sub-tenants, as it is an arrangement between the co-sub-tenants which does not go beyond the tenant-in-chief. Hence the zamindar is not a necessary party in such a suit. **('51) 1951 RD 184: 1951 All WR (Rev) 176.**

3. Nature of final decree.

——**S. 49 — Sch. 4, Group F, Serial 7 and Limitation Act (9 of 1908), Art. 181 — Final decree in a suit for division of holding — Nature of — Application for — Limitation.**

The final decree in a suit for the division of a holding is not in the nature of execution of the preliminary decree but it is a part of the decree itself and the suit for division is not concluded until the final decree is passed. No application is necessary as it is the Court's duty to pass a final decree. Therefore, the period prescribed in Section 7 of Group F of Sch. 4 of the Tenancy Act or in Art. 181 of the Limitation Act is not applicable to a proceeding for making a final decree after a preliminary decree is passed. **1951 All WR (Rev) 107: 1951 RD 110.**

4. Settlement record — Evidentiary value of.

——**S. 49 — Decree in suit under— Actual division on the spot by the co-sharers — No entries as separate khatas in the village records — No delivery through Court — Whether separation of shares or no.**

It is neither necessary that a decree for division should be followed by a formal delivery through Court; nor is it necessary that it should be followed by a record of separate khatas. What is necessary is that there should be an actual division on the spot between the co-tenants; the mistake of the Patwari in the manner of giving effect to the division in the village records will not affect the rights of parties. **1952 ALJ (Rev) 183: 1952 AWR (Rev) 173: 1952 RD 352.**

——**S. 49 — Suit under — Settlement record of 1288-F — Entry in — Sole tenants — Evidentiary value.**

On the contention by the defendants that their ancestor was shown in the land records as the only tenant and the plaintiffs had no right to any share of the holding which is sought to be partitioned in the suit under S. 49 of the Act.

Held, it was a common practice in the last century to enter in the land records only the name of the head of the joint Hindu family. 10 RD 121, Foll. **1952 RD 136: 1952 AWR (Rev) 99.**

5. Appeal.

——**S. 49** — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6 — U. P. Zamindari Abolition and Land Reforms Rules, R. 7 — Appeal in suit filed under S. 49, Tenancy Act, before Revenue Board — Death of land-holder, party to suit, after vesting order made under S. 6, Zamindari Abolition Act — Joinder of parties in appeal. **1956 All LJ 519: 1956 All WR (HC) 512: AIR 1956 All 704 (705) (Pr 4) (DB).**

——**S. 49** — Suit under — Appeal to Additional Commissioner from the preliminary decree — Final decree passed by the Trial Court — Second Appeal to the Board — Interpretation or construction put upon document by lower Courts cannot be questioned — Legal implication or

defect of interpretation may be questioned in second appeal — No appeal against the final decree — Appeal against the preliminary decree — Not maintainable. **1952 RD 247: 1952 ALJ (Rev) 284.**

——Ss. 49 and 59 — Suit under — Appeal — Zamindar-lambardar dying — Abatement of appeal — (Civil P. C. 1908), O. 22, R. 11.

Where the zamindar-lambardar died during the pendency of an appeal against the dismissal of a suit under Ss. 49 and 59 and an application for substitution was not made within time and the succeeding zamindar-lambardar supported the appellant's claim that he was a co-tenant along with his brother.

Held, that the brother who was the other respondent could not insist on the dismissal of the appeal as having abated when the present zamindar-lambardar whatever his motive might be, admitted the appellant's claim and the other co-sharers had made no objection. **('52) 1952 All LJ (Rev) 94: 1952 RD (BR) 89.**

——**S. 49** — Suit under — Appeal against preliminary decree dismissed as also an application to review it — Final decree passed thereafter — Another application to review prior dismissal allowed — No appeal against final decree — Appeal against preliminary decree becomes infructuous. **1951 RD 179: 1951 All WR (Rev) 80.**

SECTION 54

——S. 54 (2) (before its repeal in 1947) and S. 242 — Acquisition proceedings under S. 54 — Restoration proceedings under S. 54 (5) — Suit for declaring restoration order ultra vires — Jurisdiction of Civil Courts to grant declaration not barred — (Civil P. C. (1908), S. 9). **AIR 1953 All 578 (579) (Pr 8).**

——S. 54 (2) (before its repeal in 1947) and Section 242 — Acquisition proceedings under S. 54 — Compromise between parties — Order of acquisition in terms of compromise passed — Order embracing provisions outside S. 54 — Restoration proceedings purporting to be under Section 54 (5) — Restoration order passed — Suit for declaring restoration order ultra vires — Jurisdiction of Civil Courts to grant declaration not barred — Civil P. C. (1908), S. 9. **('52) 1952 All WR (HC) 141: 1952 RD (BR) 25: 1952 All LJ 82.**

——**S. 54** — Land utilised beyond 3 years of acquisition — Before Act 10 of 1947 — Restoration under S. 28 of that Act — Not permissible. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 28. **('52) 1952 RD (BR) 158.**

——**S. 54** — U. P. Tenancy (Amendment) Act (10 of 1947), Ss. 28 and 31 — Proceeding for restoration of land under S. 54 (5) is not distinct from, but in continuation of, proceeding for acquisition of land under S. 54 (1) — Order for restoration passed under S. 54 (5) — Appeal against, pending, when Amendment Act of 1947 came into force — Application under S. 54 (5) can be treated as application under S. 28, Amendment Act — No separate application under S. 28, Amendment Act is necessary. **('51) 1951 RD 47: 1951 AWR (Rev) 48 (50).**

SECTION 55

——S. 55 — Trespasser — Acceptance of, as tenant from previous date.

Unless there is a sitting tenant over the land it is always open to the zamindar to accept a trespasser as tenant from a date previous to the one on which he actually accepts the trespasser as such. **1952 RD (BR) 354: 1952 All LJ (Rev) 244.**

SECTION 57

——S. 57 — Lease attested under — Section 57 when takes effect — (Registration Act (1908), Section 47).

The definition of the word "registered" in Section 3 (17), U. P. Tenancy Act includes attestation under S. 57 of that Act. Hence the principle of S. 47, Registration Act, would apply to a lease duly attested under S. 57, U. P. Tenancy Act and the lease would take effect from the date of its execution and would prevail over a perpetual lease executed subsequent to the date of its execution. **AIR 1951 All 622 (622, 623) (Prs 2, 3) (DB).**

SECTION 59

SYNOPSIS

(Tenancy Laws — U. P. Tenancy Act (1939), S. 59.)

1. Scope.
2. Suit for mere declaration — Maintainability.
3. Necessary parties.
4. Reference to arbitration.
5. Co-tenancy.
6. Jurisdiction of Civil Court.
7. Jurisdiction of Revenue Court.
8. Abatement of appeal.
9. Discretion of Board to convert appeal.

1. Scope.

——**S. 59** — After the coming into force of the U. P. Act 1 of 1951, a suit for declaration has to be filed under U. P. Act 1 of 1951—(Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 229-B. 1962 All LJ 90, Rel. on. **1966 All LJ 149: 1965 All WR (HC) 841.**

——**S. 59 (2)** — 'Land-holder' — The term "land-holder" shall include not only the land-holder on the date of the suit, but his predcessors-in-title also. **1965 All WR (HC) 214.**

——**S. 59** — Nature of suit — Landholder made party to suit — No allegations in plaint — Maintainability of suit. **1957 All LJ 846: 1957 All WR (HC) 887.**

——**S. 59** — Void mortgage — Mortgagor's right to recover possession on payment of money received — Relief claimed in redemption suit — Claim in respect of ex-proprietary tenancy and occupancy tenancy land — Sections 59, 10 and 182 of the U. P. Tenancy Act have no application to the case. See Transfer of Property Act (1882), S. 60. **AIR 1956 All 639.**

——**S. 59** — Decision in suit under S. 59 — U. P. Tenancy Act is not binding on Assistant Collector. See U. P. Land Utilisation Act (5 of 1948), S. 3. **AIR 1955 NUC (All) 2724.**

——Ss. 59 and 61 — Sir plots of the Zamindar and Sirdar of the village — Permanent lease to predecessor in title of plaintiff as a fixed rent — Nature of tenancy — Entry in patwari papers — Effect.

In a suit by plaintiffs under Ss. 59 and 61 of the Tenancy Act it was proved that they derived their title to the plots in dispute under a permanent lease at a fixed rent granted by the then zemindar and sir-holder. The defendants (respondents) had not proved any subsequent settlement of the land with them. The suit was decreed by the Collector; but Commissioner modified it declaring the plaintiffs as non-occupancy tenants at a rent of Rs. 9-5-4. The plaintiffs appealed to the Board.

Held: The entry in the patwari papers omitting the words 'Pattadar istimrar' was wrong

and the plaintiffs held the land under the terms of the permanent lease at a fixed rent and not merely as non-occupancy tenants as declared by the Commissioner in the first appeal. **1952 RD 182: 1952 ALJ (Rev) 228.**

——**S. 59** — Plaintiff in adverse possession against tenant-in-chief — Becomes hereditary tenant — Non-mention in plaint of the fact of plaintiff perfecting his title by adverse possession — Effect. See Tenancy Laws — U. P. Tenancy Act (1939), S. 180. **('52) 1952 RD (BR) 172.**

——**Ss. 59 and 61 — Suit under — Previous decision of Civil Court upon tenancy rights — Res Judicata.**

In a suit under Ss. 59 and 61, U. P. Tenancy Act, 1939, previous adjudication by Civil Court declaring rights as a tenant operates as res judicata as Civil Courts were competent under Act 18 of 1873 to decide the matter and it is not open to the parties actually represented in the Civil Suit to repudiate the decision merely because the zamindar was not a party to it. 3 All 83, Rel. on. **('52) 1952 RD (BR) 74: 1952 All WR (Rev) 69: 1952 All LJ (Rev) 30.**

——**S. 59 and Civil P. C. (5 of 1908), S. 151 — Dismissal of suit under S. 59 — Zamindar respondent not served, if can ask for restoration under S. 151, Civil P. C.**

Where a suit under S. 59 of the Tenancy Act has been dismissed, the Zamindar respondent who has not been properly served is not entitled to ask for a restoration of the suit under S. 151, Civil P. C. **1951 All WR (Rev) 204: 1951 RD 207.**

——**S. 59** — Suit allegation of admission to tenancy by mortgagor prior to suit not proved — Plaintiff stating to have been in occupation during currency of mortgage — Admission to tenancy admittedly not by mortgagee — Plaintiff is only a trespasser. **('50) 1950 All WR Rev 72: 1950 RD 163 (164).**

2. Suit for declaration — Maintainability.

——**Ss. 59, 180 and 183** — Suit for redemption and possession of occupancy plots under usufructuary mortgage deed decreed in terms of compromise — Compromise decree amounting to sale of certain suit plots in consideration of mortgage money — Mortgagees no longer in permissive possession and becoming hereditary tenant under S. 180 after expiry of period of limitation for filing suit under S. 180 or 183 — Suit by mortgagors under S. 59 for mere declaration of right and title as occupancy tenant is barred by S. 42 of the Specific Relief Act. **1963 All WR (HC) 734.**

——**S. 59 — Suit for declaration without prayer for possession — Maintainability — Co-tenancy.**

The argument that plaintiffs not in possession would not be entitled to a declaration under S. 59 of the U. P. Tenancy Act, where they do not seek relief for recovery of possession, has no force where the plaintiffs have been recorded as co-tenants and there is no division of the holding according to the law separating the share of the plaintiffs from that of others. **1951 RD 252: 1952 ALJ (Rev) 19: 1952 AWR (Rev) 16.**

——**S. 59** — Suit for declaration of plaintiff as a tenant under S. 59 of the tenancy Act instituted after its repeal by the U. P. Zamindari Abolition and Land Reforms Act is not maintainable — As the right claimed has been converted into right as Sirdar under the U. P. Zamindari Abolition Act, Cl. (2) of the U. P. Land Tenures Legal Proceedings Removal of Difficulties Order 1952 does not apply to case — Under S. 229-B of the Abolition Act the plaintiff can file a suit for the declaration of his right as a sirdar. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 229-B. **19(All LJ 90.**

——**S. 59 — Plaintiff not in possession — Suit for declaration without relief for possession — Maintainability — (Civil P. C. (1908), O. 2, R. 2) — (Specific Relief Act (1877), S. 42, Proviso).**

The law does not encourage multiplicity of litigation and with that end in view requires that all the reliefs which can be claimed at the same time should be claimed in one and the same suit. Failure to do so is penalized both by the proviso to S. 42, Specific Relief Act, and by O. 2, R. 2, Civil P. C. Where, therefore, a plaintiff not in possession and hence entitled to seek a relief for possession also, sues only for declaration under S. 59 of the U. P. Tenancy Act, the suit is not maintainable. **('52) 1952 RD (BR) 231: 1952 All LJ (Rev) 132.**

——**Ss. 59 and 62 — Single declaratory suit in respect of more than one holding — Maintainability — Conditions.**

Under Section 62 of the U. P. Tenancy Act a single suit may be instituted under the provisions of Section 59 of the Act in respect of a number of holdings only if the parties are the same. This is a necessary condition. **1952 RD 12: 1952 ALJ (Rev) 11: 1952 AWR (Rev) 19.**

——**S. 59** — Suit for declaration without a prayer for possession — Plaintiff not in possession — Suit is barred under Section 42 of Specific Relief Act (1877). **1951 RD 229: 1951 AWR (Rev) 214.**

——**S. 59 and U. P. E. E. Act (25 of 1934), S. 11 — Suit for declaration regarding property sold not included in list published under S. 11 (1) of U. P. E. E. Act — Maintainability.**

Where property not included in the list published under S. 11 (1) of the U. P. Enc. Est. Act is sold by mistake the owner of the property can file a suit for declaration under Section 59 of the U. P. Tenancy Act and it is not barred either by Section 11 (2) of the U. P. Tenancy Act or O. 21, R. 92, Civil P. C. **1951 RD 167: 1951 AWR (Rev) 152.**

——**S. 59 — Suit for declaration when defendant in possession as sub-tenant — When can be decreed — Specific Relief Act (1 of 1877), S. 42, Proviso.**

When a plaintiff sues for a declaration of his right as a tenant being the heir of a previous tenant and the defendant's possession is found to be only permissive, he being a sub-tenant, the declaration can be granted even though no possession is asked for. The plaintiff in such a case must be deemed to be in constructive possession. **1951 AWR (Rev) 104: 1951 RD 81.**

——**S. 59 — Suit under — Plaintiff not in possession — Declaration if can be given — Specific Relief Act (1877), S. 42, Proviso.**

Where a person claiming to be in possession of certain land brings a suit for mere declaration of his title as tenant under Section 59, U. P. Tenancy Act, but it is found that he is not actually in possession on the date of suit, he cannot be granted declaration in view of proviso to Section 42, Specific Relief Act. **('51) 1951 AWR (Rev) 1 (2).**

3. Necessary parties.

●——**Ss. 59, 180 and 183** — Suit under Section 59, U. P. Tenancy Act or appeal arising out of it — Zamindar, after abolition of Zamin-

dari, is neither a necessary nor proper party. See C. P. Code (1908), O. 1, R. 10. **AIR 1963 All 549 (FB).**

——**S. 59** — Suit under Section 59 or appeal in such a suit — Zamindar although has a limited interest is a necessary party — Omission to implead her is fatal defect. 1947 RD 49, 1947 RD 207; 1951 RD 40, Foll. **('51) 1951 RD (Rev) 268 (DB).**

4. Reference to arbitration.

——S. 59 — Suit under — Reference to arbitration — Parties to agreement — Some of zamindars not appearing before Court — Want of their consent to reference — Effect.

In a suit under Section 59 it cannot be said that all the zamindars are not interested in the declaration as to who is to be adjudicated as the tenant of the land. The same argument applies when a few of the zamindars set up the claim that the land is their khudkasht. Therefore it is necessary that if the dispute is to be referred to arbitration all of them, as well as the persons claiming to be the tenants, or as khudkasht-holder of the land, must agree to do so. The mere fact that some of the zamindars may not appear in Court does not imply that they are not interested parties as they may not want to put in appearance when the dispute is to be decided by a Court of law, but their consent is certainly necessary before the matter can be referred to arbitration. **('51) 1951 RD 185: 1951 All WR (Rev) 162: 1952 All LJ (Rev) 65.**

——**S. 59** — Applicability of Arbitration Act to Revenue Courts. See Arbitration Act (1940), Section 21. **('52) 1952 RD (BR) 89 (DB).**

5. Co-tenancy.

——S. 59 — Sole tenant — Death of — One member of the family recorded as sole tenant — Effect of — Rights of brothers.

Where on the death of a recorded sole tenant a member of the family is recorded as the tenant in his place and the other members of family filed a suit under Section 59 of the U. P. Tenancy Act, it was found that the recorded successor had not proved that he was the adopted son of the deceased all the three brothers of the deceased alive on the death of the originally recorded tenant succeeded to the property as co-tenants. **1952 RD 174: 1952 ALJ (Rev) 223.**

——S. 59 — Parties entered as co-tenants over number of years — Presumption — Question of adverse possession — (Limitation Act (1908), Art. 144).

If the parties are related and are entered as co-tenants over a number of years and if neither party is able to prove satisfactorily the pedigree set up by it entitling it to be treated as nearest collateral, co-tenancy should be presumed and no question of adverse possession by one party as against the other arises. 1950 RD 16, Rel. on. **('52) 1952 All WR (Rev) 11: 1951 RD 284: 1952 All LJ (Rev) 97.**

——S. 59 — Suit for declaration of co-tenancy with the recorded tenants — Evidence — Onus of proof — Marfat kasht entries of faslis 1349 to 1351 — Some entries for 40 years showing defendants alone as tenants.

In a second appeal by the plaintiffs against the concurrent decrees dismissing the suit by them under Section 59, U. P. Tenancy Act, for a declaration of their rights as co-tenants by succession to the tenancy of a collateral S deceased.

Held: To establish their right it is necessary for the plaintiffs to prove that they or their predecessors in title were the nearest heirs of the deceased tenant and that they shared in the cultivation of the holding at his death. The defendants, recorded tenants for 40 years, need not prove in defence of their rights to the tenancy how they were acquired; the plaintiffs cannot rely on the weakness of the defendant's case. The Marfat kasht entries of Faslis 1349 to 1351 alone wherein the plaintiffs' names were found, were rightly disregarded by the Courts under the circumstances. **1951 RD 258: 1952 AWR (Rev) 171.**

——S. 59 — Persons cannot acquire co-tenancy rights against express provision of law— There is no estoppel against law — Name of respondent wrongly entered as co-tenant on death of co-tenant — Respondent not co-tenant from commencement of tenancy or by succession or by specific recognition by land-holder — Respondent cannot acquire co-tenancy right against express provision of law — Subsequent intention or actions of persons who were entitled to be recorded as co-tenants in place of respondent will not operate as estoppel — (Evidence Act (1872), S. 115). **('52) 1952 All LJ (Rev) 126: 1952 RD (BR) 176.**

——Ss. 59, 180 — Entry of name of widow of holder of fixed rate holding as co-tenant, though she was not entitled to succeed — Effect.

Where the name of a widow, who is not entitled to succeed to a deceased tenant, is recorded as a co-tenant, the entry must be presumed to have been with the consent of the collaterals by way of consolation. She is only a licensee with a limited life interest which must terminate on her death. **('51) 1951 All WR (Rev) 16: 1952 All LJ (Rev) 19: 1951 RD 252.**

6. Jurisdiction of Civil Court.

——S. 59 (2) — Scope. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **1965 All WR (HC) 214.**

——Ss. 59 and 100 — Jurisdiction — Civil and Revenue Court — Suit for declaration that the Revenue Court decree was ineffectual and also for possession of land — Suit is cognisable by Civil Court. See C. P. Code (1908), S. 9. **1960 All LJ 676.**

——S. 59 — Suit under — Plaintiff not aggrieved by action of landholder — Suit lies in civil Court — (Civil P. C. (1908), S. 9). **1952 RD (BR) 269.**

——Ss. 59, 180, 183 and 242 (before amendment by Act 10 of 1947) — Suit by tenant against trespasser — Jurisdiction of civil Court.

Where a person brings a suit before the amendment of Ss. 180 and 183 in 1947 alleging that he is a tenant of the plots in dispute and that the defendant has forcibly taken possession of the same and is occupying them as trespasser, the allegations are not covered by any of the three Sections 59, 180 and 183 and the jurisdiction of the civil Court is not ousted. **1950 All WR (HC) 573: AIR 1950 All 449 (449) (Prs 3, 5).**

7. Jurisdiction of Revenue Court.

——S. 59 — Relief under — Cancellation of deed of lease unnecessary — **Held,** leases or decree without any legal force cannot oust jurisdiction of revenue Court nor is it conferred

on civil Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **AIR 1965 All 514.**

——**S. 59** — Administration of Evacuee Property Act (1950), Ss. 4, 28 and 46 — Suit under S. 59, U. P. Tenancy Act (1939) — Jurisdiction of Revenue Court — No bar under Administration of Evacuee Property Act — Custodian made party to suit— Decision against Custodian — Binding between parties and would operate as res judicata — Civil P. C. (1908), S. 11. **1965 All WR (HC) 385: 1965 All LJ 563.**

——**S. 59** — Suit held cognizable by Revenue Court. **AIR 1955 NUC (All) 2736 (DB).**

——**S. 59** — Suit by tenant against trespasser and landlord for declaration — Suit is cognisable by Revenue Court — (Civil P. C. (1908), S. 9). **AIR 1955 NUC (All) 1741 (DB).**

●——**Ss. 59/183 — Suits under — Decreed in appeal — Second appeal pending before the board — U. P. Zamindari Abolition and Land Reforms Act, 1951, enforced — Effect — Jurisdiction of Revenue Courts — Procedure — Parties Gaon Sabas — Substitution or addition.**

Suits under Sections 59/183 were dismissed as barred by limitation while the plaintiffs were found to be tenants. On appeal the Additional Commissioner holding they were not barred by time decreed the suits. Hence the appeals to the Board. While the appeals were pending the new Act of 1951 came into force. The respondents contended that the rights claimed in appeal by the landholders have evaporated into the thin air by the abolition of the class as well as rent and the appeal could not be maintained in view of the change in the law and the change in jurisdiction also there being no provision corresponding to Section 242 of the old Act.

Held, under S. 6 of U. P. General Clauses Act, 1924, the result of the repeal of an Act does not take away the rights vested. But this is subject to a different intention appearing in the repealing Act.

(1) After the enforcement of the U. P. Zamindari Abolition and Land Reforms Act, 1951, the Revenue Courts have still the jurisdiction left to try and dispose of all pending cases of the U. P. Tenancy Act (and the Land Revenue Act) not covered by Rules 4 and 5 of the Rules under the new Act of 1951 and therefore covered by Rule 7 of the same. They will be disposed of throughout all the stages including appeals, references, etc., by the Revenue Courts.

(2) The procedure to be followed by the Revenue Courts in cases under the Tenancy Act will be under the new Act.

(3) Gaon Sabas as the agent of the State which acquires under the new Act the rights of the landholder a necessary party in the proceedings, may be added as a party to the proceedings where the Court considers it necessary. The old landholder will continue as a party as before. The impleadment will be under O. 1, R. 10 and under O. 22, R. 10, C. P. Code. **1952 AIJ (Rev.) 159: 1952 AWR (Rev.) 134: 1952 RD 303 (FB).**

——**S. 59** — Revenue Courts — Jurisdiction — Suits, appeals, etc., under U. P. Tenancy Act, 1939, pending — Not mentioned in Rr. 4 and 5 of Rules under the Zamindari Abolition and Land Reforms Act, 1950, but under Rule 7 — Continuance of jurisdiction — Procedure, as prescribed in the new Act. **1952 ALJ (Rev) 159.**

8. Abatement of appeal.

——**Ss. 59 and 180** — Suit of ejectment under — Decreed against several defendants — Appeal against the decree by some of them — Parties to — Formal parties — Non-impleadment of parties not disclosed in the decree — Effect — Appeal not rendered incompetent and cannot be dismissed as such — Appellate Court should have exercised its powers under O. 41, R. 20 of C. P. C. — Civil Procedure Code (1908), O. 41, R. 20 — Powers under — Exercise of — Party whose name was not disclosed in decree not impleaded as respondent in appeal — Power under — Exercise of — Civil Procedure Code (1908), O. 22, R. 4 — Decree against several defendants — Appeal by some— Non-impleadment of pro forma defendants in appeal — Effect. **1965 All WR 540.**

——**S. 59** — Appeal — Death of zemindar pending appeal — Substitution application filed beyond limitation — L. R. supporting application — Effect. See Tenancy Laws — U. P. Tenancy Act (1939), S. 49. **('52) 1952 RD (BR) 89 (DB).**

——**S. 59 — Female Zamindar not impleaded in appeal in suit under S. 59 — If a fatal defect.**

As a zamindar is a necessary party not only to a suit under Section 59 of the U. P. Tenancy Act, but also to an appeal in such a suit, failure to implead him would be a fatal defect. The failure to implead female Zamindar would not cease to be a fatal defect because she had only a limited interest. **1952 AWR (Rev) 34: 1952 ALJ (Rev) 12: 1951 RD 268.**

9. Discretion of Board to convert appeal.

——**Ss. 59 and 63** — Case decided as one under S. 59 — Dispute really falling under S. 63 — Discretion of the Board to convert — Appeal defective — Gross negligence of the appellant the cause — Board not bound to allow conversion at the late stage. **1951 AWR (Rev) 234: 1951 RD 247.**

——**Ss. 59, 61 and 63 — Board if can treat suit filed under Ss. 59/61 and decreed, as one under S. 63.**

Though a suit is filed under Ss. 59/61 of the Tenancy Act and decreed, the Board can treat it as one which ought to have been filed under Section 63 when the facts show that it really falls under that section. **1951 RD 74 (1): 1951 AWR (Rev) 53.**

SECTION 60

——**Ss. 60, 64** — There is no equally efficacious relief under U. P. Tenancy Act, to plaintiff basing his suit for permanent injunction restraining defendant from interfering with his possession on simple fact that he was in possession and that defendant has no right to disturb it. See Specific Relief Act (1877), S. 56 (1). **AIR 1960 All 573.**

[**Overruled** on another point in AIR 1962 All 248.]

——**Ss. 60, 61, 63, 242 — Jurisdiction of Civil Court — (Civil P. C. (1908), S. 9) — AIR 1949 All 257; AIR 1952 All 496, Overruled.**

Suit for permanent injunction filed on the allegations that the plaintiffs were the zamindars of the land in suit, which was their sir and khudkasht, that the defendants had no manner of right in this land, but they wrongly deposited 10 times the rent and sought to obtain bhumidari rights under the provisions of the U. P. Tenants Acquisition of Privileges Act, and that the defendants were also trying to enter into possession of the land — **Held,** that Section 60 clearly covered the case; and, therefore, the suit was barred from the cognizance of a Civil Court by Section 242 inasmuch as it arose out

of a cause of action in respect of which a relief for a declaration could be obtained from the revenue Court. Case-law discussed. **1953 All LJ 399: 1953 All WR (HC) 414: AIR 1953 All 729 (730) (Pr 11) (DB).**

——**S. 60** — Suit by tenant for cancellation of sub-lease on ground of fraud — Jurisdiction of Civil Court not barred by S. 60 — Civil P. C. (1908), S. 9. **('52) 1952 RD (HC) 197: 1952 All WR (HC) 201: 1952 All LJ 206: AIR 1952 All 922 (922) (Pr 2).**

——**Ss. 60, 180** — Suits for cancellation of lease — Civil Court alone is the proper forum — Civil P. C. (1908), S. 9. **1950 All WR 676: 1952 All LJ 364: AIR 1950 All 532 (533) (Pt A) (Prs 4, 7).**

——**Ss. 60, 63 and 180 — Suit under — Decreeing of the extent of the shares of parties — If Court acts beyond powers.**

It cannot be said that a Court if in deciding a suit under Sections 60, 63 and 180 of the U. P. Tenancy Act decrees the extent of the shares of the parties it acts beyond the subject-matter of the suit. **1950 RD 192.**

SECTION 61

——**S. 61** — Jurisdiction of Civil Court — AIR 1949 All 257; AIR 1952 All 496, **Overruled.** See Tenacy Laws — U. P. Tenacy Act (17 of 1939), S. 60. **AIR 1953 All 729 (DB).**

——**S. 61** — Sir plots of zemindar and sirdar of the village — Permanent lease to predecessor in-title of plaintiff at fixed rent — Nature of tenancy — Entry in patwari papers — Effect. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **1952 All LJ (Rev) 228.**

——**Ss. 61 and 59** — Suit under — Previous decision of Civil Court upon tenancy rights operates as res judicata. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **1952 All LJ (Rev) 30.**

——**S. 61** — Board if can treat suit filed under S. 59/61 and decreed, as one under S. 63. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **1951 All WR (Rev) 53.**

——**S. 61 — Transfer of sir land by one co-sharer.**

Where only one co-sharer mortgages his proprietary right in the joint sir and no exproprietary rights are claimed by the mortgagor, the sir land continues to be sir of other co-sharers and the person admitted as tenant by the mortgagee cannot acquire hereditary rights under Section 29. **('51) 1951 RD 30: 1951 All WR (Rev) 25.**

SECTION 62

——**Ss. 62 and 59** — Suit under S. 59 in respect of several holdings — Parties not same — Suit is liable to be dismissed. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **('52) 1952 All LJ (Rev) 11 (DB).**

——**Ss. 62 and 59** — Single declaratory suit in respect of more than one holding — If the parties are the same it is maintainable. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **1952 All WR (Rev) 19.**

——**S. 62 — Scope and effect of.**

Section 62 of the U. P. Tenancy Act does not restrict the provisions of O. 1, R. 1, Civil P. C. but it extends it. It does not say that a single suit will not lie even if it is maintainable under O. 1, R. 1 unless the parties are the same. The only effect of S. 62 is that in a case where the parties are not the same, a single suit will not lie if it is not maintainable under O. 1, R. 1, Civil P. C. If it is maintainable under O. 1, R. 1, Civil P. C., S. 62 would not make it defective. **1951 All WR (Rev) 172: 1952 RD 193.**

SECTION 63

——**S. 63** — Suit for declaration — Powers and duties of Court — Subsequent events — If to be taken note of — Effect of passing of U. P. Act 1 of 1951 — Court should take the subsequent legislation into consideration and refuse the decree. See Specific Relief Act (1877), S. 42. **AIR 1957 All 719 (DB).**

——**Ss. 63, 60, 61, 242—Jurisdiction of Civil Court — (Civil P. C. (1908), S. 9) — (AIR 1949 All 257; AIR 1952 All 496, Overruled).**

The suit was barred from cognizance of a Civil Court by S. 242, since the relief sought lies in the Revenue Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 60. **AIR 1953 All 729 (DB).**

——**S. 63 — Civil P. C. (1908), S. 9 — Suit for injunction respecting khudkasht land — Jurisdiction of Civil Court.**

At the initial stage the Court is confined to the allegations in the plaint and has to accept them as correct. The position would be different at the later stage in the proceedings. See Civil P. C. (1908), S. 9. **AIR 1952 All 496.**

[**Overruled** in AIR 1953 All 729.]

——**Ss. 63 and 180 — Case under — Decree for declaration under S. 63 but order staying relief for ejectment under S. 180 passed on 30-12-1949 — Validity — Effect of B. O. No. 11791-11844/ Jud 1, Ex-116, D/-15-9-1949 — Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act, 1950 (7 of 1950), S. 10.**

The contention that since the Additional Commissioner stayed the relief of ejectment on the basis of B. O. No. 11791-11844 Judi. Ex. 116, D/- 15-9-1949; and as the decree for declaration amounts to a decision of the relief under Section 180, the decree was without jurisdiction, cannot be sustained. **('52) 1952 RD (BR) 161: 1952 All LJ (Rev) 87.**

——**Ss. 63 and 180** — Khudkasht of individual proprietor not of period exceeding two years when suit is brought — Proprietor does not become "khudkasht holder" as contemplated by Section 180 (2) and cannot maintain suit under Section 63. **('52) 1952 RD (BR) 180.**

——**Ss. 63 and 59** — The Board has the discretion to treat a case decided under S. 59 as one under S. 63. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **('51) 1951 RD 247.**

——**S. 63** — Case decided as one under S. 59 — Dispute really falling under S. 63 — Discretion of the Board to convert — Appeal defective — Gross negligence of the appellant the cause — Board not bound to allow conversion at the late stage. See Tenancy Laws — U. P. Tenancy Act 1939, S. 59. **1951 All WR (Rev) 234.**

——**Ss. 63, 61 and 59** — Board can treat suit filed under Ss. 59/61 and decreed, as one under S. 63, when the facts show that it really falls under that section. See Tenancy Laws — U. P. Tenancy Act, 1939, S. 59. **1951 All WR (Rev) 53.**

SECTION 64

——**Ss. 64, 60** — Specific Relief Act (1877), Section 56 (i) — There is no equally efficacious relief under U. P. Tenancy Act, to plaintiff basing his suit for permanent injunction restraining defendant from interfering with his possession on simple fact that he was in possession and that

defendant has no right to disturb it. See Specific Relief Act (1877), S. 56 (i). **AIR 1960 All 573.**

——S. 64 — Injunction — Ignorance of prior appointment of Receiver — Property in setting aside injunction by the same Court when it became aware of it.

When a Receiver had already been appointed and a temporary injunction is issued in ingorance of it, there is nothing wrong in the Court setting aside the injunction when informed of the prior appointment of the Receiver. **1950 RD 129.**

SECTION 81

——S. 81 (2) — Suit for damages for cutting trees — Question of ownership arising on pleadings jurisdiction of Civil Court, is not barred by S. 242. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **1958 All WR (HC) 64.**

——S. 81 (2) — Tenant right — In a dispute between parties whether trees stood on the holding or on the boundary S. 81 (2) would apply. The provisions of S. 288 (1) would not apply as the tenant right is not the same thing as a right of ownership of trees. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 288. **1958 All WR (HC) 64.**

SECTION 82

——S. 82 (3) — Oral surrender with transfer of possession — Validity and effect.

An oral surrender accompanied with transfer of possession is a valid surrender under S. 82 (3) of the Act although it is neither by sending a registered notice to the landholder nor by an application to the Tahsildar under S. 82 (1) or 84 respectively. It has the effect of extinguishing the rights of the person surrendering under Section 45 (c) of the Act. **1952 All LJ (Rev) 192.**

——S. 82 — Surrender by tenant accepted by Karinda of landholder — Landholder alone can avoid the surrender and not the tenant. **('52) 1952 All LJ (Rev) 118: 1952 RD (BR) 171.**

——S. 82 — Plaintiff voluntarily surrendering land before Tahsildar — Plaintiff's name ordered to be expunged — Continuance of name by patwari cannot be construed that plaintiff remained in possession. **('52) 1952 All LJ (Rev) 118: 1952 RD (BR) 171.**

——S. 82 —Surrender of ex-proprietary tenancy must be in favour of whole body of co-sharers, whether the person surrendering has right to ex-proprietary tenancy in whole or only a portion of the plot — He cannot surrender it in favour of one of several co-sharers. **(52) 1952 RD (BR) 168.**

——S. 82 — Oudh Rent Act (1886), S. 20 — Tenancy right mortgaged — Possession with mortgagee — Relinquishment of tenancy by tenant — Validity of.

A mortgagee who holds the mortgage of tenancy rights has no privity of contract with the landlord and he cannot, therefore, prevent him from accepting the surrender from his tenant. Where the tenant is in actual physical possession, delivery of possession is an essential ingredient of a valid relinquishment. 7 OC 265; 1923 RD 466; 1948 RD 125, Rel. on. **('51) 1951 All WR (HC) 585.**

——S. 82 — Applicability to grove-holder.

Section 82 of the U. P. Tenancy Act which deals with surrender of a tenant's holding is not applicable to a grove-holder. **1951 RD 157: 1951 AWR 159.**

SECTION 86

——S. 86 (1) and (4) — Abandonment — Requisites.

The words "ceases to cultivate and leaves the neighbourhood" in Section 86 (1) and (4) contemplate an intention of the tenant to sever the connection with his holding permanently and do not include a temporary absence from the neighbourhood. It cannot be said that there is an abandonment when the holding continues to be looked after by a relative of the tenant and rent continues to be paid to the landholder. **1952 RD 104: 1952 All WR (Rev) 58: 1952 All LJ (Rev) 79.**

SECTION 87

——Ss. 87 (4), 88 and 183 — Scope.

Where a tenant in possession is imprisoned and does not leave any person in charge of the land responsible for payment of rent nor gives any notice to the landholder about it he will be presumed to have abandoned the holding under S. 84 (4). But landholder who enters upon a holding in contravention of the provision of Section 88 shall be deemed to have "ejected" the tenant otherwise than in accordance with the provisions of this Act within the meaning of Section 183. The tenant is therefore, entitled to the benefit of S. 19 of the Act 10 of 1947. **1952 RD (BR) 378: 1952 All WR (Rev) 244: 1952 All LJ (Rev) 275.**

——Ss. 87, 88, 88-A, 89 and 183— Abandonment — Presumption — When can be raised — Entry by landholder or non-landholder on abandonment — Difference in status.

A tenant who ceases to cultivate the land and leaves the neighbourhood without leaving in charge of the holding a person responsible for the payment of rent as it may fall due and giving notice to the landholder for the payment of rent, must be presumed to have abandoned the holding. Once the above basic facts are proved the presumption of abandonment must be raised and the consequences of abandonment must follow.

In spite of the abandonment of the holding by the tenant the landholder however, will not have the right to enter upon the land unless the procedure of S. 88 is followed by him. If he does enter upon the land without following the procedure of S. 88, his entry will be questionable under S. 183, U. P. Tenancy Act.

So far however, as non-landholders are concerned they are not encumbered with any such responsibility as the landholder is. They can, therefore, enter upon the land and acquire such rights as the law may give them on a vacant holding. In other words, remedy of S. 88-A is barred to the landholder who has not complied with S. 88 but is permissible to non-landholder in spite of procedure of S. 88 not having been adopted by the landholder. **1952 All LJ (Rev) 263: 1952 RD (BR) 380: 1952 All WR (Rev) 188.**

——Ss. 87 and 88 — Absence of notice — Plea of abandonment.

The provision of a notice by the landholder through the Tahsildar as provided for in S. 88 is a step to be taken by the landholder and the fact that such action was not taken by the landholders will not prevail against a plea of abandonment against the co-tenants. **1952 All LJ (Rev) 259.**

——S. 87 (1) and (4) — Abandonment of holding — Presumption of — Evidence of intention to sever connection permanently is necessary. **1952 All LJ (Rev) 68: 1952 RD 103: 1952 All WR (Rev) 164.**

——S. 87 (1) and (4) — Abandonment of holding — Evidence of — Absence of notice to landholder — Effect.

It is necessary to prove that the tenant had (a) ceased to cultivate and (b) left the neighbourhood without leaving a person in charge and making arrangement for payment of the rent. A

written notice to the landholder of such arrangement is also necessary but not indispensable. **('52) 1952 RD (BR) 104: 1952 All WR (Rev) 68: 1952 All LJ (Rev) 79.**

——**S. 87 (1) and (4)** — Ceases to cultivate and leaves the neighbourhood — Does not include temporary absence. **1952 RD (BR) 104: 1952 All WR(Rev) 68: 1952 All LJ (Rev) 79.**

SECTION 88

——**Ss. 88 and 87** — Absence of Notice — Plea of abandonment — A notice by the landholder through the Tahsildar is a step to be taken by the landholder and the fact that such action was not taken will not prevail against the plea of abandonment against the co-tenants. **1952 All WR (Rev) 188: 1952 All LJ (Rev) 259 :1952 All LJ (Rev) 275.**

——**S. 88 — Abandonment — When effective.**

An abandonment of a holding by a tenant does not become complete and effective by the mere recording of an order of the Tahsildar that the holding be treated as abandoned. It should be shown that after the abandonment either the zamindar himself entered upon the land or legally put some other tenant in possession or that it was held by a third person adversely to both the zamindar and the tenant who had abandoned. **1951 RD 162: 1951 All WR (Rev) 154.**

——**Ss. 88 and 183** — Tenant committed to jail — Provisions of S. 88 not complied with — Landlord letting another into possession — Liability to be sued under S. 183 — Benefit of S. 19, Tenancy (Amendment) Act — If available.

The entry of the landlord upon the land can be treated as unlawful and he can be sued under S. 183 by virtue of S. 89. See Tenancy Laws — U. P. Tenancy Act (1939), S. 183. **1952 All WR (Rev) 244.**

SECTION 88-A

——**Ss. 88-A, 87, 88, 89 and 183**— Abandonment — Presumption — When can be raised —Entry by landlord or non-holder on abandonment — Difference in status. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 87. **1952 All WR (Rev) 188.**

SECTION 89

——**Ss. 89, 87, 88, 88-A and 193** — Abandonment — Presumption — When can be raised — Entry by landlord or non-holder on abandonment — Difference in status. See Tenancy Laws — U. P. Teancy Act (17 of 1939), S. 87. **1952 All WR (Rev) 188.**

SECTION 91

——**S. 91 — Object of S. 91 and its interpretation — Charge levied on weaver for weaving in house — Charge amounts to cess and cannot be levied.**

The object of the Legislature in enacting Section 91, appears to have been to curtail the right of the zamindar to levy customary dues or services of a vague and uncertain nature. In interpreting this section it should be remembered that no suit can lie for the recovery of any cess which is levied in accordance with village custom unless it is sanctioned by the provisions of subsection (2) of the section. **ILR (1954) 2 All 294: 1953 All LJ 636: AIR 1954 All 211 (212) (Prs 7, 8, 9) (DB).**

SECTION 92

——**S. 92** — Compensation to be paid to intermediary — Assessment — Enhanced rate of rent required to be paid on grant of bhumidhari sanad — If to be taken into consideration. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 39 (1) (a). **1959 All LJ 526.**

SECTION 94

——**Ss. 94 and 180 (2) and 244 — Declaration under S. 180 (2) — Assessment of rent under S. 94.**

It is open to the trial Court to assess rent under S. 94 of the Act while giving a declaration under S. 180, sub-clause (2). 1949 RD 83; 1943 RD 480, Dist. **('52) 1952 All LJ 177: AIR 1953 All 236 (238) (Pt C) (Pr 13).**

——**S. 94** — Powers of lambardar to act on behalf of other co-sharers are confined to land as defined in the Act — It does not extend to land let out or held for building purposes. See Tenancy Laws — U. P. Tenancy Act (1939), Section 3 (10). **1951 All WR (HC) 84.**

——**S. 94 — Rented grove — Land ceasing to be grove — Fixation of Rent.**

On the land ceasing to be groveland the right of a grove-holder cannot be enjoyed by a person who becomes a hereditary tenant of such land. He can have the rights and liabilities of a hereditary tenant not of a grove-holder. Hence the rent to be fixed under S. 94 is not the rent that the grove-holder was liable to pay so long as the land retained the character of a grove. **1951 All WR (Rev) 84: 1951 RD 77.**

SECTION 100

——**Ss. 100 and 59** — Jurisdiction — Civil and Revenue Court — A suit for declaration is essentially of a civil nature, and not of the nature of a suit specified in the Fourth Schedule of U. P. Tenancy Act — Revenue Court has, therefore, no jurisdiction in respect of such suits. See Civil P. C. (1908), S. 9. **1960 All LJ 676.**

SECTION 113

——**S. 113 — Suit for commutation of rent — Dismissal of, on account of ignorance of sanctioned rates — Decision does not operate as res judicata — (Civil P. C. (1908), S. 11).**

A cause of action under S. 113 is a recurring cause of action and the tenant cannot be prevented from getting his grain rent commuted if he has failed before. **('52) 1952 All WR (Rev) 122: 1952 RD (BR) 189.**

SECTION 117

——**S. 117 — Applicability — Existence of — Agreed rate of rent — Effect.**

Where there is an agreed rate of rent in existence between the landlord and tenant, the limitation to such enhancement as is laid down in S. 117 of the Tenancy Act should apply irrespective of whether the tenant is a tenant or a grantee of favourable rent. **1951 RD 272: 1952 All WR (Rev) 12.**

SECTION 119

——**Ss. 119 and 194** — Agreed rent between landholder and tenant or grantee at favourable rent — Enhancement of rent — Limitations in Section 119 apply. See Tenancy Laws — U. P. Tenancy Act (1939), S. 194. **('51) 1951 RD 272.**

SECTION 142

——**Ss. 142 and 183** — First suit under S. 142 treating defendants as sub-tenants withdrawn — Second suit under S. 183 treating defendants as persons admitted to holding by Zamindar otherwise than in accordance with provisions of law — Plaintiff held was not estopped from bringing

suit under S. 183 — Evidence Act (1872), S. 115. **('52) 1952 RD (BR) 251: 1952 All LJ (Rev) 128.**

SECTION 148

——**S. 148** — Plaintiff's case neither against tenants nor for recovery of rent — Section 148 not attracted. **1965 All WR (HC) 461: 1965 All LJ 777.**

——**S. 148** — Defendant executing qabuliyat in favour of plaintiff — Defendant is estopped under S. 116 of Evidence Act from challenging that plaintiff is his land-holder entitled to receive rent from him. See Evidence Act (1872), S. 116. **1952 All LJ (Rev) 329 (DB).**

SECTION 157

——**S. 157 — Scope and applicability.**

Section 157 only safeguards rights of a tenant against ejectment by some 'procedure' other than the provisions of the U. P. Tenancy Act. It does not apply to a case where a person has not resorted to the provisions of law at all for ejectment, but has taken possession of some land by force. Taking possession by force is outside the purview of a 'procedure' for ejectment. **1964 All WR (HC) 255.**

SECTION 160

——**Ss. 160 (3) and 180** — Penal Code (1860), Ss. 103, 147, 148, 304, 323 and 325 — Right of private defence of property — Rioting — Each party charging other as aggressor — Title legally with accused under decree had right of private defence. See Penal Code (1860), S. 103. **1953 Cri LJ 717: AIR 1953 All 327.**

SECTION 161

——**S. 161 (2), Proviso 2 (added by Act 10 of 1947) — Scope — Mandatory nature of.**

According to the fresh proviso to S. 161 (2) of the Tenancy Act added by S. 13 of the U. P. Tenancy (Amendment) Act, 10 of 1947, the notice to a tenant shall be served through registered post acknowledgment due. Its provisions are mandatory. Courts have no justification to ignore the existence. **1951 RD 278: 1952 All WR (Rev) 9.**

——**Ss. 161, 175, 178, 183 — Tenant ejected in accordance with law — Maintainability of suit under S. 183.**

A suit by the tenant under S. 183, for recovery of possession from the landholder cannot succeed unless the plaintiff is able to establish fraud. Any technical defect in the service of notice under S. 161 would amount to an irregularity but not to a fraud so as to render the proceedings void. **1951 RD 32: 1951 All WR (Rev) 32.**

SECTION 163

——**S. 163** — Suit under S. 163 can be filed only against tenant and not against servant. **1965 All WR (HC) 461: 1965 All LJ 777.**

——**Ss. 163, 180** — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 — Person ejected as trespasser under S. 163 — He still persisting in possession and hence again ejected by action under S. 180 — Person not an occupant and has no right to be reinstated under S. 27. **1952 All LJ (Rev) 90: 1952 RD (BR) 112.**

——**S. 163** — Ejectment proceedings against recorded tenant — Unrecorded tenant is bound by such proceedings if it could be assumed he had knowledge of proceedings. **1952 All WR (Rev) 125: 1952 RD (BR) 213.**

——**Ss. 163 and 183 — Ejectment non-representation of minor tenant — Validity — Suit under S. 183 — Maintainability — Civil P. C. (1908), O. 32, R. 3.**

As the minor was not properly represented in the proceedings the order of ejectment was without jurisdiction and void and therefore, the suit under S. 183 was maintainable. **1951 All WR (Rev) 9.**

——**Ss. 163 to 165 — Object of.**

The provisions of Ss. 163 to 165 of the U. P. Tenancy Act have been enacted for the purposes of securing speedy recovery of rents of Zamindars from the tenants. They were never intended to be utilized for purpose of securing their ejectment. **1950 RD 122: 1951 All WR (Rev) 3.**

——**Ss. 163, 165 and 171** — Application under S. 163 — Suit for ejectment under S. 171 filed simultaneously — Order for ejectment passed under S. 165 (1) during pendency of suit — Subsequent withdrawal of suit — **Held** landlord was entitled to simultaneous proceedings — Order for ejectment under S. 165 (1) cannot become illegal on ground that landlord had treated defendants as tenants by continuing suit. **1950 All WR (Rev) 12: 1950 RD 194.**

——**S. 163 — Nature of proceedigs under — Object of the Legislature.**

Proceedings under S. 163 were enacted as a special procedure for the express purpose of enabling zamindars to collect and realise rents expeditiously. The intention was not to secure ejectment of tenants from their holdings for the benefit of the zamindars. **1950 RD 194: 1950 All WR (Rev) 12.**

——**S. 163 — Suit under — Jurisdiction of Tahsildar — Plea of land being under water.**

Where in a suit under Section 165 the tenants in the first instance admitted the tenancy but later on pleaded that the land was under water, the plea does not in any way affect the jurisdiction of the Tahsildar and the ejectment would not be illegal. **1950 RD 133.**

SECTION 164

——**Ss. 164, 163, 165** — Object of — The provisions of Sections 163 to 165 have been enacted for the purposes of securing speedy recovery of rents of Zamindars from tenants. They were not intended for securing their ejectment. See Tenancy Laws — U. P. Tenancy Act (1939), S. 163. **1951 AWR (Rev) 3.**

SECTION 165

——**S. 165 (4) — Applicability — Landholder taking back possession in restitution — Deposit of amount due subsequent under the section — Validity — Period of one month in subs. (4) — Starting point — Application under Section 144, C. P. Code — Nature of.**

The application for restitution is not an application for execution of a decree; the order under Section 144 restored the status quo and therefore merely confirmed the fact that the tenants were duly ejected for non-payment of arrears in June, 1942. The deposit required to be made under Section 165 (4) not being within one month of that date will not avail.

Further, the order of the Board restoring the order for ejectment was before the enactment of the provision of sub-section (4) of S. 165 and the landholder was entitled to its benefit and be put in the position which he occupied on delivery to him in 1942. **1952 RD 258: 1952 All LJ (Rev) 342.**

——**S. 165 (1) and (2) — Scope — Provisions are mandatory — Deposit of dues before delivery of possession — Effect.**

In case of default by the tenant to pay arrears of rent and the instalments falling due by 31st of May, the Tahsildar is bound under sub-sections (1) and (2) of Section 165 to make an order for ejectment. Where however the dues are deposited before the delivery of possession either or after the ejectment order, the order must be cancelled. **1951 RD 107: 1951 An WR (Rev) 78.**

——**Ss. 165, 164, 163** — Object of — The provisions of Sections 163 to 165 have been enacted for the purposes of securing speedy recovery of rents of Zamindars from tenants. They were not intended for securing their ejectment. See Tenancy Laws — U. P. Tenancy Act (1939), S. 163. **1951 AWR (Rev) 3.**

SECTION 168

——**S. 168** — Proceedings under —Act repealed by U. P. Urban Areas Zamindari Abolition and Land Reforms Act — Effect — Person not acquiring status of sirdar — Proceedings can be continued — Section 200 of U. P. Act 1 of 1951 no bar — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act 1950 (1 of (1951), Ss. 200, 209, 210. **1965 All WR (HC) 381: 1965 All LJ 645: ILR (1965) 2 All 383.**

——**S. 168** — Application — Forum for — Application has to be made in trial Court and not in executing Court. AIR 1945 All 238. **held overruled** by 1956 All LJ 704. **1965 All WR (HC) 381: 1965 All LJ 645: ILR (1965) 2 All 383.**

——**S. 168** — Order under — Not a proceeding under Section 47, C. P. C. — Appeal against, not maintainable — Civil P. C. (1908), S. 47. **1965 All WR (HC) 381: 1965 All LJ 645: ILR (1965) 2 All 383.**

——**S. 168 (1) — Application under when to be made.**

The words of Section 168 (1) clearly show that it was not the intention of the legislature that a decree holder should exhaust all remedies in execution before making an application under Section 168. **1954 All LJ 361: 1954 All WR (HC) 359: AIR 1954 All 651 (651) (Pr 3) (DB).**

——**Ss. 168, 181** — Ejectment decrees or orders passed under Oudh Rent Act, Section 61 — Relevant provision in Act 17 of 1939 could be enforced. Section 68 is a continuation of the special provisions for ejectment for arrears contemplated by Sections 163 and 165. It does not cover orders or decrees already passed by competent Courts. See Tenancy Laws — U. P. Tenancy Act (1939), S. 181. **('51) 1951 RD 270.**

SECTION 170

——**S. 170** — Right under S. 45 extinguished — Landlord obtaining possession — Objection by tenant under Section 47, Civil P. C. — Abolition of Zamindari — Effect — Remedy of tenant — **Held,** landlord cannot be dispossessed under Section 47, Civil P. C. — Tenancy Laws — U. P. Abolition of Zamindari and Land Reforms Act (1 of 1951), S. 232. **1961 All WR (HC) 597.**

SECTION 171

——**S. 171** — Several tenants ejected under S. 171 — One of them can claim reinstatement under Section 27 of U. P. Tenancy (Amendment) Act (10 of 1947). See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S 27. **1952 All LJ (Rev) 282 (DB).**

——**Ss. 171 and 27** — Suit for ejectment under Section 171 — Tenant surrendering land to Zamindar in lieu of compensation before decree — Tenant not entitled to benefit of S. 27. See Tenancy Laws — U. P. Tenancy Act (1939), S. 27. **('52) 1952 All LJ (Rev) 23.**

——**S. 171** — Houses standing on small areas are "improvements" within Section 3 (8) (i) of the Act — Houses standing when applicant was ejected under Section 171 — Applicant entitled to reinstatement over entire holding. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (1). **('52) 1952 RD (BR) 241.**

——**S. 171** — Wrongful dispossession under Section 183 — Proceedings under Section 171 pending — A plot therein sold in execution of decree of arrears of rent — Purchaser obtaining delivery — Zamindar securing dakhal of the plot — Ostensible ground of decree under Section 171.

It was the landlord who brought to sale the property purchased by the plaintiff during the pendency of proceedings under S. 171, so he is estopped from taking advantage of Section 52, of T. P. Act (lis pendens). See Tenancy Laws — U. P. Tenancy Act (1939), S. 183. **('52) 1952 RD (BR) 164.**

——**S. 171** — Suit under S. 183 — Ejectment order in a suit under S. 171 — Legality can be gone into by the Court. See Tenancy Laws — U. P. Tenancy Act (1939), S. 183. **('51) 1951 RD 260.**

SECTION 172

——**S. 172 — Reinstatement of ejected tenant — Planting of trees by tenant admitted in the meanwhile — Cutting of those trees by that subsequently admitted tenant.**

It cannot be held to be an act detrimental to the holding as contemplated by Section 172 of the U. P. Tenancy Act. **1952 RD 96: 1952 ALJ (Rev) 108: 1952 AWR (Rev) 101.**

SECTION 175

——**S. 175** — Amendment of S. 19 — Effect of — No real change in substantive law — Amended section applied to pending ejectment proceedings under Section 175 — **Held,** on facts, that provisions of amended S. 19 were substantially complied with in the case. See Tenancy Laws — U. P. Tenancy Act (17 of 1939) (as amended by U. P. Act 10 of 1947), S. 19. **1963 All LJ 343: 1963 All WR (HC) 297: 1963 SCD 593: (1963) 2 SCJ 288: (1963) 3 SCR 904: AIR 1967 SC 732.**

——**Ss. 175, 183** — Suit for ejectment under Section 183 by sub-tenants — Sub-tenant liable for ejectment under Section 175 — Proviso to Section 183 was attracted and suit could not be decreed. See Tenancy Laws — U. P. Tenancy Act (1939), S. 183. **1965 All LJ 290.**

——**Ss. 175 and 295-A — Decree for ejectment under S. 175 against sub-tenant — Pendency of second appeal in High Court — U. P. Amendment Act (10 of 1947) introducing S. 295-A — Effect.**

The sub-tenant cannot be ejected for a period of 5 years. The defendant did not become a trespasser on the passing of a decree for ejectment particularly when that decree had not become final and his status was pending decision by the High Court in second appeal. **1952 RD 44: 1952 ALJ 51: AIR 1953 All 217 (217) (Pts A, B) (Prs 7, 8) (DB).**

——**Ss. 175 and 183 — Tenant ejected under S. 175 — Proper remedy — Appeal or revision — Suit under Section 183 — Not maintainable.**

The remedy of a person evicted in proceedings under S. 175, lies by way of appeal or revision and no fresh suit under S. 183 of the Act will lie. **1952 ALJ (Rev) 234: 1952 AWR Rev 209: 1952 RD 286.**

——Ss. 175 and 178 (2) — Proceedings for ejectment under Section 175 before Tahsildar — No objection raised by defendant that he had acquired hereditary right and could not be ejected — Ex-parte decree for ejectment passed by Tahsildar — In absence of objection, Tahsildar held was quite competent under Section 178 (2) to pass decree for ejectment. **('52) 1952 All LJ (Rev) 152: 1952 RD (BR) 211.**

——Ss. 175, 183 — Ex parte order for ejectment under S. 175 — Subsequent suit under S. 183 questioning the propriety of the order — Provisions under S. 19 — Effect of — Failure on the part of landholder to mention the local rates paid by him — If constitutes fraud.

The omission to mention such particulars in the application under Section 175, constitutes merely a silence as to facts, which does not constitute fraud on the part of the sir-holder as defined in the Contract Act. **1952 RD 211: 1952 ALJ (Rev) 152: 1952 AWR (Rev) 214.**

——Ss. 175 and 183 — Order of ejectment under S. 175 — Order in accordance with law and found not without jurisdiction or invalidated by fraud — Suit by ejected person under Section 183 — Acquisition of hereditary rights on ground of sir-holder paying more than Rs. 25 as local rate held could not be pleaded **('52) 1952 All LJ (Rev) 152: 1952 RD (BR) 211.**

——Ss. 175 and 183 — Ejectment under S. 175 and Dakhaldehani following it — Absence of notice to tenant — Suit by tenant under S. 183 — Maintainability.

It is merely an irregularity and does not amount to fraud which entitles a party to maintain a suit under Section 183. The remedy of the tenant lies in getting the ex parte decree of ejectment and delivery of possession set aside **('52) 1952 All WR (Rev) 55: 1952 All LJ (Rev) 73: 1952 RD (BR) 62.**

——S. 175 — Claim of defendants to be groveholders negatived — Defendants held liable to be ejected. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 31. **1952 RD (BR) 350.**

——Ss. 175, 183 (2) — Ejectment in accordance with law — What is — Ejectment under Section 175 — Ejectment in accordance with the provisions of Sections 175/178 is in accordance with law and possession under Section 183 cannot be recovered unless fraud is established. See Tenancy Laws — U. P. Tenancy Act (1939), S. 183 (2). **('52) 1952 RD (BR) 116.**

——Ss. 175, 3 (22) — Tenant of maufidar — Position of — Liability of ejectment.

A maufidar must be regarded as tenant before the passing of the Act (17 of 1939) having acquired rights of hereditary tenant under Section 29-A and therefore a person holding under him is only a sub-tenant liable to be ejected under Section 175 as non-occupancy tenant. See Tenancy Laws — U. P. Tenancy Act (1939), S. 3 (22). **('51) 1951 All WR (HC) 643.**

——S. 175 — Liability to ejectment under — Person taking land for cultivation from person holding it as rent free muafi.

The possession of the former is that of a sub-tenant. In other words he is a non-occupancy tenant and so liable to ejectment under Section 175 of the U. P. Tenancy Act. **1951 AWR (HC) 643.**

SECTION 177

——S. 177 — Technical defect in service of notice — It is only irregularity and does not amount to fraud so as to render proceedings void. 1952 All LJ (Rev) 234: 1952 All WR (Rev) 209: 1952 RD (BR) 286.

——S. 177 — Irregularity in service of notice does not amount to fraud — (Contract Act (1872), S. 17). **1952 All LJ (Rev) 152: 1952 RD (BR) 211.**

SECTION 178

——S. 178 — Proceedings for ejectment under Section 175 before Tahsildar — Ex parte decree for ejectment passed in absence of objection. Tahsildar was competent under S. 178 (2) to pass decree for ejectment. See Tenancy Laws — U. P. Tenancy Act (1939), S. 175. **('52) 1952 RD (BR) 211.**

SECTION 180

SYNOPSIS

(Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180.)

1. Applicability and scope.
2. Decree under.
3. Acquisition of right by prescription — Sub-s. (2).
4. Assessment of rent — Sub-s. (2).
5. Effect of amendment — Pending proceedings.
6. Explanations I and II — Applicability.
7. Jurisdiction of Civil Courts.
   (A) Revenue Courts.
8. Limitation.
9. Miscellaneous.

1. Applicability and scope.

●——S. 180 — Scope — "Taking and retaining possession' — Meaning of — Possession under order under S. 145, Cr. P. Code — Nature of — No defence to suit for ejectment — (Cr. P. Code 1898), S. 145).

Under Section 180, a person entitled to admit another to a plot of land can file a suit in a Revenue Court to eject him. The latter can defend the suit only on two grounds, namely, (1) that he has taken possession or retained possession of the said plot with the consent of the former; and (2) that he took possession or retained possession in accordance with the provisions of law for the time being in force. The dichotomy between taking and retaining indicates that they are mutually exclusive and apply to two different situations. The word 'taking' applies to a person taking possession of a land otherwise than in accordance with the provisions of the law while the word 'retaining' applies to a person taking possession in accordance with the provisions of the law but subsequently retaining the same illegally. A provisional order of a Magistrate under Section 145, Cr. P. Code, in regard to possession irrespective of the rights of the parties, cannot enable a person to resist the suit under Section 180 of the Act. Bhinka v. Charan Singh, **1959 All WR (HC) 440: 1959 All LJ 557: 1959 All Cri R 337: 1959 Cri LJ 1223: (1959) Supp (2) SCR 798: 1960 SCJ 892: AIR 1959 SC 960 (965, 966) (Pt D) (Prs 12, 14, 15, 16).**

——Ss. 180 (1) and (2), 30 (2) — Land — Suit for possession of land in river bed used for

casual or occasional cultivation — Suit is entertainable as Section 180 (1) applies to any 'land' irrespective of right which may or may not accrue in it to person in occupation, if no suit is brought against him. **1965 All LJ 70: AIR 1965 All 514 (516) (Pt C) (Pr 10).**

——S. 180 — Applicability — Land — Ingredients of.

In order to make the provisions of S. 180 U. P. T. A. apply the following are essentials:— (1) The suit must be in respect of a plot of land. (2) It must be filed by a person entitled to admit the defendant to occupy such plot. (3) The occupation of the defendant must be otherwise than in accordance with law. (4) The suit must be filed within the period of limitation prescribed. In order to be land it must first be a land which is held for growing of crops or as grove land or for pasturage, and secondly, it must not be a land which is occupied by buildings or appurtenant thereto other than building which are improvements. The land contemplated by Section 180, is the land which is agricultural in nature and is either let out or is meant to be let out to or held by a tenant. Land to which somebody cannot be admitted as a tenant, even though used for the purpose of a grove, would not be land within the meaning of S. 180. AIR 1953 All 85 (FB), Rel. on. **1965 All WR (HC) 161: 1965 All LJ 777.**

●——**S. 180** — Tenancy Laws — Z. A. and L. R. Act, Ss. 209, 231 (2), 240-A — Failure to bring suit under Section 180 prior to 1-7-1953 — Effect of — Adhivasi is not a tenure holder — Rights of bhumidhar and Adhivasi— Distinction between — Liability of adhivasi to ejectment arising under Section 180, Tenancy Act — Bhumidar filing suit under Section 209 of Z. A. and L. R. Act — Suit must fail — Scope of Section 231 (2), indicated. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. **AIR 1964 All 213 (FB).**

[Overruled in AIR 1968 SC 466.]

——**S. 180** — Adverse possession— Usufructuary mortgage of occupancy holding — Nature of mortgagee's possession — Mortgagee is not a trespasser though mortgage is void — S. 180, U. P. Tenancy Act (17 of 1939) not applicable — Ejectment can be made by Civil Court. See Limitation Act (1908), Art. 144. **AIR 1963 All 535.**

——**Ss. 180 and 183** — Applicability — Tenancy at fixed rate — Alienation by widow — Suit for possession by reversioner against alienee after widow's death — Civil Court's jurisdiction — The suit is maintainable in Civil Court and is not barred under S. 180 and S. 183. See Civil P. C. (1908), S. 9. **AIR 1958 All 500.**

——S. 180 (1) — Applicability — Conditions.

In order that Section 180 of the U. P. Tenancy Act, may be attracted it must be shown that on the date of suit the retention of possession was without the consent of the person entitled to admit. **AIR 1958 All 500 (501) (Pt C) (Pr 13).**

●——**S. 180 (before amendment in 1947), S. 3 (23) — 'Tenant', 'sub-tenant'.**

A sub-tenant would be included within the meaning of the word 'tenant' for the purposes of the Act unless a contrary intention appears from the context where the word is used. There is nothing in the wording of Section 180 or in the context in which the word 'tenant' has been used to indicate that the word 'tenant' does not include a sub-tenant. ILR 22 Luck 48; AIR 1947 Oudh 104; 230 Ind Cas 2 (FB), **Overruled. 1957 All LJ 928: 1927 All WR (HC) 876: ILR (1957) 2 All 275: AIR 1958 All 403 (404) (Pt A) (Pr 3) (FB).**

●——**S. 180 — "Otherwise than . . . . in force" — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (I of 1951), S. 20).**

The Zamindari Abolition Act is a part of the law for the time being in force. A defendant to a suit filed under Section 180 is not therefore debarred from contending that he is entitled to possession of the land in suit in accordance with the provisions of that Act. Jagannath v. Board of Revenue, U. P., **1955 All LJ 276: 1955 All WR (HC) 297: ILR (1955) 1 All 611: AIR 1955 All 432 (435) (Pt D) (Pr 16) (FB).**

——**S. 180 (as amended in 1947)** — Suit by grove-holder against trespasser — S. 180 applies. **AIR 1955 NUC (All) 5493.**

——**S. 180** — Suits for cancellation of lease if governed by Rule. Is covered by Section 180 read with Section 242 and Rule 4 (2) (v). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 4 (2) (v). **AIR 1955 NUC (All) 4453.**

——**S. 180 (2)** — Sub-section comes into operation when suit can be brought under S. 180 but it is not brought — Suit not maintainable — Sub-section does not apply. **AIR 1955 NUC (All) 2017.**

——**Ss. 180 and 246** — Suit under S. 180 — S. 246 applies to such suit. **AIR 1955 NUC (All) 2017.**

——**Ss. 180, 44, 198 and 242 — Suit by muafidar for possession — (C. P. Code (1908), Section 9).**

Section applies to a suit brought by a muafidar for possession against the defendants on the ground that they were trespassers who had taken possession of the land during his absence. The section being in general terms and not confined to hereditary tenants, its application to the suit will not be excluded by section 198. **1953 All WR (HC) 731: 1954 LJ 38: AIR 1954 All 355 (356) (Prs 4 to 7).**

——S. 180 — Applicability — Plaintiff claiming possession alleging unlawful ejectment by defendant.

Where the only allegation is that the defendant has unlawfully ejected the plaintiffs from possession and there is no allegation of the defendant claiming to be a tenant, it is not a case which falls under Section 180 of the Tenancy Act and consequently Section 242 of the Act would not apply and the Civil Court will have jurisdiction to try the case. **1952 AWR (HC) 64: AIR 1953 All 733 (733) (Pr 7).**

●——**Ss. 180, 206 (e) and 183** — Applicability — Suit for possession of grove land — Cause of action arising before repeal of Tenancy Act by U. P. Zamindari (Abolition and Land Reforms) Act — Court having jurisdiction — (Tenancy Laws — U. P. Zamindari (Abolition and Land Reforms) Act (1 of 1951), Ss. 19 and 209) — (Tenancy Laws — U. P. Zamindari (Abolition and Land Reforms) Order (1952), Paras. 2 and 5) — (Civil P. C. (1908), S. 9). See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 183. **AIR 1953 All 85 (FB).**

——S. 180 — Applicability — Ejectment of trespasser by grove-holder.

A grove-holder dispossessed by a trespasser cannot seek ejectment of such trespasser under

Section 180, his remedy is only by a suit in Civil Court. **1951 RD 226: 1952 AWR (Rev) 95.**

——S. 180 (as amended by Act 10 of 1947) — Scope — Suit under — Right of — Tenant of sir land.

A tenant of sir land cannot maintain a suit under Section 180 of U. P. Tenancy Act as he cannot sublet his holding (See S. 39 (2)). **1952 ALJ (Rev) 217: 1952 RD 151.**

——S. 180 — Right to sue under — Tenant of Sir land.

A tenant of Sir is not entitled to maintain a suit under Section 180 and this position has not in any way been affected or altered by Section 180 of U. P. Tenancy (Amendment) Act, 1947. **1952 AWR (Rev) 37: 1952 RD 17: 1952 ALJ (Rev) 7.**

——S. 180 (as amended in 1947) — Suit under — Necessary parties.

The law under the amended Section 180 does not make all the co-sharers in a mahal necessary parties to the suit. Unless it is shown that they have something to do with the disputed land, it is wrong to assume that they are necessary parties. **1951 AWR (Rev) 61: 1951 RD 9.**

——S. 180 — Several trespassers — Single suit to eject — If prohibited.

There is nothing in the law as Section 180 of the Tenancy Act reads prohibiting a landholder from bringing a single suit against a number of trespassers. **1951 AWR (Rev) 61: 1951 RD 9.**

——Ss. 180 and 183 — For a suit under Section 180 or Section 183 an allegation of 'title' to the land either as owner, or tenant or otherwise has to be made. **1951 All LJ 290: ILR (1951) 2 All 568: AIR 1950 All 407 (409) (Pt D) (Pr 11) (DB).**

2. Decree under.

——S. 180 — Suit of ejectment under — Decreed — Appeal against the decree — Parties to — Formal parties — Non-impleadment of parties not disclosed in the decree — Effect — Appeal not rendered incompetent and cannot be dismissed as such — Appellate Court should exercise its powers under O. 41, R. 20 of C. P. C. See Tenancy Law — U. P. Tenancy Act (1939), S. 59. **1965 All WR 540.**

——S. 180 — Scope — Decree under — Execution — The decree under Section 180 of the Act, to the extent that if granted damages and allowed costs is still executable. The proviso does not say "all decrees and orders shall be quashed". See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 31, 4th Proviso. **1958 All WR (HC) 354.**

——S. 180 — Suit by permanent lessee and his transferee to eject a trespasser — Transfer found illegal — Permanent lessee entitled to a decree in ejectment. **1952 ALJ (Rev) 144.**

——S. 180 — Decree for ejectment under S. 84 or 44, Agra Tenancy Act — Whether one under S. 180 — Applicability of Section 27 of U. P. Act 10 of 1947 — Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S, 27.

The decree under Section 86 for a matter of that even one under Section 44 of the Agra Tenancy Act cannot be taken to be one under Section 180, U. P. Tenancy Act. **('51) 1951 RD 198 (201): 1951 All WR (Rev) 187.**

——S. 180 — Suit by one of several co-sharers for ejectment — Suit decreed before amendment of Section 180 by Act 10 of 1947 — Appeal dismissed solely on the ground that one co-sharer could not bring such suit under amended section — **Held,** in second appeal, that plaintiff should be given an opportunity to prove that he could sue alone as the agent of all the co-sharers. **('51) 1951 RD 195 (2) (196): 1951 All WR (Rev) 184.**

3. Acquisition of right by prescription — Sub-s. (12).

——S. 180 — Mortgage with possession of occupancy holding — Suit for possession of land mortgaged by mortgagor — Cause of action for such suit — Possession of mortgagee when becomes unlawful.

The cause of action for recovery of possession accrues on the mortgagor's demand for possession upon payment of the mortgage-money and refusal thereof by the mortgagee. The possession of the mortgagee does not become unlawful so long as the amount due to him has not been offered. The mortgagee accordingly never becomes liable to ejectment under Section 180 of the U. P. Tenancy Act and never acquires tenancy rights under S. 180 (2) of that Act. AIR 1950 All 604 (FB) and AIR 1956 All 436, Rel. on. **AIR 1965 All 288 (299, 291) (Prs 4, 7).**

——S. 180 (2) — Scope.

Claim of defendants to be grove-holders negatived — Land found to be pasture land — Defendants held could not claim to be hereditary tenants under Section 206 (a) — Further on finding that the defendants were non-occupancy tenants, no rights could accrue either because of Section 180 (2) of the Act. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 30. **AIR 1955 NUC (All) 4168.**

——S. 180 (2) — Acquisition of hereditary rights by prescription — No plea by plaintiffs — Suit under Section 59/183 — Decree in appeal on such a plea — No opportunity given to defendants to rebut — Legality. The Appellate Court cannot set up a new plea to the prejudice of the opposite party. See U. P. Tenancy Act, S. 267. **1952 ALJ (Rev) 311.**

——Ss. 180 (2), 183 — Claim in suit under a contract — New case of acquisition of rights under Section 180 (2) — Permissibility — Benefit of Section 19 of the (Amendment) Act, 1947 — Tenants alone entitled. See Tenancy Laws — U. P. Tenancy Act (1939), S. 183. **1952 ALJ (Rev) 143.**

——S. 180 (2) — Party claiming to be hereditary tenant by virtue of contract — He cannot set up new case that he became hereditary tenant under Section 180 (2) — (Civil P. C. (1908), O. 41, R. 1). **('52) 1952 All LJ (Rev) 143: 1952 RD (BR) 235.**

——S. 180 (2) — Claim to hereditary tenancy — Mortgagees in possession of occupancy holding — On ejectment of mortgagors, mortgagees' interest extinguished — Mortgagees remaining in possession in spite of formal Dakhal — All parties accepting position as it existed before — Mortgagors again recorded as tenants-in-chief — Mortgagees are not entitled to benefit under S. 182 (2). **('52) 1952 All LJ (Rev) 57: 1952 All WR (Rev) 58: 1952 RD (BR) 57.**

——S. 180 (2) — Applicability — Possession with the consent of the landlord.

Where a person is in possession with the consent of the landlord as a licensee, limitation cannot run. **1952 AWR (Rev) 58: 1952 RD 57: 1952 ALJ (Rev) 57.**

——Ss. 180, 63 — Khudkasht of individual proprietor not of period exceeding two years when suit is brought — Proprietor does not become "Khudkasht" holder as contemplated by Section 180 (2) and cannot maintain suit under

Section 63. See Tenancy Laws — U. P. Tenancy Act (1939), S. 63. **('52) 1952 RD (BR) 180.**

——Ss. 180. 59 — Original tenant-in-chief (defendant) losing his right to recover possession by adverse possession by plaintiff — Plaintiff becoming hereditary tenant under Section 180 (2) — Suit for declaration under Section 59 — Point that plaintiff has perfected his title under S. 180 (2) not mentioned in plaint — Defendant held not prejudiced in any way. **('52) 1952 RD (BR) 172.**

——S. 180 (2) — Scope — Trespassers — Possession of holding over statutory period — No settlement of rent — Recorded tenant — Right to holding — Extinction.

Held: The plaintiff's allegation of admission to tenancy, even though not proved, their possession for over the statutory priod entitles them to be recorded as tenants in chief under Section 180 (2). This statutory provision has to be applied in this case and the plaintiffs must be declared to be hereditary tenants. (1942 RD 724, applied). **1952 RD 172.**

——S. 180 — Suit under — Tenant not pleading acquisition of tenancy by prescription — Court not justified in going into the question. **('52) 1952 PD (BR) 124.**

——S. 180 (2) — Perfecting his title by recorded trespasser — Subsistence of mortgage — Computation of period of possession — Proper rule as to.

No recorded trespasser during the subsistence of the mortgage would be entitled to claim that period for perfecting his title under S. 180 (2) of the Tenancy Act if he held by collusion with the mortgagee or the trespass was allowed, only a little prior to the eventual redemption, to defeat the mortgagor's interest. **1952 RD 99.**

——S. 180 (2) — Marfat entries — Meaning — Marfat possession — Acquisition of hereditary rights by prescription during life-time of recorded tenant, cannot be acquired.

Marfat entries have been held to be entries on behalf of the recorded tenants and not as adverse to the tenant's interest. **('52) 1952 All WR (Rev) 43: 1951 RD 279.**

——S. 180 (2) — Acquisition of tenancy by prescription — Ejectment as trespasser and landlord put in possession — Setting aside of decree and trespasser put back in possession — Trespasser, if can count time when landlord was put in possession in his favour — Continuity of actual possession — Necessity.

The period of possession of landlord cannot be counted towards the trespasser's right to acquire tenancy by prescription under S. 180 (2) of the Tenancy Act. The time for filing a suit for ejectment can be counted only from the date when the trespasser was given back the possession. **1951 RD 244: 1951 AWR (Rev) 225.**

——S. 180 (2) — Accrual of hereditary rights in Sir lands — If possible.

Hereditary rights can accrue in Sir land under Section 180 (2) of the Tenancy Act. **1951 RD 119: 1951 AWR (Rev) 140.**

——S. 180 — Acquisition of hereditary rights in sir land by trespasser.

If in possession of sir land without consent for over two years can acquire hereditary right by prescription under Section 180 (2). See Tenancy Laws — U. P .Tenancy Act (1939), S. 29. **('51) 1951 All WR (Rev) 140: 1951 RD 119.**

——S. 180 (2) — If confers hereditary rights when barred by Ss. 29 and 30.

The provisions of sub-section (2) of S. 180 of the U. P. Tenancy Act cannot be construed to confer hereditary rights where such rights are barred under Sections 29 and 30 of the Act. **1951 RD 36 (1): 1951 AWR (Rev) 31.**

4. Assessment of rent — Sub-s. (2).

——Ss. 180 and 94 — Suit under S. 180 — Power of Court to assess rent when declaring the defendants to have become hereditary tenants.

A Court can assess rent under Section 94 of the U. P. Tenancy Act in a suit filed under Section 180 of the Act for ejectment and damages with an alternative prayer for assessment of rent when it gives a declaration under Section 180 (2) that the defendants had become hereditary tenants. **1952 AIJ 177: AIR 1953 All 236 (238) (Pt C) (Pr 13).**

5. Effect of amendment — Pending proceedings.

——Ss. 180 (as amended by U. P. Act 10 of 1947) and 242 — Tenant suing trespasser for ejectment in Civil Court — S. 180 amended pending suit — Suit triable by Revenue Court — Retrospective effect of S. 180 — Return of plaint to revenue Court — Power of High Court in second appeal.

Held, that though the U. P. Tenancy Act was repealed by the U. P. Zamindari Abolition and Land Reforms Act, in view of Clause (2) of the U. P. Land Tenure (Legal Proceedings) (Removal of Difficulties) Order the High Court in second appeal which was pending when the U. P. Zamindari Abolition and Land Reforms Act came into force, had power to direct the plaint to be returned for presentation to a Revenue Court. **1957 All WR (HC) 853: ILR (1957) 1 All 287: AIR 1957 All 257 (258, 259) (Pt A) (Prs 3a 8, 9) (DB).**

●——S. 180 — Proceeding under pending on 30th June, 1952 — Proceeding, if to be decided with reference to any right accrued under U. P. Zamindari Abolition Act — (Tenancy Laws — U. P. Zamindari Abolition and Iand Reforms Act (1 of 1951), S. 20) — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), Rr. 5 (3) and 5-A — (Tenancy Laws — U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order (1952), Cl. 2).

Notwithstanding anything contained in the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952, a suit, appeal or other legal proceedings under S. 180 of the U. P. Tenancy Act, pending on 30th June, 1952, will be decided with reference to any right which may have accrued to either party under the U. P. Zamindari Abolition and Land Reforms Act. 1954 All LJ 121; AIR 1954 All 434, **Overruled.** Jagannath v. Board of Revenue, U. P., Allahabad, **1955 All LJ 276: 1955 All WR (HC) 297: ILR (1955) 1 All 611: AIR 1955 All 432 (435) (Pt A) (Pr 20) (FB).**

——Ss. 180, 242 (as amended by U. P. Act 10 of 1947) — Suit filed in Civil Court — Effect of amendment on jurisdiction is not to take away jurisdiction of civil Court in matter of suits rightly instituted in Civil Court. **AIR 1955 NUC (All) 2689 (DB).**

——Ss. 180 (as amended by U. P. Act 10 of 1947) — Retrospective effect — Difference between substantial law and procedural law pointed out — Amendment in procedural law — It does not take away jurisdiction of civil Court in suits already instituted before amendment of Section 180 — Civil P. C. (1908), Preamble,

S. 9 — (AIR 1953 All 188 — AIR 1953 All 254 and Second Misc. Appeal No. 23 of 1948 dated 17-9-1954 (All) **Overruled). AIR 1955 NUC (All) 2689 (DB).**

——**S. 180** — Suit filed in revenue Court pending enactment of U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) — Abatement of suit — Suit freshly filed in Civil Court — Competency of — Applicability of U. P. Land Tenure (Legal Proceedings) (Removal of Difficulties) Order (1952), S. 2 (b). To such a suit Section 2 (b) of the U. P. Land Tenure (Legal Proceedings) (Removal of Difficulties) Order, 1952, does not apply. See Civil P. C. (1908), S. 9. **AIR 1955 NUC (All) 1742.**

——**S. 180 (as amended in 1947), S. 242 — Suit pending in civil Court — Effect of amendment — Proceedings held without jurisdiction — U. P. General Clauses Act (1 of 1904), S. 6.**

It is well known that no one has a vested right in procedural law. The amendment of Section 180 must, therefore, be held prima facie to be applicable to all pending as well as future actions Section 6 of the U. P. General Clauses Act, 1904 does not alter the position. **1952 All LJ 92: AIR 1953 All 254 (255, 256) (Pt B) (Prs 5, 6).**

[**Overruled** in AIR 1955 NUC (All) 2689.]

——**Ss. 180 and 242 — Effect of amendment of S. 180 on pending suit — Interpretation of statutes, retrospective effect.**

Where a suit under Section 180 by a tenant against a trespasser for recovery of possession is instituted in a Civil Court and during its pendency, Section 180 is amended in such a way that the suit in question became triable by revenue Courts, and consequently the jurisdiction of the Civil Court became barred under Section 242, the Civil Court has no jurisdiction to proceed with the trial of the case after the amendment, and must return the plaint for presentation to the proper Court. The amendment relates to a change in the procedure and so has immediate effect. AIR 1933 Oudh 274; AIR 1934 Oudh 16, Rel. on. **1952 All LJ 132: AIR 1952 All 188 (189, 190) (Prs 6, 9, 12).**

[**Overruled** in AIR 1955 NUC (All) 2689.]

——**Ss. 180 and 183 — Suit against C, as trespasser under S. 180, pending in appeal — Lease by landlord to R creating a tenancy — Suit remanded by the Board to raise a new issue without finding against the decision on the other points — Effect — Subsequent compromise — C getting restitution — Right of R to sue under S. 183 of the Act.**

Held: The contention that R was ejected by a due process of law in the restitution proceedings in favour of C and therefore no suit would lie under Section 183, cannot be accepted.

An ejectment by a process of law is illegal if the ejectment is held to be illegal. **1952 ALJ (Rev) 304.**

——**S. 180** —Suit under— Alteration in period of limitation made by Section 32 of Amending Act 1947 governs suit instituted before but pending at time when Act came into force — New rule can be applied to suits reaching stage of appeal — Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 32 — Interpretation of Statutes — Statute of limitation — Retrospective operation — General Clauses Act (1897), S. 6. Raghuraj Singh v. Sobhaman, **1951 All WR (HC) 1: 1951 All LJ 56: ILR (1952) 1 All 207: AIR 1951 All 485 (485 to 488) (Prs 1, 8 to 11, 18, 19, 23) (FB).**

——**S. 180 (as amended) — Scope — Effect of amendment.**

The amendment of Section 180 of the Tenancy Act has brought cases filed by tenants even against trespassers within the purview of Section 180. Where a case has been decided by the civil Court prior to the amendment, the jurisdiction of that Court would not be affected by the subsequent change in the law. **1951 AWR (HC) 370.**

6. Explanations I and II — Applicability.

——**S. 180, Expl. 2 (as amended by Act 10 of 1947) — Suit for possession by tenant against trespasser — Forum of suit — Effect of Amending Act on vested right under decree — (Interpretation of Statutes).**

A suit for possession of an agricultural plot by the tenant against a trespasser filed in 1945 in a civil Court could rightly be maintained in that Court. The mere fact that the amending Act (10 of 1947) has added an explanation to Section 180, U. P. Tenancy Act, 1939, does not mean that Section 180 as it originally stood was applicable to a suit by a tenant against a trespasser. AIR 1947 Oudh 104 (FB), Rel. on. And the decree of the trial Court which is correct according to the law as it stood at that time is not affected by the subsequent amendment of Section 180 which is made after the passing of the decree. **1957 All LJ 137: 1957 All WR (HC) 237: AIR 1957 All 286 (286, 287) (Prs 7, 8).**

——**S. 180, Explanation 2 (as amended by U. P. Act 10 of 1947) — Applicability — 'May maintain' — Effect of.**

The real object behind the Explanation was to emphasise that a suit under Section 180 could be instituted by a tenant also. It cannot be said that the Explanation applies only in pending suits. **1957 All WR (HC) 853: ILR (1957) 1 All 287: AIR 1957 All 257 (259) (Pt C) (Pr 7) (DB).**

——**S. 180, Expl. 2 (as amended by Act 10 of 1947) — 'Tenant' — If includes sub-tenant — S. 2 (23).**

The word 'tenant' in Explanation 2 of Section 180 of the U. P. Tenancy Act does not include a 'sub-tenant'. **ILR (1957) 2 All 185.**

——**S. 180, Expl. I** — Suit by co-sharer entitled to exclusive possession of joint land with consent of other co-sharers — Explanation does not apply — Suit lies in Civil Court. **AIR 1955 NUC (All) 2741.**

7. Jurisdiction of Civil Courts.
(A) Revenue Courts.

7. Jurisdiction of Civil Courts.

——**S. 180 — Suit for possession — Not falling within definition of 'land' — Jurisdiction of Civil Court, if barred — Test.**

The test which should be applied, when the question arises as to whether the suit for possession of certain plot of land instituted in Civil Court is not cognisable by that Court but is cognisable by the Revenue Court in view of Section 180 is to see the nature of title which may have been set up by the defendant before the institution of the suit; in other words the state of affairs which existed before the institution of the suit. If, therefore, the State of affairs existing prior to the institution of the suit and of which the plaintiff was aware pointed out that the title set up by the defendant was

that he claimed to be the tenant of the plot then the jurisdiction in respect of a suit for possession would belong to the Revenue Court. **1957 All LJ 623: 1957 All WR (HC) 631.**

——**Ss. 180, 242** — Suit for ejectment of trespasser — The suit is cognizable by Revenue Court after amendment of Act. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **AIR 1955 NUC (All) 177.**

——**S. 180** — Usufructuary mortgage of tenancy holding — Mortgage void — Suit for possession by mortgagor against mortgagee as trespasser is maintainable in revenue Court. 1950 All LJ 713 and 1946 All LJ 369, Ref. **1952 All LJ 80: AIR 1952 All 544 (546) (Pr 6).**

——S. 180 — Exclusive jurisdiction of revenue Court — Civil P. C. (1908), S. 9.

The jurisdiction of the Court depends upon the state of affairs which existed at the time of the institution of the suit. Where in two earlier suits the defendant set up a plea of tenancy, in the absence of anything to suggest the contrary the circumstances indicate that the plaintiff must have known that that was the ground on which the defendant claimed possession of the land and the revenue Court alone has jurisdiction to entertain the suit. **1951 All LJ 265: 1951 All WR (HC) 467: AIR 1951 All 611 (612) (Pt B) (Pr 4).**

——**S. 180** — Suit for ejectment against trespasser — Defendant alleging tenancy rights — Revenue Court has jurisdiction. AIR 1949 All 257, Disting. **('50) 1950 ALJ 861: 1951 All WR (HC) 274: AIR 1951 All 610 (610) (Pt A) (Pr 4) (DB).**

——S. 180 — Further reliefs arising out of same cause of action within jurisdiction of revenue Court — Civil P. C. (1908), S. 9.

Where the principal relief claimed was under the jurisdiction of the Civil Court the fact that further reliefs claimed and arising out of the same cause of action with regard to the same property against the same defendant were within the jurisdiction of the revenue Court would not oust the jurisdiction of the civil Court to entertain the whole suit. **1951 All WR (HC) 199 (DB).**

——S. 180 — Reliefs awardable by civil and revenue Courts — Separation of — Civil P. C. (1908), S. 9.

If possession of some plots is claimed and an injunction and damages are claimed with regard to others then the relief which can be granted by the revenue Courts can be separated from the one which can be granted by the civil Court but where possession and injunction are claimed with regard to the same plots this cannot be done. 1943 OWN 101, Dist. **1951 All WR (HC) 199 (DB).**

——S. 180 — Jurisdiction of Civil and Revenue Courts — Test.

Where the dispute between the parties to the suit relate to proprietary rights and it is not asserted by any of the defendants that they were in possession only under a claim of tenancy, the Civil Court will have jurisdiction to entertain the suit. Where the main relief of injunction can be granted only by a Civil Court, though the other reliefs in respect of the same property and against the same defendants may fall within the jurisdiction of the Revenue Court that would not oust the jurisdiction of the Civil Court to entertain the suit. **1951 AWR (HC) 199.**

——**S. 180** — Suit for possession against trespasser — Plaintiff knowing that defendant claimed possession as tenant — Jurisdiction of civil Court — The suit lies in a revenue Court and not in a civil Court. Civil P. C. (1908), Section 9. **1950 All WR 676: 1952 All LJ 364: AIR 1950 All 532 (533) (Pt B) (Pr 8).**

——Ss. 180, 183, 242 — Specific Relief Act (1877), S. 9 — Jurisdiction — Civil and Revenue — Suit for ejectment in respect of agricultural holding framed under S. 9 — Civil P. C. (1908), S. 9.

The suit is on the basis of his previous possession or dispossession, it is cognisable by Civil Court, but if the plaintiff alleges his title to the land and also possession and dispossession by the defendant the suit is cognisable by the Revenue Court under Section 180 or S. 183. See Specific Relief Act (1877), S. 9. **AIR 1950 All 407 (DB).**

——**Ss. 180 and 183** — Suit by tenant against landlord who was preventing plaintiff from occupying his land, lies in revenue Court which alone has jurisdiction to try the same. If the defendant can be said to be a landholder as defined in the Tenancy Act, the suit would lie in the revenue Court under Section 183. If he cannot be said to be a landholder he can be sued under Section 180 as amended. AIR 1945 Oudh 118, Ref. **1949 All WR (HC) 457: ILR (1950) All 1130: AIR 1950 All 96 (97) (Pr 2) (DB).**

7 (A). Revenue Courts.

——**S. 180 (1)** — Jurisdiction — Suit by subtenant against a trespasser for ejectment — Suit does not fall under the section — Subtenant not a person who could admit anyone to occupy the holding — Suit cognisable by Civil Court — Civil Procedure Code (1908), Section 9. (1961) ALJ (Rev) 47, Disapproved. **1962 All WR (HC) 155: 1962 All LJ 193.**

——**Ss. 180, 242** — Plaint allegations making suit one under Section 54, Specific Relief Act — Facts entitling plaintiff to relief under S. 180, Tenancy Act — Not pleaded — Jurisdiction of civil Court is not barred. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **AIR 1960 All 573.**

●——**Ss. 180 and 183** — Scope of — Illegal dispossession from agricultural lands — Suit under Section 9, Specific Relief Act, 1877 — Whether barred. Jurisdiction of Civil Court is not barred. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **AIR 1959 All 1 (FB).**

●——**S. 180** — Applicability — 'Without the consent of the person entitled to admit him as tenant' — Defendant holding land with permission of plaintiff — Plaintiff held could maintain suit for ejectment of defendant under Section 180 — Suit could only be maintained in revenue Court and not in Civil Court. Wali Mohammad v. Taqi, **1957 All LJ 928: 1957 All WR (HC) 876: ILR (1957) 2 All 275: AIR 1958 All 403 (404) (Pt B) (Pr 4) (FB).**

——Ss. 180, 183, 242 — Jurisdiction — Suit under S. 9, Specific Relief Act — (C. P. Code (1908), S. 9).

That the plaintiff could obtain a relief on the cause of action that had accrued by means of a suit under Section 180 or S. 183, U. P Tenancy Act, is a circumstance which divests a civil Court of its jurisdiction. In order to confer jurisdiction upon a Revenue Court the plaint must allege a cause of action in respect of which it can grant relief. Section 9, Specific Relief Act, certainly provides a speedy and summary remedy to a person who has been wrongfully dispossessed by another; but the ban im-

posed by Section 242, U. P. Tenancy Act, on a Civil Court, to entertain suit includes a suit even under Section 9, Specific Relief Act. If the jurisdiction of a Civil Court is barred, even a suit under Section 9, Specific Relief Act, cannot be filed. AIR 1950 All 407 and ILR (1951) 2 All 16 and AIR 1954 All 199 and AIR 1946 All 486 and 1950 All LJ 645 and AIR 1953 All 733, Diss. from. **1957 All LJ 783: 1957 All WR (HC) 771: AIR 1958 All 48 (50 to 53) (Prs 4, 7) (DB).**

[**Overruled** in AIR 1959 All 1.]

——Ss. 180 and 183 (as amended by Act 10 of 1947) — Suit by sub-tenant to eject trespasser — Civil Court's jurisdiction — (C. P. Code (1908), S. 9). **ILR (1957) 2 All 185.**

——Ss. 180, 30, 40 — Applicability — Suit for ejectment by assami — Jurisdiction of civil court is barred — (Civil P. C. (1908), S. 9). **AIR 1955 NUC (All) 2732 (DB).**

——S. 180 (before amendment of 1947) and S. 242 — Suit against co-sharer in peaceful possession — Forum — (C. P. Code (1908), S. 9).

A suit by one co-sharer against another who was in peaceful possession of a particular plot of land instituted in 1945 would be governed by the law as it stood on that date both as regards substantive and procedural rights. Hence the suit in question could not be covered by S. 180 so as to become a suit exclusively within the jurisdiction of the revenue Court under S. 242. Such a suit is rightly instituted in Civil Court. **1953 All WR (HC) 615: 1953 All LJ 687: AIR 1954 All 191 (191, 192) (Pt A) (Pr 6).**

——S. 180 —Suit for possession — No question of title — Jurisdiction and power of Court — Civil Court has jurisdiction under S. 9 of the Specific Relief Act. See Specific Relief Act (1877), S. 9. **AIR 1954 All 109.**

——Ss. 180, 183 (before amendment in 1947) — Lease by one co-sharer without consent of other co-sharers — Suit for declaring lease to be invalid and for possession — Jurisdiction of Civil Court — Civil P. C. (1908), S. 9 — Such a suit is maintainable in a civil Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 183. **AIR 1952 All 650 (DB).**

——Ss. 180, 242 — Reliefs for possession and injunction — Civil P. C. (1908), Ss. 9, 115.

If in a suit for possession of tenancy land and damages a prayer for injunction be added which is based on the same cause of action the jurisdiction of the revenue Court will not be ousted. But where the two claims are based on different causes of action, the relief based on the claim for possession and damages is within the jurisdiction of the revenue Court and the relief based on the claim for injunction is within the jurisdiction of the civil Court. **1951 All LJ 265: 1951 All WR (HC) 462: AIR 1951 All 611 (612, 613) (Pt C) (Prs 6, 8, 10).**

——Ss. 180, 242 — Perpetual lease by karta — Suit for possession by junior members of family — Lease alleged to be in excess of karta's power — Plaintiffs not claiming either in plaint or in proceeding to be persons entitled to admit tenant to suit land — Suit does not fall under Section 180 — Trial of suit by Civil Court is not barred. **('51) 1951 AWR 48: AIR 1951 All 581 (582) (Pr 8).**

——S. 180 — Applicability — Defendant pleading proprietary title. Section 180 has no application and the suit is rightly instituted in Civil Court. **1951 All WR (HC) 6: AIR 1951 All 437 (437, 438) (Prs 5, 11, 12) (DB).**

——Ss. 180 and 242 — Suit for ejectment by tenant against trespasser — Competency of Civil Court to entertain.

A suit for ejectment by a tenant against a trespasser does not lie under Section 180. Consequently the jurisdiction of the civil Court to entertain such a suit is not barred by reason of that section. **1951 All WR (HC) 370.**

——S. 180 — Exclusive jurisdiction of Revenue Courts — Civil P. C. (1908), S. 9.

Where the dispute between the plaintiffs and the defendants related to proprietary rights and none of the defendants asserted that they were in possession only under a claim of tenancy and the suit was not only for possession but for possession and an injunction to restrain the defendants from digging sand from the plots in suit, the civil Court has clearly jurisdiction to entertain the suit. **1951 All WR (HC) 199 (DB).**

——S. 180 — Trespasser on grove — Suit for ejectment under S. 180 — Maintainability.

The suit by a grove-holder against a trespasser on the grove does not lie in the revenue court, and Section 180 is not applicable. His remedy for ejectment lies only in civil Court **1951 RD 226.**

——Ss. 180, 60 — Suits for cancellation of lease — Jurisdiction of civil Court — Civil P. C. (1908), S. 9. To grant the relief of cancellation of the lease, therefore, Civil Court alone is the proper forum. See Tenancy Laws — U. P. Tenancy Act (1939), S. 60. **AIR 1950 All 532.**

——S. 180 — Suit for ejectment of trespasser from grove land — Jurisdiction of civil Court — Civil P. C. (1908), S. 9.

A suit for ejectment of a trespasser from a groveland is triable by a civil Court and not by a revenue Court as Section 180 under which a suit for ejectment of a trespasser can be filed by a landlord, has no application to a groveland. **1950 All WR 487: 1952 All LJ 384: AIR 1950 All 528 (528) (Pt A) (Pr 5).**

——Ss. 180, 59, 183 and 242 (before amendment by Act 10 of 1947) — Suit by tenant against trespasser — Jurisdiction of civil Court. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **AIR 1950 All 449.**

8. Limitation.

——S. 180 (prior to amendment by U. P. Act 10 of 1947) — Plaintiff dispossessed from land in July, 1941 — Suit for possession filed on 24-3-1945 — Suit held filed in time — Amendment during pendency of suit — Effect of, on limitation — One of the reliefs relating to grove — Suit as a whole maintainable in Civil Court — Civil P. C. (1908), S. 9. ILR 35 All 227, Rel. on. **1962 All WR (HC) 296: 1962 All LJ 419.**

——S. 180 — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 232 (1) — Suit for ejectment of tenant — Plea in defence that tenant has acquired Adhivasi right taken on change in law introduced by application of Zamindari Abolition and Land Reforms Act during pendency of appeal — Limitation does not apply to plea in defence as Section 232 (1) Zamindari Act does not apply to the defence. **AIR 1955 NUC (All) 4440.**

——S. 180 and Sch. 4, Group B, Items 18 — Suit under Section 180 — Item 18 does not apply — Suit will not be governed by Art. 142 — Limitation — (Limitation Act (1908), Art. 144). **AIR 1955 NUC (All) 2017.**

——**S. 180** — Suit for ejectment by some co-sharers — Defendant raising plea of hereditary tenancy — Procedure indicated — Limitation applicable, stated. **AIR 1955 NUC (All) 1148 (DB).**

——**S. 180** — Applicability — Civil suit by tenant against person who had no right to possession — Plea of hereditary tenancy — Availability. As the limitation required to establish hereditary tenancy, S. 180 is inapplicable and the usual period of 12 years for adverse possession has to be proved. **AIR 1952 All 305 (305, 306) (Pt B) (Pr 7).**

——**S. 180** — Suit by vendee against vendor — Transfer of proprietary rights — Starting point of limitation was the date of mutation and not of transfer. **1952 All LJ (Rev) 270.**

——**S. 180** — Death of a tenant — One of the rival heirs put in possession under an order in proceedings under S. 145, Cr. P. Code — Suit under S. 59, Tenancy Act by the defeated claimant — Decision in appeal that none could succeed to the tenancy — Suit by zamindar against the person put in possession — Starting point of limitation. **Held,** that the suit filed on 16-12-43 was beyond the period of limitation, the starting point being the date A was put in possession and not the date of decision in appeal in the suit under S. 59 of the Act. **1952 All LJ (Rev) 224.**

——S. 180 — Suit under — If barred by mere possession over abandoned holding for a long time.

Mere possession over an abandoned holding for any number of years is not enough to make a suit against the person in possession time-barred unless it is shown that such possession was unlawful to the knowledge of the Zamindar. **1951 AWR (Rev) 158: 1951 RD 188.**

——S. 180 — Zamindar's right to sue trespasser against tenant on abandonment by the latter — Limitation — Starting point.

The Zamindar's right to sue under S. 180 of the Tenancy Act a trespasser against the tenant on abandonment by the latter does not arise until he enters upon the abandoned holding according to the provisions of S. 88 of the Act. **1951 AWR (Rev) 125: 1951 RD 98.**

——**S. 180 (2)** — Commencement of period of limitation for purposes of — Plaintiff suing in 1944 for declaration that defendants are trespassers after failing to get possession under ejectment decree of Civil Court in 1943. They cannot be held to have acquired such rights because the period of limitation cannot be taken to have commenced for the purpose of sub-section (2) of Section 180 before the formal possession was delivered to the plaintiff in execution of the Civil Court decree. **1951 AWR (Rev) 99.**

——S. 180 — Suit under — Limitation — Starting point.

The trespass of the defendants who, till the High Court decree, were claiming to be proprietors and heirs themselves, obviously started only after the final decree in 1946, and the suit against them, which was filed only about a month later, could not be held to be bevond time. **1951 All WR (Rev) 61: 1951 RD 9.**

——**S. 180 (2)** — Applicability— Plaintiff's title recognised by Civil Court as against defendant who had obtained mutation — Suit by plaintiff under S. 180 within two months of decree to eject defendant as trespasser — The defendant cannot turn round and plead that he had become a hereditary tenant under S. 180 (2) before the suit was instituted. The suit brought within two months thereof cannot be held to be beyond time. **1951 All WR (Rev) 61: 1951 RD 9.**

——S. 180, Expl. II (as amended by Act 10 of 1947) — If retrospective in operation — Suit by tenant in Civil Court — Limitation.

Expln. II to S. 180 of the U. P. Tenancy Act added by the Amendment Act 10 of 1947 has not got any retrospective effect and where a suit by a tenant under S. 180 has been rightly instituted in a Civil Court, it will be governed by the 12 years rule of limitation. **1951 All WR (HC) 491.**

——**S. 180** — Suit for ejectment under S. 180 — Limitation — Allegation that plaintiff was ousted subsequent to date of dakhal — It is for plaintiff to clearly state date of such trespass or ouster — It cannot be presumed or decided by mere inferences — In the absence of any other clear evidence or assertion by plaintiff himself trespass must be presumed to have started from date of dakhal. **('51) 1951 All WR (Rev) 6: 1950 RD 177 (179, 180).**

——S. 180 (before the amendment in 1947) — Suit for ejectment of trespasser from sir-land — Limitation — Limitation Act (1908), S. 29, Article 144.

The suit for ejectment of trespasser from Sir land is governed by S. 180 (1) and if the suit is not brought within the period of 3 years, the trespasser would become a hereditary tenant of the land — (Tewelve years' rule of limitation under Limitation Act does not apply). **1950 All WR 427: AIR 1950 All 439 (440) (Pr 3).**

——**S. 180** — Right to eject lessee of mortgagee of sir lands on redemption after 15 years — The sir rights would not revive as redemption was after 15 years. The lease would be binding on the mortgagor and the lessee could not be ejected as a trespasser as he had become a hereditary tenant. **1950 RD 150.**

9. Miscellaneous.

——**S. 180** — Suit for possession — Even non-occupancy tenant can bring suit under section. **1965 All LJ 70: AIR 1965 All 514 (516) (Pt B) (Pr 9).**

——**S. 180** — Lands seasonly submerged under water every year reverts to possession of owner — Principle applies to suits under Tenancy Laws. **AIR 1965 All 313 (317, 318) (Pt B) (Prs 10, 12).**

●——**Ss. 180 and 242** — Ejectment decree obtained after 1-1-1940 — Execution — Annulment of — Reinstatement after 1947 Act — Liability to ejectment in execution of decree obtained after 1-1-1940 — Second suit for ejectment is barred. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27. **AIR 1965 All 116 (FB).**

●——**Ss. 180 and 242** — Suit for ejectment under S. 180 in Civil Court is barred — Civil P. C. (1908), S. 9. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **AIR 1965 All 116 (FB).**

——**S. 180 (2)** — Plaintiffs holding as intermediaries planting trees on lands — Trees were in such numbers taking shape of grove — Plaintiff held became bhumidars of the lands. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 18. **1965 All WR (HC) 22.**

●—— S. 180 — Civil P. C. (1908), O. 1, R. 10 and O. 22, Rr. 1, 2 and 10 — Suit under S. 59, U. P. Tenancy Act or appeal arising out of it — Zamindar, after abolition of zamindari, is neither a necessary nor proper party. See Civil P. C. (1908), O. 1, R. 10. **AIR 1963 All 549 (FB).**

——**Ss. 180, 59 and 183** — Suit for redemption and possession of occupancy plots under usufructuary mortgage deed in terms of compromise — Compromise decree amounting to sale of certain suit plots in consideration of mortgage money — Mortgagees no longer in permissive possession and becoming hereditary tenant after expiry of period of limitation — Suit by mortgagors under S. 59 for mere declaration of right and title as occupancy tenant is barred by S. 42 of the specific Relief Act. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **1963 All WR (HC) 734.**

——**S. 180** — Suit by tenant who had obtained a declaration of his tenancy rights under S. 6 of U. P. Agricultural Tenants (Acquisition of Privileges) Act of 1949 — Death of plaintiff pending suit — Application for substitution by heir on the basis of will bequeathing his rights to the petitioner — U. P. Act 10 of 1949, amended by addition of Cl. (c) to S. 7, given retrospective operation by S. 340 of the U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) — Devisee acquires rights under the will and entitled to be impleaded as legal representative, Constitution of India, Art. 226 — Civil P. C. (1908), O. 22, R. 3 — Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), Ss. 6, 7 (c) — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1954), S. 340. **1962 All WR (HC) 539: 1962 All LJ 596.**

——**Ss. 180 and 183** — 'Tenant if includes subtenant' — Right of suit. **1957 All LJ 623: 1957 All WR (HC) 631.**

——**S. 180** — Suit under — Parties to — All cosharers are necessary parties. **AIR 1955 NUC (All) 5510.**

——**S. 180 (as amended in 1947)** — Land includes groveland. **AIR 1955 NUC (All) 5493.**

——**S. 180** — Suit under Ss. 63 and 180, U. P. Tenancy Act — Stay and abatement of — The suit in which the appeal was pending was liable to be stayed under R. 4 and then to be abated under R. 5. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 16. **AIR 1955 NUC (All) 3552 (DB).**

——**S. 180 (2)** — Suit for possession against trespasser in possession since 1935 — Suit for possession within two years from date of commencement of Act — Trespasser would not acquire any tenancy right. **AIR 1955 NUC (All) 1729.**

——**S. 180** — Death of one respondent — Abatement of appeal — Principle — The principle guiding the abatement of an appeal in part or as a whole is that the decision of the appeal should not result in two inconsistent decrees. See Civil P. C. (1908), O. 22, R. 4. **AIR 1954 All 436 (DB).**

——**Ss. 180 and 160 (3)** — Penal Code (1860), Ss. 103, 147, 148, 304, 323 and 325 — Right of private defence of property — Rioting — Each party charging other as aggressor — Title legally with accused under decree — Accused had right of private defence. See Penal Code (1860), Section 103. **1953 Cri LJ 717: AIR 1953 All 327.**

——**Ss. 180, 63** — Decree for declaration under S. 63 but order staying relief for ejectment under S. 180 passed on 30-12-1949 — Validity — The decree and order cannot be deemed to be in contravention of the provisions of the U. P. Act 7 of 1950. See Tenancy Laws — U. P. Tenancy Act (1939), S. 63. **('52) 1952 All LJ (Rev) 87.**

——**S. 180** — Tenant ejected under S. 44, Agra Tenancy Act — Decree confirmed by Commissioner — Second appeal dismissed summarily — Proceedings under S. 44 of Agra Tenancy Act held could not be deemed to have continued under S. 180 of the Act. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27. **('52) 1952 RD (BR) 259.**

——**S. 180** — Mortgagee of sir land letting it to plaintiff not in usual course of prudent management of property but when redemption suit is pending or in any case imminent to prevent land passing to mortgagor without encumbrance — Plaintiff acquires no tenancy rights which can enure after redemption — Plaintiff is a mere trespasser who can be ejected by mortgagor after redemption — (T. P. Act 1882, S. 76 (a)). See Tenancy Laws — U. P. Tenancy Act (1939), Section 11. **('52) 1952 RD (BR) 203.**

——**S. 180** — Tenant of sir cannot sue under S. 180. **('52) 1952 RD (BR) 151.**

——**Ss. 180, 163** — Person ejected as trespasser under S. 163 — He still persisting in possession and hence again ejected by action under S. 180 — Person not an occupant and has no right to be reinstated under S. 27. See Tenancy Laws — U. P. Tenancy Act (1939), S. 163. **('52) 1952 RD (BR) 112.**

——**S. 180 — Entry of name of widow of holder of fixed rate holding as co-tenant, though she was not entitled to succeed — Effect.**

The entry must be presumed to have been made with the consent of the collaterals by way of consolation. She is only a licensee with a limited life interest, terminating on her death. See Tenancy Laws — U. P. Tenancy Act (1939), Section 59. **('51) 1951 RD 252.**

——**S. 180 — Right to sue for ejectment — Landholder who has granted leases to third parties.**

The mere execution of leases in favour of third parties cannot take away the landholder's right to seek ejectment of a trespasser. **1951 RD 162: 1951 All WR (Rev) 154.**

——**Ss. 180, 11** —. Mortgagee of sir plots admitting tenant — Status and rights of such a tenant on redemption — Tenant admitted by a mortgagee of sir plots does not become tenant of Sir land. He is a tenant of the land in possession of the mortgagee and when on redemption sir rights revive. See Tenancy Laws—U. P. Tenancy Act (1939), S. 11. **1951 All WR (Rev) 115.**

——**S. 180 — Right of khudkasht holder.**

The khudkasht holder has the right to file a suit against trespasser on his khudkasht land even in a lambardari mahal. **1951 RD 104 (105): 1951 All WR (Rev) 109.**

——**Ss. 180 and 47 (4)—Dismissal of suit under S. 180 as defendant was a sub-tenant and not a trespasser — Right of possession of sub-tenant expiring during pendency of second appeal — Ejectment can be decreed on the principle of S. 107 (1) (a) and O. 41, R. 33, Civil P. C. 1951 All WR (Rev) 52: 1951 RD 39.**

——**Ss. 180, 245 (as amended in 1947)** — Lambardar — Right to eject tenant admitted by khudkasht holder not entitled to admit tenant. The lambardar alone can sue to eject. See Tenancy Laws — U. P. Tenancy Act (1939), S. 245. **1951 All WR (Rev) 42.**

——**Ss. 180, 245 and 246** — Co-sharer letting out khudkhast — Suit for ejectment by lambardar is maintainable. **1951 RD 34: 1951 All WR (Rev) 42.**

——**S. 180** — Suit for ejectment by all co-sharers — Death of one — Heirs not impleaded — Remaining plaintiffs definitely stating that it was not necessary to implead sons of deceased co-sharer — Subsequent application that remaining plaintiffs who pursued suit, were competent to do so, being sole land-lords — Application held not maintainable. **1951 All WR (Rev) 6: 1950 RD 177.**

——**S. 180** — Trespass — Evidence — Mere fact that in some plots no crops were noted in certain years in revenue records is no justification for the inference that plots were in possession of owner — It is conceivable that trespasser has been cultivating all the plots but sowed only some of them. **1951 All WR (Rev) 6: 1950 RD 177.**

SECTION 181

——Ss. 181, 168 — Ejectment decrees or orders passed under Oudh Rent Act S. 61 — Enforcement of — Relevent provision in Act 17 of 1939.

The relevant corresponding section under which the ejectement decree or orders passed under the Oudh Rent Act could be enforced was S. 181 of the U. P. Tenancy Act. **('52) 1952 All WR (Rev) 92: 1951 RD 270.**

——S. 181 — Rules under, R. 104 — Proclamation by beat of drums — Omission to send written notice — Condonation under S. 99, Civil Procedure Code.

Proclamation by beat of drum cannot take the place of issuing notice to the judgment-debtors. Omission to send notice cannot be condoned under S. 99, Civil P. C. **1951 RD 197: 1951 All WR (Rev) 167: 1952 All LJ (Rev) 101.**

SECTION 182

——S. 182 — Scope — (Specific Relief Act (1877), S. 9).

Decrees passed under the U. P. Tenancy Act are passed both by the revenue Courts and Civil Courts and evidently the reference to decrees by the Civil Courts in S. 182 of the U. P. Tenancy Act is to decrees passed under the U. P. Tenancy Act and not to decrees passed under any other law. A decree passed under Section 9 of the Specific Relief Act does not have any reference to the title of the parties to the propety and is passed solely on the ground that a person has been dispossessed without recourse having been taken to law and should, therefore, be put back in possession of that property and can be executed. It cannot be said that S. 182 of the U. P. Tenancy Act applies to decrees passed by Civil Courts in respect of agricultural land. **1956 All LJ 948: 1957 All WR (HC) 263.**

——**Ss. 182, 10, 59** — T. P. Act (1882), S. 60 — Void mortgage — Mortgagor's right to recover possession on payment of money received — Question of limitation arises — Form of suit — Relief claimed in redemption suit — Claim in respect of ex-proprietary tenancy and occupancy tenancy land — Jurisdiction of Civil Court — (Contract Act (1872), S. 45) — (Civil P. C. (1908), S. 9 and O. 7, R. 7) — Limitation Act (1908), Art. 144. See Transfer of Property Act (1882), S. 60. **AIR 1956 All 639.**

——Ss. 182, 183 and 186 — Decree or order of ejectment for arrears of rent or unlawful possession — Time for execution.

The time for execution of a decree or order of ejectment is not to be observed when the ejectment has been ordered for arrears of rent or for unlawful possession. **('52) 1952 All WR (Rev) 84 (2): 1952 RD (BR) 197: 1952 All LJ (Rev) 83.**

SECTION 183

SYNOPSIS

(U. P. Tenancy Act (1939), S. 183.)

1. Applicability.
2. Suit cognisable by Revenue Court.
3. Suit cognisable by Civil Court.
4. Parties to suit.
5. Right to sue.
6. Maintainability.
7. Bar to suit.
8. Proviso.
9. Miscellaneous.

1. Applicability.

——**S. 183** — Applicability — Tenancy at fixed rate — Alienation by widow — Suit for possession by reversioner, against alience after widow's death — Civil Court's jurisdiction — The suit is maintainable in the Civil Court and is not barred under S. 180 or S. 183 of the Act. See Civil P. C. (1908), S. 9. **AIR 1958 All 500.**

——**S. 183** — Suit under — Limitation — Computation — Limitation Act, S. 6 — Applicability — The exception contained in S. 6, Limitation Act cannot be availed of in a suit under the Act. See Limitation Act (1908), S. 29. **AIR 1958 All 311 (DB).**

——**S. 183 — Applicability.**

A suit by a tenant against a person who is holding a land either on behalf of the landlord or who has been allowed to continue in possession of the land belonging to a tenant by a landlord would lie under S. 183 of the Tenancy Act in the Revenue Code. **1950 All LJ 642: 1953 All WR (HC) 717: AIR 1954 All 192 (192, 193) (Prs 6, 7).**

●——**Ss. 183, 206 (b) and 180 — Applicability — Suit for possession of grove land — Cause of action arising before repeal of Tenancy Act by U. P. Zamindari (Abolition and Land Reforms) Act — Court having jurisdiction — Tenancy Laws — U. P. Zamindari (Abolition and Land Reforms) Act (1 of 1951), Ss. 19 and 209 — (Tenancy Laws — U. P. Zamindari (Abolition and Land Reforms) Order (1952), Paras 2 and 5) — (Civil P. C. (1908), S. 9).**

Although S. 183 in terms applied only to tenants, and grove-holders are not tenants except for certain purposes, yet S. 206 (b) which applied to grove-holders, makes S. 183 applicable to grove-holders as well. Further S. 183 applies when the disputed property is a holding. A suit filed before the repeal of U. P. Tenancy Act by the U. P. Zamindari (Abolition and Land Reforms) Act is a suit governed by S. 183, U. P. Tenancy Act, and cognisable only by the revenue Courts. Baba Mahadeo Das v Satyendra Kumar **1952 All LJ 643: 1952 RD (HC) 337: 1952 All WR (HC) 607: ILR (1953) 1 All 256: AIR 1953 All 85 (86, 87) (Prs 3, 5, 7, 9) (FB).**

——**Ss. 183, 182 and 186** — Decree in a suit under Section 183 — Execution for delivery — Section 182 not applicable — "Reinstatement" in Section 186 provides that the provisions of

Section 181 shall apply to the execution of the decree for reinstatement of the tenant — The rights to get possession of the successful party in a suit under Section 183 is unfettered by the provisions of Section 182 — He is entitled to get possession at any time of the year under Section 181. The pendency of an appeal against the decree does not deprive the decree holder of his advantage. See Tenancy Laws — U. P. Tenancy Act (1939), S. 182. **1952 All LJ (Rev) 319.**

——S. 183 — Scope of — Suit under — Decree or order of ejectment — Objections.

A decree or order of ejectment that has become final can be questioned under Section 183 of U. P. Tenancy Act only on the ground of fraud and not any other ground of illegality or material irregularity. **1952 RD 149: 1952 AWR (Rev) 97: 1952 ALJ (Rev) 125.**

——Ss. 183, 3 (23) — Halwaha to whom Sir plots are given in lieu of wages becomes a sub-tenant of the plot and if he is forcibly dispossessed by the Zamindar can recover possession under Section 183. See Tenancy Laws — U. P. Tenancy Act (1939), S. 3 (23). **1952 ALJ (Rev) 93.**

——S. 183 — Right to claim restoration — Irregularities in ejectment — Extension of limitation under S. 19 of the U. P. Tenancy (Amendment) Act, 1947 is for tenants wrongly ejected.

Mere irregularity or even illegality in the conduct of the sale or ejectment proceedings taken long ago should not be held to be sufficient to entitle the ejected tenant to claim restoration under S. 183 of the Act. **1952 AWR (Rev) 60: 1952 RD 85: 1952 ALJ (Rev) 49.**

——Ss. 183, 87, 88, 88-A and 89 — Abandonment — Presumption — When can be raised — Entry by landholder or non-landholder on abandonment — Difference in status.

If he enters upon the land without following the procedure of Section 88, his entry will be questionable under Section 183 of the Act. See Tenancy Laws — U. P. Tenancy Act (1939), S. 87. **1952 All WR (Rev) 188.**

——Ss. 183 and 175 — Tenant ejected under Section 175 — Proper remedy lies by way of appeal or revision and no fresh suit under Section 183, of the Act will lie. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 175. **1952 RD (BR) 286.**

——S. 183 — Scope and applicability — Suit by co-tenant N against other co-tenants— Name of N, the heir of a deceased co-tenant not recorded in the khatauni — Effect — Rights of N if extinguished for failure to file a suit under Section 183.

Held: The decision of the Additional Commissioner is not contrary to any specific provision of law and so not liable to be set aside in third appeal.

There was no allegation of dispossession of N the daughter of a deceased co-tenant by the appellants claiming through the landholder and so a suit by N under Section 183 is not maintainable; and her title as the right successor to her father cannot be held to be extinguished by her failure to institute such a suit.

A suit by her for joint possession with the others can lie only in a civil Court and the period of limitation for such a suit is 12 years.

Her application for the correction of khatauni should not be thrown out as she was not in actual possession of her share but only in constructive possession through co-tenants. **1952 ALJ (Rev) 297: 1952 RD 239.**

——S. 183 — Section does not contemplate suit by co-tenant against other co-tenants — Co-tenant's title to rent-free grant cannot therefore be extinguished by his omission to sue within three years of his dispossession. **('52) 1952 RD (BR) 239.**

——S. 183 — Decree or order of ejectment — Ground on which it can be questioned.

A decree or order of ejectment which has become final can be questioned by a suit under Section 183 only on the ground of fraud and not on the ground of any other illegality or irregularity. **('52) 1952 RD (BR) 221.**

——S. 183 — Suit under — Ejectment order in a suit under Section 171 — Legality of order can be gone into. **1951 AWR (Rev) 231: 1951 RD 260.**

——S. 183 — Suit under, is not barred by reason of possession of defendant obtained at on execution sale held without authority — Such possession cannot be deemed to be lawful. 1951 RD 167: 1951 AWR (Rev) 152.

——S. 183 — Co-sharer — Illegal ejectment of tenant by — Suit for damages by tenant — Section 183, if applies.

A suit by a tenant for possession and damages will not be covered by Section 183 and will not be cognizable exclusively by Courts of Revenue. **('50) 1950 AWR (HC) 691.**

——Ss. 183 and 275 — Suit under S. 183 — Tenant wrongly ejected under S. 165 (2) — Not pursuing ultimate remedy against it by way of revision to Board — Relief, if can be given.

Section 183 of the Tenancy Act can certainly be invoked. The mere fact that the tenant did not pursue his remedy would not affect his right to seek restoration under Section 183. His suit can be decreed by the Board as under Section 275 it has a right to interfere in revision in all cases where a Subordinate Court has acted illegally or with material irregularity in the exercise of its jurisdiction. **1950 RD 157.**

2. Suit cognisable by Revenue Court.

——Ss. 183, 180 — Suit by tenant against landlord who was preventing plaintiff from occupying his land, lies in revenue Court. See Tenancy Laws — U. P. Tenancy Act (1939), Ss. 180 and 183. **AIR 1950 All 96 (DB).**

3. Suit cognisable by Civil Court.

——Ss. 183, 180, 242 — Suit under S. 9, Specific Relief Act — (Civil P. C. (1908), S. 9) — (Specific Relief Act (1877), S. 9) — AIR 1950 All 407 and ILR (1951) 2 All 16 and AIR 1954 All 199 and AIR 1946 All 486 and 1950 All LJ 645 and AIR 1953 All 733, Diss. from.

The ban imposed by Section 242 of the Act, on a civil Court, to entertain suit includes a suit even under Section 9, Specific Relief Act. It the jurisdiction of a Civil Court is barred, even a suit under Section 9, Specific Relief Act cannot be filed. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1958 All 48 (DB).**

[**Overruled** in AIR 1959 All 1.]

——S. 183 (as amended by Act 10 of 1947) — Suit by sub-tenant to eject trespasser — Civil Court's jurisdiction. See Tenancy Laws — U. P. Tenancy Act (17 of 1939) (as amended by Act 10 of 1947), S. 180. **ILR (1957) 2 All 185.**

——S. 183 — A suit instituted in 1945 (i.e., before Section 183 was amended in 1947) for possession of some plots of land which were a

part of the tenancy holding of the plaintiffs but which had been taken possession of unlawfully by the defendant could be instituted in Civil Court under the provisions of the Act as it stood then. AIR 1946 All 379 (FB), Not foll. **1953 All WR (HC) 588: 1953 All LJ 665: AIR 1954 All 171 (172) (Pt A) (Prs 1, 3) (DB).**

——**S. 183** — Suit for possession — No question of title or tenancy rights — Jurisdiction and power of Court. The case was cognisable by Civil Court, under Section 9, Specific Relief Act. See Specific Relief Act (1877), S. 9. **AIR 1954 All 109.**

——**Ss. 183, 59, 180 and 242 (before amendment by Act 10 of 1947) — Suit by tenant against trespasser — Jurisdiction of civil Court.**

A suit by tenant before the amendment of Ss. 180 and 183 in 1947 alleging that he is the tenant of the plots in dispute and that the defendant has forcibly taken possession of the same and is occupying them as trespasser, the allegations are not covered by Ss. 59, 180 or 183 and the jurisdiction of the Civil Court is not ousted. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **AIR 1950 All 449.**

——**Ss. 183, 100, 242 — Specific Relief Act (1877), S. 9 — Jurisdiction — Civil and Revenue — Suit for ejectment in respect of agricultural holding framed under S. 9 — (Civil P. C. (1908), S. 9).**

If the suit is on the basis of his previous possession or dispossession, it is cognizable by Civil Court; but if the plaintiff alleges his title to the land and also possession and dispossession by the defendants the suit is cognisable by the Revenue Courts under S. 180 or S. 183. See Specific Relief Act (1877), S. 9. **AIR 1950 All 407 (DB).**

4. Parties to suit.

●——**S. 183** — Civil P. C. (1908), O. 1, R. 10 and O. 22, Rr. 1, 2 and 10 — Suit under S. 59, U. P. Tenancy Act or appeal arising out of it — Zamindar, after abolition of zamindari, is neither a necessary nor proper party — Civil Misc. Writ No. 1338 of 1961, D/- 5-9-1961 (All), **Overruled.** See Civil P. C. (1908), O. 1, R. 10. **AIR 1963 All 549 (FB).**

——**S. 183** — Divided holding — Suit by only one co-tenant — Joinder of other co-tenant allowed by Court but not carried by Court staff — Suit under Section 183 was competent. See Civil P. C. (1908), O. 6, R. 18. **1952 RD (BR) 344.**

——**Ss. 183 and 246 — Co-tenants — Suit by same alone — Not maintainable — Suit by all — Withdrawal of some — No permission of Court recorded under O. 23, R. 1 (4) — Continuance of suit — Validity.**

Held: The withdrawal of some of the plaintiffs would not be allowed without the consent of the others and in the absence of any record to show such consent the withdrawal, if any, does not affect the maintainability. **1952 RD 178: 1952 ALJ (Rev) 123.**

——**S. 183** — Zamindar not impleaded — Defect is fatal. **('52) 1952 RD (BR) 151.**

——**S. 183 — Suit under — Non-impleading of co-sharer landholders — Fatal.**

The omission to implead other landholders (co-sharers) in a suit under S. 183 of the Tenancy Act is a fatal defect and the suit should be dismissed straightway. **1952 RD 151: 1952 ALJ (Rev) 217.**

——**S. 183 (1) (a)** — Suit by tenant evicted by landholder subsequent to Amendment Act of 1947 — Benefit of S. 19 — No necessity to plead under O. 7, R. 6, C. P. Code — Necessary parties. **Held:** In a suit under S. 183 (1) (a), the lambardar having been joined as defendant he will be deemed to represent all the co-sharers of the mahal (vide S. 245, U. P. Tenancy Act).

It is optional for the plaintiff in such a suit to join the brothers and other co-sharers in cultivatory possession; the absence of co-sharers in the khewat as parties does not render the suit bad for their non-joinder. The suit is not under Section 183 (1) (b) when they may be necessary parties. **1952 ALJ (Rev) 309.**

——**S. 183 — Parties to suit under — Civil P. C. (1908), O. 1, R. 10.**

Where there are more than one tenant in a holding all must join in a suit under S. 183. Where some of the co-tenants had abandoned the holding, they having ceased to be tenants their non-joining the plaint does not render the suit bad and incompetent. **1952 All LJ (Rev) 259.**

——**S. 183 — Scope — Suit by two of four co-tenants — Others alleged to have abandoned — Dispossession by defendants in collusion with the landholder — Joinder of several persons in possession.**

The suit under Section 183 was maintainable as the dispossession was with the collusion and help of the landholder. **1952 ALJ (Rev) 259.**

——**S. 183 (a)— Necessary parties to suit under — Landholder — Not the entire body of proprietors — Impleading of the person claiming the right to eject — Sufficiency.**

Held: A suit under Section 183 of the Act lies under Cl. (a) of it not only against the landholder but also against any person claiming to have the right as a landholder to eject the tenant.

It is not necessary to implead the lambardar or the entire body of proprietors in the suit under Cl. (a) of Section 183 of the Act. **1952 ALJ (Rev) 158: 1952 RD 302.**

——**Ss. 183 and 246 — Holding joint at the time of suit under S. 183 — Necessity for joining all co-tenants as parties.**

It becomes imperative that all the co-tenants should have been joined and in their absence the suit will be defective by reason of the provisions of Section 246 of the Act. **1951 AWR (Rev) 13.**

5. Right to sue.

——**Ss. 183 and 295-A — Surrender by tenant-in-chief after Tenancy Amendment Act 10 of 1947 — Sub-tenant in possession under S. 295-A — Dispossession of — Right of suit under Section 183.**

There can be no sub-tenant without a tenant-in-chief. Therefore when he was dispossessed along with the tenant-in-chief he cannot be deemed to be a tenant as contemplated by Section 183 of the Act to be able to recover possession thereunder. His remedy if any lies in the civil Court against the persons who dispossessed him. **1952 ALJ (Rev) 168: 1952 RD 347.**

——**S. 183** — Right to sue under — Person whose rights have been extinguished prior to the Tenancy Act coming into force, cannot be said to be a person who is deprived of his possession otherwise than in accordance with law for the time being in force who is entitled to sue for recovery of possession under S. 183 of the Act. **1951 AWR (Rev) 58: 1951 RD 41.**

——S. 183 — Right to sue under — Tenant who has been ejected in accordance with the provisions of Section 175/178 of the Tenancy Act cannot be said to have been ejected otherwise than in accordance with the law and therefore he cannot succeed in a suit under Section 183 of the Tenancy Act unless he is able to establish fraud. **1951 RD 32: 1951 AWR (Rev) 32.**

6. Maintainability.

——**Ss. 183 and 3** — Suit for possession by tenant against co-sharers not entitled to eject — Suit is maintainable in civil Court. **AIR 1955 NUC (All) 4161 (DB).**

——**Ss. 183, 180 (before amendment in 1947) — Lease by one co-sharer without consent of other co-sharers — Suit for declaring lease to be invalid and for possession — Jurisdiction of Civil Court — Such a suit is maintainable in a Civil Court. Civil P. C. (1908), S. 9. 1950 All LJ 867: 1950 All WR (HC) 665: AIR 1952 All 650 (651) (Pt A) (Pr 5) (DB).**

——**S. 183** —Suit against C, as trespasser under Section 180, pending in appeal — Lease by landlord to R creating a tenancy — Suit remanded by the Board to raise a new issue without finding against the decision on the other points — Effect — Subsequent compromise — C getting restitution — R has a right to sue under Section 183 of the Act. See Tenancy Laws — U. P. Tenancy Act (1939), Section 180. **1952 ALJ (Rev) 304.**

——**S. 183 — Suit under — Maintainability.**

Where the plaint and the written statement support the view that the plaintiff had been dispossessed by the defendant through the agency of the landholder the suit by plaintiff under Section 183 is maintainable. **1952 All LJ (Rev) 259.**

——**Ss. 183, 175** — Tenant ejected under Section 175 — Proper remedy — Appeal or revision — Suit under Section 183 — Not maintainable. See Tenancy Laws — U. P. Tenancy Act (1939), S. 175. **1952 AWR (Rev) 209.**

——**S. 183** — Suit under — Maintainability — Persons treated as sub-tenants sued and ejected under Section 175 of the Tenancy Act who had allowed those proceedings to become final cannot maintain a suit under Section 183 on the ground that their ejectment was not in accordance with law unless they establish fraud. **1952 RD 116.**

——**S. 183 — U. P. Tenancy (Amendment) Act, S. 19 — Suit under — Plaintiff (legal representative of a tenant ejected in execution of a decree under S. 61 of the Oudh Rent Act — Application for execution in April, 1940 — Within time — Proceedings in execution and ejectment under Ss. 181 and 182 — Ejectment not wrongful — Suit not maintainable.**

Held: The plaintiff was not ejected wrongfully from the holding. Section 19 of the (Amendment) Act, 1947, merely extends the period of limitation but does not dispense with the other requirements of Section 183. Suit under S. 183 is not maintainable. **1952 ALJ (Rev) 154: 1952 RD 329: 1952 AWR (Rev) 167.**

——**S. 183 — Suit under — Maintainability — Ejectment under S. 179 found to be invalid owing to want of notice to tenant — Proper remedy.**

A suit under Section 183 would not be maintainable when an ejectment under Section 179 is found to be invalid on the ground of want of notice to the tenant. His proper remedy is to have the ex parte decree for ejectment set aside. **1952 AWR (Rev) 55: 1952 RD 62: 1952 ALJ (Rev) 73.**

——**S. 183 — Suit by tenant under S. 183 against zamindar — Actual occupier not impleaded — Decree — Subsequent suit under S. 183 against both — Maintainability — Limitation against tenant.**

Held, as the suit against the zamindar for restoration had already been decreed, what the tenant wanted was now to eject and dispossess the trespasser, whom he had avoided to implead in the first suit under Section 183. His suit lay obviously under Sections 180 and not 183. His subsequent suit could only be treated as one under Section 180 and limitation should have been counted from the date the trespasser was in possession adversely to him and within his knowledge. **('51) 1951 RD 241.**

——**S. 183** — Suit under, for reinstatement — Ejectment in proceedings under S. 163, when plaintiff was a minor with no guardian ad litem appointed — Maintainability of suit. A suit for reinstatement under Section 183 of the Tenancy Act will certainly lie. **1951 AWR (Rev) 9.**

——**Ss. 183 and 163 — Suit under S. 183 — Maintainability — Minor tenant ejected in proceedings under 163 without a guardian ad-litem being appointed.**

The order of ejectment in such proceedings is one without jurisdiction and hence a suit under S. 183 for restoration of possession would be maintainable. **1950 RD 153.**

7. Bar to suit.

——**Ss. 183, 180, 59** — Suit for redemption and possession of occupancy plots under usufructuary mortgage deed decreed in terms of compromise — Compromise decree amounting to sale of certain suit plots in consideration of mortgage money — Mortgagee no longer in permissive possession and becoming hereditary tenant after expiry of period of limitation — Suit by mortgagors under S. 59 for mere declaration of right and title as occupancy tenant is barred by Section 42 of Specific Relief Act. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **1963 All WR (HC) 734.**

●——**Ss. 183, 242, 180** — Cause of action — Meaning of — Illegal dispossession from agricultural lands — Suit under S. 9, Specific Relief Act, 1877 within 6 months — Whether barred by S. 242 — Jurisdiction of Civil Court is not barred by virtue of S. 242 of the Act — (Specific Relief Act (1877), S. 9) — (Civil P. C. (1908), Ss. 9, 20) — 1957 All LJ 783; AIR 1958 All 48, **Overruled.** See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **AIR 1959 All 1 (FB).**

——**S. 183** — Civil P. C., O. 23, R. 1 (3) —Suit under S. 59 U. P. Tenancy Act withdrawn — Permission of Court not obtained — No fraud — Fresh suit for claim of tenancy barred — Suit under S. 183 not maintainable. **1952 All LJ (Rev) 154: 1952 RD 329: 1952 All WR (Rev) 167.**

——**Ss. 183, 182 and 186** — Decree in a suit under S. 183 — Execution for delivery — S. 182 if applies — "Reinstatement" in S. 186 is not included in "delivery of possession" in S. 182 — Decree-holder's right to get possession at any time of the year — Pendency of appeal if a bar. Section 186, provides that the provisions of S. 181 shall apply to the execution of the decree for

reinstatement of the tenant. Section 182 is not made applicable to the execution of the decree in a suit under S. 183 and considering the scheme of the Act also it is not applicable. He is entitled to get possession at any time of the year under S. 181 which is made expressly applicable.

The pendency of an appeal against the decree does not deprive the decree-holder of his advantage. **1952 All LJ (Rev) 319.**

——**S. 183** — Suit under — Not barred by withdrawal of a prior suit under S. 142 between the same parties — No estoppel. **1952 All LJ (Rev) 128: 1952 RD 251.**

8. Proviso.

——**Ss. 183, Proviso and 175** — U. P. Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act (7 of 1950), S. 10 — Suit for ejectment under S. 183 by sub-tenant — Sub-tenant liable for ejectment under S. 175 — Section 10 of U. P. Act 7 of 1950 held did not apply — Proviso to S. 183 was attracted and suit could not be decreed — Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) (Amendment) and Misc. Provisions Act (7 of 1950), S. 10. **1965 All LJ 290.**

——**S. 183 — Proviso — Scope.**

The proviso prohibits a decree for actual possession in order to avoid future litigation if the plaintiff even though he was dispossessed unlawfully was liable to ejectment in the agricultural year. **('52) 1952 RD (BR) 53: 1952 All WR (Rev) 57: 1952 All LJ (Rev) 42.**

9. Miscellaneous.

——**S. 183 (1) (b)** — Allowing 'to retain possession' — Fixed tenancy — Sale by Hindu widow — Rent accepted by landlord from alienee — Death of widow — Alienee's right as against reversioner — Receiving rent does not mean that possession is allowed against the rightful owners that is the reversioners. **AIR 1958 All 500 (501) (Pt A) (Pr 9).**

——**S. 183 (1) (b) — 'Retain' — Meaning of.**

The word 'retain' in S. 183 (1) (b) carries with it the connotation that the landholder wrongfully supports the right of the person who is in wrongful possession and denies the right of the person who is righfully entitled to possession and allows the person wrongfully in possession to continue in possession on the basis that he has an established right to continue in possession as against the claimant who has not. **AIR 1958 All 500 (501) (Pt B) (Pr 9).**

——**S. 183** — Hereditary tenant — Surrender of land by him in favour of landlord in 1949 — Sub-tenant under him is entitled to continue in possession as sub-tenant and to bring suit under S. 183. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 295-A. **1957 All WR (HC) 67.**

——**Ss. 183, 87 (4) and 88** — Where a tenant in possession is imprisoned and does not leave any person in charge of the land responsible for payment of rent nor gives any notice to landholder about it, he will be presumed to have abandoned the holding under S. 87 (4). But a landholder who enters upon a holding in contravention of the provisions of S. 88 shall be deemed to have ejected the tenant otherwise than in accordance with the provisions of this Act within the meaning of S. 183. The tenant can take advantage of S. 19 of the Act 10 of 1947. See Tenancy Laws — U. P. Tenancy Act (1939), S. 87 (4). **1952 Rev Dec 378: 1952 All LJ (Rev) 275: 1952 All WR (Rev) 244.**

——**Ss. 183 and 88 — Tenant committed to jail — Provisions of S. 88 not complied with — Landlord letting another into possession — Liability to be sued under S. 183 — Benefit of S. 19, Tenancy (Amendment) Act — If available.**

Held: Even if T (tenant) can be presumed to have abandoned, the landlord not having complied with the provisions of S. 88 the tenant T can treat the entry of the landlord upon the land as unlawful and sue him under S. 183 by virtue of S. 89.

It cannot be said that T was not 'ejected' and he could not claim the benefit of S. 19 of the (Amendment) Act, 1947. **1952 RD 378: 1952 All LJ (Rev) 275: 1952 All WR (Rev) 244.**

——**Ss. 183, 175** — Ex-parte order of ejectment under S. 175 — Subsequent suit under S. 183 questioning the propriety of the order — Provisions under S. 19 — Effect of — Failure on part of the landholder to mention the local rates paid by him constitutes merely a silence as to facts, which he was not duty bound to disclose, and does not constitute fraud. See Tenancy Laws — U. P. Tenancy Act (1939), S. 175. **1952 All WR (Rev) 214.**

——**S. 183 — Wrongful dispossession under — Proceeding under S. 171 pending — A plot therein sold in execution of decree for arrears of rent — Purchaser obtaining delivery — Zamindar securing dakhal of the plot — Ostensible ground of decree under S. 171.**

Held: the possession obtained by the landlord of the plot purchased by the plaintiff could not be justified on the ground that he took it by the purchase subject to the liabilities of the defendant in the proceedings under S. 171 (as provided under S. 251 of the Act). The plaintiff not having been a party in the said proceedings under appeal before the Board the landlord's action in taking such possession was wrongful dispossession within the meaning of S. 183 of the Act.

It was the landlord himself who brought to sale the property purchased by the plaintiff during the pendency of proceedings under S. 171, Tenancy Act; so he is estopped from taking advantage of S. 52, T. P. Act (lis pendens). **1952 RD 164: 1952 All LJ (Rev) 215.**

——**S. 183 — Plaintiff not basing his tenancy rights on adverse possession — Power of Court to make out such a case for him.**

When a plaintiff in a suit under S. 183 of the Tenancy Act does not base his tenancy rights on adverse possession by prescription, the Courts are not justified in setting up such a new case for him. **1952 All LJ (Rev) 213: 1952 RD 124.**

——**S. 183** — Suit under — Non-joinder of a co-tenant — Co-tenant, order to implead on his application — Not carried out — Effect — Non-joinder of a co-sharer in the proprietary rights — No plea in the written statement — Plaint alleging the right to receive rent in the landholder impleaded — Question, not to be raised in second appeal (S. 267). **1952 All LJ (Rev) 173: 1952 RD 344.**

——**Ss. 183 and 180 (2)** — Claim in suit under a contract — New case of acquisition of rights under S. 180 (2) — Permissibility — Benefit of S. 19 of the (Amendment) Act, 1947 — Tenants

alone entitled. **1952 RD 235: 1952 All LJ (Re 143.**

——**S. 183** — Mortgagee leasing portion of land in ordinary course of normal and prudent management — No allegation of any fraud on collusion underlying transaction — Redemption of mortgage after 30 years and ejectment of lessee — Lessee held had become hereditary tenant and was entitled to recover possession under S. 183. **('52) 1952 RD (BR) 223: 1952 All LJ (Rev) 130.**

——**S. 183 — Suit to question decree or order of ejectment which has become final.**

A decree or order of ejectment which has become final can be questioned by a suit under Section 183 only on the ground of fraud and not on the ground of any other illegality or irregularity. **1952 All LJ (Rev) 125: 1952 All WR (Rev) 97: 1952 RD (BR) 149.**

——**S. 183** — Tenancy rights devolving upon widow — Surrender by widow — Heirs of deceased can sue for recovery of possession under S. 183 within three years of widow's dispossession — Period of limitation expiring — Section 19 of, Amending Act of 1947 does not extend privilege of extension of period of tenants prevented from obtaining possession — Privilege is given to only those tenants who are wrongfully dispossessed — Tenancy Laws — U. P. Tenancy Amendment Act (10 of 1947), S. 19. **('52) 1952 All LJ (Rev) 123: 1952 RD (BR) 178.**

——**Ss. 183 (2), 175 — Ejectment in accordance with law — What is — Ejectment under S. 175.**

Ejectment of a tenant in accordance with the provisions of S. 175/178, U. P. Tenancy Act is not otherwise than in accordance with law and a suit by a tenant so ejected for recovery of possession under S. 183 cannot succeed unless he is able to establish fraud. **('52) 1952 RD (BR) 116.**

——**S. 183** — Right to maintain a suit under — Halwaha to whom Sir plots are given in lieu of wages and who is subsequently dispossessed. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 3 (23). **1952 RD 79.**

——**S. 183** — A admitted to tenancy — Zamindar cannot superimpose B during A's life time — Any agreement by zamindar with B is inoperative — **Held** on facts that B had no title. **1952 All WR (Rev) 88: 1952 All LJ 85: 1952 RD (BR) 109.**

——**S. 183 — Person super-imposed on a tenant — Status.**

As during the lifetime of a tenant a third person could not be super-imposed as a tenant the latter will be a person without title. **1952 All LJ (Rev) 85: 1952 RD 109: 1952 All WR (Rev) 88.**

SECTION 186

——**Ss. 186, 182, 183** — Decree in a suit under S. 183 — Execution for delivery — S. 182 if applies — "Reinstatement" in Section 186 is not covered by delivery of possession in S. 182 — No reliance can be placed on the word "reinstatement" in S. 186 to attract provisions of S. 182 — Section 186, provides that the provisions of S. 181 shall apply to the execution of the decree for reinstatement of the tenant. See Tenancy Laws — U. P. Tenancy Act (1939), S. 182. **1952 All LJ (Rev) 319.**

——**Ss. 186, 182 and 183 — Decree or order of ejectment for arrears of rent or unlawful possession — Time for execution.**

A decree under S. 183 is a decree for recovery of possession from an unlawful occupant. Section 186, therefore, excludes the provisions of S. 182. See Tenancy Laws — U. P. Tenancy Act (1939), S. 182. **('52) 1952 All LJ (Rev) 83.**

SECTION 191

——**S. 191 — Land granted rent free — Resumption by zamindar — Powers of — Conditions.**

A comparative study of Ss. 191, 192 and 195 of the Act would evolve the position that land held rent free is resumable unless it, (1) is of a period prior to settlement; (2) is, at the same time, one of a non-service nature. **1952 All LJ 306: 1952 All WR (HC) 271: 1952 RD 297: AIR 1952 All 934 (935) (Pt C) (Pr 10).**

SECTION 192

——**Ss. 192, 191 and 195 — Grant — When resumable.**

A grant is resumable unless it is of a period prior to the permanent settlement, and is, at the same time, one of a non-service nature. See Tenancy Laws — U. P. Tenancy Act (1939), S. 191. **AIR 1952 All 934.**

——**Ss. 192, 3 (22)** — Retrospective effect if any — Holder of land from a rent-free grantee under Oudh Rent Act — If becomes sub-tenant under U. P. Tenancy Act — U. P. Tenancy Act is not retrospective to affect the rights acquired under the Oudh Act prior to the passing of the U. P. Tenancy Act. The statutory tenant becomes a hereditary tenant under S. 29 (a) of the Act. See Tenancy Laws — U. P. Tenancy Act (1939), S. 3 (22). **1952 All LJ (Rev) 308 (2).**

SECTION 194

——**Ss. 194 and 119** — Agreed rent between landholder and tenant or grantee at favourable rent — Enhancement of rent — Limitations in S. 119 apply. **('51) 1951 RD 272: 1952 All WR (Rev) 12.**

SECTION 195

——**S. 195 — Exception provided by section — Burden of proof.**

The provision in S. 195 preventing ejectment furnishes an exception to the general rule allowing ejectment. This exception, on the face of it, has to be pleaded and proved by the party relying upon it affirmatively and not disproved by the landlord in a negative fashion. **('52) 1952 RD (BR) 297: 1952 All WR (HC) 271: 1952 All LJ 306: AIR 1952 All 934 (935) (Pt A) (Pr 7).**

——**S. 195 — Grantee — Ejectment — When not liable to ejectment.**

Under S. 195 ejectment would not follow where the grantee had become a proprietor under S. 192 or where the grant was not for some specific purpose no longer required. **('52) 1952 RD (BR) 297: 1952 All WR (HC) 271: 1952 All LJ 306: AIR 1952 All 934 (935) (Pt B) (Pr 8).**

——**Ss. 195, 191, 192 — Land granted rent-free — Resumption by zamindar — Powers of — Conditions.**

A comparative study of Ss. 191, 192 and 195 of the Act would evolve the position that land held rent-free is resumable unless it, (i) is of a priod prior to settlement and (ii) is, at the same time, one of a non-service nature. See Tenancy Laws — U. P. Tenancy Act (1939), S. 191. **AIR 1952 All 934.**

SECTION 197

——**Ss. 197 and 3 (23)** — Landholder letting out his holding on favourable or reduced rent to tenant — The tenant becomes a rent-free grantee — Landholder cannot subsequently say that he

was merely tenant from very beginning. **('51) 1951 RD 272: 1952 All WR (Rev) 12.**

SECTION 198

——**S. 198** — Effect of on applicability of Section 180 to suit by Muafidar for possession — Section 180, being in general terms and not confined to hereditary tenants, its application to suit will not be excluded by S. 198. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 180. **AIR 1954 All 355.**

SECTION 205

——**S. 205** — Section does not apply to proprietary rights between landlords inter se but only govern relations between landlord and tenant — Compromise in suit brought by co-sharers in respect of proprietary rights over their own grove would be governed by provisions of Civil P. C. (1908), O. 23, R. 1 and not by S. 246. **AIR 1965 All 570 (570, 571) (Prs 5, 7) (DB).**

——**S. 205 (a) and (b) — Applicability.**

Where a person claiming to be a grove-holder does not assert that the plot on which the grove stands was let or granted to his predecessors in-interest for the purpose of planting a grove, sub-section (a) of S. 205 does not apply to his case. The person then must rely on sub-section (b) for his grove-holder's rights but that sub-section deals with the case of a person who is a tenant and does not apply if the deft. does not prove himself to be a tenant before he becomes a grove-holder. **('51) 1951 All WR (Rev) 68: 1951 RD 51 (52).**

——**S. 205— Written permission — Grove-holder — Acquisition of rights.**

Where the land on which the grove is planted is not held as a tenant, no written permission of the landlord is necessary even if the grove is planted after 7-9-1926. If the grove is planted with the knowledge of the landlord and is recorded as grove in the settlement papers and the landlord slept over his right to eject the grove-holder it will be presumed that the land was granted for the purpose of planting the grove and therefore, such person will acquire the rights of a grove-holder and cannot be ejected as trespasser. **('51) 1951 RD 54: 1951 All WR (Rev) 46 (47).**

SECTION 206

——**S. 206** — Section does not apply to proprietary rights between landlords inter se but only governs relations between landlord and tenant — Compromise in suit brought by co-sharers in respect of proprietary rights over their own grove would be governed by provisions of Civil P. C. (1908), O. 23, R. 1 and not by S. 246. **AIR 1965 All 570 (570, 571) (Prs 5, 7) (DB).**

——**S. 206 (a)** — Scope. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 30. **AIR 1955 NUC (All) 4168.**

——**S. 206 (a) — Applicability.**

Section 206 (a) preserves rights of those who were grove-holders on the date when the Act came into force — Grove-holder ceasing to be grove-holder before Act by abandonment and consequent escheat to Zamindari according to custom — Section does not apply. **ILR (1954) 1 All 156: 1953 All WR (HC) 349: 1953 All LJ 390: AIR 1953 All 709 (710) (Pr 5) (DB).**

●——**Ss. 206 (b), 180 and 183** — Applicability — Suit for possession of grove land — Cause of action arising before repeal of Tenancy Act by U. P. Zamindari (Abolition and Land Reforms) Act — Court having jurisdiction — (Tenancy Laws — U. P. Zamindari (Abolition and Land Reforms) Act (1 of 1951), Ss. 19 and 209) — (Tenancy Laws — U. P. Zamindari (Abolition and Land Reforms) Order (1952), Paras 2 and 5) — (Civil P. C. (1908), S. 9) — Section 206 (b) which applies to grove-holders, makes S. 183 applicable to grove-holders as well. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 183. **AIR 1953 All 85 (FB).**

——**S. 206 (a) — Clause (a) whether retrospective — Escheat by custom taking place before commencement of Act — Section 206 (a) whether applies.**

Section 206 (a) is not retrospective in its operation. In such circumstances S. 206 (a) does not apply and the zamindar is entitled to succeed. **AIR 1952 All 174 (175) (Prs 9, 12).**

——**S. 206 (e) — Suit by dispossessed grove-holder under S. 183 — When maintainable.**

Under S. 206 (e), the grove-holder when dispossessed has a remedy under S. 183, just as any tenant would have but this relates to dispossession either by the zamindar or persons claiming through the zamindar. **('52) 1952 All WR (Rev) 95: 1951 RD 226.**

——**S. 206 — Grove — Disappearance of — Reversion of land — Applicability to case of occupancy tenancy.**

The argument that on the disappearance of grove the land reverted to the Zamindar under U. P. Land Revenue Act, 1901, would not apply where the land on which the grove had been planted is occupancy tenancy. **1952 All WR (Rev) 36: 1952 RD 19: 1952 All LJ (Rev) 24.**

——**S. 206 (c) — Transfer by one of two joint grove-holders in favour of landholder — Effect.**

Clause (c) of S. 206 has made the interest of a grove-holder transferable by voluntary transfer. If one of the joint holders of a grove transfers his interest to the landholder it is valid and it cannot be contended that the other grove-holder becomes a sole grove-holder by survivorship. **1952 RD 157: 1951 All WR (Rev) 159.**

——**S. 206 (f)** — Scope and effect — A suit in which the issue whether defendants are grove-holders is raised, it cannot be referred to Revenue Court, as no question regarding tenant right is involved. Section 206 (f) does not affect this question. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 288 (1). **1951 All WR (HC) 204.**

SECTION 209

——**Ss. 209 and 3 (24) — Theka or lease.**

Where though a deed purported to be a theka, it appeared that the entire land of the khewat was given to the defendant for cultivation for a specified amount and there was no other transfer of any proprietary right whatsoever in favour of the defendant the alleged thekadar, and there were no tenants from whom any rents were to be realised nor profits to be collected and even land revenue was to be paid by the lessor, the transaction is only a lease and not a genuine theka. **1951 RD 60.**

SECTION 211

——**S. 211 — Exercise of the rights of lessor by the thekadar is permissible except the two under S. 211 (1) (a) and (b) — No lease executed by him — Statement by thekedar in Court in a suit under S. 183 does not validate illegal lease. 1952 All LJ (Rev) 128: 1952 RD 251.**

SECTION 213

——S. 213 — Arbitration Act (1940), S. 30 — Misconduct — Theka rights in village not divided by arbitrator appointed to make partition — There is no misconduct since such rights are not partible. See Arbitration Act (1940), S. 30. **AIR 1955 All 573 (DB).**

SECTION 214

——S. 214 (1) (d) — Sections 4, 8 of the Suits Valuation Act — Suit by lessor against thekadar for ejectment on ground that he was holding over after expiry of theka under Section 214 (1) (d), U. P. Tenancy Act (17 of 1939) — Suit governed by S. 7 (xi) (cc), Court-fees Act, and not by S. 7 (v) — Section 8, Suits Valuation Act, applies — Valuation for purpose of court-fees and jurisdiction would be the same — Court-fees Act (1870), S. 7 (v), (xi). See Suits Valuation Act (1887), S. 4. **AIR 1952 All 658 (DB).**

——Ss. 214 and 286 — Reference to Civil Court.

Where an admitted proprietor sues a thekadar for ejectment, the issue whether the defendant is a thekadar or not cannot be referred to the Civil Court. **1952 All LJ (Rev) 277.**

——S. 214 — Suit under by Court of wards — The Manager or the Collector may bring a suit in the Revenue Court. See U. P. Land Revenue Act (3 of 1901), S. 34 (1). **('51) 1951 All WR (Rev) 113.**

——S. 214 — Suit under against defendant as thekadar — Proprietary title of plaintiff not denied — Issue as to whether defendant was a thekadar — Reference to Civil Court — Necessity — The issue need not be referred to the Civil Court — The defendants' claim to be a tenant is entertainable by the Revenue Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 286. **1950 RD 120.**

SECTION 230

——Ss. 230, 245 — Claim of lambardar to haq-e-lambardari is not tenable when amount of rent is not realised by lambardar. **AIR 1955 NUC (All) 5507 (DB).**

——S. 230 — Right of possessory mortgagee who was in possession of a share in a village to sue for his share of profits — Mortgagor put in possession under Section 35 of the U. P. E. E. Act. The former can file a suit under S. 230 of the Tenancy Act to recover his share of the profits, though he is not a recorded co-sharer. ILR (1950) All 489.

SECTION 231

——S. 231 — Assignee of right to recover profits — Suit for share of profits. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 3 (1). **1958 All LJ 407.**

——S. 231 (read with S. 3 (1)) —Suit for recovery of profits — Possessory mortgagee from co-sharer — Suit by — Mortgagee being successor-in-interest, suit by him is not barred by S. 231. **('50) ILR (1950) All 489.**

SECTION 233

——S. 233 — Scope — Net profits, meaning of — Debt Laws — U. P. Debt Redemption Act (13 of 1940), S. 9.

This section is, therefore, of no use in determining the meaning of the expression "net profits" in S. 9, U. P. Debt Redemption Act. Dara v. Mathura, **1951 All LJ 421: 1951 All WR (HC) 389: AIR 1951 All 643 (646) (Pt B) (Pr 21) (FB).**

SECTION 242

SYNOPSIS

(U. P. Tenancy Act (1939), S. 242.)

1. Jurisdiction of Civil/Revenue Courts.
2. Bar of Civil suit.
3. Effect of amendment on pending suits.
4. Jurisdiction of special Judge.
5. Jurisdiction to entertain appeal.
6. Miscellaneous.

1. Jurisdiction of Civil/Revenue Courts.

——Ss. 242 and 59 (2) — Suit whether cognizable by Civil Court or revenue Court — Substance of relief claimed should be looked to — Mere omission to implead land-holder can neither oust jurisdiction of revenue Court nor confer it on Civil Court — Plaintiff claiming as tenant filing suit for injunction restraining defendant from interfering with his possession — Defendant also claiming land through land-holder and adducing evidence therefor — **Held,** question of jurisdiction could not be decided on assertions made in plaint but only on recording a finding on defendant's evidence — Plaint could be returned to competent Court, even after recording evidence, if the suit was found not maintainable in Civil Court — Civil P. C. (1908), S. 9, O. 7, R. 10; O. 1, R. 9. **1965 All WR (HC) 214.**

——S. 242 — Suit under Section 63 for declaration stayed by revenue Court — Second suit for injunction — Civil Court has jurisdiction to try — Question of jurisdiction is determinable on allegations in plaint and not on the allegations made by the defendant in the written statement. AIR 1946 All 379 (FB); AIR 1953 All 729, Distinguished. **1961 All WR (HC) 639: 1961 All LJ 854: ILR (1962) 1 All 194.**

——S. 242 — Jurisdiction — Suit under S. 9, Specific Relief Act — C. P. Code, S. 9. The ban imposed by Section 242, on a Civil Court, to entertain a suit includes a suit even under Section 9 of Specific Relief Act. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1958 All 48 (DB).**

[Overruled in AIR 1959 All 1.]

——Ss. 242, 81 (2) and 288 — Suit for damages for cutting trees — Question of ownership arising on pleadings — Jurisdiction of Civil Court — (Civil P. C. (1908), S. 9).

Under Section 242 read with Section 81 (2) Civil Court has no jurisdiction to entertain a suit for a declaration of ownership of trees. But a suit for damages for the cutting of trees and not for a declaration of ownership of them is maintainable in civil Court. **1958 All WR (HC) 64: ILR (1957) 1 All 38.**

——S. 242 — Question in civil suit whether party is grove-holder — Power to refer issue. When one of the issues in a suit is whether a party is a grove-holder or not the Civil Court cannot refer that to Revenue Court but must decide the same itself. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 3. **1957 All LJ 809.**

——S. 242 (as it stood before amending Act 10 of 1947) — Suit for cancellation of decree and for possession of agricultural plots — Suit is cognisable by Civil Court — (Civil P. C. (1908), S. 9). 1957 All WR (HC) 41.

——S. 242 and S. 180 (before amendment of 1947) — Suit against co-sharer in peaceful possession — Forum — (Civil P. C. (1908), S. 9).

The suit not covered by Section 180 so as to become a suit exclusively within jurisdiction of the revenue Court under Section 242. Such suit can be rightly instituted in Civil Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1954 All 191.**

——S. 242 — Omission of word "adequate" from section — Effect of — Relief obtainable in revenue Court — Every suit relating to such relief is excluded from cognizance of Civil Court.

The omission of the word 'adequate' from Section 242 goes to show that the intention of the Legislature was to exclude from the cognizance of a Civil Court every suit based on a cause of action, in respect of which any relief could be obtained in a revenue Court. AIR 1944 All 81, Dissent. from; AIR 1946 All 379, Ref. to. **('50) ILR (1950) All 431: AIR 1952 All 660 (661, 662) (Prs 6, 8, 10) (DB).**

——S. 242 — Question of jurisdiction — Preliminary issue as to — Determination — Relevant materials — Suit for injunction against trespassers — Civil Court would have jurisdiction.

Where a preliminary issue is raised as to jurisdiction, in determining it at the initial stage the Court is confined to the allegations in the plaint and has to accept them as correct. But the position would be different after the suit has been tried and findings arrived at on those allegations. At that stage those findings would go to determine the jurisdiction of the Court. **1952 ALJ 202: 1952 AWR (HC) 541: AIR 1952 All 496 (497) (Pt B) (Pr 4).**

[**Overruled** in AIR 1953 All 729.]

——S. 242, Expl. 2 — Suit for possession by removal of thatched-shed — Suit if maintainable in Revenue Court — Civil P. C. (1908), S. 9.

In such a suit, the relief for removal cannot be granted by the Revenue Court. Section 242, Expl. II would, therefore, not exclude the jurisdiction of the Civil Court. **1952 All WR (HC) 203: AIR 1952 All 274 (274) (Pt B) (Pr 7).**

——S. 242 — Jurisdiction — Pronote for purchase of produce of 'phulwari' and 'kondar' — Suit for price based on pronote is cognizable by Civil Court only and not by Revenue Court — Civil P. C. (1908), S. 9. 14 RD 313, Dist. ('51) 1951 All WR (HC) 634: 1951 All LJ 632.

——S. 242 — Status as groveholder — Relief for declaration of.

Where the relief sought for in a suit is substantially a relief for a declaration of plaintiff's status as a groveholder, the suit clearly falls within the jurisdiction of the revenue Court. **AIR 1950 All 660 (661) (Pt A) (Pr 5).**

2. Bar of Civil Suit.

——Ss. 242, 59 — Bar to jurisdiction of Civil Court — Suit by plaintiff for declaration of right as tenant and that leases in favour of defendants and decrees passed by Revenue Court were not binding on him — **Held,** leases or decrees without any legal force cannot oust jurisdiction of revenue Court nor is it conferred on civil Courts even if particular relief is claimed — C. P. Code (1908), S. 9. **1965 All LJ 70: AIR 1965 All 514 (515, 516) (Pt A) (Prs 7, 8).**

● **——Ss. 242, 180 —** U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 — Ejectment decree obtained after 1-1-1940 — Execution — Annulment of — Reinstatement after 1947 Act — Liability to ejectment in execution of decree obtained after 1-1-1940 — Second suit for ejectment is barred. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27. **AIR 1965 All 116 (FB).**

● **——Ss. 242 and 180 —** Suit for ejectment under Section 180 in Civil Court is barred — Civil P. C. (1908), S. 9 — Provisions of S. 242 cannot be defeated by pleading that some co-sharers are not willing to join suit under S. 180. Kedar Nath v. Jamuna, **1964 All WR (HC) 219: 1964 All LJ 442: ILR (1964) 2 All 398: AIR 1965 All 116 (120) (Pt D) (Pr 19) (FB).**

——Ss. 242 and 180 — Plaint allegations making suit one under S. 54, Specific Relief Act — Facts entitling plaintiff to relief under S. 180, not pleaded — Jurisdiction of Civil Court —If barred.

The jurisdiction of the Civil Court is not barred simply because the plaintiff could have by alleging the additional facts, obtained relief under Section 180 of the U. P. Tenancy Act. AIR 1959 All 1 (FB), Foll.; AIR 1953 All 729, Not Foll. **1960 All LJ 314: 1960 All WR (HC) 210: AIR 1960 All 573 (576) (Pt B) (Pr 8).**

[**Overruled** on another point in AIR 1962 All 248.]

● **——Ss. 242, 180 and 183 — Applicability — Illegal dispossession from agricultural lands — Suit under S. 9, Specific Relief Act, 1877 — Whether barred by S. 242 — 'Cause of action' — (Specific Relief Act (1877), S. 9).**

The jurisdiction of the Civil Court is not barred by virtue of Section 242 in respect of suit filed under Section 9 of the Specific Relief Act for obtaining possession over agricultural land from which the plaintiff alleged his illegal dispossession within six months of the date of the suit. 1957 All LJ 783; AIR 1958 All 48, **Overruled.** Yar Muhommad v. Lakshmi Das, **1958 All LJ 628: 1958 All WR (HC) 703: ILR (1958) 2 All 304: AIR 1959 All 1 (4 to 7) (Pt A) (Prs 8, 9, 14, 15, 17 to 20) (FB).**

——S. 242 (as amended in 1947) — Bar of Civil suit — Cause of action on which Revenue Court can grant relief — Civil suit is barred even if relief is not as wide as can be granted by Civil Court — (Civil P. C. (1908), S. 9). **AIR 1955 NUC (All) 5493.**

——S. 242 — Bar of Civil Suit — Determining factor is cause of action — What is cause of action stated — One must have regard to allegation made in plaint or application and not to allegation in written statement — (Civil P. C. (1908), S. 9 and O. 2, R. 2). **AIR 1955 NUC (All) 2729 (DB).**

——S. 242 — Applicability. The only point for revision is whether the suit instituted in the Court of the Munsif could be instituted in the Revenue Court, and the jurisdiction of the Munsif was barred under S. 242 of the Act. The jurisdiction of the Civil Court could not be said to be barred. See Specific Relief Act (1877), Section 9. **AIR 1954 All 109.**

——S. 242 — Suit under S. 9 Specific Relief Act — Defendant not alleged to be tenant — Jurisdiction of Civil Court is not barred — (Specific Relief Act (1877), S. 9).

The suit lies in the Civil Court and the jurisdiction of that Court is not barred by S. 242, U. P. Tenancy Act. **('52) 1952 All WR (HC) 64: AIR 1953 All 733 (733) (Pr 7).**

——Ss. 242, 60, 61, 63 — Jurisdiction of Civil Court — (Civil P. C. (1908), S. 9) — AIR 1949 All 257 and AIR 1952 All 496, Overruled.

The suit was barred from cognizance of a Civil Court by Section 242, since relief sought lies in the Revenue Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 60. **AIR 1953 All 729 (DB).**

——Ss. 242, 54 (2) (before its repeal in 1947) — Acquisition proceedings under S. 54 — Restoration proceedings under S. 54 (5) — Suit for declaring restoration order ultra vires — Jurisdiction of Civil Courts to grant declaration not barred — (Civil P. C. (1908), S. 9). See Tenancy Laws — U. P. Tenancy Act (1939), S. 54 (2). **AIR 1953 All 578.**

——Ss. 242, 180 — Perpetual lease by Karta — Suit for possession by junior members of family — Lease alleged to be in excess of karta's power — Plaintiffs not claiming either in plaint or in proceeding to be persons entitled to admit tenant to suit land — Suit does not fall under Section 180 — Trial of suit by Civil Court is not barred. See Tenancy Laws — U. P. Tenancy Act (1939), S. 180. **AIR 1951 All 581.**

——Ss. 242, 180 — Suit for ejectment by tenant against trespasser does not lie under S. 180 — The jurisdiction of Civil Court to entertain such suit is not barred by reason of that section. See Tenancy Laws — U. P. Tenancy Act (1939), S. 180. **1951 All WR (HC) 370.**

——Ss. 242, 59, 180, 183 (before amendment by Act 10 of 1947) — Suit by tenant against trespasser — Jurisdiction of civil Court.

The jurisdiction of the Civil Court is not ousted since the allegations in the dispute are not covered by the three Sections, 59, 180 and 183. See Tenancy Laws — U. P. Tenancy Act (1939), S. 59. **AIR 1950 All 449.**

——Ss. 242, 180, 183 — Specific Relief Act (1877), S. 9 — Jurisdiction — Civil and Revenue — Suit for ejectment in respect of agricultural holding framed under S. 9 — When barred — Civil P. C. (1908), S. 9. See Specific Relief Act (1877), S. 9. **AIR 1950 All 407 (DB).**

3. Effect of amendment on pending suits.

——S. 242 — Tenant suing trespasser for ejectment in Civil Court — Section 180 amended pending suit — Suit triable by revenue Court — Retrospective effect of Section 180 — Return of plaint to Revenue Court — High Court in second appeal had power to direct the plaint to be returned for presentation to a Revenue Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), (as amended by U. P. Act 10 of 1947), S. 180. **AIR 1957 All 257 (DB).**

——S. 242 (as amended by U. P. Act 10 of 1947) — Suit filed in civil Court — Effect of amendment on jurisdiction, is not to take away jurisdiction of Civil Court in matter of suits rightly instituted in civil Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939) (as amended by Act 10 of 1947), S. 180. **AIR 1955 NUC (All) 2689 (DB).**

——Ss. 242 and 180 — Suit for ejectment of trespasser is cognizable by Revenue Court after amendment of Act — Suit transferred to Civil Court — Amendment coming into force — Suit should be retransferred to Revenue Court — (Civil P. C. (1908), S. 9) — (Tenancy Laws — U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order (1952), S. 2. **AIR 1955 NUC (All) 177.**

——S. 242 — Effect of amended S. 180 on suit by Muafidar for possession pending in civil Court. Where the suit of the Muafidar was pending in a civil Court on the date of the amending Act, the civil Court would cease to have jurisdiction immediately and the suit has to be sent to the Revenue Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 180. **AIR 1954 All 355.**

——Ss. 242 and 180 — Suit Pending in civil Court — Effect of amendment — Proceedings held without jurisdiction. See Tenancy Laws — U. P. Tenancy Act (1939), S. 180. **AIR 1953 All 254.**

[**Overruled** in AIR 1955 NUC (All) 2689.]

——Ss. 242 and 180 — Suit under S. 180 against trespasser filed in Civil Court — Amendment of Section 180 depriving civil Court of jurisdiction — Effect of amendment on pending suit — Interpretation of Statutes — Retrospective effect. The amendment relates to a change in the procedure and so has immediate effect. See Tenancy Laws — U. P. Tenancy Act (1939), S. 180. **AIR 1952 All 188.**

[**Overruled** in AIR 1955 NUC (All) 2689.]

4. Jurisdiction of Special Judge.

——S. 242 — Claim as to arrears of profits due to landlord applicant — Jurisdiction of special judge. There is no bar by virtue of S. 242 of the Act to the Special Judge determining the question. See Debt Laws — U. P. Encumbered Estates Act (25 of 1934), S. 4. **AIR 1955 NUC (All) 4162.**

5. Jurisdiction to entertain appeal.

——S. 242 — Jurisdiction to entertain appeal — C. P. Code, S. 9.

The jurisdiction to entertain a suit is quite different from the jurisdiction to entertain an appeal; Section 242 U. P. Tenancy Act and Section 9, C. P. Code, deal with the jurisdiction to entertain a suit and not with the jurisdiction to entertain an appeal. **1957 All WR (HC) 853: ILR (1957) 1 All 287: AIR 1957 All 257 (258) (Pt B) (Pr 6) (DB).**

6. Miscellaneous.

——S. 242 — Procedure — Return of plaint for presentation to proper Court. See C. P. Code (1908), O. 7, R. 10. **1958 All WR (HC) 21.**

——S. 242 — Suits for cancellation of lease if covered by Rule. The suit is covered by S. 180 of the Act and R. 4 (2) (v). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 4 (2) (v). **AIR 1955 NUC (All) 4453.**

SECTION 243

——S. 243, Sch. 2, List 2, S. No. 13 — Civil P. C. (1908), O. 41, R. 11 — Board can summarily dismiss appeal without hearing either appellant or his pleader. **1964 All WR (HC) 226.**

——S. 243 — Order of remand by Dist. Judge — Appeal.

U. P. Tenancy Act makes no provision for an appeal from an order of remand by a District Judge. **1957 All LJ 846: 1957 All WR (HC) 887.**

——S. 243 — Civil P. C. (1908), S. 144 — Applicability.

Section 144 Civil P. C. (1908) applies to suits under the Act vide Section 243 read with Lists 1 and 2 of the Second Schedule. See Civil P. C. (1908), S. 144. **AIR 1956 All 663 (DB).**

——**Ss. 243, 263, 271, 272** — Order under S. 47, Civil P. C. — It is an order and not decree, under the Act — C. P. C. is superseded in this respect by special provisions — U. P. Tenancy Act is self-contained in matters of appeals and second appeals — Section 272 clearly bars second appeal from orders under Section 47 C. P. C. — (Interpretation of Statutes — General and Special Provisions) — (Civil P. C. (1908), Pre.). **AIR 1955 NUC (All) 2021.**

●——**S. 243 — Judgment without hearing parties — (Revenue Court Manual, R. 170)—(Civil P. C. (1908), O. 41, R. 30).**

When a single Member of the Board of Revenue has given a judgment modifying or reversing the order or decree under consideration and for concurrence sends it to another Member of the Board of Revenue, the latter cannot give a judgment without giving the parties or their pleaders an opportunity of a hearing as required by Rule 30 of O. 41, Civil P. C. 1951 All LJ 548: AIR 1952 All 90, **Overruled.** Suraj Mal v. Board of Revenue, U. P. Allahabad, **1953 RD (HC) 22: 1953 All LJ 1: 1953 All WR (HC) 1: ILR (1953) 1 All 667: AIR 1953 All 264 (266) (Pr 12) (FB).**

——**S. 243** — Applicability of C. P. Code to proceedings under the Act — Proceedings under Section 27 of the (Amendment) Act, 1947 — Dismissed for default — Restoration — Not without jurisdiction — No interference in revision. **1952 AWR (Rev) 115: 1952 RD 243.**

——**Ss. 243, 268, 273 — Summary dismissal of second appeal — Review — Civil P. C. (1908), O. 47, R. 1.**

It is discretionary with the Court to admit an appeal for hearing or to dismiss it summarily after hearing the appellant or his counsel or without hearing him. The exercise of the discretion by one member is hardly a ground for review of that Member's order by another Member of the Board. **('51) 1951 RD 14: 1951 AWR (Rev) 33 (35).**

——**S. 243** — The whole of Order 41 including R. 27 as amended by the High Court is applicable to U. P. Tenancy Act. See Civil P. C. O. 41, R. 27. **('51) 1951 All WR (Rev) 196.**

——**Ss. 243 and 268 — Power of Board to reject second appeal summarily.**

Under Section 243 read with List 2 of the Second Schedule (Serial No. 13) it is provided that nothing in R. 11 of O. 41, shall require the Board to hear any party before rejecting an appeal summarily. Section 268 of the Act lays down that the Board may either admit an appeal or may summarily reject it. **1951 AWR (Rev) 33: 1951 RD 14.**

SECTION 244

——**Ss. 244, 94, 180 (2)** — Declaration under Section 180 (2) — Assessment of rent under Section 94. It is open to the trial Court to assess rent under Section 94 of the Act, while giving declaration under Section 180 (2). See Tenancy Laws — U. P. Tenancy Act (1939), S. 94. **AIR 1953 All 236.**

SECTION 245

——**S. 245 (2)** — Powers of lumberdar — Lumberdar acts beyond his power when he executes permanent lease on behalf of other co-sharers without obtaining their written consent. **1965 All LJ 1011.**

——**Ss. 245, 246** — Suit by one co-sharer for whole rent is not maintainable. **AIR 1955 NUC (All) 5507 (DB).**

——**S. 245** — Claim of Lambardar to haq-e-lambardari is not tenable when amount of rent is not realised by lambardar. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 230. **AIR 1955 NUC (All) 5507 (DB).**

——**Ss. 245 and 290** — Suit by lambardar to realise amount of rent wrongfully collected by defendant lies in civil Court — Suit filed in wrong Court — High Court can act under Section 290 — (Civil P. C. (1908), S. 9). **AIR 1955 NUC (All) 163 (DB).**

——**Ss. 245 and 180 (as amended in 1947)** — Lambardar — Right to eject tenant admitted by khudkasht holder not entitled to admit a tenant. The lambardar can alone sue to eject. **1951 RD 34: 1951 AWR (Rev) 42.**

——**Ss. 245, 246** — Where there is a tussle between the co-sharers and the lambardar and all along it is the co-sharers who have been actively doing things to preserve the property held jointly with the lambardar and the latter does nothing to show that he alone was entitled to treat the entire mahal as his own the lambardar alone is not entitled to settle the land and to treat the other co-sharers as trespassers and is not entitled to eject them. **('51) 1951 RD 1: 1951 AWR (Rev) 26 (29).**

SECTION 246

——**Ss. 246, 205 and 206** — Applicability— Sections do not apply to proprietary rights between landlords inter se but only govern relations between landlord and tenant — Compromis in suit brought by co-sharers in respect of proprietary rights over their own grove would be governed by provisions of C. P. Code (1908), O. 23, R. 1 and not by S. 246 of Act — Suit brought by co-sharers for declaration of their proprietary rights — One co-sharer withdrawing with permission of Court — Compromise between remaining co-sharers transferring their share is valid to that extent and transferee can acquire rights under compromise — Second Appeal No. 93 of 1952, dated 22-1-1960 (All), **Reversed. ILR (1965) 1 All 631: AIR 1965 All 570 (570, 571) (Prs 5, 7) (DB).**

——**S. 246** — 'Special contract' means contract in writing — Suit for arrears of rent by one co-sharer without impleading others — Implied contract among co-sharers not sufficient to save suit from bar created by Section 246 (1). **AIR 1960 All 519 (520) (Pt A) (Prs 6, 7).**

——**S. 246** — Suit by one co-sharer for whole rent is not maintainable. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 245. **AIR 1955 NUC (All) 5507 (DB).**

——**S. 246** — Applicability — "All things required or permitted to be done", interpretation — Transfer of tenant's interest in fixed rate tenancy by a co-sharer — Section does not apply. **AIR 1955 NUC (All) 2300 (DB).**

——**S. 246** — Suit by tenant for possession against trespasser — Co-tenants not joining — Suit cannot be instituted in revenue Court. **AIR 1955 NUC (All) 2017.**

——**S. 246** — Suit under S. 180 — S. 246 applies to such suit. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1955 NUC (All) 2017.**

——**S. 246** — Tenancy rights devolving upon widow — Surrender by widow — Heirs of widow can sue for recovery of possession under Section 183 within three years of widow's dispossession. See Tenancy Laws — U. P. Tenancy Act (1939), S. 183. **1952 ALJ (Rev) 123.**

——**S. 246 — Mortgage of share of Mahal to one of co-sharers — Right of mortgagee to sue for whole rent of mortgagor's expropriety tenancy.**

The suit was, maintainable under Section 246, as the mortgagors being also the co-sharers, it was not necessary to implead them as plaintiffs and the suit by the mortgagee could be treated as a suit on behalf of all the co-sharers conjointly for the whole rent. **1951 All WR (HC) 54.**

——**S. 246 — Right of a co-sharer to admit tenant to a plot.**

Unless there is a local usage or special contract to the contrary, a co-sharer cannot admit a tenant to the plot. **1951 AWR (Rev) 42: 1951 RD 34.**

——**S. 246 — Applicability — Joint grove-holders — Suit by one alone — Maintainability.**

As the provisions of Section 246 of the Act do not apply to joint grove-holders, one of them alone can maintain a suit under S. 183 of the Act. **1951 RD 167: 1951 AWR (Rev) 152.**

——**S. 246 — Bar under — Suit under S. 183 in which all co-tenants had not joined — Private division of holding to which zamindar was not a party.**

Where the holding was joint all the co-tenants should join in suit under Section 183 in regard to that holding. Else it would be barred by Section 246 of the Act. **1950 RD 118.**

SECTION 247

——**S. 247 — Intervener — Right to appeal and to file cross-objections.**

An intervener in suit for arrears of rent has no right to file an appeal against the decree and necessarily cannot also file cross-objections. **1951 RD 208: 1951 AWR (Rev) 209.**

SECTION 251

——**S. 251** — Sirdari rights — Different from ex-proprietary rights under Act — Decree for recovery of arrears of rent for period prior to date of vesting — Cannot be executed by sale of sirdari rights of judgment-debtor after coming into force of the U. P. Zamindari Abolition and Land Reforms Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1950) (1 of 1951), S. 7 (b). **1960 All LJ 889.**

——**S. 251** — Wrongful dispossession under Section 183 — Proceedings under Section 171 pending — A plot therein sold in execution of decree for arrears of rent — Purchaser obtaining delivery — Zamindar securing dakhal of the plot — Ostensible ground of decree under S. 171. See Tenancy Laws — U. P. Tenancy Act (1939), S. 133. **('52) 1952 RD (BR) 164.**

——**Ss. 251 and 275** — Sale of holding under Section 251 — Decree-holder and judgment-debtor separately applying for setting aside sale — Judgment-debtor's application rejected as time-barred — Decree-holder's application allowed and sale set aside — Appeal by sub-tenant who had applied under Section 251 (3) — Appeal allowed and sale confirmed — Separate revisions filed by decree-holder and judgment-debtor in Commissioner's Court — Revisions dismissed — Joint revision before Board — Revision held was competent and was not barred by res judicata — Though judgment-debtor did not appeal against dismissal of his application held he could join decree-holder in filing revision — (Civil P. C. (1908), S. 11). **1952 All LJ (Rev) 43: 1952 All WR (Rev) 63: 1952 RD (BR) 75.**

——**S. 251 (3) — Interest of tenant judgment-debtor — Passing of to sub-tenant — Confirmation of sale — Necessity to apply under O. 21, R. 89, Civil P. C. — (Civil P. C. (1908), O. 21, R. 89).**

The interest of the tenant-judgment-debtor cannot pass to the sub-tenant under Section 251 (3) before the sale is confirmed. It not necessary that the sale must be confirmed and that the judgment-debtor must go through the form of filing an application under O. 21, R. 89, Civil P. C. and depositing money in Court. **1952 All LJ (Rev) 43: 1952 All WR (Rev) 63: 1952 RD (BR) 75.**

——**Ss. 251 (3) and 270 — Order setting aside sale — Appeal by sub-tenant applying under S. 251 (3) — Maintainability.**

Where a sub-tenant applies within the period allowed by law claiming the judgment-debtor's interest under Section 251 (3) he acquires a legal status and it is not necessary to deposit any amount at the time of making the claim. When, therefore, an order is passed setting aside the sale the order affects the sub-tenant's interest adversely and he is entitled under Section 270 to prefer an appeal against that order. **1952 All LJ (Rev) 43: 1952 All WR (Rev) 63: 1952 RD (BR) 75.**

——**S. 251** — Decree for arrears of rent —Execution under Section 251 — Decree should be in respect of whole rent of holding — Decree obtained by some of zamindars in respect of their share of rent — Sale of holding in execution of such decree is invalid. **1951 RD 236: 1951 All WR (Rev) 218.**

——**S. 251 (1)** — Landholder himself purchasing at a sale in execution of a decree for arrears of rent against expropriety tenant — Can not acquire rights of the latter. **1951 RD 78: 1951 AWR (Rev) 210.**

SECTION 252

——**S. 252** — Decree for arrears of rent under the Tenancy Act — Execution — Execution by lease out of holding — Not barred by S. 165 of Zamindari Abolition Act — Such lease not inconsistent with the scheme of the Land Reforms Act — Lessee does not acquire Asami rights thereunder but becomes a trespasser after period of the lease. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 7. **1963 All LJ 338.**

——**S. 252** — 'Ejectment' — What amounts to — Lease out of holding in execution of decree for arrears of rent — Not ejectment. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 7 (b). **1963 All LJ 338.**

SECTION 254

——**S. 254 — Possession of abandoned holding — Suit for ejectment of trespasser — Period of limitation — Starting point.**

Mere possession over an abandoned holding for any number of years is not enough to make a suit against the person in possession time barred unless it is shown that such possession was unlawful to the knowledge of the Zamin-

dar. See Tenancy Laws — U. P. Tenancy Act (1939), S. 180. **('51) 1951 All WR (Rev) 158.**

SECTION 263

——**S. 263** — Order under Section 47 — Civil P. C. — Second Appeal. It is an order and not decree — C. P. C. is superseded by special provisions — Section 272 bars second appeal from orders under Section 47, C. P. C. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 243. **AIR 1955 NUC (All) 2021.**

——**Ss. 263, 271 (2) and 275** — Order of remand passed under O. 41, R. 23, C. P. C. by the Commr. or the Addl. Commr. — No appeal lies from the order — Revision, however, lies — Appeal may be treated as revision — C. P. C. (1908), O. 41, R. 23. **1951 All WR (Rev) 97: 1951 RD (Rev) 79.**

——**Ss. 263, 270 and 271** —Asst. Commr's Order rejecting application for re-admission of appeal passed by Commr. or Addl. Commr. — Not appealable — C. P. C. (1908), O. 43, R. 1 (t). **1951 AWR (Rev) 87: 1951 RD 75.**

SECTION 265

——**S. 265** — Question of jurisdiction decided by trial Court — Question in issue in appeal — Jurisdiction of Commissioner is ousted to decide the question. **1952 All LJ (Rev) 136: 1952 RD (BR) 165.**

——**S. 265 (3) — Right of appeal — Plea of jurisdiction — Nature of.**

A plea of jurisdiction contemplated by Section 265 (3) should not be a plea that if the facts alleged by the defendant are taken into account, the Court will be found to have no jurisdiction. **AIR 1950 All 340 (341) (Pr 7).**

——**S. 265 (3) — Question of jurisdiction in issue in appeal but not raised by appellant — Competency of appeal before Commissioner.**

Where the Court of first instance decided that the suit was rightly instituted in the revenue Court and this question of jurisdiction was in issue in appeal, although not raised by the appellant, the appeal lies to the District Judge and not to the Commissioner. **1950 RD 210: 1950 All WR (Rev) 25.**

SECTION 267

SYNOPSIS

(U. P. Tenancy Act (1939), S. 267.)

1. Applicability.
2. Finding of fact.
3. New plea.
4. Parties.
5. Second appeal — Interference.

1. Applicability.

——**S. 267 — Second appeal to the Board — Suit under S. 49, Tenancy Act — Compromise between plaintiff and tenants-defendant excluding landlord — Rejection of — Want of stamp — Decision on merits — Settlement entry — Presumption — Rebuttal of question of fact.**

Held: It is true that the presumption of correctness attached to a settlement entry is rebuttable; but the finding that it had not been rebutted is a question of fact not to be raised in second appeal.

The rejection of the compromise document for want of stamp at the time of writing judgment when it had been admitted in evidence without objection cannot be supported; however the landholder who was a necessary party to the suit not having joined in the deed of compromise between the others no decree could be passed thereon under O. 23, R. 3, C. P. Code, and hence it was rightly decided on the merits of the claim. **1952 ALJ (Rev) 237: 1952 RD 253.**

——**S. 267 — Second appeal to the Board — Ex parte order a piece of evidence in the case — Finding consequent — Objection in second appeal.**

Prior judgments, not operating as res judicata are relevant under Section 13 of the Evidence Act; therefore there was error in law when the appellate Court relied on an ex parte order recognising the exproprietary rights claimed by the plaintiff in the suit under Section 183 of the Act, as a piece of evidence in the case and the finding based thereon cannot be questioned in second appeal. **1952 AWR (Rev) 130: 1952 RD 321: 1952 ALJ (Rev) 207.**

——**S. 267 — Entry in land records.**

Long standing entries, which are supported by the evidence of actual possession, cannot be allowed to be challenged in second appeal. **1952 All WR (Rev) 99: 1952 All LJ (Rev) 124: 1952 RD (BR) 136.**

——**S. 267 — Challenging of facts accepted by Additional Commissioner.**

The appellant is not entitled to challenge the facts. **1952 All WR (Rev) 104: 1952 RD (BR) 142: 1952 All LJ (Rev) 121.**

——**S. 267** — Question of limitation not raised in Lower Courts — Party not debarred from raising it in second appeal — (Civil P. C. (1908), S. 100). **1952 All WR (Rev) 211: 1952 All LJ (Rev) 110: 1952 RD (BR) 144.**

——**S. 267** — Concurrent findings of two lower courts — Second appeal — Findings cannot be brushed aside unless shown perverse. **1952 RD (BR) 107: 1952 All WR (Rev) 116: 1952 All LJ (Rev) 84.**

——**S. 267** — Oral evidence adduced by party Whether trustworthy is a question of fact — Finding thereon cannot be disturbed in second appeal. **1952 RD (BR) 105: 1952 All WR (Rev) 67: 1952 All LJ (Rev) 82.**

——**S. 267** — Finding of lower appellate Court on question of consent to co-tenancy — Finding not perverse — Cannot be questioned in second appeal. **1952 RD (BR) 113.**

——**S. 267** — Appealability — Dismissal of appeal by Assistant Commissioner on appellant's advocate reporting no instructions —Amounts to a decree and is appealable. **1951 RD 75: 1951 All WR (Rev) 87.**

2. Finding of fact.

——**S. 267 — Finding of fact — If can be set aside in second appeal—Certificate under R. 166 of Revenue Court Manual — When required to challenge.**

Held, the finding is one of facts and cannot be upset in second appeal unless it is found to be without any basis of evidence or vitiated by any other illegality or irregularity.

Held, further that, if a finding of fact is challenged on a question of law, it is not necessary to give a certificate as required by R. 166 of the U. P. Revenue Court Manual. **1952 ALJ (Rev) 203.**

——**S. 267 — Concurrent findings of facts — If and when can be ignored.**

The concurrent findings of facts of the lower Courts cannot be brushed aside in second appeal unless they are shown to be perverse. **1952 ALJ (Rev) 84: 1952 RD 107: 1952 AWR (Rev) 116.**

——S. 267 — Settlement entry — Nature — Finding by lower Court — Binding effect.

A settlement entry can be rebutted and where evidence in rebuttal has been carefully considered by the Court below the finding of fact cannot be disturbed in second appeal. **1952 All WR (Rev) 67: 1952 All LJ (Rev) 82: 1952 RD (BR) 105.**

——S. 267 — Lower appellate Court's finding of fact — When and when not to be upheld in second appeal.

Though ordinarily the findings of fact of the lower appellate Court should be accepted in second appeal, where the lower appellate Court has misread and misinterpreted the evidence, its order cannot be upheld. **1952 ALJ (Rev) 81: 1952 RD 110: 1952 AWR (Rev) 100.**

——S. 267 — Erroneous conclusion as to fraud based on finding of fact — Interference —Civil P. C. (1908), S. 100 and O. 41, R. 2.

The conclusion of both the courts below cannot be allowed to remain undisturbed even though no objection was made in the memorandum of second appeal. **('52) 1952 All WR (Rev) 55: 1952 All LJ (Rev) 73: 1952 RD (BR) 62.**

——S. 267 — Finding of fact — Finding that sale deed is fictitious is finding of fact and cannot be interfered with in second appeal —Mere entry of purchaser's name in patwari papers is of no importance (Civil P. C. (1908), S. 100). **1952 All LJ (Rev) 67: 1952 All WR (Rev) 77: 1952 RD (BR) 139.**

——S. 267 — Concurrent finding of fact — Attack in second appeal.

A concurrent finding of fact cannot be allowed to be challenged in second appeal unless shown to be perverse. **1952 AWR (Rev) 34: 1952 ALJ (Rev) 12: 1951 RD 268.**

——S. 267 — Interference in second appeal — Finding of fact when material evidence has not been considered.

A finding on a question of fact of the first appellate Court can be interfered with in second appeal if material evidence has not been considered. **1952 AWR (Rev) 6: 1951 RD 285: 1952 ALJ (Rev) 39.**

——S. 267 — Settlement entry — Presumption of correctness — Presumption is rebuttable— Finding that presumption has not been rebutted is one of fact — Finding cannot be questioned in second appeal — (Civil P. C. (1908), S. 100). **1952 RD (BR) 253.**

——S. 267 — Finding of fact — Transfer of tenancy rights whether genuine is a question of fact and finding thereon cannot be questioned in second appeal. **1951 All WR (Rev) 71: 1951 RD 55.**

——S. 267 — Finding of fact — Interference — Perverse finding.

It is settled law that a finding of fact can be interfered with in second appeal if it is perverse and when it is further unsupported by evidence, it cannot be sustained. **1950 RD 163.**

——S. 267 — Finding of fact — Interference in second appeal — Perverse finding.

A finding of fact is liable to be interfered with in second appeal when it is based on a superficial consideration of the evidence and is even otherwise perverse. **1950 RD 125 and 127.**

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3. New plea.

——S. 267 — New plea of non-joinder — Not allowed — Suit under S. 59/183, U. P. Tenancy Act — Acquisition of Tenancy rights under Section 180 (2) — Finding in first appeal — New case set up by Court — Legality.

The plea for the first time in second appeal, that the suit is bad for non-joinder of co-sharers landlords, cannot be allowed to be raised.

The plea of the suit being barred by S. 42 of the Specific Relief Act is not sustainable.

Where the plea of acquisition of hereditary rights by prescription under S. 180 (2) was not raised in the suit by the plaintiffs, the appellate Court cannot set up such a new plea to the prejudice of the opposite party and decree the suit on that basis. **1952 All LJ (Rev) 311.**

——S. 267 — Second appeal — New plea of limitation — No material on record — If can be allowed.

Where a plea of limitation is raised for the first time in arguments in the second appeal, the Court cannot allow such a plea to be raised. **1951 All WR (Rev) 50: 1951 RD 45.**

——S. 267 — New plea of law — When entertainable in second appeal.

A new plea of law which does not require a fresh finding for the decision of it can be taken at any time, even in second appeal. **1952 All WR (Rev) 37: 1952 RD 17: 1952 All LJ (Rev) 7.**

4. Parties.

——S. 267 — Zamindar letting out land to certain persons after ejectment of plaintiff — Persons impleaded in lower Courts but not in second appeal — Persons held ought to have been impleaded in second appeal being necessary parties even though they did not contest suit in Courts below — (Civil P. C. (1908), O. 41, R. 20). **1952 All WR (Rev) 125: 1952 RD (BR) 213.**

5. Second appeal — Interference.

——Ss. 267 and 271 — Appeal from order of Commissioner granting review in proceedings under Act — Board cannot interfere except as provided for an appeal from an order mentioned in R. 1 of O. 43 of Civil P. C. — (Civil P. C. (1908), O. 43, R. 1 and O. 47, Rr. 4 and 7). **1952 RD (BR) 205.**

——S. 267 — Second appeal — Finding as to co-tenancy based on village records — Interference.

Though village records are not conclusive evidence in regard to co-tenancy and there is also no presumption of their correctness they are good evidence of facts which they record and when two lower Courts have based their finding as to co-tenancy on such evidence, there is no reason to disagree in second appeal and reverse the finding on the ground that the evidence was not conclusive. **1951 RD 102: 1951 All WR (Rev) 123.**

——S. 267, Sch. 4, Group B, Serial No. (18) — Question of fact — Contiguity — When can be raised in second appeal.

The question of contiguity of plots is a question of fact which can be raised in second appeal only if no additional evidence is required. **1951 All WR (Rev) 67: 1951 RD 62.**

——S. 267 — Second appeal — Change of case — Pleadings.

The appellant cannot be allowed to change the case at the time of the argument in second appeal from what he had stated in the ground of his appeal and which he had accepted in the two

lower Courts in spite of what is asserted in the plaint. **1951 All WR (Rev) 65: 1951 RD 42.**

——S. 267 — U. P. Land Revenue Act (3 of 1901), S. 57 — Second appeal — Interference — Finding discarding settlement entry on inadequate grounds.

As under S. 57 of the U. P. Land Revenue Act a settlement entry shall be presumed to be correct until the contrary is proved, where a finding discards such entry on quite inadequate grounds it is liable to be interfered with in second appeal. **1951 RD 41: 1951 All WR (Rev) 58.**

——S. 267 — Second appeal — Interference — Finding not based on evidence.

Where the finding of the lower Court has no basis in evidence at all and there has been an omission to judicially consider the value of certaine evidence, it can be set aside in second appeal. **1950 RD 206.**

SECTION 268

——Ss. 268 and 273— Summary dismissal of appeal — Review.

Where the Board in the exercise of its discretion dismisses summarily a second appeal it is competent for it to review the order subsequently and admit the appeal for hearing on merits. **1951 All WR (Rev) 37.**

——Ss. 268, 243 — Power of Board to reject second appeal summarily — Section 268 lays down that the Board may either admit an appeal or may summarily reject it. See Tenancy Laws — U. P. Tenancy Act (1939), S. 243. **1951 RD 14: 1951 All WR (Rev) 33.**

SECTION 270

——S. 270 — Locus standi to appeal — Sub-tenant who had applied under S. 251 (3) — Right to appeal against setting aside sale.

The sub-tenant being aggrieved by the order is entitled under S. 270 to prefer an appeal against the order. **1952 RD 75: 1952 All LJ (Rev) 43: 1952 All WR (Rev) 63.**

SECTION 271

——S. 271 — Order under S. 47, Civil P. C. — Second Appeal — It is an order and not decree, under the Act — Civil P. C. is superseded in this respect by special provisions — Section 272 clearly bars second appeal from orders under S. 47, Civil P. C. — U. P. Tenancy Act is self-contained in matter of appeals and second appeals. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 243. **AIR 1955 NUC (All) 2021.**

——Ss. 271 and 267 — Appeal from order of commissioner granting review in proceedings under Act — Board cannot interfere except as provided for an appeal from an order mentioned in R. 1 of O. 43 of Civil P. C. (1908), See Tenancy Laws — U. P. Tenancy Act (1939), S. 267. **('52) 1952 RD (BR) 205.**

——Ss. 271 and 275 — Appeal against order of remand by the Commissioner — Competency — Revision.

No appeal has been provided in S. 271 (2) of the Act against an order of remand by the Commissioner, but the appeal can be treated as a revisionu in a fit case. **1951 RD 79: 1951 All WR (Rev) 97.**

SECTION 272

——S. 272 — Order under S. 47, Civil P. C. — Second Appeal — Section 272 clearly bars second appeal from orders under S. 47, Civil P. C. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 243. **AIR 1955 NUC (All) 2021.**

——Ss. 272 and 273 — Orders rejecting appeal and review application without notice to respondents — Subsequent application under S. 273 read with S. 151, Civil P. C. — Order on — Notice to respondents not necessary — Civil P. C. (1908), S. 151. **1952 RD (BR) 14.**

SECTION 273

SYNOPSIS

(U. P. Tenancy Act (1939), S. 273.)

1. Application for review.
2. Retrospective operation.
3. Summary rejection.
4. Power of single member to alter or modify order.
5. Review — Pinciple to be applied.
6. Review by Board.

1. Application for review.

——S. 273 — Board can review its own order passed on review — Order 47, Rule 9 has no application. **AIR 1955 NUC (All) 2294 (DB).**

——Ss. 273 and 293 — Rules under S. 293 — Rule 170 — Rule does not apply to application for review. **AIR 1955 NUC (All) 1517.**

[**Overruled** on another point in AIR 1956 All 698.]

——S. 273 — 'Appeal' includes review. See U. P. Board of Revenue (Declaration of Procedure and Validation) Act (30 of 1953), S. 3. **AIR 1955 NUC (All) 171.**

——Ss. 273 and 274 — Scope.

The terms of S. 273 and the juxtaposition of Ss. 273 and 274 make it sufficiently clear that whereas the provisions of O. 47, Civil P. C. govern applications for the review of judgment by all revenue Courts other than the Board of Revenue, the power of the latter to review its own decrees or orders is derived exclusively from S. 273. **AIR 1955 NUC (All) 171.**

——S. 273 — Decision of the Board — Application for review — Wrong view of law, the only ground.

A wrong view of the law is no ground for review except when there is a mistake on the face of record. **1952 All LJ (Rev) 352: 1952 RD 221.**

——S. 273 — Application for review of an order by one member — Power to admit by another — Grounds for review — Bar of the Zamindari Abolition Act — U. P. Land Tenure (Legal Proceedings) (Removal of Difficulties) Order, 1952.

Held: There can be no objection to a single member to admit a petition for review of an order but if the order has to be set aside, then it requires the concurrence of another.

It is only when there is mistake of fact or law on the face of the record the review can be allowed.

A decision is not liable to be reviewed and modified every time a new interpretation is put on a question of law. **1952 All LJ (Rev) 279: 1952 All WR (Rev) 240.**

——S. 273 — Scope of the power of review — Successive applications to review same order — Competency.

Though the power of the Board in a review is unlimited, it cannot be allowed to be abused by making one application after another for a re-

view unless it is shown that something new of exceptional importance was not before the Board or the Hon'ble Member. The restriction provided in O. 47, Civil P. C. against review of a review should be ignored only in exceptional cases where grave injustice has been done or where a clear provision of law has been ignored. **1951 All WR (Rev) 36: 1951 RD 14.**

2. Retrospective operation.

——S. 273 — Retrospective operation — Review of order or decree passed long before amendment — Maintainability.

An order or decree passed in second appeal arising out of a suit under S. 171 of the Act long before amendment came into force by which a person ceased to be a sub-tenant cannot be altered on review on account of change in law introduced by subsequent amendment. See Tenancy Laws — U. P. Tenancy Act (Amendment) Act (10 of 1947), S. 295-A. **1951 All WR Rev 181.**

3. Summary rejection.

——S. 273 — Review — Revision, summary rejection of — Vakalat undated — Civil P. C., O. 3, R. 4, overlooked — Allowed.

The view of law on which the petition was summarily rejected has clearly overlooked the provisions of O. 3, R. 4, Civil P. C. It deserved to be set aside in review. **1952 All LJ (Rev) 302.**

——S. 273 — Summary rejection of appeal and of subsequent review application — Application for setting aside orders thereon — Necessity of notice.

No notice is necessary before the orders are set aside on an application under S. 151, Civil P. C. read with S. 273, U. P. Tenancy Act. **1952 All WR (Rev) 33: 1952 All LJ (Rev) 9.**

——S. 273 — Orders rejecting appeal and review applications without notice to respondents — Subsequent application under S. 273 read with Section 151, Civil P. C.—Order on — Notice to respondents not necessary. See Tenancy Laws — U. P. Tenancy Act (1939), S. 272. **1952 RD (BR) 14: 1951 All WR (Rev) 33.**

——S. 273 — Application to review summary rejection of second appeal without hearing — Competency.

It is a matter of discretion with the Court to admit an appeal for hearing or to dismiss it summarily after hearing the appellant or his counsel or without hearing him and the exercise of such discretion by one Member is hardly a ground for review of that Member's order by another Member of the Board. **1952 RD 14: 1951 All WR (Rev) 33.**

4. Power of single member to alter or modify order.

——S. 273 — Case arising out of U. P. Zamindari Abolition and Land Reforms Act — Single member of Board can review order of predecessor — (Tenancy Laws — U. P. Zamindari Abolition and Land Beforms Rules (1951), R. 239) — (U. P. Land Revenue Act (3 of 1901), S. 7 (2)). **1959 All LJ 611: 1959 All WR (HC) 432: ILR (1959) 2 All 173: AIR 1960 All 93 (96) (Pt D) (Pr 7) (DB).**

——S. 273—Powers of a single member to alter or modify the order of any member except himself.

A single member cannot set aside or modify the order passed by another member without the concurrence of a second member. **1952 All LJ (Rev) 308 (1).**

——S. 273 — Order by one member — Another member can admit application for review for consideration — Order sought to be reviewed cannot be set aside by such member without concurrence of another member. **1952 RD (BR) 400: 1952 All WR (Rev) 240: 1952 All LJ (Rev) 279.**

——S. 273 — Powers of a single member to review.

A single member of the Board should be reasonably held to possess the power to review his own order. This power should not extend to reviewing an order of two members or of a single member other than himself. **1952 RD 230: 1952 All LJ (Rev) 249: 1952 All WR (Rev) 206.**

——S. 273 — Powers of single member of Board to review.

A single member shall not have power to alter or reverse a decree or order passed by the Board or by any member other than himself. It can be done only with the concurrence of two members. **1952 All WR (Rev) 33: 1952 All LJ (Rev) 9.**

5. Review — Principle to be applied.

——S. 273 — Rejection of review petition without hearing petitioner — Principle of natural justice is not violated. **AIR 1955 NUC (All) 1517.**

[**Overruled** on another point in AIR 1956 All 698.]

——S. 273 — New interpretation put on question of law — Decision is not liable to be modified by reason of such interpretation. **1952 RD (BR) 400: 1952 All WR (Rev) 240: 1952 All LJ (Rev) 279.**

——S. 273 — Ground for review.

The fact that a question is important is not a valid ground for the review of the decision on the allegation that it is not correct. **1952 RD (BR) 400: 1952 All WR (Rev) 240: 1952 All LJ (Rev) 279.**

——S. 273 — Decision of Board — No important provision of law overlooked — Decision cannot be reviewed. **1952 RD (BR) 221.**

——S. 273 — Review of decree or order passed by the Board — Principle to be applied.

Under S. 273 of the U. P. Tenancy Act the principle laid down in sub-section (3) of S. 220 of the U. P. Land Revenue Act about review under that Act has to be followed. **1952 RD 14.**

6. Review by Board.

——S. 273 — Second review application to Board of Revenue — Competency — Question of general importance — The question whether the Board of Revenue has power to entertain a second application for review raises a question of general importance and is covered by Cl. (c) of Art. 133 (1), Constitution of India. See Constitution of India, Art. 133 (1) (c). **AIR 1957 All 116 (DB).**

——S. 273 and Rules under S. 293, R. 170 — Powers of Revenue Board or review (U. P. Land Revenue Act (3 of 1901), S. 7) — 1954 All LJ 628, **Overruled. 1956 All LJ 510: 1956 All WR 518: AIR 1956 All 698 (699, 700, 702, 703) (Prs 4, 7, 10, 11, 26, 27, 30) (DB).**

——S. 273 — Applicability of O. 47, Civil P. C. — Has no application to review made by Board of Revenue — It is open to member to allow opposite parties' application for review and second appeal simultaneously. **AIR 1955 NUC (All) 3529.**

——Ss. 273 and 293 — Rule 170 or the Rules framed under S. 293 — Powers of review — Board of Revenue can delegate power of review but single member cannot exercise delegated power without concurrence of second member. **AIR 1955 NUC (All) 3529.**

SECTION 274

——S. 274 — Scope. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 273. **AIR 1955 NUC (All) 171.**

——**S. 274** — Decree of predecessor reviewed by Additional Commissioner — Merits of decree not entered into — It cannot be held that Additional Commissioner had no jurisdiction to review decree passed by predecessor — (Civil P. C. (1908), O. 47, R. 1). **1952 All LJ (Rev) 136: 1952 RD (BR) 165.**

SECTION 275

SYNOPSIS

(U. P. Tenancy Act (1939), S. 275.)

1. Competency of revision.
2. Cross objections in revision.
3. Effect of repeal of Act by U. P. Zamindari Abolition and Land Reforms Act.
4. Interference in revision.
5. Joint application by J. D. and D. H.
6. Power of Board.
7. Time limit for application.
8. "Case decided".

1. Competency of revision.

——**S. 275** — Order passed in appeal in proceeding under S. 27 of Act 10 of 1947 — Revision under S. 275 lies against such order. **1952 All LJ (Rev) 282 (DB).**

——**S. 275 — Scope and applicability — Order under S. 13 of U. P. Act 10 of 1949 — Revision — Maintainability — Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 13).**

The authority under S. 275 is confined to cases under that Act and does not extend to any case decided by a subordinate Court in which no appeal lies either to the District Judge or to the Board.

No revision lies to the Board under S. 275 of the Tenancy Act against an order passed by the Commissioner under S. 13 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949. **('52) 1952 All LJ (Rev) 145: 1952 RD (BR) 191.**

——**S. 275** — Suit remanded for decision according to law — No ground for revision. **('52) 1952 All LJ (Rev) 64: 1952 All WR (Rev) 70: 1952 RD (BR) 69.**

——**S. 275 — Revision — Grounds for — Wrong view of law.**

Though a wrong view of law held by a Court is no ground for revision, yet a revision would lie when a Court has committed illegality of procedure in exercising its jurisdiction. **1951 All WR (Rev) 236: 1951 RD 251: 1952 All LJ (Rev) 15.**

——**Ss. 275 and 29, Explanation** — Finding based on Explanation to S. 29 — Finding can be questioned in revision. **1952 All WR (Rev) 237: 1952 All LJ (Rev) 329: 1952 RD (BR) 372.**

——**Ss. 275, 271 — Appeal against order of remand by the Commissioner — Competency — Revision.**

No appeal has been provided in S. 271 (2) of the Act against an order of remand by the Commissioner, but the appeal can be treated as a revision in a fit case. See Tenancy Laws — U. P. Tenancy Act (1939), S. 271. **1951 All WR (Rev) 97: 1951 RD 79.**

——**S. 275 (c) — Revision — Grounds — Wrong view of the law — Illegal procedure in exercising jurisdiction.**

A wrong view of the law held by the Court is no ground for revision as the Court cannot be deemed to have exercised a jurisdiction illegally. A revision lies only when a Court has committed illegality of procedure in exercising its jurisdiction. **1951 All WR (Rev) 48: 1951 RD 47.**

——**S. 275** — Order under U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949) is not revisable under S. 275 of the Act. See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 13 **('51) 1951 RD 263.**

——**S. 275 — Scope of revisional jurisdiction.**

Where a suit is decreed on the decision of a question of an adoption and there is no appeal against the judgment, the finding as to adoption cannot be challenged in an application for revision in respect of certain proceedings in review of the judgment. **1951 RD 33: 1951 All WR (Rev) 35.**

——**Ss. 275, 163 and 165 — Order for ejectment — Setting aside of, under S. 151, Civil P. C. — Revision — Civil P. C. (1908), S. 151.**

Interference in an order passed by a Court under S. 151, Civil P. C. would only be called for if such an order had no basis whatever and was perverse or resulted in material injustice. **('50) 1950 All WR Rev 12: 1950 RD 194 (196, 197).**

2. Cross objections in revision.

——**S. 275 — Cross objections in revision — Maintainability — Correction of obvious mistake in finding of Lower Court.**

No cross-objections in a revision lie but the Board is competent to rectify an obvious mistake in the finding of the Lower Court. **1952 All LJ (Rev) 214: 1952 RD (BR) 267.**

——**S. 275 — Remand on the ground of non-joinder of a party, objection to which was not taken at the earliest opportunity.**

Order is vitiated by material irregularity of procedure and is liable, to be set aside in revision. **1951 All WR (Rev) 97: 1951 RD 79.**

3. Effect of repeal of Act by U. P. Zamindari Abolition and Land Reforms Act.

——**S. 275 — Effect of repeal of Act by U. P. Zamindari Abolition and Land Reforms Act upon right of revision — (U. P. General Clauses Act (1 of 1904), S. 6).**

Though under section it is discretionary with the Court to interfere or not to interfere in revision a party has got the right to apply to the revisional Court to exercise its discretion in a judicial manner. This right has not been taken away by the repeal of the U. P. Tenancy Act by U. P. Zamindari Abolition and Land Reforms Act.

Further in view of S. 6 of the U. P. General Clauses Act a revision arising out of the proceedings stated for asserting the right to reinstatement by an ejected tenant is a legal proceeding in respect of such right and may be continued and conducted as if the U. P. Tenancy Act as amended by Act 10 of 1947, under which the right to reinstatement had been acquired, has not been repealed. **1952 RD (BR) 377: 1952 All WR (Rev) 230: 1952 All LJ (Rev) 246.**

4. Interference in revision.

——**S. 275 (c) — Decision by Assistant Commissioner as to payment of rent — Interference in revision — (Civil P. C. (1908), S. 115 (c)).**

Where the Assistant Collector in appeal on a consideration of the evidence before it, reaches the conclusion that certain payments of rent to the Zamindar, as alleged by opposite parties, were not proved, it cannot be said that he has committed either any error of procedure or any material irregularity in the manner in which he reached that conclusion.

A contrary decision arrived at by the Commissioner in revision on the evidence is really an interference on a question of fact which in the opinion of the Commissioner, was erroneously decided by the Assistant Collector. It is not an interference on any matter of procedure and such an interference is not contemplated by the provisions of S. 275 (c). **1955 All WR (HC) 494: 1955 All LJ 570: ILR (1955) 2 All 724: AIR 1955 All 557 (559) (Pt A) (Pr 8) (DB).**

——S. 275 — Constitution of India, Article 226 — Certiorari — Error on face of record — Power of superior Court to disturb decision of inferior Court on question of jurisdiction, extent of, indicated — Board of Revenue erroneously entertaining and allowing revision under S. 275, U. P. Tenancy Act—Decision can be quashed by writ of certiorari under Article 226. See Constitution of India, Art. 226. **AIR 1955 All 557.**

——S. 275 — Revision — Fresh evidence — If admissible — Dismissal of application for reinstatement — Right of one of the evicted tenant to apply — Erroneous decision — Interference by the Board — One of the several ejected tenants can maintain an application for reinstatement without joining the other cotenants either as applicants or defendants. See U. P. Tenancy (Amendment) Act, S. 27. **1952 All LJ (Rev) 331.**

——S. 275 — Revision — Board of Revenue — Inherent powers to interfere — Proceedings under S. 27, U. P. Tenancy (Amendment) Act — Powers under S. 275 — Exercise of — Proper.

The Board, in spite of the provision in S. 5 of Land Revenue Act, has no inherent power of revision over the subordinate Court.

U. P. Act 10 of 1947 is not an independent Act but an amending Act and the proceedings under S. 27 are also governed by the Tenancy Act which Act 10 of 1947, has amended for certain purposes and the Board has powers to interfere under S. 275 of the Tenancy Act. The uniform practice is also in accordance with the law. **1952 All LJ (Rev) 315.**

——S. 275 — Grounds of interference — (Civil P. C. (1908), S. 115).

For the interference of the Board in revision the case must not only fall within one of the clauses of S. 275 of the Act but there should also be some material injustice done to the applicant. **1952 All LJ (Rev) 248.**

——S. 275 — Decision not supported by legal evidence — Relief under S. 27 of the Tenancy (Amendment) Act — Not available — Grant of, in a case where the section is not applicable — The order is liable to be set aside on that ground. **1952 All WR (Rev) 132: 1952 RD 322: 1952 All LJ (Rev) 199.**

——S. 275 — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (3), Proviso — Ex parte order against land-holders for reinstatement set aside in appeal — Proceedings under S. 27 afresh — Declaration regarding sub-tenants is liable to be set aside. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (3), Proviso. **1952 RD (BR) 294.**

——S. 275 — Board, when would interfere in revision.

The Board would not interfere in exercise of its revisional powers unless in addition to the case falling under one of the clauses of Section 275, U. P. Tenancy Act, some material injustice has been caused to the applicant. **1952 All WR (Rev) 115: 1952 RD (BR) 243.**

——S. 275 — Interference in revision — Dismissal of appeal by Commissioner — Failure to implead party — Necessary and proper parties — Distinction.

Held: An appeal without impleading some of the parties to the suit who were not necessary but only proper parties is not liable to be dismissed. Failure to implead a party is fatal only if he is a necessary party.

Where there is nothing to show that they were not necessary parties and the applicant himself having impleaded them in the trial Court the order of the Commissioner is justified. **1952 RD 209: 1952 All WR (Rev) 113: 1952 All LJ (Rev) 191.**

——S. 275 (c) — Exercise of jurisdiction illegally or with material irregularity — Civil P. C. (1908), Section 115.

Where on the stay of suits under S. 63 by Act 7 of 1950 the plaintiffs apply for withdrawal of relief under S. 63 and addition of relief under S. 60 and for amendment of the plaint accordingly, the trial Court clearly acts in the exercise of its jurisdiction with material irregularity when it allows the amendment which involves the defendant in the continuance of a litigation which had been definitely stayed under Act 7 of 1950. **1951 RD 113 (115): 1951 All WR (Rev) 106.**

——S. 275 — Interference in revision — Principles governing.

The consistent view of the Board has always been that it will not interfere in exercise of its revisional powers unless in addition to the case falling under one of the clauses of S. 275 of the Tenancy Act some material injustice has been caused. **1950 RD 197.**

——S. 275 — Interference in revision with orders passed under S. 151, Civil P. C.

Interference with an order passed by a Court under S. 151, Civil P. C., setting aside an order of ejectment would only be called for if such an order had no basis whatsoever and was perverse or resulted in material injustice. **1950 RD 194.**

5. Joint application by J. D. and D. H.

——S. 275 — Joint application by J. D. and D. H. in regard to setting aside a sale — Competency.

A joint revision to the Board cannot be ruled out as incompetent even though they might have preferred separate revisions before the Commissioner. **1952 RD 75: 1952 All LJ (Rev) 43: 1952 All WR (Rev) 63.**

6. Power of Board.

——S. 275 — Order of Commissioner dismissing appeal against order by Assistant Collector cancelling declaration under S. 6 — Revision to Revenue Board — Section 275 of the Act does not empower the Board of Revenue to revise an order made by the Commissioner. See U. P. Tenants (Acquisition of Privileges) Act (1949), S. 6. **AIR 1955 NUC (All) 2653.**

——S. 275 — Order under Section 27, U. P. Tenancy (Amendment) Act, 1947 — Revision — Jurisdiction of Board of Revenue to entertain — Tenancy Laws—U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (6).

The Board of Revenue, U. P., has jurisdiction under S. 275 to entertain revision in a case under S. 27, U. P. Tenancy (Amendment) Act, 1947.

Section 27 of the Amending Act is a part and parcel of the U. P. Tenancy Act, 1939. Hence clearly an application for revision in a case under S. 27 of the Amending Act is maintainable under S. 275 of the U. P. Tenancy Act, 1939. AIR 1940 Oudh 33 and AIR 1937 Oudh 124, Diss. from. **('52) 1952 All WR (HC) 235: 1952 All LJ 196: ILR (1953) 2 All 866: AIR 1952 All 820 (830) (Prs 4, 6, 7) (DB).**

——S. 275 — Revision — Exercise of powers — Inherent powers of Courts when can be exercised.

In the exercise of powers of revision the Board will not maintain an illegal order. The powers are intended to be exercised in the interests of justice but it does not extend to the substitution of one order for another.

The lower appellate Court was perfectly right in setting aside the second order (i.e.), by the successor but it was wrong in setting aside the prior order of the predecessor in Office of S. D. O., passed right or wrong, in the exercise of his jurisdiction when no appeal against that order was pending before him and that, in the exercise of his inherent powers without giving the parties affected an opportunity to support it. **1952 All LJ (Rev) 326.**

——S. 275 — Revision — Orders in proceedings under U. P. Act 10 of 1937 — Exercise of powers by the Board — Legal. **1952 All LJ (Rev) 315.**

——S. 275 and (Amendment) Act, 1947, S. 27 — Right to apply under S. 27 —One out of several co-tenants —Order of Collector based on misinterpretation of S. 27 — Revision.

One out of several co-tenants can maintain an application under S. 27 of the Amendment Act for reinstatement.

The Collector's order based on a misinterpretation of S. 27 of the Amendment Act cannot be held to be final. The Board has interfered in such cases and it has not been interfered with by the High Court under Art. 226. **1952 All LJ (Rev) 282.**

——S. 275 — Single revision against different orders in same proceedings.

The Board has ample powers to examine all the orders passed by the subordinate Courts in a single proceeding even if the irregularity of the orders is brought to its notice by a single application. **1952 All LJ (Rev) 280: 1952 RD (BR) 291.**

——S. 275 — Powers under — Discretionary and not mandatory.

Section 275 of the U. P. Tenancy Act under which the Board's revisional jurisdiction is exercised is discretionary and not mandatory. **1952 All LJ (Rev) 71: 1952 RD 117: 1952 All WR (Rev) 173.**

——S. 275 — Revisional jurisdiction — Exercise of — Principles.

The Board would not exercise its revisional jurisdiction unless the party applying for revision is shown to have suffered any substantial injustice. There can be no injustice when a suit is remanded for decision according to law. **1952 RD 69: 1952 All LJ (Rev) 64: 1952 All WR (Rev) 70.**

——S. 275 — Application in revision admitted — If can be thrown out on ground of technical defect.

The application cannot be thrown out on the ground of a technical defect. **('51) 1951 RD 169: 1951 All WR (Rev) 149.**

——S. 275 — Revision filed before Board — One of three applicants dying — Legal representative not substituted within 90 days — Interest of legal representative identical with that of remaining two applicants who could prosecute the application — Revision does not abate. **('51) 1951 RD 107: 1951 All WR (Rev) 78.**

——S. 275 — Revision — Power to reject application on technical ground — Civil P. C. (1908), O. 22 (General) O. 22, R. 4.

An application for revision should not be thrown out on the ground of technical defect. The Board will not be bound to hear the application on merits but may, if it thinks fit, reject the application on the technical ground after hearing the parties on that ground. **1951 All WR (Rev) 70.**

——S. 275 (c) — Powers of the Board under — Illegal order of ejectment under S. 165 (2) — Reinstatement under S. 27 of the U. P. Tenancy (Amendment) Act.

Under S. 275 (c) of the U. P. Tenancy Act, the Board could either suo motu or on a reference by a subordinate Court, exercise the jurisdiction, if there was any illegality or material irregularity in the exercise of jurisdiction by a subordinate Court. **1950 RD 122: 1951 All WR (Rev) 3.**

7. Time limit for application.

——S. 275 — Revision — Time limit for application — No cause shown for delay — Section 3 of Limitation Act — Decision found to be in proper exercise of jurisdiction — Interference suo motu, if called for.

The Board may act suo motu in any proper case; no period of limitation is prescribed for such action. **1952 All LJ (Rev) 185: 1952 All WR (Rev) 160: 1952 RD 348.**

——S. 275 — Application for revision beyond time admitted — No rejection thereafter.

Once an application for revision is admitted by the Board it amounts to a decision to call for the record of the case and when the record has been received, it becomes the duty of the Board to examine the case and see if interference is called for in the interests of justice. The application cannot be thrown out on the ground of a technical defect. **1952 All LJ (Rev) 134: 1952 RD 249.**

——S. 275 — Revision before Additional Commissioner beyond 4 months of order of the Collector — Dismissal — Revision before the Board within 4 months of the order of Additional Commissioner is barred. Rules 187 and 188 of the Revenue Court Manual do not help. **1952 All WR (Rev) 213: 1952 All LJ (Rev) 109: 1952 RD 195.**

——S. 275 — Revision—No period — Prevailing practice of 4 months—Powers of Board — Special cases. The Board has powers to revise an order of the lower Court on one of the grounds mentioned in sub-section (2) of Section 275 of the Act if an illegality or irregularity is brought to the notice of the Board beyond the 4 months time. **1952 RD 151: 1952 All LJ (Rev) 217.**

——S. 275 — Interest of tenant judgment-debtor cannot pass to the sub-tenant — Not necessary that sale must be confirmed — The judgment debtor need not go through the form of filing an application under O. 21, R. 89, Civil P. C. See Tenancy Laws — U. P. Tenancy Act (1939), S. 251. **('52) 1952 RD (BR) 75 (DB).**

——S. 275 — Revision — Powers of Board — The suit can be decreed by the Board as under S. 275 it has a right to interfere in revision in all cases where a subordinate Court has acted illegally or with material irregularity in the exercise of its jurisdiction. See U. P. Tenancy Act (17 of 1939), S. 183. **1950 RD 157.**

8. "Case decided".

——S. 275 — 'Case decided' — Meaning — Civil P. C. (1908), S. 115.

Where the plaintiffs' foremost claim was that they were the Sir and khudkasht holders of the land in suit, the amendment of the plaint giving

up the claim under S. 63 amounts to striking off a pleading. This amounts to a 'case decided' and a revision lies. **('51) 1951 RD 113 (114): 1951 All WR (Rev) 106.**

SECTION 276

——S. 276 — Revisional powers of High Court.

The revisional powers of the High Court that can be exercised in respect of a suit filed in a Revenue Court can only be those powers as are provided for in S. 276, U. P. Tenancy Act and not the powers of revision as provided for by S. 115, Civil P. C. **1957 All LJ 846: 1957 All WR (HC) 887.**

——S. 276 — Scope — (Civil P. C. (1908), Section 150).

Where the appellate Court which has jurisdiction to entertain and hear an appeal, holds in reversal of the trial Courts' decision that the suit was cognizable by a Revenue Court, the decision even if erroneous is not open to revision under S. 276, U. P. Tenancy Act, as no question of jurisdiction of the appellate Court is involved in such case. That section applies only when there is illegal assumption of jurisdiction or failure to exercise jurisdiction or irregular exercise of jurisdiction. **1953 All WR (HC) 454 (1): 1953 All LJ 554: AIR 1954 All 50 (51) (Pr 3).**

——S. 276 — Order staying suit under Indian Soldiers Litigation Act is case decided — Order is revisable — Civil P. C. (1908), S. 115 **1950 All WR 692.**

SECTION 286

——S. 286 — Debt Laws — U. P. Agriculturist Relief Act (27 of 1934), Ss. 10, 12 — Nature of Collectors' jurisdiction under Section 10 — Application for redemption under Section 12 — Issue of proprietary title whether can be referred to Civil Court under S. 286 — They act as Revenue Courts or possess the powers conferred under S. 286 of the Act — Regarding issues of proprietary title they cannot be remitted to Civil Courts which have no jurisdiction in such cases to enquire and record findings. See Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), S. 10. **AIR 1952 All 84.**

——Ss. 286 and 214 — Suits by proprietor against Thekadar — Title of plaintiff not in question — Only question being whether defendant is a tenant and not a Thekadar — Reference to civil Court — Not necessary. **1952 ALJ (Rev) 277.**

——S. 286 — Scope — Disputed plot — Sir — Exclusive or joint right between parties — It is a question of proprietary rights in issue and within the exclusive jurisdiction of civil Courts. **1952 RD 168: 1952 ALJ (Rev) 233.**

——S. 286 —Claim to be under-proprietor made in defence to suit under S. 194 — If should be referred to civil Court.

It is a claim clearly within the jurisdiction of the revenue Courts and not to the civil Court as the former Courts are the competent Courts which could give a finding on such a question. **1951 RD 272: 1952 AWR (Rev) 12.**

——Ss. 286 and 214 — Issue when to be referred to a civil Court — Suit under S. 214 to eject defendant as thekadar — Proprietary title to plaintiff not denied — Issue as to whether defendant was a thekadar — Reference to Civil Court need not be made — In any case an issue should be referred to the civil Court only if it is clear that that is an issue of proprietary rights which the Revenue Courts cannot decide. 1950 RD 120.

SECTION 288

——S. 288 — Suit for damages for cutting trees — Question of ownership arising on pleading — Jurisdiction of Civil Court.

Suit is maintainable in Civil Court for cutting trees and not for declaration of ownership. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. **1958 All WR (HC) 64: ILR (1957) 1 All 38.**

——S. 288 — Applicability.

Section 288 applies only when a suit relating to agricultural land is instituted in a civil Court; a suit is not a suit relating to agricultural land, where it is a suit relating only to the cutting of trees owned by the plaintiff. **ILR (1957) 1 All 38: 1958 All WR (HC) 64.**

——Ss. 288 and 81 (2) — Tenant right.

Tenant right is not the same thing as a right of ownership of trees, and provisions of S. 288 (1) would not apply but provisions of S. 81 (2) would apply to the case. 1947 ALJ 671 Dist. **1958 All WR (HC) 64: ILR (1957) 1 All 38.**

——S. 288 — Question in civil suit whether party is grove-holder — Power to refer issue. The Civil Court cannot refer the question to the Revenue Court but must decide it itself. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 3. **1957 All LJ 809.**

——S. 288 — Plea of tenancy — Reference to revenue Court — Conditions.

Before a plea of tenancy raised in a suit relating to agricultural land can be referred to the appropriate revenue Court two conditions must be fulfilled: (1) that the suit must relate to agricultural land. (2) that the question regarding tenancy right should arise therein. If either of the two pre-requisites is absent, the Court concerned has no jurisdiction to refer any such issue to the revenue Court. **1957 All LJ 809: 1957 All WR (HC) 793.**

——S. 288 — Repeal of — Effect of, on suit prior to its commencement — Determination of tenancy rights— Jurisdiction of civil Court. The suit having commenced before U. P. Act (1 of 1951), the issue related to the tenancy rights of the plaintiffs and had to be referred to the Revenue Court under Section 288 of the Act. Civil Court had no jurisdiction to decide the issue. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 339. **1957 All LJ 544.**

——S. 288 — Civil Court cannot recall issue sent to the Revenue Court for disposal — If it does so it exercises a jurisdiction not vested in it by law. See Civil P. C. (1908), S. 115. **1957 All LJ 104.**

——S. 288, Explanation — "Such question has not previously been determined by a Court of competent jurisdiction" — Compromise vesting title to land in plaintiff — Compromise incorporated in decree in previous suit — Issue regarding tenancy must be held to have been determined by competent Court — Plea of tenancy raised, cannot be considered as bona fide but for purpose of ousting jurisdiction of civil Court. **AIR 1955 NUC (All) 2020.**

——S. 288 (1) — Debt Laws — U. P. Encumbered Estates Land Act (25 of 1934), S. 11 (3) — Plea of tenancy raised before Special Judge — Special Judge not bound to refer it for decision to revenue Court. See Debt Laws — U. P. Encumbered Estates Land Act (25 of 1934), Section 11 (3). **AIR 1953 All 575.**

——S. 288 (1) — Civil Court — Revenue Court seized of proceedings under S. 12 of the U. P. Agri. Rel. Act.

It cannot be said that a revenue Court seized of proceedings under Section 12 of the U. P. Agricultural Relief Act is a "Civil Court" for the purpose of Section 288 (1) of the U. P. Tenancy Act. **1952 ALJ 170: 1952 AWR (HC) 217: AIR 1953 All 146 (146) (Pt A) (Pr 9).**

——**S. 288** — Suit for possession — Defendant pleading co-tenancy — Reference to Revenue Officer — Finding that defendant is Sajhi Kasht cannot be returned. **AIR 1952 All 305 (305) (Pt A) (Pr 5).**

——**S. 288 — Applicability — Question whether a person is a grove-holder raised in a civil suit — Procedure to be followed.**

Having regard to the provisions of S. 206 and Section 59 of the Tenancy Act the determination of the question whether a person is a grove-holder or not lies within the exclusive jurisdiction of the Revenue Court. Accordingly, when such a question is raised in a suit pending in a Civil Court, the issue must be framed and referred to the Revenue Court for determination. **AIR 1951 All 358 (359) (Pr 5).**

——**Ss. 288 (1), 206 (f) — Issue as to status of grove-holders in Civil suit — Reference to Revenue Court.**

Under Section 288 (1) it is only a question relating to tenant's right that has to be referred to the revenue Court. A grove-holder not being a tenant and Section 288 not being one of the provisions made applicable to grove-holders by Section 206 (f), an issue in a civil suit as to whether the defendants were the grove-holders of the suit land cannot be referred to the Revenue Court for a decision under S. 288. **1951 All WR (HC) 204.**

SECTION 289

——**S. 289 (2) — Applicability to appellate Court.**

Sub-section (2) of Section 289 of the Act gives the power to make a reference to a Court, whether civil or revenue, in which a suit, application or appeal having been rejected by a Court of one description, is subsequently filed in case that Court disagrees with the finding of the other Court. It is not only applicable to the proceedings in the Court of first instance but is applicable to the proceedings in the appellate Court as well. Sub-section (4) of the section supports this view. **1959 All LJ 859: 1959 All WR (HC) 659.**

——**S. 289 (2)** — Scope — Revenue Court can refer to High Court a question whether a suit pending before it is cognizable by Revenue Court or Civil Court. **AIR 1955 NUC (All) 2736 (DB).**

——**S. 289** — Reference — Revenue Court itself has to decide whether it can or cannot compel plaintiff to amend plaint — No reference lies on this. **AIR 1955 NUC (All) 2736 (DB).**

SECTION 290

——**S. 290 — Failure to raise objection to jurisdiction of Civil Court in trial Court — (Civil P. C. (1908), S. 21).**

Where the Revenue Court had jurisdiction but no objection was raised in the trial court, the appeal would be disposed of as if the civil Court had jurisdiction. **1958 All LJ 638: 1958 All WR (HC) 734.**

——**S. 290 (3)** — Suit by co-sharer for cancellation of lease granted by another co-sharer — Munsif directing return of plaint for presentation to proper Court — District Judge remanding suit for trial to Munsif — Revision against District Judge's order lies in High Court — (C. P. Code (1908), S. 115). **AIR 1955 NUC (All) 4453.**

——**S. 290** — Suit by lambardar to collect rent — Forum — Suit filed in wrong Court — High Court can act under Section 290. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 245. **AIR 1955 NUC (All) 163 (DB).**

——**S. 290** — Plea of jurisdiction not raised in trial Court — Appeal before District Judge — Plea of jurisdiction cannot be entertained in appeal. **('50) 1950 ALJ 861: 1951 All WR (HC) 274 and 186: AIR 1951 All 610 (611) (Pt C) (Pr 6) (DB).**

——**Ss. 290, 291 — Defect in jurisdiction when cannot be cured.**

The defect of jurisdiction cannot be cured under Sections 290 and 291, in cases where a suit is wrongly instituted in a Civil Court and an appeal would lie to the Commissioner, if it was rightly instituted. **1950 All WR (HC) 691.**

SECTION 291

——**S. 291 — Duty of appellate Court.**

Section 291, is meant to prevent multiplicity of legal proceedings. Where from the judgment of the trial Court it does appear that the relevant material was on the record and the procedure mentioned in sub-section (2) of S. 291 was not necessary to be followed, the only course open to the appellate Court under the law was to proceed with the appeal and to decide it on merits. **1960 All LJ 165: 1960 All WR (HC) 100.**

——**S. 291 — Scope.**

Suit by persons claiming to be the nearest reversioners of the deceased, who was possessed of certain under-proprietary and occupancy plots, against the defendants on the allegations that the property had passed to the plaintiffs and the defendants had taken unlawful possession of the plots in collusion with the Zamindars also impleaded as defendants — Trial Court dismissing suit on ground that suit did not lie under Section 183 as the defendants were in possession in their own right as heirs of the deceased and not through the landlords — Civil Judge in appeal holding that the material on record was sufficient for disposal of suit and giving his decision on merits — **Held,** that in view of Section 291 the civil judge was competent to do so and the question whether the suit was within the cognizance of the revenue Courts or not was immaterial. **1954 All WR (HC) 101 (2): 1953 All LJ 641: AIR 1954 All 170 (171) (Pr 7).**

——**Ss. 291, 290** — Defect in jurisdiction when cannot be cured — It cannot be cured under Sections 290 and 291, in cases where a suit is wrongly instituted in a civil Court and an appeal would lie to the Commissioner, if it was rightly instituted. See Tenancy Laws — U. P Tenancy Act (1939), S. 290. **1950 All WR (HC) 691.**

SECTION 293

——**S. 293, R. 170 and S. 273** — Powers of Revenue Board of review — (U. P. Land Revenue Act (3 of 1901), S. 7) — 1954 All LJ 628, **Overruled.** See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 273. **AIR 1956 All 698 (DB).**

——**S. 293** — R. 170 of the Rules framed under Section 293 — Power of review — Board of Revenue can delegate power of review but single member cannot exercise delegaled power without concurrence of second member. See Tenancy Laws — U. P. Tenancy Act (1939), S. 273 **AIR 1955 NUC (All) 3529.**

——S. 293 — Rules under S. 293 — R. 170 — Rule does not apply to application for review See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 293. **AIR 1955 NUC (All) 1517.**

——S. 293 — Rules under Rule 104 — Delivery of possession effected by Amin without notice to judgment-debtor — Delivery is not invalidated — (Civil P. C.(1908), O. 21, R. 35). **AIR 1954 All 39 (41) (Pt A) (Pr 10) (DB).**

SECTION 295-A

——**Ss. 295-A, 45 (as amended by U. P. Act 10 of 1947)** — U. P. Zamindari Abolition and Land Reforms Act (1 of 1950), Ss. 20 (a) (ii), 20 (b), 240-A (as amended by U. P. Act 20 of 1954) — Sub-lease of land by fixed rate tenant on 14-5-1946 for five years — Rights of sub-tenant on expiry of period — Effect of U. P. Zamindari Abolition and Land Reforms Act, 1950 repealing U. P. Tenancy Act — Suit for ejectment of sub-tenant filed on 31-8-1951 — Sub-tenant not liable to ejectment — He becomes adhivasi and then sirdar under U. P. Act of 1951— T. P. Act (1882), Ss. 105, 111 — 1963 All LJ 288, **Overruled.** See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) (as amended by U. P. Act 20 of 1954), S. 20 (a) (ii). **AIR 1964 All 498 (FB).**

——**Ss. 295-A and 183** — Hereditary tenant — Surrender of land by him in favour of landlord in 1949 — Sub-tenant under him is entitled to continue in possession as sub-tenant and to bring suit under Section 183. **1957 All LJ 224: 1957 All WR (HC) 67.**

——**S. 295-A** — Person a sub-tenant remaining in possession for period of five years under Section 295 — Period expiring on 31-12-1944 and right to remain in possession coming to an end — He is not entitled to benefit under Section 295-A introduced by Amending Act of 1947. **1953 All WR (HC) 362: 1953 All LJ 428: AIR 1953 All 723 (724) (Pr 9) (DB).**

——**S. 295-A — Applicability — Tenancies already extinguished.**

Section 295-A merely provides that all sub-tenants would be entitled to retain possession over their holdings for five years from the date of commencement of the Amending Act 10 of 1947. The section can have no operation so far as tenancies already extinguished are concerned. **1952 All LJ 92: AIR 1953 All 254 (255) (Pt A) (Pr 3).**

[Overruled in AIR 1955 NUC (All) 2689.]

——**S. 295-A (Inserted by U. P. Tenancy (Amendment) Act 10 of 1947).**

Applicability — Suit for ejectment of sub-tenant — Defendant denying his status — Court finding that defendant was sub-tenant — Suit decreed before amending Act came into force — Appeal against decree dismissed — Second appeal after amending Act came into force — Defendant's counsel accepting position that he was sub-tenant — Mere fact that decree was passed in ejectment of defendant held would not change his status and, therefore, section was applicable. **1952 All LJ 51: 1952 RD (BR) 44: AIR 1953 All 217 (217) (Pt A) (Pr 7) (DB).**

——**S. 295-A (Inserted by U. P. Tenancy (Amendment) Act (10 of 1947)) —Suit in ejectment — Anticipatory decree.**

As according to Section 295-A, a sub-tenant is not liable to ejectment for a period of five years from the date the amending Act came into force, a decree in anticipation of the cause of action arising on the expiry of five years cannot be passed in a suit for ejectment of the sub-tenant. **1952 All LJ 51: 1952 RD (BR) 44: AIR 1953 All 217 (217) (Pt B) (Pr 8) (DB).**

——**Ss. 295-A and 183** — Surrender by tenant-in-chief after Tenancy Amendment Act 10 of 1947 — Sub-tenant in possession under S. 295-A — Dispossession of — Right of suit under S. 183 — He cannot be deemed to be a sub-tenant as contemplated by S. 183 of the Act to be able to recover possession thereunder. See Tenancy Laws — U. P. Tenancy Act (1939), S. 183. **1952 All LJ (Rev) 168: 1952 RD 347.**

——**S. 295-A — Scope of.**

By S. 295-A of the U. P. Tenancy Act all sub-tenants who were sub-tenants on the date the Amendment Act came into force have been given the benefit to remain in possession for five years notwithstanding anything contained in the Act. This would cover all cases of ejectment under any section of the Act. There is no justification to read into the section any exception with regard to any particular section of Act. **1952 RD 73: 1952 All LJ (Rev) 56: 1952 All WR (Rev) 62.**

——**Ss. 295-A, 273 — Retrospective operation — Review of order or decree passed long before amendment — Maintainability.**

An order and decree passed in second appeal arising out of a suit under S. 171, Tenancy Act long before the amendment came into force by which a person ceased to be a sub-tenant cannot be altered on review on account of change in law introduced by subsequent amendment. **1951 RD 183: 1951 All WR (Rev) 181.**

——**S. 295-A** — Benefit of — Availability — Person allowed to continue in possession on extinction of tenancy-in-chief under S. 47 (4) of the Tenancy Act. See U. P. Tenancy (Amendment) Act (10 of 1947), S. 26. **1951 All WR (Rev) 89.**

SECTION 296

——**S. 296** — Scope of — The provisions of the Civil P. C., which are applicable to other sections of the Act as amended by Act 10 of 1947 are equally applicable to proceedings under S. 27 of the Amended Act. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (1) (c). **1952 All WR (Rev) 111.**

——**S. 296** —Suit under S. 44, Agra Tenancy Act — Decree after commencement of U. P. Tenancy Act, 1939 — Ejectment of tenant — Tenant is not entitled to benefit of S. 27 (1) (c) of Act 10 of 1947. **('52) 1952 RD (BR) 15: 1952 All WR (Rev) 53: 1952 All LJ (Rev) 6.**

SCHEDULE 2

——**Sch. 2 — Civil P. C. (1908), S. 151 — Inherent power.**

Schedule 2, U. P. Tenancy Act does not exclude S. 151, Civil P. C. from application to proceedings in the Revenue Courts under that Act. The sale officer who has dismissed for default the execution application pending on his file has, therefore, power to restore it also if justice so demanded. See Civil P. C. (1908), S. 151. **AIR 1953 All 467 (FB).**

SCH. 2, LIST 2, ITEM 5

——**Sch. 2, List 2, Item 5—U. P. Revenue Court Manual, R. 170 — Appeal heard by one member of the Board of Revenue — Other member later signing order and assenting — Procedure if irregular — Civil P. C. (1908), O. 41, R. 30.**

Under R. 170, U. P. Revenue Court Manual, it is not necessary in appeal for both the members of the Board of Revenue to be present at the time of argument, but the order or decree of one Member has to be concurred in by the other member. This rule is not in conflict with the Act.

Serial No. 5 of List 2 of the Second Schedule attached to the U. P. Tenancy Act, specially empowers the procedure of the character adopted by the Board. **1951 All LJ 548: 1951 All WR (HC) 635: ILR (1951) 2 All 552: AIR 1952 All 90 (90, 91) (Pr 3) (DB).**

[**Overruled** in AIR 1953 All 264.]

SCH. 2, LIST 2, ITEM 11

●——**Sch. 2, List 2, Item 11 — Collector, Interpretation of — (Interpretation of Statutes — Harmonious construction — (Civil P. C. (1908), Preamble).**

The provision made at Item No. 11 of List 2 Schedule 2 is a rule of procedure and should be construed liberally that is in such a way as will lead to the smooth working of the scheme of the Statute. The word 'Collector' should be interpreted to mean and include all Assistant Collectors, who have been invested with the powers of a Collector for the purposes of Entry No. 11, List 2 of the Second Schedule. Ramlal v. Ram Narain. **1953 All WR (HC) 143: 1953 All LJ 213: ILR (1953) 2 All 381: AIR 1953 All 467 (469) (Pt B) (Pr 16) (FB).**

●——**Sch. 2, List 2, Item 11 — Evidence Act (1872), S. 114 — Judicial and official acts.**

The High Court can safely presume that the official act of the transferor Court, in sending the case direct to the sale officer instead of sending it to the Collector was done in the regular manner and that the Court of the sale officer was seised of the jurisdiction to proceed with the execution of that case. See Evidence Act (1872) S. 114. **AIR 1953 All 467 (FB).**

SCH. 2, LIST 2, ITEM 13

——**Sch. 2, List 2, Item 13 — "Party"—Meaning of — Civil P. C. (1908), O. 41, R. 11.**

The word 'party' in Serial No. 13 cannot be said to be used as distinguished from the pleader acting on behalf of the party. **1951 All WR 255: 1952 All LJ 207: ILR (1952) 1 All 734: AIR 1953 All 608 (609) (Pr 4) (DB).**

SCH. 4, GROUP B, ITEM 18

——**Sch. 4, Group B, Item 18 —** Suit not under S. 180 — Limitation. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1955 NUC (All) 2017.**

——**Sch. 4, Group B, S. 183 —** Limitation under special or local Acts — The period of limitation provided in Sch. 4, Group B, Col. 4, against suits under S. 183, of the Act do not apply to suits brought under the provisions of S. 9, Civil P. C. See Limitation Act (1908), S. 29. **AIR 1954 All All 171 (DB).**

——**Sch. 4, Group B, Item 18 —** Amendment by Act of 1947 — Period of limitation for suit against person in unauthorised occupation is now two years — Amendment has retrospective operation — Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 31. **1950 All LJ 43: AIR 1950 All 191 (191) (Pr 2).**

SCH. 4, GROUP F

●——**Sch. 4, Group F, Serial No. 7. Cl. (5) — 'Date of final decree', meaning of — (Civil P. C. (1908), O. 41, R. 5 (1)).**

The words "the date of the final decree" would mean the date of the decree which has become final. **1953 All LJ 349: 1953 All WR (HC) 293: ILR (1953) 2 All 299: AIR 1953 All 747 (748) (Pt A) (Pr 13) (FB).**

—U. P. TENANCY (AMENDMENT) ACT (10 of 1947)

PREAMBLE

——**Preamble — Effect on jurisdiction of Civil Court.**

The effect of the U. P. Tenancy (Amendment) Act is certainly not to take away the jurisdiction of Civil Court in cases which it had prior to the coming into force of the Amendment Act. **1952 RD 43: 1952 All LJ 87: AIR 1953 All 219 (221) (Prs 3, 4).**

——**Preamble — Retrospective effect — Interpretation of Statutes.**

The amendments made by Act 10 of 1947 being amendments in the law of procedure, must have immediate effect given to them and thus would apply to suits pending at the time of the enforcement of the Act. **1952 All WR (HC) 203: AIR 1952 All 274 (274) (Pt A) (Pr 5).**

SECTION 6

——**S. 6, Explanation** — Effect of — Suit for declaration of hereditary tenancy under S. 59, U. P. Tenancy Act — Tenant recorded as sub-tenant of relative of landholder— Burden of proof is upon relative to show that he is genuine tenant and and had not been admitted to tenancy by landholder to prevent accrual of hereditary right to tenant — U. P. Tenancy Act (17 of 1939), S. 59. **1950 All WR Rev 53: 1950 RD 204.**

SECTION 17

——**S. 17, 27, 31, Proviso I — Decree in ejectment proceedings under S. 171 of the Tenancy Act — Appeal pending — Act 10 of 1947 coming into force — Tenants rights under proviso 1 to S. 31 — Application under S. 27 for reinstatement.**

Held: The existing decree in the case cannot be amended in the light of the provisions of S. 17 of Act 10 of 1947 by the Court in second appeal the proceedings of the second appeal and the lower Courts are to be quashed. The appellant will have a right to apply under S. 27 for reinstatement under Proviso 1 to S. 31 of the Act He will have the benefit of limitation in his favour even in the petition already so filed. **1952 All LJ (Rev) 189.**

SECTION 18

——**S. 18 — Change introduced by — Plea based upon — Opportunity to opposite party to rectify — Necessity.**

Where the change introduced by S. 18 of the U. P. Tenancy (Amendment) Act, 1947, comes into effect during the pendency of an appeal in a suit filed under S. 180 of the Tenancy Act, before the appellate Court proceeds to decide the appeal according to the new law, he must give an opportunity to the plaintiff in the suit to add the other parties and to prove his right to sue alone. **1951 RD 195 (2): 1951 All WR (Rev) 184.**

SECTION 19

——**S. 19 — Benefit of section.**

A tenant ejected through Court or dispossessed otherwise than through Court is entitled to the benefit of S. 19. But a person prevented from taking possession is not entitled to the benefit of the section. **1952 All WR (Rev) 245: 1952 All LJ (Rev) 299: 1952 RD (BR) 375.**

——**S. 19 — Benefit of section — Physical dispossession necessary.**

For the purposes of S. 19 ejectment means physcial dispossession. Where the party is not physically dispossessed but is merely prevented from obtaining possession he is not entitled to the benefit of the section. **1952 All LJ (Rev) 266.**

——S. 19 — Land holder entering upon holding in contravention of provisions — Benefit under S. 19 is available to tenant. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 87 (4). **1952 RD (BR) 378: 1952 All WR (Rev) 244: 1952 All LJ (Rev) 275.**

——S. 19 — Benefit of section.

The benefit of S. 19 is admissible only to a tenant who was ejected and not to a tenant who was prevented from obtaining possession. **1952 All WR (Rev) 252: 1952 All LJ (Rev) 271.**

——S. 19 — Applicability — No eviction of the tenant through process of law.

It is not correct that S. 19 of the (Amendment) Act applied not only to cases of tenants ejected through the agency of Courts but also to cases of tenants wrongfully dispossessed outside. **1952 All LJ (Rev) 240: 1952 RD 245 (1).**

——S. 19 — Applicability — Heirs of ejected tenant.

Section 19 applies only to cases where the tenant had himself been wrongfully ejected from his holding and would not cover the case of his heirs who are prevented from getting possession. **1952 RD (BR) 231: 1952 All LJ (Rev) 132.**

——S. 19 — Applicability — Persons wrongfully dispossessed outside Court.

The extended period of limitation under Section 19 applies not only to cases of tenants ejected through the agency of Courts but also to cases of tenants wrongfully dispossessed outside Court. **1952 RD (BR) 242: 1952 All WR (Rev) 119: 1952 All LJ (Rev) 133.**

——S. 19 — Section 19 does not extend privilege of extension of period of tenants preventing from obtaining possession. Privilege is given to only those who are wrongly dispossessed. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 183. **1952 All LJ (Rev) 123: 1952 RD (BR) 178.**

——S. 19 — Section applies even to tenants wrongfully ejected outside Court and not only through agency of Court. **1952 All LJ (Rev) 118: 1952 RD (BR) 171.**

——S. 10 — Applicability — Tenant prevented from obtaining possession of holding — Limitation under S. 183 of Tenancy Act, 1939 — Expired — Further period of six months — Allowance of.

When the tenancy rights devolved on the wife of the tenant on his death and she surrendered possession of the tenancy to the landlord, the heirs of the deceased are prevented from getting possession of the same and they can file a suit under S. 183 of the Tenancy Act for which the period is 3 years from the date of surrender as aforesaid. But if that period expired before the coming into force of the Act 10 of 1947, he is entitled to apply in a further period of six months from the coming into force of that Act. It applies only to cases of tenants ejected but not to those who were prevented from taking possession. **1952 ALJ (Rev) 123: 1952 RD 178.**

——S. 19 — Applicability — Surrender of holding — Effect.

The right of the tenant to sue under S. 183, is not affected by dispossession out of Court, Section 19 is applicable to a case of dispossession, if wrongful, in such a case also if it is only between 1st January, 1940 and 1st September 1946.

Surrender by the tenant is not wrongful dispossession to found a suit under S. 183 of the Tenancy Act. **1952 All LJ (Rev) 118: 1952 RD 171.**

——S. 19 — Dispossession of tenant by illegal surrender — He can recover possession under Section 183, U. P. Tenancy Act 1939 — Period of extended limitation provided by S. 19 of Amending Act is available to him provided remedy is not already claimed and refused. **1952 All LJ (Rev) 117: 1952 RD (BR) 170: 1952 All WR (Rev) 226.**

——S. 19 — Scope of — U. P. Tenancy Act, 1939, S. 183 — Dispossession of tenant — Illegal — Remedy by suit under S. 183 — Refusal of — Extended period — Availability.

Section 19 of Act 10 of 1947 provides only for fresh period of limitation within which a suit under S. 183 may be instituted even in cases where the tenant illegally ejected has allowed the right to sue under the section to become barred before the Act 10 of 1947.

It does not provide for a revival of the cause of action for such a suit or the remedies thereunder when it is barred by the provisions of any statute. **1952 RD 170: 1952 All LJ (Rev) 117: 1952 All WR (Rev) 226.**

——S. 19 — Scope — Does not affect S. 11, Civil P. C. (1908). **1952 RD (BR) 215: 1952 All LJ (Rev) 114.**

——S. 19 — Holding privately divided between two recorded co-tenants — Both agreeing to pay their respective rents separately — Holding is not finally divided and co-tenants continue to be liable for arrears of rent jointly and severally — Decree for arrears of rent under S. 61 Oudh Rent Act against both — Subsequently disputed land settled on one of them only — Such tenant recorded and paying rent—Both are jointly and severally liable for arrears of rent in spite of private division and agreement — Benefit of S. 19 U. P. Tenancy Act cannot be allowed in such a case. **1952 All LJ (Rev) 104: 1952 RD (BR) 154.**

——S. 19 — Wrongful ejectment of tenant long ago — Claim by him for restoration — He cannot get benefit of S. 19. See Tenancy Laws — U. P. Tenancy Act (17 of 1949), S. 183. **1952 Rev Dec (BR) 85: 1952 All LJ (Rev) 49: 1952 All WR (Rev) 60 (DB).**

——S. 19 — Person ejected in due process of law — Restoration under S. 19.

Section 19 is not intended to give a fresh start for limitation to persons who had been ejected in due process of law through the instrumentality of Courts, and whose objections to the ejectment at that time were rejected and who did not care to question them within the period of limitation. **1952 All WR (Rev) 92: 1951 RD 270.**

——S. 19 — Applicability.

The extended period of limitation under S. 19 applies not only to cases of tenants ejected through the agency of Courts but also to cases of tenants wrongfully dispossessed outside Court. **1952 RD (BR) 245 (1).**

——S. 19 — Ejectment through Court — Dispossession not questioned within 3 years — Section 19 does not apply. **1951 All WR (Rev) 85: 1951 RD 85.**

——S. 19 — Reinstatement — Case covered by.

Reinstatement under S. 19 of the U. P. Tenancy (Amendment) Act, 1947 can cover only such cases in which the ejectment was clearly wrongful (i.e.) without the intervention of any process of law. **1951 All WR (Rev) 85: 1951 RD 85.**

——S. 19 — Scope — Applicability of extended period of limitation — Persons to whom it will apply.

The scope of S. 19 of the U. P. Tenancy (Amendment) Act of 1947 is not so extensive as to include every ejected tenant, or his heir and successor to seek restoration under this section. **1950 RD 130: 1951 All WR (Rev) 18.**

——S. 19 — Scope — Operation of extended period of limitation — Is not restricted to wrongful ejectment through Courts. **1950 RD 130: 1951 All WR (Rev) 18.**

——S. 19 — Scope and applicability — Fraud, evidence of — Acquiescence in ejectment — Evidence Act (1872), S. 115.

Section 19 is not intended to create fresh rights for all ejected tenants who were ejected through the agency of the Court, irrespective of whether the ejectment was legal or illegal. The only ground on which this extended limitation could apply would be where the ejectment had been secured by means of any fraud, and on no other grounds. **1950 All WR (Rev) 77: 1950 RD 172.**

SECTION 26

——Ss. 26 and 27 — Respective scope.

Section 26 contemplates the subsistence of the sub-tenancy rights at the date of the commencement of the Act, whereas S. 27 provides for reinstatement of the ejected tenants who have already lost their tenancy rights. **1951 RD 267: 1951 All WR (Rev) 213.**

——S. 26 — U. P. Tenancy Act (17 of 1939), S. 295-A — Benefit of — Availability — Person allowed to continue in possession on extinction of tenancy-in-chief under S. 47 (4) of the Tenancy Act.

A person who has been allowed to continue in possession on the extinction of the tenancy-in-chief under S. 47 (4) of the Tenancy Act is not entitled to the benefit of S. 26 of the U. P. Tenancy (Amendment) Act or S. 295-A of the Tenancy Act as the sub-tenant contemplated in the latter section is one where the tenancy-in-Chief is also in existence. **1951 RD 94: 1951 All WR (Rev) 89.**

——S. 26 — Applicability — Appeal which had abated before the commencement of Act 10 of 1947.

If an appeal is not pending on 14th June, 1947, the date when Act 10 of 1947 came into force, S. 26 of that Act would not apply. Where an appeal had abated prior to that date, it is no longer pending and so S. 26, cannot be availed of by the appellant. **1950 RD 140.**

SECTION 27

SYNOPSIS

(U. P. Tenancy (Amendment) Act (10 of 1947), S. 27.)

1. Scope and validity.
2. Sub-section (1).
3. Cl. (a) of sub-section (1).
4. Cl. (b) of sub-section (1).
5. Cl. (c) of sub-section (1).
6. Proviso to Cl. (c).
7. Sub-section (2).
8. Sub-section (3).
9. Proviso to sub-section (3).
10. Sub-section (4).
11. Sub-section (5).
12. Sub-section (6).
13. Limitation.

1. Scope and validity.

——S. 27 — Provisions of S. 27 of U. P. Tenancy (Amendment) Act are not void — Re-instatement of ejected tenant under S. 27, is not 'acquisition' within meaning of S. 299, Government of India Act and Art. 31 of the Constitution — U. P. Act is existing law and is saved — Rights under Article 19 (1) (f) of new tenant are not infringed. See Constitution of India, Art. 31. **AIR 1961 All 191 (DB).**

——S. 27 — Application under — Order passed on it not amounting to a decree — Civil P. C. (1908), S. 2.

An application made under S. 27 of the Act does not amount to a plaint and, therefore, the proceedings started with it cannot amount to a suit. The provisions of the Civil P. C. relating to the plaint or its presentation are not applicable to the proceedings started under S. 27. Therefore, an order passed on an application under S. 27 is to be treated as an order and not a decree. **1961 All WR (HC) 412: 1961 All LJ 491.**

——S. 27 — Section 27 is not relevant in interpreting S. 232 of U. P. Act, 1 of 1951 — Remedy under S. 27 is available only to those who have been ejected through Court—Remedy under Section 232 of Act (1 of 1951) is available to those who have been ejected though Court or otherwise See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 232. **1957 All WR (HC) 163: 1957 All LJ 171.**

——S. 27 — Applicability of Civil P. C.

The provisions of the Code of Civil Procedure apply to a proceeding under S. 27 and the tenant in possession at the time of reinstatement cannot be ejected unless he is a party to the proceeding. If the reinstated tenants want to dispossess him, the remedy lies by a separate suit for possession against him. The proceeding under S. 27 cannot be re-started. **1952 RD (BR) 363: 1952 All WR (Rev) 235: 1952 All LJ (Rev) 258 (2) (DB).**

——S. 27 — Proceedings under — Civil P. C. applies — Civil P. C. (1908), O. 9, R. 4.

Section 243 of the U. P. Tenancy Act makes the provisions of C. P. C. applicable to all suits and proceedings under the Act subject to the modifications provided therein. Consequently, by reason of S. 141, Civil P. C. the same procedure which is to be followed in suits has to be followed in the case of all proceedings also and therefore, the Court does not act without jurisdiction in restoring an application under S. 27 which was dismissed for default. **1952 All LJ (Rev) 248.**

——S. 27 — Application under S. 27 — Order by Collector in appeal — Revision to Additional Commissioner — Reference to Board — Opposite party seeking to agitate finding of fact — No revision filed against Collectors' order within limitation — Finding not challenged before Additional Commissioner — Finding cannot be questioned before Board. **1952 All LJ (Rev) 188: 1952 RD (BR) 248.**

——S. 27 — Matters with which Court is concerned in proceedings under.

In proceedings under S. 27 of the U. P. Tenancy (Amendment) Act, 1947, the Court is not concerned with the legality or otherwise of the original order of ejectment which may have been perfectly legal and justified when it was passed. The Court is only concerned to find out and satisfy itself if the arrears for which ejectment was ordered or effected were less than one-fourth of the annual rent. If it is so, reinstatement has to follow irrespective of whether the payment was made before or after the order of ejectment or before or after the dakhal dehani. **1952 All WR (Rev) 25: 1952 RD 8: 1952 All LJ (Rev) 2.**

——S. 27 — Civil Procedure Code is applicable to proceedings under S. 27 by virtue of S. 243, U. P. Tenancy Act — (Civil P. C. (1908), Preamble) — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 243). **1952 All WR (Rev) 115: 1952 RD (BR) 243.**

——Ss. 27, 26 — Respective scope indicated. See Tenancy Laws — U. P. Tenancy (Amendment) Act (1947), S. 26. **1951 All WR (Rev) 213: 1951 Rev Dec 267.**

——S. 27 — Act 10 of 1947 is not an independent Act — In proceedings under S. 27, provisions of O. 1, regarding impleadment of necessary parties apply — Applicant is not absolved from duty of impleading Zamindar and tenant in possession — Civil P. C., O. 1, R. 10. **1951 All WR (Rev) 111: 1951 RD 89.**

——S. 27 — Section 27 provides for restoration in cases of tenants ejected under specified sections of U. P. Tenancy Act — It has no general applicability to all ejected tenants of all kinds. **1950 All WR Rev 77: 1950 RD 172.**

2. Sub-section (1).

——S. 27 — Several tenants ejected under Section 171, U. P. Tenancy Act — One of them can claim reinstatement under S. 27 — U. P. Tenancy Act (17 of 1939), S. 171. **1952 All LJ (Rev) 282 (DB).**

——S. 27 — Application under, by few out of many tenants.

A few out of many tenants who are ejected can apply for their reinstatement under S. 27 without adding the rest even as defendants. **1952 All LJ (Rev) 280: 1952 RD (BR) 291.**

——S. 27 — One of several ejected tenants can maintain an application for reinstatement without joining the other co-tenants either as applicants or defendants. 1950 RD 17, Foll. **1952 All WR (Rev) 263: 1952 All LJ (Rev) 331: 1952 RD (BR) 413 (2).**

——S. 27 (1) — Houses standing on small areas are "improvements" within S. 3 (8) (i), U. P. Tenancy Act — Houses standing when applicant was ejected under S. 171 of Tenancy Act — Applicant is entitled to reinstatement over entire holding — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), Ss. 3 (7), (8) (i) and (10) and 171). **1952 All LJ (Rev) 148: 1952 RD (BR) 241.**

——S. 27 (1) — Applicability — Compromise of suit under S. 171, U. P. Tenancy Act — Part of land taken from the tenants and settled with the tenant-in-chief — Rest with the tenants at an enhanced rent — Disposession held fell under S. 27 (1). **1952 RD 225: 1952 All LJ (Rev) 135: 1952 All WR (Rev) 167.**

——S. 27 — Re-instatement under — Order cannot be made while hearing appeal in suit under S. 183, U. P. Tenancy Act — Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 183. **1951 All WR (Rev) 231: 1951 RD 260.**

——S. 27 (1) — "Such holding" — Meaning.

The phrase "such holding" occurring in Section 27 (1) includes the substitute of the plots exchanged in consolidation operations. **1950 RD 212: 1950 All WR (Rev) 32.**

3. Cl. (a) of sub-section (1).

——S. 27 — Scope.

Tenant ejected under S. 44, Agra Tenancy Act on 12-6-1939 — Decree confirmed by Commissioner on 18-9-1939 — Second appeal to Board dismissed summarily on 21-2-1940 — Proceedings under S. 44 held could not be deemed to have continued under S. 180, U. P. Tenancy Act until 21-2-1940 — Tenant held was not entitled to benefit of S. 27—(Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 180) — (Tenancy Laws — Agra Tenancy Act (3 of 1926), S. 44). **1952 All WR (Rev) 111: 1952 RD (BR) 259.**

——S. 27 — Scope — Burden of proof.

Section 27 does not entitle an ejected tenant to ask the Courts to sit in review or revision of the order of ejectment under that section he has to prove and convince that the order of his ejectment passed under S. 165 of the Tenancy Act was for an arrear which was less than one-fourth of his annual rent. **('52) 1952 All LJ (Rev) 54: 1952 All WR (Rev) 106: 1952 RD (BR) 87.**

——S. 27 — Application for reinstatement — Co-tenants are necessary parties — Non-joinder condoned in suitable cases. **1952 RD 261: 1952 ALJ (Rev) 142.**

——S. 27 — Right to reinstatement — Person ejected under Section 163 of the Tenancy Act in 1350-F persisting in possession and being ejected under Section 180 of the Act — He cannot be reinstated. **1952 ALJ (Rev) 90: 1952 RD 112.**

——S. 27 — Applicability — Conditions — Tenant ejected in execution of decree under S. 61 of the Oudh Rent Act — Cannot claim benefit of S. 27. **1950 RD 172.**

4. Cl. (b) of sub-section (1).

——S. 27 (1) (b) — Suit under Section 171 of the Tenancy Act— Decree for possession following compromise — Consent by tenant, admittedly given in view of his receiving another plot — No mention of exchange of plots in compromise — Payment of Rs. 700 in evidence not considered in appeal — Condition for return of the other plot in the order for reinstatement —Case held fell under S. 27 (1) (b). **1952 RD 238: 1952 ALJ (Rev) 334.**

——S. 27 — Application by some of the tenants evicted — Formal delivery of possession — Proof if necessary — Admission of evidence in revision — Interference in revision.

In revision proceedings no additional evidence is admissible as in the case of appeals. O. 41, R. 27, C. P. Code, does not apply to a proceeding in revision. A Court of revision is normally entitled to interfere only when the materials on record justify; it may be in exceptional circumstances that fresh evidence may be admitted to prevent a miscarriage of justice.

It is not necessary that there should be a formal delivery of possession in pursuance of a decree for ejectment under Section 171, Tenancy Act. Even voluntary dispossession in pursuance of such a decree for eviction is enough to justify reinstatement under S. 27. The Board has consistently held that the application by one out of many tenants evicted is maintainable under S. 27. **1952 All LJ (Rev) 331.**

——S. 27 — Application by one out of several tenants ejected — Competency of.

One of several tenants ejected under S. 171, U. P. Tenancy Act, can apply for reinstatement. It is not necessary that all the tenants should join as applicants or be impleaded as defendants. **1952 RD (BR) 377: 1951 All WR (Rev) 230: 1952 All LJ (Rev) 246.**

——S. 27 — Decree in ejectment proceedings under Section 171 of the Tenancy Act 1939 — Appeal pending — Amendment Act coming into force — Benefit available to appellant. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 17. **1952 ALJ (Rev) 189.**

——S. 27 — Consent decree under S. 171 of the Tenancy Act — Tenant giving possession after decree — No compensation received — Reinstatement can be claimed by him. **1952 AWR (Rev) 128: 1952 ALJ (Rev) 177: 1952 RD 338.**

——S. 27 — Application for reinstatement by tenant evicted under Section 171 of the Tenancy Act — House standing on the land at the time of eviction — Land not converted into abadi — Reinstatement over the area covered

by the house also can be granted. **1952 RD 241: 1952 All LJ (Rev) 148.**

——**S. 27 (1)** — Suit under Section 171, Tenancy Act — Suit compromised — Applicants giving up possession over portion of land— Remainder settled with applicants on enhanced rent — Formal dakhal through Court taken after decree — Case held fell under Section 27 (1). **1952 All WR (Rev) 157: 1952 All LJ (Rev) 135: 1952 RD (BR) 225.**

——**S. 27** — Applicant ejected as result of ex parte decree under Section 171 of U. P. Tenancy Act (17 of 1939)— Possession delivered to Zamindar — Applicant could have applied for re-delivery of possession under S. 144 C. P. C on ex parte decree being set aside — Meanwhile applicant prevented from doing so by reason of ejectment decree passed in appeal by Commissioner — **Held,** applicant was entitled to benefit of Section 27 as person prevented from obtaining re-delivery of possession must be treated to be on same footing as person dispossessed as a consequence of decree. **1952 All WR (Rev) 84 (1): 1952 All LJ (Rev) 99 (1): 1952 RD (BR) 134 (DB).**

——S. 27 — Right to maintain application for reinstatement under.

A person will be deemed to have been ejected under Section 171 of the U. P. Tenancy Act in order to enable him to maintain an application under Section 27 of Act 10 of 1947, not only when dispossession follows a decree under Section 171 by formal delivery of possession but also if a person against whom the decree for ejectment has been passed gives up possession voluntarily without recourse having been made to dakhal dehani. **1952 ALJ (Rev) 72: 1952 RD 120: 1952 AWR (Rev) 170.**

——**S. 27** — Benefit of — Availability — Ejectment though under Section 171 of the Tenancy Act, existence of prior surrender for compensation paid — Tenant not entitled to benefit. **1952 AWR (Rev) 32: 1952 RD 51: 1952 ALJ (Rev) 23.**

——**S. 27 (1) (b)** — Suit under S. 171, U. P. Tenancy Act — Decree for ejectment by compromise — Decree followed by delivery of possession — Tenant admitting that for giving his consent to passing of decree he had received another plot — Compromise silent on this exchange — Reinstatement held could be ordered without attaching condition for return of plot received in exchange. **1952 RD (BR) 238.**

——S. 27 — Right to apply for reinstatement — Person deemed to have been ejected under S. 171, Tenancy Act — Giving up possession without formal dekhal dehani.

A person will be deemed to have been ejected under Section 171 of the U. P. Tenancy Act in order to enable him to maintain an application under Section 27 of Act 10 of 1947, not only when dispossession follows a decree under Section 171 by formal delivery of possession but also if a person against whom the decree for ejectment has been passed gives up possession voluntarily without recourse having been made to dekhal dehani. **1951 RD 57: 1957 AWR (Rev) 93.**

5. Cl. (c) of sub-section (1).

●——**S. 27** — U. P. Tenancy Act (17 of 1939), Ss. 180 and 242 — Ejectment decree obtained after 1-1-1940 — Execution — Annulment of — Reinstatement after 1947 Act — Liability to ejectment in execution of decree obtained after 1-1-1940 — Second suit for ejectment is barred. Kedar Nath v. Jamuna, **1964 All WR (HC) 219: 1964 All LJ 442: AIR 1965 All 116 (118 to 120) (Pt A) (Prs 8, 10, 20) (FB).**

——**S. 27 (1) (c)** — Word "ejected" means person was dispossessed as consequence of decree or order passed under Section 171 or S. 180 of Tenancy Act — Suit for ejectment under Section 180 decreed on 26th March, 1940 — No execution — Tenant is ejected within meaning of Section 27 of Amending Act — He can apply for reinstatement — (Words and Phrases — 'Ejected'). **AIR 1955 NUC (All) 3303 (DB).**

——S. 27 — Voluntary dispossession.

It is not necessary that there should be a formal delivery of possession following a decree for ejectment when reinstatement is justified; but even voluntary dispossession in pursuance of a decree for ejectment is enough. 1951 RD 57, Foll. **1952 All WR (Rev) 263: 1952 All LJ (Rev) 331: 1952 RD (BR) 413 (2).**

——S. 27 — Benefit of — Person recorded as sub-tenant in 1348-F — Record operations — June 1939 to end of 1941 — If entitled —Order to record by S. D. O. — Validity.

It is enough for the purposes of Section 27 if a person is found to be recorded as an 'occupant after January 1, 1938 and if the entry is in accordance with the records revised under Chap. 4 of the Land Revenue Act. He cannot be deprived of the benefit of Section 27 by the accident of the revision of the records falling in the same year as that of entry of the petitioner as a sub-tenant. The petitioner must be regarded as an 'occupant' within the meaning of Section 27 and thus entitled to the benefit of the section.

The correction order by the S. D. O. in the circumstances of the case must be held to be in exercise of the powers as the Assistant Record Officer under the Collector. **1952 ALJ (Rev) 283: 1952 RD 245 (2).**

——S. 27 (1) (c) — Applicability — Decree under S. 44 of the Agra Tenancy Act — Summary rejection of appeal to the Board under S. 268 of U. P. Tenancy Act — If a decree under S. 180 of the Tenancy Act — S. 296, construed.

The order of the Board summarily rejecting the second appeal under Section 268 is not a decree. 1945 AWR (Rev) 228 (2), Foll.

Section 296 of U. P. Act provides that a suit pending at the commencement of the Act shall be decided or a decree under the Agra Act shall be executed in accordance with the corresponding provisions of the U. P. Act and not that it is converted or deemed to be a decision under the corresponding section of the later Act. A decree under Section 44 of the Agra Tenancy Act is not and cannot be deemed to be under Section 180 of the U. P. Act.

A person ejected in execution of the decree under Section 44 of the Agra Tenancy Act cannot therefore be entitled to apply under S. 27 (1) (c) of the Amendment Act of 1947. **1952 AWR (Rev) 111: 1952 RD 259: 1952 ALJ (Rev) 250.**

——Ss. 27 (1) (c) and 31 (1) — "Occupant" — Meaning of.

The word 'occupant' has the same meaning in Section 27 (1) (c) and in Section 31 (1). It includes a trespasser and a khudkasht holder. **1952 All LJ (Rev) 238: 1952 All WR (Rev) 208: 1952 RD (BR) 262.**

——**S. 27 (1) (c)** — Tenant is recorded as an occupant in record revised under Chapter 4 of U. P. Land Revenue Act or corrected by officer specially appointed for correction of annual

registers — Tenant is not entitled to benefit of S. 27 (1) (c). **1952 RD (BR) 254: 1952 All WR (Rev) 147: 1952 All LJ (Rev) 221.**

——**S. 27 (1) (c)** — Applicability — Tenant ejected under Section 180 of the Tenancy Act after 1st January, 1940 — Name entered as occupant in the record revised under Chap. 4 of the Land Revenue Act — Year of revision prior to 1938 — Rules of interpretation — Order ignoring the language of the statute — Order is revisable. **1952 RD 318: 1952 All LJ (Rev) 208.**

——**S. 27** — Recorded sub-tenant — Evicted in proceedings under S. 180 — Application for restitution — Not maintainable. **1952 AWR (Rev) 148: 1952 RD 334: 1952 ALJ (Rev) 197.**

——**S. 27** — Right to apply under — Matter pending in Appeal — No final ejectment under Section 180 of the Tenancy Act — Persons recorded in Khasra for 1345-F as mortgagee — Not entered in Khatauni of 1345-F — Not an occupant under Chapter 4 of the Land Revenue Act — No right to reinstatement — Revision proceedings pending — Death of pro forma party — No knowledge — Petition to implead heirs after 8 months — No abatement. **1952 AWR (Rev) 127: 1952 RD 240: 1952 ALJ (Rev) 180.**

——**S. 27 — Applicability to sub-tenants.**

Where on the death of an occupancy tenant, the zamindar confers occupancy rights on another person and in a suit brought by the latter under Section 180 of the U. P. Tenancy Act, 1939, the sub-tenants of the former occupancy tenant are ejected. the sub-tenants are not entitled to reinstatement under S. 27. **1952 All LJ (Rev) 112: 1952 All WR (Rev) 124: 1952 RD (BR) 208.**

——**S. 27** — Person ejected as trespasser under Section 163 — Persistence in possession and again being ejected under S. 180 — Person not occupant. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 163. **('52) 1952 RD (BR) 112: 1952 All LJ (Rev) 90 (DB).**

——**S. 27** — Application under — Court need not enter into merits of case decided under Section 180, U. P. Tenancy Act. **1952 All LJ (Rev) 69: 1952 All WR (Rev) 82: 1952 RD (BR) 119.**

——**S. 27 — Application under — Revision of records in 1344-F or in 1346-F instead in 1345-F — Effect.**

It is enough for purposes of Section 27 if a person is found recorded as an occupant after the 1st day of January 1938 and if the entry is in accordance with a record revised under Chapter 4 of the U. P. Land Revenue Act, 1901. **1952 All LJ (Rev) 69: 1952 AWR (Rev) 82: 1952 RD (BR) 119.**

——**S. 27 (1) (c)** — Applicants recorded as "occupants" at quinquennial settlement by Collector are not entitled to benefit of section. **1952 All LJ (Rev) 28: 1952 All WR (Rev) 29: 1952 RD (BR) 67.**

——**S. 27** — Ejectment on 17-6-1940 — Presumption is that ejectment took place under Section 180 of the U. P. Tenancy Act (17 of 1939) and not under Section 44 of the Agra Tenancy Act — Applicant is entitled to benefit of Section 27. **1952 RD (BR) 48: 1952 All LJ (Rev) 26: 1952 All WR (Rev) 51.**

——**S. 27 (1) (c)** —Condition for granting benefit under — Ejectment under Section 44, Agra Tenancy Act — Benefit not available. **1952 All WR (Rev) 29: 1952 All LJ (Rev) 28: 1952 RD (BR) 67.**

——**S. 27 (1) (c)** — Benefit of — Availability — Tenant against whom a decree for ejectment had been passed after U. P. Tenancy Act came into force in suit filed under Section 44 of the Agra Tenancy Act — Benefit not available. **1952 RD 15: 1952 ALJ (Rev) 6: 1952 AWR (Rev) 53.**

——**S. 27 (1) (c)** — Sole proprietor selling his entire right except right to cut and remove trees, entered as "baghbar" — He is not entitled to benefit of S. 27 (1) (c). **1952 All WR (Rev) 18: 1952 All LJ (Rev) 1.**

——**S. 27 (1) (c)** — Right to reinstatement — Sub-tenant becoming a trespasser and getting ejected out of possession — Not an "occupant". **1952 RD 106: 1952 AWR (Rev) 134.**

——**S. 27** — Decree for ejectment under Section 84 or 44 of Agra Tenancy Act — It is not one under Section 180 of U. P. Tenancy Act (17 of 1939) — Benefit under Section 27 of Amendment Act is not available to persons evicted thereunder. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **1951 Rev Dec 193: 1951 All WR (Rev) 187.**

——**S. 27 (1) (c) — Applicability — Ejectment after 1940 under a prior decree.**

The section applies to the case where the formal possession was delivered to the landlord on 14-3-1947 though the decree was passed before 1-1-1940. **1951 RD 198: 1951 All WR (Rev) 187.**

——**S. 27 (1) (c) — Occupant — Meaning of.**

Where a person who was recorded as a sub-tenant in the settlement is duly ejected from his sub-tenancy his persistence to continue to remain in possession in defiance of the legal authority does not entitle him to the benefit of Section 27 simply because he was ejected under Section 180. **1951 All WR (Rev) 134: 1951 RD 106 (107).**

6. Proviso to Cl. (c).

——**S. 27 — Mortgagee of holding — Evicted along with tenant on the illegal mortgage — Reinstatement of Tenant— Mortgagee if entitled to be reinstated — Wrong decision that he is — Revision under Section 275, U. P. Tenancy Act.**

Held:— In cases relating to the interpretation of Section 27 of Act 10 of 1947, the Board has consistently interfered in revision where the Courts below have put a wrong interpretation on it, even though an erroneous decision on a question of law is not a ground for exercise of revisionary powers under Section 275 of the Tenancy Act. **1952 ALJ (Rev) 296.**

——**S. 27, Proviso — Ouster of mortgagee before redemption.**

Although under Proviso to Section 27, the mortgagor, and not the mortgagee, is entitled to apply for reinstatement, this does not mean that the mortgagee can be ousted before the mortgage has been redeemed. **1952 All WR (Rev) 23: 1952 RD (BR) 4: 1952 All LJ (Rev) 17.**

——**S. 27 — Application under, by mortgagee.**

A mortgagee is not entitled to make an application for re-instatement under S. 27 in isolation from the tenant-in-chief. **1952 All WR (Rev) 127: 1952 RD (BR) 240.**

7. Sub-section (2).

——**S. 27 (2)** — Tenant surrendering holding to Zamindar on consideration — Tenant not entitled to reinstatement. **1952 All WR (Rev) 87: 1952 All LJ (Rev) 120: 1952 RD (BR) 138.**

——**S. 27 (2) — Applicability — Tenant of sir lands** — Hereditary rights not acquired — No

right to apply to be reinstated. **1952 ALJ (Rev) 113: 1952 RD 210.**

——**S. 27 (2)** — Question whether applicant for reinstatement made the surrender voluntarily or in consequence of fraud, etc. is a question of fact — It has to be seen whether the agreement was above suspicion. **1952 RD 111: 1952 ALJ (Rev) 91 (1): 1952 AWR (Rev) 163.**

——**S. 27 — Limitation.**

Application under — Bona fide mistake in description of land — Can be corrected subsequently. **1952 All LJ (Rev) 69: 1952 All WR (Rev) 82: 1952 RD (BR) 119.**

——**S. 27** — Applicability — Tenant surrendering land voluntarily and for consideration and putting zamindar in possession — Relief under Section 27 not available. **1950 RD 162 (2).**

8. Sub-section (3).

——**S. 27 (3) — Reinstatement — Tenant evicted — Holding — Portion — Converted to 'abadi' — Not 'land' — Excepted.**

Tenant ejected from his holding is entitled to be reinstated under Section 27 (3) of Act 10 of 1947 to the holding. Where a portion of the holding has been converted into abadi by outsiders that portion is not 'land' under Section 3 (10) of Tenancy Act, 1939 and only in the rest of the original holding will the evicted tenant be reinstated. **1952 RD 150: 1952 ALJ (Rev) 103: 1952 AWR (Rev) 98.**

——**S. 27** — Application under — Zamindar and tenants are necessary parties — In suitable cases delay in impleading necessary parties can be condoned under Section 5, Limitation Act — (Limitation Act (1908), S. 5. **1952 All WR (Rev) 10: 1952 All LJ (Rev) 4: 1951 RD 283.**

——**S. 27** — Case under S. 27 — Law regarding impleadment of parties is not clear — Strict view of failure to implead necessary parties should not be taken. **1952 All WR (Rev) 114: 1952 RD (BR) 252.**

——**S. 27 (3) — Benefit of — Availability — Condition.**

Unless the person seeking the benefit of Section 27 (3) of the U. P. Tenancy (Amendment) Act is a tenant of the whole body of the co-sharers he cannot succeed. **1950 RD 190.**

9. Proviso to sub-section (3).

——**S. 27 (3), Proviso** — Order of reinstatement — Execution of, not necessary. 1956 All LJ 417, **Overruled.** Civil P. C. (1908), O. 21, R. 36. **1962 All LJ 133: 1962 All WR (HC) 68: ILR (1962) 2 All 67.**

——**S. 27** — Land in dispute given in exchange for other land — Tenant can claim reinstatement. **1952 All LJ (Rev) 280: 1952 RD (BR) 291.**

——**S. 27 (3)** — Person declared as a sub-tenant under S. 27 (3) now occupancy tenant under S. 31 of Tenancy Act cannot be ejected without a suit under S. 175 of Tenancy Act. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 31. **1952 RD (BR) 350: 1952 All WR (HC) 198: 1952 All LJ (Rev) 261.**

——**S. 27 (3), Proviso — Declaration as sub-tenants — Liability to ejectment — Suit if necessary — Appeal against order for delivery without suit— Two alone out of three appellants — Competency — (O. 41, R. 4, Civil P. C.).**

Section 27 (3), Proviso provides only for a declaration to be made in the order for reinstatement under S. 27 that the tenants then in possession are declared to be sub-tenants entitled to remain in possession for 3 years. Such sub-tenants are under a liability to ejectment thereafter. The law does not provide for an order of ejectment to be made at the end of the period. Section 175 (b) of the Tenancy Act governs also the case of sub-tenants so declared. They can be ejected only by a suit.

The appeal by two only of the three enures to the benefit of the third also if it succeeded. The other is not prejudicially affected. The case is covered by O. 41, R. 4, Civil P. C. **1952 All LJ (Rev) 261: 1952 All WR (Rev) 198: 1952 RD 350.**

——**S. 27 (3), Proviso** — Order for reinstatement — Trespasser in possession of land, even though he had acquired hereditary right under S. 180 (2), U. P. Tenancy Act, is not saved from ejection. **1952 RD (BR) 364: 1952 All LJ (Rev) 257.**

——**S. 27 (3), Proviso — "Any other person in possession" — Meaning of.**

Includes a trespasser who has or has not acquired the rights of a hereditary tenant as well as any other person, tenant or land holder. **1952 All LJ (Rev) 257: 1962 RD 354: 1952 All WR (Rev) 242.**

——**S. 27 — Right of co-tenant to reinstatement in entire holding when others do not claim reinstatement.**

A co-tenant has got no separate interest in any portion of the joint holding until the partition of the holding. His rights or interests extend to every part of the land comprised in the holding and when he is reinstated he is entitled to reinstatement in the entire holding even though the other co-tenants may not claim reinstatment. **1952 RD (BR) 377: 1952 All WR (Rev) 230: 1952 All LJ (Rev) 246.**

——**S. 27** — Reinstatement — One of the co-tenants ejected — Application by — Right to reinstatement of the whole of the holding Repeal of the Act before application in revision — Competent. **1952 All LJ (Rev) 246: 1952 All WR (Rev) 230: 1952 RD 377.**

——**S. 27 (3), Proviso — Period of sub-tenancy — Date of commencement.**

The period of three years' sub-tenancy for the purposes of the proviso to sub-section has to be counted from the date when that tenancy is declared for the first time and not from the subsequent date when the declaration is confirmed. **1952 RD (BR) 354: 1952 All LJ (Rev) 244.**

——**S. 27 (3), Proviso** — Ex parte order against land holders for reinstatement — B and C subsequently admited tenants claiming right to retain possession for 3 years — Ex parte order set aside in appeal — B and C withdrawing their claim — Proceeding under S. 27 afresh — Declaration that B and C are sub-tenants — Liable to be set aside. **1952 All LJ (Rev) 241: 1952 RD 294.**

——**S. 27 (3), proviso** — Original tenants evicted — Land settled on a relation of the Zamindar — Actual occupiers, not relations or servants claiming to be sub-tenants of the relation — Their status — Reinstatement of original tenants — Occupiers not liable to be ejected for three years of declaration of their sub-tenancy rights. **1952 RD 236: 1952 ALJ (Rev) 182.**

——**S. 27 (3), proviso — Tenant evicted under S. 171, Tenancy Act — Validity — Onus — Tenant continuing in possession after delivery — Surrendering possession in the course of the consequent criminal proceeding — Effect — Landlord's sons let into possession — Right to the benefit of sub-tenancy — Proviso to sub-section (3) — Claim for improvements — Right to compensation under S. 27 (4) of the Act.**

Under the proviso to S. 27 (3) of the (Amendment) Act the sons of the landholder are not entitled to be declared as sub-tenants.

In such a case the compensation for improvements claimed has to be granted to the landholder inasmuch as the improvements must be deemed under the circumstances to have been effected by him, the person who takes advantage of the proviso to sub-s. (3) of S. 27 of the Act must take the obligation implied by it. **1952 ALJ (Rev) 171: 1952 RD 343.**

——**S. 27 (3), proviso** — Application for reinstatement — Order for possession on the expiry of 3 years — The tenant in possession to be sub-tenant for the said period — Ejectment of sub-tenant after the period — Necessity of proceedings under the Tenancy Act. **1952 ALJ (Rev) 156.**

——**S. 27** — Applicant ordered to be recorded as sub-tenant in correction of papers — Case in 1348F — Revision of records commenced on 1-7-40 and ended on 30-6-41 — Applicant held was entitled to benefit of S. 27. **1952 RD (BR) 245 (2).**

——**S. 27 (3), Proviso** — Land settled with Zamindar's relation — Actual occupiers of land not servants of Zamindar — Occupiers must be deemed to be holding as tenants-in-chief direct from Zamindar — They are entitled to be declared as sub-tenants not liable to ejectment until after expiry of three years from date of declaration. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 29. **('52) 1952 RD (BR) 236.**

——**S. 27** — Proceedings under — Applicability of Civil P. C. (1908), O. 1 — Person admitted to tenancy after 1-9-1946 is a necessary party. **1951 AWR (Rev) 93: 1951 RD 57.**

——**S. 27 (3), Proviso — Right to retain possession as sub-tenant — Person admitted to a part of the holding after 1st September, 1946.**

(Per Singh, J. M. II). — Where a person has been admitted to a part of the holding after 1st September, 1946, he is not entitled when a tenant ejected under S. 171 of the Tenancy Act applies for re-instatement, to retain possession as a sub-tenant under the proviso to sub-s. (3) of S. 27 of Act 10 of 1947, but he is a necessary party and cannot be ejected without notice being given to him. **1951 AWR (Rev) 93: 1951 RD 57.**

10. Sub-section (4).

——**S. 27** — Portion of holding converted into abadi — Reinstatement in such area cannot be granted — (U. P. Tenancy Act, 1939, S. 3 (10)). **1952 All WR (Rev) 197: 1952 All LJ (Rev) 269: 1952 RD (BR) 353.**

——**S. 27 — Scope—Order for reinstatement of sub-tenant — Failure to specify rent — Effect.**

The section is automatic in its application and the formula on which the rent payable by the tenant is given therein. Therefore the failure of the Court to specify the rent while ordering reinstatement of the tenant will not render the order bad though the better thing to do would be to state the amount of rent also in the order. **1952 RD (BR) 354: 1952 All LJ (Rev) 244.**

——**S. 27** —Heir of ejected tenant is entitled to reinstatement under section. **1952 All LJ (Rev) 188: 1952 RD (BR) 248.**

——**S. 27** — Outsider converting portion of holding into abadi — It is not "improvement" entitling landholder to compensation — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 3 (10). **1952 All LJ (Rev) 103: 1952 All WR (Rev) 98: 1952 RD (BR) 150.**

——**S. 27 (3) and (4)** — Ejectment of applicants from holding — Zamindar letting out holding to objector primarily for cultivation but also for planting trees and erecting house — Nazrana given to Zamindar — Trees planted and house built — Holding held continued to be 'land' within meaning of Section 3 (10) of the U. P. Tenancy Act, 1939 — Applicants held entitled to reinstatement under Section 27 (3) of Amendment Act of 1947 — No compensation to objectors held to be paid — Remedy of objectors held was by suit against zamindar for compensation for improvements made by them — Under Section 27 (4) of Act of 1947 compensation has to be paid only to zamindar for improvements made by him. (Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 3 (10)). **1952 RD (BR) 198: 1952 All LJ (Rev) 102.**

11. Sub-section (5).

——**S. 27 (5) — 'Existing on the date of his ejectment' — Construction of.**

In order to make sub-section (5) of Section 27 of the Act effective, the expression 'existing on the date of his ejectment' should be understood in the sense of 'existing immediately before the date of his ejectment'. Kedar Nath v. Jamuna, **1964 All WR (HC) 219: 1964 All LJ 442: ILR (1964) 2 All 398: AIR 1965 All 116 (119) (Pt C) (Pr 11) (FB).**

——**S. 27 (c) and (5)** — Entry in a record revised under Chap. 4, (UP) LR Act — Meaning of — Final entry after action and S. 54 of the L. R. Act — Revival of rights under Cl. (v) — Rights existing at the time of evidence only are revived. **1952 All LJ (Rev) 322.**

——**S. 27** — Application by one out of several tenants evicted — Maintainable — Tenant admitted after Act — Not impleaded — Effect — Dismissal of appeal against landholder — Not improper. **1952 ALJ (Rev) 312.**

——**S. 27** — Application for reinstatement — Applicant one out of several tenants evicted — Two of the defendants minors — Guardian appointed beyond the period of limitation— Maintainable. **1952 All LJ (Rev) 293.**

——**S. 27 (3)** — Order of ejectment against three sub-tenants — Appeal by only two of them — Appeal held was covered by O. 41, R. 4 Civil P. C. and was competent. See Civil P. C. (1908), O. 41, R. 4. **1952 RD (BR) 350: 1952 All WR (Rev) 198: 1952 All LJ (Rev) 261.**

——**S. 27 — Scope and applicability — Application by the heir of an ejected tenant — Death of the tenant prior to Act 10 of 1947.**

Section 27 provides for the revival of a right which had already been extinguished before the Amendment Act came into force; and this right can be exercised by the tenant who was ejected as well as by his heir by virtue of Section 3 (1) of the Tenancy Act. **1952 RR 248: 1952 ALJ (Rev) 188.**

——**S. 27** — Application under S. 27 — Reference to Board by Additional Commissioner — One of opposite parties dying — Heirs not substituted within time — Point not taken before Additional Commissioner or in objection filed against his recommendation — Affidavit to the effect that applicant had no previous knowledge of party's death — Objection held should be overruled — (Civil P. C. (1908), O. 22, R. 3) — (Limitation Act (1908), Art. 176). **1952 All LJ (Rev) 142: 1952 RD (BR) 261.**

——**S. 27** — Application by heir of tenant ejected — Maintainable — Distinction between Sections 26 and 27 pointed out. **1951 RD 267: 1951 AWR (Rev) 213.**

——**S. 27 (5)** — Sub-tenant reinstated — He cannot have better or higher right than what he

possessed at the time of his ejectment. **1951 All WR (Rev) 134: 1951 RD (Rev) 106 (107).**

——**S. 27** — Ejected person — Heirs and successors are included. **1951 RD 112 (113): 1951 All WR (Rev) 122.**

——**S. 27 — Right to reinstatement under — Heir of ejected tenant.**

In the face of the provisions of Section 3 (1) of the Tenancy Act, the heir of the ejected tenant is also entitled to reinstatement under Section 27 of Act 10 of 1947. **1951 AWR (Rev) 93: 1951 RD 57.**

12. Sub-section (6).

——**S. 27 (6)** — Order on application under — Revision under Section 275 of the U. P. Tenancy Act, 1939 — Board is competent to entertain. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 275. **AIR 1952 All 829 (DB).**

——**S. 27 (6) — "Final" — Meaning — If shuts out the revisional jurisdiction of the Board.**

The word "final" in an enactment can only mean "not subject to appeal" and the use of that word by the Legislature would not shut out the revisional jurisdiction and hence from the use of the word "final" in Section 27 (6) of the U. P. Tenancy (Amendment) Act, it cannot be said that the revisional jurisdiction of the Board is ousted. **1952 ALJ 196: 1952 AWR (HC) 235: ILR (1953) 2 All 866: AIR 1952 All 829 (830, 831) (Prs 4, 6, 7) (DB).**

——**S. 27** — Order passed in appeal in proceedings under Section 27 — Revision against, under Section 275 U. P. Tenancy Act lies. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 275. **1952 All LJ (Rev) 282.**

——**S. 27 — Application for reinstatement — Dismissal for default — Application for restoration of the petition under Section 27 — Dismissal of — Appeal — S. 5, Limitation Act — Condonation.**

An application for reinstatement under Section 27 of the Act 10 of 1947 was dismissed for default and the petition under O. 9, R. 9 was dismissed. In an appeal to the Collector the original application was ordered to be restored. The reference to the Board for restoration of order of the trial Court was made by the Additional Commissioner in revision.

Held: The applicant did not even claim the benefit of the Section 5 of the Limitation Act; the Collector has not used his discretion in a judicial manner in condoning the delay in filing the petition for restoration without sufficient cause being shown to extend the period under Section 5 and passing the order for restoration in the exercise of his inherent powers.

(Obiter.) No appeal is provided against the order of dismissal of an application under O. 9, Rule 9 to restore an application under S. 27 for reinstatement and hence only a revision to the Board lies. **1952 RD 340: 1952 ALJ (Rev) 175.**

——**S. 27 — Order — Appeal to wrong Court — Effect.**

An appeal against an order passed under Section 27 of the U. P. Tenancy (Amendment) Act, 1947, lies to the Collector, and where the appeal is filed before the Additional Commissioner there is no appeal at all and the first Court's order becomes final. **1952 ALJ (Rev) 78: 1952 RD 130: 1952 AWR (Rev) 158.**

——**S. 27** — Application for reinstatement under Section 27 — Dismissal for default — Application restored — Appeal against order of restoration dismissed — Revision — Since filing of revision application under Section 27 disposed of on merits — Revision becomes infructuous. **1952 All LJ (Rev) 30: 1952 All WR (Rev) 243: 1952 RD (BR) 365.**

——**S. 27** — Proceedings under — Revision lies. **1951 RD 198: 1951 All WR (Rev) 187.**

——**S. 27** — Appeal against order on application under Section 27 — One of subsequently admitted tenant not joined — Omission held not fatal. See Civil P. C. (1908), O. 41, R. 4. **('52) 1952 RD (BR) 93: 1952 All WR (Rev) 117.**

13. Limitation.

——**S. 27 — Period of limitation — S. 14, Limitation Act — If applicable.**

Held: Section 29 (2) of the Limitation Act provides that Section 14 is applicable to a suit or application under a special or local law unless excluded by it.

The allegations as to the duration of pendency of the prior proceedings not having been denied must be deemed to be admitted under O. 8, R. 5, C. P. Code.

Section 14 is applicable to this case as there is no exclusion of its applicability in the Tenancy Act or in the Amendment Act. It is immaterial whether the original application is represented or having been dismissed a fresh petition is filed provided the other conditions for applicability, good faith, etc., are satisfied. **1952 AWR (Rev) 150: 1952 ALJ (Rev) 195: 1952 RD 336.**

——**S. 27 — Application under — Correction of mistake.**

Where an application under Section 27 of the U. P. Tenancy (Amendment) Act has actually been filed within the period of six months, any bona fide mistake in the description of the land can be corrected subsequently even after the expiry of the six months' period. **1952 ALJ (Rev) 90: 1952 RD 112.**

——**S. 27 — Application under, within time — Correction of bona fide mistakes thereafter — Permissibility.**

If an application under Section 27 of the U. P. Tenancy (Amendment) Act is made in time (i.e.) within six months, then any bona fide mistakes therein can be corrected even after the expiry of the period of six months. 1949 RD 412, Foll. **1952 AWR (Rev) 30: 1952 RD 52: 1952 ALJ (Rev) 25).**

——**S. 27** — Application under Section 27 made within time to S. D. O. under order of Collector — Application returned for presentation to proper court after period of limitation — Benefit under Section 14 Limitation Act held was available as the Collector committed bona fide mistake. See Limitation Act (1908), S. 14. **1952 RD (BR) 267: 1952 ALJ Rev 214.**

SECTION 28

——**S. 28 — Tenant's rights to claim restoration.**

If the land had not been used for the purpose for which it was acquired either within three years or beyond, till the coming into force of the U. P. Tenancy (Amendment) Act of 1947, the tenant is entitled to the restoration of the land. If the land has been so utilised, the tenant is not entitled to restoration even if the land has subsequently lost its character. **1952 RD (BR) 396: 1952 All WR (Rev) 265: 1952 All LJ (Rev) 288.**

——**S. 28 — Acquisition of land but not utilized within three years for grove — Restoration, when can be had — Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 54.**

Section 28 of Act 10 of 1947, does not permit the restoration of land which was not utilized within three years of its acquisition if it has been utilised when the Act came into force, viz. June 14, 1947. If the applicant wants restoration on the plea that the land was not utilised for planting a grove within three years of its acquisition, then he should make an application for restoration under sub-section (5) of S. 54 of the U. P. Tenancy Act 1939, within six months from the expiry of three years from the date of the order of acquisition. When he fails to do so he can claim restoration under Section 28 of Act 10 of 1947 only if the land was not utilised before the date of the commencement of the Act. **1952 All LJ (Rev) 100: 1952 RD (BR) 158.**

——S. 28 — "Landlord" — Successor of landlord — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 3 (1)).

Section 28 of the Amending Act must be interpreted with reference to Section 3 (1) of the Tenancy Act. Therefore if a transferee of land succeeds to the same interest as the landlord who originally acquired it, he steps into his shoes and is subject to the same liabilities as the original acquirer. **1952 RD (BR) 126: 1952 All WR (Rev) 79: 1952 All LJ (Rev) 51.**

——S. 28 — Application under — Maintainability — Prior application under S. 54 (5) of the U. P. Tenancy Act dismissed as filed out of time — Res judicata.

The dismissal of an application under S. 54 (5) as having been filed out of time would not operate as res judicata in a subsequent application under Section 28 of the U. P. Tenancy (Amendment) Act for restoration because the latter section gives a fresh cause of action. **1951 RD 265: 1952 AWR (Rev) 76.**

——S. 28 — Restoration of land acquired for planting a grove— Grove not planted even after Tenancy (Amendment) Act came into force.

Where a landholder though he has failed to plant a grove in the land acquired under Section 54 of the U. P. Tenancy Act within 3 years from the date of acquisition does so prior to the date of the U. P. Tenancy (Amendment) Act, it may not be a ground for restoration under Section 28 of the U. P. Tenancy (Amendment) Act. But where no grove is planted when the Amendment Act came into force and the land is in the possession of the landholder, the tenant would be entitled to restoration. **1951 RD 265: 1952 AWR (Rev) 75.**

SECTION 31

——S. 31, Fourth Proviso — Scope — Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 180).

The decree under Section 180, U. P. Tenancy Act, to the extent that it granted damages and allowed costs, is still executable. The proviso does not say 'all decrees and orders shall be quashed'. The introduction of the qualifying words 'for the ejectment' seem to indicate that there was not to be a general quashing of the decrees and orders passed under Section 180 of the 1939 Act, but only a quashing of the decrees and orders, so far as they related to ejectment. **1958 All WR (HC) 354.**

——S. 31 — Tenant suing trespasser for ejectment in civil Court — Section 180 amended pending suit — Suit triable by revenue Court — Retrospective effect of S. 180 — Return of plaint to revenue Court — Power of High Court in second appeal indicated. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Section 180 (as amended by U. P. Act 10 of 1947). **AIR 1957 All 257 (DB).**

——S. 31 — Change of forum — Decree passed by Civil Court — Amending Act changing forum subsequently directing pendency of appeal — Decree is not affected. Sobha Nath v. Ram Baran, **1954 All WR (HC) 392: 1954 All LJ 265: ILR (1955) 1 All 113: AIR 1954 All 493 (494, 495) (Pt A) (Prs 6 to 9) (FB).**

——S. 31 — "Pending under the said Act" — Suit filed in Civil Court.

Provisions of Section 31 apply not only in the case of appeals and revisions but also to proceedings in suits. Where the suit had been properly filed in the court of Munsif it could not be a suit pending under the U. P. Tenancy Act which would necessarily have had to have been filed in a revenue Court. It is therefore not affected by the provisions of Section 31 and the jurisdiction of the civil Court remained unaffected. The effect of the amending Act was not to divest the civil Court of the jurisdiction which it admittedly had in a case prior to the coming into operation of that Act. **1952 All WR (HC) 156: 1952 All LJ 87: AIR 1953 All 219 (220) (Prs 3, 4).**

[Overruled in AIR 1957 All 257.]

——S. 31, Proviso (4) — Persons recorded as occupants in the revision of records of 1346-F — Not to be ejected.

The effect of the proviso (4) to Section 31 of the U. P. Tenancy (Amendment) Act is that persons recorded as "occupants" in the revision of records are not to be ejected as occupying the lands without the permission of the land or as trespassers. **1952 All LJ (Rev) 286.**

——S. 31, Proviso (4) — Scope — Appellant in a pending proceeding entitled to the benefits — "Occupant", meaning of — Proper order in appeal.

Held: The word "occupant" used in Proviso 4 to Section 31 of the (Amendment) Act 1947, includes "trespasser" also in view of Paras. 121 and 124 (10-A) of the Land Records Manual showing that the occupiers of land without title are also to be recorded in khatauni under Section 32 (e) of the Land Revenue Act. 1948 RD 241, Ref.

The proper order in a pending appeal where the appellants are entitled to the benefits of proviso 4 to Section 31 of the Tenancy (Amendment) Act is not to dismiss the appeals as originally filed but to allow the appeals in consideration of the change in status of the parties created by proviso 4 to Section 31 of the Act. 1948 RD 241, Foll. **1952 All LJ (Rev) 187.**

——S. 31, Proviso 1 — Decree in ejectment proceeding under Section 171 of the Tenancy Act 1939 — Appeal pending — Amendment Act coming into force — Benefit under the amendment will be available. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 17. **1952 All LJ (Rev) 189.**

——S. 31, Proviso 4 — Applicability.

Sections 48, 53, 54 and 55 of Chapter 4 of the U. P. Land Revenue Act (3 of 1901) are applicable to revision and preparation of records as distinct from settlement operations. Explanation to Section 55, U. P. Land Revenue Act (3 of 1901), would show that the khatauni prepared during the revision of records will be for a year which shall be reckoned as a completed year, and this year is commonly known as the year of verification and it is the entry in the khatauni of that year which would entitle a per-

son to take the benefit of proviso 4 to S. 31 of Act 10 of 1947. **1952 All WR (Rev) 43.**

——**S. 31 (1)**—'Occupant' — It includes a trespasser and a khudkasht holder. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (1) (e). **1952 RD (BR) 262: 1952 All LJ (Rev) 238: 1952 All WR (Rev) 208.**

——**S. 31 — Scope.**

Section 31 of Act 10 of 1947 cannot revive a right which did not exist when the plaintiff was dispossessed or when he brought the suit, under Section 183, U. P. Tenancy Act. **1952 RD (BR) 124.**

——**S. 31** — Scope — Retrospective effect — Provision of section is subject to provisos — Decree by civil Court before coming into force — Forum of appeal is not affected in view of Proviso 5 — Appeal lies in first civil appellate Court. **AIR 1951 All 497 (498) (Pt B) (Pr 3).**

——**S. 31 — Retrospective effect— Suit pending in civil Court.**

Section 31 only provides for retrospective effect to be given to the provisions of the Act in case a suit or an appeal or a revision is pending in any Court under the provisions of the U. P. Tenancy Act. **1951 All WR (HC) 199 (DB).**

——**S. 31, Proviso 4 — Occupant — If includes mortgagees.**

The word "occupant' used in Proviso 4 to Section 31 of the U. P. Tenancy (Amendment) Act is wide enough to include mortgagees. **1951 All WR (Rev) 179: 1951 RD 181.**

——**S. 31, Proviso 4 — Applicability — Conditions.**

It is only if a person was recorded as an "occupant" at a settlement after the 1st day of January, 1938, that he could claim the benefit of the 4th Proviso to Section 31 of the U. P. Tenancy (Amendment) Act, 1940. But an entry in the khasra of an ordinary year is not enough. **1951 RD 162: 1951 AWR (Rev) 154.**

——**S. 31, Proviso 4 — Benefit under — Whom available.**

The mere fact that a person was recorded as an occupant on or after the first day of January, 1938, in a record revised under Chap. 4 of the U. P. Land Revenue Act, 1901 or corrected by an officer specially appointed for the correction of annual registers in any tract is sufficient to give him the benefit of the proviso irrespective of the fact whether he has or has not already been ejected from the holding in dispute. The words 'person' and 'occupant' do not necessarily mean a tenant. They have been used by the Legislature intentionally to cover the cases of traspassers. **1951 RD 195 (1): 1951 All WR (Rev) 168.**

——**S. 31, Proviso 4 — Right to the benefit of — Khudkasht-holder — If an "occupant" — Continuity of possession, if necessary.**

The word "occupant" in Proviso 4 to S. 31 of the U. P. Tenancy (Amendment) Act, 1947, is wide enough to include a khudkasht-holder. Once a person was recorded as an occupant on or after 1st January, 1938, in a record revised under Ch. 4 of the U. P. Land Revenue Act of 1901 or corrected by an officer specially appointed for that purpose, it was immaterial whether he occupied it as a khudkasht-holder, as a tenant, as a mortgagee, or even a trespasser. **1951 AWR (Rev) 185: 1951 RD 192.**

——**S. 31** —Period of limitation for suit against person in unauthorised occupant is now two years — Amendment has retrospective operation. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Sch. 4, Group B, Serial No. 18. **1950 All LJ 43: AIR 1950 All 191.**

——**S. 31 — If should be given effect to even in cases where appeal had already abated.**

There is no provision in U. P. Tenancy (Amendment) Act that it overrides only provisions of the Limitation Act or of the C. P. Code which have been made applicable to the U. P. Tenancy Act. Hence, if an appeal has abated, the abatement cannot be set aside simply to enable a tenant to take advantage of any benefits accruing to him under the Amendment Act. The provisions of Section 31 of the Act cannot be given effect to against an abatement under the law as provided by the C. P. Code. **1950 RD 184.**

——**S. 31 — Applicability — Appeals.**

Appeals, as are contemplated in the latter part of Section 31 are appeals which arose out of the proceedings or suits pending on the date of the commencement of the amending Act; and not appeals arising out of suits subsequently instituted. **1950 All WR (Rev) 77: 1950 RD 172.**

——**S. 31 — Applicability.**

Section 31 of the U. P. Tenancy (Amendment) Act of 1947 would apply only to cases of pending suits, appeals or revisions and not to suits already disposed of and decided. **1950 RD 122: 1951 AWR (Rev) 3.**

SECTION 32

●——**S. 32** — U. P. Tenancy Act (17 of 1939), S. 180 — Suit under — Alteration in period of limitation made by Section 32 of Amending Act, 1947, governs suit instituted but pending at time when Act came into force — New rule can be applied to suits reaching stage of appeal. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1951 All 485 (FB).**

—U. P. URBAN AREAS ZAMINDARI ABOLITION ACT (9 of 1957)

SECTION 10

——**S. 10** — Contract for sale of plots — Vesting of plots in Government — Specific performance of contract not possible. See Contract Act (1872), S. 56. **1965 All WR (HC) 129: 1965 All LJ 446: AIR 1966 All 185.**

—U. P. URBAN AREAS ZAMINDARI ABOLITION RULES (1957)

RULE 38

——**R. 38** — Contract becoming impossible of performance — Rule not applicable. See Contract Act (1872), S. 56. **1965 All WR (HC) 129: 1965 All LJ 446: AIR 1966 All 185.**

RULE 39

——**R. 39** — Contract becoming impossible of performance — Rule not applicable. See Contract Act (1872), Sec. 56. **AIR 1966 All 185.**

—U. P. ZAMINDARI ABOLITION AND LAND REFORMS ACT (1 of 1951)

PREAMBLE

●——**Pre.** — Constitution of India, Art. 31 (2) — Acquisition of proprietary rights apart from land — State can acquire proprietary rights in land and leave bhumidari right with the landlord. See Constitution of India, Art. 31 (2). **AIR 1952 SC 252.**

●——**Pre.** — Constitution of India, Art. 31 (2) — "Public purpose", what is — Acquisition under Act is for public purpose. See Constitution of India, Art. 31 (2). **AIR 1952 SC 252.**

●——**Pre.** — Constitution of India, Art. 31 (4) — Bill introduced — Assembly prorogued on 21st January 1950 — Bill is still pending and does not lapse — Coming in of Constitution meanwhile on 26th January 1950 — Bill held

was pending when Constitution came into force — Re-introduction of Bill afterwards does not mean introduction of new bill — Article 31 (4) applies: Per Mahajan J. — See Constitution of India, Art. 31 (4). **AIR 1952 SC 252.**

●——**Pre.** — Act cannot be challenged on ground of lack of public purpose and provision for compensation — (Constitution of India, Article 31 (2) and (4)). State of Bihar v. Kameshwar Singh. **1952 SCJ 354: 65 Mad LW 527: 1952 SCR 889: 1953 SCA 53: ILR 31 Pat 565: AIR 1952 SC 252 ((263, 265, 310) (Pt X) (Prs 11, 18, 205).**

●——**Pre. — Provisions as to compensation are not illusory — (Constitution of India, List III, Entry 42).**

(Per Mahajan J.): Though the principles of payment of compensation stated in the Act do not give anything like an equivalent or 'quid pro quo' for the property acquired and provide only for payment of what is euphemistically described in the resolution of the U. P. Legislature as "equitable compensation", the conclusion cannot be drawn that the provisions as to compensation in the Act are illusory. State of Bihar v. Kameshwar Singh, **1952 SCJ 354: 65 Mad LW 527: 1952 SCR 889: 1953 SCA 53: ILR 31 Pat 565: AIR 1952 SC 252 (310) (Pt Z) (Prs 203, 204).**

●——**Pre** — Actual amount of compensation to be determined by Compensation Officer — Provision for appeal against the adjudication — It cannot be said that State is a judge in its own cause — It is an Act of Legislature and within its competence — No challenge can be made against validity of Act on this ground — Per Mahajan J. — (Constitution of India, Art. 245). State of Bihar v. Kameshwar Singh, **1952 SCJ 354: 65 Mad LW 527: 1952 SCR 889: 1953 SCA 53: ILR 31 Pat 565: AIR 1952 SC 252 (310) (Pt Zb) (Pr 206).**

●——**Pre.** — Hereditary rights in land granted to taluqdars affected — Act is not void on that ground — (Constitution of India. Art. 245). State of Bihar v. Kameshwar Singh. **1952 SCJ 354: 65 Mad LW 527: 1952 SCR 889: 1953 SCA 53: ILR 31 Pat 565: AIR 1952 SC 252 (312) (Pt Ze) (Pr 213).**

●——**Pre. — Acquisition of property dedicated for charitable purposes for public purposes — (Constitution of India, Art. 31 (2)).**

(Per Mahajan J.) — A charity created by a private individual is not immune from the sovereign's power to compulsorily acquire that property for public purposes. It is incorrect to say that the vesting of these properties in the State under the provisions of the Act in any way affects the charity adversely because the net income that the institutions are deriving from the properties has been made the basis of compensation awarded to them. State of Bihar v. Kameshwar Singh, **1952 SCJ 354: 1952 SCJ 427: 65 Mad LW 252: 1952 SCR 889: 1953 SCA 53: ILR 31 Pat 565: AIR 1952 SC 252 (313) (Pt Zf) (Pr 214).**

●——**Pre.** — Religious Endowments Act does not stand in the way of acquisition of religious endowment: Per Mahajan and Das JJ. — (Religious Endowments Act (20 of 1863). State of Bihar v. Kameshwar Singh. **1952 SCJ 354: 65 Mad LW 527: 1952 SCR 889: 1953 SCA 53: ILR 31 Pat 565: AIR 1952 SC 252 (313, 316) (Pt Zg) (Prs 215, 233).**

●——**Pre.** — Act not void — Notification of consequential nature issued by executive under the Act cannot be bad: Per Mahajan J. State of Bihar v. Kameshwar Singh, **65 Mad LW 527: 1952 SCJ 354: 1952 SCR 889: 1953 SCA 53: ILR 31 Pat 565: AIR 1952 SC 252 (313) (Zh) (Pr 215).**

——**Pre.** — Right to be adhivasi created by U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) — Right not claimed in prior suit — Issue as to cannot be raised in subsequent suit. See Civil P. C. (1908), S. 11, Expl. **1965 All WR (HC) 348: 1965 All LJ 714.**

——**Pre.** — Administration of Evacuee Property Act (1950), Section 7 — Custodian declaring sir rights as evacuee property after coming in force of U. P. Act (1951) — Declaration cannot be interpreted to include declaration that bhumidari rights were also evacuee property as bhumidari rights were not comprised in sir right. **1964 All LJ 696.**

——**Pre.** — Agreement to re-sell Zamindari land sold — Refusal on demand to re-sell — Breach of contract is complete — Subsequent passing of U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — Subsequent Act does not affect the breach of contract. See Contract Act (1872), S. 55. **AIR 1963 All 201.**

——**Pre.** — Validity — Section 2 of the Act is valid enactment — Notifications extending certain provisions to Rampur State are valid. **AIR 1955 NUC (All) 3534.**

——**Pre.** — Effect of on the rights of landlords — Landlords lose all rights with respect to uncultivated land under U. P. Act 5 of 1948 — (Tenancy Laws — U. P. Land Utilisation Act (5 of 1948), S. 3). **AIR 1955 NUC (All) 2720 (DB).**

——**Pre.** — Act has not ceased to be operative when provisional legislature which passed it was dissolved. **1952 RD (HC) 340: 1952 All WR (HC) 599: 1952 All LJ 677: AIR 1953 All 92 (93 to 95) (Pt A) (Prs 6, 8, 17) (DB).**

——**Pre. — Compensation.**

The question whether the acquisition under the U. P. Act 1 of 1951, was or was not for a public purpose was agitated both before the High Court and the Supreme Court. Both the Courts held that there was a public purpose behind the Act. Further both the Courts held that it was within the competence of the legislature to fix the amount of compensation or specify the principles on which and the manner in which, the compensation is to be determined and given. The question whether the principles underlying compensation in the Act could be different, having regard to the provisions of Article 14 of the Constitution, from those to be found in the Land Acquisition Act could be raised before the Supreme Court or the Full Bench of this Court. It cannot be allowed to be reagitated again. **1952 RD (HC) 340: 1952 All WR (HC) 599: 1952 All LJ 677: AIR 1953 All 92 (94, 95) (Pt B) (Prs 9, 15, 18) (DB).**

——**Pre. — Validity — Absence of payment of compensation — Constitution of India (1950), Art. 246 and Sch. 7.**

U. P. State Legislature could enact under Entry 42 of List 3 in respect of property acquired that compensation shall be paid in bonds or even that there shall be no compensation. So the U. P. Act 1 of 1951 cannot be attacked on this ground. **1952 ALJ 52: AIR 1952 All 88 (89) (Pt A) (Pr 4) (DB).**

——**Pre.** — Validity—Cannot be attacked on the ground that the entire interest of the intermediaries have not been acquired — There is violation of Art. 31 of the Constitution of India. **1952 All LJ 52: AIR 1952 All 88 (89) (Pt G) (Pr 9) (DB).**

——**Pre.** — Act not invalid as being inconsistent with the Land Acquisition Act. **1952 All LJ 52: AIR 1952 All 88 (90) (Pt I) (Pr 11) (DB).**

——**Preamble** — Proceedings pending on 1-7-1952 — Proceedings should be decided in accordance with provisions of U. P. Tenancy Act — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), Preamble). **1952 RD (BR) 400: 1952 All WR (Rev) 240: 1952 All LJ (Rev) 279.**

●——**Pre. — If a valid piece of legislation.**

The Zamindari Abolition and Land Reforms Act does not contravene any provision of the Constitution and is not invalid on that ground and is a piece of legislation within the powers of the State Legislature. Suryapal Singh v. Government of Uttar Pradesh, **1951 All WR (HC) 317: ILR (1952) 2 All 46: 1951 All LJ 365: AIR 1951 All 674 (699) (Pt A) (Pr 136) (FB).**

SECTION 1

——**S. 1** — Act is only retrospective — Powers and duties of Court — Subsequent legislation — Effect of — Suit under S. 63, U. P. Tenancy Act — Passing of U. P. Act 1 of 1951 has no effect. See Specific Relief Act (1877), S. 42. **AIR 1957 All 719 (DB).**

——**S. 1** — Applicability — Act which abolishes right of pre-emption not extended to Kumeon — Suit for pre-emption of property within jurisdiction of Court at Garhwal not bit by S. 336. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 336. **AIR 1955 NUC (All) 158.**

——**S. 1 — Validity of Act — Absence of provision for compensation — Effect — Constitution of India, Art. 246, List II, Entry 36, List 3, Entry 42 — 'Subject to Provisions of Entry 42' — Meaning.**

The words 'subject to the provisions of entry 42 of List 3' in Entry 36 of List 2 do not by themselves mean that the State Legislature cannot legislate with respect to the acquisition of property unless there is a public purpose and only on payment of compensation.

U. P. Act of 1951, cannot, therefore, be questioned on the ground that no payment of compensation is provided in it. 1940 FCR 110, Ref. **1952 All LJ 52: AIR 1952 All 88 (89) (Pt A) (Pr 4) (DB).**

——**S. 1 — Validity of Act — Acquisition, whether of entire rights — Constitution of India, Article 31.**

Under the Act all the proprietary rights of the intermediaries have been acquired. No doubt Sir and Khudkasht lands have been allowed to be retained by them in their capacity as Bhumidhars but it is a new tenure created by the Act and the Bhumidhars are not proprietors. The proprietary rights under the Act vest in the State. It cannot, therefore, be said that the entire proprietary rights of the intermediaries have not been acquired under the Act, and as such it is invalid as Art. 31 of the Constitution authorises an acquisition of only the entirety of the rights in any property. **1952 All LJ 52: AIR 1952 All 88 (89) (Pt G) (Pr 9) (DB).**

——**S. 1** — Act is not confiscatory — Even assuming that it was so, provisions are protected by Art. 31 (4) of the Constitution. 1951 All LJ 345 (FB), Foll. **1952 All LJ 52: AIR 1952 All 88 (90) (Pt H) (Pr 10) (DB).**

——**S. 1 — Validity of Act — Repugnancy with Land Acquisition Act, 1894 — Constitution of India, Art. 254 (2).**

As the U. P. Act 1 of 1951 was reserved for the consideration of the President and has received his assent under Art. 254 (2), the Act is not invalid on the ground of its repugnancy with the Land Acquisition Act and so far as the State of Uttar Pradesh is concerned, the provisions of the Act prevail over the provisions of the Land Acquisition Act. **1952 All LJ 52: AIR 1952 All 88 (90) (Pt I) (Pr 11) (DB).**

——**S. 1** — Act is for public purpose. **1952 All LJ 52: AIR 1952 All 88 (90) (Pt J) (Pr 13) (DB).**

——**S. 1 — Validity of Act — Bill whether pending on 26-1-1950 — Constitution of India, Articles 382, 389.**

The old legislature in the State of Uttar Pradesh continued to function on the 26th January 1950, under Art. 382 of the Constitution and the Bill, which ultimately was enacted as the impugned Act and which was pending before the 26th January 1950 was continued by virtue of Art. 389 in the new legislature when it came into existence sometime in May 1950. It cannot, therefore, be said that the Bill which ultimately was enacted as the Zamindari Abolition Act was not pending on the date of the commencement of the Constitution and hence the Act is not valid. **1952 All LJ 52: AIR 1952 All 88 (90) (Pt K) (Pr 15) (DB).**

SECTION 2

●——**S. 2** — Constitution of India, Art. 363 — Zamindars not parties to agreement between acceding State and Dominion Government cannot rely upon provisions of agreement and attack extension of U. P. Act 1 of 1951 to acceding State — Notification attacked on ground that it changed the definition of "Estate" in Act — In view of amendment of Act by Act 14 of 1958, the contention held fell — Power to extend Act to new areas was not excessive delegation of legislative power — Amendment Act does not save pending actions. See Constitution of India, Art. 363. **AIR 1959 SC 909.**

——**Ss. 2 and 4**—Repeal of U. P. Land Revenue Act, extent of — It is to the extent mentioned in Cl. 3, List 2 of Schedule appended to Act (1 of 1951). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 339. **1959 All LJ 789: 1959 All WR (HC) 644.**

——**S. 2** — Constitution of India, Art. 245—Delegated legislation — Notifications under Section 2, Nos. 3168 and 3169 are not ultra vires. See Constitution of India, Art. 245. **AIR 1955 All 554 (DB).**

——**S. 2** — Constitution of India, Art. 14 — Estate abolition legislation — Territorial discrimination — Applicability of U. P., Act 1 of 1951, with modification to erstwhile Benaras State by notification — Notification offends Art. 14 — Notification quashed — Result of applying S. 10 of Act with modification, indicated. See Constitution of India, Art. 14. **AIR 1955 All 546.**

SECTION 3

——**S. 3** — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 115-D — 'Collector' — Meaning of the expression—Tahsildar, on whom powers of an Assistant Collector of the first class could be conferred under S. 224 of the U. P. Land Revenue Act (1901) as amended by U. P. Acts 37 of 1958 and 10 of 1961, would be "collector" within the meaning of S. 3. **1965 All WR 466: 1965 All LJ 837: ILR (1965) 2 All 845.**

——**S. 3 (14)** — 'Land' — Meaning of — Plot of land with mosque and houses on portion of it — Petitioner claiming himself to be sirdar of plot and further claiming to have acquired bhumidhari rights in respect of the plot — Held, plot was 'Land' within meaning of Act as Petitioner could neither be sirdar nor could he acquire bhumidhari rights unless the plot was 'Land'. **1965 All LJ 502: 1965 All WR (HC) 458: ILR (1965) 2 All 777.**

——**Ss. 3 (8) and 4** — Muhammadan Law — Wakf—Graveyard — Presumption — Muslim residents of village burying dead bodies in plot — Right recognised by defendants even after passing of Act — Presumption is that plot was dedicated

——**S. 4** — Unit of acquisition is Mahal — Minus assets cannot be adjusted against compensation payable in respect of other estate of same person — (Constitution of India, Art. 31). **1961 All LJ 126: 1961 All WR (HC) 154: ILR (1959) 2 All 671.**

——**S. 4** — Right to ferry — Does not vest in State. **1960 All LJ 863.**

●——**Ss. 4, 6, 9, 18** — Effect of — Mortgage of village by Zamindar before Act — Vesting of estate in State by virtue of notification under Section 4 — Bhumidari rights remaining in Zamindar continue to be subject to mortgage — (T. P. Act (1882), S. 73). Rana Sheo Amber Singh v. Allahabad Bank, **ILR (1959) 1 All 360: 1959 All LJ 229: 1959 All WR (SC) 239: AIR 1959 All 179 (182 to 184) (Pt A) (Prs 13 to 15, 19, 21, 22) (SB).**

[Reversed in AIR 1961 SC 1790.]

——**Ss. 4, 2, Sch., List 2, Colmn. 3, Item 23** — Repeal of U. P. Land Revenue Act 1901—Repeal is to the extent mentioned in Col. 3, List 2 of Schedule. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 339. **1959 All LJ 789.**

——**Ss. 4 and 6 — Taking over ferry unconnected with estate — Right of ferry owner — (Northern India Ferries Act (1878), Ss. 4 and 5) — (Constitution of India, Art. 226) — (Evidence Act (1872), S. 115) — (Civil P. C. 1908), S. 11).**

Under S. 6 of the U. P. Zamindari Abolition and Land Reforms Act the rights, title and interest of intermediaries in the estates alone vested in the Government. Where a particular ferry is unconnected with any estate acquired under the Act, it will continue, despite the acquisition of the Zamindari under S. 4 of the Act, to belong to its previous owner. Sub-clause (i) of Cl. (a) of S. 6 will not entitle the State to claim the ferry. Therefore, the State cannot take over possession of the ferry under the provisions of the Act. Where the State, however, has taken over possession of the ferry, it is not necessary to restore back the possession of it to the ferry owner because the State in any case is entitled to take possession of it under S. 4 of the Northern India Ferries Act. Therefore, the only right that the owner has in the circumstances is to compensation under S. 5 of that Act. The dismissal of a prior writ field by his predecessors-in-title but not on merits is no bar to the ferry owner's second application for writ against the taking possession of the ferry and claiming his rights. Similarly such predecessor-in-title taking a theka in respect of the ferry from the State after the State took possession will not estop the owner from asserting his right to compensation under the Northern India Ferries Act. **1959 All LJ 310: 1959 All WR (HC) 330.**

——**S. 4 — Scope — U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 6 — Right accrued under decree passed before Act — If affected.**

Neither the original U. P. Zamindari Abolition and Land Reforms Act, 1950, nor its subsequent amendment by virtue of S. 3 of U. P. Land Reforms (Supplementary) Act, 1952, takes away the right which had accrued to a person by virtue of a decree obtained before that date. A right which is accrued to a person by a decree can only be taken away by specific provision in the Act, otherwise no person can be deprived of the right which has accrued to him by virtue of a decree of a Court. **1958 All LJ 31: 1958 All WR (HC) 202: AIR 1958 All 544 (545) (Pt A) (Pr 4).**

——**S. 4 (2)**—Order of correction after local investigation — Validity — Notice to individual party — Not necessary. **1957 All LJ 188.**

——**S. 4 (2)** — Corrections in record of rights — — Limitation of six months not applicable to exercise of powers by officer suo motu. See Constitution of India, Art. 226. **1957 All LJ 188.**

——**S. 4 (2) — Applicability — Suo motu exercise of powers by officer — Limitation — Application by a party — Effect.**

The limitation placed by S. 4 on the rights of persons to apply within six months does not apply to the exercise of the powers by the officer suo motu. What the section lays down is that any person cannot insist on the correction of the revenue records if he approaches the officer by an application presented beyond six months of the commencement of the Act. But that does not take away the right of the officer if on an enquiry he finds that the entry is incorrect and requires correction, to order correction suo motu. **1957 All LJ 188.**

——**Ss. 4, 6 (b) and 45** — Annual grant of money as pension — Amount calculated on basis of one-fourth of revenue of pargana — Refusal by Government to pay grant — Right of pensioner to grant — Right held could be enforced by writ of mandamus — (Constitution of India, Art. 226). **AIR 1956 All 564 (565, 570) (Pt D) (Prs 2, 15) (DB).**

[Reversed in AIR 1963 SC 799.]

——**S. 4 and Sch. 3, List 1 (as amended by Act 16 of 1953) — U. P. Agriculturists' Relief Act (27 of 1934) — Repeal of — Extent.**

The U. P. Agriculturists' Relief Act has been repealed only with respect to any area with regard to which a notification under S. 4 of the U. P. Zamindari Abolition and Land Reforms Act 1951 as amended by Act 16 of 1953 may have been issued by the State Government. The U. P. Agriculturists' Relief Act, therefore, has not been repealed in its entirety and with respect to any area with regard to which no notification under S. 4 has been issued the Act still remains in force. **1954 All WR (HC) 241: 1954 All LJ 336: AIR 1955 NUC (All) 1695 (DB).**

——**S. 4** — Notification under — Notification is necessary for the applicability of S. 9. See U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 9. **AIR 1954 All 23.**

——**S. 4 — Date of vesting.**

Long before the notification was issued the public knew that the date of vesting would be the 1st of July 1952. The proprietors were not taken by surprise when the notification of the 1st of July 1952 giving the same date as the date of vesting was issued. **1952 RD (HC) 340: 1952 All WR (HC) 599: 1952 All LJ 677: AIR 1953 All 92 (95) (Pt D) (Pr 16) (DB).**

●——**S. 4 (2)** — Constitution of India, Art. 14 — Equal protection of laws — Meaning — Section 4 (2), U. P. Act 1 of 1951 does not contravene Art. 14 of Constitution. See Constitution of India, Art. 14. **AIR 1951 All 674 (FB).**

●——**S. 4 (2)—If offends against Art. 14 of the Constitution of India.**

As the classification that may result from Section 4 (2) of the U. P. Act (1 of 1951) cannot be said not to rest on a reasonable basis it cannot be said that the sub-section offends against Art. 14 of the Constitution. Suryapal Singh v. Government of Uttar Pradesh, **ILR (1952) 2 All 46: 1951 All WR (HC) 317: 1951 All LJ 365: AIR 1951 All 674 (690, 691) (Pt S) (Prs 83, 86, 88) (FB).**

SECTION 6

●——**S. 6 (d) and R. 8-A** — Scope — Zamindari Abolition — Compensation Bonds issued to intermediaries cannot be accepted in payment of agricultural income-tax — 1960 All LJ 532, **Revers-**

Section 14 (1) — Mortgagors of such plots of land do not acquire bhumidhari rights under Section 18. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 14 (1). **1962 All WR (HC) 528: 1962 All LJ 612.**

[**Overruled** in AIR 1964 All 311 (FB).]

——**Ss. 6 (g) (i), 14 (1) and 21 (1) (d)** — Repeal of U. P. Agriculturists Relief Act — Effect — Mortgagor's right of redemption not affected — Only decree for redemption can be passed under the Act — Parties to approach Revenue Court for possession. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 339. **1961 All LJ 273.**

——**S. 6 (d)** — Refusal to accept compensation bonds in lieu of arrears of agricultural income-tax is erroneous — Practice of the department not to accept the bonds, being one not in accordance with the section and the rule, is no criterion for rejecting the bonds — That the bonds are not immediately encashable is also an irrelevant consideration. **1960 All WR (HC) 381: 1960 All LJ 532.**

[**Reversed** in AIR 1965 SC 1919.]

——**Ss. 6, 14 and 209** — Mortgage of Sir and Khudkasht plots — Right of mortgagee to continue in possession after date of vesting —Suit for ejectment brought in 1953 — Civil Court has jurisdiction to entertain. 1958 ALJ 302, Disting. **1960 All WR (HC) 206: 1960 All LJ 308.**

●——**Ss. 6, 4, 9, 18** — Effect of — Mortgage of village by Zamindar before Act — Vesting of estate in State by virtue of notification under Section 4 — Bhumidari rights remaining in Zamindar continue to be subject to mortgage — (T. P. Act (1882), S. 73). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. **AIR 1959 All 179 (SB).**

[**Reversed** in AIR 1961 SC 1790.]

——**Ss. 6, 9 — Benefit of S. 9 — Trespasser's right to.**

The Legislature has used wide language in Section 9 and it covers the case of buildings belonging to persons who constructed them lawfuly or unlawfully. **1957 All LJ 743 (2): 1957 All WR (HC) 760: ILR (1957) 2 All 344: AIR 1958 All 332 (333) (Pr 3) (DB).**

[**Overruled** in AIR 1962 All 43 (FB).]

——**Ss. 6 (a) (i)** — Applicability — Right to operate ferry without any interest in lands — It is not right of intermediary. AIR 1956 All 564, Rel. on. **1957 All LJ 276: 1957 All WR (HC) 425: AIR 1957 All 455 (457) (Pt B) (Prs 6, 10).**

——**S. 6** — Appeal in suit filed under S. 49, U. P. Tenancy Act, before Revenue Board — Death of landholder, party to suit, after vesting order made under Section 6, Zamindari Abolition Act — Joinder of parties in appeal— Gaon Samaj can be impleaded as a party. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 49. **AIR 1956 All 704 (DB).**

——**Ss. 6 (b), 4 and 45** — Annual grant of money as pension — Amount calculated on basis of one-fourth of revenue of pargana — Refusal by Government to pay grant after coming into force of Act — Right of pensioner to grant — Right held could be enforced by writ of mandamus — (Constitution of India, Article 226). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. **AIR 1956 All 564 (DB).**

[**Reversed** in AIR 1963 SC 799.]

——**S. 6** — Applicability — Plot of land not used for agricultural purposes — Land not in possession of tenants but in possession of co-sharer — Possession will be protected. **AIR 1955 NUC (All) 2741.**

——**S. 6** — Validity — In view of declaration by Supreme Court in AIR 1952 SC 252 that the Act is not ultra vires the contention that it was not 'intra vires' cannot be urged — Section 6 is not ultra vires. (Constitution of India, Art. 141). **AIR 1955 NUC (All) 2696 (DB).**

——**S. 6 (1)** — Rules under Act, Rr. 4 and 5 — 'Suit' in Section 6 (1) includes appeal — Rule regarding abatement of appeal is not ultra vires. **1954 All LJ 364: AIR 1954 All 639 (640) (Pt A) (Pr 3).**

——**Ss. 6 (1) and 26 (2) (b) — Rr. 4 and 5 taking away right of appeal — Rules are validly framed.**

Both Section 6 (1) and Section 26 (2) (b) specifically confer power on the State Government to make rules providing for the stay or disposal of suits of a certain nature. Rules 4 and 5 cannot be challenged on the ground that they take away right of appeal conferred by statute. **1954 All LJ 364: AIR 1954 All 639 (640) (Pt C) (Pr 4).**

——**S. 6 (1)** — Orders under, after vesting order, are valid. **1954 All LJ 364: AIR 1954 All 639 (640) (Pt D) (Pr 4).**

——**Ss. 6 and 26 — Validity — (Constitution of India, Art. 245).**

Under Clause (i) of Section 6 read with Section 26, the State Government has power to prescribe the nature of suits and proceedings pending at the date of vesting which are to be stayed. Thereafter, under Section 26 the State Government is empowered to make rules to provide for the disposal of such suits and proceedings as have been stayed under Clause (i) of Section 6. The delegation of this rule-making power to the State Government by the U. P. Legislature is valid and cannot be challenged. **1954 All WR (HC) 281: 1954 All LJ 231: AIR 1954 All 515 (515) (Pt A) (Pr 2).**

——**Ss. 6 and 26 — Rules under Rr. 4 and 6 — Validity.**

Rules 4 and 5 of the rules framed under the U. P. Zamindari Abolition and Land Reforms Act are not in contravention of or beyond the scope of the power of making rules granted to the State Government under Sections 6 and 26 of the Act. **1954 All WR (HC) 281: 1954 All LJ 231: AIR 1954 All 515 (515) (Pt B) (Pr 2).**

——**Ss. 6 and 26 — Rules under Rr. 4 and 6 — Applicability.**

Rules 4 and 5 which are valid clearly govern suits under Section 180 of the U. P. Tenancy Act irrespective of whether the land in the suit was the khudkasht of the intermediary or was of any other kind. Consequently, the Board of Revenue has jurisdiction to abate the suit under Section 180, U. P. Tenancy Act as well as Second appeal pending before it having arisen out of that suit. **1954 All WR (HC) 281: 1954 All LJ 231: AIR 1954 All 515 (516) (Pt C) (Pr 3).**

——**Ss. 6 (i) and 344 (4) — S. 6 (i) if ultra vires — U. P. Z. A. and L. R. Rules — Enforcement of.**

On the question of abatement of a second appeal arising out of a suit under Section 113, U. P. Tenancy Act, stayed under R. 4 (a) of the Rules.

Held, Section 6 (i) of the Act is valid in law and intra vires and cannot be questioned now. It is concluded by the authority of 1951 ALJ 365 (FB) confirmed by the Supreme Court.

What Section 344 (4) of the Act requires is that the rules are to be before the State Legislature and they will be subject to such modi-

fication as the legislature may deem fit. The rules do not come into force on the date of publication unless a date is fixed. The rules have come into force and the second appeal has to abate. **1952 ALJ (Rev) 295.**

——S. 6 — Validity — (U. P. Zamindari Abolition and Land Feforms Rules (1952), Rr. 4, 5, 6 and 7).

Section 6 of the Act and Rr. 4, 5, 6 and 7 of the Rules are ultra vires: 1951 ALJ 365 (FB), Rel. on. **1952 RD (BR) 374: 1952 All LJ (Rev) 267.**

SECTION 7

——S. 7 (aa) — Object of.

'Section 7 (aa) of the Act, when it uses the term bhumidhar, includes within its operation zamindars who held cultivatory holdings called their sir or khudkhasht. It places bhumidhars on the same level as other cultivators, who were not zamindars but have now become bhumidhars. sirdars, adhivasis or asamis. The object of this provision is to confer on all these classes of cultivators, to an equal extent, rights of beneficial enjoyment of the land. There is in the scheme of this provision no intention to discriminate between those cultivators who were zamindars and those who were not. **1964 All WR (HC) 516: 1964 All LJ 307.**

——S. 7 (aa) — Interpretation of "any similar right."

The words "any similar right" in S. 7 (aa) of the Act should not be interpreted as being controlled by the word "easement". They represent a different category of rights. **1964 All WR (HC) 516: 1964 All LJ 307.**

——S. 7 — Suit filed in exercise of possessory title — Claim for tahbazari dues — Ex-zamindar held entitled to decree. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 6. **1963 All WR (HC) 392.**

——Ss. 7, 21, 165 — U. P. Tenancy Act (17 of 1939), S. 252 — Decree for arrears of rent under the Tenancy Act — Execution — Execution by lease out of holding — Not barred by S. 165 of the Zamindari Abolition Act—Such lease out not inconsistent with the scheme of the Land Reforms Act — Lessee does not acquire Asami rights thereunder — Lessee becomes a trespasser after period of the lease — There is ample provision for eviction of trespassers in the Act — Words and Phrases — 'Notwithstanding'. **1963 All WR (HC) 329: 1963 All LJ 338: ILR (1963) 1 All 883.**

——S. 7 (b) — U. P. Tenancy Act (17 of 1939), S. 252 — 'Ejectment' — What amounts to — Lease out of holding in execution of decree for arrears of rent — Not ejectment — Words and Phrases — Ejectment.

Mere temporary non-occupation by the holder does not amount to ejectment.

When the holding of a judgment-debtor is leased out under Section 252 of the Tenancy Act read with Section 7 (b) of the Abolition Act, he loses his possession of the holding only temporarily, for the period for which it is leased out by the Court. Such a lease out of the holding cannot amount to the judgment-debtor's ejectment from the holding. **1963 All WR (HC) 329: 1963 All LJ 338: ILR (1963) 1 All 883.**

——S. 7 (aa) — No suit by Gram Samaj in respect of land — Plaintiffs bhumidars and Sirdars — Section 7 (aa) applied. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 3 (14). **1963 All WR (HC) 238.**

——S. 7 (b) — Sirdari rights — Different from ex-proprietary rights under U. P. Tenancy Act (1939) — Decree for recovery of arrears of rent for period prior to date of vesting — Cannot be executed by sale of sirdari rights of judgment-debtor after coming into force of the U. P. Zamindari Abolition and Land Reforms Act — Tenancy Laws — U. P. Tenancy Act (1939). S. 251. **1960 All WR (HC) 649: 1960 All LJ 889: ILR (1961) 1 All 223.**

SECTION 8

——S. 8 — Suit filed in exercise of possessory title — Claim for tahbazari dues — Ex-zamindar held entitled to decree. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 6. **1963 All WR (HC) 392.**

——S. 8 — Power of State Government to constitute land as reserve forest — Essential conditions — Lease of waste land by intermediary for purpose of reclamation prior to U. P. Zamindari Abolition Act — Lessee recorded as hereditary tenant — After abolition of Zamindaris lessee recorded as sirdar on payment of rent to Government. See Forest Act (1927), S. 3. **ILR (1962) 1 All 11.**

——S. 8 — "Private forest" — Definition of "private forest" in U. P. Private Forests Act, 1948. does not apply — (U. P. Private Forests Act 1948 (6 of 1949), S. 3 (15)). **AIR 1955 NUC (All) 3292 (DB).**

——S. 8 — "Contract" — It does not contemplate only such contracts which create rights in land itself and not include such contracts which are in nature of licences permitting another to do certain acts which in the absence of permission would be unlawful — Contract to gather forest produce from land is "contract". **AIR 1955 NUC (All) 3292 (DB).**

——S. 8 — Applicability and scope — It is not necessary that contract between former Zamindars and their tenants should affect any transfer of any right in property which vests in State. **AIR 1955 NUC (All) 3282.**

——S. 8 — Private forest — Definition in U. P. Private Forests Act does not apply — Contract in respect of private forest became void with effect from date of vesting of estate, i.e., 1-7-1952 — (U. P. Private Forests Act (6 of 1949), S. 3 (3)), **AIR 1955 NUC (All) 1738.**

SECTION 9

——Ss. 9, 4, 6 (1) (a), 18 —Mortgage of proprietary rights in estate before the Act —Effect of notification under Section 4 — Nature of Bhumidari rights — Cannot be followed as substituted security — Mortgagee can proceed only against compensation money. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 4. **AIR 1961 SC 1790.**

——S. 9 — Buildings belonging to or held by intermediary excluding the site vest on the owner or intermediary by virtue of Section 9 of the U. P. Zamindari and Land Reforms Act (1 of 1951) — Mortgage partly of estate and partly of house property — Reduction of rent should be calculated on the basis of Section 4 (3) and the amount distributed on the estate and the house, in possession of mortgagors — Amount due on the specified date, viz. 1st July, 1952, has to be reduced — Decree inclusive of costs to be reduced. See Debt Laws — U. P. Zamindars' Debt Reduction Act (15 of 1953), Sec. 4 (3). **1965 All WR (HC) 256.**

——S. 9 — Suit involving trust regarding debts of author of trust instituted in 1947 — U. P. Act 1 of 1951 passed during pendency of appeal — **Held** arguments based on the two Acts could not be entertained. See Civil P. C. (1908), S. 151. **ILR (1964) 2 All 191.**

——S. 9 — Protection under is not available to person in wrongful possession. **AIR 1963 All 110 (120) (Pt B) (Pr 5).**

——S. 9 — Words "Tenant" and 'Held' — Meaning of — House of intermediary held by him before commencement of Act — Demand to be settled with him and not his tenant. **1963 All WR (HC) 283: 1963 All LJ 384: ILR (1963) 2 All 440.**

——Ss. 9, 117 (vi) — Question of land being appurtenant to house is one of fact — Bazaar on such land — Character of land not changed. **1963 All WR (HC) 392: 1963 All LJ 499.**

——S. 9 — Word 'building' in S. 9 — Meaning of — Gher is building — Settlement of its site. **1963 All WR (HC) 323: 1963 All LJ 439.**

——S. 9 — Suit filed in exercise of possessory title — Claim for tahbazari dues — Ex-zamindar held entitled to decree. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 6. **1963 All WR (HC) 392.**

● ——S. 9 — 'Hold', meaning of — Refers to a title having legal origin—Intermediary wrongfully dispossessing riyaya of his village site by demolishing kuchcha construction and including it in his residential house — Cannot claim any right in the site by virtue of S. 9. AIR 1958 All 332, **Overruled.** AIR 1953 All 406, Rel. on. Buddhan Singh v. Nabi Bux. **ILR (1961) 2 All 321: 1961 All LJ 536: 1961 All WR (HC) 452: AIR 1962 All 43 (46, 52) (Pt A) (Prs 5, 47, 48) (FB).**

——S. 9 — Suit for possession of land appurtenant to house situated in abadi — Plaintiff's right to sue is not lost after passing of Act during pendency of suit. **1962 All LJ 1080: 1962 All WR (HC) 859.**

——S. 9 — Structure whether a building — Tests for determination — Brick-kiln held ordinarily not a building — Words and Phrases — 'Building'. **1961 All WR (HC) 604: 1961 All LJ 910.**

——S. 9 — 'Building' — Meaning of — Brick kiln is a building within S. 9. AIR 1927 All 214; (1892) 1 QB 264; AIR 1952 All 607; AIR 1921 Nag 147 (2), Distinguished. **1961 All WR (HC) 213: 1961 All LJ 193.**

● ——Ss. 9, 4, 6, 18 — Effect of — Mortgage of village by Zamindar before Act — Vesting of estate in State by virtue of notification under S. 4 — Bhumidari rights remaining in Zamindar continue to be subject to mortgage. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. **AIR 1959 All 179 (SB).**

[**Reversed** in AIR 1961 SC 1790.]

——Ss. 9 and 6 — Benefit of S. 9 can be availed of by trespassers also. AIR 1953 All 406 and 1954 All LJ 693, Dissent from. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. **AIR 1958 All 332 (DB).**

[**Overruled** in AIR 1962 All 43 (FB.]

——S. 9 — Applicability — Possession of person entitled to it will be maintained. **AIR 1955 NUC (All) 2741.**

——S. 9 — Land in village abadi belonging to zamindar but building thereon belonging to another person — Zamindar cannot claim possession of land. **AIR 1955 NUC (All) 1749 (DB).**

——S. 9 — Applicability — Notification under S. 4 not issued — Section 9 has no application. **AIR 1955 NUC (All) 164 (DB).**

——S. 9 — Scope of indicated. **AIR 1955 NUC (All) 164 (DB).**

——Ss. 9 and 4 — Settlement under S. 9 without notification under S. 4 — It is invalid. **1952 All LJ 358: 1951 All WR (HC) 280: AIR 1954 All 23 (24) (Pr 4).**

——S. 9 — 'Held' and 'belong to'.

Section 9 does not confer a right on persons having no title to the land. It is confined in its application to the case where the building is lawfully held by the person in possession. **1953 All WR (HC) 118: 1953 All LJ 197: ILR (1954) 2 All 675: AIR 1953 All 406 (407) (Pt A) (Pr 9) (DB).**

——Ss. 9, 18 — 'Subject to the provisions of this Act' — Refers to rights and liabilities of Bhumidars. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1953 All 406 (DB).**

——S. 9 — Construction by trespasser on sir land.

Section 9 does not mean that if any person has made any construction whatsoever over any land lying within the limits of an estate, however wrongful or recent the possession might be, his construction will stand and site of the building will be deemed to have been settled with him by the State Government. **ILR (1954) 1 All 675: 1953 All WR (HC) 118: 1953 All LJ 197: AIR 1953 All 406 (407) (Pt E) (Pr 10) (DB).**

SECTION 10

——S. 10 (2) (v) — Applicability — Claim for relief under — Provisions when attracted.

Where the land-holder, who let out the sir plot to appellants, was too fat and, was, therefore, incapable of doing cultivation by reason of physical infirmity and the person who succeeded the said plots also a disabled person being a woman.

Held, she is entitled to the benefit of sub-section (2) of S. 10. **1965 All LJ 642.**

——S. 10 — Constitution of India, Art. 14 — Estate abolition legislation — Territorial discrimination — Applicability of U. P., Act 1 of 1951, with modification to erstwhile Benaras State by notification — Notification offends Art. 14 — Notification quashed — Result of applying Section 10 of Act with modification, indicated. See Constitution of India, Art. 14. **AIR 1955 All 546.**

SECTION 12

——S. 12 — Order under S. 12 not becoming final — Same point can be raised in objection under S. 20. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 20. **1965 All LJ 1013.**

SECTION 14

——S. 14 — Sir land — Mortgage — Personal cultivation of mortgagee — Mortgagor becomes Bhumidar — Mortgagee ceases to have any right. See Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), S. 12. **1965 All WR (HC) 299: 1965 All LJ 363.**

● ——Ss. 14 (1) & 14 (2) (a), 3 (8), 18 (1), 6 (g) (i) — Expression an estate or share therein' — Not confined to fractional share but includes specific or isolated sir plot — Usufructuary mortgage of sir plot — Mortgagee in possession on date of vesting — Deemed to be simple mortgagee on 1-7-1952 — Land deemed to be sir of mortgagor under S. 14 (2) (a) who is entitled to possession as bhumidhar — Mortgagee has no right to the land — 1962 All LJ 612, **Overruled** — (Majority view). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 3 (8). **AIR 1964 All 311 (FB).**

——Ss. 14 (2), (a), (b), 209 — Land Sir or Khudkasht of mortgagor on date of mortgage

— Deposit by mortgagee under S. 14 (2) (b) and acceptance by State — Grant of certificate to mortgage has no legal effect — Possession not in accordance with law for the time being in force — Suit for ejectment under S. 209 is maintainable — Words and Phrases — "Possession in accordance with law". **1964 All WR (HC) 224: 1964 All LJ 1109.**

——**S. 14** — Mortgagor — Who is — Grantor of Guzara which the grantee mortgaged without any powers of transfer — Mortgagees acquired title by adverse possession are not a mortgagor — Reversion of grant — Grantor does not become mortgagor though he is entitled to redeem — He is not 'bhumidar" and is not entitled to benefit of S. 14. See Transfer of Property Act (1882), S. 58. **(1964) All WR (HC) 120.**

——**S. 14** — Suit for possession — Mortgage must be subsisting on date immediately preceding date of vesting — Suit under S. 14 and suit for redemption — Distinction — Precise date of mortgage not necessary for relief, provided other conditions are satisfied. **1964 All WR (HC) 115.**

——**S. 14 (1) — Scope — Divestment of mortgagee is absolute.**

Section 14 (1) divests the mortgagee absolutely of all rights to hold or possess the plots. The divestment is not conditional or in relation to the mortgagor alone. **1964 All WR (HC) 720: 1963 All LJ 860.**

——**Ss. 14 (2) (a) and (b), 19, 6 (g) (i) and 209** — Occupancy tenant holding on the date of vesting acquires sirdari rights in Mandadari land — Usufructuary mortgage of such land void — Mortgagor entitled to possession and mortgagee entitled to mortgage amount — Usufructuary mortgage of "sir" land — After vesting mortgagor entitled to possession but mortgagee not entitled to mortgage amount. **1964 All LJ 528.**

——**S. 14 (1), S. 18 and S. 6 (g) (1)** — Usufructuary mortgagee of part of an estate — Right to retain possession after the Act — Loss of under S. 6 (g) (1) and not S. 14 (1) — Mortgagors of such plots of land do not acquire bhumidhari rights under S. 18 . **1962 All WR (HC) 528: 1962 All LJ 612: ILR (1963) 1 All 30.**

[**Overruled** in AIR 1964 All 311 (FB).]

——**Ss. 14 and 209 — Expressions 'Mortgagor' and 'Legal Representative' — Meaning of — Possessory mortgage — Requirements of law — Suit for claiming possession by donee of original mortgagor — Maintainable.**

The word 'mortgagor' used in S. 14 must be deemed to include not only the original mortgagor but also persons deriving title from him. It is not necessary for purposes of claiming possession under S. 209 read with S. 14 of the Act that the same person who originally executed the mortgage should himself claim the property in such proceedings. The transferee who is a donee of the original mortgagor has every right to maintain a suit for possession under S. 209 read with S. 14 of the Act. **1963 All LJ 18: 1962 All WR (HC) 465.**

——**S. 14 (1)** — Repeal of U. P. Agriculturists Relief Act—Mortgagor's right of redemption not affected — Parties to approach revenue Court for possession. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 339. **1961 All LJ 273.**

——**Ss. 14, 6 and 209** — Mortgage of sir and khudkasht plots — Right of mortgagee to continue in possession after date of vesting —Suit for ejectment brought in 1953 — Civil Court has jurisdiction to entertain. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 6. **1960 All WR (HC) 206: 1960 All LJ 308.**

——**S. 14 — 'Mortgagor' — Holder of equity of redemption — Right of.**

Term 'mortgagor' used in S. 14, would include the holder of the equity of redemption. **1958 All LJ 591: 1958 All WR (HC) 692.**

——**Ss. 14, 19 — Rights of mortgagor and mortgagee.**

There is in a case which falls under S. 14 (2) (b) of the Act no break in the continuity of the right of the mortgagee to hold land, since the mortgagee's right to continue to hold as a hereditary tenant comes into force at once, provided, of course, the conditions laid down in S. 14 (2) (b) are fulfilled. The mortgagor is not deemed to come into possession of the mortgaged plots on the date of vesting. **1958 All WR (HC) 481 (2): 1958 All LJ 302.**

——**S. 14** — Mortgagor — Includes auction-purchaser as his legal representative. **1957 All WR (HC) 850.**

——**S. 14** — Transfer of Property Act (1882), Ss. 58 and 59 — Loan of Rs. 500 on foot of pronote — Subsequent oral agreement under which creditor entered into possession of debtor's fields till liquidation of debt—Transaction is not mortgage. See Transfer of Property Act (1882), S. 58. **AIR 1956 All 150.**

SECTION 15

——**S. 15** — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 22 — Applicability — Section 15 does not apply to joint sir holders and khudkasht holders. The note at the foot of R. 22 of the Land Reforms Rules clarifies this matter. **1965 All WR (HC) 603: 1965 All LJ 1037.**

SECTION 16

——**S. 16 — 'Occupant" — Meaning of.**

The occupant under S. 16, means an occupant by virtue of some rights of his own and if he has no right of his own he would not be entitled to possession. **1958 All LJ 31: 1958 All WR (HC) 202: AIR 1958 All 544 (545) (Pt B) (Pr 5).**

——**S. 16** — Ejectment decree against tenant obtained and executed — Appeal pending against decree — Status of tenant for purposes of U. P. Zamindari Abolition and Land Reforms Act stated. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 45 (b). **1958 All LJ 904.**

SECTION 18

●——**Ss. 18, 4, 6 (1) (a), 9** — Mortgage of proprietary rights in estate before the Act — Effect of notification under S. 4 — Nature of Bhumidari rights — Cannot be followed as substituted security — Mortgagee can proceed only against compensation money. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 4. **AIR 1961 SC 1790.**

——**S. 18** — Khudkasht rights — Source of — Cultivatory possession and not possession over proprietary rights can be source of khudkasht rights. **1965 All WR (HC) 125: 1965 All LJ 313: AIR 1966 All 173 (173, 174) (Pt A) (Pr 1) (DB).**

●——**Ss. 18, 134, 137, 152, 169, 171, 172, 172-A and 174** — Scope of S. 152 — Female inheriting holding before Act from last made holder and becoming bhumidar under S. 18 or acquiring bhumidari rights under Ss. 134 and 137 — Can transfer such holding — Transfer valid and effective beyond her lifetime — Female inheriting bhumidari holding from male bhumidar can transfer it — Such transfer is also valid and effective beyond her lifetime. F. A. F. O. No. 214 of 1955 dated 31st January, 1958 (All.), Overruled; 1958 All LJ 547 and 1962 All LJ 468, Approved. Ramji Dixit v. Bhrigunath. **1964 All WR (HC) 75: 1964 All LJ 197: ILR (1964) 1 All 589:**

AIR 1965 All 1 (2, 4 to 8, 10) (Prs 1, 12, 13, 18, 20, 25, 43, 45) (FB).

——**Ss. 18 and 21 (1) (d)** — Mortgagee holding Sir becomes bhumidar but by virtue of S. 21 (1) (d) does not become asami. See Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), Section 12. **1965 All WR (HC) 299: 1965 All LJ 363.**

——**S. 18** — Acquisition of rights in occupancy tenancy — Holding possessed by joint Hindu family — Adopted son of one of members cannot acquire rights — Tenant acquiring status of Bhumidar — Alienation by — His adopted son cannot challenge — Section 9 cannot apply to such case. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 35 (a). **1965 All LJ 665: 1965 All WR (HC) 365.**

——**S. 18** — Plaintiffs holding as intermediaries planting trees on lands — Trees were in such numbers taking shape of grove — Plaintiff held became bhumidars of the lands — U. P. Tenancy Act (17 of 1939), S. 180 (2). **1965 All WR (HC) 22.**

● ——**Ss. 18 (1), 3 (8), 14 (1), 14 (2), (a), 6 (g) (i)** — Expression 'an estate or share therein' — Not confined to fractional share but includes specific or isolated sir plot — Usufructuary mortgage of sir plot — Mortgagee in possession on date of vesting — Deemed to be simple mort gagee on 1-7-1952 — Land deemed to be sir of mortgagor under S. 14 (2) (a) who is entitled to possession as bhumidhari — Mortgagee has no right to the land — 1962 All LJ 612, **Overruled** — (Majority view). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 3 (8). **AIR 1964 All 311 (FB).**

● ——**Ss. 18, 240-A, 240-B** — Extinguishment of bhumidhari rights followed by their vesting in State — Article 31 (2) of Constitution not violated. Manhoo Mal v. Mulloo. **1963 All WR (HC) 498: 1963 All LJ 731: ILR (1963) 2 All 751: AIR 1964 All 213 (219) (Pt F) (Pr 14) (FB).**

[**Overruled** in AIR 1968 SC 466.]

——**S. 18** — Suit involving trust regarding debts of author of trust instituted in 1947 — U. P. Act 1 of 1951 and U. P. Act 15 of 1953 passed during pendency of appeal — **Held** arguments based on the Act could not be entertained. See Civil P. C. (1908), S. 151. **ILR (1964) 2 All 191.**

——**Ss. 18 and 24** — Option to reconvey to seller land sold — Subsequent passing of U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — Portion of land vested in State resettled on purchaser — Purchaser cannot back out of agreement to reconvey land to seller. See Contract Act (1872), S. 56. **AIR 1963 All 201.**

——**S. 18** — Contract Act (1872), S. 56 — 'Becomes impossible' — Does not mean physically or literally impossible — Contract to sell zamindary property — Subsequently under S. 18 of U. P. Z. A. and L. R. Act zamindar given bhumidhari rights in same lands — Contract does not become impossible — Subject matter of contract still exists. See Contract Act (1872), S. 56. **AIR 1963 All 194.**

——**S. 18** — Usufructuary mortgage of part of an estate — Right to retain possession after the Act — Loss of under S. 6 (g) (i) and not S. 14 (1) — Mortgagors of such plots of land do not acquire bhumidari rights under Section 18. See Tenancy Laws — U. P. Zamindary Abolition and Land Reforms Act (1951), S. 14 (1). **1962 All WR (HC) 528: 1962 All LJ 612: ILR (1963) 1 All 30.**

[**Overruled** in AIR 1964 All 311 (FB.)]

●——**Ss. 18, 4, 9, 6** — Effect of — Mortgage of village by Zamindar before Act — Vesting of estate in State by virtue of notification under S. 4 — Bhumidari rights remaining in Zamindar continue to be subject to mortgage. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. **AIR 1959 All 179 (SB).**

[**Reversed** in AIR 1961 SC 1790.]

——**Ss. 18 and 21 — Applicability.**

Application under S. 12, U. P. Agriculturists Relief Act by mortgagor — After the decree of the trial Court and during the pendency of appeal. U. P. Act 1 of 1951 coming into force on 1st July, 1952 — Decision of lower appellate Court on 17th March, 1953, confirming decree of trial Court:

Held, that there was no subsisting right in the mortgagor to get relief under S. 12 — Mortgagee had on the other hand acquired certain rights which had to be enforced. **1957 All LJ 543: 1957 All WR (HC) 533.**

——**Ss. 18 (2) and 26-B — Acquisition of Bhumidari right — (Tenancy Laws — U. P. Agricultural Tenants' (Acquisition of Privileges) Act (10 of 1949), Ss. 3 and 6).**

Before a person can be deemed to be a Bhumidhar of the holding, he must be a person belonging to the class mentioned in S. 3 or subsection (2) of S. 3-A of U. P. Act No. 10 of 1949 and further he should have been granted the declaration referred to in S. 6 of that Act.

An occupier of land, which is sir or khudkasht, does not come within the definition of the word 'occupier', as used in Cl. (e).

Therefore, where the land has proved to be the khudkasht land of an evacuee at the time of migration to Pakistan it must be deemed to have been khudkasht of the evacuee on 31-6-1952 by virtue of S. 26-B read with Para. 1 of Sch. 5 of U. P. Act (1 of 1951) and that being the case the person in possession on it does not become an occupier and does not acquire Bhumidari rights under S. 18 (2) of that Act. **1955 All LJ 218: 1955 All WR (HC) 257: AIR 1955 All 538 (539, 540) (Pt A) (Prs 4 to 6).**

——**S. 18** — Possession under void mortgagor — Mortgagee cannot claim to be assamis. See Tenancy Laws — U. P. Zamindary Abolition and Land Reforms Act (1 of 1951), S. 21 (1) (d). **AIR 1955 NUC (All) 4171.**

——**S. 18** — Out of property of the deceased — Bhumidari rights — Remained assets of the zamindari. See Civil P. C. (1908), S. 52. **AIR 1955 NUC (All) 1703 (DB).**

——**Ss. 18, 9 — 'Subject to the provision of this Act.**

The expression 'subject to the provisions of this Act' in S. 18 refers to the rights and liabilities of the Bhumidars which are detailed in a subsequent chapter of the Act, and not to the provisions of S. 9. **ILR (1954) 1 All 675: 1953 All WR (HC) 118: 1953 All LJ 197: AIR 1953 All 406 (407) (Pt D) (Pr 10) (DB).**

——**Ss. 18, 171—Sir, Khudkast and Horticultural lands — Succession.**

Sir, Khudkast and horticultural land — Intermediary gets bhumidari rights — Devolution of those lands is governed by special order of succession provided in S. 171, which excludes the application of all personal laws as also the Hindu Law of Inheritance (Amendment) Act. **AIR 1956 Pat 457 (476) (Pt I) (Pr 37) (DB).**

SECTION 19

——**S. 19** — Lease by lumberdar executed in favour of person held to be invalid — Such person being trespasser cannot claim title to the land. 1961 All LJ 536, Rel. on. **1965 All LJ 1011.**

——S. 19 — Rights of mortgagor and mortgagee indicated. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 14. **1958 All LJ 302.**

——S. 19 — Possession under void mortgage — Mortgagee cannot claim to be assami. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 21 (1) (d). **AIR 1955 NUC (All) 4171.**

●——S. 19 — U. P. Tenancy Act (1939), Sections 183, 206 (c) and 180 — Applicability — Suit for possession of grove land — Cause of action arising before repeal of Tenancy Act by U. P. Zamindari (Abolition and Land Reforms) Act — Court having jurisdiction stated. See Tenancy Laws — U. P. Tenancy Act (1939), Section 183. **AIR 1953 All 85 (FB).**

SECTION 20

SYNOPSIS

(U. P. Zamindari Abolition and Land Reforms Act (1951), S. 20.)

1. Scope and validity.
2. Sub-clause (a).
3. Sub-clause (b).
4. Sub-clause (c).
5. Explanations.
6. Sub-section (2).

1. Scope and validity.

——Ss. 20, 12 — Order under S. 12 not becoming final — Same point can be raised in objection under S. 20. **1965 All LJ 1013.**

——S. 20 — Civil P. C. (1908), S. 11 — Res judicata at different stages of same proceeding — Owing to change of law question to be decided at subsequent stage depending on different facts — Decision at previous stage not res judicata. See Civil P. C. (1908), S. 11. **AIR 1961 All 278 (DB).**

——S. 20 — Validity of S. 20 — Question is of general importance and is covered by Art. 133 (1). See Constitution of India, Art. 133 (1) (c). **AIR 1957 All 116 (DB).**

——S. 20 — Applicability — Party to litigation permitted to cultivate suit lands — Position of — Rights under the Act, cannot be acquired. **1956 All LJ 484: 1956 All WR 782: AIR 1956 All 665 (667) (Pt A) (Pr 15) (DB).**

●——S. 20 — Proceeding under S. 180, U. P. Tenancy Act pending on 30th June, 1952 — Proceedings, has to be decided with reference to any right accrued under U. P. Zamindari Abolition Act. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1955 All 432 (FB).**

●——Ss. 20 and 232 — Suit for ejectment under S. 180, U. P. Tenancy Act — Adhivasi, is not entitled to set up his rights as such in view of S. 232. Jagannath v. Board of Revenue U. P. **1955 All LJ 276: 1955 All WR (HC) 297: ILR (1955) 1 All 611: AIR 1955 All 432 (495) (Pt E) (Pr 18) (FB).**

——S. 20 — Section is not retrospective. **1954 All WR (HC) 86: 1954 All LJ 121: AIR 1954 All 434 (436) (Pt B) (Pr 7) (DB).**
[Overruled on another point in AIR 1955 All 432.]

——S. 20 — Applicability to pending proceedings — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), Cls. 4 and 5 (3)) — (Tenancy Laws — U. P. Land Tenure (Legal Proceedings) (Removal of Difficulties) Order (1942), Para 2).
Section 20 will not affect the rights of the parties to pending proceedings. **1954 All WR (HC) 86: 1954 All LJ 121: AIR 1954 All 434 (434 to 436) (Pt C) (Prs 2, 7) (DB).**
[Overruled in AIR 1955 All 432.]

2. Sub-clause (a).

——S. 20 (a) (i) — Plaintiff suing for possession, recorded as occupant in 1356-F — He comes under S. 21 (h) — Remedy of plaintiff is by suit under S. 212-B. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act 1950 (1 of 1951), S. 21 (h). **1965 All WR (HC) 406: 1965 All LJ 643.**

●——Ss. 20 (a) (ii), 20 (b), 240-A (as amended by U. P. Act 20 of 1954) — U. P. Tenancy Act (17 of 1939) (as amended by U. P. Act 10 of 1947), Ss. 295-A, 45—Sub-lease of land by fixed rate tenant on 14-5-1946 for five years — Rights of sub-tenant on expiry of period — Effect of U. P. Zamindari Abolition and Land Reforms Act, 1950, repealing U. P. Tenancy Act — Suit for ejectment of sub-tenant field on 31-8-1951 — Sub-tenant not liable to ejectment — He becomes adhivasi and then sirdar under U. P. Act of 1951 — T. P. Act (1882), Ss. 105, 111. 1963 All LJ 288, **Overruled.** Dam Dula Singh v. Babu Sukhu Ram, **1963 All WR (HC) 461: 1963 All LJ 667: ILR (1963) 2 All 472: AIR 1964 All 498 (500 to 502, 504) (Prs 4, 8, 23) (FB).**

——S. 20 — Clause (a) and Cl. (b) not mutually exclusive. **1962 All WR (HC) 700: 1962 All LJ 782.**

——Ss. 20 (a) (ii), 209 and 231 and 234 — Subletting by hereditary tenant in 1942 — Suit for ejectment and compromise — Sub-tenant- permitted to remain in possession — He acquires adhivasi rights independent of compromise — He was exempted from eviction. **1959 All WR (HC) 416: 1959 All LJ 586: ILR (1959) 2 All 319.**

3. Sub-clause (b).

●——S. 20 (b) (i) — Scheme of — Persons recorded as occupants — How determined — Record of Khasra or Khatauni of 1356-F is material factor — Occupant — Meaning of — Proof of his actual possession in 1356-F not necessary. Amba Prasad v. Mohaboob Ali Shah, **1964 All LJ 805: (1965) 1 SCJ 559: (1964) 1 SCR 800: (1964) 1 SCWR 771: 1964 All WR (HC) 541: AIR 1965 SC 54 (56, 58, 59) (Prs 9, 16, 17, 18).**

●——S. 20 (b) (i) — Occupant recorded as thekedar — Status of.
Per Majority: The words in S. 20 (b) (i) only speak of a person being recorded as occupant and there is nothing in that section as to the nature of the occupancy, namely, whether it is on behalf of the person recorded or on behalf of somebody else. That is a matter which must always be decided on other evidence for the entry does not contemplate recording the nature of the possession in the sense of its being on behalf of the person recorded or on someone else's behalf. Upper Ganges Sugar Mills Ltd. v. Khalil-ul-Rahman, **1961 All LJ 27: 1961 All WR (HC) 78: (1961) 1 SCJ 387: (1961) 1 SCR 564: AIR 1961 SC 143 (146) (Pt B) (Pr 9).**

——S. 20 (b) — Suit for possession — Names of defendants entered as tenant or sub-tenant in Khasara — Held they did not acquire adhivasi rights. **AIR 1965 All 313 (318) (Pt C) (Pr 16).**

——S. 20 (b) — Adhivasi rights — Entry as sub-tenant — Effect of.
Ordinarily, an entry as a sub-tenant does not establish Adhivasi rights under S. 20 (b) (i) of the Act. But it is possible to establish that such an entry is not quite correct. If in fact the occupation of the plot was as a trespasser, and not as a sub-tenant, the occupier can be given the benefit of S. 20 (b) (i) of the Act. **1964 All**

LJ 273: ILR (1964) 2 All 67: AIR 1965 All 253 (255) (Pt B) (Pr 12) (DB).

——S. 20 (b) (ii) (as amended by Act 16 of 1953) — Sub-tenant cannot become adhivasi under S. 20 (b) (ii) —Sub-tenant not remaining as such on date of vesting held could not acquire any right also under Section 20 (a) (ii). **1965 All LJ 591: 1965 All WR (HC) 404: ILR (1965) 2 All 636.**

——S. 20 (b) — 'Occupant' — Mere entry of a person as tenant in Khasra or Khatauni of 1356-F is not sufficient — Actual possession in 1356-F is essential. **1965 All WR (HC) 765: 1965 All LJ 1211.**

——S. 20 (b) — Person in occupation in his own right — Occupation supported by decree — Entry as "occupant" cannot be said to be on basis of decree — Person is entitled to benefit of S. 20 (b). **1965 All LJ 1013.**

——S. 20 (b) — Entry in Class 10-A of Khatauni — Evidentiary value — Entry not decisive regarding nature of occupation — Evidence Act (1872), S. 35. **1964 All WR (HC) 711: 1964 All LJ 1127.**

——S. 20 (b) — Adhivasi rights — Conferment of— Record of occupation as distinguished from fact of occupation, material — Conflicting entries in Revenue registers — Entry cannot form basis of Adhivasi rights — Evidence Act (1872), S. 35. **1964 All WR (HC) 711: 1964 All LJ 1127.**

——S. 20 (b) (as amended by U. P. Act 16 of 1953) — Advashi rights — Acquisition — Person recorded as occupant along with rightful occupant of that land cannot acquire such rights. **1964 All WR (HC) 520.**

——S. 20 ((b) (i) and Explanations II and III — Scope — Entry in record of rights as occupant under S. 20 — Entry in record of 1356 Fasli in contravention of express order of a competent authority not contemplated by the section — An order declaring an entry to be incorrect can be passed in advance — An order for correction of record passed even before 1-7-1952 when the Act came into force is as good as an order directing correction of entry contemplated by S. 20 (b) (i) and Explanations. 1963 All LJ 190, Dissented from; 1959 All LJ 560, Disting. Explanation III not exhaustive. 1956 All LJ 351, Rel. on. U. P. Land Revenue Act (3 of 1901), Sections 28, 33. **1963 All LJ 537: ILR (1963) 2 All 741.**

——S. 20 (b) — U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 3 — Debtor and creditor — Easements Act (1882), Ss. 52, 62 — Creditor in possession of debtor's land in lieu of interest under oral agreement cannot acquire adhivasi rights. (1961) 1 SCJ 387; AIR 1961 SC 143, Rel. on. **1963 All WR (HC) 387: 1963 All LJ 456.**

——S. 20 (b) — Adhivasi rights — Acquisition of — Proof of actual possession — Not relevant — Entry in Khasara — Presumption — 1963 All LJ 190, **Overruled. 1963 All WR (HC) 208: 1963 All LJ 288.**

[**Overruled** in AIR 1964 All 498 (FB).]

——S. 20 (b) — Entry in Khasara or Khatauni — Presumption — Production of original records — When essential — Practice and procedure.

Under S. 20 (b) the entry in the Khasara or Khatauni is presumed to be conclusive proof of the facts stated therein but where one party pleads that the entries are forged or fictitious, the Court should insist on the production of the original record. **1962 All WR (HC) 849: 1963 All LJ 190.**

[**Overruled** in 1963 All LJ 288, which itself has been **Overruled** in AIR 1964 All 498 (FB).]

——S. 20 (b) — Effect of — Section is in accordance with general scheme of Act — Entry by patwari — Presumption — Claim to be an adhivasi — Conditions precedent — Words 'recorded as an occupant' — Meaning stated. **1962 All WR (HC) 849: 1963 All LJ 190.**

——S. 20 (b) — U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 3 — Claim to rights of adhivasi — Conditions precedent — Person recorded as sub-tenant in 1356-F — Cannot acquire adhivasi rights — Mere possession is not enough — Person must establish that he was in cultivatory i.e., actually cultivating the land in 1359-F. **1963 All WR (HC) 97.**

——S. 20 (b), Expl. III — Applicability.

Section 20 (b), Expln. II applies even to cases where as a necessary consequence of some order or decree a correction of the entry in 1356-F is required even though the order or decree does not itself make a direction for such correction. (1957) RD 413, Approved; 1959 All LJ 860, Foll. **1962 All WR (HC) 778.**

●**——S. 20** — Lease of sir plot in 1933 in favour of K — Sub-lease by K — In 1356-F. K. recorded as shikmi and sub-lessee recorded as dar-shikmi — Acquisition of adhivasi rights by sub-lessee — Occupant meaning stated — 1957 All LJ 548, Disting.; 1956 All LJ 317, Rel. on. **1960 All WR (HC) 175: 1960 All LJ 241: ILR (1960) 1 All 470 (FB).**

——S. 20 (b) — Remedy under S. 232 not confined to adhivasis falling under S. 20 (b) ejected through Court — It is available to all groups contemplated by S. 20 (b). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 232. **1957 All LJ 171.**

——S. 20 (b) (1) — Adhivasai rights — Acquisition of.

What S. 20 (b) (1) requires is the record of the name, in either of the registers, Khasra or Khatauni in the year 1356-F and where the names have not been entered, the persons concerned could not acquire the rights of Adhivasis, even though they may have been in possession of the land. **1955 All LJ 218: 1955 All WR (HC) 257: AIR 1955 All 538 (540) (Pt B) (Pr 7).**

——S. 20 — Rights under Clauses (b) (i) and (b) (ii) of S. 20 do not require proof of actual possession in year 1356-F. **AIR 1955 NUC (All) 3552 (DB).**

4. Sub-clause (c).

●**——S. 20 (c) — 'Occupant' — Meaning of.**

The only limitation that has been placed by judicial decisions on the meaning of the word "occupant" is that the person should be in occupation in his own right and not on behalf of someone else. Upper Ganges Sugar Mills Ltd. v. Khalil-ul-Rahman. **1961 All LJ 27: 1961 All WR (HC) 78: (1961) 1 SCJ 387: (1961) 1 SCR 564: AIR 1961 SC 143 (145, 146) (Pt A) (Prs 7, 8).**

——S. 20 (b) — Person entitled to claim Adhivasi rights under S. 20 (b) — Person in actual cultivatory possession in 1359-F — Preference — In the matter of giving preference a person having actual cultivatory possession in 1359-F is to be preferred to a person entitled to get possession under S. 20 (b). **1965 All WR (HC) 765: 1965 All LJ 1211.**

●**——Ss. 20, 234 — Right of an adhivasi to remain in possession — Extent of.**

Even if two or more persons can get adhivasi rights under S. 20 it is obvious that they all cannot be put in possession. **1963 All WR (HC) 498: 1963 All LJ 731: ILR (1963) 2 All 751: AIR 1964 All 213 (219) (Pt D) (Pr 11) (FB).**

[**Overruled** in AIR 1968 SC 466.]

——Ss. 20 (b), 28, 33 — Adhivasi rights — Claim to — Person must be recorded as occupant in Khasara of year 1356-F and not in part of the year. **1963 All WR (HC) 183: 1963 All LJ 286.**

——S. 20 — U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 3 — Adhivasi rights cannot be claimed by trespasser. **1963 All WR (HC) 118.**

——S. 20 — Person in occupation as licensee — He cannot claim status of Adhivasi. **1963 All WR (HC) 45.**

——S. 20 — U. P. Land Reforms (Supplementary) Act (31 of 1952), Sections 3, 6 — Adhivasi rights obtained under Section 3 of 1952 Act override those obtained in S. 20 of 1950 Act—Latter rights not protected by S. 6 (a) (ii) of the 1952 Act — Section 6 (a) (ii) applies only in cases of decrees for possession against persons obtaining Adhivasi rights under S. 3. **1962 All LJ 870: 1962 All WR (HC) 690.**

——S. 20 (c) (ii) — Presumption under — Can be raised only on strict proof by direct evidence of entry as occupant in revenue records of 1356-F — Proof of such entry in subsequent years not sufficient. **1962 All WR (HC) 584.**

——Ss. 20, 209 and 331 — Suit for possession and damages — Plaintiff claiming status of Adhivasis — Jurisdiction of Civil Court not barred. **1959 All WR (HC) 625: 1959 All LJ 807.**

——S. 20 (b) (as substituted by U. P. Act 16 of 1953) — 'Occupant' — Mortgagee in possession — Rights of.

Keeping in view the language of S. 20 and the provision of Explanation IV (as added by U. P. Act 20 of 1954), a mortgagee in possession will not be covered by the expression 'occupant' in Cl. (b) of S. 20 of the Act. **1959 All WR (HC) 345: 1959 All LJ 479.**

——S. 20 — Possession of mortgagee of tenancy rights — Effect of — (T. P. Act (1882), Ss. 6 and 108 (j)).

An entry as mortgagee of tenancy rights is entry as a licensee; hence, such an entry does not confer the rights of adhivasi under S. 20, Section 6 of the Transfer of Property Act actually prohibits transfer of rights of occupancy of a tenant. **1957 All WR (HC) 487: 1957 All LJ 548.**

5. Explanations.

——S. 20, Expl. III — Applicability — Correctness of entry not in issue — Effect.

The words 'corrected' and 'correction' occurring in Explanation III to S. 20, U. P. Zamindari Abolition and Land Reforms Act, suggest that the order or decree must have held that the material entry in the Khasra did not represent the true state of facts and was wrongly made. Those words exclude the application of Explanation III to a case where the order or decree has expressly held that the material entry was rightly made on the strength of actual possession. **1959 All WR (HC) 662: 1959 All LJ 860.**

——S. 20, Explanation III — Applicability. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 232. **1957 All LJ 593: 1957 All WR (HC) 630.**

——S. 20 — Explanation I — Scope of.

It cannot be said that an adhivasi falling under Cl. (b) of S. 20 can get the benefit of S. 232 only if he has been 'evicted' from the land after that date as contemplated by the explanation. **1957 All WR (HC) 630: 1957 All LJ 593.**

——S. 20, Expln. IV (as amended by Act 20 of 1954) — Retrospective operation.

Having regard to the scheme of the Zamindari Abolition and Land Reforms Act and to the fact that an appeal is the continuation of a suit, it is open to the defendants to take advantage of S. 20, in appeal before the Board of Revenue. It is equally open to the plaintiffs to urge that the defendants cannot take advantage of S. 20 in view of the Explanation which was added by the Amending Act of 1954. **1955 All LJ 883: 1956 All WR (HC) 18: AIR 1956 All 177 (178) (Pt B) (Pr 4).**

——S. 20, Explanation — Applicability.

The explanation does not apply to those who claim to be adhivasis under Cls. (a) and (b) of S. 20. **1954 All WR (HC) 86: 1954 All LJ 121: AIR 1954 All 434 (435) (Pt A) (Pr 4) (DB).**

[**Overruled** on another point in AIR 1955 All 432.]

6. Sub-section (2).

——Ss. 20 (2), 240-A (1), 240-D, 240-G and 240-J — Lessees of land entered as Sirdari in compensation statement prepared under S. 240-D — Landholder objecting under S. 240-G to such entry on the ground that land in question was not land referred to in S. 240-A (1) — Objection dismissed for default — Objection to such entry raised under S. 20 (2) agitating claim for Sirdari rights — Claim not barred by finality of compensation statement under S. 240-J — (Civil P. C. (1908), Section 11). **(1965) All WR (HC) 806.**

SECTION 21

——Ss. 21 (1) (d) and 202 — Possession under void mortgage — Mortgage by occupancy tenant while U. P. Tenancy Act of 1939 was in force — Mortgagee is not Asami and cannot be ejected under S. 202. **1964 All WR (HC) 646: 1965 All LJ 255: AIR 1965 All 504 (508) (Pt E) (Pr 19).**

——S. 21 (1) (d) — Mortgage of occupancy holding — Mortgage is void and mortgagee does not acquire status of 'asami' under the Act.

A mortgagee under a void mortgage of an occupancy holding does not acquire the status of an asami under the provisions of the U. P. Zamindari Abolition and Land Reforms Act. AIR 1963 All 535, **Overruled. 1963 All WR (HC) 430: 1963 All LJ 682: ILR (1963) 2 All 492: AIR 1965 All 221 (223) (Prs 6, 7) (DB).**

——Ss. 21 (h), 20 (a) (i) and 212-B — Plaintiff suing for possession, recorded as occupant in 1356-F — He comes under S. 21 (h) — Remedy of plaintiff is by suit under S. 212-B. **1965 All WR (HC) 406: 1965 All LJ 643.**

——S. 21 (d) — Mortgage of occupancy holding is not a valid mortgage — Mortgagor is entitled to recover possession on payment of amount due on account of loan. **1964 All WR (HC) 422.**

——S. 21 (1) (c) — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (3), Proviso — Right of declared sub-tenant to remain in possession — Extent of U. P. Land Reforms Supplementary Act (31 of 1952), S. 3 — Defendants in cultivatory possession in 1359-F— **Held** acquired rights of asami — Tenancy Laws — U. P. Land Reforms Supplementary Act (31 of 1952), S. 3. **1964 All WR (HC) 255.**

——S. 21 (1) (d) — Expression 'Mortgagee in possession', meaning of — Mortgagee of an occupancy holding acquires status of asami although mortgage was invalid. **AIR 1963 All 535 (536) (Pt D) (Pr 3).**

[**Overruled** in AIR 1965 All 221.]

——**Ss. 21, 7 and 165** — Decree for arrears of rent under the Tenancy Act — Execution — Execution by lease out of holding — Not barred by Section 165 of Zamindari Abolition Act — Such lease not inconsistent with the scheme of the Land Reforms Act — Lessee does not acquire asami rights thereunder but becomes a trespasser after period of the lease. **1963 All WR (HC) 329: 1963 All LJ 338: ILR (1963) 1 All 883.**

——**S. 21 (1) (h) (as amended by U. P. Amendment Act 20 of 1954)** — Words "to any one or more of the classes mentioned in S. 157" in Section 21 (1) (h) after amendment have reference to the classes mentioned in amended S. 157 which is retrospective. See Tenancy Laws — U. P. Zamindari and Land Reforms Act (1951), S. 202. **1962 All WR (HC) 591.**

——**S. 21 (1) (d)** — Repeal of U. P. Agriculturists Relief Act — Mortgagor's right of redemption not affected — Parties to approach revenue Court for possession. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), Section 339. **1961 All LJ 273.**

——**Ss. 21 (1) (d), 18, 19 and 202** — Possession under void mortgage — Mortgagee cannot claim to be assami. **AIR 1955 NUC (All) 4171.**

SECTION 23

——**Ss. 23, 24** — Transfer of certain Jagir to younger brother not holding any Zamindari property for maintenance — Condition that in case of no male descendant the property to revert to impartible estate — Sections 23 and 24, held did not apply. **1965 All LJ 480.**

SECTION 24

——**S. 24** — Applies to transfer by intermediary — Transfer to person not an intermediary — No transfer by transferee — S. 24 does not apply. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 23. **1965 All LJ 480.**

——**S. 24** — Contract Act (1872), S. 56— Specific Relief Act (1877), Section 14 — Option to reconvey to seller land sold — Subsequent passing of U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — Portion of land vested in State resettled on purchaser — Purchaser cannot back out of agreement to reconvey land to seller. See Contract Act (1872), S. 56. **AIR 1963 All 201.**

——**S. 24** — Enforcement of — Section has come into force and is in force now. **1952 All WR (Rev) 179: 1952 RD (BR) 273.**

——**S. 24 — Applicability — Applies to old leases — Words "Relieve" and "liability"—Meaning of.**

The lease or the agreement under Section 24 relieves the tenant of the liability and it, therefore, follows that the liability has to be there before it can be lightened — It must therefore, refer to such cases only where the rent has already been determined and the lease seeks to reduce it. Support is lent to this view by a comparison of Section 247 of the Act which is to cover all cases of new lease made after 1st July, 1948. Section 24 is not applicable to new lease but covers only old existing leases. **1952 All WR (Rev) 179: 1952 RD (BR) 273.**

SECTION 26

——**S. 26 (1)** — Rules under, Rule 4 — Rule is valid. **AIR 1955 NUC (All) 2696 (DB).**

——**S. 26** — Rules under, Rule 5 — Rule is valid. **AIR 1955 NUC (All) 2696 (DB).**

——**S. 26** — Rules under, Rule 5 (5) — Rule is not invalid because it infringes principle of avoiding multiplicity of suits. **AIR 1955 NUC (All) 2696 (DB).**

——**S. 26 (2)** — "Stayed under this Chapter", does not mean suit itself should have been stayed under any express provision in Ch. 2, but means suits to be stayed in view of S. 6 (1). **AIR 1955 NUC (All) 2696 (DB).**

——**S. 26 (2)** — Section 26 (2) (b) does not relate to disposal of appeals — Scope and meaning of S. 26 (2) indicated. **AIR 1955 NUC (All) 2696 (DB).**

——**S. 26 (2) (b)** — Rr. 4 and 5 taking away right of appeal — Rules are validly framed. See Tenancy Laws — U. P. Abolition of Zamindari and Land Reforms Act (1 of 1951), S. 6 (1). **AIR 1954 All 639.**

——**S. 26 (2) (b)** — Abatement of suit is one of the methods of disposal — Rr. 4 and 5 under Act are not ultra vires. **1954 All LJ 364: AIR 1954 All 639 (640) (Pt B) (Pr 4).**

——**S. 26** — Power of delegation is valid. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. **AIR 1954 All 515.**

——**S. 26** — Rules under, Rr. 4 and 6 — Rules are valid. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. **AIR 1954 All 515.**

——**S. 26** — Rules under, Rr. 4 and 6 — Rules govern suits under S. 180 of the U. P. Tenancy Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. **AIR 1954 All 515.**

SECTION 26-B

——**Ss. 26-B and 18 (2)** — Acquisition of Bhumidari right — Land proved to be Khudkasht of evacuee at time of migration to Pakistan must be deemed to be khudkasht of evacuee on 31-6-1952 — Person in possession of it does not become an occupier and does not acquire Bhumidari rights under S. 18 (2). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18 (2). **AIR 1955 All 538.**

SECTION 27

——**S. 27** — Execution of trust in 1929 — Trust not extinguished by coming into force of U. P. Act 1 of 1951. See Trusts Act (1882), S. 77 (a). **ILR (1964) 2 All 191.**

●——**S. 27** — Constitution of India, Art. 31 (2) and (4) — Compensation — Meaning — U. P. Act 1 of 1951, cannot be challenged on question of adequacy of compensation. See Constitution of India, Art. 31 (2) and (4). **AIR 1951 All 674 (FB).**

●——**Chapters 3 (Ss. 27 to 64) and 5 (S. 73) — Compensation if includes Rehabilitation grant.**

Per Mootham, Chandiramani, Agarwala and Bhargava JJ. — The compensation which the intermediary will receive for the acquisition of his property under the Act includes the amount (if any) to which he is entitled as Rehabilitation Grant.

As the Rehabilitation Grant forms part of the real compensation payable to the intermediary under the Act, the provisions relating to the grant are not open to attack as contravening the terms of Article 14 of the Constitution, by virtue of Article 31 (4).

Per Malik C. J. — The Rehabilitation Grant is not a part of compensation. The validity of the Act, however, cannot be challenged on the ground that Rehabilitation Grant has not been paid on a uniform basis and is therefore discriminatory. Raja Surya Pal Singh v. U. P. Government. **1951 All LJ 365: 1951 All WR (HC) 317: ILR (1952) 2 All 46: AIR 1951 All 674 (686, 687, 700, 701) (Pt O) (Prs 56, 65, 145, 148) (FB).**

SECTION 28

——**Ss. 28 and 33** — Adhivasi rights — Claim to — Person must be recorded as occcupant in Khasra of year 1356-F and not in part of the year. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Sec. 20 (b). **1963 All WR (HC) 183: 1963 All LJ 286.**

●——**Ss. 28, 30 and 54** —Acquisition of Zamindari rights by State Government — Compensation paid in bonds — Amount of interest paid to Zamindar— Not part of compensation money — Amounts to interest on security or income from other source — Liable to pay income-tax. See Income-tax Act (1922), S. 6. **AIR 1961 All 574 (FB).**

SECTION 29

——**S. 29** — Payment of interim compensation under U. P. Zamindari and Land Reforms Act without security or sureties — Contempt of Court by compensation Officer. See Contempt of Courts Act (1952), Section 3. **1960 Cr LJ 442: AIR 1960 All 231 (DB).**

SECTION 30

●——**S. 30** — Income-tax Act (1922), S. 6 — Acquisition of Zamindari rights by State Government — Compensation paid in bonds — Amount of interest paid to zamindar — Not part of compensation money — Amounts to interest on security or income from other source — Liable to pay income-tax. See Income-tax Act (1922), S. 6. **AIR 1961 All 574 (FB).**

SECTION 32

——**S. 32** — U. P. Land Revenue Act (1901), S. 32 — Mortgagee in possession of proprietary rights is not an intermediary. **1961 All LJ 1013.**

——**Ss. 32, 39 and 46** — Record of rights — Correctness of entries in — Compensation Officer has to determine correct rental for preparing assessment roll — He cannot do it on basis of entries in record of rights. **AIR 1955 NUC (All) 1727.**

SECTION 33

——**S. 33** — Adivasi rights claim to — Person must be recorded as occupant in khasra of year 1356-F and not in part of the year. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 20 (b). **1963 All WR (HC) 183.**

SECTION 34

——**Ss. 34, 48 and 49 — Scope.**

Section 34 preserves the right of any person to establish his claim in respect of any estate or part thereof in the ordinary municipal Courts having jurisdiction and this notwithstanding anything that may be found in Sections 32, 33 and 49 which makes the order of the compensation officer deciding an objection under Section 48 to be a decree of a civil Court. While Sections 48 and 49 of the Act enable the Court to determine the extent of the compensation they are not intended to cover cases where the question of title to compensation is itself involved. These are cases which are covered by Section 34. **1954 All WR (HC) 208: 1954 All LJ 271: AIR 1954 All 751 (752) (Pt A) (Prs 3, 4).**

SECTION 37

——**S. 37 (b), Proviso** — Applicability — Test. **1963 All WR (HC) 282: 1963 All LJ 328.**

SECTION 38

——**S. 38** — Procedure — Objection under Section 46 to statement of gross assets in respect of some village rejected — Same objection — Cannot be raised by application under Section 61. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 61 (2). **1957 All LJ 616.**

——**Ss. 38 and 46** — Scope of — 'Arithmetical mistake' — Omission in statements of gross assets prepared under Section 36 — Is a mistake. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 61 (2). **1957 All LJ 616.**

SECTION 39

——**S. 39 (1) (a)** — Compensation to be paid to intermediary — Assessment of — Enhanced rate of rent required to be paid on grant of Bhumidari sanad — If to be taken into consideration — (Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 7 (1) (b)) — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 92). **1959 All LJ 526.**

——**S. 39** — Record of rights — Correctness of entries in — Power of compensation officer to determine correct rental for preparing assessment roll stated. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 32. **AIR 1955 NUC (All) 1727.**

SECTION 44

——**S. 44** — Assignee of land revenue, simpliciter — Not entitled to compensation. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 3 (8). **1962 All WR (HC) 661.**

SECTION 45

——**S. 45** — Assignee of land revenue, simpliciter — Not entitled to compensation. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 3 (8). **1962 All WR (HC) 661.**

——**Ss. 45, 4, 6 (b)** — Annual grant of money as pension — Amount calculated on basis of one-fourth of revenue of pargana — Refusal by Government to pay grant after coming into force of Act — Right of pensioner to grant — Right can be enforced by writ of mandamus. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. **AIR 1956 All 564 (DB).**

[Reversed in AIR 1963 SC 799.]

——**S. 45 — Who can take advantage of section.**

Section 45 contemplates the payment of compensation to the proprietors mentioned therein. In Section 45, S. 78 of the U. P. Land Revenue Act has been expressly mentioned and consequently, even if a person may have been entitled to get the benefit of provisions similar to the provisions of Section 78 in the earlier Acts, he cannot take advantage of S. 45. **AIR 1956 All 564 (568 to 570) (Pt E) (Pr 14) (DB).**

[Reversed on another point in AIR 1963 SC 799.]

——S. 45 — Applicability — Conditions.

Before the provisions relating to ascertainment of gross and net assets for the purposes of payment of compensation can be taken advantage of by a person, it is necessary that his claim must be an estate which has been acquired by the State Government. If it is not an estate and has not been acquired by the State Government the applicant cannot be regarded as a proprietor under Section 45, and is not entitled to any compensation and consequently, the question of applying Section 45 does not arise. **AIR 1956 All 564 (568) (Pt F) (Pr 14) (DB).**

[Reversed on another point in AIR 1963 SC 799.]

SECTION 46

——S. 46 — Writ of prohibition — Delay — Lack of jurisdiction — Delay is immaterial. See Constitution of India, Art. 226. **AIR 1962 All 590 (DB).**

——S. 46 — Compensation Officer is Court and has inherent powers under S. 151 — Restoration application under O. 9, R. 13, barred — Inherent jurisdiction cannot be invoked. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 48. **AIR 1962 All 590 (DB).**

——Ss. 46 and 343 — Proceedings started by objection in response to notice — State Government is to be deemed to be a party. **1962 All LJ 501: 1962 All WR (HC) 475: AIR 1962 All 590 (596) (Pt A) (Pr 15) (DB).**

[Reversed in AIR 1966 SC 1164.]

——Ss. 46, 47 and 343 — Only when State appears in response to notice under S. 46, it is entitled to notice under Section 47 — Second part of Section 343 (1), provides the manner in which the notice is to be sent — State not appearing under Section 46 — State is not entitled to notice on basis of natural justice — 1960 All LJ 557, **Reversed. 1962 All LJ 501: 1962 All WR (HC) 475: AIR 1962 All 590 (596, 598, 600, 601) (Pt B) (Prs 15, 23 to 26, 33, 36) (DB).**

[Reversed on another point in AIR 1966 SC 1164.]

——S. 46 — Word 'and' in expression 'appear and file objections' does not mean 'for purpose of' — Interpretation of Statutes — Words — 'And'.

The expression used in the Hindi version of the Act is inconsistent with the English version; that being so the English version will have to be preferred. **1962 All LJ 501: 1962 All WR (HC) 475: AIR 1962 All 590 (598) (Pt C) (Pr 22) (DB).**

[Reversed in AIR 1966 SC 1164.]

——Ss. 46, 48, 341 — Proceedings before the compensation officer under Section 46, nature of — Position of State and objector are not that of plaintiff or defendant, decree-holder or judgment-debtor. 1960 All LJ 557, **Reversed. 1962 All LJ 501: 1962 All WR (HC) 475: AIR 1962 All 590 (599) (Pt D) (Pr 29) (DB).**

[Reversed on another point in AIR 1966 SC 1164.]

——Ss. 46, 48, 341 — Registration of objection — Notice or summons under O. 5, Civil P. C. is not necessary. 1960 All LJ 557, **Reversed. 1962 All LJ 501: 1962 All WR (HC) 475: AIR 1962 All 590 (599) (Pt E) (Prs 30, 31) (DB).**

[Reversed on another point in AIR 1966 SC 1164.]

——Ss. 46, 52, 343 — Compensation Roll made under S. 52 — Finality.

Even though the law may make a particular order or act final the Courts have the power to enquire into the validity of the steps leading to the order or act. Therefore, compensation Roll held did not become final under S. 52. **1960 All WR (HC) 418: 1960 All LJ 557.**

[Reversed in AIR 1962 All 590.]

——S. 46 — Scope of — Objection under, to statement of gross assets in respect of some villages rejected — Same objection — Cannot be raised by application under S. 61. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 61 (2). **1957 All LJ 616.**

——S. 46 — Record of rights — Correctness of entries in — Power of compensation officer to determine correct rental for preparing assessment roll. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 32. **AIR 1955 NUC (All) 1727.**

SECTION 47

——Ss. 47, 46 and 343—Only when State appears in response to notice under S. 46, it is entitled to notice under S. 47 — Second part of S. 343(1) provides the manner in which the notice is to be sent — State not appearing under S. 46 — State is not entitled to notice on basis of natural justice — See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 46. **AIR 1962 All 590 (DB).**

[Reversed in AIR 1966 SC 1164.]

——S. 47 — C. P. Code (1908), O. 9, R. 13 — Ex parte decision of objections under S. 46 — Restoration application has to be within 30 days of the decree. **1962 All LJ 501: 1962 All WR (HC) 475: AIR 1962 All 590 (601) (Pt G) (Pr 41) (DB).**

[Reversed on another point in AIR 1966 SC 1164.]

——Ss. 47, 48, 50, 343 — Proceedings under Chs. 3, 4 and 5 —State Government is necessary party. **1960 All WR (HC) 418: 1960 All LJ 557.**

[Reversed in AIR 1962 All 590.]

SECTION 48

——Ss. 48, 46, 341 — Proceedings under Section 46, nature of — Position of State and objector are not that of plaintiff or defendant, decree-holder or judgment-debtor. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 46. **AIR 1962 All 590 (DB).**

[Reversed on another point in AIR 1966 SC 1164.]

——Ss. 48, 46, 341 — Registration of objection — Notice of summons under Order 5, Civil P. C. is not necessary. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 46. **AIR 1962 All 590 (DB).**

[Reversed on another point in AIR 1966 SC 1164.]

——Ss. 48, 46 — C. P. Code (1908), O. 9, R. 13, Section 151 — Compensation officer is Court and has inherent powers under S. 151 — Restoration application under O. 9, Rule 13, barred — Inherent jurisdiction cannot be invoked. **1962 All LJ 501: 1962 All WR (HC) 475: AIR 1962 All 590 (602) (Pt H) (Pr 42) (DB).**

[Reversed on another point in AIR 1966 SC 1164.]

——S. 48 — Proceedings for determination of compensation — Nature of — Hearing of objections by Compensation Officer — Procedure to be followed — Compensation Officer determining compensation without giving notice — Proceedings vitiated. **1961 All WR (HC) 403: 1961 All LJ 493.**

——**S. 48** — Proceeding under Chs. 3, 4 and 5— State Government is necessary party. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 47. **1960 All WR (HC) 418: 1960 All LJ 557.**

[**Reversed** in AIR 1962 All 590.]

——**S. 48** — Compensation Officer, is not Court subordinate to High Court. See Civil P. C. (1908), S. 115. **AIR 1957 All 495.**

[**Overruled** in AIR 1962 All 315 (FB). **Overruled** in AIR 1964 All 504.]

——**S. 48** — Parties — Proceedings under — Party neither necessary nor proper party — Compensation officer ordering addition suo motu — Order is illegal — Order however cannot be revised under Section 115 as it is not a Court subordinate to High Court. See Civil P. C. (1908), O. 1, R. 10 (2). **AIR 1957 All 495.**

[**Overruled** in AIR 1962 All 315 (FB). **Overruled** in AIR 1964 All 504.]

SECTION 49

——**S. 49** — Scope indicated. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 34. **AIR 1954 All 751.**

SECTION 50

——**S. 50** — Proceedings under Chapters 3, 4, 5 — State Government is a necessary party. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951). Sec. 47. **1960 All WR (HC) 418: 1960 All LJ 557.**

[**Reversed** in AIR 1962 All 590.]

SECTION 52

——**S. 52 (2)** — Compensation Officer having jurisdiction finalising compensation roll — Correct procedure not followed — Still compensation roll becomes final after being filed and sealed. **1962 All LJ 501: 1962 All WR (HC) 475: AIR 1962 All 590 (601) (Pt F) (Pr 38) (DB).**

[**Reversed** on another point in AIR 1966 SC 1164.]

——**Ss. 52, 60, 61** — Compensation Assessment Roll finalised — No alteration can be made in it except in case of accidental error — Changes made because of amendment of Rule 39-B (2) by addition of proviso to the Rule — Amendment of rule not retrospective — Change in Compensation Assessment Roll is illegal. **ILR (1959) 2 All 671: 1961 All LJ 126: 1961 All WR (HC) 154.**

——**S. 52** — Compensation Roll made under Section 52 — Not final. See Tenancy Laws— U. P. Zamindari Abolition and Land Reforms Act (1951), S. 46. **1960 All WR (HC) 418: 1960 All LJ 557.**

[**Reversed** in AIR 1962 All 590.]

SECTION 54

●——**S. 54** — Income-tax Act (1922), S. 6 — Acquisition of Zamindari rights by State Government — Compensation paid in bonds — Amount of interest paid to zamindar — Not part of compensation money — Amounts to interest on security or income from other source — Liable to pay income-tax. See Income-tax Act (1922), S. 6. **AIR 1961 All 574 (FB).**

SECTION 60

——**S. 60** — Compensation Assessment Roll finalised — No alteration can be made in it except in case of accidental error — Changes made because of amendment of Rule 39-B (2) by addition of Proviso to the Rule — Amendment of rule not retrospective — Change in compensation Assessment Roll is illegal. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 52. **ILR (1959) 2 All 671.**

SECTION 61

——**S. 61** — Compensation Assessment Roll finalised — No alteration can be made in it except in case of accidental error — Changes made because of amendment of Rule 39-B (2) by addition of Proviso to the Rule — Amendment of rule not retrospective — Change in Compensation Assessment Roll is illegal. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 52. **ILR (1959) 2 All 671.**

——**S. 61 — Limitation.**

There is no limitation prescribed under Section 61 for making an application. The only limitation placed on the power of the Compensation Officer is that before the compensation is actually paid he can correct the compensation assessment roll. **1957 All WR (HC) 605: 1957 All LJ 616.**

——**S. 61 (2)** — Applicability — Objection under S. 46 to statement of gross assets in respect of some villages rejected — Same objection —Cannot be raised by application under S. 61. **1957 All WR (HC) 605: 1957 All LJ 616.**

——**S. 61 (2)** — 'Arithmetical mistake' — Omission in statements of gross assets prepared under Section 36 — It is an arithmetical mistake. **1957 All WR (HC) 605: 1957 All LJ 616.**

SECTION 62

——**S. 62** — Applicability — Is not applicable to an order of injunction where 'no proceedings pending before the Compensation Officer' had been staved or were restrained, but it was ordered that the possession of the compensation bonds may not be taken in the meanwhile. **1960 All WR (HC) 111: 1960 All LJ 124.**

SECTION 65

——**S. 65** — Execution of trust in 1929 — Trust not extinguished by coming into force of U. P. Act 1 of 1951. See Trusts Act (1882), S. 77 (a). **ILR (1964) 2 All 191.**

SECTION 68

●——**Ss. 68, 6 (e), (g)** — Delegation is within permissible limits and is not delegation of essential legislative power. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 6 (e). **AIR 1952 SC 252.**

——**S. 68 — Payment in bonds — Whether payment of compensation.**

Though a bond is a promise to pay in future and does not amount to payment in cash in present it does not mean that there is no payment of compensation whatsoever when the State Government prescribes under S. 68 that the compensation shall be payable entirely in bonds. **1952 All LJ 52: AIR 1952 All 88 (89) (Pt B) (Pr 4) (DB).**

——**S. 68** — Delegation of power under — Validity — Delegation is justified and lawful. 1951 All LJ 365 (FB). Foll. **1952 All LJ 52: AIR 1952 All 88 (89) (Pt F) (Pr 8) (DB).**

SECTION 69

——**S. 69 — U. P. Zamindari Abolition and Land Reforms Rules, (1952), R. 84 — Discretion of Compensation Officer.**

Section 69 gives a discretion to the Compensation Officer to deposit or not to deposit the amount of compensation payable to a limited owner. Rule 84 of the Rules made under the Act does not give any directions with respect to

this matter. The provisions of the rule come into effect only after the Compensation Officer has exercised his discretion and has come to the conclusion that the amount should be deposited in a bank. **1953 All LJ 651: AIR 1954 All 202 (203) (Pt A) (Pr 4) (DB).**

——**Ss. 69 and 72** — U. P. Zamindari Abolition and Land Reforms Rules, 1952, R. 84 — Rules cannot take away what is given by Act. **1953 All LJ 651: AIR 1954 All 202 (203) (Pt B) (Pr 5) (DB).**

——**Ss. 69 and 72** — "Possession" — Meaning — Compensation in respect of property acquired under U. P. Act 1 of 1951 — Right of widow of Zamindar to amount deposited in Bank under S. 69 of the U. P. Act. See Hindu Succession Act (1956), S. 14. **AIR 1964 All 165.**

SECTION 70

——**S. 70** — Mortgagee obtaining decree under U. P. Act 25 of 1934 — Decree transferred to Collector for liquidation — Mortgagor taking delivery of compensation bonds in pursuance of notice under R. 77 of U. P. Z. A. L. R. Rules — Board of Revenue directing Collector to direct treasuries to stop payment on instalments and to attach movable and immovable property to mortgagor — First direction held proper and required no cancellation but second direction was beyond jurisdiction of Board. See Debt Laws — U. P. Encumbered Estates Act (25 of 1934), Section 23-A. **1965 All LJ 490: AIR 1966 All 109 (DB).**

——**S. 70** — Inherent powers of Board of Revenue, in revision under S. 46 (2), U. P. Act (25 of 1934) to give directions to Collector — Proceedings for liquidation of decretal debt before Collector — U. P. Act (1 of 1951) coming into force during pendency and proprietary rights of J. D. vesting in State Government — Remedy under U. P. Acts (35 of 1934) and (1 of 1951) for directing Compensation Officer to place compensation money at disposal of Collector, not availed of — Compensation bonds delivered to J. D. — Proceedings started by creditor before Collector to stop payment of compensation bonds and to attach properties of J. D. — Order by Board of Revenue in revision under inherent powers directing Collector to take such action — Order illegal. See Civil P. C. (1908), S. 151. **AIR 1964 All 203.**

[**Reversed** in AIR 1966 All 109.]

——**S. 70** — Execution of compromise decree — Compromise decree against ex-zamindar providing payment from compensation payable to him under U. P. Act, 1 of 1951 — Decree-holder can get attached bonds of face value of amount due to him and not bonds of market value. See Civil P. C. (1908), O. 23, R. 3. **AIR 1963 All 438 (DB).**

SECTION 72

——**S. 72** — Rules cannot take away what is given by Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 69. **AIR 1954 All 202 (DB).**

——**S. 72** — Hindu Succession Act (1956), S. 14 — "Possession" — Meaning — Compensation in respect of property acquired under U. P. Act 1 of 1951 — Right of widow of Zamindar to amount deposited in Bank under S. 69 of the U. P. Act stated. See Hindu Succession Act (1956), S. 14. **AIR 1964 All 165.**

SECTION 73

——**S. 73** — A and B co-sharers of Zamindari estate — Interest of A transferred to B under S. 152, U. P. Land Revenue Act — Abolition of Zamindari — Transfer also comes to end — A alone is entitled to claim rehabilitation grant — U. P. Land Revenue Code (1901), S. 152. **1964 All WR (HC) 287.**

——**S. 73** — Compensation payable for the acquisition — It includes amount to which he is entitled as Rehabilitation Grant. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 27. **1951 All WR (HC) 317: AIR 1951 All 674 (FB).**

SECTION 113

——S. 113 — Validity — Establishment of Gaon samaj as body corporate — Validity — Constitution of India, Sch. 7, List II, Entry 32.

It is not necessary that there must be a voluntary society of individuals united together by mutual agreement for common purposes before a corporation can come into existence. Raja Surya Pal Singh v. U. P. Government, **1951 All LJ 365: 1951 All WR (HC) 317: ILR (1952) 2 All 46: AIR 1951 All 674 (698) (Pt W) (Pr 132) (FB).**

SECTION 114

——S. 114 — Membership of Gaon Samaj — Constitution of India, Art. 19 (1) (c).

Under the Act no person can be made a member of the Gaon Samaj against his will. Hence there is no contravention of the provisions of Art. 19 (1) (c), Constitution of India. Raja Surya Pal Singh v. U. P. Government, **1951 All LJ 365: 1951 All WR (HC) 317: ILR (1952) 2 All 46: AIR 1951 All 674 (699) (Pt X) (Pr 132) (FB).**

SECTION 117

——**S. 117** — Trees standing on graveyard — They vest in Gaon Samaj. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 4. **1965 All WR (HC) 371: 1965 All LJ 609: ILR (1965) 2 All 337.**

——**S. 117 (vi)** —Question of land being appurtenant to house is one of fact — Bazar on such land — Character of land not changed. See Tenancy Laws— U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 9. **1963 All WR (HC) 392: 1963 All LJ 499.**

——**S. 117 (1)** — Land vesting in Gaon Samaj — Test of — Land emerging out of river bed and cultivated by adjoining plot holders —Land held vested in Gaon Samaj. **ILR (1961) 1 All 26.**

——**Ss. 117, 3 (14)** — Object of S. 117 — Land not used for purposes of S. 3 (14) — Land still gets vested in Gram Samaj. **1961 All WR (HC) 604: 1961 All LJ 910.**

SECTION 118

——**Ss. 118, 344, 128 (2) (kk), 209 and 210** — U. P. Zamindari Abolition and Land Reforms Rules, Rr. 115-C, 115-D and 115-E, 115-F — Ejectment order against trespasser can be passed only by Collector and not by Tahsildar — Rules 115-D, 115-E, 115-F are ultra vires — Sub-section (2) (kk) of S. 128 being repugnant to Section 128 (1) is invalid — Rules being invalid, ejectment order under them is illegal — Trespasser has to be ejected by suit under Section 209 — Government cannot provide summary remedy when remedy by way of suit is available — U. P. Land Revenue Act (3 of 1901), Ss. 223 and 224. **1960 All WR (HC) 327: 1960 All LJ 549.**

SECTION 122-B

——**Ss. 122-B (2), 115-C, 115-D** — Tehsildar invested with powers of a Collector — Jurisdiction of, to try suits — Cannot try a case involving bona fide questions of title — Evidence in case showing that respondents were in possession of land in dispute years before com-

mencement of proceedings under Sections 115-C to 115-D against them — **Held**, that bona fide question of title was involved in the case and hence Tehsildar was not competent to try it. **1965 All WR 466: 1965 All LJ 837: ILR (1965) 2 All 845.**

——**S. 122-B** — Suit not confined to declaration of title alone — In case of conflict between Collector's decision and Court's decision latter prevails. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 115-H. **1965 All LJ 426.**

——**S. 122-B (as inserted in 1961)** — U. P. Zamindari Abolition and Land Reforms Rules (1952), Rule 115-C — Case under R. 115-C — Bona fide question of title involved — Collector or Assistant Collector had no jurisdiction to decide the case. **1965 All WR (HC) 1: 1965 All LJ 236.**

——**S. 122-B (amended by U. P. Landlords (Second Amendment) Act (28 of 1961))** — Tenancy laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 115-C — Application by Chairman, Land Management Committee under Rule 115-C either under R. 5 (1) or sub-section (2) of S. 122-B — In either case proceedings are not ultra vires. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 115-C. **1964 All WR (HC) 748: 1965 All LJ 50.**

SECTION 126

——**S. 126** — U. P. Zamindari Abolition and Land Reforms Rules, Rr. 115-A and 115-B — U. P. Gaon Samaj Manual Paragraph 59 — Provisions of Para. 59 are mandatory. **1964 All WR (HC) 1: 1964 All LJ 104.**

SECTION 127-B

——**S. 127-B** — Non-compliance with Para. 131, U. P. Gaon Samaj Manual, not fatal to presentation of writ petition or appointment of counsel. See Constitution of India, Art. 226. **1965 All WR (HC) 515: 1965 All LJ 858.**

SECTION 128

——**S. 128 (2)** — Sub-section (2) (kk) of Section 128 being repugnant to S. 128 (1) is invalid. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 118. **1960 All WR (HC) 327: 1960 All LJ 549.**

SECTION 129

●——**S. 129** — Forest Act (1927), Chap. 2, (Ss. 2-27) and 5-A (U. P. Amendment) — Applicability — Waste land held by Bhumidar — Bhumidar is not a proprietor but is a mere tenure-holder under the State — Chap. 2 and Chap. 5-A will apply to his land. See Forest Act (1927), Chaps. 2 and 5-A (U. P. Amendment). **AIR 1963 SC 1019.**

SECTION 134

——**Ss. 134, 143, 144 and 146** — Land held for agricultural purposes though not in fact brought under cultivation is 'Land' except in Ss. 143 and 144 — Sirdar not entitled to use such land for industrial or residential building purposes except by acquiring Bhumidhari rights and thereafter obtaining declaration and exemption. See U. P. Large Land Holdings Tax Act (31 of 1957), S. 7 (2). **1965 All WR (HC) 38: 1965 All LJ 243: AIR 1966 All 34.**

●——**Ss. 134, 137, 153, 167, 171, 172, 172-A and 174** — Female inheriting holding before Act from last male holder and acquiring bhumidari rights under Ss. 134 and 137 — Can transfer such holding — Transfer valid and effective beyond her lifetime — Female inheriting bhumidari holding from male bhumidar can transfer it — Such transfer is also valid and effective beyond her lifetime. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1965 All 1 (FB).**

——**S. 134** — Sale deed executed after deposit of ten times revenue — Sale deed cannot be challenged on ground of non-transferability. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 137. **1965 All LJ 549: 1965 All WR (HC) 474: AIR 1966 All 367.**

——**S. 134** — Interpretation — Word "Land" has been used not as synonym for "holding" but to dislinguish it from "holding" as defined in U. P. Tenancy Act (17 of 1939), S. 3 (7). **1964 All WR (HC) 609: 1964 All LJ 1017.**

SECTION 137

——**Ss. 137 and 134** — Sale deed executed after deposit of ten times revenue — Sale deed cannot be challenged on ground of non-transferability. **1965 All LJ 549: 1965 All WR (HC) 474: AIR 1966 All 367 (368) (Pt A) (Pr 7).**

●——**S. 137** — Female inheriting holding before Act and acquiring bhumidari rights under S. 137 — Can transfer such holding. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1965 All 1 (FB).**

——**S. 137** — Sirdar — Becomes bhumidhar only upon grant of certificate. **1965 All LJ 502: 1965 All WR (HC) 458: ILR (1965) 2 All 777.**

——**S. 137** — Bhumidhari sanad — It is binding only on parties to proceedings leading to its issue — It is not conclusive evidence of its contents against whole world. **1965 All LJ 857.**

——**S. 137** —Grant of sanad under S. 137—Persons depositing ten times would be deemed to be Bhumidhars from date of deposit. **1965 All WR 455.**

SECTION 137-A

——**S. 137-A** — Declaration under — Form of — Word "allowed" on application is sufficient — Declaration made — Subsequent application under Sections 137-A and 198 cannot be entertained. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 143. **1965 All WR (HC) 683.**

SECTION 143

——**S. 143** — U. P. Large Land Holdings Tax Act (31 of 1957), Ss. 7 (2) and 2 (15) — 'Land' — Definition of — Land held for agricultural purposes though not in fact brought under cultivation is 'land' — Sirdar not entitled to use such land for industrial or residential building purposes except by acquiring Bhumidhari rights and thereafter obtaining declaration and exemption — Application for such declaration rejected by Department — Petitioner held liable to assessment under Act. See U. P. Large Land Holdings Tax Act (31 of 1957), S. 7 (2). **1965 All WR (HC) 38: 1965 All LJ 243: AIR 1966 All 34.**

——**Ss. 143, 137-A and 198** — Declaration under Section 143 — Form of — Word "allowed" on application is sufficient — Declaration made — Subsequent application under Ss. 137-A and 198 cannot be entertained. **1965 All WR (HC) 683.**

——**S. 143 (2)** — Provisions are mandatory. **1965 All WR (HC) 683.**

SECTION 144

——**S. 144** — U. P. Large Land Holdings Tax Act (31 of 1957), Ss. 7 (2) and 2 (15) — 'Land' — Definition of — Land held for agricultural

purposes though not in fact brought under cultivation is 'land' — Sirdar not entitled to use such land for industrial or residential building purposes except by acquiring Bhumidhari rights and thereafter obtaining declaration and exemption — Application for such declaration rejected by Department — Petitioner held liable to assessment under Act. See U. P. Large Land Holdings Tax Act (31 of 1957), S. 7 (2). **1965 All WR (HC) 38: 1965 All LJ 243: AIR 1966 All 34.**

SECTION 146

——**S. 146** — Land held for agricultural purposes though not in fact brought under cultivation is 'land'. See U. P. Large Land Holdings Tax Act (31 of 1957), S. 7 (2). **1965 All WR (HC) 38: 1965 All LJ 243: AIR 1966 All 34.**

SECTION 151

——**S. 151** — Acquisition of rights in occupancy tenancy — Holding possessed by joint Hindu family — Adopted son of one of members cannot acquire rights — Tenant acquiring status of Bhumidar — Alienation by — His adopted son cannot challenge — S. 9 cannot apply to such case. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 35 (a). **1965 All LJ 665: 1965 All WR (HC) 365.**

SECTION 152

——**Ss. 152, 18, 134, 137, 169, 171, 172, 172-A and 174** — Scope of Section 152 — Female inheriting holding before Act from last male holder and becoming bhumidar under S. 18 or acquiring bhumidari rights under Sections 134 and 137 — Can transfer such holding — Transfer valid and effective beyond her lifetime — Female inheriting bhumidari holding from male bhumidar can transfer it — Such transfer is also valid and effective beyond her lifetime. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1965 All 1 (FB).**

——**Ss. 152, 154, 169, 171 and 172 — Applicability — Hindu widow inheriting occupancy holding from her husband and acquiring bhumidari rights — Power to make absolute gift— (Hindu law — Widow — Alienation).**

Where a Hindu widow, after she inherited the occupancy holding in dispute from her husband, became a Bhumidar of a holding by depositing ten times the rent, she has a right to give it away and the reversioners of her husband during her lifetime cannot challenge it or get it declared that it will not enure after her lifetime. There is nothing in the Act providing that such a widow has only limited life estate in her Bhumidari holding or that she has no right to make the gift like the one in question. Except to the extent laid down in S. 172, Bhumidhari rights are not to be governed or affected in any way by the personal law of the Bhumidhar. **1958 All WR (HC) 633: 1958 All LJ 547.**

——**Ss. 152 and 154** — Scope — Section 154 restricts transfer of Bhumidari rights — Extent of restriction pointed out — No restriction to make will or gift to person not mentioned in section. **AIR 1955 NUC (All) 5819.**

SECTION 153

——**Ss. 153 (1), 166, 167, 175**—Transfer of Sirdari rights—Suit by surviving co-tenure holder for declaration of transfer of sirdari rights by a limited heir of other co-tenure holder is maintainable — Right of survivorship does not involve 'transfer' — Hindu Law — Joint family — Survivorship. **1963 All WR (HC) 411.**

SECTION 154

——**S. 154, Explanation** — "Family" — Meaning of — Adult sons or daughters whether married or unmarried, not to be included in the family of transferee and land held by the latter not required to be aggregated with land of the transferee from the bhumidar. **1964 All WR (HC) 228.**

——**S. 154** — Scope — Bhumidari rights —They are liable to attachment and sale. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 152. **AIR 1955 NUC (All) 5819.**

——**S. 154** — Sale of Bhumidhari rights in execution must comply with S. 154 — It must be in favour of person who does not fall within mischief of Section 157. **AIR 1955 NUC (All) 1703 (DB).**

SECTION 157

——**S. 157** — Section refers to living persons and not to artificial persons such as deity — Deity not entitled to benefit of Section 157. **1963 All WR (HC) 107.**

——**S. 157 (1) (b) and (d)** — Idol or deity is not a minor within meaning of Section 157 (1) (b) — Idol or deity does not come within class of persons contemplated by Section 157 (1) (d). **1963 All WR (HC) 95.**

——**S. 157 (1)** — Idol or deity whose Shebait or Sarbarkar is disabled within S. 157 (1) is itself not a disabled person. 1958 All WR (Rev) 184, **Overruled. 1963 All WR (HC) 95.**

——**S. 157 (as amended by U. P. Amendment Act 20 of 1954)** — Plaintiff married woman—Her husband suffering from physical infirmity — Covered by Cls. (c) and (d) of amended S. 157 (1) — Suit for ejectment of asami is maintainable. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 202. **1962 All WR (HC) 591.**

——**S. 157 (d) — Scope and applicability — 'Other physical infirmity', meaning of.**

The words 'other physical infirmity' referred to in S. 157 (d) included only such infirmities as result in total disablement and prevent the person concerned not only from cultivating with his own hands but also from supervising the cultivation of his fields by hired labour or servants. **1962 All WR (HC) 363: 1962 All LJ 858.**

——**S. 157 (d) — 'Other physical infirmity' — Meaning.**

The phrase 'other physical infirmity' means any kind of physical infirmity whatsoever, and is not to be read ejusdem generis. **1959 All WR (HC) 354.**

SECTION 165

——**S. 165 (a)** — Land in occupation of Asami — Bhumidhar leasing lands — Lease is valid. **1964 All WR (HC) 375: 1964 All LJ 722.**

——**S. 165** — Decree for arrears of rent under the Tenancy Act — Execution — Execution by lease out of holding — Not barred by S. 165 of Zamindari Abolition Act — Such lease not inconsistent with the scheme of the Land Reforms Act — Lessee does not acquire assami rights thereunder but becomes a treapasser after period of the lease. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 7. **1963 All WR (HC) 329: 1963 All LJ 338.**

SECTION 166

——**S. 166** — Transfer of sirdari rights — Suit by surviving co-tenure holder for declaration of transfer of sirdari rights by a limited heir of other

co-tenant holder is maintainable. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 153 (1). **1963 All WR (HC) 411.**

SECTION 167

——**S. 167 (1)** — Benefit of rule under U. P. Large Land Holdings Tax Act, 1957 cannot be claimed only by disabled subletting land holder. See U. P. Large Land Holdings Tax Act (31 of 1957), Rules under, Rule 6-A. **1964 All LJ 933.**

——**S. 167** — Transfer of sirdari rights — Suit by surviving co-tenure holder for declaration of transfer of sirdari rights by a limited heir of other co-tenure holder is maintainable. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 153 (1). **1964 All WR (HC) 411.**

SECTION 169

●——**S. 169 (2)** — Completely prohibits female bhumidar from making testamentary bequest of bhumidari holding. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1965 All 1 (FB).**

SECTION 171

●——**S. 171** — "His interest in his holding shall devolve" occurring in S. 171 — Expression suggests that female bhumidar has life interests. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1965 All 1 (FB).**

——**Ss. 171, 172 and 173** — Provisions of Act have not abrogated principles of Hindu Law — Members of Joint Hindu family hold Bhumidari tenure under Act as joint tenants and not as tenants-in-common. **1965 All LJ 582: 1965 All WR (HC) 419: ILR (1965) 2 All 445.**

——**Ss. 171, 172, 172-A — Hindu widow acquiring Bhumidhari Rights — Can transfer land without restriction — Effect of Ss. 171, 172 and 172-A.**

Even if the Bhumidhari rights arose out of hereditary rights inherited by the Bhumidhar as a Hindu widow, the question of her powers to transfer them is governed by the provisions of the Zamindari Abolition and Land Reforms Act and not by Hindu Law. There is no provision at all in the Act restricting her power to transfer them. What S. 172-A says is that when she dies then for the purposes of devolution, the land shall be deemed to be an accession to the holding of the male holder thereof, and that the devolution of whatever Bhumidhari rights are left on the death of a female Bhumidhar will be governed by the provisions of Ss. 172 and 171. **1962 All WR (HC) 228: 1962 All LJ 468.**

——**S. 171** — Sir, Khudkast and horticultural lands — Succession is governed by special order of succession under S. 171. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1956 Pat 457 (DB).**

SECTION 172

●——**Ss. 172, 18, 134, 137, 152, 169, 171, 172-A and 174** — Scope of S. 152 — Female inheriting holding before Act from last male holder and becoming bhumidar under S. 18 or acquiring bhumidari rights under Ss. 134 and 137 — Can transfer such holding — Transfer valid and effective beyond her lifetime — Female inheriting bhumidari holding from male bhumidar can transfer it — Such transfer is also valid and effective beyond her lifetime. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1965 All 1 (FB).**

——**S. 172** — Judgment-debtor succeeding to property under S. 172 (2) (b) of U. P. Act (1 of 1951) on the death of female Bhumidhar — Property does not form part of assets of deceased — Judgment-debtor not succeeding to it as legal representative of deceased debtor — Property would not be liable to attachment in execution of decree realisable from assets of deceased in the hands of judgment-debtor. See Civil P. C. (1908), S. 52. **1964 All LJ 1020.**

——**S. 172** — Hindu widow acquiring Bhumidari Rights can transfer land without restriction. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 171. **1962 All WR (HC) 228: 1962 All LJ 468.**

SECTION 172-A

●——**Ss. 172-A, 18, 134, 137, 152, 169, 171, 172 & 174** — Scope of S. 152—Female inheriting holding before Act from last male holder and becoming bhumidar under S. 18 or acquiring bhumidari rights under Ss. 134 and 137 — Can transfer such holding — Transfer valid and effective beyond her lifetime — Female inheriting bhumidari holding from male bhumidar can transfer it — Such transfer is also valid and effective beyond her lifelime. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1965 All 1 (FB).**

——**S. 172-A** — Hindu widow acquiring Bhumidari rights can transfer land without restriction. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 171. **1962 All WR (HC) 228: (1962) All LJ 468.**

SECTION 174

●——**Ss. 174, 18, 134, 137, 152, 169, 171, 172, 172-A** — Scope of S. 152 — Female inheriting holding before Act from last male holder and becoming bhumidar under S. 18 or acquiring bhumidari rights under Ss. 134 and 137 — Can transfer such holding — Transfer valid and effective beyond her lifetime — Female inheriting bhumidari holding from male bhumidar can transfer it — Such transfer is also valid and effective beyond her lifelime. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1965 All 1 (FB).**

SECTION 175

——**S. 175** — Transfer of sirdari rights — Suit by surviving co-tenure holder for declaration of transfer of sirdari rights by a limited heir of other co-tenure holder is maintainable. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 153 (1). **1963 All WR (HC) 411.**

SECTION 176

——**Ss. 176, 182-A and 182-B** — Division of holding — Appeal against order of Collector under S. 176 not entertained by Commissioner on ground of non-maintainability — Board of Revenue setting aside order of Commissioner in Second Appeal — Writ petition against order of Board held not maintainable — Constitution of India, Art. 226. **1961 All WR (HC) 728: 1962 All LJ 11.**

——**Ss. 176, 182-A and 182-B** — Suit for partition — Decree passed by Munsiff — Transfer to Collector — Application to Munsiff not necessary. **1958 All LJ 624: 1958 All WR (HC) 715: AIR 1958 All 673 (674) (Pt B) (Pr 2).**

SECTION 178

——S. 178 (1) (as amended by U. P. Act 20 of 1954) — Retrospective operation — Amendment makes change in procedure not in any substantive rule of law — Change in provision would be retrospective and would apply to suit pending at time amending Act came into force. **1965 All WR (HC) 770: 1965 All LJ 1208.**

SECTION 182-A

——Ss. 182-A and 182-B (as amended by U. P. Act 37 of 1958) — U. P. Zamindari Abolition and Land Reforms Rules (1952), Rr. 156 to 164 — Civil P. C. (1908), S. 54 and O. 20, R. 18 — Suit for partition — Section 54 and O. 20, R. 18, Civil P. C. do not apply — Suit instituted in Civil Court — Final decree can be passed by that Court. **1965 All WR (HC) 584: 1965 All LJ 948.**

——S. 182-A — Suit for partition — Decree passed by Munsiff — Transfer to Collector — Application to munsiff not necessary. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 176. **1961 All WR (HC) 728: 1962 All LJ 11.**

——182-A, 176 and 182-B — Suit for partition under S. 176 — Decree passed by Munsiff — Transfer to Collector — Application to Munsiff not necessary. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 176. **AIR 1958 All 673.**

SECTION 182-B

——S. 182-B (as amended by U. P. Act 37 of 1958) — After amendment of section, S. 54 and O. 20, R. 18, Civil P. C. do not apply to suit for partition. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 182-A. **1965 All LJ 948: 1965 All WR (HC) 584.**

——S. 182-B — Partition of agricultural holding — Jurisdiction of Civil Court, extent of — Separation of agricultural plots — Jurisdiction for effecting — Revenue Court alone is competent. **1965 All WR (HC) 276: 1965 All LJ 445.**

——Ss. 182-B, 176, 182-A — Suit for partition under S. 176 — Decree passed by Munsiff — Transfer to Collector — Application to Munsiff not necessary. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 176. **AIR 1958 All 673.**

SECTION 182-D

——S. 182-D — Application for partition addressed to judicial Magistrate — Sub-Divisional Officer has jurisdiction to partition. **1958 All LJ 624: 1958 All WR (HC) 715: AIR 1958 All 673 (674) (Pt A) (Pr 2).**

SECTION 183

——S. 183 — Surrender by Sirdar — Acceptance — Necessity.

There is nothing in R. 167 which provides that the surrender will not be operative even though there has been compliance with the provisions of S. 183 unless such surrender has been accepted by a competent authority. **1957 All LJ 910: 1957 All WR (HC) 868.**

SECTION 189

——Ss. 189 and 199 — Scope — Sections do not restrict attachment and sale of Bhumidari rights in execution. **AIR 1955 NUC (All) 5819.**

SECTION 198

——S. 198 — Declaration under — Form of — Word "allowed" on application is sufficient — Declaration made — Subsequent application under S. 137-A and 198 cannot be entertained. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 143. **1965 All WR (HC) 683.**

——S. 198 — Who can apply under — Allotment by Land Management Committee of Gaon Samaj — Successor Pradhan of Gaon Samaj cannot apply. **1965 All WR (HC) 683.**

——S. 198 (4), Sch. II, S. No. 20 — Order cancelling lease is appealable. **1963 All LJ 837: ILR (1964) 1 All 203: 1964 All WR (HC) 552.**

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SECTION 199

——Ss. 199 and 200 — Land — The word 'Land' includes Bhumidhari and Sirdari land — Bhumidari and Sirdari land can be acquired under the Act without following procedure under sections 199 and 200 of the U. P. Z. A. and L. R. Act. See Land Acquisition Act (1894), S. 3 (a). **AIR 1965 All 17 (DB).**

——Ss. 199 and 232 — Bhumidhar dispossessing Adhivasi — Adhivasi is entitled to claim back possession. **1963 All WR (HC) 111: 1963 All LJ 98.**

——Ss. 199, 200 and 201 — Act to be construed as a whole — Conflict in different provisions to be avoided. **1962 All LJ 782.**

——Ss. 199, 200, 201 — Ejectment — Meaning of — Not used in restricted sense — Sense of the word in S. 199 different from one in Ss. 200, 201 of the Act. **1962 All WR (HC) 700: 1962 All LJ 782.**

——S. 199 — Scope — Bhumidari rights — Liability to attachment and sale not restricted. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 189. **AIR 1955 NUC (All) 5819.**

SECTION 200

——Ss. 200 and 209 — Proceedings under U. P. Tenancy Act, S. 168 — Act repealed by U. P. Urban Areas Zamindari Abolition and Land Reforms Act — Proceeding held should be continued. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 168. **(1965) All WR (HC) 381: 1965 All LJ 645: ILR (1965) 2 All 383.**

——S. 200 — Proceedings under S. 12, U. P. Agriculturists' Relief Act — Proceeding should be continued after the Act of 1951. See Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), S. 12. **1965 All WR (HC) 299: 1965 All LJ 363.**

——Ss. 200, 202 (c) — U. P. Agriculturists' Relief Act (27 of 1934), S. 12 — Repeal of Act of 1934 —Effect—Proceedings under S. 12 cannot be continued — Remedy is by way of suit under repealing Act. 1961 All LJ 188, **Overruled. 1961 All WR (HC) 675: 1961 All LJ 877: ILR (1962) 1 All 246.**

——S. 200 — Ejectment — Meaning of — Not used, in restricted sense — Sense of the word in S. 199 different from one in Ss. 200, 202 of the Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 199. **1962 All WR (HC) 700.**

——S. 200 — Scope of—Repeal of Agriculturists' Relief Act — Effect — Application for redemption of mortgage — Maintainability — Debt Laws — U. P. Agriculturists Relief Act (27 of 1934), Section 12.

Even after the enforcement of the U. P. Zamindari Abolition and Land Reforms Act an application for redemption of mortgage under S. 12 of the Agriculturists' Relief Act is maintainable. **1961 All WR (HC)302: 1961 All LJ 188.**

[Overruled in 1961 All LJ 877.]

SECTION 201

——S. 201—Act to be construed as a whole—Conflict in different provisions to be avoided. See Interpretation of Statutes—Harmonious Construction. 1962 All L J 782.

——S. 201 — The word ejectment is comprehensive enough not only to include ejectment from possession but also ejectment of property—The word ejectment in S. 199 has been used in respect of a totally different kind of rights than in S. 200 or S. 201 of the Act. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 199. 1962 All W R (HC) 700.

SECTION 202

——S. 202 — Mortgage by occupancy tenant while U. P. Tenancy Act of 1939 was in force — Mortgagee is not Asami and cannot be ejected under S. 202. AIR 1965 All 504 (508) (Pt E) (Pr 19).

——S. 202 — Proceedings under S. 12, U. P. Agricultural Relief Act—Repeal of that Act by U. P. Act 1 of 1951—Proceedings can continue except for plot held in fixed rate tenancy. See Debt Laws—U. P. Agriculturists' Relief Act (27 of 1934), S. 12. 1963 All W R (HC) 299 : 1965 All L J 363.

——S. 202 (f) (ii) — Disability — Meaning of—Means disability of all the landholders where there are more than one—S. 202 (f) (i) does not require determination of liability under (ii) for maintainability of suit. 1964 All W R (HC) 447.

——S. 202 (c)—Ejectment of an asami — Jurisdiction to try suit by Civil Court — Law amended during pendency of appeal — Amendment not made retrospective — Amendment cannot be given effect to in appeal—Interpretation of statutes—Rule of construction. A I R 1963 All 535 (536) (Pt C) (Pr 5).

——S. 202 (c) — Suit under for possession by ejectment of defendants on the ground that the mortgage money has been satisfied or the amount deposited in Court—Requirements — Mention of section in plaint not necessary. AIR 1963 All 535 (536) (Pt D) (Pr 9).

——Ss. 202 (1), 204 — Applicability — U. P. Tenancy Act (17 of 1939), S 41—Limitation — Computation—Hindu Widow, tenant of disputed land—Sub-lease by her before 1946 — Widow died on 31-1-1952 — Her interest inherited by A — Suit by A for ejectment of sub-tenants filed on 11-7-1952 — Suit held barred by time — Tenancy Laws — U P. Tenancy Act (17 of 1939), S. 41. ILR (1963) 2 All 271.

——S. 202 (c) — Suit by mortgagor under S. 12 of Agriculturists Relief Act for ejectment of mortgagee on the ground that the mortgage had been satisfied out of usufruct — Agriculturists Relief Act repealed during the pendency of the suit—The remedy of the mortgagor after the repeal of the Agriculturists Relief Act was to file a suit for ejectment of mortgagee under S. 202 on the ground that the mortgage had been satisfied. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 200. ILR (1962) 1 All 246.

——S. 202—Period of limitation for suit under—Subsequent amendment — Vested right acquired due to expiry of limitation — Right acquired not affected — Cause of action based on Asami's right which is continuing and not recurring. (1962) All W R (HC) 26 : 1962 All L J 229 : ILR (1962) 1 All 843.

——Ss. 202, 21 (1) (b) and 157 (as amended by U. P. Amendment Act 20 of 1954) — Suit for ejectment of Asami—Effect of S. 5 (2) of amending Act is that the amended S 21 must be deemed to have stood on the statute book from commencement of the principal Act of 1950 — Hence both unamended S. 202 (f) and its amended substitute can only refer to cl. (h) of S. 21 (1) as it stands after amendment—Words "to any one or more of the classes mentioned in S. 157" in S. 21 (1) (b) after amendment have reference to the classes mentioned in amended S. 157 and the amended S. 157 is retrospective in its application — Plaintiff married woman —Her husband suffering from physical infirmity covered by Cls. (c) and (d) of amended S. 157 (1) incapacitating him from personal cultivation — Plaintiff falls under clause (a) of S. 157 (1) and is therefore entitled to maintain a suit for ejectment of Asami under S. 202. 1962 All L J 667 : 1962 All W R (HC) 591.

——S. 202—Suit under, by some of the land-holders —Held maintainable.

The word 'land-holder' has the same meaning, as defined in the U. P. Tenancy Act, that is a person to whom rent is, or but for a contract, express or implied, would be payable. But since S. 202 gives the ground for ejectment of an Asami, which is a creation of the U. P. Zamindari Abolition and Land Reforms Act, and since a provision like S. 246 of the Old Tenancy Act (which read with S. 189 of that Act governed the relation between the co-sharers), is not to be found in the U. P. Zamindari Abolition and Land Reforms Act, an Asami could be ejected by any of the land-holders if the other land-holders are made parties to the suit. Therefore, a suit under S. 202 is maintainable even if brought by some of the land-holders only. 1956 All L J 24 and 1957 All L J 86, Approved. 1962 All W R (HC) 206 : 1962 All L J 706.

——S. 202 (c) — Trusts Act (1882), S. 90 — Usufructuary mortgage of holding by occupancy tenant in 1933 — Possession of holding not given to mortgagee — Zamindar ejecting tenant for arrears of rent — Zamindar resettling tenancy with mortgagee — S. 90 of Trusts Act held not applicable—Mortgagee not an Asami — Tenant not entitled for possession — Trusts Act (1882), S. 90. 1961 All W R (HC) 637 : 1961 All L J 856.

——S. 202 (c) (as amended in 1953) — Words added by amending Act—Rule as to interpretation—'Amount due' means amount payable for the redemption of the mortgage and not simply amount owing — T. P. Act (1882), S. 60. 1960 All W R (HC) 688 : 1960 All L J 950.

——S. 202 (b), App. III, Item 25 (2) — Petitioners declared sub-tenants under S. 27 (3), Proviso, U. P. Tenancy (Amendment) Act, on 5-7-1948 — Vesting order passed on 1-7-1952 — Suit for ejectment — On 24-9-1952 — It barred — Starting point of limitation. 1958 All W R (HC) 657 : 1958 All L J 553.

——S. 202—Possession under void mortgagor—Mortgagee cannot claim to be assamis. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 21 (1) (d). AIR 1955 N U C (All) 4171.

SECTION 204

——S. 204—Applicability—U. P. Tenancy Act (17 of 1939), S. 41 — Limitation — Computation — Hindu widow, tenant of disputed land — Sub-lease by her before 1948—Widow died on 31-1-1952—Her interest inherited by A—Suit by A for ejectment of sub-tenants filed on 11-7-1952 — Suit held barred by time. See Tenancy Laws—U. P. Zamindari (Abolition and Land Reforms) Act (1951), S. 202 (1). ILR (1963) 2 All 271.

SECTION 209

——S. 209—Mere suit for possession is not cognizable by Civil Court by virtue of S. 209 of the Act. See Civil P. C. (1908), O. 7, R. 10. 1965 All L J 549 : 1965 All W R (HC) 474 : AIR 1966 All 367.

——Ss 209 and 311 — Suit for possession of land — Civil Court has no jurisdiction to decide such suit—Additional prayer for injunction cannot confer jurisdiction on Civil Court — Civil P. C. (1908), S. 9, O. 7,

Rr. 1 and 7. 1965 All L J 549 : 1965 All W R (HC) 474 : A I R 1966 All 367 (369) (Pt D) (Pr 12).

——S. 209 and Schedule Serial No. 24 (as amended by Amendment Act of 1958) — Suit for damages — Suit was maintainable in revenue Court even before amendment — Addition of words 'and damages' by amendment is only by way of abundant caution — Even assuming want of jurisdiction in revenue Court prior to amendment, Court should not set aside decree for damages validly passed and direct filing of fresh suit before same Court which now admittedly has jurisdiction to pass it — Civil P. C. (1908), S. 107. 1965 All W R (HC) 227 : 1965 All L J 651 : A I R 1966 All 234 (235) (Pt A) (Pr 5).

——S. 209 (as amended in 1962) — Suit under — Impleading State as party to suit — Suit filed before amendment—State not impleaded in suit—Suit reaching appellate stage when amendment was effected—Suit cannot be invalidated by giving retrospective effect to amendment — Interpretation of Statutes — Procedural Law—Retrospective effect. 1965 All W R (HC) 227 : 1965 All L J 651 : A1R 1966 All 234 (236) (Pt C) (Prs 10, 11).

——S. 209—Suit by sirdar for ejectment—Limitation for — Time when begins to run. 1965 All L J 936 : 1965 All W R (HC) 750 : I L R (1965) 2 All 611.

——Ss. 209, 331—Suit for possession of agricultural land after demolition of unauthorised construction on it—Jurisdiction of Civil Court—Civil P. C. (1908), S. 9.

A Civil Court cannot take cognizance of a suit for possession of agricultural land and for demolition of unauthorised construction standing thereon but can take cognizance of a suit merely for demolition of unauthorised construction made on agricultural land. A!R 1954 All 768, Disting. 1965 All L J 1137 : 1965 All W R (HC) 688.

——S. 209 — Proceedings under — Act repealed by U. P. Act 1 of 1951 — Effect — Mortgage of Sir plots as well as one which was in fixed rate tenancy — Proceedings can be continued except for plot held in fixed rate tenancy. See Debt Laws—U. P. Agriculturists' Relief Act (27 of 1934), S. 12. 1965 All W R (HC) 299 : 1965 All L J 363.

——S. 209 and Sch. II, Item 24 — Bar of jurisdiction of Civil Court—Suit for ejectment of persons occupying land without title and for damages — Revenue Court can give relief to plaintiffs in such cases — Such a suit falls under S. 209 and Sch. II, Item 24 and cannot be entertained by a Civil Court — Fact that plaintiffs have also asked for demolition of structures unauthorisedly constructed by the defendants does not alter the nature of suit—If defendants are dispossessed, they cannot hold such unauthorised constructions made by them and they would have to vacate the land—Relief of demolition from the Revenue Court is not necessary for the plaintiffs in the circumstances — Plaintiffs' main cause of action was wrongful dispossession and they could ask for the relief for possession from the Revenue Court — Such suits are exclusively cognizable by the Revenue Courts. 1953 All L J 399; 1963 All L J 1064, Foll. 1965 All W R (HC) 199.

●——Ss. 209, 231 (2), 240-A—U. P. Tenancy Act (17 of 1939), S. 180 — Failure to bring suit under S. 180 prior to 1-7-1953 — Effect of — Adhivasi is not a tenure holder—Rights of Bhumidhar and Adhivasi—Distinction between — Liability of adhivasi to ejectment arising under S. 180, Tenancy Act — Bhumidar filing suit under S. 209 of Zamindari Abolition and Land Reforms Act—Suit must fail—Scope of S. 231(2), indicated. Mahnoo Mal v. Mulloo, 1963 All WR (HC) 498 : 1963 All L J 731 : I L R (1963) 2 All 751 : AIR 1964 All 213 (215 to 217, 219) (Pt A) (Prs 2, 6, 7, 12) (FB).

[Overruled an another point in AIR 1968 S C 466.]

——Ss. 209, 232, 232-A and 240-A—Adhivasi out of possession — Failure to apply for recovery of possession within prescribed period—Claim to be Sirdar by virtue of declaration under S. 240. A — Limitation — Starting point — "Date of occupation" — Interpretation of—U. P. Zamindari Abolition and Land Reforms Rules (1952) Appendix III Serial No. 30, Cl. (iii) — U. P. Consolidation of Holdings Act (5 of 1954), Ss. 11, 12. 1964 All L J 1045.

——S. 209—Scope.

Section 209 covers cases in which the cause of action may be either 'taking or retaining possession of land otherwise in accordance with the provisions of law for the time being in force'. It is only if a plaintiff's case as set out in the plaint, clearly falls outside the purview of S. 209 that the suit could fail. The case of retaining possession contrary to the provisions of law, after the date of vesting, will fall under S. 209 when the suit is by an alleged 'asami', 'sirdar' or 'bhumidhar'. 1964 All W R (HC) 255.

——S 209—Land Sir or kudkast of mortgagor on date of mortgage — Deposit by mortgagee under S. 14 (2) (b) and acceptance by State—Grant of certificate to mortgage has no effect — Possession not in accordance with law for the time being in force — Suit for ejectment under S. 209 is maintainable. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 14(2). 1964 All W R (HC) 224.

——Ss. 209, 331 (1), Sch. 2 (as amended by U. P. Land Reforms (Amendment) Act (18 of 1956) — Applicability of amendment to pending suits — Suit for possession and eviction instituted in civil Court prior to amendment—Amendment does not Affect jurisdiction of civil Court to further decide suit — Tenancy Laws—U. P. Land Reforms (Amendment) Act (18 of 1956), S. 23(1). I L R (1963) 2 All 261.

——Ss. 209, 212-B, 232, 232-A, 234-A—Scope—Adhivasi dispossessed by order of revenue Court—Filing a suit for recovery of possession under S. 209 — Suit held maintainable — Limitation Act (1908), Art. 47—Not applicable to suits under S. 209—Limitation is three years from July next following the date of dispossession—Interpretation of Statutes — Harmonious construction—Rule as to—Ss. 232, 212-B, 234-A, 209 232-A—Interpretation of — Sections not overlapping Ss. 232, 212-B, 234-A—Applicability—Limitation Act (1908), S. 29 (2), Art. 47—Interpretation of Statutes—Harmonious construction—Rule as to. AIR 1959 S C 960, Foll.; 1959 All L J 860, Disting.; (1958) 1 Andh W R (SC) 109 : (1958) 1 Mad L J (SC) 109 and A I R 1958 S C 255; AIR 1956 S C 614, Foll. 1963 All W R (HC) 89.

——S. 209—Ejectment order can be passed only by Collector and not by Tehsildar — Rr. 115-D, 115-E, 115-F are ultra vires—Sub-s. (2) (kk) being repugnant to S. 128 (1) is invalid — Rules being invalid ejectment order under them is illegal—Trespasser can be ejected by suit under S. 209 — Government cannot provide summary remedy when remedy by way of suit is available. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 118. 1960 All W R (HC) 327 : 1960 All L J 549.

——S. 209—Mortgage of Sir and kudkhast plots — Right of mortgagee to continue in possession after date of vesting—Suit for ejectment brought in 1953—The suit was within the purview of S. 209 and could be entertained by a civil Court. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. 1960 All W R (HC) 206 : 1960 All L J 308.

——S. 209—Scope—U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 115-C — Scope and validity — Rule held does not conflict with S. 209 of the Act. See Tenancy Laws—U. P Zamindari Abolition and Land Reforms Rules (1952), R. 115-C. AIR 1958 All 97.

——Ss. 209, 330, 331—Applicability—Bar of suit.

Section 209 provides for a suit against a person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force. In other words, it envisages a suit against a trespasser. Where the initial possession of the defendants was in their capacity as mortgagees and their possession had continued after the vesting order under an order passed under S. 14 of the Act by a competent Court, it could not be said that the defendants were trespassers. Therefore, the suit did not fall under S. 209. Section 330 clearly bars the jurisdiction of the civil Court to entertain a suit in respect of any order passed under S. 14 of Part I of the Act. The suit was clearly barred both under that section and S. 331 (1) of the Act. 1958 All W R (HC) 481 (2) : 1958 All L J 302.

●——S. 209—Suit for possession of grove land—Cause of action arising before repeal of Tenancy Act by U. P Zamindari (Abolition and Land Reforms) Act — The defendants not able to prove claim as tenant of that land — Suit is governed by S. 183 of U. P. Tenancy Act and is cognisable only by revenue Courts. See Tenancy Laws—U. P Tenancy Act (17 of 1939), S. 183. AIR 1953 All 85 (FB).

SECTION 210

——S. 210 — Proceedings under U. P. Tenancy Act, S. 168—Act repealed by U. P. Urban Areas Zamindari Abolition and Land Reforms Act — Effect — Person not acquiring status of sirdar — Proceedings can be continued—Section 200 of Act 1 of 1951 no bar. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 168. 1965 All W R (H C) 381 : 1965 All L J 645 : I L R (1965) 2 All 383.

——S. 210 — Suit under S. 209 not brought within time—Mortgagees can still become sirdars. See Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), S. 12. 1965 All W R (H C) 299 : 1965 All L J 363.

——S. 210 — Expression 'purposes connected with agriculture' in S. 3 (14) — Meaning of — No suit by Gram Samaj in respect of such land within limitation —Effect of—Plaintiffs being Bhumidhars and Sirdars, S. 7 (aa), applied. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 3 (14). 1963 All W R (H C) 238.

——S. 210 — Ejectment order can be passed only by Collector and not by Tahsildar—Rules 115-D, 115-E, 115-F are ultra vires — Sub-s. (2) (kk) being repugnant to S. 128 (1) is invalid — Rules being invalid ejectment order under them is illegal — Trespasser can be ejected by suit under S. 209 — Government cannot provide summary remedy where remedy by way of suit is available. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 118. 1960 All W R (H C) 327 : 1960 All L J 549.

SECTION 211

——S. 211—Division of sirdars into two classes under Ss. 211 and 211-A is not irrational — Section 211-A does not infringe Art. 14 of the Constitution. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 211-A. 1965 All L J 502 : 1965 All W R (H C) 458 : I L R (1965) 2 All 777.

SECTION 211-A

——S. 211-A—'Collector' — Meaning of — Tahsildar appointed ex-officio Assistant Collector and invested with powers of Collector — He is 'Collector' within meaning of S. 211-A. 1960 All L J 549, Overruled. 1965 All L J 502 : 1965 All W R (H C) 458 : I L R (1965) 2 All 777.

——S. 211-A—Validity—Dispute about title to land—Summary procedure against sirdar for ejectment—Sirdar has remedy under sub-s. (6) of S. 211-A — He can institute suit to establish his right—Sirdar against whom summary procedure is applied is not placed in worse position than sirdar in suit by Gaon Samaj under S. 211 — Summary procedure held not in contravention of any constitutional provision—S. 211 A is not invalid. 1960 All L J 725, Dissent. from. 1965 All L J 502 : 1965 All W R (H C) 458 : I L R (1965) 2 All 777.

——Ss. 211-A and 211 — Division of sirdars into two classes is not irrational — Section 211-A does not infringe, Art. 14 of Constitution. 1965 All L J 502 : 1965 All W R (H C) 458 : I L R (1965) 2 All 777.

SECTION 212

——S. 212 — Member, Board of Revenue, reversing judgment without obtaining concurrence of another member—Order is liable to be quashed. See Constitution of India, Art. 226. 1965 All W R (H C) 515 : 1965 All L J 858.

——S. 212 — Suit under — Must be with regard to 'tank'—'Tank', 'Pond', Talao' and 'Pokhara' are not synonymous terms.

A suit under S. 212 (unamended) would only be maintainable if it is with regard to a tank. When it is not clear whether the plot in suit is a tank or a pond and the plot is described in the entries in revenue papers as tal, pokhara, pokhari and pokhar in this state of affairs the plaintiff is not entitled to any relief in, the absence of clear proof that the suit plo was a tank. 1963 All W R (H C) 656.

SECTION 212-A

——Ss. 212-A (6), (7), 209, 189 (c) — Ejectment of Bhumidar under S. 212-A (6) without any compensation—Suit under S. 209, brought by him beyond six months of the order but within three years thereof—Order under S. 212-A (6) being illegal, suit under S. 209 beyond six months was maintainable. 1965 All W R (H C) 220 : 1965 All L J 555.

SECTION 212-B

——S. 212-B—Plaintiff suing for possession, recorded as occupant in 1356-F — He comes under S. 21 (h)—Remedy of plaintiff is by suit under S. 212-B. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act 1950 (1 of 1951), S. 21 (h). 1965 All W R (H C) 406 : 1965 All L J 643.

——S. 212-B — Adiwasi dispossessed by order of revenue Court—Filing a suit for recovery of possession under S. 209—Suit held maintainable—Limitation Act, Art. 47—Not applicable to suits under S. 209—Limitation is three years from July next following the date of dispossession — Rules as to Ss. 232, 212-B, 234-A, 209, 232-A — Interpretation of — Sections are not overlapping. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. 1963 All W R (H C) 89.

SECTION 220

——S. 220 — Ejectment of tenant on the ground of non-payment of rent — Cause of action falls under S. 234 (a)—Application to Tahsildar under S. 220 for order for payment of arrears of rent and in default for ejectment is the remedy open to landlord — Act impliedly bars the jurisdiction of the Civil Courts to grant the relief of ejectment in such cases. See Tenancy Laws—U. P. Zamindari Abolition and Land

Reforms Act (1950) (1 of 1951), S. 234 (a). 1962 All L J 162.

SECTION 229

——Ss. 229, 229-B, 229-C—Scope—of—Suit for mere declaration under S. 229-B — Applicability of S. 42 of Specific Felief Act — Suit held maintainable—Specific Relief Act (1877), S. 42.

The intention of the Legislature in making a distinction between S. 229 on the one hand and Ss. 229 B and 229-C on the other hand was to make a suit for mere declaration maintainable. In no case, S. 42 of the Specific Relief Act can apply to suits for declaration under S. 229-B or 229-C. Therefore, the plaintiff's suit for mere declaration under S 229-B that he was the sirdar of the suit land basing his claim by virtue of his being hereditary tenant of that land is maintainable and it is not necessary for the plaintiff to seek any further relief. 1963 All W R (H C) 291 : 1963 All L J 326.

SECTION 229-B

——S 229-B—Scope — No declaration of co-tenancy in agricultural holding can be given.

Under S 229-B no declaration of co-tenancy in any agricultural holding is contemplated. What the section contemplates is either a declaration that plaintiff is a Sirdar of the holding if the claim in the plaint is based on exclusive rights or for a declaration of the plaintiff's share if the claim is on the basis of jointness.

A claim of exclusive right does not include a claim of joint tenancy. If therefore the plaintiff in a suit for declaration for exclusive rights is not able to establish that right the Court cannot grant him the relief of joint rights though on the evidence on record it is found that the plaintiff had no exclusive right but a joint right. In such a case, the proper course open to the Court is to dismiss the suit. If S. 229-B does not contemplate a declaration of co-tenancy, the Revenue Court cannot claim such power or jurisdiction under some general law. 17 Ind App 187, Rel. on; (1954) All W R (Rev) 46 and A I R 1952 S C 47, Distinguished. 1965 All W R (H C) 775.

——S. 229-B—S. 42, Specific Relief Act not applicable to suits under S. 229-B — Plaintiff's suit for mere declaration under S. 229-B is maintainable and it is not necessary for the plaintiff to seek any further relief. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 229. 1963 All W R (HC) 291.

— S 229-B —Tenancy Laws— U. P. Tenancy Act (17 of 1939), S. 59 — Suit for declaration of plaintiff as a tenant under S. 59 of the Tenancy Act instituted after its repeal by the U. P. Zamindari Abolition and Land Reforms Act is not maintainable — As the right claimed has been converted into right as sirdar under the U. P. Zamindari Abolition Act, Cl. 2 (2) of the U. P. Land Tenures (Legal Proceedings Removal of Difficulties) Order, 1952 does not apply to case—Under S. 229-B of the Abolition Act the plaintiff can file a suit for the declaration of his right as a sirdar. 1962 All W R (HC) 96 : 1962 All L J 90 : ILR (1962) 1 All 416.

SECTION 229-C

——S. 229-C—Scope of — Civil P. C. (1908), S. 11 — Res judicata—Ex parte decree.

There can be no justification for holding that the declaration, which can be sought from the Court by means of a suit under S. 229 C of the Act must be confined to the fact that the defendant is not an asami. On the other hand it enables the institution of a suit in which the plaintiff may have every controversy relating to the rights of the defendant settled once for all and the nature of the rights, if any, possessed by the defendant finally ascertained. However if the plaintiff does not want any other declaration except that the defendant is not an Assami the position would be different. But if he positively asserts that the defendant is neither an asami nor has he any other rights in the land in suit and wants a declaration to that effect, a challenge is thrown to the defendant to establish any such rights as he may claim to possess and the Court has not only the power but also the duty to decide whether the defendant has any right and, if so, what the nature of that right is. If the defendant in spite of the challenge and clear assertion by the plaintiff that the defendant has no right at all, keeps away from a contest and allows an ex parte decree to be passed against him the decree operates as res judicata and it has the effect of having finally determined that the defendant has no right at all. 1964 All W N (HC) 252.

——S. 229-C — The intention of the legislature in making a distinction between S. 229 on the one hand and S. 229-B and S. 229-C on the other was to make a suit for mere declaration maintainable — In no case can S. 42, Specific Relief Act can apply to suits for declaration under S. 229-B and S. 229-C—See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 229. 1963 All W R (HC) 291.

SECTION 231

——S. 231 (1) — Surrender of rights prior to date of vesting — Party can establish Adhivasi rights in spite of surrender. 1964 All L J 273 : ILR (1964) 2 All 67 : AIR 1965 All 253 (254) (Pt A) (Pr 7) (DB).

● ——Ss. 231 (2), 209, 240-A— U. P. Tenancy Act (17 of 1939), S. 180 — Failure to bring suit under S. 180 prior to 1-7-1953—Effect of—Adhivasi is not a tenure holder—Rights of bhumidhar and Adhivasi—Distinction between — Liability of adhivasi to ejectment arising under S. 180, Tenancy Act — Bhumidar filing suit under S. 209 of Zamindari Abolition and Land Reforms Act — Suit must fail — Scope of S. 231 (2), indicated. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. AIR 1964 All 213 (FB).

● ——Ss. 231, 240-A — Words "held or deemed to be held by an adhivasi"—Meaning of—Different kind of persons acquire Adhivasi rights, but once they have acquired them the distinction between them disappears and it is no longer relevant to consider what rights they had previously and how they acquired adivasi rights except for the purposes of S. 231. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 240-A. AIR 1964 All 213 (FB).

SECTION 232

——S. 232 — Adivasi out of possession — Failure to apply for recovery of possession within prescribed period — Claim to be Sirdar by virtue of declaration under S. 240-A—Limitation—Starting point "Date of Occupation" — Interpretation of. See Tenancy Laws —U. P. Zamindari (Abolition and Land Reforms) Act (1951), S. 209. 1964 All L J 1045.

——S. 232—Bhumidhar dispossessing adivasi—Adivasi entitled to claim back possession. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 199. 1963 All L J 98.

——S. 232—Adivasi dispossessed by order of revenue Court—Filing a suit for recovery of possession under S. 209 — Suit held maintainable — Limitation Act (1908), Art. 47—Not applicable to suits under S. 209 — Limitation is three years from July next following the date of dispossession—Harmoneous constructions —Rule as to—Ss. 232, 212-B, 234-A, 209, 232 A—Interpretation — Sections are not overlapping. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 209. 1963 All W R (HC) 89.

——S. 232 — S. 232 gives a right to adivasi to claim back possession from person who wrongfully dispossesses him — A person cannot avoid the effect of S. 232 on the ground that he had acquired Bhumidhari rights and on that account was not liable to be ejected under S. 199. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 199. 1963 All W R (HC) 111.

——S 232 — Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 170 — Right under S. 45 extinguished — Landlord obtaining possession — Objection by tenant under S 47, Civil P. C — Abolition of Zamindari — Effect—Remedy of tenant—Held, landlord cannot be dispossessed under S. 47, Civil P. C. See U. P. Tenancy Act (17 of 1939), S. 170. 1961 All W R (HC) 597.

——S. 232 — R. 190, U. P. Revenue Manual does not apply. See U. P. Revenue Manual, R. 190. AIR 1960 All 93 (DB).

——S. 232—Applicability to post-vesting ejectment.

Section 232 of the U. P. Zamindari Abolition and Land Reforms Act applies also to a case of post-vesting ejectment. Therefore, any person who has been evicted at any time after 30th June, 1948, will be entitled to regain possession as Adhivasi under that section. 1959 All L J 860 : 1959 All W R (HC) 662.

——S. 232—Right to apply under—Explanation III to S. 20—Applicability. 1957 All L J 593 : 1957 All W R (HC) 630.

——Ss. 232, 20 (b) — Remedy under S. 232 not confined to adhivasis falling under S. 20 (b) ejected through Court—It is available to all groups contemplated by S. 20 (b)—(Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 183 (2))—(Tenancy Laws—U. P. Tenancy (Amendment) Act (10 of 1947), S. 27).

The remedy provided by S. 232 of the Act is available not only to those adhivasis who have been ejected through Court but it is also available to persons belonging to any of the three groups contemplated by S. 20 (b).

That Clause (2) of Rule 183 of the Rules framed under the Act requires the filing of a copy of a decree or order in case the applicant has been ejected by the decree or order of a Court is entirely immaterial.

Only because provisions of S. 232 are similar to the provisions of S. 27 of the U. P. Tenancy (Amendment) Act, 1947 it is not permissible to say that because under S. 27 the persons who can apply for reinstatement are persons ejected through court;: the persons who can take advantage of S. 232 also must belong to the same class. 1957 All W R (HC) 163 : 1957 All L J 171.

——S. 232—Applications under S. 232—Second appeal to board of revenue does not lie. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) (as amended by U. P. Act (16 of 1953), S. 331. 1956 All L J 897.

● ——S. 232 — Suit for ejectment under S. 180, U. P. Tenancy Act—Adhivasi, entitled to set up his rights as such in defence—S. 232 is no bar. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20. AIR 1955 All 432 (FB).

——S. 232 (1)—Suit for ejectment of tenant—Plea in defence that tenant has acquired adivasi right—Limitation does not apply to plea in defence. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 180. AIR 1955 N U C (All) 4440.

SECTION 232-A

——S. 232-A—Adivasi out of possession — Failure to apply for recovery of possession within prescribed period — Claim to be sirdar by virtue of declaration under S. 240-A—Limitation—Starting point — "Date of occupation"—Interpretation of. See Tenancy Laws —U. P. Zamindari (Abolition and Land Reforms) Act (1951), S. 209. 1964 All L J 1045.

——S. 232-A—Adivasi dispossessed by order of revenue Court — Filing suit for recovery of possession under S 209—Limitation Act (1908), Art. 47 — Not applicable to suits under S. 209 — Limitation is three years from July next following the date of dispossession—Harmonious construction—Rule as to—Ss. 232, 212-B, 234-A, 209, 232-A — Interpretation—Sections are not overlapping. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 209. 1963 All W R (HC) 89.

SECTION 234

——S. 234 — Suit under — Cause of action arising before date of vesting — Suit was misconceived and therefore dismissed — During pendency of appeal U. P. Land Reforms (Amendment) Act (1954) coming into force—Effect — Plaintiff ceased to be landholder —Suit could not be decreed in appeal. 1965 All W R (HC) 525 : 1965 All L J 943.

● ——Ss. 234, 20 — Right of an adhivasi to remain in possession—Extent of — If two or more persons get adhivasi rights under S. 20 they all cannot be put into possession—Adivasi who is already in possession is entitled to remain in possession so long as he is not ejected in the enforcement of the liability existing on 30-6-52 or under S. 234 and so long as he is not ejected another adhivasi cannot be restored to possession. The necessary consequence must be that adivasi rights of others will disappear. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20. AIR 1964 All 213 (FB).

——Ss. 234 (a) and 220—Ejectment of tenant on the ground of non-payment of rent—Cause of action falls under S. 234 (a) — Application to Tahsildar under S. 220 for order for payment of arrears of rent and in default, for ejectment is the remedy open to landlord —Act impliedly bars the jurisdiction of the Civil Courts to grant the relief of ejectment in such cases —Civil P. C. (1908), S. 9. 1962 All W R (HC) 112 : 1962 All L J 162.

SECTION 234-A

——S. 234-A — Adivasi dispossessed by order of revenue Court — Filing a suit for recovery of possession under S. 209 — Limitation Act (1908), Art. 47—Not applicable to suit under S. 209 — Limitation is three years from July next following the date of dispossession — Harmonious construction—Rule as to—Ss. 232, 212-B, 234-A, 209, 232-A — Interpretation—Sections are not overlapping. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 209. 1963 All W R (HC) 89.

SECTION 240

—— S. 240—Question of limitation — Reference to a Court not necessary — Decision to be given by Compensation Officer himself. 1961 All W R (HC) 602 : 1961 All L J 835.

——S. 240—Applications under S. 232—Second appeal to Board of Revenue does not lie. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) (as amended by U. P. Act 16 of 1953), S. 331. 1956 All L J 897.

SECTION 240-A

——Ss. 240-A, 240 G, 240-H and 240-J — Petitioner not challenging validity of notification — Notification is binding on him.

It is permissible under the law to file an objection as to the inclusion of any particular land in the notification under S. 240-A. The effect of S. 240-J is to finalise the statement, i.e., to hold that the notification has not been objected to and to put the seal of confirmation on that notification.

Where what the Consolidation Courts have clearly held appears to be that no objection having been filed under the provisions of S. 240-G and the statement having been finalised under S. 240 J, the rights of the petitioner in the land mentioned in the notification under S. 240 A have ceased and have vested in the State Government. The fact that the consolidation Courts have referred only to S. 240-G and not to the provisions of S. 240-A is not entitled to any weight. Therefore, if the petitioner does not in fact challenge the validity of the notification, it must be held to be binding on him. **1964 All L J 910 : ILR (1965) 1 All 309.**

——**S. 240-A (1)** — Lessees of land entered as Sirdari in compensation statement prepared under S. 240D—Landholder objecting under S. 240 G to such entry on the ground that land in question was not land referred to in S. 240-A (1) — Objection dismissed for default — Objection to such entry raised under S. 20 (2) agitating claim for Sirdari rights — Claim not barred by finality of compensation statement under S 240-J. See Tenancy Laws—U. P. Zamindari Abolision and Land Reforms Act (1 of 1951), S. 20 (2). **1965 All W R (HC) 806.**

● ——**S. 240-A**—Sub-lease of land by fixed rate tenant on 14.5.1948 for five years—Rights of sub-tenant on expiry of period—Effect of U. P. Zamindari Abolition and Land Reforms Act, 1950 repealing U. P. Tenancy Act—Suit for ejectment of sub-tenant filed on 31.6-1951 — Sub-tenant not liable to ejectment — He becomes adhivasi and then sirdar under U. P. Act of 1951—T. P. Act (1882), Ss. 105, 111 — 1963 All L J 288, **Overruled**. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), (as amended by U P. Act 20 of 1954), S. 20 (a) (ii). **AIR 1964 All 498 (FB).**

● ——**Ss. 240-A, 209, 231 (2)**—U. P. Tenancy Act (17 of 1939), S. 180 — Failure to bring suit under S. 180 prior to 1-7-1953—Effect of—Adhivasi is not a tenure holder—Rights of bhumidhar and Adhivasi—Distinction between — Liability of adhivasi to ejectment arising under S. 180, Tenancy Act — Bhumidar filing suit under S. 209 of Z. A. and L. R. Act — Suit must fail — Scope of S. 231 (2), indicated. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. **AIR 1964 All 213 (FB).**

● ——**Ss. 240-A and 231 — Words "held or deemed to be held by an adhivasi"—Meaning of.**

The words "held or deemed to be held by an adhivasi" in S. 240-A do not mean that the land was lawfully held or deemed to be held by an adhivasi and do not exclude from the scope of S. 240-A a trespasser-adhivasi. Land in which adhivasi rights are created is land held by an adhivasi. The Zamindari Abolition and Land Reforms Act makes no distinction between one adhivasi and another. Different kinds of persons acquire adhivasi rights, but once they have acquired them the distinction between them disappears and it is no longer relevant to consider what rights they had previously or how they acquired adhivasi rights except for purposes of S. 231. Mahnoo Mal v Mulloo. **1963 All W R (H C) 498 : 1963 All L J 731 : I L R (1963) 2 All 751 : A I R 1964 All 213 (219) (Pt E) (Pr 13) (FB).**

[Overruled on another point in A I R 1968 S C 466.]

● ——**Ss 240-A, 18, 240-B** — Extinguishment of bhumidhari rights followed by their vesting in State —Article 31 (2) of Constitution not violated. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **A I R 1964 All 213 (FB).**

——**S. 240-A**—Adhivasi out of possession—Failure to apply for recovery of possession within prescribed period — Claim to be sirdar by virtue of declaration under S. 240-A—Limitation—Starting point — "Date of occupation" — Interpretation of. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 209. **1964 All L J 1045.**

SECTION 240-B

● ——**S. 240-B** — Acquiring Sirdari rights under—Actual possession of land on 29th October 1954 not essential for an adhivasi or a person deemed to be an adhivasi — Provided his adhivasi rights were not extinguished before that date by lapse of time or otherwise. Gajadhar Singh v. Harnandan Singh, **1964 All W R (H C) 158 : 1964 All L J 379 : I L R (1964) 1 All 982 : A I R 1964 All 442 (444, 446, 447) (Prs 10, 11, 28, 32, 33, 35) (FB).**

——**S. 240-B (as inserted by U. P. Act 20 of 1954)**—Effect of—Suit to be declared adhivasi filed on 19th March 1955 — Revenue Court held had no jurisdiction. **1963 All W R (H C) 32.**

——**Ss. 240-B (as amended by Act 10 of 1954), 332-B (as amended by Act 7 of 1955)** — Party to suit whether adhivasi — Munsiff justified in referring issue to Revenue Court under S. 332-B. **1960 All W R (H C) 474 : 1960 All L J 588.**

SECTION 240-D

——**S. 240-D** — Lessees of land entered as Sirdari in compensation statement prepared under S. 240-D—Landholder objecting under S. 240-G to such entry on the ground that land in question was not land referred to in S. 240-A (1) — Objection dismissed for default—Objection to such entry raised under S. 20(2) agitating claim for Sirdari rights — Claim not barred by finality of compensation statement under S. 240-J. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20 (2). **1965 All W R (H C) 806.**

SECTION 240-G

——**S. 240-G** — Consolidation Courts holding statement under S. 240-J finalised in the absence of objection under S. 240-G and that the rights of the petitioner in the land mentioned in the notification under S. 240-A have ceased and have vested in the State Government—The fact that the consolidation Courts have referred only to S. 240-G and not to the provisions of S. 240-A is not entitled to any weight—The notification must be held binding on the petitioner. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 240-A. **1964 All L J 910 : I L R (1965) 1 All 309.**

——**S. 240-G** — Lessees of land entered as Sirdari in compensation statement prepared under S. 240-D—Landholder objecting under S. 240-G to such entry on the ground that land in question was not land referred to in S. 240-A (1) — Objection dismissed for default—Objection to such entry raised under S. 20 (2) agitating claim for Sirdari rights — Claim not barred by finality of compensation statement under S. 240-J. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20 (2). **1965 All W R (H C) 806.**

SECTION 240-H

——**S. 240-H**—Where what the consolidation Courts have clearly held appears to be that no objection having been filed under the provisions of S. 240-G the statement having been finalised under S. 240-J the rights of the petitioner in the land mentioned in the notification under S. 240-A have ceased and have vested in the State Government. The fact that the consolidation Courts have referred only to S. 240-G and not to S. 240-A is not entitled to any weight. The notification must be held binding on the petitioner. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 240 A. **1964 All L J 910 : I L R (1965) 1 All 309.**

SECTION 240-J

——S. 240-J — It is permissible under the law to file an objection as to the inclusion of any particular land in the notification under S. 240-A. The effect of S. 240-J is to finalise the statement i e. to hold that the notification has not been objected to and to put the seal of confirmation on that notification. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 240-A. **1964 All L J 910: I L R (1965) 1 All 309.**

SECTION 251

●——Ss. 251, 267—Increase of land revenue—U. P. Large Land Holdings Tax Act (31 of 1957) — Tax under—Nature of — U. P. Large Land Holdings Tax Act (31 of 1957).

The tax under Act 31 of 1957 is a tax on land and not land revenue. And there is no violation of Ss. 251 and 267. Even if it be assumed that a tax on land is land revenue, the impugned Act having been passed by the State Legislature after the Zamindari Abolition and Land Reforms Act, the latter would be deemed to be repealed by the former to the extent that there is any inconsistency between the two assuming there to be one. Oudh Sugar Mills, Ltd. v. State of U. P., 1959 All L J 754 : 1959 All W R (HC) 544 (2) : I L R (1960) 1 All 487 : A I R 1960 All 136 (151) (Pt G) (Pr 46) (FB).

SECTION 267

●——Ss. 267, 251—Increase of land revenue—U. P. Large Land Holdings Tax Act (31 of 1957) — Tax under not land revenue—And there is no violation of Ss. 251 and 267. See Tenancy Laws — U P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 251. **A I R 1960 All 136 (FB).**

SECTION 278

——Ss. 278 to 280—Income-tax Act, S. 46 (2), Proviso—Recovery of arrears of Income-tax as revenue arrears—Difference in procedure — When Collector acts under S. 46 (2) of the Income-tax Act an objection under O. 21, R. 58, Civil P. C. would be maintainable — When Collector acts under the powers conferred on him under U. P. Land Revenue Act or Zamindari Abolition and Land Reforms Act for the recovery of land revenue, an objection under O. 21, R. 58, Civil P. C. could not be entertained by him. See Income-tax Act (1922), S. 46 (2), Proviso. **A I R 1965 All 154.**

SECTION 279

——Ss. 279, 286—Recovery of arrears of land revenue — Processes to be resorted to. **1962 All W R (HC) 515: 1962 All L J 616 : I L R (1962) 1 All 922.**

——Ss. 279 and 286—Recovery of amount not arrears of revenue but recoverable as arrears of revenue — Provisions apply to the recovery. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 288. **I L R (1962) 1 All 922.**

——S. 279 (c)—Arrears of tax—Deduction from compensation money payable to assessee — Communication to Compensation Officer—Not constituting commencement of proceedings within S. 32 (2)—Also not a process within S. 279 (c) of Zamindari Abolition Act —Proceedings for recovery as arrears of land revenue held barred by time. See U. P. Agricultural Income-tax Act (3 of 1949), S. 32 (2). **1961 All L J 116.**

——S. 279—Company assessed to sales tax—Recovery of tax as arrear of land revenue — Notice issued to share-holders—Validity—(Sales-tax—U. P. Sales Tax Act (15 of 1948)).

The share-holders of a company passed a resolution by which the company went into voluntary liquidation. By the resolution the share capital of the company was reduced and each share holder withdrew a sum of money from the paid up share capital. The company having been assessed to sales-tax and there having been a failure to pay the same a requisition was sent to the Collector who proceeded to realise the tax as arrear of land revenue and issued a notice to each of the share-holders calling upon him to deposit a sum of money towards the arrears of sales tax out of the assets of the company in his hands within a certain time.

Held, that the issue of the notice was in contravention of Cls. (a) to (c) and (f) of S. 279 and was, therefore, ultra vires and must be set aside. **1958 All W R (HC) 540 : 1958 All L J 439.**

——S. 279—'Arrears of land revenue' — Interpretation of—Award against Co-operative Society—Amount recoverable from its assets—Assets including amount realisable from member — Member not party to arbitration proceedings — Recovery from member—Competency — (U. P. Co-operative Societies Rules (1936), Rr. 128 and 137). **1957 All L J 849 : 1957 All W R (HC) 893.**

SECTION 280

——Ss. 280 (1) and 288 — Recovery proceedings — When commence — Realisation of tax—Procedure for —Notice by Tahsildar is writ of demand issued during recovery proceeding — Proceedings are not initiated by such notice. See U. P. Agricultural Income-tax Act (3 of 1949), S. 32 (1). **1962 All L J 358.**

SECTION 281

——S. 281—Section 281 authorises the arrest and detention of a person who had defaulted in the payment of an arrar of land revenue and amounts recoverable as such. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 288. **1959 All W R (HC) 644 : 1959 All L J 789.**

SECTION 286

——S. 286—Per Sahai J.—It cannot be held that it is not S. 286 (2) but S. 288 of the Act which makes provisions of S. 279 and other sections dealing with the recovery of arrears of land revenue applicable to recovery of miscellaneous dues. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 288. **I L R (1962) 1 All 922.**

——S. 286—Section whether mandatory or directory.

Per Sahai, J. — Under S. 286 if the Collector is unable to recover the arrears by resorting to the processes contemplated by Cls. (a) to (e) of S. 279 he must sell the immovable property of the defaulter and to that extent the provision is imperative or mandatory but the provision that he shall first have recourses to the processes contemplated, by Cls. (a) to (e) of S. 279 is merely directory. Even though directory provision is intended to be obeyed, a failure to obey it does not render a thing duly done in disobedience of it, a nullity. Therefore even though movable property was not sold before selling immovable property the order of the Collector would not be amenable to a writ of certiorari or to being otherwise quashed or set aside. **1962 All W R (HC) 515 : 1962 All L J 616: I L R (1962) 1 All 922.**

——S. 286 (1), (2)—Scope—Sub-sections whether independent of each other.

Per Mukerji, J.—Arrears which were not due in respect of any specific land could be recovered from any immovable property of the defaulter. The words under this section in S. 286 (2) do not indicate that sub-s. (2) of S. 286 was in some sense controlled by the provisions contained in sub-s. (1).

Per Sahai, J.—The two sub-sections of S. 286 have got to be read together and the effect of sub-s. (2) is

that even in connection with the recovery of miscelleneous dues as arrears of land revenue, i.e., sums which are not arrears of land revenue but recoverable as such, it is permissible to sell immovable property of the defaulter but subject to what is provided for in sub-s. (1). Sub-section (1) makes a reference to all the clauses of S. 279 of the Act. Even in the case of relisation of miscellaneous dues recourse must first be had to the processes provided for by Cls. (a) to (e) of S. 279. **1962 All W R (HC) 515 : 1962 All L J 616 : I L R (1962) 1 All 922.**

——S. 286 (2) — Dues of Agricultural Income-tax — Recovery of, by sale of immovable property — Other modes of recovery need not be exhausted first. **1961 All W R (HC) 735 : (1962) 46 I T R 420.**

——S. 286—Scope.

Under S. 286 the power to realise arrears of land revenue in respect of certain holding of the tenant from attachment or sale of his other properties can only be exercised if the steps to realise the amount of land revenue by attachment or sale of the holding the land revenue of which has not been paid had been taken. **1957 All L J 910 : 1957 All W R (HC) 868.**

SECTION 288

——Ss. 288, 286, 279—Recovery of amount not arrears of revenue but recoverable as arrears of revenue — Applicability of provisions.

Per Mukerji, J.— Section 279 does not in terms make a mention of recovery of such amounts which could be recovered as arrears of land revenue. But S. 288 provides for the contingency of having to recover some amount which was not really arrears of land revenue but which, under the authority of law, was to be for the purpose of its realisation and recovery, treated as such.

Per Sahai, J.—Section 288 was enacted for arrears of land revenue which had already become due before the commencement of the Act and the liability for the payment of which had not arisen under the Act, to be recovered by the machinery provided by the Act. It cannot therefore be held that it is not S. 286 (2) but S. 288 of the Act which makes the provisions of S. 279 and other sections dealing with the recovery of arrears of land revenue applicable to the recovery of miscellaneous dues. **1962 All W R (HC) 515: 1962 All L J 616: I L R (1962) 1 All 922.**

——S. 288—Arrears of tax—Deduction from compensation money payable to assessee—Communication to compensation officer — Not constituting commencement of proceedings within S. 32 (2) of U. P. Agricultural Income-tax Act — Also, not a process within S. 279(c) of Zamindari Abolition and Land Reforms Act — Proceedings for recovery as arrears of land revenue held barred by time. See U. P. Agricultural Income-tax Act (3 of 1949), S. 32(2). **1961 All L J 116.**

——Ss. 288, 281, 339 — Loan under Rehabilitation Finance Administration Act — Recovery of, as Land Revenue — Provisions of U. P. Land Revenue Act being repealed and amended not applicable — Loan can be recovered under Zamindari Abolition Act — **(U. P. Land Revenue Act (3 of 1901), Ss. 58 to 188) —(Rehabilitation Finance Administration Act (1948), S. 13).**

Under S. 288, the provisions of the Act with regard to the recovery of arrears of revenue shall apply to all arrears of revenue and sums of money recoverable as arrears of revenue due at the commencement of this Act. Where the loan under S. 13 of the Rehabilitation Finance Administration Act, 1948 was taken in March, 1949 long before the commencement of the U. P. Zamindari Abolition and Land Reforms Act, the amount can be recovered under the provisions of the U. P. Zamindari Abolition and Land Reforms Act provided that the corresponding provisions of the U. P. Land Revenue Act are not applicable to the person concerned, being repealed or amended by S. 339.

Section 281 authorises the arrest and detention of a person who had defaulted in the payment of an arrear of land revenue and amounts recoverable as such. **1959 All W R (HC) 644 : 1959 All L J 789.**

SECTION 311

——S. 311—Suit for possession of land — Civil Court has no jurisdiction to decide such suit — Additional prayer for injunction cannot confer jurisdiction on civil Court—Civil P. C. (1908), S. 9, O. 7, Rr. 1 and 7. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 209. AIR 1966 All 367.

SECTION 330

——S. 330—Orders passed under Part I—High Court's revisional jurisdiction — (Constitution of India, Art. 214)—(General Clauses Act (1897), S. 3)—Bengal Agra and Assam Civil Courts Act (12 of 1887), S. 3).

The jurisdiction that is barred by the section is that of a civil Court. Civil Courts are created by the Bengal and Assam Civil Courts Act; the High Court is created not by that Act but by the Constitution. The High Court exercises jurisdiction over all sorts of Courts; merely because it exercises jurisdiction over civil Courts it would be wrong to treat it as a civil Court. The Bengal and Assam Civil Courts Act itself confers upon the High Court appellate jurisdiction over the civil Courts. There is no foundation for the view that appellate jurisdiction over a civil Court can vest only in another civil Court. What is meant by the highest civil Court of appeal is the Court invested with the highest appellate jurisdiction over civil Courts; it itself need not be a civil Court. Therefore, S. 330 does not exclude the jurisdiction of the High Court. **(1957) 2 Lab L J 225 : 1958 All W R (HC) 330 : AIR 1957 All 495 (504) (Pt F) (Pr 11).**

[**Overruled** on another point in A I R 1962 All 315 (FB) and A I R 1964 All 504 (FB).]

——Ss. 330 and 331—Applicability—Bar of suit. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 29. **1958 All L J 302.**

SECTION 331

——S. 331 — Suit for possession is not cognizable by civil Court by virtue of S. 331 of the Act. See Civil P. C. (1908), O. 7, R. 10. **1965 All W R (HC) 474 : 1965 All L J 549 : A I R 1966 All 367.**

——S. 331 (2) (before amendment by U. P. Act 37 of 1958)—Whether S. 331 (2) controls S. 332 (4) of Act, is doubtful. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) (before Amendment by U. P. Act 37 of 1958), S. 332 (4). **1965 All W R (HC) 340: 1965 All L J 616: AIR 1966 All 196 (DB).**

——S. 331 — Suit for possession of agricultural land after demolition of unauthorised construction on it—Jurisdiction of civil Court—Civil Court cannot entertain such a suit — It can take cognisance of a suit merely for demolition of unauthorised construction made on agricultural land. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. **1965 All W R (HC) 688 : 1965 All L J 1137.**

——S. 331 (as amended by Act 28 of 1961) and S. 229-B—Suit for injunction — Suit cannot be entertained if suit for declaration is cognizable by revenue Court—Suit for declaration—Landholder, State Government or Goan Samaj not challenging status of plaintiff—Suit cannot be deemed to be against them but against third party—Suit for declaration is cogni-

zable by civil Court and consequently suit for injunction can be entertained against third party alone, based on the same cause of action—Civil P. C. (1908), S. 9. 1965 All W R (HC) 367 : 1965 All L J 677.

——S. 331 (4) — Civil P. C. (1908), S. 100 — Finding that appellant was not negligent in filing appeal—Finding of fact—Not to be interfered with in second appeal. A I R 1931 All 28 (1), Rel. on. A I R 1964 All 228 (230) (Pt C) (Pr 5).

——S. 331 (1) (as amended by U. P. Act 28 of 1961) —Section placing bar on taking cognizance of suits by civil Court — Suit pending before civil Court on the date the amendment came into force, can be heard and determined by it—Civil P. C. (1908), S. 9—A I R 1957 All 257, Disting. 1964 All W R (HC) 560: 1964 All L J 1026.

——S. 331 (before amendment in 1961) and Sch. II—Scope—Jurisdiction of Civil Court — Only suits mentioned in Sch. II, Col 3 were barred—Section did not require or permit enquiry into true object of suit etc. 1964 All L J 994 : 1964 All W R (HC) 283 : ILR (1964) 2 All 182.

——S. 331 (1)—The words 'shall take cognisance of' in S. 331 (1) only refer to entertaining a suit—Where the jurisdiction regarding the entertainment of the suit has already been exercised the civil Court retains the jurisdiction for deciding the suit. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. ILR (1963) 2 All 261.

——Ss. 331 and 341 (as it stood before amendment of 1958)—Second appeals—Grounds.

Second Appeal to the Board of Revenue under S. 331 of the Act even before its amendment by Act 37 of 1958 was maintainable only on questions of law. S. 341 which governed second appeals also laid down that the provisions of Civil P. C. were applicable to proceedings under the Act, unless it was therein expressly provided to the contrary. 1961 All W R (HC) 121 : 1961 All L J 87.

——S. 331 (4)—Second Appeal — Scope of—S. 341—Effect of—Section 100, Civil P. C.—Scope.

Sub-section (4) of S. 331, U. P. Zamindari Abolition Act only lays down in what cases second appeals shall lie and it does not go any further. Apart from saying that a second appeal shall lie against all decrees passed in appeal, S. 100 of the Civil P. C., further enjoins the grounds on which a second appeal can be maintainable. Section 331 of the U. P. Zamindari Abolition and Land Reforms Act makes no provision on this subject and therefore S. 341 of the Zamindari Abolition and Land Reforms Act will have effect and the portion of S. 100 of the Civil P. C., which does not stand modified by S. 331 of the Zamindari Abolition and Land Reforms Act is to be applied to all proceedings under the Zamindari Abolition and Land Reforms Act. It consequently follows that the Board of Revenue can entertain a second Appeal filed under the Zamindari Abolition and Land Reforms Act only on the grounds specified in S. 100 of the Civil P. C. The correctness of the findings of fact arrived at by the subordinate Courts therefore cannot be considered by the Board of Revenue. ILR (1958) 2 All 652 : 1958 All L J 565 : 1958 All WR(H C) 664 : A I R 1959 All 13 (13) (Pt A) (Pr 4) (DB).

——Ss. 331, 332-A—'Question of title'.

A plea regarding title to a land, which is clearly untenable and is intended solely to oust the jurisdiction of the revenue Court, is not deemed to raise a question regarding title to the land within the meaning of S. 332 of the Act. The mortgagees were claiming to be 'sirdars' under S. 19 of the Act and it was their claim which was equally being adjudicated as the claim of the mortgagors.

Held, that on the analogy of the provisions of S. 332-A of the Act, it could not be said that any question of title was being raised. The Sub-Divisional Officer had jurisdiction to decide whether a real question of title was raised or whether a mere objection was being raised in order to oust his jurisdiction. If there was any error committed by the said Sub-Divisional Officer, there was a right of appeal from that order to Commissioner. 1958 All W R (HC) 481 (2) : 1958 All L J 302.

——S. 331—Initial possession of the defendants was as mortgagees—Possession continued after the vesting order under an order passed under S. 14 of the Act by a competent Court — Defendant not a trespasser—Suit against defendant does not fall under S. 209—Suit is also barred under S. 330 and S. 331 (1) of the Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. 1958 All L J 302.

——Ss. 331, 232, 240, Sch. 2, Entry 16A — Applications under S. 232 — Second appeal to Board of Revenue does not lie — (U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 191).

Section 331 as it stood before its alteration by U. P. Land Reforms (Amendment) Act 18 of 1956 made no provision for a second appeal to the Board of Revenue in the case of applications under S. 232 of the Act.

Sub-rule (2) of Rule 191 of the Rules made under S. 240 was before the passing of U. P. Act 18 of 1956 inconsistent with the provisions of the Act and can be of no avail in this connection. 1956 All L J 897 : 1957 All W R (HC) 187.

SECTION 332

——Ss. 332 (4), 331 (2) and 341 (before amendment by U. P. Act 37 of 1958)—Appellate decree of Civil Court passed under S. 332 (4)—Second appeal lay to High Court—C. P. Code (1908), S. 100.

No doubt it was open to the Legislature to lay down that the appellate decision under S. 332 (4) of the Act should be final. But there was no such indication in S. 332 (4) of the Act. It must be held that a decision of the Civil Court under S. 332 (4) of the Act was not to be regarded as final. Such a decision was subject to a second appeal, as provided in S. 100, C. P. Code. Therefore, a second appeal lay to the High Court against the appellate decree of a Civil Court passed under S. 332 (4) (since deleted by U. P. Act 37 of 1958) of U. P. Zamindari Abolition and Land Reforms Act. Second Appeal No. 1333 of 1957, dated 1st August 1962 (All), Overruled. 1965 All W R (HC) 340 : 1965 All L J 616 : ILR (1965) 2 All 327 : AIR 1966 All 196 (199) (Prs 20, 21).

——Ss. 332, 332-A, 332-B (prior to amendment by U. P. Act 37 of 1958) — Issues with regard to Sirdari and adhivasi rights — Revenue Court can record a finding in the reference already made—C. P. Code (1908), S. 115 — Powers of High Court to interfere. 1964 All W R (HC) 577.

——S. 332 — U. P. Land Reforms (Amendment) Act (37 of 1958), S. 87 (1) — Issue regarding bhumidari rights framed by revenue Court and referred to civil Court under S. 332 — Deletion of S. 332 by Amendment in 1958—Decision of issue by civil Court after amendment — Decision is binding on revenue Court under S. 87 (1) of latter Act — 1962 All L J 384, Approved; 1957 All L J 628, Disting. 1963 All W R (HC) 785 : 1964 All L J 54.

——Ss. 332 and 332-B—Reference of issue to Civil or Revenue Court—Second Appeal—Procedure—Memorandum of Second Appeal need not be accompanied by copy of finding — Copies of the judgment of the trial Court containing the finding of the revenue Court under S. 332-B not filed within limitation—

Application under S. 5, Limitation Act, to excuse delay is necessary—Registrar has power to grant time for filing copies on oral request. See C. P. Code (1908), O. 42, R. 1 (All). **AIR 1961 All 595.**

——Ss. 332 and 339—Repeal of U. P. Tenancy Act—Effect on suit prior to its commencement—Determination of tenancy rights—Jurisdiction of Civil Court—S. 332—(Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 288)—(Tenancy Laws—U. P. Land Tenures Legal Proceedings (Removal of Difficulties) Order, 1952, Cl. 1)—(U. P. General Clauses Act (1 of 1904), S. 6).

Section 6 of the U. P. General Clauses Act, 1904, and the U. P. Land Tenures Legal Proceedings (Removal of Difficulties) Order, 1952, made provisions for the continued investigation, inquiry and decision of matters arising in any suit commenced before the repeal of the U. P. Tenancy Act, namely, that they shall be decided in accordance with the provisions of the U. P. Tenancy Act. The suit having commenced before the U. P. Act (1 of 1951), the issue relating to the tenancy rights of the plaintiff's had to be referred to the Revenue Courts under S. 288 of the U. P. Tenancy Act. The order of the lower Court holding that Civil Court had no jurisdiction to decide that issue and referring it to Revenue Courts was, therefore, correct.

Section 332 which relates to those cases only which fall under the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1950, did not apply to the case. **1957 All L J 544 : 1957 All W R (HC) 536.**

——S. 332 (5) (as amended by S. 5 of Ordinance of 1954)—Retrospective operation — S. 6, U. P. General Clauses Act — Applicability—(Tenancy laws — U. P. Zamindari Abolition and Land Reforms (Amendment) Ordinance, 1954, S. 5 — Section, if retrospective — Whether 'repealing Act' within meaning of U. P. General Clauses Act, S. 6). 1957 All L J 628 : 1957 All W R (HC) 623.

[Overruled on another point in AIR 1959 All 659.]

SECTION 332-A

——S. 332-A — Reference in disregard of S. 332-A—Civil Judge's jurisdiction to decide reference — District Judge can hear appeal against order of Civil Judge. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), S. 12 (4). **1965 All W R (HC) 741 : 1965 All W R (HC) 374.**

——S. 332-A—Retrospective operation—Section cannot apply retrsopectively. See Tenancy Laws — U. P. Consolidation of Holdings (Amendment) Act (16 of 1957), S. 18. **1965 All L J 741 : 1965 All W R (HC) 374.**

——S. 332-A — Issues with regard to 'sirdari' and adivasi rights — Revenue Court can record a finding in the reference already made — C. P. Code, S. 115—Power of High Court to interfere. See Tenancy Laws—U. P. Zamindari (Abolition and Land Reforms) Act (1951), S. 332. **1964 All W R (HC) 577.**

——S. 332-A—Sirdari rights — Question of reference does not arise. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 20. **1963 All W R (HC) 327.**

——S. 332-A **(as amended in 1956)** — U. P. Consolidation of Holdings Act (5 of 1954), Ss. 12, 36-A—Objection under—Authorities need not refer matter to Civil Judge for referring it to arbitrator — Question regarding sirdari rights — Does not involve question of title—Provisions of S. 332 A applicable to consolidation proceedings. **1962 All W R (HC) 336 : 1962 All L J 483.**

——S. 332-A — The mortgagees were claiming to be 'sirdars' under S. 19 of the Act and it was their claim which was equally being adjudicated as the claims of the mortgagors — Held that on the analogy of the provisions of S. 332-A of the Act it could not be said that any question of title was being raised. The Sub-Divisional Officer had jurisdiction to decide whether a real question of title was raised or whether a mere objection was being raised in order to oust his jurisdiction. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 331. **1958 All L J 302.**

SECTION 332-B

——S. 332-B—Section repealed when finding was given by Revenue Court — Finding not part of judgment of trial Court.

Where S. 332-B, which made the finding of the Revenue Court a part of the judgment of the trial Court, stood repealed when the Revenue Court gave its finding in the present suit, the finding cannot be regarded as a part of the judgment of the trial Court. **1965 All W R (HC) 22.**

——S. 332-B—Issues with regard to Sirdari and adivasi rights — Revenue Court can record a finding in the reference already made—Civil P. C., S. 115—Power of High Court to interfere. See Tenancy Laws — U. P. Zamindari (Abolition and Land Reforms) Act (1951), S. 332. **1964 All W R (HC) 577.**

——S. 332-B (as amended by U. P. Act 18 of 1956 and U. P. Act 37 of 1958)—Suit instituted before and pending at commencement of Act, 18 of 1956—Issue of Sirdari right is necessary to be referred to Collector — Issue however not referred before commencement of Act 37 of 1958 — Issue is no longer required to be so referred. 1961 A L J 991, Approved; 1959 Rev Dec 207 and 1959 A L J 681, Overruled. Kalu Khan v. Kamrulnisa, **1962 All W R (HC) 839 : 1962 All L J 1039 : ILR (1963) 1 All 301 (FB).**

——S. 332-B (as amended by Act 18 of 1956) — Retrospective effect — Civil suit relating to land pending in Civil Court at commencement of amending Act—Effect of S. 23 (1) of amending Act—Remission of issue about sirdari rights to Revenue Court obligatory—'Proceeding' in S. 23 (1)—Meaning.

In a civil suit relating to tenancy rights in land, which continued to be pending in the civil Court at the date when the amending Act of 1956 came into force, it was obligatory on the civil Court to refer the issue about sirdari rights to the Revenue Court after the amending Act came into force. S. 23 (1) of the amending Act of 1956 did not create a jurisdictional bar to a reference.

Appeal, review or revision from either any suit or proceeding instituted or commenced prior to the commencement of the Act should, notwithstanding the amendment lie to the Court or authority to which it would have lain if it had been instituted or commenced before the said amendment.

The word 'proceeding' in sub-s. (1) of S. 23 could not refer to an issue drawn up in a suit.

The proceedings to which S. 23 (1) of Act, 18 of 1956, applied must be proceedings apart from those in a sense, arising out of a suit. C. R. No. 1492 of 1956 dated 6.1.1958 (All) and 1959 All L J 681, Overruled. **1962 All W R (HC) 239 : ILR (1962) 1 All 893 : 1961 All L J 991 : 1961 All W R (HC) 757 : AIR 1962 All 248 (250, 251) (Pt A) (Prs 11, 12, 13).**

——S. 332-B—As amended by U. P. Act (18 of 1956)—Suit involving issue of sirdari rights—Reference to arbitration prior to enactment of S. 332-B—Award and decree thereon passed after S. 332-B—Legality—Arbitration Act (1940), Ss. 2 (c) and 15 to 17.

A suit involving the issue of sirdari rights had been referred to arbitration by the Civil Court, prior to the coming into force of U. P. Act 18 of 1956. S. 332-B

as inserted by Act 18 of 1956 however took away the jurisdiction of the Civil Court to decide the issue of sirdari rights and the civil Court was enjoined to refer that issue to the decision of a Revenue Court. An award passed by the arbitrators subsequent to the passing of the amending Act was made a rule of the Court.

Held, that the issue regarding the sirdari rights could not have been the subject of an award much less of a judgment of Court, nor could a decree in terms of the award have been passed by the Civil Court after the coming into force of S. 332-B of the Act. Hence the award and the decree passed thereon in so far it dealt with the sirdari rights could not be allowed to stand. **1962 All L J 902 : 1962 All W R (HC) 743.**

——S. 332-B—U. P. Land Reforms (Amendment) Act (37 of 1958). S. 79 — Repeal of S. 332-B — Issues regarding Sirdari rights—To be decided by Civil Courts —Change in law of procedure acts retrospectively—Suit though filed before amendment is governed by amended procedure. **1962 All W R (HC) 252 : 1962 All L J 384.**

——Ss. 332-B, 332 — Civil P. C., O. 42, R. 1 (Allahabad), Ss. 122, 123, 124—(Allahabad) Rules of Court (1952), Chap. 9, Rr. 21 (1), 8 — Letters Patent (Allahabad), Cl. 28 — Limitation Act (1908), S. 5—Reference of issue to Civil or Revenue Court — Second appeal—Procedure—Memorandum of second appeal need not be accompanied by copy of finding—Copies of the judgment of the trial Court containing the finding of the revenue Court under S. 332-B not filed within limitation—Application under S. 5, Limitation Act, to excuse delay is necessary—Registrar has power to grant time for filing copies on oral request. See Civil P. C. (1908), O. 42, R. 1 (Allahabad). **AIR 1961 All 595.**

——S. 332-B (as amended by S. 19, U. P. Land Reforms (Amendment) Act 18 of 1956)—Civil Court remitting issue to Collector — Jurisdiction of Collector to sit in judgment over civil Court's view.

It is for the civil Court to decide whether it has to refer an issue to the Collector or not. Its view may be wrong, but the Collector gets jurisdiction to decide the issue referred in view of sub-s. (2) of S. 332-B of the Act. Of course, he can reframe the issue, if necessary. The civil Court has to accept his finding and to decide the suit accepting that finding. Further, such a finding of the Collector is deemed to be part of the finding of the civil Court in view of sub-s. (5) of S. 332-B of the Act. Therefore, the Collector or the Assistant Collector has no jurisdiction to sit in judgment on the view of the civil Court remitting the issue to the Collector and has to decide that issue in accordance with the provisions of sub-ss. (2) and (3) of S. 332-B of the Act. 1957 All L J 628, **Overruled. ILR (1959) 2 All 87: 1959 All L J 592: 1959 All W R (HC) 419 : AIR 1959 All 659 (660) (Pt B) (Pr 9).**

——S. 332 B (as amended by U. P. Act of 1956)—Scope—Retrospective operation.

The amending Act of 1956, which requires the remittance of any issue on sirdari rights to the revenue Court, does not affect the procedure in suits filed before that amendment became law. **1959 All L J 681.**

[Overruled in AIR 1962 All 248.]

——S. 332-B (as amended by U. P. Act 20 of 1954)—Applicability — Decree passed before amendment—Remitting issue to Revenue Court not necessary.

Section 332-B applies only to those suits which have been instituted after the commencement of that Act or if they have been instituted before the commencement of the Act but no decree had been passed. Where a decree has already been passed, S. 332-B will not apply and therefore, the Civil Court need not remit the issue of adhivasi rights to revenue Court for decision. **1957 All W R (HC) 885 : 1957 All L J 845.**

SECTION 333

——S. 333—Neither S. 333 nor S. 340 of U. P. Act 1 of 1951 is an authority for the Board to interfere in revision against an order of the commissioner passed under S. 13 of the U. P. Act (10 of 1949). See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 13. **('52) 1952 R D (BR) 191.**

SECTION 336

——S. 336 (2) — Applicability to pending appeals in proceedings commenced prior to Act.

Sub-section (2) of S. 336 of the Act would apply not only to suits pending in the Court of the first instance or to such appeals in such suits which were against the dismissal of the pre-emption suit, but also to appeals against the decrees passed in favour of the plaintiff in pre-emption suits. **1957 All W R (H C) 728 (1) : 1957 All L J 743 (1).**

——Ss. 336 and 1 — Applicability — Act abolishing right of pre-emption — It has not been extended to Kumaun — Pre-emption suit with respect to property within jurisdiction of Garhwal Court is not hit. **A I R 1955 N U C (All) 158.**

——S. 336—Appeal competent when filed—Automatic dismissal under S. 336 (2) of U. P. Zamindari Abolition and Land Reforms Act — Court-fees could not be refunded—(Civil P. C. (1908), S. 151). See Court-Fees Act (1870), S. 10. **A I R 1953 All 184.**

——Ss. 336 and 339—Interpretation of—Pre-emption under Agra Pre-emption Act — Want of notification under S. 4—Effect.

There is no doubt some incongruity between Ss. 336 and 339 in that Agra Pre-emption Act will continue to remain enforceable so long as the notification under S. 4 as mentioned in S. 339 is not made, while the right of pre-emption, as mentioned in S. 336, would be taken away even before that time from the commencement of the U. P. Act 1 of 1951. But the language employed in S. 336 must be given its natural meaning and if so given the right of pre-emption ceased to exist in the areas to which the Act applied from the date on which the Act came into force, secondly S. 336 does not merely deal with the right of pre-emption, as contained in the Agra Pre-emption Act. It deals with the right of pre-emption based upon custom, usage or agreement also. It may be that the Legislature intended that the right of pre-emption, and all litigations regarding claims for pre-emption, may be put an end to as soon as the Act came into force, although, for some reasons the Agra Pre-emption Act was mentioned in Sch. 3 to the Act in which other enactments were also mentioned and which were to be repealed with effect from the date of publication of the notification under S. 4. However that may be Court is bound to give full effect to the express language of S. 336 specially when the whole area of the legislation dealt with in S. 336 is not covered by the provisions of S. 339. **1951 All L J 554 : I L R (1952) 1 All 265 : A I R 1952 All 81 (81, 82) (Pt B) (Prs 4, 6, 7).**

SECTION 339

——S. 339—Application for mutation—Passing of U. P. Act 1 of 1951 during pendency of appeal — Effect of amendment of S. 210—Order appealable to Collector and not to Commissioner. See Tenancy Laws—U. P. Land Revenue Act (3 of 1901), S. 210. **1961 All W R (H C) 595.**

——Ss. 339, 21 (1) (d), 14 (i) and 6 (g) (i) — Repeal of U. P. Agriculturists' Relief Act — Effect — Mortgagor's right of redemption not affected — 1957 All L J 543, Dissented from—Only decree for redemption can be passed under the Act — Parties to approach Revenue Court of competent jurisdiction for possession — U. P. General Clauses Act (1 of 1904), S. 6. 1961 All W R (H C) 444 : 1961 All L J 273.

——S. 339 (b) — Section 17 of Debt Redemption Act not repealed by S. 339 (b) of Zamindari Abolition Act. See Debt Laws — U. P. Provincial Debt Redemption Act (13 of 1940), S. 17. 1961 All L J 800.

——Ss. 339, 2, 4, Sch., List 2, Col. 3, Serial No. 23—Repeal of U. P. Land Revenue Act ; extent of—(U. P. Land Revenue Act (3 of 1901), Ss. 58 to 188)—(Interpretation of Statutes—Object of Legislature in using particular words).

The words 'in its application to such area' used in Cl. (c) of S. 339 are of great importance and will make it clear beyond any doubt that the amendments made to the U. P. Land Revenue Act were to apply only to such area which had vested in the State under the provisions of S. 4 of the U. P. Zamindari Abolition and Land Reforms Act. In other words, the provisions contained in S. 339 apply to only such estates as are covered by S. 2 of the Act and have vested in the State under S. 4 ; and as far as such land, area or estates are concerned, the provisions of the U. P. Land Revenue Act, 1901, shall stand amended or repealed to the extent mentioned in column 3 of List 2 of the Schedule. 1959 All W R (H C) 644 : 1959 All L J 789.

——S. 339 — Loan under S. 13 of the Rehabilitation Finance Administration Act (1948) taken in March 1949 i.e. long before the commencement of the U. P. Zamindari Abolition and Land Reforms Act — The corresponding provisions of U. P. Land Revenue Act not applicable to the person concerned being repealed or amended by S. 339 — Amount can be recovered under the provisions of the U. P. Zamindari Abolition and Land Reforms Act 1 of 1951. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 288. 1959 All W R (H C) 644 : 1959 All L J 789.

——S. 339—Order of Commissioner dismissing appeal against order by Assistant Collector cancelling declaration under S. 6 — Revision to Revenue Board does not lie. See U. P. Tenants (Acquisition of Privileges) Act (1949), S. 6. A I R 1955 N U C (All) 2653.

——Ss. 339, 336 — Interpretation of — Pre-emption under Agra Pre-emption Act — Want of notification under S. 4—Effect — The Court is bound to give full effect to the express language of S. 336 specially when the whole area of the legislation dealt with in S. 336 is not covered by the provisions of S. 339. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 336. A I R 1952 All 81 (DB).

SECTION 340

——S. 340 — Suit by tenant who had obtained a declaration of his tenancy rights under S. 6 of U. P. Agricultural Tenants (Acquisition of Privileges) Act of 1949—Death of plaintiff pending suit—Application for substitution by heir on the basis of will bequeathing his rights to the petitioner — U. P. Act 10 of 1949 amended by addition of Cl. (c) to S. 7—Given retrospective operation by S. 340 of the U. P. Zamindari Abolition and Land Reforms Act — Devisee acquires rights under the will and entitled to be impleaded as legal representative. See Tenancy Laws —U. P. Tenancy Act (17 of 1939), S. 180. 1962 All L J 596.

——S. 340—Neither S. 333 nor S. 340, U. P. Act 1 of 1951 is an authority for the Board to interfere in revision against an order of the Commissioner passed under S. 13 of Act 10 of 1949. See Tenancy Laws—U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 13. ('52) 1952 R D (B R) 191.

SECTION 341

——S. 341 (before amendment by U. P. Act 37 of 1958)—Section 341 is provision subsequent to S. 331 of Act which shows that the decision of the civil Court under S. 332(4) of the Act was not to be regarded as final and was subject to second appeal as provided by S. 100, Civil P. C. See under Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) (before amendment by U. P. Act 37 of 1958), S. 332(6). 1965 All W R (HC) 340 : 1965 All L J 616 : AIR 1966 All 196 (DB).

——S. 341—Delay in filing appeal due to mistake of Court in failing to give intimation of delivery of judgment as required under law — Appeal within limitation from date of knowledge but beyond limitation from date of judgment — There is no delay in filing appeal and no question of condonation arises. See Limitation Act (1908), S. 5. AIR 1964 All 228.

——S. 341—Registration of objection—Notice or summons under O. 5, Civil P. C., is not necessary. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 46. A I R 1962 All 590.

[Reversed on another point in AIR 1966 S C 1164.]

——S. 341—Proceedings under S. 46, nature of—Position of State and objector are not that of plaintiff or defendant, decree-holder or judgment-debtor. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 46. A I R 1962 All 590.

[Reversed on another point in AIR 1966 S C 1164.]

——S. 341—Inquiry under R. 115-E of the rules framed under the U. P. Zamindari Abolition Act — Both Civil P. C., and Evidence Act apply—Witnesses must be examined in open Court if their statements are to be relied on—Order based solely on statement in reports of persons not examined in Court is not according to law. 1962 All W R (HC) 98.

——Ss. 341, 331 — Second Appeal under S. 331 (4)—Applicability of S. 100, Civil P. C.—Board of Revenue can entertain second appeal filed under the Zamindari Abolition and Land Reforms Act only on the grounds specified in S. 100, Civil P. C. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 331. AIR 1959 All 13.

SECTION 343

——S. 343—Proceedings started by objection in response to notice — State Government is to be deemed to be a party. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 46. AIR 1962 All 590.

[Reversed on another point in AIR 1966 S C 1164.]

——S. 343—Only when State appears in response to notice under S. 46, it is entitled to notice under S. 47 —Second part of S. 343(1) provides the manner in which the notice is to be sent — State not appearing under S. 46 — State is not entitled to notice on basis of natural justice. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 46. AIR 1962 All 590.

[Reversed on another point in AIR 1966 S C 1164.]

——S. 343—Order 5, Civil P. C., would apply to proceedings arising out of an objection filed under S. 47 of the Act 1 of 1951 and therefore a notice should be given to the State Government. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act

(I of 1951), S. 47. 1960 All W R (HC) 418 : 1960 All L J 557.

[Reversed in AIR 1962 All 590.]

——S. 343—Compensation Roll made under S. 52 — No notice to State Government — Order under S. 52 set aside on application by State Government and case restored to original number — Validity of this procedure challenged by Zamindar — Held, even though the law may make a particular order or Act final the Courts have the power to enquire into the validity of the steps leading to the order or act—Therefore the compensation Roll did not become final under S. 52. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 46. 1960 All W R (HC) 418 : 1960 All L J 557.

[Reversed in AIR 1962 All 590.]

——S. 343 (2)—Second appeal to the High Court — U. P. Act 1 of 1951 does not provide a period of limitation different from one given in Limitation Act—Limitation is therefore governed by Limitation Act—The provisions of S. 29 will not make S. 5, Limitation Act inapplicable to a second appeal. See Limitation Act (1908), S. 5. 1958 All L J 119 : 1958 All W R (HC) 204.

——S. 343 (2)—Second appeal under — Limitation—S. 5, Limitation Act is applicable. See Limitation Act (1908), S. 5. 1958 All L J 119.

SECTION 344

——S. 344 (1) (c)—Rules under R. 115-C — Applicability—Title to land in dispute—Effect.

Cases under R. 115-C can only be taken by the Assistant Collector if the title to the land concerned is not in dispute. But if the title itself is in disoute, the only course open to the Land Management Committee is to proceed by way of a suit for ejectment. A citizen cannot be deprived of his valuable right of holding land in summary proceedings by R. 115-C. AIR 1958 All 97, Foll. 1960 All W R (HC) 564: 1960 All L J 725.

——S. 344—Ejectment order can be passed only by Collector and not by Tahsildar—Rules 115-D, 115-E, 115-F, are ultra vires—Rules being invalid ejectment order under them is illegal. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 118. 1960 All W R (HC) 327: 1960 All L J 549.

——S. 344—Power of State Government — Rule 61—Amendment of—Validity.

The power conferred on the State Government to make rules is to be exercised at all times and is not dependent upon the existence of the Legislature passing the Act. Hence, the power conferred on the State Government by S. 344 of the Act to make rules did not come to end when the Provincial Legislature that had passed the Act became defunct. Under S. 344 of the Act the Rules have to be laid down before the Legislature and the Legislature has power to amend them; but it does not mean that so long as they are not laid before the Legislature they are not in operation. They come into operation as soon as they are made and published. The amendment of R. 61 has been gazetted. It must be presumed that the amendment was placed before the Legislature as required under S. 344; it was not at all necessary for the fact to be published in a Gazette. 1956 All W R (HC) 838: 1956 All L J 244: AIR 1956 All 413 (414) (Pt A) (Prs 2, 3).

——S. 344—Constitution of India, Art. 14—Equality before law — Prospective operation of statute — The amendment of R. 61 framed under S. 344, U. P. Act 1 of 1951 does not contravene the guarantee of equality before the laws. See Constitution of India, Art. 14. AIR 1956 All 413.

——S. 344 — Rules under, R. 61 — Amendment of—Appeal filed after amendment — Court-fee — (U. P. General Clauses Act (1904), S. 6).

The court-fees payable on a memorandum of appeal filed under S. 50 of the Act after the amendment of R. 61 would be governed by the amended R. 61 and not by the old R. 61 which was in force when the action was commenced and ad valorem court-fee on the value of the subject-matter in appeal would be payable. Section 6, U. P. General Clauses Act lays down the effect of repeal of an enactment by another. There is no reason for applying a different law to repeal of a rule by another rule and the analogy of S. 6 should be applied. When a Court-fees Act is amended, the amendment does not revive anything not in force or existing at the time of the amendment. It must not affect the previous operation of the original Act; this only means that the court-fee that has been paid correctly according to the original Act must not be held to be insufficient because the amendment Act enhances the court-fee. But, if no court-fee has been paid yet, the old Act cannot be said to have been put into operation and the question of the court-fee payable arising after the amendment is not required to be answered by reference to the original Act. It follows that the amending statute must be applied. 1956 All L J 244 : 1956 All W R (H C) 838 : AIR 1956 All 413 (414) (Pt C) (Prs 5, 6, 7).

——S. 344 (3) and (4) and Rules—Rules and Act are intra vires.

Second appeal in a case under S. 49 of U. P. Tenancy Act was pending; the question was, if it was to be abated under R. 5 (a) (i) of the Zamindari Abolition Act and Land Reform Rules, 1952. It was contended that S. 6 (i) of the Act and Rules 4 to 7 of the Rules were ultra vires.

Held, it is concluded by the decision in AIR 1951 All 674 (FB) confirmed by the Supreme Court, that the provisions of the Act are valid and intra vires.

Section 344 (3) provides that the rules come into force on the date of publication in the Gazette unless some later date is appointed. Sub-sections (3) and (4) read together shows that though the rules come into force on the date of publication; they shall be subject to modification by the legislatures.

The appeal has to abate, but in view of the proposal to amend the rules 4 and 5 being under consideration, the appeal was adjourned. 1952 A L J (Rev) 267 : 1952 R D 374 : 1952 A W R (Rev) 247.

——S. 344 (4) — On a question of abatement of a second appeal arising out of a suit under S. 113, U. P. Tenancy Act stayed under R. 4 (a) of the Rules Held, what S. 344 of the Act requires is that the Rules are to be placed before the State Legislature and they will be subject to such modification as the Legislature may deem fit—The rules come into force on the date of publication unless a date is fixed — The rules have come into force and the second appeal has to abate. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6 (i). 1952 A L J (Rev) 295.

SCHEDULE 2, ENTRY 16-A

——Sch. 2, Entry 16-A (as amended by U. P. Act 16 of 1953) — Applications under S. 232 — Second appeal to board of revenue does not lie. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) (as amended by U. P. Act 16 of 1953), S. 331. 1956 All L J 897.

SCHEDULE 2, ENTRY 24

——Sch. 2, Entry 24 (as amended by Amendment Act of 1958)—The words "and damages" were added to the schedule by the Amending Act 37 of 1953—

But since the suit under S. 209 of the Act was cognisable by a Revenue Court and the section itself after amendment, mentioned that the plaintiff could get relief of ejectment as well as damages from the Revenue Court mere non-mention of the words "and damages" before amendment could not disentitle the plaintiff from getting relief of damages before the Revenue Court. See under Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 209. **1964 All W R (H C) 227 : 1965 All L J 651 : AIR 1966 All 234.**

——Sch. 2, Entry 24 — Bar of jurisdiction of Civil Court—Suit for ejectment of persons occupying land withourt title and for damages — Such a suit falls under S. 209 and Sch. 2, Item 24 and cannot be entertained by a Civil Court — Fact that plaintiffs have also asked for demolition of structures unauthorisedly constructed by the defendants does not alter the nature of suit. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act 1 of 1951), S. 209. **1965 All W R (H C) 199.**

SCHEDULE 3, LIST 1

——Sch. 3, List 1 (as amended by Act 16 of 1953) —U. P. Agriculturists Relief Act (27 of 1934) — Repeal of — Extent — Has been repealed only with respect to any area with regard to which a notification under S. 4 of the U. P. Zamindari Abolition and Land Reforms Act 1951 as amended by Act 16 of 1953 may have been issued by the State Government. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 4. **AIR 1955 NUC (All) 1695 (DB).**

SCHEDULE 3, ENTRY 13

——Sch. 3, Entry 13 (as amended by U. P. Act 16 of 1953) — Application under S. 12 of the U. P. Agriculturists Relief Act, 1934 allowed and redemption ordered — Subsequent repeal of Act by U. P. Act 1 of 1951 — Effect on decree — The decree was not affected by the repeal of the Act in view of S. 6 of the U. P. General Clauses Act, 1904. See Debt Laws — U. P. Agriculturists Relief Act (27 of 1934), S. 12. **1957 All W R (HC) 850.**

—U. P. ZAMINDARI ABOLITION AND LAND REFORMS (AMENDMENT) ACT (16 of 1953)

SECTION 67

——S. 67 — Repeal of U. P. Agriculturists' Relief Act (27 of 1934) — Effect of, on pending proceedings — It cannot be said that when the decree of the trial Court continues to be effective the proceedings under S. 12 cannot be dropped only because during the pendency of the appeal or revision, the act was repealed retrospectively. See Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), S. 12. **1965 All W R (HC) 299 : 1965 All L J 363.**

—U. P. ZAMINDARI (ABOLITION AND LAND REFORMS) ORDER (1952)

CLAUSE 2

● ——Cl. 2 — Suit for possession of grove land — Cause of action arising before repeal of Tenancy Act by U. P. Zamindari (Abolition and Land Reforms) Act—Suit falls under S. 183, U. P. Tenancy Act and is cognisable by the Revenue Court—Since the cause of action which arose before repeal of the Tenancy Act would fall under para. 2 of the Zamindari Abolition and Land Reforms Order 1952 the question of jurisdiction will have to be determined according to the provisions of the U. P. Tenancy Act — Para. 5 will not apply to the case — (Tenancy Laws — U. P. Zamindari (Abolition and Land Reforms) Order (1952), Paras. 2 and 5) — (Civil P. C. (1908), S. 9). See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 183. AIR 1953 All 85 (FB).

CLAUSE 5

● ——Cl. 5 — Suit for possession of grove land — Cause of action arising before repeal of Tenancy Act by U. P. Zamindari (Abolition and Land Reforms) Act—Suit falls under S. 183, U. P. Tenancy Act and is cognisable by Revenue Courts—Since the cause of action which arose before the repeal of Tenancy Act would fall under para. 2 of the Zamindari Abolition and Land Reforms Order, 1952 the question of jurisdiction will have to be determined according to the provisions of U. P. Tenancy Act—Para. 5 of the order will not apply to the case. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 183. **AIR 1953 All 85 (FB).**

—U. P. ZAMINDARI ABOLITION AND LAND REFORMS RULES (1952)

RULE 4

——Rr. 4, 5 — Applicability — Abatement of suit — Pending suit — Meaning of — Suit decided prior to commencement of the Zamindari Abolition Act but appeal against decree filed after Act came into force —Not covered by R. 4 and hence did not abate under R. 5. **1963 All W R (HC) 713 : 1963 All L J 1062 : ILR (1964) 1 All 289.**

——R. 4 (2) (v) — 'Intermediary'—Word refers only to plaintiff-intermediary—Object of the rule.

The word 'defendant' occurs later on in R. 4 (2) (v) after the word 'intermediary'. From this it would follow that the word 'intermediary' must refer to a plaintiff-intermediary. **1962 All W R (HC) 722 (1) : 1962 All L J 382.**

——R. 4 — Reduction in amount and apportionment between liability falling on estate and non-estate—Recovery of money by decree-holder — Mode of—Effect of stay—R. 4 of U. P. Zamindari Abolition and Land Reforms Rules — No bar to action under Act—Decree executable after reduction and apportionment—See Debt Laws — U. P. Zamindars' Debt Reduction Act (15 of 1953), S. 4. **1961 All L J 599.**

● ——Rr. 4, 5 (as amended)—Applicability—Stay, of suit under S. 180, U. P. Tenancy Act—Case re-started under old R. 4—Abatement.

Where the suits for ejectment filed under S. 180, U. P. Tenancy Act, 1939, were stayed in view of the notification issued under the U. P. Ordinance, 3 of 1951), but were re-started under the old Rules and thereafter no stay order was made under the amended Rules, the position is that there is neither a subsisting stay under the old Rules nor any stay order made under the new Rules. If so, R. 5 of the amended Rules cannot be invoked for under that rule only a suit stayed under R. 4 (a) (i) shall be abated thereunder. There is therefore no abatement of the suits under R. 5 as amended. Bhink v. Charan Singh, **1959 All L J 557 : 1959 Cri L J 1223 : 1959 All W R (HC) 440 : 1959 All Cri R 337 : (1959) Supp (2) S C R 798 : 1960 S C J 892 : AIR 1959 S C 960 (966, 967) (Pt G) (Prs 17, 18).**

——Rr. 4, 5 — "Whether of the first instance, appeal or revision" in R. 4—Meaning—Suit decreed and first appeal dismissed, before date of vesting — Second appeal only pending on date of vesting — Second appeal abates under R. 5 and not suit. **1958 All L J 638 : 1958 All W R (HC) 734.**

——R. 4 (2) (v) — Suit for cancellation of lease if covered by Rule—Lease by one co-sharer alleging that he was sole proprietor—Suit by another co-sharer for cancellation is covered by S. 180 read with S. 242—Even otherwise being a suit of similar nature it falls under R 4 (2) (v)—(Tenancy Laws — U. P. Tenancy Act (17 of 1939), Ss. 180 and 242). **AIR 1955 N U C (All) 4453.**

——R. 4 — Suit under Ss. 63 and 180, U. P. Tenancy Act against N whose name was recorded as a tenant—Stay and abatement of—Held the rights of Adhivasi had accrued to N and the appeal before the Board of Revenue and the suit itself in which the appeal was pending were liable to be stayed. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 16. AIR 1955 N U C (All) 3552 (DB).

——Rr. 4 (1), 5 (1) — Abatement of pending suit — Suit dismissed — Appeal — Suit is pending—Appeal against review dismissed — Appeal against decree barred—Second appeal—Suit declared abated—Order held not without jurisdiction. AIR 1955 N U C (All) 2277.

——Rr, 4, 5 — Abatement of suit under. (Tenancy Laws—U. P. Tenancy Act (18 of 1939).

Where an appeal from a joint decree passed in a suit under S. 180, U. P. Tenancy Act, 1939, had neither been stayed nor was pending on the date when R. 5 came into force and had already abated as long ago as January, 1950, it would not be deemed to be pending when R. 4 or R. 5 came into force and hence no order directing abatement of the suit which has given rise to the appeal could be passed. 1954 All W R (HC) 52 : 1954 All L J 116 : AIR 1954 All 436 (437) (Pt B) (Pr 6) (DB).

——R. 4—Section 20, Zamindari Abolition and Land Reforms Act, will not affect the right of parties to pending proceedings. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20. AIR 1954 All 434 (DB).

[Overruled in AIR 1955 All 432].

——R. 4—S. 2 of the U. P. Land Tenures (Legal Proceedings) Removal of Difficulties Order (1952) does not abrogate Rr. 4 and 5 of the U. P. Zamindari Abolition and Land Reforms Rules and where, therefore, an appeal before the Board is stayed under Rr. 4 & 5 of those rules S. 2 cannot make it competent for the Board to hear the appeal until the issue has been allowed to be restarted under R. 5 (3) of those rules. 1952 All L J (Rev) 242.

——R. 4—Stay under cannot be nullified by use of S. 151, Civil P. C.—(Civil P. C. (1908), S. 151).

The inherent power of a Court cannot be invoked where there is a specific provision for doing or forbearing from doing any act — Hence the stay of proceedings provided in R. 4, U. P. Zamindari Abolition and Land Reforms Rules, cannot be nullified by the use of S. 151, Civil P. C. 1952 All L J (Rev) 254 : 1952 R D (B R) 384 : 1952 All W R (Rev) 194.

——R. 4 (vi)—Proceeding for setting aside sale under S. 24, U. P. Eucumbered Estates Act — Revision—Stay of—Debt Laws — (U. P. Encumbered Estates Act (25 of 1934), S. 24).

A proceeding under S. 24 of the U. P. Encumbered Estates Act is a proceeding for liquidation of a decree and shall be stayed under R. 4 (vi) — A proceeding taken upon a decree or order passed in a case of limitation of a decree under the Act shall also be stayed — Therefore, a proceeding under Civil P. C. shall also be stayed if it is in liquidation of a decree under the Act—Therefore, a revision arising out of a proceeding for setting aside the sale under S. 24 of the Act shall be stayed under R. 4 (vi). 1952 All L J (Rev) 254 : 1952 R D (BR) 384 : 1952 All W R (Rev) 194.

——R. 4 (vi)—"Case"—Meaning of.

The word "case" in R. 4 (vi) is wide enough to include an appeal or revision and is not restricted to a suit. 1952 All L J (Rev) 254 : 1952 R D (BR) 384 : 1952 All W R (Rev) 194.

——R. 4—Application under O. 41, R. 19, Civil P. C. —Is to be stayed.

Where an application under O. 41, R. 19, Civil P. C. was made for re-admission of an appeal dismissed for default, held, that R. 4, Cl. 5 of the Rules has enlarged the scope of R. 4 and the legal proceedings, steps taken for legal action, under O. 41, R. 19, Civil P. C. are also liable to be stayed under it. 1953 All L J (Rev) 258 (1) : 1952 R D 369 : 1952 All W R (Rev) 232.

——R. 4 — Section 6 of the Act and Rr. 4, 5, 6 and 7 of the rules are ultra vires of the legislature in view of sub-ss. (3) and (4) of S. 344 of the Act. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. 1952 All L J (Rev) 267.

——Rr. 4 (iv) and 5 (a) (i)—Appeal pending on date of vesting—Stayed under R. 4 (iv) — Second appeal alone to be abated—Not the suit. 1952 All L J (Rev) 268 : 1952 All W R (Rev) 256.

RULE 5

●——Rr. 5, 4 (as amended) — Stay of suit under S. 180, U. P. Tenancy Act—Case re-started under old R. 4—Amended R. 5 not applicable — Suit does not abate. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 4 (as amended). 1959 Cri L J 1223 : AIR 1959 S C 960.

——R. 5 — Suit decided prior to commencement of the Zamindari Abolition Act but appeal against decree filed after the Act came into force — Not covered by R. 4 and hence did not abate under R. 5. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 4. 1963 All W R (HC) 713.

——R. 5 — "Whether of the first instance, appeal or revision" in R. 4 — Meaning — Suit decreed and first appeal dismissed, before date of vesting — Second appeal only pending on date of vesting—Second appeal abates under R. 5 and not suit. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 4. 1958 All L J 638.

——R. 5(1)—Applicability—'Pending suit or proceeding'—Meaning of — (Constitution of India, Art. 133)—(Civil P. C. (1908), S. 109).

Under sub-r. (1) of Rule 5, U. P. Zamindari Abolition and Land Reforms Rules, the abatement can be ordered only of the suit or proceeding which is pending. When an application for leave to appeal to Supreme Court is made what in such a case is pending is an application for leave to appeal to the Supreme Court and it cannot be said that when such an application is pending, it is the suit itself that is pending in appeal or revision. 1955 All L J 614, Rel. on. 1957 All W R (HC) 319 : 1957 All L J 340.

——R. 5—Civil P. C. S. 144—Applicability— Reversal of decree by means of abatement of proceedings by subsequent legislation—Section 144 applies—(Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) — Rules under, R. 5), See Civil P. C. (1908), S. 144. AIR 1956 All 663 (DB).

●——R. 5 (3) — Proceeding under S. 180, U. P. Tenancy Act pending on 30th June 1952 — Proceeding, will be decided with reference to any right accrued under U. P. Zamindari Abolition Act. See Tenancy Laws—U. P. Tenancy Act (18 of 1939), S. 180. AIR 1955 All 432 (FB).

——R. 5 (3)—Pending suits are governed by U. P. Tenancy Act, 1939 - (U. P. Land Tenures Legal Proceedings) (Removal of Difficulties) Order (1952), Para 2. AIR 1955 NUC (All) 4168.

——R. 5—Rights under, when can be acquired —Suit under Ss. 63 and 180, U. P. Tenancy Act against *N* whose name was recorded as a tenant — Stay and abatement of — Held, the rights of adhivasi had accrued to *N* andthe appeal, before the Board of

Revenue and the suit itself in which the appeal was pending were liable to be stayed. See Tenancy Laws —U. P. Zamindari Abolition and Lands Reforms Act (1 of 1951), S. 16. **AIR 1955 NUC (All) 3552 (DB).**

——R. 5—Before ordering abatement of suit, appellate Court must come to conclusion that appeal is pending —Appeal not maintainable — Suit cannot be held to be pending. **AIR 1955 NUC (All) 2277.**

——R. 5 (1)—Abatement pending suit—Suit dismissed —Appeal — Suit is pending — Appeal against review dismissed — Appeal against decree barred — Second Appeal before the Board of revenue — Suit declared abated — Since the proceedings could be said to be pending before the trial Court. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) Rules under, R. 4 (1). **AIR 1955 N U C (All) 2277.**

——R. 5 — Exercise of powers under, by Revenue Board—Decision of Board can be scrutinised under Art. 226—(Constitution of India, Art. 226—Certiorari). **AIR 1955 NUC (All) 2277.**

——R. 5—**Rule is not invalid because it leads to multiplicity of suits.**

The rules framed under this Act have really the force of law. It cannot be said that the provision of R. 5 is in any way unreasonable.

An enactement cannot be held to be invalid because as a result of it a multiplicity of litigation may follow. R. 5 which provides that an order of abatement shall not debar a person from having his right determined in any subsequent proceeding is not invalid because it leads to multiplicity of suits. **1954 All L J 364 : AIR 1954 All 639 (640) (Pt E) (Pr 4).**

——R. 5—Abatement of suit—When an appeal from a joint decree passed in a suit under S. 180, U. P. Tenancy Act 1939 had neither been stayed nor was pending on the date when R. 5 came into force and had already abated as long as January 1950 it would not be deemed to be pending when R. 4 or 5 came into force and hence no order directing abatement of the suit which has given rise to the appeal could be passed. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 4. **AIR 1954 All 436 (DB).**

——R. 5 (3)—Section 20, Zamindari Abolition and Land Reforms Act will not affect the rights of the parties to pending proceedings. See Tenancy Laws— U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20. **AIR 1954 All 434 (DB).**

[Overruled in AIR 1955 All 432.]

——R. 5—Section 2 of the U P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order (1952) does not abrogate Rr. 4 and 5 of the U. P. Zamindari Abolition and Land Reforms Rules and therefore where an appeal before the Board is stayed under Rr. 4 & 5 of those rules S. 2 cannot make it competent for the Board to hear the appeal until the issue has been allowed to be re-started under R. 5 (3) of those rules. **1952 All L J (Rev) 242.**

——R. 5—Section 6 and Rules 4, 5, 6 and 7 of the rules are ultra vires of the legislature in view of sub-ss. (3) and (4) of S. 344. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. **1952 All L J (Rev) 267.**

——R. 5—Where it is the second appeal (which was pending on 1-7-52) which was stayed under R. 4 (iv) it is this appeal which shall be abated under R. 5 (a) (i) and not the suit itself from its inspection rendering the decree of the lower appellate Court final and barring future litigations in respect of the suit. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 4. **1952 All L J (Rev) 268.**

——R. 5 (a) (i) — The plain meaning of the language used in R. 5 (a) (i) is that what has been stayed under R. 4 (i) to (iv) has to be abated by the Court before which it was pending. If it was the second appeal which was pending on the date of vesting and had been stayed it is that alone that has to be abated and not the suit also. See Tenancy Laws — U. P. Zamindary Abolition and Land Reforms Rules (1952), R. 4. **1952 All W R (Rev) 256.**

RULE 5-A

——R. 5-A—Proceeding under S. 180, U. P. Tenancy Act pending on 30th June, 1952 — Proceeding, will be decided with reference to any right accrued under U. P. Zamindari Abolition Act. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 180. **A I R 1955 All 432 (FB).**

RULE 6

—— R. 6—Section 6 and Rules 4, 5, 6 and 7 of the rules are ultra vires of the Legislature in view of sub-ss. (3) and (4) of S. 344 of the Act. See Tenancy Laws—U. P Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. **1952 All L J (Rev) 267.**

RULE 7

——R. 7—U. P. Tenancy Act, S. 49, U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6— U. P. Zamindari Abolition and Land Reforms Rules, R. 7—Appeal in suit filed under S. 49, Tenancy Act, before Revenue Board — Death of land-holder, party to suit, after vesting order made under S. 6, Zamindari Abolition Act — Joinder of parties in appeal — The Board of revenue has the power to implead the Gaon Sabha as a party to the appeal. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 49. **AIR 1956 All 704 (DB).**

——R. 7—Section 6 of the Act and Rr. 4, 5, 6 and 7 of the rules are ultra vires of the legislature in view of sub-ss. (3) and (4) of S. 344 of the Act. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. **1952 All L J (Rev) 267.**

RULE 8

——R. 8 (a)—Scope—If mandatory.

The portion of the rule which lays down the manner of recovery by setting off against compensation due under the Zamindari Abolition and Land Reforms Act, is mandatory; that mandatory direction has to be carried out but without prejudice to other means of recovery. Once the tax is actually realised by this means, proceedings taken by the other means will have to stop. On the other hand, if some tax is recovered by other means before effect can be given to set-off under R. 8(a), that recovery would not become void. **1960 All W R (HC) 412 : 1960 All L J 542.**

RULE 8-A

——R. 8-A—Scope — Zamindari Abolition — Compensation Bonds issued to intermediaries cannot be accepted in payment of agricultural income-tax. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 6(d). **AIR 1965 S C 1919.**

——R. 8-A—Rule is mandatory — Agricultural income-tax due from Zamindar—Collector is bound to adjust it against compensation due to him. Collector and Deputy Commissioner, Sultanpur v. Raja Jagdish Pratap Sahi, **1965 All W R (HC) 344 : 1965 All L J 705 : (1965) 57 I T R 784 : (1965) 2 S C R 29 : (1965) 1 S C J 398 : (1965) 1 I T J 437 : A I R 1965 S C 909 (912) (Pt A) (Pr 7).**

——R. 8-A—U. P. Agricultural Income-tax Act (3 of 1949), Ss. 6(d), 3, 2(13) — Assessment of agricultural income-tax for assessment year ending no 30-6-

1953 — Tax is in respect of income during previous year ending on 30-6-1952 — Rule 8-A applies to its recovery.

Section 3 of the U. P. Agricultural Income-tax Act emphatically charges the total agricultural income of the previous year to tax. It is true that assessment under the Act is made after the close of the previous year, but the income which is liable to tax is the income of the previous year. Where, therefore, the tax assessed is in respect of the agricultural income for the period of the previous year, i.e , for the period which ended on June 30, 1952, the case clearly falls within the terms of S. 6(d) and the benefit of R. 8-A was admissible to the assessee though the tax is due in assessment year ending on 30th June, 1953. Collector and Deputy Commissioner, Sultanpur v. Raja Jagdish Pratap Sahi, 1965 All W R (HC) 344 : 1965 All L J 705 : (1965) 57 I T R 784 : (1965) 2 S C R 29 : (1965) 1 S C J 398 : (1965) 1 I T J 437 : A I R 1965 S C 909 (912) (Pt B) (Pr 8).

RULE 16

——Rr. 16, 18, 19—Scope — Order under R. 16 — If open to challenge in civil Court.

Rule 19 does not apply to an order passed under R. 18. Rule 19 speaks of a Court of competent jurisdiction and does not speak of a civil Court. Therefore, that rule is not an indication of the fact that even an order under R. 16 can be challenged in a civil Court. The competent Court under R. 19 could still be the 'revenue Court' and R. 19 nowhere says that the 'competent Court' would be the civil Court. 1958 All L J 302 : 1958 All W R (HC) 481.

RULE 18

——R. 18—Scope — Rule 19 does not apply to an order passed under R. 18. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), Rules under R. 16. 1958 All L J 302.

RULE 19

——R. 19—Rule 19 speaks of a Court of competent jurisdictions and does not speak of a civil Court. The competent Court under R. 19 could still be the 'revenue Court'. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Rules (1952), Rules under R. 16. 1958 All L J 302.

RULE 26-A

——Rr. 26-A and 115-C to 115-F—Scope — Lease of plots by Gaon Samaj—Lessee removing trees—Liability to pay compensation for damage. 1958 All W R (HC) 647 : 1958 All L J 524.

RULE 41

——R. 41—Assignee of land revenue, simpliciter—Not entitled to compensation. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 45. 1962 All L J 835.

RULE 47

——R. 47—Scope—S. 9 of the U. P. Zamindars' Debt Reduction Act, 1952 does not apply to the case of interim compensation which is payable in cash under R. 47 of the Rules under U. P. Zamindari Abolition and Land Reforms Act. 1959 All L J 676.

RULE 52

——R. 52—Contempt of Courts Act, S. 3 — Payment of interim compensation under U. P. Zamindari and Land Reforms Act without security or sureties — Such payment does not amount to contempt of Court by Compensation Officer — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 29) — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1951), R. 52). See Contempt of Courts Act (1952), S. 3. 1960 Cri L J 442 : AIR 1960 All 231 (DB).

RULE 77

——R. 77—Inherent powers of Board of Revenue, in revision under S. 48 (2), U. P. Act (35 of 1934), to give directions to Collector — Proceedings for liquidation of decretal debt before Collector—U. P. Act (1 of 1951) coming into force during pendency and proprietary rights of Judgment-debtor vesting in State Government—Remedy under U. P Act (35 of 1934) and (1 of 1951) for directing Compensation Officer to place compensation money at disposal of Collector, not availed of — Compensation bonds delivered to Judgment-debtor — Proceedings started by creditor before Collector to stop payment of compensation bonds and to attach properties of Judgment-debtor — Order by Board of Revenue in revision under inherent powers directing Collector to take such action — Not valid. See Civil P. C. (1908), S. 151. AIR 1964 All 203.

RULE 84

——R. 84 — Discretion of Compensation Officer to deposit or not to deposit compensation amount payable to limited owner — No direction issued by State Government—It cannot be said that the compensation officer did not act in accordance with the directions given by the State Government — R. 84 does not give any direction with respect to this matter. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 69. A I R 1954 All 202 (DB).

——R. 84—Rules cannot take away what is given by Act — Hence contention that State Government can make a rule No. 84 taking away the discretion of the compensation officer given under S. 69 cannot be accepted. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 69. A I R 1954 All 202 (DB).

RULE 85

——R. 85 — Hindu Succession Act, S. 14—"Possession—Meaning—Compensation in respect of property acquired under U. P. Act 1 of 1951—Right of widow of Zamindar to amount deposited in Bank under S. 69 of the U. P. Act—The amount would be deemed to be in possession of the widow — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 69 and 72, Rules under R. 85. See Hindu Succession Act (1956), S. 14. A I R 1964 All 165.

RULE 115

——Rr. 115 and 115-C — Scope and Validity — Rule held does not conflict with S. 209 of the Act — (Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 209) —(Constitution of India, Art. 14). See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 115-C. A I R 1958 All 97.

——Rr. 115 and 115-C — Duty of Collector — Interference by High Court — (Constitution of India, Art. 226).

When the report is made by the member of the Land Management Committee it is at that stage that the Collector has to make up his mind whether he will take steps for the removal of the encroachment or the repair of the damage under the subsequent sub-clauses of R. 115 or file a regular suit. Where that stage was over and the Collector had already issued notice under R. 115-D and had selected to take steps for the removal of the encroachment or to repair the damage, and the aggrieved party applied for prohibition directing the officer concerned not to proceed further with the matter.

Held, that the proceedings taken by the Collector were in the nature of quasi-judicial proceedings and the High Court could issue a writ of prohibition. AIR 1958 All 97 (99 to 101) (Pt C) (Prs 11, 12).

——Rr. 115, 115-A and 115-B — Scope — Auction sale of fishery right — Directions in para. 62 (2), U. P. Gaon Samaj Manual—Non-observance—Effect.

The auction of fishery right in tanks and ponds does not fall under cl. (d) of sub-r. (1) of R. 115 at all. Para. 62 of the Gaon Samaj Manual cannot therefore be said to be a direction issued under S. 115-A of the Zamindari Abolition and Land Reforms Rules and, as such, it cannot have the force of law or a direction validly issued under rule 115-A. Further the directions are not of a mandatory nature and therefore the land management committee was not bound to follow the directions. 1957 All W R (HC) 818 : 1957 All L J 716.

RULE 115-C

——Rr. 115-C and 115-D — Validity of — Rules not void in view of introduction of S. 122-B in U. P. Zamindari Abolition and Land Reforms Act, 1951 (as inserted by U. P. Act 28 of 1961). 1965 All W R 466 : 1965 All L J 837 : ILR (1965) 2 All 845.

——R. 115-C — Tehsildar invested with powers of a Collector — Tahsildar has no jurisdiction to try suits. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 122-B (2). 1965 All W R 466 : 1965 All L J 837 : ILR (1965) 2 All 845.

——R. 115-C—Bona fide question of title involved — Collector or Assistant Collector had no jurisdiction to decide the case. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 122-B (as Inserted in 1961). 1965 All W R (HC) 1 : 1965 All L J 236 : ILR (1965) 1 All 423.

——R. 115-C — Application by Chairman, Land Management Committee under R. 115-C either under R. 5 (1) or sub s. (2) of S. 122-B — In either case proceedings are not ultra vires. See Tenancy Laws—U P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 122. 1964 All W R (HC) 748.

——R. 115-C—Proceedings under can be commenced at the instance of the Chairman, any Member or Secretary of the Land Management Committee—Mere allegation of absence of complaint from Committee as such—Proceedings not rendered void. ILR (1961) 1 All 26.

——R. 115-C — It is only in respect of the properties which are covered by the description given in R. 115-C that the power belonging to the Collector under these and subsequent rules is exercisable Where, therefore, in a dispute regarding the ownership of a well, the Assistant Collector decided the matter under Rule 115-D, it was held that well was not the property which came within the description of R. 115-C and hence the Assistant Collector had no jurisdiction to pass orders under R. 115-D. 1960 All L J 575 : 1960 All W R (HC) 433 : ILR (1960) 1 All 605.

——R. 115-C—Application made before amendment of February, 1957 — Some of applicants members of Committee — Competency.

There is nothing in R. 115-C (1) or (2) which makes it obligatory on the members of the Land Management Committee to make the report after they have received the sanction by a resolution of the Land Management Committee. The power under Cl. (2) has been given to the Chairman or any member or Secretary of the Committee to bring all cases of injury to the property of the Gaon Samaj to the notice of the Collector. Therefore, when some of the applicants are admittedly the members of the Land Management Committee it cannot be said that there was no proper report to the Collector on which action could be taken by him. Form No. 49 which was inserted in Cl. (2) of R. 115-C was amended in February 1957 and did not apply to the application made before that date. A I R 1958 All 97 (99) (Pt A) (Pr 8).

——Rr. 115-C and 115 — Scope and validity — If conflicts with S. 209 of the Act — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 209) — (Constitution of India, Art. 14).

There is no conflict between R. 115-C of the Rules and S. 209 of the U. P. Act (1 of 1951). The two provisions are not discriminatory and are not hit by the provisions of Art. 14 of the Constitution. Action cannot be taken under R. 115-C in cases where the title of the Gaon Samaj itself is disputed; nor does R. 115-C apply to a case where a person has been put in possession of the land under a patta on behalf of the Land Management Committee and to ignore the patta on the ground that that was illegal, and regard the possession of the tenant as that of a trespasser and consider it as an encroachment on the land or an injury or damage to such a land. Even if the Collector has a right to declare the patta illegal the remedy of the Collector is to file a suit against the petitioner under S. 209 and not to take action under R. 115-C. A I R 1958 All 97 (99) (Pt B) (Pr 11).

——Rr. 115-C and 115—Stage when Collector should make up mind which step he should take — Stage passed —High Court can interfere — (Constitution of India, Art. 226). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 115. AIR 1958 All 97.

RULE 115-D

——R. 115-D — 'Collector' — Meaning of the expression — Tahsildar, on whom powers of an Assistant Collector of the first class could be conferred under S. 224 of the U. P. Land Revenue Act (1901) as amended by U. P. Acts 37 of 1958 and 10 of 1961 would be comprehended in the expression. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 3. 1965 All W R 466 : 1965 All L J 837 : ILR (1965) 2 All 845.

——R. 115-D—Validity of — Rules not void in view of introduction of S. 122-B in U. P. Zamindari Abolition and Land Reforms Act, 1951 (as inserted by U.P. Act 28 of 1961). See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 115-C. 1965 All W R 466 : 1965 All L J 837 : ILR (1965) 2 All 845.

——R. 115-D — Tehsildar invested with powers of Collector — Jurisdiction of, to try suits. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 122-B (2). 1965 All W R 466 : 1965 All L J 837 : ILR (1965) 2 All 845.

RULE 115-G

——R. 115-G (1) — Encroachment or land vested in Gaon Samaj—Person cultivating the land — Proceedings under R. 115-C and S. D. O. ordering him to pay double amount of one year's rent — Order passed is one under R. 115 (1)— Intention to allow, the person to be in possession of crop till its harvesting can be implied. ILR (1961) 1 All 26.

RULE 115-H

——R. 115-H — Suit by person affected by order of Collector — Suit not confined to declaration of title alone — In case of conflict between Collector's decision and Court's decision latter prevails. 1963 All L J 426.

RULE 156

—Rr. 156 to 169—Applicability. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 182A. 1965 All L J 948 : 1965 All W R (HC) 584.

RULE 167

—R. 167 — Surrender by Sardar — Provisions of S. 183 complied with — Acceptance by competent authority not necessary. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 183. 1957 All L J 910.

RULE 177

—R. 177—Rule is only directory—Lease in respect of lands fetching rent below Rs. 100, registered — Absence of attestation by Revenue Officer — Instrument is not invalid under Para. 79 of Gaon Samaj Manual — Its attestation by Superior, Qanungo is neither mandatory nor necessary — U. P. Gaon Samaj Manual, Para. 79 (7). 1964 All W R (HC) 606 : 1964 All L J 837.

RULE 177-A

—R. 177-A — Applicability — Does not apply to tenant's land. 1965 All W R (HC) 544.

RULE 182

—R. 182 (1)—U. P. Revenue Court Manual, R. 150 —Revision before Board of Revenue from proceeding under S. 198 of U. P. Zamindari Abolition and Land Reforms Act —R. 190 is attracted — Non-compliance —Effect of.

Although appeals and revisions have not been expressly mentioned in R. 182 (1) it appears that R. 182 (1) applies to appellate and revisional Courts also. Hence R. 190 of the Revenue Court Manual is attracted, when the Board of Revenue proceeds to dispose of a proceeding under S. 198 of Act No. 1 of 1951. 1960 All L J 26 and A I R 1960 All 93 Dist. Where a single member of the Board of Revenue proceeded to set aside the Additional Commissioner's order without obtaining concurrence from another Member of the Board, as required by the proviso to R. 190 of the Revenue Court Manual there was non-compliance with R. 190 and the order of the Board of Revenue must be quashed. 1963 All L J 837 : ILR (1964) 1 All 203 : (1964) All W R (HC) 552.

RULE 183

—R. 183 (2) — Relevancy in interpreting S. 232 of U. P. Act 1 of 1951— Only because the provisions of S. 232 are similar to the provisions of S. 27 of the U. P. Tenancy (Amendment) Act 1947 it is not permissible to say that because under S. 27 the persons who can apply for reinstatement are persons ejected through Court—The persons who can take advantage of S. 232 also must belong to the same class. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 232. 1957 All L J 171.

RULE 186

—R. 186—U.P. Revenue Manual, R. 190—Revision arising out of case under S. 232, U. P. Zamindari Abolition and Land Reforms Act — Rule does not apply — (Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 232). See U. P. Revenue Manual, R. 190. AIR 1960 All 93 (DB).

RULE 191

—R. 191—Applications under S. 232—Second appeal to board of revenue does not lie. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) (as amended by U. P. Act 16 of 1953), S. 331. 1956 All L J 897.

RULE 239

—R. 239 — One single member of Board — Can review his or his predecessor's order. See Tenancy Laws —U. P. Tenancy Act (17 of 1939), S. 273. AIR 1960 All 93 (DB).

RULE 285-E

—R. 285-E— Civil P. C. (1908), O. 21, R. 85— Petitioner's land attached for default to pay revenue dues — Auction sale on 22nd November 1958 — Balance of 75% of purchase money not deposited by auction purchaser till 8th June 1959—Sale confirmed on 10th July 1959—Held sale was a nullity due to non-payment of balance within 15 days of sale—Confirmation of invalid sale was also invalid — There being no alternative remedy to petitioner writ jurisdiction of High Court would be appropriate forum for ventilating grievance particularly as the only relief would be a re-auction of property — Constitution of India, Art. 226 : A I R 1954 S C 349; A I R 1957 All 558 Rel. on. 1965 All L J 277.

RULE 285-I

—R. 285-I — Order of Commissioner setting aside sale under U. P. Z. A. and L. R. Rules, R. 285-I, on ground of irregularity in sale proclamation — Order, however, failing to record finding that party had suffered substantial injury—Order reversed by Government under S. 219 of Land Revenue Act without hearing petitioner — Held, order of Government contravened para. 913 of Revenue Manual read with R. 119 of Revenue Court Manual and also violated principles of natural justice and omission of Commissioner to record finding as to substantial injury was not sufficient for not interfering with impugned order — Constitution of India, Art. 226. See U. P. Land Revenue Act (3 of 1901), S. 219. 1965 All W R (HC) 826.

RULE 339

—R. 339 (2)—Delay in filing appeal due to mistake of Court in failing to give intimation of delivery of judgment as required under law — Appeal within limitation from date of knowledge but beyond limitation from date of judgment — There is no delay in filing of appeal and no question of condonation arises. See Limitation Act (1908), S. 5. AIR 1964 All 228.

APPENDIX III, S. No. 30, CLAUSE (iii)

—Appendix III, S. No. 30, Cl. (iii) — "Date of occupation" — Interpretation of. See Tenancy Laws —U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 209. 1964 All L J 1045.

—VINDHYA PRADESH ABOLITION OF JAGIRS AND LAND REFORMS ACT (11 of 1952)

PREAMBLE

● —Preamble—Constitutionality of Act as a whole cannot be challenged in view of Art. 31-A of Constitution of India. State of Vindhya Pradesh v. Moradhwaj Singh, 1960 S C J 754 : 1960 M P C 447 : 1960 Jab L J 793 : 1960 M P L J 1118 : 1960 Nag L J 678 : (1960) 3 S C R 106 : AIR 1960 S C 798 (798) (Pt A) (Pr 3).

SECTION 1

—S. 1 — Art. 31-A of the Constitution applies to V. P. Act 11 of 1952 and thus bars all objections to the validity of the Act based on contravention of Art. 31 (2) or on the adequacy or reasonableness of the compensation. See Constitution of India, Art. 31-A. AIR 1954 Vind Pra 24.

—S. 1—Applicability of Art. 254 to Part C State— Repugnancy between Part C Act and Parliamentary legislation — Effect — V. P. Act of 1952 is not void under Art. 254 (1). See Constitution of India, Art. 254. AIR 1954 Vind Pra 24.

——Ss. 1, 22, 37 and Sch., Cl. 4 (e)—Validity of — Entire Act except Ss. 22, 37 and Sch., Cl. 4 (e) is valid.

The V. P. Abolition of Jagirs and Land Reforms Act, 1952, as a whole is valid and constitutional subject to the following exceptions :

(a) That the 3 year test under S. 22 is bad as a piece of colourable, discriminatory legislation.

(b) That S. 37 barring the jurisdiction of Civil Courts is void under S. 22 of Government of the Part C States Act in view of repugnance to existing Parliamentary law in S. 9 of the C. P. Code.

(c) That cl. 4 (e) of the schedule is invalid and inoperative because it leads to the result of no compensation for a separable and independent item of interest in the property. AIR 1954 Vindh Pra 24 (29, 32) (Pt A) (Prs 27, 43, 47).

[Reversed in AIR 1960 S C 796.]

SECTION 2

——S. 2 (1) (e)—"Ijaredar"—Meaning of—Lambardari lease conferring actual rights in land — Lessee held not a mere Ijaredar.

The word 'Ijaredar' used in S. 2 (1) (e) cannot be held to mean any lease of land of whatever kind. It should be confined to a person holding an Ijara which is a lease or form of land revenue or other proprietary right as distinguished from other kinds of leases of land. Padmini Kunwar Ju Sahiba v. State of Vindhya Pradesh, (1962) 1 S C J 531 : (1961) 3 S C R 907 : AIR 1961 S C 1204 (1205, 1206) (Prs 4, 6).

——S. 2 (f) — Land cultivated in 'adhiya' is not personal cultivation. 1960 M P L J (Notes) 1.

——Ss. 2 (c) and 2 (d) — Definition of Jagirdar and Jagir.

The terms 'jagirdar' and 'jagir' as defined in Ss. 2 (c) and 2 (d) are cognate terms, the former being the holder of an interest, and the latter the interest itself and hence when the term 'Jagirdar' has been defined very widely and comprehensively an apparent narrowness in the definition of 'Jagir' is not of any material consequence. AIR 1954 Vindh Pra 24 (26) (Pt B) (Pr 6).

SECTION 5

——S. 5—Rent does not include a consideration paid by an assignee to the assignor of a bandh. 1964 M P L J 200 : 1964 Jab L J 135.

SECTION 6

——S. 6 (g) — Part C States (Laws) Act, (1950) — S. 22 (as amended in 1954) — Conflict between provisions of S. 6 (g) of Abolition Act and S. 58, T. P. Act —S. 6 (g) not void after amendment of S. 22, Government of Part C States Act, in 1954. See Government of Part C States Act (49 of 1951), S. 22. AIR 1961 Madh Pra 216 (DB).

——S. 6—Scope — Resumption of Jagir lands subject to mortgage with possession — Personal liability of Jagirdars.

The effect of Cl. (g) of S. 6 (1), under which a mortgage with possession of the Jagir land, after resumption, is to be deemed to have been substituted by a simple mortgage, is not to render the Jagir lands held by the State Government liable to be sold for recovery of the mortgage debt. Section 6 (1) (a) provides that all lands shall stands resumed to the State Government 'free from all encumbrances'.

The word 'shall be deemed to have been substituted' used in sub-s. (ii) of Cl. (g) imply the creation of a legal fiction. The object of creating the fiction is to exonerate the State Government from any liability for the debt. It necessarily follows from the legal fiction that the Jagirdar (mortgagor) becomes personally liable for the debt as the security is destroyed by the vesting of the property in the State. Accordingly, the mortgagee has a right to sue for recovery of the amount from the Jagirdar. 1961 M P C 160 : 1961 Jab L J 836 : 1961 M P L J 1429 : ILR (1960) Madh Pra 1029 : A I R 1961 Madh Pra 216 (219, 220) (Pt C) (Prs 15, 19) (DB).

——S. 6—Rules under, Rules 4 and 5—Suit for redemption of resumed Jagir, abatement of.

A redemption suit is essentially a mixed suit for accounts and possession. A suit for possession is necessarily a suit for ejectment as the plaintiff is put into possession after the ejectment of the defendant. Hence a suit for redemption of land which forms part of a resumed jagir, so far as it relates to the relief of possession is a proceeding for ejectment from the land of a resumed jagir within the meaning of R. 4 (1) and should be abated under R. 5. A I R 1954 Vin Pra 13 (15) (Pt B) (Prs 7, 8).

SECTION 7

——Ss. 7, 22 and 28 (1)—Scope—Validity of S. 22 —If colourable legislation—If violates Art. 14.

The Vindhya Pradesh Legislature had full competence to enact S. 22 under entry 18 of List 2 of Sch. 7 of the Constitution. Section 22 cannot be challenged as a colourable piece of legislation. The provisions of S. 22 as a whole provide a scheme for carrying out the intention of the legislature expressed in S. 7 (a) of the Act and are perfectly constitutional. A I R 1953 S C 375; 1953 S C J 592, Applied. Section 22 does not violate Art. 14. Even if it be held that there is discrimination under S. 22 (1) as compared to S. 28 (1) it cannot be a ground for striking down S. 22 (1) in view of Art. 31-A. Sections 7 and 22 of the Act work out the scheme of acquisition of estates and are incidental provisions which are equally protected under Art. 31-A along with the main provisions contained in Ss. 5 and 6 of the Act. A I R 1959 S C 475, Rel. on. State of Vindhya Pradesh v. Moradhwaj Singh. 1960 S C J 754 : 1960 M P C 447: 1960 Jab L J 793 : 1960 M P L J 1118: 1960 Nag L J 678 : (1960) 3 S C R 106 : A I R 1960 S C 796 (799) (Pt B) (Pr 6).

——S. 7—Land not in personal cultivation of jagirdar —Order of allotment—Not valid—Writ of certiorari— High Court has jurisdiction to issue — (Constitution of India, Art. 226). See Tenancy Laws — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 22. **A I R 1956 Vin. Pra 12.**

——Ss. 7 (b), 7 (c), 11 (4), 13 (8), 27 (2) and 41 — Validity of — Do not amount to delegation of legislative power.

Though in S. 7 (b) and (c), S. 27 (2), S. 41, S. 11 (4) and S. 13 (8) certain things are left open to be 'prescribed' by the rule-making authority, the legislature is not dealing with the acquisition of the Zamindari and is not enunciating the principles and the manner of paying compensation in these provisions. Here it is dealing with the consequential matters following from its policy of leaving certain properties with the Jagirdar, tenant, or other person as the case may be. It also does not leave it to the rule-making authority which property is to be given. It does not therefore, amount either to a complete abdication of legislative

will apply and the jurisdiction of the civil Courts will become barred by virtue of S. 9 read with S. 37 of the Act. S. 37 is not ultra vires the powers of the Vindhya Pradesh Legislature. State of Vindhya Pradesh v. Moradhwaj Singh, 1960 S C J 754 : 1960 M P C 447 : 1960 Jab L J 793 : 1960 M P L J 1118 : 1960 Nag L J 678 : (1960) 3 S C R 106 : AIR 1960 S C 796 (800) (Pt C) (Pr 7).

——S. 37—Provision making order of Collector final —Finality means that no appeal shall lie — Provision does not bar revision of the order to competent authority—Bar of jurisdiction of civil Courts also does not affect power of revision against the order. See Tenancy Laws—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (1952), S. 31. **1965 M P L J (Notes) 26.**

——S. 37—Validity of— S. 37 barring the jurisdiction of civil Courts is void under S. 22 of the Government of the Part C States Act in view of repugnance to existing parliamentary law in S. 9 of the C P. Code. See Tenancy Laws — V. P. Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 1. **AIR 1954 Vind Pra 24.**

[Reversed in AIR 1960 S C 796].

——S. 37—Applicability of Art. 254 to Part C State— Repugnancy between Part C State Act and Parliamentary legislation — Effect — V. P. Act of 1952, is not void under Art. 254 (1). See Constitution of India, Art. 254. **AIR 1954 Vin Pra 24.**

SECTION 41

——S. 41—Validity of — Does not amount to delegation of legislative power. See Tenancy Laws — V. P. Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 7 (b). **AIR 1954 Vin Pra 24.**

SECTION 42

——S. 42—Calculation of gross income — Valuable consideration received for transferring possession of Bundh is not either 'rent' or "other item of income" —It cannot be taken into account. See Tenancy Laws — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 10. **1964 M P L J 200.**

SCHEDULE CLAUSE 3 (b) (i).

——Sch. Cl. 3 (b) (i), Cl. 4 (e)—Cl. 4 (e) is valid — The method of calculation of income provided by these two clauses indicated. See Tenancy Laws—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (1952), Sch. Cl. 4 (e). **AIR 1960 S C 796.**

SCHEDULE CLAUSE 4 (e)

——Sch. Cl. 4 (e) and Cl. 3 (b) (i)—Validity.

Clause 4 (e) of the Schedule to the Act is valid. Though the landlord may have to pay rent in future for the land remaining with him, he does not pay any revenue which was payable by him so far with respect to such land. In the circumstances, it cannot be said that he has been deprived of the proprietary interest without any compensation, for he is relieved of the charge of paying land revenue which has also been taken into account in arriving at the net assets for that purpose, and that is all that he can expect, considering that the land remains in his possession for all other purposes. State of Vindhya Pradesh v. Moradhwaj Singh. **1960 S C J 754 : 1960 M P C 447: 1960 Jab L J 793 : 1960 M P L J 1118 : 1960 Nag L J 678 : (1960) 3 S C R 106 : A I R 1960 S C 796 (800, 801) (Pt D) (Pr 8).**

——Sch. Cl. 4 (e) — Validity of — Cl. 4 (e) of the Schedule is invalid and inoperative because it leads to the result of no compensation for a separable and independent item of interest in the property. See Tenancy Laws—V. P. Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 1. **AIR 1954 Vin Pra 24 (DB).**

[Reversed in AIR 1960 S C 796.]

—VINDHYA PRADESH LAND REVENUE AND TENANCY ACT 1953 (30 of 1955)

SECTION 135.

——Ss. 135, 220 — Hindu Women's Rights to Property Act, S. 3 — Sons living separate from father — No presumption of partition can be raised — Sons could be excluded from inheriting father's property only if they separated after partition—Father dying after Hindu Women's Rights to Property Act came in force—Widowed mother entitled to share along with sons. **1963 M P L J (Notes) 72.**

SECTION 153

——Ss. 153 and 215—Claim for possession of holding —Application to Tahsildar under S. 215 is alternative summary remedy — Civil suit is not barred — S. 153 prohibits specified fragmentation — It does not prohibit transfer of the whole holding — Attesting witness testifying attestation of gift—Attestation valid— Evidence Act (1872), S. 68. **1962 M P L J (Notes) 237.**

SECTION 159

——S. 159—Limitation Act (1908), Art. 144—Adverse possession of inalienable property—Right, transfer of which is prohibited by Act, can still be possessed adversely — (Tenancy Laws — Rewa Land Revenue and Tenancy Code (1935), S. 76). See Limitation Act (1908), Art. 144. **AIR 1956 Vin Pra 34.**

SECTION 194

——S. 194 (1) — Transfer of Property Act, S. 114 — S. 114, Transfer of Property Act is not applicable to agricultural leases unless made so applicable by contract—Matter in such cases to be governed by specific provision of special Act. 1962 M P L J 609 (SC), Rel. on. **1962 M P L J (Notes) 304.**

——S. 194—Failure to pay rent within two months— Sub-tenant liable to ejectment—Mere intention to pay not sufficient. **1962 M P L J (Notes) 153 (Rev).**

SECTION 212

——Ss. 212 and 214 — Power to determine obstruction—If, exercisable by Nyaya Panchayat.

Section 214 of the Act lays down that if Tahsildar finds that any obstacle has been erected impending the free use of a recognised road, path or common land of a village or obstracting a road or watercourse which had been the subject of decision under S. 212 of the Act, he may order the person responsible for creating the obstacle to remove it. The Tahsildar's jurisdiction and thus of Nyaya Panchayat by virtue of S. 70 of the Ordinance is, therefore, limited to the consideration of the question whether an obstruction has been put on land which has been subject of decision under S. 212 of the Act. In the absence of any adjudication under S. 212 the Nyaya Panchayat could not deal with the matter as if it had been called upon to decide for the first time whether the land was a recognised road, path or common land. **1961 M P L J (Notes) 143.**

SECTION 215

——Ss. 215 and 218—A suit for possession of land based on title is maintainable in civil Court — Such suit is not barred under S. 218 of the Act.

The provisions contained in Ss. 215 and 218 of the Vindhya Pradesh Land Revenue and Tenancy Act, 1953, correspond to Ss. 250 and 257 of the Madhya Pradesh Land Revenue Code (1959). **1965 M P L J (Notes) 165.**

the natural meaning of the word "desire" and the absence of any qualification of any kind to restrict its natural meaning, as also the difference between that expression and the expression "bona fide required" which had been used in a series of Rent Acts but has not been used in the Barga Act, there is no room for importing any considerations of "bona fides" of requirement in the decision of a question under S. 5 (1) (a). 26 C W N 499, Referred to. **56 Cal W N 320 : 89 Cal L J 196 : AIR 1951 Cal 574 (575) (Pt A) (Pr 9) (DB).**

——S. 5 (1) (a) — Constitution of India, Art. 227 — Special tribunal not applying correctly provisions of law—High Court is entitled to correct in exercise of its powers under Art. 227. See Constitution of India, Art. 227. **AIR 1951 Cal 574 (DB).**

SECTION 6

——Ss. 6 (2), 19 (2) (d), 12 (1), 2 (h) — R. 8 (1)— Validity.

Even though under S. 6 (2) the full Board has to consist of a chairman and four other members with two representatives of bargadars and two representatives of owners, it is obvious that in order to carry out the purposes of the Act some sort of quorum has to be prescribed and this is precisely what the Government have done by making rule 8 (1) of the Rules under the Act. The rule is clearly reasonable, even though no provision for proportionate representation of bargadars and owners has been made in the rule. The rule has statutory force and it is well within the competence of the State Government to make such rules. An order passed in conformity with R. 8 (1) cannot be held to be ultra vires or without jurisdiction. 63 CWN 627, **Overruled. 63 Cal W N 905 : AIR 1959 Cal 758 (758) (Pr 2) (DB).**

——S. 6 — Tribunal — Meaning of — Conciliation Board under Bargadar's Act, is tribunal. See Constitution of India, Art. 227. **AIR 1955 NUC (Cal) 2074 (DB).**

——Ss. 6 and 2 — Person filling both characters of owner and bargadar — If proper representative of bargadars.

Section 6 of the W. B. Bargadars Act, read with S. 2 thereof, envisages that the representatives of bargadars must be bargadars pure and simple. If a person fills dual characters, such as that of a bargadar and that of an owner, he has conflicting interests to serve as such owner and bargadar. In order that the interest of bargadars can be properly and adequately served, the person representing the interest of the bargadars must be a bargadar, pure and simple. **AIR 1952 Cal 868 (869, 870) (Prs 12, 14, 15).**

SECTION 7

——S. 7—Board's power to pass interim or prohibitory order — (C. P. Code (1908), S. 9)—(Special Tribunal).

The Bhagchas Board which is entirely a creature of the statute cannot act except within the four corners of the Statute which sets it up. Section 7 of the Act, empowers the Board to decide disputes, with respect to matters mentioned in the section, between a bargadar and an owner of the land, and there is nothing in the said section or in the Act empowering the Board to make an interim order or even to pass any prohibitory order. In the absence of provisions in the Act which confers any such general powers on the Board, the Board has no power other than those specifically conferred on it by the Act. 59 CWN 119, followed. **(1957) 61 Cal W N 149.**

——Ss. 7 (1), 9 (2) and 18 — Dispute relating to matters mentioned in S. 7 (1) — Civil Court's jurisdiction to decide.

The cumulative effect of Ss. 7 (1), 9 (2) and 18 of the West Bengal Bargadars Act is that the only forum available for settlement of every dispute relating to matters mentioned in S. 7 (1), i.e., dispute regarding the division or delivery of the produce is the Board established for the area concerned and no Court shall entertain any suit required to be decided by the Board. Even if no Board has been established by the Government for the local area concerned, the Civil Court has no jurisdiction to decide such dispute. 59 Cal W N 658, Approved. **60 Cal W N 351 : ILR (1957) 2 Cal 435 : AIR 1956 Cal 497 (498) (Pt A) (Pr 3)(DB).**

[**Overruled** in AIR 1966 Cal 285.]

——Ss. 7 (3) and 15—Proviso to S. 7 (3) as added by Amendment Act (I of 1953)—Effect— Suit for share in cash — Jurisdiction — (C. P. Code (1908), S. 9).

Held, that the Board had jurisdiction to make award or order for payment of the price of owner's share of the bhag produce, and under the terms of S. 9 (2) the Civil Court had no jurisdiction to entertain the suit. **(1956) 97 Cal L J 287: 60 Cal W N 894.**

——S. 7—Board cannot make interim order that pending decision of dispute produce of land should be kept in custody of receiver—It is only empowered to decide dispute. **AIR 1955 NUC (Cal) 4510.**

——S. 7 (1) — Suit for termination of Bargadar's cultivation — Effect of non-establishment of Board—That does not give jurisdiction to Civil Court to entertain suit. See Tenancy Laws—W. B. Bargadar's Act (2 of 1950), S. 9 (2). **AIR 1955 NUC (Cal) 4283 (DB).**

——Ss. 7 (1). 8, 9—Scope — W. B. Bargadars Ordinance (10 of 1949).

Prima facie, an Act of a legislature is prospective and speaks from the date of its coming into force in the absence of an express provision to the contrary or a necessary intendment in the Act. There is nothing either in the W. B. Ordinance 10 of 1949 or in W. B. Act 2 of 1950, which contains an express provision or a necessary intendment to the contrary. On the other hand, Ss. 7 (1) (a), 7 (1) (b) and 7 (1) (c) and S. 8 of the Bargadar Act contemplate a State of events which can only occur after the Statute came inco operation. These sections reinforce the general rule that the Bargadars Act, 1950, must be taken to operate prospectively.

The word 'any' in S. 9 (2) refers to any disputes which occur after the Act came into force. The dispute which occurred in 1946-47 does not come within S. 7 (1) (a) and a right to sue in civil Court in consequences of that dispute has not been taken away by S. 9 (2) of the W. B. Act (2 of 1950). **AIR 1955 NUC (Cal) 935 (DB).**

——S. 7—Dispute prior to Act—Conciliation Board can decide—High Court cannot decide under Article 226 of the Constitution — (Constitution of India, Art. 226). AIR 1955 NUC (Cal) 194.

——Ss. 7 and 9—Dispute as to division or delivery of barga paddy—Dispute must be referred to Board — Civil Court has no jurisdiction — (Civil P. C. (1908), S. 9. **57 C W N 532 : AIR 1953 Cal 720 (720) (Pt A) (Pr 3)**

——Ss. 7 and 9 (2)—Jurisdiction of Conciliation Board.

If the reliefs asked for by the applicants come under any one or more of the clauses enumerated in S. 7 of the Act, the Bhag Chas Conciliation Board will have jurisdiction to decide a question, such as a question of title, not falling within that section, as ancillary or incidental to the reliefs asked for by the applicants, though the decision on such question will not certainly be final or conclusive and will not be

ceedings under S. 403, Penal Code, were misconceived and the Magistrate was justified in making an order under S. 253, Criminal Procedure Code. (1957) 61 Cal W N 522 : 1957 Cri L J 671 (671, 672) (Pt A) (Prs 4, 7).

——S. 14—Elements of offence under.

In a prosecution under S. 14 two things need be proved; (i) the existence of an order or award made by a Board, and (ii) non-compliance with that order or award. If these two elements are proved, the offence described in S. 14 is established. (1957) 61 Cal W N 522 : 1957 Cri L J 671 (671) (Pt B) (Pr 5).

——S. 14—Scope—Offence—Complaint under Penal Code — Dismissal — Subsequent complaint under S. 14, W. B. Bargadars Act if barred — (Penal Code (1860), S. 403)—(Cr. P. Code (1898), Ss. 253, 403).

An order of discharge in respect of an offence under S. 403, Penal Code, cannot possibly be a bar to a properly framed complaint under S. 14 of the Bargadars Act. (1957) 61 Cal W 522 : 1957 Cri L J 671 (671) (Pt C) (Pr 5).

——S. 14—Procedure—(Criminal P. C. (1898), S. 29 and Schedule II)—Applicability.

For the trial of offences under the W. B. Bargadars Act, the procedure prescribed by the Code of Criminal Procedure will undoubtedly apply. Under the second schedule of the Code any magistrate can try a contravention of S. 14 of W. B. Bargadars Act provided a proper complaint is instituted in Court. (1957) 61 Cal W N 522 : 1957 Cri L J 671 (671) (Pt D) (Pr 6).

——S. 14—Applicability — Order not one under Act —Conviction for contravention—Legality.

The Board passed an order prohibiting a bhagchasi from reaping paddy on the land in dispute without the knowledge of the Board. Thereupon he made a proposal that he would appear before the Board 3 days before the reaping of the paddy and take a member of the Board with him to the spot. He was accordingly given a direction to that effect. But in spite of the direction, he reaped the paddy without taking the member of the Board with him. He was therefore charged under S. 14 of the Act.

Held, that though it was certainly an order passed on the basis of an undertaking given by the accused himself, at the same time in deciding whether the accused came within the mischief of S. 14 of the Act what one had to consider was whether it was an order under the Act; the order in question might be perfectly legal without at the same time being an order under the Act. The order was obviously not one under any of the provisions of the Act and that being so, the accused did not make himself liable under S. 14 of the Act. (1957) 61 Cal W N 149.

SECTION 18

——Ss. 18, 7 (1), 9 (2) — Dispute relating to matters mentioned in S. 7 (1)—Civil Court has no jurisdiction to decide even if there is no Board established for the local area — (Civil P. C. (1908), S. 9). See Tenancy Laws — West Bengal Bargadars Act (2 of 1950), S. 7 (1). A I R 1956 Cal 497 (DB).

[Overruled in A I R 1966 Cal 285].

——S. 18 — Applicability — Not confined to proceedings before Board — It has effect everywhere. A I R 1955 N U C (Cal) 4283 (DB).

——Ss. 18, 9 (2), 7 (1) — Dispute not falling under S. 7 (1)—Board not in existence — Order staying suit is illegal—(Constitution of India, Art. 14). A I R 1953 Cal 95.

——S. 18—Scope of—Power to go behind contract.

Section 18 does not mean that even as regards the existence or otherwise of a settlement of the barga type, the contract or instrument must or may be disregarded. The Board or the Appellate Officer is undoubtedly entitled to see whether a written contract purporting to evidence the arrangement between the parties is a sham document, not representing the true incidents of the contract, but the source of that power is not S. 18. The proper line to take before discarding the instrument would be to see if the recorded payments were consistent with the terms of the agreement or suggested an arrangement on other terms. If the payments were found to be consistent with the terms of the deed, other and stronger reasons would be required in order to hold that the deed did not represent the true relationship between the parties. ('52) 56 Cal W N 124 : A I R 1952 Cal 526 (529) (Pt C) (Pr 18) (DB).

SECTION 19

——Ss. 19 (2) (d), 6 (2), (d), 12 (1), 2 (h) - R. 8 (1)— Validity — Rule has statutory force and is intra vires rule making power of State Government — 63 Cal W N 627, Overruled. See Tenancy Laws — West Bengal Bargadars Act (2 of 1950), S. 6 (2). A I R 1959 Cal 758 (DB).

——S. 19—Rules under R. 7 (3)—Applicability—Does not apply to remanded case. A I R 1955 N U C (Cal) 2074 (DB).

——S. 19—Rules under R. 7 (3) — Time limit — Remand by Superior authority.

The time-limit under S. 7 (3) cannot apply when the case is remanded by a superior authority. ('52) 56 Cal W N 124 : A I R 1952 Cal 526 (530) (Pt D) (Pr 19) (DB).

SECTION 20

——S. 20 — Scope of — Applicability — S. 20 has no application to dispute in respect of which no action has been taken under Ordinance of 1949—Parties can avail themselves of Act provided dispute is of such nature which falls within ambit of Act. A I R 1955 N U C (Cal) 194.

—WEST BENGAL BARGADARS ACT (19 of 1956)

SECTION 1

——S. 1—'Under the Act'—Meaning of.

The words 'under the Act' refer only to those proceedings which are authorised by this Act. There is no scope for extending the benefit of these words to any proceedings under any law other than the West Bengal Bargadars Act, 1950. Rabindra Nath Mahapatra v. Gour Mondal, 61 C W N 311 : A I R 1957 Cal 274 (279, 280) (Pt H) (Prs 21, 25, 29) (FB).

SECTION 2

——S. 2—Scope and operation of.

The West Bengal Bargadars Act, 1956 took the place of the West Bengal Bargadars Ordinance 1956, as soon as the Ordinance ceased to operate. Section 2 of the Act is in the same terms as Cl. 2 of the Ordinance except that a second proviso has been added at the end of the provisions and that in sub-s. 1 (a) (i), corresponding to sub cl. (1) (a) (i) of the Ordinance the words 'or any application for revision' have been added. The Legislature has made no provision for saving the Bargadars Act, 1950, for the purposes of pending proceedings initiated under other laws. The result is that the West Bengal Bargadars Act, 1950, is alive for purposes of and applicable only to, and in, such pending proceedings, authorised by the Act itself, as are mentioned in S. 2 (1) (a), West Bengal Bargadars Act, 1956, provided they were pending on 31-3-1956 and also at the date of the Act. The provisions of the Act are not applicable to or in pending proceedings under other laws such as Art. 227 of the

——S. 2 (i) (as amended by W. B. Act 4 of 1957) —Applicability and scope— Article 31-A of Constitution held attracted. See Constitution of India, Art. 31-A (1) (a). AIR 1960 Cal 646.

Sub-section 2 (k).

——Ss. 2 (k), 5—'Non-agricultural' tenant — Lessee of fishery—Status and rights of.

The right of fishing is not a right in land at all. It is what is called a "profit-a-prendre", and is a right arising out of land. A benefit arising out of land is not the land itself, although it may be a kind of immovable property — Where the lease of fishery expressly laid down that the lessees would have no interest in the underlying or the subjacent land, relating to the jalkar, then they cannot be said to have any interest in non-agricultural land, and therefore cannot be deemed to be non-agricultural tenants. AIR 1956 S C 17, Rel. on; AIR 1944 Cal 315, held not good law in view of AIR 1956 S C 17—The right enjoyed by the lessee is an "easement" and therefore, comes within the meaning of the expression "incumbrance" as used in sub-s. (a) of S. 5 of the Act. Since all estates and the rights of intermediaries in such estates have vested in the Government free from incumbrances it follows that unless the lessee of the fishery can show that he is able to save his rights under some provisions of law the State must take the estate free from his right. (1959) 63 Cal W N 933.

Sub-section 2 (n).

● ——S. 2 (n)—'Charitable purposes'—What amounts to, indicated. See Tenancy Laws—West Bengal Estates Acquisition Act, 1953 (1 of 1954), S. 6(1)(i). A I R 1965 S C 1722.

Sub-section 2 (p).

——Ss. 2 (p) and 4—'Estate'—'Intermediary'.

Held, that the interest of the petitioner under the Sanad was not an intangible right like a political pension, but a right in land. It certainly was an 'estate' as defined under the Bengal Tenancy Act and related to land included under one entry in one of the General Registers of revenue-paying or revenue free lands prepared and maintained under the law for the time being in force by the Collector of a District. It was an interest of an 'intermediary' in such an estate because it was the interest of an intermediary above a raiyat. His interest had always been treated as an intermediate interest in land and entered as such in the record of rights to which at no time had there been any objection. The result was that it was an 'estate' which came within the scope of the West Bengal Estates Acquisition Act, 1953 and by the Notification under S. 4, the estate had vested in the State of West Bengal. (1959) 63 Cal W N 666.

SECTION 3

● ——S. 3—Interpretation of Acts — Must be construed on its actual words — Exemption under S. 6 cannot be enlarged. See Tenancy Laws—West Bengal Estates Acquisition Act, 1953 (1 of 1954), S. 6 (1) (i). AIR 1965 S C 1722.

——Ss. 3, 12, 23 and 26 (as amended by Act 25 of 1937)—Mortgage over property acquired—Compensation—Attachment of by mortgagor — Application for appointment of receiver to collect compensation money — Attachment allowed up to 50 per cent. —Effects — (T. P. Act (1882), S. 73 (2), (3)) — (Civil P. C. (1908), O. 40, R. 1; O. 21, R. 11). (1958) 62 Cal W N 911.

——S. 3 (i) and (k) — Transfer of non-agricultural land by tenure-holder—Tenure-holder not a tenant—S. 24 of West Bengal Act 20 of 1949 does not apply. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 24 (1). A I R 1957 Cal 511.

SECTION 4

——S. 4 (as amended by W. B. Act 35 of 1955) — Notification under S. 4 issued on 10-4-1956 — Validity — Amendment of West Bengal Act being retrospective. estates did not cease to exist on date of amendment — Act protected by Art. 31-A, though notification of vesting is issued later on. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954) (as amended by West Bengal Act 35 of 1955), S. 52. AIR 1964 Cal 552 (DB).

——Ss. 4, 59 (1)—West Bengal Estates Acquisition Rules (1954), R. 4—Right of pre-emption is attracted to Mokarari and Korfa holdings — Prohibition under S. 18 (2) and sub-s. (2) of S. 48-G, of Bengal Tenancy Act (1939) is overcome by the Rule—Rule is not ultra vires. AIR 1964 Cal 460, Applied. See Tenancy Laws — Bengal Tenancy (Second Amendment) Act (13 of 1939), Ss. 18 (2), 489 (2). (1964) 68 Cal W N 1055.

——S. 4 (1)—Sale of part of occupancy rayati holding — Co-sharers in tenancy — Right to pre-emption. See Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 26-F. (1961) 65 Cal W N 354.

——Ss. 4, 2 (i), 5, 28, 29 (as amended by West Bengal Act 4 of 1957) — Amendment of definition of "intermediary" in S. 2 (i) so as to include "lessees and sub-lessees", with retrospective operation—Estate acquired prior to amendment—Effect of amendment—Amendment is valid and covers the law as enacted in the body of the Act — Position of existing lessees and sub-lessees of mines and minerals of such estate after amendment—Fresh notification in terms of S. 4 must be issued to vest their estates and rights in State Government. See Tenancy Laws—West Bengal Estates Acquisition Act, 1953 (1 of 1954) (as amended by West Bengal Act 4 of 1957), S. 2 (i). A I R 1960 Cal 646.

——Ss. 4, 2 (i) (as amended by West Bengal Act 4 of 1957) — Provision for acquisition of rights of lessees or sub-lessees in mines and minerals—Provision does not contravene Art. 31 of Constitution. See Tenancy Laws — West Bengal Estates Acquisition Act, 1953 (1 of 1954) (as amended by West Bengal Act 4 of 1957), S. 2 (i). AIR 1960 Cal 646.

——Ss. 4, 5 (as amended by West Bengal Act 4 of 1957) — Acquisition of estate subject to leases in mines and minerals — Rights to leases in mines and minerals whether extinguished — Quaere. AIR 1960 Cal 646 (663) (Pt D) (Pr 30).

——S. 4—Validity of—(Constitution of India, Arts. 31, 31-A)—(T. P. Act (1882), S. 73 (2)).

Under S. 4, the estate of an intermediary and all rights in the estate vest in the State Government free from all incumbrances, that is to say, free from the mortgage. Under S. 73 (2) of the Transfer of Property Act, the mortgages shift to the compensation money. The definition of the word 'rights' in Art. 31-A includes all kinds of rights in estates. The basic idea was that the land and all rights in it should vest in Government, so that it could be distributed amongst the actual tillers of the soil. The interest of a mortgagee would be included in the words 'rights in an estate' as used in Art. 31-A. That being so, even if it is found that the statute contains no provision for compensation to the mortgagee, still the law is saved by the provisions of Art. 31-A of the Constitution. (1959) 63 Cal W N 751 : I L R (1959) 2 Cal 495.

——S. 4—Receiver in possession — Service of notice on Receiver.

Notice is to be served on whoever is in actual possession and where a receiver has been appointed the Receiver is in possession, although he is the hand of the Court. (1959) 63 Cal W N 751 : I L R (1959) 2 Cal 495.

for damages is also passed against the tenant on the footing that he is declared to be a trespasser from a date prior to the date of vesting. This part of the decree for damages cannot in any way be rendered nugatory by the order of vesting and where such a question is pending in appeal on the date of vesting the question must be finally determined in the appeal. It would be absurd to say that the whole decree including the decree for damages has become infructuous by reason of the vesting. 61 C W N 607, Rel. on. 61 C W N 533, Disting. **(1958) 62 Cal W N 505: ILR (1959) 2 Cal 283.**

——S. 5 — Tenure vesting in State under — Decree-holder's right to proceed against other properties — Bar of S. 168-A of Bengal Tenancy Act, would not apply. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 168-A. **A I R 1958 Cal 255 (DB).**

——S. 5—'Any other person' — If to be read ejusdem generis with intermediary — Sale of right to cut timber from forest for particular period.

Under S. 5 (aa), West Bengal Estates Acquisition Act as amended by W. B. Act 25 of 1957 what vests in Government is not only the land but all the trees standing thereon or the produce of the trees held by the intermediaries or any other person. But the words 'any other person' cannot be read ejusdem generis, with intermediaries The rule of ejusdem generis can only apply where there exists a genus or category. The word 'intermediary' does not contain one genus or one category to which the disputed words may be said to belong. By the Estates Acquisition Act all the estates of intermediaries were being acquired. Where the owner of a certain forest had granted a right in 1953 to the petitioner who was admittedly not an intermediary to enter the forest, cut and take away the trees therefrom for a particular period, the petitioner's right is lost by virtue of S. 5 as amended, and he can no longer take away the wood without the permission of the State. **1958 Cal L J 213 : (1958) 62 Cal W N 610.**

——S. 5 -Decree for ejectment — Appeal by landlord decree-holder — Estates Acquisition Act coming into force —Maintainability of appeal. See Tenancy Laws —West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 88. **(1957) 61 Cal W N 607 : ILR (1958) 1 Cal 393.**

——S. 5 (c) — Transfer of non-agricultural land by tenure-holder—Tenure holder not a tenant — S. 24 of W. B. Act 20 of 1949 does not apply. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 24 (1). **A I R 1957 Cal 511.**

——S. 5—Vesting of estate — Effect on lease for felling trees in forest — (Sale of Goods Act (1930), S. 2 (7)—Goods)—(T. P. Act (1882), Ss. 3, 105)—(Constitution of India, Art. 226—Mandamus).

Held on facts, that the so-called lease was not a lease of the land in the usual sense, but it was really a sale of goods and not a transfer of any interest in land. What was sold was the wood standing in a certain forest, for a specified price. The wood that was sold was already standing. It was impossible upon a construction of the agreement in this case to hold that the wood that the petitioner purchased was a purchase of a mere profit a prendre. As it was a sale of goods the property had passed before the Act 1 of 1954 came into operation. The State had been proceeding upon a misconstruction or misappreciation of the Estates Acquisition Act, and was proceeding to take possession of things which had not vested in the Government. Hence there would be a writ in the nature of mandamus and/or an appropriate writ directing the State not to prevent the petitioner from cutting or removing the wood which he was entitled to do under the agreement. A I R 1953 Cal 344, Rel. on. **61 Cal W N 576 : ILR (1958) 1 Cal 55 : A I R 1957 Cal 350 (354 to 357) (Prs 5 to 9).**

SECTION 5-A

——Ss. 5-A, 2 (1) and 20 (2) — Transfer of certain lands by intermediary in 1952—Finding that deed was not bona fide and was antedated to defeat provisions of S. 5-A — Held, enquiry whether deed was antedated was within jurisdiction—Petition under Art. 226 against finding — Alternative remedy under S. 20 (2) available to petitioner—Finding could not be reopened in petition—A I R 1964 S C 1419 and A I R 1959 S C 422, Rel. on. A I R 1965 Cal 539 (540) (Pt A) (Prs 6, 8, 9, 13).

——S. 5-A (7) (iii) — 'Gift' — Dedication to Hindu deity is a transfer within the meaning of S. 5-A (7) (iii) — Provisions cannot be restricted to transfers to living persons. A I R 1963 Cal 551 (551, 552, 553) (Pt A) (Prs 2, 7 to 9) (DB).

——S. 5-A (7) (iii)—Transfer of Property Act (1882), S. 5—Transfer of property—Definition does not apply to the West Bengal Act 1 of 1954 — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A (7) (iii). See Transfer of Property Act (1882), S. 5. A I R 1963 Cal 551 (DB).

——S. 5-A — West Bengal Estates Acquisition Rules (1954), Rr. 3-A, 3-B and 9—Proceedings under—Bargadars are neither necessary nor proper parties to such proceedings or appeal arising therefrom. Civil P. C. (1908), O. 1, R. 10. **(1963) 67 Cal W N 719.**

——S. 5-A and R. 3-A—Applies to khas mahal lands—Constitutional validity — No excessive or unguided delegation—Word 'may' — Meaning of—West Bengal Estates Acquisition Rules (1954), R. 3-A — Rule for procedure of enquiry and not for forming opinion — Words and Phrases — 'May' — Constitution of India, Arts. 14 and 19. A I R 1957 S C 896, Foll. (1963) 67 Cal W N 129.

——S. 5-A—Validity — Delegation of power under — Not excessive — Exercise does not affect fundamental rights of intermediaries — Constitution of India, Art. 245. (1962) 66 W N 1024.

——S. 5-A — Sub-s. (3) is not a colourable piece of legislation—Constitution of India, Art, 246. (1962) 66 Cal W N 405.

——S. 5-A—Constitution of India, Arts. 31 (2), 31-A and 14 —Sub-s. (3) is saved by Art. 31-A of Constitution — Provision cannot be struck down as introducing unreasonable classification or as not subserving the purpose of the Act. (1962) 66 Cal W N 405.

——Ss. 5-A (6) and 11 (2) and Rules, Rr. 3-B and 9 —Appellate authority has power to stay proceedings regarding recovery of possession.

Under R. 3-B read with R. 9 of the West Bengal Estates Acquisition Rules, the appellate authority has power to stay further proceedings in respect of recovery of possession under the order of the Collector until the disposal of the appeal on sufficient grounds being shown. Such power, however, has to be exercised with a view to render justice to both the parties and not merely to the appellant. Consequently where the appellant wants the stay of operation of the order and wants to cultivate the land pending the hearing of the appeal, he can be allowed to do so conditionally by requiring him to deposit some amount.

Rule 9, sub-r. (d) applies mutatis mutandis for disposal of appeal under sub-s. (6) of S. 5A. The meaning of the words mutatis mutandis being with necessary changes in point of detail, the change in detail as regards the appeal under S. 5A (6) will be that, instead of the word 'fine' in R. 9 (d), the word 'possession' has to be read. **(1962) 66 Cal W N 282.**

expiring before date of vesting — Intermediary in possession, if entitled to retain it. 1960 Cal L J 49 : 63 Cal W N 620 : A I R 1959 Cal 440 (441, 442) (Prs 8, 10, 13, 17).

——Ss. 6 (4), 5 (aa) — Right to enter forest and cut trees in future —Nature of —Grantee is intermediary —His interest vests in Government — Compensation not provided—Art. 31-A will apply – (Tenancy Laws —W. B. Estates Acquisition (Second Amendment) Act (25 of 1957), Ss. 3 (b) and 4 (b)) — (Constitution of India, Arts. 31 (2) and 31-A, See Tenancy Laws— West Bengal Estates Acquisition Act, 1953 (1 of 1954) S. 5 (aa). AIR 1959 Cal 316.

——S. 6 (2)—Intermediary holding jalkar—Permanent tenants of Jalkar — Tank fishery — Tenants become lesseees of State Government — (Constitution of of India, Art. 226— Question of fact). (1959) 63 Cal W N 933.

——S. 6 (1)—'Khas possession' — Meaning of—Rule of 'casus omissus' — (Interpretation of Statutes — Casus omissus.)

'Khas possession' is mentioned in clauses (c), (d) and its provisos (h), (i) and (j) of S. 6, whereas it is not mentioned in the other clauses. This use of the words 'khas possession' in some clauses and not in others must be taken to be deliberate and not accidental. It cannot be argued that the legislature had not the intention of making a distinction between the case of clause (b) and clause (c). The Court will not add these words in the clauses where they are not. (1959) 63 Cal W N 513.

——S. 6 (1) (b) — Applicability — Chandina tenants building structure.

The lands whereon the Chandina tenants of the intermediary have constructed structures come within the mischief of S. 6 (1) (b) of the Act, and where the intermediary has elected to retain the same the State Government cannot treat the Chandina tenants as its own tenants to the exclusion of the intermediary. That action is not warranted by the terms and provisions of the Act as it now stands. (1959) 63 Cal W N 513.

——S. 6 (1) (g) — Applicability — "Land comprised in factories'—Brick field.

Where the land under the lease is a brick field and bricks are manufactured therein it must be held to be a land comprised in factories if not in workshops. (1957) 61 Cal W N 533.

——S. 6 (2), Proviso — Lease under intermediary — Lease expiring before the Act—Effect.

Where the lease given by the intermediary Corporation comes to an end long before the West Bengal Estates Acquisition Act had come into force it cannot be said that the lessee is holding the land under the lease from intermediary within the meaning of the Proviso to S. 6 (2) even if the corporation did not get the physical possession of the land long after the Act. The proviso does not apply to the case. (1957) 61 Cal W N 533.

——S. 6 (2), Proviso — Applicability — Lease under intermediary—S. 6 (1).

The lease referred to in the proviso to S. 6 (2) is a lease held under the intermediary and if there is such a lease on the declaration of the date of the vesting a direct relationship is created between the lessee and the State Government with the result that the right of the intermediary is completely wiped out and he is not entitled even to retain the land under sub-s. (1) of S. 6. This meaning of the proviso is borne out by sub-s. (1) of S. 6. which states that except in the case mentioned in the proviso to sub-s. (2) the intermediary would be entitled to retain with effect from the date of the vesting the properties mentioned. (1957) 61 Cal W N 533.

——S. 6 (3)— (as amended by Act 35 of 1955) — Land comprised in mill in possession of tenants — Intermediary cannot retain it. (1956) 60 Cal W N 979.

——S. 6 (1)—'Retain'—Meaning—Lands in possession of tenants — Intermediary is not entitled to retain such lands—(Words and Phrases—'Retain').

The dictionary meaning of the word 'retain' is to keep possession of or to keep in possession and so the use of this word in S. 6 (1) is sufficient to indicate that the Legislature intended that the intermediary must be in possession of whatever lands he was entitled to retain under S. 6. Hence in order that an intermediary might retain such lands they must be in his khas possession and not in the possession of his tenants. (1956) 60 Cal W N 979.

SECTION 7

——Ss. 7 and 9:— Estate of intermediary vesting in State — Application under S. 9, by intermediary for adjustment of compensation towards taxes, allowed by Government—Assessment of agricultural income-tax on income of intermediary subsequent to date of vesting but relating to period prior to vesting—Held, it could not be recovered otherwise than by adjustment against compensation, See Bengal Agricultural Income-tax Act (4 of 1944), S. 33. (1962-63) 67 Cal W N 376.

——Ss. 7 and 8 — Scope — Recovery of arrears of revenue cesses, taxes etc.]— Permissibility by process of execution. 1958 Cal L J 283 : (1958) 62 Cal W N 330.

SECTION 8

——S. 8 — Decree for arrears of rent—Execution against movables of tenant—Bar under S. 168-A of Bengal Tenancy Act removed by implied repeal by S. 5-B of W. B. Acquisition Act, 1953—Remedies under S. 51, C. P. Code, becomes available—S. 9 of Bengal General Clauses Act not attracted. See Tenancy Laws — West Bengal Estates Acquisition Act (1954). S. 5-B. (1961) 65 Cal W N 1053 : 1961 Cal L J 202 : ILR (1962) 2 Cal 347.

——Ss. 8, 4 — Tenure-holder's decree for arrears of rent against holder of subordinate tenure— Estate vesting in State under W. B. Act 1 of 1954 prior to passing of decree—Realization of decretal dues for rent by execution—Effect of W. B. Act, 1 of 1954 on S. 168-A of W. B. Act 8 of 1885. See Tenancy Laws —Bengal Tenancy Act (8 of 1885), S. 168-A (1) (a). AIR 1958 Cal 253 (DB).

SECTION 9

——Ss. 9, 7—Estate of intermediary vesting in State— Application under S. 9, by intermediary for adjustment of compensation towards taxes, allowed by Government—Assessment of agricultural income-tax on income of intermediary subsequent to date of vesting but relating to period prior to vesting —Held, it could not be recovered otherwise than by adjustment against compensation. (1962-63) 67 Cal W N 376.

SECTION 10

——S. 10 (2) and S. 5 (aa) (as introduced by second Amendment Act 1957) — Word 'forest' originally appearing in S. 5 (a) (ii) and definition of forest both omitted by amendment with retrospective effect— Cl. (aa) to S. 5 introduced by amendment with retrospective effect—Notice under S. 10 (2) with reference to notification issued under S. 4 in 1954 and 1956 — Notification published in 1954 and 1956 could not

apply to type of land brought under purview of S. 5 (aa)—Retrospective effect of amendment. (1965) 69 Cal W N 325.

——Ss. 10 (2) and 10 (j)—Statute and Rule — Avoidance of conflict—Harmonious construction. See Interpretation of Statutes. (1963) 67 Cal W N 12.

——S. 10—Right of retention—Failure to exercise — Collector not bound to issue notice—Intermediary must apply for retention—Notice to handover possession under S. 10 (2) — Notice not valid because of S. 10 (5). See Tenancy Laws — W. B. Estates Acquisition Act (1954), S. 6. (1963) 67 Cal W N 12.

——S. 10 (2)—Notice under—Necessity.

Section 10 (2) is merely an enabling one calculated to aid the Collector in the taking over of possession of estates and rights vested in Government and for collection of rent. It is not a condition precedent, either to the taking over of possession or collection of rent that notice under S. 10 (2) should be given. In fact, after the estate has vested in Government, neither has the intermediary any further right to collect rent, nor has the tenant any option but to pay rent to the Government or to the Collector on behalf of Government. (1959) 63 Cal W N 666.

——Ss. 10, 4—Acquisition of jalkar—Jalkar rights may be called immovable property — They are benefits arising out of land. (Transfer of Property Act (1882), S. 3). See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 4 AIR 1958 Cal 114.

SECTION 12

——S. 12 — Decree-holder having charge over property acquired under Act — Right to satisfy charge from compensation received by Receiver—(T. P. Act (1882), Ss. 73 and 100).

A decree-holder, who has a charge over the property which has since been acquired under the West Bengal Estates Acquisition Act, 1953, and in respect of which compensation is payable under the Act, is entitled to an order directing the Receiver appointed by the Court to obtain payment of the ad interim compensation money and to apply the same towards satisfaction of his dues. This can be done by virtue of S. 73 (2) read with S. 100 of the Transfer of Property Act. Even apart from any statutory provision, on general principles when a property is compulsorily acquired free from incumbrances, the charge which attached to the property must be held to attach to the compensation money which replaces the property and the charge-holder is entitled to follow the substituted security and to realise his dues out of the latter property. AIR 1928 Cal 453 : 62 Cal W N 569, Rel. on. (1959) 63 Cal W N 869 : ILR (1960) 2 Cal 65.

——S. 12—Charge on property acquired — Right of charge-holder over compensation money—If taken away by Act.

Having regard to the various provisions of the West Bengal Estates Acquisition Act, the mortgagee of or charge-holder on the property acquired under the Act cannot obtain payment of the compensation moneys directly from the Compensation Officer. But the Court can appoint a Receiver of the compensation moneys and authorise the Receiver to collect and receive the cash compensation and the income of the non-negotiable bonds in the name of the intermediary and to appropriate the moneys so realised towards the liquidation of the moneys due to the mortgagee or the charge-holder. (1959) 63 Cal W N 869 : ILR (1960) 2 Cal 65.

——Ss. 12 and 24 — Hindu widow in possession of estate in lieu of maintenance under will — Estate acquired—Right to interim compensation. (1960) 64 Cal W N 368.

SECTION 16

——S. 16 (1) (a) (ii) — W. B. Estates Acquisition Rules (1955), R. 15—Validity—Not ultra vires on the ground of unauthorised delegation of legislative power—Constitution of India, Art. 245—Appeals from Original Orders Nos. 273-275, etc. of 1955 decided on 18th September, 1958 (Cal), Foll. 68 Cal W N 1124 : AIR 1964 Cal 552 (553) (Pt F) (Pr 12) (DB).

SECTION 18

——S. 18—Decree for ejectment—Appeal of landlord decree-holder filed—Estates Acquisition Act coming into force — Maintainability of appeal. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 88. (1957) 61 Cal W N 607 : ILR (1958) 1 Cal 393.

SECTION 20

——Ss. 20 (2), 5A, 2 (1) — Transfer of certain lands by intermediary in 1952 — Finding that deed was not bona fide and was antedated to defeat provisions of S. 5-A : Held, enquiry whether deed was antedated was within jurisdiction — Petition under Art. 226 against finding — Alternative remedy under S. 20 (2) available to petitioner—Finding could not be reopened in petition. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A. AIR 1965 Cal 539.

SECTION 26

——S. 26 — Order for appointment of Receiver — If one for attachment — Charge holder's right to recover her dues out of compensation — She can ask assistance of Court to enforce her right by appointment of Receiver. 62 Cal W N 911, Dissented from. (1959) 63 Cal W N 869 : I L R (1960) 2 Cal 65.

SECTION 28

——Ss. 28, 29, 2 (i), 4, 5 (as amended by W. B. Act 4 of 1957) — Amendment of definition of "intermediary" in S. 2 (i) so as to include "lessees and sub-lessees", with retrospective operation—Estate acquired prior to amendment — Effect of amendment — Amendment is valid and covers the law as enacted in the body of the Act — Position of existing lessees and sub-lessees of mines and minerals of such estate after amendment — Fresh notification in terms of S. 4 must be issued to vest their estates and rights in State Government. See Tenancy Laws—West Bengal Estates Acquisition Act, 1953 (1 of 1954) (as amended by W. B. Act 4 of 1957), S. 2 (i). AIR 1960 Cal 646.

——Ss. 28, 29 (as amended by W. B. Act 4 of 1957) —Scope — Conflict with Central Statutes dealing with mines and minerals.

It may be that the provisions of Ss. 28 and 29 of the Act may come in conflict with the Central Acts, Rules and Regulations relating to mines and minerals, which is a central subject. But this is expressly provided for in the Act, inasmuch as both Ss. 28 and 29 are subject to the proviso that all such terms and conditions as are laid down in those sections shall be consistent with the provisions of any Central Act for the time being in force relating to the grant of mining lease or codification thereof. With these provisos the operations of the Central Acts, Rules and Regulations are kept in full force. If there is any clash between any provision of the Act and Central Acts, Rules and Regulations, the Central Acts, Rules and Regulations will prevail. 66 Cal W N 304 : AIR 1960 Cal 646 (663) (Pt E) (Pr 30).

SECTION 29

——Ss. 29, 28 (as amended by W. B. Act 4 of 1957)—Ss. 28 and 29 whether clash with Central Statutes dealing with : mines and minerals which is central subject — If there is any clash between any provision of the Act and Central Act, Rules and

Regulation will prevail. See Tenancy Laws — West Bengal Estates Acquisition Act. 1953 (1 of 1954) (as amended by W. B. Act 4 of 1957), S. 28. AIR 1960 Cal 646.

SECTION 39

——Ss. 39, 44 (4) — Record of rights — Presumption of correctness of entry — Party relying on presumption of correctness need not prove foundation or basis of correctness. 69 Cal W N 210 ; AIR 1965 Cal 328 (331) (Pt A) (Prs 11, 12).

——S. 39 (1) (b) and (4) — Proceedings for preparation of record of rights taken under Chap. X, Bengal Tenancy Act — Before they were finally published under S. 102-A (2) of that Act, the W. B Estate Acquisition Act coming into operation — Notification by State Government purporting to be an order under S. 39 (1) (b) of the said Act for revision of record of rights — Order held was completely erroneous — Case held appropriate to be dealt under Art. 226 of the Constitution — (Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 103-A (2)) — (Constitution of India, Art. 226). AIR 1955 N U C (Cal) 5330.

SECTION 44

——Ss. 44 and 59 — Concurrent findings upheld—Interference of High Court under Art. 227 held improper—Nature of enquiry under S. 44 (1)—Order appealable — Duty of Revenue Officer to record oral evidence indicated — Rr. 30 (2) and 17 (2) framed under S. 59. See Constitution of India, Art. 227. AIR 1963 S C 1895.

——S. 44 (4) — Record of Rights — Presumption of correctness of entry — Party relying on presumption of correctness need not prove foundation or basis of correctness. 69 Cal W N 210; AIR 1965 Cal 328 (331) (Pt A) (Prs 11, 12).

——Ss. 44 (2a) and (3) — Order passed in revision — Meaning — Revision applications rejected — Entry in settlement records not revised—Appeal lies under S. 44 (3). (1961) 65 Cal W N 738.

——S. 44 — Title suits pending in civil court—Question of title and possession — Cannot be determined in summary proceeding under S. 44. (1961) 65 Cal W N 738.

——Ss. 44 and 55 — Tribunal under S. 44 — Power to issue temporary injunction — O. 39, Rr. 1 & 2 of C. P. C., held could have no operation to facts and circumstances of the proceeding. 63 Cal W N 354 : ILR (1960) 1 Cal 651: AIR 1959 Cal 386 (387) (Pt A) (Pr 2)(DB).

——S. 44—Inherent powers of tribunal—Its exercise for ends of justice—Appellate Court or Tribunal when can be said to have acted illegally. See C. P. Code (1908), S. 151. AIR 1959 Cal 386 (DB).

——S. 44 (2), (3) and (4) — Scope — Entry in record of right — If conclusive and binding. See Constitution of India, Art. 226. (1959) 63 Cal W N 933.

SECTION 46

——S. 46 — Record of Rights—Suit challenging correctness of entry filed after final publication of Record of Rights — Suit is maintainable — 64 Cal W N 561, Foll. 69 Cal W N 210 ; AIR 1965 Cal 328 (332) (Pt D) (Pr 18).

——S. 46—Applicability—Stay of suit under—When granted.

For the applicability of S. 46 the test is to find out whether, in the proceeding in question before the Civil Court, the matters in issue involve or comprise the question of determination of rent or the incidents of any tenancy or the status of any tenant and, once that test is satisfied, the suit or proceeding concerned must be stayed. The section would apply even if the determination of the incidents of the tenancy or of the status of the tenant be only one of the issue in the suit. 66 Cal W N 121 ; 1964 Cal L J 170.

——S. 46 — Stay of further proceedings in suit.

What S. 46 contemplates is stay of further proceedings in suits where the 'question of rent' or the 'question of status' of the tenant or 'incidents' of the tenancy were — or, at least, were also — matters for determination as distinct from the question of existence or non-existence of the particular tenancy. 64 Cal W N 83 ; I L R (1960) 2 Cal 898.

——S. 46 (as amended by Act 25 of 1957) — Scope—Effect of amendment.

Questions of title and apportionment of rent do not fall within the ambit of S. 46. Hence where a court decides these questions the decision must be upheld. 59 C W N 1006; 60 C W N 1070 and 61 C W N 349, Rel on.

The scope of the application of S. 46 has in no way been widened by the amendment. The real purport of the amendment is that whereas according to the original section, a pending suit to which S. 46 applied remained stayed and was liable to be revived, the amendment provided that the suit would abate on the happening of certain events. ILR (1960) 1 Cal 319.

——S. 46 — Applicability — Suit for declaration of tenancy right and for injunction during preparation or revision of record of rights—Maintainability.

In all suits in which questions as regards the rate of rent, the status of tenant or the incidents of any tenancy to which the record of rights relates have to be determined for a proper decision of a suit S. 46 will apply. Where the notification has been published, the civil Court will not entertain such a suit, but where the suit had already been instituted when the notification is published, the civil Court will stay the hearing of the suit and will recommence the hearing of the suit after final publication. 59 Cal W N 1006 and Civil Case No. 3449 of 1955, Rel. on. Observations to the contrary in 61 Cal W N 349, held obiter and not correct. 60 Cal W N 1070, Overruled. 63 Cal W N 521 : I L R (1960) 1 Cal 30.

——S. 46—Applicability — Landlord's suit repudiating defendant's claim as tenant.

In order that the suit may satisfy the description given in S. 46, it must be a suit for determination of rent or a determination of the status of the tenant or the incidents of any tenancy to which the record of rights relates. A suit by the landlord for a declaration which virtually repudiates the defendant's claim as a tenant or a Bargadar, cannot be said to be one to which the description given in S. 46 may rightly be applied. (1959) 63 Cal W N 818.

——S. 46—Stay of suit—Issue as to whether relationship of landlord and tenant exists.

Section 46 does not provide for stay of a suit for the determination of the issue as to whether the relationship of landlord and tenant exists. Hence a suit for determination of such issue and for declaration that the plaintiff is entitled to tenancy rights and for consequential reliefs is not a suit, for "determination of the status of any tenancy". 59 Cal W N 1006, Rel. on. 60 Cal W N 1070 : I L R (1957) 3 Cal 77.

[Overruled in 63 Cal W N 521.]

——S. 46—Scope of—Civil Court's jurisdiction—Bar of—(Civil P. C. (1908), S. 9).

Section 46 of the West Bengal Estates Acquisition Act restricts the power of the civil Court temporarily. The operation of that section should, therefore, be confined to cases to which the section applies in its terms and it should not be extended beyond that limit. Section 46 applies to suits and applications,

which are purely suits and applications for the determination of rent or determination of the status of any tenant or the incidents of any tenancy. The operation of S. 46 cannot be extended to cases where a person seeks for a declaration of his right to any land as a tenant and where that right is denied by the other side. (1957) 99 Cal L J 7 : 61 Cal W N 349.

——S. 46—Status of tenant or incidents of tenancy can arise only on the admitted fact of a tenancy. AIR 1955 N U C (Cal) 4264 (DB).

SECTION 49

——Ss. 49, 52 (as amended by West Bengal Act 35 of 1955) — Validity — Acquisition of rights of raiyats and under-raiyats — Provisions are protected by Art. 31-A of the Constitution and cannot be declared void on the ground that the Act is violative of Arts. 14, 19 and 31. 68 Cal W N 1124 : AIR 1964 Cal 552 (554) (Pt A) (Pr 3) (DB).

——Ss. 49, 52 (as amended by West Bengal Act 35 of 1955)—Raiyats and under-raiyats — Meaning of—Must be given ordinary meaning — Includes raiyats who are tillers of land. See Constitution of India, Art. 31-A (2) (b) (as amended by the Fourth Amendment Act, 1955). AIR 1964 Cal 552 (DB).

——Chap. 6, (Ss. 49-52) — Pre-emption — Co-sharer occupancy raiyats — Decree for partition — No partition by metes and bounds — Co-sharer in separate possession by amicable arrangement — One co-sharer selling portion in his possession — Other co-sharers entitled to pre-empt even after vesting of holding under Acquisition Act—Jama also remains joint after vesting. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 26-F. (1963) 67 Cal W N 633.

——S. 49—Scope — Held, on facts that sales of land in question were not void in view of provision of S. 5-B read with S. 52 of Estates Acquisition Act. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 52. I L R (1962) 2 Cal 210.

——Chap. 6 (Ss. 49-52)—Amendment of—Validity in so far as it enables acquisition of rights of raiyats under-raiyats in possession — Cl. 6 has affected such rights — Raiyats and under-raiyat are now in position of intermediaries. See Constitution of India, Art. 31-A. AIR 1958 Cal 96.

——Chap. 6 (Ss. 49-52) — Scope — If vague and uncertain.

There is no substance in the argument that as under S. 52 certain provisions of the Act are to apply mutatis mutandis to raiyats and under-raiyats as if such raiyats or under-raiyats were intermediaries. The provisions referred to therein, which were in the first instance meant to be applied to intermediaries as defined in the Act, were to apply to raiyats and under-raiyats with such modifications as were necessary, but that there is no certainty as to what modifications are to be made and who was to decide the same. Deeming provisions of law are usually made in that fashion to avoid repetition of the provisions of all the Chapters which were meant to apply, increasing the bulk of the Act needlessly. The Act aims at the acquisition of the entire interest of the raiyat or under-raiyat, which vests in the State. A contract, usage or custom cannot override the vesting provisions in the statute. Even assuming that there exist two provisions of the nature it is not likely to be put into operation so as to come into conflict with each other. 62 Cal W N 14 : A I R 1958 Cal 96 (102) (Pt D) (Pr 16).

——Chap. 6 (Ss. 49-52) — Validity of—Chap. 6 does not become ineffective because of vagueness and uncertainty. See Constitution of India, Art. 31 (2). AIR 1958 Cal 96.

——S. 49 (as amended by West Bengal Act 35 of 1955)—Notification issued under—Right of co-sharer to pre-empt—'Encumbrance'—Meaning. See Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 26-F. (1963) 62 Cal W N 360.

SECTION 52

——Ss. 52, 49 (as amended by West Bengal Act 35 of 1955) — Validity — Acquisition of rights of raiyats and under-raiyats — Provisions are protected by Art. 31-A of the Constitution. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954) (as amended by West Bengal Act 35 of 1955), S. 49. AIR 1964 Cal 552 (DB).

——Ss. 52, 49 (as amended by West Bengal Act 35 of 1955)—Raiyats and under-raiyats — Meaning of—Must be given ordinary meaning — Includes raiyats who are tillers of land. See Constitution of India, Art. 31-A (2) (b) (as amended by the Fourth Amendment Act, 1955). AIR 1964 Cal 552 (DB).

——S. 52 (as amended by W. B. Act 35 of 1955) — Notification under S. 4 issued on 10-4-1956—Validity — Amendment of W. B. Act being retrospective, estates did not cease to exist on date of amendment—Act protected by Art. 31-A, though notification of vesting is issued later on — Constitution of India, Art. 31-A. AIR 1961 S C 1649, Rel. on. 68 Cal W N 1124 : AIR 1964 Cal 552 (555) (Pt C) (Pr 5) (DB).

——S. 52 (as amended by W. B. Act 35 of 1955) — Validity — Amendment being retrospective in operation was protected by Art. 31-A as amended in 1955 — Constitution of India, Art. 31-A. 68 Cal W N 1124 : AIR 1964 Cal 552 (555) (Pt D) (Prs 7, 8) (DB).

——S. 52 (as amended by W. B. Act 35 of 1955) — Validity — Section not vague — Use of expression 'mutatis mutandis' — Effect of — Difficulty in making adaptations — Does not make a section uncertain. 68 Cal W N 1124 : AIR 1964 Cal 552 (555, 556) (Pt E) (Pr 9) (DB).

——S. 52 — Constitutional validity — Expression 'modification' — Meaning of — Words and Phrases — 'Modification' — Constitution of India, Arts. 14 and 19.

The word 'modifications' in S. 52 of the Act means contextual adaptation of Chaps. II, III, V and VII of the Act to the case of raiyats and under-raiyats and not amendment of the substantive provisions and effects of those chapters. The contextual adaptation is only intended to make those chapters applicable to the case of raiyats and under-raiyats which without the modification might not have been applicable to the case of raiyats and under-raiyats. (1963) 67 Cal W N 129.

——Ss. 52, 49 and 5-B — Scope — Bengal Tenancy Act, S. 173 — By enacting S. 52 legislature did not intend to transpose bodily all provisions contained in S. 5-B. Held on facts that sales of land in question were not void in view of provision of S. 5-B read with S. 52 of Estates Acquisition Act — Application under S. 173, Bengal Tenancy Act is maintainable. ILR (1962) 2 Cal 210.

——S. 52 — Raiyat or under-Raiyat in possession — Notification vesting land in Government-lands in possession of such person whether becomes khas lands of state — Raiyats and under-raiyats could not claim higher rights than intermediaries — (Interpretation of Statutes — Deeming provision). AIR 1930 P C 244 and (1954) S C A 293, Rel. on. AIR 1958 Cal 143 (145) (Pt A) (Pr 6).

——S. 52 — Other intermediary — Land cultivated by rajyats or under-raiyats as tenants — Section 52 held to be not ultra vires. See Constitution of India, Art. 31-A (2) (b). AIR 1958 Cal 143.

——S. 52 — Giving of notice by Assistant Collector— Not foundation of vesting. **AIR 1958 Cal 143 (146) (Pt D) (Pr 9).**

——S. 52 — Amendment of — Validity in so far as it enables acquisition of rights of raiyats under-raiyats in possession — Chapter 6 has affected such rights — Raiyat and under raiyat is now in position of intermediary. See Constitution of India, Art. 31-A. **AIR 1958 Cal 96.**

SECTION 55

——S. 55 — Tribunal under S. 44 — Power to issue temporary injunction — Order 39, Rr. 1 and 2, Civil P. C. held could have no operation to facts and circumstances of proceeding. See Tenancy Laws — West Bengal Estates Acquisition Act, 1953 (1 of 1954), S. 44. **AIR 1959 Cal 386 (DB).**

——Ss. 55, 44 — Inherent powers of Court or Tribunal — Its exercise for ends of justice — Appellate Court or Tribunal issuing temporary injunction when can be said to have acted illegally. See Civil P. C. (1908), S. 151. **AIR 1959 Cal 386 (DB).**

SECTION 59

●——Ss. 59, 44—Rules framed under S. 59, Rr. 30 (2) and 17 (2) — Concurrent findings — Interference of High Court under Art. 227 of Constitution held improper. See Constitution of India, Art. 227. **AIR 1963 S C 1895.**

——S. 59 — Rule-making power—General and particular — Particular does not curtail general power — **Interpretation of Statutes.**

Where a statute confers a general power to make rules as that conferred by sub-s. (1) of S. 59 of the W. B. Estates Acquisition Act, 1953, as well as a particular power to make rules relating to specified matters, the particular power cannot be held to curtail the width of the general power. AIR 1945 P C 156, Foll. **68 Cal W N 574 : AIR 1964 Cal 460 (465) (Pt D) (Pr 30) (DB).**

——S. 59 (1) — W. B. Estates Acquisition Rules (1954), R. 4 — Right of pre-emption is attracted to Mokarari and Korfa holdings — Prohibition under Ss. 18 (2) and sub-s. (2) of S. 48-G of Bengal Tenancy Act (1939) is overcome by the rule — Rule is not ultra vires. See Tenancy Laws — W. B. Estates Acquisition Act (1954), S. 4. **(1964) 68 Cal W N 1055.**

—WEST BENGAL ESTATES ACQUISITION RULES (1954)

RULE 3-A

——Rr. 3-A, 3-B and 9 — W. B. Estates Acquisition Act (1 of 1954), S. 5-A — Proceedings under—Bargadars are neither necessary not proper parties to such proceedings or appeal arising therefrom. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A. **(1963) 67 Cal W N 719.**

RULE 4

——R. 4 — Right of pre-emption — Effect of West Bengal Estates Acquisition Act, 1953 (1 of 1954) — All tenants under the State are to be treated on equal footing — Korfa tenant has right of pre-emption even prior to Amendment of R. 4 — Amendment of prior 4 is ex abundanti cautela — Interpretation of Statutes — Rule of harmonious construction. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 26-F. **(1965) 69 Cal W N 499.**

——R. 4 — "Terms and Conditions" — Meaning of— This expression includes right of pre-emption of occupancy raiyat — Holding vested in State Government — Right of pre-emption can still be claimed. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 6 (2). **AIR 1964 Cal 460 (DB).**

——R. 4 — Object of Act — Power of Legislature to make laws on ancillary matters — Interpretation of S. 6 and R. 4 — Rule is not ultra vires. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 6 (2). **AIR 1964 Cal 460 (DB).**

——R. 4 — Right of pre-emption is attracted to Mokarari and Korfa holdings—Prohibition under S. 18 (2) and sub-s. (2) of S. 48-G of Bengal Tenancy Act (1939) is overcome by the rule — Rule is not ultra vires. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 4. **(1964) 68 Cal W N 1055.**

RULE 4-A

——R. 4-A — Statute and Rule — Avoidance of conflict — Harmonious construction. See Interpretation of Statutes. **(1963) 67 Cal W N 12.**

RULE 9

——R. 9 — Appellate authority has power to stay proceedings regarding recovery of possession — See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), S. 5 (A) (6). **(1962) 66 Cal W N 282.**

RULE 11

——R. 11 (2)—Appellate authority has power to stay proceedings regarding recovery of possession. See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), S. 5 (A) (6). **(1962) 66 Cal W N 282.**

RULE 15

——R. 15 — Validity — Not ultra vires on the ground of unauthorised delegation of legislative power — Constitution of India, Art. 245. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 16 (1) (a) (ii). **AIR 1964 Cal 552 (DB).**

RULE 38

——R. 38 — Appellatte authority has power to stay proceedings regarding recovery of possession. See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), S. 5 (A) (6). **(1962) 66 Cal W N 282.**

—WEST BENGAL ESTATES ACQUISITION (SECOND AMENDMENT) ACT (25 of 1957)

SECTION 3

——Ss. 3 (b) and 4 (b) — Scope — Right to enter forest and cut trees in future — Nature of—Grantee, is intermediary. See Tenancy Laws — West Bengal Estates Acquisition Act 1953 (1 of 1954), S. 5 (aa). **AIR 1959 Cal 316.**

SECTION 4

——Ss. 4 (b), 3 (b) — W. B. Estates Acquisition Act (1 of 1954), Ss. 5 (aa) and 6 (4)—Right to enter forest and cut trees in future — Nature of — Grantee is intermediary — His interest vest in Government — Compensation not provided — Art. 31-A will apply, See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), S. 5 (aa). **AIR 1959 Cal 316.**

—WEST BENGAL LAND REFORMS ACT (10 of 1956)

SECTION 1

——S. 1 — Supposed spirit of law cannot be given effect to in opposition to plain language. See Tenancy Laws—W. B. Land Reforms Act, S. 2 (2). **ILR (1962) 1 Cal 313.**

SECTION 2

——S. 2 (2), Preamble — Bargadar — Meaning of — Definition is not illustrative—Person cultivating land as labourer of owner, does not come within purview of Act — Supposed spirit of law cannot be given effect to in opposition to plain language. **ILR (1962) 1 Cal 313.**

SECTION 16

—S. 16 (3) — Cultivation — Meaning—Production of 'Jhinga' and 'Banana' is cultivation within the meaning of S. 16 (3) since they are agricultural products which can be stored. (1965) 69 Cal W N 468.

—S. 16 — Bargadar not delivering share of produce to the landlord — Landlord cannot only recover his share of produce but also can ask for eviction of the Bargadar. See Tenancy Laws—West Bengal Land Reforms Act, 1955 (10 of 1956), S. 17 (1) (c). (1964) 68 Cal W N 601.

—Ss. 16 (2), 17—Bargadar dying after the term of the barga without delivering produce — Possession of Bargadar after the term not under the contract but on terms of the Land Reforms Act—Liability of heirs as bargadars continues but is limited to extent of assets received from their father. Hindu Law—Liability of sons—Extent of. 1963 Cal L J 198 : 65 Cal W N 1125.

SECTION 17

—Ss. 17, 18, 19 and 21—West Bengal Land Reforms (Bargadars) Rules (1956), R. 8 — Petition by jotedars filed before Bhagchas Officer for termination of Barga and for division or delivery of produce — Ex parte award — Civil suit by Bargadars challenging award on ground that it was obtained by jotedars by suppression of notice and process — Defence that plaintiffs did not avail of all remedies provided by Act and that jurisdiction of Civil Court was barred under S. 21 (1)—Held (i) that appeal under S. 19 (2) having become time barred by reason of fraudulent suppression of notice and provision of S. 5, Limitation Act (1908) not being applicable before the amendment to S. 19 (2) in 1962, appeal was not posssible—(ii) that there being no provision in the Act or in the Rules framed thereunder for the applicability of Civil P. C. universally mutatis mutandis; Bhagchas had no power of setting aside ex parte orders—(iii) that R. 8 also was not available—(iv) that although civil suit was barred under S. 21, Bargadars could make fresh application under : S. 18 and raise the question again wherein previous decision being ex parte and not on merits could not be res judicata — Civil P. C. (1908), Ss. 9, 11—West Bengal Land Reforms (Bargadars) Rules (1956), R. 8. (1965) 69 Cal W N 908.

—Ss. 17 (1) (c), 16—Bargadar not delivering share of produce to the landlord — Landlord cannot only recover his share of produce but also can ask for eviction of the Bargadar. (1964) 68 Cal W N 601 (DB).

—Ss. 17 (1) (c), 18 (1) — Landlord having two remedies (1) recovery of share of produce from Bargadar (2) Eviction of Bargadar — If landlord instead of seeking both remedies simultaneously can pursue one remedy first and then the other could be considered to have elected one and waived the other ? (Quare—Per Basu, J.). (1964) 68 Cal W N 601 (DB).

SECTION 18

—Ss. 18 (2) and (I) and 21 — Jurisdiction of Civil Court — Suit for declaration that person is Bargadar —Civil Court has jurisdiction to try suit — Civil P. C. 1908), S. 9—66 Cal W N 229, Foll. 69 Cal W N 210 : AIR 1965 Cal 328 (332) (Pt C) (Pr 15) .

—S. 18 (1) — Landlord having two remedies (1) recovery of share of produce from Bargadar (2) Eviction of Bargadar—If landlord instead of seeking both remedies simultaneously can pursue one remedy first and then the other could be considered to have elected one and waived the other ? (Quaere). (1964) 68 Cal W N 601.

—Ss. 18 (2), 19B — Decision if a person is a Bargadar or not can be made under S. 18 (2) — Bhagchas Officer deciding it in proceedings under S. 19B — Decision is not without jurisdiction. (1964) 68 Cal W N 112.

—Ss. 18, 21—Bhagchas officer and Munsif holding that occupier was not bargadar but tenant — Suit by owner for declaration of title and possession — Suit maintainable — Forum under S. 18 has no jurisdiction to decide tenancy right — Decision of said forum is not res judicata—Occupier held liable for eviction. (1963) 67 Cal W N 1076.

—S. 18—Disputes between Jotedars and bargadars —Bhagchas officer has jurisdiction under Land Reforms Act. See Criminal P. C. (1898), S. 145. (1962) 66 Cal W N 947.

—Ss. 18 and 19—Award by Special Tribunal under the Act—Suit for setting aside the award and for restraining execution of the same is not maintainable in civil Court. See Tenancy Laws — West Bengal Land Reforms Act (10 of 1956), S. 21. (1962) 66 Cal W N 229.

—S. 18—Proceedings before Bhagchas Officer — Limitation — No period fixed under the Act — Provisions of Limitation Act (1908), not applicable. AIR 1953 S C 98 : 1953 S C J 68 : (1953) 1 M L J 364, followed. 1963 Cal L J 198 : 65 Cal W N 1125.

—Ss. 18 (1) (a), 21 (2) — Claim before Bhag Chas Board for bhag crops or their value — Award allowing claim—Review application for setting aside award pending when Act came into operation — Effect — Application being a "proceeding" within S. 21 (2) automatically stood transferred to Bhag Chas Officer concerned — It was within his competence to decide the dispute. ILR (1958) 1 Cal 273.

—S. 18—West Bengal Bargadaras Act (2 of 1950), S. 7—S. 21 (2), Land Reforms Act, is ineffective. See West Bengal Land Reforms Act 1955 (10 of 1956), S. 21 (2). AIR 1957 Cal 274 (FB).

SECTION 19

—Ss. 19 and 57—Order of eviction of Bhag Chas Officer under West Bengal Land Reforms Act — Appeal to Munsif under S. 19 — S. 18, Limitation Act applies but S. 5 does not apply by virtue of S. 29 (2). See Limitation Act (1908), Pre. AIR 1963 Cal 253.

—S. 19—Award by Special Tribunal under the Act —Suit for setting aside the award and for restraining execution of the same is not maintainable in Civil Court. See Tenancy Laws — West Bengal Land Reforms Act (10 of 1956), S. 21. (1962) 66 Cal W N 229.

SECTION 19-B

—S. 19-B—Decision if a person is a Bargadar or not can be made under S. 18 (2) — Bhagchas Officer deciding it in proceedings under S. 19-B—Decision is not without jurisdiction. See Tenancy Laws — West Bengal Land Reforms Act (10 of 1956), S. 18 (2). (1964) 68 Cal W N 112.

—S. 19-B — When action under S. 19-B can be maintained — Persons claiming as Bargadar 'in possession" — Others removing crops cultivated by Bargadar — Such acts do not give a right to others under S. 19-B.

In order to maintain an action under S. 19-B, it must be proved that there has been an illegal termination of cultivation of land by a bargadar. If that fact is not proved, then no action under S. 19-B (1) can be maintained. Where persons claiming as Bargadars were in possession of land, others doing acts of crime or tort by removing crops raised will not get a right to maintain action under S. 19-B. (1964) 68 Cal W N 112.

SECTION 20

—Ss. 20 (2) and 57 — What Court can grant restitution—W. B. Land Reforms Act (10 of 1956), Ss. 57,

20 (2) — Order for ejectment passed by trial authority reversed by appellate authority — Delivery of properties obtained by execution of order of trial authority — Claim for restitution — S. 144, Civil P. C. not attracted — Relief under inherent powers — Application should be filed before executing authority and not before appellate or trial authority. See Civil P. C. (1908), S. 144. (1962) 66 Cal W N 1068.

SECTION 21

——S. 21 — Jurisdiction of Civil Court — Suit for declaration that person is Bargadar — Civil Court has jurisdiction to try suit. See Tenancy Laws — West Bengal Land Reforms Act (10 of 1956), S. 18 (2). AIR 1965 Cal 328.

——Ss. 21, 18—Bhagchas officer and Munsif holding that occupier was not bargadar but tenant — Suit by owner for declaration of title and possession — Suit maintainable — Forum under S. 18 has no jurisdiction to decide tenancy right — Decision of the said forum is not res judicata — Occupier held liable for eviction. :(1953) S C A 23, Disting. (1963) 67 Cal W N 1076.

——S. 21, read with Ss. 18, 19 — Award by Special Tribunal under the Act — Suit for setting aside the award and for restraining execution of the same is not maintainable in Civil Court. (1962) 66 Cal W N 229.

——S. 21—West Bengal Estates Acquisition Act (1 of 1954), S. 46—Applicability — Suit for declaration of tenancy right — No dispute within S. 21 in existence —Status of tenant or incidents of tenancy also not disputed — Suit held not barred under S. 21 or under S. 46 of Estates Acquisition Act. 1962 Cal L J 130: 66 Cal W N 88.

——S. 21 (2)—Claim before Bhag Chas Board for bhag crops or their value — Award allowing claim— Review application for setting aside award pending when Act came into operation — Effect—Competency of Bhag Chas officer concerned to review award. See Tenancy Laws—West Bengal Land Reforms Act (10 of 1956), S. 18 (1) (a). ILR (1958) 1 Cal 273.

●——S. 21 (2)—Scope and effect of — West Bengal Bargadars Act (2 of 1950), Ss. 7 and 18.

The Land Reforms Act, 1955 provides in S. 18 for the appointment of a tribunal of an altogether different kind and, therefore, S. 18 of the Act can, in no sense, be regarded as the re-enactment of S. 7, Bargadars Act, 1950. S. 25, Bengal General Clauses Act, can, therefore, have no application unless at the time when the Bargadars Act was to expire, there were already officers or authorities appointed under the Land Reforms Act, to whom proceedings pending before the old Boards under the Bargadars Act could stand transferred, such proceedings could not survive the expiry of the Bargadars Act for the purposes of a subsequent transfer. Immediately on the expiry of the Bargadars Act they would terminate automatically. Nothing could keep them alive during the interval between the expiry of the Bargadars Act and and the appointment of appropriate officers or authorities under the Land Reforms Act, Rabindra Nath Mahapatra v. Gour Mondul, 61 C W N 311: A I R 1957 Cal 274 (277) (Pt D) (Pr 13) (FB).

●——S. 21 (2) – Scope — Effect of S. 2 (1) of Ordinance (3 of 1956)—S. 21 (2) is virtually repealed. See West Bengal Bargadars Ordinance (No. 3 of 1956), S. 2 (1). 61 C W N 311: AIR 1957 Cal 274 (FB).

SECTION 57

——S. 57—Limitation Act (1908), Pre. Ss. 5, 18 and 29 (2) — Scope — Act applies to appeals to all Courts and not merely Civil Courts subject to S. 29 — Order of eviction by Bhag Chas Officer under West Bengal Land Reforms Act — Appeal to Munsif under S. 19— S. 18, Limitation Act applies but S. 5 does not apply by virtue of S. 29 (2). See Limitation Act (1908), Pre. AIR 1963 Cal 253.

——S. 57—Claim for restitution—Application should be filed before executing authority and not before appellate or trial authority. See Civil P. C. (1908), S. 144. (1962) 66 Cal W N 1068.

SECTION 59

——S 59 — Notification issued under S. 49, W. B. Estates Acquisition Act — Right of co-sharer to pre-empt cannot be affected. See Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 26-F. (1958) 62 Cal W N 360.

●——S. 59 (7)—General Clauses Act (1 of 1899), S. 8 —Effect of qualifying words "as if the repealing Act had not been passed" — Effect of repeal of temporary Act due to expire shortly. See Bengal General Clauses Act (1 of 1899), S. 8. AIR 1957 Cal 274 (FB).

—WEST BENGAL NON-AGRICULTURAL TENANCY ACT (20 of 1949)

SECTION 1

——S. 1 (2) — Calcutta Thika Tenancy Act (2 of 1949), S. 1 (2) — Calcutta Municipal Act (33 of 1951), Ss. 594 and 595 — Premises situated in Tollygunge, Calcutta — Tenancy of premises created in 1937— Petition for eviction of tenants brought in 1957 — Tollygunge included in Calcutta by notification issued under S. 594, Calcutta Municipal Act — Effect of notification on applicability of Calcutta Thika Tenancy Act — Held, that W. B. Non-Agricultural Tenancy Act applied and not Calcutta Thika Tenancy Act and that tenants could not be evicted — 20 Cal W N 258, Rel. on. (1965) 69 Cal W N 842.

——S. 1 (2) (a)— Scope — Calcutta Municipal Act of 1923 repealed and re-enacted as Calcutta Municipal Act of 1951 — Definition of "Calcutta" as given in S. 1 (2) (a) of W. B. Act 1 of 1949 in terms of that given in Calcutta Municipal Act, 1923 must be construed as definition in terms of that Calcutta Municipal Act of 1951. See Bengal General Clauses Act (1 of 1899), S. 10. AIR 1956 Cal 357 (DB).

——S. 1 (2) (b) — Scope — Bengal General Clauses Act (1 of 1899), S. 10—Contrary intention—It cannot be said that the expanded definition of Calcutta as given in Calcutta Municipal Act 1 of 1951 was excluded, because a different intention appeared in S. 1 (2) (e) of W. B. Act 20 of 1949. See Bengal General Clauses Act (1 of 1899), S. 10. AIR 1956 Cal 357 (DB).

——S. 1—Scope and object of Act — It is not merely an Act regulating ejectment and incidental proceedings therewith — It deals with general law on the subject. AIR 1955 N U C (Cal) 2957.

——S. 1—Interpretation.

The West Bengal Non-agricultural Tenancy Act, 1949, is admittedly a remedial statute and so it ought to be liberally construed. Case-law referred. 58 Cal W N 651 : ILR (1956) 2 Cal 370 : AIR 1954 Cal 539 (540) (Pt C) (Pr 6).

SECTION 2

——S. 2 (5) and S. 3 (1) — Section 2 (5) read with S. 3 (1) indicates that under-tenant is non-agricultural tenant too — Right of pre-emption under S. 24 available to co-sharer non-agricultural tenant, equally avails co-sharer non-agricultural under-tenant. See Tenancy Laws— W. B. Non-agricultural Tenancy Act (20 of 1949), S. 24. (1965) 69 Cal W N 836.

——S. 2 (5)—'Tenant' — The words 'non-agricultural tenant' must be taken to include a tenant whose

tenancy had expired for some reason or other before the Act came into force but for whose ejectment the suit was filed alter the Act had come into force. AIR 1953 Cal 780; AIR 1942 Cal 49, Rel. on. (1960) 64 Cal W N 240.

——Ss. 2 (4), 2 (5) and 3 (3) — Tenancy of lands partly for agricultural and partly for non-agricultural land — Tenant — If non-agricultural tenant.

According to the definition of a non-agricultural tenant, the non-agricultural land must by itself, constitute an independent unit of tenancy. If the non-agricultural land by itself does not constitute the subject-matter of a separate tenancy and is a fraction of lands held partly for agricultural and partly for non-agricultural purposes, the tenant holding such a land cannot be said to be a non-agricultural tenant within the meaning of S. 4 (5) or a tenant within the meaning of S. 3 (2) of the Act. AIR 1954 Cal 28, dissented from. (1959) 63 Cal W N 939.

——Ss. 2 (7), 7 (5)—Applicability — Tenant purchasing pucca structures on the demised land erected by landlord — Protection of S. 7 (5) — Right to.

Purchase by the lessee of the pucca structures standing on the leased land and built by the landlord, subsequent to the taking of the lease, amounts in law to the same thing as allowing by the landlord the erection of pucca structures by the tenant within the meaning of S. 7 (5). In such a case the tenant would get the benefit of S. 7 (5) provided that the structures are pucca ones. A pucca structure as defined in S. 2 (7), is a structure constructed mainly of brick, stone or concrete or any combination of these materials. 62 Cal W N 505 : ILR (1959) 2 Cal 283.

——S. 2 (5)—Applicability — Tenant-in-will.

The tenant-at-will is not a person who 'is or but for a special contract would be liable to pay rent to' the landlord and is, therefore, not a tenant within the meaning of S. 2 (5) of the West Bengal Non-Agricultural Tenancy Act. The tenant-at-will is, therefore, not protected by the Act. (1957) 61 Cal W N 23 : ILR (1957) 3 Cal 636 : AIR 1957 Cal 625 (626) (Pt E) (Pr 16).

——Ss. 2 (4) and 2 (5) — Transfer of non-agricultural land by tenure-holder—Tenure-holder not a tenant—Effect of, stated. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 24 (1). AIR 1957 Cal 511.

——S. 2 (5) — Tenancy of land along with structures standing thereon—Structures allowed to be demolished — No diminution of rent — Tenant becomes non-agricultural tenant. See Tenancy Laws — Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (9 of 1940), S. 2. AIR 1956 Cal 168 (DB).

——Ss. 2 (4), 24—Applicability.

Under-raiyat—Land in proceeding under S. 24 not coming within S. 2 (4) (b) or (c) — Land let out and used for purposes not connected with agriculture or horticulture — Rights of party are governed by the Act. 57 C W N 703 : AIR 1954 Cal 28 (29) (Pt A) (Pr 2).

——S. 2 (5) — Non-agricultural tenant includes ex-tenant.

For the purpose of applying the Act to proceedings pending at its commencement, the words "non-agricultural tenant" must be taken to include a tenant whose tenancy was determined by a notice to quit, but who remained in possession in spite of the notice and a decree in ejectment. ILR (1953) 2 Cal 358 : 57 C W N 533 : AIR 1953 Cal 780 (781) (Pt B) (Pr 4) (DB).

SECTION 3

——S. 3 (2) — Transfer of non-agricultural land by tenure-holder— Tenure-holder not a tenant—S. 3 (2) must be read as a "person other than the proprietor or tenure-holder" — Tenure-holder has no locus standi to maintain application for pre-emption under S. 24. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 24 (1). AIR 1957 Cal 511.

——S. 3—Execution application stayed under S. 3 — Application is pending within S. 88. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 88. (1956) 98 Cal L J 168.

SECTION 6

——S. 6 (2) (a) — Validity — Provision is intra vires the competency of State Legislature — Object and scope of Act, indicated — Word 'land' in entry 18 of List II of Schedule VII of Constitution, includes building or structure — Art. 13 of Constitution has no application — Constitution of India, Art. 13 and Sch. VII, List II, Entry 18. 69 Cal W N 833 : AIR 1966 Cal 97 (98) (Pt A) (Pr 4).

——S. 6 (2) (a)— Tenant in continuous possession for over twelve years though under successive annual leases — He is entitled under S. 6 (2) (a) to errect pucca structure — Any tenancy in S. 7 (2) means continuity of possession as a tenant for over twelve years and not continuity of possession under one and the same lease. (1963) 67 Cal W N 644.

——S. 6 (2) (c) — Applicability — Non-agricultural tenants.

Where the defendants are non-agricultural tenants whose tenancy commenced from the year 1879, they are entitled to the benefits of S. 6 (2) (c) of the West Bengal Non-agricultural Tenancy Act. (1960) 64 Cal W N 172.

——S. 6 — Tenant's right to build structure—He can acquire such right pending suit. AIR 1955 N U C (Cal) 5333 (DB).

——Ss. 6, 7, 22 and 88 — Bemiadi lease, meaning of — Bemiadi lessee under an ordinary non-agricultural tenant does not get protection under Ss. 6 and 7 (Words and Phrases — Bemiadi lease) — (T. P. Act (1882), S. 105). AIR 1955 N U C (Cal) 2957.

SECTION 7

——S. 7—Expression "Commencement of the Transfer of Property Act, 1882" — Interpretation of — Date of commencement held 1st July, 1882—Non-agricultural land held on lease in Chandernagore — Computation of period would be under provisions of S. 90 of W. B. Non-Agricultural (Temporary Provisions) Act of 1940 — Tenant in possession for less than 12 years before institution of suit — Not entitled to protection from eviction under S. 7. (1962) 66 Cal W N 525.

——S. 7 (5) — Applicability — Knowledge of landlord of pucca structures must be shown. 64 Cal W N 293 : ILR (1960) 2 Cal 814.

——S. 7 — Computation of period relevant under — Mode of indicated. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 90. 64 Cal W N 293 : ILR (1960) 2 Cal 814.

——S. 7 (5) — Pucca structure erected by lessee — Landlord given compensation instead of mandatory injunction—It does not amount to landlord's sanction. (1960) 64 Cal W N 365.

——S. 7 (5) — Applicability — Accrual of right in favour of landlord to eject tenant before commencement of Act — Suit filed subsequently.

The provisions of the West Bengal Non-Agricultural Tenancy Act of 1949, must clearly apply

to all suits which have been filed after the Act came into force and therefore, the provisions of S. 7 (5) can be availed of by the tenant, even when the right of the landlord to obtain ejectment had accrued before the coming into force of the Act, but though he could not file a suit immediately because the Non-Agricultural Tenancy (Temporary Provisions) Act of 1940 barred the filing of suit for ejectment against non-agricultural tenants during the time when the temporary Act was in force. (1960) 64 Cal W N 240.

—— Ss. 7, 90 — Lease of non-agricultural land for 7 years commencing in 1937—Suit for ejectment in 1950—Defence under S. 7 not available. **61 Cal W N 841 : ILR (1958) 1 Cal 233: AIR 1957 Cal 479 (480) (Pt A) (Pr 10) (DB).**

——**S. 7 — Applicability.**

Where the tenant is found to be in possession for a period less than 12 years, then S. 7 of the West Bengal Non-agricultural Tenancy Act will not apply to the case. **(1956) 60 Cal W N 1092.**

——S. 7—Bemiadi lease, meaning of—Bemiadi lessee under an ordinary non-agricultural tenant cannot get protection under Ss. 6 and 7. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 6. **AIR 1955 N U C (Cal) 2957.**

——**Ss. 7 (2) (i) and 88 — Scope — Execution started for first time after commencement of Act does not come under S. 7 or 88 — Tenant cannot claim protection from ejectment under S. 7. AIR 1955 N U C (Cal) 2882 (DB).**

——**Ss. 7 (4), 90 — Continuation of lease — Applicability of S. 7 (4).**

A tenancy began with a lease on 28th September, 1929, for 7 years. During the pendency of the lease a second lease was executed which specifically mentioned in the recital that it was "after the expiry of the previous lease". This lease was again for a further period of 7 years. The documents themselves left no room for doubt that the second lease was a continuation of the first lease;

Held, that there being a continuation of the lease S. 7 (4) read with S. 90 clearly and specifically applied and the tenant was protected from ejectment.

Further, that is the continuation of the period, not the continuity of the rent which is to be considered in connection with S. 7 (4). **57 Cal W N 912 : AIR 1954 Cal 168 (168, 169) (Prs 2, 3) (DB).**

SECTION 9

●——**S. 9 (1) (b) (iii) — Applicability — Tenancies from month to month — 'Year of the tenancy' — Meaning.**

Section 9 (1) (b) (iii), applies to all non-agricultural tenancies including monthly tenancies or tenancies from month to month. The expression 'a year of the tenancy' in sub-s. (1) (b) (iii) of the section in relation to the tenancies from month to month means, in the absence of a contract to the contrary, a year or a period of twelve months according to the calendar of the particular tenancy, starting with its date of commencement or any anniversary thereof. AIR 1957 Cal 479, Distinguished. The term 'year' in the provision does not necessarily mean the calendar year in every case. ILR 27 Cal 570 and ILR 30 Mad 109, distinguished. Indian Iron & Steel Co., Ltd. v. Baker Ali, **64 Cal W N 641 : ILR (1961) 1 Cal 892 : AIR 1961 Cal 515 (516 to 518) (Prs 6, 10) (SB).**

——S. 9 — Notice under S. 111 (g) not given—Decree for possession cannot be passed. See Transfer of Property Act (1882), S. 106. AIR 1960 Cal 40.

——S. 9 (1) (iii), Proviso — Decree for ejectment — Direction for payment of compensation by landlord if imperative — Tenant —If trespasser until payment of compensation — Right of landlord to claim damages. **64 Cal W N 293 : ILR (1960) 2 Cal 814.**

——Ss. 9 (1) (a), 9 (1) (b) (iii) — Applicability—Contractual tenancy expiring while Bengal Act 9 of 1940 was in force — Tenant continuing in possession on payment of rent — Suit for ejectment after coming into force of W. B. Act 20 of 1949 — Notice — Necessity — Applicability of S. 116, T. P. Act (Transfer of Property Act (1882), S. 116) — (Tenancy Laws — Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (9 of 1940), S. 3). (1949) F L J 168 : AIR 1949 F C 124; AIR 1955 Cal 226 and AIR 1956 Cal 120, Rel. on; 60 C W N 1092, Disting. **64 Cal W N 448 : ILR (1960) 1 Cal 708.**

——S. 9 (1) (b) (iii) — Scope — Kabuliyat executed by lessee alone — Lease for five years — Validity — Notice — Landlord must give six months notice. See Transfer of Property Act (1882), S. 105. **(1959) 63 Cal W N 535.**

——S. 9 (1) (b) (iii) — Tenancy according to Bengali Calendar — Notice to quit — Case held came under S. 9 (1) (b) (iii) — (T. P. Act (1882), S. 110). AIR 1944 Cal 84, Rel. on. **61 Cal W N 841 : ILR (1958) 1 Cal 233 : AIR 1957 Cal 479 (480, 481) (Pt B) (Prs 11, 15, 16) (DB).**

——**Ss. 9 and 88** — By virtue of S. 88, S. 9 applies to a pending suit. **(1956) 60 Cal W N 1092.**

——S. 9 (1) (b) — Tenant holding over with consent of landlord — He is not in possession under lease in writing — Case would be governed by Cl. (b) requiring a six months notice before he is asked to quit and not by Cl. (a) of S. 9 (1). **(1956) 60 Cal W N 1092.**

——**S. 9 — 'Liable to ejectment' — (Words and Phrases).**

The words "shall not be ejected" and the words "shall be liable to ejectment have no reference to ejectment in execution proceedings but refer only to the liability of a decree for ejectment being passed against the tenant. **(1956) 60 Cal W N 109.**

——S. 9 (1) (iii), Proviso — Reasonable compensation —Basis of assessment stated. **AIR 1955 N U C (Cal) 4513.**

——S. 9—Scope — Decree dated 12-7-1946 for ejectment, containing provision for stay till life of Bengal Act 9 of 1940 — S. 9 held not attracted by provision of S. 88. See Tenancy Laws—W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 88. **AIR 1955 N U C (Cal) 350 (DB).**

——S. 9 (1) (b) (iii)—Protection under—Tenancy by holding over is new tenancy. See T. P. Act (1882), S. 116. **AIR 1954 Cal 539.**

SECTION 16

——S. 16 — Tenancy of under-tenant is non-agricultural tenancy — S. 16 not attracted. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 24. **(1965) 69 Cal W N 836.**

SECTION 22

——S. 22 — Sections 23, 22 and 16 do not indicate that under-tenants are excluded from ambit of S. 24. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 24. **(1965) 69 Cal W N 836.**

——S. 22—Bemiadi lease, meaning of—Bemiadi lessee under an ordinary non-agricultural tenant cannot get protection under Ss. 6 and 7. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 6. **AIR 1955 N U C (Cal) 2957.**

SECTION 23

——S. 23 — Sections 23, 22 and 16 do not indicate that under tenants are excluded from ambit of S. 24.

See Tenancy Laws—W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 24. (1965) 69 Cal W N 836.

——Ss. 23 and 24—"Making the application"—Where consideration money is disputed, it does not mean date of presentation but when Court is called upon to make order either granting or refusing pre-emption—Non-notified co-sharer—Amount of consideration not deposited at time of application — Order for pre-emption should be made. AIR 1955 N U C (Cal) 3667.

SECTION 24

——Ss. 24, 2(5), 3 (1), 23, 22 and 16 — S. 2 (5) read with S. 3 (1) indicate that under tenant is non-agricultural tenant too — Right of pre-emption under S. 24, available to co-sharer non-agricultural tenant, equally avails co-sharer non-agricultural under-tenant —Ss. 23, 22 and 16 do not indicate that under-tenants are excluded from ambit of S. 24 — S. 16 which applies provisions of Chap. 4 to under-tenants is by way of abundant caution : (1959) 63 Cal W N 939; Expl. (1941) 45 Cal W N 790, Disting. (1965) 69 Cal W N 836.

——S. 24—Object of, indicated — Non-agricultural land with building — Section attracted. (1963) 67 Cal W N 599.

——S. 24—Applicability—Occupancy raiyat — Grant of sub-lease for non-agricultural purpose—Effect of, stated. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 4 (3). (1959) 63 Cal W N 939.

——Ss. 24 (1), 2 (5), 2 (4) and 3 (2)—Applicability—Transfer of non-agricultural land by tenure-holder—Tenure-holder not a tenant—Effect — (Tenancy laws —Bengal Tenancy Act (8 of 1885), Ss. 182, 5 (3))—(W. B. Estates Acquisition Act (1953), Ss. 3 (i), 3 (k) and 5 (c)).

'Tenant' and 'under-tenant' as defined in S. 3 of the West Bengal Non-Agricultural Tenancy Act correspond to "raiyat" and 'under-raiyat' of the Bengal Tenancy Act. Having regard to sub-sections (1) and (2) of S. 5 of the Bengal Tenancy Act, a 'tenure-holder' could not be a raiyat. The word "person" in S. 2 (5) and S. 3 (2) must, however, be read as a 'person other than the proprietor or tenure-holder'. It is also clear from Ss. 3 (i), 3 (k) and 5 (c) of the West Bengal Estates Acquisition Act, 1953, that a tenure-holder is not a non-agricultural tenant within the meaning of that Act. A tenure-holder is an intermediary above a non agricultural tenant. 61 Cal W N 572 : AIR 1957 Cal 511 (512, 513) (Prs 11, 21 to 25).

——S. 24 (8)—Applicability—Execution of pre-emption orders—Procedure—C. P. Code held applicable. See C. P. Code (1908), S. 36. AIR 1957 Cal 335 (DB).

——S. 24—Application for pre-emption — Limitation —(Limitation Act (1908), Art. 181).

A certain holding belonged to M who held it under P. On 15th December, 1950 M sold the said holding to A without giving notice of transfer to the landlord P. P applied for pre-emption on 19th March, 1953, i.e., within three years of the sale.

Held, that as no notice of transfer was served on the landlord. P, his application for pre-emption filed within three years of the sale was within time. 59 C W N 849, Rel. on. 98 Cal L J 159 : ILR (1957) 2 Cal 998.

——S. 24 (1) (b)—'Contiguous'—Meaning—Municipal road intervening between two plots—Plots cannot be said to be contiguous. (1931) 2 K B 21, Rel. on. 98 Cal L J 159 : ILR (1957) 2 Cal 998.

——S. 24—Application for pre-emption by heir of unrecognised transferee — Application is maintainable. AIR 1955 N U C (Cal) 3846.

——S. 24—One deed of sale with one lump price for two holdings — One application for pre-emption of both holdings is maintainable. AIR 1955 N U C (Cal) 3846.

——S. 24—No notice served upon applicant for pre-emption — Statutory period for four months mentioned in S. 24 would not apply—Application would be within time if filed within three years from date of sale under Art. 181, Limitation Act — (Limitation Act (1908), Art. 181)— AIR 1948 Cal 48 (FB), Foll. AIR 1955 N U C (Cal) 3846.

——S. 24—Deposit made not in Court but in treasury —Deposit is valid. AIR 1955 N U C (Cal) 3846.

——S. 24 (1) — Sub-section does not require deposit to be made as condition precedent to making of application. AIR 1955 N U C (Cal) 3667.

——S. 24 — "Making the application" — Meaning—Non-notified co-sharer—Amount of consideration not deposited at time of application — Order for pre-emption should be made. See Tenancy Laws—W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 23. AIR 1955 N U C (Cal) 3667.

——S. 24 — Right of pre-emption is mandatory and not discretionary — Purchaser should get consideration money and compensation. AIR 1955 N U C (Cal) 3667.

——S. 24 —Applicability — Land in proceeding under S. 24 not coming within S. 2 (4) (b) or (c) — Land let out and used for purposes not connected with agriculture or horticulture—Rights of party are governed by Act. See Tenancy Laws — West Bengal non-Agricultural Tenancy Act (20 of 1949), S. 2 (4). AIR 1954 Cal 28.

——S. 24—Under-tenants—Under-tenants are within S. 24. 57 Cal W N 703 : AIR 1954 Cal 28 (29) (Pt B) (Pr 3).

SECTION 56

——S. 56 — Applicability — Decree passed under Proviso to S. 3 of old 1940 Act — Tenant's right to protection under S. 56 of new Act—(Tenancy Laws — Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (9 of 1940), S. 3, Proviso). 61 Cal W N 607 : ILR (1958) 1 Cal 393.

SECTION 72

——S. 72 (1)—Appellant's right to be heard—Appeal ought not to be dismissed withought giving appellant a hearing, although Act does not specifically require so—(Natural justice)—(Constitution of India, Art. 226). AIR 1955 SC 425, Foll. 60 Cal W N 1 : ILR (1957) 2 Cal 357 : AIR 1956 Cal 357 (358) (Pt A) (Pr 4) (DB).

——Ss. 72 and 1 (2) (a) — Application under S. 72 — Valid order thereon when is made—Calcutta Municipal Act (33 of 1951) coming into force—Its effect on special jurisdiction of Collector. (1956) 60 Cal W N 551.

SECTION 88

——S. 88 — Registered kabuliat signed by lessee is invalid as lease — Possession under such lease and acceptance of rent by landlord — Lease by operation of law is created — Provision for re-entry for breach of condition against alienation contained in kabuliat attaches to such lease—Breach of condition — Notice under S. 111 (g) not given — Decree for possession cannot be passed. See Transfer of Property Act (1882), S. 108. AIR 1960 Cal 40.

——S. 88—Applicability—'Proceeding', meaning of—Decree for ejectment passed in 1941 — Execution stayed even though no execution was pending—Effect—S. 88 held applicable to the facts of the case. 58 C W N 502 and 59 C W N 243, Rel. on. 62 Cal

W N 376 : AIR 1958 Cal 313 (315, 317, 318) (Pt A) (Prs 6, 19 to 21) (DB).

——S. 88 — Pending execution — Judgment-debtor held entitled to benefits of Ss. 7 and 9. 60 C W N 109, Rel. on. 62 Cal W N 576 : AIR 1958 Cal 313 (316, 318) (Pt B) (Prs 9, 11, 23) (DB).

——S. 88—Decree for ejectment—Appeal of landlord decree-holder filed—Estates Acquisition Act coming into force—Maintainability of appeal—(Tenancy laws West Bengal Estates Acquisition Act, 1953 (1 of 1954), Ss. 5 and 18). 61 Cal W N 607 : ILR (1955) 1 Cal 393.

——S. 88 — Applicability — Execution application stayed under S. 3, Bengal Non-Agricultural Tenancy (Temporary Provisions) Act—If pending—(Tenancy Laws — W. B. Non-Agricultural Tenancy Act (9 of 1940), S. 3).

An execution case started by the decree-holder and stayed by the Court under S. 3, Bengal Non-Agriculturist Tenancy (Temporary Provisions) Act and thus remaining undecided and undisposed of must be held to be an application for execution which is pending within the meaning of S. 88, even though the decree may have been passed even before the temporary Act of 1940. 98 Cal L J 168 : ILR (1958) 1 Cal 31.

——S. 88—Suit for mandatory injunction — Act does not apply — 59 Cal W N 434, Dissented from. AIR 1955 NUC (Cal) 5333 (DB).

——S. 88—Bemiadi lease, meaning of—Bemiadi lessee under an ordinary non-agricultural tenant cannot get protection, under Ss. 6 and 7. See Tenancy Laws — West Bengal non-Agricultural Tenancy Act (20 of 1949), S. 6. AIR 1955 NUC (Cal) 2957.

——S. 88—Scope—Execution started for first time after commencement of Act does not come either under S. 7 or S. 88—Tenant cannot claim protection from ejectment under S. 7. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 7 (2) (1). AIR 1955 NUC (Cal) 2882 (DB).

——Ss. 88, 9—Scope—(Tenancy Laws—Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (9 of 1940).

The Act 20 of 1949 contemplates that the suits, appeals or proceedings referred to in S. 88 must be actually pending at the date when the Act came into operation, i. e., on 15-5-1949.

Where, therefore, a decree for ejectment which was passed on 12-7-1946 contained a provision for stay of its execution till the life of the Bengal Act 9 of 1940 and the decree-holder filed execution petition on 26-11-1949, on judgment-debtor's contentions that the execution proceeding must be deemed to be pending because of the prohibition in the decree.

Held, that the mere fact that the said decree could not be executed till the life of the Bengal Act 9 of 1940 did not connote that the execution of the decree was pending for the entire period during which the stay operated. The contention that S. 9 was attracted by the provisions of S. 88 was not tenable. AIR 1955 NUC (Cal) 350 (DB).

——S. 88—Order under S. 4, Bengal Act (9 of 1940) — Effect on execution completed by delivery of possession — Execution proceedings must be deemed to be pending within S. 88. See Tenancy Laws — Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (9 of 1940), S. 4. AIR 1953 Cal 780 (DB).

——S. 88—Ejectment suit—Stay of delivery of possession under previous Tenancy Act—Appeal—Effect of S. 88—Tenancy Laws — West Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (9 of 1940), S. 3.

Where the lower Courts in a suit for ejectment held that the defendant could not be ejected as ejectment was barred under S. 3 of the Act of 1940 and directed that execution of the decree for delivery of possession would be stayed during the pendency of the Act of 1940 and after the plaintiff filed an appeal to the High Court, the Act of 1940 was superseded by the Act of 1949 :

Held, that the judgment and decree passed by the lower Courts must be set aside and case sent back to the lower Court of appeal to consider whether the provisions of the new Act were applicable and, if so, whether the plaintiff was entitled to a decree for ejectment. 54 Cal W N 581 : AIR 1950 Cal 532 (533) (Pr 7).

SECTION 89

——S. 89—Scope and applicability—Section exempts period during which Bengal Non-Agriculturai Tenancy (Temporary Provisions) Act 1940 continued in force only in case of execution of decree passed in suit for ejectment on ground of non-payment of rent. AIR 1955 NUC (Cal) 2882 (DB).

SECTION 90

——S. 90 — Scope — Computation of period under Ss. 7 and 9—Mode of.

Section 90 contemplates all cases, where the tenant was actually holding either under a lease in writing for a specified period or for an unspecified period or without a lease in writing for a specified period or for an unspecified period or without a lease in writing at the date of commencement of the temporary Act, the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940 and makes suitable and express provision for each of them, and the mode of calculation or exclusion, that it prescribes is that, if, at that time, the tenant was holding under a lease in writing and if such lease in writing expired during the continuance of the above temporary Act and the tenant continued to hold the land during the rest of the period, for which the aforesaid temporary Act lasted or continued in force, in the calculation of the period of twelve years under S. 7 or of the relevant period under S. 9, the occupation of the tenant for the period after the expiration of the lease in writing and before or up till the expiry of the above temporary Act, that is, between the expiry of the said lease and the expiry of the said Act, would not be relevant or taken into account. That is the simple scheme and intention of S. 90 of the Act. 64 Cal W N 293 : ILR (1960) 2 Cal 814.

——Ss. 90, 7 — Lease of non-agricultural land for 7 years commencing in 1937 — Suit for ejectment in 1950—Defence under S. 7 not available. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 7. A I R 1957 Cal 479 (DB).

——S. 90—Continuation of lease — S. 7 (4) read with S. 90 held applicable. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 7 (4). A I R 1954 Cal 168.

SECTION 91

——S. 91 (1) and (2)—Effect of repeal of Bengal Act 9 of 1940.

Section 91 (1) merely repeals the 1940 Act. What the consequence of the repeal would be, would depend on the effect of repeal of a temporary Act under the general rules of interpretation.

It cannot be said that S. 91 (2) necessarily implies that all the provisions of and all the orders made under the 1940 Act must be deemed to be non est. On the other hand as regards the order which had been completed and which had full effect before the repeal of the 1940 Act must be taken to have been properly

passed. ILR (1953) 2 Cal 358 : 57 C W N 533 : A I R 1953 Cal 780 (782) (Pt C) (Pr 5) (DB).

—WEST BENGAL NON-AGRICULTURAL TENANCY (TEMPORARY PROVISIONS) ACT (9 of 1940)

SECTION 1

——S. 1—Scope—Decree dated 12-7-1948 containing provision for stay till life of Bengal Act 9 of 1940 — Contention that S. 9 was attracted by provision of S. 88 held not tenable. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 88. A I R 1955 N U C (Cal) 350 (DB).

SECTION 3

——S. 3—Execution application stayed under S. 3 — Application is pending within S. 88. See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 88. (1956) 98 Cal L J 168.

——S. 3—Ejectment suit—Stay of delivery of possession under previous Tenancy Act—Appeal—Effect of S. 88 of W. B. Act (20 of 1940) — Case remanded to consider applicability of new Act. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 88. A I R 1950 Cal 532.

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TENANT

Estoppel of.
See Evidence Act (1872), S. 116.

Tenant-in-Common.
See Hindu Law.

TENDER

See (1) Coinage Act (1906), S. 13.
(2) Contract Act (1872), Ss. 38, 39.
(3) T. P. Act (1882), Ss. 84, 108 (l).
(4) Sale of Goods Act (1930), Ss. 11, 32.

TENDER OF EXPENSES OF WITNESSES

See Civil P. C. (5 of 1908), O. 16, R. 3.

TENDER OF MORTGAGE MONEY

See Civil P. C. (5 of 1908), O. 34, R. 7.

TENDER OF PARDON

See (1) Constitution of India, Arts. 72, 161.
(2) Criminal P. C. (1898), Ss. 337, 338, and
(3) Statutory cross-references under (i) "Constitution of India" and (ii) "Criminal trial".

TENDER OF RENT BY LESSEE

See T. P. Act (1882), S. 108 (l).

TENURE OF OFFICE OF PERSONS SERVING IN UNION OR STATE

See Constitution of India, Art. 310.

TERMINAL TAX

Tax on railway fares and freight.
See Constitution of India, Sch. 7, List 1, Entry 89.

TERMINATION OF AGENCY

For statutory cross-references see under "Contract —Principal and agent".

TERMINATION OF ATTACHMENT

See Civil P. C. (1908), S. 64; O. 21, Rr. 53, 55, 57, 60, O. 39, R. 9.

TERMINATION OF SERVICE

See (1) Constitution of India, Arts. 309, 310 & 311.
(2) Tort—Master and servant and
(3) Statutory cross-references under "Civil services".

TERMINATION OF SUB-AGENTS' AUTHORITY

For statutory cross-references see under "Contract —Principal and agent".

TERM OF LEASE

See T. P. Act (1882), S. 110.

TERM OF PATENT

See Patents and Designs Act (1911), Ss. 14, 15.

TERMS OF WRITTEN CONTRACT

Proof of.
—Exclusion of oral evidence.
See Evidence Act (1872), S. 91.

TERRITORIAL COUNCILS ACT (103 of 1956)

SECTION 11

——S. 11—Date of Notification—Meaning of — Interpretation of Statutes—Duty of Court. See Territorial Councils Act (1956), S. 13. A I R 1959 Him-Pra 25.

SECTION 13

——Ss. 13 and 11—Date of 'Notification'—Meaning of — Interpretation of Statutes — Duty of Court — (Territorial Councils Rules (1957), R. 60) — (Elections).

The Court must proceed on the footing that the Legislature intended what it has said. It is not competent to any Court to proceed upon any assumption that the Legislature has made a mistake. The plain language of S. 13, read with Ss. 11 and 12 of the Territorial Councils Act, leaves no room for doubt that the date of the notification referred in S. 13 (1) would be the date of notification of the result in the Official Gazette under S. 11 and not the date of the declaration of the result, by the Returning Officer, under R. 60 of the Territorial Councils Rules. AIR 1959 Him Pra 25 (26, 27) (Pt A) (Prs 10, 12).

——S. 13—Election petition under—Act 43 of 1951 not applicable — (Representation of the People Act (1951), S. 81 (1))—(Elections).

Where the Legislature has deemed it proper to draw up a different scheme for elections to the Territorial Councils, and the language of the statute is not ambiguous, there would be no justification to borrow from the provisions of the Representation of the People Act in order to ascertain whether a particular election petition filed under the Territorial Councils Act is within time or not. AIR 1959 Him Pra 25 (27) (Pt B) (Pr 11).

SECTION 16

——S. 16 — Applicability of procedure provided in C. P. Code — Extent of — Amendment of election petition — Competency — Territorial Councils Act (1956), S. 20 — Rules under, Rr. 70, 71, 72, 75 and 79) — (C. P. Code (1908), O. 6, Rr. 15 and 17 — Representation of the People Act (1951), S. 90 (1)).

Under S. 16 of the Territorial Councils Act, the District Judge is not debarred from permitting alteration or amendment of the election petition under O. 6, R. 17, C. P. Code, and of the verification under O. 6, R. 15. Under the scheme of the Territorial Councils Act, there is greater scope for the application of the procedure laid down in the C. P. Code to the trial of election petition than under the scheme of Representation of the People Act, and therefore the provisions of the C. P. Code apply to the trial of an election petition, under the Territorial

Councils Act, not only in respect of the matters covered by Rr. 70, 71, 72, 75 and 79, but all matters raised at the trial, AIR 1958 Him Pra 1 and AIR 1958 Pat 287 and AIR 1958 Mad 171 and AIR 1958 Mad 187 and AIR 1958 Cal 322, Disting. **AIR 1958 Him Pra 26 (27, 28) (Pt A) (Prs 7, 8, 23).**

——Ss. 16 and 20 — Rules, R. 69 —Validity —(C. P. Code (1908), O. 6, R. 17).

Section 20 of the Territorial Councils Act authorises the Central Government to make rules for the disposal of the election disputes, where the Act makes no provision therefor or makes insufficient provision. Since S. 16 of the Territorial Councils Act distinctly prescribes that the procedure laid down in the C. P. Code would be followed in the trial of election petitions, it was not open to the Central Government to make R. 69, which had the effect of nullifying the provision of O. 6, R. 17, C. P. Code. R. 69 of the Rules must be read along with the relevant provision of the C. P. Code to the extent, that this rule offends or goes against the relevant provision of the C. P. Code, it must be deemed to be ultra vires of the Territorial Councils Act. AIR 1954 All 202 and AIR 1954 Cal 436 and AIR 1955 Assam 45, Relied on. **AIR 1958 Him Pra 26 (28) (Pt B) (Prs 13, 23).**

SECTION 19

——S. 19 — Order of District Judge on election petition is final — It would be defeating the intention of Legislature if his order is interfered with lightly under Arts. 226 and 227, Constitution of India. See Constitution of India, Art. 226. **AIR 1961 Him Pra 2.**

SECTION 20

——S. 20 — Constitution of India, Arts. 226, 227— Certiorari — Error of law — Error in holding that certain rule was within rule-making power and intra vires — Cannot be said to be self evident and patent on face of record See Constitution of India, Art. 226. **AIR 1961 Him Pra 2.**

——S. 20 — Rules framed under S. 20 — Omission to lay them on table of Houses of Parliament — Does not render the rules invalid or inoperative. See Territorial Councils Act (103 of 1956), S. 54 (3). **AIR 1961 Him Pra 2.**

SECTION 22

—— S. 22 (3) —Scope of —Notice of meeting —Copy of notice of removal not containing all signatures — Effect — Does not invalidate notice. **A I R 1960 Manipur 25** (28) **(Pt A) (Pr 16).**

——S. 22 (3) — Notice of meeting — Signature of secretary by order of Chief Commissioner who was administrator of union territory under Art. 239 of Constitution — Held, notices to be treated as validly issued. **AIR 1960 Manipur 25 (28) (Pt B) (Pr 17).**

——S. 22 (3)—Notice of meeting—Provisions as to—If mandatory.

It is clear that the words in S. 22 (3) of the Territorial Councils Act 'after giving not less than 15 days' notice thereof' are only directory in their nature and substantial compliance is sufficient and if such compliance has been made, the meeting will not be invalidated. AIR 1954 Cal 49 and 1955 S C J 283 : (1955) 1 M L J (SC) 173 : A I R 1955 S C 196 and (1955) 1 M L J (S C) 157 : 1955 S C J 267 ; AIR 1955 S C 233 and A I R 1959 S C 352 : 1959 S C J 425 : (1959) 1 M L J (SC) 154 : (1959) 1 Andh W R (SC) 154, Rel. on. **AIR 1960 Manipur 25 (29 to 31) (Pt C) (Prs 21, 23, 28, 29).**

——S. 22 (3) — Writ petition — Delay as ground of invalidity—Petitioner himself responsible for delay—Plea not allowed. See Constitution of India, Art. 226. **AIR 1960 Manipur 25.**

——S. 22 (2)—Order of removal passed by Administrator—If purely administrative—Writ when issued —(Constitution of India, Art. 226).

An order passed by the Administrator removing the chairman under S. 22 (3) is not of a purely administrative nature. It is an order passed as required under the statute which calls upon him to give his reasons for the order. The effect of the order is to divest a person of his position as Chairman of the Council. Such an order cannot be said to be a pure administrative order. It is a clear case where he acts in a quasi-judicial manner and hence his order can be questioned under Art. 226 of the Constitution. It is only when the Administrator has exercised a jurisdiction not vested in him that a writ will issue. When the order shows that he has recorded his reasons as required under S. 22 (2) for deciding to remove the Chairman there is a proper exercise of his jurisdiction and it is not for the Court to go into the question whether the reasons given are sufficient or even whether they are valid reasons. It may be that the reasoning can be pointed out to be erroneous. But erroneous decisions cannot be quashed by a writ unless such an error is apparent on the face of the record and goes to the very root of the matter. (1948) 2 M L J 480 ; AIR 1949 Mad 535, Rel. on. **AIR 1960 Manipur 25 (32, 33) (Pt F) (Prs 38, 39).**

SECTION 53

——S. 53—Default in performance of duties—Single instance — Sufficiency—Duty of Administator.

Under S. 53, the default in the performance of its duties on the part of the council must be persistent in order to take action and a single instance of voting down the budget was sufficient for the administrator to act under the section. He was to watch and see if the Territoriol Council can be made to function properly without resorting to the extraordinary remedy of supersession within a year of its election. **AIR 1960 Manipur 25 (33) (Pt G) (Pr 43).**

SECTION 54

——S. 54 (3)—Rules framed under S. 20 — Omission to lay them on table of Houses of Parliament—Effect.

The omission on the part of the administrative department concerned to lay the rules framed by the Central Government in the exercise of the powers conferred by S. 20 on the table of the Houses of Parliament does not render the rules invalid or inoperative. **AIR 1961 Him Pra 2 (7) (Pt D) (Pr 18).**

TERRITORIAL COUNCILS RULES (1957)

RULE 60

——R. 60—Date of Notification—Date of notification referred to in S. 13 of the Territorial Councils Act would be the date of result in Official Gazette under S. 11 of the Act and not the date of declaration of result under R. 60. See Territorial Councils Act (1956). S. 13. **AIR 1959 Him Pra 25.**

RULE 70

——Rule 70—Applicability of procedure provided in Civil P. C. — Extent of — Not resticted to matters covered by Rules only. See Territorial Councils Act (103 of 1956), S. 16. **AIR 1958 Him Pra 26.**

RULE 71

——Rule 71—Applicability of procedure provided in Civil P. C.—Extent of—Not restricted to matters covered by Rules only. See Territorial Councils Act (103 of 1956), S. 16. **AIR 1958 Him Pra 26.**

RULE 72

——Rule 72—Applicability of procedure provided in Civil P. C.—Extent of—Not restricted to matters

covered by Rules only. See Territorial Councils Act (103 of 1956), S. 16. AIR 1958 Him Pra 26.

RULE 75

—Rule 75—Applicability of procedure provided in Civil P. C.—Extent of — Not restricted to matters covered by Bules only. See Territorial Councils Act (103 of 1956), S. 16. AIR 1958 Him Pra 26.

RULE 78

—R. 78—Receipt of deposit—Essentials—Defect in entries in receipts—Effect—(Elections).

The receipt under R. 78 is required to show that the amount was deposited as security for costs of the petition which means that the contents of receipt should be such that any one who looks at it could arrive at the conclusion that the deposit had been made for the purpose mentioned in the rule. Thus where, although column 2 of the challan was not properly filled in, nobody—neither the petitioners nor the Treasury officer—had any doubt about the fact that the sum deposited was by way of security for costs and the amount was available to the Secretary to the Election Department and could not be withdrawn without his orders, it must be held that the requirements of R. 78 have been complied with. AIR 1959 Him Pra 25 (28) (Pt C) (Prs 16, 18).

RULE 79

—Rule 79—Applicability of procedure provided in Civil P. C.—Extent of — Not restricted to matters covered by Rules only. See Territorial Councils Act (103 of 1956), S. 16. AIR 1958 Him Pra 26.

RULE 80

—Rule 80—Constitution of India, Arts. 226, 227 — Error of law—Error in holding that R. 80 was intra vires cannot be said to be self evident and patent on face of record. See Constitution of India, Art. 226. AIR 1961 Him Pra 2.

TERRITORIAL EXTENT OF LAWS

See Constitution of India, Art. 245.

TERRITORIAL JURISDICTION

Execution of decree.
See (1) Civil P. C. (1908), Ss. 16, 17, 21, 24, 38. O. 21, R 8.
(2) Constitution of India, Arts. 226 and 32.

TERRITORIAL WATERS

Things of value underlying vest in the union.
See Constitution of India, Arts. 51, 297.

TERRITORIES

Merger of
See Chandernagore (Merger) Act (1954).
Taxable
See (1) Business Profits Tax Act (1947), S. 2.
(2) Income-tax Act (1922), S. 2 (14A).
Transfer of upon reorganisation of States
See (1) States Reorganisation Act (1956) S. 3.
(2) Bombay Reorganisation Act (1960).
Union
See Constitution of India, Arts. 239, 240, 241 and Sch. 1.

TESTAMENTARY AND INTESTATE JURISDICTION OF HIGH COURT

See Letters Patent (Bom, Cal. and Mad.) Cl. 34.

TESTAMENTARY GUARDIAN

See (1) Civil P. C. (5 of 1908), O. 32, R. 4.
(2) Hindu Minority and Guardianship Act (1956), S. 9.

TESTAMENTARY SUCCESSION

See (1) Hindu Succession Act (1956), S. 30.
(2) Succession Act (1925), Ss. 57 and 58 to 190.

TESTIMONY OF FACTS STATED IN DOCUMENT USED

See Evidence Act (1872), S. 160.

THEFT

See (1) Penal Code (1860) Ss. 378, 379 to 382 and
(2) Statutory cross references under "Criminal law".

Electric energy, of
See Electricity Act (1910), S. 39.
Postal articles, of
See Post Office Act (1898), S. 52.

THINGS ATTACHED TO EARTH

See (1) Civil P. C. (1908), S. 60.
(2) T. P. Act (1882), S. 3.

THINGS SAID OR DONE BY CONSPIRATORS

Relevancy of, to prove conspiracy
See Evidence Act (1872), S. 10.

THIRD PARTY TO CONTRACT

Rights of.
See (1) Contract Act (1872), S. 2 (d), 37, 40.
(2) Specific Relief Act (1877), S. 23.

THIRTY YEARS' OLD DOCUMENT

Presumption as to
See Evidence Act (1872), S. 90.

THIRUCHIRAPALLI KAIERUWARAMDAR AND MATTUWARAMDAR ACT (MAD. ACT 36 of 1958)

See under Tenancy Laws.

THREAT OF INJURY TO PUBLIC SERVANT

See Penal Code (1860), S. 189.

THROUGH TRAFFIC

Defined.
See Railways Act (1890), S. 3.

TIBBIA COLLEGE ACT (DELHI ACT) (5 of 1952) SECTION 1

● —S. 1—Validity of the Act — Corporation—Any expression showing an intention to incorporate will be sufficient — Essence of — Registration of Board of trustees under Societies Registration Act—Effect of—Activities of Board confined to State of Delhi — Act falls under Entry 32 of List II and is within competence of Delhi State Legislature — The Act cannot be called in question on the ground of repugnancy with an existing law or law made by Parliament. Board of Trustees, Ayurvedic & Unani Tibbia College, Delhi v. State of Delhi, 1962 Supp (1) S C R 156 : A I R 1962 S C 458 (464, 471, 477, 478) (Pt A) (Prs 9, 19, 20, 45, 46).

● —S. 1 — Validity of Act — Classification under Art. 14 — Even one institution may be a class — Unreasonableness of selection — Burden to prove is on party attacking validity — Act held did not contravene Art. 14 — Constitution of India, Art. 14. 1951 S C J 29: A I R 1951 S C 41, Rel. on. Board of Trustees, Ayurvedic & Union Tibbia College, Delhi v. State of Delhi, 1962 Supp (1) S C R 156: A I R 1962 S C 458 (471, 473) (Pt B) (Prs 21, 25).

● —S. 1—Validity of Act—Scope of the Act—Does not provide for compulsory acquisition of any property

—Art. 31(2) or Art. 31(1) not contravened—Constitution of India, Art. 31. AIR 1954 SC 119, Disting. Board of Trustees v. State of Delhi, 1962 Supp (1) SCR 156 : AIR 1962 SC 458 (471 to 473) (Pt C) (Prs 22, 23, 25).

● —S. 1—Validity of Act — Does not conflict with provisions of Societies Registration Act, 1860 — S. 22 of Act (49 of 1951) does not apply. Board of Trustees Ayurvedic & Unani Tibbia College, Delhi v. State of Delhi, 1962 Supp (1) S C R 156 : AIR 1962 S C 458 (473, 478) (Pt E) (Prs 26, 48).

● —S. 1—Validity of the Act — Doctrine of colourable legislation — What is — Act held not a piece of colourable legislation. Board of Trustees Ayurvedic & Unani Tibbia College, Delhi v. State of Delhi, 1962 Supp (1) S C R 156: A I R 1962 S C 458 (473) (Pt F) (Pr 27).

SECTION 9

● —S. 9 (1) — Validity — Dissolution of old society and vesting of its property in new society created by Act — Right of old Board to property of society — Nature of — Not a right to dispose of property within Art. 19(1)(f)—Section does not infringe Art. 19(1)(f) of the Constitution. 1954 SCJ 127: (1954) 1 Mad L J 314: A I R 1954 S C 92, Distringuished. Board of Trustees Ayurvedic & Unani Tibbia College, Delhi v. State of Delhi, 1962 Supp (1) S C R 156 : A I R 1962 S C 458 (472, 473) Pt D) (Prs 23, 25).

TICKETS

Refund of fares.
See Railways Act (1890), S. 67.

Return and season tickets.
See Railways Act (1890), S. 70.

Travelling on railways without.
See Railways Act (1890), Ss. 68, 112, 113.

TIME

—Extension of.
—Payment of court-fees for.
See (1) Civil P. C. (1908), Ss. 148, 149; O. 41, R. 1.
(2) Court-fees Act (1870), Ss. 10, 28.

TIME AND PLACE OF PERFORMANCE OF CONTRACT

See Contract Act (1872), Ss. 46.50.

TIME AS ESSENCE OF CONTRACT

See Contract Act (1872), S. 55.

TIME FOR EXECUTION SALE

See Civil P. C. (1908), O. 21, R. 68.

TIME FOR PAYMENT OF PRICE UPON SALE OF GOODS

See Sale of Goods Act (1930), S. 11.

TIME FOR STAMPING INSTRUMENT

See Stamp Act (1899), Ss. 17, 18, 19.

TIME REQUISITE FOR COPIES

Exclusion of, from period of limitation.
See Limitation Act (1908), S. 12.

TIME TO PAY DEFICIT COURT-FEE

See Court-fees Act (1870), S. 10.

TITLE DEEDS OF MORTGAGED PROPERTY

See Civil P. C. (1908), O. 34, Rr. 3, 5 and 7.

TITLE OF ACT

Consideration of, in interpreting statute.
See Interpretation of Statutes.

TITLE OF AUCTION-PURCHASER AT EXECUTION SALE

See Civil P. C. (1908), O. 21, Rr. 64, 77, 84, 91, 92, 94; O. 34, Rr. 5, 14.

TITLES

Abolition of.
See Constitution of India, Art. 18.

TOBBACO

See C. P. and Berar Tobacco Act (8 of 1939).

TODA GIRAS ALLOWANCES ACT (1887) (Bom. Act 7 of 1887)

SECTION 3

—S. 3—Lineal male heirs in male descent does not include succession by rule of primogeniture. 54 Bom L R 99 : I L R (1952) Bom 675 : A I R 1952 Bom 243 (248) (Pt C) (Pr 4) (DB).

TOILET PREPARATION

—Defined.
See Medicinal and Toilet Preparations (Excise Duties) Act (1955), S. 2.

TOLLS

See (1) Constitution of India, Sch. 7, List 2, Entry 59.
(2) Custom—Orissa.
(3) Tolls Act (1851).
(4) Enactments under "Municipalities".

Ferris
See Northern India Ferries Act (1878), Ss. 8, 14, 15.

TOLLS ACT (8 of 1851)

SECTION 2

—S. 2—Validity—(Constitution of India, Art. 265).

The State Government is owner of a river bed, but the right of ownership is subject to customary right of the public to cross the river bed. The right of the Government as owner cannot operate in derogation of the right of the public which has been acquired by custom and immemorial usage. (1952) 2 M L J 894: AIR 1953 Mad 279 and (1954) 2 MLJ 622 : 1954 SCJ 819: AIR 1954 S C 728, Rel. on.

The right to collect tolls from the vehicles passing over the river bed can only be granted by legislation and unless there is legislative authority for the imposition of such a toll, the Collector of a district has no right to realise the toll or lease out the right to realise toll from the trucks plying across the rivers bed. AIR 1961 Pat 442 (443) (Pr 2) (DB).

TOLLS (ARMY AND AIRFORCE) ACT (2 of 1901)

SECTION 6

—S. 6—Suit claiming additional remuneration for plying additional marboat—S. 34, Nothern India Ferries Act (1878), does not apply and jurisdiction of civil Court not barred—(Civil P. C. (1908), S. 9). See Northern India Ferries Act (1878), S. 34. AIR 1952 Assam 147.

TONK LAND REGULATION

SECTION 190

—S. 190—Suits under—Applicability of C. P. Code. Held that the case being a suit for possession of agricultural land was one cognizable by the Revenue Courts under S. 190 (a) and not being a civil suit hearable by Revenue Courts under S 191, O. 2, R. 2 did not apply to it. See Civil P. C. (1908), O. 2, R. 2. AIR 1959 Raj 95.

SECTION 191

—S. 191 — Object and scope of — Applicability of C. P. Code to suits under S. 190 (a). Held that the case being a suit for possession of agricultural land was one cognizable by the Revenue Courts under S. 190 (a) and not being a civil suit hearable by Revenue Courts under S. 191, O. 2, R. 2, did not apply to it. See Civil P. C. (1908), O. 2, R. 2 (2). AIR 1959 Raj 95.

TONK STATE KHANDAN RULES (1944)

—Existing law — Meaning of—Rules framed by erstwhile Nawab of Tonk—Not mere executive orders or domestic instructions — Amount to existing law within Art. 366 (10)—Right to receive cash allowance under such rules cannot be determined by an executive order. See Constitution of India, Art. 372. 1961 Raj L W 386.

TOOLS OF ARTISAN

See Civil P. C. (1908), S. 60.

TORTS

SYNOPSIS

(Torts)

1. Adjacent lands.
   See also Easements Act (1882), S. 7.
2. Applicability and scope.
3. Assault.
4. Contribution.
5. Contributory negligence.
   See Note 18 (B).
6. Conversion.
   - (A) Damages.
   - (B) Liability.
   - (C) Conversion and detention.
7. Damages.
   See Notes 3, 6, 9, 16, 18, 24 for damages for specific wrongs.
   - (A) Exemplary.
   - (B) Future damages.
   - (C) Special and General.
   - (D) Measure.
   - (E) Remoteness.
8. Deceit.
9. Defamation.
   See also Penal Code (1860), Ss. 499-500.
   - (A) Cause of action.
   - (B) Civil action.
   - (C) Corporation.
   - (D) Damages.
   - (E) Evidence and proof.
   - (F) Fair comment.
   - (G) Innuendo.
   - (H) Justification.
   - (I) Malice.
   - (J) Privilege.
   - (K) Publication.
10. Government servant.
    See Note 25 (B).
11. Highway.
    See also Note 18.
12. Joint Tortfeasors.
13. Liability.
14. Malicious arrest and detention.
    See also Note 29.
15. Malicious proceedings.
    See also (1) Note 16.
    (2) Civil P. C. (1908), Ss. 9 and 95.
16. Malicious prosecution.
    - (A) Burden of proof.
    - (B) Civil action.
    - (C) Damages.
    - (D) Evidence — Elements to be proved.
      See also Note 16-A.
      (i) Judgment of Criminal Court.
      (ii) Malice and absence of reasonable and probable cause.
    - (E) Malice.
    - (F) Prosecution.
    - (G) Reasonable and probable cause.
      See also Note 16 (A).
17. Master and servant.
    See also (i) Note 25 (A).
    (ii) Contract Act (1872), S. 73.
    (iii) Employers' Liability Act (1938).
18. Negligence.
    See also Note 11.
    - (A) Collision,
      See also Note 18 (I).
    - (B) Contributory negligence.
    - (C) Damages.
    - (D) Dangerous things.
    - (E) Evidence and proof.
    - (F) Liability.
    - (G) Public bodies.
    - (H) Railway company.
      See also Railways Act (1890) S. 72.
    - (I) Motor accident.
      See also (i) Note 18 (A).
      (ii) Penal Code (1860), S. 304-A.
    - (J) Vicarious liability.
      See also Note 25.
19. Nuisance—What amounts to.
    See also (i) Penal Code (1860), S. 268.
    (ii) Criminal P. C. (1898), Ss. 133, 142.
    (iii) Specific Relief Act (1877), Ss. 53 to 57.
    - (A) General.
    - (B) Abatement.
    - (C) Authorised acts.
    - (D) Continuing nuisance.
    - (E) Injunction.
    - (F) Public Nuisance.
      See also Penal Code (1860), S. 268.
20. Public Nuisance.
    See Note 19 (F).
21. Right of action—General.
    See also Civil P. C. (1908), Ss. 19 and 20.
    - (A) In cases of breach of contract.
22. Seduction.
23. Trade mark.
    See also (i) Trade Marks Act (1940).
    (ii) Trade and Merchandise Marks Act (1958).
24. Trespass.
    - (A) Damages.
    - (B) Who can sue.
25. Vicarious liability.
    - (A) Master and servant.
    - (B) Government servant.
    - (C) Principal and agent.
26. Vis Major.
27. Wrongful attachment.
28. Wrongful detention and seizure of goods.
    See also Note 6 (C).

29. Wrongful confinement or false imprisonment.
See also Note 14.

1. Adjacent lands.
See also Easements Act (1882), S. 7.

——Adjacent lands— Neighbours — Escape of water from defendant's land due to construction of embankment — Liability of defendant.

Although a person is not responsible for allowing the escape of things which are naturally on his land he is responsible for causing their escape. He is not entitled to relieve his own land of a burden by casting it upon the land of his neighbour. Thus he is responsible for the escape of water from his land if the escape is due to some embankment made by him. **1950 All L J 60 : A I R 1950 All 519 (520) (Pt C) (Pr 5).**

——Adjacent lands—Riparian owner— Right to obstruct flow of water from adjacent land — Extent of indicated — Normal flow and flood water — Distinction pointed out— Held in circumstances of the case that it could not be held that defendants are not entitled to protect their lands from flood water—Case was one of damnum sine impuria and plaintiff must adopt his own protective measures against flood water. **A I R 1958 Andh Pra 103.**

——Adjacent lands— Diversion of water to adjacent land — Liability of person diverting — Right of one owner to discharge water from his land—Extent of.

The right of a person to dam up water or divert the course of naturally flowing water or provide a particular channel for the flow of accumulated water is not an unrestricted right—It is subject to the obligation of seeing that no injury was caused to the property of another.

Held, on facts that defendant was liable to pay damages to the plaintiff for the damage done to latter's crop by diverting the natural flow of water from his field. **Madh B L R 1956 Civil 513 : 1956 Madh B L J 1108 : A I R 1956 Madh B 209 (210) (Pr 5).**

——Adjacent lands — Negligence — Easement of support.

Distinction between support to one's land to one's structure in land from subjacent and adjacent land owned by neighbour pointed out—If owner of a building has not acquired a right in easement for the support of building or structure from his neighbour's land neighbour would be within his right in carrying on excavation on his soil even if by so doing damage is caused provided there is no negligence in excavation operations. See Easements Act (1882), S. 7 (b). **A I R 1957 Madh Pra 227 (DB).**

——Adjacent lands—Negligence — Adjacent owners —Right of drainage—Drainage water from higher land by artificial means — Does not amount to normal user of land — Owner of such land liable in damages to owner of lowly situated land—No easement of necessity— Existence of drainage channel between the two lands — No inference of natural right of owner of higher situated land to drain water from his land to the other possible in the circumstances. **I L R (1963) Cut 798 : A I R 1964 Orissa 41 (42) (Prs 7, 8, 9).**

——Adjacent lands — Riparian rights — What is a natural stream indicated. **AIR 1954 Pat 320 (DB).**

2. Applicability and scope.

——Defences—Good faith— It is important factor in considering whether an act amounts to offence but not so in considering whether it amounts to tort. **1965 All W R (HC) 95 : 1965 All L J 432 : I L R (1965) 1 All 435 : A I R 1965 All 527 (530) (Pt F) (Pr 22) (DB).**

——English Common Law— Insult, intimidation and assault—Essential ingredients to constitute — Action for damages when permissible ?

Held, on facts, that in the case of torts the Indian Courts have always adopted the English Common Law in so far as it is consonant to justice, equity and good conscience. They have departed from the English Law only when a particular rule appeared unsuitable to local conditions.

Insult per se is not actionable. Even if the words and conduct of the Village Munsiff who was under a duty to collect arrears of revenue had been construed as amounting to insult no action for damages could be founded on it. The essential ingredients of the wrong of intimidation as understood in the English Law, are wanting in this case. In the case of an intentional insult there must be proof of intent to provoke a breach of the peace or the commission of an offence and in the case of criminal intimidation the intent should be to cause alarm to the person intimidated or to cause a person to do something which he is not legally bound to do or omit to do something which he is legally entitled to do.

In the English Law of Torts, assault is regarded as a form of trespass to the person. 'Battery' in the English Law of Torts corresponds to 'criminal force' as defined by S. 350, Penal Code and 'assault' in the English Law corresponds to the definition of that terms in S. 351, Indian Penal Code. Whether judged from the stand-point of the alleged wrongdoer or the wronged immediacy and imminence of the use of force is the true test of assault. **(1963) 2 Andh W R 403 : (1964) 1 Andh L T 11 : I L R (1964) Andh Pra 1021 : A I R 1964 Andh Pra 382 (386, 387) (Prs 18, 22, 24, 25, 29, 31 to 83) (DB).**

——Actionable wrong — Damages — Suit for—Liability of statutory corporation for tortious acts — Conditions for — Refusal to grant renewal of working licence by Municipal Corporation in purported exercise of its statutory power—If actionable wrong.

There is no statute in India which expressly provides for cases of torts. Therefore, the English common law rules are availed of by the Courts as consistent with justice, equity and good conscience. The rules of torts are not indefinitely flexible to cover any case. Therefore, a tortious act must be a civil wrong actionable in law. Whether a private individual or a corporate body, both are subject to tortious liability.

Under the English Common law a corporation is liable to be sued for any tort, provided that (1) it is a tort in respect of which an action would lie against a private individual, (2) the person by whom the tort is actually committed is acting within the scope of his authority and in the course of his employment as agent of the corporation, and (3) the act complained of is not one which the corporation would not, in any circumstances, be authorised by its constitution to commit. The same principle governs tortious acts in India committed by the corporate bodies according to the law as administered in India.

Held, that having regard to the facts and circumstances of the case, the impugned act of refusal to grant the licence was clearly an act purporting to have been in exercise of authority conferred by law (viz., S. 321 (8), Madras District Municipalities Act) and it could not be said that the officer was guilty of abuse of power vested in him; nor was there anything to show that in passing the order he was actuated by malice or by extraneous or objectionable consideration. In no sense of the term the impugned act was an actionable wrong or a tortious act. At best it was an error of judgment which could be corrected in appeal. The suit for damages was

therefore misconceived and was liable to be dismissed. (1963) 1 Andh L T 262 : A I R 1963 Andh Pra 435 (438) (Pr 8).

——Damages — Waiver — Contract of sale — Buyer obtaining delivery of goods by fraud and converting them to his own use—Seller demanding price on the basis of contract—Does not amount to waiver of tort.

Where the buyer in a contract of sale obtained delivery of the goods not under the contract by paying the price but by practising fraud on the agent of the sellers and converted them to his own use and the sellers demanded the amount due to them on the basis of the contract of sale;

Held, that the fact that the sellers demanded the price of the goods could not be considered to be either a waiver of the right to claim damages for tort or as an assent to the appropriation of the goods to the contract. 1941 A C 1, Rel. on. 1963 Ker L J 638: 1963 Ker L T 741 : I L R (1963) 2 Ker 723 : AIR 1964 Ker 135 (138) (Pt E) (Pr 11) (DB).

——Master and servant — Suit for damages against servant — Bailee and servant — Distinction — Suit for damages against servant on ground of bailment is not maintainable — But an action in torts lies against servant if he is negligent in handling goods of his master. See Contract Act (1872), S. 148. A I R 1955 N U C (Madh B) 3705.

——Plaintiff writing letter from Ujjain to defendant in Bombay that he is sending his watch for repairs by parcel — Defendant receiving parcel but finding it empty — Cause of action held did not arise in Ujjain—Suit held one in tort — Held there was no offer—Ujjain Court held had no jurisdiction — (Contract Act (1872), Ss. 4, 10, 187 and 218). See Civil P. C. (1908), S. 19. AIR 1953 Madh B 38.

——Liability for — Does not amount to debt — On death of judgment-debtor his son will be bound to pay if he received assets — Son's liability will be governed by Ss. 50 and 53, C. P. Code.

A liability for tort does not amount to a debt; it is distinct from an obligation legally incurred in consequence of a contract or quasi-contract. Where a father is guilty of a civil wrong and a decree is passed against him, it does not become an Avyavaharik debt. His son is bouud to pay subject to the condition that he has received assets from which the liability can be discharged. The liability will be governed by the provisions contained in Ss. 50 and 53, C. P. Code. (1943) 1 Mad L J 268; AIR 1943 Mad 415, Rel. on; 16 Ind Cas 970 (Cal) and A I R 1927 Nag 337 and A I R 1938 All 591, :Disting. 1962 M P L J (Notes) 154 : A I R 1963 Madh Pra 49 (51) (Pt B) (Pr 11).

● ——Damages — "Injurious falsehood" — Actionability — False complaint to Magistrate leading to stopping of marriage on allegation of marriage being illegal—Subsequent dismissal of complaint—Suit for damages — Held on facts that though the act did not fall under any category of torts either to the person or to property it was still actionable as it clearly amounted to an injurious falsehood. See Mysore Limitation Act, Arts. 22, 23 and 36. ILR (1951) Mys 74 (FB).

——Scope — Negligence — Cardinal principle of liability in tort, when death or bodily injury is caused to a person, is negligence or failure to take requisite amount of case required by law — Ss. 110 to 110F, Motor Vehicles Act do not in any way override law of torts. See Motor Vehicles Act (1939), S. 110. AIR 1962 Punj 540.

3. Assault.

——Assault on woman for committing sexual intercourse—Assessment of damages.

In a case where a man drags a woman for the purpose of committing sexual intercourse, the amount of damages has to be assessed at the discretion of the Court, which of course must be judicially exercised. The damages awarded to the wronged woman are not as compensation for any injury as there is no injury, but for mental pain and shock. There is no known method of calculating the money value of the pain and anguish caused to a woman who is dragged by a ruffian for the purpose of assaulting her. The damages have to be arbitrary in one sense, though not in the judicial sense. 1965 All W R (HC) 495 : 1965 All Cri R 315 : A I R 1966 All 527 (528) (Pr 3).

——Insult — Intimidation— Assault — Collection of arrears of Land Revenue by village munsif—Threat by village munsif to distrain ear-rings worn by agriculturist—Village goldsmith called for — On arrival of goldsmith, one amongst those present paying amount of arrears — Conduct of village munsif held did not amount to insult or intimidation or assault — Penal Code (1860), Ss. 503, 504, 350, 351. (1963) 2 Andh W R 403 : (1964) Andh L T 11 : I L R (1964) Andh Pra 1021 : A I R 1964 Andh Pra 382 (386, 387) (Prs 18, 20, 22, 24, 25, 29, 31, 32, 33) (DB).

——Assault and battery — Damages — Liability of minor.

A minor is in general liable for his torts in the same manner and to the same extent as an adult. The rule of exemption from all responsibility and liability for an act done by a person below a certain age has applicability in conduct tortious in itself and in its very essence. It is only in those cases where an act is innocent in itself, but becomes tortious by the addition of some ingredient such as intention, malice, knowledge or state of mind in the person charged as a wrong-doer that the age and mental capacity of the defendant becomes relevant.

In the case of a violent assault and battery on a harmless man, such consideration as intention, knowledge, state of mind and conception of right and wrong are wholly immaterial; the act in itself is sufficient to support the cause of action. The person committing the assault cannot, therefore, contend that he cannot be made liable for damages because at the time of the commission of the battery he was a minor of fifteen or sixteen years of age, and did not know the nature and quality of the act or that what he was doing was wrong. Madh B L R 1955 Civ 231 : Madh B L J 1955 H C R 1140 : ILR (1955) M B 355 : AIR 1956 Madh B 84 (85, 86) (Pt A) (Pr 4).

——Expression 'personal injuries' includes physical as well as mental injuries — Claim for compensation for loss of reputation or mental agony does not survive after death of party injured—But claim for compensation for injury to goods survives. See Succession Act (1925), S. 306. AIR 1960 Madh Pra 200.

——Bodily injury—Injury by shock.

It cannot be said that because bodily injury was not manifested by external visible injury, injury caused to a person by a shock to his nervous system which incapacitates him from his ordinary activities and avocations is not therefore bodily injury. The body is controlled by its nervous system and if by reason of an acute shock to the nervous system the activities of the body are impaired and incapacitated from functioning normally, there is clear bodily injury. 1951-2 Mad L J 471 : A I R 1951 Mad 1058 (1058) (Pt C) (Pr 11).

——Assault—Damages.

A with his three of four companions went to take forcible possession of B's house. B's party was four in number. B's father delivered two or three stick

blows to A but there was no attempt on the part of A to use any violence against the person of B or his father or his brothers. B, howevor, used an axe and hit A on the head and thus inflicted a dangerous injury upon a vital part of body by a deadly weapon. In a suit for damages for assault.

Held, that B's father was within his right but B exceeded it. B had not a right of self-defence but a right to forcibly remove the trespasser. The harm caused to A could be regarded as an unavoidable result of an act done in a reasonable and careful manner. The maxim "volunti non fit injuria" had no application as it could not be said that because A trespassed into the premises of B, A consented to the injury inflicted upon him.

The assault committed by B was out of all proportion to the harm sought to be prevented. And merely contemptuous damages could not therefore be awarded to A. The justification of B having failed, he must be held liable for all the direct consequences flowing from the wrongful injury caused to A. 88 E R 872 and 137 E R 945, Rel. on. **1951 Nag L J 477 : A I R 1952 Nag 16 (16, 17) (Pt A) (Prs 4, 6 to 9).**

——Assault—Damages—Assessment of.

In a suit for damages for assault, the question of damages has to be considered by reference to all the circumstances of the case. Where the assault committed by the defendant was out of all proportion to the harm sought to be prevented by him, he must be held liable for all the direct consequences flowing from the wrongful injury caused to the plaintiff. **1951 Nag L J 477 : A I R 1952 Nag 16 (17) (Pt C) (Pr 10).**

——Assault — What amounts to — Abusive language and threat of violence—Liability.

Held, on facts that apart from menacing words the defendant by his action in raising his right hand for the purpose of giving a blow, in addition to using threatening words, made it absolutely clear that his intention was to give a slap to the plaintiff. Whatever may be the provocation there was no justification for assaulting the plaintiff at a public place near the Court premises thereby causing him considerable humiliation and insult. Hence the defendant was guilty of actionable assault. I L R 26 Cal 653, Distinguished. Salmond Torts, (12th Edn.), p. 295, Rel. on. **(1959) 25 Cut L T 83.**

——Assault — Damages for bodily pain and mental agony.

As to the question of awarding any sum as damages for bodily pain and mental agony, on account of the beating given to the plaintiff and the four injuries including the one grievous caused to him, it is very difficult in such cases to measure exactly as to what should be the quantum of damages. The plaintiff in this case sustained four injuries and one of them was grievous and that injury had diminished the strength of the leg. On account of the injury, the plaintiff had to remain in hospital for 18 days and he had suffered bodily pain and mental agony.

Held, that these were the relevant factors which could be legally considered in the awarding of the damages and as the case did not call for only nominal damages because the plaintiff suffered substantial bodily and mental pain, a sum of Rs. 500/- could not by any means be said to be very excessive. **1959 Raj L W 207.**

4. Contribution.

——Contribution — Suit for — Joint decree for costs against A and B — B not contesting suit in any way— Payment of full decretal amount by A — A cannot in equity recover from B, B's share of costs — A wrongdoer cannot recover contribution from an innocent person whom he has led into commission of a tort. AIR 1961 Pat 103.

5. Contributory negligence.

See Note 18(B).

6. Conversion.

(A) Damages.

(B) Liability.

(C) Conversion and detention.

6. Conversion.

——Conversion — Goods illegally seized and sold by Government — Seizure however not mala fide — Suit against Government for value of goods being one for damages is barred. See Essential Supplies (Temporary Powers) Act (1946), S. 16(2). (1964) 1 Andh W R 333.

——Conversion—Sale of pledged goods by pledgee— Pledgor impugning sale—Pledger must either redeem or sue for damages for conversion — Mere suit for declaration not competent. See Contract Act (1872), S. 176. AIR 1960 Andh Pra 273 (DB).

——Conversion—Trespass to goods—Trespass by co-sharer by removing paddy from possession of tenants —:Conversion may be inferred for the refusal to deliver the paddy — Landlord has right to sue the co-sharer as a wrong-doer in tort for price for paddy. See Tort — Trespass to goods. A I R 1955 N U C (Assam) 2303.

——Conversion—Gain by wrongful act—Fish caught by wrongful act of trespassing — Money realised by sale of—Disposal of.

A wrong-doer is not entitled to keep with himself any part of the money realised by the sale as the result of a wrongful act on his part. A person obtaining money by the sale of the fish as a result of wrongul operations by trespassing into the fishery in possession of another person, cannot be permitted to withhold any portion of the profit accruing to him as the result of the wrongful act on his part. Nor can he be allowed to claim collecting charges incurred in catching fish. **AIR 1950 Assam 190 (191) (Pr 7) (DB).**

——Conversion—Test—(Railways Act (1890), S. 77).

In order to determine whether there was conversion of goods the test to be applied is not merely to see whether there was failure to return the goods. It must also appear that there was an intention to keep the goods in defiance of the plaintiff. In other words, detention is not conversion unless there is an adverse claim. A carrier who on demand being made states that he would not return the goods because they were looted while in his possession cannot ipso facto be said to have been guilty of conversion. **56 Bom L R 150 : AIR 1954 Bom 297 (300) (Pt D) (Pr 14).**

——Conversion — Conversion of cheque — Remedies of claimant pointed out. AIR 1955 N U C (Cal) 6103 (DB).

——Conversion—(Civil P. C. (1908), O. 7, R. 11).

There is no conversion by demand and refusal, without a demand before action having been made. A demand, therefore, is an essential part of such a cause of action and must necessarily be pleaded, except in the case of a bailee or unless at the date of the demand, the defendant had the possession or control over the property, but failed or refused to deliver it.

Conversion by wrongful detention arises when the detention is adverse to the person entitled to the possession of the thing detained and the refusal by the defendant to deliver upon demand is, proof of the detention being adverse. Therefore, refusal to deliver up property on demand cannot be a conversion, i.e., cannot shew an intention to hold them adversely to the owner, if it is no longer in the power or possession of the defendant. **AIR 1955 NUC (Cal) 1058.**

—Conversion—Elements — Meaning and methods.

The tort of 'conversion' consists in an act of wilful interference, without lawful justification, with a chattel in a manner inconsistent with another's right whereby that other is deprived of the use and possession of it. There are three distinct methods in which one may be guilty of a conversion: (1) by wrongly taking it, (2) by wrongly detaining it, and (3) by wrongly disposing of it. **1957 Ker L T 1106 : 1957 Ker L J 1098 : ILR (1958) Ker 268 : AIR 1958 Ker 47 (48) (Pt A) (Pr 6) (DB).**

—Conversion — Failure to deliver goods after demand.

Where the defendant is an agent of steamship carriers and the finding of the Court against the defendant's case of short landing cannot be said to be unjustified, his failure to deliver the goods consigned by the plaintiff after demand therefor amounts to conversion. **1957 Ker L T 1106 : 1957 Ker L J 1098 : ILR (1958) Ker 268 : AIR 1958 Ker 47 (49) (Pt C) (Pr 7) (DB).**

—Conversion—What amounts to—Proof of adverse detention — Refusal to deliver forthwith goods to claimant when justified.

A conversion is not act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. Two elements are combined in such interference; (1) a dealing with the chattel in a manner inconsistent with the right of the person entitled to it, and (2) an intention in so doing to deny that person's right or to assert a right which is in fact done is necessarily a denial of the other's right. The usual method of proving that a detention is adverse within the meaning of this rule is to show that the plaintiff demanded the delivery of the chattel and that the defendant refused to or neglected to comply with the demand. Presumably, any conduct of the defendant which shows that he not merely possesses the goods, but intends to hold them in defence of the plaintiff and to deprive him of the possession of them is sufficient to constitute a conversion, even though there has been no formal demand of restitution. Where there is a genuine doubt in the defendant's mind as to the ownership of chattels, a temporary and provisional refusal to deliver them to the claimant, pending inquiries into his title, is justifiable, and is neither a conversion nor any other kind of wrong. **1962 MPLJ 1163 : 1963 Jab L J 244 : ILR (1962) Madh Pra 404 : AIR 1963 Madh Pra 89 (92, 93) (Pt B) (Prs 10, 14) (DB).**

—Conversion — Notice to pledgee of owner's title —Sale of article pledged by pledgee — He was held guilty of conversion of article by unlawfully effecting sale of it and appropriating the proceeds thereof. See Contract Act (1872), S. 178. AIR 1955 Mad 505 (DB).

—Conversion—Notice of demand before suit.

Notice of demand is not condition precedent to suits for recovery of movables — Demand and refusal do not in themselves constitute conversion but are only evidence— Conversion proved otherwise to have taken place long before suit — Absence of notice of demand cannot defeat claim. **ILR (1953) Mys 213 : AIR 1953 Mys 147 (150) (Pt D) (Pr 15) (DB).**

—Conversion — Consignment marked for C — Refusal of Goods Clerk to deliver at R—If conversion.

A refusal of delivery to the true owner is not necessarily a conversion though it may be evidence of it. The refusal of the Goods Clerk to give delivery to the plaintiff (owner) at Raipur of a consignment marked for Champa cannot be regarded as a conversion because, under the rules to which he was subject, he could not give delivery of that consignment to the plaintiff at Raipur, even assuming that the plaintiff made it clear to the Goods Clerk that the consignment was his. The conduct of the Goods Clerk cannot be regarded as denial of the plaintiff's title at all. In view of the marking on the consignment, the action of the Goods Clerk must be regarded as bona fide. **1951 Nag L J 450: ILR (1951) Nag 545 : AIR 1951 Nag 245 (247) (Pt A) (Pr 9).**

6 (A). Damages.

—Conversion — Conversion of goods — Suit for damages—Essentials to be established.

Before the plaintiffs can maintain an action in trover, they must establish that they had title to the goods in question and that further they were entitled to possession thereof when they called upon the defendants to deliver them. If the parties stood in the relation of sellers and purchasers with reference to the transactions, then the plaintiffs must show that the property in the goods, which initially was with the defendants, passed to them in accordance with the provisions of the Sale of Goods Act. If, however the defendants imported the goods as agents of the plaintiffs, then the title to them would undoubtedly be with the latter, and the only question then would be whether the former were entitled to retain possession, as they would be if they had paid the price of the goods on behalf of the principal, and had not been reimbursed that amount.

Held on the pleadings and on the evidence in the suit that the claim for damages on the footing of conversion must fail. **L. J. Leach and Co., Ltd. v. Messrs. Jardine Skinner and Co. 1957 S C A 318 : 1957 S C J 313 : 1957 B L J R 750 : 59 Rom L R 395 : 1957 M P L J 497 : 1957 Nag L J 321 : 1957 S C C 237 : 1957 M P C 583 : 1957 All L J 794 : 1957 S C R 438 : A I R 1957 S C 357 (359 to 362) (Pt A) (Prs 5, 7, 14).**

—Compensation—Once a plaintiff claims compensation for conversion he cannot also claim any sum of money for loss of income. ILR (1951) 3 Assam 275:AIR 1952 Assam 141 (147) (Pt F) (Pr 33) (DB).

—Damages — Compensation — The compensation for conversion is to be determined with reference to the date of conversion. 1927 Lah 403 and 1943 Nag 162; Rel. on. ILR (1961) 3 Assam 279 : AIR 1952 Assam 141 (Pt G) (Pr 32) (DB).

—Conversion — Damages — Contract of sale — Buyer not paying price but obtained goods by fraud and converting them — Measure of damages.

Where the buyer in a contract of sale obtained delivery of the goods not by paying the price as provided by the contract but by practising fraud upon the agent of the seller :

Held, that damages in such a case should normally be the value of the property as on the date of conversion but as in the instant case the buyers must be deemed to have knowledge of the contract under which the goods were sold to them they were answerable for all the consequences reasonably flowing from their act. They were therefore liable for damages for the price of the goods under the contract, irrespective of the market value of the goods on the date of the conversion. **1963 Ker L J 638 : 1963 Ker L T 741: ILR (1963) 2 Ker 723:AIR 1964 Ker 135 (138) (Pt C) (Pr 10) (DB).**

—Conversion — Damages — Measure of — Declaration made under S. 29, Sea Customs Act — If conclusive as to value of goods—Figures in bill of entry — Effect of — Value as per invoices if should be accepted — (Sea Customs Act (1878), S. 29) — (Evidence Act (1872), S. 115).

The value recoverable in an action for conversion is, in general, the value of the property at the date of

the conversion and not its value at an earlier or later date. It is wrong to say that the figures in the bill of entry constitute an estoppel against the plaintiff for, there is no question of the defendant's altering his position on the faith of the representations contained in the bill of entry. The values as per the invoices should therefore be accepted for calculating damages awardable to the plaintiff for the conversion of his goods where the plaintiff's case is that the price of the goods given in the bill of entry was only for the purpose of assessing customs duty and that the correct price was shown in the invoices. **1957 Ker L T 1106 : ILR (1958) Kerala 268 : 1957 Ker L J 1098 : AIR 1958 Ker 47 (50) (Pt E) (Pr 9) (DB).**

——Conversion — Remedies of bailor — Defence open to bailee — Measure of damages — Cause of action.

A bailor in the event of non-delivery of the goods by the bailee, on a demand made by him in that behalf, is entitled at his election to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof and if the bailor pursues hie remedy for wrongful conversion of the goods instead of wrongful detention thereof, it is no answer for the bailee to say that he was guilty of wrongful detention of the goods at an earlier date which fact of detention of the goods the plaintiff knew or ought to have known at or about that time and is, therefore, not liable to the plaintiff for wrongful conversion thereof. It is the option of the plaintiff to pursue either remedy against the bailee.

In general, the measure of damages is the value of the thing, credit being given te the defendant for the return of the goods converted or of their equivalent. Damages to be awarded in a case af conversion should be the damages when the conversion took place.

Conversion does not deprive the plaintiff of his title to the goods. Therefore, he may get judgment either (i) for the goods or their value; or (ii) for the value of the goods or for damages for their conversion. But, whichever of these two judgments he obtains his title to the goods is not (in the absence of special circumstances) affected, he may exercise all his rights as owner until the judgment is fully satisfied.

The cause of action may be based on trover and detinue simultaneously. Where all the ingredients that are necessary to spell out a cause of action on anyone of these two bases are present in the case by the mere use of the word 'Price' in the notice and the demand for price in the suit the real cause of action cannot be made obscure. **1962 M P L J 1163 : 1963 Jab L J 244 : ILR (1962) Madh Pra 404 : AIR 1963 Madh Pra 89 (94, 95) (Pt D) (Prs 19, 22, 23, 24) (DB).**

——Damages — Earth dug up by wrong-doer from plaintiff's land converted into bricks—Assessment of damages.

Where a wrong-doer converts the earth dug up from the land of the plaintiff into bricks, then in addition to the expenses incurred by the plaintiff in manuring the plots dug out and for levelling up the pits created in the process of digging of the earth and the value of the crops that he would have been able to realise out of the lands in question and the value of the site prejudicially affected by digging of the pits, the plaintiff will be entitled to the value of the bricks. The value of the bricks is to be arrived at after deducting the making charges incurred by the defendant, it he has acted without fraud or negligence and quite fairly and honestly. ILR (1941) 1 Cal 285, Ref. **64 Mad L W 858 : 1951-2 Mad L J 419 : AIR 1952 Mad 597 (598) (Pr 4).**

——Conversion — Damages — Refusal to take delivery offered late — Right to claim damages for total loss.

It is not open to the owner of goods to refuse to take delivery of goods offered to him, even though such delivery may have been offered late and after the goods had deteriorated and then claim damages as if there was a total loss. In such a case the owner can get only nominal damages. **1951 Nag L J 450 : ILR (1951) Nag 545 : AIR 1951 Nag 245 (247) (Pt B) (Pr 11).**

——Detinue and conversion — Suit for damages for conversion — Offer of specific restitution—Plaintiff if can refuse.

Any interference with a chattel in manner inconsistent with the right of a person entitled to it accompanied by a denial of title of that person amounts to conversion. Therefore, where the plaintiff sues for the value of materials removed and not for specific restitution the action is one for damages for conversion and not an action in detinue. But where the defendant offers to restore the property and there is no case of deterioration in value of the goods since the date of the wrong the plaintiff cannot insist on damages refusing specific restitution. **1951 Nag L J 44 : ILR (1950) Nag 453 : AIR 1950 Nag 246 (248) (Pt D) (Prs 10, 11) (DB).**

——Conversion — Damages.

In the case of wrongful conversion of goods of ordinary merchandise by the agent where the principal can re-purchase goods after getting information of conversion the latter is entitled to claim the market rate of the goods on the day on which he came to know of the conversion for, the market rate on the subsequent date, the option to claim the particular rate being with mim. **AIR 1953 Sau 126 (127) (Prs 3-5) (DB).**

6 (B). Liability.

——Earth from plaintiff's land removed and placed on railway line — Demand for return of earth not made — Probability of independent contractor for supply of earth having been employed — Railway authorities are liable in conversion for value of earth —Sale of Goods Act (1930), S. 27 — Limitation Act (1908), Art. 43.

If in a given case, there is evidence that the defendant has dealt with goods in a manner adverse to the plaintiff and inconsistent with his right to the use and possession of them, such dealing with the goods, amounts to conversion, notwithstanding the fact that no demand for the return of the goods was made. 1924 Mad 438, Rel. on.

Where a large quantity of earth from land belonging to the plaintiff was removed and placed on the railway track under construction.

Held, that the Union of India was liable in conversion for the value of the earth belonging to the plaintiff, even if the latter had made no demand for the return of the earth. **ILR (1951) 3 Assam 279 : A I R 1952 Assam 141 (146) (Pt E) (Prs 28 to 30) (DB).**

——Conversion—Hire purchase agreement — Assignment of right to use goods—Assignee becomes trustee and is bound to protect goods — Assignee allowing owner to wrongfully seize goods and purchasing them himself — Assignee is liable for loss suffered by hirer. See Contract—Hire-purchase Agreement. AIR 1965 Mad 257 (DB).

6 (C). Conversion and detention.

——Conversion and detention—Actions for—Scope of and distinction—Reliefs awardable.

A conversion is an act of wilful interference, without lawful justification with any chattel in a manner

inconsistent with the right of another, whereby that other is deprived of the use and possession of it. Every person is guilty of a conversion, who without lawful justification, deprives a person of his goods by delivering them to some one else so as to charge the possession. The action of detention is based upon a wrongful detention of the plaintiff's chattel by the defendant, evidenced by a refusal to deliver it upon demand and the redress claimed is not damages for the wrong but the return of the chattel or its value. Action for wrongful conversion and action for wrongful detention are otherwise known as action in trover and action in detinue. Judgment for the petitioner in trover is for recovery of damages for the conversion: Judgment for the petitioner in detinue is for delivery of the chattel or payment of its value and damages for detention. Dhian Singh Shobha Singh v. Union of India, 36 Mys L J 256: 1958 Mad W N (SC) 40: (1958) S C J 363: (1958) 1 Mad L J (SC) 93: (1958) 1 Andh W R (SC) 93: 1958 S C A 307: 1958 S C R 781: A I R 1958 S C 274 (278) (Pt A) (Prs 15, 16, 18).

● ——Conversion and detention—Remedies—Option of plaintiff — Action for wrongful detention against bailee—Plea of in defence.

A bailor in the event of the non-delivery of the goods by the bailed, on a demand made by him in that behalf, is entitled, at his election, to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof and if the bailor pursues his remedy against the bailee for wrongful detention of the goods it would be no answer for the bailee to say that he was guilty of wrongful conversion of the goods at an earlier date which fact of conversion of the goods the plaintiff knew or ought to have known at or about that time and is therefore not liable to the plaintiff for wrongful detention thereof. It is the option of the plaintiff to pursue either remedy against the bailee just as it suits him having regard to all the circumstances of the case and the bailee cannot be heard to say anything to the contrary for the simple reason that he cannot take advantage of his own wrong and cannot ask the plaintiff to choose a remedy which may be beneficial to him. Dhian Singh Shobha Singh v. Union of India, 1958 S C J 363: 36 Mys L J 256: 1958 Mad W N (SC) 40: (1958) 1 M L J (SC) 93: (1958) 1 Andh W R (SC) 93: 1958 S C A 307: 1958 S C R 781: A I R 1958 S C 274 (280) (Pt B) (Prs 24, 25).

● ——Conversion and detention—Measure of damages —Value at the date of judgment allowed.

The position in law in regard to the measure of damages in an action for wrongful conversion is far from clear and the law in regard to the same cannot be said to be perfectly well settled. It is, however, quite clear that in actions for wrongful detention the measure of damages can only be the value of the goods as at the date of the verdict or judgment. (1946) 1 K B 374, Rel. on. In the case of wrongful conversion, the tort is complete the moment the goods are wrongfully converted by the defendant and no question can arise in those cases of any continuing wrong. In a case of wrongful detention, however, the cause of action may certainly arise the moment there is a refusal by the defendant to re-deliver the goods on demand made by the plaintiff in that behalf. But even though the cause of action thus arises on a refusal to re-deliver the said goods to the plaintiff the wrogful detention of the goods is a continuing wrong and the wrongful detention continues right up to the time when the defendant re-delivers the goods either of his own volition or under compulsion of a decree of the Court. The only verdict of judgment which the Court can give in actions for wrongful detention is that the defendant do deliver to the plaintiff the goods thus wrongfully detained by him or pay in the alternative the value thereof which can only be ascertained as on the date of the verdict or judgment in favour of the plaintiff. Dhian Singh Sobha Singh v. Union of India, 36 Mys L J 256: 1958 Mad W N (SC) 40: 1958 S C J 363: (1958) 1 M L J (SC) 93: (1958) 1 Andh W R (SC) 93: 1958 S C A 307: 1957 S C R 781: A I R 1958 S C 274 (286, 287) (Pt D) (Prs 50, 52).

——Conversion — Detention when becomes conversion.

To be an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. Detention of a chattel amounts to conversion when it is adverse to the owner or other person entitled to possession, i.e., the defendant has an intention to keep the thing in defiance of the plaintiff. Merely, to be in possession of a chattel without title is not conversion nor is it a tort of any kind. If a bailee merely holds over after the end of the period of bailment, he may be liable for a breach of contract but is not guilty of conversion or of any other tort. The usual method of proving that the detention is adverse is to show that the plaintiff demanded the delivery of the chattel and the defendant refused or neglected to comply with the demand. 1959 All W R (HC) 18.

——Conversion — Conversion by detention—Essence of — Cause of action.

A plaintiff's anterior possession is not an essential element of conversion. It is enough if the defendant came by possession of the plaintiff's goods by trespass as against plaintiff or even otherwise and then detained it against the plaintiff's will. If the failure to deliver was not justified, the defendant is not allowed to say that he had not converted the goods. 1957 Ker L T 1106: 1957 Ker L J 1098: ILR (1958) Ker 268: AIR 1958 Ker 47 (48) (Pt B) (Pr 6) (DB).

——Detinue or trover— Relief cannot be denied even if wrong complained of does not fall within any of the recognised forms of action — Suit by wife for return of articles — Plaint not alleging entrustment but stating that they 'remained' with husband should not be rejected in limine — Husband must be regarded as bailee, as delivery is to be inferred from articles "remaining" with him — Action is one in detinue or trover. See Civil P. C. (1908), S. 9. AIR 1953 Mys 147 (DB).

——Detinue — Value of property.

Suit by wife for articles presented during marriage and, on occasions, subsequently — Value set out by her, when not high and there is no contrary evidence, should be accepted — Principles of valuation in actions for detinue stated. ILR (1953) Mys 213: AIR 1953 Mys 147 (151) (Pt E) (Prs 17, 18) (DB).

——Conversion — Detention — Action for—Liability of defendant — (Contract Act (1872), S. 71)—(Penal Code (1860), S. 403, Expln. 2).

Held, (i) that apart from the legal position that the principles of criminal law are not applicable for the purpose of determining Civil liability, the notice given by the defendant in the present case was sufficient within the meaning of Explanation 2 to S. 403, Penal Code, and after the expiry of the notice period the defendant had no liability to the plaintiff in respect of the timber lying on the lands leased to it. (ii) that S. 71, Contract Act, had no application to the facts of the case. Section 71 requires that, to be responsible for the goods, the finder of the goods has to "take them into his custody." The defendant had no animus possidendi which is required to amount to possession in law. Mere corpus or physical existence or lying down of the timbers in the area in question did not amount to possession or taking custody in law. (iii) that the timbers left in the area in ques-

tion after the notice, could be deemed or treated res derelicto, in any event, after January 15, 1947, i.e., after the expiry of notice period. (iv) that the defendant was in no way liable to the plaintiff in respect of his timber lying on the lands. There was no evidence of any assertion on the part of the defendant of any property in the timber or dealing with the timber as its own. Far from it they repeatedly requested the merchants concerned to remove the timber from the area in question. Hence the defendant was not liable either for conversion or detinue, (1875) 7 H L 757 and (1855) 24 L J C P 198, Dist; (1913) 29 T L R 386 and (1845) Q B 769 and (1920) 1 K B 723, Rel. on. **ILR (1959) Cut 32 : AIR 1959 Orissa 103 (104 to 107) (Prs 8, 12, 14) (DB).**

7. Damages.

See Notes 3, 6, 9, 16, 18, 24 for damages for specific wrongs.

(A) Exemplary.

(B) Future damages.

(C) Special and General.

(D) Measure.

(E) Remoteness.

7. Damages.

See Notes 3, 6, 9, 16, 18, 24 for damages for specific wrongs.

——Damages — As result of report by defendant, land in cultivatory possession of plaintiff, attached under S. 145, Criminal P. C. — Proceeding terminating in favour of plaintiff — Suit for damages — (Criminal P. C. (1898), S. 146).

As a result of the report by the defendant that there was a danger of breach of the peace, proceedings under S. 145 were taken and the land in cultivatory possession of the plaintiff was attached. Owing to the order of attachment the plaintiff could not cultivate the land. The proceedings under S. 145 ultimately terminated in favour of the plaintiff. The plaintiff brought a suit for damages for the loss sustained by him.

Held, that the loss suffered by the plaintiff though might be attributable to the order passed by the Magistrate yet it could not be said to be the result of the report made by the defendant which was followed by the proceedings under S. 145. The plaintiff was therefore not entitled to the damages from the defendant. 3 Ind Cas 12 (Cal) and 6 Mad 426, Rel. on. **1955 All W R (HC) 709 : 1956 All L J 42 : AIR 1956 All 119 (120) (Pr 4).**

——Interest by way of damages.

Interest by way of damages or compensation could only be awarded when the principal or corpus is withheld and usually follows a decree for the latter. It is to be calculated upto the date when such principal or corpus in delivered. Even on the analogy of mesne profits, which is the nearest parallel, it can only be granted at the time when the claim for the principal sum or corpus is adjudicated upon. **ILR (1952) Mys 176 : AIR 1952 Mys 90 (92) (Pt B) (Prs 8, 9) (DB).**

——Damages—Death of person in motor car accident — Grant of damages by way of solatium not permissible. **1960 Raj L W 284 : ILR (1960) 10 Raj 705 : AIR 1960 Raj 224 (235) (Pt I) (Pr 33) (DB).**

7 (A). Exemplary.

——Damages — Exemplary damages.

Minor of 16 years of age slapping the plaintiff on his face in the presence of several persons in his own shop — Defendant committing assault in outrageous manner and in utter disregard of his right — Though act of defendant did not result in much physical injury it was certainly an insult to his dignity—**Held**, that exemplary damages of Rs. 1,000 awarded to plaintiff were proper and not at all excessive. **Madh B L R 1955 Civ 231 : ILR (1955) Madh B 355 : Madh B L J 1955 H C R 1140 : AIR 1956 Madh B 84 (86) (Pt B) (Prs 5, 6).**

7 (B). Future damages.

——Damages — Future damages — When can be granted.

There is no impediment in granting future damages in a case where the damages result from a single cause of action and the cause of action continues even after the filing of the suit. **1964 Ker L J 364 : 1964 Ker L T 150 : AIR 1965 Ker 147 (148) (Pt B) (Pr 5).**

7 (C) Special and general.

——Damages—Measure of — Road accident by lorry driver by defendant, knocking down plaintiff, a lad of six years, trying to cross road—Driver of lorry found negligent and liable — General and special damages — Measure of — No specific pleading is necessary for general damages. Civil P. C. (1908), O. 6, R. 2, O. 7, R. 7.

Damages for personal injury are assessed under two distinct heads. First, there is what is referred to as special damage which has to be specially pleaded and proved. This consists of out of pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like and, if the injuries suffered are such as to lead to continuing or permanent: disability, compensation for loss of earning power in the future. 1956 A C 185 and 1961 A C 545, Rel. on.

Damages under the head of medical expenses may, cover both past and prospective expenses and include not only the cost of medical treatment and attendance but also such matters as increased living expenses, if, e.g., the plaintiff has to live in a special institution because of his injuries, transport costs to and from hospital and charges of nursing attendance.

Expenses incurred on medicine mixture given to the mother of the injured lad (the plaintiff) who was in attendance on the boy at the Nursing Home, can be awarded as special damages to the plaintiff. (1960) 2 Q B 430, Rel. on.

General damages represents pecuniary reparation or solatium to the plaintiff for the injuries sustained by him. In practice, a mere general allegation that the plaintiff has suffered damage or injury or a mere statement of facts about the accident with a prayer for award of damages is sufficient. Even in valuing the claim, it is open to the plaintiff to put an estimate of the general damages paying Court-fee thereon and offering to pay before decree is passed additional Court-fee on the fixation of damages due to him. (1907) 17 Mad L J 625, Rel. on. The relief of general damages must necessarily be more imperative in a case of collision causing personal injuries with concomitant pain and suffering—physical and/or mental. **1965 Ker L T 1172 : 1965 Ker L J 1112 : ILR (1966) 1 Ker 226 : AIR 1966 Ker 172 (178) (Pt C) (Prs 11, 13, 15).**

——The matters that should be taken into account in the assessment of general damages are, (1) pain and suffering endured, past, present and future, (2) inconvenience and loss of enjoyment of life sustained, past, present and future and injury to health; (3) and a shortened expectation of life. The damages must give the plaintiff a reasonable compensation for the injuries sustained and the suffering entailed. **Madh B L J 1955 H C R 1479 : Madh B L R 1955 Civ 489 : ILR (1955) Madh-Bha 306 : AIR 1955 Madh B 214 (221) (Pt C) (Pr 14) (DB).**

—Damages—Plaintiff failing to make out special damages—Right to claim damages in general way.

Where the goods of the plaintiff are wrongfully attached and formally made over to the custody of the sureties under a surety bond and the defendant has not even made out that the attachment was affected bona fide, the plaintiff is entitled to claim damages in a general way, even if he fails to make out the special damages he has sought to recover. In fact the need for granting nominal damages arises only where the party has failed to make out any grounds for the award of special damages. Case law discussed. ILR (1952) Mys 176 : AIR 1952 Mys 90 (94) (Pt F) (Pr 16) (DB).

—False imprisonment — Damages — General and special damages — Pleading and proof—(C. P. Code (1908), O. 7, R. 7).

In a suit for damages for false imprisonment the plaintiff need not specially plead and prove general damage though it is necessary for him to plead and prove special damage. In the case of the former, the principle which is generally applied is one of restitutio in integrum while in the case of the latter the quantum is assessed on the principle of fair compensation. AIR 1959 Pat 490 (499) (Pt F) (Pr 17).

—Damages — General damages — Claim for—No separate averment or proof necessary — Special damages—Specific averment is necessary.

Where the plaintiff claims general damages, it is not necessary for him to prove such damages specifically. The reason is that general damages are considered at law to be pecuniary reparation for the damage which is presumed to follow the injury, and therefore which is not required to be separately averred or proved. On the other hand, special damages are the pecuniary equivalent of the loss actually sustained such as medical expenses incurred by reason of bodily harm or loss of business due to wrongful confinement. The plaintiff can recover such damages only if he specifically avers and claims them. AIR 1958 Raj 257, Rel. on. ILR (1962) 12 Raj 202 : 1962 Raj L W 77 : AIR 1962 Raj 127 (133) (Pt D) (Pr 26).

—Damages — Special damages — Bodily injury — Medical expenses.

In a suit for damages for bodily injury suffered by the plaintiff in a motor accident in calculating the expenses spent over medical treatment by the plaintiff the fact that the doctor who treated the plaintiff did not take any fees from the plaintiff would not entitle the defendant to take advantage of it, because a wrong-doer cannot claim any benefit that the plaintiff may have had in that regard for reasons of his own : A I R 1955 Madh B 214, Foll. 1960 Raj L W 284 : ILR (1960) 10 Raj 705 : AIR 1960 Raj 224 (229) (Pt D) (Pr 20) (DB).

—Damages—Special damages — Personal injury—Damages for pain and suffering and loss of prospective earning.

The Court is legally justified in granting damages both for physical and mental pain and suffering and loss of earning on account of the injury. AIR 1959 Mad 369; (1959) 1 Mad L J 278, Rel. on. Damages for personal suffering cannot be measured by any precise rule and it is scarcely intended to be a full compensation for the injury sustained. The principle of 'restitutio in integrum' is an unattainable ideal in this respect.

Held, on facts that by reason of the injury which the plaintiff sustained, and the permanent deprivation of his limb, there was no doubt that it must seriously interfere with his earning capacity. In the circumstances compensation of Rs. 15,000 for loss of earning was not quite speculative, but was based upon the background of his pecuniary status and his prospective earning in future. 1960 Raj L W 284 : ILR (1960) 10 Raj 705 : AIR 1960 Raj 224 (229, 230) (Pt E) (Prs 21 to 23) (DB).

—Damages.

Damages are of two kinds; general and special, while special damages are required to be specifically pleaded and proved, general damages are not. General damages are damages which the law presumes to flow from and, as it were, be the natural and probable consequence of, the defendant's act. Therefore general damages need not be pleaded specifically nor need any evidence be produced to prove them as such. 1059 Raj L W 222 : ILR (1959) 9 Raj 498: AIR 1959 Raj 169 (175) (Pt E) (Pr 29).

—General damages—Proof—(C. P. Code (1908), O. 7, R. 7—Evidence Act (1872), Ss. 101 to 104).

The legal principle is well established that general damages are not required to be proved specifically. ILR (1958) 8 Raj 681 : 1959 Raj L W 247: AIR 1958 Raj 257 (258) (Pt A) (Pr 5).

—Damages—Special and general damages—Distinction pointed out. AIR 1955 NUC (Raj) 291 (DB).

7 (D). Measure.

● —Measure of damages—In absence of any special circumstances, the measure of damages cannot be the amount of loss ultimately sustained by the representee—It can only be for difference between price which he paid and the price which he would have received if he had resold the shares in the market forthwith after purchase provided there was a fair market there—Ordinarily market rate of shares on date when fraud was practised would represent their real price in absence of any circumstance. See Contract Act (1872), S. 73. AIR 1953 S C 235.

—Damages — Injury — Suit for compensation for personal injury—Court should consider nature of Injury as well as status of plaintiff in assessing compensation.

In assessing compensation for personal injury to the plaintiff, the Court has to consider not merely the nature of injury but also the status of the plaintiffs. If a person gives a respectable person a slap in broad day light in the market place and afterwards pleads that damages should be nominal because a slap is a trival matter, the Court is entitled to consider the status and class of the plaintiff before deciding whether the wrong done to the plaintiff is serious or trivial. 1965 All L J 805.

—Damages—Assessment of—Suit for compensation for short delivery and deterioration of goods—Assessment and Damage certificate by Railway Inspector marked without prejudice—How far admissible as admission of liability or proof of damages—Certificate cannot be treated as admission of liability — Plaintiff must prove actual loss and damage as to the quantum and extent — If absolute certainty is impossible, though damrges are not uncertain, amount of damages might be still ascertained by usual rules of evidence to a reasonable degree of certainty. See Railways Act (1890), S. 72 (Prior to Amendment of 1961). AIR 1965 Cal 636.

—Damages — Assessment — Suit for damages on account of death due to neglect of duty on part of defendant—Principles governing assessment of damages are well settled—Their application to particular case does not raise any question of law. Constitution of India. Art. 133.(1) (c). AIR 1964 Him Pra 17.

—In the assessment of damages the plaintiff can sue for compensation only once, he can never sue again for it. He must, therefore, be awarded a full and fair compensation for that which he has suffered and which he may suffer in future. ILR (1955) Madh

Bha 306 : Madh B L J 1955 H C R 1479 : Madh BLR 1955 Civ 439 : A I R 1955 Madh B 214 (221) (Pt D) (Pr 16) (DB).

——Damages — Battery and slander — Principles— Plaintiff, an ex-convict—He has to be protected against batterry and slander — Measure of damages explained. AIR 1955 N U C (Madh B) 2988.

——Damages—Loss of earning due to loss of one leg in motor accident—Fifty per cent of normal earning is proper measure — Workmen's Compensation Act (1923), Sch. 1.

Under Sch. 1 to the Workmen's Compensation Act, the loss of earning capacity on account of loss of leg below the knee is stated to be fifty per cent of the normal earning capacity. This is a fair measure of damages for loss of earning due to the loss of one leg caused in a motor accident due to the defendants' negligence. 1962 M P L J 657 : 1962 Jab L J 852 : ILR (1963) M P 270.

——Damages—Injury to person —Assessment.

The principle on which damages were awarded in tort was to compensate the person wronged, so far as money could compensate for the wrongful act of the defendant and for all its direct and natural consequences. If the tort is in relation to property, assessment of damage is comparatively easy because the damages then are measured by the actual pecuniary loss suffered but when injury was to a person or his reputation damages were difficult to assess because it is not possible to assess in money value the pain and suffering of a person or the effect of damages to reputation. Where the tort was accompanied by malicious intent, such malice might be taken into consideration in assessing damages. 1960 M P L J (Notes) 184.

——Damages—Assessment—Principle of.

Damages in cases of tort, are allowed to compensation and not by way of restoration or restitution. Applying this principle to the case of bodily injury, the plaintiff would be entitled only to compensation for the loss of future employment and not an amount on the basis of an absolute mathematical calculation without taking into consideration the probable fluctuations in life. 1957 M P C 393 : 1957 Jab L J 765 : 1957 M P L J 585 : I L R (1957) Madh Pra 43 : AIR 1957 Madh Pra 159 (161) (Pt B) (Pr 13) (DB).

——Damages—Loss caused by wrongful act—Measure of damages.

The measure of damages is the loss of the value of the property caused by the wrongful acts of the tort-feasor. 1957 M P C 343: 1957 M P L J 418 : 1957 Jab L J 722.

——Damages—Mode of assessment—Loss of expectation of life of deceased—Factors to be taken into account stated, See Fatal Accidents Act (1855), S. 1-A. AIR 1962 Mad 309.

——Nervous shock—Measure of damages.

The nervous complexes of persons are different and so are their reactions to violent shock and even to physical injury. The measure of damages in a case of this kind is by no means easy to assess. 1951-2 Mad L J 471 : AIR 1951 Mad 1056 (1059) (Pt E) (Pr 14).

——Damages — Physical injury due to motor accident — Damages on heads of pain, loss of amenities and future earnings—Principles.

Held, that in a claim for damages for personal injury, when caused by negligence the damages apart from special damages, will be given for the physical injury itself and, in case of loss of limb, disfigurement or disablement, for its effect upon the physical capacity of the injured person to enjoy life, as well as for his bodily pain and suffering or for shock or injury to health. Such damages cannot be a perfect compensation but must be arrived at by a reasonable consideration of all the heads of damages in respect of which the plaintiff is entitled to compensation and of his circumstances making allowances for the ordinary accidents and chances of life. In addition to such general damages special damages may be recovered for pecuniary loss subject to remoteness and mitigation sustained whether it be for expenses properly incurred in medical attendance, or for any other loss or injury actually suffered which follows in the ordinary course of things from the tort. The heads of compensation may differ from case to case.

Damages on the head of 'medical expenses' claimed by the plaintiff not being challenged, could be awarded.

The award of damages on the head of pain and suffering and for loss of future amenities due to disablement a disfigurement of the arm, by the trial Court is more or less in its discretion which has to be used judicially. In the instant case, though the trial Court might have, to some extent erred on the side of generosity, the award of Rs. 10,000 on this head made by it was not either unreasonable or improper.

On the head of loss of future profits and business, it was not established that the business had suffered on account of the injury sustained by the plaintiff. The loss was due to the fact that many shops of similar type had come into existence due to the growth of the town. But since the injury imposed on the plaintiff a general permanent handicap in his life it must be compensated. It could not be ignored that there are several contingencies in life which might arise which would affect the earning of the injured person. Though therefore, this loss had to be compensated, yet it must be done having regard to the various chances of life and other imponderable events and having regard to the fact of getting the money now in the one lump sum. It could not also be forgotten that the damages awarded in actions for torts are compensatory and not punitive. (Rs. 15,000 were awarded as proper compensation). (1879) 5 CPD 280, Rel. on. 1963 Mys L J (Supp) 159 : AIR 1963 Mys 161 (164, 166, 167) (Pt B) (Prs 20, 25, 42, 44, 55, 56) (DB).

——Damages—Personal injury—Assessment of damages—Principles—Compensation for pain and suffering undergone as well as impairment of health and reduced capacity to work—Award of special damages for treatment.

In an action for damages for personal injuries caused to the plaintiff in an accident the plaintiff is entitled to be compensated for the pain and suffering undergone by him as a result of the accident as also in respect of the general impairment of his health, if there has been any such impairment, and reduced capacity for work, if there has been lowering of his endurance or stamina in that regard, besides the special damages awardable to him for the expenses which he had to incur for his treatment during the period, he was an in-patient in the hospital. In such a case the assessment of compensation should necessarily be a matter to some extent of conjecture. 1930 A C 113, (1953) 1 All E R 314, Rel. on. 38 Mys L J 323 : ILR (1960) Mys 130 : AIR 1960 Mys 222 (225, 226) (Pt B) (Prs 16, 19, 20, 24, 25) (DB).

——Damages — Death by accident — Pecuniary loss suffered by dependants—Computation.

The compensation to be awarded to the members of the family of a person injuriously affected by an accident must be proportioned to the loss resulting to the plaintiffs from the death of that person which

means the loss of the pecuniary benefit to them according to reasonable expectations. This assessment of the compensation must undoubtedly be based on reasonable future probabilities. It is not the compensation which is in the nature of and which sometimes is described as sentimental damage caused by bereavement, pain or suffering, an action in such cases being an action which is purely compensatory in nature.

When the deceased met his death by the accident he was 52 years old drawing a salary of Rs. 140 per month. The District Judge, while awarding compensation to the plaintiffs, the dependants of the deceased for the pecuniary loss suffered by them, took into account only the monthly salary of the deceased and capitalised the same by applying three years rule :

Held, that the three years rule was utterly inadequate. He should also have capitalised the pension. **37 Mys L J 718 : ILR (1958) Mys 759 : AIR 1960 Mys 105 (110, 111) (Pt C) (Prs 29 to 32) (DB).**

——Determination of Court's duty — Plaintiff claiming damages for cutting 1,500 trees and deposing so —Court relying on indirect testimony by fixing rate in relation to number of trees and awarding damages for 3,000 trees—The mode of determining damages is unsatisfactory. **('51) 1951 Nag L J (Notes) 199.**

——Damages—Live trees cut—Measure of damages.

The price of a living tree is always more than its price after it is cut. If a tort-feasor, after cutting a live tree, leases it to the charge of the owner, then alone he can urge that he is liable only for the difference between the price of the standing tree and that of the cut tree. If he cuts a tree without authority and does not specically leave it to the custody of the owner, he is liable to reimburse the owner for the loss of the whole tree and he cannot claim any concession on the ground that the owner does not prove that he has misappropriated the dead tree. **26 Cut L T 392 : AIR 1961 Orissa 124 (128) (Pt D) (Pr 6) (DB).**

——Damages—Computation of—Death of husband in car accident which was driven negligently and rashly by defendant—Expectancy of life—Deceased at time of death 42 years old — For arriving at a fair period for computing damages to the widow, the conclusion of Court that deceased would have lived for 15 years more, held was not shown to be erroneous, so as to call for interference in appeal. **AIR 1961 Punj 400 (403) (Pt C) (Pr 16) (DB).**

——Damages —Computation of—Death due to rash and negligent driving of motor car—Loss of expected provident fund contribution by employer — Relevancy—Fatal Accidents Act (1855), S. 1-A.

Where the deceased is killed in an accident caused by a motor car driven negligently and rashly by the defendant it is true that damages are awardable only to the extent that the plaintiffs (widow and minor children of the deceased) have suffered pecuniary loss but this may legitimately include reasonable expectation of pecuniary benefit in the future. The plaintiffs are not in law, debarred from getting pecuniary benefit of the Provident Fund that would be payable in April 1972, the date on which the deceased would have died naturally when the children were at the time of the accident only 7 and 11 years of age. This amount has to be included while computing the compensation. **AIR 1961 Punj 400 (404, 405) (Pt D) (Prs 19, 20) (DB).**

——Damages—Computation—Death in car accident by rash and negligent driving—Deduction for expected amount of maintenance of deceased.

Where the deceased met his death in an accident caused by rash and negligent driving of a motor car by the defendant, from compensation to be paid to widow and children of deceased, calculated upon the basis of what the deceased would have earned had he lived, the amount which would have been required or expended for the personal and living expenses by the deceased has to be deducted; in other words, the estimated amount of his maintenance, has necessarily to be deducted.

In fixing the amount, the possibility of addition to the number of family members, had the deceased lived longer, has to be taken into account and the plaintiff's pecuniary loss has to be proportionately reduced. **AIR 1961 Punj 400 (405) (Pt E) (Pr 27) (DB).**

——Damages — Quantum — Determination by trial Court — Appellate Court will not interfere unless in determining the amount the trial Court has failed to notice any principle on which it is to be fixed. **62 Punj L R 571 : AIR 1960 Punj 490 (492) (Pt C) (Pr 12) (DB).**

——Damages—Assessment of.

Where damage to the attaching creditor has resulted on account of the wrongful acts of the sarpurdar a mere uncertainty as to the amount of damages and the difficulty in quantifying damage in terms of money cannot preclude the right of recovery. This is certainly true, where from the nature of the case, the amount of damage is not capable of exact and accurate proof. Even where the tort is of such a nature so as to preclude the determination of the amount of damage with certainty, the Courts have to draw just and reasonable inference, although the deduction is based only on approximation. **AIR 1958 Punj 348 (351) (Pt C) (Pr 13).**

——Damages — Quantum of — Suit for damages brought against Municipal Board for loss of reputation caused to plaintiff by illegal and mala fide order of attachment issued by the Board against plaintiff — Board being statutory local body and not an individual and the local bodies having very limited funds at their disposal the sum of Rs. 500 awarded as damages was reduced to Rs. 200 only. **ILR (1962) 12 Raj 161 : 1962 Raj L W 595 : AIR 1962 Raj 169 (172) (Pt C) (Pr 11).**

——Damages — Computation of future earnings — Trial Judges adopting correct legal standard—Appellate Court would be loth to interfere with his discretion in the matter. **1960 Raj L W 284 : ILR (1960) 10 Raj 705 : AIR 1960 Raj 224 (235) (Pt J) (Pr 33) (DB).**

——Damages — Suit for enforcement of claims for paddy—Decree to be passed must be in terms of currency of the country — Paddy to be commuted into current money at market rate prevailing on respective dates when it becomes payable — Such dates to be determined with reference to terms of contract between parties to transaction. See C. P. Code (1908), O. 20, R. 10. **AIR 1954 Trav-Co 473 (FB).**

7 (E). Remoteness.

——Damages—Remoteness.

If the result that has followed the act is far too remote, there is no liability for any damages quite apart from the question of quantum of damages.

Where a Municipal Board grants a licence to A to erect a flour mill near the house of B, when the bye-laws prohibited the Board from granting such licenses and the licence was granted in spite of the opposition of B and A erects a flour mill and as a consequence of its working the house of B is damaged by vibrations, the Board is not liable for the damage which is remote. Damage to the building could not be a direct consequence of the grant of the licence

by the Board. 1962 All W R (HC) 64 : AIR 1961 All 430 (431, 432) (Pt B) (Prs 2, 3).

——Damages—Remoteness — Voluntary payment — Wrongful detention.

In tort a man is not answerable for damages which are too remote. The tort-feasor or the wrong-doer is liable only for the natural and probable consequences of his act, or, as it is usually called, the direct, immediate or proximate damages, resulting therefrom, and, although a third party intervention or the action of a third party does not necessarily break the chain of causation and make subsequent damage too remote, yet when there comes, in the chain, the act of a person who is bound by law to decide the matter judicially and independenty the consequences of his act are too remote from the original wrong which gave him a chance of deciding, except in cases where the decision had to be made as a matter of course, or, where it is ex parte in the sense that the person sought to be affected thereby was not a party to the proceeding in which the decision was given and, possibly also, where the decision was not final or binding, so far as the party sought to be affected thereby, was concerned. These exceptions however, are in the nature of apparent exceptions which do not affect the rule. Further for a payment voluntarily made and never demanded back, no damage can be claimed either for detention or otherwise. (1924) 2 K B 517 : (1920) A C 985 : 12 Q B 871, Rel. on. 61 Cal W N 389 : 99 Cal L J 185 : AIR 1957 Cal 617 (622) (Pt B) (Pr 20) (DB).

——Damages — Remoteness—Rule as to—Rule same whether damages are claimed in actions of contract or tort. See Contract Act (1872), S. 73. AIR 1964 Ker 135 (DB).

8. Deceit.

——Deceit — Action on — Essentials.

In order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly careless whether it be true or false. This principle, applies to 'actual' fraud, a conscious misrepresentation as opposed to constructive fraud. 1960 M P L J 865 : 1960 M P C 481 : 1960 Jab L J 965 : (1962) 32 Comp Cas 830 : I L R (1960) Madh Pra 265 : AIR 1960 Madh Pra 323 (326) (Pt A) (Prs 6, 7) (DB).

——Deceit — Action on — Misrepresentation—'Suppressio veri suggestio falsi'.

A particular statement verbally accurate may be a false statement in effect as if the fact had been misstated altogether. If by a number of statements a person intentionally gives a false impression and induces a person to act upon it, it is not the less false although if one takes each statement by itself there may be a difficulty in showing that any specific statement is untrue. It is a case of suppressio veri suggestio falsi. Equally, a misrepresentation may be implied from a party's conduct; if one conducts himself in a particular way with the object of fraudulently inducing another to believe in the existence of a certain state of things contrary to the true fact and to act upon the basis of its existence, and damage results therefrom to the party misled, he who misled him will be just as much liable as if he had misrepresented the facts in express terms. 1960 M P L J 865 : 1960 M P C 481 : 1960 Jab L J 965 : (1962) 32 Comp Cas 830 : ILR (1960) Madh Pra 265: AIR 1960 Madh Pra 323 (327) (Pt B) (Pr 12) (DB).

——Deceit — Misrepresentation by person having no knowledge — If 'fraud'.

Where a person having no knowledge whatever on the subject, takes upon himself to represent a certain state of facts to exist, he does so at his peril; and, if it be done either with a view to secure some benefit to himself he is in law guilty of a fraud, for, he takes upon himself to warrant his own belief of the truth of that which he so asserts. (1853) 13 C B 777 and (1869) 4 H L 64 and (1798) 6 T R 619, Relied on. 1960 M P L J 865 : 1960 M P C 481 : 1960 Jab L J 965 : (1962) 32 Comp Cas 830 : I L R (1960) Madh Pra 265 : A I R 1960 Madh Pra 323 (327) (Pt C) (Pr 14) (DB).

——Deceit — Action on — Vicarious liability—Agent of company by misrepresenting facts about the financial position of company and the position of shares in the market selling shares to plaintiff—Plaintiff suffering great loss — Managing directors and a relation of his benefiting themselves by this transaction — It is not unreasonable to infer that the managing director was primarily responsible for sending agent to plaintiff to dispose of unyielding and unprofitable shares held by him and his relation — Managing director cannot escape liability for damage suffered by plaintiff. 1960 M P L J 865 : 1960 M P C 481 : 1960 Jab L J 965 : (1962) 32 Comp Cas 830 : I L R (1960) Madh Pra 265 : AIR 1960 Madh Pra 323 (328) (Pt D) (Pr 17) (DB).

——Deceit — Vicarious liability — False representation by agent.

Where an agent makes a false statement in the course of his employment, the principal will be liable under the normal rules of vicarious responsibility for the torts of his agent. Where an agent by making false representation about the position of the company whose agent he is, sells some shares of the Company to the plaintiff and the representations are false both to the knowledge of the principal, i e., the directors and the agent and are made during the agent's course of employment, the directors and the agent all are liable as joint tort-feasors. (1912) A C 716, Relied on. 1960 M P L J 865 : 1960 M P C 481 : 1960 Jab L J 965 : (1962) 32 Comp Cas 830 : I L R (1960) Madh Pra 265 : AIR 1960 Madh Pra 323 (329) (Pt E) (Pr 18) (DB).

——Deceit — False representation — Action, when lies.

The tort of deceit is not complete till the false report is acted upon. Where a person makes false representation about a company and its shares and induces the plaintiff to buy some shares and the plaintiff acting upon these misrepresentation and inducement purchases the same, which but for the misrepresentation he would not have purchased, the tort of deceit is complete and action for damages by the plaintiff against the person and the directors for whom he acted is maintainable. 1960 M P L J 865 : 1960 M P C 481 : 1960 Jab L J 965 : (1962) 32 Comp Cas 830 : ILR (1960) Madh Pra 265 : AIR 1960 Madh Pra 323 (329) (Pt F) (Pr 19) (DB).

——Deceit — Remedies — Suit in tort for damages and not for rescission — Parties.

Various remedies are available to a person who has been the victim of fraud, deceit or other unconscionable conduct. Rescission, restitution, damages or constructive trust are some of the usual remedies for fraudulent misrepresentation. A plaintiff may sue to rescind a contract to which his assent was procured by fraud or deceit in an action for breach of such contract or for specific performance. But the plaintiff in all cases of rescission must do equity which means that he must return any consideration which he may have received in the transaction. If the suit were for rescission of the contract induced by fraud and misrepresentation by the agent of a company allotting shares to the plaintiffs, the Company would be a necessary party. But where the plaintiffs have not purposely made he company a party defendant

nor bave they claimed rescission in terms but the relief claimed is a relief in tort, i.e., damages suffered by him due to directors', and their agent's deceit in inducing them to purchase shares by false representations, the suit against the directors individually and the agent without, joining the company as party defendant is maintainable. **1960 M P L J 865 : 1960 M P C 481 : 1960 Jab L J 965 : (1962) 32 Comp Cas 830 : ILR (1960) Madh Pra 265 : AIR 1960 Madh Pra 323 (329) (Pt G) (Prs 20, 21) (DB).**

——Deceit—Measure of damages—Plaintiff induced by false representations to purchase worthless shares of Company.

Where the shares were worthless from the time they were fraudulently palmed off to the plaintiffs because of the inherent defect in the project itself, the measure of damages is the price the plaintiffs were induced to give for such worthless shares by the fraud of the defendants. **1960 M P L J 865 :1960 M P C 481 : 1960 Jab L J 965 : (1962) 32 Comp Cas 830 : I L R (1960) Madh Pra 265 : AIR 1960 Madh Pra 323 (329) (Pt H) (Prs 22, 23) (DB).**

——Deceit — False inducement — Actionability — Plea of contributory negligence — When to be raised — (Civil P. C. (1908), S. 100 — New plea).

In an action based on deceit, in that the defendant by falsely identifying the payee, knowing it to be false, induced the postman to deliver the money order to a person, who was not the real payee, it is no defence that the postman had other means of knowledge which he did not avail of or that he made an incomplete investigation of facts. The defendant cannot also raise a plea that the postman was guilty of contributory negligence, for the first time, in second appeal, when it was not taken in the written statement. When the statement, which according to the postman induced, him to pay the money to the payees, was false to the knowledge of the defendant and there was no question of honest belief, in the truth of that statement, it must be regarded as fraudulent within the meaning of the rule in (1889) 14 A.C 337 so as to furnish basis for an action for deceit. **1959 Jab L J 367 : 1959 M P C 559 : 1959 M P L J 884 : AIR 1959 Madh Pra 389 (390, 391) (Prs 8, 11).**

9. Defamation.

See also Penal Code (1860), Ss. 499-500.

(A) Cause of action.
(B) Civil action.
(C) Corporation.
(D) Damages.
(E) Evidence and proof.
(F) Fair Comment.
(G) Innuendo.
(H) Justification.
(I) Malice.
(J) Privilege.
(K) Publication,

9. Defamation.

See also Penal Cade (1860), Ss. 499-500.

——Defamation — Essential ingredients — Communication of libel to third person is material. See Penal Code (1860), S. 500. 1962 (2) Cri L J 760 (2) : AIR 1962 Madh Pra 382 (DB).

——Defamation — Two possible interpretations of allegedly defamatory matter — Meaning which is not defamatory should be preferred. AIR 1937 Rang 105 and A I R 1957 All 219, Rel. on. 1963 M P L J 891 : 1963 Jab L J 979 : AIR 1964 Madh Pra 62 (68, 69) (Pt B) (Prs 22, 24) (DB).

——Defamation — Damages — Statement of unchastity to a woman is defamation—Slander is actionable without further proof of any special damage.

Held, that the imputation was a deliberate statement of fact made by the appellants and as it was made in the presence of several persons, it amounted to defamation. That they were provoked to make that statement by the respondent starting the quarrel was another matter and could be considered as a circumstance mitigating damages, but it could not be a complete defence to the action. Further that imputation of unchastity to a woman was actionable in India without proof of special damages. In England words imputing unchasity to a woman were not actionable per se before the Slander of Women Act, 1891, by which such an imputation was made actionable without proof of any special damage. AIR 1947 Cal 159 : ILR 34 Cal 48; 62 Mad L J 608 : AIR 1932 Mad 445; AIR 1927 Bom 22, Foll.; ILR 28 Cal 452, Not foll. **1962 M P L J (Notes) 112.**

——Defamation — Witness — Putting defamatory questions to witness — Remedies at law.

Where a witness is put questions per se defamatory the remedies open to him under the law are threefold, viz., (a) protection by court; (b) self-help in the shape of setting the criminal law in motion or (c) filing a suit for damages. The extensive powers which have been granted to the court for protecting witnesses from questions not lawful in cross examination are set out in Ss. 146 to 153 of the Evidence Act.

The first remedy is, however, unsatisfactory as half the mischief is done when the questions are put and it becomes too late for the court to prevent the putting of the same. Therefore, valuable as the powers are under these sections, owing to the timid way in which it is exercised and owing to the difficulties not unoften in the exercise of the same, the aggrieved party has to rely only upon his own remedies for ventilating his grievance, viz., file a suit for damages or file a complaint under S. 500, Penal Code.

Scope of Ss. 146 to 153, Evidence Act, fully discussed and limitation on the power of court to forbid questions indicated. **1954 Cri L J 1239 : AIR 1954 Mad 741 (749 to 751) (Pt E) (Prs 19, 24).**

——Defamation — Suit for recovery of rent — Application for attachment before judgment — Allegation of defendants' indebtedness made in affidavit to support application — Allegation being necessary under the Rule held not defamatory — Civil P. C. (1908), O. 38, R. 5. **(1965) 1 Mys L J 137 : AIR 1965 Mys 276 (278) (Pt A) (Pr 14).**

——Defamation — Civil and Criminal liability — Difference in law in India and England — Penal Code (1860), S. 499.

In India the criminal liability for defamation is codified and embodied in S. 499 of the Penal Code and differs from the law in England in that regard. The civil liability for defamation to pay damages, however, is not governed by any statute law but is determined with reference to the principles of justice, equity and good conscience, which generally have been imported in this country from the English principles. There seems to be a little scope for an appreciable difference between the Indian and the English law on this subject. **1962 (1) Cri L J 737 : ILR 41 Pat 816 : AIR 1962 Pat 229 (230) (Pt A) (Pr 4) (DB).**

9(A). Cause of action.

——Defamation — Damages — Suit for — Cause of action when arises.

The essence of a cause of action for defamation lies in the fact that the person defamed is lowered in the estimation of others. If none else has heard the defamatory remark, no suit is maintainable for

damages for defamation. It is immaterial that the plaintiff's feelings were hurt by the said remark. **1951 All L J 268 : AIR 1953 All 302 (306) (Pt D) (Pr 18) (DB).**

9(B). Civil action.

——Defamation — Suit for damages for publication of defamatory matter and for perpetual injunction restraining publication — Interim injunction can be granted when plaintiff has made out prima facie case. See Specific Relief Act (1877), S. 54. **AIR 1962 Cal 27.**

——Defamation — Action for — Particulars to be set out in plaint to disclose cause of action, stated. See Civil P. C. (1908), O. 6, R. 4. **AIR 1958 Cal 269 (DB).**

——Defamation — Suit for damages — Death of respondent pending plaintiff's second appeal — Right to sue does not survive. See Civil P. C. O. 22, Rr. 4 and 11. **AIR 1952 Nag 408.**

9 (C). Corporation.

——Defamation — Resolutions passed at a meeting of Board of Directors —Whether per se defamatory.

Held, that in order to determine whether particular resolutions passed by the Board of Directors at their meeting were defamatory per se, the Court must ignore all the surrounding circumstances relating to the aforesaid resolutions and should view them as divorced from the context in which they were passed. The Court should look at the resolutions as a whole, giving to the words used therein their obvious and natural meaning. Defamation has a particular legal sense and unless the stinging character of the alleged statement reaches that level, it is not possible for the Court to predicate that the resolutions in question are defamatory per se. If the resolutions are not defamatory per se, the plaintiff has to make out their defamatory character by showing that there was an innuendo behind them which by insinuation converted what prima facie was not defamation into a tortious wrong styled as defamation. Clerk and Lindsell on Torts, 10th Edn., pp. 711 to 715, Ref. **AIR 1957 All 219 (224) (Pt A) (Prs 15, 16).**

——Defamation — Resolutions passed at meeting — Validity or otherwise of meeting or resolution—Relevancy.

In an action for damages for passing certain defamatory resolutions against the plaintiff the Court is not concerned with the validity or otherwise of the meeting or the resolutions passed therein, but: it is only concerned with the bona fide nature of the resolutions. If the publication of the resolution is made on privileged occasions then unless the plaintiff proves that the resolutions were actuated by express malice he cannot succeed. **A I R 1957 All 219 (228) (Pt D) (Pr 31).**

9 (D). Damages.

——Libel and defamation — Damage—Measure of—Interference by appellate Court.

It is true that in England, a Court of Appeal rarely interferes on the ground of the quantum of damages being inappropriate, but that is for the reason that the quantum is a question for the jury. In India, an appellate court may interfere on proper grounds being made out because the appraisement of the damages is an act of the trial Judge himself and the appellate Judges are in the same position as he.

The omission to tender an apology before the suit is not an aggravating circumstance in the case, when the demand for an apology was accompanied by a further demand for the payment of two big sums of money. But it is certainly a material circumstance that the defendants pleaded justification and sought unsuccessfully to prove it.

Where the plaintiff was at the relevant time, a person of considerable prominence in public life and at the date of the plaint, she was a member of the Legislative Assembly of Bengal, a member of the West Bengal Provincial Congress Committee, a member of the Executive Committee of Indian National Trade Union Congress, the Treasurer of the Bengal Provincial National Trade Union Congress, a member of the Executive Committee of the Indian Women's Conference and the President of ten Labour Unions, in addition to the Union of Press Workers of the defendant's publication and after the publication of the libel, she had gradually to withdraw from all those organisations, because she found her position to be extremely uncomfortable and was practically shunned and had lost the confidence of the public and it was evident that considering the large publication of the defendant's paper, her reputation must have been damaged seriously.

Held, that the award of Rs. 5,000 as damages by the trial Judge was not excessive. **AIR 1955 N U C (Cal) 407 (DB).**

——Defamation — Article in monthly journal — Libellous attack on person characterising him as a Godseite and as a member of that group — Effect of — Absence of any occasion for the writing and absence of inquiry as to facts relied on for attack — Personal animus—If to be proved — Motive — Relevancy — Malice in law — Sufficiency — Quantum of damages—Factors to be considered—Principles.

Held : (1) To brand any person as a Godseite or a member of that group from whom danger may be apprehended was to impute that the person was likely to adopt the methods of political assassination for enforcing his opinions and there could be no doubt that the expressions complained of were highly defamatory per se; (2) that there was hardly any occasion for the offending article which was highly defamatory per se and hence no personal animus need be shown; the defendants were not therefore entitled to claim privilege of occasion; (3) that the act of blackening the plaintiff in the eyes of the reading public of the periodical was not justified either as fair comment or as truth; (4) the question of motive was not material, and it was sufficient that malice in law was fully proved; (5) that the imputation against the plaintiff was cruel and unjust, and since the occasion was not privileged; the libel was established; (6) that while the fact of an offer to apologise having been offered was certainly a relevant fact in assessing the damages, there was no real or fair opportunity for an honourable apology; (7) that the plaintiff had not estabItshed that he suffered any actual or substantial injury to his reputation; (8) that Courts of law are not bound to sustain in full actions for damage for libel which are primarily intended for the monetary benefit of the plaintiffs taking advantage of the occasion of a libel; and (9) that therefore the case was only one for nominal damages and not for award of substantial damages. **1961 Mad W N 56 : (1961) 2 M L J 189 : 74 Mad L W 10 : AIR 1961 Mad 254 (255 to 258) (Pt A) (Prs 2, 3, 4, 6, 10 to 12).**

——Defamation — Damages — Assessment of—Matters to be considered indicated. **AIR 1961 Mad 254 (258) (Pt C) (Pr 12).**

——Defamation — Apology when bars a suit for damages.

No doubt where there is an apology and an acceptance thereof, the defendant can resist the plaintiff's suit for damages. The publication of the 'contradiction' and the expression of regret in certain issues of the paper is not tantamount to apology, **1956 Nag L J 586: 1956 M P L J 66: ILR (1956) Nag 439: AIR 1957 Nag 19 (23) (Pt B) (Pr. 15) (DB).**

——Defamation—Damages—Proof—Necessity.

Where, the allegations are defamatory the plaintiff in a suit for damages is entitled to damages even without proving actual loss sustained by him. 1956 Nag L J 586 : 1956 M P L J 66: ILR (1956) Nag 439: AIR 1957 Nag 19 (23) (Pt C) (Pr 18) (DB).

——Defamation and Malicious prosecution — Damages.

A claim for damages for malicious prosecution is quite a separate species of tort from a claim for damages for defamation. In a suit for damages for defamation the law requires that the plaint ought to allege the publication of the defamatory statement set out the actual words used and also state that they were published or spoken to some named individuals and specify the time and place when and where they were published. Where the plaint allegations only make out a case for malicious prosecution there could not be a decree for damages for defamation in favour of plaintiff. A I R 1940 Nag 125, Rel. on. 1956 Nag L J 315 : I L R (1956) Nag 236: A I R 1956 Nag 264 (265) (Pt A) (Pr 6) (DB).

——Defamation—Suit for damages—Scope of damages—Duty of Court.

In actions for defamation the function of the Court is to see whether the words complained of are capable of a defamatory meaning and are capable of being defamatory of the plaintiff. (1946) 1 M L J 152; A I R 1946 P C 13, Rel. on. 1961 B L J R 554 : I L R 40 Pat 84: AIR 1961 Pat 164 (174) (Pt D) (Pr 93).

——Defamation — Libel — Damages—Measure of — Punitive damges.

In libel, damage is presumed and no doubt punitive or, as they are sometimes called, vindictive damages may be given, but extravagance is not to be permitted. 1961 B L J R 554 : I L R 40 Pat 84 : A I R 1961 Pat 164 (174) (Pt E) (Pr 93).

9(E). Evidence and proof.

——Defamation — Privileged occasion — Express malice must be proved. AIR 1961 Mad 254 (255, 256) (Pt B) (Prs 5, 6).

——Defamation — Damages — Proof of actual loss of reputation not necessary — Calling a person goonda is defamatory—Question of status of person defamed not relevant. 28 Cut L T 55 : A I R 1962 Orissa 115 (117) (Pt B) (Pr 5).

——Defamation—Essentials to be proved—Defendant sending defamatory letter in Urdu script to plaintiff's home address — Plaintiff, not conversant with Urdu getting it read by third person—Publication.

In a suit for damages for defamation the plaintiff in order to succeed has not only to prove that the words used by the defendant in the letter addressed to him are defamatory but also that the defendant knew or ought to have known that the letter would probably be read by some person other than the plaintiff.

Held, that in the absence of pleading and proof of the important fact that the defendant while writing the letter in question in Urdu script knew that the plaintiff did not know Urdu which would necessitate reading of the letter by a third person it must be held that the defendant was not responsible for the alleged publication of the libellous matter. 10 Suth W R 184, Rel. on. 1958 Pat L R 106: A I R 1958 Pat 445 (447, 448) (Prs 7, 9, 10).

——Evidence of bad general reputation but not of particular facts showing bad character or disposition admissible. See Penal Code (1860), S. 499. 1961 (1) Cri L J 710: AIR 1961 Punj 215.

——Defamation — Publication — Proof — (Evidence Act (1872), Ss. 101 to 104).

If the words used by the defendants in connection with the plaintiff were per se defamatory and tended to injure his reputation, it was scarcely necessary for him to show 'how and to what extent he was lowered in the public eyes'. Another essential factor which is necessary for the plaintiff to prove in a suit for defamation is that of publication. I L R (1959) 8 Raj 681: 1959 Raj L W 247 : A I R 1959 Raj 257 (258) (Pt B) (Prs 5, 6).

9(F). Fair comment.

——Libel and defamation — Fair comment, what amounts to.

The right of fair comment is not a special privilege of newspapers but is a right which every citizen or person has. But the comment must be fair in the sense that it must be based on facts truly stated and must consist in an inference, reasonably warranted by such facts and honestly drawn. One must state as facts only the truth and cannot state mere matters of one's belief, but after he has stated facts truly and laid a foundation for criticism, he may add observations by way of comment and such observations will be within the range of fair comment and so protected from an action for libel, if they consist in inferences which might legitimately be drawn from the facts stated and if the plaintiff does not prove that although prima facie and objectively fair, the comment was nevertheless made with a malicious motive. If these conditions are satisfied, the mere fact that there was some exaggeration will not defeat the defence. But the exaggeration will be excused only if it is merely an excess of severity short of violent invective and cannot take the form of an addition of untrue facts. It is true that an inference or comment may sometimes take the form of a statement of fact but it must appear that what has been stated in terms of fact is only a conclusion or deduction from other facts truly stated and such deduction must be one fairly warranted. An independent and further allegation of dishonourable conduct cannot be made as a fact and immunity cannot then be claimed for it on the basis that it is comment. It is one thing to comment upon or criticise even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of a particular act of misconduct.

[The publication held not protected by the right of fair comment.] AIR 1955 NUC (Cal) 407 (DB).

——Libel and defamation — Fair comment — Onus is on defendant — He must not only establish that the matter which he defends as comments is comment on matter of public interest but also that it is not founded on misstatements of facts in the so-called comment. AIR 1955 NUC (Cal) 407 (DB).

——Fair comment—Editor of newspaper stating facts and drawing fair inferences — Comment in public interest without malice—Onus is on accused to show that a statement that is prima facie defamatory is justified under Exception 2 or 3, of S. 499, Penal Code. See Penal Code (1860), S. 499, Exceptions 2 and 3. 1961 (2) Cri L J 114: AIR 1961 Madh Pra 205 (DB).

9 (G). Innuendo.

——Libel and defamation — Innuendos.

Where the publication is found to be libellous in its plain meaning, it is immaterial whether the plaintiff succeeds or fails in establishing the innuendos alleged by her. If she fails, she can treat the unproved innuendos as surplusage and still contend that the words of the publication are defamatory in their natural and ordinary meaning. AIR 1955 NUC (Cal) 407 (DB).

——Libel and defamation — Innuendos—Proof.

In order to prove an innuendo, evidence of surrounding circumstances which would lead those who

read the libel, to conclude that the plaintiff was the person referred to, is admissible.

When the alleged libel is contained in a newspaper, the plaintiff can, in explaining its meaning, put in evidence any article or paragraph contained in the same or a previous issue of the same newspaper which is connected with the subject-matter of the libel.

Having regard to the false pretences contained in one of the paragraphs of the publication and the allegations in the previous publications, the innuendo was held to be established. **AIR 1955 NUC (Cal) 407 (DB).**

——Defamation—Innuendo— Imputation in published matter made by winning candidate, alleged to be defamatory of rival candidate in context of extrinsic facts — Failure to plead extrinsic facts— Imputation cannot be held defamatory of rival candidate. See Representation of the People Act (1951), S. 123 (4). **AIR 1964 Madh Pra 62 (DB).**

9 (H). Justification.

——Defamation — Defence of justification — Pleading and proof — Civil P. C. (1908), O. 6, R. 4 — Evidence Act (1872), Ss. 101 to 103.

In an action for damages for defamation, the defendant who wants to put forward the defence of justification must not only raise the plea in his written statement but should prove it strictly by leading evidence that the defamatory remarks about the plaintiff were true. The onus to prove justification always lies on the defendant. **('51) 1951 All L Jour 268 : AIR 1953 All 302 (307) (Pt I) (Prs 29, 30) (DB).**

9 (I). Malice.

——Defamation — Malice — Onus — Malice in law and malice in fact.

In an action for defamation malice in law which is alleged at the first stage of the case is merely a formal allegation. It is more or less a matter of presumption and hardly requires any proof. Malice in fact, or in other words, express malice, the burden of which is shifted on the plaintiff once the occasion is proved to be a privileged one, is the substantial malice which the plaintiff has to prove before he can succeed in the case. **AIR 1957 All 219 (227) (Pt C) (Pr 29).**

——Libel and defamation — Malice — Proof.

A defamatory statement, not germane in any way to the privileged occasion and not pertiment to the defendant's vindication, is itself evidence of malice; it may be such evidence as to the whole of the publication. The malice required to be proved is express malice, in other words, malice in fact, as distinguished from the implied malice which the law presumes from the mere publication of defamatory matter. In a case of qualified privilege, such implied malice is excluded by the nature of the occasion and in order to be able to succeed, the plaintiff must prove express malice which means an actual wrong state of mind in which the defendant acted, not bona fide and for a reason which would make the statement privileged but from an indirect and wrong motive, such as spite, ill-will or prejudice or with knowledge that the statement was untrue or recklessly "careless whether it was true or false."

Held, that there was considerable extrinsic evidence to show that the defendants acted from malice. **AIR 1955 NUC (Cal) 407 (DB).**

——Defamation — Malice — Qualified privilege — Charges framed against plaintiff on report by head of department—All charges except two, proved or found to have reasonable basis — Malice held could not be imputed against the head of department. **1963 BLJR 316.**

9 (J). Privilege.

——Defamation — Action for damages — What plaintiff has to prove — Defence of qualified privilege—Scope.

In order to sustain an action for defamation it is necessary for the plaintiff not only to prove that a defamatory statement regarding him has been made but also that the person making it has published it to some person other than the person defamed. In such a case it is open to the person who is sought to be charged with the liability to take up the defence of qualified privilege in respect of the publication. Five cases are relevant. Firstly, that the publication was made by him in discharge of a duty owed by him. Secondly, that there existed between him and the party to whom the publication was made a common interest in the subject-matter in question. Thirdly, the doctrine would also cover a confidential relationship between persons and societies as a result of which one party is empowered or entitled to tender advice or information to another party respecting a matter in which both are concerned. Fourthly, where such a relationship exists, any enquiry made by one party from another might be an additional ground involving the other party in a kind of moral obligation to convey the information to the party that seeks the said information. Fifthly, that the publication was made for the protection of the legitimate interests of the person or persons who make the publication or even for the protection of the interest of another person in which both the parties are concerned. The publication thus made is of a defensive nature and where it falls within the four corners of this definition, it is difficult to weigh the defence set up in golden scales. **AIR 1957 All 219 (226, 227, 229, 233) (Pt B) (Prs 23, 24, 29, 42, 71).**

——Qualified privilege—Remark by Superior officer about his subordinates.

A superior officer has a qualified privilege to comment upon the conduct of his subordinate. Even if the remarks about the conduct of the subordinate are incorrect they are privileged unless they are malicious. **('51) 1951 All L Jour 268 : AIR 1953 All 302 (306) (Pt E) (Pr 19) (DB).**

——Publication of defamatory remarks by an official when privileged.

A privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is so made has a corresponding interest or duty to receive it. 1917 A C 309, Rel. on.

Hence the publication of defamatory remarks made by a superior officer about the conduct of his subordinate would not in the absence of malice, be actionable if the publication is made in the performance of his duty.

When an official act is to be performed, naturally it must necessarily pass through the hands of subordinates. Publication to such subordinates is always privileged. **(1951) 1951 All LJ 268: AIR 1953 All 302 (306) (Pt G) (Prs 20, 21) (DB).**

——Defamation of rival by way of retaliation if permissible.

Even where a person is defamed, and the law gives him an opportunity to defend himself, he may publish such matters as will clear his own conduct. But the privilege does not extend to defame one's opponent if such defamation does not clear his own conduct. Therefore, defamation of one's rival carried out by way of retaliation is not permissible. **(1951) 1951 All L J 268 : AIR 1953 All 302 (307) (Pt H) (Pr 28) (DB).**

——Defamation—Privilege—Statements made before Police Officer in course of investigation—(Evidence Act (1872), S. 124).

A statement if made before an officer who was not acting in a judicial capacity or who was not exercising the attributes of a Court, cannot be said to be absolutely privileged. Hence the defamatory statements made before the Police Officer in the course of the investigation carried on under Criminal P. C., cannot be regarded as absolutely privileged, but only a qualified privilege attaches to them which is liable to be destroyed by proof of malice. A I R 1943 Bom 167, Foll.; AIR 1939 Cal 477 and AIR 1926 Mad 521, Not approved. That the statements were made with full knowledge that those statements were untrue is a conclusive proof of malice. **61 Bom L R 143 : 1959 Nag L J 128 : I L R (1959) Bom 405 : AIR 1959 Bom 443 (446) (Pr 15).**

——Libel and defamation — Qualified privilege, defence of.

When a person publishes statements which are false in fact and injurious to the character of another, the law regards such publication as malicious and therefore actionable, but in a case where such statements are fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned, the occasion rebuts or rather excludes the initial presumption of malice and throws upon the plaintiff the burden of proving malice in fact. In other words, the defendant must first prove that the occasion on which the statement was made was in fact of the above character and therefore privileged, but once he proves it, he can claim that the statement, although untrue and libellous, is protected by the privilege. A privileged occasion is an occasion where the person who makes a communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. The reciprocity is essential.

No special privilege attaches to the position of a newspaper. **AIR 1955 N U C (Cal) 407 (DB).**

——Defamation — Suit for damages on account of defamation — Defence may be of qualified or absolute priviiege — Scope of qualified and absolute privilege.

Held, that the defence of privilege was of two kinds; (1) Absolute privilege and (2) qualified privilege. Absolute privilege was concerned with speeches made in Houses of Legislature and also extended to Judges, Jurors, Advocates and witnesses. The instant case was of qualified privilege. As a generel rule, the publication of information injurious to the character of any one was considered by law as malicious, unless it was fairly made by a person in discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matter where his interest was concerned. A qualified privilege was, therefore, one where generally speaking no one had a right to defame any one, unless such defamatory statement was warranted by any reasonable occasion or exigency and was honestly made. Such communications were protected for the common convenience and welfare of the society. **1965 M P L J (Notes) 61.**

——Defamation—Absolute privilege.

The defendant sent a petition to the Deputy Inspector-General of Police containing allegations about some ancient history as to the affairs in the village and the part which the plaintiffs took in the village matters without specifying any definite or separate offence which had been committed calling upon the police to investigate and take action. There was no basis for any belief by the defendant that he was making these statements with a view to repeat them on oath at a subsequent judicial proceeding to be taken by the Deputy Inspector-General of Police on his petition. The allegations in the petition were enquired into and found to be false and frivolous. The plaintiffs thereupon brought an action against the defendant. The defendant pleaded absolute privilege in defence.

Held, that the petition could not be considered to be a petition whereon action was sought to be taken under S. 107, Criminal P. C., and that the defendant was not free from liability for damages. The plea of absolute privilege was unsustainable. **1957 Mad W N 239 (2) : (1957) 2 Mad L J 71 : A I R 1957 Mad 756 (758) (Pr 6).**

——Defamation — Statement made in course of and with reference to judicial proceedings — Whether absolutely privileged in India (Quaere). AIR 1965 Mys 276 (278) (Pt B) (Pr 17).

——Defamation — Special privilege — Publication of news item by newspaper — (Constitution of India, Art. 19 (1) (a)).

According to the common law in England, which is also the law of the various States of America, subject to statutory modifications, the publication of a news item in a newspaper is not subject to any exceptional privilege. No doubt the law of libel recognises absolute privilege in some cases and qualified privilege in other cases. Under the common law the newspapers have no absolute privilege with regard to the publication of any matter excepting complete and accurate copies of parliamentary papers. A qualified privilege is accorded to the reports of proceedings in Parliament, of meetings of local authorities and other public meetings, and of judicial proceedings but there is no such privilege in respect of news. In India the same principles would apply. **1956 Nag L J 586: 1956 M P L J 66 : I L R (1956) Nag 439 : A I R 1957 Nag 19 (23) (Pt A) (Prs 13, 14) (DB).**

——Defamation—Privilege in election—Plaintiff contesting election on Muslim League ticket — Publication of forged handbill under signature of leader of Congress Party imputing the plaintiff had promised to join Congress if elected — Handbills distributed at election meeting and prior to polling—Handbill held defamatory. I L R (1956) Nag 378 : 1956 Nag L J 168 : AIR 1956 Nag 146 (148) (Pt A) (Prs 8, 9) (DB).

——Defamation—Qualified privilege — Enquiry conducted by third person into Criminal case at the instance of Adalati Panchayat — Enquiry without jurisdiction—Defamatory statement in report—Report of enquiry entitled to qualified privilege. 28 Cut L T 55 : AIR 1962 Orissa 115 (116) (Pt A) (Pr 4).

——Defamation—Defamatory statement in first information report of cognizable offence is absolutely privileged — Penal Code (1860), S. 499 — Criminal P. C. (1898), S. 154. 1962 (1) Cri L J 737 : I L R 41 Pat 816 : A I R 1962 Pat 229 (231 to 233, 235) (Pt B) (Prs 5, 6, 12) (DB).

——Defamation — Privilege — Absolute privilege — Conditions.

The occasions of absolute privilege as defence to an action for defamation may be classed as the administration of justice proceedings in Parliament and advising the State in affairs of State, this last-mentioned category :extending to communications between officers of State in relation to State affairs. The plea of 'absolute privilege,' therefore is available for example in respect of any statement made in the course of and with reference to judicial proceedings by any Judge jurymen, party, witness or advocate. Such privilege is called 'judicial privilege' and 'professional privilege'. **1961 B L J R 554 : I L R 40 Pat 84 : AIR 1961 Pat 164 (168) (Pt A) (Pr 28).**

——Defamation — Privilege — Absolute privilege — Judicial privilege—Extent of.

Judicial privilege applies not only to all kinds of Courts of justice but also to other tribunals recognised by law and acting judicially. The privilege although it extends to tribunals acting in a manner similar to Courts of Justice does not, however apply to tribunals which merely discharge administrative functions or to officials possessing merely administrative functions. The privilege attaches not merely to proceedings at the trial but also to proceedings which are essentially steps in judicial proceedings. The privilege also applies to officers of Court who have a duty to report in the course of judicial proceedings. **1961 B L J R 554 : ILR 40 Pat 84 : AIR 1961 Pat 164 (168) (Pt B) (Pr 29).**

——Defamation— Privilege — Qualified privilege — What is — Onus —Pleadings.

Privilege is qualified where the defendant is entitled to make the statement even if it is false but only if he makes it honestly with respect to what he states and carefully with respect to the means by which he states it. Qualified privilege exists when the defendant is exempted from the rule of strict liability for defamation not absolutely but only conditionally on the absence of malice. Qualified privilege, therefore; is an intermediate case between total absence of privilege and the presence of absolute privilege. The privilege extends only to a communication upon the subject with respect to which the privilege exists.

A statement made in the performance of a duty is conditionally privileged if it is made in the performance of any legal or moral duty imposed upon the person making it provided that the person to whom the statement is made has a corresponding interest or duty to receive it. A statement made in the protection of an interest even when there is no duty to make the statement is nevertheless privileged if it is made in the protection of some lawful interest of the person making it; for example if it is made in the defence of his own property or reputation. There must be a interest to be protected on one side and a duty to protect it on the other. It is for the defendant to prove the facts and circumstances which establish that the occasion was privileged. If he does so the burden of showing actual or express malice rests upon the plaintiff. **1961 B L J R 554 : I L R 40 Pat 84 : AIR 1961 Pat 164 (169, 171 to 174) (Pt C) (Prs 39, 56 to 60, 73, 74, 82, 91).**

——Defamation — Privilege — Statement made in reply to notice of action.

The statement is protected if it is fairly made by a person in the discharge of some public or private duty whether legal or moral; or in the conduct of his own affairs in matters where his interest is concerned. If fairly warranted by any reasonable occasion or exigency, and honestly made such communications are protected for the common convenience and welfare of society and the law has not restricted the right to make them within any narrow limits.

Certain statements though by themselves libellous were made by the defendant in answer to the notice given by the plaintiffs that it was the defendant who got them arrested and that not only without any reasonable and probable cause but also maliciously and as such he was liable to pay damages for the same.

Held, that the statements were made on a privileged occasion and therefore the defendant was not liable for defamation. Here the privilege arose for two reasons; firstly for the reason that the statements were made in the performance of a duty, and secondly that they were made in the protection of interest; and it could not be denied that in either case reciprocity was there as contemplated in law. Further though it is true that in the case of qualified privilage as was the case here it can constitute protection only if the statements were made honestly and without any indirect or improper motive but here there was no evidence that the statement made in reply to the notice was made either dishonestly or with any indirect or improper motive and not only with an honest intention to be consistent with what had already been stated in the F. I. R. **AIR 1959 Pat 490 (498) (Pt E) (Pr 16).**

——Privilege—Members of Legislative Assembly and Parliament—Absolute privilege in regard to statements made in the House — Privilege does not extend to their repetition outside the House either by members or third persons. See Penal Code (1860), S. 499. **1961 (1) Cri L J 710 : AIR 1961 Punj 215.**

——Defamation — Absolute privilege — Report to Police.

Privilege is of two kinds: (1) absolute privilege and (2) qualified privilege. The plea of absolute privilege means that by a sort of legal fiction law owing to compelling considerations of public policy invests statements made upon certain occasions with a special protection so that all statements made on such occasions, even though they may be defamatory cannot be made the subject-matter of litigation in Courts of law and no action for defamation will lie in respect of them. As to a qualified privilege a communication is said to be so privileged if it is made by a person in discharge of some duty whether public or private of a legal moral or social character or having an interest to be protected to a person who has some interest in receiving it or to a person honestly believed to have a duty to protect that interest. Such communications where they are fairly warranted by any reasonable occasion or exigency are also protected for the common convenience and welfare of the society. It may also be pointed out that a plea of qualified privilege can always be defeated by proving malice, that is malice actual or in fact. A statement made by a party in his report or complaint to the police is absolutely privileged. The doctrine of absolute privilege forbids any inquiry into the motives of the persons who made the complaint. **1959 Raj L W 222 : ILR (1959) 2 Raj 498 : A I R 1959 Raj 169 (170, 171 to 175) (Pt A) (Prs 6, 17, 20, 22, 23, 26, 29).**

——Defamation—Privilege.

The defence of privilege is of two kinds; first, an absolute privilege, and secondly, a qualified privilege. The term 'privilege' is used in the sense of an excuse or immunity conferred by law on certain statements or communications made on certain occasions which are called 'privileged occasions'. These are occasions when a person has a duty or interest in making certain statements to some person or persons having a corresponding duty or interest. In the case of an absolute privilege, once such a privilege is established there is an end of the matter and thereafter it is not open to the plaintiff to negative the privilege by establishing malice on the part of the defendant. In the case of a qualified privilege, the demands of public policy are not so high and the exigencies demand that protection should be afforded only so long as such persons are not proved to have acted maliciously or from an improper motive. **ILR (1958) 8 Raj 681 : 1959 Raj L W 247 : AIR 1958 Raj 257 (259, 260) (Pt C) (Prs 8, 9).**

——Defamation — Qualified privilege — Slanderous statement by Patels of community while caste dispute was pending before Court — Good faith and honest belief of makers.

In order to claim the privilege, the defendants have to prove that there was a privileged occasion on which they had a duty or interest in making the communication to a person or persons who had the

corresponding duty or interest to receive it, and the communication was relevant or pertinent to the occasion. If that is established, then it is for the plaintiff to prove malice of the defendants in making the statement, by malice being meant an improper motive.

Where in a caste dispute between husband and wife, pending before a Court, the Patels of the community to which the parties belonged, including some of the persons nominated by the State for being called upon to assist the Court in deciding caste disputes, send a slanderous statement against the husband to the Court before they were called upon to assist the Court, the statement cannot be said to have been made on privileged occasion.

If the occasion is not lawful then it is immaterial whether the person making the statement was the headman of the estate or a member, and had in that capacity a legal or moral duty to speak. 8 Sau L R 27 : AIR 1955 Sau 110 (111 to 113) (Prs 2, 3, 6, 8) (DB).

9 (K). Publication.

——Defamation—Publication—Privileged, communication — Resolutions passed at meeting—Reading of minutes at subsequent meeting — Effect. AIR 1957 All 219 (230, 231) (Pt E) (Prs 48, 52, 54).

——Libel and defamation—Publication libellous in regard to personal capacity of plaintiff.

Personal capacity of a person is not limited to his character as an individual in private life, but comprises also his personal conduct in relation to the affairs of associations or concerns with which he may be connected. Where the publication represented the plaintiff as a person who has been guilty of trickery and employment of hirelings in conducting the affairs of the Union of which she was the President, and who had also been responsible for acts or violence, including daylight robbery, while outwardly professing to subscribe to the creed of the Congress Labour Organization, the publication is not only defamatory of her, as regards her personal conduct in relation to her duties as the President of the Union, but it also defames her as regards her general character on which such allegations are bound to react. AIR 1955 NUC (Cal) 407 (DB).

——Defamation—Publication.

The word "publish' means to make known to others. Though in common parlance the word 'publication' is usually understood in the sense of making the contents known to the public, yet the meaning of this expression is not so limited in law. When the report was made to the police. it was certainly made known to persons other than the plaintiff and this was sufficient publication in the legal sense. 1959 Raj L W 222 : ILR (1959) 9 Raj 498 : AIR 1959 Raj 169 (175) (Pt B) (Pr 28).

10. Government servant.

See Note 25 (B)

11. Highway.

See also Note 18.

——Highway — Access to — Interference — Owner of land abutting public Highway—Right of access—Extent of.

The owner of a land which is contiguous to a public highway has a right of access to the highway from his land and vice versa at any point along the line of contact and that right cannot be interfered with though he may have fenced his land off or raised a wall for his convenience.

Where the construction made on a part of the public street did not prevent the owner of the adjoining land from stepping into the highway at any point from his premises but he complained of the construction because it prevented him from using the entire width of the road at the point where it stood.

Held, that the right of access into the highway is different from the right of user of the public highway. The former was a private right and the latter a public one. As the construction left unaffected the portion of the road immediately abutting on the premises, the plaintiff had access to every bit of the highway. Therefore it could not be held that his right was in any way interfered with. (1957) 2 Andh W R 546 : 1957 Andh L T 930 : AIR 1958 Andh Pra 586 (590) (Pt B) (Prs 17a and 19) (DB).

——Owner of property adjoining highway—Interference with his right as such owner — Suit for injunction — Estoppel — (Evidence Act (1872), S. 115).

When a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right and makes no objection while the act is in progress, he loses the remedy by injunction which he would otherwise have. Where the owner of property adjoining a highway actively participated in the joint endeavour of the locality to establish a shrine on a part of the road abutting on his premises and consciously stood by for a period of 10 years when the institution gradually progressed and thereafter upon a misunderstanding arising with the other sponsors complained that the shrine and its structures constituted a source of damage to his property and person.

Held, that the owner who was an active participant in the encroachment and who stood by for a long period of time had so acquiesced in the act and was so guilty of laches that he would not be entitled to any equitable relief. (1957) 2 Andh W R 546 : 1957 Andh L T 930 : AIR 1958 Andh Pra 586 (592) (Pt E) (Prs 30, 31) (DB).

12. Joint Tort-feasors.

——Joint tortfeasors — Liability — (Married Women and Tort-feasors Act, 1935 (25 and 26 Geo. V. C. 30), S. 6 (1) (b)).

There is no statutory law of torts in India. The Courts here act on the principle of equity, justice and good conscience in matters which are not covered by statute and rely upon the principles established under the English law to find out what the rule of justice, equity and good conscience is. Any technical rule or statutory law of England is not, as such considered to be based on the principle of equity, justice or good conscience. unless it appears to be so to the judge deciding the case. The rule of law indicated in Cl. 6 (1) (b) is not necessarily based on any principle of equity, justice or good conscience.

There is no justifiable reason why in the subsequent suit, if more than one suit is brought for damages against different persons, the plaintiff should be restricted to the amount decreed against one joint tortfeasor in his suit against the other joint tortfeasors against whom the cause of action is not only joint but joint and several. AIR 1955 All 594 (595) (Pt A) (Pr 5) (DB).

——Joint tortfeasors — Damages—Liability—Attachment of house by N in insolvency proceedings — House locked — Official Receiver unable to let out house — Suit for damages by owner of house—Liability.

Where in the insolvency proceedings the property was attached at the instance of one N and it remained locked and the Official Receiver could not let out a major portion of it to anyone in spite of his efforts in that direction, the damage caused to the building was the direct consequence of the attachment and its be-

ing locked up by N and he alone must be held responsible. **AIR 1955 All 594 (595) (Pt B) (Pr 6) (DB).**

●——**Joint tort-feasors — Contribution — Rule in Merryweather v. Nixon—Applicability of, to cases in India—Contract Act (1872), S. 43.**

Per Full Bench—The rule laid down in the English case of Merryweather v. Nixon, which is formulated in these terms, namely, there is no contribution among joint tort-feasors and wrong doers, has no application to cases arising in India, A I R 1932 All 334, **Overruled:** A I R 1932 Mad 1 Not Appr. Case Law discussed.

Per Wali Ullah, J.—After a decree has been obtained against two or more tortfeasors, which imposes a joint and several liability upon each one of the judgment-debtors, if one of them is made to pay the entire amount of the decree, justice and fairplay require that he should be able to share the burden with his compeers, i.e, the other joint judgment-debtors. Further, a tortfeasor may recover contribution from any other tortfeasor who is, or would, if sued, have been liable in respect of the same damage, whether as a joint tortfeasor or otherwise. The question whether contribution is actually recoverable and, if so, in what proportion, would necessarily depend on various factors and principally on the facts of the particular case. Apportionment of the entire liability is to be made in such proportions as the Court thinks just and equitable having regard to the extent of the moral responsibility of the parties concerned for the damage caused.

Per Agarwal J.: — Even in the case of conscious tortfeasors, contribution should be allowed where the facts warrant the same. This should be so whether a joint decree has been passed against the joint tortfeasors or not. Contribution is to be allowed as between conscious tortfeasors not upon the principle of implied agreement but upon equitable considerations. The mode of calculating the amount of contribution depends upon the facts of each case. Dharni Dhar v. Chandra Shekhar, **1951 A L J 521 : ILR (1952) 1 All 759 : A I R 1951 All 774 (783, 784, 790, 792) (Prs 31, 33, 71, 85) (FB).**

——Misfeasance proceedings — General principle of liability of joint tortfeasors cannot apply. See Companies Act (1913), S. 235. **AIR 1959 Cal 625.**

——Joint tortfeasors—Suit against joint tortfeasors—Death of one of them — Legal representatives not brought on record—If conduct shows only an intention of omission to sue, the suit does not abate. See Civil P. C. (1908), O. 22, R. 4. **A I R 1960 Madh-B 322 (DB).**

——Joint tortfeasors — Damages — Trespass by cattle belonging to several owners, in a body—All are liable. **A I R 1955 N U C (Madh-B) 5655.**

——Joint tort-feasors—Decree against—Entire amount of decree recovered in execution against only one of them—He has right to contribution from other wrongdoers. **1962 M P L J (Notes) 154 : A I R 1963 Madh Pra 49 (50) (Pt A) (Pr 7).**

——Joint tort-feasors — Partnership — Illegal sale of diesel oil with approval of partners—State recovering whole penalty from one partner — Other partner not liable to be sued for contribution. **AIR 1960 Mad 457.**

——Joint tort-feasors—Conspiracy to defame plaintiff by publication of libel contained in fabricated handbill—Single tortious act whatever parts conspirators might have played—Suit for damages for libel against all is not bad for mis-joinder of causes of action. See Civil P. C. (1908), O. 1, R. 3. **A I R 1956 Nag 146 (DB).**

——**Joint tort-feasors — Right of one to insist on apportionment of damages.**

Where the defendant conspired with others to defame the plaintiff, he must be held to be joint tortfeasor along with his collaborators. The liability of joint tort-feasors is joint and several. The plaintiff can recover the whole of the damages from one of the joint tort-feasors. One of the joint tort-feasors has no right to insist on apportionment of the damages. **ILR (1956) Nag 378 : 1956 Nag L J 168 : A I R 1956 Nag 146 (150) (Pt C) (Pr 19) (DB).**

——Joint tort-feasors — Contribution — Rule of non-contribution. See Contract Act (1872), S. 43. **A I R 1963 Pat 227.**

13. Liability.

——**Liability of Government for wrong orders passed by Courts of Justice — (Master and Servant)—(Bengal Regulation (11 of 1822), S. 38),**

The Government is not liable for orders passed by Courts of justice. The reason is obvious. Although the presiding officers of the Courts of Justice may be Government servants in the sense that their salaries are paid by Government and their appointment and removal rest with the Government, yet it goes without saying that once appointed they are independent of the Government. The Government cannot dictate, nor even suggest to them in what manner they should decide a particular case. Since they are totally independent of the Government in the discharge of their duties, the Government is not liable for their acts on the ground that it cannot control the said acts. This principle has received statutory recognition in S. 38 of Bengal Regulation (11 of 1822). AIR 1922 All 276; 21 All 341 and AIR 1937 All 158, Rel. on. **1955 All L J 697 : ILR (1957) 1 All 94 : A I R 1956 All 75 (77) (Pt B) (Pr 17) (DB).**

——Damages—Suit against Government — Maintainability—Property taken over by agent — Government need not have proprietary interest. See C. P. Code (1908), S. 79. **AIR 1957 Andh Pra 714 (DB).**

——**Liability — Patni sale — Sale proceeds wrongly paid by Collector to person not entitled to same—Liability of Government.**

The holding of a patni sale by a Collector is an act done by an officer of the Government in the exercise of powers conferred on him by the Patni Regulation and done in the course of his official duties. It is not a private enterprise by the Crown nor an act by which the Crown, acting as such, invades for its own purposes lands or goods or money belonging to a subject. Hence, where the Collector negligently pays out of the sale proceeds of a patni-sale a certain sum to an attaching creditor of the defaulting patni holder, the superior landlord who is entitled to the proceeds cannot sue the Government for damages for negligent act of the Collector. **51 C W N 537 : ('47) ILR (1947) 2 Cal 141 (149) (DB).**

——**Liability of Crown—Rights of subject.**

If a subject fails to avail himself of remedies which the law gives him against the acts of a servant of the Crown, he would not be permitted to claim damages in tort against the Crown. **51 C W N 537 : ('47) ILR (1947) 2 Cal 141 (150) (DB).**

——**Wrongful action — Cases involving wrongful motive or intent — Corporation or company can be held liable—Penal Code (1860), S. 40.**

A corporation can be held liable for wrongful acts and that such liability extends even to cases in which malice fraud or other wrongful motive or intent is a necessary element. An action for libel, malicious prosecution or deceit will lie against a company. **1963 Mad W N 106 : 75 Mad L W 287 : ILR (1962) Mad 781 : (1962) 2 Mad L J 29 : AIR 1965 Mad 133 (136) (Pt B) (Pr 14) (DB).**

—Liability of—Bodies corporate — Municipal corporation is as much liable in an action on tort as an individual — Travancore Municipalities Act (23 of 1116), S. 375—Liability of municipal corporation for tort committed by its servants — Domestic and harmless dog killed by municipal employee in course of his duty—Action by owner for damages against municipal council—Action not barred by S. 375—Municipal council not immune from liability on ground that act was not intra vires municipal council—Plaintiff entitled to recover only the sum representing the value of the dog as damages — He is not entitled to recover any damage for mental pain and anguish suffered by him. 1961 Mad W N 10 : (1962) 1 Mad L J 279 : ILR (1961) Mad 514 : 1961 Ker L T 153 : 74 Mad L W 104 : AIR 1961 Mad 230 (232, 233) (Pt C) (Prs 13 to 15).

—Damages — Misperformance of quasi-judicial powers by administrative officers—Liability for.

If administrative officers exercising quasi-judicial powers act bona fide and honestly within the general range of their duties they are not liable for an error in judgment or for a mistake innocently made. But if they act maliciously or for a purpose not intended to be advanced by the policy of the privilege of their office, they would be liable to an individual for the misperformance thereof. (1959) 10 S T C 553 (Mad).

—Damages — Land Acquisition Proceedings — Damage done during surveying by Government Officers without authority—Liability of State—Land Acquisition Act (1894), S. 5.

Where the party's pleading was that the officers concerned did not obey the statutory law laid down in S. 5 of the Land Acquisition Act, and it was nowhere his case that the State of Orissa authorised them to do so :

Held, that there could be no cause of action in tort against the State of Orissa though those particular officers might have been sued for the alleged illegality committed by him. AIR 1954 Pat 513, Relied on. If the State of Orissa was liable, it did not matter whether those officers were made or not made parties. AIR 1952 Nag 213, Relied on. Since the Government of Orissa authorised the Central Government officers under its statutory power to make the survey, those officers must for that purpose be deemed to have been employed by the State of Orissa, and it did not matter who was their paymaster. 26 Cut L T 392 : AIR 1961 Orissa 124 (127, 128) (Pt C) (Pr 5) (DB).

—Liability of Crown for acts of its servants—Present position in India—Immunity of State for tortious acts—Exceptions to—(Constitution of India, Arts. 294 (b) and 300).

Per Ahmed, J.—It is true that in England common law does not recognise an action against Crown on the principle either that 'the King can do no wrong' or that the King cannot be sued in his own Court. There the liabilities against Crown under common law are enforced only on a Petition of Right, which extends to detention of the land, chattels or money of the subject, and also to breach of contract. The law on the subject in India is, however, in many respects different.

The general immunity of the State in India in the field of torts has been put to at least three broad exceptions and in those cases the State is liable to an action in Courts for the tortious liabilities of its servants. They are as follows :

(1) Where the act complained of is done in the conduct of undertakings which might be carried on without having sovereign power delegated to it. That is the State is liable for the negligence of its employees in the course of their employment in the same way as any private employer in a similar case, where the act complained of is of a private nature and not done in the exercise of powers usually called sovereign or Governmental power or in the performance of an act of State. 5 Bom H C App 1 and 40 Cal 391, (PC), Ref. to.

(2) Where the acts complained of consist in detention by the State of land, goods or chattels belonging to the subject though in fact those acts are done by the officers of the State in the exercise of power given to them under the municipal law. In cases of this class the subject has a right to maintain an action against the State which in England, is done by Petition of Right. The acts done in the exercise of sovereign power are broadly divisible into two groups—(i) the first covering the acts of State properly so called, such as, making a treaty, commandeering private property for war purposes, or quelling civil disturbances by force, over which the Court has no jurisdiction—as regards which the agent is protected as well as the principal and (ii) the second covering the acts done under colour of municipal law as to which the agent at any rate is always responsible. These acts done under colour of municipal law are again divisible into two sub-groups—(1) those consisting in detention, by the Crown, of land, goods or chattels belonging to the subject and (2) those done by officers of the Crown in the discharge of their official duties. The former, as stated above, constitutes the second exception to the general rule. 51 Cal W N 537, Ref. to.

(3) As a rule acts falling in the second sub-group done by the servants in the discharge of their duties imposed upon them by the municipal law do not constitute a liability for action against the State on the principle that in exercising such authority or in exceeding it they cannot be considered to have been the agents of the authority appointing them so as to render the latter liable. In such cases neither the doctrine of 'Respondeat Superior' apply. In cases of this class even ratification by the State would make no difference, because there can be no ratification unless the act is done on behalf of the principal in the first instance. But where it is proved that the impugned act has been expressly authorised by the State or that the State has been profited by its performance, the State will not be left immune from an action for the liability arising from them. They, therefore, constitute the third exception to the rule. 1954 Cri L J 1593 : ILR :33 Pat 603 : AIR 1954 Pat 513 (517, 518) (Pt A) (Prs 14, 15) (DB).

—Liability of principal for acts of his agent — Suit for damages for wrongful dismissal of servant by agent. See Contract Act (1872), S. 73. AIR 1954 Trav-Co 104 (DB).

14. Malicious arrest and detention.

See also Note 29.

—Arrest of person in one State under warrant of speaker of legislature of another State — Directions of Governments not statutory — Suit for damages for wrongful arrest against Governments maintainable. 60 Bom L R 279 : ILR (1957) Bom 218.

—Damages — Malicious detention — Chaining of undertrial prisoner to window bars in hospital during medical treatment — Trial and acquittal — Suit for trespass to person — Act when mala fide and malicious — Limitation for suit, under S. 53, Madras District Police Act (1959).

The plaintiff claimed damages from a police officer in action for a tort for trespass on his person on the ground, that the trespass was mala fide and malicious. The fact was that the police officer had kept the plaintiff, when he was an undertrial prisoner in handcuff when he was undergoing treatment in the hospital and chained him to a window like a ferocious animal. In the

criminal trial the plaintiff was ultimately acquitted. The defence in the suit was that he bona fide followed the instructions of his superiors and certain rules to prevent his escape.

Held, that, with reference to the commission of a tort of the character a motive or intention need not be attributed; that if the officer exceeded and abused his authority, the act would be malicious and mala fide unless it is established that circumstances justified the use of the power. That the use of handcuffs and chaining of the plaintiff, an undertrial prisoner, like a ferocious animal was not justified, even upon literal interpretation of O. 666 of the Madras Police Standing Orders, Chap. 31, p. 423 in Vol. I (1960 Edn.) **Held**, further: that the protection under S. 53 of the Madras District Police Act, 1959, barring suits filed after three months of the date of the cause of action would include acts done or intended to be done under the provisions of the Police Act and also acts done or intended to be done under the provisions of any other Act conferring powers on the police but not when the act is outside the ambit altogether. The suit in this case filed beyond three months was not barred by limitation. AIR 1964 S C 33, Rel. on. **78 Mad L W 316: (1965) 2 Mad L J 530: 1965 Mad L J (Cri) 890: ILR (1966) 1 Mad 393: AIR 1965 Mad 438 (439, 440) (Prs 4, 7) (DB).**

——Malicious arrest—Essentials—Distinction between malicious arrest and malicious prosecution indicated. **AIR 1959 Mad 89 (95, 96) (Pt B) (Prs 28, 29).**

——Malicious arrest—Reasonable and probable cause — Lodging of F. I. R. on advice of counsel — Inference of bona fide belief — Civil P. C. (1908), S. 100).

The question whether in lodging F. I. R. against the plaintiff, on the advice of his counsel the defendant had acted in the bona fide belief that he had a cause of action against the plaintiff is not a question of law but only a circumstance to be taken into consideration in coming to a finding of fact as to whether the defendant in getting the plaintiff arrested acted bona fide or without any reasonable and probable cause. **AIR 1959 Pat 490 (497) (Pt D) (Pr 14).**

——Damages — Action for wrongful preventive detention — Claim for loss of reputation cannot be disallowed.

In an action for damages for wrongful preventive detention, the Court is not right in disallowing a claim by the plaintiff for loss of reputation. Ordinarily the people presume that preventive detention is ordered only in connection with illegal activities and the reputation of a person who is so detained does suffer. **1960 Raj LW 225: ILR (1960) 10 Raj 784: AIR 1961 Raj 64 (72) (Pt H) (Pr 31) (DB).**

15. Malicious proceedings.

See also (1) Note 16. (2) Civil P. C. (1908), Ss. 9, 95.

——Malicious civil proceedings — Obtaining Court's order on false and baseless allegations — It is direct act of party and not judicial act of Court — Party liable for damages.

A distinction can be drawn between the acts done without judicial sanction and acts done under judicial sanction which is improperly obtained, where defendants by obtaining an order of injunction from a Court on false and baseless allegations cause injury to the plaintiffs property the injury is the direct and proximate result of the defendants action in obtaining the order of injunction on wholly improper and unjustifiable grounds. The case falls within the second of the above categories and makes the defendant liable in an action for damages. AIR 1931 PC 28 and ILR 17 Cal 436 (PC), Rel. on. **1965 All W R (HC) 166: ILR (1965) 1 All 946: AIR 1966 All 172 (173) (Pr 13).**

16. Malicious prosecution.

(A) Burden of proof.
(B) Civil action.
(C) Damages.
(D) Evidence—Elements to be proved.
See also Note 16 (A).
(i) Judgment of criminal Court.
(ii) Malice and absence of reasonable and probable cause.
(E) Malice.
(F) Prosecution.
(G) Reasonable and probable cause.
See also Note 16 (A).

16. Malicious prosecution.

——Malicious prosecution, suit for — Meaning of — Application under S. 107, Criminal P. C. may be basis of — Test of damage sustained.

An application filed against a party making false and malicious allegations of breach of the peace by the latter for the purpose of initiating proceedings under S. 107 of the Criminal P. C,, against him, amounts to a prosecution for which damages may be claimed. Such an application may be made the foundation of a suit for damages for malicious prosecution. The proceedings on the application must, however, reach a stage at which damage to the plaintiff results. 17 C W N 554; 19 C W N 935 and 51 C W N 723, Rel. on.

Thus where in an application against the plaintiff to initiate proceedings under S. 107, Criminal P. C. the plaintiff was directed by the Magistrate to show cause and he did show cause; he had to appear before the Magistrate and incur costs for appearance and showing cause, the plaintiff must be held to have sustained damage. **ILR (1959) 2 Cal 395.**

——Magistrate's finding in favour of defendant — Effect.

Even though the Magistrate may have arrived at a finding in favour of the defendant, Civil Courts have got to reach their own conclusions in decreeing the suits for damages for malicious prosecution. The burden of proof in such cases is always on the plaintiff. **ILR (1952) Hyd 709: AIR 1953 Hyd 215 (218) (Pt C) (Pr 16) (DB).**

——Malicious prosecution — Essentials — Effect of dismissal of criminal case.

There is no presumption with respect to criminal proceedings that they were wrongly taken, if the proceedings fail in a Court of law. It is therefore, necessary for the plaintiff in a suit for malicious prosecution to prove not only that he has been declared innocent, but that he must also show that there was no probable or reasonable cause for the complainant to have started proceedings in the case. **12 J & K L R 67: AIR 1953 J & K 20 (21) (Pr 3).**

——Malicious prosecution—Essentials—Proceedings under S. 13, Legal Practitioners Act—Nature.

The foundation of the action for a malicious prosecution lies in abuse of the process of the Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose. The plaintiff must prove that the proceedings instituted against him were malicious, without reasonable and probable cause. that they terminated in his favour (if that be possible), and that he has suffered damage. Damages might be claimed in such an action under three heads (i) damage to the person, (ii) damage to property, and (iii) damage to reputation. The word 'prosecution' in the title of the

action is not used in the technical sense which it bears in criminal law. AIR 1947 P C 108, Rel. on. Proceedings under S. 13 of the Legal Practitioners Act are not purely of a civil nature but are quasi-criminal in nature. Therefore, even if costs are awarded in proceedings under that section, the reputation of a legal practitioner cannot be said to be re-established by the award of costs. 1960 M P L J 243 : 1960 M P C 138 : 1960 Jab L J 298 : 1960 Cri L J 829 : ILR (1959) Madh Pra 544 : AIR 1960 Madh Pra 171 (173) (Pt A) (Prs 7, 9) (DB).

——Malicious prosecution — President of Panchayat Court launching prosecution under S. 174, I. P. C. acts in judicial capacity — Suit against him for damages for malicious prosecution is barred under Judicial Officers' Protection Act. See Judicial Officers' Protection Act (1850), S. 1. AIR 1951 Mad 211.

——Malicious prosecution — Suit for damages — When lies — Proof required—"Prosecution"—Malice — "Reasonable and probable cause"—Tests — Judgment in criminal case — Value of — (Evidence Act (1872), Ss. 33, 157 and 158).

The action for damages for malicious prosecution is part of the common law of England. In India, the law on the subject is exactly the same as the law in England and the U. S. A. The foundation of the action for damages for malicious prosecution lies in the abuse of the process of the Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the mchinery of the justice for an improper purpose. The gist of the action is the putting of legal process in force.

To render one liable for malicious prosecution it must appear that he has proximate and efficient cause of putting the law in motion; some affirmative action in connection with the prosecution must be shown,

In order to succeed in a suit for malicious prosecution, the second essential is that the plaintiff must establish that his prosecution by the defendant ended in his favour. A prosecution may end favourably not only by acquittal but also end favourably by discharge, discontinuance of the proceedings excepting where it is due to the possibility or impracticability of bringing the accused to trial on dismissal of the complaint. The plaintiff must show that the defendant prosecuted him without reasonable and probable cause. AIR 1957 Mad 646 (652 to 657) (Pt A) (Prs 19 to 31, 35) (DB).

——Malicious prosecution—Withdrawal of criminal proceedings due to settlement how far defence.

Where the prosecution launched was withdrawn due to settlement, the accused could not make a claim for damages for malicious prosecution. But in order to so bar him the settlement must have been one between him and the prosecutor in pursuance of which the prosecution was withdrawn. Therefore where the prosecution was withdrawn as a result of settlement between the prosecutor and one of several accused, the other accused are not disentitled to make the claim. 1950 Mad W N 145 : (1950) 1 Mad L J 219 : 63 Mad L W 229 : 1950 Mad W N (Cri) 29 : (1950-51) 2 F J R 65 : 51 Cri L J 1563 : AIR 1950 Mad 831 (832) (Pr 3).

——Malicious prosecution — Essentials stated — Defendant's responsibility for prosecution — A being Karji of village sending report to Sub-Magistrate through Revenue Inspector alleging that B along with others were letting out filthy water from houses on public road — All tried — Except B all convicted — B's suit against A for damages for malicious prosecution — Relations between A and B cordial before and after event — Failure to prove that A was directly and primarily responsible for prosecution — Suit did not lie. AIR 1955 N U C (Orissa) 713.

——Malicious prosecution—Nature of wrong—False imprisonment — Distinction.

As contradistinguished with the wrong of malicious prosecution the wrong of false imprisonment isan action of trespass. In this wrong the injury is always forcible and direct, forcible in the sense of being an act of physical interference with the person or property of another. As such trespass lies for all direct injuries, whether wilful or merely negligent. An action for false imprisonment will lie against any person who authorises or directs the unlawful arrest or detention of the plaintiff by a merely ministerial officer of the law, as distinguished from a judicial officer or Court of justice. Unlike the case of malicious prosecution, it is not necessary for liability that the arrest should have been malicious; it is enough that it was without reasonable and probable cause. The burden of proving the existence of reasonable and probable cause is on the defendant. Where the defendant by making a complaint under S. 420, I. P. C.. to the police against the plaintiff had caused the latter to be arrested by the police and it was not the result, of any judicial order, the claim for malicious prosecution is; wholly misconceived. AIR 1959 Pat 490 (494, 495) (Pt A) (Prs 8, 9).

——Malicious prosecution.

Whenever the law has been set in motion not for the bona fide purpose of vindicating justice, but there is a perversion of the machinery of justice for improper purposes. an action will be maintainable. 1957 B L J R 546 : ILR 36 Pat 786; AIR 1958 Pat 329 (333) (Pt A) (Pr 8a) (DB).

——Malicious prosecution—Ingredients — (Evidence Act (1872), Ss. 101 to 103).

Ingredients stated — The co-existence of malice and want of probable cause are essential pre-requisites to the success of an action for malicious prosecution — Malice alone, however great, is insufficient—Want of probable cause cannot be inferred from malice, however great such malice may be but malice may be implied or inferred as a fact from want or probable cause—The question is not what the actual facts were but what the defendant had reason to believe they were. ILR (1954) Punj 8; 55 Punj L R 218; AIR 1953 Punj 213 (213) (Pt A) (Pr 5) (DB).

16(A). Burden of proof.

——Malicious prosecution—Burden of proof.

Both as regards malice and the absence of reasonable and probable cause, the burden of proof lies upon the plaintiff and the questions whether there was malice and whether there was absence of reasonable and probable cause are questions of fact. ('50) 1950 A L J 754 : ILR (1950) All 1310 : AIR 1952 All 554 (557) (Pt B) (Pr 9) (DB).

——Malicious prosecution — Suit for damages — Facts to be eslablished — Onus — "Prosecution" — Test.

In an action for malicious prosecution the plaintiff must show first that he was prosecuted by the defendant that is to say, the law was set in motion against him on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving every one of these is on the plaintiff. The question in all cases is who was the prosecutor and the answer must depend on the circumstance of the case. 1956 Andh L T 406 : 1956 Andh W R 530 : AIR 1957 Andh Pra 347 (348, 349) (Prs 5, 11, 12) (DB).

——Malicious prosecution—Burden of proof—Essential facts to be proved.

The plaintiff in order to succeed in a suit for damages for malicious prosecution has to prove, (1) that he was prosecuted by the defendant, (2) that the proceedings complained of terminated in favour of the plaintiff if from their nature they were capable of so terminating, (3) that the prosecution was instituted against him without any reasonable or probable cause, (4) that the prosecution was instituted with a malicious intention, that is, not with the mere intention of carrying the law into effect or in furtherance of justice but with some indirect or improper motive. **ILR (1950) 2 Assam 181 : AIR 1950 Assam 101 (105) (Pt C) (Pr 15) (DB).**

——Evidence Act (1872), Ss. 101 to 103. The onus of proving want of reasonable and probable cause, and of proving the existence of such facts as are evidence of such want. lies on the plaintiff. It is also essential that the plaintiff should give some evidence of the defendant's malice, where it is denied, But if the plaintiff should prove want of probable cause malice may be inferred although want of probable cause is not conclusive evidence of malice. **56 Cal W N 248 : AIR 1952 Cal 242 (243 to 245) (Pt A) (Prs 5, 6).**

——Malicious prosecution — Burden of proof—Plaintiff has to prove that defendant invented and instigated whole proceedings for prosecution.

In a suit for damages for malicious prosecution, the question is not whether the plaintiff committed the acts complained of or whether the defendant invented the acts or the offences imputed to the plaintiff, but the question is, whether the plaintiff has proved, that the defendant invented and instigated the whole proceedings for prosecution. AIR 1926 P C 46, Foll. **1964 Ker L J 879 : 1964 Ker L T 602.**

——Malicious prosecution — Burden of proof — Absence of reasonable and probable cause — Burden when shifts on defandant.

In a suit for malicious prosecution the burden of proving absence of reasonable and probable cause, a negative, is not static, and may shift to the opposite party. As a matter of law, this is so but then the condition pre-requisite is that "the plaintiff has given such evidence, as if not answered, will entitle him to a veredict". AIR 1957 Mad 646, Rel. on. **1964 Ker L J 879 : 1964 Ker L T 602.**

——Malicious prosecution—Suit for—What plaintiff should prove — Prosecution.

In an action for malicious prosecution, the onus is upon the plaintiff to prove (1) that he was prosecuted by the defendant; (2) that the proceedings complained of terminated in favour of the plaintiff, if from their very nature they were capable of so terminating; (3) that the prosecution was instituted against him without any reasonable and probable cause; and (4) that it was due to a malicious intention of the defendant and not with a mere intention to carry the law into effect. In the case of a person who merely gives some information to the Police on the basis of which the Police starts investigation and ultimately lays a charge against the person, who according to them, may be involved in a particular occurrence, it cannot be stated that such a person who merely laid information to the Police, without anything more, can be considered to be a prosecutor unless he misleads the Police by bringing suborned witnesses to support it and influences the Police to assist him in sending an innocent man for trial before the Magistrate. In proper cases, Courts must consider even such a person as a prosecutor and make him liable for damages for malicious prosecution. In such cases the complainant is regarded as a person who had set the law in motion. ILR 30 All 525 (P C), Foll.; AIR 1919 Mad 229 (2) : 37 Mad L J 234, Relied on; ILR 26 Mad 362, Not Foll. **1959 Ker L J 1172 : 1960 Ker L T 312 : ILR (1960) Ker 557 : AIR 1960 Ker 264 (268, 269) (Pt A) (Prs 32, 39).**

——Malicious prosecution—Burden of proof — Plaintiff must show that defendant had no reasonable and proboble cause — Facts alleged by defendant not obviously false — Question depending upon inquiry into previous history of subject-matter in dispute and its surroundings — It cannot be said that defendant acted without reasonable and probable cause. **51 Cri L J 418: AIR 1950 Kutch 12 (12) (Prs 5, 6).**

——Malicious prosecution — Burden of proof is in plaintiff to prove falsity of case and their innocence, that there was no reasonable and probable cause and that the proceedings were initiated in malicious spirit that is not in furtherance of justice. **AIR 1955 N U C (Madh-B) 3342.**

——Malicious prosecution—Burden of proof.

In an action for malicious prosecution, the plaintiff has to prove (a) that he was prosecuted by the defendant; (b) that the proceedings complained of terminated in favour of the plaintiff; (c) that the prosecution was instituted without any reasonable and probable cause; and (d) that it was due to a malicious intention. AIR 1926 P C 46, Foll. **AIR 1953 Madh B 269 (269) (Pt A) (Pr 3).**

——Malicious prosecution—Reasonable and probable cause — Onus.

In a suit for malicious prosecution the onus of proving want of reasonable and probable cause for the prosecution is on the plaintiff and the question of absence of reasonable and probable cause is a question of fact.

Reasonable and probable cause is defined as an honst belief in the guilt of the accused based on a full conviction founded upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any prudent and cautious man, placed in the position of the accused, to the conclusion that the person charged was probably guilty of the crime imputed. 1952 N L J 183, Foll. **1961 M P L J (Notes) 132.**

——Malicious prosecution — Burden to prove want of reasonable and probable cause and malice is always on plaintiff—(Evidence Act (1872), Ss. 101-104). **AIR 1959 Manipur 32 (33) (Pt C) (Pr 8).**

——Malicious prosecution — Action for — What plaintiff has to prove—(Evidence Act (1872), Ss. 101 to 103).

In an action for malicious prosecution the plaintiff has to prove that (i) he was prosecuted by the defendant; (ii) the proceedings terminated in favour of the plaintiff, if from their nature they were so capable of terminating; (iii) the prosecution was instituted against him without reasonable and probable cause; (iv) it was due to malicious intention of the defendant and not with the intention of carrying the law into effect.

The plaintiff has, in the first place, to give some evidence tending to establish an absence of reasonable and probable cause operating on the mind of the defendant. To do this he must show the circumstances in which the prosecution was instituted. **ILR (1955) Nag 872 : 1955 Nag L J 617 : AIR 1955 Nag 265 (267) (Pt A) (Prs 11, 12) (DB).**

——Malicious prosecution — Reasonable and probable cause — Onus of proof — Plaintiff must prove absence of such cause.

It is settled law that the initial onus of proving the absence of reasonable and probable cause is on the plaintiff even though this means that he has to prove the negative. It is true that where the criminal case has ended in the acquittal of the accused person and the complainant had claimed to be an eye-witness to the commission of the offence by the accused, slight evidence on the accused's side may suffice to discharge his initial burden. But some evidence on

his side is absolutely necessary and he cannot merely rely on the fact that the Magistrate did not take cognizance of the case or that the case ended in the acquittal or discharge of the accused. ILR (1964) Cut 153 : 1964 (2) Cri L J 168 : AIR 1964 Orissa 187 (189) (Pt C) (Pr 9).

——Malicious prosecution — What plaintiff has to prove — Presence of reasonable and probable cause —Onus of proof — Evidence Act (1872), Ss. 101 to 104.

In a suit for malicious prosecution, it is incumbent upon the plaintiff to establish that; (i) the proceedings were instituted or continued by the defendant; (ii) the defendant acted without reasonable and probable cause; (iii) the defendants acted maliciously; and (iv) the proceedings terminated in favour of the plaintiff.

The onus of proof regarding the presence of reasonable and probable cause would lie on the defendant where the plaintiff has been acquitted on merits is a criminal complaint filed by the defendant against the plaintiff. S. A. No. 490 of 1950 (Ori.), Foll. AIR 1962 Pat 478, Not. foll. ('63) 29 Cut L T 357.

——Malicious prosecution—Absence of probable and reasonable cause — Onus of proof — Rule as to — (Evidence Act (1872), Ss. 101-104).

In an action for malicious prosecution the initial burden of proving the absence of probable and reasonable cause and the existence of malice on the part of the defendant in launching the prosecution against the plaintiff rests on the plaintiff. The burden may shift during the trial and the nature of evidence required to discharge the initial burden depends upon the facts and circumstances of each case. Where the plaintiff has failed to discharge the initial onus of proving the case against the defendant, there is no question of shifting of onus. (General principles stated). 24 Cut L T 421.

——Malicious prosecution — Suit for — Essentials to be proved — Burden to prove that prosecution was instituted without reasonable and probable cause with malicious intention lies upon plaintiff — Onus not shifted even where defendant purports to be an eye-witness to the offence alleged. AIR 1938 Pat 529, held no longer good law. ILR 41 Pat 369 : AIR 1962 Pat 478 (479 to 481) (Prs 3, 4) (DB).

——Malicious prosecution — Burden of proof.

In action for malicious prosecution the burden of proof, in the first instance lies on the plaintiff. He must show not only that he was prosecuted by the defendant, and, that the prosecution terminated in his favour, but also that he suffered damage, and that the defendant acted maliciously, and without reasonable and probable cause. The plaintiff no doubt in proving absence of reasonable and probable cause has to prove a negative, and, in general, need only give slight evidence of such absence. The amount and nature of evidence required to fulfil the initial burden depends upon the facts and circumstances of each case. 1957 B L J R 546 : ILR 36 Pat 786 : AIR 1958 Pat 329 (334, 350, 351) (Pt D) (Prs 15, 162, 163) (DB).

——Malicious prosecution — Essentials to be proved —Onus — (Evidence Act (1872), Ss. 101 to 103).

In an action for malicious prosecution the onus is upon the plaintiff to prove (1) that he was prosecuted by the defendant; (2) that the proceedings complained of terminated in favour of the plaintiff; (3) that the prosecution was instituted against him without any reasonable and probable cause; and (4) that it was due to a malicious intention of the defendant and not with a mere intention to carry the law into effect. AIR 1926 P C 46 : 51 M L J 42 and AIR 1944 P C 1 : (1944) 1 M L J 40, Rel. on. AIR 1956 Pat 285 (287) (Pr 3).

——Malicious Prosecution — Suit for damages — Plaintiff's onus of proof to establish that prosecution was false — Extent of — Shifting of onus.

In cases for damages for malicious prosecution though the initial burden would lie on the plaintiff to establish that his prosecution was false and that it was made without any reasonable and probable cause the burden is not particularly heavy on plaintiff. There are many cases where the plaintiff's case is negative, and then very slight evidence on the part of the plaintiff may be sufficient to shift the onus on to the defendant. In such a case after the plaintiff has denied on oath his participation in a particular crime, it is for the defendant to prove by positive evidence that the plaintiff had committed the act complained of. This would be so where the prosecution was based on facts which must have been within the knowledge of the prosecutor. AIR 1959 Raj 37, Foll. 1963 Raj L W 316 : ILR (1963) 13 Raj 801.

——Malicious prosecution — Absence of reasonable and probable cause—Burden of proof lies on plaintiff. 1958 Raj L W 434 : AIR 1959 Raj 37 (39) (Pt B) (Pr 11).

16 (B). Civil action.

——Malicious prosecution—Suit for damages— Death of either party — Right to sue does not survive. See Civil P. C. (1908), O. 22, R. 1. 1964 All L J 1115.

——Malicious prosecution — Civil action— Corporation — Liability.

A corporation, which has got in all civil matters the same liability as any other individual can be held to be guilty of malice and can be liable for damages in all cases where a master would be liable for an act of his servant acting within the scope of his employment. ('50) 1950 A L J 754 : ILR (1950) All 1310 : AIR 1952 All 554 (556) (Pt A) (Pr 4) (DB).

——Malicious prosecution —Suit for damages - Forum —Court at place where plaintiff was served with summons in criminal case has jurisdiction to entertain it—Service of summons is part of wrong done to plaintiff. See Civil P. C. (1908), S. 19. 1965 (2) Cri L J 75 : AIR 1965 Bom 109.

——Malicious prosecution — Suit for damages — Limitation.

Starting point — Dismissal of criminal complaint for want of prosecution — Revision against dismissal also dismissed — Limitation starts from date of dismissal of revision petition. See Limitation Act (1908), Art. 23. 1965 Kash L J 64.

——Malicious prosecution — Statutory body like municipality—Liability of.

If a servant of a statutory body like the municipality has laid the prosecution in the circumstances under which that servant would be liable for damages, then if he had not acted within the scope of his authority and in excess of the powers conferred on him by the statute, then the employer, namely, the statutory body will be equally liable. 1955 Mad W N 133 : 68 Mad L W 317 : (1955) 1 M L J 269 : AIR 1955 Mad 562 (563) (Pt B) (Pr 3).

——Malicious prosecution — Action for damages for —Decree — Reversed on appeal — Death of plaintiff thereafter — Second appeal by legal representatives of deceased plaintiff — Death of defendant, during pendency of second appeal and his legal representatives brought on record—Competency of the second appeal — Maxim of actio personalis moritur cum persona—Applicability of.

A suit for damages for malicious prosecution was decreed by the trial Court with costs, but on appeal by the defendants, the decree of the trial Court was

reversed and the suit dismissed with costs. The plaintiff died thereafter and his legal representatives filed a second appeal. During the pendency of the second appeal the defendant died and his legal representatives were brought on record. On a preliminary objection raised by the respondents to the hearing of the second appeal founded on the rule actio personalis moritur cum persona:

Held, when the plaintiff respondent in the lower appellate Court died after the decree of that Court there was no right to seek relief in further appeal on the part of his legal representatives. With the decree of the lower appellate Court in reversal of that of the trial Court, the plaintiff lost in appeal what he had gained in the Court of trial. It is as if he were thereafter to agitate the matter with a clean slate, so to say, if he should file a second appeal, and if before he could, file it he died, his legal representatives could not file it after his death because with his death the cause of action personal to him died too. Further, when the defendant-respondent died during the pendency of the second appeal, the right to seek further relief did not survive against his legal representatives. After wiping out of the trial Court's decree by the lower appellate Court's the position was that there was merely an outstanding claim in the second appeal indeterminate in character on the part of the legal representatives of the plaintiff against the respondent after whose death the claim cannot be pursued against his estate since it is only an unliquidated claim which has not been perfected by judgment at the time of the death of the defendant. **1951 Mad W N 330 : 64 Mad L W 291 : (1951) 1 M L J 442 : AIR 1951 Mad 733 (733, 734, 736) (Prs 4, 6, 10).**

——Malicious prosecution and slander—Suit on basis of false complaint of theft to police dismissed — Decree reversed in appeal — New plea that plaintiff's claim should be considered on ground of action for slander or defamation cannot be considered for first time in second appeal. See Civil P. C. (1908), S. 100. **(1965) 1 Mys L J 389 : (1965) 3 Law Rep 157 : AIR 1966 Mys 13.**

——Malicious prosecution — Suit for damages — Forum — Court at place where plaintiff was served with summons in criminal case—If part of cause of action.

A malicious prosecution is in essence a malicious abuse of the process of the criminal Court. If such abuse is made of the process of a criminal Court in a particular place by serving that process upon the person who was maliciously prosecuted the wrong is done in the place where he is so served.

Even if S. 19 of the Code of Civil Procedure is the statutory provision determining the jurisdiction of the Court within whose jurisdiction a suit for malicious prosecution has to be instituted, the Banglore Court in this case within whose jurisdiction the plaintiff was served with summons in the criminal case commenced by the defendant in the Bombay Court is the Court in which it was competent for the plaintiff to institute his suit. AIR 1933 Cal 706, Rel. on. **39 Mys L J 270 : AIR 1961 Mys 188 (189) (Pt A) (Prs 4, 6).**

——Malicious prosecution — Complaint dismissed under S. 203, Cr. P. Code — Complainant proceeding in revision and summons issued to plaintiff — Suit for malicious prosecution lies. **(1964) 6 Orissa J D 218 : ILR (1964) Cut 598.**

——Malicious prosecution—Suit for damages—Forum —Malicious prosecution—Notice of criminal proceedings served at C—Court at C has jurisdiction to entertain suit for damages. See Civil P. C. (1908), S. 20. **(1964) 6 Orissa J D 218 : ILR (1964) Cal 598.**

——Malicious prosecution—Suit for malicious prosecution lies in respect of information given under the section, S. 107, Cr. P. C. See Criminal P. C. (1898), S. 107. **1955 Cri L J 989 : AIR 1955 Punj 139.**

16 (C). Damages.

——Malicious prosecution —Damages —Chairman of municipality bona fide demanding license fee from plaintiff in accordance with its resolution — Prosecution of plaintiff for failure to take out licence — Discharge — Municipality in demanding fee acting outside its powers under Act — Held, there was absence of reasonable and probable cause for prosecution — Municipality not actuated by any indirect or improper motive other than furtherance of justice or vindication of the law in prosecuting—Held, their being absence of malice, claim for damages was not maintainable. **ILR (1950) 2 Assam 181 : AIR 1950 Assam 101) (104 to 106) (Pt E) (Prs 14, 18, 21) (DB).**

——Malicious prosecution — Infructuous criminal process.

If, in fact, the processes of the criminal Court are set in motion and the criminal Court takes cognisance of the matter, the bare fact that the processes may be void on some ground or other does not disentitle the plaintiff from claiming damages for malicious prosecution. **54 Cal W N 135 : AIR 1950 Cal 259 (259, 260) (Pt A) (Pr 6).**

——Malicious prosecution—Damages—Grounds.

In an action for malicious prosecution, the plaintiff can claim damages, either on the ground of loss of reputation or damage to person and property. **54 Cal W N 135 : AIR 1950 Cal 259 (260) (Pt C) (Pr 10).**

——Malicious prosecution — Malice established — Exemplary damages can be awarded — Lower appellate Court reducing damages — Proper legal principle applied — No interference in second appeal. **1959 Ker L J 1172 : 1960 Ker L T 312 : ILR (1960) Ker 557 : AIR 1960 Ker 264 (275) (Pt B) (Pr 62).**

——Malicious prosecution — Damages — Vindictive damages.

A malicious prosecution is one in which vindictive damages are permissible. AIR 1949 Nag 273, Rel. on. **1961 Jab L J 332 : 1961 M P L J 36 : 1961 M P C 419 : ILR (1960) Madh Pra 1008 : AIR 1961 Madh Pra 329 (332) (Pt C) (Pr 11) (DB).**

——Malicious prosecution — Reckless allegations against character of laywer — Award of vindictive damages.

Where reckless allegations are made against the character of a professional lawyer, the Court is entitled to take into consideration aggravation of damages and to award vindictive damages. **1960 M P L J 243 : 1960 M P C 138 : 1960 Jab L J 298 : 1960 Cri L J 829 : ILR (1959) Madh Pra 544 : AIR 1960 Madh Pra 171 (174) (Pt C) (Pr 11) (DB).**

——Malicious prosecution—Suit for damages—Basis of claim.

Damages claimable in a suit for malicious prosecution may be classed under two heads, namely, (1) solatium for injury to reputation and feelings of the plaintiff and his detention (if any) and consequent suffering and (2) legitimate expenses incurred by him in his defence. Damages under the first head are variable. They may be aggravated or mitigated according to the circumstances of the case. Where both the plaintiff and the defendant were actuated by malicious motives, the Court would be justified in awarding only nominal damages. In a proper case exemplary damages may be awarded. Exemplary damages sometimes called by the rather unpleasant name of vindicative damages—are consolatory rather

than penal, resting upon the principle that where there is malice, the mental pain caused to the plaintiff must be taken note of and a solatium awarded for it. AIR 1957 Mad 646 (656) (Pt B) (Pr 34) (DB).

——Malicious prosecution — Damages — No satisfactory evidence to show that sums claimed as defence expenses were actually spent — Assessment of damages.

Although the plaintiffs did not produce any satisfactory evidence that they spent the sums of money which they claimed to have spent in their defence in those Courts, they must have spent some money over their defence in the criminal Courts. Some damages are also awardable to them for the pain and suffering which they had to endure as a result of their having been unjustly prosecuted. 39 Mys L J 754 : AIR 1962 Mys 153 (155) (Pt B) (Pr 17).

——Malicious prosecution—Pleadings.

Civil P. C. (1908), O. 6, R. 2 — Cause of action as stated in plaint in suit for damages, based on malicious prosecution — Plaintiff cannot build up a case for damages for malicious arrest and search. See Civil P. C. (1908), O. 6, R. 2. (1962) 4 Orissa J D 334.

——Malicious prosecution and malicious arrest — Process not issued — Arrest and search during Police investigation do not form part of prosecution — No suit for damages for malicious prosecution or malicious arrest lies. (1962) 4 Orissa J D 334.

——Malicious prosecution—Damages.

When the plaintiff is able to establish that there was no reasonable and probable cause for some of the charges preferred by the defendant in the original proceeding but that there may have been such cause for other, the Court ought to grant a decree to the plaintiff in respect of the charges for which there was no reasonable or probable cause. I L R (1954) Punj 8 : 55 Pun L R 218 : AIR 1953 Punj 213 (214) (Pt C) (Pr 9) (DB).

——Malicious prosecution—Quantum of damages.

Complaint under Ss. 379 and 427, Penal Code — Complaint under S. 427 held to be without reasonable and probable cause — No proof that plaintiff was required to incur additional expenditure in defending charge under S. 379 — Nominal damages awarded. I L R (1954) Punj 8; 55 Pun L R 218; AIR 1953 Punj 213 (215) (Pt D) (Pr 10) (DB).

——Malicious prosecution—Suit for damages—Liabi- of defendant—Opinion of lawyer.

In a suit for damages for malicious prosecution, the fact that a lawyer's opinion had intervened before the defendant set about his prosecution will not help the defendant if he had not placed all the facts before the lawyer. A I R 1946 All 204, Distinguished. 1955 Ker L T 791 : A I R 1956 Trav-Co 96 (96) (Pr 4).

16(D). Evidence—Elements to be proved.

See also Note 16(A).

(i) Judgment of Criminal Court.

(ii) Malice and absence of reasonable and probable cause.

16(D). Evidence—Elements to be proved.

See also Note 16(A).

——Malicious prosecution—Suit for damages—Facts to be proved.

In order to succeed in an action for damages for malicious prosecution the plaintiff must prove (1) the prosecution by the defendant of a criminal charge against the plaintiff; (2) that the proceedings complained of terminated in his favour if from their nature they were capable of so terminating; (3) that the defendant instituted or carried on such proceedings maliciously; (4) that there was an absence of reasonable and probable cause for such proceedings, and (5) that the plaintiff has suffered damages: Case Law Ref. 1965 Kash L J 64.

——Suit for — Essentials to be proved — 'Malice' — 'Prosecution'—What constitutes.

Held, In an action for malicious prosecution the plaintiff must prove all the following points : (a) that the plaintiff was prosecuted by the defendant; (b) that the prosecution ended in plaintiff's favour; (c) that the defendant acted without reasonable and probable cause; and (d) that the defendant was actuated by malice. The term 'malice' has to be construed as meaning an improper or indirect motive, that is to say, some motive other than a desire to vindicate public justice or a private right. The question as to who is the real prosecutor has to be established irrespective of the fact whether the complaint is by the defendant himself or the prosecution is started at his instance. It is well-settled that instigating a prosecution is something different from the act of giving information on the strength of which a prosecution is commenced by some one else in exercise of his own discretion. 1959 Cri L J 328 : (1959) 1 M L J 135 : 1959 M L J (Cr) 157: A I R 1959 Mad 89 (94 to 96) (Pt A) (Prs 16, 18, 21, 24, 26, 27, 28, 31).

——Malicious prosecution — Foundation of action for damages—Factors to be proved.

The foundation of an action for malicious prosecution lies in abuse of the powers of Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose. Before a plaintiff can succeed in an action for damages for malicious prosecution, it should be established that — (a) the defendant prosecuted the plaintiff; (b) the prosecution has ended in favour of the plaintiff, (c) the prosecution was without reasonable or probable cause; (d) the defendant was actuated by malice and (e) the plaintiff has suffered special damages or the proceedings are such that in their very nature are calculated to injure his honour or credit. If any one of these elements is lacking the plaintiff cannot succeed in the action. 1958 MLJ (Cr) 58: (1958) 1 Mad L J 79.

——Malicious prosecution — Essential elements — Plaitiff should prove that prosecution was without reasonable and probable cause and with malicious intention — Prosecution held could not be said to be without reasonable and probable cause and actuated by malice – Suit held could not be decreed. AIR 1955 N U C (Trav-Co) 3466.

16 (D) (i). Judgment of Criminal Court.

——Malicious prosecution—Burden of proof — Innocence of plaintiff — Order of acquittal in criminal trial—Effect.

An order of acquittal in a criminal case does not by itself establish innocence. It merely establishes that the case against the accused is not proved, but merely failure to move the accusation in a criminal case cannot be equated with establishing the innocence of the accused. 1952 N L J 183, Not foll. 1958 Nag L J (Notes) 30.

——Malicious prosecution — Suit for damages — Acquittal in criminal case cannot be used as evidence in proving want of reasonable and probable cause for launching prosecution—Case Law Ref – Evidence Act (1872), S. 43. (1965) Kash L J 64.

——Malicious prosecution — Want of reasonable and probale cause—Burden of proof.

Per Division Bench (Khan and Shiv Dayal JJ.):—

In a suit for the recovery of damages for malicious prosecution, the production of the judgment in the criminal case is not sufficient for the plaintiff to dis-

charge the burden of proving want of reasonable and probable cause for the prosecution. Observations in AIR 1952 Nag 310 to the contrary, Dissent. from.

Per Khan J.: — The rule of common law is that the plaintiff is bound to give some evidence, which may prima facie suggest absence of reasonable and probable cause. If he does, the onus then shifts to the defendant to rebut it.

Per Shiv Dayal J.: — The defendant will be deemed to have had reasonable and probable cause for a prosecution where (a) he took reasonable care to inform himself of the true facts; (b) he honestly, although erroneously believed in his information and (c) that information, if true, would have afforded a prima facie case for the prosecution complained of. 1960 Jab L J 509:1960 MPC 545: AIR 1960 Madh Pra 397 (399, 400) (Prs 13, 15, 21, 22, 23) (DB).

——Malicious Prosecution — Absence of reasonable and probable cause—Proof of—Burden is on plaintiff to establish — Judgment of criminal Court is admissible only for purpose of showing that prosecution terminated in favour of plaintiff — Civil Court to decide the question—Acquisition based on false facts —Conviction by trial Court not material. ('65) 78 **Mad L W 321.**

——Malicious prosecution — Evidence—Judgment of acquittal by criminal Court is admissible in evidence in civil suit only for limited purpose of establishing fact that the prosecution had ended in plaintiff's favour and not for purpose of ascertaining grounds on which judgment had proceeded. See Evidence Act (1872), S. 13. **A I R 1959 Manipur 32.**

——Malicious prosecution — Evidence — Criminal Court judgment — Admissibility of — (Evidence Act (1872), S. 43).

It is not judgment of the criminal Court has to be ignored altogether but it should not be relied upon as conclusive for deciding the civil suit for malicious prosecution. A civil Court has to go into the matter on the evidence adduced before it in the civil suit independently of the view expressed by the criminal Court. The sense in which it is said that the criminal Court judgment is not admissible in evidence is that apart from the fact of the result of the criminal Court judgment, namely, its termination in favour of the accused persons, the observations of the criminal Court or the reasoning on which the order of acquittal is based is not to be accepted as conclusive. **25 Cut L T 366 : A I R 1960 Orissa 29 (31, 32) (Pt B) (Prs 9).**

——Malicious prosecution — Evidence and proof — Finding that defendant was real prosecutor is not binding in second appeal if it is shown that lower Court did not apply its mind to legal requirement on the point. **AIR 1955 N U C (Orissa) 713.**

——Malicious prosecution — Malice and want of probable and reasonable cause — Burden of proof on plaintiff — Judgment of criminal Court cannot be relied on — Not admissible for proving malice and want of probable and reasonable cause — A I R 1958 Pat 329, Rel. on. — Civil Court should come to its own finding. **1961 B L J R 521 : AIR 1961 Pat 226 (227) (Prs 4, 5).**

——Malicious prosecution — Proof — Judgment in criminal Court—Admissibility.

It is well settled that in every case of malicious prosecution, the civil Court must hear evidence of both sides and decide for itself independently of the findings of the criminal Court whether or not the prosecution of the plaintiff was without reasonable and probable cause and malicious, and will not take into consideration the judgment or reasons which may have led the criminal Court to an acquittal. It is equally well settled that in such an action, it is no part of the duty of the Judge of the civil Court to criticise the judgment of the criminal Court acquitting the plaintiff. The judgment of the criminal Court is in no way binding upon the civil Court in such a case, and, it cannot be pleaded as a bar to prevent the defendant from proving that the charge made by him against the plaintiff was in fact true. Such a judgment is evidence and, a conclusive evidence, merely to show the acquittal of the plaintiff as a fact in issue. A I R 1936 All 537, Rel. on. But such a judgment is admissible to show who were the witnesses examined by the parties and what documents were produced in that case when the existence of such documents and the non-examination of such witnesses, is challenged in the civil action. **1957 B L J R 546 : I L R 36 Pat 786 : A I R 1958 Pat 329 (348) (Pt L) (Pr 150) (DB).**

16 (D) (ii). Malice and absence of reasonable and probable cause.

——Suit for damages — Proof of malice.

In an action for malicious prosecution the plaintiff has to prove (1) that he was innocent and so pronounced by the tribunal before whom the complaint was preferred against him, (2) that there was no reasonable or probable cause for the prosecution, and (3) that the proceedings were initiated in a malicious spirit, that is, from an indirect or improper motive and not in furtherance of justice.

Held : In the absence of the complaint and the judgment of the Court which tried the case ending in the acquittal, it is difficult for any Court of law to find the prosecution was in fact malicious. **A I R 1952 Ajmer 36 (1) (36) (Pr 3).**

——Malicious prosecution — Suit for damages — Absence of reasonable or probable cause and presence of malice are necessary ingredients — Both must be proved—Finding as to absence of reasonable cause — Malice cannot be presumed — Distinction between absence of reasonable cause and malice. A I R 1944 P C 1; AIR 1946 All 204, Rel. on.—Civil P. C. (1908), Ss. 100-101—Evidence Act (1872), Ss. 101 to 104 and 114. **1965 All L J 317.**

——Malicious prosecution — Duty of prosecutor — Want of reasonable and probable cause.

The duty of the prosecutor is not to ascertain whether there is any defence. If the prosecutor has honest belief on the materials placed before him in the guilt of the accused and the materials placed before him are such that a reasonable man, in the circumstances of the case, would believe that the accused was guilty, then it cannot be said that there was want of reasonable and probable cause. **I L R (1950) All 1310 : 1950 A L J 754 : AIR 1952 All 554 (557, 558) (Pt C) (Prs 12, 14) (DB).**

——Malicious prosecution — Malice and want of reasonable cause — Proof of—Onus is on plaintiff — Civil Court must adjudge on evidence before — Evidence in or findings by criminal Court not sufficient.

The burden lies on the plaintiff to establish want of reasonabe and probable cause as well as malice. Malice cannot be inferred from want of reasonable and probable cause. The two elements must coexist.

In an action for malicious prosecution it is not open to the civil Court to rely on the findings recorded by the criminal Court or the evidence adduced before the criminal Court, to reach the conclusion as to the existence of malice and the absence of reasonable and probable cause; but it is incumbent upon the civil Court to examine the evidence adduced before it and adjudge on that evidence

irrespective of the views expressed by the criminal Court as to the credibility of witnesses is examined before it or to the findings recorded by the criminal Court. A I R 1925 All 337 and A I R 1945 Bom 320, Rel. on. (1964) 2 Andh W R 148 : 1964 M L J (Cri) 515.

——Malicious prosecution—Ingredients of—Absence of reasonable and probable cause—Burden of proof.

A complaint under S. 408, Penal Code, was filed by A, alleging that A, on behalf of his master G, had booked certain goods for sale at Gauhati and had deputed M, another employee of G, to take delivery of goods and sell them through X who were the agents of G, that M took the delivery of goods and instead of selling through X sold them through J and by showing a bogus sale at lower rates misappropriated the balance. The accused were discharged by the Magistrate. Upon the suit for malicious prosecution brought by J :

Held, that under the circumstances if G bona fide believed that J along with M without any authority sold the goods and misappropriated the balance, it could not be said that he had no reasonable and probable cause to think that J had committed an offence.

Held, also that from the mere fact that the case in the civil Court was different from the one taken in the criminal Court an inference could not be drawn that the facts were known to the complainant at the time when the complaint was filed and they were false to the knowledge of the complainant at that time. (1881) 8 Q B D 167; AIR 1944 P C 1, Rel. on. ILR (1962) 14 Assam 470 : AIR 1962 Assam 129 (131) (Pr 9) (DB).

——Malicious prosecution — Malice — Evidence and proof of.

In actions for malicious prosecution, malice can be proved either by showing what the motive was and that it was wrong, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecution. Salmond on Torts, 13th Edn., pp. 724, 725, Rel. on. Absence of reasonable and probable cause for launching the prosecution may be some evidence of malice. 1964 Ker L J 879 : 1964 Ker L T 602.

——Malicious prosecution — Essentials to be proved —Plaintiff must prove absence of reasonable cause and presence of malice on part of defendant.

The points that require to be proved, in a suit for damages for malicious prosecution are, inter alia, that the defendant launched the prosecution without reasonable and probable cause and that he acted maliciously. 1964 Ker L T 602 : 1964 Ker L J 879.

——Malicious prosecution — Damages — Suit for — Case set up by plaintiff only abuse of judicial proceedings by defendant — Plaintiff cannot succeed unless malice is proved. 1962 Ker L T 354 : 1962 Ker L J 273.

——Malicious prosecution — Malice and absence of reasonable and probable cause — Onus of proof.

In a suit for damages for malicious prosecution, it is necessary for the plaintiff, inter alia, to prove that the defendant acted without reasonable and probable cause and that the defendant was actuated by malice. Even when plaintiff succeeds in establishing malice of the defendant, in order to make out a cause of action, however, malice and want of reasonable and probable cause must concur. Either is insufficient without the other, and the important question for determination in such a case is whether the defendant acted without reasonable and probable cause when he sent the information leading to prosecution of the plaintiff. The burden of proving the absence of reasonable and probable cause is on the plaintiff.

Held, that the plaintiff had not discharged the burden cast upon him to prove the absence of reasonable and probable cause for the conduct of the defendant. AIR 1944 P C 1, Foll. 1959 Ker L T 1081 : 1959 Ker L R 1141 : 1959 Ker L J 1233: ILR (1959) Ker 1189 : AIR 1960 Ker 131 (132, 133) (Prs 5, 10, 11, 19) (DB).

——Malicious prosecution — Ingredients — Want of reasonable and probable cause — Proof of—Absence of reasonable and probable cause—Inquiry into malice not necessary.

In a suit for malicious prosecution the plaintiff must establish inter alia (1) that the defendant acted without reasonable and probable cause; and (2) that he acted maliciously. The question of reasonable and probable cause depends on the facts as known to the defendant who initiated the prosecution. When the facts upon which the prosecutor acted have been ascertained and when the facts operating on the prosecutor's mind at the time of the prosecution are known then the Court has to determine whether those facts afforded reasonable and probable cause for prosecuting the accused. If these facts do accord reasonable and probable cause then the prosecution would be justified and it would not as a rule be necessary for an inquiry to be made into the prosecutor's belief. The state of his belief goes to malice but not, as a rule to reasonable and probable cause. (1951) 1 All E R 814 and (1952) 1 All E R 1, Rel. on; AIR 1952 Nag 310, Dissented from. Madh B L J 1955 (H C R) 1445 : ILR (1955) Madh B 137 : Madh B L J 1955 (H C R) 259 : Madh B L R 1955 (Civil) 373 : AIR 1956 Madh B 32 (33) (Prs 2, 3).

——Malicious prosecution — Malice or want of reasonable or probable cause — Judgment of acquittal— It is conclusive only for showing that prosecution terminated in favour of plaintiff—Plaintiff must show malice in fact, i. e., defendant was actuated by spite or ill-will. A I R 1955 NUC (Madh B) 3765.

——Suit for damages for malicious prosecution — Want of reasonable and probable cause—Proof.

Reasonable and probable cause is an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds of the existence of a set of circumstances which, assuming them to be true would ordinarily lead a prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed. (1961) M P L J Notes) 247.

——Malicious prosecution — Malice — Inference of, from absence of reasonable and probable cause — (Evidence Act (1872), S. 114).

Malice can be inferred in certain circumstances from absence of reasonable and probable cause. If a prosecution is launched with the knowledge that the accused has committed no offence, a presumption would arise that the prosecution was due to a malicious intention. I L R (1955) Nag 872 : 1955 Nag L J 617 : AIR 1955 Nag 265 (267, 268) (Pt C) (Prs 18, 21) (DB).

——Malicious prosecution — Absence of reasonable and probable cause—Civil P. C. (1908), S. 135.

In execution of a decree which was nearly 15 years old, the decree-holder, who was a senior advocate, sought the arrest of the judgment-debtor by pursuing him with a process server and two others. When the judgment-debtor was stopped on his way and was shown the warrant of arrest. The process-server was apprised of an order granting immunity from arrest under S. 135, Civil P. C. The Process-Server respected the order and did not execute the warrant of arrest. Thereupon the judgment-debtor filed a criminal case

against the decree-holder under S. 341 read with S. 109, Penal Code which ended in acquittal. In a suit for damages for malicious prosecution filed by the decree-holder;

Held, that the decree-holder was perfectly within his rights in pursuing the judgment-debtor and in trying to arrest him. The judgment-debtor, in launching a criminal prosecution, acted not only maliciously but without reasonable and probable cause. The plaintiff's suit can, in the circumstances, be decreed. **(1960) 26 Cut L T 289.**

——Malicious prosecution — Absence of reasonable and probable cause of malice — Initial burden — Shifting of onus—Accusation false to the knowledge of defendant and enmity between parties and their supporters — Conclusion would be that prosecution of plaintiff was malicious as well as without any reasonable and probable cause. (Evidence Act (1872), Ss. 101 to 103)—AIR 1955 Orissa 129, Foll. **AIR 1956 Pat 285 (288 to 290) (Pt C) (Prs 5, 7, 8).**

——Malicious prosecution — Malice and absence of reasonable and probable cause—Case on facts — Prosecution held started with malice and without reasonable cause. **AIR 1955 NUC (Pat) 2491.**

16 (E). Malice.

——Proof — In the absence of the complaint and the judgments of the trial Court ending in acquittal in the case it is difficult for any court of law to come to the finding that the prosecution was in fact, malicious. **AIR 1952 Ajmer 36 (1) (36) (Pr 3).**

——Malicious Prosecution — Malice —Words "with intent to cause injury" in S. 211, Penal Code indicate malice — Standard and Measure for judging 'malice', stated. See Penal Code (1860), S. 211. **1965 All W R (HC) 316; 1965 All Cri R 229: AIR 1966 All 66 (DB).**

——Malicious prosecution — Malice — Proof.

One J made a report at the police station that there had been a theft of movable committed in his house in his absence and that his suspicion was against one M and his companions. This report was followed by a house search made by the police but nothing incriminating was recovered. M was a young lad of about 10 years. Evidently the grounds for J's suspicion against M were that the family of M bore ill-will to him and they were his close neighbours.

Held, that these circumstances evidently showed that J had reasonable grounds for the suspicions which he expressed in the report lodged by him. If J had made a definite statement that the theft had been committed by M it could very well be said that he should have proved his bona fides for making that positive assertion; but when he expressed only a suspicion and there were good grounds for that suspicion, it could not be said that J was actuated by malice in making that statement. The statement made by J was a bona fide statement and although he had not entered into the witness-box his statement was privileged and no action for damages could be brought on the basis of that statement. He could not therefore be held liable for damages for this act of the police. The mere non-recovery of any stolen articles from the house of the plaintiffs was also not in itself a conclusive proof of the fact that the plaintiffs had no hand in the theft. All that had to be seen in this case was if these proceedings initiated by a report had been shown to be malicious. **I L R (1957) 1 All 501.**

——Malicious prosecution — Absence of reasonable and probable cause — Legal malice when to be inferred.

In a particular case it may be possible to infer improper motive from the obvious or the apparent illegality of the action taken. But it is not in every case that because there is absence of reasonable or probable cause for a prosecution that a Judge would be justified in inferring malice. Where there is something more to indicate the existence of indirect or improper motive besides the mere absence of reasonable or probable cause, a finding that the prosecution was malicious would be justified. **ILR (1952) 2 Assam 181 : AIR 1950 Assam 101 (105) (Pt D) (Pr 19) (DB).**

——Arrest by railway servant.

As to malice, which is an essential ingredient in an action for malicious prosecution, the principle to be followed in a case of arrest by a railway servant under S. 132 of the Railways Act is that which applies to a corporation. In respect of a prosecution initiated by an agent with the principal's authority, express or implied, the malice of the agent will be imputed to the principal. It is on this principle that a corporation is liable to an action for malicious prosecution, although it has no mind and cannot be guilty of malice. **56 Cal W N 248 : AIR 1952 Cal 242 (247) (Pt C) (Pr 10).**

——Absence of reasonable cause is no malice—Held that there was reasonable cause.

In order to make a case for damages for malicious prosecution successful, the plaintiff must first establish that he was prosecuted by the defendant. Secondly, he must prove that the proceeding terminated in his favour. Thirdly, the plaintiff must show that his prosecution was without reasonable and probable cause and lastly, he should convince the Court about the prosecution by the defendant being due to a malicious intent, and not with one of carrying law into effect. AIR 1926 PC 46, Rel. on.

Mere absence of reasonable and probable cause does not necessarily mean malice. The Court must come to the conclusion not only that the lodging of the complaint by the defendant was without reasonable and probable cause but he did then entertain no genuine belief in the accusation he was making. AIR 1951 Assam 101, AIR 1944 PC 1 and (1940) 1 M L J 668, Rel. on.

Held on facts that the defendant's complaint was not without reasonable and probable cause. **ILR (1952) Hyd 709 : AIR 1953 Hyd 215 (217, 218) (Pt A) (Prs 8, 12) (DB).**

——Malicious prosecution — Malice — Anger is not malice. **ILR (1952) Hyd 709 : AIR 1953 Hyd 215 (218) (Pt B) (Pr 16) (DB).**

——Malicious prosecution—Proof of malice—Mere fact that plaintiff was acquitted for want of prosecution does not prove malice. Purvell v. Macnamara (1808) 9 East 361 and Sykes v. Dunbar (1799) 1 Camp, 201, Rel. on. **(1965) Kash L J 64.**

——Malicious prosecution—Malice—What is.

Malice is a legal term which has now acquired a judicial definition. Malice in law in a suit for damages for malicious prosecution means the presence of some improper and wrongful motive, that is to say an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. It means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will; it may be due to a desire to obtain a collateral advantage. Case Law Ref. **(1965) Kash L J 64.**

——Malicious prosecution — Requisites — Malice, meaning of.

The plaintiff, in order to succeed in a suit for malicious prosecution, has to prove that the defendant was actuated by malice and that he had acted without reasonable and probable cause. The mere fact that the complaint filed by the defendant against

the plaintiff was dismissed and the plaintiff was discharged does not render the defendant liable for malicious prosecution. Malice has been said to mean any wrong or indirect motive but a prosecution is not malicious merely because it is inspired by anger. However wrongheaded a prosecutor may be, if he honestly thinks that the accused has been guilty of a criminal offence he cannot be initiator of a malicious prosecution. AIR 1955 J & K 27 (28) (Pr 4) (DB).

——Malicious prosecution—Malice—Meaning of.

Malice means the presence of some improper and wrongful motive—that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. Salmond on Torts, 13th Edn. pp. 724, 725, Rel. on. 1964 Ker L J 879 : 1964 Ker L T 602.

——Malicious prosecution—Malice.

If a person prefers an indictment, or sets the criminal law in motion knowing at the time he did so that he has no reasonable ground for it, that alone is evidence of malice on his part. By the term malice is meant an indirect wrong motive. Any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice is a malicious motive on the part of the person who acts in that way. Malicious intention is a wish to injure person rather than to vindicate the law. AIR 1932 Bom 259, Foll. 1961 Ker L J 1313 : (1962) 2 Ker L R 649 : 1961 Ker L T 1067.

——Malicious prosecution—Malice.

Malice means wrong or improper motive, that is, motive other than securing ends of justice. If the complaint was a false one, it would have followed that the charge was made maliciously. Where however it is found affirmatively that there was reasonable and probable cause for filing the complaint, it cannot be held that the complaint was filed maliciously. AIR 1954 Kutch 39 (42) (Pt D) (Pr 11).

——Malicious prosecution—Proof of malice.

Malice can be inferred in certain circumstances from absence of reasonable and probable cause. If a prosecution is launched with the knowledge that the accused has committed no offence then whatever may be the motive which actuates the prosecutor, the prosecution would be considered to be due to malicious intention in law. AIR 1953 Madh-B 269 (269) (Pt C) (Pr 3).

——Malicious prosecution—Malice—Proof.

Where the prosecution for criminal breach of trust was being conducted by Assistant Public Prosecutor and the accused was defended by no less than three advocates, from the fact that the complainant also engaged an advocate, with the permission of the Magistrate to assist the Assistant Public Prosecutor it cannot be said that the complainant was actuated by malice and vindictiveness against the accused. AIR 1957 Mad 646 (659) (Pt C) (Pr 44) (DB).

——Malicious prosecution—Malice.

Malice exists unless the predominant wish of the accuser is to vindicate the law. Where the defendant does not believe in the truth of the charge he makes against the plaintiff and there is a long standing feud between the parties, the defendant's predominant motive cannot be to vindicate the law but to humiliate and harass the plaintiff. (1891) 2 Q B 718, Ref. to. 1952 Nag L J 183 : ILR (1953) Nag 529 : AIR 1952 Nag 310 (312) (Pt D) (Pr 9).

——Malicious prosecution—Malice.

Malice does not necessarily connote personal spite or ill-will but only means an indirect or improper motive rather than a desire to vindicate the law. AIR 1938 Pat 529, Foll.

A mere absence of reasonable and probable cause does not justify, as a matter of law, the conclusion that the prosecution was malicious, though it is quite conceivable that the evidence which is sufficient to prove absence of reasonable and probable cause may also establish malice. AIR 1948 Pat 167, Foll. 21 Cut L T 423 : AIR 1955 Orissa 129 (132) (Pt B) (Prs 23, 24) (DB).

——Malicious prosecution—'Malice'—Proof—Prosecution inspired by anger.

Malice and absence of reasonable and probable cause must unite and co-exist in order to produce liability. Where there is such plain lack of reasonable and probable cause that obviously the prosecutor could not have believed in the charge this may itself provide an evidence of malice. A prosecution is malicious only if it is animated by a desire to use the criminal law for some such purpose for which it is not intended. Malicious intention means a wish to injure the party, rather than to vindicate the law. But a prosecution is not malicious merely because it is inspired by anger. However wrong-headed a prosecutor may be, if he honestly thinks that the accused is guilty of a criminal offence, he cannot be called the initiator of a malicious prosecution. 1957 B L J R 546 : I L R 36 Pat 786 : AIR 1958 Pat 329 (336) (Pt I) (Prs 24, 25) (DB).

——Malicious prosecution—Malice.

If the defendant had a reasonable and probable cause for setting the criminal law in motion the mere fact that he might have pursued a civil remedy cannot render him liable for malicious prosecution. ILR (1954) Punj 8 : 55 Punj L R 218 : A I R 1953 Punj 213 (214) (Pt B) (Pr 7) (DB).

——Malicious prosecution—Malice.

Where the prosecutor honestly thinks that the accused has been guilty of a criminal offence, he cannot be initiator of a malicious prosecution. But malice alone is not enough; there must also be shown absence of reasonable and probable cause. (1944) 1 Mad L J 40 : A I R 1944 P C 1 and 1938 App Cas 305 and (1952) 1 All E R 1, Rel. on. 1959 Raj L W 434 : A I R 1959 Raj 37 (40) (Pt D) (Pr 13).

——Malicious abuse of process of Court—A obtaining injunction preventing B from taking possession—Suit by B against A for damages—Maintainability—Proof of malice—(Limitation Act (1908), Art. 109).

Held on facts that the true principle is that where the interference with the plaintiff's possession is by way of valid or regular order of Court, the only action which lies is one of trespass and not trespass simpliciter, and it is necessary to prove malice before the plaintiff can recover damages. (A I R 1944 Cal 289, Rel on.) (2) That by merely avoiding the word "damages" and using the words "loss of profits" the plaintiff cannot make his position any better. Where the essence of the action is the malicious abuse of the process of the Court, it cannot be ignored by merely framing the suit as one for loss of profits on ground of trespass alone, under Art. 109, Limitation Act. AIR 1931 P C 28, Rel. on. (3) That the suit was not therefore maintainable in absence of the proof of malice and want of reasonable and probable cause in obtaining the injunction. 1955 Ker L T 783 : A I R 1956 Trav Co 222 (223) (Prs 5, 6) (DB).

16 (F). "Prosecution".

——Malicious Prosecution — Prosecutor, who is — Person lodging false report with the police and doing pairvi in the case held to be real prosecutor. A I R 1963 All 580 (580, 581) (Prs 5, 6, 7, 10).

——Malicious prosecution — Damages — Proof of — Prosecution under Municipalities Act.

A person filing a suit for damages for malicious prosecution has to prove that he suffered damages either to his reputation or to his person or to his property. It is not necessary that the proceedings should have been in a criminal Court, even in other cases where such damage has been incurred a suit for damages for malicious prosecution would lie. It is not therefore correct to say that such a suit would not lie merely because the plaintiff has been prosecuted under the Municipalities Act or any other similar Act. In each case, the Courts would have to decide whether there was a likelihood of damage to his reputation, person or property. ('50) 1950 All L J 754 : ILR (1950) All 1310 : A I R 1952 All 554 (558, 559) (Pt D) (Prs 15, 21) (DB).

——Malicious Prosecution—Damages—Person giving information to police when can be held liable for damages.

If a person has done nothing beyond giving information to the police which he considered to be true, an action for damages for malicious prosecution could not be maintained against him. But if besides setting the law in motion he has taken an active part in the conduct of the prosecution he could be regarded as the real prosecutor although the actual prosecution was by the police and rendered himself liable for damages. So also if the complaint made by him was false to his knowledge, if he has misled the police by bringing suborned witnesses in support of his complaint or if he has influenced the police to assist him in sending an innocent man for trial before the Magistrate, it would be highly improper to allow him to escape liability merely because, he has not conducted the prosecution. But merely showing that the complainant knew that the complaint made by him was false would not be sufficient to make him, liable for damages. In order to fix the liability on him, the further facts, that he influenced the police to assist him in sending an innocent man for trial and that he misled the police by bringing suborned witnesses, have to be proved. (1954) 2 M L J 189; 18 M L J 394; A I R 1926 P C 46, Rel. on. **(1965) 2 Andh L T 362 : (1965) 2 Andh W R 488 : A I R 1966 Andh Pra 292 (294) (Pr 10).**

——Malicious prosecution — Prosecutor, who is — Person giving information to police resulting in police prosecution — Informant when can be held liable as prosecutor.

A person setting the criminal law in motion may either present a complaint to a Magistrate or give information to a plice-officer or in the case of a non-bailable offence, give information to the village-headman who is bound by law to communicate that information to the nearest police-officer. If the story told to the police is untrue to the knowledge of the person lodging the first information or if he misleads the police in their investigation by bringing in false witnesses, then he would be liable as a prosecutor. If in his first information to the police or complaint to a Magistrate a person positively asserts that another person has committed the offence and the latter is arrested and on inquiry by the Magistrate is discharged, the person lodging the information or the complaint must be held to have started the prosecution. If all that is furnished in a first information report or a complaint is that, on the facts and circumstances truly stated therein, there is an honest suspicion against a person, it cannot be said that the person lodging the first information or making the complaint initiated the prosecution, for all that he had done is to give a mere narration of facts and circumstances from which the police or Magistrate may or may not infer that the person suspected has committed a crime. 26 Mad 362; 12 M L J 389 held not good law in view of 35 I A 189; 18 M L J 394 (PC). **69 Mad L W (Andhra) 3 : 1956 Andh W R 17 : A I R 1956 Andh 174 (175, 176) (Pt A) (Pr 5).**

——Malicious prosecution — Prosecutor who is — Person giving information to complainant.

It is now well established, that, if a person does nothing beyond giving information to the police which he considers to be true, an action for damages for malicious prosecution is not maintainable against him. If, on the other hand, besides setting the law in motion he takes an active part in the conduct of the prosecution he will be regarded as the real prosecutor although the actual prosecution is by the police and renders himseff liable for damages. The person sought to be made liable for damages should be directly or primarily responsible for the prosecution. Case-law discussed. A I R 1932 Mad 53; (1931) 62 M L J 107, dissented from. **1954 Andh L T (Cri) 59 : 1955 Cri L J 1313 : (1954) 2 Mad L J (Andhra) 189 : A I R 1955 Andh 218 (220, 221) (Prs 9, 10, 16).**

——Malicious prosecution—Prosecution—Test—Mere filing of false complaint.

The question whether in a particular case there has been a prosecution or not depends on the facts of that particular case. The test is not whether the criminal proceedings have reached a stage at which they may be certainly described as a prosecution, but the test is whether the criminal proceedings have reached a stage at which damages to the plaintiff may result. The mere filing of a false complaint which may fail is not per se such a prosecution. **54 Cal W N 135 : AIR 1950 Cal 259 (260) (Pt B) (Pr 9).**

——Malicious prosecution—Prosecutor — Who is — Evidence required.

In an action for malicious prosecution, the first important question is 'who is the prosecutor?'

The fact that a private person, who merely makes a statement or complaint to the police giving out information which he believes to be correct, would not make him 'the prosecutor.' To become prosecutor, he must be actively instrumental in putting the criminal law in motion. Where there is no evidence of the conduct of the private person before and after he made the statement or complaint to the police to show that he was directly responsible for the charge being made, had taken principal part in the conduct of the case and had done all he could do to secure the conviction of the plaintiff in a suit for malicious prosecution, it cannot be said that he was the prosecutor so as to sustain an action against him for malicious prosecution. **Madh B L J 1955 H C R 250 : 1955 Cr L J 1078 : Madh B L R 1955 Civil 441 : ILR (1955) Madh Bha 189 : AIR 1955 M B 124 (125, 126) (Prs 4, 6, 8).**

——Malicious prosecution — Prosecutor — Who is — Person putting criminal law in motion is prosecutor.

In all cases of malicious prosecution, the question as to who is the prosecutor must be answered upon the whole circumstances of the case and any person actively instrumental in putting the criminal law in motion would be a prosecutor. Such a person cannot be allowed to escape liability because the prosecution is not directly conducted by him. ILR 30 All 526 (P C), Rel. on. **1961 Jab L J 332 : 1961 M P L J 36 : 1961 M P C 419 : I L R (1960) Madh Pra 1008 : AIR 1961 Madh Pra 329 (330) (Pt A) (Pr 5) (DB).**

——Malicious prosecution — 'Prosecution' — Meaning of.

Held, that it could not be said that the prosecution was started by the informant (defendant), because the res gestae were primarily the discovery by the authorities and not the information given by the informant. But whether or not the defendant was the real prosecutor in the case would not decide the instant case.

The main question was whether the plaintiffs had proved that the defendant invented and instigated the whole proceedings for prosecution. As this was not proved, the plaintiff's suit was bound to fail. As the information given by the defendant turned out to be true, the question whether defendant was prompted by malice or by a genuine desire to vindicate the law was irrelevant : A I R 1952 Nag 310, Disting. 1961 M P L J 263 : 1960 Cr L J 1337 : A I R 1960 Madh Pra 305 (306) (Prs 7 to 10).

——Malicious prosecution — Prosecutor — Liability of informant.

If on the merits the finding is that the person who gave the information which resulted in launching the prosecution had no reasonable and probable cause and was actuated by malice, then a suit against him for malicious prosecution would certainly lie and the mere fact that he has not actually figured in name as a prosecutor would not absolve him from liability if he is really culpable.

Where all that the person had done was to request the Municipal Commissioner to direct the plaintiff to cut and remove the overhanging branches of his trees which were a source of danger to the building in the neighbouring compound, and on failure to comply with the direction of the Commissioner to cut and remove them, the latter filed a complaint against the plaintiff under the Municipal Act, the person cannot be held liable for initiating the criminal prosecution. 1955 Mad W N 133 : 68 Mad L W 317 : (1955) 1 M L J 269 : AIR 1955 Mad 562 (564, 565) (Pt A) (Prs 7, 8).

——Malicious prosecution—Essentials — Prosecution under Municipal Acts.

In order to entitle the plaintiff to claim damages for malicious prosecution the prosecution must have been for an offence of which a conviction would carry reprobation impairing the party's fair fame. It is not enough that the proceedings were penal in form as is the case under many administrative statutes. Prosecution under the municipal Acts or for failure to pay tithe or revenue cannot be deemed to be completely criminal proceedings. They are quasi civil in nature.

Where on failure by the plaintiff to comply with the direction of the Municipal Commissioner to cut and remove the overhanging branches of the trees which were a source of danger to the building in the neighbouring compound, the commissioner files a complaint before magistrate under Ss. 219 (1) and 313 (c), Madras District Municipal Act, there is no slur or odium upon the character and good name of the plaintiff. 1955 Mad W N 133 : 68 Mad L W 317 : (1955) 1 M L J 269 : AIR 1955 Mad 562 (569) (Pt D) (Prs 26, 27).

——Malicious prosecution — Proceedings under S. 145, Criminal P. C.

A proceeding under S. 145, Criminal P. C., constitutes a prosecution in respect of which a suit for damages for malicious prosecution would lie. 13 M L J 370 diss. from. ('51) 64 M L W 125 : 1951 M W N 75 : 1951-1 M L J 189 : I L R (1951) Mad 838 : AIR 1951 Mad 659 (659, 660) (Pt A) (Pr1) DB).

——Malicious Prosecution — Suit for — Maintainability.

In respect of proceedings under S. 145, Criminal P. C. provision is made in S. 148 (3) for awarding costs on the basis of expenses incurred by the successful party. If the Court refuses costs to the successful party it is because the successful party did not deserve them. Therefore, a suit by such party for damages for malicious prosecution in respect of the proceedings under S. 145, Criminal P. C. in such a case would not lie. ('51) 64 M L W 125 : 1951 M W N 75 : 1951-1 M L J 189 : I L R (1951) Mad 838 : AIR 1951 Mad 659 (660) (Pt B) (Prs 2, 5) (DB).

—Malicious prosecution — Suit for—Prosecution—Meaning of — False complaint to police—No judicial authority set in motion — There is no prosecution. (1965) 1 Mys L J 389 : (1965) 3 Law Rep 157 : AIR 1966 Mys 13 (13, 14) (Pt A) (Pr 3).

——Malicious Prosecution—"Prosecution"—Meaning — Word includes proceedings under S. 107 Criminal P. C. — Words and Phrases—"Prosecution". (1963) 1 Mys L J 292.

——Malicious prosecution — 'Prosecution'.

Where the defendant has not gone beyond giving an account of his honest suspicion about the plaintiff to the police, who launched the prosecution without any further interference on his part and there is no evidence that the defendant produced false witnesses to support the prosecution or did anything more to help the prosecution (except giving such honest assistance as was required of him) it cannot be said that it was the defendant who, in effect, prosecuted the plaintiff. 30 All 525 (P C), Foll. 1956 Nag L J 315 : I L R (1956) Nag 236 : AIR 1956 Nag 264 (265) (Pt B) (Pr 8) (DB).

— Malicious prosecution — Employer's liability for malicious prosecution committed by his servant.

Although employers have been held liable for the malicious prosecution committed by their servants, where a servant did not give a false report to the police about an occurrence which led to the prosecution of the plaintiff and there was a reasonable and probable cause for him to do so, the prosecution of the plaintiff is not malicious or wrongful and neither the servant nor his employer is liable for any damages on that account. I L R (1955) Nag 860 : 1955 Nag L J 575 : AIR 1955 Nag 269 (271) (Pt F) (Pr 19) (DB).

——Malicious prosecution — Malicious prosecution by Assistant Station Master — Liability of Dominion of India for tortious acts.

Where an Assistant Station Master prosecuted a person under S. 113, Railways Act, though he was not empowered to do so and charges under Ss. 121 and 122 of the said Act were later on added at his instance out of private malice.

Held, that the Dominion of India was not liable for the tortious acts of the Assistant Station Master. ILR (1955) Nag 872 : (1955) Nag L J 617 : AIR 1955 Nag 265 (268) (Pt D) (Pr 22) (DB).

——Defendant informing that plaintiff incited processionists to loot his shop—Plaintiff found not to be present — Information leading to prosecution — Defendant is prosecutor.

Defendant gave information to the police that when a procession was passing by his shop, plaintiff and others incited the processionists to loot his shop. Plaintiff was prosecuted but acquitted and he then sued defendant for malicious prosecution. The Court found that plaintiff was not present in the procession.

Held, that the information given by defendant to the police was false to his knowledge and he must be regarded as a prosecutor. 31 All 525 (533-534) and 26 Mad 362, Rel. on. 57 Cal 25, Dist. ('52) 1952 Nag L J (Notes) 100,

——Malicious prosecution — Prosecution —Criminal proceedings against plaintiff — When amount to — Test indicated — Proceedings must reach a stage at which damages must result — Issuing of summons or warrant held decisive. ILR (1964) Cut 153 : 1964 (2) Cri L J 168 : AIR 1964 Orissa 187 (188) (Pt A) (Prs 6, 7).

——Malicious prosecution —' Prosecution' — Person complained against voluntarily taking part in enquiry held under S. 202, Criminal P. C.—Complainant—Liability for damages.

A mere complaint, not followed by any issue of process or notice under S. 204, Criminal P. C., does not amount to prosecution to form a basis of the suit for malicious prosecution. If the person complained against, voluntarily incurs the risk in attending the enquiry under S. 202, Criminal P. C. arising out of the complaint, the complainant is not liable for the consequence. The test is whether the criminal proceedings have reached the stage at which damage to the person complained against results. If the damage is invited by the person himself, complainant is not liable. AIR 1947 P C 108 : (1947) 2 Mad L J 27 and ILR 38 Cal 880. Rel. on. **(1961) 3 O J D 125 : ILR (1960) Cut 650 : 1961 (2) Cri L J 130 : AIR 1961 Orissa 118 (120) (Pt A) (Prs 5, 6).**

——Malicious prosecution — Information given to police by private person—Prosecutor, who is.

If the defendant gives information of the commission of a cognizable offence and names the accused in that report in consequence of which the police after investigation files a charge-sheet against the person complained against, it can be said that the defendant is the prosecutor. A I R 1953 Orissa 56, Dissent, from.

Where the evidence showed that the defendant made the report which showed that it was based upon his personal knowledge, followed the police and was present during a portion of the investigation, pointed out the plaintiff upon which he was taken into custody, attended the criminal Court during the trial of the case and on one or two days even conducted the prosecution, there is no doubt that the defendant was the prosecutor in the case. **21 Cut L T 423 : AIR 1955 Orissa 129 (132) (Pt A) (Pr 19) (DB).**

——Malicious prosecution — Prosecutor who is—Evidence Act (1872), Ss. 101 to 103.

The real question is to determine who is the real prosecutor. The mere giving of information, even though it was false, to the police cannot give cause of action to the plaintiff in a suit for malicious prosecution :if the defendant is not proved to be the real prosecutor by establishing that he was taking active part in the prosecution, and that he was primarily and directly responsible for the prosecution. Case law discussed. **ILR (1952) Cut 633 : A I R 1953 Orissa 56 (56, 57) (Prs 7, 8, 9).**

——Malicious prosecution — 'Prosecution'—Meaning of.

To found an action for damages for malicious prosecution based upon criminal proceedings the test is not whether the criminal proceedings have reached a stage at which they may be correctly described as prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results. The mere presentation of a false complaint which first seeks to set the criminal law in motion will not per se found an action for damages for malicious prosecution. The malicious criminal prosecution, therefore, means instituting unsuccessful criminal proceedings against anyone resulting in damage to him, if the prosecution is inspired by malice and is destitute of any reasonable and probable cause. **1957 B L J R 546 : I L R 36 Pat 786 : A I R 1958 Pat 329 (334) (Pt B) (Pr 9) (DB).**

——Malicious prosecution—'Prosecutor'—Who is.

Where as a result of a statement made by A to choukidar on his personal knowledge and as an eye-witness to the occurrence implicating the plaintiff in the murder, the plaintiff was prosecuted for murder, A must be held to be the prosecutor. **AIR 1956 Pat 285 (287) (Pt B) (Pr 3)**

——Foundation of action — Test—Prosecution when starts in criminal cases.

The foundation of the action for malicious prosecution lies in abuse of the process of the Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose. In order to succeed the plaintiff must prove that the proceedings were malicious, without reasonable and probable cause, that they terminated in his favour and that he had suffered damage. The word 'prosecution' in the title of the action is not used in the technical sense which it bears in Criminal Law. For the action lies for the malicious prosecution of certain classes of civil proceedings, for instance, falsely and maliciously presenting a petition in bankruptcy or a petition to wind up a company. 11 Q B D 674; 17 C W N 554; 20 C L J 518, Ref. to.

To found an action for malicious prosecution the test is therefore not whether the criminal proceedings have reached a stage at which the magistrate could take cognizance. The test is whether the defendant was actively instrumental in putting the criminal law into force, in other words whether the defendant maliciously set the law in motion through a constituted authority without regard to the technical form in which the charge has been preferred. **AIR 1952 Pat 283 (284, 285) (Prs 6, 10) (DB).**

——Malicious prosecution—Prosecutor—Liability of informant.

Where criminal proceedings were started against the plaintiffs on the report of the defendant, it cannot be said that no action for malicious prosecution lay against the defendant on the ground that the defendant was not the prosecutor of the plaintiffs. AIR 1926 P C 46 : 51 M L J 42, Foll. **1958 Raj L W 434 : A I R 1959 Raj 37 (39) (Pt A) (Pr 10)**

——Malicious prosecution — Prosecution — Proceedings under S. 107, Criminal P. C.—Action whether lies.

Proceedings under S. 107 of the Criminal P. C. are of a quasi-criminal nature, which may involve considerable restriction of the liberty of the person and must necessarily injure the credit and reputation of the person proceeded against, so that on action to recover damages for malicious prosecution lies in respect of such proceedings. Case law referred. 13 Mad Law Jour 370, Not approved. **1951 Raj L W 254 : 52 Cri L J 1240 : ILR (1951) 1 Raj 78 : AIR 1951 Raj 160 (160) (Pt A) (Pr 3),**

——Person lodging false information to police and helping police by suborned evidence—Liability.

Where a person by lodging a false information with the police that his money purse was stolen misleads the police to send an innocent man for trial and also supports the complaint by brining suborned witnesses and even engages a pleader to conduct the prosecution, it scarcely lies in his mouth to say that the police and not he himself was the prosecutor so as to escape from the liability to pay damages for the malicious prosecution : 35 I A 189, Foll. **AIR 1952 Sau 16 (17) (Pt B) (Pr 4).**

——Malicious Prosecution—Liability of instigator.

Where in a suit for damages for malicious prosecution it was found that A who had launched the prosecution was instigated by B who took active part in the prosecution and was also one of the prosecution witnesses.

Held that B also was liable for damages as a joint tort-feasor. **4 Sau L R 224 : AIR 1952 Sau 9 (9) (Pt B) (Pr 4).**

16 (G). Reasonable and probable cause.

See also Note 16 (A).

——Malicious Prosecution — Words "there is no just or lawful ground" in S. 211, I. P. C., indicate want of reasonable or probable cause—Standard and measure of judging "want of reasonable or probable cause", stated. See Penal Code (1860), S. 211. 1965 All W R (HC) 316 : 1965 All Cri R 229 : AIR 1966 All 66 (DB).

——Malicious prosecution — Reasonable and probable cause — Duty of prosecutor —Acting on lawyer's opinion — Effect.

Where an Executive Officer of a Municipal Board has no reason to disbelieve the report made to him by a responsible officer such as a Sanitary Inspector and acts on it, taking a further precaution to consult the legal adviser to the Board and on his advise files a complaint against a person, his action is without malice, in good faith and on reasonable and probable cause. No action for malicious prosecution can lie against the Board in such a case, even if the report of the Sanitary Inspector is false and deliberately misleading. **1950 A L J 754 : ILR (1950) All 1310 : AIR 1952 All 554 (557, 558) (Pt C) (Prs 12, 14) (DB).**

——Malicious prosecution—Reasonable and probable cause—Question is one of fact—(C. P. Code (1908), S. 100). AIR 1939 Mad 783; Not foll.; 10 MLJ 300 (PC) and 36 Mad 375 : 24 M L J 515; AIR 1920 Mad 252; AIR 1947 Mad 236, Foll. 69 Mad L W (Andhra) 3 : 1956 Andh W R 17 : AIR 1956 Andhra 174 (176) (Pt B) (Pr 11).

——Malicious prosecution — Absence of reasonable and probable cause—Judgment of criminal Court — Relevancy —Burden of proof—(Evidence Act (1872), Ss. 101-104).

The judgment of acquittal of the criminal Court can be used only to prove the fact of acquittal and is of no other use in the civil Court. The civil Court must decide the existence of reasonable cause on evidence tendered before it. It is erroneous to say that the judgment of acquittal affords a prima facie proof that the complaint filed in the criminal Court was without reasonable and probable cause and it by itself is enough to shift the burden on to the defendant. ILR (1945) Bom 547 ; AIR 1945 Bom 320; 25 Bom 332 (PC); 56 Mad 641, Rel. on. The burden to prove want of reasonable and probable cause is on the plaintiff. **1958 Nag L J (Notes) 105.**

——Malicious prosecution—Reasonable and probable cause—What is.

Reasonable and probable cause may be stated to mean reasonable grounds for suspicion, supported by circumstances sufficiently strong in themselves, to warrant an ordinary prudent and judicial man into the belief that the person charged with a crime was probably guilty of the offence with which he is charged. Case Law Ref. **1965 Kash L J 64.**

——Suit for malicious prosecution—Reasonable and probable cause — Presence or absence of — Determination of — Held suit was not without reasonable or probale cause, as to merit a decree for damages. 1962 Ker L J 231 : (1962) 1 Ker L R 278 : 1962 Ker L T 143.

——Malicious prosecution — Absence of reasonable and probable cause.

Reasonable and probable cause may be defined to be an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. (1878) 8 Q B D 67, Foll. **1961 Ker L J 1313: (1961) 2 Ker L R 649 : 1961 Ker L T 1067.**

——Malicious prosecution—Reasonable and probable cause—Onus—(Evidence Act (1872), Ss. 101 to 103.)

Initial onus of showing want of reasonable and probable cause is on the plaintiff. The fact of the plaintiff's acquittal cannot discharge or shift the onus as from acquittal only a presumption of innocence can be raised. But innocence may wear the aspect of want of reasonable and probable cause if the fact of innocence involves with it other circumstances which show that there was want of reasonable and probable cause. As the judgment of the criminal Court is admissible only to show the fact of acquittal, the plaintiff could have discharged the initial onus by showing that innocence involved with it such circumstances. But innocence is not proved but presumed and like any other rebuttable presumption, it could be rebutted.

Where the story stated by the defendant was true or false to his knowledge as distinguished from information and belief the plaintiff's acquittal raising a presumptive proof of innocence prima facie showed that there was want of reasonable and probale cause and thus shifted the onus on the defendant to show that there existed reasonable and probable cause. So also where it was proved by the plaintiff that he was prosecuted on the allegation that he abused and thus criminally intimidated the defendant on a day, time and place certain and that his defence was that he was not at all present on the said day and the said time and place and that he was acquitted, the plaintiff's acquittal raising a presumptive proof of innocence involved circumstances showing want of reasonable and probable cause. Onus had shifted on the defendant to show existence of reasonable and probable cause.

The onus could be discharged by the defendant by showing that accusation was true. The question of honest belief in the accusation does not arise in such cases. Held, that the lower Court was right in relying on the positive evidence and in holding that there was no absence of reasonable and probable cause. **AIR 1954 Kutch 39 (40, 41) (Pt A) (Prs 3, 4, 5, 7, 8, 10).**

——Malicious prosecution — Inference about want of reasonable and probable cause on certain facts is a mixed question of law and fact—General damages allowed by Courts below to be accepted unless they are palpably wrong — 1961 MPLJ 436, Foll. 1962 M P L J (Notes) 116.

——Malicious prosecution—Reasonable and probable cause—Determination of—Mixed question of law and fact.

The question of reasonable and probable cause depends on the facts as known to the defendant who initiated the prosecution; the Court has to determine whether those facts afforded reasonable and probable cause for prosecuting the accused. The question whether on certain facts found, the inference about the want of reasonable and probable cause can be drawn is a mixed question of law and fact. **1961 Jab L J 332 : 1961 M P L J 36 : 1961 M P C 419 : ILR (1960) Madh Pra 1008 : AIR 1961 Madh Pra 329 (330 to 332) (Pt B) (Prs 6, 10) (DB).**

——Malicious prosecution — Want of reasonable and probable cause—President of Municipality prosecuting respectable citizen for theft of road roller without proper enquiry —Complaint dismissed — Prosecution launched held was without reasonable and probable cause—S. A. No. 243 of 1957, dated 28-9-1959 (M.P.), Reversed. 1961 Jab L J 332 : 1961 M P L J 36 : 1961 M P C 419 : ILR (1960) Madh Pra 1008 : AIR 1961 Madh Pra 329 (331) (Pt D) (Prs 7, 8) (DB).

——Malicious prosecution — Reasonable and probable cause — What is — Nature and extent of enquiry —Question depending on facts.

Reasonable and probable cause means a genuine belief based on reasonable grounds. The issue, therefore, is one of fact which depends upon the circumstances of each case. The question of the nature and the extent of enquiry, which a man should make before launching a prosecution therefore, depends upon the facts of each case. (1938) 1 All E R 1, Rel. on. **1960 M P L J 243 : 1960 MPC 138 : 1960 Jab L J 298 : 1960 Cr L J 829 : I L R (1959) Madh Pra 549 : AIR 1960 Madh Pra 171 (173) (Pt B) (Pr 10) (DB).**

——Malicious prosecution — Absence of reasonable and probable cause and malice—Questions are of fact —Findings of first appellate Court — High Court cannot go behind in second appeal — Civil P. C. (1908), Ss. 100-101. **('65) 78 Mad L W 321.**

——Malicious prosecution—Reasonable and probable cause.

The fact that complainant obtained the opinion of counsel as to the propriety of institution of a prosecution will not excuse the defendant if the charge was in fact unreasonable and improbable. Similarly if the charge is unfounded to the knowledge of the complainant he cannot escape liability because the prosecution has not technically been conducted by him. In such a case he would be deemed pro hac vice to have represented the Crown or State. **AIR 1957 Mad 646 (659) (Pt D) (Pr 46) (DB).**

——Malicious prosecution—Finding as to absence of reasonable and probable cause and malice — Interference in second appeal — (Civil P. C. (1908), S. 100).

If the finding regarding the absence of reasonable and probable cause and malice is based upon relevant and admissible evidence then the question is one of fact and the High Court is precluded from going behind the conclusion of fact arrived at by the Courts below. 25 Bom 332; 36 Mad 375; 24 Mad L J 515; AIR 1920 Mad 252 and AIR 1947 Mad 236; (1946) 2 Mad L J 484, Foll. **1955 Mad W N 133 : 68 Mad L W 317: (1955) 1 Mad L J 269 : AIR 1955 Mad 562 (566) (Pt C) (Pr 17).**

——Malicious prosecution — 'Reasonable and probable cause' — Charge of more than one offence in a complaint—Standard of proof—Defence.

Reasonable and probable cause means an honest belief in the guilt of the accused based upon a full conviction, found upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true would reasonably lead any ordinarily prudent and cautious man placed in the position of the accused to the conclusion that the person charged was probably guilty of the crime imputed. Where the plaintiff is charged with more than one offence in one complaint, it is sufficient to show that there was no reasonable and probable cause for some of the charges in the complaint, though there may have been such cause for others. 1938 A C 305 and (1881) 8 Q B D 167, Foll. Lack of honest belief would destroy the defence of reasonable and probable cause. When the defendant himself does not support in his evidence the charge he had laid in the complaint, it is sufficient to hold that there is lack of honest belief in him that the plaintiff committed that offence. In such circumstances, it cannot be said that the defendant commenced the prosecution with an honest belief of the plaintiff's guilt. **40 Mys L J 1065 : 1964 (1) Cri L J 247.**

——Malicious prosecution — Absence of reasonable and probable cause — Duty of Court to record independent finding.

In a suit for recovery of compensation for malicious prosecution, a fact of acquittal or discharge is a fact in issue and therefore a relevant fact. That being so, an order of discharge or acquittal made by a criminal Court is not only admissible to prove that fact but also for the purpose of ascertaining the circumstances leading to the order of acquittal or discharge. The civil Court before which a suit is instituted for the recovery of compensation for malicious prosecution should independently record a finding whether the person prosecuted was or was not guilty of the offence with which he was charged and whether the prosecution was commenced without reasonable or probable cause. **39 Mys L J 754 : AIR 1962 Mys 153 (154, 155) (Pt A) (Prs 12, 13, 15).**

——Malicious Prosecution—Reasonable and probable cause—What is.

Reasonable and probable cause may be defined as an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. 1938 A C 305, Foll. **1952 Nag L J 183 : ILR (1953) Nag 529 : A I R 1952 Nag 310 (311) (Pt A) (Pr 5).**

——Malicious Prosecution—Reasonable and probable cause—Burden of proof—Discharge of.

Innocence is proved by proving acquittal in criminal proceedings where the prosecutor must know whether his accusation against the accused is false or true. If the accused is innocent it follows that the prosecutor must be telling a falsehood and there must be a want of reasonable and probable cause. Thus, in this class of case proof of innocence of the accused by production of the judgment in the criminal case is sufficient for the plaintiff to discharge the burden of proving want of reasonable and probable cause for the prosecution. **1952 Nag L J 183 : I L R (1953) Nag 529 : AIR 1952 Nag 310 (312) (Pt B) (Pr 6).**

——Malicious prosecution — Reasonable or probable cause - Charge such as must be true or false to knowledge of defendant — No question of reasonable or probable cause arises. 11 All L J 125; 50 All 713; AIR 1928 All 337 and AIR 1948 Pat 167, Ref. **1952 Nag L J 183 : I L R (1953) Nag 529 : AIR 1952 Nag 310 (312) (Pt C) (Pr 13).**

——Malicious prosecution—Reasonable and probable cause — What is — Question is limited to whether defendant bona fide believed that plaintiff committed the offence.

An honest belief in the guilt of the accused based upon a full conviction, founded on reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead an ordinary, prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. The question ultimately does not depend on whether a Court after reviewing the entire evidence and the probabilities of the case would believe as true allegation that the plaintiff had committed the offence alleged against him. The question is a narrower one and is limited to whether on the facts and circumstances, as they appeared to the defendant at that time, he had in good faith believed that it was the plaintiff who committed the alleged offence. **I L R (1964) Cut 153; 1964 (2) Cri L J 168: AIR 1964 Orissa 187 (189) (Pt B) (Pr 11).**

——Malicious prosecution — Issue not specific on malice but on want of reasonable and probable cause — Concurrent findings on point — Binding — Effect - (Civil P. C. (1908), Ss. 100-101).

Where, in a suit for damages for malicious prosecution, no specific issue was raised as to the malice but the issue was raised as to whether the plaintiff-accused were entitled to damages for want of reasonable and probable cause in instituting the criminal case.

Held, that both these questions as to absence of reasonable and probable cause and malice are questions of fact and not of law. As there were concurrent findings of both the Courts below that there was absence of reasonable and probable cause and that the plaintiffs-accused were prosecuted maliciously and that case ended in acquittal of the plaintiff-accused it was sufficient to hold the defendant-complainant liable for malicious prosecution. The term 'malice' means the presence of some improper and wrongful motive—that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purposes. Malice can be presumed from the facts as they transpire from the evidence at the trial. **25 Cut L T 366 : AIR 1960 Orissa 29 (30, 31) (Pt A) (Prs 5, 7).**

——Malicious prosecution — Suit for damages — Burden of proof — Complaint based on personal knowledge — Acquittal on merits — Presumption — (Evidence Act (1872), Ss. 101-104 and 114).

In a suit for damages for malicious prosecution, where the complaint was made by the defendant-complainant on facts based on his personal knowledge the burden of proof is different from a case where the complaint is based on information believed to be true. In the case of complaint based on personal knowledge if the trial ended in acquittal on merits, there would be a presumption in favour of the plaintiffs that there was no probable and reasonable cause for the accusation. **25 Cut L T 366 : A I R 1960 Orissa 29(33) (Pt C) (Pr 10).**

——Malicious prosecution—Reasonable and probable cause.

The question of reasonable and probable cause depends in all cases not upon the actual existence but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of, no matter whether his belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another.

It cannot of course be laid down as abstract proposition that an accuser is justified in acting either upon the credited statement of an informant or upon his own memory — The question must always arise according to circumstances whether it was reasonable to trust either the one or the other.

The mind of the prosecutor at the time when he initiated the prosecution is an important factor in determining the existence of reasonable and probable cause. (1936) 2 All E R 1377, Foll.

It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence but to ascertain whether there is reasonable and probable cause for a prosecution. (1938) 1 All E R 1, Foll. **21 Cut L T 423 : A I R 1955 Orissa 129 (133) (Pt C) (Pr 26) (DB).**

——Malicious prosecution—'Prosecutor'—Who is.

In the case of a police prosecution the question as to who is the prosecutor is a question of fact which depends upon the facts and circumstances of each particular case.

In a suit for damages for malicious prosecution it was proved that the defendants had made statements to police during the course of investigation in a murder case that they suspected the plaintiffs of a criminal offence but apart from these statements there was nothing to show that they had taken any active part in the investigation before the police.

Held, that in the circumstances the defendants could not be said to be prosecutors so as to make them liable to pay damages to the plaintiffs for the tort of malicious prosecution. **ILR 30 All 525 (P C), Dist. 1960 B L J R 523 : A I R 1960 Pat 570 (570) (Pr 2) (DB).**

——Malicious prosecution — Absence of reasonable and probable cause.

Reasonable and probable cause is an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances which assuming them to be true would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed. It is well settled that the question of the absence of reasonable and probable cause is for the Judge. At the same time it is clear that the question is one of fact and not law. **1957 B L J R 546 : I L R 36 Pat 786 : A I R 1958 Pat 329 (335) (Pt E) (Prs 16a, 17, 18, 19) (DB).**

——Malicious prosecution — Absence of reasonable and probable cause — Prosecution on mere suspicion —Prosecution from malicious motive — A man may be prosecuted from a malice motive and yet at the same time the prosecutor may have reasonable and probable cause. 1957 B L J R 546 : ILR 36 Pat 786 : AIR 1958 Pat 329 (335) (Pt F) (Pr 20) (DB).

——Malicious prosecution — Absence of reasonable and probable cause — Innocence of accused — Sufficiency.

It is never true that mere innocence is proof of want of reasonable and probable cause. Innocence per se does not, therefore, raise the presumption as to want of reasonable and probable cause. It must be innocence accompanied by such circumstances as raise the presumption that there was a want of reasonable and probable cause. **1957 B L J R 546 : ILR 36 Pat 786 : A I R 1958 Pat 329 (335) (Pt G) (Pr 21) (DB).**

——Malicious prosecution—Reasonable and probable cause — Prosecution based upon statement of informant or accuser's own memory — Mind of prosecutor at the time when he initiated proceedings is an important factor in determining existence of reasonable and probable cause —He must not have tested every possible relevant fact before he takes action — His duty is not to ascertain whether there is a defence but to ascertain whether there is reasonable and probable cause for a prosecution. AIR 1958 Pat 329 (335) (Pt H) (Pr 22) (DB).

——Malicious prosecution—Reasonable and probable cause—Distinction between cases where prosecutor acts on his own information and cases where he acts on information supplied by others pointed out. AIR 1958 Pat 329 (352) (Pt M) (Prs 168, 171, 172) (DB).

——Malicious prosecution — Question of want of reasonable and probable cause is not altogether a question of fact — Certain facts are to be proved by evidence — Inference has to be drawn from them whether they make out a case of want of reasonable or probable cause. (Civil P. C. (1908), Ss. 100-101). AIR 1959 Raj 37 (40, 41) (Pt C) (Pr 13).

——Malicious prosecution—Findings of fact — Interference in Second Appeal — Civil P. C. Ss 100-101.

The questions whether there was malice on the part of the defendant and whether there was no reasonable and probable cause for institution of the proceedings are both questions of fact and the findings thereon cannot be interfered with in second appeal. A I R 1939 All 554, Rel. on. **A I R 1932 Pat 91,**

Disting. 1951 Raj L W 254 : 52 Cri L J 1240 : ILR (1951) 1 Raj 78 : A I R 1951 Raj 160 (160) (Pt B) (Pr 3).

17. Master and servant

See also (i) Note 25 (A). (ii) Contract Act (1872), S. 73. (iii) Employee's Liability Act (1938).

——In torts damage is essential ingredient but that element is not necessary in law of master and servant —In law of crimes there are a series of offences based on negligence in which loss or injury is not material – Apart from the question of loss another ingredient is that there must be a duty to take care— Extent of error of judgment in good faith and negligence indicated. See Penal Code (1860), S. 405. 1965 (1) Cri L J 539 : AIR 1965 All 233.

——Relationship—Essentials.

A person is said to be a servant where by agreement express or implied he places himself under the control of another — the master. A person is under the control of another if he is bound to obey the orders of that other not only as to the work which he shall execute but also as to the details of the work and the manner of its execution. 1957 : N L J 100 : 59 Bom L R 267 : A I R 1957 Bom 238 (238) (Pt B) (Pr 5) (DB).

——Master and servant—Dismissal for misconduct—Nature of enquiry.

Where the agreement of service provides that the servant may be dismissed summarily for :misconduct without any notice being given to him beforehand and also suggests that some investigation may be made but the nature of the investigation is not indicated it may be an investigation by the employer to inform its own mind and may not be a judicial enquiry. AIR 1953 Cal 581 (585) (Pt D) (Pr 7).

——Master and servant — Railways servant is not servant for all purposes—All principles of law relating to master and servant do not necessarily apply.

Merely because a person may be a railway servant within the meaning of the Railways Act does not necessarily mean that that person is servant for all purposes and that all the principles of law relating to master and servant must apply. A I R 1950 East Punj 40 (51) (Pt G) (Pr 18) (DB).

——Mastsr and Servant — Liability for collateral negligence, explained.

A person employing another is not liable for his collateral negligence unless the relation of master and servant existed between them. On the other hand a person causing to be done, something the doing of which casts on him a duty cannot escape from the responsibility attaching on him of seeing that duty performed, by delegating it to a contractor. (1896) 1 Q B 335, Ref. 1962 Jab L J 576 (Madh Pra).

——Master and servant — Domestic enquiry of a servant—Basis of — Bona fide dismissal by master — Servant cannot complain. See Constitution of India, Art. 311. (1964) 1 Lab L J 500 (Mad).

——Master and Servant — Compulsory winding at instance of Superintendent of Insurances—Effect on contract of employment between company and Secretary — Secretary of Insurance Company — Services terminated due to Official Liquidator taking charge— Right to claim damages for wrongful termination of service — Doctrine of frustration of contract—Applicability — Companies Act (7 of 1913), S. 162. See Insurance Act (1938), S. 53. A I R 1963 Mad 297 (298) (Prs 5, 8) (DB).

——Master's right to punish — Carelessness on part of employee—Punishment.

It cannot be suggested that carelessness on the part of an employee in relation to his work would not justify serious punishment. A compositor who carelessly places a plus sign instead of a minus sign in a question paper may cause numerous examinees to fail. A compounder in a hospital or chemist's shop who makes up the mixtures or other medicines carelessly may cause quite a few deaths. The man at an air-port who does not carefully filter the petrol poured into a plane may cause it to crash. The railway employee who does not set the points carefully may cause head-on collision. (1959) 72 Mad L W 577 : (1959) 2 Mad L J 393.

——Master and Servant—Liability of Master — Provincial Government liable for acts of its servant committed within scope of commercial employment but not within scope of sovereign employment. A I R 1951 Nag 419 (424) (Pt D) (Pr 40) (DB).

——Master and Servant—Acting in course of employment — Salesmen of licenced excise vendor found in unauthorised possession of excisable articles—Salesmen found sitting in shop for purpose of selling goods when unauthorised goods were seized—Salesmen must be held to have been acting on behalf of vendor. See Bihar and Orissa Excise Act (2 of 1915), S. 59. ('65) 31 Cut L T 221 : I L R (1965) Cut 27.

——Relationship—Loan of servant—Effect of.

When one person has lent his servant to another for a particular employment, the servant, for anything done in the course of that particular employment, must be dealt with as the servant of the man to whom he is lent, though he remained the general servant of the person who lent him. A I R 1927 P C 188 ; A I R 1921 P C 221 and A I R 1943 P C 63, Rel. on. I L R (1954) Trav-Co 208 : 1954 Ker L T 60 : A I R 1954 Trav-Co 305 (309) (Pt C) (Pr 26) (DB).

——Master and servant—Injury to servant by tortious act of third person—Loss of service—Right of master to sue for damages for loss of service. See Travancore Workmen's Compensation Act, Ss. 3 and 15. A I R 1951 Trav-Co 171 (2) (DB).

18. Negligence.

See also Note 11.

(A) Collision.

See also Note 18 (I).

(B) Contributory negligence.

(C) Damages.

(D) Dangerous things.

(E) Evidence and proof.

(F) Liability.

(G) Public bodies.

(H) Railway company.

See also Railways Act (1890), S. 72.

(I) Motor accident.

See also (i) Note 18 (A).

(ii) Penal Code (1860), S. 304-A.

(J) Vicarious liability.

See also Note 25.

18. Negligence.

See also Note 11.

——Negligence—Negligence is a term of art but has distinct meanings in different jurisdictions—In torts, damage is an essential ingredient, but that element is not necessary in law of master and servant — In law of crimes there are a series of offences based on negligence in which loss or negligence is not material. See Penal Code (1860), S. 405. 1965 (1) Cri L J 539 : A I R 1965 All 233.

——Negligence—Banker and customer—Payment on forged cheque—Estoppel by negligent conduct.

If customer's conduct is such as to lead the bank to believe that signatures were genuine or customer has acted in a manner so as to prejudice bank in recovering amount from forger or in having arrested and brought before Court, the customer would be estopped from recovering amount. See Evidence Act (1872), S. 115. **A I R 1955 N U C (All) 2764 (DB).**

——Negligence—Carrier of passengers—Duty to take due care — Extent of — Does not extend to defects which no skill can detect. **1963 Mah L J 241 : 65 Bom L R 180 : I L R (1962) Bom 797 : A I R 1963 Bom 144 (145) (Pt B) (Pr 1) (DB).**

——Negligence — Carriers of passengers — Duty to take reasonable care — Accident due to slipping of drag link balls — Held, on facts reasonable care was not taken. **1963 Mah L J 241 : 65 Bom L R 180 : I L R (1962) Bom 797 : A I R 1963 Bom 144 (145, 146) (Pt E) (Prs 3, 4) (DB).**

——Negligence—Case of emergency—Error of judgment—Test is what an ordinary prudent man would have done. **A I R 1965 Cal 252 (270 to 272) (Pt C) (Prs 83, 84, 88, 90) (DB).**

——Negligence—Carriage by air—Aircraft taking off with passengers — Trouble detected in one of the engines — Rules laid down to be observed in such emergency — Rules not followed — This amounts to negligence and is an actionable wrong. **A I R 1962 Cal 544 (554) (Pt F) (Pr 31).**

[Reversed in A I R 1965 Cal 252].

——Negligence—What amounts to stated — Accident on road by motor lorry — Plaintiff, lad of 6 years knocked down — Degree of care expected of lorry driver—Test of foreseeability indicated — Driver held negligent. **(1965) Ker L T 1172 ; 1965 Ker L J 1112: I L R (1966) 1 Ker 226 : A I R 1966 Ker 172 (175 to 177) (Pt B) (Prs 5, 6, 7, 10).**

——Negligence — Ingredient — Two motor vehicles proceeding in opposite directions — Duty to move with due care so as to avoid collision.

When negligence is alleged as the basis of an actionable wrong, a necessary ingredient in the conception is the existence of a duty owed by the defendant to the plaintiff to take due care. It is axiomatic that when two parties are so moving in relation to one another as to involve a risk of collision, each owes to the other a duty to move with due care no matter whether they both are in control of vehicles, or both are proceeding on foot or whether one is on foot and the other in a moving vehicle. **1963 M P L J 162 : 1963 Jab L J 336 : (1963) 33 Com Cas 667 : I L R (1964) Madh Pra 91 : A I R 1963 Madh Pra 164 (168) (Pt A) (Prs 12, 14) (DB).**

——Negligence—What amounts to — Loss of goods entrusted to common carrier by accidental fire—Not an act of God. See Act of God. **A I R 1962 Mad 44 (DB).**

——Negligence — Motor accident — Cyclist driving abreast and conversing — Accident with bus—Driver held not negligent. See Penal Code (1860), S. 304-A. **1963 (1) Cri L J 692 (Manipur).**

——Negligence—Negligence and misconduct — Distinction indicated — Breach of express duty amounts to negligence. See Railways Act (1890), S. 74-D. **A I R 1957 Pat 147.**

● ——Accident of vehicle of transport company due to negligence of driver — Claim for compensation— Driver not impleaded as party — Effect—Civil P. C. (1908), O. 1, R, 10, (Per Division Bench.)

Per Division Bench — It is not necessary for a claimant to implead every person guilty of tort so long as the party (transport company in the case) against whom the claim is pressed is joined in the claim. The mere circumstance that the transport company may have some claim against the driver is of no consequence and really of no concern to the claimants. Northern India, Transporters-Insurance Co. Ltd., Jullunder v. Amra Wati, 67 Punj L R 386 : (1965) I Com L J 253 : (1965) 35 Com Cas 397 : I L R (1965) I Punj 810 : AIR 1966 Punj 288 (292) (Pt B) (Pr 9) (FB).

——Negligence—Public vehicle — Injury to passenger's hand—Presumption of negligence of driver.

It is the duty of the driver and the owners of vehicles to take reasonable care that the passengers travelling do not receive injuries during the journey. Therefore, it is necessary for the driver to be on the lookout for any possible obstruction on the road or even in the air and to take reasonable steps to avoid the obstruction without causing any injury to the passengers. If a driver fails to take precaution then he is acting negligently. (1942) 1 All E R 433, Relied on.

A bus was passing over a bridge having one way traffic. The driver of the bus however in order to cross a rickshaw which was going ahead of him, turned towards extreme right. The passengers got a jolt and the bus rubbed against the iron railings of the iron wall, causing injury to a passenger's hand :

Held, that the driver must be held to have acted negligently. **62 Punj L R 571 : AIR 1960 Punj 490 (492) (Pt A) (Prs 7 to 9) (DB).**

——Negligence—General principles.

Broadly speaking, tort may come under one of the three headings; a nuisance for which the defendant will be liable without proof of negligence; a tort where the negligence being an ingredient will be presumed against the defendant unless rebutted; or one where the negligence of the defendant will have to be proved by the plaintiff.

Where after a few days rains defendant's wall and the plaintiff's out-house near it came down at night when nobody saw the actual process of falling in a suit for damages filed by the plaintiff averring that his house was in a good condition and had been damaged by the fall of the defendant's wall the case was one of strict liability and not of presumed negligence. Strict liability of the defendant therefore had to be proved by the plaintiff. **AIR 1953 Vin Pra 21 (22) (Pt A) (Pr 6).**

18 (A). Collision.

See also Note 18 (I).

●——Negligence — Steamship — Collision—Held on facts that there was an act of negligence or part of Nizam which was primarily responsible for collision — Asiatic, Steam Navigation Co. Ltd. v. Arabinda Chakravarti, **1959 S C A 581 : 1959 S C J 815 : (1959) Supp (1) S C R 979 : AIR 1959 S C 597 (607) (Pt D) (Prs 19, 20).**

——Negligence — Plaintiff injured in collision of buses—Buses belonging to defendant — Burden of proof—Negligence of driver when may be inferred— Applicability of principle of res ipsa loquitur — Damages—Liability of defendant.

Where a plaintiff is injured as a result of a collision of two transport buses owned by the defendant corporation and he files a suit for damages, the burden is on the plaintiff to prove that the injuries to him were caused as a result of negligence of the defendant corporation or some one in the service of the defendant. If in the ordinary course of things, a collision would not have occurred between two moving bodies in charge of different persons, if both had taken due care and had not acted negligently, the fact that

there was such collision would be prima facie proof that either or both of them acted negligently. But in such cases the principle of res ipsa loquitur would not be of any assistance in fixing the negligence of one of the two drivers. And if in such a case the prima facie proof of negligence of either of the two drivers is not rebutted then it can be held that the accident was due to the negligence of either of the drivers or both of them. And if the drivers of both the vehicles happen to be servants of the defendants (as in this case), the defendant would be liable. **(1961) 2 Guj L R 304 : AIR 1961 Guj 196 (197 to 200) (Pt A) (Prs 5, 6, 16) (DB).**

——Negligence—Lorry colliding with stationary bus belonging to the State Government—One of the passengers injured dying later—Government making ex gratia payment to widow of deceased—Held that the causa causans of the payment was not the negligence of the lorry driver but it was the voluntary act of the plaintiff-Government — Hence no decree for the amount as damages could be awarded against the defendant lorry-owner. 1917 A C 38, Rel. on; (1935) 2 K B 309, Distinguished. **1963 Ker L J 122 : 1963 Ker L T 275.**

——Damages—Collision—Collision between railway train and truck — Owner of truck giving truck on hire—Driver of truck, servant of hirer - Driver found negligent — Owner's claim against railway and against hirer.

There was a collision between a passing train and a truck, at level crossing. The truck was damaged. It was established that the driver of the train engine was not negligent. The accident was due to the negligence of the truck driver who was found to be drunk. The plaintiff who was the owner of the truck, had given the truck on hire to another. The driver of the truck was the servant of the person who hired the truck. The plaintiff filed a suit for damages against the Union of India.

Held, that the plaintiff had no cause of action against the railway company. His rights would be against the hirer of the truck only. However, the correct legal position was that, as property belonging to him had been damaged by an alleged tort committed by the defendant Railway, he will have a cause of action against the defendant subject to the limitation that his rights would be the same as the rights which hirer had in respect of the alleged tort. Hence the negligence of the truck driver was relevant to the plaintiff's claim and the Railway was not liable because it was the truck driver who was negligent. **1957 M P C 492 : (1957) M P L J 617 : 1957 Jab L J 939 : ILR (1957) Madh-Pra 348 : AIR 1958 Madh Pra 93 (95) (Pt A) (Prs 7, 8) (DB).**

——Negligence — Collision between bus and lorry—Negligence of drivers—Injury to passenger—Suit for damages against owners of vehicles — Burden of proof—(Evidence Act (1872), Ss. 101-104).

Where a plaintiff, a passenger in a bus, sustained an injury on account of a collision between the bus and a lorry and he brought a suit for damages against the owner of both the vehicles on the allegation that the accident was caused by the negligence of the drivers of both the vehicles :

Held, that the burden did not lie on the plaintiff to prove affirmatively to the exclusion of the driver of the bus that the driver of the lorry alone was guilty of negligence. In such a case the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damage, the plaintiff is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons though in any case he cannot recover in the whole more than his whole damage. **AIR 1939 Mad 261 : (1939) 1 M L J 143 ; (1921) 2 K B 664,** Relied on. **1956 Mad W N 269 : 69 Mad L W 192 : (1956) 26 Com Cas (Ins) 31 : (1956) 1 M L J 477 : ILR (1957) Mad 306 : AIR 1956 Mad 464 (465) (Pt A) (Pr 8).**

——Negligence — Collision — Suit for damages — Parties.

In cases of injuries resulting from a 'composite negligence,' the plaintiff is entitled to sue all or any of the negligent persons. Consequently for injuries caused as a result of collision between two buses, action can be brought against the owners of the buses, the drivers and the Insurance Company. **1963 Mys L J (Supp) 368.**

——Negligence — Collision — Suit for damages by injured person — Burden of proof.

Generally speaking in running down cases, or as they are sometimes called collision on land cases, the plaintiff is not entitled to succeed unless he gives affirmative proof of negligence on the part of the defendant or his servant. Persons who base a claim for negligence must prove negligence.

In a case of this kind, presumptions on question of fact arise and may have to be rebutted. Thus it may be sufficient for the plaintiff to prove that the bus in which he was travelling took a turn and proceeded beyond the road and in turning back to go to the road, it struck against a tree which caused injury to him. Then it is for the defendant to prove that one of the bullock carts going in front turned and stood across the road and he could not avoid taking a turn. If it is proved, then the presumption raised in plaintiff's favour stands rebutted by the defendant's evidence. **ILR (1953) Mys 539 : 32 Mys L J 78 : AIR 1954 Mysore 138 (139) (Pt A) (Prs 3).**

——Negligence — Collision — Duty of wiser course —Limits of.

When by the negligent conduct of a vehicle or foot-passenger on the road a collision with another person or vehicle is rendered imminent, the latter will not be liable in respect of a collision if in the stress and agitation of the moment he takes unwise course in seeking to avoid it.

Good sense and the policy of the law impose some limit upon the amount of care, skill and nerve which are required of a person in a position of duty, who has to encounter a sudden emergency.

Thus even if it be possible to take a view that it would have been wiser for the driver to apply the brakes though he was quite near the bullock carts, he cannot be expected to be as wise as he or anybody else is expected to be at a cooler moment. **ILR (1953) Mys 539 : 32 Mys L J 78 : AIR 1954 Mysore 138 (139) (Pt B) (Pr 4).**

——Negligence — Highway users — Collision — Motor accident in broad daylight near bridge on road due to motor bus being driven on wrong side of road — Bus injuring plaintiff's horse permanently when both rider and horse were standing on left side of road —.Driver not heeding signal of rider to stop nor showing down — Driver held guilty of negligence which was effective cause of injury caused to plaintiff's horse — Bus owner vicariously liable — Quantum of damages — What is negligence—Rule of the Road — Doctrine of res ipsa loquitur — Contributory negligence — Doctrine of last opportunity — Vicarious liability — General principles. ILR 41 Pat 244 : AIR 1962 Pat 258 (263, 270, 271, 272) (Prs 34, 37, 93, 98, 103, 105, 106, 108).

——Negligence — Accident due to collision between two buses — Suit for damage for rash and negligent driving—Onus of proof—Doctrine of res ipsa loquitur — Applicability. 1960 Raj L W 284 : ILR (1960) 10 Raj 705:AIR 1960 Raj 224 (227) (Pt A) (Pr 8) (DB).

——Negligence — Accident due to collision between two buses — Suit for damages for rash and negligent driving — Onus of proof — Doctrine of res ipsa loquitur — Applicability. **AIR 1960 Raj 224 (227) (Pt A) (Pr 6) (DB).**

——Negligence—Appreciation of evidence by appellate Court — Collision case. See Civil P. C. (1908), S. 107. **AIR 1960 Raj 224 (DB).**

——**Collisions in Canals.**

The principles regarding collision at sea can be applied to collisions in backwaters and canals. Every vessel is to observe the regulations and rules prescribed therefor. It is always a positive duty on the part of the boat-men to observe the regulations and a departure from the same can only be justified by necessity. Non-observance of the regulations is prima facie negligence, unless it can be shown that the departure from the regulation either did not in fact, wholly or in part, cause the collision. **AIR 1952 Trav-Co 143 (147) (Pt A)(Prs 12, 13, 13a)(DB).**

——**Negligence — Collision of Vessels—Liability of owners — Principles — Duty to comply with regulations promptly — Failure — Effect of.**

A vessel is not justified in delaying to take precautions until the last moment or in trusting to being able to "stave" clear of the other. If, by doing so, she frightens another vessel into taking a wrong step and a collision occurs, she will be responsible for the entire loss. By a prompt compliance with the regulations, where a vessel is required to alter her course to avoid another, she apprises the latter of her ability and intention to comply with the regulations. Whereas by delaying to take the required step, she may lead the other vessel to suppose that she is unable to comply with them, and cause her to take a step which may make a collision inevitable. Where a ship or boat, in order to show that she is free from blame, is required to prove that she altered her course at the proper time, it is not enough for her to show that her helm was altered at that time; she must prove that she altered her helm in time. **AIR 1952 T-C 143.**

18 (B). Contributory negligence.

——Negligence—Banker and customer—Payment on forged cheque — Negligence of customer in keeping cheque book under his own personal lock and key would not disentitle him to a decree against bank for the sum paid by it on forged cheque. See Banker and Customer. **AIR 1955 N U C (All) 2764 (DB).**

——Negligence — Contributory negligence — Defence of contributory negligence has no place in a suit brought for damages on account of an intentional wrong. **1950 All L J 60: AIR 1950 All 519 (520) (Pt B) (Pr 5).**

——Negligence — Contibutory negligence—Defence based on — Principle stated. **AIR 1963 Assam 117 (123) (Pt C) (Pr 20) (DB).**

——Negligence—Railway Company—Level crossing — Incoming train not visible — Railway engine dashing against rear part of lorry crossing line—Plea of contributory negligence on part of lorry driver — Burden of proof — Held, on facts, plea not established. **AIR 1963 Assam 117 (124, 125) (Pt D) (Prs 22, 23, 24) (DB).**

——Negligence—Contributory negligence—Damages.

Plaintiff sustaining injury while slipping out of compartment of a standing train due to jerk of engine — Damagas — Measure of. See Railways Act (1890), S. 47 (1). **AIR 1955 N U C (Cal) 751 (DB).**

——Negligence—Motor accident—Children playing on road—Duty of motor driver pointed out—Contributory negligenee of children.

The responsibility of a driver of a motor vehicle when he sees infants playing on the road becomes greater and he must take into account the fact that their behaviour would be uncertain. The driver is under a duty to take reasonable care to avoid harm to the children. Things would be different if the boys suddenly appear on the road or one of them crosses all of a sudden while they were quietly standing on one side of the road. That would be a case of inevitable accident. But where the boys are right in the middle of the road and are playing, the driver should slow down well in time to allow the boys to run away from the road. It may be that he could not succeed on account of the electric pole in avoiding the accident but that does not exonerate him from his responsibility to take special care on seeing infants playing on the road. A different view of the matter might be taken if the accident occurs to an adult pedestrian who behaved in an uncertain manner after receiving a warning by horn being blown; but in the case of children of tender ages the same standard of care cannot be accepted.

Contributory negligence of a child is seldom a good defence to such a tort, though in some cases the defence of inevitable accident may prevail. **1962 M P L J 657 : 1962 Jab L J 852.**

——Negligence — Rash or negligent driving — Petitioner driving heavily loaded bus up-hill along zig-zag road on wrong side at speed between 20 and 25 miles per hour and colliding with car proceeding from opposite direction on right side — Petitioner held guilty of rash and negligent driving — Doctrine of contributory negligence does not apply to criminal liability. See Penal Code (1860), S. 279. **1961 (1) Cri L J 541 : AIR 1961 Orissa 71.**

——Negligence — Contributory negligence — Level crossing on shunting area — Railway line crossing busy road — Incoming train not visible — Railway is bound to give warning of approaching train — Accident — Question of contributory negligence on part of lorry driver cannot arise — Railways Act (1890), S. 7. F. A. No. 78 of 1952 dated 2nd December 1958 (Pat), Reversed. **ILR 44 Pat 150 : AIR 1965 Pat 167 (169 to 172) (Prs 6, 7, 8) (DB).**

——Negligence — Contributory negligence — Public vehicle — Passenger resting elbow on window — Injury to passengers's hand—No contributory negligence by passenger. **62 Punj L R 571 : AIR 1960 Punj 490 (492) (Pt B) (Pr 11) (DB).**

——Negligence — Contributory negligence — Buses brushing against each other — Excessive speed and rash and negligent driving established — Passenger keeping his hand outside window — Injury to arm resulting in its amputation — Passenger held not guilty of contributory negligence — (English) Law Reform (Contributory Negligence) Act, 1945 held had no application — Insurance companies, insuring buses held were jointly liable with owners of buses— Motor Vehicles Act (1939), Ss. 96, 86 (2) (1), (English) Law Reform (Contributory Negligence) Act, 1945, S. 1 (2), Motor Vehicles Act (1939), Ss. 96, 86 (2). **1962 R L W 255 : ILR (1962) 12 Raj 128.**

——Negligence— Contributory negligence—Collision between two buses on road junction—Deviation from normal rule of road—:Effect stated. **1960 Raj L W 284 : ILR (1960) 10 Raj 705 : AIR 1960 Raj 224 (227) (Pt B) (Pr 13) (DB).**

——Negligence — Contributory negligence—'Volenti non fit injuria' — Applicability of maxim.

The plaintiff owned paddy lands adjoining a stream, which served as the only outlet for the excess water collected in his paddy land. As a result of unusually heavy rainfall in a particular year the excess water spread over the paddy lands of the plaintiff higher up and the paddy crop in the

plaintiff's lands was kept submerged for a few days and also prevented him from raising other cultivation during that year. In a suit for damages against the State in respect of the alleged tortious acts.

Held, that the claim was unsustainable. Even apart from the defendants' plea that this case comes within the exceptions of 'vis major' as also of the plaintiff's consent, as recognised in Fletcher v. Rylands, (1866) 1 Ex 265, the two essential conditions necessary to attract the rule of absolute liability are not satisfied in this case. Indian law has all along recognised the use of a property as a reservoir of water for irrigation purposes as a natural use essential to the welfare of the community. When such is the position, under normal circumstances, greater immunity must attach itself to similar works undertaken to tide over the extraordinary situation brought about by the acute shortage of the staple commodity of paddy as in the present instance. The plea of 'volenti non fit injuria' raised by the defendant in answer to the plaintiff's claim for compensation, is also fully supported by evidence on record. **1956 Ker L T 291 : ILR (1956) Trav-Co 639 : AIR 1956 Trav-Co 225 (228 to 230) (Prs 6, 7, 8) (DB).**

——Negligence — Contributory negligence— Plea of —Sustainability.

It is not for a person who has created a dangerous situation to minutely criticise the action of the persons whom he has by his fault involved in danger; and the party suffering damage cannot be charged with contributory negligence in such a situation when he is found to have acted on the spur of the moment and had no time to contribute any negligence as a cause for the occurrence. **1949 T C L R 277 : AIR 1951 T C 171 (2) (174) (Pt B) (Pr 6).**

——Negligence — Contributory negligence.

Accident to motor vehicle and death of driver — Motor vehicle driven by person holding license to drive — Licence illegally issued, the driver being incompetent on account of age — Driver held acted illegally and his act was an act of contributory negligence. **AIR 1954 V:nd Pra 17 (20) (Pt B) (Pr 19).**

——Negligence — Contributory — Damages — Fatal accident—Level-crossing.

Collision between railway engine and truck, at level-crossing resulting in death of truck driver — Truck driver found driving with licence to which he was not entitled in as much as he was few months younger than the required age—Truck driver held guilty of rash driving and contributory negligence — Railway authorities found negligent by not keeping the level-crossing properly manned or by in any way warning the users of road — Railway held liable to pay damages — Contributory negligence of truck driver mitigated damages, in the circumstances of the case to half. **AIR 1954 Vind Pra 17 (21) (Pt D) (Pr 28).**

18 (C). Damages.

——Negligence — Damage done to jetty by vessel —Quantum of damages — Damages must be for full restoration and not for restitution amounting to reconstruction of jetty — State though charged with maintenance of jetty cannot get anything higher than what private individual can. F. A. No. 697 of 1955, dated 1-10-1959 (Bom), Reversed: Lotus Line (P.), Ltd. v. State of Maharashtra. (1965) 2 S C R 699 : (1965) 2 Law Rep 411 : 1965 Mah L J 701 : 1965 M P L J 877 : (1965) 1 S C W R 640 : 67 Bom L R 429 : AIR 1965 S C 1314 (1315) (Pr 4).

——Negligence—Damages — Remoteness of.

Damage caused to plaintiff's truck due to negligent act of defendant — Loss suffered by plaintiff on account of truck remaining idle for a month because of the accident cannot be said to be remote—Plaintiff would be entitled to claim such damages and also damages on account of depreciation of truck. **AIR 1952 All 449 (451) (Pt B) (Pr 14).**

——Negligence — Death caused due to negligent act —Estimation of damages to be awarded to dependents of deceased —Principles — Matters to be considered — (Fatal Accidents Act (1855), Ss. 1 and 2).

Estimating the amount of damages in case of actionable negligence resulting in death is always a difficult task for the Court. The standard must not be a subjective standard but an objective standard. The Court has some discretion in fixing the measure of reparation and the important consideration would be the probable earning of the deceased and what is more important what amount the deceased would have probably spent for the support of his wife and children. Expectation of life of the deceased having regard to his age, bodily health and habits and the possibility of premature death is one of the other relevant considerations. Where the deceased has left property which goes to the claimants the resulting acceleration of interest in that property would also be a factor of reduction in the final assessment. **1942 A C 601 (617): 1951 A C 601 (614), Foll. 59 Bom L R 1196 : AIR 1958 Bom 218 (221) (Pt B) (Pr 9).**

——Negligence—Accident—Damages.

The fact that payment has not actually been made by the plaintiff in respect of liabilities incurred under any of the heads of damages is immaterial, as long as the liability is a genuine liability actually incurred. The fact that the doctors who treated the plaintiff, on account of their friendship with him or for some other reason did not claim from him any fees, is a matter, which is completely collateral to damage.

If the plaintiff for reasons peculiar to him gets the benefit of free medical advice, the defendants cannot appropriate the benefit to themselves, by saying that by their negligent act they have not inflicted any financial burden on the plaintiff in the shape of doctor's fees. **Madh B L J 1955 H C R 1479 : Madh B L R 1955 Civ 489 : ILR (1955) Madh Bha 306 : AIR 1955 Mah B 214 (220) (Pt B) (Pr 12) (DB).**

——Negligence —Damages — Collapse of wall due to rains, killing son and daughter of plaintiff, who were looking after thela of plaintiff on adjoining road — Wall in dilapidated condition and not under repairs for thirty years — Doctrine of vis major and volenti non fit injuria, applicability — Contributory negligence, plea of — Liability of owner and occupier, extent of — Burden of proof of negligence—Damages to plaintiff — Expectation of life of deceased — Considerations in awarding damages — (Fatal Accidents Act (1855), S. 1) — (Evidence Act (1872), Ss. 101 to 104 — Negligence) — (Civil P. C. (1908), Ss. 100 and 107). See Tort—Negligence. AIR 1958 Madh-Pra 48 (DB).

——Negligence — Damages — Loss of one leg caused by the rash and negligent driving of motor vehicle — Compensation for — Principles.

In so far as the injury results in actual pecuniary loss, past or prospective, the plaintiff should be awarded full compensation for that loss; but that does not mean that in the case of loss of prospective earnings the plaintiff is to be awarded his annual earnings multiplied by the number of years for which he could be expected to have worked, if he had not been injured. A simple calculation of that sort ignores many contingencies which would or might operate to reduce the plaintiff's future and so would mean that the plaintiff would get more than full compensation for his loss. In so far as the injury results in damage which does not admit of assessment by arithmetical calculation, the plaintiff should be award-

ed fair and reasonable compensation, such compensation to be assessed in the light of previous awards in respect of comparable damage.

In the instant case a sum of Rs. 10,000 was awarded as compensation for the loss of one leg following the decision in (1918) 7 L W 415. **1959 Mad W N 397 : (1959) 1 M L J 278 : ILR (1959) Mad 475 : 72 Mad L W 232 : AIR 1959 Mad 369 (371, 372) (Prs 9, 12) (DB).**

——Negligence — Damages.

Damages can be claimed on the basis of nervous shock directly attributable to negligence. There is difficulty in estimating damages claimed by reason of shock. But it is only shock of such a description which can be measured by direct consequences on bodily activity which can form the basis for an action in damages. It is not possible to lay down any hard and fast rule, and each case has to be dealt with on its own merits. 1925-1 K B 141, Rel. on. 1883-13 A C 222; AIR (36) 1949 Nag 256, Ref. **1951-2 Mad L J 471 : AIR 1951 Mad 1056 (1058) (Pt D) (Pr 11).**

——Negligence of Advocates — Professional misconduct—Advocate neglecting to furnish requisite papers which could have been easily produced to enable Court to proceed with petition though time repeatedly granted for compliance — Client not only not informed real progress of the case but on enquiries told that hearing date had not been announced — Such gross negligence involving moral turpitude or delinquency in its wider sense amounts to professional misconduct. See Bar Councils Act (1926), S. 10. **AIR 1965 Mys 28 (DB).**

——Negligence — Damages — Damage by fire — Burden of proof.

The plaintiff filed a suit against the defendant claiming damages in respect of the destruction said to have been caused to his orange garden on account of the fire started by the defendant in his garden which was adjacent to the plaintiff's garden.

Held, the burden of proving negligence on the basis of which a claim for damages is made lies upon the party who alleges it and to establish a case, he should prove the negligence affirmatively by adducing credit-worthy evidence of it. Mere proof that an accident has occurred, the cause of which is unknown, is not invariably proof of negligence. The plaintiff had, therefore, to establish that it was the fire that the defendant started on his land without taking necessary precautions to prevent the same from spreading into the neighbouring lands, that spread into his garden and caused the destruction of the orange trees, to succeed in his case. Once it was established that it was the fire that the defendant started on his land that spread into the garden of the plaintiff the burden of proving that the defendant had taken all necessary precautions and that it was not on account of his negligence that the fire spread into the garden of the plaintiff, was heavily on the defendant. When the defendant set fire to his land without taking necessary precautions to prevent the same from spreading into the lands in the neighbourhood he was 'playing with fire' and should be deemed to have foreseen the possibility of the fire spreading into the lands adjoining his land and was liable for any damage caused to them. (1955) 1 Mad L J 312; A I R 1955 Mad 68 and (1961) 1 All E R 404, Rel. on. **(1963) 2 Mys L J 384 : AIR 1964 Mys 80 (82, 83, 84) (Prs 6, 14, 15, 16) (DB).**

——Negligence — Damages — Overcrowding — Whether actionable negligence depends on duty arising out of contract — Assuming it is actionable negligence, plaintiff has still to prove that negligence resulted in some danger or injury to him. See Railways Act (1890), S. 63. **AIR 1955 Pat 282 (DB).**

——Negligence — Collapse of building — Loss of life — Suit for damages — Question of negligence — Onus is on persons responsible for maintenance of building. See Fatal Accidents Act (1855), S. 1. **AIR 1960 Punj 300 (DB).**

——Negligence — Damages for loss of goods due to negligence of railway — Costs of goods proved—Loss due to misdelivery to another — Prevailing price of goods on date of delivery not proved — Damages to the extent of costs actually incurred by plaintiff without probable profits claimed by plaintiff, held rightly allowed. (1962) 2 S C J 479 : AIR 1962 S C 113, Distinguished. **1963 Raj L W 135 : ILR (1963) 13 Raj 140 : AIR 1963 Raj 162 (171) (Pt F) (Pr 21) (DB).**

——Negligence—Damages — Collision between buses — Plaintiff's bus damaged — Quantum of damages — Determination of, indicated. **1960 Raj L W 284 : ILR (1960) 10 Raj 705 : AIR 1960 Raj 224 (228) (Pt C) (Pr 15) (DB).**

——Negligence — Damage by fire.

Where a person pours petrol from a can into a drum while keeping a lighted hurricane lantern nearby and the petrol catches fire on account of the proximity of the lantern there is negligence; the handling of petrol which is a highly inflammable substance was a dangerous operation in itself. The degree of care which a person is required to use in a particular situation in order to avoid the imputation of negligence varies with the nature of the risk since the risk in this case was very high, as there was a burning lantern in the godown the person was bound to take special precautions, and the person is liable in damages for the damage caused by the fire. Case law referred. **('51) 4 Sau L R 124.**

——Negligence — Damages caused by fire—Damages can be recovered only when negligence is proved — Defendants held negligent and liable for damages. **AIR 1955 N U C (Trav-Co) 1904.**

——Negligence — Damages — Assessment — Motor vehicle—Damage by collision with another—Measure of damages — Evidence of provable cost.

In the case of damages caused to a motor vehicle by collision with another, the standard to be adopted for awarding damages against the wrongful party is to assess, the amount which would be reasonably necessary to meet the expenses of repairing the damage; and as to the probable cost, the evidence of a competent witness may be accepted, e. g., that of a workshop enginner. **1949 T C L R 277 : AIR 1951 T C 171 (2) (175) (Pt D) (Pr 8) (DB).**

——Negligence — Damages — Unless otherwise provided by a statute or agreed between parties no deduction can be made from wages of unliquidated damages (e. g., damages for negligence or breach of contract which are at large) payable by a servant to a master. See Civil Service (C. C. & A.) Rules, R. 49. **AIR 1955 Vindh Pra 21.**

——Negligence — Damages—Assessment of damages — Principle of, indicated — Evidence. See Fatal Accidents Act (1885), S. 1. **AIR 1954 Vindh Pra 17.**

18 (D). Dangerous things.

——Negligence — Fire—Fire in defendant's premises caused by electric short circuit, spreading to plaintiff's house and damaging plaintiff's premises—Spread of fire due to negligence of defendant — Defendant held liable for damage to plaintiff's building. **1955 Mad W N 41 : (1955) 1 Mad L J 312 : ILR (1955) Mad 1167 : 68 M L W 99 : AIR 1955 Mad 68 (69, 70) (Pr 5) (DB).**

——Negligence—Dangerous things—Liability of landowner — Depositing mud on back of tank — Land-

owner is liable for damage caused by washing away of such mud in tank, to neighbour. **AIR 1955 N U C (Trav Co) 4128.**

18 (E). Evidence and proof.

● **——Negligence — Proof — Damage caused due to breach of canal — Rule of res ipsa loquitur — Applicability.**

Per Sarkar J.:—In an action for damages for inundation of plaintiff's land due to breach of a canal in the management of the defendant, the rule of res ipsa loquitur would apply because canal banks are not breached if those in management take proper care and the breach itself would be prima facie proof of negligence unless the defendant can show that the breach was due to act of God or to act of a third party or any other thing. (1865) 3 H and C 596 and (1950) 1 All E R 392, Rel. on.

Per Hidayatullah, J.: — The rule in Rylands v. Fletcher (1868) 3 H L 330, shortly stated, is that any occupier of land who brings or keeps upon it anything likely to do damage if it escapes is bound at his peril to prevent its escape, and is liable for all the direct consequences of its escape, even if he has been guilty of no negligence. The rule in Rylands v. Fletcher was derivatively created from the rule of strict liability applicable to the acts of animals but, it is hardly applicable to a case where damage is caused to adjoining land due to a breach in a canal maintained by the Government.

The rule laid down in Scott v. London and St. Katharins Dock Co., (1865) 159 E R 665 that where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care, has been regarded as the principle of res ipsa loquitur. But the principle if it be one, cannot always be safely applied where the facts before the Court are not the whole facts. The principle of res ipsa loquitur had its origin in the falling of a barrel of flour from a first floor widow on a passerby but it has been extended to situations quite different. It is a rule of evidence and not of liability. It is not sufficient to say res ipsa loquitur because the danger is that facts may not always tell the whole story and if there is something withheld how can the thing be said to speak for itself. State of Punjab v. M/s. Modern Cultivator. **(1964) 2 Andh W R (SC) 185: 67 Punj L R 117 : (1965) 1 Andh L T 36 : (1965) 1 S C W R 136 : 1965 S C D 578 : (1964) 8 S C R 273 : (1964) 2 S C J 796 : (1964) 2 Mad L J (SC) 185 : AIR 1965 S C 17 (20, 22, 23, 24, 25) (Pt B) (Prs 5, 7, 16, 18, 19, 22, 26, 29).**

——Negligence—Pleading—Mere allegation of negligence or misconduct on part of railway administration not sufficient—Particulars to be given — Burden of proof is on plaintiff. See Civil P. C. (1908), S. 80. **ILR (1965) 2 All 127 : AIR 1966 All 333.**

——Negligence—Proof—Driver of road roller driving roller fast in an unusual speed through busy locality —Boy easing by the side of the road hit by the edge of the roller and after his fall his right palm crushed under the front wheel of the roller — Roller stopped only after the event though timely alarm was raised by persons present which, if, taken, might have prevented the accident—Accident held was direct result of negligence and rash driving of the driver. AIR 1961 Andh-Pra 283 (284) (Pt A) (Prs 4, 5) (DB).

——Negligence—Burden of proof.

In action for negligence the plaintiff must establish that the defendant owed him a duty, breach of it and a causal connection between the injury and the breach of duty. **1963 Mah L J 241 : 65 Bom L R 180 : ILR (1962) Bom 797 : AIR 1963 Bom 144 (145) (Pt A) (Pr 1) (DB).**

——Negligence — Carrier of passengers — Fault of omission—Proof of.

Where negligence consists of a fault of omissions it is absolutely necessary that the] proof of that fault of omission should be one of two kinds either to show that the thing which he did not do was a thing which was commonly done by other persons in like circumstances or to show that it was a thing which was so obviously wanted that it would be folly in any one to neglect to provide it. **1963 Mah L J 241 : 65 Bom L R 180 : ILR (1962) Bom 797 : AIR 1963 Bom 144 (145) (Pt C) (Pr 1) (DB).**

——Negligence — Maxim — Res ipsa loquitur—Principle underlying the maxim — Evidence Act (1872), S. 114.

The maxim 'res ipsa loquitur' is a rule of evidence and the principle underlying it is that when the thing is shown to be under the management of the defendant or his servants and the accident is such as in ordinary course of things does not happen if those who have the management use proper care, if affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care. (1865) 3 H and C 596, Rel. on. **1963 Mah L J 241 : 65 Bom L R 180 : ILR (1962) Bom 797 : A I R 1963 Bom 144 (145) (Pt D) (Pr 2) (DB).**

——Negligence—Action on tort of negligence — Burden of proof of negligence — Maxim "res ipsa loquitur" — Applicability of—Crashing of aircraft immediately after take off—Maxim applies.

In an action on the tort of negligence, the plaintiff must prove that the defendant is guilty of negligence. Although the burden of proof of negligence is on the plaintiff in some cases the mere happening of an accident affords prima facie evidence that the tort constituting the cause of action is the result of want of care on the part of the defendant. This is known as the maxim of "res ipsa loquitur". (1865) 3 H C 596, Foll. In cases where an aircraft crashes immediately after its take off, the maxim res ipsa loquitur applies. (1937) 1 All E R 108, Rel. on. **AIR 1962 Cal 544 (547) (Pt B) (Pr 8).**

[Reversed on another point in AIR 1965 Cal 252.]

——Negligence—Loss of life through aircrash — Applicability of maxim res ipsa loquitur — Plea that is to be taken by plaintiff — Construction of plaint—Held plaintiff was entitled to invoke aid of maxim—It was for carrier to disprove negligence. A I R 1962 Cal 544 (548) (Pt C) (Pr 13).

[Reversed on another point in AIR 1965 Cal 252].

——Negligence—Rer ipsa loquitur—Applicability of maxim—Burden of proof of negligence.

The maxim res ipsa loquitur is no more than a rule of evidence, whether the rule applies depends on the nature of each accident. Even on the same facts the Courts have and may differ on the question as to whether the maxim is applicable. When evidence is tendered as to the cause of accident, the maxim is not of much importance. In such cases the Court is required to consider the :entire evidence and record whether on consideration of the evidence as a whole negligence is established. In cases, where the rule of res ipsa loquitur applies, the defendant has to disprove negligence. In cases where the rule does not apply the plaintiff is to prove negligence affirmatively. **A I R 1962 Cal 544 (551) (Pt D) (Pr 18).**

[Reversed on another point in AIR 1965 Cal 252].

——Negligence — Premises let out as godown for storing and stacking purposes — Tenant subletting it for residential purposes — Premises destroyed in fire

—Tenant would prima facie be liable for damages caused to premises—Onus would be on him to show that there was no negligence either on his part or on part of sub-tenant. See T. P. Act (1882), S. 108, Cl. (e), Proviso. A I R 1962 Cal 263 (DB).

——Negligence—Res ipsa loquitur — Plaintiff injured in collusion of buses — Buses belonging to defendant —Burden of proof — Negligence of driver when may be inferred — Applicability of principle of res ipsa loquitur — Damages — Liability of defendant. See Torts—Negligence. AIR 1961 Guj 196 (DB).

——Negligence—Suit for damages—T. P. Act (1882), S. 108, Sub-s. (m) — Building in possession of lessee damaged by fire — Liability of lessee for damages — Doctrine of res ipsa loquitur discussed — Building used only for storing goods manufactured by defendant — No occasion for use of fire in building — No facts proved leading to inference of negligence on part of lessee — Doctrine of res ipsa loquitur held inapplicable—Negligence on part of defendant held not established — Defendant held not liable to pay damages. 1963 Ker L T 375 : (1964) Ker L R 106 : ILR (1963) 1 Ker 509.

——Negligence — Res ipsa loquitur— (Evidence Act (1872), Ss. 101 to 103).

The maxim res ipsa loquitur when applied to an action for negligence is merely a rule of evidence affecting onus. It does not alter the general rule that the burden of proof of the alleged negligence rests upon the plaintiff. It means that the res or the facts and circumstances of the accident proved by the plaintiff are by themselves, without any direct proof of negligence, sufficient prima facie evidence from which an inference of negligenee may reasonably be drawn.

The inference may be rebutted by the defendant by proving some specific cause of the accident for which he was not responsible or by proving that he was, in fact, not negligent, or by giving a reasonable explanation and proving it, that the happening of the accident was as consistent with the absence of negligence as it was with the presence of negligence. When the defendant has done this, the burden is shifted back to the plaintiff. Madh B L J 1955 H C R 1479: Madh B L R 1955 Civ 489 : ILR (1955) Madh B 306 : AIR 1955 M B 214 (217) (Pt A) (Pr 8) (DB).

——Negligence — Damage to premises by fire — Lessee's liability — Burden of proof of negligence is on lessor—Principle of res ipsa loquitur.

The lessee is liable for damage caused to the premises by fire intentionally or by negligence. The burden of proving negligence on the part of the lessee is on the lessor. No presumption of negligence can be drawn from the bare facts. The lessor has to show that the fire was due to something unusual which the lessor's servant did.

Even in applying the maxim res ipsa loquitur and the rule laid down in Rylands v. Fletcher, (1888 L.R 3 H L 330), regard must be had to all the circumstances of time, place and practice of mankind. The applicability of the maxim res ipsa loquitur to cases of fire is not excluded by any equitable principle. The maxim is merely a rule of evidence affecting onus. It does not alter the general rule that the burden of proof of the alleged negligence, rests upon the plaintiff. The inference of negligence may be rebutted by the defendant by proving some specific cause of the accident for which he was not responsible or by giving a reasonable explanation and proving it, that the happening of the accident was as consistent with the absence of negligence as it was with the presence of negligence. When the defendant has done this, the burden is shifted back to the plaintiff. A I R 1955 M B 214, Rel. on. 1962 M P C 60 : 1961 Jab L J 1516 : 1962 M P L J 187.

——Negligence — Evidence and proof—Suit against Court of Wards — (C. P. Court of Wards Act (24 of 1899), S. 19 (1) (c).)

The plaintiff in order to succeed in his suit for damages for negligence, must establish, firstly a duty to take care, secondly a breach of the duty and thirdly that such breach was the proximate cause of the loss or injury sustained by him. ILR (1947) Nag 955, Rel. on.

In a suit for recovery of damages on the allegation that during the period the Court of Wards was in charge of the plaintiff's estate, decrees were obtained against persons owing money to the estate but were negligently allowed to be barred by limitation, the manager, Court of Wards, would be the person primarily responsible for the loss, if any, under S. 19 (1) (c) of the Central Provinces Court of Wards Act, 1899. The best evidence of the loss, if any, would be furnished by the plaintiff's account books. It was, therefore, his duty to produce them. He should also lead evidence of an independent and reliable character to prove that the loss, if any, was caused by the wilful negligence of the Manager, Court of Wards. In the absence of such evidence, the Court is justified in holding that the plaintiff had failed to prove that any actual loss was caused to him. 1957 M P C 332 : 1957 M P L J 282 : 1957 Jab L J 559 : AIR 1957 Madh Pra 78 (79) (Prs 4, 6,7) (DB).

——Negligence — Proof of negligence and causation —Res ipsa loquitur when applies.

In a claim for damages founded on negligence, the general rule is that the plaintiff must establish a breach of duty and its causal connection with his injury. The exception to this rule is that if the facts proved or admitted amount to prima facie proof of negligence or its causal connection, the burden is shifted to the defendant to rebut these points. The defendant may be able to rebut the presumption, but rebut it he must, if he wishes to escape liability. The question of prima facie evidence or onus of proof is generally immaterial where there is evidence on both sides. But it becomes important where the defendant does not offer rebutting evidence or the evidence on either side is scanty or obscure as often happens in many cases of serious accidents. The Courts will take judicial notice of what happens in the ordinary course of things at all events to the extent of using their knowledge of the common affairs of life to complete or correct what is stated by witnesses. AIR 1956 Mad 59 (64, 66, 67) (Prs 20, 25, 26).

——Negligence — Boat carrying rice sunk in sea — Plea of bad weather and act of God—Plea rejected on evidence found in case. (1955) 2 M L J 240 : 1955 Mad W N 395 : 69 Mad L W 1042 : I L R (1956) Mad 85 : A I R 1955 Mad 519 (522 to 525) (Pt C) (Prs 14, 18, 20) (DB).

——Negligence —"Res ipsa loquitur"—Applicability —Conditions essential.

In an action for negligence normally, the burden of proof of the alleged negligence is on the plaintiff in the first instance. It is for him to establish all facts which lead to the natural inference that the injury complained of was caused by the defendant's negligence. There are however cases where the facts established show that the injury could not have happened unless there was negligence on the part of the defendant. It is in such cases that the doctrine of "res ipsa loquitur" is invoked. Its principle is only a rule of evidence and shifts the onus of proof. The conditions that should be established before the principle can be invoked in any case are; firstly that the thing which caused the

injury or damage should be shown to be under the management of the defendant or his servant; secondly, the accident that happened was of such a nature that in the ordinary course of things it would not have happened if the persons in management of the thing had exercised proper care or due diligence. (1963) Mys L J (Supp) 368.

——Negligence — Accidents on the road — Allegation of rash and negligent driving — Burden of proof — Rule applicable.

Where in a suit for recovery of damages from the defendants for causing injuries to a minor girl (plaintiff) while she was passing by a road on its left side along with her mother the allegation was that defendant 1 who was coming on a cycle from the opposite direction with defendant 2 sitting on the rod suddenly turned his cycle on the wrong side and collided with the plaintiff, with the result that the plaintiff was badly injured.

Held, that in a case like this, although the injury is direct and forceful and as such prima facie a case of trespass to the person, still the plaintiff has to prove negligence on the part of the defendants (that is all reasonable care which could avoid the collision was not taken by them) in order to succeed, for the principle that a man cannot recover damages if he has consented to run the risk of accidental harm is clearly applicable to case arising out of accidents on a road. AIR 1963 Pat 316 (316, 317) (Pt A) (Prs 3, 4).

——Negligence — Fire — Onus of proof — Liability of lessee to lessor for damage caused by fire — Res ipsa loquitur — Doctrine of — Applicability—(T. P. Act (1882), S. 108 (e)) — (Evidence Act (1872), Ss. 101-104).

Where the house leased out to the defendant was destroyed by fire, the onus of proving negligence on the part of the defendant is on the plaintiff-landlord. The doctrine of res ipsa loquitur does not apply to such a case and the normal rule of evidence must prevail. In the absence of any evidence that the fire was due to the defendant's negligence, no decree for damages can be granted to the plaintiff in tort. (1947) 1 All E R 344 and AIR 1928 Mad 1140: 55 M L J 663, Rel. on. 1959 B L J R 137 : AIR 1959 Pat 348 (349) (Pr 3) (DB).

——Negligence — Absence of negligence — Held that there was imposed an obligation upon treasury staff to honour District Board's cheque — To that end they were bound to know signiature of Chairman of Board—Payment on forged cheques — Onus of proving absence of negligence was cast upon treasury. See Evidence Act (1872), Ss. 101 to 103. AIR 1954 Pat 529 (DB).

——Negligence — Rash and negligent driving—Proof — Res ipsa loquitur — Bus turning turtle — Fact speaks for itself — Best evidence against negligence would be of driver himself — Omission to examine him — Effect — Evidence Act (1872), S. 106. (1965) 67 Punj L R 1064 (Punj).

——Negligence — Res ipsa loquitur — Meaning and effect of — Motor accident — Skidding of motor vehicle — It is neutral factor.

The maxim res ipsa loquitur suggests that on the circumstances of a given case the res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts—not a conjectural inference—shows that the act is attributable to some person's negligent conduct. The effect of this maxim, however, depends on the cogency of the inferences to be drawn and must, therefore, vary in each case. Its effect appears to shift the burden or onus of proof on to the defendant who is expected to show as to how the accident may have occurred without his negligence.

A skid in itself does not excuse the motor accident and it may not suffice. by itself, to displace the prima facie inference of negligence arising from the vehicle being where it has no right to be; for a skid may be caused by bad, careless or fast driving. The skid is thus by itself a neutral factor and it may or may not be due to the driver's negligence. 64 Punj L R 448 : AIR 1962 Punj 540 (542) (Pt B) (Prs 8, 9).

——Negligence — Private carrier — Failure to keep vehicle in proper state of repair — Defective steering — Res ipsa loquitur — Applicability.

It is the duty of the owner of private carrier to take proper care as to the soundness of the mechanism and the road-worthiness of the vehicle and keep the vehicle in a proper state of repair, when conveying invitees. Where he fails to take such care and allows the vehicle to become defective as when the steering of a motor car becomes so worn out that the driver cannot control the car, that will be evidence of negligence on his part. (1920) 37 T L R 72, Rel. on.

Where a private carrier meets with an accident due to a defective tierod which connected the steering wheel with the wheels of the car, the doctrine of res ipsa loquitur which raises a presumption of fault against the owners fully applies and the burden of proving that the accident was inevitable, is upon the owners. The accident was not due to a latent defect which could be said not to be discoverable by reasonable care. (1865) 159 E R 665 (666) and (1948) 2 All E R 460 and (1953) 2 M L J 532 : AIR 1953 Mad 981, Rel. on. 62 Pun L R 314: ILR (1960) Punj 1007 : AIR 1960 Punj 392 (393) (Prs 5, 8 to 11).

——Negligence — Evidence and proof — Res ipsa loquitur — Presumption of negligence.

There is no legal presumption of negligence even where the rule res ipsa loquitur applies and hence if the defendant produces a reasonable explanation, equally consistent with the negligence and no negligence, the burden of proving the affirmative, that the defendant was negligent and that his negligence caused the accident, still remains with the plaintiff. On the other hand the onus of disproving negligence lies on the defendant, at least in the sense that he must know either that the accident was due to a specific cause which does not connote his negligence, or that he had used all reasonable care in the matter. All that the rule means is that on the proof of certain set of facts, the Court may be justified in drawing an inference, unless the contrary is proved, that the accident was not likely to occur except through the negligence of the defendant. ILR (1959) Punj 1799 : 61 Pun L R 718 : AIR 1960 Punj 66 (69) (Pt A) (Pr 9) (DB).

——Negligence — Evidence and proof.

Before the liability can be fastened on the defendant there must be direct or circumstantial evidence establishing that the fall of the plaintiff's house was a consequence of the collapse of the defendant's wall.

Where there was no direct evidence and also there was absolutely nothing by way of observation or inference of the witnesses to justify the allegation that the fall of the plaintiff's house was a consequence of the collapse of the defendant's wall.

Held, that mere assertion of the plaintiff that his house was in an excellant condition, and could not have possibly come down except by the collapse of the temple wall on it is not sufficient proof. AIR 1953 Vind Pra 21 (23. 24) (Pt B) (Prs 9, 10, 11).

——Negligence — Burden of proof — (Evidence Act (1872), Ss. 101 to 103).

In a suit for damages for torts where plaintiff alleges that the fall of his house was the consequence of collapse of the defendant's wall, it is for the plaintiff to prove his case and he cannot take advan-

tage of the defendants inability to prove that his wall 'did not' fall on the plaintiff's house. AIR 1953 Vind Pra 21 (24) (Pt D) (Pr 11).

18(F). Liability.

——Negligence — Collapse of wall due to rains, killing son and daughter of plaintiff, who were looking after thela of plaintiff, on adjoining road — Doctrine of vis major—Volenti non fit injuria—Applicability—Contributory negligence—Plea of—Liability of owner and occupier. extent of pointed out—(Fatal Accidents Act (1855), S. 1) — (Evidence Act (1872), Ss. 101 to 104)—(Civil P. C. (1908), Ss. 100 and 107 — Quantum of damages. 1957 M P L J 532 : 1957 Jab L J 978 : 1958 M P C 390 : I L R (1957) Madh Pra 275 : A I R 1958 Madh Pra 48 (49, 50, 51, 52) (Prs 4 to 8, 17 to 19) (DB).

——Negligence and rashness — Essence of—Distinction between Civil liability and Criminal liability. (1962) 2 Mad L J 146 : 1962 (2) Cr L J 386: 1962 Mad L J (Cr) 444 : 75 Mad L W 760 : A I R 1962 Mad 362 (364) (Pt B) (Prs 5, 6, 6a).

——Negligence — Liability of occupier — Hidden danger — Invitee and licensee — Masonry in cinema house falling and causing death of person who had gone there after purchasing ticket — Liability of occupier indicated. AIR 1951 Mad 358 (360) (Prs 4, 5) (DB).

——Negligence—Injury to animal — Animal trespassing on railway track—Liability of railway company for damages.

The duty that an occupier has towards a trespasser as distinguished from a licensee or an invitee is the lowest recognised by law. That duty is not to do a wilful act in reckless disregard of ordinary humanity. The general rule is a man trespasses at his own risk. The position is the same with regard to trespassing animals : (1894) 2 Q B 281 and (1911) A C 361, Rel. on.

Hence, where an elephant trespassing upon a railway track gets itself injured by colliding with the engine without any negligence or rashness on the part of the railway servant, the railway company is not liable in damages for injury to the animal : (1863) 143 E R 364, Disting. 1950 Nag L J 351 : ILR (1950) Nag 473 : AIR 1950 Nag 234 (236, 237) (Pt B) (Prs 8, 13, 14) (DB).

——Negligence—Damages—Damage caused by overflowing of tank dug by adjacent owner and spreading of earth put around the tank—Liability of owner of adjacent land to pay damages—Test for determining liability—Foreseeability of consequence—Principle explained — Adjacent owner held not liable as damages were unforeseen. ILR (1962) Cut 635: A I R 1963 Ori 21 (22, 23) (Prs 6, 7, 9, 10).

18(G). Public bodies.

——Negligence — Statutory corporations—Municipal Board—Negligence in maintaining pipelines in proper state of repair — Damage caused by defective condition of pipes to citizen's house from overflowing water — Municipal Board liable for damages — U. P. Municipalities Act (II of 1916), S. 228 — U. P. Municipal Rules, R. 41-A. 1961 All L J 894: 1961 All W R (H C) 731 : A I R 1962 All 211 (215, 216) (Pt B) (Prs 17, 18, 23 to 25).

——Negligence—Carriage by air — Death of passenger caused by neglect of carrier—Carrier's liability—Exemption from — Exemption clause in contract of carriage brought to notice of passenger — Held the clause was void.

Held (1) that every passenger in an aircraft must be deemed to have entered into the contract of carriage and purchased the ticket with full knowledge of the exemption clause printed in the ticket and displaved in a board in the office of the detendant Corporation from which the ticket was purchased; (2) that the clause was void and was not binding on the passengers or their representatives. AIR 1962 Cal 544 (546) (Pt A) (Pr 4).

[Reversed in AIR 1965 Cal 252.]

——Negligence resulting in death of air passenger — Liability of Indian Airlines Corporation — Applicability of rules under Carriage by Air Act (1934) as rules of justice, equity and good conscience.

(a) The carrier is liable in damages in the event of death or injury to the passenger in the case of accident. (b) The carrier is not liable if he proves that he or his agent have taken all necessary measures to avoid the damages or that it was impossible for him or them to take such measures. (c) Contributory negligence on the part of the passenger will exonerate the carrier from liability wholly or partly depending on the nature of contributory negligence proved. (d) The carrier is not entitled wholly to contract out of his liability. AIR 1962 Cal 311 (318 to 321) (Pt I) (Prs 19, 19a, 20, 22 to 26).

——Negligence — Tree planted by District Board on roadside — Injury caused by fall of tree — Liability of Board under common law — (Bihar Local Self-Government Act (3 of 1885), S. 79).

The Act does not impose any duty on the Distict Board either to maintain the trees properly or to lop off the branches in case they extend upon the property of others. The duty, therefore, if any can be said to arise under the common law only. Under that law it is the duty of the District Board to see that the tree should not be allowed to extend beyond the confines of the road so as to become a danger or nuisance to persons occupying the land in the neighbourhood. However, where the injury is in substance caused by the trees, not by the extension of their branches but being rooted out from the soil and thereafter having fallen on the premises of the plaintiffs, the Board cannot be held liable for the damage resulting from such a cause so long as it has no knowledge or means of knowledge of the trees having become dangerous due to some hidden action of nature on it or due to some disease. 1955 B L J R 492: ILR 34 Pat 661 : A I R 1955 Pat 432 (439) (Pt I) (Pr 19) (DB).

——Negligence—Non-feasance — Liability of public bodies.

(Quaere): Are not the public bodies in India liable for acts of non-feasance, such as failure to cut down the trees in dangerous condition on the margin of the roads?. 1955 BLJR 492: ILR 34 Pat 661: AIR 1955 Pat 432 (440) (Pt J) (Pr 20) (DB).

18(H). Railway Company.

See also Railways Act (1890), S. 72.

——Negligence — Railway Company—Level crossing — Railway line crossing a thoroughfare — Railway is bound to give warning of approching train — Failure to do so amounts to negligence on its part — Railways Act (1890), S. 7 — F. A. No. 17 of 1956, D/- 29.5.1961 (Assam), Reversed. AIR 1963 Assam 117 (Pt B) (Prs 14, 16) (DB).

——Negligence — Railway Company — Collision — Railway engine hitting a motor vehicle — Damages—Measure of—Duty of railway pointed out. A I R 1963 Assam 117 (125, 126) (Pt E) (Prs 25, 26) (DB).

——Negligence — Suit for damages against Railway based on negligence in torts — Notice. See Railways Act (1890), S. 77. A I R 1957 Madh B 111.

——Negligence — Railway — Public level crossing — Duty to take care. See Railways Act (1890), S. 13. AIR 1959 Madh Pra 128 (DB).

——Negligence—Owner or occupier of land — Duty of—Railway line running through residential locality —Duty of Railway to fence—Child trespassing upon railway line and getting injured by running train — Liability of railway — (Railways Act (1890). S. 13 (a) (c)).

An owner or occupier of land or premises owes no obligation or duty to a trespasser but he must not set up a trap of him or cause wilful injury to him. There is no difference in the case of a child trespasser as compared to an adult trespasser as the law draws no distinction in the duty of the owner or occupier of the premises towards either category of trespasser. (1913) 1 K B 398, Rel. on. Unlike S. 68 of the English Railway Clauses Consolidation Act (8 and 9 Vict., c. 20) 1845 the Indian statute does not impose any imperative obligation on the Railway to fence a line. but, S. 13 (a), Railways Act, gives power to the Central Government to require the Railway, among other matters, to provide fences and to maintain the same. There is no obligation apart from statute under the general law.

Held. on facts that the railway could not be held to be guilty of negligence merely because it had not fenced the track on both sides for the benefit of the adjoining house-holders. Even if it is accepted that there was a level foot-way crossing near where the accident occurred, no duty apart from the statute (which was not the case here), was placed upon the Railway administration to either keep a gate or stile there with a fence or to keep a watchman for the benefit of those using the same. **ILR (1951) Punj 1147 : 60 Pun L R 221 : AIR 1958 Punj 246 (247 to 249) (Prs 4, 5, 6) (DB).**

——Negligence — Damages — Carrier — Collision— Liability of railway to trespasser — Person travelling by goods train without ticket or permission injured in collisiou — Railway administration held not liable— Person travelling contrary to a bye-law and against wishes of railway servant is a trespasser — He cannot recover if as a result of negligence of carrier he suffers injury. See Railways Act (1890), S. 66. **A I R 1957 Punj 164 (DB).**

——Negligence—Damages—Railway accident—Injury to plaintiff's mares on line where there was no restriction on speed and the driver was not bound to keep look-out—Accident at midnight—Held, no negligence on part of engine driver. **1955 Raj L W 384 : ILR (1955) Raj 298 : AIR 1955 Raj 57 (59) (Pt B) (Prs 11, 16) (DB).**

——Negligence — Railway — Level crossing—Railway's liability — Negligence of driver of engine— (Railways Act (1890), S. 7),

A lever-crossing is on the one hand a danger spot in view of the possible movement of trains, and on the other is an invitation to the passer-by. This is a public crossing and not merely one by private accommodation. Therefore it is the legal duty of the railway to assure reasonable safety. At a reasonable distance on either side, prominently written boards can be affixed, asking, the road-users to beware of trains. If the track on either side is visible from near the caution board or within a short distance from the crossing, this would be sufficient because a diligent road user could look round and see the train. Even if the car driver knows by frequent use of the road by him that there is a crossing, the roaders should be alerted at the proper moment by the boards or gates; it is not a case for remote knowledge, but one for immediate alertness.

On the other hand, if there is a bend on the track or there are trees or bush in between, or the road on either side of the crossing is very far below the level of the railway tract, or for any other similar reasons the track is not visible beyond a short distance, then even the caution boards are useless. In that case gates are indicated. Similarly boards may be affixed along the railway, say half to three-fourth of a mile in either direction calling upon the engine driver to whistle. A whistle by the driver can supplement, but cannot replace, gates or caution boards as a device to protect the users of a crossing.

All these aspects of maintaining a level crossing have been considered by the railway authorities in accordance with S. 7 of the Indian Railways Act and guiding principles have been laid down.

Held, on facts that the railway level crossing was unmanned and without any barrier, that there was an obstruction to view by branches of some trees and that there was negligence on the part of the railway authority in maintaining the same.

Held, however that the engine driver who was driving the engine at the time of the collision at the level crossing with the truck driven by the deceased which collision resulted in the death of the deceased was not negligent in the manner of driving either before or after catching sight of the truck.

Held, further, that apart from the truck drivers' rashness in driving without a proper licence, it was difficult to say that he was further negligent in the driving itself. **AIR 1954 Vind Pra 17 (20, 21) (Pt C) (Prs 19 to 21, 26, 27).**

18 (I). Motor accident.

See also (i) Note 18 (A);
(ii) Penal Code (1860), S. 304-A.

——Negligence — Death due to rash driving—Suit for damages — Burden of proving negligence — Evidence Act (1872), S. 101.

In an action for damages for the death due to rash and negligent driving it is for the plaintiff claiming damages to establish negligence of the defendant in the first instance. Direct evidence is not necessary for establishing negligence. It may be inferred from the circumstances of the case. Once a prima facie case of negligence has been made out by the plaintiff, it is for the defendant to prove that the incident was a result of inevitable accident or contributory negligence on the part of the plaintiff. **1961 Jab L J 372 : 1961 MPLJ 526 : 1961 MPC 298 : ILR (1961) Madh Pra. 90 : AIR 1962 Madh Pra 23 (23) (Pt A) (Pr 7) (DB)**

——Negligence—Penal Code (1860), S. 304-A—Applicability—Criminal and civil negligence — Distinction —On facts held that accused was negligent in driving bus and was guilty under S. 304-A. See Penal Code (1860), S. 304-A. **(1962) 2 Mad L J 508.**

——Negligence—Accident — Driving at high speed.

Whether in a particular instance the speed was excessive or not must depend on a number of circumstances such as the condition of the road, the nature of the locality, the time and so forth. Whether in a given case the speed was excessive or not must be determined on a consideration of all the circumstances. Where the road passed over a culvert, taking a sharp bend with a downward gradient and adjoining it was a ditch, the speed at 20 miles per hour was held to be excessive. **1953 Mad W N 730 : I:L R (1954) Mad 226 : (1953) 2 M L J 532 : 66 Mad L W 677 : AIR 1953 Mad 981 (982, 983) (Pt A) (Prs 3, 4) (DB).**

——Negligence—Motor accident.

In allowing a person who had a driving license to drive a bus, on a route which was new to him, assisted by the old driver who was acquainted with the route, the owner of the bus held did not act negligently. **1953 Mad W N 730 : ILR (1954) Mad 226 : (1953) 2 MLJ 532 : 66 Mad L W 677 : AIR 1953 Mad 981 (984) (Pt C) (Pr 6) (DB).**

—Negligence—Motor accident — Accident taking place on off side of road—There is a prima facie presumption of negligence. (Presumption held not rebutted). (1948) 2 A E R 460, Applied. 1953 Mad W N 730 : I L R (1954) Mad 226 : (1953) 2 Mad L J 532 : 66 Mad L W 677 : AIR 1953 Mad 981 (985) (Pt E) (Prs 10, 11) (DB).

—Negligence—Suit for damages— Bar by criminal proceedings.

Where the taxi driver was criminally prosecuted for rash and negligent driving and was convicted on his plea of "guilty" :

Held, that the conviction did not by itself establish negligence and it was open to the defendant in a suit for damages to establish want of negligence. 1951-2 Mad L J 471 : AIR 1951 Mad 1056 (1057) (Pt A) (Pr 8).

—Negligence—Duty of motorist crossing tram line.

A tram car is immobile in the sense that it is bound by rails and cannot deflect its course. There is a duty cast on a motorist who crosses the tramline to make sure that there is no tram car approaching. 1951-2 Mad L J 471 : AIR 1951 Mad 1056 (1057) (Pt B) (Pr 8).

—Negligence—Rash and negligent driving.

Where it was found that the defendant was driving the lorry, in the course of his employment, at excessive speed and that it knocked down dead the pedestrians, who were passing the road on the right side of the road and then collided against the bridge the inference that should necessarily be drawn is that the defendant was driving the lorry with such speed and with such rashness and negligence that he paid no regard to the safety or security of the other persons who were also entitled to use the highway. (1865) 3 H and C 596 and (1950) 1 All E R 392 and (1953) 2 Mad L J 532; A I R 1953 Mad 981 and A I R 1933 Cal 178, Relied on. 37 Mys L J 718 : I L R (1958) Mys 759 : A I R 1960 Mys 105 (109, 110) (Pt B) (Prs 23, 25) (DB).

—Negligence—Rash and negligent driving — Res ipsa loquitur.

Held, considering the relevant facts and circumstances and the admitted fact that the defendant had taken a driving licence only about two months back and the nature of extensive injuries to the deceased constituted prima facie proof of very high speed of the car at the relevant time and of the motor driver's negligence, the doctrine of res ipsa loquitur was fully attracted. A I R 1961 Punj 400 (403) (Pt A) (Pr 12) (DB).

—Negligence — Rash and negligent driving — Principles.

In the matter of cases of accidents due to the alleged rash and negligent driving no case is exactly like another, nor is it possible to extract from decided cases any precise principle of law on the point. The question of negligence is essentially one of fact. The circumstances of each case are almost always peculiar and unique with the result that the conclusion in one case can hardly constitute a safe or helpful illuminating guide for another. A I R 1961 Punj 400 (403) (Pt B) (Pr 14) (DB).

—Negligence — Death of third party in motor car accident in Kotah due to rash and negligent driving —Act not applicable to Kotah when accident happened — Right of representatives of deceased to sue for damages owner of motor vehicle — Applicability of principles embodied in the Act as principles of justice, equity and good conscience — Kotah Civil Courts Act (1945), S. 21 (2) — Scope of. See Fatal Accidents Act (1855), S. 1. A I R 1960 Raj 224 (DB).

18 (J). Vicarious liability.

See also Note 25.

—Negligence—Damages — Liability of Government for acts of its servants — Principles — Tortious acts committed by public servants in course of employment and in exercise of statutory functions delegated to them by Government — State is immune from liability—Claim for damages held not sustainable. Kasturi Lal Ralia Ram Jain v. State of U. P., 1965 (2) Cri L J 144 : (1965) 1 S C A 809 : (1965) 1 S C W R 995 : (1965) 2 S C J 318 : (1965) 2 Mad L J (S C) 15 : (1965) 2 Andh W R (S C) 15 : 1965 Mad L J (Cri) 571 : I L R (1965) 2 All 175 : A I R 1965 S C 1039 (1043, 1046, 1048) (Pt C) (Prs 11, 21, 29, 30).

—Negligence—Liability of master for act of servant indicated. See Fatal Accidents Act (1855), S. 1. A I R 1961 All 14 (DB).

—Negligence—Suit against Government for tort of its employees—Loss of property through negligence of officers in discharge of their legal duty—Government not liable. See Constitution of India, Art. 300. 1960 All L J 529.

—Negligence—Government Official attaching and seizing goods — Goods damaged while in custody of official due to rains—The heavy rains do not amount to an act of God—It was the duty of the Government Officers to take such care as every prudent man takes of his own goods. The Government stood in the position of bailees and it is for them to prove that they had taken as much care as was possible for them and that damage was due to reasons beyond their control. 67 Bom L R 823 : 1966 Mah L J 341 : A I R 1966 Bom 134 (139) (Pt B) (Pr 6).

—Negligence — Master and servant — Master is vicariously liable for negligence of servant during course of his employment.

Where defendant 2 was driving the car of his employer defendant 1, during the course of his employment, and due to his negligence meets with an accident and injures the plaintiff, a lad of less than 6 years, if defendant 2 is liable, his master, i. e., defendant 1, is equally liable for the act of his servant namely defendant 2, during the course of his employment. 1965 Ker L T 1172 : 1965 Ker L J 1112 : I L R (1966) 1 Ker 226 : A I R 1966 Ker 172 (175) (Pt A) (Pr 4).

—Negligence—Damages — Liability of master for negligence of servant.

The fact that a company was the owner of the bus on the material date and that the bus was being driven by a person is itself evidence of the fact that on that date the latter was the servant or agent of the Company. Madh B L J 1955 H C R 1479 : Madh B L R 1955 Civ 489 : I L R (1955) Madh Bha 306 : A I R 1955 Madh Bha 214 (222) (Pt E) (Pr 17) (DB).

—Negligence — Death due to negligent driving— Liability of employer — Driver whether acting in course of employment—Evidence as to.

In deciding the liability of the employer for the negligent driving of his employee, the mere fact that the truck was used for carrying passengers instead of goods does not show that the driver was not working in the course of employment. When the driver was in the employment of employer, the presumption is that he was acting in the course of employment. 1961 Jab L J 372 : 1961 M P L J 526 : 1961 M P C 298 : I L R (1961) Madh Pra 90 : A I R 1962 Madh Pra 23 (25) (Pt B) (Pr 13) (DB).

—Negligence — Accident — Whether one man is servant of another—Mode of determination—Owner of lorry held liable for damages to plaintiff's car.

Whenever it is necessary to discover whether or not one man is the servant of another the chief enquiry must be directed towards finding who has the power to control and it is also essential to know how and by whom a person is paid, by whom and in what circumstances he may be dismissed. It is in this connection that a distinction is drawn between a contract of service and contract for service. In deciding whether a man is the servant of another "the test is this—Whether the servant is transferred, or only the use and benefit of his work".

A general servant remains the servant of the master who pays him and there is a presumption against the transfer of that servant as distinct from his services, and the presumption is all against there being such a transfer. The burden of proof of such a transfer is a heavy one. It must be proved that there was such a transference of the servant as to pass the right or authority to control him in the manner of the execution of the act in question. It is a question of fact involving the whole circumstances of the case whether there has been such a transference of the right or authority to control. In deciding the question the following things have to be kept in mind; who is a paymaster, who can dismiss, how long the alternative service lasts, what machinery is employed. A I R 1927 P C 173, Const.; A I R 1958 Cal 597, Foll. 77 Mad L W 174: (1964) 1 Mad L J 316: I L R (1964) 2 Mad 383: A I R 1964 Mad 362 (363, 364) (Prs 7, 9).

——Negligence—Master and servant.

Negligence of servant during course of employment. Employer is liable even though he himself is not negligent. 1953 Mad W N 730: I L R (1954) Mad 226: (1953) 2 Mad L J 532: 66 Mad L W 677: A I R 1953 Mad 981 (984) (Pt D) (Pr 6) (DB).

——Negligence — Master's liability — Lorry driver authorising cleaner to drive vehicle—Damage by rash and negligent driving — Owner of lorry is liable to pay damages on principle of delegation. I L R (1965) 1 Punj 155: A I R 1965 Punj 376 (377) (Pr 5).

——Negligence — Encashment of forged cheque by Bank—It is not payment in due course — Both bank and customer negligent — Bank is responsible. See Negotiable Instruments Act (1881), S. 10. A I R 1961 Punj 571.

——Negligence — Negligence by servants of State—Vicarious liability of State.

Appellant's goats and sheep seized by servants of Nawanagar State outside that State and taken to village within State — Out of 304 animals seized all but 39 animals perishing—Sale of surviving animals —Seizure of animal held illegal and refund of sale proceeds ordered — Shortly after order, Nawanagar State merging into Saurashtra State — Appellant filing suit against Saurashtra State for recovery of price of all animals, loss of profit and legal expenses.

Held, that the Nawanagar State was clearly liable to restore the animals and where restoration could not be made of all the animals seized, it must account for the animals which were not restored. It might be that those servants of the State who had custody of the animals might be negligent in not selling them away before they perished but in detaining the animals they were acting in the exercising of powers conferred upon them by Municipal law and the Nawanagar State clearly could not be held responsible for the loss of animals for it could not be said that it had profited by the loss of the animals. The Nawanagar State was therefore liable for the sale proceeds actually realised and the Saurashtra State's liability could not extend beyond that. A I R 1954 Pat 513, Rel. on. 8 Sau L R 437: A I R 1956 Sau 62 (64) (Pr 6) (DB).

——Negligence — Vicarious liability — Liability of master for negligent act of servants — Rule as to stated. See Master and servant. A I R 1951 Trav.Co 171 (2) (DB).

19. Nuisance—What amounts to

See also (i) Penal Code (1860), S. 268; (ii) Criminal P. C. (1898), Ss. 133-142; (iii) Specific Relief Act (1877), Ss. 53 to 57.

(A) General.
(B) Abatement.
(C) Authorised acts.
(D) Continuing nuisance.
(E) Injunction.
(F) Public nuisance.

See also Penal Code (1860), S. 268.

19. Nuisance—What amounts to

See also (i) Penal Code (1860), S. 268; (ii) Criminal P. C. (1898), Ss. 133-142; (iii) Specific Relief Act (1877), Ss. 53 to 57.

——Nuisance, meaning of — Onus of proving that tenant has created a nuisance or done any other act which deprives him of protection under S. 3 of U. P. Rent Act (3 of 1947) is on the landlord. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (d). 1963 All W R (HC) 522.

——Nuisance — Owner building chabutra on plot abutting public lane—Lane narrowed — Bullock cart prevented from taking turning—It is a nuisance. AIR 1955 N U C (All) 2296.

——Nuisance — What amounts to — Anything injurious or obnoxious to the community or any member of it or which is annoying or offensive for which legal remedy may be had may fall under category of nuisance. The question of nuisance is always a question of fact to be determined with reference to all the circumstances of the case. See Houses and Rents —Hyderabad Houses (Rent, Eviction and Lease) Control Act (20 of 1954), S. 15 (2)(iv). (1959) 1 Andh W R 363.

——Nuisance — Non-supply or short supply of water does not amount to nuisance. See Municipalities—Calcutta Municipal Act (33 of 1951), S. 5 (50). (1965) 69 Cal W N 674.

——Nuisance—Public and private—What amounts to —Neighbour setting up flour mill—His duty pointed out—Private nuisance.

Nuisances are of two kinds, public and private. A public nuisance is also known as common nuisance, and constitutes primarily a criminal offence, such as keeping a gambling house, keeping brothels or obstructing a highway. A public nuisance can also become actionable, when the act complained of constitutes some form of tort as well, such as the obstruction of a high way is a public nuisance, but if it causes any special or peculiar damage to an individual, a civil suit can also lie. On the other hand a private nuisance consists of the wrongful disturbance of an easement or any right to which a person is entitled. The basic doctrine of the law of private nuisance is described by a latin maxim, sic uteri tuo ut alienum non laedas, which means, so use your own property as not to injure your neighbours. The rule with regard to public nuisance is different; it is only actionable at the suit of a private individual on proof of special damage. A neighbour who sets up a flour mill should so use it as to cause no injury or damage to his neighbours. M B L J 1955 H C R 2115.

——Nuisance—Roots of defendant's tree penetrating plaintiff's adjacent wall — Act amounts to private

nuisance — Right of plaintiff to claim damages and injunction, against defendant — Form of relief — Specific Relief Act (1877), S. 54.

Held, that the defendant's act amounted to a private nuisance, because by permitting a nim tree to stand and grow on his own land which he was lawfully entitled to do, he caused consequences which extended to the land of his neighbour, in that the roots of his tree encroached upon his neighbour's sub-soil and thus caused physical damage to his property. The plaintiff was, therefore, entitled to damages as well as to an injunction. 1962 M P C 111 : 1961 Jab L J 721 : 1961 M P L J 834.

——Nuisance—What amounts to—Test.

The standard of comfort differs according to the situation of the property and the class of people who inhabit it. But whatever the standard of comfort in a particular district may be, the addition of a fresh noise caused by the defendant's works may be so substantial as to create a legal nuisance. 61 Punj L R 197 : AIR 1959 Punj 217 (218 to 220) (Prs 3, 4, 6).

——Nuisance—What constitutes.

Every little discomfort or inconvenience cannot be brought on to the category of actionable nuisance. Consistent with the circumstances under which a person is living, he may have to put up with a certain amount of inevitable annoyance or inconvenience. But if such inconvenience or annoyance exceeds all reasonable limits, then the same would amount to actionable nuisance. In order to constitute an act of nuisance there must be inference with the use or enjoyment of land, or of some right over or in connection with it, causing damage to the plaintiff. 1904 A C 179, Rel on. ILR (1956) T C 1306 : AIR 1957 Trav-Co 281 (282) (Pr 2) (DB).

19 (A). General.

——Nuisance—Private nuisance—Running of electric flour mill in market place in hill station.

The defendant established an electric flour mill in a premises in the bazaar locality of Mussoorie, which was adjacent to the plaintiff's house. The running of the mill produced a very unpleasant noise, which caused great inconvenience to the plaintiff and the members of his family and it generated vibrations on account of which the walls, floors, doors, windows, etc., in the plaintiff's house shook and rattled. In the locality there was no other flour mill :

Held, that the running of the mill caused inconvenience and serious discomfort to the plaintiff and the residents of his house and its running amounted to a private nuisance which could not be permitted. The immunity from discomfort or inconvenience must, be dependant considerably on the place where a person resides. In the instant case, which comes from Mussoorie, it would not be unreasonable to accept the plaintiff's contention that he is entitled to such freedom from loud or uncomfortable noise as might enable him to live peacefully in his house. It is not essential in a case like this to prove either that the property has been damaged or that the health of the inhabitants of the plaintiff's house has been impaired. (1752) 1 Dick 163 and (1865) 1 Ch A 16 and 1904 A C 179, Rel. on. AIR 1960 All 632 (633, 634) (Pt A) (Prs 5, 6, 11).

——Obstruction to the view of building — Whether actionable wrong.

A mere obstruction to the view of another's building or place of business does not per se give rise to a cause of action unless the obstruction affects his right of access or if it otherwise causes damage to his building or business. (1866-67) Ch App 158; ILR 29 All 22 and (1866) 35 L J Ch 317. Rel. on. (1957) 2 Andh W R 546 : 1957 Andh L T 930 : AIR 1958 Andh Pra 586 (590) (Pt C) (Pr 23) (DB).

——Nuisance — Highway — Obstruction — Proof of special damage — Civil P. C. (1908), S. 91.

The public and every one has a right to use the entire width of a public highway without obstruction. Any person or body of persons or even a public body cannot interfere with that right unless statutorily or otherwise legally empowered to do so. Such an obstruction without any averment of speciai damage could be removed by following the procedure prescribed under S. 91, Civil P. C. But an individual cannot maintain a suit to remove it unless by reason of such obstruction special damage of a substantial character has been caused to him or to his premises. (1957) 2 An W R 546 : 1957 Andh L T 930 : A I R 1958 Andh Pra 586 (591) (Pt D) (Pr 27) (DB).

——Nuisance — Interference with light and air acquired by prescription — Infringement of — When actionable.

When plaintiffs complained of diminution of light and air acquired by prescription.

Held: That it should be of such a nature as would amount to 'an actionable nuisance'. (1914) 27 M L J 117 : L R 41 I A 180 : ILR 42 Cal 46 (PC) and L R (1904) A C 179, App. 1957 Andh L T 855 : (1958) 1 An W R 78.

——Nuisance — Tenant placing furniture in passage used by other tenants — Notice under S. 381 (1) (ii) on landlord and tenant — No steps taken to abate nuisance — Landlord and tenant both are liable — (Penal Code (1860), S. 268). See Municipalities — Bombay Municipal Corporation Act (3 of 1858), S. 381 (1) (ii). AIR 1956 Bom 163.

——Nuisance — Construction of latrine by neighbour —Local standard of comfort must be taken into consideration — Latrine not very near the plaintiff's residence—Other neighbours not complaining—Held, that there was no actionable nuisance. (1964) 1 Ker L R 359.

——Nuisance—Private nuisance — Constant noise—Defence of reasonable use of property or acts being authorised by rules—When available.

The principles governing the nuisance caused by constant noise may be summarised as follows: (1) Constant noise, if abnormal or unusual can be an actionable nuisance, if it interferes with one's physical comforts. (2) The test of a nuisance causing personal discomfort is the actual local standard of comfort, and not an ideal or absolute standard. (3) Generally, unusual or abnormal noise on defendant's premises which disturbs sleep of the occupants of the plaintiff's house during night, or which is so loud during day time that due to it one cannot hear ordinary conversation in the plaintiff's house or which cannot allow the occupants of the plaintiff's house to carry on their ordinary work is deemed to be a noise which interferes with one's physical comforts. (4) Even in a noisy locality if there is substantial addition to the noise by introduction of some machine, instrument, or performances at defendant's premises, which materially affects the physical comforts of the occupants of the plaintiff's house then also the noise will amount to actionable nuisance. (5) If the noise amounts to an actionable nuisance, the defence that the defendant is making a reasonable use of his own property will be ineffectual. (6) If the defendant is found to be carrying on his business so as to cause a nuisance to his neighbours, he is not acting reasonably as regards them. And may be restrained by injunction although he may be conducting his business in a proper manner and according to rules framed in that behalf either by the Municipality or by the Government. (7) If an operation of the defendant's premises cannot by any care and skill be prevented from causing a private nuisance to the neighbours, it cannot be undertaken at all, except

with the consent of those injured by it. **1958 M P C 7 : 1958 M P L J 114 : 1958 Jab L J 110 : AIR 1959 Madh Pra 240 (244) (Pt A) (Pr 16).**

——Adjacent Land—Easement of lateral support — Neighbour digging to very extremity of his land and causing damages to plaintiff's boundary wall and building — Plaintiff's land not in its natural state but burdened by structures — Right of lateral support to structures not shown acquired by prescription — Plaintiff's action in tort for nuisance is not maintainable — (Easement—Lateral susport)—(Easements Act (1882), Ss. 7 and 15). **I L R (1965) Cut 558 : 32 Cut L T 172 : AIR 1966 Orissa 86 (87) (Pr 2).**

——Nuisance—Escape of water from land due to alteration in natural condition— Liability for—Limitation Act (1908), S. 26 — Applicability.

Two nalas in plaintiff's lands through which water flowed into the defendant's tank across agal portion were natural channels. As the water accumulated in the agal portion, the defendant with a view to transfer the evil of any injury to his lands constructed an embankment or a bundh, thereby diverting the flow of water of the channels in another direction. That obstructed the flow of water through those channels into the tank, and resulted in the diversion of accumulated water into plaintiff's plot.

Held, (i) that it was not at all open to the defendant to erect such embankment. (ii) that the right that the plaintiffs claimed was not one of easement but was based on the law of torts. That being so, the provisions of S. 26 of the Limitation Act, which relate to acquisition of rights to easements, have no application to the facts of the case. **AIR 1963 Pat 455 (457, 458) (Pt A) (Prs 10, 13).**

——Nuisance—Injury caused by fall of tree planted on roadside by District Board — Nature of wrong.

Where the injury by the fall of tree is suffered by the plaintiffs while they are on their own land adjoining to the land whereon the tree was planted by the District Board, then it is neither a case of trespass, nor a case of negligence as contemplated in its purely objective sense giving rise to injuries on the dangerous premises itself, nor is the case covered by the rule of Raylands v. Fletcher'. Therefore, the wrong on the facts alleged, if any, in this case can be one of nuisance alone. **1955 B L J R 492 : I L R 34 Pat 661: AIR 1955 Pat 432 (435) (Pt E) (Pr 10) (DB).**

——Nuisance — Nuisance relating to highways — Rights of owners of land adjoining public street — Right of free access — Portion of street covered up by municipality by permanent structure—Remedies of adjoining owner — (Specific Relief Act (1877). S. 55)—(Municipalities—Bombay District Municipal Act (3 of 1901), (as applied to Saurashtra) Ss. 50 (2), 90) — (Highways).

The owner of an adjoining property has a right of access to the highway on all points on his boundary and the access is not to be restricted to any particular point. Therefore, if there is an obstruction to the access at any point he has a right to have the obstruction removed irrespective of the fact that he has an ingress and egress on the road from other places in his property. In the absence of anything in the Bombay District Municipal Act, 1901, (as adapted and applied to the State of Saurashtra) to empower the Municipality to cover up a portion of the street by putting up a permanent structure thereon, may be for carrying out a duty permitted by the Act, viz., the collection of octroi duty, the action of the Municipality cannot be justified. Such construction is an invasion of a valuable right of the owner of land adjoining the street. The invasion would be a continuous one and it can be remedied only by a mandatory injunction ordering the removal of the structure itself and not mere damages. **7 Sau L R 116 : AIR 1955 Sau 63 (65, 66, 67) (Prs 5, 12, 15, 16) (DB).**

19 (B). Abatement.

——Nuisance — Branches of overhanging trees — 'Nizhal Vadai' — Right of affected party to abate the nuisance.

When the plaintiff's land is affected and becomes unproductive on account of the shade caused by the overhanging branches of the trees on the defendant's adjoining land—'Nizhal Vadai'—it is open to the plaintiff to abate the nuisance even without resorting to the Court. The mere fact that the offending trees have been in existence for a considerable number of years will not make any difference. For one thing no prescriptive right could be acquired to commit a nuisance and secondly what is stated initially to be a harmless nuisance can become intolerable by passage of years as the branches of a tree are ever growing and changing. Further the fact that the previous owner of the affected land did not take any steps to abate the nuisance cannot estop or prevent a subsequent buyer to seek the relief which he is entitled to. **1958 Mad W N 313 : (1958) 2 Mad L J 157 : AIR 1959 Mad 12 (13) (Pt A) (Prs 3, 4).**

——Nuisance — Branches of tree planted on roadside invading private premises—Right of owner.

It is open to the owner of the premises in law to protect himself against an invasion by cutting the tree projecting on his land beyond the boundary of the road and by removing it from his premises; this he can do even though the fallen tree is doing no harm to him. **1955 B L J R 492 : I L R 34 Pat 661 : AIR 1955 Pat 432 (437) (Pt G) (Pr 15) (DB).**

19 (C). Authorised acts.

——Nuisance—Private nuisance—Right to commit—Acquisition of.

The right to commit a private nuisance can, in certain circumstances, be acquired either by prescription or by the authority of a statute. **1958 M P C 7 : 1958 M P L J 114 : 1958 Jab L J 110 : AIR 1959 Madh Pra 240 (243, 244) (Pt B) (Pr 15).**

——Nuisance — Breach of duty by local authority—Failure to maintain and repair drainage — It is liable for damages as any other subject is liable, unless it can rely upon statute as providing a defence to such an action — Bihar and Orissa Municipal Act does not permit commission of such nuisance—(Municipalities —Bihar and Orissa Municipal Act (7 of 1922), Ss. 68, 384). **I L R 38 Pat 516 : 1959 B L J R 53 : 1959 Pat L R 27 : AIR 1959 Pat 273 (274 to 277) (Pt A) (Pr 6) (DB).**

—— Nuisance — Damage caused by fall of tree — Statutory authority to plant trees—Liability of statutory authority for injury caused — (Bihar Local Self-Government Act (3 of 1885), S. 79).

No action can lie against the District Board for the planting of trees by the side of the road unless the plaintiffs, whose house was damaged by the fall of such a tree, prove that in its endeavour to exercise the power the District Board did not use due care and diligence. Where the District Board in planting the trees does not commit any negligence nor exercise the power given to it oppressively, arbitrarily and unnecessarily, the District Board is not liable for doing what it did in the exercise of an absolute power given to it under the statute or for its necessary consequences. Case law referred **1955 B L J R 492 : I L R 34 Pat 661 : AIR 1955 Pat 432 (439) (Pt H) (Pr 18) (DB).**

——Nuisance—Damage—Laying drainage on land of another is authorized by Bombay Municipal Boroughs

Act (18 of 1925), S. 132. AIR 1953 Sau 97 (98) (Pt B) (Pr 5).

19 (D). Continuing nuisance.

——Nuisance—Nuisance caused by fall of tree — Injury done by fall is not continuing wrong — Suit to recover damages for injury caused—Limitation—(Bihar Local Self-Government Act (3 of 1885), S. 146)—(Limitation Act (1908), S. 23).

The question as to whether a nuisance is of a continuing character or not has in each case to be decided on its own facts. A nuisance in wrongfully causing or allowing the escape of a deleterious thing, which in this case was the tree, into the land of the plaintiffs is not a continuing wrong. The criterion of a continuous wrong is not whether the right or its corresponding obligation is a continuing one, but whether the wrong is a continuing one.

Hence, a suit for damages caused by the fall of the tree if brought beyond three months from the date on which the tree fell is barred by time under S. 146, Bihar Local Self-Government Act, 1885. 1955 B L J R 492: I L R 34 Pat 661: AIR 1955 Pat 432 (436) (Pt F) (Prs 13, 14) (DB).

——Nuisance—Continuing nuisance — Injunction — Residential locality—Working of noisy power loom wearing factory—Form of relief—Factory restrained from working from 10 P. M. to 6 A. M.—Owner also afforded chance to abate nuisance — Specific Relief Act (1877), S. 54).

The plaintiff a householder brought a suit against the proprietors of a power loom wearing factory situated in a residential locality to restrain them from operating their factory as it was a source of nuisance to the plaintiff and the members of his family whose rest and repose were seriously interfered with. It was found that the factory was divided only by a party wall from the house of the plaintiff. The lower Courts held that the working of the factory amounted to nuisance and considering that the noise was intolerable in the nights granted an injunction to the effect that the factory should cease working between 9 P. M. to 7 A. M.

Held, that the finding of the lower Court that nuisance had been caused must be affirmed. (But the hours of restriction were curtailed to 8 hours from 10 P. M. to 6 A. M.) Further, the terms of the decree afforded a chance to the factory owner of abating nuisance by mechanical contrivance if possible. 65 Pun L R 80 : I L R (1963) 1 Punj 248.

19 (E). Injunction.

——Nuisance—Part III of the Constitution of India does not deal with rights of individual citizens inter se—Article 19 does not abrogate Law of Torts relating to private nuisance — Suit for injunction to prevent defendant from running flour mill as it amounted to private nuisance—Article 19 (1)(g) does not bar the suit. See Constitution of India, Part III (Gen). A I R 1960 All 632.

——Nuisance—Private nuisance—Constant noise—Injunction — Grant of — (Specific Relief Act (1877), S. 54).

The inconvenience, annoyance, and substantial physical discomfort caused by the constant noise cannot be adequately estimated in money. A man is entitled to the comfortable enjoyment of his dwelling house and to carry on ordinary conversation in that house without substantial interruption from any abnormal noise. If his neighbour makes such a noise as to interfere with the ordinary use and enjoyment of his dwelling house so as to cause serious disturbance to the ordinary conversation amongst the occupiers of the dwelling house, the owner or the occupier is entitled to be protected from it by means of an injunction. 1958 M P C 7 : 1958 M P L J 114 : 1958 Jab L J 110 : A I R 1959 Madh Pra 240 (244) (Pt C) (Pr 18).

19(F). Public nuisance.

——Nuisance—Public and private nuisance—Distinction.

A private nuisance is a civil wrong but a public nuisance is a criminal offence, an act not warranted by law or an omission to discharge a legal duty which act or omission, obstructs or causes inconvenience or damage to the public in the exercise of rights comman to all the subject. Public and private nuisance are not in reality two species of the same genus at all. AIR 1960 All 632 (633) (Pt C) (Pr 3).

20. Public nuisance.

See Note 19(F).

21. Right of action—General.

See also Civil P. C. (1908), Ss. 19 and 20.

(A) In cases of breach of contract.

21. Right of action — General.

——Right of action—Decree for damages — Death of judgment-debtor—Rule actio personalis moritur cum persona does not come into play. 1962 M P L J (Notes) 154 : AIR 1963 Madh Pra 49 (51) (Pt C) (Pr 10).

——Right of action — Liability — Damnum sine injuria — Meaning — Co-owners — Water flowing through defendant's lane, as a result of construction on his land, damaging plaintiff's walls — No easementary right vesting in plaintiff—No right of action accrues to plaintiff — Case of damnum sine injuria. 1961 Jab L J 1352 : AIR 1963 Madh Pra 28 (28) (Prs 3, 4).

——Right of action — Damages for obstructing construction on, one's own land claimed — Ascertainment of damages, not necessary — Damages to compensate inconvenience by obstruction.

Plaintiff appellant contended that he had a right to construct his latrine at a point on his own property and the defendant-respondent committed a tort in obstructing him from constructing the latrine. Therefore, he claimed general damages on account of the inconvenience caused to him for the tort committed by the defendants. Plaintiff claimed Rs. 25 as nominal damages.

Held, that plaintiff claimed general damages on account of the inconvenience, as such no ascertained loss or specific damages having been proved, he was still entitled to general damages for a tort. It would be sufficient for him to prove that he had such a right and that there was an obstruction by the defendants. 1961 M P L J (Notes) 165.

——Right of action — M. B. Secondary Education Act (51 of 1950), S. 16—Regulations under—Breach.

An act may cause inconvenience and even loss to others, such as competition in business. According to law, competition with all its drawback is permissible, provided nobody's right, such as a patent right or the right to a trade-mark is infringed. The simple rule of law is that no action lies on the ground of mere damage, however, substantial, caused by some act which does not violate a legal right.

Held that assuming that the Board in granting recognition to the rival institution had acted in breach of the provisions of the Regulations made under the M. B. Secondary Education Act, Smt. 2007 (Act No. 51 of 1950), the petitioner had failed to show any violation of his right, except that as a result of the competition, he had suffered a loss. 1959 M P C 52 : 1959 M P L J 150 : 1959 Jab L J 232.

——Right of action— Suit for damages—Abatement— Suit for recovery of damages— Defendants alleged to have caused pecuniary loss to plaintiff by entering into conspiracy — Death of plaintiff during pendency of suit — His legal representatives are entitled to be brought on record to continue suit. See Civil P. C. (1908), O. 22, R. 1. **('63) 76 Mad L W 581.**

——Right of action — Damages — **Domestic animals — Dogs — Right of owner to maintain action in trover for loss.**

Domestic animals like dogs are capable of being owned absolutely. The owner can maintain an action in trover for them and he retains his property in them even if they stray or are lost. **1961 Mad W N 10 : (1962) 1 Mad L J 279 : ILR (1961) Mad 514 : 1961 Ker L T 153 : 74 Mad L W 104 : AIR 1961 Mad 230 (232) (Pt B) (Pr 11).**

——Right of action — Wrong done, confined to one share-holder of company — Only such a share holder can complain — Other share-holders on behalf of himself and others, not being the individuals to whom wrong is done, cannot maintain an action for, that wrong. See Companies Act (1913), S. 30. **AIR 1953 Madh 520 (527) (Pt H) (Pr 19) (DB).**

——Right of action — Personal injury — Damages — Who can sue — Defendant's dog biting plaintiff's minor son — Suit for damages should be brought in name of minor represented by next friend under O. 32, Civil P. C. — Plaintiff had no locus standi to bring suit even if he had incurred expenses for treatment of his minor son. **AIR 1960 Manipur 49 (51) (Pt B) (Pr 7).**

——Right of action—Injuries—Action for personal injuries and for damage to his car due to collision with defendant's truck—Decree for reduced claim — Appellant claiming full amount — Death of plaintiff — Right to claim further relief, held, had come to an end —But so far the tort related or affected the car, the right to sue will survive to legal representatives of plaintiff and maxim actio personalis moritur cum persona will not apply. See Civil P. C. (1908), O. 22, R. 1. **AIR 1964 Pat 548 (DB).**

——Right of action — Injury to Property Rights — Plaintiff opening new windows — Defendants building wall on land not belonging to him — Dimunition of light and air coming through new windows— Suit for demolition of construction and permanent injunction — Action is maintainable if plaintiff is able to show that he has suffered an injury. See Easements Act (1882), S. 7. **AIR 1963 Raj 184.**

21 (A). In cases of breach of contract.

——Cause of action — Breach of contract procured by third party — Liability in tort.

Where a third person is found to have brought about a breach of contract, it is only the person that procures a breach of contract that commits a tort and no tortious liability could be fastened on a person who is alleged to have committed a breach of contract. The latter's liability will be ex contractu and he does not incur any tortious liability. **AIR 1959 Andh Pra 551 (554) (Pt B) (Pr 10) (DB).**

——Right of action — Procuring breach of contract of service — Actionability — Public policy — (Contract Act (1872), S. 23).

In order to succeed in an action for procuring breach of a service contract there ought to be some evidence, to predicate active association of the defendant with the breach of contract by the servant. Any active step taken facilitating a breach would be enough. No action lies for dissuading one (even if the finding be that the defendant was responsible for such act) from performing a contract which must be regarded as contrary to public policy, for example, a contract to serve on Rs. 2 p. m. for 112 months which is nothing short of a contract of serfdom. **ILR (1957) Madh Pra 645 : 1958 M P C 485 : 1958 M P L J 657 : 1958 Jab L J 724 : AIR 1958 Madh Pra 367 (367, 368) (Prs 4, 5).**

——Right of action — Procuring breach of contract —Liability for damages — Assessment of damages.

A defendant who procures a breach of contract or breach of contractual or business relations by illegal means or with malicious intent is liable in law for the consequences of his act. He cannot escape the liability on the ground that the act induced is one within the right of the immediate actor and therefore is not wrongful in so far as he is concerned. (1938) 2 M L J 769 : AIR 1938 Mad 958 and AIR 1935 Rang 73 (2), Distinguished.

There can be no doubt that on the facts found the plaintiff is entitled to general damages on the ground of defamation. But as regards the interference with his contractual relationship he must prove either that damage has resulted or that it is likely to result from the defendant's procuring the breach. It is not easy to assess general damages. It is really arbitrary and not amenable to any legal standard of measurement. It depends on various factors, the nature of the accusation, the language used, the social position of the parties etc.

But it is wrong to fix a consolidated sum as damages general as well as special. **1961 (2) Cri L J 247 : 38 Mys L J 559 : ILR (1960) Mys 645 : AIR 1961 Mys 178 (180, 181) (Prs 4, 6).**

22. Seduction.

——Seduction of wife — Presumption that wife was performing service — Husband's right to damages.

Plaintiff's case was that the defendant induced his wife to leave him and then the defendant married her by Pat form.

Held, that it could be presumed in such cases that a wife was performing service for her husband and by the conduct of the defendant in inducing her to leave the husband, the husband had been deprived of such services. The plaintiff's estimate of the damages on this account at Rs. 200 for a period of nearly twenty months could not be considered to be at all exaggerated. Damage for loss of society and for mental worry could reasonably account for the rest of the damages awarded by the lower appellate Court. The sum of Rs. 500 was not at all excessive. **1961 M P L J (Notes) 137.**

——Seduction — Action for damages — Seduced person, if can file.

An action for damages brought by the seduced person herself on the ground of seduction cannot be maintained for the reason that the person seduced cannot found on seduction, because seduction implies consent. **(1951) 1 Mad L J 1 : 1951 Mad W N 102 (2) : 64 Mad L W 189 : AIR 1951 Mad 466 (467) (Pt A) (Pr 5).**

23. Trade mark.

See (i) Trade Marks Act (1940), (ii) Trade and Merchandise Marks Act (1958).

24. Trespass.

(A) Damages.

(B) Who can sue.

24. Trespass.

●——Trespass—Laying of trap—Injury to trespasser — Owner fixing live naked electric wire of high voltage across passage to his latrine to dissuade trespassers — No warning that wire was live one — If a trespasser gets shock and receives injury, owner is

guilty of a tort and the person injured is entitled to recover. Ses Penal Code (1860), S. 304-A. (1964) Mad L J (Cri) 236 : (1964) 1 S C J 417 : (1964) 1 Cri L J 205 : AIR 1964 S C 205.

● —Trespass—Possession—Nature of—A trespasser can be in cultivatory possession—Possession taken by force — Animus for possession is present. See Tenancy Laws—U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 3. AIR 1964 All 213 (FB).

[Overruled in AIR 1968 S C 466.]

—Trespass — Plaintiff's land adjoining defendant's house — Land lying to north of defendant's house — Defendant opening door in north wall of his house with the purpose of having access to north—Plaintiff is entitled to relief for apprehended trespass against his land. AIR 1963 All 239 (241) (Pt C) (Pr 8).

● —Trespass—Column of air above land—Ownership of—Extent of—Easements Act (1882), S. 7.

Per Wali Ullah J. — (Obiter dicta). The general rule embodied in the maxim, cujus est solum, ejus set usque ad coelum et ad inferos (whose is the soil, his it is, even to the skies and to the depths below) has been considerably curtailed and qualified in recent times. This has been principally due to the development of aeronautics and consequently of aeronautical law during the past few years. The ownership of the surface of the soil does not necessarily carry with it either the possession or ownership of the column of the air space ad infinitum. The upward limit of the general rule embodied in the above maxim must, therefore, be understood to be rigorously limited at the present day : Case law referred. Municipal Board Kanauj v. Manohar Lal, ILR (1952) 2 All 1362 : 1951 All L J 561 : 1951 All W R (HC) 534 : 1951 R D (HC) 323 : AIR 1951 All 867 (871, 872) (Pt B) (Prs 23, 27) (FB).

—Trespass—Erection of a fencing, wall or building on somebody else's land, whether owner of land is a private individual or a public body is an act of encroachment and dispossession by itself and may give rise to a cause of action. See Muncipalities — Assam Municipal Act (1 of 1923), S. 318. 1958 Cri L J 1125 : AIR 1958 Assam 93 (DB).

—Trespass — Unlawful attachment—Effect of.

Mere unlawful attachment of a decree did not certainly amount to trespass according to law. It merely prohibited the judgment-debtors from making payment to the rival claimant. 62 C W N 389 : 99 Cal L J 185 : AIR 1957 Cal 617 (624) (Pt D) (Pr 24) (DB).

—Trespass—Central Provinces Land Revenue Act, 1917 (C. P. 2 of 1917), S. 218—Underground mineral rights — Assignee of such rights from Government — Occupation by him of surface land owned by another —Occupation in disregard to provisions of S. 218 (3) —His occupation amounts to trespass. See Central Provinces Land Revenue Act, (1917) (C. P. 2 of 1917), S. 218. 1962 M P L J 14.

—Trespass — Wrongful attachment of immovable property—Suit for damages—Basis of—Trespass and abuse of civil process — Distinction between. AIR 1957 Mad 156 (DB).

—Trespass — Duty of person towards trespasser — Trespasser expected on person's property—Person not to do something dangerous to trespasser—Person not to lure other's animals on to his land and kill them. 1949 Mad W N 472 : 62 Mad L W 493 : (1949) 2 Mad L J 143 : ILR (1950) Mad 365 : AIR 1950 Mad 58 (58, 59) (Prs 1, 3).

—Trespass—Attachment amounting to trespass.

Where the attachment is thoroughly improper and not bona fide in the sense that it was not made with any care or caution, though there may be no proof of malice, the attachment clearly falls within the meaning of trespass which has been defined as a wrongful act done in disturbance of possession of property of another or against his will. ILR (1952) Mys 176 : AIR 1952 Mys 90 (92, 93) (Pt C) (Pr 11) (DB).

—Trespass — What constitutes — Actionable wrong —Damages—Exemplary damages.

To constitute a trespass the act must in general be unlawful at the time when it is committed, and an act may be a trespass although it is committed by mistake or without malice. The commission of a negligent act may amount to a trespass though a person who has not been negligent cannot be a trespasser in respect of any involuntary or inevitable accident. Trespass is an actionable wrong and a mere trespass is as a rule actionable only and not criminally though even bare trespass may be a criminal offence under certain special Act. In an action of trespass the plaintiff if he proves the trespass is entitled to recover damages even though he has not suffered actual loss; though, if the trespass is accompanied by aggravating circumstancer, the plaintiff is entitled to recover exemplary damages. ILR (1952) Mys 176 : AIR 1952 Mys 90 (92, 93) (Pt D) (Pr 11) (DB).

—Trespass on goods.

Trespass on goods is an unlawful disturbance of the possession of the goods by seizure or removal by a direct act causing damage to goods, and the remedies available to a plaintiff against whom such trespass is committed is independent of his claims for other wrongs in respect of the property which are described as conversion or detention. Detenue is the form of action which lies when one person wrongfully detains the goods of another. The gist of the action is the unlawful failure to deliver them up when demanded. ILR (1952) Mys 176 : AIR 1952 Mys 90 (92, 93) (Pt E) (Pr 11) (DB).

—Trespass—Distress—Cattle on land of another—Right of distress—Damages—Occupier is entitled to seize any cattle which are unlawful on his land and detain them until compensation for damage done is paid — Distress is not limited to cattle — It can be exercised in respect of inanimate objects—Distress is not unlawful because compensation demanded is excessive — The wrongdoer should estimate the damage and lay it before Court. AIR 1955 N U C (Nag) 97.

—Trespass—Licensee—Right of entry.

Licensee entering premises of consumer for removing materials which belongs to consumer inspite of his objection—Both the licensee and the servant through whom entry was made commit trespass for which they were liable in damages. AIR 1950 Nag 246 (DB).

—Trespass — Trespass to land — Encroachment by building — Suit for ejectment — Compensation not proper relief. AIR 1957 Pat 308 (312) (Pt C) (Pr 15) (DB).

—Trespass—Projection of cornice of another's land —Effect of.

Even a projection of a cornice on another man's land amounts to trespass and the defendant cannot justify that trespass simply by saying that it has been done for ornamenting his building. If he wants to ornament his building in any way, he should do it by restricting himself on his own land. AIR 1927 Mad 357, Rel. on. ILR (1960) 10 Raj 1.

—Trespass—Trespass of goods—Trespasser cannot divest himself of responsibility for trespass on pretext that he committed trespass on behalf of another. AIR 1955 NUC (Raj) 291 (DB).

——Trespass — Conversion — Wrongful removal of chattel—No intention to assume possession—It is not conversion but trespass. **AIR 1955 N U C (Raj) 291 (DB).**

24 (A). Damages.

——Trespass—Damages—Proof of damage — Plaintiff in possession of temple under agreement—Dispossession by defendant — Claim for damages and loss in respect of offerings at temple — Amount of offering uncertain and voluntary—When there was no definite proof of loss suffered no decree for damages could be passed. See Contract Act (1872), S. 73. **AIR 1955 Ajmer 14.**

——Trespass—Damages—Damages claimed for breach of contract or in tort on ground of wrongful deprivation of possession — No decree for damages can be allowed in absence of definite proof of loss suffered by plaintiff. See Contract Act (1872), S. 73. **A I R 1955 Ajmer 14.**

——Trespass — Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates Mahals and Alienated Lands) Act, 1950 (M. P. 1 of 1951), Ss. 3, 4—Trespass —Underground mineral right holder trespassing on surface land — Surface land vesting in Government under S. 3 after such trespass—Right of surface land holder to recover damages does not pass or vest in Government. See Tenancy Laws—M. P. Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act, 1950 (M. P. 1 of 1951), S. 3. **1962 M P L J 14.**

——Trespass — Central Provinces Land Revenue Act, 1917 (C. P. 2 of 1917), S. 218 (4)—Trespass on surface land committed by underground mineral right holder —Permission of Deputy Commissioner to occupy surface land not obtained — Claim for damages brought by surface land holder by application in Revenue Court — S. 218 (4) does not apply—Revenue Court has no jurisdiction to entertain application. See Central Provinces Land Revenue Act, 1917 (C. P. 2 of 1917), S. 218 (4). **1962 M P L J 14.**

——Trespass upon person — Police Officer handcuffing an under-trial in hospital and chaining him to the window—If liable in tort for damages—Madras District Police Act (24 of 1959), S. 53 — Scope of protection under.

If an act is done by a Police Officer maliciously it ceases to be an act done or intended to be done under the provisions of the District Police Act. The moment an act is shown to be malicious it ceases to be protected by S. 53 of the Act and the three months' period of limitation does not apply. Where a Police Officer without any justification and contrary to the specific departmental rules and instructions, handcuffs an under-trial undergoing treatment in hospital and chains him to a nearby window as if he is a dangerous animal it cannot be said that his conduct is bona fide and he will be liable for damages in tort. In such cases it is not necessary for the victim of the tortious act to attribute and prove an intention or motive on the part of the Police Officer. If the Officer has exceeded and abused his authority the act will be malicious and mala fide unless it can plausibly be contended that the circumstances justified the use of the power. **(1965) 2 M L J 530 : 78 Mad L W 316 : (1965) M L J (Cr) 890 : ILR (1966) 1 Mad 393 : AIR 1965 Mad 438 (439, 440) (Prs 4, 7) (DB).**

——Trespass — Trespass to moveable property — Damages — Seizure and detention of lorry by Police Sub-Inspector before expiry period allowed to owner to pay tax—Action held wrongful and constituted tort of trespass — Nominal damages of one rupee allowed. See Madras Motor Vehicles (Taxation of Passengers and Goods) Act (16 of 1952), S. 10 (2). **1962 Mad L J (Cri) 467 : (1962) 2 M L J 212.**

——Trespass—Wrong to movable property is actionable per se without proof of actual damage—Plaintiff need not prove that defendant acted intentionally or even negligently. **AIR 1955 N U C (Mad) 2423.**

——Trespass—Damages—Trespass to goods—Measure of damages general and special—Mode of, stated. **AIR 1955 N U C (Mad) 2423.**

——Trespass to property—Tort — Damages—Suit for —Village Panchayat Committee unlawfully demanding tax not due and attaching plaintiff's movables — Suit is maintainable against Panchayat but not against sarpanch—Malice need not be proved—S. 111 (1) Bombay Village Panchayat Act—Protects Sarpanch but not panchayat—Law on subject stated. **(1964) 1 Mys L J 112.**

——Trespass—Damages—Liability for—Tenant subleasing property without consent of landlord —Joint decree for damages against tenant and sub-tenant—Validity—Measure of damages.

Where a tenant in a house sub-let it to other two sub-lessees at different times without the consent of the landlord, it was held that a joint decree for damages could not be passed against them all as the tenant and his sub-lessees could not be said to have committed a joint act of trespass and as one of the sub-lessees was in possession of only a portion of the house the decree for damages could be passed against him only to the extent of the portion occupied by him, AIR 1934 Pat 394, Foll. **22 Cut L T 387 : ILR (1956) Cut 587 : AIR 1957 Orissa 246 (247) (Pr 5).**

——Trespass — Damages — Suit for possession on ground of dispossession before vesting of estate in state of Bihar — Relief of damages on the ground of trespass—Amendment of plaint, necessity of—Cause of action for damages arose on date of vesting — If plaintiff had an opportunity to amend the plaint but did not do so he must be deemed to have waived his claim for damages. See Civil P. C. (1908), O. 6, R. 17. **1965 B L J R 119.**

——Trespass — Deprivation of chattel — Remedies open to plaintiff—Measure of damages.

In the case of trespass on chattel, when the chattel has been taken away by the trespasser the following remedies are open to a plaintiff — (i) He may treat the trespass by the defendant as if he has been totally deprived of the chattel. (ii) He may claim damages for wrongful detention of the chattel and also redelivery of the same. In the first case, the cause of action is the act of taking away the chattel and the plaintiff is prima facie entitled to the value of the chattel by way of damages and it is irrelevant what happened to the chattel after the date of the trespass. The plaintiff's right to claim damages arises and is complete as soon as trespass has been committed : ILR 17 Cal 486 (P C), Rel. on. Thus where the plaintiff has claimed damages for trespass which took place when his cattle were wrongfully attached and taken away by the defendant the defendant incurred the liability to recompense the plaintiff to the extent of the value of the chattel on the date he took them away. If subsequently the cattle died a natural death it would not exonerate the defendant from his liability to pay damages to the extent of the value of the cattle. **1965 Raj L W 56 : I L R (1965) 15 Raj 159 : A I R 1965 Raj 121 (124) (Pt C) (Prs 10, 11, 12, 14).**

——Trespass—Trespass of goods — Exemplary damages can be awarded where the manner of taking goods has been high-handed — But such damages have to be pleaded. **AIR 1955 N U C (Raj) 291 (DB).**

——Trespass—Trespass of goods—Damages—Normal measure is price of goods. **AIR 1955 N U C (Raj) 291 (DB).**

——Trespass—Trespass of goods—Damages—Burden of proof lies on plaintiff, to prove loss — (Evidence Act (1872), Ss. 101 to 103). AIR 1955 NUC (Raj) 291 (DB).

——Trespass—Damages— Deprivation of property by executive Order—State having wrongfully sold tendu leaves belonging to plaintiffs, the latter were entitled to recover damages. See Constitution of India, Art. 31 (1). AIR 1955 Vin Pra 19.

24 (B). Who can sue.

——Trespass to goods — Trespass by co-sharer by removing paddy from possession of tenants—Landlord has right to sue for price for paddy. AIR 1955 NUC (Assam) 2303.

——Trespass—Allottee of evacuee (property) can sue trespasser for recovery of damages for use and occupation. See Administration of Evacuee Property Act (1950), S. 2 (a). AIR 1965 Punj 119.

——Trespass on chattel in possession of bailee — Bailor's right to sue stranger for damages.

In the case of trespass, ordinarily the person who has possession of the property has a right to bring an action, but a person who has an immediate right of possession may also sue in certain circumstances.

Where there is simple bailment of a chattel, the bailee holds merely as an agent for the bailor. The one has actual possession but the other has a right of possession. In such a case the baillor has a right to sue a stranger for damages for trespass in respect of the chattel in spite of the fact that he was not in immediate possession thereof. English case-law referred. 1965 Raj L W 56 : ILR (1965) 15 Raj 159 : AIR 1965 Raj 121 (122, 123) (Pt A) (Prs 5, 7).

25. Vicarious liability.

(A) Master and servant.

(B) Government servant.

(C) Principal and agent.

25. Vicarious liability.

——Vicarious liability — Agency in Torts. It is not true to say that there could be no agency in tort. AIR 1959 Cal 597 (599) (Pt C) (Pr 10) (DB).

——Vicarious liability — Criminal liability of person for criminal acts of servant, agent or independent contractor. Principal or master is not generally criminally liable for acts or omission of his agents or servants, whatever his civil liability may be. 1965 (1) Cri L J 301 : AIR 1965 Madh Pra 66 (DB).

——Principal and agent—Government's responsibility for tortious acts of its agents—Illegal seizure of licensee's goods by Prohibition Sub-Inspector — Act of seizure not bona fide and he is actuated by malice or ill-will — Government not liable to licensee for the act of Prohibition Inspector—Madras Prohibition Act (10 of 1937), Ss. 18 and 34. AIR 1957 Mad 190 (191) (Pt C) (Pr 2).

——Vicarious liability — Principle of—How far applicable to State—State taking over management of plaintiff's estate under Bihar Act 21 of 1949—Loss caused to plaintiff due to wilful default or gross neligence of estate manager—State held liable.

For applying the rule of vicarious liability in relation to the State, a distinction must be made between acts of State, or acts which are done by the State in exercise of what are known as its police powers, and other acts which do not fall within that category. In regard to acts of State it may be conceded that any wrong done to the persons or property of a private individual does not normally afford a case of action for compensation against the State. But in regard to another class of Governmental acts which, for instance, involve detention by the State of land, goods or chattles belonging to the private individual, as also acts of mercantile or commercial nature, undertaken as measures of social welfare or social control, the State cannot claim absolute immunity from the application of the principle of vicarious liability of the master for the wrongful acts of its servants. AIR 1962 SC 933 and AIR 1954 Pat 529 and AIR 1952 Cal 242, Rel. on. Where plaintiff's estate was taken over by the State under Bihar Act 21 of 1949, for loss arising out of wilful default or gross negligence of the manager of the estate. State was liable. ILR 44 Pat 105 : AIR 1964 Pat 13 (23) (Pt B) (Prs 33, 35) (DB).

——Vicarious liability — Corporations doing business as printer and publisher of newspaper—Cannot escape vicarious liability for a publication if it amounted to a contempt of Court. See Contempt of Courts Act (1952), S. 3. 1964 (2) Cri L J 450 : AIR 1964 Punj 428.

——Vicarious liability—International Law — Suit for damages against new State for tort committed by former State which has ceased to exist — Suit is not maintainable. See Constitution of India, Art. 300. AIR 1960 Raj 49 (DB).

25 (A). Master and servant.

——Master and servant —Vicarious liability—Hire of motor bus with driver — Liability of hirer for negligence of driver indicated. AIR 1952 All 449 (450, 451) (Pt A) (Prs 8, 9, 10).

——Master and Servant — Negligence of servant — Vicarious liability.

A master who is vicariously liable for the wrongful act of his servant cannot be held so liable unless the wrongful act has been done in the course of his employment. It is not necessary that every wrongful act for which the master is held liable should be proved to have been expressly authorised by the master. ILR (1963) 15 Assam 474 : AIR 1964 Assam 85 (87) (Pt A) (Pr 8) (DB).

——Master and Servant—Damages—(Fatal Accidents Act (1855), S. 1)—Motor Vehicles Act (1939), S. 96 (2)—Liability of Insurance Company).

The person driving defendant No. 3 had no driving licence at all and the way the vehicle was zigzagging in its movement on the road clearly indicated that it was being driven by person who did not either know how to drive or was drunk or both. The truck was at the time employed for the purpose of the business of the owners defendants 1 and 2. The driver was present in the truck at the time of the accident and he allowed defendant No. 3, take charge of the steering wheel.

Held, that defendants 1 and 2 would be liable for damages to the party who suffered on account of the servant's negligence.

Held, further that the Insurance Company could not be held liable for payment of damages under the provisions of S. 96 (2). Motor Vehicles Act. AIR 1955 Assam 157 (161) (Pt B) (Prs 12, 13) (DB).

——Master and servant — Vicarious liability — Conductor of a truck having no licence driving it negligently and damaging plaintiff's goods — Liability of owner — Owner is not liable — (1900) 2 Q B 530, Foll; (1895) 2 Q B 84 Rel. on; (1915) 1 K B 644 and AIR 1956 Mad 41, Dist. 1960 Nag L J (Notes) 41.

——Master and servant — Vicarious liability—Liability of master for actionable negligence of servant. 59 Bom L R 1196 : AIR 1958 Bom 218 (219, 220) (Pt A) (Prs 1, 4).

——Master and Servant —Liability of master for acts of his servant—A and B entering into partnership and

forming Union for plying buses—Subsequent modification in partnership—Each partner taking management of his buses—Irregularities committed by A's driver—Suspension of bus service of union by Transport Authority - A held liable to B for damages. See Partnership Act (1932), S. 13 (e) and (f). **AIR 1956 Bom 155.**

——Master and servant—Lending of servant—Liability for damages by servant.

Where the question is, when *A's* servant is sent by *A*, who may be called the general employer, to do a certain work for *B*, who may be designated "the hirer", and the servant commits a tort and causes damage to a third party in the course of execution or performance of that work, who, *A* (the general employer) or *B* (the hirer) would be liable to the injured third party for the damage done the enquiry should be as to which one of them had the right to control the doing of the work in the course of execution whereof, the tort in question was committed. The answer would, of course, depend on the facts of each particular case. Same would be the result of the application of the other test namely, whether the servant had been transferred or only his services or the use and benefit thereof. The control being obviously in the temporary employer, where the servant and not merely his services are lent, the hirer or the temporary master should be regarded as the relevant master. Such transference of control, ordinarly, implies transfer of the servant, as distinguished from mere transfer of his services, in which latter case the general employer, retaining the relevant control in his hands, would remain liable. The resultant position would be the same and in no way different if we act upon the distinction between cases of skilled and unskilled labour. **62 Cal W N 696 : I L R (1959) 2 Cal 722 : AIR 1958 Cal 597 (599, 605, 606) (Prs 16, 37, 39, 40, 43) (DB).**

—— Master and Servant — Vicarious liability — Suspension bridge under widening — Loosening of wire ropes — Plaintiff's son passing over bridge — Bridge tilting and plaintiff's son falling in river and dying — Negligence of contractor's men in not closing bridge for traffic — Liability of contractor. See Fatal Accidents Act (1855), S. 1-A. **AIR 1963 Him Pra 37.**

——Master and Servant — Implied authority to bind master.

The relation of master and servant does not in itself confer on the servant an implied authority to bind his master. As a general rule the master is not liable for the contracts entered into by this servant without express authority. An authority to bind the master may, however, be implied from the circumstances of the particular case.

Where in a suit to recover purchase money the case of the plaintiff was that *A* who was in the service of *B* purchased a sari in the name of *B* and as he was the authorised agent, *B* was bound to pay the amount and it was shown that there were other servants who used to make purchases and *B* had never challenged their acts.

Held, that the mere fact that other servants used to make the purchases would not be sufficient to fasten *B* with liability for the act of *A*. Held, further, that the fact that the plaintiff believed that *A* was the authorised servant of *B* would not bind *B* unless it was shown that *B* had, by his conduct or action, held him out to be an authorised person. **ILR (1955) Hyd 475 : AIR 1956 Hyd 15 (16) (Prs 7, 8).**

——Master and servant — Vicarious liability—Plaintiff sustaining injury in a motor collision — Proof that car which caused accident belonged to defendant — Presumption that driver was servant or agent of defendant can be drawn—Presumption is however rebuttuble. **ILR (1964) Madh Pra 91 : 1963 M P L J 162 : 1963 Jab L J 336 : (1963) 33 Com Cas 667 : AIR 1963 Madh Pra 164 (169) (Pt B) (Pr 16) (DB).**

——Master and Servant — Vicarious liability — Liability of owner for acts of motor driver — Owner held liable for act of driver performed improperly. **1960 M P L J 125 : 1960 M P C 78 : 1960 Jab L J 201 : I L R (1959) Madh Pra 583 : AIR 1960 Madh Pra 147 (148) (Pt A) (Pr 7) (DB).**

——Master and Servant—Vicarious liability — Liability of owner for act of motor driver — Driver giving lift to unauthorised person — Owner not liable. **1960 M P L J 125 : 1960 M P C 78 : 1960 Jab L J 201 : I L R (1959) Madh Pra 583 : AIR 1960 Madh Pra 147 (148) (Pt B) (Pr 10) (DB).**

——Master and servant — Vicarious liability — Liability for negligent acts of servant — Owner of motor lorry hiring same to another temporarily for purpose of transporting articles for marriage — Accident caused by driver's negligent driving of lorry — Damages resulting — Liability of owner of lorry — Test indicated — Driver continues to be servant of owner of lorry — Driver was not transferred to hirer but only the use of his services — Hirer had no control over driver for all purposes — Owner must be liable for damages. **(1964) 1 M L J 316 : 77 Mad L W 174 : I L R (1964) 2 Mad 383 : AIR 1964 Mad 362 (363, 364) (Prs 7, 9).**

——Master and Servant — Vicarious liability — Negligent driving of motor bus by conductor when driver was seated by side — Responsibility of driver and master.

In a suit for damages for the injuries sustained by the plaintiff when he was travelling in the defendant's bus, it was proved that the conductor was permitted by the driver to drive the bus for a distance of 12 miles and that the driver was seated by the side of the conductor, when the accident occurred on account of the negligence on the part of the conductor who was actually driving :

Held, that negligence must be attributed to driver who was the person who was lawfully authorised to drive, his negligence arising in allowing the conductor to drive in a negligent manner. The driver had the further duty of controlling the driving by the conductor and to see that he did not negligently dirve; and if in the circumstances an accident happened due to the negligence of actual driving of the bus, the driver cannot escape liability and consequently the master, who employed the driver would also equally be liable, since what has been done must be deemed to be in the course of the employment of the driver who had directed the conductor to drive. **1956 Mad W N 596 : I L R (1957) Mad 513 : 69 M L W 600 : (1956) 2 M L J 230: AIR 1956 Mad 641 (641, 642) (Prs 1, 7, 8).**

——Master and Servant—Vicarious liability—Owner of lorry — Lorry driven by driver — Accident — Presumption is that driver was acting in course of employment. **37 Mys L J 718 : I L R (1958) Mys 159 : AIR 1963 Mys 105 (109) (Pt A) (Pr 21) (DB).**

——Master's liability for unauthorised torts of his servant.

The master's liability for the unauthorised torts of his servant is limited to unauthorised modes of doing authorised acts. **ILR (1955) Nag 860 : 1955 Nag L J 575 : AIR 1955 Nag 269 (271) (Pt E) (Pr 17) (DB).**

——Master and Servant—Vicarious liability — Salesmen of licensed Excise vendor found in unauthorised possession of excisable articles — Salesmen found sitting in shop for purpose of selling goods when unauthorised goods were seized — Salesmen must be held to have been acting on behalf of vendor. See Bihar and Orissa Excise Act (2 of 1915), S. 59. **('65) 31 Cut L T 221 : I L R (1965) Cut 27.**

——Master and Servant — Relationship — Distinction between servant and independent contractor pointed out — Liability of master for wrongful acts of his servant indicated. See Contract Act (1872), S. 182. AIR 1962 Pat 384 (DB).

——Master and servant—Vicarious liability—Master when liable for act of his servant — Liability whether dependent upon benefit to master—Banker and Customer—False assurance by bank accountant to third party about joint operation of overdraft account of customer and fraudulent representation about his status — Third party induced to part with his money on account of such representation and assurance — Liability of bank for act of accountant.

In order to fix up the liability of a master, the plaintiff has only to show that the agent was working within the scope of his authority. It is not necessary to show that the impugned act was also for the benefit of the master.

Held, on facts (i) that the action of the Defendant Bank or its employees, in allowing B partner of (third party) A to withdraw the money and goods from his account on his own signature alone, in disregard of the instructions, if any, given by him previously about joint operation by himself and A (third party) was perfectly justified and did not amount to any wrongful act. There could be, therefore, no vicarious liability arising out of that act. (ii) The Bank would not also be liable on account of the assurance which C (the Bank accountant) had given to A, about the joint operation of B's account in the Bank, because he was only in charge of maintaining the overdraft account and not anything beyond that. Such an assurance could not be said to be within the scope of business or agency or authority or duties of C as an employee and accountant of the Bank. The Bank, therefore, would not be liable for any consequences following from that assurance. ILR 41 Pat 213 : AIR 1961 Pat 488 (491 to 494, 496) (Prs 6, 7, 9, 11) (DB).

——Vicarious liability — Negligence—Master's liability — Lorry driver authorising cleaner to drive vehicle — Damage by rash and negligent driving — Owner of lorry is liable to pay damages on principle of delegation. See Tort — Negligence — Master's liability. AIR 1965 Punj 376.

——Master and Servant — Vicarious liability — Servant's act within scope of service but unauthorised—Liabiltiy of master.

It is well established that the master is bound by the acts of the servant even if the act was unauthorised or prohibited provided the act was within the scope of the service or employment. The principle is that when a servant does any act which he is authorised by his employment to do under certain circumstances and conditions and does it in a manner which is unauthorised and improper even then the employer is liable for the wrongful act of his servant. On this principle it follows that even if a driver was authorised to drive the vehicle only upto 9 p. m. the master is liable for his wrongful act if he drove it at 11 p. m. ILR (1959) Punj 714 : 61 Punj L R 683 : AIR 1959 Punj 297 (304) (Pt J) (Pr 33) (DB).

——Master and servant — Joint tort-feasors—Master's liability for servant's wrong — Suit for damages against master alone — Master jointly and severally liable for any tort committed by his servant while acting in the course of his employment—(Fatal Accidents Act (1855), S. 1). 61 Punj L R 683 : ILR (1959) Punj 714 : AIR 1959 Punj 297 (304) (Pt K) (Prs 34, 35) (DB).

——Master and Servant — Liability of owners — No vicarious liability. See Motor Vehicles Act (1939), S. 123 (1). 1963 (1) Cri L J 481 : AIR 1963 Raj 81 (DB).

——Master and Servant—Master's liability for acts of servant.

Master is responsible not merely for what he authorises his servant to do, but also for the way in which he does it. If the unauthorised and wrongful act of the servant is not so connected with the authorised act as to be a mode of doing it, but is an independent act, the master is not responsible for, in such a case, the servant is not acting in the course of his employment, but has gone outside of it. Each case has to be decided on its own facts. AIR 1943 P C 63, Foll. 1954 Ker L T 60 : ILR (1954) T C 208 : AIR 1954 Trav-Co 305 (310, 311) (Pt D) (Prs 35, 36) (DB).

——Master and Servant — Master's liability for acts of servant — Tortious acts of servant—Liability of master.

It is settled law that a master is liable for the tortious acts of his servants committed while acting in the course of the employment if it is proved (1) that the relationship of master and servant did exist at the time of the act complained of and (2) that the act was committed in the course of the employment of the servants. A I R 1943 PC 63, Rel. on. 1949 T C L R 277 : AIR 1951 T C 171 (2) (174) (Pt C) (Pr 7) (DB).

25 (B). Government servant.

——Vicarious liability — Government servant — Liability of Government for acts of its servants — Principles — Tortious acts committed by public servants in course of employment and in exercise of statutory functions delegated to them by Government — State is immune from liability—Claim for damages held not sustainable. AIR 1965 S C 1039.

——Master and Servant — Vicarious liability — Liability of State as employer — Act done in course of employment but not in connection with sovereign powers of State — Still the State like any other employer is vicariously liable. See Constitution of India, Art. 300. AIR 1962 S C 933.

——Master and Servant — Vicarious liability—Government servant — Liability of Government for act committed by servant in performance of duty imposed by law

A master is ordinarily held liable for the acts of his servant because the presumption is that the servant acts under the master's direction and guidance and for his benefit. It is true that in certain cases the servant may go against the master's directions, and yet the law may hold the master liable because the master is supposed to control him. But where the servant acts in performance of the duties imposed upon him by law the master has no right to control him nor to give him any instructions. He is obeying the law and not the master and naturally the master should not be held liable for anything which the servant does while carrying out the aforesaid duties. ILR (1957) 1 All 94 : 1955 All L J 697 : AIR 1956 All 75 (77) (Pt A) (Prs 10, 16) (DB).

——Master and Servant—Vicarious liability—Crown servants — Liability of Crown — Stolen goods recovered and lost through negligence of Crown servants—Rule embodied in maxim respondeat superior does not apply — Whether immunity of State extends in respect of torts by Crown servants committed in performance of all transactions in exercise of sovereign powers (Quaere) — Government of India Act (1935), S. 176. 1950 All L J 46 : 1950 All W R 56 : ILR (1951) 1 All 135 : AIR 1950 All 206 (210) (Pt B) (Prs 22, 23).

——Vicarious liability — Government servants—State when liable for acts of its servants—Government servant acting under powers conferred by Act, has indemnity against all remedies of injured persons — State held was not vicariously liable. (1964) 2 An

L T 310 : (1964) 1 Andh W R 253 : ILR (1965) Andh Pra 360 (DB).

——Vicarious liability—Liability of Government for tortious acts of its servants—Government not liable for act committed by servant in exercise of sovereign powers. See Constitution of India, Art. 300. AIR 1961 Andh Pra 283 (DB).

——Vicarious liability—Liability of Government for acts of subordinates — No liability unless the State had expressly authorised the act. AIR 1959 Assam 28 (54) (Pt C) (Pr 73) (DB).

——Vicarious liability—Illegal seizure—Illegal acts of Government servants — Ratification by State — Effect.

Held, that as the State prosecuted the plaintiff's manager for the alleged violation or contravention of the Defence of India Rules, on which the illegal seizure was founded, and, in point of fact, in the course of the said criminal proceedings (which must be taken to be part of one continuous course of conduct on the part of the State) supported the detention of the seized stock of rice and resisted its return to the plaintiff and even its sale or disposal at the plaintiff's instance, that was sufficient ratification by the State to make it liable for compensation for the above illegal seizure. Further the State eventually appropriated the sale proceeds of the seized stock of rice which it sold or disposed of after getting possession from the Court at its own instance as its own property. On his finding also the State would be liable for compensation to the plaintiff. A I R 1959 Cal 597 (598) (Pt A) (Prs 7, 8) (DB).

——Vicarious liability —Illegal seizure—Ratification —Express authority—Necessity.

Obiter. — Ratification in relation to the State's liability for the illegal or unlawful acts of the officers, is to be understood in its loose or popular sense or dictionary meaning of approval or confirmation of the act and adoption of all its benefits and liabilities (obligations), that is, all its consequences and not in its strict legal sense, if that means that there can be no ratification except by a person or authority, competent and/or having the power to do the act, to be ratified, validly, as, otherwise, by ratification the illegal act itself would become valid, being rendered, by such ratification, the legal act of such a competent person or authority and the liability or claim for damages for the same would disappear. By the ratification, in its said legal sense, the tort would disappear and, along with it, the claim or liability for damages. It would then be useless, and unmeaning too,—to say that the State would be liable for the tortious acts of its officers and servants if it ratified the same and that proposition which is now a well-established and firmly settled or accepted proposition would become a meaningless platitude. There exists no material distinction between "express authority" and "ratification", as, for the above purpose and in the relevant contest, ratification will be equivalent to antecedent authority and will relate back for the inception of the particular act or transaction in question and will have a complete retrospective or retroactive effect or efficacy, having the same effect as original authority. AIR 1959 Cal 597 (598, 599) (Pt B) (Prs 9, 11) (DB).

——Vicarious liability—Crown Servants.

The master is liable where the servant, acting in a matter which is within the scope of his authority, that is, within the course of his employment, commits a wrong by exceeding the authority vested in him. A suit would lie against Government for tort committed by its servants in the course of their employment in a business or commercial undertaking owned by the State. The immunity, if any, which is afforded in respect of acts done in exercise of powers or duties under a statute is confined to acts done in exercise of governmental powers. If the acts complained of are acts in connection with a private undertaking or an undertaking not in exercise of sovereign powers, then there is no immunity.

Where on the plaintiff's failure on demand to disclose his name and address he was arrested by the railway servant, the railway servant concerned was acting in the discharge of duties which were incidental to the conduct of a commercial undertaking. The fact that S. 132 of the Indian Railways Act empowers a railway servant, under certain circumstances, to arrest, without warrant or other written authority, a passenger, does not afford immunity to the owner of the railway undertaking from the consequences of a tortious act on the part of its servant, simply because the relevant statute gives that servant authority to act in a particular way. Case law discussed. 56 Cal W N 248 : A I R 1952 Cal 142 (145, 146) (Pt B) (Prs 8, 9).

——Liability — Liability of Crown for acts of its servants — Extent of — Government of India Act (1935), S. 176.

As regards the liability of the Crown for acts of its officers and servants a distinction must be made between acts done by the Crown in pursuance of ventures which a private individual might undertake equally well, and acts done in exercise of Governmental powers which could not be lawfully exercised save by the sovereign authority or persons to whom the sovereign authority might delegate those powers. Acts of the former class are mercantile operations or operations of like kind. Acts of the second class fall under two categories. One class are acts of State properly so-called, such as making a treaty commandeering private property for war purposes, or quelling civil disturbances by force. Such acts are never justifiable in Courts of law, and since the Crown itself is not answerable for such acts in its Courts, there is no principle upon which it could be made liable for the acts of its officers or subordinates The immunity is absolute. The other class of acts are those which are done under the sanction of some municipal law or statute and in exercise of powers thereby conferred. This class can be subdivided further into two classes : (i) those consisting in detention by the Crown of land, goods or chattels belonging to the subject and (ii) those done by officers of the Crown in the discharge of their official duties. With regard to acts of the first sub-class, an action would lie in the Courts in India, and it would seem that even in England, a Petition of Right would lie. With regard to acts of sub-class (ii) however, no action would lie except in cases where it can be proved that the impugned act had been expressly authorised by the Crown or that the Crown had profited by its performance. 51 C W N 537 : ILR (1947) 2 Cal 141 (DB).

——Vicarious liability — Negligence of servant — Master's liability — Servant in Government Military Farm —Negligence by—Liability of Government.

A suit lies against the Union of India for torts committed by its servants in connection with a private undertaking or an undertaking not in exercise of sovereign powers A I R 1954 Pat 529, Ref.; A I R 1932 Cal 834, Rel. on.

Held (i) that the farm run by the Government was not an undertaking which could be referred only to its sovereign powers. It was an undertaking which any private patron could take to and was indeed in the nature of a business or commercial concern. It was immaterial whether or not the customers belonged exclusively to military organisation. (ii) That it was not an act of a Government servant which was performed in exercise of any statutory powers. The case was governed by the ordinary law of the liability

of a master for the tort committed by his servant. (iii) That the accident was caused through driver's negligence. In the circumstances the Union of India would be liable as the injury sustained by the plaintiff was caused by its servant's negligence in the course of his employment. 1957 M P C 393 : 1957 Jab L J 765 : 1957 M P L J 585 : ILR (1957) Madh Pra 43 : A I R 1957 Madh Pra 159 (160, 161) (Pt A) (Prs 4, 5, 6, 11) (DB).

——Vicarious liability—Liability of State for acts of its servants—State claiming immunity from liability on ground that act was done in performance of sovereign function — Pleading and proof—Absence of—Effect.

In a suit for damages against the State for personal injuries suffered by the plaintiff due to rash and negligent driving of a motor vehicle belonging to the Civil Supply Department of the State, if the State claims immunity from the liability for the tort committed by its servant on the ground that the accident happened during the exercise of sovereign function of the State it is for the State to allege and prove the facts which would justify the view that the function that its servant was performing was a sovereign function. The question as to whether the driver was performing a sovereign function is not a pure question of law but a mixed question of law and fact. In the absence of pleading and proof it was not open to the State to raise the plea at the stage of arguments nor was the Court justified in giving a finding that the accident happened during the exercise of a sovereign function by a servant of the State. 38 Mys L J 323 : ILR (1960) Mys 130 : AIR 1960 Mys 222 (224) (Pt A) (Prs 10, 12, 14, 15) (DB).

——Vicarious liability—Crown servants.

Where the Forest Range Officer wrongfully interfered with the removal of timber by the purchaser of the forest the wrongful acts of the Range Officer arise out of the exercise of the commercial or mercantile functions and not in the exercise of sovereign powers and the Secretary of State for India is liable for the acts of the Range Officer. AIR 1952 Nag 213 (215) (Pt B) (Pr 14) (DB).

——Vicarious liability—Liability of Government for acts of their servants.

Police officers seizing goods belonging to plaintiff —Seizure neither authorised by the State nor had the sanction of any law nor was it for purposes of Government — Conspiracy between officers and Government not proved — Government neither ratifying nor deriving any benefit from such seizure—Held, that in the circumstances the Government was not liable for the tortious acts of their servants. ILR (1954) Cut 171 : 1954 Cri L J 1625 : AIR 1954 Orissa 225 (232, 233) (Pt J) (Prs, 25, 26) (DB).

——Vicarious liability—State servants—Vicarious liability of State for acts of its servants—Extent of indicated — Goods seized and sold under purported authority of statute—State held not liable. AIR 1963 Pat 290 (292) (Pr 6).

——Vicarious liability—Government servant — Tort by—Act ratified by Government.

Where the Additional District Magistrate who passed the order of requisition and acquisition of plaintiff's goods under R. 75.A of the Defence of India Rules did not commit any irregularity and his act was not tortious there can be no question of making him personally liable for the compensation payable in respect of the property. Even if his act was wrongful or tortious the State would still be liable when it ratified the act of servant by refusing to pay compensation and by profiting out of the act by retaining the amount realised by the sale. AIR 1958 Pat 512 (518) (Pt G) (Pr 9) (DB).

——Liability of Union to be sued — Non-duty-paid tobacco—Seizure and confiscation — Tobacco sold in spite of payment of duty and redemption fine — Suit for recovery of tobacco or its market price against Union of India — Such a suit claiming damages for the tort of conversion cannot be brought — But as certain amount of the sale proceeds of tobacco was deposited in Government treasuries and Union was benefited to that extent, plaintiff was entitled to refund of that money. See Central Excises and Salt Act (1944), S. 40. AIR 1958 Pat 439 (DB).

——Vicarious liability—Master and servant — Liability of Government for negligence of its servants—When duty to be performed is imposed by law and not by the will of the employer, the employer is not liable for wrong done by agent in such employment. See Constitution of India, Art. 300. AIR 1954 Pat 529 (DB).

——Vicarious liability — Suit against Rajasthan State Government for tortious act of Commissioner in ordering wrongful detention—Government is entitled to claim protection under S. 44, Public Safety Ordinance if other conditions laid down in S. 44 are satisfied—If Commissioner is protected under S. 44, vicaricus liability of State would also not arise because such liability is co-extensive with liability incurred by servant. See Public Safety — Rajasthan Public Safety Ordinance (1948), S. 44. AIR 1961 Raj 64 (DB).

——Vicarious liability—Liability of Government for acts of its servant — Position in England and India compared—(Constitution of India, Art. 300.)

In England, no action in torts to lie against the Crown, in common law, firstly on the maxim that 'the king can do no wrong' secondly, it was thought that the King could not be impleaded in his own Courts. The procedure by way of petition of right was, however available to the subject and in appropriate cases, the treasury used to pay compensation ex gratia. This immunity has, however, been brought to an end to a large extent by the Crown Proceedings Act, 1947, which came into force on 1st January, 1948. In India, the position is not yet settled by legislation and, therefore, the Courts have to depend upon case-law as it has developed from time to time. 1957 Raj L W 404 : ILR (1957) 7 Raj 773 : AIR 1957 Raj 305 (307) (Pt A) (Pr 9) (DB).

——Vicarious liability—Liability of Government for acts of servant—Death caused by rash and negligent driving by Government employee — Liability of Government for damages — (Constitution of India, Art. 300)

Held, that in the circumstances of the case the State of Rajasthan must be held to be responsible for the rash and negligent act of defendant 1 just as any other ordinary employer would have been. The car was being brought from a private workshop after repairs just as a car of any private owner would have been brought back. The driver was not taking the car to quell any riot or disturbance and there was no question of his being employed in exercise of sovereign powers.

The State is in no better position in so far as it supplies cars and keeps drivers for its employees in its civil service. When Government employs persons to drive vehicles on public roads for purposes for which ordinary persons also do then in our opinion, the Ssate may be held vicariously responsible for the acts of its employees just as any private employer. AIR 1957 Raj 17 and AIR 1932 Cal 834 and AIR 1934 Cal 128 and AIR 1915 Mad 434 and AIR 1950 All 206 and AIR 1944 F C 41 and AIR 1948 P C 121, Disting. 1957 Raj L W 404 : ILR (1957) 7 Raj 773 : AIR 1957 Raj 305 (307 to 309) (Pt B) (Prs 10, 20) (DB).

——Vicarious liability — Liability of Union of India for mistake or wrong done to public servant by another officer—(Master and Servant)—(Contract Act (1872), S. 211).

Where action is taken against a public servant by his superior officer during the course of statutory duties and the superior officer commits mistake in taking such action, the Union of India cannot be responsible vicariously for the acts of its employees because the action in question is not taken against the public servant concerned by the will or order of Union of India nor is that action ratified by it. Hence the Union of India is not responsible to pay damages in torts to the public servant in its employ on account of the mistake or wrong committed by another officer in its employ. ILR (1956) 6 Raj 804 : 1956 Raj L W 303 : AIR 1957 Raj 17 (19) (Pr 9).

——Vicarious liability — Acts of Government servant—Immunity of State — Exception — Illegal confiscation and release of grain on orders of State — Damage to grain due to negligence — Liability of State — Presumption of negligence—(Constitution of India, Art. 295 (2))—(Evidence Act (1872), S. 114).

Where it is proved that the impugned act had been expressly authorised by the State or that the State has been profited by its performance, the State will not be left immune from an action for the liability arising from them. Such a case, therefore, constitutes an exception to the general rule of immunity applicable in favour of the State. AIR 1954 Pat 513, Rel. on.

Held, that the entire process of detention of the grams, their confiscation and release was expressly authorised by the Saurashtra Government and no discretion was left to its officers. As soon as it was discovered that its orders were unjustified, the Saurashtra Government should have returned the grams or accounted for them. (2) That the State could not be allowed to throw the loss on the plaintiff firm, unless it was shown that the loss could not be avoided in spite of taking reasonable care in storing them, which an ordinary prudent man was expected to bestow under similar circumstances. (3) That when food grains become unfit for human consumption during their storage in a godown, a presumption of negligence arises, unless it is shown that measures were taken to preserve them. This presumption is not displaced by merely proving that they were stored like other goods. Mere proof that other goods were also stored in the Collector's godowns without any information about their nature and the length of their storage is not sufficient to rebut the presumption. (4) That this was therefore a case in which the State had benefited by the confiscation of the grams, but that benefit was lost to it through the negligence of its servants. This loss must be borne by the State and could not be thrown on the firm. A I R 1956 Sau 62, Distinguished. (5) that the liability of the Saurashtra Government to compensate the plaintiff firm for the destruction of the grams by negligently delaying its delivery was not covered by Art. 295 (1) (b) but by Art. 295 (2) and consequently it continued to be the liability of the Saurashtra Government after the Constitution and must be discharged by it. A I R 1956 Sau 65 (69 to 71) (Pt C) (Prs 9 to 11) (DB).

——Vicarious liability — Negligence by servants of State—Vicarious liability of State

Appellant's animals seized by servants of Navanagar State outside that State and taken to village within State — Some animals perishing—Sale of surviving animals — Seizure held illegal and refund of sale proceeds ordered — Shortly after order Nawanagar State merging into Saurashtra State — Held that the Nawanagar State was liable for sale proceeds actually realised and Saurashtra State's liability could not extend beyond that — It might be that those servants of State, who had custody of animals might be negligent in not selling them before they perished but in detaining animals they were acting in exercise of powers conferred upon them by Municipal law and the State could not be held liable for loss because it had not profited by the loss of animals. AIR 1956 Sau 62 (DB).

25 (C). Principal and agent.

——Vicarious liability — Customer's cheque encashed but money entrusted to bank's own servant for payment to wholesaler — Misappropriation by servant before payment to wholesaler — Money held was not paid in due course to customer — Bank not entitled to recover from customer — Principle of vicarious liability not attracted. See Negotiable Instruments Act (1881), S. 85. AIR 1964 S C 377.

——Vicarious liability — Principal and Agent — Indian Income-tax Investigation Commission having its office in New Delhi appointing authorised official to work in Travancore uuder S. 6 of Travancore Taxation on Income (Investigation Commission) Act (14 of 1124 M. E.) — Authorised official acting contrary to law — Travancore-Cochin High Court has jurisdiction to issue writ against him under Art. 226—There can be no agency in matter of commission of a wrong — Relationship between principal and agent would only be relevant for purpose of determining whether principal as also vicariously liable for wrong perpetrated by his agent. See Constitution of India, Art. 226. AIR 1956 S C 246.

——Vicarious liability:— Principal and agent — Liability of principal for tortious act of agent.

The principal is not liable for the tortious acts of his agent unless the act which was parent of wrong itself fell within the scope of his employment as an agent. It might be that an opportunity to commit a wrong is provided to an agent in the course of his employment but that fact alone is not enough to bring the wrong itself within the scope of his employment. An opportunity to rob a patient might be provided to a doctor in the course of a surgical operation, but from that it cannot be said that the wrong committed by him was within the scope of his employment as a doctor. A I R 1956 S C 246 : 1956 S C J 323, Rel. on. A I R 1957 All 219 (232, 233) (Pt G) (Prs 62, 64).

——Vicarious liability — Principal and Agent — Co-operative Society employing contractor to undertake draining operations requiring for lands of its members — Society selected A's land for installing pumping machinery — A sustained damage as result of draining operations carried on site and not by any collateral negligence of contractor or his workmen —Fact that contractor was employed or that A's land was conveniently situated for carrying on draining operations is no defence — Land being selected by Society, it was liable for damage caused. (1951) 2 K B 343 at 363, Rel. on; Salmond on Law of Torts', 13th edition, p, 157, Ref. 1965 Ker L T 320 : I L R (1965) 1 Ker 295.

26. Vis major.

——Vis Major — Act of God — What amounts to — Loss of goods entrusted to common carrier by accidental fire—Not an act of God.

An act of God will be an extraordinary occurrence due to natural causes, which is not the result of any human intervention which could not be avoided by any amount of foresight and care, e.g., a fire caused by lightning. But an accidental fire though it might not have resulted from any act of or omission of the common carrier, cannot be said to be an act of God.

74 Mad L W 495 : ILR (1951) Mad 1091 : AIR 1962 Mad 44 (46) (Pt B) (Pr 3) (DB).

——Vis Major—Act of God.

The expression 'act of God' is a mere short way of expressing the proposition that a common carrier is not liable for any accident as to which he can show that it is due to natural causes directly and exclusively without human intervention, and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected from him 1955 Mad W N 395 :69 Mad L W 1042 : ILR (1956) Mad 85 : (1955) 2 M L J 240 : A I R 1955 Mad 519 (524) (Pt D) (Pr 19) (DB).

——Vis Major.

Where the rainfall was rather heavy, but not exceptionally so; it was not an unforeseeable rainfall, and as such not an act of God. A I R 1953 Vindh Pra 21 (24) (Pt C) (Pr 11).

27. Wrongful attachment.

——Wrongful attachment—Damages.

Where at the instance and as a result of a direct effort of a creditor of the insolvent the interim receiver attaches the properties which the creditor knew had been validly sold by the insolvent before his adjudication to the plaintiff, the creditor is responsible for the consequences resulting from the attachment. I L R (1953) 2 All 480 : A I R 1952 All 402 (404, 405) (Pt A) (Prs 13, 19) (DB).

——Wrongful attachment — Government servant—Liability of State—Extent of—Illegal attachment by tahsildar of immoveable properties under Madras Revenue Recovery Act by following procedure prescribed for attachment of moveable properties — Government is not liable for tort—Officer effecting illegal attachment cannot be sued in his official capacity—C. P. Code (1908), S. 9—Act of State—Constitution of India, Art. 300—Madras Revenue Recovery Act (2 of 1864), Ss. 8, 9, 25 to 44—Tort—Illegal attachment. (1965) 2 Andh L T 261 : (1965) 1 Andh W R 183 : AIR 1965 Andh Pra 457 (462, 463) (Pt B) (Prs 30, 31, 40, 46) (DB).

—Wrongful attachment by Government Official—Goods in possession of pledgee attached and seized in execution certificate under S. 46 (2), Income tax Act —Goods damaged while in custody of Government—Seizure is illegal—Circle officer in attaching was acting under delegated authority — Suit by pledgor for pledge amount—Suit not based on negligence in tort but on illegal attachment—Circle officer, Mamlatdar, Collector and Union of India held liable. See Civil P. C. (1908), O. 21, R. 43. (1965) 67 Bom L R 823 : AIR 1966 Bom 134.

——Malicious attachment—Abuse of process of Court —Malicious procuring of attachment berore judgment—Requirements.

A suit lies for abuse of the ordinary civil process. As a general rule the law allows a person to employ its process to enforce his rights and does not subject him to any liability on the ground that he has brought the suit maliciously and without reasonable or probable cause, on allegations of fact which may ultimately be proved to be false. Nevertheless there are certain civil proceedings involving interference with the liberty or property of a person or which affect or are likely to affect his reputation in case of which the law recognises the cause of action where it is alleged that such proceedings were motivated by malice and were undertaken without reasonable and probable cause.

The essential requirements of such action are that malice and absence of reasonable and probable cause must be shown. It differs, however, from malicious prosecution in that the gist of it seems to be special damage. It must be shown by the plaintiff that the defendant wrongfully and maliciously procured an order of attachment before judgment and the process of the Court was applied in pursuance of the order. He must show that the order was obtained irregularly. As a general rule he must get the order set aside and then proceed by way of a suit to establish that there was an abuse of process of Civil law. 56 Bom L R 984 : AIR 1955 Bom 67 (68) (Pt A) (Pr 2).

——Malicious attachment — Abuse of process of Court—Malicious procuring of attachment before judgment — Absence of reasonable and probable cause.

From its very nature the plaintiff has to prove the negative and, in general even slight evidence on his part may be enough to discharge the onus which lies on him. Of course, even the proof of the most express malice cannot amount to proof of absence of reasonable and probable cause. But if the plaintiff says that there was no ground for even some of the allegations made against him, that would be sufficient to discharge the onus. In such a case it would not make any difference that there was some reason to think that the plaintiff was in financial difficulties. If the plaintiff succeeds in showing that the defendant made even some of those allegations recklessly and without reasonable and probable cause and maliciously that would be indicating that the defendant was actuated by spite again sufficient for the plaintiff to discharge the onus which lies on him on this aspect of the case. 56 Bom L R 984 : AIR 1955 Bom 67 (69) (Pt B) (Pr 3).

——Malicious attachment—Abuse of process of Court —Malicious procuring of attachment before judgment—Malice.

Malice necessary to be established is not really malice in law such as may be assumed from certain acts and which is known as malice in law, but malice in fact, malus animus indicating that the defendant was actuated by spite against the plaintiff or had indirect or improper motives. At the same time the Court is entitled to take into account circumstances on which it may properly arrive at a conclusion that there is in law absence of reasonable or probable cause, if those circumstances by themselves are indicative of malice. 56 Bom L R 984 : AIR 1955 Bom 67 (69) (Pt C) (Pr 4).

——Malicious attachment—Abuse of process of Court —Malicious procuring of attachment before judgment—Cause of action for.

Service of a summons, notice, order or warrant issued by a Court on a party is by itself a process of the Court and it is quite usual and correct to refer to the handing over of the summons, notice, order or warrant as service of the process of the Court. A mere procuring of an order of attachment in a suit does not of itself afford a cause of action for damages for wrongful attachment and further a mere showing by a bailiff of the Court of the order of attachment before judgment to the party whose goods were sought to be attached is not sufficient to complete the plaintiff's cause of action in a suit of a like nature.

The test to be applied in a case of the nature under consideration is, not to ascertain whether the order of attachment was fully executed but to ascertain whether the process of the Court was in fact applied. The crucial question that must arise, therefore, is—Was anything done by the bailiff to apply the process of the Court? Was any act done by him in furtherance of the order of the Court? The matter may also be approached by asking: Was there at any time any restraint on the goods of the plaintiff in execution of the order of Court? The length of time during which the plaintiff was restrained from dealing with in his shop or carrying on the business of the shop

does not matter. AIR 1925 Bom 357, Expl. and Foll. 56 Bom L R 984 : A I R 1955 Bom 67 (71) (Pt D) (Prs 5, 8).

——Wrongful attachment—Damages—Remoteness—Malicious process — Fraud — Voluntary payment — —Wrongful detention—Damages—Right to—(Equity —Conduct of plaintiff).

Held, on facts that it was difficult to discover in the agreement any contract of indemnity which was essential to support the plaintiffs' claim under that head. The attachment in the certificate proceedings was unlawful as the decree attached, in view of the Court's decision which was final and binding between all parties concerned, was, at the relevant time, the property not of the certificate debtor but of the third party Keshardeo Chamaria; nor could it be said, on the facts of the case, that the execution was applied for without: reasonable and probable cause. In the circumstances the damages which might have been occasioned to the plaintiffs or which the plaintiffs might have suffered by reason of the payment which they made or chose to make on 28th May 1934, were too remote to fix the Secretary of State with any liability therefor. Further on the facts of this case, the payment of Rs. 1,60,000 must be treated as voluntary payment and no damages could be claimed in respect thereof. No question of detention of the money by the Secretary of State could at all arise and, no damages could be claimed against the Secretary of State for any wrongful receipt or detention or detention of the money. 61 Cal W N 389 : 99 Cri L J 185 : A I R 1957 Cal 617 (620, 621, 623) (Pt C) (Prs 11, 15, 16, 23) (DB).

——Wrongful attachment — Abuse of process — Suit for damages—Basis of claim — Trespass and abuse of process.

In a suit for damages for wrongful attachment of immovable property the claim can fall under one of two heads, namely (a) trespass and (b) abuse of civil process. When the property of a person not a party to the suit is wrongly attached the action is really one founded on trespass. But there is another aspect of the matter; when the act of attachment complained of is done under judicial sanction, though at the instance of a party, the remedy is an action for abuse of civil process. There are substantial points of distinction between an action for abuse of civil process and an action for trespass to property. In the former, which resembles an action for malicious prosecution, the plaintiff has to prove absence ot reasonable and probable cause.

But in an action for trespass the plaintiff has only to prove the trespass and it is for the defendant to prove a good cause or excuse. In an action for abuse of process the plaintiff has further to prove malice on the part of the defendant; but in an action for trespass this is not necessary. 1956 Mad W N 916: (1957) 1 M L J 118 : 69 Mad L W 1017 : A I R 1957 Mad 156 (157, 158) (Prs 2 to 6) (DB).

——Wrongful attachment — Suit for damages—Onus of proof.

The onus of proving that the attached property belongs to a plaintiff who is claiming damages for wrongful attachment lies on him. But the amount of evidence which a Court would consider sufficient to discharge that burden would obviously depend upon the circumstances of each case. I L R (1952) Mys 176: AIR 1952 Mys 90 (92) (Pt A) (Prs 4, 5) (DB).

——Wronful attachment—Damages—Proof of malice not necessary.

In a case of trespass on chattel, defendant cannot urge that the plaintiff must prove that the former was actuated by malice. Even honest but mistaken belief of the defendant is not excusable. It is for the defendant to take due care and caution in making the attachment and if he is instrumental in attaching property of a third person, he is answerable in tort for trespass: A I R 1951 Raj 26 and A I R 1952 Raj 164, Disting; ILR 17 Cal 436 (PC) and 1962 Raj L W 342, Rel. on. I L R (1965) 15 Raj 233 : 1965 Raj L W 56: AIR 1965 Raj 121 (123) (Pt B) (Pr 8).

——Wrongful attachment of property — Cause of action for suit — Mere procuring of order of attachment not enough to sustain suit — Employment of coercive process is however sufficient — What is coercive process depends on facts and circumstances of each case.

Although mere procuring of an order of attachment, albeit malicious, would not be enough to sustain an action for damages for an abuse of process, yet once the process has been issued and served on the party concerned, the employment of the coercive process is sufficient to found an action for damages. The answer to the question whether a coercive process has been effectually employed or not is bound to depend upon the facts and circumstances of a particular case. 30 Mad L J 180; AIR 1917 Mad 145, Disting.: A I R 1922 Mad 206, Rel. on.; A I R 1955 Bom 67 and A I R 1925 Bom 357, Expl. and not Foll. I L R (1962) 12 Raj 161 : 1962 Raj L W 595 : A I R 1962 Raj 169 (172) (Pt B) (Pr 8).

——Wrongful attachment — Malicious abuse of civil process — Suit for damages for wrongful attachment before judgment — Burden of proof is on plaintiff. ILR (1962) 12 Raj 19: 1962 Raj L W 86: A I R 1962 Raj 164 (166) (Pt A) (Pr 5) (DB).

——Wrongful attachment — Malicious abuse of civil process — Suit for damages for wrongful attachment before judgment — Malice, proof of, is not enough— Absence of reasonable or probable cause should be shown.

Held, on a consideration of evidence that there was reasonable and probable cause for the application for attachment; before judgment; that the plaintiff had not led satisfactory evidence to prove that the defendant had no justification for taking proceedings under O. 38, R. 5, Civil P. C.; and that the application for attachment was made for sufficient reasons and with due regard to the requirements of law. ILR (1962) 12 Raj 19: 1962 Raj L W 86: AIR 1962 Raj 164 (166 to 169) (Pt B) (Prs 6, 7, 9, 12) (DB).

——Wrongful attachment — Attachment of property of stranger or wrongful attachment of judgment-debtor's property — Action for damages — Proof of malice not necessary — Ordinary damages can be allowed on failure to prove special damages:

A judgment-creditor is responsible in damages to any person who is not a party to the proceedings and whose property he wrongfully causes to be attached in execution of his decree without proof of malice. The gist of the matter in an action of tort for damages for attachment is the wrongfulness of the attachment or that such attachment amounts to a trespass on the rights of the plaintiff and where that condition is satisfied, an action for damages must be held to lie and the plaintiff need not prove malice.

The gist of the action in such a case is not the special damage but the unlawful attachment and the plaintiff cannot be deprived of ordinary damages for the actionable wrong, even if he fails to prove the special damage claimed: AIR 1925 Nag 390; AIR 1928 All 177; A I R 1938 All 508 and 1 L R 17 Cal 436, Rel. on. 1962 Raj L W 342.

——Wrongful attachment—Abuse of legal process — Suit for damages — Cause of action—What plaintiff must allege and prove—Civil P. C. (1908), S. 95.

Normally in order that the plaintiff may have a cause of action in a suit for damages for abuse of

legal process, it is essential that he should allege and prove that the proceedings taken by him in order to show that the process had been got issued without reasonable and probable cause had terminated in his favour. The allegation that the warrant of attachment had been got issued out of malice and without reasonable and probable cause is wide enough and would take under its cover and include the further ground that it had been got issued with a view to compel a compromise. Accordingly, the latter cannot be held to be an additional cause of action and the suit is liable to be dismissed as not being maintainable if the proceeding relating to attachment has not terminated. 1950 Raj L W 74: A I R 1951 Raj 26 (28, 29) (Prs 4, 6) (DB).

28. Wrongful detention and seizure of goods.

See also Note 6 (c).

● **——Wrongful detention—Action for — Measure of damages — Damages in addition to value of goods detained.**

It is well settled that in an action for wrongful detention the plaintiff is entitled besides the redelivery of the chattel or payment of its value in the alternative, also to damages for such wrongful detention. There is however no definite criterion laid down by the decided cases as to what the measure of such damages should be. The unlawful keeping back of what belongs to another person is of itself a ground for real damages and not for nominal damages at all. The quantum of damages may be big or small but it does not make any difference to the principle. The principle of assessing the damages is the same and that is that where by the wrongful act of one man something belonging to another is either itself so injured as not to be capable of being used or is taken away so that it cannot be used at all, that of itself is a ground for damages. (1900) A C 113, Rel. on.; (1835) 7 C and P 193, Disting. Dhian Singh Sobhan Singh v. Union of India, 36 Mys L J 256 : 1958 Mad W N (SC) 40 : 1958 S C J 363 : (1958) 1 M L J (SC) 93 : (1958) 1 An W R (SC) 93 : 1958 S C A 307 : 1958 S C R 781 : AIR 1958 S C 274 (287 to 289) (Pt E) (Prs 52, 53, 56, 59).

——Wrongful seizure — Negligence — Master and Servant — Vicarious liability — Government Servant —Goods in possession of pledgee attached and seized in execution certificate under S. 46 (2), Income-tax Act — Goods damaged while in custody of Government — Seizure is illegal — Circle officer in attaching was acting under delegated authority — Suit by pledger for pledge amount—Suit not based on negligence in tort but on illegal attachment — Circle officer, Mamlatdar, Collector and Union of India, held liable. See Civil P. C. (1908), O. 21, R. 43. **(1965) 67 Bom L R 823 : AIR 1966 Bom 134.**

——Wrongful detention of goods by railway owned by Government — Government held liable to return goods — (Constitution of India, Art. 300). ILR (1947) 2 Cal 141, Rel. on. **AIR 1958 Cal 183 (186) (Pt C) (Pr 10).**

——Wrongful detention — Detinue — Goods taken on hire — Measure of damages — Equal to hire.

Where an elephant is given on hire under a contract for one month, the duty to return the elephant on the expiry of the period is on the person who took it on hire. Where the contract is silent as to consequences of wrongful detention it is the hire money agreed to be paid that is the just measure of damages for the wrongful detention. AIR 1958 SC 274: (1952) 2 G B 246, Rel. on. 1963 Ker L J 1079.

——Wrongful detention — Seizure of logs of wood cut by plaintiff from the forest by officer — Order of Board of Revenue asking officer to return property — No action taken to return — Suit against state — Held it was a simple case where state would be deemed to have held property through its officers for benefits of plaintiff—Suit to claim the same being in nature of an action in detinue based upon its wrongful detention, it was not an action for wrongful conversion. See Constitution of India, Art. 300. **AIR 1963 Madh Pra 174 (DB).**

——Wrongful detention of goods and refusal to deliver — Liability for — (Sale of Goods Act (1930), S. 2 (4)).

A who was a charcoal dealer owed certain amount of money to B. In payment of the debt A wrote a delivery order upon his commission agent X, asking him to deliver certain number of bags of coal to B. X was asked not to charge any commission. In the delivery order, the fact that the coal was to be delivered to B in payment of the debt was mentioned. The bags of coal were mentioned as B's property. When B took the delivery order to X, X refused to deliver the goods on the ground that the goods were pledged to him. B filed a suit against A and X. It was found that the story of X as to pledge was false and the document produced in support of the alleged pledge was false. Still the Court passed a decree against A only for the return of the price. Suit against X was dismissed on the ground that there was no contract between B and X. In appeal by B.

Held, that the claim against X was not on the basis of a contract but was in tort. There was a transfer of ownership of goods, even though no cash was paid as the price. There had been a completed sale. The document asking X to deliver the goods was a document of title to goods within the meaning of S. 2 (4), Sale of Goods Act. Such a document represented the goods themselves and failing to implement the direction in the delivery order X made himself liable in tort in detinue. **Held** further, that X, the tort-feasor was liable to restore the goods or if he had converted them the value of the goods on the relevant date. (Decree passed jointly against A and X). AIR 1949 Nag 186 and AIR 1944 Nag 120 AIR 1949 Nag 319 and 1958 S C J 363 : (1958) 1 M L J (SC) 93 : (1958) 1 An W R (SC) 93 ; AIR 1958 S C 274, Disting. **1958 M P C 600 : 1959 M P L J 509 : 1958 Jab L J 784: AIR 1958 Madh Pra 415 (416, 417) (Prs 5 to 9).**

——Wrongful detention of goods — Measure of damages. See Contract Act (1872), S. 161. **1965 Mad W N 233 : (1965) 78 M L W 464 : AIR 1966 Mad 184 (DB).**

——Wrongful seizure of goods — Public officer — Unauthorised seizure of paddy by village patel — Liability for damages — Plea that he acted under oral orders of Tahsildar — Validity.

Crown servants may be sued and made personally liable for tortious or criminal acts committed by them in their official capacity without showing malice or want of probable cause. Thus where a Village Patel purporting to act under the provisions of the Essential Supplies (Temporary Powers) Act, (1946), wrongfully seizes the paddy of a person, he is liable in tort for damages. The fact that the seizure was not actuated by malice but was carried out under the oral orders of his superior officer, i.e., Tahsildar, would not be a sufficient justification for seizing the paddy and cannot be pleaded as a defence to a suit on tort. **1956 Mad W N 575 : 69 Mad L W 526 : ILR (1956) Mad 1381 : (1956) 2 M L J 207 : AIR 1956 Mad 616 (616 to 618) (Prs 3, 5, 7).**

——Wrongful seizure — Seizure and detention of truck — Liability for detention.

Truck seized from plaintiff as result of report made to police — Truck returned to plaintiff after his acquittal — During interval, truck kept in custody of

supratdar — Seizure and detention of truck held could not be deemed to be wrongful and defendants were not liable for its detention. **1955 Nag L J 575 : ILR (1955) Nag 860 : AIR 1955 Nag 269 (271) (Pt G) (Pr 19) (DB).**

——Wrongful seizure—(Defence of India Act (1939), S. 17 (1)).

Police officers seizing a number of bags of rice belonging to plaintiff with a view to prevent them from being exported from Orissa to Bengal in spite of the fact that the plaintiff had shown them a valid licence — Police acting in a high-handed manner without caring whether there was any authority in them to make such seizures—They neither acted nor purported to act under the provisions of any statute — **Held,** that the police officers were not entitled to claim the protection of S. 17 (1), Defence of India Act and therefore were liable to pay damages to the plaintiff for the loss sustained by the illegal seizure. **ILR (1954) Cut 171 : 1954 Cr L J 1625 : AIR 1954 Orissa 225 (231) (Pt H) (Pr 21) (DB).**

——Wrongful seizure of goods — Seizure held not wrongful — (Criminal P. C. (1898), Ss. 523 (1) and 550).

Police officer suspecting contravention of Cl. 3 (1), Food Grains Control Order, 1942, seizing certain bags of rice belonging to plaintiff — No valid permit produced at time of seizure — Plaintiff going three hours after seizure to police station where bags were removed and showing his licence and demanding release of bags — Police officer refusing to release bags on ground that they had no authority to release them without the authority of the Magistrate under S. 523 (1), Criminal P. C. — **Held,** that the seizure was justified under S. 550, Criminal P. C. and that he had acted within his authority in refusing to release them and therefore was not liable for damages. **ILR (1954) Cut 171 : 1954 Cri L J 1625 : AIR 1954 Orissa 225 (232) (Pt I) (Pr 23) (DB).**

29. Wrongful confinement or false imprisonment.

See also Note 14

——False imprisonment — S. D. O. ordering arrest of plaintiff for offence under S. 436, Penal Code — Proceedings closed without trial — Suit for damages for false imprisonment — Admission that no cognizance of any offence was taken as Magistrate — Officer held acted in executive capacity — Not entitled to protection under Judicial Officers' Protection Act (1850). See Judicial Officers Protection Act (1850), S. 1. 1965 (2) Cri L J 686 : AIR 1965 S C 1651.

——False imprisonment — Proof—Acquittal of plaintiff in criminal case — Effect of—Value as evidence in the civil suit.

Held, that the mere acquittal of the plaintiff on the ground on which he was acquitted was no proof in the civil suit of the fact that the defendant had made a false statement which led to the arrest of the plaintiff. In the absence of proof in the civil suit that less than thousand bricks were used by the plaintiff and therefore the statement was false the defendant could not be held liable. **1958 Cri L J 1278 : AIR 1958 All 758 (765) (Pt F) (Pr 33) (DB).**

——False imprisonment — Action for damages — Burden of proof.

False imprisonment means the total restraint of a person's liberty without lawful justification. The word 'false' in that phrase signifies the unlawful character of the restraint. False imprisonment is a tort and in an action for damages for this tort, the plaintiff should prove (a) his imprisonment and (b) that it was caused by the defendant or his servants acting in the course of their employment. On proof of these facts, his ease is complete and it is then for the defendant to prove a lawful justification and not for the plaintiff to prove its absence. **AIR 1959 Assam 28 (49) (Pt A) (Pr 62) (DB).**

——False imprisonment — Assessment of damages — Interference with exercise of discretion of trial Court.

The assessment of damages more or less is a matter of judicial discretion to be exercised by the Court on a review of all the relevant circumstances bearing on the point; the status of the plaintiff, the damage or discomfort or inconvenience caused and the contumacious or malicious conduct of the defendant. If therefore the Court in assessing the amount of damages had lost sight of any of the relevant considerations, the Court in appeal would be perfectly justified in interfering with the exercise of that discretion. **AIR 1959 Assam 28 (39, 54) (Pt F) (Prs 27, 75) (DB).**

——False imprisonment—Power of Police to re-arrest after discharge of bond — Re-arrest by Police — Liability for false imprisonment — If arrest by Sub-Inspector is under orders of Superintendent they are jointly liable. See Criminal P. C. (1898), S. 502. **1955 Cri L J 410 : AIR 1955 Punj 51 (DB).**

——False imprisonment — Damages — Causation — Arrest by police — Causation is broken by intervention of act of judicial officer.

The chain of causation for damages for false imprisonment by police is broken when the act of a judicial officer intervenes. Damages for detention subsequent thereon cannot be recovered in an action for false imprisonment, although they often may be recovered in an action for malicious prosecution.

The liability of the defendants therefore must only be confined to the illegal arrest of the plaintiff which would extend from the time of his arrest to the time that he was placed before the Judicial Officer. Any expenses which the plaintiff had to undergo for the purpose of applying to the Judicial Officer (Magistrate) for his release are the direct consequence of the act of the defendants and they are liable to the plaintiff for that. **56 Punj L R 331 : 1955 Cri L J 410 : AIR 1955 Punj 51 (53, 54) (Pt C) (Prs 15, 17, 18) (DB).**

——Wrongful confinement — What is — Damages — Suit for — Burden of proof — What plaintiff has to prove.

In order to amount to 'wrongful confinement' or 'false imprisonment' what is essential is that there must be total restraint for howsoever short a time on the liberty of person without lawful justification, and actual imprisonment in a jail is not necessary.

In a suit for damages for wrongful confinement, loss of reputation and for physical and mental suffering as well, it is for the plaintiff to prove that he was wrongfully detained or falsely imprisoned and that such detention or imprisonment was caused by the defendant. Once these facts have been proved, the case of the plaintiff is prima facie complete, and then it is for the defendant to prove that there was lawful justification for such detention.

If A gets a police officer to arrest B or put him under wrongful confinement and the police officer acts more or less as a ministerial agent of A, the latter cannot escape his liability in an action for false imprisonment. ILR 39 Mad 208 (Sic) and AIR 1925 Cal 884, Rel. on. **ILR (1962) 12 Raj 202 : 1962 Raj L W 77 : AIR 1962 Raj 127 (130, 131) (Pt A) (Prs 14 to 16).**

——False imprisonment — Action for — Interference in appeal.

In an action for false imprisonment, the amount of damages is purely in the discretion of the Judge and his discretion is not to be lightly interfered with in

appeal. 1960 Raj L W 225 : ILR (1960) 10 Raj 784 : AIR 1961 Raj 64 (72) (Pt G) (Pr 30) (DB).

TOTAL INCOME

See (1) Income Tax Act (1922), Ss. 2 (15) and 4.
(2) For statutory cross-references, see under "Income tax".

TOUT

See (1) Bengal Touts Act (5 of 1942).
(2) Legal Practitioners Act (1879), Ss. 3, 22, 26.

Defined.
See Legal Practitioners Act (1879), S. 3.

List of.
See Legal Practitioners Act (1879), S. 36.

TOWN IMPROVEMENT

See State Acts under "Municipalities".

TRADE

Enemy, with.
See Contract Act (1872), S. 23.

TRADE AND COMMERCE

See Constitution of India, Sch. 7, List 2, Entry 26. Sch. 7, List 3, Entry 33.

Restriction on legislative powers of Union and States.
See Constitution of India, Art. 303.

TRADE AND COMMERCE WITH FOREIGN COUNTRIES

See Constitution of India, Sch. 7, List 3, Entry 41.

TRADE AND MERCHANDISE MARKS ACT (43 of 1958)

See also Trade Marks Act (5 of 1940)

SECTION 2

——Ss. 2 (1) (h), 3 and 5— Combined effect —Trade mark registered at Madras — Rectification proceedings — Jurisdiction of Andhra Pradesh High Court.

Under the Trade and Merchandise Marks Act, 1958, rectification proceedings can be taken only in the High Court having jurisdiction, that is to say, if a trader has registered his trade mark in Bombay, then rectification proceedings will take place only in the Office at Bombay or in the High Court at Bombay, as the case may be.

In the instant case, the trade mark was got registered in the Office of the Trade Marks Registry at Madras. Therefore the Andhra Pradesh High Court has no jurisdiction to entertain the petition for rectification, cancellation, etc. (1965) 2 An W R 128 : AIR 1966 Andh Pra 102 (103, 104) (Pr 5).

——S. 2 (1) (v) (i)—'Trade marks'—Right of property in trade mark is acquired merely by using it upon or in connection with goods :irrespective of length such user and the extent of trade — Priority in adoption and use of mark is superior to priority in registration. (1964) 56 Bom L R 612 : AIR 1965 Bom 35 (46, 47, 48) (Pt B) (Prs 27, 28).

——S. 2 (d)— "Deceptively similar" — Test — Trade mark, to be registered for injection, and mark already registered for tablets, visually and phonetically not similar — Registration can be granted. See Trade and Merchandise Marks Act (1958), S. 11. (1965) 67 Bom L R 729.

——Ss. 2 (1) (v), 79 and 6 — Action under S. 79— Registration of trade mark not necessary — Passing off action in case of unregistered mark — Nature of proof indicated. See Trade and Merchadise Marks Act (1958), S. 79. 1965 (1) Cri L J 558 : AIR 1965 Mad 214.

SECTION 3

——S. 3 — Application under S. 56 — Parties doing business at Kanpur — Place within territorial limits of Trade Marks Registry, New Delhi — Held Punjab High Court and not Allahabad High Court had jurisdiction to dispose of the application. See Trade and Merchandise Marks Act (1958), S. 56. AIR 1965 All 256.

——S. 3—Trade mark registered at Madras— Andhra Pradesh High Court has no jurisdiction to entertain petition for rectification. cancellation etc. See Trade and Merchandise Marks Act (1958), S. 2 (1) (h). (1965) 2 Andh W R 128 : AIR 1966 Andh Pra 102.

——S. 3 (5) — Suit for infringement of trade mark — Stay of — Discretion of Court to grant reliefs under S 3 (5) — Issue of temporary injunction is not an invariable rule—Civil P. C. (1908). O. 39. R. 1. (1962) 2 Andh W R 203: ILR (1962) Andh Pra 999.

SECTION 4

——S. 4 (2)—Registrar's power of rectification does not go beyond contention raised by applicant. See Trade and Merchandise Marks Act (1958), S. 56 (2). AIR 1963 Bom 246.

SECTION 5

——S. 5—Trade Mark registered at Madras — Rectification proceedings — Andhra Pradesh High Court has no jurisdiction. See Trade and Merchandise Marks Act (1958), S. 2 (1) (h). (1965) 2 Andh W R 128 : AIR 1966 Andh Pra 102.

SECTION 6

—— Ss. 6, 79, 2 (1) (v)—Action under S. 79 — Registration of trade mark not necessary — Passing off action in case of unregistered mark— Nature of proof indicated. See Trade and Merchandise Marks Act (1958), S. 79. 1965 (1) Cri L J 558 : AIR 1965 Mad 214.

SECTION 8

——Ss. 8, 11, 12 and 21 — Trade Mark — Infringement — Mark consisting of visual designs and words or expressions — If infringed by use of expressions not identical and phonetically similar and dissimilar —Test — "Ambal" if infringed by "Andal" in relation to snuff — Visual test and sound test — Value and weight of — Principles to be applied — Honest concurrent user — Proof — Nature of evidence to be adduced — Trade and Merchandise Marks Rules, R. 54 — Scope and effect of — Duty of applicant — Findings of Registrar of Trade Marks — If conclusive and binding on Court in appeal.

Where the controversy arising from an action for infringement in the form of an appeal against the registration of a trade mark is essentially between a pre-existing trade mark consisting of an expression which has acquired significance by close association with the goods of the proprietor of the mark and visual design which incorporates another expression as a part thereof, both the two expressions not being identical, but phonetically both similar and dissimilar, it being found as a fact that there is no deceptive resemblance between the two labels and that from the point of view of the visual test the mark sought to be registered does not offend any canon of trade mark registration by any affinity of line or forms or the totality of semblance, the party seeking registration cannot plead that the dissimilarities should be given weight particularly because the supposed offending expression is not sought to be registered by itself, but as some part of a visusal design of the proprietor opposing registration. It is also no valid defence that the goods distinguished by the two marks have circulated side by side, in identical places of business, without causing confu-

sion or deception, with reference to the customers in the absence of adequate evidence being adduced by the party seeking registration in substantiation of such a defence.

The test of phonetic similarity is one which has to be applied on broad principles. A trade mark is undoubtedly a visual device; but it is well-established that the ascertainment of an essential feature is not to be by colour test alone. Since words can form part, or indeed the whole, of a mark it is impossible to exclude consideration of the sound or significance of those words. Evidence of honest concurrent user must be clear cogent and specific. Where affidavits are filed under R. 54 of the Trade and Merchandise Marks Rules, they must be filed under such circumstances as will fix the other side with a fair notice of this evidence. Otherwise they would not be evidence and cannot be considered by the Court on the point of honest concurrent user.

The decision of the Registrar under S. 8 of the Trade and Merchandise Marks Act should no doubt be given due respect but the Registrar does not occupy a better position than the Subordinate Civil Courts, and there is no presumption that the conclusions of the Registrar are necessarily right. The duty is that of the Court and the Court alone and the Court cannot shirk that duty by treating the conclusions of the Registrar as sacrosanct. **(1964) 2 M L J 206.**

SECTION 9

❶ — S. 9—Trade mark—Registration of — Requisites for — 'Words having no direct reference' — Words 'Pharmaceutical Laboratories' have direct reference to character of goods — But length of user of such words is material factor for trade mark being registered under proviso to sub-s. (3). See Trade Marks Act, 1940, S. 6 (1) (d). **AIR 1965 S C 980.**

❷ —S. 9 — Construction of Proviso — Proviso to S. 6 (3), Trade Marks Act (1940) is not otiose. See Trade Marks Act, 1940, S. 6 (3), Proviso. **AIR 1965 S C 980.**

—Ss. 9 (d) and 56 (4) — Manufacture of fountain pens by petitioners—Petitioners applying for registration of word 'Sulekha' as trade mark — Meaning of word 'Sulekha'—It is not descriptive of goods manufactured. See Trade Marks Act (1940), S. 6 (d). **A I R 1962 Bom 82.**

—Ss. 9 (d) and 56 (4)— Word 'Sulekha' registered as trade mark of fountain pens by Registrar —Successor Registrar cancelling registration — Successor cannot reopen question of fact—Use of dictionaries in fixing meaning of word suggested as trade mark—Such use is not warranted. See Trade Marks Act (1940), S. 46 (4). AIR 1962 Bom 82.

—S. 9 (1) (d) and (2)—Registration of word 'Sagar' in Part A of register—'Sagar' in ordinary signification means sea or ocean—Word is not common name or surname or proper name—Not prohibited for registration — 'Sagar' might be part of name — Part of name is not prohibited by S. 9. **69 Cal W N 947 : AIR 1965 Cal 417 (420) (Pt A) (Pr 12).**

—S. 9 (3) and (5) (b) — Distinctiveness of mark—Long user — Question if user is long enough is question of appreciation of evidence by Registrar — Conclusion correct in facts and circumstances of case—High Court would not interfere. See Trade and Merchandise Marks Act (1958), S. 109. **A I R 1965 Cal 417.**

—S. 9—Common user of mark in trade — Evidence and proof — Affidavits of traders filed to prove such common user—Goods not proved to be reputed under mark in question — Held affidavits not reliable and mark distinctive of goods of trader seeking registration. **ILR (1965) 1 Mad 426 (DB).**

—S. 9 (1) (e) — Distinctive mark — Geographical name, whether can be registered.

A geographical name adopted as a distinctive mark and without its conveying any idea of a geographical origin or association would come within clause (e) of S. 9 (1) and may be registrable if the Registrar is satisfied of its distinctiveness. For example, a food article named "Everest dish" or a hair cream called 'Himalayan snow' is certainly distinctive and there can be no valid objection to its registrability. A. S. Nos. 560 and 561 of 1956, Rel. on. **(1964) 2 Mad L J 148 : ILR (1964) 2 Mad 963.**

—Ss. 9 (1) (c) and 9 (4)— Claim that trade mark is invented word or it has become distinctive of goods—Both grounds are mutually exclusive—Registration is allowed if any ground is proved, **67 Pun L R 329 : AIR 1965 Punj 17 (18) (Pt A) (Pr 4).**

—S. 9 (1) (c) and (d)—Invented word — Word 'Entozine' containing cover reference to character of goods — Word cannot be refused registration. Solio case, Eastman Photographic Materials Co., Ltd.'s Application. (1898) 15 R P C 476, Rel. on. **67 Pun L R 329 : AIR 1965 Punj 17 (19, 20) (Pt C) (Prs 10, 13) (DB).**

—Ss. 9 (3), 32 (c)—Expression "distinctive of the goods"—Meaning—Allegation that certain mark is not distictive of certain goods — Proof— Cancellation of registration under S. 32—Essentials—Registration for more than seven years—Absence of evidence to show its usage in trade prior to registration — Fact that it could be challenged under S. 31 before expiry of seven years, not sufficient to justify cancellation under S. 32. See Trade and Merchandise Marks Act (1958), S. 32 (c). **AIR 1964 Punj 77.**

—Ss. 9, 11 and 32 — Mark unregistrable under S. 9 due to its not being "distinctive" not disentitled to protection. See Trade and Merchandise Marks Act (43 of 1958), S. 32. **AIR 1964 Punj 77.**

SECTION 11

—S. 11 (a)—Prohibition against registration of trade marks — Use likely to cause deception or confusion in public mind.

For the purpose of S. 11 (a), it is necessary that the mark should have attained such reputation among the members of the public as would lead them to associate the mark only with the products of the petitioner corporation and of no one else.

Held, on facts that in spite of the fact that the sales by the respondent company of its products under the mark 'Monarch' were not very much larger than the imports and sales in this country of the products of the petitioner corporation, it could not be held that by allowing the mark 'Monarch' to be registered as applied for by the respondent company, there would be any likelihood of deception or confusion in the minds of the public. Accordingly, the petitioner corporation could not resist the registration of the mark 'Monarch' on the applications of the respondent company under Cl. (a) of S. 11 of the Act. **66 Bom L R 612 : AIR 1965 Bom 35 (48, 49) (Pt C) (Pr 29).**

—Ss. 11, 12, 2 (d) and 18—"Deceptively similar"—Test — Trade mark, to be registered for injection, and mark already registered for tablets, visually and phonetically not similar—Registration can be granted. **(1965) 67 Bom L R 729.**

—Ss. 11 (a), 12 (1), (2), 18, 109— Mark alleged as likely to deceive or cause confusion by phonetic and visual similarity — Tests to be applied to decide on confusion or deception—Registrar deciding 'sagar' is not deceptively similar to 'singer' — Registrar's decision is exercise of discretion and not mere finding of fact — Discretion exercised in judicious and proper

manner—High Court would not interfere. AIR 1963 S C 449, 1927 A C 406 and (1890), 15 A C 252, Rel. on. 69 Cal W N 947 : AIR 1965 Cal 417 (421, 422, 423) (Pt D) (Prs 17, 18, 21, 22).

——Ss. 11 (a), 12 (1) — Machines alleged identical or deceptively similar—Admissibility of photographs of machines in evidence—Examination of photographs to find if there is cause for confusion or deception is incorrect in law — (1951) 68 RPC 103, Rel. on. 69 Cal W N 947: AIR 1965 Cal 417 (423, 424) (Pt F) (Pr 26).

——Ss. 11 (a), 12 (1) — Machines alleged identical or deceptively similar — Alleger not allowing inspection of machines—Adverse inference can be correctly drawn — Evidence Act (1872), S. 114, Illus. (g). 69 Cal W N 947 : AIR 1965 Cal 417 (423, 424) (Pt G) (Pr 26).

——Ss. 11 and 12—Finding that there is no evidence that deception will result—No discretion to refuse registration. (1964) 1 Mad L J 355 : 77 Mad L W 318 : 1964 Mad W N 239 : AIR 1965 Mad 42 (45) (Pt C) (Pr 9).

——Ss. 11 (a), 12 (1)—Mark likely to deceive or cause confusion—Trade mark usually dissimilar but phonetically similar to already registered trade mark —Registration held could not be permitted. (1964) 1 Mad L J 151 : AIR 1964 Mad 204 (204, 205) (Pr 1) (DB).

——Ss. 11, 12, 17, 21, 23, 33—Identical marks—Registration—Duty of Registering authority pointed out—Mark containing features common to trade—Method of comparison pointed out—Distinctiveness of mark — Tests indicated — Registration opposed by owner of prior registered mark — Both marks in use for considerable time—No instance of confusion—Registration allowed. ILR (1964) 1 Mad 786.

——S. 11 (a) — Confusion on ground of phonetic similarity—Words Entozine and Entrozyme are not phonetically similar—Both drugs obtainable only on doctor's prescription — Phonetic similarity even if established will not cause confusion. 67 Pun L R 329 : AIR 1965 Punj 17 (20) (Pt D) (Pr 14) (DB).

——Ss. 11, 32 and 9— Mark unregistrable under S. 9 due to its not being "distinctive" not disentitled to protection. See Trade and Merchandise Marks Act (1958), S. 32. AIR 1964 Punj 77.

SECTION 12

——S. 12(3)—'Honest concurrent use' — Question of volume is relevant and is question of fact — Commercial use of mark is to be considered and not its value in money. See Trade Marks Act (1940), S. 10(2). AIR 1963 S C 1882.

——S. 12(3)—'Other special circumstances'—These must be connected with the use of the mark. See Trade Marks Act (1940), S. 10(2). AIR 1963 S C 1882.

——S. 12(3)—Discretion under, when can be used.

The discretion under S. 12(3) can only be exercised where two or more parties unknown to each other and unaware of the mark used by each other innocently adopt and use the same mark in respect of their respective goods of the same nature. 66 Bom L R 612 : AIR 1965 Bom 35 (57, 58) (Pt E) (Pr 42).

——S. 12—"Deceptively similar"—Test—Trade mark, to be registered for injection, and mark already registered for tablets, visually and phonetically not similar — Registration can be granted. See Trade and Merchandise Marks Act (1958), S. 11. (1965) 67 Bom L R 729.

——Ss. 12 (1) and 11 (a)—Machines alleged identical or deceptively similar — Alleger not allowing inspection of machines—Adverse inference can be correctly drawn — Evidence Act (1872), S. 114, Illus. (g). See Trade and Merchandise Marks Act (1958), S. 11(a). AIR 1965 Cal 417.

——Ss. 12 (1) and 11 (a)—Machines alleged identical or deceptively similar—Admissibility of photographs of machines in evidence — Examination of photographs to find if there is cause for confusion or deception is incorrect in law. See Trade and Merchandise Marks Act (1958), S. 11(a). AIR 1965 Cal 417.

——Ss. 12 (2) and 11 (a) — Mark alleged as likely to deceive or cause confusion by phonetic and visual similarity—Tests to be applied — Registrar's decision is exercise of discretion and not mere finding of fact—Discretion exercised in judicious and proper manner —High Court would not interfere. See Trade and Merchandise Marks Act (1958), S. 11(a). AIR 1965 Cal 417.

——Ss. 12 and 11—Finding that there is no evidence that deception will result — No discretion to refuse registration. See Trade and Merchandise Marks Act (1958), S. 11. AIR 1965 Mad 42.

——Ss. 12 (1) and 11 (a)—Mark likely to deceive or cause confusion — Trade mark usually dissimilar but phonetically similar to already registered trade mark —Registration held could not be permitted. See Trade and Merchandise Marks Act (1958), S. 11(a). AIR 1964 Mad 204 (DB).

——Ss. 12 and 9 (1)—Registration of label with geographical name—Subsequent registration of label of another with same name — Application for rectification by owner of prior registered label — Registrar exercised his discretion by refusing to rectify register —Court in appeal ought to give considerable weight to it and should ordinarily be loath to interfere with that discretion. See Trade and Merchandise Marks Act (43 of 1958), S. 9(1). (1964) 2 Mad L J 148 : I L R (1964) 2 Mad 963.

——Ss. 12, 11, 17, 21, 23 and 33—Identical marks—Registration—Duty of Registering authority pointed out — Method of comparison pointed out — Distinctiveness of mark — Tests — Registration opposed by owner of prior registered mark — Both marks in use for considerable time — No instance of confusion — Registration allowed. I L R (1964) 1 Mad 786.

SECTION 17

——Ss. 17, 11, 12, 21, 23 and 33—Identical marks—Registration — Duty of Registering authority pointed out — Method of comparison pointed out — Distinctiveness of mark — Tests — Registration opposed by owner of prior registered mark — Both marks in use for considerable time — No instance of confusion — Registration allowed. I L R (1964) 1 Mad 786.

SECTION 18

——S. 18 (1)—Food Products Order, 1955, S. 8(b) and (c) — Label giving different name of manufacturer — Applicant for registsation described as sole distributor — Registration cannot be done. 66 Bom L R 612 : A I R 1965 Bom 35 (49 to 52) (Pt D) (Prs 30, 33).

——S. 18—"Deceptively similar"—Test—Trade mark, to be registered for injection, and mark already registered for tablets, visually and phonetically not similar — Registration can be granted. See Trade and Merchandise Marks Act (1958), S. 11. (1965) 67 Bom L R 729.

——Ss. 18 and 109—High Court's power to interfere with decision of Registrar — Finding based on evidence will not be interfered. See Trade and Merchandise Marks Act (1958), S. 109. AIR 1965 Cal 417.

——Ss. 18, 109, 9 (3), 9 (5) (b) — Distinctiveness of mark—Long user—Question if user is long enough is

question of appreciation of evidence by Registrar—Conclusion correct in facts and circumstances of case — High Court would not interfere. See Trade and Merchandise Marks Act (1958), S. 109. **AIR 1965 Cal 417.**

——Ss. 18, 11(a), 12 (2), 109—Mark alleged as likely to deceive or cause confusion by phonetic and visual similarity — Tests to be applied to decide on confusion or deception — Registrar deciding 'sagar' is not deceptively similar to 'singer'—Registrar's decision is exercise of discretion and not mere finding of fact—Discretion exercised in judicious and proper manner —High Court would not interfere. See Trade and Merchandise Marks Act (1958), S. 11(a). **AIR 1965 Cal 417.**

——Ss. 18 (4), 109—Discretion of Registrar — Registrar finding that certain mark has become distinctive of goods — Finding faultless and based on ample material on record — High Court would not interfere with finding. **67 Pun L R 329 : A I R 1965 Punj 17 (18) (Pt B) (Pr 6) (DB).**

SECTION 21

——Ss. 21, 11, 12, 17, 23 and 33—Identical marks — Registration — Duty of Registering authority pointed out — Method of comparison pointed out — Distinctiveness of mark — Tests — Registration opposed by owner of prior registered mark — Both marks in use for considerable time — No instance of confusion — Registration allowed. **I L R (1964) 1 Mad 786.**

SECTION 22

——S. 22 (a) — Amendment of application for registration allowed after long delay — No prejudice to objector proved — Amendment is not wrong exercise of powers conferred on Registrar. **69 Cal W N 947 : AIR 1965 Cal 417 (423) (Pt H) (Pr 25).**

SECTION 23

——Ss. 23, 11, 12, 17, 21, 33—Identical marks—Registration—Duty of Registering authority pointed out—Method of comparison pointed out — Distinctiveness of mark—Tests — Registration opposed by owner of prior registered mark — Both marks in use for considerable time—No instance of confusion — Registration allowed. **ILR (1964) 1 Mad 786.**

SECTION 27

——Ss. 27, 28 and 30—Infringement of trade-mark—Temporary injunction — Test to be applied for grant of injunction —Nature of right in trade-mark—Particulars creating confusion amongst consumers — Evidence and proot— Circumstances held not in favour of grant of injunction. See Civil P. C. (1908), O. 39, R. 1. **AIR 1962 Madh Pra 297.**

——S. 27 (2) — Passing off action— Infringement of trade mark — Assessment of degree of resemblance between two trade marks — Prominent features of trade mark alone to be taken into account. See Torts. **AIR 1962 Mad 127.**

——S. 27 (2) — Passing off action — Trade mark not registered—Expression 'registered' wrongfully used in trade mark—Suit for injunction for infringing trade mark—Maintainability of— Suit can be maintained if user is due to honest mistake. See Torts. **A I R 1962 Mad 127.**

SECTION 28

——S. 28 — Action for passing off and action for infringement of trade mark — Difference between pointed out. See Trade Marks Act 1940, S. 21. **A I R 1965 S C 980.**

——S. 28—Infringement of trade-mark:— Temporary injunction — Test to be applied for grant of injunction — Nature of right in trade-mark — Particulars creating confusion amongst consumers — Evidence and proof — Circumstances held not in favour of grant of injunction. See Civil P. C. (1908), O. 39, R. 1. **AIR 1962 Madh Pra 297.**

——S. 28 — **Registration of label as trade mark does not give owner to exclusive use of any particular word therein.**

Where a distinctive lable is registered as a whole such registration cannot possibly give any exclusive statutory right to the proprietor of the trade mark to the use of any particular word or name contained therein apart from the mark as a whole. 8 R. P.C. 181, A I R 1955 S C 558, Rel. on. **(1964) 2 Mad L J 148 : I L R (1964) 2 Mad 963.**

——S. 28—**Registration of trade mark with Chamber of Commerce—Effect.**

The entering up of a trade mark in the registers of bodies like Chambers of Commerce can only indicate that the particular mark has been in existence on the date of its registration; that would not, however, be sufficient to prove its user on the date of such registration. Nor can it prove its reputation in the market as representing the goods of the person registering it. (1956) 2 M L J 223 ; LXIII R. P. C. 187 (P. C.)—Rel. on. **ILR (1964) 1 Mad 786.**

SECTION 29

——S. 29—Action for infringement of trade mark—Burden of proof would be on plaintiff to establish that trade mark used by defendant in course of trade in the goods in respect of which his mark is registered is deceptively similar — Identification of essential features of trade marks. See Trade Marks Act, 1940, S. 21. AIR 1965 S C 980.

——S. 29—Infringement of trade-mark — Temporary injunction—Test to be applied for grant of injunction —Nature of right in trade-mark—Particulars creating confusion amongst consumers—Evidence and proof — Circumstances held not in favour of grant of injunction. See Civil P. C. (1908), O. 39, R. 1. **A I R 1962 Madh Pra 297.**

——S. 29—Infringement—What constitutes indicated —Trade Marks Act (1940), S. 21. See Trade Mark. **AIR 1963 Mad 460 (DB).**

——Ss. 29 and 133 — Rules under R. 13 and Sch. IV Class 30 — Trade mark registered in respect of particular goods falling under Class 30 of Sch. IV—Proprietor's right to use in respect of other goods falling under the same class. See Trade Marks Act (1940), S. 21. **AIR 1963 Mad 460 (DB).**

——S. 29—'Confectionary' and 'Biscuits' — Meaning indicated—Trade Marks Act (1940), S. 21. See Words and Phrases—'Confectionary'. **A I R 1963 Mad 460 (DB).**

——S. 29—Infringement action—Colourable imitation of essential features of trade mark—Trade mark must be examined as a whole to decide whether a man of reasonable apprehension and eye-sight would be deceived — Held trade mark with picture of Maharaja was not likely to be mistaken for trade mark with picture of Maharani. **ILR (1965) 1 Mad 607 : A I R 1965 Mad 250 (251 to 253) (Prs 6, 8, 12) (DB).**

SECTION 30

——S. 30—Infringement of trade-mark —Temporary injunction — Test to be applied for grant of injunction — Nature of right in trade-mark— Particulars creating confusion amongst consumers — Evidence and proof —Circumstances held not in favour of grant of injunction. See Civil P. C. (1908), O. 39, R. 1. **AIR 1962 Madh Pra 297.**

SECTION 32

——Ss. 32 (c) and 9 (3) — Expression "distinctive of the goods" —Meaning —Allegation that certain mark

is not distinctive of certain goods—Proof— Cancellation of registration under S. 32—Essentials—Registration for more than seven years—Absence of evidence to show its usage in trade prior to registration— Fact that it could be challeged under S. 31 before expiry of seven years not sufficient to justify cancellation under S. 32. ILR (1963) 2 Punj 62 : AIR 1964 Punj 77 (79, 80) (Pt A) (Prs 8, 10, 11).

——Ss. 32, 9 and 11— Mark unregistrable under S. 9 due to its not being 'distinctive' not disentitled to protection.

A mark which is unregistrable under S. 9 (1) (e) on account of not being distinctive is not necessarily disentitled to protection in a Court under Cl. (e) of S. 11. The validity of the registration of such a trade mark cannot therefore be challenged under S. 32 (b). (1918) 35 R P C 185, Rel. on. ILR (1963) 2 Punj 62 : AIR 1964 Punj 77 (79, 80) (Pt B) (Pr 9).

SECTION 33

——Ss. 33 and 111 (1) and (5)—Suit for infringement of trade-mark stayed under S. 111 (1)— Court not bound to pass order of injunction — Balance of convenience — Conditions under which injunction may be refused indicated — Civil P. C. (1908), O. 39 R. 1. (1962) 1 Andh W R 398 : A I R 1962 Andh Pra 510 (512 to 514) (Prs 7, 10, 11).

——Ss. 33, 11, 12, 17, 21, 23 — Identical marks — Registration — Duty of Registering authority pointed out — Method of comparison pointed out— Distinctiveness of mark — Tests — Registration opposed by owner of prior registered mark — Both marks in use for considerable time — No instance of confusion— Registration allowed. ILR (1964) 1 Mad 786.

SECTION 51

——S. 51—Trade mark—Infringement of—Passing off action—Absence of registered trade mark does not affect maintainability of suit for damages. 1961 Ker L J 177 : (1961) 1 Ker L R 299 : ILR (1961) 2 Ker 435 : 1961 Ker L T 1048 : AIR 1962 Ker 156 (162) (Pt D) (Pr 11) (DB).

SECTION 56

——Ss. 56, 109, 3—Application under S. 56—Parties doing business at Kanpur — Place within territorial limits of Trade-Marks Registry, New Delhi — Held, Punjab High Court and not Allahabad High Court had jurisdiction to dispose of the application — AIR 1962 Mad 214, Disting. AIR 1965 All 256 (257, 258) (Prs 7, 8, 9, 14).

——S. 56 — Person "aggrieved" — Person making application for rectification would have the locus for making application under S. 56, although at hearing of application he may not be found to be such person by his conduct in allowing trade mark to be registered by withdrawing opposition. 64 Bom L R 616 : AIR 1963 Bom 246 (249, 250) (Pt A) (Pr 8).

——Ss. 56 (2) and (4) and 4 (2) — Registrar's power of rectification does not go beyound contention raised by applicant. AIR 1963 Bom 246 (253) (Pt B) (Pr 14).

——S. 56 (4) — Word "Sulekha" registered as trade mark of fountain pens by Registrar — Successor Registrar cancelling registration — Successor cannot reopen question of fact—Use of dictionaries in fixing meaning of word suggested as trade mark—Such use is not warranted. See Trade Marks Act (1940), S. 46(4). AIR 1962 Bom 82.

——Ss. 56, 107 and 108—Petition for rectification of Register — Petitioner's match boxes bearing trade mark "three mangoes" — Trade mark "Mutulaies" adopted by respondents—Customers relying on labels found on match boxes—Claim for rectification cannot be sustained — Fraudulent intent to be specifically pleaded. (1964) 1 Mad L J 355 : 77 Mad L W 318 : 1964 Mad W N 239 : AIR 1965 Mad 42 (43, 44) (Pt A) (Prs 4, 5).

——Ss. 56, 112 (2) — High Court ordinarily loath to Interfere with Registrar's discretion. See Trade and Merchandise Marks Act (1948), S. 112 (2). AIR 1965 Mad 42.

——Ss. 56, 107 and 108 — Objection to registration of trade mark dismissed—Rectification petition made to expunge such mark from registry — Appeal also filed against Registrar's order directing registration— Held, such order could not operate as res judicata in a rectification petition made by objector under Ss. 56, 107 and 108 — (Civil P. C. (1908), S. 11). ILR (1965) 1 Mad 426 (DB).

——S. 56 — Registration of label with geographical name — Subsequent registration of label of another with same name — Application for rectification by owner of prior registered label—Registrar exercised his discretion by refusing to rectify register — Court in appeal ought to give considerable weight to it and should ordinarily be loath to interfere with that discretion. See Trade and Merchandise Marks Act (53 of 1958), S. 9 (1). (1964) 2 Mad L J 148 : ILR (1964) 2 Mad 963.

SECTION 77

——S. 77—Use of another's trade mark with express or implied consent—No infringement. 1964 All Cr R 143 : 1964 All W R (HC) 208 : 1964 All L J 653.

——Ss. 77, 78 — Controversy involved relating to complicated questions of abandonment of user and consent of holder of trade mark — Not fit to be decided by Criminal Court—Tort—Trade mark. 1964 All Cr R 143 : 1964 All W R (HC) 208 : 1964 All L J 653.

SECTION 78

——S. 78 — Controversy involved relating to complicated questions of abandonment of user and consent of holder of trade mark — Not fit to be decided by Criminal Court. See Trade and Merchandise Marks Act (1958), S. 77. 1964 All Cr R 143 : 1964 All W R (HC) 208 : 1964 All L J 653.

SECTION 79

——Ss. 79, 2 (v), 6 — Action under S. 79 — Registration of trade mark not necessary — Passing of action in case of unregistered mark — Nature of proof indicated. 1964 Mad W N 379 : 1965 (1) Cri LJ 558 : (1964) 2 Mad L J 192 : 1965 Mad L J (Cri) 646 : ILR (1965) 1 Mad 707 : AIR 1965 Mad 214 (215) (Prs 11, 12)

SECTION 92

——S. 92 — Accused styling his medicine in particular manner within three years of date of complaint—Complaint not barred by section.

A plain reading of S. 92 would show that a prosecution can be launched either within three years of the offence charged or within two years of its discovery by the prosecutor, whichever happens first. Thus in a case there is evidence on the record that the accused who had discontinued to infringe the complainant's trade mark had again begun to do so within three years previous to the date of the complaint, the complaint is not barred by S. 92. 1964 All Cr R 143 : 1964 All W R (HC) 208 : 1964 All L J 653.

SECTION 99

——Ss. 99, 109 — Claim in appeal that registration of certain mark should have been refused as certain declarations by applicant were false — Declarations false or true is question of fact — Question not raised

or agitated before Registrar — Cannot be allowed to be raised in appeal — Registrar's decision cannot be impeached on grounds which were never uttered before him. 69 Cal W N 947 : AIR 1965 Cal 417 (423) (Pt E) (Pr 24).

SECTION 105

—Ss. 105 and 2 (e)—Suit for passing off goods—District Court of Mysore closed for vacation—Plaintiff instituting suit in High Court of Mysore—High Court if possesses ordinary original civil jurisdiction then alone it would be 'District Court' within S. 2(e)—High Court, though at apex of Civil Courts, possesses no original jurisdiction in matters not expressly declared within its cognizance — It is not invested with ordinary original jurisdiction of District Court and is not competent to entertain passing off actions under S. 105—Mysore Act 5 of 1962, S. 12 of Mysore Act 1 of 1884 and Ss. 24 (1) (b) (i) and 151 of Civil P. C. are of no avail — Civil Petn. No. 90 of 1964, dated 29-5-1964 (Mysore), Reversed. Raja Soap Factory v. Shantharaj, (1965) 1 S C W R 834 : 1965 S C A 358 : (1965) 2 S C R 800 : 1965 S C D 491 : (1965) 2 Andh L T 1 : AIR 1965 S C 1449 (1450) (Pt A) (Prs 3, 4, 5, 6).

——S. 105—Suit under S. 73, Trade Marks Act, filed in Court of Additional Civil Judge — Objection to jurisdiction disallowed by Civil Judge but allowed by High Court in writ proceedings against that decision —High Court also issuing writ of prohibition to Court of Civil Judge not to proceed with trial of suit — Power of Civil Judge to return plaint under O. 7, R. 10 not affected. See Civil P. C. (1908), O. 7, R. 10. AIR 1963 All 448.

SECTION 106

——S. 106 — Passing off action — Unregistered trade mark—Infringement of — Suit for injunction—Relief in — Plaintiff is entitled to injunction but not to delivery of offending lables, blocks or goods. See Torts. A I R 1962 Mad 127.

SECTION 107

——S. 107 — Petition for rectification of Register — Petitioners' match boxes bearing trademark "three mangoes" — Trade mark "Matulaies" adopted by respondents — Customers relying on labels found on match boxes — Claim for rectification cannot be sustained. See Trade and Marchandise Marks (1958), S. 56. AIR 1965 Mad 42.

SECTION 108

——S. 108 — Petition for rectification of Register — Petitioners' match boxes bearing trademarks "three mangoes"—Trade mark 'Matulaies" adopted by respondents — Customers relying on labels found on match boxes — Claim for rectification cannot be sustained. See Trade and Merchandise Marks Act (1958), S. 56. A I R 1965 Mad 42.

SECTION 109

——S. 109 — Application under S. 56 — Parties doing business at Kanpur—Place within territorial limits of Trade Marks Registry, New Delhi—Held Punjab High Court and not Allahabad High Court had jurisdiction to dispose of the application. See Trade and Merchandise Marks Act (1958), S. 56. A I R 1965 All 256.

——S. 109—Decision of Registrar — Interference by High Courts—Grounds for.

Before the High Court interferes with the decision of the Registrar, as to the similarity or dissimilarity of the two marks or the two words, it ought to be satisfied that the Registrar in arriving at his decision has acted upon some wrong principle, e. g., has not approached the problem in the right way, or has taken into consideration matters which he ought not to have taken into consideration or has omitted to take into consideration matters which were proper for consideration. Unless there are some such grounds as those for interfering with the decision of the Registrar, that decision ought not to be disturbed. (1935) 52 R P C 136, Rel. on. 66 Bom L R 612 : A I R 1965 Bom 35 (41, 42) (Pt A) (Pr 16).

——S. 109 — Mark alleged as likely to deceive or cause confusion by phonetic and visual similarity—Tests to be applied—Registrar's decision is exercise of discretion and not mere finding of fact — Discretion exercised in judicious and proper manner — High Court would not interfere. See Trade and Merchandise Marks Act (1958), S. 11 (a). AIR 1965 Cal 417.

——Ss. 109, 18—High Court's power to interfere with decision of Registrar — Finding based on evidence will not be interfered. 69 Cal W N 947 : A I R 1965 Cal 417 (420) (Pt B) (Pr 13).

——Ss. 109, 18, 9 (3), 9 (5) (b) — Distinctiveness of mark—Long user — Question if user is long enough is question of appreciation of evidence by Registrar—Conclusion correct in facts and circumstances of case —High Court would not interfere. 69 Cal W N 947 : A I R 1965 Cal 417 (420, 421) (Pt C) (Pr 14).

——S. 109 — Claim in appeal that registration of certain mark should have been refused as certain declarations by applicant were false — Declarations false or true is question of fact — Question not raised or agitated before Registrar — Cannot be allowed to be raised in appeal — Registrar's decision cannot be impeached on grounds which were never uttered before him. See Trade and Merchandise Marks Act (1958), S. 99. A I R 1965 Cal 417.

——S. 109—Discretion of Registrar—Registrar finding that certain mark has become distinctive of goods—Finding faultless and based on ample material on record—High Court would not interfere with finding. See Trade and Merchandise Marks Act (1958), S. 18 (4). AIR 1965 Punj 17 (DB).

SECTION 111

——S. 111 (1) and (5) — Suit for infringement of trade mark stayed under S. 111 (1)—Court not bound to pass order of injunction — Balance of convenience — Conditions under which injunction may be refused indicated. See Trade and Merchandise Marks Act (1958), S, 33. A I R 1962 Andh-Pra 510.

——S. 111 (1) — Stay of suit—Interlocutory application for stay whether sufficient.

Section 111 seeks to prevent parallel enquiries in the same matter and as such if the defendant even before the filing of the written statement and before the trial pleads in any petition or affidavit that the registration of the plaintiff's trade mark is invalid he would be entitled to ask for a stay of the suit if the other conditions specified in the section are satisfied. The word 'pleads' is not necessarily confined to averments made in plaints and written statements and can be and is given an extended meaning. The words 'The Court trying the suit' do not mean 'actually trying' 'that is at the trial itself. The words 'trying Court' cannot be in the context of the purpose the legislature seeks to enforce in this section, the Court before which the suit is pending, the Court charged with the duty of the trying the action. A suit can, therefore, be stayed on an interlocutory application. 69 Cal W N 683 : A I R 1966 Cal 247 (248, 249) (Pt A) (Prs 4, 5).

——S. 111 (1) — Suit for infringement of trade mark and for passing off — Suit so far as it relates to infringement should be stayed. 69 Cal W N 683 : AIR 1966 Cal 247 (249, 250) (Pt B) (Prs 8, 9).

SECTION 112

——Ss. 112 (2) and 56—High Court ordinarily loath to interfere with Registrar's discretion,

The relief to be given under S. 56 is a discretionary relief, and, though the High Court is bound to consider the case independently on merits, it would ordinarily be loath to interfere with the discretion of the Registrar. (1964) 1 Mad L J 355 : 77 Mad L W 318 : 1964 Mad W N 239 : A I R 1965 Mad 42 (44, 45) (Pt B) (Pr 8).

SECTION 123

——S. 123 (b)—Trade Mark agents whether carry on industry — Agents carrying on activities not covered by Trade and Merchandise Marks Act — May be said to pursue industry — Question to be decided on evidence — Case sent back to Industrial Tribunal for deciding question after taking evidence. See Industrial Disputes Act (1947), S. 2 (j). A I R 1964 Cal 80 (DB).

——S. 123—Rules framed under the Act, R. 21.

Power to withdraw application by Respondent for registration under Trade and Merchandise Marks Act (1958) — Power of Attorney executed by appellant in favour of Advocate to take opposition proceedings — Such power authorises the advocate to enter settlement or compromise by withdrawing the opposition proceedings. See Civil P. C. (1908), O. 3, R. 4. 1965 Punj L R (Sup) 284.

TRADE, COMMERCE AND INTERCOURSE AMONG STATES

Restriction on

See Constitution of India, Arts. 302, 304.

TRADE DISPUTE

See (1) Bombay Industrial Relations Act (1947).
(2) C. P. and Berar Industrial Disputes Settlement Act (1947).
(3) Industrial Disputes Act (1947).

TRADE MARK

See (1) Hyderabad Trade Marks Act.
(2) Penal Code (1860), Ss. 480—489.
(3) Trade and Merchandise Marks Act (1958).
(4) Trade Marks Act (1940).

Counterfeit.

See Penal Code (1860), S. 28.

Infringement of.

See (1) Civil P. C. (1908), O. 6, R. 4, O. 39, R. 4.
(2) Penal Code (1860), Ss. 480 to 489.
(3) Trade and Merchandise Marks Act (1958), Ss. 77, 79.

TRADE MARKS ACT (5 of 1940)

See also Trade and Merchandise Marks Act (43 of (1958).

PREAMBLE

——Preamble—Law of trade mark adopted in the Act merely reproduces English Law with slight modifications — Reference to English decisions on corresponding sections of English Act is apposite and helpful. A I R 1955 S C 558.

——Preamble — Person stocking goods wrapped in wrappers bearing marks which are colourable imitation of genuine marks — (Trade mark — Using false trade mark)—(Words and Phrases—"Using false trade mark"). See Penal Code (1860), S. 482. 1958 Cri L J 1102 : A I R 1958 All 643 (DB).

——Preamble—Object and scope of.

Trade-mark is kind of property and is entitled to protection under the law, irrespective of its value in money so long as it has some business or commercial value. Not merely the interests of the public but also the owner are the subject and concern of the Trade-Mark legislation. 64 Cal W N 110 : A I R 1959 Cal 56 (59) (Pt F) (Pr 19) (DB).

——Preamble—Reference to English decisions—How far helpful in interpreting Act.

As the law of Trade Marks adopted in the Indian Trade Marks Act merely reproduces the English Law with only slight modifications, a reference to the judicial decisions on the corresponding section of the Englsh Act, is apposite and helpful. A I R 1955 S C 558, Foll. 1961 Ker L J 177 : (1961) 1 Ker L R 299 : I L R (1961) 2 Ker 435 : 1961 Ker L T 1048 : A I R 1962 Ker 156 (159) (Pt A) (Pr 7) (DB).

——Preamble—Passing off—Whether trade mark and get-up of defendant's article contravenes trade name and get-up of similar article of plaintiff — Tests laid down. 51 Punj L R 383 : I L R (1950) Punj 114 : A I R 1951 Punj 332 (335, 336) (Pt B) (Prs 16, 17, 18, 20) (DB).

SECTION 2

——S. 2 (n)—Imposition of disclaimer — Exercise of discretion by Registrar — Interference by High Court — Principle indicated. See Trade Marks Act (1940), S. 13. A I R 1955 S C 558.

——S. 2 (l)—Trade mark—Essentials.

The essence of the definition of 'trade mark' contained in the section is that the mark is intended to identify the goods as goods manufactured or produced by a particular person. The question that arises in a trade mark case is whether the goods produced by the applicant for registration of a particular trade mark are sold in the market or can be passed off as the goods of the objector by the use of the trade mark for which registration is sought. 1958 All L J 474 : I L R (1958) 2 All 721 : A I R 1958 All 823 (826, 829) (Pt C) (Prs 12, 16, 26, 27) (DB).

[Reversed in A I R 1963 S C 449.]

——Ss. 2 (2), 37 (1) (a)—'The use of a trade mark in relation to those goods' — Expression includes use of trade mark on goods itself or on container—Occasion for use is when person securing trade mark desires to use it — If he does not desire to use it on certain occasion, it is not for others to say that he must. A I R 1955 N U C (All) 3584.

——S 2 (f) — Counterfeiting — Containers bearing complainant's trade mark recovered from shops of accused—Complainant's product removed and spurious substituted — Offence under Ss. 482 and 485, Penal Code, held established—Burden was on accused to prove that he had acted without intent to defraud. See Penal Code (1860), S. 482. 1961 (1) Cri L J 488 : A I R 1961 Cal 240 (DB).

——S. 2 (1), (e) and (2) — 'Use' — Meaning of. See Trade Marks Act (1940), S. 10 (2). A I R 1959 Cal 56 (DB).

——S. 2 (d)—'High Court' — Petition of registration of mark filed when Hyderabad Act was in force—Appeal lies to Hyderabad High Court even though Hyderabad Act was replaced by Indian Act. See Trade Marks Act (1940), S. 76. A I R 1955 N U C (Hyd) 2361 (DB).

SECTION 6

SYNOPSIS

(Trade Marks Act (5 of 1940), S. 6.)

1. Scope.
2. Sub-section (1).
3. Distinctiveness—Sub-section (2).
4. Proviso to sub-section (3).

1. Scope.

——S. 6—Scope—Trade Mark—Registration—Essentials—Distinctive trade mark.

The qualifications that a trade mark must possess are mentioned in S. 6, which absolutely prohibits registration if there is an absence of any of the essential particulars. The section does not enjoin registration merely because it consists of one of the particulars and the Registrar's discretion to refuse registration granted by S. 14 is not taken away by S. 6. Further a trade mark is eligible for registration if it consists of any one of the particulars and, is not required to consist of more than one of the particulars. If the subject-matter of registration is a trade mark and contains one invented word, it is eligible for registration even if the trade mark does not contain any other particular, or it was not adapted to distinguish the applicant's goods from others. A trade mark is required to be distinctive only if it is eligible for registration under paragraph (e) but not if it is eligible for registration under any other paragraph. If the subject-matter consists of any of the particulars mentioned in paragraphs (a) to (d) but does not amount to a trade mark, there is no question of registering anything and there would be no occasion for considering the provisions of S. 6 at all. The proviso to sub-s. (3) deals with old trade marks, e. g., trade marks continuously used from a date prior to 25-2-1957 upto the date of the application for registration. **A I R 1957 All 683 (689 to 691) (Pt A) (Pr 8).**

——Ss. 6, 8, 9 and 10—Applicability and scope.

Sections 8, 9 and 10 which forbid registration of certain trade marks necessarily apply to trade marks which otherwise would have been registrable. They impose disqualifications which can exist side by side with the qualification mentioned in S. 6. A trade may be qualified for registration under S. 6 and yet be disqualified under Ss. 8, 9 and 10. If a trade mark does not possess the necessary qualification and is, therefore, not registrable, there would be no occasion for considering the provisions of these sections. Section 8 is directed to some positive objection to registration and not to mere lack of qualification. The words "contrary to any law" in paragraph (c) of S. 8 mean that the trade mark must be contrary to some law other than that contained in Ss. 6, 8, 9, etc. of the Act. If a trade mark is not registrable under any of the provisions of the Act itself, there would be no need of enacting S. 8 (c). **A I R 1957 All 683 (691) (Pt B) (Pr 10).**

——S. 6—Trade name—When can be said to lose its character by becoming publici juris.

A name originally a good trade name may lose its character and become publici juris, i. e., where the first person using the name does not claim the right to prevent others from using it, and allows other persons to use it without complaint. The name then comes to denote the article and nothing more; the name becomes publici juris, and any one who it at liberty to make the article can call it by the name by which it is usually known. No name, however can become publici juris in this way so long as the person originally entitled to the use of the name asserts his rights in that respect. Moreover, it is for those who assert that a trade name has become publici juris to prove it. (1896) 2 Ch 54, Rel. on.

Held, that the medicine known as 'Amritdhara' had not become publici juris before its registration as a trade mark and therefore was not disentitled to protection in a Court of Justice. **AIR 1957 All 683 (699, 700) (Pt L) (Prs 35, 37).**

——S. 6—Object and scope of.

The provisions of S. 6 are intended to protect all common words of the language from the monopoly that would result from registration as a trade mark. **ILR (1960) 1 Cal 719 : AIR 1959 Cal 636 (639) (Pt C) (Pr 13) (DB).**

2. Sub-section (1).

——S. 6—'Invented word' — 'Amritdhara'.

The word 'Amritdhara' is not an invented word. It is a mere combination of two words in common use in Hindi. The word 'amritdhara' has not only a meaning but also a meaning with reference to the medicine to which it is applied ; it suggests a liquid medicine to be taken internally and having the power of curing a number of diseases as nectar is supposed to do. The word 'Amritdhara' cannot be claimed to be invented simply because it was never used for a medicine previously; this is not the test of an invented word. An invented word is a word that never existed previously and not a word that existed but was not applied to a particular article previously. **AIR 1957 All 683 (694, 695) (Pt E) (Pr 18).**

——S. 6 (1) (d) — Applicability — Use of common word as trade mark—Test.

A trade mark registrable under S. 6 (d) can be an ordinary or common word having some significance but it must not have any significance in relation to the goods to which it is applied. It is the significance of the designation in connection with the goods upon which it is used, not its abstract significance, which is determinative. **AIR 1957 All 683 (695) (Pt F) (Pr 19).**

——S. 6 (1) (c) and (d)—Relative scope and distinction.

The difference between paragraphs (c) and (d) of S. 6 (1) is that if a trade mark consists of an invented word which necessarily means that the word has no meaning in relation to the goods, the question of its having direct reference to the character or quality of the goods cannot possibly arise, whereas if it consists of a common word i. e., an uninvented word, it must be such a word as has no direct reference to the character or quality of the goods. **AIR 1957 All 683 (695) (Pt G) (Pr 21).**

——S. 6 (1) (c) — 'Patentex' — Word is neither an invented nor a coined word — As such it cannot be registered as a trade mark. **63 Bom L R 650 : AIR 1962 Bom 88 (90) (Pt A) (Prs 3, 4).**

——S. 6 (1) (e) — Word — Patentex though in long user is not registrable as a mark distinctive in its character.

In spite of the 'long user' by the petitioner of the word 'patentex' in connection with his goods it is not registrable as a trade mark distinctive in its character under sub-s. (1) (e). The word is indistinguishable from and has the same meaning as the word 'patented' Neither the word patent nor the word patented could ever be adapted in relation to goods of any person in order to distinguish them from those of others within the meaning of Cl. (e) of sub-s. (1) of S. 6, and neither of them could be registered as a trade mark in relation to any goods. Consequently the word 'patentex' too is inherently inadaptable in relation to any goods as the word 'patented' and cannot be registered as a trade mark. **63 Bom L R 650 : AIR 1962 Bom 88 (90) (Pt B) (Pr 5).**

——S. 6 (1) (d) — Manufacture of fountain pens by petitioners—Petitioners applying for registration of word 'Sulekha' as trade mark — Meaning of word 'Sulekka' — It is not descriptive of goods manufactured.

The Registrar of Trade Marks is not justified in attempting to discover the meaning of the word 'Sulekha' by splitting it into 'Su' and 'lekha' and then finding out the meanings thereof from several dictionaries and then coming to the conclusion only

on the basis of three of the several dictionaries that the word 'Sulekha' meant 'good writing.' 63 Bom L R 642 : AIR 1962 Bom 82 (85, 86) (Pt A) (Prs 10, 11).

——S. 6 (1) (d)—Word 'Sulekha' registered as trade mark of fountain pens by Registrar — Successor Registrar cancelling registration — Successor cannot reopen question of fact—Use of dictionaries in fixing meaning of word suggested as trade mark—Such use is not warranted. See Trade Marks Act (1940), S. 46 (4). : AIR 1962 Bom 82.

——S. 6 (1) (c)—"Invented word"—"Vapo Rub".

The word "Vapo Rub" is not an invented word. The word "Vapo Rub" suggests the combination of two ordinary English words "Vapour" and "Rub" with a slight distortion of the word "Vapour". It is no doubt true that by the dropping of "U" and "R" the word "Vapo" ceases to be an ordinary English word and some element of novelty is introduced into it, which gives it the appearance of a coined word, but still it does not attain the status of an invented word which is a word not to be found in the existing vocabulary. The word "Karsote" is however an invented word. ILR (1960) 2 Cal 174 : AIR 1959 Cal 654 (656) (Pt A) (Prs 15, 16) (DB).

——Ss. 6 (1) (e), 70—Distinctive mark—"Vapo Rub".

Held, that taking into consideration affidavits of the respondent company, the Mark 'Vapo Rub' had been continuously in user in India from a date prior to 25th February, 1937 and up to the date of the application of the respondent company for registration and even later than that:and this mark had acquired sufficient distinctiveness in fact, to entitle the mark to registration. ILR (1960) 2 Cal 174 : AIR 1959 Cal 654 (656, 657, 658) (Pt B) (Prs 17 to 19, 26, 37, 38) (DB).

——S. 6 (1)—Distinctive mark—"B. I. Phlogiston" — Nature of,

Ordinarily when one of the particulars mentioned in (a), (b), (c) or (d) is shown to be present, the presumption is that the mark is distinctive. The mark "B. I. Phlogiston" is distinctive and satisfies the requirement of S. 6 (1). ILR (1960) 1 Cal 719 : AIR 1959 Cal 636 (640) (Pt E) (Pr 20) (DB).

——S. 6 (1)—Scope and applicability.

Sub-section (1) of S. 6 is couched in the negative form. Its effect is that in order to be eligible for registration a mark must contain at least one of the particulars so specified. In other words, the absence of any one of the particulars will disqualify the mark for registration though the presence of any one of them will not, ipso facto make the mark eligible for registration. Sections 8, 9, 10 and 14 (1) lay down certain other matters which may be taken into consideration in directing registration of a trade mark. 59 Cal W N 320 : ILR (1956) 2 Cal 738 : AIR 1955 Cal 519 (520, 521) (Pt A) (Pr 7) (DB).

——S. 6 (1) (b) — Mark, whether has reference to character or quality of goods—Considerations.

In considering :whether a mark has reference to the character or quality of the goods, the mark must be looked at, not in its grammatical significance, but as it would represent itself to the public at large. Such a question is a practical question to be decided by the common understanding of the term among those who used it or have occasion to use it in the course of their daily lives and not by what may be recondite meaning to be found in dictionaries. 59 Cal W N 320 : ILR (1956) 2 Cal 738 : AIR 1955 Cal 519 (521) (Pt B) (Pr 8) (DB).

——S. 6 (1) (d) — Mark must not:have direct reference to character and quality — Distinctiveness — Mark 'Rasoi' for hydrogenated cooking oil — Whether can be registered — Word of common use — Eligibility for registration.

Section 6 (1) (d) requires that mark must not have direct reference to the character or quality of the goods. A mere suggsstive reference is not direct reference.

Reference to cases is not of much help in finding out whether or not a particular word has direct reference to the character and quality of goods unless the decision lays down a principle of construction.

The word 'Rasoi' for hydrogenated cooking oil has direct reference to the character and quality of the goods and is not eligible for registration.

The requirement of distinctiveness attaches to each one of the clauses in S. 6 (1) including S. 6 (1) (d). Distinctiveness must be proved to exist in respect of the Cls. (a) to (e) of S. 6 (1).

Thus even if the word 'Rasoi' when used as a trade mark for the hydrogenated cooking oil, cannot be said to have such direct reference to the quality or character of the goods, the mark must still be proved to be distinctive in order to be eligible for registration. 59 Cal W N 320 : ILR (1956) 2 Cal 738 : AIR 1955 Cal 519 (521 to 523) (Pt C) (Prs. 10, 16, 17, 19, 21).

——S. 6 (1) — Scope and applicability — For eligibility for registration mark must contain at least one of particulars specified in S. 6 (1) — Absence of any one of particulars will disqualify mark for registration though presence of any one of them will not, ipso facto, make mark eligible. AIR 1955 NUC (Cal) 3664 (DB),

——S. 6 (1) (d) — Mark, whether has reference to character or quality of goods — Considerations indicated. AIR 1955 N U C (Cal) 3664 (DB).

——S. 6 (1) (d)—Reference to character and quality must not be direct—Distinctiveness — Requirements of, considered—Mark "Rasoi" for hydrogenated cooking oil — Cannot be registered being of common use and not having become distinctive — Word of common use — When eligible for registration indicated. AIR 1955 N U C (Cal) 3664 (DB).

——S. 6 (1) (a) — Trade name registered distinctive of goods of manufacturer even before registration — Registration of geographical name held proper — Relief under S. 46 is discretionary. See Trade Marks Act (1940), S. 46. AIR 1965 Mad 33.

——S. 6 (1) (c)—Invented word — Combination of two words is not invented word — 'Speedmaster' is not invented word. 40 Mys L J 646 : AIR 1963 Mys 122 (124) (Pt A) (Pr 3) (DB).

——S. 6 (1) (d)—Word "Speedmaster" has no direct reference to character of goods namely ordinary watches, clocks and time pieces.

Under S. 6 (1) (d) what is objectionable to the eligibility of a word being registered as a trade-mark is its direct reference to the character or quality of the goods. A mere suggestive significance in connection with the goods would not render it inappropriate for use as a trade-mark. For finding out whether a particular word has any direct reference to the character or quality of the goods what has to be looked into is not the strict grammatical sense of the word, but as to what it would represent to the public at large. (1928) 45 R P C 421 and AIR 1955 Cal 519, Rel. on.

The essential feature of any ordinary clock, time piece or watch, is to include the time. There being no mention of time, in the expression "Speedmaster," it cannot be said that the expression has any direct reference to the character of the goods. 40 Mys L J 641:AIR 1963 Mys 122 (125, 126) (Pt B) (Pr 5) (DB).

——Ss. 6 (1) and 14 (1) — Registrar refusing registration though mark was eligible under S. 6 (1) — High Court can interfere. See Trade Marks Act (1940); S. 76. AIR 1963 Mys 122 (DB).

——S. 6 (1) — Marks satisfying requirements for eligibility — Refusal to register — Interference by High Court. See Trade Marks Act (1940), S. 76. AIR 1963 Mys 122 (DB).

——S. 6 — Geographical name cannot be registered under para. (d) but it can be registered under para. (e) — 'Landra' a name of small insignificant village not connected with road or rail — No post office — It cannot be called a geographical name. AIR 1955 N U C (Punj) 737.

3. Distinctiveness—Sub-section (2).

——S. 6—Distintiveness—Onus of proof.

When the distinctitive mark is an ordinary plain word, heavy onus lies upon the applicant to prove that it has acquired distinctiveness. AIR 1957 All 683 (696) (Pt H) (Pr 24).

——S. 6 (2)—Distinctiveness—Test.

In deciding whether a distinctive trade-mark was adapted to distinguish the goods the tribunal may take into consideration whether it was inherently so adapted to distinguish or whether in fact by reason of the user or by any other circumstances it was in fact so adapted. Inherently adapted means that it has an innate quality of distinctiveness: 49 Cal W N 425, Rel. on. AIR 1957 All 683(697, 699)(Pt J)(Prs 29, 33).

——Ss. 6 (2) and (3) and 8 — Distinctiveness.

Sub-section (3) of S. 6. as indeed sub-s. (2), deals with distinctiveness and S. 8 (a) also deals with something which is likely to deceive or cause confusion and therefore is not distinctive. Where the mark was registered it must be taken that the provisions of S. 6 (2) and (3), were complied with. ILR (1955) Punj 1023 : AIR 1956 Punj 4 (5) (Pt B) (Pr 9).

——S. 6 — Distinctiveness — Evidence — Witness stating — 'Landra' machines better than others and he purchased it because it was 'Landra'— That it had connection with village name or with manufacturers not shown — Evidence held was not of much assistance. AIR 1955 N U C (Punj) 737.

4. Proviso to sub-s. (3).

●——S. 6 (1) (d) and (3), Proviso — Trade mark — Registration of — Requisites for — 'Words having no direct reference' — Words 'Pharmaceutical Laboratories' have direct reference to character of goods —But length of user of such words is material factor for trade mark being registered under Proviso to sub-s. (3). Kaviraj Pandit Durga Dutta Sharma v. Navaratna Pharmaceutical Laboratories. (1965) 2 S C A 52 : 1965 Ker L J 690 : (1965) 1 S C R 737: (1964) 2 S C W R 479 : AIR 1965 S C 980 (985, 986) (Pt A) (Prs 14 to 16).

●——S. 6 (3), Proviso — Construction of Proviso — Proviso is not otiose.

The use of the words 'as aforesaid' in the words of the Proviso to sub-s. (3) of S. 6 'shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid' takes one back first to sub-s. (3) and then on to sub-s. (2) and necessarily also the provision in S. 6 (1) (d) where marks which are incapable of acquiring distinctiveness are dealt with. Hence, even on the terms of the Proviso however construed it is not possible to escape the conclusion that a mark which is not 'adapted to distinguish' by the application of the tests laid down in S. 6 (1) could still qualify for registration by proof of acquired distinctiveness. A construction which would lead to old marks and new marks being placed on the same footing and being subjected to the same tests for registrability cannot be accepted.

A mark might have been used even prior to February 25, 1937; but it might not qualify for registration under the Proviso to S. 6 (3) by not having acquired that degree of factual distinctiveness which the Registrar considers is sufficient to enable it to qualify for registration. It is, therefore, possible to conceive of cases where even if the Proviso to S. 6 (3) were construed in the manner indicated above, there would still be scope for the rejection by the Registrar of a trade mark in use prior to the specified date. Kaviraj Pandit Durga Dutt v. Navaratna Pharmaceutical Laboratories. (1965) 2 S C A 52 : 1965 Ker L J 690 : (1965) 1 S C R 737 : (1964) 2 S C W R 479 : AIR 1965 S C 980 (987, 988) (Pt B) (Prs 20, 21, 23).

——S. 6 (3), Proviso — Effect of.

The proviso to S. 6 (3) dispenses with the proof of a trade mark being adapted to distinguish or having in fact been adopted to distinguish by user when it has been used continuously from before 25th February, 1937, and regardless of whether it was adapted to distinguish or not the mere fact that it has come to distinguish may be taken as sufficient by the Registrar. AIR 1957 All 683 (699) (Pt K) (Pr 34).

——S. 6 (3), Proviso — Application for registration made on 11-3-59 — Applicant admitting that goods in connection with which the word for which registration is claimed was not marketed in India during second world war — Held he was not entitled to registration of the word as proviso to sub-section requiring user from before 25-2-1937 to date of application was not complied with — Exclusion of period covered by war was not warranted by the proviso. 63 Bom L R 650 : AIR 1962 Bom 88 (91) (Pt C) (Pr 6).

——S. 6 — Word in common use — When can be registered as trade mark — Such word when used in combination with other words can be registered if combination is new or original — Words 'Navaratna' and 'Navaratna Pharmaceutical Loboratories' — If can be registered as trade mark.

Held, that the word 'Navaratna' a descriptive word in Ayurvedic medicines had not by the long user by the plaintiff firm on its medicinal preparations, acquired such a secondary distinctive meaning as to justify its being registered as firm's trade mark under S. 6 of the Act. But the combination of the three words 'Navaratna Pharmaceutical Laboratories' had acquired sufficient distinctiveness to justify their registration as the firm's trade mark, 1961 Ker L J 177 : (1961) 1 Ker L R 299 : 1961 Ker L T 1048 : ILR (1961) 2 Ker 435 : AIR 1962 Ker 156 (159 to 162) (Pt B) (Prs 7, 9, 12) (DB).

SECTION 8

SYNOPSIS

(Trade Marks Act (5 of 1940), S. 8.)

1. Scope.
2. Comparison of provisions of Ss. 8 and 10.
3. "Likely to deceive or to cause confusion."
4. "Or otherwise."
5. "Contrary to any law."
6. Burden of proof.

1. Scope.

●——S. 8 (a)—Duty of Registrar under S. 8 (a).

The question which the Registrar has to decide under S. 8 (a) is, whether having regard to the reputation acquired by use of a mark or a name, the mark at the date of the application for registration if used in a normal and fair manner in connection with any of the goods covered by the proposed registration, will not be reasonably likely to cause deception and confusion amongst a substantial number of persons. What he decides is a question of fact but

having decided it in favour of the applicant, he has a discretion to register it or not to do so. But the discretion is judicial and for exercising it against the applicant there must be some positive objection to registration, usually arising out of an illegality inherent in the mark as applied for at the date of application for registration. (1940) 58 R P C 91 and (1951) 68 R P C 197, Rel. on. London Rubber Co, Ltd. v. Durex Products Incorporated. (1963) 2 S C W R 9: (1964) 1 S C A 503: (1964) 2 S C R 211: AIR 1963 S C 1882 (1886) (Pt C) (Pr 8).

●——S. 8 (a) — Trade mark — Reputation among general public should attach to trade mark and not to maker of goods.

In order that a trade mark may acquire reputation among the general public what is necessary is that the reputation should attach to the trade mark; it should appear that the public associated that trade mark with certain goods. The reputation is the reputation of the trade mark and not that of the maker of the goods bearing that trade mark. A trade mark may acquire a reputation in connection with the goods in respect of which it is used though a buyer may not know who the manufacturer of the goods is. Corn Products Refining Co. v. Shangrilla Food Products Ltd, 62 Bom L R 162 : (1960) 1 S C A 536: (1960) 1 S C R 968 : 1960 Mad L J (Cr) 418 : 1960 S C J 509 : AIR 1960 S C 142 (145) (Pt A) (Pr 11).

●——S. 8 — Passing off action and registration of trade mark — Different considerations — (Civil P. C. (1908), S. 11).

The onus in a passing off action rests on the plaintiff to prove whether there is likelihood of the defendants' goods being passed off as the goods of the plaintiffs. The considerations relevant in a passing off action are somewhat different than they are on an application made by registration of a mark under the Trade Marks Act and that being so the decision of a Court in a passing off action cannot be considered as relevant on the questions that the Registrar has to decide under the provisions of S. 8. The National Sewing Thread Co., Ltd. v. James Chadwick and Bros., Ltd. 1953 S C A 610 : 56 Bom L R 21 : (1953) S C J 509 : (1953) 2 M L J 215 : 1953 S C R 1028 : AIR 1953 S C 357 (363) (Pt L) (Pr 24).

——S. 8 — Scope — Section 8 is directed to some positive objection to registration and not to mere lack of qualification — Words "contrary to any law" in S. 8 (c) mean that the trade mark must be contrary to some law other than that contained in Ss. 6, 8 and 9 etc. of the Act. See Trade Marks Act (1940), S. 6. AIR 1957 All 683.

——S. 8 (a)—Discretion of Registrar — Interference in appeal — S. 76.

The matter of registration of trade mark is essentially left to the discretion of the Registrar. Particularly when the Registrar comes to the conclusion that under the provisions of S. 8 (a) and by reason of the mark of the applicant being likely to deceive or to cause confusion he was disentitled to protection in a Court of Justice, the High Court in appeal would certainly be very reluctant to interefere with the exercise of such discretion. 62 Bom L R 841 : AIR 1961 Bom 119 (120) (Pt A) (Pr 5).

——Ss. 8, 10 (2) — Opposition to application for registration—Points to be considered.

Where a proprietor applies for registration of his trade-mark and there is opposition by another proprietor of a similar trade mark, relying on S. 8 and the Registrar considers the application for registration both under S. 8 and S. 10 (2), the questions for consideration would be : (1) whether the mark of the applicant contains any matter, the use of which would, by reason of its being likely to deceive or to cause confusion, disentitle it to protection in a Court of law; and (2) whether, notwithstanding the opposition's case that the applicant's mark so nearly resembles his own as to be likely to deceive or cause confusion, the applicant has established honest concurrent user to entitle him to obtain registration under the provisions of sub-s. (2) of S. 10. 37 Mys L J 801 : ILR (1959) Mys 668 : A I R 1960 Mys 142 (144, 145) (Pt B) (Prs 7, 8) (DB).

——Ss. 8, 10 — Considerations in registering trademarks are somewhat different from those in passing off actions. AIR 1955 N U C (Mys) 5952 (DB).

——Ss. 8, 16, 76—Exercise of discretion by Registrar should not be lightly interfered with. A I R 1955 N U C (Mys) 5952 (DB).

——Ss. 8 (a), 24, 46 and 47 — Application for rectification of register—Necessary particulars not given —Competency of application.

Under S. 24 a trade mark which has been registered for seven years or more is valid in all respects and is not open to attack under S. 46 of the Act except on the ground of fraud or unless it offends against the provisions of S. 8. If an application for rectification of register contains no particulars of fraud or as to how the registration causes confusion or interference, the application is incompetent. I L R (1955) Punj 1023 : AIR 1956 Punj 4 (5) (Pt A) (Prs 6, 7, 10).

2. Comparison of provisions of Ss. 8 and 10.

●——Ss. 8 (a) and 10 (1)—Comparison of provisions of Ss. 8 (a) and 10 (1).

From a comparison of the provisions of S. 8 (a) and S. 10 (1) of the Trade Marks Act, 1940, it is clear that the object of both these provisions is to prohibit from registration marks which are likely to deceive or cause confusion. Deception or confusion may result from the fact that the marks are identical or similar or for some other reason. While sub-cl (a) of S. 8 is wide enough to cover deception or confusion resulting from any circumstance whatsoever sub-s. (1) of S. 10 is limited to deception or confusion arising out of similarity in or resemblance between two marks. In other words the enactment of this provision would show that where there is identity or similarity in two marks in respect of the same goods, or goods of the same description registration at the instance of another proprietor would be prohibited where a mark is already on the register as being the property of another proprietor. London Rubber Co., Ltd. v. Durex Products Incorporated. (1963) 2 S C W R 9 : (1964) 1 S C A 503 : (1964) 2 S C R 211 : A I R 1963 S C 1882 (1885, 1886) (Pt A) (Pr 7).

● ——Ss. 8 (a) and 10 (2) — Construction of S. 10 (2) — It is to be construed independently of sub-s. (1) — Section 8 (a) does not override effect of S. 10 (2). See Trade Marks Act (1940), S. 10 (2). A I R 1963 S C 1882.

——Ss. 8 and 10 — Operation of S. 8 compared with that of S. 10.

Looking at the scheme of Ss. 8 and 10, it seems to be clear that S. 10 has undoubtedly a restricted operation. It deals with a case where the trade mark sought to be registered is identical with the trade mark of another proprietor where there is a close resemblance between those two trade marks. So that under S. 10 what the Registrar has got to do is to compare the trade mark of the person applying for registration with the trade mark already registered by him, and if he finds that there is an identity between the two or there is a close resemblance such as to be likely to deceive or cause confusion, then he must refuse registration. Section 8 is wider in its

operation. In the first place, if there is a trade mark which is likely to deceive or cause canfusion, it must be refused notwithstanding the fact that there is no identity with another trade mark nor is there any close resemblance with another trade mark. The Registrar has to come to a conclusion independently of any comparison with any registered trade mark. Further, whereas S, 10 contemplates an opposition by a proprietor of a registered trade mark, opposition under S. 8 may come even from a person who is selling goods under a trade mark which is not registered. What the Registrar has to decide is merely whether looking to all the circumstances of the case, a particular trade mark is likely to deceive or to cause confusion. **('51) 53 Bom L R 556 : ILR (1952) Bom 344 : A I R 1951 Bom 147 (152) (Pt D) (Pr 10) (DB).**

——Ss. 8 (1) and 10 (1) — Scope compared. **A I R 1955 N U C (Hyd) 2361 (DB).**

——Ss. 8 and 10 (1)—Scope.

The scope of S. 8 is wider than that of S. 10 (1) since it takes into account the possibility of deception and confusion independently of similarity to any mark already registered. 36 Mys L J 139 : I L R (1957) Mys 254 : A I R 1958 Mys 134 (135) (Pt B) (Prs 4, 5) (DB).

3. "Likely to deceive or to cause confusion."

●——Ss. 8 (a) and 10 (1)—Deception or confusion—Provisions of S. 10 (1) overlap those of S. 8 (a).

Deception may result from the fact that there is some misrepresentation therein or because of its resemblance to a mark, whether registered or unregistered, or to a trade name in which a person other than the applicant had rights. Where the deception or confusion arises because of resemblance with a mark which is registered, objection to registration may come under S. 10 (1) as well. The language of S. 8 (a) is wide and though upon giving full effect to that language the provisions of S. 10 (1) would, in some respects, overlap those of S. 8 (a), there can be no justification for not giving full effect to the language used by the Legislature. (1890) 15 A C 252, Rel. on. London Rubber Co., Ltd. v. Durex Products Incorporated. **(1963) 2 S C W R 9 : (1964) 1 S C A 503 : (1964) 2 S C R 211 : AIR 1963 S C 1882 (1886) (Pt D) (Pr 8).**

●——Ss. 8 (a), 14, 10 (1), 10 (2)—Trade name likely to "deceive and cause confusion" — Tests indicated—Overall similarity has to be considered—Trade names "Lakshmandhara" and "Amritdhara" in respect of medicinal preparation for alleviation of various ailments — Word "Lakshamandhara" held was likely to deceive and confuse persons of the class who generally purchased such preparation — "Lakshmandhara" widely advertised and sold for a long time in particular State—Proprietors of "Amritdhara" standing by and allowing "Lakshmandhara" to grow in business—Held that there was "acquiescence," to bring case within expression "special circumstances" in S. 10 (2) — Registration of "Lakshamandhara" in that particular State granted. A I R 1958 All 823, Reversed. See Trade Marks Act (1940), S. 14. **AIR 1963 S C 449.**

●——S. 8 (a)—Likely to deceive or cause confusion—Tests for determining indicated — Similarity of marks—Trade connection, between different goods—Trade marks 'Gluvita' used with reference to biscuits and 'Glucovita' used with reference to glucose, held were likely to cause deception or confusion. Corn Product Refining Co. v. Shangrila Food Products Ltd. **62 Bom L R 162 : (1960) 1 S C A 536: (1960) 1 S C R 968 : 1960 Mad L J (Cr) 418 : 1960 S C J 509 : AIR 1960 S C 142 (147, 148) (Pt D) (Prs 17, 18, 20).**

●——S. 8 — 'Likely to deceive or to cause confusion'.

Under S. 8 an application made to register a trade-mark which is likely to deceive or to cause confusion has to be refused notwithstanding the fact that the mark might have no identity or close resemblance with any other trade-mark. The Registrar has to come to a conclusion on this point independently of making any comparison of the mark with any other registered trade-mark. The real question to decide in such cases is to see as to how a purchaser, who must be looked upon as an average man of ordinary intelligence, would react to a particular trade-mark, what association he would form by looking at the trade mark, and in what respect he would connect the trade-mark with the goods which he would be purchasing.

Held, that camouflaging an Eagle into a vulture by calling it such was likely to cause confusion especially when it did not represent a vulture or look like a vulture of any form or shape. AIR 1951 Bom 147, Affirmed. National Sewing Thread Co., Ltd. v. James Chadwick and Bros., Ltd., **1953 S C A 610 : 56 Bom L R 21 : (1953) 2 M L J 215 : 1953 S C R 1028 : (1953) S C J 509 : AIR 1953 S C 357 (363) (Pt J) (Prs 21, 22, 23).**

——S. 8 — "Likely to deceive" or to cause confusion —Trade mark 'Amritdhara' whether of that nature.

Whether a trade mark is likely to deceive or to cause confusion or otherwise be disentitled to protection in a Court of justice is a question of fact. Confusion that is sought to be prevented by S. 8 is confusion arising from the mode of using the trade mark or from its similarity with another trade mark or from any other particular trade mark being known in the market by a particular name. Confusion may arise from the use of a trade mark for a particular stuff on account of its identity with another trade mark for quite a different stuff. The trade mark Amritdhara is not likely to deceive by making people think that it contains nectar or has the efficacy of nectar and that it is likely to be confused with Amrit Sukhjiwan Dhara. The trade mark, in order to be disqualified must however be likely to deceive and Amritdhara is not of that nature. **AIR 1957 All 683 (692, 693) (Pt D) (Prs 15, 16).**

——S. 8—Causing of confusion — Applicant's desire to register certain mark — This should not be taken into consideration of question whether previous trade-mark was such which should not have been registered. **AIR 1955 N U C (All) 3584.**

——Ss. 8, 20—Trade-mark leading to deception and confusion — Person using trade-mark for five years but not registering it, has no right against person infringing it — He cannot object to its registration by the other on ground that it would lead to deception and confusion. **AIR 1955 N U C (All) 3584.**

——S. 8 (a)—Contraceptives not prepared under any patented process — Use of word patentex in connection with them amounts to a deception on the consumers — Hence petitioner would be disentitled to claim registration of the word as a trade-mark even if the case is governed by S. 6 (3). **63 Bom L R 650 : AIR 1962 Bom 88 (91) (Pt D) (Pr 7).**

——Ss. 8 (a) and 10 — Scope—Registration of trade mark—Likelihood of confusion—Matters to be considered.

In the matter of registration of trade-mark the identity of design is not necessarily to be found so as to hold that the use of the applicant's mark would deceive or cause confusion. What one has to decide is whether a particular trade-mark was likely to deceive or cause confusion. What is important is to find out what is the distinguishing or essential feature of the trade mark already registered and what is the main feature or the main idea underlying that trade mark, and if it is found that the trade mark whose

registration is sought contains the same distinguishing or essential feature or conveys the same idea, then ordinarily the trade mark should not be registered. The burden of proving that the particular mark which a person seeks to register is not likely to deceive or cause confusion is upon the applicant. It is for him to satisfy the Registrar or the Court that his trade-mark does not fall within the prohibition of S. 8 or 10 and therefore the same should be registered. 62 Bom L R 841 : AIR 1961 Bom 119 (120) (Pt B) (Pr 6) (DB).

——S. 8 (a)—Use of trade mark causing confusion—Evidence.

It would be difficult for any manufacturer of Bidis to get evidence of consumers of bidis so as to prove that he was confused whilst purchasing bidis. In any case where the sale of bidi with the mark claimed by the petitioner was not large, it would be further difficult to get evidence of confusion. Such evidence is not absolutely necessary to be produced whilst opposing the application for registration. The non-existence of such direct evidence does not prove at all that the Petitioner's mark which very nearly resembles the mark of the opponents is not likely to deceive or cause confusion. 62 Bom L R 841 : AIR 1961 Bom 119 (121) (Pt C) (Pr 10).

——Ss. 8 and 10—Trade-mark likely to cause deception — Prohibition on registration—Power of Registrar to impose conditions—S. 15.

Section 8 has to be read with S. 10 as otherwise impossible consequences will follow. When Ss. 8 and 10 are read together the conclusion that emanates is that the law prevents registration of a trade-mark which is likely to deceive or cause confusion but in the case of identity or similarity of trade marks which is also or may also be a ground for confusion or deception, the trade-mark could be registered under certain conditions as the Registrar may think fit to impose. S. 10 is an exception to the general prohibition against registration where the mark is likely to deceive or cause confusion; and whether conditions and limitations could or could not be imposed under S. 8, sub-s. (2) of S. 10 and S. 15 (4) give power to the Registrar to impose conditions and limitations. 64 Cal W N 110 : AIR 1959 Cal 56 (57 to 59) (Pt A) (Prs 9, 13) (DB).

——S. 8—Applicability — Findings as regards likelihood of deception or confusion—Effect.

The findings as regards the likelihood of deception or confusion also bring into operation the provisions of S. 8 under which, therefore an application for registration must fail. ILR (1960) 1 Cal 719 : AIR 1959 Cal 636 (640) (Pt F) (Pr 21) (DB).

——Ss. 8 and 10 — Tests to see if trade-mark will cause confusion, indicated. AIR 1955 N U C (Hyd) 2361 (DB).

——S. 8 (a) — Plea of deception or confusion—Evidence of rebuttal by applicant—Admissibility.

It is beyond dispute that the question of deception or confusion can be and has to be considered with reference to the opponent's use of his mark in relation to his goods during the prior period, for, the confusion or deception can arise only because it is such user that causes the mind of the consumer public to associate the opponent's mark with the goods. If evidence regarding such user by the opponent of his mark in respect of his goods is relevant it cannot be said that similar evidence in regard to the applicant's user cannot be availed of in rebuttal. 36 Mys L J 852 : ILR (1958) Mys 200 : AIR 1959 Mys 85 (86) (Pt B) (Pr 4) (DB).

——Ss. 8 and 6 (2) and (3) — Distinctiveness — Sub-s. (3) of S. 6, as indeed sub-s. (2), deals with distinctiveness and S. 8 (a) also deals with something which is likely to deceive or cause confusion and therefore is not distinctive. See Trade Marks Act (5 of 1940), S. 6 (2). AIR 1956 Punj 4.

4. "Or otherwise."

——S 8—"Or otherwise"—Interpretation of.

Quaere:—Whether the expression "or otherwise" occurring after the words "by reason of its being likely to deceive or to cause confusion" is ejusdem generis. And whether it is open to the Registrar to refuse registration on a different ground, viz., that the application contained a misstatement as to the object represented by the trade mark even though that misstatement might not lead to any deception or confussion. ('51) 53 Bom L R 556 : I L R (1952) Bom 344 : A I R 1951 Bom 147 (154, 155) (Pt H) (Prs 15, 16) (DB).

5. "Contrary to any law."

——S. 8 (c)—Contrary to any law—Amritdhara.

The use of the word "amritdhara" in a trade mark is not contrary to any law within the meaning of S. 8(c) of the Act. A I R 1957 All 683 (692) (Pt C) (Pr 14).

6. Burden of proof.

■ ——S. 8 (a) — Application for registration of trade mark—Burden of proof.

The provisions of S. 8, like the provisions of S. 10 of the Trade Marks Act, 1940, are enabling provisions in the sense that it is not obligatory upon a proprietor of a mark to apply for its registration so as to be able to use it. But when a proprietor of a mark, in order to obtain the benefit of the provisions of the Trade Marks Act, such as a legally protected right to use it, applies for registration of his mark he must satisfy the Registrar that it does not offend against the provisions of S. 8 of the Act. The burden is on him to do so. London Rubber Co., Ltd. v. Durex Products Incorporated, (1963) 2 S C W R 9 : (1964) 1 S C A 503: (1964) 2 S C R 211: AIR 1963 S C 1882 (1886) (Pt B) (Pr 8).

● ——S. 8 (a)—Likely to deceive or cause confusion — Applicant for registration relying on series of marks having common feature — Onus to prove their extensive use in markets lies on applicant — Presence of such marks on register is no proof of its user. Corn Products Refining Co. v. Shangrila Food Products, Ltd. 62 Bom L R 162 : 1960 S C J 509 : (1960) 1 S C A 536 : (1960) 1 S C R 968 : 1960 Mad L J (Cri) 418 : AIR 1960 S C 142 (145 to 147) (Pt B) (Prs 13, 15).

■ ——S. 8—Burden of proof—(Evidence Act (1872), Ss. 101 to 103).

The burden of proving that the trade mark which a person seeks to register is not likely to deceive or to cause confusion is upon the applicant. It is for him to satisfy the Registrar that his trade-mark does not fall within the prohibition of S. 8 and therefore it should be registered. National Sewing Thread Co., Ltd. v. James Chadwick and Bros., Ltd. 1953 S C A 610: 56 Bom L R 21: (1953) S C J 509.: (1953) 2 Mad L J 215 : 1953 S C R 1028 : AIR 1953 S C 357 (363) (Pt K) (Pr 22).

——Ss. 8, 10—Burden of proof.

The burden of proving that the trade mark which a person seeks to register is not likely to deceive or cause confusion is upon the applicant. It is for him to satisfy the Registrar that his trade mark does not fall within the prohibition of S. 8 or S. 10 and therefore it should be registered. ('51) 53 Bom L R 556 : I L R (1952) Bom 344 : A I R 1951 Bom 147 (152) (Pt E) (Pr 10) (DB).

——Ss. 8 and 10 — Burden of proof is on applicant—He must satisfy Court that trade-mark does not fall

within prohibition of Ss. 8 and 10. AIR 1955 N U C (Hyd) 2361 (DB).

SECTION 9

——Ss. 9 and 23 — Scope — "Legal Proceeding" — Meaning of — Proceeding under S. 46(2). See Trade Marks Act (1940), S. 24. AIR 1957 All 683.

SECTION 10

SYNOPSIS

(Trade Marks Act (5 of 1940), S. 10.)

1. Scope.
2. Comparison of provisions of Ss. 8 and 10.
   See Trade Marks Act (1940), S. 8, Note 2.
3. "Likely to deceive or cause confusion."
4. Sub-section (2).
5. Burden of proof.

1. Scope.

——S. 10—Scope, stated—Ss. 8, 9 and 10 impose disqualifications which can exist side by side with the qualification mentioned in S. 6 — A trade may be qualified for registration under S. 6 and yet be disqualified under Ss. 8, 9 and 10. See Trade Marks Act (1940), S. 6. AIR 1957 All 683.

——S. 10—Register of trade marks—Rectification of —Guiding considerations.

The object of maintaining a trade mark register is that the public should know whose goods they are buying and with whom particular goods are associated. It is therefore, essential that the register should not contain trade marks which are identical or which so closely resemble each other that an unwary purchaser may be likely to be deceived by thinking that he is buying the goods of a particular person or a particular firm or a particular industry, whereas he is buying the goods of another person or firm or industry. In trade mark cases and especially when the Court has to compare two different words the matter in the ultimate analysis must depend upon first impression. The nature and kind of customer who would be likely to buy those goods and the surrounding circumstances and the likely result if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks, must all be considered. In a case falling under the section the evidence of long user by the person accused of infringement or the failure of the complainant to prove actual deception is irrelevant. It is not for a witness or a large number of witnesses to tell the Court whether there is likelihood of deception. The Court cannot abdicate its own function which is to decide on looking at the two trade marks and on considering them phonetically whether they resemble each other and whether there is likelihood of deception. If the resemblance between the two marks is clear and obvious, then it is the duty of the Court to remove from the register a mark which is likely to cause deception. 59 Bom L R 548 : I L R (1959) Bom 702 : AIR 1958 Bom 56 (58 to 62) (Pt A) (Prs 3, 5, 6, 8, 13) (DB).

——S. 10 (1) — Scope of—Non-existence of another trade mark on date of application — Another trade mark registered before application is allowed—Effect. There is a prohibition against registration of the trade mark, although there was no such trade mark in existence at date of application. See Trade Marks Act (1940), S. 16 (1). A I R 1958 Bom 56 (DB).

——S. 10 (1) and (2)—Relative Scope.

Sub-section (2) cannot be confined only to the cases of competition between a registered trade mark and an unregistered trade-mark but on the plain reading of the language it must also include cases of competition between even unregistered trade marks none of which is on the register, so long as the fact of honest concurrent use or other special circumstances are present. It is true that sub-s. (1) commences with the words "save as provided in sub s. (2)." But that only means that the provisions of sub-s. (1) are to be read as modified by the provisions contained in sub-s. (2) and not that the provisions of sub-s. (2) should not be read independently but only as a proviso to sub-s. (1). Sub-section (2) deals with all cases of honest concurrent use or of other special circumstances in which registration of trade marks by different proprietors although they are identical or merely resembling each other could be granted by the Registrar subject to conditions and limitations as he thinks fit. In sub-s. (1) the prohibition is against registering a trade mark which competes with another registered trade-mark. Sub-section (2) imposes no such limitation.

Per Bachawat, J.: Sub-section (2) of S. 10 permits registration of an identical or resembling trade-mark though that mark does not offend against the provisions of sub-s. (1) and though the other mark is not on the register. The reasons are as follows : (1) There is no warrant for cutting the general words of sub-s. (2) and for limiting its protection to a mark which offends against the provisions in sub-s. (1); (2) The subject-matter of S. 10 is identical or resembling mark in respect of the same goods or description of goods. Sub-section (2) applies where there are such identical or not one of the marks is on the register; (3) Sub s. (3) on the face of it applies to a case where neither of the marks is on the register. Sub-section (2) clearly shows that S. 10 is not limited in its application to a case where one of the marks is already on the register; and, (4) Logically speaking the reasons for affording protection under sub-s. (2) are much stronger in a case where neither of the marks is on the register. 64 Cal W N 110 : AIR 1959 Cal 56 (58, 61) (Pt B) (Prs 12, 35) (DB).

——S. 10 (1) — Applicability — "Already on register or already registered" in S. 10 (1)—Interpretation of. See Trade Marks Act (1940), S. 16 (1). AIR 1959 Cal 56 (DB).

——S. 10 — Prohibition of registration of similar marks—Matters to be considered.

Where the two marks are not identical and there are obvious differences between the two, the important matter for consideration under S. 10 (1), is whether one so nearly resembles the other as to be likely to deceive or cause confusion. It is well established is that it is not superficial differences or differences in detail that matter but that the question has to be determined bearing in mind the essential features of the two marks. In doing so, it is not the visual impression created when the two marks are seen side by side that should constitute the criterion but whether the essential features of the mark in question leave such an impression that they are likely to cause confusion or deception in relation to the customer's recollection of the essential features of the other mark. A I R 1951 Bom 147. Foll. 36 Mys L J 139 : ILR (1957) Mys 254 : A I R 1958 Mys 134 (135) (Pt A) (Pr 4) (DB).

——S. 10—Considerations in registering trade marks indicated. See Trade Marks Act (1940), S. 8. A I R 1955 N U C (Mys) 5952 (DB).

2. Comparison of provisions of Ss. 8 and 10.

See Trade Marks Act (1940), S. 8, Note 2.

3. "Likely to deceive or cause confusion."

●——S. 10 (1)—Deception or confusion—Provisions of S. 10 (1) overlap those of S. 8 (a). See Trade Marks Act (1940), S. 8 (a). A I R 1963 S C 1882.

●——Ss. 10 (1) and (2) — Trade name likely to "deceive and cause confusion" — Tests indicated —

Overall similarity has to be considered—Trade names "Lakshmandhara" and "Amritdhara" in respect of medicinal preparation for alleviation of various ailments—Word "Lakshamandhara" held was likely to deceive and confuse persons of the class who generally purchased such preparation—"Lakshmandhara" widely advertised and sold for a long time in particular State—Proprietors of "Amritdhara" standing by and allowing "Lakshmandhara" to grow in business — Held, that there was "acquiescence" to bring case within expression "special circumstances" in S. 10 (2) — Registration of "Lakshmandhara" in that particular state granted — A I R 1958 All 823, Reversed. See Trade Marks Act (1940), S. 14. **A I R 1963 S C 449.**

——S. 10 — Registration of trade mark—Use of trade mark if causes confusion — Matters to be considered. See Trade Marks Act (1940), S. 8 (a). **AIR 1961 Bom 119 (DB).**

——S. 10—"Likely to deceive or cause confusion" — Distinguishing or essential feature of trade mark — How to find it.

In deciding whether a particular trade mark is likely to deceive or cause confusion, it is not sufficient merely to compare it with the trade mark which is already registered and whose proprietor is offering opposition to the registration of the former trade mark. What is important is to find out what is the distinguishing or essential feature of the trade mark already registered and what is the main feature or the main idea underlying that trade mark, and if it is found that the trade mark whose registration is sought contains the same distinguishing or essential feature or conveys the same idea, then ordinarily the registrar is right if he comes to the conclusion that the trade mark should not be registered. The real question is as to how a purchaser, who must be looked upon as an average man of ordinary intelligence, would re.act to a particular trade mark what association he would form by looking at the trade mark, and in what respect he would connect the trade mark with the goods which he would be purchasing. **('51) 53 Bom L R 556 : ILR (1952) Bom 344 : A I R 1951 Bom 147 (152, 154) (Pt G) (Prs 10, 14) (DB).**

——S. 10 (1) — Resemblance likely to deceive or cause confusion — Test—Absence of evidence of actual cases—Effect.

Whether or not there is any resemblance and whether or not the resemblance is such as likely to deceive or cause confusion are questions which have to be decided by the Registrar on the Court on the basis of their own understanding of the matter. The possession clearly is that the Registrar in the first place and then when the matter goes to the Court, the Court has to decide for itself quite apart from evidence of cases of actual confusion or the opinions of experts as to the likelihood of confusion, as to the inherent probability of the confusion. In making a decision on this question, the Registrar and the Court has to take into consideration all the surrounding circumstances—the extent of the resemblance, visual or phonetic, the nature of the market of the goods, the character, education and general mental equipment of the persons who are likely to purchase these goods and all other matters which are relevant. The absence of any evidence as regards any actual case of confusion or deception is, therefore, of no value whatsoever. 1899 A C 83 and (1900) R P C 628, Rel. on. **ILR (1960) 1 Cal 719 : AIR 1959 Cal 636 (637, 638) (Pt A) (Prs 3, 4) (DB).**

——S. 10—Trade mark likely to cause deception—Prohibition on registration not absolute—Registrar can impose conditions while allowing registration. See Trade Marks Act (1940), S. 8. **AIR 1959 Cal 56 (DB).**

——S. 10—Test to see if trade-mark will cause confusion indicated. See Trade Marks Act (1940). S. 8. **AIR 1955 NUC (Hyd) 2361 (DB).**

——S. 10 (1) — Registered trade mark for soaps, perfumery, cosmetic goods etc.—Similar trade mark for agarbatties—Not allowed.

Where the opponents have a registered trade mark in respect of articles of perfumery such as soaps, perfumery, cosmetics, heir lotions, and essential oils in class 3 and the applicant's goods namely agarbatties in respect of which he seeks registration of his trade mark also come under the same description, the marks being closely similar in the sense that they are likely to deceive or cause confusion, the terms of S. 10 (1) apply and make it imperative that registration should be refused. **36 Mys L J 852 : ILR (1958) Mys 200 : AIR 1959 Mys 85 (87) (Pt D) (Pr 7) (DB).**

4. Sub-section (2).

——Ss. 10 (2) and 8 (a) — Construction of S. 10 (2) —It is to be construed independently of sub-s. (1) —S. 8 (a) does not override effect of S. 10 (2).

When considered by itself S. 10 (2), permits simultaneous registration of identical or similar marks at the instance of several proprietors, quite irrespective of the question whether an identical or similar mark is already on the register. Its language is wide enough to embrace a mark which is already on the register as well as a mark which is not on the register at all. The mere fact that sub-s. (1) is made subject to the provisions of sub-s. (2) cannot justify the narrowing of the scope of the language used by the Legislature in sub-s. (2). The provisions of sub-s. (2) of S. 10 are by way of an exception to the prohibitory provisions of the Trade Marks Act. Those provisions are contained in S. 8 (a) and S. 10 (1). The condition for the applicability of sub-s. (1) of S. 10 is undoubtedly the existence of an identical or similar mark on the register. Further, the provision in S. 8 does not override the statutory effect of S. 10 (2) of honest concurrent use and an objection under S. 8 (a) may be disposed of it there is evidence that the trade mark has been honestly used without confusion resulting. Kerly on Trade Marks, 8th Edn. Halsbury's Laws of England, Vol. 38, Rel. on. AIR 1955 S C 765, Disting. London Rubber Co., Ltd. v. Durex Products Incorporated. **(1963) 2 S C W R 9 : (1964) 1 S C A 503 : (1964) 2 S C R 211 : AIR 1963 S C 1882 (1887, 1888) (Pt E) (Prs 12, 13, 15, 16, 17).**

——S. 10 (2)—'Honest concurrent use' — Question of volume is relevant and is question of fact — Commercial use of mark is to be considered and not its value in money.

The question of volume of use is always a relevant question in considering 'honest concurrent use' under S. 10 (2) of the Act. It depends on the facts of each case. No hard and fast rule can be laid down regarding the volume of use for the purposes of sub-s. (2) of S. 10. Ordinarily it would be sufficient if it is shown that there was a commercial use of the mark. Trade mark is a kind of property and is entitled to protection under the law, irrespective of its value in money so long as it has some business or commercial value. AIR 1959 Cal 56, Affirmed. London Rubber Co., Ltd. v. Durex Products Incorporated. **(1963) 2 SCWR 9 : (1964) 1 SCA 503 : (1964) 2 SCR 211 : AIR 1963 S C 1882 (1889) (Pt G) (Prs.19, 20).**

——S. 10 (2) — 'Other special circumstances' — These must be connected with the use of the mark.

A special circumstances must be connected with the use of the mark. The words 'or of other special circumstances' include any circumstances peculiar to the application in relation to the subject-matter of the application and this include use by an applicant

of his mark before the conflicting mark was registered or used. Hence, the socio-economic consideration of the use of the articles is not a relevant circumstances. 1957 R P C 289, Rel. on. London Rubber Co., Ltd. v. Durex Products Incorporated. **(1963) 2 S C W R 9 : (1964) 1 S C A 503: (1964) 2 S C R 211: AIR 1963 S C 1882 (1890) (Pt H) (Pr 22).**

——S. 10 (2) — Honest concurrent user.

Where the applicant was advertising his medicine from 1923 to 1942 in the same journals and periodicals in which the objector was also advertising his medicine and the name used by the applicant was entirely different :

Held, that when the applicant had been openly advertising his medicine through the same medium and increasing its sale no element of dishonesty could be attributed to him. Hence he was entitled to the registration of the name under which he was describing his medicine on the basis of honest concurrent user from 1923 to 1942. **1958 All L J 474 : ILR (1958) 2 All 721 : AIR 1958 All 823 (829) (Pt D) (Pr 28) (DB).**

[Reversed in AIR 1963 S C 449].

——S. 10 (2)—Other special circumstance—Estoppel against objector — (Evidence Act (1872), S. 115).

In order to invoke estoppel against the objector to the registration of a trade mark, there must be elements in the evidence of long concurrent user by the applicant though not honest, within the knowledge of the objector; that the circumstances were such as to lead to the reasonable inference that the objector waived his right to object to that used. **1958 All L J 474 : ILR (1958) 2 All 721 : AIR 1958 All 823 (829) (Pt E) (Pr 30) (DB).**

[Reversed on another point in AIR 1963 S C 449.]

——Ss. 10 (2) and 15 (4)—Registrar's power to allow amendment of trade mark.

The words 'conditions and limitations' in Ss. 10 (2) and 15 (4) of the Act have no reference to the power of amendment of the trade mark. The words 'conditions and limitations' have reference to such things like mode of user of the trade mark or as to the area of its user. The only power the Registrar has of allowing amendment of a trade mark proposed for registration if before or at the time of acceptance of the mark for advertisement for purposes of registration; and also after acceptance, provided the applicant makes application for or asks for such amendment. **ILR (1960) 2 Cal 174 : AIR 1959 Cal 654 (658) (Pt D) (Prs 40, 41) (DB).**

——S. 10 (2)— Concurrent use of trade mark proved to be dishonest — Registration on basis of 'other special circumstances'—Permissibility.

Where the concurrent use of a trade mark has been proved to be dishonest, it is open to the Registrar to permit registration on the basis of other special circumstances. The intention of the legislature clearly was that in two classes of cases registration would be permitted when there is identity or resemblance likely to deceive or cause confusion — the first class to consist of cases of honest concurrent use and the second class to consist of cases where there are special circumstances not being cases of dishonest concurrent use. The whole idea behind the law of registration of trade marks is to prevent fraudulent use of the marks of one proprietor by another proprietor. **ILR (1960) 1 Cal 719 : AIR 1959 Cal 636 (640) (Pt D) (Pr 18) (DB).**

——S. 10 (2) — Concurrent use—Question of fact.

Concurrent use concerns the volume of use which is a question of fact. There is no express statutory emphasis that the use should be large and substantial. **64 Cal W N 110 : AIR 1959 Cal 56 (59) (Pt D) (Prs 15, 19) (DB).**

——S. 10 (2)—Concurrent use—Finding of Registrar —Interference in appeal.

In S. 10 (2) it is the "opinion of the Registrar" which is expressly said to judge if the case of honest concurrent use makes it proper to permit registration. Of course the opinion of the Registrar can be revised in an appeal under S. 76 but the statute has made his opinion the first standard on the question. Unless that standard is obviously not discharged, the High Court should hesitate on a disputed question of fact, namely the concurrent use, to take a contrary view on the ground merely that a different view is possible. **64 Cal W N 110: AIR 1959 Cal 56 (59) (Pt E) (Pr 17) (DB).**

——S. 10 (2)—"Other special circumstances."

The words "other special circumstances" are designedly left vague by the statute. It is difficult to exhaust or categorise such special circumstances in which competing trade-marks could be permitted to be registered with limitations and conditions. The word "other special circumstances" even construed ejusdem generis with "honest concurrent use" can include a variety of special circumstances relating to the use of a trade-mark. To state a few, the name for which registration is sought being the name of the applicant-company itself, long user of the name and the resultant hardship to the applicant if registration is denied, the socio-economic consideration of the user and that the registration sought is for goods which are very different from the goods of the opposer are special circumstances. **64 Cal W N 110 : AIR 1959 Cal 56 (60) (Pt G) (Pr 22) (DB).**

——S. 10 (2)—"Use" — Use in relation to samples — S. 2 (1) (e) and (2).

Bachawat J. — Having regard to the language of Ss. 2 (1) (e) and 2 (2) of the Act use in relation to samples of the goods is use within the meaning of sub-s. (2) of S. 10. **64 Cal W N 110 : A I R 1959 Cal 56 (61) (Pt H) (Pr 38) (DB).**

——S. 10 (2)—Benefit of — Petitioner must establish honest use for considerable period and over substantial area. **AIR 1955 N U C (Hyd) 2361 (DB).**

——Ss. 10 (2) and 17— Scope—Registration of trade mark in joint names of two persons—Validity.

A obtained a registration of a trade mark in his name on a false representation that he was the sole proprietor of the trade mark though in fact his father was the sole proprietor. Subsequently A's brother B who had been using the same trade mark which his father was using applied under S. 46 (2) for cancellation of the entry in A's name. The Judge who entertained the application came to the conclusion that the registration was invalid as being obtained by fraud but ordered a joint registration in the names of A and B.

Held, that the order directing joint registration was not justified and must be set aside. Section 10 (2) of the Act refers to concurrent user which is honest that is independent concurrent user that is user which cannot be traced to the same source. Before a joint registration is ordered under S. 17 there should be applications from at least two persons and the Registrar should have an opportunity of forming an opinion by reason of special circumstances existing in the case. **1956 Mad W N 751 : I L R (1957) Mad 206 : 69 Mad L W 739 : (1956) 2 Mad L J 469 : AIR 1957 Mad 76 (78) (Pt B) (Pr 4) (DB).**

——Ss. 10 (2), 17 (2), 46 (2) — Entry made without sufficient cause—Order to be made.

Held, that on the conclusion that the registration had been procured by fraud in that it was obtained

on material misstatements in the application for registration of the trade mark this became a case where the entry had been made in the register without sufficient cause and become liable to be cancelled or varied as the tribunal thought fit under S. 46 (2). This was not a fit case, however, for cancellation but only for variation of the entry in the register, this was a case which would fall under S. 10 (2). In the special circumstances of the case it was unnecessary to cancel the entry made in the Trade Marks Register and the proper thing to do was to vary it by registering both the petitioner and the respondent as joint proprietors of the trade mark and that the proprietary rights in the trade mark would naturally date from the dates of their respective settlement deeds. This joint registration would also be in conformity with the spirit if not the letter of S. 17 (2) as the petitioner and the respondent did not being governed by the Aliyasanthana law constitute members of a joint family coparcenary and the two factories did not constitute joint family assets. **A I R 1956 Mad 184 (188) (Pt E) (Prs 25, 26).**

——S. 10 (2)—Action for infringement—Plea of concurrent and honest user—Procedure—Stay of suit.

What is commonly described as a plea of honest and concurrent user in an action for infringement really connotes that the defendant contends that on the strength of honest and concurrent user he is entitled to get his mark also registered under the provisions of law. It is only upon the registration that the plea becomes a complete and absolute plea and not before. When therefore an unregistered proprietor raises a plea of honest and concurrent user in a suit for infringement at the instance of a registered proprietor the proper thing for the defendant to do to prove the bona fides of his claim is to make an application for registration on the strength of honest and concurrent user and simultaneously ask the Court to stay further proceedings in the suit. In such an event the proper course for the Court to take would also be to stay further proceedings so that the defendant may substantiate his defence because to refuse to stay and to proceed with the suit would be to deprive the defendant of a substantial and strong defence. Another reason why the suit should be stayed pending the completion or disposal of the application for registration is that the extent and ambit of the injunction which the Court may grant will also depend to a considerable extent upon the 'conditions and limitations' if any which the Registrar might impose while granting the registration in terms of sub-s. (2) of S. 10. **37 Mys L J 801 : ILR (1959) Mys 668 : A I R 1960 Mys 142 (144) (Pt A) (Pr 5) (DB).**

——Ss. 10 (2) and 8 — Opposition to application for registration — Points to be considered by Registrar stated — Nature of similarity — Total impression on minds of customers has to be considered and not careful scrutiny of details. See Trade Marks Act (1940), S. 8. AIR 1960 Mys 142 (DB).

——S. 10 (2) — Concurrent user— Length of time to be considered.

The user that is relevant for the purpose of S. 10 (2) is concurrent user and not merely contemporaneous user. The concurrence of the user has to be examined from the point of view of the length of time during which the mark has been used by the applicant as well as the extent of his trade or quantity of the turnover. **37 Mys L J 801: ILR (1959) Mys 668: AIR 1960 Mys 142 (145) (Pt C) (Pr 9) (DB).**

——S. 10 (2)—Honest and concurrent user — Discretion of Registrar.

The very basis for the application of sub-s. (2) of S. 10 is honest user. Both the question of the similarity between the marks and the question of honesty are matters for adjudication by the Registrar. Even if finding on adjudication of these matters of fact is in favour of the view that the applicant before him is honest in user although the marks may have been similar it is still a matter of discretion with him whether or not to allow registration under that provision. That discretion, no doubt, has to be exercised judicially. The basis for such exercise has been stated to be that the fact that one merchant or trader has obtained registration for his mark ought not to be permitted if possible to destroy or prejudicially affect the trade of other persons who have conducted themselves honestly. If there is no such honesty at all it is not possible to contend that the Registrar has not exercised his discretion judicially in refusing registration. **37 Mys L J 801 : ILR (1959) Mys 668 : A I R 1960 Mys 142 (145, 146) (Pt D) (Pr 15) (DB).**

——S. 10 (2)—Concurrent use of trade mark—Use of only prominent feature —Not sufficient.

The honest concurrent use relied upon by the applicant under S. 10 (2) must refer to the trade mark sought to be registered. It is not enough if one feature of it even though it may be a prominent feature has been used. **36 Mys L J 852 : ILR (1958) Mys 200 : AIR 1959 Mys 85 (86) (Pt A) (Pr 3) (DB).**

5. Burden of proof.

●——S. 10 (2) — Concurrent use —Reasonable probability of confusion —Burden of proof.

The question of discharging the burden of establishing that there was no reasonable probability of confusion cannot arise in a case of honest concurrent use. However that burden may be taken as discharged by the eloquent fact that throughout there has not been a single instance of confusion.

Held, that there was no likelihood of confusion or deception in this case because the respondent's goods were confined to contraceptives for use by women which could only be used with medical assistance while the appellant's contraceptives were essentially for men. London Rubber Co., Ltd. v. Durex Products Incorporated. **(1963) 2 S C W R 9 : (1964) 1 S C A 503 : (1964) 2 S C R 211 : AIR 1963 S C 1882 (1890) (Pt I) (Pr 23).**

——Ss. 10 and 8—Burden of proof —It is for the applicant to statisfy the Registrar that his trade mark does not fall within prohibition of S. 8 or S. 10 and therefore it should be registered. See Trade Marks Act (5 of 1940), S. 8. AIR 1951 Bom 147 (DB).

——S. 10—Onus—Onus of proving that a mark is not likely to deceive or cause confusion is on the applicant and if it is not clear that deception may not result the registration should be refused. ILR (1960) 2 Cal 174 : A I R 1959 Cal 654 (659) (Pt F) (Pr 46) (DB).

——S. 10 (1)—Whether resemblance is not likely to deceive or cause confusion — Onus of proof — 'B. I. Phlogiston' resembles 'Antiphlogistine' — (Evidence Act (1872), Ss. 101 to 104).

The burden of proving that the resemblance in the marks is not likely to deceive or to cause confusion is on the applicant and where there is doubt whether there is such likelihood or not he will not be entitled to registration.

Held, that the word 'B. I. Phlogiston' resembled the registered trade mark 'Antiphlogistine' so much as to be likely to deceive and cause confusion and therefore the applicant was not entitled to registration of that word. **ILR (1960) 1 Cal 719 : AIR 1959 Cal 636 (639) (Pt B) (Pr 11) (DB).**

——S. 10 — Burden of Proof is on applicant. See Trade Marks Act (1940), S. 8. AIR 1955 N U C (Hyd) 2361 (DB).

SECTION 11

——S. 11 — Registrar's duty to consider registration of combination mark as a whole.

Section 11 gives an indication that it is the whole mark which is proposed for registration that is to be registered. The Deputy Registrar had no power to cut out the words 'Vapour Rub' from the appellant's trade mark and direct registration of the amended mark 'Karsote'. The Deputy Registrar had no power to dissect the mark and then conclude that some component parts were distinctive and some were not distinctive, and on that ground direct registration of a part of the mark and refuse registration of the other parts. He must consider the combination mark as a whole. **ILR (1960) 2 Cal 174 : AIR 1959 Cal 654 (659) (Pt E) (Pr 43) (DB).**

SECTION 12

——S. 12 — Containers bearing complainant's trade mark recovered from shops of accused — Complainant's product removed and spurious substituted — Offence under Ss. 482, 485, held established. See Penal Code (1860), S. 482. 1961 (1) Cri L J 488 : AIR 1961 Cal 240 (DB).

SECTION 13

●——S. 13—Imposition of disclaimer under—Power when arises.

The power of the tribunal to require a disclaimer under the section is conditioned and made dependent upon the existence of one of two things which are set out in cls. (a) and (b) and which have been called the jurisdictional facts. It is only on the establishment of one of the two jurisdictional facts that the Registrar's jurisdiction regarding imposition of a disclaimer arises. Registrar of Trade Marks v. Ashok Chandra Rakhit, Ltd., **1955 Mad W N 935 : 1955 S C J 562 : (1955) 2 M L J (S C) 76 : 1955 Andh W R (S C) 330 : 1955 S C A 1043 : (1955) 2 S C R 252 : AIR 1955 S C 558 (561, 562) (Pt A) (Pr 6).**

● ——S. 13 — Power to impose disclaimer — Nature and exercise of.

The exercise of the power of imposing disclaimer conferred on the Registrar by S. 13 always remains a matter of discretion to be exercised, not capriciously or arbitrarily but, according to sound principles laid down for the exercise of all judicial discretion. Registrar of Trade Marks v. Ashok Chandra Rakhit, Ltd., **1955 Mad W N 935 : 1955 S C J 562 : (1955) 2 M L J (S C) 76 : 1955 Andh W R (S C) 330 : 1955 S C A 1043 : (1955) 2 S C R 252 : AIR 1955 S C 558 (561, 562) (Pt B) (Pr 6).**

●——S. 13—Purpose of.

The avowed purpose of the section in requiring a disclaimer is not to confer any direct benefit on the rival traders or the general public but to define the rights of the proprietor under the registration, so as to minimise, even if it cannot wholly eliminate, the possibility of extravagant and unauthorised claims being made on the score of registration of the trademarks. Registrar of Trade Marks v. Ashok Chandra Rakhit, Ltd. **1955 S C J 562 : 1955 Mad W N 935 : (1955) 2 M L J (SC) 76 : 1955 Andh W R (SC) 330 : 1955 S C A 1043 : (1955) 2 S C R 252 : AIR 1955 SC 558 (563) (Pt D) (Pr 8).**

● ——S. 13, Proviso—Scope of — Rights under other Acts are preserved.

The proviso to S. 13 preserves intact any right which the proprietor may otherwise under any other law have in relation to the mark or any part thereof. The disclaimer is only for the purposes of the Act. It does not affect the rights of the Proprietor except such as arise out of registration. Registrar of Trade Marks v. Ashok Chandra Rakhit, Ltd., **1955 Mad W N 935 : 1955 S C J 562 : 1955 Andh W R (S C) 330 : (1955) 2 M L J (S C) 76 : 1955 S C A 1043 : (1955) 2 S C R 252 : AIR 1955 S C 558 (563) (Pt E) (Pr 9).**

● ——S. 13 (2) (n) — Imposition of disclaimer — Exercise of discretion by Registrar—Interference by High Court—Principles.

S. 13 confides a discretionary power of imposing disclaimer in the 'tribunal' which, by virtue of S. 2 (n) means the Registrar or, in proper proceedings, the High Court. It is however to be remembered that it is the Registrar to whom in the first instance is committed the discretionary power. If that authority has exercised his discretion in good faith and not in violation of any law such exercise of discretion should not be interfered with by the High Court merely on the ground that, in the opinion of the High Court, it could have been exercised differently or even that the High Court would have exercised it differently, had the matter been brought before it in the first instance. The proper approach in such a case is for the High Court to consider, whether the Registrar had really gone so wrong as to make it necessary to interfere with his discretion. Registrar of Trade Marks v. Ashok Chandra Rakhit, Ltd., **1955 Mad W N 935 : 1955 S C J 562 : 1955 Andh W R (SC) 330 : (1955) 2 M L J (SC) 76 : 1955 S C A 1043 : (1955) 2 S C R 252 : AIR 1955 S C 558 (562, 566) (Pt G) (Prs 7, 16).**

SECTION 14

● ——Ss. 14, 8 (a), 10 (1), 10 (2) — Trade name likely to 'deceive and cause confusion' — Tests — Overall similarity has to be considered — Trade names 'Lakshmandhara' and 'Amritdhara' in respect of medicinal preparation for alleviation of various ailments—Word 'Lakshmandhara' held was likely to deceive and confuse persons of the class who generally purchased such preparation — 'Lakshmandhara' widely advertised and sold for a long time in particular state — Proprietors of 'Amritdhara' standing by and allowing 'Lakshmandhara' to grow in business—Held, that there was 'acquiescence' to bring case within expression 'special circumstances' in S. 10 (2) —Registration of 'Lakshmandhara' in that particular state granted. AIR 1958 All 823, Reversed. Amritdhara Pharmacy v. Satya Deo Gupta, 1964 SCD 75 : (1963) 1 S C A 267 : ILR (1963) 1 All 38 : (1963) 2 S C R 484 : AIR 1963 S C 449 (452, 453, 454) (Prs 7, 8, 9, 11, 13, 14).

——Ss. 14 (3), 48 (1) — Amendment of application after advertisement—Power of Registrar.

It is not possible to give to the expression "to amend his application" in S. 14 (3) very wide connotation. The proper construction of S. 14 (3) is to equate the discretion exercised by the Registrar and S. 48 (1) with the discretion conferred upon him under S. 14 (3). Just as the Registrar cannot allow an amendment of a trade mark after registration which would substantially affect its identity, similarly the Registrar has no power to allow an amendment of a trade mark after the original trade mark has been advertised in a manner affecting the identity of the trade mark. When an application for amendment is made after acceptance, it is for the Registrar to apply his mind and consider whether the application is such as would result in substantially affecting the identity of the trade mark. If he comes to that conclusion, then the amended application must be advertised. If, on the other hand, he comes to the conclusion that the amendment will not substantially affect the identity of the trade mark, then it is discretionary with him whether he should or should not order advertisement. **59 Bom L R 539 :**

ILR (1957) Bom 564 : AIR 1958 Bom 47 (49, 50) (Pt A) (Prs 5, 7) (DB).

——S. 14 (3)—Amendment—Identity of trade marks—Factors involved — Judgment of Registrar — Interference by Court—Grounds.

The question of identity of trade marks depends upon various factors — How the particular object appears in one trade mark and how it appears in the other, what part of the object is emphasised in one and what part in the other, what impression one object will give to the purchaser and what impression the other object will give to the purchaser—and therefore merely because the same bird appears in both the trade marks, they will not be necessarily identical. The Registrar of Trade Marks is a much better judge in these matters than the Court can ever be. But the decision of the Registrar must be given after considering the relevant and material provisions of the law and after applying his mind to what the law directs him to apply his mind to. If his judgment is given without these considerations, then if the Court interferes, it is not interfering with his discretion but it is interfering because the Registrar has failed to exercise properly the jurisdiction. 59 Bom L R 539 : I L R (1957) Bom 564 : A I R 1958 Bom 47 (50, 51) (Pt B) (Prs 7, 8, 10) (DB).

——S. 14 — Registration of trade mark — Discretion of Registrar.

In the case of trade marks public interest is also concerned, and if by reason of the abandoning by the opponent of his right in a particular area for an unduly long time the trade mark has come to be associated in that area with the goods of the petitioner, it will not be right to refuse registration to the petitioner in that area. The minority of the opponent will not be of assistance when as a fact his father, who had abandoned the right was alive during a period of five years after such abandonment. A I R 1956 Bom 641 (644) (Pt D) (Pr 9).

——S. 14—Registration of trade mark is not absolute right.

There is no absolute right in anyone to obtain the registration of a trade mark. The effect of Ss. 8, 10 and 14 is this that if S. 8 or S, 10 is applicable, then the Registrar has no descretion at all; he must refuse registration. But though the case may not fall within the ambit of S. 8 or S. 10 he has discretion under S. 14 even so not to register the trade mark. 57 Bom L R 1006 : I L R (1955) Bom 976 : A I R 1956 Bom 76 (77) (Pt A) (Pr 4) (DB).

——S. 14 — Material date to determine rights of parties.

In the case of all applications for registration of trade marks, including opposed applications, the rights of the party or parties are to be determined as at the date of the application for registration. I L R (1960) 2 Cal 174 : A I R 1959 Cal 654 (656) (Pt C) (Pr 19) (DB).

——Ss. 14 (1) and 76 (1) — Registrar refusing to accept under S. 14 (1) application for registration of trade mark — Appeal under S. 76 (1), scope of discussed — Appeal allowed — Effect indicated. A I R 1955 N U C (Cal) 3664 (DB).

——S. 14—Comoromise by parties—Registrar can act on it. A I R 1955 N U C (Hyd) 2361 (DB).

——S. 14—Consent of real owner.

Under S. 14 if the applicant himself is not the proprietor the consent of the real owner would not entitle him to register the mark on his own name. (1891) 8 R P C 137, Rel. on. A I R 1956 Mad 184 (188) (Pt D) (Pr 24).

——S. 14 — Registrar refusing registration though mark was eligible under S. 6 (1) — High Court can interfere. See Trade Marks Act (1940), S. 76. A I R 1963 Mys 122 (DB).

——S. 14 (1) — Marks satisfying requirements for eligibility — Refusal to register — High Court when can interfere indicated. See Trade Marks Act (1940), S. 76. A I R 1963 Mys 122 (DB).

SECTION 15

——Ss. 15 (4) and 76 — Registrar refusing registration of trade marks—Appeal.

Application for registration of trade mark—Registrar after hearing objection of the other party deciding under S. 15 (4) that trade mark should not be registered on account of its similarity to another registered trade-mark — Proceeding held did not amount to suit because decision did not relate to any right of parties — Decision held was not conclusive and therefore did not amount to a decree — Appeal under S. 76 against such order held was first appeal from an order and not from a decree. 1954 All W R (H C) 280 : A I R 1954 All 720 (720, 721) (Pt A) (Pr 3) (DB).

——S. 15 (4)—Registrar's power to allow amendment of trade mark pointed out. See Trade Marks Act (1940), S. 10 (2). A I R 1959 Cal 654 (DB).

——Ss. 15 (2) and 84—Cochin Trade Marks Act (19 of 1119), S. 15 (2)—Trade Marks Rules (1122), R. 30—Limitation for filing notice of opposition—Starting point.

The four months' period prescribed by R. 30 read with S. 15 (2) for filing the notice of opposition to the registration or a trade mark should be counted from the date of despatch of the Trade Marks Journal containing the advertisement to the subscribers and not from the date when it is got printed or few copies or cuttings distributed among the subordinate offices of the Trade Marks Registry or among the applicants for registration. The reason is that the object of advertisement will be served only when the journal is distributed among the subscribers or otherwise made available to the public. A I R 1952 Trav-Co 77 (78) (Pt A) (Pr 4) (DB).

SECTION 16

——S. 16 (1)—Applies to applications accepted with amendments, conditions and modifications. A I R 1955 N U C (All) 3584.

——Ss. 16 (1), 10 (1) and 46—Relative scope — Non-existence of another trade mark on date of application—Another trade mark registered before application is allowed—Effect.

Section 16 (1) is a procedural section, and must be read subject to S. 10 (1) which is a substantive section. Section 10 (1) provides that no trade mark shall be registered which is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or which so nearly resembles such trade mark as to be likely to deceive or cause confusion. Therefore, when on the date of the registration there is a trade mark on the register, closely resembling the trade mark of the applicant for registration, then there is a prohibition against the registration of his trade mark, although there was no such trade mark in existence at the date of his application. 59 Bom L R 548 : I L R (1957) Bom 702 : A I R 1958 Bom 56 (61) (Pt D) (Pr 12) (DB).

——S. 16 — Power of Registrar—Decision on points not in issue—Competency.

It certainly is the Registrar's duty to register a trade mark and to see whether a trade mark is registrable or not. But that does not mean that the Registrar should use the power of coming to a deci-

sion either on facts which do not exist or on facts which he invests or on facts on which no opportunity is given to the applicant to bring further evidence to satisfy him. Such a course would be procedurally hard and unfair. **A I R 1959 Cal 116 (116, 117) (Prs 6, 8) (DB).**

——S. 16 (1) — Applicability — Doctrine of relation back—S. 10 (1) — "Already on register or already registered"—Meaning of.

Obiter : It may be that the doctrine of "relation back" under S. 16 (1) does not apply to the expression "already on register or already registered" in S. 10 (1) not only because S. 16 appears in Chap. III relating to "procedure for and duration of registration" so that the statute there provided that the date of registration shall be deemed to be date of the application for registration but also because the expression "already on the register or already registered" in S. 10 (1) might mean the date actually on which the trade-mark is put on the register and not the notional date as provided in S. 16 (1) even though such notional date is for the purposes of the Act. **64 Cal W N 110 : AIR 1959 Cal 56 (59) (Pt C) (Pr 14) (DB).**

——Ss. 16 and 76 — Discretion of Registrar—No interference unless conclusion is clearly wrong or perverse. AIR 1955 N U C (Hyd) 2361 (DB).

——S. 16 — Exercise of discretion by Registrar. See Trade Marks Act (1940), S. 8. AIR 1955 N U C (Mys) 5952 (DB).

SECTION 17

——S. 17 — Exercise of discretion by Registrar — Equitable principle and its application in exercise of discretion under S. 14.

The Registrar has, under S. 14, wide discretion subject to the only limitation that it must not be arbitrarily of capriciously exercised. In deciding what are the principles upon which that discretion should be exercised, it is not right totally to exclude equitable principles. It is open to the Registrar to take into consideration the agreement arrived at between the parties. And, if he is satisfied that in ignoring a solemn agreement and in attempting to act contrary to its clear provisions the applicant's case is not founded in truth, then the Registrar has the discretion to compel the applicant to adhere to his solemn covenant and not to give him a relief which will constitute a breach of that covenant. For, no Court of conscience will permit a relief to be granted which is in its very nature unconscionable. (1890) 15 A C 252, Rel. on. And as considerations of equity cannot be discarded or ignored when the Registrar exercises his discretion under S. 14, then it is clear that if a party comes to Court with a false case the Court may refuse to grant him relief. Whether the falsity in any particular case is such as to disentitle him to relief will depend upon the facts and circumstances of each case. **57 Bom L R 1006 : ILR (1955) Bom 976 : A I R 1956 Bom 76 (78, 79) (Pt B) (Prs 6, 8, 9) (DB).**

——S. 17 — Scope — Registration of trade marks in joint names of two persons — Validity — **Held** the order directing joint registration was not justified. See Trade Marks Act (1940), S. 10 (2). **(1956) 2 Mad 2 L J 469 : AIR 1957 Mad 76 (DB).**

——S. 17 (2)—Entry made without sufficient cause—Order to be made — **Held** in circumstances that registration was procured by fraud—In special circumstances of case it was unnecessary to cancel the entry and the proper thing to do was to vary it by registering both the petitioner and the respondent as joint proprietors of trade mark. See Trade Marks Act (5 of 1940), S. 10 (2). **AIR 1956 Mad 184.**

SECTION 20

——Ss. 20, 21 (1) and 73 — Passing of action related to use of plaintiff's trade mark — Action, if affected by S. 73.

The passing off actions which are not affected by the provisions of the Trade Marks Act are those actions which are unrelated to the use of the aggrieved person's trade mark. If they are related to it those suits will necessarily require the determination of the question whether there had been an infringement of the trade mark and therefore would be affected by the provisions of S. 73.

No passing of action is likely to succeed when it is based on the use of the plainfiff's trade mark, unless it be shown that the mark used by the defendant is identical or similar to the plnintiff's trade mark and that it had been used in such a manner as to lead persons to consider that that mark was being used as trade mark, meaning thereby that the goods were the goods of the persons who had a right in the trade mark or in a manner as to indicate that the goods were of the other person. **1955 All L J 555 : A I R 1955 All 404 (406, 407) (Prs 8 to 11) (DB).**

——S. 20 — Trade mark leading to deception and coufusion — Person using trade-mark for five years but not registering it, has no right against person infringing it. See Trade Marks Act (1940), S. 8. **AIR 1955 N U C (All) 3584.**

——S. 20 — Infringement of unregistered trade-mark — Passing off action — Plaintiff selling medicine in market under trade name 'Tonic Phosphotone' — Defendant subsequently bringing out similar medicine under name "Cipla Phosphoton"—No similarity in outer form of two packages of rival medicines so as to mislead unwary purchasers — Plaintiff held not entitled to any relief as word 'Phosphotone' was merely discriptive and had not acquired any secondary meaning. I L R (1951) 1 All 211 : A I R 1950 All 258 (263) (Pt B) (Prs 23, 25) (DB).

——S. 20 — Passing off — Question of resemblance and likelihood of deception—Dissimilarity in object represented—Relevancy of.

The question of resemblance between two trademarks and the likelihood of deception are to be considered by reference not only to the whole mark but also to the distinguishing or essential feature if any of a trade mark. There may be cases where dissimilarity in the object represented may be the deciding factor. If, for instance, a particular class of goods are sold by several dealers, all under different kinds of 'Eagle' Trade marks, e.g,, then the purchaser is expected to know the difference between one trade mark and another, knowing as he does that more than one person sells goods under the same appellation. But when only a single proprietor sells a particular class of goods under the 'Eagle' brand and his goods are known as Eagle or Eagley, then the position is different; any attempt to sell goods under a trade mark which fixes in the mind of the purchaser the association of an eagle would not be justified. **53 Bom L R 556 : I L R (1952) Bom 344 : AIR 1951 Bom 147 (DB).**

——S. 20—Passing off — Person acquiring exclusive right to mark in connection with particular article—Right to prohibit use by others in connection with goods of totally different character.

The acquisition of an exclusive right to a mark or name in connection with a particular article of commerce cannot entitle the owner of that right to prohibit the use by others of such mark or name in connection with goods of a totally different character. The mark 'Bata' not having been associated in the public mind with lunghis or handkerchiefs, these goods being of a totally different character from those

of the Bata Shoe Co.'s goods, a traders' user of the said mark or name in respect of lunghis or handkerchiefs of his manufacture cannot constitute any passing off of his goods as those of the Bata Shoe Co., (1887) 12 A C 453 and (1885) 30 Ch D 454, Rel. on., (1898) 16 R P C 12, Dissented from. 61 Cal W N 122 : 98 Cal L J 173 : AIR 1957 Cal 120 (121, 122) (Prs 9, 17) (DB).

——S. 20 — Passing off — Law before Trade Marks Act, 1940 was common law of England according to which trade mark was acquired by prior user.

The law applicable in this country before the Trade Marks Act 1940 was the common law of England. Under the common law of England, title to a trade mark was acquired by prior user of the mark. User of a mark means, not what the person who uses the mark has in his own mind about it, but what the public would understand when the trade mark is impressed upon the goods, or upon some wrapper or case containing the goods, in such a way that the public would necessarily understand the words to be, and alone to be the trade mark of the person who uses them. (1891) 2 Ch 522 (532), (1887) 12 A C 453, Relied on. ILR (1952) 1 Cal 373 : AIR 1952 Cal 673 (676) (Pt B) (Prs 38, 39) (DB).

——S. 20 — Passing off — Plaintiff acquiring trade mark before 1940 by prior use. Plaintiff becoming sole proprietor of company manufacturing goods bearing plaintiff's trade mark — Trade mark held still remained the property of plaintiff — Company taken over by another company — Trade mark not being assets of transferring company, did not pass to new company—Plaintiff held not estopped from asserting ownership. ILR (1952) 1 Cal 373 : AIR 1952 Cal 673 (676, 677) (Pt C) (Prs 41, 51, 53, 56, 61) (DB).

——S. 20—Jurisdiction of Court other than District Court — Suit for infringement of trade mark and for passing off the goods — Further prayer for handing over infringing label for purpose of destruction—Exclusive jurisdiction to entertain action on trade mark lay with the District Court. See Hyderabad Trade Marks Act, S. 19. AIR 1956 Hyd 177 (DB).

——S. 20—Passing off action—Infringement of trade mark—Assessment of decree of resemblance between two trade marks — Prominent features of trade mark alone to be taken into account.

In a suit for injunction to restrain the defendant from passing off his goods as those of the plaintiff, the average purchaser to be taken into account for deciding the question of resemblance between two trade marks is one who has imperfect recollection of these trade marks. In this respect the prominent features of the trade mark alone can be taken into account in assessing the degree of resemblance between two trade marks. It is for the Court to assess the value of the contention that the public are likely to be misled by the two trade marks. (1962) 1 M L J 365 : 74 Mad L W 666 : ILR (1962) Mad 209 : AIR 1962 Mad 127 (130) (Pt A) (Pr 16).

——S. 20—Passing off action — Trade mark not registered—Expression 'registered' wrongfully used in trade mark—Suit for injunction for infringing trade mark—Maintainability of — Suit can be maintained if user is due to honest mistake.

A wrongful user of the expression 'registered' in a trade mark when the mark has not been actually registered does not disentitle the plaintiff from maintaining his suit for injunction in a passing off action, where the user of the word 'registered' by the plaintiff in his trade mark is the result of an honest mistake. In such a case the plaintiff should not be visited with any penalty for such user of the word 'registered' in his trade mark. (1935) 52 R P C 136 and (1951) 68 R P C 197 and (1904) 21 R P C 753 and (1954) 71 R P C 106, Rel. on. (1962) 1 M L J 365 : 74 Mad L W 666 : ILR (1962) Mad 209 : AIR 1962 Mad 127 (131) (Pt B) (Prs 21, 23).

——S. 20 — Passing off action — Unregistered trade mark—Infringement of—Suit for injunction — Relief in—Plaintiff is entitled to injunction but not to delivery of offending labels, blocks or goods.

In a passing off action based upon an unregistered trade mark the plaintiff, even though entitled to an injunction by reason of the defendant's trade mark having been deliberately introduced with the intention of passing off as the goods of the plaintiff, is still not entitled to an order for delivery of the offending labels or blocks or goods. Relief in such a case to which the plaintiff is entitled is an injunction restraining the defendant, his servants and agents from using his trade mark in respect of his goods, but it cannot be an absolute injunction. (1928) 46 R P C 10 and AIR 1959 Mad 357, Rel. on. (1962) 1 M L J 365 : 74 Mad L W 666 : ILR (1962) Mad 209 : AIR 1962 Mad 127 (132) (Pt C) (Pr 26).

——S. 20—Passing off action—Deception of buyer, if should be established.

Where in the plaint it was unequivocally stated that the user by the defendants with the label closely resembling the label of the plaintiffs has the effect of passing off the defendants goods as the goods manufactured by the plaintiffs, it is not necessary that there should be actual evidence that the similarity had deceived the buyers. Sometimes when a plaintiff comes to Court expeditiously before any perceptible loss has been sustained it will not be possible to adduce evidence of actual deception. Then it would be for the Court to find out if an ordinary buyer would or would not be taken in by the close similarity between the trade marks adopted by the two contesting parties. 1959 Mad W N 270 : 72 Mad L W 214 : (1959) 2 Mad L J 434 : AIR 1959 Mad 357 (358) (Pt A) (Pr 4) (DB).

——S. 20—Passing off action—Onus—(Torts—Trade Mark).

Where the case of the plaintiffs was that they were using a particular label with the device of a chair for a considerably long period and that only recently the defendants had begun to use a label which very closely resembles their own and it is the defendants who plead that they had been using exactly similar labels from a long time, it is incumbent on them to prove their case. There is one circumstance which is clinching namely that if the defendants had been using a similar label for a long time and they found that the plaintiffs were using a label closely resembling theirs, they would have taken proceedings to prevent the plaintiffs from using the label and the very fact that they never made any such complaint certainly inclines one to accept the version of the plaintiffs. 1959 Mad W N 270 : 72 Mad L W 214 : (1959) 2 Mad L J 434 : AIR 1959 Mad 357 (358) (Pt B) (Pr 6) (DB).

——S. 20 (2)—Passing off action is not barred.

Having regard to sub-s. (2) which expressly saves the rights of action against any person passing off goods, the action based on passing off is not barred by the provisions of this section. 72 Mad L W 214 : 1959 Mad W N 270 : (1959) 2 Mad L J 434 : AIR 1959 Mad 357 (358) (Pt C) (Pr 7) (DB).

——S. 20—Passing off—Permanent injunction—Form of—(Specific Relief Act (1877), S. 54).

In a passing off action the Court gave permanent injunction to the plaintiff. The decree ran: '1. That S. M. Syed Haji Abdul Rahiman & Co., the defendants herein, their servants and agents be and are hereby restrained by a perpetual injunction from using the label or trade mark Ex. P. 2 or Ex. D. 1 (annexed

hereto) with the device of the chair, and that there be no objection to their using the said device without the chair.' 2. In appeal, the decree was modified to run as: That S. M. Syed Haji Abdul Rahiman & Co., the defendants herein, their servants and agents be and are hereby restrained by perpetual injunction from using the label or trade mark Ex. P. 2 with the device of the chair without clearly distinguishing such label from the label used by the plaintiffs marked Ex. P. 1 so as to induce the belief that the lunghis sold under the said trade mark are the lunghis manufactured by the plaintiffs.' **1959 Mad W N 270 : 72 Mad L W 214 : (1959) 2 Mad L J 434 : AIR 1959 Mad 357 (358) (Pt D) (Pr 8) (DB).**

——S. 20 (2) — Passing off action with allegations of infringement of registered trade mark — Forum — Decree passed by City Civil Court held a nullity— Executing Court can look into pleadings to decide whether the Court had jurisdiction to pass the decree. See Trade Marks Act (5 of 1940), S. 73. **A I R 1958 Mad 490 (DB).**

——S. 20 (1) and (2)—Suit for infringement of registered trade mark and passing off action—Distinction.

The only difference in the action based on a registered mark and a passing off action under S. 20, sub-cl. (2), is that the former action is for infringement of a statutory right and depends on the validity of registration and is subject to other restrictions laid down in the Act, and the only question that requires to be decided in such circumstances is whether the defendant's mark is identical or shows a deceptive resemblance to the plaintiff's trade mark. In such an action the Court need not enquire whether the infringement is likely to deceive or confuse customers of the goods. On the other hand in a passing off action the only question to be decided is whether the mark used by the defendants on their goods is likely to deceive the customers into buying defendants' goods as if they were the plaintiff's goods and this is based on the principle that nobody is entitled to represent his goods as the goods of somebody else. **ILR (1955) Punj 1292 : 57 Punj L R 463 : A I R 1956 Punj 17 (18) (Pt A) (Pr 5) (DB).**

——S. 20 (2) — Passing off action — Trade mark — Infringement of.

In a passing off action it is for the Judge to decide whether having regard to the appearance of the marks and of the goods, the class of people to whom the goods are to be sold are likely to be deceived or not. **ILR (1955) Punj 1292 : 57 Punj L R 463 : AIR 1956 Punj 17 (18) (Pt B) (Pr 6) (DB).**

——S. 20 (2)—Passing off action—Damages—Failure to produce account books — Presumption—Evidence Act (1872), Ss. 106 and 114, illus. (g).

In a passing off action the plaintiffs are entitled to recoup the loss that they incurred as a direct and natural consequence of the defendants' wrongful action. Where in a passing of action the defendants refused to produce their books of account showing the quantities of goods manufactured or sold by them during the period of infringement and the profits earned thereon the Court would be justified in raising every presumption against them. It is their duty to produce their account books as the matter in entirely within their special and exclusive knowledge. **ILR (1955) Punj 1292 : 57 Punj L R 463 : AIR 1956 Punj 17 (18) (Pt C) (Pr 6) (DB).**

——S. 20 (2)—Common law action of "passing off".

The Act has no application to a common law action of "passing off", when there is no allegation of any infringement of a registered trade mark. Such action is saved by S. 20 (2). **51 Punj L R 383 : ILR (1950) Punj 114 : A I R 1951 Punj 332 (334, 335) (Pt A) (Pr 12) (DB).**

——Ss. 20 (2) and 73 — Passing off action—Jurisdiction of Court.

Where the plaint alleges that the defendant is passing off his publication as the publication of the defendant and is thereby deceiving the subscribers and advertisers of the plaintiff's paper, the pith and substance of the plaint is appropriate in a passing off action under S. 20 (2) and the suit is not hit by S. 73. **A I R 1951 Simla 176 (177) (Pt A) (Pr 11).**

——S. 20 — Infringement action and passing off action.

The main question in a passing off case is whether the defendant is passing off his goods as the goods of the plaintiff whereas in an infringement action the plaintiff has to prove that he has a proprietary right in the trade mark and having proved that he has to prove that the defendant is using either the identical mark or similar mark. **A I R 1951 Simla 176 (177) (Pt B) (Pr 9).**

SECTION 21

● ——S. 21 — Action for passing off and action for infringement of trade mark — Difference between pointed out. Kaviraj Pandit Durga Dutt v. Navaratna Pharmaceutical Laboratories, **(1965) 2 S C A 52 : 1965 Ker L J 690 : (1965) 1 S C R 737 : (1964) 2 S C W R 479 : A I R 1965 S C 980 (989, 990) (Pt C) (Pr 28).**

● ——**S. 21—Action for infringement of trade mark —Burden of proof — Identification of essential features of trade marks.**

When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be in the course of trade', the question whether there has been an infringement is to be decided by comparison of the marks. Where the two marks are identical no further questions arise; for then the infringement is made out. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered. Where the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in the respect of which his mark is registered, is deceptively similar. This has necessarily to be a ascertained by a comparison of the two marks—the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff. (1897) A C 199, Ref.; A I R 1962 Kerala 156, Affirmed. Kaviraj Pandit Durga Dutt v. Navaratna Pharmaceutical Laboratories. **(1965) 2 S C A 52 : 1965 Ker L J 696 : (1965) 1 S C R 737 : (1964) 2 S C W R 479 : A I R 1965 S C 980 (990) (Pt D) (Pr 29).**

● ——S. 21—Before the Trade Marks Act, proprietor of a trade mark could maintain an action for infringement of his trade mark and cause of in such a

case was quite different from cause of action in an action for passing off goods—By the Act the right of owner of trade mark is increased by S. 21 and it is made assignable independently of the good will under Ss. 28 and 29. See Income-tax Act (1922), S. 10. AIR 1951 SC 464.

——S. 21 (1) — Passing off action related to use of plaintiff's trade mark — Action, when affected by S. 73, indicated. See Trade Marks Act (1940), S. 20. AIR 1955 All 404 (DB).

——S. 21—Trade Mark—Infringement of—Descriptive trade mark and trade mark with invented or coined name, meaning explained — In former case anybody imitating it does not become liable while in latter case he becomes liable for infringement. ILR (1951) 1 All 211 : AIR 1950 All 258 (259, 260) (Pt A) (Prs 8, 9).(DB).

——S. 21 (1) — Ignorance of registration — No defence.

The provisions of S. 21 (1) do not seem to admit of a plea that the defendant had used the trade mark unaware of the fact of its registration. ILR (1962) Andh Pra 939 : AIR 1963 Andh Pra 58 (61) (Pt B) (Pr 40) (DB).

——S. 21 (1) — Infringement of trade mark — Held that the use of the word 'Hume Pipes' in relation to R. C. C. pipes manufactured and sold by the defendant, constituted an infringement of the trade mark. ILR (1962) Andh Pra 939 : AIR 1963 Andh Pra 58 (62) (Pt C) (Pr 49) (DB).

——S. 21—Infringement of trade mark—Damages — Measures of — Question left open for ascertainment by Commissioner to be appointed—Could not be disposed of by Court by award of nominal damages. ILR (1962) Andh Pra 939 ; AIR 1963 Andh Pra 58 (62, 63) (Pt D) (Prs 50, 52, 56, 57, 58) (DB).

——S. 21—Infringement of trade mark—Temporary injunction—Deceptive resemblance—Test.

In a suit for an infringement of a trade mark and the grant of a temporary injunction restraining the defendant from continuing to make use of a label, the issue of deceptive resemblance is not to be determined by a comparison of the emblems in dispute. It is to be determined on consideration of two quesions, namely, (i) who are the persons whom the resemblance must be likely to deceive or confuse and (ii) what rules of comparison are to be adopted in judging whether such resemblance exists ? The correct method of resolving the issue of deceptive resemblance is to independently study the design bear in mind the registered trade mark, try and ascertain whether that design would create in the mind of an ordinary citizen the impression, that what he was buying is an article bearing the registered trade mark. Once the Court is satisfied that the label put forward by the defendant is a colourable imitation or is substantially similar so as to give an impression that the wrapper on the defendants' article is the same or similar to that of the plaintiff's and consequently an ordinary member of the public using the article in the usual course is likely to mistake the one for the other, then there is sufficient justification for restraining the defendants from continuing to make use of that label. AIR 1960 Andh Pra 149 (150) (Prs 1, 3),

——S. 21—Infringement of trade mark — Action for passing off—Interim injunction—Court to see whether prima facie case is made out. See Civil P. C. (1908), O. 39, R. 1. AIR 1959 Andh Pra 168 (DB).

——Ss. 21 and 25—Counterfeiting trade mark—Tests — Duty of Court indicated. See Penal Code (1860), S. 482. 1961 (2) Cri L J 871 : AIR 1962 Bom 29 (DB).

——Ss. 21 and 25—Object of.

Anyone whose trade mark is registered under the Act, becomes entitled as of right to the use of that trade mark exclusively, subject to certain exceptions, one of those exceptions being as enacted in S. 25 which provides that if that trade mark had been the subject-matter of proprietary use by another, before that day, then that other person's right would not be disturbed. He is also entitled, in the event of any infringement of the registered trade mark, to avail himself of the remedies specified in sub-s. (2) of S. 21 of that Act. 1961 (2) Cri L J 871 : 63 Bom L R 563 : 1961 Nag L J 462 : ILR (1961) Bom 841 : AIR 1962 Bom 29 (31) (Pt A) (Pr 11) (DB).

——S. 21—Jurisdiction of Court other than District Court —Suit for infringement of trade mark and for passing off the goods—Further prayer for handing over infringing label for purpose of destruction — Exclusive jurisdiction to entertain action on trade mark lay with the District Court. See Hyderabad Trade Marks Act, S. 19. AIR 1956 Hyd 177 (DB).

——S. 21—Applicability—Section applies even when there is likelihood of deception.

Held, that the words 'Navaratna Kalpa Pharmacy' used by the defendant was likely to deceive the public that they were purchasing the goods, bearing the plaintiff's registered trade name, viz., Navaratna Pharmaceutical Laboratories and therefore the Court was justified in granting an injunction against the use of the words "Navaratna Kalpa Pharmacy." AIR 1958 Mys 134, Rel. on. 1961 Ker L J 177 ; (1961) 1 Ker L R 299 : ILR (1961) 2 Ker 435 : 1961 Ker L T 1048 : AIR 1962 Ker 156 (162, 163) (Pt E) (Prs 13, 14) (DB).

——Ss. 21 and 22 — Infringement of trade-mark—Temporary injuncion—Test to be appiled for grant of injunction—Nature of right is trade-mark—Particulars creating confusion amongst consumers — Evidence and proof — Circumstances held not in favour of grant of injunction. See Civil P. C. (1908), O. 39, R. 1. AIR 1962 Madh Pra 297.

——S. 21—Infringement—Temporary injunction.

The plaintiff in the suit, Lever Brothers, (India) Ltd., were the manufacturers of detergents. and one of their commodities was the well known Sunlight Soap. The defendant put on the market a soap which was called the Swan-White Soap.

Held, that there was a likelihood of confusion in the mind of a purchaser particularly unlettered and ignorant villager, who wanted to purchase a particular soap, being indifferent as to what the lettering on the label was. He was likely to think that the Swan-White Soap was the same as the Sunlight Soap, and he was not likely to find that it was not of the same type. In this case there was a likelihood of injury to the plaintiff-company by reason of the sale of this imitation article, and therefore it was necessary to prevent the mischief. Of course, there are various ways of doing justice between the plaintiff and defendant in an action for infringement of a registered trade mark. In most cases action is taken to prevent manufacture where there is a reasonable possibility of the suit succeeding. This was a case which called for the stoppage of the defendant's label. The order granting temporary injunction against the defendant was therefore proper. 1957 M P C 554 : 1957 M P L J 676 : 1957 Jab L J 903 : I L R (1957) Madh Pra 160 : A I R 1958 Madh Pra 348 (349, 350) (Pt A) (Prs 6, 7, 8).

——S. 21—Trade Mark—Infringement — What constitutes—Trade and Merchandise Marks Act (1958), S. 29.

There will be an infringement of trade mark if there is a probability of deception or confusion in the mind of a customer by reason of either visual or

phonetic similarity between the two words one of which has been registered as a trade mark. 48 R P T C 31; 1959 R P D T M C 283; 1961 R P C 219; 1961 R P C 255; AIR 1958 Bom 56 and AIR 1960 S C 142, Rel. on.

Section 21 of the Trade Marks Act also indicates what amounts to an infringement. Thus if the two marks are so nearly resembling each other as to be likely to deceive or cause confusion in the course of trade in relation to any goods in respect of which it has been registered by the plaintiff, then the defendant's mark will be deemed to have infringed the plaintiff's.

Held, on facts that the words used were strikingly similar when pronounced and they were also deceptive to the eye and the use of the word 'Perry's' would be an infringement of the trade mark 'Parrys'. **1963 Mad W N 567 : (1963) 2 Mad L J 311 : A I R 1963 Mad 460 (462, 463) (Pt A) (Prs 7, 10) (DB).**

—— **S. 21 (2)—'Confectionary' and 'Biscuits'—** Meaning — Trade Marks Act (1940), S. 21. See Words and Phrases—'Confectionary' and 'Biscuits.' **AIR 1963 Mad 460 (DB).**

——**Ss. 21 and 84—Rules under—R. 13 and Sch. IV, Class 30 — Trade mark registered in respect particular of goods falling under class 30 of Sch. IV of Rules — Proprietor's right to use in respect of other goods falling under the same class — Trade and Merchandise Marks Act (1958), Ss. 29 and 133.**

The operation of protection given by the Trade Marks Act is confined to the goods in respect of which the Trade Mark has been registered. Section 21 of the Trade Marks Act gives an exclusive use of the right in respect of a trade mark only in relation to the goods in respect of which it has been registered. The fact that a proprietor has registered his trade mark in respect of goods in class 30 of the Sch. IV of the Rules would not entitle him to use the mark with respect to any of the goods specified in the class or with respect to all goods specified in the class. The classification of the goods under R. 13 read with Sch. IV is only for the purpose of regarding the application i. e., for the purpose of registration and S. 21 cannot be read as giving an exclusive right to a registered proprietor to use the mark not only in respect of the goods in relation to which it has been registered but also in respect of other goods found in the same category or classification: 7 R P C 183, Rel. on.

A trade mark registered for biscuits falling under class 30 of Sch. IV cannot be used in respect of confectionary also falling under the same class. **1963 Mad W N 567 : (1963) 2 Mad L J 311 : A I R 1963 Mad 460 (463) (Pt B) (Prs 11, 12, 17) (DB).**

——**Ss. 21 (1) and 35 (1) — Suit for infringement of trade mark by heirs of registered proprietor—Maintainability before order under S. 35—Order by itself —If give cause of action.**

There is nothing in S. 21 or S. 35 which would support the argument that it is only the order of the Registrar under S. 35 which confers a right on the heirs of the original registered proprietor to bring an action for infringement of the trade mark. Such an action is therefore, maintainable even before an order was passed under S. 35. If, subsequently, the plaintiffs file into Court an order under S. 35 (1) recognising their title, the plaint need not be amended because the order of the Registrar under S. 35 by itself does not give a cause of action. All that it gives is a recognition of the title which already inheres in the legal representative of the deceased proprietor. **72 Mad L W 620 : I L R (1960) Mad 51 : (1960) 1 Mad L J 270 : AIR 1960 Mad 80 (80, 81) (Prs 3, 4) (DB).**

——**S. 21—Trade Mark—Infringement — Passing off —Suit for — Injunction — Grant of — Intention to deceive—Necessity for—What has to be made out—Test to apply.**

In order to justify the issue of an injunction in action for infringement of a trade-mark or a trade-name, it is not at all necessary that there should be an intention to deceive. A man has a right of property in the goodwill of his business which he has either built up, or acquired, and if another interferes with it by 'passing off' his own goods among the public as the former's then that person has a remedy. He can go to Court and obtain an injunction restraining the latter from such act even if that latter's action be entirely innocent and done in ignorance of any interference with the former's rights. The proper test to apply in such cases is not whether a person, after careful and intelligent examination or study of the marks on the goods, and after seeing them together, is not likely to be misled but whether by the general impression produced, or 'the main idea left on the mind' by looking at the article there is a probability of the similarity causing deception. Each case must depend upon the degree or amount of resemblance. **55 Mys H C R 334 : 30 Mys L J 42 : AIR 1951 Mys 29 (DB).**

SECTION 23

——**S. 23—Legal proceeding—Meaning of—Proceeding under S. 46(2)—Not a legal proceeding.** See Trade Marks Act (1940), S. 24. **AIR 1957 All 683.**

—— **Ss. 23, 24, 46, 72 — Registered trade mark — Infringement of — Suit for injunction — Validity of trade mark cannot be challenged in such proceeding—Proceeding under Ss. 46/72 pending in another Court—Duty of Court dealing with injunction suit.**

In the context of S. 23 and S. 24, it is clear that the validity of a registered trade mark cannot be canvassed in a suit for injunction resulting from an alleged infringement of trade mark. The person aggrieved must adopt, in such a case, the special procedure provided in S. 46 read with S. 72 of the Act for modification or cancellation of the registered trade mark. Where such a special proceeding is already pending in another Court, it is not proper in the interests of justice for the Court dealing with the suit for injunction to express any opinion upon the merits of the controversy regarding validity of the trade mark. **1962 Mad W N 541 : 75 Mad L W 513 : AIR 1963 Mad 12 (12, 13) (Prs 3, 4) (DB).**

SECTION 24

——**Ss. 24, 9, 23, 46 (2), 47, 48, 59—Scope — "Legal proceeding" — Meaning of — Proceeding under S. 46 (2).**

A proceeding under S. 46 (2) of the Trade Marks Act is not a legal proceeding within the meaning of S. 24 of that Act : **A I R 1956 Punj 4, Dissented from.** Proceedings for the registration of a trade mark are always taken before the Registrar; they are departmental proceedings and not legal proceedings. Proceedings under S. 46 for the cancellation or rectification of the registration are of the same nature as proceedings for registration and should be deemed to be departmental proceedings even if they are taken before a High Court. The purpose of S. 24 is to furnish conclusive evidence of the validity of a trade mark in certain circumstances; it provides a rule of evidence to be applied in a legal proceeding. The justification that exists for applying such a rule in a legal proceeding does not exist in a proceeding under S. 46. There is no time limit imposed by the Act upon an aggrieved person's right to make an application under S. 46; he can make it even after the expiry of seven years from the date of the original registration.

Section 23 lays down that in all legal proceedings relating to a registered trade mark the fact that a

person is registered as its proprietor shall be prima facie evidence of its validity, but after seven years it becomes conclusive evidence (except in case of fraud or infringement of provisions of S. 8). A proceeding for cancellation or varying taken before the Central Government under S. 59, could hardly be said to be a legal proceeding; a proceeding under Ss. 46, 47 and 48 being of a similar nature should also be not said to be a legal proceeding. A word which is the commonly used and accepted name of any single chemical element or compound cannot be registered as a trade mark. It is laid down in S. 9 of the Act (an exact copy of S. 15 (3) of the English Act, 1938) that if it is still registered, the registration "shall, notwithstanding anything in S. 24, be deemed for the purposes of S. 46, to be an entry made in the register without sufficient cause", etc. **A I R 1957 All 683 (701, 702) (Pt M) (Prs 38 to 41, 43, 45).**

——S. 24—"Obtaining registration by fraud"—What amounts to.

Held, that the statements made by the defendants to the Registrar that he started business in 1901, that he had been using the trade mark "Amritdhara" since then and had spent about 12 lacs on advertisement are not proved to be false. Even if the defendants made some exaggerated or even false statements and thereby induced the Registrar to register the trade mark, it would not amount to their obtaining the registration by fraud within the meaning of S. 24. Obtaining a favourable order by giving false evidence has never been held to amount to obtaining it by fraud. Fraud is conduct involving dishonest or grave moral culpability. It is conduct which vitiates every transaction known to the law. **A I R 1957 All 683 (702, 703) (Pt N) (Pr 46).**

——S. 24—Fraud—Registration of trade mark affords protection to owner—Non-user by person registering it, may lead to removal of trade mark from register—Party leading Registrar to believe that entire trade-mark as sought to be registered would be used though having as a matter of fact no intention to use it—This is no fraud on Register. A I R 1955 N U C (All) 3584.

——Ss. 24 and 37—Fraud — Lack of intention to use trade mark at time of registration, is not fraud contemplated by S. 24. A I R 1955 N U C (All) 3584.

——S. 24 — Portion of trade mark not being distinct —Registration cannot be questioned, after lapse of seven years after registration. A I R 1955 N U C (All) 3584.

——S. 24 — Proceedings under S. 46 are legal proceedings — Rectification of registration after lapse of seven years cannot be allowed. See Trade Marks Act (1940), S. 46. A I R 1965 Mad 33.

——S. 24—Registered trade mark—Infringement of—Suit for injunction — Validity of trade mark cannot be challenged in such proceeding—Proceeding under S. 46/72 pending in another Court — Duty of Court dealing with injunction suit — It is not proper in interest of justice to express any opinion upon merits of controversy regarding validity of trade mark. See Trade Marks Act (1940), S. 23. A I R 1963 Mad 12 (DB).

——Ss. 24 and 46 (2)—Applicability—Registration of trade mark obtained by fraud — Effect — Subsequent renewal of registration is also invalid. 1956 Mad W N 751 : I L R (1957) Mad 206 : 69 Mad L W 739: (1956) 2 Mad L J 469 : A I R 1957 Mad 76 (77) (Pt A) (Pr 3) (DB).

——S. 24—'Fraud'—What amounts to.

It is not permissible for a person under S. 24 to contend that registration was obtained by fraud unless he had alleged actual dishonesty or fraud. Though it seems impossible to construct a definition which would meet every case which might be brought under the Trade Marks Act there is little danger in saying that whenever fraud is alleged therein two elements are at least essential, viz., first deceit or intention to deceive or, in some cases a mere secrecy; and, secondly, either actual injury or possible injury or an intention to expose some person either to actual injury or to a risk of possible injury by means of deceit or secrecy. A practically conclusive test as to the fraud practised in trade marks cases would be, did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, it is hardly possible that the advantage should not have had an equivalent in loss or risk, loss to someone else; and if so, there was fraud. In practice people hardly ever intentionally deceive each other in matters of business for a purpose which is not fraudulent. **A I R 1956 Mad 184 (187, 188) (Pt C) (Prs 21, 24).**

——Ss. 24, 8 (a) — Application for rectification of register necessary particulars not given—Application is incompetent. See Trade Marks Act (1940), S. 8 (a). A I R 1956 Punj 4.

SECTION 25

——S. 25 — Object of, stated. See Trade Marks Act (1940), S. 21. 1961 (2) Cri L J 871 : A I R 1962 Bom 29 (DB).

——S. 25—Counterfeiting trade mark—Tests — Duty of Court indicated. See Penal Code (1860), S. 482. 1961 (2) Cri L J 871 : A I R 1962 Bom 29 (DB).

——S. 25—Plea of prior user—Evidence.

In a suit for injunction for infringing a registered trade-mark (a label) if the defendant's label was in current use before the registration of the plaintiff's label the provisions of S. 25, Trade Marks Act, will save prima facie the defendant from the grant of a temporary injunction. For this purpose, however, there has to be evidence. A mere declaration in respect of a label before a justice of the peace is not sufficient to discharge the burden laid by that section upon the defendant.

Where neither side cared to lead evidence and relied upon affidavits,

Held, that in the circumstances of the case, they were a poor substitute for the kind of proof needed to apply S. 25. **A I R 1946 P C 109, Relied on. 1958 Jab L J 873 : 1959 M P L J 832 : A I R 1959 Madh Pra 21 (22) (Prs 3, 5) (DB).**

SECTION 28

● **——S. 28—Before the Trade Marks Act, proprietor of a trade mark could maintain an action for infringement of his trade mark and cause of in such a case was quite different from cause of action in the action for passing off goods — By the Act the right of owner of trade mark is increased by S. 21 and it is made assignable independently of the good will under Ss. 28 and 29. See Income-tax Act (2) (xv). A I R 1951 S C 464.**

SECTION 29

● **——S. 29.— Before the Trade Marks Act the proprietor of a trade mark could maintain an action for infringement of his trade mark and cause of action in such a case was quite different from cause of action in an action for passing-off goods—By the Act the right of the owner of trade mark is increased by S. 21, and it is made assignable independently of the goods will under Ss. 28 and 29. See Income-tax Act (1922), S. 10 (2) (xv). AIR 1951 S C 464.**

——S. 29—Assignment of—Sale-deed assigning trade mark simpliciter conveys no valid title in the trade-marks to the transferee — Law does not recognise transfer of trade-mark 'per se' separate from good

will or business. 62 Mad L W 461 : (1949) 2 Mad L J 84 : 1949 Mad W N 455 : ILR (1950) Mad 267 : AIR 1951 Mad 681 (682) (Pt A) (Pr 4) (DB).

SECTION 30

—S. 30—Registration of distinctive label — Disclaimer of a part of it—When necessary.

It is true that where a distinctive label is registered as a whole, such registration cannot possibly give any exclusive statutory right to the proprietor of the trade mark to the use of any particular word or name contained therein apart from the mark as a whole. The truth is that the label does not consist of each particular part of it, but consists of the combination of them all. Case-law referred. This circumstance, however, does not necessarily mean that in such a case disclaimer will always be unnecessary. It is significant that the section itself contemplates that there may be a disclaimer in respect of parts contained in a trade mark registered as a whole although the registration of the mark as a whole does not confer any statutory right with respect to that part. Registrar of Trade Marks v. Ashok Chandra Rakhit, Ltd, 1955 Mad W N 935 : 1955 S C J 562 : 1955 Andh W R (SC) 330 : (1955) 2 M L J (SC) 76 : 1955 S C A 1043 : (1955) 2 S C R 252 : AIR 1955 S C 558 (565) (Pt F) (Pr 14).

SECTION 35

—S. 35 (1)—Suit for infringement of trade mark by heirs of registered proprietor — Suit is maintainable even before order was passed under S. 35 — Such order by itself does not give cause of action. See Trade Marks Act (5 of 1940), S. 21 (1). AIR 1960 Mad 80 (DB).

—Ss. 35 and 47 (1) (b) — Private limited company having registered trade mark — Merger of certain private limited companies in such company — Company converted into public company and changing its name—Suit by company for infringement of trade mark — Maintainability without change effected under Ss 35 and 47 — Companies Act (1956), Ss. 31 (2) and 44 (1).

Held (i) that from Ss. 31 (2) and 44 (1), Companies Act, 1956, it is clear that when a private company is converted into a public company there is only an alteration in the articles of association of the company, that company does not cease to exist nor does a new company spring into existence. In other words, the alteration in the articles of a company does not affect the legal personality of that company. Hence there was no need to apply under S. 35 of the Trade Marks Act. Failure to apply therefore did not affect the maintainability of the suit. AIR 1943 Pat 278, Rel. on; (ii) that when a change in the name of the registered proprietor is required the authorities of the company need only apply under S. 47, Trade Marks Act. The plaintiff could not be non-suited merely because the change in the name of the registered proprietor had not been effected by the time the suit was instituted. Registration of the name of the proprietor does not confer title on him. It is merely an evidence of his title. The plaintiff-company was the owner of the trade mark in question at all times. AIR 1960 Mad 80, Rel. on ; (iii) that the true effect of the merger was that the merging companies lost their identity and tney became one with the company in which they merged. The legal personality of Lever Brothers (India) Private Limited continued to be the same though there might have been a change in its assets and liability position. (1964) 1 Mys L J 1 : AIR 1964 Mys 173 (175, 176, 177) (Prs 8, 9, 12).

SECTION 37

—S. 37 (1) (a)—The use of a trade mark 'in relation to those goods' — Expression includes use of trade-mark on goods itself or on container. See Trade Marks Act (1940), S. 2 (2). AIR 1955 N U C (All) 3584.

—Ss. 37 and 24—Fraud — Lack of intention to use trade-mark at time of registration is, not fraud contemplated by S. 24. AIR 1955 N U C (All) 3584.

—S. 37 (i) — Application for rectification of Trade Marks Register— Can be filed only in the High Court within whose jurisdiction Trade Marks Register is situate or in that High Court within whose jurisdiction the owner of marks resides or carries on business. See Trade Marks Act (1940), S. 46 (1). AIR 1962 Mad 214 (DB).

—Ss. 37 and 46 (2)—Jurisdiction — 'High Court'—Meaning — S. 2 (1) (d) 'in relation to any State' — Meaning and effect of — Trade Marks registered in Bombay — Owner of marks having registered office in Bombay and Spinning Mill in Mysore State—Application to remove trade mark made by another—Jurisdiction of High Court at Madras — Absence of allegation or proof that goods bearing marks in question are being sold in Madras State—Effect.

The expression 'High Court' in Ss. 37 and 46 (2) of the Trade Marks Act cannot be interpreted as a High Court which exercises jurisdiction in any part of India, on the ground that any High Court in India would have jurisdiction to entertain a petition by any citizen of India to have another citizen's trade mark struck off the register. Such a view would be inconsistent with definition of High Court in S. 2 (1) (d) as amended by the Adaptation of Laws Order 1 of 1956, because the words 'in relation to any State, the High Court for the State' would then be deprived of all significance. Hence an application under Ss. 37 and 46 (2) may not be entertained by the High Court of Madras unless the subject-matter of the application has relation to the State of Madras in a sense in which the subject-matter does not have relation to every other State in India by reason merely of registration.

The first respondent a company having its registered office in Bombay, owned and conducted a Spinning Mill in the State of Mysore. It applied for and obtained registration of the trade marks by the Registrar of Trade Marks of Bombay. The petitioner whose application for registration of a trade mark was opposed by the first respondent applied to the High Court of Madras under Ss. 37 and 46 (2), while the application was still pending before the Registrar, praying that the first respondent's registered trade marks be taken off the register. There was no allegation or evidence that the first respondent's goods bearing the trade marks in question were being sold in Madras.

Held, that the subject-matter of the application had relation to State of Bombay and Mysore, it had no relation to the State of Madras, and hence the High Court of Madras had no jurisdiction to entertain the application under Ss. 37 and 46 (2) of the Act. 72 Mad L W 144 : (1959) 1 M L J 217 : ILR (1959) Mad 363 : AIR 1959 Mad 251 (253) (Pr 16).

SECTION 39

—Ss. 39 and 73—Scope — 'Or otherwise relating to any right in a trade mark' — Meaning of — Jurisdiction.

The right in a Trade Mark referred to in S. 73, Trade Marks Act, connotes either the full right of ownership or the right to user thereof though the person claiming may not be the proprietor or owner of the Trade Mark. 60 Cal W N 591 : A I R 1957 Cal 135 (138) (Pt B) (Prs 34, 36, 37, 41) (DB).

SECTION 44

—S. 44 (2) — Containers bearing complainant's trade mark recovered from shops of accused—Com-

plainant's product removed and spurious substituted —Offence under Ss. 482, 485, held established. See Penal Code (1860), S. 482. 1961 (1) Cri L J 488 : A I R 1961 Cal 240 (DB).

SECTION 46

—S. 46 (2) — Scope, stated — Absence of notice — Effect—Omission on part of Registrar to give a notice of an application for registration to a depositor is not a ground for expunging or varying an entry of trade mark in the register. See Trade Marks Rules (1942), R. 23 (3). A I R 1957 All 683.

—S. 46 (2)—Proceeding under — Not a "legal proceeding." See Trade Marks Act (1940), S. 24. A I R 1957 All 683.

—S. 46 — Application for removal of trade mark from register — Onus.

In an application for removal of a trade mark from the register and that too after the expiry of seven years the onus lies on the applicant to establish his case or to prove that the trade mark was not registrable. A I R 1957 All 683 (696) (Pt I) (Pr 26).

—S. 46 (2)—'An aggrieved person'—Meaning of.

Any trader is, in the sense of the statute, aggrieved whenever the registration of a particular trade mark operates in restraint of what would otherwise have been legal rights. Whatever benefit is gained by registration must entail a corresponding disadvantage upon a trader who might possibly have had occasion to use the mark in the course of his business: (1894) A C 8, Rel. on. AIR 1957 All 683 (704) (Pt P) (Prs 49, 51, 52).

—Ss. 46 (4) and 6 (1) (d) — Word 'Sulekha' registered as trade mark of fountain pens by Registrar—Successor Registrar cancelling registration — Successor cannot reopen question of fact — Use of dictionaries in fixing meaning of word suggested as trade mark—Such use is not warranted. 63 Bom L R 642 : A I R 1962 Bom 82 (85, 86) (Pt B) (Pr 11).

—S. 46 — Scope — Non-existence of another trade mark on date of application — Another trade mark registered before application is allowed — Effect —Then there is prohibition against registration of trade mark, although there was no such trade mark in existence at the date of application. See Trade Marks Act (1940), Ss. 10 (1) and 16 (1). A I R 1958 Bom 56 (DB).

—S. 46—"Aggrieved person"—Meaning of.

The phrase "any person aggrieved" has been very liberally construed so as to hold as persons aggrieved all these who are in some way or other substantially interested in having the mark removed where it is a question of removal from the Register, or persons who would be substantially damaged if the mark remained. It will be difficult to conceive of a person more aggrieved than one whose case is that the person complained against is likely to be sold as the product of the complainant if that person were to be allowed to use the trade mark complained about. 59 Bom L R 548 : ILR (1957) Bom 702 : A I R 1958 Bom 56 (60) (Pt B) (Pr 9) (DB).

—S. 46—Delay in making application—Effect.

The granting of relief under S. 46 is a discretionary relief and the Legislature has not laid down any period of limitation for making an application under S. 46. The question of delay in the making of the application must be approached from this point of view whether the applicant stood by any thereby caused substantial injury to the respondent and the injury was so substantial that that injury would outweigh the interest of the public which the Court must consider where a trade mark is likely to deceive. 59 Bom L R 548 : ILR (1957) Bom 702 : A I R 1958 Bom 56 (60) (Pt C) (Pr 10) (DB).

—S. 46—Power of Court — Interference with discretion of Registrar.

The relief to be given under S. 46 is discretionary relief. Where the Registrar has exercised the discretion in favour of a person that fact ought considerably to weigh with the Court. It is not as if the exercise of that discretion is final or is not subject to appeal, but the appellate Court ordinarily should be loath to interfere with that discretion. 59 Bom L R 548 : ILR (1957) Bom 702 : A I R 1958 Bom 56 (61, 62) (Pt E) (Pr 13) (DB).

—S. 46 — Application for rectification — Delay — Effect of.

Delay in making the application for rectification of the register under S. 46 of the Trade Marks Act is not per se a valid ground for defence. ILR (1952) 1 Cal 373.

—S. 46—'Sufficient cause' — Meaning of—Rectification of register.

Where a person has wrongfully registered in his own name the trade mark of another the proper procedure is for the true proprietor to apply for the removal of the mark from the register. In considering the question whether an entry was made without sufficient cause or not, the matter should be looked at as on the date of the application for registration. There is 'sufficient cause' for rectification of the register within the meaning of S. 46 of the Trade Marks Act where the applicant for registration did not disclose to the Registrar that opposition had been entered by the respondent in the application for registration of the associated mark though he had agreed to the conditions imposed by the Registrar that the two applications should be considered as for registration of associated marks and where he did not disclose to the Registrar that his right to the mark had been negatived by the Civil Court in a prior suit. ILR (1952) 1 Cal 373.

—S. 46 — Power of Court to cancel registration of trade mark.

Section 46 confers on the Court the jurisdiction to cancel the registration of a trade mark on the ground of failure to observe the conditions relevant for the entry being made in the Registry. Where the word 'Navaratna' registered as trade mark was proved not to have lost its original meaning and covered by S. 6 (1) (e) of the Act, the word can be ordered to be deleted from the register of Trade Marks. 1961 Ker L J 177 : (1961) 1 Ker L R 299 : ILR (1961) 2 Ker 435 : 1961 Ker L T 1048 : A I R 1962 Ker 156 (162) (Pt C) (Pr 10) (DB).

—Ss. 46 and 24—Proceedings under S. 46 are legal proceedings—Rectification of registration after lapse of seven years cannot be allowed.

Proceedings for rectification under S. 46 are legal proceedings and the provisions of S. 24 are applicable to such proceedings. 58 Bom L R 912; A I R 1956 Punj 4, Foll.; A I R 1957 All 683, Dissented from. Hence where the name 'Manthithope' on the label of a medicinal oil was registered the registration could not be rectified under S. 46 after the lapse of more than seven years from its original registration. (1964) 1 M L J 121 : ILR (1964) 2 Mad 194 : AIR 1965 Mad 33 (34, 35) (Pt A) (Pr 5).

—Ss. 46 and 6 (1) (a) — Trade name registered distinctive of goods of manufacturer even before registration — Registration of geographical name held proper—Relief under S. 46 is discretionary. (1964) 1 Mad L J 121 : ILR (1964) 2 Mad 194 : A I R 1965 Mad 33 (36, 37) (Pt B) (Prs 10, 12).

—Ss. 46, 23—Registered trade mark—Infringement of—Suit for injunction — Validity of trade mark cannot be challenged in such proceeding — Proceeding under S. 46/72 pending in another Court — Duty of

Court dealing with injunction suit stated. See Trade Marks Act (1940), S. 23. **A I R 1963 Mad 12 (DB).**

——**Ss. 46 (1), 37 (i) — Application for rectification of Trade Marks Register—High Court in which it is to be made.**

An application for rectification to Trade Marks Register by deleting the registered trade mark can be filed only in the High Court within whose jurisdiction the Trade Marks Register is situate or in that High Court within whose jurisdiction the owner of the Marks resides or carries on business. The High Court within whose jurisdiction the goods bearing the impugned trade-mark are sold has no such jurisdiction. **75 Mad L W 33 : I L R (1962) Mad 392 : (1962) 1 Mad L J 408 : A I R 1962 Mad 214 (215) (Pr 4) (DB).**

——Ss. 46 (2), 37—Trade mark registered in Bombay — Petition for removal of trade mark made in Madras High Court — High Court of Madras, held had jurisdiction to entertain petition. See Trade Marks Act (1940), S. 37. **AIR 1959 Mad 251.**

——S. 46 (2) — Registration of trade mark obtained by fraud—Effect—Subsequent renewal of registration is also invalid — S. 24, does not apply. See Trade Marks Act (1940), S. 24. A I R 1957 Mad 76 (DB).

——**S. 46 (2)—'Person aggrieved.'**

A person against whom the respondents have filed a suit for declaration of rights to the trade mark in question, and, the proprietors of a trade mark applying for rectification of the register by cancelling the entry as to registered user, will be "persons aggrived." Misc. No. 15 of 1950, dated 8th October, 1951 and (1952) R P C 166, Rel. on. **AIR 1956 Mad 184 (186) (Pt A) (Pr 14).**

——S. 46 (2) — Entry made without sufficient cause —Proper order to be made in the circumstances of the case, indicated. See Trade Marks Act (5 of 1940), S. 10 (2). **AIR 1956 Mad 184.**

——**S. 46—'Person aggrieved.'**

In determining the locus standi of an applicant the allegations as to facts made by him should, prima facie, be assumed to be true, although they may be challenged. (1891) 45 Ch D 519, Rel. on. **AIR 1956 Mad 184 (187) (Pt B) (Pr 15).**

——**S. 46—Application under—Delay.**

There is no legal obligation on persons interested to see an advertisement in the Trade Marks Journal and if they do not see an advertisement they cannot be in a worse position than they would have been before. Further, a defendant moving to rectify only when the plaintiff taking advantage of his registration used it against the defendant in a suit cannot be held to be guilty of delay. Delay assumes importance only if it puts the opposite party to serious unfair disadvantage by the loss of evidence or the like which was not the case here. In matters concerning rectification of the register the public interest is of paramount importance and the merits and demerits of the applicant for rectification are of little importance. **AIR 1956 Mad 184 (189) (Pt F) (Pr 27).**

——Ss. 46, 8 (a) — Application for rectification of register necessary particulars not given — Application not competent. See Trade Marks Act (1940), S. 8 (a). **AIR 1956 Punj 4.**

——S. 46 (2) — 'Person aggrieved' — Petitioners in same trade as respondent — Application before Registrar for registration of mark 'Nanra'—Respondent entering opposition—Proceedings of criminal nature by respondent against petitioner — Petitioner held 'person aggrieved.' **AIR 1955 N U C (Punj) 737.**

——**Ss 46 and 72** — Application for rectification of registration of trade mark under S. 46—Punjab High Court has jurisdiction to decide matter : 51 C W N 42, Foll.; A I R 1947 Lah 171, Not foll. **54 Pun L R 176 : AIR 1952 Punj 266 (267) (Pt B) (Prs 6, 7).**

SECTION 47

——S. 47—Legal proceeding—Meaning of — Proceeding under S. 46 (2) — Not a legal proceeding. See Trade Marks Act (1940), S. 24. **AIR 1957 All 683.**

——S. 47 (1) (b) — Private limited company having registered trade mark — Merger of certain private limited companies in sudh company—Company converted into public company and changing its name —Suit by company for infringement of trade mark — Maintainability without change effected under Ss. 35 and 47. See Trade Marks Act (1940), S. 35. **A I R 1964 Mys 173 (DB).**

——S. 47 — Application for rectification of register necessary particulars not given — Application not competent. See Trade Marks Act (1940), S. 8 (a). **AIR 1956 Punj 4.**

SECTION 48

——S. 48—Legal proceeding—Meaning of—Proceeding under S. 46 (2) — Not a legal proceeding. See Trade Marks Act (1940), S. 24. **AIR 1957 All 683.**

——S. 48 (1) — Amendment of application after advertisement — Extent of power of Registrar — Principle—Duty of Registrar indicated. See Trade Marks Act (1940), S. 14 (3). **AIR 1958 Bom 47 (DB).**

SECTION 59

——S. 59—Legal proceeding—Meaning of—Proceeding under S. 46 (2) — Not a legal proceeding. See Trade Marks Act (1940), S. 24. **AIR 1957 All 683.**

SECTION 68

——**S. 68 before amendment by Act 12 of 1946** — Commencement — Whole Act brought into force in whole of Mysore on and from 1st July 1948 by notification in Official Gazette of 13th May 1948 — Civil Area, Bangalore, retroceded to Mysore in August 1948 — Act made applicable to Civil Area from August 1948 by Retroceded Area (Application of Laws) Act, 1948 — No fresh notification under S. 68 held was necessary—(Mysore Trade Marks Act (1944), S. 68) — (General Clauses Act (1897), S. 5). **1953 Cri L J 1277 : ILR (1953) Mys 436 : 33 Mys L J 54 : AIR 1953 Mys 110 (110) (Pr 4) (DB).**

——S. 68 — Penal Code (1860), Ss. 482, 483, 486 — Offences under, held committed, on facts of the case. **1959 Cri L J 1463 : AIR 1959 Pat 554 (DB).**

SECTION 70

——**S. 70 (a) — Registrar of Trade Marks if Court — Proceedings before him—S. 9, Bombay Pleaders Act —Applicability—(Bombay Pleaders Act (17 of 1920), S. 9 and S. 2).**

Even though in some respects the position of the Registrar of Trade Marks may be analogous to that of a Court he is not a Court, and the provisions of S. 9, Bombay Pleaders Act, do not apply to any proceedings before him. Further, it cannot be inferred from the definition of the expression "Court subordinate to the High Court" appearing in S. 2 of the Bombay Pleaders Act, 1920, that the Registrar of Trade Marks is constituted a Court within the meaning of that Act. **59 Bom L R 1019 : AIR 1959 Bom 21 (24, 25) (Pt E) (Prs 7, 8).**

——**S. 70—Evidence by affidavit—Cross-examination of deponent—Power of Registrar—C. P. Code, O. 19, R. 2.**

The Registrar has, under S. 70 (a) read with O. 19, R. 2, Civil P. C., power in a suitable case to require that any person who has made an affidavit should attend for cross-examination at the instance of either party. However, S. 70 (b) provides that the Registrar may, if he thinks fit, take oral evidence "in lieu of or in addition to such evidence by affidavit." It is obvious, therefore, that it is open to the Registrar not to admit oral evidence or to admit oral evidence in addition to the evidence by affidavits. **AIR 1956 Bom 641 (643) (Pt B) (Pr 6).**

——S. 70 (d) — Rules framed under, R. 81 and Sch. VI—Entries 1 and 2 in Sch. VI—Interpretation of.

—The heading for the entries in the Sixth Schedule is matter in respect of which cost is to be 'awarded' and when the matter is "one day's hearing" with or without examination of witnesses, the maximum amount is Rs. 25 or Rs. 16. That relates to costs of a day's hearing when granted and not to costs of the entire proceedings. **AIR 1956 Bom 641 (645) (Pt E) (Pr 11).**

——S. 70 (d) — Rules framed under, R. 81—Discretion of Registrar in awarding costs.

The discretion of the Registrar in awarding costs under R. 81 is entirely unfettered and he is to award such costs as he considers reasonable having regard to all the circumstances of the case. **AIR 1956 Bom 641 (645) (Pt F) (Pr 11).**

——Ss. 70 and 77 — Procedure before Registrar — Evidence by affidavit — Rules under S. 77, Rr. 34 and 36 — Expression "evidence in support of application" in R. 34—Meaning.

Under the Trade Marks Act, the Registrar is given the power to decide any matter that comes before him on affidavit. The scheme of the Act is that ordinarily all disputed questions of fact should be disposed of by affidavit. But there may be cases where this would be impossible, in which case discretion is vested in the Registrar to take oral evidence either in lieu of or in addition to evidence by affidavit.

The position under the rules framed under the Trade Marks Act is that, after the notice of opposition is given, evidence in support of opposition is given by the person opposing the registration, and this evidence is given by affidavit and the affidavit should set out the evidence on which the opponent intends to rely. Thereafter, evidence in support of the application is given by the applicant, and that too is given by affidavit. A further right is given to the opponent to give evidence in reply, but that can only be done by leave of the Registrar, and R. 36 provides that no further evidence is permissible although the Registrar may, at any time if he thinks fit, give leave either to the applicant or to the opponent to lead evidence on such terms as to costs or otherwise as he may think fit.

The expression "evidence in support of the application" in R. 34 includes evidence submitted by the opponent in support of his opposition, because evidence in rebuttal of the case of the opposition is also evidence in support of the application.

It would be taking too technical a view of the rules to tie an applicant down to his admission in the affidavits that document was not a forgery or that the document was a genuine one especially where it is merely a constructive admission. **54 Bom L R 28 : AIR 1952 Bom 165 (166) (Pt B) (Pr 3) (DB).**

——S. 70—Distinctive Mark—'Vapo rub'. See Trade Marks Act (1940), S. 6(1) (e). **AIR 1959 Cal 654 (DB).**

SECTION 72

——S. 72—Registered trade mark—Infringement of—Suit for injunction — Validity of trade mark cannot be challenged in such proceeding—Proceeding under S. 46/72 pending in another Court — Duty of Court dealing with injunciion suit indicated. See Trade Marks Act (1940), S. 23. **AIR 1963 Mad 12 (DB).**

——Ss. 72, 46—Application for rectification of registration of trade mark under S. 46 — Punjab High Court has jurisdiction to decide matter. See Trade Marks Act (1940), S. 46. **AIR 1952 Punj 266.**

SECTION 73

——S. 73—Suit under S. 73, Trade Marks Act, filed in Court of Additional Civil Judge — Objection to jurisdiction disallowed by Civil Judge but allowed by High Court in writ proceedings against that decision — High Court also issuing writ of prohibition to Court of Civil Judge not to proceed with trial of suit —Power of Civil Judge to return plaint under O. 7, R. 10 not affected — Nature of proceedings under O. 7, R. 10. See Civil P. C. (1908), O. 7, R. 10. **AIR 1963 All 448.**

——S. 73 — Passing off action related to use of plaintiff's trade mark — Action, when affected by S. 73, indicated. See Trade Marks Act (1940), S. 20. **AIR 1955 All 404 (DB).**

——S. 73 — City Civil Court, Hyderabad, presided over by Additional Chief Judge has jurisdiction to try suit under Act — G. O. Ms. Nos. 444 and 555 of 1958 (Andhra Pradesh) — Effect of. 1961 Andh L T 767 : (1961) 2 Andh W R 255 : A I R 1962 Andh Pra 127 (129) (Pr 6).

——S. 73—G. O. Ms. Nos. 444 and 555—Re-organisation of Courts — Suit originally instituted before First Judge City Civil Court — Continuation of suit before Additional Chief Judge after re-organisation Validity — Chief Judge and Additional Chief Judge —Jurisdiction of —If co-ordinate.

Section 73 of the Trade Marks Act bars only the institution of a suit in any Court inferior to a District Court. The City Civil Court, Hyderabad, where the suit was originally instituted was admittedly a District Court within the meaning of S. 73 of the Trade Marks Act. After the re-organisation of Courts the Courts presided over by the Chief Judge and Additional Chief Judge City Civil Court respectively are Courts of co-ordinate jurisdiction both pecuniary and territorial. There is nothing in G. O. Ms. No. 444 or G. O. Ms. No. 555 to indicate that the City Civil Court, whose Presiding Officer is the Additional Chief Judge is a Court inferior to the City Civil Court whose Presiding Officer is the Chief Judge. Therefore the Additional Chief Judge City Civil Court, has jurisdiction to try the suit under S. 73 of the Trade Marks Act. **(1961) 2 Andh W R 255.**

——S. 73—Jurisdiction —'Relating to a trading mark' —Meaning of indicated. See Trade Marks Act (1940), S. 39. **AIR 1957 Cal 135 (DB).**

——S. 73—Jurisdiction of Court other than District Court—Suit for infringement of trade mark and for passing off the goods further prayer for handing over infringing label for purpose of destruction—Exclusive jurisdiction to entertain action on trade mark lay with District Court. See Hyderabad Trade Marks Act, S. 19. **AIR 1956 Hyd 177 (DB).**

——Ss. 73 and 20 (2) — Applicability — Passing off action —Forum for institution of suits— Jurisdiction of Madras City Civil Court.

The combined effect of Ss. 20 and 73 of the Trade Marks Act, 1940, is that a suit to prevent an infringement of a trade mark or for damages for such infringement cannot be instituted at all unless the trade mark is registered. Under the provisions of the Act and even in the case of infringement of registered trade marks such a suit cannot be instituted in any Court inferior to that of a District Court having

the requisite jurisdiction such as territorial jurisdiction. Section 20 (2) of the Act no doubt excludes passing off actions from the provision of the Act. But what is saved under S. 20 (2) is only the right of action and it has no bearing on the forum mentioned in S. 73. Hence S. 73 will apply to passing off actions also and the expression, 'otherwise relating to any right in a trade mark' in the section is wide enough to include passing off actions also where the alleged misuse of a registered trade mark is in issue. Hence such a suit cannot be instituted in the City Civil Court Madras which is not a District Court within the meaning of the section. A decree of the City Civil Court Madras in a suit in which the cause of action is based either wholly or in part on the infringement of a trade mark will be a nullity and the execution Court can look into the pleadings to decide whether the Court had jurisdiction to pass the decree. 1958 Mad W N 239 : (1958) 1 M L J 355 : 71 M L W 383 : I L R (1958) Mad 622 : A I R 1958 Mad 490 (492, 494) (Prs 6, 10, 12, 14, 17, 19) (DB).

——S. 73—Passing of action — Plaintiff alleging that defendant is passing off his publication as the publication of the defendant — Suit is not hit by S. 73. See Trade Marks Act (5 of 1940), S. 20 (2). AIR 1951 Simla 176.

——S. 73 — Section is not retrospective. A I R 1955 N U C (Raj) 4068.

SECTION 74-A:

——S. 74A — Appearance by Registrar before High Court — Costs— Appearance in final Court of appeal merely for elucidating his own judgment and pointing out errors in judgment of lower appellate Court —No costs to Registrar.

There are certain cases in which the Registrar should appear and can legitimately claim his costs. It is entirely wrong on the part of the Registrar in the final Court of appeal to appear merely for the purpose of elucidating his own judgment and pointing out the errors in the judgment of the Court below. That is not the proper function of the Court of first instance and the Registrar is nothing else except the Court of first instance. He must submit to the judgment of the lower appellate Court if there is no appeal from that judgment. If there is an appeal, he must submit to the judgment of the final Court of appeal. If his judgment is right it will be restored by the final Court and the errors of the lower appellate Court will be rectified; if his judgment is wrong then the lower appellate Court's judgment will be confirmed by the final Court of appeal. But the final Court of appeal neither needs illumination nor guidance from the Judge of the first instance as to what are the errors in the judgment of the lower appellate Court. 54 Bom L R 28 : A I R 1952 Bom 165 (169) (Pt D) (Pr 12) (DB).

——S. 74A — Costs of Registrar in proceedings in High Court.

Rule 619 framed by the Bombay High Court under S. 77 of the Trade Marks Act gives the Registrar a right to appear before the Chamber Judge and on general principles as he has a right to appear before that Judge he has equally a right to appear before the Court of appeal. Therefore with respect to his costs the practice adopted by the Bombay High Court is that before the Chamber Judge ordinarily the Registrar should get his costs whether he is successful or unsuccessful and in the Court of appeal ordinarily if he is unsuccessful he should not get his costs and if he is successful ordinarily he should not get his costs. 53 Bom L R 556 : I L R (1952) Bom 344 : A I R 1951 Bom 147 (155, 156) (Pt J) (Prs 18, 20) (DB).

SECTION 76

●——S. 76 — Letters Patent (Bom.), Cl. 15 — Competency of appeal — S. 76 confers a right of appeal to High Court. See Letters Patent (Bom., Cal. and Madras), Cl. 15. AIR 1953 S C 357.

■——S. 76 — Letters Patent (Bom., Cal. and Madras) Cl. 15—"Judgment" — A decision given by a single Judge of High Court in an appeal preferred under S. 76, Trade Marks Act, constitutes a judgment within meaning of Cl. 15 of the Letters Patent. National Sewing Thread Co. Ltd. v. James Chadwick. (1953) 2 Mad L J 215 : 1953 S C R 1028 : 1953 S C J 509 : 1953 S C A 610 : 56 Bom L R 21 : AIR 1953 S C 357 (359) (Pt A) (Pr 6).

■——S. 76—Appellate jurisdiction given by S. 76 — (Letters Patent (Cal.), Cl. 15).

The rights created by the Trade Marks Act are civil rights for the protection of persons carrying on trade under marks which have acquired reputation. The statute creates the Registrar a tribunal for safe-guarding these rights and for giving effect to the rights created by the Act, and the High Court as such without more has been given appellate jurisdiction over the decisions of this tribunal. The High Court while exercising this appellate jurisdiction has not to exercise it in a manner different from its other appellate jurisdiction. It is merely an addition of a new subject-matter of appeal to the appellate jurisdiction already exercised by the High Court. A I R 1947 Cal 49, Overruled. National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. 1953 S C A 610 : 56 Bom L R 21 : (1953) 2 M L J 215 : 1953 S C R 1028 : 1953 S C J 509 : A I R 1953 S C 357 (362) (Pt H) (Pr 17).

——S. 76 (1), Proviso — Registrar of Trade Marks at Bombay deciding case — Suit relating to the same trade mark pending in Court under jurisdiction of Allahabad High Court at the time — Subsequently first appeal against the decision of the Court also filed before the same High Court — Held, the appeal against the decision of the Registrar also lay before the same High Court — Held, further the proviso referred only to appeals from the order of the Registrar and not from the suit in the civil Court. 1958 All L J 474 : I L R (1958) 2 All 721 : A I R 1958 All 823 (825) (Pt A) (Prs 5, 6) (DB).

[Reversed on another point in AIR 1963 S C 449].

——S. 76 (1) — Appeal against order of Registrar — Duty of Court

In appeals under S. 76 (1) of the Act against the order of the Registrar the duty of the Court is exactly the same as in a first appeal in any other case in the High Court. The Court has to come to an independent opinion of the whole case and has to come to a conclusion, the course taking into consideration the decision of the Registrar and giving due weight to his judgment. AIR 1953 S C 357 and (1913) 30 R P C 363, Rel. on. 1958 All L J 474 : I L R (1958) 2 All 721 : AIR 1958 All 823 (825) (Pt B) (Pr 7) (DB).

[Reversed on another point in AIR 1963 S C 449.]

——S. 76—Registrar refusing registration of trademark — Appeal against such order held was first appeal from an order and not from a decree. See Trade Marks Act (1940), S. 15(4). AIR 1954 All 720 (DB).

——S. 76—Scope—Exercise of discretion of Registrar —Registrar coming to conclusion that by reason of the mark of applicant being likely to deceive or to cause confusion he was disentitled to protection in a Court of justice — High Court in appeal would be very reluctant to interfere with the exercise of such discretion. See Trade Marks Act (1940), S. 8(a). AIR 1961 Bom 119 (DB).

—S. 76 — Appeal heard and disposed by Judge of High Court under S. 76, Trade Marks Act (1940) — Competency of second appeal — There is no bar to any second appeal if a second appeal would lie under the rules of practice and procedure obtaining in High Court. See Letters Patent (Bom., Cal. and Mad.), Cl. 15. **AIR 1951 Bom 147 (DB).**

—S. 76 — Letters Patent (Bom.), Cl. 15 — Appeal heard and decided by Judge of High Court under R. 617 framed under S. 77, Trade Marks Act (1940)— Decision constitutes judgment within meaning of Cl. 15 of Letters Patent. See Letters Patent (Bom., Cal. and Mad.), Cl. 15. **AIR 1951 Bom 147 (DB).**

—S. 76—Discretion exercised by Registrar — Duty of appellate Court in respect of.

The Registrar, in coming to the conclusion whether a trade mark should or should not be registered, exercises the discretion vested in him by statute and the Court in appeal should always be extremely loath to interfere with that discretion. Discretion exercised by the Registrar should not be interfered with unless the Court comes to the conclusion that the Registrar in coming to the conclusion that he did was clearly wrong or patently in error. **53 Bom L R 556 : I L R (1952) Bom 344 : A I R 1951 Bom 147 (152) (Pt F) (Pr 10) (DB).**

—S. 76—Second appeal — Power of High Court in interfering with discretion exercised in allowing or refusing registration of trade mark.

Where the only question that arises in the second appeal is whether the discretion exercised by the Registrar in refusing to register a trade mark was clearly wrong and whether the Court in first appeal was right in interfering with that discretion and if the High Court in second appeal comes to the conclusion that the lower Court was in error in interfering with the discretion exercised by the Registrar, it is competent to the High Court to set the Court below right and to come to the conclusion that the discretion exercised by the Registrar should not be interfered with. **53 Bom L R 556 : I L R (1952) Bom 344 : AIR 1951 Bom 147 (155) (Pt I) (Pr 16) (DB).**

—S. 76 (1) — Registrar refusing to accept under S. 14 (1) application for registration of trade-mark— Appeal under S. 76 (1)—Scope of—Appeal allowed— Effect indicated. See Trade Marks Act (1940), S. 14 (1). **AIR 1955 N U C (Cal) 3664 (DB).**

—S. 76—Discretion of Registrar — No interference unless conclusion is clearly wrong or perverse. See Trade Marks Act (1940), S. 16. **A I R 1955 N U C (Hyd) 2361 (DB).**

—Ss. 76, 2 (d) — Petition for registration of mark filed when Hyderabad Act was in force — Appeal lies to Hyderabad High Court even though Hyderabad Act was replaced by Indian Act—(Hyderabad Trade Marks Act, S. 74) — (Part B States (Laws) Act (1951), S. 6) — (Civil P. C. (1908), S. 96). **AIR 1955 N U C (Hyd) 2361 (DB).**

—S. 76 (1)—Decision of Registrar regarding rectification of register — Appeal against jurisdiction — Appeal lies to Bombay High Court. **1959 Mad W N 488 : (1959) 1 Mad L J 304 : 72 Mad L W 298 : I L R (1959) Mad 823 : A I R 1959 Mad 359 (359) (Pr 1) (DB).**

—Ss. 76, 14, 6 (1) — Registrar refusing registration though mark was eligible under S. 6 (1)—High Court can interfere.

The question of eligibility of a trade-mark is one which has to be adjudged by the Registrar, in accordance with the provisions of S. 6. The fact that the Registrar may have a discretion in the matter of admitting a trade mark to registration, cannot in any way lessen his responsibility to correctly determine the question of eligibility. To determine correctly the question of eligibility under S. 6(1) is quite distinct from the discretionary power. If in so adjudging, the Registrar reaches an erroneous conclusion on the question as to whether the requirements of S. 6 (1) (d), have been satisfied or not, in the case of a particular trade mark, it will be certainly open to the appellate Court to rectify the error committed by the Registrar. It will be within the powers of the Court of appeal to do so. The appellate jurisdiction conferred by S. 76 is exercisable by the High Court in the same manner as it exercises its other appellate jurisdiction. **A I R 1953 S C 357, Rel. on. 40 Mys L J 646 : A I R 1963 Mys 122 (125, 126) (Pt C) (Pr 5) (DB).**

—Ss. 76, 14 (1), 6 (1) — Marks satisfying requirements for eligibility — Refusal to register — Interference by High Court.

It is no doubt true that the mere fact that a particular trade mark satisfies the requirements of eligibility under S. 6 (1) will not entitle the applicant to have it registered, as of right. In spite of a trade-mark being eligible under S. 6 (1) the Registrar may under S. 14 (1) refuse the application. But, the discretion to refuse under S. 14 (1) should not be exercised arbitrarily or capriciously, but judicially and reasonably. The requirement that the Registrar should state in writing the grounds of his decision and the materials used by him in arriving thereat is, doubtless, intended to enable the appellate Court to find out whether the discretion of the Registrar has been exercised judicially. Where there was no material justifying the Registrar exercising his discretion against the applicant the High Court will interfere in appeal. (1918) 35 R P C 53, Rel. on; AIR 1955 S C 558, Expl. and Distinguished. **40 Mys L J 646 : AIR 1963 Mys 122 (126, 127) (Pt D) (Pr 6) (DB).**

—S. 76—Exercise of discretion by Registrar should not be lightly interfered with. See Trade Marks Act (1940), S. 8. **AIR 1955 N U C (Mys) 5952 (DB).**

—S. 76 (1)—Forum of appeal.

An Amritsar Tea Company, aggrieved by the refusal of the Registrar at Bombay to register its trade-mark on the opposition of another Tea Company should file its appeal against this order in the High Court at Bombay. The High Court of Punjab has no jurisdiction to entertain the appeal. AIR 1947 Lah 171; AIR 1951 Bom 147, Foll. **56 Punj L R 425 : ILR (1955) Punj 547 : AIR 1954 Punj 270 (271) (Pr 7) (DB).**

—S. 76 — Cochin Trade Marks Act (19 of 1119), S. 72—Trade Marks Rules, R. 85—Whether an order of Registrar refusing to reject as out of time an opposition to an application for registration of a trade-mark is a decision within meaning of S. 72 or R. 85 (Quaere). **AIR 1952 Trav-Co 77 (78) (Pt B) (Pr 6) (DB).**

SECTION 77

—S. 77—S. 77 does not negative applicability of Letters Patent (Cal.), Cl. 15.

There is nothing in the provisions of S. 77 which debars the High Court from hearing appeals under S. 76 according to the rules under which all other appeals are heard or from framing rules for the exercise of that jurisdiction under S. 108 of the Government of India Act, 1915, for hearing those appeals by single Judges or by division benches. Even if S. 77 had not been enacted it cannot be said that the High Court will then have no power to make rules for the hearing of appeals under S. 76. AIR 1947 Cal 49, Overruled. National Sewing Thread Co. Ltd. v. James Chadwick and Bros., Ltd. **1953 S C A 610 : 56 Bom L R 21 : (1953) S C J 509 : (1953) 2 M L J 215 : 1953 S C R 1028 : AIR 1953 SC 357 (362) (Pt I) (Pr 19).**

——S. 77—Procedure before Registrar—Evidence by affidavit—Rules under S. 77, Rr. 34 and 36—Expression "evidence in support of application" in R. 34 — Meaning of. See Trade Marks Act (1940), S. 70. **AIR 1952 Bom 165 (DB).**

——S. 77 — **R. 617 framed by High Court under — Regulation of proceeding of High Court pursuant to procedure laid down under Constitution of India, Art. 225.**

Section 77, Trade Marks Act, only empowers the High Court to make rules with regard to matters that arise under the Trade Marks Act. That section in no way affects or modifies the power of the High Court to regulate its own proceedings and in passing R. 617 although the rule was made under the Trade Marks Act, the High Court was exercising its power conferred upon it by Art. 225 of the Constitution in regulating its own proceedings. Therefore, although the Sitting Judge in Chambers disposes of the appeal pursuant to R. 617 made under the Trade Marks Act, in sitting singly and in exercising that jurisdiction he is doing so pursuant to the procedure laid down by the High Court under Art. 225 of the Constitution. **53 Bom L R 556 : ILR (1952) Bom 344 : AIR 1951 Bom 147 (151) (Pt C) (Pr 7) (DB).**

SECTION 80

——S. 80—"Act"—Meaning—Proceedings before Registrar of Trade Marks — Registered trade marks agent—Right to plead.

There is nothing to control the meaning of the word "act" as used in section 80. It is referable to all kinds of acts which any person is required to do by or under the Trade Marks Act. It may be the act of making an application; it may be the act of filing an affidavit; it may be the act of leading evidence; it may be the act of pleading before the Registrar in support of the application. As the word used there is wide enough to cover all these activities and it is intended to exclude the act of making an affidavit, the words "other than the making of an affidavit" have been inserted in that section. Thus, the word "act" as used in S. 80 is wide enough to cover the act of pleading, and hence a registered trade marks agent is entitled to plead before the Registrar of Trade Marks under the provisions of S. 80 of the Trade Marks Act. **59 Bom L R 1019 : AIR 1959 Bom 21 (24) (Pt C) (Pr 5).**

——S. 80—'Required"—Meaning of.

The word "required" as appearing in S. 80 means "needed" or "found needful". In that event if by or under the Trade Marks Act, 1940, if the act of pleading is needed or found needful to be done by any person, then that act could be done by his duly authorised agent being a legal practitioner or a registered trade marks agent. 17 M L J 347 (PC), Rel. on. **59 Bom L R 1019 : AIR 1959 Bom 21 (24) (Pt D) (Pr 6).**

——S. 80—Rights of Counsel to compromise—Counsel appearing as agent under S. 80, Trade Marks Act. See Civil P. C. (1908), O. 3, R. 4. **AIR 1955 N U C (Hyd) 2361 (DB).**

SECTION 84

——Ss. 84, 21 — Rules under, R. 13 and Sch. IV Class 30—Trade mark registered in respect of particular goods falling under class 30 of Sch. IV — Proprietor not entitled to use the mark in respect of other goods falling under the same class. See Trade Marks Act (1940), S. 21. **AIR 1963 Mad 460 (DB).**

——S. 84 — Trade Marks Rules (1122), R. 30—Limitation for filing notice of opposition—Starting point. See Trade Marks Act (1940), S. 15 (2). **AIR 1952 Tra-Co 77 (DB).**

TRADE MARKS RULES

See also under Trade Marks Act (1940), Ss. 77 and 84.

RULE 81

——R. 81—Rules framed under, R. 81 and Sch. VI —Entries 1 and 2 in Sch. VI—Interpretation of. See Trade Marks Act (1940), S. 70 (d). **AIR 1956 Bom 641.**

——R. 81—Rules framed under, R. 81—Discretion of Registrar in awarding costs. See Trade Marks Act (1940), S. 70 (d). **AIR 1956 Bom 641.**

TRADE MARKS RULES (1122 M. E. Cochin)

RULE 30

——R. 30 — Cochin Trade Marks Act (19 of 1119), S. 15 (2)—Limitation for filing notice of opposition—Starting point. See Trade Marks Act (1940), S. 15 (2). **AIR 1952 Trav. Co 77 (DB).**

RULE 85

——R. 85 — Cochin Trade Marks Act (19 of 1119), S. 72—Trade Marks Rules, R. 85—Whether an order of Registrar refusing to reject as out of time an opposition to an application for registration of a trademark is a decision within meaning of S. 72 or R. 85 (Quaere). See Trade Marks Act (1940), S. 76. **AIR 1952 Trav-Co 77 (DB).**

TRADE MARKS RULES (1942)

RULE 23

——R. 23 (3)—Notice of application for registration —Whether mandatory—Absence of notice—Effect—(Trade Marks Act (1940), S. 46 (2).)

The provision as to notice of application for registration to the depositors in R. 23 (3) of the Trade Marks Rules is only directory and not mandatory. Whether to give notice to the depositor or not is expressly left to the discretion of the Registrar. The time within which a notice of opposition to the registration of a trade mark is given is four months from the date of the advertisement in the Journal, vide R. 30. Even when the Registrar gives a notice under R. 23 (3) to the depositor of a trade mark, he gets four months from date of the advertisement in the Journal for making an objection to the registration. The Act does not provide for any notice to the depositor and if the Government themselves have not made the giving of a notice obligatory, it is not open to a High Court to say that it is obligatory. The grounds on which an entry in the register may be expunged or varied are stated in S. 46 (2) of the Act. They are exhaustive inasmnch as it cannot be expunged or varied on any other ground. The omission on the part of the Registrar to give a notice of an application for registration to a depositor is not a ground for expunging or varying an entry of the trade mark in the register. **A I R 1957 All 683 (703) (Pt O) (Pr 48).**

SCHEDULE 4, CLAUSE 3

——Sch. 4, Cl. 3 — 'Perfumery' — Agarbatties.

In their very nature, agarbatties are articles of perfumery both in their composition and in their use and as such come under clause 3 of the Fourth Schedule. **36 Mys L J 852 : ILR (1958) Mys 200 : AIR 1959 Mys 85 (86) (Pt C) (Pr 5) (DB).**

SCHEDULE 6

——Sch. 6—Rules framed under, R. 81 and Sch. 6 — Entries 1 and 2 in Sch. 6 — Interpretation of. See Trade Marks Act (1940), S. 70 (d). **AIR 1956 Bom 641.**

TRADE RESTRICTIONS

See Constitution of India, Art. 19.

TRADES AND OCCUPATIONS

License to carry on

See Cantonments Act (1924), S. 210.

TRADE UNION

See (1) All India Postal Workers Union (Class III) (Allahabad Branch) Constitution, R. 45.

(2) Constitution of India, Sch. 7, List 3, Entry 22.

(3) Trade Unions Act (1926).

TRADE UNIONS ACT (16 of 1926)

PREAMBLE

——Pre.—Right to form trade unions comes within Art. 19 (1) (a) of Constitution—State cannot circumvent article by placing restriction on objects or purposes of association — Rejection of application of federation of trade unions to represent its members—This would be restriction with Art. 19 (4). See Constitution of India, Art. 19 (1) (c). AIR 1960 All 45.

SECTION 1

——S. 1 — Object — Statute not in pari materia with Industrial Disputes Act (1947)—Meaning of 'industry' in Industrial Disputes Act not applicable in case of Trade Unions Act—Industrial Disputes Act (1947), Ss. 1 and 2 (j). **62 Mad W N 18 : (1961-62) 20 FJR 52 : (1961) 1 Lab L J 599 : 74 Mad L W 658 : ILR (1961) Mad 1134 : (1961) 2 Mad L J 554 : AIR 1962 Mad 231 (233) (Pt B) (Pr 11).**

SECTION 2

——Ss. 2 (g), 6—Trade Union of Emplopees of Employees' State Insurance Corporation can be registered—Employees are 'workmen'— Corporation comes within ambit of Act. AIR 1960 S C 610, Rel. on. **(1962) 5 Fac L R 339 ; (1963) 1 Lab L J 100 : AIR 1963 Cal 56 (58, 59, 60, 61) (Pt B) (Prs 5, 10, 11) (DB).**

——Ss. 2 (g) and (h) and 71—'Workmen'—Meaning—Does not include civil servants engaged in tasks of sovereign and regal aspects of Government—Association of non-gazetted Government Servants consisting members of services forming part of regal functions as well as members of services—Not entitled to registration as 'Trade Union' — Principle of 'Collective bargaining' not applicable to such relationship. **1962 Mad W N 47 : (1962) 5 Fac L R 168 ; (1962-63) 22 F J R 1 ; (1962) 1 Lab L J 753 : ILR (1962) Mad 605 : 75 Mad L W 167 ; AIR 1962 Mad 234 (237, 238) (Prs 11, 12, 13) (DB).**

——Ss. 2 (h), 2 (g)—'Trade Union'—Persons engaged in trade or business can form trade union— Persons employed in Raj Bhavan for domestic and other duties — Cannot form a trade union.

The term 'trade union' as defined under the Act contemplates the existence of the employer and the employee engaged in the conduct of a trade or business. The definition of the term 'workmen' in S. 2 (g) would prima facie indicate that it was intended only for interpreting the term 'trade dispute'. But even assuming that that definition could be imported for understanding the scope of the meaning of the term 'trade union' in S. 2 it is obvious that the industry should be one as would amount to a trade or business, i.e., a commercial undertaking.

The workers at Raj Bhavan cannot form a trade union and a union of such workers is not entitled for registration under the Act. AIR 1956 Cal 548, Dist. **1962 Mad W N 18 : (1961-62) 20 F J R 52 : (1961) 1 Lab L J 599 ; 74 Mad L W 658 : ILR (1961) Mad 1134 : (1961) 2 Mad L J 554 : AIR 1962 Mad 231 (232, 234) (Pt A) (Prs 6, 17).**

——S. 2 (m) — Workman—Assistant Editor of Newspaper. See Industrial Disputes Act (1947), S. 2 (s). **AIR 1954 Pat 1 (DB).**

SECTION 3

——Ss. 3, 8 — Registrar of Trade Unions —Jurisdiction and powers of — Can enquire about legality of election of new office-bearers of Trade Union.

The Registrar of Trade Unions has full jurisdiction to enquire about the legality of the new election of the office-bearers of a Union for the purpose of maintaining a proper register showing the names of the office bearers who may be at the relevant time required to comply with the provisions of the Act or to be dealt with in accordance therewith. **(1963) 1 Lab L J 60 : (1962-63) 23 FJR 43 : 1962 BLJR 294: AIR 1962 Pat 338 (340) (Pt B) (Pr 7) (DB).**

SECTION 5

——Ss. 5, 6 and 7 — Powers of Registrar — He can call for further information only from union and not from any other source such as D. C.

Section 7, Trade Unions Act no doubt empowers the Registrar to call for further information for the purpose of satisfying himself about compliance with S. 5 or that the union is entitled to registration until information is supplied. But the information is to be called from the Trade Union and not from any other source and the provisions of Ss. 5 and 6 would show that information could not be supplied by any other source except the union itself. The powers of the Registrar are limited to the provisions of S. 7 and he could not add to those provisions. He cannot call for further information from the Deputy Commissioner. **1952 Nag L J (Notes) 39 (DB).**

——Ss. 5, 7, 8—Scope—Application for registration—No action by Registrar —Remedy — Petition for writ lies—(Constitution of India, Art. 226). **1958 BLJR 357 : (1958) 2 Lab L J 458 : 1958 Pat L R 239 : AIR 1958 Pat 470 (471) (Prs 2, 3) (DB).**

SECTION 6

——S. 6—Scope and effect of.

The fact that S. 6 provides that no Union can be registered unless its constitution provides for the matters mentioned therein does not necessarily mean that the rules relating to matters contained in S. 6, acquire a statutory force. It is only a condition precedent for registration that the constitution has to provide for the matters given in S. 6. No registration certificate can be issued unless the constitution provides for those matters but it cannot be said that the rules relating to these matters are rules framed under the authority of S. 6. S. 6 itself does not confer any authority to frame any rules. The existence of such rules is a condition precedent for the registration of the Union. **AIR 1957 All 234 (235) (Pt B) (Pr 8).**

——Ss. 6, 2 (g) — Trade Union of Employees of Employees' State Insurance Corporation can be registered — Employees are "workmen" — Corporation comes within ambit of Act. See Trade Unions Act (1926), S. 2 (g). **AIR 1963 Cal 56 (DB).**

——S. 6—Powers of Registrar — He can call for further information only from union and not from any other other source such as D. C. See Trade Unions Act (1926), S. 5. **1952 Nag L J (Notes) 39.**

SECTION 7

——Ss. 7, 2 (g) — 'Workmen' — Meaning—Does not include civil servants engaged in tasks of sovereign and regal aspects of Government — Association of non-gazetted Government Servants consisting members of services forming part of regal functions as

well as members of services—Not entitled to registration as "Trade Union" — Principle of "Collective bargaining" not applicable to such relationship See Trade Unions Act (1926), S. 2 (g). **AIR 1962 Mad 234 (DB).**

——S. 7—Powers of Registrar—He can call for further information only from union and not from any other source such as D. C. See Trade Unions Act (1926), S. 5. **1952 Nag L J (Notes) 39.**

——Ss. 7 and 8 — Duty of Registrar — No shortcomings in proposed rules—Registrar calling for further information from D. C. on ground of shortcomings—He could not do so — Stage for duty under S. 8 is reached. **1952 Nag L J (Notes) 39 (DB).**

——Ss. 7 and 11—Appeal—Registrar calling for further information from D. C.—S. 11 does not apply.

Section 11, Trade Unions Act provides for appeal only when the Registrar refuses to register a Trade Union or withholds or cancels a certificate of registration. It does not apply when the Registrar does none of these but calls for further information from the D. C. and thus follows a wrong procedure. **1952 Nag L J (Notes) 39 (DB).**

——Ss. 7, 8—Application for registration—No action by Registrar—Petition for writ lies — (Constitution of India, Art. 226). See Trade Unions Act (1926), S. 8. **AIR 1958 Pat 470 (DB).**

SECTION 8

——S. 8—Registration—Effect—Registration of union under the Act is not conclusive proof of its real existence. **1949 Mad W N 819 : (1949) 2 Mad L J 789 : AIR 1951 Mad 616 (624) (Pt H) (Pr 27) (DB).**

——Ss. 8, 7—Duty of Registrar — No shortcomings in proposed rules — Registrar calling for further information from D. C. on ground of shortcomings — He could not do so—Stage for duty under S. 8 is reached. **1952 Nag L J (Notes) 39.**

——Ss. 8, 3—Registrar of Trade Unions—Jurisdiction and powers of—Can enquire about legality of election of new office-bearers of Trade Union. See Trade Unions Act (1926), S. 3. **AIR 1962 Pat 338 (DB).**

SECTION 11

——S. 11 (4)—Primary school teachers not workmen — Avocation of teacher not employment in industry —Federation of teachers not a Trade Union.

Where the question was whether the occupation of primary school teachers could be said to be employment in any trade or industry so as to entitle the Federation of Primary Teachers to ask for registration as a Trade Union.

Held, that in the context in which the term 'trade' was used in the Act it was not intended to convey the wider meaning of 'some practice or some occupation or business or profession as a means of livelihood or gain' as defined in the Oxford Dictionary but that it was the intention to use it in the more specific connotation of a mercantile occupation or a skilled handicraft as distinct from a profession. The use of the words 'conditions of labour in the definition of workmen' in S. 2 (g) clearly indicated that the emphasis is on some mercantile occupation or skilled handicraft and those words could not possibly refer to the occupation of a teacher. The avocation of a teacher could in no case be said to be an employment in industry. A Federation of primary Teachers seeking registration could not be deemed to be a Trade Union. **1957 Nag L J (Notes) 155.**

——S. 11 (1) (a) — Decision of Single Judge High Court in appeal under S. 11 (1) (a), Trade Unions Act from decision of Registrar of Trade Unions — Letters Patent appeal against, is maintainable. See L.P. (Cal), Cl. 15. **AIR 1963 Cal 56 (DB).**

——S. 11 (1) (a) and S. 11 (3) — "High Court"—Meaning — Appeals under S. 11 (1) (a) — Forum — Judge of High Court sitting on Original Side — General Clauses Act (1897), S. 2 (25).

Appeals under S. 11 (1) (a) are to be heard by a Judge of the High Court sitting on the Original Side and not by a Judge or Judges on the Appellate Side. The words "High Court" occurring in S. 11, sub-s. (1) mean and include the High Court in its Original Jurisdiction as well as Appellate Jurisdiction : AIR 1940 Cal 264 and 5 C W N 377, Foll. As the powers of the Appellate Court under S. 11 (3) are analogous to the powers which are exercised by a Judge trying a suit, the appeal should be heard by a Judge on the Original Side. **64 Cal W N 1065 : (1961) 1 Lab L J 50 : (1960) 1 Fac L R 446 : AIR 1961 Cal 165 (165, 166) (Pr 1) (DB).**

——S. 11—Refusal by Registrar to register a Trade Union situate within the limits of Presidency Town—Appeal—Forum — Original Side of the High Court only.

An appeal under S. 11 of the Indian Trade Unions Act by person aggrieved by the refusal of the Registrar to register a Trade Union situate within the limits of the Presidency Town should be filed on the Original Side of the High Court only. Sub-s. (3) makes it clear that the jurisdiction of the Court is original in nature and the procedure that is applicable to suits is enjoined in the conduct of the enquiry. (1935) ILR 63 Cal 565, Followed. **1958 Mad W N 607 : (1958) 2 M L J 395 : 71 M L W 618 : ILR (1959) Mad 168 : AIR 1959 Mad 55 (56) (Pr 3).**

——S. 11—Appeal — Registrar calling for further information from D. C. — S. 11 does not apply. See Trade Unions Act (1926), S. 7. **1952 Nag L J (Notes) 39.**

SECTION 13

——S. 13—Person — Includes both natural and legal persons — Suit by Registered Trade Union in forma pauperis is maintainable. See Civil P. C. (1908), O. 33, R. 1. **AIR 1961 Pat 15 (DB).**

——S. 13—Registered trade union — Status of, indicated. See Municipalities—Patna Municipal Corporation Act (13 of 1952), S. 8 (1) (c) (ii) and (iii). **AIR 1954 Pat 312 (DB).**

SECTION 15

——S. 15 (d) — Scope and effect—If contravened by Bombay Industrial Relations Act (1947) — Bombay Act if void.

Section 15 (d) of the Trade Unions Act merely renders lawful the expenditure of money belonging to a trade union for the conduct of a Trade Dispute. It does not render obligatory upon a trade union to expend any portion of its general funds upon such conduct. Neither S. 27-A nor S. 30 of the Bombay Industrial Relations Act can be said to contravene S. 15 (d) of the Trade Unions Act in so far as they disentitle any trade union from appearing before an Industrial Court or any other Court. The Industrial Relations Act cannot therefore be held to be void as preventing a trade union representing its members before a conciliator or a Court of voluntary or compulsory arbitration. **21 Bom Cri Cas 112 : ILR (1951) Bom 318 : 52 Cri L J 779 : 53 Bom L R 333 : AIR 1951 Bom 105 (117, 121) (Pt I) (Prs 25, 41) (DB).**

SECTION 18

——S. 18 — Strike illegal under S. 24 of Industrial Disputes Act—Still workars are entitled to the immunity under S. 18 of this Act—Legality or illegality of the strike has no bearing on the question of immunity furnished under this section. (1914) 30 T L R 432 and (1922) 1 Ch 487, Rel. on. **1962 B L J R 660 : (1962) 2 Lab L J 420 : (1963-64) 25 F J R 395 : ILR**

42 Pat 819 : A I R 1963 Pat 170 (174, 175) (Pt C) (Pr 8) (DB).

SECTION 19

——S. 19—Compulsory trade unionism — Concept of 'close shop' and 'Union shop' — Law in India — Dismissal of workmen on ground that rival union is following 'close shop' policy — Dismissal is wrong — Reinstatement is not proper relief — Industrial Disputes. (1963) 7 Fac L R 1 : (1964) 1 Lab L J 516 : 67 Cal W N 923 : A I R 1963 Cal 624 (627, 628) (Pt B) (Pr 17).

SECTION 21

——S. 21 — Mandamus against a registered Trade Union refusing to enroll a person as a member. See Constitution of India, Art. 226. AIR 1955 Cal 189.

SECTION 28-F

——S. 28-F—Representation of workmen. See Industrial Disputes Act (1947), S. 36. A I R 1953 Trav-Co 286.

SECTION 28-J

——Ss. 28 J and 28-K (as amended in 1947)—Unfair Labour practice. See Industrial Disputes Act (1947), S. 15. AIR 1962 All 70.

SECTION 28-K

● —S. 28-K — Violation of discipline — Dismissal from service — Order of re-instatement — Propriety. See Industrial Disputes Act (1947), S. 11. A I R 1959 S C 529.

——S. 28K (as amended in 1947) — Unfair Labour Practice—Meaning—Cannot be restricted to definition in Trade Unions Act 1926 (as amended in 1947)—Even a single act of employer liable to be condemned as amounting to unfair Labour Practice—Condition of employment designed to invest employer with arbitrary power regarding chances of workman being made permanent—Amounts to unfair labour practice. (1961) 2 Fac L R 598 : (1961) 2 Lab L J 204 : A I R 1962 All 497 (499 to 502) (Pt A) (Prs 14, 15, 16, 25, 26).

● —S. 28-K—Unfair practice — What constitutes—Successor of employee relieved of portion of work previously done by latter—There is no unfair labour practice — (Per Dutta, J. in dissenting judgment) Management of Maijan Tea Estate v. Presiding Officer, Labour Court, Assam, A I R 1963 Assam 108 (117) (Pt C) (Pr 36) (FB).

——S. 28K (as amended in 1947)—Closure of factory—Question whether it amounts to illegal lock-out or unfair labour practice — Industrial Tribunal has to decide that question—For if it is a lock-out or an illegal labour practice the tribunal will have jurisdiction to go into the question. See Industrial Disputes Act (1947), S. 24. A I R 1953 Mad 30.

TRADE UNIONS (AMENDMENT) ACT (45 of 1947)

SECTION 28-F

——S. 28-F—Consent by workers to change in service conditions — Limits of labour unions to represent workers' interests. See Industrial Disputes Act (1947), S. 18 (1). A I R 1965 Mad 111 (DB).

TRAFFIC

Control of.

See Motor Vehicles Act (1939), Ss. 71-91.

Defined.

See Railways Act (1890), S. 3.

TRAFFIC ACCOUNTS CODE

RULE 846

——R. 846—Railway Establishment Code, R. 1708-R — Railway servant chargesheeted for misconduct — But penalised for negligence coupled with violation of certain rules—Held, as conduct of servant did not amount to misconduct, chargesheet must be treated as vague—Penal order must be quashed. See Constitution of India, Art. 311 (2). (1965) 10 Fac L R 263 (Cal).

TRAFFIC FACILITIES (RAILWAY)

See Railways Act (1890), Ss. 26 to 49.

TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

See Constitution of India, Art. 23.

TRAFFIC IN WOMEN

See (1) Constitution of India, Art. 23.
(2) Penal Code (1860), Ss. 366A, 366B, 372, 373.
(3) Suppression of Immoral Traffic in Women and Girls Act (1956).
(4) State Enactments on Prevention of Prostitution and immoral traffic in women; and
(5) Statutory cross-references under "Prostitution".

TRAFFIC MANUAL OF B. B. AND C. I. RAILWAY

RULE 32

——Rr. 32 and 45 — (Chapter 11, Booking of Goods Traffic Rules) — Liability of railway as bailee—Duty to compare railway receipt with junction or through invoice before effecting delivery, pointed out. See Contract Act (1872), Ss. 151 and 152. A I R 1963 Raj 162 (DB).

TRAFFIC SIGN

See Motor Vehicles Act (1939), S. 75.

TRAILERS OF MOTOR VEHICLE

Registration of.

See Motor Vehicles Act (1939), S. 40.

TRAMWAYS

See (1) Calcutta Tramways Act (1 of 1880).
(2) Calcutta Tramways Act (25 of 1951).

TRANSFER

Criminal proceedings, of.

See Criminal P. C. (1898), Ss. 526, 528.

Fraudulent.

See Civil P. C. (1908), O. 21, Rr. 40, 63.

Stamp duty payable.

See Stamp Act (1899), Sch. A, Art. 62.

TRANSFERABLE SPECIFIC DELIVERY CONTRACT

Defined.

See Forward Contracts (Regulation) Act (1952), S. 2.

TRANSFER BY OPERATION OF LAW

See T. P. Act (1882), S. 2.

TRANSFER OF ATTACHED PROPERTY

See Civil P. C. (1908), S. 64; O. 21, R. 54.

TRANSFER OF BUSINESS OF COURT

See Civil P. C. (1908), Ss. 37, 150.

TRANSFER OF CASE

See Civil P. C. (1908), Ss. 22, 23, 24.

Appellate Court, by.
See Civil P. C. (1908), O. 41, Rr. 25, 26.

TRANSFER OF CRIMINAL APPEAL

See Criminal P. C. (1898), S. 407.

TRANSFER OF CRIMINAL CASE

See Criminal P. C. (1898), Ss. 192, 350, 526, 527.

TRANSFER OF DECREE

See Civil P. C. (1908), Ss. 39, 40, 41, 42, 45; O. 21, R. 16.

Application for, in execution.
See Civil P. C. (1908), S. 39.

Attached decree, transfer of.
See Civil P. C. (1908), S. 64.

Execution application to transferring Court, after.
See Civil P. C. (1908), Ss. 38, 42; O. 21, R. 10.

Transferee, execution by.
See Civil P. C. (1908), O. 21, R. 16.

Transferee pendente lite.
—Resistance by, to execution of decree.
See Civil P. C. (1908), O. 21, R. 102.

Transferee, rights and liabilities of.
See Civil P. C. (1908), Ss. 47, 49, 64; O. 21, Rr. 2, 16.

TRANSFER OF DECREE FOR EXECUTION

See Civil P. C. (5 of 1908), Ss. 21, 39, 42, 47; O. 21, Rr. 3 to 9.

Step-in-aid, whether.
See Limitation Act (1908), Art. 182.

When takes effect.
See Civil P. C. (1908), O. 21, R. 5.

TRANSFER OF DETAINED PERSONS ACT (48 of 1949)

See under Public Safety.

TRANSFER OF DOMINANT HERITAGE

Effect on easement right.
See Easements Act (1882), S. 19.

TRANSFER OF EXECUTION PROCEEDING

See Civil P. C. (1908), Ss. 24, 38.

TRANSFER OF INSURANCE POLICY

See Insurance Act (1938), S. 38.

TRANSFER OF INTEREST BY LESSEE

See T. P. Act (1882), S. 108 (j).

TRANSFER OF LICENSE

See Easements Act (1882), S. 56.

TRANSFER OF OWNERSHIP OF MOTOR VEHICLE

Registration of.
See Motor Vehicles Act (1939), S. 31.

TRANSFER OF PROCEEDINGS, UPON REORGANISATION OF STATES

See States Reorganisation Act (1956), Ss. 59, 62, 63, 64.

TRANSFER OF PROPERTY

See (1) Government Grants Act (1895), S. 2.
(2) Hindu Disposition of Property Act (1916).
(3) Merchant Shipping Act (1958).
(4) Provident Funds Act (1925), S. 3.
(5) Transfer of Property Act (1882).

Actionable claim, transfer of.
See T. P. Act (1882), Ss. 130, 131, 132.

Charge.
For statutory cross-references see under "charge".

Class, transfer to.
See T. P. Act (1882), S. 15.

Competency to transfer.
See T. P. Act (1882), S. 7.

Conditional.
See T. P. Act (1882), S. 25.

Condition restraining.
See T. P. Act (1882), S. 10.

Contingent interest, transfer of.
See T. P. Act (1882), S. 21.

Co-owner, transfer by.
See T. P. Act (1882), Ss. 43, 44.

Court of Ward, transfer by.
See T. P. Act (1882), Ss. 6, 8.

Covenant running with land.
See T. P. Act (1882), S. 40.

Defined.
See (1) Gift Tax Act (1958), S. 2.
(2) Presidency Towns Insolvency Act (1909), S. 2 (i).
(3) T. P. Act (1882), S. 5.

Direction for accumulation.
See T. P. Act (1882), S. 17.

Easement, transfer of.
See T. P. Act (1882), S. 6.

Election.
See T. P. Act (1882), S. 35.

Exchange.
See T. P. Act (1882), Ss. 118-119.

Family settlement.
See T. P. Act (1882), S. 9.

Fraudulent transfer.
See (1) Presidency Towns Insolvency Act (1909), Ss. 55, 56.
(2) Provincial Insolvency Act (1920), Ss. 53, 54.
(3) T. P. Act (1882), S. 53.

Gift.
For statutory cross-references see under "Gift".

Guardian by.
See (1) Hindu Law—Guardianship.
(2) Mahomedan Law—Guardianship.

Hindu widow, transfer by.
See Hindu Law—Widow.

How effected.
See (1) Registration Act (1908), S. 17.
(2) T. P. Act (1882), Ss. 9, 54, 59, 123.

Improvement by holder under defective title.
See T. P. Act (1882), S. 51.

Insurance policy, transfer of.
See T. P. Act (1882), Ss. 130, 135A.

Joint transfer.
See T. P. Act (1882), S. 45.

Lease.
For statutory cross-references see under "Landlord and Tenant".

Lis pendens
See T. P. Act (1882), S. 52.

Marshalling by purchaser.
See T. P. Act (1882), S. 56.

Marshalling of securities.
See T. P. Act (1882), S. 81.

Meaning of.
See (1) Gift Tax Act (1958), S. 2.
(2) Presidency Towns Insolvency Act (1909), S. 2 (i).

(3) Provincial Insolvency Act (1920), S. 3 (f).
(4) T. P. Act (1882), S. 5.

Mere right to sue, transfer of.
See T. P. Act (1882), S. 6 (e).

Mortgage.
For statutory cross-references see under "Mortgage."

Obligation annexed to ownership.
See T. P. Act (1882), S. 40.

Operation of.
See T. P. Act (1882), S. 8.

Oral transfer.
See T. P. Act (1882), S. 9.

Ostensible owner, transfer by.
See T. P. Act (1882), S. 41.

Partition.
For statutory cross-references see under "Partition".

Part performance.
See T. P. Act (1882), S. 53A.

Perpetuity, rule against.
See T. P. Act (1882), S. 14.

Person not competent to contract, transfer in favour of.
See T. P. Act (1882), Ss. 6, 7.

Person with limited authority, transfer by.
See T. P. Act (1882), S. 38.

Priority.
See T. P. Act (1882), S. 48.

Property subsequently declared to be evacuee property.
See Administration of Evacuee Property Act (1950), S. 40.

Restraint on enjoyment.
See T. P. Act (1882), S. 11.

Restricted right, transfer of.
See T. P. Act (1882), S. 6.

Restriction repugnant to interest created.
See T. P. Act (1882), S. 11.

Sale.
See (1) T. P. Act (1882), S. 55.
(2) Statutory cross-references under "Sale".

Sales in invitum.
See (1) T. P. Act (1882), S. 8.
(2) Statutory cross-references under "Execution sale".

Third person entitled to maintenance.
See T. P. Act (1882), S. 39.

Transfer by operation of law.
See T. P. Act (1882), S. 2.

Transfer in execution of decree or order.
See T. P. Act (1882), S. 2.

Transferor subsequently acquiring interest in property transferred.
See T. P. Act (1882), S. 43.

Trust property, transfer of.
See Statutory cross-references under "Trusts".

Unborn person, transfer for benefit of.
See T. P. Act (1882), S. 13.

Unlawful object or consideration, transfer for.
See (1) Contract Act (1872), S. 23.
(2) T. P. Act (1882), S. 6 (h).

Vested interest, transfer of.
See T. P. Act (1882), S. 19.

What is.
See (1) Gift Tax Act (1958), S. 2.
(2) Presidency Towns Insolvency Act (1909), S. 2 (i).
(3) Provincial Insolvency Act (1920), S. 3 (f).
(4) T. P. Act (1882), S. 5.

TRANSFER OF PROPERTY ACT (4 of 1882)

PREAMBLE

——Preamble—Scope—The Transfer of Property Act has in no way been repealed by the Control of Rent and Eviction Act. **A I R 1960 All 211 (212, 213) (Pt B) (Pr 14) (DB).**

——Preamble — Provisions not inconsistent with those of Administration of Evacuee Property Act (1950). **AIR 1954 Bom 56 (57) (Prs 2, 3, 4) (DB).**

——**Preamble—Act is not exhaustive.**

The Act does not consolidate the law nor does it profess to be complete code dealing with transfer of property. It purports to do no more than to define and amend certain parts of the law relating to transfer of property. **1953 B L J R 135 : A I R 1953 Pat 193 (193, 194) (Pt B) (Pr 3) (DB).**

SECTION 1

——S. 1—Applicability of principles of Act to cases excluded therefrom — Matters which have been expressly excluded from purview of Act, provisions thereof should not be invoked unless they embody principles of general application. AIR 1919 Mad 12, Approved. Namdeo Lokman Ladhi v. Narmadabai, **1953 S C A 51 : 1953 Mad W N 592 : (1953) S C J 306 : (1953) 1 M L J 715 : 55 Bom L R 517 : 55 Punj L R 312 : 1953 S C R 1009 : AIR 1953 S C 228 (232) (Pt B) (Pr 22).**

——Ss. 1, 60—Transactions before application of Act to Bilaspur State—Principles apply—Clause in mortgage held clog on redemption. **A I R 1957 Him Pra 46 (48) (Prs 9, 10).**

——Ss. 1, 53-A — In absence of express provision of Kutch law principles of Indian Act may be applied — Custom always prevailed — Section 53-A would not apply in Kutch, since Kutch law expressly prohibits use of unregistered document in manner envisaged in S. 53-A — S. 20, Kutch Registration Act, also conflicts with S. 53-A — Kutch Registration Act, S. 20. **AIR 1950 Kutch 64 (65) (Pt B) (Prs 7, 9).**

——S. 1 — Part B States (Laws) Act (1951), S. 3 — Transfer of Property Act (1882) came into force in Madhya Bharat on 1-4-1951. See Part B States (Laws) Act (1951), S. 3. **AIR 1957 Madh B 133.**

——S. 1—Applicability—Act does not apply to Pepsu — Principles underlying apply. **A I R 1955 N U C (Pepsu) 4003.**

——Ss. 1 and 111 — Does not apply to State of Punjab but only principles of justice, equity and good conscience embodied therein apply. See T. P. Act (1882), S. 111. **AIR 1964 Punj 210 (DB).**

——S. 1 (3) — Extension of Act — Effect of Act 3 of 1951—Act not applicable to Pepsu or Punjab — (Part B States (Laws) Act (1951), S. 3). **A I R 1959 Punj 440 (446, 447) (Pt I) (Pr 15) (DB).**

[Reversed on another point in AIR 1963 S C 222].

——Ss. 1 and 92 — Not applicable in Punjab—Provisions are as matter of principle are, however, followed — Technical rules embodied in provisions are not followed — Principles of subrogation are applicable but not technical rule laid down in S. 92, Para. 3, as to registered agreement remitting subrogation. **ILR (1957) Punj 79.**

——S. 1 — Principles of Act apply to Punjab on ground of justice, equity and good conscience — Rules of procedure are not applicable. **ILR (1955) Punj 988 : A I R 1955 Punj 215 (217) (Pt B) (Pr 15) (DB).**

——S. 1 — Tenancy coming into existence on 23rd March, 1948, in State of Udaipur—Act not applicable to such tenancy. **1963 Raj L W 27 : I L R (1963) 13 Raj 370 : AIR 1963 Raj 113 (116) (Pt D) (Pr 8).**

——S. 1 — Applicability of Act to Cochin — Act applied from 1-1-1112—Before this matter was decided in accordance with common law which governed mortgage transactions. ('50) 1950 K L T 462 : A I R 1951 Trav-Co 17 (20, 21) (Pt B) (Pr 5) (DB).

SECTION 2

SYNOPSIS

(Transfer of Property Act (1882), S. 2.)

1. Clause (a).
2. Clause (b).
3. Clause (c).
4. Clause (d).
5. Mahomedan Law.

1. Clause (a).

——S. 2—Right or liability arising out of legal relationship constituted before Act came into force or any relief in respect thereof is not affected — T. P. Act made applicable in Travancore in 1951 — Before this, though principles of T. P. Act were applied, modification made in 1929 in the Act did not apply — As law stood before amendment in 1929 of S. 60, where the mortgagee recognised partition of mortgaged property amongst co-mortgagors, mortgagor had a right to get partial redemption—This was not a mere matter of procedure — See Transfer of Property Act (1882), S. 60. **1957 Ker L T 1289 : 1958 Ker L J 78.**

——S. 2 — Section 13, Rajasthan Premises (Control of Rent and Eviction) Act as it was passed in Nov. 1950, is not hit by T. P. Act or Civil P. C. See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 13. **AIR 1955 N U C (Raj) 4061 (DB).**

2. Clause (b).

——Ss. 2, 130—Assignment of joint promissory note in partition — Instrument in writing not necessary — Partition not transfer as contemplated by T. P. Act. (1961) 2 M L J 470; AIR 1961 Mad 518 (FB), Rel. on. **1963 Raj L W 504 : ILR (1963) 13 Raj 963.**

3. Clause (c).

——Ss. 2 (c) and 60—Mortgage—Redemption—Law prevailing at time when right of redemption comes into existence and not at the time when cause of action for suit for redemption arises governs case. AIR 1955 Trav-Co 9 (FB); AIR 1934 P C 205 and AIR 1950 F C 1, Rel. on. **1964 Ker L J 203 : 1964 Ker L T 153.**

——Ss. 2 (c), 106 and 116 — Lease executed before applicability of Act — Ss. 106 and 116 do not apply. **AIR 1955 NUC (Madh B) 3694.**

——Ss. 2 (c), 111 (g) — Lease in former State of Nawanagar before T. P. Act was made applicable will not be governed by T. P. Act but by common law—(Houses and Rents—Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 13 (e)). See Transfer of Property Act (1882), S. 111 (g). **AIR 1953 Sau 113 (DB).**

4. Clause (d).

●——Ss. 2 (d) and 5 — Provision in S. 2 (d) prevails over definition in S. 5—Provisions of S. 57 and those contained in Ch. IV apply to transfer by operation of law. AIR 1943 All 115 (FB), Approved; AIR 1940 Mad 701 and AIR 1937 Cal 129, Overruled. Laxmi Devi v. Mukand Kanwar, **(1965) 1 SCR 726 : (1965) 2 SCA 521 : (1965) 2 SCJ 656 : (1965) 2 Andh W R (S C) 133 : (1965) 2 Mad L J (S C) 133 : (1965) 1 S C W R 303 : AIR 1965 S C 834 (838) (Pt B) (Pr 16).**

●——S. 2 (d) — Berar Land Revenue Code (1928), S. 176 — Sale giving rise to right of pre-emption — Parties entering into only agreement to sell — Suit for pre-emption not maintainable — Defeating right of pre-emption is no fraud — A I R 1953 Nag 182, Reversed. See Berar Land Revenue Code (1928), S. 176. **AIR 1960 S C 1368.**

——Ss. 2 and 51 — S. 51 does not apply to transfer in execution of decree — Consideration of equity — Principle of 'caveat emptor' applies. See T. P. Act, S. 51. **AIR 1953 All 449 (DB).**

——S. 2 — Execution sales are 'transfers' as contemplated by S. 47 of Hyderabad Act 21 of 1950 — Agricultural lands are exempted from attachment in execution — Expression 'other transfers' is not used in restricted sense as in the Transfer of Property Act — Attachment for the purpose of bringing agricultural lands to sale also inhibited. See Civil P. C. (1908), S. 60 (c). **AIR 1964 Andh Pra 514 (DB).**

[Overruled in AIR 1967 Andh Pra 148.]

——S. 2 (d)—Civil P. C. (1908), O. 21, R. 34 — Mortgage executed by Court—Attestation is not necessary —S. 59, T P. Act does not apply to such documents. See Civil P. C. (1908), O. 21, R. 34. **AIR 1960 Andh Pra 465 (DB).**

——Ss. 2 (d) and 105—Relationship created by decree —S. 2 (d) excludes application of S. 105 — Provision of S. 105 would be invoked as matter of justice, equity and good conscience. **56 Bom L R 365 : ILR (1954) Bom 615 : AIR 1954 Bom 370 (378, 379) (Pt H) (Pr 16) (DB).**

—— Ss. 2 (d), 6 (e) — Banking Companies — Scheme of amalgamation — Scheme has the force of law — Suit for damages based on misfeasance and malfeasance instituted by transferor bank — Transfer of all assets, liabilities, rights and interest including rights of pending actions to transferee bank under the scheme — Transfer of mere right to sue and limitations as to transferability and assignability—Applies to contractual transactions only — Transfer by operation of law (under the scheme), not affected — Accrued right as incidental to the transfer of property to which it is attached — Valid — Scheme of amalgamation—Provisions prevail over any other law — Continuance of pending actions by or against — Provision in the Scheme — Continuance of suit by transferee bank — Application not provided for — Fiction — No extension beyond express provision — Reference in Banking Companies Law to provision in Companies Act for assessing damages against deliquent directors — Not to mean the applicability of entire provisions relating to winding up — Words and phrases—'Subject to the provisions of the scheme' —Banking Companies Act, 1949 (Central Act 10 of 1949), Ss. 45 (5) (e), 45 (14), 45 L (4) — Companies Act (1 of 1956), S. 543. (1959) 29 Com Cas 357; AIR 1959 Cal 352; ILR (1939) 2 K B 578, Ref. **1965 Mad W N 277 : (1965) 2 Comp L J 210 : (1965) 2 M L J 443 : 78 Mad L W 569 : AIR 1966 Mad 26 (27, 28, 29) (Prs 3, 5, 6) (DB).**

——Ss. 2 (d), 53, 5—Collusive and fraudulent decree and execution — Possession delivered to auction-purchaser — Suit by other creditors for declaration that decree and all other proceedings are null and void — Suit is maintainable — Applicability of S. 53 and S. 42, Specific Relief Act considered —(Specific Relief Act (1877), S. 42)—(Provincial Insolvency Act (1920), S. 28 (2)). See T. P. Act (1882), S. 53. **AIR 1959 Mad 141 (DB).**

——Ss. 2 (d) and 8 — Houses and Rents — Orissa House Rent Control Act (31 of 1958), S. 2 (5) — "Tenant" — Suit to evict tenant after termination of tenancy — Compromise decree — Intention not to create lease — Tenant held was not statutory tenant

but a licensee — He was not protected by the Act. See Houses and Rents — Orissa House Rent Control Act (31 of 1958), S. 2 (5). ILR (1964) Cut 229.

——Ss. 2 (d) and 53 (2) — Auction-purchaser at execution sale is not subsequent transferee within meaning of S. 53 (2). See T. P. Act (1882), S. 53 (2). AIR 1958 Pat 569.

——Ss. 2 (d), 54 — Applicability — Transfer in execution of a decree or order of a Court — Sale of minor's property under directions of Guardian Court —Sale is governed by S. 2 (d) and is not hit by S. 54. ILR (1959) Punj 753 : AIR 1960 Punj 630 (631, 632) (Prs 6, 7, 8) (DB).

——Ss. 2 (d), 5, 55 and 100—Reading Ss. 2 (d), 5 and 100, the expression 'transferred' in S. 100 is used in a wider sense and includes both a transfer by act of parties and a transfer by operation of law or by or in execution of a decree. AIR 1960 Punj 296 (297) (Pt B) (Prs 7, 9) (DB).

——Ss. 2 (d), 58 and 60 — Transfer by operation of law—When T. P. Act was not in force in Travancore, charge on property created by decree — Defendant to retain possession till she got amount declared to be due to her by decree — Plaintiff could file suit for redemption within 50 years — Defendant had right to appropriate profits arising from property and she could not be asked is account for same—Limitation Act (1908), Art. 148. 1955 Ker L T 895 : AIR 1955 Trav Co 130 (131, 132) (Prs 6, 7, 9) (DB).

5. Mahomedan Law.

——S. 2—Mophilis in North Malabar are governed by Marumakkathayam law and not by Mahomedan Law in absence of evidence to contrary. 1957 Ker L T 899 : 1957 Ker L J 862.

SECTION 3

SYNOPSIS

(Transfer of Property Act (1882), S. 3)

1. "Immovable property.
2. "Standing timber."
3. "Growing crops."
4. "Grass."
5. "Attached to the earth."
6. "Imbedded in the earth."
7. "Attached to what is so imbedded."
8. "Attested."
9. "Each of whom has seen the executant sign."
10. "Sign."
11. Acknowledgment of signature need not be express.
12. 'In the presence of the executant.'
13. Onus of proof of attestation.
14. Party as attestor.
15. Scribe as witness.
16. Sub-Registrar and persons identifying before Sub-Registrar, as witness.
17. "Registered."
18. "Actionable claim."
19. Debts.
20. Debt ripened into decree.
21. Beneficial interest in movable property.
22. "Notice."
23. Wilful absention from enquiry.
24. Gross negligence.
25. Attestation of deed, if notice of contents.
26. Notice by registration of instrument.
27. Proviso to Explanation I.
28. Possession as notice—Explanation II.
29. "Agent."
30. Onus of proof as to notice.

1. "Immovable property."

——S. 3—General Clauses Act (1897), S. 3 (26) — Right to catch and carry away fish from specific portion of lake — Profit a prendre — Amounts to a license to enter on land coupled with grant to catch and carry away fish, that is to say it is a profit a prendre which is regarded in India as benefit arising out of land, i. e. immovable property. — Easements Act (1882), S. 52. Ananda Behera v. State of Orissa, 1956 S C C 79 : ILR (1956) Cut 425 : 69 Mad L W 872 : 22 Cut L T 101 : (1955) 2 S C R 919 : 1955 S C J 96 : (1955) 1 M L J (SC) 69 : AIR 1956 S C 17 (19) (Pt A) (Prs 9, 10).

——S. 3 — Immovable property — Tenancy right in Building is immovable property. See Court-fees Act (1870), S. 7 (iv) (a). AIR 1965 All 496.

——Ss. 3, 8—Transfer of Zamindari—Presumption.

The question whether a building is or is not appurtenant to the zamindari must primarily be a question of fact and intention. The question has to be determined by taking into consideration all the surrounding circumstances. The presumption must be that in a case of a residential house it is not necessarily appurtenant to the zamindari and unless it can be established from evidence that it was intended to be transferred along with the rest of the zamindari the house must be deemed to have remained the property of the earstwhile Zamindar. Deota Din v. Gur Prasad, ILR (1955) 1 All 718 : 1955 All L J 157 : 1955 All W R (HC) 217 : AIR 1955 All 292 (294, 296) (Prs 12, 27) (FB).

——Ss. 3 and 58 (a) — Mortgagee's interest in mortgaged property is immovable and not movable property — General Clauses Act (1897), S. 3. (26). AIR 1952 Bom 454 (455, 456, 457) (Prs 7, 10) (DB).

——S. 3—Transfer of benefit arising out of land, viz., right to enjoy immovable property, is a transfer of interest in immovable property. See Transfer of Property Act (1882), S. 53-A. AIR 1951 Bom 127 (DB).

——S. 3 — 'Immovable property' — A lease may be regarded as immovable property. AIR 1951 Bom 127, Rel. on. AIR 1960 Cal 609 (617) (Pt E) (Pr 28) (DB).

——S. 3—Immovable property — Definition given in S. 3 (26), General Clauses Act — Applicability of — Registration Act, S. 2 (6).

By virtue of S. 4 of the General Clauses Act the definition of immovable property in S. 3 (26) of that Act will apply to the Transfer of Property Act, unless there is anything repugnant in the subject or context. The effect therefore is that by virtue of the combined operation of S. 2 of the T. P. Act and Ss. 3 (26) and 4 of the General Clauses Act, the definition of immovable property for the purpose of the Transfer of Property Act becomes almost the same as that given in the Registration Act except that the incidents such as 'hereditary allowances, rights to ways, etc. are absent in the Transfer of Property Act. But these incidents are probably also brought in by virtue of S. 8 of the Act. AIR 1960 Cal 331 (334, 335) (Pt B) (Pr 10).

——S. 3—'Immovable property' — Sludge from sedimentation tank is movable and not immovable property. See General Clauses Act (1897), S. 2 (26). AIR 1960 Cal 123.

——S. 3 — Acquisition of jalkar — It is interest in immovable property. See Tenancy Laws — West

Bengal Estates Acquisition Act (1 of 1954), S. 4. AIR 1958 Cal 114.

——S. 3—'Immovable property—Mining lease — Coal land—Held not immovable property. See Evidence Act (1872), S. 116. AIR 1957 Cal 128 (DB).

——S. 3—X cutting channel for irrigating his land through B and C properties — Agreement allowing B and C properties to be irrigated by water from channel —X entitled to fish Prawns in portion of channel in B and C properties — Nature of right discussed. See Easements Act (1882), S. 4. AIR 1965 Ker 147.

——S. 3—Interest in land—Right in land — Whether contract created any interest in land, cannot be decided on basis of the definition of "immovable property" or "movable property" in the Registration Act or in the Transfer of Property Act — Lease construed. See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 2(1). AIR 1954 Mad 949 (DB).

——Ss. 3 and 107—Mustajir lease — Lease of right to collect rents — It is lease of immovable property within S. 107 — General Clauses Act (1897), S. 3(25). 21 Cut L T 501: AIR 1952 Orissa 116 (116, 117) (Pt A) (Pr 5) (DB).

——S. 3—Auction sale of khas mahal hats—Petitioner the highest bidder unable to deposit security money after acceptance, of bid—There is no interest in land created in favour of petitioner. See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 7. 1958 Pat L R 17 : 1LR 37 Pat 302.

——S. 3 — 'Property' — Passage benefit provided to member of Indian Civil Service is not property (Obiter). See Constitution of India, Art. 31. AIR 1957 Pat 515 (DB).

——S. 3—Interest in immovable property.

The right to rear lac is an interest in immovable property. AIR 1955 Pat 402 (404) (Pt C) (Pr 9) (DB).

——S. 3—Interest in lease is immovable property. See Transfer of Property Act (1882), S. 105. AIR 1955 N U C (Trav-Co) 1040.

2. "Standing timber."

——S. 3—Immovable property—Right to cut trees—Nature of right discussed. See Constitution of India, Art. 32. AIR 1958 S C 532.

——S. 3—Immovable property — Trees — Standing timber—Distinction pointed out. See General Clauses Act (1897), S. 3(26). AIR 1958 S C 532.

——S. 3—Sale of Sisham and Nim trees—Sale deed not registered — Trees sold whether 'standing timber' —Test to determine whether tree is standing timber indicated — Nature of trees or intention of parties have to be looked into — Held, trees sold were standing timber and sale deed, though unregistered, was admissible in evidence. See Registration Act (1908), S. 2(6). AIR 1963 All 214 (FB).

——S. 3—U. P. District Boards Act (10 of 1922), S. 192(1) and (3)—Immovable property—Meaning and test of—Suit relating to—(Limitation—Trees to be cut and removed are not immovable property—Registration Act (1908), Ss. 2(6), 2(9)—(U. P. General Clauses Act (1 of 1904), S. 4(23)) — (Words and Phrases—Immovable property)—(Limitation Act (1908), Art. 120). See U. P. District Boards Act (10 of 1922), S. 192(1). AIR 1956 All 680 (DB).

——S. 3—Immovable property — Standing timber attached to land is immovable property — Registration Act (1908), S. 2(9). A I R 1952 All 310 (312) (Pt C) (Pr 4).

——S. 3—'Immovable property' — Trees—Agreement for sale and purchase of tree to be grown — Creates interest in land. See Registration Act (1908), S. 2(6). AIR 1958 Andh Pra 713 (DB).

——S. 3—Trees standing on the land — Sale of — It was held not sale of mere profit a prendre—What was sold held was wood to be cut from-trees—It was sale of goods and not immovable property. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 5. AIR 1957 Cal 350.

——Ss. 3 and 52—Trees rooted in earth constituting standing timber — They are excluded by this section from connotation of "immovable property"—Scope of S. 52 cannot be enlarged by introducing into it in indirect manner the definition of "immovable property" in General Clauses Act. See Transfer of Property Act (1882), S. 52. AIR 1952 Mad 59.

3. "Growing crops."

——S. 3—Registration Act (1908), Ss. 2(6), 2(9), 17(d) —Lease of crop of mango grove for 5 years entitling lessee to grass which might grow on land — Lease is in respect of immovable property and requires registration. See Registration Act (1908), S. 2(6). AIR 1951 All 608.

——S. 3—Immovable property—Bamboos are immovable property. AIR 1955 N U C (Cal) 5612 (DB).

——Ss. 3 and 105—Fruits growing on trees — Agreement to pluck and take fruits away — Transaction is not lease — It relates to sale of growing crop — Section 4 of M. P. Act 1 of 1951 is not attracted—(Registration Act (1908), S. 2(6) and S. 2(9)) — (Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals Alienated Lands) Act, 1950 (1 of 1951), S. 4). See Transfer of Property Act (1882), S. 105. AIR 1959 Madh Pra 120 (DB).

4. "Grass."

——S. 3—Lease of crop of mango grove for five years entitling lessee to grass which might grow on land—Lease is in respect of immovable property and requires registration. AIR 1951 All 608 (609) (Pr 5).

5. "Attached to the earth."

——S. 3—'Immovable property'—Structure so long as it stands on the land is immovable property. AIR 1960 Cal 484 (488) (Pt E) (Pr 15).

——S. 3—Registration Act (1908), Ss. 2(6) and 17—General Clauses Act (1897), S. 3(25) — Immovable property—Machinery attached to earth, when immovable property — Tests — English Law of fixtures — Transfer of machinery erected by tenant — Held, did not require registration. See Registration Act (1908), S. 2(6). AIR 1953 Hyd 14 (DB).

——S. 3—Machinery belonging to A attached to land belonging to B — It must be assumed that machinery was erected by A either as licensee or as temporary tenant and that he did not intend it to form part and parcel of immovable property to which it was attached for the time being — Test is degree or mode of annexation and the object of annexation. 1953 Nag L J 104 : I L R (1953) Nag 488 : AIR 1953 Nag 224 (226) (Prs 9, 10) (DB).

6. "Imbedded in the earth."

——S. 3—Factory building and machinery embedded therein—Machinery are immovable property—Attachment by following procedure prescribed for attachment of movable property is illegal—Attaching officer commits tort — Tort — Government servant. See Madras Revenue Recovery Act (2 of 1864), S. 8. A I R 1965 Andh Pra 457 (DB).

——S. 3 — Scope — English law of fixtures does not apply to India. A I R 1960 Cal 331 (336) (Pt D) (Pr 17).

——Ss. 3, 8, 51—Maxims — Quicquid plantatur solo, solo cedit—Whatever is affixed to soil belongs to the

soil — Maxim does not apply in India. 1959 Ker L J 1349 : I L R (1960) Ker 115 : 1960 Ker L T 1343 : AIR 1961 Ker 147 (148) (Pt A) (Prs 7, 8) (DB).

——Ss. 3, 8 and 51 — Rule of law that whatever is affixed to the soil belong to the soil does not apply in India—Mortgagor having only life interest constructing new structure after execution of mortgage deed —Mortgagee is entitled to mortgage decree in respect of new structure. See Transfer of Property Act (1882), S. 63. A I R 1965 Mad 185 (DB).

——S. 3 — Dispute relating to premises and printing press standing thereon — Section 145, Criminal P. C. applies. 1964 B L J R 875.

——S. 3—"Imbedded in the earth".

The question whether a particular machinery is imbedded in the earth within S. 3 is a question which depends upon the circumstances of each case. (1953) 24 I T R 306 : A I R 1953 Pat 298 (301, 302) (Pt A) (Pr 11) (DB).

——Ss. 3, 108 (h)—Structures on land of another.

If a trespasser puts up a structure on a plot of land belonging to another without the permission of the owner, the structure becomes the property of the owner of the land. I L R (1955) Punj 94 : 56 Punj L R 480 : A I R 1955 Punj 34 (36) (Pt B) (Pr 10) (DB).

——S. 3—'Attached to the earth' — Lease of right to run printing press for three years together with entire machinery — Lessor himself tenant of building in which press was situated — Machinery held did not fall within definition of immovable property, not being attached to earth. See Registration Act (1908), S. 2 (6). A I R 1965 Raj 15 (DB).

7. "Attached to what is so imbedded".

——S. 3—Machinery — If immoveable property — In India the rule of English common law as applied to fixtures either as between landlord and tenant or as between mortgagor and mortgagee has no application after the enactment of the T. P. Act — Tests whether they are immovable property is one of intention— Regard must be had not merely to circumstances in which they came to be fixed, the title of the person fixing it and the object of the transaction. See Letters Patent (Cal.), Cl. 12. A I R 1960 Cal 331.

——S. 3—Owner of structure has right of pre-emption — (Immovable property) — General Clauses Act (1897), S. 3 (25)—Immovable property)—(Words and Phrases — Immovable property). See Jammu and Kashmir Right to Prior Purchase Act (1993), S. 15. A I R 1959 J & K 32 (DB).

8. "Attested".

●——S. 3—Lender of mortgage amount not party to mortgage deed can validly attest the same. See T. P. Act (1882), S. 59. A I R 1965 S C 1738.

●——S. 3 — Attestation — Proof of — Document required by law to be attested by at least two witnesses —No valid attestation can be said to have been proved unless there is evidence that two attesting witnesses, one of whom is examined in the case, have signed the document after witnessing the signature of the executant or receiving from him a personal acknowledgment of his signature. A I R 1954 S C 316.

——S. 3 — Attestation of document not specifically challenged — Witness not cross-examined regarding details of attestation — Statement by witness that document was attested means attested according to law. A I R 1950 Nag 83, Rel. on. 1963 Jab L J 120 : 1963 M P L J 191 : A I R 1963 Madh Pra 286 (288) (Pt B) (Pr 8) (DB).

——S. 3—Purpose of attestation.

The attestation of persons to a document is to ensure that there is no fraud or other vitiating circumstance in the execution of the document. (1953) 2 Mad L J 303 : 66 Mad L W 964 : A I R 1954 Mad 126 (127) (Pt A) (Pr 6).

——S. 3—Evidence Act (1872), S. 68—Attestation not specifically challenged—Witness not cross-examined regarding details of attestation — It is sufficient for him to say that document was attested by him and other witness. See Evidence Act (1872), S. 68. A I R 1950 Nag 83 (DB).

——Ss. 3 and 59—Scope and applicability.

One of the essentials of attestation of a mortgage-deed is that each of the attesting withesses must have signed the instrument in the presence of the executant. Where the Sub-Registrar and the identifying witnesses have affixed their signatures to the registration and endorsement under Ss. 58 and 59 of the Registration Act, admitting execution of a mortgage-deed but there is no evidence that signatures of the attesting witnesses were made in the presence of the executant, the signatures cannot be said to have proved due attestation as required by S. 59 of the Transfer of Property Act. The endorsements made at the time of registration are relevant to the matter of registration only. (1961) 3 Orissa J D 47 : A I R 1961 Orissa 178 (179, 180) (Pt B) (Prs 4, 5) (DB).

——S. 3—Attestation—Proof of—Calling of attesting witness — Necessity. See Transfer of Property Act (1882), S. 59. I L R (1960) Cut 214.

——S. 3—Attestation—What amounts to.

In order to constitute valid attestation the essential conditions are : (1) there must be two attesting witnesses ; (2) each of them must have seen the executant sign or affix his mark to the instrument ; and (3) each of the two attesting witnesses must have signed the instrument in the presence of the executant. The attestation consists witnessing the fact of the execution of a document. If the witnesses present there have seen the executant executing the document, it is enough. The execution may be effected either by signature or by affixing a mark. If each of the attesting witnesses had seen the executant either sign or affx his mark, it will be sufficient. A I R 1958 Pat 566 (567, 568) (Pt A) (Pr 5).

9. "Each of whom has seen the executant sign".

●——S. 3 — Attested — Document attested on same day as it was written but before it was executed i. e., signed by the party—Attestation not valid. Sant Lal v. Kamla Prasad, 1951 Mad W N 888 : 65 Mad L W 5 : 1952 All L J 46 : 1951 S C J 768 : 1952 All W R (H C) 118 : 1952 S C R 116 : I L R 30 Pat 1210 : A I R 1951 S C 477 (480, 481) (Pt B) (Pr 13).

——S. 3—'Attested'—Proof of attestation — There is no requirement that attesting witnesses should identify each other's signature. See Evidence Act (1872), S. 68. I L R (1965) 1 All 483 : A I R 1966 All 570 (DB).

——S. 3—Attested—Identifier—If attesting witness —(Evidence Act (1872), S. 68).

Where an identifier who is expressly called for the purpose of identifying executant merely puts down his signature without subscribing his name on the document as a person having seen the executant sign his name or heard him admit execution of the deed, he cannot be regarded as an attesting witness within the meaning of S. 3 of the Transfer of Property Act. There is no set or stereotyped form for indicating how an attesting witnesss should sign, but there must be some indication to show that an attesting witness subscribes his name as such. AIR 1925 PC 89, Rel. on. Whether the identifier signed his name

before the registering officer in his capacity as identifier and nothing more and deposed in Court that he saw the executant sign his name and he also signed his name in his presence but not as an attesting witness the identifier signing a deed under the circumstances cannot be regarded as an attesting witness. (1958) 1 Cal L J 123 : 64 Cal W N 33 ; ILR (1959) 1 Cal 431 : AIR 1959 Cal 243 (243, 247) (Pt B) (Prs 17, 21) (DB).

——S. 3—Attestration—What amounts to—Attesting witness stating that executant and the other attesting witness signed in his presence and he signed at instance of executant—Attestation held proved. ILR (1964) 14 Raj 259 : 1964 Raj L W 196 : AIR 1964 Raj 39 (40, 41) (Pt B) (Prs 7, 9).

10. "Sign".

——S. 3—Attestation by illiterate person — Validity.

A document can be attested by putting a mark as witness by an illiterate person, signature being affixed by the scribe. A gift deed thus attested by one of the attestators, is validly attested. AIR 1957 Pat 485 (486) (Pr 9) (DB).

——S. 3—'Attested'—Signature by one attesting witness for himself and for other attesting witness at the instance and in the presence of the latter is good though no mark is affixed by the latter. AIR 1951 Pat 368 (368, 369) (Pr 3) (DB).

——S. 3 — Simple money bond — Signature only on first sheet—Effect, stated. See Stamp Act (1899), S. 2 (5). AIR 1955 Raj 91 (DB).

11. Acknowledgment of signature need not be express.

——S 3—Succession Act (1925), S. 63 — Attestation of witnesses after acknowledgment of testator's signature. See Succession Act (1925), S. 63. AIR 1956 Andhra 1 (DB).

12. "In the presence of the executant."

——S. 3 — Attestation — Proof of — Execution and registration taking place at same time—Presumption of due attestation by witness arises. See Evidence Act (1872), S. 68. AIR 1958 Assam 56 (DB).

——S. 3—Attestation—Presence of executant — Executant need not see witnesses sign instrument. AIR 1954 Nag 11 (13) (Pt A) (Prs 7, 8) (DB).

13. Onus of proof of attestation.

●——S. 3—Contracts conveying rights to take forest produce including tendu leaves, soil for making bricks, right to prune, coppice and burn tendu trees, and right to build for purposes of business—Nature of rights. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act (1 of 1951), S. 3. AIR 1959 SC 735.

14. Party as attestor.

——S. 3—Mortgage in favour of P and S—P assigning his mortgage rights in favour of X—S attesting the assignment in favour of X—Such attestation will not have effect of transferring rights of S to X. AIR 1963 Mad 21 (24) (Pt B) (Pr 8).

——Ss. 3 and 59—Party as attestor—(Evidence Act (1872) S. 68).

A party to a document cannot be a valid attesting witness. Where B executes a mortgage-deed as a power-of-attorney agent of A, though he is a different person, yet the act he does is on behalf of A and in law A is the executant of the deed, A thus being a party to the deed cannot be a valid attesting witness to that deed. 7 Q B 516; 49 Cal 438, Foll. (1953) 2 M L J 303 : 66 Mad L W 964 : AIR 1954 Mad 126 (128) (Pt B) (Pr 10).

15. Scribe as witness.

——S. 3—Attestation by scribe—Validity.

A person who signs on behalf of the executant of a document cannot also sign as an attestator of it. The executant may execute the document by (1) signing it; (2) by affixing his mark to it; or (3) by asking some other person to sign it on his or her behalf. Where the executant executes the document by affixing her pen mark, and there is an endorsement by a witness that the executant had affixed her pen mark in his presence, the witness cannot be described as person executing the document on behalf of the executant. The execution is completed when the executant makes her pen mark and the object of the scribe in describing the mark is to authenticate the mark, that is to vouch the execution. In such a case it cannot be said that the attestion is by the person who executed the document on behalf of the executant. AIR 1916 Bom 123, Rel. on. AIR 1958 Pat 566 (568) (Pt B) (Pr 6).

16. Sub-Registrar and persons identifying before Sub-Registrar, as witness.

——Ss 3, 55—Duty of purchaser.

The usual thing when a person purchases property is to find out from the Municipal office whether there are any arrears of taxes due and further to find out from the registration office whether there are any encumbrances. AIR 1955 All 24 (27, 28) (Pt E) (Pr 11) (DB).

——S. 3 — Will not requiring registration — Sub-Registrar and identifying witnesses may become attesting witnesses. See Succession Act (1925), S. 63 (c). AIR 1965 Ker 32.

●——S. 3—Registering Officer and identifying witnesses —Signatures of, during registration of document—When can amount to valid attesting signatures stated. (1932) ILR 54 All 1051 (FB), Disented from. See T. P. Act (1882), S. 59. AIR 1962 Mad 111 (FB).

——S. 3—Gift deed—Endorsement of sub Registrar —Proof of execution—Evidence Act (1872), S. 68.

Where there is no evidence that the Sub-Registrar signed the endorsement on a gift deed in the presence of the executant the mere endorsement of the Sub-Registrar on the deed, even if admissible, cannot by itself prove the execution and attestation of the gift deed : AIR 1939 P C 117, Foll.; AIR 1940 Nag 382, Dissent. 1953 Nag L J 425: ILR (1953) Nag 507 : AIR 1953 Nag 339 (340) (Pt B) (Pr 4) (DB).

——S. 3—Attestation—Validity—Sub-registrar cannot be attesting witness — Applicability of principle in area where Act not in force. See Transfer of Property Act (1882), S. 59. ('58) 24 Cut L T 461.

——S. 3—Registration of mortgage deed — Endorsement by Registrar—When can amount to valid attestation — Proof of his signature in presence of executant necessary.

The Registrar's endorsement can amount to attestation of the mortgage-deed provided the conditions laid down for the attestation under S. 3 of the T. P. Act were otherwise fulfilled. It is up to the party who wishes to rely on the deed to prove to the satisfaction of the Court that the Registrar signed the document in the presence of the executant before his endorsement can be accepted as amounting to attestation. The view that the endorsement of the Registrar can in no case amount to due attestation is erroneous. AIR 1932 All 527 (FB), AIR 1948 Bom 322 (DB), Dissented from. 1962 R L W 192 : ILR (1961) 11 Raj 1211.

——S. 3—Will—Attestation—Proof—Scribe and Sub-Registrar as attesting witnesses. See Succession Act (1925), S. 63 (c). AIR 1957 Raj 180 (DB).

17. "Registered".

—S. 3—Transfer—Gift—Invalidity—Registration — Transfer of occupancy holding — Requirement of compulsory registration is not applicable—Invalidity arises not because of non-registration of compulsorily registrable document but by virtue of contravention of S. 46 (3), C. P. Ten. Act. See Tenancy Laws—C. P. Tenancy Act (11 of 1898), S. 46 (3) and (5). AIR 1954 Orissa 195 (DB).

18. "Actionable claim".

— S. 3—Civil P. C. (1908), S. 60 (1) — Right to purchase shares or an option to do so is assignable and can be attached. See Civil P. C. (1908), S. 60 (1). 69 Cal W N 815 : AIR 1966 Cal 134 (DB).

—S. 3 — Railways Act (1890), S. 72 — Actionable claim — Right of consignor under railway receipt is not actionable claim and, therefore, not transferable. ILR (1964) Guj 928 : (1964) 5 Guj L R 879 : AIR 1966 Guj 6 (12, 13) (Pt D) (Prs 6, 7) (DB).

—Ss 3 and 55—Agreement to reconvey — Sale and lease back — Transaction does not affect assignment of right of reconveyance—Madras Indebted Agriculturists (Repayment of Debts) Act (1 of 1955), S. 7—Does not prevent third party from obtaining assignment. 1962 Mad W N 68 : 75 Mad L W 89 : AIR 1962 Mad 378 (379) (Pr 4).

—Ss. 3 and 6 (e)—The words "right to sue" do not connote the same thing as the words "actionable claim". AIR 1951 Pat 415 (417) (Pt A) (Pr 8) (DB).

19. Debts.

—S. 3—Applicability — Assignment of debt as part of assets of firm to one of partners—It is not transfer of actionable claim — S. 130 is not applicable to such case. See Transfer of Property Act (1882), S. 130. AIR 1964 All 15.

—Ss. 3, 6 and 130 (2)—Actionable claim, what is—Hypothecation bond of standing crops — Transfer of rights under such bond—Suit by transferee to recover debt held not maintainable. ILR (1962) 14 Assam 484 : AIR 1963 Assam 11 (13, 14, 15) (Pt B) (Prs 10, 11, 13) (DB).

—Ss. 3 and 130 — Transfer of right to proceeds of business—Form of instrument.

The right to the proceeds of a business is an actionable claim and any transfer of such a right even by way of security is covered by S. 130 of the T. P. Act. The requirements of this section would be satisfied if there is a writing from which the intention to create a charge or hypothecation can be gathered. ILR (1951) Assam 1 : AIR 1951 Assam 56 (57) (Pt A) (Pr 4) (DB).

—Ss. 3 and 6—Actionable claim—Debts—Arrears of rent which have become due are debts. See Houses and Rents—W. B. Premises Tenancy Act (12 of 1956), S. 17. AIR 1960 Cal 378 (DB).

—S. 3 — Actionable claim — Commercial letter of credit is not negotiable but the benefit of the credit is negotiable and the credit itself, as distinguished from the benefit of it, is assignable or transferable with the buyer's consent although it may not be negotiable benefit under letter of credit is a chose in action. See Neotiable Instruments Act (1881), S. 13. AIR 1959 Cal 328 (DB).

20. Debt ripened into decree.

● —Ss. 3 and 8 — Transfer of debt pending suit (C. P. Code Ss. 3 and 8 — Transfer of debt pending suit (C. P. Code (1908), O. 21, R. 10 — Equitable transfer of decree).

Per Das, J. — Where during the pendency of a suit for recovery of a certain amount from the defendant the plaintiffs in the suit transfer to third persons all book and other debts due to them the transfer of the debt passes all the interest which the transferors were then capable of passing in the debt and in the legal incidents thereof. By the assignment of the debt the third persons undoubtedly become entitled to get themselves substituted under O. 22, R. 10 as plaintiffs in the pending suit but if they do not choose to do so and allow the transferors to continue the suit and a decree to be passed in their favour, S. 8 does not help them. S. 8 of the Transfer of Property Act does not operate to pass any future property; for that section passes all interest which the transferor can then, i.e., at the date of the transfer, pass A book debt which is made the subject-matter of the pending suit does not, for that reason, cease, to be a book debt and therefore, it is also transferred but no decree to be passed in respect of that book debt is in terms transferred. In such a situation there is no room or scope for the application of the principle of equitable assignment at all.

Per Bhagwati, J. : — In cases of transfer of book debts or property coming within the definition of actionable claim there is necessarily involved also a transfer of the transferor's right in a decree which may be passed in his favour in a pending litigation and the moment a decree is passed in his favour by the court of law, that decree is also automatically transferred in favour of the transferee by virtue of the assignment in writing already executed by the transferor. The debt which is the subject-matter of the claim a merged in the decree and the transferee of the actionable claim becomes entitled by virtue of the assignment in writing in his favour, not only to the book debt but also to the decree in which it has merged. The book debt does not lose its character of a debt by its being merged in the decree and the transferee is without anying more entitled to the benefit of the decree passed by the court of law in favour of the transferor. The transferee of the actionable claim thus could step into the shoes of the transferor and claim to be the transferee of the decree by virtue of the assignment in writing executed by the transferor in his favour and could therefore claim to execute the decree as transferee under O. 21, R. 16 of the C. P. Code. Jugalkishore Saraf v. Raw Cotton Co. Ltd., 1955 S C A 440 : 58 Bom L R 507 : 1955 Mad W N 421 : 1955 S C J 371 : (1955) 1 M L J (SC) 220 : 1955 Andh W R (S C) 220 : (1955) 1 S C R 1369 : AIR 1955 S C 376 (382, 383, 384, 399, 400) (Pt C) (Prs 8, 56).

●—Ss. 3, 130—Judgment debt.

Per Bhagwati, J. — A judgment debt or decree is not an actionable claim for no action is necessary to realise it. It has already been the subject of an action and is secured by the decree. A decree to be passed in future also does not come as such within the definition of an actionable claim and an assignment or transfer thereof need not be effected in the manner prescribed by section 130. Jugalkishore Saraf v. Raw Cotton Co. Ltd. 1955 Mad W N 421 : 1955 S C A 440 : 1955 S C J 371 : (1955) 1 M L J (SC) 220 : 1955 Andh W R (SC) 220 : (1955) 1 SCR 1369 : AIR 1955 S C 376 (398, 399) (Pt L) (Pr 54).

—Ss. 3 and 130—Actionable claim—Decretal debt is actionable claim. AIR 1951 Pat 415(416, 417)(Pt B) (Prs 5, 8) (DB).

—Ss. 3, 6 and 130—Actionable claim—Contract for sale of goods — Breach — Right to recover earnest money and damages—If transferable — Contract Act, S. 74.

The right to recover money paid under a contract of sale of goods on failure of the seller to deliver the goods, is not a mere right to sue. It is a claim for an ascertained amount and can be transferred as an actionable claim.

But a claim for damages for breach of the contract is not an ascertained amount and a transfer of the claim to recover damages even where they are mentioned in the contract is not permitted by law, as under S. 74 of the Contract Act even if the amount of damages are mentioned in the contract the party complaining of the breach is only entitled to reasonable compensation. ILR (1952) Raj 5 : 1952 R L W 197 : A I R 1952 Raj 187 (188) (Prs 2, 3).

21. Beneficial interest in movable property.

——Ss. 3 and 6, 4 — **Benefit of contract if can be assigned in favour of third party — Contract if governed by rule against perpetuities.**

Where a sale deed in respect of certain land contains a stipulation that the vendee would reconvey the property to the vendor in case he repays the purchase price to the vendee after two years but within fifteen years from the sale, the benefit of such a contract of repurchase can be validly assigned in favour of a stranger who can enforce the same against the vendee.

The rule against perpetuities cannot apply to such a contract for the obvious reason that the contract did not create any interest in immovable property. A I R 1954 Assam 95 (96) (Pt A) (Pr 2).

——S. 3 — Assignment of rights under contract. See T. P. Act (1882), S. 130. A I R 1954 Bom 167 (DB).

——S. 3—**'Actionable claim'—Right under contract.**

The rights under a contract in respect of movable property are beneficial interest in movable properties. They are certainly not things in pessession and a right to the benefit of an obligation under a contract can only be and is enforced by an action at law. Right to benefit of a contract falls within the definition of actionable claim'. So also the rights and benefits under a contract of carriage entered into with a carrier of goods are actionable claim under S. 3 of the Transfer of Property Act and are assignable. 1956 Nag L J 791 : 1956 M P L J 215 : A I R 1957 Nag 31 (44) (Pt D) (Pr 91) (DB).

22. "Notice".

——S. 3—Notice — Order, uncommunicated order — Notification, dated 28th December, 1960 under West Bengal Panchayat Act (1957) — Communication — Order when becomes complete and effective—Order is effective only when it is communicated to person concerned. (1964) 68 Cal W N 1109.

——S. 3—Notice—Person who is bound to make an enquiry and fails to do it, should he held to have notice of all facts which would have come to his knowledge had he made the enquiry. 1954 Cri L J 132 : AIR 1954 Cal 367 (368, 369) (Pt A) (Pr 6).

——S. 3—"Bona fides"—Meaning—Bona fides is mental state negativing fraud or dishonesty — It has no relation to negligence or want of care — Word "Notice" in S. 25 (ii), Bombay Agricultural Debtor's Relief Act (28 of 1947) is actual notice and not constructive notice — Fraud or dishonesty on part of bone fide purchaser for value without notice not alleged — No allegations to show that transaction was not real—Transaction prior to requisite date mentioned in S. 25 (ii) Bombay Agricultural Debtor's Relief Act (28 of 1947) — Purchaser is protected by S. 25 (ii), Bombay Agricultural Debtor's Relief Act (28 of 1947). See Debt Laws — Bombay Agricultural Debtors' Relief Act (28 of 1947), S. 4. (1964) 5 Guj L R 289 : ILR (1963) Guj 575.

——S. 3—Notice — Constructive notice—Property in possession of tenant sold by A in favour of B — Sale deed reciting that out of the consideration Rs. 9,000 had been lett with B to be paid within two months—Property put up for sale after 4 years in execution of decree against B — Sale proclamation not showing that property was subject to any charge—Property purchased by C in auction — Held in the circumstances C had no notice of charge. A I R 1932 Mad 71, Rel. on. 61 Punj L R 912 : 1960 All W R (Supp) 4 : 1960 All Cri R 51 : 1960 Cri L J 847 : A I R 1960 Punj 296 (297, 298) (Pt C) (Prs 10, 12) (DB).

23. Wilful abstention from enquiry.

——S. 3 — Notice — Suit for pre-emption — Decree referring to agreement to re-sell executed by vendor —Under S. 3 pre-emptor must be deemed to have notice of terms of agreement which he would have known from inquiry — Transferee from pre-emptor was bound to examine title of the pre-emptor—He must also be fixed with notice of agreement to re-sell under S. 4. A I R 1963 All 194 (199) (Pt D) (Pr 26).

——S. 3—Constructive notice — Wilful abstention or gross negligence of vendee of property in municipal area to make equiries as to amount of tax which is due on it — Vendee must be imputed with notice of the tax for which is the first charge on property. A I R 1951 Cal 398 (400) (Pt B) (Pr 13) (DB).

——S. 3—**Notice—Abstention from enquiry — Effect of.**

Where a person abstained from making further inquiry about the rights of the person and did not cause a search to be made in the office of the Sub-Registrar to ascertain if there was any encumbrance over the property, his omission must be held to be wilful or grossly negligent and he would be said to have notice of the prior transaction. (1958) 1 M L J 188 : 1958 Mad W N 130 : 71 M L W 451 : A I R 1958 Mad 515 (515) (Pr 4).

——S. 3 — **Notice — Constructive notice as regards prior transaction affecting title — Transferee when not required to make enquiry.**

A transferee of an immovable property may be fastened with the constructive notice of any prior transaction affecting the title of the transferor, if he wilfully refrains from making any enquiry in order to avoid acquiring knowledge of the transferor's title or if he does not make any enquiry when the circumstances are such as would lead a prudent and reasonable person to embark on an enquiry regarding the title of the transferor. But a subsequent transferee cannot be fixed with constructive notice of the prior transaction, where the circumstances do not require him to make any enquiry.

Where a usufructuary mortgagor who retained possession of the mortgaged property on payment of rent to the mortgagee under a kabuliyat, agreed to sell the property to the mortgagee, but subsequently sold the property to the vendee, with whom was kept a certain sum out of the consideration money as deposit for redemption of the mortgage, under these circumstances, the vendee was not required to make an enquiry as to the prior agreement to sale and he cannot be fixed with constructive notice of the prior transaction. There was no gross negligence or wilful abstention from any enquiry or search which he ought to have made, and, therefore, he was a bona fide purchaser for value without notice. 1964 B L J R 284 : ILR 44 Pat 271 : A I R 1964 Pat 144 (146, 147) (Pr 10) (DB).

——S. 3—Duty of auction-purchaser to enquire about encumbrance of property under O. 21, R. 66, Civil P. C.—Auction-purchaser failing to enquire—He will be taken to have constructive notice of encumbrance. A I R 1962 Pat 236 (239, 240) (Pt C) (Prs 10, 11) (DB).

24. Gross negligence.

——S. 3—Bank giving double credit inadvertently to its customer — Customer acting upon the credit to

his detriment—Estoppel—Customer grossly negligent in scrutinising the weekly statements, accounts and correspondence — Constructive notice — Banker in the circumstances not estopped from claiming refund of excess credit from the customer. (1964) 2 M L J 104 : AIR 1964 Mad 202 (203) (Pr 5).

25. Attestation of deed, if notice of contents.

——S. 3—Notice—Attestation.

Attestation of a deed by itself does not estop any person from denying anything except that he has witnessed the execution of the deed and knowledge of the contents of the deed ought not to be inferred from the mere fact of the attestation though an attestation may take place in circumstances which would show that the witness did in fact know the contents of the deed. AIR 1955 NUC (Andh Pra) 4179.

——S. 3—Waiver of right to pre-empt:— Evidence — Receipt executed,by vendor in favour of vendee and signed by pre-emptor is no evidence to prove that premptor had signed it as an attesting witness — An attesting witness merely testifies that the executant of the document signed that document in his presence—He is not supposed to know the contents of the document which is executed by the executant. See Evidence Act (1872), S. 115. AIR 1963 J & K 14 (DB).

——S. 3—Attestation—Inference from fact of attestation as to age of party to document — (Evidence Act (1872), S. 114).

The attesting witnesses cannot be expected to know the correct age of each and every one of the parties to the documents and these witnesses could not interest themselves in such a matter. Hence, the fact of attestation of a document cannot be relied upon to infer that a party to the document was not a minor at the date of execution. 1957 Ker L J 258 : ILR (1957) Kerala 367 : 1957 Ker L T 799 : AIR 1957 Kerala 103 (105) (Pt D) (Pr 4).

——S. 3—Evidence Act (1872), S. 115 — Estoppel by conduct — Attestation of sale deed and identification before Registrar — (Registration Act (1908), S. 58). AIR 1949 All 464, Dissented from. See Evidence Act (1872), S. 115. AIR 1956 Madh Bha 16.

——S. 3—Attestation of a deed by itself estops a man from denying nothing whatever excepting that he has witnessed the execution of the deed. But the fact of attestation taken in conjunction with other circumstances may justify an inference that the attesting witness had knowledge of the contents of the document and had agreed to them. AIR 1951 Madh Bha 92 (95, 96) (Pt H) (Pr 15).

——S. 3—Mere attestation is not notice of contents—Other circumstances may exist showing that attestation was intended to convey something more than a mere witnessing of execution and was meant as involving consent to the transaction. AIR 1953 Pepsu 86 (86, 87) (Pt A) (Pr 3) (DB).

——S 3—Attestation — No evidence that attesting witness knew what the document contained — He merely affixing signature in token of his acceptance of transaction—Attestation does not amount to consent. ('52) 3 Pepsu L R 413 (DB).

——S. 3—Attestor a relative of parties—This is not a circumstance which will raise presumption of notice of the contents of the document. AIR 1951 Pepsu 71 (72) (Pt C) (Pr 4).

——S. 3—Attestation—Effect.

The attestation of a document does not amount to an admission by the attesting person unless it can be proved that the document was read over to him and that he made an attestation conscious of the statement made in the document. 1951 Raj L W 494 : ILR (1951) 1 Raj 597.

26. Notice by registration of instrument.

——S. 3—Entry regarding mortgage in registers in the Office of Registrar—Purchaser of property must be deemed to have notice of the encumbrance. I L R (1964) 1 All 553 : AIR 1964 All 381 (383) (Pt D) (Pr 7) (DB).

——S. 3—Mortgage on leased property—Lessor if can escape from liability on the ground that the mortgage being a registered instrument the lessee had constructive notice discussed. See T. P. Act (1882), S. 65-A. AIR 1955 NUC (All) 1691 (DB).

——S. 3—Registration Act (1908), S. 51—Registration of document in Book No. 4 instead of Book No. 1—Does not affect rights of innocent third parties. See Registration Act (1908), S. 51. AIR 1962 Andh Pra 94 (DB).

——S. 3, Expl.—Registered sale-deed creating charge on property—Constructive notice of charge— Applicability of S. 63 of Amending Act (20 of 1929).

A person acquiring an interest with respect to that property subsequent to 1st April 1930, is fixed with knowledge of the earlier sale deed in immovable property as from the date of registration and S. 63 of amending Act XX of 1929 does not apply. There is no warrant in the Explanation for the construction that registration should have been effected only subsequent to the passing of the Act. The transaction relating to immovable property and evidenced by a registered instrument might have been effected at any time prior to the amending Act. The person who acquires an interest subsequent to the amending Act shall, according to section 3, be deemed to have notice of the registration from the date of registration. Further the Explanation applies in respect of a charge which is in writing as it is required by law to be registered. AIR 1955 NUC (Andh Pra) 5336.

——S. 3—Registration — If notice.

Under the present law, registration amounts to implied notice to the persons subsequently acquiring any interest in the property. Therefore, the mortgagees of properties must be held to have implied notice of the prior registered deed of assignment of the same properties. (1961) 65 Cal W N 881.

——S. 3, Explanation I—Cochin Transfer of Property Act, S. 3, Explanation I— Explanation affects transferee after 1st Chingam on which date Explanation came into force. 1959 Ker L J 975 : 1959 Ker L T 941 : 1959 Ker L R 1008 : ILR :(1959) Ker 1243 : AIR 1960 Ker 139 (140) (Pt B) (Pr 5) (DB).

——S. 3—Notice by registration of instrument.

Registration of a document which is compulsorily registrable is deemed to be a notice to the persons subsequently acquiring the property comprised in the instrument. 32 Mys L J 123 : ILR 1953 Mys 152: AIR 1953 Mys 22 (23, 24) (Pt D) (Pr 6).

——S. 3 — Mortgage registered — Party cannot be heard to say that he searched Registration Index without finding necessary index — Conduct amounts to wilful abstention — Party must be taken to have notice of the mortgage — Inspection of Registration Index for 12 years prior does not discharge the burden and is not sufficient in case of mortgage though it might be sufficient in case of sale. A I R 1952 Nag 106 (109).

——S. 3 — Registration is notice — (Partnership Act (1932), S. 4).

Partition of a joint Hindu family business — Some members forming new partnership — Partnership registered by documents — Registration is notice to all the parties concerned including creditors. (1954)

26 I T R 185 : A I R 1955 Pat 172 (174, 175) (Pt B) (Pr 7) (DB).

——S. 3—Notice—Registration of document.

The mere fact that the deed was registered does not fix the plaintiffs with the knowledge of its execution on a certain date. (Chopra J.) 2 Pepsu L R 571 : AIR 1952 Pepsu 31 (33) (Pt C) (Pr 5).

——S. 3, Explanation I — Constructive notice of previous registered mortgage, is no defence to charge of cheating by selling property on misrepresentation that it was unencumbered. See Penal Code (1860), S. 415, Illus. (i). 55 Cri L J 299 : A I R 1954 Punj 31 (DB).

27. Proviso to Explanation I.

——S. 3 and S. 100, Para. 2 — "Without notice of the charge" — Charge created on immovable property — Constructive notice of — Charge registered but particulars not entered in indexes kept under S. 55 of Registration Act — There can be no constructive notice on such case imputed to subsequent mortgagee. 65 Bom L R 510 : I L R (1963) Bom 509 : 1963 Mad L J 756 : A I R 1964 Bom 1 (3) (Pt B) (Pr 7) (DB).

——S. 3, Expl. I, Provisos (2) and (3) — Registration of mortgage document in one district—Memorandum to be filed in other district — Unless it is proved to have been so filed notice to purchaser of mortgage will not be imputed — No presumption can arise under S. 114, Evidence Act. AIR 1962 Pat 236 (238, 239) (Pt B) (Pr 8) (DB).

——S. 3 -'Notice' — Explanation I, Proviso — Requirements of Clauses 2 and 3 not fulfilled — Mere registration held did not amount to notice. 1963 Raj L W 177 : ILR (1963) 13 Raj 552 : AIR 1963 Raj 141 (142, 143) (Pt A) (Prs 6, 7).

28. Possession as notice—Explanation II.

——S. 3, Expl. II — Notice includes constructive notice—Possession as notice. See Specific Relief Act (1877), S. 27 (b). AIR 1954 Andhra 20.

——S. 3 — Mortgage with possession—Agreement to sell property to mortgagee — Subsequent sale to stranger — Omission of purchaser to inquire if mortgagee had any other right — Notice of equities in favour of mortgagee will be imputed to the vendee —He cannot obtain benefit of principle of the proviso to S. 27-A, Specific Relief Act. 64 Mad L W 759 : 1951 Mad W N 627 : 1951-2 Mad L Jour 191 : A I R 1952 Mad 265 (266) (Pr 5).

——S. 3—Notice—Possession as notice—Defendant in possession only of a portion of suit property — Plaintiff knowing that defendant was in possession of such portion merely on basis of a monthly tenancy — Held that plaintiff had no reason to believe that defendant was in possession on the basis of any title on any other basis excepting as a monthly tenant. AIR 1917 Pat 478 (FB), Rel. on. AIR 1962 Orissa 86 (88, 89) (Pt B) (Pr 10).

——S. 3—Transferee without notice—Monthly tenant continuing in possession — Subsequent transferee cannot be charged with notice of contract to sell in favour of former. See T. P. Act (1882), S. 53-A. AIR 1962 Orissa 86.

——S. 3, Expl II and S. 53-A, Proviso — Word 'title' in S. 3, Expl. II does not connote completed title — Equitable interest under S. 53-A attracts provisions of S. 3, Expl. II—Eviction suit—Tenant in possession claiming part performance — Purchaser claiming advantage of S. 53-A, Proviso—Burden of proving that he had no notice of 'contract to transfer' lies on him and not on tenant. AIR 1935 Rang 12, Dissent. from. 1965 B L J R 243 : I L R 44 Pat 596 : A I R 1965 Pat 467 (469) (Pt B) (Pr 6) (DB).

——S. 3, Expl. II — Notice of contract — Possession is notice of title of person in possession. See T. P. Act (1882), S. 53-A, Proviso. AIR 1960 Pat 354.

——S. 3, Explanation II—Notice—Possession.

The agreement for sale in favour of the plaintiff by defendant 1 covered only 2 Kathas 17-1/3 dhurs being one-third share of the property which was mortgaged with the plaintiff and the whole of the property was in possession of the plaintiffs.

Held, that under Explanation II of S. 3 of the Transfer of Property Act defendant No. 2 should be deemed to have notice of the mehandanama executed in favour of the plaintiffs by defendant No. 1. 1958 B L J R 466.

——Ss. 3, 53-A—Registration Act (1908), S. 50—Two vendees of same immovable property — Priority between — Document compulsorily registrable not registered—Possession of trespasser whether amounts to notice—Registration Act (1908), S. 49. See Registration Act (1908), S. 50. A I R 1950 Pepsu 34 (DB).

——S. 3, Explanation II—Applicability—Mere agreement to sell.

Mere agreement to sell does not confer any title on the tenant. It does not terminate his tenancy. The possession of a tenant in occupation cannot therefore, amount to notice under Explanation II of S. 3, T. P. Act. 1960 Raj L W 103.

29. "Agent".

——S. 3 — Service of notice — Notice served on husband of petitioner—Petitioner present—Husband not an agent of petitioner—Service of notice is not valid. See Land Acquisition Act (1894), S. 12 (2). AIR 1962 Ker 266.

30. Onus of proof as to notice.

——Ss. 3 and 40—Onus is in transferee to prove that he had no notice of prior charge — (Evidence Act (1872), Ss. 101 to 104). 1959 Ker L J 975 : 1959 Ker L T 941 : 1959 Ker L R 1008 : I L R (1959) Ker 1242 : AIR 1960 Ker 139 (140) (Pt A) (Pr 2).

——S. 3—Onus of proof of notice.

Held that the burden of proving notice of agreement was on the defendant. Onus of proving want of notice would have been on plaintiff in case defendant had succeeded in proving that his case otherwise fell under S. 53-A. 1960 Raj L W 103.

SECTION 4

——Ss. 4, 59 and 100—Scope—Charge on immovable property — Amount secured exceeding Rs. 100 — Charge is compulsorily registrable. (1962) 32 Com Cas 925 : AIR 1962 All 101 (103) (Pt B) (Pr 4) (DB).

——Ss. 4, 105 and 108 — C. P. and Berar Municipalities Act (2 of 1922), Ss. 15 (1), 22, 45—Members of Municipality taking leases of rooms belonging to it — Members incur disqualification under S. 15 (1) and cease to be members. See Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 15 (1). AIR 1960 Bom 126 (DB).

●——Ss. 4, 59—Civil P. C. (1908), O 41, R. 5, O. 48, R. 3, Appendix G, Form 3—Security bond—Registration —(Transfer of Property Act (1882), Ss. 4, 59) — (Registration Act (1908), S. 17, 49).

A security bond executed in Form No. 3 of Appendix G, Civil P. C. creates a mortgage and in view of Ss. 4 and 59 of the T. P. Act and S. 49, Registration Act such a bond has to be registered where the principal money secured is one hundred rupees or upwards in order to affect the immovable property comprised therein. R. M. Palat v. P. A. Nedungadi,

1958 Ker L T 635 : 1958 Ker L J 754 : ILR (1958) Ker 992 : AIR 1958 Ker 377 (378, 379, 380) (Prs 8, 13, 19) (FB).

——Ss. 4, 107 — Registration Act, S. 17 — Rent note executed by tenant need not be registered. 1957 Jab L J 1033 : 1958 M P L J 59 : 1958 M P C 68 : AIR 1958 Madh Pra 146 (148) (Pr 14).

——S. 4—Rights and liabilities of co-shares—Partial payment of tax by one co-owner and acceptance of it by Municipality — Municipality can demand remaining portion of tax from any of two co-owners — Partition alone does not entitle co-owner to be absolved from entire tax unless premises are separately registered in name of each co-owner in municipal records. 1965 Mad W N 117 : 78 Mad L W 157 : ILR (1965) 2 Mad 107.

——Ss. 4 and 5 — Contract of sale executed by Court in pursuance of decree for specific performance— It is transfer by Court on behalf of judgment-debtor and has got all characteristics of transfer inter vivos. (1965) 2 Mys L J 692 : AIR 1966 Mys 299.

——S. 4—Contract for sale of immovable property— S. 55, Contract Act, has full application by virtue of S. 4, T. P. Act. AIR 1964 Orissa 269 (271, 272) (Pt B) (Pr 7).

——Ss. 4 and 53 — Non-payment of consideration is no ground for holding transfer as fraudulent. ILR (1964) Cut 719.

——S. 4—Compulsorily registrable lease unregistered —Possession delivered—Payment of consideration by lessee — Such contracts when carried out terminates in a complete contract, so long as it is incohate in that respect, it is an enforceable contract, that is nothing deters from exercising right of specific performance of contract. See Specific Relief Act (1877), S. 27-A. AIR 1952 Orissa 116 (DB).

——S. 4—Scope—Creation of charge—Writing and registration — Necessity. See Transfer of Property Act (1882), S. 100. AIR 1959 Raj 143.

SECTION 5

SYNOPSIS

(T. P. Act (1882), S. 5.)

1. Scope.
2. "Living person".
3. Conveys.
   - (A) Family arrangement.
   - (B) Partition.
   - (C) Relinquishment, release, abandonment and surrender.
   - (D) Charge.
4. "Property".
5. "In present or future".
6. "Or to himself".

1. Scope.

●——Ss. 5 and 2 (d) — Provision in S. 2 (d) prevails over definition in S. 5 — Provision of S. 57 and those contained in Ch. 4 apply to transfer by operation by law. AIR 1940 Mad 701 and AIR 1937 Cal 129, Overruled. See T. P. Act (1882), S. 2 (d). AIR 1965 S C 834.

——S. 5 — Transfer of property lying outside British India.

Definition does not exclude properties outside India. A mortgage deed cannot be challenged on the mere ground that a part of the property embraced by it was outside British India. 1950 All L J 431 : ILR (1951) 2 All 703 : AIR 1951 All 462 (462, 463) (Pt A) (Pr 5) (DB).

——S. 5—Transfer of immovable property—Mode of strict adherence — Mere engagement between last male-holder and another—Sufficiency to pass title.

Although a promise to give property in consideration of the promisee rendering some assistance or doing something, is a valid one and can be legally enforceable, a contract by itself does not confer a title to immovable property on a party to the contract. The mode of creating an interest in immovable property is prescribed in the Transfer of Property Act. So, if a person claiming to have been constituted an heir has not acquired title to the property during the life-time of the last male-holder in any of the methods prescribed by law he cannot lay any claim to the estate although it might furnish a good cause of action and he might obtain title by suing for specific performance of it. 7 Mad H C R 25 and S A No. 968 of 1885 (Mad) and 2 Bom 67 and AIR 1917 Cal 292 and 20 All 209 (PC), Disting. AIR 1956 Andh 209 (211, 212) (Pt B) (Prs 16, 17) (DB).

——S. 5 — Definition of transfer is to be taken as definition of "transfer of property" for determining what is transfer within the meaning of that term used in Proviso to S. 2 of the Hindu Women's Rights to Property (Bombay Extension to Agricultural Land) Act (1942). AIR 1951 Bom 94 (Pr 2) (DB).

——S. 5—Transfer of property — Definition does not apply to the West Bengal Act. 1 of 1954 — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A (7) (iii). AIR 1963 Cal 551 (552) (Pr B) (Pr 6) (DB).

——S. 5—'Transfer of property'—Act not exhaustive about modes of transfer—Contribution of immovable property to partnership —Change of ownership from that of individual to partnership firm is a transfer —Partnership Act (1932), S. 14. AIR 1963 Pat 221, Foll. 1965 B L J R 252 : AIR 1965 Pat 144 (148) (Pt C) (Pr 8) (DB).

——S. 5 — Benami — What constitutes —Considerations.

The circumstances usually taken into consideration in determining as to whether a certain transaction is a benami, are the passing of consideration custody of the title deed, possession of the property, motive and relationship. Where plaintiffs' case that the transaction was benami has failed in respect of the first four, mere relationship between the parties will not turn the scale. AIR 1962 Pat 160 (165) (Pt B) (Pr 24) (DB).

2. "Living person."

——Ss. 5, 122 and 123—Dedication to Hindu deity— It is not gift—It would be endowment if owner divests himself of his rights of ownership therein — Section 123 not applicable—Deity is not 'living person'. (1965) 58 I T R 721 : AIR 1966 All 100 (DB).

——S. 5—Joint family is a person within meaning of S. 2(xviii), Gift Tax Act (1958). A I R 1965 Andh Pra 95 (DB).

——S. 5—Execution sales are 'transfers' as contemplated by S. 47 of Hyderabad Tenancy and Agricultural Lands Act 21 of 1950. (1964) 1 Andh W R 319; AIR 1964 Andh Pra 514 (DB).

[Overruled on another point in AIR 1967 Andh Pra 148.]

——S. 5—Applicability—Transfer by operation of law. See Specific Relief Act (1872), S. 27. (1963) 65 Bom L R 229.

——S. 5 — 'Gift' — Dedication to Hindu deity is a transfer within the meaning of S. 5-A (7)(iii), West Bengal Estates Acquisition Act (1954) — Provisions cannot be restricted to transfers to living persons— Provisions of Transfer of Property Act do not apply. AIR 1963 Cal 551 (DB).

——S. 5—Wakf—Creation of wakf deed amounts to transferring the property to the Almighty for the benefit of his creatures — Right of owner is extinguished. AIR 1955 N U C (Cal) 797.

——Ss. 5, 10—Applicability—Condition against Shebait's power to alienate—Validity.

Where there was absolute dedication of the properties to the deities subject to a condition that the Shebait of the deities for the time being shall not have power to alienate or encumber the dedicated properties on the principles enunciated in S. 10, the condition in the deed of dedication imposing limitation on the Shebait's power of disposal is manifestly void. A juristic person like an idol is not necessarily a living person. The equitable principle of law enacted in S. 10 governs the restraint upon the power of alienation independent of the provisions of the Transfer of Property Act. Restriction on the power of the shebait to alienate the dedicated property is void and inoperative and is, therefore, legally ineffectual to invalidate the perpetual lease granted by Shebait. I L R 38 Pat 49 : 1958 B L J R 812 : A I R 1959 Pat 305 (307, 308, 309) (Pt B) (Prs 7, 11) (DB).

3. "Conveys."

(A) Family arrangement.

(B) Partition.

(C) Relinquishment, release, abandonment and surrender.

(D) Charge.

3. "Conveys."

——S. 5 — 'Transfer' — What constitutes stated. See Income-tax Act (1961), S. 2(47). AIR 1965 Andh Pra 196 (DB).

——S. 5 — Gift Tax Act (1958), Ss. 2(xii), 2(xviii), 2(xxiv)(d), 3 and 4 — Assessee throwing all his self acquired property in common stock of joint Hindu family of which he was manager — Transaction held was transfer of property within terms of S. 2(xxiv)(d) and gift as envisaged in S. 2(xii) — Import of definition "of transfer of property" explained—Joint Hindu family is person within S. 2(xviii). AIR 1965 Andh Pra 95 (DB).

——Ss. 5, 53 and 2(d) — Collusive and fraudulent decree and execution — Possession delivered to auction-purchaser — Suit by other creditors for declaration that decree and all other proceedings are null and void—Suit is maintainable—Applicability of S. 53 and S. 42, Specific Relief Act. See Transfer of Property Act (1882), S. 53. AIR 1959 Mad 141 (DB).

——S. 5—'Transfer' meaning of — 'Transfer' implies that it is a result of act of parties — Unless it is act of parties it cannot come within exceptions covered by S. 9-A(10)(ii)(b), Madras Agricultural Relief Act — Court-auction purchase is outside the scope of the sub-section. (1954) 1 Mad L J 537 : A I R 1955 Mad 245 (247) (Pt D) (Pr 6).

[Overruled in AIR 1962 Mad 21 (FB).]

——Ss. 5 and 4—Contract of sale executed by Court in pursuance of decree for specific performance—It is transfer by Court on behalf of judgment-debtor and has got all characteristics of transfer inter vivos. (1965) 2 Mys L J 692 : A I R 1966 Mys 299 (303) (Pt A) (Pr 6).

——S. 5—Partner contributing immovable property as his share of partnership—No written document or registration is necessary. See Partnership Act (1932), S. 14. AIR 1963 Pat 221 (DB).

3(A). Family arrangement.

——S. 5—Family settlement — It does not amount to transfer—It does not also create an interest. (1965) 2 S C W R 837 : AIR 1966 S C 323 (Pt B).

——S 5—Family arrangement — Validity — Attack on ground that one member, M, was not party thereto—M not shown to keep any property for herself, in arrangement — But statements of parties revealing that agreement was arrived at by consent of M — Family arrangement can be arrived at orally — Held, M was party to arrangement and fact that M's statement was not recorded in agreement did not invalidate the arrangement. (1965) 2 S C W R 636 : AIR 1966 S C 292 (Pt C).

——S. 5 — Family arrangement — Essentials — Arrangement when brought about by document, registration necessary — Memorandum of arrangement — Registration not necessary. (1965) 2 S C W R 636 : AIR 1966 S C 292 (Pt D).

——S. 5—Validity of family arrangement of disputed rights depends on the facts existing at the time of the transaction and will not be affected by subsequent judicial determination showing rights of parties to be different from what was supposed or that one party had nothing to give up. Ponnammal v. Srinivasarangan, AIR 1956 S C 162 (165) (Pr 9).

——S 5—Family arrangement—Nature of. AIR 1959 All 473 (Pt H) (DB).

——S. 5—Family arrangement — Nature of — Essentials — Existence of doubtful claims not essential. AIR 1926 All 194, Not foll. AIR 1959 All 473 (Pt G) (DB).

——Ss. 5 and 6(a)—Family settlement — Reversioner giving up half share in property in possession of widow after her death — No transfer of spes successionis — Reversioner estopped from claiming entire property—Evidence Act (1872), S. 115 — (Hindu Law —Family settlement). 1952 All W R (HC) 52 : A I R 1953 All 213 (214, 215) (Pr 5).

——S. 5—Family arrangement.

A bona fide settlement of doubtful claims is not a transfer of property at all but really a recognition of the title of the opposite party and an abandonment of all further claims to it. Such an arrangement cannot be considered to be a transfer within the meaning of the Transfer of Property Act. ('51) 1951 All W R (HC) 91 : A I R 1951 All 823 (824, 825) (Pt B) (Pr 4).

——Ss. 5, 9—Family settlement—Nature of property.

Members of a family who have no proprietary interest in the property in their possession can enter into a family arrangement with respect to such right as they may possess in the property. AIR 1950 All 320 (321) (Pt B) (Pt 10).

——Ss. 5, 9 — Family arrangement — If transfer — Written instrument or Registered deed not necessary —(Registration Act (1908), Ss. 17, 49).

The parties set up competing titles and the differences are solved by the compromise, there is no question of one deriving title from the other and therefore the arrangement does not fall within the mischief of S. 17 read with S. 49 of the Registration Act as no interest in property is created or declared by the document for the first time. Generally by such an arrangement it is intended to set at rest competing claims amongst the various members of the family to secure peace and amity. The compromise is on the footing that there is an antecedent title of some sort in the parties and the settlement acknowledges and defines title of each of the parties. In such an event, the settlement need not be reduced to writing and even if it is embodied in a document it need not be registered. A I R 1958 Andh Pra 147 (155) (Pt D) (Pr 29) (DB).

——S. 5 — Family arrangement — If all members of family should be parties discussed. ILR (1959) 11 Assam 59 : AIR 1959 Assam 109 (111) (Pt B) (Pr 10) (DB).

——S. 5—Family Arrangement—Consideration. ILR (1959) 11 Assam 59 : A I R 1959 Assam 109 (111) (Pt C) (Pr 12) (DB).

——S. 5 — There should be transfer of right to enjoy immovable property — Definition does not contemplate right to manage property for or on behalf of other person — Understanding between widow and defendant that defendant to manage property and give certain amount of paddy to widow for maintenance of herself and her daughter—On her remarriage, right to maintenance and property to cease —Arrangement reduced to writing — Writing held to be memorandum of family arrangement entered into orally and did not require registration — Document held not lease. AIR 1955 N U C (Assam) 4183 (DB).

——Ss. 5, 54—Sale and relinquishment—Distinctions —(Income-tax Act (1922), S. 12-B—Sale).

A sale or a transfer presuposes the existence of the property which is sold or transferred. It presupposes the transfer from one person to another of the right in property. On the other hand, relinquishment means the extinction of a right or the destruction of a property, and if the property is destroyed or the right is extinguished, there is nothing left to transfer or to sell. ILR (1953) Bom 1281 : (1953) 23 Com Cas 260 : (1953) 24 I T R 33 : 55 Bom L R 804 : A I R 1954 Bom 95 (99) (Pt C) (Pr 8) (DB).

——S. 5—Family arrangement — Compromise which was a bona fide settlement of doubtful claims and for the benefit of the estate held was a family arrangement binding on reversioners. ILR (1953) 1 Cal 208 : AIR 1952 Cal 473 (477) (Pt C) (Pr 10) (DB).

——S. 5 — Transfer — Settlement of disputed claims relating to land between person belonging to same family — Claims of some relinquished and of others recognised—No transfer of property. AIR 1958 Him Pra 5 (Pt C).

——S. 5—Construction—Family arrangement—What amounts to.

A family arrangement means an arrangement between the members of the same family generally and reasonably intended to be for the benefit of the family either by compromising doubtful or disputed rights or preserving family property or peace and security of the family by avoiding litigation or by saving its honour. Therefore a document, whereby no dispute in the tarwad was settled and which was executed when there was no pressure on the tarwad to be met thereby, nor was any debt of the tarwad discharged by it to save its honour, cannot be called a Family arrangement. 1964 Ker L J 104.

——S. 5—Alienation — Family arrangement between father and son — Son relinquishing his right to property in return for money—Property given to mother absolutely — Arrangement acted upon — Family arrangement is not hit by S. 6 (a) of T. P. Act or by Hindu law—Alienation by mother-widow of property is valid and cannot be repudiated by son. See Hindu Law—Widow. A I R 1954 Madh-B 153.

——S. 5—Family settlement—Nature of—Not a gift. 74 Mad L W 784 : (1962) 1 Mad L J 393 : A I R 1962 Mad 160 (161) (Pt B) (Pr 5).

——S. 5—Transfer—Family arrangement—Essentials.

A bona fide settlement of dispute and an arrangement entered into for the benefit of the estate are the hall marks of a family arrangement. (1957) 2 Mad L J 610.

——S. 5 — There must be competing titles in respect of the properties in dispute—Invalid gift deed cannot be construed as family settlement. A I R 1953 Mad 161 (Pt A).

——Ss. 5. 10—Family arrangement.

As a result of some friction between the members of the family arrangement consented to by the members of the family for the distribution of the properties which belonged to it. Adopted son given some property absolutely — Father and mother given some property for their lifetime — Father not to alienate property — Adopted son consenting to gift of some property by father to his foster son — Arrangement held did not amount to partition but amounted to family settlement — Arrangement did not involve transfer of property and did not attract S. 10 — Restriction on power of alienation by faiher was not invalid. 39 Mys L J 443 : ILR (1961) Mys 932.

——S. 5 — Essentials of family arrangement stated. A I R 1956 Nag 261 (Pt B) (DB).

——S. 5—Remote expectancy is not a good consideration for family arrangement to be valid. A I R 1956 Nag 261 (Pt C) (DB).

——S. 5——Compromise of disputed claims between persons who may not be members of same family by which claim of one person is relinquished and existing rights of others are acknowledged—Not a transfer of property. A I R 1951 Nag 171 (172) (Pt A) (Pt 6).

——S. 5 — Family settlement — Antecedent title — Question of, not involved. A I R 1958 Orissa 242 (Pt C) (DB).

—— Ss. 5, 6 (d) and 10 — Family arrangement not a transfer within S. 5. A I R 1964 Pat 214 (Pt A) (DB).

——S. 5—Family arrangement — Essence of.

It is true that the existence of a family dispute is not the essential ingredient of a family arrangement, nor, the settlement of doubtful or disputed rights is essential to the validity of the family arrangement. The preservation of family peace and the preservation of its property may very well form a good basis for a family arrangement. Nevertheless there must be a situation of a contest or apprehension of some dispute in future which is sought to be bona fide resolved by the arrangement. When maintenance of family peace and harmony forms the basis of the arrangement it implies that there was some trouble existing or anticipated which was calculated to disturb the family peace. But the friction or disharmony which is sought to be prevented must be real and bona fide and not imaginary. Forbearance from raising a hopeless and groundless dispute of a right cannot form a valid consideration for the abandonment of that right. 1957 Pat L R 168 : 1957 B L J R 319 : A I R 1957 Pat 456 (460, 461) (Pt A) (Pr 8) (DB).

——S. 5—Family arrangement— Whether transfer of spes successionis. ILR (1959) 9 Raj 1264.

3 (B). Partition.

——S. 5 — 'Transfer' — Partition is not transfer. See Madras Hereditary Village Offices Act (3 of 1895), S. 5. (1958) 2 Andh W R 608.

——S. 5 — The word 'Transfer' used in S. 9 (9), Berar Regulation of Leases Act (1951), does not include partition. 1958 Nag L J 453 : 60 Bom L R 1431 : ILR (1959) Bom 424.

——S. 5—Partition is not a transfer of property. See Berar Land Revenue Code (1928), S. 174 (4). 1957 Nag L J 296.

——S. 5 — Partition — Property allotted to one co-sharer exclusively — Though it involves transfer of interest or shares of other co sharers to the co-sharer to whom the property is allotted such allotment is never considered to be a sale by one co-sharer to another. AIR 1958 Cal 177 (179) (Pr 10).

——Ss. 5 and 100—'Transfer'—Meaning of—Lease—Subsequent partition between lessors—Evidence Act (1872), S. 116.

The partition is a transfer of property within the meaning of S. 5 and S. 109 as it has been held to be a mixture of surrender and a conveyance of rights in a property.

Held, that any rights of realizing rent or ejecting the defendant which were possessed by the plaintiff once had ceased to exist so far as he was concerned and those rights were now vested in his co-sharers to whom the exclusive ownership had been transferred by partition.

On the date of transfer (in this case partition) the relationship of landlord and tenant ceased to exist between the plaintiff and the defendant. Therefore the defendant was not debarred from pleading that he was not bound by any relationship of landlord and tenant so far as he and the plaintiff were concerned. **10 J & K L R 176 : A I R 1952 Jam & Kash 18 (18, 19) (Prs 3, 4).**

● **——S. 5—Partition of Marumakkathayam tarwad—** Member getting property on partition is not a transferee. A I R 1959 Ker 235. **Overruled.** See Tenancy Laws — Malabar Tenancy (Amendment) Act (22 of 1956), S. 5 (2). **AIR 1963 Ker 66 (FB).**

——S. 5—'Transfer'—Partition—(Nair Act I of 1088, S. 19).

Where immovable property has been partitioned among co-sharers by metes and bounds there is a transfer. **1958 Ker L T 846 : A I R 1959 Ker 235 (236) (Pt A) (Pr 5) (DB).**

[Overruled in AIR 1963 Ker 66 (FB).]

——Ss. 5 and 36—Principle of S. 36 — Applicability to joint family partition. See T. P. Act (1882), S. 36. **AIR 1959 Ker 208 (DB).**

——Ss. 5, 109 — Principles of S. 109 — Applicability to joint family property —Suit for ejectment by the coparcener or coparceners to whom the property in possession of a tenant is allotted on partition alone can terminate the tenancy—Notice by such a coparcener or coparceners alone is valid. AIR 1965 Madh Pra 1 (2) (Prs 4 5, 7, 8).

——S. 5—Houses and Rents — M. P. Accommodation Control Act (XLI of 1961), S. 12 -Suit under S. 12 (1) (f) for eviction of tenant—House allotted to plaintiff in partition — S. 12 (4) does not apply to such property. See Houses and Rents—M. P. Accommodation Control Act (41 of 1961), S. 12. **1964 Jab L J 544.**

——S. 5—Partition— Partition of immovable properties between coparceners — Registration. See Registration Act (1908), S. 17 (1) (b). **A I R 1957 Mad 472 (DB).**

——S. 5—Construction — Partition deed or family arrangement —Tests — (Hindu Law—Partition).

In considering the question whether a document is a partition deed or a family arrangement each document has to be construed on its own merits and not with reference to how similar documents were interpreted or construed under different conditions.

The principle underlying the construction of what on the face of it does not appear to be a partition deed is the course of conduct for a long period of time.

Held, applying the above principle that the document in the instant case was a family arrangement and not an outright partition as only six years had elapsed since the execution of the deed till the filing of the suit for partition. **AIR 1955 N U C (Mad) 2447 (DB).**

——Ss. 5 and 53A—Partition is not a transfer of property within S 53A. See T. P. Act (4 of 1882), S. 53A. **AIR 1951 Mad 213 (DB).**

——Ss. 5, 10—Scope—Partition is not transfer of property—S. 10 does not apply. 39 Mys L J 443 : ILR (1961) Mys 932.

—S. 5—Partition—Mahomedan parties—It is transfer of property. AIR 1963 Pat 108 (Pt A) (DB).

——Ss. 5 and 10, 54, 118 and 122—"Transfer of Property" — Partition — Share falling to co-sharers — Nature of right—Restriction on alienation—Validity —(Hindu Law—Partition).

The true character of partition is, that it converts joint enjoyment into enjoyment in severalty. It is not a conveyance; it is not a gift. The separate allotment is not obtained by another independent title. A partition therefore does not amount to a property 'transferred' within the meaning of S. 10 of the Act. To be an exchange the ownership of one party must be exclusive of the ownership of the other, so that a partition is not an "exchange". The usual type of family settlement by which each party takes a share by virtue of an antecedent title does not fall within the definition of an "exchange". Therefore the restriction of alienation by the allottee in a deed which is either a partition deed, or a family arrangement deed, in respect of the joint family properties is not hit by, and does not come within the purview of S. 10 of the Transfer of Property Act. **AIR 1957 Pat 570 (573, 574) (Pt C) (Prs 21, 24, 25, 27, 28) (DB).**

——S. 5 — 'Transfer' — Definition is for purpose of T. P. Act — Partition — Partition does not amount to 'transfer' or an acquisition of property by transfer within the meaning of Delhi Rent Control Act. See Houses and Rents — Delhi Rent Control Act (59 of 1958), S. 14 (6). **AIR 1965 Punj 450 (DB).**

——Ss, 5 and 109—'Transfers the property'—Includes partition—(Hindu Law—Joint family—Partition).

The term 'transfer of property' is wide enough to include a 'partition' and the provisions of S. 109, T. P. Act can be applied to a person who receives the property leased in his share by partition : AIR 1920 Mad 20, Not foll.

Even if it be held that 'partition' is not included within the term 'transfer of property', as mentioned in S. 5, even then the principle embodied in S. 109, T. P. Act would apply. **1955 Raj L W 129 : AIR 1955 Raj 167 (171, 172) (Pt D) (Prs 23, 27, 28)**

——S. 5—Partition—Partition by metes and bounds— Proof — Deed of partition not registered — State of separation subsequent can be proved by showing separate possession and enjoyment. **AIR 1955 N U C (Sau) 1459 (DB).**

——Ss. 5 and 53-A—Partition—Unregistered deed—Applicability of S. 53-A.

A partition is not a transfer within the meaning of S. 5 and therefore the doctrine of part performance does not apply to an unregistered deed of partition. **6 Sau L R 100 : AIR 1954 Sau 46 (48) (Pt B) (Pr 6) (DB).**

3. (C) Relinquishment, release, abandonment and surrender.

● **——S. 5—Deed—Construction —** Conveyance or release — Document of transfer in terms confirming pre-existing rights - Pre-existing rights not shown— No interest conveyed. **1959 S C J 545 : AIR 1958 S C 832 (837, 838) (Pt C) (Pr 17).**

——S. 5 — Landlord and tenant — Abandonment — Essentials—Intention to abandon.

Abandonment when used with reference to a person having a derivative interest, e.g., a tenant or ryot, essentially means the giving up of his right in the property by the person with the intention that he will no longer have any concern with it and that it is to revert to the person to whom it is ultimately to belong. The necessary intention to abandon must

therefore be there. This intention has a positive as well as a negative aspect.

A tenant cannot be held to have abandoned a shop simply because he executes a gift deed in respect of it in favour of a person who is not only closely related to him but has been brought up by him as his son with the intention that he should continue in the shop after him in the same way as he himself has been in possession of the shop. ILR (1957) 2 All 391 : AIR 1958 All 107 (108) (Prs 6, 7, 8, 9) (DB).

● —Ss. 5, 20—Relinquishment of interest in joint family property by member of Mitakshara Joint Hindu family—Interest in favour of sons to be born in future created—Relinquishment does not constitute transfer of property — Release in favour ot persons not in existence confers no benefit on after begotten sons. Katragadda China Anjaneyulu v. Kattragadda China Ramayya, ILR (1965) Andh Pra 771 : (1965) 1 Andh W R 159 : (1965) 1 Andh L T 149 : AIR 1965 Andh Pra 177 (183) (Pt D) (Pr 37) (FB).

—S. 5—Release deed—Effect of to pass title — Use of the rebut presumption of correctness of settlement record—(Evidence Act (1872), Ss. 18 and 35).

It is true that title or title to land does not pass by admission when the statute requires a deed of transfer and that a mere release is ineffective to pass title. The use of the admission contained in a release deed for the purpose of rebutting the presumption of the settlement record would not be to use it to pass or extinguish title and this is certainly not using the deed of release as a document of title, either creating or extinguishing or transferring title to land. ILR (1957) 3 Cal 614 : 60 Cal W N 793 : 98 Cal L J 64 : AIR 1956 Cal 669 (671) (Pt B) (Pr 17) (DB).

—S. 5—Release—Transfer—(Deed — Construction) —(Cochin Nambudiri Act (17 of 1114), S. 14).

Under S. 14 of the Cochin Nambudiri Act a member of an illom has the liberty to give up his rights in the illom at any time. A mere statement or an affirmation that the person executing the deed of release had no more rights except to the life interest specified without adequate words of conveyance, cannot, in law have the effect of a disposition of property. Such a statement can be an erroneous one, and will not be efficacious to transfer or extinguish rights. 1959 Ker L J 395.

—S. 5—'Transfer'—Release—It is a sort of surrender of rights in favour of another and for all intents and purposes it is a transfer of the rights. AIR 1961 Madh Pra 15 (Pt C) (Pr 11) (DB).

—S. 5—Deed—Construction—Release—Can be read as conveyance. (1961) 2 Mad L J 265.

—S. 5 — Release deed — Not sufficient to transfer title. 1959 Mad W N 258 : ILR (1959) Mad 552 : (1959) 2 M L J 324 : AIR 1960 Mad 33 (41) (Pt E) (Pr 42) (DB).

—S. 5 — Release of her right by daughter before inheritance opens—Transfer—Family arrangement — (Mahomedan Law).

A release of her rights by a Muhammadan presumptive heir (daughter) before the inheritance to the property of her father opens cannot amount to a family arrangement, when there is no agreement between the members of the family or any arrangement with regard to the property. Further, such a release cannot be claimed as a compromise of doubtful claim or disputed rights. AIR 1942 PC 54; AIR 1955 SC 481. Rel. on; ILR (1943) All 411 Dist. (1958) 2 Mad L J 492 : 71 Mad L W 688 : AIR 1959 Mad 131 (134, 135) (Pt B) (Prs 5, 6, 7) (DB).

—S. 5—Transfer — Surrender by Hindu widow — Not a transfer. (1957) 2 Mad L J 610.

—S. 5 — Landlord and Tenant — Surrender—Surrender deed of ryoti rights—Validity.

Held, that the surrender deed was invalid and could not have any binding effect against the plaintiffs. (1957) 23 Cut L T 408.

—Ss. 5, 6, 8, 9, 53, 111—Under tenure merging in Patni tenure — 'Release' — If under-tenure unregistered deed — Effect of release — (Registration Act (1908), S. 17)—(Tenancy laws—Bihar Tenancy Act (8 of 1885), S. 167 — (Bengal Cess Act (9 of 1880), S. 99).

It is well settled that no valid title can be created by relinquishment or release. The release presupposes the existence of title in a third person and does not purport to reconvey that title to him. It is tantamount to an admission of existing facts by the ostensible owner. Release by the patnidar in effect and in essence operates to create a fresh under-tenure and, therefore, in so far as it is done by an unregistered document, it is inoperative to confer any valid title, upon the under-tenure-holders. 1957 B L J R 109 : AIR 1957 Pat 706 (709) (Pt A) (Pr 6) (DB).

—S. 5—Landlord and Tenant—Surrender—Surrender by manager or trustee—Validity.

Surrender by the mother of the original raiyat who at best, was a mere manager or trustee on behalf of him, cannot be a valid surrender in the eye of law so as to give any right to the landlord and extinguish the interest of the original raiyat. AIR 1956 Pat 186 (187) (Pt A) (Pr 3).

—S. 5—Relinquishment—Mere execution of document reciting that tenant was giving up the holding unaccompanied by actual delivery of possession would not amount to relinquishment. See Tenancy Laws—Rajasthan (Protection of Tenants) Ordinance (9 of 1949), S. 7 (5). AIR 1955 NUC (Raj) 3451.

3 (D). Charge.

—S. 5 — Charge—Floating charge created by consent decree on property to come into existence in future—If operative—Maxim "Equity regards that as done which ought to be done" — Applicable in India. 54 Bom L R 757 : AIR 1953 Bom 101 (103) (Pt A) (Pr 7).

—Ss. 5, 2 (d), 55 and 100— Transferred for consideration without notice of charge — Unpaid vendors charge — Charge whether binds auction-purchaser. See T. P. Act (1882), S. 2 (d). AIR 1960 Punj 296 (DB).

4. 'Property'.

● —S. 5—Declaration that certain shares of companies were held by assessee upon trust for 7 years or life of settlee, whichever was shorter, to pay dividends to wife—Trust irrevocable—Dividend income held liable to be included in total income of assessee under S. 16 (3) (b). See Income-tax Act (1922) S. 16 (1) (c). AIR 1961 SC 1026.

—Ss. 5 and 105—Lease during currency of subsisting lease—Validity.

The interest of a lessor is a reversion, a future estate capable of being reduced to possession on the termination of the existing lease and can be validly transferred under S. 5 of the Transfer of Property Act. The transfer would take effect on possession or the termination of the subsisting lease. The fact that the subject-matter of the lease was an eight annas share of the lessor of which physical possession could not be delivered to the lessee does not invalidate the lease. The question as to what amounts to delivery of possession in any particular case will depend upon the nature of the property leased. (1956) Andh W R 1093 : AIR 1957 Andh Pra 619 (622) (Pt B) (Pr 5) (DB).

——S. 5—Subsequent mortgage of property for consideration and without notice of prior charge created over said property prevails—Such mortgage is transfer of property in hands of mortgagee—"In hands of a person"—Meaning of. See Transfer of Property Act, 1882, S. 100, Para. 2. AIR 1964 Bom 1 (DB).

——S. 5—Lease of lands in favour of industrial and commercial company—Lease including plots already let out — Validity. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 88 (1) (b). AIR 1956 Bom 749 (DB).

——Ss. 5, 6, 21, 23—Contingent interest is property and transferable.

Contingent interest is property and it is transferable. Contingent interest does not necessarily require a prior interest for its support and does not, always take effect after the termination of a prior interest. The case of subsequent contingent interest arising on the termination of a prior interest dealt with in S. 23 is not exhaustive of contingent interests as a whole. It is just one kind of such interest. AIR 1960 Cal 609 (615) (Pt B) (Pr 21) (DB).

——S. 5 — Hereditary trusteeship of temple is property. AIR 1955 NUC (Mad) 2419.

——Ss. 5, 6—Applicability—Vested right of minor to challenge alienation by guardian is in the nature of right to property — If mere right to sue—Right if heritable—(Limitation Act (1908), Art. 44).

Where a minor has exercised the option by repudiating the transaction of alienation entered by his mother as his guardian, by filing a suit, after his death pending the suit it is open to him to inherit that right to prosecute the litigation in his or her own right. It is vested right in the nature of a right to property and not a mere right to sue and, as such, is heritable. On principle also there is no reason why the right of a ward to set aside an alienation under Art. 44 of the Limitation Act should be only a personal right and not a right inherent in the estate which would be heritable after his death. Art. 44 of the Limitation Act, has no bearing on this question. ILR 37 Pat 1078 : AIR 1959 Pat 278 (282, 283) (Pt C) (Prs 10, 11) (DB).

——Ss. 5, 6—Gayawali gaddi is property — Transfer of gaddi is valid.

The occupant of a Gayawali gaddi does not hold a priestly office or an office of a religious nature. As such, a gift by the owner of the gaddi is not a transfer of a religious or priestly office nor of an interest restricted in its enjoyment to the owner personally but it is the transfer of a business with its assets, good will and name and so, is not invalid in law. 1956 B L J R 88 : AIR 1956 Pat 345 (349) (Pt C) (Prs 11) (DB).

——S. 5—Property must exist before transfer—Interpretation — Trees — Permanent lease in — Right to new trees.

Held, that the compromise decree did not talk of only the existing trees but talked of the trees in the village which must be said to include not only the existing trees but also the trees that may come into existence. The coming up of the new trees only meant that there was an increase in the number of trees, and that being so, it could not be said that the defendants had no right to rear lac on the new trees. Further, the right being of a permanent character it could not be said that the defendants had no right to the new trees. AIR 1955 Pat 402 (403, 404) (Pt A) (Pr 7) (DB).

——S. 5—"Property"—Meaning of—Decree obtained by citizen of India against another citizen of India in Court of Sub-Judge, Lahore—Decree set aside in appeal by Lahore High Court but restored by Federal Court of Pakistan—Decree whether property. See Indian Independence (Legal Proceedings) Order (1947), S. 4 (3). AIR 1957 Punj 201 (DB).

5. "In present or future".

● ——S. 5—'In present or in future'.

Per Bhagwati, J.:—A transfer of a decree by assignment in writing may be effected by conveying the decree in present or in future to the transferee. But even for the transfer to operate in future the decree which is the subject matter of the transfer must be in existence at the date of the transfer. The words "in present or in future" qualify the word "conveys" and not the word "property" in the section and a 'transfer of property' that is not in existence operates as a contract to be performed in the future which may be specifically enforced as soon as the property comes into existence. Jugalkishore Saraf v. Raw Cotton Co. Ltd. 1955 Mad W N 421 : 1955 SCA 440: 1955 SCJ 371: (1955) 1 MLJ (SC) 220: 1955 An WR (SC) 220 : (1955) 1 SCR 1369 : AIR 1955 S C 376 (398) (Pt K) (Pr 53).

——S. 5—Lease to take effect in future — Transfer, if valid discussed. See Transfer of Property Act (1882), S. 105. AIR 1960 Cal 609 (DB).

——Ss. 5, 43—Transfer of non-existent property—Validity—Effect.

Section 43 cannot validate a transfer prohibited by the statute. Though S. 5 cannot be invoked to validate a transfer of non-existent property, such transfer is not prohibited and there can be no valid objection to the application of S. 43 to such transfers for validating or giving effect to the same. Further, though S. 43 may not strictly apply to transfer of non existent property, its underlying principle, namely, that of feeding the estoppel, would obviously apply to give effect to the particular transfer. AIR 1960 Cal 609 (616) (Pt D) (Pr 25) (DB).

● ——S. 5— Disposal of immovable property by will is not 'transfer' within meaning of S. 5 of J. & K. T. P. Act AIR 1959 J & K 62 (63) (Prs 15, 16) (FB).

——Ss. 5 and 105—Contract to lease or agreement to lease—Difference in pointed out—Lease to commence from a future date—Fact that there is a provision for execution of a formal document in future will not make the transaction a merely executory agreement and not a lease — Actual entry on land is not necessary — Held that there was no lease in praesenti but the registered deed constituted only an agreement to grant lease in future. See T. P. Act (1882), S. 105. AIR 1958 Pat 589 (DB).

6. "Or to himself."

——S. 5—Transfer — Assessee declaring that he held certain shares upon trust for seven years to pay income to wife — Trust irrevocable — Assessee not deriving any benefit from income — Held that there was transfer of assets by reason of declaration of trust from individual settlor to himself as a trustee—In the capacity of a trustee, he was a different person from his capacity as settlor. See Income Tax Act (1922), S. 98 (1) (e) and (3) (b). (1958) 33 ITR 383 (Bom).

SECTION 6

SYNOPSIS

(Transfer of Property Act (1882), S. 6)

1. Scope.
2. "Or by any law for time being in force."
3. Clause (a) — General.
   (A) "Chance of heir apparent succeeding to an estate."
   (B) "Chance of a relation obtaining a legacy."

(C) "Any other mere possibility of like nature."
(D) Applicability of S. 48 to transfers of expectations and possibilities.:
4. Clause (d) —Interest restricted in its enjoyment.
(A) Grant of property for maintenance.
5. Clause (dd).
6. Clause (e) —Mere right to sue.
(A) Rights under contract.
(B) Rights to mesne profits.
(C) Rights under decree.
(D) Right to impeach prior transactions.
(E) Right to sue for accounts.
(F) Right in partnership.
7. Clause (f).
8. Clause (h) (i)—Transfer opposed to nature of interest affected thereby.
(A) Service tenure.
9. Clause (h) (2) — Transfer for unlawful object or consideration.
(A) Consideration partly unlawful.
(B) Forbidden by law.
(C) Transfer for immoral purposes.
(D) Transfer opposed to public policy.
10. Clause (i).

1. Scope.

——S. 6—Contract for transfer of property—Property not in existence — Subsequent acquisition by transferor—Right of intended transferee.

Where there is a contract for the transfer of property not in existence the agreement by itself, proprio vigore does not transfer the property when it is subsequently acquired and the intended transferee cannot be said to have acquired title to it by the force of that agreement. It is only when the transferor voluntarily executes a deed of transfer or is compelled to do so by a decree for specific performance that the legal title of the transferor in the property passes from him to the transferee. The transfer of title is brought about not by the prior agreement but by the subsequent deed of transfer. 1958 Ker L J 521.

——S. 6—'Property' meaning of — Provision of S. 6 of T. P. Act and Ss. 11 an 12 of Pensions Act does not derogate from pension be a property, if it otherwise is so. See Constitution of India, Art. 226. 1965 Pun L R (Supp) 275 : ILR (1965) 2 Punj 1.

2. "Or by any law for the time being in force."

——S. 6—Assam—Brahmottar — In absence of anything contrary in statute or land laws brahmottar land is transferable. AIR 1955 NUC (Assam) 1001 (DB).

——S. 6 (a)— Right to scavenge — Mortgage of—Validity—Right if can be founded on custom—Custom—Customary rights.

There is no such thing as a right to scavenge, and the recognition of any such right in any individual to the exclusion of others would be repugnant to law. A mortgage or a sale of such a right cannot be enforced by any Court of law. AIR 1938 Mad 881 and 6 I C 864 (Cal) Rel. on. AIR 1951 Madh Bha 120 (121) (Prs 2, 4, 7).

——Ss. 6, 5—Gayawali gaddi is property — Transfer of gaddi is valid. See T. P. Act (4 of 1882), S. 5. AIR 1956 Pat 345 (DB).

3. Clause (a)—General.

(A) "Chance of heir apparent succeeding to an estate".

(B) "Chance of a relation obtaining a legacy".
(C) "Any other mere possibility of like nature".
(D) Applicability of S. 48 to transfers of expectations and possibilities.

3. Clause (a)—General.

●——S. 6 (a) — Co-widows — Inheriting husband's property take as joint tenants with rights of survivorship — Partition of properties absolutely and reiinquishment of right to survivorship — Not repugnant to S. 6 (a). See Hindu Law. A I R 1965 S C 1752.

——Ss. 6, 5, 21, 23 — Contingent interest is property and transferable — Prior interest not necessary for contingent interest — Scope of S. 23 indicated. See T. P. Act (1882), S. 5. A I R 1960 Cal 609 (DB).

——S. 6—'Contracts to transfer'—Plaintiff's property under attachment for Government revenue — Before property could be put to sale arrears paid by defendant to Government and property released from attachment—Agreement to transfer property to defendant when property was under attachment is not void — Section 6 has no application as the interest transferred is in praesenti and not a spes successionis. A I R 1955 Hyd 101 (103, 104) (Pt E) (Pr 9).

——S. 6 (a) — Alienation — Family arrangement between father and son—Alienation by widow acting on that arrangement—Validity.

Held, that such a family arrangement was not hit by S. 6 (a) and alienation by widow (mother) was valid. I L R (1954) Madh B 372 : A I R 1954 Madh B 153 (154) (Pr 10).

——S. 6 and Civil P. C., S. 60 and O. 21. R. 52—Property offered as security—Proprietor's right to transfer the property is subject to charge of surety alone—Right to transfer the property is not completely defeated by the liability. 1964 M P L J (Notes) 27.

——S. 6 (a) — Deed of divorce by father and mother—Provision for son's maintenance — Son not entitled to claim share in father's property — Father dying intestate—Extinguishment of son's right.

Held, on facts that as on the date of the divorce deed the plaintiff had no right in the properties of his father, but a spes successionis, the deed did not extinguish the plaintiff's right to inherit over half of the properties of his father. Case law Ref. 1952 Ker L T 203 : I L R (1951) Trav-Co 329 : A I R 1952 Trav-Co 351 (352, 353) (Prs 5, 6) (DB).

3. (A) "Chance of heir apparent succeeding to an estate".

●——S. 6 (a)—Transfer of property by sale—Transferor having spes successionis selling property—Transferor representing that he has present interest in property — Section 43 and not S. 6 (a) applies—Distinction between S. 43 and S. 6 (a). See Transfer of Property Act (1882), S. 43. A I R 1962 S C 847.

——S. 6 (a) — Family arrangement to which reversioners under Hindu law are parties is not prohibited by S. 6 (a), T. P. Act. 1959 All W R (H C) 85 : A I R 1959 All 473 (481, 482) (Pt H) (Pr 31) (DB).

——Ss. 6 (a) and 5—Family settlement — Reversioner giving up half share in property in possession of widow after her death — It is not transfer of spes successionis. See Transfer of Property Act (1882), S. 5. A I R 1953 All 213.

——S. 6 (a) — Family arrangement affecting reversioners' right.

A compromise would contravene S. 6 (a) only when the object thereof is to deal with a spes successionis. When an agreement decides an antecedent title to the estate, in the hands of the widow, the compro-

mise is valid even though indirectly it affects the rights of a reversioner. I L R (1953) 1 All 437 : A I R 1951 All 522 (527) (Pt C) (Pr 26) (DB).

——S. 6 (a) — **Transfer of expectancy — Family arrangement.**

Where a person admittedly the next reversioner, agrees with another member of the family that during the lifetime of the widow each party would remain in possession of a moiety and on her death each would share the inheritance equally and the parties actually divide the properties in their possession in accordance with the agreement, the arrangement is valid as a family arrangement and does not offend against the provisions of S. 6 (a). **A I R 1950 All 320 (322) (Pt C) (Prs 13, 14).**

——S. 6 (a) — Hindu widow — Alienation — Legal necessity—Consent of prospective reversioner—Effect —Reversioner if precluded from challenging alienation by doctrine of estoppel, election or ratification— Law discussed. **A I R 1955 N U C (Andhra) 3617.**

——S. 6—**Spes successionis—Interest of a reversioner.**

A Hindu reversioner has no interest in praesenti in the property in the hands of a widow during her lifetime. His right is only a spes successionis or a mere chance of succession within the meaning of S. 6 of the Transfer of Property Act. It is not a vested interest but only an interest expectant on the death of a limited heir. It cannot therefore be sold, mortgaged or assigned nor can it be relinquished. Such a transfer if effected would be a nullity. **1954 Andh L T (Civil) 163 : (1954) 2 Mad L J (Andh) 195 : A I R 1955 Andhra 49 (53, 54) (Pt B) (Pr 20).**

[**Overruled** on another point in A I R 1955 Andh Pra 8.]

[**Reversed** in A I R 1961 Andh Pra 430.]

——S. 6 (a)—Will—Bequest—Validity—Deed—Family arrangement — Construction — Contract Act (1872), S. 23—Family arrangement — Essentials — Property belonging to Mahomedan, *M*, partitioned among his sons during his lifetime — One clause in partition deed providing that property found in name of *M* and not included in deed, would not be claimed by two sons (plaintiffs) after *M*'s death—Suit filed by the plaintiffs challenging the clause as being void and claiming shares as under intestacy of *M*—No consent by plaintiffs after *M*'s death to disposition under the clause—Clause held to be in nature of will — Bequest to other sons under the clause, not consented to by plaintiffs after *M*'s death, held void—Relinquishment or agreement to relinquish by plaintiffs of their shares on *M*'s death held void under S. 23 of Contract Act, read with S. 6 (a) of T. P. Act — Plaintiffs held not parties to family arrangement. See Mahomedan Law. **1963 Ker L J 1047 : 1963 Ker L T 1173 : I L R (1964) 1Ker 355 : A I R 1964 Ker 200 (DB).**

——S. 6 (a) — **Renunciation by Mahomedan heir of contingent right of inheritance—Validity.**

Even though S. 6 (a) of the Transfer of Property Act does not apply to Muhammadans, a transfer or renunciation of a contingent right of inheritance is prohiaited by the Muhammadan law itself. A distinction sought to be made between relinquishment in the nature of gift or transfer of a contingent right and a mere agreement of contract not to claim the contingent right when the succession opened in future is untenable. A release cannot be supported on the ground of its being a mere contract not to claim a share when succession opens. I L R 58 All 834 : A I R 1936 All 573, Dissent. from. **(1958) 2 Mad L J 492 : 71 Mad L W 688 : A I R 1959 Mad 131 (133, 134) (Pt A) (Prs 3, 4) (DB).**

——Ss. 6 (a) and 35—Release of right by Muhammadan presumptive heir before inheritance opens — It cannot be supported on basis of estoppel or election —Mahomedan Law. **AIR 1959 Mad 131 (136) (Pt C) (Pr 11) (DB).**

——S. 6 — Family arrangement — Essentials stated— There must be either a dispute or at least an apprehension of a dispute — Where it is merely a cloak for the transfer it cannot be upheld. **AIR 1956 Nag 261 (262, 263) (Pt B) (Prs 9, 10) (DB).**

——S. 6 — Remote expectancy is not a good consideration. **A I R 1956 Nag 261 (Pt C) (DB).**

——Ss. 6 (a) and 8—Property allotted to, at division of family properties — Nature of interest created — Widow's estate or maintenance grant — Construction of deed—Property allotted to two widows—Provision as to devolution after their death. See Hindu Law—Widow. **A I R 1962 Pat 28 (DB).**

——S. 6 (a) — **Deed of ekrarnama executed by reversioners — Deed, if family arrangement or hit by S. 6 (a)—Estoppel—Hindu law - Reversioners—Evidence Act (1872), S. 115—Family arrangement.**

A family arrangement is founded on the assumption that there was an antecedent title of some kind in the parties and the agreement acknowledges and defines what that title was, and cannot be deemed to be a transfer of property because by such an arrangement no right, either vested or contingent, is conveyed by one party to another.

Held, that the arrangement embodied in the ekrarnama could not be regarded as a family arrangement, but was a transfer of property which could have come in the hands of the reversioners only after the death of the widow who was alive on the date of the agreement. The agreement, therefore, merely dealt with a mere spes successionis and as such was unenforceable.

Held further that, as the agreement came within the mischief of S. 6 (a), the principle of estoppel could not be invoked by D in a suit by him instituted against B and C for a declaration of his title to the share transferred to him under the ekrarnama. **A I R 1950 Pat 488 (489, 490, 491) (Prs 5, 6) (DB).**

——S. 6 (a) — Reversioners — Transfer of right of expectancy or spes successionis—Transferee's suit for possession after death of widow—Suit held not maintainable — Specific Relief Act S. 18 (o). **A I R 1955 Punj 215 (DB).**

——S. 6 — Widow succeeding to her husband's self acquired property in a compromise with collaterals in a suit relinquishing future right of her minor daughter —Transfer of daughter's right is invalid—At the time of relinquishment daughter had only spes successionis and the widow acting as guardian-ad-litem of the minor could not bargain with or bind or relinquish the rights of the minor. **AIR 1955 NUC (Punj) 4953.**

——S. 6 (a)—Family arrangement—Whether transfer of spes successionis discussed. **ILR (1959) 9 Raj 1264**

——S. 6 (a) — Family settlement—Renunciation of a chance of heir-apparent succeeding to estate—Not valid — But it is valid if supported by consideration and is a part of valid family settlement. See Mahomedan Law. **A I R 1956 Trav Co 217 (DB).**

3 (B). "Chance of relation obtaining a legacy".

——S. 6 (a) — **Widow in possession of limited estate — Compromise between widow and grandson — Grandson given right to take the property after widow's death — Gift over of a remainder being in nature of spes successionis confers no title.**

Held, that the sons would not obtain any right under cl. (9) of the agreement. The compromise was intended only to recognise and declare her pre-existing right in her husband's properties; the inte-

rest would be a woman's estate as known to Hindu Law. She would be the full owner of the property albeit her powers of disposal were limited. There was no scope for any vested remainder existing so long as the female owner possessed her estate as defined by the law. The gift over a remainder after a widow's estate being in the nature of spes successionis could confer no title. Hence Cl. '9' would be void for repugnancy. (1940) 1 M L J 188, Rel. on. 77 Mad L W 9 : (1964) 1 M L J 374 : ILR (1964) 1 Mad 570 : AIR 1964 Mad 387 (389) (Pt B) (Prs 7, 8) (DB).

——S. 6 (a) — Suit claiming past and future maintenance — Assignment of claim pending suit—Validity.

Where a person purports to release his rights in the family properties against an undertaking for maintaining him with clothes and food by the sons and the grandsons and they not having kept up the undertaking files a suit against them claiming that he should be paid past and future maintenance at a specified rate and claims a liquidated sum of money for past maintenance and in the course of the pendency of the proceedings assigns his maintenance his claim prior to the decree is not assignable; it becomes assignable only after it ceases to be a claim and crystallises into a decree. It is nothing more that expectation because the Court may not grant him past maintenance. 1956 Mad W N 653 : A I R 1956 Mad 681 (681, 682) (Pr 8).

3 (C). "Any other mere possibility of like nature".

● ——S. 6 — The validity of family arrangement of disputed rights depends on the facts existing at the time of the transaction and will not be affected by subsequent judicial determination showing the rights of the parties to be different from what was supposed or that one party had nothing to give up. Ponnammal v. Srinivasarangam. AIR 1956 S C 162 (165) (Pr 9).

——S. 6—Sale of right to future offerings at a temple.

A sale of a right in the offerings of a temple to be collected in future is a mere possibility. Provisions of S. 6 of the Transfer of Property Act are attracted to such a transfer and the transfer is inoperative. 1960 Nag L J (Notes) 96 (Bom).

——S. 6—Mortgage of the income derivable in future from the scavenging work to be done would be invalid being an expectancy or a possibility within meaning of Cl. (a) of S. 6. AIR 1951 Madh Bha 120 (121) (Prs 2, 4, 7).

——S. 6—Interest of female specified in S. 8, Hindu Law Women's Rights Act—It is liable to attachment and sale in execution of decree obtained against her. See Mysore Hindu Law Women's Rights Act (10 of 1933), S. 8. 53 Mys H C R 278 : (1951) 29 Mys L J 64 (DB).

——S. 6—Birat Jajmans—Nature of right—Lady, the last holder of Birat can make arrangement with another to officiate as priest — Holding of Birat Jajmani is not holding of a religious office—There is no office which purohit holds. 1952 Raj L W 335 : ILR (1952) 2 Raj 116 : AIR 1953 Raj 144 (144, 145) (Pr 6) (DB).

——S. 6 — Agreement to convey property to be acquired in future.

The Act was not in force in Travancore and so the question of the validity or otherwise of a covenant in respect of future property must depend not on the provisions of S. 6 of the enactment but on the general principles of equity, and, therefore, an agreement to convey property to be acquired in the future is enforceable in spite of S. 6. 1954 Ker L T 111 : AIR 1954 Trav-Co 357 (358) (Pr 4).

3 (D). Applicability of S. 48 to transfers of expectations and possibilities.

——S. 6—S. 6 no bar to applicability of S. 43 — S. 43 applies to case when transferor has non-transferable interest which subsequently becomes transferable. See Transfer of Property Act (1882), S. 43. AIR 1965 All 504.

—— Ss. 6 (a) and 43—Transaction void—Ratification — Non-applicability of S. 43. See T. P. Act (1882), S. 43. AIR 1959 Mad 131 (DB).

● ——Ss. 6 and 43 — Applicability of S. 43 discussed —Transfer of spes successionis without making representation that the transferor had authority to transfer —S. 43 will not help — Where both parties know the truth S. 43 cannot be invoked — Transferee from reversioner not aware of the truth at time of transfer that which was being transferred was only a spes successionis — S. 43 would not apply. 65 Mad L J 588 : AIR 1933 Mad 795 : 145 Ind Cas 965, Overruled. See T. P. Act (1882), S. 43. AIR 1953 Mad 637 (FB).

4. Clause (d)—Interest restricted in its enjoyment.

(A) Grant of property for maintenance.

4. Clause (d) — Interest restricted in its enjoyment.

——Ss. 6 (d), 8 and 10—Applicability — Enjoyment restricted to person—Test.

The test in deciding whether the property allotted to the widow or to some other person for maintenance or for any other purpose comes within the ambit of S. 6 (d) or not is whether the deed conferred any right against the properties comprised therein or whether the intention was to give her for her maintenance a personal right to appropriate the profits in the property assigned to her. The answer to the question depends upon the facts of each case and the interpretation of the relevant document. If, on a construction of the relevant terms of the instruments the Court comes to the conclusion that rights were created against the property, the matter is taken out of the purview of S. 6 (d). (1958) 2 Andh W R 183 : 1958 Andh L T 735 : ILR (1958) Andh Pra 510 : AIR 1958 Andh Pra 658 (659, 660) (Prs 4, 5) (DB).

——S. 6 (d)—'Property'—Meaning of.

Taking into consideration the provisions of Ss. 6 (d) and 105, it can be said that where enjoyment of tenancy right has not been restricted to the tenant personally under the terms of the lease or there is no enactment which restricts the enjoyment of the tenancy right to the tenant himself the right of the tenant is property. AIR 1959 Assam 61 (62) (Pt A) (Pr 2) (DB).

——Ss. 6 (d), 10, 5—Family arrangement not a transfer within S. 5—Party getting property under family arrangement subject to absolute restraint in the matter of alienation — Held S. 10 could not apply—Lessee from such party could not acquire title to property—Suit by both lessor or lessee against others for ejectment — Trial Court held could not pass a decree in favour of lessee — Appellate Court held could pass decree in favour of lessor though he had not filed appeal or cross-objection. AIR 1964 Pat 214 (217, 218, 219, 220) (Pt A) (Prs 5, 6, 8) (DB).

——S. 6 (d) — Applicability — Mahomedan widow—Lien for dower—Alienability. See Mahomedan Law —Dower Debt. AIR 1960 Pat 147 (DB).

4 (A). Grant of property for maintenance.

——Ss. 6 (d), 7 and 10 — Deed of partition — Construction—Partition between Hindu father and sons—Eldest son even though having no interest in family

properties given some properties by way of maintenance of his family with no power of alienation—Nature of interest acquired by him.

Held (i) on a fair construction of the deed of partition that the only interest in the property given to S, the eldest son of the executant of the partition deed was the interest described in Cl. (d) of S. 6 of the Transfer of Property Act restricted in its enjoyment to him personally. It was not transfer of a life estate. The donors could not have thought of having him a life estate in the English law sense knowing fully well that if such a right is given to him he would immediately plunge into a reckless career alienating that life interest also, thereby throwing his wife and children into the streets. (ii) that as S had no right to transfer the properties obtained under the document, subsequent alienations of the same were void and inoperative even during his lifetime. ILR (1963) Cut 830: AIR 1964 Orissa 59 (62) (Prs 13, 14) (DB).

5. Clause (dd).

——S. 6—Waqif can reserve entire income from wakf for the benefit of the wakif, his family and his descendants. Such reservation is to be made for their maintenance and support not in the restricted sense in which the phrase "maintenance allowance" is used in S. 60, Civil P. C., and S. 6 of T. P. Act but in a larger sense of personal use for all lawful purposes. ILR (1954) 2 All 556 : AIR 1957 All 94 (101) (Pt H) (Pr 30) (DB).

——S. 6 (d) and (dd) — Deed of wakf — Right of beneficiaries under wakf deed to receive certain amount of money periodically for maintenance known as "kharch parwarish" and prawarish with words "gujara ka vaste"—It is a mere right to future maintenance and is neither attachable nor saleable in execution of decree under S. 60 (1) (n), Civil P. C. 1950 All L J 386 : ILR (1951) 1 All 740 : A I R 1952 All 662 (665) (Prs 18, 19) (DB).

——S. 6 (dd):— "Right to future maintenance" — Restricted scope of expressions used in S. 60, Civil P. C. and S. 6 (dd), T. P. Act pointed out. See Civil P. C. (1908). S. 60 (1) (n). A I R 1957 Andh Pra 215 (DB).

——S. 6 — Member of tarwad—Right to maintenance —Surrender deed surrendering right to arrears and those accruing — It is transfer of property. See Provincial Insolvency Act (1920), S. 2 (1) (d). AIR 1955 N U C (Mad) 3144.

——S. 6 (dd) — Right to future maintenance—When liable to attachment stated. See Civil P. C. (1908), S. 60 (1) (n). AIR 1954 Mad 946.

——S. 6 (dd) — Right to sue in personal actions — Widow's claim to maintenance — Death of widow pending suit — Right does not survive to legal representative. 1952 Mad W N 628 : 65 Mad L W 793 : (1952) 2 Mad L J 344 : I L R (1953) Mad 527 : AIR 1953 Mad 202 (203) (Pr 10) (DB).

——S. 6 (dd) — Civil P. C., S. 60 (1), Proviso (n) — Arrears of maintenance right to is not within Cl. (dd)—Prohibition against attachment in respect of maintenance applies only to future maintenance and not to arrears. See Civil P. C. (1908), S. 60 (1) Proviso (n). AIR 1950 Orissa 220 (DB).

——S. 6 (dd) — Civil P. C. (1908), Ss. 51, 60; O. 33, R. 10; O. 40, R. 1—Decree for future maintenance—Government has right to appointment of receiver to realise court-fee payable to them under the decree—This right is subject to safeguards as to leaving adequate provision for the plaintiff. See Civil P. C. (1908), S. 51. AIR 1950 Orissa 220 (DB).

——S. 6 (a)—Alienation — Legal necessity — Sale by coparcener only—Existence of widow having interest in property—Nature of interest acquired by alienee—Suit by alienee for declaration of title and confirmation of possession. 1963 B L J R 536 : AIR 1963 Pat 277 (281, 282) (Pt B) (Prs 10, 13) (DB).

——S. 6 (dd) — Right to future maintenance — Not attachable and transferable—Gift of entire property with obligation on donee to pay a monthly sum to donor as maintenance for his life. ILR 30 Pat 1046 : AIR 1952 Pat 78 (79) (Pt A) (Pr 4) (DB).

6. Clause (e)—Mere right to sue.

(A) Rights under contract.

(B) Right to mesne profits.

(C) Rights under decree.

(D) Right to impeach prior transactions.

(E) Right to sue for accounts.

(F) Right in partnership.

6. Clause (e)—Mere right to sue.

——S. 6—Scavenging rights —Birt Khakrobi—Transferability.

In the absence of any evidence to show that birt khakrobi right has been based on any custom grant or agreement and that there is any custom recognising the right as a transferable right or as a right in immoveable property such right cannot be held to be transferable and cannot be made the subject-matter of a valid lease : 1961 All W R (H C) 475 : 1961 All L J 565 : A I R 1961 All 518 (519, 520) (Pt B) (Prs 7, 10).

——S. 6 (e)—Construction—'Mere' — Significance of —'Bare' in English law — Reasons for exception—Transfer of right to recover profits arising out of land along with transfer of land—Validity.

Section 6 (e) is closely associated with the exception of the bare right of action not being assignable. The word, 'mere' in S. 6 (e), should be given similar importance.: The clause has been framed on the English rule and precedents defining the limits of the rule have been frequently followed as guides in applying the clause. Moreover, the doctrine of champerty and maintenance not having been fully adopted in India, S. 6 (e) should not be extended beyond what it was intended to prohibit. Section 6 (e) should not cover that assignment of the right to recover profit which is supported by the alienation of the property out of which the profits arose and is sufficiently connected with the enjoyment of the property. Consequently a transfer of the right to recover profits which arose out of land along with a transfer of the land itself is not hit by S. 6 (e), Transfer of Property Act. AIR 1916 Mad 473 (1); 25 M L J 410 and Observations of Ramesam J. in AIR 1927 Mad 817 : 53 Mad L J 342, Dissented from ; I L R 44 Mad 539, Foll. Gangaraju v. Gopala Krishnamurthi. (1957) 1 Andh W R 309 : 1957 Andh L T 357 : I L R (1957) Andh Pra 215 : A I R 1957 Andh Pra 190 (193, 195, 196) (Prs 10, 14, 17) (FB).

——Ss. 6, 3 and 130 (2) —Actionable claim what is—Hypothecation bond of standing crops — Transfer of rights under such bond — Suit by transferee to recover debt held not maintainable. See T. P. Act (1882), S. 3. AIR 1963 Assam 11 (DB).

——Ss. 6, 130 — Presidency Towns Insolvency Act (1909), S. 46—Contract Act (1872), S. 172 — Deed — Construction principles relating equitable assignments —Agreement between debtor and his creditors for payment of dues from dividends on debtor's shares in company under liquidation held on facts of case, not to amount to equitable assignment. (1897) 1 Q B 17, Disting. AIR 1964 Cal 470 (472, 473, 474) (Prs 9, 12, 13, 14, 17) (DB).

——S. 6 (e)—"Mere right to sue"— Short delivery of goods consigned by Railway — Consignee getting

money from insurer and assigning to him all rights against Railway — Such assignment is not hit by S. 6 (e). A I R 1964 Cal 31 (31, 32, 33) (Prs 1, 3) (DB).

——S. 6—Houses and Rents—West Bengal Provinces Tenancy Act (1956), S. 17 — Suit for ejectment by assignee of premises with arrears of rent.

Claim for arrears of rent ceases to be claim for rent and converted into an actionable claim as defined in S. 3 and is assignable. See Houses and Rents — West Bengal Premises Tenancy Act (1956), S. 17. AIR 1960 Cal 378 (DB).

——S. 6 (e)—Mere right to sue cannot be transferred. Transfer of a bare right to sue and nothing else is prohibited. AIR 1959 Cal 352 (Pr 9) (DB).

——S. 6 (e) — Applicability — Entire business or undertaking transferred along with its right to sue—Enforcement of contract — (Specific Relief Act (1877), S. 23 (g) and S. 27 (d)).

Section 6 (e) provides that a mere right to sue cannot be transferred. Transfer of a bare right to sue and nothing else is prohibited. Property with an incidental right to sue for damages may be transferred. An undertaking or business as a going concern is property. A right to sue for damages for breach of contract appertaining to the business is intimately connected with the enjoyment of the business and is an important item of its assets. The assignee of the business takes it with all rights appertaining to it. Hence, a transfer of an undertaking together with the right to sue for damages for breach of contract appertaining to the undertaking is not a transfer of a mere right to sue and as such does not infringe the provisions of S. 6 (e) of the Transfer of Property Act. In this connection it may be noted that by Ss. 23 (g) and 27 (d) of the Specific Relief Act where a public company has entered into a contract and subsequently becomes amalgamated with another public company, that contract may be enforced by or against the new company which arises out of the amalgamation. (1959) 29 Com Cas 357 : I L R (1960) 1 Cal 615 : A I R 1959 Cal 352 (353, 354, 355) (Pt C) (Prs 9, 10, 17, 21) (DB).

——S. 6 (e)—Transfer of right to recover damages in respect of property along with property itself — Validity.

When a property is transferred and along with it, a right to recover damages or compensation in respect of that property, the assignment of this right is a valid assignment and is not hit by clause (e) of S. 6. ('51) 88 Cal L J 126 : 56 Cal W N 260 : A I R 1953 Cal 321 (321) (Pt A) (Pr 4).

——S. 6 (e) — Usufructuary mortgage — Mortgagee keeping portion of consideration and agreeing to pay interest—Nature of stipulation. See Transfer of Property Act (1882), S. 76 (h). AIR 1959 Ker 163 (DB).

——S. 6 — Transfer of ownership of business. See Sales Tax — M. P. General Sales Tax Act (2 of 1959), S. 33 (1). 1965 Jab L J 392 : (1965) 16 S T C 350 : 1965 M P L J 364.

——S. 6 (e) — Chalgeni, tenant—Right to claim improvements.

The right of a chalgeni tenant to claim the value of the improvements of the property by reason of his putting up additional buildings which are attached to the land is a right annexed to the ownership of the land and the ownership of the buildings put up by the tenant. Such a right which is annexed to immoveable property is transferable and the purchaser of the tenant's right therefore acquires a right to claim the value of the improvements. A I R 1955 N U C (Mad) 2430.

——S. 6 (e) — Applicability — Right of a minor to question an excessive or improper alienation by de facto guardian.

Alienation by de facto guardian — Ex-minor transferring his interest — It is not transfer of mere right to sue but interest in property, though suit may be necessary to set aside alienation — Transferee can challenge the alienation. (1951) 1 Mad L J 265 : AIR 1951 Mad 817 (820, 821) (Pr 13).

——S. 6 (e)—Partition — Rights of transferee — Sale by manager — Subsequent transfer by minor member on attaining majority — Transferee has right to sue for partition and possession without setting aside sale by manager—Limitation Act (1908), Art. 44. AIR 1950 Mad 560 (Pt B) (Pr 2).

——S. 6 (e)—"Mere right to sue" — S dying leaving widow H and daughter's daughter B by previous wife—H gifting to her daughter M—Gift upheld and possession taken by M—B selling property to plaintiff as reversioner — Plaintiff suing M for possession — Transfer to plaintiff is not of mere right to sue and is valid. ('52) 1952 Nag L J (Notes) 148.

——S. 6 (e) — "Actionable claim" and "right to sue" —The words "right to sue" do not connote the same thing as the words "actionable claim". A I R 1951 Pat 415 (417) (Pt A) (Pr 8) (DB).

6 (A). Rights under contract.

——S. 6 — Benefit of contract, if can be assigned in favour of third party.

Where a sale deed in respect of certain land contains a stipulation that the vendee would reconvey the property to the vendor in case he repays the purchase price to the vendee after two years but within fifteen years from the sale, the benefit of such a contract of repurchase can be validly assigned in favour of the stranger who can enforce the same against the vendee. AIR 1954 Assam 95 (96) (Pt A) (Pr 2).

——S. 6—Assignment of rights under contract.

In order that the assignment should be effective all the interest of the assignor under the contract must be transferred and conveyed to the assignee — The only question that the Court has to consider with regard to assignments is whether if the debtor paid the assignee, he would get a complete and proper discharge — A's contract with B, as sole proprietor of A and sons.—Assignment of benefits under contract by A to C as karta of the Hindu joint family firm of A and sons does not affect B's liability to pay A and in law to pay his assignee C — B cannot plead against C's claim on the ground that since the assignment was made by A as karta, the other coparceners of the joint family may make claims against him contending that the assignment was not made for the benefit or legal necessity of the family and that therefore he apprehended that by paying assignee he could not get a complete discharge. AIR 1954 Bom 167 (170) (Pt B) (Pr 7).

——S. 6 (e) — Railway accepting goods for carriage and delivery—Short delivery to consignee — Insurer paying damages to consignee — Consignee assigning all rights, title and interest and also all rights and claims against Railway to Insurer in respect thereof — Suit by Insurer against Railway — Assignment is not assignment of mere right to sue for damages — As such was not hit by S. 6 (e)—Suit is maintainable. 1962 Cal L J 140 : 66 Cal W N 419.

——S. 6 (e)—Applicability—Rights under contract — Transferability.

The right to recover damages for breach of a contract is a mere right to sue and is not ordinarily assignable. (1957) 100 Cal L J 70.

——S. 6 (e)—Banking Companies Act (1949), Ss. 45 (5) (e) and 45-L (4)—Suit by plaintiff bank for damages against its servants on ground of acts of misfeasance —Plaintiff bank amalgamated with second plaintiff bank during pendency of suit which was also transferred — Second plaintiff held was entitled to continue suit—Companies Act (1956), S. 543—Civil P. C. (1908), O. 22, R. 10. **78 Mad L W 569 : (1965) 2 Com L J 210 : (1965) 2 Mad L J 443 : 1965 Mad W N 277 : AIR 1966 Mad 26 (27, 28, 29) (Prs 3, 5, 6) (DB).**

——Ss. 6, 23 (b)—Assignment of option under contract—Contract of sale of property containing option to repurchase reserved to vendor — Option is assignable in absence of contract to contrary and can be enforced by assignee—Burden of proving contrary is on him who pleads it. See Specific Relief Act (1877), S. 23 (b). **AIR 1965 Mad 506 (DB).**

——Ss. 6 (e), 130-A, 92—Right to sue — Motor insurance — Assured assigning all his rights to insurer — Insurer can sue third party in his own name not because he is subrogated to rights of assured but because of express assignment of all rights by assured. **1964 Mad W N 400 : 35 Comp Cas 874 : 77 Mad L W 511 : I L R (1964) 2 Mad 901 : AIR 1965 Mad 159 (160, 161, 162) (Prs 4, 5, 6, 7, 8, 9).**

——S. 6—Transfer of share effected after declaration of dividend — It cannot convey title to transferee to receive payment of dividend already declared. See Companies Act (1956), S. 206. **A I R 1964 Mad 519 (DB).**

——Ss. 6 (e) and 8 — Mere right to sue not transferable — Mining lease — Lessee having right of indemnity in respect of payment of way leave rent as legal incident of lease-hold property and not as personal covenant — Transfer of leasehold property —Right to indemnity also passes to transferee. **1962 B L J R 942 : A I R 1963 Pat 160 (163, 164) (Pt B) (Prs 9, 10) (DB).**

——S. 6—Widow—Property allotted to at division of family properties — Nature of interest created — Widow's estate or maintenance grant — Construction of deed — Property allotted to two widows — Provision as to devolution after their death—Effect stated. See Hindu Law—Widow. **AIR 1962 Pat 28 (DB).**

——Ss. 6, 3 and 130 — Assignment of rights under contract—Contract to deliver goods—Damages specified in case of breach — Breach — Suit by assignee to recover earnest money and damages — Assignee was entitled to recover earnest money but not the amount specified as damages for breach — C is only entitled to reasonable compensation — Transfer of claim to recover damages even where they are mentioned, being mere right to sue, is not permitted by law — (Contract Act (1872), S. 74). See Transfer of Property Act (1882), S. 3. **AIR 1952 Raj 187.**

6(B). Right to mesne profits.

——S. 6 (e) — Right to mesne profits — Transfer of ownership of property and also right to collect arrears of rent and mesne profits — **Held**, that right to mesne profits being transferred with property was not mere right to sue and transfer thereof was not hit by S. 6 (e). **1965 All W R (HC) 569.**

——S. 6—Assignment of mere right to claim mesne profits along with the property itself is not a transfer of a mere right to sue. **AIR 1951 Trav-Co 180 (181) (Pr 5) (DB).**

6(C). Rights under decree.

——S. 6—**Right of assignee from mortgagor judgment-debtor to claim benefit of instalments granted by decree.**

An assignee of equity of redemption from original mortgagor against whom an instalment mortgage decree has been passed under S. 34, Bengal Money-Lenders Act can avail of the right to pay by instalments conferred by the decree — Right to redeem by instalments attaches to the loan itself and is not a personal right reserved for the original borrower. **92 Cal L J 269 : AIR 1954 Cal 129 (131) (Pr 12).**

——S. 6—**Right to arrears of maintenance — (Hindu Law—Maintenance—Arrears—Rights to).**

Held, on facts that in such circumstances in case of the death of the third defendant, defendants 4 and 5 would be entitled to claim as heirs the amount payable to the third defendant after ascertainment. By reason of the preliminary decree the third defendant had become entitled to maintenance, though unascertained, which could be considered to be property, which was transferable and heritable. After the preliminary decree the right of the third defendant to be entitled to a particular sum had become recognised and it could not be said that after decree, any defences which might be open against her would still be available. The right of the widow had been declared and it could no longer be said to be mere right to sue. Once the claim had ripened into a decree, it could not be a mere right to sue. Nor could it be a right to future maintenance as the fourth and fifth defendants only claimed arrears of maintenance that had already accrued to which the third defendant was entitled on the date of the death. The preliminary decree for partition was transferable and heritable notwithstanding that the amount remained to be ascertained. Case-law discussed. **1954 Mad W N 974 : 68 Mad L W 943 : I L R (1955) Mad 1122 : (1955) 1 Mad L J 72 : A I R 1955 Mad 165 (168, 169, 170) (Pt B) (Prs 6, 8, 11) (DB).**

——S. 6 (e)—Assignment of a right to apply under mortgage decree for personal decree for portion not paid off by sale proceeds is not invalid. **(1949) 2 Mad L J 741 : 63 Mad L W 54 : AIR 1951 Mad 628 (629) (Prs 1, 7) (DB).**

6 (D). Right to impeach prior transactions.

——S. 6 (e)—**Transfer by ex-minor of property unauthorisedly sold by his guardian.**

Where an ex-minor transfers property unauthorisedly sold by his guardian during his minority he transfers not a mere right to sue but his interest in the property, though a suit may be necessary to avoid the transfer by the guardian and recover possession of the property from his alienee. Conversely, the liability of the transferee from the guardian is not a liability to pay damages for the unauthorised act of the guardian but is a liability to restore the property to the rightful owner or his transferee. **AIR 1951 Mad 817 (820, 821) (Pt C) (Pr 13).**

——Ss. 6, 5 — Vested right of minor to challenge alienation by guardian — Right exercised — Right if heritable—(Limitation Act (1908), Art. 44). See T. P. Act (1882), S. 5. **AIR 1959 Pat 278 (DB).**

6 (E). Right to sue for accounts.

——S. 6 (e)—**Right to sue for accounts.**

Where the income from the jagir has been received by the Certificate holder, the other sharers can validly assign their right to take accounts of their share in the income of the Jagir. **I L R (1953) Nag 764 : 1953 Nag L J 410 : AIR 1953 Nag 335 (337) (Pt B) (Prs 19, 20).**

6 (F). Right in partnership.

——S. 6—Applicability—Assignment of debt as part of assets of firm to one of partners—It is not transfer of actionable claim—S. 130 is not applicable to such case. See Transfer of Property Act (1882), S. 130. **AIR 1964 All 15.**

——S. 6 (e)—Civil P. C. (1908), O. 22, R. 3—Suit for dissolution of partnetship and accounts — Transfer pending appeal, of interest in partnership including

right to continue appeal in case of transferor's death —Transfer is of tangible interest in partnership and tranferable right to sue notwithstanding the fact that suit stood dismissed at the time of transfer, what transferee gets by transfer is not a mere right to sue. (1950) 1 Mad L J 309 : 1950 Mad W N 248 : AIR 1950 Mad 824 (827) (Pt B) (Prs 8, 9).

7. Clause (f).

——S. 6 (f)—Public policy—What is — Agreement in respect of public office—Validity—Policy under S. 5, Madras Hereditary Village Offices Act and S. 6 (f) of T. P. Act. See Contract Act (1872), S. 23. AIR 1964 Andh Pra 465.

——S. 6 (f) —"Public office" —Office of worship in temple—(Hindu Law—Partition).

In India a public office is deemed to be a position of trust and S. 6 (f) of the Transfer of Property Act provides that a public office cannot be transferred, nor can the salary of a public officer. An office of worship in a temple which is heritable and partible, is not a public office within the meaning of S. 6 (f) of the Transfer of Property Act. 1956 Andh W R 1050 : AIR 1957 Andh Pra 876 (877, 878) (Pt A) (Pr 2) (DB).

——S. 6 (f)—Consent decree—Term that amount be recovered by attaching defendant's salary — Defendant, an employee of railway company — Contract void under Contract Act, S. 23 and T. P. Act, S. 6 (f) —Exemption under S. 60 (i), Civil P. C. is mandatory and cannot be waived — Contract Act (1872), S. 23. See Civil P. C. (1908), S. 60 (i). AIR 1950 Bom 155 (DB).

——S. 6 (f)—Applicability — Agreement by younger brother in favour of elder brother to pay latter specified sum every month after he commenced to earn income — Amount fixed as percentage of possible earnings — Promisor not bound to pay out of salary —Absence of relationship of lender and borrower— Agreement in consideration of natural love and affection —If void —Public policy —Penalty —Contract Act (1 of 1872), S. 74—Applicability.

Section 6 (f), Transfer of Property Act, prohibits the transfer of public office and the salary of the public officer whether before or after it has become payable. Where an agreement does not at all purport to deal with the salary of a public officer and does not by itself have anything to do directly with any public office, and when no head of a department, could, under the agreement; be requested to deduct for the benefit of the promisee any sum payable to the promisor, S. 6 (f) cannot be invoked to invalidate it. When there is no relationship of debtor and creditor or lender and borrower, but the agreement is made out of natural love and affection by an younger brother to an elder brother for the maintenance of the latter and his dependents, no question of penalty arises and S. 74 of the Contract Act cannot have any application. (1840) 48 E R 1290 at 1292; (1859) 28 T L J 868; ILR (1941) Bom 415; AIR 1927 Mad 818, Distinguished. 1959 Mad W N 620 : ILR (1960) Mad 87 : (1960) 1 MLJ 164 : 73 Mad L W 188 : AIR 1960 Mad 188 (188, 189, 190) (Prs 6, 7, 12, 13, 14).

——S. 6 — "Property" — Passage benefit provided to member of Indian Civil Service. See Constitution of India, Art. 31. AIR 1957 Pat 515 (DB).

8. Clause (h) (1) — Transfer opposed to nature of interest affected thereby.

(A) Service tenure.

8. Clause (h) (1) — Transfer opposed to nature of interest affected thereby.

——S. 6—Religious endowment —Shebait — Transfer of right of office — Shebaitship cannot be transferred unless the transaction is the same as renunciation by shebait of the entire right as shebait amounting to acceleration— Transferor retaining portion of his right and transferring remaining portion — Such transfer cannot be upheld even if it is to next of him —It is repugnant to the very concept of shebait right which consists of office and property inseparably mixed up and blended together—Even if pala could be transferred, it does not mean that a shebaiti right could be transferred. 84 Cal L J 237 : AIR 1951 Cal 490 (496, 497) (Pt A) (Prs 19, 23).

8 (A). Service tenure.

——S. 6 (h)—Service inam land—Lease of—Validity —(Madras Hereditary Village Offices Act (3 of 1895), S. 5).

Held, that the statutory provision enacted in S. 6 (h) of T. P. Act is that if the service-holder had placed himself beyond the reach of the income from the inam which is attached to the office by a transaction, be it a lease or a mortgage or a sale, it would be inoperative and invalid, as by being deprived of the income therefrom he cannot satisfactorily render service for which purpose the inam is granted. Even under S. 5 of the Madras Hereditary Village Offices Act, the lease became inoperative after the lessor left the village permanently without making any arrangements for the performance of service. In these circumstances, the lease was voidable and did not bind the successor-in-office of the lessor. AIR 1935 Mad 320; 69 M L J 115, Dist.; 70 M L J 286, Relied on. (1957) 2 Andh W R 471 : 1958 A L T 128 : AIR 1958 Andh Pra 286 (288) (Pr 6).

——S. 6 (h)—Standing crops on archaka service property—Attachment in execution — S. 6 (h) not violated. See Civil P. C. (1908), S. 60. AIR 1957 Andh Pra 349.

9. Clause (h) (2)—Transfer for unlawful object or consideration.

(A) Consideration partly unlawful.

(B) Forbidden by law.

(C) Transfer for immoral purposes.

(D) Transfer opposed to public policy.

9. Clause (h) (2)—Transfer for unlawful object or consideration.

——Ss. 6 (h), 122—Validity of gift.

No question of unlawful consideration arises in the case of a gift which is a transfer without consideration.

The only relevant factor to be taken into consideration in deciding the question whether a gift would come under S. 6 (h), T. P. Act, is the object of the donor in making the gift. Therefore, even if the marriage between the donor and the donee is not valid according to law the object in making the gift cannot be said to be unlawful so long as the donor regarded the donee as his lawfully wedded wife. ILR (1953) Trav-Co 1121 : AIR 1954 Trav-Co 348 (349, 350, 351) (Pt B) (Prs 8, 9).

9 (A). Consideration partly unlawful.

——S. 6 (h)—Premium forming part of consideration of transfer—Validity of transfer.

The W. B. Premises Rent Control (Temporary Provisions) Act by S. 7 prohibits the claiming or receiving of any premium or selami in addition to the rent, for the grant, renewal or continuance of a tenancy. If the receipt of a salami forms part of the consideration for the transfer, S. 23, Contract Act would be attracted and the Court would give no assistance to the parties to such transfer and would certainly refuse to grant specific performance of an agreement which would run counter to the provisions of law contained in S. 6 (h). ILR (1956) 2 Cal 859 : AIR 1955 Cal 442 (444, 445, 447) (Pt B) (Prs 19, 20, 24, 25).

9 (B). Forbidden by law.

——S. 6—Fraud—Effect — (Registration Act (1908), S. 28).

Mortgage of property—Registration in place where property did not exist — Fraud on law of registration —Fraud carried out in part in that creditors were deprived of property — Plaintiff benefited throughout—Plaintiff will not be allowed to take advantage of his own fraud. AIR 1955 N U C (All) 1992 (DB).

——S. 6—Minor — Transfer by guardian—Right of subsequent transferee from ward to resist suit by prior transferee — (Limitation Act (1908), Art. 44)—(Evidence Act (1872), Ss. 101 to 104).

Where the property of the ward is mortgaged by his guardian and the mortgagee brings a suit on the mortgage, it does not matter whether it is the ward that resists the suit or the subsequent alienee from him. The latter is entitled to put the plaintiff to proof that the mortgage in his favour is valid and binding upon the property in his hands. 1957 Ker L T 389 : 1957 Ker L J 251 : AIR 1957 Ker 96 (96, 97) (Pr 5).

9 (C). Transfer for immoral purposes.

——S. 6 (h) (2)—Scope—Transfer for immoral objects — Validity — Particeps criminis — Applicability of principles laid down in Ayerst v. Jenkins, (1874) 16 Eq. 275 in India — Lease of house by owner for running brothel—Right of executors and trustees of will of owner to recover back property—Public policy—(Contract Act (1872), Ss. 23, 65).

Where the owner of a house lets out the property to the defendant for the immoral purpose of running a brothel, the executors and trustees of the will of the owner, who were not in pari delicto or in particeps criminis can sue to eject the defendant on the basis that the transfer is void and the Court will accord relief to the claimants.

In Indian law the transferor claiming that the transfer is void may sue to recover the property on the strength of his original title and in general he may be given relief though he is particeps criminis.

In the instant case, no rule of law or equity or public policy preclude the plaintiffs from obtaining relief. Public interest and public welfare demand discontinuance of the brothel and of the user of the premises as a place of promiscuous sexual intercourse. The lease for immoral purposes ought not to be allowed to stand for reasons of public policy. 63 Cal W N 258 : ILR (1959) 2 Cal 684 : AIR 1958 Cal 713 (719, 724, 729, 730) (Pt C) (Prs 24, 44, 114, 117) (DB).

9 (D). Transfer opposed to public policy.

——S. 6 (f)—"Public office"—Office of village barber and of vetti whether 'public office'—Agreement with respect to village barber service inam—No reference to office of vetti or its remuneration—Agreement held not opposed to public policy or non-alienable. See Andhra Pradesh (Andh. Pra) Hereditary Village Offices Act (3 of 1895), S. 3 (1) (v). AIR 1964 Andh Pra 465.

——S. 6—Paying capacity of debtor—Determination of—Property what is—'Pension' received by the debtor to be excluded while determining capacity. See Debt Laws — Hyderabad Jagir Debt Settlement Act (12 of 1952), S. 33. (1962) 2 Andh W R 82.

——Ss. 6 (a) and 6 (dd)—Agreement between husband and wife — Wife giving up her right to inherit husband's property — Agreeing to a maintenance and separate residence — Also agreeing not to claim anything more than fixed maintenance—Validity — First and third conditions held contrary to law and against public policy and therefore void—Second condition held valid. See Contract Act (1872), S. 23. (1961) 65 Cal W N 1115.

——S. 6 (h)—Agreement: preventing alienation.

An agreement preventing alienation in perpetuity or for an indefinite period is opposed to public policy and is invalid and unenforceable on the general principles of law. AIR 1957 Pepsu 21 (22) (Pt D) (Pr 8).

10. Clause (i).

——S. 6—Co-tenancy — Money paid as price for admission to co-tenancy — This tantamounts to sale of occupancy tenancy and is, therefore, illegal and against policy — No rights are created in favour of the persons so paying. 1952 A L J (Rev) 20 : 1952 A W R (Rev) 31 : 1951 R D 277 (Pr 4).

——Ss. 6, 5, 8, 9, 53, 111 — Uuder-tenure merging in Patni tenure—Patnidar cannot "release" under-tenure by unregistered deed. See T. P. Act (1882), S. 5. AIR 1957 Pat 706 (DB).

——S. 6 (1)—Tenancy Laws — Tripura Tenancy Act, S. 12—Tenancy holding — Gift of, in favour of childless widowed daughter cannot operate against landlord if not executed after getting his permission. AIR 1955 N U C (Tripura) 4701.

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See also Contract Act (1872), S. 11.

——S. 7—Transfer in favour of person who is ill—Illness may prevent a person from executing an agreement but does not pervent a transfer by others in his favour as he is a passive party. A I R 1963 All 194 (199) (Pt H) (Pr 29).

——S. 7— Interest of co-sharer in common property can be sold, mortgaged or leased to another co-sharer or to a stranger. Sections 7, 8 and 44, T. P. Act recognize the validity of such transfers. AIR 1957 Andh Pra 619 (622, 624) (Pt D) (Pr 11) (DB).

——S. 7 — Competency to transfer—Want of sound disposing mind and undue influence are totally different. AIR 1965 Ker 189 (DB).

——S. 7—Power of father under Mitakshara to gift property out of affection to son-in-law.

Where a person claims a half portion of the property on the allegation that a few years after his marriage with the daughter of the donor (Hindu governed by Mitakshara Law) the property was gifted to him by the donor but fails to prove that the property was self acquired property of the donor, he fails to establish that the donor could have legally made the gift of that property to him. AIR 1954 Manipur 22 (23) (Pt A) : (Prs 2, 3).

——S. 7 — Manipur Darbar Resolution (6-A of 25-7-1931)—Scope—Transfer of Property—Daughter inheriting father's estate—Sale certificate—Necessity —Issue of.

Under the Manipur State laws a certificate for sale from the required authority is necessary only when a guardian of a minor wants to dispose of her husband's property for legal necessity. The application by the daugher for a certificate is not necessary and the certificate cannot be issued. AIR 1952 Manipur 11 (1) (11) (Pr 2).

——Ss. 7, 6 (d) and 10 — Deed of partition — Construction —Partition between Hindu father and sons —Eldest son even though having no interest in family properties given some properties by way of maintenance of his family with no power of alienation—Nature of interest acquired by him indicated. See T. P. Act (1882), S. 6 (d). AIR : 1964 Orissa 59 (DB).

SECTION 8

SYNOPSIS

(Transfer of Property Act (1882), S. 8.)

1. Sale in invitum.
2. "Unless a different intention is expressed or necessarily implied."
3. Maintenance grants.
4. Hindu law.
5. Grant for indefinite period.
6. "Transfer of property."
7. "Which the transferor is there capable of passing."
8. "In the property."
9. "Easements annexed thereto."
10. Rents and profits of property.
11. "All things attached to the earth."
12. House when passes fixtures.
13. Transfer of debt—Securities pass.
14. Deed — Construction.

See also Contract Act (1872), S. 10.

(A) Intention of parties.
(B) Harmonious construction.
(C) Repugnancy.
(D) Conflicting recitals.
(E) Discrepancy between area and boundaries.
(F) Conduct of parties.
(G) Construction to be in accord with law.
(H) Form of expression not to be taken in literal sense.
(I) Legal nature of document.
(J) Same meaning to be given to same word.
(K) No enforced construction to escape harshness.
(L) Assistance of similar documents.
(M) Words acquiring technical meaning.

1. Sale in invitum.

——S. 8 — Malguzari village share sold at revenue auction—What passes—Interest in Khudkasht land—If passes. 1960 MPLJ (Notes) 196.

——S. 8—Auction sale in execution for recovery of cess — Under tenure purchased by patnidar —Under-tenure passes absolutely to patnidar and merges in patni lease. A I R 1957 Patna 706 (709) (Pt A) (Pr 6) (DB).

——S. 8—Civil P. C. (1908), O. 21, R. 90— Execution sale—Misdescription of property — Doctrine of falsa demonstratio non nocet—Applicability of, discussed. See Civil P. C. (1908), O. 21, R. 90. AIR 1956 Pat 349 (DB).

2. "Unless a different intention is expressed or necessarily implied."

——S. 8—Deed—Construction — Ascertainment of intention of parties — Court must consider document as a whole and also take into account circumstances under which particular words were used—Importance of status and training of parties — Document disposing of properties—Conflict between different parts—Rule of harmonious construction to be followed. Ramkishorelal v. Kamalnarayan. 1963 M P L J 396 : (1963) Supp 2 S C R 417 : 1963 Mah L J 428 : 1963 Jab L J 523 : AIR 1963 S C 890 (893, 894) (Pt A) (Pr 12).

——S. 8—Deed—Construction—Agreement to utilize property subject to discharging the obligations mentioned before. See Transfer of Property Act (1882) S. 100. AIR 1954 Ajmer 77.

——S. 8—Deed—Construction—Intention of party—How to be deduced.

It is well settled that the intention of party to a document must be deduced from the document itself by giving words their ordinary natural meaning. The surrounding circumstances cannot be looked into except when there is an ambiguity. When the words are plain and clear, no words can be supplied to cut down their effect and amplitude. (1963) 2 Andh L T 457 : (1964) 1 Andh W R 150.

——S. 8—Will—Construction—Principles—Lands to pass on to daughter after the life time of daughter-in-law—No limiting words—Daughter takes absolute estate—Defeasance clause —Validity discussed. See Succession Act (1925), S. 74. AIR 1958 Andh Pra 447 (DB).

——S. 8 — Building lease in respect of open plot — Objection that it cannot be used for residence unless building is built upon—Rules of construction. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 6 (1). AIR 1957 Bom 94 (DB).

——Ss. 8, 105—Creation of relationship of landlord and tenant—(Deed — Construction)—(Decree—Construction).

In considering the question as to the relationship which results from a compromise decree passed in a suit in which the landlord had claimed possession of the demised property from his tenant after determining the tenancy the fact that the tenant claimed protection under the Rent Restriction Act is apt to put a different complexion.

It is perfectly true that even in such a suit it would be open to the landlord to enter into an agreement with the tenant by which the relationship of landlord and tenant can be created afresh between the parties. Where the agreement is reduced to writing, it is but trite to say that the relationship brought into existence by the writing must always be determined in the light of the words used by the parties in executing the document. The substance of the transaction has no doubt to be determined, and if in substance the transaction appears to be one of lease, the fact that an effort is made to clothe the transaction with an appearance of licence by the use of ingenious and clever words would not alter the essential character of the transaction.

In determining the nature of the transaction itself Courts have inevitably to take into account the words used by the parties, and in that sense it would be wrong to suggest that the words used in the document such as "compensation" or "mesne profits" are of no consequence whatever.

The intention can be given effect to in construing the words of the document only where the words are capable of two constructions one of which is consistent with the said intention. 56 Bom L R 365 : ILR (1954) Bom 615 : AIR 1954 Bom 370 (374) (Pt E) (Pr 4) (DB).

——Ss. 8, 105—Lease for life-time of tenant.

The nature of the tenancy created by any document must be determined by construing the document as a whole. If the tenancy is for a building purpose, prima facie it may be arguable that it is intended for the life-time of the lessee or may in certain cases be even a permanent lease. Prima facie such a lease is not intended to be tenancy at will.

Held, on facts that having regard to all the clauses which were to be found in the contract of lease it must be held that the tenant had a right to remain in possession of the property leased out to him so long as he paid the rent and so this was tenancy for the

life-time of the tenant. Since the lessee in this case was registered company the leasehold rights enured so long as the company lasted. The lease was not a permanent lease. The lease could not also be considered as creating a tenancy at will. AIR 1926 Bom 374, Dissented from. 56 Bom L R 61 : ILR (1954) Bom 448 : AIR 1954 Bom 257 (258, 259, 261) (Pt A) (Prs 3, 5, 6, 13, 14) (DB).

——S. 8 — Lease — Construction — Contract to the contrary. AIR 1955 NUC (Cal) 2865 (DB).

——S. 8—Construction—Settlement or Will — Document styled as Nischayapatram and not will or Marana sasanam—Deed registered as a deed of settlement — Deed providing that it was irrevocable—Provisions creating rights to come into existence immediately — Provision that property would devolve on plaintiff after father's lifetime held could not prevail over other considerations—Document held to be deed of settlement and not a will. 1959 Ker L R 722 : 1959 Ker L J 912 : 1959 K L T 773 : I L R (1959) Ker 867.

——Ss. 8, 10, 11 — Absolute or restricted transfer — (Deed—Construction).

The meaning of any particular clause in gifts or wills is to be collected from the entire insrument and all its parts are to be construed with reference to each other. And before a provision is disregarded on the ground of repugnancy to the main provision, every attempt must be made to reconcile, if possible, the two provisions to see whether the main object of the transferor was to make an absolute transfer or only a restricted transfer. 1957 Ker L J 226 : 1957 Ker L T 407 : AIR 1957 Ker 119 (121) (Pt A) (Pr 7) (DB).

——S. 8—Settlement deed—Absolute estate or limited estate—Intention of settlor, how gathered. ILR (1957) Ker 822.

——S. 8—Gift to Hindu female—No presumption that she takes life estate — Recitals, if clear and unambiguous shall be construed irrespective of sex of donee. If ambiguous, Court will rely upon surrounding circumstances to ascertain intention of donor. 1957 Ker L J 769 : 1957 Ker L T 990 : I L R (1957) Ker 822.

——S. 8 — Deed — Construction—Object is to discover intention of parties—Substance and not form determines nature of transaction—Duty of Court.

The object of interpreting a written instrument is to discover the real intention of parties. The Court should not sacrifice the substance of the matter for its form. It is the substance, not so much the form, which determines the nature of the transaction. Since Court is entitled to hold that a transaction which appears from the deed is only a legal mask for quite another sort of transaction, it must clear off the mask to see the real face of the transaction notwithstanding that the mask is legally perfect in itself. Fulfilment of certain formalities and the apparent form of the document cannot save the veil being torn off and discarded. 1963 Jab L J 744.

——S. 8—Deed — Interpretation — Real intention of parties has to be looked into while construing deeds — Mere form is not decisive. AIR 1959 SC 532 : 1952 S C R 775 and 54 I A 68, Rel. on. 1963 M P L J (Notes) 76.

——S. 8—Gift deed — Construction and surrounding circumstances should be taken into account for knowing intention of donor—Gift deed executed by Hindu in favour of his wife containing recital that donee will be absolute owner 'Malik' — Held on circumstances and text of document that wife obtained absolute ownership over the properties. 2 Ind App 7 (PC) and AIR 1937 Mad 100 and AIR 1953 SC 7, Dist. AIR 1965 Pat 217 (218, 219) (Prs 5, 6) (DB).

——Ss. 8 and 6 (e) — Mere right to sue not transferable—Mining lease — Lessee having right of indemnity in respect of payment of way leave rent as legal incident of leasehold property and not as personal covenant—Transfer of lease-hold property—Right to indemnity also passes to transferee. See T. P. Act (1882), S. 6 (e). AIR 1963 Pat 160 (DB).

——S. 8—Deed—Construction—Conflicting recitals—Gift deed — Ascertainment of intention — Absolute gift in earlier part—Absolute title restricted in later part of the deed—Conflict between two parts of the deed—Rule of harmonious construction — Absolute title to prevail. 66 Pun L R 314 : 1963 Cur L J (Punj) 556, Reversed. 1964 Cur L J 463 : 66 Pun L R 1059 : AIR 1965 Punj 110 (111) (Pt A) (Pr 6) (DB).

——S. 8—Construction.

Where a document has to be construed, the intention must be gathered in the first place from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties as intended or meant but what is the legal effect of the words which they used. If, however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended. AIR 1954 SC 345, Rel. on. ILR (1964) 1 Punj 186.

——S. 8—Will—Absolute estate — Defeasance—Validity. See Succession Act (1925), S. 131. AIR 1956 Punj 45.

3. Maintenance grants.

——S. 8 — Deed — Construction—Words — Grant to Deshpandia for past services in perpetuity to holders and their heirs — Female heirs are included. 1952 Nag L J (Notes) 32 (DB).

——Ss. 8 and 10—Construction — Partition or maintenance arrangement—Test.

The real test as to whether a document is a partition or only a maintenance arrangement is the intention of the parties who executed it and the right approach would be to read the document as a whole, not to read each clause as an isolated provision, and to construe the document in the light of all the provisions therein, trying as far as possible to give effect to all the provisions and seeing whether the apparently conflicting provisions could be reconciled with each other and rejecting only such provisions as are really inconsistent with the intentions of the parties as gatherable on a reading of the whole document.

A provision for permanency of the arrangement by itself is not a decisive factor as to whether a document is a partition or a maintenance arrangement. A permanent arrangement for maintenance does not mean anything more than this and cannot constitute a bar to the exercise of the right to compulsory partition subsequently conferred on the members of the tarwad by the Statute.

The fact that the document which is styled as a family karar provides not merely for the karnavanship of a common tarwad, but the karnavan is to be no titular head but is asked to discharge all the important functions which the Marumakkathayam law ordinarily assigns to him shows that at the time of the document the members of the tarwad had no intention to effect an outright partition and that their intention was to continue united in the same tarwad.

A clause prohibiting alienation of properties except with the consent of all the members of the tarward provides a definite indication that the document is only an arrangement for maintenance and not a deed of partition. 1957 Ker L J 980 : 1958 Ker L T 29 :

A I R 1958 Ker 265 (267, 268, 269) (Prs 4, 6, 7, 9, 10) (DB).

——S. 8—Scope of — Settlement deed by mother in favour of daughter — Daughter to enjoy income as maintenance—Restrictions on her power of alienation —Devolution to be in line of her male children— Intention held was to benefit daughter for life and give properties as vested remainder to her grandsons. See Hindu Law—Gift. I L R (1957) Ker 822.

——S. 8—Deed—Construction—Religious endowment —What constitutes—Held, that the correct interpretation of the grant, as evidenced by the sanad as also by the entries in the Muafi Register, was that the land was given to one *B* only with a burden upon him to utilise its income for the upkeep and maintenance of the temple and the Deity installed therein, and he was to hold the land revenue free so long as the temple existed. Had it been a grant to the Deity or to the temple and merely had been placed in possession of *B*, there would have been a stipulation for its reversion to the grantor on the temple ceasing to exist. 1961 Jab L J 952 : 1961 M P C 698 : 1961 M P L J 1081.

——S. 8—Succession Act (1925), S. 82—Deed termed as settlement and registered—Beneficial interest postponed—Deed held was settlement and not will. See Succession Act (1925), S. 82. A I R 1956 Mad 248.

——S. 8 — Construction — Partition — Maintenance arrangement—Description given to deed—Effect.

The description of the document will not make a maintenance arrangement into a partition arrangement or vice versa. The Courts must construe all the clauses of the document to gather the real intention of the parties and give effect to it. A I R 1955 N U C (Mad) 2447 (DB).

——S. 8—Deed—Construction—Case on facts. A I R 1955 N U C (Mad) 671 (DB).

——S. 8—Deed—Settlement in favour of a woman—It confers absolute or limited estate on settlee—Tests.

Held, on construction of settlement deed : (1) The intention of the settlor has to be ascertained by a reading of the document as a whole and if there is any ambiguity one can look to the circumstances under which the document came to be executed and also, if necessary, to the subsequent conduct of the parties which might throw some light on the intention of the settlor.

(2) A gift or bequest to a woman should be construed in the same spirit as a gift in favour of a male.

(3) The indications in the earlier portion of the document are that the settlor intended to give the settlee an absolute estate and the subsequent clauses relating to devolution of property on the death of the settlee do not show any intention to bestow only a life estate. The use of the words "for ever and ever" indicate that it was an absolute estate that was conferred.

(4) The absence of words conferring powers of alienation in the document does not make any difference as there are words of sufficient amplitude to confer an absolute estate on the settlee.

(5) The provision for devolution of the property on the death of the settlee in the instant case is more an indication that the settlor intended to impress upon the property a descendable quality and cannot be taken as giving the settlee only a life estate.

(6) Even assuming that the settlor intended to make an independent gift to the male issues this would not take effect as it is repugnant to the absolute estate given to the settlee in the earlier portion of the document and is in the nature of a defeasance clause. It cannot operate to curtail the absolute estate given to the settlee in the earlier portion of the document. (1952) 2 Mad L J 884 : A I R 1953 Mad 566 (569) (Pt A) (Prs 28, 29).

——Ss. 8 and 122 — Gift for maintenance of donee—(Hindu Law—Gift).

Even if the purpose of the gift is stated to be for maintenance of the donee, it does not necessarily follow that the estate given is limited to the life of the donee if the dispositive words are clear that an absolute estate is given. Case law referred. 1952 Nag L J 78 : I L R (1952) Nag 60 : A I R 1952 Nag 55 (56, 57) (Pt B) (Pr 11).

——Ss. 8 and 122 — Gift for "Choli bangdi" or "Haldi Kunkum"—Meaning of words—(Hindu Law —Gift)—Words and Phrases.

The expression, for 'choli bangdi' or the similar expression for 'Haldi kunkum' is a traditional set of words employed on the occasion of gift made to a woman either at the time of her marriage or under coverture. The idea is that the daughter who is going or has gone into a new family should not be without independent means of her own to satisfy her personal needs. In such a case the nature of the estate cannot be said to be limited by the purpose for which the estate is given. There is no warrant for holding that the estate reverts to the donor on cessation of the need for 'choli bangdi' or 'Haldi kunkum', i. e., on the woman becoming a widow. 1952 Nag L J 78 : I L R (1952) Nag 60 : A I R 1952 Nag 55 (57) (Pt C) (Pr 12).

——Ss. 8, 122—Deed—Construction — Gift or will—Mere reservation of life interest or provision for maintenance did not necessarily indicate that deed was will — (Deed — Construction). See T. P. Act (4 of 1882), S. 122. A I R 1956 Pat 345 (DB).

——S. 8—Deed — Construction — Gift by Hindu to wife of property as "inam" — Recital that as donor had taken second wife and as donee was dutiful he was making a grant for her maintenance — Donee to enjoy for lifetime without making alienation — Held, to be absolute gift and not maintenance grant. 1952 Ker L T 436 : A I R 1952 Trav-Co 105 (110, 111) (Pt D) (Pr 18) (DB).

4. Hindu Law.

●——S. 8—Hindu Law—Gift by father in favour of daughter—Nature of estate conferred — (Succession Act (1925), S. 95).

It may be taken to be quite settled that there is no warrant for the proposition of law that when a grant of an immovable property is made to a Hindu female, she does not get an absolute or alienable interest in such property, unless such power is expressly conferred upon her. If an estate were given to a man without express words of inheritance, it would, in the absence of a conflicting context carry, by Hindu Law, an estate of inheritance—This is the general principle of law which is recognised and embodied in S. 8 of the Transfer of Property Act and unless it is shown that under Hindu law a gift to a female means a limited gift or carries with it the restrictions or disabilities similar to those that exist in a widow's estate there is no justification for departing from this principle. It is, therefore, clearly wrong to say that a will having been made by the father in favour of his daughter, it should be presumed that he intended to give her a limited life estate. AIR 1951 S C 139, Foll. Nathoolal v. Durga Prasad, 1954 S C A 921 : (1955) 1 S C R 51 : 1954 S C J 557 : 67 Mad L W 641 : AIR 1954 S C 355 (358, 359) (Pt E) (Prs 14, 15).

●——S. 8 — Family arrangement — Will — Will by father — Where a Hindu father makes a will of the joint family property the absence of registration precludes the document from operating as a gift. 1959 Andh L T 67.

——Ss. 8, 6 (d), 10—Applicability of S. 6 (d)—Test—Deed creating life interest—Construction. See Transfer of Property Act (4 of 1882), S. 6 (d). AIR 1958 Andh Pra 658 (DB).

——S. 8—Gift—Gift to female—Presumption, nature of. See Hindu Law. AIR 1957 Andh Pra 534 (DB).

——S. 8—Deed — Construction — Award — On construction award, held, conferred merely a Hindu widow's estate — (Hindu Law — Widow — Widow's estate). AIR 1955 N U C (Cal) 2335 (DB).

——S. 8—Marumakkathayam law — Gift — Travancore area—Presumption — Gift held in favour of the tavazhi of the donee—Deed—Gift—Construction.

At least so far as the Travancore area is concerned, there is a presumption, when a Marumakkathayee governed by the notions and concepts of the Marumakkathayam system of law executed a gift in favour of a Marumakkathayee, that the donor intended to benefit not merely the donee eo nomine mentioned in the gift deed, but his intention was that the property should be enjoyed by the donee and his or her tavazhi with all the incidents of tarwad property. (1963) 1 Ker L R 541 : 1963 Ker L T 630 : I L R (1963) 2 Ker 65.

——S. 8 — Hindu Law — Tarwad — Alienation by Karnavan without consent or necessity is not a nullity — If not challenged within the prescribed period its validity cannot be canvassed in subsequent proceedings — Presumption as to consent and necessity for the alienation. (1961) Ker L T 996.

——S. 8—Gift — Construction — Settlement deed by mother in favour of daughter — Daughter to enjoy income as maintenance — Restrictions on power of alienation — Devolution to be in line of her male children — Nature of estate conferred, stated. 1957 Ker L J 769:1957 Ker L T 990: I L R (1957) Ker 822.

——S. 8—Construction—Settlement deed—Absolute estate or limited estate—(Hindu Law—Gift).

In cases where the intention of the settlor is to grant an absolute estate an attempt to reduce the powers of the owner by imposing restraint on alienation would certainly be repelled on the ground of repugnancy; but where the restrictions are the primary things which the settlor desires and they are consistent with the whole tenor of the settlement deed, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership. 1957 Ker L J 769 : 1957 Ker L T 990 : I L R (1957) Ker 822.

——S. 8—Deed—Construction—Will in favour of wife—Life or absolute estate. See Hindu Law—Will. AIR 1955 N U C (Madh Bha) 5359.

——S. 8—Deed—Construction — Settlement deed — Principles of construction—Deed held gave only life estate.

In construing gift deeds it should be the endeavour of the Court to ascertain the real intention of the settlors. The intention means the intention which the document itself by express words or by implication declares and the primary duty of the Court is to ascertain from the language of the entire instrument what the intentions of the settlors were.

The meaning to be adopted to the actual words used may certainly be affected by surrounding circumstances and in interpreting the language, the Court has got to bear in mind other matters than the mere words used.

Among such surrounding circumstances, the Court in construing the document of a Hindu is competent to take into consideration what are known to be the ordinary notions and wishes of a Hindu with respect to devolution of property and the settlor must be presumed to have made the bequest with these ideas in his mind. These surrounding circumstances are relevant however for the purpose of putting a right interpretation upon the actual words used by the maker of the document and it is from these words alone that the intention of the settlor has got to be gathered.

Held, that in the settlement deed the absolute estate of the first taker (settlee) was cut down to a life estate by what was contained in the other parts of the settlement deed. 67 Mad L W 502 : A I R 1954 Mad 1008 (1010) (Pt B) (Prs 11, 12, 13).

——S. 8—Hindu Law — Alienation — Coparcener — Alienation of undivided share — Validity — Effect of S. 8, Transfer of Property Act stated. See Hindu Law —Alienation. AIR 1951 Mad 318.

——S. 8—Deed—Construction—Will or gift in favour of several persons—Disposition to members of Hindu joint family or husband and wife — Estate taken — Joint tenancy or tenancy-in-common — Test—Intention of donor or testator — English law and Hindu Law — Distinction pointed out. See Hindu Law — Will. AIR 1952 Mys 32 (DB).

——Ss. 8 and 10—Deed—Construction — Wife given right to gift or sell and 'R', rights of Malik after her death — Wife, whether gets absolute estate — Deed construed. A I R 1965 Orissa 54 (57, 58, 59) (Pt A) (Prs 15, 19, 23).

—— S. 8—Deed—Construction — Compromise decree in partition suit. See Hindu Law—Joint tenancy. AIR 1964 Orissa 141.

——S. 8—Grant in favour of Hindu female — Estate taken—Presumption. See Hindu Law—Gift. AIR 1958 Orissa 254.

——S. 8—Impartible estate—Separation — Renunciation of right of succession by joint members — Effect indicated. See Hindu Law. AIR 1956 Pat 457 (DB).

——S. 8 — Bequest of his property by Hindu testator to his wife and two brothers—There is no presumption that only life estate is conferred on wife. See Hindu Law — Will. 1965 Cur L J 741 : A I R 1966 Punj 262 (DB).

——S. 8—Deed — Construction—Gift deed — Hindu exercising gift deed of land in favour of his wife prior to coming into force of Hindu Succession Act — Criterion to decide whether it passes absolute or limited interest to donee—Deed providing for transfer of all rights of donor in property to donee and specifying that she was to be owner — But deed also containing provision that donee would not be entitled to transfer property in any manner whatever deed held to pass limited interest only to donee — S. 10, T. P. Act held inapplicable. See Hindu Law — Gift. 1963 Cur L J 556 : 66 Pun L R 314.

[Reversed in AIR 1965 Punj 110.]

——S. 8—Gift—Gift to wife — Nature of estate taken —Inheritance. See Hindu Law. AIR 1956 Punj 209 (DB).

——S. 8—Deed—Construction — Absolute or limited estate.

Where the parties had agreed and intended to convey an absolute title to the one of the parties who was a widow and the language used in the compromise was the same as regards the property given to both the parties.

Held, that there was nothing to narrow the interests of the widow in the estate allotted to her. AIR 1953 Sau 146 (151) (Pt B) (Pr 15) (DB).

5. Grant for an indefinite period.

●——S. 8 — Grant by sovereign authority. See Government Grants Act (1895), S. 3. A I R 1957 S C 286.

—S. 8—Validity—Waqf.

Even if the executant changed his mind and decided upon cancellation of the waqf deed it would not lead to the conclusion that he had no intention of making a bona fide waqf when he created the waqf-alal-aulad. I L R (1954) 2 All 556 : A I R 1957 All 94 (98, 99) (Pt C) (Pr 19) (DB).

—Ss. 8, 108 (a) — Permanent settlement of estate under Bengal Permanent Settlement Regulation—Proprietor having mineral rights—Permanent tenure-holder under proprietor — If acquires mineral rights —Maxim "tentum prescriptum — quantum possessum" — Applicability — Temporary suspension of working of mine — Effect—(Limitation Act (1908), Arts. 142 and 144).

Where upon the permanent settlement (under Bengal Permanent Settlement Regulation) the mineral rights in the estate vests in the proprietor, in the absence of express inclusion those mineral rights do not pass to a permanent tenure-holder under the proprietor however wide his rights may be and those rights must be presumed to belong to the zamindar. When a grant is made by a zamindar of a tenure at a fixed rent although the tenure may be permanent, heritable and transferable minerals will not be held to have formed a part of the grant in the absence of express evidence to that effect. 33 Cal 54 held reversed in 37 I. A. 136. Mining activity is not confined to mere extraction of coal, but it also includes despatch of coal already extracted, preparation of coke, purchase of machinery for future operations and other connected activities. If the actual raising of coal is temporarily suspended on account of the exigencies of trade it does not mean cessation of all mining activity and abandonment of possession. The fact that notice of closure was given because it was required by law under the Mines Act for various purposes does not show abandonment or discontinuance of mining. 44 I A 104, Distinguished. (1957) 61 Cal W N 970 : A I R 1959 Cal 195 (199, 200, 201, 202, 204, 205) (Pt C) (Prs 8, 12, 13, 15, 24, 26, 28, 29, 30) (DB).

—S. 8 — Creation of irredeemable mortgage. See Tenancy Laws — Travancore Jenmi and Kudian Act (5 of 1071 as Amended in 1108), S. 3. A I R 1955 N U C (Trav-Co) 543.

6. "Transfer of property."

—S. 8 — Agricultural tenancy — Underground right—Presumption.

A zamindar is presumed to be the owner of the underground rights in the tenancies created by him in the absence of evidence that he ever parted with them. 1951 S C J 386 : 1951 All L J (SC) 141 : 1951 S C R 534 : ILR 30 Pat 931 : AIR 1951 S C 288 (293) (Pt D) (Pr 19).

—S. 8—Transfer of Zamindari—Presumption. See Transfer of Property Act (1882), S. 3. A I R 1955 All 292 (FB).

—S. 8 — Construction — Release can be treated as conveyance.

A document, though styled as a release can be treated as a conveyance if it appears clearly that the intention of the executant of the document was to transfer his rights. (1956) Andh W R 1115 : A I R 1957 Andh Pra 288 (289, 290) (Pt A) (Pr 3).

—S. 8 — Khudkasht fields appurtenant to village share transferred — Khudkasht fields go with the share — (C. P. Land Revenue Act (II of 1917), S. 2 (5)).

The khudkasht fields are attached to a village share and if a village share is transferred the khudkasht fields appurtenant to the share go along with the share. It is not necessary to mention the khudkasht fields in the deed of transfer. A foreclosure decree of a village share even though it does not mention any khudkasht field still all the khudkasht lands appurtenant to the village share would have been deemed to be foreclosed. 1958 M P L J (Notes) 133.

—S. 8—Scope — Mortgagor's right to open site on abadi if appurtenant to share in proprietary rights. See Tenancy Laws—M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 5. 1957 M P C 557.

—S. 8—Deed—Construction— Gift deed—Assessee making a gift of perpetual annuity out of income from his estate— Annuity made a charge on revenue of the estate — Deed whether gift or trust deed. See Orissa Agricultural Income-tax Act (24 of 1947), S. 8. AIR 1955 N U C (Orissa) 3228 (DB).

— S. 8 — Sale of building only — Land on which building stands does not pass. A I R 1958 Pat 133 (136, 137), (Pt G) (Pr 6) (DB).

—S. 8—Rights under decree.

Section 8 does not take in rights under the decree in respect of immovable properties obtained by the transferor. 1951 Ker L T 787 : ILR (1951) Trav-Co 743 : AIR 1952 Trav-Co 254 (254, 255) (Pt B) (Pr 2) (DB).

7. "Which the transferor is then capable of passing."

—S. 8—Transfer of grove.

When an owner of a grove sells the grove by declaring that he was selling it with every right that he possessed therein, it follows that his right to the land is also conveyed to the vendee unless it is expressly reserved by him. 1953 All L J 391 : AIR 1953 All 705 (706) (Pt A) (Pr 4) (DB).

—Ss. 8, 7, 44, 111 (e) — Transfer of interest of co-sharer in common property—Validity—Lease of his interest by co-sharer in favour of another co-sharer—Surrender—Effect.

The interest of a co-sharer in common property can be sold, mortgaged or leased to another co-sharer or to a stranger. Sections 7, 8 and 44 of the Transfer of Property Act recognise the validity of such transfers. It is not the law that one co-sharer can only release his interest in favour of the other co-sharers. A lessee from a co-sharer is entitled to the rights of his lessor and can even enforce a partition if it is necessary to give effect to his lease. It is open to the lessee to surrender his interest in the lease to his lessor under S. 111 (e) of the Transfer of Property Act. On such surrender the lease would stand terminated. (1956) Andh W R 1093 : AIR 1957 Andh Pra 619 (624) (Pt D) (Pr 11) (DB).

—S. 8—Scope and object—Retrospective operation —Extent of — Sale by a limited owner without legal necessity prior to Act—S. 14, Hindu Succession Act does not enlarge rights of purchaser of her limited interest. See Hindu Succession Act (1956), S. 14 (1). AIR 1957 Andh Pra 280 (DB).

—S. 8—Perpetual lease—Lease by limited owner for cultivation for ever — Construction. See T. P. Act (1882), S. 105. AIR 1959 Madh Pra 52.

—S. 8 — Sale-deed — Execution by owner of property but recital as guardian of minor son—Mark affixed without qualification and admission of execution at registration—If amounts to sale of all interest or right of vendor, discussed. See Mysore Registration Act, S. 35. AIR 1952 Mys 12 (DB).

—S. 8—Deed — Construction — Agreement under which Mills allowing use of waste water to certain owners of Khasra numbers free of charge—Nature of grant held a sort of bounty — Mills has right to give subsequently portion of waste water to third person. AIR 1955 N U C (Punj) 4966.

8. "In the property."

——S. 8—Tenancy Laws—M. P. Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act, 1950 (M. P. 1 of 1951), Ss. 3, 4—Trespass — Underground mineral right holder trespassing on surface land — Surface land vesting in Government under S. 3 after such trespass—Right of surface land holder to recover damages does not pass or vest in Government — See Tenancy Laws—M. P. Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act, 1950 (M. P. 1 of 1951), S. 3. **1962 M P L J 14.**

——S. 8—Deed—Construction—Sale—Mining lease—Subsequent sale by lessor of his interest under lease —Right to way-leave rent if passes to vendee.

There is a distinction between a grant or a reservation of 'coal' and a grant or a reservation, as the case may be, of a 'mine'. The word 'coal' does not bear a definite meaning, and its meaning must be gathered from the document under construction.

Held, on a construction of the sale-deed as a whole the right transferred to R was confined to the coal, regarded as so much mineral, lying below the surface of plot X. There was no intention to transfer the vendor's title in the cubical space within which the coal was comprised and therefore A's right under the way-leave agreement to realise the way-leave rent did not pass to R. **ILR 30 Pat 406 : AIR 1951 Pat 556 (562, 563, 564) (Pt E) (Pr 28) (DB).**

9. "Easements annexed thereto."

—— S. 8 — Applicability — (Easements Act (1882), S. 13).

The defendant's tarwad was already the owner of the Konganpara Estate and subsequently, they became the absolute owners of the irrigation system which was irrigating those lands.

Held, that when the rights in the irrigation system were also purchased by the defendant's tarwad, there had been a complete merger of the two rights in them.

The defendant executed a possessory mortgage of the Konganpara Estate in favour of the plaintiff. The mortgagee was put in possession of the Konganpara Estate and also the irrigation system and the mortgagee was entitled to take water coming along the irrigation system for the irrigation of the mortgaged property.

Held, that S. 8 applies to mortgages. The principles of S. 8 applied to the case. The principles of S. 13 of the Easements Act, especially Cl. (b), also applied to the case. There was no different intention expressed or implied to show that the owner of the Konganpara lands was not entitled to take water from the irrigation system was necessary for enjoying the Konganpara system. There was no dispute that the water of the lands as it was enjoyed when the transfer took effect. The system was one appurtenant, to the Konganpara Estate and the latter Estate was entitled to use the water from the system without any liability for payment of neervaram. **1959 Ker L T 336 : AIR 1959 Ker 408 (412, 413) (Prs 36, 40, 43) (DB).**

——S. 8—Transfer of dominant tenement—Easement also passes—(Easements Act (1882), S. 19).

It is settled law that once an easement has become legally appurtenant to a dominant tenement, it will, ipso facto pass on a conveyance of that dominant tenement, no express mention thereof in the deed of conveyance being necessary. **ILR 38 Pat 443 : AIR 1959 Pat 463 (470, 471) (Pt D) (Prs 35, 38) (DB).**

10. Rents and profits of property.

——S. 8—Malabar Tenancy Act (14 of 1930), S. 41—Assignment of right to arrears of rent—Assignee gets the benefit of charge therefor.

Section 8 of the Transfer of Property Act provides that the assignment of a debt will take along with it the security therefor.

Rent which has accrued due constitutes a debt, therefore where such a debt is transferred the transferee gets a charge on the tenant's holding as provided in S. 41 of the Malabar Tenancy Act. AIR 1944 Mad 557 (DB). Dissented from. **(1961) Ker L T 996 : (1961) 2 Ker L R 608.**

●——S. 8 — Lease — Construction of—Government Nazul plots sold by auction — Lessee entering into possession of property on acceptance of his bid — Lease deed executed on future date—Liability to pay rent—It arises from date of possession—Tests — (Per Division Bench). Ramnarayan Trivedi v. State of M. P., **1961 Jab L J 1364 : 1961 M P L J (Notes) 295 : 1962 M P L J 1 : 1962 M P C 118 : ILR (1962) Madh Pra 84 : AIR 1962 Madh Pra 93 (101, 102) (Pt E) (Prs 38, 39) (FB).**

——Ss. 8, 36, 55 — Sale of agricultural land — Land subject to lease — Apportionment of rent — Applicability of S. 36 considered. See T. P. Act (4 of 1882), S. 36. **AIR 1951 Mad 601.**

——S. 8—Sale of land under lease — Legal incidents —Arrears of rents.

Rents and profits accruing due before the transfer are not legal incidents of the property transferred. Such arrears of rents are a debt or actionable claim and if they are to be transferred, must be assigned separately. **(1951) 1 Mad L J 69 : 1951 Mad W N 184 : AIR 1951 Mad 601 (602, 603) (Pt B) (Pr 3).**

——Ss. 8, 109—Arrears of rent—Right of ex proprietor to recover — Liability of lambardar and tenants considered. See C. P. Land Bevenue Act (2 of 1917), S. 188 (2). **AIR 1951 Nag 299.**

11. "All things attached to the earth."

●——S. 8 — Grant of village together with "water, trees" etc.—"Water" does not include flowing water in river passing through the village. See Grant — Inam—Construction. **AIR 1964 S C 24.**

——Ss. 8, 3 and 51 — Quid quid plantatur solo, solo cedit—Whatever is affixed to soil belongs to the soil —Maxim does not apply in India. See Maxims. **AIR 1961 Ker 147 (DB).**

——S. 8 and S. 58—Mortgage of land — Building imbedded in land also passes.

A building is a thing attached to the earth. A house being imbedded in the earth is immoveable property and when land is transferred by way of mortgage, buildings erected upon it pass by necessary implication to the transferee. **1959 Ker L T 120 : AIR 1959 Ker 294 (296) (Pt A) (Pr 3) (DB).**

——S. 8 — Trees in Raiyati Malik land — No rights mentioned in wazib-ul-arz or enactment — Rights governed by S. 8 of Transfer of Property Act — The respondents-raiyats became raiyat maliks which implied a proprietary interest in the land and they became full owners of the land and everything standing on the land — Appellant had no right to appropriate usufructs of the trees. **1961 M P L J (Notes) 170.**

——Ss. 8, 63 — Rule of law that whatever is affixed to the soil belongs to the soil does not apply in India — Mortgagor having only life interest constructing new structure after execution of mortgage deed — Mortgagee is entitled to mortgage decree in respect of new structure. See T. P. Act (1882), S. 63. **AIR 1965 Mad 185 (DB).**

12. House when passes fixtures.

——Ss. 8, 58 and 70—Mortgage of a cinema building —What passes to mortgagee.

Held, that having regard to the description of the mortgaged property, what was intended to be hypothecated was only the building as such. It may be that the building was intended to be used for running a cinema but it was not a running cinema house as such that was mortgaged. In this view the ceiling boards and the ceiling fans and the exhaust fans would not form an integral part of a building, though they may be required to run a cinema in the building. So far, however, as the electric installation is concerned, a distinction should be made between the electric fittings which are removable and the electric installation consisting of the mains, the switch board and the connecting wires between the mains of the building and the mains of the electric supply. These latter would obviously form an integral part of the house and intended to go along with the house. So would be the general electric wiring in the building.] But electric fittings like fans, shades, bulbs, holders, plugs and other electric fittings which would go with these cannot form an integral part of the house. The mortgagee-purchaser of the building will not be entitled to them. 1957 Mad W N 65 : ('57) 70 Mad L W 205.

13. Transfer of debt—Securities pass.

● —S. 8 — Transfer of debt pending suit. See Transfer of Property Act (1882), S. 3. A I R 1955 S C 376.

—S. 8—Deed — Construction — Power of Attorney executed by customer in favour of Bank purporting to assign future debts payable to customer—Whether charge is created in favour of Bank — Held on construction of document that though S. 100 of T. P. Act (1882), would not in terms apply, clear words of hypothecation indicated that charge was created. 1964 All L J 956 : I L R (1965) 1 All 23 : A I R 1965 All 474 (475, 476, 477) (Pt A) (Prs 2, 5) (DB).

—S. 8 — Transfer of debt—Securities when pass—Transfer of preliminary decree on simple mortgage—Construction of transfer deed—Transferee has right to security also—Deed—Construction.

Under S. 8, unless there is a different intention, express or implied, the transfer of property passes forthwith to the transferee all the interest that the transferor has in the property and in the legal incidents of that interest.

Held, that the transfer was of the entire rights arising under the mortgage and not only of the mortgage decree. (1963) 2 Andh L T 404 : A I R 1964 Andh Pra 297 (298) (Pt A) (Pr 7).

—S. 8 — Debt as distinguished from mortgage can be transferred without registration. See Registration Act (1908), S. 17. AIR 1955 N U C (Andhra) 5840.

—Ss. 8, 58 and 105 — Transfer of possession for securing repayment of loan — Nature of transaction —Whether mortgage — (Deed — Construction). See T. P. Act (4 of 1882), S. 58. AIR 1956 Bom 625.

—S. 8 — Decretal debt — Transfer by registered instrument—Securities are also transferred.

Where a decretal debt is transferred by a registered instrument, the securities therefor are also transferred to the transferee. A I R 1950 Pat 211 (212) (Pt B) (Pr 6) (DB).

14. Deed — Construction.

See also Contract Act (1872), S. 10.

(A) Intention of parties.
(B) Harmonious construction.
(C) Repugnancy.
(D) Conflicting recitals.
(E) Discrepancy between area and boundaries.
(F) Conduct of parties.
(G) Construction to be in accord with law.
(H) Form of expression not to be taken in literal sense.
(I) Legal nature of document.
(J) Same meaning to be given to same word.
(K) No enforced construction to escape harshness.
(L) Assistance of similar documents.
(M) Words acquiring technical meaning.

14. Deed — Construction.

See also Contract Act (1872), S. 10.

● —S. 8—Deed—Construction—Principles. Central Bank of India v. Hartford Insurance Co. Ltd., (1965) 1 SCJ 498 : AIR 1965 SC 1288 (1289, 1290, 1291) (Prs 3, 5, 6, 10).

● —S. 8 —Deed—Construction — Map attached to deed—Lease deed referring to map—Map should be treated as incorporated in lease. K. S. Nanji and Co. v. Jatashankar Dossa, 1961 BLJR 514 : (1961) 2 Ker L R 15 : (1962) 1 SCA 332 : (1962) 1 SCR 492 : ILR (1961) 40 Pat 488 : AIR 1961 SC 1474 (1477) (Pt A) (Pr 9).

● —S. 8 — Construction of documents — Case on facts. Chunchun Jha v. Bhadat Ali, (1954) SCJ 469 : (1954) 1 Mad L J 708 : AIR 1954 SC 345 (346, 347) (Pt B) (Pr 6).

—S. 8—Deed—Construction—Acknowledgment on back of bond that nothing was due — Acknowledgment does not amount to acknowledgment that nothing was due to either party. AIR 1955 NUC (Ajmer) 4141.

—S. 8—Deed—Construction—Case on facts. See Trusts Act (1882), S. 6. AIR 1955 NUC (All) 1704 (DB).

—S. 8 —'Issue (Santhathi)' —'Does not have an issue, —Includes adopted son. See Words and Phrases — "Issue." AIR 1958 Andh Pra 447 (DB).

—S. 8 —Deed—Construction—Rules as to—Language of document: primarily to be considered. See Deed—Construction. AIR 1961 Assam 173.

—S. 8—Construction — Case on facts. AIR 1954 Assam 45 (48) (Pt B) (Prs 16, 17).

—S. 8—Lost grant—Entry in record of rights that tank is to irrigate some particular plots—It does not show that owners were as a matter of fact irrigating plots from tank at time of settlement—Actual grants might have been lost or missing. See Government Grants Act (1895), S. 3. AIR 1955 Cal 510.

—S. 8—Construction—Release—Meaning of words —Rule.

In the matter of construction of releases or relinquishment deeds, the rule is that the general words in the operative part would be controlled by the recitals. AIR 1952 SC 29 : 1952 SCJ 1, Foll. ILR (1955) 2 Cal 109.

● —S. 8—Deed—Construction—Contract — Consideration of surrounding circumstances — (Contract Act (1872), S. 10). Gulabchand Gambhirmal v. Kudilal Govindram, 1960 MPLJ 334 : 1959 MPC 143 : 1959 Jab LJ 78 : AIR 1959 Madh Pra 151 (160) (Pt C) (Pr 16) (FB).

● —S. 8—Deed—Construction — Contract between businessmen for purchase and sale of shares in managing agency—Fixation of price—Presumption. Gulabchand Gambhirmal v. Kudilal Govindram, 1960 MPLJ 334 : 1959 MPC 143 : 1959 Jab L J 78 : AIR 1959 Madh Pra 151 (160, 161) (Pt D) (Pr 17) (FB).

● —S. 8—Deed—Construction—Contract—Implied term—Business contract—(Contract Act (1872), S. 10) — (Deed—Construction—Contract.)

A contract which is intended to be binding may be enforceable even though certain terms have not been precisely agreed, if the nature of the terms can be ascertained by implication. One cannot add to a contract an implied term inconsistent with or which contradicts the express terms of the contract. But in a suitable case one can imply a term, if it is necessary to give it business efficacy. Gulubchand Gambhirmal v. Kudilal Govindram, 1960 MPLJ 334 : 1959 MPC 143 : 1959 Jab LJ 78 : AIR 1959 Madh Pra 151 (161, 162) (Pt F) (Pr 18) (FB).

——Ss. 8, 52, 76, 105—Landlord and Tenant—Relationship — Usufructuary mortgage — Lease back to mortgagor—Effect of — Suit for rent—Maintainability—(Civil P. C. (1908), O. 34, R. 14).

The elementary rule of interpretation is that a document should be construed according to its plain words and that the words must be interpreted in their natural and ordinary sense, if a person has created a usufructuary mortgage, then it means that he has given possession of the property to the mortgagee. In the circumstances the mortgagee can give a lease of the property either to the mortgagor or to any third person. And when a mortgagee gives a lease either to third person or to the mortgagor, it is certainly, a new relation that has been created. (Because of the bar of O. 34, R. 14, Civil Procedure Code, the mortgagee landlord may not succeed in having the property put up for sale, but he can certainly seek satisfaction of the decree from the person and other property of the mortgagor-tenant. AIR 1957 Pat 24, Commented upon. 1958 MPC 551 : 1958 MPLJ 736 : 1958 Jab L J 788 : AIR 1958 Madh Pra 319 (320) (Pt A) (Prs 5, 6).

——S. 8—Deed—Construction—Principle stated. 1957 MPLJ 196.

——S. 8—Deed — Construction — No distinction in construction between partition deed and other documents inter vivos or by way of testamentary disposition. ('64) 77 Mad L W 691: ILR (1965) 1 Mad 41: AIR 1965 Mad 193 (195) (Pt B) (Pr 6) (DB).

——S. 8—Debtor and creditor—Loan or deposit — Tests. (1961) 2 MLJ 349 : ILR (1961) Mad 955.

——S. 8—Hypothecation and hire purchase agreement — Distinction—Rule of construction stated. See Contract Act (1872), S. 172. AIR 1960 Mad 328.

——S. 8—Construction—Release—Promise to execute deeds for better securing the estate.

Held, on facts that in order that title to the estate might be secured to him, it was necessary that the plaintiff should have a proper deed of conveyance. Even if the deed of release had been registered, the plaintiff would need a deed of conveyance in order to become owner otherwise than by adverse possession. The expression "all deeds and writings for better securing the estate" could not be limited to deeds or writings which were in the contemplation of the parties at the time of the execution of the deed of release. Any deed or writing, which the plaintiff might subsequently find to be necessary in order to secure title, would under the clause in the deed of release have to be executed by the defendant, provided, the plaintiff's claim that such further document be executed was reasonable and the plaintiff offered to bear the expenses of the execution and registration of such document. Hence in enforcement of the promise made by the defendant in the deed of release the plaintiff was entitled to have a proper deed of conveyance executed by the defendant at the plaintiff's cost and registered. 1959 Mad W N 258 : ILR (1959) Mad 552 : (1959) 2 MLJ 324 : AIR 1960 Mad 33 (41) (Pt F) (Prs 42, 43) (DB).

——S. 8—Deed—Construction—Settlement—Case on facts. See Muhammadan Law — Gift. AIR 1954 Mad 770 (DB).

——S. 8—Deed — Construction—Plaintiff entitled to life-interest in property, by agreement, appointing defendant entitled to property after her death, to collect rent and pay her fixed amount of Rs. 30/- p. m. every month — In default, agreement to stand cancelled — Provision in case of default is essential condition—Deed held not deed of surrender—Agreement did not relate to immovable property. 38 Mys L J 1121 : I L R (1960) Mys 96.

——S. 8—Deed—Construction—Principles. See Deed —Construction. AIR 1965 Orissa 121.

——S. 8 — Deed — Construction — Principles. See Limitation Act (1908), S. 19. AIR 1959 Pat 69 (DB).

——S. 8—Deed — Construction — Oral evidence, admissibility. See Evidence Act (1872), S. 92. AIR 1957 Pat 126.

——S. 8—Deed—Construction—Case on facts. 1956 B L J R 314.

——S. 8—Rules of—Construction of document, stated. See Contract Act (1872), S. 10. AIR 1954 Pat 586 (DB).

——S. 8—Deed—Construction—Recording evidence for interpreting document not proper.

A document has to be interpreted on its own terms and at the most in the light of the surrounding circumstances of the case and the intention of the parties. It would not be necessary or even proper to record evidence for the purposes of interpreting a document. (1961-62) 20 F J R 253 : 1961 Cur L J (Part 1 AA) 1 : (1962) 1 Lab L J 534 : I L R (1961) 2 Punj 421.

——S. 8—Suit for pre-emption—Court must look into the nature of transaction i. e., intention of parties—Case on facts. AIR 1954 Punj 115 (116) (Pt A) (Prs 5, 8).

——S. 8 — Deed — Construction — Principles. AIR 1964 Raj 184 (DB).

——S. 8 — Construction of deed, principles of. See Registration Act (1908), S. 17. A I R 1959 Raj 15.

——S. 8—Merger of Estates (Saurashtra)—Agreement of merger — Right of estate holder to ijara dues in respect of liquor sale — Agreement construed. AIR 1955 N U C (Sau) 681.

——S. 8 — Construction — General rules of. AIR 1955 N U C (Trav-Co) 5110.

14 (A). Intention of parties.

●——S. 8 — Construction — Intention of parties—When the words are clear and unambiguous there is no scope for drawing upon hypothetical considerations or supposed intentions of the parties. Union of India v. Kishorilal Gupta, 1961 Andh L T 20 : (1960) 1 S C R 493 : 1960 S C J 1101 : (1960) 2 S C A 343 : A I R 1959 S C 1362 (1367, 1368) (Pt B) (Pr 6).

●——S. 8—Deed—Construction — Intention, principles stated. See Income-tax Act (1922), S. 12-B. A I R 1959 S C 254.

■——S. 8—Dedication—Complete or partial dedication — Effect of — Question of intention of parties, how gathered. See Hindu Law — Religious Endowments. A I R 1957 S C 797.

●——S. 8—Deed—Construction — Intention — Surrounding circumstances.

In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used ; the surrounding circumstances are to be considered but that is only for the purpose of finding out the intended meaning of the words which have actually been employed. Ram

Gopal v. Nand Lal, 64 Mad L W 547 : 88 Cal L J 1 : 1951 All L J 24 : 1950 S C J 575 : 1950 S C R 766 : A I R 1951 S C 139 (141) (Pt A) (Pr 7).

——S. 8—Deed—Construction—Will—Case on facts. See Succession Act (1925), S. 74. A I R 1954 Ajmer 63 (2).

——S. 8—Deed—Construction — Genuine or sham — Motive of parties to avoid statute — Whether ground to assail transaction.

If a transaction is genuine and intended to be acted upon, it cannot be assailed on the ground that the motive of the parties was to avoid a particular statute. Secondly, on the other hand, if it is 'sham' transaction never intended to be acted upon but only a legal mask for quite another sort of transaction, the Court will tear off the mask to see the real face of the transaction ; and the fact that the mask is legally perfect, in itself will not save it from being torn off and discarded. The border line between motive and intention may be thin and hard to distinguish—every border is troublesome for those who have to guard it—but the question whether a particular transaction is genuine or 'sham' is one of fact and the decision must depend upon the circumstances of each case. A I R 1959 All 440 (449) (Pt E) (Pr 28).

——S. 8—Construction—Intention — Charitable Endowments — Gift whether of land or only of trees standing on it.

Held, on facts that the land itself was dedicated and not only some partial interest in it. (1959) 1 Andh W R 357 : A I R 1960 Andh Pra 35 (37) (Pt D) (Pr 6).

——S. 8—Evidence Act (1872), Ss. 92, Proviso (6), 94 and 95 — Construction of document — Intention of parties—Extrinsic evidence — Admissibility of. See Evidence Act (1872), S. 92, Proviso (6). A I R 1959 Andh Pra 612 (DB).

——Ss. 8 and 105—Deed—Construction—Kabuliat.

Rent payable in kind — Fixed quantity of paddy payable as rent—In case of default, fixed sum payable as its price—Default—Held, landlord was entitled to recover only stipulated sum and not price of crop at market rate. I L R (1953) 5 Assam 94 : A I R 1954 Assam 45 (48) (Pt A) (Prs 15, 17).

——S. 8 — Construction—Intention—Duty of Court.

Held, on facts that the resolution in question that was taken by the Corporation at its meeting amounted, in substance, to a resolution renewing the appointment of the Commissioner and not to mere recommendation for his appointment. ('59) 63 Cal W N 590 : ILR (1960) 1 Cal 553.

——S. 8 — Construction — Intention — Principles of construction — Extrinsic evidence — (Evidence Act (1872), S. 92).

The object of interpretation of a written instrument is to discover the intention of the author, the written declaration of whose mind it is always considered to be. Intention must be gathered from the written instrument. The function of the Court is to ascertain what the parties meant by the words used and written in the instrument and not to find out what was intended to have been written. It is the duty of the Court to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent to the intention. It is not permissible to guess the intention of the parties and to substitute the presumed for the expressed intention.

Where the intention of the parties has been reduced in writing it is not generally permissible to use extrinsic evidence, whether oral or contained in writing, such as instructions, drafts, or conditions of sale or preliminary agreements, unless the provisions of S. 92 of the Evidence Act are satisfied. 1958 Cal L J 252.

——S. 8 — Construction of Will — Principles stated. See Succession Act (1925), S. 82. AIR 1957 Cal 150 (DB).

——S. 8 — Construction — Trust.

A deed must be presumed to intend what it says and its provisions must be so construed, whenever possible, as to give effect to that intention and so must the directions contained in the deed be held to be workable and intended to be worked, if such a construction is open on the words used. (1956) 29 I T R 781 : AIR 1956 Cal 164 (167) (Pt B) (Pr 10) (DB).

——S. 8 — Lease — Construction — Rent payable partly in cash and partly in kind — Money value of rent in kind mentioned — Money value, if fixed value or market value — It depends upon intention of parties as appearing from lease. AIR 1955 N U C (Cal) 2909.

——Ss. 8, 108 (g) — Contract to the contrary—Lease for purpose of Cinema shows containing covenant for free admission to lessor—Lease containing clause that on lessee's failure to carry out terms of lease lessor would be at liberty to determine lease — Covenant does not imply that lessee shall be liable to pay entertainment tax imposed on lessor for witnessing performances — (Lease — Construction). AIR 1955 N U C (Cal) 2865 (DB).

——S. 8 — Landlord and Tenant — Suit for arrears of rent — Provision in lease deed for payment of rent in kind or its cash equivalent — Construction of — Mode of, indicated. AIR 1955 N U C (Cal) 848.

——S. 8 — Construction — Partition or maintenance arrangement — A provision for mutation by itself is not a sure indication of partition arrangement as contrasted with a maintenance arrangement. 1959 Ker L R 148.

——Ss. 8, 55 — Indemnity clause—Construction.

Where the indemnity clause merely states that if there are any subsisting charges on the property, the same would be paid off by the vendors themselves without causing any loss to the vendee and that if the vendee sustains any loss on account of the vendor's default to pay off such encumbrances, he will be entitled to recover the amount of such loss with interest on the same from the properties included in the sale deed towards security for such possible loss, the indemnity clause being thus restrictive in its scope and application, it cannot be said that it would take in losses arising out of any deficiency in the extent of the property. Even if it is taken that the indemnity clause is comprehensive enough to cover a case of loss sustained by the vendee of the property on account of its deficiency in extent that clause can come into operation only in the event of the vendee sustaining any actual loss and not in any other contingency. 1957 Ker L J 448 : 1957 Ker L T 485 : ILR (1957) Ker 475 : AIR 1957 Ker 181 (185, 186) (Pt D) (Pr 8) (DB).

●——S. 8 — Deed — Construction — Contract — Intention — (Contract Act (1872), S. 10) — (Deed — Construction — (Contract).

A contract must be construed as a whole and the intent of the parties must be ascertained from the document as a whole. Gulabchand Gambhirmal v. Kudilal Govindram. 1960 M P L J 334 : 1959 M P C 143 : 1959 Jab L J 78 : AIR 1959 Madh Pra 151 (161, 162) (Pt E) (Pr 18) (FB).

——S. 8 — Construction—Surrounding circumstances — Relevancy when language is clear.

If the words of a document are express and clear, effect must be given to them and any extraneous

enquiry into what was thought or intended is ruled out. If, however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended. 1957 Jab L J 403 : (1957) M P L J 196.

——S. 8 — Settlement — Creation of life interest in favour of two beneficiaries and gift over descendants of one of them — Effect stated. AIR 1958 Mad 334 (DB).

——S. 8 — **Deed — Settlement deed — Intention of settlor how to ascertain.**

The intention of the settlor has to be ascertained by a reading of the document as a whole and if there is any ambiguity Court can look to the circumstances under which the document came to be executed and also, if necessary to the subsequent conduct of the parties which might throw some light on the intention of the settlor. (1952) 2 M L J 884 : AIR 1953 Mad 566 (568) (Pt C) (Pr 13).

——S. 8 — Construction — Intention of parties and not lawyer's opinion should guide. (1960) 2 O J D 273 : ILR (1960) Cut 307 : AIR 1960 Orissa 165 (167) (Pt B) (Pr 8) (DB).

——S. 8 — Deed — **Construction.**

In construing a document, whether in English or the Vernacular, the fundamental rule is to ascertain the intention from the words used in the document. If the words are express and clear, effect must be given to them, and any extraneous enquiry into what was thought, or intended is ruled out. The real question in such a case is not what the parties intended, or meant, but what is the legal effect of the words which they used which have actually been employed. Where the terms of the document are unambiguous, it is not open to the court to say that the document means something else than what it clearly says, merely because the parties have gone on for a long time so understanding it. In a case of ambiguity, however, evidence is admissible as to the manner in which the thing granted has always been possessed and used, for so the parties thereto must be supposed to have intended; and it is open to the court to call in aid acts under the deed as a clue to the intention. The construction of a document cannot depend on one isolated word taken from its context; the document should be construed as a whole. Case law, Rel. on. 1956 B L J R 314 : 1956 Pat L R 298.

——S. 8 — Gift or will — Tests for determination stated. AIR 1955 N U C (Trav-Co) 2562 (DB).

——Ss. 8, 11, 122 — Gift deed — Construction — Case on facts. AIR 1955 N U C (Trav-Co) 1249 (DB).

14 (B). Harmonious construction.

——S. 8 — Deed — Lease deed — Construction of — **Held**, on a construction of the lease that tenant was liable to ejection at the option of landlord and that clause relating to termination of lease by Cantonment Committee operated only in exceptional circumstances. AIR 1955 NUC (Ajmer) 4418.

——S. 8 —**Deed —Court is bound to take deed as it stands.**

Per Desai J.—The Court is bound to take the deed as it stands and cannot add to its terms or substitute in its place another deed which the Court thinks should have been made. The power of a Court is to construe a deed and not to reconstruct it. If there is any omission in the deed, it is certainly not for the Court to fill up the omission or to put a forced construction upon its terms. AIR 1952 All 1011 (1019) (Pt E) (Pr 43).

——S. 8 — Deed — Construction of — Ambiguity in term of contract — Ambiguous term is to be construed against one who has executed the deed. 67 Cal W N 110 : AIR 1963 Cal 325 (330) (Pt F) (Pr 26) (DB).

——S. 8—**Construction—Harmonious constructions.**

In construing any writing, be it a writing, settlement or anything else, every clause must be considered with reference to the context and other clauses of the writing so as, as far as possible, to make a consistent whole and that no part of the writing should be construed in isolation for the intention of the author of the writing is to be found not in one part of the writing or in the other, but in the entire writing and that intention can best be gathered by viewing a particular part of the writing not detached from its context in the writing but in connection with its whole context. (1964) 1 I T J 201 : (1965) 55 ITR (ED) 1 : AIR 1965 Guj 9 (13, 14, 15) (Pt A) (Pr 3) (DB).

——S. 8—**Construction—Settlement deed—Intention of settlor—(Hindu Law—Gift).**

The true intention of the settler has to be gathered not by attaching importance to isolated expressions but by reading the deed as a whole with all the provisions and ignoring none of them as redundant or contradictory. 1957 Ker L T 990 : 1957 Ker L J 769 : ILR (1957) Ker 822.

——S. 8 — **'Expressio unis est exclusio alterius' — Applicability—'Advance'—Meaning of.**

An 'advance' means literally a payment beforehand. In certain cases it may be a loan but not necessarily so. Where an advance is declared to be re-payable though only conditionally, it would lean to the side of a loan.

In interpreting deeds the applicability of the maxim expressio unis est exclusio alterius is not an absolute one and its application depends on the intention of the parties as discoverable upon the face of the instrument. The maxim ought not to be applied when its application, having regard to the subject-matter to which it is sought to be applied, would lead to inconsistency or injustice. 1960 Mad WN 74 : (1960) 2 Mad L J 13.

——S. 8 — Usufructuary mortgage and lease of property back to mortgagor — Mortgage and lease whether part of same transaction — Test. See T. P. Act (1882), S. 58, Note 31. AIR 1957 Pat 24.

——S. 8 — Deed — Construction — Must be read as whole. AIR 1955 NUC (Raj) 4046.

14 (C). Repugnancy.

——S. 8—**Deed—Construction—Proviso.**

Per Mukherjea J.—A proviso is normally an excepting or a qualifying clause and the effect of it is to except out of the preceding clause upon which it is engrafted something which but for the proviso would be within it.

Per Chandrasekhara Aiyar J. — The technical rules of interpretation of provisos and exceptions, with reference to their scope and legal effect, adopted in constructing statutes should not ordinarily be imported in interpreting deeds and documents executed by laymen. Angurbala Mullick v. Debabrata Mullick, 1951 S C J 394 : 64 Mad L W 960 : 1951 SCR 1125 : ILR (1952) 2 Cal 209 : AIR 1951 S C 293 (300, 301) (Pt C) (Prs 20, 23).

——S. 8—Construction of deed—Repugnancy — Gift and later bequest—Intention of the executant has to be ascertained from the recital as a whole — Earlier part reciting gift as accomplished fact and latter part containing bequest — Latter part cannot be operative —Hindu Law — Gift or bequest — Construction of a deed — T. P. Act (1882), S. 8—Deed—Construction—Repugnancy. ILR (1964) 2 All 534.

——S. 8 — Construction — Clause conferring full ownership — If consistent with providing rents as maintenance discussed. 1959 Andh L T 67.

——S. 8 — Deed containing two clauses repugnant to each other—Interpretation.

Ordinarily the intention of the executant of a document has to be ascertained from the instrument read as a whole and not by reading isolated passages therein without reference to the other passages, and the attempt should be to reconcile as far as possible the apparently irreconcilable clauses. If, after reading the document as a whole and making this attempt, it is seen that there are two passages which are wholly irreconcilable and repugnant to each other, the subsequent clause in the instrument of transfer or gift, inconsistent with the nature of the gift or interest made by the earlier clause, has to be rejected as repugnant to the earlier clause. 1958 Ker L T 516 : 1958 Ker L J 747.

——Ss. 8 and 28—Scope of—Clause in deed conferring absolute interest — Subsequent clause creating interest in another transferee on happening of specified uncertain event — Whether operates in defeasance of prior clause—(Deed—Construction).

It is only if an interest is created by a subsequent clause in an instrument of transfer in favour of another transferee conditional on the happening of a specified uncertain event that the subsequent clause can be taken as a clause in defeasance of an earlier clause creating an absolute interest and the absolute interest created by the earliest clause taken as a limited or life estate. 1958 Ker L T 516 : 1958 Ker L J 747.

——Ss. 8, 19 and 21 — Restraint on alienation and gift over—Partition deed between father A and son B giving A right to mortgage and lease but not to sell or gift over—B to get A's share in case of A not getting son by second marriage — A not marrying again — Held, on construction that A got only life estate under partition deed and B was entitled to vested remainder. See Hindu Law — Partition. AIR 1965 Mad 193 (DB).

——S. 8 — Deed — Construction—Clause restricting alienation — Zamindar's right to resume pre-settlement inam — Hindu Law — Inheritance—Still-born child—Right to inherit to such child.

Where a clause restricing the alienation is not in derogation of an absolute grant but is a condition of the grant itself, the intention of the parties must be given effect to.

Held, on facts that the gift deed was not valid and that plaintiff was not entitled to any relief except the maintenance provision in the partition deed. (1951) 2 M L J 664 : AIR 1952 Mad 166 (167, 168) (Pts A, C) (Prs 2, 5).

14 (D). Conflicting recitals.

●——S. 8—Deed—Construction—Hindu joint family —Award embodying partition among members—Conflict between earlier and later directions — Village given 'kul haq haquq samet milkiyat' to co-sharer R —Direction followed by mention of purposes (meeting expenses of worship and maintenance of public temple) for which village was being given—Village held dedicated absolutely to temple and R was given possession of it as manager and trustee—(Hindu Law —Religious Endowment—Dedication—Proof). A I R 1958 Madh Pra 246, Reversed. Ramkishorelal v. Kamalnarayan, 1963 M P L J 396 : (1963) Supp (2) S C R 417 : 1963 Mah L J 428 : 1963 Jab L J 523 : AIR 1963 S C 890 (894, 895, 896, 897) (Pt B) (Prs 14, 19, 20a, 22, 24).

——S. 8—Falsa demonstratio non nocet — (Maxims) —(Deed—Construction).

The maxim falsa demonstratio non nocet means that if there be an adequate and sufficient description with convenient certainty of what was meant to pass, an erroneous addition to the description will not vitiate it. Where there are two conflicting descriptions of the subject-matter of a grant or two conflicting parts of the same description, that which is the more certain and stable and the least likely to have been mistaken or to have been inserted inadvertently must prevail if it sufficiently identifies the subject-matter. Preference ought to be given to that element of the description of the subject-matter which is most consistent with the intention of the parties to be collected from other parts of the deed, illumined if necessary by the surrounding circumstances and subsequent conduct of the parties. 1957 KLT 825 : 1957 Ker L J 925.

14 (E). Discrepancy between area and boundaries.

■ ——S. 8—Construction —Grant purporting to carry out contract for sale of inam land — Contradiction in description and conditions upon which it was directed to be sold—Construction — Words and Phrases — Agraharam — Tenancy Laws — Madras Estates Land Act (1 of 1908 as amended in 1936), S. 3 (2) (d). See Government Grant's Act (1895), S. 3. AIR 1950 P C 105.

——Ss. 8, 54—Sale-deed — Construction — Discrepancy between area and boundaries — Effect — Admissibility of extrinsic evidence — (Evidence Act (1872), S. 92) — (Deed — Construction).

If a contract has been reduced to writing, oral evidence cannot be received of what passed between the parties before the document was written or during that time it was under preparation or after its execution so as to vary or qualify the written contract. Whatever be the negotiations that may precede the contract of sale, the parties will be bound by what they have embodied in the written contract. Extrinsic evidence of the intention of the parties to a contract of sale from declarations and negotiations preceding the contract is inadmissible to interpret the meaning of the written contract or of the intention of the parties to the transaction.

In English law the statement as to area therein would be rejected as falsa demonstratio and the same principle is applicable here.

Errors as regards the statement of area are likely to occur in the case of unsurveyed lands, but the boundaries, if they are well-defined and ascertainable with certainty, give an accurate idea of the land intended to be conveyed under the deed. In such cases, as between the vendor and the purchaser the entire extent of land comprised, within the boundaries, be it more or less than the area described, is the subject of bargain and any excess or deficiency in area does not amount to a breach of warranty. Case-law referred. AIR 1955 NUC (Andhra) 5841.

——S. 8 — Deed — Construction.

Where there is a conflict between description by boundaries and description by area, the canon of construction that is applied is that, if the description by boundaries is precise and accurate, it prevails over or overrides the description by area. AIR 1955 NUC (Cal) 1068 (DB).

——S. 8— Description by boundaries—(Deed—Construction).

Where on a construction of the sale seed, it is clear that the intention of the parties was to sell a parcel of land within well-defined boundaries, any erroneous statement regarding its extent should be rejected as falsa demonstratio. 1957 Ker L J 448 : 1957 Ker L T

485 : ILR (1957) Ker 475 : AIR 1957 Ker 181 (185) (Pt C) (Pr 7) (DB).

——S. 8—Construction of deeds— Conflict between boundaries and area — Rule of construction — Description of area when prevails —(Deed — Construction.)

When there is a conflict between the area and the boundaries mentioned in a document the description of the boundaries should be accepted in preference to the area mentioned in the document for determining the extent of the land conveyed thereunder. Such is the usual rule; but this is not an inflexible or infallible rule and when, from the proved circumstances it is clear that the intention of the parties was only to convey the extent mentioned in the document, even though the boundaries would take in a larger area, effect has to be given to their intention and the description of the boundaries cannot be allowed to prevail. 1957 Ker L T 886 : 1957 Ker L J 722 : ILR (1957) Ker 835.

——S. 8—Deed—Construction—Extent of property—Conflict between area and boundaries — Determination of extent of property — Rule as to.

Ordinarily, in the case of a conveyance, lease or other document, in cases of conflict between the area, the survey number and the boundaries of the property mentioned in the document, the boundaries are to prevail and the rest is considered as false or erroneous description, in the absence of circumstances indicating that the application of the rule of predominance of the boundaries in determining the extent of the land covered by the deed will lead to an error. 1951 KLT 117.

——S. 8— Deed — Construction —Conveyance—Property sold described by boundaries– Boundaries will normally determine property conveyed. AIR 1955 NUC (Madh B) 4892.

——S. 8–Deed—Construction—Text accompanied by diagram—Diagram contradictory to text— Text prevails. AIR 1955 NUC (Madh B) 3038.

——S. 8 — Deed — Construction—Sale-deed—Boundaries of land sold specified exactly—Approximate area also mentioned — Description of land by boundaries prevails. AIR 1963 Mad 147 (147, 148) (Pr 2).

——S. 8—Boundaries and description—Deed construed. AIR 1955 NUC (Mad) 2435.

——S. 8—Discrepancy between boundaries and area.

Where on a construction of the sale deed the intention of the parties was to sell a parcel of land within well-defined boundaries, the measurements should be rejected as falsa demonstratio. ('51) 1951 Mad W N 869 : 65 Mad L W 82 : 1951-2 Mad L J 611 : ILR (1952) Mad 682 : AIR 1953 Mad 769 (774) (Pt C) (Pr 32) (DB).

——S. 8—Construction—Difference between area and boundaries– Operative portion in the document to be looked to. AIR 1961 Orissa 97 (99, 100) (Pt C) (Pr 9).

——S. 8—Applicability of falsa demonstratio—Admissibility of oral evidence. AIR 1955 NUC (Pat) 1591 (DB).

——S. 8—Deed — Construction — Sale certificate—Description and area Conflict between— Recitals describing property sold and those giving area and jama — Inconsistency between — Which to prevail —Paramount description and false or incorrect description.

The principle is well established that if the description of a property in a deed of sale is sufficient to render certain what is intended, the addition of a wrong name, or of an erroneous statement as to quantity, occupancy or erroneous enumeration of particulars will have no effect. As soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it, according to the maxim, falsa demonstratio non nocet. Where the portion conveyed is perfectly described and can be precisely ascertained, and there is no difficulty except that arising from a subsequent statement about the area being so much, the latter statement becomes merely a fasle description of that which is conveyed with convenient certainty before.

Held, on facts that the property purchased was adequately described as "one anna pokhta share", etc., and that the subsequent addition of the area the share of the Sudar Jama and the valuation was erroneous and would not affect that which had been conveyed with certainty before.

Sarjoo Prasad, J. : — What was purchased at a sale in execution must depend essentially upon the recitals in the sale certificate which is a document of title; and when the recitals are clear and unambiguous it is not open to the parties to refer to recitals in any other document or to any other evidence in the case to construe the recitals in the sale certificate. But where the entire description of the property as given in the sale certificate does not fit in with the description of any particular property of the judgment-debtor, it has to be ascertained which part of the recital is the true and correct description and which is an incorrect or false description. AIR 1952 Pat 146 (147, 148) (Prs 5, 9) (DB).

——S. 8—Conflict between description of area given in compromise and decree based on it and measurements — Power of executing Court to ascertain property. See Civil P. C. (1908), S. 38. AIR 1958 Punj 13.

14 (F). Conduct of parties.

——S. 8—Deed—Construction— Subsequent declaration or conduct of parties.

It is a firmly established rule that the construction of a contract cannot be affected by the declaration of parties made subsequent to its date though when the words are ambiguous they may be explained by the previous or contemporaneous conduct of the parties. 57 Bom L R 850 : AIR 1955 Bom 419 (429) (Pt G) (Pr 21).

——S. 8—Construction — Subsequent declaration or conduct of parties does not affect construction of document — When words are ambiguous they may be explained by previous or contemporaneous conduct. AIR 1955 Bom 419 (429) (Pt G) (Pr 21).

——S. 8 — Construction — Subsequent conduct — Relevancy—(Evidence Act (1872), S. 8).

Contemporaneous exposition is helpful where the documents are ambiguous. But this method is always fraught with danger. Where there is no ambiguity in the document, the evidence of actings of parties is irrelevant. 1958 M P L J 198 : 1958 Jab L J 289 : 1958 M P C 317 : AIR 1958 Madh Pra 246 (254, 255) (Pt I) (Prs 39, 42) (DB).

[Reversed on another point in AIR 1963 S C 890.]

——S. 8—Appreciation of evidence—Statements made from ulterior motives — (Deed — Construction). See Evidence Act (1872), S. 5. AIR 1958 Madh Pra 246 (DB).

[Reversed in AIR 1963 S C 890.]

——Ss. 8 and 107 — Registered lease deed — Interpretation by reference to antecedent negotiation — Award by Industrial Tribunal — Error apparent on face of record — [Industrial Disputes Act (1947), S. 15 (1)]—(Constitution of India, Art. 226).

When once the terms of a contract are reduced to the form of a document, particularly to the form of a registered lease deed the contract must be construed

according to its term, and cannot be explained or interpreted by antecedent negotiation that led up to it. Where, therefore, an Industrial Tribunal relies upon a letter written by the lessee in the course of negotiation for the purpose of construing the obligations of the lease there is an error apparent on the face of the record. (1954) 2 M L J 447 : 67 Mad L W 669 : AIR 1954 Mad 1045 (1048) (Pt C) (Pr 14).

——S. 8—Deed – Construction – Conduct of parties — Party's opinion about legal effect — Use of. See Evidence Act (1872), S. 91. AIR 1957 Pat 278 (DB).

——S. 8—Deed—Ambiguous document— Subsequent conduct if can be considered.

The circumstances attending the creation of the document may be looked into in case there is ambiguity, and it is capable of two interpretations. But if there is no ambiguity extraneous matters cannot be looked into. In no case can subsequent happenings and subsequent conduct of the parties be utilized for the interpretation. AIR 1952 Vindh Pra 25 (28) (Pt G) (Pr 14).

14 (G). Construction to be in accord with law.

●——S. 8—Deed—Construction—Deed partly void—Effect.

The fact that a clause in a deed is not binding on the ground that it is unauthorised cannot ipso facto render the whole deed void, unless it forms such an integral part of the transaction as to render it impossible to sever the good from the bad.

Where a proviso in a lease deed is void as it is unauthorised, and the effect of declaring the proviso void will leave the rest of the deed whole and intact, the lease without the proviso is perfectly valid. Karanpura Development Co., Ltd. v. Kamakshiya L. Narain Singh, 1956 Pat L R (S C) 115 : (1956) S C J 511 : 1956 S C R 325 : ILR 35 Pat 573 : 1956 S C A 591 : AIR 1956 S C 446 (459) (Pt G) (Pr 37).

——S. 8 — Deed — Construction — Construction to lean towards validity of document. AIR 1955 N U C (Assam) 3639.

——S. 8—Construction — Settlement deed.

Settlement consisting of valid and invalid terms — Separation not possible—Settlement is invalid as a whole. 89 Cal L J 224 : ILR (1954) 2 Cal 41 : AIR 1952 Cal 763 (767) (Pt D) (Pr 34).

——S. 8—Deed—Construction — Trust Deed — Trust Deed to be interpreted as not to be repugnant to the settled law on the subject — Assessee transferring his shares in companies to a Trust — Assessee, himself a Trustee investing trust funds in such companies — No dominant control over the affairs of the company —Assessee, held, did not receive any benefit from such borrowings— Exemption under Proviso 3, held, applied — Dividends on such shares not taxable. See Income-tax Act (1922), S. 16 (1) (c), Proviso 3. (1964) 53 I T R 292 : ILR (1965) 2 Mad 113 (DB).

——S. 8—Gift of immovable property under Muhammadan Law. See Transfer of Property Act (1882), S. 122. AIR 1953 Sau 180 (DB).

[Reversed in AIR 1959 S C 1383].

14(H). Form of expression not to be taken in literal sense.

●——S. 8—Construction—Name given to document.

Per Bose J. — The true nature of a document cannot be disguised by labelling it something else. Shantabai v. State of Bombay, 1958 S C J 1078; 1958 S C A 727; 1959 S C R 265; A I R 1958 SC 532 (535) (Pt B) (Pr 15).

——S. 8—Construction — Payment of rent "in Company's sica" — Reference to company's sica held meant payment in current coin and not the equivalent to company's sica in current coin—(Evidence Act (1872), S. 35 — Record of Rights — Presumption). 93 Cal L J 36 : I L R (1955) 2 Cal 102 : A I R 1954 Cal 480 (481, 482) (Pt A) (Prs 6, 8) (DB).

——S. 8—Deed — Construction — Recitals in indenture—Use of 'Gift to children' —'Children' if includes grandchildren—T. P. Act (1882), Ss. 8, 13 — Words and Phrases—Children.

The word "Children" is a plain and simple word, which in ordinary parlance does not mean or include grand children. Where there is no other word in the operative part which will indicate an intention to abridge or enlarge that ordinary meaning, and there is no question of the gift to the children being defeated by the gift over, for there were children in existence who will take, the word "children" in the operative part ought not to be given a meaning which is wider than its ordinary natural meaning, so as to include the grand children. ('49) I L R (1949) 1 Cal 498 (503 to 506).

——S. 8—Construction—Adherence to plain meaning of express words. ILR 30 Pat 613 : AIR 1951 Pat 254 (259) (Pt F) (Pr 15) (DB).

14(I). Legal nature of document.

——S. 8—Construction—Title—If conclusive.

The character of a document is to be determined with reference to the contents and not with reference to the name given to it. (1961) 1 Andh W R 105: 1961 Andh L T 240 : I L R (1961) 1 Andh Pra 579 : A I R 1962 Andh Pra 94 (99) (Pt F) (Pr 49) (DB).

——S. 8—Nature of document.

The real nature of the transaction rather than the name given to it by the parties should decide the nature of the transaction. 1957 Ker L T 732 : 1957 Ker L J 753 : I L R (1957) Ker 859 : A I R 1958 Ker 307 (309) (Pt B) (Pr 2) (DB).

——S. 8 -Deed — Construction — Apparent tenor of document—Duty of Court.

A duty is cast upon the Courts to determine the nature of the transaction when such a question is raised by the pleadings of the parties and the Courts should not be satisfied merely by the apparent tenor of a document. A I R 1954 Punj 116 (117) (Pt A) (Pr 6).

14(J). Same meaning to be given to same word.

——S. 8—Deed—Construction—Meaning of words.

The ordinary rule of construction is that the same expression should be construed in the same sense wherever it appears in the same document unless of course there is something repugnant in the context. 72 Mad L W 270: (1959) 1 Mad L J 335 : ILR (1959) Mad 601.

14(K). No enforced construction to escape harshness.

——S. 8 — Construction of — Right to make bricks, erect brick kilns and lime kilns—Limited to use for building on leased premises.

Where a lease confers a right on the lessee to make bricks, brick kilns and lime kilns is limited to the making of bricks, and brick kilns for domestic purposes, that is, for use in the construction of houses on the leased land such a term in the lease cannot be construed as conferring an unrestricted or unlimited right to manufacture bricks for commercial purposes and to take them out of the land and dispose them of to strangers. AIR 1952 Pat 387 (389) (Prs 10, 11) (DB).

——S. 8—Construction.

Where a lease does not permit the premises to be used for any purpose otherwise than business premises, the tenant by living in a small portion of the

premises does not contravene the condition in the lease. 55 Punj L R 295: AIR 1953 Punj 247 (248, 249) (Pt B) (Pr 5).

14(L). Assistance of similar documents.

● ——S. 8—Deed—Construction—Judicial decisions construing similar words—Value of.

The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document. and so unless words used in a given document are identical with words used in a document judicially considered it would not serve any useful purpose to refer to judicial precedents in the matter. Shapoor Fredoom Mazda v. Durgaprosad Chamaria, (1961) 1 Ker L R 550: (1962) 1 S C R 140 : (1963) 1 SCJ 332 : AIR 1961 SC 1236 (1238) (Pt B) (Pr 7).

● ——S. 8—Deed—Construction—Usefulness of precedents in construing documents—(Deed—Construction).

In construing documents, the usefulness of precedents is usually of a limited character; after all Courts have to consider the material and relevant terms of the document with which they are concerned and it is on a fair and reasonable construction of the said terms that the nature and character of the transaction evidenced by it has to be determined. Trivenibai v. Smt. Lilabai, 1959 M P C 572 : 1959 Nag L J 290 : 1959 S C A 333 : 1959 M P L J 653: 1959 SCJ 594: (1959) Supp (2) S C R 107 : AIR 1959 S C 620 (626) (Pt C) (Pr 20).

● ——S. 8—Deed — Construction — Interpetation of document with reference to interpretation of another document.

Per Mahajan J.—Unless the language of two documents is identical, an interpretation, placed on one document is no authority for the proposition that a document differently drafted, though using partially similar language, should be similarly interpreted. Abdulla Ahmed v. Animendra Kissen Mitter, 1950 Raj L W 139: 1950 S C J 153 : 1950 S C R 30 : I L R (1951) 1 Cal 511 : A I R 1950 S C 15 (22) (Pt E) (Pr 25).

——S. 8—Deed—Construction.

The construction of documents depends upon the words used therein and it is futile to attempt to construe a document in the light of authorities interpreting the terms of document in other cases. Those decisions may serve as a useful guide if they contain general rules of construction. (1952) 2 Mad L J 884: AIR 1953 Mad 566 (568) (Pt B) (Pr 12).

——S. 8—Deed—Construction — Different deeds evidencing separate transactions—One cannot be used to explain another. 1957 Pat L R 51 : ILR 36 Pat 471 : AIR 1957 Pat 278 (283, 284) (Pt D) (Pr 49) (DB).

——S. 8 — Deed — Construction — Construction of similar document, if binding.

Per Jha C. J. — When the question is one of pure construction of a written instrument, decisions based upon the construction of another document, couched in similar but not the same language, is not binding as an authority. I L R 30 Pat 613 : A I R 1951 Pat 254 (259, 260) (Pt F) (Pr 16) (DB).

——S. 8—Construction—Will — Use of precedents — Held conferred only a Hindu widow's estate. ('50) 2 Pepsu L R 584.

——S. 8 — Deed — Construction — Reference to different documents — Agreement fixing mode of discharge of debt—Personal liability.

Each document is to be construed by a reference to language in the said document and it is unsafe to rely on the construction made of different documents executed under different circumstances although some of the words in the two documents may be the same.

Held on facts (i) that the liability of C and D under the agreement was not personal and their liability could only be enforced by payment of 1/5th of the realizations of the decree;

(ii) that the liability of C and D was for the entire amount but only its mode of discharge was to be in a particular manner. AIR 1950 Raj 25 (26, 27) (Prs 9, 14, 15) (DB).

14(M). Words acquiring technical meaning.

● ——S. 8 — Deed — Construction — Principles — "Tamliknama" in favour of Hindu widow — Use of the word "malik"—Effect—Nature of estate taken.

In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered but that is only for the purpose of finding out the intended meaning of the words which have been actually employed.

To convey an absolute estate to a Hindu male, no express power of alienation need be given; it is enough if words are used of such amplitude as would convey full rights of ownership.

The use of the word "malik" with reference to the interest which a will or other document purports to convey to the devisee or transferee is very common in many parts of India and it cannot certainly be regarded as a technical term of conveyancing. The word when uses as descriptive of the position which a devisee or donee is intended to hold is apt to describe an owner possessed of full proprietary rights including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be confirmed.

Held on facts the mere fact that the grant was made for the maintenance and residence of the widow could not be taken to be a prima facie indication of the intention of the executant that the widow was to enjoy the property only during her lifetime. The object of creating the relinquishment deed and the tamliknama contemporaneously was not merely to make provision for the maintenance of the widow; the other and the more important object was to perfect the title of the minor to the estate and to quiet all disputes that might arise in respect of the same. The document does no doubt not make any reference to the heirs of the widow, but that is not at all necessary, nor is it essential that any express power of alienation should be given. There is nothing in the context of the document or in the surrounding circumstances which would displace the presumption of full proprietary rights which the use of the word "Malik" is apt ordinarily to convey. The widow got an absolute title to the properties on the strength of the tamliknama. Ram Gopal v. Nand Lal, 1951 All L J 24 : 64 Mad L W 547 : (1950) S C J 575 : (1950) S C R 766 : 88 Cal L J 1 : AIR 1951 S C 139 (141, 142, 144) (Pts A, B, C) (Prs 7, 8, 9, 10, 13, 19).

——S. 8 — Deed — Ambiguity in language of instrument—Evidence of usage.

Where there is ambiguity in the language of an instrument evidence may be given of usage to show what was the meaning attached to the instrument soon after its execution by those interested in interpreting it. It is not necessary that the actings should be of parties or their agents; it is sufficient that the actings are of persons purporting to act under the document. (1906) App Cas 92, Foll. A I R 1952 Pat 409 (413) (Pt B) (Pr 11) (DB).

SECTION 9

● ——S. 9—Partition of property can be made without writing on general principles of law, if not under

this section. See Registration Act (1908), S. 17. AIR 1958 S C 706.

——Ss. 9 and 5—Family arrangement—Not a transfer—Written instrument or registered deed not necessary. See Transfer of Property Act (1882), S. 5. AIR 1958 Andh Pra 147 (DB).

——S. 9—There should be transfer of right to enjoy immovable property — Definition does not contemplate right to manage property for or on behalf of other person — Understanding between widow and defendant that defendant to manage property and give certain amount of paddy to widow for maintenance of herself and her daughter — On her remarriage, right to maintenance and property to cease —Arrangement reduced to writing—Writing held to be memorandum of family arrangement entered into orally and did not require registration — Document held not lease. AIR 1955 N U C (Assam) 4183 (DB).

——S. 9—Oral transfer—Release, relinquishment and surrender — Mother can relinquish her interest in joint family property orally.

Where the relinquishment by the mother of her interest in the joint family property is merely abandonment of her interest in the joint family property in favour of her sons, such a relinquishment or abandonment of interest in the joint family property, even though it consists of immovable properties and is of the value of Rs. 100 and upwards, can be effected without a written instrument, though if one is executed it would undoubtedly require registration under S. 17 of the Registration Act. I L R (1964) Bom 702: 66 Bom L R 499 : 1964 Mah L J 736 : AIR 1965 Bom 74 (76) (Pr 8).

——S 9 — Agreement to treat sale as mortgage — Necessity of writing.

To enable the parties to come to an agreement to treat a sale as a mortgage by a subsequent agreement, no writing need be executed by and between the parties. 54 Bom L R 492 : A I R 1952 Bom 425 (434) (Pt C) (Pr 10) (DB).

—Ss. 9 and 105—Lease deed—Reduced to writing by parties — Recitals therein to be relied on for deciding rights of parties.

Where the claims are made by parties on the basis of lease deeds executed by them, their rights have to be adjudged in the right of description of properties in those documents and the Court cannot say that the measurements given in the documents are of little significance. 1962 Ker L J 33 : (1962) 1 Ker L R 152 : ILR (1961) 2 Ker 514.

——S. 9—Scope — Oral transfer — Contract to settle property in consideration of marriage—If should be in writing and registered — Registration Act (16 of 1908), S. 17.

Held, on facts that the transaction entered into by the parties was neither a sale, nor a lease, nor an exchange nor a gift. This transaction fell within the scope of S. 9 of the Transfer of Property Act and required no writing and no registration. By reason of the subsisting and enforceable contract on the date of the suit, the plaintiffs would be barred from obtaining the relief of declaration or recovery of possession. (1959) 72 Mad L W 206 : (1959) 2 Mad L J 502.

——S. 9 — Hindu Religious and Charitable Endowment — Dedication of property — Writing not necessary. I L R (1955) Mys 383.

——S. 9 — Applicability — Section does not apply to charge.

The section in terms does not apply to charges because a charge is not 'a transfer of property' and the phrase does not admit of being paraphrased as 'any transaction.' 1950 Nag L J 111: ILR (1950) Nag 802: AIR 1950 Nag 117 (124) (Pt E) (Pr 35).

——S. 9 — Auction sale in execution for recovery of cess —Under-tenure purchased by patnidar—Under-tenure passed absolutely to patnidar and merged in patni tenure — Patnidar cannot release under-tenure in favour of under-tenure holder by unregistered deed. 1957 B L J R 109: AIR 1957 Pat 706 (709) (Pt 4) (Pr 6) (DB).

——S. 9 — Relinquishment or surrender by Hindu widow does not require any writing. It may be effected by her by any voluntary act which may operate as her civil death. AIR 1952 Pat 67 (Pt B) (Pr 10) (DB).

——Ss. 9 & 54 — Agreement to sell immovable property in Travancore need not be in writing. 1949 T C L R 18.

SECTION 10

SYNOPSIS

(Transfer of Property Act (1882), S. 10).

1. Scope.
2. "Is transferred".
3. Restraint on alienation for particular period.
4. Alienation restricted to a particular class of persons.
5. Condition against alienation in gifts.
6. Conditions in decrees and awards restraining alienation.
7. Agreement or covenant not to alienate.
8. Covenant against alienation in leases.

1. Scope.

——Ss. 10 and 5—Applicability discussed. See Transfer of Property Act (1882), S. 5. 39 Mys L J 443: ILR (1961) Mys 932.

——S. 10 — Principle of Section.

The principle underlying this section is that a right of a transfer is incidental to and, inseparable from, the beneficial ownership of property. An absolute restraint therefore, on that power is repugnant to the nature of the estate; and an exception to the very essence of the grant. It is the essence of an immovable property that it confers free power of alienation, and alienation of such a property cannot be made upon the condition that the alienee shall not alienate the land to any. The rule in the section that a condition of absolute restraint of alienation is void, is founded on the principle of public policy allowing free circulation and disposition of property. The Courts have always leant against any device to render an estate inalienable. AIR 1957 Pat 570 (573) (Pt B) (Pr 18) (DB).

2. "Is transferred."

——S. 10 — Will — Construction — Life estate — Validity — Gift for life — If can be construed as an interest for life in usufruct. See Muhammadan Law —Will. AIR 1952 All 1 (DB).

——Ss. 10 and 11 — Applicability — Property of a female Hindu — General presumption as to absolute estate—It is subject to sub-s. (2) — Sub-s. (2) when applies —Tests to determine—'Restricted estate' — Meaning of—Restriction must be understood in reference to Ss. 10 and 11 of T. P. Act — Document of family arrangement — Property given to paternal grandmother to enjoy usufruct in lieu of maintenance—Restrictions not to damage fruit trees, or mortgage or give permanent lease — Grandmother settling property upon her daughter — Held, that grandmother gets restricted estate within meaning of sub-s. (2) and she could not settle it in favour of the daughter. See Hindu Succession Act (1956), S. 14 (1). AIR 1965 Andh Pra 367.

——S. 10 — Applicability — Settlement of disputed claims relating to land — If transfer — S. 5.

A compromise which amounted to a settlement of some disputed and doubtful claims relating to the land is not a transfer of property and consequently

the restrictions on alienation contained in S. 10 would not be applicable AIR 1933 Punj 282, Rel, on. AIR 1958 Him Pra 5 (7, 8) (Pt C) (Pr 17).

– S. 10—Partition — Condition forbidding alienation to strangers—Valid — Sale in breach of condition—Remedy — Suit for setting aside — No prayer for specific performance — Not maintainable — Specific Relief Act (1877), S. 27.

A condition in a partition deed relating to tarwad property forbidding parties to sell property obtained to strangers is a partial restriction and is valid under S. 10 of T. P. Act.

Where in violation of the condition, a member of the tarwad sold his share to a stranger, the right which the other members of the tarwad get under the deed is one for specific performance under S. 27 of the Specific Relief Act and a suit for setting aside the sale without any prayer for specific performance is not maintainable. AIR 1932 P C 158, Foll.; ILR 24 Mad 449; 27 T L J 935; AIR 1943 Cal 417, Rel. on; AIR 1958 S C 838, Ref. 1963 Ker L J 167 : 1963 Ker L T 355.

——S. 10 — Deed — Settlement deeds—Father conveying property absolutely in favour of his sons A and B—Expression of intention that A should not convey any property during minority of B—Effect of.

Held, on facts that in the later expression there was nothing more than a pious wish expressed by a well-intentioned father that the properties given by him to his two sons must be preserved for the benefit of both. This could not certainly put any restriction in the disposing power of A in respect of the properties given to him. Even if this was considered to be a restriction that restriction could not operate in the face of unequivocal disposition in full of all his rights in favour of the two sons. 1960 Ker L R 828 : 1959 Ker L T 1030 : 1959 Ker L J 1244 : AIR 1960 Ker 226 (227) (Pr 11).

——S. 10 — Applicability — Deed of maintenance arrangement—Clause prohibiting alienation — Validity discussed. AIR 1958 Ker 265 (267, 268 and 269) (Prs 4, 6, 7, 9 and 10) (DB).

— Ss. 10 and 5 – Scope — Partition is not transfer of property — S 10 does not apply. 39 Mys L J 443: ILR (1961) Mys 932.

— Ss. 10, 7 and 6 (d) — Deed of partition — Partition between Hindu father and sons — Eldest son even though having no interest in family properties given some properties by way of maintenance of his family with no power of alienation — Nature of interest acquired by him. See T. P. Act (1882), S. 6 (d). AIR 1964 Orissa 59 (DB).

——S. 10—Family arrangement not a transfer within S. 5 – Party getting property under family arrangement subject to absolute restraint in the matter of alienation — Held S. 10 could not apply. See Transfer of Property Act (1882), S. 6 (d). AIR 1964 Pat 214 (DB).

—S. 10 — Partition — Share falling to co-sharers—Nature of right—Restriction on alienation—Validity.

Restriction of alienation by allottee in a deed which is either a partition deed or a family arrangement deed, in respect of joint family property is not hit by S. 10. AIR 1957 Pat 570 (574) (Pt C) (Pr 25) (DB).

——S. 10 — Applicability — Family settlement — Partition—Joint shares — Restrictions on alienation —Validity – (Hindu law — Partition).

Family settlement does not come under the purview of S. 10. A partition deed will not come under the definition of family settlement. 1955 Ker L T 299 : ILR (1954) T C 1264 : AIR 1955 Trav-Co 231 (231, 232) (Prs 2, 4).

3. Restraint on alienation for particular period.

——Ss. 10 to 17—Scope and object—Restraint on alienation for a specific period contained in a consent decree.

Sections 10 to 17 (Transfer of Property Act) have been enacted to encourage free alienation and circulation of property. Entire transfers are not vitiated simply because there may happen to be some clauses in the deeds which are repugnant to the free transfer and circulation of property; such restrictive clauses are to be treated as void. So gift of income without providing for the corpus must be taken as gift of the corpus. The principle is of universal application and there is nothing in the Hindu or Mahomedan law inconsistent with it and so it applies to Hindus and Mahomedans.

Under S. 10 a condition absolutely restraining a transferee from disposing of the property is void and the section is wholly silent as to the validity of qualified restraints on alienation.

A family arrangement and compromise of disputed claims are not transfers, and the section does not in terms apply to them. But the principle would be applicable where the condition involves an absolute restraint on alienation. Similarly, the section does not apply to partitions; but restraints clearly offending the rule must be held to be void. AIR 1955 Mad 350 (355, 357, 358) (Pt C) (Prs 17, 26, 27, 28, 28, 29).

4. Alienation restricted to a particular class of persons.

——Ss. 10, 14, 40 and 54 — Agreement requiring parties to sell their lands amongst themselves and on their not purchasing same to sell it to one of the members of the Community — Otherwise sale to be invalid — Agreement held only restricted right of alienation but did not create right of pre-emption—Even if it gave rise to right of pre-emption it was not hit by provisions of Ss. 14 and 10 — Agreement was covered by second part of S. 40. AIR 1960 Assam 178 (DB).

——S. 10—Alienation restricted to specified class of person—Partition deed—Alienation restricted to other sharers offering to purchase—Validity.

Where a partition deed states that in case any of the the sharers desire to sell the share allotted to him (or her) it shall be sold to whomsoever among the other sharers who offers to purchase it, such a limited restraint on alienation is a valid restraint. 1956 Ker L T 691 : AIR 1957 Trav-Co 156 (157) (Pr 6) (DB).

5. Condition against alienation in gifts.

——S. 10—Religious endowment — Property dedicated to idol — Alienability — Effect of S. 10, T. P. Act.

Prohibition against a condition absolutely restraining the transferee from transferring his interest transferred to him as laid down in S. 10 does not affect the idol to whom the transfer by way of an endowment is made, because an idol by itself is incapable of making any transfer or disposing of its interest in the property. ILR (1956) 1 All 421: AIR 1957 All 77 (80, 81) (Pt B) (Pr 21) (DB).

——Ss. 10, 11, 122—Gift—Construction.

Held on facts that the intention of the donor was to settle the property on the children who were minors at the time and the mother was only to have a life estate in the property. The restrictive clauses were intended rather as a qualification of the estate created by the document in favour of the mother so that what might otherwise be an estate of inheritance was displaced in effect by the clauses. 1957 Ker L T 1119.

——S. 10 – Bequest to Hindu female—Wife given right to gift or sell and 'R' rights of Malik after her death

—Wife, whether gets absolute estate — Construction —Held presumption of life estate cannot be drawn and right to gift or sell being incidents of ownership wife gets absolute estate—Held, further bequest to R was not a case of subsequent devise — Succession Act Act (1925), Ss. 95, 96, 82, 85. I L R (1964) Cut 479 : AIR 1965 Orissa 54 (57, 58, 59) (Pt A) (Prs 15, 17, 23).

—Ss. 10 and 5 — Dedication—Condition against Shebait's power to alienate— Condition is void and is legally ineffectual to invalidate the perpetual lease granted by shebait. 1958 B L J R 312 : I L R 38 Pat 49 : AIR 1959 Pat 305 (309) (Pt B) (Pr 11) (DB).

—S. 10—Hindu executing gift deed of land in favour of his wife prior to coming into force of Hindu Succession Act—Criterion to decide whether it passes absolute or limited interest to donee —Deed providing for transfer of all rights of donor in property to donee, and specifying that she was to be owner—But deed also containing provision that donee would not be entitled to transfer property in any manner whatever—Deed held to pass limited interest only to donee S. 10, T. P. Act, held inapplicable. See Hindu Law—Gift. 1963 Cur L J 556 : 66 Pun L R 314.

[Reversed on another point in AIR 1965 Punj 110].

—Ss. 10 and 126 — Applicability — Candition against alienation in gift.

If an absolute gift is made subject to a condition that the donee will not have the power to alienate the gifted property by sale or by mortgage or in any other way, the condition is void. The case falls under section 10 and not under S. 126. 58 Punj L R 114 : AIR 1956 Punj 255 (255) (Prs 2, 3).

—S. 10—Restrictions against alienations in compromises—(Contract Act (1872), Ss. 23 and 25).

Gift of property in favour of pichhlag son objected to by collaterals of donor—Agreement made between parties that donee or his descendants will not have right of sale or mortgage over property — Agreement amounts to a compromise and not a transfer to which S. 10 applies and hence restrictions on alienation contained therein are not hit by the section—Agreement is not in any way contrary to principles of equity or any provision of law. 55 Punj L R 398: ILR (1954) Punj 165 : AIR 1953 Pun 282 (283, 284) (Prs 5, 6, 8) (DB).

6. Condition in decrees and awards restraining alienation.

—S. 10—O. 23, R. 3—Consent decree containing term contravening S. 10, T. P. Act — Decree is not a nullity — It is merely contrary to law and binds the parties thereto unless set aside by proper proceedings. See Civil P. C. (1908), O. 23, R. 3. AIR 1953 Bom 412 (DB).

—Ss. 10 and 11—Family arrangement under award —Clause against alienation—Binding character.

Where under a family arrangement contained in an award, one of the members, to whom share in property is allotted in full proprietorship, bind himself not to alienate certain property, the income from which was to be used for supporting a charity under the directions in the award, the family arrangement might be binding upon the parties to it, but the inalienability clause would not bind his successors. A restraint against alienation cannot derogate from a complete proprietary right. The inalienability clause offends Ss. 10 and 11, T. P. Act. 1958 M P L J 198 : 1958 Jab L J 289 : 1958 M P C 317 : AIR 1958 Madh Pra 246 (252) (Pt F) (Pr 31) (DB).

[Reversed on another point in A I R 1963 S C 890.]

7. Agreement or covenant not to alienate.

—S. 10 — Compromise deed — Absolute estate — Restraint on alienation — Void condition — (Civil P. C. (1908), O. 23, R. 3).

Where in a deed of compromise, an absolute estate of inheritance is created in favour of a person, any subsequent clause which purports to restrict that interest is invalid, and the person in whose favour any property passes under the compromise, takes an absolute estate as if the deed contained no such restrictive condition. AIR 1933 Lah 201, Foll. 56 Punj L R 361 : AIR 1955 Punj 49 (50) (Pt A) (Prs 8, 10).

8. Covenant against alienation in leases.

—Ss. 10, 111 (g) — Lease — Stipulation restraining sub-letting —Breach of—Absence of provision for re-entry — No forfeiture of lease. 65 Cal W N 1050 : 1961 Cal L J 131 : ILR (1962) 2 Cal 206.

—S. 10 — Lease before T. P. Act — Condition against alienation would be void as infringing rule against perpetuity. See T. P. Act (1882), S. 108 (j). AIR 1954 Cal 541 (DB).

—Ss. 10, 107 — Compromise decree creating perpetual lease—Property containing paddy land — Condition restraining alienation — Decree not registered— Condition held unenforceable — (Tenancy Laws — Malabar Tenancy Act (14 of 1930), S. 39) — (Registration Act (1908), S. 49). A I R 1955 N U C (Mad) 3950.

—Ss. 10, 111 (g), 112 — Condition against alienation in a lease — Right of re-entry not reserved to lessor—Breach of condition — No suit against alienee on ground of forfeiture. AIR 1956 Tripura 9 (14, 15) (Pt E) (Pr 29).

SECTION 11

—Ss. 11, 40—Restrictive covenant.

There must be a mention in the sale deed that the vendor had reserved any rights for "the beneficial enjoyment of his other property." Where S sold a portion of the land to A reserving a passage in the portion sold, this passage is to be treated as in joint ownership of S and A. Subsequently S sold the remaining portion of that land to B with the passage, by specifically mentioning the fact in the sale deed. B cannot enforce the agreement between S and A. AIR 1951 Ajmer 74 (75, 76) (Prs 6, 8).

—S. 11—Will — Construction — Principles—Lands to pass to daughter after lifetime of daughter-in-law —No limiting words — Estate conferred, nature of. See Succession Act (1925), S. 74. AIR 1958 Andh Pra 447 (DB).

—S. 11—Plaintiff selling one of his two neighbouring houses — Stipulation in sale deed that vendee should not construct windows or doors to the southern side of the house but that there should be only Zarookas of 1¼' by 1¼' for light is not void and is enforceable. 1962 Nag L J (Notes) 40.

—S. 11—Scope of second para. of S. 11.

The immovable property contemplated by the second paragraph of S. 11, T. P. Act, can hardly be said to be an incorporeal right. (1956) 29 ITR 629 : AIR 1956 Cal 480 (484) (Pt B) (Pr 19) (DB).

—S. 11 — Proprietary interest sold reserving subordinate tenancy interest in vendor — There is no repugnancy — Attachment of subordinate interest in execution of decree against vendor is void—(C. P. Code (1908), S. 60). ILR (1956) 1 Cal 15 : AIR 1954 Cal 400 (402) (Prs 13, 14) (DB).

—S. 11—Contracts restricting enjoyment—Purchase of leaseholder's interest — Payment of annuity to lease-holder and his family in perpetuity agreed— Reservation of right for annuity is not repugnant to nature of the grant. 1964 Ker L J 517 : (1964) Ker L R 348 : 1964 Ker L J 511 : AIR 1965 Ker 27 (27, 28) (Pt A) (Pr 3).

—Ss. 11, 10 and 8 — Absolute or restricted transfer — Partition arrangement providing in the fir instance for allotment of disputed property in favour

of R's wife C—C not to deal with property by sale or otherwise during R's life time—After C property was to devolve on her four brothers — Held that interest intended to be conveyed in favour of C was in the nature of mere life-interest and not an absolute estate. 1957 Ker L J 226 : 1957 Ker L T 407 : A I R 1957 Ker 119 (121) (Pt A) (Pr 7) (DB).

——S. 11— Transfer of house—Restriction on private right of way out of the house is void. 1961 M P L J (Notes) 311.

——S. 11—Deed — Construction—Husband settling property on wife — Clause providing that property should be enjoyed by the settlee and by her male heirs from generation to generation—Effect of.

Where in the operative clause there is no mention of any gift or devise in favour of any heirs of the settlor and where it cannot be inferred from the recitals that the dominant or the sole intention of the settlor was to make a gift only to the male heirs to be born through the second wife without giving any independent estate of gift in favour of the second wife, the settlee gets an absolute interest in the property. The subsequent clause cannot control the full import or effect of the operative sentence which precedes it and by which the settlor had conferred an absolute estate on the wife. It is settled law that such subsequent clauses detailing the mode of enjoyment or the devolution of the properties from generation to generation do not curtail the full effect of the operative clause, by which the settlor had already expressed his intention to confer an absolute estate on the settlee. It is well established that such a clause as "to be enjoyed from generation to generation" indicates only a heritable estate. It is also well settled that the word "Sarvaswathanthiramai" occurring in a settlement or gift deed indicates an absolute estate. 71 Mad L W 124 : (1958) 1 Mad L J 335.

——S. 11 - Deed— Construction—Document— Whether conferred life estate or absolute estate.

Clause restricting alienation in a partition deed conferring only a life estate was held not in derogation of an absolute grant but a condition of the grant itself. (1951) 2 Mad L J 664 : AIR 1952 Mad 166 (167) (Pt A) (Pr 2).

——S. 11—Deed—Construction — Gift to Society for certain purpose executed by Manager of joint family —Property to revert to donor if not required for the purpose—Reverter clause held operated to benefit of other members—Clause held not one of repugnancy to absolute estate but one of defeasance — Clause did not violate rule against perpetuity. 62 Mad L W 634 : (1949) Mad W N 607 : (1949) 2 Mad L J 459 : AIR 1951 Mad 798 (799) (Prs 3, 4, 5).

——S. 11—Gift — Vested remainder after creation of life estate—Validity. AIR 1955 N U C (Mys) 705.

——S. 11—Gift — Revocable gift — Conditions to be performed by donee provided for in gift deed after operative portion — Validity discussed. AIR 1955 N U C (Trav-Co) 1046 (DB).

——Ss. 11 and 126 — Agreement for revocation—Gift deed — Donor equivocally and unconditionally transferring all his rights to the donee with absolute powers to deal with the same from date of the gift—Subsequent clause in the deed to the effect that on death of donee property shall not devolve on any of donee's heirs but revert to the donor—Subsequent clause will be repugnant to the absolute estate created in favour of the donee and to the legal incidents of such estate and as such will be ineffective and wholly void. 1952 Ker L T 686 : AIR 1953 Trav.Co 115 (116, 117) (Pr 3).

SECTION 12

●—— S. 12—Sale deed and deed of reconveyance on same dates—Transaction held not mortgage by conditional sale — Reconveyance on original vendor's performing certain conditions—One of conditions not performed—Court will not relieve against forfeiture. See T. P. Act (1882), S. 58. AIR 1963 S C 1182.

——S. 12 - Scope and object — Principles of sections 10 and 12 have been recognised by Mahomedans and Hindus. See T. P. Act (1882), S. 10. AIR 1955 Mad 350.

——S. 12—Scope of.

(Quaere) Whether S. 12 invalidates conditions which are in derogation of the rights of the transferor. ILR 29 Pat 713 : AIR 1951 Pat 488 (492) (Pt B) (Pr 10) (DB).

[Reversed on another point in AIR 1956 S C 336.]

——S. 12 — Travancore Specific Relief Act (13 of 1117 ME), S. 11—Oral agreement to sell can be specifically enforced. See Specific Relief Act (1877), S. 12. 1949 T C L R 18.

SECTION 13

● ——Ss. 13 and 15 — Creation of interest in favour of unborn person—Gift to class or series of persons—Some of them in existence—Validity of gift.

It is true that no interest could be created in favour of an unborn person but when the gift is made to a class or series of persons, some of whom are in existence and some are not it does not fail in its entirety, it is valid with regard to the persons who are in existence at the time of the testator's death and is invalid as to the testator's death and invalid as to the rest. Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer, 1952 S C J 655 : (1953) 1 M L J 103 : 1963 All L J 49 : 1953 All W R (HC) 85 : 1953 S C R 232 : 1953 S C A 369 : ILR (1953) 1 All 896 : AIR 1953 S C 7 (10) (Pt F) (Pr 14).

——S. 13—Settlement deed — Gift in favour of unborn grandchildren—Validity—Transfer not of whole interest in property—Effect—(Succession Act (1925), S. 113).

Held, on facts that the gift in favour of the grandchildren being not the whole of the interest of the settlor the gift must be held to be void in law. AIR 1944 P C 67, Foll. AIR 1957 Cal 118 (119) (Pt A) (Pr 6).

——S. 13 -Deed — Construction — Recitals in indenture use of — Gift to children—Children ordinarily does not mean or include grand children unless it is clearly repugnant to or excluded by the context. ILR (1949) 1 Cal 498.

——S. 13 — Scope and object of S. 13 discussed. See T. P. Act (1882), S. 10. AIR 1955 Mad 350.

——Ss. 13 and 20 —Scope and applicability — Provisions of S. 20 not controlled by S. 13—Interest in favour of unborn person under S. 13 dissimilar to that envisaged by S. 20 — S. 13 has application only to cases where interest created on the first occasion is a limited interest and such transfer is followed up by the creation of another interest—Gift to daughter's son A—Property to be enjoyed by A along with sons of daugher if born prior to A attaining majority—Gift valid under S. 20. 40 Mys L J 459 : AIR 1962 Mys 98 (100) (Prs 9, 11, 12, 14).

——S. 13 — Travancore Nayar Regulation (1 of 1088 M.E), S. 17 — Section not applicable—T. P. Act applies — Gift in favour of more persons than one — Donees take as tenants-in-common. See Travancore Nayar Regulation (1 of 1088), S. 17. AIR 1953 Trav-Co 89 (DB).

SECTION 14

● ——Ss. 14 and 18 — Scope — Wakf-alal-aulad of Talukdari property by Muhammadan talukdar—Wakf for benefit of wakif, his family and descendants, generation after generation — Wakf violates rule against perpetuity in S. 12 and is invalid. See Tenancy Laws

transfers by operation of law, family arrangement and partition considered. See T. P. Act (4 of 1882), S. 10. AIR 1955 Mad 350.

SECTION 16

——S. 16—Scope and object of the section considered. See T. P. Act (1882), S. 10. AIR 1955 Mad 350.

SECTION 17

——S. 17—Scope and object of the section considered. See T. P. Act (1882), S. 10. AIR 1955 Mad 350.

SECTION 18

● ——S. 18 — Oudh Estates Act (1869), Ss. 2, 11, 12, 18—Scope — Wakf-alal-aulad of Talukdari property by Muhammadan talukdar — Wakf for benefit of wakif his family and descendants generation after generation — Wakf violates rule against perpetuity in S. 12 and is invalid. See Tenancy Laws — Oudh Estates Act (1 of 1869), S. 2. AIR 1962 S C 1722.

——S. 18—Public charitable trust — Determination of.

If the intention of the donor is merely to benefit specific individuals the gift is not charitable even though the motive of the gift may be to relieve their poverty or to accomplish some other purpose in reference to these particular individuals which would be charitable if not so confined; on the other hand, if the donor's object is to accomplish abstract purpose of relieving poverty, advancing education and religion etc., without reference to any particular individuals and without giving any particular individual the right to claim the funds, the gift is charitable. A I R 1956 Bom 81 (83, 85, 86) (Pt A) (Prs 17, 23, 24).

SECTION 19

● ——Ss. 19 and 21—Interest taken by beneficiaries under trust — Contingent or vested — Principles — Intention of settlor—(Succession Act (1925), Ss. 119 and 120).

Where the question is whether the interest of the judgment-debtor under the deed of trust is a vested as opposed to a contingent interest then the determination of the question has to be guided generally by the principles recognised under Ss. 19 and 21, Transfer of Property Act, 1882, and Ss. 119 and 120, Succession Act, 1925. Such a question is really one of intention to be gathered from a comprehensive view of all the terms of the document. Further, the Court has to approach the task of construction in such cases with a bias in favour of a vested interest unless the intention to the contrary is definite and clear. Rajes Kanta Roy v. Smt. Shanti Debi. 1957 S C J 197 : 1957 S C R 77 : 1957 S C A 440 : A I R 1957 S C 255 (260, 261, 262, 263) (Pt D) (Prs 8, 9, 10, 11, 14).

——S. 19—Will—Construction—Life estate—Gift for life — If can be construed as an interest for life in usufruct, considered— Succession Act (1925), S. 119. See Mahomadan Law—Will. AIR 1952 All 1 (DB).

——S. 19—Will—Construction—Vested interest.

Where a testator bequeathed his estate to his wife for her life and on her death to his two sisters as owners, with a proviso that if a child were born to the wife, it was to be the owner of the properties.

Held that the two sisters took vested interest in the properties on the death of the testator which was liable to be divested by the birth of a child to the widow. 52 Bom L R 301 : I L R (1951) Bom 203 : AIR 1950 Bom 289 (292, 295) (Prs 9, 18, 19) (DB).

——S. 19 — Transferee pendente lite takes property transferred subject to the result of the suit — Suit ending in compromise decree — Defendant getting contingent interest in property—Condition precedent not fulfilled — Vendee's possession is not affected. See T. P. Act (1882), S. 52. AIR 1954 Hyd 185 (DB).

—S. 19 — Contingent or vested interest — Will — Testator giving certain amount to his son — Payment of amount with interest deferred to a future date — Vested interest if created. See Civil P. C. (1908), S. 60 (1) (m). 1960 Ker L J 705.

——S. 19 — Hindu Law — Partition — Restraint on alienation and gift over — Partition deed between father A and son B giving A right to mortgage and lease but not to sell or gift over — B to get A's share in case of A not getting son by second marriage — A not marrying again — Held, on construction that A got only life estate under partition deed and B was entitled to vested remainder. See Hindu Law — Partition. AIR 1965 Mad 193 (DB).

——S. 19—Deed—Construction—Gift to a class and gift to individuals—Distinction and incidents of.

Held on facts that the settlor intends to confer an interest on the great grandsons. The interest is a present one, namely, a vested remainder in the property over which a series of life estates are created. Early vesting of such an interest would require that the great grandson should obtain on birth that interest that is, over the property given to his father, though the extent of his own interest might be diminished by the birth of other children to his father. The son of M had therefore an interest in half the settled properties, which on his death without issue will be inherited by his mother, who will accordingly be entitled to a partition of one half share in the properties settled. (1963) 1 M L J 150 : 76 Mad L W 226 : ILR (1963) Mad 512.

——S. 19 — Vested interest — Interest to take effect after life-estate.

Where by a Settlement deed husband settles his property on the wife for life and further provides that the sons born to her by the settlor would thereafter take the property absolutely the sons born to them after the execution of the settlement deed would get the vested remainder in the property. (1958) 2 Mad L J 57.

——S. 19 — Deed — Construction—D executing deed of trust — Estate to be held in trust for benefit of settlor and wife for their lifetime and thereafter for D's daughter-in-law and her sons S and B — Trustee directed to hand over accumulated surplus to S and B on latter completing 25th year — Settlor held had conferred upon S and B vested remainder. AIR 1955 N U C (Mad) 3895.

——S. 19 — Gift — Retention of right of possession giving up power of disposal after death—Transaction held governed by S. 19. AIR 1955 N U C (Trav-Co) 5101 (DB).

——S. 19 — Limitation Act (1908), Arts. 44, 140 — Travancore Christian Succession Act (2 of 1092), Ss. 17, 24 — Intestate succession — Original owner dying leaving behind widow and plaintiff as heir—Right of heir to share on death or re-marriage of widow—Nature of, indicated — Alienation by mother as guardian of plaintiff — Setting aside — Limitation applicable. See Limitation Act (1908), Art. 44. AIR 1956 Trav-Co 107 (DB).

SECTION 20

● ——S. 20 — Relinquishment of interest in joint family property — Interest in favour of sons to be born in future created — Relinquishment does not constitute transfer of property. See Transfer of Property Act (1882), S. 5. A I R 1965 Andh Pra 177 (FB).

——Ss. 20 and 13—Scope and applicability — Provisions of S. 20 not controlled by S. 13 — Interest in favour of unborn person under S. 13 dissimilar to

that envisaged by S. 20 — Gift to daughter's son A — Property to be enjoyed by A along with sons of daughter if born prior to A attaining majority — Gift valid under S. 20. 40 Mys L J 459 : A I R 1962 Mys 98 (100) (Prs 9, 11, 12, 14).

SECTION 21

● —S. 21—Interest taken by beneficiaries under trust — Contingent or vested—Principles stated—Intention of settlor — Held interest taken was vested and not contingent. See T. P. Act (1882), S. 19. A I R 1957 S C 255.

● —S. 21 — Contingent interest — (Succession Act (1925), S. 120).

One of the features of a contingent interest is that if a person dies before the contingency disappears and before the vesting occurs, the heirs of such a person do not get the benefit of the gift. Rajes Kanta Roy v. Smt. Shanti Debi. 1957 S C J 197 : 1957 S C R 77 : 1957 S C A 440 : AIR 1957 S C 255 (263) (Pt E) (Pr 12).

—Ss. 21, 23, 5 and 6 — Contingent interest is property and transferable — Prior interest not necessary for contingent interest — Scope of S. 23. indicated. See T. P. Act (1882), S. 5. AIR 1960 Cal 609 (DB).

—S. 21 — Transferee pendente lite takes property transferred subject to the result of the suit — Suit ending in compromise decree — Defendant getting contingent interest in property — Condition precedent not fulfilled—Vendee's possession is not affected. See T. P. Act (1882), S. 52. AIR 1954 Hyd 185 (DB).

—S. 21 — Contingent or vested interest — Will — Testator giving certain amount to his son — Payment of amount with interest deferred to a future date — Vested interest if created. See Civil P. C. (1908), S. 60 (1) (m). 1960 Ker L J 705.

—Ss. 21, 100 — Under Ss. 21 and 100, T. P. Act a present charge as security for discharging a contingent liability can be validly created. See T. P. Act (1882), S. 100. AIR 1952 Madh Bha 16 (DB).

—S. 21 — Hindu Law — Partition — Restraint on alienation and gift over — Partition deed between father A and son B giving A right to mortgage and lease but not to sell or gift over — B to get A's share in case of A not getting son by second marriage — A not marrying again — Held, on construction that A got only life estate under partition deed and B was entitled to vested remainder. 77 Mad L W 691 : ILR (1965) 1 Mad 41 : AIR 1965 Mad :193 (194, 195) (Pt A) (Prs 3, 6) (DB).

—S. 21 — Settlement in favour of wife in case of disagreement between husband and wife — Interest of wife, whether contingent or vested.

Where, under a settlement deed by a husband in favour of a wife, her interest in the property is dependent upon the event of any disagreement between the husband and the wife, the wife has only a contingent interest in the property till the contingency has arisen. Her interest in the property would arise ouly if the uncertain event of the disagreement between the wife and the husband should arise at any time and if they live amicably there is no scope for the settlement becoming effective and any interest in the property would not vest in her. 1955 Mad W N 989 : 69 Mad L W 472 : (1956) 1 Mad L J 75 : AIR 1956 Mad 304 (304, 305) (Pt A) (Pr 2).

SECTION 23

—Ss. 23, 21, 6 and 5 — Contingent interest is property and transferable — Prior interest not necessary for contingent interest — Scope of S. 23 indicated. AIR 1960 Cal 609 (DB).

—S. 23 — Bequest to A for life and after A's death to B and C absolutely in equal shares with condition that in case B or C dies issueless survivor to get entire property absolutely — Death of B issueless after A's death — Subsequent legacy in favour of C does not take effect. See Succession Act (1925), S. 124. 1965 B L J R 410 : AIR 1966 Pat 40 (DB).

SECTION 25

—S. 25 — Sale of property subject to condition — Condition not fulfilled — Sale may be avoided. See T. P. Act (1882), S. 54. AIR 1955 N U C (All) 2767 (DB).

SECTION 26

● —Ss. 26 and 29 — Scope — Relationship of husband and wife must subsist when transfer of assets is made—Words 'husband and wife' to be interpreted as indicative of marital relationship—Person transferring assets to a woman in consideration of their forthcoming marriage — S. 16 (3) (a) (iii), Income-tax Act, held not attracted. See Income-tax Act (1922), S. 16 (3) (a) (iii). AIR 1964 S C 587.

SECTION 28

—S. 28—Transferee pendente lite takes property tranferred subject to the result of the suit — Suit ending in compromise decree — Defendant getting contingent interest in property— Condition precedent not fulfilled— Vendee's possession is not affected. See T. P Act (1882), S. 52. AIR 1954 Hyd 185 (DB).

—S. 28 — Will — Absolute bequest subject to defeasance on donee dying without male issue — Will construed. See Succession Act (1925), S. 131. AIR 1960 Ker 183.

—S. 28—Clause in deed conferring absolute interest — Subsequent clause creating interest in another transferee on happening of specified uncertain event —Whether operates in defeasance of prior clause discussed. See Transfer of Property Act (1882), S. 8. 1958 Ker L T 516.

—S. 28 — Applicability — Mappilas of Malabar are governed by Marumakkathayam law and not by Mahomedan law. 1957 Ker L T 899.

—S. 28 —Moplas in north Malabar are governed by the Marumakkattayam law in the absence of evidence to the contrary — Stridhanam gift — Incidents of — Gift over after death of wife of donee without issue in favour of brother and sister of the wife will take place. To such gift S. 28, T. P. Act (1882) will apply. See Marumakkathayam Law. 1957 Ker L T 899 : 1957 Ker L J 862.

—S. 28—Bequest to A for life and after A's death to B and C absolutely in equal shares with condition that in case B or C dies issueless survivor to get entire property absolutely — Death of B issueless after A's death — Subsequent legacy in favour of C does not take effect. See Succession Act (1925), S. 124. 1965 B L J R 410 : AIR 1966 Pat 40 (DB).

—Ss. 28, 32 and 8 — Will — Absolute estate — Defeasance — Gift in favour of other persons on defeasance clause coming into force, is contingent —On happening of contingency ulterior transfer will become vested interest by virtue of S. 21. See Succession Act (1925), S. 131. AIR 1956 Punj 45.

—Ss. 28, 126 — Absolute gift with a defeasance clause — Effect of —Not repugnant to S. 126.

Section 28 expressly allows the gift of any interest in favour of the donee subject to the condition that on the happening of a specified uncertain event the interest shall pass to another person. In such a case what is really conferred on the donee under the first clause is only a life estate even though the interest is described in that clause as an absolute estate, and the absolute estate passes to the donee or donees under the second clause on the happening of the specified uncertain event.

Held, on facts that the gift to the donee S under the first clause was only a gift of a life estate and the defeasance clause was not repugnant to that gift and did not offend the provisions of S. 126. I L R (1956) Trav-Co 914 : 1956 Ker L T 620 : AIR 1957 Trav-Co 167 (169, 170) (Pr 5) (DB).

SECTION 29

● ——S. 29—Income-tax Act (1922), S. 16 (3) (a) (iii) —Scope — Relationship of husband and wife must subsist when transfer of assets is made — Words 'husband' and 'wife' to be interpreted as indicative of marital relationship — Person transferring assets to a wowan in consideration of their forthcoming marriage — S. 16 (3) (a) (iii) held not attracted. See Income-tax Act (1922), S. 16 (3) (a) (iii). **AIR 1964 SC 587.**

SECTION 30

——S. 30—Deed —Construction of — Repugnancy — Gift and later bequest — Intention of the executant has to be ascertained from the recital as a whole — Earlier part reciting gift as accomplished fact and later part amounting to bequest —Later part cannot be operative—See T. P. Act, S. 8. **ILR (1964) 2 All 534.**

——Ss. 30, 52 and 100 — Civil P. C. (1908), S. 151 — Interim maintenance — Grant of—Princioles stated—(Hindu Law—Maintenance) — See Civil P. C. (1908), S. 151. **AIR 1955 Mad 571.**

SECTION 31

——Ss. 31, 123, 126—**Deed of gift and condition of revocation in seoarate documents — Effect — Registration Act (1908), S. 17 (1) (a), (b) (2) (v).**

Held on facts that the deed of gift and the agreement formed part of the same transaction. The transaction read as a whole fell within the purview of Ss. 31 and 126, T. P. Act. The omission to make the payment by the donee agreed upon would constitute the happening of the specified event mentioned in S. 126 and also the happening of the specified uncertain event mentioned in S. 31. The agreement as to the condition upon which the donor was given the right to revoke the deed of gift did not require registration. It was enough that the deed of gift was registered. The donor was therefore entitled to revoke the deed of gift on the donee's failure to maintain him. **AIR 1951 All 599 (599, 600, 601) (Prs 5, 6, 8, 12, 13).**

——S. 31—Deed—Construction — Gift to Society for certain purpose executed by Manager of joint family —Property to revert to donor if not required for the purpose — Reverter clause held operated to benefit of other members—Clause held not one of repugnacy to absolute estate but one of defeasance— Clause did not violate rule against perpetuity. **62 Mad L W 634 : 1949 Mad W N 637 : (1949) 2 Mad L J 459 : AIR 1951 Mad 798 (799) (Prs 3, 4, 5).**

——S. 31—**'Specified uncertain event' — Meaning of.**

The Illustrations given under S. 31 are sufficiently suggestive of the position that a specified event contemplated under that section must be definite and specific and a wide and vague clause of the nature 'any other business' the prohibition of which is inserted as a term in a lease deed cannot be taken to be a specified uncertain event. **AIR 1957 Orissa 35 (37) (Pt B) (Pr 8) (DB).**

SECTION 32

——S. 32—Deed—Construction — Gift to Society for certain purpose executed by Manager of joint family —Property to revert to donor if not required for the purpose—Reverter clause held operated to benefit of other members—Clause held not one of repugnancy to absolute estate but one of defeasance—Clause did not violate rule against perpetuity. **62 Mad L W 634 : 1949 Mad W N 637 : (1949) 2 Mad L J 459 : AIR 1951 Mad 798 (799) (Prs 3, 4, 5).**

——S. 32—Will—Absolute estate—Defeasance—Validity considered—See Succession Act (1925), S. 131. **AIR 1956 Punj 45.**

SECTION 35

● ——**Ss. 35, 60 and 62 — Doctrine of election — Its applicability to mortgage transaction — By his conduct mortgagee held to be bound by doctrine of election—Limitation Act (1908), S. 3 and Art. 148 - Suit for redemption — Held suit was not barred by limitation.**

The doctrine of election may be stated thus: he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it. This principle is often put in another form that a person cannot approbate and reprobate the same transaction. AIR 1929 Mad 502 (FB) and AIR 1918 P C 196; AIR 1961 S C 1327, Rel. on. Beepathuma v. Velasari Shankaranarayana. **(1964) 5 S C R 836 : AIR 1965 S C 241 (246, 247) (Pt A) (Prs 16, 17, 18, 19).**

——S. 35 — Hindu law — Reversioner — Consent to alienation—Election—What amounts to — By affirming or accepting the validity of the transaction, made by the limited owner, a particular reversioner may preclude himself from challenging the same. This is loosely called ratification. Strictly speaking, however, it is a rule of election. Case law referred — See Hindu Law—Reversioner. **AIR 1956 Cal 211 (DB).**

——Ss. 35 and 6 (a)—Release of right by Mahomedan presumptive heir before inheritance opens — It cannot be supported on basis on basis of estoppel or election—See T. P. Act (1882), S. 6 (a). **AIR 1959 Mad 131 (DB).**

——S. 35—Scope and applicability — Principle of election—Suit for partition of tarwad properties — Claiming properties dealt with by will of testator as tarwad properties — Plaintiffs made legatees under will—There is no scope for applicability of principle of election to such case—Question of election would arise only after decision of question whether properties were tarwad or self-acquired. See Succession Act (1925), S. 180. **AIR 1954 Mad 556.**

——S. 35—**Courses to be elected must be legal—Doctrine cannot be resorted to cure illegality.**

No question of election arises when one of the courses open to the person is not a legal or lawful one. **65 Mad L W 496 : 1952-2 Mad L J 104 : AIR 1953 Mad 161 (163, 164) (Pt C) (Pr 13).**

——S. 35—Tenancy laws — Bihar Land Reforms Act (30 of 1950), S. 14 — Claim under, in respect of rent decree—Simultaneous execution of decrees — Maintainability—Order putting decree-holder to election of remedy—Legality—Principle of election—Applicability to remedies—The principle of election did not apply to the case and the judge was wrong in putting the decree-holders to election. The decree-holders might levy simultaneous execution in respect of his decree in more than one Court. See Tenancy laws—Bihar Land Reforms Act (30 of 1950), S. 14. **AIR 1956 Pat 223 (DB).**

[Overruled in AIR 1958 Pat 630 (FB)].

——Ss. 35, 58—**Doctrine of Election—Applicability.**

The principle which is well known as 'doctrine of election' in English Law broadly means that where a deed professes to bestow a benefit on a person named in it, such person cannot accept the benefit under the instrument without at the same time conforming to all its provisions. The vendees must either accept the transaction as a whole with all its incidents and obligations or repudiate it altogether. Having accepted the sale they are also bound by the stipulation to reconvey it to the plaintiffs. The principle embodied in S. 58, T. P. Act, does not apply to the case. **ILR (1960) 1 Punj 70.**

SECTION 36

●—S. 36—S. 36, T. P. Act applies in absence of contract to contrary between transferor and transferee. See Income-tax Act (1922), S. 4 (1) (a). AIR 1954 S C 470.

—Ss. 36 and 5 — Applicability to joint family partition—(Hindu Law—Joint family—Partition).

The principle of S. 36 of the Transfer of Property Act is not applicable to cases of partition of joint families. 1958 Ker L J 472 : 1959 Ker L T 73 : AIR 1959 Ker 208 (210, 211) (Prs 12, 13) (DB).

—S. 36 — "Contract to the contrary" —Stipulation to pay rent of year's lease at particular date is contract to the contrary. AIR 1955 NUC (Mad) 2450.

—Ss. 36, 8, 55 — Sale of agricultural land — Land subject to lease — Apportionment of rent — Applicability of S. 36.

The rents and profits should be apportioned under S. 36 which applies to agricultural rents. Even if S. 36 does not apply in terms, the rule of apportionment prescribed under S. 36 will apply, as a rule of justice, equity and good conscience even to agricultural rents. (1951) 1 Mad L J 69 : 1951 Mad W N 184 : AIR 1951 Mad 601 (603, 604) (Pt A) (Prs 4, 6).

—S. 36—No transfer of interest of lessor — Section not attracted — Lease of running Sugar Mill — Deed providing for payment of rent in instalments—Lessee held liable to pay rent till sale of Mill to Government though no crushing of sugarcane was done during the period. AIR 1964 Pat 258 (260, 261) (Prs 2, 3, 4) (DB).

SECTION 37

—Ss. 37 and 109—Partition—Co-sharers becoming joint lessors of building—Separate suits by cosharers for their shares of rent maintainable.

On partition of property, co-sharers who become joint lessors of a building can bring separate suits for their shares of rent of the building against the lessee, where the lessee has been paying for several months their shares of rent separately. AIR 1942 Pat 120 and AIR 1916 Cal 645 and AIR 1936 Bom 10 and AIR 1923 Mad 577, Rel. on; AIR 1934 P C 58, Disting. 1962 B L J R 386 : ILR 41 Pat 915 : AIR 1963 Pat 85 (86, 87) (Pr 4) (DB).

SECTION 38

●—S. 38 — Transfer of movables — Intention of parties has to be considered, whether the intention was to sell fixtures as movables. See Income-tax Act (1922), S. 12-B. AIR 1959 S C 254.

—S. 38 — Alienation — Licence in respect of joint family property. See Hindu Law — Alienation. AIR 1953 All 496 (DB).

—S. 38—Alienation by Hindu Widow — Necessity —Burden of proof—Alienee's duty—Transferee from alienee — Position of — If a sale by a widow is impeached the burden lies on the alienee to prove either that there was legal necessity or that he made bona fide enquiries as to the existence of the necessity. The purchaser who claims from alienee, does not stand on any higher footing. See Hindu Law — Alienation. AIR 1957 Andh Pra 776.

—S. 38 — Alienation — Manager — Necessity of — Inquiry by transferee—The lender is bound to enquire into the necessities for the loan, and to satisfy himself that the manager is acting for the benefit of the property. See Malabar Law — Alienation. 1959 Ker L T 30 : 1958 Ker L J 1136 : ILR (1959) Ker 902.

—S. 38 — Sale for legal necessity — Consideration spent for justifying purposes—Effect.

In the case of a sale for legal necessity it would not be enough for the alienee to prove that the consideration was spent for justifying purposes. The question whether the sale was justified or not depends upon whether the danger to be averted or the pressure of circumstances was such as to leave no alternative but to effect the sale. 1950 N L J 452; AIR 1950 Nag 69, Foll. 1960 MPLJ (Notes) 70.

—S. 38—Scope—Principle of equity—Protection to bona fide transferee for value — The alienee has to prove that certain circumstances existed in order to justify the alienation. See Hindu Law—Alienation—Father. AIR 1960 Mad 99 (DB).

—S. 38 — Widow — Alienation —Power to alienate husband's property—Limitations—Sale—Legal necessity—Enquiry as to, by bona fide purchaser for value —Sale when binding on reversioners. The ownership of the widow is qualified by limitations which are not imposed on her for the benefit of the reversioners. See Hindu Law — Widow. (1956) 69 Mad L W 809.

—S. 38 — Alienations by guardian of minors — Validity—Test to decide.

The validity of the alienations by a guardian of a minor must be judged on the circumstances obtaining on the date of the transaction and not on events which subsequently happened. The only question to be considered is whether in the circumstances that existed at the time of the alienation, the act would be regarded as a proper one by men of ordinary prudence. It is also not necessary to prove that the creditors were actually making demands before it could be found that there was a pressure on the estate. A I R 1938 Mad 322 and 17 I C 609 (Mad), Rel. on. 63 Mad L W 318 : (1950) 1 Mad L J 505 : 1950 Mad W N 401 : A I R 1950 Mad 606 (607) (Prs 3, 4) (DB).

—S. 38—Hindu Law—Widow—Alienation — Sale of husband's property by Hindu widow in Manipur State — No certificate of sale from proper authority as required by law in State obtained — Sale is void and inoperative. See Hindu Law — Widow. A I R 1952 Manipur 10.

—S. 38 — Necessity of alienation—Question can be decided only by limited owner and not by transferee. AIR 1952 Nag 60 (63, 64) (Pt E) (Pr 22).

—S. 38:— Transfer by guardian of minor — Necessity—Proof—Onus.

The necessity for transfer has to be considered and in all such cases the burden is laid on the transferee to justify the transfer in his favour. A I R 1951 Nag 403 (405, 406) (Pt D) (Prs 16, 18).

—S. 38 — Recitals in deed — Evidentiary value—Recitals are by themselves no evidence of what they state. AIR 1951 Nag 403 (406) (Pt E) (Pr 17).

—S. 38 — Transfer by natural guardian of Hindu minors — Legal necessity — Proof of—Onus—Out of consideration of Rs. 300, Rs. 108 satisfying minors' debt and Rs. 28 arrears of land revenue—Payment of debt not urgent — Sale held not justified by legal necessity — Hindu law — Guardianship. 1950 Nag L J 452 : I L R (1950) Nag 795 : A I R 1950 Nag 69 (70, 71) (Pt A) (Prs 7, 12).

—S. 38 — Transfer of minor's property by natural guardian — Plea of voidability can be taken in defence.

The contention that the sale of a minor's property, effected by his natural guardian, being only voidable, it cannot be allowed to be avoided by him except in a suit instituted for that purpose is not maintainable. A I R 1920 Mad 748 (FB); (1867) L R 2 H L 325; 1 I C 289 (Cal); AIR 1919 Bom 99 and AIR 1919 P C 6, Ref. 1950 Nag L J 452 : ILR (1950) Nag 795 : AIR 1950 Nag 69 (70, 71) (Pt B) (Prs 8, 11).

—S. 38 — Hindu Law — Alienation — Widow—Alienee's duty—Onus to prove legal necessity or that he made reasonable inquiry into such necessity is on alienee. See Hindu Law — Alienation. A I R 1955 Orissa 17 (DB).

—S. 38—Deed—Construction—Mortgage or lease—Person paying zarpeshgi amount to another and

taking settlement of land and executing kabuliat agreeing to pay annual rent — If mortgagee liable to surrender land on payment of amount paid.

The owner of the land cannot seek to recover possession by paying back to the settlee the amount paid to him, when the latter by being in cultivating possession of the land for more than 12 years has acquired occupancy rights in the land, under the Tenancy Act. **A I R 1952 Pat 312 (314) (Pt B) (Pr 15).**

SECTION 39

● ——S. 39—Charge created by decree — (Maintenance).

A Hindu widow's right to maintenance as against persons other than her own son is not ipso facto a charge upon the property. It is this right, which is not yet a charge, to receive maintenance out of the profits of immovable property which is spoken of in S. 39. Section 39 does not apply to a charge created by a decree. Mahesh Prasad v. Mt. Mundar, **1951 All L J 39 : 1951 All W R (H C) 225 : I L R (1953) 1 All 284 : A I R 1951 All 141 (145, 146, 148, 149) (Pt A) (Prs 19, 33, 36, 37) (FB).**

——S. 39 — Does not create any right or interest in property on ground of maintenance. See Hindu Succession Act (1956), S. 14 (1). **A I R 1965 Andh Pra 367.**

—— S. 39 — Hindu wife's right to receive maintenance out of profits of husband's property — (Hindu Law — Maintenance) —Hindu Adoptions and Maintenance Act (1956), S. 18 (1)

A wife, is entitled to be maintained out of the profits of her husband's property and under the express terms of S. 39 she can enforce her right against the properties in the hands of the alienee with notice of her claim. **(1958) 1 Andh W R 46 : I L R (1958) Andh Pra 1 : 1958 Andh L T 256 : A I R 1958 Andh Pra 396 (401) (Pr 39) (DB).**

——S. 39—Applicability—Hindu Married Women's Right to Separate Residence and Maintenance Act (1946), S. 2 (2) — Right of wife and children under to separate maintenance — Charge on husband's property when can be created under—Gratuitous transferee's liability.

A charge can be created not only over the properties in the hands of the husband or father but also over properties transferred by him either gratuitously or to persons having notice of the right to maintenance. (1947) 1 Mad L J 329 : A I R 1947 Mad 376, Dissented from. **1956 Andh W R 1021 : A I R 1957 Andh Pra 710 (711, 712, 713) (Prs 3, 14).**

——S. 39—Hindu Law — Widow — Maintenance—Possession of husband's separate property—Effect on claim for maintenance from joint family estate—A widow can sue for maintenance. See Hindu Law—Widow. **A I R 1957 Andh Pra 598.**

——S. 39 — Purchase of lottery ticket in name of minor child—(Civil P. C. (1908), S. 35).

Held, that there was absolutely no reason to think that Ramani intended to purchase the ticket exclusive for the benefit of the minor daughter. From the evidence and also the circumstances of this case, it was abundantly clear that the ticket was purchased for his own benefit. The name of the daughter was used simply because he wanted to try his luck by using the name of the daughter who was the youngest child. Ramani Mohan Mukherjee was the real owner of the ticket and he was entitled to get the prize money in question. **93 Cal L J 79 : 58 Cal W N 435: A I R 1954 Cal 490 (491, 492) (Prs 7, 8, 9, 10) (DB).**

——Ss. 39 and 53—Advancement — Benami transaction.

There is no presumption of intended advancement in India. The criterion as to whether the property really belongs to the benamidar or any other person, is to find out as to who paid the consideration. The source of consideration will be the most important factor to be taken into consideration. **I L R (1953) Hyd 165 : A I R 1953 Hyd 77 (78) (Prs 4, 5) (DB).**

——S. 39 — Transferee without notice — Notice of existence of right as sufficient — Notice of transferee's intention to defeat right not necessary.

Now under the new section notice of the existence of the right is sufficient to bind the transferee. A I R 1947 Mad 376, Diss. from. **72 Mad L W 364 : A I R 1960 Mad 42 (42, 43) (Pr 4).**

——S. 39 — Transfer where third person is entitled to maintenance — Right to claim enhanced maintenance — Can be enforced against purchaser, having notice of right.

Section 39 employs the words "where a third person has a right to receive maintenance". The right to receive maintenance about which this section speaks is not only the right to receive maintenance in the first instance but also the right to receive enhanced maintenance which may be claimed if there is a material change of circumstances. A I R 1951 All 141 (FB) and A I R 1948 Mad 208, Disting. **(1964) 1 Mys L J 122 : I L R (1963) Mys 1122 : A I R 1964 Mys 265 (267) (Prs 15, 16) (DB).**

——S. 39 — Wife and children of a person have a right to be maintained out of his property — Hence their maintenance can be made a charge over his properties not only in his hands but also transferred by him gratuitously to avoid their claims : A I R 1944 Bom 50 and 1956 Andh W R 1021 : A I R 1957 Andh Pra 710 and (1958) 1 Andh W R 46 : A I R 1958 Andh Pra 396 and A I R 1960 Mad 42, Rel. on ; A I R 1947 Mad 376 held wrongly decided. Right of minor children or the wife under S. 39, T. P. Act. get to a charge over the properties in respect of their maintenance is not affected by S. 27 of the Hindu Adoptions and Maintenance Act. **40 Mys L J 267 : I L R (1962) Mys 150 : A I R 1962 Mys 207 (208, 209) (Prs 4, 5) (DB).**

——Ss. 39 and 100—Right to receive maintenance—(Hindu Law—Maintenance).

The right to maintenance does not create a charge on the property unless there is an agreement or a decree. **1956 Nag L J 359 : I L R (1956) Nag 181 : A I R 1956 Nag 138 (144) (Pt D) (Pr 37) (DB).**

——S. 39 — Conditions for applicability of section—Right of maintenance cannot be enforced against transferee for consideration without notice—Onus of proof—The onus to prove that the defendant transferee had notice of the plaintiff's right to receive maintenance is on the plaintiff. **1962 B L J R 677 : I L R 42 Pat 860 : A I R 1963 Pat 74 (75) (Pt A) (Pr 5) (DB).**

——S. 39 — Applicability — Right to maintenance against person personally and not in virtue of his holding property—S. 39 does not apply. **1962 B L J R 677 : I L R 42 Pat 860 : A I R 1963 Pat 74 (75, 76) (Pt B) (Pr 6) (DB).**

——S. 39—Scope of — Maintenance decree in favour of wife—Charge on husband's land — Gift of land—Transferee having notice of maintenance claims—Land can be sold in execution — Separate suit not necessary. See Civil P. C. (1908), O. 21, R. 17. **(1957) 59 Punj L R 15.**

——S. 39—Right of maintenance—Enforcement of—Charge on family property alienated—Claim for maintenance is not a charge on the estate of her deceased husband whether joint or separate until it is fixed and charged upon the estate, and unless a case is made out that fraudulent or gratuitous alienation was made, she cannot claim a charge on that portion of the property in the hands of the alienee. Section 39 also cannot be made applicable. See Hindu Law—Widow. **A I R 1955 N U C (Trav-Co) 1912 (DB).**

——Ss. 39, 122—Benami—Advancement.

Where a sale is by the husband to the wife the presumption that the purchase is made by the husband with his own funds and for the benefit of his wife and children can arise only in the absence of evidence to the contrary. A I R 1951 Trav-Co 195 (196) (Pt A) (Prs 2, 3) (DB).

SECTION 40

SYNOPSIS

(Transfer of Property Act (1882), S. 40)

1. Applicability.
2. Restrictive covenants.
3. Covenants running with land.
4. Privity of contract.
5. Licence and contract.
6. Contract to sale immovable property.
7. Right of pre-emption.
8. Contract to pay Zare Chaharam.
9. Transferee with notice.
10. Covenants between landlord and tenant.

1. Applicability.

● —S 40 — Suit for specific performance by prior purchaser against his vendor and subsequent purchaser — Prior form of decree — The practice of the Courts in India has not been uniform for the proper form of decree, and there are three distinct lines of thought See Specific Relief Act (1877), S. 27. AIR 1954 S C 75.

—S. 40 — Interpretation of — Use of english decisions.

Section 40, T. P. Act embodies certain of the principles of the English Law of equity relating to restrictive covenants to ownership of immoveable property. In interpreting the section guidance can no doubt be had from the decided cases of English Courts while taking care not to depart from the plain meaning and effect of the lauguage employed in the section. 1962 Mys L J (Supp) 148 : ILR 1962 Mys 675.

——S. 40 — Annexation of burden to land — Essentials.

What is essential for the effective annexation of a covenant to a land is the intention of the original parties to the covenant, for discovering which, the Court has to look to the wordings of the covenant and the surrounding circumstances. If they show either that the covenant binds the land in its inception or it it affects the nature, quality or value of the land, it will go with the land to transferee as being annexed to it. ILR 38 Pat 443 : AIR 1959 Pat 463 (471, 472) (Pt F) (Prs 41, 42, 44) (DB).

2. Restrictive covenants.

——S. 40 — Restrictive covenant—A restrictive covenant imposed for the better enjoyment of property cannot be enforced against the covenantee by a stranger. See T. P. Act (4 of 1882), S. 11. AIR 1951 Ajmer 74.

——S. 40 — Effect of amendment in 1929 — Right under covenant referred to in first para — Who can enforce — Enforcement against transferee of original covenantor's property — Building scheme by Municipality — Restrictive covenants contained in agreement with municipality by individual owners of house sites — The appellant had not acquired the right of enforcing any of the covenants. 1962 Mys L J (Supp) 148 : ILR (1962) Mys 675.

——S. 40 — Doctrine of Tulk v. Moxhay (41 E R 1143) — Applicabiiity.

The doctrine of Tulk v. Moxhay (41 E R 1143) applies only to restrictive or negative covenants, the doctrine cannot be extended to affirmative covenants such as covenant compelling a man to lay out money or to do any other act of an active character, the covenant must be one restricting or affecting the user of the land, and the remedy is not a remedy at law by way of specific performance under a species of implied privity, but a remedy in equity by injunction against the violation of the covenant — Case law discussed. AIR 1952 Pat 409 (415, 416) (Pt G) (Pr 17) (DB).

3. Covenants running with land.

——Ss. 40, 105, 111 — Lease—Covenant for renewal — Enforceability against assignee from lessor or lessee.

A covenant for renewal in a lease runs with the land and both the lessor and the lessee and their successors in title are bound by it and the lessee is not liable to be ejected, where he has exercised that option before the expiry of the terms. AIR 1959 Assam 22 (24) (Pt B) (Pr 9) (DB).

——Ss. 40 and 109—Covenant by lessor to pay lessee cost of construction of buildings on determination of lease — If covenant running with land.

Held that the covenant was not a personal covenant but ran with the land and bound the plaintiff who was the lessor's basis assignee in respect of a part of the reversion purchased by him. The effect of S. 109, T. P. Act is that the assignee in respect of the part of reversion has the benefit of the lessee's covenants and bears the burden of the lessor's covenants. 55 Cal W N 656 : ILR (1953) 1 Cal 34 (DB).

——S. 40 — Landlord and Tenant — Putni lease — Covenant by putnidar to submit collection papers yearly affects value of land and, therefore, is covenant running with land — Covenant binds assignees from parties. 54 Cal W N 327 : ILR (1951) 1 Cal 276 : AIR 1950 Cal 195 (195, 196) (Prs 2, 4) (DB).

——S. 40 — Covenant running with the land — Covenant for repurchase.

The covenant which is annexed to the land is one which binds the land in its inception or which affects the nature, quality or value of the land. The benefit of such a covenant runs with the land for the benefit of which it is expressed to be made. The right of re-purchase cannot be such a covenant. AIR 1955 Manipur 37 (39) (Pt B) (Pr 9).

——S. 40 — Landlord and tenant — Rent—Co-sharer landlords cannot realize rent at different jamas — Co-sharer landlords—Reduction of rent by some—Others continuing to charge original jama — Transferee is not bound by reduction — Agreement reducing rent is not covenant running with land. ILR 28 Pat 844 : AIR 1950 Pat 22 (24, 25) (Pt C) (Prs 9, 11) (DB).

4. Privity of contract.

——Ss. 40 and 108 (j) — Lessor and sub-lessee — Privity of contract — Covenants in principal lease — Sub-lessee—How far bound.

It is true that covenants that touch and concern the land, as distinguished from collateral covenants, run with the land and bind the assignees. But it is elementary that as between the lessor and the defendants who are sub-lessees there is neither privity of contract nor privity of estate and the sub-lessees would not be bound by the covenants of the principal lease. AIR 1952 Pat 409 (415) (Pt F) (Pr 16) (DB).

5. Licence and contract.

——S. 40 — Licence and easement — Distinction between—Portion of land sold by A to B—B allowed to discharge water from his land through drain on A's land on payment of small sum — Document in form of receipt — Construction — Document held granted a licence and not easement — Permission did not bind A's successor in interest in land. See Easements Act (1882), S. 52. (1962) 69 Cal W N 503.

——S. 40, Para. 2 — Benefit at obligation amounting to rights of easements — Section 40, Para. 2 does not apply. ILR (1962) 2 Punj 255 : AIR 1962 Punj 299 (307) (Pt E) (Pr 29).

6. **Contract to sale immovable property.**

——Ss. 40, 14, 54, 10 — Agreement requiring parties to sell their lands amongst themselves and on their not purchasing same to sell it to one of the members of the Community — Otherwise sale to be invalid — Agreement held only restricted right of alienation but did not create right of preemption — Even if it gave rise to right of pre-emption it was not hit by provisions of Ss. 14 and 10—Agreement was covered by second part of S. 40. See Transfer of Property Act (1882), S. 14. **AIR 1960 Assam 178 (DB).**

——**Ss. 40 and 54—Benefit of obligation arising out of contract—Enforcement of, against transferee with notice—(Trusts Act (1882), S. 91).**

An agreement to sell immovable property does not create any interest in the buyer and the title continues to remain in the owner till the formalities prescribed by S. 54, Transfer of Property Act, are complied with. But where the owners of a house first agreed to sell it to A but B having notice of that agreement pursuaded them to sell it to him and on intimation of this sale A obtained a sale deed in his favour; which could be enforced against B. **59 Bom L R 1084 : 1958 Nag L J 6 : I L R (1958) Bom 234 : AIR 1958 Bom 194 (195, 196) (Pr 4).**

——**Ss. 40 and 54**—Agreement to sell immovable property—Subsequent sale in favour of third person with notice of prior agreement—Sale is subject to obligation under prior agreement See Transfer of Property Act (1882), S. 54. **AIR 1953 Mad 409.**

——S. 40—Contract for sale of land—Vendee selling land to others in breach of contract—Suit for specific performance of contract by vendee against vendor and transferees—Transferees denying notice of prior agreement to sell—Burden of proof — Discharge of. The onus is on the transferees to prove that they had no notice of the prior agreement to sell in favour of the plaintiff. This onus can be discharged by evidence led in the case. See Specific Relief Act (1877), S. 27(b). **AIR 1963 Punj 470 (DB).**

7. **Right of pre-emption.**

——**Ss. 40 and 37**—Partition award containing pre-emption clause — Pre-emption clause held was in the nature of contract and was binding not only on the parties but their assignees also — Pre-emption clause suffered from no infirmity either on ground of uncertainty or being contrary to law. See Contract Act (1872), S. 37. **AIR 1961 Cal 152 (DB).**

——S. 40 — Sale with agreement of reconveyance — Rights and objection of transferee from vendee with notice of agreement — Right of pre-emption with notice. He cannot resist its entorcement by the vendor. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 26-F. **AIR 1955 Cal 21 (DB).**

——S. 40—Pre-emption—Pre-emptor deprived of property pre-empted by vendor's sons who obtained decree for possession — Pre-emptor suing vendor for return of purchase-money—Reliance placed on covenant of indemnity in sale deed — Covenant held did not enure for benefit of pre-emptor and he could not recover purchase-money. **51 Pun L R 347 : AIR 1950 East Punj 74 (78, 79) (Pt D) (Pr 30) (DB).**

8. **Contract to pay Zare Chaharam.**

—— S. 40—Lease—Contract to pay Zare Chaharam—Nature of covenant.

The covenant as to the payment of zare chaharam is one which necessarily affects the value of the land. Hence a covenant by a lessee in a registered document of lease to pay Zare chaharam to the lessor in case of any sale or transfer by him of that lease hold interest is binding on and enforceable against his assigns and transferees. **1958 B L J R 554 : AIR 1958 Pat 467 (467, 468, 469, 470) (Pt A) (Prs 2, 3, 4).**

[Reversed in AIR 1962 Pat 193.]

9. **Transferee with notice.**

——**S. 40 (2)**—Specific Relief Act (1877), **S. 27 (b)**—Transferee without notice — Prior and subsequent buyer — Subsequent buyer making payment of purchase-money in good faith without notice — He is protected by S. 27 (b) — Notice by prior buyer after execution by subsequent buyer of kobala but before its registration does not affect his protection. See Specific Relief Act (1877), S. 27 (b). **AIR 1962 Cal 40 (DB).**

——**Ss. 40 and 3**—Onus is on transferee to prove that he had no notice of prior charge. See Transfer of Property Act (1882), S. 3. **AIR 1960 Ker 139 (DB).**

——**Ss. 40 and 54** — Purchase with notice of prior agreement for sale to another — Sale is subject to obligation under prior agreement — Rights of person under prior agreement stated—Trusts Act (2 of 1882), S. 91 — Scope and effect of. **1952 Mad W N 552 : 65 Mad L W 674 : (1952) 2 Mad L J 166 : A I R 1953 Mad 409 (412) (Pr 7).**

10. **Covenants between landlord and tenant.**

——**S. 40**—Covenants between landlord and tenant—Covenants construed—**Held**, it affected value of land in case of transfer and ran with land. **AIR 1955 N U C (Cal) 2080 (DB).**

——**Ss. 40, 105, 108 — Covenants between landlord and tenant.**

A covenant entered into between a lessor and a lessee is primarily binding as between the two personally. But upon an assignment either of the reversion or of the terms, it may also be binding on the grantee of the reversion or the assignee of the terms, and similarly the benefit of a covenant may pass to these parties respectively. If the covenant is one by the lessor for the benefit of the lessee and directly touches or concerns the land it runs with the land in favour of the assign. An option to renew the lease runs with the land and the leasehold interest and so both the lessor's and the lessee's successors-in-title are bound. **I L R (1954) Cut 1 : 20 Cut L T 193 : AIR 1954 Orissa 110 (111, 112) (Pt A) (Prs 5, 7) (DB).**

——**Ss. 40, 14, 111 (e) and 106**—Landlord and Tenant—Lease in respect of land—Covenant in lease giving option to lessor to terminate lease under specified conditions — Nature of — No breach of rule against perpetuities — Heirs of lessor can enforce — Determination of lease according to covenant — Notice under S. 106 not necessary. See Transfer of Property Act (1882), S. 14. **AIR 1962 Pat 201 (DB).**

——S. 40 — Covenant whether personal or running with land — Lease containing express covenant that in case lessee wishes to assign the demised property to anyone else he should first take lessor's consent and if the lessor does not wish to purchase then the lease may be assigned to a third person, who would be liable to pay chauth money in respect of salami etc., to the lessor—Assignment of lease to third person —Failure to pay chauth money to lessor — Lessor's suit to realise it from assignee and also from lessee—**Held**, that the covenants giving the option to the lessor to take an assignment of the lease from the lessee was one running with the land but the covenant for payment of chauth was only personal and not one touching or concerning land demised and, therefore, it was not a covenant running with the land — Lessor was, therefore, not entitled to recover the chauth amount from lessee's assignee, even though there was privity of estate as between the assignee and the lessor — Section 40, therefore did not apply. A I R 1958 Pat 467, **Reversed**; 1954 S C J 590 : A I R 1954 S C 417, Rel. on; A I R 1923 Cal 679 and A I R 1930 Cal 357 and A I R 1919 All 235, Disting. **1962 B L J R 52 : I L R 41 Pat 656 : A I R 1962 Pat 193 (195) (Pr 4) (DB).**

in the absence of any ground for suspicion that the trasferor may not be the real owner. (1872) IA (Sup) Vol. 40 and ILR 26 All 490, Rel. on. **1960 Pat LR 197: AIR 1961 Pat 16 (17, 18, 19) (Prs 7, 8, 13, 15, 16).**

——**S. 41** — Applicability to execution sales — Section does not in terms apply. **AIR 1955 NUC (Pat) 3250.**

——**S. 41 — Scope of.**

A person who induces some one to accept the transfer of property by leading him to believe that somebody else is the owner is estopped from setting up his own ownership. But if the property vests in a religious institution no such estoppel can operate against the institution. **AIR 1951 Pepsu 101 (105) (Pt D) (Pr 11) (DB).**

——**S. 41** — Principle underlying — When one of two innocent persons must suffer by act of third, he who enabled such person to occasion loss must sustain it. **(1965) Cur LJ 752: ILR (1965) 2 Punj 720.**

——S. 41 — Transfer without consideration — Section does not apply. **1965 Cur LJ 752: ILR (1965) 2 Punj 720.**

——**S. 41 — Principles of the section — Conditions necessary to attract the rule of estoppel — Person aware of prior registered sale deed taking transfer without enquiring into transferor's right to transfer — He is not entitled to benefit of the equitable rule.**

The rule embodied in S. 41 is an exception to the recognised principle of law that no man can transfer to another a right or title greater than what he himself possesses. The exception is, as its language shows: a form of equitable doctrine of estoppel.

To attact the rule of estoppel contained in the section it must be shown, inter alia that the ostensible owner has been enabled to possess the indicia of ownership by the express or implied consent of the real owner, and further that the transferee has, after taking reasonable care to ascertain that the transferor has the power to make the transfer, acted in good faith. It must always remain a question to be determined in the circumstances of each case as to whether or not inactivity on the part of the person interested attracts the rule of estoppel contained in Section 41. **(1962) 64 Punj LR 230.**

——**S. 41** — Scope — If overrides S. 52 — Section 41 does not override S. 52. See T. P. Act (1882), S. 52. **AIR 1961 Punj 299.**

2. Execution sales.

——**S. 41 — Applicability — Court-sale.**

Section 41, applies to voluntary sales only, but the principle of natural equity on which that provision is based would apply even to a court-sale. **1951 NLJ 596: AIR 1952 Nag 64 (64, 65) (Pts A, B) (Prs 6, 7, 8).**

——**S. 41** — Default by P in payment of sircar tax — Revenue sale — D purchasing property benami for P — D to be ostensible owner — Property purchased by decree holder in execution of decree against D — Decree holder auction purchaser held protected. **AIR 1952 Trav-Co 479 (480) (Pt A) (Pr 3) (DB).**

3. Ostensible owner with the consent of persons interested.

●——**S. 41** — Transfer by ostensible owner — One co-sharer put in management of property — No estoppel can be raised against other co-sharers precluding them from asserting their rights. **(1964) 6 SCR 192: 1965 SCD 23: (1965) 1 Andh LT 82: AIR 1965 SC 295 (299) (Pt A) (Pr 16).**

——**S. 41** — Applicability — Mortgage of endowed property by Shebait — Transferee put on guard so as to ascertain whether transferor was real owner — Deity, which was the owner, held was not a sentient to allow or not to allow shebait to act as ostensible owner — Suit by deity to set aside mortgage and for possession, held not barred by S. 41. **AIR 1961 All 206 (214) (Pt E) (Pr 38) (DB).**

——**S. 41 — Purchase in wife's name — Husband whether competent to dispose of property — Real ownership — Absence of declaratory decree — Effect of.**

So long as the documents stand in the name of the wife the husband could not dispose of property. **(1963) 2 ITJ 334 (Andh Pra).**

——**S. 41 — Applicability — Ostensible owner with consent of person interested.**

For the application of S. 41 it is necessary to show that the seller was an ostensible owner with the consent, express or implied, of the person interested in the immovable property. **AIR 1956 Assam 154 (155, 156) (Pt A) (Pr 9).**

——**Ss. 41 and 52** — Transferee pendente lite not entitled to protection — Person obtaining possession under appealable decree is not an ostensible owner. **63 Bom LR 163: 1961 Nag LJ 185: ILR (1961) Bom 649: AIR 1961 Bom 288 (292) (Pt D) (Pr 12).**

——**S. 41** — Applicability — Transferee must prove that transferor was ostensible owner with consent of his co-sharers — Management of property left to one co-sharer by other co-sharers — This does not show that they hold him to be the owner. **AIR 1955 NUC (Cal) 2807 (DB).**

——**S. 41 — Applicability — 'Ostensible owner' — Malabar tarwad — Karnavan — If ostensible owner.**

Section 41 can have no application at all to a case where the karnavan of a marumakkathayam tarwad or illom alienates tarwad or illom property standing in his name. He is not the ostensible owner of the property standing in his name but one of the real owners, and the property stands in his name not because of or with the consent of the real owners but because of the law that property belonging in the tarwad or illom shall ordinarily vest in the karnavan. **1957 Ker LT 924: 1957 Ker LJ 856: AIR 1958 Ker 325 (326) (Pr 3) (DB).**

——**S. 41 — Applicability — Benami transfer — Transfer by benamidar — Heirs of Original transfer — If bound.**

Held, on the facts and circumstances of the case that the purchaser, who had purchased the property from benamidar, was entitled to resist the heirs' claim under S. 41. **1957 Ker LT 997.**

——**S. 41 — Ostensible owner — Who is — On facts of case transferor held to be ostensible owner.**

An ostensible owner is a person who has got indicia of ownership such as title, possession or entries in records made to show ownership. **AIR 1952 Kutch 55 (57) (Pt B) (Pr 8).**

——**S. 41 — Benefit of, when can be claimed by transferee — Bona fide enquiry not enough — Transferee must first prove that transferor was ostensible owner with consent of real owner.**

Held, though the leasehold interest belonged to the transferor there is no principle of law that a lessee must be presumed to have built the superstructure upon a land comprised in the lease and that no one else should be thought to have done so. The building permit could not

Lah 147, Foll. **AIR 1952 Orissa 75 (80, 81) (Pt E) (Prs 12, 17) (DB).**

——S. 41 — Real owner when deprived of his rights — Mere inaction is not enough.

In order to deprive the real owner of his right under Section 41, it must be established that he had given his consent, express or implied, to another to represent himself as the owner, though such consent may be by word or conduct. AIR 1947 Lah 147, Rel. on. **1963 Cur LJ 425 (Punj).**

——S. 41 — Applicability — Real owner when deprived of immovable property.

In order to deprive a real owner of his rights in immovable property under Section 41 it must be established that he had given his consent, express or implied, to another to represent himself as the owner of the said property. AIR 1947 Lah 147, Foll. **ILR (1958) Punj 2258: 60 Punj LR 528: AIR 1959 Punj 123 (127, 128) (Pt E) (Pr 10) (DB).**

6. Consent need not be to the transfer by ostensible owner.

——S. 41 — Scope — Transfer by ostensible owner — Consent — Effect of — Estoppel — (Evidence Act (1872), S. 115).

The true meaning and interpretation of Section 41 is that the person who is the ostensible owner of the property must be such ostensible owner of the property with the consent, express or implied, of the person interested in such property and for a transfer by such an ostensible owner, the consent of the real owner is not needed. If the transferee takes the transfer from such an ostensible owner, then he is protected under the Proviso to Section 41 of the Act, only if it is proved by him that he, after taking requisite care to ascertain that the transferee had power to make transfer, had acted in good faith. **1958 BLJR 103: 1957 Pat LR 448: AIR 1958 Pat 537 (540) (Pt B) (Pr 22).**

7. Consent under coersion, fraud, misrepresentation and mistake.

---S. 41 — Waqf of property by registered deed — Heirs of dedicator obtaining collusive decree and transferring it — Transferee claiming benefit of section — **Held**, they could not. **1950 All LJ 776: ILR (1950) All 1001: AIR 1950 All 109 (116) (Pt G) (Pr 21) (DB).**

——S. 41 — Joint family property — Sham and benami transactions — Distinction — Plaintiff's father conveying property to N without parting with possession — Subsequently N in his turn conveying same property to plaintiff's mother — Suit for declaration that plaintiff was sole preferential heir to her mother and injunction restraining defendants, her brothers from taking possession of properties — Conveyances held were sham and nominal as distinct from benami. See Hindu Law — Joint family property. **(1965) 78 Mad LW 113: ILR (1964) 2 Mad 483.**

——S. 41 — Essential ingredients of — Transfer without consent of real owner — Onus of proof is on transferee — Fraud by ostensible owners — Remedy is against them.

In order to invoke the provisions of S. 41, the transferee has to prove the four ingredients laid down in this section.

In order to create ostensible ownership the real owner must in some manner be privy to it. **AIR 1962 Punj 46 (47, 48) (Prs 7, 9).**

8. Consent must continue up-to the time of transfer.

——S. 41 — Applicability — Conditions of — Burden of proof.

The consent referred in the section of the person interested to the ostensible ownership must continue, up to the time of transfer. Any person claiming to have acted in good faith would have to show also that, on proper and sufficient inquiries, he could not know that some other person was laying claim to the property. **('49) ILR 28 Pat 542.**

9. Transferee must have acted in good faith after making reasonable inquiry.

——S. 41 — Applicability — Purchaser's duty to enquire.

If either by words or conduct, a man permits another to hold himself out to be the owner of the estate, and a third person purchases it for value from the ostensible owner after reasonable enquiry into title, then the real owner will be estopped from recovering upon the secret title. That is the principle. **(1960) 2 MLJ 570: AIR 1960 Mad 399 (400, 401) (Prs 8, 10) (DB).**

——S. 41 — Bona fide purchaser.

It is the very first step of a bona fide purchaser to enquire before finalising the transaction regarding possession. **22 Cut LT 223: AIR 1954 Orissa 244 (247) (Pt C) (Pr 10) (DB).**

——S. 41 — Scope — Duty of transferee is not to ascertain nature of property but authority of ostensible owner to transfer it and to act in good faith. **66 Pun LR 1130: AIR 1965 Punj 140 (143) (Pt C) (Pr 9) (DB).**

10. Good faith.

●——S. 41 — Bona fide purchase in good faith — Finding not based on evidence — Impact of Section 41, T. P. Act also not considered by lower appellate Court — Finding cannot bind the High Court in second appeal. See Civil P. C. (1908), Ss. 100-101. **AIR 1963 SC 1917.**

●**——S. 41 — Defect in vendor's title known to the purchaser — Purchase cannot be held to be one in good faith.**

Where the facts establish beyond doubt that the purchaser had the knowledge that the title of his transferor was in dispute and he had taken a risk in purchasing the same it is not possible to hold that he had purchased the property in good faith. Gurbaksh Singh v. Nikka Singh, **1963 SCD 403: (1963) 2 SCJ 285: (1963) Supp 1 SCR 55: AIR 1963 SC 1917 (1919) (Pt B) (Pr 7).**

——S. 41 — Bona fide purchaser without notice.

Vendee who had knowledge of partition and separate possession held could not get protection under Section 41. **1954 All WR (HC) 108: AIR 1954 All 595 (597, 598) (Pt C) (Pr 9).**

——S. 41, Proviso — Applicability — Good faith on part of transferee and inquiry —Proof of.

It is not enough for the plaintiff to show that the seller was an ostensible owner with the consent, express or implied, of the person really interested in the property. The requirements of the Proviso to Section 41 have to be satisfied and plaintiff has to prove that reasonable care had been taken to ascertain that the ostensible owner had the power to make the transfer and that he had acted in good faith.

The decision of a plea of protection under Section 41 of the Transfer of Property Act depends on several questions of fact each of which requires careful examination. Where the plea was not taken and not put in issue between the parties the party cannot raise the plea in second appeal for the first time and his claim for protection under the section must be rejected. **AIR 1959 Cal 69 (70) (Pt A) (Pr 6) (DB).**

——S. 41 — "Ostensible owner" — Consent of real owner — Previous and subsequent to the transfer by him — Plea and proof of — Necessity —Availability of principle of estoppel under S. 115, Evidence Act — Good faith on the part of the transferee — Essential.

An ostensible owner is one who has got indicia of ownership, title, possession or entries in records made to show ownership. The material point of time for considering whether a person is an ostensible owner is the date of transfer yet inferences showing the consent of real owners can be made from previous as well as subsequent conduct.

A transferee from an ostensible owner is protected and his rights under the transfer cannot be challenged by the real owners, if he had acted in good faith in getting it, but when he knows the true state of facts as to ownership he cannot rely on the equitable doctrine.

A transfer from a third party with the implied consent of the owner cannot also be questioned by the principle of estoppel under S. 115, Evidence Act; but it must be raised as a special plea and proved. It cannot be raised in the second appeal. **AIR 1952 Kutch 55 (57, 58) (Pts B, C, D, E) (Prs 8, 10, 11).**

——S. 41 — Plea under S. 41 — When available.

The success or failure of a plea under S. 41 depends in findings of facts which must be alleged in the pleadings. **1962 BLJR 728: ILR 42 Pat 579: AIR 1962 Pat 392 (394) (Pt A) (Pr 5) (DB).**

——S. 41 — Pleading and proof — If can be permitted in second appeal.

Section 41, T. P. Act, is an exception to the general rule that no person can transfer to another any right or title greater than the transferor had. This exception must be specifically pleaded and strictly proved. When no such plea is raised and no issue raised in the Courts below, it cannot be raised in second appeal for the first time. **('49) ILR 28 Pat 542.**

13. Burden of proof.

——Ss. 41, 78, 48 —Competition between mortgagee and subsequent purchaser — Section 48 applies — No proof of negligence on part of mortgagee — Purchaser not protected. See Transfer of Property Act (1882), S. 78. **AIR 1961 Cal 300 (DB).**

——Ss. 41, 53 — Benami transaction — Test of benami — Burden of proof.

The general rule of law is that where a person with funds, supplied by himself, buys property in the name of another, there is a resulting trust in favour of the former, the beneficial interest being in him though the ostensible ownership is in the latter. The English doctrine of advancement has no application in India.

Where, therefore, a husband pays the money and purchases the property in the name of his wife, the burden lies on the wife to show that the husband purchased the property in her name by way of gift or advancement. If the wife fails to prove this, the presumption would arise that the husband who in fact provided the money is the rightful owner. **Madh BLR 1955 Civ 667: Madh BLJ (1955) HCR 534: ILR (1955) Madh Bha 239: AIR 1955 MB 148 (155, 156, 157) (Pt F) (Pr 20) (DB).**

——S. 41 — Onus — Protection under section.

Section 41 is an exception to the general rule that no person can dispose of an interest in property that is not vested in him and therefore the onus is on the transferee to bring his case within this section. AIR 1934 Pat 67; 12 Rang 55; AIR 1944 All 42, Relied on. **ILR (1953) Nag 684: AIR 1952 Nag 106 (108) (Pt A) (Pr 7).**

——S. 41 — Reasonable inquiries.

It is not enough to assert generally that inquiries as to title should be made or that a prudent man would make inquiries some specific circumstance should be pointed out as the starting point of an enquiry which might be expected to lead to some result. **AIR 1952 Orissa 75 (80, 81) (Pt D) (Prs 12, 17) (DB).**

——S. 41 — Evidence Act (1872), Ss. 101-103 — Benami — Onus to prove — Benami character of transaction — Test to determine.

The test to be applied to find out a benami transaction are (i) motive (ii) relationship between parties (iii) possession of property in question (iv) custody of the title deeds and (v) the payment of the consideration money. See Evidence Act (1872), Ss. 101-103. **1965 BLJR 800: AIR 1966 Pat 110 (DB).**

——S. 41 — Transfer from ostensible owner — Burden of proof on transferee — Plea should be raised in trial Court and not in second appeal for the first time — Civil P. C. (1908), Sections 100-101.

To claim the benefit of Section 41, T. P. Act or principle underlying it, the transferee from an ostensible owner must prove (1) that he had acted in good faith and (2) that he had taken reasonable care to ascertain that the transferor had power to make the transfer. It is impossible to give any findings on these two questions of fact for the first time in second appeal without any evidence having been led on them by either of the parties and without such a case having been raised in his written statement at the trial. **1963 Raj LW 92: ILR (1963) 13 Raj 377.**

SECTION 42

——Ss. 42 and 43 — Applicability.

The conditions requisite for the application of Section 42 are that there must be an ostensible owner with the consent, express or implied of the true owner and the transferee must have acted in good faith and must have paid consideration. Section 43 is based on the principles of feeding the grant by estoppel. In other words that section comes into play when a transfer is made by a person who has no title to the property transferred but later on he acquires title to that property. **AIR 1964 Him Pra 19 (26) (Pt H) (Pr 41).**

SECTION 43

SYNOPSIS

(Transfer of Property Act (1882), S. 43.)

1. Applicability.
2. "Fraudulenty or erroneously represents".
3. Sale prior to Act.
4. Principle of rule of estoppel.
5. "Notice of the existence of the option".
6. Relief granted by first para.
7. Subsequent acquisition of title or property.
8. Charge on future property.

9. "At any time during which the contract of transfer subsists".
10. Transaction invalid at inception.
11. Distinction between S. 43 and S. 41.
12. Representation.

1. Applicability.

——S. 43 — Applicability — Transferee can act on representation — Section casts no duty on transferee to take reasonable care as under Section 41. **1964 All WR (HC) 646: 1965 All LJ 255: AIR 1965 All 504 (506) (Pt C) (Pr 9).**

——S. 43 — Sub-section (2) of S. 28 Provincial Insolvency Act, places no inherent bar on rights which creditor has at common law but places only a restriction on the rights — Sale in auction of insolvent's property without leave of Court — Property purchased by creditor decree-holder himself — Court has power to validate sale by subsequent order — Receiver reporting to Court to accept sale — Court ordering that sale may be confirmed if purchaser paid a certain sum — Amount paid by auction-purchaser utilised by receiver for payment to creditor of insolvent — Effect of the order of Court was to validate the sale by ratification-subsequent acceptance of the sale by the receiver by his act amounted to feeding the estoppel — Hence person having obligation to pay the profits of the property cannot defeat the right of the purchaser to such profits by pleading the absence of saleable interest in the judgment. See Provincial Insolvency Act (1920), S. 28 (2). **1962 All LJ 53.**

●——S. 43 — **Applicability — Two doctrines on which S. 43 is based.**

Where a representation is a term of the contract or of a transfer made for consideration the promisee or transferee need only rely upon the two doctrines, namely, the doctrine, of the Common Law called 'estoppel by deed' coupled with the doctrine of feeding the 'estoppel' and the doctrine of Equity that 'equity treats that as done which ought to be done'. Under both these doctrines knowledge on the part of the promisee or transferee that the transferor did not have the authority to transfer the property which he purported to transfer is immaterial and does not deprive of the benefit of the doctrines except when the contract or transfer is illegal or invalid. **1956 All LJ 1: 1956 All WR (HC) 61: ILR (1956) 1 All 313: AIR 1956 All 225 (228) (Pt D) (Pr 7) (FB).**

[This case was held **overruled** on another point by AIR 1962 SC 847 as interpreted in AIR 1965 All 504.]

●——Ss. 43 and 55 (2) — **Equity treats that as done which ought to be done — Knowledge of truth by transferee — Its necessity in application of this equity.**

One of the doctrines of equity is that equity treats that as done which ought to be done. This equity creates a personal obligation which compels the transferor to perform his contract when he is able to do so on the acquisition of subsequent interest. The knowledge of the buyer in such a case is immaterial. Even if the buyer knew that the seller has no power to transfer the interest, he is entitled to the benefit of the contract and to enforce the sale according to its terms and may hold the seller responsible in damages. View of Mulla, T. P. Act, 3rd Edn., Pages 212, 213, held erroneous. Parma Nand v. Champa Lal, **1956 All LJ 1: 1956 All WR (HC) 61: ILR (1956) 1 All 313: ALR 1956 All 225 (229, 230) (Pt H) (Prs 14, 16, 19, 20) (FB).**

[Overruled in AIR 1965 All 504.]

●——S. 43 — **Applicability to gift.**

Section 43 partly reproduces the doctrine of what is commonly known in England as a grant feeding the estoppel shorn of some of its technicalities but it applies only to a case where a transfer is for consideration. A gift of property in which a transferor has no interest will not be protected under this section if the transferor acquires title to the property after the gift. Where a reversioner has joined in the execution of a deed of gift executed by a Hindu widow the fact that he purports to be one of the donors will not affect his interest under Section 43. The principle laid down in S. 43 or its adaptation will not, therefore, debar the reversioner who has consented to a gift made by a Hindu widow from claiming the property if succession opens in his favour. Ganga Baksh Singh v. Madho Singh. **1955 All LJ 162: 1955 All WR (HC) 223: ILR (1955) 1 All 587: AIR 1955 All 288 (291) (Pt B) (Pr 16) (FB).**

——S. 43 — **Scope.**

In order to get the benefit of Section 43, two of the conditions which must be satisfied are (i) that the contract of transfer was entered into by a person who was competent to contract; (ii) that the contract should subsist at the time when a claim for recovery of the property is made. **1954 All WR (HC) 61: 1954 All LJ 92: AIR 1954 All 452 (453) (Pt A) (Pr 4).**

——S. 43 — Scope and object — Retrospective operation — Extent of — Sale by a limited owner without legal necessity prior to Act — Section 14 does not enlarge rights of purchaser of her limited interest. See Hindu Succession Act (1956), S. 14 (1). **AIR 1957 Andh Pra 280 (DB).**

——Ss. 43, 111 — **Joint family property — Father and son — Son selling property representing himself as sole owner — Tenancy existing on land sold — Purchaser terminating tenancy and bringing suit for possession against tenant — Maintainability of suit — During pendency of suit father dying — Purchaser whether as against defendant takes advantage of S. 43.**

The proper remedy of the purchaser is to file a fresh suit against the defendant relying upon the title of the vendor's father. See Hindu Law — Joint Family Property. **AIR 1956 Bom 624.**

——S. 43 — Applicability — Transfer of non-existent property -- Transfer is not prohibited — Section 43 or at least its principle applies to such transfer. See Transfer of Property Act (1882), S. 5. **AIR 1960 Cal 609 (DB).**

●——S. 43 — Applicability — Partition — Property belonging to one member given to certain member in partition in absolute right in order to make up deficiency in his share — Transaction held amounted to partition and assignment — Section 43 held applied — Knowledge of defect in title of transferor on part of transferee did not affect applicability of S. 43. Ramaswamy Pattamali v. Lakshmi, **1962 Ker LJ 364: 1962 Ker LT 243: ILR (1962) 2 Ker 130: AIR 1962 Ker 313 (316, 317) (Pt A) (Prs 9, 10, 11, 16, 17) (FB).**

——S. 43 — Suit for redemption on basis of usufructuary mortgage executed on certain date — Only question that will have to be considered is whether plaintiff had right to execute usufructuary mortgage on that date — Question whether plaintiff had been allotted kanom rights over suit property does not come into picture in such proceedings — Principles underlying S. 43 cannot be invoked. **1958 Ker LT 836: 1957 Ker LJ 1143.**

——S. 43 — Alienee from co-owner — Right to general partition — A co-owner under the Mahomedan Law has a right of claiming a general partition of all the properties. the right ought not to be denied to an alienee of a specific item of the property by some of the co-owners. See Mahomedan Law — Partition. **AIR 1959 Madh Pra 190.**

——S. 43 — Applicability — Alienation by Hindu widow — Effect of S. 14 (1), Hindu Succession Act, 1956.

The first part of the section cannot be brought into play. The second part of the section requires, that, subsequent to the transfer, the woman acquires an interest in the property which she did not own at the time of the transfer. Section 14 (1) of the Hindu Succession Act does not deal with property which was not in possession of or which was not held by the Hindu widow at the time of the commencement of the Act. See Hindu Succession Act (1956), S. 14 (1). **(1958) 1 Mad LJ 101: AIR 1958 Mad 525 (DB).**

——S. 43 — Applicability and scope — The exception in favour of usufructuary mortgage under S. 9-A — Debt Laws — Madras Agriculturists Relief Act (4 of 1938) was of no avail and the purchaser was entitled to the benefit of the provisions of the Act and to have the decree scaled down. See Debts Laws — Madras Agriculturists Relief Act (4 of 1938), S. 9-A. **AIR 1954 Mad 861 (DB).**

● **——S. 43 — Transfer by insolvent — Adjudication annulled — Applicability of S. 43.**

In case of transfers of property by an insolvent during his insolvency such transfers are retrospectively validated by reverter under S. 37 of the Provincial Insolvency Act and if the conditions of S. 43 of the Transfer of Property Act are fulfilled they may also be supported under that section. Subbiah Goundan v. Ramaswami Goundan, **68 Mad LW 106: 1953 Mad WN 857: ILR (1954) Mad 80: (1953) 2 Mad LJ 766: AIR 1954 Mad 604 (615) (Pt B) (Pr 33) (FB).**

● **——Ss. 43 and 6 — Applicability — Transfer of spes successionis.**

Where the transferee from a reversioner was not aware of the truth at the time of the transfer that which was being transferred was only a spes successionis, S. 43 would apply. 29 Mad LJ 733, Approved; 65 Mad LJ 588, **Overruled.** Jumma Musjid Marcara v. Kodimani Andra Devaiah, **1953 Mad WN 183: (1953) 1 Mad LJ 388: 66 Mad LW 215: ILR (1953) Mad 427: AIR 1953 Mad 637 (639, 640) (Pt A) (Prs 9, 10) (FB).**

——S. 43 — Principle.

Section 43 is based on the general rule of equity that where a transferor purports to convey a particular property and has not the title under which he professes to convey, the transferee must be satisfied out of any title which the transferor then has or afterwards acquires in the said property. It may be regarded as only an extension of the law of specific performance of contracts. **34 Mys LJ 112: ILR (1955) Mys 1: AIR 1955 Mys 8 (10, 11) (Pt A) (Pr 7).**

——S. 43 — Principle of section does not apply to cases of involuntary sales. **32 Mys LJ 204: ILR (1953) Mys 530 : AIR 1954 Mys 143 (144) (Pt C) (Pr 4).**

——S. 43 — Plea under S. 43, T. P. Act not taken by plaintiff in plaint and necessary elements of S. 43, not pleaded or proved — Plaintiffs are precluded from raising plea in second appeal, See Civil P. C. (1908), S. 100. **ILR (1963) Cut 146.**

——S. 43 — Applicability — Absence of consideration — Effect.

The doctrine of feeding the grant contained in S. 43 is not available where the transfer is found to be fraudulent and without consideration. **ILR 37 Pat 1078: AIR 1959 Pat 278 (281, 282) (Pt B) (Pr 8) (DB).**

——S. 43 — Rule of law underlying section is that as between transferor and transferee, transferor cannot plead subsequent title to land transferred, if he had induced transferee to pay money for transfer. **AIR 1955 NUC (Pat) 242.**

——S. 43 — Applicability — Sale deed by members (of tarwad entitled to benefit of) S. 35, Thivya Act, before Act came into force — Benefit of principle of Section 43, T. P. Act, can be claimed by transferee — Executors will be estopped from saying that sale deed is not binding on them — (Cochin Thiyya Act (8 of 1107), Sec. 35). **AIR 1955 NUC (Trav-Co) 5091 (DB).**

2. "Fraudulently or erroneously represents".

——S. 43 — Erroneous representation — Transferor need not be aware of erroneousness of representation made by him. **(1964) All WR (HC) 646: 1965 All LJ 255: AIR 1965 All 504 (505, 506) (Pt A) (Pr 4).**

——S. 43 — Fraudulently or erroneously represents — Transferee aware of absence of transferable interest — Knowledge of transferee disentitles him of benefit of S. 43. AIR 1956 All 225 (FB), stands **overruled** in view of AIR 1962 SC 847. **1964 All WR (HC) 646: 1965 All LJ 255: AIR 1965 All 504 (506) (Pt B) (Prs 8, 9).**

● **——S. 43 — 'Fraudulently or erroneously represents' — Transferee aware of true facts — Section 43 still is available.**

Per Full Bench:— Section 43, T. P. Act, requires only that the transferee who can take advantage of it should be one to whom a fraudulent or erroneous representation about the transferor's authority to transfer the property is made. It does not further require that he should also be one who did not have knowledge of the true factual position and had merely acted on the belief of the erroneous or fraudulent representation made to him by the transferor. If, however, both the transferor and the transferee knew of the true position, and colluded to enter into a transaction which is invalid in law, the state of knowledge of the transferee becomes material and S. 43, cannot be availed of by him.

Per Desai, J.:— Collusion is a variety of fraud and since fraud vitiates the whole transaction, if there is collusion between the transferor and the transferee the sale may be held to be invalid on that ground and the transferee may be held to be disentitled to enforce the provisions of S. 43, as against the transferor. The Court would not hold either party to the fraud and would let the matter rest where it is. AIR 1943 Oudh 196: 204 Ind Cas 547, **Overruled;** 34 Mad 159, Dissented from. Parma Nand v. Champa Lal, **1956 All LJ 1: 1956 All WR (HC) 61: ILR (1956) 1 All 313: AIR 1956 All 225 (230, 231) (Pt A) (Prs 31, 37) (FB).**

[This case was **Held Overruled** by AIR 1962 SC 847 as interpreted in AIR 1965 All 504—Ed.]

● **——S. 43 — Evidence Act (1872), S. 115 — 'Erroneously represents' — Knowledge of transferee, how far material for Section 43, T. P. Act.**

The notion that the state of knowledge of the person to whom the representation is made is

material has been imported from the doctrine of estoppel by representation as embodied in Section 115, Evidence Act. But the words in S. 115, conveying the same which is conveyed by the phrase 'caused or permitted to believe a thing to be true and to act upon such belief' are not be found in the wording of S. 43, T. P. Act. The vital difference between the representation referred to in S. 43, T. P. Act, and the representation mentioned in S. 115, Evidence Act, is that while the representation under S. 43, T. P. Act, is a term of the contract of the transfer, the same is not necessarily so in the case of a representation mentioned in S. 115, Evidence Act. Parma Nand v. Champa Lal. **1956 All LJ 1: 1956 All WR (HC) 61: ILR (1956) 1 All 313: AIR 1956 All 225 (228) (Pt B) (Prs 5. 6) (FB).**

[**Overruled** in AIR 1965 All 504.]

——S. 43 — Transferee not misled by erroneous representation — If protected.

Section 43, T. P. Act, merely requires an erroneous representation from the transferor. If he has received money on an erroneous representation, he can be made to perform his part of the contract so long as he is in a position to do so. **ILR (1950) 2 Assam 1: AIR 1951 Assam 20 (23, 24) (Pt C) (Pr 13a) (DB).**

——S. 43 — Lease of property not in possession of lessor — When effective — Plea by lessor that lessee knew about his lack of title — Burden of proof.

Where a person makes a transfer (in this case a lease) of his leasehold interest in a property in possession of military authorities and under requisition at the time of such transfer the transfer would not be invalid but would be fully operative from the future date, namely, after derequisition. It may, possibly, be open to the transferor to defeat the transferee's claim under the transfer on the basis of S. 43 by showing that the transferee knew about the non-existence and the consequent invalidity and inoperative character of the transfer at the time and took the transfer in spite of such knowledge, but the onus on the point would clearly be on the transferor. 7 Cal LJ 381 and 7 Cal LJ 387 and AIR 1918 Cal 419 and AIR 1923 Cal 535 and (1881) 20 Ch D 1 and (1897) AC 156 and (1932) 1 Ch 331, Rel. on. **AIR 1960 Cal 609 (615, 616) (Pt C) (Prs 22, 23) (DB).**

——S. 43 — Advantage of S. 43 sought — Plea of erroneous fraudulent representation necessary — Person having knowledge of facts and not misled — Section 43 not attracted. **1962 MPLJ (Notes) 31.**

——S. 43 — 'Fraudulently or erroneously represents" — Representation that two trustees were entitled to convey properties — Purchasers not solely relying on such representation — Purchasers cannot be said to have acted on representation. **AIR 1955 NUC (Mad) 3934 (DB).**

——S. 43 — 'Fraudulently or erroneously represents'.

Where there is a representation that the two trustees by virtue of the terms of the trust deed were entitled to convey the properties, but the purchasers did not solely rely on such representation, and they consulted their lawyers and were satisfied that the two trustees had the power there is no question of the transferees having acted on the erroneous representation of the transferors or being induced by such representation. **(1954) 2 Mad LJ 486: ILR (1954) Mad 537 (DB).**

——S. 43 — 'Fraudulently or erroneously represents' — Representation, meaning of.

A representation need not be in any particular form. It can be by word of mouth or by a document. A statement in a sale deed that the vendor has not transferred the property to anybody in any manner whatsoever, nor has anybody any rights, interest or share therein is quite enough to show that there was a fraudulent representation when in fact the vendor had sold it already to third party. **1952 Nag LJ 287: ILR (1952) Nag 629: AIR 1952 Nag 29 (30) (Pt A) (Pr 6).**

——S. 43 — Scope — Specific Relief Act Section 18 (a) — Distinction.

Section 43 applies only where there is fraudulent or erroneous representation by the transferor and there is transfer of property for consideration while S. 18 of the Specific Relief Act is restricted to two classes of transfers only, namely, sale or lease and not to any other class. See Specific Relief Act (1877), S. 18 (a). **AIR 1959 Orissa 169 (DB).**

[**Reversed** in AIR 1964 SC 1789.]

——S. 43 — 'Fraudulently or erroneously represents' — Erroneous representation should be with regard to authority of transferor to transfer property — Sale is by private transfer in favour of plaintiff on representation that amount was required for making deposit to get execution sale set aside and for payment of cess arrears — Omission to state that sale was in execution of mortgage decree — There is no erroneous misrepresentation with regard to authority of B — Plaintiff cannot have recourse to S. 43. **AIR 1955 NUC (Orissa) 1859 (DB).**

——S. 43 — No case of fraudulent or erroneous representation — Principle of feeding the estoppel does not apply. **AIR 1963 Pat 375 (380) (Pt D) (Pr 21) (DB).**

——S. 43 — Fraudulently or erroneously represent — Transferee must show that there was erroneous representation — Absence of pleading or proof — Plea if can be decided in Letters Patent Appeal.

A transferee from a sole coparcener in a joint Hindu family consisting of himself and widow having an interest in the joint family properties under the Hindu Women's Right to Property Act can take the aid of S. 43, T. P. Act in respect of the widow's interests after her death provided he proves that the transferor coparcener erroneously represented that he was authorised to transfer the widow's interest. But if no case of such representation is either made out in the pleadings or in the evidence on record, and further it could not be said in the circumstances that the transferee was ignorant of the correct legal position, there could be no question of erroneous representation by the coparcener so as to enable the transferee to invoke the aid of Section 43.

Further, in the absence of pleading and proof it would not be fair to decide a new question on the basis of a recital in the sale deed alone, raised for the first time in Letters Patent Appeal. **1963 BLJR 536: AIR 1963 Pat 277 (282) (Pt C) (Pr 13) (DB).**

3. Sale prior to Act.

——S. 43 — Lands comprised in non-occupancy holding — Transfer permitted under Agra Tenancy Act (3 of 1926) — Sale of prior to Act — Assuming prohibited, under old law sale becomes valid after the Act (U. P. Act 12 of 1881) — Agra Tenancy Act (3 of 1926), S. 22. **('50) ILR (1950) All 311.**

——S. 43 — Hindu Succession Act (1956), S. 14 — Alienation by widow before Act — Alienee's claim to benefit of section.

The rule in S. 43 of the Act would not avail the vendees because the female vendor does not get an absolute estate under S. 14, Hindu Succession Act (1956) in property which she was not in possession of at the date when the Act came into force. See Hindu Succession Act (1956), Section 14. **AIR 1958 Mad 459.**

4. Principle of rule of estoppel.

——S. 43 — Scope — Embodies the doctrine of feeding the estoppel — Applies to transfer for consideration.

The importation of the principles of English law in regard to such matter is out of place. Where a trust deed is not executed for consideration the section will not apply. **ILR (1964) 2 All 191.**

——Ss. 43, 41 — Feeding the estoppel — Doctrine of — Applicability — Coparcener transferring certain family property — Partition in family subsequent to such transfer — Transferees entitled to share of such coparceners — Karta of family entitled only to joint possession as against such transferees. See T. P. Act (1882), S. 41. **AIR 1963 All 599.**

● **——S. 43 — Civil P. C. (1908), S. 11 — Evidence Act (1872), S. 115 — Estoppel by deed, judgment and in pais.**

Under the English law, estoppel is of three kinds; estoppel by judgment, estoppel by deed and estoppel in pais. Estoppel by judgment is embodied in the Indian Law in doctrine of res judicata. The doctrine of estoppel in pais is embodied in S. 115, Evidence Act, whereas the doctrine of estoppel by deed coupled with the doctrine of feeding the estoppel where the deed is a transfer for consideration is embodied in Section 43, T. P. Act, with slight modifications. Parma Nand v. Champa Lal, **1956 All LJ 1: 1956 All WR (HC) 61: ILR (1956) 1 All 313: AIR 1956 All 225 (228) (Pt E) (Pr 8) (FB).**

[This case was **Held Overruled** on another point by AIR 1962 SC 847 as interpreted in AIR 1965 All 504.]

● **——S. 43 — Principle on which estoppel by deed is based.**

Estoppel by deed is based on the principle that when a person has entered into a solemn engagement by a deed under his hand and seal as to certain facts, he shall not be permitted to deny any matter which he has so asserted. This doctrine being merely a rule of evidence does not perfect the title of the transferee. The title is perfected under the doctrine of estoppel by deed, knowledge of the truth on the part of the transferee is material only when the transfer is invalid in law and not otherwise. Parma Nand v. Champa Lal. **1956 All LJ 1: 1956 All WR (HC) 61: ILR (1956) 1 All 313: AIR 1956 All 225 (228, 229) (Pt F) (Prs 9, 11) (FB).**

[**Overruled** on another point in AIR 1965 All 504.]

——S. 43 — "Feeding the estoppel" — During life-time of tenant, A, landlord executing lease in favour of B — A dying without leaving any heir entitled to succeed to the tenancy — Lease executed by landlord in favour of B, held became good on the death of A and B became the tenant of the land after the death of A. **AIR 1955 NUC (All) 4448.**

——S. 43 — Principle of section does not apply to auction sales inasmuch as the judgment debtor cannot be deemed to have guaranteed any title in himself when his property is sold in execution of decree and therefore, he is not barred by the principle of estoppel from asserting any subsequently acquired title. **AIR 1952 All 287 (288, 289) (Pt B) (Prs 3, 4).**

——S. 43 — Applicability — A obtaining money decree against B — C agreeing with B to sell certain property to B — A attaching that property in execution before sale is completed — Attachment is neither bona fide nor legal — Subsequent sale by C to B — Does not enure to the benefit of A or auction purchaser — S. 43, T. P. Act or equitable rule of estoppel feeding the grant held not applicable — Civil P. C. (1908), O. 21, R. 54. **(1964) 1 Andh WR 300.**

——S. 43 — Feeding the estoppel.

Suit by A against C on promissory note — Attachment before judgment of suit house belonging to C — Suit decreed — Prior to decree, C mortgaging suit house to B — C subsequently adjudicated insolvent — During pendency of insolvency A filing petition requesting Official Receiver to move Court for annulment of mortgage as fraudulent and not binding on general body of creditors — Settlement between A and B according to which B was to purchase house in auction to be held by Official Receiver subject to mortgage in his favour and thereafter to give half portion of house to A free of mortgage liability towards decree debt in favour of A — As part of arrangement, petition to Official Receiver withdrawn — Settlement given effect to and A obtaining possession of half portion of suit house — Later, mortgage enforced and in execution of mortgage decree, suit house purchased by B's son — In pursuance of purchase B's son obtaining delivery of suit house after forcibly ejecting A — A not made party to mortgage proceedings — Suit by A for re-delivery of possession of suit house — B and his son held estopped by reason of their representations and conduct in prior proceedings from disputing right and title of A to half portion of suit house derived by him under settlement between A and B. **AIR 1960 Andh Pra 592 (597) (Pt A) (Prs 17, 18) (DB).**

——Ss. 43, 41, 55 (2), 65 (a) — Scope of S. 43 — Benefit under when available — Knowledge of facts how far required — Independent enquiry not necessary — Rule of estoppel — Consideration of — (Evidence Act (1872), S. 115).

To entitle a transferee to the benefit of S. 43, there must be a fraudulent or erroneous representation by the transferor that he is authorised to transfer the property which he professes to transfer and the transfer must be for consideration. There is no further requirement that the transferee must have acted in ignorance of the true facts and must have believed in the truth of the representation by the transferor. An erroneous representation does not cease to be such because the transferee knows the true facts any more than a thief who is caught in the act ceased to be a thief. Though it may not deceive the transferee, yet it is erroneous. The representation that the transferor is authorised to transfer may be embodied as a term of the deed or may be implied. A transferee who takes a transfer of property absolutely and pays full consideration, acts on the representation of the transferor as to title incorporated in the deed of transfer and is entitled to the benefit of S. 43, even though, to his knowledge, the title might be defective. Section 43, thus does not require that the transferee should have made an independent enquiry or taken reasonable care to ascertain that the transferor had power to transfer the property before claiming the benefit of the section. (1925) ILR 48 All 150, Dissented from; AIR 1956 All 225 (FB), Foll. **1956 Andh WR 1115: 1956 Andh LT 1045: AIR 1957 Andh Pra 288 (290, 291) (Pt B) (Pr 5).**

——S. 43 — Scope — Personal estoppel — Considerations of — (Evidence Act (1872), S. 115).

It is not legitimate to import the consideration governing personal estoppel under S. 115, Evidence Act, into S. 48, T. P. Act. Under the doctrine of title or interest feeding the estoppel, knowledge of the truth appears to be material only when the transfer is void and invalid in law and not otherwise. **1956 Andh LT 1045: 1956 Andhra WR 1115: AIR 1957 Andh Pra 288 (291, 292) (Pt C) (Prs 7, 8).**

——S. 43 — Specific Relief Act (1877), S. 18 (a) — Feeding the estoppel — Charge for earnest paid for purchase of property to which vendor has no title — Vendor subsequently acquiring title — Principle of feeding the estoppel does not apply — Charge is not validated. **ILR (1961) 2 Cal 558: AIR 1962 Cal 12 (16, 17) (Pt C) (Prs 13, 14) (DB).**

●——Ss. 43, 42 — Applicability — Section 43 is based on the principles of feeding the grant by estoppel. See T. P. Act (1882), S. 42. **AIR 1964 Him Pra 19.**

●——S. 43 — Scope — Lays down special rule of estoppel affecting legal relations.

Section 43 laid down a rule of estoppel which is not the estoppel which is a rule of evidence preventing a party from alleging and proving the truth of facts. It is a kind of estoppel which affects legal relations. Ramaswamy Patamali v. Lakshmi, **1962 Ker LJ 364: 1962 Ker LT 243: ILR (1962) 2 Ker 130: AIR 1962 Ker 313 (317) (Pt D) (Pr 18) (FB).**

——S. 43 — Feeding the grant — Mortgagor entitled to third share — Mortgage by him of two third share — Purchaser in Court auction in execution of mortgage decree — If can invoke the doctrine of feeding the grant to third share acquired by mortgagor after the sale or decree — Evidence Act (1 of 1872), S. 115 — Representation by mortgagor that he has title to third share — Acted upon by mortgagee to his detriment — Estoppel — Mortgagor and his representatives would be precluded from asserting the contrary.

There is distinction between the rule of estoppel contained in S. 43 of the Transfer of Property Act and the one contained in S. 115 of the Evidence Act. In the former, estoppel which exists by reason of the representation has the effect of transferring the property to the purchaser the moment the transferor obtains the same during the subsistence of the contract. In the latter case there is no question of any transfer of property or of feeding the original grant. The person who makes the representation and his successors are merely precluded from denying that they did not have the interest which by reason of their representations they made the transferor believe and act upon such belief to their detriment. (1895) ILR 18 Mad 492, Followed and the Criticism by Mulla Dissented from. **(1963) 2 Mad LJ 365: 76 Mad LW 603: 1963 Mad WN 525: ILR (1964) 1 Mad 85: AIR 1964 Mad 122 (123, 124, 125, 126) (Pt A) (Prs 2, 3, 4, 8, 11, 12, 17, 18) (DB).**

——S. 43 — Object of — Not intended to benefit pre-Act-alienees — Usufructuary mortgage by Hindu limited owner prior to Act — Death of limited owner after — Mortgage extinguishes on her death — Heir entitled to possession — Doctrine of freeding the estoppel not applicable. See Hindu Succession Act (1956), S. 14. **AIR 1963 Mad 37.**

——S. 43 — Scope — Distinction between title by estoppel and title acquired on principle of Section 43.

The law of estoppel in the case of real property is different from the law of estoppel as between persons. It is the law which operates when a grantee of land has had a conveyance of the whole interest in the land from a grantor who himself at the time had only a partial interest in the land. The former then has a right, when the grantor gets the entire interest in the land, to say as against all the world that that interest has passed to him. It does not then depend upon the mere representation by the grantor that he had the whole interest. The estate feeds the estoppel, and therefore, ceases to be an estate by estoppel only and becomes an interest. From the moment therefore, that the transfer commences to operate on the interest acquired by the transferor in the property it is no longer in the region of estoppel but becomes an interest, and the commencement of that interest is from the date when the mortgagor has subsequently acquired the interest in the property. Case-law Ref. **1954 Mad WN 300: ILR (1954) Mad 791: (1954) 2 Mad LJ 569: 67 Mad LW 577: AIR 1954 Mad 861 (863) (Pt B) (Pr 9) (DB).**

——S. 43 — Plea under — When available.

Section 43 is a species of estoppel and so cannot be availed of by a person who knows the facts and was not misled. **1952 Nag LJ 106: ILR (1951) Nag 12: AIR 1951 Nag 241 (244) (Pt D) (Pr 23).**

——S. 43 — Principle of rule of estoppel by deed.

The rule of estoppel by deed is that if a man who has no title whatever to property grants it by conveyance which in form would carry the legal estate and he subsequently acquires an interest sufficient to satisfy the grant, the estate instantly passes. **AIR 1951 Pat 315 (316) (Pt B) (Pr 6) (DB).**

5. "Notice of the existence of the option".

——S. 43 — "Notice of the existence of the option" — Meaning of.

Obiter:— Section 43 does not require that after the transferor **has acquired** title in the previously transferred by him the transferee must immediately give him notice that he proposes to hold him bound by the agreement. The phrase "notice of the existence of the option" has been used as the first transferee who has an equitable interest only has nothing more than an option to proceed against the property included in his transfer, it being merely an equitable right and not a transfer, of a legal interest. The subsequent transferee must be deemed to have had notice of the existence of the said option if he had knowledge of the previous transaction. **AIR 1952 All 301 (302, 303) (Pt A) (Pr 7).**

——S. 43 — Question whether subsequent transferee had "notice of the existence of the option" — Civil P. C. (1908), O. 6, R. 2; O. 6, R. 6.

In the absence of pleadings and issues, it cannot be assumed that the second mortgagee of the share mortgaged previously but acquired subsequently, had notice of the first mortgage specially when the first mortgage qua the subsequently acquired share in the property was bad and conveyed merely an equitable interest. **AIR 1952 All 301 (302, 303) (Pt B) (Pr 7).**

6. Relief granted by first para.

——S. 43 — Scope and effect — Transferee having knowledge of true facts — If entitled to "option" mentioned in para 1 — Prior sale-deed, registered, imputes constructive notice to transferee. The transferee has no option such as described in S. 43, first paragraph. **1952 Nag LJ 287: ILR**

(1952) Nag 629: AIR 1952 Nag 29 (30, 31) (Pts B, D) (Prs 7, 8, 12, 13, 14).

——S. 43 — Nature of relief granted by first paragraph.

The relief provided in S. 43 first paragraph is additional and it enables him to get at the property itself provided the contract subsists on that date. **1952 Nag LJ 287: ILR (1952) Nag 629: AIR 1952 Nag 29 (30) (Pt C) (Pr 10).**

——S. 43, First paragraph — Fraudulently or erroneously represents.

The rule of law in S. 43 first paragraph is a rule of equity and is based expressly on estoppel. For the purposes of estoppei it is absolutely necessary that there should be no knowledge of true facts so far as the transferee is concerned.

It is true that S. 43 first paragraph does not require that the transferee should make any enquiry or that the transferee was in fact misled. But where the transferee has knowledge of the true facts he cannot have any option under the first paragraph. **1952 Nag LJ 287: ILR (1952) Nag 629: AIR 1952 Nag 29 (30, 31) (Pt D) (Prs 12, 13, 14).**

7. Subsequent acquisition of title or property.

●——S. 43 — Specific Relief Act (1877), Section 18 (a) — "Subsequently to the sale or lease" — Meaning of — Means subsequently to the contract to sell or let and not subsequently to the execution of sale deed or lease deed — AIR 1959 Orissa 169, **Reversed.** See Specific Relief Act (1877), S. 18 (a). **AIR 1964 SC 1789.**

●——**S. 43 — Subsequent acquisition of property — When does it take place in favour of transferee.**

Under S. 43, T. P. Act, the transfer of the subsequently acquired property takes place automatically as in the English Law, but it takes place not at the moment when the interest is acquired but at the moment the transferee exercises the option that the interest shall stand transferred to him. This is the first matter in respect of which the Indian law differs from the English law and the second matter in respect of which it differs is that it does not apply the doctrine of feeding the estoppel so as to impair the rights of subsequent transferees in good faith for consideration without notice of the existence of the option in the prior transferee. Parma Nand v. Champa Lal, **1956 All LJ 1: 1956 All WR (HC) 61: ILR (1956) 1 All 313: AIR 1956 All 225 (229) (Pt G) (Pr 12) (FB).**

[**Overruled** on another point in AIR 1965 All 504.]

——**S. 43 — Transfer by person with defective title — Subsequent acquisition of title — Effect** — Section 43 applied to the case as the representations made by the father in the Hindu joint family misled the plaintiff. **34 Mys LJ 112: ILR (1955) Mys 1: AIR 1955 Mys 8 (13) (Pt C) (Pr 14).**

——S. 43 — Vendor acquiring title after execution of sale deed — Effect.

Section 43, only enabled the transferee to claim an interest which the transferor acquired subsequently and did not lay down that the interest would vest in the transferee from the date of execution of the document in his favour. See Berar Land Revenue Code (1928), S. 174. **AIR 1955 NUC (Nag) 2457 (DB).**

——**S. 43** — "On any interest which the transferor may acquire" — Mortgagor having no title to property mortgaged — Title subsequently acquired to portion of property — Enforcement of mortgage against such portion is valid — Case law discussed. **AIR 1955 NUC (Pat) 242.**

——**S. 43** — Lessee not in possession of property — Lessee coming into possession subsequently but not under lease — Applicability of S. 116, Evidence Act. Section 116 of Evidence Act will apply. See Evidence Act (1872), S. 116. **AIR 1955 NUC (Raj) 4050.**

8. Charge on future property.

——**Ss. 43 and 6** — Professed transfer of interest of Bhumidhar by person having non-transferable interest of Sirdar— Transferor subsequently acquiring interests of Bhumidhar — Interest of Bhumidhar will be deemed to have passed to transferee — S. 6 no bar to applicability of S. 43 — 'Property' — Meaning of. **1964 All WR (HC) 646: 1965 All LJ 255: AIR 1965 All 504 (506, 507, 508) (Pt D) (Prs 10, 16, 17).**

——**Ss. 43, 6 and 100** — Rule of English law that charge on future property operates on such property as soon as it comes into existence applies to India. See T. P. Act (1882), S. 6. **AIR 1953 Bom 101.**

——**Ss. 43, 105, 5** — Lease to take effect in future — Transfer of is valid under S. 5. See T. P. Act (1882), S. 105. **AIR 1960 Cal 609 (DB).**

●——**S. 43** — Assignee having no real title at time of assignment but subsequently acquiring interest in the property — S. 43 will apply. Ramaswamy Pattamali v. Lakshmi, **1962 Ker LJ 364: 1962 Ker LT 243: ILR (1962) 2 Ker 130: AIR 1962 Ker 313 (316, 317) (Pt B) (Prs 12, 14) (FB).**

●——**S. 43 — Exercise of option by transferee — Occasion arises after real interest becomes vested in transferor — Consent of quondam transferor not necessary.**

It is enough if the transferee exercises his option to take the subsequent interest under the earlier transfer in his favour. No further conveyance is contemplated by the section. Ramaswamy Pattamali v. Lakshmi, **1962 Ker LJ 364: 1962 Ker LT 243: ILR (1962) 2 Ker 130: AIR 1962 Ker 313 (317, 318) (Pt E) (Pr 19) (FB).**

——**S. 43** — Better title acquired by transferor subsequently — Transferor liable to make good the better title to transferee — (M. P. Land Revenue Code (20 of 1959), S. 165). **1962 MPLJ (Notes) 3.**

——**S. 43 — Transfer by person with limited interest — Transferor subsequently acquiring full title — Such title enures to the benefit of transferee.**

When a person having a partial or no interest in a certain property transfers it and subsequently acquires an interest sufficient to justify the grant. Section 43 of the Transfer of Property Act applies and the transferee is entitled to the interest so acquired by the transferor. The title subsequently acquired by the transferor will avail to the benefit of the transferee. **1961 MPLJ (Notes) 207: 1961 Jab LJ 1292.**

9. "At any time during which the contract of transfer subsists".

——**S. 43 — 'At any time during which the contract of transfer subsists' — (Pre-emption, Decree for — Effect of).**

The contract of sale which existed previously between the vendor and the vendee would be deemed to be subsisting between the vendor and the successful pre-emptor. A contract of transfer would therefore subsist even after a decree for pre-emption is passed and the pre-emption money is paid. **1954 AWR (HC) 61:**

1954 All LJ 92: AIR 1954 All 452 (453) (Pt B) (Prs 4, 5).

10. Transaction invalid at inception.

——**Ss. 43 and 6 (a) — Transaction void — Ratification — Non-applicability of S. 43.**

A void transaction cannot be ratified. S. 43 does not apply. **AIR 1959 Mad 131 (136) (Pt D) (Prs 12, 13) (DB).**

——**S. 43 — Transaction invalid at inception** — Two out of three trustees selling trust property — Sale is invalid — Transferees cannot invoke aid of section. **AIR 1955 NUC (Mad) 3934 (DB).**

——**S. 43 — Transaction invalid at inception.**

Since the transactions at their inception are in violation of the law relating to transfer of trust properties would not confer any rights on the transferees which would enable them to rely on any subsequent intervening circumstances and claim any interest accrued to the transferors and invoke the aid of S. 43. **ILR (1954) Mad 537: (1954) 2 MLJ 486 (DB).**

11. Distinction between S. 43 and S. 41.

——**S. 43** —Distinction between S. 43 and S. 41. See T. P. Act, (1882), S. 41. **AIR 1955 Mys 8.**

12. Representation.

●——**S. 43 and S. 6 (a) — Transfer of property by sale — Transferor having spes successionis selling property — Transferor not representing that he has present interest in property — S. 43, and not S. 6 (a) applies — Distinction between S. 43 and S. 6 (a).**

Where the transferee knows as a fact that the transferor does not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. S. 43 would then have no application and the transfer will fall under Section 6 (a). 65 Mad LJ 588; AIR 1933 Mad 795; 145 Ind Cas 965, **Overruled;** AIR 1953 Mad 637; (1953) 1 MLJ 388 (FB), Affirmed. Jumma Masjid Mercara v. Kodimaniandra Deviah, **(1962) 2 SCA 422: 1962 Supp (2) SCR 554: 1962 SCD 790: 1963 Mad WN 5: (1962) 2 SCJ 303: (1962) 2 Mad LJ (SC) 90: (1962) 2 Andh WR (SC) 90: (1962) 1 Ker LR 309: AIR 1962 SC 847 (850, 852, 853) (Pt A) (Prs 9, 15, 18).**

●——**S. 43 — Representation.**

The representation mentioned in S. 43, may be either express or implied. It will be implied when the law makes it an implied term of the transfer. AIR 1927 Mad 1, Ref. Parma Nand v. Champa Lal, **1956 All LJ 1: 1956 All WR (HC) 61: ILR (1956) 1 All 313: AIR 1956 All 225 (230) (Pt I) (Pr 22) (FB).**

[Overruled on another point in AIR 1965 All 504.]

SECTION 44

See also Partition Act (1893), S. 4.

SYNOPSIS

(Transfer of Property Act (1882), S. 44.)

1. Applicability.
2. Tenant-in-common.
3. Partition.
4. Co-owners and co-sharers — Suit for declaration of title and possession.
5. Undivided family — Dwelling house.
6. Stranger purchaser.
7. Right to joint possession.
8. Dwelling house.
9. Joint property — Rights in.
10. Co-sharer building or improving on common land — Compensation.
11. Exclusive possession.
12. Second part.
13. Suit by one against trespasser.
14. Surrender by one tenant — Validity.

1. Applicability.

——**S. 44** — Purchaser at court auction of undivided share in specific item — Remedy of — Specific item not allotted to share of judgment-debtor at partition — Purchaser cannot avail of remedy of substitution of the property of equivalent value. See Hindu Law— Joint family. **AIR 1963 Andh Pra 110 (DB).**

●——**Ss. 44, 47** — Co-owners— Permanently settled district in Bengal — Estate purchased at auction held under provisions of Bengal Land Revenue Sales Act, 1859 — Suit brought by purchaser to eject defendant from portion of estate occupied by him as tenant of other co-owners — Defendant denying title of plaintiff — Such denial amounts to ouster — Decree for joint possession can be passed in favour of plaintiff — Decree need not be subjected to any condition as it can be executed under O. 21, R. 35 (2) of the Civil P. C. 60 Cal WN 361, Partly **Overruled.** Allahabad Bank Ltd. v. Subodh Gopal Bose. **AIR 1963 Cal 209 (210, 211, 212, 213, 214) (Prs 2, 3, 4, 9, 16, 26, 30) (FB).**

——**S. 44** — Compromise decree for possession — Decree-holders holding specific shares in the undivided and joint property, under the terms of decree — Two decree-holders, out of three, transferring their interest to lessees-judgment-debtors — Transfer is not invalid and the judgment-debtors would be entitled to joint possession of the property along with the other co-owner or his transferee. **1964 Kash LJ 238: AIR 1965 J and K 2 (6) (Pt B) (Pr 15).**

——**S. 44** — Adverse possession — Alienee from one coparcener — Possession of non-alienating coparceners becomes adverse from date of sale — Alienee being auction purchaser in Court sale — Fact that he was given delivery under O. 21, R. 95 or R. 96. Civil P. C. is not of any help. See Limitation Act (1908), Art. 144. **AIR 1962 Orissa 147.**

——**S. 44** — Applicability by virtue of S. 2 (d), the principle of Section 44 can be applied to involuntary sales as a rule of equity, justice and good conscience. **AIR 1962 Orissa 147 (149) (Pt B) (Pr 8).**

——**S. 44** — Partition Act (1893), S. 4 (1) — Scope — It is equal to Section 44, T. P. Act. See Partition Act (1893), S. 4 (1). **AIR 1961 Orissa 203.**

——**S. 44 — Joint property — Ejectment petition by one co-owner even on ground that he bona fide requires it for his residence is maintainable.**

It is well nigh settled that in the case of joint owners of property which had been rented out, a petition for ejectment of the tenant is maintainable even if the same is required for the bona fide residence of one of the co-owner landlords. **(1965) 67 Punj LR 97.**

——**S. 44** — Party-wall — Rights of co-owners — Co-owner not entitled to raise height of wall or deprive other co-owner of use of wall without latter's consent — Unauthorised interference by such co-owner — Other co-owner entitled to mandatory injunction. **1961 Raj LW 644: ILR (1961) 11 Raj 1203: AIR 1962 Raj 227 (230, 231) (Pt B) (Prs 19, 20, 21).**

——S. 44 — Tenants-in-common — One of several tenants-in-common is entitled to recover exclusive possession from a trespasser — One tenant-in-common is justified in asking for possession of share of another tenant-in-common. 31 TLR 193, Rel. on. **('49) 1949 Ker LT 5: 1949 Trav-Co LR 1 (DB).**

2. Tenant-in-common.

● **——S. 44 (as amended in 1929) — Effect on rights of alienee under Hindu Law.**

Section 44 before the amendment of the Act by the Transfer of Property (Amendment) Act of 1929, had not the effect of overriding the Hindu Law and would not entitle the alienee from a member of the joint Hindu family to claim joint possession of the alienor's share as a tenant-in-common by virtue of the section and his only right is to obtain by a suit for partition the share to which his alienor would be entitled. Peramanyakam Pillai v. Sivaraman, **1952-1 Mad LJ 308: ILR (1952) Mad 835: AIR 1952 Mad 419 (434) (Pt D) (Pr 28) (FB).**

——S. 44 — Ouster — Adverse possession — Non-participation in rents and profits — Sole possession by one of them — Effect — Limitation Act (1908), Arts. 142 and 144.

Possession is never considered adverse if it can be referred to a lawful title and in law, possession of a co-owner of a land is the possession of all his other co-owners. Circumstances in a particular case may, however justify the presumption of ouster. Non-participation in the rents and profits for a considerable length of time taken with other circumstances may lead to an inference of ouster. In order to establish ouster it is not always necessary that there must be an express demand by one and denial by the other.

Sole possession by one tenant-in-common continuously for a long period without any claim or demand by any person claiming under the other tenant-in-common is not by itself evidence from which actual ouster of the tenant-in-common who is not in possession may be presumed. But these facts taken along with the other circumstances of the case may lead to an inference of ouster. ILR 29 Bom 300, Dissent from. **39 Mys LJ 248: ILR (1961) Mys 133: AIR 1961 Mys 244 (246, 247) (Prs 10, 11, 12, 15) (DB).**

3. Partition.

● **——S. 44 — Partition — Right to.**

Partition is a right incident to the ownership of property and once the parties are held as co-owners, their right to partition cannot be resisted. Chhote Khan v. Mal Khan, **1954 SCJ 577: 1955 SCR 60: AIR 1954 SC 575 (579) (Pt B) (Pr 21).**

——S. 44 — Partition — Common property — Exclusive user — Case on facts. **AIR 1955 NUC (All) 173.**

——S. 44 — Partition suit — Co-sharer in occupation of a fair share of family dwelling house cannot be asked to go out without provision being made for his residence — Co-sharer is not liable to pay compensation for occupation of joint residential house. **AIR 1955 NUC (Cal) 2866.**

——S. 44 — Benami purchaser of undivided interest of coparcener — Suit by for partition in his own name — Maintainability. Where the real owner has not repudiated the title of the benamidar, the latter can maintain a suit for partition. See Hindu Law —Partition. **AIR 1960 Mad 341.**

——S. 44 — Partition of well for irrigating a particular piece of land divided between the sharers — Water from well if can be used for other lands by a co-sharer.

Held: The rights in the well cannot be dissociated from the land to which the well was attached (S. No. 309) and any diversion by a party of the water for irrigating other lands will constitute an infringement of the right of the other party who will therefore be entitled to a decree restraining the taking of the water from the well to other lands. **64 Mad LW 927: (1951) 2 MLJ 343: AIR 1951 Mad 459 (459, 460) (Pr 2).**

——S. 44 — Purchase of coparcenery interest in Court auction — Acquires only right to compel partition — Auction-purchaser obtaining symbolical delivery — He does not become entitled to joint possession — Section 44, T. P. Act does not affect rules of Hindu law — Suit for partition is governed by Art. 144 — Limitation would run from date of confirmation of sale. See Limitation Act (1908), Art. 144. **AIR 1964 Orissa 43 (DB).**

——Ss. 44, 47 — Partition — Suit for partition of one item only of property is maintainable in case of tenants-in-common.

Where property is held as tenants-in-common a suit for partition of even one item of such property is maintainable, provided that the partition can be effected without much inconvenience to the other co-owners. **AIR 1963 Pat 375 (378, 380) (Pt C) (Prs 11, 20) (DB).**

——S. 44 — Partition — Suit for without claiming declaration of title — Maintainability.

Where the plaintiff is a co-sharer in the properties he can maintain a suit for partition even though he is not in actual possession unless exclusion and ouster are pleaded and proved. He need not claim a declaration of title. **1959 BLJR 209: AIR 1959 Pat 523 (529) (Pt C) (Pr 17).**

——S. 44 — Possession — Unequal possession of bakasht land by one co-sharer — Other co-sharers are not excluded from claiming their rightful shares in suit for partition. **AIR 1955 NUC (Pat) 240.**

——S. 44 — Partition — Suit for — Proof of title.

In a suit for partition the question of the plaintiff's title and possession cannot be left open to be determined at a later stage for the obvious reason that no decree for partition can be passed unless possession of the plaintiff based on some title is proved. **ILR 30 Pat 213: AIR 1952 Pat 11 (14, 15) (Pt B) (Pr 18) (DB).**

——S. 44 — Partition — Finding secured by one co-sharer relating to invalidity of mellrappa — Finding enures to benefit of other co-sharers.

A decree for partition is a joint decree in favour of all the share-holders so that execution proceedings taken by one of them are sufficient to keep the decree alive in favour of all. AIR 1932 Cal 869 and 3 Cal 551 and 17 TLR 122, Rel. on. **('49) 1949 Ker LT 5: 1949 Trav-Co LR 1 (DB).**

4. Co-owners and co-sharers — Suit for declaration of title and possession.

——S. 44 — Lease by a co-sharer — Binding nature.

Where one of the co-sharers grants a lease of a plot of land in which he is the owner along with others, his action cannot bind the

others, but there is no reason to hold that his action does not bind himself. In such a case the lease must be confined to the interest which the lessor could transfer. **1950 AWR 665: 1950 ALJ 867: AIR 1952 All 650 (651) (Pt A) (Pr 5) (DB).**

——S. 44 — Permanent lease of proprietary right by one of co-sharers — Extent of validity.

A permanent lease of proprietary rights by one of the co-sharers without the consent of the other co-sharers though invalid in respect of the shares of the other co-sharers is good to the extent of the interest of the transferor. **('50) 1950 All WR 665: 1950 All LJ 867: AIR 1952 All 650 (652) (Pt B) (Pr 12) (DB).**

——S. 44 — Admission to co-tenancy on payment of price — Effect — Rights, if any created.

Where a price is paid for the admission of a person to a co-tenancy it is tantamount to a sale of occupancy tenancy which is illegal and against public policy and therefore no rights would be created in favour of the person who makes such a payment. **1952 AWR (Rev) 31: 1951 RD 277: 1952 ALJ (Rev) 20.**

——S. 44 — Co-sharers — Suit for declaration of title to and exclusive possession in absence of partition not maintainable.

A person purchasing a share in the tenancy rights is only a cosharer tenant. As such he is not entitled to a declaration of title to and khas possession of a specified plot of land forming part of the tenancy where there is no allegation or proof that there was any binding partition between the co-sharers. **ILR (1949) 1 Assam 40: AIR 1950 Assam 1 (4, 5) (Pt B) (Prs 10, 11) (DB).**

——S. 44 — Co-owners — Independent proprietors — Confusion of boundaries — Settlement of boundaries — Court when will interfere.

As between the independent proprietors, confusion of boundaries per se does not furnish a ground for Court's interference unless some equity is superinduced by the act of parties as some particular circumstances of fraud or confusion where one party has ploughed too near the other or the like. The mere fact that the boundary in between is not fixed does not mean that there is confusion within the meaning of the rule. **1958 Ker LJ 955: 1958 Ker LJ 1177.**

——S. 44 — Right to sue for share of rent — Co-sharer can sue tenant for entire rent on joining others — He cannot sue for his share in absence of custom or agreement.

A co-sharer landlord can, under the general law, sue a tenant of the whole body of proprietors for the entire rent if the other co-sharers are joined unless such a suit is prohibited by law or custom. 35 Cal 331 (PC), Foll. **('52) 1952 Nag LJ (Notes) 150.**

——S. 44 — Party wall — One co-owner raising its height — Remedy of other co-owner.

If one of two co-owners of a party wall raises its height by building a wall on it so as to make exclusive use of it, or so as to interfere with the other's reasonable use of that wall, the other co-owner has a right himself to remove the raised portion of the party wall, and he is, a fortiori, entitled to come to the Court and ask for a mandatory injunction in order to get the raised portion removed. **1951 NLJ 131: ILR (1951) Nag 893: AIR 1951 Nag 389 (390) (Prs 4, 5).**

——S. 44 — Co-sharer — Lambardar granting lease in perpetuity of nistar — Co-sharer can avoid it, if it is mala fide or if no land be available for co-sharers to take fuel from. 1950 Nag LJ 51: ILR (1950) Nag 218: AIR 1950 Nag 107 (108, 109) (Pt C) (Pr 9).

——S. 44 — Co-sharers — Suit for ejectment by single co-sharer — Maintainability — Suit against tenants and trespassers — Difference.

Suit is bound to fail as the entire body of the landlords is not represented. See co-sharer. **AIR 1958 Orissa 101 (DB).**

——Ss. 44, 47 — Suit for possession of portion of land — Maintainability — Plaintiff dispossessed only from portion of land in execution — Suit for possession of such portion held maintainable.

Held, that the plaintiffs could not be forced to institute a suit in respect of all the lands recorded in the name of their father unless they had a cause of action arising on account of dispossession from all the lands and unless they were entitled to seek a relief in respect of the entire land, the suit could not be held to be not maintainable on this score. AIR 1957 Pat 511, Distinguished. **ILR 42 Pat 763: AIR 1963 Pat 62 (66, 67) (Pt D) (Pr 8) (DB).**

——S. 44 — Possession of one exclusively — Liability to pay compensation to others — Grounds — Considerations — Principles — Equitable considerations — Ouster — Necessity.

It is well settled that if a co-sharer, is in separate possession of any portion of the common land — whether or not in excess of the area to which he may be entitled on partition — without causing ouster or exclusion of any other co-sharers, or is in occupation of such land in a proper or husbandlike manner without any objection on their part, it would be in consonance to allow rules of justice, equity and good conscience to allow them to claim a share in the fruits of the labour or the capital of the co-sharer in possession. But if a co-sharer occupies a portion of the common land in denial of the right or title of other co-sharers in spite of their objection or excludes them or ousts them from possession, he should be held liable to pay to such co-sharers compensation for his exclusive user of the common land from the profits earned by him with the help of his labour, industry, skill or capital. This rule or principle on which the liability of one co-sharer to compensate his other co-sharers for his exclusive use of the common land is determined is based on equitable considerations. **ILR 30 Pat 213: AIR 1952 Pat 11 (17, 18) (Pt D) (Pr 30) (DB).**

——S. 44 — Common land — Sole possession by one — Compensation for profits received — Liability of co-sharer in possession to others — Absence of objection by or exclusion or ouster of others — Principle.

Where one co-sharer is in separate possession of the common land without objection from or ouster or exclusion of the other co-sharers he is under no obligation either to account or to pay compensation to such co-sharers in respect of the profits which have accrued to him by reason of the skill or industry which he has employed in making good use of the property while he was in possession. **ILR 30 Pat 804: AIR 1951 Pat 481 (482) (Pr 5) (DB).**

——S. 44 — Co-sharer — Co-sharer in exclusive possession of portion of undivided holding — Transfer by co-sharer — Remedy of other co-sharers.

If a co-sharer is in exclusive possession of any portion of an undivided holding not exceeding his own share he cannot be disturbed in his

possession until partition. **1 Pepsu LR 312: AIR 1950 Pepsu 5 (5, 6) (Pr 3).**

——**S. 44** — Possession of co-owners — Suit for accounts by excluded co-sharers held maintainable — (Limitation Act (1908), Arts. 142 and 144) — (Tenancy Laws — Punjab Tenancy Act (16 of 1887), S. 77 (k)). **AIR 1955 NUC (Punj) 4969.**

——**S. 44** — One co-sharer managing property — He is liable to render account. **AIR 1955 NUC (Sau) 1452 (DB).**

——**S. 44 — Common land used as a passage — Construction above the same by one co-owner — No inconvenience or injury caused to others — No ouster — Right to demolition and injunction — (Ss. 54 and 55 of Specific Relief Act).**

Held: A co-owner is not entitled to an injunction restraining another co-owner from exercising his rights in the common property absolutely and that simply on the ground of his co-ownership and without reference to the amount of damage to be sustained by the one or the other from the granting or withholding of the order of injunction. (14 C 189, Foll.).

In the absence of any inconvenience or injury to the plaintiffs' right of passage over the common land and in the absence of any ouster of the plaintiffs, no mandatory or permanent injunction could be issued to restrain the defendant from constructing the balcony complained against. **4 Sau LR 213: AIR 1951 Sau 85 (88) (Pr 7) (DB).**

——**S. 44 — No division by metes and bounds — Shares specified — "Kandukrishi lands" — Transfer by a co-owner of specific property — Rights of the transferee — Right to joint possession and proportionate advantage arising therefrom — No right to exclusive possession.**

The relief for exclusive possession cannot be granted; he is entitled to the interests of the share of the transferor obtained in the family partition though not by metes and bounds. **AIR 1952 TC 571 (573) (Pt B) (Prs 5, 6) (DB).**

5. Undivided family — Dwelling house.

——**S. 44 — Joint family — Dwelling house — Right of joint possession of stranger purchaser of undivided share — Partition Act, S. 4.**

He can possess his own share by instituting a suit for partition unless, he is pre-empted under Section 4 of the Partition Act. **AIR 1952 Cal 253 (254) (Pt C) (Pr 10).**

——**S. 44 — Scope and effect — Undivided family dwelling house — Transfer of his share by member to stranger — Right of other members — Nature and extent — Suit by member for injunction restraining transferee from taking joint possession — Maintainability.**

A suit by a member of an undivided family for permanently restraining a stranger purchaser of the share of another member in the undivided family dwelling-house from taking joint possession of the homestead, impleading only the purchaser and without joining the other co-sharers as parties, is not maintainable in law. **55 CWN 289: AIR 1951 Cal 412 (413, 414) (Pt A) (Prs 14, 20).**

——**S. 44** — Partition Act (1893), S. 4 — Share in dwelling house belonging to undivided family — Meaning of —Undivided family means family which owns dwelling house and has not divided it —Transfer of share by member to stranger — House does not cease to be one belonging to undivided family. See Partition Act (1893), Section 4. **AIR 1950 Cal 111 (DB).**

——**S. 44** — Partition Act (1893), S. 4 (1) — Undivided family — Meaning — Expression means family undivided qua dwelling house — Applies to Hindu as well as Muhamedans. See Partition Act (1893), S. 4 (1). **(1962) 40 Mys LJ 693.**

6. Stranger purchaser.

——**S. 44 — Scope of — Transfer to stranger of undivided share of dwelling house — Suit for injunction by other co-sharers — (Specific Relief Act (1877), S. 54).**

Upon a transfer to a stranger of an undivided share of a family dwelling-house by a co-sharer of it, the other co-sharer or co-sharers can maintain a suit for injunction for restraining the stranger transferee from exercising any act of joint possession in respect of the share transferred. 54 Cal WN 912, Approved: 55 Cal WN 289, Dissented from. **(1957) 61 Cal WN 776: AIR 1958 Cal 614 (615) (Pr 9).**

——**Ss. 44 and 53-A** — Transfer of share of joint Hindu family dwelling house to stranger — Right of co-owners to ask for injunction restraining transferee from exercising right to joint possession — They have a right under S. 44, Para 2 to ask for an injunction restraining the stranger purchaser from exercising any act of joint possession in respect of the joint family residence. The language of S. 53-A and that of S. 44 are not analogous. **AIR 1952 Cal 253 (254, 255) (Pt E) (Pr 12).**

——**S. 44 — Specific Relief Act (1877), S. 54 — Stranger purchaser of share of joint family dwelling house — Injunction to restrain transferee from taking possession.**

A suit by a member who has still an interest in the dwelling house belonging to an undivided Hindu family, impleading only the stranger transferee, for permanently restraining the latter from taking joint possession is misconceived and is not maintainable. See Specific Relief Act (1877), S. 54. **AIR 1951 Cal 412.**

——**S. 44** — Second paragraph — Stranger-purchaser from coparcener obtaining joint possession, when he is not entitled to it — He can be evicted — His only remedy is to sue for partition — In such cases again, the defendant coparcener will be able to take shelter under Sec. 4, Partition Act — (Partition Act (1893), Sec. 4). **AIR 1955 NUC (Orissa) 1119.**

7. Right to joint possession.

——**S. 44** — Co-pattadar — Suit for possession of specific plots of patta — No partition — Co-pattadar in possession cannot be ejected — Other co-pattadars not joined — Claim for joint possession cannot be allowed — (Limitation Act (1908), Arts. 142 and 144) — (Civil P. C. (1908), O. 1, R. 1). **AIR 1955 NUC (Assam) 586.**

——**S. 44 — Civil P. C. (1908), O. 1, R. 10 — Suit for possession by transferee from some of the co-owners — Other co-owners not made parties — Decree — Nature of.**

Where the plaintiffs who are transferees from some of the co-owners only do not claim the whole of the property in suit but claim only half a share in it, they cannot get a decree for exclusive possession. They cannot get also a decree for partition and separate possession of their half a share in the property when the remaining half does not belong to defendants but to some other person. In order that a decree for partition and separate possession should be passed the

other sharers must be before the Court. The plaintiffs in such a case are entitled to be put in joint possession of the property with defendants. See Civil P. C. (1908), O. 1, R. 10. **AIR 1956 Bom 625.**

——**S. 44, Para 2** — Civil P. C. (1908), S. 33 — Form of decree — Suit under S. 44, Para 2, T. P. Act — Declaration of right to joint possession of defendant — Not proper — It is bad in law. See Civil P. C. (1908), S. 33. **AIR 1952 Cal 253.**

——**S. 44** — Co-owners — Possession — Co-owner, though not in possession, could be deemed to be in joint posssession with other co-owner or co-owners. **1965 Jab LJ 532: ILR (1965) Madh Pra 125: AIR 1965 Madh Pra 85 (88) (Pt B) (Pr 10).**

——**S. 44 — Right of possession — P suing for joint possession and given 2 pies share in village — Symbolical possession taken — P again suing for joint possession of sir and khudkasht alleging exclusion by defendant — Suit can be decreed without claiming partition.**

Held, that though plaintiff may have been better advised to sue for partition there was no bar to a decree for joint possession. 51 Cal 631, Dist. **('52) 1952 Nag LJ (Notes) 56.**

——**S. 44 — Joint possession — Decree for — When cannot be granted.**

In the absence of any denial of title on the part of a co-sharer who is in whole occupation of a portion of the joint property, there is no ouster of other co-sharers and they are not entitled to get a decree for khas possession of such property. They are not entitled to get a decree for joint possession with regard to the disputed land. **1962 BLJR 277.**

——**S. 44 — Possession of co-sharer.**

The possession of one co-sharer of a part of a joint property cannot by itself amount to an ouster of others. The possession of one co-sharer is presumed to be the possession of all and unless the hostile title is asserted there can be no ouster by adverse possession: AIR 1941 Lah 307, Rel. on. **(1965) 65 Punj LR 838: 1963 Cur LJ 159.**

——**S. 44 — Joint possession — Trees.**

Trees planted by some co-sharers do not belong to them alone but to all the co-sharers of the land. See Transfer of Property Act (1882), S. 108 (o). **AIR 1955 Punj 63 (DB).**

——**S. 44** — Alienation by one co-sharer of his interest — Alienee cannot sue for joint possession — Remedy is to sue for partition. **AIR 1955 NUC (Trav-Co) 4121.**

8. Dwelling house.

——**S. 44** — Expressions 'dwelling house' and 'undivided family' — Meaning of — Major portion of house let out to tenant — Some of daughters married and living with their husbands away from father's house — Sale of her share in house by one of married daughters — House held was 'dwelling house belonging to undivided family' within S. 4. See Partition Act (1893), S. 4 (1). **AIR 1964 Cal 52 (DB).**

——**S. 44, Second part** — "Dwelling house" — Garden or tank independently of any house or structure is not dwelling house. **AIR 1955 NUC (Cal) 25.**

——**S. 44** — Partition Act (1893), S. 4 (1) — "Dwelling house", meaning of — (Words and Phrases — Dwelling house). See Partition Act (1893), S. 4 (1). **AIR 1953 Cal 259 (DB).**

——**S. 44** — Right under — Non-exercise of, on previous transfer of undivided share — If bars exercise on subsequent transfer of such share — Does not debar them from exercising that right on a subsequent occasion upon a new transfer under deed of a share of dwelling house. **AIR 1952 Cal 253 (254) (Pt B) (Pr 7).**

9. Joint property — Rights in.

——**S. 44 — Party wall — Interference with.**

In the case of joint owners of a common wall, neither party can interfere with the wall in any manner without the consent of the other party. **AIR 1954 Ajmer 28 (29) (Pr 3).**

——**S. 44 — Rights and liabilities.**

It is not open to one of the co-sharers of joint property to create subsidiary rights or interest in favour of third parties in the entire property without the consent of the other co-sharers. **1954 All WR (HC) 207: 1954 All LJ 295: AIR 1954 All 683 (684) (Pt B) (Pr 11).**

——**S. 44 — Co-sharers — Rights of — How extinguished — Non-entry of name in papers for long time — Effect.**

The rights of a co-tenant can be extinguished either by transfer, surrender or adverse possession. In the absence of evidence of any of these three, the mere fact that the name of a co-tenant was not entered in the papers of a long period during which a settlement intervened does not extinguish his rights, for the principle that the possession of one co-tenant is possession of all co-tenants prevails. **('52) 1952 All LJ (Rev) 91 (2): 1952 RD (BR) 122 (DB).**

——**S. 44 — Rights inter se—Right of one in exclusive possession of joint land to build on it.**

The general rule is well settled that one co-sharer cannot build on joint land without the consent of the others. **AIR 1951 All 338 (339, 340) (Prs 9 to 14) (DB).**

●——**S. 44 — Invasion of right of one by another in respect of joint land — Relief for demolition and injunction — Principles in regard to the granting of.**

While a co-sharer is entitled to object to another co-sharer exclusively appropriating land to himself to the detriment of other co-sharers, the question as to what relief should be granted to the plaintiff in the event of the invasion of his rights will depend on the circumstances of each case. The right to the relief for demolition of any construction put up and for injunction will be granted or withheld by the Court as the circumstances established in the case justify. **1951 All LJ 196: ILR (1952) 1 All 227: AIR 1951 All 199 (204) (Pr 25) (FB).**

——**Ss. 44, 47 — Co-owners and co-sharers — Strip of land between adjoining houses — No proof of exclusive title — Common ownership may be presumed.**

It is theoretically conceivable that a strip of land between two houses, may partake of one of the three alternative features; first, joint property with joint title over every square inch, second, property divisible into two ownership each streching up to the middle line; third, property, the title of which wholly vests in one, but subject to an easement vesting in the other.

Held, on facts that the narrow strip of land between two adjoining houses was the joint property of both the owners. **1962 Jab LJ 220: 1961 MPLJ 410.**

——**S. 44 — Common property — Staircase kept common — Walls of staircase also remain common.**

Merely because on partition a staircase is kept for common use it cannot be said that the walls in which the staircase is fixed becomes the property of one party or the other. **1962 MPLJ (Notes) 156.**

——Ss. 44, 47 — Common irrigation well — Rights of co-owners — Principle of restriction of user to particular properties — Applicability.

The principle of restriction of the user to particular property alone, can only be applied where the history of the property owned in common shows that the user was so determined from the very inception. Where this principle is inapplicable on facts, the principle applicable is that, as between co-owners, each is entitled to use the facility of the common property without detriment to the enjoyment of the other, and so long as the property itself suffers no injury, weakening or loss. **1962 Mad WN 472: 75 Mad LW 464: ILR (1963) Mad 86: AIR 1962 Mad 498 (499, 500) (Prs 4, 6).**

——S. 44 — Rights of — Co-sharer cannot lease out joint property.

There is no provision of law which entitles a co-sharer to deal with joint property. **('52) 1952 Nag LJ (Notes) 9.**

——S. 44 — Suit for rent — Joinder of claims in one suit.

Where there are several co-sharer Inamdars in separate possession of their shares one suit for realisation or rent against all co-sharers is not maintainable inasmuch as the Inamdars have no joint and several liability. **('52) 18 Cut LT 33: AIR 1953 Orissa 92 (95) (Pt D) (Pr 7).**

——**Ss. 44, 47** — Co-sharers — Suit for accounts — Agreement between parties that rent from tenants of joint property would be realised by one co-sharer (Defendant) and latter would be responsible for taxes and repairs — Suit maintainable — Co-sharer in possession is entitled to claim set off in regard to amount incurred by him towards taxes and repairs — In the instant case set off for repairs was not allowed as the amount spent could not be established — Civil P. C. (1908), O. 20, R. 16, O. 8, R. 6. **AIR 1963 Pat 145 (146) (Prs 2, 3, 4).**

——S. 44 — Joint property — Rights in — Co-sharer making use of plot in a way consistent with joint ownership and possession — If ousts others — Plea that plot is not included in joint property — If denial of right of other co-sharer.

Where the defendant as a co-owner has made use of the joint property in a way quite consistent with the continuance of the joint ownership and joint possession, he cannot be said to have excluded any co-sharer as it is a proper use. No question of exclusive right in the defendant or of any dispute of the plaintiff's title to the property arises in such case, so as to entitle the plaintiff co-sharer to a decree for joint possession. A defendant who merely pleads that the disputed plot did not form part of an alleged joint property does not dispute the plaintiff's right or title to the joint property. **AIR 1952 Pat 268 (269) (Pr 4).**

——S. 44 — Joint land — Lease of joint land by one co-sharer — Decree for partition obtained by other co-sharer — Lease not binding on decree-holder co-sharer — Tenant can be ejected in execution.

When land, jointly owned, is leased out by one of the co-sharers, and the other co-sharer obtains a decree for partition, the tenant can be ejected in execution. The lessee cannot contend that he is the tenant of the whole land by virtue of the lease deed and is thus protected against ejectment. A tenant let on the land by one of the co-sharers does not ipso facto become a tenant of the other co-sharers. AIR 1926 Cal 714 (FB) and 1 Ind App 106 (PC), Rel. on. **66 Pun LR 832: ILR (1964) 2 Punj 223: AIR 1964 Punj 525 (526, 527) (Pt A) (Prs 3, 6).**

——**S. 44** — Joint property — Land lying banjar for number of years — Some co-sharers bringing part of it to their use — This does not constitute interference with other co-sharers' possession. **AIR 1955 NUC (Punj) 4027.**

——**S. 44** — Joint property — One joint owner entitled to make reasonable use of it so as not to cause inconvenience to any other joint owner. **1960 Raj LW 473: ILR (1960) 10 Raj 948.**

10. Co-sharer building or improving on common land — Compensation.

■ **——S. 44 — Exclusion — Compensation.**

(Obiter):— Separate occupation by one co-sharer is not necessarily exclusive occupation. It may or may not be, according to the circumstances that are proved and each case has to be decided on its own facts.

(**Held,** that defendant was liable for compensating plaintiffs for use of the joint property in the circumstances of the case). Arshad Ali Laskar v. Tahir Ali Laskar, **ILR (1953) 5 Assam 415: AIR 1954 Assam 33 (39, 40, 41) (Pt C) (Prs 36, 37, 39) (FB).**

● **——S. 44 — Exclusion — Compensation — (Trusts Act (1882), S. 88).**

Continued diversion of elephants by the defendant co-sharer after the demand of plaintiffs co-sharers for accounts and possession of the assets, would be covered by the decision in AIR 1941 Pat 90. Compensation for diversions before that period held was due to the plaintiffs on equitable grounds. Arshad Ali Laskar v. Tabir Ali Laskar, **ILR (1953) 5 Assam 415: AIR 1954 Assam 33 (40, 41) (Pt D) (Pr 39) (FB).**

——S. 44 — Improvements on joint land — Partition — Improving co-sharer should be allotted improved parcel of land — Improvements if well within share that may fall, consent of others for improvements is irrelevant — Case when allotment of improved parcel of land impracticable, mode of compensation indicated.

Where it is impossible or impracticable to allot that portion of the property on which the improvement is situated to the co-tenant who erected the improvement, the other co-tenants may be required to pay their proportionate share of the enhancement of value resulting from such improvement. But if the co-tenant, covers the whole of the estate with valuable improvements, so that it is impossible for his co-tenant to obtain his share of the estate without including a part of the improvement so made, the tenant making the improvements would not be entitled to compensation therefor notwithstanding that, that may have added greatly to the value of the land. **1965 Ker LJ 678: (1964) 1 Ker LR 366: ILR (1964) 2 Ker 169: 1965 Ker LT 655: AIR 1965 Ker 207 (208) (Prs 3, 4).**

——**S. 44** — Common property — What is — Property kept for common use becomes common property — Tenancy-in-common — Interest in common property is transferable — Transferee gets right of partition — Construction on common land detrimental to other party not allowed. **1962 MPLJ (Notes) 156.**

——**S. 44** — Construction on common land by one party to the detriment of other party — Suit for demolition — No equity in defendant's favour

— Compensation in lieu of demolition should not be decreed. **1962 MPLJ (Notes) 156.**

——S. 44 — Co-owners — Nature of ownership — Building put up by one co-owner on the joint land — Mandatory injunction to demolish — When could issue.

Unless an encroachment is shown to have been objected to by the other co-owners at the earliest time and is also shown to cause material and substantial injury to the other co-owners which cannot be otherwise compensated, a mandatory injunction to demolish the building will not be issued. A purchaser from a complaining co-owner cannot claim any better right. **(1961) 1 Mad LJ 480: 74 Mad LW 182.**

——S. 44 — Partition suit — Construction by co-sharer on joint property in excess of his share — Right of such co-sharer to claim compensation for construction which has fallen to share of another co-sharer. See Civil P. C. (1908), O. 20, R. 18. **AIR 1962 Orissa 71.**

——S. 44 — Common land — Relations inter se — One co-sharer building on common land — Injunction, when can be granted — Civil P. C. (1908), O. 39, R. 1 — Specific Relief Act (1877), Section 54.

There is no statutory law in India governing the relations among the co-sharers inter se about the common land, and the matter must be regulated by the rules of justice, equity and good conscience.

While considering a question of injunction, each case must be decided upon its own peculiar facts. A co-owner is not entitled to an injunction restraining another co-owner from exercising his rights in the common property absolutely, and simply on the ground of his co-ownership and without reference to the amount of damage to be sustained by the one side or the other from the granting or the withholding of the injunction. The right to relief for demolition and injunction will be granted or withheld by the Court according as the circumstances established in the case justify. An injunction can be granted in case of an ouster. In other cases where ouster is not pleaded the Court is to examine the equities between the parties. **ILR (1961) Cut 291: AIR 1962 Orissa 31 (33, 34, 35) (Prs 8, 9, 11, 12).**

——S. 44 — Improvement on joint land — Partition — Expenses for improvements — Improver is entitled to have in one way or another recouped to him by his co-owners the value of improvements which they get in the shares which are allotted to them. See T. P. Act (1882), Section 51. **AIR 1962 Pat 300.**

——S. 44 — Common land — Co-sharer building on — Acquieseence of other co-sharers — Building not to be demolished — Compensation in money.

In such a case the commissioner should be instructed to fix a reasonable price for the land in dispute and the defendants should be asked to compensate the plaintiffs in money to the extent of their share. **AIR 1952 Pat 351 (351, 352) (Prs 4, 6) (DB).**

——S. 44 — One co-owner raising construction on portion of joint land not exceeding his own share in spite of protests by other co-owner — Aggrieved co-owner if and when obtain decree for demolition.

If, in spite of protests by one co-owner, another co-owner raises a building on a portion of joint land, not exceeding his own share therein, the aggrieved co-owner cannot obtain a decree for demolition of that building without proving special damage or substantial injury to him unless the other co-owner who has raised the building has done so by asserting an exclusive title in himself and by denying that of the other co-owners. **ILR (1962) 1 Punj 101: AIR 1961 Punj 528 (539, 540) (Pt B) (Prs 79, 80) (DB).**

——S. 44 — Party wall — Use by Co-owners — Opening Alas and Almirahs in such wall.

Having 'Alas' and almirahs in the party wall is a very reasonable mode of using it, which cannot cause any harm or injury to any party whatever. No consent of the other co-owner or payment for making such use of the wall by the co-owner concerned is or should be at all necessary. **1961 Raj LW 644: ILR (1961) 11 Raj 1203: AIR 1962 Raj 227 (231) (Pt C) (Pr 23).**

11. Exclusive possession.

——S. 44 — Exclusive possession of joint land with consent of other co-sharers — Dispossession by another co-sharer — Suit for possession without asking for partition is maintainable. **AIR 1955 NUC (All) 2741.**

——S. 44 — Common land — Exclusive possession by one — Rights of others — Claim for account of profits — Competency.

Where a co-sharer is in exclusive possession of a common land, it is open to the other co-sharer either to allow the former to continue in exclusive possession of the land as an occupant or to file a suit for joint possession. He does not have any right to ask for accounts of profits from that land. He has also a right to claim compensation. **1957 Nag LJ 389: 59 Bom LR 1115: ILR (1957) Bom 856: AIR 1958 Bom 251 (252) (Prs 4, 5).**

——S. 44 — Exclusive possession by one of joint land — Settlement by one co-sharer — Effect on rights of other — Remedies available.

Held, on facts that the co-sharers plaintiffs were not entitled to obtain a decree for ejectment of the transferees, and that the decree for joint possession of the disputed land with their co-sharers-transferors and the transferees was proper. AIR 1943 Pat 194 (FB), Foll. **ILR 36 Pat 273: 1957 Pat LR 45: AIR 1957 Pat 511 (513, 514) (Pt B) (Prs 9, 10) (DB).**

——S. 44 — Co-sharers — Joint property — Exclusive possession by some as lessees — Suit for ejectment — Proper relief was to bring a suit for partition of entire property. **AIR 1957 Pat 192 (193, 194) (Prs 3, 4) (DB).**

——S. 44 — Right to claim exclusive possession of Shamlat Deh.

The tenure of land prevalent in the area of former Alwar State was on the lines of the tenure system of the Punjab and a co-sharer can claim exclusive possession of the land from which he had been dispossessed, no matter the land was Shamlat Deh. **1956 Raj LW 151: ILR (1955) 5 Raj 529: AIR 1955 Raj 173 (173, 174) (Pt B) (Prs 3, 7).**

12. Second part.

——S. 44 — Scope — Whether suit can be filed under S. 44, Second part? (Quaere). **AIR 1955 NUC (Cal) 25.**

——S. 44 — Second paragraph — Construction and scope.

The true and proper construction of the second paragraph of the section is that the transferee of a share of a dwelling house belonging to an undivided family, who is not a

member of the family, shall not be entitled to joint possession, or other common or part enjoyment of the undivided house. AIR 1952 Cal 253; AIR 1950 Cal 111; AIR 1916 Cal 170 and ILR 5 Bom 499, Rel. on. **AIR 1958 Pat 550 (553) (Pr 17).**

13. Suit by one against trespasser.

——S. 44 — Transfer of property by one of the co-owners — Transferee is entitled for possession and declaration that the interest of transferor has been conveyed to him.

If one co-owner purported to alienate the property in favour of third party, it was for the co-owner to object such a course and take such action as was open to him. No trespasser could question the right of one of the co-owners to be dealt with the property in its entirety. **ILR (1965) 2 Mad 521: 78 Mad LW 86: AIR 1965 Mad 389 (390, 391) (Pt A) (Pr 4).**

——S. 44 — Possession — Right to eject trespasser.

A co-tenant co-owner has full right to be in possession of the property and to take steps to eject the trespasser from it. **1956 Mad WN 14: ILR (1956) Mad 1004: 69 Mad LW 454: (1956) 1 MLJ 195: AIR 1956 Mad 514 (517) (Pt D) (Pr 10) (DB).**

——S. 44 — Suit for ejectment, by one only — Maintainability — Suit against tenants and trespassers — Difference.

If a suit in ejectment is brought by one of the landlords against the tenants, it is bound to fail as not being maintainable as the entire body of the landlords is not represented. **ILR (1958) Cut 31: 22 Cut LT 224: AIR 1958 Orissa 101 (102, 103) (Prs 5, 6, 8) (DB).**

——S. 44 — Suit by one against trespasser.

(Obiter). — When a common land of several co-sharers is possessed by any person without right and without authority, any one of the co-sharers can maintain an action in ejectment against the trespasser for the simple reason that as a joint owner his right extends to every inch of the joint land and cannot be distinguished from the right of others. **1956 Pat LR 177: 1956 BLJR 249: AIR 1956 Pat 308 (311, 312) (Pt E) (Pr 9) (DB).**

——S. 44 — Possession — Nature of — Suit by one co-owner on his own behalf for possession against trespasser — Maintainability.

A co-owner can therefore maintain a suit for possession of the entire property against a trespasser on his own behalf. **('51) 1951 Ker LT 210: AIR 1952 Trav-Co 195 (198, 199) (Pt C) (Pr 12) (DB).**

14. Surrender by one tenant — Validity.

——S. 44 — Transfer of interest of co-sharer in common property — Validity — Lease of interest by co-sharer in favour of another — Effect — Surrender. The interest of a co-sharer in common property can be sold, mortgaged or leased to another co-sharer or to a stranger. Ss. 7, 8 and 44 of the Act recognise the validity of such transfers. See T. P. Act (1882), S. 7. **AIR 1957 Andh Pra 619 (DB).**

——S. 44 — Surrender by one of several tenants — Validity. There is nothing in Section 44 to hold that the surrender will not be countenanced. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (47 of 1948), S. 5 (3) (b). **AIR 1957 Bom 217 (DB).**

——Ss. 44, 47 — Abandonment — Essentials — Onus — Surrender — Distinction.

Abandonment means the act of intentionally and voluntarily relinquishing a known right absolutely and unconditionally without vesting it in any other person. Abandonment is not a surrender of property because the latter term connotes its relinquishment to another.

Although a co-sharer is competent to relinquish his share in a joint holding, the evidence of such relinquishment where the property is originally left in the possession of another co-sharer must be clear and unequivocal.

The Courts do not presume in favour of abandonment and the onus rests on the party asserting abandonment. **62 Punj LR 494: ILR (1960) 2 Punj 707: AIR 1960 Punj 494 (496, 497) (Pt A) (Prs 7, 8, 14) (DB).**

SECTION 45

——S. 45 — Applicability — Hindu law — Coparcener — Acquisition of property with aid of joint family funds — The principle of S. 45 cannot be applied to the acquisition.

Resort can be had to the principle laid down by Section 45, only if the property is transferred to two or more persons who pay the consideration out of their joint or separate funds. **1957 All LJ 752: 1957 All WR (HC) 741: AIR 1958 All 42 (47, 48) (Pt C) (Pr 33) (DB).**

——S. 45 — Several decree-holders purchasing land from debtor jointly in satisfaction of their decrees — In order to determine if sale is valid under Section 34 (1) area in possession of each purchaser must be found out — Fact that collectively land exceeds ceiling area is irrelevant. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (1948), S. 84-B. **1963 Mah LJ (Notes) 81 (Rev) (Bom).**

——S. 45 — Applicability to involuntary sales — Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 22 (2).

Though Section 45, T. P. Act, does not in terms apply to involuntary sales, the principle underlying the section being consistent with justice, equity and good conscience will apply to such transfers. AIR 1940 Cal 145, Disting. **60 Cal WN 270: AIR 1956 Cal 58 (58, 59) (Pt A) (Prs 4, 5) (DB).**

——S. 45 — Property purchased in the name of two persons — Consideration paid in full by one alone — Rights of other — His share in the property would be nil; since the shares would be in proportion to the share of consideration advanced by each. **1960 MPLJ (Notes) 204.**

——Ss. 45, 13, 14 — Travancore Nayar Regulation (1 of 1088), S. 17 — Section not applicable — T. P. Act applies — Gift in favour of more persons than one — Donees take as tenants-in-common. See Travancore Nayar Regulation (1 of 1088), S. 17. **AIR 1953 Trav-Co 89 (DB).**

SECTION 46

——S. 46 — Mortgage by persons having distinct interests.

Property belonging to joint family of father and four sons — Property hypothecated — Hypothecatee bringing suit against sons after death of father — Suit withdrawn against three sons but decreed against one who remained ex parte — Decree-holder gets one-fifth share of judgment-debtor in addition to one-fourth of one-fifth share of father, that is, in all one-fourth share in the property — He does not get one-fifth share of judgment-debtor and one-fifth share of the father that is in all two-fifth

share in the property. **ILR (1955) Mys 354: 32 Mys LJ 189: AIR 1954 Mys 16 (16) (Pr 3).**

——S. 46 — Contract by karta — Payment to junior or separated member.

Payment of the consideration to a junior member will not bind him when the joint family subsists. Similarly a payment made to a separated member, without karta's consent would not bind him. See Hindu Law — Joint family **('52) 1952 Nag LJ (Notes) 141.**

SECTION 47

——S. 47 — Mortgage by one to another of zamindari property including Sir in his possession — Right to claim possession of Sir on redemption.

Where a co-sharer while mortgaging his zamindari property to a joint Sir holder includes in the mortgage a part of the joint Sir area over which by arrangement between him and his co-sharers, he is in separate possession, he is entitled to claim back the said area from the mortgagee at the time of the redemption only if he, having become an exproprietary tenant of the area in dispute, still retains his exproprietary rights at the time of redemption. Jokhu Mal v. Gopi Mal. **1952 All WR (HC) 18: 1951 All LJ 687: ILR (1953) 2 All 500: AIR 1952 All 251 (257) (Pt A) (Prs 37, 39) (FB).**

——S. 47 — Lease of joint land by one co-sharer — Rights of lessee — Lessee's right is perfect as against lessor but is subject to right of other co-sharers of lessor to enforce partition. **AIR 1955 NUC (Cal) 2872.**

——S. 47 — Lease by all — Tenant paying rent to one only — If valid discharge.

A tenant holding joint land under two co-sharer landlords is not discharged from his liability by his paying the rent to one of them only. 23 Mys CCR 148; 7 Mys LJ 379, Foll. **31 Mys LJ 24: AIR 1952 Mys 68 (69) (Prs 3, 4).**

——S. 47 — Partition — Right to — Alienation by co-sharer — Right of others.

The fact that a mortgage was executed subsequent to the partition proceedings cannot make a difference to the application of the general principles of law that the right of a co-sharer to partition is not affected by an alienation created by his other co-sharers. **20 Cut LT 397: AIR 1955 Orissa 48 (48) (Pr 2).**

——S. 47 — Lease of joint land to tenant by one in exclusive possession — Others not consenting to same — They would not be bound by such tenancy. **AIR 1955 NUC (Orissa) 1347.**

——S. 47 — Joint property — Part sold by co-sharer — Sale does not disentitle him to share in remaining property. **AIR 1955 NUC (Punj) 4027.**

——S. 47 — Suit to recover share of compensation money received by one for the acquisition of common property — Maintainability.

Where common property has been acquired and compensation money paid to one of the co-sharers, a suit against him by another co-sharer for his share of the compensation money could not be defeated on a plea that the suit for partial partition of the joint property will not lie. **AIR 1951 Raj 86 (87, 88) (Pr 6).**

SECTION 48

——S. 48 — Partition decree — Provision for owelty or equality of partition — Nature of — Lien or charge in favour of member to whom owelty is awarded may be express or implied — Charge takes precedence over earlier encumbrance. See Hindu Law — Partition. **AIR 1957 SC 577.**

—— Ss. 48 and 54 — Agreement to sell land executed in favour of A — Subsequently, mortgage of same land executed in favour of B — Later on sale-deed executed in favour of A — Mortgage held must have its effect as against subsequent sale though agreement to sell was executed before mortgage. **AIR 1950 Ajmer 59 (60, 61) (Pt C) (Pr 8).**

——S. 48 — Determination of priority of mortgages.

Section reproduces the equitable maxim qui prior est tempore potior est jure. Where there are successive transfers of the same property, the later transfer will be subject to the prior transfer. In the case of two successive mortgages, therefore, the later or puisne mortgage is subject to the prior mortgage. **(1965) 2 Andh WR 393: (1965) 2 Comp LJ 222: AIR 1966 Andh Pra 233 (236) (Pt B) (Pr 18) (DB).**

——S. 48 — Debenture holders — Rights of — Creation of specific charge and floating charge on same properties — Priority in such charges. See Companies Act (1913), S. 229. **(1965) 2 Andh WR 393: (1965) 2 Com LJ 222: AIR 1966 Andh Pra 233 (DB).**

——Ss. 48, 78, 41 — Competition between mortgagee and subsequent purchaser — Section 48 applies — No proof of negligence on part of mortgagee — Purchaser not protected. See Transfer of Property Act (1882), S. 78. **AIR 1961 Cal 300 (DB).**

——S. 48 — Devolution — Lease in favour of Punjab Government — As result of partition of country portion of Punjab which formed part of Indian territory, coming to be known as East Punjab — Right under lease devolved on Government of East Punjab — East Punjab Government is competent to transfer its rights to Himachal Pradesh Government — Lease subsisting — Proprietary right of lessor is subject to the terms of the lease. **AIR 1964 Him Pra 19 (24) (Pt E) (Prs 27, 28).**

——S. 48 — Partition — Provision for owelty — Charge — Nature of — Priority between charge of owelty and charge under indemnity clause. See Hindu Law — Partition. **1958 Ker LT 41: 1958 Ker LJ 230.**

——S. 48 — Registration Act (1908), S. 47 — Scope — Priority between registered documents — Sale of same property in favour of two different persons at different times — Sale executed prior in point of time will prevail. See Registration Act (1908), S. 47. **AIR 1960 Mad 396.**

——S. 48 — Joint execution.

If the law requires that all trustees must join in the execution of the conveyance and that two alone joining the execution would not conform to law. See Transfer of Property Act (1882), S. 53-A. **AIR 1955 NUC (Mad) 3934 (DB).**

——S. 48 — Crown debts — Civil P. C. (1908), O. 40, R. 1.

Crown debts cannot for all purposes be put into the category of unsecured debts. They occupy a special and privileged category of their own. It is only a secured debt, that is, one in respect of a strictly specified security which can have priority over a Crown debt. 12 Rang 437, Doubted. **1953 Mad WN 669 (2): (1953) 2 MLJ 496: (1953) 24 ITR 335 (Mad): AIR 1954 Mad 107 (108, 109) (Pr 6).**

——S. 48 — Registered documents — Priority — Plaintiff purchaser under earlier sale — His title cannot be defeated by any subsequent sale

although the sale-deed in his favour was not registered until later. — (Registration Act (1908), S. 47). **AIR 1955 NUC (Manipur) 4336.**

——S. 48 — Priority between sale deeds of same immovable property.

Where it is accepted that the parties really intended to convey certain immovable properties under a sale deed and possession of the said properties was in fact delivered to the vendee in pursuance of the said conveyance, the mere omission of the plot numbers in the sale-deed is not of any consequence and a subsequent sale deed in favour of the plaintiff in respect of the very same property is of no avail. **ILR (1963) Cut 525: AIR 1963 Orissa 136 (137) (Pt A) (Pr 9).**

——Ss. 48, 54 — Effect of registration of transference of title — Prior sale deed in favour of A followed by subsequent sale deed in favour of B duly registered — Prior sale deed registered after second sale deed— Suit for recovery of possession by A against B — The limitation for suit will run from the date of sale in favour of A. (Registration Act (1908), S. 47) — (Limitation Act (1908), S. 28, Art. 144). See T. P. Act (1882), Section 54. **AIR 1958 Pat 193.**

——S. 48 — Restoration of property to evacuee — Effect on rights of lessee recognised as such by Custodian before restoration — Licensee of lessee — Another lease created in favour of licensee after restoration by person to whom property is restored — Right of former and subsisting lessee not affected by fresh lease — Protection of former lessee's rights under Section 48, T. P. Act — Extension of principle of estoppel to licensee — Former lessor is entitled to obtain possession of premises from his licensee. See Administration of Evacuee Property Act (1950), S. 16 (3). **(1962) 64 Pun LR 680.**

——S. 48 — Simultaneous mortgages —Priority.

The Court must enquire which of the two deeds executed on the same day was executed first, or the Court will presume that the deeds were executed in such order as to give effect to the manifest intention of the parties. See Registration Act (1908), S. 47. **AIR 1955 NUC (Trav-Co) 5082 (DB).**

SECTION 49

——S. 49 — Scope and applicability — Suit for recovery of arrears of rent — Demised property destroyed by fire — Landlord recovering a substantial sum from Insurance Company — Term in the lease providing that it being a lease involving extra risk any additional premia had to be borne by the lessee — An inference that the insurance was for the benefit of the lessee also, held, could not be drawn from such term — Lessee, held, not entitled to damages. **(1965) 67 Bom LR 352: 1965 Mah LJ 537: ILR (1965) Bom 783 (DB).**

SECTION 50

——S. 50 — Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), Ss. 13 (2) and 14 (4) — Statutory tenant — Liability for rent — Date from which liability arises.

The operation of sub-section (2) has the effect of making the sub-tenant a direct tenant as soon as a decree is passed by which the tenancy of the tenant is determined. Therefore, however hard it might be upon the sub-tenant to compel him to pay twice if his plea of payment to the tenant is true, he must be directed to pay the arrears in respect of his tenancy to the Landlord on and from the date of the decree. **(1957) 100 Cal LJ 57.**

——S. 50 — Astam sale — Payment of rent to outgoing darpatnidar — Effect — Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 72.

Even though Section 72 of the Bengal Tenancy Act may not apply to the case of tenants of a darpatnidar whose tenancy is annulled after an astam sale, the tenants may claim relief in regard to payments bona fide made by them to the outgoing landlords under Section 50, T. P. Act. **AIR 1955 NUC (Cal) 931.**

——S. 50 — Scope.

Obiter — Section 50 contemplates payment of rent in good faith for the same tenancy to a wrong person. Where a sub-tenant pays rent to the tenant who is his immediate landlord in respect of the sub-tenancy without the knowledge that he had become a statutory tenant directly under the landlord such payment cannot be relied upon by him as payment to the landlord in respect of the statutory tenancy. **AIR 1951 Cal 394 (395) (Pt A) (Pr 12) (DB).**

——S. 50 — Payment in advance — When valid.

What Section 50, excuses is the payment of rent and profits of any immovable property which means that the rent or profits should have become due. If before they become due, anything is paid in advance to the former landlord, it is a simple loan to him and it cannot be taken as a discharge for the rent becoming due after notice of transfer to the tenant. **1959 Raj LW 80: ILR (1959) 9 Raj 190: AIR 1960 Raj 19 (20) (Pr 6).**

——Ss. 50, 52 and 65-A — Ss. 50 and 65-A are subject to S. 52.

The doctrine of lis pendens applies to the mortgage suits. Hence, in spite of the provisions of Section 65-A, the mortgagor cannot lease out the mortgaged property during the pendency of the suit for redemption to the prejudice of the mortgagee's or auction-purchaser's right. Further, the mortgagor cannot for the same reason accept any advance rent. Thus both Section 50 and Section 65-A are subject to the doctrine of lis pendens contained in S. 52 **6 Sau LR 223: AIR 1954 Sau 82 (84) (Pt A) (Pr 4).**

SECTION 51

SYNOPSIS

(Transfer of Property Act (1882), S. 51.)

1. Applicability.
2. Person claiming benefit under section must be a transferee.
3. Improvement by purchaser at Court sale.
4. Improvements.
5. "Good faith".
6. Right to compensation.
7. Modes of compensating evicted transferee.
8. Value of improvements — How estimated.
9. Acquiescence and this section.

1. Applicability.

——S. 51 — Proof to be given by defendant under.

In order to succeed under S. 51, T. P. Act, a defendant has to prove that he is a transferee of immoveable property, and that he made improvements in good faith. **1950 AMLJ 57: AIR 1951 Ajmer 18 (19) (Pt B) (Pr 4).**

——Ss. 51, 54 — 'Transferee' — Who is — Purchaser of immovable property valued it more

Property Act (1882), S. 108 (h). **AIR 1964 Pat 363 (DB).**

5. "Good faith".

——**S. 51 — "Believing in good faith that he is absolutely entitled thereto".**

Where the sale certificate standing in the name of the transferor showed that the transferor had purchased the property and not only the mortgagee rights therein it is a circumstance which might lead the transferee to believe that he was absolutely entitled to the property. **AIR 1955 All 339 (349) (Pt H) (Pr 67) (DB).**

——**S. 51 — Principles and scope — Improvement by transferee — Good faith is essential for claiming benefit of section — Question of good faith is one of fact.**

The key note of S. 51 is good faith and the transferee would not be entitled to the benefit of S. 51 unless he proves that he made the improvements on the property in the honest belief that he was absolutely entitled to it. **(1962) 2 Andh WR 169: (1963) 1 Andh LT 22: ILR (1963) Andh Pra 991: AIR 1963 Andh Pra 177 (184, 185) (Pt C) (Pr 18) (DB).**

——**S. 51** — "Good faith" — Alienation of house by Hindu widow — Expenditure incurred on reconstruction of house by alienee after notice by next reversioner claiming to be entitled to the house as reversioner — This would disprove the ingredient of good faith necessary under S. 51 **1960 Nag LJ 113: 62 Bom LR 322: AIR 1961 Bom 169 (183) (Pt S) (Pr 48) (DB).**

——**S. 51 — Good faith.**

The first condition which must be satisfied by the claimant for compensation under S. 51 is that he must be a transferee of the immoveable property. Whether the word transferee in S. 51 includes only a voluntary transferee or it includes a purchaser in execution of a mortgage decree, in either view, before the claimant can claim compensation he must believe in good faith that the transferor whose interest he was purchasing was absolutely entitled to the property. Good faith includes a due enquiry.

Secondly, as a general rule, improvements made on property by a life tenant thereof, attach to the estate and pass to the reversioner or remainderman, at the expiration of life-estate, without any liability on his part to make compensation therefor. The same is true of improvements made by a purchaser from one who holds a limited interest, for, it is presumed that such purchaser knows the title which he acquires. **58 Cal WN 760: ILR (1956) 1 Cal 456: AIR 1954 Cal 345 (346, 347) (Pt A) (Pr 5).**

——**S. 51 — 'Good faith'.**

The question whether a person believed in good faith that he was absolutely entitled to the property is one of fact to be decided on the particular facts of each case. Where the plaintiff wrote a letter to the defendant that he was agreeable to sell the land to a third person saying that the agreement was only nominal in his name and that the sale was to be in favour of the defendant:

Held, that the defendant rightly believed in good faith that he became entitled to the property. **ILR (1954) Hyd 822: AIR 1955 Hyd 101 (104) (Pt G) (Pr 10).**

——**S. 51** — 'Good faith' meaning of — Title of transferee depending upon existence of legal necessity — Failure to make proper inquiry does not necessarily indicate bad faith. **18 Cut LT 161: AIR 1952 Orissa 239 (243, 244) (Pt C) (Pr 13).**

——**S. 51 — Person alleging to be bona fide purchaser without notice of prior sale — Improvements by — Rights to compensation.**

Where A is the prior purchaser of certain property and has acquired a valid title to it, a subsequent sale in favour of B of the same property cannot affect the validity of the sale in favour of A. If B claims to be a bona fide purchaser for value without notice of the sale in favour of A, and has made any improvements it is for him to prove that he is such a bona fide purchaser without notice. AIR 1932 All 210, Rel. on; AIR 1928 All 41, Disting. **38 Mys LJ 589: AIR 1961 Mys 62 (63) (Pt A) (Prs 4, 5).**

——**S. 51** — Vendee purchasing ancestral land — Expenditure incurred bona fide for its improvement — Suit by minor for possession — Failure to prove necessity for full amount — Setting aside of sale — Vendee has right to compensation — (Specific Relief Act (1877), S. 41). **AIR 1953 Pepsu 45 (47) (Prs 4, 6).**

6. Right to compensation.

——**S. 51 — Trespasser cannot claim benefit of Section 51.**

A trespasser on an adjoining plot of land is not a transferee of that land nor can it be said that he has a defective title therein hence, for the improvements made by him on the land, he cannot claim the benefit of Section 51, T. P. Act. **AIR 1955 Ajmer 23 (23, 24) (Prs 4, 5).**

——**S. 51** — Trespasser making improvements upon encroached land, cannot claim compensation. **1950 AMLJ 57: AIR 1951 Ajmer 18 (19) (Pt D) (Pr 4).**

——**S. 51** — Licensees making constructions over sir land — No belief in good faith that they are absolutely entitled to the property — Not entitled to compensation. **1953 All WR (HC) 118: 1953 All LJ 197: ILR (1954) 1 All 675: AIR 1953 All 406 (409) (Pt J) (Pr 16) (DB).**

——**S. 51** — Specific Relief Act (1877), S. 9 — Suit under — Encroachment on plaintiff's land — Construction of building — Compensation not proper relief. See Specific Relief Act (1877), S. 9. **AIR 1950 All 535.**

——**S. 51 — Improvement by person having no title — Right to compensation.**

Where a person having no title to land erects constructions on it, the righful owner cannot be asked to take it on payment of compensation **AIR 1959 Cal 69 (71) (Pt D) (Pr 9) (DB).**

——**Ss. 51, 108 (h)** — Planting of trees on State land without permission or title — Being a trespasser, plaintiff not entitled to any compensation on eviction. **1965 Ker LT 666: (1965) 1 Ker LR 489: ILR (1965) 2 Ker 173: 1965 Ker LJ 858: AIR 1966 Ker 72 (74, 75, 76) (Pt B) (Pr 10) (DB).**

——**S. 51** — Kerala Compensation for Tenants Improvements Act (29 of 1958), S. 1 — Provisions of Kerala Act 29 of 1958 do not supersede Section 51 — Preliminary decree in suit for redemption of mortgage passed — Plaintiff is not precluded from taking point under S. 51 till final decree is passed — Section 51 applies to mortgagee believing in good faith to be absolutely entitled to the property.

There is no conflict between the provisions of the Kerala Act 29 of 1958 and S. 51 of the T. P. Act and the provisions of Act 29 of 1958 do not supersede the provisions of S. 51. **1963 Ker LT 219: (1963) 1 Ker LR 228.**

——**S. 51 — 'Transferee' — Assignment of separate plots by Government in plaintiff and defendant — Defendant erroneously occupying plot**

assigned to plaintiff and effecting improvements— Defendant is not 'transferee' of plot within Section 51 and hence, not entitled to compensation for improvements under that section — Claim for mesne profits by plaintiff — Whether maintainable — Civil P. C. (1908), O. 20, R. 12.

Where the defendant had erroneously entered into the suit site assigned by the Government to the plaintiff, innocently believing that the site had been allotted to him, and effected improvements therein, though the defendant could be held to have effected the improvements in the suit site believing in good faith that he was absolutely entitled to that site, he could not be held to be a 'transferee' under S. 51 and so, was not entitled to claim the value of the improvements effected by him under that section. The plaintiff as the true owner of the suit site is entitled to some mesne profits from the defendant who had unauthorisedly occupied the same. The burden of proving the mesne profits due is on the plaintiff. **(1963) 2 Mys LJ 43: ILR (1963) Mys 301: AIR 1964 Mys 24 (25) (Prs 4, 6, 7).**

●——**Ss. 51, 108 (h)** — Lessee under invalid lease paying rent — Creation of relationship of landlord and tenant — Improvements made by lessee — Right to — Lessee can remove structure. Bastacolla Colliery Co., Ltd. v. Bandhu Beldar. **ILR 39 Pat 140: 1960 BLJR 245: 1960 Pat LR 100: AIR 1960 Pat 344 (352, 353, 354) (Pt C) (Prs 38, 47) (FB).**

——**S. 51** — Applicability — 'Absolutely entitled thereto" — Person making improvement, claiming permanent tenancy — Right of — The lessee is not entitled to the benefit of S. 51. The section does not apply. **1960 Pat LR 65: AIR 1960 Pat 289 (291, 292) (Pt C) (Pr 4) (DB).**

●——**S. 51 — Improvements by tenant.**

According to the law in the State of Travancore-Cochin tenant who effects improvements in the property though in the absence of a provision in that behalf contained in the lease deed but if the making of such improvements be not prohibited, is entitled to claim value therefor and retain possession of the property until such value is paid. Eipu Varkey v. State, **1954 Ker LT 437: ILR (1954) TC 841: AIR 1954 Trav-Co 471 (472, 473) (Pt B) (Pr 3) (FB).**

——**S. 51** — Travancore Land Conservancy Act (4 of 1091). S. 9 — Right of trespasser to improvements effected by him — The ejected trespasser will have a right to remove the improvements made by him or compensation therefor. See Travancore Land Conservancy Act (4 of 1091), S. 9. **AIR 1953 Trav-Co 349 (DB).**

——**S. 51 — Improvements by trespasser — Value of — Trespasser in possession if entitled to value of improvements — (Improvements by trespasser) — (Trespasser — Improvements by).**

Though even a person who may be in law : trespasser, may be entitled to value of improvements if he comes into possession and makes improvements bona fide, a person deliberately entering into and doing works in the property for his own purposes with a view to start and establish a false claim for title thereto, is not entitled to value of improvements. **('51) 1951 KLT 210: AIR 1952 Trav-Co 195 (199) (Pt D) (Pr 14) (DB).**

7. Modes of compensating evicted transferee.

——**S. 51** — Option under S. 51 is to be exercised by owner of land. **1950 AMLJ 57: AIR 1951 Ajmer 18 (19) (Pt C) (Pr 4).**

——**Ss. 51, 109** — Principles of S. 109 — Applicability to joint family property — Suit for ejectment by the coparcener or coparceners to whom the property in possession of a tenant is allotted on partition alone can terminate the tenancy — Notice by such a coparcener or coparceners alone is valid — Hindu Law — Joint family property — Partition — Nature of share on partition. **1964 MPLJ 334: 1964 Jab LJ 436: ILR (1964) Madh Pra 122: AIR 1965 Madh Pra 1 (2, 3) (Prs 4, 5, 7, 8, 10).**

——**Ss. 51, 108, Cl. (h)** — Improvements by lessee — Doctrine of "equitable estoppel" in Ramsden v. Dyson, (1865-66) 1 HL 129, applicability — Erection of pucca superstructure on vacant site with consent of landlord — Tenant is entitled to claim compensation for superstructure at the time of eviction — Evidence Act (1872), S. 115. **AIR 1961 Mad 293 (295, 296, 297) (Prs 8, 9, 12, 13, 15, 16).**

Ss. 51, 105, 107 — Permanent lease — Inference — Oral lease of land for construction of building — Lessee constructing building with lessor's knowledge — No inference of permanent lease can be drawn — Lessee not entitled to compensation on ejectment. See Transfer of Property Act (1882), S. 105. **(1962) 40 Mys LJ 861.**

——**S. 51** — Partition suit — Construction by co-sharer on joint property in excess of his share — Right of such co-sharer to claim compensation for construction which has fallen to share of another co-sharer. See Civil P. C. (1908), O. 20, R. 18. **AIR 1962 Orissa 71.**

——**S. 51 — Compensation — Option as to — Procedure.**

In a suit for redemption it is at the option of the plaintiff, who is the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee or to sell her interest. **1957 Raj LW 362: ILR (1957) 7 Raj 473.**

——**Ss. 51 and 63-A — Value of improvements — Bearing trees — Valuation (Malabar Law).**

The bearing trees have to be valued on the basis of the yield thereof. The normal rule is that the deduction for "droppings" is that one-fourth of the total number of nuts on a tree has to be deducted on that account. The normal rule would seem to be one-fourth in respect of maintenance as well. **ILR (1951) Trav-Co 282 (DB).**

8. Value of improvements — How estimated.

●——**S. 51 — Date of eviction — Value of improvements.**

If the evidence enables a Court to do so, it should assess the valuation of the improvement as at a date as near as possible to the date of actual eviction rather than the date of election as had been done in this case. Narayana Rao v. Basavarayappa, V. G., **1956 Pat LR (SC) 218: 1956 Ker LT 20: ILR (1956) Mys 184: AIR 1956 SC 727 (729) (Pt A) (Pr 8).**

●——**S. 51 — Saleable value of improvement.**

The Court has to know exactly how much the transferee had spent on improvement and thus to arrive at the conclusion as to what was the saleable value of the improved property. 25 Mad LJ 176 (PC), Rel. on. Narayana Rao v. Basavarappa, V. G., **1956 Pat LR (SC) 218: ILR (1956) Mys 184: 1957 Ker LT 20: AIR 1956 SC 727 (729, 730) (Pt B) (Pr 9).**

——**S. 51** — Date of valuation — Under S. 51 the value at the date of eviction has to be awarded. **1960 Nag LJ 113: 62 Bom LR 322: AIR 1961 Bom 169 (183) (Pt R) (Pr 48) (DB).**

——S. 51 — Burden of proof — (Evidence Act (1872), S. 106).

The amount spent for improvements is a fact within the special knowledge of the transferee and it is for him to lead satisfactory evidence in support of his claim. **57 Bom LR 840: ILR (1955) Bom 1033: AIR 1955 Bom 457 (459, 460) (Pt B) (Pr 7).**

——S. 51 — Improvements — Right of transferee.

A land which is fallow would not yield the income estimated, unless improvements had been effected by the owner of the land. A land may appreciate in value either because there is a general rise in prices or the value may increase on account of the improvements made by the transferee. Apart from the improvements made by him and money actually spent by him, the transferee would be entitled also to some consideration in the shape of increase in the value of the land. **57 Bom LR 840: ILR (1955) Bom 1033: AIR 1955 Bom 457 (459, 460) (Pt C) (Pr 7).**

——S. 51 — Value of improvements — Test for assessment of — Relevancy of amount expended.

It is to be seen whether the improvements have or have not enhanced the value of the property and the extent of such enhancement. The amount of expenditure made has occasionally very little to do with that issue. **AIR 1952 Mys 117 (118, 119) (Pt C) (Pr 6).**

——Ss. 51, 44 — Co-owners — Improvement on joint land — Partition — Expense for improvements — Improver when is entitled to, stated. AIR 1929 Cal 553, Rel. on. **AIR 1962 Pat 300 (301) (Pt A) (Pr 6).**

——Ss. 51, 63-A and 116 — Improvements — Mode of assessment.

The improvenments are to be valued at the time of redemption on the terms previously agreed to, though such redemption is long after the expiry of the period fixed. See Landlord and Tenant — Improvements. **AIR 1953 Trav-Co 299 (DB).**

9. Acquiescence and this section.

——Ss. 51, 108 (h) — Doctrine of acquiescence — Suit for possession against lessee — Equitable estoppel — Relief on — There must be pleading and evidence — Removal of constructions on property held under void lease — Grant of time to lessee for — Evidence Act (1872), S. 115.

Held, that the relief of compensation granted to the lessee first defendant could not stand. To grant relief on the basis of equitable estoppel, not only should there be pleadings, but there should be evidence on which foundation could be laid for raising the plea. However, six months time was granted to the first defendant to remove the buildings and constructions he erected on the property held under void lease. **(1964) 77 Mad LW 634: (1965) 1 Mad LJ 167: ILR (1965) 2 Mad 341.**

——S. 51 — Applicability to lease — Monthly tenant building structure — Right to compensation on ejectment — Section 108.

Where a monthly tenant, wrongly believing that he was a permanent tenant constructs a structure on the land leased, the rights and liabilities of the tenant are governed by S. 108, and under Cl. (h) thereof, on ejectment, he is only entitled to remove all the things he had attached to the earth, but is not entitled to compensation. A specific provision having been enacted in Section 108 (h), there is no scope for the application of S. 51, or the principle involved in it to the case of a lease. Equitable principles cannot possibly be allowed to defeat statute. **AIR 1957 Pat 331 (333) (Pt A) (Pr 11) (DB).**

——S. 51 — Construction of permanent structures for non-agricultural purposes by tenant — Right of landlord to removal during lease — Doctrine of estoppel by acquiescence — Applicability.

If the lessor objects to such construction and there is no waiver or acquiescence on the part of the lessor, then S. 108 (p) will operate and the landlord will be entitled to ask for removal of the structure. See Transfer of Property Act (1882), S. 108 (p) and (h). **AIR 1951 Pat 600 (DB).**

SECTION 52

SYNOPSIS

(T. P. Act (1882), S. 52.)

1. Applicability and object.
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4. Transfer pendente lite.
5. Section if covers partition.
6. Alienation pending suit.
7. Right to immovable property — Charge.
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16. Charge decree — Binding nature.
17. Rent decree — Purchaser whether representative of tenant-mortgagor.
18. Rent suit.
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20. Suit for possession of property.
21. Suit in "forma pauperis".
22. Suit for recovery of money.
23. Mortgage suit.
24. Necessary party.
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26. Sale for arrears of revenue — Effect.
27. Injunction when can be granted.
28. Security bond by judgment-debtor.
29. Restitution — Grant of.
30. Fixing period of redemption.
31. Execution creditor not specifying judgment debtor's interest.
32. Surrender.
33. Explanation.

1. Applicability and object.

——S. 52 — Notices in respect of suits or proceedings in which property outside Greater Bombay was subject-matter in dispute. The section does not apply to any suits in which property in Greater Bombay is not the subject-matter in dispute. See Transfer of Property and the Indian Registration (Bombay Amendment) Act (14 of 1939), S. 3. **AIR 1965 SC 414.**

——S. 52 — Applicability — Revenue sale during pendency of suit on mortgage over other properties of the defaulter — The purchaser is bound by the result of that suit under the doctrine of lis pendens. See U. P. Land Revenue Act (3 of 1901), S. 162. **AIR 1952 All 298.**

——Ss. 52, 8 — Sale deed — Construction — Discrepancy between area and boundaries — Effect — Admissibility of extrinsic evidence.

Extrinsic evidence of the intention of the parties to a contract of sale from declarations and negotiations proceedings the contract is

tion itself by its express terms may not apply to an involuntary alienation, the principle of lis pendens applies to such an alienation. The strong weight of authority, though not in express language of the section, is in favour of the view that the doctrine of lis pendens applies to execution sales as well. **1957 BLJR 694: 1957 Pat LR 347: ILR 36 Pat 1139: AIR 1957 Pat 729 (731) (Pt C) (Pr 10) (DB).**

——S. 52 — Applicability — Conditions.

The requirements of Section 52 are: (1) the pendency of any suit or proceeding, (2) non-collusive character of such suit or proceeding, (3) any right to immovable property being directly and specifically in question, (4) the other party (other than the party making the transfer pendente lite) having some right under the decree in that suit or order in that proceeding. The consequence of the doctrine is that the transaction pendente lite shall not be allowed to affect the rights of any other party thereto under the decree or order. It is of the essence of the rule of lis pendens that a right to immovable property is directly and specifically in question in the suit. The lis commences on the date of the plaint, and not on the date of the decree. **1957 BLJR 694: 1957 Pat LR 347: ILR 36 Pat 1139: AIR 1957 Pat 729 (731) (Pt D) (Pr 11) (DB).**

——S. 52 — Applicability — Substance of litigation to be considered.

Applicability of the doctrine of lis pendens is not a question of form, and a mere mention of certain lands in the plaint, though having regard to the scope of the suit they were outside the dispute between the parties, will not attract the operation of Section 52. It is really a question of substance of the litigation, and if the property transferred is not actually in litigation, even though the plaint prima facie includes those plots, this section will not apply. **AIR 1957 Pat 408 (413, 414) (Pt F) (Pr 19) (DB).**

——S. 52 — "To the extent necessary to give effect to the contract" — Bar of remedy.

It could not be said that the claim of the subsequent purchaser could be defeated either on the doctrine of 'lis pendens' or on the principle embodied in Section 91 of the Trusts Act at a time when any claim for specific performance was barred. Section 91 of Trusts Act did not help. See Trusts Act (1882), S. 91. **AIR 1955 NUC (Pat) 1596 (DB).**

——S. 52 — Ss. 50 and 65-A are subject to Section 52. Both Sections 50 and 65-A are subject to the doctrine of lis pendens contained in Section 52. See T. P. Act (1882), S. 50. **AIR 1954 Sau 82.**

——S. 52 — Doctrine is not based on notice.

The rule of lis pendens is based not on the doctrine of notice but on expediency, that is necessity for final adjudication. **6 Sau LR 223: AIR 1954 Sau 82 (84) (Pt B) (Pr 4).**

——S. 52 — Principles underlying S. 52 apply in Travancore-Cochin, though Act does not. **('51) 1951 KLT 41: AIR 1951 Trav-Co 187 (188) (Pt B) (Pr 4) (DB).**

2. Doctrine of lis pendens.

——S. 52 — Sale in execution of mortgage decree — Lis pendens.

Although Section 52, T. P. Act, does not apply in terms to sales held in execution of a decree, the principle of lis pendens applies to such Court sales also. **AIR 1958 All 24 (25, 26) (Pt B) (Prs 7, 8, 9, 10) (DB).**

——S. 52 — Declaratory decree.

Where a decree is merely a declaratory one and does not admit of execution proceedings being taken the lis ends with the passing of the decree and any transfer made by the judgment-debtor after the date of the decree will not be affected by the doctrine of lis pendens. **1951 All LJ 39: 1951 All WR (HC) 225: ILR (1953) 1 All 284: AIR 1951 All 141 (153) (Pt F) (Pr 67) (FB).**

——S. 52 — Doctrine of lis pendens — Scope and extent of.

The principle of lis pendens enforced in England both by Courts of law and equity is embodied in Section 52. The section does not declare that all the transfers made pendente lite are null and void but what is provided for is that such transfers will be subject to the decree or order passed or made in the suit. In other words the transfer will be subservient to the decree or order. **(1958) Andh LT 938: (1959) 1 An WR 72: AIR 1959 Andh Pra 280 (285, 286) (Pt G) (Prs 20, 21, 26) (DB).**

——S. 52 — Doctrine of lis pendens.

The property to which the doctrine of lis pendens applies is property which is "the subject-matter of the suit". **1956 Andhra WR 549: ILR (1956) Andh Pra 137: AIR 1957 Andh Pra 454 (456) (Pt B) (Pr 13) (DB).**

——S. 52 — Lis pendens — Doctrine applies to execution sales also. **AIR 1951 Cal 481 (484, 485) (Pt B) (Pr 3) (DB).**

——S. 52 — Doctrine of lis pendens — Not applicable to movable property.

The doctrine of lis pendens does not apply to movable property. The doctrine is a rule of necessity and does not depend, for its operation, on notice actual or constructive, of the pending lis. **1962 Ker LJ 613: ILR (1962) 2 Ker 55: (1962) 2 Ker LR 36: 1962 Ker LT 455: AIR 1962 Ker 309 (312) (Pr 13).**

——S. 52 — 'Lis pendens' — General principles — Institution of suit in wrong Court — Operation of doctrine during interval between return of plaint and representation.

Held, on facts that as there was no T. P. Act, in force at the relevant time, the Court was only concerned with the application, the general principles governing the matter. S. 52, T. P. Act, as it stood after its amendment by Act 20 of 1929 embodied the correct version of the rule of lis pendens which was to be applied to the case. Under that section the suit or proceedings for the purposes of the doctrine of lis pendens should be deemed to commence from the date of presentation of the plaint or the institution of the proceedings in a Court of competent jurisdiction. If that rule was applied to the case there was no doubt that there was no suit pending in a Court of competent jurisdiction prior to 29-11-1095 and therefore the gift made on 3-6-1095 was not vitiated by the rule of lis pendens. AIR 1927 Rang 145, held not good law after amendment. **1957 Ker LT 34: ILR 1957 Ker 5: 1957 Ker LJ 11: AIR 1957 Ker 10 (13) (Pr 14) (DB).**

——S. 52 — Rule of lis pendens applies to agricultural leases. **AIR 1955 NUC (Madh B) 3706.**

——S. 52 — Property sold in execution of a simple money decree during the pendency of a mortgage suit in respect of the same property — Effect — Doctrine of "lis pendens" — Applicability.

Where a property was sold and purchased by a party in execution of his decree during the pendency of a mortgage suit in respect of the

The rule of lis pendens extends the scope of the rule of res judicata, the principle of which, is that the parties and their privies are bound by the judgment of the Court. The rule of lis pendens goes a step further and lays down that whoever purchases a property during the pendency of an action, is held bound by the judgment that may be made against the person from whom he derived his title, even though such a purchaser was not a party to the action or had no notice of the pending litigation. **AIR 1959 Punj 490 (495, 496) (Pt E) (Prs 18, 19).**

——S. 52 — Lis pendens and res judicata — Conflict between — Res judicata prevails.

Where there is an apparent conflict between the rule of lis pendens and the bar of res judicata, the latter which is supreme will prevail over the former. 1934 Cal 552, Ref. to. See Civil P. C. (1908), S. 11. **('51) ILR (1951) Trav-Co 32.**

4. Transfer pendente lite.

●——S. 52 — Scope of — Purchaser pendente lite — Rights.

As a purchaser pendente lite, a person will be bound by the proceedings taken by the party in whose favour the decree is passed in execution of her decree, and justice requires that she should be given an opportunity to protect her right. Sm. Saila Bala Dassi v. Sm. Nirmala Sundari Dassi, **36 Mys LJ 385: 1958 Mad WN (SC) 107: 1959 Pat LR (SC) 27: 1958 SCJ 743: (1958) 2 MLJ (SC) 99: (1958) 2 An WR (SC) 99: 1958 Nag LJ 385: 1958 MPLJ 473: 1959 SCA 129: 1958 SCR 1287: AIR 1958 SC 394 (397, 398) (Pt E) (Pr 9).**

——S. 52 — Suit dismissed for default under O. 9, R. 3 — Fresh suit for same relief not barred — Transferee pendente lite from plaintiff also entitled to bring fresh suit as he has same rights as plaintiff. See Civil P. C. (1908), O. 9, R. 4. **AIR 1964 All 300.**

——Ss. 52, 100 — Declaratory decree creating simply charge on property — Results that follow from such decree — (Specific Relief Act (1877), S. 39) — (Limitation Act (1908), Art. 131).

Three results follow — (1) Question of notice assumes importance and want of notice can be pleaded; (2) the transferee will not be subject to the doctrine of lis pendens; and (3) it is possible that the right of suit may become barred and the original decree declaring the charge may thus be extinguished as against the defendants against whom the right of suit has become time barred. See Civil P. C. (1908), S. 38. **AIR 1957 All 575 (DB).**

——S. 52 — Transfer pendente lite — Not nullity.

A sale cannot be regarded to be a nullity because of the bar of lis pendens, whether the sale is voluntary or involuntary. **ILR (1961) Bom 977: 63 Bom LR 975: AIR 1962 Bom 191 (197) (Pt B) (Pr 23).**

——S. 52 — Transfer pendente lite is not void — Effect.

The title acquired by such a transfer would be inferior to the title acquired under the decree or order which is eventually passed in the suit during the pendency of which the transfer is made. **AIR 1951 Cal 481 (484, 485) (Pt C) (Pr 3) (DB).**

——Ss. 52, 19, 28 and 21 — Transferee pendente lite takes property transferred subject to the result of the suit — Suit ending in compromise decree — Defendant getting contingent interest in property — Condition precedent not fulfilled — Vendee's possession is not affected — (Contract Act (1872), S. 31).

A transfer 'pendente lite' is not 'ipso facto' void. It is voidable at the instance of the decree-holder. It will affect the vendee only so far as his rights are inconsistent with the rights declared by the decree. The compromise decree is not inconsistent with the vendee's right, since what the compromise decree gives the defendant is not a vested right to the property but a contingent one. **ILR (1954) Hyd 250: AIR 1954 Hyd 185 (188, 189, 190) (Prs 17, 22, 23, 25, 26) (DB).**

——S. 52 — Transferee pendente lite — The applicant is not entitled to the benefit of the procedure under Rr. 99 and 101 of O. 21, and resist the execution of the decree. See Civil P. C. (1908), O. 21, R. 102. **AIR 1955 NUC (Madh Bha) 4527.**

——S. 52 — Transfer pendente lite — Nature of — Effect on rights of parties — Suit for specific performance by subsequent contractees — Earlier contractees not impleaded — Sale pendente lite in favour of earlier contractees — Not affected by decree in favour of subsequent contractees — Suit for possession by earlier contractees held maintainable — Specific Relief Act (1877), Section 27 (b) — Civil P. C. (1908), S. 47, O. 6, R. 17. AIR 1941 Nag 289; AIR 1957 SC 357; 1957 SCJ 313; AIR 1957 SC 363; 1957 SCJ 371, Rel. on. **1962 Jab LJ 338: 1962 MPLJ 142.**

——S. 52 — Scope and effect of — Transfer pendente lite — If void.

Section 52 does not declare the transfer made during the pendency of the suit to be void or annul it but only renders it subservient to the rights of the parties to the action as determined by the decree. 1937 Bom 244; 1936 Mad 589, Ref. **('50) 55 Mys HCR 174.**

——S. 52 — "Representative" — Purchaser pendente lite.

A purchaser from defendant "pendente lite" is deemed to be a representative in interest of the defendant and, therefore, a representative within S. 47 of Civil P. C. See Civil P. C. (1908), Section 47. **AIR 1953 Nag 236.**

——S. 52 — Transferee pendente lite — Substitution of transferee's name in place of transferor is matter in Court's discretion — Order refusing substitution — No interference by appellate Court. See Civil P. C. (1908), O. 22, R. 10. **AIR 1962 Orissa 71.**

——S. 52 — Transfer pendente lite — If void.

An alienation pendente lite is not void ab initio. It is a voidable transaction. The effect of the doctrine of lis pendens is that such an alienation is subject to the result of the suit. **25 Cut LT 156: (1959) 1 OJD 131: ILR (1959) Cut 273: AIR 1959 Orissa 157 (159) (Pr 7) (DB).**

——S. 52 — Civil P. C. (1908), S. 47 — Representative of judgment-debtor — Transferee pendente lite — Suit for possession if lies — Alienation if affected by doctrine of lis pendens. See Civil P. C. (1908), S. 47. **AIR 1956 Orissa 165 (DB).**

——S. 52 — Scope — Transfer pendente lite — If ipso facto void — Lis pendens — Doctrine of.

The doctrine of lis pendens denotes those principles and rules of law which define a limit of operation of the common law maxim pendente lite nihil innovetur, that is, pending the suit nothing should be changed.

The doctrine of lis pendens in ultimate analysis is in effect an extension of the law of res judicata and makes the adjudication in the suit binding on alienees from parties to a pending suit. But a transfer or dealing pendente lite by a party to a suit or proceeding is not ipso facto void. One of the conditions essential for the operation of this doctrine is that the proceeding

or suit should not be collusive. ('59) ILR 38 Pat 389.

●——**S. 52 — Transferee pendente lite — If representative of transferor.**

Though the Transfer of Property Act was not in the statute book of Travancore, the rules of S. 52 were being enforced by the Courts in that area as principles of general application and not as statutory provisions. A transfer pendente lite is good as between the parties thereto, only the transferee's rights will be subject to the decree and execution thereof in the litigation pending which the transfer is made. The plaintiff or the decree-holder would be entitled to ignore the transfer even if he has notice of it and proceed with the original party on record and the transferee would be bound by the ultimate result of the litigation even if he had no notice of it at any stage. Such a transferee would be a representative-in-interest of the party transferor. Chacko Pyli v. Iype Varghese, **ILR (1955) TC 823: 1955 Ker LT 739: AIR 1956 Trav-Co 147 (150) (Pt A) (Pr 1) (FB).**

●——**S. 52 — Civil P. C. (1908), S. 2 (11), O. 22, Rr. 2, 3, 10 — Transfer 'inter vivos' — Transferee is not legal representative of transferor — Transfer pendente lite — Death of transferor after decree — Execution — Right of decree-holder to prosecute proceedings without transferee.**

The right of the decree-holder to ignore the transfer pendente lite continues after the death of the transferor and would enable the decree-holder to prosecute the proceedings with the legal representatives of the deceased transferor on record and without the transferee. See Civil P. C. (1908), S. 2 (11). **AIR 1956 Trav-Co 147 (FB).**

——**S. 52 — Transfer pending suit to create a charge — Doctrine of lis pendens applies.**

The principle of lis pendens applies not only to a case where the plaintiff seeks to enforce a pre-existing charge but also to a case in which the plaint asks for the grant of a charge. The transferee pendente lite takes transfer from a defendant to the action subject to the rights granted by and enforced under the decree. **1955 Ker LT 307: AIR 1955 Trav-Co 234 (235) (Pt A) (Pr 2).**

——**S. 52** — Scope — Transfer pendente lite — If bad for all purposes — Transferee, if representative of transferor for purpose of S. 40. Travancore Civil P. C. A transferee pendente lite is a representative-in-interest of the party from whom he got the transfer — Princples underlying Section 52 apply to Travoncore-Cochin, though Act does not. See Travancore Civil P. C., S. 40. **1951 Ker LT 41: AIR 1951 TC 187 (DB).**

5. Section if covers partition.

——**S. 52 — Suit for partition — Defendant coparcener alienating property pending suit — Rights of alienees to work out equity in suit — (Hindu Law — Partition).**

Where in a pending suit for partition, a defendant alienates some properties in favour of another defendant, such alienation is not valid and binding on the plaintiffs by reason of the terms of S. 52 of the Transfer of Property Act. But the rights which inhered in the first alienee can be properly worked out in the suit. **(1958) 1 Andh WR 85.**

[**Overruled** in AIR 1959 Andh Pra 523.]

——**S. 52 — Scope — Section if covers partition.**

Section 52 prevents not merely the transfer of immovable property when any right to it is directly and specifically in question but it also prevents dealing with the property otherwise. Partitioning the property is certainly dealing with it. The language of the section is wide enough to cover a partition. **ILR (1950) 2 Assam 225: AIR 1950 Assam 119 (126) (Pt D) (Pr 50) (DB).**

——**S. 52 — Right to immovable property directly and specifically in question.**

The proceeding for execution of the money decree was not a proceeding in which any right to the immovable property of the family was directly and specifically involved. The property which was to be sold was the family property; but the subject-matter of the proceeding was the recovery of the monies which were due to the judgment-debtor and, therefore, S. 52 had no application to the partition. **52 Bom LR 154: ILR (1950) Bom 114: AIR 1950 Bom 278 (285, 286) (Pt B) (Pr 17) (DB).**

——**S. 52** — Applicability — Section 52, applies to suit for partition — Tenant inducted by party during pendency of suit is bound by decree. **1960 Ker LT 1232: AIR 1961 Ker 335 (335, 336) (Pt A) (Pr 2).**

——**S. 52** — Partition suit — Lis pendens principle of, applies to auction sales — Pendency of partition proceedings for final decree — Money decree against all members — Execution — Purchase by decree-holder — Doctrine of lis pendens held applied. **AIR 1955 NUC (Pat) 1597 (DB).**

——**S. 52** — Land belonging to four brothers in possession of tenant — Two of the brothers mortgaging their respective shares with possession — Brothers partitioning the land and putting mortgagees into possession of mortgaged land after dispossessing tenant — Tenant instituting suit for recovery of possession against owners without impleading mortgagees as defendants — One of the other two brothers selling his one-fourth share during the pendency of suit, and the other selling his remaining one-fourth share after the decree to the mortgagees — Though the mortgagees were not parties to the tenant's suit decree passed in the suit will be binding on them with regard to the land sold to them after the institution of suit — Hence the mortgagees' suit to restrain the tenant from execution decree should be dismissed to the extent of those portions of land which were bought by them after the institution of the tenant's suit. **1964 Cur LJ 297: 66 Pun LR 625.**

——**S. 52** — Suit against lessee for recovery of possession — Partiliotn of property leased among lessors — Recovery of possession by one sharer from lessee — Such recovery is not affected by 'lis pendens'. **AIR 1955 NUC (Trav-Co) 1655.**

6. Alienation pending suit.

——**Ss. 52 and 53 (before amendment of 1929)** — Frame of suit to set aside alienation — If to be in representative capacity. It was not necessary for a creditor to file a suit under O. 21, R. 63 in a representative capacity, before S. 53, T. P. Act was amended. See Civil P. C., S. 11. **AIR 1959 Andh Pra 280 (DB).**

——**S. 52 — Transfer pending litigation — Rights of transferee.**

Where a transfer is made during the pendency of the litigation the doctrine of lis pendens applies; but it cannot be said that the transferee has no right to redeem the property because the transfer is not rendered void altogether by reason of the pendency of the litigation. **1959 Andh LT 436.**

——**S. 52 — Alienation pending suit — Plea of prior agreement to sell — Effect of.**

The fact that prior to the date of the institution of the suit by the plaintiff, the defendant had entered into an agreement to sell the suit properties to the alienee does not affect the application of S. 52, of the Transfer of Property Act. **(1958) 1 Andh WR 85.**

[**Overruled** on another point in AIR 1959 Andh Pra 523.]

——S. 52 — Applicability — Transfer during claim proceedings — Lis pendens — (Civil P. C. (1908), O. 21, Rr. 58, 63).

A suit brought under O. 21, R. 63 is a mere continuation of the proceedings in the claim petition. As such all alienations during the continuance of the proceedings originated by the claim petition till the disposal of the suit brought to set aside the claim petition order, are alienations pendente lite and are affected by the doctrine of lis pendens formulated in S. 52, Transfer of Property Act. **(1957) 1 Andh WR 285.**

——S. 52 — Transfer during pendency of mutation proceedings — Pendency of mutation proceeding cannot create bar of lis pendens against donee of gift deed executed during its pendency. **AIR 1955 NUC (Assam) 2851.**

——S. 52 — Section 28 Bombay Agricultural Debtor's Relief Act deals with alienations made before the proceedings commence under S. 4 of the Act — Section 40 of the Act applies to all alienations made subsequent to the commencement of the proceedings under Act until the debts due by debtor are discharged. See Debt Laws — Bombay Agricultural Debtors' Relief Act (1947), Section 40. **AIR 1955 NUC (Bom) 912 (DB).**

——S. 52 — Alienation pendente lite — Void or voidable — Right to question — Transfer.

The doctrine of lis pendens as embodied in Section 52, Transfer of Property Act, does not mean that a transfer pendente lite is either illegal or void. It is only voidable to the extent that it affects the rights of the party who obtains the decree or an order in the pending litigation and that at the instance of that party only and not of any other party. It is good otherwise and cannot be questioned by a third party or even by the successful party in the pending litigation if his right in the property in question is left unaffected by the transfer. **AIR 1957 Cal 106 (109) (Pt A) (Pr 20).**

——S. 52 — "So as to affect the rights of" — Transfer during pendency of suit or proceeding is not illegal — Transfer acquiesced in by other party and he receiving benefit under it — He cannot later on say that transfer would not bind him being inconsistent with his rights obtained under decree. **AIR 1955 NUC (Cal) 2870 (DB).**

——S. 52 — Hindu Succession Act (1956), Sections 4 (1) (a) and 14 (1) — Gift by widow of property inherited from husband prior to the Act — Suit by reversioner after the Act for declaration that gift not binding on him after widow's death — Reconveyance of property during pendency of suit — Widow gets absolute estate and suit is liable to be dismissed. See Hindu Succession Act (1956), Section 4 (1) (a). **AIR 1965 Mad 497.**

——S. 52 — Transfer pending suit — Effect of section.

A transfer pending a suit will be held void only so far as it affects the right of any other party to the litigation. The decree in the suit does not have the effect of annulling a conveyance or mortgage but would only render it subservient to the rights of the parties to the litigation. The effect of S. 52 is that the right of the successful party in the litigation in regard to that property would not be affected by the alienation but it does not mean that, as against the transferor, the transaction is invalid. **(1959) 1 Mad LJ 178: 1959 Mad WN 87: AIR 1959 Mad 225 (226, 227) (Pt C) (Pr 2).**

——S. 52 — Alienation pendente lite — Compromise between alienor and other party to suit.

An alienation pendente lite is subject to the rule of lis pendens enacted in S. 52 and the alience if he is not impleaded as a party and does not object to any compromise behind his back between his alienor and the other party to the suit, would be bound by the compromise reached between them, unless thereafter he would be able to establish in a separate suit that the compromise was collusive and fraudulent. **1954 Mad WN 114: (1954) 1 Mad LJ 530: 67 Mad LW 307: ILR (1955) Mad 519: AIR 1954 Mad 592 (593) (Pt A) (Pr 5) (DB).**

——S. 52 — Applicability — Suit compromised and decree passed on basis of compromise — If affects alienation made pending suit.

The rule of its pendens applies to transfers effected during the pendency of a contentious suit or proceeding although such suit is subsequently compromised, provided the compromise is not tainted with fraud or collusion. **('50) 55 Mys HCR 174.**

——S. 52 — Alienation pending suit under O. 21, R. 63, Civil P. C. — Suit affected by lis pendens. **ILR (1951) Nag 241: 1951 Nag LJ 175: AIR 1951 Nag 194 (197) (Pt C) (Prs 18, 19).**

——S. 52 — Scope.

Section 52, prohibits alienation, or any transaction in respect of immovable property, forming the subject-matter of any suit or proceeding. **AIR 1957 Pat 408 (413, 414) (Pt E) (Pr 19) (DB).**

——S. 52 — Lis pendens — Mortgage decree — Auction-purchaser in execution is not affected — Doctrine affects only opponents.

The principle on which the doctrine of lis pendens rests is applicable only as between opponents with regard to alienations made by any one of them during the pendency of the suit. The doctrine cannot be applied as between parties to a suit who are arrayed upon the same side and between whom there is no dispute to be adjudicated. **ILR 31 Pat 722: 1953 BLJR 137: AIR 1953 Pat 58 (59) (Pt A) (Pr 3) (DB).**

——S. 52 — Scope — If overridden by S. 41.

The principle of estoppel contained in S. 41 must yield to the doctrine of lis pendens contained in S. 52 under which no title in property can be validly transferred during the pendency of litigation in respect of it. **AIR 1961 Punj 299 (300, 301) (Pt A) (Pr 8).**

——Ss. 52, 76 — Execution of mortgage pending suit for enhancement of michavaram.

Where the mortgage was executed pending the suit filed by the jenmi for enhancing the michavaram, the mortgagor, and the mortgagee are both bound by the decree in that suit. **AIR 1954 Trav-Co 251 (252, 253) (Pt D) (Pr 5) (DB).**

7. Right to immovable property — Charge.

——S. 52 — Applicability — Suit for specific performance of contract to sell house — Right to immovable property is directly in question — Proceeding continues till decree is fully satisfied — Sale in pursuance of decree for specific performance on 3rd June, 1947 — Property already sold in execution of simple money decree and sale confirmed on 8th May, 1947 — Auction-purchaser in execution of simple money decree is bound by transfer. **AIR 1955 NUC (All) 3556.**

●——Ss. 52, 100 — Right to immovable property — Charge (Lis pendens).

In a suit filed by a Hindu widow, claiming that she was entitled to be maintained out of the income of the properties mentioned in the plaint which she claimed were joint family properties in which her husband had a share and asking for a charge to be created on the said property, a right to immovable property is directly and specifically in question.

Where a decree is passed specifically creating a charge on specific immovable property and the decree is not merely a declaratory decree but an executable one a transferee of the property before the decree is fully satisfied is barred by the decree, irrespective of the fact that he had no notice of the charge created by the decree: AIR 1943 Oudh 354, Dissent; ILR (1939) All 885: AIR 1939 All 687: 185 IC 597, **Overruled.** Mahesh Prasad v. Mt. Mundar, **1951 All LJ 39: 1951 All WR (HC) 225: ILR (1953) 1 All 284: AIR 1951 All 141 (146, 151, 153) (Pt E) (Prs 21, 55, 67) (FB).**

——S. 52 — Scope — Right to immovable property — Charge over property.

The doctrine of Lis Pendens has nothing to do with any rule of substantive law. If the plaintiff claims a charge over property specified in the plaint and ultimately obtains it, then a right to that property is directly and specifically involved in the suit so as to attract provisions of S. 52, T. P. Act. **1959 Andh LT 509.**

——S. 52 — Right to immovable property — Easement — (Easements Act (1882), Ss. 4, 8 and 19).

Under the provisions of the Easements Act, an easement is a right or interest in immovable property.

Held, that the terms of S. 52 applied to the case and so the only course was to execute the decree as against him and not to file a separate suit. **1955 Andhra WR 72: 1955 Andh LT (Civil) 17: ILR (1955) Andh Pra 257: AIR 1955 Andh 199 (199, 200) (Prs 2, 3, 4).**

——S. 52 — Doctrine of lis pendens — Notice of suit to transferee not essential.

The application of the doctrine of lis pendens does not depend upon the purchaser having notice of the suit even if the transferee pendente lite from a party has no notice of the suit, the rights of the other party to a suit in which a right to immovable property is directly and specifically in question under the decree cannot be prejudicially affected by the transfer. **60 Bom LR 1083: 1958 Nag LJ 546: ILR (1959) Bom 94: AIR 1959 Bom 475 (477) (Pt C) (Pr 6).**

——S. 52 — Scope — Suit for declaring charge of Corporation of Calcutta — Transferee after preliminary decree declaring charge but before final decree — Decree executable against him. See Civil P. C. (1908), O. 34, R. 1. **(1958) 62 CWN 288.**

——S. 52 — Suit under S. 36, Bengal Moneylenders Act — Right to immovable property is not in question — (Debt Laws — Bengal Moneylenders Act (10 of 1940), S. 36). **AIR 1955 NUC (Cal) 2069.**

●——S. 52 — Decree for redemption of Kanom property against Karnavan — Delivery taken — Partition during pendency of suit — Sharers, whether to be impleaded — (Marumakkathayam Tarwad — Karnavan — Representation).

In a suit or proceeding in which any right to immovable property is directly and specifically in question (which would include the right to recover property) brought against the manager of a Hindu joint family or the karnavan of a marumakkathayam tarwad in his representative capacity, which is not collusive, the plaintiff or the decree-holder in the execution proceedings is not bound to implead either in the suit or in the execution proceedings any person to whom the suit property has been allotted under a partition effected subsequent to the institution of the suit and all proceedings in such a suit, whether on the trial, appellate or execution side, would be binding on all the members of the tarwad or joint family including the persons who had obtained title to any part of the suit property under the subsequent partition, if they are valid and binding against the original defendant and the persons from whom the plaintiff or decree-holder was bound to implead on the death of such defendant. Lakshmanan v. Kamal, **1958 Ker LJ 901: 1958 Ker LT 851: ILR (1958) Ker 1266: AIR 1959 Ker 67 (74) (Pt C) (Pr 24) (FB).**

——Ss. 52, 54 — Basis of S. 52 — Suit for specific performance of subsequent agreement for sale of property, pending — Execution of sale deed on basis of prior agreement for sale — Hit by doctrine of lis pendens — Notice of suit to prior purchaser not necessary. **1961 MPLJ 191: 1961 MPC 148: 1961 Jab LJ 573: ILR (1960) Madh Pra 797: AIR 1962 Madh Pra 34 (35, 36) (Prs 7, 15) (DB).**

——S. 52 — 'Lis pendens' — Applicability — Court-auction sale during pendency of suit — Subsequent withdrawal and abandonment of the suit by plaintiff — Effect.

For S. 52 of the Transfer of Property Act (4 of 1882) to apply, the right to immovable property should be directly and specifically in question. Section 52 of the Act, in terms contemplates rights having been secured by a party to the suit under a decree or order therein. In the case of an abandonment of the suit claim, the question is withdrawn from adjudication. ILR 29 Mad 426 (FB), Followed. **1963 Mad WN 181: (1963) 1 Mad LJ 154: 76 Mad LW 215: ILR (1963) Mad 592: AIR 1963 Mad 300 (301, 302) (Prs 4, 5) (DB).**

——S. 52 — Applicability — Charge under S. 74, Orissa Tenancy Act — Proceeding to enforce — Transfer during pendency of — If affected by lis pendens.

Though a suit for the enforcement of a charge under S. 100, Transfer of Property Act, is a suit relating to immovable property for purposes of S. 52, Transfer of Property Act, a suit or proceeding to enforce a charge under S. 74 of the Orissa Tenancy Act is not a suit or proceeding in which "any right to immovable property is directly and specifically in question", so as to render a transfer made during the pendency thereof liable to be affected by lis pendens under S. 52, Transfer of Property Act. **ILR (1950) Cut 195: AIR 1951 Orissa 41 (45) (Pt C) (Pr 9) (DB).**

——S. 52 — Judgment-debtor — Defendant against whom suit is dismissed transferring suit property — Plaintiff filing appeal after transfer of property — Suit decreed in appeal — Defendant is judgment-debtor within meaning of O. 21, R. 102 and S. 2 (10) — Transferee's application against dispossession not maintainable under O. 21, R. 102. See Civil P. C. (1908), O. 21, R. 102. **1964 Raj LW 487.**

8. Right existing before suit not affected.

——S. 52 — Right existing before suit not affected — Applicability to suit for specific performance.

A suit based upon a mortgage of a prior date during the pendency of other proceedings is not hit by the doctrine of lis pendens. AIR 1932 Mad 566; AIR 1945 Mad 91, Rel. on.

The doctrine of lis pendense applies also to suit for specific performance. **1958 Ker LT 836: 1957 Ker LJ 1143.**

——S. 52 — Interest acquired prior to institution of suit — Attachment before judgment.

Where in a suit for recovery of money, a property which was released by the mortgagee, a Co-operative Society, is attached before judgment and subsequent to the attachment the Co-operative Society, with or without the knowledge of the judgment-debtor proceeds against the released property also in the proceedings for mortgage award, whether mala fide or bona fide, the interest of the attaching decree-holder who was no party to that proceeding cannot be affected and the auction sale pursuant to the attachment is not hit by the rule of lis pendens. **AIR 1957 Pat 408 (414, 415) (Pt H) (Pr 21) (DB).**

——Ss. 52, 53-A — Rights existing before suit not affected by S. 52.

Under S. 52, T. P. Act protection is given only to the rights of the parties as they existed when the suit was commenced and find embodiment in the decree in the suit. Nothing done by a party during the pendency of the suit can affect the rights of any other party under the decree but if a right exists in a stranger from before in relation to the property it will not to be affected merely because the title to the property in pursuance of that right was perfected during the pendency of the suit. **AIR 1951 Pat 613 (616, 617) (Pt B) (Prs 6, 8, 10) (DB).**

——Ss. 52, 65-A — Lease after suit on mortgage — Validity.

During the pendency of the suit on a simple mortgage, the mortgagor cannot execute a lease of the mortgaged property, because if the lease is upheld the amount payable at the time of the redemption has been substantially increased by the deed. **ILR (1956) Trav-Co 716: 1956 Ker LT 592: AIR 1957 Trav-Co 292 (293) (Prs 3, 4).**

9. Adverse possession.

——S. 52 — Adverse possession and right of transferee — Transferee during litigation is bound by result — He can get himself made party but plaintiff is not bound to add him — D. H. obtaining possession — That is good against transferee — Failure to get names mutated is not failure to get possession — Civil Procedure Code Order 22, Rule 10 — Limitation Act, Article 144. **('52) 1952 Nag LJ (Notes) 66.**

● **——S. 52** — Lis pendens — Doctrine of — Scope — 'Transfers or otherwise deals' — Meaning of — Suit by A against B for declaration of title and possession — A taking forcible possession of suit land by evicting B during pendency of his suit — Suit dismissed — B's suit for possession after 12 years from date of his dispossession — Section 52 does not apply and A's adverse possession for more than 12 years is not affected — B's suit held barred by limitation under Art. 142, Limitation Act or alternatively under Article 144. Santa Singh v. Rajinder Singh, **1965 Pun LR (Supp) 1: ILR (1965) 2 Punj 97: AIR 1965 Punj 415 (420, 423, 427) (Pt E) (Prs 11, 21, 22, 39, 40, 41) (FB).**

10. Pre-emption — Nature of right.

——S. 52 — Pre-emption suit — (Punjab Pre-emption Act (1 of 1913), S. 17).

It is settled law in Punjab that the rule of lis pendens is as much applicable to a suit to enforce the right of pre-emption as to any other suit. But the rule applies only to a transfer pendente lite and it cannot affect pre-existing rights. AIR 1954 Pepsu 59, **Reversed.** Bishan Singh v. Khazan Singh. **ILR (1958) Punj 2225: 1958 SCJ 1234: 1959 SCR 878: AIR 1958 SC 838 (844, 845) (Pt B) (Prs 19, 20, 23).**

——S. 52 — Lis pendens — Pre-emption — Occupant selling his field — Sale-deed and agreement to reconvey executed and registered on the same date — Vendor obtaining reconveyance of property within time prescribed — Transaction does not attract the right of pre-emption — Agreement for reconveyance binding on the pre-emptor. See Berar Land Revenue Code (1928), S. 180. **(1963) 65 Bom LR 229.**

——S. 52 — Suit for pre-emption — Pending suit vendee exchanging property sought to be pre-empted with another who had equal right of pre-emption — Effect.

Although the rule of lis pendens is applicable to pre-emption suits yet certain transfers made during the pendency of pre-emption suit are not hit by this rule, for instance, if after the institution of a suit for pre-emption another pre-emptor had, asserted his right of pre-emption privately and the vendee in recognition of his right had transferred the property to him, the rule of lis pendens would not apply to such a case. **AIR 1960 J and K 112 (113, 114, 115) (Pt B) (Pr 5) (DB).**

——S. 52 — Pre-emption — Right of — Does not exist prior to completion of sale — Contract of sale — Vendor conveying property to person having right of pre-emption pending suit for specific performance of contract of sale by vendor — Doctrine of lis pendens applies — Specific performance of contract will not be refused merely because of sale in favour of pre-emptor. **1961 Jab LJ 337: 1961 MPC 216: 1961 MPLJ 480: ILR (1961) Madh Pra 97: AIR 1962 Madh Pra 25 (27) (Pt B) (Prs 10, 12) (DB).**

——Ss. 52 and 54 — Pre-emption — Right of — Does not exist prior to completion of sale — Contract of sale — Vendor conveying property to person having right of pre-emption pending suit for specific performance of contract of sale by vendor — Doctrine of lis pendens applies — Specific performance of contract will not be refused merely because of sale in favour of pre-emptor. See Pre-emption. **AIR 1962 Madh Pra 25 (DB).**

——S. 52 — Pre-emption — Nature of right.

It is not equal to a right of repurchase. It is more than a right of substitution in place of the vendee which puts him in his shoes, but does not make him a transferee from him. **AIR 1954 Pepsu 59.**

[**Reversed** on another point in AIR 1958 SC 838.]

——S. 52 — Tenants right of pre-emption — Punjab Security of Land Tenure Act (10 of 1953), S. 17-A — Applicability — Sale held hit by doctrine of pendente lite — Vendees becoming co-sharers subsequent to institution of suit — Plaintiff's right of pre-emption, if could be defeated — Section 21-A, Punjab Pre-emption Act would have prevented plaintiff's right of pre-emption being defeated. See Punjab Pre-emption Act (1 of 1913), Section 15. **1964 Cur LJ 200 (Punj).**

——S. 52 — Pre-emption — Vendee selling house sought to be pre-empted before institution of pre-emption suit — Sale deed registered after suit

——S. 52 — Compromise decree.

The circumstance that the decree was passed by consent is not of consequence as such a decree is as effective as a decree passed after contest provided it is not collusive or fraudulent. ('50) 55 Mys HCR 174 (DB).

——S. 52 — Rule of lis pendens applies to compromise decrees.

The rule of lis pendens will apply to compromise decrees but it will apply only if the compromise was not the result of fraud or collusion. 7 Trav LR 42; 18 Trav LJ 478 and 18 Trav LJ (SN) 147, Dissented from. **1954 Ker LT 673: ILR (1954) TC 794: AIR 1955 Trav-Co 3 (5) (Pr 7) (DB).**

——S. 52 — Compromise between parties to suit — Intention to defraud stranger transferee — Applicability of principle of lis pendens — (Civil P. C. (1908), O. 23, R. 3).

That compromise will not affect the interests of the transferee and the decree passed on such a compromise will not affect that transferee, that is to say, the principle of lis pendens will not apply to such a case. **AIR 1952 Trav-Co 309 (309, 310) (Pr 1) (DB).**

15. Decree against insolvent pending — Official receiver if bound.

——S. 52 — Provincial Insolvency Act (1920), S. 28 (2) (7) — Decree against insolvent pending insolvency in suit filed before insolvency petition — Official receiver if bound.

The official receiver cannot be impleaded in execution of the decree and no relief can be claimed against him. See Provincial Insolvency Act (1920), S. 28 (2) (7). **AIR 1951 Mad 687 (DB).**

16. Charge decree — Binding nature.

——S. 52 — Charge decree — Purchase pendente lite.

Held, that the appellants having obtained the interest of one M by reason of their purchase of the house in execution of the charge decree were entitled to exclude not only him but also the respondent who was a purchaser of his interest pendente lite. **60 Bom LR 829: 1958 Nag LJ 442: ILR (1959) Bom 256: AIR 1959 Bom 269 (271) (Pt B) (Pr 11).**

——S. 52 — Premises destroyed by fire — Reconstruction and leasing out to other person — Order of restoration under Cl. 13 (7) in favour of former tenant — Binding effect on subsequent tenant — The order passed in the rent control proceedings could be binding by application of the rule of "lis pendens", assuming that the rule is attracted to such proceedings. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (7). **AIR 1955 NUC (Nag) 1236 (DB).**

17. Rent decree — Purchaser whether representative of tenant — Mortgagor.

——S. 52 — Civil P. C. (1908), S. 47— Pending execution of mortgage-decree tenancy holding sold in execution of rent decree — Purchaser at execution of rent decree whether representative of tenant mortgagor — Principle of lis pendens if applies — Tenancy Laws — Orissa Tenancy Act (2 of 1913), Ss. 74 and 220.

The rent-purchasers are not merely the purchasers of the right, title and interest of the tenant judgment-debtor in the mortgage-suit and are not therefore his representatives within the meaning of Section 47, C. P. C. The decree, therefore, cannot bind them and the principle of lis pendens cannot apply against them. See Civil P. C. (1908), S. 47. **AIR 1952 Orissa 64 (DB).**

18. Rent suit.

——S. 52 — Applicability — Initiation of proceedings under S. 171 by landlord under Tenancy Act — Proceedings pending — Landlord's decree for arrears of rent — Sale of one of the plots in dispute in the proceedings under S. 171 — Purchase by plaintiff — Delivery through Court — If subject to lis pendens — Advantage of S. 52 not available. See U. P. Tenancy Act, S. 183. **1952 RD 164.**

——S. 52 — Suit for rent — Applicability.

The suit is primarily a suit for recovery of money and although a decree for arrears of rent creates a first charge it cannot be said that this renders the suit in which the right to immovable property is involved. It is therefore not hit by the doctrine of lis pendens. **AIR 1951 Cal 221 (224, 225) (Pt A) (Prs 15, 16, 18) (DB).**

——Ss. 52, 8, 76, 105 — Usufructuary mortgage — Lease back to mortgagor — Relationship of landlord and tenant — Suit for rent if maintainable — (Civil P. C. (1908), O. 34, R. 14) — Order 34, Rule 14 of Civil P. C. does not bar a suit for rent. **AIR 1958 Madh Pra 319.**

——S. 52 — Applicability— Mortgage — Decree on — Execution — Sale of holding in execution of rent-decree— If affected by lis pendens.

Section 52, Transfer of Property Act, does not in terms apply to sales in execution of decrees, including rent-decrees under the Orissa Tenancy Act. What is purchased at such a rent sale is not merely the right, title and interest of the judgment-debtor, i.e., the defaulting tenant, but the holding itself. The purchaser is not representative of the judgment-debtor, so as to be bound by the result of a mortgage suit or proceedings in execution of a decree on a mortgage, pending at the time of the rent sale. The principle of lis pendens cannot therefore apply to such a case. **ILR (1952) Cut 277: AIR 1952 Orissa 64 (68, 71, 72) (Pt E) (Prs 12, 23) (DB).**

——S. 52 — Suit land sold in execution of rent decree — Execution sale, if affected by lis pendens.

Held, that the purchase of the defendants second party was hit by the doctrine of lis pendens. **Held,** further that, as the defendants second party purchased the suit land in execution of a decree for arrears of rent due in respect of the suit land, it is manifest that the plaintiffs were bound in law to pay the said arrears of rent. The plaintiffs, therefore, could recover possession of the property in suit only on payment of the amount for which the defendants second party purchased the property in suit. **1957 BLJR 694: 1957 Pat LR 347: ILR 36 Pat 1139: AIR 1957 Pat 729 (731) (Pt E) (Pr 12) (DB).**

——S. 52 — Rent suit — Nature of — Property conveyed after rent decree but before execution — Lis pendens, Doctrine of — Applicability — Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 65.

A suit for rent is primarily a suit for money and is not a suit in which "any right to immovable property is directly and specifically in question". It is true that S. 65 of the Bihar Tenancy Act makes rent a first charge on the holding but no such charge is created until in

any event before the decree is passed in the suit. It is of the essence of the rule of lis pendens that, in order to obtain the protection of the rule, the property must be directly and specifically in question in the suit. A suit for rent can hardly be regarded as a claim to charge some specific property. To make a lis pendens notice to a purchaser of an estate, the question in the suit must relate specifically to the estate and not merely to the money secured on it.

A rent decree is in no sense a mortgage decree and the charge referred to in S. 65 of the Bihar Tenancy Act is not such a charge as is defined by Section 100 of the Transfer of Property Act. 6 Pat LJ 354, Rel. on. **ILR 30 Pat 317: AIR 1952 Pat 9 (10, 11) (Pt B) (Prs 5, 6, 7, 9) (DB).**

19. Maintenance suit.

●——**S. 52 — Suit for maintenance and for creation of charge — Lis when commences.**

When a suit is filed for maintenance and there is a prayer that it be charged on specified properties, it is a suit in which right to immovable property is directly in question, and the lis commences on the date of the plaint and not on the date of the decree, which creates the charge. Nagubai Ammal v. B. Shama Rao, **1957 MPC 150: 1956 SCJ 655: 1956 SCA 959: ILR (1956) Mys 152: 1956 An LT 1029: 1956 SCR 451: AIR 1956 SC 593 (597) (Pt A) (Pr 9).**

——**S. 52 — 'In which a right to immovable property is directly and specifically in question' — Suit by Hindu wife for maintenance claiming charge on husband's property.**

It is no doubt true that a Hindu wife has no interest in the property of her husband: and that she has only a right to claim maintenance which is enforceable against her husband personally. But when a Hindu wife brings a suit for maintenance praying for a charge on the property belonging to her husband and the Court passes a decree declaring a charge on that property the suit would be one in which a right to immovable property is directly and specifically in question within the meaning of Section 52. It is not correct to say that lis pendens in such suit operates only from the date of decree and not before. 52 MLJ 520: AIR 1927 Mad 502, Dissented from. **60 Bom LR 1083: 1959 Nag LJ 546: ILR (1959) Bom 94: AIR 1959 Bom 475 (477) (Pt B) (Prs 4, 5).**

——**Ss. 52, 39, 100 — Civil P. C. (1908), S. 151 — Interim maintenance — Grant of — Principles stated — (Hindu Law — Maintenance).**

Interim maintenance should not be granted in suits for maintenance or partition where the status and the right of the claimant is hotly contested supported by a volume of prima facie evidence, documentary or circumstantial. See Civil P. C. (1908), S. 151. **AIR 1955 Mad 571.**

——**Ss. 52, 100 — Charge for maintenance — Applicability of S. 52.**

Where in a suit for maintenance by a Hindu wife against her husband a charge is asked for in respect of specified property of the husband and a decree is made creating a charge, S. 52 would apply so as to protect the plaintiff against transfers effected pendente lite. 52 MLJ 520, Diss. **('51) 1951 MWN 78: 1951-1 MLJ 143.**

——**S. 52 — Collusive — Suit for maintenance.**

Where during the pendency of a collusive maintenance suit by a wife against her husband a person bona fide purchases property of the husband, the charge subsequently created in favour of the wife on such property cannot be allowed to prevail over the purchaser's superior rights. **ILR (1953) Mys 332: 32 Mys LJ 161: AIR 1954 Mys 26 (28, 29) (Pr 10).**

——**S. 52 —** Charge decree for maintenance — Decree remaining unsatisfied — Purchaser of property charged is bound by decree by virtue of Section 52. **AIR 1951 Orissa 306 (310, 311) (Pt C) (Pr 16) (DB).**

20. Suit for possession of property.

——**S. 52 —** Suit for possession of property — Defendant entering into possession of property long after institution of suit — No question of lis pendens arises. **AIR 1955 NUC (All) 6.**

——**S. 52 —** Sufficient means — Question as to — Determination of — Property which is subject-matter of previous litigation between parties which is still pending cannot be taken into account. See Civil P. C. (1908), O. 33, R. 1. **AIR 1963 Gui 30.**

21. Suit in "forma pauperis."

——**S. 52 —** Suit in forma pauperis — It must be held to be pending from time of presentation of application for leave to sue as pauper — Decree does not terminate lis — It continues during execution of decree — In absence of collusion, it is immaterial, how decree was obtained — Court applying lis pendens, cannot sit in judgment over the decree. **AIR 1955 NUC (Pat) 231 (DB).**

22. Suit for recovery of money.

——**S. 52 —** Applicability — Suit for recovery of money on pronote — Decree — Execution — Attachment of immovable property — Question of right to immovable property directly and specifically is not involved — There is no bar of lis pendens against transferee during pendency of such attachment. **AIR 1955 NUC (All) 3556.**

——**Ss. 52 and 100 —** Suit to recover simple money debt — Creation by decree of charge over immovable property of debtor — No right in immovable property in suit is involved — Section 52 is not attracted. **65 Bom LR 510: ILR (1963) Bom 509: 1963 Mah LJ 756: AIR 1964 Bom 1 (4, 5) (Pt D) (Prs 9, 12) (DB).**

——**S. 52 — Court sale in execution of money decree subsequent to mortgage suit — Effect.**

Court sale in execution of a money decree held subsequent to the institution of a mortgage suit is vitiated by the doctrine of lis pendens. **1957 Ker LJ 1190: 1958 Ker LT 925: ILR (1958) Ker 480: AIR 1959 Ker 133 (135) (Pt B) (Pr 21) (DB).**

——**S. 52 —** Sale in execution of money decree pending mortgage suit — Execution of mortgage decree — Purchaser given symbolical possession — Suit for recovery of property from purchaser pendente lite, in execution of money decree if barred. See Civil P. C. (1908), S. 47. **AIR 1959 Ker 133 (DB).**

——**S. 52 — Suit for money.**

In a simple suit for money the doctrine of lis pendens has no application as in such a suit no right to immovable property is involved at all. This rule affects only the subsequent transfer of immovable property which is actually in litigation. **AIR 1957 Pat 408 (414) (Pt G) (Pr 20) (DB).**

23. Mortgage suit.

——**S. 52 — Mortgage suit — Lis — Duration of.**

The lis in a mortgage suit begins from the date on which the suit is instituted and continues till the decree is satisfied. **AIR 1958 All 24 (25) (Pt A) (Pr 6) (DB).**

——S. 52 — Mortgage suits.

Where the mortgage in dispute by the wife, who was shown to be an ostensible owner of the property in the mortgage bond, had already come into existence before the institution of the suit by the husband against the wife, for a declaration that he was the real owner of the property mortgaged and not the wife, the mortgagee, who obtains a decree on the foot of the mortgage against the wife, would not be affected by the doctrine of lis pendens. At the most the judgment obtained by the husband negativing the apparent ownership of his wife and holding that he was the real owner, may be a relevant fact under Sections 11 and 13 of the Evidence Act. The position of the husband in execution proceedings of the mortgage decree is no more than that of an objector and he will have to prove the real nature of the transaction in execution as against the mortgagee decree-holder. **ILR (1958) AP 595: (1958) 1 An WR 531: AIR 1958 Andh Pra 722 (723) (Pt A) (Pr 7) (DB).**

——S. 52 — Civil P. C. (1908), O. 34, R. 1, O. 22, R. 10 — Mortgage suits — Effect of sale in execution of decree on second mortgage during pendency of suit on first mortgage.

Where a sale in execution of a decree obtained on foot of a puisne mortgage takes place during the pendency of the suit on the prior mortgage, it is affected by the rule of lis pendens so as to make the purchaser's right subject to the result of the prior mortgage suit. AIR 1950 Orissa 210 and AIR 1945 Mad 91 and AIR 1945 Nag 86, Dissent from; **ILR (1961) Bom 977: 63 Bom LR 975: AIR 1962 Bom 191 (196, 197) (Pt A) (Prs 19, 20, 21, 22, 23, 25).**

——Ss. 52, 65-A — Lease by mortgagor pending suit by mortgagee — Purchaser at Court sale — If affected by lease — Applicability of doctrine of lis pendens — Lessee's rights under Bombay Tenancy and Agricultural Lands Act — Enforceability.

Any leases which are created and which are affected by the doctrine of lis pendens do not enable a lessee to exercise any rights created in his favour by the Bombay Tenancy Act because of the creation of such a lease, against the mortgagee or the purchaser in execution of the decree. **59 Bom LR 46: AIR 1959 Bom 19 (20, 21) (Prs 3, 4) (DB).**

——S. 52 — Mortgage suits — (C. P. Code (1908), O. 22, R. 4).

Held, on facts that B was not entitled to any such direction. The sale deed taken by B was one vitiated by lis pendens. If he had purchased the property in Court sale in execution of the decree obtained on the prior encumbrance and was in possession, it would have been open for him to urge such a plea. But as a transferee pendente lite he was not entitled to ask for such relief. **Held,** further that it was also not possible to give a decree against A and his wife and the property given as security because A's husband had died when the suit was pending before the lower Court and his legal representatives had not been brought on record. **AIR 1957 Ker 121 (124) (Pt B) (Pr 4) (DB).**

——S. 52 — Applicability — Mortgage suits.

In this case in which successive mortgagees sued for sale of mortgaged property without impleading each other in their respective suits the prior mortgagee who sued earlier and also purchased in execution earlier had the right to redeem the later mortgages. See T. P. Act (1882), S. 60. **AIR 1957 Ker 48 (DB).**

——S. 52 — Applicability — Mortgage suit — Transfer pending suit — Decree — Execution can be taken out against transferee. See C. P. Code (1908), S. 2 (11). **AIR 1960 Madh Pra 198.**

——Ss. 52, 65-A and 109 — Applicability — Mortgagor taking mortgaged property on rent — Sub-lease by mortgagor after final decree in mortgage suit — If bad for lis pendens — Auction purchaser — Right of — (C. P. Code (1908), O. 21, R. 96). 1959 MPC 317.

——S. 52 — "Any party" — Mortgage suit.

Transfer of possession pendente lite will be transfer of property within the meaning of Section 52 but the lis must be such as can effect possession. It is only a lis pending in a Court having jurisdiction to entertain it and grant the relief sought that would hit transfers during its pendency. **AIR 1953 Trav-Co 573 (574) (Pt B) (Prs 2, 3).**

——S. 52 — Mortgage suit — Property sold in execution of money decree pending suit — Doctrine of lis pendens applies. ('50) 1950 Trav-Co LR 636 (DB).

24. Necessary party.

——S. 52 — Civil P. C. (1908), O. 1, R. 10 — Necessary party — Suit for eviction by landlord against person purchasing lessee's interest at auction sale — Original lessee or subsequent transferee not necessary party. See Civil P. C (1908), O. 1, R. 10. **AIR 1956 Assam 116.**

25. Collusive suit.

——S. 52 — Collusive proceeding and fraudulent proceeding — Distinction.

Collusion in judicial proceeding is a secret arrangement between two persons to obtain a decision of a judicial tribunal for a sinister purpose. While in a fraudulent proceeding the claim made therein is untrue, but a favourable verdict has been obtained from the Court by practising fraud on the Court. Nagubai Ammal v. B. Shama Rao, **1956 SCA 959: 1956 SCJ 655: ILR (1956) Mys 152: 1956 Andh LT 1029: 1956 SCR 451: 1957 MPC 150: AIR 1956 SC 593 (599) (Pt C) (Pr 15).**

——S. 52 — Lis pendens — Doctrine of — Applicability — Suit collusive.

The requirements of the section are: (1) the pendency of a suit, (2) non-collusive character of the suit (3) any right of immovable property being in question in that suit (being in question directly and specifically), (4) the other party (other than the party making the transfer pendente lite) having some right under the decree in that suit. The consequence of the doctrine is that the transaction pendente lite shall not be allowed to affect the rights under the decree. The collusion contemplated in S. 52 need not be at the inception but might well develop during the pendency of the proceeding. Consequently, where though otherwise the requirements under S. 52, have been made out in case, if there is collusion in obtaining the decree that section will not apply. **('58) 71 Mad LW 391.**

——S. 52 — Suit resulting in consent decree — If bars application of doctrine of lis pendens.

The fact that a suit results in a consent decree is no bar to the application of the doctrine of lis pendens when it is not established that the decree was obtained by fraud or collusion. **ILR**

(1951) Nag 241: 1951 Nag LJ 175: AIR 1951 Nag 194 (196, 197) (Pts B, C) (Prs 15, 18, 19).

——S. 52 — Transfer in favour of wife — Sham transaction — Title continues to remain with transferor.

Where the husband purported to gift the property to his wife without intending that his title should cease or pass to her, such an alleged transfer which does not result in the vesting of title in the transferee (wife) the transferor (husband) continuing to retain the title, notwithstanding the execution of the transfer deed is a sham transaction. **AIR 1961 Pat 158 (160) (Pt C) (Pr 14) (DB).**

26. Sale for arrears of revenue — Effect.

——S. 52 — Sale for recovery of Income-tax after preliminary mortgage decree — Lis pendens applies — Sale is subject to rights of mortgagee acquired under mortgaged decree — (Income-tax Act (1922), S. 46). **AIR 1955 NUC (All) 1698 (DB).**

——S. 52 — Compulsory sales for recovery of Government dues — Doctrine of lis pendens does not apply to revenue sale in Travancore-Cochin, even though it applies in State — Doctrine has no application to paramount claims of State or local body — Revenue sale pending litigation regarding title or property is not affected — 1949 TLR 36, Dissented from — (Travancore Revenue Recovery Act (1 of 1966), Sections 1, 5 and 39). **AIR 1955 NUC (Trav-Co) 1043 (DB).**

——S. 52 — Compulsory sale for arrears of Jenmikarom — Doctrine of lis pendens does not apply — Travancore Jenmi and Kudiyan Act (5 of 1071), Ss. 9 and 26-A. **1952 Ker LT 420: AIR 1954 Trav-Co 122 (123) (Prs 5, 6) (DB).**

——S. 52 — Applicability to revenue sale — (Travancore Revenue Recovery Act (1 of 1066), Ss. 2 and 39).

The doctrine of lis pendens cannot be extended so as to effect a revenue sale under the Revenue Recovery Act held during the pendency of a suit regarding title or ownership of the property sold. 1949 Travancore LR 36, Dissented from; Case law discussed. **1952 Ker LT 30: AIR 1952 Trav-Co 230 (234) (Pr 18) (DB).**

——S. 52 — Applicability — Revenue Sale.

The principle underlying S. 52 relating to lis pendens does not apply to cases of revenue sale for arrears of tax due on a property. 1949 Trav LR 36, Dissent. from. **1951 Ker LT 660: ILR (1951) Trav-Co 554: AIR 1952 Trav-Co 96 (97) (Pt A) (Pr 5) (DB).**

——S. 52 — (Travancore) Revenue Recovery Act (1 of 1068), Ss. 2, 39 — Sale for arrears of revenue — Effect.

The sale is valid and will extinguish prior encumbrances. See (Travancore) Revenue Recovery Act 1 of 1068, S. 2. **AIR 1952 Trav-Co 61.**

27. Injunction when can be granted.

——S. 52 — Civil P. C. (1908), O. 39, R. 1 — Injunction when can be granted.

When a party to a suit is not prepared to furnish security to compensate the opposite party in case the latter is restrained from selling the immovable property in dispute during the pendency of the suit and thus sustain loss, ad interim injunction asked for by the former cannot be granted. See Civil P. C. (1908), O. 39, R. 1. **AIR 1950 Ajmer 29.**

28. Security bond by judgment-debtor.

——S. 52 — Civil P. C. (1908), Ss. 47, 145 — Security bond by judgment-debtor and accepted by the Court comes under S. 47 of Civil P. C. See Civil P. C. (1908), S. 47. **AIR 1953 Trav-Co 364 (DB).**

29. Restitution — Grant of.

——S. 52 — Against whom restitution can be granted — Transferee pendente lite of a party is his representative — Order for delivery of property can be passed against him even if he is not party to restitution proceedings. See Civil P. C. (1908), S. 144. **AIR 1952 Assam 111.**

——S. 52 — Tenant inducted pendente lite — Liable to be evicted in restitution proceedings — He cannot successfully set up rights under Bombay Rent Act against his eviction. **63 Bom LR 163: 1961 Nag LJ 185: ILR (1961) Bom 649: AIR 1961 Bom 288 (291, 202) (Pt B) (Prs 7, 10).**

——S. 52 — Applicability — Transfer during pendency of first appeal — In second appeal consent decree passed reversing that of trial Court — Effect — Application for restitution of possession — Order for actual possession against transferees held could not be passed — AIR 1932 Cal 29, Dissented from. See Civil P. C. (1908), S. 144. **AIR 1957 Bom 117 (DB).**

30. Fixing period of redemption.

● ——Ss. 52, 60 — C. P. Land Revenue Act (2 of 1917), S. 157 (3) — "As if it were an arrears of land revenue" — Meaning of — Fixing of fresh period of redemption— Necessity — Under the altered conditions a fresh date for redemption was necessary. 18 Nag LJ 149; AIR 1935 Nag 185; 158 Ind Cas 263, **Overruled.** See C. P. Land Revenue Act (2 of 1917), S. 157 (3). **AIR 1952 Nag 341 (FB).**

31. Execution creditor not specifying judgment-debtor's interest.

——S. 52 — Execution creditor not specifying judgment-debtor's interest in property — Encumbrance not specified — No lis pendens.

It is the duty of the decree-holder as execution creditor to specify the judgment-debtor's interest in the property so far as he is able to ascertain the same. It is also imperative that the sale proclamation should specify as clearly and as accurately as possible any encumbrance to which the property was liable. Where this is not done, the auction-purchaser is not affected by the doctrine of lis pendens. **ILR 31 Pat 722: 1953 BLJR 137: AIR 1953 Pat 58 (59, 60) (Pt B) (Pr 4) (DB).**

32. Surrender.

——Ss. 52 and 111 — Combined effect — Lease determining by efflux of time — Surrender of leased property during pendency of suit — Prior permission of Court — Necessity.

Held, a lease for a term of years prima facie implies that the lessee's right to the property ends with the term. It does not import a right to renewal. No further act by the lessor, such as a notice to quit is necessary to determine the lease. According to S. 111 of the Transfer of Property Act, it determines by efflux of time. In the instant case, the parties not only delivered possession but also had given notice to the landlords, though in law they were not bound to do so. That being the case it cannot be said that their conduct in sending the notices and giv-

ing up possession is 'surrender' within the meaning of the Transfer of Property Act. This is not a case of surrender, but of expiry of the term of lease which was specified to be one year. Since they were entitled to deliver possession without the permission of the Court, the consequential finding that they are liable to pay profits even thereafter upto date of delivery of possession is, unsustainable. **(1963) 2 Andh WR 465.**

——**S. 52** — Otherwise dealt with — Includes surrender. **AIR 1955 NUC (Madh Bha) 3706.**

——**S. 52** — Scope — Surrender by Hindu widow — Effect of — If transfer or assignment of her interest — Surrender by a Hindu widow does not amount to a transfer or assignment of her interest in the properties held by her as limited owner. Hence it cannot be held that by making the surrender the widow "transferred or otherwise dealt with" the properties in dispute within the meaning of S. 52. See Hindu Law — — Widow. **AIR 1958 Pat 115.**

——**Ss. 52, 111 (e) — Surrender to person without title — Effect — When affected by lis pendens.**

Surrender to a person having no title cannot operate as surrender. It will, however, operate as an assignment, and if it does not operate as an assignment, it would not be vitiated by lis pendens unless the transfer is given by a defendant in the suit, the proceedings in which operate as lis pendens. See T. P. Act (1882), S. 111 (e). **AIR 1953 Trav-Co 12.**

33. Explanation.

——**S. 52, Expln. — Lis how long continues — Transfer after dismissal of suit under O. 9, R. 2 and before its restoration — If affected.**

In S. 52 of the Transfer of Property Act as it stood before it was amended by Act 20 of 1929, the expression 'active prosecution of any suit or proceeding' was used. That expression has now been omitted, and the Explanation makes it abundantly clear that the lis continues so long as final decree or order has not been obtained and complete satisfaction thereof has not been rendered. If after the dismissal of a suit and before an appeal is presented, the lis continues so as to prevent the defendant from transferring the property to the prejudice of the plaintiff, there is no reason for holding that between the date of dismissal of the suit under O. 9, R. 2, of the Civil Procedure Code and the date of its restoration, the lis does not continue. **60 Bom LR 1083: 1958 Nag LJ 546: ILR (1959) Bom 94: AIR 1959 Bom 475 (476, 477) (Pt A) (Pr 3).**

——**S. 52, Explanation** — Pendency of a suit — Commencement of — Application for leave to sue as pauper granted — Suit to be deemed pending from date of presentation of application — Civil P. C. (1908), O. 33, R. 8. **(1961) 65 Cal WN 701.**

——**S. 52, Explanation** — Applicability — Punjab — Rule of computation contained in explanation applies in Punjab — Pendency of litigation should be deemed to commence from date of presentation of plaint. **AIR 1961 Punj 299 (301) (Pt B) (Pr 9).**

SECTION 53

SYNOPSIS

(Transfer of Property Act (1882), S. 53.)

1. Scope and applicability.
2. Transfer of property under the section.
3. Validity of transfer under the section.
4. Avoidance of transfer in part.
5. Transfer by Muhammadan to wife as mehar.
6. "Creditor" — Meaning of.
7. Preference of one creditor over other.
8. Intent to defeat or delay creditors.
9. Benami transactions not necessarily fraudulent.
10. Who can avoid fraudulent transfer.
11. "At his option".
12. Plea in defence.
13. "Good Faith".
14. Representative suit — Its form and object.
15. Auction purchaser whether a subsequent transferee.
16. Onus of proof.
17. Limitation for suits under the section.

1. Scope and applicability.

● ——**S. 53** — Sale proceeds of sale earmarked for payment of debts for which pressure was the greatest — Transfer can be impugned under Insolvency Law and not under S. 53. C. Abdul Shukoor Saheb v. Arji Papa Rao, **(1964) 1 SCJ 168: (1964) 1 Mad LJ (SC) 49: (1964) 1 Andh WR (SC) 49: (1963) Supp 2 SCR 55: AIR 1963 SC 1150 (1156) (Pt F) (Pr 14).**

● ——**S. 53** — Scope — Only part of property of debtor sold — This cannot negative applicability of S. 53 (1). C. Abdul Shukoor Sahib v. Arji Papa Rao, **(1964) 1 SCJ 168: (1964) 1 Mad LJ (SC) 49: (1964) 1 Andh WR (SC) 49: (1963) Supp 2 SCR 55: AIR 1963 SC 1150 (1156) (Pt G) (Pr 15).**

● ——**S. 53** — Maxims — Ex turpi causa non oritur actio — Applicability — Illegality trivial — Plaintiff not required to rest his case on such illegality — Defendant not to be allowed to take advantage of that position. See under Maxims. **AIR 1960 SC 213 (218, 219) (Pt D) (Prs 15 to 18).**

——**S. 53** — Suit by judgment creditor for declaration that R acquired no interest in suit property under sale-deed executed in his favour by judgment-debtor — Plaintiff alleging that sale deed was sham and fictitious executed with intent to defeat and delay plaintiff as well as other creditors — Suit cannot be said to be only under S. 53 of Transfer of Property Act — Suit is maintainable under Section. See Specific Relief Act (1877), S. 42. **1964 All LJ 1079.**

——**Ss. 53 and 122** — Donor not divesting himself of title in property gifted — The deed of gift may simply be ignored as a fictitious document and S. 53 has no application. **AIR 1951 All 443 (445) (Pt A) (Pr 17) (DB).**

——**S. 53 — Single creditor — Section applies.**

Section 53, applies even where a debtor disposes of his property with the intention of defeating one single creditor. There is no distinction between a case where a transferor had a single creditor and a case where he had several creditors. AIR 1917 Pat 448, Rel. on; Observations in AIR 1930 Mad 665 and AIR 1955 Mad 446, held obiter. **(1964) 2 Andh LT 381: (1965) 1 Andh WR 23: AIR 1965 Andh Pra 68 (69) (Prs 13, 14) (DB).**

——**S. 63** — Section applies to fraudulent alienation made by debtor with intention to defeat and delay even one creditor — Benefit under section cannot be refused to a defeated and delayed creditor merely on the ground that the debtor did not have any other creditor at the time of institutiion of suit. **(1963) 2 Andh LT 224.**

——**S. 53** — Property standing in name of wife — There is no presumption that it belongs to husband. See Evidence Act (1872), Sections 101-104. **(1956) 60 Cal WN 886.**

——S. 53 — Applicability — The section does not apply to sham or simulated transactions in which there is no intention to transfer and no conveyance of any rights in property. **AIR 1953 Cal 251 (252) (Pt B) (Pr 11) (DB).**

——S. 53 — Section applies to sham transfers — Suit under Order 21, Rule 63, Civil P. C. and Section 42, Specific Relief Act is maintainable by creditor. **AIR 1965 Ker 288 (292. 293) (Pt C) (Pr 17).**

——S. 53 — Debt Laws — Madras Indebted Agriculturists (Temporary Relief) Act (5 of 1954). Section 6 — Scope — Mortgage in contravention of Sec. 6 — Effect — Validity of mortgage if can be challenged in execution proceedings — The validity cannot be challenged in proceedings arising out of execution of the mortgage decree — Such a mortgage will be valid until it is avoided under Section 53 of the Act. See Debt Laws — Madras Indebted Agriculturists (Temporary Relief) Act (5 of 1954), Section 6. **AIR 1963 Mad 450.**

——Ss. 53, 2 (d), 5 — Collusive and fraudulent decree and execution — Possession delivered to auction purchaser — Suit by other creditors for declaration that decree and all other proceedings are null and void — Suit if maintainable — Section 42, Specific Relief Act — (Specific Relief Act (1877), Section 42) — (Provincial Insolvency Act (1920), S. 28 (2)).

Held, that though Section 53, T. P. Act could not in terms apply to the case, the suit was maintainable, apart from the provisions of that section. **Held,** further that Section 42 of the Specific Relief Act is not exhaustive of the category of declaratory suits and the law does allow suits for a mere declaration which may not strictly fall within that section. **Held,** also that the leave of the Insolvency Court under S. 28 (2) was not necessary as no remedy was sought in the suit against the properties of the insolvent. **AIR 1959 Mad 141 (141, 142) (Prs 2, 3) (DB).**

——S. 53 — Section when comes into operation.

Only when a suit is instituted by a creditor for avoiding a transfer by the debtor, does Section 53 come into operation. **1955 Mad WN 283: AIR 1955 Mad 446 (447, 448) (Pt B) (Pr 5).**

——S. 53 — No applicability to barred transfers.

The section is intended to cover cases of transfers which are capable of being set up and defended, and not barred transfers. **AIR 1955 Mad 446 (447, 448) (Pt D) (Pr 5).**

——S. 53 — Fraudulent transfer.

A fraudulent transfer coming under Clause (b) of Sec. 6, Provincial Insolvency Act (1920), is one voidable under Section 53, T. P. Act independently of the insolvency of the transferor, and one that is voidable under Section 53, Provincial Insolvency Act. See Provincial Insolvency Act (1920), Section 6 (b). **AIR 1955 NUC (Mad) 3169.**

——S. 53 — Applicability — Conditions — Plaintiff not creditor of transferor — Allegation that transaction impeached is sham and colourable — If suit falls under Section 53 and should be framed as on behalf of all creditors.

Section 53, T. P. Act, no doubt requires that a creditor suing to get rid of a fraudulent transfer must file the suit on behalf of all the creditors of the ostensible transferor, and unless the plaintiff in such a suit can be said to be a creditor of the defendant-transferor, it need not conform to that form. If the transaction impeached is a sham and colourable transaction not intended to pass any title to the transferee, the section has no application. **ILR (1951) Mys 407: 30 Mys LJ 64: AIR 1951 Mys 103 (104, 105) (Pts A, B). (Prs 3, 4) (DB).**

——S. 53 — Civil P. C. (1908), Order 21, R. 63 — Suit by defeated decree-holder in his individual right for declaration that transaction in favour of claimant was sham and for setting aside order under Order 21, Rule 58 — Suit is not hit by Section 53, T. P. Act and is maintainable even if decree-holder does not take steps under Order 1, Rule 8, Civil P. C. See Civil P. C. (1908), O. 21, Rule 63. **AIR 1956 Orissa 58 (DB).**

——Ss. 53, 5, 6, 8, 9, 111 — Under-tenure merging in Patni tenure — Patnidar cannot "release" under-tenure by unregistered deed — Requisites for release — Effect of release — (Words and Phrases — Release) — (Registration Act (1908), S. 117) — (Tenancy Laws — Bihar Tenancy Act (8 of 1885), Section 167) — (Bengal Cess Act (9 of 1880), Section 99).

It is well settled that no valid title can be created by relinquishment or release. The release presupposes the existence of title in a third person and does not purport to reconvey that title to him. It is tantamount to an admission of existing facts by the ostensible owner. See T. P. Act (1882), Section 5. **AIR 1957 Pat 706 (DB).**

——S. 53 — Applicability to Shia Muhammadans.

The provisions of Section 53, T. P. Act are general in terms and govern all communities; a Shia Muhammadan cannot be excluded from being governed by those provisions. **1955 BLJR 346: ILR 34 Pat 133: AIR 1955 Pat 270 (276) (Pt E) (Prs 29, 30) (DB).**

——S. 53 — Scope — Partition designed to prevent attachment of joint family property — Not illegal —For setting aside partition fraud must be proved. See Hindu Law — Partition. **AIR 1960 Punj 548 (DB).**

——S. 53 — Fraudulent transfer — Transfer effected before incurring liability.

It is true that it is not necessary that a person should be actually indebted at the time of making a voluntary transfer in order to bring it under Section 53. **1954 Ker LT 234: AIR 1954 Trav-Co 404 (405) (Pt B) (Prs 5, 6) (DB).**

2. Transfer of property under the section.

——S. 53 — Void or fictitious deed alienating immovable property whether requires to be set aside under Section 53.

Section 53 proceeds entirely upon the assumption that the alienation complained of is good and operative but it is liable to be avoided in the interest of the creditors on equitable grounds. A deed which is void or fictitious is infructuous. It does not need to be set aside at all. **AIR 1952 All 83 (83, 84) (Pt B) (Prs 4, 5) (DB).**

——S. 53 (1) — Auction-purchaser if can challenge validity of transfer.

Obiter :— An auction-purchaser can challenge the validity of a transfer under Section 53, though he is a representative of the judgment-debtor, i.e., of the transferor. Particularly when the auction takes place in pursuance of a mortgage decree, the auction-purchaser represents the interest not only of the mortgagor but also, to a certain extent, of the mortgagee and he can, therefore, take the pleas which are open to the mortgagee himself. **AIR 1951 All 443 (448) (Pt F) (Prs 41, 42) (DB).**

——S. 53 — Partition between father and sons — Not a transfer within the meaning of section — No allegation that partition in question is a colourable one — Income derived from share given to sons cannot be included in income of father. See Hyderabad Agricultural Income-tax Act (13 of 1950), Section 9. **(1962) 2 Andh WR 70.**

——S. 53 (1) — Debts — Decree against father alone — Partition pending execution — Sale in execution — What passes by sale — Partition in fraud of creditors.

A decree against father alone cannot be executed against son's interests whatever be the motive of partition. What will pass in the execution sale to which sons were not parties when the sale took place after the partition, is the interest of the father alone. See Hindu Law — Debts. **AIR 1950 Bom 278 (DB).**

——S. 53 — Partition of joint property.

Where after the execution of a mortgage binding on all the members of the joint Hindu family the parties effect a partition without making provision for the payment of the mortgage debt the partition is fraudulent. **52 Bom LR 104: AIR 1950 Bom 247 (252) (Pt A) (Pr 14) (DB).**

——Ss. 53 and 54 — Fraudulent sale — Evidence — Non-payment of consideration — Intention of parties — Inadequacy of consideration — Effect of — Doctrine of lucky purchase.

Where there is no evidence as to the real worth of the property it will be inadvisable for Courts to apply the doctrine of inadequate consideration. It is better to apply in such cases the doctrine of "lucky purchasers". Often the lucky purchaser gets a property for less than $^1/_4$th its value. See Provincial Insolvency Act (1920), Section 53. **AIR 1957 Mad 630.**

——S. 53 — Consideration — Essentials of—Transfers for natural love or affection.

Consideration is the material cause of any contract without which it will not be generally effectual or binding. Transfers for natural love or affection are dealt with as transfers without consideration. See Contract Act (1872), Section 2 (d). **AIR 1955 NUC (Mad) 3168.**

——Ss. 53, 54 — Specific Relief Act (1877), Sections 42 and 39 — Setting aside transactions — (Evidence Act (1872), Section 92).

Sale of property real — Intention to defraud creditors — Fraud not carried out — Representatives-in-interest cannot, without setting aside sale deed, recover property upon a mere declaration of their title. See Specific Relief Act (1877), Sec. 42. **AIR 1953 Mad 545.**

——S. 53 — Fraudulent transfer — Transfer for dower.

The question whether the transaction was really a transfer of property or sham or simulated transaction must be decided on the facts and circumstances of each particular case.

Held, on evidence that the plaintiff's wife failed to establish that her dower was prompt and the deed of sale of property belonging to the husband, in her favour in lieu of the dower debt was genuine. The sale deed even if held to be genuine was without consideration and was executed in order to defeat or defraud the creditors of the husband and did not affect them because the deed was a sham transaction. **AIR 1954 Manipur 1 (2, 3) (Pt A) (Prs 5, 6).**

——S. 53 — Transfer of property — Transaction if real or nominal — How to be determined.

Whether a transaction is real or nominal depends upon the intention of the parties which should be gathered from the surrounding circumstances. In a nominal transaction no title either legal or beneficial, is transferred. **ILR (1953) Mys 152: 32 Mys LJ 123: AIR 1953 Mys 22 (23, 24) (Pt C) (Pr 6).**

——S. 53 — Sham transaction — Applicability.

Section 53 implies the existence of a transfer and cannot apply to cases in which the transfer is characterised as sham or a mere show without effecting any change of title or affecting the right of parties. **30 Mys LJ 64: ILR (1951) Mys 407: AIR 1951 Mys 103 (104, 105) (Pt A) (Pr 3) (DB).**

——S. 53 — Effect of declaration under.

The effect of the declaration under Section 53, T. P. Act, is that the transaction does not affect the creditors' right to recover their claims from the property transferred. The declaration still leaves the deed operative between the parties thereto and does not amount to cancelling or setting aside the deed because the creditors have no title or interest in the property to set aside the deed as between the parties thereto. **1954 Nag LJ 34: ILR (1953) Nag 937: AIR 1954 Nag 129 (134, 135) (Pt D) (Pr 30) (DB).**

——S. 53 — 'Transfer of property' — Transfers contemplated by section — Benami and sham transactions.

The transfers contemplated by the section are transfers apparently well made and binding upon the parties but voidable at the option of a creditor if the transfer was made with the intention specified in the section, that is to say, where there has taken place a transfer which is 'prima facie' valid until set aside. Such transfers must not be confused with transfers which are benami or colourable and which are, in fact, no transfers, the transactions being merely sham and never intended to be operative. In the latter class of transactions, there being no transfer, the property, subject-matter of the transfer, remains in possession of the transferor as before but placed in the benami name of another, generally to defraud creditors.

A wakf of property whether sham or real can be declared void under Section 53 as against the creditors of the wakif provided the same was executed with intent to defeat or delay the creditors. **1955 BLJR 346: ILR 34 Pat 133: AIR 1955 Pat 270 (275, 276) (Pt A) (Prs 19, 21, 24) (DB).**

——S. 53 — Frame of suit under the section.

A benami or ism-farzi transaction properly so called is really a tri-lateral one. The transfer as such is not a sham or imaginary one: it is only the name of the ostensible transferee that is illusory or farzi. **AIR 1952 Vindh-Pra 69 (73, 74) (Pt E) (Pr 21).**

3. Validity of transfer under the section.

——S. 53 — Transfer of equity of redemption effected day before mortgagee filed suit — Transaction is not invalid. **AIR 1955 NUC (All) 6.**

——S. 53 — Scope — Framing of suit under — Two positions — One where transfer is prima facie valid — Other when it is ab initio void — Distinction — Voidness of transfer not patent — Suit by creditor for avoiding transfer — Duty of Court.

Section 53 presupposes a transfer which is prima facie valid, and would be operative but for any action taken by the creditors individually or in a representative capacity. This position has to be distinguished from another, where the sale is ab initio void, and does not exist in the eye of law; in that event creditor need not bring any suit for avoiding it, but need only, after obtaining a decree against the transferor-debtor, attach the property and in the event of a transferee filing a claim case or a suit, plead the transfer was ipso facto void.

Where the initial voidness of the transfer is not patent, the creditor would be bringing a suit assuming the best in favour of the transferee, that the transfer is not void in itself but only voidable. In such cases the Court may decide (i) that the suit is unnecessary, the transfer being void in itself, or (ii) avoid the sale under Section 53, the avoidance being in favour not of one or more individual creditors who may be suing, but the entire body or (iii) refuse to find that the transfer

Dissolution to give preference to one creditor — Effect.

Section 53 deals with transfers of immovable property and it is doubtful if a dissolution of partnership can, strictly speaking, be considered to be such a transfer. A suit under this section has to be instituted on behalf of or for the benefit of all the creditors and it does not hit a transaction by which one creditor is given preference over others, for which contingency, proceedings will have to be had under some other law, for instance, Section 53 or 54 of the Provincial Insolvency Act. **62 Punj LR 224: AIR 1960 Punj 417 (418, 419) (Pt A) (Pr 3) (DB).**

8. Intent to defeat or delay creditors.

● **——S. 53 — Whether defence based on Sec. 53 has been taken away — Written statement — Construction.**

Held on facts, that the written statement had not been artistically drafted, keeping in view the real distinction between a sham and nominal sale which is not intended to pass title and a sale which is real but which is voidable at the instance of creditors because the transfer is intended in the language of Section 53 (1) "to defeat or delay creditors". But in the light of the averments it must be held that the defendants raised two distinct pleas: (1) that the sale was a sham, a pretended sale without any consideration and not intended to pass any title to the nominal purchaser and in the alternative (2) that even if it were a real transaction supported by consideration and intended to pass title to the plaintiff, still the same was, having regard to the circumstances stated, a fraud upon the creditors and therefore voidable at their instance. In these circumstances it could not be said that there had not been a sufficient plea of a defence based upon Section 53 as to justify or entitle the Court to afford relief if satisfied that the same was proved. C. Abdul Shukoor Saheb v. Arji Papa Rao, **(1964) 1 SCJ 168: (1964) 1 Mad LJ (SC) 49: (1963) Supp 2 SCR 55: (1964) 1 Andh WR (SC) 49: AIR 1963 SC 1150 (1153, 1154) (Pt A) (Prs 7, 8).**

● **——S. 53** — Question whether sale was to defeat or delay creditors within Section 53, T. P. Act — Entire evidence before Court — Question of burden of proof is merely academic — Except in a rare case where considerations are evenly balanced it would have little significance. See Evidence Act (1872), Sections 101, 104. **AIR 1963 SC 1150.**

● **——S. 53 — Transfer with a view to defeat or delay creditors — Transfer in favour of member of same community.**

Held, that the plaintiff might have been chosen by the vendors because of his willingness to take the sale without any searching enquiry as to the circumstances necessitating it, and because there would be less publicity in the transaction being put through between them — such as for instance inspection of the property or enquiries in the locality as regards value, etc., which would take place if the sale was to a total stranger which would attract the attention of the vendor's creditors. C. Abdul Shukoor Saheb v. Arji Papa Rao, **(1964) 1 SCJ 168: (1964) 1 Mad LJ (SC) 49: (1964) 1 Andh WR (SC) 49: (1963) Supp 2 SCR 55: AIR 1963 SC 1150 (1155) (Pt E) (Pr 11).**

——S. 53 — Transfer without consideration — Fraudulent nature — Determination of.

The mere fact that a transfer is executed without consideration, as in the case of a gift, will not necessarily lead to an inference that the transfer was made with intention to defeat or delay the creditors of the transferor. Each case must be examined on its merits. AIR 1923 Nag 334, Disting. **AIR 1950 Ajmer 41 (41, 42) (Prs 5, 6).**

——S. 53 (1) — Intent to defeat or delay.

Obiter :— It is not only the defeat of creditors that is contemplated by Section 53 but also their being delayed and the creation of an interest in a third person might well delay, though it cannot defeat a mortgage. **AIR 1951 All 443 (447, 448) (Pt D) (Pr 38) (DB).**

——S. 53 (1) — Intent to defeat or delay.

Obiter :— If the mortgagee's debt is not satisfied out of the property mortgaged, a personal decree will be obtained and, in satisfaction of that decree other property belonging to the mortgagor may be taken. Thus the transfer of his other property by the mortgagor, when the mortgaged property is not sufficient to satisfy the mortgage debt, can well indicate an intention to defeat or delay the mortgagee. **AIR 1951 All 443 (447, 448) (Pt E) (Pr 38) (DB).**

——S. 53 (2) — Applicability — Sale deed — Execution and registration in place where previous transactions were effected — Effect — Inference of intention, to defeat creditors. Such registration would not operate to defeat the rights of innocent third parties. See Registration Act, Ss. 17, 18 22, 51 and 80. **AIR 1962 Andh Pra 94 (DB).**

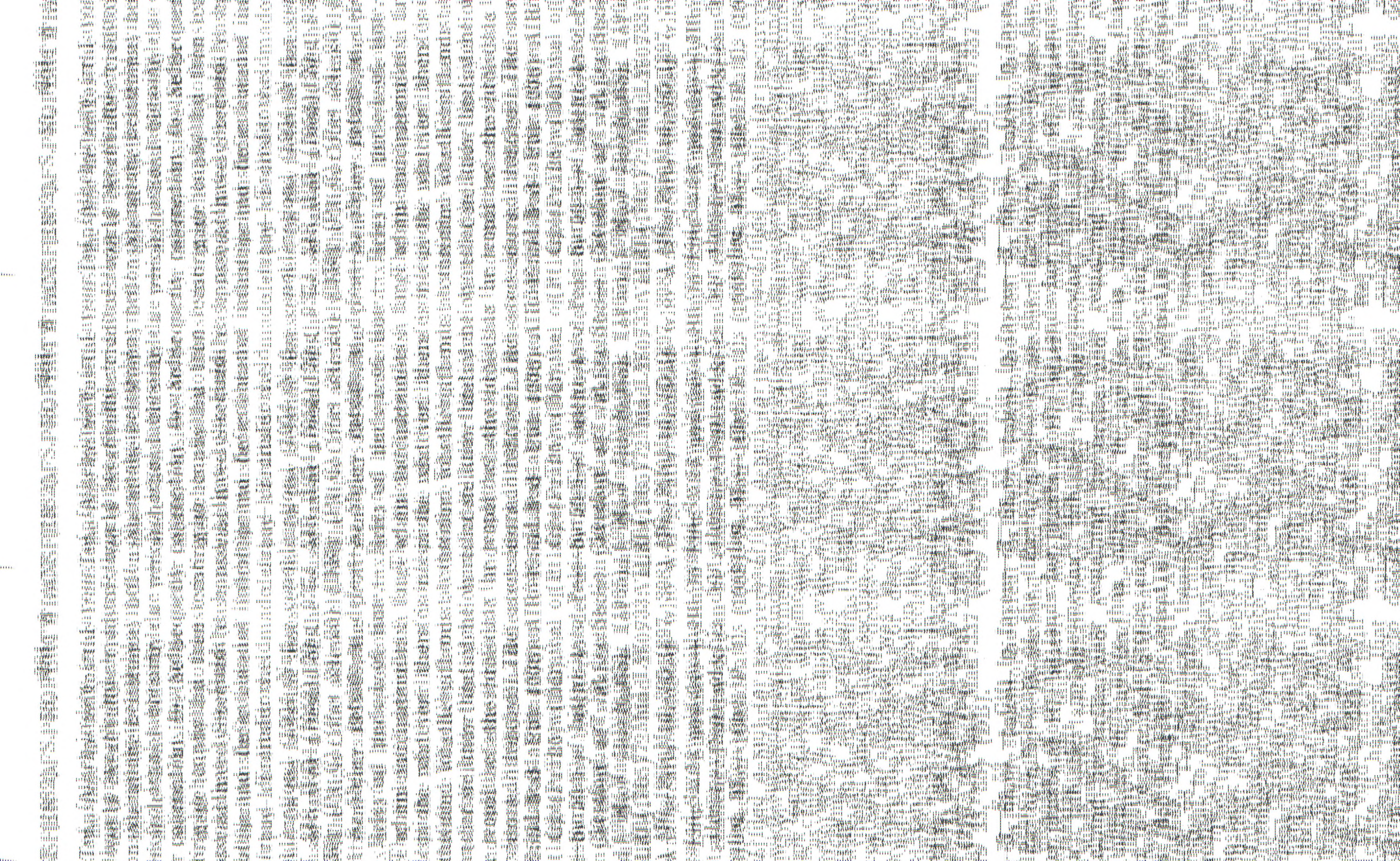
——S. 53 — Scope — Transfer to defraud creditors — Distinction between real sale and sham sale.

Section 53, T. P. Act really applies to a transfer where a sale is valid and effective for all purposes until it is set aside on the ground that the same was made with intent to defraud or delay the creditors of the transferor. Such a transfer is voidable at the option of the creditors who are defrauded; it is otherwise valid and binding on the transferee. On the other hand, there are Benami transfers which are merely sham; they are not meant to be operated between the parties. **1960 Jab LJ 1171: 1960 MPLJ 1029.**

——S. 53—Transfer of property—Gift by assessee in favour of wife and children — If intended to defeat creditors — Intention to cheat future creditors — Voidability — Income-tax liability — Indian Income-tax Act, 1922 (Central Act 11 of 1922).

The assessee was doing business in cloth, possessed about 290 acres of coffee plantations, a house in the State of Kutch, substantial cash in his banking accounts, and had no debts during the period material to the case. The assessee during the relevant time purchased an extent of nine acres of land also. By a deed of settlement the assessee gifted the coffee plantations to his second wife and her children. In April 1947, the assessee sold the nine acres of land purchased by him recently. For the assessment year 1948-49, the profits of this sale of lands were brought to tax by the department. The assessment for the year 1948-49, and reassessment for the years 1944-45 and 1950-51, were the subject-matter of reference in the High Court. As the tax due for the above two years was not paid, in the tax recovery proceedings the Collector attached the lands already gifted by the assessee. The claim put forward by the donees was allowed by the Collector and a suit had to be filed to set aside the summary order. The lower Court decreed the suit holding that the gift deed was a transfer intended to defeat the creditors. The donees under the gift deed appealed to the High Court.

Held, it is now well settled that for the purpose of avoiding a transfer by a debtor under Sec. 53 of the T. P. Act, it is not necessary that the transferor should have been actually indebted at



directed in defrauding one creditor alone, it would still be one in fraud of creditors voidable by the creditor sought to be defrauded or delayed. **('51) 1951 KLT 310: ILR (1951) Trav-Co 788: AIR 1951 Trav-Co 237 (238) (Pt B) (Prs 2, 3) (DB).**

9. Benami transactions not necessarily fraudulent.

——S. 53 — Benami transaction — Concurrent findings as to — No interference — (Civil P. C. (1908), Sections 100-101).

It is well settled that a purchase of the property being benami is a question of fact and when there are concurrent findings, those are binding in second appeal on the High Court. **1959 Andh LT 661: (1959) 2 Andh WR 140: AIR 1960 Andh Pra 70 (74) (Pt B) (Pr 10) (DB).**

——Ss. 53, 41 — Benami transaction — Evidence of benami nature.

The essence of a benami is the intention of the parties. The source of sale price also plays a large part in the determination of the nature of the transaction. **AIR 1956 Andh Pra 225 (227) (Pt A) (Prs 10, 11, 12) (DB).**

——S. 53 — Benami transaction — Nature — Determination of — Court must rest its finding on evidence. **AIR 1955 NUC (Cal) 5348 (DB).**

——Ss. 53, 39 — Advancement — Benami transaction — (Evidence Act (1872), Sections 101 to 103).

The onus of proving the benami nature is on the person who alleges a transaction to be benami. See T. P. Act (1882), Section 39. **AIR 1953 Hyd 77 (DB).**

——Ss. 53, 41 — Benami transaction — Test of benami indicated — Husband paying money — Purchase in name of wife — Burden is on wife to show that purchase in her name was by way of gift or advancement — If onus is not discharged presumption is that husband is owner — Source of money though not conclusive, is main test. See T. P. Act (1882), Section 41. **AIR 1955 Madh Bha 148 (DB).**

——S. 53 — Sham and benami transactions — Distinction — Plaintiff's father conveying property to N without parting with possession — Subsequently N in his turn conveying same property to plaintiff's mother — Suit for declaration that plaintiff was sole preferential heir to her mother and for injunction restraining defendants, her brothers from taking possession of properties — Question whether conveyances were benami in nature — Conveyances held were sham and nominal as distinct from benami — Per Jagadisan, J. — Defendants were not barred from resisting suit by reason of their allegation that apparent title stood in name of non-members of family. **ILR (1964) 2 Mad 483.**

——S. 53 — Nature of.

A benami transaction is not per se an illegal transaction and it will not bring the case within the principle that a man is precluded from obtaining relief in respect of transactions the purpose of which was illegal and has been accomplished. Case Law Rel. on. **AIR 1955 NUC (Mad) 3926.**

——S. 53 — Benami transaction — Proof of benami nature — Onus is on the person who alleges a transaction to be benami. **1952 Nag LJ 160: ILR (1951) Nag 334: AIR 1952 Nag 246 (247) (Prs 9, 10, 11).**

——S. 53 — Essentials of benami nature — Consideration of motive, relationship between parties and source of consideration necessary — Transaction in question held benami. See Benami Transactions. **AIR 1962 Orissa 74 (DB).**

——S. 53 — Benami transaction.

Section 53 contemplates that there is a transfer in fact though made with the fraudulent intention to defeat the legal rights of subsequent transferees. Where, however, the transaction is entirely fictitious and colourable, or in other words where the transaction is farzi or benami, the provisions of Section 53 do not come into play at all. **AIR 1958 Pat 568 (570, 571) (Pt C) (Prs 7, 8).**

——S. 53 — Benami transactions — A benami transfer per se will not come within the mischief of Section 53. **62 Punj LR 224: AIR 1960 Punj 417 (418, 419) (Pt B) (Pr 3) (DB).**

10. Who can avoid fraudulent transfer.

——S. 53 — Suit by transferee — Claimant under Order 21, Rule 63, Civil P. C. — Transfer can be avoided under Section 53 even by way of defence to such suit by the attaching creditor — Suit in representative capacity not necessary.

It is not correct to say that a transfer which is voidable under Section 53 (1) of the Transfer of Property Act can be avoided only by a suit filed by a creditor impugning the transfer on behalf of himself and the other creditors and not by way of defence to a suit under Order 21, Rule 63, Civil P. C. by a transferee claimant whose application has been rejected in summary proceedings under Order 21, Rules 58 to 61, Civil P. C. AIR 1920 Mad 748 (FB), Approved. C. Abdul Shukoor Saheb v. Arji Papa Rao, **(1964) 1 SCJ 168: (1964) 1 Mad LJ (SC) 49: (1964) 1 Andh WR (SC) 49: (1963) Supp 2 SCR 55: AIR 1963 SC 1150 (1160) (Pt I) (Prs 29, 31).**

——S. 53 — Fraudulent transfer — Both transferor and transferee in equal fraud — Fraud carried out and creditors of transferor defrauded — Possession with transferor — Suit for possession by transferee — Fraud can be pleaded in defence — Court will not help transferee — Trusts Act (1882), Section 84 — ILR 31 Bom 405 and ILR 56 Mad 646: AIR 1933 Mad 457: 145 Ind Cas 308 and ILR 59 Mad 289: AIR 1936 Mad 88: 159 Ind Cas 729 and 32 Mad LJ 484: AIR 1918 Mad 365: 43 Ind Cas 352, **Overruled;** S. A. No. 1656 of 1947, D/- 16-11-1951 (Mad), **Reversed. (1962) 2 Mad LJ (SC) 101: (1962) 2 Andh WR (SC) 101: (1962) 2 SCJ 437: (1962) 2 Andh LT 465: (1962) 3 SCR 739: AIR 1962 SC 370 (375, 376) (Prs 12, 15, 23, 24).**

——S. 53 — Sham but fraudulent transaction — Suit under Section 53 is not sustainable — There is no distinction in this respect between mortgage and sale — Suit under Section 42, Specific Relief Act for declaration that transaction is sham does not lie at instance of mere creditor who has not attached the property. **AIR 1962 Andh Pra 25 (27, 28, 29) (Prs 5-A, 6, 7).**

——S. 53 — Fraudulent transfer — Father transferring decrees amounting to Rs. 4,000 in favour of son for Rs. 5,000 due by father to son — Transfer deed on stamp paper purchased by third parties — Transfer held was one with intent to defeat attaching decree-holder's right. **(1960) 1 An WR 29: 1960 Andh LT 101: AIR 1960 Andh Pra 544 (544, 545) (Pt A) (Pr 1).**

——S. 53 — Fraudulent transfer — Right to avoid.

Obiter :— In a fraudulent transaction effected with the object of defrauding creditors, where the fraud is carried out, a Court will refuse to interfere on either side since where the fault is

mutual, the law will leave the case as it finds it. The assistance of the Court could be invoked only if the contemplated fraud was not carried out. ILR 35 Cal 551 (PC). Rel. on. **(1960) 1 An WR 340: ILR (1959) Andh Pra 951: AIR 1960 Andh Pra 222 (226) (Pt A) (Pr 10) (DB).**

——S. 53 — Fraudulent transfer — Fraud carried out — Suit to set it aside by party or his successors-in-interest — If lies — 'In pari delicto' — Application of.

The maxim 'in pari delicto potior est conditio defendantis is based on public morality and when a sole surviving co-parcener or all the coparceners then in existence save property by resorting to benami transactions in order to deprive the creditors of their dues and the fraud is carried out, it will not be open to the subsequent born coparceners to recover that very property, especially when it is in the hands of alienees fom the ostensible owner. In such a situation, the principle "Let the estate lie where it falls" takes effect. AIR 1933 Mad 457, Distinguished. **1956 Andhra WR 943: AIR 1956 Andhra 225 (227, 228) (Pt B) (Prs 16, 18, 21) (DB).**

——S. 53 — Applicability — Transfer of movable property by judgment-debtor — Rights of creditor.

A fraudulent transaction (in this case it was a sale of a she-buffalo by the judgment-debtor) can be set aside at the instance of the creditor whose interest had been defeated as a result of the fraudulent transaction. **AIR 1956 Bhopal 22 (24) (Pt B) (Pr 10).**

——S. 53 — Fraudulent transfer — Gift of large portion of property by father to sons during pendency of suit, retaining very small portion utterly inadequate to satisfy decree that would be passed against him — Finding that transfer was with intent to defeat claim of plaintiff and other creditors — No error of law — Pleadings — Fraudulent and sham transaction — Effect in two cases — Alternative pleadings. AIR 1965 Ker 288 (290, 291) (Pt A) (Prs 5, 6, 8).

——S. 53 — Eviction of tenants on certain grounds nullified by law with retrospective effect — Transaction, prior to such law to delay such eviction not fraudulent. **AIR 1963 Ker 79.**

——S. 53 — Fraudulent assignment of tenancy — Assignee a confederate in fraud — Tenant not estopped to prove his possession as against assignee — Court will not help assignee. **AIR 1963 Ker 79 (Pt B).**

——S. 53 — Fraudulent transfer.

The transfer was sham since no consideration passed. AIR 1958 Mad 580, Rel. on. **1959 MPLJ (Notes) 169.**

——S. 53 — Fraudulent transfer — Test to determine — Retention of benefit by debtor is real test — Sale by agriculturist debtor in 1955 — Debtor discharging earlier mortgage on property and retaining small benefit — Presumption under Madras Act 1 of 1955 held not rebutted. **AIR 1961 Mad 403 (403, 404) (Pr 5).**

——S. 53 — Fraudulent transfer — Indicia — Transfer in order to deprive decree-holder of fruits of decree — Equity in favour of vendee — He who seeks equity must do equity — (Equity) — (Maxims).

The factors which constitute a fraudulent conveyance must necessarily depend upon the circumstances of each case. But certain broad indicia have been formulated in England, America and India. **AIR 1958 Mad 580 (581, 582, 583) (Prs 1, 12).**

——S. 53 — Civil P. C. (1908), Order 1, Rule 8 and Order 21, Rule 63 — Suit to set aside fraudulent transfers.

When a suit is originally laid under Order 21 Rule 63, C. P. C., an application by the plaintiff for amending the plaint so as to bring it in conformity with the requirements of Section 53 should be allowed. See C. P. Code (1908), O. 1, Rule 8. **AIR 1953 Mad 619.**

——S. 53 — Avoidance by fraudulent grantor — (Trusts Act (1882), Section 84).

So long as contemplated fraud is not carried out or at least there has been no substantial part performance of it, the grantor although in pari delicto is entitled to invoke the assistance of a Court for the recovery of the properties he has parted with irrespective of the fact whether the frustration of the fraud was the result of the locus poenitentiae of the transferor or due to other causes. (1951) 1 All ER 92, Not followed. **(1953) 1 MLJ 123: AIR 1953 Mad 545 (547) (Pt A) (Pr 11).**

——S. 53 — Transfer avoided under Section 53 — Transaction is not wiped out but has no effect on creditors defeated or delayed. **1963 Mys LJ (Supp) 266: AIR 1963 Mys 257 (260) (Pt B) (Pr 12).**

——S. 53 — Non-payment of consideration is no ground for holding transfer as fraudulent. See T. P. Act (1882), Section 4. **ILR (1964) Cut 719.**

——S. 53 — Evidence Act (1872), Section 115 — Estoppel in cases of fraud — Chandna Tenancy — Benami transfer by tenant to defeat claim of decree-holder — Fraud accomplished — Transferor cannot set up benami nature of transaction to resist suit for ejectment by landlord. See Evidence Act (1872), Section 115. **AIR 1953 Pat 199 (DB).**

——S. 53 — Fraudulent transfer — Avoidance of — Effect — Transferor — Locus standi to object to attachment.

Where a fraudulent transfer of his house made by the judgment-debtor in favour of his son after the passing of a decree against him is avoided by the decree-holder and the house is attached by the decree-holder in execution of his decree, the judgment-debtor has no locus standi to raise an objection to the attachment under Section 60 (1) (ccc) Civil P. C. because the transfer in so far as the parties to it are concerned is still a good and valid transfer, though it would not affect the rights of the decree-holder. **ILR (1960) 2 Punj 551: AIR 1961 Punj 423 (424) (Prs 9, 11, 12).**

——S. 53 (1) — Suit by creditor to set aside transfer as fraudulent — Frame of — If to be on behalf of all creditors — Civil P. C. (1908), O. 1, Rule 8.

The last portion of Section 53 (1), T. P. Act, specifically provides that a suit shall be instituted on behalf of, or for the benefit of all the creditors. But the Act is not in force in the Punjab. The contention of the vendee that a suit under Section 53 of the Transfer of Property Act could only be filed under Order 1, Rule 8 of the Code of Civil Procedure on behalf of or for the benefit of all the creditors, must, therefore, be rejected. **63 Punj LR 319: ILR (1962) 2 Punj 378: AIR 1961 Punj 398 (399) (Pt A) (Pr 3) (DB).**

——S. 53 — Fraudulent transfer — Sham transfer — Distinction — Only one creditor delayed or defrauded — Right of avoidance — Separate suit by creditor — Necessity — Attachment of transferred property as belonging to debtor — Sufficiency.

A transaction will be a sham only if it is of no effect; a transaction which is in fraud of creditors under Section 53, Transfer of Property Act, is a real transaction and not a sham transaction. In order that a transfer may be in fraud of creditors it is not necessary that there should be more than one creditor. Even if a transaction is directed to defrauding one creditor alone, it would still be in fraud of creditors voidable by the creditor sought to be defrauded or delayed. Nor is it necessary for the creditor seeking to avoid it to file a separate suit for the purpose. It would be enough that the creditor at whose instance the transfer is voidable repudiates the same by an unequivocal declaration in that regard. The attachment by the creditor of the property transferred under the transfer voidable under Section 53, T. P. Act, as belonging to the debtor is a sufficient repudiation and unequivocal declaration to repudiate the transaction. **1951 KLT 310: ILR (1951) TC 788: AIR 1951 TC 237 (238, 239) (Pts B, C) (Prs 2, 3, 4) (DB).**

●——S. 53 — Plea of fraudulent transfer — Who can take.

Where A, a co-sharer, transfers his share to his wife B who sues for partition thereof other co-sharer defendants cannot raise the plea that the transfer was a sham transaction intended to defraud A's creditors. Such a plea can be raised only by A's creditors or by A himself. **AIR 1950 Trav-Co 60 (61) (Pt B) (Pr 4) (FB).**

——S. 53 — Sale of property to defraud creditors — Binding nature of transaction.

The motive of putting the property beyond the reach of the creditors, does not by itself make the transaction a sham one. As far as the parties to the sale are concerned it is a perfectly valid and a binding transaction; it is open only to the creditors to bring a suit for avoiding the sale on the principles contained in Section 53 of the T. P. Act. **AIR 1952 Vindh-Pra 69 (72) (Pt C) (Pr 15).**

——S. 53 — Fraudulent transfer — Who can avoid.

A person cannot, on the one hand, make a fraudulent transfer to defeat somebody else's interests, and then sue to recover the property from the transferee after the fraud has materialised. But if the fraud is only intended, and has not yet materialised to any extent, then the Court should not refuse assistance. Case law ref. **AIR 1952 Vindh-Pra 69 (73, 74) (Pt D) (Pr 21).**

11. "At his option".

——S. 53 — 'At his option'.

A creditor having the right to avoid a transfer under Section 53 can do so by any act which shows clearly and unambiguously an intention to avoid it. The right to avoid does not depend on the ability to establish fraud in a Court of law, though its practical worth will be nothing without it. **(1953) 2 MLJ 737: 66 Mad LW 729: AIR 1954 Mad 173 (174, 175) (Pt B) (Pr 4).**

——S. 53 — 'At his option' — Plea in defence.

The avoidance of transfer need not necessarily be by way of a suit instituted for the purpose. But a creditor may manifest his intention to avoid the transaction otherwise than by filing a suit, as, for example, by attaching the property transferred. Voidable transactions may be avoided by any open or unequivocal declaration of an intention to avoid them. It is open to an attaching decree-holder to plead in defence to a suit by the alienee whose claim has been rejected that the transfer to him was fraudulent under Section 53. **1955 BLJR 346 :ILR 34 Pat 133: AIR 1955 Pat 270 (275, 276) (Pt B) (Pr 24) (DB).**

——S. 53 — 'At his option' — Avoidance of transfer, mode of.

To avoid a transfer which is voidable under Section 53, Transfer of Property Act, it is not necessary that a separate suit should be filed and that it is enough that a creditor or creditors at whose instance the transfer is voidable repudiate the transfer by an unequivocal declaration in that regard. 43 Mad 760 (FB) and AIR 1936 Mad 406, Rel. on. **('51) 1951 KLT 310: ILR (1951) Trav-Co 788: AIR 1951 Trav-Co 237 (238, 239) (Pt C) (Pr 4) (DB).**

12. Plea in defence.

——S. 53 — Civil P. C. (1908), Order 6, Rule 2 — Inconsistent pleas — Plea that gift deed is fictitious — Other plea that deed is liable to be set aside under Section 53 are not inconsistent and mutually destructive pleas and can be taken simultaneously. See Civil P. C. (1908), Order 6, Rule 2. **AIR 1951 All 443 (DB).**

——S. 53 (1) — Plea under Section — Plea can be taken in defence by creditor — Obiter. **AIR (1951) All 443 (448) (Pt G) (Pr 43) (DB).**

——S. 53 — Defence of fraudulent transfer by attaching creditor — If open.

It is open to an ataching creditor to plead in defence that the transfer was in fraud of creditors. AIR 1920 Mad 748: 39 MLJ 350 (FB), Foll. **1958 Andh LT 938: (1959) 1 An WR 72: AIR 1959 Andh Pra 280 (287) (Pt I) (Pr 31) (DB).**

——S. 53 — Suit by debtor — Defence by creditor based on section — If barred.

In a suit by a debtor or his assignee under Order 21, Rule 63, C. P. Code, it is open to a creditor to raise by way of defence a plea that the claim made by the plaintiff is based upon a particular transaction which is bad as being hit by Section 53 of the T. P. Act although the suit is not a representative one. This is the law under that section both before and after his amendment in 1929. **56 CWN 740: AIR 1953 Cal 251 (257) (Pt C) (Pr 46) (DB).**

——S. 53 — Plea in defence.

A creditor who is defeated or delayed can treat the transfer as voidable and not binding on him. There is nothing in the language of Section 53 expressly depriving him of the option to treat such a transaction as voidable. There is nothing in the language of Section 53 even as amended, barring the defendant from raising the plea on the principle of Section 53. Thus the plea under Section 53 is open to the defendant in a suit where the plaintiff seeks to enforce a mortgage which is attacked as a fraudulent transfer. **1956 Mad WN 584: (1956) 2 Mad LJ 157: AIR 1956 Mad 682 (684) (Pt A) (Prs 10, 11).**

——S. 53 — Plea under can be raised as defence to suit under Order 21, Rule 63 — (C. P. Code (1908), Order 21, Rule 63).

The institution of a suit to avoid fraudulent transfer is not the only mode of avoiding it. It may be made by way of defence in a suit brought to enforce the transfer. Thus in a suit under O. 21, Rule 63, C. P. Code, by a defeated claimant on the basis of a transfer made to him by the debtor, or creditor who has attached the property in execution of his decree may plead in defence that the transfer was fraudulent under Section 53 of the Transfer of Property Act. **AIR 1954 Manipur 1 (3, 4) (Pt D) (Pr 10).**

——S. 53 — Plea that transfer was made with intent to defeat or delay realisation of plaintiff's debt — Alternative plea that sale was fictitious — Plaintiff cannot be non-suited merely because the sale has not been proved to be fictitious. **AIR 1955 NUC (Raj) 2545.**

13. "Good faith."

——S. 53 — "Transferee in good faith" — Marriage settlement transferring all property of indebted settlor — Grantee charged with notice of fraud — Transaction is voidable. **AIR 1960 Mad 536 (537) (Pt B) (Pr 7).**

——S. 53 — Good faith — Mortgage for pre-existing debt — Creditor aware of precarious financial position of debtor at time of mortgage — Plea of good faith, can stand under this section but not under Section 53, Provincial Insolvency Act. See Provincial Insolvency Act (1920), Section 53. **AIR 1952 Sau 47 (DB).**

14. Representative suit — Its form and object.

●——S. 53 — Civil P. C. (1908), Order 21, R. 63 — Suit under Civil P. C., Order 21, Rule 63 for declaration that sale by judgment-debtor is in fraud of creditors — Plaintiff being sole creditor of judgment-debtor — Form of suit.

Even if it be considered that a suit to set aside a sale deed under Section 53 of the Transfer of Property Act is necessary before the declaration under Order 21, Rule 63 of the Code of Civil Procedure could be granted, where there is no other creditor except the one in execution of whose decree the proceedings under Order 21, Rule 63 have arisen, the suit for declaration as brought by that creditor would satisfy the requirements of the fourth clause of S. 53 of the Transfer of Property Act as the plaintiff is the sole creditor and the suit is consequently on behalf of all the creditors. Fazal-ul Rahim Khan v. Nawal Kishore, **1952 All LJ 101: 1952 All WR (HC) 129: 1952 RD (HC) 56: AIR 1952 All 226 (227) (Pr 2) (FB).**

——S. 53 — Suit filed in representative capacity — Relief against fraudulent transfer — Not outside the scope of the suit. See Civil P. C. (1908), Order 21, Rule 63. **AIR 1963 Andh Pra 6 (DB).**

——S. 53 — Applicability — Suit under Order 21, Rule 63, Civil P. C. — Frame of — If to be in respresentative capacity — Suit under Civil P. C., Order 21, Rule 63 for declaration that sale by judgment-debtor is in fraud of creditors — Plaintiff being sole creditor of judgment-debtor — Suit as brought is in representative capacity. See Civil P. C. (1908), Order 21, Rule 63. **AIR 1959 Andh Pra 280 (DB).**

——S. 53 — Absence of clear averment in plaint.

A mere allegation in the plaint that the lease and the kobala executed by the debtor are fraudulent transactions intended to defeat the claim of the creditor merely indicates the motive for the execution of the lease and the kobala. Unless, therefore, there is a clear averment that the suit is being filed on behalf of the plaintiff and all other creditors of the debtor, the suit cannot be regarded as one under the provisions of Section 53. **AIR 1954 Cal 440 (441) (Pt A) (Pr 3) (DB).**

——S. 53 — Suit to declare partition to be fraud on creditors — Suit when not filed in representative capacity, is not maintainable. See Civil P. C. (1908), Order 1, Rule 8. **AIR 1963 Guj 276.**

——S. 53 — Suit under Order 21, Rule 63 — Allegations that deed of assignment was in fraud of creditors — Principles of Section 53, T. P. Act,

relied on — Suit must be representative one under Order 1, Rule 8. See Civil P. C. (1908), Order 21, Rule 63. **AIR 1963 Ker 356.**

——S. 53 — Transfer by judgment-debtor — Transferee's objection to attachment upheld — Suit by decree-holder for declaration that transfer was made to defeat his claim — Maintainability — (Civil P. C. (1908), Order 21, Rule 63).

The suit being one to avoid a transfer said to have been fraudulently made by the judgment-debtor in favour of his wife, ought to have been brought in a representative capacity. AIR 1946 Sind 78; AIR 1939 Pat 138 and AIR 1940 All 72, Dissented from. **Madh BLR 1955 Civ 574: ILR (1955) Madh Bha 297: AIR 1955 MB 159 (159, 160) (Pt A) (Prs 2, 7) (DB).**

——S. 53 — Object of representative suit.

The principal object in compelling the plaintiff in cases under Section 53 to sue on behalf of or for the benefit of all the creditors is that the transferees and the transferors may not be harassed by successive litigations of similar nature. **Madh BLR 1955 Civ 574: ILR (1955) Madh Bha 297: AIR 1955 MB 159 (160) (Pt C) (Pr 6a) (DB).**

——S. 53 — Suit must be representative one — Recitals in plaint that suit was for plaintiffs and on behalf of other creditors — Express permission of Court not obtained — Notices under Order 1, R. 8, Civil P. C. not issued — Everybody concerned including Court forgetting about it — These points raised for first time in appeal — Omission could not be condoned under Section 99, Civil P. C. at appellate stage but could be remedied by granting permission to plaintiffs and by issuing notice to creditors if nature of suit is not changed. **1962 MPLJ 596: 1962 MPC 310: 1962 Jab LJ 604: AIR 1962 Madh Pra 363 (364, 365) (Pt B) (Prs 5, 6, 7, 8, 9, 10) (DB).**

——S. 53 — Fictitious and fraudulent transactions— Distinction — Plaint alleging fictitious transaction — Suit need not be a representative suit.

There is a distinction between a fictitious and a fraudulent transfer. If the plaintiff's basis was under Section 53 of the Transfer of Property Act, there is no doubt that the frame of the suit should have been of a representative character. If however, the stand taken by him is on the fictitious character of the transfer, the plaintiff can bring the suit in his individual capacity. **1957 Jab LJ 202: 1957 MPC 244: 1957 MPLJ 107.**

——S. 53 — Procedure — Suit under Order 21, Rule 63 — Objection at late stage that it should be in representative capacity under Section 53, T. P. Act — Court's duty to allow amendment of plaint — Court even if it sustains the objection must allow plaintiff's application for amendment. See Civil P. C. (1908), Order 6, Rule 17. **1957 MPLJ 107.**

——S. 53 — Representative suit by creditor of insolvent under Section 53, T. P. Act — No notice to Official Receiver — Decision in suit not binding on official Receiver — Subsequent petition under Sec. 54, Provincial Insolvency Act not barred by res judicata. See Civil P. C. (1908), Section 11, Explanation VI. **AIR 1962 Mad 189.**

——S. 53 — Applicability and scope — Suit under Order 21, Rule 63, Civil P. C. — If falls under — Suit must be brought in a representative capacity under Order 1, Rule 8 of Civil P. C. where in the circumstances of the case it is in essence one under Section 53, T. P. Act. See Civil P. C. (1908), Order 21, Rule 63. **(1958) 2 Mad LJ 548.**

——**S. 53 — Suit by attaching creditor for avoiding transfer made with intent to defeat his claim — If should be brought in a representative capacity — Order 21, Rule 63.**

A suit by an attaching creditor under Order 21, Rule 63 of the Code of Civil Procedure, to establish his right to attach and bring to sale certain property by avoiding a transfer of the property on the ground that it had been made with the intent to defeat his claim may well in certain circumstances be in essence a suit under Section 53 of the Transfer of Property Act and must be brought in a representative capacity in compliance with the provisions of Order 1, Rule 8 of the Code. It is the duty of the Court to see whether the suit should be proceeded with in a representative capacity or not. An amendment should be freely allowed to bring the suit in conformity with the provisions of Section 53 of the Transfer of Property Act. **(1958) 2 MLJ 540.**

——**S. 53 — Creditor — Auction purchaser or his transferee — Suit to enforce rights acquired at Court sale — If should be representative.**

A purchaser at an execution sale or his transferee cannot be termed creditor of the J. D. and a suit by him to enforce the rights acquired by virtue of the Court-sale alleging that the settlement deed by the J. D. was executed with intent to defraud the D. H. need not be a representative one under Section 53. AIR 1921 Pat 53: AIR 1933 Cal 812, Rel. on; 50 Mys HCR 321, Disting. **30 Mys LJ 64: ILR (1951) Mys 407: AIR 1951 Mys 103 (105) (Pt B) (Pr 4) (DB).**

——**S. 53** — Representative suit — Suit by one creditor under Order 21, Rule 63, Civil P. C. — Permission under Order 1, Rule 7 not obtained — Suit cannot be considered to be representative within the scope of Section 53, T. P. Act. **62 Pun LR 224: AIR 1960 Punj 417 (418, 419) (Pt C) (Pr 3) (DB).**

15. Auction purchaser whether a subsequent transferee.

——**S. 53 (2)** — Settlement deed by two brothers — Indebtedness by one of them meanwhile — Creditor bringing property to sale — Gift deed whether avoided — Suit by creditor for declaration of settlement deed as fraudulent — Decree for costs — Sale in execution — Transfer of such property could prevail over title of the donee under the settlement. **(1953) 2 Mad LJ 737: 66 Mad LW 729: AIR 1954 Mad 173.**

——**S. 53 — Auction-purchaser.**

An auction-purchaser is as such neither a creditor nor a transferee within the meaning of Section 53. **(1953) 2 MLJ 737: 66 Mad LW 729: AIR 1954 Mad 173 (175, 176) (Pt C) (Pr 5).**

——**S. 53 — Auction-purchaser.**

When a decree-holder entitled to avoid a transfer of property under Section 33 has elected to do so by bringing the properties to sale in execution of his decree, that avoidance enures for the benefit of the auction-purchaser, notwithstanding that he is not himself a creditor or transferee. AIR 1915 Bom 89, Dissented from. **(1953) 2 MLJ 737: 66 Mad LW 729: AIR 1954 Mad 173 (176) (Pt D) (Pr 6).**

——**Ss. 53 (2) and 2 (d) — 'Subsequent transferee' — Auction-purchaser at execution sale — Position of.**

Clause (d) of Section 2 read with the preamble makes it clear that the T. P. Act does not apply to transfers by operation of law or by or in execution of a decree or order of a Court of competent jurisdiction. The transfers governed by the Act are transfers by 'act of parties'. Hence, purchase at an auction sale is not a transfer as contemplated by the Transfer of Property Act and, is, therefore, not validated or invalidated by anything contained in the Act. Accordingly the expression 'subsequent transferee' in subsection (2) of Section 53 does not include a purchaser at a Court sale. **AIR 1958 Pat 568 (569, 570) (Pt A) (Pr 4).**

16. Onus of proof.

——**S. 53** — Transfer in good faith — Burden of proof — Fraud on part of transferor proved — Burden to show that transferee was transferee in good faith is on transferee. C. Abdul Shukoor Sahib v. Arji Papa Rao, **(1964) 1 SCJ 168: (1964) 1 Mad LJ (SC) 49: (1964) 1 Andh WR (SC) 49: (1963) Supp 2 SCR 55: AIR 1963 SC 1150 (1157) (Pt H) (Prs 17, 18).**

——**S. 53** — Sham transfer — Onus — Reliance sought to be placed on the fact that transferee had no possession or had no funds to make payment of price — Person challenging genuineness of transaction has to establish such facts — (Benami — Husband and wife). **AIR 1955 NUC (Cal) 2867 (DB).**

——**S. 53 — Fraudulent transfer and fictitious or benami transfer — Distinction — Burden of proof — Evidence Act (1872), Sections 101-103.**

The law draws a clear distinction between a fraudulent transfer under Section 53, T. P. Act and a fictitious or benami transfer. If a transaction is fictitious it is never intended to exist. If, however, a transaction is fraudulent, it is intended to exist though its object is to defeat the legal rights of other people. Whether the question be one of sham or benami transaction or of fraudulent transfer the burden of proof is on the person who sets up the plea. **('51) 1950 KLT 502 (DB).**

——**S. 53** — Fraudulent and collusive transfer — Suit to set aside — Burden to show that transfer was fraudulent etc., is on plaintiff — Transfer of immovable property by person in favour of his daughter, who was child widow, living on maintenance, during pendency of money suit against transferor is significant — Plaintiff held showed by circumstances that transfer was fradulent and collusive. **AIR 1950 Kutch 57 (57, 58) (Prs 2, 8).**

——**S. 53 — Burden of proof — Intention to defeat or defraud creditor — (Evidence Act (1872), Section 102).**

The burden of proof in a suit under Section 53, T. P. Act, that the alienation was made with a view to defeat or delay the creditors is on the plaintiff. Plaintiff must plead and prove circumstances to discharge his onus. If he makes out a prima facie case of fraudulent intention, the burden sifts on to the transferee to prove his good faith.

It is not enough to bring out circumstances which create suspicion. The decision must rest upon legal grounds established by legal testimony and not on suspicion.

Mutation of names by itself is not sufficient to discharge the onus that lies on the transferee. **1954 Nag LJ 34: ILR (1953) Nag 937: AIR 1954 Nag 129 (131, 132, 134) (Pt A) (Prs 13, 27) (DB).**

——**S. 53 — Fraudulent transfer — Defeating or delaying creditors — Burden of proof — Indicia of fraud.**

The burden of successfully assailing a transaction initially lies on the creditors. **AIR 1961 Punj 361 (363) (Pt B) (Pr 5) (DB).**

17. Limitation for suits under the section.

——**S. 53** — Limitation — Suit for declaration that alienation is not binding on plaintiff-creditor — Starting point of limitation — Starting point of limitation under Article 120. Limitation Act is the date on which circumstances entitling the plaintiff to have his interest guarded first comes to his knowledge as the right to sue then accrues to him. See Limitation Act (1908), Article 120. **AIR 1959 Andh Pra 280 (DB).**

——**S. 53 — Limitation Act (1908), Articles 91, 120 — Suit by creditor under Section 53 — Article 120 and not Article 91 applies — Starting point — Burden of proof.**

Starting point of limitation is the date on which circumstances entitling the plaintiff to have his interest guarded first comes to his knowledge as the right to sue then accrues to him. See Limitation Act (1908), Article 91. **AIR 1951 Mad 388.**

——**S. 53 — Suit for avoiding transfer — Limitation — Starting point — (Limitation Act (1908), Article 120).**

A suit for declaration under Section 53, T. P. Act is governed by Article 120, Limitation Act and the starting point of limitation under Article 120, Limitation Act, is the date on which circumstances entitling the plaintiff to have his interest guarded first comes to his knowledge, as the right to sue then accrues to him. **1954 Nag LJ 34: ILR (1953) Nag 937: AIR 1954 Nag 129 (135) (Pt E) (Pr 31) (DB).**

SECTION 53-A

SYNOPSIS

(Transfer of Property Act (1882), S. 53-A.)

1. Doctrine of part performance — Nature of.
2. Scope.
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16. Proviso.
17. This section and Section 27 Specific Relief Act.
18. Transfers before the Act.
19. Law in states to which Act did not apply.

1. Doctrine of part performance — Nature of.

——**S. 53-A — Doctrine of part-performance — Matter of legal right and not an equitable doctrine.**

In so far as the equitable doctrine of part-performance is concerned, having regard to the statutory enactment in Section 53-A, it is no longer an equitable doctrine. No doubt there are still many differences between the equitable doctrine as applicable in England and the right which has been given under Section 53-A. But it is clear that where a sale-deed is inadmissible in evidence for want of registration, it can be used for collateral purposes, particularly where the defendant is in possession as a consequence of the transaction of sale and the plaintiff is seeking to recover possession of the land which was given pursuant to that sale-deed. The provisions of Section 53-A are not to be applied on equitable consideration, it is a legal right given by a statute and it is wrong to say that equitable considerations will prevail, and that since the defendant did not have the document registered, he cannot have the benefit of Section 53-A. **(1957) 1 Andhra WR 366.**

——**S. 53-A — Equitable doctrine of part performance — Section 53-A recognises doctrine in a modified form.**

The doctrine of part performance is an equitable doctrine designed to relieve the vigour of the law and provide a remedy when a transfer or an agreement to transfer falls short of the requirements laid down by the law. In England it was developed by the Equity Courts. In a modified form it has been recognised statutorily in India being embodied in Section 53-A of the T. P. Act. **AIR 1963 Mad 310 (311) (Pt A) (Pr 4) (DB).**

——**S. 53-A — English and Indian Law — Distinction — Suit by person entitled to benefit of section.**

Whereas in English law the equity of part performance is an active equity which a plaintiff in possession may enforce in an independent suit or proceeding the right conferred by Section 53-A is a passive equity available only to the defendant to protect his possession. The section imposes a statutory bar on the transferor and does not confer any active title or right on the transferee. Thus, it is not possible for a person who is entitled to the benefit of the section to bring a suit as plaintiff for the purpose of enforcing his right to the property. AIR 1933 Bom 381; AIR 1934 Rang 284; AIR 1934 Lah 751, Diss. from. **(1954) 1 MLJ 588: 67 Mad LW 265: AIR 1954 Mad 702 (703) (Pr 7).**

——**S. 53-A** — This section and English doctrine of part performance — Distinction stated. **AIR 1955 NUC (Manipur) 4551.**

——**Ss. 53-A and 54 — Contract for sale — Non-existence of instrument in writing — Doctrine of equitable estoppel — Applicability — (Evidence Act (1872), Section 115).**

The doctrine of equitable estoppel, even if there is any such doctrine, in ultimate analysis rests either on contract, express or implied, or upon some statement of fact constituting an estoppel and secondly that there is no estoppel against statute. In Indian Law, unlike the English Law, a contract for sale of immovable property does not create any interest either equitable or legal but only a right, which if not enforced in time, is not of any avail to defend possession even if already delivered on that basis. And when the doctrine of part performance as laid down in Section 53-A is not applicable for want of writing as contemplated in Section 53-A, any other

defence based on equitable consideration cannot succeed. **AIR 1958 Pat 133 (140, 141) (Pt E) (Pr 13) (DB).**

——S. 53-A — Relief given under section is equitable relief.

The relief given under Section 53-A or under the principle embodied in it is an equitable relief and not a legal right which can be enforced by a plaintiff. Section 53-A merely protects a defendant and does not confer any legal right. **ILR (1956) Punj 1279: AIR 1956 Punj 181 (185) (Pt G) (Pr 16) (DB).**

2. Scope.

——S. 53-A — Right in limitation of Government's right to assess — Limited right acquired by adverse possession — Estoppel by representation — Corporation holding possession under colour of an invalid grant of land in perpetuity — Such possession not being referable to legal title was prima facie adverse to the legal title of Government as owner of the land. See Bombay City Land Revenue Act (2 of 1876), Section 8. **AIR 1951 SC 469.**

——S. 53-A — Scope.

Section 53-A envisages a case in which the transferee has obtained possession and has performed his part of the contract. In a sale or mortgage the only two other steps are the execution of the deed and its registration. Paragraph 1 of Section 53-A also envisages the execution of some contract. As such, if only the step of the registration has not been taken, the contract will remain only partly performed and it will be open to the transferee to invoke the principle of part performance and take advantage of the provisions of Section 53-A. **1953 AMLJ 109: AIR 1953 Ajmer 47 (47) (Pt A) (Pr 4).**

——S. 53-A — Land acquisition proceedings — Position of claimant is that of defendant and he can rely on Section 53-A.

In land acquisition proceeding, the role of the Government which is acquiring the land is that of a plaintiff and the role of the claimant who is in possession of the land is that of a defendant and the claimant can therefore, rely on Section 53-A. **ILR (1960) 2 All 71.**

——S. 53-A — Scope — Principal's property in Agent's possession — Agreement between principal and another benami for agent to convey the property — Agent's subsequent possession, if in part-performance of contract — Consent of transferor, if necessary.

Paragraph 2 of Section 53-A of the Transfer of Property Act refers to a situation where the transferee was in possession prior to the contract. In such a case also the continuance of possession must be in part-performance of the contract. The implication is that, the possession is in pursuance of the contract or is referable to the contract, or that it is in relation to the contract. The acts relied upon to prove part-performance must be unequivocal and in their nature, referable to the contract. A change in the possession of land is an act of part-performance both of the person who gives and of the person who takes. The possession which can be relied upon for the purpose of Section 53-A should be with the consent of the transferor.

Even in the case of a tenant who is in possession, his continued possession after the expiry of the term is in its nature equivocal, for it may be referred either to the previous tenancy or to a new agreement with the landlord. If a tenant in possession sues for specific performance of an alleged contract for a new lease, the mere fact of his continuance in possession will have no weight as an act of part-performance of the contract.

The consent of the transferor being a primary condition for the applicability of Section 53-A, the possession of the first defendant (as the agent of his principal) cannot be availed of by the defendants for the purpose of seeking the benefits of that section. AIR 1944 Oudh 212, Differed from. **(1964) 2 Andh LT 159: (1964) 2 An WR 5.**

——Ss. 53-A and 58 — Scope of — Possession obtained in part performance of usufructuary mortgage — Applicability.

It is manifest from Section 58 of the Transfer of Property Act that a mortgage transfers an interest in specific immovable property. A mortgage creates a transfer of property (though of subordinate right) to the mortgagee and for consideration and as such Section 53-A, which is based on equitable considerations, applies to the usufructuary mortgagee. AIR 1963 AP 239: (1962) 1 ALT 381, **Reversed.** AIR 1950 SC 1, Rel. on. **(1963) 2 An WR 345: (1963) 2 Andh LT 278: ILR (1964) Andh Pra 832: AIR 1963 Andh Pra 489 (490) (Prs 6, 10) (DB).**

——S. 53-A—Scope of—Hindu widow entering into a contract to sell land of her husband — If sale is for legal necessity and the requisites of S. 53-A are complied with, whether it can be said that reversioners are claiming under the widow — Evidence Act (1 of 1872), S. 65—Scope of—Parole evidence—Admissibility to prove existence of a document contemplated under S. 53-A—Secondary evidence — Admissibility without proof of loss of original.

Under the Hindu Law a Hindu widow is not a life-tenant. She is the owner of the estate with certain restrictions and as such she represents the estate for several purposes. That being the position, an alienation made by her for a legal necessity is binding upon the estate, which means that the reversioners are bound by such an alienation. As a necessary corollary a contract entered into on her behalf (by her) for the sale of land for such a legal necessity would also bind the reversioners. If such a contract could be given effect to even as against the reversioners, it cannot be said that S. 53-A of the Transfer of Property Act could not be attracted to such a contract. The reversioners, in such circumstances, would be deemed to be 'claiming under the widow'. The position will be altogether different if the contract as such would not affect the reversioners as in a case where it does not purport to be for the benefit of the estate. In construing S. 53-A, Courts should try to give effect to the equitable object underlying this provision and, therefore, should put a liberal construction on the words therein. One of the essential ingredients of S. 53-A is that the terms necessary to constitute the transfer should be ascertained with reasonable certainty. If it is not possible to gather the terms of the contract from the secondary evidence the section cannot come into operation. In the absence of the document or unimpeachable evidence as to the terms or recitals therein, it is difficult to judge the nature of the sale the extent of the land conveyed thereunder, etc. Therefore the most essential requisite of S. 53-A has not been fulfilled. In order to claim the benefits of S. 65 of the Evidence Act, there should be credible evidence of the loss of the original. **(1959) 2 Andh W R 357 : 1959 A L T 743 : AIR 1959 Andh Pra 568 (569, 570) (Pt A) (Prs 9, 10, 11) (DB).**

——S. 53-A — Scope — Transferee's right to avail of right as plaintiff to use possession as a shield to defend his rights.

Section 53-A does not either expressly or by necessary implication indicate that the rights conferred on the transferee thereunder can only be invoked as a defendant and not as a plaintiff. Under the section no title passes to a transferee. He cannot file a suit for a declaration of his title to the property or seek to recover possession of the same on the basis of any title conferred to him. But, if the conditions laid down in the section are complied with, it enables the transferee to defend his possession if the transferor seeks to enforce his rights against the property. This statutory right he can avail himself both as a plaintiff and as a defendant provided he is using his right as a shield and not as a sword. **1956 Andh L T 725 ; 1956 Andh W R 830 : ILR (1956) Andh-Pra 1019 ; AIR 1957 Andh Pra 854 (855, 858) (Pt A) (Prs 4, 19) (DB).**

—— S. 53-A — Scope of — Rights of parties—R selling field to L and putting L in possession—Sale-deed not executed — L selling to M—R opting for Pakistan—Asst. Custodian laying claim to property — Custodian upholding order—Custodian is prima facie entitled to take possession — M may establish his claim in ordinary Court. See Administration of Evacuee Property Act (1950), S. 2 (F). **(1958) Nag L J (Notes) 21 (Bom).**

——S. 53-A — Oral lease reserving yearly rent — Tenant building permanent structure—Estoppel—S. 105—(Evidence Act (1872), S. 115).

Section 53-A, T. P. Act has no application where there is no contract to grant lease in writing. An oral agreement to grant lease reserving a yearly rent by itself is no defence to a suit for ejectment by the owner of the land. A person cannot establish a case of estoppel merely by proving that he has built permanent structures relying upon an invalid lease. **61 C W N 23 : ILR (1957) 3 Cal 636 : AIR 1957 Cal 625 (626) (Pt C) (Prs 10, 11, 12).**

——S. 53-A—Scope—Enforcement of right expressly provided by contract.

Where the transferor has put the transferee in possession in part performance of the contract S. 53-A by plain implication, enables the transferor to enforce a right expressly provided by the contract.

Where a lessee is already put in possession of certain premises in part performance of an unregistered lease, the lessor can enforce the term of the lease entitling him to re enter if there is default in payment of six months' rent. **AIR 1953 Cal 349 (352) (Pt E) (Prs 17, 20).**

——S. 53-A—Transfer of share of joint Hindu family dwelling house to stranger — Co-owners have been given a right under S. 44, para. 2 to ask for injunction restraining transferee from exercising right to joint possession — The language of S. 53-A and S. 44 is not analogous. See T. P. Act (1882), S. 44. AIR 1952 Cal 253.

——S. 53-A—Contract partly performed — Breach of —Suit for damages is not required to be rested on S. 53-A.

Where the contract has been partly performed a suit for damages simpliciter for breach of contract does not require to be rested upon S. 53-A at all : **AIR 1941 Bom 346, Dissent. 54 Cal W N 58 : ILR (1950) 2 Cal 443 : AIR 1950 Cal 23 (28) (Pt E) (Pr 17) (DB).**

——S. 53-A—Suit against third person—Maintainability.

When the right to remain on property can be defended under provisions of S. 53-A against true owner, a mere trespasser cannot by show of force defeat such right. **AIR 1957 Hyd 37 (Pt C) (DB).**

——S. 53-A—Scope.

Section 53-A has imported in a modified form the English doctrine of part performance. Doctrine of part performance stated. **ILR (1954) Hyd 822 : AIR 1955 Hyd 101 (102) (Pt A) (Pr 4).**

——S. 53-A — Scope—Suit for specific performance against owner and subsequent purchaser under a registered sale deed with knowledge of prior agreement—Plea of part performance—Trusts Act (1882), S. 91.

Held, that as the defendant had been in possession throughout in his capacity as a tenant and not in part performance of the contract, he could not be heard to say that by reason of the agreement to sell his possession was no longer that of a tenant. If he succeeded in his suit for specific performance of the contract the plaintiff will by virtue of S. 91, Trusts Act be deemed to be in possession of the property in trust for the defendant. AIR 1960 Madh Pra 3, Dist.; 67 Mad L J 865; AIR 1934 P C 235, Rel. on. **1961 Jab L J 427 : ILR (1961) M P 443 : AIR 1961 Madh Pra 237 (239) (Pt C) (Prs 7, 9).**

——S. 53-A—Object — No right of action.

Section 53-A was inserted principally for the protection of ignorant transferees who take possession or spend money in improvements relying on documents which are ineffective as transfers or on contacts which cannot be proved for want of registration. The effect of this section is to relax the strict provisions of the Transfer of Property Act and Registration Act in favour of transferees in order to allow the defence of part performance to be established. The section does not however confer a right of action on the transferee in possession under an unregistered contract or conveyance. The right conferred by the section is a right only available to the defendant to protect his possession. **I L R (1956) Nag 10 ; 1955 Nag L J 742 : AIR 1955 Nag 306 (310) (Pt D) (Pr 16) (DB).**

——S. 53-A—Section to be strictly construed — Protection given by section if can be extended to transferor.

Section 53-A is an exception to the provisions which require a contract to be in writing and registered and which bar proof of such contract by any other evidence. Consequently the exception must be strictly construed. The protection given by this section to the defendant in possession cannot by analogy be extended to the transferor. **1955 Nag L J 742 : ILR (1956) Nag 10 : A I R 1955 Nag 306 (310) (Pt E) (Pr 18) (DB).**

——Ss. 53-A and 3 — Transferee without notice — Monthly tenant continuing in possession —Subsequent transferee cannot be charged with notice of contract to sell in favour of former. AIR 1962 Orissa 86 (89) (Pt C) (Pr 11).

——S, 53-A—Part performance — Transferee taking possession under transfer—Sufficiency.

All that is necessary to invoke S. 53-A is to consider whether the transferee who was not in possession prior to the transfer in question was inducted upon the land in pursuance of the transfer in question or not. **1960 B L J R 203 ; 1960 Pat L R 174; AIR 1960 Pat 354 (356) (Pt A) (Pr 10).**

——S. 53A — Scope — If gives right to transferee to enforce his right in Court.

Per Sinha J. —S. 53A gives no right to a transferee to come to Court as a plaintiff either to maintain his possession or to recover possession if dispossessed after having been put in possession in pursuance of the contract. A transferee who is not clothed with title in the manner recognised by law cannot be said to be a person having a valid title in law and therefore Courts of law cannot recognise such a title. **AIR 1951 Pat 160 (164) (Pt C) (Pr 10) (DB).**

——S. 53-A—Scope.

The right conferred by S. 53-A is only available to a defendant to protect his possession. I L R (1955) Punj 122 : 56 Punj L R 412 : AIR 1955 Punj 22 (24) (Pt B) (Pr 13) (DB).

3. Applicability.
(A) Necessary conditions.
(B) Does not apply.

3. Applicability.

● ——S. 53-A—Applicability — C bringing in N into his family under an arrangement that latter would marry his wife's sister's daugbter and help him in cultivation and management of the properties in consideration of which N would inherit the entire property after C's death—Alienees from Reversioners of C suing for recovery of property in the hands of N's sons — N's sons if can rely on equitable doctrine of part performance and resist the claim.

Held, after S. 53-A of the Transfer of Property Act was enacted the only case in which the English doctrine of equity of part performance can be applied in India is where the requirements of S. 53-A are satisfied. Quite clearly S. 53-A does not apply to the facts of the present case. Considerations of equity cannot confer on N or his heirs any title in the lands which under the statute could be conferred only by a registered instrument. Ramachandrayya v. Satyanarayana, (1964) 3 S C R 985 : (1964) 1 S C J 109 : 1963 S C D 876 : (1963) 2 S C W R 449 : (1964) 1 Mad L J (SC) 46 : (1964) 1 Andh W R (SC) 46 : AIR 1964 S C 877 (880) (Pr 14).

● ——S. 53-A—Applicability.

Where the plaintiff claimed possession of property under a good and genuine contract of sale earlier in date to the defendant's contract, and the defendant was not a transferee for value who had paid money in good faith but all that he had got was a contract of sale but not a sale and the High Court had found further that he took his contract with the knowledge of the plaintiff's earlier title, S. 53-A had no application. AIR 1953 S C 503 (505) (Pr 14) (DB).

——S. 53-A—Applicability — There must be contract in writing signed by person who contracts to transfer —No lease signed by lessor — Lessee entering into possession—Lessor cannot take advantage of doctrine of part performance. AIR 1955 NUC (All) 1705 (DB).

——S. 53-A — Applicability — Agreement for sale—Purchaser taking possession—Possession of purchaser protected. See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 22. I L R (1959) Bom 35.

——S. 53-A—Applicability — Lease of property by A and B to a partnership of which B was also partner —Agreement by partnership to transfer their leasehold interest to a company—Company could not take advantage of S. 53-A as against A at all and as against B in his capacity as owner of the property. A I R 1963 Cal 198 (202) (Pt B) (Pr 15) (DB).

——S. 53-A — Kabuliyat executed by lessee—S. 53-A does not apply.

Section 53-A has no application to a case where the document upon which a party relies is not a contract of transfer by the lessor but is a kabuliyat executed by the lessee. A I R 1954 Cal 207 (208) (Pt A) (Pr 3) (DB).

——S. 53-A — Section applies even where contract to transfer requiring registration has not been registered —To hold that contract cannot be looked at because it is unregistered would render S. 53-A and S. 49, Registration Act, 1908, nugatory and meaningless. (1965) 6 Guj L R 502 : ILR (1965) Guj 490.

——S. 53-A—Applicability—Suit for specific performance time barred.

The doctrine embodied in S. 53-A would apply even where the vendee's suit for specific performance has become barred. ILR (1954) Hyd 822 : AIR 1955 Hyd 101 (103) (Pt F) (Pr 9).

——S. 53-A—Applicability — Contract to transfer — Leases—Unregistered deed— Evidence of possession in pursuance of document—Admissibility.

The provision of S. 53-A apply to a lease also.

That section enables the lessee who has been put in possession of a property in pursuance of an agreement to use the possession as a defence in any suit that might be brought to eject him or disturb his possession and therefore the Court should allow evidence to be given of the agreement even though the document containing the agreement itself is not receivable in evidence being unregistered. ILR (1953) Hyd 110 : AIR 1953 Hyd 97 (97, 98) (Pt B) (Pr 3).

——S. 53-A—Agricultural lease for more than 5 years — Deed must be registered — Lack of registration strikes documents not transactions— Agreement prohibited in law—Principle of part performance cannot save possession under void agreement. See Transfer of Property Act, S. 105. 1961 M P L J (Notes) 271.

——S. 53-A — Applicability — Proceeding under Madras Cultivating Tenants Protection Act (25 of 1955).

It is not necessary that a deed of transfer should have been obtained by the party before he could invoke S. 53-A. Indeed the very language of the section is against such a contention. The conditions laid down in S. 53-A of the Transfer of Property Act are fulfilled even though a contract to sell alone was obtained. The moment possession is taken or continued under the contract of sale, the original relationship of landlord and tenant ceases to exist and the landlord cannot take advantage of the provisions of the Madras Cultivating Tenants Protection Act to file an application for eviction. 72 Mad L W 265 : 1959 Mad W N 382 : (1959) 1 Mad L J 301 : I L R (1959) Mad 896 : A I R 1959 Mad 354 (355) (Pr 7).

——S. 53-A—Applicability — Contract to sell — Payment of earnest money and vendee put in possession —Contract falling through for non-payment of price —Suit for possession by vendor—Concurrent finding that defendant was always willing to perform his part of contract—Finding being one of fact cannot be challenged in second appeal — Absence of specific plea of part performance in written statement—Section 53-A if can be availed of in second appeal—Civil P. C. (1908), S. 100. (1965) 2 Mys L J 229 : A I R 1966 Mys 86 (88) (Pt A) (Prs 4, 5).

——S. 53-A—Applicability.

Where the instrument of transfer is a registered one and there is no defect in it according to the law in force at the time of its execution the section has no application. 1953 B L J R 403 : A I R 1954 Pat 41 (42) (Pt B) (Pr 5).

——S. 53-A — Applicability — Contract itself must constitute transaction of transfer—Agreement varying rate of interest—Section 53-A not attracted. 66 Punj L R 1201 : AIR 1965 Punj 117 (118) (Pt C) (Prs 3, 4).

——S. 53-A—Applicability — Unregistered mortgage —Possession delivered to mortgagee — Insolvency of mortgagor — Benefit conferred by S. 53-A, T. P. Act, if available to mortgagee as against Receiver. See Provincial Insolvency Act (1920), S. 33. A I R 1960 Punj 604.

——S. 53-A—Applicability—Suit under O. 21, R. 63, Civil P. C.—No advantage of S. 53-A to plaintiff.

Whatever be the nature of the cause of action, Section 53-A is a registered document. Thus, in suit under O. 21, R. 63, Civil P. C., the plaintiff-transferee cannot be granted advantage of S. 53-A of T. P. Act.

1963 Raj L W 320 : I L R (1963) 13 Raj 832 : A I R 1964 Raj 11 (12) (Pt A) (Pr 6).

3 (A). Necessary conditions.

——S. 53-A—Applicability—Conditions.

The necessary conditions for the application of S. 53-A are : (i) there is a contract to transfer immovable property for consideration, (ii) the contract is signed by or on behalf of the transferor, (iii) the terms can be ascertained with reasonable certainty from the document. (iv) the transferee is put in possession or if he has been already in possession continues in possession, (v) he has done some act in furtherance of the contract and (vi) the transferee has performed or is willing to perform his part of the contract. 1956 Andh L T 725 : 1956 Andh W R 830: I L R (1956) Andh Pra 1019 : A I R 1957 Andh Pra 854 (855) (Pt B) (Pr 4) (DB).

——S. 53-A—Applicability—Essentials — Conduct of party showing mala fides—No benefit under S. 53-A can be claimed. (1962) 64 Punj L R 731.

——S. 53-A—Applicability—Conditions.

Held, that the two documents did not satisfy the requirements of S. 53-A and that section was not applicable to the case. 1960 Raj L W 103.

3 (B). Does not apply.

——S. 53-A—Applicability.

Section 53-A which presupposes the existence of a document of transfer can have no application to a family arrangement which does not involve transfer of property. Hence, S. 53-A cannot cure the defect of non-registration of a deed of family arrangement. 1950 All L J 477 : I L R (1952) 2 All 703 : A I R 1950 All 700 (704) (Pt F) (Pr 10) (DB).

——Ss. 53-A, 54, 58 and 105 — Doctrine of part performance—Applicability—Principles while applicable to sale and leases do not however apply to mortgage. (1962) 1 Andh L T 381 : (1962) 13 S T C 755 : A I R 1963 Andh Pra 239 (240, 241) (Prs 3, 4, 6, 7).

[Reversed in A I R 1963 Andh Pra 489.]

——S. 53-A—Applicability — Section has no application to partition. A I R 1950 Assam 129 (130) (Pt B) (Pr 8) (DB).

——S. 53-A — Patta for 25 years executed by *A* in favour of *B* on monthly rental — Patta not signed by *B*—*B* going into possession and effecting improvements in terms of patta—Suit for arrears of rent and eviction of *B* before expiry of patta — There is no implied tenancy from month to month — Doctrine of part performance held applied. See T. P. Act (1882), S. 107. A I R 1962 Cal 502.

——S. 53-A — Section applies when there is writing signed by the transferor—Kabuliat signed by lessee—Section 53-A does not apply. A I R 1960 Cal 40 (42) (Pt A) (Pr 12).

——S. 53-A — Exchange of holding — Execution of document not proved — Right of part performance not available. 1961 Jab L J 1146 : 1961 M P L J 1179.

——Ss. 53-A, 58 and Proviso to S. 60 — 'Mortgage by conditional sale'—Sale with condition of repurchase within certain period — Failure to repurchase—Mortgagor relinquishing rights for additional consideration under registered deed—Extinguishment of right by act of parties — Subsequent suit for redemption—Defendant entitled to benefit of section — (Contract Act (1872), S. 20—Mistake of law). 1959 Jab L J 289; 1959 M P L J 368 : 1959 M P C 295 : A I R 1959 Madh Pra 221 (222) (Prs 2, 5, 6) (DB).

——S. 53-A—Agreement to gift — Specific performance.

An agreement to gift in its very nature is incapable of specific performance. The doctrine of part performance does not apply to gift. 1958 M P L J (Notes) 155.

——S. 53-A—Applicability to gifts.

An agreement to make a gift is not capable of specific performance and, therefore, part performance has no application. Besides, the rule of part performance enunciated in S. 53-A of the Transfer of Property Act does not apply to a gift, because that section applies only to a transfer for consideration. 72 Mad L W 206 : (1959) 2 Mad L J 502.

——S. 53-A—Applicability and scope — Unregistered assignment of usufructuary mortgage — Benefit of section not available — Section 53-A, T. P. Act will not apply. See Debt Laws — Madras Agriculturists' Relief Act (4 of 1938), S. 9-A (10) (ii) (b). AIR 1958 Mad 576 (DB).

——S. 53-A — Usufructuary mortgagee having no registered assignment in his favour — Scaling down of debt—Part performance — Mortgagee is entitled to protect his possession and to resist dispossession by the equitable doctrine of part performance laid down in S. 53-A, T. P. Act. See Debt Laws—Madras Agriculturists' Relief Act (4 of 1938), S. 9-A (10) (b). AIR 1955 NUC (Mad) 3923.

——S. 53-A— Movable property.

The doctrine of part performance has no application to a case which does not relate to immovable property. AIR 1957 Manipur 9 (13) (Pt G) (Pr 9).

——S. 53-A — Applicability— Possession delivered to mortgagee in satisfaction of debt under oral agreement—Subsequent sale of same property—Suit for possession by vendee—Mortgagee cannot resist possession. AIR 1951 Nag 171 (174) (Pt E) (Prs 19, 20, 21).

——Ss. 53-A and 107—Leases and doctrine of part performance — Kabuliat executed by lessee.

Section 53-A, has no application to a case where the document upon which a party relies is not a contract of transfer by the lessor but is a kabuliyat executed by the lessee. AIR 1957 Pat 24 (29) (Pt E) (Pr 19).

——S. 53-A—Objection under, cannot be raised for first time in second appeal—Civil P. C. (1908), S. 100. AIR 1951 Pat 502 (503) (Pt C) (Pr 8) (DB).

——S. 53-A—Two vendees of same immovable property — Priority between — Document compulsorily registrable not registered — Admissibility of, under S. 49, Registration Act—Possession of vendee in such a case is that of a trespasser and until such possession matures into ownership by prescription such vendee is liable to be ejected — Question of notice by possession does not arise — Nor does equitable principle of part performance apply to such a case. See Registration Act (1908), S. 50. AIR 1950 Pepsu 34 (DB).

——Ss. 53-A, 54—Doctrine of part performance — Applicability — No written evidence of oral sale — Doctrine not applicable to transaction. AIR 1962 Punj 475 (476) (Pt A) (Prs 4, 5).

——S. 53-A—Applicability—Partition— Unregistered deed—A partition is not a transfer within the meaning of S. 5 and therefore the doctrine of part performance does not apply to an unregistered deed of partition. See Transfer of Property Act (1882), S. 5. AIR 1954 Sau 46 (DB).

4. Retrospective operation.

——S. 53-A — Retrospective operation — Section has no retrospective operation and would not apply to document executed before year 1929. (1960) 2 Andh W R 164 : 1960 Andh L T 683 : ILR (1961) 1 Andh

Pra 473 : AIR 1961 Andh Pra 31 (33) (Pt A) (Pr 8) (DB).

——S. 53-A—Retrospective operation.

The section would apply where the suit is instituted after the section came into operation though the act of part performance took place before that date. ILR (1954) Hyd 822 : AIR 1955 Hyd 101 (103) (Pt D) (Pr 8).

——S. 53-A—Retrospective operation — Act extended to Manipur during pendency of suit —Court can give relief by applying S. 53-A. AIR 1961 Manipur 54 (55, 56) (Pr 8).

——S. 53-A — Retrospective effect can be given to S. 53-A : 51 Mys H C R 148 (FB) held no longer good law. 30 Mys L J 172 : ILR (1951) Mys 414 : AIR 1951 Mys 126 (127) (Pt B) (Pr 5) (DB).:

——S. 53-A—Retrospective operation—Applicability to suits filed after application of Act to Saurashtra.

Section 53-A applies to suits filed under the application of the Transfer of Property Act to Saurashtra even though the transaction may have taken place earlier. AIR 1953 Sau 56 (57) (Pt A) (Pr 8) (DB).

——S. 53-A—Retrospective effect — Relevant date.

In considering whether S. 53-A has retrospective effect or not, it is not the date of the making of the contract but the date on which the suit is filed, that is relevant. In this sense, S. 53-A has retrospective effect. AIR 1955 Vind Pra 15 (16) (Pt A) (Pr 3).

——S. 53-A—Scope—Retrospective operation.

Section 53-A only debars the transferor's plea of the sale being invalid for lack of registration and does not validate the invalid transfer. It is a kind of estoppel which comes into operation only when the dispute comes to Court. Consequently when the dispute arises in Court after S. 53-A came into force the purchaser is obviously entitled to press it into his service even though the sale may have taken place prior to its coming into force. AIR 1955 Vind Pra 15 (16) (Pt B) (Pr 3).

5. "Contracts to transfer."

(A) Terms ascertainable with reasonable certainty.

5. "Contracts to transfer."

●——S. 53 A — Agreement to lease contained in correspondence of Government officials—Secondary evidence—Admissibility—When original is not produced in spite of notice under S. 66 of Evidence Act, secondary evidence of the same by certified copies of record can be adduced by defendant in support of his defence of part performance. See Evidence Act (1872), S. 65 (a). AIR 1950 SC 1.

——S. 53-A—No contract to transfer immovable property — Question of part-performance of contract does not arise. AIR 1964 All 300 (301) (Pt D) (Pr 9).

——S. 53-A—Partition deed not registered—Admissibility — Part of property, arrangement as to part of property, if can be regarded as transfer—Held on facts that the arrangement in respect of the house could not be regarded as a transfer within the meaning of S. 53-A or S. 54 of T. P. Act. See Registration Act (1908), S. 49 (1). AIR 1950 Assam 129 (DB).

——S. 53-A—Scope of—Sauda Chitti—Vendee put in possession of property—Effect—Held that the ownership in property had not passed from the vendor to the vendee by execution of Sauda Chitti. The transaction had not passed into the realm of transfer and was only a contract. If the vendee was in possession of the property in pursuance of the contract he was entitled to the rights conferred by S. 53-A. But that did not make him a transferee of the property. See Debt Laws—C. P. and Berar Relief of Indebtedness Act (14 of 1939), S. 15 (2). AIR 1957 Bom 236.

——S. 53-A—Agreement to sell accompanied by delivery of possession — If an agreement to sale does not create any interest in land, evidently there can be no transfer of land by a mere agreement :for sale of land —The Debt Adjustment Board cannot exercise jurisdiction under S. 24, B. A. D. R. Act to declare an agreement of sale accompanied by delivery of possession of property in anticipation of execution of a sale deed as a transfer of land—Held that under the guise of an application for adjustment of debt, the debtor was seeking to institute proceedings in the Debt Adjustment Court for obtaining possession of property contrary to the provisions of S. 53A of T. P. Act. See Debt Laws—Bombay Agricultural Debtors' Relief Act (28 of 1947), S. 24. AIR 1957 Bom 31.

——Ss. 53-A, 3 and 105—Applicability of S. 53-A to leases.

A lease is a transfer of immovable property within the meaning of S. 53A, T. P. Act. Merely because S. 105, T. P. Act defines a lease as a transfer of a right to enjoy immovable property it does not follow that a transfer of the benefit to arise out of land viz., the right to enjoy immovable property is not a transfer of interest in immovable property. 53 Bom L R 363 : ILR (1951) Bom 692 : AIR 1951 Bom 127 (128, 129, 130) (Prs 6, 10, (DB).

——Ss. 53-A and 6 — 'Contracts to transfer' — (C. P. Code (1908), S. 64).

Plaintiff's property under attachment for Government revenue — Before property could be put to sale arrears paid by defendant to Government and property released from attachment—Agreement to transfer property to defendant when property was under attachment is not void—S. 6 has no application as the interest transferred is in praesenti and not a spes successionis. ILR (1954) Hyd 822 : AIR 1955 Hyd 101 (103) (Pt E) (Pr 9) (DB).

——S. 53-A—Relinquishment—"In part performance of the contract."

Relinquishment is also a transfer, and there is no reason why the principle of part performance should not be applied to it. ILR (1952) Hyd 449 : AIR 1953 Hyd 114 (116) (Pt B) (Prs 14, 15) (DB).

——S. 53-A — Section presupposes existence of valid contract — All trustees not joining in executing conveyance — There is no valid contract — Doctrine of part performance being an equitable one, there can be no equity that can arise when the transaction itself contravenes the provision of law—(Trusts Act (1882), S. 48—Joint execution). AIR 1955 N U C (Mad) 3934 (DB).

——S. 53-A—Partition—If transfer within S. 53-A—A partition is really a process in and by which joint enjoyment is transformed into an enjoyment in severalty — A partition is, therefore, not a transfer within the meaning of S. 53A, T. P. Act. AIR 1951 Mad 213 (217, 218) (Pt B) (Pr 10) (DB).

——S. 53-A—Applicability.

The provision of S. 53-A is available only where there is a written contract of sale in favour of the person in possession and where he is ready and willing to perform his part of the contract. 1952 Nag L J 160 : ILR (1951) Nag 334 : AIR 1952 Nag 246 (248) (Pt D) (Pr 19).

——S. 53-A—Grant of relief under—Necessity of contract being specifically enforceable — Distinction between S. 53-A and S. 12, Specific Relief Act (1877) —Whether a contract is specifically enforceable or not is not a matter which must be taken into consideration for granting relief under S. 53-A, T. P. Act. AIR 1952 Nag 244 (245) (Pt A) (Pr 5).

——S. 53-A—Transfer — Where actually there is only an agreement to sell, such an agreement along with the possession does not amount to a transfer within the meaning of Art. 44 of Limitation Act though the person in possession may resist dispossession under S. 53-A, T. P. Act as that section does not create a new form of transfer. See Limitation Act (1908), Art. 44. AIR 1951 Nag 403.

——S. 53-A — Deed reproducing terms of previous oral agreement — Document takes the place of oral agreement. See Evidence Act (1872), S. 91. AIR 1951 Nag 285 (DB).

——S. 53-A — Applicability — Contract in writing signed by transferor from which terms necessary to constitute transfer can be ascertained, is necessary. AIR 1955 N U C (Orissa) 712.

——Ss. 53-A and 107 — Lease executed by lessor alone—If complete.

The words "the transfer has not been completed in the manner prescribed therefor by the law for the time being in force' are sufficient to cover a lease which has not been executed both by the lessor and the lessee. If a lease is executed by the lessor alone after amendment of S. 107 of the Transfer of Property Act then it is an instrument of transfer not having been completed in the manner prescribed therefor within the meaning of S. 53-A. 1960 B L J R 203 : 1960 Pat L R 174 : AIR 1960 Pat 354 (356) (Pt B) (Pr 10).

——S. 53-A — "Contract to transfer" — It includes contract to lease—No difference between contract to lease and agreeable to lease. AIR 1955 N U C (Sau) 4689.

5(A). Terms ascertainable with reasonable certainty.

——S. 53-A — Terms ascertainable with reasonable certainty—Section applies.

In order that S. 53-A of the Transfer of Property Act should come into play, it is quite enough if the essential terms of the contract are capable of ascertainment with reasonable certainty from the writings brought into existence by the parties concerned. ILR (1960) 2 All 71.

——S. 53-A—Contract to transfer—Proof—(Registration Act (1908), S. 49).

Suit for specific performance by person having a contract for sale in his favour—Property in possession of lessee from promisor in furtherance of the terms of an unregistered lease executed before contract for sale was made—Lessee performing his part under the contract and such performance acquiesced in by transferor— Plaintiff having knowledge of that fact even prior to date of suit agreement—Held, that lessees and his assignee were entitled to resist plaintiff's attempt to recover possession by ejecting them and rely for that purpose on the strength of the unregistered deed and also that the document was not inadmissible in evidence. (1953) 23 Com Cas 468 : AIR 1954 Trav-Co 10 (16, 17) (Pt C) (Pr 23) (DB).

6. Written agreement—Necessity of.

——S. 53-A—Applicability—Agreement to lease,

A formal lease is not necessary to attract the application of S. 53-A. All that is required is that an agreement in writing signed by the transferor can be gathered from the evidence. 1950 All L J 396 : 63 Mad L W 495 : 52 Bom L R 521 : 1950 S C R 75 : 1950 Raj L W 117 : 1950 S C J 317 : (1950) 2 Mad L J 344 : AIR 1950 S C 1 (5) (Pt D) (Pr 18).

——S. 53 A — In construing section, resort could be had to S. 65, Evidence Act — Existence and contents of the document could be established by secondary evidence—(Evidence Act (1872), S. 15).

One of the essential ingredients of S. 53-A is that the terms necessary to constitute the transfer should be ascertained with certainty. It is plain that the section lays stress on the terms of contract. If it is not possible to gather the terms of the contract from secondary evidence, the section cannot come into operation. AIR 1959 Andh-Pra 568 (571) (Pt B) (Prs 17, 18) (DB).

——S. 53-A — Written contract — Necessary condition.

The doctrine of part performance as obtaining in England is not available in India by way of defence to a suit for eviction except as provided in S. 53-A. The absence of a written contract would take the case out of the purview of S. 53-A. AIR 1956 Andh-Pra 209 (212) (Pt C) (Pr 18) (DB).

——S. 53-A—Essentials—Writing necessary.

The requirement of S. 53 A is that a person should contract to transfer immovable property by writing signed by him or on his behalf. ILR (1958) 9 Assam 50 : AIR 1959 Assam 60 (61) (Pt B) (Pr 9) (DB).

——S. 53 A—Contract must be in writing.

Ram Labhaya J. — The mere admission by the vendor before the Revenue authorities in mutation proceedings that the land had been sold to the vendee, even though in writing, cannot be regarded as a written contract between the parties. AIR 1950 Assam 107 (110) (Pt C) (Pr 19) (DB).

——S.53-A—Absence of written document—S. 53-A cannot be availed of. AIR 1955 NUC (Cal) 921 (DB).

——S. 53A—No written agreement—Section does not apply. ILR (1955) 2 Cal 214.

——S. 53-A — Written contract of sale of immovable property — Contract of final sale and not contract to sell requires registration—Contract of sale if unregistered can be regarded as contract to sell. (Obiter). See Registration Act (1908), S. 17. (1965) 6 Guj L R 502 : ILR (1965) Guj 490.

——S. 53-A — Existence of contract in writing is essential for applicability of S. 53-A. AIR 1955 NUC (Madh B) 5643 (DB).

——S. 53-A—"Writing signed by him"—Oral agreement of sale—Aid of S. 53-A cannot be taken. AIR 1955 NUC (Madh B) 3769.

——S. 53-A—Contract to be in writing and must show terms of transfer — Agreement to lease suppressed by plaintiff—Admission of oral evidence — (Evidence Act (1872), S. 65-A).

Section 53-A requires that the contract to transfer must be in writing, signed by the person or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty. But if the agreement to lease, the basis of the contract, happens to be suppressed by the plaintiff, the contents of the agreement and the terms nenessary to constitute the transfer and which have to be ascertained with reasonable certainty, can be obtained from the oral evidence of the witnesses. 69 Mad L W 697 : 1956 Mad W N 753 : (1956) 2 M L J 515 : AIR 1956 Mad 693 (694) (Pt A) (Pr 2).

——S. 53-A—"Signed by or on behalf of"—Transfer by father of joint family property under unregistered sale deed — Sale deed not signed by or on behalf of son—Vendee going into possession cannot invoke S. 53-A. AIR 1955 NUC (Mad) 3167.

——S. 53-A — Contract reduced to writing if protected.

When the terms of a contract or disposition of property are reduced to the form of a document, the

document takes the place of the oral contract or agreement. There is no doubt that such a document is a contract or agreement in writing and serves as a protection under S. 53-A of the T. P. Act. ILR (1950) Nag 799 : 1951 NLJ 81 : AIR 1951 Nag 285 (286, 287) (Pts A, B) (Prs 7, 9, 11) (DB).

——S. 53-A—Agreement in writing.

Where an agreement of transfer is not in writing, S. 53-A cannot be applied. **AIR 1958 Pat 133 (137) (Pt A) (Pr 8) (DB).**

——S. 53-A—Contract in writing and proof.

The doctrine of part performance as provided in S. 53-A of the Transfer of Property Act forms part of the substantive law. **AIR 1958 Pat 133 (138) (Pt B) (Pr 10) (DB).**

——S. 53-A — 'Writing signed by him or on his behalf'.

Before the provisions of S. 53-A, Transfer of Property Act can be invoked it must be shown that there was a writing in existence signed by the transferor or on his behalf. **ILR (1956) Punj 1279 : AIR 1956 Punj 181 (184) (Pt E) (Pr 15) (DB).**

——Ss. 53-A, 107, Para. 2 — Document of lease not signed by lessor—Document is admissible as evidence of part performance of agreement to grant lease under S. 53-A. (1955) 8 Sau L R 378.

7. Unregistered deed—Admissibility.

——S. 53-A — Unregistered agreement to lease — Admissibility in evidence—Agreement of lease containing present demise though unregistered is admissible as evidence of part performance. See Registration Act (1908), S. 49. **AIR 1950 SC 1.**

——S. 53 A — Compromise decree amounting to sale of certain suit plots — Decree not necessarily registrable and would be admissible in evidence. See Registration Act (1908), S. 17 (2) (vi). **1963 All W R (HC) 734.**

——S 53-A — Sale-deed of property worth less than Rs. 100—Deed not registered—Transferee in possession —Suit for possession by vendor—Unregistered deed, if contract in writing — Defendant has right to claim benefit of doctrine of part performance. AIR 1943 Bom 431, **Overruled. 59 Bom L R 303 : ILR (1958) Bom 556 : AIR 1957 Bom 138 (140) (Pt A) (Pr 6) (DB).**

——S. 53-A—Lease for 10 years—Deed unregistered and unilateral—Deed is hit by S. 107, T. P. Act and S. 49 read with S. 17 (1) (d), Registration Act — No leasehold rights can be claimed under such deed — Deed can, however, be relied on for purposes of S. 53A, T. P. Act. See T. P. Act (1882), S. 107. **AIR 1960 Cal 609 (DB).**

——S. 53-A—Unregistered Kobala—Admissibility to prove requisite contract to transfer or terms thereof —(Evidence Act (1872), S. 91).

There can be no doubt that an unregistered Kobala is invalid as a document of title. Being unregistered, it cannot pass title or be regarded as a valid deed of transfer in view of S. 12, Bengal Tenancy Act, and to the extent that it purports to effect transfer and confer title, it must be held to be invalid and of no effect whatsoever. For purposes of proving, however, the requisite contract in writing under S. 53-A, or the terms thereof, there appears to be no valid objection in law to its reception in evidence. **97 Cal L J 257 : 60 Cal W N 714 : AIR 1956 Cal 350 (352) (Pt C) (Pr 10) (DB).**

——S. 53-A—Unregistered lease deed — Admissibility — Admissible to prove nature of possession — Lessee entering into possession of land under such deed — Part-performance — Deed also admissible under S. 53-A of Transfer of Property Act (1882). See Registration Act (1908), S. 49. **AIR 1963 Him Pra 49.**

——S. 53-A—Sale of property of less than Rs. 100 by delivery of possession and unregistered document—Is complete by delivery of possession — S 53-A has no application. See Evidence Act (1872), S. 91. **AIR 1951 Hyd 42 (DB).**

——S. 53-A—"Notwithstanding that the contract .... not been registered" in S. 54 of Gwalior T. P. Act have the effect of expressly superseding the provisions of S. 41 of Gwalior Registration Act — Amendment in S. 49 of Indian Registration Act after introduction of S. 53-A was merely in reinforcement of S. 53-A, Transfer of Property Act. See Gwalior Transfer of Property Act (1945), S. 54. **AIR 1955 Madh Bha 49 (DB).**

——S. 53-A — Doctrine of part performance — Unregistered sale deed can be used to establish part performance — For the purpose of attracting the doctrine of part performance the only defect permissible is one of registration. **AIR 1965 Madh Pra 275 (279, 280) (Pt A) (Prs 15, 19) (DB).**

——S. 53-A, Proviso — Unregistered sale deed by mortgagor in favour of possessory mortgagee—Subsequent sale by mortgagor in favour of another who had notice of prior sale—Suit for redemption—Maintainability — Mortgagee can rely on part performance as against mortgagor and his transferee—The transferee having taken the sale with notice of prior sale could not avail of the benefit of last proviso to the section. **A I R 1965 Madh Pra 275 (283, 286) (Pt F) (Prs 32, 44) (DB).**

——Ss. 53-A and 54—Scope—Unregistered sale by A in favour of B in 1939 — Gift by B in favour of C in 1954 — Suit by C against A for possession on allegation of dispossession in 1954 — C being plaintiff cannot advance plea of part performance under S. 53-A, but can succeed only if he can prove oral sale accompanied by delivery of possession in favour of B. **1960 Jab L J 706 : 1960 M P C 526 : 1960 M P L J 673.**

——S. 53 A—Transfer of occupancy holding of value of Rs. 100 or more by unregistered deed accompanied by possession — Suit for possession by thekadar — If lies. See Tenancy Laws — C P. Tenancy Act (1 of 1920), S. 12. **AIR 1955 N U C (Nag) 5378 (DB).**

——S. 53-A — Unregistered deed of sale:— Possession delivered—Deed is admissible to prove part performance. **I L R 29 Pat 628 : A I R 1951 Pat 277 (283) (Pt C) (Pr 19) (DB).**

——S. 53-A — Registration Act (1908), S. 49 — Part performance not proof of factum of sale.

Even in a case where the Court comes to the conclusion that there has been part performance of a contract of sale it cannot use that finding as a proof of the factum of sale. **I L R (1953) Patiala 508 : AIR 1954 Pepsu 133 (135) (Pt C) (Pr 11) (DB).**

——Ss. 53-A and 54 — Sale of immovable property worth less than Rs. 100 —Unregistered document not admissible for proving sale — Proof by oral evidence of delivery of possession is permissible — Document admissible for proving part performance of contract of sale—Registration Act (1908), Ss. 17 and 49. **1960 Raj L W 473 : I L R (1960) 10 Raj 948.**

——S. 53-A — Mortgage with possession — Mortgagee retaining portion of mortgage security and surrendering rest to mortgagor in pursuance of arrangement between parties to extinguish mortgage—Subsequent deed of arrangement not registered — Suit by mortgagor to redeem: mortgage barred by doctrine of part performance. **A I R 1950 Trav-Co 81 (81, 82) (Pt A) (Pr 3) (DB).**

——S. 53-A—Proof — Unregistered document — Admissibility—(Registration Act (1908), S. 49).

The ineffectiveness of the document is a maiter of substantive law; but the provision relating to the inadmissibility of the document in evidence is a matter of procedural law. Under the existing law governing procedure in the State of Vindhya Pradesh there is no provision which makes the unregistered document inadmissible in evidence for purposes of proving part performance. **AIR 1955 Vind Pra 15 (16) (Pt D) (Pr 6).**

8. "Acts in furtherance of the contract".

■ —S. 53-A — "In part performance of the contract" — Pending redemption suit mortgagor executing agreement to sell mortgaged property to mortgagee—Suit dropped—No sale-deed executed—Mortgagee never in possession of mortgaged property — Section held had no application — Second suit for redemption held was not barred. **1949 F L J 398 : 1949 F L R 484 : 52 Bom L R 181 : (1950) 1 Mad L J 752 : 1950 Mad W N 767 : AIR 1950 F C 1 (7) (Pt D) (Pr 15).**

——S. 53-A — Act in furtherance of contract — Payment of money.

In many cases the only act open to the mortgagee or the vendee may be the payment of the price particularly if he is already in possession since before the contract. It may not be in every case that it is possible for the mortgagee or the vendee to make substantial alterations in the building. The payment of the money is made in furtherance of the contract and there is no reason why it should not be treated as an act in furtherance of the contract. View of Thadani C. J. in AIR 1950 Assam 129, Not followed. **1954 A M L J 65 : AIR 1954 Ajmer 70 (71) (Pt A) (Pr 7).**

——S. 53-A—Act in furtherance of contract.

Where the mortgagee gets a rent note, in respect of the house usufructuarily mortgaged to him, executed, it is in assertion of his rights in pursuance of the mortgage and the requirements of second clause of S. 53 A are satisfied. **1954 A M L J 65 : A I R 1954 Ajmer 70 (71) (Pt B) (Pr 9).**

——S. 53-A — Act done in furtherance of contract — Payment of consideration.

An act which can be regarded as having been done in furtherance of the contract must consist of something more than mere payment of the consideration. **A I R 1950 Assam 129 (131, 132) (Pt C) (Prs 10, 16) (DB).**

——S. 53-A—Act in furtherance of contract—Transferee not in possession — It is not necessary to consider whether any other such act has been done. AIR 1950 Assam 129 (131) (Pt D) (Pr 15) (DB).

——S. 53-A — Applicability — In furtherance of contract person entering into possession—Person willing to perform his part of contract—Person is entitled to defend his possession. AIR 1955 N U C (Bom) 5888.

——S. 53-A — Acts of part performance under the section.

To invoke the doctrine of part performance the transferee must take possession of the property and if he be already in possession and continues as such, he must in furtherance of the contract, do some act which must be such as to constitute an act of part performance. The acts of part performance, if they preceded the contract, cannot be evidence of part performance. It is essential, therefore, that if a transferee is already in possession and continues in possession he must have done some act in furtherance of the contract in order to constitute a part performance of the contract. **ILR (1954) Hyd 822 : AIR 1955 Hyd 101 (103) (Pt C) (Pr 7).**

——S. 53-A — Acts in furtherance of contract—What are—Acts introductory to or previous to contract.

It is well settled that the act of part performance must not be an act preparatory to the completion of the contract and that acts introductory to and previous to the agreement cannot be treated as acts of part performance. **Madh B L R 1955 Civ 468 : Madh B L J 1955 H C R 436 : A I R 1955 Madh B 93 (94) (Pt A) (Pr 2).**

——S. 53-A — 'In furtherance of the contract'. It is not correct to say that no payment of money can be an act in furtherance of the contract. See Gwalior Transfer of Property Act (1945). **A I R 1955 Madh B 49 (DB).**

——S. 53-A—Acts of part performance.

Section 53-A lays down that the transferee must show that in part performance of the contract some overt or rather express act has been done. **Madh B L R 1954 Civ 120 : Madh B L J 1954 H C R 828 : AIR 1954 Madh B 128 (129) (Pt C) (Pr 3).**

——S. 53-A—Acts of part performance.

A right to redeem is not capable of easy actual delivery. The interest which the mortgagor can transfer when the mortgage is usufructuary cannot be regarded as identical with the property and so in cases of sale of equity of redemption in a usufructuary mortgage if the mortgagee pleads part performance he must show some distinct overt act (besides his possession which he had as usufructuary mortgagee) in furtherance of the contract. **Madh B L R 1954 Civ 120 : Madh B L J 1954 H C R 828 : A I R 1954 Madh B 128 (129) (Pt D) (Pr 4).**

——S. 53-A — 'Has done some act in furtherance of contract' — Payment of money by vendee to vendor at his request towards expenses of sale deed which were to be borne by vendor — Payment of money can be an act in furtherance of the contract — The 'act envisaged' by the second clause of S. 53-A need not either precede or follow the agreement or the contract but should be in pursuance of the contract. A I R 1965 Madh Pra 275 (281, 282) (Pt B) (Prs 21, 25) (DB).

——S. 53-A — Part-performance—Agreement of sale signed by the Manager of the jont Hindu family — For discharging binding family for — Purchaser put into possession — "Contract signed by him or on his behalf" — Meaning of the expression — Purchaser if can invoke S. 53-A — Hindu law — Manager of joint Hindu family—Powers of.

The Manager of a joint Hindu family entered into an agreement to sell the family property for the purpose of discharging debts binding on the family. In pursuance of the agreement he put the purchaser in possession of the property, the Manager has got the right under the law to enter into such transaction not only on behalf of himself but on behalf of the members of the family. He is the person who answers the description of the "transferor" in the sense in which these words are used in S. 53-A of the Act. The plaintiff cannot plead that S. 53-A of the Act is not applicable, as the Manager has not signed the agreement on behalf of the other coparceners. Section 53-A of the Act is applicable to a transaction entered into by the Manager of a Hindu undivided family whereby he alienates joint family property for binding purposes and for legal necessity. **(1963) 1 M L J 234 : 76 Mad L W 291 : ILR (1963) Mad 722 : AIR 1963 Mad 310 (313, 314) (Pt B) (Prs 12, 13) (DB).**

——S. 53-A — Act of part performance under the section.

Where the document expressly stated that the demise fee of Rs. 125 had been recovered in respect of the document and there was oral evidence, which was accepted by the Courts below, that the first defendant told the plaintiff and his father that

money had already been paid under the document there was sufficient compliance with the requirements of S. 53 A and the payment of money can be treated as an act in furtherance of the contract. 1953 Mad W N 459 : (1953) 1 M L J 812: A I R 1953 Mad 925 (926) (Pt C) (Pr 5).

——S. 53-A — 'In part performance of contract' — **Mortgage giving right to foreclose—Possession delivered to mortgagee by act of parties.**

Where a mortgage gives the mortgagee only a right to foreclose and the mortgagor delivers possession of mortgaged property to mortgagee in satisfaction of his debt, the possession taken by the mortgagee is not in part performance of this contract for the simple reason that the contract, namely the mortgage did not give him the right to possession untill the happening of two events (1) default and (2) foreclosure, by which is meant foreclosure through a Court there being no other mode of foreclosure. AIR 1951 Nag 171 (174) (Pt D) (Pr 21).

——S. 53-A — **Acts of part performance—Delivery of possession — Transferee already in possession of property—Effect.**

Where a person in whose favour a document of sale is written is already in possession of the property, though as a tenant, or a licencee, or a mortgagee, or otherwise, under permission of the vendor, it is not necessary that the vendee should be dispossessed, and then re-put in possession for the applicability of S. 53-A. All that is necessary to show is that the nature of the possession was changed after the execution of the sale deed. This can be shown either by the document itself or from other evidence. 40 C W N 1176, Rel. on. **1959 Raj L W 305 : ILR (1958) 8 Raj 839.**

——S. 53-A — 'Act in furtherance of contract' — **What is.**

Where an alienee is already in possession of the property, a payment by him in part performance of contract of sale amounts to some act in furtherance of the contract. 1957 Raj L W 173 : I L R (1957) 7 Raj 101.

9. Possession of transferee.

——S. 53-A — **Possession of transferee — When required.**

Section 53-A does not say that the transferee should be in possession on the date when the transferor seeks to enforce her right against the property. The essential condition for invoking the doctrine is that she should have taken possession of the property in part performance of the contract and has done some act in furtherance of the contract. Where the transferee is admittedly put in possession, the fact that subsequently she lost possession cannot deprive her of her rights which she is entitled to under the section. 1956 Andh L T 725 : 1956 Andh W R 830 : ILR (1956) Andh Pra 1019 : A I R 1957 Andh Pra 854 (858) (Pt C) (Pr 21) (DB).

——S. 53-A — **Applicability — Plaintiff maintaining possession on strength of restraint orders — Sufficiency—Purposes of section.**

Held, that in the circumstances the plaintiffs' present possession could not be treated as strictly legal or at all relevant or sufficient for purposes of S. 53-A. Even if the suit be taken as a continuation of the previous suit, the same defect would remain; it would even be more pronounced as the plaintiffs were admittedly, not in possession at all on the date. **97 Cal L J 257 : 60 Cal W N 714 : A I R 1956 Cal 350 (352) (Pt D) (Prs 11, 12) (DB).**

——S. 53-A — **Acts of part performance—Mortgagee in possession purchasing property—Payment of consideration.**

If a mortgagee purchaser under an unregistered deed of sale has paid either the whole or part of the consideration, the same can be said to be in pursuance of the contract of the sale within the meaning of S. 53-A and he can claim the benefit of that section. 38 Mys L J 31 : ILR (1955) Mys 234 : AIR 1955 Mys 38 (40) (Pt A) (Pr 7).

——S. 53-A — Defendant already in possession — It must be established that he continued to remain in possession in part performance of contract—Finding that defendant is in possession is not enough. **A I R 1955 N U C (Orissa) 712.**

——S. 53-A—Certain compromise between defendant and other persons not registered—Court holding such compromise not binding on plaintiff — **Held**, possession of defendant under the compromise could not be held to be in part performance of the compromise, and provisions of S. 53-A could not be invoked. **I L R 42 Pat 763 : A I R 1963 Pat 62 (66) (Pt C) (Pr 5) (DB).**

——S. 53 A—Compromise — Registration — Compromise itself creating title requires registration—Defect not cured by rule of equitable estoppel or part performance. See Registration Act (1908), S. 17 (1) (b). **A I R 1961 Pat 79.**

——S. 53-A—Agreement to sell — Transferee already in possession as mortgagee — **Held**, that there was part performance of agreement. **1952 Raj L W 414 : I L R (1951) 1 Raj 918 : A I R 1952 Raj 141 (142) (Pr 2).**

10. "Transferor."

——S. 53-A—**'Transferor'—Who is—Tests — 'Signed on his behalf'—Interpretation.**

In determining as to who answers the description of 'the transferor' the first test that has to be applied in each case is whether the contract was binding on the person and could have been specifically enforced against him. The other test is whether if the transaction had been completed by a duly executed and registered deed of transfer, the transfer would have been binding on the person concerned. If the answer to both these questions is in the affirmative, then the person answers the description of 'the transferor' within the meaning of S. 53-A of the Act.

As the father, who had signed the contract of sale, had in law authority to enter into the contract on behalf of his minor sons, he being the karta of the family, it follows that he had signed it on their behalf also and the sons are debarred from instituting a suit for recovery of possession under S. 53-A. **63 Bom L R 602 : 1961 Nag L J 58 : I L R (1961) Bom 344 : A I R 1961 Bom 215 (216) (Pr 4) (DB).**

——S. 53-A — **Rights of transferor — Section 53-A sanctions enforcement by transferor of his contractual rights against transferee—Exercise of his rights is not dependent upon fulfilment of conditions mentioned in S. 53-A—Unregistered lease of premises for 5 years—Contract partly performed — Lessee bound to vacate possession on expiry of period.**

So far as the transferee is concerned, S. 53-A confers a right on him to the extent that it imposes a bar on the transferor. But this is only a right to protect his possession against any challenge to it by the latter contrary to the tenor of the contract or the instrument of transfer.

So far as the transferor is concerned, when the section says that the transferor shall be debarred from enforcing any right against the property other than a right expressly provided by the terms of the contract, by plain implication it sanctions the enforcement by the transferor of a right which has been so provided. And there is obvious justice in this, for if the transferor is to be held to his bargain with the transferee in respect of the property, it is only just

that he should be given liberty to enforce his contractual rights against the latter in respect of it. It may be said that this is not the conferment of a right but the saving of an existing right. But whether it is the one or the other, it secures the result of enabling the transferor to enforce his contractual rights against the transferee in respect of the property. 54 Cal W N 58 : I L R (1950) 2 Cal 443 : A I R 1950 Cal 23 (27, 28) (Pt A) (Prs 11, 14, 15, 18) (DB).

——S. 53-A—Transfer by guardian—Minor whether 'transferor'.

Where an agreement to transfer entered into by the guardian of minor is one which the guardian is competent to enter into so as to bind the minor and is one for the benefit of the minor, the minor is the 'transferor' in the sense in which the words are used in S. 53-A. A I R 1951 Nag 403 (405) (Pt C) (Pr 13).

——S. 53-A—Transferor—Meaning of—Minor.

If a minor is a party to a sale-deed, through his guardian, he is a transferor within the meaning of S. 53-A and therefore the statutory protection given to the alienee under S. 53-A is equally applicable against him. I L R (1950) Cut 107 : A I R 1950 Orissa 217 (218) (Pt A) (Pr 3) (DB).

11. "Any person claiming under him".

——S. 53-A — Contract to transfer by manager of joint Hindu family by writing signed by him—Transferee's right to avail of S. 53-A against other members.

The equitable doctrine of part performance embodied in S. 53-A is applicable only where a person having contracted to transfer property by 'writing signed by him or on his behalf' and put the vendee in possession thereof, wants to recover the property taking advantage of want of formality in the evidence. This section precludes a transferor from asserting his title in respect of property transferred by him when the conditions contemplated by the section are fulfilled. It is based on the rule of estoppel, and hence the disability attaches to a contracting party and not to any other person. It can be used only as a shield and not as a weapon of attack. That being so, it could not be applied against a member of a joint Hindu family who has not agreed to transfer the property by writing signed by him or on his behalf. (1959) 1 Andh W R 405 : I L R (1959) Andh Pra 547 : A I R 1959 Andh Pra 534 (535, 536) (Pt A) (Prs 6, 7) (DB).

——S. 53-A—'Person'—Word 'person' is comprehensive enough to include a joint family. (1959) 1 Andh W R 405 : I L R (1959) Andh Pra 547 : A I R 1959 Andh Pra 534 (535) (Pt C) (Pr 4) (DB).

——S. 53-A—Applicability—Usufructuary mortgage—Unregistered endorsement on mortgage by mortgagor relinquishing his interest in mortgaged land in favour of mortgagee for a sum below Rs. 100 — Registration —Mortgagee continuing in possession in part performance of contract can claim benefit of S. 53-A to resist suit for redemption — Registration Act (1908), S. 17. A I R 1952 Assam 28 (29, 30) (Prs 6, 8) (DB).

——S. 53-A—"Any person claiming under him".

A contract of sale validly entered into by the widow would be defeated at the hands of the reversioner if a literal constuction is placed upon the words "person claiming under the transferor" because under the Hindu law the estate passes to the reversioner on the death of the widow as the heir of the last male holder and not as the heir of the widow. But to place such a construction would be opposed to the principles of equity and inconsistent with the spirit of the Hindu law because under Hindu law the widow's right is in the nature of a right of property and her position of an owner and therefore if she had gone a step further and sold a part of the estate for a legal necessity the sale would have bound the reversioner and succession would open with regard to the undisposed of remainder of the estate only. 55 Bom L R 890 : I L R (1954) Bom 194 : A I R 1954 Bom 153 (155, 157, 158) (Prs 7, 11, 14, 15) (DB).

——S. 53-A — Registration Act (1908), S. 49 — W. B. Premises Tenancy Act (1956), S. 2 (1)—Statutory tenant who is — Person remaining in possession after the period fixed in a compromise decree where lease as contemplated by the agreement was neither executed nor registered, does not become a statutory tenant—S. 53-A of T. P. Act does not confer any right on such person—Such person after the period agreed to in the compromise is over, becomes a trespasser—Suit by such person for declaration of his right as a tenant and for permanent injunction not maintainable. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 2 (1). A I R 1964 Cal 235 (DB).

——S. 53 A— "Claiming under transferor" — Judgment-creditor attaching judgment-debtor's property in possession of purchaser under unregistered deed is included. AIR 1955 N U C (Madh-B) 3041.

——S. 53-A — Sale by father of ancestral land on his own behalf and not as manager — Sale-deed unregistered — Vendee securing possession:— Suit by sons after father's death— Purchaser's right to plead S. 53-A.

Held, that the plaintiffs could not be considered to be transferors in the deed within the meaning of S. 53-A of the Transfer of Property Act. Section 53-A would apply only if the document which is relied upon has been executed by the person concerned or by some one on his behalf. 1959 M P L J (Notes) 61.

——S. 53-A—'Any person claiming under him.'

Joint family property — Deed of transfer executed by father alone — S. 53-A would be operative as regards interest of father and not the interests of sons who were not parties to the transaction — Agreement was however not invalid though not binding on the sons. 35 Mys L J 266 : I L R (1957) Mys 108 : A I R 1959 Mys 173 (175, 176) (Pt B) (Prs 9, 11).

——S. 53-A — 'Any person claiming under him'—Reversioner—If claimed under Hindu widow.

The reversioners are bound by a contract of sale entered into by the Hindu widow for a legal necessity as persons claiming under her and the purchaser from her is entitled to rely upon the provisions of S. 53-A because the reversioners though they do not claim through the widow are her successors in title of the estate after the widow's death under the Hindu law in the sense that the extent of the estate which would devolve on them would always depend on the exercise by her of her undoubted right of disposal of the estate for a legal necessity. AIR 1943 Cal 344, Diss. from. (1959) 1 O J D 409 : I L R (1959) Cut 453 : AIR 1960 Orissa 170 (171) (Pr 7).

——S. 53-A — 'Any person claiming under him' — (Words and Phrases — 'Any person claiming under him'.)

The expression 'any person claiming under him' means only the person who has derived any interest from or through the transferor namely assignee or legal representative of the transferor. 1956 B L J R 249 : 1956 Pat L R 177 : A I R 1956 Pat 308 (311) (Pt D) (Pr 7). (DB).

——S. 53-A — Person claiming through the party—Collaterals of a Hindu widow.

The collaterals of a Hindu widow who desire to set aside a sale on her death as not binding on them, cannot be regarded as her representatives-in-interest. In fact their interests are adverse to those of heirs as

they deny her right to sell the property. Hence the doctrine of part performance cannot apply to the case. ILR (1953) Patiala 508 : A I R 1954 Pepsu 133 (135) (Pt B) (Pr 10) (DB).

12. Willingness of transferee.

——S. 53-A—Transferee guilty of laches.

Where the Courts found that the prior transferee was guilty of laches that he had abandoned the suit contract and that he was not anxious to perform his part of the contract the said finding disentitles him to any protection under S. 53-A. AIR 1914 Cal 21 Not Foll. AIR 1957 Andh Pra 58 (59, 60) (Prs 8, 9, 11).

——S 53-A—Requirements of — Contract for re-sale of property purchased by plaintiff on payment of sale consideration within fixed period—Defendant intimating his intention to take property and offering certain amount — No evidence to show that he was willing to pay entire sale consideration — Held, one of the essential elements of S. 53-A not complied with. ILR (1964) 16 Assam 493 : A I R 1966 Assam 46 (47, 48) (Prs 8, 9, 10) (DB).

——S. 53-A—Partial compliance by transferee is not sufficient — Complete performance or complete willingness is essential to claim the protection of the section. AIR 1955 N U C (Madh B) 5643 (DB).

——S. 53-A—Defendant relying on part performance — Defendant's readiness to perform remaining part of contract must be specifically pleaded and proved—The matter cannot be left to surmise or conjecture. A I R 1930 P C 57 (1) and AIR 1953 S C 235 and AIR 1956 S C 593, Rel on.—Civil P. C. (1908), O. 6, R. 4. AIR 1965 Madh Pra 275 (282, 283) (Pt D) (Pr 29) (DB).

——S. 53-A — Party relying on principle of part performance failing to perform his part nor showing willingness to do so — Doctrine of part performance cannot be availed by him. 1962 Mad W N 697 : 75 Mad L W 746.

——S. 53-A—Transferee's willingness to perform his part—Suit for possession by plaintiff—Plea of willingness even when not taken in written statement is no bar to applicability of S. 53-A — (Civil P. C. (1908), O. 6, R. 6 and O. 8, R. 1). 69 Mad L W 697: 1956 Mad W N 753 : (1956) 2 Mad L J 515 : A I R 1956 Mad 693 (694) (Pt B) (Pr 3).

——S. 53-A — Willingness of transferee to perform his part.

The condition as to willingness must subsist upto the date of hearing of the matter, i.e., even to the date of hearing of second appeal. 35 Mys L J 266 : ILR (1957) Mys 108 : AIR 1959 Mys 173 (175) (Pt D) (Pr 10).

——S. 53-A — Unwillingness to perform contract — False plea that certain obligation under contract has been discharged by transferee—Does indeed show an unwillingness on the part of transferee to abide strictly by the contract entered into between him and the transferor. A I R 1952 Nag 244 (245) (Pt B) (Pr 7).

——S. 53-A — Transferee not in possession by virtue of contract for sale — Transferee not willing to perform his part of contract — Section does not apply. AIR 1955 N U C (Orissa) 3977.

——S. 53-A — Defendant must have been willing to perform his part of contract to claim protection under the section. AIR 1955 N U C (Orissa) 712.

13. Available as defence only.

——S. 53-A—Section is used only as defence — Suit under O. 21, R. 63, C. P. Code is defensive — Objection of transferee under O. 21, R. 58, dismissed — Failure to file suit under O. 21, R. 63 — Effect of — (C. P. Code (1908), O. 21. Rr. 58 and 63)—(Evidence Act (1872), S. 115).

Section 53-A can be used only as a shield and not as a sword. A suit under O. 21, R 63, Civil P. C., is not an offensive proceeding, but is a proceeding essentially in the nature of defence and a proceeding in continuation of the objection under O. 21, R. 58, AIR 1952 Orissa 143, Dissented from, AIR 1939 Mad 456, (1939) 1 MLJ 802 (SB), Disting. 1955 AMLJ 70: AIR 1956 Ajmer 22 (23, 24) (Prs 2, 3).

——S. 53-A—Defendant—Meaning of.

The word 'defendant' means a person who pleads S. 53-A for defending his possession against the transferor. Hence a plaintiff can invoke the aid of S. 53-A. 1952 AMLJ 33 : AIR 1953 Ajmer 19 (21) (Pt C) (Pr 6).

——S. 53-A—Scope — Can be used in defence only—It is a shield and not a sword. AIR 1955 NUC (Cal) 844 (DB).

—S. 53-A—Who can claim benefit under section—Benami transfer.

The benefit of S 53-A can be availed of only by the transferee or persons claiming under him. In the case of a benami transfer the real transferee is entitled to claim the benefit of S. 53-A. ILR (1954) Hyd 822: AIR 1955 Hyd 101 (102) (Pt B) (Pr 5).

——S. 53-A—Applicability to Kutch — Section which gives right to a defendant to defend his possession by using an unregistered document against the vendor would not apply in Kutch as the Kutch law prohibited such use and rendered such document inoperative in a Court in Kutch—The section conflicts with S. 20 of Kutch Registration Act. See T. P. Act (1882), S. 1. AIR 1950 Kutch 64.

——S. 53-A— Plea under, is only available as a defence to protect possession. 1961 MPC 136 : 1961 Jab L J 221.

——S. 53-A—S. 53-A of the Transfer of Property Act does not entitle a person to sue; it only enables him to defend his rights to possession and if the plaintiff is out of possession he does not obtain any title or right to claim possession against his transferor by virtue of that section. 1960 MPLJ (Notes) 137.

——S. 53 A — Doctrine available only to defend possession.

The equity which the doctrine of part performance embodies in S. 53-A of the Transfer of Property Act is a passive equity available to a defendant to protect his possession. It confers no title on him and gives him no right to enforce it in an independent proceeding. 1960 MPLJ (Notes) 137.

——S. 53-A—Only a defendant and not a plaintiff can plead bar of section. AIR 1955 NUC (Manipur) 4551.

——S. 53-A—It is used as defence.

Section 53-A is ordinarily to be used as a defence and not as a weapon of attack. ILR (1955) Nag 833 : 1955 Nag L J 710 : AIR 1955 Nag 302 (304) (Pt C) (Pr 12) (FB).

——S. 53-A — Transferee suing under O. 21, R. 63 Civil P. C.—Transferee if can rely on section.

The section can never be availed of as founding a cause of action, and it cannot therefore, be urged that what is available to the transferee as a defence in a suit in ejectment by the transferee is available to him as a weapon of attack in an action which takes its rise from an invasion of transferee's rights under the contract. AIR 1952 Orissa 143 (144, 145, 146, 147, 149) (Prs 16, 17, 29, 30) (DB).

——S. 53-A — Defendant tenant—Right to defend possession — Burden of proof.

A defendant, in order to avail himself of the doctrine of part performance under S. 53-A, T. P. Act, must establish not only that there was a transfer, but also that there was delivery of possession in pursuance thereto. ILR (1950) Cut 143 : AIR 1952 Orissa 118 (119) (Pt A) (Pr 7) (DB).

——S. 53-A—Defendant not in possession.

When it is found that the defendant is not in possession of the suit land, there is no question of protecting his possession under S. 53-A. AIR 1955 Pat 126 (130) (Pt C) (Pr 10) (DB).

——S. 53-A— Rights existing before suit not affected by S. 52.

Held, that if B had been impleaded in C's suit for specific performance B could have been able to interpose the shield of S. 53-A. The fact that while standing in this position B took a lease from A could not make his position worse than it was. B having retained the possession of the property was entitled to rely on it in resisting the decree obtained by C. See T. P. Act (1882), S. 52. A I R 1951 Pat 613 (DB).

——S. 53-A—Suit for possession.

The doctrine of part performance only entitles a person in possession to invoke the doctrine as a shield to protect such possession and it does not enable a person who has lost possession to sue for recovery of it. ILR (1953) Patiala 319 : AIR 1954 Pepsu 42 (43) (Pt A) (Pr 2).

14. Plea of part performance.

● ——S. 53-A—Contract of lease—Part performance—Plea of — Though plea of part performance has been recognised by S. 27-A of Specific Relief Act as an active equity, it has no application however to contracts executed before 1-4-1930, though in such cases defence under S. 53-A, T. P. Act is available to the person. See Specific Relief Act (1877), S. 27-A. AIR 1950 S C 1.

● ——S. 53-A — Plea under. A I R 1944 Bom 105 Reversed.

Where in an action to eject a lessee on the ground that he had no registered deed of lease executed in his favour the defendant lessee takes the plea of part performance and proves that there was a written and signed contract of lease in his favour and that he had taken possession in accordance with the terms of the agreement and had built a factory on the land and also that he was paying rent to the plaintiffs in accordance with that agreement the defendant is entitled to retain possession in spite of an absence of the registered deed : AIR 1944 Bom 105, Reversed. 1950 All L J 396 : 63 Mad L W 495 : 52 Bom L R 521: (1950) 2 Mad L J 344 : 1950 SCR 453; 1950 Raj L W 117 : 1950 SCJ 317 : AIR 1950 S C 1 (5, 6) (Pt E) (Prs 18, 19).

——S. 53-A— Claim suit — Plea of part performance by plaintiff.

A suit under O. 21, R. 63, Civil P. C., should be deemed to be a defensive proceeding in continuation of the proceeding under O. 21, R. 58 of the Code of Civil Procedure. Hence, the plaintiff in such a suit can invoke the aid of S. 53-A, Transfer of Property Act. 1953 A M L J 109: AIR 1953 Ajmer 47 (48) (Pt B) (Pr 5).

——S. 53-A—Suit for possession of agricultural lands and mesne profit — Plea by defendant that he has been in possession under unregistered contract of sale not barred — Defence is available under S. 53-A —Plea not denied by S. 47, Hyderabad Tenancy and Agricultural Lands Act (21 of 1950). (1962) 2 Andh W R 462 : AIR 1963 Andh Pra 232 (234, 236) (Pt B) (Prs 11, 15).

●——S. 53-A—Plea of part performance — Plaintiff claiming title to property on basis of sale — Alternative case in appeal that he was in possession of property and had valuable rights under S. 53-A—No foundation alleged for such case in pleadings—Court declined to investigate the question. See Civil P. C. (1908), O. 6, R. 2. (1965) 2 Ker L R 315 : 1965 Ker L T 1208 : 1965 Ker L J 1081 : AIR 1966 Ker 96 (FB).

——S. 53-A—Plea of part performance—When to be taken.

The defence of the doctrine of part performance involves questions of fact and the defendant claiming the benefit of the doctrine must raise the plea in his written statement. Madh B L R 1955 Civ 469 : Madh B L J 1955 H C R 436 : AIR 1955 Madh B 93 (95) (Pt C) (Pr 4).

——S. 53-A—Plea of part performance—Essentials.

Section 53-A, T. P. Act requires that the party relying on the section has either fulfilled or is prepared to fulfil his part of the bargain. This fact must be pleaded by him. AIR 1947 Nag 188, Rel. on. 1961 Jab L J 427 : 1962 M P L J (Notes) 65 : ILR (1962) Madh Pra 443 : AIR 1961 Madh Pra 237 (238) (Pt B) (Pr 6).

——S. 53-A — Concurrent findings of fact — Defendant claiming protection under S. 53-A — Where the story put forward by defendant about unregistered document of lease and both the Courts have found it acceptable on evidence, High Court could not go behind it in second appeal. See Civil P. C. (1908), S. 100. AIR 1953 Mad 925.

——S. 53-A—Plea of part performance—Limitation.

Section does not say that a suit for specific performance should be within time on the date on which defence of part performance is set up — Moreover, when a person wants to make use of provision of law only to protect his possession and that too in defence, no question of limitation arises. AIR 1951 Nag 403 (405) (Pt B) (Pr 12).

——S. 53-A—Suit for declaration of title and recovery of possession — Doctrine of part performance not pleaded by defendant in written statement — Cannot be pleaded for the first time in second appeal. See Civil P. C. (1908), S. 100. AIR 1964 Pat 288 (DB).

——S. 53-A — Plea of part performance cannot be raised for first time in second appeal—Civil P. C. (1908), S. 100. AIR 1951 Pat 502 and AIR 1941 Cal 33, Rel. on. 66 Pun L R 1201 : AIR 1965 Punj 117 (118) (Pt B) (Pr 4).

15. "Only if contract or transfer is invalid for want of completion in the prescribed manner."

——S. 53-A — Contract infringing provisions of Cantonments Act, 1924 — (Cantonments Act (1924), Ss. 114 (1), 115).

Under S. 53-A, the proposed transferee can protect his possession by invoking S. 53-A but cannot assert any active title on the strength of that possession. But S. 53-A necessarily implies that the contract contemplated by the section is a valid contract. If the contract is otherwise valid. S. 53-A protects the possession of the transferee, notwithstanding the fact that the contract is not registered. But, if the contract is invalid under any other law, that section obviously cannot validate that which the law says is invalid. In this view, a contract between the plaintiff and the Cantonment, infringing the provisions of S. 114 (1) read with S. 115 of the Cantonments Act, 1924, cannot be set up in order to sustain the plea of part performance by the plaintiff. 1957 Andh L T 211 : (1957) 1 Andh W R 135 : AIR 1957 Andh Pra 859 (860, 861) (Pt B) (Prs 10, 12, 15).

——S. 53-A — Defendant's right to specific performance barred—Can still claim protection of S. 53-A.

ILR (1958) Bom 556 : 59 Bom L R 303 : AIR 1957 Bom 138 (140) (Pt B) (Pr 8) (DB).

——S. 53-A—Kabuliyat executed by lessee alone—Lease for five years — Validity — Applicability of S. 53-A—Held, that S. 53-A would be of no application because the term of the tenancy, sought to be fixed under the Kabuliyat, expired long ago. See Transfer of Property Act (1882), S. 105. (1959) 63 Cal W N 535.

——S. 53-A — Non-compliance with Ss. 67 and 68, Calcutta Municipal Act (1923)—Agreement is invalid —Part performance of contract is of no use—Ratification of such contract. See Municipalities — Calcutta Municipal Act (3 of 1923), S. 68 (5). AIR 1956 Cal 18.

——S. 53-A—"By the law for the time being in force" —Section protects transfers which are invalid due to its not being completed in accordance with law in force at the time — Transfer invalid for some other reason, is not protected. AIR 1955 N U C (Madh B) 3769.

——S. 53-A—Mortgage — Invalid usufructuary mortgage—Doctrine of part performance can be applied. AIR 1955 N U C (Madh-B) 203.

——S. 53-A—Valid contract to transfer—(Trusts Act (1882), S. 48—Joint execution).

The equitable doctrine of part performance enunciated in S. 53-A of the Transfer of Property Act, presupposes the existence of a valid contract to transfer immoveable property, that is, by persons who are competent to contract and entitled to the property. The two out of three trustees are not alone and solely entitled to the trust properties and though they are competent to contract they are not entitled to these properties and therefore there is no valid contract, the foundation upon which the doctrine of part performance could be rested. If the law requires that all trustees must join in the execution of the conveyance and that two alone joining the execution would not conform to law, by entering into a contract in writing and delivering possession, they could not be in a better position. The initial requirement of the existence of such a contract is wanting in such a case. **(1954) 2 M L J 486 : ILR (1954) Mad 537 (DB).**

——S. 53-A—Applicability—Sale of agricultural land in contravention of S. 47 (1) of Hyderabad Tenancy and Agricultural Lands Act (21 of 1950) — Claim for possession by person claiming proprietary rights — Purchaser cannot plead part performance. (1963) 2 Mys L J 146.

——Ss. 53-A and 107 — Contract of lease — Requirement of completed contract—To attract applicability of S. 53-A contract need not have been signed both by lessor and lessee — Formal lease not necessary — Document invalid as lease, being without signature of lessee — Facts and circumstances revealing that there was completed contract of lease—Document is sufficient to attract S. 53-A. ILR 44 Pat 596 : 1965 BLJR 243 : AIR 1965 Pat 467 (468) (Pt A) (Prs 4, 5) (DB).

——S. 53-A—Contract must be enforceable contract.

'Contract' contemplated by S. 53-A is a contract which is enforceable at law. In other words, the contract in part performance of which possession has been taken is a contract in respect of which right to sue for specific performance of the same still subsisted. 1956 BLJR 249 : 1956 Pat L R 177 : AIR 1956 Pat 308 (311) (Pt C) (Pr 6) (DB).

——S. 53-A—Doctrine of part performance not available to seller-defendant claiming back purchase price. ILR (1961) 2 Punj 293 : 63 Punj L R 362 : AIR 1961 Punj 378 (383) (Pt B) (Pr 20) (DB).

——S. 53-A — Applicability — Transfer by Municipal Committee — Mode of — No written instrument — Permission to occupy certain premises on rent—Held created only licence and not lease — Held, that in any case the defect in agreement (non-compliance with S 47 (2) of Punjab Municipal Act, 1911) could not be cured by application of the doctrine of part performance. See Municipalities—Punjab Municipal Act (3 of 1911), S. 47 (2). AIR 1959 Punj 220.

——S. 53-A—Principle of part performance—Applicability.

The principle of part performance only applies where there has been a transfer made and not where the statute bars a transfer. ILR (1956) Punj 1279 : AIR 1956 Punj 181 (185) (Pt F) (Pr 16) (DB).

——S. 53-A—Transferor debarred from enforcing his right to property.

The doctrine of part performance as embodied in S. 53-A, T. P. Act is available only to the defendant to protect his possession. I L R (1955) Punj 1242 : AIR 1955 Punj 252 (253) (Pt A) (Pr 3).

——S. 53-A — Transfer of holding without sanction is void — Status of transferee —Transfer is not saved by S. 53-A, T. P. Act, See Tenancy Laws — Bundi State Tenancy Act, S. 20. ILR (1959) 9 Raj 271.

——S. 53-A — Fraudulent transfer — Contemplated fraud effected—Recovery of property by a person in pari delicto—Practice.

A person cannot, on the one hand make a fraudulent transfer to defeat somebody else's interests, and then sue to recover the property from the transferee after the fraud has materialised. But if the fraud is only intended, and has not yet materialised to any extent, then the Court should not refuse assistance.

In many cases, the fraud contemplated at the time of the transaction is not fully effected. As long as it is effected to a substantial extent then the person in pari delicto cannot recover. AIR 1952 Vindh Pra 69 (73, 74) (Pt D) (Pr 21).

16. Proviso.

——S. 53-A, Proviso — Plea of part performance against transferee for consideration — Cannot be allowed to be raised in second appeal for the first time—(Civil Procedure Code (1908), Ss. 100-101). AIR 1964 All 300 (301) (Pt E) (Pr 9).

——S. 53-A, Proviso — Suit for possession by vendee of property — Defendant in possession claiming protection under S. 53-A — Unless defendant proves all the elements necessary to sustain claim under main part of section, proviso will not apply and plaintiff will succeed, even if he has notice of prior agreement with defendant or defendant's part performance of the agreement. ILR (1961) 1 Cal 30 : AIR 1960 Cal 541 (542) (Pr 5) (DB).

——S. 53-A, Proviso — Transferee for consideration without notice—Not affected by rights under section. Madh B L R 1955 Civ 468 : Madh B L J 1955 H C R 436 : AIR 1955 Madh B 93 (95) (Pt B) (Pr 5).

——S. 53-A, Proviso — Under S. 53-A it is for the person claiming benefit of the doctrine of part performance to show that the transferee who otherwise has a legal title, had notice of the contract or of the part performance thereof. Madh BLR 1954 Civ 120 : Madh B L J 1954 HCR 828 : AIR 1954 Madh B 128 (129) (Pt B) (Pr 3).

——S. 53-A, Proviso — Scope of protection afforded under—Notice—What amounts to—Manner of getting notice — Not material. (1953) 1 M L J 812 : 1953 Mad W N 459 : AIR 1953 Mad 925 (926) (Pt B) (Pr 3).

——S. 53-A, Proviso 3 — Notice of contract or of possession—Essentials—Mere casual conversation not sufficient.

Held on facts that the trial Court was right in holding that the plaintiff had not knowledge either of the prior agreement in favour of the appellant or of his having been in possession of the disputed house site by virtue of the same and therefore could not seek the help of S. 53-A. (1959) 1 Orissa J D 362.

——S. 53-A, Proviso—Burden of proof.

Where in a suit for possession by a transferee of a house the defendant who is in possession of the house as a tenant resists the suit on the ground that the character of his possession has changed from that of a tenant to that of a vendee in part performance of a contract the defendant must prove that the plaintiff who is a subsequent transferee had notice of the contract or of the part performance thereof. 17 Cut L T 62 : AIR 1952 Orissa 163 (164) (Pt A) (Pr 3) (DB).

——S. 53-A, Proviso — Word 'title' in S. 3, Expln. II does not connote completed title—Equitable interest under S. 53-A, attracts provisions of S. 3, Expln. II—Eviction suit — Tenant in possession claiming part performance — Purchaser claiming advantage of S. 53-A, proviso — Burden of proving that he had no notice of 'contract' 'to transfer' lies on him and not on tenant. See T. P. Act (1882), S. 3, Expln. II. AIR 1965 Pat 467 (DB).

——S. 53-A, Proviso S. 3, Expln. II — Notice of contract—Burden of proof—Possession if notice of title of person in possession.

Where the defendant was in actual possession by virtue of the alleged transfer, and the question of actual notice of the contract was not pleaded by either party, the plaintiff must be deemed to have notice of the defendant's title. 1960 Pat L R 174 : 1960 B L J R 203 : AIR 1960 Pat 354 (358) (Pt C) (Pr 12).

17. This section and S. 27, Specific Relief Act.

●——S. 53-A—Scope—Specific Relief Act, S. 27-A—Distinction. While S 53-A gave only a shield S. 27-A, Specific Relief Act (1877) placed a weapon of attack in the hands of the lessee. He cannot only defend his possession but also file a suit claiming specific performance and thus obtain a good title. The substantial object of both S. 53-A of T. P. Act and S. 27-A, Specific Relief Act is to protect rights acquired under written contracts which have been partly performed. It can hardly be said therefore that the intention of the Legislature was to make a written contract of lease of a compulsorily registrable character enforceable proprio vigore. See Specific Relief Act (1877), S. 27-A. AIR 1960 Andh Pra 83 (FB).

——S. 53-A — Distinction between S. 53-A and S. 27A, Specific Relief Act — (Specific Relief Act (1877), S. 27-A).

While Section 53-A of the Transfer of Property Act would include a case of lease also, it stops short after providing an effective defence to a claim for possession where the defendant in possession has not taken care to clothe his title in legal form. On the other hand, Section 27-A of the Specific Relief Act arms such a person with a weapon of offence also, in the sense that such a person may claim specific performance of the contract which, for want of registration, may not afford a basis for a claim of title. ILR (1952) Nag 604 : 1952 Nag L J 142 : AIR 1952 Nag 115 (117) (Pt C) (Pr 8) (DB).

18. Transfers before the Act.

——S. 53-A—Transfer before Act—Suit brought after coming into force of Act—Applicability of Section.

Where the transfer takes place before the T. P. Act comes into force but suit is brought after the Act has come into force, the provisions of S. 53-A apply. And a plaintiff claiming under the transferee can successfully defend his possession against the person who is claiming under the transferor. 1952 A M L J 33 : AIR 1953 Ajmer 19 (20) (Pt B) (Pr 5).

——S. 53-A—Doctrine of part performance applies to cases before T. P. Act was made applicable. AIR 1955 NUC (Sau) 4689.

19. Law in States to which Act did not apply.

——S. 53-A—Act of part performance. Section 53-A creates no real right; it does not operate to create a form of transfer of property which is exempt from registration; the right conferred by that section is a right available only to the dependant to protect possession. In other words it merely affords a defence which a party may raise in answer to a suit brought against him by the transferor. See Gwalior Transfer of Property Act (1945), S. 54. AIR 1955 Madh B 49 (DB).

——S. 53-A — Indore Transfer of Property Act (4 of (1940), Ss. 53-A and 2—Doctrine of part performance — Applicability — Transfer by sale of agricultural holding effected without Subha's sanction — S. 53-A does not apply — (Tenancy Laws — Indore Land Revenue and Tenancy Act 1931), S. 45 (1). AIR 1955 NUC (Madh B) 5945 (DB).

——S. 53-A—Laws in Gwalior State.

So far as the Gwalior State territory of Madhya Bharat State is concerned the principle embodied in S. 53-A had been applied even before the Transfer of Property Act was made applicable in Gwalior State. Madh B L R 1954 Civ. 120 : Madh B L J 1954 H C B 828 : AIR 1954 Madh B 128 (129) (Pt A) (Pr 2).

——S. 53-A—Unregistered sale deed — Admissibility to prove part performance — Deed is receivable in evidence of part performance because though the provisions of T. P. Act have not been extended to Manipur State the principles of that Act including doctrine of part performance have been followed and given effect to in that State even before 1947 — (Registration Act (1908), Ss. 17, 49). AIR 1957 Manipur 32 (33) (Pt A) (Prs 6, 7).

——S. 53-A—Law in the State of Vindhya Pradesh.

Section 53-A was based on the equitable principles which were applicable to the whole of India including the Provinces where the Transfer of Property Act was not in force. The defence of part performance was, therefore, open in State of Vindhya Pradesh even before the application of Transfer of Property Act exactly in the same manner as it is open now. AIR 1955 Vind Pra 15 (16) (Pt C) (Pr 4).

SECTION 54

SYNOPSIS

(T. P. Act (1882), S. 54).

1. Scope and applicability.
2. Tranfer under a decree or order of a Court.
3. Muhamadan Law.
4. "Transfer of ownership".
5. Sale or gift.
6. Sale or hire purchase agreement.
7. Sale or lease.
8. Sale or release.

9. Sale or mortgage.
See Notes to S. 58, T. P. Act.
10. Sale or exchange.
11. "In exchange for a price".
12. "Paid or promised"
13. Non-payment of price.
14. Inadequacy of consideration.
15. Sale of property of value of rupees one hundred or more.
16. "Or other intangible thing".
17. Execution of sale deed.
18. Sale of property of less than one hundred rupees in value.
19. Delivery of property.
20. Contract for sale.
    (A) Does not create any interest.
    (B) Whether can be specifically enforced.
    (C) Rights of subsequent transferee with notice.
    (D) Contract for sale accompanied by delivery of possession or payment of earnest money.
21. Construction of document.
22. When liable to be pre-empted.

1. Scope and applicability.

——S. 54—Champertous transaction—Sale of share in house—Transaction is not per se invalid—The Court shall refuse to give effect to such transaction if it appears that it is unconscionable or unfair or is otherwise opposed to public policy—(In this case it was held that the transaction was neither opposed to public policy nor was it unconscionable, extortionate and unfair). See Contract Act (1872), S. 23. AIR 1955 All 393 (DB).

——S. 54—Owner, though not in possession can still sell property—Distinction between 'title to property' and 'possession over property' pointed out. **AIR 1955 NUC (All) 2767 (DB).**

——Ss. 54, 55 and 8 —Agreement of sale of specified extent of land—Provision for adjustment of price in case extent found to be more or less — Execution of sale deed — Land given found deficient—Compensation — Construction of sale deed—Agreement of sale if can be looked into. See T. P. Act (4 of 1882), S. 54. **AIR 1958 Andh Pra 278.**

——Ss. 54 and 53-A — Registration Act, S. 49 (1) — Partition deed not registered — Admissibility — The deed can be admitted in evidence for the purpose of proving the factum of partition though not for proving that a particular property was allotted to the share of the plaintiff. Arrangement as to a house that if plaintiff paid 2/3 value to the defendant the house would be allotted to plaintiff cannot be regarded as transfer. See Registration Act (16 of 1908), S. 49(1). **AIR 1950 Assam 129 (DB).**

——S. 54—Transfer and sale—Distinction.

The word "transfer" is a larger word and the word "sale" is a specific word. A transfer may be by means of lease, by means of a mortgage or by means of a sale or in any other mode. Where it is clear from the document transferring a business that the transferor has not retained any control over the affairs of the business after the transfer, the transfer amounts to a sale. **AIR 1963 Bom 110 (114) (Pt C) (Pr 10).**

——S. 54—Transfer—What is.

Transfer of possession of agricultural land under an agreement of sale is not a permanent alienation or transfer of land as contemplated by Hyderabad Tenancy Act. The word 'transfer' occurring in Ss. 47 and 78-A and other allied provisions is used in a restricted sense given to it in S. 54 of the Transfer of Property Act. See Tenancy Laws—Hyderabad Tenancy and Agricultural Lands Act (21 of 1950), S. 2 (1) (a). **(1962) 64 Bom L R 560 : 1962 Nag L J 686 ; I L R (1962) Bom 641.**

——S. 54—Hindu Law — Surrender by widow—Surrender can be challenged under S. 53 as a transfer to defraud the creditors. See Transfer of Property Act (1882), S. 53. **AIR 1965 Mad 337.**

——S. 54—Conveyance—French civil law — Bilateral document of sale under French Law — Essentials — Deposit of document with Notaire by both parties makes document effective. **I L R (1964) 2 Mad 471.**

——S. 54—Sale—Agreement to reconvey — Sale and lease back—Transaction does not affect assignment of right of reconveyance — Madras Indebted Agriculturists (Repayment of Debts) Act (1 of 1955), S. 7—Does not prevent third party from obtaining assignment. See Transfer of Property Act (1882), S. 3. **AIR 1962 Mad 378.**

——S. 54 — Sale of intangible property — Licence coupled with grant — Permission to plant trees — Registration — (Registration Act (1908), S. 17 (1) (b) (Easements Act (1882), S. 52.)

Where A permits B to plant mango trees on his land and allows access to B to gather the fruit of the trees, the transaction is neither a sale of an intangible property nor a licence coupled with a grant, but is a mere licence which is not required by law to be granted under a registered instrument. **1953 Nag L J 663 : I L R (1954) Nag 172 : A I R 1952 Nag 321 (322) (Pr 5).**

——S. 54, Cl. (2)—Interest of partner in partnership is not immovable property — Sale of such interest does not come within Cl. (2) of section — General Clauses Act (1897), S. 3 (25).

The interest of a partner in a partnership is an "intangible thing" but is not "immovable property" within the meaning given to it by the Central General Clauses Act. It is movable property and its sale does not come within Cl. (2) of S. 54 as that section has no application to the sale of movable property. **1950 Nag L J 157 : I L R (1950) Nag 355 : A I R 1950 Nag 89 (90) (Pt A) (Prs 5, 6).**

——Ss. 54 and 105—Transfer of holding amounts to sale only when transferee obtains absolute title, annihilating transferor's interest. See Tenancy Laws—Patna State Tenancy Act (1 of 1944), S. 106. **AIR 1965 Orissa 121.**

——S. 54—Orissa Tenancy Act, S. 31 (1) (as amended in 1938) — S. 31 (1) overrides S. 54, Transfer of Property Act. See Tenancy Laws — Orissa Tenancy Act (2 of 1913 as amended in 1938), S. 31 (1). **AIR 1951 Orissa 11 (DB).**

——S. 54—Scope—Allotment of shares on partition—Not conveyance. See Transfer of Property Act (1882), S. 5. **AIR 1957 Pat 570 (DB).**

——S. 54—Who can be called a "purchaser", indicated — (Sale of Goods Act (1930), S. 4). See Provincial Insolvency Act (1920), S. 53. **A I R 1955 Pat 458 (DB).**

——S. 54—Meaning of word "transfer" in S. 41 of Administration of Evacuee Property Act (1950) — Term used in generic sense precluding narrowness and technicality attached to it under S. 54, Transfer of Property Act. **I L R (1965) 1 Punj 619.**

——S. 54—Execution of sale—Deed but not registered —Constituted transfer within S. 40 of Administration of Evacuee Property Act — The term transfer is used in generic sense precluding narrowness and technicality attached to it under S. 54, Transfer of Property

trary to the provisions of S. 54, T. P. Act. If there was an intention to transfer the ownership to the transferee one cannot call the transfer sham and bogus. See Civil P. C. (1908), S. 100. **AIR 1964 Guj 174.**

——S. 54 — Registered deed—Non-payment of price — Sale-deed if operates as transfer—Burden of proof.

It is the intention of the parties which has to be looked into to decide whether the sale-deed operated as a transfer of interest from the vendor to the vendee on the date of its execution. If this was the intention, then it does not matter whether the whole of the consideration or part of it remained unpaid. Further, where a registered deed of sale purporting to operate as a conveyance on the face of it exists, the burden of proving that it was not so intended is on the party who asserts this fact. **1960 M P L J 1326 : 1961 Jab L J 138 : ILR (1960) Madh Pra 614 : AIR 1961 Madh Pra 176 (178) (Pt A) (Pr 9) (DB).**

——S. 54 — Registration in certain circumstances may convey title to vendee—(Registration Act (1908), S. 17.)

It cannot be laid down as an invariable rule that mere registration of an instrument, without reference to other circumstances, operates to transfer the property; but certainly where the other circumstances and the recital in the sale-deed go in favour of the transfer, then the registration of the instrument would convey the title in the property to the vendee. **1959 M P C 632 : 1959 M P L J 1078 : 1960 Jab L J 1004.**

——S. 54 — Non-payment of consideration in a sale — Court has to take into consideration surrounding circumstances in deciding whether parties intended that title would pass independent of question of consideration. See Evidence Act (1872), S. 92. **AIR 1964 Orissa 239.**

——S. 54 — Sale-deed executed and registered but consideration not paid — Vendor in possession and document also in custody of vendor—Vendee, whether acquires right under the deed.

Held, on facts that B has not acquired any title in the suit property by virtue of the sale-deed made in his favour by A. When a vendor sells his property on account of some pressing necessities there cannot be any reason as to why he would allow his title to pass immediately to the vendee without receiving any consideration and then he would await to receive the same at any time in future at the sweet-will of the vendee. It is seldom the intention of the parties to allow title to pass without the actual receipt of the consideration money. **ILR (1964) Cut 381.**

——S. 54 — Sale deed — Recital as to passing of consideration—Title, when passes.

If there is a clear conveyance that the executant conveys title in favour of the vendee from the date of the execution of the document and the recital regarding consideration comes later independently of the clause regarding title, then the title passes independent of the question of consideration. **(1960) 2 O J D 136 : AIR 1961 Orissa 19 (21) (Pt C) (Pr 6).**

——S. 54—Sale of immovable property — Title when passes—Intention of parties.

On the sale of an immovable property the decision as to whether title passed on the date of execution of the sale-deed or else whether the intention of the parties was that it should pass only when the entire consideration money was paid depends on the intention of the parties which should primarily be gathered from the recitals in the document; where the recitals are indecisive or ambiguous the surrounding circumstances and the conduct of the parties may be legitimately looked into: A I R 1947 Pat 1; ILR (1957) Cut 380, Rel. on.

Held, on the construction of the sale deed that the recitals in the document clearly showed that the title passed on the date of execution of the document and that payment of full consideration was not a condition precedent to the passing of title. **(1959) 1 Orissa J D 1.**

——S. 54 — Sale — Title when passes — Intention of parties — Consideration not paid—Effect—Evidence of intention, when sale-deed is ambiguous.

Where the question arises whether title passes on the registration of the document of sale or whether passing of the title depends upon the passing of consideration, the primary criterion is the recitals in the document. The terms of the contract as to the passing of title will be proved from the document alone if the terms are clear and unambiguous. If the terms are indecisive and ambiguous, then only the Courts will take into consideration other extraneous circumstances. The custody of the document is a very strong piece of circumstance to throw light in the matter. Where the sale deed was ambiguous on the point of passing of the title, the sale-deed was in the custody of the vendor, and some days after the execution of sale-deed, the vendor executed another deed of cancellation on the ground that the consideration for the sale-deed had not been paid and executed another sale-deed in favour of another person, it is clear that the intention of the parties to the first sale-deed was that the vendee would not get title on the basis of the sale-deed unless the consideration was paid. **ILR (1957) Cut 380 : 23 Cut L T 374 : A I R 1957 Orissa 243 (244, 245) (Prs 3, 4, 5. 9) (DB).**

——S. 54—Deed—Construction—Execution of document by guardian on behalf of minor—Mother one of executants—Body of—Document making it clear that property belonged to minor son — No indication that mother had any interest in document — Mother held acted as guardian — Kobala found for legal necessity —Minor's interest held had been conveyed. AIR 1955 NUC (Orissa) 988.

——S. 54—Deed—Passing of consideration, if condition precedent to transfer of title.

Where a sale deed expressly states that from the date of its execution the vendee shall be entitled to all the rights in the property sold and that the entire consideration money also passed on that day, but this portion of the recital in the deed is incorrect, from this circumstance alone it cannot be inferred that the intention of the parties was that passing of the consideration was a condition precedent to the transfer of the title. **I L R (1953) Cut 531 : 19 Cut L T 402 : A I R 1954 Orissa 23 (24 25) (Pt B) (Pr 5) (DB).**

——S. 54—Sale—Execution of sale-deed—Title, when passes — Passing of consideration — Intention of parties.

When a sale-deed is executed and registered there is a prima facie completion of transfer of title to the vendee. The mere non-payment of consideration will not arrest the passing of the title. But whether the vendor really intended, to transfer ownership by mere execution and registration, or contracted to do so only after receipt of consideration as a condition precedent, would depend upon the terms of the contract between the parties. If there is a stipulation in the sale-deed itself that title to and ownership of the property would vest in vendee after payment of the purchase money the reasonable inference would be that until the condition is fulfilled there is no effective transfer of ownership. In such cases intention is not to transfer ownership unless consideration is paid. The only evidence that the Court will look into is that afforded by what the parties have said and evidence aliunde is not admissible to prove their intention if the language employed is unambiguous.

But, if the recital is clear that the receipt of consideration and the transfer of title should be simultaneous, or that the sale is made in exchange for the price and the vendee is made the owner and put in possession after realization of the entire consideration the only inference should be that one is dependent on the other. If the recital about the receipt of consideration is proved to be incorrect, a latent ambiguity arises and if the circumstances show that the consideration was not, in fact, paid it would follow that the intention of the parties was not to effect a transfer of ownership by the mere execution or registration of the document. I L R (1953) Cut 343: A I R 1953 Orissa 315 (323 to 325) (Pt F) (Prs 42, 45) (DB).

——S. 54—'Sale' — Part payment of purchase-money — Title passes to purchaser on execution and registration of sale-deed — Vendee can claim possession and mesne profits. AIR 1931 Pat 236, Rel. on. A I R 1965 Pat 29 (30) (Pt A) (Prs 2, 3).

——S. 54—Sale when complete—Intention of parties.

Held, that it was manifest from the recitals in the deed and from the facts that the intention of the parties was that title should pass on the payment of the consideration money which was to be paid at the time of the passing of the registration receipt.

(2) As no consideration had been paid either to the vendor A or to her creditors no title had passed to B under the deed. 1953 B L J R 147 : AIR 1953 Pat 330 (333) (Pt A) (Pr 8).

——S. 54—Sale deed — Question whether title passes on execution and registration of deed or on payment of consideration depends upon intention of parties to be gathered from deed. A I R 1952 Pat 263 (264) (Pt A) (Prs 6, 7, 8) (DB).

——S. 54—Non-payment of price.

Title would be deemed to have passed to the purchaser, unless there was an intention on the part of the parties to the contract that title would not pass until the entire consideration money had in fact been paid.

The circumstances of non-delivery of the original document of sale and non-delivery of possession are not of much importance for the purpose of determining what was the intention of the parties in a case where the suit has been filed only nine days after the sale. A I R 1951 Pat 454 (456, 457) (Prs 8, 10).

——S. 54—Registered sale deed—Recital of payment of full consideration and delivery of possession — Non-payment of price — Possession and deed remaining with vendor—Title if passes to vendee.

Held that the inference was irresistible that the intention of the parties was that title would not pass unless consideration money was paid. As the consideration was never paid title in the property remained with the vendor. AIR 1950 Pat 288 (289) (Pr 5) (DB).

——S. 54—'Sale'—Non-payment of consideration and non-delivery of possession—Effect of.

The fact that the price was not paid at the time of registration is of no consequence. In the absence of a clear intention common to both the parties to a sale that the ownership should not pass until the consideration has been actually paid and the deed of sale registered, the accomplishment of this condition is not essential to the completion of sale. Mere non-delivery of possession or stipulation to deliver possession at a later period does not prevent the sale from being complete. 59 P L R 310 : AIR 1957 Punj 238 (241) (Pt D) (Pr 11) (DB).

5. Sale or gift.

——Ss. 54, 122— Consideration and motive — Where the motive behind the deed of gift was an unequivocal intention on the part of the transferor to give to the transferee a title which would act as a safeguard against any claim for the pre-emption in respect of the other property intended to be sold, the transaction for that reason cannot be called a sale. See T. P. Act (1882), S. 122. AIR 1952 All 149 (DB).

●——S. 54—Oral transfer by way of gift of immoveable property of over 100 rupees in value cannot be made by Muslim husband to wife in lieu of dower which also exceeds Rs. 100/-. Such a transaction is neither a gift nor a combination of gifts which can be made orally. It is a sale which can be effected by means of a registered instrument only. See Muhammadan Law. AIR 1951 All 86 (FB).

——S. 54—Joint family — Dravida school — Father Manager — Alienation — Powers of — Sale deeds in respect of joint family land and house in favour of concubine — False recital of cash consideration — Real consideration being past cohabitation — Documents are not sales but gifts — Such gifts being beyond competence of father, were aslo invalid and not binding on family — Effect of subsequent partition. See Hindu Law—Mitakshara. AIR 1963 Andh Pra 177 (DB).

——Ss. 54, 122 — Sale and gift — Subsequent affirmation — Other members can affirm the sale of joint family property by the manager. They cannot affirm the deed of gift by the manager—Distinction between sale and gift stated. See Hindu Law — Sale and gift. AIR 1957 Bom 280 (DB).

——Ss. 54, 123, 129 — Hyderabad T. P. Act, Ss. 54, 110—Transfer of immovable property in lieu of dower—Sale or gift — Muhammadan Law—Marriage —Dower.)

Held on facts that as the house was being given in lieu of Mehr the transaction was a simple gift and not a transfer made in consideration of the relinquishment of the Mehar by the proposed bride. The transaction being unilateral act was a pure gift and not a sale and was saved by S. 110, Hyderabad T. P. Act which is similar to S. 129, T. P. Act. ILR (1952) Hyd 7 : AIR 1952 Hyd 3 (5) (Pt A) (Pr 9) (DB).

——Ss. 54 and 122—Deed of transfer—Consideration paid—Nature of deed.

Whatever might be the original motive behind a deed, if it purports to be a deed of transfer and consideration has been paid for it must be treated as an effective deed of transfer and cannot be regarded as a deed of gift. 1954 B L J R 82: AIR 1954 Pat 280 (283) (Pt C) (Pr 10) (DB).

——Ss. 54 and 122—Transaction whether gift or sale.

Where out of regard for the donees and their father, the donor gets the land mutated in favour of the donees who in return maintain him and look after him, such a transaction cannot be described to be a sale. ILR (1959) Punj 626 : AIR 1959 Punj 117 (118) (Pt A) (Pr 4) (DB).

——S. 54 — Sale or gift. Vendors were a Christian mission — In order to help christians serving them property worth Rs. 8000, was alleged to be sold for Rs. 190—No evidence that any money was received from the alleged transferees as price but he had only to pay some subscription — Held the transaction was a gift and not a sale. See Punjab Pre-emption Act (1 of 1913), S. 4. AIR 1954 Punj 116.

6. Sale or hire purchase agreement.

——S. 54—Sale or hire purchase agreement — Principles to determine—(Deed— Construction.)

In determining the question as to the nature of a transaction the Court should not be led away merely by the ostensible appearance given to it by the words used by the parties, but should make an attempt to

go behind the phraseology for the purpose of ascertaining the real intention of the parties.

In its endeavour to do it, the Court should dissect the transaction, scrutinise its legal implications and bear in mind the legal consequences that would ensue from it.

In order to arrive at a conclusion, the transaction has got to be looked at as a whole.

Thus, for example, where it is apparent that as a result of a hire-purchase agreement, the transferee has eventually to pay the entire purchase price, it may be a circumstance indicating that the transaction was meant to be a sale. On the other hand, if the transferee is given a right to terminate the agreement, that may be an important circumstance indicating that the transaction was intended to be a hire purchase agreement. That again, however may not be a conclusive test, as the right to terminate the transaction might itself have been put into the agreement for the purpose of giving it the appearance of a hire-purchase agreement. 1953 All W R (H C) 590 : 1953 All L J 656 : AIR 1954 All 195 (196) (Pt A) (Pr 10).

——S. 54 —Deed —Construction — Sale or Hire purchase agreement — Principles to determine. See Transfer of Property Act (1882), S. 54. AIR 1954 All 195.

7. Sale or lease.

——Ss. 54 and 105 — Sale and lease — Distinction—Sale is transfer of entire ownership — Lease creates limited right of enjoyment of land—Rest of incidents of ownership called reversion in legal terminology still continue to vest in owner—Plots disposed of by Governor-General in Council by grant of leases for 99 years—Provision for renewal of leases for period of 999 years—Held that there was no disposal in the sense of a conveyance out and out. (1962) 64 Bom L R 311 : ILR (1963) Bom 10 (DB).

8. Sale or release.

——S. 54 — Sale and relinquishment — Distinction. See T. P. Act (1882), S. 5. AIR 1954 Bom 95 (DB).

9. Sale or mortgage.

See Notes to S. 58, T. P. Act.

10. Sale or exchange.

——Ss. 54, 118 — Sale or exchange— Deed of agreement between A and B — A agreeing to purchase B's property for certain amount and B agreeing to purchase A's property for same amount — Each party to execute sale deed in favour of other at future date — Nobody to get any money from another but parties to adjust themselves — Held, it was agreement for execution of two documents of sale, each to be executed by one in favour of other, and not for executing a deed of exchange—A obtaining possession of B's property in terms of agreement — Held, there was no failure of consideration and B was entitled to sue A for specific performance of contract of sale. 65 Cal W N 661 : I L R (1961) 1 Cal 619 : AIR 1961 Cal 193 (194) (Pt A) (Pr 5).

——Ss. 54 and 55 — Exchange of tarwad immovable property for convenience of enjoyment is invalid—Word "sale" in S. 25 — Meaning—Right of alienee—Alienee before being ousted entitled to get back his property. See Travancore Nayar Act (II of 1600 M.E.), S. 25. 1963 Ker L J 395.

——Ss. 54 and 118—Sale and exchange—Distinction.

A 'sale' should always be for a price but in the case of 'exchange' the transfer of the ownership of one thing is not for any price paid or promised but for transfer of another thing in return. If in a case a transfer of ownership of an immovable property is exchanged for money, then the transaction cannot be an exchange but a sale. It being so unless the property of both parties are simultaneously transferred in favour of each other the title to the property cannot pass in favour of the one when the other party does not execute any such document in favour of the other. Exchange can be effected either by one document or by different documents. The consideration for the one document executed in pursuance of an agreement for exchange is the execution of a document by the other party.

When one of the parties has failed to execute the deed in pursuance of the agreement, the mere fact of exchange of possession cannot be sufficient to complete the passing of title in favour of each other, especially when properties to be exchanged are each worth more than Rs. 100. I L R (1953) Cut 706 : 21 C L T 409 : AIR 1954 Orissa 105 (106, 107) (Prs 4, 5).

——Ss. 54 and 118—Sale or exchange.

Held that the circumstances in which the two deeds were executed clearly showed that the object of A in entering into the transaction with B was to sell the land to B without his being exposed to a suit for pre-emption. Hence the transaction was in substance a sale and not an exchange. AIR 1919 Lah 127, Foll. AIR 1944 Pesh 15 Diss. from. A I R 1954 Punj 115 (116) (Pt B) (Pr 8).

11. "In exchange for a price."

——S. 54 — Champertous transaction — Sale of property — Disparity in consideration — Circumstances to be weighed. See Contract Act (1872), S. 23. A I R 1955 All 393 (DB).

——S. 54—Price—Meaning—Includes debts.

Per Bhargava J. — The use of the word "price" instead of "money" in S 54 signifies that the word is wide enough to include any amount which can be definitely ascertained and worked out in terms of money, such as outstanding debts. The dower due to a Muslim wife is a debt—It has been so regarded even under the Mahommedan law; consequently if the amount of dower is ascertained and the transfer is made in lieu thereof the transfer would be for a price. Ghulam Abbas v. Mt. Razia Begum. 1951 All W R (HC) 39 : 1950 All L J 917 : I L R (1952) 1 All 477 : AIR 1951 All 86 (89, 90) (Pt B) (Pr 20) (FB).

——S. 54—Sale in exchange for labour and expenses of redemption suit — Sale if pre-emptible — Agra Pre-emption Act (11 of 1922), S. 4 (10).

Held, on facts that the transaction was not a sale at any rate a pre-emptible sale. 1950 All L J 467 : I L R (1953) 1 All 265 : AIR 1950 All 632 (634, 638) (Pt A) (Prs 2, 10) (DB).

——S. 54 — Consideration partly in cash and partly something else which cannot be expressed in terms of money the whole takes the character of the latter part. See Contract Act (1872), S. 2 (d). AIR 1950 All 632 (DB).

——S. 54—Sale—Property mortgaged to hilt—Equity of redemption worth nothing—No evidence to show that that the property was worth more than the mortgage amount—Absence of additional consideration in respect of equity of redemption — Does not render sale as one not supported by consideration. (1958) 2 Andh W R 301.

——S. 54—Deed—Construction—Importance should be given to consideration statements in document. AIR 1955 N U C (Assam) 4220.

——S. 54—In exchange for a price custodian granting lease of evacuee property to petitioner — Petitioner agreed to purchase all raw material, finished goods and other ascertained goods lying on the demised premises the value of which was to be ascertained by expert valuers. The possession was given to the

petitioner under the agreement — Held under the agreement the property in the goods lying on the premises passed to the petitioner and the mere postponement of the payment of the price or even the postponement of the ascertainment of the price did not affect the position See Administration of Evacuee Property Act (1950), S. 10. **A I R 1954 Bom 518 (DB).**

——S. 54—Sale of property — Consideration when is to be paid — Ordinarily it is to be simultaneous with and of the time when the conveyance is executed by the vendor — The parties may deviate from the ordinary rule. See Specific Relief Act (1877), S. 12. **AIR 1955 Cal 101 (DB).**

——S. 54 — Sale-deed—Consideration—Sale deed in order to satisfy the loan dues of the plaintiff — The sale deed cannot be deemed to be without considerations. See Contract Act (1872), S. 25. **A I R 1955 N U C (Manipur) 4336.**

——S. 54—In exchange for price — 'Price', meaning of — It does not include 'promise not to contest suit.' **ILR (1959) Cut 250: AIR 1960 Orissa 16 (18) (Pr 11) (DB).**

——S. 54 — Contract Act, Ss. 64, 65, 73, 74—Earnest money — Forfeiture when can be incurred stated. **A I R 1955 Nag 109, Dissented from.** See Contract Act (1872), S. 64. **AIR 1959 Pat 176.**

12. "Paid or promised".

——S. 54—Sale—Consideration for—Proof.

When once execution is proved, recitals of payment of consideration are prima facie proof of it against the executant or persons claiming under him. **A I R 1962 Andh Pra 94 (97) (Pt B) (Pr 36) (DB).**

——S. 54 — Earnest money or part payment of price makes the conclusion inevitable that the amount was intended to be earnest money and not part payment of price. **61 Bom L R 1339 : (1959) 37 I T R 359 : ILR (1960) Bom 36 : A I R 1960 Bom 224 (224) (Pt B) (Pr 2) (DB).**

——S. 54—Sale—Non-payment of price—Effect.

The mere fact that a sale deed recites the payment of consideration which is not true cannot render the document invalid. To support a sale it is not necessary that the whole of the price should be paid. The price may be paid or promised wholly or in part. If according to the tenor of the document, the consideration was not actually paid, but the document shows that there was an intention to pay, then in that case the document is not rendered invalid on account of the non-payment of the consideration. If, on the other hand, the intention was not to pay any consideration, then the document is of no effect. **53 Bom L R 861 : A I R 1952 Bom 56 (56, 57) (Pr 1) (DB).**

——S. 54—Debt Laws — Mysore Agriculturists Relief Act (18 of 1928), S. 3 — A sold property to B — Part of price paid — Payment for balance promised—Suit by A for recovery of balance held to be suit for recovery of money due on contract — Hence suit fell under S. 3 (ii). See Debt Laws — Mysore Agriculturists Relief Act (18 of 1928), S. 3. **(1962) 40 Mys L J 675.**

——S. 54 — Failure of sale—Purchase price paid in advance—Forfeiture.

Law does not permit the seller to forfeit payments made by the buyer by way of an advance. Part payment of the purchase price cannot be forfeited for the reason that it is not a guarantee for the performance of the contract and, therefore, what is forfeitable is what has been given by way of earnest. **63 Punj L R 362 : ILR (1961) 2 Punj 293 : AIR 1961 Punj 378 (383) (Pt C) (Pr 21) (DB).**

——S. 54—Sale.

A sale is nonetheless a sale whether the price be paid down or the price be promised to be paid. **23 Comp Cas 246 : A I R 1953 Trav-Co 161 (163) (Pt B) (Pr 9) (DB).**

13. Non-payment of price.

——S. 54—Non-payment of price.

A sale may be complete even though the full price has not been paid. **1950 All L J 467 : I L R (1953) 1 All 265 : AIR 1950 All 632 (634) (Pt B) (Pr 2) (DB).**

——S. 54 — Validity of sale — Consideration — Non-payment of — Effect — If the document shows that there was an intention to pay then the document is not rendered invalid on account of non-payment of the consideration — If the intention was not to pay the consideration then the document is of no effect. See Deed—Consideration. **AIR 1952 Bom 56 (DB).**

——S. 54 — Payment of price not made condition precedent for passing title — Non-payment of price — Seller cannot set aside conveyance. **1959 M P C 632 : 1959 M P L J 1078 : 1960 Jab L J 1004.**

——Ss. 54 and 55 — Possession delivered to vendee—Consideration not paid — Vendor is entitled to consideration and interest till its payment — (Contract Act (1872), S. 73) — (Civil P. C. (1908), S. 34). **A I R 1957 Mad 630 (630) (Pt C) (Pr 3).**

——Ss 54, 55 — Consideration for sale agreed to be Rs. 2,000/- — Sale supported by consideration only to the extent of Rs. 1,000/- —Seller has charge over property for that amount. **(1963) 1 Mys L J 592.**

——S. 54—Widow — Alienation — Part of consideration not paid — Sale is not invalid on that ground — Validity of sale is to be determined from the point of view of legal necessity. See Hindu Law. **A I R 1955 N U C (Pat) 4576 (DB).**

●——S. 54—Deed—Consideration—Plea of want of —Locus standi to raise.

A plea of want of consideration for a deed, is not available to a person who is an utter stranger to the deed which must stand good between the parties thereto. Chandi Avira v. Thommen Varkey, **1951 K L T 7 : I L R (1951) T C 209 : A I R 1951 T C 109 (114, 115) (Pt D) (Pr 16) (FB).**

14. Inadequacy of consideration.

——S. 54 — Inadequacy of consideration — Would not of itself affect the title of the vendee. See Contract Act (1872), S. 25, Expl. 2 **AIR 1954 Pat 280 (DB).**

15. Sale of property of value of rupees one hundred or more.

●——S. 54 — Income-tax Act, S. 12B — "Sale, exchange or transfer of a capital asset effected after the 31st day of March 1946 and before the 1st day of April 1948" — Transfer of factory, plant, machinery, furniture, stocks, and goodwill — Held, title to immovable property and items permanently embedded in earth could not pass till conveyance was executed and registered — Stocks were exempt from definition of capital asset—Title to furniture passed by delivery —Title to goodwill could not pass till whole business was transferred. ILR (1963) Andh Pra 702, **Reversed.** See Income-tax Act (1922), S. 12B. **(1965) 2 I T J 164 : (1965) 57 I T R 185 : (1965) 2 S C J 283 : (1965) 2 M L J (SC) 9 : (1965) 2 Audh W R (SC) 9 : (1965) 2 S C R 567 : AIR 1966 S C 115.**

■——S. 54 — Sale of right to catch fish in a lake — Registration — Oral sale — Effect.

A sale of a profit a prendre (a right to catch fish in a lake) which is immovable property of the value of more than hundred rupees requires writing and registration under S. 54, T. P. Act. An oral sale in such a

case does not pass any title or interest in the vendee. Ananda Behara v. State of Orissa, 22 Cut L T 101 : 69 Mad L W 872 : (1955) 2 S C R 919 : 1956 S C J 96 : (1956) 1 M L J (SC) 69 : 1956 S C C 70 : I L R (1956) Cut 425 : A I R 1956 S C 17 (24) (Pt B) (Pr 11).

——S. 54 — Sale deed executed and registered on 15.9.1959 — Transaction taking place on 4.8.1959— Sale consideration Rs. 1,500 also passed on latter date — Sale can only be made by means of written and registered instrument — Therefore sale actually took place on 15.9.1959 and not on 4.8.1959. 1965 All W R (HC) 491 : 1965 All L J 852 : ILR (1965) 2 All 683.

——S. 54 — Oral sale of immovable property of value of more than Rs. 100 — Sale is ineffective. AIR 1964 All 300 (301) (Pt B) (Pr 6).

——S. 54 — 'Transferee' — Who is — Purchaser of immovable property valued at more than Rs. 100 under oral agreement — Not a "transferee." See T. P. Act (1882), S. 51. AIR 1964 All 300.

——Ss. 54, 53-A, 58 and 105 — Doctrine of part performance — Applicability — Principles while applicable to sale and leases do not however apply to mortgage — Sale not complete—Transferee put in possession — Transferee can resist eviction by vendor under S. 33-A. See T. P. Act (1882), S. 53-A. AIR 1963 Andh Pra 239.

[Reversed in AIR 1963 Andh Pra 489.]

——S. 54—Sale or transfer of ownership of property worth rupees more than Rs. 100/ cannot be effected except by registered instrument—Oral sale cannot be recognised as valid and cannot be allowed to be proved. AIR 1960 Andh Pra 397 (398) (Pt C) (Pr 7).

——S. 54 — Agreement for the purchase of building — Assessee taking possession of building after adjusting consideration money to seller's account — Assessee does not acquire the ownership till execution of sale deed — Assessee cannot claim depreciation on the value of building unless he has become the owner of it in the year for which depreciation is claimed. See Income-tax Act (1922), S. 10 (2) (vi). AIR 1965 Assam 20 (DB).

● ——S. 54, Paras. 2 and 3 — Immovable property of value above rupees hundred—Sale of, can be effected only by registered instrument — Sale by delivery of property of no avail. Illikkal Devaswom v. Pottokkatt Narayanan. (1965) 2 Ker L R 315 : 1965 Ker L T 1208 : 1966 Ker L J 1081 : AIR 1966 Ker 96 (97) (Pt A) (Prs 5, 6) (FB).

——S. 54—Sale in former princely State—Essentials.

The Transfer of Property Act contains provisions of two kinds — substantive and procedural. Provisions relating to registration and delivery of possession contained in S. 54, T. P. Act are procedural matters and not substantive requisites of sale. Therefore in the former Gwalior State where the Transfer of Property Act was not applicable, the sale was complete when the vendor transferred the ownership and accepted the price. 1960 Jab L J 222 : 1960 M P C 441 : 1960 M P L J 879: AIR 1960 Madh Pra 237 (238) (Pt A) (Pr 8).

——S. 54 — Conveyances perfected by registration — They could not be placed in same category as agreements to avoid for want of part of consideration. 1959 M P C 632 : 1959 M P L J 1078 : 1960 Jab L J 1004.

——S. 54 — Contract Act, S. 38 — Agreement to execute conveyance — Agreement would not be fully performed until the vendor has assisted in its registration. See Contract Act (1872), S. 38. AIR 1960 Mad 83 (DB).

——Ss. 54, 53A — Madras Agriculturists' Relief Act, S. 9-A (10) (ii) (b) — Applicability and scope — Unregistered assignment of usufructuary mortgage — Transfer not valid then deed being not registered — An instrument of mortgagage of immovable property is itself an interest in immovable property and can be transferred by only registered instrument — Benefit of section not available — Section 53-A, T. P. Act will not apply—C. M. A. No. 502 of 1951 (Mad), Reversed. See Debt Laws — Madras Agriculturists' Relief Act (4 of 1938), S. 9A (10) (ii) (b). AIR 1958 Mad 576 (DB).

——S. 54 — Registration Act, S. 77 — Refusal of registration — Separate suit for specific performance is maintainable where for any reason it becomes impossible to obtain registration after resort to provisions under the Registration Act — Maintainability — (Specific Relief Act (1877), S. 21). See Registration Act (1908), S. 77. AIR 1957 Mad 78 (DB).

——S. 54 — Contract of sale — Decree for specific performance — Title passes with execution and registration of sale deed and does not flow from decree — Decision in AIR 1955 Cal 267 must be confined to question of possession only — (1881) ILR 5 Bom 554, Not foll. (Civil P. C. (1908), S. 47, O. 21, R. 32). (1965) 2 Mys L J 692 : AIR 1966 Mys 299 (301, 304) (Pt B) (Prs 5, 10).

——S. 54—Sale or agreement for sale—Non-registration—(Registration Act (1908), S. 49).

Held, that the cumulative effect of all the evidence together with the allegations in the plaint that an absolute sale of the land had been made by defendants 1 to 5 in favour of the plaintiff led to the conclusion that the transaction could not be anything other than a sale. 37 Mys L J 261 : ILR (1958) Mys 746 : AIR 1959 Mys 194 (197) (Pt B) (Prs 12, 13).

——S. 54—Unregistered agreement of sale — Specific performance can be granted to the vendee—Registration Act does not come in the way in view of S. 49 of that Act though the document requires registration. See Specific Relief Act (1877), S. 27. AIR 1955 N U C (Mys) 949.

——Ss. 54, 60—Right to redeem—Extinguishment by act of parties — Transfer of mortgaged property exceeding Rs. 100 to mortgagee — Formalities of law of writing and registration necessary. Mere delivery of possession under oral agreement is not enough. AIR 1951 Nag 171 (173) (Pt B) (Pr 11).

——S. 54 — Sale deed registered — Sale takes effect from the date of the execution of the deed and not from the date of registration. See Registration Act (1908), S. 47. AIR 1958 Pat 312 (DB).

——Ss. 54, 48—Sale—When complete — Registration—Effect.

A sale is complete when a sale deed is executed by the vendor and the vendor has no right in law to rescind or revoke the sale, registration or no registration. After a sale is completed by execution of a deed, registration comes as a matter of course and is not dependent upon the volition of the vendor. It can be brought about compulsorily in the event of refusal by the vendor to assent to the registration. AIR 1929 Pat 117. Rel. on. 1957 B L J R 745 : AIR 1958 Pat 193 (195, 196) (Pt A) (Prs 7, 8).

——Ss. 54, 53-A—Doctrine of part performance—Applicability—No written evidence of oral sale — Doctrine not applicable to transaction. See T. P. Act (1882), S. 53-A. AIR 1962 Punj 475.

——S. 54—Applicability—Lahore municipality—Registered sale deed necessary to pass title.

Section 54 requires that the transfer of ownership by way of 'sale', in the case of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument. Thus, title to the house, the sale price of which was

agreed to be Rs. 58,000, cannot pass by an oral sale or mere admission when the statute requires the execution of a deed and there is no scope for importing the equitable doctrine of British law. 63 Punj L R 362 : ILR (1961) 2 Punj 293 : AIR 1961 Punj 378 (380, 381) (Pt A) (Prs 10, 12, 14) (DB).

——S. 54—Registration Act (1908), S. 49 — Unregistered sale deed — Admission of factum of sale by opposite party in deposition in suit — Opposite party cannot challenge the fact of sale notwithstanding the circumstance that the sale deed being unregistered is inadmissible in evidence. See Registration Act (1908), S. 49. AIR 1961 Raj 18.

——S. 54—Sale of property—Registered deed—Patta under not obtained—Effect—Title of vendee is complete. See (Alwar) Hidayatnama Sareshte Nazool (1882), Cl. 5. 1959 Raj L W 283.

16. "Or other intangible thing."

——S. 54—Sale of right of redemption.

Ram Labhaya J.—The mortgagor's right to redeem, where property is in the possession of the mortgagee, is intangible property and its sale, even where the value of the property is less than Rs. 100, can be effected only by a registered instrument and not by delivery of possession.

Thadani C. J. contra.— Sale of property by the mortgagor which he had given in an usufructuary mortgage is a sale of tangible property and can be effected in favour of the mortgagee in the case of property of the value of less than Rs. 100 by delivery of possession, if the change in the character of possession can be fairly regarded as delivery of possession. AIR 1950 Assam 107 (110, 113) (Pt A) (Prs 18, 35, 36) (DB).

——S. 54—Intangible right in immovable property—Right of patta—Possession and patta—Distinction—(Evidence Act (1872), S. 110).

Patta and possession are two different rights and exist independent of each other. Right of patta like any other right is alienable; but there should be a valid contract with the pattadar for the same. Being an intangible right in the immovable property, it can be alienated only under a registered sale deed in accordance with the provisions of S. 54. ILR (1956) Hyd 760 : AIR 1957 Hyd 23 (24) (Pt B) (Pr 3) (DB).

——S. 54—Sale of patta right.

A patta right is intangible and the sale of such right can be effected only by a registered document. ILR (1951) Hyd 283 : AIR 1950 Hyd 58 (58, 59) (Pt A) (Pr 5) (DB).

——S. 54—Tangible immovable property of a value less than one hundred rupees.

A person remains an owner of the property notwithstanding that he has executed a mortgage or a lease of the property. If then he makes a transfer of his interest, he makes a transfer of the property itself and not merely of an abstract right or of certain rights out of his total bundle of rights originally owned by him. The sale of such a property (the value of which is less than one hundred rupees) may be effected by delivery of possession under S. 54. Case law discussed. ('52) ILR (1952) Nag 37 : AIR 1954 Nag 109 (113) (Pt B) (Pr 30).

● ——Ss. 54, 58 and 60—Tangible and intangible immovable property—'Equity of redemption' — Sale by mortgagor of immovable property usufructuarily mortgaged—Sale of tangible immovable property.

Two important points of difference between the old English law and the Indian law on the subject of mortgage may be noted. Firstly, no such expression as the 'equity of redemption' has been used in the Indian law. It will be quite incorrect to consider the right to redeem to be a substitute for 'the equity of redemption' because the latter expression imports that the ownership at law is vested in some one other than the holder of the equity of redemption. Secondly, a mortgage is according to S. 58 of the Transfer of Property Act, the transfer of an interest in specific immovable property and not that of the immovable property itself. Ownership does not pass by way of mortgage but by way of sale as defined in S. 54. The word 'tangible' means something that can be touched, i.e., a material object. A property is tangible because it can be touched by anyone and not because it is capable of being touched by a person who is in possession and has an immediate right to touch it. Hence, when an owner sells his immovable property which is subject to a simple or usufructuary mortgage, it is the sale of a tangible immovable property and not that of a mere intangible right. 11 Mad L J 132 and AIR 1919 Cal 325 (2); AIR 1950 Assam 107, Dissented from. Sarju Prasad v. Mt. Aguta Devi, ILR 37 Pat 1577 : 1959 B L J R 28 : AIR 1959 Pat 153 (154, 155) (Pt A) (Prs 5, 9) (FB).

17. Execution of sale-deed.

——S. 54 — Sale deed — Validity — Attestation not necessary for validity — No particular formalities needed for execution of sale deed. 1960 M P C 461 : 1960 M P L J 911 : 1960 Jab L J 827.

——S. 54 — Sale deed purporting to be executed by father and son—Latter not signing it—Deed held not defective. 1959 M P C 632 : 1959 M P L J 1078 : 1960 Jab L J 1004.

——S. 54—Registration Act (1908), S. 47—Decree for specific performance — Subsequent sale deed alone passes title. See Registration Act (1908), S. 47. A I R 1953 Nag 167 (DB).

18. Sale of property of less than one hundred rupees in value.

——Ss. 54 and 55 (1) (f)—Tangible property—Agreement to reconvey — Sale of trees for Rs. 90 to defendant—Agreement to reconvey property sold, to plaintiff within 10 years on payment of Rs. 90 — Suit for possession on payment of Rs. 90—Proper course held was to institute suit for reconveyance — Decree for possession held however could be passed as property was tangible and worth Rs. 90. A I R 1955 N U C (All) 1260.

——S. 54 — Third paragraph — Tangible immovable property—Right to redeem a usufructuary mortgage is trangible immovable property — There can be delivery of possession to mortgagee by appropriate declaration of mortgagor — Possession of mortgagee becomes adverse from date of sale.

The right of the mortgagor to redeem the mortgaged property is tangible immovable property within the ambit of paragraph 3 of S. 54. When the mortgagor transfers his remaining interest, viz , the right to redeem the mortgage, it could not be characterised as intangible property. The fact that at the relevant time the transferor is not in possession of the property does not alter the character of the property.

In cases where the transaction is not evidenced by a registered document in regard to property of the value of less than Rs. 100, to make it effective, there should be delivery of the property. Delivery should be such as the property is capable of. If the animus of the mortgagor, viz., to pass title and also possession as owner, is disclosed by appropriate declarations, delivery would be effective within the scope of S. 54, Paragraph 3. In such a case oral sale of the right to redeem the usufructuary mortgage could be effective and a registered instrument to evidence it is not quite indispensable. I L R 34 Cal 207 and A I R 1928 All 726 (FB), Dissented from.

Even assuming that this view is open to challenge the right of the vendee could be sustained on the ground of adverse possession from the date of sale. (1963) 1 Andh L T 274 : I L R (1964) Andh Pra 199: A I R 1964 Andh Pra 21 (22 to 24) (Prs 15, 21, 22, 24, 28, 29, 32) (DB).

● —S. 54 — Oral sale — Proof — Finding as to — Binding effect of finding in second appeal — Civil P. C. (1908), S. 100.

When an oral sale is set up, which, if proved, would be valid, its proof or a finding that it has been proved would necessarily involve a finding as to validity. Hence, where an oral sale for less than Rs. 100 is set up and is held as proved the finding cannot be challenged in second appeal on the ground that the Court had failed to give a definite and express finding on the point whether the sale was for a consideration which was below Rs. 100. Sehopanit Shah v. Chabilal Tewari, A I R 1952 Assam 52 (53, 54) (Pt A) (Prs 10, 13) (SB).

—Ss. 54 and 53-A — Evidence Act, S. 91 — Sale of property of less than Rs. 100 is complete by delivery of possession and unregistered document can be looked into to see whether there was a contract or whether the vendee was in possession of the property in pursuance of the contract. See Evidence Act (1872), S. 91. A I R 1951 Hyd 42 (DB).

—S. 54 — Unregistered sale by *A* in favour *B* in 1934—Gift by *B* in favour of *C* in 1954 — Suit by *C* against *A* for possession on allegation of dispossession in 1954 — *C* being plaintiff cannot advance plea of part performance under S. 53 A but can succeed only if he can prove oral sale accompanied by delivery of possession in favour of *A*. See T. P. Act (1882), S. 53-A. 1960 Jab L J 706 : 1960 M P C 526 : 1960 M P L J 673.

—S. 54—Property worth below Rs. 100—Delivery of possession—If to be simultaneous with writing.

Delivery of possession in pursuance of oral contract need not be simultaneous with execution of unregistered sale deed, but may be after its execution. A I R 1949 Nag 410, Rel. on. 1960 Jab L J 706 : 1960 M P C 526 : 1960 M P L J 673.

—S. 54 — Sale of immovable property worth less than one hundred rupees—Sale deed written but not registered—Effect, stated—(Registration Act (1908), S. 49).

In the case of tangible immovable property worth less than Rs. 100 if the transfer is not made by delivery there must be a registered sale deed. An unregistered deed would be invalid and would not operate as constructive delivery. But if there is delivery it is not rendered nugatory by the existence of an unregistered deed. The delivery need not be contemporaneous with the unregistered deed ; it may take place some time after. (1961) 1 Mad L J 390.

—S. 54 — Delivery of possession and unregistered sale-deed.

The existence of an unregistered instrument does not prevent property from passing provided delivery of the property has taken place. In such a case the deed would be evidence of the contract of sale and of negotiations concerning the transaction. 1956 Mad W N 897 : (1957) 1 Mad L J 17 : A I R 1957 Mad 209 (210) (Pt A) (Pr 5).

—S. 54 — Registration Act (1908), S. 49 — Sale of immovable property worth less than Rs. 100 effected by delivery of possession—Execution of unregistered deed does not render sale invalid — Admissibility of deed for proving existence of contract of sale.

If a sale of property of less than Rs. 100 in value is effected by delivery of possession, that sale, which is, as provided by S. 54 of the Transfer of Property Act, a valid sale, is not rendered invalid by reason of the execution of an unregistered instrument of sale recording it.

Such an unregistered instrument of sale is admissible in proof of the existence of a contract of sale between the parties. 39 Mys L J 523 : I L R (1961) Mys 942.

—S. 54—Sale of property of less than one hundred rupees — Unregistered sale deed and delivery of possession.

A mere existence of an unregistered instrument does not prevent the purchaser from falling back upon his title by the delivery of property. By mere delivery of property the purchaser acquires a complete title and the fact that in addition to a good title by delivery he had a bad title by an unregistered instrument should not prejudice him. Case law rel. on. ('52) ILR (1952) Nag 37 ; AIR 1954 Nag 109 (113) (Pt C) (Pr 31).

—S. 54—Delivery of property—Sale of property by mortgagor to usufructuary mortgagee—Essentials for delivery of possession.

Where the property in possession of a usufructuary mortgagee was sold to him by the mortgagor for less than Rs. 100 and it is found that the sale deed was genuine and contains a recital that the executant desired to put an end to the possession of the transferee as mortgagee and accepted him as a vendee the mortgage must be held to have come to an end and the delivery of possession will be deemed to have been effected by declaration in favour of the mortgagee vendee. (1959) 25 Cut L T 281.

—S. 54 — Property sold of value below Rs. 100 — Vendee in possession — Registration of sale deed is compulsory.

Under S. 54 a sale in respect of properties below Rs. 100 can be effected only by a registered document or by delivery of possession. Where, therefore, the vendee is already in possession of the property sold, a registered document is compulsory to pass the title to the vendee, especially when there is an absence of a declaration of renouncement by the vendor or of any evidence to the effect that the vendor did any overt act by which he got the name of the vendee recorded in any of the public papers. AIR 1955 NUC (Orissa) 438.

—S. 54—Sale of property less than hundred rupees in value—(Evidence Act (1872), S. 91).

Sale can be effected either by registered instrument or by delivery of property itself—Sale effected by delivery—Fact that the parties who wanted the other terms, such as, price, default clause or the clause for damage if vendee did not get possession or was dispossessed, rendered into writing and had executed an unregistered deed will not render the sale completed by actual delivery invalid — Existence of such a document is not a bar under S. 91, Evidence Act from proving the transaction of sale by actual delivery — The document itself is admissible for the purpose of proving the terms of the contract between the parties. AIR 1928 Mad 546, Dissented from, 20 Cut L T 62 : AIR 1954 Orissa 31 (31, 32) (Pr 1) (DB).

● —S. 54, Cl. 4—Delivery of tangible immovable property — Property usufructuarily mortgaged sold for price less than Rs. 100—Delivery.

Oral sale accompanied by delivery of possession is one of the modes in which the sale of a tangible immovable property of the value of less than Rs. 100 can be effected. There is no good reason why this mode of transfer should not be available to a person who sells a property of such low value, simply because the vendee is in possession of the property under some legal right on the date of the sale. All that is necessary in such a case is that the vendor should do

whatever he can do in the circumstances so as to indicate definitely and without any ambiguity an intention to pass the title and also possession as owner to the vendee. He can do so by making appropriate declarations or by doing such acts as are necessary. ILR 34 Cal 207, Dissented from; AIR 1946 Pat 81 : 226 Ind Cas 39, **Overruled.** Sarju Prasad v. Mt. Aguta Devi, **ILR 37 Pat 1577 : 1959 BLJR 28 : AIR 1959 Pat 153 (158) (Pt B) (Prs 22, 23) (FB).**

——S. 54—Sale of immovable property worth less than Rs. 100 evidenced by unregistered instrument— Sale can be proved by oral evidence showing that property was worth less than Rs. 100 and accompanied by delivery of possession—Unregistered sale deed not admissible to prove sale—Could be admissible as proving part performance of a contract of sale. See T. P. Act (1882), S. 53-A. **1960 Raj L W 473 : ILR (1960) 10 Raj 948.**

19. Delivery of property.

● **——S. 54 — Sale of mortgaged property to sub-mortgagee in possession — Registered instrument—Necessity of.**

The delivery contemplated by S. 54 is not constructive or symbolic delivery but actual or real delivery. Therefore, where a mortgagor sells the mortgaged property to a sub-mortgagee in possession as the sub-mortgagee is already in possession no further possession can be given to him and hence, even assuming that the equity of redemption constitutes a tangible immovable property, the sub-mortgagee can acquire title to the property only if he obtains a registered instrument. Case-law, discussed. Bhikhabhai Nanabhai Patel v. Chimanlal Maganlal Shah, **ILR (1953) Bom 1071 : 55 Bom L R 641 : AIR 1953 Bom 437 (438 to 440) (Prs 4, 10) (FB).**

——S. 54—Delivery of possession — Nature of—Sale of equity of redemption by unregistered deed—Validity.

The possession contemplated by S. 54, T. P. Act, is actual possession. For the purposes of the section constructive or symbolic possession would not do. Where therefore a mortgagee has been in possession of the property by virtue of the mortgage and thereafter a sale is effected of the property, the vendee cannot invoke the provisions of S. 54, T. P. Act and get title of the property by means of an unregistered sale deed unless some overt act of possession is established. **ILR (1956) Hyd 321 : AIR 1956 Hyd 170 (171) (Pt B) (Pr 4).**

——S. 54 — Sale — Non-delivery of property — If justifies inference of fictitious character.

Non-delivery of actual possession when there was standing crop, cannot be a circumstance in support of the fictitious nature of sale. **ILR (1956) Hyd 328 : AIR 1956 Hyd 114 (115) (Pt B) (Pr 7) (DB).**

——S. 54—"Delivery of property" — What amounts to — Change in village records and payment of rent in name of vendee—Effect.

The transfer of possession from the vendor to the vendee can only refer to such transfer of the property sold as can be made under the circumstances of the case. Where both the parties (vendor and vendee) were residing jointly, the only way in which the transfer could be made is by change in the village records and by payment of rent being made in the name of the vendee. **1960 MPLJ 1326 : 1961 Jab L J 138 : ILR (1960) Madh Pra 614 : AIR 1961 Madh Pra 176 (178) (Pt B) (Pr 10) (DB).**

——S. 54—Delivery of possession—What amounts to.

Delivery of possession required under S. 54, T. P. Act, is that kind of delivery which a property according to its nature and circumstances admits of. It is not necessary under that section that the vendee should go and physically occupy every nook and corner sold to him. **1960 Jab L J 222 : 1960 MPC 441 : 1960 MPLJ 879 : AIR 1960 Madh Pra 237 (239) (Pt C) (Pr 11).**

——S. 54—Delivery of possession.

Where property which is the subject of a usufructuary mortgage is sold to the mortgagee in discharge of the mortgage a direction by the vendor to the vendee to keep the property as absolute owner amounts to delivery of possession. **(1957) 1 Mad L J 17 : 1956 Mad W N 897 : AIR 1957 Mad 209 (210) (Pt B) (Pr 5).**

——S. 54—Delivery of possession—Purchaser already in possession—Redelivery not necessary.

Where the purchaser was already in possession as adhiyat under a lease it was not necessary that he should have first handed over possession of the property to the seller who should then have redelivered the property to the purchaser in order to constitute delivery of possession within the meaning of S. 54. It is enough if the character of the possession changes; in other words, if the seller converts, by appropriate declaration or acts, the previous possession of purchaser into plenary possession as that of the purchaser there is sufficient delivery of property. **('52) ILR (1952) Nag 37 : A I R 1954 Nag 109 (111, 112, 113) (Pt A) (Prs 19, 23, 29).**

——S. 54 — Property subject to usufructuary mortgage—Sale to mortgagee—Renunciation of rights by vendor—If amounts to delivery of possession.

The transfer of ownership of property subject to usufructuary mortgage by the mortgagor in favour of the mortgagee is a transfer of tangible immovable property. Where the vendor renounces all his rights to the property usufructuarily mortgaged the declaration clearly purports to change the character of the possession of the vendee from that of mortgagee to that of purchaser. Such a declaration amounts to a delivery of possession within the meaning of S. 54 of the Transfer of Property Act, and the transfer is completed. A I R 1933 Cal 544 and A I R 1921 Oudh 124 (2) and A I R 1919 Cal 107 and A I R 1950 Assam 107, Diss. from. **ILR (1958) 8 Raj 572 : 1959 Raj L W 285 : A I R 1959 Raj 218 (220) (Prs 12, 16) (DB).**

20. Contract for sale.

(A) Does not create any interest.

(B) Whether can be specifically enforced.

(C) Rights of subsequent transferee with notice.

(D) Contract for sale accompanied by delivery of possession or payment of earnest money.

20. Contract for sale.

● **——S. 54—Contract of sale completed—Subsequent dispute as to clause in sale-deed — Its effect on contract.**

A dispute arising subsequent to the contract for sale of property about a particular clause in the deed during the negotiations about the form the deed should take cannot affect the completeness of the contract already made, nor can it amount to repudiation when it is not persisted in and the vendee later expresses his readiness and willingness to perform the contract "agreed to". Durga Prasad v. Deep Chand, **1954 S C J 23 : 1954 Mad W N 222 : (1954) 1 M L J 60 : 1954 A L J 73 : 1954 B L J R 213 : 1954 S C R 360 : 1954 S C A 934 : 67 Mad L W 945 : A I R 1954 S C 75 (80) (Pt B) (Pr 32).**

——S 54—Consideration unascertainable on date of sale—Effect on sale transaction.

Where a transaction is on the face of it a completed sale it cannot be taken to be merely an agreement to sell. The mere fact that the consideration is unascer-

tainable on the date of the sale will not make the transaction of sale an agreement to sell. **A I R 1955 All 393 (395) (Pt A) (Pr 9) (DB).**

——S. 54—Deed—Construction—Sale — Agreement for—Date of coming into force of the document.

Held, on facts that it was a binding document from the date that it was entered into but an option was given to the vendor, that he could sell the property to any one else within three months, and it could not be held that though there was an agreement, dated the 25th June, 1942, it must be deemed to have come into operation on the 25th of September, 1942. **A I R 1955 All 24 (26) (Pt E) (Prs 10) (DB).**

——S. 54—Contract of sale and contract to sell or for sale—Distinction — Sale of Goods Act (1930), S. 4.

There is a well-understood distinction between a contract of sale and a contract to sell or for sale. The former is an executed contract and the latter is an executory contract. Sale creates a jus in rem as it passes ownership immediately when it has been executed, while a contract to sell is jus ad rem, for it only creates an obligation attached to the ownership of property not amounting to an interest therein. It is not always that ownership passes on the execution of a deed of sale, when the ownership passes is a question of intention of the parties. The criterion to decide whether there is a sale or merely a contract for sale is whether another deed would be required to pass the title or ownership. **1950 All L J 467: ILR (1953) 1 All 265: A I R 1950 All 632 (634, 635) (Pt D) (Pr 3) (DB).**

——S. 54—Contract for sale—Refusal to purchase — Effect of, if should be mentioned in contract—(Contract—Sale).

It is inherent in every contract of purchase and sale that both the parties are entitled to insist upon the completion of the contract. It is not necessary that the document should mention what the effect would be in case either party refused to complete, for, if the purchaser refuses to complete the contract the seller can sue him for specific performance as well as for damages. **AIR 1956 Bom 120 (122) (Pt A) (Pr 6).**

——S. 54—Sale or agreement for sale — Registration.

Where the title deed on which the suit is based is described as an agreement to sell and contains a stipulation that a formal sale-deed will be duly executed and registered within two months thereafter the document taken as a whole cannot be construed as mere contract of a sale which shall take place on terms settled therein if it evidences actual transfer of ownership and also the possession of the property for the price partly paid and partly promised. The document, therefore, in view of its contents is in fact, a sale-deed as defined in S. 54 of the Transfer of Property Act. According to the provisions of law, such a sale would be validly effected only by a registered sale-deed. **ILR (1956) Hyd 733 : A I R 1957 Hyd 37 (39) (Pt B) (Pr 15) (DB).**

——S 54—Contract for sale becoming impossible by act of defendant-seller — He is liable to refund advance paid by plaintiff purchaser—Suit for refund is governed by Art. 116 of Limitation Act—In absence of contract interest for period before suit cannot be allowed. See Contract Act (1872), S. 73. **A I R 1963 Ker 247.**

——Ss. 54, 14 — Agreement to sell or resell is not within the mischief of the rule against perpetuities. See T. P. Act (1882), S. 14. **A I R 1951 Mad 767.**

——S. 54—Sale or agreement.

Where a document is described as an agreement and is stamped as such and there are no words of conveyance therein but it clearly states that the sale deed will be executed in future, the document must be regarded as an agreement and not a conveyance. **A I R 1951 Nag 403 (405) (Pt A) (Pr 11).**

—S. 54—Contract for sale — Writing if necessary for.

A contract for sale of immovable property need not be in writing. But the parties may agree that the negotiations between themselves for the sale of the property may not become final until the terms are reduced to writing in the form of a written contract. AIR 1923 PC 47 and AIR 1948 P C 97, Rel. on. **ILR (1964) Cut 89: AIR 1964 Orissa 176 (177) (Pt A) (Pr 10) (DB).**

——S. 54—Scope—Contract for sale — Non-existence of instrument in writing—Doctrine of equitable estoppel does not apply. See T. P. Act (1882), S. 53-A. **AIR 1958 Pat 133 (DB).**

——S. 54—Sale or agreement to sell.

Held, on facts that it was not a perfected contract of sale and as such did not require registration but was an agreement to sell. **1955 Raj L W 232 : ILR (1954) 4 Raj 705: AIR 1955 Raj 70 (71) (Pt B) (Pr 5) (DB).**

20 (A). Does not create any interest.

● **——S. 54** — Contract for sale of land does not of itself create any interest in the property which is the subject-matter of the contract. The doctrine of frustration is applicable to contracts for sale of land in India. See Contract Act (1872), S. 56. **AIR 1954 S C 44.**

——Ss. 54 and 48 — Agreement to sell land executed in favour of A—Subsequently, mortgage of same land executed in favour of B—Later on sale-deed executed in favour of A — Mortgage held must have its effect as against subsequent sale though agreement to sell was executed before mortgage. See T. P. Act (1882), S. 48. **AIR 1950 Ajmer 59.**

——Ss. 54 and 55 (6) — Civil P. C. (1908), O. 21, Rr. 58, 59 — Claim under O. 21, R. 58 — Interest of claimant in property — Extent of — Person having prior agreement for sale in his favour — Payment of portion of consideration — Interest sufficient for preferring claim. See Civil P. C. (1908), O. 21, R. 58. **(1964) 1 Andh W R 300.**

——Ss. 54 and 55 (1) (d), 55 (6) (a) — Contract for sale—Rights of purchaser—Claim for mesne profits—Not maintainable. See T. P. Act (1882), S. 55 (1) (d), **AIR 1957 Andh Pra 960.**

——S. 54 — Mere agreement to sell immovable property creates no title and it cannot be enforced against third party who acquires independent right. **67 Bom L R 911 : ILR (1966) Bom 648 (DB).**

——S. 54 — Bare agreement to sell immovable property in future — Does not create interest in that property. See Transfer of Property Act (1882), S. 14. **AIR 1960 Bom 105 (DB).**

——S. 54 — Contract for sale — It does not by itself create any interest or charge on the immovable property. **1958 Ker L T 836 : 1957 Ker L J 1143.**

——Ss. 54, 52 — Basis of S. 52 — Suit for specific performance of subsequent ageeement for sale of property, pending — Execution of sale deed on basis of prior agreement for sale — Hit by doctrine of lis pendens — Notice of suit to prior purchaser not necessary. See T. P. Act (1882), S. 52. **AIR 1962 Madh Pra 34 (DB).**

——S. 54—Agreement to sell — No title or interest to purchaser is created until sale deed is executed. **1965 BLJR 214 : ILR 44 Pat 694.**

——S. 54—Agreement for sale — Rights of promisee — Suit by earlier mortgagee — Promisee's right to

charge — Suit for specific performance — Effect — (Specific Relief Act (1877), Ss. 14, 15).

Held, on facts that the suit was not maintainable because under S. 54, T. P. Act unless and until the agreement for sale fructified into a sale deed, he could not claim to have acquired any title to the property. Till that stage was reached C was the proper person to represent the equity of redemption of the property and the decree obtained by B with C on record was a perfectly valid decree in execution of which the title to the property could validly be sold. This position was unaffected by D's suit for specific performance and having obtained a decree. AIR 1922 Cal 412 (2) and AIR 1928 Nag 95. Dissented from. 1955 Ker L T 134 : AIR 1955 T-C 195 (196) (Pr 4) (DB).

——S. 54 — Contract for sale — (Civil P. C. (1908), O. 28, R. 12).

English Law recognises an equitable estate in favour of a party who has entered into a contract for the sale of immovable property. Under the Indian Law such a person gets only a right to compel the other party to execute a sale deed in respect of the property and unless and until such a sale deed is actually brought into existence by act of parties or under a decree of Court, the party who has contracted for the purchase cannot be said to have acquired an ownership over the property. Hence he cannot until then sustain a claim for recovery of mesne profits from the lessee of the person who has contracted to sell as the lessee's possession under the subsisting lease cannot be said to be wrongful. (1953) 23 Com Cas 468 : AIR 1954 Trav-Co 10 (24) (Pt M) (Pr 45) (DB).

20 (B). Whether can be specifically enforced.

——S. 54 — Decree for specific performance of contract of reconveyance of immovable property — Decree sold — Minor's interest in decree transferred by de facto guardian—Validity of transfer—(Muhammadan Law—Minors).

When a decree is passed in a suit for specific performance of a contract for sale of immovable property no interest in the property is created in favour of the decree-holder. Where, therefore, a decree passed in a suit for specific performance of a contract of reconveyance is sold by the decree-holders who are Muhammadans and the interest of a minor decree-holder in the decree is conveyed to the purchaser by his de facto guardian, the transfer of such interest is not void. 59 Cal W N 886 : ILR (1957) 1 Cal 388 : AIR 1956 Cal 147 (148) (Prs 2, 4).

——Ss. 54, 40 — Agreement to sell immovable property—Subsequent sale in favour of third person with notice of prior agreement — Sale is subject to obligation under prior agreement—[Trusts Act (1882), S. 91] [Specific Relief Act (1877), S. 27 (b)]. ('52) 65 Mad L W 674 : 1952 Mad W N 552 : 1952-2 Mad L J 166 : AIR 1953 Mad 409 (412) (Pr 7).

——S. 54—Contract for sale—Effect of.

An agreement for sale does not vest any interest in the property and if a third party obtains an assignment of the properties in question the party in whose favour the agreement has been executed has to seek specific performance; but he cannot challenge the right of the subsequent assignee on the basis of the prior agreement and a second sale in his favour of a subsequent date. I L R (1956) Trav-Co 998 : 1956 Ker L T 880 : AIR 1957 Trav-Co 189 (192) (Pt D) (Pr 9) (DB).

20 (C). Rights of subsequent transferee with notice.

——Ss. 54 and 40 — Benefit of obligation arising out of contract—Enforcement of against transferee with notice—(Trusts Act (1882), S. 91).

N agreed to sell a house to A—B with notice of that agreement purchasing the house himself — On intimation of this sale to B, 'A' obtained a sale in his favour—Held A was entitled to the benefit of the obligation arising out of the contract, which, by contract of sale became annexed to the owership of the house by virtue of S. 40, T. P. Act and it could in law be enforced against B who was a transferee with notice. See T. P. Act (1882), S. 40. AIR 1958 Bom 194.

——S. 54 — Subsequent transferee for value with notice of prior oral agreement of sale — Rights of transferee — Subsequent transfer not binding on the person in whose favour there was a valid oral agreement of sale—Applicability of S. 48, Registration Act. Section 48 of the Registration Act does apply to a case where the subsequent transferee had obtained his transfer with notice of the prior oral agreement and in fraud of the right created in favour of the third party under the oral agreement. See Specific Relief Act (1877), S. 27 (b). AIR 1960 Madh Pra 3.

20 (D). Contract for sale accompanied by delivery of possession or payment of earnest money.

——S. 54—"Transfer'—Interpretation of—Sauda Chitti — Vendee put in possession of property—Transaction, only a contract and not a transfer. See Debt Laws — C. P. and Berar Relief of Indebtedness Act (14 of 1939), S. 15 (2). AIR 1957 Bom 236.

——S. 54—Agreement to sell accompanied by delivery of possession—Effect.

The debt adjustment Court cannot exercise jurisdiction under S. 24 of Bombay Agricultural Debtors Relief Act to declare an agreement of sale accompained by delivery of possession of property in anticipation of execution of a deed of sale as a transfer of land. See Debt Laws — Bombay Agricultural Debtors' Relief Act (28 of 1947), S. 24. AIR 1957 Bom 31.

——S. 54—Agreement of sale and payment of earnest money before proclamation for sale—Such a purchaser under an agreement for sale has an interest and even a charge in the immoveable property sold in execution. See Civil P. C. (1908) O. 21, R. 89. AIR 1956 Cal 462.

21. Construction of document.

——S. 54 — Stamp Act (1899), S. 2 (10), Art. 5 and Art. 23 — Construction of document — Cumulative effect of recitals to be considered — Held that documents were sale deeds. See Stamp Act (1899), S. 2(10). AIR 1951 Andh Pra 424.

——Ss. 54 and 55 and 8—Agreement of sale of specified extent of land—Provision for adjustment of price in case extent found to be more or less—Land found deficient—Compensation—S. 8—Construction of sale deed — (Agreement of sale if can be looked into — (Contract Act (1872), Ss. 73 and 10) — (Deed—Construction).

Held, on facts that the contract of sale did not in any way control or contradict or vary the terms of the conveyance. As there was an ambiguity in the sale deed as to what exactly was agreed to be sold, the contract of sale could certainly be looked into. 1957 Andh L T 597 : AIR 1958 Andh Pra 278 (279, 280) (Prs 4, 5).

——S. 54 — Sale deed—Construction—Discrepancy between area and boundaries—If boundaries definite, boundaries must prevail over the description of the area sold—Effect — Extrinsic evidence inadmissible. See Transfer of Property Act (1882), S. 8. A I R 1955 NUC (Andhra) 5841.

——Ss. 54, 8 — Construction — Sale deed—External evidence — Admissibility — (Evidence Act (1872), S. 92, Proviso (6) and S. 94).

Held, on facts that as the area of the three omitted plots corresponded very nearly with area of 42 acres expressly excluded by the deed of sale, the omission of as many as three plots from the kobala could not in the circumstances of the case, be accidental or due to an oversight of the scribe, but was deliberate. That the document being plain and unambiguous, showing both the area and specific plots sold, did not require any explanation to show what particular items were sold and therefore no extrinsic evidence could be admitted under S. 92, Proviso (6), Evidence Act. **1958 Cal L J 252.**

——S. 54—Deed — Construction—Sale deed — Discrepancy between boundaries and area—Area when prevails.

Where the boundaries are vague and indefinite the area should prevail but where the boundaries are specified and definite, the land that is conveyed must be the land within those specified boundaries and the area must be taken as having been given approximately; the recitals about area in the body of the document cannot be read as divorced from what is stated in the boundaries. **ILR (1964) Cut 203.**

——S. 54—Construction—Sale deed—Sale of a stated area out of two separate plots taken together — Deed not specifying the area sold in each plot—Deed not void for uncertainty—Purchaser can select the portion which he wants in each plot. (1858) 54 E R 172 and 74 E R 28, Rel. on. **1960 B L J R 148 : AIR 1960 Pat 420 (421, 422) (Pt C) (Pr 9) (DB).**

——S. 54—Contract for sale—Property described by boundaries and area—Area not measured—Boundary prevails over area.

Held, on facts that the normal inference would be that the vendee agreed to purchase the lands as included in the definite boundaries without attaching any special importance to the area. **AIR 1952 Tripura 28 (29) (Prs 7, 9 to 12).**

22. When liable to be pre-empted.

●——Ss. 54, 2—Berar Land Revenue Code, S. 176—Sale giving rise to right of pre-emption—Essentials—Parties entering into only agreement to sell—Suit for pre-emption not maintainable — Defeating right of pre-emption is no fraud. AIR 1953 Nag 182, Reversed. See Berar Land Revenue Code (1928), S. 176. **A I R 1960 S C 1368.**

——S. 54—Sale when complete.

The true test to determine the date on which the right to claim pre-emption accrued to the plaintiff is to look at the intention of the parties and to ascertain what was the date with reference to which the parties intended the sale to be effectual. The Court cannot throw out the case merely on the ground that the sale was not complete according to the provisions of Transfer of Property Act the sale deed not having been registered. See Quanoon Haq Shafa Gwalior—S. 3. AIR 1955 N U C (Madh-Bha) 3031.

——S. 54—Pre-emption—Rights of—Can be defeated by all legitimate methods — Modification of agreement of sale is one of such means.

The right of pre-emption is a weak right may be defeated by all legitimate methods. Modification of an agreement of sale is not prohibited by law. Even where it is adopted to defeat a right of pre-emption it is legitimate and the agreement cannot be attacked on that ground. **1961 Jab L J 337 : 1961 M P C 216 : 1961 M P L J 480 : I L R (1961) Madh Pra 972 : AIR 1962 Madh Pra 25 (26) (Pt A) (Pr 7) (DB).**

——S. 54—Right of—Does not exist prior to completion of sale — Contract of sale — Vendor conveying property to person having right of pre-emption pending suit for specific performance of contract of sale by vendor—Doctrine of lis pendens applies—Specific performance of contract will not be refused merely because of sale in favour of pre-emotor. 1961 Jab L J 337 : 1961 M P C 216 : 1961 M P L J 480 : AIR 1962 Madh Pra 25 (27) (Pt B) (Prs 10, 12) (DB).

——S. 54—Pre-emption — Agreement of sale — Pre-emptor approached before agreement but not wishing to purchase property — Effect on right of pre-emption.

Even if before the agreement of sale had been entered into between the vendor and the vendee the pre-emptor was approached by them and he assured them that the did not wish to purchase the property, that cannot debar the pre-emptor from exercising his right of pre-emption. **1958 M P C 541 : 1959 M P L J 174 : 1958 Jab L J 828 : A I R 1958 Madh Pra 412 (413) (Pt B) (Pr 4).**

——S. 54—Pre-emption—Sale of house sought to be pre-empted by vendee — Effect on right of pre-emption.

The pre-emptor's right to pre-empt is founded on the sale of the house by the vendor to the vendee and is not affected by the subsequent sale of the house by the vendee to another person. **1958 M P C 541 : 1959 M P L J 174 : 1958 Jab L J 828 : AIR 1958 Madh Pra 412 (413) (Pt C) (Pr 5).**

——S. 54—Contract for sale—No registered sale deed executed — Possession of property delivered — Pre-emptor is entitled to pre-empt. See Berar Land Revenue Code (1928), S. 176. **AIR 1953 Nag 182 (DB).**

[Reversed in AIR 1960 S C 1368.]

SECTION 55

SYNOPSIS

(Transfer of Property Act (1882), S. 55.)

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6. Paragraph 1, Cl. (e)—Taking care of property.
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1. Scope.

——Ss. 55, 73 — Mortgage — Substituted security — Doctrine of — Applies to private sales — Hindu joint family — Sale by co-parcener of specific item of joint family property — Rights of alienee. It stands in the shoes of the vendor and is entitled to work out his rights by means of partition. See Hindu Law — Joint Family—Co-parcener. AIR 1957 Andh Pra 572 (DB).

——S. 55—Property held by transferor on patta from Government—Sale of—Rights of transferee and transferor are governed by Transfer of Property Act in the absence of a statutory provision prohibiting transfer. AIR 1951 Assam 20 (22) (Pt A) (Pr 8) (DB).

——S. 55—Exchange of tarwad immovable property for convenience of enjoyment is invalid under Travancore Nayar Act (2 of 1100, M. E.). The alienee of such an invalid alienation before being ousted from tarwad properties has to be given back his property. The fact that sales and exchanges are treated separately in the Transfer of Property Act is of no consequence in construing the Nayar Act as the two are not in pari materia. See Travancore Nayar Act (1600, M. E.), S. 25. AIR 1963 Ker L J 395.

——S. 55 (2)—Applicability — Rule of caveat emptor — Applicability of, to erstwhile Travancore State — Fraudulent misrepresentation as to title — Claim for damages—(Contract Act (1872), Ss. 17, 18 and 73).

Held, that the representation as to title made by the vendors was made recklessly or with gross negligence and they could not escape the charge of fraudulent misrepresentation and the vendees would be entitled to claim consequential remedy by way of damages. 1957 Ker L T 911: 1957 Ker L J 950; I L R (1958) Ker 27 : AIR 1958 Ker 322 (323) (Pt A) (Pr 5) (DB).

——S. 55—Specific Relief Act, Ss. 14, 15—Completion of contract by conveyance—No question of compensation can arise between the vendor and the vendee in respect of defects that may be subsequently discovered in respect of that transaction. By execution of the conveyance the purchaser cannot acquire any larger rights than he had under the contract of sale. See Specific Relief Act (1877), S. 14. AIR 1957 Ker 181 (DB).

2. Paragraph 1 Cl. (a)—Disclosure of defect.

——S. 55 (1) (a) — Penal Code (1860), S. 420 — Dishonest suppression — Sale by public auction — Non-mention of prior encumbrance on property not sufficient to constitute cheating. See Penal Code (1860), S. 420. 1960 Cri L J 1067 : AIR 1960 Andh Pra 405.

——S. 55 (1) (a) and (c) — Material defects in property — Duty of seller — Answering of requisition not sufficient.

A seller has a dual duty to perform. He is required to disclose to the buyer a material defect of which he is aware at the time when the parties enter into an agreement of sale. Apart from this duty, a seller is also required to answer requisitions made by the buyer and it is not enough for a seller to say that his duty is over or discharged by answering requisitions without pointing out to the buyer a material defect of which he is aware and of which the buyer is not aware. AIR 1956 Bom 175 (178) (Pt A) (Pr 12) (DB).

——S. 55 — Marketable title — What is — Existence of right of way — Effect — Breach of agreement to sell — When justified — (Contract Act (1872), S. 73).

The title which a party agrees to convey must be a title free from reasonable doubt. A party in whose favour an agreement of sale has been executed is entitled to have a marketable title made out for him. There may be a material defect in the property, if there is a right of way. But a defect in property is a different thing from a defect in title and an easement may not be a material defect in title as opposed to a material defect in property. Thus, where a right of way once existed in the property agreed to be sold, but before the agreement was entered into, the right had been extinguished by operation of law, namely, by reason of S. 41 (b), Bombay Town Planning Act, 1915, on the reconstitution of plots under the scheme, it could not be said that the purchaser had a reasonable apprehension that there was a material defect in the title of the seller. AIR 1956 Bom 175 (179) (Pt C) (Pr 14) (DB).

——S. 55 (1) (a) — Material defect in title — Prior deed of assignment — Effect of.

A prior deed of assignment of the property whereby the owner transferred his right, title and interest in the property is a material defect in the title of the property, which, if not disclosed at the time of auction sale, exposes the purchaser to the risk of adverse claim. This defect is not merely a defect in property which the buyer could immediately discover and thereafter make his offer. (1961) 65 Cal W N 881.

——S. 55 — Scope — Auction sale of land under consent decree — Suppression of prior registered assignment in conditions of sale — Effect — Right of auction purchaser to avoid sale and claim refund of deposit — Contract Act (1872), Ss. 17, 18, 19.

Held, the representations made by the auctioneers in the notification of sale that the properties were 'valuable properties' must be held to be fraudulent. 14 A C 347, Rel. on.

The frudulent suppression of material defects in title to the properties in question rendered the sale voidable and had been duly avoided and was liable to be set aside. The plaintiffs were entitled to claim refund of the deposit.

Even if the auctioneers could not be fixed with notice of the defect in title under S. 3 of the Transfer of Property Act, the agreement would be void under S. 20 of the Contract Act on the ground of mutual mistake of the auctioneers and the auction purchasers as to a matter of fact essential to the agreement. (1961) 65 Cal W N 881.

——S. 55, Para. (1), Cl. (a) — Applicability — Sale of Wasildar right in Jammu and Kashmir subject to the conditions regulated not by a private document but by a set of Rules which had the force of law — Land liable to resumption by State for breach of condition of lease by seller (lessee), which is a material defect of title undoubtedly — Non-disclosure of such condition — Where buyer has means of discovering the defects of title, there can be no breach of S. 55 (1) (a). AIR 1961 J & K 66 (70) (Pt D) (Pr 13).

——S. 55 (1) (a)—Disclosure of defects.

The mere fact that a particular area is included in the Town Planning Scheme does not justify holding that the owner of such property is incompetent to sell the same or that his title to deal with it is in any way affected. Assuming that the scheme is a material defect in the seller's title, the purchaser can discover it with ordinary care. S. 55 (1) (a) of the Transfer of Property Act, cannot therefore be invoked. (1952) 2 M L J 567 : 1952 Mad W N 707 : 65 Mad L W 908 : AIR 1953 Mad 628 (631, 632) (Pt B) (Pr 8, 9) (DB).

——S. 55 (1) (a) — Constructive notice of previous registered mortgage is no defence to charge of cheating by selling property on misrepresentation that it was unencumbered. See Penal Code (1860), S. 415, Illus. (i). AIR 1954 Punj 31 (DB).

——S. 55 (1) (a) — Material defect — Incumbrance.

The existence of an incumbrance on the property sold is not a material defect in the property within

S. 55 (1) (a). 52 Pun L R 201 : AIR 1950 East Punj 278 (280, 281) (Pt C) (Prs 10, 11) (DB).

——Ss 55 (1) (a) and 82 — Breach of indemnity of title — Property purchased was subject to encumbrance along with other properties — Non-disclosure — Suit by vendee for damages — Liability of vendor for damages was limited to the amount that was actually charged on the property purchased by vendee. AIR 1957 Trav-Co 59 (60) (Prs 5, 6) (DB).

——S. 55 (1) (a) — Misrepresentation.

Where the seller knew that the representation that he made in the sale deed was false and on the strength of that representation he received consideration for the document it is a case of fraudulent misrepresentation and the principle of caveat emptor cannot reply. Therefore the purchaser is entitled to a decree against the seller for the purchase money. AIR 1953 Trav-Co 236 (236) (Pr 2) (DB).

3. Paragraph 1, Cl. (b) — Examination of documents.

——S. 55 (1) (b) — Contract to contrary—Clause in agreement for sale stipulating that seller 'shall forthwith deliver' title deeds — Construction of — Forthwith means with all reasonable dispatch, on request being made — Such agreement is not contract to contrary within meaning of S. 55 (1) (b). AIR 1965 Cal 45 (47) (Pt A) (Pr 9) (DB).

——S. 55 (1) (b) — Applicability — Does not apply where dispute is regarding possession of documents of title. (1964) 68 Cal W N 611.

——S. 55 (1) (b)—Agreement to sell immovable property—Non-examination of title deeds —Mere agreement to sell cannot be subject to the production and examination of title-deeds — Necessity for it arises at the time of execution of sale deed — (Contract Act (1872), S. 37). AIR 1955 N U C (Pat) 1595.

——S. 55 (1) (b)—Place of production of documents of title.

The seller is not bound to produce to the buyer documents of title at the office of the buyer's Advocates. 55 Punj L R 259 : AIR 1953 Punj 231 (232) (Pt A) (Pr 19) (DB).

——S. 55 — Acceptance of title — (Evidence Act (1872), S. 114).

Per Harnam Singh J.—Agreement for sale made on 24-1-1947 providing for completion of sale on or before 23-5-1947 — No request made by buyer to seller for examination of deeds of title till 16-5-1947 — Held, buyer must be taken to have accepted title of seller before he made the request. 55 Pun L R 259 : AIR 1953 Punj 231 (232) (Pt B) (Pr 20) (DB).

4. Paragraph 1, Cl. (c)—Answer relevant questions.

——S. 55 (2) — Covenant for title — Inquiry into by vendee—Mala fides.

Per Chandra Reddy J. and Subba Rao C. J., (Umamaheswaram J. Contra). — If the vendee was within his rights in calling upon the vendor to satisfy him that the property agreed to be purchased by him was free from encumbrances, the latter was not entitled to call upon the former to pay the balance of sale-price and take a conveyance without complying with the requisition or without even telling him that he should be compensated for any loss that might be sustained by him consequent upon his failure to pay off the mortgage debt, if any, outstanding and later on put an end to the contract on the ground that the vendee did not perform his part of the contract. 1955 Andh L T 713 : I L R (1955) Andh Pra 170 : 1955 Andh W R 502 : AIR 1957 Andh Pra 307 (328, 329) (Pt E) (Prs 101, 102) (DB).

——S. 55 (1) (c)—Agreement to sell property—Readyness and willingness of purchaser to perform his part—Entire consideration received by the seller—Demand to show marketable title would by itself not lead to an inference that he was not ready or he was unwilling to perform his part of the contract— Seller is bound to answer such questions under S. 55 (1) (c), T. P. Act. See Specific Relief Act (1877), S. 12. AIR 1955 NUC (Nag) 1578 (DB).

5. Paragraph 1, Cl. (d) — Execution of deed.

——S. 55, Para. 1, Cl. (d) — Scope and applicability —Suit by purchaser for specific performance of contract for sale— Decree directing defendant to execute sale deed within 30 days from the date of decree—No provision in the decree when the sale price was to be paid—Held that the payment of sale price cannot be treated as being a condition precedent for execution of the sale deed. Cl. (d) of Para. 1 of S. 55 does not help the judgment-debtor as it was to be deemed that the Court while fixing no time for payment of sale price ordered that the two acts need not be simultaneous or there was a contract to the contrary. See Civil P. C. (1908), S. 46. AIR 1963 All 49.

——S. 55 (1) (d) — Contract Act (9 of 1872), Ss. 69 and 70 — Applicability—To execute a proper conveyance —Preparation of draft sale-deed by solicitors at request of seller — Acceptance of draft by buyer —Seller paying solicitors for services and seeking reimbursement from buyer — Maintainability of claim.

The statement that it is the duty of the buyer to tender a conveyance does not mean that the buyer is under an obligation to the seller to tender a conveyance and that if he does not do it, the seller can compel him to do so. As between the seller and buyer, the seller need not do anything at all as regards the tendering of a conveyance. If the buyer is not interested in obtaining a conveyance, he takes the consequences whatever they are. But he is not compellable by anybody to tender it. To attract S. 69 of the Contract Act the person who claims reimbursement must show that he was interested in paying the money and that the other person was bound by law to pay it.

A solicitor when he prepares any document under instructions from his client the seller is acting only for him and not for any other and he must look to his own client for reimbursement. It is a matter of some doubt whether a case of payment of money to a third person for another would at all be covered by S. 70 of the Contract Act, the more appropriate section being S. 69. (1960) 2 Andh W R 299 : AIR 1961 Audh Pra 57 (58) (Pt A) (Pr 5) (DB).

——S. 55 (1) (d) — Contract Act (1872), Ss. 55, 51 and 52 — Contract for sale of immovable property—Payment of purchase money within stipulated time—Stipulation not essence of contract—Decree for specific performance cannot be refused merely for failure to pay money in time—Principles stated. See Contract Act (1872), S. 55. AIR 1950 Cal 526.

——S. 55 (1) (d) — By virtue of combined effect of S. 55 (1) (d), T. P. Act and S. 29 (c) Stamp Act it is the duty of the buyer to prepare a conveyance, tender it to the seller for execution and get it registered—He is bound to have recourse to the statutory remedy provided by the Registration Act before coming into the Court for the equitable relief of specific performance. See Specific Relief Act (1877), S. 12. AIR 1953 Hyd 225 (DB).

——S. 55 (1) (d)—Execution of indemnity bond—Condition for executing sale deed.

If the seller insists on the purchaser to execute a meaningless indemnity bond, which in law he cannot do, and makes that a condition for executing the sale

deed which he is bound to execute, the mere fact that he does so by way of abundant caution cannot justify his action in law or save him from the consequences of such unreasonable conduct. ILR (1954) Mys 274 : 33 Mys L J 148 : AIR 1954 Mys 145 (146) (Pt A) (Pr 6) (DB).

——S. 55 (1) (d) — Sale deed in favour of purchaser's nominee.

The obligation under S. 55 (1) (d) is merely to execute a proper conveyance, the section being silent as to the person in whose favour the conveyance is to be executed. The seller is therefore bound to execute a proper conveyance to the purchaser's nominee. ILR (1954) Mys 274 : 33 Mys L J 148 : AIR 1954 Mys 145 (146) (Pt B) (Pr 7) (DB).

——S. 55 (1) (d)—Agreement to sell — Failure of seller to perform his part of contract — Purchaser is entitled to sue for realisation of earnest money. See Contract Act (1872), S. 39. AIR 1955 N U C (Pat) 5700.

6. Paragraph 1, Cl. (e) — Taking care of property.

——S. 55 (1) (e) —Agreement to sell certain premises —Term inter alia that vendor would make out good title to premises free from all encumbrances—Suit by vendor for specific performance—Vendee contending that (1) vendor failed to remove certain encroachments which created a right of easement appertaining to adjacent plots ; (2) That vendor permitted the owner of adjacent plot to permit illegal attachment to be effected thereto—Held, the encroachments were of trivial nature and attachment to adjacent plots were permissible and not illegal and that the vendor did not fail to take care of property as required under S. 55 (1) (e) and a decree for specific performance could be granted. See Specific Relief Act (1877), S. 12. AIR 1955 N U C (Cal) 4263.

——S. 55 (1) (e)—Duty of seller to protect property.

A vendor who has agreed to sell his property being a trustee for the purchaser is bound to protect the property from injury or wrongful occupation by trespassers. If he fails in any of these duties the purchaser will be entitled to an allowance by way of compensation to be deducted from the purchase money. AIR 1950 Cal 333 (335, 336) (Pt A) (Pr 14).

——S. 55 (1) (e)—Agreement to sell leasehold interest in Verumpattom holding by A in favour of B—A subsequently executing renewal in favour of landlord agreeing to pay enhanced rent—Renewal not binding on A. 1956 Ker L T 648.

7. Paragraph 1, Cl. (f)—Delivery of possession.

——S. 55 (1) (f)—Evacuee Interest (Separation) Act (1951), Ss. 5, 10, 17 — Evacuee Interest (Separation) Rules (1951), R. 11-E — Property sold under S. 10 (a) (iii)—Trespasser in possession—Competent officer has no power to evict him and to deliver actual possession to the auction-purchaser. See Evacuee Interest (Separation) Act (64 of 1951), S. 5. AIR 1960 All 626 (DB).

——S. 55 (1) (f)—Tangible property — Agreement to reconvey trees worth Rs. 90 — Suit for possession by plaintiff on payment of Rs. 90 —Proper course for the plaintiff was to have instituted a suit requiring the defendant to reconvey property on receipt of Rs. 90—Decree for possession could not be passed as property was worth Rs. 90 (less than Rs. 100) and was tangible. See Transfer of Property Act (1882), S. 54. AIR 1955 N U C (All) 1260.

——S. 55 (1) (f) — Decree for specific performance of contract of sale silent as to delivery of possession—Executing Court is still competent to grant delivery of possession. See Civil P. C. (1908), S. 47. AIR 1954 All 643 (DB).

——S. 55—Suit for possession by vendee—Whole or part of price not paid — Conditional decree can be passed.

It is always open to a Court to impose such restrictions or conditions as the nature of the case may require when a vendee seeks to recover possession from his vendor to whom he has not paid either the whole sale price or a portion of that price.

The defendant sold certain property to the plaintiff part of which was usufructuarily mortgaged. Under the sale deed the plaintiff was to pay Rs. 3,000 to the mortgagee but which he had not paid. The terms of the contract clearly provided that if the vendee had to pay more to the mortgagee, he would recover the excess amount paid by him from the vendor, and similarly if he had to pay less than what was left with him, the balance would be payable to the vendor. The case of both the plaintiff and the defendant clearly was that nothing whatever was payable on account of the mortgage. On a suit being filed for possession by the plaintiff :

Held, that the plaintiff would be entitled to recover possession on paying Rs. 3,000/- to the defendant. 11 All 244, 30 All 125 and AIR 1945 All 139, Foll. 1951 All W R (HC) 512 : 1951 All L J 750 (DB).

——S. 55 (1) (f)—Duty to give possession —Nature of possession contemplated.

Under S. 55, sub-s. (1), Cl. (f) of the T. P. Act, a seller is bound to give, on being so required, to the buyer or his nominee such possession of the property as its nature admits. 'Possession' here does not necessarily mean personal occupation but might include a landlord's possession if the property sold is in the occupation of a tenant to the knowledge of the buyer. The contract of sale might, however, provide for delivery of vacant possession of the property even though it is in the occupation of a tenant to the knowledge of the buyer. S. 55 of the T. P. Act is subject to the contract between the parties. 1956 Andh L T 24 : 1956 Andh W R 20 : AIR 1956 Andh 113 (113) (Pt B) (Pr 5).

——S. 55 (1) (f)—Under S. 55 (1) (f) unless there is a contract to the contrary giving delivery of possession to the buyer by the seller is an incident of contract for sale and when there is a decree directing the contract to be specifically performed it includes a direction upon the vendor to give delivery of possession to the purchasers. See Civil P. C. (1908), S. 47. AIR 1955 Cal 267 (DB).

——S. 55 (1) (f)—Agreement to sell house—Duty to give vacant possession.

Ordinarily, in the absence of a contract to the contrary, if the agreement is to sell a house in which the seller has the sole and absolute interest, the possession that its nature permits delivery of, is vacant possession. The presence of tenants or trespassers in the house cannot affect the nature of the property inasmuch as the words 'its nature' in S. 55 (1) (f) mean an incident which is inherent in the property which can be called as its nature. AIR 1950 Cal 333 (336) (Pt B) (Prs 15, 16).

——S. 55 (1) (f) — Duty to give possession to buyer's nominee.

Under S. 55 (1) (f) the seller is bound to give possession to the buyer or 'such other person as he directs'. Hence a suit for specific performance of an agreement to sell and to hand over possession to such person can be brought by the buyer along with such person. AIR 1950 Cal 333 (337) (Pt D) (Pr 27).

——S. 55 (1) (f)—Possession — Nature of—Purchaser having knowledge of tenancy — Not entitled to

vacant possession in absence of contract to contrary. 1964 Ker L J 12 : 1964 Ker L T 39.

——S. 55—Decree for specific performance of contract of sale — Execution — Relief of possession though claimed in suit decree silent as to such relief —Executing Court is entitled to order delivery of possession to decree-holder. See Civil P. C. (1908), O. 21, R. 32. AIR 1963 Madh Pra 86.

——S. 55 (1) (f) — Vendor not in a position to give possession — Purchaser, if entitled to rescind contract — Contract Act (1872), S. 39.

When the vendor is not in a position to give possession of the property agreed to be sold by him to the purchaser, the purchaser will be entitled by virtue of S. 55, sub-clause 1 (f) of the Transfer of Property Act and S. 39 of the Contract Act to rescind the contract and claim the advance that has been paid to him. (1950) 2 Mad L J 807 : AIR 1951 Mad 470 (471) (Pr 6) (DB).

——S. 55 (1) (f) — Relief available to plaintiff under Ss. 12 and 13 of the Bombay R. H. and L. House Rates Control Act also available under S. 55 (1) (f) of the T. P. Act—It can be asked in one suit brought against owners and tenant — Suit is not bad for multifariousness. See Civil P. C. (1908), O. 1, R. 9. AIR 1963 Mys 159.

——S. 55 (1) (f) — 'Such possession of property as its nature admits' — No vacant possession of property in possession of tenants possible — Vendee if can rescind contract on the ground that vacant possession is not given—(Contract Act (1872), S. 39).

The words 'such possession of the property as its nature admits' occurring in S. 55 (1) (f) refer to an incident which is inherent in the property, and the presence of tenants or trespassers in the house cannot affect the nature of the property so far as the question of delivery of actual possession is concerned. Where the auction-purchasers were told that the actual possession of that portion of property which was with the tenants would not be delivered but that the tenants would attorn to the purchaser, the provisions of S. 55 (1) (f), T. P. Act are not attracted, and the auction-purchaser will not be entitled to rescind the sale on the ground that no vacant possession is given. If the vendee commits the breach the legal consequences of rescission of contract must, therefore, follow. AIR 1960 Punj 51 (53) (Prs 7, 8, 9).

—— S. 55 (1) (f)—Agreement to sell agricultural land —Vendor refusing to give vacant possession in the absence of a contract to contrary— Vendee is entitled to rescind contract and claim the money paid by him in advance to the vendor. See Contract Act (1872), S. 39. AIR 1964 Raj 240.

8. Paragraph 1, Cl. (g)— Payment of public charges and incumbrances.

●——S. 55 (1) (g)—"Seller"—Meaning of — Conveying party different from party contracting to sell — Contracting party if not "seller."

Where A contracts to sell certain property to B, A imposes upon himself the obligation imported by S. 55 (1) (g). The fact that the trustees of the property, and not A, were to be the conveying parties, does not affect A's obligation under Cl. (g). The meaning of the word "seller" is not limited in that way. 1950 All L J 270 : (1950) 2 Mad L J 1 : 63 Mad L W 434: AIR 1950 P C 99 (102, 103) (Pt B) (Pr 10).

●——S. 55 (1) (g)—Contract to contrary — Contract substituting date of possession for date of sale.

The terms of the contract for sale may operate to substitute the date of possession for the date of sale that would otherwise be the determining date for the obligation arising under S. 55 (1) (g). 1950 All L J 270 : 54 Cal W N 419 : (1950) 2 Mad L J 1 : 63 Mad LW 434 : AIR 1950 P C 99 (102, 103) (Pt C) (Pr 10).

●——S. 55 (1) (g) — Contract to contrary — Use of word "net" in sale price.

Mere use of the word "net" in the price in a sale contract may not be sufficient to exclude the application of S. 55 (1) (g). 1950 All L J 270 : 54 Cal W N 419 : (1950) 2 Mad L J 1 : 63 Mad L W 434 : AIR 1950 P C 99 (102, 103) (Pt D) (Pr 10).

——S. 55 (1) (g) — Duty to pay public charges, rents and encumbrances — 'Contract to the contrary' — If should be express.

To exclude the statutory obligation of the vendor uncer S. 55 (1) (g), T. P. Act, the contract to the contrary as contemplated by S. 55 should be express and not implied from the fact that the entire terms of the sale deed are inconsistent with the statutory covenant. 1957 Andh L T 475.

——S. 55 (1) (g) — Incumbrance — Occupation by trespassers.

Where property is agreed to be sold 'with all rights and free from all incumbrances' the seller is bound to give vacant possession of the property which is occupied by trespassers. The reason is that trespasser's possession or occupation is a liability or impediment within the ordinary meaning of the word 'encumbrance' and it would impede the important right of occupation of the purchaser. AIR 1950 Cal 333 (336) (Pt C) (Prs 17, 18).

——S. 55—Property sold subject to encumbrance — Encumbrance found invalid — Benefit goes exclusively to purchaser.

The liability, which was a contingent one at the inception and at the date of the sale in favour of the defendants, failed to fix itself either on the property or as against the plaintiff and this left the defendants altogether free. 1957 Ker L T 392 : ILR (1957) Ker 321 : 1957 Ker L J 271 : AIR 1957 Ker 98 (100) (Pt B) (Pr 6).

——S. 55 (1) (a) and (1) (g), S. 55 (2) — Prior registered encumbrance — No duty on seller under S. 55 (1) (a) to disclose it — Property sold as free from prior encumbrance — Right of vendee to claim refund of sale price as damages.

To attract the provisions of S. 55 (1) (a), two conditions are necessary: firstly, that the buyer should not be aware of the existence of the defect in title; and secondly, that he could not with ordinary care discover the defect.

Where there is a prior registered encumbrance on the property sold S. 55 (1) (a) is not attracted although there is an express recital in the sale deed that the property is free from mortgage. The second condition is not satisfied inasmuch as the buyer could have known about the encumbrance :by making inquiries in the office of the Registrar.

That, however does not affect the right of the vendee to claim compensation for the defective title. The appropriate provision applicable is S. 55 (1) (g) according to which the seller is bound to discharge the encumbrance existing on the date of the sale. It is immaterial that the buyer was aware of the encumbrance.

Where the vendor fails to do so and the vendee is dispossessed of the property in enforcement of the mortgage which existed on the date of the sale the vendee is entitled to the refund of the sale price as damages. His claim can be supported under S. 55 (2). 1961 Jab L J 1408 : 1962 M P L J 40 : AIR 1962 Madh Pra 144 (145) (Pt A) (Prs 5, 7, 9).

——S. 55 (1) (g)—Owner of land bound to construct works of development in accordance with agreement with Improvement Trust in consideration of its sanc-

tioning construction of buildings — If expenses for construction of development works are to be incumbrances on property then the owner of land is bound to discharge them before he sells the land unless there is an agreement to the contrary, with the buyer —(There was held no such agreement.) 1954 Nag L J 538 : I L R (1953) Nag 579 : A I R 1954 Nag 65 (68) (Pt B) (Pr 13).

——S. 55 (1) (g) — Buyer is not bound to pay municipal taxes paid by seller for period prior to date of sale. 1954 Nag L J 538 : ILR (1953) Nag 579 : A I R 1954 Nag 65 (68) (Pt E) (Pr 17).

——S. 55 (1) (g) — Contract implied by — Property not sold subject to encumbrances — Seller must be deemed to have made a contract of indemnity if it turns out that there were encumbrances on the property on the date of the sale deed — Suit to enforce implied contract would be governed by Art. 116, Limitation Act. See Limitation Act (1908), Art. 116. AIR 1955 N U C (Trav-Co) 6038 (DB).

9. Implied warranty of title—Para. 2.

(A) If can be negatived.

(B) Marketable title.

(C) Knowledge of defects to the purchaser —Effect.

(D) Breach of —Remedies available.

(E) Suit for damages.

9. Implied warrantly of title — Para. 2.

——S. 55 (2) — Agreement in sale deed that in case vendee's possession is partially or fully lost vendor would return consideration — Contract is not 'contract to the contrary' — Statutory warranty is unaffected. 1959 All L J 841 : I L R (1959) 2 All 521 : AIR 1960 All 367 (368) (Pt A) (Pr 8) (DB).

——S. 55—Enquiry as to vendor's title— Representation by vendor.

There is not duty cast on the vendee to make enquiries and he may accept the representation made to him by the vendors in regard to the latter's title. 1959 All L J 841 : ILR (1959) 2 All 521 : A I R 1960 All 367 (368) (Pt C) (Pr 9) (DB).

——S. 55 — Duty of purchaser is to find out from the Municipal Office whether there are any arrears of taxes due and to further to find out from the Registration Office whether there are any encumbrances. See Transfer of Property Act (1882), S. 3. AIR 1955 All 24 (DB).

● ——S. 55 (2) — Nature of warranty of title—(Sale —Warranty of title.)

(Per Agarwala and Wanchoo JJ.) — Section 55 (2) embodies an absolute warranty of title. Unless there is an agreement to the contrary every sale implies this warranty of title. Deepchandra v. Ruknuddaula. 1951 All L J 81 : I L R (1950) All 1033 : A I R 1951 All 93 (114, 118) (Pt D) (Prs 112, 135) (FB).

● ——S. 55 (2) — Scope of — (Sale — Warranty of title).

(Per Agarwala and Wanchoo JJ.) — The language of Section 55 (2) is applicable both to a conveyance as well as to a contract of sale. Deepchandra v. Ruknuddaula, 1951 All L J 81 : I L R (1950) All 1033 : A I R 1951 All 93 (114, 118) (Pt E) (Prs 116, 135) (FB).

——S. 55 (2) — Civil P. C. (5 of 1908), S. 2 (11) — Covenant for good title — If can be enforced against —Universal legatee under original vendor — 'Legal representative'—S. 2 (11), C. P. Code.

The covenant for good title could be enforced by any person in whomsoever the property vests. The question is as to whether such right is enforceable as against all persons in possession of the property who claim to be in possession under a will executed by the legatee who in turn came to be in possession of the property under a will of the original owner. The liability to discharge the debts of the person from whom property is received is confined only to the legal representatives or the heirs-at-law. If therefore, the defendants (devisees under a devisee from the original vendor) do not come within the definition of heirs or legal representatives within S. 2 (11), Civil P. C. and hence they will not be liable. The expression 'legal representative' cannot be said to include persons who take possession of the property from the legatees of a part of the estate. (1960) 1 Andh W R 282 : AIR 1961 Andh Pra 29 (30) (Pt A) (Prs 7, 9, 10).

——S. 55 (2) — Where an agreement for the sale of land provides that it is "subject to the approval of the title of the vendor by the purchaser's lawyer" the provision is not a mere surplusage or a clause which means no more than what S. 55 (2), T. P. Act implies but is really a term of the contract which must first be assented to by the vendor and secondly the fulfilment of which is necessary for the enforcement of the contract. See Specific Relief Act (1877), S. 25 (b). AIR 1959 Andh Pra 256.

——S. 55 (2) — Applicability—Agreement of sale of land.

Per Chandra Reddy J.—The import of S. 55 is wide enough to include contracts for sale of properties and is not restricted to conveyances. In fact sub-s. (2) makes it abundantly clear that it has reference to contracts for sale as much as to completed transactions. Thus the statutory covenant for title embodied in S. 55 (2) is implied in every contract of sale of immoveable property even if there is no express clause embodying such a warranty. 1955 Andh L T 713 : I L R (1955) Andh Pra 170 : 1955 Andh W R 502 : AIR 1957 Andh Pra 307 (323, 324) (Pt A) (Prs 67, 68) (DB).

——S. 55 (2)—Covenant for title—Duty of vendor.

Per Chandra Reddy, J. and Subba Rao, C. J., (Umamaheswaram, J. contra). In order to make out a good title to the property the vendors must show that the property is free from all encumbrances. The vendee could not be expected to take a title with a cloud thereon, or compelled either to accept a doubtful title without investigation or rescind the contract. He could file a suit for specific performance and ask for an inquiry into the title by the result of which he would be bound. The existence of a mortgage over a property would make the title thereto incomplete, and knowledge on the part of the purchaser of defects in title of the vendor does not take away his rights to the statutory covenants unless there is a specific provision to cover such defects also. The non-repudiation of liability to discharge mortgages by the vendor cannot furnish a valid ground for not meeting the demand for inquiry into title. Case law Ref.

Where time was not the essence of the contract, the right of the vendee to ask for satisfactory evidence of discharge of the mortgage on the property sold is not lost by reason of his not having done it within the time prescribed for the completion of the sale. 1955 Andh L T 713 : ILR (1955) Andh Pra 170 : 1955 Andh W R 502 : A I R 1957 Andh Pra 307 (327, 328) (Pt C) (Prs 95, 100) (DB).

——S. 55 (2) — Scope of S. 43 — Transferee taking property absolutely and paying full consideration and acting on the representation of the transferor as to title incorporated in the deed of transfer — Benefit under, is available—Knowledge of facts not required —Independent enquiry not necessary—Rule of estoppel — Consideration of. See T. P. Act (1882), S. 43. 1956 Andh W R 1115 : A I R 1957 Andh Pra 288.

——S. 55 (2) — Covenant of title and of quiet enjoyment — Breach of — When takes place—A breach of the covenant can occur only on the disturbance of the vendee's possession. See Limitation Act (1908), Art. 116. **A I R 1950 Bom 401 (DB).**

——**Ss. 55 (1) (a), 55 (2) — Auction sale of land — Defect in vendor's title — Duty of vendor — Purchaser's duty to make inquiry — Covenant for title—Scope of.**

Whether the sale is made by auction or by private treaty the purchaser is under no obligation to make inquiry as to defects in the vendor's title, but it is the duty of the vendor to disclose all that is necessary for his own protection.

The expression 'shall be deemed to contract' in S. 55 (2) must be deemed to be incorporated in every contract for sale and thus the rule of caveat emptor is rendered obsolete and inapplicable. **(1961) 65 Cal W N 881.**

——S. 55 (2) — Agreement to sell property — S. 55 (2) applies to such an agreement. **1963 (2) Cri L J 369 : (1963) 4 Guj L R 833 : AIR 1963 Guj 239 (240, 241) (Pt B) (Prs 5, 6).**

——**S. 55, para 2** — Sale of immovable property in Travancore (prior to applicability of T. P. Act)—Defects in vendor's title discovered after conveyance —Vendee cannot bring suit for cancellation of sale deed unless fraud is proved — Plea of mutual mistake not open — Rule of caveat emptor applies—Purchaser's remedy lies in suit for damages. **1963 Ker L J 400.**

——**S. 55**—Covenant for quiet enjoyment—Covenant for title—Difference. **1957 Ker L J 445 : 1957 Ker L T 588.**

——S. 55 (2)—Disclosure of defects—Duty of vendor — Non-disclosure by vendor that the permission granted by the Government to construct building on the land sold was non-transferable—Purchaser has a right to rescind contract—Doctrine of caveat emptor —Not applicable in view of the statutory provision of S. 55. Section 55 (2) implies a warranty of title in all sales — The last clause of S. 55 will also entitle the buyer to rescind the contract. See T. P. Act (1882), S. 55 (1) (a). **A I R 1957 Madh B 23.**

——**S. 55 (2)**—Sale by C to B — Suit by A for declaring sale of property by C in favour of defendant B void and for possession decreed — Appeal by plaintiff against direction against him as to refund of consideration—No separate appeal or cross-objection filed by defendant — Defendant in second appeal has no right to challenge decree of trial Court — Second appellate Court directing C instead of B to refund purchase money—Plaintiff not liable to refund consideration money which B paid to C. See Civil P. C. (1908), O. 41, R. 22. **A I R 1955 N U C (Madh B) 3808.**

——**S. 55 (2) — Covenant of indemnity—Interpretation — Deed — Construction — Contract Act (1872), S. 124.**

Held, that the latter covenant was not confined to the encumbrance mentioned in the earlier covenant but was intended to cover every dispute which caused loss to the vendee and thus amounted to a specific covenant to indemnify the vendee in case he sustained loss on account of any dispute arising in respect of the property. **(1950) 1 Mad L J 499 : 63 Mad L W 399 : AIR 1950 Mad 621 (622, 623) (Pt A) (Pr 3) (DB).**

——**S. 55—Covenant for title—Breach—When occurs —Limitation Act (1908), Art. 115.**

Held, that though it may be that the breach might be deemed to have occurred on the date of the conveyance on the ground that to the extent of half a share in the property the defendant's father had no right to convey, still under the terms of the aforesaid covenant, the right to sue could not have accrued to the plaintiff till the dispute was raised by the sons and it was not settled by the defendant. **(1950) 28 Mys L J 165 (DB).**

——**S. 55—Covenant for quiet enjoyment — Breach of—When occurs.**

"A breach of the covenant for quite enjoyment cannot occur till the plaintiff has been actually dispossessed or otherwise disturbed." A mere claim for possession is not enough to constitute a disturbance of possession so as to constitute breach of covenant for quiet enjoyment. **(1950) 28 Mys L J 165 (DB).**

——**Ss. 55 (2), 119 and 120—Loss on pre-emption — Plaintiff exchanging land with defendant — Plaintiff losing on third person pre-empting—Plaintiff knowing of right of pre-emption—There is no defect in title or deprivation of land—S. 55 (2) is not attracted — Plaintiff cannot claim damages. 1952 Nag L J (Notes) 132 (DB).**

——**S. 55—Contract to the contrary must be strictly construed — Ambiguity should be resolved in favour of vendee.**

Held, that under S. 55, both A and B were answerable, if it was found that the vendors had no title to the property and if by that reason the vendee had to suffer, unless there was a contract to the contrary in the sale deed. But this contract must be in clear and unambiguous terms, which has to be construed strictly in order to take out the case from the operation of S. 55. The indemnity clause in the contract being ambiguous, it would be construed in favour of the vendee and both A and B would be liable. **54 Pun L R 134 : A I R 1952 Punj 298 (299) (Pr 6) (DB).**

——**S. 55 (2) — Suit for return of purchase-money—Suit not based on breach of implied covenant of title —Plaintiff cannot take advantage of sub-section. 51 Punj L R 347 : A I R 1950 East Punj 74 (76) (Pt A) (Pr 13) (DB).**

——**S. 55 (2)**—Sub-section even if regarded as rule of justice, equity and good conscience is not enforceable by transferee in invitum—Per Kapur J. **51 Punj L R 347 : A I R 1950 East Punj 74 (76) (Pt B) (Pr 14) (DB).**

9 (A). If can be negatived.

——**S. 55 (2) — Warranty of title — Absence of contract to the contrary—Damages—Mode of assessment —Civil P. C. (5 of 1908), O. 41, R. 33 — Power of Appellate Court to pass decree in favour of defendants who have not preferred appeal.**

Under S. 55 (2) of the Transfer of Property Act, every sale for consideration carries with it an implied covenant for title. It is open to the vendor to contract out of the covenant for title. The contract to the contrary must be express. In the absence of such contract to the contrary, the warranty of title follows from the section.

Order 41, R. 33, Civil P. C., empowers the appellate Court to pass a decree in favour of a party even though he has not filed an appeal or cross-appeal. A I R 1960 Andh Pra 137, Dissented from. **(1961) 1 Andh W R 462 : 1961 Andh L T 421 : A I R 1962 Andh Pra 192 (195) (Pt A) (Pr 17) (DB).**

——**S. 55 (2) — Covenant for title — Contract to the contrary — Proof of — Oral evidence to exclude covenant — If permissible — (Evidence Act (1872), S. 92).**

Per Chandra Reddy, J. and Subba Rao, C. J.; Umamaheswaram, J. contra: It is open to the purchaser to contract himself out of the statutory rights conferred on him by S. 55 (2); but this should be expressed in clear and definite terms in the document itself and it is not permissible to let in oral evidence

to show that there was an agreement excluding covenants for title, and mere knowledge on the part of the vendee of a defect in title to the property to be sold would not by itself defeat the purchaser's right based on the statutory covenant.

Where a deed embodying a contract of sale of immovable property provided that "if in respect of this property any disputes arise from any one, I (seller) shall settle them at my own expense".

Held, (Per Chandra Reddy, J. and Subba Rao, C. J.; Umamaheswaram, J., contra) that the utmost that could be said in favour of it was that the clause was vague and indefinite and hence was not sufficient to constitute a contract to the contrary and to negative the covenant for title embodied in S. 55 (2). **1955 Andh L T 713 : I L R (1955) Andh Pra 170 : 1955 Andh W R 502 : A I R 1957 Andh Pra 307 (325, 326) (Pt B) (Prs 75, 76, 83, 88) (DB).**

——S. 55 (2) — Defect in vendor's title — Vendee aware of the defect—Vendee can sue for damages on implied covenant of title—Incompetent to transfer—Contract is void from inception or, is one subsequently discovered to be void within S. 65, Contract Act—Vendor is liable to refund—Contract Act (1872), S. 65. **1950 Nag L J 145 : I L R (1950) Nag 467 : A I R 1950 Nag 229 (230, 231) (Pt A) (Prs 10, 13, 14).**

9 (B). Marketable title.

——S. 55 (2)—Generally speaking a "marketable title" is one which at all terms and under all circumstances could be forced on an unwilling purchaser under a contract for sale made without special conditions. See Words and Phrases — Marketable title. **A I R 1964 Orissa 269.**

——S. 55 (2)—Marketable title—Meaning of—Specific Relief Act (1877), S. 25.

Under S. 55 (2), T. P. Act what a seller is, therefore, required to give is a "marketable title" or as S. 25 of the Specific Relief Act describes it, "a title free from reasonable doubt", if he can ensure that it would be sufficient compliance with the requirements of S. 55 (2) of the T. P. Act also. **1960 Raj L W 571 : I L R (1960) 10 Raj 1153 : A I R 1961 Raj 196 (201) (Pt C) (Pr 18).**

——S. 55 (2)—Marketable title—Tests.

A marketable title is a title which reasonably and strictly speaking a vendor would be in position to force on an unwilling purchaser, under all circumstances. **1960 Raj L W 571 : I L R (1960) 10 Raj 1153 : A I R 1961 Raj 196 (202) (Pt D) (Pr 20).**

——S. 55 (2) — Marketable title — Title by adverse possession.

If a proper title by adverse possession can be successfully made out, this would fulfil the vendor's obligation to make out a marketable title : (1912) 2 Ch 1 and A I R 1938 Bom 77, Relied on. **1960 Raj L W 571 : I L R (1960) 10 Raj 1153 : A I R 1961 Raj 196 (203) (Pt E) (Pr 26).**

——S. 55 (2)—Marketable title—Decision of inferior Court that title is defective is not binding upon superior Court. A I R 1961 Raj 196 (202) (Pt F) (Pr 20).

9 (C). Knowledge of defects to the purchaser—Effect.

● **——Ss. 55 (2) and 43** — Equity treats that as done which ought to be done — Transferor having no interest which he intended to transfer but getting such interest subsequently—Transferor must perform his part of the contract when he is able to do so on the acquisition of the interest subsequently — Knowledge of truth by transferee that transferor had no interest is immaterial—The representation that transferor had authority to transfer the interest is implied under S. 55 (2) when nothing is said to the contrary in the deed of transfer. See T. P. Act (1882), S. 43. **A I R 1956 All 225 (FB).**

——S. 55 (2)—Subsequent purchaser who has notice of previous agreement of sale does not forfeit his rights under the sale if the vendor has given an assurance that he would adjust the claim of the previous purchaser. **1963 Mah L J (Notes) 22.**

——S. 55 — Breach of warranty of title — Suit for damages — Purchaser's knowledge of defect in title immaterial—Assessment of damages.

The knowledge of the purchaser regarding the defect in title is immaterial to a claim for damages for breach of warranty of title. Even if the vendee was aware of a defect in the vendor's title to or capacity to transfer the property concerned, the vendor is responsible for damages under the implied covenant of title under the sale deed. Under S. 55 of the T. P. Act, it is not the price of the land on the date of sale which is material for assessment of damages, but the market price of land on the date on which eviction takes place. **1960 M P L J (Notes) 155.**

——S. 55 (2)—Warranty of title—Buyer's knowledge of seller's defective title—Relevancy.

Under S. 55 (2) the implied warranty of title on the part of the seller in favour of the buyer is irrespective of the question whether the buyer has or has not notice of the infirmity of the title of the seller. **61 Punj L R 672 : I L R (1959) Punj 1463 : A I R 1960 Punj 275 (277) (Pt A) (Pr 4) (DB).**

——S. 55 (2) — Applicability — Agreement to sell — Warranty of title.

The law places the seller in the absence of a contract to the contrary under a statutory obligation to give a warranty of title to the purchaser to the effect that he possesses the interest which he professes to transfer and that he has power to transfer the same.

If, therefore, in a given case it is established that there is a breach of this warranty, the seller must be held to be liable to the vendee even though the latter has notice of the defective title, provided there is no contract to the contrary. In such a case the seller would not be entitled to ask for specific performance of the agreement to sell. Clause (2) of S. 55 applies not only to a completed sale but also to an agreement to sell and that, in any case, if S. 55 (2) only refers to a completed sale and does not in express language refer to an agreement to sell the warranty of title essential in the former case must be held to be necessarily implied in a contract for sale also. **1960 Raj L W 571 : I L R (1960) 10 Raj 1153 : A I R 1961 Raj 196 (199, 200) (Pt A) (Prs 10, 11).**

9(D). Breach of — Remedies available.

● **——S. 55 (2)—Form of warranty in sale-deed — Its effect on contract of sale — (Specific Relief Act (1877), S. 23).**

Vendees' insistence on the form of warranty to be inserted in the sale deed subsequent to the contract for sale cannot affect the contract. It might in a given case disentitle him to specific performance. But that would depend upon whether his proposal regarding a form of warranty to which he was not entitled was a mere proposal regarding the form of the sale or was a refusal to perform without it. Durga Prasad v. Deep Chand, **1954 Mad W N 222 : 1954 S C J 23 : (1954) 1 M L J 60 : 1954 A L J 73 : 1954 B L J R 213 : 1954 S C R 360 : 1954 S C A 934 : 67 M L W 945 : A I R 1954 S C 75 (80) (Pt A) (Pr 32).**

● **——S. 55 (2) — Refusal of vendor to give warranty of title—(Sale—Warranty of title).**

If a contract for sale of land is concluded between a vendor and a purchaser without any express stipulation as to the warranty of good title, and the vendor before the conveyance is executed, expresses his inability to give such a warranty the Court in a suit to enforce such a contract is entitled to pass a decree for specific performance, even though it is unable to hold that the refusal by the vendor was mala fide and invented only as an excuse to back out of the transaction. The mere refusal on the part of vendor to give such a warranty does not disentitle the purchaser to a decree for specific performance. Deepchandra v. Ruknuddaula, **1951 All LJ 81 : I L R (1950) All 1033 : A I R 1951 All 93 (118) (Pt B) (Pr 134) (FB).**

——S. 55 (2)—Defective title—Remedy.

Every purchaser of property takes the risk of a possible infirmity of title in his vendor. That is why apart from the statutory safeguard in S. 55 (2) of the Transfer of Property Act, the instrument of conveyance generally contains an express covenant as to the subsisting title of the vendor. In case the title is proved to be defective the remedy, in the absence of a contract to the contrary, is to enforce the covenant of title by filing an appropriate action for damages. **1958 Andh L T 956.**

——S. 55 (2) and (5) (b)—Breach of covenant for title —Right to purchase money.

There is no provision in S. 55, making the obligation of the buyer to pay the purchase money to the seller under S. 55 (5) (b) conditional upon the fulfilment of the contract provided for in S. 55 (2). A breach of the covenant for title or quiet enjoyment is no bar to a suit for recovery of unpaid purchase money. A breach of covenant for title or quiet enjoyment would not entitle the buyer to avoid the sale on that ground but would entitle him to damages. **(1957) 1 Andh W R 1 : A I R 1957 Andh Pra 688 (689, 690) (Pt A) (Prs 3, 4) (DB).**

——S. 55 (1) (g) and (2)—Breach of covenants—Vendee's right to reimbursement—(Contract Act (1872). S. 69).

Held, on facts (1) that as the sale deed executed by the predecessor of defendant 2 who was the widow of plaintiff's vendor in favour of plaintiff's wife did not exclude the statutory covenant under S. 55 (1)(g), defendant 2 was liable for the maintenance charge and was also bound by consequent liability under S. 69, Contract Act; (2) that defendants 3 to 5 the three nephews of the Hindu widow the decree-holder of the charge decree were also liable for half the amount to the plaintiff under S. 69, Contract Act, though the suit was based against them on breach of covenant for title. **1957 Andh L T 475.**

——S. 55(2)—Subsequent purchaser placed in possession of property by vendor—Dispossession by prior purchaser in execution of decree for specific performance of contract—Suit by subsequent purchaser against vendor for breach of warranty of title — Subsequent purchaser entitled to retain profits received by him during the period he was in possession — Such profits not to be adjusted towards claim for refund of consideration. 1963 Mah L J (Notes) 22.

——S. 55. Para. (2)—Warranty of title — Scope of—(J. and K.) Rules for Grant of Lands for Building Purposes, R. 35 — Sale of land by Wasildar without obtaining sanction for sale — Resumption of land — Remedies of vendee—Contract Act (1872), Ss. 65, 73 —Doctrine of pari delicto, applicability.

Held on facts in the instant case, the sale of the defendant's interest in favour of the plaintiff being in direct contravention of R. 35 of the Wasildari Rules, and the sale having been avoided by the order of resumption the sale was void ab initio and it was not necessary for the plaintiff to set aside the sale before claiming damages for breach of warranty of title by the defendant.

The vendee had two remedies. He could either sue for damages for breach of covenant as implied under S. 55 (2) and in that case he would be entitled to damages under S. 73 of the Contract Act. He had also an alternative remedy to sue for restitution of the benefits gained by the vendor under S. 65 of the Contract Act.

In the instant case the doctrine of pari delicto could not be said to apply on account of the knowledge of both the parties that the contract might become void if the permission was refused, so as to prevent the plaintiff from getting any relief under S. 65, as the purpose or object of the sale was not unlawful. **A I R 1961 J & K 66 (70 to 72, 75) (Pt E) (Prs 13 to 16, 26, 27).**

——S. 55 (c) — Sale deed — Vendor alleging that he had never contracted to sell—Oral evidence—Admissibility—Evidence Act (1872), S. 92.

Held, that in the case it was necessary to see whether the plaintiff was entitled to prove that the transaction was not intended to be a sale.

Held, further that S. 39 of the Specific Relief Act gave an additional remedy to the plaintiff which he could avail of at the discretion of the Court. However when he had lost possession of the lands, he could not bring a suit for cancellation of the sale deed alone without also claiming the further relief of possession. A formal prayer for cancellation of the deed was not necessary and the suit for possession could not be dismissed on the ground that the plaintiff had not sued for cancellation of the sale deed first. **1961 M P L J (Notes) 127.**

——S. 55 (2) — Privity of estate between seller and transferee from buyer of immovable property—Transferee from buyer is entitled to sue for damages in breach of deemed covenant of title. 77 Mad L W 555 : ILR (1965) 1 Mad 287.

——S. 55 (2) — Contract for sale of immovable property — Mention of time limit for completion of contract — Time when essence of contract — Test — Onus of proof — Distinction between such contracts and commercial contracts—Exceptions to the Rule of expressed intention — Circumstances such that Court would refuse specific performance to vendor—Vendee would be entitled to refund of earnest money. See Contract Act (1872), S. 55. AIR 1964 Orissa 269.

——S. 55 (1) (f), (2)—Express covenant in sale deed that in case of defect of title vendee will be compensated — Vendee not obtaining possession over portion—Suit for refund of part of consideration.

The covenant for title implied by S. 55 (2) gives the buyer, no doubt, a remedy in case of defects discovered after conveyance, but, where a suit for the return of the purchase money is based on an express covenant contained in the conveyance itself, it is only an additional safeguard over and above the statutory obligation under S. 55 (2). Where there is an express contract in the conveyance itself that in case of defect of title the vendee will be compensated by the vendor, the vendee is entitled, on the basis of the covenant in the deed itself, to maintain a suit for compensation by way of a refund of a part of the consideration of the sale for not having got possession over a portion of the vended land due to want of title of the vendor in it. In such a case it is not necessary that the entire sale should be set aside before the vendee can claim the refund. **AIR 1961 Pat 11 (12, 13) (Pt A) (Prs 10, 24, 25).**

——S. 55 (2) — Warranty of title — Seller's title doubtful — Court not to force such title on pur-

chaser. 61 Punj L R 672 : ILR (1959) Punj 1463 : AIR 1960 Punj 275 (277) (Pt B) (Pr 4) (DB).

——S. 55 (1) (a)—Seller's failure to disclose material defects in property sold — Effect — Seller aware of such defects but buyer not aware — Non-disclosure must be held fraudulent — Buyer deprived of possession of property — Remedies available to him — Suit for return of purchase money without rescission of sale deed is maintainable. 1962 Raj L W 429 : ILR (1962) 12 Raj 744 : AIR 1963 Raj 38 (41) (Pr 11).

——S. 55 (2) — Specific Relief Act, S. 25 — Suit by vendee for return of earnest on grounds of want of marketable title in defendant vendor — Question of marketable title can be decided in absence of party in whom title is alleged to reside — Civil P. C. (1908), O. 1, Rr. 9, 10, S. 11. See Specific Relief Act (1877), S. 25. AIR 1961 Raj 196.

——S. 55 (2)—Hindu Law—Debts — Son's liability—Alienation by father set aside on ground of want of legal necessity — Suit by transferee to recover back consideration money—Not maintainable against son. See Hindu Law—Debts. AIR 1959 Raj 254.

——S. 55, para. 2 — Covenant for title — Sale of unregistered poromboke — Covenant by seller to secure its registry — Breach of — Vendee obtaining grant of unregistered poromboke Kuthakapattom — Damages—Cause of action—Quantum of damages.

Held that in a suit for recovery of unpaid purchase money, filed by the plaintiff the covenant had been broken and the vendee had a present cause of action. It could not be argued that the cause of action arose only on actual eviction. The covenant was for procuring title by registry of the plot. In such a case, the fair rules would be to give the defendant such damages as would compensate him for the defective quality of his title. AIR 1956 Trav-Co 90 (92) (Pr 4) (DB).

9 (E). Suit for damages.

——S. 55—A and B sold certain property to C—Sons of A and B sued C and A and B to set aside the sale on the ground that it was a joint family property—Suit decreed — C had to pay some amount to the sons to save his property—Suit by C against A and B claiming damages — Held, A and B were liable in damages for the breach of warranty of title by A and B. See Civil P. C. (1908), S. 11. AIR 1960 All 367 (DB).

——S. 55 — Breach of implied contract as to title of vendor—Damages—It is duty of vendee to mitigate damages caused by vendor's breach—Vendee cannot claim to be compensated for loss caused by his own failure — Failure of plaintiff — Vendee to prosecute suit diligently as a prudent man and his failure to file appeal — Vendee is not entitled to damages caused by his own failure — The test to determine whether his behaviour is reasonable is to see whether he did what a prudent man might have reasonably done if the whole expense was to fall on him — Vendee has to act as a person of prudence, if he is to get damages from vendor by enforcing liability under S. 55 (2) — Held, that the plaintiff did not act with due diligence and prudence such as he ought to have — Contract Act (1872), S. 73. AIR 1962 Andh Pra 192 (195 to 197) (Pt B) (Prs. 18, 22) (DB).

——S. 55 — Breach of implied covenant for title — Damages — Assessment — Basis of assessing damage would be the market value of the land (subject-matter of sale) as on date of dispossession of vendee —Obiter—Case law ref. — Contract Act (1872), S. 73. AIR 1962 Andh Pra 192 (198) (Pt C) (Pr 30) (DB).

——S. 55—Limitation—Suit for damages for breach of covenant for title — Starting time for limitation is the actual or constructive dispossession. See Limitation Act (1908), Art. 116. AIR 1959 Andh Pra 445.

——S. 55 (2) — Suit for damages for breach of covenant for title and quiet enjoyment. Limitation Act, Art. 116 applies. See Limitation Act (1908), Art. 116. AIR 1950 Bom 401 (DB).

——S. 55 (2) — Sale contravening Proviso 3 to S. 40, Bombay Court of Wards Act — Breach of covenant for quiet enjoyment — Damages, if can be recovered —Bombay Court of Wards Act (1 of 1905), S. 40 Proviso 3—Contract Act (1872), S. 73.

If an owner of property, which is made non-transferable by statute, agrees to transfer that property in a manner intended to circumvent the provision of the statute, the agreement is void in law and unenforceable, and damages cannot be awarded for breach of such an agreement. But, if a person purports to convey what he has no authority to convey and agrees to guarantee quiet enjoyment to the vendee, the vendor or the person claiming under him cannot avoid an obligation to pay damages for breach of the covenant on the ground that the vendor had either no interest or had a limited interest, which has since the date of the sale ceased. In such a case the fact that the conveyance is void to the extent to which it exceeds the authority of the vendor by reason of the absence of title in him or by reason of a personal disqualification imposed upon him does not affect the liability of the vendor or persons claiming under him to compensate the vendee for breach of the covenant of title and quiet enjoyment. Consequently, damages for breach of covenant for quiet enjoyment entered into by a vendor who sells property and the sale contravenes the provisions of S. 40, Proviso 3, Bombay Court of Wards Act, can be recovered. 52 Bom L R 614 : AIR 1950 Bom 401 (406, 407, 408) (Pt D) (Prs 21, 25) (DB).

——S. 55, Para. (2) — Limitation Act, Arts. 116, 62 — J. and K. Limitation Act, Arts. 120, 95 — Breach of covenant of title in registered sale deed — Suit for damages by vendee — Article 116 applies and not Art. 62. See Limitation Act (1908), Art. 116. AIR 1961 J and K 66.

——S. 55 — Breach of covenant for title and quiet possession — Suit by buyer for damages — Relevant date for assessment of damages is the date of the suit and not any other date prior to it — (Contract Act (1872), S. 73). AIR 1953 Mad 529 (530) (Pt B) (Pr 6) (DB).

——S. 55 (2) — Implied contract for title — Breach of — Suit for damages.

In a suit for damages for breach of the implied warranty of title the non-production of the sale deed in favour of the plaintiff is immaterial when the defendant does not plead a contract to the contrary. The reason is that the warranty of title claimed is a statutory one which does not require to be established by the sale deed. The statutory warranty is available to the plaintiff even if he was aware of defect in title of the vendor. The cause of action for the suit arises on the date of dispossession and not on the date of the sale deed and hence the suit cannot be dismissed on the ground that it has been filed a very long time after the sale. 38 Mys L J 491 : ILR (1958) Mys 237 : AIR 1959 Mys 46 (46, 47) (Prs 4, 5, 6).

——S. 55 — Covenant for title—Breach of—Measure of damages — Contract Act (1872), S. 73.

In the case of a breach of covenant for title the measure of damages is the difference between the value of the thing as it is and its value as it was warranted to be.

Where the defect in title is so complete as to pass nothing to the vendee, the purchase money is gene-

rally taken to be the measure of damages as the price paid is prima facie evidence of the value, though if it is proved that on the date of sale the property conveyed was of more value than the actual price paid the real value may be decreed as damages. In cases where possession has been delivered, having regard to the fact that profits from the property would be received by the purchaser, he would not be entitled to any interest. (1950) 28 Mys L J 165 (DB).

——S. 55 (2) and (5) (c) — Suit impeaching vendor's title and claiming vendee's eviction — Vendor remaining ex parte—Liability for damages to vendee.

Held, that the vendor was liable for damages and he could not without imputing bad faith to the vendee blame him for compromising the suit. AIR 1933 Nag 364, Foll. 1955 Nag L J 73J : ILR (1956) Nag 74 : AIR 1956 Nag 124 (126) (Pt B) (Pr 5).

10. Paragraph 3 — Delivery of title deeds.

——S. 55 (1) (b) — Division of ownership of land — Title deeds in possession of a part owner — Right of other owners and purchaser regarding production of documents.

Where ownership of land held under one title is divided, and the title deeds remain in the possession of the owner of a part, the owners of the rest of the land have an equitable right, independently of any covenant or statutory acknowledgment, to enforce production of the title deeds, in order to defend a title or effect any sale or like disposition of their lands. The purchaser, therefore, has a right to enforce production of the title deeds for inspection. (1964) 68 Cal W N 611.

11. Right to rents and profits and interest on purchase money.

——Ss. 55 (1) (d), 55 (6) (a) and 54 — Contract for sale — Rights of purchaser — Claim to mesne profits — Maintainability.

In view of S. 54 of the T. P. Act there is no room for the contention that the purchaser becomes in equity the owner of the estate under the contract for sale and the vendor holds the property in trust for him. The buyer is entitled to the rents and profits of the property on the passing of the ownership to him by the execution of a sale deed by the vendor. It cannot be said that the possession of the vendor is wrongful or that he is bound to account to the purchaser for profits till the sale deed is executed in favour of the plaintiff. The purchaser therefore cannot sue for mesne profits from the date of contract for sale to the date on which he obtains possession. 1956 A L T 365 : 1956 Andh W R 528 : AIR 1957 Andh Pra 960 (961) (Pt A) (Pr 2).

——S. 55 (4)—Suit for specific performance of agreement for sale of land decreed — Subsequent suit for mesne profits or damages — (Civil P. C. (1908), O. 2, R. 2) — (Specific Relief Act (1877), S. 19).

A suit for specific performance of an agreement for sale of certain land or in the alternative for recovery of damages was decreed. The purchaser filed a subsequent suit for mesne profits from the said land.

Held, (1) that the suit was not maintainable as the plaintiff was not entitled to the rent and profits until the conveyance was executed in his favour.

(2) The plaintiff only prayed for compensation for the breach of the contract in substitution for such performance. He did not seek compensation in addition to specific performance. The cause of action being the agreement of sale, and not the decree for specific performance, the provisions of O. 2, R. 2 applied and the suit was consequently not maintainable. Case law discussed. AIR 1955 NUC (Andh Pra) 17.

——Ss. 55, 36 and 8 — Sale of agricultural land — Land subject to lease of yearly rent, the year expiring a month after the sale — No different intention expressed—Apportionment of rent—Section 36, T P. Act applies — The transferor will be entitled to rents and profits accruing before the transfer as stated in S. 55 (4) (a) and the transferee to the rents and profits thereof accruing after the date of transfer and the passing of ownership to him as stated in Ss. 8 and 55 (6)(a). See T. P. Act (1882), S. 36. AIR 1951 Mad 601.

——S. 55 (4) (a) — Seller's right to claim rents and profits or interest on unpaid purchase price when arises—Contract to sell immovable property—Vendee put in possession after paying part of consideration—Contract falling through on account of non-payment of entire consideration — Section 55 (4) (a) does not apply — Right of vendor to claim interest on unpaid purchase price on equitable principle. (1965) 2 Mys L J 229 : AIR 1966 Mys 86 (90) (Pt B) (Prs 11, 12).

12. Paragraph 4, Cl. (b) —Vendor's lien.

(A) Enforcement of.

12. Paragraph 4, Cl. (b)—Vendor's lien.

——S. 55 (4) (b) — Applicability — Prospective buyer put in possession in anticipation of transfer — Equitable principle — Payment of interest.

Section 55 (4)(b) has no application to a case where in anticipation of the transfer of property the prospective buyer is put in possession of property. In that case, there is no completed transfer and, therefore, the statutory rule has no application. That situation therefore governed by the equitable principle, which requires the buyer to pay interest on his purchase money from the date of taking possession and which is based on an implied agreement arising out of the fact of taking over possession without paying the consideration amount. The principle is independent of the Transfer of Property Act. This agreement may be negatived by a contract, either express or implied. (1955) Andhra W R 964 : ILR (1956) Andh 87 : AIR 1957 Andhra Pra 34 (36) (Prs 13, 14) (DB).

——S. 55 (4) — Seller's charge for purchase-money — Right to interest on purchase-money.

Under S. 55 (4) of the Transfer of Property Act the seller is entitled where the ownership of the property has passed to the buyer before the payment of purchase money, to a charge on the property for the amount of the purchase money and for interest on such amount from the date on which possession had been delivered. Where physical possession is not delivered to the buyer there is no justification for awarding interest to the seller on the purchase price. 1956 Andhra L T 24 : 1956 Andh W R 20 : AIR 1956 Andhra 113 (114) (Pt C) (Pr 9).

——S. 55 (4) (b) — Mortgage of property sold in favour of vendor — Whether loan or security for unpaid purchase money — Is to be decided from the essential nature of the transaction and not merely from the form of it — If it is found that it was a transaction merely to secure the vendor's lien by taking some security or bond under S. 55 (4) (b), T. P. Act then the case will not be hit by the Bengal Money Lenders Act. See Debt Laws—Bengal Money Lenders Act (10 of 1940), S. 38 (1). AIR 1955 N U C (Cal) 748 (DB).

——S. 55 (4) (b) — Ownership of property passed to buyer before payment of purchase-money — Notice of non-payment to transferee from buyer not proved —Charge on property in hands of transferee for non-payment of consideration not sustainable. 1964 Ker L T 950 : 1964 Ker L J 1220 : AIR 1965 Ker 28 (29) (Pt B) (Pr 4).

■—S. 55 (4) (b) — Owelty of partition represents the unpaid price of the excess land taken from one co-sharer and given to another on partition. It is therefore a liability for which a charge under S. 55 (4) (b), T. P. Act does enure — Meaning — Incidents — Whether a 'debt' within S. 2 (c). See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), S. 2 (c). AIR 1962 Ker 85 (FB).

—S. 55 (4) (b) and (5) (b)—Recital in sale deed that sum is reserved as first charge on property sold — It imports personal liability to pay and does not exclude it. 1962 Ker L J 1309 : IL R (1962) 2 Ker 740 : 1962 Ker L T 768.

—S. 55 (4) (b) — Object of — Applicability — T. P. Act (1882) coming in force on 1-4-51 — Liability from document dated 18-10-40 was not a charge under S. 55 (4) (b) — Hence not excluded from definition of debt. See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), S. 2 (c) (vii). 1962 Ker L T 254.

—S. 55 (4) (b) — Scope — Suit for recovery of balance of purchase price remaining unpaid after discharing mortgage on property and personal debts of vendor — Decree obtained with a charge on the property was held included in S. 2 (c) (vii). See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), S. 2 (c) (vii). (1961) 1 Ker L R 249 : 1961 Ker L T 373.

—S. 55 — Vendor's lien — Extinguishment of — Mere execution of promissory note by purchaser for unpaid purchase price — Not sufficient. 1962 Mad W N 355 : AIR 1962 Mad 423 (424) (Pt A) (Prs 5, 8).

—S. 55 — Mortgage executed in respect of sum representing sale price and assigned subsequently — Debt exempted from the operation of the Madras Agriculturists Relief Act (4 of 1938). See Debt laws — Madras Agriculturists' Relief Act (4 of 1938), S. 10 (2). AIR 1955 N U C (Mad) 3187.

—S. 55 (4) (b) — Seller's charge for purchase money — (Limitation Act (1908), Art. 132).

The existence of a statutory charge can arise only if there is a contract between the vendor and the vendee that the latter would pay the consideration into the hands of the vendor who would redeem the usufructuary mortgage on the property and deliver it free of encumbrance to the vendee. In such a case it can be said that there is really a vendor's lien but such a statutory lien cannot be said to exist where the agreement is that the vendee should himself discharge the mortgage and recover possession of the property. In the latter case the purchase price left with the vendee for payment of the usufructuary mortgage is not money due to the vendor under S. 55 (5) (b) and hence no statutory charge or vendor's lien on the property can arise in respect of that amount.

Even if it is assumed that there is vendor's lien in such a case it has to be enforced within 12 years from the date of sale and a suit brought after that time will be barred by Art. 132, Limitation Act. 1953 Mad W N 692 : ILR (1954) Mad 484 : (1953) 2 M L J 504 : AIR 1954 Mad 508 (511, 512) (Pt B) (Prs 9, 11, 12) (DB).

—S. 55 (4) (b) — Interest on purchase money cannot be claimed by the vendor under S. 55 (4) (b) so long as he remains in possession. AIR 1952 Mad 678 (679) (Pr 3) (DB).

—Ss. 55 and 54 — Consideration for sale agreed to be Rs. 2,000/-—Sale supported by consideration only to the extent of Rs. 1,000/- — Seller has charge over property for that amount. See Transfer of Property Act (1882), S. 54. (1963) 1 Mys L J 592.

—S. 55 (4) (b) — Right to interest on unpaid price —Vendor entitled to interest from date when vendee enters into possession of property sold, on theory of implied agreement. ILR (1964) 1 Punj 143 : AIR 1964 Punj 123 (129) (Pt D) (Pr 13) (DB).

—Ss. 55, 2 (d), 5 and 100 — Transferred for consideration without notice of charge — Unpaid vendor's charge — Charge does not bind auction-purchaser without notice of charge. See T. P. Act (1882), S. 2 (d). AIR 1960 Punj 296 (DB).

—S. 55 (4) (b)—Property sold—Subsequent to sale-deed separate document executed containing statement that part of price is left as "amanat" with vendee — This document does not create charge on property sold — It does not require registration—Registration Act (1908), S. 17. 1965 Raj L W 513.

—S. 55—A assigning his mortgagee rights to B reserving portion of consideration with B for subsequent payment — A assigning his rights in respect of that portion of amount to C — Mortgagor redeeming mortgage and B releasing mortgage for consideration and giving possession to mortgagor — Mortgagor not knowing that portion of consideration for first assignment was unpaid — C held had no vendor's lien on mortgage rights for balance of consideration. AIR 1955 N U C (Trav-Co) 5057.

12 (A). Enforcement of.

—S. 55 (4) (b) — Default of payment of purchase-money—Seller is entitled to charge — He is not entitled to possession of property in default of payment of purchase money. (1965) 2 Andh W R 401 : AIR 1967 Andh Pra 7 (7, 8) (Prs 5, 6).

—S. 55 (4) (b)—Seller's charge for purchase money —Enforcement—Procedure.

Where a vendee brings a suit for possession based on a registered sale-deed, the vendor's lien for purchase money may be recognised and enforced in the same action. No separate action is necessary. ILR (1956) Hyd 328 : AIR 1956 Hyd 114 (118) (Pt G) (Pr 14) (DB).

—S. 55—Possession delivered to vendee — Consideration not paid—The vendor is entitled to the consideration and interest thereon till the date of payment. See T. P. Act (1882), S. 54. AIR 1957 Mad 630.

—S. 55 (4) (b) — Suit by vendee for possession—Vendor alleging non-payment of full purchase-money — Vendor's lien under equity and statutory charge — Court can pass decree in vendee's favour conditional on payment of balance of consideration money—Vendor's lien.

Held, that the decree passed in favour of the vendee conditional on payment of the balance of the consideration money was neither illegal nor invalid.

It is true that under S. 55 (4) (b) the remedy to the vendor for recovery of the balance of the consideration money which has been still left unpaid is by way of enforcement of the charge in separate suit. But the application of the principles of equity is not excluded. AIR 1965 Pat 29 (31, 32) (Pt B) (Pr 6).

—S. 55 (4)—Purchaser refusing to pay to the creditors (mortgagees) the money left in his hands to pay off the debts—Suit by mortgagee—Vendor paying the mortgagee and avoiding execution sale — Suit to enforce vendor's lien by putting to sale the vended property so as to enforce the charge in terms of S. 55 (4) (b) — Cause of action had accrued when actually plaintiff vendor made deposit to save the property from being put to sale. See Limitation Act (1908), Art. 132. AIR 1955 N U C (Pat) 247.

—S. 55 (4) (b)—Sale of property in Punjab—Stipulation in sale deed that balance of consideration would be paid as soon as possible but at a time when

vendee would be in position to make payment—Construction — Stipulation not a contingent contract—Suit to enforce payment of unpaid consideration money is governed by Art. 132, Lim. Act—Principle of S 55 (4) (b), T. P. Act, applicability in Punjab—Evidence of intention of parties. See Contract Act (1872), S. 31. AIR 1964 Punj 123 (DB).

——S. 55 (4) (b)—Suit for possession of property sold—Consideration not paid—Form of decree — Declaration of statutory charge.

A Court while passing a decree in favour of the plaintiff to recover possession of the property sold to him can also declare a statutory charge in favour of the vendor for the unpaid purchase money and also further order that the plaintiff should pay such amount within a particular period. AIR 1952 Sau 72 (73, 74) (Prs 1, 5).

——S. 55 (4) (b)—Limitation Act, Art. 132 — Part of purchase money left with vendee—No date fixed for paying debts—Suit for recovery of purchase money—Limitation when begins — The right to enforce any charge by way of vendor's lien started from the date of the sale itself for the purpose of computing the period of limitation. See Limitation Act (1908), Art. 132. AIR 1957 Trav-Co 221.

——S. 55 (4) (b) — Unpaid purchase money in hands of vendee to pay off prior encumbrance—Vendor has charge on property sold — Suit for return of it, is governed by Art. 119, Trav. Limitation Act—(Limitation Act (1908), Art. 116) — (Travancore Limitation Act (6 of 1100 ME), Art. 113). AIR 1955 N U C (Trav-Co) 5072.

——S. 55 (4) (b)—Unless there is a contract to the contrary the purchase money becomes due on the date of the sale—Suit to enforce vendor's lien on property sold must be brought within 12 years under Art. 132 of the Limitation Act from the date of the transaction. See Limitation Act (1908), Art. 132. AIR 1954 T C 427 (FB).

13. Paragraph 5, Cl. (b)—Payment of purchase money.

——S. 55—Benefit of contract — Rights of mortgagee or charge-holder—Sale of mortgaged property—Some money left with the vendee—The sale deed merely laying down that the vendees might pay off the mortgage debt but not laying any obligation on the vendees to discharge the debt—Suit by the mortgagee against the vendee—Under the sale deed no trust was created in favour of the mortgagee — Mortgagee had already obtained a decree against the vendor — Mortgagee could not bring a fresh suit against the vendee. See T. P. Act (1882), S. 65. AIR 1954 All 348.

——Ss. 55 (5) (b) and 55 (4) (b) — Sale of property subject to encumbrance—Vendee retaining part of purchase money for payment — Money not paid to encumbrancer—Suit to recover from vendee—Limitation — Starting point — (Limitation Act (1908), Art. 132.)

Under S. 55 (5) (b), T. P. Act the vendee is given a right to keep with himself a portion of the purchase money to discharge any encumbrance existing on the property. Where a part of the consideration is left in the hands of the vendee to be applied to the discharge of an encumbrance, limitation to claim the money back commences only from the time when the vendor himself or herself satisfied the debt or the mortgage becomes extinguished for other reasons and not from the date of the sale. Therefore, the vendor's lien could be enforced within 12 years from that period. ILR 27 Pat 898 and (1953) 2 M L J 504, Diss. from. D. Subbaiah v. G. Suryanarayana, ILR (1959) A P 445 : (1959) 2 Andh W R 127 : 1959 Andh L T 468 : AIR 1959 Andh Pra 636 (637, 638) (Prs 8, 14) (SB).

——S. 55 (5) (b) — Money left with buyer to pay off incumbrance — Failure to pay incumbrance — —Liability to return amount to seller.

Where a sum was left with the buyer to pay off a mortgagee but no time was fixed for making the payment, the engagement has to be performed within a reasonable time under S. 46 of the Contract Act. If the payment is not made at all by the buyer, if the mortgagee sells other property of the seller which is subject to the mortgage and realises the bulk of the amount due to him, the amount retained by the buyer for payment to the incumbrancer, must be paid to the seller. The buyer acts as the agent of the seller as regards the disposal of the sum retained by the sellers with him for payment to the mortgagee, is accountable to the seller for the amount. (1957) 1 Andh W R 1 : AIR 1957 Andh Pra 688 (689) (Pt B) (Pr 3) (DB).

——S. 55 (5) (b)——Consideration in sale—Covenant to pay sum of money in future and covenants to pay money — Distinction is real. (1962) 1 Ker L R 539 : 1962 Ker L T 254.

——S. 55 (5) (b) — The encumbrancer obtaining decree and selling the property in execution — Suit to claim unpaid purchase money—The starting point of limitation was the date when the property was sold in execution of the decree and there was no necessity for the purchaser to pay the encumbrancer. See Limitation Act (1908), Art. 132. AIR 1954 Mad 729.

——S. 55 (5) (b)—Seller's remedy.

Mortgagor selling mortgaged property — Part of consideration retained by vendee for paying off the mortgage — Suit on mortgage in which subsequent mortgagee was impleaded — Subsequent mortgagee paying off earlier mortgage brought the properties to sale and himself became purchaser — Subsequent mortgagee obtaining a personal decree and brought the right to recover unpaid purchase money to sale which was purchased by plaintiff—Suit for recovery of unpaid purchase money by plaintiff—Defendant claiming ownership under a sale deed — Held, that the proceeding taken for getting the personal decree and the execution proceeding in which the right at the sale was sold were perfectly legal and as such the purchaser of the right was entitled to recover the amount from the property which has come to the hands of the defendant from the subsequent mortgagee. 1954 Mad W N 156 : (1954) 1 M L J 582 : AIR 1954 Mad 729 (730) (Pt B) (Pr 3).

——S. 55 (5) (b) — Sale free from incumbrance — Money retained with purchaser to discharge mortgage—Sum required found greater—Effect.

Under S. 55 (5) (b), it is the duty of the vendee to pay or tender the money which he retains in his hands to the mortgagee, but if the sum required to pay off the mortgage is greater than the amount left in his hands he may defer doing so until the vendor is prepared to contribute the remainder of the sum due to pay off the mortgagee completely. Where the vendee himself pays the entire amount, without waiting for the vendor's contribution for the balance, he has no right in law to retain the balance of the purchase money in his hands on the ground that he had paid an amount in excess of the balance of the purchase money. ILR (1957) Cut 545.

——S. 55 (5) (b) — Buyer's duty to pay purchase money.

A purchaser is not bound to part with the price except on a complete conveyance to himself of the whole interest that he has purchased. Where the sale deed in favour of the plaintiff has not been registered there is no obligation upon the plaintiff to part with the consideration money. AIR 1955 Pat 201 (204) (Pt A) (Pr 9) (DB).

—S. 55 (5) — Property agreed to be sold free of encumbrances — Right of buyer to retain out of purchase money amount of encumbrances—Nature of.

Under S. 55, Cl. (5), a buyer may retain out of the purchase money the amount of any encumbrances on the property existing on the date of the sale and shall pay the amount so retained to the persons entitled thereto, where the property is sold free from encumbrances in the absence of a contract to the contrary. This is a statutory right which the buyer possesses and there need not even be any express agreement to this effect. AIR 1955 Pat 201 (206) (Pt C) (Pr 10) (DB).

14. Paragraph 5, Cl. (c)—Buyer to suffer loss.

—Ss. 55 (1) (e), 55 (4) (c)—Applicability—Ownership passing to buyer — Seller is not liable for subsequent deterioration of property. M L R 1956 Civil 125 : 1956 Madh B L J (H C R) 456.

15. Paragraph 5, Cl. (d) — Payment of rent, taxes etc., by buyer.

—S. 55 — Sale — Part of consideration left with vendee for discharging prior mortgage—Vendee not discharging mortgage for a long time — Interest accumulating—Vendee paying interest—Mortgage: debt reduced under Madras Act 4 of 1938—Vendor cannot demand refund of balance of amount that would remain, after paying off mortgage amount as reduced, when vendee had actually paid more than amount deposited, towards the principal and also interest. 1952 Mad W N 583 : 65 Mad L W 694 : (1952) 2 Mad L J 198 : AIR 1953 Mad 370 (370, 371) (Pr 3) (DB).

—S. 55 (1) (g)—Sale of property—Encumbrance on property—Recital in sale deed varied by subsequent letter written by purchaser — Admission of letter in evidence — Discharge of encumbrance by purchaser —Re-imbursement—Evidence Act (1872), S. 92.

Immovable property was purchased by A from B under a registered sale deed. The sale deed contained a recital that there were no encumbrances, even though admittedly there was a charge on the properties for a loan by Government. Subsequently while seeking transfer of the khata of the properties to his name, A wrote to the Amildar stating that he had purchased the same subject to the payment of the loan and that B conveyed all his rights and liabilities. Subsequently A sued B for recovery of the amount paid by him towards the loan:

Held (1) that the decision to be arrived at did not depend solely on the terms of the sale deed but on the subsequent agreement or admission contained in the letter of A.

(2) That A was not entitled to be reimbursed for the payment of loan made. ILR (1953) Mys 29 : AIR 1952 Mys 120 (121) (Prs 4, 5).

—S. 55—Stranger to contract—Right to sue—Registered sale deed — Vendee agreeing to pay vendor's creditor portion of purchase money left in his hands — Suit by creditor — Limitation — Limitation Act (1908), Art. 116—Contract Act (1872), S. 2 (d).

Held on facts that the suit was maintainable. Though originally there was no privity of contract between B and C, B having subsequently promised to pay the amount, C was entitled to bring a suit against B for recovery of the amount.

Held further that the suit was governed by Art. 116, Limitation Act as the obligation to pay arose directly under the registered instrument. 41 Cal 137, Rel. on. 31 Mys L J 114 : ILR (1952) Mys 316 : AIR 1952 Mys 109 (110) (Prs 7, 8) (DB).

—S. 55—Sale to pay off certain mortgages—Excess in hands of purchaser after payment of debts— Duty to refund.

Held, on facts that upon a proper construction of the sale deed B must be held to be in the position of trustee for the unpaid purchase money and was liable to refund the excess amount in his hands with respect to the mortgage money payable to the mortgagee. As there was a fiduciary relationship between the parties as regards the unpaid purchase money, there was a duty cast upon B to refund any benefit which he had derived after the passing of the Bihar Money-Lenders Act. AIR 1955 Pat 254 (256) (Pt A) (Pr 10) (DB).

—S. 55 — Benefit of non-payment of previous encumbrance.

Sale of property — Part of purchase-money left with purchaser for payment to previous mortgagee— Seller has no right to participate in the benefits which purchaser might get by non-payment. ILR (1952) Punj 219 : AIR 1953 Punj 110 (113) (Pr 10) (DB).

16. Paragraph 6, Cl. (a) —Right to improvements.

—S. 55—Sale by husband to his wife — Repairs or additions by seller after sale to the building sold — Subsequent additions can be claimed by the wife as part of her own property so long as the building remains the separate property of the wife. AIR 1951 Trav-Co 195 (196, 197) (Pt B) (Pr 4) (DB).

17. Paragraph 6, Cl. (b)—Buyer's charge.

(A) Against whom can be enforced.

(B) Nature and forfeiture of earnest money.

17. Paragraph 6, Cl. (b)—Buyer's charge.

—S. 55 (6) (b) — Father — Alienation — Death of father — Sale set aside at the instance of the son— The father comes under an obligation to refund purchase money to the vendee — This liability of the father should be discharged by the son out of the joint family properties in his hands — The vendee is entitled to a charge for the amount claimed by him on the moiety of the property— See Hindu Law. AIR 1957 Andh Pra 557 (DB).

—S. 55 (6) (b) — Composite property subject to charge under S. 55 (6) (b), T. P. Act in favour of the plaintiff — Sale by Competent Officer under S. 10 of Separation Act—Charge not destroyed and is available against the purchaser—'Claim' and 'free from encumbrances and liabilities' in S. 11 (1) of Separation Act—Meaning — Custodian of Evacuee Property after vesting of property in him under S. 8 of Administration Act, claims through evacuee within S. 55 (6) (b), T. P. Act — Court not competent to order sale of property in hands of purchaser subject to charge under S. 55 (6) (b) — S. 17 (1), Administration Act, operates as a bar — The property charge after sale would be transferred to the sale proceeds. See Evacuee Interest (Separation) Act (1951), S. 2 (b). AIR 1962 Bom 169 (DB).

—S. 55 (6) (b) — Suit for specific performance of contract to sell — Decree allowing only refund of purchase money against defendants and their property — Buyer's right to charge — (Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951), S. 43) — (M. P. Land Revenue Code, 1954 (2 of 1955), Ss. 155 and 238 and Sch, III). 1958 Nag L J (Notes) 99.

—S. 55 (4) and (6) — Scope and effect of — Oral sale — Possession — Vendor's right to — Application under Bombay Agricultural Debtors Relief Act — Maintainability — (Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 35) — (Limitation Act (1908), S. 28; Arts. 142 and 144.)

Miscellaneous application under S. 32, Bombay Agricultural Debtors Relief Act by seller for possession on the ground that the property had not been sold to the deft. but he was only a creditor and the loan has been repaid from the income of the property — Sale was oral accompanied by delivery of possession —Suit brought after more than 12 years from the date of oral sale — Contention that buyer has only a charge on the property for the money paid by him and he cannot refuse delivery if the money has been repaid — **Held** if the vendor's title is extinguished the Court cannot pass an order under S. 32 (5) of the Bombay Agricultural Debtors Relief Act directing the transferee to deliver the property to debtor. When an owner purports by an oral sale to transfer his property and delivers possession to another person, the possession of the transferee must be deemed to be adverse to the owner and a suit for recovery of possession must be filed within 12 years from the date on which possession was delivered. If the right is not so exercised by the combined operation of Art. 144 and S. 28, Limitation Act, the vendor's title must be deemed to be extinguished. 58 Bom L R 734 : ILR (1956) Bom 844 : A I R 1957 Bom 79 (81, 82) (Pt B) (Prs 8, 9) (DB).

——S. 55 (6) (b) (prior to amendment in 1929) — Applicability — Oral invalid sale prior to 1911— Real nature cannot be determined under Bombay Agricultural Debtors Relief Act — But the buyer becomes a charge holder under S. 55 (6) (b) and it would be open to the debtor to offer the amount and require the intending buyer to release his property from the charge — See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 24 (1). **AIR 1957 Bom 18.**

——S. 55 (6) (b)—Invalid sale — Petitioner applying to the Debt Adjustment Court to adjust debt on the ground that the transaction was not a sale but a mortgage — The petitioner purchaser had a charge on the property intended to be sold — There was clearly a debt which the debtor was bound to pay — The Debt Adjustment Court had jurisdiction to adjust debt. See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 24. **AIR 1953 Bom 145 (DB).**

——S. 55 (6) (b)—**Buyer in possession of property.**

The creation of a charge under S. 55 (6) is not at all dependent upon the buyer not coming into possession of the property intended to be sold. Under the section, a charge arises immediately the purchase price is paid by the buyer to the seller. **54 Bom L R 971 : ILR (1953) Bom 253 : AIR 1953 Bom 145 (149) (Pt C) (Pr 15) (DB).**

——Ss. 55 (6) (b), 100, 58 — Vendor having no title to immovable property, cannot create charge on it, for earnest money paid to him. **ILR (1961) 2 Cal 558: AIR 1962 Cal 12 (16) (Pt B) (Pr 11) (DB).**

——S. 55 (6) (b) — Civil P. C. (1908), O. 21, R. 89— 'By virtue of title acquired before sale' — Agreement of sale and payment of earnest money before proclamation for sale — The provisions of S. 55 (6) (b) would be attracted and it will be treated as though ownership of the property had passed and there is a charge for part of the purchase money paid. See Civil P. C. (1908), O. 21, R. 89. **AIR 1956 Cal 462.**

——S. 55 (6) (b)— Section has no application to court sales. **AIR 1952 Kutch 10 (11, 12) (Pt D) (Pr 8).**

——S. 55 (6) (b) — Purchaser accepting delivery — S. 55 (6) (b) has no application. **AIR 1952 Kutch 10 (11, 12), (Pt E) (Pr 8).**

——S. 55 (6) (b)—**Suit for refund of purchase-money —Interest on.**

The purchaser who has paid an amount towards the contract for sale can claim interest on the amount paid from the date of the institution of the suit filed for the return of purchase-money and not from the date when the money was paid. (Point conceded.) **1958 Jab L J 369 : (1958) M P L J 370 : 1958 M P C 375 : A I R 1958 Madh Pra 239 (242) (Pt C) (Pr 8) (DB).**

——S. 55 (6) (b)—Buyer's charge for price prepaid— Charge can be enforced only in executory contract of sale. **(1965) 2 Mad L J 478 : 78 Mad L W 456 : AIR 1966 Mad 330 (Pr 3).**

——S. 55 (6) (b) — Facts proved by plaintiff showing that defendants were willing to fulfil their part of contract of sale by executing sale deed at any time— Sale deed not executed — Held, there was improper refusal by plaintiff to accept delivery so as to disentitle him to a charge on property. **1965 B L J R 466 : AIR 1965 Pat 404 (406) (Pr 10) (DB).**

——S. 55 (6) (b) — Charge of buyer for purchase-money — Suit for—Property being evacuee property —Suit whether barred.

Under the provisions of S. 55 (6) (b) of the Transfer of Property Act, the buyer has a charge on the property as against the seller and all persons claiming under him for the amount of any purchase money paid by the buyer in consideration of the execution of a formal deed of sale and of delivery of property.

If there is a charge in favour of a non-evacuee on property belonging to an evacuee then the interest of the evacuee is only the property subject to the charge and the charge on the property belongs to the non-evacuee which does not vest in the custodian. Nor has the custodian any power under the Administration of Evacuee Property Act to determine the charge in favour of a non-evacuee on evacuee property. There is thus nothing in the Administration of Evacuee Property Act to bar the jurisdiction of the civil Court over the suit. The suit is also not barred by any provision in the Evacuee Interest (Separation) Act in the absence of any notification under S. 2 (b) including a charge in the category of claims which the Competent Officer can entertain. There is no provision in the Displaced Persons (Compensation and Rehabilitation) Act for determining whether or not the property of the evacuee is subject to a charge and the suit is not barred under S. 36. Thus the civil Court is competent to decide the suit. **1964 Raj L W 470 : ILR (1963) 13 Raj 1111 : AIR 1964 Raj 48 (49) (Prs 5; 6).**

17 (A). Against whom can be enforced.

——Ss. 55 (6) (b), 100 — Buyer's charge for unpaid purchase money or earnest money — If available against transferee for value without notice.

The charge under S. 55 (b) for the purchase money or the earnest money comes into existence from the moment the buyer pays part of the purchase money or earnest money towards the sale transaction and this charge is not lost except on account of the buyer's own subsequent default. It is available to the buyer not only against the seller but also against the purchaser from the seller irrespective of the question whether the purchaser under the seller had or had not notice of the charge. Hence the circumstance that the transfer in favour of the subsequent purchaser has taken place before the date of the suit by the buyer praying for a declaration of the charge makes no difference and the purchaser is bound by the decree declaring the charge. **53 Bom L R 817 : AIR 1952 Bom 67 (68, 69, 70) (Prs 7, 9).**

——S. 55 (6) (b) — Registration Act (1908), S. 17 (2), Explanation—Explanation supersedes effect of decision in AIR 1926 P C 94—Agreement to sell creating charge contemplated by S. 55 (6) (b), T. P. Act — Registration not necessary—Explanation applies even where charge is sought to be enforced against a trans-

feree without notice. See Registration Act (1908), S. 17 (2), Explanation. 1962 Ker L J 725 : (1962) 2 Ker L R 77 : 1962 Ker L T 728.

——Ss. 55 (6) (b) and 100 — Buyer's charge under S. 55 (6) (b)—Enforceable also against persons claiming under seller irrespective of question of notice. 1962 Ker L J 725 : (1962) 2 Ker L R 77 : 1962 Ker L T 728.

——S. 55 (6) (b)—Charge for costs of suit — Suit for specific performance of agreement to sell against seller and transferee from him — Decree awarding damages of Rs. 1,000 personally against seller and also creating charge for price paid on property in hands of transferee—Sum of Rs. 1000 being entirely unrelated to any claim which may properly arise within scope of S. 55 (6) (b) no charge can be given for costs decreed in respect of that sum. 1962 Ker L J 725 : (1962) 2 Ker L R 77 : 1962 Ker L T 728.

——S. 55 (6) (b)—Vendee's lien.

The purchaser of property has got a lien for the money paid by him on the vendor's interest when the contract of sale goes off for no fault of the purchaser just in the same way as the vendor has in the property which has passed to the vendee for the unpaid sale consideration. This charge is made specifically available not only against the seller but all persons, claiming under him and notice of the payment is not essential to the persons claiming under the vendor. 1959 Ker L J 332 : 1959 Ker L R 359 : 1959 Ker L T 491 : A I R 1959 Ker 389 (391) (Pr 4) (DB).

17 (B). Nature and forfeiture of earnest money.

——S. 55 — Earnest money — Breach by vendee — Vendor can forfeit earnest money even though agreement does not contain forfeiture clause but contains clause for refund — (Contract Act (1872), S. 39). AIR 1955 N U C (Ajmer) 333.

——S. 55 — Earnest money — Forfeiture — Right of seller — Contract Act (1872), S. 74.

The mention of a payment as earnest money carries with it the incident that it is intended to be security for the performance of the contract. Therefore in a contract for sale if the buyer commits a breach of the contract the seller can forfeit the earnest money and is not liable to refund it. The mere fact that such earnest money has been mentioned as "advance" or "consideration for sale" in the contract cannot take away the right of the seller if it was originally agreed to be earnest money. (1963) 1 Andh W R 253 : AIR 1963 Andh Pra 304 (305) (Prs 5, 6).

——S. 55 (6) (b)—Interest on earnest money.

Clause (b) of S. 55 (6) consists of two parts. The first deals for the return of the purchase money properly paid by the buyer together with interest on such amount. Therefore interest is to be paid upon the amount of the purchase money. The other part consists of the return of the earnest and it provides that the earnest should be returned to the purchaser together with costs, but makes no mention of the payment of interest. This shows that whereas interest may be paid upon the purchase price interest is not to be paid on the amount of the earnest. A I R 1956 Bom 443 (447) (Pr 12) (DB).

——S. 55 (6) — Earnest money — Its dual characteristics — Forfeiture of earnest money when takes place —Applicability of Contract Act (1872), Ss. 64, 65, 74.

The earnest money, in the real sense is, in the absence of a contract to the contrary, either express or implied, liable to be forfeited by the vendor when the contract goes off for default on the part of the purchaser. This liability exists, notwithstanding S. 64, 65 and 74 of the Contract Act, and is not affected by any of the said provisions :

Held, that the earnest money paid could not be termed as unreasonable and no implication of any contrary intention could be deduced by applying the test of 'unreasonableness of the amount in question and further there being no contrary intention, express or imptied, in the contract the earnest money was liable to forfeiture. 55 Cal W N 765 : 88 Cal L J 149 : A I R 1952 Cal 93 (96, 97, 99) (Pt A) (Prs 9, 10, 22).

——S. 55—Earnest money and part payment — Distinction between.

The distinction between a deposit with the seller by way of earnest and a part payment of the consideration to him, lies in the intention with which the deposit or the payment is made. In the former, the intention is to assure the seller that the buyer is in earnest or is sincere and guarantees or secures the due performance of the contract on the part and when the transaction goes through the amount deposited is adjusted towards the sale consideration; in the latter, this intention is not present, but there is simply a part payment. In the former the deposit is forfeited on default. 1964 Ker L J 638: 1964 Ker L T 546; AIR 1965 Ker 187 (187) (Pt B) (Pr 2).

——S. 55, Cl. (6) (b) — Seller's title doubtful — Buyer can refuse to carry out transaction of purchase — Buyer rightly declining to accept delivery — He is entitled to a charge on property against seller for earnest money paid by him. AIR 1952 Madh Bha 145 (145) (Pr 4).

——S. 55 (6) (b)—Breach of contract for sale—When committed by vendor—(Contract Act (1872), S. 55).

When the vendors agree to sell the land which cannot be transferred without the sanction of the revenue authorities, they must be deemed to have agreed to obtain the requisite permission for the proposed transfer and it is their responsibility to move the revenue authorities to sanction the transfers and obtain the permission. When, therefore, the vendors do not take diligently steps for obtaining the sanction and fail to obtain it, it must be held that they committed a breach of their obligations under the contract. And in such a case the vendors are bound to return the sum paid to them by the purchaser irrespective of the fact whether the amount was paid as earnest money or as a part payment of the consideration amount. 1958 Jab L J 369: 1958 M P L J 370; 1958 M P C 375 : AIR 1958 Madh Pra 239 (240, 241) (Pt A) (Prs 6, 7) (DB).

——S. 55 (6) (b) — Contract for sale — Payment by purchaser—Part payment or earnest money.

The question whether a sum of money paid under a contract for the sale of some property by the purchaser to the vendor was paid an earnest money or as part payment towards the discharge of the contract depends upon the intention of the parties and the circumstances surrounding the payment. 1958 Jab L J 369 : 1958 M P L J 370 : 1958 M P C 375 : AIR 1958 Madh Pra 239 (241) (Pt B) (Pr 7) (DB).

——S. 55 (6) (b)—Specific Relief Act (1877), S. 25 (a) —Contract for sale of building — Defect in vendor's title—Breach of contract — Vendee's right to return of earnest money — (Crown Grants Act (1895), Ss. 2 5)—(Contract Act (1872), Ss. 73, 74).

Held, that there was nothing to show that a valid lease was continued after 31.5.1939 on the same terms as those given in the original lease and that it was renewed for thirty years. Even if the order of the Deputy Commissioner was held to have legally extended the period of the lease to 31.5.1939 there was nothing to show that there was any agreement between the parties that it would be continued there-

after or that it would be continued on the same conditions including the conditions regarding rent;

(2) that this defect in title was quite sufficient to raise a reasonable doubt in the mind of the vendee whether the lease was renewed after 26.5.1939 and could be renewed after 31-5-1949. In such a case the vendee could properly decline to complete the transaction;

(3) that in these circumstances the vendor was responsible for the breach of contract and the vendee was entitled to get back the amount of earnest money paid by him. **1955 Nag L J 289 : I L R (1955) Nag 538 : AIR 1955 Nag 38 (40) (Pt A) (Pr 11) (DB).**

——S. 55—Contract for sale of land — Sale by public auction—Earnest money—Nature of — Contract falling through owing to fault of vendee—Forfeiture of earnest money — Vendee if entitled to refund—(Contract Act (1872), Ss. 39, 64 and 74).

Earnest money is not same as deposit of a portion of the price but is of a two-fold character. It is part payment of the price if the transaction is completed. But it is also an earnest or guarantee that the contract shall be performed. Hence, it is not correct to say that the right of the vendee to the refund of a sum deposited as part of the purchase price must necessarily extend to a right to the refund of the earnest money also.

Further, it cannot be said that the earnest money is a benefit under the main contract for sale within the meaning of S. 64, Contract Act. **29 Cut L T 672: AIR 1955 Orissa 20 (23) (Prs 7, 8, 9) (DB).**

——S. 55 (6) (b)—Earnest money and part payment—Distinction. See Contract Act (1872), S. 74. **AIR 1955 Orissa 11 (DB).**

——S. 55—Contract Act (1872), S. 74 — Forfeiture of earnest money in case of non-performance of contract for sale of land by purchaser is in the nature of penalty—Purchaser's failure to secure relief of specific performance of the contract of which time was of essence — Purchaser can be relieved from forfeiture of the earnest money by the Court in exercise of its equity jurisdiction. See Contract Act (1872), S. 74. **AIR 1953 Orissa 105 (DB).**

——S. 55—Vendor and vendee — Deposit of earnest money—Vendee not completing contract—Forfeiture of earnest money — Ancient Roman and Hindu Law bear testimony of the practice of giving earnest money as a guarantee of the binding character of the bargain on pain of forfeiture. See Contract Act (1872), S. 55. **AIR 1960 Punj 51.**

——S. 55 (6) (b) — Contract sale — Part of property destroyed by fire — Vendee not prepared to take sale is not entitled to return of earnest money — Contract Act (1872), S. 74 — Specific Relief Act (1877), S. 13.

Held, that as under S. 13, Specific Relief Act the contract could be specifically performed at the instance of either party, A in refusing to take a sale was guilty of breach of contract and as such was not entitled to refund of earnest money. **AIR 1952 Punj 380 (381) (Pr 4).**

——S. 55 — Earnest money — Nature of — (Contract Act (1872), S. 74) — (Words and Phrases — Earnest money).

Earnest money is the sum of money paid by the buyer of property under a contract for sale in order to bind the seller to the terms of the agreement for sale. In other words, it is a guarantee for the performance of a contract. When the transaction goes forward the earnest money becomes part of the purchase money. It is forfeited if the transaction falls through by reason of the fault or failure on the part of the buyer and the buyer cannot get it back. Where there is no disproportion and nothing unreasonable in regarding the deposit as a guarantee, then the defaulter will not be allowed to recover back what he has paid on an express stipulation that it shall be forfeited in the event of default. Earnest money amounting to 10 per cent., of the consideration held was not disproportionate and the whole of it was forfeited. A I R 1915 Mad 896 : 24 Mad L J 488 (FB) and A I R 1942 Cal 382, Rel. on. **AIR 1956 Vind Pra 42 (43) (Pt A) (Pr 4),**

18. Omission to make disclosures referred to in paragraph 1 cl. (a).

——S. 55 (1) (a) — A executing agreement to sell house to S—Subsequent agreement to sell it to R and receipt of earnest money—Earlier agreement of sale is not material defect in property or seller's title thereto—Omission to make its disclosure is not fraudulent. See Penal Code (1860), S. 415. **1965 All Cri R 380 : 1965 All W R (HC) 587 : 1965 All L J 786.**

——S. 55 (1) (a) — Defect in vendor's title—Onus of proving that non-disclosure was fraudulent lies on purchaser.

The onus is on the purchaser to establish that there was material defect in the seller's title which the seller did not disclose and that the non-disclosure was fraudulent due to non-fulfilment of the ingredients prescribed in clause (a) of sub-s. (1) of S. 55 of the Act. **A I R 1964 Orissa 269 (271) (Pt A) (Pr 5).**

19. "In the absence of a contract to the contrary".

——S. 55 (4) (b)—Applicability—Decree for balance of consideration under sale-deed—If 'debt'.

Sale deed providing for a charge on the property sold in respect of unpaid consideration—Is a contract in consonance and not contrary to S. 55 — The provision in the deed for suing for interest alone would amount to a contract to the contrary. A liability under a decree obtained for the balance of consideration by the vendor will not be a 'debt' within S. 2 (c) of the Kerala Agriculturists Debt Relief Act (31 of 1958) and the Act therefore will not apply. **(1960) 1 Ker L R 40.**

——Ss. 55 (1) and 109—Lessor selling property leased —In absence of contract to contrary vendee acquires all rights of lessor—Vendor executing Kirayanama in favour of vendee making himself as tenant to vendee —This is contract to contrary by lessor-vendor who had leased the property — The lessees do not become lessees of vendee by virtue of S. 109 but become sub-lessees of vendor — Ejectment decree against tenant i.e. vendor—Original lessees, now sub-lessees cannot resist execution of ejectment decree. **1956 M B L J (H C R) 56.**

20. Deficiency in extent of property sold—Rights of vendee.

——S. 55 — Agreement of sale of specified extent of land—Agreement further providing for adjustment of price if the land was found more or less — Execution of sale deed—The above provisions not repeated in the sale deed — Land found deficient—As there was warranty in the sale deed read with the agreement of sale that the extent conveyed by the sale deed was correct the plaintiff was certainly entitled to compensation—Compensation—Agreement of sale can be looked into to clarify the ambiguity in the sale deed. See T. P. Act (1882), S. 54. **AIR 1958 Andh Pra 278.**

——S. 55—Agreement as to implied warranty regarding the correctness of the extent of property sold should be established on the terms of the sale deed and it is not open to the plaintiff to travel outside the deed and to prove that there was a warranty de hors

the instrument. See Evidence Act (1872), S. 92. A I R 1957 Ker 181 (DB).

——S. 55 — Indemnity clause — Construction—Held on facts — If it is taken that the indemnity clause is comprehensive enough to cover a case of loss sustained by the vendee on account of its deficieney in extent that clause can come into operation only in the event of the vendee sustaining any actual loss and not in any other contingency. See T. P. Act (1882), S. 8. A I R 1957 Ker 181 (DB).

——S. 55 — Error in statement of extent of property sold — Compensation — Specific Relief Act (1877), S. 14.

If there is any error in the statement of the extent of the property agreed to be sold the purchaser can claim specific performance with compensation if he can bring his case under S. 14 of the Specific Relief Act but if the contract has been completed by the execution of the sale deed then the purchaser can claim compensation if he establishes fraud or if there is a special agreement for making compensation for errors in quantity or if there is a warranty that the extent conveyed by the sale deed is correct. 1951 Mad W N 869 : 65 Mad L W 82 : 1951-2 Mad L J 611 : ILR (1952) Mad 682 : AIR 1953 Mad 769 (773) (Pt A) (Pr 28) (DB).

——S. 55—Implied warranty—Proof—Evidence Act (1872), S. 92.

An agreement as to implied warranty regarding the correctness of the extent of the property sold should be established on the terms of the sale deed and it is not open to the plaintiff to travel outside the deed and adduce evidence to prove that there was a warranty, de hors the instrument. Such evidence is inadmissible under S. 92 of the Evidence Act. 1951 Mad W N 869 : 65 Mad L W 82 : (1951) 2 Mad L J 611 : ILR (1952) Mad 682 : AIR 1953 Mad 769 (774) (Pt B) (Pr 31) (DB).

SECTION 56

——S. 56—Scope—Marshalling — Purchaser claiming marshalling of properties—Fact that purchaser is mortgagee of other property of his seller is irrelevant. Braham Parkash v. Manbir Singh, Minor, 66 Pun L R 392 : 1964 S C D 485 : (1964) 2 S C R 324 : (1964) 2 S C J 766 : AIR 1963 S C 1607 (1611) (Pt B) (Pr 10).

——S. 56—Prejudice the rights of the mortgagee — Question of prejudice is one of factual inadequacy of mortgaged property — Plea should be specifically raised and proved. Braham Parkash v. Manbir Singh, 66 Pun L R 392 : 1964 S C D 485 : (1964) 2 S C R 324 : (1964) 2 S C J 766 : AIR 1963 S C 1607 (1611) (Pt C) (Pr 10).

——S. 56—"Contract to contrary"—Indemnity clause in sale deed.

An indemnity clause in the sale-deed to the effect that if any part of the property should go out of the vendee's possession due to the claim of any one, the vendee should be entitled to recover the loss from the vendor personally and from his other properties does not amount to a "contract to contrary" within the meaning of S. 56. A I R 1952 All 163 (166) (Pt B) (Pr 13) (DB).

——S. 56—"Contract to the contrary"—No intention evidenced by sale deed to extinguish entire mortgage—Held no contract to the contrary.

The right of marshalling under S. 56 can be taken away from the vendee if it is proved that the intention was to extinguish the entire mortgage and release the property from the mortgage, but if there was no such intention evidenced by any contract, the right is not defeated or lost.

A number of properties were mortgaged. Out of the properties mortgaged, two were sold and a portion of the consideration was left with the vendees to be paid to the mortgagees but it was not sufficient to extinguish the mortgage ;

Held, that there was no contract to the contrary and that the vendees were entitled to marshalling under S. 56. AIR 1926 All 415 ; AIR 1946 Mad 59, Dist. AIR 1952 All 163 (166, 167) (Pt C) (Prs 13, 15) (DB).

——S. 56 — Decree-holder having two items of properties — One item of small part of properties was sold in execution of decree against same judgment-debtor—Decree-holder should, first, exhaust his remedies against properties not sold. 78 Mad L W 35 : (1965) 1 Mad L J 137 : ILR (1965) 1 Mad 160.

——S. 56—Decree on mortgage — Court has discretion to fix order in which property is to be brought for sale—Mortgagee is also entitled only for rateable liability of individual item.

Where a mortgagee-holder releases major items of mortgaged property to mortgagor and in collusion with him deliberately attempts to throw the entire burden of the decree on a particular item of the mortgage property purchased by a bona fide purchaser from the mortgagor the Court is entitled to frustrate that attempt by exercising its discretion and not permitting him to bring that item for sale until he brings for sale all the other items of property.

As the mortgagee himself was responsible for relieving the major items of the property from the liability to bear the proportion of the debt he cannot allowed by proceeding against the particular item to recover more than the rateable liability of that item. ILR 29 Mad 217, Rel. on. 1964 Mad W N 308: (1965) 1 Mad L J 199 : ILR (1965) 1 Mad 154: 77 Mad L W 383 : AIR 1964 Mad 547 (548) (Pr 3).

——S. 56—Marshalling—Scope of.

Where the owner of two or more properties mortgaged sells one of them to another, the purchaser has under S. 56 of the Transfer of Property Act, the statutory right to insist on the mortgage debt being satisfied out of the property or properties not sold to him. But this right of the purchaser cannot prejudice the rights of the mortgagee or persons claiming under him. Nor could this right be enforced if there is a contract to the contrary. S. 56 does not operate to curtail or restrict the rights of the mortgagee to recover the mortgage amount from all or any of the items mortgaged in any manner he likes. (1961) 1 Mad L J 422 : 74 Mad L W 248 : I L R (1961) Mad 794.

——S. 56 (before amendment of 1929) — Sale of two out of three items of mortgaged property — Suit by mortgagee against the purchaser — Mortgagor not joined as party and item No. 3 exonerated from the suit —Held the mortgagee was entitled to a decree for the entire mortgage money recoverable from items 1 and 2 of the property in the hands of the purchaser. See Civil P. C. (1908), O. 34, R. 1. AIR 1955 Mad 439 (DB).

——S. 56 (before amendment of 1929)—Right of mortgagee to realise entire amount from any part of mortgaged property — Right if privilege — (General Clauses Act (1897), S. 6 (c)).

Under S. 56 before the amendment of 1929, the mortgagee had a right which accrued to him on the date of the mortgage itself of realising, if he chose, the entire amount due to him from any part of the mortgaged property. Such a right was not subject to any right of marshalling at the instance of the purchaser of a portion of the hypotheca. This right was not a mere privilege. Even assuming that all that the mortgagee had was privilege, even then under S. 6 of the General Clauses Act, that privilege itself would not be taken away except by express enactment or

necessary intendment by the amending Act. Therefore notwithstanding the amending Act which came into force by the time of the institution of the suit, the rights of the parties are governed by the original S. 56 under which the purchaser of any portion of the hypothecated property did not have the right of marshalling as against the mortgagee. (1954) 2 M L J 768 : 1955 Mad W N 46 : AIR 1955 Mad 439 (441) (Pt A) (Pr 2) (DB).

——S. 56 — Suit on mortgage—Marshalling in execution of mortgage-decree—Decree-holder has no right to take out execution against any item—A purchaser of one of the mortgaged properties where in the sale deed it is covenanted by the vendor that he would discharge the prior mortgage debt out of the other hypothecated property, is entitled to say that the property purchased by him should be sold last. See T. P. Act (1882), S. 81. AIR 1955 Mad 208.

——S. 56—"Contract to the contrary"—There can be contract to contrary between mortgagor and vendee—Bare promise by vendee to pay off mortgage debt not necessarily to imply willingness to have vendee's property sold first in court sale — Three vendees promising individually to pay certain sum in part discharge of mortgage debt though whole debt to be discharged if all paid — No contract to contrary within S. 56.

Where the three vendees promised to pay a certain sum of money to the mortgagee in part discharge of the mortgage debt and it was contemplated that the whole mortgage debt would be discharged if all the three vendees did pay as they promised to do, but no provision was made in the three sale deeds as to what was to happen in case the money was not paid promptly :

Held that the parties did not contemplate the possibility of the property being brought to sale and a question arising as to the priority of the sale of the various items. Hence it was not possible to spell out of the three sale deeds themselves any "contract to the contrary" within the meaning of S. 56. Case law discussed. 62 Mad L W 780 : (1949) 2 Mad L J 606 : 1949 Mad W N 729 (2) : AIR 1950 Mad 224 : (225, 226) (Prs 3, 5) (DB).

——S. 56—Principle of contribution and marshalling—The principle of contribution is applicable where the property has been sold subject to mortgage while marshalling arises under S. 56 where the property has been sold free from encumbrance — An auction purchaser of an item of mortgaged property who purchased having constructive notice of the mortgage is liable to contribute to mortgage-debt paid out of the other items of properties, he cannot invoke the principle underlying S. 56, T. P. Act. See T. P. Act (1882), S. 82. AIR 1962 Pat 236 (DB).

——Ss. 56 and 81 — Where doctrine of marshalling of securities is not available Court has power to direct order in which mortgaged properties should be sold under O. 34, Rr. 4 and 5, Civil P. C. to be exercised in exceptional cases only for the purpose of adjusting equities between the parties. ILR 38 Pat 1 : AIR 1960 Pat 378 (379, 380) (Pt A) (Pr 4) (DB).

——S. 56—Execution of mortgage decree — Rateable distribution of decree debt—Question cannot be gone into at the execution stage—But in view of S. 56, T. P. Act it was held that the mortgagee should first proceed against the property left in the hands of the mortgagor before proceeding against the property purchased by the defendants. See Debt Laws—Bihar Money-Lenders Act (3 of 1938), S. 14. AIR 1955 Pat 108.

——S. 56 — Provisions are not exhaustive — Principle of marshalling may be applied to purchasers in execution — Auction purchaser must show that he is bona fide purchaser for value without notice of prior mortgage. AIR 1955 NUC (Pat) 230.

——S. 56—"Then sells one or more of the properties".

Though S. 56 cannot in terms apply to involuntary sales the equitable principle underlying the section can be invoked by an auction purchaser of property in execution of a money decree provided only if he makes out a case that he was a bona fide purchaser for value of the property without notice of the prior mortgage. 1953 BLJR 135 : AIR 1953 Pat 193 (193) (Pt A) (Pr 3) (DB).

——S. 56 — Marshalling, doctrine of—Applies to a case of purchaser of one of two items of mortgaged property pending execution of mortgage decree. AIR 1962 Punj 477 (478) (Prs 2, 3).

——Ss. 56 and 81—Mortgage of more than two properties—Sale in execution of decree—Order in which properties are to be sold should be decided by executing Court after mortgagee indicates the order required—Decision of executive Court cannot be disturbed in any manner by inequitable rights of other parties. AIR 1955 NUC (Punj) 4599.

SECTION 57

——S. 57—Provision of S. 57 and those contained in Chap. IV apply to transfer by operation by law. See T. P. Act (1882), S. 2 (d). AIR 1965 S C 834.

SECTION 58

SYNOPSIS

(Transfer of Property Act (1882), S. 58.)

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1. Scope.

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[Reversed in AIR 1963 Andh-Pra 489.]

——S. 58 — Oral mortgage — Transfer of Property Act not in force in Marwar when transaction took place — One of the parties handing over title deeds to other with a view to hypothecate immovable properties — **Held**, a valid simple mortgage came into existence by voluntary act of the parties —1940 M L R 299 (Civil), Rel. on. **ILR (1961) 11 Raj 76 : AIR 1962 Raj 12 (18) (Pt D) (Pr 30).**

——S. 58 — Transfer by operation of law — Charge on property created by decree—Suit for redemption — Period of limitation was 50 years—Transfer of Property Act was not in force in Travancore State at the time of the decree — The principles of T. P. Act applied — See T. P. Act (1882), S. 2 (d). **AIR 1955 Trav-Co 130 (DB).**

2. The Punjab and North-West Frontier province.

——Ss. 58 and 53-A — Applicability — Doctrine of part performance — Applies to mortgage—A I R 1963 Andh Pra 239, **Reversed.** — See T. P. Act (1882), S. 53-A. **AIR 1963 Andh-Pra 489 (DB).**

——S. 58 (c), Proviso — Not applicable to Punjab — Sale or mortgage—Distinction—Sale with a condition to reconvey — Determination of real nature — Oral evidence not admissible — Tests indicating a mortgage — Transaction in suit held a mortgage by conditional sale and not a sale—Evidence Act (1872), Ss. 91 and 8 — R. S. A. No. 756 of 1954 dated 5th September 1958 (Punj.), **Reversed.** ; A I R 1960 S C 301, Rel. on. **65 Punj L R 1064 : AIR 1964 Punj 81 (82) (Prs 5, 6) (DB).**

——S. 58 (c), Proviso — Applicability to Punjab.

The proviso to S. 58 (c) does not apply to Punjab. The proviso does not embody any rule of equity, justice or good conscience but only a technical rule as to proof : 48 Punj L R 517, Foll. **62 Punj L R 586: ILR (1960) 2 Punj 741 : AIR 1960 Punj 444 (445) (Pt A) (Prs 13, 14) (DB).**

——S. 58 — Sale and condition of repurchase as part of the same transaction and reproduced in mutation deed — Vendees cannot assert that they agreed to the transaction of sale but never agreed to the vendors' exercising their option to repurchase, as the two hang together — The principle embodied in S. 58, T. P. Act, does not apply to the case — See T. P. Act (1882), S. 35. **ILR (1960) 1 Punj 70.**

3. Section 6 (g), Vindhya Pradesh Abolition of Jagir and Land Reforms Act — Whether repugnant to section.

——S. 58—Government of Part 'C' States Act (1951) (as amended in 1954), S. 22—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 6 (g)—Part C States (Laws) Act, 1950 — Conflict between provisions of S. 6 (g) of Abolition Act, and S. 58, T. P. Act—S. 6 (g) not void after amendment of S. 22, Government of Part C States Act, in 1954—"Law made by Parliament" in S. 22, Explanation, as it stood prior to its amendment in 1954 — Part C States (Laws) Act, 1950, extending Transfer of Property Act to Vindhya Pradesh, whether covered—See Government of Part C States Act (1951), S. 22. **A I R 1961 Madh-Pra 216 (DB).**

——S. 58—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, S. 6 — Effect of substitution of mortgage with possession with simple mortgage by virtue of Cl. (g) of S. 6 (1) of the Act of 1952 — Resumption of Jagir lands subject to mortgage with possession — Personal liability of Jagirdars as mortgagors to repay loan which is a necessary ingredient of the simple mortgage comes into existence — See Tenancy Laws—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 6. **A I R 1961 Madh-Pra 216 (DB).**

4. Mortgage is a transfer of an interest in immovable property.

——Ss. 58, 59 — Debtor and creditor—Easements Act (1882), Ss. 52, 62 — U. P. Tenancy Act (17 of 1939), S. 47—Oral agreement between debtor and creditor that creditor shall remain in possession of debtor's land in lieu of interest—Transaction is not mortgage —AIR 1957 All 125, Rel. on—Position of creditor is also not that of sub-tenant but that of mere licensee. AIR 1950 All 604, Rel. on. Licence can be revoked by demand for possession on payment of money or by suit for possession. AIR 1950 All 604; AIR 1952 All 544 and AIR 1956 All 436, Rel. on. **1963 All W R (H C) 387 : 1963 All L J 456.**

——S. 58 — Subsequent mortgage of property for consideration and without notice of prior charge created over said property prevails—Such mortgage is transfer of property in hands of mortgagee —"In hands of a person" — Meaning of. See Transfer of Property Act (1882), S. 100, Para. 2. **AIR 1964 Bom 1 (DB).**

——Ss. 58, 59 (a)—Interest of usufructuary mortgagee is immovable property and not movable property. **54 Bom L R 519 : I L R (1952) Bom 1090 : AIR 1952 Bom 454 (455, 456) (Prs 7, 10) (DB).**

——Ss. 58, 55 (6) (b), 100 — Vendor having no title to immovable property, cannot create charge on it under S. 55 (6) (b), for earnest money paid to him. The charge does not also amount to a mortgage for a mortgage under S 58 is the transfer of an interest in immovable property — See T. P. Act (1882), S. 55 (6) (b). **AIR 1962 Cal 12 (DB).**

——S. 58—Transfer of future crop—Agreement providing that creditor was entitled to crop of mango tree in lieu of interest on loan—Does not amount to mortgage—(Registration Act (1908), Ss. 17 and 49)

An agreement that the plaintiffs were entitled to the crops of the mango tree in satisfaction of their interest due on the loan is not a transfer of any interest in immovable property so as to amount to a mortgage. The transfer or mortgage of a future crop neither sown nor cultivated at the time really

amounts to an executory agreement binding on the parties to the transaction, and cannot be regarded as a mortgage in the restricted sense of the term: AIR 1924 All 833, Rel. on. Such a document is admissible in evidence without registration. **1960 Raj L W 460 : I L R (1960) 10 Raj 978.**

——Ss. 58, 100 — Mortgage and charge — Distinction.

It is well known that a mortgage constitutes transfer of interest but a charge does not, with result that a transferee from a mortgagor gets the property subject to the interest of the mortgagee even if such a transferee purchases without notice of the mortgage. But the same thing cannot be said of a charge. Charge does not operate as transfer of interest in the property and a transferee of a property gets the property free from the charge provided he purchases it for value without notice of the charge. **(1956) 60 Cal W N 988 : I L R (1959) 3 Cal 418.**

5. Sub-mortgages.

——S. 58—Sub-mortgage for higher amount—Effect on rights of original mortgagee.:

The mere fact that a mortgage right is sub-mortgaged for a higher amount is no reason for holding that the rights of the original mortgagee cease to exist after the date of the sub-mortgage. **1958 Ker L J 182.**

6. Agreement to grant or accept mortgage.

——S. 58 — Specific Relief Act (1877), S. 21 (a)—Contract to mortgage cannot be specifically enforced unless plaintiff shows that compensation would not afford adequate relief or that he had actually advanced money on promised mortgage—See Specific Relief Act (1877), S. 21 (a). **AIR 1950 Kutch 86.**

7. Specific immovable property.

● **——S. 58—Clause in mortgage deed that mortgagee was competent to realise amount due to him by selling certain mouza—Held mouza must be held to be mortgaged.**

In the mortgage deed it was stated that as security for the realisation of the principal and interest, Mauzas Bansjora and Simitanr were to stand mortgaged:

Held, that though this prima facie suggested that those two mauzas alone were mortgaged, as the mortgagor had in the same paragraph agreed that should "any cause of action arise", the mortgagee shall be competent to realise the full amount due to him together with interest and costs by selling Mauza Bansjora, Simitanr and Bahaldih, the mortgagee could not sell the mortgagor's interest in Mauza Bahaldih in satisfaction of his mortgage claim, unless it was mortgaged to him, the intention appearing from this covenant was therefore clearly to encumber Mauzas Bansjora, Simitanr and Bahaldih. The High Court was in error in holding that the mortgagor's interest in Mauzas Bansjora and Simitanr only was mortgaged. AIR 1955 Pat 505, **Reversed. 1964 B L J R 217 : (1964) 1 Ker L R 179 : (1964) 1 S C W R 221 : (1964) 5 S C R 635 : I L R 43 Pat 895 : AIR 1964 S C 1295 (1298) (Pt A) (Prs 8, 9).**

——Ss. 58, 137 — Pledge and mortgage — Distinction —Mortgagee acquires general property in thing mortgaged but pledgee has only special property — There can be mortgage or pledge of shares—Instrument of security along with blank transfers without more does not mean mortgage — Contract Act (1872), Ss. 172, 176. **AIR 1960 Andh Pra 273 (276, 277) (Pt A) (Prs 18, 19, 20) (DB).**

——Ss. 58, 8, 100 — Companies Act (1913), S. 109 — Charge, creation of — Loan by Bank to Company — Promissory note by Director in favour of company given as security by way of guarantee—Negative lien on all fixed and liquid assets of company—Undertaking by the Company that fixed and liquid assets of Company would not be charged, while company remained indebted to Bank — Charge, floating charge or floating mortgage held not created on assets of Company—The only right that the bank acquired was an undertaking by the company to keep all its assets unencumbered till the loan was discharged—(Deed—Construction) — (Contract Act (1872), S. 171) — See Companies Act (1913), S 109. **AIR 1955 Bom 419.**

——Ss. 58 (a) and 3—Mortgagee's interest is immovable and not movable property—(General Clauses Act (1897), S. 3 (26))—See T. P. Act (1882), S. 3. **AIR 1952 Bom 454 (DB).**

——S. 58—Floating charge on stock in trade of business—Subsequent attachment by another creditor in this suit — Charge is crystallised on attachment but operates from date of charge. See Transfer of Property Act (1882), S. 100. **AIR 1961 Cal 308 (DB).**

——S. 58 — Equity of redemption — Usufructuary mortgage of.

Equity of redemption not being specific immovable property is not capable of a usufructuary mortgage. **(1961) 2 Guj L R 433 : (1961) 2 Guj H C R 154 : AIR 1961 Guj 129 (130) (Pt C) (Pr 3).**

——Ss. 58 and 8 — Mortgage of land — Building imbedded in land also passes—See T. P. Act (1882), S. 8. **AIR 1959 Ker 294 (DB).**

——S. 58—Mortgagee does not acquire pucca tenancy rights under S. 37 of the Zamindari Abolition Act. See Tenancy Laws — M. B. Zamindari Abolition Act, S. 37. **1961 M P L J (Notes) 235.**

——S. 58—Tenant becoming mortgagee — No merger of right—See Transfer of Property Act (1882), S. 111 (d). **1960 M P L J (Notes) 173.**

——S. 58—Mortgage of building which was intended to be used for running a cinema house but was not a running cinema house — Purchase by mortgagee—The things fitted in the building which formed an integral part of the building would alone pass to the purchaser — What passes. See T. P. Act (1882), S. 8. **(1957) 70 Mad L W 205.**

● **——S. 58—Stamp Act, S. 2(17)—Specified property.**

A clause in the mortgage deed was as follows — That the whole of the borrower's floating assets...and comprising lands, buildings and premises bearing door No. 27 Tiruvottiyur High Road Madras .... and all other stocks and goods of the borrower .... shall be hypothecated to the company — **Held**, the references to the premises described in the document as bearing door No. 27 Tiruvottiyur High Road Madras as also to the stock in trade was obviously to "specified" property within the meaning of S. 2 (17) of Stamp Act (1899) — See Stamp Act (1899), S. 2 (17). **AIR 1953 Mad 764 (FB).**

● **——Ss. 58, 54 and 60** — Tangible and intangible immovable property — Expression "equity of redemption" whether recognised by Indian Law as distinguished from English law — Sale by mortgagor of immovable property usufructuarily mortgaged is sale of tangible immovable property — ILR 24 Mad 449 (463) and AIR 1919 Cal 325 ; Sulaiman, A. C. J. in A I R 1928 All 726, (FB), Ram Labhaya J. in AIR 1950 Assam 107, Dissented from. See T. P. Act (1882), S. 54. **AIR 1959 Pat 153 (FB).**

——S. 58—House mortgaged—Appurtenances.

The parti land attached to the house, used for business carried on in house, held should be considered as part of house which was mortgaged. **1954 B L J R 33 : AIR 1955 Pat 189 (191) (Pt A) (Pr 4).**

8, Mortgage of movables.

——S. 58 —Stamp Act (1899), Sch. 1, Arts. 6, 40 — Pledge or hypothecation bond — The document is chargeable with duty under Art. 6 of Stamp Act — (Contract Act (1872), S. 172) — See Stamp Act (1899), Sch. 1, Art. 6. AIR 1958 All 864 (DB).

——Ss. 58, 100 — Contract Act (1872), S. 172— Hypothecation and mortgage of movables—Transactions though not provided for in statutes in India are recognised as valid. A I R 1964 Andh Pra 201 (203) (Pt B) (Prs. 7, 8, 9).

——S. 58—Pledge, lien and mortgage — Distinction. See Contract Act (1872), S. 172. AIR 1959 J & K 67.

——S. 58—Pledge of movables—Nature of.

Pledge differs from a mortgage of movable property in important respects. The pledgee has no property in the pawn but has merely a right to sell. It is also not an equitable mortgage. It is after all a security between a simple loan and a mortgage which wholly passes property in the thing conveyed. See Contract Act (1872), S. 172. AIR 1954 Madh B 6.

——S. 58—Mortgage of movable — Delivery of possession not necessary—Mortgage—Movables of.

A hypothecation of movable property though not accompanied with delivery of possession is valid and recognised in Indian law. Since, however, the transfer of movable property is not complete without delivery of possession such hypothecations have been described as creating equitable charge. ILR 8 Mad 104 (FB) ; 4 Bom L R 577 ; ILR 21 Cal 241 ; I L R 23 Cal 582 : 12 M L J 282 ; AIR 1940 Mad 929 ; (1940) 2 M L J 456, Relied on. 1961 Jab L J 306 : 1961 M P L J (Notes) 242.

——S. 58 — Companies Act (1913), Ss. 28 (1) and 34 (1)—There can be pledge and mortgage of shares in India whether it is one or the other will depend on the intention of the parties and the circumstances of each case—(Contract Act (1872), S. 172). See Companies Act (1913), S. 28 (1). AIR 1956 Pat 32 (DB).

——S. 58 — Hypothecation of movable property — Pledge and Hypothecation — Distinction between stated—Property hypothecated and in possession of debtor — Creditor is deemed to be in possession— Debtor cannot transfer it without consent of creditor. S. 17, Displaced Persons (Debts Adjustment) Act held applied. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 17. AIR 1960 Punj 42 (DB).

——S. 58 — Mortgage of moveable property (machinery)—Mortgagor in possession paying interest equal to rent -Transaction held hypothecation of moveable property and governed by equitable principles— Transferee of the property for value and without notice of charge claim of hypothecatee is defeated.

In the deed mortgaging machinery there was a recital that the mortgage was with possession. At the same time, it mentioned the property to be leased out to the mortgagor at Rs. 90 per month, which would be paid by the mortgagor and appropriated by the mortgagee towards interest agreed to be paid under the mortgage deed. Possession was not delivered. No rent was ever paid. It was never the intention to create a pledge of the property, the essence of which is transfer of possession.

Held, that the transaction was that of hypothecation of moveable property which could be done without transferring possession. The incidences of a transaction of hypothecation of moveable property witnout transferring possession, not being provided for either in the Contract Act or in the Transfer of Property Act were governed by equitable principles of the English Law. AIR 1952 Sau 107 (109) (Pt C) (Pr 5).

——S. 58—Mortgage of movables.

Hypothecation of movables can be recognised by the Courts as valid. But when these movables are left in the possession of the mortgagor a wide door is opened for fraud, and when the equities between the innocent purchaser and the mortgagee have to be weighed, the preference must be given to the purchaser for the mortgagee has by his omission to secure possession of the goods facilitated the commission of the fraud. The bona fide purchaser of hypothecated goods without notice of the encumbrance takes the goods free of all encumbrances. 1955 Ker L T 423 : I L R (1955) T C 216 : AIR 1955 Trav-Co 162 (163) (Pr 4) (DB).

9. "For the purpose of securing the payment of money."

——Ss. 58 and 100 — Charge or mortgage—Specific immovable property encumbered with payment of debt—In case of default debt recoverable by sale of property—Executants jointly and severally liable — Deed held was simple mortgage and not charge.

A clause in the deed acknowledged that a sum of money was due to A as dower debt. It stated that the said amount would be paid to her within a week. The clause further stated that so long the dower debt was not paid. the immovable property of M would remain encumbered and in the event of default in payment of the said amount A would be entitled to recover it by auction sale of the said immovable property or from the sons of M jointly and severally.

Held, that the clause in the deed fell within the principle, viz. documents providing for payment of a debt, giving specific immovable property as security, creating personal liability to pay the debt and clearly stating that the aforesaid property may be sold for recovery of debt, have been held to create a mortgage. It would accordingly create a simple mortgage and not a charge in favour of A. 19 I C 658 ; AIR 1914 All 187 ; A I R 1931 All 62 and 1935 A L J 279, Disting.

Distinction between charge and mortgage pointed out. Case law Ref. to. 1965 All L J 1104.

——S. 58—Mortgage—Legality — Contravention of Child Marriage Restraint Act—What amounts to — (Child Marriage Restraint Act (1929), S. 5) — (Contract Act (1872), S. 23).

Where the mortgagee is not aware that the mortgagor's daughter for whose marriage the debt was alleged to have been contracted by her father by executing the mortgage was a minor aged 12, it cannot be said that the mortgagee's object in lending the amount was unlawful or that the provisions of the Child Marriage Restraint Act were to be contravened, and hence the mortgage cannot be challenged as invalid or unenforceable. (1957) Andh L T 179: (1957) 2 An W R 16 : AIR 1958 Andh Pra 145 (146) (Pt B) (Pr 5) (DB).

——S. 58 (f) —"With intent to create a security thereon"—Inference as to intention—(Evidence Act (1872), S. 114).

The question of intention is not easy to decide. Intention cannot be proved by positive evidence. Intention has to be inferred from the circumstances of the case. But if a debtor gives his documents of title to the creditor, when the debtor had already a debt to pay to the creditor, the fact of delivery of the documents of title to the creditor would raise the presumption of a mortgage and the fact that there was subsequently a memorandum does not go to establish that the writing itself constituted a contract between the parties. That is because a transaction was already complete, and the transaction was not completed by the execution of the writing.

57 Bom L R 844 : ILR (1955) Bom 962 : AIR 1955 Bom 454 (456) (Pt A) (Pr 10).

——S. 58—"For the purpose of securing the payment of money" — Meaning—Usufructuary mortgage by holder of dharmilla inam grant in favour of tenant—Construction — Deed held not mortgage—(Deed—Construction).

A security is the assurance in its payment or ready recoverability that constitutes a particular thing a security for a debt.

The holder of dharmilla inam grant executed an instrument, styled as usufructuary mortgage, in favour of the tenant of those lands. Under the terms of the instrument, the entire Rajbhagam was payable to the mortgagor (landlord). The deed further provided "within a time limit of five years from to-day, I will discharge the dues relating to the principal and interest of this bond in full, get the payment in full satisfaction endorsed on the back of the bond and take it back from you and also take possession back of my lands. In the event of my default to pay off the mortgage dues in full, within this stipulated time, the mortgaged properties shall remain in your possession only, until they are discharged in full, in accordance with the aforesaid terms."

Held that the bond was not a usufructuary mortgage bond or even a simple mortgage bond or an anomalous mortgage bond.

It did not even amount to a mortgage as required under Section 58 (a) of the Transfer of Property Act, inasmuch as it did not secure repayment of the mortgage money. Case law discussed. 24 Cut L T 52 : ILR (1956) Cut 650.

——S. 58—Mortgage—Indemnity clause in sale deed—If amounts to mortgage—Sale by mortgagor to mortgagee in discharge of mortgage debt—Provision that in case of loss to or dispossession of mortgagee-vendee due to defect or flaw discovered in property mortgaged lien would affect sale and be enforceable—Effect of—If creates fresh mortgage having priority over mesne mortgage.

A sale deed executed by a mortgagor to a first mortgage provided inter alia, that "in case any flaw or defect as a result of any act of me, the executant is discovered and proved in the said vended property as a result whereof the said vendee is put to any loss in respect of the vended property, then the mortgage lien under the mortgage bond, in satisfaction of which debt this sale deed is executed shall affect the deed of sale also. The said vendee has and shall have the right to institute a suit in a competent Court in respect of the mortgage bond and realise the entire amount of the principal, interest and costs, etc., from the person and other assets and the entire moveable and immoveable properties of me, the executant and all my heirs and representatives".

Held, that the stipulation or indemnity clause could not be construed as creating a fresh mortgage within the meaning of S. 58, T. P. Act, with respect to the properties in dispute so as to give the vendee-mortgagee priority over an intermediate mortgage created by the mortgagor on the property. 28 Pat 303: AIR 1949 Pat 505 (508) (Pt C) (Pr 7) (DB).

10. "Existing or future date."

——S. 58—Agreement to advance money in future—Sufficiency, to support mortgage.

For transfer of an interest in immovable property to secure repayment, there need not be a present advance at the date of the execution of the deed. Even an arrangement to advance money in future will support a mortgage. Mortgage takes effect from the date of registration and not from the date when the consideration money is paid. 61 Bom L R 612 : ILR (1959) Bom 1112: AIR 1959 Bom 482 (485) (Pt B) (Pr 10) (DB).

——S. 58 — Mortgage for securing money advanced and to be advanced—Nature of—There is one mortgage covering all such advances—Starting of limitation is the date of the last advance made—See Limitation Act (1908), Art, 132. AIR 1955 Cal 194 (DB).

——S. 58—Deposit of title deeds with S. I. Bank to secure amount which A took from the bank by getting that amount credited in his account—The credited amount deposited by A in the same bank in fixed deposit account—Subsequent mortgage to C Bank by again depositing of title deeds — Held, though the mortgage to S. I. Bank was meant to secure future advances yet when the fixed deposit receipt was issued to the mortgagor A, he became a debtor in that account—The equitable mortgage ceased to be a mortgage to secure a future advance and became a mortgage to secure entire sum—Mortgage in favour of 'C' bank was therefore not entitled to priority. —See Transfer of Property Act (1882), S. 93. AIR 1958 Mad 132 (DB).

——S. 58—"Debt" meaning of.

Debt means that what is due from one person to another, that is a thing owed, whereas loan is that what is lent i. e. what is given in the shape of money or of money value. The sale price, which formed the consideration for the mortgage cannot be treated as money lent and does not come within the definition of "loan" in the Usurious Loans Act as it is neither a loan in fact nor in substance—See Usurious Loans Act (1918), S. 2 (2). AIR 1955 N U C (Mad) 3187.

11. "Or the performance of an engagement".

——Ss. 58 (d), 60 — Security for performance of agreement — Clog on redemption — (Deed — Construction).

A mortgage need not necessarily be for the purpose of securing payment of money advanced as a loan. It may be for securing "performance of an engagement which may give rise to a pecuniary liability". When the mortgagor authorises the mortgagee to remain in possession of the property until payment of the mortgage money the transaction amounts to a usufructuary mortgage.

Under a deed the different branches of the tarwad had to pay particular amounts to A as value of improvements due to him and he was allowed to be in possession of the properties till he was paid those amounts. If the amount payable by each branch was not paid within 4 years the right to recover possession of the property allotted to the share of that branch was to be forfeited and A was to acquire full right to the same.

Held, that the deed amounted to a usufructuary mortgage as defined in S. 58 (d) of the Transfer of Property Act. in favour of A.

(2) that the agreement to the effect that A would acquire title to the property on default by a breach to pay the value of improvements due to him was illegal, being a clog on the equity of redemption. 1948 T L R 556, Foll. ILR (1952) T C 438 : 1953 Ker L T 382 : AIR 1954 T C 7 (9) (Pt A) (Pr 7) (DB).

12. "Mortgagor."

——Ss. 58, 59 (a) and 91 — Mortgagor — Who is — Grantor of Guzara which grantee mortgaged without any powers of transfer and where mortgagees acquired title by adverse possession not a mortgagor — He is not "Bhumidar" and is not entitled to benefit of S. 14 of the U. P. Zamindari Abolition and Land Reforms Act (1951), though he is entitled to redeem — Reversion of grant — Grantor does not become mortgagor though he is entitled to redeem.

While every mortgagor is entitled to redeem, every person entitled to redeem is not a mortgagor. For determining whether a person is a mortgagor the test is not whether he may redeem or institute a suit for redemption but whether he is a transferor himself or a person deriving title from such transferor. If he is not a mortgagor within the meaning of S. 58 or within its extended meaning under S. 59 (a) he cannot be regarded as a mortgagor, though he may be interested in the mortgaged property and its redemption.

Where the grantee of guzara having no right to transfer mortgages the subject-matter of the grant, the mortgage is invalid at the inception but it becomes valid by lapse of 12 years and the mortgagees acquire mortgagee's interest therein and are entitled to retain possession of the property. The grantor although he incurs the objection to redeem, does not acquire the legal character of a mortgagor and is not entitled to the benefits of S. 14 of the U. P. Z. A. and L. R. Act. The grantor does not become the bhumidar of the plot (guzara) and is not entitled to a decree for possession. **1964 All W R (HC) 120 : 1964 All L J 244.**

——S. 58 — Mortgagor.

Where under a deed A and his father borrowed a certain amount of money from B and as a security for the debt A's father alone gave his property and both the father and son undertook to pay the amount and made themselves liable for the same.

Held, that A could not be said to be a mortgagor as he had not transferred any interest in specific immovable property. **AIR 1955 N U C (All) 1695 (DB).**

——S. 58—Two mortgagors each mortgaging his two properties under one mortgage deed — Construction.

A and B executed a single mortgage deed in discharge of amounts separately owed by them to the mortgagee and it covered two properties of each of them. The debt was made payable by instalments, the condition being that on failure to pay any instalment in time, the mortgagee would be entitled to realise the entire unpaid balance together with interest by selling the mortgaged property and if the mortgaged property was not sufficient for the discharge of the mortgagee's dues the mortgagee would be entitled to proceed against the other properties, movable and immovable of the mortgagors.

Held, that there was nothing to indicate that the loan transactions were joint. On the other hand, the mere fact that the debt of each of the two mortgagors was separately mentioned showed that these loans in the past were not advanced jointly to them. Considering all the provisions of the mortgage it was clear that there were really two separate mortgages embodied in one document, in spite of the fact that the provision for recovering the debt from all the properties of the mortgagors and the absence of specification regarding the portion of the instalments to be paid by each of them might lead to the inference of the mortgage being one and indivisible. **60 Cal W N 903 : AIR 1956 Cal 625 (628) (Pt C) (Pr 8).**

——S. 58 — Mortgage — Enforcement of — Liability is joint and several amongst mortgagors and subsequent transferees. See Civil P. C. (1908), O. 34, R. 14. **AIR 1956 Orissa 6 (DB).**

13. "Mortgagee."

——Ss. 58 and 59 — Loan of Rs. 500 on foot of pronote — Subsequent oral agreement under which creditor entered into possession of debtor's fields till liquidation of debt—Transaction is not mortgage — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 14—Applicability).

Where a debtor took a loan of Rs. 500 from his creditor on the foot of a pronote and subsequently put the creditor into possession of his 'khudkasht' fields under an oral agreement between the parties to the effect that the creditor should continue in possession till the debt is liquidated.

Held, that the transaction did not amount to a 'mortgage' within the meaning of that term under the Transfer of Property Act, and the person in possession will not be a "mortgagee" as defined in that Act; so that S. 14, U. P. Zamindari Abolition and Land Reforms Act will not come into play to cover such a transaction. Consequently, the creditor cannot be said to be a "mortgagee in possession of an estate", and his "right to possess will not cease" under S. 14, U. P. Zamindari Abolition and Land Reforms Act "with effect from the date of vesting". **1955 All L J 825 : AIR 1956 All 150 (151) (Pr 6).**

——S. 58 — Decree on simple mortgage — Sale of property — Auction purchaser decree-holder does not become mortgagee and if he had obtained possession of property, he does not become "tenant" within meaning of S. 2 (d) (i) of Compensation of Tenants Improvements Act (29 of 1958). 1959 Ker L T 956 : ILR (1959) Ker 1147.

[Overruled on another point in ILR (1960) Ker 475.]

14. Mortgage money.

● —Ss. 58 (d), 60, 62 — Usufructuary mortgage — Payment of mortgage money by mortgagor — Mortgage comes to an end and cannot be said to exist so long as mortgagor's right to ask mortgagee to perform acts mentioned in S. 60 continues.

When the mortgage money is paid by the mortgagor to the mortgagee, there does not remain any debt due from the mortgagor to the mortgagee. Further, the definition of usufructuary mortgage itself leads to the conclusion that the authority given to mortgagee to remain in possession of the mortgaged property ceases when the mortgage money has been paid up. When the mortgage money has been paid up, no question of appropriating the rents and profits accruing from the property towards interest or mortgage money can arise. If the mortgage money has been received by the mortgagee a new right to get his demands enforced through the Court thus arises as a result of the provisions of S. 60. AIR 1950 F C 1, Distinguished. ILR 8 All 402 and ILR 18 All 189 and AIR 1951 Nag 171 and AIR 1946 All 400, Rel. on. Prithi Nath Singh v. Suraj Ahir, **1963 B L J R 675 : (1963) 1 S C W R 403 : (1963) 3 S C R 302 : 1963 S C D 651 : AIR 1963 S C 1041 (1042, 1043) (Prs 4, 5, 7, 8).**

——S. 58 — Usufructuary mortgage — Mortgagee keeping portion of consideration and agreeing to pay interest — Mortgagor is entitled to credit at time of redemption. See Transfer of Property Act (1882), S. 76 (h). **AIR 1959 Ker 163 (DB).**

——S. 58 —Civil P. C. (1908), O. 34, R. 17 — A mortgaged a house to B for seven years under an anomalous mortgage — B sub-mortgaged the property to *C* for one year — *C* sued for mortgage money and caused B's interest to be sold to D—Suit by A for redemption against D — D claiming entire amount under original mortgage — Held the accounts between A and B and also accounts between B and the sub-mortgagee have also to be taken and the respective claims of A, B, C are to be adjusted and settled. See Civil P. C. (1908), O. 34, R. 17. **AIR 1956 Madh Bha 118.**

● ——S. 58 — Suit to enforce simple or equitable mortgage—Appointment of receiver to collect rents and profits of hypotheca — Effect of — Deposit of rents collected to credit of suit — Mortgagee decree-holder cannot claim any right over such deposit unless there is order of appropriation or allocation towards mortgage debt—Crown debt on account of

income-tax due from mortgagor is entitled to be paid out of such deposit in preference to mortgagee's claim. See Civil P. C. (1908), O. 40, R. 1. AIR 1962 Mad 59 (FB).

——Ss. 58 (a), (d) and 60 — 'Mortgage-money' — Interest due under mortgage—"Contract to the contrary".

Under S. 58 (a) of the Transfer of Property Act 'mortgage-money' is the amount due for principal and interest of which payment is secured for the time being.

The question whether the interest and other amounts payable by the mortgagor to the mortgagee are monies of which payment is secured must be decided on the actual provisions of the document of mortgage. A mortgagee is entitled to treat the interest due under a mortgage as a charge upon the mortgaged property in the absence of any contract to the contrary. The provision in the document that the mortgagors made themselves personally liable to pay interest would not amount to a contract to the contrary. (1961) 2 Mad L J 109 : 1961 Mad W N 266 : 74 Mad L W 216 : AIR 1961 Mad 415 (417) (Pt A) (Pr 5) (DB).

——S. 58—Simple mortgage for Rs. 8,000/-.—Rs. 360 deducted towards first year's interest in advance—Held, there is no reduction in principal — Mortgagee is entitled to subsequent interest on entire Rs. 8,000/- and not on Rs. 7,640/- only. AIR 1953 Sau 84 (85) (Pt B) (Pr 6) (DB).

——S. 58—Mortgage with possession and lease back—Non-payment of rent—Effect—Mortgage debt does not include rent. See Transfer of Property Act (1882), S. 60. AIR 1957 Trav-Co 13 (DB).

——S. 58 — Right to interest —Under mortgage deed mortgagee entitled to 9 P. C. P. A. — Debt Relief Act not applicable — Mortgagee held entitled to contract rate. AIR 1955 NUC (Trav-Co) 5083 (DB).

15. Non-payment of consideration—Effect.

——S. 58—A mortgaging certain property usufructuarily to *B* in consideration of *B* agreeing to pay off prior mortgage —*B* not paying prior mortgagee—Sale of mortgaged property in execution of decree on prior mortgage—Sale confirmed and the mortgagor's right to redeem extinguished. Suit by mortgagor for damages against *B* — Suit governed by Art. 83, Limitation Act. See Limitation Act (1908), Art. 83. A I R 1953 Mad 603.

——S. 58—Mortgage—Mortgagor admitting execution but pleading want of consideration—Burden of proof—Evidence Act (1872), Ss. 101-103.

Where the mortgagor admits the execution of the mortgage by him but pleads that the document was executed by him to get out of the clutches of his creditors and was not supported by consideration, the burden of proving want of consideration for the mortgage-bond lies squarely on the shoulders of the mortgagor. 1963 Raj L W 351 : ILR (1963) 13 Raj 866 : AIR 1964 Raj 72 (74) (Pt A) (Pr 7).

——S. 58 (a) — Mortgage—Validity depends upon passing of consideration at creation.

The definition of a mortgage shows that the validity of a mortgage deed is not dependent upon the passing of consideration then and there. As soon as the deed is executed a transfer of an interest takes place. The question of consideration will certainly arise when the mortgagee comes forward to enforce his right under the deed and the quantum of liability is to be fixed. Thus, where the debtors execute a mortgage giving immovable property as security to safeguard the interest of the Bank with regard to the demand loan account in the name of the debtors; the mortgage does not become invalid because the consideration shown therein was not credited by the Bank towards the amount due from the debtors. AIR 1919 Mad 781, 1935 Mad L J 740 and A I R 1922 Pat 299 (2) and AIR 1916 Lah 155 (FB), Rel. on. 1956 Ker L T 13 : ILR (1956) T C 167 : AIR 1956 Trav-Co 234 (234, 235) (Prs 5, 7) (DB).

16. Mortgage without title.

——S. 58 (1)—Contract Act (1872), S. 21—Sale of property — Mortgage of same property given by vendee for price — Title to property not in dispute—Transactions not part of settlement of disputed claim —Vendor found to have no title to property — Mortgage is devoid of consideration. See Contract Act (1872), S. 21. AIR 1950 Mad 146.

——S. 58 (c)—Scope — Compromise between decree-holder and judgment-debtor that if decretal amount were paid within 12 months, sale to be set aside, if not paid sale to be confirmed — Held, so long as the sale was subsisting the judgment-debtor had no interest in the property to transfer or mortgage the property— Compromise not a sale, or mortgage or mortgage by conditional sale as there was no transfer of interest in the property which is requisite for a mortgage — It was a mere recognition of the fact that a sale was held by the Court. See T. P. Act (1882), S. 58 (a). AIR 1959 Pat 239 (DB).

——S. 58—Under-tenure sold in certificate proceedings for recovery of cess—Purchase by patnidar — Subsequent mortgage of under-tenure by under tenure-holder—Mortgagee gets no interest — Release by patnidar— Mortgage is not endowed with any interest in property. See Bengal Cess Act (9 of 1880), S. 99. AIR 1957 Pat 706 (DB).

17. Mortgage by co-sharers.

——Ss. 58 and 68 (1) (b)—Mortgage by co-sharer—Security rendered insufficient.

A co-sharer has a right to mortgage his share in the property. If he mortgages the entire property, the mortgage is valid to the extent of his share of the property. If a suit brought by the other co-sharers for a declaration that the mortgage was not binding on their share is decreed, the property furnished as security for loan is evidently rendered insufficient and the mortgagee is entitled to sue under S. 68. 1953 All W R (HC) 695 : 1954 All L J 72 : AIR 1954 All 314 (314, 315) (Prs 3, 4).

——S. 58—Mortgage by co-sharer—Subsequent partition — Mortgaged property allotted to the share of another co-sharer — Mortgagee cannot pursue that property any more — He has to be content with the property allotted to the share of his debtor. See T. P. Act (1882), S. 73. AIR 1951 All 654.

——S. 58—Mortgage by several persons — No valid execution by some — Effect — Contract Act (1872), S. 43.

Where a mortgage is executed by several persons, the mere fact that some of them are minors and pardanashin ladies, who had not executed the deed in accordance with law cannot make the execution by the rest invalid. The mortgage would be valid and binding against the rest. The reason is that the liability of the mortgagors being joint and several the mortgagee can realise the whole of the debt from any one of them. AIR 1938 P C 181, Dist. 1951 All L J 258 : 1951 All W R (HC) 282 : AIR 1951 All 618 (619, 620) (Prs 6, 7) (DB).

——Ss. 58, 92, 73, 100—Cosharer mortgaging specific items—Partition—Items falling to share of another—Right of mortgagee to obtain substituted security—Nature of—Mortgagee selecting another substituted security—Items already mortgaged — Priority of another mortgagee.

The fact that the cosharer mortgaged specific fields as distinct from his share in the holding does not affect the applicability of the principle of substituted security if the partition is not challenged on the ground of unfairness or fraud.

It cannot be said that the equitable right of substituted security creates a mortgage in favour of the mortgagee from the date of the original mortgage or from a date prior to the date when the security takes new form. Similarly it cannot be said that the right of selection given by the mortgage deed, in case the mortgagee loses any portion of mortgaged property confers on the mortgagee a right of mortgage in the property, that is, subsequently selected by the mortgagee from the date that the mortgage was effected. The right of substituted security whether on equitable grounds or under an agreement can at best create a charge as defined in S. 100, Transfer of Property Act. It cannot be considered to be a mortgage as defined in S. 58, Transfer of Property Act, as it does not amount to a transfer of an interest in specific immovable property. After this right has accrued or properties are allotted to the mortgagee in exercise of this right, then those properties may be held to be subject to mortgage but not before that right has accrued or has been exercised. This right could not be exercised till after the partition had been effected between the mortgagor and his cosharers.

But where the property sought to be substituted by the mortgagee A after partition was already mortgaged before partition by the mortgagor to B and B had no notice of A's charge, B's mortgage would have priority over A's charge. In these circumstances if A insists on selecting these fields mortgaged to B it is in accordance with the principles of equity that the mortgagee rights of B should follow into A's hands and take precedence over the mortgage effected on these fields by virtue of the A's selection of these fields. Mortgage of B, still remains attached to the property. ILR (1957) Punj 79.

18. Mortgage in favour of a minor.

——S. 58 (e) — Execution of English mortgage in favour of minor advancing whole money is not nullity—Contract Act (1872), S. 11.

Where a person executes an English mortgage in favour of a minor who has advanced the whole money, the mortgage is not a nullity. The minor mortgagee has nothing like a contractual obligation to perform. By advancing the mortgage money he has done all he has to, and little or nothing remains to be done by him. If facts reveal a contractual obligation remaining to be performed by an infant mortgagee, they are caught by Mohori Bibee's case, (1907) 7 C W N 441.

By repeating a statutory obligation in a deed that after repayment the mortgagee at the cost of the mortgagor re-convey the property you do not convert it into a contractual obligation. It is a statutory right of the mortgagor conferred by S. 60, not by any contract. (1903) 7 C W N 441 Explained and Distinguished. 3 C W N 468, 22 C W N 130; (1916) ILR 40 Mad 308, AIR 1919 Pat 561 and AIR 1929 All 604, Rel. on.

Too much emphasis should not be laid on the words in S. 58(e) under which, amongst other things, the mortgagor transfers the mortgaged property absolutely to the mortgagee and the mortgagee retransfers it to the mortgagor upon payment of the mortgage money. These words are more catchy than effective. The mortgage remains a mortgage which under S. 58 (a) is the transfer only of an interest in specific immovable property. Because of these deceptive words, an English mortgage does not elevate itself to the height of a sale which under S. 54 is a transfer of ownership. 66 I A 50, Ref. (1965) 69 Cal W N 593.

19. Simple mortgage—Possession.

——S. 58 — Term in mortgage that mortgagee shall remain in possession till repayment of loan — Effect of.

Where one of the terms of the mortgage was that the mortgagee shall be in possession of the property till the mortgagor pays back the amount originally advanced and get repurchase from the mortgagee and on mortgagor's failure to deliver possession, the mortgagee sued for possession:

Held, that the term was enforceable in law and that the plaintiff was entitled to possession. 1961 Nag L J (Notes) 87 (Bom).

——Ss. 58 and 68 (a)—Simple mortgage or usufructuary mortgage—Document evidencing transaction of loan—Stipulation to repay loan with interest within certain period — In default mortgagee entitled to enter into possession of property given by way of security for loan — Document is simple mortgage—Express personal covenant to pay not destroyed by stipulation as to possession — Mortgagee entitled to sue for simple money claim based on personal covenant.

The defendants borrowed a sum of money and agreed to pay the principal with interest at certain rate within a period of 2 years and as a security for the loan mortgaged a 'Bara' belonging to them in favour of the plaintiffs. It was stipulated that in default of payment of entire loan with interest at the end of two years from suit claiming a simple money decree for the principal and the date of loan the plaintiffs would be entitled to take possession of the Bara. The document evidencing the transaction being unregistered the plaintiffs instituted a suit claiming a simple money decree for the principal and interest.

Held, that the document evidencing the transaction was a simple mortgage wherein there was an express promise to pay and possession was not intended to be delivered as an initial part of the agreement between the parties. And that being so, the further undertaking given by the defendants that in case of their failure to pay the mortgage money together with interest at the stipulated time the plaintiffs would be at liberty to enter into possession of the mortgaged property was not enough to convert this simple mortgage into a usufructuary one. There was nothing in the nature and the terms of the security offered whereby the personal liability undertaken by the defendants could be said to have been negatived. Hence the plaintiffs were not debarred in law from filing a suit for a simple money claim based on the personal covenant to pay. 1 Mad H C R 114 and AIR 1919 Oudh 270 and AIR 1923 Nag 161 (1) and AIR 1932 Lah 630 and 10 Ind Cas 272 (PC) and AIR 1925 P C 63, Rel. on; AIR 1937 Oudh 517 and AIR 1916 P C 119, Dist. 1963 Raj L W 101 : ILR (1963) 13 Raj 54 : AIR 1963 Raj 100 (103) (Pt A) (Pr 17).

——S. 58—Deed—Construction—Mortgage deed.

Held on facts that the document purported to be a simple mortgage at the outset with stipulation for delivery of possession of part of the property after 15 days and for further delivery of entire property after 12 months from which date the loan was to carry interest. The right of redemption was not lost by delivery of possession even according to the terms of the mortgage. AIR 1955 N U C (Raj) 5406.

——S. 58—Mortgage—Burden of proof.

In a case where there is a simple mortgage deed, when a party claims that the mortgaged property was handed over as per oral agreement with the direction that the income was to be adjusted towards interest,

the burden is heavily on him to prove the same. See Evidence Act (1872), Ss. 101-104. **ILR (1956) Trav-Co 1130.**

20. Mortgagor binds himself personally to pay.

● —S. 58—Displaced Persons (Debts Adjustment) Act (1951), S. 2 (6) (c) — Pecuniary liability includes mortgage debt. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 2 (6) (c). **AIR 1960 S C 1030.**

—S. 58 — **Unregistered mortgage — Mortgagee to remain in possession and enjoy rents and profits in lieu of interest — Mortgagor promising to pay principal after two years and in default mortgagee to continue in possession as before till redemption — Personal covenant—(Registration Act (1908), S. 49).**

A mere promise to pay contained in a mortgage deed does not import a personal liability, for such a covenant is to be found in every form of mortgage. The essential thing to see is whether the covenant creates a legal obligation which does not merely give the borrower the option of paying the loan amount and redeeming the security but also confers on the mortgagee, a right enforceable against the mortgagor to realise his money otherwise than out of the mortgage security. Thus a promise to pay cannot be said to contain a personal covenant to pay it in the event of the mortgagor's non-payment it does not give the mortgagee the remedy of enforcing the promise to pay. **1958 Jab L J 392 : 1958 MPC 361 : 1958 MPLJ 595 : A I R 1959 Madh Pra 178 (179 to 181) (Prs 3, 7).**

—S. 58 — **Personal covenant to pay — Recitals — Section 82—Deposit by the mortgagor—Withdrawal by the mortgagee after objection—Suit by the mortgagee for sale of the property — Usufructuary mortgagor — Madras Agricultural Relief Act (4 of 1938), S. 9-A.**

The recitals in the mortgage clearly amount to a personal covenant to pay the debt and enabled the mortgagee to bring a suit for sale of the mortgaged property. The recitals follow the fixation of definite period for redemption. The withdrawal by the mortgagee of the deposit made under S. 82 of the Transfer of Property Act after making his objection to the deposit will not operate to discharge the mortgage. It is not the law that once a valid deposit is made ipso jure there is no subsisting mortgage which can be enforced or redeemed. Having regard to the scheme of Madras Act IV of 1938, S. 9-A is only intended to apply when the mortgagor seeks to redeem the mortgage. Although the mortgagor may be entitled to the benefit of sub-s. (9) (a) (i) of that section he cannot invoke it in the suit for sale by the mortgagee. **(1962) 1 M L J 304 : 75 Mad L W 543 (2) : AIR 1962 Mad 308 (308) (Pt A) (Pr 2).**

—S. 58 — Scope and object — Personal decree for balance against mortgagor — Personal liability is a question of construction of mortgage. See Civil P. C. (1908), O. 34, R. 6. **AIR 1957 Pat 575 (DB).**
[Overruled on another point in AIR 1958 Pat 630.]

—Ss. 58 and 60— **Simple mortgage or mortgage by conditional sale—Clog on redemption.**

A document which is essentially a simple mortgage an express personal covenant to pay does not cease to be a simple mortgage and becomes a mortgage by conditional sale merely because it contains a term under which the mortgaged property is to be deemed to have been sold outright on failure of payment of the principal money with interest by a certain date. Such a term in the mortgage amounts to a clog on the equity of redemption under S. 60 and is void. **AIR 1955 Vin Pra 4 (5) (Pt A) (Pr 3).**

21. "Mortgagee shall have a right to cause mortgaged property to be sold."

—S. 58—Mortgage—Indivisibility— Splitting up of security — Amount of mortgage decree deposited in Court — Payment in instalments under Madras Indebted Agriculturists (Repayment of Debts) Act (1955) — Effect — Does not split up security. See Civil P. C., S. 73. **(1958) 2 Mad L J 566.**

—S. 58 — **Simple mortgage — Absence of express term for sale—Remedy of mortgagee—Ss. 67 and 98.**

A executed a mortgage without possession expressly agreeing to repay the mortgage money with interest at a specified rate. In case of default the mortgagee was given two options namely either to recover the money with interest calculated at a higher rate or to get possession of the land in lieu of the principal money. If the mortgagee exercised the second option the interest was to cease to run :

Held, that the mortgage was not an anomalous mortgage where no decree for sale could be passed but it was a simple mortgage in which a right of sale was deemed to have been impliedly given to the mortgagee. Even assuming it was anomalous mortgage the mortgagor having clearly undertaken to repay the amount with interest the mortgagee was entitled to file a suit for the recovery of the money and to have the property sold. A I R 1928 Mad 220 (1), Distinguished. **A I R 1958 Punj 309 (310) (Pr 5) (DB).**

—S. 58 — Civil P. C. (1908), O. 21, Rr. 54 (1), 46—Scope — Mortgagee entitled to claim realisation and mortgagor entitled to claim repayment of mortgage money — There is debt — Order 21, R. 46 and not O. 21, R. 54 (1) applicable. See Civil P. C. (1908), O. 21, R. 54 (1). **AIR 1960 Pat 198 (DB).**

22. Mortgage by conditional sale—General.
(A) Sale or mortgage—Test of distinction.
(B) Illustrations.
(C) Proviso to S. 58 (c)—Effect.

22. Mortgage by conditional sale—General.

—S. 58—Pre-emptor whether bound by agreement to re-sell—Sale and agreement to re-sell forming part of same transaction—Pre-emptor bound by agreement to re-sell. See Pre-emption. **AIR 1963 All 194.**

● —S. 58 (c)—**Ostensible, meaning of—(Words and Phrases).**

Per Agarwala J.—The word 'ostensible' in S. 58 (c), T. P. Act has two meanings—(a) that the object bears a certain form or appearance without suggesting that it is or is not that of which it has the superficial appearance; and (b) that the object bears a certain appearance but is not really that of which it bears the appearance.

The word 'ostensible' is used in the section in both senses and not in one only.

Per Beg J. — The word 'ostensible' in clause (c) is used in opposition to the word 'real.' In other words it is used only in the second sense and not in the first. Debi Singh v. Jagdish Saran Singh, **ILR (1952) 2 All 200 : AIR 1952 All 716 (724, 736) (Pt D) (Prs 41, 104) (FB).**

—S. 58 (c) —**Sale or mortgage—Tests — Relationship of debtor and creditor — Determination of — Consideration for repurchase calculated in particular manner — Effect.**

When one speaks of a mortgage one has in mind a relationship of a debtor and a creditor between the parties to the transaction. Where there is no undertaking by the seller to repay the sum and what is imposed is an obligation on the buyer to reconvey the property if and in case the seller pays him a certain

amount calculated in a particular manner, the mere fact that the consideration for the repurchase is to be in a particular manner is not necessarily indicative of a subsisting relationship of a debtor and a creditor between the seller and the buyer. 1959 Andh L T 457.

——S. 58 (c)—Sale or mortgage—Tests—Inadequacy of price—Plea raised in appeal — Maintainability—(Civil P. C. (1908), O. 41, R. 1).

The contention that the circumstance that the consideration for the alleged sale is considerably less than the true value of the property would point to a mortgage while the circumstance that the consideration for the sale represents the true value of the property would point to a sale when nothing has been suggested in plaint or in evidence cannot be entertained in appeal for the first time. 1959 Andh L T 457.

——S. 58 (c) — Agreement for reconveyance— Pre-emption — Occupant selling his field — Sale deed and agreement to reconvey executed and registered on the same date—Vendor obtaining reconveyance of property within time prescribed — Transaction does not attract the right of pre-emption — Agreement for reconveyance binding on the pre-emptor. See Berar Land Revenue Code (1928), S. 180. (1963) 65 Bom L R 229.

——S. 58 (c)—Field ostensibly transferred — Transferor executing Kabuliyat — Transferee filing suit for recovery of lease-money — Suit maintainable. See Transfer of Property Act (1882), S. 108. 1959 Nag L J (Notes) 133.

——S. 58 — Civil P. C. (1908), S. 115 — Question whether a certain transaction was a sale or mortgage —Lower appellate Court in the circumstances and having regard to evidence finding that it was sale — Finding held could not be challenged in revision application. See Civil P. C. (1908), S. 115. AIR 1956 Bom 607.

——S. 58 (c) — Proviso — Sale with agreement for reconveyance in two separate documents — Oral evidence to show that it was intended to be a loan or mortgage is inadmissible. See Evidence Act (1872), S. 92. AIR 1955 NUC (Cal) 2334 (DB).

——S. 58—Absolute sale—Contemporaneous unregistered agreement to reconvey is inadmissible to prove that the deed of sale is in reality a mortgage by conditional sale. See Registration Act (1908), S. 49. AIR 1955 Hyd 179 (DB).

——S. 58—Construction—Mortgage or sale—Is purely a question of fact —Very little assistance can be derived from decided cases. AIR 1953 Madh Bha 143 (144) (Pt B) (Pr 5) (DB).

——S. 58 (1)—Suit for possession based on sale deed — Defendant can allege and prove that transaction was one for loan only—(Evidence Act, Ss. 91 and 92).

In a suit for possession by plaintiff on the strength of a sale deed in his favour by the defendant it is open to the defendant to allege and prove that the sale was merely nominal and that the real transaction was one of loan and the apparent sale deed was by way of collateral security for the transaction of loan. S. 91 or S. 92 of the Evidence Act nor S. 58 (c) of the Transfer of Property Act would be a bar to the defendant raising such contentions. L R 63 I A 126, Rel. on ; A I R 1938 Nag 335 : I L R (1939) Nag 1, Foll. 1962 M P L J (Notes) 199.

—S. 58 (c)—Sale or mortgage—Test.

There need not be a pre-existing mortgage transaction in order to create a mortgage by conditional sale. It is enough if the document is in accordance with the requirement of S. 58 (c). Where a document of ostensible sale executed after 1929 contained a condition that on payment the vendee should transfer the property to the vendor with absolute permanent rights and the condition as to repurchase was embodied in the document and there were other circumstances as to the price, the pre-existing creditor and debtor relationship, the purchase of the stamp-papers in the name of the transferor, etc. :

Held, that the document was a mortgage by conditional sale. 1956 Mad W N 888 : (1956) 2 Mad L Jour 565.

——S. 58 (c) — Condition to reconvey property not embodied in sale-deed executed by plaintiff on 7-5-1955—Transaction cannot be considered to be mortgage and plaintiff cannot lead oral evidence contrary to recitals of sale-deed — Extension of Act to agricultural land in Part-B States of Mysore—Mysore Transfer of Property (Extension to Agricultural Lands) Act (32 of 1951), S. 2.

The provisions of the Transfer of Property Act, were applied to the former State of Mysore by the Part-B States (Laws) Act (3 of 1951), with effect from 1-4-1951, 'to the extent' that any of the provisions contained therein relates to matters with respect to which Parliament has power to make laws.

Therefore, where in a sale deed executed by the plaintiff on 7-5-1955, i.e., after the Transfer of Property Act became applicable to Part-B States of Mysore, the alleged oral agreement to treat the transaction as mortgage and to reconvey the property on payment of the mortgage money with interest was not embodied in the sale-deed, the plaintiff could not get over the bar created by S. 58 (c) of the T. P. Act and the transaction could not be considered to be a mortgage by conditional sale, Hence, it was not open to him to lead oral evidence contrary to the recitals of the sale-deed. (1965) 1 Mys L J 141 : AIR 1965 Mys 297 (299) (Pt A) (Prs 7, 8).

——S. 58 (c) — Provisions of, have not ceased to be operative after extension of Indian Evidence Act and Transfer of Property Act to Mysore State—S. 5, Mysore Agriculturists Relief Act (1928), not void on ground of repugnancy to above Central Act—Nor is it impliedly repealed. See Debt Laws—Mysore Agriculturists Relief Act (18 of 1928), S. 5. AIR 1965 Mys 54 (FB).

●——S. 58 (c)—Mortgage or sale—Creation of mortgage by conditional sale — Antecedent transaction resulting in relationship of debtor and creditor not essential.

In order that there should be a mortgage by conditional sale it is not necessary that there should be an antecedent transaction between the two parties resulting in the relationship of debtor and creditor between them. By the very act by which the parties enter into a mortgage by conditional sale they can bring about the relationship of debtor and creditor.

The fact that one of the parties built a house on the property in question at his own expense is a strong evidence in support of the contention that he mortgaged the property by conditional sale and did not sell it outright. 39 Mys L J 991 : AIR 1962 Mys 238 (239) (Pr 5).

——S. 58—Sale or mortgage.

There is no presumption attaching to an ostensible sale deed but the onus on the party alleging that an ostensible sale is in fact a mortgage. 1954 Nag L J 64 : AIR 1954 Nag 193 (196) (Pt B) (Pr 17) (DB).

——S. 58 (c)—Mortgage or sale—Deed sale on face—Possession passing — Party alleging mortgage must give cogent reasons and reliable evidence.

Where a transfer is a sale on the face of it and possession passes to the transferee, the party who alleges that it is not a sale must give cogent reasons

and reliable evidence to support his case. ('52) 1952 Nag L J (Notes) 48.

● —S. 58 (c) — Conditions one and two — Sale or mortgage.

(Obiter) Per Ray C. J. — A transaction evidenced by a deed which contains either the first or the second condition must be one of mortgage. By its very terms, it is made clear that the sale is not a completed and absolute one from the beginning but has the contingency of either becoming final and absolute or becoming void.

Per Das J. — A transaction by way of an ex facie sale which contains a stipulation rendering the sale absolute in default of payment or avoiding the sale on payment, cannot be ipso facto held to be a mortgage without any consideration of the intention to be gathered from the other terms of the document and of the surrounding circumstances : Case law discussed. Nilamoni Bewa v. Mrutunjaya Pradhan, I L R (1951) Cut 281 : A I R 1951 Orissa 362 (368, 377) (Pt B) (Prs 13, 42) (FB).

● —S. 58 (c) — Sale or mortgage — Delay in filing suit for redemption.

Per Ray C. J. — Delay in launching the suit for redemption will not make the transaction a sale which from its very inception was a mortgage, whatever other equitable considerations might arise therefrom. Once a mortgage is always a mortgage.

Per Das J. — Delay in seeking redemption is a circumstance which must call for scrutiny. Unexplained delay must receive its due weight as one of the relevant circumstances, by way of conduct where such conduct is admissible. Sm. Nilamoni Bewa v. Mrutunjaya, ILR (1951) Cut 281 : AIR 1951 Orissa 362 (373, 378) (Pt C) (Prs 27, 45) (FB).

—Ss. 58 (a) and 58 (c) — Applicability—Compromise between decree-holder and judgment-debtor that if decretal amount were paid within 12 months sale to be set aside—If not paid sale to be confirmed —If sale, or mortgage or mortgage by conditional sale.

Held, that the compromise petition did not constitute a deed of transfer by the judgment-debtor in favour of the decree-holder by way of an ostensible sale, but the document was a mere recognition of the fact of the sale having been held by the Court — which sale was either to be set aside or confirmed in terms of the compromise. So long as the sale was subsisting the judgment-debtor had no interest in the property to transfer or mortgage the property. In order to make the document a mortgage by conditional sale, first requirement is that there should be ostensible sale of the property by the mortgagor, i.e., the transferor. Therefore the compromise was not a mortgage by conditional sale. Similarly it was not also a mortgage, the first requisite of which was the transfer of an interest in the property. ILR 37 Pat 904 : 1958 B L J R 698 : AIR 1959 Pat 239 (241 to 243) (Prs 8, 12, 13, 15) (DB).

—S. 58 (c) — Mortgage by conditional sale — If loan.

Suit for foreclosure by plaintiff on the basis of a mortgage by conditional sale is a suit for recovery of money within S. 4, Bihar Money-Lenders Act as money advanced is a loan within S. 2 (f) of the Act — S. 4 therefore applies to such a case. See Debt Laws—Bihar Money Lenders Act (3 of 1938), S. 2 (f). 1959 B L J R 145 : (1959) Pat L R 7.

—S. 58 — Document in form of sale — Plea that it is really a mortgage by conditional sale — Onus is on party setting up the plea to establish it — (Evidence Act (1872), Ss. 101 to 103). 54 Pun L R 42 : AIR 1952 Punj 181 (183) (Pt C) (Pr 12).

22 (A). Sale or mortgage—Test of distinction.

● —S. 58 (c) — Sale and mortgage by conditional sale—Distinction—(Evidence Act (1872), S. 92).

The question whether by the incorporation of a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The circumstance that the condition is incorporated in the sale deed must undoubtedly be taken into account, but the value to be attached thereto must vary with the degree of formality attending upon the transaction. The definition of a mortgage by conditional sale postulates the creation by the transfer of a relation of mortgagor and the mortgagee, the price being charged on the property conveyed. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer the property within the period specified. What distinguishes the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt. The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances. Oral evidence of intention is not admissible in interpreting the covenants of the deed but evidence to explain or even to contradict the recitals as distinguished from the terms of the documents may of course be given. Evidence of contemporaneous conduct is always admissible as a surrounding circumstance; but evidence as to subsequent conduct of the parties is inadmissible. Bhaskar Waman Joshi v. Shrinarayan Rambilas Agarwal, (1960) 1 Ker L R 142: 1957 Jab L J 1032: (1960) 1 M L J (SC) 87 : (1960) 1 Andh W R (SC) 87 : 1960 S C J 327 : (1960) 2 S C R 117 : (1960) 2 S C A 189 : (1960) M P C 409 : A I R 1960 S C 301 (304 to 307) (Prs 7, 8, 9, 13).

—S. 58 — Absolute sale with condition to repurchase or mortgage by conditional sale — Test to decide—Intention of parties—Deed—Construction.

Whether a transaction evidenced by a document is an absolute sale with a condition to repurchase or is a mortgage by conditional sale, the Court has to determine the real intention of the parties. The mere form in which the document is couched is immaterial. The intention of the parties has to be gathered from the terms of the documents themselves, and from such of the surrounding circumstances as are required to show in what manner the language of the documents is related to the existing facts.

The day on which the deeds of transfer were executed by the transferor, the fact that the agreement to reconvey the property was a contemporaneous or a simultaneous act on the part of the transferee goes to support the contention that the transactions embodied in the two documents constituted a single transaction, and were intended by the parties to stand as a whole. This fact by itself, however, is not conclusive of the matter :

Held, on the facts and terms embodied in the documents that the transaction in question was intended by the parties to be one of mortgage, and not one of sale. 1957 All W R (HC) 719 : 1957 All L J 724 : AIR 1957 All 740 (741, 742) (Pt A) (Prs 4, 5) (DB).

—Ss. 58 (c) and 54 — Evidence Act, S. 92 — Deed whether sale with condition of repurchase or mortgage with conditional sale—Intention to be gathered from deed and surrounding circumstances — Oral evidence not admissible. See Evidence Act (1872), S. 92. AIR 1952 All 200 (DB).

——S. 58 (c) — Sale or mortgage —Tests—Language of deed, if sole test.

A mortgage by conditional sale is ostensibly a sale. The law provides that even though a transaction may ostensibly be a sale, it will nevertheless be treated as a mortgage if the intention was not an out and out sale but to advance the money to the transferor and to give him a right to get back the property on the repayment of the money and if the property was transferred only for the purpose of serving as a security for the money advanced.

No hard and fast rule can be laid down as to when a transaction is an out and out sale and when a mortgage by conditional sale. It depends upon many circumstances.

The real test in such cases is to see the intention of the parties. Intention can be judged only from the surrounding circumstances. If the Courts were to go only by the language used in the deed then there would hardly be any case of a sale which could be treated as a mortgage :

Held on facts that the transaction in reality was one of mortgage by conditional sale and not an out and out sale. **AIR 1950 All 430 (431, 432) (Prs 5, 6, 9, 14).**

——S. 58 (c) as it stood before Amendment of 1929 —Sale or mortgage—Rule of construction.

Prima facie an absolute conveyance containing nothing to show that the relation of debtor and creditor is to exist between the parties does not cease to be an absolute conveyance and become a mortgage merely because the vendor stipulates that he shall have a right to repurchase . . . . . In every such case the question, is, what upon a fair construction is the meaning of the instruments ? Intention of the parties as expressed in the covenants is the determining factor. I L R 12 All 487 (P C) ; 44 E R 924, Rel. on. **1959 Andh L T 457.**

——S. 58 (c)—Sale or mortgage — Tests — Non-delivery or postponement of possession.

In a case of a sale and an instrument of reconveyance the fact the receipt of rent by the vendee from the lessee is postponed will not indicate that the seller is to continue in possession until that date and the non-delivery of possession contemporaneously with the deed points to the transaction being a mortgage. The right to collect rent may be postponed because the lessee has already paid the vendor the advance rent till that date. Significance may attach to non-delivery of possession only in a case where the possession is to come into effect from the final date fixed for the sale becoming irrevocable. **1959 Andh L T 457.**

——S. 58 (c)—Sale or mortgage—Tests—Duration of period.

A period of one year and five months during which the repayment was to be made by the seller is not a long period indicative of the mortgage. **1959 Andh L T 457.**

——S. 58 (c)—Sale or mortgage — Tests—Agreement to reconvey made contemporaneously with sale-deed —Effect.

While it may be true that where an agreement to reconvey comes into existence after a lapse of time from the date of the sale, it is to be construed as a mere contract for repurchase, it does not follow, that the fact that it came into existence contemporaneously with the sale deed is a sure sign of the transaction being a mortgage. It was never the law that every transaction of sale followed immediately by an agreement to reconvey should be deemed to be a mortgage. **ILR 12 All 387, Ref. 1959 Andh L T 457.**

——S. 58 (c)—Sale or mortgage — Tests — Time for repurchase not being of essence of contract—Effect.

The fact that time is not made the essence of a contract of repurchase does not make the transaction a mortgage. The general rule of course is that stipulations relating to conveyance of immovable property are not treated as stipulations which make time essential. But a right to enforce a covenant to repurchase is different from a right to redeem a mortgage. If there can be agreements to reconvey in which time is not of the essence, even assuming that time is not of the essence in a given case, there is no reason why the deed of reconveyance should not be interpreted as one such. **1959 Andh L T 457.**

——S. 58 (c)—Mortgage by conditional sale and sale with condition for repurchase — Test of — Evidence admissible.

The transaction contemplated in S. 58 (c) is ostensibly a sale and the parties to it are described as 'buyer' and "seller". Simply because a document describes a transaction as sale, this by itself can raise no presumption that the transaction is a sale. Subsequent conduct cannot be proved to show that the intention of the parties was something other than that expressed in the document. The intention of the parties must be gathered from the terms of the document itself and the surrounding circumstances. Under the proviso to S. 58 (c) a document to be constructed as a mortgage by conditional sale, both the conditions of sale and repurchase must be found in same document. But the converse does not hold good and if both the conditions are incorporated in the same document, it does not necessarily mean that it must be a mortgage and not a sale. AIR 1954 S C 345, Foll. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer the property within the period specified. What distinguishes the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt. The form in which the deed is clothed is not decisive. AIR 1960 S C 301, Foll.

Where the document incorporated ostensibly an absolute sale of the land for Rs. 400/- and at the time of the transaction the transferor owned a sum of Rs. 200/- to the transferee and there was nothing to show that the purchase price viz., Rs. 400/- was inadequate and the document further provided that the transferor would get back the land if he was able to return the purchase money within 3 years :

Held, that the relationship of debtor and creditor could not be said to have been continued and the document must be regarded as one of sale. **ILR (1963) 15 Assam 496 ; AIR 1965 Assam 90 (91, 92) (Prs 6, 7, 8).**

——S. 58 (c) — Sale or mortgage — Tests — Oral evidence regarding intention of parties not permissible.

In determining the question whether a particular transaction amounts to a transfer by sale or a mortgage by conditional sale, the Court can look into the two documents alleged to constitute the same transaction and can also take into consideration the circumstances of the case. But the parties cannot be permitted to lead oral evidence on the intention of the parties at the time of the transaction, as such evidence would be barred under S. 92, Evidence Act. Where there are two separate documents viz., a sale deed and an agreement to reconvey the property and only the sale deed is registered and not the deed of agreement, the deed of agreement would be inadmissible, in evidence, if the transaction is treated to be a mortgage by conditional sale. But the registration of an ordinary agreement is not necessary and consequently, if the transaction amounts to a sale out and out, the agreement, even if unregistered, can be en-

forced and would be permissible under the law as a separate contract between the parties. Thus the fact that the agreement was not registered can be used to infer that the transaction was not a mortgage by conditional sale. S 58 (c) contemplates a certain date by which the payment of the mortgage money has to be made. Where no date has been specified for the payment of the mortgage money but the option is given to the mortgagor to repay the sum at any time when he likes the transaction does not come within the four corners of a mortgage by conditional sale as defined in S. 58 (c). **1956 Madh B L J (Bhopal) 125 : AIR 1956 Bhopal 59 (61) (Pt B) (Prs 6, 8).**

——S. 58 (c)—**Ambiguous deed—Principles of construction — Sale with condition of re-purchase or mortgage by conditional sale—Test.**

Of a document couched in language of uncertainty, dubiousness and ambiguity, it is not possible to find out or to determine the nature of the document from a reading of the document itself. In such a case one has to see what type of document the parties intended to create or what was the intention of the parties as envisaged in the document. The decision of the question whether a particular document is a mortgage by conditional sale or a sale out and out with a condition of repurchase depends on the particular facts of each case and the intention of the parties entering into the 'transaction'. It is reasonable to suppose that persons, who after the amendment of S. 58 of T. P. Act by the Amending Act (20 of 1929) choose not to use two documents do not intend the transaction to be a sale unless they displace that presumption by clear and express words and that if the conditions of S. 58 (c) of the Transfer of Property Act are fulfilled, then the deed should be construed as a mortgage :

Held, on facts that the deed was a deed of mortgage by conditional sale. **(1959) 63 Cal W N 430.**

——S. 58 (c)—**Sale or mortgage—Determination of—Tests.**

The question whether a given transaction is an outright sale with a condition of repurchase or a mortgage by conditional sale must be decided on its own facts. Broadly speaking it depends on the intention of the parties to be gathered from the contents of the document and the surrounding circumstances, as to whether an absolute right in the property is to vest forthwith in the transferee subject only to the condition regarding retransfer or on the other hand a sale is to come into effect on a future date. If the transferee became entitled to all the rights of the transferor on the date of the execution of the document the document will be regarded as a sale. But if the absolute transfer of right is intended to be postponed so as to take effect only on a future date the transaction will be held to be one by way of mortgage. In the former case the ownership vests in the transferee from the date of the document and there is no question of any debt coming into existence after the date of the transaction, while in the latter case the debt subsists and the right to redeem remains with the debtor. I L R 12 All 387, Relied on. Again as a matter of construction, the fact that a transaction is embodied in one document and not two and its terms are covered by S. 58 (c) may give rise to the inference that it is a mortgage by conditional sale unless there are express words to indicate the contrary or in a case of ambiguity the attendant circumstances necessarily lead to the opposite conclusion. **1957 Ker L J 525 : 1957 Ker L T 550 : A I R 1957 Ker 169 (170) (Prs 3 to 7).**

——S. 58 (c)—Mortgage by conditional sale and sale with condition of retransfer — Distinction. **A I R 1955 N U C (Madh B) 5646 (DB).**

——**Ss. 58 and 54—Sale or mortgage—Tests.**

The tests which have to be applied for determining whether the transaction between the parties is a mortgage by conditional sale or an absolute sale coupled with a condition of repurchase are :

If the purchasers do not desire that their transaction should be interpreted as a mortgage by conditional sale, they must insist on two separate documents which can never be construed as a mortgage under the law. If, however, they choose to incorporate the condition of repurchase in the same document, they must insist that clear and express words excluding the mortgage are incorporated in the same document. If they do not insist on these two things, and the condition of repurchase is in the same document, then, however ostensible the first part conveying absolute title to the purchaser may be, Courts will hold that a mortgage was intended and they will go to the surrounding circumstances only if there be ambiguity, but not otherwise. A I R 1955 Nag 272 : (1955) Nag L J 344, Held correctly decided and Relied on.

Held, on an application of the above tests, the transaction in the suit was to be regarded as a mortgage by conditional sale and not as an absolute sale with a condition of repurchase. **I L R (1957) Madh Pra 28 : 1957 Jab L J 195 : 1957 M P C 196 : 1957 M P L J 101 : A I R 1957 Madh Pra 207 (209) (Prs 14, 15).**

——S. 58 (c) — **Mortgage by conditional sale or sale with a covenant for re-purchase—Tests.**

The crux of the distinction between a mortgage by conditional sale and the sale with a condition of re-transfer lies in the fact that the former is a debt the payment of which is charged on the property conveyed, whereas in the latter no relationship of debtor and creditor subsists. The introduction of the proviso to S. 58 (c) of the Transfer of Property Act, by amending Act 20 of 1929 makes it explicit that one or other of the conditions contemplated in the definition of mortgage by conditional sale should find a place in the document itself which effects or purports to effect the ostensible sale.

The period fixed in the document is a condition for the performance and after the expiry of the period, the right reserved is itself at an end. The period fixed in the deed is not the period of limitation prescribed for any suit and cannot be extended during period Court was closed.

In the instant case, on the question of intention and other evidence it was held that the conveyance was an out and out sale with a covenant for re-purchase. (1960) S C J 327 ; (1928) 55 Mad L J 198 ; L R 55 I A 243 : I L R 51 Mad 533 (PC) ; (1950) S C J 1 : (1940) F C R 441 : (1950) 1 Mad L J 683 : A I R 1950 F C 38, Followed. **(1961) 1 Mad L J 445 : 1961 Mad W N 112 : 74 Mad L W 23 : I L R (1961) Mad 387 : A I R 1961 Mad 276 (278, 279) (Pt A) (Prs 4, 5).**

[Reversed in A I R 1966 S C 902.]

——S. 58 (c) — **Applicability — Sale with option to re-purchase and mortgage by conditional sale—Tests to decide—Deed—Construction.**

The question whether a given transaction is mortgage by conditional sale or a sale outright with a condition of repurchase has to be decided on its facts with reference to the attendant circumstances, such as the existence of the relationship of debtor and creditor between the parties at the date of the suit transaction, the absence of a separate document providing for re-conveyance, etc.

(On a construction of the deed in the instant case having regard to the surrounding circumstances it was held that the transaction was a mortgage by conditional sale to which the provisions of S. 9-A of Madras Act (4 of 1938) are applicable.) (1954) 1 Mad

L J 708 : (1954) S C J 469 (SC), Rel. on. 1956 Mad W N 164 : 69 Mad L W 546 : (1956) 1 Mad L J 388.

——S. 58 (c)—Applicability—Sale with an option to re-purchase and mortgage by conditional sale—Tests to determine—'Vayida crayam' and 'Suddha crayam' —Meaning of—Deed—Construction.

The question whether a given transaction is a mortgage by conditional sale or a sale outright with a condition of repurchase is a vexed one and each case has to be decided on its own facts and it is not possible to lay down the exhaustive list of factors that could apply to all cases. But there are certain general principles that have to be considered in connection with these cases to find out the nature of the transaction. The term 'Vayida crayam' in a deed of sale is used in contradistinction to 'suddha crayam' and means nothing more than the fact that the document is a sale-deed with a condition to repurchase within a fixed period and not absolute sale without any such condition.

(On a construction of the deeds in their surrounding circumstances the transactions evidenced by the deeds in the instant case were held to be sales with a condition to repurchase and not mortgages by conditional sale.) 1956 Mad W N 165 : 69 Mad L W 548 : (1956) 1 Mad L J 385.

——S. 58—Sale or mortgage—Tests for determination stated — Deed in question held to be a mortgage by conditional sale and not an outright sale. ('51) 64 Mad L W 812 : 1951 Mad W N 779 : I L R (1952) Mad 604 : (1951) 2 Mad L J 366 : A I R 1952 Mad 11 (12) (Pt E) (Prs 7, 8) (DB).

——S. 58—Sale or mortgage—Test.

Where the contents of the deed clearly show that it is an out and out sale deed, the mere fact that the word 'Mahajan' has been used in the deed will not be sufficient to prove that the deed was only intended to embody a loan transaction. A I R 1954 Pat 586, Rel. on. A I R 1957 Manipur 9 (11) (Pt A) (Pr 4).

——S. 58—Mysore Transfer of Property Act (4 of 1918), S. 58 (before amendment by Act 16 of 1938)—Sale or mortgage—Documents of sale and agreement to reconvey whether constitute mortgage—Principles stated. See Mysore Transfer of Property Act (4 of 1918), S. 58 (before amendment by Act 16 of 1938). 1962 Mys L J (Sup) 534 (DB).

——S. 58, Proviso—Mortgage or sale with condition of reconveyance — Tests — Singleness of transaction is not conclusive test — Transaction held not mortgage but sale with condition of reconveyance.

The proviso to S. 58 merely declares that a transaction which is to be treated as a mortgage by conditional sale shall be deemed to be a mortgage only if the condition is embodied in the document which effects or purports to effect the sale. It is no authority for holding that merely because the condition is embodied in the same document the transaction must be deemed to be a mortgage. 49 All 405 ; 51 Mys H C R 187, Relied on.

One of the main tests to distinguish a mortgage by conditional sale from a sale with a condition for repurchase is whether the relation between the parties is that of a creditor and a debtor and whether what was described as purchase money in the deed was intended to be treated as a loan. The nature of the document is to be determined from its contents and from such extrinsic evidence afforded by the surrounding circumstances to show the relation of the written language to the existing facts. 51 Mys H C R 187, Rel. on.

While considering the nature of the document Court may take into consideration almost any pertinent matter including preliminary negotiations.

Held, on consideration of internal and external evidence that the transaction was a conditional sale and not a mortgage. ILR (1952) Mys 247 : AIR 1953 Mys 105 (105) (Pr 2) (DB).

——S. 58—Distinction between sale and mortgage.

In considering whether a transaction is a sale or mortgage though the matter is one of the intention of parties, the intention is to be gathered only from the document, though the surrounding circumstances may be looked into to see in what way the language of the document is related to existing facts. 22 All 149 (PC), Foll.

When the question is whether a transaction is a sale or a mortgage, it is an inviolable rule that upon such a question the Court must find the substance behind the form. But where the oral evidence is unreliable and contradictory the Court cannot safely depart from the written evidence of the documents, AIR 1946 P C 178 (179), Foll. 1954 Nag L J 64 : AIR 1954 Nag 193 (196) (Pt A) (Pr 15) (DB).

——S. 58 (c) — Sale or mortgage — Tests of distinction.

The surrounding circumstances that tend to show that a transaction is a mortgage and not a sale, though in form a sale, are :

(i) Whether the vendee has reserved to himself the right to recall the money at a future date thus indicating that the relationship of debtor and creditor is preserved between the vendor and the vendee. AIR 1924 P C 226, Foll.;

(ii) Whether there was any bargaining between the parties to settle an adequate price and whether the price actually paid is adequate in all the circumstances of the case—a price below the true value of the property indicates a mortgage;

(iii) Whether there was any agreement to pay interest ;

(iv) Whether the handing over possession of the property indicate sale; and

(v) Whether the fixation of a short period of time for repurchase and making time of the essence of the transaction.

Note.—Applying all these tests together, particularly the test about the debtor and creditor, it was held in this case that the document was a mortgage and not a sale with condition of repurchase. 1954 Nag L J 64 : AIR 1954 Nag 193 (197, 198 to 200) (Pt E) (Prs 20, 27, 35 to 38) (DB).

——Ss. 58 and 54 — Mortgage by conditional sale and sale with condition of repurchase — Distinguishing features of former — Distinction is to be made by looking into contents of documents and not by its form.

There is a clear legal distinction between the two concepts, a mortgage by conditional sale and a sale with a condition of repurchase. The former is a mortgage; the relationship of debtor and creditor subsists and the right to redeem remains with the debtor. The latter is an out and out sale whereby the owner transfers all his rights in the property to the purchaser reserving a personal right of repurchase. The question as to which category a document belongs presents a real difficulty which can only be solved by ascertaining the intention of the parties on a consideration of the contents of the document and other relevant circumstances : AIR 1963 S C 1906, Rel. on. The postponement of absolute character of legal title of the transferee till the expiry of certain date and avoidance of the entire transaction on repayment by the transferor are the two features laid down by S. 58 (c) as appertaining to mortgage by conditional sale. The form and language of the document is not material if it is found to have contained one or both of these conditions.

Held on facts that it is clear that there is a relationship of debtor and creditor as between the transferor and the transferee, the transaction evidenced by the document must be considered as a mortgage by conditional sale and not a sale with a condition of repurchase. (1965) 31 Cut L T 233.

——S. 58 — **Question whether document is mortgage by conditional sale or out and out sale — Construction of document — Principles — Surrounding circumstances should be considered — Deed — Construction.**

The principles to be followed in construing a document regarding which there is controversy as to whether it is a mortgage by conditional sale or a sale with condition for repurchase are that the true intention of the parties in entering into the transaction must be found out on a proper construction of the document along with the surrounding circumstances: that where there is a condition for repurchase embodied in the document itself, there may be a presumption in favour of the view that the transaction is a mortgage; and in such a case oral evidence of the subsequent conduct of parties is wholly irrelevant. The gross inadequacy of the price is, also an important circumstance in favour of the transaction being only a mortgage:

Held, on the facts of the case that the condition mentioned in the deed was inconsistent with the document being an out and out sale. AIR 1951 Orissa 362, Foll. ILR (1961) Cut 487.

——S. 58 (c)—**"Mortgage by conditional sale" or sale with condition of re-purchase — Tests—Document held to be mortgage by conditional sale.**

A mortgage by conditional sale is transaction by which the transferee becomes entitled to the property as absolute owner if the transferor fails to pay the money within the stipulated period. For that, no other deed of transfer is necessary and the absolute ownership of the transferee does not date from the date of expiry of the stipulated period but from the date of execution of that mortgage bond. The transaction of mortgage assumes the character of sale by a legal fiction on account of a special condition incorporated in that document the transferor failing to get back the property on the repayment of the money given by the transferee. There can also be a document in form or appearance a deed of absolute sale with more or less such a condition. The difficulty in ascertaining the real nature of the transaction arises in the latter case, because that may have semblance of a sale with a condition of repurchase as well as a mortgage by conditional sale. A decisive difference between those two kinds of transactions is that in case of sale there is an absolute transference of ownership from the vendor, but in the other case the vendee's title will be absolute only in default of payment at a particular time by the vendor. Even where a condition of repurchase is included in a deed of sale, the vendee's title does not wait to be absolute till the expiry of the time fixed for re-purchase. Since in a mortgage by conditional sale there is a postponement of acquisition of absolute title for some time, that acquisition can be prevented by the vendor paying back the money to the vendee. On such payment the transaction in favour of the vendee becomes void, that is, whatever interest the transferee had in the property becomes inoperative. In case of a sale when the vendor performs his part of the condition by paying back the consideration money to the vendee, the transaction of sale in favour of the vendee does not become void, but only comes to an end. The two things characteristics of a conditional mortgage (mortgage by conditional sale), are therefore the postponement of absolute character of the legal title of the transferee till the expiry of a certain date and avoidance of the entire transaction on repayment by the transferor. These two features are inconsistent with a sale and cannot, therefore, find place in a deed of actual sale. That is why Cl. (c) of S. 58 of the Transfer of Property Act has laid down those two features as appertaining to mortgage by conditional sale irrespective of the form and language of the document:

Held, on facts that the document evidenced a transaction of mortgage by conditional sale. AIR 1964 Pat 193 (195 to 197) (Prs 5, 9) (DB).

——S. 58—Mortgage or sale—Test. See Evidence Act (1872), S. 92. AIR 1957 Pat 673 (DB).

——S. 58—**Sale or mortgage—Test of distinction.**

The mere fact that the conditions on which a mortgage can be redeemed are onerous would not be sufficient to justify a Court in coming to the conclusion that the transaction which purported to be a mortgage was a sale. 1954 B L J R 486 : ILR (1954) Pat 638 : AIR 1954 Pat 562 (565) (Pt B) (Pr 13) (DB).

—— S. 58—**Transaction whether sale with stipulation for repurchase or mortgage with conditional sale—Tests—Transaction held sale with stipulation for repurchase.**

In order to see whether a transaction is a sale with a stipulation for repurchase or a mortgage by conditional sale, the tests to be applied are:— (1) The existence of a debt, (2) the period of repayment a short period being indicative of a sale and a long period of a mortgage, (3) the continuance of the grantor in possession indicates a mortgage, (4) a stipulation for interest on repayment indicates a mortgage, (5) a price below the true value indicates a mortgage and (6) a contemporaneous deed stipulating for reconveyance indicates a mortgage, but one executed after a lapse of time points to a sale :

Held, on facts that the transaction was an out and out sale with a stipulation for repurchase and not a mortgage by conditional sale. Case law ref. 54 Pun L R 42 : AIR 1952 Punj 181 (183) (Pt B) (Pr 15).

22 (B). Illustrations.

●——S. 58 — **Mortgage by conditional sale and sale with condition of repurchase—Distinction—Tests.**

There is a clear legal distinction between the two concepts, a mortgage by conditional sale and a sale with a condition of re-purchase. The former is a mortgage, the relationship of debtor and creditor subsists and the right to redeem remains with the debtor. The latter is an out and out sale whereby the owner transfers all his rights in the property to the purchaser reserving a personal right of re-purchase.

Held, that the executant (appellant) described the transaction as a sale and the respondents as vendees. The amount paid was described as consideration for the sale. Usual covenant of title was given and there was a provision of reconveyance in case of payment of the prescribed amount within the time agreed upon. The total area of the land mortgaged in the year 1923 was 13.17 acres and the amount advanced thereunder was Rs. 1,600. Only one year thereafter out of the said extent, 12.6 acres was transferred by the document in question for a sum of Rs. 2,800, that is if the contention of the appellant was correct, a smaller extent of land was mortgaged for a higher amount. It was improbable that a mortgagee would advance an additional amount and take a mortgage of a smaller extent in discharge of an earlier mortgage whereunder a larger extent of land was given as security. Unless there are extraordinary reasons for this conduct, this would be a clinching circumstance in favour of holding that a document was a sale. 1954 S C J 469 : (1954) 1 M L J 708 : AIR 1954 S C 345, Distinguished. Bhoju Mandal v. Debnath Bhagat, (1963) 2 S C J 676 : (1963) 1 Ker L R 391 : 1963 B L J R 618 : (1963) 1 S C W R 517 : (1963) Supp 2

S C R 82 : AIR 1963 S C 1906 (1907 to 1909) (Prs 4, 6, 7).

● ——Ss. 58, 12 — Sale deed not deed of reconveyance on same dates — Transaction held not mortgage by conditional sale — Reconveyance on original vendor's performing certain conditions — One of conditions not performed — Court will not relieve against forfeiture—Contract Act (1872), S. 74.

Held, on facts that (1) the sale deed, the deed of reconveyance and the rent note were parts of the same transaction and that the transaction was not one of mortgage by conditional sale; (2) that the Court could not relieve the plaintiff against the forfeiture clause. If the original vendor i.e., the plaintiff failed to act punctually according to the terms of the contract the right to repurchase would be lost and could not be specifically enforced. Refusal to enforce the terms specifically for failure to abide by the conditions did not amount to enforcement of a penalty and the Court had no power to afford relief against forfeiture arising as a result of breach of such a condition. AIR 1950 F C 38, Rel. on.

It is true that equity relieves against penalties when the intention of the penalty is to secure payment of a sum of money or attainment of some other object and when the event upon which the penalty is made payable can be adequately compensated by payment of interest or otherwise. But where under a contract, conveyance, or will, a beneficial right is to arise upon the performance by the beneficiary of some act in a stated manner, or at a stated time, the act must be performed accordingly in order to obtain the enjoyment of the right and in the absence of fraud, accident or surprise, equity, will not relieve against a breach of the terms. K. Simrathmull v. Manjalingiah Gowder. (1962) 2 Ker L R 72 : (1962) Supp 3 S C R 476 : 1962 S C D 701 : AIR 1963 S C 1182 (1183) (Pt A) (Pr 4).

——Ss. 58 (c) and 54—Proviso to S. 58 (c) — Condition of repurchase embodied in deed itself is not necessarily conclusive—Intention is to be gathered—Transaction held out and out sale with a condition of repurchase and not mortgage by conditional sale. AIR 1952 All 200 (202 to 204) (Pt B) (Prs 12, 17, 18) (DB).

——S. 58 (c)—Question whether transaction is mortgage by conditional sale or an outright sale—Determination—Test—Transaction held an outright sale.

There was an agreement on 15th July 1923 to sell the property for Rs. 3,400 to the transferees by the transferor. Towards payment of the price the transferees undertook to discharge debts of Rs. 2,896 due to two Marwaris and paid Rs. 500 to transferor to discharge other debts. Only cash of Rs. 4 was given to the transferor on 2nd August 1925 when document of sale (Ex. B) was executed. The property was under a lease (1st March 1925 to 1st March 1927) on rent of Rs. 20 per mensem. It was recited in the document that the vendors had delivered possession of the property to the vendees that very day and the vendees could take physical possession of the property on the expiry of the lease. Then followed the usual recitals that the vendees had acquired absolute right in the property and that they should pay the municipal taxes from the date of the deed. On the same day the transferees executed a statement (Ex-A) agreeing to reconvey the property if Rs. 3,400 was repaid with interest at 1 per cent. Under this document the option to repurchase was to be exercised between 2nd February 1926 and 30th July 1927. In suit for redemption by vendor the question was whether the transaction was a mortgage by conditional sale or an outright sale:

Held, the two instruments read together establish that the transaction was an outright sale and not a mortgage by conditional sale and that the transferor was not entitled to redeem it. The test in cases of this kind is the intention of the parties to be gathered from the language of the documents themselves. The meaning of the instrument has to be collected from a fair reading of the two documents constituting a single transaction. ILR 12 All 387 ; 31 M L J 750; AIR 1916 P C 49, Rel. on. (1964) 2 Andh W R 190 : (1964) 2 Andh L T 225 : AIR 1966 Andh Pra 252 (254, 255) (Prs 14, 15, 17, 18, 26, 27) (DB).

——Ss. 58, 8, 54—Sale or mortgage.

The fact that a document is in the form of a sale of the properties comprised in the document does not conclude the matter for even in the case of a mortgage by conditional sale there is an ostensible sale of the property with a condition that on payment of the mortgage money the buyer should re-transfer the property to the seller. The question depends upon the intention of the parties when they entered into the transaction whether they intended that the transfer of the properties specified in the document should be only by way of security or whether they intended that the property should be sold outright to the transferees the transferors having a mere right to repurchase the property. There was an antecedent relationship of debtor and creditor between the parties and the document was executed for the full amount due by the vendor to the vendee on the date of the sale; there was the further circumstance in the case that the interest on the amount specified in the sale-deed and the profits of the property conveyed by the sale deed were not set off one against the other, but the vendor and the vendee had each to account for the interest and the annual profits at the rates specified in the document; there was also the fact that the trial Court found that the property was worth Rs. 400 per acre while under the document the price worked out to Rs. 210 per acre.

Held, that the disparity between real value of the property and the price specified in the document would indicate that it was not an absolute sale but only by way of security. The document was a mortgage by conditional sale and not a sale with a contract for repurchase. 1956 Andh L T 534 : 1956 Andh W R 569.

——S. 58 (c) — Sale or mortgage by conditional sale—Tests.

The question whether a certain transaction constituted a mortgage by conditional sale or an out and out sale with a condition of re-purchase has to be decided on a construction of the terms of the documents themselves in the light of the surrounding circumstances. Each case will have to depend on its own facts; and any other decision on the point cannot be of much use or guidance unless the facts are essentially similar or identical.

A and his four sons jointly executed on 29-7-1924 in favour of B a deed purporting to be a sale deed conveying certain land for Rs. 1,200. On the same date the four sons of A took settlements of the land to the extent of one-fourth share each and executed different kabuliyats in favour of B for a term of 5 years. On expiry of the term B was free to settle it with any other tenants if the lessees did not obtain fresh settlement. This was followed by execution of four ekrarnamas between B and each of sons, which recited the facts of sale and settlement and provided that if the son paid Rs. 300, being the one-fourth share of original consideration of sales, within five years at the rate of Rs. 60 per year, B would execute a deed of reconveyance in his favour to the extent of one-fourth share of the land. It was contended that all the documents taken together represented a transaction of mortgage by conditional sale.

Held, that the contention could not be entertained. It was a simple case of an agreement between B and each of the sons to reconvey the land if the consideration was repaid within certain period and as the terms were not carried out the son was not entitled to any decree. **ILR (1957) 9 Assam 109.**

——S. 58—Sale or mortgage.

The following circumstances, viz., (1) a contemporaneous agreement to reconvey and (2) agreement forming the terms of the consideration of the transaction of sale; (3) a fairly long period of five years for repayment and reconveyance; and (4) possession continued with the defendant transferor clearly indicate the relationship between the parties to be of a debtor and creditor leading to the irresistible conclusion that the intention was to mortgage the property by conditional sale and the rent was intended to cover interest. **AIR 1953 Bhopal 18 (20) (Pt D) (Pr 10).**

——Ss. 58, 8 — Sale or mortgage — Test — (Deed —Construction).

Where even though the document was described as 'Mudat Kharedi Khat' or as a conditional sale deed, there was no covenant or recital in the document whereby the property could be said to have been conveyed by H to K the recitals in the document in substance stated that H borrowed Rs. 700 from K and that he had in consideration thereof given property belonging to him into the possession of K and it was recited that if the amount of Rs. 700 was not repaid within ten years, K on the expiry of those ten years was to be the absolute owner of the property :

Held that the transaction intended to be effected by the document was a mortgage and not a sale. **A I R 1956 Bom 575 (576) (Pt A) (Pr 2).**

——S. 58—Mortgage by conditional sale or sale with condition of repurchase—Tests.

A document styled as Kana Theeradharam. after stating that a consideration of Rs. 400 had been received provided that from that day onwards the executee is to take possession of the property and from that day onwards he is to pay the michavaram due to the jenmi and also revenue and other payments. It was further stated that if the amount of Rs. 400 is paid within three years from that date the schedule mentioned properties are to be returned. Till the expiry of the period of three years, the executee is to have no right to deal with the property in any manner or to encumber it in any way whatsoever. Then it was specifically provided that after the expiry of three years alone the executee will have full kanom rights in respect of the property and have direct dealings with the jenmi and he will have also the rights of alienation etc., from that day onwards. It was in evidence that on the date of execution of the deed the executant had the necessity to borrow Rs. 400 and that the property in question was worth about Rs. 800.

Held that the document taken by itself leads only to one conclusion, namely that it is a mortgage by condititonal sale and cannot be considered to be a sale with an option to repurchase. **1954 S C J 469 : (1954) 1 M L J 708 : A I R 1954 S C 345** and **(1956) 1 M L J 388** and **A I R 1957 Kerala 169** Rel. on. **1960 Ker L T 12 : 1960 Ker L J 604 : ILR (1960) Ker 857: AIR 1960 Ker 198 (199) (Pr 9).**

——S. 58 (c), Proviso — Execution of sale-deed by *M* in favour of *G*—*G* executing deed of agreement for re-sale on repayment of sum — Possession not delivered—*M* selling property to *K* during subsistence of agreement of repurchase — Suit filed by *G* against *M* alone without impleading *K*, alleging that *M* had relinquished his right of repurchase by another contract — Consent decree passed by which *M* should execute deed of relinquishment — Possession not ordered to be given to *G* in the decree but in execution *G* dispossessed *K* — Suit by *G* for declaration of title and possession — **Held**, that transaction is mortgage and not sale — Before the enactment of the proviso, it was permissible to show a transaction as amounting to a mortgage though a document of sale and another document for recovery and are exercised when *G* in execution of decree evicted *K* when there was no decree passed for ejectment of *M*, *K*'s eviction was held illegal—**A I R 1917 P C 207**, Rel. on. **1962 Jab L J 171 : 1961 M P L J 1298.**

——Ss. 58, 53-A and 60—Proviso — Mortgage by conditional sale with condition of repurchase within certain period — Failure to repurchase — Mortgagor relinquishing rights for additional consideration under unregistered deed — The vendee was all along in possession — **Held**, the document was a mortgage and not a sale coupled with an option of repurchase —Where condition of Proviso to S. 58 (c) is fulfilled the presumption is of mortgage — Extinguishment of right including the right of redemption by act of parties—Subsequent suit for redemption—Not maintainable — (Contract Act (1872), S. 20 — Mistake of law). See T. P. Act (1882), S. 53-A. **A I R 1959 Madh Pra 221 (DB).**

——S. 58—Mortgage by conditional sale or outright sale—Test — Intention of parties — Admissibility of extrinsic evidence.

The true nature of the transaction has got to be determined by the intention of the parties thereto as evidenced by the terms of the document. Where the terms of the document are clear no extrinsic evidence de hors the document is admissible. But in cases of ambiguity it may be permissible to ascertain the true intention by having regard to the surrounding circumstances under which the document came into existence and other declaration of intention made by the parties **A I R 1960 S C 301 : 1960 S C J 327 : (1960) 1 Andh W R (S C) 87 : (1960) 1 Mad L J (S C) 87**, Rel. on.

Held, on a consideration, of the terms of the document that it is an outright sale and not a mortgage. The recital in the document that the vendee shall have the right to alienate the properties even before the expiry of the stipulated period shows that title to the properties passed from the vendor to the vendee eo instanti on the execution of the document. Secondly, there is a significant clause stating that on the expiry of the period fixed under the document neither the vendor nor his heirs shall have any manner of right over these properties. The option for reconveyance has got to be exercised within the stipulated period time being essence of the contract. **1961 Mad W N 84 : (1961) 2 Mad L J 72 : 74 Mad L W 829 : A I R 1961 Mad 301 (302, 303) (Prs 5, 6, 7).**

——S. 58 (c), Proviso — Applicability — Sale of immovable property by registered deed—Allegation by vendor to have received part consideration and of oral agreement to reconvey property on return of consideration — Transaction held not a mortgage. 39 Mys L J 607 : I L R (1961) Mys 513 : A I R 1962 Mys 44 (46) (Pt C) (Pr 6).

——S. 58 (c) — Sale or mortgage — Construction—Tests — Sale deed giving executant right to 'free' property, creating charge and giving to vendee permanant right to enjoy property only on default of payment of amount by executant within stipulated period—Transaction held was mortgage and not sale.

A document which purported to be a sale-deed provided that the executants of that document had the right to "free" the property and retrieve it by the payment of a sum which formed the consideration of the document within a period of fifteen years from the date of the document. A charge was created on

the property which was referred to in the document. The sum of consideration was exactly equivalent to the prior debt and the expenditure required for purchasing the stamped paper on which the sale deed was executed. Further, the document contained a recital that the person in whose favour it was executed would have the right to be in enjoyment of the property 'on permanent right' only after the expiry of the period of fifteen years and only in the event of the executants of the document committing default in the payment of the amount, on the payment of which they would be entitled to obtain possession of the property back.

Held, that the document was only a mortgage transaction. A I R 1954 S C 345, Relied on; I L R 12 All (PC) 387; I L R 22 All (PC) 149 and I L R 38 All (PC) 570, Ref. **I L R (1961) Mys 542.**

——S. 58(c) — Mortgage by conditional sale or sale with covenant to repurchase—Construction of deal.

The plaintiff brought his suit to enforce a right of redemption in respect of what he said was a mortgage. The document incorporated an absolute conveyance of the property and said further that possession of the property was delivered on the same day. It, however, made a provision which was the subject-matter of dispute in appeal. That provision was: "If I pay the sum of Rs. 1,300 on date 26th June 1945 you shall have to take the same and return the house.

And within five years (I) will neither mortgage the aforesaid house nor will I sell the same, and 1 will also not effect any changes in the building". A Judge of the High Court reversed the concurrent decision of the two Courts below and held that the transaction was an absolute conveyance of the property with merely an option of repurchase and not a mortgage.

Held, (1) that the restrictive covenant bound the vendor and that there was evidence to show that both the parties understood that the vendor, in spite of the ostensible nature of the document, enjoyed some measure of proprietorship over the property and that it was not necessary to limit that proprietorship by imposing upon him a restriction as to transfer and alterations;

(2) that in view of the ambiguity which evidently existed the Court could look to the surrounding circumstances to determine the true nature of the document and the meaning of the words in relation to existing facts; and

(3) that the transaction amounted to a mortgage and that the suit for redemption was properly laid. **1955 Nag L J 344: I L R (1955) Nag 942: A I R 1955 Nag 272 (275, 276) (Pt D) (Prs 15, 18) (DB).**

——S. 58 (c)—Sale or mortgage—Test is to determine intention ascertained from terms of document and surrounding circumstances.

A mortgage by conditional sale is ostensibly a sale. The law provides that even though transaction may be a sale it will nevertheless be regarded as mortgage if the intention was not an out and out sale but an advance of money to the vendor and to give him a right to take back the property on repayment of the consideration and if the property was transferred for purpose of security for sum advanced. The real test in such cases is to see the intention of the parties and such intention can be ascertained from the substance of the deed and the surrounding circumstances. AIR 1940 Nag 84 and 1950 N L J 390, Ref.

Plaintiff executed ostensibly on the 26th June 1940 a sale deed for Rs. 1,300 in favour of defendant who was placed in possession. The defendant sold the property absolutely for ever from generation to generation. It was stated that if plaintiff's heirs put any claim it was to be regarded as false and defendant was to be compensated if the property in any way passed out of defendant's possession partly or in full. The debtor was heavily indebted and it was provided that if within 5 years plaintiff repaid Rs. 1,300 the defendant was to reconvey the property. The house was not to be mortgaged or sold within a period of five years. The Court found market value to be Rs. 1,300.

Held, that the restriction about mortgaging and selling was imposed on the vendee; that there was nothing to show relation of debtor and creditor and that in view of the circumstances the transaction was a sale and not a mortgage. ('52) 1952 Nag L J (Notes) 125.

——S. 53 (c), Proviso — "Document" — Sale, lease and agreement to reconvey executed on same day — These cannot be considered as one document for purposes of proviso.

A transaction of sale, a transaction of lease in favour of the vendor and an agreement to reconvey by the purchaser were written on the same day on separate papers. It was contended that the sale and agreement to reconvey should be treated as one document for purposes of the proviso to section 58, Transfer of Property Act though each paper may be a document by itself.

Held, that the two papers could not be treated as one document and that the sale deed could not be treated as a mortgage since the agreement to reconvey was not contained in it. ('52) 1952 Nag L J (Notes) 111 (DB).

——S. 58 (c) —Mortgage or sale—Deed providing for repayment within 3 years—Other facts pointing towards mortgage—Transaction is mortgage and not sale.

A provision for repayment in the ostensible sale necessarily implies the further consequence that the sale shall either become void or the buyer shall retransfer property.

The deed after reciting that the property was sold to the purchaser provided that the consideration would be paid within 3 years. Nothing was said as to what was to happen on repayment. The Court found that the property was worth Rs. 5,200, that the transferor continued in possession; that the consideration shown in the sale deed was Rs. 3,000; that it was possible to repay Rs. 3,000 within 3 years; that money was required for maintenance and that the transferee did not show he dealt with the property.

Held, that the transaction was a mortgage and not a sale. ILR (1946) Nag 278, Ref. **('52) 1952 Nag L J (Notes) 47.**

——S. 58 (c)—Mortgage by conditional sale—Recitals in document—Construction.

If the sale and agreement to repurchase are embodied in the same document the intention as to whether it is a mortgage or sale must be gathered from the terms of the document, and it would be a matter of pure construction of the document itself. After the amendment of S. 58 (c), if persons choose not to utilise two documents, prima facie they do not intend the transaction to be a sale. In other words if one document is used for the purpose, there would be a presumption that it is a mortgage unless it is displaced by clear and express words. In case of a mortgage, however, there must exist relationship of debtor and creditor and the price must be charged upon the property conveyed. If the words are plain and unambiguous, they must be given their true legal effect in the light of the evidence of surrounding circumstances. But if there is ambiguity in the language employed, evidence of contemporaneous conduct is always admissible as a surrounding circumstance. But evidence as to subsequent conduct of the parties is inadmissible.

Held, on facts that the transaction was a mortgage and not a sale. There was no clause for reconveyance if the consideration was paid within four years. The reconveyance was to be effected only by redelivery of possession.

This was only consistent with the theory that the original title still vested in the transferor which was compatible with the only view that the transaction was a mortgage and not a sale. The term in the document that the transferor would reimburse the transferee on the contingency of their being dispossessed not being restricted to cases of grantor's defective title was indicative of the fact that the transfer was a mortgage and not a sale. The 3rd term that if the consideration money was paid back without payment of interest within the stipulated period, the transferees would redeliver possession indicated the relationship of debtor and creditor, one of the essential elements of a transaction of mortgage. **1964 (1) Cri L J 57 : ILR (1962) Cut 699 : AIR 1964 Orissa 17 (18) (Pr 5).**

●——**S. 58 (c) — Sale or mortgage.**

Condition that on re-payment within certain time of consideration money buyer to return the land together with the Kabala — On failure of payment buyer to possess and enjoy from generation to generation and after getting his name duly mutated in the Sherista of Zamindar to use the land in any way — Difference in the operative words of conveyance of ownership used in earlier portion and later portion of the document indicating detraction from full ownership prior to the stipulated time—Transaction held to be a mortgage and not a sale. 64 I C 583 ; 35 I C 102 and 22 I C 806, Ref. Nilamoni Bewa v. Mrutunjaya Pradhan, **ILR (1951) Cut 281 : AIR 1951 Orissa 362 (372, 373, 378) (Pt D) (Prs 24, 27, 47) (FB).**

——**S. 58 (c)—Transaction whether mortgage by conditional sale or sale with clause for re-purchase.**

The executants executed a baifulwafa deed in respect of a plot of land in favour of A for a period of five years. The executants were, however, given the right to repay the amount loaned to them even before the expiry of the stipulated period. The document ended with a recital that 'in lieu of the said consideration money, the property covered by this deed of conditional sale will stand mortgaged, hypothecated, liable and pledged.'

Held, that the transaction was a mortgage by conditional sale, and not an absolute sale with the reservation of a right of repurchase by the vendor. **1957 B L J R 767 : AIR 1958 Pat 67 (69) (Pt A) (Pr 14) (DB).**

—**S. 58 (c)** — Sale or mortgage — Case from Punjab — Contemporaneous documents embodying sale, reconveyance and lease — Vendor continuing in possession on payment of rent — Consideration comprising of principal amount of debt and interest — Intention of parties to perpetuate relationship of debtor and creditor not deducible from facts and circumstances — Grantor (mortgagor) evicted for non-payment of rent and allowing time for re-purchase to expire—Payment of taxes by grantee—Lapse of considerable time after expiration of time given for re-purchase during which grantee was in possession as ostensible owner — Transaction held to be absolute sale with reservation of re-purchase and not mortgage by conditional sale — Principles which should guide the Courts in determining whether a transaction was mortgage or sale exhaustively discussed with the help of Indian, English and American case law. See Mortgage — Sale or Mortgage. **A I R 1960 Punj 444 (DB).**

——S. 58—Mortgage or conditional sale — Registered sale deed conveying house absolutely to vendee — Subsequent unregistered agreement to reconvey house at any time within five years — Transaction does not amount to mortgage by conditional sale but is an absolute sale — Agreement to reconvey though of itself does not require registration when it is sought to modify the terms of registered sale-deed by such agreement requires registration—Registration Act (1908), S. 17). **55 Punj L R 41 : AIR 1953 Punj 292 (293) (Pt A) (Pr 6) (DB).**

——**S. 58—Mortgage by conditional sale or sale with clause for re-purchase.**

In form the deed was not one of absolute conveyance nor was there a provision for re-purchase. The document styled itself as otti—There was mention of a specific sum as debt and the right of redemption was expressly reserved though limited to a specified period. The document further stated that for that specified period the executee should remain in possession and enjoy the property as ottidar. Provision was also made as to how the amount should be realised in case the property was lost or found inadequate for the debt. In that event the executee was given liberty to proceed against the remaining properties in the decree.

Held, that the parties intended only to create a mortgage and not anything more. The absence of a personal covenant in the deed was not an indication that the parties intended to create a sale. The deed did not evidence a sale with a condition of re-purchase but was a mortgage by conditional sale. **I L R (1953) T C 999 : 1953 Ker L T 743 : AIR 1954 Trav-Co 142 (144) (Pt B) (Prs 8, 9) (DB).**

——**S. 58—Mortgage by conditional sale or sale with a clause for re-purchase.**

Document styled as otti — Mention of specific sum as debt and right of redemption expressly reserved though limited to a specific period—For that specific period the executee to remain in possession as ottidar — Alternate provision for realisation of debt if property was lost or found inadequate for the debt by proceeding against the remaining properties. **Held**, the parties intended only to create a mortgage. The deed did not evidence a sale with a condition of re-purchase but was a mortgage by conditional sale. **A I R 1954 Trav-Co 142 (144) (Pt C) (Pr 9) (DB).**

22 (C). Proviso to S. 58 (c)—Effect.

●——**S. 58 (c)—Mortgage by conditional sale or sale with a condition of repurchase—Test.**

Under the Proviso to S. 58 (c), T. P. Act, if the sale and agreement to repurchase are embodied in separate documents, then the transaction cannot be a mortgage whether the documents are contemporaneously executed or not. But the converse does not hold good, that is to say, the mere fact that there is only one document does not necessarily mean that it must be a mortgage and cannot be a sale. If the condition of repurchase is embodied in the document that effects or purports to effect the sale, then it is a matter for construction which was meant. The legislature has made a clear cut classification and excluded transaction embodied in more than one document from the category of mortgages, therefore, it is reasonable to suppose that persons who, after the amendment choose not to use two documents, do not intend the transaction to be a sale, unless they displace that presumption by clear and express words; and if the conditions of S. 58 (c) are fulfilled, then the deed should be construed as a mortgage.

[In the instant case on a construction of the deed the terms of which were ambiguous, it was held that it was a mortgage by conditional sale.] Ghunchun Jha v. Ebadat Ali, **(1954) S C J 469 : (1954) 1 M L J 708 : 1954 S C A 611 : 1954 All L J 546 : 1954**

B L J R 421 : (1955) 1 S C R 174 : A I R 1954 S C 345 (346 to 348) (Pt A) (Prs 5 to 8, 20).

■ **——S. 58 (c), Proviso — Effect of proviso — Sale deed containing one of conditions mentioned in S. 58 (c) — Transaction necessarily amounts to a mortgage by conditional sale in all cases irrespective of intention of parties.**

(Per Agarwala and Chandiramani JJ., Beg J. contra) :— If a deed effecting or purporting to effect a sale after the amendment in Clause (c) of S. 58 of the Transfer of Property Act came into force, contains any one of the three conditions mentioned in that clause, it is in every case a deed of mortgage by conditional sale. AIR 1941 Oudh 582; 17 Luck 198; AIR 1940 All 227; A I R 1937 All 724; A I R 1939 All 713; A I R 1938 Oudh 57; A I R 1944 Oudh 305; AIR 1949 All 194, **Overruled**; A I R 1931 Bom 371; A I R 1934 Nag 18; A I R 1936 Sind 209; AIR 1940 Nag 84; A I R 1935 Rang 212; A I R 1946 Mad 456; AIR 1947 Pat 345; AIR 1950 Nag 193, **Dissented from.**

Per Chandiramani J. — The proviso lays down the positive test for what is a mortgage by conditional sale. The cases in A I R 1931 Bom 371; A I R 1937 All 724 and AIR 1941 Oudh 582 which say that only a negative test has been laid down by the proviso have clearly lost sight of the positive aspect or effect of the proviso.

Per Agarwala J.—Impliedly the proviso means that if the condition is contained in the same document that of a real sale and that of an unreal sale, the question of intention whether the sale was real or unreal is immaterial. The words "ostensible sale" in the section must, therefore cover both cases, that of a real sale and that of an unreal sale.

Per Beg J. — A transaction has to come under S. 58, Cl. (a) before it can come under Cls. (b) to (g). It would be erroneous to construe any of clauses (b) and (g) independently of Cl. (a).

An analysis therefore of the general scheme of S. 58 as well as of the specific clause in question goes to show that intention constitutes the crucial test of mortgage by conditional sale as defined in cl. (c) of S. 58 as of every transaction of mortgage.

The effect of the proviso, therefore, is merely to limit the Court's power to enquire into the question whether the transaction is a mortgage only to cases where the condition is embodied in one document, and to bar it in cases of multiple documents.

Where the transaction is embodied in one document the transaction does not, as a result of the proviso added by the Amendment Act of 1929, necessarily become a mortgage by conditional sale irrespective of the intention of the parties. Debi Singh v. Jagdish Saran Singh, **I L R (1952) 2 All 200 : AIR 1952 All 716 (720, 725, 726, 728, 729, 737, 745) (Pt A) (Prs 15, 16, 49, 53 to 55, 68, 69, 71, 107, 154 to 156) (FB).**

● **——S. 58 (c), Proviso — Not retrospective.**

Per Chandiramani, J.: — The proviso to S. 58 (c) as added by the Transfer of Property (Amendment) Act 1929, is expressly stated to be not retrospective and therefore the statutory test laid down therein is applicable only to transactions after the amendment. AIR 1935 Rang 212 and AIR 1947 Pat 345, Rel. on. Debi Singh v. Jagdish Saran Singh, **ILR (1952) 2 All 200 : AIR 1952 All 716 (719) (Pt B) (Pr 7) (FB).**

——S. 58 (c), Proviso — Application to Bhopal.

Proviso under S. 58 (c), T. P. Act, was not added to the section in the Bhopal T.P. Act and as such in order to raise a plea of the transfer being a mortgage, it was not necessary that the condition of reconveyance should have been embodied in the document of sale itself. **AIR 1953 Bhopal 18 (20) (Pt B) (Pr 9).**

——S. 58 (c) — Condition of reconveyance not embodied in document of sale but in separate document — Mortgage by conditional sale or sale —S. 54.

When the condition of reconveyance is not embodied in the document of sale but is embodied in an independent document, the proviso to S. 58 (c) of the Transfer of Property Act cannot be deemed to be satisfied by merely holding that it was the intention of the parties to regard the independent document as part and parcel of one transaction. The letter of the law has to be strictly followed and it cannot be departed from by having reference to an unexpressed intention of the parties. Where the contition of reconveyance is not embodied in the document which effected the sale, the transaction cannot be regarded as mortgage by conditional sale. **1959 Nag L J (Notes) 15.**

——S. 58—Ostensible sale with agreement to repurchase contained in two documents — Not a mortgage by conditional sale. See Debt Laws — Bengal Money-Lenders Act (10 of 1940), S. 2 (12). **AIR 1955 NUC (Cal) 2334 (DB).**

——S. 58 (c)—Scope.

In order to constitute a mortgage by conditional sale the condition for reconveyance must be embodied in the document which effects or purports to effect the sale. **ILR (1955) 2 Cal 214.**

——S. 58 (c), proviso — Mortgage or sale.

The effect of the proviso to S. 58 (c) is that an ostensible sale with a stipulation for repurchase shall not be regarded as a mortgage unless this stipulation is contained in the same document which effects the sale. Its object evidently was to shut out an inquiry whether a sale with a stipulation of retransfer is a mortgage where the stipulation is not embodied in the same document. **ILR (1955) Hyd 380 : AIR 1955 Hyd 177 (179) (Prs 9, 11 to 13) (DB).**

——S. 58 (c), Proviso—Sale and agreement to reconvey not embodied in same document—Transaction cannot be regarded as mortgage by conditional sale —Seller is precluded from showing that transaction was not an out and out sale but was something between mortgage and sale — AIR 1946 Mad 456 : (1946) 1 MLJ 342, Rel. on.—(Evidence Act, 1872, S. 92). **ILR (1957) M P 330 : 1958 M P C 40 : 1958 MPLJ 121 : 1958 Jab L J 130 : AIR 1958 Madh Pra 295 (296) (Pt A) (Pr 14) (DB).**

——S. 58 (c)—Sale or mortgage.

If the conditions of S. 58 (c) are fulfilled, there is a presumption that the transfer is a mortgage by conditional sale, which cannot be dispelled except by clear and unambiguous words in the deed, or by attendant circumstances necessarily leading to the opposite conclusion ; AIR 1954 SC 345 : 1954 S C J 469 : (1954) 1 MLJ 708 and AIR 1955 Nag 272, Rel. on.

Where the terms of the deed in question described as conditional sale indicated that the property was not to pass to the transferees until the transferor committed default in payment of the amount borrowed within the stipulated period, although they were permitted to take its possession on the date of the execution of the document and the need of the transferor in entering into the transaction was mainly the payment of a debt due by him :

Held, on the construction of the document, that the terms indicated a mortgage and not a sale; AIR 1954 SC 345 : 1954 SCJ 469 : (1954) 1 MLJ 708, Applied. **1957 Jab L J 403 : (1957) MPLJ 196.**

——S. 58 (c) Proviso — Sale or mortgage —Tests of, distinction.

A transaction which consists of an ostensible sale accompanied by a separate agreement for repurchase can in the light of the proviso to S. 58 (c), be only a

mortgage by conditional sale. It cannot be any other of the known kinds of mortgage, for, to hold so will stultify the enactment contained in the proviso. AIR 1946 Mad 456 : (1946) 1 MLJ 342, Foll.

The rule laid down in the proviso is rigid and where the condition for retransfer is not embodied in the document of sale the transaction shall not be treated as a mortgage. What the proviso says is that when the condition is not embodied in the same document in no case shall a sale be deemed to be a mortgage. Observations in AIR 1931 Bom 371 (372) and AIR 1934 Nag 18 (19), Not Appr.

The word "deemed" is used in the proviso because ostensibly the transaction is only a sale. When the condition of reconveyance is embodied in the same document it is open to the Court to hold that what purports to be a sale is really a mortgage. Then it can be said that the sale is "deemed" to be a mortgage. 1953 Mad W N 391 : (1953) 1 MLJ 667 : 66 Mad L W 410 : ILR (1953) Mad 1196 : AIR 1953 Mad 830 (830, 831) (Prs 3, 6, 8) (DB).

——S. 58 (c)—Property conveyed by registered deed though out and out sale — No condition of re-purchase attached to this deed — Mortgage cannot be deemed to be a mortgage by conditional sale within S. 58 (c) — Mere fact that the word "Mahajan" was used will not in any way go to establish that it was really a mortgage by conditional sale. AIR 1955 Manipur 37 (38) (Pt A) (Prs 5, 7).

——S. 58, Proviso—Scope and effect — Agreement of re-sale not embodied in deed of sale itself—Effect—Mortgage by conditional sale—If created or effected.

The proviso to S. 58, T. P. Act, places a restriction on the kind of sale deed which can be regarded as a mortgage (by conditional sale) by stating as a pre-requisite that the condition of reconveyance is to be present (and embodied) in the sale deed itself. There may be factors pertaining to the transaction which point to its being a mortgage, it will not avail in the absence of the condition in the sale-deed itself: 42 Mys HCR 257, Dist.; AIR 1946 Nag 261; AIR 1947 Pat 345, Foll.; AIR 1934 Nag 18, Not Foll.; 22 All 149, Ref.; AIR 1935 Rang 212, Rel. on. 29 Mys L J 85: ILR (1951) Mys 427 : AIR 1952 Mys 56 (56) (Pr 3) (DB).

——S. 58 (c) — Sale absolute with condition for re-purchase or mortgage by conditional sale—Ambiguity in document — Presumption arising in such case.

Whereas under the law as understood before a document, though ostensibly a sale with a bare condition merely for repurchase, could be interpreted as incorporating two independant conditions creating an absolute conveyance and an option of repurchase, placing the burden upon the one who sought to interpret it against the clear tenor of the document as a mortgage, that approach is not now permissible.

The inclusion of the condition of repurchase in the same document must now be taken as a token of mortgage in the first instance, and it must be left to one who contends that the conveyance was absolute with only an option of repurchase to establish if by express words to be found in the document and in case of ambiguity, by reference to the surrounding circumstances. The need for interpretation would really arise if there be ambiguity.

To take the document out of the category of mortgages some express words excluding the mortgage have to be shown, or some surrounding circumstances have to be proved which go to show that the transaction was not to operate as a mortgage but as a sale with a mere option of repurchase. 1955 Nag L J 344 : I L R (1955) Nag 942 : AIR 1955 Nag 272 (274) (Pt A) (Prs 10, 11) (DB).

——S. 58—Mortgage by conditional sale—Test.

From the proviso to S. 58 (c) it can be inferred that if the condition of reconveyance is not embodied in the document itself, the document cannot be construed as a mortgage. But even if the condition is so incorporated, it is not always conclusive. The intention of the parties must be found out from the terms of the document and the surrounding circumstances are examined if there is any necessity to interpret the meaning of the words used in relation to existing facts. The cardinal test which is to be applied in all such cases is whether the relation of a debtor and creditor is preserved between the vendor and the vendee. If that relationship is found, then the transaction ordinarily amounts to a mortgage, unless there be something to the contrary. 1954 Nag L J 64 : AIR 1954 Nag 193 (197) (Pt C) (Pr 18) (DB).

——S.. 58 (c)—Sale or mortgage by conditional sale —Sale without any condition of repurchase — Oral evidence admissible to prove condition—(Evidence Act (1872), S. 92).

Where a document purports to be one of simple sale without any condition for reconveyance embodied in it as required by the proviso to S. 58 (c), T. P. Act, it cannot amount to a mortgage by conditional sale.

Evidence of an oral agreement as to the condition of reconveyance is, however, admissible and is not excluded by S. 92, Evidence Act. ILR 1949 Mad 487 (PC), Discussed and Foll. 1954 Nag L J 293 : AIR 1953 Nag 337 (338) (Pt B) (Pr 2).

——S. 58 (c), Proviso — Effect of — Deed of sale with condition of reconveyance — Transaction if necessarily mortgage — Burden of proof — Evidence Act (1872), Ss. 101-103.

The effect of the proviso to cl. (c) of S. 58 is that if the condition of conveyance is not embodied in the document which effects or purports to effect a sale, the transaction cannot be regarded as a mortgage by conditional sale. As the proviso is in a negative form it does not follow that whenever there is a condition of reconveyance in a deed of sale the transaction must be deemed to be a mortgage. It is an inviolable rule that upon such a question the Court must find the substance behind the form. AIR 1940 Nag 84, S. A. No. 421 of 1944 (Nag) and S. A. No. 17 of 1942 (Nag), Dissent.

Prima facie, an absolute conveyance containing nothing to show that the relation of debtor and creditor is to exist between the parties does not cease to be an absolute conveyance and become a mortgage merely because the vendor stipulates that he shall have a right to repurchase.

The question whether a particular deed is a mortgage by conditional sale within the meaing of S. 58 (c) or an out and out sale has to be determined on a consideration of the terms of the deed itself with such extrinsic evidence of surrounding circumstances as may be required to show in what manner the language of the document is related to existing facts.

A short period (in this case of 2 years) for exercising the right of reconveyance is indicative of a sale rather than a mortgage. 1950 Nag L J 390 : I L R (1950) Nag 719 : A I R 1950 Nag 198 (199, 200) (Pt A) (Prs 6 to 9).

——S. 58 (c), Proviso — Document purporting to be sale contended to be mortgage by conditional sale —Contention based on certain agreement — Agreement not in document—Transaction held could not be deemed a mortgage.

Where a document which purported to be an outright sale was contended to be a mortgage by conditional sale on the allegation that it was agreed between the vendee and the vendor that the property sold was merely to remain as a security and that the vendor would redeem the mortgage within three

years, but there was no trace of this alleged agreement in the document :

Held, that in view of the proviso to cl. (c) of S. 58 the transaction in question was what it purported to be and could not be deemed to be a mortgage as the condition for reconveyance was not embodied in the document which effected the sale : AIR 1946 Nag 264, Ref. 1950 Nag L J 1 : I L R (1949) Nag 933 : AIR 1950 Nag 22 (25, 26) (Pt A) (Pr 14) (DB).

● ——S. 58 (c)—Third condition—Sale or mortgage—Postponement of mutation—Covenant for refund on dispossession—Construction in case of ambiguity.

Where the mortgagor ostensibly sells the mortgage property on condition that on such payment being made the buyer shall transfer the property to the seller and the condition is embodied in the document which effects or purports to effect the sale in accordance with the proviso added to S. 58 (c) by the Transfer of Property Amendment Act, 1929, it is to be presumed a mortgage, and the party, who asserts to the contrary, must have to prove it. But in the conditional sales, effected by one or more documents prior to the 1929 amendment with the above condition there is no presumption either way. Their nature and character are to be determined irrespective of the form according as the parties intended. Express provision for postponement of mutation of the grantee's name in the landlord's papers till after the time for re-payment expires is decisive of the transaction being a mortgage ; but in cases of transfer of occupancy holdings before they were made freely transferable by the Orissa Tenancy Amendment Act, 1938, postponement of mutation is rather inconclusive and the nature of the transaction will have to be decided on construction of the deed in the light of the surrounding circumstances. Covenant for refund of consideration money with interest on dispossession or disturbance of possession of the grantee not attributable to grantor's defective title is indicative of a mortgage rather than a sale, while, on the other hand, such a covenant in case of dispossession due to grantor's defective title is inconclusive. In case of ambiguity or doubt, ex facie import or the tenor of the document affecting the transaction shall prevail. The ambiguity or the doubt must, in each case, be inherent in the provisions of the deed and not dissoluble by reference to the surrounding circumstances : Case law discussed. S. A. No. 41 of 1946, Overruled, Nilamoni Bewa v. Mrutunjaya Pradhan. I L R (1951) Cut 281 : A I R 1951 Orissa 362 (370, 373, 374, 377) (Pt A) (Prs 14, 15, 31, 32, 34, 43) (FB).

——Ss. 58 (c), Proviso and 54 — 'Mortgage by conditional sale' and 'Sale with condition of repurchase'—Distinction — Test — Document purporting to be absolute sale with condition of repurchase in express and clear terms—Intention of parties be determined from document itself and not from surrounding circumstances—Inadequacy of price or payment of cost of stamp by executant cannot alter its nature.

The question as to whether a particular document is a mortgage by conditional sale or an out and out sale with a condition of repurchase depends on the facts and circumstances of each case. The real crux is as to whether the title is to be reconveyed by the execution of another sale deed and whether that term has been stipulated in the deed itself which is the subject-matter of interpretation.

No doubt under the proviso to S. 58 (c), T. P. Act if the sale and agreement to repurchase are embodied in separate documents, then the transaction cannot be a mortgage whether the documents are contemporaneously executed or not. But the converse does not hold good, that is to say, the mere fact that there is only one document does not necessarily mean that it must be a mortgage and could not be a sale. AIR 1962 Pat 53 (54, 55) (Prs 4, 5, 6) (DB).

——S. 58 (c) (before addition of proviso in 1929) — Mortgage or sale.

The decision of the question whether a particular document is a mortgage by conditional sale or a sale out and out with a condition of repurchase depends on the particular facts of each case and the intention of the parties entering into the transactions. The proviso added in 1929 has only attempted not to permit a controversy to be raised for construing a document as being one of mortgage by conditional sale unless the condition is embodied in that very document. It is reasonable to suppose that persons, who after the amendment in 1929 choose not to use two documents do not intend the transaction to be a sale unless they displace that presumption by clear and express words and that if the conditions of S. 58 (c) of the Transfer of Property Act are fulfilled then the deed should be construed as a mortgage. Where, the document was executed before the proviso was added to S. 58 (c), the presumption referred to above will not arise in favour of the document being a mortgage by conditional sale and the question will have to be decided on the construction of the document as well as the intention of the parties as envisaged in that document. 1958 B L J R 376 : AIR 1958 Pat 371 (372 to 374) (Prs 4, 5, 7 to 9) (DB).

——S. 58 (c)—Property sold under sale deed—Agreement to re-purchase in separate document—Transaction cannot be deemed to be mortgage by conditional sale. AIR 1955 Tripura 30 (32) (Pt C) (Pr 9).

23. Usufructuary mortgage.

(A) Possession not delivered or disturbed—Effect.

(B) Covenant for personal liability in the deed —Effect.

23. Usufructuary mortgage.

——S. 58—Usufructuary mortgage—Mortgagee's right to possession—Case on facts—Mortgagor applying for redemption of one of his usufructuary mortgages — Collector holding that the prior mortgage had merged in later mortgage and allowing redemption on payment of both the mortgage sums — Suit by mortgagee—J. C.'s Court in second appeal directing mortgagee to remain in possession—Dispossession by mortgagor—Suit by mortgagee for restoration of possession—Held, the J. C.'s Court had left the question of prior mortgage open which modified the Collector's order to the redemption of later mortgage only. The mortgagee was therefore entitled to possession on the bssis of title accrued to them under the prior mortgage—(Deed—Construction — Judgment). AIR 1955 N U C (Ajmer) 2625.

——Ss. 58 and 59—Subsequent oral agreement allowing usufructuary mortgagee to remain in possession for a further period in lieu of interest on debt incurred subsequent to mortgage—Nature of—Validity—Proof of—Registration Act (1908), S. 17—Evidence Act (1872), S. 92.

Where subsequent to the execution of a usufructuary mortgage the mortgagor orally agrees to allow the mortgagee to remain in possession of the mortgaged property for a further period of five years in lieu of interest on the new debt incurred subsequent to the mortgage, the subsequent contract does not amount to a mere charge but amounts to an additional usufructuary mortgage and as such it can only be effected by a registered instrument. Even assuming that it amounts to a charge, an oral charge could not be a valid one. A I R 1939 Mad 202; A I R 1940 Mad 140, Rel. on. I L R (1952) Hyd 351 : AIR 1952 Hyd 5 (6) (Prs 4, 5).

——S. 58 (d) — Implied surrender of lease—Test of —Property leased to a person — Usufructuary mort-

gage of same property in favour of same person — Terms of mortgage incompatible with those of earlier lease—Held, there was implied surrender of lease, See T. P. Act (1882), S. 111 (f). **AIR 1961 Ker 293.**

——S. 58 — Kanapattom or possessory mortgage—Tests. See Tenancy Laws—Kerala Stay of Execution Proceedings Act (1 of 1957), S. 4. **1959 Ker L T 1299.**

——Ss. 58, 67, 68, 69 — **Usufructuary mortgage containing also a stipulation for sale of property—Suit for sale of property dismissed—Right to possess property not extinguished—C. P. Code (1908), S. 11.**

Where a suit for the sale of the property on a usufructuary mortgage containing also a stipulation that the mortgagee can realise the debt by the sale of the property is dismissed the remedy provided for its sale comes to an end, but the security for debt, namely, the usufructuary mortgage remains intact. The right of the usufructuary mortgagee to possess the property does not become extinguished merely because another remedy provided for the sale of the property cannot be availed of until the debt is liquidated the security remains unaffected. AIR 1960 M P 44, Rel. on. **1961 Jab L J 1207.**

——S. 58 — Usufructuary mortgage with stipulation that on failure of mortgagor to pay mortgage amount within time specified, property would be deemed to be sold to mortgagee—Redemption—Right of mere admission of mortgagor after expiry of stipulated period that property stands sold, in the absence of fresh transaction de hors the mortgage, is not enough. See T. P. Act (1882), S. 60. **1961 M P L J 404.**

——Ss. 58 and 62—Usufructuary mortgage—There is an implied term against converting land into desert by cutting trees. **AIR 1955 N U C (Mad) 5673.**

——S. 58 — **Usufructuary mortgage — Delivery of possession of property in lieu of repayment of debt—Agreement not containing either any obligation to repay or creating any security for its repayment — Transaction not a usufructuary mortgage — Stamp Act (1899), S. 2 (17) and Sch. I, Art. 5.**

A executed a document in favour of B whereby he delivered possession of land to B for a period of ten years in consideration of repayment of a mortgage debt with interest due to B on a previous mortgage of the land. On expiry of the period B was to deliver back the land to A unencumbered.

Held that as the agreement did not contain either any obligation to repay the debt or create any security for its repayment the transaction was merely an agreement and "not a usufructuary mortgage for purposes of stamp duty." I L R 25 All 115, Rel. on. **(1962) 40 Mys L J 669**

——Ss. 58 (d), 60 and 76 — **Mortgage in favour of lessee—End of lease—Possession continued — Mortgagee's liability to deliver possession in mortgagor's suit for redemption.**

In the case of a mortgage-deed executed in favour of the lessee during the continuance of the lease the possession which the mortgagee retains even after the termination of the lease cannot be said to be a possession of an usufructuary mortgagee as contemplated in S. 58, Transfer of Property Act. The mere fact that there is a provision in the mortgage-deed to the effect that the rent payable by the mortgagee as lessee will be adjusted towards interest payable on the mortgage will not make the document a usufructuary mortgage. There must be either delivery of possession or a promise to deliver such possession. But the position where a tenant purchases a mortgage and thereby becomes a mortgagee and where the tenant becomes a mortgagee by virtue of a mortgage created by the mortgagor in his favour is the same. Therefore, the mortgagee, after the termination of the lease, if continues in possession as a mortgagee, is a mortgagee who is in possession of the mortgaged property and is bound, in a suit for redemption, to deliver the property under S. 60. AIR 1941 Pat 296, Disting. **35 Mys L J 232 : I L R (1957) Mys 100 : AIR 1958 Mys 20 (21, 22) (Pt B) (Prs 5, 8).**

——S. 58 — Usufructuary mortgage or anomalous mortgage — Mortgage described as Bhoga Bandha Patram—On construction mortgage held to be usufructuary — S. 17, Money Lenders Act held not applicable—(Debt Laws—Orissa Money Lenders Act (3 of 1939), S. 17—Applicability). **A I R 1955 N U C (Orissa) 3971 (DB).**

——S. 58 (d)—Orissa Money-Lenders' Act (1939), S. 17 (as amended by Orissa Money-Lenders (Amendment) Act (18 of 1947)—Does not apply to oral usufructuary mortgage—(So proof of execution of a mortgage would be necessary only where the mortgage is in writing and the statutory discharge by virtue of continuous possession for 15 years as provided in S. 17 would apply only to such mortgages and not to oral mortgages—See Debt Laws—Orissa Money-Lenders Act (3 of 1939), S. 17. **AIR 1953 Orissa 17 (DB).**

——S. 58 —**Two usufructuary mortgages on same land—Permissibility.**

There cannot be two different usufructuary mortgages on the same land at the same time. **AIR 1958 Pat 79 (80) (Pt C) (Pr 9).**

——Ss. 58, 76 (c)—**Simple mortgage or usufructuary mortgage.**

Held on facts, that the document read and construed as a whole was a mortgage with possession and not a simple mortgage. It is true, during the continuance of the mortgage, when the mortgagee takes possession of the mortgaged property, he must pay all charges of a public nature in respect of the house under S. 76 (c) of the Transfer of Property Act, but that is so, in the absence of a contract to the contrary. It is therefore, open to the parties to contract out of the provisions of S. 76 (e) of the Transfer of Property Act. Hence the mere fact that the mortgagor undertook to pay the taxes, electric bill, etc., referred to in the last portion of the document did not make the transaction a simple mortgage and not a mortgage with possession. AIR 1955 Pat 357, dist. **1956 Pat L R 493 : AIR 1957 Pat 717 (719) (Pt A) (Pr 11) (DB).**

——S. 58 (d)—**Essential ingredient of usufructuary mortgage.**

In order to create a usufructuary mortgage, the mortgagor must authorise the mortgagee to retain possession of the property until payment of the mortgage-money. This is one of the essential ingredients of usufructuary mortgage and if from the terms of the bonds it does not appear that the mortgagee had any authority to retain possession until payment of the mortgage-money the mortgage cannot be a usufructuary mortgage.

Where for the sake of convenience and systematic payment of the interest a mortgagee is given a right to realise the royalties receivable from the mortgagor's coal fields towards the interest of the principal money with a clear stipulation that if the mortgagee fails to realise the same the mortgagor is liable to pay the amount of interest to the mortgagee, then the mortgage bond containing such a term cannot be characterised as a usufructuary mortgage bond. **1955 B L J R 571 : AIR 1955 Pat 505 (507) (Pt A) (Prs 7, 8) (DB).**

[Reversed on another point in AIR 1964 S C 1295.]

——S. 58 (d)—**Usufructuary mortgage bond—Construction of.**

A recital in the bond in its very opening line that this usufructuary mortgage bond is executed to the following effect does not make it a usufructuary mortgage if from the terms of the bond it appears that it cannot be said to be usufructuary mortgage. **1955 B L J R 571 : AIR 1955 Pat 505 (507) (Pt B) (Pr 7) (DB).**

[Reversed on another point in AIR 1964 S C 1295.]

——Ss. 58, 62 — Usufructuary mortgage—Rights of mortgagor after mortgage—Transferability of.

When the owner of property hypothecates that property by a usufructuary mortgage he does not cease to have any interest in the property until the mortgage-debt is satisfied in due course and he is in a position to sue for recovery of possession under S. 62. The ownership of property connotes a bundle of mortgage the owner of that bundle ot rights of rights in respect of that property. In a transaction transfers some of those rights to the mortgagee. The remainder of that bundle of rights still remains with him and can be transferred. AIR 1946 All 400, Expl. **AIR 1952 Pat 469 (471) (Pt B) (Pr 11) (DB).**

——S. 58—Mortgagee purchasing land in his possession before redemption—Suit for pre-emption — Plea of — Contravention of S. 3-A, Patiala Alienation of Land Act (1972) by deft.—He must prove that he was a creditor and loan advanced by him was a loan being interest bearing under S. 3-A—Mere possession of the land does not make the mortgage a usufructuary one unless it is shown that the income of the land was to be appropriated towards payment of interest or partly towards principal and partly towards interest—See Patiala Pre-emption Act, S. 23-A. **AIR 1955 N U C (Pepsu) 257 (DB).**

——S. 58, cl. (d)—Usufructuary mortgage—Essentials.

The essential pre-requisite of a usufructuary mortgage which is analogous to 'Welsh mortgage' in England and 'Lekha Mukhi' mortgage in Punjab is the term that the mortgagee immediately gets into possession and applies the rents and profits towards the interest or the principal or both. In the absence of a term with respect to possession no usufructuary mortgage can come legally into existence. 48 M L J 687 : AIR 1925 P C 63, Followed. **AIR 1961 Punj 477 (479) (Pt D) (Pr 13).**

——Ss. 58 and 60 — Usufructuary mortgage created in compromise agreement which contained a forfeiture clause—Forfeiture clause is clog on redemption. AIR 1955 N U C (Trav-Co.) 6003 (DB).

——Ss. 58, 91—Mortgagee has right to be in possession until redeemed by a competent person—Wayfarer cannot redeem. **AIR 1955 N U C (Trav.-Co,) 1075.**

——S. 58—Simple mortgage—Subsequent oral agreement to deliver possession—Effect—Suit for possession by mortgagor—Limitation Act (1908), Art. 148) —(Evidence Act (1872), S. 92, Proviso 4).

Where it was contended that a registered deed of mortgage which was a simple mortgage in its inception, was converted into a usufructuary mortgage by subsequent oral agreement altering the mode of payment of interest and by delivering possession to the mortgagee and hence the 60 years' rule under Art. 148, Lim. Act, applied to the suit by mortgagor for redemption and for possession of the property mortgaged:

Held, that under Proviso 4 to S. 92, Evidence Act, no oral agreement was admissible to prove variation of the terms of registered deed including a term as to the payment of interest and hence no usufructuary mortgage could be created in favour of the simple mortgagee by a subsequent oral agreement which sought to vary the terms of the registered simple mortgage deed. The suit for possession was therefore held misconceived. (2) Further, Art. 148, Limitation Act did not apply as no subsisting usufructuary mortgage could be proved. **AIR 1956 Tripura 6 (8) (Pt C) (Prs 10, 12).**

23 (A). Possession not delivered or disturbed — Effect.

——S. 58 (d) — Utilization of profits towards mortgage money and interest — Mortgage, if valid — Ajmer Regulation (3 of 1914), S. 5 (1) (b).

There may be a usufructuary mortgage providing for the utilization of the profits towards the mortgage money and the interest. It is not necessary for the validity of a usufructuary mortgage that some amount should remain outstanding as principal.

Where in a document called Baraskati, it was stipulated that the second party should remain in possession of the land of the first party for 20 years and that the first party should recover possession without any payment and though in the document it was mentioned that possession had been made over to the second party, he was not actually put in possession; **Held**, that the document was a usufructuary mortgage. **AIR 1950 Ajmer 59 (60) (Pt B) (Prs 6, 7).**

——S. 58 (c) — Conditional sale deed by defendant providing for plaintiff to be in possession — Defendant executing kabuliyat and cultivating as tenant — Plaintiff's suit for possession maintainable. See T. P. Act (1882), S. 108. **1959 Nag L J (Notes) 134.**

——S. 58 — Mortgagee already in possession of the mortgaged property under usufructuary mortgage — Creation of further possessory mortgages on same property in favour of same mortgagee — Actual delivery of possession while creating subsequent mortgages not necessary. (1961) 2 Guj L R 433 : (1961) 2 Guj H C R 154 : AIR 1961 Guj 129 (130) (Pt B) (Pr 4).

——S. 58 — Other mortgage — No provision for interest — Possession not delivered — Mortgagee entitled to interest and charge upon mortgaged property for breach of covenant to deliver possession. See T. P. Act (1882), S. 68 (1) (d). **AIR 1964 Mad 201.**

——Ss. 58 (g), 67, 68 and 98 (as amended in 1929)— Combination of simple and usufructuary mortgages — Failure of mortgagor to put the mortgagee in possession — Right of mortgagee to decree for sale— Right to profits for period mortgagee was kept out of possession.

Where in a usufructuary mortgage there is a personal covenant to pay the mortgagor fails to give possession to the mortgagee and the mortgagor alone continued in possession the mortgagee is entitled to sue for a decree for sale. As anomalous mortgages are now after 1929 included in S. 58 of the Transfer of Property Act, the application of Ss. 68 and 67 of the Act is not excluded as under the old law. Further, a personal covenant to pay implies and carries with it a right of sale.

If the mortgagor commits a breach of the covenant to deliver possession he should not be allowed to take advantage of it or retain the proceeds of the property and at the same time paying no interest on the mortgage amount the benefit of which he enjoyed. The mortgagee is entitled to the profits. **1952 Mad W N 621 : I L R (1952) Mad 993 : 65 Mad L W 861 : (1952) 2 M L J 416 : AIR 1953 Mad 13 (15, 16) (Prs 7, 8, 10) (DB).**

——Ss. 58 (d), 67 and 68 — Usufructuary mortgagee — Right to sue for sale.

As S. 58 (d) now stands, if under the mortgage deed the mortgagor expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, the transaction is a usufruc-

tuary mortgage notwithstanding the fact that actual possession has not been delivered. Such a transaction being a usufructuary mortgage, S. 67 does not empower a mortgagee to institute a suit for sale. Section 68 only confers a right on the mortgagee to sue for the mortgage money when the mortgagor fails to deliver the property to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor. This does not either expressly or by necessary implication confer on him a right to realise the said amount by sale of the hypotheca. In the contingencay contemplated by the section he will be able only to obtain a decree for money. AIR 1959 Mad 1164 (FB), held no longer good law. 1952 Mad W N 439 : 65 Mad L W 510 : (1952) 2 Mad L J 55 : AIR 1952 Mad 856 (857) (Pt A) (Pr 8).

——S. 58 — Usufructuary mortgage — Mortgagee has a right to sue for mortgage-money where mortgagor fails to deliver possession or to secure possession without disturbance—Interest can be treated as charge on mortgage property. See T. P. Act (1882), S. 68 (1) (d). AIR 1958 Mys 32.

——S. 58 — Limitation Act, Art. 132 — "When the money sued for becomes due"—Usufructuary mortgage — Cause of action for suit to recover mortgage money arises on date of dispossession — See Limitation Act (1908), Art. 132. AIR 1956 Pat 312 (DB).

——S. 58, cl. (a) and S. 68 (1) (d) — Usufructuary mortgage — Possession taken back by mortgagor — Mortgagee's right to sue for money — Debtor or obligee cannot say that he is not personally liable for money. AIR 1961 Punj 477 (480) (Pt E) (Pr 14).

——S. 58 (d)—Lease or mortgage—Baraskati deed.

A advanced Rs. 7,000 to B. The terms of the Baraskati deed executed by B in favour of A were that A would be put in possession of three villages for 10 years, and would get his money with interest from the usufruct of those villages for that period. A, however, was not given possession of the villages.

Held, that the Baraskati deed was a mortgage, and as such A was entitled to recover the amount which he had advanced when he failed to get possession of the three villages. ILR (1956) 6 Raj 1070 : 1957 Raj L W 61 : AIR 1957 Raj 120 (121) (Pt A) (Pr 4) (DB).

23 (B). Covenant for personal liability in the deed—Effect.

——S. 58 — Usufructuary mortgage and lease back—Suit for arrears of rent — Maintainability.

A executed a usufructuary mortgage of his house interest — Mortgagor under the deed undertaking personal liability to pay up the amount — Under a separate deed of agreement mortgagee given possession over the property—That by itself will not make the mortgage a usufructuary mortgage —Remedy of mortgagee is to enforce his mortgage and not to resist decree for ejectment obtained by lessor against lessee. I L R (1961) 13 Assam 101 : AIR 1961 Assam 70 (73) (Pt F) (Pr 8) (DB).

——S. 58 — Anomalous mortgage — Usufructuary mortgage with personal covenant.

Where a personal covenant is found to exist either in express terms or by necessary implication in a usufructuary mortgage, the mortgage becomes anomalous. Where a mortgage with possession contains a further stipulation that at the end of a certain period the mortgagor shall redeem the mortgage by paying the mortgage debt, the stipulation amounts to a personal covenant and the mortgage is anomalous. I L R (1950) 2 Assam 444 : AIR 1952 Assam 19 (21) (Pt B) (Pr 15) (DB).

——S. 58 (d) and (g) — Mortgage with possession containing stipulation for repayment within specified time — It is not out and out usufructuary mortgage but anomalous mortgage.

Where there is an express undertaking to pay money contained in a deed of mortgage, even though the mortgage is with possession, it is not an out and out usufructuary mortgage. It partakes of the character of a simple mortgage also and is thus converted into an anomalous mortgage being a simple cum-usufructuary mortgage. Where an undertaking or a promise to pay money or rather the personal covenant is found in the document side by side with the right of the mortgagee to enjoy and possess the lands on payment of land revenue, it implies that the mortgagee has the right to bring the property to sale. The mortgage, in these circumstances, cannot be treated as purely usufructuary: AIR 1935 Lah 103; AIR 1947 Lah 40 (FB); 12 All 203; AIR 1929 Pat 605; 34 Bom 462 and 27 Mad 526 (FB), Rel. on; AIR 1940 Cal 436 and 24 Cal 677, Dissent.; 53 C W N 96, Disting. ILR (1949) 1 Assam 167 : AIR 1950 Assam 18 (20) (Pt B) (Pr 9) (DB).

——S. 58 — Usufructuary mortgage — Personal liability of mortgagor to pay debt — This personal liability to pay debt cannot be extended to mortgagor's heirs — S. 59-A, T. P. Act, does not apply — Application for adjustment of debts made by mortgagor's heirs — Not maintainable. See Debt Laws — Saurashtra Agricultural Debtors Relief Act (23 of 1952), S. 4. AIR 1963 Guj 280.

——Ss. 58, 67 and 68 — Usufructuary mortgage — Mortgagors also binding themselves personally to pay — Mortgage being a simple mortgage, usufructuary mortgagee has a right to bring mortgaged property to sale.

Held, that the mortgage was not a purely usufructuary mortgage but it was a simple mortgage usufructuary and hence the mortgagee had a right to bring the property to sale. AIR 1942 All 326, Dist. AIR 1937 P C 32; AIR 1947 Lah 40, Rel. on. The personal covenant to pay together with right of recovery and agreement that the burden for such payment would rest upon the mortgaged property, clearly implied a right of sale in the mortgagee. Such right could not be exercised without bringing the mortgaged property to sale. The property was clearly subject to a burden for the payment of the amount according to contract. When such burden was there not only for the principal amount but also for the interest and taxes, there was a clear right of sale by necessary implication. 1964 M P L J 97 : 1964 Jab L J 38 : AIR 1964 Madh Pra 305 (306) (Pr 5) (DB).

——S. 58 — Personal covenant to pay—Usufructuary mortgage providing particular date for redemption—Provision, in case of default in redemption, for payment on the particular date of any subsequent years — Deed held to contain personal covenant to pay — Mortgage held anomalous mortgage — Mortgage — Construction.

A deed creating a usufructuary mortgage on agricultural land provided that after the expiry of the time for redemption and on receipt of the amount, the land and the document would be handed over to the mortgagor by the mortgagee but in case of default in payment by that time, the money may be paid on a particular date of any subsequent years. No payment was made on the first date fixed for redemption.

Held, that the deed contained a personal covenant to pay and the mortgage was an anomalous mortgage. I L R 27 Mad 528 (FB), Foll. (1964) 77 Mad L W 666.

——Ss. 58, 67 — Usufructuary mortgage prescribing specific period for redemption — Recital to pay principal after expiry of period amounts to personal covenant to pay — Right of mortgagee to bring property to sale.

The recital in a usufructuary mortgage that the mortgagee will pay the principal after the expiry of a period of three years and redeem the properties clearly amounts to a covenant to pay the debt and a suit for sale of the hypotheca by the mortgagee for recovery of the amount will lie. ILR 27 Mad 526 (FB) and (1946) Mad L J 90; AIR 1946 Mad 312, Rel. on. **75 Mad L W 543 (2) : (1962) 1 Mad L J 304 : AIR 1962 Mad 308 (308) (Pt A) (Pr 2).**

——S. 58 (d) — Usufructuary mortgage containing personal covenant to pay — Not an anomalous mortgage.

Where all the elements of a usufructuary mortgage, as defined by S. 58 (d) of the Transfer of Property Act, are clearly present in the mortgage it does not cease to be a usufructuary mortgage and become an anomalous mortgage only because it contains a personal covenant to pay. AIR 1929 P C 139, Disting. **(1962) 1 Mad L J 397.**

——Ss. 58 (d) and (g) and 59 — Usufructuary or anomalous mortgage — Unregistered Khata mentioning that amount was borrowed on security of shop — Delivery of possession — Agreement to pay interest —Rent payable by mortgagee to be adjusted towards debt — Mortgagor stipulating that property would not be redeemed until entire debt is paid—Mortgage is usufructuary and not anomalous as there was no personal covenant to pay — Suit by mortgagee for recovery of loan — Maintainability — Khata being unregistered not admissible even to prove payment of consideration — Registration Act (1908), Ss. 17 (1) (c) and 49.

Held, on facts that the transaction embodied in the khata was a usufructuary mortgage and not an anomalous mortgage. There was delivery of possession of the mortgaged property to the mortgagee and he was authorised to retain it till payment of the mortgage amount and he was to receive rents and profits of the mortgaged property in lieu of interest. Thus, all the ingredients of an usufructuary mortgage were satisfied. The fact that the defendant had agreed to pay interest did not mean that there was a personal undertaking to pay the debt. So also from the fact that the mortgagor had imposed upon himself an obligation not to claim the property until the debt was satisfied it could not be taken that he had promised to pay the mortgage money personally: ILR 24 Cal 677, Rel. on. ILR 27 Mad 526 (FB) and AIR 1960 Raj 1 and ILR (1960) 10 Raj 948, Dist. (ii) that as the document was not registered as required by S. 59, T. P. Act, there was no transaction of mortgage at all and it could not be admitted in evidence even for the limited purpose of proving the receipt of consideration in view of S. 17 (1) (c) read with S. 49, Registration Act. (iii) that the plaintiff was entitled to recover the loan without having recourse to the security if he could prove by other evidence that the sum had been paid to the defendant. **1963 Raj L W 147 : I L R (1963) 13 Raj 334 : AIR 1963 Raj 129 (131 to 133) (Prs 6, 14, 15, 18).**

——S. 58 — Simple mortgage or usufructuary mortgagee — Suit for recovery of pattam and possession by mortgagee from mortgagor lessee.

Defendant mortgagor executed the usufructuary mortgage-deed, Ex. A, in favour of the plaintiff authorising him to retain possession of the plaint property and to utilise the income therefrom for payment of the pattom of Rs. 20, due to the original jenmi of the said property and for appropriating for himself the balance towards interest on the mortgage amount of Rs. 500. The mortgagor further undertook to pay up the mortgage amount on demand and also to be personally liable for the same. Ex. A was followed by another document Ex. B of the same date executed by the defendant mortgagor in favour of the plaintiff. As per Ex. B, the defendant took back the properties on lease from the plaintiff.

Held, that (i) the parties intended the rights and liabilities arising out of Exs. A and B to be separate and distinct in themselves. The transaction evidenced by Exs. A and B was not intended and treated as a simple hypothecation. Ex. A satisfied all the essential features of a usufructuary mortgage. The additional undertaking in Ex. A could not by itself destroy the effect of other essential features of the document as a usufructuary mortgage. **1953 Ker L T 89 : ILR (1952) Trav-Co 696 : AIR 1953 Trav. Co 63 (64, 65, 67) (Pt A) (Prs 2, 3, 7) (DB).**

——S. 58 — Travancore Debt Relief Act, S. 2 (ix) — Usufructuary mortgagage — An undertaking by the mortgagor to be personally liable for the mortgage debt will not change the characteristic of the mortgage. See Debt Laws—Travancore Debt Relief Act, 1115 (2 of 1116), S. 2 (ix). **AIR 1951 Trav-Co 154 (DB).**

24. Zuripeshgi lease.

——S. 58—Bihar Agricultural Income-tax Act S. 2(a) — Agricultural income — Assessee taking zarpeshgi lease and for 28 years to remain in possession — Premium paid —Construction —Transaction held not loan and receipts did not represent a capital return— Income held agricultural income. See Bihar Agricultural Income-tax Act (7 of 1938), S. 2 (a). **AIR 1959 S C 1303.**

——S. 58 — Zarpeshgi lease — Lessee is not mortgagee.

A mortgage deed is always executed by a mortgagor. Where therefore a person on payment of a Zarpeshgi amount takes settlement of a land by a registered Kabuliyat and agrees to pay annual rent, the Kabuliyat does not confer on such person the status of a mortgagee and the landlord cannot get possession of the land on paying the Zarpeshgi amount to him. **1952 Cri L J 1124 : AIR 1952 Pat 312 (314) (Pt B) (Pr 15).**

25. English mortgage.

——S. 58 — English mortgage — Possession of property — Presidency Small Cause Courts Act (1882), S. 41.

Under an English mortgage a mortgagee is entitled to the same rights as the mortgagor himself had in the property and one of the most important rights is the right of possession. He may not take actual possession, in which case the mortgagor continues in possession by sufferance of the mortgagee or by permission express or implied given by the mortgagee. The mortgage may provide that on the mortgagor committing a certain default the mortgagee would be entitled to enter into actual possession. In such a case the stipulation amounts to the permission being withdrawn or the licence being terminated on the default taking place. Under such circumstances the mortgagee is entitled under Section 41, Presidency Small Cause Courts Act (1882) to institute proceedings, for ejectment. **55 Bom L R 739 : ILR (1955) Bom 115 : AIR 1954 Bom 81 (81) (Pr 3).**

26. Kanom and otti.

(A) Kanom and usufructuary mortgage— Distinction.

26. Kanom and otti.

——S. 58 (g) — Otti — Nature and essentials of — Description of transaction as otti and Kuzhikanon— Essential nature of demise as mortgage not affected — Provision for michavaram in mortgage—Effect of

—Transaction if comes within purview of Kerala Act (1 of 1957).

The essence of an 'otti' transaction stated. 1961 Ker L T 13 : (1961) 1 Ker L R 60 : AIR 1962 Ker 27 (27, 28) (Prs 4, 5, 6).

——S. 58 — An illom granted a kanom demise — On the same day it executed a puram kadam to the kanomdar in which it was stipulated that interest at a certain rate was payable and that the interest would be appropriated by the kanomdar out of the purappad payable under the kanom deed — Held that puramkadam was a simple mortgage of the jenmon right of the illom and could not be considered as a transaction under which kanomdar came into possession as a mortgagee — Transaction not exempted from the operation of the Madras Agriculturists' Relief Act and therefore not liable to be scaled down. See Debt Laws—Madras Agriculturists' Relief Act (4 of 1938), S. 3. 1958 Ker L T 777.

——S. 58 — Usufructuary mortgage — Nature of — Loss of right of redemption — Right to recover rent if also lost—(Limitation Act (1908), S. 28, Art. 110).

The right of redemption is based on the substantial right of ownership of the mortgagor in the mortgage property. If by the operation of the law of limitation the right of redemption is lost, that would inevitably extinguish also the mortgagor's ownership over the mortgaged property. Therefore, the argument that usufructuary mortgage is really a combination of a mortgage and a lease and the loss of the right of redemption would not, in that view affect the plaintiff's right to recover the arrears of michavaram which virtually arose out of the lease involved in the mortgage document, is untenable. 1957 Ker L T 395 : 1957 Ker LJ 310 : AIR 1957 Ker 117 (119) (Pt C) (Pr 5).

——S. 58 — Otti if can be converted to simple mortgage by mere intention.

By a mere intention, unexpressed in any document, the parties to an otti cannot convert it into a simple mortgage. The circumstance that the rent was arrived at by calculating interest on the mortgage money is immaterial and if a mortgagor takes a usufructuary mortgaged property on lease his possession is in his capacity as a tenant of the mortgagee and not in his capacity as owner. 1957 Ker L J 380 : 1957 Ker L T 411 : AIR 1957 Ker 109 (112) (Pt G) (Pr 9).

——Ss. 58 and 105 — Pandarapattom property — Irredeemable tenure—If can be created.

It is open for parties to create irredeemable tenures in respect of even Pandarapattom property but in such cases there should be clear provision for enjoyment in perpetuity. The provision for renewal and payment of Adukuvathu do not indicate irredeemability in the absence of a clear provision for permanent occupancy. 1957 Ker L T 690 : 1957 Ker L J 659.

——S. 58 (d) and (g) — Madras Agriculturists Relief Act (1938), S. 9-A (as amended in 1950) — Malabar Otti is not usufructuary mortgage within S. 9-A. See Debt Laws — Madras Agriculturists Relief Act (4 of 1938), S. 9-A. AIR 1958 Mad 117 (DB).

——S. 58 — Malabar Tenancy Act (1930), S. 3 (1)—Kanom — Incidents of stated. See Tenancy Laws—Malabar Tenancy Act (14 of 1930), S. 3 (1). AIR 1955 N U C (Mad) 695.

——S. 58 — Kanom deed — Terms other than those ordinarily found in kanom deed — Transfer is kanom. See Tenancy Laws — Malabar Tenancy Act (14 of 1930), S. 3 (1). AIR 1950 Mad 612.

——Ss. 58, 98—Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), S. 2, Explanation—Applicability—Kanom or Otti—Tests.

The important aspects of a Kanom are (1) that the income from the property will generally have no proportion to the interest which the Kanom, tenant has to realise for the amount advanced by him a low pattom being usually fixed as payable to the jenmi, and (ii) the right of the tenant to be in possession of the property for a period of not less than 12 years. One other test is that there must be a covenant for renewal of payment of renewal fees for the transaction to be a Kanom for purpose of the Act. Where the michavaram of 84 rupees per annum was equivalent to the mortgage amount itself, that is to say, there was rather a very high pattom and not the low pattom and the term of the otti deed was 6 years. The transaction was held to be a Kanom within the meaning of the Act. AIR 1952 Trav-Co 333 (FB), Rel. on. AIR 1957 Trav-Co 239 (240) (Pt A) (Pr 5).

——S. 58—Creation of irredeemable mortgage — Provision relating to payment of customary dues and renewal fees in the document — Do not lead necessarily to the inference in favour of irredeemability—Deliberate avoidance of the term kanom and use of expression 'oora otti' denoting a particular type of mortgage indicate that the executant wanted to reserve with him the right of redemption. See Tenancy Laws — Travancore Jenmi and Kudiyan Act (5 of 1071). S. 3. AIR 1955 (Trav-Co) 543.

——S. 58—Otti mortgage—Nature of.

A deed of otti is neither a simple mortgage nor a usufructuary mortgage as defined in the Transfer of Property Act. It properly comes under the category of anomalous mortgages. All the elements of a hypothecation bond are present in an otti transaction and in addition possession of the property secured is given to the mortgagee so that he may take the profits in lieu of interest. 1954 Ker L T 795 : AIR 1955 T C 207 (207) (Pt A) (Pr 3).

——Ss. 58 and 105—Kanom—Renewal clause—Interpretation.

An express provision that all covenants in the original lease shall be inserted in the renewed lease will not include a covenant for a further renewal. Where there is a covenant for renewal, if the option does not state the terms of renewal, the new lease will be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for renewal itself. 1954 Ker L T 671 : ILR (1954) T C 1098 : AIR 1955 Trav-Co 161 (161) (Prs 2, 4, 5) (DB).

——S. 58—Irredeemable—Kanom or otti—Creation of on non-jenmom lands — Is a question of intention. AIR 1955 N U C (Trav-Co) 5089 (DB).

——S 58—Kanam and othi—Document styled as otti and Kuzhikanam expressly providing for redemption —Receipt showing payment of aduku vathu to the jenmi at the time of execution held not genuine—Held — The receipt could not affect the redeemable character of the mortgage. (Malabar Law—Kanom). AIR 1955 N U C (Trav-Co) 5086.

——S. 58—Kanom or possessory mortgage—Test.

Giving of the name 'possessory mortgage' to a document which otherwise satisfies the requirements of a kanam and which is itself a renewal of an earlier demise which is a kanam cannot operate to convert the transaction into a possessory mortgage. 1954 Ker L T 222; AIR 1954 Trav-Co 392 (393) (Pt A) (Pr 4) (DB).

——Ss. 58 and 60—Pandarapattom Lands—Irredeemable tenure—(Malabar Law).

Redeemability is the normal incident of a mortgage or a lease transaction and except in cases where the law has made it irredeemable the jenmi can be deprived of his right of redemption only when he has created permanent occupancy right in the tenant. It

is open to the contracting parties to create irredeemable tenure in respect of lands other than jenmom lands such as pandarapattom lands etc. The question will always remain whether in a given case the parties have really created such a right. There is no law saying that where the document with respect to pandarapattom land contained no provision for redemption or for payment of value of improvements, that the parties named the document as a kanom deed and mentioned the premium paid as kanom reserved as also for payment of michavarom and adukkavathu the tenure created shall be irredeemable. **ILR (1951) Trav-Co 282 (DB).**

● ——S. 58—Tarwad — Karnavan—Representation—Suit by member to set aside mortgage of tarwad property dismissed — Findings upholding the mortgage by the High Court are binding on vendee from member of tarwad. See Marumakkattayan law — Tarwad. **AIR 1950 Trav Co 49 (FB).**

26(A). Kanom and usufructuary mortgage—Distinction.

——S. 58 (d) — Deed—Construction — Distinction between kanam and mortgage — Tests to determine nature of transaction — Intention of parties to be ascertained. See Tenancy Laws — Kerala Agrarian Relations Act (4 of 1961), S. 2 (18), Cl. (a). **AIR 1963 Ker 309 (DB).**

——S. 58—Distinction between Kanom and mortgage —Kaichit executed as counterpart of kariapanayam deed reciting prior lease—Transferees to be in possession of properties on Karipanayam for 10 years—Part of Karipanayam amount to carry no interest — Transferees to surrender properties before expiry of term, if desired, on receipt of Karipanayam amount—Transaction held to be a mortgage and not kanom. See Tenancy Laws — Kerala Agrarian Relations Act (4 of 1961), S. 2 (18). **ILR (1961) 2 Ker 667.**

——Ss. 58 and 105 — 'Kanom' and 'Possessory mortgage' — Distinction — Tests to determine whether a transaction is kanom or possessory mortgage. See Tenancy Laws—Kearala Agrarian Relations Act (4 of 1961), S. 2 (18). **I L R (1961) 2 Ker 589.**

——S. 58—Document essentially evidencing borrowing on security of property is a mortgage and not a lease — Stipulation in document for payment of an annual sum towards Government tax, michavaram and onakazcha is not necessarily inconsistent with a mortgage — Nor is the fact that the person who took the document is entitled to appropriate the yield of the property which might work out to more than ordinary rate of interest sufficient to override the essential feature of the transaction. See Tenancy Laws — Kerala Agrarian Relations Act 1960 (4 of 1961), S. 2 (50) (1). **1961 Ker L T 970.**

——S. 58—Document styled as kanom—Construction of—Whether a lease or a mortgage depends upon the circumstances of each case — All the terms in the material deed should be looked into to ascertain whether its primary object is to allow that person to enjoy that land or to keep the land as security for the debt—Test. See Tenancy Laws — Malabar Tenancy Act, S. 3 (5). **A I R 1955 N U C (Mad) 3913.**

——S. 58—Deed—Construction—Kanam or usufructuary mortgage.

Where a document was described as a panayam kychit, and did not provide for liability to pay a renewal fee and there was no proof of such payment.

Held, It was proper to construe it as a usufructuary mortgage and not as a kanam. The name panayam kychit is a very well-known word in Malabar and where it is used there is no reason to suppose that a mortgage is not what was intended by the parties but a kanam. If really the parties intended a kanom there was no difficulty in the way of their use of that word. That they have not used that word but have used altogether a different word is a point of considerable significance. **(1951) 2 Mad L J 527 : 64 Mad L W 1063 : A I R 1952 Mad 176 (177) (Pt B) (Pr 6).**

● ——Ss. 58, 72, 98—Kanom—Incidents of.

A kanom partakes of the nature of a mortgage with possession and a lease. The kanomdar is a tenant liable to pay the rent stipulated in the kanom deed to his jenmi. But he does not forfeit his right to hold the land for 12 years by allowing the rent to fall into arrears. He is also a mortgagee, the kanom amount and interest thereon being secured by the land and its usufruct. The kanom amount is looked upon as a security for the rent due to the jenmi and is itself secured by the land demised on kanom. On the expiry of the term, an account has to be taken between the jenmi and the kanom holder credit being given to the latter for the value of the improvements in addition to the kanom and interest thereon and to the former for all the rent in arrear.

The michawaram or the net rent payable to the jenmi by the kanomdar, if allowed to remain in arrears it becomes a matter of account in a suit for redemption by the jenmi. **(1951) 1 Mad L J 497 : 64 Mad L W 361 : 1951 Mad W N 323 : I L R (1952) Mad 92 : A I R 1951 Mad 187 (189, 190) (Pt A) (Prs 5, 9) (FB).**

——S. 58 — Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), S. 2, Expln. —Kanapattam — Kanom and mortgage — Distinction stated — **Held**, on construction of document that it was not a kanom within the meaning of S. 2, Explanation, Travancore-Cochin Holdings (Stay of Execution Proceedings) Act. See Debt Laws—Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), S. 2, Expln. **A I R 1953 Trav-Co 273 (DB).**

● ——S. 58 — Distinction between kanom and usufructuary mortgage stated. See Debt Laws—Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), S. 2. **A I R 1952 Trav-Co 333 (FB).**

27. Equitable mortgage.

(A) Delivery of title deed accompanied by written document — Registration when necessary.

27. Equitable mortgage.

● ——S. 58 (f) — Mortgage by deposit of title deeds —Essentials—Intention to create security by deed—Question of fact—Deposit of title-deed — Mode of—May be physical or constructive — Such mortgage distinguished from equitable mortgage.

Under the Transfer of Property Act a mortgage by deposit of title-deeds is one of the forms of mortgages where under there is a transfer of interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of loan. Such a mortgage of property takes effect against a mortgage deed subsequently executed and registered in respect of the same property. The three requisites for such a mortgage are, (i) debt, (ii) deposit of title-deeds; and (iii) an intention that the deeds shall be security for the debt. Whether there is an intention that the deeds shall be security for the debt is a question of fact in each case. Though there is no presumption of law that the mere deposit of title-deeds constitutes a mortgage, a Court may presume under S. 114 of the Evidence Act that under certain circumstances a loan and a deposit of title-deeds constitute a mortgage. Physical delivery of documents by the debtor to the creditor is not the only mode of deposit. There may be a constructive

deposit. A Court will have to ascertain in each case whether in substance there is a delivery of title-deeds by the debtor to the creditor. The law recognizes a constructive delivery. Though such a mortgage is often described as an equitable mortgage, there is an essential distinction between an equitable mortgage as understood in English law and the mortgage by deposit of title-deeds recognised under the Transfer of Property Act in India. The distinction between English and Indian Law stated. Nathan v. Maruthi Rao, (1964) 6 S C R 727 : (1964) 2 S C J 671 : (1964) 2 Mad L J (SC) 162 : (1964) 2 Andh W R (SC) 162 : (1964) 2 S C W R 122 : A I R 1965 S C 430 (432 to 436, 439) (Pt A) (Prs 8, 10, 18) (DB).

● ——Ss. 58 (f) and 59—Mortgage by deposit of title-deeds—Memorandum given along with title-deeds—Registration held was not necessary. See Registration Act (1908), S. 17 (1) (b). **A I R 1950 S C 272.**

——S. 58 (f) — Mortgage by deposit of title deeds—Intention that title deeds should be security is the very essence of transaction.

It is no doubt true that mere deposit of title deeds is not enough to prove a mortgage and the intention that the title deeds should be the security for the debt is the very essence of the transaction and that intention has also to be proved. The language of S. 58 (f) of the Transfer of Property Act makes that proposition clear enough. The whole question in each case is a question of fact whether the intention has been proved by evidence and circumstances. 1960 Cal L J 59 : 66 Cal W N 92 : A I R 1960 Cal 351 (354) (Pt C) (Pr 19) (DB).

——S. 58—Equitable mortgage—Deposit of all title-deeds not necessary.

To create an equitable mortgage, deposit of all title deeds is not necessary or imperative. A I R 1959 Cal 213 (214) (Pt B) (Pr 7).

——S. 58 — Mortgage by deposit of title deeds, by pardanashin illiterate woman — Nature of proof — Mortgagee must prove that she fully understood nature of transaction and its consequences—He must show that deeds were in fact deposited by her and it was with intention of creating security thereon for her liability as surety for husband's debts—(Contract Act (1872), S. 16). AIR 1955 N U C (Cal) 2324 (DB).

——Ss. 58 and 96—Equitable mortgage—Nature of.

By the combined operation of Ss. 96 and 58 (b) an equitable mortgage must be held to be a mortgage where the mortgagor binds himself personally to pay the mortgage money. AIR 1953 Cal 208 (209) (Pt A) (Pr 7).

——S. 58 (f)—Delivery of documents of title—Physical delivery not necessary — Constructive delivery sufficient to create valid equitable mortgage.

A and B (defendants 1 and 4) applied to the Tirur branch of plaintiff Bank for overdraft accommodation undertaking to deposit the documents of title of the properties belonging to them. They gave the title deeds to the branch at Tirur. The documents were sent for scrutiny to the head office of the Bank at Kozhikode which was a notified area where a mortgage by deposit of title deeds could be created. At the time, when the memorandum of deposit and the accompanying documents were executed, they were in the custody of the head office. The question arose whether the title deeds were delivered at Kozhikode with the intent to create a mortgage in respect of the properties covered by those deeds :

Held, that a valid equitable mortgage was created on the properties. Delivery of possession of the title deeds need not be by actual physical delivery. If the Head office of the Bank at Kozhikode was in custody of the documents of title when the defendants indicated their intention to create a mortgage by deposit of title deeds, there was a constructive delivery of the title deeds to the Bank at Kozhikode for that purpose. 1964 Ker L J 748 : 1964 Ker L T 603.

——Ss. 58 and 100 — Mortgage by deposit of title deeds or equitable mortgage—Essentials—Agreement to execute mottgage in future in case amount due on promissory note was not paid accompanied by handing of title deed of property agreed to be mortgaged —No equitable mortgage or lien created.

Held, (i) that the essential requisites for creating a mortgage by deposit of title deeds or an equitable mortgage as evidence from S. 58 (1), T. P. Act are a debt, a deposit of title deeds and an intention that the deeds shall be security for the debts. Since there was nothing in Exhibit C or in the evidence to indicate that the handing over of the title deed was with a view to make that deed a security for the amount advanced the transaction did not amount to a mortgage by a deposit of title deeds. (ii) that Exhibit C by promising a mortgage in future did not create a lien either immediately or when the conditions precedent for the performance of the promise came into being. Therefore, the only decree the appellant was entitled to get was a money decree. A I R 1930 P C 76, A I R 1938 Mad 889 Rel. on. 17 T L R 105, Not Foll. 1963 Ker L J 494 : 1963 Ker L T 561 : ILR (1963) 2 Ker 60.

——S. 58 (f) — Mortgage by deposit of title deed — English law not applicable — Deposit must be of deeds showing title in mortgagor.

Though S. 58 (f), T. P. Act, relating to mortgage by deposit of title deeds is derived from the English law of equitable mortgage, in construing this provision, the Courts are not bound by the principles of equity as laid down in the English decisions on the matter.

So far as the law in India is concerned, the matter is governed by statute which must be construed according to its tenor and context. Reading S. 58 (f) of the Transfer of Property Act by itself, the first impression one gets that the deposit must be of documents of the mortgagor's title.

The scheme of the Transfer of Property Act as of the Registration Act is that generally speaking all dealings with immovable property must be by registered instrument. When an exception is made to this general rule as in the third paragraph of S. 54, in S. 58 (f), in S. 59 and in the second paragraph of S. 107 of the Transfer of Property Act, the law insists that the transfer should be accompanied by delivery of the property concerned, or of document of title to the property. 21 M L J 454 and A I R 1933 Rang 229, Rel. on. ILR (1961) 1 Ker 493 : 1961 Ker L T 434 : 1961 Ker L J 799.

——S. 58 (b) — Mortgage by deposit of title deeds—Essentials—Physical delivery of title-deeds — Necessity—Civil Procedure Code (5 of 1908), O. 12, R. 6—Decree on admission—When permissible.

The three essential elements to make a valid mortgage by deposit of title deeds are a debt, a deposit of title deeds and an intention to give security of the property covered by the title deeds. If the documents of title are already with the creditor, it would be an idle formality for the documents to be taken back by the debtor and returned as a deposit of title deeds. What would be necessary to consider is whether the parties agreed to treat the documents in the possession of the creditor as delivery to him for the purpose of the transaction. The question will have to be considered in the light of the surrounding circumstances and the probabilities of the case. A decree can follow on admission only of a claim. When however there is no claim by the plaintiff the Court cannot pass any decree on the admission of the defendant. (1965) 1 Mad L J 179 : 77 Mad L W 725 : ILR (1965) 2 Mad 441.

—S. 58 — Mortgage by deposit of title deeds — Elements of—Title-deeds already in creditor's possession—Further loan—Title-deeds when continue to be security for further loan.

The three essential elements to make a valid mortgage are (1) a debt, (2) a deposit of title-deeds and (3) an intention to give security of the property covered by the title-deeds. The Court may in certain circumstances from the existence of a debt and the probabilities without evidence of an express agreement imply the existence of an agreement to make the title-deeds security for the loans. But the mere fact of the existence of a loan and the possession of the title-deeds by the creditor will not raise a presumption that there is a deposit of title-deeds. If the creditor is already in possession of the title-deeds it would be hypertechnical to insist upon the formality of the creditor delivering the title-deeds to the debtor and the debtor redelivering them to the creditor. What would be necessary in those circumstances is whether the parties agreed to treat the documents in the possession of the creditor or his agent as delivery to him for the purpose of the transaction. A I R 1929 Rang 107; ILR 25 Cal 611, Rel. on. A I R 1965 S C 430, Foll. (1964) 77 Mad L W 725 : (1965) 1 Mad L J 179 : ILR (1965) 2 Mad 441.

—Ss. 58 (f), 59—Requirements of equitable mortgage.

The requisites of an equitable mortgage by deposit of title deeds are: (i) There must be a debt; (ii) Delivery must be by a debtor or his agent; (iii) Delivery must be in the towns mentioned in the Act; (iv) Delivery must be to a creditor or his agent; (v) Delivery must be of documents of title to immovable property, and (vi) Delivery must be with intent to create a security thereon. A I R 1960 Mad 529 (531) (Pr 9).

—S. 58—Mortgage by deposit of title deeds — Constructive delivery of title deeds sufficient — Mysore Transfer of Property Act (4 of 1918), S. 58 (f). I L R 25 Cal 611, Rel. on. 1963 Mys L J (Sup) 121 (DB).

—Ss. 58 (f), 59 — Equitable mortgage—Deposit of title deeds accompanied by writing— Registration—Necessity—Registration Act (1908), Ss. 17, 49.

The requisites of an equitable mortgage are : (i) a debt, (ii) a deposit of title deeds, and, (iii) an intention that the deeds shall be security for the debt.

A mortgage by deposit of title deeds does not, however, require any writing, and, being an oral transaction is not affected by the law of registration but it is usual for the deposit to be accompanied by a memorandum in writing. If this writing is the contract of mortgage so that it creates the mortgage, it must be registered. But, registration is not necessary if the mortgage is complete without the writing and the writing is merely a statement that the mortgage has been effected.

Where title deeds are handed over with nothing said except that they are to be security the law supposes that the scope of the security is the scope of the title. Where however title deeds are handed over accompanied by a bargain that bargain must rule. AIR 1939 P C 167, Disting. AIR 1923 P C 50 and 11 Beng L R 405 and AIR 1916 P C 115 Rel. on.

Where the parties professing to create a mortgage by deposit of title deeds contemporaneously entered into a contractual agreement, in writing, such a document, to be admissible in evidence under S. 49 of the Registration Act, must be registered under S. 17, sub-s. 1 (b), of that Act. A I R 1939 P C 167, Rel. on. A I R 1961 Pat 158 (161 to 163) (Pt D) (Prs 22, 24, 25, 33, 38 to 40, 43) (DB).

27 (A). Delivery of title deeds accompanied by written document — Registration when necessary.

—Ss. 58 (f) and 59—Mortgage by deposit of title deeds—Essence of— When parties choose to reduce contract to writing registration if required — Registration Act (1908), S. 17. A I R 1958 Pat 472, Reversed.

When the debtor deposits with the creditor title deeds of his property with an intent to create a security the law implies a contract between the parties to create a mortgage and no registered instrument is required under S. 59 as in other clauses of mortgage. It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. But if the parties choose to reduce the contract to writing this implication of law is excluded by their express bargain and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage and the document requires registration under S. 17 of the Registration Act, 1908 where the value of such property is one hundred rupees and upwards. If a document of this character is not registered it cannot be used in evidence at all and the transaction itself cannot be proved by oral evidence either. A I R 1958 Pat 472, Reversed. (1873) 11 Beng L R (O C) 405 and AIR 1916 P C 115 and AIR 1931 P C 36 and AIR 1950 S C 272, Rel. on. Where the letter was not intended to be an integral part of the transaction between the parties and did not by itself operate to create an interest in the immovable property it did not require registration. United Bank of India Ltd. v. Lekharam Sonaram. (1965) 1 S C W R 726 : (1965) 2 Law Rep 606 : (1965) 35 Com Cas 471 : 1965 B L J R 480 : (1965) 2 S C J 91 : (1965) 2 Andh W R (S C) 5 : (1965) 2 Mad L J (SC) 5 : AIR 1965 S C 1591 (1593, 1594) (Prs 7, 8).

—Ss. 58 (f) and 59—Mortgage by deposit of title-deeds — Memorandum given along with title deeds not forming an integral part of the transaction — Registration not necessary. See Registration Act (17 of 1908), S. 17 (1) (b). AIR 1950 S C 272.

—S. 58 (f) — Deposit followed by memorandum—Registration when necessary.

In cases in which there is first a deposit of title deeds followed by a memorandum the question often arises as to whether the memorandum itself constitutes a contract between the parties. If the memorandum merely records a past transaction of an equitable mortgage, then the writing does not require to be registered. But on the other hand, if the memorandum itself constitutes a contract or a bargain between the parties then in such a case the writing would require to be registered. 57 Bom L R 844 : I L R (1955) Bom 962 : AIR 1955 Bom 454 (456) (Pt B) (Pr 9).

—S. 58 — Equitable mortgage — Registration — (Registration Act (1908), S. 17).

If the letter of deposit itself can be treated as the bargain or the contract of mortgage then the document, be it in the form of a letter of deposit memorandum or an agreement must be registered in order that a valid mortgage may be created. But if the equitable mortgage is effected by oral deposit of title deeds to create a security and subsequently a document is created recording this fact such a document is not required to be registered.

Held, on facts that the document on the face of it, recorded a past transaction and not a document by

which the mortgage was created. It could not be considered itself to be the bargrain which required registration. AIR 1959 Cal 213 (214) (Pt C) (Pr 8).

——Ss. 58 and 59 — Memorandum accompanying deposit of title deeds — No intention of parties to reduce theis bargain regarding security into writing —Document amounting merely to a memorandum of completed transaction—Registration is not necessary. Registration Act (1908), S. 17. 1960 Ker L J 388 : 1960 Ker L T 442.

——S. 58 (f) — Property situate in non-notified town —Mortgage by deposit of title deeds by delivery in a notified town is valid. 1960 Ker L J 388 : 1960 Ker L T 442.

——S. 58 (f) — Mortgage by deposit of title-deeds— Registration — Letter not creating any interest — Registration held not required. See Registration Act (1908), S. 17 (1) (b). 1958 Ker L J 109.

——Ss. 58 (f) and 59— Equitable mortgage—Letter reciting deposit of documents — Registration — Necessity.

In the case of an equitable mortgage, if the documents had been deposited before the execution of the writing reciting it that is, if the documents had been handed over to the creditor as security for the loan and the writing or letter merely recorded a past transaction there would be no need for registration of the letter for a valid equitable mortgage. Where however there was no past transaction of actual deposit of title deeds before the execution of the letter relied on and the letter is the only evidence of the mortgage and the only document by which the mortgage was created the letter has to be registered and if it is not registered it cannot be admitted in evidence to prove a valid equitable mortgage by deposit of title deeds. (1961) 2 M L J 328 : 74 Mad L W 797 : AIR 1962 Mad 258 (259) (Pt B) (Pr 3) (DB).

——Ss. 58 (f) and 59 — Mortgage by deposit of title deeds — Creation of — Memoranda accompanying deposit — Registration — (Registration Act (1908), Ss. 17, 49).

Mortgage by deposit of title deeds may be oral and no writing is necessary, the only requirements being that the debtor should deposit with the creditor the title deeds of his properties with intent to create a security. This by itself will imply a contract between the parties to create a mortgage. In order, however, to obviate a possible defence that the deeds were left with the creditor for other purposes, usually a writing accompanies or is sometimes handed over to the creditor by the debtor. Where the letter accompanying the deposit of title deeds is not merely intended to be an evidence of the deposit of title deeds but is meant to be an integral part of the transaction, the document requires registration and if not registered, no other evidence of the mortgage is admissible. **A I R 1958 Pat 472 (476, 477) (Prs 22, 24) (DB).**

[**Reversed** in AIR 1965 S C 1591.)

——S. 58 (f) — House of an agriculturist—Mortgage deeds in respect of house handed over to creditor — No sale-deed offered as security — House property held not specifically charged—Proviso not applicable. See Civil P. C. (1908), S. 60 (1) (ccc), Proviso (Punjab). **AIR 1963 Punj 205.**

——Ss. 58 (f) and 59 — Mortgage by deposit of title deed — Memorandum furnishing list of properties mortgaged—Registration.

If the document per se creates an equitable mortgage it requires registration, but if it merely recites a completed transaction it does not require registration and it is immaterial whether the creation of the mortgage and the preparation of the memorandum reciting the factum of the completed equitable mortgage with the list of the properties mortgaged may have simultaneously come about.

Held, that the document in question per se did not create the mortgage and therefore, registration was not necessary. **62 Pun L R 599 : A I R 1961 Punj 81 (83) (Pt B) (Pr 9).**

——S. 58 — Deposit of title deeds—Documents recording transaction and list of deeds deposited — Registration — No necessity. See Registration Act (1908), S. 17. **AIR 1958 Punj 218 (DB).**

28. Anomalous mortgage.

See also Notes 23B and 29.

——Ss. 58, 60 and 98—Anomalous mortgage—Rights of mortgage.

The respondent mortgaged with possession two houses to secure payment of Rs. 300 advanced to him by the appellant. One of the terms of the mortgage was that if the mortgagor failed to redeem the property within three years of the date of the mortgage, the profits arising out of the hypotheca were to be appropriated towards the principal. The bond in question was silent about interest.

Held, that the disputed mortgage was neither usufructuary nor one by conditional sale. It was an anomalous mortgage; there would be no right of redemption since by reason of the default of payment of the debt within three years, the document would automatically convert itself into a sale-deed; the rights and liabilities depended on the terms of the contract as controlled by the Transfer of Property Act. The terms of the contract did not offend S. 60 or constitute a clog on redemption. **(1956) Andh W R 1155 : 1957 Andh L T 263 : A I R 1957 Andh Pra 511 (512) (Pr 5).**

——Ss. 58, 60—Sylhet Tenancy Act, S. 34 (as amended in 1943) — Applies to usufructuary mortgages created after amendment — Usufructuary mortgage with personal covenant — It was an anomalous mortgage — Suit for redemption under S. 34 was not maintainable — A suit for redemption of mortgage money under T. P. Act would be competent unless it is barred — Agreement of sale in favour of mortgagee—Effect—See Tenancy Laws—Sylhet Tenancy Act (11 of 1936), S. 34. **AIR 1956 Assam 17 (DB).**

——S. 58 (c) — Applicability — Karar Kharedi Khat (conditional sale) authorising vendor to repurchase after 6 years on repaying the original amount and authorising vendee to remain in possession till then —Anomalous mortgage.

Where document styled as Karar Kharedi Khat recited that the plaintiff (purchaser) shall remain in possession of the property and that after 6 years the defendant (vendor) will be entitled to repurchase the property on payment of the consideration of Rs. 3,000 which was the original consideration for the conditional sale and there was also another agreement whereunder the plaintiff was not entitled to charge any interest on the amount and the plaintiff also admitted that the transaction was one of loan.

Held, that the transaction was anomalous mortgage. **1961 Nag L J (Notes) 87.**

——S. 58 — Usufructuary or anomalous mortgage — Construction of deed.

A mortgage document provided that the ginning factory was mortgaged with possession in consideration of a certain sum payable in annual instalments together with interest. The default clause ran as follows :

'In the event of non-payment of continuous or non-continuous five instalments as specified above

the mortgagee shall be entitled to recover the entire mortgage amount and whatever the amount of mortgage remains payable in consideration thereof the aforesaid factory shall be deemed to have been foreclosed in favour of the mortgagee and that the right of redemption of mortgage of the executant shall become extinguished.'

Held, that the document read as a whole evidenced a transaction of anomalous mortgage the terms of which expressly conferred a right of foreclosure. It was not a usufructuary mortgage and therefore a suit for foreclosure on its basis was maintainable. **62 Bom L R 222 : 1960 Nag L J 235 : I L R (1960) Bom 719 : A I R 1960 Bom 411 (412) (Pt A) (Pr 2) (DB).**

[Reversed on another point in AIR 1967 S C 278].

——Ss. 58 (g) and 67 (a) — Anomalous mortgage — Remedy of mortgagee.

Where under the mortgage without possession a period was fixed for payment of the mortgage debt, and in the event of default the mortgagee was entitled to enter into possession of the land, such a mortgage is an anomalous mortgage under S. 58, and under S. 67 (a) a decree of foreclosure can be passed to enforce it. **I L R (1956) Hyd 339 : A I R 1956 Hyd 107 (110) (Pt C) (Pr 4).**

——Ss. 58, 98 and 105 — Mortgage or lease—Anomalous mortgage and simple usufructuary mortgage — Dead transferring possession to creditor for certain period — Discharge of debt to be out of income — Debtor also contracting for personal liability—Nature of transaction—**Held** it was an anomalous mortgage, a combination of simple and usufructuary mortgage and not a zuripeshgi lease. **AIR 1953 Madh B 9 (12) (Pt C) (Pr 15).**

——Ss. 58 (g) and 98 — Combination of usufructuary and simple mortgage — It is an anomalous mortgage —Right of parties under should be determined by the contract as evidenced by the mortgage deed. **A I R 1956 Mad 434 (437) (Pt A) (Pr 9) (DB).**

——Ss. 58, 67 and 68 —Scope —The document after stating details of consideration proceeded "the principal and interest shall be paid — Mortgagee put in possession and directed to credit the net profits towards the mortgage — Mortgagor also specifically agreeing to pay the principal and interest under the mortgage deed whenever money was available—**Held** the mortgage was a combination of simple and usufructuary mortgage because of personal covenant and therefore a decree for sale could be made under S. 67. **(1952) 2 M L J 55 : AIR 1952 Mad 856 (858) (Pt B) (Prs 10, 11).**

——S. 58 — Orissa Money-lenders' Act, S. 17—Mortgagee put in possession in lieu of interest — Also a personal covenant by mortgagor to pay the mortgage amount by sale of other property — Mortgage is an anomalous mortgage — S. 17 does not apply. See Debt Laws — Orissa Money-lenders Act (3 of 1939), S. 17. **AIR 1951 Orissa 147.**

——S. 58 (g) — Combination of simple and usufructuary mortgage—Suit for sale.

Where in order to secure principal and interest a house is mortgaged with possession and the mortgagor takes back its possession by executing a deed of lease and it is provided that if the mortgagor makes any objection to repayment of the money in Court, it would be considered to be false, it may be deduced from the last provision that a suit for sale is also contemplated and the mortgage is thus an anomalous mortgage i. e., a combination of simple as well as an usufructuary mortgage. **ILR (1957) 7 Raj 268 : 1958 Raj L W 134 : AIR 1957 Raj 32 (33) (Pt A) (Pr 5).**

——Ss. 58 (g), 60 — The principle relating to clog on the equity of redemption embodied in S. 60 applies to anomalous mortgage also. See Transfer of Property Act (1882), S. 60. **AIR 1954 T-C 7(DB).**

29. Simple mortgage usufructuary.

See also Note 28.

——Ss. 58, 67 and 68 — Usufructuary mortgage — Mortgagors also binding themselves parsonally to pay — Mortgage being a simple mortgage usufructuary mortgagee has a right to bring mortgaged property to sale.

The defendants had mortgaged their houses in favour of the plaintiff. The mortgage deed indicated that the mortgagors had bound themselves personally to pay the mortgage money by instalments on specified dates and had, in the event of failure on their part, agreed that the same might be recovered according to law. They had also bound themselves to pay interest on the mortgage money in the form of rent of the property every month and in the event of their failure to do so had agreed that the same might be recovered out of the mortgaged property. Besides this they had also agreed that in case the mortgagees were required to pay house-tax, water-tax and electric charges there would be charge in respect of them also upon the mortgaged property. As the defendants failed to pay the instalments the plaintiff filed a suit for recovery of the mortgage money with interest at the contract rate by the sale of the mortgaged property.

Held, that the mortgage was not a purely usufructuary mortgage but it was a simple mortgage usufructuary and hence the mortgagee had a right to bring the property to sale. AIR 1942 All 326, Disting; AIR 1927 P C 32 and AIR 1947 Lah 40 (FB); Rel. on. The property was clearly subject to a burden for the payment of the amount according to contract. When such burden was there not only for the principal amount but also for the interest and taxes, there was clear right of sale by neceasary implication. **1964 Jab L J 38 : 1964 M P L J 97 : AIR 1964 Madh Pra 305 (306) (Pr 5) (DB).**

——S. 58 — Simple mortgage or usufructuary mortgage — Lessee creating simple mortgage over his interest in favour of B and also executed a rent note agreeing ro pay rent to B for continuing to occupy the house—The rent note was for one year.

A continued to occupy the house even after one year. B died and his legal representative C filed a suit for arrears of rent of Rs. 200 at the rate of Rs. 25 p. m. A contended that though the note was styled as rent note it was in fact an interest note and C was not entitled to recover any rent from him.

Held, that the mortgage was intended to be a combination of simple and usufructuary sort. Interest was agreed upon and the date by which the principal money was to be paid was mentioned in the mortgage deed. The defendant was to continue in occupation as the mortgagee's tenant. There was therefore clearly a relationship of landlord and tenant created between the parties. 65 Mad L J 150; AIR 1933 P C 178, Rel. on. (2) As even subsequent to the period of the rent-note the defendant continued to pay rent to B and, on latter's death, recognised the plaintiff as his landlord, it was futile for A to say that a suit for the recovery of rent was not competent. **1959 MPC 563 : 1960 Jab L J 950.**

——Ss. 58, 67 and 68 — After stating the details of the consideration, a document proceeded to say that "the principal and interest shall be paid." The mode of payment was also pointed out, namely, the mortgagee who was put in possession was directed to credit the net profits towards the mortgage. In addition, the mortgagor specifically agreed to pay the

principal and interest under the mortgage deed whenever the money was available.

Held, that the mortgage deed was a combination of a simple mortgage and usufructuary mortgage because of the personal covenant contained therein. Because of that personal covenant a decree for sale could be made under S. 67. 58 M L J 401. Foll. 14 Mad 232; 17 Mad 131 (FB), 1937 MWN 81, Rel. on. 1952 Mad W N 439: 65 Mad L W 510; (1952) 2 Mad L J 55: AIR 1952 Mad 856 (858) (Pt B) (Prs 10, 11).

——S. 58 (d)—Mortgage—Construction.

In deciding whether a mortgage is a simple usufructuary what is to be ascertained is the real character of the mortgage and not what the mortgagees themselves say about it. 35 Mys L J 232: ILR (1957) Mys 100: AIR 1958 Mys 20 (21) (Pt A) (Pr 5).

——Ss. 58, 67 and 68—Simple mortgage usufructuary —Right to sue for sale.

Where a mortgage deed after reciting that a sum of Rs. 650 was received from the mortgagee and that the properties were left in his possession for a period of two years, stated that immediately after the expiration of the said period the mortgagor would pay the amount to the mortgagee and in case of default the mortgagee may continue to be in possession of the properties:

Held, that the mortgage contained a personal covenant to pay and therefore it could not be regarded a purely usufructuary mortgage but may be called a simple usufructuary mortgage. The mortgagee under such a mortgage had a right to sue for realisation of the mortgage debt by sale of the mortgaged property. The subsequent clause for continuance of enjoyment in case of default in payment was not to nullify the previous covenant to pay on expiry of the period. 34 Mys L J 92: ILR (1954) Mys 15: AIR 1954 Mys 177 (177) (Pr 5) (DB).

30. Vatandar transaction—a mortgage.

——S. 58 (d)—Vatantar transaction—Nature of—Has all the characteristics of usufructuary mortgage. AIR 1953 Kutch 8 (10) (Pt A) (Pr 7).

——S. 58—Digest of Local Customs, S. 645 — Vatantar transaction — Nature of — Amounts to a usufructuary mortgage. See Custom (Kutch). AIR 1953 Kutch 4.

——S. 58 (d)—Usufructuary mortgage—Characteristics of — Vatandar transaction in Kutch amounts to usufructuary mortgage.

The characteristics of a usufructuary mortgage are as follows: (1) possession of the mortgaged property is delivered to the mortgagee; (2) the mortgagee is to appropriate rents and profits of the property in lieu of interest or of principal or of both. (3) the mortgagor does not incur any personal liability to repay the money; (4) the mortgagee is not entitled to foreclose or to sue for sale. The vatandar transaction in Kutch has all these characteristics and thus amounts to a usufructuary mortgage. AIR 1953 Kutch 4 (6) (Pt B) (Pr 7).

——S. 58—Chitham mortgage—Personal liability.

Difference between Chitham and a simple mortgage is that chitham on failure to pay the mortgage amount on due date the mortgagee becomes entitled to recover possession and to enjoy the usufruct, either in lieu of interest or otherwise as might have been agreed between the parties, till the mortgagor chooses to redeem. The nature of a mortgage by conditional sale and of an usufructuary mortgage negatives a covenant of personal liability. Chitham is a kind of an anomalous mortgage. Such being its nature, the question to be decided must turn on the interpretation of its terms. The fact that there is provision in such a mortgage for payment of mortgage amount with interest is not conclusive as even in mortgage by conditional sale and usufructuary mortgage such a provision may be found. What is material is the provision made for recovery or otherwise in case of default. At the same time, the general nature of the mortgage and its incidents as understood in the country where it is prevalent can be taken into account in deciding the question. Where provision made for recovery or otherwise in case of default to pay within the stipulated time was to convert the Ghitham into vatantar it means that the mortgagee was to remain in possession as a vatantar mortgagee till redeemed by the mortgagor. Such a provision by implication negatives a personal liability. It cannot be construed to give an option to the mortgagee either to take vatantar or to sue for recovery of money. AIR 1924 Nag 53, AIR 1939 All 260, Rel. on. AIR 1952 Kutch 65 (66) (Prs 4, 6, 7).

——S. 58 — Kutch Sherista Sangraha, Ss. 585 and 586—Scope and incidents of custom of chit-tham mortgage becoming a vatandar mortgage.

Under S. 585 of the Kutch Sherista Sangraha a chit-tham mortgagee can take possession of the mortgaged property and convert the chit-tham mortgage into a vatandar mortgage if the debtor refuses or does not pay interest or principal and interest on demand when it becomes due. In such a case the custom is that the debtor can redeem the property on payment of the amount due on the date when possession was taken. This is purely usufructuary and income is enjoyed by the mortgagee in lieu of interest. Under S. 586 the chit-tham mortgagee can take possession and convert the chit-tham into a vatandar mortgage when the debtor has gone away. The difference in the case of this kind of vatandar is that the mortgagee has to keep an account of the income and on his return the mortgagor can call for the account and the mortgagee must return the excess of the income received by him over the interest. This is therefore a mortgage with possession and the mortgagee is under an obligation to maintain proper accounts of the income.

The burden of proving that he took possession under S. 585 is on the mortgagee. Though long lapse of time may make the proof difficult, it can only be a circumstance which a Court can take note of in deciding the question. But the difficulty of obtaining evidence cannot in law be allowed to dispense with proof or shift the onus of proof. AIR 1951 Kutch 1 (2) (Pt A) (Pr 8).

31. Mortgage or lease—Test.

——S. 58—Usufructuary mortgage — Mortgage or lease—Rule to determine—S. 105.

Whether the question to be decided by the Court is whether the transaction is a lease or mortgage the only guiding rule that can be extracted from the cases on the subject is that the intention of the parties must be looked into and that once you get a debt with security of land for its redemption then the arrangement is a mortgage by whatever name it is called.

Held, on the construction of the document (1) that under the document, there was a relationship of creditor and debtor between the parties and the property was given as security for the payment of the amount advanced with interest; (2) that whatever ambiguity there might be in the recitals that was dispelled by the unambiguous declaration made by the parties that the property was given as security for the loan and the document was executed as a mortgage; (3) that the gist of the document was not a letting of the premises, with a rent reserved, but a mortgage, of the premises with a small portion of the income of it

made payable to the mortgagor; and (4) that, therefore, there was no scope for the argument in this case that the document was a lease and not a mortgage. Ramdhan Puri v. Bankey Bihari Saran. 1959 S C J 121 : (1959) 1 M L J (S C) 53 : (1959) 1 Andh W R (SC) 53 : 1959 S C A 110 : ILR 37 Pat 1168 : 1959 S C R 1085 : AIR 1958 S C 941 (943 to 945) (Pt A) (Prs 4, 5).

——S. 58—Lease or mortgage and license — Distinction. See Easements Act (1882), S. 52. **AIR 1955 N U C (All) 2770 (DB).**

——S 58—Mortgage or lease—S. 105.

Where from the recitals of a document, which was styled as a deed of possessory mortgage and khandagutta of Inam wet lands, it was manifest that there was a debt carrying interest, that there was the relation of creditor and debtor between the parties and the mode of discharge of the debt was indicated :

Held, that the document was a mortgage and not a lease. (1958) 1 Andh W R 410 : AIR 1958 Andh Pra 507 (509) (Pt B) (Pr 5) (DB).

——Ss. 58, 105 — Usufructuary mortgage or lease — Construction of deed—(Deed—Construction).

Where the parties name the deed in question as a premium lease, the term occurring twice in the deed, at the end as well as in the beginning, the parties appear to be aware of the distinction between a mortgage and a lease and a previous possessory mortgage over the same property is mentioned, there are also counterparts executed by the lessees; there are no words indicating that the land should constitute security for the debt though future interest is mentioned and the whole of such interest is assessed at a consolidated sum and treated as part of the money advanced by the lessees to the lessors, the document is a lease and not a mortgage. The mere fact that part of the sum, which constitutes the consideration for the lease is future interest does not make any difference in the nature of the document. 1957 Andh L T 153 : (1957) 1 Andh W R 283 : A I R 1957 Andh Pra 504 (505) (Prs 3, 4, 5).

——S. 58 — Document whether mortgage or lease—Principles that should be considered.

In order to decide whether a document is a mortgage or a lease the following principles should be taken into consideration. The nomenclature of the document is not conclusive. What has to be considered in each case is as to the true intention of the parties, namely, whether the debt is still subsisting and whether the properties are put in possession of the creditor as security for the debt. Reference to payment of future interest, or provision as to redemption or account taking will be clear indication that the document is a mortgage deed. **A I R 1955 N U C (Andh Pra) 1767.**

——S. 58—Mortgage or lease — Tests — Mortgage of house with possession — Lease back on same date — Suit by mortgagee for arrears of rent and eviction — Maintainability—S. 105.

The defendant mortgaged with possession the house in suit to the plaintiff by a mortgage deed. Simultaneously with the mortgage, by a rent note executed on the same day, the portion of the house in the defendant's occupation was leased back to him by the plaintiff for a term of six months. The plaintiff sued the defendant for possession of the said portion and for arrears of rent on the strength of the rent note.

Held, (i) the fact that the two documents had varying periods of operation will not make any difference in determining the question whether they formed part of the same transaction or not. A I R 1952 Mad 877, Rel. on. (ii) Hence the only inescapable conclusion was that the two documents, Exhibits 5 and 6, formed part of one and the same transaction, that the passing of the rent note was merely a device to enure regular payment of interest and that no relationship of landlord and tenant was at all intended to be created thereby and none was created. It followed therefore that the plaintiff was not entitled to enforce the rent note and recover possession of the premises in the occupation of the defendant. (iii) Though techically the plaintiff was not entitled to recover any rent as no relationship of landlord and tenant existed between the parties there could be no valid objection to giving him a decree for rent on the footing, that it really represented interest repayable by the defendant. A I R 1957 Pat 24, Rel. on. 59 Bom L R 884 : ILR (1958) Bom 765 : A I R 1958 Bom 8 (9, 10) (Prs 2, 3, 4, 6).

——Ss. 58, 105 and 8 — Transfer of possession for securing repayment of loan—Nature of transaction.

A executed a document in favour of B under which possession of land was transferred to B on receipt of Rs. 1,000 from him. Although period of 10 years was mentioned in the deed, B was to pay khand or rent to A and he was not entitled to bring the property to sale. B was to hand over possession to A not at the end of the term but on return of consideration to him by A sometime after the end of the term.

Held, that the property was made security for payment of money and the transaction was obviously a usufructuary mortgage and not a lease. **A I R 1958 Bom 625 (627) (Pt A) (Pr 3).**

——Ss. 58, 105—Lease or mortgage—Test.

The question whether a transaction embodied in a written instrument is a lease or a mortgage with possession has to be determined according to the intention of the parties as expressed in the document, and the test is that when once you get a debt with the security of land for its repayment, then the arrangement is a mortgage by whatever name it is called. ILR (1949) 1 Cal 487.

——S. 58—Compromise decree in suit for redemption of mortgage — Creation of lease — No transfer of any right of enjoyment under compromise — Character of possession of land retained by mortgagee held not changed from that of mortgagee to that of lessee. See T. P. Act (1882), S. 105. **1964 Ker L T 75.**

——Ss. 58, 105 — Lease or mortgage — Intention of parties to be looked to.

Where the question to be decided is whether the transaction is a lease or a mortgage the only guiding rule is that the intention of the parties must be looked into and that once a debt with security of land for its redemption is found, then the arrangement is a mortgage by whatever name it is called. 1959 S C J 121 : (1959) 1 Andh W R (SC) 53 : (1959) 1 M L J (SC) 53 : AIR 1958 S C 941, Rel. on.

Held, on fact that these provisions clearly showed that the intention of the parties was to create a mortgage and not a lease.

Even under the definition of tenant under Kerala Act 4 of 1961 the Court has to find out the intention of the parties as to whether the transfer of possession is for the purpose of the enjoyment of the transferee or for securing the loan advanced by him. 1961 Ker L T 762, Rel. on.

In Ss. 59 and 63 themselves the distinction between mortgage and lease is kept up and not wiped out; and even the payment of purappad under the mortgage cannot convert the mortgage into a lease, for purappad is not necessarily rent but is only the balance that remains after the appropriation of the interest on the mortgage money. 1961 Ker L T 451, Rel. on. **1962 Ker L T 888 : AIR 1963 Ker 261 (261, 262) (Pt A) (Prs 1, 2, 4, 6) (DB).**

——Ss. 58, 105 — Lease or mortgage — Intention of parties must be looked into — Kerala Act 4 of 1961 has not altered this principle.

Where the question to be decided is whether the transaction is a lease of a mortgage the only guiding rule is that the intention of the parties must be looked into and once you get a debt with security of land for its redemption, then the arrangement is a mortgage by whatever name it is called. The provisions of Act 4 of 1961 have not in any way altered this principle. 1959 S C J 121 : (1959) 1 Andh W R (SC) 53 : (1959) 1 Mad L J (SC) 53 : A I R 1958 S C 941, Rel. on.

Held, on facts that these provisions clearly indicated that the parties laid more stress on the interest of the amount advanced than on the actual enjoyment of the properties by the transferee by the cultivation thereof. The parties intended to create a security for the proper repayment of the money advanced; and the predominant intention of the parties was not to create a landlord and tenant relationship. Therefore the document was only a possessory mortgage and not a lease. **1962 Ker L J 660 : A I R 1963 Ker 75 (77) (Pt A) (Pr 7).**

——S. 58 (d) — Usufructuary mortgage and lease—Distinction between—Tests—Transaction held to be mortgage and not a lease — S. 4 of Kerala Act 1 of 1957 not applicable—Tenancy laws — Kerala Stay of Execution Proceedings Act (1 of 1957), S. 4.

It is well settled that the essential difference between a lease and a possessory mortgage is that, in the case of the former, the transfer of the property is for the purpose of enjoyment while, in the case of the latter, the transfer is by way of security for the money advanced by the transferee to the transferor. In other words, in the case of a mortgage there is a loan, and the relationship created is that of debtor and creditor while in the case of a kanom or other lease, the money paid for the transfer is not a loan and is repayable, if at all, only if and when the transferor resumes the property.

Thus, having regard to the fact that the parties called the transaction a panayam, the quantum of the money paid in relation to the value of the property, the purpose for which the money was taken, and, above all to the circumstance that the deed provided for recovery of the money by sale of the property.

Held, that the transaction was essentially a loan and the transfer was only by way of security for loan advanced and not for the purpose of enjoyment. Held, further that as the transaction was a possessory mortgage and not a lease, the periodical payments enjoined by the document were only excess profits and not rent. Section 4 of the Kerala Act 1 of 1957 was therefore no bar to the execution of the decree. **1963 Ker L T 125.**

——S. 58—Lease or mortgage—The nomenclature of a document by itself is not conclusive if the various other recitals in the document evidence a contrary intention. Debtor and creditor relationship was predominant in the whole transaction. **1959 Ker L J 823 : 1959 Ker L R 805 : 1959 Ker L T 854.**

——S. 58—Mortgage or sale—Decided cases—Use of.

The question whether a deed is mortgage or sale is purely one of fact. In the determination of this question on the construction of the deed very little assistance can be derived from the construction put on different documents by the Courts in decided cases. **A I R 1953 Madh Bha 143 (144) (Pt B) (Pr 5) (DB).**

——Ss. 58 and 105 — Mortgage with possession or lease—Panaya deed and panaya kychit both constitute mortgage — Party cannot rely on panaya kychit only and say that it is lease. **A I R 1955 N U C (Mad) 1826.**

——S. 58—Sale or mortgage—Documents of sale and agreement to reconvey whether constitute mortgage —Principles stated. See Mysore Transfer of Property Act (4 of 1918), S. 58 (before amendment by Act 16 of 1938). **1962 Mys L J (Sup) 534 (DB).**

——Ss. 58, 62, 105 and 8—Construction — Usufructuary mortgage and lease of property back to mortgagor — Mortgage and lease whether part of same transaction—Test.

No hard and fast rule can be laid down for determining the question whether an ijara and the kerayanama executed on the same day were part of one and the same transaction. Each case must be judged on its own facts.

But one test may generally be applied to enable the Court to say that the two documents form part of one and the same transaction, where it appears on a reasonable construction of the documents that the properties were given in security not only for the principal amount secured under a usufructuary mortgage bond but also for the interest accruing thereupon.

Held, the two documents in the case were really parts of a single transaction. Held, further that in view of the finding that the mortgage and the kerayanama formed parts of one transaction the amount payable under the kerayanama, therefore, is interest on the mortgage money, and not rent for use and occupation of the mortgaged property, and as such no relationship of landlord and tenant is created thereby. A I R 1955 Pat 357 and A I R 1952 S C 205, Rel. on. **A I R 1957 Pat 24 (26, 27) (Pt A) (Prs 7, 9, 11, 13).**

——Ss. 58, 105 — Mortgage or lease — *A* transferring property with possession to *B* as a security for loan—*A* not liable to pay any interest and *B* not liable to pay any rent — After repayment of debt *B* to continue in possession by paying a 'Vero' of Rs. 3 a year—Document is mortgage and not lease. **('50) 3 Sau L R 236: A I R 1951 Sau 53 (54) (Pt A) (Pr 3).**

——S. 58—Transfer of property with a provision for redemption after 12 years by discharging the amount paid — Transaction held mortgage and not lease—Mortgagor held not entitled to protection of Act. See Debt Laws—Travancore Holdings Stay of Execution Proceedings Act (8 of 1950). **A I R 1952 Trav-Co 104 (DB).**

——Ss. 58, 105—Lease and usufructuary mortgage—(Travancore) Ordinance (2 of 1125—Act 8 of 1950).

Under a document called "Kanapatta Ethiradharam" the defendant advanced the jenmi fanams 1865.3 Chs. 12 cash as a loan and of this a sum of 1500 fanams-1 Ch. 0 cash was declared to be a charge on the properties conveyed thereunder. The yield of the properties was assessed and interest on the loan advanced was deducted. The balance was agreed to be paid as Michavaram along with other perquisites mentioned therein. He also undertook to take renewal after the expiry of 12 years. The balance of 365 fanams 2 Chs. 12 cash was not charged on the property. These properties were outstanding with another party. To redeem him a decree had already been obtained by the owner. The rights of the tenant to the amount advanced as well as to the value of improvements had been purchased in Court auction by the owner. The right over the value of improvements was assessed at fanams 365-2 chs 12 cash and assigned over to the defendant :

Held, that the document was not a lease and the nomenclature of the document as a "kanapattom" was immaterial for the purpose of gathering the intention of the parties and the tenure created thereby. The execution of a decree obtained on such a document was not stayed by Ordinance 2 of 1125 or

Act 8 of 1950. 1951 Ker L T 73 : AIR 1951 Tra Co 190 (191, 192) (Prs 3, 4) (DB).

32. Mortgage and a lease back — General.
(A) Effect.

32. Mortgage and a lease back—General.

——S. 58 (d) — Usufructuary mortgage of a house—Mortgagor continuing to reside in under a rent note executed simultaneously as a tenant and as such liable to pay rent—No relief can be claimed by mortgagee or under U. P Agriculturists' Relief Act in respect of the rent. See T. P. Act (1882), S. 108 (1). AIR 1964 All 370.

——S. 58—Limitation Act (1908), S. 20 (2)—Mortgage with possession—Rent note executed simultaneously—Transaction is not simple mortgage. (1965) 6 Guj L R 364 : ILR (1965) Guj 378 : AIR 1966 Guj 59 (61) (Pt C) (Prs 9, 10).

——Ss. 58, 62—Lease back to mortgagor—Whenever as a part of the same transaction property which is usufructuarily mortgaged is leased back to the mortgagor, the rent accrued is really interest and automatically becomes charge on the property to be paid as part of the mortgage money at the time of redemption if it remains in arrears. See T. P. Act (1882), S. 62. AIR 1959 Ker 112 (DB).

——S. 58 — Usufructuary mortgage — Lease back to mortgagor on rent representing amount of interest—Nature of transaction.

Where parties, deliberately cast bargain in a particular form with the idea that their mutual rights and obligations should be governed by the transaction as represented in that form, then the form cannot be ignored with a view to bring about different rights and obligations. The circumstance that mortgage and the lease formed parts of the same transaction is by no means inconsistent with the effect being given to each according to its terms and it is not permissible to treat what is a possessory mortgage as a simple one. 40 Ind App 31 (PC) and AIR 1933 P C 178 and AIR 1940 Mad 996, Rel. on. 1963 Jab L J 953 : AIR 1964 Madh Pra 129 (132) (Pt C) (Pr 11) (DB).

——Ss. 58 (d) and 108 — Usufructuary mortgage followed by lease back at rent reserved — Rights and liabilities of parties—Suit for eviction and arrears of rent by mortgagee-lessor against mortgagor-lessee—Maintainable.

Where an usufructuary mortgage is executed with notional possession given to the mortgagee, which is followed up by a lease given by the mortgagee to the mortgagor of the same property at an agreed rent reserved, whether the mortgage and the lease constitute one transaction or not, the two liabilities created are not inconsistent or mutually exclusive, and can be pursued and enforced independently of each other. The arrangement does not amount to a simple mortgage. It is open to the mortgagee-landlord to bring a suit for eviction of the mortgagor-tenant and also for the arrears of rent which will be calculated and allowed as rent on the contract and the laws if any, applicable to rent and not as interest, like the Interest Act and similar statutes governing interest. ILR 35 All 48; AIR 1933 P C 178; AIR 1957 Punj 57; AIR 1940 Mad 946 and 1955 M B L J 1250, Rel. on. 1961 M P L J (Notes) 299.

——Ss. 58 (g), 98—Usufructuary mortgage and lease back to mortgagor cannot be construed as a simple mortgage but the terms of each must rule the transaction—Suit for redemption—Held on facts mortgage deed did not create any charge for interest—Lease back created a charge for interest for one year only—The deed of surrender not being stamped or registered did not create charge for arrears of rent. Mortgagor could redeem on payment of principal and mortgagee could not claim any amount for arrears of rent in the suit for redemption. AIR 1956 Mad 434 (441) (Pt D) (Pr 21) (DB).

——S. 58—Usufructuary mortgage — Property leased back to mortgagor—Both documents parts of one and same transaction — Mortgage is not usufructuary but is simple. AIR 1955 N U C (Mad) 3912.

——S. 58—Civil P. C. (1908), O. 34, R. 14—Usufructuary mortgage and lease back — Test to determine whether they form one transaction — Rent in arrears—Subsequent usufructuary mortgage of which arrears of rent was the consideration—Decree for rent was a claim arising under the mortgage and O. 34, R. 14 was a bar to sale of mortgaged property. See Civil P. C. (1908), O. 34, R. 14. AIR 1952 Mad 877.

——S. 58 — Mortgage with possession — Mortgagee leasing back premises to mortgagor—Effect—Relationship of landlord and tenant comes into existence—Mortgagee is not precluded from entering into such a transaction. See T. P. Act (1882), S. 105. AIR 1958 Punj 140.

——Ss. 58 and 105—Construction — Deed held to be mortgage with possession—Intention clear—Evidence to show that the registered deed was not intended to be mortgage with possession cannot be allowed—Lease back to mortgagor — Term not fixed — Possession can be demanded even after expiry of one year—(Evidence Act (1872), Ss. 91, 92). AIR 1955 N U C (Trav-Co) 3468 (DB).

——S. 58 — Travancore Debt Relief Act, S. 2 (ix)—Usufructuary mortgage with lease back — Does not loose the legal characteristic of mortgage within the meaning of S. 2 (ix) of the Travancore Debt Relief Act simply on that account even if the mortgagee agrees to receive only a portion of the rent. See Debt Laws—Travancore Debt Relief Act, 1115 (2 of 1116), S. 2 (ix). AIR 1951 Trav-Co 154 (DB).

32 (A). Effect.

——S. 58—Applicability — Mortgage with possession and lease back to mortgagor — Held lease was not a device for regular payment of interest and mortgagee was entitled to sue for recovery of rent. See Civil P. C. (1908), O. 34, R. 14. AIR 1961 J & K 85 (DB).

——S. 58 — Scope — Possessory mortgage and lease back —Relationship — If that of lessor and lessee — Suit to evict and recover arrears of rent — Maintainability —Deed—Construction—Form of document.

A executed a mortgage in favour of B expressly reciting that B was to have possession of the mortgaged house, that actual possession had been handed over to him, that B was entitled to live in the house himself or to lease it out to somebody else and that the rent so collected was to be considered equal to the interest on the mortgage money. On the day the mortgage was registered there was a lease back executed in favour of A by a separate deed reserving a monthly rent and providing that in default of payment of rent by A he will be liable to be evicted. In a suit subsequently brought by B for eviction and arrears of rent. A contended that the effect of the mortgage and the lease back read together was to create a simple mortgage under which B had no right to possession of the property but was entitled only to enforce the security for recovering the mortgage debt :

Held, that the transaction in question was a mortgage with possession which authorised B to remain in possession of the property or to lease it out to any person of his choice including the mortgagor. The relationship between the parties was that of lessor and lessee and B :was therefore entitled to evict A and also recover the arrears of rent from him. A I R 1927 P C 32, Disting ; ILR 35 All 48 (P C) : AIR 1933

P C 178 and AIR 1928 Mad 543 Rel. on. **A I R 1959 J & K 103 (105) (Prs 9, 11).**

——Ss. 58 (d) and 60 — Usufructuary mortgage and lease back — Right to redeem on payment of principal alone.

When a usufructuary mortgage is accompanied by a lease back and they form distinct transactions the mortgagor is entitled to redeem on payment of the principal mortgage amount alone leaving the mortgagee to seek other remedies for the rent, if any due to him under the lease. A I R 1952 Trav.Co 92, Foll. **I L R (1959) Ker 11 : 1958 Ker L J 1125 : 1958 Ker L T 1139 : AIR 1959 Ker 155 (156) (Pr 15) (DB).**

——Ss. 58, 68, 108 (j) — Mortgage with possession and lease back—Transfer by mortgagor.

Where after creating a mortgage with possession in favour of the mortgagee the mortgagor obtains a lease of the property from the mortgagee and no period is fixed in the lease and the mortgagor sells the property and hands over possession to a third person the mortgagee cannot bring a suit for possession with mesne profits against the transferee treating him as a trespasser. Of course the mortgagee as a landlord can bring a suit according to law, for the eviction of the alienee as tenant and gain possession but the present suit cannot be treated as a suit for eviction by the landlord against a tenant. The decree of the trial Court dismissing the suit of the plaintiff but holding him entitled to the mortgage amount is not proper as the suit is not one for mortgage money. A I R 1950 Madh Bha 72 (75, 76) (Pt A) (Prs 27, 37) (DB).

——S. 58 — Mortgagee leasing back mortgaged property to the mortgagor — Rent representing monthly interest on mortgage money — Failure of mortgagor to repay within stipulated time and sale by him of the property in contravention of a stipulation — Suit by mortgagee for rent on the basis of lease-deed impleading successive purchasers also—Suit decreed—Subsequent suit for mortgage money— Held the rent suit was based on the rent deed and non-payment of rent as per contract and assignment of lessee's interest to the vendees while the cause of action for suit mortgage money was the execution of anomalous mortgage which gave right to the mortgagee right of sale—The suit was not barred under O. 2 R. 2. See Civil P. C. (1908), O. 2, R. 2. A I R 1964 Madh Pra 129 (DB).

——S. 58—Possessory mortgage — Contemporaneous lease back—The documents component parts of same transaction—Rent corresponding to interest on mortgage debt — Mortgagee's right to sue for eviction on basis of his title as lessor. It is not open to the mortgagor to plead that he is not a tenant. See Evidence Act (1872), S. 92. A I R 1963 Madh Pra 265 (DB).

——Ss. 58, 106 and 111 — Suit for ejectment on the ground of determination of tenancy by forfeiture — Plaintiff alleging sale by defendant and lease back to him — Defendant is entitled to deny tenancy and plead that sale deed was only a mortgage—If defendant's case is upheld, suit must be dismissed. See T. P. Act (1882), S. 111. **1963 Jab L J 605.**

——Ss. 58, 68 and 105 — A executing rehan bond in favour of B for certain amount of loan— B executing Kabuliat four days after in favour of A agreeing for hunda rent for period of 9 months — Documents held to be part of same transaction of mortgage— Suit for hunda rent held not maintainable — Decree for interest on mortgage money held could not be passed. A I R 1955 Pat 357 and A I R 1960 Pat 485, Rel. on; AIR 1961 Pat 133, Dist. 1961 B L J R 798 : AIR 1962 Pat 413 (414, 415) (Prs 3, 5).

——Ss. 58 and 106—Usufructuary mortgage and lease back on monthly rent by executing unregistered kirayanama by mortgagor — Documents of same date —No stipulation as to rate of interest in mortgage deed — Mortgage deed and the kirayanama are two different transactions — Suit for arrears of rent on basis of Kirayanama—Maintainable — A I R 1944 Pat 5. applied — Acceptance of rent by mortgagee for the first four months — Presumption as to monthly tenancy applies. 1960 B L J R 605 : **AIR 1961 Pat 133 (133, 134) (Prs 2, 3) (DB).**

——S. 58—Usufructuary mortgage and lease back to mortgagor — Lease in the nature of a machinery for realising interest due on the mortgage and as such formed a component part of the mortgage transaction—Suit for recovery of rent—The cause of action arose out of the same transaction namely the mortgage debt — Suit decreed but amount not realised — Mortgage claim not joined—Subsequent suit for mortgage money held barred by O. 2 R. 2, Civil P. C. as the cause of action was the same as for the previous suit. (Civil P. C (1908), O. 2. R. 2) — A I R 1944 Pat 5, Rel. on. 1959 B L J R 521 : A I R 1960 Pat 106 (107 to 109) (Prs 12, 16, 21).

——S. 58 (d) — Usufructuary mortgage with lease back rent representing interest—Mortgagor cannot be deemed to be a tenant of the mortgagee — Relationship of mortgagor and mortgagee continues—Suit by mortgagee for rent does not lie in the rent Court. See Civil P. C. (1908), S. 9. 1956 B L J R 125.

——S. 58 — Mortgage or lease — Mortgagor taking back a lease of mortgaged property — Kirayanama executed in favour of mortgagee — Rent payable representing interest on mortgage money and not rent for use and occupation — Held, Kirayanama was a device for regular payment of interest and not a lease of the properties. The mortgagor therefore was not a tenant of the mortgagee and mortgagee could not file a suit for eviction of mortgagor under S. 11 of the Bihar Buildings Control Act. See Houses and Rents — Bihar Buildings (Lease Rent and Eviction) Control Act (3 of 1947), S. 2 (h). **A I R 1955 Pat 357 (DB).**

——S. 58 — Usufructuary mortgage—Lease back — Effect—Relationship of landlord and tenant is created. See T. P. Act (1882), S. 105. **AIR 1957 Punj 57.**

——Ss. 58 and 105 — Mortgage of house with possession — Mortgagor executing kabuliyat on same date — Rent stipulated equal to monthly interest on mortgage money —Transactions held were independent — Suit for arrears of rent and eviction on basis of rent note—Held maintainable.

Held on facts, that the mortgage and the kabuliat though executed on the same day could not be treated as parts of the same transaction and therefore a suit for eviction and arrears of rent based on the rent note was maintainable. AIR 1957 Raj 32 and I L R 23 All 338 and ILR 23 All 338 (F. N). at pp. 341-345 and A I R 1920 Cal 363 (FB), Rel. on; A I R 1927 P C 32, Dist.: A I R 1955 Pat 357 and A I R 1960 Pat 106 and AIR 1961 Pat 133, Dist. from. **1962 Raj L W 564 : ILR (1962) 12 Raj 947 : A I R 1963 Raj 69 (71) (Pr 13).**

——S 58 — Usufructuary mortgage and lease back by a separate deed on the same day — Held on facts that the usufructuary mortgage and the lease did not form part and parcel of the same transaction and the mortgagee could not demand interest till the tender of mortgage money relying on the recital in the mortgage deed and the lease deed that the amount of Rs. 180 represented the interest on the mortgage money and treating the transaction as simple mortgage. **A I R 1952 Trav·Co 92 (Pt A) (DB).**

33. Mortgage and agreement to sale—Distinction.

——S. 58—Mortgage and agreement to sell—Distinction—Deed held mortgage and not agreement to sell. AIR 1951 Pat 327 (329) (Pt B) (Prs 4, 5) (DB).

34. Mortgage—Proof to establish different nature — If permissible.

See also Notes to S. 92, Evidence Act.

——S. 58 — Sale or mortgage—Oral evidence is admissible to show that document is a mortgage and not a sale. See Evidence Act (1872), S. 92, Proviso 6. AIR 1962 Manipur 45.

——S. 58 (c):— Usufructuary mortgage—Language of the document plain and unambiguous clearly indicating the transaction to be usufructuary mortgage —Construction — Oral evidence of subsequent events to prove the contrary is not admissible evidence. See Evidence Act (1872), S. 92. AIR 1957 Pat 126.

——S. 58 — Mortgage or sale — Parole evidence not admissible to prove that the document was of sale when the documents in dispute were plain and unambiguous and the terms stipulated therein also conclusively proved that they were intended to operate as usufructuary mortgage deed. See Evidence Act (1872), S. 92, Proviso (6). A I R 1954 Pat 562 (DB).

——S. 58 (c) — Document evidencing usufructuary mortgage—Oral evidence as to—Subsequent conduct of parties showing it to be a sale is inadmissible. See Evidence Act (1872), S. 92. A I R 1952 Pat 431 (DB).

35. Construction.

● ——Ss. 58, 8 — Deed — Construction — Intention of parties — Reference to surrounding circumstances —Permissibility.

Where a document has to be construed, the intention must be gathered, in the first place, from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If, however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended. Chunchun Jha v. Ebadat Ali, 1954 S C J 469 : (1954) 1 M L J 708 : 1954 S C A 611 : 1954 All L J 546 : 1954 B L J R 421 : 1954 Andhra L J (W) S C 45 : (1955) 1 S C R 174 : AIR 1954 S C 345 (346) (Pt B) (Pr 6).

——S. 58 (d)—Dominant intention of parties—Interpretation contrary to it should not be accepted — Usufructuary mortgage—Appropriation of usufruct — Held that the intention of the parties was that the usufruct should be appropriated only towards the principal. AIR 1955 N U C (Andh Pra) 3608.

——S. 58—Deed—Construction—Ogha-chhut transaction in Kathiawar—Nature of — Lease or mortgage — Deed signed by the landholders only—Nature of transaction has to be decided from the intention of the parties — Transaction held mortgage-with-possession on evidence. AIR 1958 S C 941, Rel. on. AIR 1964 Guj 249 (252, 253) (Prs 12, 13, 14).

——S. 58 (d) — Deed — Construction — Intention is dominating factor. A I R 1955 N U C (Hyd) 5624 (DB).

——S. 58 (d) — Deed—Construction—Attending circumstances have to be seen. AIR 1955 N U C (Madh B) 204.

——S. 58 (d) — Deed — Construction— Intention of parties.

The intention of the parties should primarily be gathered from the sale-deed itself. But where the terms of the sale-deed are not clear and decisive the surrounding circumstances and the conduct of the parties may be looked into. A I R 1947 Pat 1, Foll. I L R (1953) Cut 531 : 19 Cut L T 402 : A I R 1954 Orissa 23 (25) (Pt A) (Pr 5) (DB).

SECTION 59

SYNOPSIS

(Transfer of Property Act (1882), S. 59.)

1. Scope.
2. Mortgage when sum secured is one hundred rupees or more.
3. Mortgage when sum secured is less than one hundred rupees.
4. Registered instrument.
5. Attestation by two witnesses.
6. Registered document when takes effect.
7. Unregistered bond—Admissibility in evidence.
8. Effect on transaction when mortgage is not registered or registration is invalid.
9. Mortgage void—Rights of parties.
10. Execution of document—Proof of.
11. Mortgage by deposit of title deeds — How created.

(See Notes to S. 58).

12. Creation of charge under S. 100.

1. Scope.

——S. 59 — Applicability — Mortgage executed by Court in pursuance of decree for specific performance — Attestation by two witnesses — Necessity — O. 21, R. 34, Civil P C., if displaced.

S. 59 of the Transfer of Property Act does not come into play in regard to instruments falling within the purview of O. 21, R. 34. If there is a conflict between the two, the former must yield to the latter by reason of clause (a) of S. 2 of the Transfer of Property Act. Order 21, R. 34, Civil Procedure Code, is not displaced by S. 59 of the Transfer of Property Act. A document which needs to be attested under law can be said to have been executed only when that formality has been gone through. There can be no execution of such an instrument without the necessary number of witnesses having affixed their signatures in token of their having seen the executants sign the document. When once the conclusion is reached that S. 59 is inapplicable to documents falling under O. 21, R. 34, the question of attestation does not assume any importance. The validity of such a document has to be judged in the light of the provisions of O. 21, R. 34. Even assuming that the expression 'execution' does not imply attestation in all cases, where attestation is necessary, there can be little doubt that in the context of O. 21, R. 34, 'execution' comprehends attestation. Apart from the contents of O. 21, R. 34, rules have also been framed by the High Court as to the mode of execution. Documents executed by Courts are not governed by S. 59. The mortgage in dispute was validly executed despite the non-attestation of the document and it was legally enforceable. (1960) 1 Andh W R 185 : 1960 Andh L T 577 : ILR (1960) 1 Andh Pra 81 : AIR 1960 Andh Pra 465 (467 to 469) (Pt A) (Prs 14, 25, 26, 30, 31, 34).

● ——Ss. 59 and 58 — Mortgage by oral agreement or by unregistered instrument prior to the year 1996 is valid for the purposes of J. and K. Restitution of Mortgaged Properties Act. S. 59, T. P. Act does not apply. See Debt Laws—J. and K. Restitution of Mortgaged Properties Act (2006) (17 of 2007), S. 3 (vii). AIR 1959 J & K 64 (FB).

——S. 59—Requirements of equitable mortgage.

(i) There must be a debt (ii) Delivery must be by a debtor or his agent (iii) Delivery must be in the towns mentioned in the Act (iv) Delivery must be to a creditor or his agent (v) Delivery must be of documents of title to immovable property and (vi) Delivery must be with intent to create a security thereon. See T. P. Act (1882), S. 58 (f). AIR 1960 Mad 529.

——Ss. 59 and 100—Amendment of para. 1 of S. 100 —Effect—Section 59 is not made applicable—Charge can be made orally, but if made by document, it must be registered. See T. P. Act (1882), S. 100. AIR 1950 Nag 117.

——S. 59 — Mortgage executed in former Bikaner State prior to enforcement of Act in that State — Requirements of attestation under S. 59 which is not a matter of principle but in nature of technical provision not complied with — Mortgage is not rendered invalid—Act cannot apply to pre-Act transactions though its principles can be applied where Act is not in force. 1963 Raj L W 1 : ILR (1963) 13 Raj 355 : AIR 1963 Raj 116 (119) (Pt B) (Pr 13).

2. Mortgage when sum secured is one hundred rupees or more.

——Ss. 59 and 58 — Loan of Rs. 500 on foot of pronote — Subsequent oral agreement under which creditor entered into possession of debtor's fields till liquidation of debt — Transaction is not mortgage — Creditor cannot be said to be a mortgagee in possession and his right "to possess will not cease" under S. 14 of the U. P. Zamindari Abolition and Land Reforms Act. See T. P. Act (1882), S. 58. AIR 1956 All 150.

——S. 59 — Unregistered document — Transaction cannot amount to a mortgage as hit by S. 59 — But it will still be held to be a loan as defined in S. 2 (12) of the Bengal Money-lender's Act. See Debt-Laws — Bengal Money-lenders Act (10 of 1940), S. 2 (12). AIR 1955 NUC (Cal) 2334 (DB).

——Ss. 59 and 58—Subsequent oral agreement allowing usufructuary mortgagee to remain in possession for a further period in lieu of interest on debt incurred subsequent to mortgage—Subsequent contract amounts to an additional usufructuary mortgage and as such can only be effected by a registered instrument — Suit for redemption — Mortgagee cannot rely on the transaction to resist the suit—Validity—Proof of — Registration Act (1908), S. 17 — Evidence Act (1872), S. 92. See T. P. Act (1882), S. 58. AIR 1952 Hyd 5 (DB).

——S. 59 — Sale deed and agreement to reconvey, both forming mortgage—Registration —Registration Act (1908), S. 17 (1) (b)—Hyderabad T. P. Act, S. 59 —Hyderabad Registration Act, S. 10 (1) (b).

Where the intention of the parties is to effect a mortgage and instead of one mortgage deed being executed, a sale-deed and an agreement to reconvey are executed, then as these two documents form part of one and the same transaction, both would require registration. ILR (1951) Hyd 189 : AIR 1950 Hyd 51 (52) (Pt A) (Pr 1) (DB).

——Ss. 59, 4—Civil P. C. (1908), O. 41, R. 5, O. 48, R. 3, Appendix G, Form 3—Security bond should be in Form No. 3 of Appendix G—Such a bond creates a mortgage and has to be registered where the principal money secured is rupees one hundred or more in order to affect immovable property comprised therein — Registration — (Registration Act (1908), Ss. 17, 49). See Civil P. C. (1908), O. 41, R. 5. AIR 1958 Ker 377 (FB).

——S. 59 — Stamp Act, S. 2 (17)—Property worth Rs. 100 or more — Mortgage deed neither attested nor registered—There is no transfer—The deed is not liable to stamp duty as a mortgage deed. See Stamp Act (1899), S. 2 (17). AIR 1953 Mad 764 (FB).

——S 59—Oral usufructuary mortgage for sum over rupees hundred—Possession of creditors — Effect of —Mortgage not redeemed—Debtor's suit for recovery of possession—Maintainability.

Under S. 59, T. P. Act, an oral usufructuary mortgage is bad and as such the possession of the creditors as mortgagee must be ignored. Similarly where the lower Courts found that the debtors had not redeemed the mortgage and had not obtained possession, their suit against mortgagee for recovery of possession of land must fail.

A debtor borrowed Rs. 154 under a simple bond. Later on he created an oral usufructuary mortgage and put the creditor in possession of land. In a subsequent suit brought by the descendants of the debtor for title and recovery of possession on grounds that they had redeemed the mortgage and had come in possession but were dispossessed, creditors denied the redemption and claimed their possession as settlees. Held, the suit must fail. A I R 1941 Pat 137, followed. A I R 1953 Pat 134 (134) (Pr 2) (DB).

3. Mortgage when sum secured is less than one hundred rupees.

——S. 59 — Evidence Act (1872), S. 91 — Possessory mortgage for Rs. 28 — Document executed but not registered—Proof of transaction should be by production of document itself — No oral evidence is admissible—Even factum of mortgage cannot be proved orally—Fact of delivery of possession can however be proved by oral evidence. 1944 All L J 253, Dissent. See Evidence Act (1872), S. 91. AIR 1955 Vindh Pra 41.

4. Registered instrument.

——S. 59 — Bhopal T. P. Act, Ss. 58 and 59 —Mortgage by conditional sale under Bhopal T. P. Act S. 58 (c) — Proviso to S. 59 (c) T. P. Act of India not in Bhopal Act — Two separate documents—Registration of both documents, necessary when both of them amount to a deed of mortgage. See Bhopal Transfer of Property Act, S. 58. AIR 1956 Bhopal 59.

5. Attestation by two witnesses.

——S. 59 — Mortgage not effected according to S. 59 —Admission of execution—Mortgagee is not absolved from proving attestation — (Evidence Act (1872), Ss. 68 and 70). A I R 1955 N U C (Assam) 588 (DB).

——Ss. 59, 3 — Registering Officer an identifying witnesses—Signatures of during registration of document — When can amount to valid attestating signatures—Registration Act (1908), Ss. 58, 59.

Per Full Bench.—The signatures of the registering officer and/or of the identifying witnesses affixed to the registration endorsement under Ss. 58 and 59 of the Registration Act would amount to valid attesting signatures to the document, within the meaning of S. 59 of the Transfer of Property Act, if the conditions necessary for a valid attestation under S. 3 of that Act have been satisfied and the persons affixing the signatures thereto had the animus to attest.

It would be competent for the parties to show by evidence that any or all of these persons did in fact intend to and did sign as attesting witnesses as well. 55 Mad L J 794 (FB); A I R 1929 Mad 1, Overruled. I L R 54 All 1051 (FB), A I R 1948 Bom 322 and ILR 6 Luck, 619, dissented from. H. Venkata Sastri v. Rahilna Bi. 1961 Mad W N 763 : 74 Mad L W 701 : ILR (1962) Mad 1 : (1961) 2 Mad L J 78 : AIR 1962 Mad 111 (117) (Pt A) (Pr 13) (FB).

——S. 59—Attestation—Meaning of — Executant of a document—If could be attesting witness also.

A party to a document could not be a valid attesting witness also for the same document. Merely because the execution of a document was done by a Power of Attorney Agent on behalf of his principal, the principal cannot be deemed to be a different person for the purposes of being an attesting witness to that document and in law the principal is treated as the executant of the document though the act was done by somebody on his behalf. The analogy of cases where the scribe who puts the mark of an illiterate executant becomes incapable of being the attesting witness also could equally apply to such a case. (1921) ILR 49 Cal 438: A I R 1922 Cal 168, followed.

In the Transfer of Property Act, as it stood before the Amending Act of 1928, there was no definition of the word "attestation". The definition was introduced by the Amending Act of 1926 and has also been retrospective in operation. **(1953) 2 Mad L J 303 : 66 Mad L W 964 : A I R 1954 Mad 126 (128) (Pt B) (Pr 10).**

——S. 59—Attestation—Essentials of—Mortgage deed proper and the execution of — Attested by two witnesses—Endorsement of Sub-Registrar as to execution of deed—Its probative value—It must be proved that witnesses attested in presence of mortgagor. See Transfer of Property Act (1882), S. 3. A I R 1961 Orissa 178 (DB).

——S. 59—Attestation — Proof of—Attesting witness when essential—(Evidence Act (1872), S. 68).

Proof of attestation is essential in order to enforce the transaction as a mortgage transaction. But where execution is not specifically denied attestation can be proved by any other method without taking recourse to the provisions of S. 68 of the Evidence Act which comes into operation only when the execution is specifically denied. A I R 1952 Cal 7, Dist. **ILR (1960) Cut 214 : 26 Cut L T 359.**

——Ss. 59 and 3—Attestation—Validity—Sub-registrar cannot be attesting witness—Applicability of principle in area where Act not in force—(Words and phrases—Attestation).

It is essential under the provisions of S. 59 of the T. P. Act that in order that the transaction may be enforced as a mortgage transaction, it must be attested at least by two attesting witnesses, and under the definition of 'attestation' not only that the executant must sign in the presence of the attesting witnesses or acknowledge the signature before the attesting witnesses but that the attesting witnesses must also sign in the presence of the executant or executants.

The Sub-Registrar cannot be taken to be a competent attesting witness simply by the endorsement that the executant had admitted the signature before him. The definition of the word "attested" requires, that the Sub-Registrar must also sign in the presence of the executant or executants. A I R 1939 P C 117, Foll. Even though the T. P. Act was not in force in letter and spirit to the ex-state area of Nilgiri when the transaction in suit was executed, the principle underlying the provisions of attestation that it must be bilateral was applicable to it. **(1958) 24 Cut L T 461.**

——S. 59—Applicability to Vindhya Pradesh—Deed of mortgage without attesting witnesses—Validity.

The Transfer of Property Act, 1882, came into force in Vindhya Pradesh on May 15, 1949. The principles underlying the Act, however, were applicable even before it. But the technical rule contained in S. 59 did not apply there and hence a mortgage deed which S. 59 requires to be attested, was admissible in V. P. even without attestation and the absence of attesting witness did not contravene the provisions of S. 68 of the Evidence Act. **A I R 1955 Vind Pra 6 (8) (Pt A) (Pr 9).**

6. Registered document when takes effect.

——S. 59—Registered mortgage—Date of operation—(Registration Act (1908), S. 47).

If there is nothing in the mortgage deed to suggest that the mortgage is not to become effective until the consideration money was paid. the mortgage deed becomes operative as from the date of execution of the mortgage and not from the date of its registration. **1957 Ker L T 395 : 1957 Ker L J 310 : AIR 1957 Ker 117 (119) (Pt B) (Pr 4).**

——S. 59—Mortgage when becomes effective.

A mortgage bond becomes an effective document after its due execution and registration — Delivery of the same is not an essential part of it unless it is specifically agreed to between the parties to the deed that title would not pass unless the deed is delivered. **ILR 30 Pat 391 : A I R 1951 Pat 566 (567) (Pt A) (Pr 7) (DB).**

7. Unregistered bond — Admissibility in evidence.

——S. 59—Mortgage by deposit of title deeds—Letter given by debtor constituting not merely the record of a past transaction but the only evidence of the mortgage and the only document by which the mortgage was created — Letter requires registration — If unregistered, not admissible to prove a valid equitable mortgage by deposit of title deeds. See T. P. Act (1882), S. 58 (2). AIR 1962 Mad 253 (DB).

——S. 59—Applicability — Mortgage for Rs. 100 executed in 1895 on cadjan leaf—Presumption as to stamp and registration. The Courts could not presume that a document though executed on a cadjan leaf was properly stamped — The document not being stamped and registered could not be received in evidence to prove the terms of the mortgage in a redemption suit by mortgagor under S. 9-A of the Madras Agriculturists' Relief Act (4 of 1938)—Admissibility of secondary evidence. See Debt Laws—Madras Agriculturists Relief Act (4 of 1938), S. 9-A. AIR 1955 NUC (Mad) 2424.

——S. 59—Simple mortgage not registered — May be used to prove debt.

In the case of a simple mortgage bond, an unregistered mortgage, though invalid as a mortgage, may be used to prove the debt. AIR 1938 Pat 479, Not Foll. AIR 1957 Pat 245, Foll. **1963 B L J R 472 : AIR 1964 Pat 241 (243) (Pt B) (Pr 7) (DB).**

——S. 59—Unregistered mortgage bond— Admissibility in evidence to prove personal covenant — Registration Act (1908), S. 49.

An unregistered document which is compulsorily registrable, can be used as evidence of a transaction not affecting the property comprised therein, when it is separable and divisible from the part which requires registration. A personal covenant to pay the debt in a mortgage transaction is always considered as such separable transaction from the portion of the document charging the property. and consequently an unregistered mortgage document can be admitted as evidence of the personal covenant. **2 Pepsu L R 619: AIR 1952 Pepsu 56 (57) (Pr 2) (DB).**

——Ss. 59 and 58 (d) and (g) — Usufructuary or anomalous mortgage—Unregistered Khata mentioning that amount was borrowed on security of shop — Delivery of possession—Agreement to pay interest — Rent payable by mortgagee to be adjusted towards debt—Mortgagor stipulating that property would not be redeemed until entire debt is paid—Mortgage is usufructuary and not anomalous as there was no personal covenant to pay — Suit by mortgagee for recovery of loan maintainable if he could prove by other evidence that the sum had been paid to the defendant—Khata being unregistered not admissible

even to prove payment of consideration—Registration Act (1908), Ss. 17 (i) (c) and 49. See T. P. Act (1882), S. 58 (d). AIR 1963 Raj 129.

——S. 59—Transfer of Property Act not applicable in Bikaner when the mortgage in question was registered —Mortgage deed not attested—Attestation not required by any law in Bikaner—Mortgage deed admissible in evidence though no attesting witness called for proving execution. See Evidence Act (1872), S. 68. AIR 1955 Raj 39 (DB).

——Ss. 59, 60—Suit for redemption of an unregistered mortgage is maintainable and unregistered deed is admissible in evidence for ascertaining character of possession—(Registration Act (1908), S. 49). AIR 1955 NUC (Raj) 5406.

8. Effect on transaction when mortgage is not registered or registration is invalid.

——S. 59 — Mortgage entered into under mistaken notion of law—Legal formalities not fulfilled — The document unenforceable at law—Suit by mortgagor for possession—S.65, Contract Act applies—Mortgagee has a right to recover consideration money before restoring possession. See Contract Act (1872), S. 65. AIR 1955 J & K 20.

——S. 59—Unregistered deed embodying mortgage transaction — Mortgagee to enjoy usufruct of property till stipulated period at the end of which loan to be repaid — On failure, mortgagee to secure repayment by sale of property through court.

Held that in face of this clear indication as regards the mode of repayment of their debt it was difficult to say that the borrowers had undertaken a personal liability to pay the amouut. The transaction being a mortgage and the document embodying it being unregistered, it could not be enforced as a mortgage bond nor could it be treated as a simple money bond as there was no personal covenant to pay apart from out of the property itself. 1961 M PLJ 1225 : 1961 Jab L J 1471.

——S. 59—Unregistered deed compulsorily registrable —Delivery in pursuance thereof—Non-production of the deed—Secondary evidence of contents admissible to ascertain the nature of possession—Proviso to S. 49, Registation Act applies. See Registration Act (1908), S. 49, Proviso. (1961) MPLJ (Notes) 297.

——S. 59—Scope—Simple mortgage—Document not registered—Non-registration—Effect— The document can operate, at the most as a bond. 1960 Jab L J 706: 1960 MPC 526 : 1960 MPLJ 673.

——S. 59—Usufructuary mortgage on 6th February, 1961—Possession given to mortgagee same day — Mortgage bond not registered—Mortgagor to take back land, in case of payment of principal by Falgoon Purnima of any year — Plaintiff forcibly dispossessed —Suit for recovery of possession by mortgagee held incompetent—Unregistered mortgage bond held liable to be treated as simple money bond—Art. 57 or Art. 66 held applicable and not Art. 80 — Limitation starts from Falgoon Purnima, next to date of loan. See Limitation Act (1908), Art. 57. AIR 1964 Orissa 35.

——S. 59—Unregistered mortgage—Use of—(Registration Act (1908), S. 49)—(Contract Act (1872), Ss. 65: 73)—(Debt laws — Orissa Money-Lenders Act (3 of 1939), S. 2 (1) — Loan).

Where the defendant executed a usufructuary mortgage bond for Rs. 2,000 in favour of the plaintiff under which the only relief open to the plaintiff was a suit for foreclosure but the bond was not registered.

Held, that (1) the plaintiff was entitled to sue for the recovery of the amount of Rs. 2,000 from the defendant. (2) Though in his plaint the plaintiff stated that he reserved his right to recover rent from the defendant by a separate suit, yet he could not file a suit to realise rent (by way of interest) as there was no subsisting valid usufructuary mortgage bond. In that view of the matter, this could not be, in substance a loan. Such a suit to recover back the amount of Rs. 2,000 was a suit by way of damages for breach of contract and could not be a suit on a loan : 1957 SCJ 775 : AIR 1957 S C 743, Foll. (1958) 24 Cut L T 447.

——Ss. 59 and 60—Unregistered rehan bond—Possession for more than 12 years — The person acquires the rights of mortgagee by prescription — Mortgagor has right to redeem—(Limitation Act (1908), Art. 144) —Observations in A I R 1938 Pat 479, held obiter and not correct. See T. P. Act (1882), S. 60. A I R 1959 Pat 164 (DB).

——S. 59—Scope — Non-compliance with S. 59—Person holding property as mortgagee during period of prescription acquires mortgagee rights by prescription — Purchaser of the mortgagor is entitled to a decree for redemption — Right to redeem. See T. P. Act (1882), S. 60. A I R 1957 Pat 245 (DB).

●——S. 59—Acquisition of mortgagee rights by prescription—Mortgage deed not registered—Effect—Suit for redemption—Maintainable — Limitation governed by Art. 148, Limitation Act and starting point will be after 12 years from the date when possession was taken under such mortgage deed. See Limitation Act (1908), S. 28. A I R 1960 Raj 1 (SB).

——Ss. 59 and 60 — Rajasthan Tenancy Act (1955)' S. 183 and Sch. 3, Serial No. 23—Applicability—Unregistered mortgage deed for Rs. 230 — Mortgagee entering into possession — Mortgagor demanding possession and willing to pay mortgage money— Mortgagee declining to do so — Mortgagee is trespasser — Suit by mortgagor for possession governed by Sch. 3 Serial No. 23. See Tenancy Laws—Rajasthan Tenancy Act (3 of 1955), S. 183. A I R 1957 Raj 362.

——S. 59—Registration Act (1908), S. 49 — Unregistered mortgage — Suit to enforce personal liability maintainable—Suit to enforce terms not maintainable. See Registration Act (1908), S. 49. AIR 1957 Raj 299.

9. Mortgage void—Rights of parties.

——S. 59—Oral agreement between debtor and creditor that creditor shall remain in possession of debtor's land in lieu of interest— Transaction is not mortgage —Position of creditor also not that of sub tenant but that of mere licensee — Licence can be revoked by demand for possession on payment of money or by suit for possession. See T. P. Act (1882), S. 58. 1963 All W R (H C) 387.

——S. 59—Suit for redemption of usufructuary mortgage — Execution of mortgage not denied by mortgagee but deed not attested—Mortgage held invalid— Decree however could be granted on basis of mortgagor's title. See Transfer of Property Act (1882), S. 60. A I R 1961 Assam 48 (DB).

——Ss. 59, 58 — Contract Act (1872), S. 11 — Void mortgage—Preliminary decree passed upon consent— Consent cannot avoid what is void—Concept of fresh agreement is barren in ultimate analysis — Consent cannot convert a nullity into a reality. In the second place, consent on a date of the preliminary decree, is no consent when the voidness of mortgage came to knowledge subsequently. (1961) 3 All E R 1169, Rel. on. (1965) 69 Cal W N 593.

——Ss. 59 and 60—Suit for redemption on void mortgage deed—Title established — Decree for possession can be granted—Proof of title independent of written mortgage deed can be given — (Evidence Act (1872), S. 91). A I R 1955 N U C (Madh B) 203.

——Ss. 59 and 60—Invalid usufructuary mortgage—Mortgagee's possession over 12 years—Effect — Suit to recover possession after redemption — Maintainability—Mortgage deed—Admissibility in evidence.

Where a mortgage is invalid in view of the provisions of the Transfer of Property Act, or any other law like a Tenancy Act, or is inadmissible in evidence in view of S. 49, Registration Act, or analogous law, there can be no question of a mortgage coming into existence on the mere basis of twelve years' possession by the mortgagee under the invalid mortgage. Nor can the proviso to S. 49 of Registration Act be used to show the nature of possession where the suit is based on such mortgage deed and the prayer is for redemption of the mortgaged property.

The interest contemplated under Art. 144, is an interest which can arise in law. But if no interest can arise in law at all there can be no question of prescribing for limited interest of a mortgage. A I R 1950 Orissa 213 and A I R 1957 Pat 245, Dissented from; A I R 1938 Pat 479 and A I R 1935 Rang 230 (F B) and A I R 1941 Rang 261 (F B), Relied on. **I L R (1958) 8 Raj 126: 1958 Raj L W 443: A I R 1958 Raj 102 (104, 105) (Pt A) (Prs 9, 16) (DB).**

[Overruled in A I R 1960 Raj 1.]

10. Execution of document—Proof of.

●——Ss. 59, 3 — Lender of mortgage amount not party to mortgage-deed can validly attest the same.

A executed a mortgage of his immovable property in favour of *B* though the money was lent by *C*. The mortgage deed was attested by two witnesses one of whom was *C*, that is the lender himself:

Held, that S. 59, T. P. Act did not debar the lender of money from attesting the deed. So also the definition of the word 'attested' in S. 3 of the T. P. Act which is similar to the one contained in the Succession Act, did not preclude in terms the lender of money from attesting a mortgage deed under which the money was lent.

However, the law requires that the testimony of parties to a document cannot dispense with the necessity of examining at least one attesting witness to prove the execution of the deed. Inferentially, therefore, it debars a party from attesting a document which is required by law to be attested. Where, however, a person is not a party to the deed there is no prohibition in law to the proof of the execution of the document by that person. A distinction has to be drawn in between a person who is a party to a deed and a person who, though not party to the deed, is a party to the transaction. 14 Cal W N 1046 and I L R 37 Cal 525 and A I R 1954 Mad 126 and (1881) 7 Q B D 516, Distinguished; 42 Ind Cas 531 (Bom) and A I R 1931 Oudh 285 (F B), Rel. on. Kumar Harish Chandra v. Bansidhar Mohanty, **(1965) 2 S C A 766: (1965) 2 S C W R 284: A I R 1965 S C 1738 (1739) (Pt A) (Pr 4).**

——S. 59 — Evidence Act (1872), S. 68 — Mortgage executed before T. P. Act — Proof of execution — Certified copy obtained from Registrar's Office—(Registration Act (1908), S. 57 (5).)

Though a certified copy of a mortgage deed obtained from the Registrar's Office would be admissible in evidence for proving the contents of the original document itself, it will not dispense with the proof of the execution of the original mortgage.

Prior to the passing of the Transfer of Property Act, there was no provision of law that the mortgage deed should be attested and, therefore, the special rule of proof in regard to documents required by law to be attested did not apply to a mortgage executed prior to the year 1882. In case of such a mortgage it would be enough to prove that it was executed by the mortgagor in favour of the mortgagee mentioned in the deed.

In the case of all old documents when all the witnesses who can speak of their personal knowledge to the execution of the document have passed away, it is idle to insist that the document cannot be proved, otherwise than by those, who had witnessed its execution. In such circumstances, the execution of the document could be proved by circumstantial evidence. **A I R 1955 N U C (Andhra) 3608.**

——S. 59—Evidence Act, Ss. 90, 65 — Production of certified copy of registered mortgage — Presumption as to original under S. 90 cannot be made that the signature, handwriting, execution or attestation of the original document were in order — Distinction between presumptions under S. 90, Evidence Act and S. 60, Registration Act — Under S. 60 of the Registration Act the presumption is that the execution of the document had been admitted by the executant before the Registrar. But this presumption will not help the party to prove that the deed of mortgage was attested by at least two witnesses which is necessary under S. 59, T. P. Act. See Evidence Act (1872), S. 90. **AIR 1956 Bom 65 (DB).**

——S. 59—Civil P. C. (1908), O. 14, R. 5 — Presumtion in favour of the plaintiff that the formalities of the mortgage deed had been complied with — Defendant praying for amendment of issue — Shifting of onus — No amendment of issue can be allowed — Neither S. 59 T. P. Act nor S. 68, Evidence Act would be of any avail to the defendant. See Civil P. C. (1908), O. 14, R. 5. **AIR 1956 Mys 36.**

——S. 59 — Mortgage deed — Mortgage executed by pardanashin lady—Burden lies on mortgagee to prove that deed was explained to her. See Evidence Act (1872), S. 101. **AIR 1961 Orissa 178 (DB).**

11. Mortgage by deposit of title deeds—How created.

See Notes to S. 58.

12. Creation of charge under S. 100.

——Ss. 59, 4 and 100 — Scope — Combined effect of Ss. 4, 59 and 100, T. P. Act — Charge on immovable property—Amount secured exceeding Rs. 100—Compulsorily registrable. See T. P. Act (1882), S. 4. **AIR 1962 All 101 (DB).**

——S. 59—Security bond creating charge — No evidence to show that the security bond was accepted by the Court or was made a rule of the Court—Registration is necessary in order to create a charge on the immovable property of the value of Rs. 100 or more. See Transfer of Property Act (1882), S. 100. **AIR 1955 N U C (All) 3556.**

●——S. 59—Suit on pronotes on original side of High Court—Defendant granted leave to defend on furnishing security—Security bond in favour of Registrar securing certain immovable properties—Bond attested by only one witness—Validity as document creating charge—Signatures of Registrar identifying witnesses held did not amount to attestation—Charge not created. See T. P. Act (1882), S. 100. **AIR 1962 Mad 111 (FB).**

——Ss. 59, 100 — Creation of charge — Stamped and registered deed necessary. See T. P. Act (1882), S. 100. **AIR 1956 Mad 434 (DB).**

SECTION 59-A

——S. 59-A—Mortgagor—Who is—Grantor of Guzara which grantee mortgaged without any power of transfer and where mortgagees acquired title by adverse possession not a mortgagor—Revision of grant—Grantor does not become mortgagor though he is entitled to redeem—He is not "bhumidar" and is not

entitled to benefit of S. 14, U. P. Zamindari Abolition and Land Reforms Act, 1951. See T. P. Act (1882), S. 58. 1964 All W R (HC) 120 : 1964 All L J 244.

——Ss. 59-A, 65-A — Simple money decree-holder purchasing equity of redemption in execution of his decree against the mortgagor cannot question validity of mortgage. AIR 1929 All 483 and (1954) 2 M L J 12; AIR 1954 Mad 650 and 139 Ind Cas 695 (All), Rel. on. ILR (1961) 1 Andh Pra 89 : AIR 1961 Andh Pra 183 (185) (Pt A) (Prs 9, 16) (DB).

——S. 59-A — Applicability and scope — Plaintiffs claiming not as heirs of mortgagee but as coparceners —Section has no bearing. AIR 1955 N U C (Assam) 5222 (DB).

——Ss. 59-A, 60—Bombay Agricultural Debtors' Relief Act, Ss. 4, 2 (4), (5), 7 — Purchaser of equity of redemption retaining amount of mortgage-debt out of price not entitled to apply under S. 4. See Debt Laws —Bombay Agricultural Debtors' Relief Act (26 of 1947), S. 4. AIR 1960 Bom 247.

——S. 59-A — Limitation Act, Arts. 134 and 148 — Nature of transfer by mortgagee contemplated by Art. 134 is a transfer of larger interest than that of a mortgagee—Transfer as owner—Redemption suit impleading transferee from mortgagee for valuable consideration without notice of the encumbrance—Article applicable is 134 Limitation Act instead of Art. 148, Lim. Act. See Lim. Act (1908), Art. 134. AIR 1952 Bom 217 (DB).

——S. 59-A—Usufructuary mortgage—Personal liability of mortgagor to pay debt—This personal liability to pay debt cannot be extended to mortgagor's heirs—S. 59-A, T. P. Act, does not apply—Application for adjustment of debts made by mortgagor's heirs—Not maintainable. See Debt Laws—Saurashtra Agricultural Debtors Relief Act (1952), S. 4. AIR 1963 Guj 280.

——Ss. 59-A, 68—Debt Laws — Bombay Money Lenders Act (31 of 1947), S. 30 (1) — Purchaser of equity of redemption of mortgage at Court sale — Not a debtor — Cannot apply for mortgage accounts under S. 30 (1) — Mortgage debt—Does not become debt of purchaser of equity of redemption. See Debt Laws—Bombay Money Lenders Act (31 of 1947), S. 30 (1). (1962) 3 Guj L R 1002.

——Ss. 59-A and 68—Exercise of power of sale under S. 69 by first mortgagee — Section does not require a notice to be served on second mortgagee. See T. P. Act (1882), S. 69. AIR 1965 Mad 142.

——S. 59-A — 'Mortgagee' within the definition in S. 59-A would include a person who acquired the interest of the mortgagee under a Court sale and would be a mortgagee both for the purpose of Art. 134 and Art. 148. See Limitation Act (1908), Art. 134. AIR 1954 Mad 650 (DB).

——Ss. 59-A and 60—'Mortgagee'.

A mortgagee for the purpose of redemption would include all persons who derive title from him and it is immaterial whether that title is derived by sale 'in invitum' or by private treaty, whether it is by act of parties, or by operation of law. A purchaser from the mortgagee is also liable to be redeemed, as he must be deemed to be a representative of the mortgagee and to have as such, purchased the property subject to the mortgage and the equity of redemption of the mortgagor. AIR 1957 Pat 136 (138, 139) (Pt B) (Prs 9, 13).

——S. 59-A — Scope — Mortgagee for the purpose of redemption would include all persons deriving title from him by sale in invitum or by private treaty. See Trusts Act (1882), S. 96. AIR 1957 Pat 136.

SECTION 60

SYNOPSIS

(Transfer of Property Act (1882), S. 60.)

1. Scope of the section.
2. Mortgage of moveables — Redemption after default.
3. Law where Transfer of Property Act is not in force.
4. Right of redemption, what is.
5. Right of redemption, when arises.
6. Right of redemption, how exercised.
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8. The payment or tender must be of the mortgage money.
9. Delivery of possession.
10. Retransfer of mortgaged property.
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14. Extinguishment of right to redeem by decree of Court.
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    - (A) Clog—Anomalous mortgage.
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    - (E) One mortgagor acquiring mortgagee right —Redemption by other.
    - (F) One mortgagor—Two or more mortgagees —Redemption by paying one alone.
18. Suit for redemption.
19. Costs of mortgagee in suit for redemption.
20. Onus of proof in suit for redemption.
21. Limitation.
22. Adverse possession of equity of redemption.

1. Scope of the section.

——Ss. 60, 58 (d), 62 — Usufructuary mortgage — Payment of mortgage money by mortgagor — Mortgage comes to an end and cannot be said to exist so long as mortgagor's right to ask mortgagee to perform acts mentioned in S. 60 continues. See T. P. Act (1882), S. 58 (d). AIR 1963 S C 1041.

——S. 60 — Applicability — Essential conditions of applicability of S. 90, Trusts Act, indicated — No one

can be allowed to benefit from his own wrongful act. See Trusts Act (1882), S. 90. AIR 1961 S C 1353.

——Ss. 60 and 62—Scope.

Section 60 is a general provision giving the right of redemption to mortgagors in general. Section 62 deals specifically with usufructuary mortgages. AIR 1953 All 33 (35) (Pt D) (Pr 8) (DB).

——Ss. 60, 59-A — Bombay Agriculturists Debtors Relief Act (26 of 1947), Ss. 4, 2 (4), (5), 7 — Purchaser of equity of redemption retaining amount of mortgage-debt out of price not entitled to apply under S. 4. See Debt Laws—Bombay Agricultural Debtors Relief Act (26 of 1947), S. 4. AIR 1960 Bom 247.

——S. 60—'Due'—Meaning of, in respect of usufructuary mortgage.

Where there is no question of enforcing payment, the word 'due' used in S. 60 means, due for payment by the mortgagor on expiry of the time during which he authorised retention by the mortgagee of possession and enjoyment of usufruct or rent and profits of the property. In a usufructuary mortgage, money becomes due to enable the mortgagor to redeem though it may not enable the mortgagee to sue for its realisation by sale or otherwise. This is due to the fact that a usufructuary mortgagee has to remain in possession till redeemed by his mortgagor. AIR 1953 Kutch 4 (6) (Pt E) (Pr 9).

——S. 60 — Mortgage—Redemption—Law prevailing at time when right of redemption comes into existence and not at time when cause of action for suit for redemption arises governs case. See Transfer of Property Act (1882), S. 2 (c). 1964 Ker L T 203.

——Ss. 60 and 111 (e) and (f)—Landlord and tenant — Tenant accepting usufructuary mortgage from his landlord — Redemption of mortgage — Effect — Tenancy cannot be said to have revived—Tenant not entitled to continue in possession. 1963 Jab L J 641 : 1963 M P L J 673 : ILR (1965) Madh Pra 602 : AIR 1963 M P 296 (297) (Pt A) (Pr 10) (DB).

——Ss. 60, 76 (a), 76 (e), 111 (c) — Redemption of usufructuary mortgage—Lessee from mortgagee cannot continue after redemption — Nature and extent of lessee's title after redemption—Houses and Rents — M. P. Accommodation Control Act (23 of 1955), S. 4.

A lessee can get no more right than what the lessor himself has. This is expressly mentioned in S. 111 (c), T. P. Act. Where therefore, a mortgrgee's interest in the mortgaged property has terminated by the redemption of the mortgage, any lease given by him without the express authority or acquiescence of the mortgagor determines automatically;

Further, under S. 76 (e), a mortgagee cannot also commit any act which is destructive or permanently injurious to the property. The word 'Injury' is used to signify the reduction in the value and utility of the property mortgaged. AIR 1954 All 16, Dissented from. 1961 M P C 840 : 1961 Jab L J 1094 : 1961 M P L J 924.

——S. 60, Last para.—Mortgage liability apportioned between two mortgagors — S. 60 held not applicable. See Debt Laws—Madras Agriculturists Relief Act (4 of 1938), S. 9-A (8). AIR 1954 Mad 818 (DB).

——S. 60 —Berar Land Revenue Code (1928), S. 141 (c) and (d)—Distinction between two clauses — Purchaser obtaining clear title to property sold and not merely equity of redemption — S. 60 not attracted to such a case. See Berar Land Revenue Code (1928), S. 141 (c). AIR 1953 Nag 259 (DB).

——S. 60—Limitation Act (1908), Arts. 142, 148—Suit by mortgagee upon simple mortgage — Plaintiff in whom equity of redemption entirely vested not party to suit—Decree for sale—Auction-purchaser enters upon property as trespasser—Suit for possession is governed by Art. 142—Section 60, T. P. Act read with Art. 148 has no application — Section 60 requires that possession should be the possession of mortgagee as such — In simple mortgage possession obtained by mortgagee or auction-purchaser, in pursuance of sale is not that of mortgagee. See Limitation Act (1908), Art. 142. AIR 1950 Pat 206 (DB).

——S. 60—Evacuee Interest (Separation) Act (1951), S. 9 (1)—Composite mortgaged property—Benefit with regard to interest under S. 9 (1) is claimable only by evacuee mortgagor and not by non-evacuee mortgagor. See Evacuee Interest (Separation) Act (1951), S. 9 (1). AIR 1962 Punj 53 (DB).

——S. 60—Prior lease in favour of a person — Lease not of permanent character — Subsequent usufructuary mortgage in his favour — Two relationships incompatible —First relationship comes to end when subsequent relationship arises for operation. See Transfer of Property Act (1882), S. 111 (f). AIR 1963 Raj 110.

——S. 60 — Pandarapattom lands — Irredeemable tenure, (Malabar law) — Law as to stated. See T. P. Act (1882), S. 58. ILR (1951) Trav-Co 282 (DB).

2. Mortgage of moveables—Redemption after default.

——S. 60 — Clog on redemption — Doctrine applies even to mortgage of moveables — Shares given as security — Creditor given option to appropriate shares —It is clog on redemption and being contrary to S. 177 Contract Act is unenforceable—(Contract Act (1872), S. 177). AIR 1955 N U C (Cal) 5348 (DB).

3. Law where Transfer of Property Act is not in force.

——S. 60 — Mortgage executed in former Alwar State where Act was not in force— Clog on equity of redemption — Stipulation barring mortgagor's right of redemption after certain period—Court's power to ignore stipulation and enforce mortgagor's right to redeem on principle of justice, equity and good conscience.

The equitable principle of justice equity and good conscience has been consistently applied by civil Courts in dealing with mortgages in a substantial part of Rajasthan and that lends support to the contention that it was recognised even in Alwar that if a mortgage deed contains a stipulation which unreasonably restrains or restricts the mortgagor's equity of redemption Courts were empowered to ignore that stipulation and enforce the mortgagor's right to redeem subject of course to the general law of limitation prescribed in that behalf.

Held, that in the present case the stipulation in the mortgage deed that if the mortgage was not redeemed within 15 years the mortgagor's title would be extinguished being a clog could not be enforced so as to bar the suit for redemption by the mortgagor. Murarilal v. Devkaran. (1965) 2 S C J 106 : (1964) 8 S C R 239 : (1964) 1 S C W R 696 : A I R 1965 S C 225 (230, 231) (Pt B) (Prs 12, 20).

——Ss. 60, 1 — Transactions before application of Act to Bilaspur State—Principles apply — Clause in mortgage held clog on redemption. See T. P. Act (1882), S. 1. AIR 1957 Him Pra 46.

——Ss. 60 and 84 — Notice of intention to redeem—Failure to give—Effect.

Though S. 60 does not contain words implying operation of the English rule whereby absence of notice to redeem only gives rise to a claim for interest S. 84 clearly shows that absence of notice of intention to redeem is no bar to tender or payment & if it is no bar to the right to redeem it cannot be a bar

to a suit to redeem. ('50) 52 P L R 460 : I L R (1950) Punj 271 : A I R 1951 Pun 404 (406) (Pt B)(Prs 10, 11) (DB).

——S. 60 and Proviso— Principle of — Applicability to places where Act is not in force—Suit for redemption decreed - Second suit for—Res judicata—(Civil P. C. (1908), S. 11).

The right to redeem is an incident of a subsisting mortgage and is inseparable from it so that the right is co-extensive with the mortgage itself. Again this right subsists until it is properly and effectively extinguished—and the extinguishment of the right of redemption can only take place either by act of the parties concerned or by a proper decree of the Court. But unless such extinguishment does take place the right of redemption is not exhausted. It follows that such a right may then be establishd by another suit (provided of course it is filed within sixty years limitation prescribed by the Limitation Act) though a decree of redemption may have been obtained in an earlier suit and might have remained unexecuted or become barred by lapse of time. If this principle is accepted as correctly applicable to redemption in this country then the same result follows even in those places where the T. P. Act may not be in force as such but where its principles may be in force. So long as the right of redeem is not extinguished effectively either by act of parties or by an order of the Court, the right to redeem must receive its natural and full play. ILR (1957) 7 Raj 964 : 1958 Raj L W 30 : AIR 1957 Raj 321 (325) (Pr 13) (DB).

——S. 60 — Act not in force where mortgaged property is situated — Doctrine of clog on equity of redemption is applicable as a rule of justice equity and good conscience. ('50) 3 Sau L R 236 : AIR 1951 Sau 53 (54) (Pt D) (Prs 5, 6).

4. Right of redemption, what is.

——S. 60—Right to redeem is right.

The right of redemption is a right and not a liability and a person holding such a right cannot be compelled to exercise it on pain of eviction. 1955 Ker L T 541 : AIR 1955 Trav-Co 152 (159) (Pt B) (Pr 4) (DB).

5. Right of redemption, when arises.

——Ss. 60, 91 — Tarwad properties —Redemption—Right of junior member.

It is open to any member of a tarwad to redeem mortgages of tarwad properties. 1958 Ker L J 72 : 1958 Ker L T 99.

——Ss. 60, 67 and 52—Rights of persons deriving title from mortgagee — Suit by successive mortgagees — Each mortgagee not impleaded in suit of other—Auction purchaser who sued earlier held had right to redeem later mortgages—(Civil P. C. (1908), S. 11 and O. 34, R. 1) — (Limitation Act (1908), Arts. 142-144)—Evidence Act (1872), S. 115). ILR (1957) Ker 35 : 1957 Ker L T 185 : 1957 Ker L J 69 : AIR 1957 Ker 48 (50, 51) (Prs 5 to 8) (DB).

——S. 60 — Construction of mortgage-deed — "Merpadiyanil" and "merpaditayappadi," — Meaning of — Suit for redemption — Limitation Act (1908), Art. 148.

Held, on facts (1) that a period has been fixed by the deed the period being from the date of the deed till 15th July 1885;

(2) that the word 'merpadiyanil' meant 'in or at the said time or prescribed time' and the word 'merpaditayappadi' should be translated 'as per or according to' and not 'within';

(3) that there was no expressed provision in the deed entitling the mortgagor to redeem within the specified period notwithstanding the period mentioned in the deed;

(4) that both under the terms of the deed and under S. 60, T. P. Act, the right to redeem only arose after the period mentioned in the deed;

(5) that as a period was fixed in the deed, limitation of 60 years is to be counted from the date when the principal money became due, that is, from 15th July 1885;

(6) that the suit for redemption was within time. (1952) 2 M L J 458 : 65 Mad L W 976 : AIR 1954 Mad 193 (194) (Pr 8).

——Ss. 60 and 62—Right of redemption when arises.

Where a usufructuary mortgagee who is entitled to appropriate the usufruct of the property for a period of 50 years in discharge of the mortgage debt allows the mortgaged property to be sold for arrears of revenue which he was bound to pay under the terms of the mortgage and the mortgagor brings a suit for redemption and possession of the mortgaged property before the expiry of the period, the mortgagee is not entitled to resist the suit on the ground that it is premature. 34 Mys L J 188: ILR (1955) Mys 180 : AIR 1954 Mys 187 (189) (Pt D) (Pr 6).

——S. 60 — Possession with mortgagee — Right to be redeemed before parting with possession—This right cannot arise when a simple mortgagee takes possession under oral agreement in satisfaction of his debt —He is only given a right to foreclose as he has no right to possession — Mortgagee must work out his rights only on basis of mortgage. AIR 1951 Nag 171 (174) (Pt F) (Pr 22).

——Ss. 60 and 59 — Unregistered rehan bond — Possession for more than 12 years—Right to redeem (Limitation Act (1908), Art. 144).

Where a person enters possession of immovable property not on the assertion of any absolute title but on the basis of an unregistered rehan bond in his favour and remains in possession for more than twelve years, he acquires the status of a mortgagee by the doctrine of prescription and so even though the rehan bond is not a valid transaction for want of registration, the mortgagor is entitled to redeem the property. 1959 BLJR 158 : AIR 1959 Pat 164 (164) (Pt A) (Pr 2) (DB).

——S. 60—Mortgagor's right to redeem usufructuary mortgage before due date.

Subject to any contract to the contrary a mortgagor is not in law entitled to redeem a usufructuary mortgage before the expiry of the due date of payment and the question of such a right by way of equitable relief does not arise in the face of the clear provision of law embodied in S. 60 of the T. P. Act. AIR 1925 Cal 105, Dissented from; AIR 1927 Oudh 12, Distinguished. 1957 Pat L R 414 : 1957 BLJR 828 : AIR 1958 Pat 464 (466) (Pt A) (Pr 9).

——Ss. 60 and 59 — Scope — Non-compliance with S. 59—Person holding property as mortgagee during period of prescription—Right to redeem.

Even where the mortgage is not a valid transaction because of non-compliance with S. 59, T. P. Act, still the defendants who are inducted on the property as mortgagees acquire the character of mortgagees of that property because of prescription when it is proved that they were holding the said property in that character during the period of prescription. And in such a case the purchaser of the mortgagor is entitled to a decree of redemption. AIR 1938 Pat 479, held not correctly decided. 1957 BLJR 189 : AIR 1957 Pat 245 (246) (Pr 2) (DB).

——Ss. 60, 59 — Rajasthan Tenancy Act (3 of 1955), S. 183 and Sch. 3, Serial No. 23 — Applicability — Unregistered mortgage deed for Rs. 230 — Mortgagee entering into possession—Mortgagor demanding possession and willing to pay mortgage money — Mortgagee declining to do so — Mortgagor if trespasser

—Suit by mortgagor for possession held must be governed by Sch. 3 Serial No. 23. See Tenancy Laws —Rajasthan Tenancy Act (3 of 1955), S. 183. AIR 1957 Raj 362.

——S. 60 — Mortgage styled as Otti and Kuzhikanom —Provision to pay compensation for trees planted, on redemption—Mortgagee to surrender property on demand on redemption — Mortgagee does not get right to be in possession for twelve years — Redemption suit can be filed any time after execution of deed. ILR (1951) Trav-Co 414 : AIR 1952 Trav-Co 286 (286) (Pr 2) (DB).

——S. 60—Kuzhikanom document—Right to redeem —Document though not styled as kuzhikanam document, yet conferring on mortgagee right to remain in possession for 12 years—Right to redeem held would arise only after expiry of said 12 years. AIR 1951 Trav.Co 170 (170) (Pr 5) (DB).

6. Right of redemption, how exercised.

——Ss. 60, 62 — Mortgage with possession of occupancy holding void—Mortgagor is entitled to sue for possession—Court should decide amount payable to mortgagee. AIR 1955 N U C (All) 4171.

——S. 60—Debtor, one of co-mortgagors—Taking of accounts and scaling down should be of whole mortgage debt—Entire mortgage can be redeemed by debtor. See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 31. AIR 1957 Bom 6.

——Ss. 60, 91—Suit for redemption by co-mortgagor —Other co-mortgagor who is necessary party not joined — Plaintiff may be allowed to redeem whole mortgage on payment of entire amount due. See Civil P. C. (1908), O. 34, R 1. AIR 1964 Ker 309.

——S. 60—Redemption on payment under protest of money demanded by mortgagee — Mortgagor can sue to recover surplus amount from mortgagee. Madh B L R 1955 Civ 387 : Madh B L J R 1955 H C R 1808 : AIR 1956 Madh B 72 (73) (Pt B) (Pr 4).

——S. 60—Specific Relief Act (1877), S. 12—Stipulation for pre-emption by mortgagee — Specific performance after exercise of right of redemption — Not permissible. See Specific Relief Act (1877), S. 12. AIR 1951 Mad 524 (DB).

——S. 60—One or several mortgagors can redeem the whole mortgage : AIR 1930 Nag 173, Held, not good law in view of AIR 1921 P C 125. ILR (1964) Cut 712 : AIR 1965 Orissa 63 (64, 65) (Pt A) (Pr 6).

——Ss. 60 and 59-A — 'Mortgagee' — Purchaser from mortgagee is also liable to be redeemed. See T. P. Act (1882), S. 59-A. AIR 1957 Pat 136.

——S. 60 — Suit by one of co-mortgagors to redeem entire mortgage is maintainable. See Civil P. C. (1908), O. 1, R. 8. AIR 1965 Punj 224.

——S. 60—Scope—Claim to possession without praying for redemption—Competency.

Held, on facts that the suit did not disclose any right of possession; R, K and B had only derivative title claiming through the mortgagee and the plaintiff having at least inherited the equity of redemption, she should have come forward with a suit for redemption of the mortgage. 1957 Raj L W 433.

——S. 60—Redemption barred—That part of transaction partaking of lease—Not enforceable. See Limitation Act (1908), S. 28. AIR 1955 Trav. Co 145 (DB).

7. "Payment."

■ ——S. 60—Income-tax Act (1922), S. 2 (l) (a)—Acquisition of land assessed to revenue — Redemption by paying capitalised land revenue — Land does not remain "assessed to land revenue" within S. 2 (1) (a). See Income-tax Act (1922), S. 2 (1) (a). AIR 1961 S C 487.

——S. 60—Payment of co-mortgagee out of income of property—Discharge of mortgage — Contract Act, S. 45.

Payment obtained from and out of the income of the property in possession of a co-mortgagee though spread over a period of time would in law constitute a payment to the co-mortgagee. Such a payment would amount to a discharge of the mortgage depriving the other co-mortgagee of his right to sue for the debt. 1956 Mad W N 840 : (1957) 1 M L J 3 : AIR 1957 Mad 191 (192) (Pr 2).

——S. 60 — Mortgage for paddy — Suit for redemption—Valuation of paddy.

Paddy has to be valued according to the rate prevalent on the date it becomes payable and in a redemption suit the date on which the paddy due as mortgage amount becomes payable is the date on which the mortgage amount is tendered for redemption. ILR (1956) Trav-Co 1162 : AIR 1957 Trav-Co 246 (249) (Pt B) (Pr 8).

——Ss. 60 and 58 — Mortgage with possession and lease back — Non-payment of rent—Effect—Mortgage debt does not include rent — (Debt Laws—Travancore Debt Relief Act (2 of 1116), S. 8).

Held, on facts that the mortgagor was entitled to redeem the mortgage on payment of the statutory percentage of the debt under the Debt Relief Act and such payment having been made, the relationship of the mortgagor and mortgagee came to an end. (2) The foundation of the lease was the mortgage and when that disappeared, the mortgagee lost his status as lessor. The claim of the mortgagee for recovery of possession and for rent after 22nd January, 1118 could not be entertained. ILR (1955) Trav Co 1071 : 1955 Ker L T 844 : AIR 1957 Trav Co 13 (14) (Pt A) (Pr 4) (DB).

8. The payment or tender must be of the mortgage money.

● ——S. 60 — Madras Agriculturists Relief Act (4 of 1938), Ss. 7, 14 — Mortgage decree — Scaling down against some judgment-debtors — Indivisibility of mortgage debt if affected—There is nothing wrong in law in scaling down a mortgage decree in favour of one of judgment-debtors while as regards others the decree is kept intact. See Debt Laws—Madras Agriculturists Relief Act (1938), S. 7. AIR 1951 S C 189.

——S. 60 — Usufructuary mortgage—Redemption—Repayment of principal amount—Necessity — There can be no question of any redemption without payment of principal amount. See Civil P. C. (1908), O. 34, R. 7. AIR 1963 Assam 176 (DB).

——S. 60 — Mortgage debt — Award by Registrar of Co-operative Societies for sale of mortgage property —Sale in execution — Mortgagor applying for time to deposit amount before confirmation of sale—His right to redeem held not extinguished — Principles of O. 34, R. 5, C. P. C, could be applied. See Civil P. C. (1908), O 34, R. 5. AIR 1963 Bom 230 (DB).

[Reversed in AIR 1968 S C 86].

——Ss. 60, 67—Mortgage money—When becomes due —It can be paid even before demand—Money becomes due when both the rights of mortgagee to sue and of mortgagor to redeem would coalesce. AIR 1955 Cal 194 (200) (Pt B) (Prs 22, 23) (DB).

——S. 60 — Usufructuary mortgage and lease back—Distinct—Right to redeem on payment of principal alone is permissible. See T. P. Act (1882), S. 58 (d). AIR 1959 Ker 155 (DB).

——S. 60 — Subsequent loan on simple money bond —Stipulation not to redeem mortgage before discharge of debt—Enforceability.

Where a mortgagor, after the mortgage, took money from mortgagee and executed a promissory note and also consented to both the loans being consolidated in one khata in the account books of the mortgagee :

Held, that the amalgamation did not augment the mortgage debt and therefore no mortgage decree could be claimed in respect of the amount due under the promissory note. **1959 M P C 102 : 1959 Jab L J 153 : 1959 M P L J 301 : AIR 1959 Madh Pra 172 (176) (Pt B) (Pr 21) (DB).**

——Ss. 60, 58 (a) and (d)—Mortgage money—Includes interest—"Contract to the contrary"—Mortgage with possession—Mortgage deed containing personal covenant to pay — Recovery of outstanding dues from mortgaged property expressly provided — Interest held charged to mortgaged property — No "contract to the contrary." See T. P. Act (1882), S. 58 (a). **AIR 1961 Mad 415 (DB).**

——S. 60 — Compensation in respect of mortgaged property deposited under Madras Estates Abolition Act — Payment of amount less mortgage debt to mortgagor — Debt cannot be scaled down under Act. See Debt Laws — Madras Agriculturists Relief Act (4 of 1938), S. 9A (3). **('60) 73 Mad L W 594.**

——Ss. 60, 67 — Default clause in mortgage fixing term for payment — Mortgage money — When becomes due—Limitation Act (1908), Art. 132.

Where in a mortgage bond fixing a time for redemption and containing a default clause the mortgagee on a default of the mortgagor to pay interest within stipulated time issued a registered notice demanding the entire mortgage money. Held, that the mortgagee had elected to enforce the default clause and the mortgage money became due from the date of the notice. **39 Mys L J 596 : ILR (1961) Mys 666 : AIR 1962 Mys 5 (8) (Prs 5, 6) (DB).**

——S. 60 — Mortgage money when becomes due — Clause providing payment of principal within certain period — It gives mortgagor option and right to make payment within time prescribed. See T. P. Act (1882), S. 67. **('51) 29 Mys L J 51 (DB).**

—— S. 60 — Discharge of mortgage debt by novated agreement is permissible. See Contract Act (1872), S. 62. **AIR 1954 Nag 84 (DB).**

——Ss. 60 and 62 — 'Principal money' — Additional amount agreed to be paid without consideration — Mortgagee to recover such amount must show that the sum was included in mortgage deed for interest. See Contract Act (1872), S. 16. **1959 Raj L W 540 : ILR (1959) 9 Raj 319.**

——Ss. 60 and 83 — Deposit of amount due on mortgage falling short — It is not sufficient tender and mortgagee can ignore it — He can recover interest even on amount tendered at contract rate till date of redemption suit—The fact that mortgagee has filed suit in respect of portion of money due, does not exonerate mortgagor from depositing full amount. **AIR 1955 NUC (Raj) 287.**

9. Delivery of possession.

——S. 60—Obligation of mortgagee, when discharged —Delivery of possession on redemption—Property in possession of tenant from mortgagee — Mortgagor is entitled to insist for delivery of khas possession to him and not merely such possession as is involved by mere direction by mortgagee to his tenant to attorn mortgagor. See Civil P. C. (1908), O. 34, R. 7. **AIR 1956 Mad 301.**

——S. 60 — Mortgage-deed—Construction—Right of redemption is not taken away under terms of bond by delivery of possession. See T. P. Act (1882), S. 58. **AIR 1955 NUC (Raj) 5406.**

10. Retransfer of mortgaged property.

——Ss. 60, 54, 58—Tangible and intangible immovable property — Expression "equity of redemption" whether recognised by Indian Law as distinguished from English law—Sale by mortgagor of immovable property usufructuarily mortgaged is sale of tangible immovable property. See T. P. Act (1882), S. 54. **AIR 1959 Pat 153 (FB).**

11. Proof of redemption.

——S. 60—Proof of redemption—Registered deed is not necessary—(Registration Act (1908), S. 17).

The payment of the money and the restoration of the possession are sufficient evidence of redemption of the mortgage. The redemption of a mortgage can be evidenced by the fact of the payment of the mortgage amount, other facts and the conduct of the parties. A registered deed is not necessary for the redemption of a mortgage. **Madh B L R 1955 Civ 387 : Madh B L J 1955 H C R 1808 : AIR 1956 Madh B 72 (73) (Pt A) (Pr 2).**

12. Extinguishment of right to redeem by act of parties.

——S. 60, Proviso — Redemption suit dropped because of compromise — Compromise evidence by two documents—First document executed by mortgagor in mortgagee's favour — Mortgagor thereby agreeing to convey mortgaged properties to mortgagee within certain time — Conveyance not executed — Second document executed by mortgagee in favour of mortgagor's wife—Mortgagee thereby gifting certain property to her for having brought about her husband's willingness to agree to convey properties to mortgagee—Right to redemption held was not extinguished by these documents. Thota China Subba Rao v. Mattapalli Raju, **1949 F L J 398 : 1949 F L R 484 : 52 Bom L R 181 : 1950 Mad W N 767 : (1950) 1 Mad L J 752 : AIR 1950 F C 31 (3, 7) (Pt C) (Prs 4, 14).**

——S. 60—Purchase by usufructuary mortgagee — Portion of rent which mortgagee was liable to pay very small as compared to portion to be paid by mortgagor—Rent sale—Property purchased by mortgagee in such sale—S. 90 and Illus. (c) are not attracted —Suit by mortgagor for redemption is liable to be dismissed. See Trusts Act (1882), S. 90, Illus. (c). **(1965) 2 S C J 458 : 1965 B L J R 841 : (1965) 2 S C W R 825 : AIR 1966 S C 126.**

——S. 60 — Purchase of equity of redemption by mortgagee by reason of default by mortgagor—Right of redemption—Trusts Act (1882), S. 90.

As between a mortgagor and a mortgagee the legal position may be stated thus : (1) The governing principle is "once a mortgage always a mortgage" till the mortgage is terminated by the act of the parties themselves, by merger or by order of the Court. (2) Where a mortgagee purchases the equity of redemption in execution of his mortgage decree with the leave of Court or in execution of a mortgage or money decree obtained by a third party, the equity of redemption may be extinguished; and, in that event, the mortgagor cannot sue for redemption without getting the sale set aside.

Where a mortgagee in possession who is bound to pay rent under the terms of the mortgage commits default and purchases the lands in a sale in execution of a decree for arrears of rent obtained by the landlord the sale being the result of manifest dereliction of the duty imposed upon the mortgagee by the very terms of the transaction, the provisions of S. 90, Trusts Act, are attracted to the case and the mortgagor's right to redeem is not extinguished. Mrutunjay Pani v. Narmada Bala Sasmal, **1961 Ker L T (SC) 54 : 1961 S C D 559 : (1962) 1 S C R 290 : (1962) 1**

S C J 149 : (1962) 1 S C A 573 : 27 Cut L T 286 : (1961) 1 Ker L R 512 : AIR 1961 S C 1353 (1355, 1356) (Pt B) (Prs 7, 8).

——S. 60—Act of parties—Foreclosure out of Court—Mortgagor orally agreeing to release equity of redemption in favour of mortgagee — Effect of agreement is to extinguish right of redemption—After that there is no mortgage which can become the subject-matter of suit under S. 33, U. P. Agriculturists' Relief Act—(Debt Laws—U. P. Agriculturists' Relief Act (27 of 1934), S. 33). AIR 1955 N U C (All) 4444.

——S. 60—Right of redemption—Extinguishment by act of parties—Redemption by consent of mortgagees prior to stipulated period, not precluded — Sale of hypotheca by manager of joint Hindu family to mortgagee in discharge of mortgage debt — Suit for redemption thereafter is misconceived. ILR (1962) Andh Pra 1054 : AIR 1963 Andh Pra 420 (422, 423) (Prs 20, 22, 32) (DB).

——S. 60—Extinguishment of right to redeem — Act of parties—Simple mortgage—Mortgagee subsequently entering into possession as owner — Adverse possession—(Limitation Act (1908), Art. 144).

Where in the case of a simple mortgage at the request of a mortgagor the mortgagee takes possession of the mortgaged lands in discharge of the mortgage-debt, it amounts to an effective arrangement that the mortgagee should take the lands for the debt. There is nothing to prevent both the mortgagor and the mortgagee from agreeing that the mortgagee should from a certain date hold possession as an owner. AIR 1958 Andh Pra 541 (544 to 546) (Pt B) (Prs 22, 24, 28) (DB).

——Ss. 60, 76 (c) — Mortgaged property sold for arrears of revenue owing to default of mortgagee and purchased by stranger—Latter selling it to mortgagee —Mortgage is revived and can be redeemed by mortgagor. AIR 1936 Pat 434, Not foll. See Trusts Act (1882), S. 65. AIR 1957 Andh Pra 430.

——Ss. 60, Proviso, 91—Mortgagor admitting title of third party to mortgaged property in litigation between mortgagor and third party—Right to redeem, held not extinguished. 60 Bom L R 477 : ILR (1958) Bom 756 : AIR 1959 Bom 172 (174) (Pr 4).

——S. 60—Effect of failure to avoid transfer of equity of redemption — Right to redeem held became extinguished. See Limitation Act (1908), Art. 44. AIR 1953 Bom 424 (DB).

——S. 60 — Extinguishment of right to redeem by act of parties.

Where after the passing of a preliminary decree and before a final decree under O. 34, R. 3 (2), C. P. Code, a mortgagee is allowed to stay in possession of the mortgaged property, allowing the mortgagee to so remain in possession will not amount to such an act as to extinguish the equity of redemption of the mortgagor. ILR (1955) Hyd 451 : AIR 1955 Hyd 190 (192) (Pt B) (Pr 10) (DB).

——S. 60—Suit for redemption — Mortgagees cannot be allowed to take advantage of their wrong—Breach of contract by mortgagee entailing sale of property—Property coming into mortgagee's hands—Mortgagees are trustees of equity of redemption for mortgagor — Mortgagor is entitled to redeem. 1963 Ker L J 1177 : 1963 Ker L T 1076 : AIR 1964 Ker 225 (226, 227) (Prs 5, 7, 8).

——S. 60 — Partial extinguishment of mortgage — (Debt Laws—Madras Agriculturists' Relief Act (4 of 1938), S. 9-A).

Even in a case where, by reason of a purchase by the mortgagee of a share in the property, the unextinguished portion of the mortgage becomes split up, thus enabling separate redemption by the remaining co-owners, the transfer effecting the mortgage would still be the original deed of mortgage and not the mortgagee's deed of purchase. 1958 Ker L T 946 : AIR 1959 Ker 112 (114) (Pt A) (Pr 12) (DB).

——Ss. 60, 82—Purchase by mortgagee.

Where by virtue of their purchase the family of the mortgagee became the owners of an undivided one-half share of the mortgaged property by this act there was a merger of the interest of the mortgagor and the mortgagee in respect of that half share, and by reason of S. 82 of the T. P. Act, an extinguishment of one half of the mortgage which thereafter attached only to the other half share. 1958 Ker L T 946 : AIR 1959 Ker 112 (113) (Pt C) (Pr 7) (DB).

——S. 60 — Mortgaged property in possession of tenants of mortgagor — Mortgagee to obtain possession by evicting tenants by filing suits within six months — Mortgage to run for 12 years after mortgagee had reduced property to his possession — Term, if bad — Supervening legislation preventing obtaining of possession — Frustration — Term of 12 years when to run—(Contract Act (1872), S. 65).

Held, on facts it was clear from the document that the parties to it contemplated a minimum term of 12 years, and this term of 12 years should run from the date of the document. The mortgage must run its stipulated term of 12 years from the date of its commencement without the subsequent starting point which the parties had in mind. This term of 12 years could not be said to commence from the time when the supervening impossibility occurred, for the result of a frustration is to relieve the parties altogether from the obligation of the contract. 1958 Ker L T 220 : 1958 Ker L J 672 : AIR 1958 Ker 245 (246) (Pt A) (Prs 4, 5) (DB).

——Ss. 60, 76 — Mortgagee gaining advantage — Mortgagee has to hold property for benefits of mortgagors and has to submit to redemption by them—Ardianthiram fee held to be payable by mortgagor. See Trusts Act (1882), S. 90. AIR 1958 Ker 230 (DB).

——S. 60 — Decree against mortgagee — Execution sale—Failure to raise objection by mortgagor—Presumption.

In a court-sale, only the right, title and interest of the judgment-debtor passes. Hence, from the fact that no objection was raised on behalf of the heirs of the mortgagors to the property being sold as of the ownership of the mortgagee it cannot be inferred that the property was sold to the mortgagee by the mortgagor and the equity of redemption was extinguished. AIR 1952 Kutch 1 (2) (Pt B) (Pr 7).

——S. 60—Doctrine of merger—Conditions for applicability stated — Mortgage of land by A to B — Sub-mortgage by B to C — C acquiring by partition A's right of redemption — There is no extinction of sub-mortgage. 1956 MBLJ 1243.

——S. 60 — Extinguishment of right to redeem by act of parties — Puisne mortgagee not impleaded in prior mortgagee's suit for foreclosure—Former is not bound by decree—His right to redeem prior mortgage is not lost — Offer by puisne mortgagee to redeem or agreement to purchase decree of prior mortgage does not extinguish his right to redeem prior mortgage. AIR 1955 NUC (Madh:B) 1309.

——S. 60—Right of redemption—Extinguishment of, by agreement.

The right of redemption is an incident of a subsisting mortgage and it subsits so long as the mortgage itself subsists. The right of redemption can be extinguished by an act of the parties or by the decree of a Court. Where an agreement between two mortgagees of different portions of a house contemplates that if either party acquires the equity of

redemption in respect of the entire house, he would retain the right in respect of the portion of the house mortgaged with himself and transfer to the other the right in respect of the portion of the property mortgaged with the other party, the agreement does not itself transfer any right to any party. It is merely an agreement to convey the equity of redemption in respect of the portions of the house from one party to the other. The equity of redemption cannot be held to be extinguished by a mere agreement to convey.

Hence, the agreement does not constitute a bar to the suit or redemption by the mortgagee who has acquired the equity of redemption of the entire house, against the other mortgagee. **AIR 1952 Madh B 3 (7) (Pt A) (Pr 4).**

——S. 60, Proviso—Applicability—Term of mortgage —Impression as to its legal effect — Statement by mortgagee — Not amounting to conveyance of equity of redemption — S. 60, Proviso not attracted. **1962 M P L J 423 : 1962 Jab L J 962.**

——Ss. 60, Proviso, 53A, 58—Mortgage by condition at sale — Sale with condition of repurchase within certain period — Failure to repurchase — Mortgagor relinquishing rights for additional consideration under unregistered deed — Extinguishment of right by act of parties — Subsequent suit for redemption—Maintainability —Proviso to S. 60 held attracted. See T. P. Act (1882), S. 53A. **AIR 1959 Madh Pra 221 (DB).**

——S. 60 — Extinguishment of right to redeem by act of parties—Usufructuary mortgage—Lease back to mortgagor—Suit to recover possession and arrears of rent by mortgagee — Compromise — Compromise deed specifically stating that surrender of possession by mortgagor lessee was in respect of entire rights of mortgrgor lessee — Compromise deed not registered —Nature of mortgagee's possession after compromise — Right to redeem how far affected. See Limitation Act (1908), Art. 142. **AIR 1955 NUC (Mad) 3912.**

——S. 60 — Extinguishment of right of redemption by act of parties. and act of Court — Right extinguished by act of Court in respect of some properties and by act of parties in respect of other — (C. P. Code (1908), O. 23, R. 1). **AIR 1955 NUC (Mad) 84.**

——S. 60 — **Purchase of equity of redemption by mortgagee—Effect.**

The effect of a mortgagee purchasing property mortgaged to him, is, that the mortgage is extinguished as between the mortgagor and mortgagee; the equity of redemption of the mortgagor is lost and he cannot thereafter claim to redeem the property though the mortgagee may choose to keep it alive for his own defence against a puisne mortgagee.

A receipt given by a mortgagee that a mortgage debt has been satisfied is admissible in proof of the dischage of the mortgage amount and would put an end to the relationship of mortgagor and mortgagee. **35 Mys L J 31 : ILR (1955) Mys 234 : AIR 1955 Mys 38 (41) (Pt B) (Pr 8).**

——Ss. 60, 54—Right to redeem—Extinguishment by act of parties — Transfer of mortgaged property to mortgagee—Formalities of law—Writing and registration is necessary—Mere delivery of possession under oral agreement is not enough. See T. P. Act (1882), S. 54. **AIR 1951 Nag 171.**

——S. 60, Proviso — Right of redemption — Extinguishment of, by act of parties—Adverse possession for statutory period by mortgagee under invalid sale —Right of redemption extinguishes—Limitation Act (1908), S. 28 and Art. 144.

A mortgagee cannot by a mere assertion of his own, or, by unilateral act on his own part convert his possession as mortgagee into that of an absolute owner. But the principle applicable to the consequences of a bilateral act of the mortgagor and the mortgagee is, however, different and the bilateral acts of the parties, though invalid and, therefore, inoperative to convey title on the dates of those transactions, would operate to give adverse possession which, if continued for the statutory period, would ripen into a good title.

Where the defendants mortgagees were in possession of suit lands as purchasers since 1917 and asserted their rights as purchasers since 1919-20 even though the sale was invalid for non-compliance with provisions regarding registration.

Held, that the mortgagees acquired a title as absolute owners of the lands by 1932. **AIR 1962 Pat 198 (200, 201) (Prs 9, 10) (DB).**

——S. 60—Right of redemption — **How extinguished —Usufructuary mortgage—Change in nature of possession by act of parties—Effect—Adverse possession —Estoppel — (Limitation Act (1908), Arts. 144, 148, S. 28)—Maxims — Once a mortgage, always a mortgage)—(Evidence Act (1872), S. 114).**

The maxim 'once a mortgage always a mortgage' applies and the only way in which a mortgage can be terminated as between the parties to it is by the act of the parties themselves, or by merger, or by an order of the Court, or by a special statute to debar it. Therefore when a party enters upon possession as a mortgagee, the mortgagor has a right to redeem, unless there is either contract between the parties, or a merger, or a special statute or an order of the Court to debar them, as provided by the proviso to S. 60 of the Transfer of Property Act. **ILR 36 Pat 753 : AIR 1957 Pat 502 (507) (Prs 30, 31, 34) (DB).**

——S. 60—Purchase by mortgagee—Effect—Mortgage interest will continue to subsist on account of trust imposed on estate held by mortgagee. See Trusts Act (1882), S. 90. **AIR 1957 Pat 136.**

——S. 60—Statutory mortgagee — Fiduciary relationship with co-sharers—Advantage gained as mortgagee —Equity of redemption with respect to land of co-owners held not extinguished — (Trusts Act (1882), S. 90)—(Co-sharers). See Tenancy Laws—Bihar Tenancy Act (8 of 1885), S. 171 (1). **AIR 1953 Pat 27 (DB).**

——S. 60 — Mortgage of occupancy right to landlord mortgagee—Effect of S. 53 (6) of Punjab Tenancy Act on right of redemption — Landlord still remains a mortgagee — By getting himself recorded in revenue papers as owner he cannot defeat right of mortgagor. See Tenancy Laws—Punjab Tenancy Act (16 of 1887), S. 53 (6). **AIR 1954 Punj 86.**

——S. 60—Relinquishment of right in mortgage property — Application for mutation by mortgagee in revenue records — Mortgagor omitting to oppose — Mortgagor's title is not lost—He can enforce his right of redemption. **AIR 1955 N U C (Trav-Co) 6003 (DB).**

——S. 60 — Provision for renewal — It will not by itself be sufficient to create an irredeemable tenure. See Tenancy Laws — Travancore Jenmi and Kudian Act (5 of 1071, M.E.), S. 3 (1). **AIR 1954 Trav-Co 443 (DB).**

——Ss. 60, 67—Purchase by hypothecatee of all items in property—Purchase, in respect of some, infructuous — Integrity of mortgage is broken. See T. P. Act (1882), S. 67. **AIR 1951 Trav-Co 101 (DB).**

13. Purchase by mortgagee at Court sale, if extinguishes right to redeem.

——S. 60—Trusts Act (1882), S. 90 — **Sale of tenancy in execution of decree for rent — Purchase by mortgagee in possession—Right of tenant to redeem —(Tenancy Laws—Bihar and Orissa Tenancy Act (2 of 1913), S. 225.)**

Held, on facts (i) that in the absence of any special statutory provision to the contrary the case was governed by S. 90 of the Trusts Act.

(ii) that B was a mortgagee and apart from special statutes, the only way in which a mortgage could be terminated as between the parties to it was by the act of the parties themselves by merger or by an order of the Court. The maxim "once a mortgage always a mortgage" applied. Therefore, when B entered upon possession he was there as a mortgagee and being a mortgagee A had a right to redeem unless there was either a contract between the parties or a merger or a special statute to debar them.

(iii) that on obtaining possession under S. 225, Orissa Tenancy Act, B became a statutory mortgagee and was still liable to redemption. B's right as a mortgagee were however preserved to him under S. 225 (2).

(iv) that when B purchased under the second sale he did not thereby destroy A's right to redeem because he was at that time standing in A's shoes as a mortgagee in possession under S. 225 (1) and his purchase so far as title was concerned, had exactly the same effect as if A himself had purchased the property.

(v) that there was equally no question of extinction by merger of a lower estate in a higher because what B purchased was the tenant's estate and not the landlord's. A was therefore entitled to a decree for redemption. Sidhakamal Nayan Ramanuj Das v. Bira Naik, 20 Cut L T 92 : AIR 1954 S C 336 (337) (Prs 8, 9).

——S. 60—Usufructuary mortgage—Right to redeem —Extinction of, by sale for arrears of land revenue— Subsequent sale by auction purchaser in favour of mortgagee — No evidence to establish revenue sale benami for mortgagee — S. 90, Trust Act not applicable—Suit for redemption held not maintainable. ILR (1963) 15 Assam 315 : AIR 1963 Assam 176 (178) (Pt A) (Prs 9 to 12) (DB).

——S. 60—Property mortgaged—Mortgagee purchasing it in execution sale of decree obtained by stranger on prior hypothecation—Effect of such purchase on equity of redemption of mortgagor.

Where the mortgagee with the permission of the Court, purchased in execution sale of a decree obtained by stanger on a prior hypothecation executed in his favour by the mortgagor :

Held, (1) that the fact that the mortgagee applied to Court for permission to purchase the property was not a ground for holding that the purchase was for the benefit of the mortgagor; (2) that the mortgagee was not a trustee for the equity of redemption to the mortgagor and that the right of the mortgagor to redeem the mortgaged property was extinguished by the sale and delivery of the same in execution of the hypothecation decree. AIR 1965 Ker 132 (133, 134) (Pt A) (Prs 5, 8, 9) (DB).

——S. 60—Purchase by mortgagee at revenue sale, if extinguishes right to redeem.

When between the mortgagor and the usufructuary mortgagee there is an agreement that the mortgagee need pay only the Government revenue on the land in the patta mortgaged then because as between the mortgagor and the Government all the lands included in the patta are liable for the entire sum due thereunder, the mortgagee has got no obligatory duty cast upon him to pay the Government revenue, and if as a result of any default on the part of the mortgagor to pay the revenue on the other lands in the patta, the land mortgaged is sold and purchased by the mortgagee, the purchase would extinguish the rights of the mortgagor to redeem. AIR 1955 N U C (Mad) 4334.

——S. 60—Coorg Land Revenue Act, Ss. 106 (4) and 145—Scope and applicability—Benami purchase by usufructuary mortgagee at revenue sale brought about by his own default — Effect of, on right to redeem — (Trusts Act (1882), S. 90) — (Coorg Land Revenue Act, Ss. 106 and 145.)

Where a usufructuary mortgagee who is bound under the terms of the mortgage to pay the land revenue to the Government, fraudulently allows the property to be sold for arrears of Government revenue and purchases the property benami in the name of a third person, neither S. 106 (4) nor S. 145, Coorg Land Revenue Act, can operate as a bar to the mortgagor's suit for redemption and possession of the mortgaged property which has continued all along in the possession of the mortgagee. Section 106 (4) of the Coorg Land Revenue Act is meant to bar a suit against a real purchaser in a revenue sale, where a certificate has been issued to him and he has been put in possession, for a declaration that the sale is benami; and cannot be invoked to assist a benami purchaser who has been a party to the fraud with the mortgagee and has sought to assist the mortgagee to commit breach of a constructive trust as defined under S. 90 of the Indian Trusts Act. 34 Mys L J 188 : ILR (1954) Mys 180 : AIR 1954 Mys 187 (188) (Pt A) (Pr 3).

——S. 60 — Mortgage by father on his own behalf and on behalf of his minor son — Suit on mortgage —Minor son's share excluded from suit — Decree against father — In execution property purchased by mortgagee himself — Minor son cannot redeem mortgage unless and until he sets aside sale — Civil P. C. (1908), O. 34, R. 1. AIR 1952 Nag 202 (204) (Pt A) (Pr 17) (DB).

——Ss. 60, 72 (b)—Mortgagee in possession required to pay rent of mortgaged property—Default—Sale of property for arrears of rent—Purchase by mortgagee —Right to redeem, not extinguished — Suit for redemption, is maintainable — Period of limitation is governed by Art. 148 of Limitation Act and not by Art. 120 thereof. See Trusts Act (1882), S. 90, Illustration (c). AIR 1956 Orissa 61 (DB).

——S. 60 — Trusts Act (1882), S. 90—Applicability— Usufructuary mortgage — Liability to pay rent on both mortgagee and mortgagor — Both committing default — Sale in execution of decree for rent — Property purchased by mortgagee — S. 90 not applicable — Right of redemption is lost. See Trusts Act (1882), S. 90. AIR 1961 Pat 439 (DB).

——S. 60 — Applicability and scope — Rent sale of mortgaged property—Purchase by mortgagee—Right of redemption—Held did not subsist. See Trusts Act (1882), S. 90. AIR 1958 Pat 649 (DB).

——S. 60—Mortgagee purchasing part of mortgaged property at rent sale—Rights and liabilities of.

Where the mortgagees have acquired portions of the mortgaged properties under rent sales free from encumbrances they cannot be made liable for payment of any portion of the debt. 1958 B L J R 252 : AIR 1958 Pat 649 (Pt C) (Pr 11) (DB).

——S. 60 — Mortgagee — Sale for arrears of rent — Extinguishment of equity of redemption — Revival when mortgagee obtains settlement of land from purchaser — Suit for redemption held must fail. See Trusts Act (1882), S. 90. AIR 1957 Pat 497 (DB).

——Ss. 60, 76 — Revenue sale — Purchase by mortgagee — Mortgagee not taking undue advantage of her position as such — Mortgage held entirely extinguished by revenue sale. See Trusts Act (1882), S. 90. AIR 1957 Pat 452 (DB).

——S. 60 — Rent sale —Extinguishment of mortgage —(Maxims—Commodum ex injuria sua nema habere debet)—Equity—Fraud).

Where a tenant mortgages his property with possession, and the mortgagee in possession, who is bound to pay rent, has made default in payment of rent, in consequence of which the holding is brought to sale by the landlord in execution of the rent decree, and is purchased by the landlord himself, but later the property comes into the hands of the original mortgagee, the mortgagor has no right of redemption when the rent sale is not proved to be fraudulent because equity of redemption is forever extinguished by the sale in execution of the rent decree and does not revive when the mortgagee eventually obtains the property. Convenience cannot accrue to a party from his own wrong (commodum ex injuria sua nema habere debet). **AIR 1957 Pat 136 (137) (Pt A) (Pr 6).**

——Ss. 60, 76 (c) — **Rent for period before mortgagee's possession — Decree — Extinguishment of right of redemption.**

Unless the mortgagees have actually collected rents or profits for a period prior to their getting into possession or unless they were so authorised to do, the mortgagor must pay the revenue on the property for the period prior to the possession of the mortgagees. Where there was an express provision in the mortgage deed that the mortgagors would pay the rent, the liability of the mortgagors, to pay rent was explicit and it was not at all necessary for the mortgagees to pay rents, more so if the rent was due prior to the mortgage. If in such a case the property is sold in execution of a decree for rent and purchased by the mortgagee the right of redemption is extinguished by a decree of the Court for arrears of rent and the property having been sold in execution of that decree the purchase by the mortgagee does not enure to the benefit of the mortgagor. **1956 BLJR 495.**

——S. 60 — Mortgage — Redemption — Mortgage of holding — Mortgaged property sold for default of mortgagee for rent and other charges — Property purchased by rehandars themselves — Subsequent sale by rehandars — Transferee making no enquiry as to title of transferor — Transferee cannot resist claim for redemption by mortgagor. **AIR 1952 Pat 476 (477) (Pt B) (Pr 8).**

——Ss. 60, 78, 92 and 94 — Suit by prior mortgagee —Puisne mortgagee not impleaded — Execution of decree—Prior mortgagee purchasing property—Suit by subsequent mortgagee to enforce his mortgage — Prior mortgagee made party — Prior mortgagee can redeem subsequent mortgagee. **AIR 1952 Pat 321 (321) (Pr 5) (DB).**

——S. 60 — Execution of mortgage decree for sale—Mortgagee decree-holder purchasing mortgaged property—Rights of—Integrity of mortgage is broken up — Person interested in portion of mortgaged property not impleaded in suit — Suit for redemption by such person — Partial redemption could be decreed. **AIR 1952 Pat 101 (103, 105) (Pt A) (Prs 14, 21) (DB).**

——S. 60—Mortgagee bound to pay michavaram due committing default — Mortgaged property sold in execution sale to recover michavaram due — Mortgagee purchasing property benami — Right of redemption not affected. **AIR 1952 T.C 53 (55, 56) (Prs 6, 11) (DB).**

14. Extinguishment of right to redeem by decree of Court.

● ——S. 60, Proviso —Right of redemption —Extinguishment of by decree — Decree must be in prescribed form — Unless right is so extinguished second suit for redemption is not barred — Old decree does not operate as res judicata — Civil P. C. (1908), S. 11 : AIR 1945 Mad 225, Reversed. Thota China Subba Rao v. Mattapalli Raju, **1949 F L J 398 : 1949 FLR 484 : 52 Bom L R 181 : (1950) 1 Mad L J 752 : 1950 Mad W N 767 : AIR 1950 FC 1 (6) (Pt A) (Pr 12).**

■ ——Ss. 60, 98—Anomalous mortgage—Final decree for foreclosure passed — Court has no jurisdiction to re-open decree and to extend time for redemption on equitable ground. See Civil P. C. (1908), O. 34, Rr. 2, 3. **AIR 1950 P C 88.**

——S. 60—**Right of redemption—(C. P. Code (1908), O. 34, R. 7)—(U. P. Agriculturists' Relief Act (27 of 1934), S. 12).**

A preliminary decree passed under O. 34, R. 7 (as it stood before its amendment in 1929) by itself does not put an end to a mortgagor's right to redeem even if it purports to say so. Even under the law as it stood prior to the amendment, a final decree had to be passed under O. 34, R. 8, before the right to redeem could be lost. In the absence of such a final decree, the right of redemption remains intact, under S. 60, T. P. Act, notwithstanding the preliminary decree and the mortgagor as well as his lessee against whom the preliminary decree is passed are entitled to apply under S. 12, U. P. Agriculturists' Relief Act. **1953 All W R (HC) 153 : 1953 All L J 258 : AIR 1953 All 503 (504) (Prs 4, 5, 7).**

——S. 60—Suit for redemption — Preliminary decree passed — Mortgagor not paying decreatal amount—Mortgagee not applying for final decree — Right of redemption is not extinguished—U. P. Agriculturists' Relief Act (U. P. Act 27 of 1934), S. 12. **1950 All L J 86 : 1950 All W R 189 : ILR (1951) 1 All 117 : AIR 1950 All 88 (88) (Pt A) (Pr 4).**

——S. 60 — **Extinguishment of right to redeem by order of Revenue Court.**

Where an heir stepped into the shoes of the original mortgagor, she is entitled to redeem the property at any time, and any decision of the revenue Courts in accordance with which an entry contrary to her claim was made, could not operate to deprive her of the right to redeem the property within the normal period of limitation. **AIR 1956 Bom 237 (238) (Pt B) (Pr 5).**

——S. 60 — **Extinguishment of right to redeem — Decree of foreclosure—Effect.**

Unless the right to redeem is expressly extinguished, and the decree contains a declaration that the mortgagor is debarred from all rights to redeem, the right remains despite the fact that a final decree for foreclosure has been passed. **ILR (1956) Hyd 339 : AIR 1956 Hyd 107 (108) (Pt A) (Pr 2).**

——S. 60—**Extinguishment of right to redeem — Defective final decree under C. P. Code, O. 34, R. 3 (2) —Effect of.**

Where in the final decree passed under O. 34, R. 3 (2), C. P. Code, there is no order of the Court to the effect that the mortgagor's right of redemption is extinguished, the right of redemption is not lost. **ILR (1955) Hyd 451 : AIR 1955 Hyd 190 (191) (Pt A) (Pr 7) (DB).**

——S. 60, Proviso — Right of redemption — Second redemption suit — Erroneous decree extinguishing right of redemption — Right though wrongly extinguished subsequent redemption suits cannot be maintained—Even erroneous decision operates as res judicata—C. P. Code (1908), S. 11. **(1964) 1 Ker L R 158 : AIR 1965 Ker 153 (153) (Pt B) (Prs 1, 2).**

——S. 60 — **Second suit for redemption — Maintainability — Right to redeem — When extinguished—(Civil P. C. (1908), O. 34, R. 8).**

Where a decree for redemption was to the effect that if the mortgage amount and the value of improvements due to the mortgagee were not paid within

three months of the date of the decree, "the plaintiff shall be debarred from all rights to redeem the property," but no final decree under S. 93, T. P. Act was passed.

Held, that the right to redeem the mortgage could not be said to be extinguished and hence a second suit for redemption was maintainable. 1957 Ker L T 1237.

——Ss. 60 and 67—Final decree for sale obtained by mortgagee — Transferee of mortgagor to get benefit for reduction of debt—Determination of claim under S. 24 of M. P. Act (1 of 1951) and passing of order under S. 27 — Remedy for decree-holders was by application under S. 28—Final decree was no longer executable—Benefits under S. 43 not open to alienee —Application for recovery of debt before executing Court was converted into one under S. 28. See Tenancy Laws—M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 24. 1962 M P L J 973.

——Ss. 60, 67—Suit by sub-mortgagee.

The decree of Court contemplated in S. 60 is the final decree in a mortgage action foreclosing the mortgagor of his right to redeem. It is open to a sub-mortgagee in an action to enforce his mortgage to obtain a decree foreclosing the right of not merely his mortgagor but also of the main mortgagor to redeem and a final decree passed in such an action would operate to extinguish the right of redemption.

Held, on facts that the decree could not be read as declaring the right of redemption in respect of original mortgage and that neither the decree nor the execution proceedings in pursuance thereof could operate to extinguish the right of the mortgagor to redeem the original mortgage. (1954) 2 Mad L J 12 : ILR (1954) Mad 664 : 67 Mad L W 89 : AIR 1954 Mad 650 (652) (Pt A) (Pr 3) (DB).

——S. 60—Extinguishment of right of redemption by decree of Court.

If the right of redemption could be extinguished under S. 60 only by a decree for foreclosure and if the decree passed is not one of foreclosure, proceedings taken in execution of that decree could not extinguish the right of redemption. (1954) 2 M L J 12 : ILR (1954) Mad 664 : 67 Mad L W 89 : AIR 1954 Mad 650 (653) (Pt B) (Pr 4) (DB).

——S. 60—Mortgage suit — Parties can settle form of decree by which right of redemption can be extinguished — Consent decree providing 8 months for redemption—No clog on redemption. See C. P. Code (1908), O. 34, R. 4. AIR 1962 Orissa 162.

——S. 60—Puisne mortgagee not impleaded in prior mortgagee's suit — Auction-purchaser suing former for sale amount — Revival of equity of redemption—(C. P. Code (1908), O. 2, R. 2).

Suit by prior mortgagee—Puisne mortgagee not impleaded—Decree passed and property sold in execution—Auction-purchaser suing puisne mortgagee in possession for sale amount—By instituting such suit auction-purchaser does not stand to lose his rights as auction-purchaser — Question of election does not arise and hence he cannot be deemed to have abandoned his rights under Court purchase — There is therefore no revival of equity of redemption in original owners so as to entitle them to institute suit for redemption. 1954 Ker L T 131 : AIR 1954 Trav-Co 384 (386, 387) (Pt D) (Prs 10, 11) (DB).

——S. 60—Civil P. C. (1908), O. 23, R. 3, S. 11—Compromise decree — Provision therein relating to forfeiture of right of redemption — Decree does not cease to be a contract between parties—Decree is no bar to parties to contract challenging its validity — Decree does not operate as "res judicata" in subsequent suit to recover property by redemption. See C. P. Code (1908), O. 23, R. 3. AIR 1954 Trav-Co 7 (DB).

——S. 60—Extinguishment of right to redeem.

Where the mortgaged properties were the subject of a suit on a prior mortgage, to which suit both the mortgagor and the subsequent mortgagee were parties, and in execution of that decree the equity of redemption was proclaimed for sale and the decree-holder purchased it in auction the mortgagor would cease to have further right of redemption till the sale in the prior suit was set aside. Once the equity of redemption is sold, the mortgagor has to avoid the sale before he claims redemption. 1953 Ker L T 85 : ILR (1953) Trav-Co 388 : AIR 1953 Trav-Co 375 (377) (Pt B) (Pr 4).

15. Extinguishment of right of redemption by operation of law.

● ——S. 60 — Suit for redemption brought by mortgagor—Pending suit mortgaged property vesting in State Government under Bihar Land Reforms Act, 1950 — Suit for redemption decreed and accounts ordered to be taken—Property having vested in State Government free from incumbrance, decree for redemption becomes infructuous — Remedy of the parties to be pursued is that under S. 14 of the Bihar Land Reforms Act. AIR 1957 Pat 584, Reversed. Raja Sailendra Narayan Bhanj Deo v. Kumar Jagat Prasad Narayan Singh, 1962 B L J R 507 : (1962) 1 Ker L R 485 : 1962 S C D 359 : 1962 Supp (2) S C R 119 : (1964) 1 S C W R 301 : I L R 41 Pat 746 : AIR 1962 S C 914 (916 to 918) (Prs 11, 14, 15).

——S. 60—Kandukrishi lease in favour of plaintiff — Mortgage of plaintiff's rights to the defendant—Government granting patta to defendant during subsequent settlement — Relationship of mortgagor and mortgagee is extinguished—S. 90, Trusts Act does not apply—Suit for redemption is not maintainable. See Trusts Act (1882), S. 90. AIR 1961 Ker 124.

——S. 60 — Extinguishment of right of redemption by operation of law—Revenue sale due to default of mortgage — Mortgagee taking settlement from landlord purchaser—Effect.

Held on facts that (i) B was clearly in the wrong in allowing the property to be sold in execution of the rent decree and by taking settlement from the landlord he could not take advantage of his own wrong and change the character of his possession and deprive A of his right of redemption. It was not open to B to contend that the plaintiff had lost his right of redemption because the old tenancy had extinguished by the rent sale.

(ii) A was entitled to treat the rent sale as against B as a private sale and claim redemption even without a prayer for the setting aside of the sale. ILR 30 Pat 391 : AIR 1951 Pat 566 (567 to 570) (Pt C) (Prs 9, 10, 13) (DB).

——S. 60—Mortgage, extinguishment of — Forfeiture of property by State—State recognising right of legal representative to redeem property — Property resold to legal representative — Forfeiture held did not involve extinction of mortgage — Mortgage held kept alive — Reselling to legal representative held made difference. AIR 1955 NUC (Sau) 743.

——S. 60—Escheat proceedings—Effect of, on right to redeem.

In Escheat proceedings the Sirkar claims as heir under the last owner. The officers of the Sirkar in such cases act more as agent of the Sirkar in its capacity of heir and not in any such public or official capacity as to give to their proceedings the effect of destroying rights to property and their dealings cannot be allowed to defeat the claims of others who question the said heir's right to dispossess them of the property said to have been escheated. Escheat

proceedings, therefore, do not destroy the rights of the mortgagor to redeem the mortgage. If the mortgagee had been compelled to pay any amount with the object of protecting the mortgagor's interest in the escheat proceedings, the mortgagee can claim a refund of that at the time of redemption. 1954 Ker L T 789 : ILR (1954) T C 1182 : AIR 1955 T C 192 (192) (Pr 4) (DB).

——S. 60—Transfer by operation of law—Charge on property created by decree — Suit for redemption — Period of limitation held to be governed by Art. 148 of Limitation Act (1908). See T. P. Act (1882), S. 2 (d). AIR 1955 Trav-Co 130 (DB).

——Ss. 60, 65 (c) — Extinguishment of right of redemption by operation of law — Sale for arrears of Government revenue — Travancore Cochin Revenue Recovery Act (1 of 1068).

Held, on facts of the case that the rights of the sub-mortgagee on account of whose default the revenue sale was occasioned, became vested in the appellant and the 2nd defendant in whom also became vested the rights of the purchaser at the revenue sale. ILR 26 Mad 385, Foll. 1953 Ker L T 566 : AIR 1953 Trav-Co 563 (566) (Pt A) (Pr 17) (DB).

16. Clog on equity of redemption.

(A) Clog—Anomalous mortgage.

(B) Stipulation giving mortgagee option to purchase the property.

(C) Provision for a long period for redemption, if a clog.

(D) Stipulation for collateral advantage.

(E) Clog—Penalty in case of default.

(F) Hard terms—Not a clog.

(G) Clogging provisions, when should be impeached.

(H) Provision for reasonable notice before redemption.

16. Clog on equity of redemption.

——S. 60—Clog on equity of redemption — Mortgage of shop with possession — Stipulation that if mortgage is not redeemed within 15 years the shop would be deemed as an absolute transfer 'Mala Kalam'.

Held, on facts that if the word 'Mala Kalam' in the relevant clause meant that there would be no scope for the mortgagor to say anything it necessarily meant that in the event of the amount due under the mortgage remaining unpaid within the stipulated period the mortgagor's title would be extinguished and the mortgagee would become the absolute owner of the property. Hence the stipulation in the mortgage deed amounted to a clog. ILR (1958) 8 Raj 811, Reversed. Murarilal v. Devkaran, (1965) 2 S C J 106 : (1964) 8 S C R 239 : (1964) 1 S C W R 696 : AIR 1965 S C 225 (227) (Pt A) (Pr 4).

——S. 60 — Particular condition whether amounts to a clog on redemption — It is a question of fact and not a substantial question of law. See Constitution of India, Art. 133 (2). AIR 1954 Ajmer 53 (1).

——S. 60 — Clog on equity of redemption — Rule against — Bargain — Merely restricting mortgagor's right to redeem —: Power of Court to relieve against.

The rule against clogs on equity of redemption involves that the Courts have power to relieve a party from a bargain which has the effect of forfeiting the mortgagor's right to redeem. The Court's jurisdiction to relieve him from the bargain in such a case would depend on whether it was obtained by taking advantage of any difficulty or embarrassement that he might have been in when he borrowed the money on the mortgage. If the mortgagor was oppressed or imposed upon then he is entitled to relief. AIR 1933 All 70, Held no longer good law. 1962 All L J 459 : 1962 All W R (H C) 350 : AIR 1962 All 422 (422, 425) (Prs 1, 15) (DB).

——S. 60—Clog on equity of redemption—Provision for compound interest.

A provision for compound interest in any deed of mortgage by itself does not amount to a clog on the equity of redemption. If the mortgagor continues to pay interest in terms of the mortgage deed, there would be no accumulation of interest or compound interest and that would not present any difficulty at the time of redemption. AIR 1955 All 339 (349) (Pt G) (Pr 71) (DB).

——S. 60—Clog on redemption—Mortgagor allowed to pay within ten years—Mortgagee to continue in possession even after payment of debt — Nature of stipulation — Redemption before expiry of period.

Held, on facts that the word 'within' and its corresponding Telugu words clearly indicate that payment could be made on or before the date fixed. (2) That the fair reading of the document left no doubt that there was a specific contract enabling the mortgagors to redeem it earlier than the period fixed. (3) That a condition which enables the mortgagee to continue in possession after the mortgage is redeemed, entrenches upon and impedes his right to redeem. It is not a collateral advantage given to the mortgagee after the discharge of the mortgage. It is really a restriction imposed on the mortgage contract itself restraining the mortgagor from taking possession of the property even after the debts discharged. It is thus in condition directly inconsistent with or repugnant to the contractual or equitable right to redeem, and is void as a clog on equity of redemption under S. 60. The suit is therefore maintainable before the expiry of the period. 1956 Andh L T 478 : 1956 Andh W R 381 : AIR 1957 Andh Pra 30 (32, 33) (Prs 12, 19).

——S. 60—Clog on redemption.

The condition of the mortgage that if the land was not redeemed within the time fixed, it shall be deemed as sold for the mortgage debt is a clog on the equity of redemption. It effectively bars redemption if enforced and therefore is unenforceable. ILR (1950) 2 Assam 444 : AIR 1952 Assam 19 (21) (Pt A) (Pr 15) (DB).

——S. 60—Clog on redemption.

The terms of S. 60 themselves indicate that the rule of English law as to the clog should be applied in favour of the mortgagor. There is nothing inconsistent in S. 60 with the said rule. On the contrary, the right to redeem is so clearly recognised in S. 60 that a mortgagor can legitimately seek for the protection of the doctrine of the clog on redemption in proper cases, it is therefore, impossible to accept the contention that if the mortgagor permits the mortgagee to adopt a device which would impede or prevent his right of redemption, he is precluded from appealing to the doctrine of the clog on redemption in protection of his right to redeem. 55 Bom L R 452 : ILR (1953) Bom 773 : AIR 1953 Bom 408 (410) (Pt A) (Pr 5) (DB).

——S. 60—Clog on redemption.

A condition converting a mortgage into a sale on the mortgagor's failure to redeem the property within a stated period of redemption is invalid as a clog on the equity of redemption. But such a condition does not prevent the parties to a mortgage from entering into a contract subsequent to the mortgage for the sale of the mortgage property to the mortgagee. Madh BLR 1955 Civ. 327 : Madh BLJ 1955 H C R 1461 : ILR (1955) Madh Bha 348 : AIR 1956 Madh Bha 83 (83, 84) (Prs 2, 3).

——S. 60—Clog on equity of redemption—Amount or nature of further debt or obligation, payment or performance of which is secured is not clog on redemption. AIR 1955 NUC (Madh B) 3716.

——Ss. 60, 58 — Usufructuary mortgage — Separate transaction dehors the mortgage is not clog on equity of redemption — Subsequent admission of sale by mortgagor—Term regarding mortgage getting itself converted into sale after the stipulated period was clog on redemption—Subsequent receipt only incorporated a factual position by reference to the terms of the document—Not a fresh transaction dehors the original transaction of mortgage—Equity of redemption held not extinguished and is admissible in evidence of registration. Registration Act (1908), S. 17. 1961 MPLJ 404.

——S. 60—Clog on equity of redemption.

A condition in the mortgage that money would be payable only in a particular month cannot be said to be a clog on the equity of redemption. 1957 M P C 269 : 1957 MPLJ 342 : 1957 Jab L J 622: ILR (1957) Madh Pra 407 : A I R 1957 Madh Pra 200 (201) (Pt A) (Pr 3).

——S. 60—Right of redemption—Usufructuary mortgage—Right of redemption restricted to five years—Mortgagee to become absolute owner in default — Clog on right—Default by mortgagor — Yadast by mortgagor affirming absolute rtghts of mortgagee and consent to change of patta — Right of redemption, if lost — Principles.

A right of redemption is inherent in every mortgage and any agreement between the parties, express or implied, cannot defeat that right. The law does not permit the mortgagee to stipulate with the mortgagor at the time of the mortgage and as part of the mortgage transaction that the mortgaged property shall become the absolute property of the mortgagee upon certain contingencies. But the mortgagor is under no disability to part with his rights to anybody; when however, the hypotheca is sold to mortgagee it must be truly an independent transaction free from the environments of the previous relationship between the parties; a mere affirmance of a term amounting to a clog in the mortgage transaction in the form of a separate transaction would not validate the clog and confer better and further rights on the parties than under the mortgage document. On the facts it was held that the two transactions were not truly independent and separate and therefore the right on redemption cannot be extinguished. (1964) 1 Mad L J 86.

——S. 60—Mortgagee to become owner after stipulated period—Such provision in mortgage is void. AIR 1955 NUC (Mad) 3939.

——S. 60—Clog on redemption—Stipulation for pre-emption.

A stipulation in a mortgage deed giving right to the mortgagee to pre-empt the property at a fixed price which may not be a proper price on the date of the sale, is clearly a clog on the equity of redemption. 63 MLW 1002 : (1950) 2 MLJ 169 : AIR 1951 Mad 524 (525) (Pt B) (Pr 3) (DB).

——S. 60—Clog on redemption—Provision for getting permanent lease on basis of terms of mortgage in favour of mortgagee is a clog on redemption and is void ab initio. See Limitation Act (1908), Art. 148. AIR 1955 NUC (Orissa) 3969.

——S. 60—Clog on equity of redemption.

A clause in a mortgage bond that if the principal amount is not paid by a certain date then the creditor would be entitled to get a foreclosure effected, is a clog or fetter on the equity of redemption and being so, is void not only against the mortgagor but also against the purchaser or his interest, since it is inconsistent with the very nature and essence of a mortgage. 57 Ind App 168, foll. 1963 BLJR 174.

——S. 60—Clog on equity of redemption — Property to pass absolutely to mortgagee in case of default — Such provision in mortgage bond held constituted a clog on equity of redemption and is void. 1958 BLJR 738 : AIR 1959 Pat 230 (234, 235) (Pt D) (Pr 16) (DB).

——S. 60—Clog on equity of redemption — Stipulation in mortgage to sell property to mortgagee — Clause held invalid as clog on redemption. AIR 1951 Pat 327 (328, 329) (Pt A) (Prs 2, 3, 6) (DB).

——S. 60—Custom (Punjab) — Ancestral agricultural land — Mortgage of—Condition postponing redemption for thirty years — It is not binding on the reversioners. See Custom (Punjab). I L R (1956) Patiala 300.

——S. 60—Muramat Shakasht rekhat — Meaning of —Stipulation to pay costs of breakage and destruction —Proper interpretation—Clog on redemption—Held on construction of document, that condition in mortgage did not entitle mortgagee to pull down the entire mortgaged property at his will and rebuild it in manner he desired. See T. P. Act (1882), S. 63-A. AIR 1955 Pepsu 87 (DB).

——S. 60—Sub-mortgage of mortgagee rights—Clause in mortgage-deed restricting right to redeem to five years only — Held clause was a clog on right of redemption. AIR 1962 Punj 478 (479) (Pr 2).

——S. 60—Transfer of equity of redemption to prior mortgagee — Validity—Extrinsic evidence to prove intention — Clog on redemption—Penal term—Relief —(Evidence Act (1872), S. 93) — (Contract Act (1872), S. 74) — (Deed—Construction).

Held, on facts, that the subsequent transfer was not an independent transaction but was linked with the prior mortgage and the condition mentioned therein constituted a clog on the equity of redemption and could not be enforced as such; (2) that the terms of the document being ambiguous, it was open to the Court to construe the terms in the light of extrinsic evidence. (3) that the evidence obviously showed that it was never intended to be an effective sale and the possession of the mortgagee continued to be that of a mortgagee; and (4) that the stipulation that in consequence of failure to pay the specified amount, the property mortgaged shall be deemed to have been sold to the mortgagee, was in the nature of a penalty, and it was open to the Court in such cases to award under S. 74, Contract Act reasonable compensation to the party who claimed the penalty on account of breach of the contract. The awarding of Rs. 100 by way of interest to the mortgagee as compensation under S. 74 was therefore justified in the case. I L R (1960) 10 Raj 517.

——S. 60—Clog—Test.

The correct test to ascertain whether certain conditions in a mortgage deed have the effect of clogging the right of redemption or not is not to look to the events as they have happened or as they have not happened but to see whether such conditions might have happened in the past or may happen in the future. ILR (1958) 8 Raj 258 : 1958 Raj L W 9 : AIR 1958 Raj 298 (301) (Pt A) (Pr 14).

[Reversed on another point in AIR 1960 Raj 47.]

——S. 60—Clog on redemption.

A condition that after redemption the mortgagee should continue in possession as a permanent tenant is invalid as it prevents the mortgagor getting back the property free and unfettered. 3 Sau L R 236 : AIR 1951 Sau 53 (54) (Pt B) (Pr 4).

——S. 60—Clog on redemption — Kanom of jenmom property—Right to demand surrender of holding for

jenmi's cultivation—Redeemability — Right does not offend rule regarding clog on redemption. See Tenancy Laws—Travancore Jenmi and Kudiyan Act (5 of 1071), S. 5 (2). **1956 Ker L T 529: ILR (1956) Trav-Co 533.**

——S. 60—Usufructuary mortgage created in compromise agreement — Clog on redemption — Its applicablity to usufructuary mortgage—Forfeiture clause in agreement in compromise held to be a clog on equity of redemption. See T. P. Act (1882), S. 58. **AIR 1955 NUC (Trav-Co) 6003 (DB).**

——S. 60—Creation of irredeemable tenure — Property not forming Jenmom land—Payment of customary dues and renewable fees — Irredeemable tenure is not thereby created. See Tenancy Laws—Travancore Jenmi and Kudian Act (5 of 1071 ME), S. 3. **AIR 1955 NUC (Trav-Co) 543.**

——Ss. 60 and 58 — Clog on equity of redemption—Condition that on failure to pay money by particular date suit for redemption would be barred—Condition is void. **ILR (1953) Trav-Co 871 : AIR 1954 Trav-Co 165 (166) (Pt A) (Pr 4) (DB).**

——S. 60—Mortgage need not necessarily be for purpose of securing payment of money advanced — Agreement to the effect that A would acquire title to property on default by a branch of tarwad — Agreement is illegal being a clog on equity of redemption. See T. P. Act (1882), S. 58 (d). **AIR 1954 Trav-Co 7 (DB).**

——S. 60—**Clog on equity of redemption.**

A provision in the mortgage deed that it would only be open to the mortgagee to ask for the return of the mortgage amount and that the mortgagor would not seek redemption can only be viewed as a clog on the equity of redemption. 1948 T L R 556 (FB), Foll. **1953 Ker L T 323 : AIR 1953 Trav-Co 570 (570, 571) (Prs 1, 2).**

——S. 60—Clog on redemption — Terms in mortgage under which mortgaged property is to be deemed to have been sold out right on failure of payment of principal money with interest by certain date—Such a term amounts to clog on equity of redemption and is void. See T. P. Act (1882), S. 58. **AIR 1955 Vin Pra 4.**

16 (A). Clog—Anomalous mortgage.

——S. 60 — Anomalous mortgage — Right of mortgagee—Failure of mortgagor to redeem within period fixed — Suit by mortgagee praying for decree for sale of mortgaged property held maintainable. See T. P. Act (1882), S. 58. **AIR 1957 Andh Pra. 511.**

——S. 60 — Usufructuary mortgage with personal covenant — Suit for redemption — Maintainability—Agreement of sale in favour of mortgagee—Mortgage anomalous—Suit for redemption on mortgage money held to be competent. See Tenancy laws — Sylhet Tenancy Act (11 of 1936), S. 34. **AIR 1956 Assam 17 (DB).**

——Ss. 60, 58 (g)—Clog applies to anomalous mortgage.

The principle relating to clog on the equity of redemption embodied in S. 60 applies even to anomalous mortgages. **ILR (1952) T C 438 : 1953 Ker L T 382 : AIR 1954 Trav-Co 7 (9) (Pt B) (Pr 7) (DB).**

16 (B). Stipulation giving mortgagee option to purchase the property.

——S. 60 — Clog on redemption — Stipulation giving mortgagee option to purchase any part of or interest in mortgaged property — It is a clog on redemption. **63 M L W 1002 ; (1950) 2 Mad L J 169 : AIR 1951 Mad 524 (524) (Pt A) (Pr 2) (DB).**

——S. 60 — **Clog on redemption.**

A stipulation in a mortgage, that in default of payment of the mortgage-money on the date fixed the mortgagor shall sell the property to the mortgagee at a fixed price or a price to be settled by an umpire is invalid as a clog on the equity of redemption. The right of redemption cannot be controlled by any agreement made as part of the transaction of mortgage. **1953 Ker L T 743 : ILR (1953) T C 999 : AIR 1954 Trav-Co 142 (143) (Pt A) (Pr 4) (DB).**

16 (C). Provision for a long period for redemption, if a clog.

● ——S. 60 — **Clog on equity of redemption — Usufructuary mortgage redeemable within six months after expiry of 85 years — In default to be treated as sale — If amounts to clog — Grant of relief — Suit for redemption before expiry of 85 years — If premature.**

Held, (i) that the term in the mortgage instrument providing that the mortgage can be redeemed only within the period of six months and not thereafter must be held to be invalid as a clog and ignored. (ii) that in the circumstances the term in the mortgage that it will not be redeemable until the expiry of 85 years was not a clog on the equity of redemption. The bargain was a reasonable one and the mortgagee had not taken any unfair advantage of his position as the lender. Nor was the mortgagor under any financial embarrassment. The term could therefore be enforced with the result that the suit was premature and must fail. Ganga Dhar v. Shankar Lal. **(1958) S C J 739 : 1959 Pat L R (SC) 8 : 1958 S C J 935 : (1958 2 M L J (SC) 150 : (1958) 2 An W R (SC) 150 : 1959 S C R 509 : AIR 1958 S C 770 (772 to 775) (Prs 4, 6, 8, 12, 15, 17 to 20).**

——S. 60 — Clog on redemption — Mortgage—Stipulation that if mortgagor failed to redeem within one month of expiry of period of 100 years, mortgaged property to be deemed to be absolutely sold to mortgagee — Terms held amounted to clog on redemption. **AIR 1955 NUC (Ajmer) 2645.**

——S. 60 — Clog—Mortgagor not entitled to redeem within period of 100 years and thereafter only if right is exercised within 6 months on payment of mortgage debt with costs of improvement — Held no clog on redemption. **AIR 1955 NUC (Ajmer) 2629.**

——S. 60 — **Long period for redemption** — Clog.

In this case the agreement between the mortgagor and mortgagee was that the mortgagor was to redeem the mortgage 99 years after its execution and the mortgagee was given full authority to build any structure on the plot mortgaged after spending any amount he liked.

Held, that the two terms of the mortgage were so unreasonable and oppressive that they amounted to a clog on the equity of redemption. **55 Bom L R 452 : ILR (1953) Bom 773 : AIR 1953 Bom 408 (411, 412) (Pt B) (Prs 7, 9) (DB).**

——S. 60 — **Clog on equity of redemption.**

A condition in the mortgage that money would be payable only after the expiry of 80 years cannot be regarded as a clog on equity of redemption when there is no other condition imposed in the mortgage deed, profits from the mortgaged property are just sufficient to cover interest on the principal, the contract in the mortgage deed cannot be taken to be unreasonable, oppressive or unconscionable, and there is also no condition in the deed that after full payment of principal, interest and costs, the mortgagee would continue to receive for a definite or indefinite period a share of the rents and profits of the mortgage property. **1957 M P C 269 : 1957 M P L J 342 : 1957 Jab L J 622 : ILR (1957) Madh Pra 407 : AIR 1957 Madh Pra 200 (203) (Pt B) (Pr 10).**

——S. 60 — Clog on the equity of redemption—Fixing long period for redemption — When amounts to clog.

Held, on facts that the terms fixing 100 years for redemption of the mortgage amounted to clog and that the mortgagor should be relieved against that term. (1963) 2 Mad L J 371 : 76 Mad L W 474 : ILR (1963) Mad 1184.

——S. 60 — Clog on equity of redemption — What constitutes — More long period for redemption is not by itself a clog on equity of redemption — Held period of 99 years did not amount to clog. 1962 B L J R 818 : ILR 42 Pat 733 : AIR 1963 Pat 114 (116, 118) (Prs 4, 5, 8) (DB).

——S. 60 — Clog on redemption — Long term.:

A long term in a usufructuary mortgage of sixty years does not per se make the bargain an unconscionable one and in the absence of undue influence or fraud the parties who enter into a contract with their eyes open are bound by the stipulations contained in their instrument of mortgage. 1957 Pat L R 414 : 1957 B L J R 828 : AIR 1958 Pat 464 (466) (Pt B) (Pr 10).

——S. 60 — Clog on redemption — Long term by itself is not clog. AIR 1950 Pat 173 (173) (Pr 2).

——S. 60 — Redemption — Clog on — Long period of redemption, if clog.

Whether the condition fixing a long term for redemption is unreasonable, or otherwise, depends on the circumstances of the case. Thus the fixing of a term of 99 years by itself is not unreasonable and a clog on the equity of redemption. It may or may not be unreasonable according as the facts and circumstances of the particular case. AIR 1958 Raj 298, Reversed. ILR (1960) 10 Raj 88 : AIR 1960 Raj 47 (48) (Pr 5) (DB).

——S. 60 — Clog—Long period—If amounts to clog.

Held, on facts that the terms as to the postponement of the right of redemption for a period of 99 years taken with the other conditions mentioned in the deed amounted to a clog on the equity of redemption. ILR (1958) 8 Raj 258 : 1958 Raj L W 9 : AIR 1958 Raj 298 (301, 302) (Pt B) (Prs 12, 14, 16).

[Reversed in AIR 1960 Raj 47].

——S. 60 — Clog on redemption — Long period.

Held, that the original period of 61 years extended by the subsequent mortgagee for further period of 30 years did not amount to a clog on redemption. AIR 1953 Sau 193 (194) (Prs 4, 5).

16 (D). Stipulation for collateral advantage.

——S. 60 — Clog on redemption — Collateral advantage to mortgagee extending beyond period of redemption is invalid — Mortgage of land — Condition in mortgage deed for mortgagee and descendants to remain after redemption as fixed rate tenant of land obtained by surrender or ejection of tenant — Condition is invalid - Mortgage land which is free of tenancy when redeemed cannot be encumbered with heritable and transferable rights except with or by consent of mortgagor's representatives — Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 59. 1950 All W R (Rev) 75.

16 (E). Clog — Penalty in case of default.

——S. 60 — Clog on redemption — Penalty in case of default.

The stipulation that the mortgage was to amount to a sale in case it was not redeemed within 4 years is a clog on the equity of redemption. 1957 Ker L T 495 : ILR (1957) Ker 492 : 1957 Ker L J 537 : AIR 1957 Ker 175 (176) (Pt A) (Pr 2) (DB).

16 (F). Hard terms—Not a clog.

——S. 60—Clog on equity of redemption—Mere fact that terms of contract appear to be harsh will not render it a clog on equity of redemption. AIR 1955 N U C (Mad) 3199.

16 (G). Clogging provisions, when should be impeached.

——S. 60 — Clogging stipulations — Mortgagor can challenge in suit for redemption — Specific allegation of undue influence need not be made — Court can exercise its equitable jurisdiction. (C. P. Code (1908), O. 6, R. 4; O. 7, R. 7) — (Contract Act (1872), Ss. 16 and 19). AIR 1955 N U C (Ajmer) 2645.

——S. 60 — Clogging provisions when should be impeached — Mortgagor coming within period of sixty years or within shorter period agreed upon—He may challenge term in deed fixing period during which mortgage could not be redeemed as clog—Mortgagor can claim immediate redemption—Mere delay is not fatal — (Limitation Act (1908), Art. 148.) AIR 1955 N U C (Ajmer) 2645.

——S. 60—Clog on redemption — Equitable relief, grant of—It can only be obtained if it is challenged within a reasonable time. AIR 1951 Ajmer 28 (31) (Pt A) (Pr 15).

16 (H). Provision for reasonable notice before redemption.

——S. 60—Notice of intention to redeem—Notice addressed jointly to mortgagee and his tenant sent by post—Notice returned as refused by tenant—There is no service of notice on mortgagee. ILR (1950) Punj 271 : 52 Pun L R 460 : AIR 1951 Punj 404 (406) (Pt A) (Pr 8) (DB).

17. Redemption piecemeal of mortgaged property—Last paragraph of the section.

(A) Mortgagee allowing redemption of a share if splits up security as to the rest.

(B) Mortgagee releasing part of mortgaged property from mortgage, if splits up security.

(C) Mortgagee acquiring share in property.

(D) Undivided property—Mortgagee purchasing share—Redemption.

(E) One mortgagor acquiring mortgagee right —Redemption by other.

(F) One mortgagor—Two or more mortgagees —Redemption by paying one alone.

17. Redemption piecemeal of mortgaged property—Last paragraph of the section.

——S. 60 — Co-mortgagees partitioning or getting separate possession of mortgaged property—Integrity of mortgage if broken—Mortgagor's right to redeem piecemeal.

Merely because co-mortgagees get separate possession over certain portions of the mortgaged property, or bring about a partition among themselves that would not amount to the breaking up of the integrity of the mortgage, giving a right to the mortgagor to redeem any portion of the mortgaged property in the possession of any of the co-mortgagees. (1956) All L J 264 : 1956 All W R (HC) 271.

——S. 60—Suit by one co-mortgagor for declaration of title to his 8 annas share and for joint possession —Mortgagee continuing in possession after satisfaction of mortgage by enjoyment of usufruct and disputing title of plaintiff is maintainable. 60 Cal W N 903 : AIR 1956 Cal 625 (627) (Pt A) (Pr 4).

——S. 60, last paragraph—Mortgage security—When can be split up — Suit for partial redemption, maintainability.

A mortgage security is indivisible and cannot be split up except by agreement between mortgagor and mortgagee. Where, therefore, the mortgagee himself allows the mortgage to be split up by agreeing to place himself in possession of a portion of the property so that the proportionate mortgage debt may be satisfied by enjoyment of its usufruct for a certain term, a suit for possession of that portion of the property, even if it amounts to a suit for redemption, would not be bad for partial redemption as the mortgagee has already allowed the mortgage security to be split up. 60 Cal W N 903 : AIR 1956 Cal 625 (629) (Pt E) (Pr 11).

——S. 60—Partial redemption — All parties agreeing to split up mortgage — S. 60 is no bar to such splitting. 1962 Ker L J 660 : AIR 1963 Ker 75 (78) (Pt B) (Prs 9, 11).

——S. 60—Indivisibility of mortgage—Mortgagee obtaining equity of redemption over share of property —Suit for partial redemption is maintainable. 64 Ind Cas 211 (2) (Lah), Distinguished. 1960 Ker L T 1080 : AIR 1962 Ker 36 (37) (Pt B) (Pr 4).

——Ss. 60, 2—Partial redemption.

Though some of the principles of the Transfer of Property Act were followed in the State of Travancore, the Act as such became applicable only in April 1951. It was only by the amendment of 1929 which introduced the word 'only' in the last clause of S. 60 that the exceptions to the rule against partial redemption became restricted to a case where the mortgagee acquired in whole or in part the share of a mortgagor. Not being bound by the Transfer of Property Act as such, Courts in Travancore did not recognise or apply the modification made in the pre-existing law by the amendment of 1929. As the law stood before the amendment of S. 60 in 1929 where the mortgagee recognised a partition of the mortgaged property among the co-mortgagors the mortgagor had a right to get partial redemption and the mortgagee had a corresponding liability to submit to partial redemption; that liability could not be affected by S. 60 of the Transfer of Property Act. This was not a mere matter of procedure. 1957 Ker L T 1289 : 1957 Ker L J 78.

——Ss. 60, 58—Partial redemption — Suit for—Right of sub-mortgagee to resist—(Civil P. C. (1908), O. 34, R. 1).

It is not open for a sub-mortgagee to resist a suit for redemption on the ground that it is one for partial redemption, when the mortgagees do not raise such an objection.

There is no privity of contract or estate between the sub-mortgagee and the mortgagor. 1957 Ker L T 1283 : 1958 K L J 113 : ILR (1958) Ker 165.

——S. 60—Vatantar transaction —Piecemeal redemption of—According to usage, co-mortgagors are entitled to redeem to the extent of their shares. See Custom (Kutch). AIR 1953 Kutch 8.

——S. 60, Last para — Applicability of —Mortgagee when cannot be said to release part of property — Mortgagee acquiring by purchase interest in mortgaged property.

The rule enunciated in the last paragraph prohibits what may be called partial redemption of a part of the property on payment of a proportionate part of the mortgage amount. The mortgage security being one and indivisible, the mortgagee has got a right to insist upon a redemption of the entire mortgage. But there is an exception created to that rule—in case where the mortgagee acquires in whole or in part the share of a mortgagor. However, this exception comes into play only where there is a person interested in a share only of the mortgaged property and seeking to redeem his own share only, on a payment of proportionate part of the amount remaining due on the mortgage, and a mortgagor whose share the mortgagee had acquired. (1956) 1 M L J 213 : 69 Mad L W 98 : ILR (1956) Mad 914 : AIR 1956 Mad 293 (295 to 297) (Pt A) (Prs 4, 5, 6, 7, 8) (DB).

——S. 60—Redemption piecemeal of mortgaged property—When may be allowed.

Where the melkanomdars have got a valid title to thirteen out of the fourteen items of property granted to them in malkanom a partial redemption cannot be granted; but they may be allowed to pay the whole mortgage amount including the cost of the improvements on the thirteen items and get redemption of only thirteen items, leaving the fourteenth item for appropriate future proceedings. AIR 1955 Mad 260 (261) (Pt B) (Pr 4) (DB).

——S. 60—Splitting up of integrity of mortgage.

Section 60 has application only so long as the mortgage continues without being modified or split up by agreement between the parties. By the amendment introduced in 1929 in the proviso to S. 60, it is no doubt true that the other modes of splitting up the integrity of a mortgage were probably intended to be negatived, and the only way by which the integrity, would be broken is in the manner laid down in the last clause in S. 60. But that is only when there is no modification of the mortgage by consent of the parties. 1954 Mad W N 291 : 67 Mad L W 588 : I L R (1955) Mad 274 : A I R 1954 Mad 818 (819) (Pt B) (Pr 5).

——S. 60—Suit barred against some of parties—Entire suit is not barred by limitation — It is open to mortgagee to have a mortgage decree against portion of hypotheca leaving the rest. See Civil P. C. (1908), O. 34, R. 1. AIR 1954 Mad 540.

——S. 60—Redemption piecemeal of mortgaged property.

Where the integrity of the mortgage is not broken the mortgage cannot be redeemed in parts unless the mortgagee agrees. I L R (1953) Nag 797 : 1953 Nag L J 633 : AIR 1954 Nag 84 (90) (Pt B) (Pr 42) (DB).

——Ss. 60, 52—Mortgagee obtaining decree without impleading subsequent purchaser or encumbrancer of part of mortgaged property — Latter can sue for partial redemption. A I R 1935 Nag 185, Overruled. Munshi Maula Bux v. Sardarmal. I L R (1952) Nag 211 : 1952 Nag L J 522 : AIR 1952 Nag 341 (344, 346, 347, 350) (Prs 11, 19, 21 to 23, 26, 28, 47) (FB).

——S. 60—Partial redemption — Payment by one of several co-heirs of deceased Muhammadan mortgagor —Payment does not extend limitation against other co-heirs. See Limitation Act (1908), S. 20. AIR 1957 Pat 559 (DB).

——Ss. 60, 91—Person entitled to equity of redemption of one of the properties.

Even if the plaintiffs are entitled to the equity of redemption of one alone of the properties mortgaged they would be entitled to redeem the whole mortgage, and the mortgagees can resist their claim for redemption of any item only if they have acquired the equity of redemption of that item. AIR 1954 Trav-Co 251 (252) (Pt B) (Pr 4) (DB).

——Ss. 60, 82 and 101—Rateable abatement.

No release of portion of mortgage debt—No merger of interests of mortgagor and mortgagee in respect of portion — Owner of portion of mortgaged property cannot claim rateable abatement. I L R (1953) Trav-Co 206 : 1953 Ker L T 430 : A I R 1953 Trav-Co 283 (284) (Pt A) (Pr 5) (DB).

17(A). Mortgagee allowing redemption of a share, if splits up security as to the rest.

——S. 60—Mortgagee allowing redemption of a portion.

Where in a suit against one of the mortgagors and the lessee, the lessee enters into a compromise with the mortgagee regarding one of the items of the property, the mortgage cannot be deemed to have been split up by reason of the compromise. The mortgage debt can be split up only by an agreement between the mortgagee and all the mortgagors. As one of the mortgagors was not a party to the suit on the mortgage and he was not a consenting party to the compromise the mortgage is not split up. AIR 1955 N U C (Andhra) 4462.

——S. 60 — Mortgagee allowing redemption of portion—Integrity is not broken.

The fact that the mortgagees themselves have allowed a portion of the property mortgaged with them to be redeemed does not entitle the mortgagors to redeem their portion only of the property.

Under S. 60 the integrity of a mortgage is not broken except where the mortgagee has purchased or otherwise acquired as proprietor a certain portion of the property mortgaged. 56 Punj L R 498 : AIR 1955 Punj 96 (97) (Pr 4) (DB).

17(B). Mortgagee releasing part of mortgaged property from mortgage, if splits up security.

——Ss. 60 and 67—Release of item of mortgaged property—Effect.

It is open to the mortgagee to release any item of property from his mortgage and recover the whole amount from the remaining properties. 1964 Ker L J 748 : 1964 Ker L T 608.

——S. 60—Release of one of items mortgaged—Release by itself does not bring about splitting up of mortgage. 1955 Mad W N 46 : (1954) 2 Mad L J 768 : AIR 1955 Mad 439 (442) (Pt C) (Pr 4) (DB).

——S. 60—Mortgagee releasing part of property unilaterally—Release after mortgage money had become due — Relinquishment is not rendered invalid. See Contract Act (1872), S. 63. AIR 1957 Pat 408 (DB).

——S. 60 — Mortgagee releasing part of mortgaged property — No novation of contract of mortgage. See Contract Act (1872), S. 62. AIR 1961 Punj 202.

——Ss. 60, 82—Release by mortgagee of part of security — Effect — Piecemeal redemption is not allowed. AIR 1955 N U C (Trav-Co) 2218 (DB).

17(C). Mortgagee acquiring share in property.

——S. 60—Mortgage of two properties to same mortgagee — One of such properties purchased by mortgagee—Recovery of entire mortgage-money from the other property.

Where a mortgagee purchases a portion of the mortgaged property in execution sale of the whole of the mortgage-debt is not chargeable on the remaining portion of the mortgaged property if the circumstances show that what was purchased by the mortgagee was only the equity of redemption and not the entire interest in the property free from encumbrance. In such a case the mortgagee is entitled to get only the proportionate mortgage amount due on the property remaining unsold. A I R 1965 Ker 132 (134) (Pt B) (Pr 11) (DB).

——Ss. 60 and 91 — Property held as tenants-in-common mortgaged — One mortgagor selling his share to mortgagee — Equity of redemption of other mortgagor.

The effect of the sale of his share of the mortgaged property in favour of the mortgagee by A, one of the two brothers (A and B) who though formed a joint family yet held the property as tenants-in-common is to bring about a sale of the share in the equity of redemption only of A who is a party to it and to that extent the mortgagee becomes a full owner of the property. As the sale is not valid to the extent of B's share as he is not a party to the sale, the mortgage-debt is not extinguished to the extent of his share and his equity of redemption subsists. I L R (1953) Madh-B 147 : A I R 1954 Madh-B 67 (69, 70) (Pt C) (Prs 7, 8).

——S. 60—Mortgagee acquiriug share in property.

Held, that in the circumstances a suit for redemption of the entire property was not the proper remedy and the plaintiff should be allowed to sue for partition and redemption of his share only especially when the mortgagee had no objection to such a course which would avoid multiplicity of suits. 1953 Mad W N 246 : (1953) 2 Mad L J 103 : I L R (1953) Mad 1200 : A I R 1953 Mad 720 (721) (Pt A) (Pr 2) (DB).

——S. 60 — Mortgagee purchasing part of mortgaged property at sale free from encumbrances — He is entitled to throw mortgage debt on remaining property. ILR (1952) Nag 366 : AIR 1953 Nag 259 (260, 261) (Pt G) (Prs 1, 11, 12) (DB).

——S. 60—Rights of parties—S and T mortgaging property with L — L acquiring T's interest—S is entitled to redeem her share — L cannot deny her status. ('52) 1952 Nag L J (Notes) 159.

——Ss. 60, 91, 92, 95—Mortgaged property falling to shares of A and B, A having one-third share and B two-third share—A selling entire property to mortgagee and reducing mortgage — Mortgagee's possession of B's share held not as mortgagee but adverse—Adverse possession for full period not proved—B is entited to redeem his share. See T. P. Act (1882) S. 91. AIR 1963 Pat 384 (DB).

——S. 60—Integrity of mortgage:— Mortgage by joint owners of land in equal shares with right of survivorship — One of mortgagors transferring his equity of redemption to mortgagee — Integrity of mortgage is broken — Joint mortgagor can redeem only his share of land. AIR 1960 Punj 420 (421) (Pt B) (Pr 3).

——Ss. 60, 91 and 95— Mortgagee acquiring share in mortgaged property — One of co-mortgagors can redeem entire residue left in spite of opposition of mortgagee. ILR (1953) Punj 271 : AIR 1954 Punj 81 (82, 83) (Prs 10, 12, 14) (DB).

——S. 60 — Before introduction of T. P. Act, one of the mortgagees acquiring equity of redemption of part of mortgaged property — Partial redemption was allowed. AIR 1955 NUC (Tra-Co) 5083 (DB).

——Ss. 60, 67— Acquisition by hypothecatee of some items in hypotheca — Subsequent suit for sale—All those items need not be brought to sale. See T. P. Act (1882), S. 67. AIR 1951 Trav-Co 101 (DB).

17 (D). Undivided property—Mortgagee purchasing share — Redemption.

——S. 60 — Heirs of mortgagor succeeding to property as tenants-in-common—Purchase of share of one heir by mortgagee — Another heir if can sue for redemption of whole of residue.

Where the heirs of the mortgagor became entitled to the mortgaged property as tenants-in-common each owning a 1/6th share and the mortgagee purchased the 1/6th share of one of the heirs, the integrity of the mortgage is broken up and it is not open to one of the heirs to redeem the whole of the residue, which includes the shares of the other heirs who are not

parties to the suit. He can only redeem his own share and nothing more. 1958 Ker L T 328.

17 (E). One mortgagor acquiring mortgagee right — Redemption by other.

——S. 60—One co-mortgagor acquiring mortgagee right—Redemption by other — Suit for — Limitation —Suit held governed by Art. 148 Limitation Act. AIR 1953 Mad 366 (367, 368) (Pt B) (Prs 6, 7, 8).

——S. 60— Co-mortgagor redeeming whole mortgage —Rights of other co-mortgagors — Other co-mortgagors can be allowed to redeem their share of property on payment of proportionate amount of mortgage money. See T. P. Act (1882), S. 92. AIR 1959 Punj 170 (DB).

——Ss. 60, 91 and 92—Redemption by co-mortgagor —He can redeem whole mortgage by paying whole mortgage amcunt and be subrogated in place of mortgagee — He cannot redeem his own share— Customary land does not affect this. AIR 1955 N U C (Punj) 1355 (DB).

——Ss. 60 and 61 — Consolidation of mortgages.

One mortgagor cannot by executing a tacking mortgage affect the rights of his co-mortgagors to redeem.

Held, on facts. that the plaintiff was in the position of a co-mortgagor at the time of the execution of the purakkadoms by the mortgagor who was therefore incompetent to execute the tacking mortgages and as such the mortgagees were not entitled to compel the plaintiff to redeem the purakkadoms along with the mortgage. 1955 Ker L T 242 : AIR 1955 Trav-Co 232 (232) (Pr 2).

17 (F). One mortgagor — Two or more mortgagees— Redemption by paying one alone.

——S. 60 — Co-mortgagees — Payment to one— Validity.

The right to redeem according to the language of S. 60, T. P. Act is a right to get back the entire mortgaged property from all the mortgagees on payment or tender of the mortgage money to them after it had become due. The right does not consist in paying the entire mortgage money to any one of the mortgagees and get back such property which is in the possession of that individual mortgagee. 1956 All L J 264 : 1956 All W R (H C) 271.

——S. 60—Suit for redemption — Mortgagee cannot deny mortgagor's title to mortgaged property — Suit by some of co-owners of mortgaged property — They can redeem only their share (Case from Kutch). A I R 1950 Kutch 36 (36, 37) (Prs 4, 5, 6).

18. Suit for redemption.

——Ss. 60 and 62—Doctrine of election —Its applicability to mortgage transaction—By his conduct mortgagee held to be bound by doctrine of election— Suit for redemption — Held, suit was not barred by limitation. See Transfer of Property Act (1882), S. 35. AIR 1965 S C 241.

——S. 60 — Void mortgage — Mortgagor's right to recover possession on payment of money received— Question of limitation if arises — Form of suit—Relief claimed in redemption suit — Claim in respect of ex proprietary tenancy and occupancy tenancy land —Jurisdiction of civil Court — (Contract Act (1872), S. 45)—(Limitation Act (1908), Art. 144)—(Tenancy Laws — U. P. Tenancy Act (17 of 1939), Ss. 10, 59, 182).

In cases of void mortgages, which under the law could not be mortgages, the mortgagor is entitled to recover possession subject to payment of the money received from the mortgagees, and no question of limitation arises in the case. The possession of the mortgagee is permissible possession and the only right he has is to be allowed to claim the money which the mortgagor had received from him. AIR 1950 All 604, Foll.

If instead of bringing a suit for possession, the mortgagor brought a suit for redemption there can be no good ground for refusing him the relief asked for, or strictly speaking the relief to which he is entitled. It is always open to the Court to grant the party entitled to a relief other than what he asked for, any appropriate relief to which he might be entitled. The form of the suit is of no consequence unless it has the effect of prejudicing the opposite party in his defence.

It cannot be contended that in such a case the claim being for recovery of possession of an under-proprietary tenancy land and occupancy tenancy land, the civil Court has no jurisdiction. The Court in granting relief adjusts equities between the parties and this can be done only by the civil Court. and not by the revenue Court. Ss. 59, 10 and 182, U. P. Tenancy Act have, therefore. no application to the case. 1956 All L J 504 : 1956 All W R (HC) 537 (2) : AIR 1956 All 639 (640) (Pt A) (Prs 5, 6).

——Ss. 60, 76 and 83 — U. P. Agriculturists' Relief Act (27 of 1934), S. 12 — Suit under, for redemption of usufructuary mortgage — Civil Court cannot consider the question whether the mortgagee has put up a fictitious perspn as tenant to prevent mortgagor from obtaining possession over mortgaged property— Section has not changed the substantive law found in T. P. Act — AIR 1949 All 380, Overruled. AIR 1953 All 472 (473, 474) (Prs 4, 5, 6) (DB).

——S. 60 — Suit for redemption — Mortgagee's plea that mortgage was already redeemed by plaintiff's father who was the original mortgagor—Plea accepted by lower appellate Court — Held, that it was a finding of fact binding on High Court in second appeal. See Civil P. C. (1908), Ss. 100-101. A I R 1963 Assam 176 (DB).

——Ss. 60, 62, 59 — Suit for redemption of usufructuary mortgage —Deed before Court—Execution of mortgage not denied by mortgagee — But deed not attested — Mortgage held invalid — Decree however could be granted on basis of mortgagor's title. I L R (1961) 13 Assam 23 : A I R 1961 Assam 48 (49, 50) (Prs 5, 6) (DB).

——S. 60 — Suit for redemption — Contention that there was agreement of sale on mortgage property in favour of mortgagee — Right to sue for specific performance held could not be set up as defence to suit for redemption. ILR (1955) 7 Assam 489 : AIR 1956 Assam 17 (20) (Pt C) (Pr 11) (DB).

——S. 60, Proviso — Right of redemption — Right once decreed, maintainability of subsequent suits— Subsequent suits within limitation are not barred unless right is extinguished in the meanwhile—Old decree by itself does not operate as res judicata in redemption suits—C. P. Code (1908), S. 11. (1964) 1 Ker L R 158 : A I R 1965 Ker 153 (153) (Pt A) (Pr 2).

——Ss. 60, 62, 76—Suit for redemption — Mortgagee in possession — Kompura at time of mortgage—Same not existing at time of redemption — No evidence that same fell down to natural causes — Mortgagee is liable to pay damages for the Kompura to the mortgagor. 1962 Ker L T 888 : AIR 1963 Ker 261 (262) (Pt B) (Pr 6) (DB).

——S. 60—Suit for redemption — Defendant building on property in violation of order of injunction issued by Court — Not entitled to value of building as part of price of redemption, See Civil P. C. (1908), O. 39, R. 1. AIR 1963 Ker 179 (FB).

——S. 60—Suit for redemption — Delay — Presumption.

Delay short of the period of limitation does not bar a right. From delay in enforcing rights of redemption a presumption cannot be made that the property was purchased by the mortgagee from the mortgagor. AIR 1952 Kutch 1 (3) (Pt C) (Pr 12).

——S. 60 — Suit for redemption on void mortgage-deed — Title established — Decree for possession can be granted—Proof of title independent of written mortgage-deed. See T. P. Act (1882), S. 59. A I R 1955 N U C (Madh B) 203.

● ——S. 60—Zamindari lands vested in Government under Zamindari Abolition Act—Suit for redemption of such lands—Maintainability of—(Madhya Bharat Zamindari Abolition Act (13 of 1951), S. 32).

Where a suit for redemption brought by the mortgagor against the mortgagee with possession does not fall within the ambit of S. 32 of the Madhya Bharat Zamindari Abolition Act, 1951 and also because, there is nothing in that Act by which such a suit is impliedly barred and its continuance impliedly prohibited, the suit for redemption cannot be dismissed solely on the ground that Madhya Bharat Zamindari Abolition Act has come into force and the Zamindari lands have all vested in the State.

Although the mortgagor's rights in the zamindari property have vested free from all encumbrances by reason of the provisions of S. 3 (1) Madhya Bharat Zamindari Abolition Act, 1951, he may yet be entitled, on payment of mortgage money to the mortgagee, to the mortgage deed and all documents relating to the mortgaged property and he can still claim an acknowledgment in writing from the mortgagee that any right in derogation of his interest transferred to him had been extinguished. Moreover, under certain contingencies, a proprietor may be entitled to possession of a property even under that Act as his Khud Khasta. Hence, the mortgagor's right to continue the suit for redemption cannot be taken away unless the law specifically provides for the same. Ramcharan v. Murlidhar. Madh B L R 1954 Civ 230 : Madh B L J 1954 H C R 671 : I L R (1954) Madh Bha 415 : AIR 1954 Madh B 193 (196) (Pt A) (Prs 33, 34, 40) (FB).

——S. 60 — Court-fees Act, Ss. 7 (iii) and 7 (ix) — Para (ix) applies to mortgage suit and not to suit for redemption of pledge—Such suit is governed by S. 7 Para (iii) — Suit held one for recovery of movable property pledged—Valuation for purposes of jurisdiction is market value of property — (Suits Valuation Act (1887), S. 8) — (Contract Act (1872), S. 172— (Gwalior Court-fees Act (Sm. 1964), S. 7 Para 8) — (Gwalior Suits Valuation Act, S. 2). See Court-fees Act (1870), S. 7 (iii). A I R 1952 Madh Bha 196 (DB).

——S. 60 — Suit for redemption is a suit for possession—Mortgage deed unregistered—Court can decree claim on the basis of title — (Registration Act (1908), S. 49). 1961 M P L J (Notes) 297.

——Ss. 60, 58 (d) and 76 — Mortgage in favour of lessee—End of lease — Possession continued—Mortgagee is bound to deliver possession in mortgagor's suit for redemption. See T. P. Act (1882), S. 58(d). AIR 1958 Mys 20.

——S. 60—Suit for redemption—Estoppel in cases of mortgagor and mortgagee — Mortgagee cannot resist claim for redemption on ground that mortgagor has no title to property. See Evidence Act (1872), S. 115. AIR 1956 Mys 14 (DB).

——S. 60 — Suit for redemption— Question of improvements — Possessory mortgage by S and T — Mortgagee acquiring T's interest—S suing to redeem —Question of improvements does not arise. ('52) 1952 Nag L J (Notes) 159.

——S. 60 — Maintainability of successive suits for redemption — (Civil P. C. (1908), S. 11 and O. 34, R. 7).

Unless there is an order for forclosure or a decree for sale the mortgage will, in the eye of law subsist. Once the mortgage is in subsistence, the right of redemption is not extinguished. If the right of redemption is not extinguished successive suits for enforcing that right can be filed. The right of redemption on the part of the mortgagor and the right to foreclose on the part of the mortgagee are co-extensive. The right to redeem can only be destroyed as provided under S. 60 of the T. P. Act, that is by the act of parties or by a decree of a Court. AIR 1959 Orissa 122 (123 to 125) (Prs 6, 8) (DB).

——S. 60, Proviso — Suit in ejectment founded upon plaintiff's title to recover possession from trespasser— Title declared in favour of plaintiff and his prayer for possession granted — Court directing that plaintiff could recover possession only on payment of mortgage money due to defendants — Decree not one for redemption as contemplated in O. 34, R. 7, Civil P. C. — No final decree or order dismissing suit passed on plainliff's failure to comply with condition — Subsequent suit by plaintiff for redemption— Suit held was not barred by S. 11 of C. P. C., as no decree expressly extinguishing plaintiff's right to redeem as contemplated by proviso to S. 60, T. P. Act, was passed in former suit. See Civil P. C. (1908), S. 11. AIR 1953 Orissa 17 (DB).

——S. 60—Suit for redemption — Addition of parties as defendant — Intervenor's interest adverse to mortgagee defendant — Conversion of suit into title suit not permissible—Addition of intervenor as defendant could not be made. See Civil P. C. (1908), O. 1, R. 10. AIR 1964 Pat 44.

——S. 60—Redemption—Deposit of mortgage money —If amounts to redemption—Mortgage is still a mortgage till decree for redemption is obtained—Suit for possession is suit for redemption. See Limitation Act (1908), Art. 148. A I R 1960 Pat 51 (DB).

——Ss. 60, 62 — Suits for redemption and possession —Distinction pointed out. See Limitation Act (1908), Art. 148. A I R 1957 Pat 452 (DB).

——S. 60—Suit for redemption—Fraudulent decree— Fraud can be impeached collaterally as a defence to an action. See Evidence Act (1872), S. 44. 1957 B L J R 127.

——S. 60, Proviso — Civil P. C. (1908), O. 1, R. 10; O. 22, R. 4—Redemption suit—Death of one of defendants — Application for addition of legal representative after limitation — Continuation of suit by addition—Permissible, when right to redeem is not extinguished. See Civil P. C. (1908), O. 1, R. 10. A I R 1950 Pat 281.

——S. 60—Redemption of mortgage—Tenant of mortgagee is liable to be ejected. 1964 Cur L J (Rev. Sup.) 1 : 66 Punj L R 427 : A I R 1964 Punj 369 (370) (Pt A) (Prs 3, 4).

——Ss. 60, 111 (d)—Merger of interests of lessee and lessor — Mortgage of house with possession executed in favour of tenant — Determination of lease by merger in mortgage—Suit for redemption—Mortgagor held entitled to actual possession on redemption. 63 Punj L R 574 : A I R 1962 Punj 48 (49, 50) (Prs 7, 8).

——S. 60—Delay—Effect — Suit after long delay— Right to relief.

The right to redeem under S. 60 of the T. P. Act is not capable of being qualified by any contract to the contrary, and where this right is imperilled a suit to obtain relief from such a peril should not be thrown out on the mere ground that it has been brought after a long time of the execution of the mortgage in

question. A I R 1923 Nag 60, Not foll. **I L R (1958) 8 Raj 258 : 1958 Raj L W 9 : A I R 1958 Raj 298 (302) (Pt C) (Pr 17).**

[Reversed on another point in A I R 1960 Raj 47.]

——S. 60 — Suit for redemption — Plaint not mentioning the specific mortgage — Document filed with plaint mentioning specific mortgage — Notice taker by defendant before filing written statement—Defendant in possession of mortgage deed—Defect in plaint is not fatal to suit. See Civil P. C. (1908), O. 6, R. 2. **I L R (1956) 6 Raj 55.**

——S. 60 — Suit for redemption of an unregistered mortgage—Suit is maintainable. See T. P. Act (1882), S. 59. **A I R 1955 N U C (Raj) 5406.**

——S. 60 — Suit for redemption is not triable by Revenue Courts. See Tenancy Laws — Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), Sch. 1. **A I R 1955 N U C (Raj) 5018 (DB).**

——S. 60—Illegal term embodied in consent decree—Such a decree is no bar to the parties to the contract contending that agreement was illegal and unenforceable in law. See Civil P. C. (1908), O. 23, R. 3. **A I R 1955 N U C (Trav-Co) 6003 (DB).**

——S. 60 — Suit for redemption and for recovery of entire property — Court limiting decree for recovery of half property — Court cannot be taken to have converted the suit for redemption into one for partition. See Civil P. C. (1908), O. 7, R. 7. **A I R 1955 N U C (Trav-Co) 2567.**

——S. 60 — Suit for redemption — Suit on mortgage against co-owners without impleading some—Decree —It is not binding on those who were not parties—(Civil P. C. (1908), O. 1, R. 3). **A I R 1955 N U C (Trav-Co) 2565 (DB).**

● **——S. 60—Decree for redemption obtained—Subsequent suit for redemption is maintainable.**

Notwithstanding the institution of a suit and the passing pf a decree for redemption, a subsequent suit for redemption of the same mortgage is maintainable even though the execution of the decree for redemption obtained in the previous suit is barred by limitation. Madhava Shenoi v. Yasodabai, **I L R (1954) Trav-Co 675 : 1954 Ker L T 530 : A I R 1955 Trav-Co 9 (9, 12) (Prs 1, 6) (FB).**

● **——S. 60—Suit for redemption of mortgage—Consideration being paddy—Valuation of paddy—(Civil P. C. (1908), O. 20, R. 10).**

A redemption of a mortgage where the mortgage consideration consists of paddy, cannot be deemed to be a suit for recovery of such paddy. In spite of a suit or a decree for redemption, the mortgage continues to subsist until redemption is sought to be enforced by tender of the redemption price. It is only at the moment of such tender that the mortgage is sought to be extinguished. It is only then that the paddy portion of the redemption price becomes payable. It follows therefore that paddy covered by the mortgage in such a case has to be valued at the price prevailing at the time when the redemption price is tendered by deposit of the same in Court and redemption is sought for by the extinguishment of the mortgage debt. 1949 Ker L T 187, **Overruled.** Ouseph v. S. Thomman, **I L R (1954) Trav-Co 427 : 1954 Ker L T 463 : A I R 1954 Trav-Co 473 (484) (Pt C) (Pr 19) (FB).**

——S. 60—Second suit for redemption.

Where after a suit for redemption filed by two mortgagors, *A* and *B*, *B* after the decree in the previous suit obtains redemption of the entire properties by virtue of his title to one-half share in the equity of redemption the remedy of *A*, under the circumstances is to bring a suit for redemption of his half share of the properties on partition by metes and bounds. The cause of action being recurring one, such a second suit is not barred on account of the previous joint action by the two co-mortgagors for redemption. **A I R 1953 Trav-Co 335 (336) (Pr 6) (DB).**

——S. 60 — Superior mortgage for certain period—Direction to redeem pre-existing mortgage—Suit to redeem such mortgage after such period was over—Maintainability of suit — (Limitation Act (1908), Art. 148).

Where a superior mortgage is for a certain period, such period is only for the benefit of the mortgagee to keep possession of the property for that period and it does not in any way shorten the period within which the mortgagee can file a suit for redemption of a pre-existing mortgage which he is directed in the mortgage deed to redeem, such latter period being the period during which the mortgagor himself could file a suit for redemption. **A I R 1952 Trav-Co 386 (387) (Pr 2) (DB).**

● **——S. 60—Mortgage—Term for renewal—Effect—Held there was no renewal — Suit for redemption held not premature.**

Held, on facts that if it had not been stated in the covenant that the value of improvements should be assessed and taken into account in granting the renewal, it would perhaps have been possible to hold that a renewal on the same terms as in the original mortgage was in the contemplation of the parties. But as it was not possible to say that it was a renewal strictly that was bargained for by the parties. It was not the same mortgage the term of which was expiring that was to be revived or renovated for another period of time. The renewal could not therefore have come into effect without something more being done by the parties and necessarily the mortgagee could not contend that the suit for redemption brought by the mortgagor is premature :

That unless the term for which the renewal is to be executed is clear from the covenant either expressly or impliedly and unless the renewal is to be otherwise on the same terms as in the original mortgage, the mortgagee cannot effectively contend that the suit for redemption is premature. Case law referred. Kurien Kurien v. Lakshmi Amma, **('49) 1949 Trav-Co L R 264 : A I R 1951 Trav-Co 71 (FB).**

——S. 60—Suit for redemption—Mortgagee can plead in defence barred claims due to him. See Limitation Act (1908). S. 3. **A I R 1951 Trav Co 17 (DB).**

19. Costs of mortgagee in suit for redemption.

——S. 60 — Costs of the mortgagee — Trial Court granting half costs — Held on facts discretion not to be interfered with. See Civil P. C. (1908), S. 35. **A I R 1955 N U C (Ajmer) 1106.**

——S. 60—Mortgage suit — Order as to costs—Interference in appeal — (Civil P. C. (1908), S. 35, O. 34, R. 10.)

The ordinary rule of law is that costs follow the event and this applies with greater force in mortgage suit. The mortgagee is in all events entitled to costs unless his conduct is contumacious.

Where the trial Court has rightly exercised its discretion in awarding costs, the Appellate Court would not interfere merely because it would have itself exercised the discretion in a different way. **AIR 1954 Ajmer 9 (1) (9) (Pt B) (Pr 5).**

——S. 60 — Mortgagee advancing certain money on mortgage — Certain sum entered in deed as Teekha Aank which was not paid — Held that there was failure of consideration in respect of latter amount — Parties left to bear their own costs—(Contract Act (1872), S. 24 — Failure of consideration). (Civil P. C. (1908), S. 35. **A I R 1955 N U C (Raj) 5987.**

——S. 60—Costs of mortgagee—Suit for redemption.

It is true that in a mortgage suit, the mortgagee is ordinarily entitled to get his costs. But where the Court finds that the mortgagees had put forward untenable contentions costs may be refused to him. ILR (1953) Trav. Co 823 : A I R 1954 Trav-Co 313 (314) (Pt B) (Pr 5).

——S. 60—Costs in suit for redemption.

The ordinary rule that in a suit for redemption the mortgagee is entitled to costs cannot be departed from unless there are reasons to do so. A I R 1953 Trav-Co 423 (424) (Pt C) (Pr 4) (DB).

——S. 60—Redemption suit — Normally mortgagee is entitled to his costs unless he is guilty of misconduct —Putting excessive value on improvements is not misconduct. See Civil P. C. (1908), O. 34, R. 10. A I R 1952 Trav-Co 295 (DB).

——S. 60—Suit for redemption—Costs of mortgagee.

Under normal circumstances, a mortgagee can claim his costs from the plaintiffs mortgagors in a suit for redemption. But where the claims put forth by the mortgagee are found to be untenable and accordingly are negatived by the trial Court, the mortgagee must be made to suffer the costs incurred in the trial Court. 1950 Ker L T 462 : A I R 1951 Trav-Co 17 (22) (Pt E) (Pr 9) (DB).

20. Onus of proof in suit for redemption.

——S. 60—Proof—(Evidence Act (1872), S. 3).

Held, that the plaintiff's allegation that the property in suit had been mortgaged with the defendant was not satisfactorily proved. As such the plaintiff was not entitled to succeed. A I R 1954 Ajmer 47 (47) (Prs 2, 3).

——S. 60 — Suit for redemption — Mortgagor must prove that claim for redemption is within limitation and subsisting — Failure to prove year of mortgage— Suit dismissed. A I R 1951 Ajmer 21 (23) (Pt C) (Pr 8).

——S. 60—Mortgage whether subsisting—Burden of proof—Evidence Act (1872), Ss. 101 to 103,

In order to succeed in a suit for redemption, a plaintiff must not only show the alleged mortgage but he must further show that it was a subsisting mortgage. The expression 'Subsisting mortgage' means a mortgage which is not extinguished when the equity of redemption is extinguished by act of parties or by operation of law. An equity of redemption is extinguished by act of parties if a mortgagee purchases it from his mortgagor. When a mortgage alleged is either admitted or proved, it may be presumed in a proper case having regard to the circumstances of the case, that it is a subsisting mortgage, if it is shown that the equity of redemption therein was not extinguished by operation of the law of limitation, but not so where the mortgage is denied.

(Held in this case the equity of redemption was not extinguished by transfer to the mortgagee). A I R 1952 Kutch 1 (2) (Pt A) (Prs 6, 6a).

——S. 60 — Onus of proof in suit for redemption — Plaintiff must prove his title to redeem — (Evidence Act (1872), Ss. 101 to 103). A I R 1955 N U C (Madh B) 3809.

——S. 60 — Suit for redemption of agricultural land in possession of defendant –Plaintiff failing to prove that land was his khudkasht at the time of mortgage —Suit for redemption not affected — A preliminary decree for redemption could not be refused to the mortgagor. 1954 M B L J 671 and 1955 M B L J 1090, Dist. (Tenancy Laws — Madhya Bharat Zamindari Abolition Act (13 of 1951), S. 37). 1961 M P L J (Notes) 235 : 1961 Jab L J 423.

——S. 60 — Suit for redemption — Initial burden of proof rests upon plaintiff mortgagor to prove mortgage by some prima facie evidence. See Evidence Act (1872), Ss. 101 to 104. A I R 1958 Raj 110.

——S. 60 —Suit for redemption—Plaintiff must prove specific mortgage set up by him—It is always for the plaintiff to prove that the property sought to be redeemed was mortgaged by virtue of a mortgage-deed of a specific date as he has alleged and if he fails to prove, his suit ought to be dismissed. 1956 Raj L W 110 : ILR (1956) 6 Raj 55.

——S. 60 — Onus of proof in suit for redemption — Plaintiff can be given decree on another mortgage set up by defendants when specific mortgage set up by him is not established — Held that as the plaintiff had not shown that they were descendants of mortgagors who executed the admitted mortgage they were not entitled to decree even on that basis. A I R 1955 N U C (Raj) 4661.

—— S. 60—Suit for redemption — Defendant setting up sale—Unregistered sale deed inadmissible to show nature of possession — Burden of proving that mortgages subsist lies on mortgagor — (Registration Act (1908), S. 49). A I R 1955 N U C (Raj) 4046.

——S. 60—Suit for redemption—Mortgage alleged by plaintiff not proved—Plaintiff cannot take advantage of different mortgage not set up by him. 1950 Raj L W 199 : A I R 1950 Raj 47 (50) (Pt D) (Pr 18) (DB).

——S. 60 — Suit for redemption — Onus of proof — Plaintiff must give prima facie evidence that mortgage is subsisting. A I R 1955 N U C (Trav-Co) 5099.

——S. 60 — Mortgage — Onus of proof in suit for redemption—Plaintiff is bound to prove that mortgage. See Evidence Act (1872), Ss. 101 to 103. A I R 1955 N U C (Trav-Co) 1906 (DB).

21. Limitation.

——Ss. 60, 62 —Starting time of limitation — Right to redeem mortgages already expiring before Act came into force, there is nothing on which Act will operate. See Limitation Act (1908), Art. 148. A I R 1953 All 620 (DB).

—Ss. 60, 62 — Limitation Act (1908), Art. 148 — Mortgage of 1-8-1878—Mortgagee to enter into possession, if money is not paid within 4 years—Suit for redemption — Starting point pointed out — Suit for possession and suit for redemption under Ss. 62 and 60 distinguished — Debt Laws—U. P. Agriculturists' Relief Act (27 of 1934), S. 12. See Limitation Act (1908), Art. 148. A I R 1951 All 392 (DB).

——S. 60 — Limitation Act (9 of 1908), Art. 148 — Civil Procedure Code (5 of 1908), S 11—Prior suit for redemption held barred under Art. 148 of the Limitation Act — Subsequent suit for redemption — Plea of res judicata —Applicable —Constructive res judicata—Applicability to special procedure enacted by statute or special rights conferred.

A subsequent suit for redemption of a mortgage would be barred by limitation on the application of the principle of res judicata, if in a prior suit for redemption between the same parties, it had been heard and decided that, that suit was time-barred with reference to Art. 148 of the Limitation Act. It cannot be said that suits under S. 60 of the Transfer of Property Act are altogether beyond the scope of the principle of res judicata, with regard to any matters in controversy that might be decided in such suits. The authority in the decisions to the effect that so long as the right to redeem is not extinguished subject to Art. 148 of the Limitation Act, successive suits for redemption would lie and that this recurring right would not be affected by S. 11

of the Code of Civil Procedure must be understood in the context, i. e., in repelling the earlier view that where the prior decree for redemption was time-barred in execution, the subsequent suit itself was barred. (1963) 1 M L J 133 : 1963 Mad W N 111 : 76 Mad L W 52 : ILR (1963) Mad 454 : AIR 1963 Mad 226 (230, 231) (Prs 15, 16, 17) (DB).

——S. 60 — Limitation Act (1908), Ss. 19, 21 (2)— Acknowledgment by some of several mortgagees— Effect on limitation—Fresh contract—Contract Act (1872), S. 62—Evidence Act (1872), S. 35.

Held, on facts (1) that in the absence of evidence that the parties entered into a new contract in 1960, the mutation entry did not create any fresh mortgage.

(2) As the acknowledgement of mortgage in the mutation entry was made by only two of the mortgagees it could not bind the remaining mortgagees and could not be used against them under S. 21 (2), Limitation Act.

(3) In the absence of any evidence the two mortgagees could not be presumed to be authorised by the others to make an acknowledgment on their behalf or to have acted as their agent.

(4) As the integrity of the mortgage was not split up by any act of the mortgagees and as it was still joint and indivisible the mortgagors could not sue each mortgagee or each branch separately for redemption. The mere fact that each branch of the mortgagees' family was recorded as having a definite share did not entitle the mortgagors to get a part of the mortgage redeemed. 1939 Lah 293 and 67 I C 463, Rel. on. AIR 1930 Bom 466 (FB), Dist. 3 Pepsu L R 484 : AIR 1952 Pepsu 6 (6, 7) (Prs 3, 4, 5) (DB).

——Ss. 60 and 67 — Limitation — Starting point — No period for redemption fixed but mortgagor to pay interest for a whole year and year by year— Mortgage money held become due after expiry of one year. See Limitation Act (1908), Art. 132. AIR 1963 Punj 25 (DB).

——S. 60 — Sale by guardian on behalf of minor— Subsequent suit for redemption — Setting aside of sale —Necessity —Limitation —Art. 44 of Limitation Act (1908), held attracted — (Limitation Act (1908), Arts. 44 and 148) — (Hindu Law — Minor and Guardian). ILR (1959) Punj 912 : 61 Pun L R 394 : AIR 1959 Punj 313 (315, 317) (Prs 6, 20) (DB).

——Ss. 60 and 67—Enforcement of mortgage—Right of mortgagor and mortgagee — 'Mortgage-money' — Meaning — No period for redemption mentioned in mortgage deed — Limitation for suit to enforce — (Limitation Act (1908), S. 19 and Art. 132).

S. 60, T. P. Act, provides that the right of the mortgagor to redeem starts from the time the principal money becomes due, though redemption can only take place on tender or payment of mortgage-money, which is both principal money and interest accumulated on the mortgage. The right of the mortgagor to redeem and that of the mortgagee to enforce his security being contemporaneous the start of limitation under Art. 132, Limitation Act, for the enforcement of either right must necessarily be the same time. The fact that it was agreed between the parties to the mortgage-deed that the mortgagee's claim to interest will accrue only after the expiry of the year does not mean that the right of redemption of the mortgagor was deferred for a year. An acknowledgment by the mortgagor or his successor-in-interest within 12 years from the date of accrual of interest but beyond 12 years from the date of mortgage deed will not save the suit brought by the mortgagee to enforce his mortgage. ILR (1959) Punj 254 : 61 Pun L R 213 : AIR 1959 Punj 249 (250, 251) (Pt A) (Prs 7, 8).

[Reversed in AIR 1963 Punj 25].

——Ss. 60, 59 — Invalid usufructuary mortgage — Mortgagee's possession over 12 years—Effect—Mortgage held does not come into existence — Suit to recover possession after redemption—Maintainability —Invalid mortgage deed — Admissibility of, as evidence — Limited interest of mortgagee held not created—(Registration Act (1908), S. 49)—(Limitation Act (1908), Arts. 142-144) —AIR 1950 Orissa 213 and AIR 1957 Pat 245, Dissented from. See T. P. Act (1882), S. 59. AIR 1958 Raj 102 (DB).

[Overruled in AIR 1960 Raj 1].

——S. 60 — Usufructuary mortgage — Possession of mortgagee after full satisfaction of debt — When adverse to mortgagor — Limitation Act, Arts. 144 and 148.

Where in case of a usufructuary mortgage, there is a conscious act on the part of the mortgagor of paying the mortgage amount, getting possession of part of the mortgage security, obtaining all the deeds back from the mortgagee and executing a registered receipt, it is idle to contend in face of all these, that the parties had any intention to continue the jural relationship of mortgagor and mortgagee after that date. If, therefore, any portion of the mortgaged property remains in the hands of the mortgagee, he cannot be taken to have held it under the old relationship. This being a case where the mortgagor had full knowledge of all the circumstances no other conduct on the part of the mortgagee is necessary to evidence assertion of hostile title. The mortgagee's possession of the portion must be held to be adverse to the mortgagor and suit filed by the mortgagor beyond 12 years is barred by limitation. 1956 Ker L T 875 : AIR 1957 Trav-Co 145 (146) (Pr 3) (DB).

22. Adverse possession of equity of redemption.

——Ss. 60 and 65 — Mortgage by Zamindar Z of his property to B — Subsequent usufructuary mortgage of his sir plots to H — Sale in enforcement of B's mortgage — H also a party — Purchase by a third party—H continuing in possession for over 12 years — Z's exproprietary rights — Non-transferability, effect of—Suit for redemption if barred.

Held, on facts the mortgagee could not remain in possession of the sir plots as the mortgagee of the ex-proprietary rights of Z on the principle of substituted security for the reason that ex-proprietary rights were rendered inalienable by law. He had lost all the rights as mortgagee of the properties by the sale of the interests of Z in the sale of 1905, in execution of the decree on a prior mortgage against H and Z. The possession of H therefore was not as mortgagee of the properties or that of ex proprietary rights of Z.

But the possession of H cannot be held to be adverse; his name appeared in the village records all through as the mortgagee from Z or his Legal Representatives though it was open to him to assert his adverse title. Hence the decision of the Court below that he be redeemed on payment of the money advanced on the mortgage is correct. 1952 A W R (HC) 458 : 1953 ALJ 203 : AIR 1953 All 147 (148) (Pt B) (Prs 5, 6).

——S. 60 — Possession of mortgagee — If and when adverse — To allow mortgagee in possession to acquire title by mere possession and enjoyment for over 12 years during subsistence of mortgage would amount to cutting down 60 years period of limitation available for redemption to 12 years—Salutary rule against acquisition of title by such assertion— So long as owner of equity of redemption has not agreed. See Limitation Act (1908), Arts. 142-144. (1958) 2 Andh W R 301.

——S. 60—Limitation Act (1908), Art. 144—Usufructuary mortgage — Adverse possession against mortgagee - Person setting up title by such possession must show knowledge of such possession by mortgagor, requisite length of possession and that this possession was open, adverse and to the knowledge of mortgagor — In absence of such proof, no trespasser can claim title by adverse possession. See Limitation Act (1908), Art. 144. AIR 1959 Mad 37.

——S. 60 — Adverse possession of equity of redemption.

In a case of usufructuary mortgage, the transferees of mortgagee rights cannot be subrogated to the position of the mortgagee and the mortgagor cannot be compelled to claim redemption only from them, because the rights that the transferees acquire against mortgagee do not create any contractual relationship of mortgagee and mortgagor between the transferees and the mortgagor. As against the mortgagor they are mere trespassers. AIR 1953 Pepsu 101 (103) (Pt D) (Pr 5).

——S. 60 — Limitation Act (1908), Arts. 142 and 144 and 148 —Possession of mortgagee —When becomes adverse stated —Obtaining patta of property without notice to mortgagor, does not affect latter's right of redemption. See Limitation Act (1903), Art. 142. AIR 1954 Trav-Co 165 (DB).

SECTION 61

——S. 61—Principles governing issue of temporary injunctions—Mortgage decree for payment of amount due on all mortgages—Injunction seeking to restrain mortgagees from selling mortgaged property in execution of their decree — Injunction cannot be issued. See Civil P. C. (1908), O. 39 R. 1. (1964) 2 Andh W R 412.

——S. 61—Possessory mortgage and deed of further charge—Recital to pay both amounts on demand—On default mortgagee could sue to recover both amounts together — Expressions 'Purukkada :Adharam' and 'Puramuri' — Meaning of—Suit for redemption—Amount to be deposited. See Debt Laws—Kerala Agriculturists Debt Relief Act (31 of 1958) S. 11. 1961 Ker L T 52.

——S. 61 (as amended in :1929) — Retrospective operation.

The right to claim consolidation, which is a valuable right, accrues when the mortgages become combined in the person claiming consolidation, and such a right which accrued before the date of the amendment of section 61 (Transfer of Property Act) cannot be taken away by the amendment which has no retrospective operation. AIR 1947 Mad 18 : (1946) 2 Mad L J 35, Foll. 1957 Ker L J 726 : 1957 Ker L T 838.

——S. 61—Contract to the contrary—Clause in later deed extending period of payment to the day of payment of earlier mortgage.

The contract to the contrary to exclude the operation of S. 61 must be specific and explicit in terms. There must be a stipulation for simultaneous redemption to disentitle the plaintiff from claiming separate redemption under the section. Thus the clause in a later mortgage which provides that notwithstanding the period stipulated in the deed and even though that period has expired, the mortgagor undertakes to pay the amount along with the sum due under the earlier mortgage as and when it is paid, does not mean that the mortgagor has undertaken to redeem both the mortgages simultaneously; the clause amounts only to extending the period for payment under the deed to a date when the payment is made under earlier deed. The clause cannot therefore amount to a contract to the contrary within the meaning of S. 61 and the right of redemption of the earlier mortgage by the plaintiff is not taken away. 1956 Mad W N 756: AIR 1956 Mad 691 (692) (Pr 5).

——Ss. 61 and 67A—Scope and object of sections indicated — Section 61 recognises abolition of the doctrine of consolidation of mortgages. A I R 1956 Mad 467 (468, 469) (Pt A) (Prs 3, 7).

——Ss. 61, 67A—Contrast between—Effect of amended S. 61—Contract to the contrary—It should state that mortgagor is prevented from exercising right conferred under S. 61 and is obliged to redeem all mortgages together. A I R 1956 Mad 434 (437, 438) (Pt C) (Prs 9, 12, 13) (DB).

——S. 61—Mortgage with possession and lease-back to the mortgagor—Suit for redemption of the mortgage — Mortgagee if could insist on the payment of not only the mortgage amount but the other sums due under the lease such as arrears of rent, etc. for the period during which the mortgagor was in possession.

Whatever might have been the state of law prior to the amendment of S. 61 of the Transfer of Property Act in 1929, the section as it stands does not compel a mortgagor to redeem all the mortgages on one and the same property at the same time. Hence even if there is a mortgage with possession a lease-back of the mortgaged properties to the mortgagor and a charge is created on the equity of redemption for arrears of rent, still the two transactions cannot be treated as one and the same compelling the mortgagor to redeem the same as such. 52 M L J 258 : L R 54 I A 68 : ILR 50 Mad 180 (PC) and 20 All 401, held no longer good law. It may be for certain purposes like O. 34, R. 14 Civil P. C. the rent under such a lease-deed may be considered to be a claim arising under the mortgage; but that would not be enough to say that it is part of the same mortgage. There is no justification for treating rent as interest on the mortgage because it is fixed in a lease-back of property comprised in a usufructuary mortgage. It is the intention of the parties and not the form of the instrument that should decide the nature of the contract between them. AIR 1952 Trav-Co 92, Approved and Followed. It is clear that when a mortgagee brings a suit for sale of the mortgaged properties he has to claim all the amounts under separate mortgages. The same principle cannot be applied when a mortgagor brings a suit for redemption. 1956 Mad W N 146 : (1956) 1 M L J 355 : 68 Mad L W 125 : I L R (1956) Mad 983 : A I R 1956 Mad 434 (439, 440) (Prs 17, 19).

——S. 61—Consolidation of mortgagees — One mortgagor cannot by executing a tacking mortgage affect the rights of his co-mortgagors to redeem. See T. P. Act (1882), S. 60. AIR 1955 Trav-Co 232.

——Ss. 61, 63 and 76 and Travancore C. P. Code, S. 31—Contract to the contrary—No limitation for accounting—Accounting between mortgagor and mortgagee—Travancore C. P. Code, S. 31 applicability of—Accretion to mortgaged property—Rights to.

There were three mortgages with possession over the same property, the first for 24 years, the second for 12 years after the period of the first and the third for 12 years, thereafter and there was another Puravaikadam the interest thereon and balance of interest on another are all to be paid on redemption of the mortgages. The mortgagee had as mortgagee in possession obtained an assignment of Government Poramboke of a property adjacent to one of the plots mortgaged. On a partition of the plaintiff's Tarwad the plaintiffs were entitled to 5/8 of the mortgaged property described by metes and bounds in the deed of partition and the mortgagee had purchased the remaining 3/8 share of the other shares.

Held : That the accretion was to the mortgaged property and the plaintiff was entitled to 5/8 share therein. Neither the plaintiff nor the defendant is exclusively entitled thereto.

That by the contract between the parties all the four documents were allowed to be consolidated and the mortgagee was entitled to refuse redemption of the mortgagees one by one and he was also debarred from claiming interest due after adjustments of usufructs as provided in the documents of mortgage until the expiration of the consolidated period of 48 years from the date of the first mortgage. When the three mortgages are consolidated with the fourth Purakkadam the consolidation makes it an anomalous mortgage.

At the time of redemption of the consolidated mortgage, accounts had to be gone into to arrive at the interest due after giving credit to michavaram.

Section 31, Travancore C. P. Code cannot be applied on such an accounting between mortgagor and mortgagee. AIR 1952 T C 552 (553) (Pt B) (Pr 7) (DB).

——S. 61 — Consolidation of mortgages — Deed of further advance.

The plaintiff filed a present suit for redemption of a mortgage. The mortgage was admittedly a usufructuary mortgage relating to plaint items 1 and 2 and another property which was not included in the plaint. The proportionate mortgage amount charged on the property left out was Rs. 49. Provision had been made in the document for the payment of Michavaram to the mortgagor and it was provided that in case the property not included in the plaint had to be surrendered to its Jenmi, then certain other terms would govern the parties. The property was not however redeemed till 1095. The mortgagors then took a further advance of Rs. 1,144 in addition to Rs. 49 charged on the property left out so that the total credit given that day was for Rs. 1,193. Provision was also made there that in case the item of property not included in the plaint came to be surrendered the amount advanced would be a charge on the plaint properties. It was mentioned by the defendants in their written statement that they had to surrender possession of the third item in the usufructuary mortgage because of a decree of Court. Michavaram was in arrears and such arrears amounted to much more than the mortgage amount at the time the decree was passed in the case.

Held that as the mortgagee could not have obtained any portion of that mortgage amount they were entitled to claim the whole amount advanced by them under the later document that amount was a charge on plaint items 1 and 2. It is now settled law that the mortgagee was entitled to consolidate the two documents and could claim the amount due thereunder before he was compelled to surrender possession of the property. 1946 T L R 546, 1948 T L R 612, Foll. AIR 1952 Trav-Co 363 (364) (Pr 4) (DB).

——S. 61 (before Amendment) — Principle of section applied in Travancore-Cochin, even before introduction of T. P. Act there — Several mortgages on same property in favour of same person—Remedy of mortgagee in respect of some mortgages barred — He can still insist on their redemption, when redeeming others.

Notwithstanding the fact that the Transfer of Property Act was not law in Travancore and Cochin before its introduction there, the principle which S. 61 (before its amendment in 1929) impliedly recognised was applicable to Travancore and Cochin and all the mortgages over the same property in favour of one and the same person must be simultaneously redeemed and the mortgagor is not entitled to redeem one without redeeming the other or others. AIR 1927 P C 32; AIR 1940 PC 38; 1946 T L R 546; AIR 1947 Mad 18, 3 Select Decision 34; 1950 K L T 462, Relied on.

The fact that an unsuccessful attempt was made to realise the puramkadam amount is bar at all to permit the tacking. A second suit within the statutory period is not under the circumstances prohibited.

The fact that the mortgagee had by the time the suit for redemption of one of the mortgages is brought lost his right to enforce payment of the puramkadam amount in respect of other mortgages by a separate suit will not stand in his way to claim it when these other transactions are sought to be redeemed. All that is needed for a mortgagee to avail of the right of tacking is that on the date when several mortgages become united in him they must all have been live mortgages and that if a mortgagee has a right to insist upon redemption of all the mortgages which have become united to him, he can hold on to the property and claim that the mortgagor, when redeeming the one, must redeem all. There is not reason or principle which necessitates all mortgages being alive on the date of the suit. Even if they are barred by limitation on the date of the suit by the mortgagor, they are still available to the mortgagee as a shield to defend his possession. Limitation does not extinguish the liability but only bars the remedy. AIR 1947 Mad 18; AIR 1932 All 553; 1946 T L R 546; 3 Select Dec. 34; AIR 1922 Mad 249; AIR 1943 Mad 370, Rel. on. 1952 Ker L T 129 : AIR 1952 Trav-Co 295 (297, 298) (Pt A) (Prs 8, 10, 11) (DB).

——S. 61 — Several mortgages in favour of same mortgagee — In respect transactions before Cochin T. P. Act mortgagee could insist on redemption of all mortgages simultaneously — (Cochin T. P. Act 17 of 1111), Ss. 65 and 2.

Codified law in Cochin regulating the transfer of properties, was introduced for the first time by the passing of the Cochin Transfer of Property Act (Act 17 of 1111) which was brought into force with effect from 1-1-1112). By Section 65 of that Act it was laid down that the mortgagor who has executed two or more mortgages on the same property in favour of the same mortgagee shall in the absence of a contract to the contrary be entitled to redeem any one such mortgage separately or any two or more such mortgages together. Such a right conferred on the mortgagor could be availed of only in respect of mortgeges which came into existence subsequent to the passing of the Act unless a similar right was available to the mortgagor as per the common law of the State, which was in force till the commencement of the Act.

Under the common law as recognised and enforced in the Cochin State prior to the passing of the Transfer of Property Act the mortgagor seeking redemption of the mortgaged property was bound simultaneously to redeem all the subsisting mortgages in favour of the same mortgagee in respect of the property sought to be redeemed and to pay off all the charges created under those documents. 3 Select Decision—Cochin 34 Followed. Case law Ref.

(It was held on the construction of the deeds, (executed prior to Act) that there was also an implied agreement that the charges should be simultaneously redeemed).

Even though the mortgagee's right to recover by independent action the mortgage amounts due to him may have become time-barred, he can use his possessory lien over the property as a shield against the claim for redemption of the properties and insist on payment of all the amounts for which he has a charge on the properties before he is asked to surrender possession of the properties and there is no bar of limitation to such a claim being set up by way of defence to a suit for redemption. The essential

test in such cases will be to see whether the mortgagee : defendant has obtained a lien on the properties sought to be redeemed, in respect of the amounts claimed by him, so as to entitle him to retain possession of the properties by virtue of such lien until the repayment of such amounts. (It was held that such a lien was created.) AIR 1952 Trav-Co 150 (151 to 153) (Pt A) (Prs 2, 3, 4) (DB).

SECTION 62

● ——Ss. 62, 35 and 60 — Doctrine of election — Its applicability to mortgage transaction—By his conduct mortgagee held to be bound by doctrine of election—Limitation Act (1908), S. 3 and Art. 148 — Suit for redemption — Held, suit was not barred by limitation. See T. P. Act (4 of 1882), S. 35. AIR 1965 S C 241.

● ——Ss. 62, 58 (d), 60 — Usufructuary mortgage — Payment of mortgage money by mortgagor — Mortgage comes to an end and cannot be said to exist so long as mortgagor's right to ask mortgagee to perform acts mentioned in S. 60 continues. See T. P. Act (4 of 1882), S. 58 (d). AIR 1963 S C 1041.

——S. 62—Starting point of limitation—Usufructuary mortgage of occupancy holding—Validity — Suit for possession by mortgagor after expiry of limitation for suit for redemption—Suit held maintainable. See Limitation Act (1908), Art. 148. AIR 1956 All 436 (DB).

——S. 62 — Mortgage with possession of occupancy holding void — Suit for possession by mortgagor—Maintainable—Refund of mortgage money—Court can rely on provisions of U. P. Debt Redemption Act as rules of equity. See T. P. Act (1882), S. 60. AIR 1955 N U C (All) 4171.

——S. 62 — Suit under lies when mortgagor's right subsists — Effect of bar of limitation to suit for redemption is that his right to property is extinguished —Property becomes absolute property of mortgagee —Suit under S. 62 does not lie—U. P. Debt Redemption Act (XIII of 1940) — Effect of, is not to revive extinguished title — (Limitation Act (1908), S. 28, Art. 148)—(Debt laws — U. P. Debt Redemption Act (13 of 1940)). AIR 1955 N U C (All) 1763.

——Ss. 62, 60 — Right to redeem mortgages already expired before U P. Debt Redemption Act came into force—There is nothing on which Act will operate. See Limitation Act (1908), Art. 148. AIR 1953 All 620 (DB).

——Ss. 62, 60—Scope -Section 60 is a general provision giving right of redemption to mortgagors in general. Section 62 deals specifically with usufructuary mortgages—See T. P. Act (4 of 1882), S. 60. AIR 1953 All 33 (DB).

——Ss. 62, 60—Mortgage of 1-8-1878—Mortgagee to enter into possession, if money is not paid within 4 years — Suit for redemption — Starting point of limitation is from 1-8-1882—Suit for possession and suit for redemption under Ss. 62 and 60 distinguished — See Limitation Act (1908), Art. 148. AIR 1951 All 392 (DB).

——S. 62—Usufructuary mortgage—Suit for redemption—Income from property—Onus of proof—Determination of — Debt laws—U. P. Debt Redemption Act (13 of 1940), S. 9 (2).

In a suit for redemption of a usufructuary mortgage, burden lies on the defendant-mortgagee to prove how much is due to him on the date of application for redemption.

Under the terms of a usufructuary mortgage, the mortgagee was to receive the income of the property in lieu of interest and in case the mortgagor failed to deliver possession, he was to pay interest at the rate of 2 p. c. per month on the principal of Rs. 3,600. Possession was delivered and the mortgagor sued for redemption after 16 years. Mortgagee was unable to prove income from property. The lower Court calculated the income to be equal to the amount ot interest agreed to be paid by the mortgagor at the rate of 2 p. c. p. m.:

Held that the rate of 2 p. c. p. m. was the rate of damages to be paid in case the mortgagor failed to carry out the terms of the mortgage. Such rate is usually higher than the current reasonable rate. The latter rate at the date of mortgage was at 12 p. c. p. a. and the income should have been calculated according to that rate.

Held further that the rate allowed to the mortgagee under the U. P. Debt Redemption Act, 1940, being only at 4⅓ p. c. p. a., there was excess in the hands of the mortgagee which went towards the satisfaction of principal and thus satisfied the whole debt. 1950 All L J 378 : 1950 All W R 463 : AIR 1950 All 466 (467) (Pr 2) (DB).

——Ss. 62, 60, 59 — Suit for redemption of usufructuary mortgage — Execution of mortgage not denied by mortgagee—But deed not attested—Mortgage held invalid — Decree however could be granted on basis of mortgagor's title — See T. P. Act (1882), S. 60. AIR 1961 Assam 48 (DB).

——S. 62—Enforcement of contractual right—Remedy —Usufructuary mortgage deed expressly granting such right to mortgagee—Suit for possession—Vendee of mortgagor—Such right cannot be pleaded as valid defence—It can be enforced only by separate suit for specific performance. AIR 1962 Cal 457 (Pt B) (DB).

——S. 62—Usufructuary mortgage —Subsequent two possessory mortgages in favour of same mortgagee — Redemption of first mortgage only—Right to possession.

Where a mortgagee holds three different mortgages for different periods on the same property the first being a usufructuary one and the other ones purporting to be additional possessory mortgages for different periods, the mortgagor would not be entitled to possession of the property by merely redeeming the first usufructuary mortgage, by reason of the subsequent possessory mortgages created by him. AIR 1934 Oudh 246, Distinguished; AIR 1940 P C 38, Foll. (1961) 2 Guj L R 433 : (1961) 2 Guj H C R 154 : AIR 1961 Guj 129 (130) (Pt A) (Pr 6).

——Ss. 62, 60, 76 — Mortgagee in possession — Kompura at time of mortgage—Same not existing at time of redemption — No evidence that same fell down to natural causes — Mortgagee is liable to pay damages for the Kompura to the mortgagor—See T. P. Act (4 of 1882), S. 60. AIR 1963 Ker 261 (DB).

——Ss. 62, 58 — Lease back to mortgagor — (C. P. Code (1908), O. 34, R. 14).

That a usufructuary mortgage accompanied by a lease back is often a device that ensures prompt payment of interest in the shape of rent by enabling the mortgagee to enter into possession in the event of default in forfeiture of the lease, cannot have the effect of converting such a mortgage into a simple mortgage. It cannot be held that whenever as part of the same transaction, property which is usufructuarily mortgaged is leased back to the mortgagor, the rent accrued is really interest and automatically becomes a charge on the property, to be paid as part of the mortgage money at the time of redemption if it remains in arrear. I L R 20 All 401, Dissented from. 1958 Ker L T 946 : AIR 1959 Ker 112 (116) (Pt B) (Pr 29) (DB).

——S. 62 — Usufructuary mortgage—Suit to recover possession—Starting point for limitation indicated—See Limitation Act (1908), Art. 143. AIR 1955 N U C (Madh B) 1324.

——S. 62 — Usufructuary mortgage — Implied term against converting land into desert by cutting trees—Garden land should not be converted into desert by cutting all trees—See T. P. Act (1882), S. 58. AIR 1955 N U C (Mad) 5673.

——S. 62 — Suit for redemption by mel kanomdar —Mel kanom found to be void—Right to recover possession—(Tenancy Laws — Malabar Tenancy Act (XIV of 1930), S. 3 (20)).

It is open to a mortgagor in a suit for redemption of a usufructuary mortgage to rely upon his title and recover possession, if it is found that the mortgage relied upon is void. But such possession he could become entitled to only on the strength of his title.

Notwithstanding the mel kanom a jenmi continues to be the owner of the property and his title is not transferred by virtue of a melcharth or a mel kanom. Where, therefore, a mel kanomdar brings a suit for redemption but the mel kanom is found to be void, he being in the position of a person entitled to only a limited right to redeem the mortgage is not entitled to recover possession of the suit property. AIR 1955 N U C (Mad) 77.

——S. 62 — Right of redemption when arises—Usufructuary mortgagee entitled under deed to appropriate usufruct of property for 50 years—Property allowed to be sold for arrears of land revenue which he was bound to pay under the terms—Suit by mortgagor for redemption — Mortgagee cannot resist suit on ground that it is premature—See T. P. Act (1882), S. 60. AIR 1954 Mys 187.

——S. 62—Usufructuary mortgage — Right given to mortgagee to induct tenants for appropriating usufruct of land in lieu of interest—Suit for redemption—Settlees on land claiming to be permanent tenants—Settlement of land held not valid beyond period of mortgage and on redemption of mortgage settlees were liable to be evicted. See T. P. Act (1882), S. 76. AIR 1963 Pat 26 (DB).

——Ss. 62, 60—Suits for redemption and possession—Distinction pointed out — See Limitation Act (1908), Art. 148. AIR 1957 Pat 452 (DB).

——S. 62—Usufructuary mortgage and lease of property back to mortgagor—Mortgage or lease—Test is whether two documents form part of one and same transaction. AIR 1957 Pat 24 (Pt A).

——Ss. 62, 58 — Usufructuary mortgage — Rights of mortgagor after mortgage — Remainder of rights can be transferred. See T. P. Act (1882), S. 58. AIR 1952 Pat 469 (DB).

SECTION 63

——S. 63 — Waqf — Wakf by user — Mutawallis making additions to wakf property (Mosque) — Original property and additions becoming one integrated unit — Addition is accretion — Adverse possession by trustee. See Mahomedan Law—Wakf. AIR 1956 S C 713.

——S. 63 — Merger — To constitute merger there must be union of entire interest of lessor and lessee — Putni sale — Darputnidar depositing amount under S. 13 (4), Bengal Putni Regulation — He subsequently acquiring interest of another dar putnidar in execution of his rent decree — Position of depositing dar-putnidar being that of mortgagee there is no merger of darputni purchased by him. See T. P. Act (4 of 1882), S. 111 (d). AIR 1950 Cal 1 (DB).

——S. 63 — Kandukrishi lease in favour of plaintiff—Mortgage of plaintiff's rights to the defendant — Government granting patta to defendant during subsequent settlement — Relationship of mortgagor and mortgagee is extinguished — S. 90, Trusts Act does not apply — Suit for redemption is not maintainable. See Trurts Act (1882), S. 90. AIR 1961 Ker 124.

——S. 63 — Usufructuary mortgagee getting adjoining Kumki lands on Darkhast — Mortgagor's right to treat acquisition as accretion.

When the usufructuary mortgagee, who is already in possession as usufructuary mortgagee of Kumki lands gets the adjoining Kumki lands on Darkhast utilising his position as a mortgagee, the mortgagor is entitled to treat the said acquisition as an accretion and as part of the mortgaged property, and he is entitled to redeem the said acquisition along with the mortgaged properties. AIR 1914 Mad 290, Rel. on. 1959 Ker L T 55 : 1959 Ker L J 219 : 1959 Ker L R 279.

——Ss. 63, 70 — Accession to mortgaged land—Mortgagor's right to redeem.

When the mortgagee taking advantage of his position at a mortgagee acquires a strip of land adjoining the mortgaged property and the Government prefers the mortgage in giving registry of the land to him and the mortgagor was not party to the registry proceedings, the mortgagor is entitled to redeem this piece of land along with the mortgaged property by paying the amount paid by the mortgagee for obtaining the registry. 1959 Ker L R 236.

——S. 63 — Rule of law that whatever is affixed to the soil belongs to the soil does not apply in India — Mortgagor having only life interest constructing new structure after execution of mortgage deed —Mortgagee is entitled to mortgage decree in respect of new structure : 6 Suth W R 228 and AIR 1961 Ker 147, Rel. on. AIR 1958 S C 789 and AIR 1961 S C 589, Foll. —Maxims — Quickquid inaedifactur solo, solo credit —Does not apply in India. 1964 Mad W N 651 : I L R (1965) 1 Mad 624 : 77 Mad L W 737 : AIR 1965 Mad 185 (186) (Pt A) (Prs 8, 9) (DB).

——Ss. 63, 70 — Accession — English rule as to fixtures — Applicability — Mortgage of land with cinema theatre building being built thereupon — Ceiling boards and exhaust fans held would not be part of security as an accession. See T. P. Act (4 of 1882), S. 70. AIR 1957 Mad 610 (DB).

——S. 63 — Acquisitions by mortgagee — Mortgagor cannot claim acquisitions from mortgagee in circumstances which do not bring mortgagee within S. 90, Trusts Act (1882).

The provisions of S. 63 of the T. P. Act, 1882 and S. 90 of the Trusts Act, 1882 have got to be read together. Though there appears to be some difference in the language, there is no difference in the principle embodied in the two sections. If the mortgagee gains any advantage, in circumstances which do not bring him within S. 90 of the Trusts Act, then the mortgagor cannot claim it as an accretion to the mortgaged property. Thus it is for the mortgagor who claims the gains as an accretion to the mortgaged property, to show that it was acquired or made by the mortgageee during the continuance of the martgage, making use or taking advantage of his position as a mortgagee and that too in derogation of his own right; and unless that is shown, the mortgagor would not be entitled to claim the acquisition made by the mortgagee as an accretion to the mortgaged property : AIR 1932 P C 199 Rel. on. (1965) 2 Law Rep 639 (Mys).

——S. 63 — Accession — Meaning of — Loss of mortgaged property by operation of law or otherwise — Mortgagor acquiring some interest therein — Whether an accession — Accession can be availed of even after passing of mortgage decree which does not destroy mortgage security. See T. P. Act (1882), S. 70. AIR 1963 Pat 412 (FB).

[Overruled in AIR 1967 S C 801.]

——S. 63 — Mortgagee in possession — Purchase by, of tenancy land in execution of decree for arrears

of rent — Acquisition — If accretion to mortgaged property — Position of mortgagee — (Trusts Act (1882), S. 90). AIR 1949 Pat 16, Overruled.

A mortgagee in possession, while purchasing any subordinate interest under his mortgage in execution of a decree for rent for that subordinate interest which he was entitled to receive as a mortgagee, cannot be said to have purchased it by taking advantage of his position as a mortgagee or in derogation of the rights of the mortgagor. In making such a purchase the mortgagee in possession does not take any advantage of his position as a mortgagee so as to come within the ambit of S. 90, Trusts Act and his purchase stands on the same footing as a purchase by a stranger. That being the position, it cannot be an accession to the mortgaged property under S. 90, Trusts Act or S. 63, Transfer of Property Act. There is no difference, so far as the purchase by the mortgagee in possession is concerned, whether the purchase was made by him without there being any competition by strangers or it was made after such competition. The purchase made by him stands on the same footing as the purchase made by any stranger. AIR 1949 Pat 99, Foll.; AIR 1949 Pat 16. Overruled. Umraon Singh v. Chakuri Singh. ILR 37 Pat 236 : 1958 Pat L R 1 : 1958 B L J R 95 : AIR 1958 Pat 302 (303, 304) (Prs 6, 7, 9) (FB).

——S. 63 — Landlord and tenant — Piecemeal reclamation — Effect.

The settlee may not, in the very first year, bring under cultivation the entire lands settled for the purpose of reclamation, yet he will be deemed to have come in possession of the entire area if it is measured out and demarcated for him, and he reclaims portion by portion in several years. 1956 Cri L J 543 : 1955 B L J R 595 : AIR 1956 Pat 116 (119) (Pt A) (Pr 10) (DB).

——S. 63—Tree fallen on land — Right of mortgagee under Otti deed.

A mortgagee under an Otti deed does not get a right to appropriate fallen trees. His right is restricted to taking the income of the properties. AIR 1932 All 506, Distinguished. I L R (1956) Trav-Co 998 : 1956 Ker L T 880 : AIR 1957 Trav Co 189 (193) (Pt E) (Pr 10) (DB).

——Ss. 63 and 63-A—Contract to the contrary—Upon redemption mortgagee is not entitled to cost of improvement exceeding the amount stipulated in mortgage deed. AIR 1955 N U C (Trav-Co) 3483 (DB).

——S. 63—Accretion to mortgaged property.

By a partition in the mortgagor's tarwad and by sale deed executed by the different members who got shares in mortgage property i.e., plaint item 1, the defendant mortgagee obtained the Jenmon right over 3/8 of the whole property and the plaintiff got the right over 5/8 share of the same. Plaint item 2 was land lying adjacent to item 1. This was Sirkar Puramboke land and was obtained on registry by the mortgagee by virtue of his position as mortgagee of the neighbouring land, that is, plaint item 1.

Held, that the plaintiff was entitled to redeem 5/8 share and the defendant to the remaining 3/8 share of this property. Neither of them could claim exclusive right over this property. AIR 1952 Tra Co 552 (553) (Pt A) (Pr 5) (DB).

——S. 63—Mortgage—Accretion—Mortgagee in possession obtaining puduval registry of mortgaged property—He holds same for benefit of mortgagor. See Trusts Act, S. 90. AIR 1951 Trav Co 109 (FB).

——S. 63—Accession to mortgaged property—Mortgagor if entitled to interest in all circumstances.

It is not an absolute rule that a benefit or interest acquired by a mortgagee over the mortgaged property, in all cases and whatever the circumstances be, must be held in trust for the benefit of the mortgagor. If the mortgagee, by fraud or unfair or sharp practice, or behind the back of the mortgagor, obtains an advantage to the prejudice of the right of redemption, which though not legally due under, has yet its root in, the mortgage, that advantage must be held for the benefit of the mortgagor. But it is open to the mortgagee to show that he acquired the advantage by the mortgagor's consent, or after a contest with him before the grant of the advantage, or otherwise so openly and fairly that he is equitably entitled to keep it. The fact that the mortgagor after ten years of persistent endeavour to get the registry in favour of his tarward as against the mortgagee withdrew from the contest evidently allowing the registry to be made in favour of the rival claimant cannot lead to the inference of any sharp practice by the mortgagee. At best it will only amount to a consent given by the mortgagor's tarwad to the claims of the mortgagee for the registry of the land in his favour in his own independent right. 1950 Ker L T 476 : 1950 TCLR 658 : AIR 1951 T C 94 (95, 96) (Prs 4, 5) (DB).

SECTION 63-A

SYNOPSIS

(T. P. Act (1882), S. 63-A.)

1. Scope of the section.
2. Improvements by auction-purchaser in execution of mortgage decree.
3. Nature of improvements, to the cost of which the morgtagee is entitled.
4. "Contract to the contrary."
5. The mortgagor shall be liable to pay the proper costs thereof.
6. Law prevalent in Malabar, Travancore and Cochin.

1. Scope of the section.

——S. 63A— Applicability — Agreement for sale — Purchaser taking possession—Purchase money—There is no debt—See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 22. ILR (1959) Bom 35.

——S. 63-A—Section does not apply to transactions entered into before 1st August, 1949 in Kutch State. AIR 1955 NUC (Kutch) 4309.

——S. 63-A—Claim for improvements.

The improvements must always be reasonable having regard to the nature and value of the estates; for if it were not so, a weapon would be put in the mortgagee's hands with which he might greatly clog the right of redemption which he has no right to make more expensive than is necessary to keep the estate in good repair and working order to protect the title. And the mortgagee should inform the mortgagor as soon as possible of the necessity or the intention to incur extraordinary expenses. The claim on the score of improvements if unreasonable, cannot be countenanced. ILR (1955) Mys 562 : AIR 1956 Mys 14 (17) (Pt C) (Pr 13) (DB).

2. Improvements by auction-purchaser in execution of mortgage decree.

——S. 63-A—Bona fide improvements by transferee from prior mortgagee auction purchaser—Liability of subsequent mortgagee not party to prior mortgagee's suit, for value of improvements.

Where a prior mortgagee brings a suit on his mortgage without impleading the puisne mortgagee, obtains a decree and purchases the property in execution of his decree, a subsequent transferee from the

decree-holder auction purchaser, who has effected bona fide improvements on the property is entitled to claim the value of improvements in addition to the amount due on the prior mortgage as a prior charge as against the puisne mortgagee who brings a suit to enforce his mortgage. 1946 TLR 518, applied. 1945 TLR 916 and 31 TLJ 366, held overruled by 1946 TLR 518, Mathai Koshi v. Geevarghese Kathanar, ('50) 1950 Trav Co L R 511 (FB).

3. Nature of improvements, to the cost of which the mortgagee is entitled.

——S. 63-A—Improvements by mortgagee — Entire agricultural character of mortgaged property changed by putting up residential buildings—Mortgagee held had no right under terms of deed or under general law to make such improvement — Cost of improvement not available—Mortgagee held not entitled to compensation but to removal of material only. AIR 1955 NUC (Ajmer) 4744.

——S. 63-A (2)—Mortgage of agricultural land — Construction of well by mortgagee—Benefit of sub-s. (2).

Construction of a well by a mortgagee of an agricultural land may improve the value of the land but it does not follow that a well is always necessary to preserve agricultural land. If it is not proved that the construction of well was necessary to preserve the property or that it was constructed with the consent of the mortgagor, the mortgagee will not be entitled to the benefit of sub-s. (2). The case would fall under sub-s. (1). AIR 1951 Ajmer 10 (11) (Pt A) (Pr 7).

——S. 63-A—Improvement of mortgagee—No contract for recovery of costs—Effect.

Before a mortgagee can recover the costs of improvement on mortgaged property he must prove a contract permitting him to make the construction and enabling him to recover the amount before redeeming the property. The fact that the mortgagor did not object to the mortgagee constructing a house on the mortgaged 'Khandhar' land, will not show that the properties could not be redeemed unless the amount spent by the mortgagee was also paid. AIR 1956 Bhopal 13 (14) (Pt C) (Prs 7, 8).

——Ss. 63-A and 72—Mortgagee's right to value of improvements—Conditions.

Where the mortgagee had not claimed that he improved the property in the circumstances mentioned in sub-s. (2) of S. 63-A, nor was it his case that the mortgagor was ever called upon to preserve the property and he failed to take proper and timely steps to preserve the property.

Held, that the mortgagee was not entitled to be credited for the amount spent by him. AIR 1956 Bom 575 (576, 577) (Pt B) (Prs 4, 6).

——S. 63-A—Claim for improvements—Party allowing decree ex parte — Claim cannot be entertained in appeal.

Where the defendants allowed the decree to be passed ex parte against them, their submission that some improvements have been effected by them in the land in dispute cannot be entertained in appeal. Improvement may or may not be a fact, but if the lower Court has not started any inquiry into that matter the defendants need thank themselves only and none else. They should not have allowed the decree to go ex parte against themselves. Note : But somehow or the other it appeared to the High Court that the defendants may have made some improvements in the land. Taking into consideration all the factors involved in the case, Rs. 20 were allowed as a compensation. 11 J & K L R 134 : AIR 1953 J & K 14 (15) (Pt C) (Pr 2).

——S. 63-A — Nature of improvement, to the cost of which the mortgagee is entitled — Mortgagee to get costs of repairing the house falling or crumbling down and of big or small construction — He is entitled to costs of construction although made not due to falling or the crumbling down of house. AIR 1955 N U C (Kutch) 4309.

——S. 63-A (2) — Preservation of property — Mortgaged house in ruined condition—Covenant by mortgagor to pay costs of repairs carried out by mortgagee — Mortgagee incurring expenditure in repairs greatly enhancing value of property — Mortgagee entitled to cost of works along with mortgage money. See T. P. Act (1882), S. 72 (b). AIR 1960 Mad 24.

——S. 63-A (2) — Cost of suit instituted for recovery of possession of property cannot be considered an improvement. See Debt Laws — Madras Agriculturists Relief Act (4 of 1938), S. 9-A (4). AIR 1954 Mad 89.

——S. 63-A — Putting up of house on agricultural land is not improvement since it does not enhance value of that land as agricultural land. (1965) 2 L R 639 (Mys).

——S. 63-A—Improvements by mortgagee—Right to.

Section 63-A is based upon the principle that the mortgagee cannot be allowed to "improve the mortgagor out of his estate." Under this section, the mortgagor will not only be entitled to the improvement but also he shall not be liable to pay the cost thereof, except in cases falling under sub-s. (2). The combined effect of sub-ss. (1) and (2) of S. 63-A is that, on no account, the mortgagee will be entitled to retain the improvement. Where therefore the improvements made by the mortgagee are not covered by sub-section (2), the mortgagor is entitled to the improvements without payment of the cost thereof to the mortgagee, and the mortgagee or his assignee is debarred even from removing the materials of the improvements made by them on the property. 1960 B L J R 311: AIR 1960 Pat 503 (503, 504) (Pr 3).

——S. 63-A—Costs of improvements — When allowed to mortgagee.

Under S. 63-A in order to entitle the mortgagee to the cost of improvements made by him on the mortgaged property, it has to be shown that (1) they were necessary to preserve the property from destruction or deterioration, or (2) they were necessary to prevent the security from becoming insufficient, or (3) they were made in compliance with the lawful order of any public servant or public authority.

Again the mortgagor is liable to pay only those costs of improvements which have been properly and reasonably incurred. I L R (1955) Pepsu 161 : AIR 1955 Pepsu 87 (90) (Pt E) (Pr 9) (DB).

——S. 63-A — Redemption suit — Costs for improvement of property incurred by mortgagee in possession during pendency of suit — Costs cannot be recovered from mortgagor. See Civil P. C. (1908), O. 34, R. 7. AIR 1964 Punj 365 (DB).

——S. 63-A (2) — Amount spent by mortgagee in effecting improvement, in order to increase yield from mortgaged land—Right to claim.

Under S. 63-A (2) the mortgagee in possession, upon redemption of the mortgagee is entitled to the amount spent by him to preserve the mortgaged property from destruction or deterioration or to prevent the security from becoming insufficient. He is not entitled to the amount spent by him in order to increase the yeild from the mortgaged land so as to recompense himself in lieu of the interest due on the principal money. This is no ground in law for granting compensation to the mortgagee in possession, and S. 63-A cannot be attracted on this ground

the mortgagee in possession cannot be permitted to lay money in increasing the value of the estate except in circumstances which strictly fall within the four corners of the section. 62 Pun L R 534 : A I R 1960 Punj 480 (481) (Pt A) (Pr 5) (DB).

——S. 63-A — Nature of improvements to the cost of which mortgagee is entitled — Otti and Kuzhikanom mortgage — Provision in mortgage deed both for planting trees and constructing house on mortgage land — Mortgagee repairing dilapidated well which was absolutely necessary — Mortgagee held entitled to costs of repairing well. A I R 1955 N U C (Trav-Co) 3483 (DB).

——S. 63-A — Improvement by mortgagee — Cost of droppings in case of cocoanut trees, depends on nature of soil and fertility—Property situate at back-water — Allowing one tenth of cocoanuts for droppings is not wrong. A I R 1955 N U C (Trav-Co) 544 (DB).

——S. 63-A — Stipulation for improvements to be effected by mortgagee. Only some of improvements effected — Mortgagee is not entitled to more than rateable proportion of amount provided for in deed.

The law of landlord and tenant and mortgagor and mortgagee as administered in Travancore does not impose any restrictions on the freedom of the parties to make contracts regarding value of improvements. That law recognises no distinction whether the value is fixed before the improvements are made or after it. The mortgagee and these holding under him are stipulations in the mortgage deed and for the items of works specified in that document they cannot get a higher value than that fixed by it. Where all the stipulated improvements have not been effected, the mortgagee is not entitled to claim more than the rateable proportion of the amount provided for in the mortgage deed. (1933) 23 T L J 369, Foll. 1952 Ker L T 129 : I L R (1952) Trav-Co 152 : A I R 1952 Trav-Co 295 (299) (Pt B) (Prs 14, 15) (DB).

4. "Contract to the contrary."

——S. 63-A—"Contract to the contrary"—Mortgagor stipulating to pay only cost of improvement — Interest on cost.

Section 63-A applies only if there is no contract between the parties. But where the mortgage-deed makes an express reference to improvements, in that the mortgagor will be liable to pay for the money spent by the mortgagee on improvement and there is no stipulation about payment of interest on this money then the interest on the money spent on improvements is not payable by the mortgagor. A I R 1951 Ajmer 28 (30) (Pt B) (Pr 12).

——S. 63-A — Contract to the contrary — Improvement not of nature mentioned in sub-s. (2) — Mortgagor liable if he has agreed to become liable. A I R 1955 N U C (Kutch) 4309.

——S. 63-A — Contract to contrary — Mortgage of house with possession — Mortgagee to get annual maintenance and repair costs — Mortgagee entitled to costs incurred for preservation of house in its original condition—Suit for redemption — Mortgagee held entitled to special repairs cost incurred in keeping house in sound condition. A I R 1950 Kutch 74 (74) (Pt A) (Pr 1).

——S. 63-A — Applicability:— Contract to the contrary—Effect of.

Section 63-A can be applicable only to those cases where there is no contract between the parties with regard to improvements made by the mortgagee. Where there is a stipulation between the parties to a mortgage that certain specific and no other improvements can be made and that they shall be subject to such terms as are agreed upon, the section does not apply. In such cases the right of the mortgagor to improvements and the right of the mortgagee to cost thereof are subject to the contract into which the parties have entered in respect thereof. ILR (1955) Pepsu 161 : AIR 1955 Pepsu 87 (90) (Pt D) (Pr 9) (DB).

——S. 63-A—Improvements to mortgaged property—Provision in mortgage deed that mortgagee would be entitled to get only one half of value of improvement at time of redemption—Tenants of mortgagee would be bound by such provision and would get no better rights than the mortgagee himself. ILR (1955) Trav-Co 196.

——S. 63-A—Mortgagee given possession with directions to make specific improvements—He cannot make other improvements and claim compensations for them—But he is entitled to remove materials.

It is for an owner to decide what use he should make with his land and if a mortgagee or lessee is given possession of a land with specific directions as to what he should do with it or what improvements he should make thereon, he cannot disobey those directions or make such use as he in his wisdom deems fit or claim compensation for improvements effected according to his whims and fancies. If the mortgagor does not wish to pay for such improvements, the mortgagee is entitled to remove the materials. (1928) T L J 195, Relied on. 1952 Ker L T 129 : ILR (1952) Trav-Co 152 : AIR 1952 Trav-Co 295 (299) (Pt C) (Pr 16) (DB).

5. The mortgagor shall be liable to pay the proper costs thereof.

——S. 63-A—New construction by mortgagee — Permission of mortgagor is necessary under R. 679, Kutch Shirasta — It may be given when construction is made or may flow from a stipulation in bond—(Kutch Shirasta Sangraha, R. 679). AIR 1955 N U C (Kutch) 4309.

——S. 63-A — Improvements by mortgagee — Subsequent sale by mortgagor — Purchaser seeking to recover possession of property as it stands must pay mortgagee costs of improvements.

A mortgagee may create a paradise on the mortgaged property for himself but the mortgagor is not bound to pay for all those improvements if they are inseparable from the mortgaged property. But a person purchasing the property as improved from the mortgagor, must pay the mortgagee the costs of the improvements if he claims possession of the property as it stands. AIR 1950 Kutch 14 (14) (Pr 6).

——S. 63-A—Mortgage before introduction of S. 63-A—Improvements by mortgagee — Right to costs—Contract to the contrary.

Where the terms of the mortgage deed executed before the insertion of S. 63-A or the coming into force of the Gwalior Transfer of Property Act, allowed the mortgagee to make improvements and repairs and to recover the costs from the mortgagor at the time of the redemption of the property, the question of the costs of improvements must be determined with reference to the terms of the mortgage-deed and to the principle of common justice that the mortgagee is entitled to recover from his mortgagor the reasonable and proper costs incurred in making lasting improvements. AIR 1918 Bom 84; 43 Bom 69; 45 Bom 1301, AIR 1921 Bom 250, Rel. on. AIR 1952 Madh-B 6 (7) (Pt B) (Pr 5).

——Ss. 63-A and 60 — 'Muramat shakasht rakhat' — Meaning of—Stipulation to pay costs of breakage and destruction—Proper interpretation.

The phrase 'Muramat shakasht rekhat' does not include destruction of the mortgaged property by the mortgagee himself at his own sweet will, irrespective

of its nature and condition. The stipulation that the mortgagor shall pay the cost of 'shakasht' (breakage) and 'rekhat' (destruction) cannot be taken to mean that the mortgagor thereby binds himself to pay the expenses which the mortgagee may incur in breaking or demolishing the mortgaged property and then in rebuilding the same.

Reasonably interpreted the stipulation only means that the mortgagor takes upon himself to pay the cost of repairs or rebuilding in case of breakage or destruction, which are due to natural deterioration or by some other act of nature beyond the control of the mortgagee and not undertaken by him at his own initiative and out of his own sweet will. **ILR (1955) Pepsu 161 : AIR 1955 Pepsu 87 (89) (Pt B) (Pr 4) (DB).**

——S. 63-A—Costs of repairs and rebuilding — Reasonableness—Test of.

Even in the case of natural decay or destruction of the mortgaged property by some unforeseen calamity. the expenditure on its repairs or rebuilding should be reasonable. What constitutes a proper and necessary expenditure is a question of fact depending upon the circumstances of each case. Among other things regard must be had to the nature, situation and value of the property mortgaged, financial condition and position of the mortgagor, the amount that he could and would have himself spent under the circumstances and the bona fide intentions of the mortgagee.

Thus where the entire structure of three shops mortgaged for Rs. 2,000 was demolished from its very foundation and a new double storeyed building was raised in its place at an alleged expenditure of Rs. 13,000 that is, more than six times the mortgage-debt and with the addition of interest claimed thereon the liability of the mortgagor went to more than twenty times the debt.

Held, that the demolition of the shops was not due to or necessitated by any act of nature; or could the huge expenditure on the new construction be regarded reasonable. **ILR (1955) Pepsu 161 : AIR 1955 Pepsu 87 (89) (Pt C) (Pr 6) (DB).**

——S. 63-A—Costs of improvement—Ordinary mortgagee is entitled to three-fourth of cost—In Paravoor Pakuthy there is no recognised custom allowing only one-fourth cost—(Custom—Costs of improvements by mortgagee). AIR 1955 N U C (Trav-Co) 3483 (DB).

——S. 63-A — Improvement by mortgagee—Cost of levelling land for plantation — One third of costs should be allowed. AIR 1955 N U C (Trav-Co) 544 (DB).

——S. 63-A—Improvement by mortgagee — Mode of valuation of fruit bearing trees in Kottayam District as in other part of State, is to allow the tenant or the mortgagee three-fourths of value of improvements effected by him. AIR 1955 NUC (Trav-Co) 544 (DB).

——S. 63-A—Value of improvements.

There is no justification for restricting the value of improvements payable to the usufructuary mortgagee to the amount advanced under the mortgage. **1953 Ker L T 527 : AIR 1953 Trav-Co 441 (442) (Pt A) (Pr 3) (DB).**

——S. 63-A—Landlord and tenant — Improvements—Mode of assessment.

Where the lease deed provides as to how the value of bearing and non-bearing trees, and of the buildings, is to be ascertained and paid for at the time of redemption the rights of parties in regard to their contractual relationship have to be respected, even though this is at variance with the general rule relating to value of improvements, that is, that the tenant would be entitled to three-fourths of the value of trees planted, and to the full value of the buildings.

The improvements are to be valued at the time of redemption on the terms previously agreed to, though such redemption is long after the expiry of the period fixed. **ILR (1953) T C 41 : AIR 1953 Trav-Co 299 (300) (Prs 5, 6) (DB).**

6. Law prevalent in Malabar, Travancore and Cochin.

——S. 63-A—Suit for redemption—Value of coconut trees planted on land—Deduction towards dropping of coconuts—(Improvements—Value of.)

In calculating the value of the coconut trees planted in the mortgaged land, the deduction towards the droppings of coconuts should be the one fourth of the total number of nuts and not the one fourth of the tender nuts which have not passed the stage of dropping. 15 K L T 717 and 1950 K L T 19, Foll. 18 T L J 609, Dist. **AIR 1952 Trav-Co 507 (507) (Pt A) (Pr 3).**

——S. 63A—Redemption suit — Mortgagee claiming value of improvements—Mortgagee denying liability for improvements in suit against tenants — Estoppel — Res judicata — (Evidence Act (1872), S. 115) — (Civil P. C. (1908), S. 11).

Where in a suit for redemption the mortgagee claimed the value of improvements and in a previous suit by him against the tenants for their eviction, he had denied any liability to pay for improvements, and to that suit the mortgagor was impleaded as a pro forma party.

Held, that no case of estoppel was made out as no one was affected to his prejudice by the denial of the mortgagee, that there was no case of res judicata because the mortgagor was impleaded in the former suit purely as pro forma party and that therefore there was no legal impediment to the mortgagee claiming the value of improvements. **1952 Ker L T 43 : A I R 1952 Trav-Co 191 (191) (Pr 3) (DB).**

——S. 63A—Improvements by sub-mortgagee.

According to the custom prevalent in Malabar, Cochin and Travancore the right of possessory mortgagees to get value of improvements effected by them, independent of any agreement in that behalf but in the absence of an agreement to the contrary, has been recognised. Thus, where the sub-mortgagee in Travancore holding under a possessory sub-mortgage effects improvements in the mortgaged property, he is entitled to get the value of those improvements, at the time of redemption of the mortgage, though the mortgagee was not authorised to effect improvements. Chandi Avira v. Thomman Varkey. **1951 Ker L T 7 : ILR (1951) Trav-Co 209 : A I R 1951 Trav Co 109 (117) (Pt F) (Pr 23) (FB).**

——Ss. 63A and 51—Value of improvements—Valuation (Malabar Law).

The bearing trees have to be valued on the basis of the yield thereof. The normal rule is that the deduction for "droppings" is that one-fourth of the total number of nuts on a tree has to be deducted on that account. The normal rule would seem to be one-fourth in respect of maintenance as well. **ILR (1951) Trav-Co 282 (DB).**

SECTION 64

——S. 64 — Sale alleged to be nominal — Burden on plaintiff—Beneficiary to prove the allegation—Onus held discharged.

Where property is conveyed by an owner to another person by a valid registered instrument, which is followed by transfer of registry, the burden lies heavily upon the person who alleges himself to be the beneficiary to show that the real title did not pass and that the ostensible vendee is a mere name lender. This burden can be discharged by the beneficiary by satisfying the well known criteria, namely,

(1) the motive for the transaction, (2) the source of purchase money relating to the transaction, (3) the custody of the document of title, and (4) the subsequent facts of possession. (1964) 1 Mad L J 306.

SECTION 65

——Ss. 65, 55, 68 — Benefit of contract — Rights of mortgagee or chargeholder — (Civil P. C. (1908), O. 34, R. 6)—(Contract Act (1872), Ss. 40, 42)—(Trusts Act (1882), Ss. 3, 94).

The general principle is that a stranger to a contract is not ordinarily entitled to claim rights under the contract but there are a few exceptions. One exception is that if as a result of a contract between two persons a trust came into existence for the benefit of a third person, that third person can claim rights under the contract without being a party to that contract.

There may be special cases where a trust might come into existence but that would depend on the exact terms of the deed of transfer.

Thus, where the deed of sale of mortgaged property executed by the mortgagor did not lay any obligation on the vendees to discharge the debts due to the mortgagee and all that the deed laid down was that a certain sum of money was left in the hands of the vendees so that they might pay off the debts due to the mortgagee, upon a suit brought by the mortgagee against the vendee:

Held, that the deed did not create any obligation. Since mere retention of money for the purpose of payment could not bring into existence a trust. the vendee held the money merely as an agent of the vendor and not as a trustee. Even if a trust had come into existence, it might have been possible for the creditor to enforce his rights under the decree, which he had already obtained against the vendor, against the trustee, but in no case could the creditor bring a fresh suit against the trustee. For, no rights superior to the rights available against the vendor could be available against a trustee in a trust created by him, and consequently a fresh suit could not be entertained. A I R 1932 Oudh 82, Distinguished. **1954 All W R (HC) 7 : 1954 All L J 147 : A I R 1954 All 348 (350) (Prs 3, 5, 6).**

——S. 65 (a) — Benefit under S. 43 when available — Knowledge of facts how far required — Independent enquiry not necessary — See T. P. Act (1882), S. 43. **AIR 1957 Andh-Pra 288.**

——S. 65 (a)—Defective title of mortgagor—Suit for mortgage money by mortgagee in possession — Interest on mortgage money during period of possession —Admissibility.

Where a suit filed by a mortgagee in possession against the mortgagor for recovery of mortgage money on the ground of absence of title in the mortgagor is decreed and interest on decretal amount is awarded from the date of decree to the date of payment as per personal covenant by the mortgagor; then so long as such mortgagee continues in possession of the property, he would not be entitled to interest on decretal amount. **1961 Mad W N 681 : (1962) 1 Mad L J 229 : 75 Mad L W 236 : AIR 1962 Mad 395 (395) (Pt B) (Pr 2).**

——Ss. 65 and 68 — Breach of covenant prescribed in S. 65—Remedy of mortgagee.

Section 68 only enumerates the conditions under which a mortgagee can sue for the mortgage money. It does not in terms provide a remedy for any breach of the covenants prescribed in S. 65. Section 68 is therefore independent of S. 65, and the view that the only remedy of the mortgagee for breach of a covenant under S. 65 is to sue for the mortgage money cannot therefore be supported. **1955 Mad W N 900 : AIR 1956 Mad 128 (129) (Pt A) (Pr 2).**

——Ss. 65 and 52 — Mortgage extinguished as result of auction sale in execution of decree on prior mortgage—Property reverting to mortgagor—Extinguished mortgage is revived.

Suit on mortgage pending. Subsequent mortgage on same properties during pendency of suit. Properties sold in execution of decree obtained in suit. Property goes to auction-purchaser free of charge created during pendency of suit. Some items of such property coming back to subsequent mortgagor by compromise. Liability again fastens to such property. **A I R 1954 Trav-Co 38 (40) (Pt C) (Pr 6) (DB).**

——S. 65 (c)—Extinguishment of right of redemption by operation of law—Sale for arrears of Government revenue — Held on facts that rights of submortgagee on account of whose default revenue sale was occasioned, became vested in appellant and defendant No. 2 in whom also became vested rights of purchaser at revenue sale. See T. P. Act (1882), S. 60. **AIR 1953 Trav-Co 563 (DB).**

SECTION 65-A

——S. 65-A — Mortgagor's power to lease prior to enactment of S. 65-A — Permanent lease granted — Burden of proof — Binding effect of lease on mortgagee.

Under the law as it stood prior to the enactment of S. 65-A, the question whether the mortgagor in possession has power to lease the mortgaged property has got to be determined with reference to the authority of the mortgagor as the bailiff or agent for the mortgagee to deal with the property in the usual course of management. It has to be determined on general principles and not on the distinction between an English mortgage and a simple mortgage or on considerations germane to S. 66.

So considered, a mortgagor in possession may grant a lease conformable to usage in the ordinary course of management but is not competent to grant a lease on unusual terms or authorise the use of land in a manner or for a purpose different from the mode in which he himself has used it before he granted the mortgage. Consequently, if the mortgagor, after he has granted the mortgage, deals with the property in the usual course of management, the interest created by him may be rightly deemed operative against the mortgagee : 21 Cal W N 88, Appr. ; 20 Cal W N 350, Not Appr.

In order that it may be so operative, it is for the lessee if he wants to resist the claim of the mortgagee to establish that the lease in his favour was granted on the usual terms in the ordinary course of management. Such a plea if established, the burden of proving which is upon him, furnishes a complete answer to the claim of the mortgagee. If the lessee fails to establish this position he has no defence to an action at the instance of the mortgagee that the lease is not binding upon him.

Note.— In this case there was no allegation on behalf of the lessee that the grant of the permanent lease was a dealing with the mortgaged property in the usual course of management by the mortgagor. It was held that in the absence of any such plea the permanent lease could not prevail against the mortgagee. Kamakshaya Narain Singh v. Chohan Ram, **1952 S C A 807 : 1952 S C J 553 : (1953) 1 M L J 12 : 1952 All L J 710 : 1953 S C R 108 : 1953 B L J R 1 : ILR 31 Pat 1020 : 66 Mad L W 549 : AIR 1952 S C 401 (403, 404, 405) (Pt A) (Prs 5, 6, 12, 14).**

——Ss. 65-A, 108 (C) and 3 — Sub-s. (3) — Simple mortgage — Mortgagor's right to grant lease does not end — Between lessor and lessee, lessee cannot say that lessor should have taken consent of his mortgagee according to clause in mortgage deed — Non-

disclosure of mortgage does not invalidate lease — Lease in contravention of S. 65-A is not void as between lessor and lessee — Lessee must be deemed to have constructive notice of registered mortgage — Lessee's suit avoiding lease and for damages, when maintainable stated. **AIR 1955 N U C (All) 1691 (DB).**

——Ss. 65-A and 59-A—Simple money decree-holder purchasing equity of redemption in execution of his decree against the mortgagor cannot question validity of mortgage—See Transfer of Property Act (4 of 1882), S. 59-A. **AIR 1961 Andh-Pra 183 (DB).**

——S. 65-A—Mortgagor acting in contravention of the section — Specific Relief Act (1877), S. 42 — (Per Thadani Ag. C. J.)

Where a mortgagor, while lawfully in possession of the mortgaged property acts in contravention of the provisions of sub-s. (2) of S. 65-A the lease so created by the mortgagor will not be binding upon the mortgagee, it is wholly unnecessary for him to bring a suit for a declaration that it is not binding upon him. The mortgagee may affirm or treat the lease granted by his mortgagor as a nullity, there being nothing to set aside or cancel as a condition precedent to his right of action : 34 Cal 329 (PC), Foll. ILR (1949) 1 Assam 198 : A I R 1951 Assam 101 (102, 103) (Pt B) (Prs 9, 10) (DB).

——S. 65-A—Scope of—Lease by mortgagor pending suit by mortgagee — Purchaser at Court sale — If affected — Doctrine of lis pendens held attracted — See T. P. Act (1882), S. 52. **AIR 1959 Bom 19 (DB).**

——Ss. 65-A and 66 — Permanent lease executed by mortgagor during continuance of simple mortgage — Both transactions being before 1929 S. 65-A not applicable — Permanent lease is binding on mortgagee if security has not become insufficient within S. 66.

Where a simple mortgage and a permanent lease by the mortgagor are executed before 1929 and the question is whether the lease is binding on the mortgagee, S. 65-A which is not retrospective has no application and the question has to be decided in the light of S. 66.

Section 66 confers wider powers on the mortgagor and in determining whether the mortgagor has exceeded his powers in granting a permanent lease during the continuance of a simple mortgage, the only test which must be applied is to see whether the act of the mortgagor impairs the security so as to render it insufficient. If the security has not been rendered insufficient the act is within the competence of the mortgagor and is binding on the mortgagee, however much it may be condemned as amounting to a destructive or permanently injurious act : Case law discussed. **51 Bom L R 820 : AIR 1950 Bom 71 (72, 73) (Prs 4, 10).**

——Ss. 65-A, 52 and 109—Applicability—Mortgagor taking mortgaged property on rent — Sub-lease by mortgagor after final decree in mortgage suit would not be a lease to which S. 65-A would be applicable —See T. P. Act (1882), S. 52. **1959 M P C 317.**

——Ss. 65-A (2) (b) and 69-A (3) and (4) — Scope and effect — Whether a Receiver appointed under S. 69 A is bound by a contract entered into by the mortgagor which the tenant in possession of the mortgaged property subsequent to the creation of the mortgage and subsequent to the creation of a tenancy — Whether the Receiver is the agent of the mortgagor in respect of all agreement.

In the instant case the loan and the agreement for repayment of it took place after the creation of the tenancy and had nothing to do with the tenancy itself as part of it. It was an independent arrangement or agreement regarding repayment of the loan from out of the rent payable by the tenant. It is not a term of the lease and it is not also a convenant embodied in the lease transaction.

The words "shall be deemed to be the agent" occurring in S. 69-A, Cl. (3) of the Transfer of Property Act (4 of 1882) makes it clear that the Receiver is only an agent by a fiction. The fiction is created for the specific purpose of holding the mortgagor liable for the acts and defaults of the Receiver appointed under S. 69 A of the Act. It does not flow from this that the Receiver is bound by every agreement entered into by the mortgagor with the tenant unconnected with the transaction of lease as in the present case. Thus the Receiver is not bound to honour the agreement and he is entitled under Cl. (4) of S. 69-A of the Transfer of Property Act, to sue for and recover all the income which the mortgagor was entitled to form property. **(1963) 1 M L J 160 : 76 Mad L W 99 : 1963 Mad W N 160 : I L R (1963) Mad 681 : AIR 1963 Mad 449 (450) (Prs 1, 3, 4).**

——S. 65-A — Lease offending the section—Effect—Acquisition of occupancy rights—Lessee held, would be tenants from year to year — Plaintiffs, holding lands as ryots on commencement of Madras Act 1 of 1908—They acquired occupancy rights—See Tenancy Laws—Madras Estates Land Act (1 of 1908), S. 3 (5) and (15). **AIR 1956 Mad 19 (DB).**

——S. 65-A—'In the ordinary course of management' —Test is to see if mortgagor would have granted lease, if he had known he would continue indefinitely as full owner of property. **AIR 1955 NUC (Mad) 2428.**

——S. 65-A — Lease created in contravention of — Lease is not binding upon mortgagee — Suit for declaration is not necessary — Mortgagee may affirm or treat lease as nullity—(C. P. Code (1908), O. 21, R. 98). **AIR 1955 NUC (Mad) 2428.**

——S. 65-A—Ss. 50 and 65-A are subject to S. 52. See T. P. Act (1882), S. 50. **AIR 1954 Sau 32.**

——S. 65-A—Lease after suit on mortgage — Validity — Mortgagor cannot execute lease of mortgaged property during pendency of such suit. See T. P. Act (1882), S. 52. **AIR 1957 Trav-Co 292.**

SECTION 66

● ——S. 66—Scope—Mortgagor's power to lease — Applicability of section.

Section 66 has nothing to do with the mortgagor's power to lease the mortgaged property. Section 68 is a statutory enactment of the powers of the mortgagor in possession in regard to waste of mortgaged property. The mortgagor in possession is not liable for what in terms of the English Law of Real Property is known as permissive waste i.e., for omission to repair or to prevent natural deterioration. He is, however, liable for destructive waste i.e., acts which are destructive or permanently injurious to the mortgaged property if the security was insufficient or would be rendered insufficient by such acts. This section therefore has no application to the grant of a lease by the mortgagor in possession. Kamakshaya Narayan Singh v. Chohan Ram, **(1952) S C A 807 : 1952 S C J 553 : (1953) 1 M L J 12 : 1952 All L J 710 : 1953 S C R 108 : 1953 B L J R 1 : I L R 31 Pat 1020 : 66 Mad L W 549 : AIR 1952 SC 401 (404) (Pt B) (Pr 10).**

——Ss. 66, 65-A — Permanent lease executed by mortgagor during continuance of simple mortgage — Both transactions being before 1929 S. 65A not applicable — Permanent lease is binding on mortgagee if security has not become insufficient within S. 66. See T. P. Act (4 of 1882), S. 65A. **A I R 1950 Bom 71.**

In a suit for sale by the hypothecatee after he has become the owner of certain items comprised in the hypotheca the argument that all those items should again be brought to sale is absolutely untenable. 1950 Ker L T 383 : 1950 T C L R 683 : AIR 1951 Trav-Co 101 (102) (Pt A) (Pr 3) (DB).

——Ss. 67 and 60 — Purchase by hypothecatee of all items in property — Purchase in respect of some infructuous — Integrity of mortgage, if broken.

Where the hypothecatee purported to purchase all the items comprised in the hypotheca but the purchase of some items proved to be infructuous, the charge remains alive in respect of those items but the integrity of the charge is broken. 1950 Ker L T 383 : 1950 T C L R 683 : AIR 1951 Trav-Co 101 (102) (Pt B) (Pr 4) (DB).

——S. 67 — Prior and puisne mortgagee — Both suing and obtaining decrees and purchasing mortgaged property — Prior mortgagee obtaining possession — Remedy of puisne mortgagee later purchaser is to file a suit to redeem the prior mortgagee — Civil P. C. (1908), O. 34, R. 1. 1951 Ker L T 198: AIR 1951 Trav-Co 36 (37) (Pr 8) (DB).

2. "After the mortgage-money has become due."

——S. 67 — Mortgage money — If no date is fixed then the money becomes due on the date of the mortgage and the limitation under Art. 132 would run from the said date. See T. P. Act (1882), S. 60. AIR 1955 Cal 194 (DB).

——S. 67 — Suit for foreclosure which stipulates that the mortgagee is entitled to foreclose on failure to pay mortgage money is maintainable and is governed by Art. 133 of Hyderabad Limitation Act. See Limitation Act (1908), Art. 132. AIR 1953 Hyd 137.

——Ss. 67 and 60 — Mortgage bond fixing time for redemption and containing default clause — Mortgagee on default by mortgagor to pay interest issuing notice demanding entire mortgage money—Mortgage money held became due on the date of notice. See T. P. Act (1882), S. 60. AIR 1962 Mys 5 (DB).

——Ss. 67, 60 — Mortgage money when becomes due — Clause providing payment of principal within certain period.

Where according to the terms of a mortgage, the principal amount is to be paid within 3 years, the terms cannot be construed to entitle the mortgagee to seek payment any time within the period of 3 years as that would virtually render the clause nugatory by enabling the creditor to sue immediately if he chose. ('51) 29 Mys L J 51 (53) (DB).

——S. 67 — Limitation Act (1908), Art. 132 — Starting point — No period for redemption fixed but mortgagor to pay interest for a whole year and year by year — Mortgage money held became due after expiry of one year. AIR 1959 Punj 249, Reversed. See Limitation Act (1908), Art. 132. AIR 1963 Punj 25 (DB).

——S. 67 — Limitation Act (1908), Art. 132 — The expression "money sued for becomes due" in Art. 132 must also be read with reference to the same time as under Ss. 60 and 67 of the T. P. Act which provide for the accrual of the right of the mortgagor to redeem and that of the mortgagee to enforce his security. See T. P. Act (1882), S. 60. AIR 1959 Punj 249. [Reversed in AIR 1963 Punj 25].

3. Failure to pay instalments.

——S. 67 — Mortgage — Stipulation to pay by instalments — Default clause — Option to mortgagee with regard to limitation — (Limitation Act (1908), Art. 132).

Held, (i) that for limitation, the correct article applicable was Art. 132 and not Art. 147 of the Limitation Act. (ii) that the default clause was for the benefit of the mortgagee and the mortgagor could not by any default of his own curtail the period of limitation. The mortgagee, therefore, had an option either to institute a suit at once or to wait till the full period of the mortgage had elapsed. The last instalment was payable on 20th March, 1935 and the suit having been instituted on 10th July, 1954 was within limitation. (iii) that though the possession was not given still the mortgagee had an option to wait till the expiry of the full period stipulated for the payment of the mortgage money. (1957) Raj L W 143 : ILR (1956) 6 Raj 1023.

4. Effect of foreclosure.

——S. 67 — Foreclosure — Foreclosure is effected by Court — When possession is eventually taken, it is in pursuance of decree of Court and not in pursuance of contract which is superseded. AIR 1951 Nag 171 (174) (Pt C) (Pr 21).

5. Effect of confirmation of sale.

——S. 67—Final decree for sale obtained by mortgagee—Transferee of mortgagor to get benefit for reduction of debt — Determination of claim under S. 24 of M. P. Act of 1951 and passing of order under S. 27 of that Act—Remedy of decree-holder is by way of application under S. 28 of that Act—Final decree no longer executable. See: Tenancy Laws — M. P. Abolition of Proprietary Rights. (Estates, Mahals, Alienated Lands) Act (1951), S. 24. 1962 M P L J 973.

● ——Ss. 67 and 92—Purchase by mortgagee in execution of his own decree—Rights as purchaser not recognised in subsequent suit—Effect on transfers by mortgagee purchaser.

Per Division Bench—In O. S. No. 41 of 1934 the decree in an earlier O. S. No. 192 of 1931 in favour of A was attached and though he had become the purchaser before the termination of the 1934 suit, the fact of the purchase was only mentioned in the judgment but the purchase by him as such had not been recognised. He was treated only as a mortgagee decree-holder in the earlier decree. that is in O. S. No. 192 of 1931, and his rights under the said decree were made subordinate to the rights of the decree-holders in O. S. No. 41 of 1934. Though the sale in favour of A was not as such declared to be not binding it was not recognised and practically given the go-by by A himself, he having been satisfied with his rights under his mortgage decree being kept alive. The question was whether in fact the sale to A could be treated as valid and subsisting after the decree in O. S. No. 41 of 1934, and a sale by A in favour of B conferred any title on B.

Held that the only reasonable conclusion that could be arrived at on this state of facts is that A's rights continued to subsist only as mortgagee decree-holder in O. S. No. 192 of 1931 and not as a purchaser.

(2) that having given up his rights under the sale and, proceeded to enforce his rights as the mortgagee decree-holder it would not be open to A to execute a sale of the property in favour of B as his title to the suit properties under the sale has ceased to exist after the decree in O. S. No. 41 of 1934 and the sale therefore in favour of B could not be upheld and could not convey any rights in the suit properties, which must be deemed to continue with the mortgagors and their representative. B, therefore, could not continue in or resist delivery of possession to the mortgagors.

(3) that B, however, would be entitled to be subrogated to the rights of the mortgage subsisting on the

mortgage. See T. P. Act (1882), S. 91. **AIR 1957 Ker 45 (DB).**

——S. 67 — Remedies of prior and puisne mortgagees against each other — Suit by prior mortgagee to enforce mortgage—Puisne mortgagee is necessary party — Puisne mortgagee not made party—His rights are unaffected—C. P. Code (1908), O. 34, R. 1. **AIR 1955 N U C (Madh B) 1309.**

● ——S. 67—Civil P. C. (1908), O. 34, R. 1—Mortgagor's right to redeem is not affected by the creation of a sub-mortgage — Right of sub-mortgagee stated — See Civil P. C. (1908), O. 34, R. 1. **AIR 1959 Mad 246 (FB).**

● ——S. 67—Suit by sub-mortgagee — It is open to a sub-mortgagee in an action to enforce his mortgage to obtain a decree foreclosing the right of not merely his mortgagor but also of the main mortgagor to redeem and a final decree passed in such an action would operate to extinguish the right of redemption. See Transfer of Property Act (1882), S. 60. **AIR 1954 Mad 650 (FB).**

——S. 67—Civil P. C. (1908), O. 34, R. 1—Non-joinder —Rights of prior and puisne mortgagees indicated — See Civil P. C. (1908), O. 34, R. 1. **A I R 1950 Orissa 210 (DB).**

10. Partial foreclosure or sale.

——Ss. 67 and 60 — **(Patiala) Hidayat (1922), Cl. 2 —Partial forclosure.**

Under the Hidayat an application for foreclosure of part of the mortgaged property is not maintainable. **3 Pepsu L R 373 : A I R 1951 Pepsu 18 (21) (Pt D) (Pr 5) (DB).**

SECTION 67-A

——S. 67-A—Suit on only one of the two mortgages —Amendment of plaint held was rightly allowed—See C. P. Code (1908), O. 6, R. 17. **A I R 1953 Ajmer 50 (2).**

——S. 67-A — Designed to confer advantage on mortgagor and save him from expense by the plaintiff having recourse to multiplicity of suits — Open to parties to contract to contrary—Benefit of section can be waived by mortgagor—Postponement of due date by agreement with mortgagee—Mortgagor precluded from raising bar under S. 67-A. 41 C W N 854 : AIR 1956 Mad 467 : (1956) 2 M L J 77 : AIR 1959 Madh Pra 426, Relied on. **1960 Andh L T 906 : (1961) 1 Andh W R 179 : A I R 1961 Andh Pra 175 (176, 177) (Prs 4, 5).**

——S. 67A—Court-fees Act (1870), S. 17 — Single suit on two different mortgages — Decree for consolidated amount - Appeal—Court-fee payable on each cause of action has to be computed and the aggregate amount has to be paid. See Court Fees Act (1870), S. 17. **AIR 1957 Andh Pra 1019.**

——S. 67A—Letters Patent (Cal), Cl. 12 — Two separate mortgages in different territories — Jurisdiction of Court—Mortgages cannot be combined—See Letters Patent (Cal), Cl. 12. **AIR 1959 Cal 616.**

——S. 67A—Civil P. C. (1908), O. 23, R. 1 — Formal defect — Non-compliance with S. 67A T. P. Act is a formal defect not touching the merits of the case—See Civil P. C. (1908), O. 23, R. 1. **AIR 1956 Madh Bha 63.**

——S. 67-A—**Mortgage on different properties—Consolidation in one suit.**

Only those mortgages could be consolidated which the Court, in which the mortgagee sues, has jurisdiction to enforce.

The provisions of this section do not amend S. 16, C. P. Code. **A I R 1954 Madh Bha 156 (157, 158) (Pt E) (Pr 5).**

——S. 67-A—Civil P. C. (1908), O. 2, R. 2—Rule 2 and S. 67-A, T. P. Act—Scope of — Contract to contrary — Contract can be based on waiver. See Civil P. C. (1908), O. 2. R. 2. **AIR 1959 Madh Pra 426.**

——S. 67-A—Mortgagee holding two or more mortgages—Suit in respect of one mortgage—Fresh suit in respect of others is not barred when he has acted in good faith and has appraised the defendant of the existence of other mortgages. **1959 MPLJ 554 : 1960 Jab L J 72 : AIR 1959 Madh Pra 426 (428) (Pt B) (Pr 9).**

——S. 67-A—**Applicability—Conditions to be fulfilled — Two mortgages, one executed by X and the other by X and Y jointly, in favour of same mortgagee—Applicability of S. 67A—Usurious Loans Act (10 of 1908), S. 3—Mortgage decree with 12 per cent. interest till date of decree — Rate of interest if usurious —Civil Procedure Code (5 of 1908), S. 35—Costs—Discretion of Court.**

Section 67-A of the Transfer of Property Act aims at relieving harassment to a mortgagor who has executed more than one mortgage in favour of the same mortgagee. The section prevents such a mortgagee from obtaining on different suits several decrees for foreclosure against the same mortgagor. For the application of this section, the mortgagee must be the same and so also the mortgagor. Further, the mortgagee must be able to consolidate the mortgages in his favour executed by the same mortgagor so that he can get a consolidated mortgage decree instead of obtaining several decrees of the same kind under S. 67 of the Transfer of Property Act on the different mortgages. **78 Mad L W 385 : (1965) 2 Mad L J 233 : AIR 1965 Mad 537 (538) (Pt A) (Pr 2) (DB).**

——S. 67-A—Mortgagor executing two mortgages of different properties in favour of same mortgagee—Mortgagee obtaining decree on prior mortgage without any objection under S. 67-A from mortgagor—Second suit on subsequent mortgage not barred by S. 67-A or O. 2, R. 2. Civil P. C.— (Civil P. C. (1908), Pre. and O. 2, R. 2) — (Interpretation of Statutes), **AIR 1956 Mad 467 (470, 471) (Pt B) (Prs 11, 12, 13, 15).**

——Ss. 67-A, 61 — Contrast between — Effect of amended S. 61 — Contract to the contrary—It should state that the mortgagor was prevented from exercising the right conferred under S. 61 and is obliged to redeem all the mortgages together. See T. P. Act (4 of 1882), S. 61. **AIR 1956 Mad 434 (DB).**

——S. 67-A — **Law in Cochin before the Act — Consolidation of mortgage and charge.**

Before the Transfer of Property Act was applied to the State, the Common law of Cochin was in favour of the mortgagee's right to insist on simultaneous redemption of all the mortgages in his favour in respect of the same properties. The principle was applicable to the case also where there had been first a mortgage followed by a subsequent charge in respect of the same properties : 19 Coch L R 241; 29 Coch L R 213 and 3 Select Decisions (Cochin) 34, Rel. on. **1950 Ker L T 462 : AIR 1951 Trav Co 17 (20) (Pt C) (Pr 5) (DB).**

SECTION 68

SYNOPSIS

(Transfer of Property Act (1882), S. 68.)

1. Scope.
2. Clause (a).
3. Clause (b).
4. Clause (c).
5. Clause (d).
6. Acquiescence by mortgagee in disturbance of possession.

7. Dispossession due to default of mortgagee.
8. Anomalous mortgages.
9. Invalid mortgages.
10. Claim for interest.
11. This section and Civil P. C. (1908), O. 34, R. 6.
12. Suit for sale.
13. Sub-section (2).
14. Charges.

1. Scope.

——S. 68 — Co-heirs — Suit on mortgage by all parties jointly interested before Court either as plaintiff or defendant—Suit is not defective—See Civil P. C. (1908), O. 1, R. 1. AIR 1963 Bom 170 (DB).

——S. 68—Debt Laws— Bombay Money Lenders Act (31 of 1947), S. 30 (1)—Purchaser of equity of redemption of mortgage at Court sale — Not a debtor—Cannot apply for mortgage accounts under S. 30 (1) —Mortgage debt—Does not become debt of purchaser of equity of redemption — See Debt Laws—Bombay Money Lenders Act (31 of 1947), S. 30 (1). (1962) 3 Guj L R 1002.

——S. 68—Parties — Suit for mortgage money—Prior lessee not necessary party. See Civil P. C. (1908), O. 1, R. 10. AIR 1958 Ker 311 (DB).

——S. 68 — Mortgage with possession and lease back —Transfer by mortgagor — Mortgagee cannot bring a suit against transferee—See T. P. Act (1882), S. 58. AIR 1950 Madh Bha 72 (DB).

——S. 68 — V. P. Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 6—Effect of substitution of mortgage with possession with simple mortgage — Resumption of Jagir lands subject to mortgage with possession - Personal liability of Jagirdars as mortgagors to repay loan—Mortgagee can bring suit against the Jagirdar. See Tenancy Laws — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 6. AIR 1961 Madh Pra 216 (DB).

——S. 68— Usufructuary mortgage containing also a stipulation for sale of property—Suit for sale of property dismissed -Right to possess property not extinguished. See T. P. Act (1882), S. 58. 1961 Jab L J 1207.

——S. 68—Decree for sale by usufructuary mortgage —Execution barred — Rights of mortgagee — If extinguished — (Civil P. C. (1908), O. 34, R. 5).

The right to possession of a usufructuary mortgage cannot be said to have extinguished merely by reason of the circumstance that the claim for execution of his decree for sale on the basis of the mortgage could not be enforced by reason of the lapse of time. Nor does a usufructuary mortgagee who enters into possession under a contract of mortgage change the character of his possession by his obtaining a decree on the basis of the mortgage. The mortgagee's right to continue in possession of the property is not extinguished by any process known to law and, further, merely by reason of the existence of a decree for sale remaining unexecuted during the period of limitation provided therefor by law the mortgagor does not acquire an unfettered title to the property to support his suit for possession as against the usufructuary mortgage. AIR 1933 Nag 241 and AIR 1937 Nag 196 and AIR 1941 Mad 737, Rel. on. 1958 M P C 638 : 1958 Jab L J 842 : 1959 M P L J 30 : AIR 1960 Madh Pra 44 (46) (Prs 8, 9).

——Ss. 68 and 65 — Breach of covenant prescribed in S. 65 — View that only remedy of mortgagee is to sue for the mortgage money is wrong. See T. P. Act (4 of 1882), S. 65. AIR 1956 Mad 128.

——S. 68 — Zarpeshgi lease — Suit for rent — Maintainability.

Where under a Zarpeshgi lease the mortgagor lessee held over and the mortgagee lessor brought a suit for recovery of rent.

Held, that if the Zarpeshgi deed and the kabuliat formed part of one and the same transaction between the parties, the plaintiff could not recover rent from the lessee (defendant) except by a suit specifically instituted for enforcement of the mortgage : S. A. No. 1350 of 1955. Dated 4th February, 1960 (Pat), Foll. AIR 1960 Pat 485 (486) (Pr 2) (DB).

——Ss. 68 and 98 — Relative scope—S. 98 if subject to S. 68.

Section 68 not being subject to a contract to the contrary does not conflict with S. 98 and S. 98 is subject to S. 68 for, the provisions of one section cannot be used to defeat those of another unless it is impossible to effect a reconciliation between them. Therefore even though there be a contract to the contrary in the mortgage bond in question, if a term of that contract offends against the statutory right to sue for the mortgage money conferred by S. 68, the statutory right must prevail upon the stipulations in the deed. ILR 38 Pat 35 : 1958 Pat L R 367 : AIR 1959 Pat 235 (238) (Pt A) (Pr 9) (DB).

——S. 68 — Usufructuary mortgage — Mortgagor in possession as lessee — Default in payment of rent — Suit for arrears of rent — If lies.

Where a usufructuary mortgagee has leased the mortgaged property back to the mortgagor, failure on the part of the mortgagor to fulfil the conditions of the lease would give rise to such statutory remedies as are available to the mortgagee as such: A I R 1917 Pat 401, Rel. on. So long as the ijara is in force the remedy of the mortgagee for arrears of rent according to the terms of the kerayanama is not confined only to his remedy under S. 68, T. P. Act but he is also entitled to sue for his arrears of rent. AIR 1949 Pat 166, Disting.; Civil Review No. 9 of 1948, dated 25th April, 1949 (Pat), Rel. on. AIR 1957 Pat 24 (27, 28) (Pt B) (Prs 14, 15).

——S. 68 (d) — Suit for recovery of debt on the basis of a mortgage deed — Document found to be inadmissible — Still claim can be decreed where personal liability of mortgagor arises out of the document. See Registration Act (1908); S. 49. 1963 Cur L J 19 (Punj).

——S. 68 — Registration Act (1908), S. 49 — Unregistered mortgage — Admissible to prove collateral transaction. See Registration Act (1908), S. 49. AIR 1956 Sau 27.

2. Clause (a).

——S. 68 (1) (a) — Equitable mortgage — Mortgagee's right to sue for moartgage money.

A mortgagor in an equitable mortgage does personally bind himself to repay the mortgage money within the meaning of S. 68 (1) (a) of the Transfer of Property Act and that is the irresistible consequence of the joint operation of S. 98 and S. 58 (b) of that Act. Therefore in an equitable mortgage, the mortgagee has a right to sue for the mortgage money within the meaning of S. 68 (1) (a) of the Act. 90 Cal L J 123 : AIR 1953 Cal 208 (209, 210) (Pt B) (Pr 7).

——S. 68 (1), Cl. (b) and Cl. (c) — Debt — Time-barred debt — Mortgage by conditional sale — Remedies to sue on personal covenant and to enforce security time-barred. Mortgage debt not within S. 4 although right to file suit for redemption not barred— Effect of remedy under S. 68 (1), Cls. (b) and (c), T. P. Act. See Debt Laws — Bombay Agriculturial Debtors' Relief Act (28 of 1947), S. 4. AIR 1963 Guj 112.

——S. 68 — The mortgage deed was a combination of a simple mortgage and usufructuary mortgage because of the personal covenant contained therein. See Transfer of Property Act (4 of 1882), S. 58. AIR 1952 Mad 856.

——S. 68 (Before amendment in 1929)—Usufructuary mortgage containing personal covenant to pay mortgage-money — Mortgagee can bring suit for recovery of money and put mortgaged property to sale — (Mysore T. P. Act (as it was 1928), S. 67). See T. P. Act (1882), S. 67. AIR 1952 Mys 125.

——S. 68 — Money left with second mortgagee to pay off prior mortgage — Suit by prior mortgagee to recover — Not maintainable. See Contract Act (1872). S. 2 (d). AIR 1957 Punj 169 (DB).

——Ss. 68 (a) and 68—Simple mortgage or usufructuary mortgage — Document evidencing transaction of loan — Stipulation to repay loan with interest within certain period — In default mortgagee entitled to enter into possession of property given by way of security for loan — Document is simple mortgage — Express personal covenant to pay not destroyed by stipulation as to possession — Mortgagee entitled to sue for simple money claim based on personal covenant. See T. P. Act (4 of 1882), S. 58. AIR 1963 Raj 100.

——S. 68 — Company — Mortgage—Liability of the company would be enforced. See Capital Issues (Continuance of Control) Act (1947), S. 3. AIR 1957 Trav-Co 6 (DB).

3. Clause (b).

——S. 68 (1) (b) — Destruction of security.

Mortgaged property in Pakistan — Mortgagor and mortgagee both abandoning property and coming away to India — Security held was not destroyed by reason of partition of India. AIR 1955 All 706 (706) (Pr 1).

——S. 68 (1) (b) — Mortgage by co-sharer — Security rendered insufficient — Mortgagee is entitled to sue under S. 68. See T. P. Act (1882), S. 58. AIR 1954 All 314.

——S. 68—Mortgagee giving up his security — Mortgagee is entitled to seek personal relief against mortgagor in Court within whose jurisdiction, mortgagor resides or carries on business. See Civil P. C. (1908), S. 16. AIR 1964 Mad 527 (DB).

4. Clause (c).

——S. 68 — Limitation — Dispossession of mortgagee not a ground for extension of time prescribed for filing suit. See Limitation Act (1908), Sch. I, Art. 132. AIR 1964 S C 1295.

——S. 68 — Civil P. C. (1908), O. 2, R. 2 — Usufructuary mortgage — Lease back to mortgagor — Mortgagor to pay monthly rent in lieu of interest — Rent not paid and mortgagor holding over — There is dispossession of mortgagee — Possession of mortgagor is not that of mortgagee — Suit for mortgage-money is maintainable — Suit for arrears of rent — Mortgage-money not claimed — Subsequent suit for mortgage-money is not barred. 1962 B L J R 789 : I L R 42 Pat 747 : AIR 1963 Pat 87 (89, 92) (Pt A) (Prs 5 to 8) (DB).

——S. 68 — Later simple mortgagee obtaining decree without making prior usufructuary mortgagee party to suit and dispossessing him in execution — Usufructuary mortgagee can sue later mortgagee for recovery of possession. AIR 1950 Pat 34 (35) (Prs 2, 3) (DB).

——S. 68 — Usufructuary mortgagee deprived of his possession, filing suit for possession—S. 68, T. P. Act is no bar to file suit for possession. See Mewar Limitation Act (2 of 1988 Smt.), Art. 19. ILR (1965) 15 Raj 503.

5. Clause (d).

——S. 68—Suit for mortgage-money — Even if mortgagee is a benamidar, his right to institute suit for mortgage-money is not affected. (Conceded point.) (1962) 2 Andh L T 61 : (1962) 2 Andh W R 276 : I L R (1964) Andh Pra 1400 (DB).

——S. 68 (1) (d)—Possessory mortgage with covenant to pay — Failure to deliver possession — Suit for recovery of mortgage money—Limitation—(Limitation Act (1908), Art. 132). 48 Bom L R 629 ; A I R 1947 Bom 152 : 231 Ind Cas 16, Overruled.

The right conferred on the mortgagee by S. 68 (1) (d) is not in the nature of an obligation and so it need not be exercised within twelve years thereafter, notwithstanding the fact that a larger period is available to him under the mortgage deed. 48 Bom L R 629 ; A I R 1947 Bom 152 ; 231 Ind Cas 16, Overruled. 56 Bom L R 407 : I L R (1954) Bom 717 : A I R 1954 Bom 407 (408, 409) (Prs 5, 6) (DB).

——S. 68 (1) (d) — Decree for possession until payment of mortgage money — (Civil P. C. (1908), O. 7, R. 7 and O. 21, R. 103) — (Limitation Act (1908), Arts. 116, 132 and 135).

A executing mortgage in favour of *B*, *C* and *D* successively — Decree for possession in suit by *C* on the basis of lease deed executed by *A* to *C* who was to be in possession under mortgage-deed—Objection by *D* upheld in execution in respect of one of the plots — Suit by *C* for foreclosure, on the ground that the property stood sold to him under the terms of the mortgage on failure of payment of mortgage money within the stipulated time, and for general relief—Possession asked for as incidental to foreclosure—Subsequent withdrawal of claim for foreclosure in view of Hyderabad Land Alienation Restraint Act, leaving only suit for mortgage money subsisting—**Held**, that decree for possession was rightly refused in the absence of a prayer in plaint for possession until payment of mortgage money and that the relief could not be given by the Court under the general provisions of Civil P. C. as a relief which may be deemed as a fit and appropriate relief — **Held**, also that the suit was one for compensation on breach of contract by mortgagor and hence Art. 116, Limitation Act applied and that Art. 135 did not apply because no question of determination of mortgagor's possession arose in the suit ; and that Art. 132 also did not apply because there was no term in mortgage deed entitling *C* to file a suit for enforcement of mortgage money ; that after the relinquishment of the prayer for foreclosure it was only a suit for a simple money decree on a registered bond and that the period of limitation for the suit was six years and hence the suit was barred — **Held**, further that it could not be regarded as a suit under O. 21, R. 103, as it was filed more than one year after the date on which the order in execution upholding *D*'s objection was passed and that even if regarded as a suit under that provision it was time-barred. I L R (1953) Hyd 642 : A I R 1954 Hyd 41 (43, 44) (Prs 5, 7, 10, 11) (DB).

——S. 68 (1) (d)—Failure to deliver possession.

There is nothing in law to prevent the mortgagee from filing a suit for possession on the basis of lease-deed. When the mortgagee is entitled under the terms of the mortgage to possession and the mortgagor fails to deliver the same to him the mortgagee is entitled to sue under S. 68, Clause (d) for the mortgage money. He has also other remedies open to him. He may sue for damages for breach of the contract to deliver possession or may sue for possession. I L R (1953) Hyd 331 : A I R 1953 Hyd 231 (232) (Pt B) (Pr 4) (DB).

——S. 68 (1) (d) — Suit by mortgagee to realise money on mortgagor's failure to deliver possession of property — Advance of money not on strength of mere promise to execute mortgage deed, but as consideration for mortgage with possession — Case not one of payment upon existing consideration and

limitation is not governed by Art. 97—Secure possession to mortgagee being implied agreement of usufructuary mortgage under S. 68, T. P. Act — Limitation held governed by Art. 116. See Limitation Act (1908), Art. 97. A I R 1965 Ker 154.

——S. 68 (1) (d) — Mortgagee of undivided share of coparcenary property — Right to recover mortgage money.

The expression 'mortgagee being entitled to possession of the mortgage property' means not only that under the terms of the mortgage, the mortgagee is entitled to possession but he is also entitled to possession, according to law. Therefore, a mortgagee of an undivided share of coparcenary property not being entitled under Hindu Law to joint possession cannot recover mortgage money under S. 68 (1) (d). A I R 1952 Kutch 18 (19) (Pt D) (Pr 5).

——S. 68 (1) (d)—Scope and object — Right of usufructuary mortgagee to sue for possession in case of disturbance of possession.

Section 68 (1) (d), T. P. Act does not deal with the mortgagee's right to sue for possession when being entitled to possession of the mortgaged property he fails to obtain possession from the mortgagor or is dispossessed therefrom. If the mortgagee is entitled to the possession of the mortgaged property and if the mortgage deed does not contain a personal covenant to pay, then under S. 68 (1) (d) the mortgagee has a supplemental right to sue for the mortgage money in the circumstances mentioned in the clause. Madh B L R 1956 (Civil) 358 : 1956 Madh B L J 930: I L R (1956) Madh B 92 : A I R 1956 Madh B 110 (112) (Pt B) (Pr 3).

——Ss. 68 (1) (d), 58—Othi mortgage—No provision for interest — Possession not delivered — Mortgagee entitled to interest and charge upon mortgaged property for breach of covenant to deliver possession—Civil P. C. (1908), O. 34, R. 11. 76 Mad L W 853 (2): A I R 1964 Mad 201 (202) (Pr 2).

——S. 68 (1) (d) — Right to sue for mortgage money —Usufructuary mortgagee not given possession of property — Nature of the right of the mortgagee—Only a privilege and not an obligation — Mortgagee can sue on the personal covenant within twelve years of the period fixed for payment — No principle of election involved. (1963) 1 Mad L J 263 : I L R (1963) Mad 580 : 76 Mad L W 815 : A I R 1963 Mad 342 (344 to 347) (Prs 4, 5, 15, 16, 19, 21).

——Ss. 68 (1) (d) and 58—Usufructuary mortgage — Right to sue for mortgage-money—Interest as charge.

A usufructuary mortgagee has a right to sue for the mortgage-money when he being entitled to possession of the mortgaged property the mortgagor fails to deliver the same to him or to secure the possession to him without disturbance by the mortgagor. In the absence of a contract to the contrary, the mortgagee is entitled to treat the interest due under the mortgage as a charge on the mortgaged property. 35 Mys L J 251 : I L R (1957) Mys 125 : AIR 1958 Mys 32 (33) (Pr 3).

——S. 68, Cl. (d) — Decree for possession cannot be refused in suit by mortgagee on ground that morfgagor was not in possession at time of mortgage. AIR 1955 N U C (Pat) 231 (DB).

——S. 68 (1) (d)—Mortgage of land in Zarpeshgi by A, B and C—Mortgagee, after some months of taking possession, granting lease to A and B for a period of two years—Mortgage deed containing no stipulation for rate of interest on principal money but requiring mortgagee to be satisfied in respect thereof by remaining in possession, A and B continuing in possession after expiry of lease — Suit by mortgagee for rent or in alternative for principal money and interest on account of use and occupation, if lessee was found to be invalid — Held, that the mortgage and lease were not parts of the same transaction and hence claim for rent or compensation did not amount to a claim for interest on mortgage money which could only be enforced by suit on the mortgage.

Held, also that S. 68 did not apply to the case even if possession of A and B could amount to a dispossession of the mortgagee since there was no dispossession by C also and hence there would be no basis for a suit for mortgage money against him. AIR 1954 Pat 304 (306) (Pt D) (Pr 5).

——S. 68 (1) (d)—Usufructuary mortgage—Deed not registered — Mortgagee establishing that though he was entitled to possession, mortgagor had failed to deliver same to him—Mortgagee entitled under S. 68 (1) (d) to recover mortgage amount. 32 Mad L J 39; AIR 1916 P C 119, Foll. 1962 Cur L J 465 : AIR 1962 Punj 465 (466) (Pr 7) (DB).

——Ss. 68 (1) (d), 58, Cl. (a) — Usufructuary mortgage — Possession taken back by mortgagor — Mortgagee entitled to sue for money — Mortgagor personally liable. See T. P. Act (4 of 1882), S. 58, Cl. (a). AIR 1961 Punj 477.

——S. 68 (1) (d)—Dispossession of usufructuary mortgagee — Suit to recover mortgage money — Suit not based on covenant in deed—Suit cannot be regarded as one for enforcing a contract within Art. 15 of Sch. II of Provincial Small Cause Courts Act — It is covered by S. 68 (1) (d) and could be entertained by Small Cause Court — Limitation — Suit governed by Art. 97 and not by Arts. 116 or 120, Limitation Act as the right cannot be regarded as an implied covenant attached to mortgage — (Provincial Small Cause Courts Act (1887), Sch. II, Art. 15 — Limitation Act (1908), Arts. 97, 116, 120). I L R 21 Mad 242 : 8 Mad L J 81, held no longer good law. A I R 1927 P C 99, Rel. on. 1961 Raj L W 321 : I L R (1960) 10 Raj 1608.

6. Acquiescence by mortgagee in disturbance of possession.

——S. 68 — Effect of acquiescence by mortgagee in disturbance of possession — (Evidence Act (1872), S. 115).

Where after it was found that the mortgagor had no title to one of the mortgaged properties, which were leased back to the mortgagor, the mortgagee recovered actual possession of the other properties and continued in possession without any steps being taken by him for a period of thirty years to complain against the diminution of the security.

Held, that the mortgagee must be deemed to have acquiesced in the diminution of the security and as such he was not entitled to any relief on that account. 24 All 521 (PC) and AIR 1934 Cal 149, Applied. 1955 Mad W N 900: AIR 1956 Mad 128 (129) (Pt B) (Pr 3).

7. Dispossession due to default of mortgagee.

——S. 68—Wrongful act or default of mortgagee — Proceedings for commutation of bhaoli rent to money rent under S. 40 of Bihar Tenancy Act—Not a wrongful act — (Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 40). I L R 38 Pat 35: 1958 Pat L R 367: AIR 1959 Pat 235 (238) (Pt B) (Pr 16) (DB).

8. Anomalous mortgages.

——Ss. 68 and 98—Anomalous mortgage — Mortgage with possession — Stipulation for redemption within two years and in default mortgagee to have option to sue ror recovery of amount by sale of property — Mortgagee held entitled to remain in possession after expiry of redemption period and is not bound to sue for sale. Madh B L R 1956 (Civ) 358 : 1956 Madh B L J 930: I L R (1956) Madh B 92 : AIR 1956 Madh B 110 (112) (Pt A) (Pr 2).

——S. 68 — Mortgage combination of usufructuary and simple mortgage — Decree for sale can be passed.

The right to cause the mortgaged property to be sold may be conferred by implication, not necessarily by express words. Where the mortgage is a combination of both simple and usufructuary mortgage, decree for sale of the mortgaged property can be passed on account of the mortgage being a simple mortgage as well.

Held, on facts that in view of the term that the property shall remain mortgaged (makful and hypothecated paeband) there was an implied agreement that the mortgagee shall have the right to cause the mortgaged property to be sold; and, therefore, there was a transfer of an interest in the property. Thus, all the three conditions of a simple mortgage were fulfilled. Hence the mortgage in question was a combination of a simple mortgage and usufructuary mortgage, and the mortgagee was entitled to realise the dues by sale of the mortgaged property. AIR 1916 Pat 11 and A I R 1922 Pat 529 and I L R 34 All 446 and A I R 1916 P C 119, Rel. on. **1962 B L J R 789 : I L R 42 Pat 747 : A I R 1963 Pat 87 (93) (Pt B) (Pr 10) (DB).**

9. Invalid mortgages.

——S. 68—Applicability—Invalid mortgage—Section does not apply. **AIR 1955 N U C (Raj) 4615.**

——S. 68—Section pre-supposes valid mortgage.

Section 68 pre-supposes a valid mortgage duly registered. If the mortgage is invalid for any purpose, there is no question of the mortgagee as such suing on any personal covenant for payment of money under the mortgage-deed. **7 Sau L R 190 : A I R 1956 Sau 27 (28) (Pt A) (Pr 6).**

10. Claim for interest.

——Ss. 68, 67, 58 (g) and 98(as amended in 1929) — Mortgagee to enjoy property in lieu of interest — Personal covenant to pay — Possession not given to mortgagee — Mortgage held anomalous — Mortgagee held entitled to decree for sale and profits from date of mortgage to date of suit. See Transfer of Property Act (4 of 1882), S. 58 (g). **AIR 1953 Mad 13 (DB).**

——S. 68 — Civil P. C. (1908), O. 2, R. 2 — Suit for arrears of rent representing interest — Maintainability.

In the case of a mortgage when the property has been leased to the mortgagor on monthly rent representing the amount of interest and a suit is filed for arrears of rent then unless the non-payment of the interest on the mortgage in the case of a lease back causes the principal mortgage money to become due, an earlier suit for arrears of rent in lieu of interest cannot bar a subsequent suit for the principal money, as they would arise out of two distinct causes of action. The cause of action for recovery of arrears of rent, which is payable in lieu of interest is separate and distinct so long as the mortgage money does not become payable. A I R 1963 Pat 87, Foll; **A I R 1955 Pat 297, Rel. on. 1963 B L J R 361 : I L R 43 Pat 606 : AIR 1963 Pat 350 (353) (Pt C) (Pr 11) (DB).**

——Ss. 68, 58 and 105—A executing rehan bond in favour of B for certain amount of loan—A executing Kabuliat four days after in favour of B agreeing for hunda rent for period of 9 months—Documents held to be part of same transaction of mortgage — Suit for hunda rent held not maintainable—Decree for interest on mortgage money held could not be passed. See T. P. Act (4 of 1882), S. 58. **AIR 1962 Pat 413.**

——S. 68 — Suit for mortgage amount and interest—Causes of action distinct — C. P. Code O. 2, R. 2 does not apply. See Civil P. C. (1908), O. 2, R. 2. **AIR 1954 Sau 93.**

——S. 68—Suit for principal barred under C. P. Code (1908), O. 2, R. 2—Suit for interest only is also barred — (C. P. Code (1908), O. 2, R. 2—(Limitation Act (1908), Art. 63).

Where a suit to recover the principal (in this case, the mortgage amount) becomes barred by reason of O. 2, R. 2, C. P. Code, then a suit merely for interest on that principal will also be similarly barred. No distinction between the two can be made. **6 Sau L R 302 : AIR 1954 Sau 93 (94) (Pt A) (Pr 3).**

11. This section and Civil P. C. (1908), O. 34, R. 6.

——S. 68 — Civil P. C., O. 34, R. 6 and S. 151 — Court has no inherent power to grant personal decree when mortgaged property has not been sold : ILR 50 All 321 : AIR 1928 All 71 ; 108 I C 459, **Overruled.** See Civil P. C. (1908), O. 34, R. 6. **AIR 1951 All 195 (FB).**

12. Suit for sale.

——Ss. 68, 58 (d) and 67—Usufructuary mortgagee—Right to sue for sale stated. See T. P. Act (4 of 1882), S. 58 (d) **AIR 1952 Mad 856.**

——S. 68 — Simple mortgage usufructuary—Right to sue for sale. See T. P. Act (1882), S. 58. **AIR 1954 Mys 177 (DB).**

——S. 68 — Mortgagee's right to recover mortgage money.

Mortgagee's right to recover the mortgage money by sale of the hypothecated property cannot in any way be affected by a mere decree obtained by a stranger against the hypothecator declaring that he is not the owner of the property. And the stranger does not, by such a decree, acquire the rights of the hypothecator. **ILR (1953) Mys 98 : 32 Mys L J 111 : AIR 1953 Mys 111 (113) (Pt B) (Pr 6).**

13. Sub-section (2).

——S. 68—Civil P. C. (1908), O. 2, R. 2 — Earlier suit for interest — Subsequent suit for principal — Subsequent suit is barred — Benefit of cl. (2) of S. 68 not available. See Civil P. C. (1908), O. 2, R. 2. **AIR 1958 Andh-Pra 608 (DB).**

——S. 68 (2) — "Stay the suit" — Mortgagor denying mortgage cannot ask to stay suit. **AIR 1953 Cal 208 (210, 211) (Pt C) (Prs 8, 9, 11, 12).**

——S. 68 (2)—"Stay of suit" — Mortgagor denying mortgage cannot ask to stay suit. **AIR 1953 Cal 208 (211) (Pt D) (Pr 15).**

——S. 68 (2)—Applicability.

When there has been an equitable mortgage by deposit of title deeds in Rangoon the prohibition contained in S. 68 (2) will apply only if the suit could be laid in the Madras State and admittedly such a suit cannot be filed. **(1956) 2 Mad L J 508 : 70 Mad L W 303 : AIR 1957 Mad 106 (110) (Pt D) (Pr 18) (DB).**

14. Charges.

——S. 68—Benefit of contract — Rights of mortgagee or charge holder stated. See T. P. Act (1882), S. 65. **AIR 1954 All 348.**

——S. 68—Equitable principle in S. 68 not applicable —A obtaining a decree for Rs. 3,300 against H—H appealed and obtained stay of execution of decree on furnishing security — G and other passed security bond and each agreed to be liable for Rs. 3,000 in case of failing of the appeal and of R to pay the amount — High Court reducing decretal amount to Rs. 990/—A sought to pooceed personally against G —A cannot be compelled to proceed against property which has been charged or to give up security — Equitable principle in S. 68 of Transfer of Property Act not applicable. See Civil P. C. (1908), S. 47. **(1956) 58 Bom L R 622.**

SECTION 69

——S. 69 (1) — Trustees for debenture-holders — Trustees Hindus—Power of sale without intervention of Court—Requirement of S. 69 (1) (a) cannot be said to be not satisfied because the trustee for the time being were Hindus. See Companies Act (1956), S. 119. **AIR 1962 Andh Pra 274 (DB).**

——S. 69 — Power of sale without intervention of Court conferred on mortgagee by mortgage deed—Suit under S. 15D, Dekkhan Agriculturists Relief Act (1879)—Decree declaring amount passed - Mortgagor not exercising his option — Mortgagee not to be prevented by injunction from exercising his power of sale without intervention of Court. See Debt Laws—Dekkhan Agriculturists' Relief Act (1879), S. 15D. **AIR 1950 Bom 49 (DB).**

——S. 69 (1) (b)—Housing Society advancing loan—Loan can be recovered as arrears of land revenue and only house constructed with the aid of loan can be sold—Sale cannot be vitiated for want of publicity—Want of publicity may entitle mortgagor for damages only. See M P. Land Revenue Code (1959), S. 155. **1963 M P L J (Notes) 141,**

——S. 69 — Usufructuary mortgage containing also a stipulation for sale of property — Suit for sale of property dismissed—Right to possess property not extinguished. See T. P. Act (4 of 1882), S. 58. **1961 Jab L J 1207.**

——Ss. 69 and 59-A — First mortgagee exercising power of sale under S. 69 — He need not give notice of it to the second mortgagee — Limitation Act (9 of 1908), S. 19—Recital in sale deed as to existence of a mortgage — If acknowledgment. **ILR (1964) 1 Mad 735 : (1964) 2 M L J 448 : 78 Mad L W 23 : AIR 1965 Mad 142 (143) (Pt A) (Pr 3).**

——Ss. 69 and 69-A — Court cannot direct the Receiver, appointed under S. 69-A, to sell the property—S. 69-A (10) enables the Court only to give such direction regarding the management or administration of the property mortgaged and not to sell the same—Even if mortgagee has power of sale under the mortgage deed he has to exercise it himself and he has no right to apply to the Court for sale. See T. P. Act (4 of 1882), S. 69-A. **AIR 1964 Mad 379.**

——S. 69 — Sale by public auction at the instance of equitable mortgagee—Conditions of sale—Stipulation as to payment by highest bidder of initial deposit and balance of purchase money within certain time — No agreement to extend time — Default in payment by auction-purchaser—Right of mortgagee to re-sell property—Auction-purchaser's suit for specific performance—Time held was of essence of contract—Auction-purchaser not entitled to decree either for specific performance or for damages — Contract Act (1872), S. 55—Specific Relief Act (1877), Ss. 12 and 21. **1963 Mad W N 504 : ILR (1963) Mad 376 : 76 Mad L W 534 : (1963) 2 Mad L J 399 : AIR 1963 Mad 468 (470, 471) (Prs 12 to 17) (DB).**

——S. 69—Scope—Right of mortgagee—Setting aside of sale on ground of fraud—Power of Court.

The right of sale of the hypotheca, without the intervention of the process of Court which a mortgagee has under S. 69 of the Transfer of Property Act, is a statutory right. **1962 Mad W N 687 : 76 Mad L W 183 : AIR 1963 Mad 208 (209) (Pt B) (Pr 5).**

——Ss. 69, 69-A—Power of sale—Receiver appointed at instance of mortgagee—Leave of Court for exercise of power not necessary. **ILR (1955) Mad 1310 : (1956) 1 M L J 223 : AIR 1956 Mad 385 (386) (Pr 13).**

——S. 69 — Sales under S. 69, T. P. Act — Bona fide objections to sale — Injunction should be granted.

See Civil P. C. (1908), O. 39, R. 1. **AIR 1955 Mad 491 (DB).**

——S. 69—Nature of provision.

Section 69 is a drastic provision and places bona fide mortgagors who have real defence to any action on the mortgage, in a very disadvantageous and helpless position. **(1955) 2 M L J 151 : 1955 Mad W N 520 : 67 Mad L W 482 : I L R (1956) Mad 229 : AIR 1955 Mad 491 (492) (Pt A) (Pr 8) (DB).**

—— S. 69—Stay of sale — Mortgagor entitled to benefits of Madras Agriculturists Relief Act—(Debt Laws—Madras Agriculturists Relief Act (4 of 1938), S. 13-A). **(1955) 2 MLJ 151: 68 Mad L W 482 : ILR (1956) Mad 229 : A I R 1955 Mad 491 (494) (Pt D) (Pr 16) (DB).**

——S. 69—Intervention of Court— Civil P. C. (1908), S. 151—Inherent powers.

When a mortgagee seeks the intervention of the Civil Court in order to sell the mortgaged property in a manner most advantageous for both himself and the mortgagor, not only has the Civil Court jurisdiction to go to his assistance but it is also its duty in the interests of justice to do so. **AIR 1955 Mad 455 (457 to 459) (Pt A) (Prs 8, 9, 11).**

——S. 69 (3) — Sale by mortgagee under powers in the deed during winding up proceedings — No leave of Court — Not invalid. See Companies Act (1913), S. 171. **AIR 1955 Mad 331 (DB).**

——S. 69 (3) — Sale in pursuance of powers in mortgage—Avoidance by mortgagor—(Trustees' and mortgagees' Powers Act (1866), S. 8).

A mortgagee's sale in exercise of the power reserved in that behalf in the mortgage is not liable to be impeached on account of want of publicity or want of notice as required either by the instrument of mortgage or by the law. **(1955) 2 M L J 1 : 1955 Mad W N 253 : AIR 1955 Mad 331 (335) (Pt B) (Pr 12) (DB).**

—— S. 69 — Does not offend Art. 14 of the Constitution - (Constitution of India, Art. 14).

The power of the mortgagee to sell under S. 69, T. P. Act, coming from England, got extended to this country because it is absolutely necessary for promoting quick credit. (Powers under S. 69, T. P. Act and the scope of Art. 14 fully discussed and case-law exhaustively dealt with, by referring to AIR commentary and other commentaries on Transfer of Property Act and the Constitution). **67 Mad L W 1147 : AIR 1955 Mad 135 (143) (Pt A) (Pr 24).**

——S. 69—Validity — Does not offend Art. 19 (1) (f) of the Constitution. **67 Mad L W 1147 : AIR 1955 Mad 135 (144) (Pt B) (Pr 25).**

——S. 69—Sale under — Applicability of Madras Act (V of 1954)—Madras Indebted Agriculturists (Temporary Relief) Act (V of 1954), S. 3).

A private sale without the intervention of the Court under S. 69, Transfer of Property Act, does not fall within the ambit of Madras Act 5 of 1954 because that Act covers only (a) suits instituted in Court and (b) execution proceedings arising from decrees of Court. The mortgagor is not therefore entitled to the benefits of the Madras Act in the case of a sale under S. 69. **67 Mad L W 1147: AIR 1955 Mad 135 (144) (Pt C) (Pr 26).**

——S. 69 — Who can exercise power — Mortgagee, sub-mortgagee and second mortgagee are entitled to exercise power of sale — Conduct of sale must be bona fide — Court will interfere if price is low. **AIR 1955 NUC (Mad) 3917.**

——S. 69 — (Constitution of India, Arts. 14 and 226 —Applicability.

Under a mortgage deed it was provided that the mortgagees shall have the power to realise the amounts due under the mortgage by selling the property which was situated within the limits of the city of Madras in public auction or by private treaty under the provisions of S. 69 of the Transfer of Property Act. Default having occurred in the payment of the mortgage amount, the mortgagees sought to bring the property to sale in pursuance of the power granted as aforesaid. The mortgagor applied for the issue of a writ of mandamus to the mortgagees to stop the sale on the ground that while simple mortgagees of properties situated outside the City of Madras could enforce the mortgage only by instituting a suit thereon, the mortgagees of properties in the City of Madras were empowered by S. 69 of the Transfer of Property Act to realise the amounts due to them without the intervention of Court and that was a discrimination against mortgagors within the City of Madras and therefore repuguant to Art. 14 of the Constitution.

Held that in the case the writ was not taken out against the State in which alone Art. 14 casts a duty and as what the mortgagees, who were citizens of the Union of India like the mortgagors, proposed to do was to enforce the contract entered into by them with the mortgagors, Art. 14 could obviously have no application.

The case involved no public duty for the enforcement of which alone a mandamus can issue. As the mortgagees were seeking merely to enforce private rights a writ of mandamus would not lie. AIR 1955 NUC (Mad) 1828.

SECTION 69-A

—Ss. 69-A and 72—Expenses of Receiver appointed in mortgagee's suit at mortgagee's instance — Is not recoverable, by mortgagee—(Civil P. C. (1908), O. 40, R. 1). 1955 Andh L T (Civil) 517 : 1955 Andhra W R 654 : AIR 1955 Andh 274 (276) (Pt C) (Pr 5).

—S. 69-A—Proceedings under S. 69-A of Act do not operate as res judicata to subsequent suit in respect of title to property — Civil P. C. (1908), S. 11. 1964 Mad W N 651 : ILR (1965) 1 Mad 624 : 77 Mad L W 737 : AIR 1965 Mad 185 (187) (Pt B) (Prs 10, 12) (DB).

—Ss. 69-A and 69—Court cannot direct the Receiver, appointed under S. 69-A, to sell the property—S. 69-A (10) enables the Court only to give such direction regarding the management or administration of the property mortgaged and not to sell the same — Even if mortgagee has power of sale under the mortgage deed he has to exercise it himself and he has no right to apply to the Court for sale. AIR 1955 Mad 455, Disting. 77 Mad L W 204 : (1964) 2 MLJ 137 : ILR (1964) 2 Mad 157 : AIR 1964 Mad 379 (379, 380) (Prs 1, 2).

—Ss. 69-A (3), (4) and 65-A (2) (b) — Receiver appointed under S. 69A is not bound by contract between mortgagor-landlord and tenant in possession, subsequent to mortgage, regarding repayment of loan taken by landlord by adjustment towards rent—Relationship of agent and principal between receiver and mortgagor by S. 69A (3) by means of fiction is for specific purpose — Receiver is not bound by agreement subsequent to mortgage. See T. P. Act (4 of 1882), S. 65A (2) (b). AIR 1963 Mad 449.

—S. 69-A — Receiver appointed under — Power to sell.

The receiver appointed under S. 69-A is a special receiver appointed for a particular purpose. He has not got the status or the powers of a receiver appointed under O. 40, R. 1, Civil P. C. pending a regular suit. There is no provision in S. 69-A or any other section of the T. P. Act, or in the Civil P. C., under which a receiver appointed tor a limited purpose under S. 69-A, could sell the mortgaged property. 1956 Mad W N 378 : 69 Mad L W 373 : (1956) 2 M L J 30 : ILR (1956) Mad 1374 : AIR 1956 Mad 424 (425) (Pr 1) (DB).

—Ss. 69A, 69 — Power of sale — Receiver appointed under S. 69A at instance of mortgagee — Leave of Court for exercise of power not necessary. See Transfer of Property Act (4 of 1882), S. 69. AIR 1956 Mad 385.

—S. 69-A (2) — Discharge of receiver on ground that debt has been wiped out — (Debt Laws—Madras Agriculturists' Relief Act (4 of 1938), S. 13-A).

The provisions of S. 69-A (2) would cover a case in which it is alleged by the mortgagor that there is no debt outstanding and therefore there should he no receiver. A mortgagor can make an application for the discharge of receiver on the ground that the debt due under the mortgage had been wiped out on an application of the provisions of S. 13 A of the Madras Agriculturists' Relief Act. It cannot be said that the debtor can get the benefit of the application of S. 13-A only in a suit filed by him for redemption or in a suit by the mortgagee on foot of the mortgage. 1954 Mad W N 295 : (1954) 2 M L J 47 : 67 Mad L W 344 : ILR (1954) Mad 1231 : AIR 1951 Mad 896 (897) (Pr 6) (DB).

SECTION 70

—S. 70 — Mortgage of share in village — Mortgagee purchasing property under mortgage decree — Mortgagor ejected from his sir and other lands by lambardar — Lambardar also obtaining possession of certain other lands — Mortgagees is entitled to a proportionate share in those lands — Omission to ask for sale of those lands in the mortgage suit does not bar his claim for partition — Civil P. C. (1908), O. 2, R. 2. (1962) 1 S C J 158 : (1961) 3 S C R 913.

—S. 70, Ill. (b) — Mortgage decree—Sale in execution of — Accession to mortgaged property after passing of decree — Mortgagee entitled to sell accession for satistaction of decree. AIR 1918 P C 34, No longer good law. 1964 All L J 888 : AIR 1965 All 193 (194) (Prs 4, 6) (DB).

—S. 70 — Debenture holders—Rights of—Creation of specific charge and floating charge on same properties — Priority in such charges — It is the law on mortgages and not the company law that governs the case. See Companies Act (1913), S. 229. (1965) 2 Andh W R 393 : AIR 1966 Andh Pra 233 (DB).

—Ss. 70 and 63 — Accession — English rule as to fixtures.

The English rule as to fixtures does not in terms apply to India. The question as to what is an accession would have to be decided on the intention of the parties as gathered from the mortgages. 70 Mad L W 638 : 1957 Mad W N 478 : (1957) 2 Mad L J 256 : AIR 1957 Mad 610 (611, 612) (Prs 3, 5, 6) (DB).

—Ss. 70 and 73—'Vest,' meaning of — Mortgaged estate of intermediary vesting in State — Effect of —Bakasht Lands forming part of mortgaged estate which are deemed to be settled with proprietor under S. 6 (1) constitute accession — S. 4 (d) does not operate as a bar to a suit to recover mortgage money by sale of such lands — Full Bench decision in AIR 1958 Pat 630 continues to be good law and has not been overruled either by AIR 1961 S C 1790 or by AIR 1962 S C 1464. See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 3. AIR 1963 Pat 412 (FB).

[Overruled in AIR 1967 S C 801].

—Ss. 70 and 63—Accession—Meaning of — Loss of mortgaged property by operation of law or otherwise — Mortgagor acquiring some interest therein —

Whether an accession — Accession can be availed of even after passing of mortgage decree which does not destroy mortgage security. Sidheswar Prasad Singh v. Ram Saroop Singh, 1963 B L J R 802 : ILR 42 Pat 192 : AIR 1963 Pat 412 (421, 423) (Pt B) (Prs 18, 19, 21, 22) (FB).

[Overruled on another point in AIR 1967 S C 801].

——S. 70 — Mortgage of site without buildings.

Where a site only is mortgaged without the building thereon or where after the mortgage of the site a building is constructed thereon by the mortgagor and the mortgagee becomes the owner of the site in execution of the mortgage decree, he is entitled to get possession of the site after removal of the building. He need pay the value of the building only if he wants it and the mortgagor is prepared to sell it at an agreed price. AIR 1950 Trav-Co 78 (78) (Pr 2) (DB).

SECTION 72

SYNOPSIS

(Transfer of Property Act (1882), S. 72.)

1. Scope.
2. Preservation of property.
3. Supporting mortgagor's title.
4. Clause (d).
5. Contract to contrary.
6. May add such money to the principal money.
7. Proviso.
8. Charge for expenses.
9. Interest on amount spent.

1. Scope.

●——S. 72 — Kanom — Incidents of stated. See T. P. Act (4 of 1882), S. 58. AIR 1951 Mad 187 (FB).

——S. 72 — Scope and applicability considered. AIR 1955 N U C (Trav-Co) 5069 (DB).

2. Preservation of property.

——S. 72 — Applicability — Mortgaged property put up for sale in execution of money-decree — Payment of decree amount by mortgagee — Section 72 does not apply. 1954 A L J 304 : 1954 All W R (HC) 51 : AIR 1954 All 420 (420) (Pt A) (Pr 5).

——Ss. 72 (b), 63-A (2), 76 (d) — Preservation of property — House in ruined condition mortgaged for Rs. 272 — Covenant by mortgagor to pay costs of repairs carried out by mortgagee — Mortgagee spending Rs. 1,000 in repairs greatly enhancing value of property — Mortgagee entitled to cost of work's along with mortgage money—(Words and Phrases—Repairs and improvements). AIR 1960 Mad 24 (27) (Pr 8).

——S. 72 (b) — Mortgagee paying up charge decree to prevent sale — Proviso to section not complied with — Mortgagee cannot add amount to principal — Personal right of suit not barred — Contract Act (1872), S. 69. 1950 Mad W N 15 : (1950) 1 Mad L J 5 : AIR 1950 Mad 333 (334) (Prs 4, 5).

——Ss. 72 (b) and 76 — Mortgagee in possession effecting constructions — Mortgagor's liability to pay for.

Where a person continues in possession as mortgagee he can repair the property and keep the property in good condition; but he cannot effect constructions thereon. If he does so, he does it at his own risk and the mortgagors are not liable to pay for the same. 35 Mys L J 232 : ILR (1957) Mys 100 : AIR 1958 Mys 20 (23) (Pt C) (Pr 12).

——Ss. 72, 76 — Payment of taxes.

When the payment of the taxes is a duty on the part of the mortgagee he is like a trustee and cannot affect the right of the mortgagor by purchasing the property at a sale for such taxes. 30 Mys L J 158 : ILR (1951) Mys 503 : AIR 1953 Mys 114 (120) (Pt D) (Pr 17) (DB).

——S. 72—Payment of taxes.

The mortgagee is in duty bound to safeguard the security mortgaged. If the arrears due on the suit property related to the period prior to his coming into possession of the property and if he has paid the arrears due to save the property he may claim the re-payment of that amount at the time of redemption. 30 Mys L J 153 : ILR (1951) Mys 503 : AIR 1953 Mys 114 (120) (Pt E) (Pr 18) (DB).

——S. 72 (b) — Right of mortgagee to pay land revenue — Right cannot be converted to obligation.

It may be that the mortgagee being a person interested in safeguarding his security has sufficient interest entitling him to pay the land revenue. But that right of his cannot be converted into an obligation. ILR (1939) Nag 248, Ref. to. ILR (1952) Nag 366 : AIR 1953 Nag 259 (260) (Pt B) (Pr 4) (DB).

——S. 72 (b) — Trusts Act (1882), S. 90, Illus. (c) — Mortgagee in possession required to pay rent of mortgaged property — Default — Sale of property for arrears of rent — Purchase by mortgagee — Right to redeem, not extinguished — Suit for redemption, maintainable. See Trusts Act (1882), S. 90, Illustration (c). AIR 1956 Orissa 61 (DB).

——S. 72 (b)—Costs of additions by mortgagee—Not allowed.

A mortgagee cannot claim the cost of additions to, or new constructions upon or in place of, the mortgaged property even under Cl. (b) of S. 72, T. P. Act. ILR (1955) Pepsu 161 : AIR 1955 Pepsu 87 (90) (Pt F) (Pr 10) (DB).

3. Supporting mortgagor's title.

——S. 72 (c) and (d) — Costs of supporting title of mortgagor or mortgagee.

The mortgagee paid moneys to Government to avert a sale of a portion of the hypotheca for realisation of the penal assessment levied by the Government on the mortgagor on the land not comprised in the mortgage. The mortgagor thereafter filed a suit against the Government for refund of the moneys so paid on ground that the Government had no right to bring to sale the hypotheca, and for injunction restraining the Government from such sales in future.

Held, that as the Government had a paramount right to realise the amount of penal assessment levied by them on the mortgagor there was no question of protecting the title of the mortgagor or the mortgagee in the suit; and the expenses of such suit could not, therefore, be added to the mortgage amount. 1955 Andh L T (Civil) 517 : 1955 Andh W R 654 : AIR 1955 Andh 274 (276) (Pt B) (Pr 4).

——S. 72 (b)—Separate suit by mortgagee for moneys recoverable under S. 72 (b) — Maintainability of — Res judicata — (C. P. Code (1908), S. 11).

After the passing of the final decree in his mortgage suit, the mortgagee made payments to avert sale of hypotheca for arrears of revenue due to Government. He applied to have this amount included in the decree when the mortgagor got the decree amount scaled down under Madras Act 4 of 1938. The mortgagee was referred to a separate suit.

Held (i) that a separate suit was maintainable and the order referring the mortgagee to a separate suit operated as res judicata against the mortgagor;

(ii) that a separate suit lies for the moneys recoverable under S. 72 (b) of the T. P. Act. 1955 Andh L T (Civil) 517 : 1955 Andh W R 654 : AIR 1955 Andh 274 (277) (Pt D) (Pr 7).

——S. 72 (c) — Costs incurred by mortgagee in defending title of mortgaged property — Mortgagee obtaining them from other property by decree of Court but making no attempt to execute decree — Mortgagee held was not entitled to debit mortgagor in his accounts with these costs. 52 Bom L R 892 : ILR (1951) Bom 209 : AIR 1951 Bom 19 (22) (Pt B) (Pr 7) (DB).

4. Clause (d).

——S. 72 (d)—Costs of supporting mortgagee's title

The mortgagee is not entitled to the expenses incurred by him in regard to certain criminal proceedings which had taken place between the parties in regard to the mortgaged land as it cannot be said that they were incurred by him for the purpose of making his own title good against the mortgagor. (1954) Mad W N 285 : (1954) 1 M L J 537 ; ILR (1955) Mad 570 : 68 Mad L W 896 : AIR 1955 Mad 245 (245) (Pt A) (Pr 2) (DB).

[Overruled on another point in AIR 1962 Mad 21 (FB).]

——S. 72—Right of mortgagee to possession resisted and challenged—Mortgagee filing suit— Suit decreed and mesne profits and costs awarded—Mortgagee can only claim actual costs incurred by him in his suit— He is not entitled to add amount of mesne profits to mortgage debt. 30 Mys L J 158 : ILR (1951) Mys 503 : AIR 1953 Mys 114 (120) (Pt F) (Pr 19) (DB)

——S. 72—Civil P. C. (1908), S. 11, O. 20, R. 12 and O. 34, R. 7 — Defendant purchasing lands including lands given in zarpeshgi, to predecessor-in-interest of plaintiffs — Defendant filing suit for redemption and obtaining decree — Before suit plaintiffs kept out of possession of 'zarpeshgi' lands by defendant for certain period — Suit by plaintiffs for mesne profits for such period — Suit held was not barred by 'res judicata' — See Civil P. C. (1908), S. 11. AIR 1953 Pat 220.

——S. 72 (d) — Redemption suit — Costs incurred by mortgagee for supporting his title—Mortgagor bound to pay actual costs. See Civil P. C. (1908), O. 34, R. 7. AIR 1964 Punj 365 (DB).

5 Contract to contrary.

——S. 72 — In the absence of a contract to the contrary — Mortgage deed providing that only "kandayam" paid by mortgagee should be reimbursed to him — No provision for payment of interest on such amount — There is contract to the contrary within S. 72 and interest cannot be claimed. AIR 1955 N U C (Mys) 5678 (DB).

6. May add such money to the principal money.

——Ss. 72, 69A — Expenses of Receiver appointed in mortgagee's suit at mortgagee's instance — Remuneration paid to him outside court without sanction or approval of Court cannot be added to mortgage amount. See T. P. Act (4 of 1882), S. 69A. AIR 1955 Andh 274.

——S. 72 (b) — Preservation of mortgaged property from forfeiture or sale.

The Government brought to sale a portion of the mortgaged properties for realisation of penal assessment levied on the mortgagor, in respect of lands not comprised in the mortgage. The mortgagee made payment to the Government, to avert the sale.

Held, (i) the sale by Government would have extinguished the title of the mortgagor and the mortgagee in the portion of the mortgaged property brought to sale by the Government. 54 L W 702, Referred to.

(ii) The mortgagee had, therefore, a right under S. 72 (b) to pay, and avert the sale for the preservation of the mortgage security with interest to the principal money. 1955 Andh L T (Civil) 517 : 1955 Andh W R 654 : AIR 1955 Andh 274 (275) (Pt A) (Pr 3).

——S. 72 — May add such money to the principal money — Usufructuary mortgage and lease back — Mortgagee obtaining decree for arrears of rent against mortgagor — Mortgagee realising value of improvements effected by mortgagor from an execution purchaser of lease-hold interest in property — Suit for redemption — Mortgagee has no right to set off amount of barred rent decree against value of improvements realised — Principle embodied in S. 60 has no application — (Contract Act (1872), S. 60) — (Tenancy Laws— Malabar Compensation for Tenants Improvements Act (1 of 1890), S. 6 (2)). AIR 1955 N U C (Mad) 3900.

7. Proviso.

——S. 72, Proviso—Retrospective operation.

The proviso to S. 72 which was introduced by the Amendment Act of 1929 is not retrospective in operation. Hence a mortgagee who has paid prior to 1929 the municipal taxes on the property which the mortgagor was bound to pay under the contract, is entitled to add that amount to the principal under S. 72 even if he has not given notice to the mortgagor as required by the proviso. (1953) 2 M L J 103 : 1953 Mad W N 246 : ILR (1953) Mad 200 : AIR 1953 Mad 720 (722) (Pt B) (Pr 3) (DB).

——S. 72, Proviso — Claim by mortgagee for amount expended—Proviso must be complied with. AIR 1955 N U C (Pat) 5705.

8. Charge for expenses.

——Ss. 72 and 63-A—Nature of improvements to the cost of which mortgagee is entitled stated —See T. P. Act (4 of 1882), S. 63-A. AIR 1956 Bom 575.

——S. 72 — Income-tax due from mortgagor—Mortgagee paying—Right to reimbursement — (Contract Act (1872), S. 70).

The mortgagee is not entitled to claim a charge in respect of sale of mortgaged properties for recovery of income-tax due from the mortgagor. The payment made by the mortgagee in such a case being of a gratuitous nature, he is not entitled to a personal decree against the mortgagors even under S. 70, Contract Act. 1959 Ker L T 120 : AIR 1959 Ker 294 (296) (Pt B) (Prs 6, 7) (DB).

——S. 72 — Section confers a right on mortgagee additional to that which he has under ordinary law— Mortgagee entitled to reimbursement under S. 69, Contract Act — Separate suit for such reimbursement not barred by S. 72. 1963 B L J R 433 : ILR 43 Pat 755 : AIR 1963 Pat 185 (188) (Pt B) (Pr 5) (DB).

9. Interest on amount spent.

——Ss. 72 and 76 — Mortgagee in possession but mortgage not usufructuary — Interest on cost of improvement is to be calculated—Interest on interest not to be taken in any form. AIR 1950 Kutch 90 (92) (Pt D) (Prs 12, 13).

SECTION 73

SYNOPSIS

(Transfer of Property Act (1882), S. 73.)

1. Scope.
2. Failure to pay arrears of revenue.
3. Sub-section (2).
4. Mortgagee's right to proceed against property also.

1. Scope.

——S. 73—Winding up of Company — Property sold free of charge—Right of debenture holder to payment

out of sale proceeds—Debenture holder not in possession of debenture scrips—Under the doctrine of substituted security, if the subject of a mortgage or charge is charged or transformed the mortgage or charge attaches the new form which it had assumed—See Companies Act (1913), S. 230 (1). AIR 1964 All 558 (DB).

● —S. 73 — Mortgage of village by Zamindar before Act of 1951—Vesting of estate in State by virtue of notification under S. 4—Bhumidari rights remaining in Zamindar continue to be subject to mortgage — See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. AIR 1959 All 179 (SB).

[Reversed in AIR 1961 S C 1790.]

——S. 73 — Principle of substituted security—Usufructuary mortgage of zamindari rights and sir land — Loss of zamindari rights — Mortgage attaches to exproprietary tenancy — Non-transferability of exproprietary tenancy—Effect—(Limitation Act (1908), Art. 144).

Where a zamindar mortgages by way of usufructuary mortgage his zamindari together with his sir lands, and by losing his zamindari rights becomes an exproprietary tenant of the sir lands. The usufructuary mortgage does not become ineffectual but takes effect as a mortgage of the exproprietary rights.

It is not open to the mortgagee who has entered into possession under the mortgage to set up any adverse title against the mortgagor and claim that by lapse of time he has perfected his title to the mortgaged property. 1952 All W R (H C) 458 : 1953 All L J 203 : A I R 1953 All 147 (148) (Pt B) (Prs 5, 6) (DB).

——S. 73 — Substituted security — Doctrine of — Applicability — Decree against motor transport company creating charge in respect of buses for payment of decree amount — Company wound up and buses sold by Official Liquidator pursuant to order of Court — Doctrine of substituted security applies — Charge in favour of decree-holder can be enforced against sale proceeds of buses — C. M. A. No. 1 of 1956 (Andh. Pra.), Foll. ; AIR 1916 Mad 323 and AIR 1937 Pat 307, Rel. on. AIR 1960 Andh Pra 555 (556) (Pr 5) (DB).

——S. 73—Doctrine of substituted security—Basis of — Charge decree — Property sold free of charge — Charge can be realised from sale proceeds : 33 Mad 429, Rel. on ; 47 M L J 704, Dist. 1960 Andh L T 460.

——S. 73 — Scope — Hindu joint family — Private alienation by coparcener of specific item of family property — Rights of purchaser—Doctrine of substituted security applies — See Hindu Law — Joint Family. AIR 1957 Andh Pra 572 (DB).

——S. 73 — Mortgage of undivided share —Partition —Mortgagee's right.

It is well settled that mortgage of an undivided share will fasten upon the entire divided share on partition. If the mortgage, therefore, is followed by a partition and the mortgaged properties are allotted to a co-sharer or co-sharers other than the mortgagor, they take the allotted properties, in the absence of fraud, free from the mortgage, and the mortgagee can proceed only against the properties allotted to the mortgagor in substitution for his undivided share. 1960 Cal L J 59 : 66 Cal W N 92 : AIR 1960 Cal 351 (355) (Pc D) (Pr 21) (DB).

——S. 73 — Mortgaged property undergoing transformation — Effect.

Where property subject to mortgage or charge undergoes transformation, the mortgage or charge attaches to the form it takes after the transformation. ILR (1959) 1 Cal 552 : 62 Cal W N 569 : A I R 1958 Cal 453 (456) (Pt F) (Pr 10) (DB).

——S. 73 — During pendency of execution petition property sold in execution of prior mortgagee's decree — Surplus sale proceeds in Court deposit — Subsequent mortgagee applying to withdraw it under doctrine of substituted security — Limitation—Court can take notice of subsequent events and grant relief in execution — See Civil P. C. (1908), S. 47. (1965) 78 Mad L W 44 : ILR (1964) 2 Mad 101.

——S. 73 — Portion of property acquired by Municipality and distinct property substituted as compensation — Entire property brought to sale in execution and purchased by decree-holder — No reference to substituted property either in sale proclamation or sale certificate—S. 73 or doctrine of substituted security not applicable. 1951 Mad W N 674 : (1951) 2 Mad L J 205 : AIR 1952 Mad 263 (263, 264) (Pr 5).

——S. 73—Substituted security — Mortgagee's right to proceed against.

The moment there is a bona fide and final partition, the mortgage of an undivided share prior to the partition gets as his security under his mortgage only the properties which were allotted to the share of the mortgagor on partition. The mortgagee is entitled to proceed against the substituted property and it is his only remedy : 1 Ind App 106 (PC), Foll. 22 Cut L T 337 : A I R 1956 Orissa 165 (169) (Pt F) (Pr 21) (DB).

——Ss. 73 and 100—Substituted security—Mortgage of undivided share —Subsequent partition — Charge in favour of mortgagee is created on property allotted to mortgagor.

As soon as the partition decree is made, the rule of substituted security comes into operation, and in place of the undivided share of the mortgagor given in usufructuary mortgage a charge is created, by the operation of law, on the entire land allotted to the share of the mortgagor in the partition decree. Case law Rel. on.

The rule of substituted security applies not only in a case where the co-sharer mortgages his undivided share in all the properties held jointly by the co-sharers, but it applies also where the co-sharer mortgages his undivided share in specific item of joint property. I L R (1948) Mad 454, Foll. (1962) ILR 41 Pat 428 (DB).

——S. 73 — Co-sharer mortgaging specific items — Partition—Items falling to share of another — Right of mortgagee to obtain substituted security — Nature of—Mortgagee selecting another substituted security — Items already mortgaged: — Priority of another mortgagee. See T. P. Act (1882), S. 58. ILR (1957) Punj 79.

2. Faliure to pay arrears of revenue.

——S. 73 — Mortgagee liable to pay sircar tax—Portion of mortgaged land sold in revenue sale — Mortgagee obtaining right to sold property — Effect on right of mortgagor to redeem.

Where under the terms of the mortgage deed the mortgagee is liable to pay all sircar tax on the mortgaged landand owing to the default of the mortgagee a portion of the mortgaged property is sold in revenue sale for the recovery of the arrears of the tax and the portion, though purchased by a stranger, is ultimately assigned in the name of the mortgagee's son the mortgagor does not lose his right to redeem in respect of that portion. The mortgagee cannot take advantage of the mere omission in describing the survey number of that portion in the deed. A I R 1953 Trav. Co 563 and 1949 Trav L R 986, Rel. on. (1955) 2 Mad L J 132, Disting. A I R 1957 Trav-Co 222 (222, 223) (Prs 1, 2).

3. Sub-section (2).

●——S. 73 (2) — Scope and effect — Mortgage of estate—Composite decree in suit on mortgage decree

directing execution of personal decree only after exhausting remedy against mortgaged property — Mortgaged property vesting in State before execution — Right of mortgagee to execute personal decree by proceeding against non-mortgaged properties of judgment-debtor without recourse to remedy available under S. 24 (5) — Barred by S. 4 (d), Bihar Act. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 4 (d). A I R 1962 S C 1464.

——S. 73 (2)—Execution of self-liquidating mortgage — Delivery of property to decree-holder in pursuance of this mortgage not possible due to abolition of Zamindari—Remedy of decree-holder—Whether can apply for sale of other immovable and movable property of judgment-debtor — Remedy under S. 6 (b) of U. P. Zamindari Abolition and Land Reforms Act read with S. 73 of T. P. Act not availed of—Necessity of obtaining decree under O. 34, R. 6, Civil P. C.—Limitation under Art. 181 starts from 1st July 1962 when Zamindari was abolished. See Debts Laws — U. P. Debt Redemption Act (13 of 1940), S. 16. A I R 1963 All 398.

——Ss. 73 and 100 — Decree-holder having charge over property acquired compulsorily — He has right to satisfy his charge from compensation received by Receiver. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 12. (1959) 63 Cal W N 869.

——S. 73 (2)—Final decree in mortgage suit—Mortgaged property substituted by another security in form of compensation money—Doctrine of substituted security can be applied in execution. See Civil P. C. (1908), S. 47 (2). AIR 1954 M B 181 (FB).

——S. 73 (2)—Land Acquisition Act (1894), S. 31 (2) —Preliminary and final decree for sale of mortgage property — Property acquired in land acquisition proceedings—Mortgagee has right to claim mortgage money out of compensation which is substituted security — Remedy of mortgagee is to execute his mortgage-decree and not file fresh suit—Where fresh suit is filed, Court can convert it into execution petition. AIR 1963 Mad 73 (73, 74) (Prs 3, 4, 5).

——S. 73(2)—Orissa Estates Abolition Act (1 of 1952), Ss. 5 (e), 18 (1) (b) — Decree for maintenance made charge on partible estate before coming into force of Orissa Act 1 of 1952—Right of decree-holder to proceed against compensation awarded to judgment-debtor under Orissa Act 1 of 1952 — Principle of S. 73 (2)—Applicability.

When a partible estate, on which a charge is made for the payment of a maintenance decree passed before the coming into force of Orissa Act (1 of 1952) vests in the State Government by virtue of the provisions of Orissa Act (1 of 1952), the decree-holder can apply for execution of his decree by proceeding against the compensation money awarded to the judgment-debtor under the Orissa Act on the principle laid down in S. 73 (2) of the T. P. Act though there is no express reference any where in that Act to S. 73 T. P. Act. ILR (1963) Cut 85.

——S. 73—'Person interested'—S. 73 only gives to the mortgagee a right to receive compensation but has no effect on the interpretation of Ss. 11, 18 and 31 of Land Acquisition Act. See Land Acquisition Act (1894), S. 31. AIR 1955 N U C (Punj) 4603.

4. Mortgagee's right to proceed against property also.

——S. 73 (2) — Mortgage of proprietary rights in estate before the Act — Effect of notification under S. 4 —Nature of Bhumidari rights—Cannot be followed as substituted security — Mortgagee can proceed only against compensation money. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. AIR 1961 S C 1790.

——S. 73—Civil P. C. (1908), O. 34, R. 6 — Mortgage decree, construction of — Mortgage decree enjoining decree-holder to proceed first against mortgaged Zamindari property — Zamindari property having vested in State not available for sale — Mortgagee decree-holder can proceed against other property, even though he can under S. 73, T. P. Act claim compensation money awarded by Government for taking Zamindari property — It is however, within power of Court, to adjust equities. See Civil P. C. (1908), O. 34, R. 6. AIR 1955 All 566 (DB).

——Ss. 73, 58—Mortgage — Mortgage by co-sharer — Subsequent partition — Effect — Principle of substituted security.

If a mortgagee accepts as security a property which is owned jointly by his debtor along with others and if, as a result of a subsequent partition, the said property is allotted to the share of the debtor's co-sharer, the mortgagee cannot pursue that property any more. He has to be content with the property which is allotted to the share of his debtor. 1951 All L J 456 : 1951 All W R (HC) 433 : AIR 1951 All 654 (654, 655) (Prs 8, 9, 15).

——S. 73:— 'Vest', meaning of — Mortgaged estate of intermediary vesting in State—Effect of— Bakasht lands forming part of mortgaged estate which are deemed to be settled with proprietor under S. 6 (1) constitute accession — S. 4 (d) does not operate as a bar to a suit to recover mortgage money by sale of such lands — Full Bench decision in A I R 1958 Pat 630 continues to be good law and has not been overruled either by A I R 1961 S C 1790 or by A I R 1962 S C 1464—(Per Ramaswami C. J. and Kanhaiya Singh J.; Sahai J. contra). See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 3. A I R 1963 Pat 412 (FB).

[Overruled in AIR 1967 S C 801.]

SECTION 76

SYNOPSIS

(Transfer of Property Act (1882), S. 76.)

1. Scope.
2. "Takes possession."
3. Clause (a).
4. Clause (b).
5. Clause (c).
6. Clause (d).
7. Clause (e).
8. Clause (g).
9. Clause (h).
10. Clause (i).
11. Last paragraph.

1. Scope.

——Ss. 76, 60, 83—Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), S. 12—Suit under, for redemption of usufructuary mortgage — Civil Court cannot consider the question whether the mortgagee has put up a fictitious person as tenant to prevent mortgagor from obtaining possession over mortgaged property —Section has not changed the substantive law found in T. P. Act. A I R 1949 All 589, Foll. and AIR 1949 All 380, Overruled. A I R 1953 All 472 (473, 474) (Prs 4, 5, 6) (DB).

——S. 76 — Mortgagee releasing property in possession of transferee from mortgagor—Transferee is not a necessary party to foreclosure suit. See Civil P. C. (1908), S. 115. 1959 Nag L J (Notes) 90.

——S. 76 — Suit for compensation for breach of condition contained in S. 76, T. P. Act—Art. 120 and not Art. 36 applies. See Limitation Act (1908), Art. 120. A I R 1954 Bom 417.

——S. 76—Conditions imposed by S. 76 — Breach of —Suit for—(Civil P. C. (1908), O. 2, R. 2).

The liability of the mortgagee to account to the mortgagor for the loss sustained by the mortgagor on account of the non-observance of the duties imposed upon the mortgagee by S. 76 must be determined and settled in the suit brought by the mortgagor for redemption. Hence a subsequent suit for compensation for the alleged demolition of the mortgaged property by the mortgagee while in possession will be barred under O. 2, R. 2, Civil P. C, if such a relief is not claimed in a prior suit for redemption brought by the mortgagor. ILR 33 Mad 71, Diss. from. 56 Bom L R 462 : ILR (1954) Bom 1131 : A I R 1954 Bom 417 (418) (Pt B) (Pr 12).

——S. 76 — Usufructuary mortgage — Lease back to mortgagor—Suit on rent note.

If a mortgagor takes the mortgaged property on lease from the mortgagee then the mortgagee as landlord can file a suit on the basis of a rent-note. A I R 1958 M P 319, Rel. on. 1961 Jab L J 1207.

——S. 76 — Usufructuary mortgage — Lease back to mortgagor—Suit for rent is maintainable. A I R 1958 Madh Pra 319.

——S. 76 — Applicability — Can be applied even to mortgage not governed by section. AIR 1955 N U C (Raj) 4623.

2. "Takes possession."

——S. 76—Applicability.

Section 76 is not applicable unless the mortgagee has obtained possession qua mortgagee. A mortgagee is not in possession qua mortgagee if he enters the property as owner. A I R 1941 Pat 296 and A I R 1916 Mad 974, Rel. on. A I R 1958 Andh Pra 541 (544) (Pt A) (Pr 18) (DB).

——S. 76 — Scope — Mortgage in favour of lessee — Lease coming to end but mortgagee continuing in possession—Mortgagee is liable to deliver property in suit for redemption. See T. P. Act (1882), S. 58 (d). AIR 1958 Mys 20.

——S. 76 — "Takes possession" — Possession under invalid mortgage—Claim for account.

Where a Mahomedan usufructuarily mortgaged his property but retained possession thereof under a lease back and after his death his widow on her own behalf and as guardian of minor children executed a usufructuary mortgage of the same property in favour of the same mortgagee putting him in possession of the property and one of her sons who was not bound by the mortgage on coming of age instituted a suit for redemption of the subsequent mortgage contending, inter alia, that the mortgagee did not acquire under the mortgage any valid right to retain possession and was, therefore, liable to render an account of the income collected by him:

Held that having regard to the scope and nature of the suit, the claim made by the plaintiff was untenable. AIR 1950 Trav-Co 33 (35, 36) (Pt B) (Prs 7, 9) (DB).

3. Clause (a).

——S. 76 (a) — U. P. Tenancy Act (17 of 1939), S. 29 (a)—Scope—Agricultural lease not protected by S. 76 (a), T. P. Act — Tenant cannot acquire rights of hereditary tenant under S. 29 (a). See Tenancy Laws —U. P. Tenancy Act (17 of 1939), S. 29 (a). AIR 1958 S C 183.

——S. 76 (a)—Agricultural lease granted by mortgagee — When binding on mortgagor — Burden of proof.

The law undoubtedly is that no person can transfer property so as to confer on the transferee a title better than what he possesses. Any transfer of the property mortgaged by the mortgagee must cease, when the mortgage is redeemed. Section 76 (a), T. P. Act provides that a mortgagee in possession 'must manage the property as a person of ordinary prudence would manage it if it were his own.' An agricultural lease created by him would be binding on the mortgagor even though the mortgage has been redeemed, provided it is of such a character that a prudent owner of property would enter into it in the usual course of management. It is for the person who claims the benefit thereof, to strictly establish it. The fact that the rent fixed is higher than the Circle rate is not decisive that the lease is binding on the mortgagors. Where the lands over which the lease was created were home-farm lands under the direct cultivation of the proprietors, as distinguished from lands which were under cultivation by tenants, having regard to the special rights which the tenancy laws all over India have recognised in the owner in respect of such lands, an act of the mortgagee which puts those rights in peril cannot be regarded as that of a prudent owner and it requires exceptional ground to justify it. A I R 1952 S C 205, Rel. on. Asa Ram v. Mst. Ram Kali. 1958 S C J 575 : (1958) 2 Andh W R (SC) 32 : 1958 All W R (H C) 598 : (1958) 2 Mad L J (SC) 32 : 1958 S C R 986 : A I R 1958 S C 183 (185, 186) (Pt B) (Prs 6, 7, 8, 10).

——S. 76 (a)—Bihar Tenancy Act (8 of 1885), S. 21 —Lessee inducted on land by mortgagee under power of management—Lessee claiming occupancy right in land—Claim is not legal. See Tenancy Laws—Bihar Tenancy Act (8 of 1885), S. 21. A I R 1956 S C 305.

——S. 76 (a) — Creation of higher right than person has — S. 76 (a), an exception to rule.

A person cannot confer on another any right higher than what he himself possesses, and therefore, a lease created by a usufructuary mortgagee would normally terminate on the redemption of the mortgage. Section 76 (a) enacts an exception to this rule. If the lease is one which could have been made by the owner in the course of prudent management, it would be binding on the mortgagors notwithstanding that the mortgage has been redeemed. Even in such a case, the operation of the lease cannot extend beyond the period for which it was granted. Harihar Prasad v. Deonarain. (1956) S C J 279 : 1956 Pat L R (SC) 85 : 1956 S C A 316 : 1956 B L J R 306 : I L R 35 Pat 221 : 1956 S C C 124 : 1956 S C R 1 : AIR 1956 S C 305 (312) (Pt H) (Pr 13).

——Ss. 76 (a) and 111 (c) — Effect of redemption on lease by mortgagee in possession.

A mortgagee in possession of a shop has a right under S. 76 (a) to let out the shop and the room appertaining thereto on a monthly tenancy and on the redemption of the mortgage the tenant continues to be a tenant and does not become trespasser. Section 111 (c) does not mean that, if in the exercise of his powers of due management as a person of ordinary prudence the mortgagee has entered into an agreement of tenancy, on the mere redemption of the mortgage without the mortgagor exercising his option of putting an end to the tenancy the tenancy automatically and ipso facto lapses on the date of the redemption, 1953 All L J 467 : AIR 1954 All 16 (16, 17) (Prs 6, 8) (DB).

——Ss. 76 (a), 111 (c)—Monthly tenancy created by mortgagee is possession—Subsequent suit for redemption by mortgagor—Decree for redemption—Tenancy terminates and tenant is not entitled to protection from eviction — Bombay Rents Hotel and Lodging House Rates Control Act (57 of 1947), Ss. 5 (11) and 12.

A monthly tenancy created by mortgagee in possession in respect of the mortgaged premises would come to an end when the mortgagor subsequently

files a suit and obtains a decree for redemption. The decree would be binding on the tenant and he is not entitled to claim the protection of the Bombay Rents Hotel and Lodging House Rates Control Act when the mortgagor seeks to evict him from the mortgaged premises. AIR 1958 Bom 53, Rel. on.

The right of a mortgagee under S. 76 (a), T. P. Act of making prudent management of property in his possession must necessarily be co-terminus with his right to continue as a mortgagee and it must come to an end as soon as his right to continue in possession ends. If during that period the mortgagee creates a lease then by virtue of S. 111 (c), T. P. Act the lease also necessarily terminates when the authority of the mortgagor to lease the property ends. The mortgagee's rights cannot be any higher than that of any other lessor whose rights are limited in point of time by the very nature of the relationship between the lessor and the owner. If once this position is reached, the Court must hold that the mortgagor is entitled to get possession of the property unless there is some provision in law which creates an exception to this doctrine. AIR 1952 S C 205, Rel. on.

There is no provision in the Bombay Rents Act under which any rights as such are conferred on the tenant. S. 12 does not give the tenant a right to remain in possession of the properties, but it imposes a disability on the landlord and unless the person who seeks to recover possession is brought within the definition of the word "landlord" the tenant cannot claim possession: After redemption there is no relationship either contractual or by privity of estate between the mortgagor and the tenant. He not being a landlord S. 12 does not come in his way of recovering possession. AIR 1952 S C 205 and AIR 1937 Cal 763, Dist.; AIR 1916 Mad 911 and AIR 1954 All 16, Dist. from. **64 Bom L R 554 : I L R (1963) Bom 236 : AIR 1963 Bom 42 (43, 44) (Pt A) (Prs 2, 3, 4) (DB).**

——S. 76 (a) — Lease by mortgagee—Lessee claiming fixity of tenure under S. 43 — Proof of legal possession by lessee necessary—Burden of proof is on lessee. See Tenancy Laws—Malabar Tenancy Act (14 of 1930), S. 43. **1961 Ker L T 958.**

——S. 76—Applicability—Case before T. P. Act.

A mortgagee in possession of property is liable for active waste committed by him but permissive waste stands on a different footing, the question of damages depending on whether the mortgagee has been guilty of gross negligence. **(1960) 1 Ker L R 459 : 1960 Ker L T 423 : 1960 Ker L J 587 : AIR 1960 Ker 298 (299, 300) (Prs 5, 6) (DB).**

——S. 76 — Mortgage with possession by Zamindar of Zamindari property—Lease by mortgagee—Lessee becomes 'pakka' tenant— Suit by mortgagor for ejectment of such pakka tenant does not lie in civil Court — See Tenancy Laws — M. B Zamindari Abolition Act (13 of 1951), S. 38. **1962 M L P J (Notes) 289.**

——S. 76 (a) — Redemption of usufructuary mortgage—Lessee from mortgagee cannot continue after redemption — Mortgagee cannot also commit any act which is destructive or permanently injurious to the property. See T. P. Act (4 of 1882), S. 60. **1961 Jab L J 1094 : 1961 M P L J 924.**

——S. 76 (a) and (b) — Subject matter of mortgage, proprietary interest of lambardar — Mortgage should not allow tenancy land reverting to him to lie fallow. **AIR 1955 NUC (Nag) 5379 (DB).**

——Ss. 76, 62, 105 — Usufructuary mortgage—Right given to mortgagee to induct tenants for appropriating usufruct of land in lieu of interest—Suit for redemption — Settlees on land claiming to be permanant tenants — Settlement of land held not valid beyond period of mortgage and on redemption of mortgage settlees were liable to be evicted. **1962 B L J R 825 : AIR 1963 Pat 26 (28 to 30) (Prs 7 to 10) (DB.)**

——S. 76 (a) — Case from Punjab — Redemption of mortgage—Tenancy created by mortgagee in course of management—When binding on mortgagor—Burden of proof lies on tenant to establish bona fides of mortgagee. **67 Punj L R 64 : AIR 1965 Punj 231 (231, 232) (Pr 2).**

——S. 76—Mortgagor introducing tenant — Tenancy continued under mortgagee—Sale of mortgaged property — Vendee authorised to redeem, redeeming mortgage—Tenant's rights.

A mortgagee cannot, as a general rule, create an interest in the mortgaged property which will enure beyond the termination of his interest as mortgagee and further the mortgagee taking possession of the mortgaged property must manage it as a person of ordinary prudence would do if it were his own. Indeed, even the statute speaks of the legal position in the same terms. Where the tenant has already been on the premises as a tenant of the mortgagor and continues to pay rent to the mortgagee without showing that he continues to be the mortgagee's tenant under a fresh agreement of lease which is improvident or is shown not to be bona fide or otherwise likely to damage the property, such a tenant on redemption would not be dispossessed in execution of the redemption decree. **1964 Cur L J 192 : AIR 1964 Punj 346 (350, 351) (Pt B) (Prs 10, 12) (DB).**

——S. 76 — Suit by mortgagee in possession for interest — Wilful default — Onus of proof — Onus on mortgagor to prove mortgagee's wilful default.

In case of a suit by a usufructuary mortgagee in possession for interest on the ground that the property mortgaged did not yield sufficient returns to cover up the amount of interest it is for the mortgagor to prove that there was wilful default of the mortgagee to manage the property which resulted in the insufficient yield. (1878) 8 Ch D 424; AIR 1937 Bom 483 and (1806) 12 Ves 493, Rel. on. **1962 Raj L W 376 : I L R (1962) 12 Raj 683.**

4. Clause (b).

——S. 76 (b) — Mortgagee in possession—He cannot take advantage of his own default in making payment of rent. See Debt Laws—U. P. Debt Redemption Act (13 of 1940), S. 9 (1). **1951 All L J 328.**

——S. 76 — Civil P. C. (1908), S. 115 — Amount of profits derived by mortgagee is question of fact — Lower Court deciding question on evidence — Question does not involve question of jurisdiction — Mortgagee entitled up to 10 per cent. as costs of collections provided he proves incurring of costs — Lower Court disallowing costs for want of proof — Lower Court does not act contrary to law — No revision lies. See Civil P. C. (1908), S. 115. **AIR 1950 All 105.**

——S. 76 (b)—Mortgagee allowing decree for rent to be time barred — He is bound to give credit for the decree for rent. **52 Bom L R 892 : I L R (1951) Bom 209 : A I R 1951 Bom 19 (22) (Pt A) (Pr 6) (DB).**

——S. 76 (b) — Usufructuary mortgage of property fetching rents — Property lying vacant for some period—Mortgagee allowed interest during the period —Credit for fair rent should be given to the mortgagor for that period. **A I R 1950 Kutch 77 (77) (Pr 4).**

——S. 76 — Profits of property—Failure to realise—Liability of mortgagee.

A mortgagee in possession who is given full right of realising profits from the mortgaged property is accountable for the profits not realised by him due to

his own wilful default. ILR 29 Pat 545 : AIR 1950 Pat 379 (383) (Pt G) (Pr 19) (DB).

[Overruled on another point in AIR 1955 Pat 494.]

——S. 76 — Mortgagee in possession of bhaoli holding — Commutation of bhaoli into nakdi rent, not binding on mortgagor. ILR 29 Pat 180 : A I R 1950 Pat 246 (247) (Prs 8, 9) (DB).

——S. 76 (b) — Usufructuary mortgage — Mortgagee to pay michavarom not paid — Mortgagor is not entitled to its benefit. ILR (1953) T C 835 : AIR 1954 Trav Co 53 (54) (Pr 3) (DB).

5. Clauae (c).

● ——S. 76 — Trusts Act (1882), S. 90, Ill. (c) — Purchase by usufructuary mortgagee — Portion of rent which mortgagee was liable to pay very small as compared to portion to be paid by mortgagor — Rent sale — Property purchased by mortgagee in such sale — S. 90 and Ill. (c) are not attracted — Suit by mortgagor for redemption is liable to be dismissed. See Trusts Act (1882), S. 90, Ill. (c). (1965) 2 S C J 458 : 1965 B L J R 841 : (1965) 2 S C W R 825 : AIR 1966 S C 126.

——S. 76 (c) — Trusts Act (1882), Ss. 65 and 90 — Mortgaged property sold for arrears of revenue owing to default of mortgagee and purchased by stranger — Latter selling it to mortgagee — Mortgage is revived and can be redeemed by mortgagor. See Trusts Act (1882), S. 65. AIR 1957 Andh Pra 430.

——S. 76 — Obligation of mortgagees under obligation to pay tax on property — Failure to fulfil — Sale of property for tax arrears—Purchase by mortgagees themselves — They cannot claim that original owner had lost his right to redeem — They cannot take advantage of their own wrong — Trusts Act (1882), S. 90. 1965 Ker L T 322.

——S. 76—Purchase by mortgagee—Mortgagor held gained an advantage and he should hold for the benefit of the mortgagor. See Trusts Act (1882), S. 90. AIR 1959 Ker 178 (DB)

——S. 76 — Mortgagee deliberately committing default in payment of Government revenue — Property sold in revenue sale and purchased by mortgagor — Mortgagee holds the same for benefit of mortgagor. See Trusts Act (1882), S. 90. AIR 1959 Ker 94 (DB).

——S. 76—Liability of mortgagee to pay tax—"Tax"—Thiruppuvaram.

By tax is meant the amount which is paid to the Government. Thiruppuvaram is a payment to a jenmi and usually the two are separately mentioned if the mortgagee has to bear the burden of the two liabilities. Burden to pay Thiruppuvaram cannot be thrown on the mortgagee when in the mortgage deed direction to the mortgagee was only to pay tax. 1959 Ker L R 244.

● ——S. 76 — Crown debt on account of income tax due from mortgagor is entitled to be paid out of such debt in preference to mortgagee's claim. See Civil P. C. (1908), O. 40, R. 1. A I R 1962 Mad 59 (FB).

——S. 76 (c) — Charges of public nature — Liability of mortgage — Extends to payment of charges accruing during subsistence of mortgage — Purchase by mortgagee at sale for arrears falling due before mortgage transaction — Trusts Act (1882), S. 90. 1963 Mys L J (Supp) 1.

——S. 76 — Payment of taxes duty of mortgagee—He is like a trustee — He cannot affect the right of the mortgagor by purchasing property at a sale for such taxes. See T. P. Act (1882), S. 72. A I R 1953 Mys 114 (DB).

——S. 76 (c) — Charges of public nature — Taccavi dues are such — Mortgagee in possession is liable to pay them out of the income. A I R 1951 Nag 254 (254, 255) (Prs 7, 8).

——S. 76 — Trusts Act (1882), S 90—Applicability—Mortgagee gaining advantage — Mortgagee of leasehold property responsible for payment of portion of rent — No attempt to pay such portion to mortgagor or landlord — Sale of property on account of default of mortgagor and mortgagee and purchase by landlord and subsequent settlement of mortgaged portion with mortgagee — Mortgagee must be held to have gained advantage within S. 90 — Mortgagor has right to redeem such portion. See Trusts Act (1882), S. 90. AIR 1960 Pat 423.

——S. 76 (c)—Applicabilily—Arrears of rent—'Summarily sold'—Meaning.

Under S. 76 (c), only such arrears of rent have to be paid by a mortgagee in possession, in default of which the property may be summarily sold. The expression 'summarily sold' implies that the proceeding for realisation of rent by sale of the mortgaged property is of a summary nature, such as a certificate proceeding under the Public Demands Recovery Act. Further, that section contemplates arrears of rent for the lands in mortgage and not for those which are outside the mortgage. A I R 1938 Pat 196, Foll. 1958 B L J R 252 : AIR 1958 Pat 649 (651) (Pt A) (Pr 4) (DB).

——S. 76 (c)—Mortgagee in possession—He is liable to pay taxes, etc. See T. P. Act (1882), S. 58. A I R 1957 Pat 717 (DB).

——S. 76 — Trusts Act (1882), S. 90—Revenue sale—Purchase by mortgagee — Mortgage is extinguished. See Trusts Act (1882), S. 90. A I R 1957 Pat 452 (DB).

——S. 76 — Mortgagee in possession making default in payment of arrears of rent—Subsequent purchase by mortgagee not legal. A I R 1952 Pat 421 (423) (Pt B) (Pr 5) (DB).

——S. 76 (c) — Mortgage of holding with possession—Deed of mortgage silent as to liability to pay rent to landlord — Mortgagee is liable. ILR 31 Pat 365 : AIR 1952 Pat 286 (287) (Pt B) (Pr 5a) (DB).

——S. 76 (c) — Payment of land revenue by mortgagee in possession — It must be out of income of property — No accounts produced — He cannot be allowed any credit for land revenue paid. AIR 1955 NUC (Pepsu) 2156 (DB).

——S. 76 (c) — Limitation Act (1908), Art. 148 — Mortgagee creating a sub mortgage — The latter agreeing to pay taxes — On default of payment of taxes, property sold in revenue auction — Suit by mortgagee against sub mortgagee for damages—Limitation is governed by Art. 136, Travancore Limitation Act. See Limitation Act (1908), Art. 148. AIR 1956 Trav-Co 49.

——S. 76 — Execution of mortgage pending suit for enhancement of michavaram — Mortgagee is liable to pay enhanced michavaram. See T. P. Act (1882), S. 52. AIR 1954 Trav-Co 251 (DB).

——S. 76—Payment of taxes.

The normal rule is that the mortgagee should pay the tax. ILR (1951) Trav-Co 282 (DB).

6. Clause (d).

——Ss. 76 and 72 — Mortgagee in possession but mortgage not usufructuary — Interest on cost of improvement is to be calculated—Interest on interest not to be taken in any form. See T. P. Act (4 of 1882), S. 72. AIR 1950 Kutch 90.

——S. 76 (d)—Preservation of property — Mortgaged house in ruined condition — Covenant by mortgagor to pay costs of repairs carried out by mortgagee —

Mortgagee incurring expenditure in repairs greatly enhancing value of property — Mortgagee entitled to cost of works along with mortgage money. See T. P. Act (1882), S. 72 (b). AIR 1960 Mad 24.

——S. 76 – Scope—Mortgagee in possession effecting constructions — Mortgagor is not liable to pay for. See T. P. Act (1882), S. 72 (b). AIR 1958 Mys 20.

7. Clause (e).

——S 76 (a) and (e) — Mortgage of agricultural land — Mortgagee cannot lease out land for period extending beyond the period of mortgage unless there is a term to that effect in deed — Exception is in case of tenants in whom certain rights spring up by virtue of statute — But the exception will not apply where the term of mortgage deed prohibits creation of such leases — Held, on construction of deed that mortgagee could not grant such lease — Ss. 20 and 21, Bihar Tenancy Act did not apply to the lessees — (Tenancy Laws — Bihar Tenancy Act (8 of 1885), Ss. 20, 21). Mahabir Gope v. Harbans Narain Singh, 90 Cal L J 180 : (1952) S C A 436 : 1952 SCR 775 : 1952 S C J 292 : AIR 1952 S C 205 (206, 207) (Pt A) (Prs 6, 11).

——S. 76 (a) and (e)—Lease by mortgagee in possession.

Section 76 (a) and (e) do not empower the mortgagee to create a lease of the mortgaged property which is to enure beyond the redemption of the mortgage itself, and it is quite clear that under S. 111 of the Act when the interest of the mortgagee comes to an end, the lease created by him also determines though this is subject to any rights that might be conferred or created on the tenant by any statute. AIR 1952 S C 205 : 1952 S C J 292, Foll. 59 Bom L R 101, Rel. on. 59 Bom L R 684 : ILR (1957) Bom 582 : AIR 1958 Bom 53 (54) (Pt B) (Pr 5).

——Ss. 76, 60, 62 —Mortgagee in possession —Kompura at time of mortgage — Same not existing at time of redemption — No evidence that same fell down to natural causes — Mortgagee is liable to pay damages for the Kompura to the mortgagor. See T. P. Act (4 of 1882), S. 60. AIR 1963 Ker 281 (DB).

——S. 76 –Duty of mortgagee in possession — Land with building thereon mortgaged — Burden is on mortgagee in possession to prove that building on mortgaged land ceased to exist due to natural causes and not due to his gross negligence — (Evidence Act (1872), Ss. 101 to 104) 1960 Ker L J 1435 : (1960) 2 Ker L R 583 : 1960 Ker L T 1207.

——S. 76—Waste by mortgagee—Claim for compensation.

Where in a suit for redemption the mortgagor claimed compensation on account of waste in relation to trees which had disappeared from the mortgaged land but there was no evidence of any active waste committed by the persons in possession that fact alone cannot absolve them of liability to account for the timber of the trees which had fallen down during the period of their possession. 1958 Ker L T 845 : ILR (1958) Ker 838 : 1963 Ker L J 984 : AIR 1959 Ker 38 (40) (Pt A) (Pr 4) (DB).

——S 76 —Wrongful conversion —Mortgage of salt pans — Conversion of salt pans into wells without mortgagor's consent — Conversion not necessary for beneficial enjoyment — Mortgagor held entitled to have income of these plots taken into consideration in settling accounts. AIR 1955 NUC (Trav.Co) 5083 (DB).

——S. 76 (e)—Holding, essentials of —Lease of mortgaged property by mortgagee — Redemption decree —Lessee cannot claim protection under S. 4 — T.-C. Holdings (Stay of Execution Proceedings) Act (8 of 1950) — Lease subsists only so long as mortgagee's right to retain possession subsists — See Debt Laws — Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), S. 4. AIR 1952 Trav-Co 395 (DB).

——S. 76 cl.(e)— Cutting timber and clearing the ground for purposes of improvement would not constitute waste — Mortgagor would be entitled to value of trees cut if they are proved to belong to him, i. e., to have existed before possession was delivered to mortgagee. 1951 Ker L T 7 : ILR (1951) Trav-Co 209 : AIR 1951 Trav-Co 109 (118) (Pt G) (Pr 24) (FB).

8. Clause (g).

——Ss. 76 (h), 58 — Mortgagor and mortgagee — Usufructuary mortgagee — His liability to account stated — See Civil P. C. (1908), O. 34, Rr. 4 and 2. AIR 1965 S C 1055.

——S. 76 (g) — Usufructuary mortgage or anomalous mortgage—Liability of mortgagee to render accounts depends on terms of the mortgage-deed—See T. P. Act (1882), S. 77. AIR 1958 S C 941.

——Ss. 76, 101—Auction purchaser in execution of prior simple mortgage decree in possession — Liability to account.

The title which the stranger auction-purchaser acquired at the sale in execution of the decree on the prior simple mortgage was the title of the mortgagor and to a certain extent, of the mortgagee in execution of whose decree he purchased the property. This was, of course, subject to the rights of the puisne mortgagee who was no party to the suit on the prior mortgage. The puisne mortgagee and his successors were not affected in any manner by the decree in the suit on the prior mortgage, or by the proceedings, including the sale, held in execution thereof. They were entitled to treat the mortgage as a subsisting one and either to redeem it or to sell the property subject to it. Where the puisne mortgagee sued, not to redeem the prior mortgage but to realise his money by the sale of the mortgaged property and he was allowed to do so subject to a proportionate liability for the money due on the prior mortgage, on the sale taking place in execution of the puisne mortgagee's decree, the title of the auction-purchaser in the prior mortgage decree, in so far as it was derived from the mortgagors, i.e. as the owners, ceased. If he was allowed to continue in possession under an arrangement because the money which he had paid for the purchase was utilised to pay off the prior mortgage and he was entitled to set up that mortgage as a shield and to insist upon continuing in possession till the proportionate share of that mortgage had been paid off, the punisne mortgagee, in calculating the money due to him was not entitled to call for an account of the profits of the property in the hands of a stranger auction-purchaser, and consequently as a matter of equity the said purchaser, although he might set up the earlier mortgage as a shield was not entitled to claim interest for the period during which he was in possession. AIR 1918 Mad 103 and AIR 1937 Mad 769, Diss. from I L R (1956) 2 All 210 : AIR 1956 All 422 (424, 425, 428) (Prs 21 to 23, 40) (DB).

——S. 76 (h) — U. P. Debt Redemption Act (13 of 1940), S. 9—'Net profits realised,' meaning of—Mortgagee of under proprietary plot in cultivating possession—Calculation of net profits — Circle rate — The expression net profits in S. 9 (1) of U. P. Act should be interpreted in the same sense in which the expression fair occupation rent is used in S. 76 (h) of T. P. Act—See Debt laws — U. P. Debt Redemption Act (1940), S. 9. AIR 1951 All 643 (FB).

——S. 76 — Mortgagees are liable to account and the method of account would be that provided by the

mortgage-deed — See Civil P. C. (1908), S. 144. AIR 1958 Andh-Pra 593 (DB).

——S. 76 (g) — Mortgagee in possession — Fiduciary character — Duty to keep accounts — (Trusts Act (1882), Ss. 90 and 95).

The mortgagee in possession though not a trustee in the strict sense of the term, holds in a fiduciary character. He is liable for the period from when he enters into possession. He is liable not only for the income which actually arises but such income as might have been received if the property had been in the custody of an ordinary prudent person and he must utilise all opportunities for getting the income from the property. He is to keep the property in proper condition and is liable for wastes and for negligence under certain circumstances. 60 Cal W N 664 : AIR 1955 Cal 569 (570) (Pt A) (Pr 12) (DB).

——S. 76 (g)—Contracting out of duty to account.

The provision contained in Cl. (g) of S. 76 is not subject to a contract to the contrary; the mortgagee in possession cannot contract himself out of the duty to account. 60 Cal W N 664 : AIR 1955 Cal 569 (571) (Pt C) (Pr 18) (DB).

——S. 76 (g)—Failure to keep clear, full and accurate accounts and failure to give to the mortgagor true copies of accounts—Consequences — Not necessarily loss of interest to mortgagee. (1965) 6 Guj L R 177 : ILR (1965) Guj 277 : AIR 1966 Guj 40 (Pt B).

——S. 76—No separate accounts kept of mortgage in question—General account books containing items of mortgage in question — This is good reason for relying on accounts — Account books written from rough notes not from day to day but once a month and rough notes not preserved—This is not to make account books any the less regular or not contemporaneous—Cash balance written in two parts every day, one being of an initial sum throughout — This is not to harm value of account books — Items of exchange of currency at widely differing rates on same day - This does not show that books were not kept in regular course of business — Particular item shown to be false will not prove that account books were not genuine or regularly kept. AIR 1950 Kutch 90 (91) (Pt A) (Prs 5, 6, 7).

——S. 76 (g) — Mortgagee not to charge loss in his agricultural operation to debt account but to bear it himself AIR 1950 Kutch 90 (92) (Pt B) (Pr 10).

——S. 76 — Mode of taking accounts — Either both costs of cultivation and monthly income of rent should bear interest from date of incurring and receiving respectively or both from end of year in which they were incurred or received. AIR 1950 Kutch 90 (92) (Pt C) (Pr 11).

——S. 76 (g) — Account of mortgage written from rough slips ad hoc at a number of consecutive sittings is inadmissible—Rough slips admissible to corroborate mortgagee's testimony — See Evidence Act (1872), S. 32. AIR 1950 Kutch 47.

——S. 76 (g) — Mortgagee's liability to account for profits and rents — Effect of Notification under S. 3 (b) of Madras Act 26 of 1948 — (Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 3 (b)).

Under S. 3 (b) of the Madras Act 26 of 1948, on and from the notified date, the entire estate stands transferred to the Government and vests in them free of all encumbrances. Consequently, where such estate is mortgaged with possession, on and from that date, the mortgagor ceases to be the owner of the property, and has no right whatever to claim the rents and profits from the property as and from the said notified date, though the relationship between the mortgagee and the mortgagor may continue in spite of the notification and the mortgagee in possession may continue to be liable to render an account in accordance with the terms of S. 76, Transfer of Property Act.

Quaere : Whether the Government would be entitled to claim the rents and profits from the mortgage from that date. 1954 Mad W N 800 (1) : AIR 1955 Mad 266 (266) (Pr 2).

——S. 76 (g) — Mortgagee in possession — Duty to keep accounts.

Where the case of the mortgagee is that he is in possession under a specific understanding that the entire income of the year was to go towards the interest due in that year, but the evidence does not establish such understanding and only shows that the property in question was to be in possession of the mortgagee primarily for the purpose of paying interest, it is necessary that the mortgagee should account to the mortgagors for the income received by him during the period he was in possession. 35 Mys L J 392 : ILR (1957) Mys 277: AIR 1958 Mys 43 (48) (Pt F) (Pr 18) (DB).

——Ss. 76, 60 — Mortgage bond constituted of previous mortgage-deeds — Mortgagor objecting in written statement for non-furnishing of accounts — Part payments towards debt also alleged — Failure to furnish accounts by plaintiff prejudices mortgagor and renders suit not maintainable. See Debt Laws—Orissa Money-Lenders Rules (1939), R. 11 (iii). ('65) 31 Cut L T 282.

——S. 76 — Orissa Tenancy Act (2 of 1913), S. 225 — Mortgagee in possession under S. 225 — Liability of — He is liable to account on the footing of wilful default. See Tenancy Laws — Orissa Tenancy Act (2 of 1913), S. 225. AIR 1951 Orissa 300 (DB).

——S. 76 (g) — Applicability — Statutory mortgage under S. 171, Bihar Tenancy Act — Mortgagee is liable to keep accounts. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 171. AIR 1957 Pat 564 (DB).

[Reversed on another point in AIR 1962 S C 914].

——S. 76 (g) — Statutory mortgagee under S. 171 (1) (c) of Bihar Tenancy Act — Provisions of S. 76 (g) apply and he is liable to keep accounts. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 171 (1). AIR 1953 Pat 27 (DB).

——S. 76 — Bihar Tenancy Act (8 of 1885), S. 171 — Usufructuary mortgagee of part of holding becoming statutory mortgagee under S. 171 — He is liable to account for rents and profits of property in his possession. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 171. AIR 1952 Pat 155 (DB).

——S. 76 (g) — Usufructuary mortgage — Failure to keep and produce account — Presumption — Inference adverse to mortgagee must be drawn. ILR 29 Pat 545 : AIR 1950 Pat 379 (383) (Pt H) (Pr 19) (DB).

[Overruled on another point in AIR 1955 Pat 494].

——S. 76 — Failure to keep accounts by mortgagee in possession — Presumption that income of property was enough to pay up interest and land revenue would be raised. A I R 1955 N U C (Pepsu) 2156 (DB).

——S. 76 — Failure to keep accounts—Presumption.

It is incumbent upon the mortgagee in possession to keep accounts and any delinquency on his part should expose him to the risk of every presumption being made against him including that the rents and profits received by him were not less than the in-

terest that he claimed. 3 Pepsu L R 373 : AIR 1951 Pepsu 18 (22) (Pt F) (Pr 6) (DB).

——S. 76 (g) — Applicability — Mortgage executed before application of Act to Bharatpur — Duty of mortgagee — Failure to keep accounts—Interest disallowed. 1957 Raj L W 233 : AIR 1957 Raj 250 (251 to 253) (Prs 12, 16, 17, 19).

——Ss. 76 (g) and 77 — Liability to account — Contract between parties as specified in contract, possession was delivered against loan—Profits to be enjoyed in lieu of interest — Mortgagees are not liable to account for profits arising out of property till repayment of full mortgage amount. AIR 1955 NUC (Raj) 296 (DB).

——S. 76 (g) — Failure to keep accounts — Mortgage with possession — Mortgagor remaining in possession and not paying anything towards rent or interest — Mortgagee not keeping accounts — No adverse inference can be drawn against him. AIR 1955 NUC (Raj) 287.

——S. 76 (g) — Failure to keep accounts — Court will fix liabitity on basis of flat rate of net profits. AIR 1955 NUC (Trav-Co) 5083 (DB).

——S. 76 — No limitation for accounts.

No question of limitation arises as between mortgagor and mortgagee when accounts are taken at the the time of redemption. 28 M L J 184 ; 1950 K L T 356, Rel. on. AIR 1952 Trav-Co 552 (553) (Pt C) (Pr 7) (DB).

——S. 76 (g) — Suit on mortgage — A in possession of mortgaged property found entitled to prior charge — In execution of mortgaged decree property mortgaged sold subject to charge — Suit by decree-holder purchaser to redeem charge — Injunction restraining A from executing decree for arrears of rent obtained by him against tenants for period subsequent to sale also claimed — A held was liable to account for profits for period subsequent to plaintiff's purchase of property — Plaintiff, however, held was not entitled to relief for injunction — Civil P. C. (1908), O. 34, R. 7 — Specific Relief Act (1877), S. 53. AIR 1950 Trav-Co 105 (106) (Pr 3) (DB).

9. Clause (h).

● ——S. 76 (h) — Suit by mortgagee to enforce mortgage — His liability to render account under S. 76 (h), T. P. Act — Two stages of accounting one upto preliminary decree and second thereafter — Even if first is barred the second remains. See Civil P. C. (1908), O. 34, R. 4. AIR 1965 S C 1055.

● ——S. 76 (g) and (h) — Mortgagee in possession—Duty to keep account—Exception — S. 77 — Applicability.

Every mortgagee in possession is bound to keep clear, full and accurate accounts and to render the accounts to the mortgagor in the manner prescribed in Cl. (h) of S. 76. But S. 77 enacts an exception to the mortgagee's liability under Cls. (g) and (h) of S. 76. Under that section (S. 77), if there is a contract between the mortgagor and the mortgagee, whereunder it is agreed that the receipts of the mortgaged property should, so long as the mortgagee is in possession of the property, be taken in lieu of interest and a defined portion of the principal, the mortgagee is freed from the statutory liability to keep accounts or to render accounts to the mortgagor in the manner prescribed under Cls. (g) and (h) of S. 76 of the Act. Ramdhan Puri v. Bankey Bihari Saran, 36 Mys L J 775 : 1959 S C J 121 : (1959) 1 Mad L J (SC) 53 : (1959) 1 Andh W R (SC) 53 : 1959 S C A 110 : I L R 37 Pat 1168 : 1959 S C R 1085 : A I R 1958 S C 941 (945) (Pt B) (Pr 7).

——S. 76 (h) — Collections by mortgagee himself—Expenses cannot be allowed. 1951 All L J 281 (DB).

——S. 76 (g), (h)—Trustees for the debenture holders—Right to carry on business to pay off debenture debt — Liability to pay for occupation of mortgaged property—Liability to submit accounts—Liquidation of company—Settlement of accounts — Reopening of —Right of trustees to sell mills (mortgaged property) without intervention of Courts. See Companies Act (1956), S. 119. A I R 1962 Andh Pra 274 (DB).

——S. 76 (h) and (g) — Mortgagee in possession of land filing suit for sale of property — Mortgagee not establishing that possession is under some other deed or contract — Possession must be presumed to be referable to mortgage — Mortgagor is entitled to ask for adjustment of profits received by mortgagee against mortgage debt. A I R 1962 Assam 52 (54 to 56) (Pt A) (Prs 4, 6) (DB).

——S. 76 (h) — Burden lies on mortgagee to prove profits received by him.

Under S. 76 (h), the burden is on the mortgagee to keep an account and if the burden is on the mortgagee it necessarily follows that he is to account for the actual yield or the profits derived by him. Burden is not on the mortgagor to show the profits derived by the mortgagee from the disputed land. A I R 1962 Assam 52 (56) (Pt B) (Pr 7) (DB).

——S. 76 (g) and (h) — Obligation of mortgagee in possession to maintain and produce accounts.

Statutory obligation is cast by Cl. (g) of S. 76 upon the mortgagee in possession to keep full and accurate accounts of all sums received and spent by him as mortgagee. The account must be supported by vouchers. If the mortgagee fails to comply with this statutory obligation then he must forfeit his right to claim interest. A I R 1933 P C 85, Foll. I L R (1960) Bom 709 : 62 Bom L R 414 : A I R 1961 Bom 43 (45 to 47) (Prs 9, 10, 11) (DB).

——S. 76 (h) — Usufructuary mortgage — Mortgagee keeping portion of consideration and agreeing to pay interest—Nature of stipulation — Mortgagor entitled to credit at the time of redemption. 1958 Ker L T 943 : 1959 Ker L J 509 : A I R 1959 Ker 163 (164, 165) (Prs 3, 4) (DB).

——S 76 — Mortgagee gaining advantage — He had to hold the property for the benefit of the mortgagor. See Trusts Act (1882), S. 90. A I R 1958 Ker 230 (DB).

——S. 76 — Refund — Mortgagor entitled to claim surplus proceeds by virtue of S. 76 (h) — Claim for surplus cannot be disallowed under S. 8 (3) of Mysore Act. See Debt Laws — Mysore Agriculturists Relief Act (18 of 1928), S. 8 (3). A I R 1955 N U C (Mys) 217 (DB).

——S. 76 (h)—Section 11, Orissa Money-Lenders Act 1939 applies to anomalous mortgage. See Debt Laws —Orissa Money-Lenders Act (3 of 1939), S. 11. A I R 1955 N U C (Orissa) 2468 (DB).

——S. 76 (h)—Excess amount paid towards principal —Mortgagor's right for refund of excess not affected. See Debt Laws — Orissa Money-Lenders Act (3 of 1939), S. 11 (1), Proviso. A I R 1955 N U C (Orissa) 954 (DB).

——S. 76 (h) — Sections 11 and 17 of Orissa Money-Lenders Act prevail over S. 76 (h), T. P. Act — Similarly S. 17 overrides S. 11 (1). See Debt Laws — Orissa Money-Lenders Act (3 of 1939), S. 11 (1). A I R 1955 N U C (Orissa) 954 (DB).

——S. 76 (h)—Discharge of mortgage and discharge of mortgage debt—Distinction pointed out. See Debt Laws—Orissa Money-Lenders Act (3 of 1939), S. 17. A I R 1955 N U C (Orissa) 954 (DB).

——S. 76—Mortgage—Liability is joint and several—Liability can be enforced in entirety against any of

them. See Civil P. C. (1908), O. 34, R. 5. A I R 1950 Orissa 6 (DB).

——S. 76—Accretion to mortgaged property—Acquisition by mortgagee of benefit or advantage after open contest with mortgagor — Not to be surrendered to mortgagor on redemption. See Civil P. C. (1908), O. 34, R. 5. A I R 1951 Trav-Co 94 (DB).

10. Clause (i).

——Ss. 76 (i), 84 — Cessation of interest — Mortgage with possession — Dismissal of S. 83 proceedings on mortgagee's refusal to accept mortgage amount—Redemption suit — Mortgagor withdrawing deposit and redepositing it in pursuance of preliminary decree — Held, in circumstances of case continuance of deposit till obtaining possession was proof of readiness and willingness to pay and mortgagor was entitled to mesne profits from date of original deposit. 78 Mad L W 205 : A I R 1966 Mad 77 (81) (Pt A) (Prs 11, 12, 13).

——Ss. 76 (i), 84, 83—Institution of suit for redemption of usufructuary mortgage — Not tantamount to tender of mortgage money — Deposit in Court after preliminary decree for redemption — Mesne profits can be awarded only from date of deposit and not from date of institution of suit. See T. P. Act (1882), S. 84. A I R 1962 Pat 203 (DB).

——S. 76 (i) — Claim for mesne profits against mortgagee after redemption—Cost of cultivation—Principle applicable to trespasser—Relevancy—(C. P. Code (1908), O. 20, R. 12).

The principle that in estimating the mesne profits, which the owner of land is entitled to recover from a trespasser, the costs of collecting rents, which are ordinarily incurred by the owner, should be allowed to the trespasser only where such trespasser enters on the land in the exercise of a bona fide claim of right does not apply to a mortgagee who is governed by S. 76 (i), T. P. Act; mortgagee is not entitled after tender or deposit either to interest or to deductions for expenses of management of property, collection of rent or profits, public charges or repairs in connection with the mortgaged property. The word 'expenses' includes the cost of cultivation. AIR 1919 Pat 392 (1) held no longer good law. 1956 B L J R 119 : AIR 1957 Pat 123 (124) (Pr 5).

——S. 76—Suit for redemption against mortgagee in possession—Dismissed as premature—Appeal—Cause of action accruing during appeal — Decree for redemption — Mortgagor's right to mesne profits — (C. P. Code (1908), O. 34, R. 7). 1956 Ker L T 402 : AIR 1956 Trav-Co 203 (204) (Pt C) (Pr 3) (DB).

11. Last paragraph.

— S. 76 -Last para.—Loss referred to includes loss incurred in respect of corpus of property. 60 Cal W N 664 : AIR 1955 Cal 569 (571) (Pt B) (Pr 19) (DB).

——Ss. 76, last para. and 108 (m) and (o) — Kanom tenant—Cutting of trees on holding — Landlord can claim compensation without suing for eviction or redemption — (Tenancy Laws — Cochin Tenancy Act (15 of 1113 M. E.), S. 25 (1) (c)).

A 'tenant' is, at the time of restoring the property to the landlord, bound to restore it in as good condition as it was in at the time he was put in possession subject only to the changes caused by reasonable wear and tear or irresistible force, and when accounts are taken at that time he is liable to make good the loss, if any, caused by his failure to perform any of the duties imposed upon him by law. This however does not mean that the landlord's right to recover damages is confined to claim it at the time of the recovery of possession of the holding and not at any time anterior to it. 1955 Ker L T 549 : I L R (1955) T C 666 : AIR 1955 T C 277 (278, 279) (Prs 3, 4, 8) (DB).

SECTION 77

——S 77—Applicability — Essential condition is that the receipts of the property should be taken in lieu of interest or in lieu of interest and a defined portion of the principal. See T. P. Act (1882), S. 76 (g). AIR 1958 S C 941.

——Ss. 77 and 98 —Usufructuary mortgage or anomalous mortgage—Liability of mortgagee to render accounts.

Whether the transaction is an usufructuary mortgage or an anomalous mortgage, in the circumstances of the case, there will not be any difference in the matter of rendition of accounts, for in the ultimate analysis, the true construction of the relevant terms of the document would afford an answer to the question whether the mortgagee is liable to render accounts. Ramdhan Puri v. Bankey Bihari Saran. 1959 S C J 121 : 36 Mys L J 775 : (1959) 1 M L J (SC) 53 : (1959) 1 An W R (S C) 53 : 1959 S C A 110 : ILR 37 Pat 1168 : 1959 S C R 1085 : AIR 1958 S C 941 (945, 946) (Pt C) (Prs 6, 7, 8).

——S. 77—Applicability—Transactions falling under S. 2 (12)—Contract contrary to provisions ineffective — Usufructuary mortgage deed expressly excluding mortgagee's liability to render account — Provisions of Bengal Act applicable to transaction — Mortgagee liable to render account. See Debt Laws — Bengal Money Lenders Act (10 of 1940), S. 2 (12). AIR 1962 Cal 457 (DB).

——S. 77 — Liability of mortgagor to pay interest — Usufruct exceeding interest or interest and portion of principal — Mortgagee would get the benefit—If he incurs loss, he must bear it. AIR 1955 NUC (Hyd) 2961 (DB).

——S. 77—Scope and applicability.

The effect of the provisions of S. 77 is that the absolute liability arising under Cls. (b), (d), (g) and (h) in S. 76 does not apply to cases where the parties have entered into a contract that the receipts from the mortgaged property shall be taken in lieu of interest on the principal money or in lieu of such interest and defined portions of the principal. Where there is no such special contract, the general provisions of S. 76 will apply. 1957 Pat L R 30 : 1957 B L J R 493 : AIR 1957 Pat 564 (567) (Pt C) (Pr 12) (DB).

[Reversed on another point in AIR 1962 S C 814].

——S. 77 — Mortgagee to be put in possession or entitled to 10 per cent. per month interest — Mortgagee not put in possession—Mortgagor paying interest — After some period mortgagee put in possession of part—Suit for redemption—Mortgagee alleging fresh contract and claiming 10 per cent. interest on amount proportionate to portion not put in his possession — Fresh contract not proved—Mortgagee held entitled to fall back on original contract. AIR 1950 Pat 201 (202) (Pt A) (Pr 2).

—S. 77—Liability to account—S. 77 is a proviso to S. 76 and provides that where there is contract between the parties as specified therein Cl. (g) of S. 76 will not apply. See T. P. Act (1882), S. 76 (g). AIR 1955 NUC (Raj) 296 (DB).

SECTION 78

——Ss. 78, 48, 41 —Competition between mortgagee and subsequent purchaser—S. 48 applies — No proof of negligence on part of mortgagee — Purchaser not protected.

Section 78 has no application where the competition is not between two mortgages but between a

a mortgagee and a subsequent purchaser. The question of priority between a mortgagee and a subsequent purchaser is governed by S. 48 and the purchaser is not protected by the provisions of S. 41 when there is no proof of negligence on the part of the mortgagee. AIR 1934 Oudh 283 and AIR 1931 Nag 144, Rel. on. AIR 1930 Cal 22, Dist. **64 Cal W N 1067 : 1960 Cal L J 190 : AIR 1961 Cal 300 (304) (Pt F) (Pr 21) (DB).**

——S. 78 — **Mortgage suit — Scope of —Suit by subsequent mortgagee for recovery of amount due to him—Question whether a prior mortgage was sham and nominal—If can be gone into—Onus of proof.**

In a suit by a subsequent mortgagee the question whether the prior mortgage was supported by consideration can be gone into.

When the existence of the prior mortgage is not disputed but its genuineness is attacked by the subsequent mortgagee who alleges that the prior mortgage is a sham and bogus one created with intent to defraud him, it is for the latter to prove it and not for the former to establish that the mortgage in his favour is supported by consideration and not a colourable one. **(1952) 2 Mad LJ 448 : 1952 Mad W N 692 :** AIR 1953 **Mad 1000 (Pt A) (Pr 6).**

——Ss. 78, 60, 92 and 94—Suit by prior mortgagee — Puisne mortgagee not impleaded — Execution of decree — Prior mortgagee purchasing property—Suit by subsequent mortgagee to enforce his mortgage —Prior mortgagee made party—Prior mortgagee can redeem subsequent mortgagee. See T. P. Act (4 of 1882), S. 60. **AIR 1952 Pat 321 (DB).**

SECTION 79

——S. 79 — Mortgage for securing money advanced and to be advanced—There is one mortgage to cover all advances—Starting of limitation is from the date of last advance. See Limitation Act (1908), Art. 132. **AIR 1955 Cal 194 (DB).**

——Ss. 79 and 93 — **Scope of — Sections are complementary.**

The effect of Ss. 79 and 93 is that where a mortgage to secure future advances expresses the maximum to be secured, but after certain advances with maximum have been made, a second mortgage is executed, the second mortgagee, if he had notice of the prior mortgage will have to yield to the prior mortgagee in respect of further advances made by the latter up to the maximum stated, although such advances may be made with knowledge of a subsequent mortgage; but if no maximum was expressed or if the subsequent mortgagee had no notice of the prior mortgage, the prior mortgagee making further advances after the second mortgage will have no priority in respect of such advances. Section 93 is thus complementary to S. 79. **ILR (1956) 2 Cal 822 : AIR 1955 Cal 194 (203, 204) (Pt D) (Pr 39) (DB).**

——S. 79 — Nature and incidents of equitable mortgage to secure overdraft — Only part of money advanced—Mortgage is good security for part advanced. See Banker and Customer. **AIR 1965 Mad 266.**

——S. 79 — Deposit of title deeds — Transaction not amounting to mortgage to secure future advances but a mortgage to secure entire sum mortgaged—Subsequent mortgagee was not entitled to priority. See T. P. Act (1882), S. 93. **AIR 1958 Mad 132 (DB).**

SECTION 81

——S. 81 — Mortgage of four properties — Three situated in Pakistan and one in India — Mortgage unenforceable against property situate in Pakistan after partition — Marshalling cannot be done as it would prejudice the rights of the mortgagee. **I L R (1964) 1 All 553: AIR 1964 All 381 (383) (Pt B) (Pr 8) (DB).**

——S. 81 — **Applicability — Essential conditions — Subsequent mortgagee expressly undertaking to make some payment to prior mortgagee — Condition not fulfilled—Subsequent mortgagee cannot invoke S. 81.**

Section 81 as amended posits two essential conditions: (i) that there should not be a contract to the contrary, and (ii) in any case no prejudice should be caused to the rights of the prior mortgagee. Thus where the puisne incumbrancer has taken the mortgage expressly on condition of discharging certain amount due on the prior mortgage and he fails to fulfil that term, S. 81 of the Transfer of Property Act cannot be invoked at the instance of the defaulting puisne incumbrancer. **AIR 1962 Andh Pra 425 (429, 430) (Pt C) (Prs 22, 24) (DB).**

——Ss. 81 and 82 – Order in which properties should be sold — Right of mortgagee — Co-judgment-debtor of a mortgage decree has no right to have the properties marshalled under S. 81, T. P. Act nor has he as against the mortgagee the right that S. 82 of T. P. Act gives to the buyer against a seller where more properties than one all subject to a common charge. See Civil P. C. (1908), O. 34, R. 4. **(1957) 2 An W R 385.**

——S. 81 — Applicability — Mortgage by A and B of their properties to C — Subsequent mortgage by A alone of his properties to D — Suit by C on mortgage —B not entitled to claim that A's properties should be sold first — Section 81 does not apply — Court not justified in directing sale of B's properties first. See Civil P. C. (1908), O. 34, R. 4. **AIR 1962 Ker 106 (DB).**

——Ss. 81, 56 – Marshalling in execution of mortgage-decree — Right of decree-holder to take out execution against any item — Equity.

A mortgagee has a permanent right to have his claim satisfied by sale of every part of the mortgaged property, but he is not entitled to dictate to the Court the order in which the mortgaged property should be sold.

The decree-holder has no unfettered right to bring any item of the hypotheca to sale in any order he pleased and the execution Court is not powerless to stop him. If the executing Court has reason to believe that a decree-holder exercising a differentiation which the law allows him is animated by mala fides it can and should step into direct an equitable order of sale without prejudice to the right of the mortgagee in this respect. When there is a special covenant by the mortgagor that he would in view of the prior mortgage on an item of hypotheca discharge the mortgage out of the other hypothecated property, he is entitled to this item being sold last in the execution in which it is sought to be brought to sale. The fact that he did not come strictly within the four walls of S. 81 will certainly not disentitle him in toto to the benefit of a recognised equitable principle and leave him to the arbitrary mercy of the decree-holder in execution. **(1954) 2 M L J 514 : AIR 1955 Mad 208 (209) (Pt A) (Prs 4, 5, 6).**

——S. 81—Applicability.

Marshalling under S. 81 is open only to a subsequent mortgagee of one or more items of property originally mortgaged by the mortgagor. Section 81 has no application where the subsequent mortgage is in favour of the same mortgagee. **(1954) 2 M L J 514 : AIR 1955 Mad 208 (209) (Pt B) (Pr 4).**

——S. 81—'Doctrine of marshalling of securities' — Applicability in execution proceedings of mortgage decree—The executing Court in exceptional circumstances where equity demands it has power to direct order in which mortgaged properties should be sold

— The executing Court has no power to exclude any of the properties decreed against and has no power to change the order laid down in the decree in which order the properties are to be sold. See T. P. Act (1882), S. 56. AIR 1960 Pat 378 (DB).

——S. 81 — Mortgage of more than two properties—Sale in execution of decree — Order in which properties are to be sold—Final decision is to be made by the executing Court — Such decision is not to be disturbed unless the order so chosen is in any manner inequitable qua the rights of other parties. See T. P. Act (1882), S. 56. AIR 1955 N U C (Punj) 4599.

——S. 81 — Rule of equitable apportionment — On facts held that as between vendee and mortgagee equity was in favour of former and mortgaged property should be sold first to satisfy claim. AIR 1955 N U C (Tray-Co) 5781

SECTION 82

SYNOPSIS

(Transfer of Property Act (1882), S. 82.)

1. Scope.
2. Common and equal liability.
3. Valuation.
4. "In the absence of a contract to the contrary".
5. Property sold in particular order — Right of contributions.
6. A claim for contribution is a charge upon the property.
7. Liability to contribute—Whether personal.
8. Right of redeeming co-mortgagor to claim contribution.
9. Effect of acquisition of a portion of equity of redemption by mortgagee.
10. Effect of release by mortgagee of a portion of equity of redemption.
11. Properties liable to contribute.
12. Contribution arises both on voluntary and involuntary payments.
13. Contribution and subrogation.

1. Scope.

——S. 82—Co-mortgagors—Sale by one—Redemption by vendee—Claim of contribution by vendee.

A and B were co-owners of certain property. B sold his share to C leaving a portion of the consideration in the hands of C with direction to pay it to a mortgagee in possession. C converted the possessory mortgage into simple mortgage and entered into possession and thus redeemed it. A brought a suit for possession of the property against C who claimed contribution in respect of A's liability under the mortgage;

Held, that the payment made by C to the mortgagee was merely as the agent of his vendor B and therefore he could not claim any contribution under S. 82 in his own right from A. 1951 All W R (HC) 401 : AIR 1951 All 596 (598) (Pt B) (Pr 10) (DB).

——S. 82—Applicability.

A second mortgage was created on two properties by the mortgagor. One of the properties was sold in execution of the decree on the first mortgage and was not available to the second mortgagee. Later on, the mortgagor sold the other property to another person :

Held, that the second mortgagee was entitled to recover the whole of the debt from the proyerty sold by the mortgagor. S. 82 had no application to the facts of the case and the purchaser had no equity against the mortgagee and could not say that only a proportionate amount should be recovered from the property sold to him : AIR 1942 P C 50, Rel. on. ILR (1952) Hyd 23 : AIR 1951 Hyd 167 (167, 168) (Pt A) (Prs 3, 4) (DB).

——S. 82—Puisne mortgagee's right to contribution.

It cannot be said that under S. 82, Transfer of Property Act (1882), it is only an owner of properties that can claim the benefit of contribution. Even a mortgagee as distinguished from a full owner can claim that right. Therefore, a puisne mortgagee of some of the items included in the first mortgage, paying off in execution the amount due under decree on such mortgage, has a right to claim contribution from the other items the rateable share of the common debt discharged by him. 1957 Ker L J 574 : 1957 Ker L T 656 : ILR (1957) Ker 598 : AIR 1958 Ker 386 (389) (Pt A) (Pr 7) (DB).

——S. 82—Scope of—Contribution—Principle of.

Section 82 of the Transfer of Property Act proceeds on the basic principle of the unity of the mortgage debt. The principle of contribution comes into existence only with reference to the liability of the property which has borne the burden of more than one mortgage debt. The first part of the section deals with a case of a mortgage over the property owned by two or more persons in distinct and separate rights. The second part deals with a case where out of two separate properties belonging to the same owner, one is mortgaged to secure one debt and subsequently both are mortgaged to secure another debt. The property which is subject to both the debts is held liable to contribute rateably to the second debt only after deducting the amount of the former debt from the value of the property out of which it has been paid. In both cases the right of contribution is available only against persons who stand in the position of co-mortgagors or their successors in-interest or against the same property subject to two different mortgages. Apart from the statutory provisions a claim for contribution can be founded on the principles of a common burden shared by many people, but discharged by one, with the result that the remaining sharers enjoyed the benefit of the discharge. This principle of law applies in many situations as between co-sharers or co-tenants, partners, co-owners, coparceners and so on. The basis of contribution in all such cases is not only the common ownership of property but also a common liability which was discharged by one. 72 L W 734 : (1959) 2 M L J 555 : ILR (1960) Mad 24 : AIR 1960 Mad 117 (119, 120) (Prs 8, 9) (DB).

——S. 82 — Civil P. C. (1908), O. 34, R. 1 and O. 1, Rr. 9 and 10 — Non-joinder of mortgagor in suit by mortgagee against transferee of portion of property from mortgagor — The mortgagee was entitled to a decree for the entire mortgage money to be recovered from the property in the hands of the transferee—The right of the transferee to contribution was not affected by such relief. See Civil P. C. (1908), O. 34, R. 1. AIR 1955 Mad 439 (DB).

——S. 82 — Introduction of extrinsic principle to modify provisions in section is not proper. AIR 1955 N U C (Pat) 224 (DB).

2. Common and equal liability.

——S. 82 — Applicability — Section 100 does not apply to a charge created by decrees of Courts — Charge created by a decree for maintenance on properties A and B belonging to X and Y — Maintenance amount recovered from X only—X cannot file a suit for contribution against the transferees of B property —He is not entitled to the benefit of S. 82 read with S. 100, T. P. Act. See T. P. Act (1882), S. 100. AIR 1959 Andh Pra 622 (FB).

——S. 82 — Principle of contribution is that fund which is equally liable with another to pay debt shall

not escape because creditor has been paid out of that other fund alone. **AIR 1955 N U C (Pat) 224 (DB).**

3. Valuation.

——S. 82—Valuation of property—Liability on other properties should be taken into account. 19 All 546 and 38 Ind Cas 649, Rel. on. **31 Mys L J 156 : I L R (1952) Mys 259 : A I R 1952 Mys 99 (102) (Pt C) (Pr 12) (DB).**

——S. 82—Different items of properties mortgaged — Liability to contribute towards payment of mortgage-debt—Fixation of price of mortgaged properties to be with respect to date when properties were mortgaged —Evidence as to. **A I R 1962 Pat 236 (241) (Pt D) (Pr 16) (DB).**

4. "In the absence of a contract to the contrary."

——S. 82—Right to contribution—Defeated only by contract to the contrary—"Contract to the Contrary", meaning of.

A right to claim contribution can be defeated only by a contract to the contrary. Words "Contract to the contrary" mean a contract to which the mortgagee is a party. A contract to the contrary which is between the purchaser at auction sale and the executing court on behalf of the mortgagors cannot exclude the operation of S. 82. A I R 1943 Mad 429 (FB), Foll.

The proclamation of sale and certificate of sale issued by the court contained the following sentence. "Items 1 to 4 were purchased for Rs. 3,030 subject to Rs. 5,000 being the decree amount, costs etc. in O. S. N. 56 of 1941. . ." On the question whether a contract to the contrary contemplated by S. 82 of the T. P. Act.

Held, that in view of the fact that the plaintiff had paid the full value of the property sold it could not be said that he would have undertaken to pay an additional amount of Rs. 5,000 and odd by way of discharging the liability under the mortgage decree.

Further the sentence quoted did not say expressly or by necessary implication that the plaintiff should give up the claim for contribution which would arise when he satisfied the decree. A I R 1933 All 929, Dist. **1960 Andh L T 163.**

——Ss. 82, 92 — Rights of subrogation and contribution — Availability of right of subrogation is no bar to a suit for contribution.

Subrogation is only an additional remedy available to a person entitled to contribution and the availability of that remedy is no bar to a suit for contribution. AIR 1958 Ker 336, Rel. on.

Held, that S, the prior mortgagee who was the auction purchaser in execution of the decree in his suit was a representative of the mortgagor, as by his purchase he got the right, title and interest of the mortgagor in the properties. S sold some of the properties to defendant and the remaining to plaintiff. In the sale deed in favour of the plaintiff there was a direction by the vendor that the plaintiff should discharge the decree debt of K out of the consideration reserved with her. Plaintiff paid off decree bebt of K and sued defendant for contribution. The fact, that there was a contract between the vendor and the plaintiff by which the plaintiff undertook to pay the decree debt of K was no bar to the plaintiff claiming contribution from the properties purchased by defendant. The defendant was not entitled to take advantage of the contract made between the vendor, who stood in the position of a co-mortgagor; and the plaintiff. The expression 'contract to the contrary' occurring in S. 82 has been interpreted to mean only a contract between the mortgagor and the mortgagee and not a contract between the mortgagor and a purchaser of a portion of the equity of redemption. Hence the defendant was liable to contribute. A I R 1930 P C 183 and A I R 1943 Mad 429 (FB), Rel. on. **ILR (1964) 1 Ker 526 : 1964 Ker L T 294 : (1964) 1 Ker L R 289 : 1964 Ker L J 505 : A I R 1964 Ker 256 (257, 258) (Prs 4, 5, 6).**

——S. 82 — In the absence of a contract to the contrary.

The words 'in the absence of a contract to the contrary' in S. 82 of the Transfer of Property Act relate to a contract to which the mortgagee is a party; such a contract runs with the land. A I R 1943 Mad 429 (FB), Foll. **ILR (1956) Mad 914 : (1956) 1 Mad L J 213 : 69 Mad L W 98 : AIR 1956 Mad 293 (297) (Pt B) (Pr 10) (DB).**

——S. 82 — Contract to the contrary — Bar to claim contribution—Suit for contribution—Order of Court settling the order in which the properties are to be sold—If and when amounts to a contract to the contrary.

Although all properties mortgaged may be equally liable for the mortgage-debt the liability may be altered by an arrangement made between the parties by which the incidence of the debt can be thrown primarily on some of the properties, the other properties being liable only if the debt is not realised by the sale of those properties.

A mere decision of an executing Court setting in a sale proclamation the order which the mortgaged properties have to be sold cannot alter the statutory liability under S. 82 of the Transfer of Property Act making it a contract to the contrary. Only a subsequent contract between the contributories determining the order in which the properties are to be sold incorporated in the decree should be understood as a contract to the contrary which could be pleaded as a bar to the claim of contribution. **(1955) 1 Mad L J 525 : 1955 Mad W N 272 (2) : 68 Mad L W 257 : A I R 1955 Mad 557 (558) (Pr 5).**

——S. 82—Contract to the contrary—Property mortgaged twice—Item of property subject to both mortgages sold to mortgagee free from encumbrance—Doctrine of contribution is excluded. **A I R 1955 N U C (Mys) 5950 (DB).**

——S. 82 — Applicability — 'In the absence of contract to the contrary'—Meaning and effect of.

Under S. 82, if there is no contract to the contrary and if a property subject to mortgage belongs to two or more persons having distinct and separate rights of ownership therein, each share owned by such persons are liable to contribute rateably to the debt secured by the mortgage. **1956 B L J R 749.**

5. Property sold in particular order—Right of contribution.

——S. 82 — Order to sell in particular order — Sale not held accordingly—Effect.

The fact that the direction in the mortgage decree or the subsequent orders in execution that a particular item should be sold last and that only if the sale of the other properties did not satisfy the mortgage decree, but no sale took place of other properties, and that in the suit on the mortgage or in the execution proceedings there was no attempt to determine the liabilities of the defendants inter se is no bar to the claim for contribution from that item of property by the puisne mortgagee of other items of property who has discharged the debt due under the decree on the mortgage. **1957 Ker L J 574 : 1957 Ker L T 656 : I L R (1957) Ker 598 : AIR 1958 Ker 386 (397) (Pt D) (Pr 24 (DB).**

6. A claim for contribution is a charge upon the property.

——Ss. 82, 92 and 100 — Contribution and subrogation — If mutually exclusive — Suit for contribution by puisne mortgagee — Limitation — (Limitation Act (1908), Art. 132).

When a person interested only in a portion of the mortgaged property redeems the mortgage he gets two distinct rights; one for contribution and the other for subrogation. The former right he gets under S. 82 of the Transfer of Property Act and S. 100 confers a charge by operation of law in his favour on the properties which have not contributed towards the liquidation of the debt. The other right (subrogation) is one conferred by S. 92. The two rights are independent and not mutually exclusive. It may well be that as subrogee the enforcement of the claim is barred by time, but the doctrine of subrogation is called to aid in suitable cases for the benefit of a party making the payment and it cannot be applied to the disadvantage of that party. When puisne mortgagee who is interested only in a portion of the mortgaged properties discharges a prior mortgage, he will get a charge over the properties comprised in the mortgage which have not been made to bear the burden of the common debt, and for his suit in terms of Ss. 82 and 100 to enforce that charge the cause of action arises and the period of limitation begins to run only from the date of the discharge of the common debt. His suit as subrogee may be hopelessly out of time but that cannot affect his suit for contribution filed within time allowed for such suits from the date of his discharging the common debt. AIR 1952 S C 47 and AIR 1930 P C 183, Rel. on. **1957 Ker L J 574 : 1957 Ker L T 656 : I L R (1957) Ker 598 : AIR 1958 Ker 386 (392, 395) (Pt B) (Prs 12, 17, 18) (DB).**

7. Liability to contribute — Whether personal.

——S. 82—Liability to contribute is not personal.

The obligation under S. 82 is not personal but the obligation is attached to the properties which are liable to contribute rateably to the debt secured by the mortgage. The owner of the properties has an option either to pay his rateable share or to allow it to be realised out of the properties.

(Nature of decree to be passed in a suit for contribution indicated). **I L R 28 Pat 955 : AIR 1950 Pat 174 (177) (Pt B) (Pr 14) (DB).**

8. Right of redeeming co-mortgagor to claim contribution.

● ——Ss. 82, 92—Suit for contribution — Plaintiff's rights against defendants — Provisions applicable — Contract Act (1872), S. 43.

A, B and C jointly mortgaged their three separate estates for Rs. 10,000 the total aggregate sum due at the date of mortgage from the three of them. There was no contract between them, either in the mortgage deed or otherwise, regarding their respective shares of responsibility in the Rs. 10,000. A's responsibility extended to Rs. 2,000, B's to Rs. 3,000 and C's to Rs. 5,000. At the date of redemption the mortgage debt had swollen to Rs. 15,000. A alone redeemed by selling Blackacre, which was his separate estate, to the mortgagee for Rs. 35,000 that being the value of Blackacre at the date of redemption. Rs. 15,000 of this was applied in satisfaction of the mortgage-debt and the balance of Rs. 20,000 was retained by A.

Held, both section 43 of the Contract Act and S. 82 of the Transfer of Property Act deal with the question of contribution. Section 43 is a provision of the Contract Act dealing with contracts generally. Section 82 applies to mortgages. As the right to contribution here arose out of a mortgage, section 82 must exclude section 43. There being no contract to the contrary, A's only remedy was under section 92 of the Transfer of Property Act read with section 82. As there was no personal covenant as between the mortgagors or any "contract to the contrary", the plaintiff A could not claim separate personal reliefs against the defendants B and C. Kedarlal v. Harilal, **1952 Mad W N 104 : 1952 S C J 37 : 65 Mad L W 179 : 1952 S C R 179 : 1952-1 Mad L J 431 : AIR 1952 S C 47 (50, 52) (Pt A) (Prs 38, 48, 49).**

——S. 82 — Proceeding under U. P. Encumbered Estates Act — Failure to implead his co-debtors — Entire mortgage amount realised from applicant co-debtor — Right for contribution — Such suit whether barred by the U. P. Act — Debt Laws — U. P. Encumbered Estates Act (25 of 1934), S. 9 (5).

Where in a proceeding started under the U. P. Encumbered Estates Act the entire mortgage amount is realised from one of the joint debtors, he can maintain a suit for contribution from his co-debtors under S. 82, T. P. Act, even though he has failed to implead the co-debtors or to get the debt apportioned between himself and the co-debtors in the said proceeding. Such a suit is not barred by any provision in the U. P. Encumbered Estates Act. **1949 All L J 469 : I L R (1950) All 1150 : AIR 1950 All 53 (55) (Prs 5, 6) (DB).**

——S. 82 — Redemption by co-mortgagor — Suit for contribution—Starting point of limitation — Depends on nature of right sought to be enforced — Claim for only contribution by enforcing charge therefor — Limitation begins from date of payment. See Limitation Act (1908), Art. 132. AIR 1964 Bom 284.

——S. 82 — Enforcement of right against person not joined as party to mortgage suit.

The right to claim contribution may be successfully asserted even as against a person who ought to have been, but was not joined, as a party defendant by the mortgagee in his action to enforce the security. The mortgagee has a right to enforce the mortgage against any part of the security, and the discharge of one mortgagor by limitation or otherwise does not affect his liability for contribution to the co-mortgagor or other persons interested in the property that bore the burden of the prior debt. **1957 Ker L J 574 : 1957 Ker L T 656 : I L R (1957) Ker 598 : AIR 1958 Ker 386 (397) (Pt C) (Pr 23) (DB).**

● ——Ss. 82, 92, 95 and 100—Rights of co-mortgagor making payment.

A co-mortgagor seeking contribution is not exactly in the same position, in all respects, as the mortgagee whom he has redeemed. Besides the right of subrogation under Ss. 92 and 95 subject to certain qualifications, the co-mortgagor by discharging the mortgage also acquires a right of contribution under S. 82, Transfer of Property Act and the amount recoverable will be a charge on the property of the persons benefited from payment and enforceable under S. 100 of the Act. These are remedies independent of each other and not mutually exclusive. 1928 All 241, Rel. on. Kenchappa v. Rokhade Nagappa. **I L R (1956) Mys 129 : A I R 1957 Mys 1 (2) (Pt B) (Pr 3) (FB).**

——Ss. 82 and 56 — Principle of contribution applicable where property is sold subject to the mortgage and marshalling arises where property is sold free from encumbrance — Two properties mortgaged together to secure one debt — Two different persons purchasing the two properties one each and subject to mortgage — The purchaser who discharges the mortgage debt is entitled to contribution from the other under S. 82, T. P. Act. AIR 1930 P C 183 and AIR 1949 Pat 522, Foll. A I R 1962 Pat 236 (238, 240, 241) (Pt A) (Prs 7, 14, 15) (DB).

——Ss. 82 and 92 — Claims for contribution and subrogation distinguished — Remedies are independent and not mutually exclusive — Limitation for claim for contribution — Limitation is to be computed from date of payment—Limitation Act (1908), Art. 132.

A co-mortgagor who paid the full amount of the mortgage debt may under S. 82 not only sue for contribution but under S. 92 he may be subrogated to the rights of the mortgagee whose mortgage he redeemed. The remedies granted by these sections are independent and not mutually exclusive; and a co-mortgagor who pays the mortgage money has right of contribution and acquires a charge under Ss. 82 and 100 in addition to his right of subrogation under Ss. 92 and 95.

The right to reimbursement arises on a contract; express or implied, to reimburse; and the party who claims the right enforces it in his own right and not in the right of another. Consequently, the right does not arise until he has discharged the debt of another. But the right to enforce a security by virtue of subrogation is a right which is enforced in the right of the original creditor, and only because the person discharging the obligation becomes clothed with the rights and powers of the original creditor. Subrogation is rather an additional remedy than an additional right, and may exist concurrently with, and as a further security to, the right to a simple action for reimbursement : AIR 1922 Pat 499, Rel. on; Case law referred.

Section 82 has not been abrogated by S. 92.

The period of limitation for a suit for contribution under S. 82 is 12 years from the date of payment and not from the date when the original mortgage money becomes payable : AIR 1929 Pat 94, Discussed. ILR 28 Pat 955 : AIR 1950 Pat 174 (175 to 178) (Pt A) (Prs 6, 13, 19) (DB).

9. Effect of acquisition of a portion of equity of redemption by mortgagee.

——S. 82 — Purchase of undivided half share of the mortgaged property by mortgagee—Effect is the merger of the interest of the mortgagor and the mortgagee in respect of that half share and by reason of S. 82, T. P. Act, an extinguishment of one-half of the mortgage which thereafter attached only to the other half share. See T. P. Act (1882), S. 60. A I R 1959 Ker 112 (DB).

——S. 82—Payment—Nature of—Mortgagee purchasing part of equity of redemption — Discharge under S. 82, T. P. Act does not amount to payment — See Debt Laws — Madras Agriculturists Relief Act (4 of 1938), S. 8 (2). AIR 1953 Mad 873.

——Ss. 82 and 101 — Purchase by mortgagee of portion of mortgaged property — Deduction of mortgaged amount—When to be allowed.

Where the mortgagee acquires a portion of the mortgaged property by way of purchase, there is a merger of rights and the mortgagors are entitled to a pro rata deduction from the amount due under the mortgage in respect of the property sold. The correct procedure is to give the necessary deduction even before passing the decree. To pass a preliminary decree for the entire amount claimed and to direct the Court to enquire into the value of the property and to give deduction in the final decree is not proper. 35 Mys L J 392 : I L R (1957) Mys 277 : A I R 1958 Mys 43 (48) (Pt G) (Pr 19) (DB).

——S. 82 — Subsequent mortgagee obtaining decree on his mortgage and purchasing in execution mortgaged property subject to prior mortgage — Prior mortgagee obtaining decree on his mortgage—Debt directed to be realised personally from mortgagor—Puisne mortgagee purchasing decree obtained by prior mortgagee and taking out execution—Proviso 2 to O. 21, R. 16, Civil P. C., (1908), held did not apply—By purchase of equity of redemption decree held was extinguished pro tanto. See Civil P. C. (1908), O. 21, R. 16, Proviso 2. A I R 1952 Trav-Co 487 (DB).

10. Effect of release by mortgagee of a portion of equity of redemption.

——S. 82—Release by mortgagee of portion of hypotheca—Right of mortgagee.

It is open to the mortgagee always to release any portion of the hypotheca and claim the whole amount from the rest of it unless he exhibits an intention to break the integrity of the mortgage. AIR 1918 Mad 1080 : 33 Mad L J 211 (FB) Rel. on. I L R (1957) Andh Pra 790 : (1958) 1 Andh W R 255 : AIR 1958 Andh Pra 598 (602) (Pt C) (Pr 12) (DB).

——S. 82—Mortgagee releasing portion of property—If it results in placing any extra burden on a mortgagor who owns only a part of the mortgage security which he should not be made to bear, he has the right to sue for contribution under S. 82 of the Act. The effect of the release of the mortgaged property would be the same whether the release comes before suit or after the decree in a suit for sale. See Civil P. C. (1908), O. 34, R. 5. AIR 1953 Assam 82.

——S. 82—Mortgagee releasing property in possession of transferee from mortgagor — Transferee not a necessary party to foreclosure suit. See Civil P. C. (1908), S. 115. 1959 Nag L J (Notes) 90.

——S. 82—Release by mortgagee of part of security —Effect—Piecemeal redemption not allowed. See T. P. Act (1882), S. 60. A I R 1955 NUC (Trav-Co) 2218 (DB).

——Ss. 82, 60 and 101—Rateable abatement—No release of portion of mortgage debt—No merger of interests of mortgagor and mortgagee in respect of portion—Owner of portion of mortgaged property cannot claim rateable abatement. See T. P. Act (1882), S. 60. AIR 1953 Trav-Co 283 (DB).

11. Properties liable to contribute.

——S. 82—Four properties mortgaged—One sold to vendee—Suit by mortgagee and a decree therein—Vendee depositing the whole money to save his property—Suit by vendee for breach of indemnity of title—Mortgagor agreeing to indemnify vendee if he suffered any loss—Liability of vendor for damages was to the extent of the amount chargeable on the property purchased by the vendee—Other properties were liable for contribution rateably to the debt and could be recovered by the vendee from those properties. See T. P. Act (1882), S. 55 (1) (a). A I R 1957 Trav-Co 59 (DB).

12. Contribution arises both on voluntary and involuntary payments.

——Ss. 82, 100 and 92—By operation of law — Land revenue—Payment by co-sharer creates charge — Co-sharer is entitled to contribution as well as subrogation. See Transfer of Property Act (4 of 1882), S. 100. AIR 1965 Ker 55.

——S. 82—Costs of prior mortgagee—Decree — Contribution in respect of.

Where the decree made the mortgagor and the mortgage security liable for costs as well the contention that no contribution can be allowed in respect of those costs is untenable. There is no analogy between costs decreed to a mortgagee in his suit for mortgage money and the compensation payable to a disappointed Court auction purchaser under O. 21, R. 89 Civil Procedure Code, or the fee chargeable for poundage from a judgment-debtor whose property is

sold by the Court. 1957 Ker L J 594 : 1957 Ker L T 656 : ILR (1957) Ker 598 : AIR 1958 Ker 386 (398) (Pt E) (Pr 25) (DB).

13. Contribution and subrogation.

——Ss. 82, 92—Rights of subrogation and contribution—Availability of right of subrogation is no bar to to a suit for contribution. AIR 1964 Ker 256.

——Ss. 82, 92—Contribution and subrogation—Rights are not mutually exclusive—Suit for contribution by puisne mortgagee—Limitation runs from the date of the discharge of the common debt. AIR 1958 Ker 386 (Pt.B) (DB).

——Ss. 82 and 92—Claims for contribution and subrogation distinguished—Remedies are independent and not mutually exclusive—Limitation for claim for contribution—Limitation is to be computed from date of payment—Limitation Act (1908), Art. 132. AIR 1950 Pat 174 (Pt A) (DB).

SECTION 83

SYNOPSIS

(Transfer of Property Act (1882), S. 83).

1. Scope.
2. "May deposit".
3. Deposit must be unconditional.
4. Deposit in redemption suit.
5. Title to money deposited until withdrawal by mortgagee.
6. Minor mortgagee.
7. "The amount remaining due on the mortgage."
8. The Court shall thereupon cause the written notice of the deposit to be served on the mortgagee.
9. "Verified in manner prescribed by law for the verification of plaint."
10. Mortgagee must accept deposit in full discharge of amount due.

1. Scope.

——S. 83—Person claiming to be tenant depositing in Court—Arrears of rent on the allegation that the landlord refused to accept it—Application contested by the landlord—Court is bound to decide whether or not the applicant is a tenant and the rent lawfully tendered by him was refused by the landlord as they are jurisdictional facts which must exist before a tenant can move an application under the section and on which the Court can accept the deposit—Position of tenant under this section is not analogous to that of the mortgagor under S. 83 of the Transfer of Property Act. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-C. (1963) All W R (H C) 399.

——Ss. 83, 60 and 76 — Debt Laws—U. P. Agriculturists' Relief Act (27 of 1934) S. 12— Suit under, for redemption of usufructuary mortgage — Civil Court cannot consider the question whether the mortgagee has put up a fictitious person as tenant to prevent mortgagor from obtaining possession over mortgaged property — Section has not changed the substantive law found in T. P. Act. AIR 1949 All 589, Foll. and AIR 1949 All 380, Overruled. AIR 1953 All 472 (473, 474) (Prs 4, 5, 6) (DB).

——S. 83—Applicability — Does not apply after institution of suit—Award of interest after institution of suit is discretionary — C. P. Code (1908), S. 34, O. 24, R. 3.

Section 83 has no application and does not enable a deposit to be made once a suit is laid. The reason is that once a suit is filed, the amount due on the mortgage can be ascertained only after the decree is passed which may provide for interest and other matters. Order 24, C. P. Code makes provision to enable a deposit or payment into Court being made and to stop the accrual of future interest. AIR 1919 Mad 948 (2), AIR 1939 Mad 200, Rel. on. The award of interest from the date of the suit is discretionary under S. 34 (1) of the C. P. Code. In the circumstances held interest from the date of the suit may be disallowed. 1963 Ker LJ 754 : 1963 Ker L T 1031.

2. "May deposit".

——S. 83—Usufructuary mortgage—Mortgagor continuing in possession as tenant under a simultaneous rent note executed by him — Mortgagor depositing mortgage money in Court and applying for redemption stating therein that he had been compelled to deposit the money in Court as mortgagee refused to accept it — Mortgagee neither opposing application nor contradicting allegation — Mortgage must be deemed to have been redeemed even on the date when the deposit was made — Mortgagor's liability to pay rent does not continue after that date until the passing of a formal order of redemption. 1964 All W R (H C) 47 : AIR 1964 All 370 (371) (Pt B) (Pr 6).

——S. 83 — Application under S. 83 — Applicant applying for challan on same day but challan not issued due to delay of Court — Deposit subsequently made relates back to date of application — (Maxims —Actus Curiae neminem gravabit).

An application under S. 83 was made on 24th August 1946, and the applicants applied for a challan on that date. They were however unable to deposit the mortgage amount in the treasury till 27th August 1946, on account of the delay in issuing the challan by the Court.

Held, that the maxim 'Actus curiae neminem gravabit' (an act of the Court shall prejudice no man) governed the case and the deposit on 27th August 1946, should be regarded as having been made on 24th August 1946, by applying 'nunc pro tunc'. AIR 1955 NUC (Andh Pra) 3837.

——S. 83—Mere readiness to pay.

Mere readiness on the part of the mortgagor to pay the debt is not sufficient. The money must be deposited in Court before relief can be sought. AIR 1950 Madh B 72 (75) (Pt C) (Pr 34) (DB).

——S. 83—Usufructuary mortgage—Deposit of mortgage money — Mortgage does not get extinguished by such deposit—Mortgage is still a mortgage until the right of redemption is extinguished within the meaning of S. 60, T. P. Act — Suit for recovery of property by mortgagor is a suit for redemption. See Limitation Act (1908), Art. 148. AIR 1960 Pat 51 (DB).

——Ss. 83 and 84 — Notice of deposit — Service of — Usufructuary mortgage — Provision for deposit of mortgage money on last day of 'Baisakh' every year —Notice of deposit served in 'Jeth' of year of deposit —Deposit is not invalid: 15 Ind Cas 592 (All), Rel. on. 1956 BLJR 67 : AIR 1956 Pat 201 (202) (Prs 8, 9).

——S. 83 — Deposit of amount due on mortgage — Full amount should be deposited — If less amount deposited it is not sufficient tender and mortgagee can ignore it. See T. P. Act (1882), S. 60. AIR 1955 NUC (Raj) 287.

——S. 83—Tender—Production of money not always necessary — Redemption suit — Mortgagee pleading that he had bought property outright — Liability of mortgagee for mesne profits — Contract Act (1872), S. 38.

It cannot be laid down as a general proposition that in order that it may be a legal tender, actual money must be produced under all circumstances.

If the creditor by his conduct dispenses with the production of the money, he cannot afterwards object that there was no valid tender. In other words, where by express words or conduct he shows his determination not to accept the money offered and the production of it is shown to be useless, it must be held that the creditor dispensed with the production. AIR 1917 L B 122, AIR 1923 P C 26, Rel. on; 1929 Rang 271, **Expl.**

Where the mortgagee refused to allow redemption saying that he had bought the property outright and it is found that the mortgagee's case was not true, the mortgagee can be ordered to account for what he had received after the institution of the suit. AIR 1917 L B 122, Applied. **1951 Raj L W 368 : AIR 1952 Raj 72 (78) (Pt B) (Pr 6).**

——S. 83—Remittance by money order—Operates as valid tender only when it is proved that the amount was actually taken to the payee and offered to him for payment. See Houses and Rents—Travancore-Cochin Buildings (Lease and Rent) Control Order (1950), Clause 8. **AIR 1955 NUC (Trav-Co) 1669.**

3. Deposit must be unconditional.

——Ss. 83 and 84 — Tender of mortgage money in Court before suit — Plaint not admitting transaction as mortgage but claiming it to be mere hypothecation — [Tender claimed to close claim upon mortgage and for rent on account of lease transactions] — Tender held not valid unconditional tender. **AIR 1955 NUC (Trav-Co) 1671 (DB).**

——Ss. 83 and 84 — Tender of mortgage money — Assignment by mortgagee bank — Liquidation of mortgagee — Purchaser of property from mortgagor moving liquidation Court to fix mortgage amount — **Held**, no valid tender — Petition to Court seeking permission to deposit—No notice to assignee—**Held** no tender—Notice to assignee that he was prepared to tender amount on condition that assignee promised to indemnify him for any loss due to conduct of original mortgagor — **Held** conditional tenders are not valid. **AIR 1955 NUC (Trav-Co) 1671 (DB).**

4. Deposit in redemption suit.

——Ss. 83, 84 and 76 (i) — Institution of suit for redemption of usufructuary mortgage — Not tantamount to tender of mortgage money — Deposit in Court after preliminary decree for redemption — Mesne profits can be awarded only from date of deposit and not from date of institution of suit. See T. P. Act (1882), S. 84. **AIR 1962 Pat 203 (DB).**

——S. 83 — Suit for redemption — Tender at time of suit is not obligatory, when mortgagor had tendered unconditionally the mortgage amount. **A I R 1955 NUC (Trav-Co) 1671 (DB).**

——S. 83—Decree for redemption with mesne profits —Deposit of mortgage money in Court — Notice of deposit to mortgagee — Mesne profits can be claimed by the mortgagor only from the date of service of the notice on the mortgagee till the actual delivery of possession to the mortgagor. See Civil P. C. (1908), O. 34, R. 7. **AIR 1952 Trav Co 236 (DB).**

——S. 83 — **Decree for redemption—Deposit—Right to mesne profits.—When arises —Date of deposit or** date of receipt by mortgagee of notice thereof — C. P. Code, O. 21, R. 1 (2) — Mortgagor not getting possession due to obstruction by persons holding under mortgagee — Right to mesne profits till delivery of actual possession.

A mortgagor who has obtained a decree for redemption and has deposited the amount of the decree into Court can claim mesne profits only from the date of service of the notice of the deposit on the mortgagee and not from an earlier date, i. e., date of deposit. Under S. 83, Transfer of Property Act, the deposit operates as a tender only when notice thereof is given to the mortgagee. O. 21, R. 1 (1) also provides for such a notice. But where after surrender of possession by the mortgagee delay is caused in delivering possession to the mortgagor due to obstruction by persons let into possession by and holding under the mortgagee, the latter is liable to the mortgagor for mesne profits not merely up to the date of surrender by him but up to the date of actual delivery of possession to the mortgagor. **AIR 1952 Trav Co 236 (236) (Prs 2, 3) (DB).**

5. Title to money deposited until withdrawal by mortgagee.

——S. 83 — Deposit in Court — Effect — Whether **per se operates to discharge mortgage.**

The deposit under S. 83 does not per se operate to discharge the mortgage and remains the property of the mortgagor until the mortgagee has expressed his willingness to the Court under S. 83 to accept the deposit and deposits the mortgage deed. Unless these conditions are fulfilled, the mere withdrawal of the deposit under different circumstances by the mortgagee will not operate to discharge the mortgage the reason being that the proceedings under S. 83 would come to an end with the refusal of the mortgagee to accept the deposit. **75 Mad LW 543 (2): (1962) 1 Mad L J 304 : AIR 1962 Mad 308 (309) (Pt B) (Pr 3).**

6. Minor mortgagee.

——Ss. 83, 84 and 103 — Usufructuary mortgage — Major and minor mortgagees—Notice of deposit without guardian ad litem — Service of notice cannot be valid unless guardian ad litem is appointed—But if in a suit for redemption the major defendants agree to act as guardians of minor mortgagees and notice is served on such defendants during the course of redemption suit the mortgagor becomes entitled to mesne profits from the date of service of notice. Section 84 does not prevent service of notice in a redemption suit. **AIR 1959 Pat 457.**

7. "The amount remaining due on the mortgage".

——Ss. 83, 84 — There must be tender or deposit — Mere expression of willingness to pay not sufficient—Tender must be of whole amount due under the mortgage. **(1965) 6 Guj L R 167 : I L R (1965) Guj 277 : AIR 1966 Guj 40 (45, 46) (Pt A) (Pr 6).**

——S. 83 — Failure by mortgagee to pay paddy as michavaram as agreed—Suit by mortgagor to recover the same by adjusting it against mortgage money due to mortgagee—Rate at which paddy is to be valued at the commutation rate prevailing on the date of suit. **AIR 1953 Trav-Co 533 (Pt A) (DB).**

8. The Court shall thereupon cause the written notice of the deposit to be served on the mortgagee.

——S. 83 —**Deposit under—Duty of Court.**

Where a tender is made under S. 83, it is not for the Court to decide whether or not the mortgage money deposited is actually the amount due to the creditor. All that it has to do is to pay the amount tendred to the mortgagee after completion of the prescribed formalities. It has no power to divert either the whole or part of the deposit to any other use. **ILR (1955) Hyd 147 : AIR 1955 Hyd 158 (158, 159) (Prs 2, 3) (DB).**

——Ss. 83 and 84 — Notice of deposit—Service of — Usufructuary mortgage — Provision for deposit of mortgage money on last day of 'Baishakh' every year —Notice of deposit served in 'Jeth' of year of deposit —Deposit is not invalid. **AIR 1956 Pat 201.**

——S. 83—Notice under S. 83, T. P. Act—Refusal to sign; acknowledgment — Notice must be taken to have been duly served even if the peon fails to suspend a copy of the notice required by R. 17. See Civil P. C. (1908), O. 5, R. 17. A I R 1953 Pat 346 (DB).

9. "Verified in manner prescribed by law for the verification of plaint."

——S. 83—Application under—Verified petition not filed by mortgagee — Right of mortgagee to money deposited in Court — Power of Court to order redemption.

Where an application under S. 83 is filed, it is only when a verified petition with documents contemplated in the latter part of S. 83 is filed by the mortgagee that the Court can allow him to receive the money. Otherwise, the Court can pass no order. Even when such a petition showing the mortgagee's willingness to accept the money is filed, the Court shall before paying him the amount so deposited, direct him to deliver possession. It is not open to the Court to decide or pass any order on any points of dispute in case the mortgagee does not file a verified petition accepting the money deposited but files objection. In such a case the Court should merely order the petition to be filed. ('51) 29 Mys L J 24.

10. Mortgagee must accept deposit in full discharge of amount due.

——S. 83—Tender of mortgage amount into Court — Dismissal of proceedings under S. 83 on mortgagee's refusal to accept mortgagee amount — Mortgagors allowing tender to continue in Court—Court does not become functus officio and can consider mortgagee's subsequent request to receive mortgage amount. 78 Mad L W 205 : AIR 1966 Mad 77 (80) (Pt B) (Pr 9).

——S. 83 —Tender of full mortgage amount by purchaser of equity of redemption — Mortgagee cannot refuse to accept — Mortgagee is liable for mesne profits from date of tender.

When the purchaser of equity of redemption from the mortgagor tenders the mortgage amount in full to the mortgagee in possession, the mortgagee cannot refuse to accept the tender and claim his right to remain in possession, on the ground that the vendee had not paid the entire purchase money to the vendor-mortgagor. If the mortgagee refuses to accept the tender, he shall be liable for mesne profits from the date of the tender. 30 Mad 524 ; 34 Mad 543 ; 43 Mad 712 and AIR 1944 Mad 124, Rel. on; 27 Mad 28, Not foll. 65 Mad L W 657 : 1952 Mad W N 561 ; (1952) 2 Mad L J 241 ; A I R 1953 Mad 821 (821) (Pt B) (Pr 3) (DB).

——S. 83 — Mortgagee accepting money deposited under S. 83 — He cannot later claim damages on ground that he was not given possession of the mortgaged property — A I R 1942 Mad 592, Rel. on. A I R 1963 Pat 324 (325, 326) (Prs 4, 5, 6).

SECTION 84

——Ss. 84, 76 (i) — Cessation of interest — Mortgage with possession — Dismissal of S. 83 proceedings on mortgagee's refusal to accept mortgage amount — Redemption suit — Mortgagor withdrawing deposit and re-depositing it in pursuance of preliminary decree — Held in circumstances of case continuance of deposit till obtaining possession was proof of readiness and willingness to pay and mortgagor was entitled to mesne profits from date of original deposit. See Transfer of Property Act (4 of 1882), S. 76 (i). 78 Mad L W 205; AIR 1966 Mad 77.

——S. 84 — Conditional deposit — Liability to pay interest.

A mortgagee in his suit on mortgage is justified in not accepting the deposit made by a purchaser of a portion of the hypotheca because the latter's title was in dispute and also because of the condition attached to the deposit and therefore, there would be no cessation of interest on the amount of deposit. (1954) 2 M L J 83 : 1954 Mad W N 288 : A I R 1954 Mad 830 (831) (Pr 2) (DB).

——S. 84—Tender and notice.

Interest does not cease on the giving of merely a notice unaccompanied by any actual tender of mortgage amount. 1954 Nag L J 64 ; A I R 1954 Nag 193 (200) (Pt F) (Pr 40) (DB).

——Ss. 84 and 60 — T. P. Act not in force in East Punjab—Principles applicable—Notice of intention to redeem—Failure to give—Since the absence of notice of intention to redeem is no bar of tender or payment as is clear from S. 84 and it is no bar to the right to redeem it is difficult to see how it can be a bar to a suit to redeem. See T. P. Act (4 of 1882), S. 60. AIR 1951 Punj 404 (DB).

——S. 84—Refusal of tender by mortgagee—Costs of redemption suit — Mortgagee is not entitled to costs of the suit. When both parties are at fault both parties will bear their own costs. See Civil P. C. (1908), S. 35. AIR 1952 Trav-Co 92.

SECTION 91

SYNOPSIS

(Transfer of Property Act (1882), S. 91.)

1. "Besides the mortgagor."
2. Clause (a)—General.
3. Puisne mortgagee.
4. Purchaser of equity of redemption.
5. Landlord if can redeem mortgage by tenant.
6. Reversioner under Hindu Law.
7. Surrender of mortgaged property by Hindu widow to next reversioner.
8. Member of Malabar Tarwad.
9. Tenants-in-common.
10. Co-owners and co-sharers.
11. Co-mortgagor.
12. Co-debtor.
13. Lessee from mortgagor.
14. Attaching judgment-creditor.
15. Person holding decree for sale of mortgaged property.
16. Trespasser.
17. Person with imperfect title to equity of redemption.
18. Partial redemption.
19. Effect of annulment of adjudication in relation to S. 91, T. P. Act.

1. "Besides the mortgagor."

——S. 91 — Mortgagor—Who is—Grantor of Guzara which grantee mortgaged without any power of transfer and where mortgagees acquired title by adverse possession not a mortgagor — Revision of grant — Grantor does not become mortgagor though he is entitled to redeem—He is not 'bhumidar" and is not entitled to benefit of S. 14, U. P. Zamindari Abolition and Land Reforms Act (1951). See T. P. Act (1882), S. 58. (1964) All W R 120 ; 1964 All L J 244.

——Ss. 91, 60, Proviso — Mortgagor admitting title of third party to mortgaged property in litigation between mortgagor and third party—Right of mortgagor to redeem not extinguished. Under S. 91 a

mortgagor is always entitled to redeem the mortgaged property even if he has parted with equity of redemption and it has become vested in a third person. See Transfer of Property Act (4 of 1882), S. 60, Proviso. **AIR 1959 Bom 172.**

——S. 91 — Civil P. C. (1908), O. 34, R. 1 and O. 1, R. 10 — Suit for redemption under O. 1, R. 10 only those persons would be regarded as necessary parties without whose presence the matters in controversy could not be effectually and completely decided — Terms of the mortgage deed making clear that the person whose interests are to be safeguarded need not be made a party and were in his absence the right of the mortgagor to redeem would be decided without prejudice to the rights of that person — That person is not a necessary party to a suit for redemption. See Civil P. C. (1908), O. 34, R. 1. **A I R 1956 Hyd 172.**

2. Clause (a) — General.

——S. 91 (a)—Redemption by puisne mortgagee.

Obiter. — Per Ram Labhaya J., Thadani J. dissenting. — Section 91 (a) implies that a mortgagee who seeks to redeem a previous mortgage must have a subsisting interest in his favour. A time-barred mortgage may not bring the case of a mortgagee under S. 91 (a). **('50) I L R (1950) 2 Assam 275 : AIR 1951 Assam 68 (70) (Pt C) (Pr 10) (DB).**

——S. 91 — Mortgagor parting with entire interest in mortgaged property — His right to redeem ceases — But if mortgagor is sued upon the personal covenant to pay, the mortgagor becomes entitled to get a reconveyance of the property to himself subject to the rights of persons interested in the equity of redemption—He cannot actively enforce his right to redeem in such a suit. **A I R 1951 Cal 202 (204) (Pr 12) (DB).**

——S. 91 (a) — 'Any person' — Person having contingent interest in mortgaged property—Right to sue for redemption.

Where the mortgage that is sought to be redeemed is a usufructuary mortgage, a person, having only a contingent interest in the property, would not come within the meaning of the term 'any person' in S. 91, Cl. (a) prima facie such a person is expected to have a present and subsisting interest in the property. **1955 Mad W N 989 : 69 Mad L W 472 : (1956) 1 Mad L J 75 : A I R 1956 Mad 304 (305, 306) (Pt B) (Prs 3, 8).**

——S. 91 (a) — Purchaser from mortgagor paying off mortgagee debt — Purchaser required to give up possession as mortgagor was found to have no title to same—Suit for re-imbursement — The purchaser was entitled to recover the amount to be a charge on the properties. The suit was filed within 12 years of the date of payment and as such there was no bar of limitation. See Limitation Act, Art. 132. **AIR 1957 Mys 65 (DB).**

——S. 91—Right to redeem — Suit on mortgage dismissed as barred by time against purchaser of part of property—Purchaser cannot redeem other mortgaged property.

A person who is not affected by the mortgage is not a person who is entitled to redeem.

A suit on mortgage was dismissed as time-barred against subsequent purchaser of part of the mortgaged property.

Held, that the purchasers had no right to redeem the other mortgaged property. **('52) 1925 Nag L J (Notes) 136.**

——S. 91 — Mortgagee has a right to be in possession until redeemed by a competent person. A wayfarer cannot offer the mortgage money and seek redemption from a mortgagee. See T. P. Act (1882), S. 58. **AIR 1955 N U C (Trav-Co) 1075.**

3. Puisne mortgagee.

——S. 91—Puisne mortgagee's right to redeem prior mortgage—(Limitation Act (1908), Art. 132).

A puisne mortgagee has the right to redeem a prior mortgage, but that right subsists only so long as his mortgage is alive. **1958 Andh L T 654.**

——S. 91 — Right of puisne mortgagee to redeem prior mortgagee—(C. P. Code (1908), O. 34, R. 1).

Where a prior mortgagee obtains a decree without impleading the puisne mortgagee and executes it by putting the mortgaged property to auction sale, that does not affect the puisne mortgagee's rights at all so long as the puisne mortgagee's rights are enforceable under the law—Thus, the puisne mortgagee's right to redeem the prior mortgagee subsists in spite of the said auction sale. If the puisne mortgagee's right to enforce his rights is itself barred by limitation, the position may be different.

The puisne mortgagee's claim to redeem the prior mortgagee cannot be resisted on the ground that the claim of redemption will lead to the consequential relief of possession in his favour. If the mortgagee takes possession of the property which is his security, and if during the time that he is in possession of such security he continued to be a mortgagee, then there is no justification for the argument that in a suit for redemption the mortgagee can claim to be in possession of the property adversely to the party entitled to redeem. **55 Bom L R 458 : ILR (1954) Bom 10 : AIR 1953 Bom 405 (408) (Pt C) (Pr 9) (DB).**

——S. 91 — Prior and puisne mortgage — Time essence of contract — Failure of puisne mortgagee to redeem prior mortgage within reasonable time after accrual of right — Contract relating to period is voidable at option of mortgagor — Contract Act (1872), S. 55.

Right to redeem and right to enforce the stipulation regarding the period of the mortgage are distinct and the doctrine that time is not essence of the contract in mortgages, whatever be its validity as a general principle, cannot be applied with regard to latter right.

Where the time was the essence of the contract, and the puisne mortgagee failed to exercise his right to redeem the earlier mortgage, within reasonable time after the right became available to him, the failure would result in rendering the contract relating to the period avoidable at the option of the mortgagor under S. 55, Contract Act. 1949 T L R 221, Rel. on. **1960 Ker L J 1528 : 1960 Ker L T 1255.**

——Ss. 91, 92—Prior mortgagee bringing mortgaged property to sale without impleading puisne mortgagee, and purchasing property himself — Subsequently puisne mortgagee redeeming prior mortgagee purchaser — Equity of redemption — (Civil P. C. (1908), O. 34, Rr. 1, 5).

Where a prior mortgagee brings the mortgaged property to sale without joining the puisne mortgagee, unless the equity of redemption is specifically excluded, the purchaser, mortgagee or third party, in the sale on the first mortgage obtains the equity of redemption also. After the equity of redemption has passed out of the mortgagor to the first mortgagee-purchaser, there can be no question of revival of such a right in the mortgagor when the puisne mortgagee redeems or pays off the prior mortgagee. A I R 1930 Pat 570 and A I R 1950 Assam 59, critised; A I R 1940 P C 11 : (1940) 1 Mad L J 97, Rel. on. **1958 Ker L T 589 : ILR (1958) Ker 1133 : A I R 1959 Ker 56 (58) (Prs. 18, 19, 20) (DB).**

——S. 91 — Mortgage with possession—Subsequent mortgage of equity of redemption — Subsequent mortgagee's right to sue for redemption of earlier mortgage.

The right of redemption is itself a property which the mortgagor is entitled to sell, mortgage or otherwise transfer. It is a fundamental concept of mortgage that it splits, so to say the ownership rights into two—one parcel (called the 'mortgagee's rights') goes to the mortgagee while the other piece which still remains with the mortgagor is the equity of redemption. When subsequently the mortgagor creates a mortgage of his right of redemption, that right again gets broken up into two fragments. This mortgagee gets the mortgagee rights of the equity of redemption while the mortgagor now retains with him the right to redeem the equity of redemption. Mortgagee of the equity of redemption can bring a suit for redemption against the earlier mortgagee with possession of the property or his representative in interest. **1959 M P C 551 : 1959 M P L J 866.**

——S. 91 — Suit for redemption by purchaser of mortgaged property.

In a suit for redemption brought by A who was claiming to redeem the mortgaged property by virtue of a sale-deed in his favour executed by the mortgagor, the mortgagee contended that A had no title to maintain the suit as the mortgaged property had been conveyed already to B by a prior sale-deed. It was proved that title in the property did not pass to B, even though there was a registered sale-deed between the parties, as the parties themselves admitted that no effect was given to the sale-deed and that the proposed vendee was unable to pay the consideration and take delivery of the sale-deed.

Held that as this was not the case of vendor and vendee, where the title passes to the vendee even though there is non-payment of consideration, A was entitled to maintain the suit for redemption. **A I R 1950 Pat 85 (85) (Pr 4).**

——S. 91 (a)—Subsequent mortgagee seeking possession of mortgaged property by discharging mortgage debt—Suit is in substance one to redeem prior mortgage. See Court Fees Act (1870), S. 7 (v). **1965 Cur L J 833 (Punj).**

——Ss. 91 and 92—Subsequent mortgagee—Rights of —Sale of property in execution of decree in favour of prior mortgagee — Claim for surplus sale proceeds by subsequent mortgagees allowed by executing Court—Subsequent suit for sale of property in hands of auction purchaser—Suit held barred. See Civil P. C. (1908), O. 34, R. 12. **A I R 1962 Punj 402 (DB).**

——S. 91—Prior mortgage not discharged — Divesting of auction-purchaser's title.

Suit by prior mortgagee — Puisne mortgagee not impleaded — Decree passed and property sold in execution — Auction-purchaser failing to get possession —Puisne mortgagee suing auction-purchaser for redemption—Suit decreed—Held that the passing of a decree to redeem the auction-purchaser had not the effect of divesting the latter's title to the equity of redemption and revesting it in those in whom it vested prior to the auction sale so as to enable them to sue for redemption. **1954 Ker L T 131 : A I R 1954 Trav-Co 384 (386) (Pt B) (Prs 8, 9) (DB).**

4. Purchaser of equity of redemption.

——Ss. 91 and 92 — Scope — Prior and subsequent mortgagee—Property sold in execution of decree on prior mortgage — Right of auction-purchaser to redeem subsequent mortgage—S. 67.

After first hypothecating the properties to K they were mortgaged to B. Assignee of K obtained a decree on hypothecation. B was not made a party. In execution of the decree, the properties were sold to A who assigned his rights to P. P filed a suit for redemption of the mortgage to B against D the assignee from B. D contended that B his assignor being a puisne mortgagee, he was entitled to redeem P whose claim was based on earlier hypothecation.

Held, that by virtue of the Court sale of the equity of redemption in the hypothecation suit the auction-purchaser obtained the rights of the mortgagee and the mortgagor also and became competent to redeem the subsequent mortgage to B and his rights had now been obtained by the plaintiff under the assignment. The Court sale though not binding on the subsequent mortgagee B, was binding upon the mortgagor, and the equity of redemption belonged to the mortgagor alone and the subsequent mortgagee had no right to it. Therefore D who was only a mortgagee was liable to be redeemed by P who was the present owner of the equity of redemption. **I L R (1957) Ker 53 : 1957 Ker L T 251 : 1957 Ker L J 222 : AIR 1957 Ker 45 (47) (Pt B) (Pr 4) (DB).**

——S. 91—Redemption suit by purchaser of equity of redemption — Non-joinder of original mortgagor — Though necessary party, his non-joinder is not fatal as relief could be granted without affecting rights of parties—Civil P. C. (1908), O. 34, R. 1.

After the execution of an usufructuary mortgage in favour of the appellant the mortgagor conveyed the equity of redemption to the respondent for which the entire purchase money had not been paid. The respondent rendered the amount due to the mortgagee who refused to receive it as money was due to him under a subsequent mortgage with respect to the same property, executed before the sale in favour of the respondent was completed. In a suit for redemption by the respondent.

Held, (i) though the mortgagor is a necessary party to the suit, failure to add him is not fatal as relief could be granted in the suit without affecting rights of parties not on record.

(ii) the plaintiff was entitled to mesne profits as the appellant was not entitled to remain in possession on the ground that the vendor had not been paid the entire purchase money by the respondent. The vendor's lien for purchase money would not entitle the vendor to remain in possession till the purchase money was paid and a mortgagee from the vendor has therefore no such right. **1952 Mad W N 561 : 65 Mad L W 657 : (1952) 2 Mad L J 241 : AIR 1953 Mad 821 (821) (Pts A, B) (Prs 2, 3).**

——Ss. 91 (a), 92 — Contract Act (1872), S. 69 — Purchaser of property from judgment-debtor prior to auction sale discharging prior usufructuary mortgage out of his own funds—Rights of — Right to use as shield against attack by auction-purchaser — Doctrine of unjust enrichment—Applicability.

The appellant purchased the suit property in execution of a money decree subject to prior encumbrances. The respondent had purchased the same property prior to the Court auction from the judgment-debtor and had discharged a prior usufructuary mortgage on the property out of his own funds. The respondent obstructed delivery of possession to the appellant.

Held, that the respondent as the purchaser of the mortgaged property had sufficient interest therein within the meaning of S. 91 (a) and on redemption of the prior mortgage was entitled to subrogation. His case fell within the first part of S. 92. He had the same rights as the usufructuary mortgagee whose mortgage he redeemed. He could use his possession of the property as a shield against the subsequent auction-purchaser, viz., the appellant, who was not entitled to the possession of the property unless he discharged the prior mortgage. AIR 1959 Mys 39, Foll.; A I R 1957 Mys 65, Applied. **38 Mys L J 480 : AIR 1960 Mys 289 (291) (Prs 8, 10, 12).**

——Ss. 91, 92 — Redemption by person not entitled to do so.

A mortgagee cannot absolve himself from liability as mortgagee to the person who has the right to redeem having acquired that right by purchase from the mortgagor, by allowing the mortgagor to redeem. In such a case redemption decree against both the mortgagee and the mortgagor can be passed. **AIR 1952 Mys 12 (14) (Pt B) (Pr 9) (DB).**

——S. 91—Redemption by auction-purchaser — Usufructuary mortgage — Subsequent purchase of equity of redemption by mortgagee himself — Mortgagee's possession for more than 12 years—Auction-purchaser bringing suit for possession within 12 years from mortgagee's purchase of equity of redemption — Right of redemption held not extinguished. **A I R 1962 Pat 177 (178) (Pr 2) (DB).**

——S. 91—Auction-purchaser at a rent sale acquiring the interest of the mortgagor—Has a right to redeem the mortgage interest even though he had failed to annul the incumbrance under S. 167 of Bihar Tenancy Act. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 167. **AIR 1955 N U C (Pat) 2148.**

——S. 91—Suit by prior mortgagee — Puisne mortgagee not impleaded — Execution of decree — Prior mortgagee purchasing property — Suit by subsequent mortgagee to enforce his mortgage—Prior mortgagee made party—Prior mortgagee can redeem subsequent mortgagee in his capacity as owner of equity of redemption. See T. P. Act (4 of 1882), S. 60. **A I R 1952 Pat 321 (DB).**

——S. 91—Contract Act, Section 69 — Mortgaged property sold in execution of rent decree—D advancing Rs. 2,000 to the mortgagor on his executing a conditional sale deed of the property in favour of D —The amount paid to the auction purchaser and sale set aside—Suit by mortgagee to enforce mortgage—D claiming salvage lien—Held principle of salvage lien did not apply because D had no interest in the property before he paid the money—His position is of a person acquiring interest in equity of redemption and acquired a lien against equity of redemption in the lands of the mortgagor. See Contract Act (1872), S. 69. **AIR 1952 Pat 81 (DB).**

——S. 91 (f) (before amendment of 1929)—Attaching creditor purchasing property subject to mortgage — Purchase pending mortgage suit—Right to redeem.

When an attaching creditor in execution of his decree, purchases the property which is subject to a mortgage, his right to redeem the mortgage under S. 91 (f) is extinguished. After the purchase, he can only seek to redeem the mortgage as being the owner of the equity of redemption. But if his purchase is during the pendency of the mortgage suit, his interest is extinguished by the sale in execution of the mortgage decree. **AIR 1951 Pat 254 (258) (Pt D) (Pr 10) (DB).**

——Ss. 91 and 92—Sale in execution of prior mortgage—Position of auction-purchaser as against subsequent mortgagee is that of a first mortgagee as well as that of the owner of equity of redemption. As prior mortgagee he can use the first mortgage as shield against the subsequent mortgagee while as owner of equity of redemption he can redeem all subsequent mortgages. See Civil P. C. (1908), O. 34, R. 12. **AIR 1962 Punj 402 (DB).**

——S. 91—Mortgage snit—Parties — Purchaser of equity of redemption is a necessary party to a suit to enforce a mortgage—If not made a party the decree is ineffective against his rights and if he is in possession he cannot be dispossessed by sale in execution of such decree. See Civil P. C. (1908), O. 34, R. 1. **ILR (1958) 8 Raj 772.**

——S. 91—X executing mortgages in favour of A,B and C—Sale of property to A discharging mortgages in favour of A and B—A mortgaging the property to P—Suit by C on his mortgage—P Made a party but did not appear—P filing a suit against auction purchaser in C's decree claiming priority over him—Held, P could plead priority in C's suit to which he was made a party —C's decree may not bind A but P was bound by it and could not claim priority on the ground that A was not impleaded in C's suit. See Civil P. C. (1908), S. 11, Expln. 4. **AIR 1955 NUC (Tra-Co) 539.**

——S. 91—Effect of non-joinder—Suit by subsequent mortgagee without impleading prior mortgagee and purchase of property in execution sale—Suit by prior mortgagee without impleading subsequent mortgagee —Prior mortgagee purchasing the same property in execution of his decree by a sale held earlier than the sale in execution of the subsequent mortgage decree — Prior mortgagee applying for delivery of possession which was objected by the subsequent mortgagee — Prior mortgagee then filing a suit for redemption—By virtue of the earlier Court sale the prior mortgagee would obtain the equity of redemption which belonged to the mortgagor and as owner of that equity of redemption he would be entitled to redeem the subsequent mortgagee. See Civil P. C. (1908), O. 34, R. 1. **AIR 1953 Trav-Co 554.**

——S. 91—Civil P. C. (1908), O. 34, R. 7—Suit for redemption by purchaser of equity of redemption — Stranger cannot question validity of purchase. See Civil P. C. (1908), O. 34, R. 7. **AIR 1950 Trav-Co 16 (DB).**

5. Landlord, if can redeem mortgage by tenant.

——Ss. 91, 105—Bhej Berari tenure—A kind of permanent lessee—Mortgage by such tenant — Suit for redemption by Zamindar is competent when he gets back the estate on the extinction of the line of the fixed rate tenancy of the permanent lessee — Debt laws—U. P. Agriculturists' Relief Act (27 of 1934), S. 12. **AIR 1951 All 655 (657, 660) (Pt B) (Prs 8, 17, 18).**

6. Reversioner under Hindu Law.

——S. 91—Hindu reversioner—Interest in property mortgaged—Right to redeem—(Obiter) — Per Ray C. J.—Hindu law—Reversioners.

Obiter.—Per Ray C. J. — The words "any interest in the property mortgaged or the right to redeem the same" would convey the widest possible connotation so as to include the particular kind of "interest," that a reversioner of Hindu law has in the last male owner's property during the subsistence of limited owner's tenures. **16 Cut L T 64 : AIR 1950 Orissa 150 (151 to 153) (Pt A) (Prs 10, 16) (DB).**

——S. 91—Hindu reversioner — Right to redeem — What must be proved — (Obiter)—Per Ray C. J. — Hindu law—Reversioners.

Obiter.—Per Ray C. J.—It is always desirable that when a reversioner wants to make out a case of an interest in the equity of redemption so as to be entitled to redeem, he must plead and prove that it was necessary for the preservation and protection of the property. **16 Cut L T 64 : AIR 1950 Orissa 150 (153, 154) (Pt B) (Pr 18) (DB).**

——Ss. 91 and 92—Hindu reversioner — Right to subrogate—Possessory lien — Hindu law — Reversioners.

At the request of her widowed mother who was unable to redeem a mortgage extecuted by her the plaintiff, her daughter paid up the mortgage money in the presence of the mother and Punchas of the village and the mortgagee, on receiving the money in full discharge of the mortgage, recorded an endorsement to that effect and made over the deed to the plaintiff. The plaintiff was given possession of the property which had been mortgaged but was later dispossessed forcibly by the defendants who were the

sons of the plaintiff's deceased sister. An unregistered deed of gift of this property was executed by the widow in favour of the defendants who, however, were never given possession under it. The plaintiff being dispossessed by the defendants brought a suit for recovery of possession on declaration that the defendants were mere trespassers :

Held, that as a reversioner, pure and simple the plaintiff could not claim having subrogated to the rights of the mortgagee; but that she was entitled to a possessory lien in respect of the property both as a matter of law and as a matter of equity, on the strength of which she could recover back her lost possession from the defendants who were mere trespassers claiming as they did under a void gift. **18 Cut L T 64 : AIR 1950 Orissa 150 (150, 154, 156) (Pt C) (Prs 3, 20, 27) (DB).**

——Ss. 91 and 92—Redemption by volunteer—Right of reversioner to redeem mortgage during life-time of widow—Subrogation.

The reversionary heirs of the deceased husband of a Hindu widow in possession as such of her husband's property are not persons who within the meaning of Section 91 of the Transfer of Property Act have such an interest in the mortgaged property as would entitle them during the life-time of the widow to redeem a mortgage made by the husband. 30 All 497 and AIR 1930 Oudh 294 Rel. on.

Even if the reversioners redeem the mortgage they would be in the position of volunteers and therefore, would not be entitled to be subrogated to the rights of the mortgagee. A I R 1931 Mad 110 and 1929 Mad 860, Ref. **ILR (1952) Patiala 101 : AIR 1952 Pepsu 74 (74) (Pt A) (Pr 2).**

7. Surrender of mortgaged property by Hindu widow to next reversioner.

——S. 91—Widow — Surrender by in favour of three daughters — Basis is effacement of widow's estate— Surrender by two daughters in favour of plaintiff — Surrender void — Suit by plaintiff for redemption making the son of third daughter as plaintiff—Defect not cured by impleading the son of the third daughter. See Hindu Law—Widow. AIR 1958 Pat 624 (DB).

8. Member of Malabar Tarwad.

——S. 91—Mortgage executed by Karnavan of Malabar Tarwad:— Person entitled to redeem —Junior member suing for redemption—Karnavan not proved to be disabled from seeking redemption — Other members of tarwad not made parties—Plaintiff held not competent.

A junior member of a Malabar Tarwad is not entitled to redeem a mortgage executed by the Karnavan of the Tarwad, on the ground that the tarwad not being a juristic person, any member of the tarwad can institute such a suit as co-owner of the tarwad property. The karnanan is the representative of the tarwad. He is not the agent of the members of the tarwad as such but only the agent of the legal entity called tarwad. The property of that entity is liable for the acts of the karnavan within the scope of his authority — both in contract and in tort. And when an action is laid against the tarwad even in jurisdiction where it is necessary to implead all the members of the tarwad, the members are impleaded only to represent the entity.

Where it is not shown how the tarwad was going in be benefited by allowing the junior member to redeem the mortgage, nor is there any allegation or proof that the karnavan had disabled himself from seeking to redeem the mortgage and also the other members of the tarwad were not made parties to the suit, the person competent to represent that body and give a discharge binding on it cannot be the junior member but the person who was the karnavan at the date of the institution of the suit. 1962 Ker L J 688, Dissented from : A I R 1951 Trav Co 155, Disting. **1964 Ker L T 166 : ILR (1964) 1 Ker 193 : 1964 Ker L J 243 : AIR 1964 Ker 81 (83 to 85) (Prs 7, 8, 10, 11, 15, 18).**

——Ss. 91, 92 — Redemption by junior member of Malabar tarwad — Effect — (Limitation Act (1908), Arts. 142 and 144).

The junior members of a tarwad who have redeemed tarwad mortgages from strangers can still not be taken to be representative of the tarwad in the matter. The redeeming junior member cannot be equated to the position of an assignee of the mortgage but is rather to be taken as the holder of a special interest in tarwad property with right to continue in possession until his accounts are settled, and paid off. No question of limitation or adverse possession as against the tarwad could arise in this case. **1957 Ker L T 732 : 1957 Ker L J 753 : I L R (1957) Ker 859 : A I R 1958 Ker 307 (308) (Pt F) (Pr 3) (DB).**

——Ss. 91, 92—Person interested — Mortgagee from separated member of tarwad — Redemption of mortgage binding on tarwad—Right of subrogation.

After a division in status, the members of a marumakkathayam tarwad become tenants-in-common with regard to the property along with the other members and it is open to some of the tenants-in-common to mortgage their share of the property to a third party without the junction of the other tenants-in-common. Under S. 91, T. P. Act, it is open to any co-sharer to redeem a mortgage executed by himself and other co-sharers. The separated members of the tarwad can, therefore, redeem the previous mortgage which is binding on the tarwad. The mortgagees from such separated members are also the 'persons interested' in the previous mortgage within S. 91, T. P. Act, and on redemption of a previous mortgage binding on the tarwad, they become subrogated under S. 92, T. P. Act, to the rights of the mortgagee whom they have redeemed. **A I R 1955 N U C (Mad) 3203.**

9. Tenants-in-common.

——S. 91—Property held as tenants-in-common mortgaged—One mortgagor selling his share to mortgagee — Equity of redemption of other mortgagor subsists —Mortgage as far as the part of vendor mortgagor is concerned the equity of redemption is extinguished and the other mortgagor cannot claim to redeem the share sold also. See T. P. Act (1882), S. 60. A I R 1954 Madh B 67.

10. Co-owners and co-sharers.

——S. 91 (a)—Possession of alienee from co-owner— Mortgage of whole property by co-owner—Possession of mortgagee for more than 12 years operates as ouster of other co-owners—Other co-owners cannot redeem mortgage. See Limitation Act (1908), Art. 144. A I R 1963 Ker 249.

——S. 91 (a) — Right to redeem — 'Interest in mortgage security'—Meaning—(C. P. Code (1908), O. 34, R. 1).

It is not merely the persons who have interest in, or charge upon, the right to redeem but also the persons who have interest in or charge upon the property mortgaged are entitled to redeem.

'Interest in the mortgaged property' mentioned in S. 91 (a), T. P. Act is not the same as the 'interest in the mortgage security' mentioned in O. 34, R. 1, Civil P. C. AIR 1930 Nag 173, Dissented from ; A I R 1947 Nag 210, Rel. on. Even the smallest interest in the mortgaged property is sufficient to entitle the plaintiffs to redeem the mortgage. Where one of the co-owners mortgages not only her share of the property

but the entire property without the concurrence of the other co-owners the other co-owners have right to redeem the same after the death of the mortgagor-co-owner. 36 Mys L J 458 : I L R (1958) Mys 239 : AIR 1959 Mys 39 (41) (Pt A) (Prs 10, 12, 13, 14).

——Ss. 91, 92, 60, 95—Mortgaged property falling to shares of A and B, A having one-third share and B two-third share — A selling entire property to mortgagee and reducing mortgage—Mortgagees' possession of B's share held not as mortgagee but adverse—Adverse possession for full period not proved — B is entitled to redeem this share. ILR 44 Pat 391 : AIR 1963 Pat 384 (385 to 387) (Pt B) (Prs 7 to 10) (DB).

11. Co-mortgagor.

——S. 91—Civil P. C. (1908), O. 34, R. 1 and O. 1, R. 9 — Effect of non-joinder — Suit for redemption by co-mortgagor — Other co-mortgagor necessary party — Co-mortgagor not joined — Plaintiff may be allowed to redeem whole mortgage on payment of entire amount due — See Civil P. C. (1908), O. 34, R. 1. AIR 1964 Ker 309.

——Ss. 91, 92 and 95 (as amended in 1929) — Co-mortgagor redeeming mortgage—Rights of the other mortgagor to file a suit for redemption — Limitation for such suit.

The co-mortgagor redeeming is merely an instance of subrogation. The redeeming mortgagor has not merely a charge, but the mortgage as to his share is extinguished and as to the shares of the other mortgagors he stands in the shoes of the mortgagee. Where a co-mortgagor redeems the entire mortgage his right as a mortgagee relates back to the date of the mortgage which he has redeemed for the benefit or priority over subsequent mortgages. The period of limitation for a suit for redeeming by the other mortgagor against the redeeming co-mortgagor is the same as against the mortgagee : 19 Pat 938 and AIR 1943 Bom 191, Appr.

A suit filed within 60 years of an acknowledgment will be in time. 65 Mad L W 1016 : 1952 Mad W N 799 : (1952) 2 M L J 404 : AIR 1953 Mad 366 (367, 368) (Pt B) (Prs 6, 7, 8).

——S. 91 — Suit by one of co-mortgagors to redeem entire mortgage is maintainable — See Civil P. C. (1908), O. 1, R. 8. AIR 1965 Punj 224.

——S. 91 — Redemption by co-mortgagor — Co-mortgagor can redeem the whole of the mortgage by paying the whole of the mortgage money and be subrogated in place of the mortgagee—He cannot under S. 60 redeem his own share — This provision is not affected by customary law principles—See T. P. Act (1882), S. 60. AIR 1955 N U C (Punj) 1355 (DB).

——Ss. 91, 60 and 95 — Mortgagee acquiring share in property — One of co-mortgagors can redeem entire residue left in spite of opposition of mortgagee: AIR 1940 All 528 and AIR 1945 All 388, Dissent.—See T. P. Act (1882), S. 60. AIR 1954 Punj 81 (DB).

12. Co-debtor.

——S. 91 — Person entitled to institute a suit for redemption — (Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), S. 12).

A co-debtor who is not a mortgagor but who is personally liable for the mortgage-debt under the terms of the mortgage is a person entitled to redeem the mortgage within the meaning of S. 91, T. P. Act, and therefore, can file an application under S. 12, U. P. Agriculturists' Relief Act. A I R 1955 N U C (All) 1695 (DB).

——S. 91 — Debtor one of co-mortgagors — Taking of accounts and scaling down will embrace the entire debt—Entire mortgage can be redeemed by debtor—See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 31. AIR 1957 Bom 6.

13. Lessee from mortgagor.

——S. 91 (a)—Cultivatory lessee—Right to redeem—(Debt laws — U. P. Agriculturists Relief Act (2 of 1939), S. 12)—(Civil P. C. (1908), S. 115)—Error of law.

The words "property mortgaged" in S. 91 (a) have reference to the entirety of the rights which the mortgagor had in the property before it was mortgaged, while the 'right to redeem' the same has reference to those rights of the mortgagor which he retains after the execution of the mortgage. Even a cultivatory lessee who has been granted a lease when a usufructuary mortgage has already come into existence has "an interest in the property mortgaged" as also in the right to redeem within the meaning of S. 91. The word "interest" is not necessarily confined to proprietary interest but includes even the interest of a lessee. Where the lower Court held that the Plaintiff, who was a cultivatory tenant, had no right to redeem.

Held, that as by a wrong application of the law the Court below had refused to exercise the jurisdiction vested in it to give relief to the applicant as provided for under S. 12 of U. P. Agriculturists' Relief Act, the case fell under Cl. (b), of S. 115, Civil P. C. 1954 All L J 767 : 1955 All W R (H C) 184 : A I R 1955 All 610 (611) (Pt A) (Prs 2, 3, 4).

——S. 91 — Civil P. C. (1908), O. 34, R. 1 and O. 7, R. 7—Mortgagee not impleading lessee of mortgaged property as party to his suit for sale on mortgage — Suit for declaration that mortgagee is entitled to bring property to sale for recovery of mortgage money maintainable — Subsequent suit by mortgagee for declaration that lease is not binding on him — Declaration that mortgagee is entitled to sue for sale of mortgaged property cannot be granted — Specific Relief Act (1877), S. 42 — See Civil P. C. (1908), O. 34, R. 1. AIR 1951 Assam 101 (DB).

——S. 91 — Civil P. C. (1908), O. 34, R. 1 — Lessee from mortgagor, is person interested in redeeming mortgaged property — Lessee not impleaded as party in suit for sale on mortgage — His right to redeem remains unaffected — See Civil P. C. (1908), O. 34, R. 1. AIR 1951 Assam 101 (DB).

——S. 91 — Right of permanent tenant to redeem — Whether necessary party to suit under O. 34, R. 1—(Civil P. C. (1908), O. 34, R. 1).

Permanent tenants on land prior to mortgage — Their rights are not affected by mortgage — They have no such interest in property as would entitle them to redeem — What is mortgaged by landlord is reversionary right vesting in him—Permanent tenants after mortgage — Since their rights come into existence during subsistence of mortgage, they are entitled to redeem — Permanent tenant whose rights are outside mortgage, has no interest in property mortgaged as such—His interest is paramount in the sense that it is not affected by a redemption or foreclosure or sale—He is not necessary party to suit under O. 34, R. 1, Civil P. C. 55 Bom L R 286 : I L R (1953) Bom 727 : AIR 1953 Bom 315 (315, 317) (Prs 2, 8).

14. Attaching judgment-creditor.

——S 91 (f) (before amendment of 1929) — Civil P. C. (1908), O. 34, R. 1 — Attaching creditor, not necessary party in a mortgage suit and remains entitled to redeem the mortgage if his purchase is not during the pendency of the mortgage suit—See Civil P. C. (1908), O. 34, R. 1. AIR 1951 Pat 254 (DB).

15. Person holding decree for sale of mortgaged property.

——S. 91 — Civil P. C. (1908), O. 34, R. 1—Attaching decree-holder, whether necessary party — The applicant had attached the hypotheca in execution of a money decree obtained by him—Suit by mortgagee to enforce hypothecation bond — The applicant applying to be made a party to the suit — The applicant is not a necessary party but in proper circumstances he is a proper party — In the present case he was allowed to be joined as defendant—See Civil P. C. (1908), O. 34, R. 1. AIR 1952 Trav-Co 74.

16. Trespasser.

——S. 91—Right of trespasser to redeem.

A trespasser before he perfects his title is not entitled to redeem. If the mortgagee allows a mere trespasser to redeem, the true owner would be entitled to treat the transaction as a nullity. AIR 1919 Oudh 217, Rel. on. ILR (1952) Nag 238 : AIR 1953 Nag 4 (5) (Pt B) (Pr 10).

——Ss. 91 and 92—Volunteer paying off mortgage—Extinguishment of mortgage — Suit for redemption by true owner of equity of redemption.

Where a person who has absolutely no title to the property mortgaged sells it, the purchaser's position is no more than that of an intruder between the mortgagee and the true owner of the equity of redemption and he will not be entitled to the equitable doctrine of subrogation by paying off the mortgage. The payment of the mortgage money cannot extinguish the mortgage. The true owner of the equity of redemption can bring a suit for recovery of possession without offering to pay any mortgage money to the purchaser. AIR 1931 Mad 110 and AIR 1937 Mad 451, Rel. on. 1952 Ker L T 436 : AIR 1952 Trav-Co 105 (111, 112) (Pt E) (Prs 19, 21, 22) (DB).

17. Person with imperfect title to equity of redemption.

——S. 91 (a) — 'Has any interest' — Meaning of — (Contract Act (1872), S. 69).

The criterion of 'having interest' is that there should be a reasonable basis for a person to honestly act upon in a manner which cannot be regarded as improper or wanton and not that the interest should be such as cannot be successfully challenged by any one. Interest in making payment does not mean such an interest as will stand the test of a judicial trial and all that is necessary is that the person making the payment should honestly and really believe payment to be necessary in his own interest. It seems repugnant to justice and equity that those who get or want to retain the advantage resulting from payments made by others should be immune from the obligation of making good the same and that bona fide alienees who clear off encumbrances binding nature of which is not open to doubt, should be denied reimbursement because of the alienation being attacked later on and being found to be defective or ineffective. 35 Mys L J 110 : ILR (1957) Mys 1 : AIR 1957 Mys 65 (68) (Pt C) (Pr 12) (DB).

18. Partial redemption.

——S. 91—Person entitled to equity of redemption of one of the properties — Can redeem the whole mortgage — Mortgagee can resist their claim for redemption of any item only if they have acquired the equity of redemption of that item. See Transfer of Property Act (1882), S. 60. AIR 1954 Trav-Co 251 (DB).

——S. 91 — Integrity split up — Partial redemption can be had.

• Where the integrity of a mortgage has been split up by the mortgagee purchasing an item of the property, suit for partial redemption is maintainable. AIR 1951 Trav-Co 212 (2) (213) (Pr 4) (DB).

19. Effect of annulment of adjudication in relation to S. 91, T. P. Act.

●——S. 91 — Provincial Insolvency Act, Ss. 28 (2), 28 (7) and 37—Mortgagor adjudged insolvent during the pendency of a suit on mortgage—Official receiver not made party to mortgage suit — Effect — The proceedings are ineffective to bind the equity of redemption which is vested in the Official receiver — Title to property on annulment vests retrospectively in the insolvent and all transactions made by him during insolvency will be validated with effect from the date on which the insolvency petition was filed—(Civil P. C. (1908), O. 34, R. 1) ; AIR 1929 Mad 480 : 113 Ind Cas 550, Overruled. AIR 1951 Nag 241, Dissent. from. See Provincial Insolvency Act (1920), S. 28 (2). AIR 1954 Mad 604 (FB).

SECTION 92

SYNOPSIS

(Transfer of Property Act (1882), S. 92.)

1. Scope.
2. Applicability to charges.
3. "Other than the mortgagor".
4. Redemption by subsequent mortgagee.
5. Redemption by purchaser.
6. Redemption by co-mortgagor.
7. Redemption by volunteer.
8. Redemption by a person claiming under a void or a voidable title.
9. Person who has advanced money to a mortgagor.
10. Sale or mortgage to pay off prior mortgage—Whether the first or the third paragraph applies.
11. Fourth paragraph — Mortgage must be redeemed in full.
12. Enforcement of rights acquired by subrogation.
13. Plea of subrogation.
14. Contribution and subrogation.

See Notes to S. 82.

1. Scope.

●——Ss. 92 and 95 — Not applicable in Punjab — Courts will apply the principles of, as rules of justice, equity and good conscience. Ganeshi Lal v. Joti Pershad, (1952) S C J 649 : 66 Mad L W 183 : 94 C L J 137 : 1953 S C R 243 : 1953 S C A 339 : 94 Cal L J 137 : ILR (1952) Punj 495 : AIR 1953 S C 1 (2, 3, 4) (Prs 7, 9, 11, 17).

——S. 92 — Section as amended has retrospective effect. ILR (1951) 1 All 515 : AIR 1953 All 296 (302) (Pr 17) (DB).

——Ss. 92, 6 (e), 130-A—Right to sue — Motor insurance — Assured assigning all his rights to insurer—Insurer can sue third party in his own name not because he is subrogated to rights of assured but because of express assignment of all rights by assured. See T. P. Act (4 of 1882), S. 6 (e). AIR 1965 Mad 159.

——Ss. 92, 82—Contribution—Basis for claim—Common ownership and discharge of common liability—Applicability of Ss. 82 and 92, T. P. Act and S. 43, Contract Act.

Encumbered estate purchased by 25 sharers — Property partitioned equally between them—Some sharers compelled to pay the whole amount of encumbrance

—These sharers sued to recover the money paid by them in excess ot their share from non-paying sharers—Held—Ss. 82, 92, T. P. Act or S. 43, Contract Act did not apply to this case — Still contributions could be claimed on the principle of equality of burden and equality of benefit which applied to this case. **AIR 1960 Mad 117 (119, 120) (Prs 8, 9) (DB).**

● —Ss. 92 and 95 — **Retrospective operation — (Transfer of Property (Amendment) Act (1929), S. 63).**

If an Amending Act groups together changes both in substantive and in procedural law and expressly enacts that such changes shall not have retrospective effect, that would not lead to an inference of any necessary intendment that all the other changes made by that Act were retrospective regardless of the question whether the changes were in substantive or in procedural law. The amending Act of 1929 does not by necessary intendment provide for retrospective effect being given to S. 92 and S. 95 among other sections referred to in clause (2) of S. 63. Independently of S. 63 neither expressly nor by necessary intendment does S. 92 or S. 95 or both of them taken together provide for retrospective effect being given to the statutory right of subrogation conferred by S. 92 on a redeeming co-mortgagor. AIR 1926 Mad 326 (1) : 41 M L J 501 and AIR 1918 Mad 19 : 34 M L J 528, held correctly decided. Ayyan Ammal v. Vellayammal. **1956 Mad W N 361 : I L R (1956) Mad 587 : (1956) 1 M L J 285 : 69 Mad L W 230 : AIR 1956 Mad 354 (358, 362, 364) (Prs 32, 67, 75 (FB).**

——S. 92—Two joint brothers A and B jointly mortgaging ancestral property — Subsequently B borrowing money on strength of promissory note from third person—Suit on promissory note—Decree—In execution property mortgaged sold and purchased by mortgagee—Suit for possession by A against mortgagee on ground that sale did not bind him — Mortgage held could not be used as shield in suit. **A I R 1951 Nag 307 (311) (Pt E) (Pr 42) (DB).**

——S. 92 — **Paragraph 1 of S. 92 deals with legal subrogation while para. 3 of that section provides for conventional or contractual subrogation.**

Paragraph 1 of S. 92 deals with the case of what is generally known as 'legal' subrogation. This kind of subrogation rests upon the doctrine of equity and principles of natural justice and not on privity of contract. Paragraph 3 of that section provides that a right of subrogation can be claimed only where there is a specific agreement that such a right may be claimed. This paragraph applies in the case of what is generally known as 'conventional' or 'contractual' suborogation. **ILR 28 Pat 531 : A I R 1950 Pat 13 (14) (Pt C) (Pr 6) (DB).**

——S. 92—**Law in Pepsu.**

The doctrine of subrogation is embodied in S. 92, T. P. Act, but in places such as Pepsu where the Transfer of Property Act is not in force, such subrogation arises from the principle of equity, justice and good conscience. **ILR (1955) Pepsu 539 : AIR 1955 Pepsu 145 (148) (Pt D) (Pr 8).**

——S. 92—**Subrogation—Law in Punjab.**

The principle of subrogation, as embodied in S. 92, has been applied to the Punjab although the Transfer of Property Act has not been extended to the Punjab. AIR 1941 Lah 53 and AIR 1943 Lah 113, Rel. on. **AIR 1959 Punj 490 (493) (Pt A) (Pr 6).**

——S. 92—**Co-sharer mortgaging specific items — Partition—Items falling to share of another—Right of mortgagee to obtain substituted security—Nature of —Mortgagee selecting another substituted security—Items already mortgaged—Priority of another mortgagee.**

A, a prior mortgagee selected a substituted security in the hands of his mortgagor as the property mortgaged had gone to the share of another coparcener—This property was already mortgaged to B by the mortgagor before partition and B had no notice of A's charge which A got on his selection of the property as a substituted security. B's mortgage would have priority over A's charge. In these circumstances if A insists on selecting these fields mortgaged to B it is in accordance with the principles of equity that the mortgagee rights of B should follow into A's hands and take precedence over the mortgage effected on these fields by virture of A's selection of these fields—Mortgage of B still remains attached to the property. **ILR (1957) Punj 79.**

——S. 92— Applicability — T. P. Act became law in Cochin State in year 1112—Redemption by co-mortgagor long before Act became law in Cochin — It is doubtful if S. 92 applies to such case. **AIR 1955 NUC (Trav-Co) 3467 (DB).**

2. Applicability to charges.

——Ss. 92 and 100, 82—By operation of law— Land revenue—Payment by co-sharer creates charge—Co-sharer is entitled to contribution as well as subrogation—See T. P. Act (4 of 1882), S. 100. **AIR 1965 Ker 55.**

3. "Other than the mortgagor."

——S. 92—Mortgagee from separated member of tarwad are 'persons interested' in the previous mortgage binding on the tarwad within the meaning of S. 91, T. P. Act and on redemption of previous mortgage they become subrogated to the rights of mortgagee whom they have redeemed — See Transfer of Property Act (1882), S. 91. **A I R 1955 NUC (Mad) 3203.**

——S. 92, Para. 3 — "A mortgagor" in S. 92 para. 3, T, P. Act does not necessarily mean all the mortgagors where there are more than one. See General Clauses Act (1897), S. 13. **AIR 1951 Mad 917 (DB).**

——S. 92—**'Other than the mortgagor'—Auction purchase—Right to redeem.**

Where a person purchases the equity of redemption at an auction sale and derives his title from the mortgagor he becomes a mortgagor within the meaning of S. 59-A. And if such a person pays off the entire mortgage-money to the mortgagee, he does not reap the benefit of S. 92. In such a case the question of subrogation does not arise. AIR 1939 All 190, Foll. **AIR 1959 Punj 490 (494) (Pt C) (Pr 12).**

4. Redemption by subsequent mortgagee.

——S. 92—Mortgage — Subrogation — Mortgagor assigning equity of redemption in favour of co-mortgagee, reserving payment of certain sum to her — Default in payment — Suit and charge — Decree in favour of mortgagor—Partition amongst mortgagees —One of co-mortgagees paying off charge decree — Suit by him for recovery of decretal amount from co-mortgagees — Subrogation of co-mortgagee who paid the decretal amount in place of original mortgagor—His position is that of a puisne mortgagee subrogated to the right of the prior mortgagee and by that right he is entitled to a decree for part of the amount they have sued for charged upon the defendant's share of the properties. **1965 Ker L J: 366: 1965 Ker L T 113 : AIR 1967 Ker 45 (46) (Prs 3, 4).**

■ ——Ss. 92, 91 — Prior mortgagee bringing mortgaged property to sale without impleading puisne mortgagee, and purchasing property himself—Subsequently puisne mortgagee redeeming prior mortgagee purchaser—Equity of redemption does not revive in mortgagor—(Civil P. C. (1908), O. 34, Rr. 1, 5—Effect of non-joinder) — See T. P. Act (4 of 1882), S. 91. **AIR 1959 Ker 56 (DB).**

● ——S. 92—Limitation Act, Art. 132—Puisne mortgagee paying off prior mortgage decree is not subrogated to the position of decree-holder and does not get fresh starting point of limitation for enforcing his charge from the date of payment fixed in the mortgage decree. The period of limitation will be under Art. 132 from the date of payment in the original mortgage—(Interpretation of Statutes — Hardship)—(Civil P. C. (1908) Pre.) — 1936 All 33 (AIR V 23) (FB) and 1922 All 153 (2) (AIR V 9) and 1945 All 239 (AIR V 32) (FB) and 1945 Cal 194 (A I R V 32) and 1925 Mad 80 (AIR V 12), Dissented from; 1939 Pat 375 (AIR V 26): 18 Pat 342: 183 Ind Cas 400 and 22 Pat 187: 1943 Pat 305 (A I R V 30): 211 Ind Cas 334, **Overruled** — See Limitation Act (1908), Art. 132. **AIR 1956 Pat 414 (FB).**

——Ss. 92, 98 — Anomalous mortgagee paying mortgage-decree in favour of prior mortgagee — Payment made in order to preserve mortgaged property from sale—Payment made is not one by volunteer — Such mortgagee is entitled to subrogation under S. 92 — See T. P. Act (4 of 1882), S. 98. **A I R 1950 Pat 13 (DB).**

——S. 92—Redemption by subsequent mortgagee.

Where a second mortgagee of the same property pays the mortgage money to the first mortgagee in saving which from being sold in execution of mortgage decree, he is presently interested, then if there is nothing to show that the second mortgagee either expressly or impliedly indicated any intention to extinguish the prior charge he should be deemed to have adopted the course which is to his interest, namely, to keep the prior charge alive. He is thus subrogated to the position of the first mortgagee. **AIR 1953 Trav. Co 536 (536) (Pr 2) (DB).**

5. Redemption by purchaser.

——S. 92 — Subrogation—Purchaser mortgagee paying off a prior mortgage and also his own out of funds reserved with him by his mortgagor vendor — It can claim subrogation in suit by a subsequent mortgagee.

Where a mortgagee purchaser pays off a prior mortgage and also his own out of funds reserved with him by his mortgagor vendor, he is not entitled to claim any rights of subrogation in a suit by a subsequent mortgagee. He paid off the mortgages not with his funds but with the money of the mortgagor left in trust with him for that purpose. He did not pay to protect his own rights. **ILR (1951) 1 All 515; AIR 1953 All 296 (302) (Pt D) (Pr 19).**

——Ss. 92, 91 — Redemption by junior member of tarwad — Effect — Cannot be equated to the position of an assignee of the mortgage but is holder of an interest in tarwad property with right to continue in possession until his accounts are settled and paid off — No question of limitation or adverse possession arises — (Limitation Act (1908), Arts. 142 and 144. See T. P. Act (4 of 1882), S. 91. **AIR 1958 Ker 307 (DB).**

——S. 92 — Usufructuary mortgage by father — Family partition — Mortgaged property allotted to son — Son discharging mortgage — Son is in position of assignee from original mortgagor and would not be barred from rights of subrogation. **AIR 1955 Mad 601 (601) (Pt B) (Pr 2).**

——Ss. 92, 91 (a) — Contract Act (1872), S. 69 — Respondent purchasing property from judgment-debtor prior to auction sale and discharging prior usufructuary mortgage out of his own funds — Rights of respondent — Respondent subrogated to rights of usufructuary mortgagee and could use his possession as shield against attack by auction-purchaser — Doctrine of unjust enrichment — Applicability. See T. P. Act (4 of 1882), S. 91 (a). **AIR 1960 Mys 289.**

6. Redemption by co-mortgagor.

● ——S. 92—Mortgage of joint property in Punjab—One co-mortgagor redeeming whole property — Subrogation — Extent of right of subrogee.

The principles of justice, equity and good conscience apply to the Punjab where the provisions of the T. P. Act are not made applicable. Where one of the co-mortgagors redeems a mortgage over the property which belongs jointly to himself and the rest, equity as embodied in the doctrine of subrogation confers on him a right to reimburse himself for the amount spent in excess by him in the matter of redemption; he can call upon the co-mortgagors to contribute towards the excess which he has paid over his own share. Such a co-mortgagor stands in the mortgagee's shoes only to the extent of getting reimbursed from the co-mortgagors for their shares in the amount actually paid by him and not for the full amount due on the mortgage on the date of redemption. AIR 1949 E P 254, Affirmed. **1952 S C J 649: 66 Mad L W 183: 1953 S C R 243: 1953 S C A 339: 94 Cal L J 137: ILR (1952) Punj 495: AIR 1953 S C 1 (2 to 4) (Pt B) (Prs 7, 9, 11, 17).**

● ——Ss. 92, 82 — Suit for contribution — Plaintiff's rights against defendants — Provisions applicable — Contract Act (1872), S. 43.

A, B, C mortgaging their separate properties for Rs. 10,000 for a debt jointly owed by them. A owed Rs. 2,000, B Rs. 3,000 and C Rs. 5,000—A selling his property and paying off the whole mortgage amount — Held there being no contract to the contrary A's only remedy was under S. 92, T. P. Act read with S. 82. As there was no personal covenant as between the mortgagors or any contract to the contrary A could not claim separate personal relief against defendants B and C. See T. P. Act (1882), S. 82. **AIR 1952 S C 47.**

——Ss. 92, 82 and 100—Redemption by co-mortgagor — He can claim subrogation and contribution — Suit for contribution — Starting point of limitation would be the date on which the plaintiff made the payment and redeemed the mortgage — If he claims the rights similar to those of the mortgagee, he may have a right of subrogation. See Limitation Act (1908), Art. 132. **AIR 1964 Bom 284.**

● ——S. 92 — Limitaiion Act, Arts. 148 and 144 — Mortgage property redeemed by one of the mortgagors — Suit for possession by co-mortgagor — Suit is governed by Art. 148 and not by Art. 144 — Possession by redeeming mortgagor cannot constitute adverse possession against the co-mortgagor. See Limitation Act (1908), Art. 148. **AIR 1964 Mad 281 (FB).**

● ——S. 92 — Limitation Act, Art. 148 — Suit by co-mortgagor for recovery of his share of hypotheca from his co-mortgagor who is in possession after discharging mortgage—Period of limitation — If the redeeming co-mortgagor takes the shelter of subrogation the period of limitation will be under Art. 148, Limitation Act and the starting point will be the same as for the original mortgage redeemed. See Limitation Act (1908), Art. 148. **AIR 1964 Mad 269 (FB).**

——S. 92 — Scope — Co-mortgagor redeeming entire mortgage — Rights of — Subrogee — If mortgagee within S. 9-A, Madras Agriculturists Relief Act—Debt Laws—(Madras Agriculturists Relief Act (4 of 1938), S. 9-A).

When one of the two co-mortgagors discharges an encumbrance binding on both, the person so discharging could not recover from his co-mortgagor more than the proportionate share of the amount actually paid by him. That is to say, the mortgage in its original form is not enforceable as regards the amount due on it but it is only the proportionate liability of the property other than his own to which he would be entitled to under subrogation. The subrogation

does not mean a complete substitution of the subrogee in the place of the mortgagee as if the claim is to be enforced on the original mortgage. It is the payment and redemption which entitles the co-mortgagor to be in possession of the property. Therefore a co-mortgagor redeeming the entire property and being subrogated to the rights of the mortgagee in regard to the excess payment of mortgage money paid by him cannot be in the position of a mortgagee within the meaning of S. 9-A of Madras Act (4 of 1938) and therefore, the claim of such a co-mortgagor for subrogation cannot be discharged by virtue of that section. **1959 Mad W N 418 : ILR (1959) Mad 883 : 72 Mad L W 424 : (1959) 2 Mad L J 122 : AIR 1959 Mad 555 (557, 558) (Prs 11, 12, 13).**

● ——S. 92 — Rights of co-mortgagor making payment of mortgage debt in addition to what he owes— Besides the right of subrogation under Ss. 92 and 95 he also acquires a right of contribution under S. 82, T. P. Act. These remedies are independent of each other and not mutually exclusive. See T. P. Act (1882), S. 82. **AIR 1957 Mys 1 (FB).**

——S. 92 — Person purchasing mortgaged property — Right of subrogation — Enforcement of right.

A person who purchases one of the mortgaged houses becomes a co-mortgagor along with the mortgagor and where, on a preliminary decree for foreclosure having been passed in favour of the mortgagee, he deposits not only the amount left with him out of the purchase money for payment towards the mortgage but an additional amount out of his own funds to make up the entire decretal amount, he is entitled to subrogation under the first paragraph of S. 92 and his right can be worked out in the suit though the preliminary decree was not passed in Form 9 of Appendix D, if the decree as passed reserves to the parties liberty to apply to the Court from time to time for such directions as the circumstances of the case might require. AIR 1932 All 489 (FB), held must be deemed to have been overruled by AIR 1937 All 588 (FB). **1956 N L J 143 : ILR (1956) Nag 197 : AIR 1955 Nag 280 (282, 283) (Prs 9, 10, 13, 14, 16) (DB).**

——S. 92 — Co-mortgagor redeeming mortgage is not merely a charge-holder.

A co-mortgagor on redeeming the mortgaged property acquires the same rights, as regards redemption, foreclosure or sale of such property, as the mortgagee whom he redeems may have against the mortgagors. No new mortgage is created in his favour, nor is he merely a charge-holder. The effect of redemption is that the co-mortgagor is subrogated to the position of the mortgagee. So far as the other mortgagors are concerned, the mortgage is not extinguished but continues to subsist, with the only difference that its benefit is transferred to the person who had paid it off. The other mortgagors have to get their shares redeemed from the redeeming co-mortgagor who steps into the shoes of the original mortgagee. AIR 1936 Lah 290, Dissented from. **ILR (1955) Pepsu 539 : AIR 1955 Pepsu 145 (146) (Pt B) (Pr 3).**

——Ss. 92 and 60 — Co-mortgagor redeeming whole mortgage — Rights of other co-mortgagors.

The provisions of S. 92 of the Transfer of Property Act do not apply to the Punjab. A co-mortgagor who has redeemed the whole mortgage cannot be taken to have been subrogated to all the rights of the original mortgagees because he can in no case be regarded to hold a mortgage at least on his own share of the mortgaged property. By redeeming the previous mortgages the co-mortgagor became entitled to reimbursement of the amount paid by him in respect of the shares of his other co-mortgagors and succeeds to the rights of the previous mortgagees only to this extent. It will be in accord with the principles of justice, equity and good conscience that each of the other mortgagors may redeem his share of the property by payment of the proportionate amount actually paid by the redeeming co-mortgagor. The integrity of the original mortgages is no longer in existence. It will be in accordance with the principles of justice, equity and good conscience to allow the other co-mortgagors to redeem their share of the property on payment of the proportionate amount of the mortgage money. **AIR 1959 Punj 170 (172) (Pt A) (Prs 5, 7) (DB).**

——S. 92 — Rights of subrogee.

The subrogee cannot, according to the rules of justice, equity and good conscience as applicable in the Punjab, claim anything more than what he has himself paid. 1952 S C J 649 : AIR 1953 S C 1, Foll. **AIR 1959 Punj 170 (172) (Pt B) (Pr 9) (DB).**

——S. 92 — One co-mortgagor redeeming mortgage is subrogated to the rights of the mortgagee — Suit by other co-mortgagor to redeem his share — Limitation is sixty years from the date of original mortgage under Art. 148 Limitation Act. See Limitation Act (1908), Art. 148. **AIR 1955 N U C (Punj) 5719.**

——S. 92 — Redemption by co-mortgagor — He can redeem the whole mortgage and get subrogated in place of the mortgagee — He cannot redeem his own share under S 60. See T. P. Act (1882), S. 60. **AIR 1955 N U C (Punj) 1355 (DB).**

——S. 92 — Co-mortgagor redeeming whole mortgaged property after 1-4-1930 becomes with respect to his co-mortgagor subrogated to the position of the mortgagee whom he redeems — Right of subrogation — Retrospective effect of S. 92—Suit for redemption by another co-mortgagor —Time begins to run against him (the redeeming co-mortgagor) under Art. 148, Limitation Act from the date of the original mortgage — (Limitation Act (1908), Art. 148). **AIR 1953 Sau 43 (46) (Prs 11, 12).**

——Ss. 92, 95 — Redemption by co-mortgagor — Limitation Act (1908), Arts. 144, 148 — (Travancore Limitation Act, Arts. 132, 136).

The case of a co-mortgagor redeeming the shares of the other co-mortgagors, is merely an instance of subrogation and he stands in the shoes of the original mortgagee in respect of the shares of the other co-mortgagors. The suit by the plaintiffs for redemption is governed by Art. 148 and not the residuary Art. 144. **ILR (1953) Trav-Co 48 : AIR 1955 N U C (Trav-Co) 537 (DB).**

7. Redemption by volunteer.

——Ss. 92 and 91 — Hindu reversioner — Right to subrogate — Possessory lien — Hindu law — Reversioners.

Reversioner paying off mortgage executed by widow and getting possession of the property — Reversioner dispossessed by defendants who claimed under a gift from the widow — Suit by plaintiff reversioner for possession — Held, plaintiff as a reversioner could not claim to be subrogated but was entitled to a possessory lien in respect of the property and claim possession on that ground from the defendants who were mere trespassers as the gift deed in their favour was void. See Transfer of Property Act (4 of 1882), S. 91. **AIR 1950 Orissa 150 (DB).**

——S. 92 — Person having no interest in equity of redemption redeeming mortgage — Right of.

Where a person who has no interest in the equity of redemption or the property mortgaged, pays off the mortgage and goes into possession, he is a mere volunteer with no equities in his favour and is not subrogated to the rights of mortgagee. A suit for possession against him by the owner of the equity of redemption, without paying the mortgage money is maintainable. **AIR 1931 Mad 110** and **AIR 1952**

Trav-Co 105 and AIR 1924 All 834 and AIR 1936 Mad 308, Relied on. AIR 1947 Bom 471 and ILR 27 Bom 43 and AIR 1914 Mad 334 (2) : 28 Mad L J 140, Relied on. 1961 B L J R 697 : AIR 1960 Pat 474 (477 to 479) (Pt B) (Prs 23, 24).

——Ss. 92 and 91 — Reversionary heirs in possession of property of the deceased husband of a Hindu widow — Are not persons who within the meaning of S. 91 have an interest in the property entitling them to redeem within the life time of the widow, the mortgage executed by the deceased husband — If they redeem they will be volunteers not entitled to subrogation. See T. P. Act (1882), S. 91. AIR 1952 Pepsu 74.

——S. 92 — Redemption by person having no right to redeem.

When a person redeems a mortgage without any right and according to law he cannot be subrogated to the mortgage, such person cannot be regarded as a transferee from the mortgagee. ILR (1952) Patiala 101 : AIR 1952 Pepsu 74 (75) (Pt B) (Pr 5).

——S. 92 — Right of subrogation — Who can claim — Mere volunteer paying mortgage debt cannot claim.

A mere volunteer cannot claim the right of subrogation by paying off a mortgage debt, the reason being that no one is entitled to thrust a benefit on another and claim to be reimbursed. A voluntary payment does not create any obligation to repay. 36 Cal 193 and AIR 1936 Mad 264, Rel. on. 1962 Raj L W 554 : ILR (1959) 12 Raj 957.

——Ss. 92 and 91 — Volunteer paying off mortgage does not get subrogated — No extinguishment of mortgage — Suit for redemption by true owner of equity of redemption lies without offering any money to the volunteer. See T. P. Act (1882), S. 91. AIR 1952 Trav-Co 105.

8. Redemption by a person claiming under a void or voidable title.

——S. 92 — Setting aside of sales effected to discharge previous mortgages—Revival of mortgages.

It was contended that as a consequence of the sales by trustees being set aside the mortgages, which were subsisting on the properties and for the discharge of which sales were made, were not automatically revived or restored, the purchasers thereby becoming mortgagees entitled to be paid the mortgage amount with interest at the contract rates and that the only principle of law under which the mortgage becomes revived is the principle of subrogation as enacted in S. 92 of the Transfer of Property Act.

Held, that the direction as regards the payment of the amounts of the mortgages discharged by the purchasers was made to work out the equities arising from the setting aside of the sale deeds and not by applying any rule of law. A I R 1955 N U C (Mad) 3934 (DB).

●——S. 92—Purchase by mortgagee in execution of his own decree — Rights as purchaser not recognised in subsequent suit by other creditors and was treated as only a mortgagee decree-holder — Effect on transfers by mortgagee purchaser — As the rights as purchaser of the mortgagee were not recognized as a mere mortgagee decree-holder he could not sell the property to *B* — Sale in favour of *B* could not be upheld—*B* would be entitled to be subrogated to the rights of the mortgage subsisting on the property which he had redeemed and also to the rights of his vendor as mortgagee decree-holder. See Transfer of Property Act (1882), S. 67. A I R 1954 Mad 604 (FB).

——S. 92 — Rights of purchaser of mortgaged property — Mortgagee obtaining decree against mortgagor and purchaser—Mortgagor declared insolvent and sale annulled—Purchaser paying decretal amount is entitled to be shown as scheduled creditor—(Provincial Insolvency Act, S. 33)—Contract Act, S. 69.

A purchaser of land who pays off an encumbrance is entitled when his purchase is found to be invalid, to stand in the shoes of the mortgagee whom he has paid off.

B purchased the mortgaged property and the mortgagee obtained a preliminary mortgage decree against the mortgagor and *B*. Later the mortgagor was adjudged insolvent. On the mortgagee's application the sale in favour of *B* was annulled. The Insolvency Court observed that *B* might be included in the list of creditors for recovery of sums really paid towards consideration. *B* deposited the decretal amount to discharge the mortgage and the same was withdrawn by the mortgagee who alleged that it was done under protest. *B* was shown in the schedule of creditors in respect of the payment.

Held, that *B* was entitled to be included in the schedule of creditors under S. 33, Provincial Insolvency Act. 21 Nag L R 21 ; 31 Mad 439 and I L R (1945) Nag 247, Rel. on ; A I R 1939 Lah 145 and A I R 1947 Bom 392, Dist. 1952 Nag L J (Notes) 143.

9. Person who has advanced money to a mortgagor.

——S. 92 — Prior mortgagee purchasing mortgaged property—Sale consideration consisting of amount of his own mortgage and also that on subsequent mortgage — Amount of subsequent mortgage kept with vendee to pay the subsequent mortgagee — Vendee mortgagee is not subrogated to the rights of the subsequent mortgagee.

In 1921 *H* an agriculturist executed a mortgage in favour of *G*, also an agriculturist. In 1922 he executed another mortgage in favour of *S*. *S* executed a sub-mortgage in favour of *P* in 1927. On 17-8-1928 *H* sold the property to *G*. The consideration consisted of the amount of both the mortgages and little more. Mortgage money due to *S* was kept with *G* to be paid to *S*. The sub-mortgagee *P* instituted a suit upon his mortgage of 1927 and sought a decree for sale of the property. He impleaded as defendants *S*, his own mortgagor, and (sons of) *H* and *G*.

Held, that since the debt of *G* was satisfied by sale to him, the relation of debtor and creditor came to an end. It was not possible for *G* to keep the mortgage in his own favour alive when he purchased the equity of redemption. There was a merger of equity of redemption with the mortgagee rights. In the absence of an agreement between *H* and *G* that on his paying off *S* he would be subrogated to the rights of *S* as mortgagee, *G* would not be subrogated to the rights of *S*. When *G* paid off *S* he did so not with his money but with the money of *H* left with him in trust for that purpose. When he did not use his own money he could not claim the right of subrogation. *G* was therefore, not entitled to any subrogation or lien. Case law ref. A I R 1953 All 296 (302) (Pt D) (Pr 19) (DB).

——S. 92—Purchaser from mortgagor — Payment to mortgagee in pursuance of contract of sale — Subrogation.

A vendee from a mortgagor who pays off the prior mortgage out of the money left with him by his vendor, which money he is bound to pay under the terms of the contract of sale, cannot claim to be subrogated to the rights of the mortgagee unless a registered instrument expressly creating such rights of subrogation was executed in accordance with the terms of S. 92. A I R 1950 All 682 (FB), Rel. on. 1951 All W R (H C) 401 : A I R 1951 All 596 (597) (Pt A) (Pr 8) (DB).

●——S. 92—Prior mortgage paid off by vendee out of sale consideration—Vendee, if subrogated to prior mortgagee.

A vendee from mortgagor who pays off the prior mortgage out of the money left with him by the vendor mortgagor, and is bound to pay it under the terms of the contract, cannot claim to be subrogated to the rights of the mortgagee whom he pays off without a registered instrument expressly creating such rights of subrogation being executed by the mortgagor vendor. A I R 1937 All 588, Approved. 1950 All L J 970 : 1951 All W R (H C) 188 : I L R (1951) 2 All 384 : A I R 1950 All 682 (687, 688) (Prs 41, 43) (FB).

——Ss. 92, 91 and 67 — Prior and subsequent mortgage — Property sold in execution of decree on prior mortgage — Auction purchaser had obtained the rights under the hypothecation bond and had also a right to redeem subsequent mortgage because in execution sale he obtains the rights of the mortgagor also — (Civil P, C. (1908), O. 34, R. 1). See Transfer of Property Act (4 of 1882), S. 91. A I R 1957 Ker 45 (DB).

●——S. 92, Thid paragraph — Agreement not itself a mortgege.

It is true that a person in the position of the lessee, who at the request of the mortgagor-lessor has advanced to him money which has been utilised to redeem the mortgages, obtains a right to be subrogated to the rights of the mortgagee whose mortgage has been redeemed though it is necessary to have that right recognised in an agreement registered. But this consequence is a legal consequence flowing out of the provisions of the statute and such an agreement wili not ipso facto become a mortgage with or without possession. Poard of Revenue, Madras v. Simson and Mc Canechy, Ltd. 71 Mad L W 487 : 1958 Mad W N 616 : (1958) 2 Mad L J 273 : I L R (1958) Mad 917 : AIR 1958 Mad 508 (509, 510) (Pr 5) (FB).

——S. 92 — Legal subrogation and conventional subrogation, distinction between—Right to subrogation arises only on discharge of prior mortgage and not earlier — Puisne mortgagee purchasing mortgaged property and undertaking to discharge prior mortgage as well as his own mortgage — Case falls under third para. of S. 92 — But there heing no registered agreement he is not entitled to subrogation.

The distinction between legal subrogation and conventional subrogation is that in the case of the former the person having the pre-existing interest discharges the prior mortgage to protect his interest and by meeting an obligation in excess of his liability; whereas in the latter case he would be discharging only an obligation he had uncertaken under a specific agreement : A I R 1936 Mad 171 (FB); A I R 1939 Mad 949; A I R 1937 All 588 (FB); AIR 1938 Pat 532 and AIR 1936 Cal 427, Ref.

The foundation of the right of legal subrogation is the equitable principle of reimbursement. The personal obligation arising under the circumstances is embodied in S. 69, Contract Act and the equitable right of subrogation under S. 92, T. P. Act. In either case the right to subrogation or reimbursement will arise only on the discharge of the prior mortgage and not earlier.

Where a puisne mortgagee purchases the mortgaged property and the consideration for such sale is the amount due on his own mortgage and also the amount due on a prior mortgage which he undertakes to discharge, the case falls within para. 3 of S. 92, but where there is no registered instrument for subrogation as required by that para. the puisne mortgagee is not entitled to be subrogated to the rights of the prior mortgagee whom he has paid off as against a mesne mortgagee. 62 Mad L W 745 : 1949 Mad W N 667 : (1949) 2 Mad L J 520 : A I R 1950 Mad 186 (188) (Prs 5, 7) (DB).

——S. 92—Applicability of first and third paragraphs indicated. Person advancing money himself redeeming the mortgage—Registered instrument not necessary. Paragraph 3 does not apply — Person advancing money not himself redeeming but claiming subrogation — Paragraph 3 applies and registered instrument necessary. AIR 1955 N U C (Orissa) 1859 (DB).

——S. 92—Scope of section—Section has crystallised conventional law of subrogation — Subrogation will not be granted unless mortgagor has by registered instruments agreed that person who has advanced money to him with which the mortgage has been redeemed shall be subrogated to the rights of mortgagee whose mortgage has been redeemed. AIR 1955 N U C (Pat) 242.

——S. 92 — Right of subrogation when arises stated — Subrogation will arise only in those cases where the parties claiming it advanced the money to pay a debt which in the event of default by the debtor he would be bound to pay or where he had some interest to protect or when he advanced the money under an agreement, express or implied, made with the debtor or creditor. A I R 1955 N U C (Trav-Co) 542 (DB).

10. Sale or mortgage to pay off prior mortgage — Whether the first or the third paragraph applies.

——S. 92 (3) — Scope — Conventional subrogation — Property subject to mortgage — Purchaser directed to pay off the mortgage out of the sale price — No registered contract — Purchaser's right to subrogation.

Under S. 92, Cl. (3) of the Transfer of Property Act, as now amended a right on the footing of conventional subrogation could be claimed only if there is a specific contract to that effect between the mortgagor or the vendor and the mortgagee or the vendee respectively. Where therefore a person purchases property which is subject to a mortgage or takes a puisne mortgage and the consideration for the sale or puisne mortgage is the discharge of the amount due on the mortgage which he is directed to pay off, case falls within Cl. 3 of S. 92 of the Transfer of Property Act and where there is no registered contract for subrogation as required by that paragraph, the purchaser or puisne mortgagee is not entitled to be subrogated to the rights of the prior mortgagee whom he has paid off. 70 M L J 1; AIR 1936 Mad 171 (FB) and AIR 1950 Mad 186; (1949) 2 M L J 520, Followed. AIR 1956 Andhra 114 (115) (Pr 2).

●——S. 92, Para 3 — Conventional subrogation — "Covenant excludes subrogation" — Meaning of — Mortgages by Hindu joint family—Subsequent partition — Clause in partition deed that all debts must be paid off by one member — Mortgage by such member to pay off pre-partition mortgages — He can create right of subrogation by covenant under Para. 3.

Three mortgages X, Y and Z were executed successively by the members of a joint Hindu family. Then there was a partition between the two brothers, G & V. who were the coparceners at the time of the partition. At this partition a larger share was allotted to G's branch in consideration of his paying all the family debts and relieving V's branch of all liability in respect of them. After this, G executed mortgages P and Q for paying off mortgages X and Y respectively. Both the mortgages P and Q contained covenants by G that the mortgagees under them should be subrogated to the rights under X and Y respectively, X and Y were accordingly discharged.

The mortgagee under Z then sued on his mortgage. The mortgagees under P and Q set up their right of subrogation under mortgages X and Y and claimed priority over Z.

The lower Court held that in view of the covenant in the partition deed, the right of subrogation did not arise. The Court applied the principle that where there is a personal covenant to pay the right of subrogation does not arise :

Held (i) The contention that where there are more than one mortgagor, the agreement under S. 92, Para. 3 must be with all of them, is not tenable. Hence the covenant by G alone in this case would give the right of subrogation though in regard to the mortgages redeemed he was only a co-mortgagor.

(General Clauses Act, S. 13 and provisions of T. P. Act exhaustively considered.)

(ii) There is no reason to restrict the meaning of the word "mortgagor" in Para. 3 of S. 92 to a mortgagor who is eo nomine a party to the mortgage redeemed. The expression includes persons deriving title from the original mortgagor.

(iii) Even if the concurrence of all the mortgagors is required under Para 3 of S. 92 for giving a right of subrogation by covenant, such requirement is satisfied in view of the agreement in the partition deed which must be deemed to authorise G to act on behalf of all the mortgagors.

(iv) Per Raghava Rao J. — The contention that if one of several mortgagors is permitted to give such a covenant and to confer a right of subrogation by agreement it would be prejudicial to the rights of other co-mortgagors is not sound. **1951 Mad W N 396 : (1951) 1 Mad L J 596 : 64 Mad L W 497 : AIR 1951 Mad 917 (919, 920, 921, 922, 924) (Pt A) (Prs 4 to 6, 8, 9, 11 to 13, 24) (DB).**

——S. 92, Para. 3 — Conventional subrogation — Redemption by subsequent mortgagee voluntarily.

After the amendment of the Act, the right of subrogation can be claimed by the lender under S. 92, para. 3 only if the mortgagor has in a registered instrument agreed that he should be so subrogated. The right can no longer be claimed or granted as before, on any slight evidence, or what may be described as the semblance of an agreement. Therefore, if even a volunteer, or a mortgagor pays the mortgage money, he does not stand in the shoes of the mortgagee. Where it appears from the rehan bond executed by the mortgagor that the subsequent mortgagee was not given the right to redeem the prior mortgage nor was any part of the mortgage money left with the subsequent mortgagee to redeem the prior mortgage, there is no obligation on the subsequent mortgagee or his heirs or successors to redeem the prior mortgage. Where the subsequent mortgagee redeems the prior mortgage, he does so only as a volunteer and by payment and redemption he does not stand in the shoes of the prior mortgagor. **1955 B L J R 699 : AIR 1956 Pat 349 (351, 352) (PtA) (Prs 10, 11) (DB).**

11. Fourth paragaph—Mortgage must be redeemed in full.

——S. 92—Partial subrogation.

Where a person does not pay off the full mortgage amount or redeem the mortgage in full, the terms of S. 92 do not apply and he cannot claim any right of subrogation. AIR 1944 P C 96, Foll. **AIR 1955 N U C (Andh-Pra) 4462.**

——S. 92—Claim for subrogation under — Essentials of—Subsequent mortgage to pay prior mortgage—Puisne mortgagee not entitled to subrogation in respect of prior mortgage in absence of registered agreement.

Under S. 92 the essential requisites for a valid claim of subrogation are: (1) the person claiming the right must have an interest in or charge upon the property mortgaged entitling him to redeem the mortgage; and (2) he must redeem the mortgage, or (3) a person must have advanced money to a mortgagor to redeem a mortgage with an agreement under a registered instrument that he shall be subrogated to the rights of the mortgagee whose mortgage is discharged. Paragraph (1) of S. 92 deals with what is familiarly called "legal" subrogation and paragraph 3 covers cases of "conventional" subrogation, so called out side paragraph 1. The case of a puisne mortgagee who discharges a prior mortgage under a term of the pusine mortgage falls under Paragraph 3 and not under Paragraph 1, and therefore, he has no valid claim of subrogation in respect of the prior mortgage unless there is a registered agreement to that effect.

The fact that the puisne mortgagee himself discharges the prior mortgage does not make him the redeeming party. The redemption is effected by the by the prior mortgagor through the medium of the puisne mortgagee by the machinery of a mortgage in his favour.

The redemption of the prior mortgage, in such a case, is not necessitated to protect any pre-existing right of the puisne mortgagee. The real position is that the prior mortgagor redeems the mortgage by raising money on a fresh hypothecation of the property in favour of the puisne mortgagee to claim to be subrogated to the rights of the prior mortgagee. The mere fact that one individual advances money to another to enable him to pay specific debts does not in the absence of a special bargain confer on the lender the right of those whose debts are discharged. **1963 Mad W N 42 : AIR 1963 Mad 211 (212) (Prs 4, 5).**

——S. 92, Para. 4 — Mortgage split up—Redemption of independent part in full — Person redeeming acquires right of subrogation. AIR 1939 Nag 215, Foll. **AIR 1964 Punj 281 (282) (Pr 6).**

——S. 92— Fourth paragraph —Mortgage must be redeemed in full.

Section 92 gives effect to the doctrine of subrogation and the important limitation on subrogation is placed by the last paragraph of S. 92. This section does not confer a right of subrogation unless the mortgage in respect of which the right is claimed has been redeemed in full. Before a right of subrogation can be claimed the previous mortgage must be redeemed in full and the prior mortgagee paid off. Thus, there can be no subrogation if only a part of the money due under the incumbrance in respect of which the defendant claims to be subrogated has been paid. (1940) 1 Mad L J 446 : AIR 1940 P C 38 and (1944) 2 M L J 343 : AIR 1944 P C 96, Rel. on. **AIR 1959 Punj 490 (493, 494) (Pt B) (Prs 7, 11).**

——S. 92 — "Mortgage must be redeemed in full"—Meaning—Partial discharge by plaintiff—Plaintiff is entitled to charge for his amount.

S. 92 only requires that the prior mortgage should have been redeemed in full. It does not lay that the person who claims the charge should himself have redeemed the mortgage in full. It is, therefore, clear that the plaintiff is entitled to the benefit of S. 92 in respect of the amount paid by him in partial discharge of the prior mortgage provided the whole mortgage has been extinguished. Where therefore it was admitted that the whole debt under the city hypothecation bond has been extinguished.

Held, that the plaintiff was entitled to a charge on the property for the plaint amount. **1952 Ker L T 485 : I L R (1952) Trav-Co 911 : AIR 1953 Trav Co 69 (69, 70) (Prs 2, 3).**

12. Enforcement of rights acquired by subrogation.

——S. 92 — Subrogation—Suit for re-imbursement—Limitation applicable is under Art. 61—Time runs from date of payment — (Limitation Act (1908), Art. 61). **AIR 1955 N U C (Mad) 2429.**

13. Plea of subrogation.

●——S. 92 — Property mortgaged by A with B—Decree in mortgage suit and property purchased by B himself in auction sale—Subsequent private sale by B to C — A forcibly dispossessing C — Suit by C against A for possession — Plea by A that one D had right of subrogation over the property — **Held**, that A could not raise the question of subrogation on behalf of D—Further as the mortgage by A in favour of D said nothing about earlier mortgage in favour of B and that money was left with D to redeem the earlier mortgage in favour of B an agreement in the mortgage of D, that he would be subrogated to the rights of B could not be inferred. Sheodhyan Singh v. Mst. Sanichara Kuer. **(1961) 2 S C J 540 : (1961) 2 M L J (S C) 116 : (1961) 2 An W R (S C) 116 : (1961) 2 Ker L R 431 : 1962 S C D 102 : 1962 B L J R 273 : (1962) 2 S C R 753 : I L R 41 Pat 402 : AIR 1963 S C 1879.(1882) (Pt B) (Prs 9, 10).**

●——S. 92—Subrogation—Presumption in favour of —Plea that presumption was discharged raised in argument before Supreme Court — Plea being one of question of fact held could not be raised.

In an appeal before the Supreme Court arising out of a suit filed in the State of Punjab in respect of the enforcement of the mortgage rights created in favour of successive mortgagees, a puisne mortgagee did not dispute the correctness of the view that in order to entitle a subsequent mortgagee to claim a right of subrogation it was not necessary that he should have entered into a written agreement stipulating for such a right. Question that presumption in favour of a person having acted to his interest and so entitled to claim subrogation was displaced by evidence of party's statement was not raised in the lower Courts.

Held, that question regarding the intention with which a prior encumbrance was discharged, would be a question of fact. If puisne mortgagee was disputing the plea of the subsequent mortgagee that the intention of such mortgagee in discharging prior mortgagee's mortgages was to retain the benefit of subrogation, it was for him to have raised it by proper pleading when an issue would have been struck and evidence led for or against such a contention. It would not, therefore, be proper to permit the puisne mortgagee to urge this ground before the Supreme Court. Braham Parkash v. Manbir Singh, Minor, **66 Pun L R 392 : 1964 S C D 485 : (1964) 2 S C R 324 : (1964) 2 S C J 766 : AIR 1963 S C 1607 (1610) (Pt A) (Pr 6).**

——S. 92 — Equitable subrogation — Plea raised for first time in second appeal not allowed. See C. P. Code (1908), S. 100. **AIR 1954 Andhra 15.**

14. Contribution and subrogation.

See Notes to Section 82.

SECTION 93

——S. 93 — Mortgage for securing money advanced and to be advanced — Nature of—Starting of limitation is the date of the last advance. See Limitation Act (1908), Art. 132. **AIR 1955 Cal 194 (DB).**

——S. 93 — Scope of — Sections 93 and 79 are complementary. See Transfer of Property Act (1882), S. 79. **AIR 1955 Cal 194 (DB).**

——S. 93 — Deposit of title deeds — Transaction not amounting to mortgage to secure future advances — Priority of subsequent mortgagee — Ss. 58 and 79.

A deposited title deeds with S. I. Bank at Coimbatore and secured a loan the amount of which he placed in fixed deposit in the same bank. He deposited the receipt with the branch of that bank at Salem and obtained the facility of operating a current account to the extent of the amount lying in fixed deposit. Subsequently he again created a mortgage by deposit of title deeds over the same properties in favour of C bank. Later the dues under the current account was adjusted by S. I. Bank by transferring the fixed deposit amount. Both the S. I. Bank and C Bank obtained decrees on their mortgagees and the question arose whether C bank was entitled to priority because the transaction in favour of S. I. Bank was only a mortgage to secure future advances and that such advances were made only subsequent to the mortgage in favour of C Bank.

Held, that the suit of S. I. Bank was not in respect of moneys due to their branch at Salem. The debt due to the Salem branch had been wiped out by adjustment of the amount of fixed deposit on the strength of which the advances had been made. The original indebtedness of the mortgagor must be deemed to be to the S. I. Bank branch at Coimbatore when he executed a promissory note in favour of that branch and deposited the title deeds and his current account at Coimbatore was credited with the sum of money obtained as loan, and it was that amount which was converted into a fixed deposit. When a fixed deposit receipt was issued to the mortgagor after debiting his current account with the sum of that deposit once and for all, the mortgagor became a debtor of the Coimbatore branch in that amount. In this view the equitable mortgage in favour of S. I. Bank must be deemed not as a mortgage to secure future advance to a limit but to have become an effective mortgage to secure the entire sum when the amount was credited in his current account. As admittedly the mortgage in favour of C bank was of a subsenuent date, it was not entitled to priority. **1957 Mad W N 645 : I L R (1958) Mad 15 : 70 Mad L W 881 : (1957) 2 Mad L J 502 : AIR 1958 Mad 132 (133) (Pt A) (Pr 4)** (DB).

SECTION 94

——Ss. 94, 60, 78 and 92—Suit by prior mortgagee—Puisne mortgagee not impleaded — Execution of decree—Prior mortgagee purchasing property—Suit by subsequent mortgagee to enforce his mortgage—Prior mortgagee made party — Prior mortgagee in his capacity as owner of equity of redemption can redeem subsequent mortgagee — See T. P. Act (4 of 1882). S. 60. **AIR 1952 Pat 321 (DB).**

SECTION 95

——S. 95 (Prior to amendment in 1929)—Applicability—Oral invalid sale prior to 1911 — The purchaser becomes a charge holder under S. 55 (6) (b) and the position of a charge holder was distinct and different from the position of the mortgagee before the amendment—See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 24 (1). **A I R 1957 Bom 18.**

●——S. 95 — Limitation Act — Arts. 148 and 144—Mortgage property redeemed by one of the mortgagors — Suit for possession by co-mortgagor—Suit is governed by Art. 148 and not by Art. 144—Possession by redeeming mortgagor cannot constitute adverse possession against the co-mortgagor — See Limitation Act (1908), Art. 148. **AIR 1964 Mad 281 (FB).**

●——Ss. 95 and 92 — No retrospective operation—(Transfer of Property (Amendment) Act (1929), S. 63)

—See T. P. Act (4 of 1882), S. 92. AIR 1956 Mad 354 (FB).

——S. 95 (before amendment of 1929)—Suit for redemption against co-mortgagor — Article applicable is Art. 144 and not Art. 148 of the Limitation Act —See Limitation Act (1908), Art. 144. A I R 1955 N U C (Mad) 3191.

●——S. 95 — Rights of co-mortgagor making payment in addition to what he owes—He has a right of subrogation and also a right of contribution. These are remedies independent of each other and not mutually exclusive. See T. P. Act (1882), S. 82. AIR 1957 Mys 1 (FB).

——Ss. 95, 91, 92, 60—Mortgaged property falling to shares of A and B, A having one-third share and B two-third share — A selling entire property to mortgagee and reducing mortgage — Mortgagee's possession of B's share held not as mortgagee but adverse —Adverse possession for full period not proved—B is entitled to redeem his share. See T. P. Act (4 of 1882), S. 91. AIR 1963 Pat 384 (DB).

——S. 95—One co-mortgagor redeeming mortgage—Suit by other co-mortgagor to redeem his share — Limitation is sixty years from the date of the original mortgage under Art. 148, Limitation Act. See Limitation Act (1908), Art. 148. AIR 1955 N U C (Punj) 5719.

——Ss. 95, 60 and 91—Mortgagee acquiring share in property — One of co-mortgagors can redeem entire residue left in spite of opposition of mortgagee. AIR 1940 All 528; AIR 1945 All 388, Diss. See T. P. Act (1882), S. 60. AIR 1954 Punj 81.

—— S. 95—Redemption by co-mortgagor — Is an instance of subrogation and he stands in the shoes of the original mortgagee in respect of the shares of the other co-mortgagors. See Transfer of Property Act (1882), S. 92. AIR 1955 N U C (Trav Co) 537 (DB).

SECTION 96

——Ss. 96 and 58—Equitable mortgage—Nature of—By the combined operation of S. 96 and 58 (b) an equitable mortgage must be held to be a mortgage where the mortgagor binds himself personally to pay the mortgage money—See T. P. Act (4 of 1882), S. 58. AIR 1953 Cal 208.

SECTION 98

SYNOPSIS

(Transfer of Property Act (1882), S. 98.)

1. Scope.
2. Applicability of other provisions of the Act.
3. Application of general provisions of law.
4. Combination of a simple mortgage and a usufructuary mortgage.
5. Kanom.

1. Scope.

——S. 98—Scope—S. 98 is subject to S. 68. See T. P. Act (1882), S. 68. AIR 1959 Pat 235.

2. Applicability of other provisions of the Act.

——S. 98—Anomalous mortgage — Rights of mortgagee depend upon the terms of the contract as controlled by the T. P. Act — The terms of the contract cannot offend the terms of S. 40 and clog redemption. See Transfer of Property Act (1882), S. 58. AIR 1957 Andh Pra 511.

——Ss. 58 (g), 67, 68 and 98 (as amended in 1929)—Mortgagee to enjoy property in lieu of interest — Personal covenant to pay — Possession not given to mortgagee — Mortgage held anomalous — Mortgagee held entitled to decree for sale and profits from date of mortgage to date of suit—(Civil P. C. (1908), O. 34, R, 4). See T. P. Act (4 of 1882), S. 58(g). A I R 1953 Mad 13 (DB).

——S. 98—Anomalous mortgagee paying prior mortgage debt can claim subrogation where there is no contract to contrary.

In the case of an anomalous mortgage the rights and liabilities of the parties are governed by S. 98. But that section does not altogether exclude the operation of the relevant provisions of the Act in so far as they are not inconsistent with the contract embodied in the deed. Thus, where a mortgagee, in whose favour an anomalous mortgage is executed, is compelled to pay a previous mortgage debt in order to obtain possession of the mortgaged property, he is entitled to the right of legal subrogation under para. 1 of S. 92 where such a right is not excluded from the terms of the contract between the parties. AIR 1922 P C 17, Rel. on. I L R 28 Pat 531 : AIR 1950 Pat 13 (14, 15) (Pt A) (Prs 6, 7) (DB).

——S. 98—Anomalous mortgagee paying mortgage-decree in favour of prior mortgagee—Payment made in order to preserve mortgaged property from sale—Payment made is not one by volunteer — Such mortgagee is entitled to subrogation under S. 92.

The doctrine of subrogation is not applied to the case of a mere stranger or volunteer. Where, however, an anomalous mortgagee, in order to preserve the mortgaged property from sale, pays a mortgage decree passed in favour of a previous mortgagee, and he is not precluded from exercising this statutory right under S. 72 by the terms of the mortgage deed executed in his favour, the payment made by him cannot be said to be a payment made by a volunteer, even if it happens to be made during the pendency of the suit for redemption brought against him. Further, such an anomalous mortgagee can claim the right of subrogation under S. 92. 15 Beng L R 208 (PC) and 36 Cal 193, Ref. I L R 28 Pat 531 : A I R 1950 Pat 13 (16) (Pt B) (Pr 8) (DB).

——Ss. 98, 58 and 67—Simple mortgage—Absence of express term for sale — A right of sale was deemed to have been impliedly given to the mortgagee—Assuming that it was an anomalous mortgage, the mortgagor having clearly undertaken to repay the amount with interest the mortgagee was entitled to file a suit for the recovery of the money and to have the property sold. See T. P. Act (4 of 1882), S. 58. AIR 1958 Punj 309 (DB).

3. Application of general provisions of law.

●——S. 98—Civil P. C., O. 34, Rr. 2, 3 — T. P. Act (1882), Ss. 60, 98—Anomalous mortgage—Final decree for foreclosure passed — Court has no jurisdiction to re-open decree and to extend time for redemption on equitable ground. See Civil P. C. (1908), O. 34, Rr. 2, 3. AIR 1950 P C 88.

——Ss. 98, 58 (g)—Usufructuary mortgage and lease back to mortgagor—Held, on facts two transactions—Suit for redemption—Claim for arrears of rent—Held, on facts not maintainable. See T. P. Act (4 of 1882), S. 58(g). AIR 1956 Mad 434 (DB).

4. Combination of a simple mortgage and a usufructuary mortgage.

●——Ss. 98, 77 and 76 (g) — Usufructuary mortgage or anomalous mortgage — Liability of mortgagee to render accounts depends on terms of the mortgage-deed. See T. P. Act (4 of 1882), S. 77. AIR 1958 S C 941.

——S. 98—Combination of simple and usufructuary mortgage — Assam Money-lenders (Amendment) Act (6 of 1943), S. 5 (2).

Ram Labhaya J.—Where the possession is given to the mortgagee but there is a provision that if the mortgagor fails to pay the mortgage money within the stipulated period the mortgagee would be entitled to enjoy the mortgage land as security for the money, the mortgage is a combination of a usufructuary and a simple mortgage and can only be described as anomalous Hence S 5(2) of the Assam Money Lenders (Amendment) Act, 1943 does not apply. **AIR 1950 Assam 107 (111) (Pt B) (Pr 21) (DB).**

——Ss. 98, 58 and 105—Mortgage or lease — Anomalous mortgage and simple usufructuary mortgage — Deed transferring possession to creditor for certain period — Discharge of debt to be out of income — Debtor also contracting for personal liability—Nature of transaction was—Held, on construction to be anomalous mortgage — Mortgagor was entitled to redeem —Parties intended to maintain the relation of debtor and creditor and to maintain accounts and the transfer of possession was to secure balance of debts after taking accounts. See T. P. Act (1 of 1882), S. 58. **AIR 1953 Madh Bha 9.**

——S. 98—Usufructuary mortgage containing also a stipulation for sale of property — Suit or sale of property dismissed—Right to possess property not extinguished See Transfer of Property Act (1882), S. 58. **1961 Jab L J 1207.**

——Ss. 98, 58(g)—Combination of usufructuary and simple mortgage—Right of parties under are determined by the contract as evidenced by the mortgage deed. See T. P. Act (4 of 1882), S. 58(g). **A I R 1956 Mad 434 (DB).**

——Ss 98, 58—Orissa Money-lenders Act, S. 17 — Usufructuary mortgage—What amounts to.

Mortgagee put in possession in lieu of interest—Personal covenant to pay the mortgage money by sale of his other properties—Mortgagor holding himself primarily liable for the mortgage debt—Mortgage is anomalous and S. 17, Orissa Money Lenders Act does not apply as it does not govern all kinds of mortgages with possession. See Debt Laws — Orissa Money Lenders Act (3 of 1939), S. 17. **A I R 1951 Orissa 147.**

5. Kanom.

——Ss. 98 and 68—Anomalous mortgage — Mortgage with possession — Stipulation for redemption within two years and in default mortgagee to have option to sue for recovery of amount by sale of property—Mortgagee held entitled to remain in possession after expiry of redemption period and is not bound to sue for sale. See T. P. Act (4 of 1882), S, 68. **AIR 1956 Madh Bha 110.**

——S. 98 — Kanom — Kanom partakes of nature of usufructuary mortgage. **AIR 1955 N U C (Mad) 3913.**

——Ss. 98 and 58—Tenancy Laws—Malabar Tenancy Act (1936), S. 3(1) —Kanom —Incidents of stated—Kanom nature and incidents of. See Tenancy Laws —Malabar Tenancy Act (14 of 1936), S. 3(1). **AIR 1955 NUC (Mad) 695.**

——S. 98 — Kanom nature and incidents of. See Tenancy Laws — Malabar Tenancy Act (4 of 1930), S. 13(1). **(1954) 1 Mad L J 439.**

——S. 98 -Kanom—Kanom partakes of the nature of a mortgage with possession and a lease - Incidents of stated. See T. P. Act (4 of 1882), S. 58. **AIR 1951 Mad 187 (FB).**

——Ss. 98, 58 —Tenancy Laws —Travancore Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), S. 2, Expl.—Applicability—Kanom and Otti—Tests.

Where the michavarom of 84 rupees per annum was equivalent to the mortgage amount itself that is to say that there was rather a very high pattom and the term of the otti was 6 years the transaction was held to be kanom within the meaning of the Travancore Cochin Holdings (Stay of Execution Proceedings) Act 8 of 1950, S. 2, Expl. See T. P. Act (4 of 1882), S. 58. **AIR 1957 Trav-Co 239.**

——S. 98 — Creation of irredeemable mortgagee — Held on facts—Provision relating to the payment of customary dues and renewal of fees in the document — No necessary inference in favour of irredeemability — The deliberate avoidance of the use of the term kanom in the document and the conscious use of the expression 'Oora otti' denoting a particular type of mortgage would go to show that the executant wanted to reserve with him the right of redemption. See Tenancy Laws — Travancore Jenmi and Kudiyan Act (5 of 1071), S. 3 (as amended in 1108). **AIR 1955 NUC (Trav-Co) 543.**

SECTION 100

SYNOPSIS

(Transfer of Property Act (1882), S. 100).

1. Scope.
2. Charge on movables.
3. Charge on future property.
4. "Made security".
5. Property must be specific.
6. "By act of parties".
7. Security bond charging immovable property.
8. Contingent charge.
9. Floating charge.
10. "By operation of law".
11. Charge under Rent Act.
12. "And the transaction does not amount to mortgage".
13. Transfer invalid as a mortgage, whether operates as a charge.
14. Mortgage or charge.
15. Creation of charge—Writing and registration.
16. Rights and liabilities of a charge-holder.
17. Priority among charge-holders.
18. Transferee for consideration without notice.
19. Charge whether binds auction purchaser.
20. Enforcement of charge.
21. Sale in execution of a charge decree — Whether extinguishes the charge.
22. Charge created by a decree.
23. Payment in the nature of salvage.
24. Hindu widow's right of maintenance.
25. Nankar and Dahyak rights.

1. Scope.

——S. 100 — Charge created in respect of future debts though to such a case section does not in terms apply. See Deed—Construction. **AIR 1965 All 474 (DB).**

——S. 100—Municipalities—U. P. Municipalities Act, S. 177 — Charge under — Splitting up — Charge is indivisible and cannot be split up by appropriating the liability for taxes among various persons. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 177. **AIR 1952 All 315.**

——S. 100 — Second paragraph — Applicability—Interpretation of Statutes—Proviso.

The effect of a proviso is to except out of the earlier part of the section something which, but, for the proviso, would be within it. The second paragraph of S 100 limits the operation of the first

paragraph, and the word "charge" there used must have reference to the charge mentioned in the first paragraph. Mahesh Prasad v. Mundar Mt., 1951 All L J 39 : 1951 All W R (HC) 225 : ILR (1953) 1 All 284 : AIR 1951 All 141 (145, 150) (Pt C) (Prs 17, 43) (FB).

—S. 100 — Religious endowment — Donors not reserving any right to themselves — Indicates dedication and not merely a charge. See Hindu Law — Religious Endowment. (1965) 2 Andh W R 203 : AIR 1966 Andh Pra 123 (b).

—S. 100 — Charge mentioned in S. 79 of C. P. and Berar Municipalities Act refers to property tax and not to water rate or lighting tax — Arrears of water rate and lighting tax for period prior to purchase cannot be recovered from the purchaser of property as there is no charge on property. See Municipalities — C. P. and Berar Municipalities Act (1922), S. 79. 1962 Nag L J (Notes) 39.

—S. 100 (prior to amendment in 1929) — Applicability — Oral invalid sale prior to 1911 — Relationship between the vendee and the vendor was comparable to that between the charge-holder and the debtor. See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 24 (1). AIR 1957 Bom 18.

—S. 100 — Vendor having no title to immovable property, cannot create charge on it, for earnest money paid to him. See T. P. Act (1882), S. 55 (6)(b). AIR 1962 Cal 12 (DB).

—S. 100—Applicability—Certain annuities charged on estate by deed of settlement—Part of the property acquired by Government and compensation paid — Charge can attach to compensation paid or to be paid. See Bengal Settled Estates Act (3 of 1904), S. 2 (n). AIR 1955 NUC (Cal) 5578.

—S. 100—Purchase of leaseholder interest—Agreement to pay annuity to leaseholder and his descendants making it a charge on the property—As charge to property was effected, rule of perpetuity has no application. See T. P. Act (1882), S. 14. AIR 1965 Ker 27.

—S. 100 — Limitation Act, Art. 132 — Person not in possession but believing to have title in property paying Government revenue cannot claim charge for it. See Limitation Act (1908), Art. 132. AIR 1950 Mad 39.

—S. 100, para. 2—Amendment of—Effect—Amendment did not alter law.

The amendment of para. 2 of S. 100, T. P. Act did not alter the law as it existed prior to 1929. The doctrine of equitable notice was as much a part of the law of Transfer of Property before the amendment as it has been after the amendment. The amendment merely made clear that which had been implied before. 1950 Nag L J 111 : ILR (1949) Nag 802 : AIR 1950 Nag 117 (119) (Pt A) (Pr 9).

2. Charge on movables.

—Ss. 100, 58—Contract Act (1872), S. 172 — Hypothecation and mortgage of movables — Transactions though not provided for in statutes in India are recognised as valid. See T. P. Act (4 of 1882), S. 58. AIR 1964 Andh Pra 201 (DB).

—S. 100—Charge how created — Charge on movables.

A charge can be validly created on movable property but in that case the property or the fund must be specifically indicated. Where the decree refers to a specified amount, viz., the cash annuity payable by the Government to the defendant and provides that it is made available for the obligation arising under the decree, it must be held that it creates a charge on the said amount. It is not necessary that any particular form or words should be used in order to create a charge. All that is required is that there must be a clear intention to make the sum a security for the satisfaction of the decretal amount. 9 Sau L R 43 : 1955 Cri L J 1402 : AIR 1955 Sau 86 (87) (Pt B) (Pr 4) (DB).

3. Charge on future property.

—S. 100—Charge on future property—Assignment—Priority.

A charge may be created on property which is to come into existence in future and may be enforced when it comes into existence. The creditor in whose favour the charge is created, will be entitled to priority over a person attaching property after that date. ILR (1951) 3 Assam 1 : AIR 1951 Assam 56 (58) (Pt B) (Pr 6) (DB).

—Ss. 100, 6 and 48 — Rule of English law that charge on future property operates on such property as soon as it comes into existence applies to India. See T. P. Act (4 of 1882), S. 6. AIR 1953 Bom 101.

4. "Made security."

—S. 100—"Made security."

A compromise between the plaintiff and the defendant in terms of which a decree is passed and which embodies an agreement that the property in question shall remain attached by the civil Court until the decretal debt is satisfied and shall be liable to be sold for that debt does not show an intention to make the property the security and therefore does not create a charge. ILR 30 Pat 613 : AIR 1951 Pat 254 (255) (Pt B) (Pr 5) (DB).

5. Property must be specific.

—Ss. 100 and 8 — Agreement to utilise property subject to discharging obligations mentioned before.

Where Clause (5) of the agreement arrived at between the parties provided, "..... the properties movable or immovable, partitioned or unpartitioned, self-acquired or joint, left by the late Rai Bahadur which shall be the absolute property of party No. 2 to be utilized by him in the manner he may think fit, subject to his discharging the obligations mentioned above ....." and Cl. (3) contained the obligation to pay a certain maintenance allowance :

Held, that all the properties allotted to party No. 2 under the agreement became subject to the charge for payment of the maintenance. AIR 1954 Ajmer 77 (77, 78) (Prs 2, 3).

—S. 100—Charge — Creation—Essentials—Deed—Construction.

The words that "O. S. No. 670 of 1944 do stand decreed in respect of a life-interest in one acre of the schedule attached to plaint, therein, free from claims of Vulugundam Radhabayamma, etc." are of sufficient amplitude creating a charge over acre 1.0 out of the properties mentioned in the schedule. 1956 Andh W R 509.

—S. 100—Creation of charge—Inam land—Melwaram specified by extent — Sufficiency to constitute charge.

When the original inam was granted, the land out of which the melwaram was to issue was specified only by extent and was not localised.

Held, that the only conclusion possible was that the melwaram was to issue out of every portion of the land in the estate. This would, therefore, have constituted a charge on the estate. When by reason of the later arrangement the amount due for melwaram was quantified into some kottahs, etc., of paddy,

it could not be held that it became transformed as it were into a rent due under a permanent lease. The nature of the obligation imposed upon the holder of the estate recognised by the land grant and confirmed at the inam settlement was not altered by reason of the substituted arrangement. **(1958) 1 Mad L J 69 : 71 Mad L W 7 : ILR (1958) Mad 234 : AIR 1958 Mad 319 (320) (Pt B) (Pr 11) (DB).**

——S. 100 — Charge — Creation—Court receiver in partition suit executing promissory note—No specific charge—Suit on promissory note—Form of decree.

Held, that in order to create a charge, specific immoveable property must be made a security for the payment of the money and must be so made in unambiguous terms. The order of the Court granting permission to defendant 1 the Court Receiver, clearly showed that no specific immovable property had been made a security for the payment of the suit money, and the question whether it would be binding against the whole family was left open. Hence in the absence of any charge created on the property in the hands of defendant 1 as receiver no decree could be passed against the estate. The trial Court could not have gone into the question of relative liability in the present suit which must be decided in the partition suit itself. Therefore, the form in which the decree was passed by the Court below is the only form in which a decree in the suit could be made. **ILR (1956) Cut 713 : 22 Cut L T 497 : AIR 1957 Orissa 32 (33, 34) (Prs 7, 10) (DB).**

——S. 100—Charge created by decree — (Decree — Construction).

Where it is expressly stated in the judgment that the amount decreed would not be a charge on the plaint properties, the direction that the decree amount could be realised from the properties of the defendants' family cannot amount to creating a charge on those properties. **ILR (1952) T C 241 : AIR 1953 Trav-Co 193 (194) (Pt C) (Pr 7) (DB).**

——S. 100—Charge—Creation—Essentials—Intention of parties—Direction in partition deed for using sale proceeds of property to discharge specified debts—Does not create charge on such property. See Deed—Construction—Charge. AIR 1952 Trav-Co 62 (DB).

——S. 100—Charge — Creation of—Partition area—Direction to sell part of property and utilize cash toward payment of debts—Charge if created.

Where in a partition deed, specific direction was given that certain items of property should be converted into cash and the cash realized was directed to be utilized for discharging certain debts :

Held, that no charge on the items of property directed to be sold was intended : Case law referred. **1951 Ker L T 5 : AIR 1952 Trav-Co 62 (63) (Prs 4, 5) (DB).**

6. "By act of parties".

——S. 100 — 'Act of parties or operation of law' — Meaning of.

Ordinarily a decree of a Court which creates a charge, after contest by the defendants does not amount to 'an act of parties or operation of law.' But if the decree is passed on the basis of a compromise or is passed on an award, it does amount to an 'act of parties'. AIR 1951 All 141 (FB), Foll. **AIR 1957 All 575 (582) (Pt B) (Pr 29) (DB).**

7. Security bond charging immovable property.

——Ss. 100, 59 — Security bond creating charge — Inclusion in order of Court—No evidence that it was accepted by Court or made rule of Court—It must be registered to create charge on property, if property is immovable of value of over Rs. 100. AIR 1955 NUC (All) 3556.

● —Ss. 100, 59—Suit on pronotes on original side of High Court — Defendant granted leave to defend on furnishing security — Security bond in favour of Registrar securing certain immovable properties — Bond attested by only one witness — Validity as document creating charge — Signatures of Registrar identifying witnesses held did not amount to attestation — Charge not created — High Court Rules and Orders — Madras Hight Court Original Side Rules (1927), R. 7.

Held, (by the Division Bench) on facts, that the security bond would not amount to a charge created by the Court but would be a charge created by a voluntary act of the party in favour of the officer of the Court and, as such, S. 100, T. P. Act would apply to it. In order to be valid the document would therefore, have to be attested by two witnesses. ILR 31 Mad 330, Rel. on. (2) that even assuming that the Registering Officer and the identifying witnesses had signed in the presence of the executant, there was nothing in their evidence to show that they had signed with the intention of attesting the document. They could not, therefore, be regarded as attesting witnesses to the document and the bond could not create a valid charge. H. Venkata Sastri v. Rahilna Bi. **74 Mad L W 701 ; 1961 Mad W N 763 : I L R (1962) Mad 1 : (1961) 2 Mad L J 78 : AIR 1962 Mad 111 (120) (Pt B) (Prs 23, 26, 27) (FB).**

8. Contingent charge.

——Ss. 100, 21—Contingent charge—Validity.

Under Ss. 5, 21 and 100, T. P. Act, a present charge as security for discharging a contingent liability can be validly created. There is a difference between a present charge to discharge a contingent liability and the mere possibility of charge or a promise to create a charge in future. A charge to secure a liability which will arise only, if at all, in future is a present charge under S. 100, which is enforceable on the happening of the contingency. Thus a direction in a decree that the amount shall be realisable from a certain property if the mortgaged property was found insufficient to satisfy the debt creates a valid contingent charge. AIR 1918 Mad 674, AIR 1937 Pesh 76; AIR 1925 Pat 288 and AIR 1928 Pat 587, Rel. on; ILR 14 Cal 687 and 3 All L J 221, held not correct. **A I R 1952 Madh B 16 (17) (Pr 3) (DB).**

——S. 100—Sale of property in Punjab—Stipulation in sale deed that balance of consideration would be paid "as soon as possible but at a time when vendee would be in position to make payment" — Construction—Stipulation not a contingent contract — Suit to enforce payment of unpaid consideration money — Limitation — Art. 132 applies—Principle of S. 55 (4) (b), T. P. Act, applicable in Punjab and the charge to the extent of the unpaid money subsists on the property — Evidence of intention of parties. See Contract Act (1872), S. 31. AIR 1964 Punj 123 (DB).

——S. 100—Contingent charge.

An instrument by which a liability not existent in present but which will arise, if at all, in the future is secured may create a present charge within the meaning of section 100. 21 M L J 562; 33 M L J 58 and 23 I L J 466, Foll. ; 8 I C 864; ILR 14 Cal 687 and 36 C W N 153, Not foll. **1953 Ker L T 188 : ILR (1953) Trav-Co 298 : AIR 1953 Trav-Co 344 (347) (Pt B) (Pr 7) (DB).**

9. Floating charge.

——Ss. 100, 58, 8—Companies Act, S. 109 — Charge, creation of—Loan by Bank to Company—Promissory note by Director in favour of company given as security by way of guarantee — Negative lien on all fixed and liquid assets of company—Undertaking that fixed and liquid assets of Company would not be

charged, while company remained indebted to Bank —Charge, floating charge or hypothecation held not created on assets of Company—(Deed—Construction) —(Contract Act (1872), S. 171). See Companies Act (1913), S. 109. **AIR 1955 Bom 419.**

——Ss. 100, 58 — **Floating charge on stock in trade of business — Subsequent attachment by another creditor in his suit — Charge is crystallized on attachment but operates from date of charge.**

A, hypothecator of business in cloths of which possession is left with the borrower, is floating charge. A floating charge is a present charge though it does not finally crystallize upon any specific property until the happening of some event which puts an end to the right of the borrower to deal wiih the property in the course of business.

Held on facts (i) that the charge or mortgage in favour of B, the person to whom was mortgaged the stook-in-trade became crystallised as soon as the attachment before judgment was effected at the instance of C an unsecured creditor. Therefore B had a preferential claim over the sale proceeds. AIR 1933 Cal 154 and (1910) 2 K B 979 and AIR 1931 Cal 223, 49 Cal W N 494, Relied on. **ILR (1960) 2 Cal 937 : AIR 1961 Cal 308 (Prs 9 to 12) (DB).**

——S. 100 — Ambulatory or a floating charge is not repugnant to juristic conception of charge —(Bengal Settled Estates Act (3 of 1904), S. 2 (n). **AIR 1955 N U C (Cal) 5578.**

——S. 100—Floating charge — Nature of — Floating charge on movables including plants, :machinery, etc., of a company—Subsequent attachment and sale of company's movable properties by the Union Government for arrears of contribution to employee's provident fund—Charge crystallised on attachment—Sale by Government — Suit instituted by charge-holder for enforcing the security, decreed—Decree-holder is entitled to recover proceeds of revenue sale. See Companies Act (1956) S. 125. **AIR 1963 Ker 301 (DB).**

——S. 100—Applicability — Receiver taking possession of assets on behalf of debenture-holder—Effect on floating charge. The charge becomes crystallised and fixed on those assets. See Companies Act (1913), S. 230 (2) (4). **AIR 1955 Mad 331 (DB).**

10. "By operation of law."

——**Ss. 100, 82 and 92—By operation of law—Land revenue—Payment by co-sharer creates charge—Co-sharer is entitled to contribution as well as subrogation.**

For the application of S. 82 of the T. P. Act, the plaintiff and the defendants are to be considered as owners of distinct portions of the property which is liable for a common debt and the plaintiff to be regarded as suing for contributions. Where one or two or more co-sharers owning an estate subject to the payment of revenue to Government pays the whole revenue, he is by operation of law entitled to a charge upon the share of each his co-sharers for the realisation of the latter's share of the revenue. ILR 26 Mad 686 (FB) and A I R 1958 Ker 386 and 19 Trav L T 7 and A I R 1941 Nag 245, Rel, on: When a person interested only in a portion of the mortgaged property redeems the mortgage he derives two distinct rights one for contribution and the other by subrogation. These rights are not mutually exclusive. A I R 1958 Ker 386, Rel. on. The same principle applies to a charge also. **1964 Ker L T 588 : 1964 Ker L J 855 : A I R 1965 Ker 55 (57) (Pt C) (Pr 3).**

——Ss. 100, 92 and 82 — **A person interested in only a portion of the mortgaged property redeeming the mortgage gets a right of contribution and also a right of subrogation and under S. 100 gets a charge by operation of law in his favour on the properties which have not contributed towards the liquidation of the debt.** See Transfer of Property Act (4 of 1882), S. 82. **A I R 1958 Ker 386 (DB).**

●——S. 100 — Rights of co-mortgagor making payment of mortgage debt in addition to what he owes —The amount recoverable will be a charge on the property of the persons benefited from payment and enforceable under S. 100, T. P. Act. See T. P. Act (1882), S. 82. **A I R 1957 Mys 1 (FB).**

11. Charge under Rent Act.

——S. 100—**Charge for payment of rent.**

Where by a jaminnama a share of A's patni interest is made security for the payment of money to B in respect of the dar-patni rent, the contract amounts to a charge within S. 100. **54 Cal W N 601 : ILR (1951) 1 Cal 507 : A I R 1950 Cal 323 (324) (Pt A) (Pr 6) (DB).**

——S. 100 — Malabar Tenancy Act (14 of 1930), S. 41 — Assignee from jenmi — Is not entitled to charge. See Tenancy Laws — Malabar Tenancy Act (14 of 1930), S. 41. **1963 Ker L T 884.**

● ——S. 100—Lease for a year—Rent fixed payable at stated time — Lessee creating charge on another property by way security for payment of rent—Expiry of term — Lessee continuing in possession by virtue of statutory tenancy created under S. 4, Cochin Verumpattomdars Act — Charge held operative so long as statutory tenancy lasted. See T. P. Act (1882), S. 105. **A I R 1962 Ker 58 (FB).**

——Ss. 100, 52 — Orissa Tenancy Act, S. 74—Charge under is not a charge under S. 100 T. P. Act — Execution proceeding — S. 52, T. P. Act not attracted. See Tenancy Laws—Orissa Tenancy Act (2 of 1913), S. 74. **A I R 1951 Orissa 41 (DB).**

——S. 100—"Charge" — Interpretation of — Suit for Mukarrari rent not hit by mischief of S. 4 (d)—Decree obtained after vesting of proprietary rights in State—No right to bring tenure to sale under S. 65 Bihar Tenancy Act. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 4 (d). **1962 B L J R 928 : ILR 42 Pat 687.**

——S. 100—Applicability—"Charge"—Bihar Tenancy Act, S. 65 — Charge under for rent is not such a charge as defined in S. 100, T. P. Act. See Transfer of Property Act, S. 52. **A I R 1952 Pat 9 (DB).**

12. "And the transaction does not amount to mortgage."

——S. 100—**Charge and mortgage—Distinction.**

A charge must be distinguished from a mortgage as defined in the Act, more specially from a simple mortgage. In every mortgage there must be a transfer of an interest in specific immoveable property, while in the case of a mere charge, no interest is transferred nor is it necessary that the property to which it relates should be specific. A charge differs from a mortgage not only in form but in substance. A plea of purchase for value without notice, for instance, although it may be perfectly good against a chage will be wholly unavailing against a mortgage. **1950 Nag L J 111 : ILR (1949) Nag 802 : A I R 1950 Nag 117 (123) (Pt B) (Pr 29).**

13. Transfer invalid as a mortgage, whether operates as a charge.

——S. 100—Mortgage by deposit of title deeds invalid — Exhibit C by promising a mortgage in future did not create a lien either immediately or when the condition precedent for the performance of the promise came into being — Mortgagee entitled to get a money decree only. See T. P. Act (1882), S. 58. **1963 Ker L J 494.**

14. Mortgage or charge.

——S. 100—Clause in deed securing payment of debt —Specific immovable property encumbered with payment of debt—In case of default debt recoverable by sale of property—Executants made jointly and severally liable—Deed held was simple mortgage and not charge. See Transfer of Property Act (1882), S. 58. **1965 All L J 1104.**

15. Creation of charge—Writing and registration.

——Ss. 100, 4, and 59—Scope—Charge on immovable property—Amount secured exceeding Rs. 100—Compulsorily registrable. See T. P. Act (4 of 1882), S. 4. **A I R 1962 All 101 (DB).**

——S. 100—Mortgage by deposit of title deeds equitable mortgage — Essentials — Agreement to execute mortgage in future in case amount due on promissory note was not paid accompanied by handing over of title deed of property agreed to be mortgage—No equitable mortgage or lien created. See Transfer of Property Act (1882), S. 58. **ILR (1963) 2 Ker 60.**

——S. 100—Jenmon lands—Charge on kanom holding—In respect of Jenmon lands there is a charge on the kanom holding for the michavarom and other dues payable under the kanapattom—For the creation of a charge no particular form and words is necessary —Suit for claim or mischavarom would be governed by Art. 132 and not by Art. 116 of the Limitation Act. See Limitation Act (1908), Art. 116. **1956 Ker L T 313.**

——Ss. 100, 59 — Creation of charge — Stamped and registered deed necessary — (Stamp Act (1899), S. 2 (17), Art. 32). **AIR 1956 Mad 434 (437) (Pt B) (Pr 10) (DB).**

——S. 100 — Creation of charge — Registration — **(Registration Act (1908), S.:17).**

Registration of a document is no doubt notice of transaction regarding a property to the person acquiring such property or any part of or share or interest therein. If by agreement of parties a charge is created then under the provisions of the amended S. 100 of the Transfer of Property Act it can be done only by a registered document. But there are other ways and methods by which charges can be created. For example a charge can be created by the operation of law, by an award of the arbitrators and by various other means.

In such cases the last clause of S, 100 of the Act which says that a bona fide purchaser without notice of the charge is protected would come into play, and therefore that clause does not become meaningless by requiring registration to create a valid charge by agreement of parties. So it is not possible to say that charge can be orally created because of the last clause of S. 100 after the amendment of that section. A I R 1939 Mad 202 : (1939) 1 M L J 185, Followed, **AIR 1955 N U C (Mad) 3153.**

——Ss. 100 and 59—Amendment of Para. 1 of S. 100 —Effect—Section 59 is not made applicable—Charge can be made orally, but if made by document, it must be registered.

By the amendment of Para 1 of S. 100, the law was not intended to be altered, but the amendment was made to show more clearly what the rights and liabilities of a charge-holder were to be. The amendment did not have the effect of bringing in its trail S. 59, T. P. Act so that a charge could only be made by a registered document attested by two witnesses as is the case with a simple mortgage. If the provisions of S. 59, are extended to charge it becomes at once apparent that all charges, irrespective of the amount secured, must be made also by a registered document. Now, if this be the case, the equitable doctrine of notice, which is put in with such circumspection in the second paragraph of S. 100 of the Act becomes meaningless. Under S. 3 of the Act there will always be notice of charge because of registration. The result therefore is that oral charges can still be made, though if a charge is made by a document the document must be registered : A I R 1939 Mad 202 and AIR 1940 Mad 140, Not foll.; AIR 1948 Nag 311, Disting. **1950 Nag L J 111 : I L R (1949) Nag 802 : AIR 1950 Nag 117 (124, 125) (Pt C) (Prs 32, 38, 39).**

——S. 100 — Registration Act (1908), Ss. 17 and 49— Unregistered deed creating further charge on mortgaged property—Oral evidence of terms of document not admissible in evidence—Evidence Act (1872), S. 9. See Registration Act (1908), S. 17. **AIR 1952 Pat 73 (DB).**

——S. 100—Creation of charge—Requirements.

The creation of a charge does not require the use of a particular form of words and a charge may be created even though the word "charge" is not used. All that is required is that the intention that the property shall be security for the payment of money is made clear and that the transaction does not amount to a mortgage that is to say, there is no transfer of an interest in the property. **ILR 30 Pat 613: AIR 1951 Pat 254 (255) (Pt A) (Pr 4) (DB).**

——S. 100—Document creating charge failing as lease.

No particular form of words is necessary for the creation of a charge, and it is sufficient if, having regard to all the circumstances of the transaction, it shows an intention to make the property security for the payment of the money mentioned therein. Thus, where a document, in clear terms, creates a charge, even if it fails as a lease, it can still be treated as creating a charge on the leasehold property **A I R 1950 Pat 478 (480) (Pt C) (Pr 7) (DB).**

——Ss. 100 and 4—'So far as may be' — Creation of charge — Writing and registration — Necessity— **(Registration Act 1908, S, 17).**

By S. 100, T. P. Act all the provisions of the Transfer of Property Act which precedes S. 100 have been made applicable 'so far as may be' to a charge. The words 'so far as may be' have not the effect of taking S. 59 out of the purview of S. 100. S. 100 applies all the provisions of the Act with regard to a simple mortgage to a charge. unless a particular provision is incompatible with a charge. Registration is surely not incompatible. S 17, Registration Act requires a charge for Rs. 100 or upwadrs to be registered. and by virtue of S. 4 T. P. Act, S. 59 has now to be read as being supplemental to S. 17, Registration Act. It follows that if the principal money secured by the charge is Rs. 100 or more, the charge can be effected only by a registered instrument signed by the debtor and attested by at least 2 witnesses. AIR 1939 Mad 202 : (1939) 1 Mad L J 185 and A I R 1940 Mad 140 : (1940) 1 Mad L J 992, Rel. on. **I L R (1959) 9 Raj 331 : 1959 Raj L W 209 : AIR 1959 Raj 143 (143) (Pr 5).**

——S. 100—Charge when extinguished.

The charge already created in favour of the creditor would continue to subsist so long as the same has not been extinguished or abandoned by express words to that effect.

Where a lease deed executed by a mortgagor in favour of the mortgagee contained an express stipulation that the lessor could recover the arrears of pattom as a charge on the properties and subsequently the mortgagor surrendered the lease by executing a deed of release wherein he mentioned all the dues under the mortgage and the arrears of pattom and gave a fresh understanding to pay the amounts as soon as possible.

Held that the undertaking had not the effect of extinguishing the charge created by the earlier deed in the absence of any words or expression in the latter deed suggesting such intention of the parties. ('50) 1950 KLT 462 : AIR 1951 Trav-Co 17 (19)(Pt A) (Pr 4) (DB)

16. Rights and liabilities of a charge-holder.

——S. 100—Simultaneous charge created in respect of two different acts of parties means two charges—Property sold in auction in enforcement of one charge—Other charge does not get extinguished—(C. P. Code(1908), O. 34. R. 15).

When a simultaneous charge is created in respect of two different sets of parties it means that two charges are created one in favour of each set and especially so, when the parties are different. Again when the charges created are also in respect of two different amounts payable by the judgment-debtor, it cannot be said that the charge is one and the same or that it is single and indivisible.

It is but reasonable, on the other hand, to construe the simultaneous charge as two charges created in respect of two different sets of individuals and in respect of two different amounts. When two charges are created in respect of two different amounts it means that the two sets of individuals are entitled to enforce the charge created in their favour separately and independently, though it may be against one and the same judgment-debtor and in respect of the self-same properties.

When there existed two charges, one of which alone was sought to be enforced and the properties brought to sale in enforcement of the charge, the other charge does not get extinguished where the party entitled to that charge has not sought to enforce it, nor any property brought to sale in execution of that charge. 68 Mad L W 755 : (1955) 2 M L J 618 : 1955 Mad W N 750 : I L R (1956) Mad 697 : AIR 1956 Mad 67 (69) (Pt A) (Pr 9) (DB).

——S. 100 — Severance of reversion — Partition of land subject to mulgeni lease — Integrity of charge for rent on land created under lease deed broken and rent also proportionately partitioned. See Landlord and Tenant. AIR 1961 Mys 171.

——S. 100 — Partition decree — Some alienations by sharers declared invalid — D, an alienee in possession of certain property on declaration of alienation to be invalid directed to surrender property to plaintiff — Sharer — Price paid for property made charge on property — D can use her possession as shield against plaintiff's attempt to get possession—Before D is compelled to deliver possession, she can claim refund of her charge. A I R 1952 Trav-Co 539 (539) (Pr 4) (DB).

17. Priority among charge-holders.

——S. 100—Scope—Partition Decree—Provision for owelty—Lien or charge in favour of member may be express or implied — Charge takes precedence over earlier encumbrance. See Hindu Law—Partition. AIR 1957 S C 577.:

——S. 100—Partition—Provision for owelty—Charge —Nature of — Priority between charge of owelty and charge under indemnity clause. See Hindu Law —Partition. 1958 Ker L T 41 : 1958 Ker L J 230.

18. Transferee for consideration without notice.

——S. 100, Para. 2—"Without notice of the charge" —Charge created on immovable property—Constructive notice of—Charge registered but particulars not entered in indexes kept under S. 55 of Registration Act—There can be no constructive notice in such case imputed to subsequent mortgagee. See Transfer of Property Act, 1882, S. 3. AIR 1964 Bom 1 (DB).

——S. 100, paragraphs 2 and 58 and 5— Subsequent mortgage of property for consideration and without notice of prior charge created over said property — Such mortgage prevails over charge — Mortgage is transfer ot property in hands of mortgagee— "In hands of a person"—Meaning of.

Section 100 of the Transfer of Property Act, 1882, provides that no charge can be enforced against any property (1) in the hands of a person, (2) to whom such property has been transferred, (3) for consideration and (4) without notice of the charge. The word "property" has been used here in a comprehensive sense. Hence a transfer which may either be of the entire property or of any interest in the property must be held to be a transfer. Even if the transfer only relates to some small right or interest in an immovable property, then it must be regarded as a transfer of immovable property. (1835) 42 R R 271 (276) and ILR 29 All 385 (FB), Rel. on.

Under S. 58 a mortgage is the transfer of an interest in specific immovable property. A mortgage therefore must be regarded as a transfer of an interest unlike a charge which only creates a right to obtain the recovery of the money out of the property over which a charge is created.

Where, therefore the subsequent mortgage is for consideration and without notice of the prior charge the subsequent mortgage prevails over the prior charge created on the same property in favour of the other creditor of the mortgagor. 65 Bom L R 510 : ILR (1963) Bom 509 : 1963 Mah L J 756 : AIR 1964 Bom 1 (3) (Pt A) (Prs 6, 8) (DB).

——S. 100, Paragraph 2 — "Such property has been transferred"—Construction of.

It is not correct to argue that the words "such property" mean immovable property which has been charged in the earlier part of the section. This cannot be so for the ordinary rule of construction is ad proximum antecedent fiat relatio nisi impediatur santentia. The word "such" is a relative word and it applies to the nearest antecedent noun in the same sentence, i.e., to "any property in the hands . . . . ." and this is made more clear by the words "has been transferred" after the word "such". The word "such" can have no relation to something which is mentioned in the first part of the section. 65 Bom L R 510 : ILR (1963) Bom 509 : 1963 Mah L J 756 : AIR 1964 Bom 1 (3) (Pt C) (Pr 8) (DB).

——S. 100 —Scope—Does not control S. 55 (6) (b):— Charge for earnest money due from defaulting seller —Not subject to S. 100, as to notice—Charge can be enforced against purchaser from seller irrespective of the question whether the purchaser under the seller had or had not notice of the charge. See Transfer of Property Act, Sections 55 (6) (b) and 100. AIR 1952 Bom 67.

——S. 100 — Transferee for consideration without notice.

A charge does not invovle a transfer of an interest in any specific immovable property and such a charge cannot be enforced against a property in the hands of a bona fide purchaser for value without notice. AIR 1951 Cal 398 (399) (Pt C) (Pr 12) (DB).

——Ss. 100 and 55 (6) (b) — Buyer's charge under S. 55 (6) (b)—Enforceable also against person claiming under seller irrespective of question of notice. See T. P. Act (1882), S. 55 (6) (b). 1962 Ker L J 725.

——S. 100—Charge created by compromise decree — Decree not satisfied —Purchaser of charged property is hit by the rule of lis pendens irrespective of whether the purchase is a bona fide transaction or

not so long as the decree is not satisfied and is kept alive. He does not get any assistance from proviso to S. 100, T. P. Act. See T. P. Act (1882), S. 52. **A I R 1953 Mad 71 (DB).**

——Ss. 100, Proviso 52 — Applicability — If subject to S. 52 — Charge created by compromise decree — Purchase for value and bona fide pending execution —If comes within proviso to S. 100.

In a suit by plaintiff (Appellant) in Court C for partition of joint family properties a compromise decree (8th October, 1928) was passed under which the plaintiff was to be paid Rs. 6,000 in lieu of his claim of which Rs. 4,000 was made payable in a particular Tamil month of 1934 and the balance to be paid in instalments. Further for due performance of the decree a charge was created over the suit properties including three items lying within the jurisdiction of Court N.

After several execution petitions for transfer of decree to Court N ultimately on 13th July, 1946, order was passed. Earlier than actual transmission an execution petition was filed in Court N. But on the same day, i.e., 13th July the Judge in Court N passed an order for return of the execution petition for purposes of production of a copy of decree.

On representation on 19th July, 1946, with an endorsement that the decree will be filed later on, properties lying within the jurisdiction of N were brought to sale. But earlier one of the defendants has sold this very same properties to others who came forward with claim petition against the execution of the decree,

Held, that reading S. 100 in conjunction with S. 52 of the Transfer of Property Act, the purchaser for value without notice of the charge acquires right only by virtue of the proviso, to S. 100 (as amended) only in cases where there is no other provision of law governing such a charge. The purchaser of properties subject to a charge created by compromise decree the satisfaction or discharge of which has not been obtained or has not become barred by limitation does not get any assistance from the proviso to S. 100 of the Act even though he is a purchaser for value without notice of the charge. So long as the decree is not satisfied and is kept alive the purchase is hit by the principle of lis pendens, irrespective of whether the purchase is bona fide or not. (1945) 2 M L J 57 ; ILR (1945) Mad 726, Foll. The appellant is entitled therefore to proceed against properties in the hands of purchasers bona fide without notice.

(2) That the Court to which the decree was transferred for execution could entertain the execution petition even before the order of transmission is made and a copy of the decree is received: **1952 Mad W N 817 : 65 Mad L W 729 : (1952) 2 M L J 347 : AIR 1953 Mad 71 (72) (Pt B) (Prs 6, 8).**

19. Charge whether binds auction purchaser.

——S. 100—Auction sale — Irregularity in not proclaiming charge — Charge becoming unenforceable by virtue of S. 100 — Whether injury suffered by charge holder is substantial is a question of fact. See Civil P. C. (1908), O. 21, R. 90 (1), Proviso. AIR 1965 S C 834.

——S. 100 — Execution sale.

The expression "transferred for consideration" in S. 100 is wide enough to include an auction sale in execution of a decree.

A bona fide auction-purchaser at the sale in execution of the decree without notice of an equitable charge is not bound by any equitable right or claim upon the property binding on the judgment-debtor. ILR (1940) All 669; 13 Luck 101, Rel. on, **ILR 31 Pat 722: 1953 B L J R 137 : AIR 1953 Pat 58 (60) (Pt C) (Pr 5) (DB).**

——S. 100 — Transferee for consideration — Without notice of charge—Unpaid vendor's charge—Does not bind auction purchaser. See Transfer of Property Act (1882), S. 2 (d). AIR 1960 Punj 296 (DB).

20. Enforcement of charge.

——S. 100 — Declaratory decree—Creation of charge but no direction in the decree about the sale of the property in enforcement of that claim—A separate suit for its enforcement necessary. See Civil P. C. (1908), S. 2 (2). **AIR 1957 7 All 575 (DB).**

——Ss. 100, 92 and 82 — Limitation Act, Art. 132 — Redemption by co-mortgagor—Suit for contribution —Starting point of limitation —Depends on nature of right sought to be enforced — Claim for only contribution by enforcing charge therefor — Limitation begins from date of payment. See Limitation Act (1908), Art. 132. **AIR 1964 Bom 284.**

——S. 100 — Civil P. C. (1908), O. 34, Rr. 14 and 15 — Not applicable to enforcement of charge where charge is created by decree and is enforceable in execution under the terms thereof — No suit is necessary is that behalf. **AIR 1953 Cal 676 (680, 681) (Pt D) (Prs 16, 21) (DB).**

——S. 100 — Charge created by decree — Enforcement of — (Civil P. C. (1908), O. 34, R. 15).

If a charge falls under the section then it can be realised by a suit for sale as if it were a simple mortgage. A charge created by a decree does not fall within the section. AIR 1956 Mad 67; (1955) 2 Mad L J 618. Followed; (1954) 2 M L J 13 (S N), Not followed. Even in cases of charges created by decrees a distinction has to be borne in mind with regard to the mode of enforceability. If the decree is executable, a charge created by it can be enforced in execution. No particular form of words is necessary to create an enforceable charge and all that is required is that there must be clear indication of the property being made security for the payment of money. AIR 1940 Cal 93 and AIR 1939 Nag 118, Followed.

If on the other hand the decree creating the charge is merely declaratory, the decree-holder is not entitled to sell the property in execution but must file a suit to enforce the charge. AIR 1918 Cal 705 and AIR 1932 All 439, Followed.

Therefore the charge created by the maintenance decree which on the facts of this case did not fall under S. 100 could be enforced by sale of the properties in execution. **AIR 1958 Mad 23 (25) (Prs 7, 9, 10).**

——Ss. 100 and 67—Civil P. C. (1908), S. 11—Decree for sale to enforce charge passed in prior suit—Decree not executed—Second suit for sale to enforce charge is not barred. See Civil P. C. (1908), S. 11. **AIR 1953 Mad 32 (DB).**

——S. 100 — Civil P. C. (1908), O. 23, R. 3—Compromise creating a charge — Want of attestation does not affect validity of decree passed on it—Execution of the decree cannot be objected to by the party. See Civil P. C. (1908), O. 23, R. 3. **AIR 1952 Mad 163.**

——S. 100 — Civil P. C. (1908), S. 47 — Decree capable of execution—Decree for maintenance made charge on properties—Not a mere declaratory decree — Can be executed straight way without a regular suit. See Civil P. C. (1908), S. 47. **ILR (1963) Cut 85.**

——S. 100—Creation of charge by operation of law—Mode of its enforcement—Any decree obtained for the recovery of that money, must in law, be a decree enforcing that charge—S. 100 applies to a charge created by operation of law. See Municipalities—Patna Municipal Corporation Act, 1951 (13 of 1952), S. 144. **AIR 1955 NUC (Pat) 4580.**

—S. 100—Decree creating charge — Charge does not come within the scope of S. 100—Executability—Sale in execution of charged property premissible—Charge need not be enforced by a separate Suit. See Civil P. C. (1908), S. 38. AIR 1957 Punj 92.

—S. 100—Charge created by compromise decree — Fresh suit to enforce it is not necessary—Charged property can be brought to sale in execution of decree — No fresh attachment is also necessary See C. P. Code (1908), O. 34, R. 14. AIR 1963 Tripura 46.

21. Sale in execution of a charge decree—Whether extinguishes the charge.

—S. 100 — Charge — Applicability of provisions applicable to simple mortgage—Extent of.

All provisions relating to a simple mortgage do not necessarily apply to a charge. They apply only 'so far as may be'. Different considerations arise when a charge is of a recurring nature. Whenever a property is made subject to a charge of a recurring nature, the charge remains attached to the property and can be enforced against it in the hands of any one who happens to be, for the time being possessed of it irrespective of the fact that on previous occasions it had been sold in enforcement of the same charge. AIR 1940 Cal 60 and AIR 1933 All 934, Rel. on. **AIR 1957 All 575 (585, 586) (Pt F) (Prs 46, 47) (DB).**

—S. 100—Decree for maintenance creating recurring charge on ceatain property—Sale in execution is not free from encumbrance as in case of mortgage decree—Property can be sold each time future maintenance becomes due — Sale proclamation not stating that property was subject to recurring charge— Does not operate as estoppel. See Civil P. C. (1908), O. 34, R. 15. AIR 1964 Mys 40.

22. Charge created by a decree.

—Ss. 100 and 52 —Civil P. C. (1908), S. 38—Declaratory decree creating simply charge on property but not directing the sale of the property in enforcement of the claim—Results that follow from such decree are (i) Question of notice assumes importance; (ii) The transferees will not be subject to the doctrine of lis pendens and (iii) it is possible that the right of suit may become barred and the original decree declaring charge may thus be extinguished as against the defendant against whom the right of suit has become barred. See Civil P. C. :(1908). S. 38. AIR 1957 All 575 (DB).

● —S. 100—Decree creating charge (Charge).

Where there is no compromise or award and the decree, as in the case of a maintenance decree declaring a charge in favour of a Hindu widow, creates a charge for the first time by its own force it cannot be said that the charge was created by "act of parties" or by "operation of law" within the meaning of first paragraph of S. 100.

Where an order for sale of the property in enforcement of the charge is made, a definite interest is created in favour of the judgment creditor. Such an order is binding not only against the judgment debtor but also against his privies including purchasers for value without notice.

(Per Malik C, J.) — Though a charge created by a decree is like any other charge and is not enforceable against a transferee for consideration without notice, where the decree directs the sale of the property, the property can be sold in execution even in the hands of a transferee from the judgment-debtor and the transferee cannot plead that he had no knowledge that a decree for sale had been passed against his transferor. A I R 1943 Oudh 354 (FB), Dissent. Mahesh Prasad v. Mundar Mt. 1951 All L J 39 : 1951 All W R (H C) 225 : ILR (1953) 1 All 284: AIR 1951 All 141 (145, 149, 151) (Pt B) (Prs 18, 39, 40, 49) (FB).

● —S. 100—Declaratory decree (Charge).

A declaratory decree, though creating a charge, does not order the sale of property and so long as an order for sale has not been passed, the interest created by the charge remains a nebulous one not available against a purchaser for value without notice. Mahesh Prasad v. Mundar, Mt. 1951 All L J 39: 1951 All WR (HC) 225 : ILR (1953) 1 All 284 : AIR 1951 All 141 (151) (Pt D) (Pr 50) (FB).

—S. 100 — Suit to recover simple money debt — Creation by decree of charge over immovable property of debtor—No right in immovable property in suit is involved — S. 52 is not attracted. See Transfer of Property Act (1882), S. 52. AIR 1964 Bom 1 (DB).

● —S. 100—The order of appointment of a receiver in an action of a simple mortgagee or an equitable mortgagee to recover the mortgage amount with a direction to him to bring in the rents and profits from the hypotheca to the credit of the suit without an order of appropriation or allocation in favour of the mortgagee does not amount to a charging order in favour of the mortgagee. See Civil P. C. (1908), O. 40, R. 1. AIR 1962 Mad 59 (FB).

—S. 100—Applicability—Charge created by decree.

A charge created by a decree does not come within the scope of S. 100, Transfer of Property Act. It cannot be a charge created either by act of parties or by operation of law. It is altogether a different category not contemplated by S. 100, Transfer of Property Act, and hence an auction-purchaser cannot take advantage of his purchase of the property sold in enforcement of the charge created by the decree to the detriment of the other charge created by the same decree but which is still subsisting and which is yet to be enforced by the party in whose favour it was created. AIR 1946 Mad 51 : (1945) 2 M L J 388, Dissented from. 68 Mad L W 755 : (1955) 2 M L J 618 : 1955 Mad W N 750 : ILR (1957) Mad 697 : AIR 1956 Mad 67 (72) (Pt B) (Pr 20) (DB).

—S. 100—Expression 'act of parties' and 'operation of law' — Meaning of—Charge created by decree—Doctrine of notice applies,

The phrases 'act of party' and 'operation of law' must be read as exhaustive of all ways in which rights of parties can be affected. 'Law' has been defined as the commands of him or them that have coercive power,' and in this generic sense an order of Court is 'law' between the parties, and the resulting relations of the parties are governed by law, and not by treaty between them. This being so, it cannot be said that decrees are outside the pale of law or operation of law, and the doctrine of notice would normally apply to decrees or orders creating charges.

Where, therefore, after passing of a money decree, the parties entered into an agreement whereby the decretal amount was made charge on certain immovable property of the judgment-debtor and the Court certified the adjustment by its order, it was held that the charge created by the order of the Court was one within S. 100. T. P. Act and was not binding on a bona fide purchaser without notice of it. The same result would follow even if the charge was not regarded as one created by decree. The order recording the adjustment could not be regarded as more than a declaratory order following a compromise between the parties. The agreement itself made the charge as one by act of parties and its subsequent incorporation in an order had no significance. AIR 1944 Nag 1, Foll. Case law discussed. 1950 Nag L J 111 : ILR (1949) Nag 802 : AIR 1950 Nag 117 (126, 127) (Pt D) (Prs 45, 46, 51).

——S. 100 — Applicability — Charge created by decree.

A charge created by a decree does not come within the scope of S. 100 as it is neither a charge created by the act of the parties or a charge created by operation of law. A I R 1956 Mad 67 : (1955) 2 Mad L J 618 and AIR 1945 Pat 278 and AIR 1948 Pat 199 and A I R 1940 Nag 163 followed; A I R 1943 Oudh 354 (FB) and A I R 1943 Bom 414, Not followed. **ILR (1957) Punj 938 : A I R 1957 Punj 92 (95) (Pt C) (Pr 15).**

23. Payment in the nature of salvage.

——S. 100—Payment in nature of salvage.

Where a person pays money in order to restore the property to its proprietor, he has a lien on the property known as salvage lien and shall hold possession till he is paid up by the owner. **('51) 17 Cut L T 157 : A I R 1953 Orissa 103 (104) (Pt B) (Pr 6).**

24. Hindu widow's right of maintenance.

● ——Ss. 100, 52 — Suit for asking the charge for maintenance on property—Right to immovable property is directly and specifically in question—Charge —(Lis pendens) — I L R (1939) All 885 : A I R (26) 1939 All 687 : 185 I C 597, **Overruled.**

Decree creating charge on specific immovable property and is executable one—A transferee of the property before the decree is fully satisfied is bound by the decree irrespective of the fact that he had no notice of the charge—See T. P. Act (4 of 1882), S. 52. **AIR 1951 All 141 (FB).**

● ——Ss. 100, 82 — Charge created by decree — If created by operation of law—Maintenance charge on A and B items of property belonging to X and Y, respectively—Maintenance recovered from X—Right of X against transferees of B properties—S. 70, Contract Act—Applicability.

Section 100 is restricted in its operation to two categories of charges, namely those created by act of parties and those created by operation of law. Charges created by decrees of Courts are not included. Such charges are not charges created by operation of law. A I R 1951 All 141 (FB); A I R 1956 Mad 67; A I R 1958 Mad 23, followed; A I R 1919 Mad 894; A I R 1918 Mad 668; 33 Mad L J 601; A I R 1940 Nag 163; 169 Ind Cas 169 (Nag); A I R 1945 Pat 278; A I R 1946 Pat 216; A I R 1948 Pat 199; A I R 1939 All 579; A I R 1957 Cal 204; A I R 1957 Punj 92, Rel. on. **A I R 1943 Oudh 354 (FB);** A I R 1943 Bom 414; (1947) 1 Mad L J 234; A I R 1946 Mad 51 and A I R 1950 Mad 396; (1950) 1 M L J 83, Dissented from.

Where by a decree a maintenance charge was created on items A and B of properties belonging to X and Y respectively and the maintenance was recovered from X only. X cannot file a suit for contribution against the transferees of B properties. He is not entitled to the benefit of S. 82 read with S. 100, T P. Act. X cannot also invoke the aid of S. 70 of the Contract Act. There is no personal liability in a matter of this kind. If S. 82 of the Transfer of Property Act has no application by virtue of the charge not coming within the scope of S. 100, transferees of B are not obliged to make any payment and consequently they cannot be said to have derived any benefit from the payment made by the plaintiff. A I R 1931 Pat 394, Disting. Rajah Bommadevara Naganna Naidu v. Rao Janardhana Krishna Rangarao. **ILR (1959) A P 511 : 1959 Andh L T 474 : (1959) 2 Andh W R 105 : A I R 1959 Andh Pra 622 (625) (Prs 21, 22, 24) (FB).**

——S. 100—Charge created by decree — Enforceability in execution.

A charge created by a decree would be one by operation of law only where the decree merely embodies a charge which exists in law apart from the decree itself. If a decree embodies a charge which has no existence in law independently of the decree itself, this would be outside the definition of S. 100 of the Transfer of Property Act. A Hindu widow's right to maintenance is not, however, in the fullest sense of the term, a charge on her husband's estate, though she has a right to be maintained out of that estate. That being so, a charge for the payment of maintenance of a widow out of her late husband's estate, though created by a decree, may from one point of view be said to be one by operation of law and from another point of view one not by operation of law but be a decree only. It has a double character and is distinguishable from one which is merely an instrument creating a charge and not at the same time a decree. If it were merely an instrument creating a charge, it could be enforced only by a suit according to the first para. of S. 100 but as it is at the same time a decree, it is capable of execution according to the provisions of law. That makes a charge created by a decree enforceable in execution. **60 Cal W N 1080 : A I R 1957 Cal 204 (208) (Pt A) (Pr 12).**

——Ss. 100, 52 and 39—Civil P. C. S. 151 — Interim maintenance can be granted in fitting cases under S. 151, Civil P. C. — Maintainance in the case of a Hindu widow is not a charge on the estate of her deceased husband until it is filed and charged upon the estate by a decree by agreement. — (Hindu Law —Maintenance). See Civil P. C. (1908), S. 151. **A I R 1955 Mad 571.**

——Ss. 100 and 39 — Right to receive maintenance does not create a charge on the property unless there is an agreement or a decree—(Hindu Law—Maintenance). See Transfer of Property Act (4 of 1882), S. 39. **A I R 1956 Nag 138 (d) (DB).**

——S. 100—Tenancy Laws— Orissa Estates Abolition Act (1 of 1952), S. 18 (1) (b) — 'Charge' — Meaning— Transferability of tenure is not a test to determine 'charge'—Monetary allowance in lieu of maintenance —Allowance paid out of estate is 'charge' on estate. See Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), S. 18 (1) (b). **('65) 31 Cut L T 932.**

25. Nankar and Dahyak rights.

——S. 100 — Nankar rent is a charge on property in respect of which it is payable—A I R 1938 Oudh 84, Rel. on. — Proprietary interest sold in execution of nankar rent decree sale should have put the auction-purchaser on enquiry—A I R 1953 Pat 58, Dist. **AIR 1961 Pat 291 (292, 293) (Prs 11, 12, 13).**

SECTION 101

● ——Ss. 101, 111—Merger—Lakhraj and mokarrari —Grant of entire village in mokarrari under single contract — Devolution of lessee's interest by inheritance on different branches — Purchase by member of one branch of share in the lakhraj interest from some of the lakhraj holders —His mokarrari interest if merges in the lakhraj interest to that extent—Partition inter se between lessees and lessors — If affects question of merger.

If the lessor purchases the lessee's interest, the lease no doubt is extinguished as the same man cannot be at the same time both a landlord and a tenant but there is no extinction of the lease if one of several lessees purchases only a part of the lessor's interest. Where a mauza is originally granted in mokarrari under a single contract of lease and the lessee's interest devolves by inheritance on three branches of the original lessee's family and a member of one of the branches purchases an eight anna share

in the lakhraj interest from two of the owners of the lakhraj holding and such a purchaser never comes to own the entire lakhraj interest in the village or the entire mokarrari interest therein, there is no coalescence of the interest of the lessor and the lessee in the whole of the estate which was subject to lakhraj and mokarrari interests and, that being so, there can be no merger of that person's mokarrari interest in his lakhraj interest.

Mere purchase by one of the lessees of portions of lakhraj would not bring about an extinction of the lease or break its integrity as he is only one of the several joint holders of the mokarrari interest.

In law, an inter se partition of the mokarrari interest would not affect the integrity of the lease and it could not be said that one of the lessees under such a partition became a mokarraridar under another contract of lease. Similarly a partition inter se among the several owners of the lakhraj holding would not in any way affect the integrity of the lease in the absence of an allegation of a fresh contract between the split up owners of the holding and the different owners of the mokarrari interest. Badri Narain Jha v. Rameshwar Dayal Singh, 1951 A L J (S C) 20 : (1952) S C A 429 : 64 Mad L W 531 : (1951) S C J 252 (SC) : ILR 30 Pat 664 : (1951) S C R 153 : AIR 1951 S C 186 (188, 189) (Pt A) (Prs 9, 10).

——Ss. 101, 76 — Auction purchaser in execution of prior simple mortgage decree in possession — Subsequent mortgagee not a party to suit on prior mortgage—His position is that of the mortgagor — Subsequent mortgagee not affected by the sale. He can treat prior mortgage as existing and can redeem it or sue to sell the property subject to it—Liability to account—(Civil P. C. (1908), O. 34, R. 1). See T. P. Act (4 of 1882), S. 76. AIR 1956 All 422 (DB).

——Ss. 101, 111—Merger—Purchase of equity of redemption in tenancy land under usufructuary mortgage by the tenant—No merger of the rights.

Merger is the sinking or drowning of the entire lesser interest in a larger one when they come together in one and the same person without any intervening interest.

Where the sole proprietor purchased the equity of redemption of land usufructuarily mortgaged by the tenant, the intervening interest of the mortgagee prevented the absolute ownership of the tenancy rights from vesting in the proprietor (S. 47 (2) of U. P. Tenancy Act); thus there was no complete merger of the proprietary and tenancy rights. (AIR 1935 Lah 522 and AIR 1950 Cal 1 Rel. on.) 1952 A W R (Rev) 209 : 1952 A L J (Rev) 234.

——S. 101 — Mortgagee purchasing mortgaged property in discharge of his mortgage—Partial failure of consideration—Remedy of mortgagee.

Where the mortgagee purchased the entire mortgaged property and subsequently it transpires that the vendor was entitled to only 8 anna share in the property in question, the only remedy of the mortgagee in a case of this nature, where there is a partial failure of the consideration, is to sue the vendor for damages. He has no right to bring a suit for enforcing the 8 anna share of the mortgage. Although the mortgagee's purchase becomes effective only to the extent of vendor's 8 anna share, the position created by the sale deed when it was executed, was a complete extinction of the entire mortgage. Once the mortgage is extinguished, it can hardly be revived except where the whole consideration fails or the deed becomes ineffective in toto and not in part. When it becomes ineffective in toto, the position is as though the transaction had never taken place, but when it is effective in part the transaction cannot be absolutely ignored nor can it be ignored to the extent of a part and taken notice of in respect of the other part. AIR 1936 Pat 404 and AIR 1922 All 76, Rel. on. AIR 1952 Cal 749(750) (Pr 5).

——S. 101 (as amended in 1929)—Scope—Merger—Cases not covered by section — Determination depends on intention.

Under S. 101 as it stood before its amendment in 1929 merger was the rule, subject to certain exceptions. After the amendment, there is no statutory rule of merger which was based upon English Common law. The question of merger would be determined on intention depending on the facts and circumstances of each case.

The mortgagor who had sold the equity of redemption to the mortgagee with a stipulation for its reconveyance after a fixed period assigned his right to reconveyance to third persons. The mortgagee executed a reconveyance in favour of such third party purchasers. In a suit for enforcement of the mortgage it was contended by such purchasers that the mortgage had extinguished by reason of merger :

Held, that the stipulation for reconveyance of equity of redemption from mortgagee to mortgagor pointed to an intention against merger. 1961 Mad W N 683 : (1962) 1 Mad L J 227 : AIR 1962 Mad 343 (344) (Prs 2, 3).

——Ss. 101, 82 — Purchase by mortgagee of portion of mortgaged property — There is a merger of the rights — Mortgagor can claim — Deduction of mortgaged amount in respect of the property sold—(Civil P. C. (1908), O. 34, R. 2.) See T. P. Act (4 of 1882), S. 82. AIR 1958 Mys 43 (DB).

——S. 101 — Mortgagee purchasing mortgaged property—Effect.

There is no prohibition for a mortgagee being the purchaser of the property mortgaged to him. The effect of the purchase is to bring about a merger of rights as mortgagee with those of purchaser except in relation to a puisne mortgagee under S. 101, Transfer of Property Act. When the mortgagee purchases the equity of redemption and acquires ownership he may keep the mortgage alive for his own defence as against a puisne encumbrancer but the mortgage is nevertheless extinguished as between the mortgagor and mortgagee or as between the mortgagee and a stranger. The provision is intended for the benefit of the mortgagee. The mortgagee cannot be considered to be trustee in any sense by becoming the purchaser of the property. 31 Mys L J 183 : ILR (1952) Mys 227 : AIR 1953 Mys 122 (122) (Prs 2b, 3) (DB)

——S. 101 — Decree by prior mortgagee — Puisne mortgagee not made party — Suit by latter—Prior mortgage can be used as shield—(Civil P. C. (1908), O. 34, R. 1.)

In a suit by a puisne mortgagee, a prior mortgagee, if he is in possession, can set up in defence the prior mortgage as shield although in his suit the latter had not impleaded the subsequent mortgagee and even though a fresh suit to enforce it would be barred by time. The several alternative orders which can be passed by the Court in such a case, indicated. AIR 1922 P C 11 and ILR 53 All 1023 F B, Rel. on. ILR (1944) Nag 383 (FB), Diss., Case law ref. 1952 Nag L J 709 : ILR (1952) Nag 684 : AIR 1953 Nag 200 (204) (Pt B) (Prs 35, 36) (DB).

——S. 101—Debts—Son's liability—Prepartition debt—Transfer of Property Act (1882), S. 101—Mortgagee from Hindu father securing equity of redemption otherwise than under mortgage — Suit by mortgagee in his capacity as purchaser of equity of redemption in execution of a decree obtained against the father alone for partition and separate possession of his share — Right to sue on mortgage barred by limitation — Suit by son for separate possession the pur-

chaser mortgagee could not resist the claim — S. 101 did not apply because it confers rights against a subsequent mortgagee and not against the owner of the property. See Hindu Law—Debts. **AIR 1951 Nag 164 (DB).**

——S. 101—Applicability—Existence of subsequent encumbrance—Effect.

According to S. 101, T. P. Act, as it stands at present, the existence of a subsequent encumbrance prevents the merger of the right of the mortgagor in the mortgagee. The subsequent encumbrance must be existing at the time when the acquisition of the right of the mortgagor in the property by the mortgagee takes place. Hence, when there is no subsisting charge at the relevant time, the merger takes place. **1959 B L J R 646 : A I R 1960 Pat 264 (265, 266) (Prs 10, 11).**

——S. 101 — Merger — Doctrine of—Conditions for applicability.

The doctrine of merger only applies where a higher security is accepted in place of a security of lower operative power. For example, if two parties to a simple contract embody its contents in a deed which they both execute, the simple contract is thereby discharged. But the doctrine is not applicable if the securities are of equal decree; as a bond taken for a bond or covenant : or a bond or covenant taken for payment of rent which is a speciality debt. (1851) 20 L J C P 102, Rel. on. The doctrine of merger will not be applicable unless the new security is between the same parties a superior security given by a surety for the debt does not merge the debt as against the principal. **22 Com Cas 88 : I L R 30 Pat 703 : A I R 1951 Pat 621 (623) (Pt B) (Pr 9a) (DB).**

——S. 101 — Custom — Alienation — Ancestral proprietary right in land—Purchase of Saunjidari rights in land by proprietor—Merger not to be presumed — Sale of land without necessity — Effect is that reversionary rights in ancestral property will not be bound by sale but sale of Saunjidari rights cannot be challenged. AIR 1955 N U C (Punj) 4601.

——S. 101—Surrender pending attachment—Effect— Attachment of right of the tenant to be in possession till the value of improvements is not paid—Surrender of his rights after attachment—No merger of the two interests of the surrenderer and the surrenderee — Just like the existence of the estate of lessee or mortgagee, the existence of attachment is enough to prevent the merger of the two estates. See T. P. Act (1882), S. 111. **AIR 1955 N U C (Trav Co) 1040.**

——Ss. 101, 60 and 82 — Rateable abatement — No release of portion of mortgage debt — No merger of interest of mortgagor and mortgagee in respect of portion — Owner of portion of mortgaged property cannot claim. See T. P. Act (1882), S. 60. **AIR 1953 Trav-Co. 283 (DB).**

——S. 101—Scope—(C. P. Code (1908), O. 34, R. 1).

The sub-mortgagee has no privity of estate or privity of contract with the original mortgagor. So far as the sub-mortgage is concerned the privity of estate and privity of contract are between the mortgagee and the sub-mortgagee and as such the sub-mortgage can be put an end to by redemption or by release, only by the original mortgagee and his representative-in-interest. It cannot also be said that on the mortgagor acquiring the rights under the sub-mortgagor there is a merger of the sub-mortgage in the ownership of the property. Such merger is possible only if there is no intermediate charge subsisting.

The property belonging to tarwad A was mortgaged and the mortgage rights were assigned to B. B in turn sub-mortgaged the property to C. While C was in possession D purchased equity of redemption from A and later on obtained release deed from C. Thereupon a member of tarwad A filed a suit for redemption of the sub-mortgage. **Held**, that a release of the sub-mortgage was in effect only on assignment of the rights under the sub-mortgage and D's possession was the possession of the sub-mortgagee. Plaintiff was, therefore, entitled to redeem that sub-mortgage and recover possession from D. **AIR 1953 Trav-Co 271 (271) (Pr 3).**

——Ss. 101, 111, 82 — Merger — Doctrine — Suit by subsequent mortgagee — Decree — Purchase by subsequent mortgagee himself of mortgaged property in execution of own decree subject to prior mortgage — Subsequent suit by prior mortgagee impleading prior purchaser — Decree — Assignment of decree in favour of subsequent mortgagee purchaser at sale in execution of decree on subsequent mortgage — Right of subsequent mortgagee as a purchaser of the decree on the prior mortgage to execute that decree — Held by purchase of equity of redemption decree was held extinguished pro tanto. **ILR (1952) T C 115 : 1952 K L T 322 : AIR 1952 T C 487 (489, 490, 491) (Prs 5, 6, 7, 8, 10) (DB).**

——S. 101 — Debtor and creditor — Extinguishment of liability by merger—Extent of.

It is a principle of jurisprudence that a person cannot, at one and the same time, unite in himself two opposite characters. For instance, a person cannot be his own creditor, or the mortgagee of his own rights. The doctrine of merger proceeds on this principle. If the quantum of the interests that coincide is co-extensive, the extinguishment is complete; otherwise there would be an extinguishment pro tanto. The principles applies to all obligations whatever be their origin and nature; it applies to obligations arising out of or merged in and evidenced by decrees as well. The principle would equally apply whatever be the manner in which the two characters happen to become vested in the same individual whether by act of parties or by operation of law. Case law Ref.

A obtained a money decree against B for Rs. 450—A then borrowed Rs. 250 from C hypothecating the said decree as security. C transferred his interest under the hypothecation bond in favour of B. B as transferee then instituted a suit against A for recovery of the amount due under the hypothecation bond personally from A as also by sale of the hypotheca.

Held that on account of the operation of the rule of extinction occasioned by the plaintiff becoming debtor and creditor the plaintiff's claim for money due on the hypothecation bond must be taken to have been satisfied out of the decretal amount due from him which was in excess of his claim. The plaintiff therefore had nothing to recover by action and hence his suit was not maintainable. 32 Cochin L R 290, Rel. on; 35 Cochin L R 414, Ref. **I L R (1951) Trav-Co 834 : 1952 Ker L T 207 : A I R 1952 Trav-Co 292 (293, 294) (Prs 4, 6) (DB).**

SECTION 103

——Ss. 103, 83 and 84 — Usufructuary mortgage — Major and minor mortgagees — Notice of deposit on minor mortgagees without guardian ad litem — Appointment of guardian ad litem for valid service of notice necessary—The argument that appointment of guardian for the minor mortgagees would only be necessary if such appointment had been requisite or desirable as laid down in S. 103 is not acceptable— Suit for redemption and mesne profits — Period for which mesne profits can be granted — See T. P. Act (4 of 1882), S. 83. **AIR 1959 Pat 457.**

SECTION 105

SYNOPSIS

(Transfer of Property Act (1882), S. 105.)

1. Applicability of Chapter.
2. Lease, essentials of.
   (A) Lease by co-sharer.
   (B) Sub-lease.
   (C) Mining-lease.
3. Lease is an interest in property.
4. Agreement to grant lease.
5. "Right to enjoy."
6. Contract necessary for lease.
7. Tenancy by payment and acceptance of rent.
8. Kabuliat, rent-note, patta etc., whether lease.
9. Lease and licence—Distinction.
10. Lease or licence—Test for determination.
11. Occupation as tenant or servant.
12. Possession under void lease—Effect.
13. Commencement of lease.
14. Term of lease—Mode of determination.
15. Lease for a term certain with a provision for continuation thereafter.
16. Periodic leases.
17. Tenancy at will.
18. Tenancy by sufferance.
19. Lease for life.
20. Lease with a clause for renewal.
21. Lessee holding over after expiration of lease—Effect.
22. Permanent lease.
   (A) Permanent tenancy—Onus of proof.
   (B) Principle of lost grant as applied to permanent tenancies.
   (C) Permanent tenancy—Construction of leases.
   (D) Permanent tenancy—Evidence and proof.
   (E) Permanent tenancy — Acquisition of, by prescription.
23. Premium or rent.
24. Rent.
   (A) Rent in kind—Payment of money value.
   (B) Service as rent.
   (C) Variation of rent.
   (D) Rent-free grants.
25. Lease or mortgage.
26. Service grants.
27. Resumption of service grants.
28. Damages for use and occupation.
29. Determination of lease.
30. Heritability of lease.
31. Perpetual lease.
32. Construction of leases.
33. Zamindari and ryotwari lands—Tenants of.
34. Zuripeshgi lease.
35. Kanom leases.
   See also T. P. Act (1882), S. 58.
36. Cultivatory lease and proprietary lease—Distinction.
37. Landlord and tenant.
   (A) Landlord and tenant—Adverse possession. See Limitation Act (1908), Arts. 142-144.
   (B) Tenant encroaching on other land of the landlord—Effect.

1. Applicability of Chapter.

●——S. 105 — Applicability — Contract of tenancy entered into in violation of order under S. 7 (2) of U. P. (Temporary) Control of Rent and Eviction Act is not void. See Contract Act (1872), S. 10. AIR 1964 All 1 (FB).

——Ss. 105 and 106 — Creation of tenancy—Service rendered in lieu of rent — Notice of ejectment — If necessary — Assam (Temporarily Settled Districts) Tenancy Act, S. 33.

Under the Transfer of Property Act rent can be paid in cash, kind or in services. Even if the provisions of the Transfer of Property Act do not apply, the principle underlying S. 105 of that Act which defines rent would be applicable. On general principles therefore, it could not be said that where services are rendered in lieu of rent, no tenancy comes into existence. Although the relationship between the parties is not covered by the Transfer of Property Act or the Assam (Temporarily Settled Districts) Tenancy Act, a reasonable notice is necessary before the tenant or the lessee could be evicted. I L R (1951) Assam 171 : AIR 1951 Assam 86 (86, 87) (Prs 5, 8, 9).

——S. 105 — Lease of lands in favour of industrial and commercial company — Lease including plots already let out — Validity — Held that by virtue of S. 3 of Bombay Tenancy Act provisions of S. 105, T. P. Act were applicable to the case — Lease was saved from operation of Tenancy Act. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 88 (1) (b). AIR 1956 Bom 749 (DB).

——Ss. 105 and 2 (d) — Relationship created by decree — S. 2 (d) clearly excludes the application of provisions of S. 105 to relationship created by a decree — Provisions of S. 105 would be invoked as matters of justice, equity and good conscience. See T. P. Act (1882), S. 2 (d). AIR 1954 Bom 370 (DB).

——S. 105—Lease of reversion—Validity.

There is nothing in the terms of S. 105 of the T. P. Act which prohibits or prevents the leasing out of a reversion. (1951) 55 Cal W N 86.

——S. 105—Lease granted before T. P. Act — Applicability of S. 105.

The definition of lease in the Transfer of Property Act of 1882 does not apply to transactions before the date on which it came into force so as to determine the character of the transaction embodied in a lease deed of 1796. The matter has, therefore, to be judged in the light of the law which prevailed in 1796, the date of the deed. 68 Mad L W 783 : I L R (1956) Mad 867 : (1956) 1 Mad L J 82 : AIR 1956 Mad 72 (78) (Pt D) (Pr 17) (DB).

——Ss. 105, 106—Settlement of village—Recovery of rent by Government—(Constitution of India, Art. 226).

A tenancy is created not only by an express contract but also by implication by the conduct of parties and acceptance of rent clearly establishes a tenancy. The Government not only stood by and let the petitioners build houses, plant fruit trees, start other cultivation; and establish a new village which came to be known as Khasia or Abom Punjee Khasia, but also recovered house tax from the petitioners. The house-tax recovered from the owner of each house was in the nature or in lieu of land-revenue or rent for his occupation of land for residence and cultivation in the village.

Held, that in these circumstances a tenancy clearly came into existence in favour of the petitioners. Transfer of Property Act did not apply to Manipur at the relevant time and therefore the presumption under S. 106 of that Act could not be availed of, nor could the petitioners be deemed to be annual tenants

under the provisions of the Assam Land and Revenue Regulation, 1886, because the provision of Chapter II, Part I, of that Regulation did not apply to land included in any reserved forest. The petitioners had acquired the right as permanent tenants or lessees of the land in dispute. In the premises, the respondents were not entitled to eject the petitioners. A demand is not an absolute legal necessity before a petition for a writ under Art. 226 can be entertained, and relief to which a petitioner might be justly entitled under Art. 226 could not be refused merely for want of a previous demand. AIR 1951 All 257 (FB), Rel. on. **AIR 1958 Manipur 31 (32, 33) (Pt B) (Prs 8 to 14).**

——Ss. 105 to 117 — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 3 — Effect of—Provisions of Ch. 5, T. P. Act are incorporated. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 3. **AIR 1961 Mys 131 (DB).**

——S. 105 — Administrator of Ex-State — Power to grant lease—Lease held not hit by provisions of Act.

Held, that the findings of the Subordinate Judge that the Administrator had no power to grant the lease and that the lease was otherwise hit by the provisions of the Transfer of Property Act were wholly contrary to law and could not be supported. 31 Cut L T 576 : ILR (1965) Cut 229.

——S. 105—Applicability — Urban Rent Control law —Lease of premises with vacant land for 30 years for erecting buildings for industrial use—Lease governed by T. P. Act and not by rent control legislation regarding buildings—Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947). AIR 1961 Pat 330 (331) (Pr 4) (DB).

● ——Ss. 105, 117 — Applicability — Main lease for agricultural purposes and sub-lease for non-agricultural purposes—Transfer of Property Act applies to sub-lease and not Bihar Tenancy Act — Basis of applicability—See T. P. Act (4 of 1882), S. 117. **AIR 1961 Pat 321 (FB).**

2. Lease, essentials of.

(A) Lease by co-sharer.

(B) Sub-lease.

(C) Mining lease.

2. Lease, essentials of.

● ——S. 105—Lease—A lease is a transfer only of right to enjoy demised premises - But there is no transfer of ownership or interest in demised premises to lessee such as there is in a sale or a mortgage—See Houses and Rents—Bombay Rents Hotel and Lodging House Rates Control Act (47 of 1947), S. 4. **AIR 1953 S C 16.**

——S. 105—Tenancy — Creation of — Paying guest whether tenant.

Tenancy, letting or sub-letting, is the creation of a contract express or implied. Like every other contract an agreement of tenancy must contain all the essential elements of a valid contract. One of them is that the object or subject-matter of the contract must be certain or capable of being made certain. A contract of tenancy must relate to specified premises. To create a tenancy or sub-tenancy the tenant or sub-tenant must be given exclusive possession of specific accommodation. But if A says to B 'You can live with my family in my house on payment of rent', B becomes A's paying guest but there is no tenancy. A paying guest is not necessarily a tenant. If a person is allowed to live in a house by the owner as a paying guest but is not given possession over the whole or any part of the house, the relationship is not that of landlord and tenant.

Where the parties are close relations and one of them comes from Pakistan to seek shelter with the other, there is no presumption that a sub-tenancy is created. There must be cogent evidence that a relationship of sub-tenancy was created, and it must be proved that the refugee was given exclusive possession of the premises. **AIR 1960 All 395 (396, 397) (Pt B) (Prs 4, 10).**

——S. 105 — Essentials for creation of tenancy — (Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7).

A tenancy is created by agreement between two or more persons. A person may be a living person or an artificial one like a company or corporation created by statute. But it is settled law that a firm does not have the legal status of a person. It is merely a convenient name or label for the person or persons who own it. The firm as such is incapable of making a contract or becoming a tenant. The statement that a firm became the tenant or secured a contract is a layman's way of describing the real legal relation namely, that the partners of the firm became tenants or entered into a contract. 1959 All L J 343.

——Ss. 105 and 107 — Market rights — Lease of — Essential—(Evidence Act (1872), S. 91).

Held, that as the document created a lease for only one year, it was not one which fell within the first part of S. 107, namely, a lease from year to year reserving an yearly rent which expression necessarily implied that more than one year should be meant to to be covered by the lease. As possession had already been taken and a part of the theka money had been paid by the defendants before they executed the document it was a case of an oral agreement which was clearly permitted by law and therefore the document could not be discarded. Another reason why the document could not be discarded was that it was not a lease at all and therefore it could not be in violation of S. 107. A lease was a transfer of a right to enjoy immovable property and in this case when the defendants who were not entitled to any transferable property, executed the document they were not transferring any property. The document therefore did not violate any provisions of the statute and could not be said to be inadmissible in evidence. **ILR (1957) 2 All 261.**

——Ss. 105 and 107—Lease — Non-registration—It is not admissible as document of title — (Registration Act (1908), S. 49). **AIR 1955 NUC (All) 2027.**

——S. 105 — There should be transfer of right to enjoy immovable property — Definition does not contemplate right to manage property for or on behalf of other person—Understanding between widow and defendant that defendant to manage property and give certain amount of paddy to widow for maintenance of herself and her daughter — On her remarriage right to maintenance and property to cease —Arrangement reduced to writing—Writing held to be memorandum of family arrangement entered into orally and did not require registration—Document held not lease (Family arrangement) - (T. P. Act (1882), Ss. 107, 5, 9). **A I R 1955 N U C Assam 4183 (DB).**

——S. 105 — Agreement under which a contractor agrees to pay a lump sum in consideration of a right to recover bazar dues or tolls, does not amount to a lease and does not require registration—(Registration Act (1908), S. 17). AIR 1940 Bom 369, Foll. **1962 Nag L J (Notes) 23.**

——S. 105 — Essential of lease.

A and B as owners of the suit premises and C as their tenant brought a suit for possession against the defendants alleging that they were trespassers who had wrongfully occupied the building. The suit was compromised and a consent decree in terms of

the compromise was passed. Its terms were: The defendants were to hand over possession to C by a certain date and if C was not willing to take possession then the possession was to be made over to A and B. Further after the date upto which the defendants had paid rent they were to pay rent at a certain sum per month before a specified date to C who in turn was to pay the amount to A and B. Default of the defendants either in the matter of handing over possession or payment of the rent was to entitle the plaintiffs to execute the decree.

Held, that on these terms it was not possible to construe the decree as creating any lease between C and the defendants. In the first place there was no actual demise of the premises by C in favour of the defendants. Further if the decree gave rise to a lease between C and the defendants then the term that A and B would be entitled to recover possession by executing the decree would be meaningless. The fact that the amount payable by the defendants was termed rent in the decree could not lead to the conclusion that the decree created the relationship of landlord and tenant. **I L R (1959) Bom 182 : 60 Bom L R 122 : AIR 1958 Bom 471 (473, 474) (Pt B) (Prs 11, 12).**

——Ss. 105, 108, 111 — Two companies having distinct legal entities—Common directorate of two companies no bar to creation of tenancy by one company in favour of the other or to termination of tenancy so created or institution of suit for ejectment—Ex parte decree for ejectment against lessee company—Sub-lessee not impleaded in ejectment suit — Effect on sub-lease—Execution against sub-lessee not illegal — Calcutta Thika Tenancy Act (1949)—Sub-lessee thika tenant — Bound by decree for ejectment obtained by landlord against lessee and landlord is entitled to recover possession of land from sub-lessee—Tenancy Law—Calcutta Thika Tenancy Act (1949). (1962) 66 Cal W N 1010.

——Ss. 105, 116—Creation of tenancy.

In a case where the tenant remains in possession by virtue of a Statute, acceptance of rent would be not sufficient to create a tenancy between the parties. There should not be any difference between the two positions, namely, where the landlord accepts rent where the landlord assents to the tenants continuing in possession in such a case. Section 116, T. P. Act, has no application to a case where the landlord has no alternative but to allow the tenant to remain in possession and to accept the rent payable by the tenant. (1945) 1 K B 577, Rel. on. **59 Cal W N 827 : ILR (1957) 1 Cal 235 : AIR 1956 Cal 120 (121) (Pt A) (Pr 4) (DB).**

——S. 105 — Bemiadi lease, meaning of — Bemiadi lessee under an ordinary non-agricultural tenant does not get protection under Ss. 6 and 7, W. B. Non-Agricultural Tenancy Act (1949), (Words and Phrases —Bemiadi lease—See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949). S. 6. AIR 1955 N U C (Cal) 2957.

——S. 105 — Person in possession recorded in Jamabandi as Ghair Mauroosi Tenant without payment of rent on account of dispute as to title — No presumption of tenancy arises from such entry. AIR 1936 Lah 461, Rel. on. AIR 1961 Him Pra 18 (20) (Pt C) (Pr 16).

——S. 105 — Compromise decree—A compromise decree can operate as a lease — See Civil P. C. (1908) O. 23, R. 3. 1965 Kash L J 369 : AIR 1966 J and K 13 (DB).

——Ss. 105 and 58 — Compromise decree in suit for redemption of mortgage — Creation of lease — No transfer of any right of enjoyment under compromise—Character of possession of land retained by mortgagee held not changed from that of mortgagee to that of lessee — (Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 4), (Kerala Tenants and Kudikidappukars Protection Act (7 of 1963), S. 3 (26).

According to the compromise decree passed in a suit for redemption of mortgage, special value of improvements (nervi) was payable by the mortgagor to the mortgagee for the redemption of that portion of land which was retained by mortgagee with him. Although the amount of nervi was to be drawn from Court by the mortgagee and though he surrendered that portion of land for which nervi was payable, the amount of nervi was not paid to him by the mortgagor. Instead, he was permitted to continue in possession of the said portion of land for certain period, on his undertaking to pay or deliver to the mortgagor, throughout the period, some definite amount by way of 'profits.' Where, therefore, the mortgagee refused to surrender the said portion of land on the ground that he was the lessee and not the mortgagee thereof:

Held, that the transaction did not fulfil the definition of a 'lease' under S. 105 of T. P. Act: AIR 1954 Bom 370, Rel. on. Nothing had happened under the compromise to change the character of the possession of the land which the mortgagee retained with him, from that of a mortgagee to that of a lessee. Under the compromise there was no transfer as such of any right of enjoyment or of any right whatever. There could not have been an intention on the part of the plaintiff to create a lease as such by the compromise. **(1964) 1 Ker L R 150 : 1964 Ker L T 75.**

——S. 105 — Holding — Existence of 'leasehold' is essential — Section 4 of Kerala Stay of Eviction Proceedings Act (1 of 1957) not applicable when there is no holding — See Tenancy Laws — Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2 (1). A I R 1960 Ker 212 (DB).

——S. 105 — Viruti and Viruti lands — Nature and meaning of—Grant of viruti lands not creating leasehold rights — Hence not a holding within S. 2 (1)— See Tenancy Laws — Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2 (1). ILR (1960) Ker 1093.

——S. 105—Tenancy Laws—Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2(1) — Vechupathi Udambadi — Nature of possession under Agreement providing for adjustment of tenants' improvements on expiry of fixed term—Effect—Property held to be holding within S. 2(1) — Deed created lease within S. 105 of T. P. Act. See Tenancy Laws—Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2(1). 1960 Ker L T 650.

——Ss. 105, 116—Creation of fresh lease—Civil P. C. (1908), O. 23, R. 3, O. 40, R. 1 — Settlement in eviction suit during pendency of appeal in interlocutory matter held did not create fresh lease but was interim arrangement during pendency of appeal.

In a suit for eviction the landlord made an application for appointment of a Receiver. On rejection of that application he filed an appeal and pending it a settlement was arrived at whereby the tenant agreed (i) to pay a certain sum to the landlord in cash (ii) to give a solvent security for the due performance of the decree as might be passed, and (iii) to pay certain amount every month as rent for subsequent period.

Held, that the settlement could not be said to have created a fresh tenancy or any leasehold right. The appeal was an appeal against an order of the trial Court refusing to appoint a Receiver. In that appeal there was no question of determining finally the rights of the parties involved in the suit. The settlement arrived at was nothing but an interim arrangement till the disposal of the appeal. There was no

adjudication of the claims of parties. The mere use of the word 'rent' in the term of the settlement could not be taken as indicating that a new relationship of landlord and tenant between the parties was brought into existence. AIR 1962 S C 554 and AIR 1949 F C 124, Rel on. **1964 Jab L J 736 : 1964 M P L J 502 : AIR 1964 Madh Pra 288 (295, 296) (Pt D) (Prs 23, 24) (DB).**

——Ss. 105 and 3—Applicability—Fruits growing on trees — Agreement to pluck and take fruits away — Transaction is not lease — It relates to sale of growing crop — S. 4 of M. P. Act (1 of 1951) is not attracted—(Registration Act (1908), S. 2 (6) and S. 2 (9)—(Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act, 1950 (1 of 1951), S. 4).

Where A by a deed purports to acquire from the proprietors of certain villages for consideration the right to rear and pluck for some years fruits from the trees from their forest and to take away the fruits so obtainable, the transaction, though called a lease, does not create any right to enjoy immovable property for a term and does not for that reason create any leasehold interest in immovable property. Such a transaction relates to sale of growing crops and does not create an interest in land. A I R 1953 S C 108 and A I R 1956 S C 17, Foll. Since such a transaction does not create an interest in land liable to vest in the State under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, S. 4(1) of that Act is not attracted. **1959 M P C 133 : 1959 M P L J 268 : 1959 Jab L J 770 : AIR 1959 Madh Pra 120 (124, 125) (Pt B) (Prs 19, 25, 26) (DB).**

——S. 105—Lease—Reservation of rent if necessary —Rent if to be paid periodically.

A deed which purports to be on the face of it a lease and which uses the phraseology and conveyancing terms appropriate only to a lease cannot normally be held to be a transaction of any other character except for overwhelming reasons and even if there is no stipulation as to the payment of rent during the currency of the lease, it does not cease to be a lease solely on that account. It is not necessary that the rent should be paid periodically. It would still be rent whether it is paid at the beginning of a term in the shape of a fine or a premium or is payable at the end of it. The time fixed for payment does not alter its essential nature as a consideration for the lease. **68 Mad L W 783 : I L R (1956) Mad 867 : (1956) 1 Mad L J 82 : A I R 1956 Mad 72 (78) (Pt E) (Pr 17) (DB).**

——S. 105—Lease operating as demise in presenti—Lessee has right to sue for possession — Suit for specific performance — Competency — (Specific Relief Act (1877), S. 12).

Under S. 105, T. P. Act, delivery of possession of the property demised is not a condition precedent for coming into operation of a lease. Where, therefore, a lessee obtains under the lease deed an interest in the property leased he is entitled to sue for possession of the same on his own right, if there were no other legal impediments. That being so, a suit for specific performance is misconceived, even if it is maintainable. The proper relief is to sue for possession. **38 Mys L J 106 : I L R (1960) Mys 151 : AIR 1961 Mys 29 (31) (Pt A) (Pr 5) (DB).**

——S. 105—Premises destroyed by fire—Reconstruction and leasing out to other person — Order of restoration under Cl. 13(7), C. P. and Berar Letting of Houses and Rent Control Order (1949) in favour of former tenant — Validity considered — After the fire, the tenements were combined into one and the reconstructed permises became the subject-matter of a fresh tenancy — That position can be affected in its entirety or not at all because the Courts cannot reconstitute a contract of tenancy between lessors and lessee. See Houses and Rents — C P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13(7). AIR 1955 N U C (Nag) 1236 (DB).

——Ss. 105 and 108 (m), (o) — 'Lease' meaning of — Tenant taking electric connection in portion let out to him — It cannot be held that he had no right to take electric connection so as to improve those premises and also to increase his own covenience and comfort. See T. P. Act (4 of 1882), S. 108(m). A I R 1965 Pat 413.

——S. 105—'Lease'—Essentials.

A lease is as complete a transaction as the transaction of sale or gift, with this difference that while sale and gift effect a permanent transfer of interest in the lands, the leases operate to create a partial transfer for a specific period. Nonetheless, the transaction of leases for all purposes is as complete as the transaction of a sale or a gift. Once the settlement is made, the transaction is final and complete and nothing more is to be done. A lease, therefore, cannot be regarded as an inchoate action. **1960 B L J R 608.**

——Ss. 105, 107—Compromise decree carrying terms of existing tenancy — Registration not necessary — (Registration Act (1908), S. 17).

It is only in the event of a new lease having been created that registration is necessary. Where the compromise decree only amounted to varying the terms of the existing tenancy and thus it created no new lease there was no necessity for registration. **AIR 1955 Pat 402 (404) (Pt B) (Pr 8) (DB).**

——S. 105—Lease—Nature of—Agreement is a concluded contract notwithstanding the fact that either lease has to commence at a future date or that formal document has to be executed. 97 Pun L R 1913 and AIR 1923 Cal 1087 and AIR 1952 Trav-Co 333 (FB), Foll. **(1965) 67 Pun L R 1143 : I L R (1966) 1 Punj 71 : AIR 1966 Punj 365 (368) (Pt D) (Pr 8) (DB).**

——S. 105—Landlord and tenant — Tenancy — Creation of — Decree for ejectment against tenant passed on basis of compromise between landlord and tenant but process of execution to remain in abeyance for certain period — No new tenancy can be held to be created by virtue of compromise. **62 Punj L R 888 : AIR 1960 Punj 514 (514, 517) (Pt B) (Prs 2, 7).**

——S. 105 — Accommodation provided rent free to workmen by employer — Workmen occupying the premises are not tenants — Money paid by them for conservancy and repairs as net rent. See Punjab Urban Immovable Property Tax Act (17 of 1940), S. 4 (1) (j). **ILR (1957) Punj 1840.**

——Ss. 105, 106 and 107 — Term as to notice — If of essence—"Contract to contrary"—S. 106.

A distinction should be made between a case where the instrument is admissible though invalid and where the instrument is both inadmissible and invalid. Where the instrument is both inadmissible and invalid, no part of it can be looked into or severed from it and the whole of the instrument must fail. But where the instrument is admissible in evidence, though it fails as a valid lease, there should be no difficulty in separating those parts of the instrument which are not of the essence of the lease as defined in S. 105 and to treat them as a separate contract altogether from the contract of lease which is invalid. Thus, a term as to notice, is not of the essence of the definition of a lease as given in S. 105. This can be separated provided the instrument in which it appears is admissible in evidence though invalid as a lease; if on separation it amounts to a contract to the contrary with respect to the provisions of S. 106, it should be given effect to. The instrument,

signed by the lessee and accepted by the lessor but not signed by him, does amount to a contract between the parties though it does not create a valid lease and if the notice is given in accordance with this contrary contract, it is not necessary that the notice should expire with the end of the month of the tenancy. 1951 S C J 813: AIR 1952 S C 23, Expl. and Disting. ILR (1958) 8 Raj 466: 1959 Raj L W 242: AIR 1959 Raj 240 (242) (Pt C) (Pr 12) (DB).

——S. 105—Lease—What is pointed out. See Registration Act (1908), S. 17. AIR 1959 Raj 15.

——S. 105 — Lease on payment of premium and annual rent held valid. See Tenancy Laws—Quanoon Mal Mewar (5 of 1947), S. 8. 1956 Raj L W 271: ILR (1956) 6 Raj 778.

——S. 105 — Lease — Execution of lease by son as Vahiwatdar.

A lease-deed executed by the sons of the plaintiff as his Vahiwatdars is binding on him when the authority of the sons to execute it on his behalf is not denied by him and there is no proof that it was executed under coercion. AIR 1953 Sau 53 (54) (Pt B) (Pr 3).

● ——S. 105 — Transfer of right to be in possession amounts to transfer of possession in view of definition of lease in S. 105. See Debt Laws—Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), S. 2. AIR 1952 Trav-Co 333 (FB).

——S. 105 — "Lease" — Right to cultivate Oodukur Punja lands obtained by highest bidder at auction—Nature of—If leasehold right.

The right to cultivate Oodukur Punja lands is not strictly a lease as defined in the T. P. Act. These lands are leased out for the specific purpose of cultivating paddy. The right to cultivate was put up for auction by the Punja Special Officer and the highest bidder got the right to so cultivate them for one year only and surrendered possession as soon as the Kumbhom crop of the year is harvested. The cultivator is not entitled to use the land for any other purpose and he is not a "lessee" in the ordinary sense of that term. 1950 Ker L T 639: AIR 1951 Trav-Co 221 (DB).

2 (A) Lease by co-sharer.

——S. 105—Setting up title in third person—Alleging landlord to be only a co-sharer with another person—Effect of is that he states that the person is not his lessor and the lease in his favour is determined by forfeiture on account of his renouncing his character as lessees of that person by setting up a title in a third person—Essentials of lease stated. See T. P. Act (1882), S. 111 (g)(2). AIR 1958 All 847(DB).

——S. 105 — Co-sharer — Undivided plot—Lease by one co-sharer—Others are entitled to eject lessee.

Where a co-sharer has transferred by way of lease a joint property, as if he was the sole owner thereof, the other co-sharers are not bound by the lease to any degree at all and are entitled to a decree for ejectment against the lessee, though only for joint possession with the other co-sharers including the lessor. 1950 All L J 258: 1958 All W R 433: AIR 1950 All 405 (406) (Pt B) (Pr 10).

——S. 105 — Co-sharers — Lease by one co-sharer without consent of others—Effect on tenancy.

When one of the co-sharer landlords in exclusive possession of a plot lets it out to a tenant without the consent of the other co-sharer landlords, the tenancy does not bind the non-consenting co-sharers. Where therefore on partition between the co sharers such a plot is allotted to the non-consenting co-sharer he is entitled to a declaration that no relationship of landlord and tenant exists between him and such a tenant. AIR 1955 NUC (Orissa) 1347.

——S. 105 — Lease granted by one of several co-sharers—Validity.

Where the co-sharer who settled agricultural lands on lease was in exclusive possession of the lands the settlee would be entitled to remain on the lands, until the other co-sharers raise any objection and maintain an action in ejectment against trespassers for ejectment. The settlee in such a case would be entitled to Khas possession of the lands and therefore a decree for such possession against the trespassers. When there is no interference from the other co-sharer landlords there is no necessity to give him only a decree for joint possession and drive him to a suit for partition. AIR 1957 Pat 692 (695) (Pt B) (Pr 15) (DB).

2 (B) Sub-lease.

——S. 105—Creation of sub-lease—Essentials, stated—In order to create a lease or sub-lease the right to exclusive possession and enjoyment of property should be conferred or assigned upon another. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11 (1). 1960 Pat L R 34: 1960 BLJR 143.

——S. 105—Lease and sub-lease—Distinction.

There is no difference in legal character between a lease and sub-lease. It is true that in the case of a lease, the proprietor is the transferor, and in the case of sub-lease the lessee is the transferor. But this does not affect the legal character of the transaction. A lease is the transfer of right to enjoy immovable property made for a certain time and where the agreement (whether it is called a lease or a sub-lease) vests in the grantee a right of possession for a certain time, it operates as a conveyance and is a lease in the eye of law. ILR 33 Pat 198: AIR 1954 Pat 340 (342) (Pt A) (Pr 5) (DB).

——Ss. 105, 108 (8)—Sub-letting.

Mere permission by the tenant to keep the show case of a watch repairer in a leased shop safely during the night cannot amount to sub letting or parting with possession of the demised shop or any part thereof. See Houses and Rents — Delhi and Ajmer Rent Control Act (38 of 1952), S. 13 (1) (c) (i), AIR 1959 Punj 508.

2 (C) Mining lease.

● ——S. 105—Mining lease—Includes a mining sub-lease. See Mines and Minerals (Regulation and Development) Act (1948), S. 3 (d). AIR 1960 S C 1373.

——S. 105—Mining lease—"Coal land" possesses all essential attributes of immovable property — Hence mining lease would not be outside normal concept of lease and would come well within T. P. Act. See Evidence Act (1872), S. 116. A I R 1957 Cal 128 (DB).

3. Lease is an interest in property.

● ——S. 105—Property—Tenants' interest in demised premises is property within Art. 19 (1) (f), Constitution of India subject to provisions of Cl. (5). See Constitution of India, Art. 19 (1) (f). A I R 1965 S C 1008.

——S. 105 — Lease for quarrying — Sale of quarried material held a lease creating interest in land. See Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 3 (c). A I R 1958 Andh Pra 522 (DB).

——S. 105 — Lease during currency of subsisting lease — Validity — Interest of a lessor is a reversion and it can be validly transferred—Transfer would take

effect on possession or termination of subsisting lease —Question as to what amounts to delivery of possession in any particular case will depend upon nature of property leased. See T. P. Act (1882), S. 5. **A I R 1957 Andh Pra 619 (DB).**

——S. 105—'Leasehold right' — If property — Civil P. C. (1908), S. 60.

Where the enjoyment of tenancy right has not been restricted to the tenant personally under the terms of the lease or there is no enactment which restricts the enjoyment of the tenancy rights to the tenant himself, the right of the tenant is a property. **A I R 1959 Assam 61 (Pt A) (DB).**

——S. 105 — "Lease" is a "transfer" for purposes of S. 53-A — Merely because S. 105 defines a lease as a transfer of a right to enjoy immovable property it does not follow that transfer of the benefit to arise out of land is not a transfer of interest in immovable property. See T. P. Act (1882), S. 53-A. **A I R 1951 Bom 127 (DB).**

——S. 105 — Lease or licence coupled with profits a prendre is not interest in proprietary rights. See Tenancy Laws—M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 4 (1) (a). **1959 Jab L J 534 : 1959 M P L J 374 : 1959 M P C 262.**

[Reversed on another point in A I R 1962 S C 1916].

——S. 105 — Right to erect platform over municipal drain—Nature of — Platforms apart from the drain over which they stood could not be held to be immovable property — It was merely a right to do something over drain but not creation of any interest in drain itself — Therefore grant of this right could not be enjoyed as a lessee. See Municipalities—Bihar and Orissa Municipality Act (7 of 1922), S. 180 (2). **1954 Cri L J 664 : A I R 1954 Pat 249 (DB).**

——S. 105 — The interest of a lessee of immovable property is the immovable property and if the lessee does effect improvements thereon, those improvements become part of his holding, that is, his interest as lessee and therefore are immovable property. See Civil P. C. (1908), S. 64. **A I R 1955 N U C (Trav-Co) 1040.**

4. Agreement to grant lease.

● ——S. 105 — Grant of certain villages to appellant in 1847 — On construction held, did not amount to lease or farm but an agreement with the State. See Tenancy Laws — Salsette Estates (Land Revenue Exemption Abolition) Act (47 of 1951), S. 3 (l) (a). **A I R 1965 S C 590.**

● ——S. 105 — Document executed by layman without legal assistance — Construction — Agreement to lease — When operates as present demise stated. See Registration Act (1908), S. 2 (7). **A I R 1959 S C 620.**

● **——S. 105—Lease and agreement to grant lease—Distinction.**

An instrument is usually construed as a lease if it contains words of present demise. It is construed as an executory agreement, notwithstanding that it contains words of present demise, where certain things have to be done by the lessor before the lease is granted such as the completion on repair or improvement of the premises, or by the lessee, such as the obtaining of sureties. Tolaram Relumal v. State of Bombay, **56 Bom L R 1206 : (1954) S C J 547 : 1954 S C A 965 : 1954 Cri L J 1333 : (1955) 1 S C R 158 : A I R 1954 S C 496 (498) (Pt A) (Pr 6).**

● ——S. 105 — Deed — Construction — Agreement between parties that in future one of them will be tenant of the shop belonging to the other — Former authorised to keep his goods in shop — Agreement held did not create rights of tenancy in favour of former. Daulat Ram Sawhney v. Trilokinath, **I L R (1962) 1 All 113 : 1961 All L J 831 : 1961 All W R (H C) 645 : A I R 1962 All 147 (148) (Pt B) (Pr 3) (FB).**

——Ss. 105 and 106—Agreement of lease—Construction—On construction, notice terminating lease held valid — (Deed — Construction). **A I R 1955 N U C (Assam) 2313.**

——S. 105—Lease and agreement to lease — Distinction—If certain things to be done by lessor or lessee, agreement is executory and there is no present demise. A I R 1954 S C 496, Rel. on. **1964 M P L J (Notes) 120.**

——S. 105 — **Lease in respect of undefined share—Validity—Contract to lease.**

Held, that under S. 105, Transfer of Property Act, a lease of immovable property is a transfer of a right to enjoy such property. Division of the property by metes and bounds is necessary as exclusive enjoyment is an important ingredient of a lease. The tenant must have the right to exclude all other persons from the premises demised. A right to occupy certain premises for a fixed period cannot be a tenacy if the person granting the right remains in general control of the property. A lease does not come into existence if an undefined share in land is transferred. Under the C. P. Tenancy Act also the lease is only in respect of a 'holding' as defined in that Act. It is necessary that the parcel of land, which the tenant holds, must be separately defined. The lease granted in favour of the plaintiff amounted only to a contract to lease and created personal liability against the ex-malguzar to define the area to be granted under the lease and then to grant a proper lease deed. This could only be a contract in persona which could be enforceable against the ex-malguzar but could not be enforced against the State. The lease being for undefined area was invalid. 14 Nag L R 62 and A I R 1925 Nag 120, Foll. **1960 M P L J (Notes) 58.**

——S. 105 — Agreement to lease — Registration — A verbal promise to grant a lease is valid — Unless agreement in question created a present demise it would not require registration. See Registration Act (1908), S. 2 (7). **A I R 1955 Nag 170 (DB).**

——Ss. 105, 111 — **Agreement for lease — Effect of.**

Whether an agreement for a lease operates as a present demise or is merely a contract is a matter of construction of the language of the document in each particular case ; 152 E R 1279; AIR 1919 P C 79: 37 M L J 525; ILR 37 Cal 808, Rel. on AIR 1934 Mad 418 ; 67 M L J 54; 50 I A 243, Disting. **I L R 38 Pat 1160 : 1960 B L J R 105.**

——S. 105 — **Contract to lease or agreement to lease — Difference in — Section 5 — Effect of.**

A contract in order that it may constitute lease under the Transfer of Property Act has to be a demise in praesenti. An agreement to grant lease in future cannot constitute lease. But as S. 5 of the Transfer of Property Act specifically says that 'a transfer of property' is a conveyance of property in present or in future, so the mere fact that an agreement provides that the lease is to commence from a future date, or that there is a provision therein for the execution of a formal document in future will not make the transaction a merely executory agreement and not a lease. Nor is any actual entry on the land necessary to complete a lease, though at the same time it does not mean that where possession is allowed to be taken under an agreement, it may necessarily amount only to creating an interest in the property and not only a personal agreement.

Held, on the facts of the case that there was no demise in praesenti. The registered deed executed by the parties constituted only an agreement to grant

lease in future and not an out and out lease. 1958 B L J R 122 : ILR 37 Pat 339 : AIR 1958 Pat 589 (593) (Pt A) (Pr 10) (DB).

[Overruled on another point in AIR 1963 S C 454.)

——S. 105 — Definition in Registration Act goes beyond that in T. P. Act, and includes agreement to lease — It is enough if parties have acted on it—Deed unregistered — Not admissible in evidence — (Registration Act (1908), S. 2 (7)). AIR 1955 N U C (Sau) 5756.

5. "Right to enjoy."

——S. 105 — Right to enjoy — (Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), Ss. 2 (c), 7)—(Easements Act (1882), S. 52).

Where the right of enjoyment is restricted in the manner that the plaintiff would have the keys of the premises during the nights and would be entitled to keep his things on the premises, it cannot be said that an exclusive right to enjoy such property for a certain time has been granted to the defendant. At best the deed created a license in favour of the defendant. 1958 All W R (HC) 17.

——S. 105 — Right to enjoy.

Where a lease which was expressly described to be a lease of the land with the buildings, etc. situated thereon gave the lessee right to enjoy the existing room with pucca walls and tin-shed together with the dalan and the pucca privy and fixed a certain amount per month as the rent of the 'Jami' or land.

Held, that although the word "Jami" was used it was clear from the context that the rent was clearly payable for the land together with the buildings and that the right to enjoy the existing structures on the land also was transferred by the lease. Therefore the lease was a lease of the land as also of the building existing thereon at the time of the lease. (1956) 60 Cal W N 642.

——S. 105 — Agreement conferring exclusive right to enjoyment of premises.

A, who had been carrying on business in cinema shows, entered into an agreement with B, in respect of certain premises for carrying on the Cinema business. The agreement entitled B to the use of the premises. It also entitled him to the use of the furniture, the machines and other fittings on the premises. The agreement did not provide that B must carry on the business. The agreement required B to pay a lump payment per month and all taxes and rates. It entitled B to spend money for the improvement of the premises, the sum to be advanced being treated as loan to be set off against the premium on certain conditions.

Held that a perusal of the terms of the document clearly indicated that what was granted was a right to a furnished cinema house. An exclusive right to the enjoyment of the premises was conferred on B in consideration of a lump sum per month. Thus there was letting of the premises. AIR 1953 Cal 149 (150) (Pt A) (Pr 2) (DB).

——S. 105 — "Right to enjoy."

A lease is a transfer of a right to enjoy the property of the lessor made for a certain time under which the lessee is put in possession of the property. Where the document of leases of certain villages contained a direction that the lessees might enjoy all kinds of rights and incomes possessed by the lessor in any portion whatsoever in the whole of the said villages together with absolute rights possessed by the lessor from the current Fasli 1341 to the end of Fasli 1360 for 20 Faslis and it also contained another direction to the effect that the lessees were entitled to exercise the rights that the lessor would exercise as per Mad. Act (1 of 1908) and as per the other amended Acts thereof, against the ryots of the said villages.

Held, that those clauses were not inconsistent with the transactions embodied in the documents being leases. The clauses did not render the lessees the owners of the lands. 1957 Mad W N 509 : 70 Mad L W 794 : (1957) 2 Mad L J 260 : AIR 1957 Mad 749 (750) (Pr 5) (DB).

——S. 105 — Question as to passing of title to lessee — Intention of parties is material for decision — Intention has to be ascertained from facts and circumstances of case.

In the case of a lease, as in the case of a sale the question whether the title has passed to the lessee on the date of execution and registration of the lease or it will pass only on payment of full consideration, has to be answered only after considering the intention of the parties. It may be that when a sale of property takes place under S. 54, T. P. Act the tangible property itself passes and in the case of a lease governed by S. 105 the right to enjoy the property only passes. But nevertheless when a transfer of a right to enjoy a property comes into existence, the right that passes is also in the nature of an immovable property. Therefore, there is no justification for making a distinction between a sale and a lease in regard to this question. It has to be ascertained on the facts as to what was the intention the parties concerned. AIR 1964 Pat 71 (72) (Pt A) (Pr 3).

——S. 105 — Use of word "enjoy" if contemplates exclusion of possession — Transfer of mere right to usufruct of property without right of possession, if lease.

The use of the word "enjoy" in S. 105 instead of the word "possess" does not mean that the section contemplates the exclusion of possession. No doubt S. 108 (b) which deals with the lessor's duty to put the lessee in possession of the property is subject to the opening words of the section under which the parties can exclude the operation of any particular clause by express contract. But this only means that the lessor's duty of putting the lessee in possession can be excluded by express contract. It does not mean that the parties can agree that the lessee is to have no right of possession. If they do so, then the transaction would not be a lease. That being so, the transfer of a mere right to the usufruct of the property without the right of possession will not be a lease. 52 Pun L R 107 : AIR 1950 East Punj 296 (306) (Pt E) (Pr 26) (DB).

Editorial Note. — It is a matter of pleasure to the Authors of A. I. R. Commentaries on the T. P. Act to note that the statement of the law on this point in this judgment is practically in the same words as those used in the Commentary on S. 105, T. P. Act. (Compare Paras. 1 and 2 of S. 105, N. 5).—Editor.

6. Contract necessary for lease.

——S. 105—Members of Municipality taking leases of rooms belonging to it—Members incur disqualification under S. 15 (1) of C. P. and Berar Municipalities Act (2 of 1922) and cease to be members — Though lease is a transfer it cannot be said to have ceased to be a contract altogether—Where there is a subsisting lease are outstanding obligations of a continuing nature. See Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 15 (1). AIR 1960 Bom 126 (DB).

——Ss. 105, 106, 108 (1) and 116—Death of lessee—There is no privity of contract between lessor and personal representatives of lessee — Devolution of lessee's interest on legatee — Assent of executor — Effect stated (Contract Act (1872), S. 10). A I R 1955 N U C (Cal) 879 (DB).

——S. 105 — Allotment of whole tenure to some of the co-sharers without distribution of rent — Other co-sharers can no longer be held liable for rent as there is no privity of estate between them and the landlord. See Tenancy Laws—Orissa Tenancy Act (2 of 1913), S. 12. AIR 1955 N U C (Orissa) 2142 (DB).

——S. 105—Contract necessary for lease.

The relationship of landlord and tenant comes into existence as the result of an agreement, express or implied. It may be implied from the acts and conduct of the parties which indicate that the landlord intended to divest himself of the possession of the premises and that the tenant intended to assume possession thereof. One of the most important circumstances from which this inference may be drawn is the payment of rent, for although rent is not an essential it is a normal incident of tenancy, and the fact that a person in possession of the premises paid rent to the owner thereof indicates to an extent at least that the relationship of landlord and tenant exists between the parties. On the other hand the fact that no rent was paid would lead one to a contrary conclusion and negative the existence of such relationship. 56 Punj L R 468: AIR 1955 Punj 37 (39) (Pt B) (Pr 10) (DB).

7. Tenancy by payment and acceptance of rent.

——S. 105 — Payment of rent does not necessarily establish relationship of landlord and tenant — Such payment may only prove permissive occupation not amounting to any right or title to possession — (Landlord and Tenant). Sheodhari Rai v. Surat Prasad Singh. AIR 1954 S C 758 (760) (Pt B) (Pr 5).

——S. 105 — Landlord and Tenant—Agricultural tenancy —Mere acceptance of rent by Zamindar does not of itself create tenancy rights. 1946 R D 145 Foll. 1952 A W R (Rev) 72: 1952 R D 61: 1952 A L J (Rev) (58) (DB).

——S. 105 — Landlord and tenant—Agricultural tanancy —Admission to tenancy — Mere payment of rent by way of marfat would not amount to admission to tenancy. 1948 R D 68 Foll. 1952 R D (BR) 83: 1952 W R 109: 1952 A L J (Rev) 45 (DB).

——S. 105 — Municipalities — C. P. and Berar Municipalities Act (1922), Ss. 15 (1), 22, 45 — Members of Municipality taking leases of rooms belonging to it—Members incur disqualification under S. 15 (1) and cease to be members. See Municipalities— C. P. and Berar Municipalities Act (2 of 1922), S. 15 (1). A I R 1960 Bom 126 (DB).

——Ss. 105 and 106—Before registration of company partnership not merely expanded but new company formed—New Company registered — New Company cannot avail of provisions of S. 263 — Leasehold interest of partnership cannot be said to be transferred to the Company without registered deed by partners—Partners not trustees of company—Relationship of landlord and tenant however established between landlord and company by acceptance of rent by landlord from company. See Companies Act (1913), S. 263. AIR 1963 Cal 198 (DB).

—S. 105—Relationship of landlord and tenant — Creation of — Payment of rent —Effect.

A mere fact that rent was sent by B to A as landlord and was received by others would not create a tenancy in favour of B. **AIR 1959 Cal 69 (71) (Pt C) (Pr 8) (DB).**

—S. 105—Plaintiff inducting defendant as tenant—Defendant liable to pay rent to plaintiff till he attorned to third person claiming to be owner. **1964 M P L J (Notes) 52.**

——Ss. 105, 116 — Landlord and Tenant — Payment and acceptance of rent—Landlord purchasing absolute occupancy field in executions of rent decree—Tenant continuing in possession — Landlord obtaining decree for rent for period subsequent to sale — Whether creates relationship of landlord and tenant.

A tenancy cannot be created by a unilateral act; like any other contract, there must be an offer by one party and its acceptance by the other. The tenancy may be implied from the conduct of the parties, e.g., where rent is paid by one party and accepted by the other. It is however, necessary that the rent should be offered as also accepted, with the clear intention of creating a tenancy before the relationship of landlord and tenant can be deemed to be established between the parties.

Where a landlord in axecution of his rent-decree purchases the absolute occupancy holding of his tenant, but the tenant continues in possession of the holding without paying any rent and the landlord subsequently obtains a decree for rent for a period subsequent to the execution sale such decree cannot be regarded as evidence of creation of a new tenancy. Merely by his claiming the amount as rent instead as of damages for use and occupation the landlord could not possibly have intended to re-establish the relationship of landlord and tenant. **I L R (1957) Madh Pra 147: 1957 M P C 377: 1957 M P L J 546: 1957 Jab L J 835: AIR 1957 Madh Pra 214 (215) (Prs 5, 6).**

——S. 105—Landlord and tenant — Rent—Payment of —Payment in certain form for number of years — —Presumption—Evidence Act (1872), S. 114.

Payment of rent in a certain form for a number of years is not only presumptive evidence of the existence of a contract to pay rent in that form or at that rate but is also presumptive evidence that the parties have agreed that it is obligatory on the one party to pay and the other party to receive rent in that form and at that rate so long as the relation of landlord and tenant may continue. ILR 7 Mad 365 Rel. on. **(1965) 2 Mys L J 93: A I R 1967 Mys 65 (66) (Pt B) (Pr 9).**

——S. 105 — Landlord and tenant — Evidence Act, S. 116—Proof of title—Receipt of rent is prima facie proof of title in absence of fraud or misapprehension.

The fact of payment of rent is prima facie proof of title in the person who receives the rent. If the tenant is unable to get rid of the effect of the fact by showing that he was acting in ignorance or that the title was in some person other than the person to whom he paid rent he would have no defence to a suit for rent or ejectment. 51 T L R 650 and 8 Bom H C R A C J 175, Foll.

Defendant executed a rent note in plaintiff's favour for lease of the land in suit for a year in 1932. Plaintiff alleged that he took possession at the end of the tenancy, leased out to others for some years and again leased out to defendant in 1935 but she did not vacate at the expiry of the lease. Plaintiff therefore sued for ejectment and possession. Defendant admitted payment of rent as also title in plaintiff's predecessor J but contended that J lost the land to C to whom he was indebted and she claimed to derive title from C. There was no proof of the facts pleaded by defendant.

Held, that the unexplained payment of rent coupled with admission of title in plaintiff's predecessor was sufficient to entitle plaintiff to succeed. **1951 Nag L J (Notes) 178.**

——Ss. 105 and 116—Lease—Creation of — Agricultural lease—Can be created by delivery of possession and giving rent receipts—T. P. Act does not apply.

It is open to the landlord to create a tenancy by giving possession and accepting rent, and such a tenancy can be proved by evidence other than the production of the lease deed. Where the lease is for agricultural purpose, none of the formalities required by the provisions of Chap. V of the Transfer of Property Act, are applicable. In such a case it is open to the landlord to create a tenancy by issuing rent receipts, accepting rent paid to him, and delivering possession to the lessee. A I R 1954 S C 758, Disting. **ILR (1965) Cut 22; 31 Cut L T 654.**

—S. 105 — Tenancy by payment and acceptance of rent—Deed of settlement not proved but rent receipts produced — Payment and acceptance of rent brings into existence relationship of landlord and tenant — Proof of settlement deed not necessary: AIR 1960 Pat 344 (FB) and A I R 1952 S C 23, Rel. on. **A I R 1965 Pat 279 (287) (Pt F) (Pr 22) (DB).**

—S. 105 — Tenancy — Proof of — Recognition of tenant by acceptance of rent or payment of rent by tenant proves tenancy.

Tenancy can be proved by payment and acceptance of rent. If a tenant is in possession under an unregistered lease and the landlord recognises his right by accepting rent from him, a lease of immovable property can be established by the latter fact. If the date of commencement of the tenancy was in question, no doubt, the unregistered lease could not be referred, to trace it. Recognition of the tenant by acceptance of rent from him or payment of rent by the tenant in recognition of the lessor's right, as the case may be, will be sufficient to prove the lease. **1964 B L J R 701.**

—S. 105—Payment of rent — Presumption — (Evidence Act (1872), S. 114).

Rent is a usual, though not an essential, incident of the relationship of landlord and tenant and payment of rent by the occupier to the owner of premises raises a presumption that the relationship of landlord and tenant has come into existence. The presumption however is a rebuttable one and may be rebutted by showing that the acts and conduct of the parties are inconsistent with its existence. **56 Punj L R 480; ILR (1955) Punj 94: AIR 1955 Punj 34 (36) (Pt C) (Pr 13) (DB).**

—Ss. 105, 107 — Lease unregistered — Tenancy by payment and acceptance of rent—Inference of.

Held, in the facts of the case that a valid tenancy could be easily inferred in the circumstances even if the lease deed was inadmissible for want of registration, and a decree for rent could be passed: A I R 1952 S C 23, Rel. on. **I L R (1960) 10 Raj 938; 1961 Raj L W 45: A I R 1961 Raj 17 (17, 18) (Pt A) (Pr 5) (DB).**

—S. 105—Creation of sub-lease—Sub-lease already subsisting when Bombay Rents Hotel and Lodging House Rates Control Act (57 of 1947) was applied to Saurashtra—It cannot be said that the tenant created any fresh sub-lease after commencement of that Act by merely recovering rent under subsisting sub-lease. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 13 (e). **AIR 1955 Sau 52 (DB).**

—S. 105—Receipt of rent under misrepresentation —Creation of relation of landlord and tenant.

The mere fact of one person paying and another person receiving rent will not necessarily create the relationship of landlord and tenant between them. Such relationship can only arise on the basis of a contract between the parties, and it is also necessary that there should be an intention to transfer an interest in the property. Where the payment was received by the Assistant Custodian on the representation (which later turned out to be false) that the applicant was a tenant of the property, by no stretch of reasoning can it be construed as an intention on the part of the Assistant Custodian to create a tenancy. **4 Sau L R 268; AIR 1953 Sau 73 (74) (Pt C) (Pr 4) (DB).**

8. Kabuliat, rent-note, patta, etc., whether lease.

● —S. 105—Relationship—Kabuliyat—Effect of.

Where no lease deed had been executed by landlords in favour of the lessee, but the latter had executed a Kabuliyat, in favour of the former and the lessors accepted the Kabuliyat and received rent as provided therein, the lessee cannot be denied the status of tenant. Asa Ram v. Mst. Ram Kali. **1958 S C J 575; (1958) 2 M L J (S C) 32; (1958) 2 Andh W R (S C) 32; 1958 All W R (H C) 598; 1958 S C R 986: AIR 1958 SC 183 (185) (Pt A) (Pr 5).**

—S. 105 — Kabuliat which is a unilateral transaction, cannot create lease, which requires consensus between two parties. **1962 All L J 773; 1962 All W R (H C) 646: A I R 1962 All 604 (605) (Pt A) (Pr 7).**

—Ss. 105 and 107—Kabuliat—Construction—Lease or license.

Under a registered kabuliat the defendant agreed to pay rent at Rs. 3/- per annnm. The defendant was entitled to make kham constructions on the land and the value of the constructions was not to exceed Rs. 50/-. It was also provided in the kabuliat if at any time the owner of the land desired to obtain back possession over the land, the defendant would receive Rs. 50/- for the constructions made by him.

Held (i) that in view of Ss. 105 and 107, a document had to be executed by the transferor when making a transfer of immovable property in the nature of a lease. In this case there was no such transfer. Consequently, the relationship of lessor and lessee did not come into existence by the execution of the qubuliat. 46 All 303, Rel. on.

(ii) Having regard to the terms on which the defendant was given the land, it was difficult to hold that any permanent rights in the land were granted to the defendant. He was only allowed to hold the land for an unspecified period.

(iii) In the absence of a valid lease, the position of a transferee was merely that of a licensee. A I R 1943 All 279. Rel. on. **1952 R D (H C) 14 : AIR 1953 All 499 (500) (Pr 14).**

—Ss. 105 and 107—Qabuliat—If creates a lease — Admissibility for proving nature of possession — Registration Act (1908), S. 49.

The law requires that a deed of lease should be executed by the lessor and the lessee both or there should be counter parts executed by each. When it is for a period of more than one year it should be registered also.

A Sarkhat (Qabuliat) executed by the lessee alone does not therefore operate as a lease. The deed is nevertheless admissible in evidence for the purpose of determining the nature of possession. **1950 All W R 506: A I R 1950 All 661 (662) (Pt A) (Pr 3).**

—Ss. 105 and 107—Lease for more than one year — Creation of—Unilateral Kabuliyat—Sufficiency.

A lease for a period, exceeding one year, cannot be created by a unilateral Kabuliyat even though it be a registered one and even though it be accepted by the landlord orally or by writing unregistered, under the provisions of the Transfer of Property Act. Under the West Bengal Non-Agricultural Tenancy Act, 1949, also the position is similar. Section 107 of the T. P. Act which is not inconsistent with any of the provisions of the West Bengal Non-Agricultural Tenancy Act or in particular with S. 7 of that Act,

would apply to tenancies under the West Bengal Act, by virtue of S. 71 of West Bengal Act. 64 Cal W N 293 : ILR (1960) 2 Cal 814.

——S. 105—'Lease'—Patta executed by plaintiff only —It can be taken into consideration as plaintiff's admission. (1960) 64 Cal W N 240.

——Ss. 105, 106, 107 — Applicability — 'Lease" Kabuliyat executed by lessee alone — Term of five years—Validity—Applicability of S. 53-A—Notice to quit—Period of — Tenancy Laws—West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 9 (b) (iii).

Held, (1) that the unilateral Kabuliyat executed by the lessee alone, could not be considered to be a lease under S. 107 of the Transfer of Property Act. As a lease for five years under the Transfer of Property Act could only be made by a registered instrument signed by both the parties, the lessor and the lessee, the express contractual lease in the present case did not take effect in law. But by admitted payment and receipt of rent, according to the Bengali calendar month, a monthly tenancy came into being in favour of the tenant-defendant under the plaintiff-landlord. (2) that S. 53-A, T. P. Act would be of no application because the term of the tenancy, sought to be fixed under the Kabuliyat, expired long ago. (3) that there was nothing in the W. B. Non-Agricultural Tenancy Act which excluded from its operation monthly tenancies such as the present was, and, therefore, the notice terminating the tenancy must, under S. 9 (1) (b) (iii) of that Act, be six months' notice expiring with the year of the tenancy, that is to say, anniversary of the month of the tenancy in the next succeeding year. (1959) 63 Cal W N 535.

——Ss. 105, 106 and 107 — Unilateral kabuliat is not lease — Tenancy can arise only on acceptance of kabuliyat by lessor — Kabuliat therefore cannot be considered to a document of lease so as to be hit by S. 107 — Implied tenancy from payment and receipt of rent — Tenancy not hit by S. 91, Evidence Act — Presumption under S. 106, T. P. Act, indicated (General Clauses Act (1897), S. 3 (35)) — (Evidence Act (1872), S. 91). A I R 1955 N U C (Cal) 5584.

——S. 105—Lease of buildings — Lease calling itself as pattom and not as vadaka—It is no ground for holding that lease was of the land rather than of buildings. See Houses and Rents — Travancore-Cochin Buildings (Lease and Rent Control) Order (1950), Cl. 2 (1). A I R 1957 Ker 109.

——S. 105 — 'Rent note' — Every rent-note cannot amount to a lease within S. 105. A I R 1955 N U C (Madh B). 4322.

——Ss. 105, 107 — Rent note to pay rent at Rs. 30 p m. for 8 months — Registration is not necessary either under Registration Act or T P. Act — Instrument not being a lease within S. 105, S. 107 does not apply—Document is a lease for purposes of Registration Act—But as it was only for 8 months, it was not necessary to register it under Registration Act—Rent note can be enforced — (Registration Act (1908) Ss. 2 (7), 17 (1) (d). A I R 1955 N U C (Madh B) 3787.

——S. 105—Tenant — Rent note cannot amount to a lease within meaning of S. 105 — Rent note is not heritable. See Evidence Act (1872), S. 116. A I R 1955 N U C (Madh B) 2987.

——S. 105 — Rent note for one year — Not a lease — Registration not necessary. See Registration Act (1908), S. 2 (7). A I R 1955 N U C (Madh B) 1553.

——Ss. 105 and 107—Unilateral agreement to occupy house and pay rent — Agreement, if lease — Agreement not registered — Admissibility in evidence — Registration Act (1908), S. 49.

Where by an unregistered agreement the executant agreed to occupy a house for eleven months at a certain monthly rent and further agreed to pay the rent in advance on a certain date every month :

Held that the agreement amounted to no better than a karar or agreement undertaking to pay the rent for use and occupation of the house and was not a lease within the meaning of S. 105 and, therefore, was admissible in evidence and the executant was bound by the terms contained therein. AIR 1951 Mys 24 (24, 25) (Prs 2, 4).

——Ss. 105, 107 — Rent chit by tenant, if lease deed — Admissibility for want of registration — Suit for rent on basis of rent chit — Registration Act (1908), S. 2 (7).

A rent chit executed by tenant does not amount to a lease deed, and therefore, no question of registration arises. The chit would be admissible in proof of admission of lease and a suit for rent by landlord on the basis of the rent chit will be maintainable. A I R 1951 Mys 13 (13, 14) (Prs 3, 4).

● ——Ss. 105, 106 and 107, (before amendment by Act 20 of 1929) — Lease, creation of, before amendment—Patta executed by lessor—Effect.

Before S. 107 was amended by Act (20 of 1929), a valid lease could be created by a patta executed by the lessor and not by kabuliyat executed by the lessee. The reason why a kabuliyat could not create a valid lease in the absence of a patta before the amendment of 1929 was that the lessor, who had the right to create the lease, did not execute a registered instrument, transferring a leasehold interest. Being a unilateral document it could not be assumed to embody a contract between the parties. If it could be so construed the lessor would have to be held to be a party to it, and the lease would have to be held to be valid. Neither law nor equity can hold a lessor bound as if a contract existed where no contract is in fact, established. To a case, where the intention of the lessor as to the duration of lease cannot be ascertained from the kabuliyat. Section 106 applies. A I R 1935 Pat 291 (FB), Rel. on. 1960 B L J R 245 : 1960 Pat L R 100 : ILR 39 Pat 140 : A I R 1960 Pat 344 (347, 348) (Pt A) (Prs 9, 10, 13) (FB).

——S. 105—Creation of relationship of landlord and tenant — Mortgage with possession — Mortgagor remaining in possession and executing rent note—Held that he occupaid the premises not in his capacity as owner but in his capacity as a tenant of the person with whom the property was mortgaged. AIR 1957 Punj 57 (58) (Prs 4, 5).

——S. 105—Deed—Patta—If confers title.

The mere issue of patta by Sirkar in one's name does not confer title to the property comprised therein on him if he had not already obtained title to it. (1124 M E) 40 Cochin 58, Foll. 1949 T C L R 59 (DB).

9. Lease and licence—Distinction.

● ——S. 105 — Lease and licence — Distinction between — Requirement of notice to licensee not inconsistent with licence—Determination of transaction depends upon intention of parties — Intention has to be ascertained by conduct of parties.

Although a licence is revocable at the will of the grantor the provision in the licence that the licensee would be entitled to a notice before being required to vacate is not inconsistent with a licence. The mere necessity of giving a notice to a licensee requiring him to vacate the licensed premises would not indicate that the transaction was a lease.

Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence,

however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties. Similarly where the terms of the document are not clear the surrounding circumstances and the conduct of the parties have to be borne in mind for ascertaining the real relationship between the parties. The fact that the premises are in exclusive possession of a person would not make him a lessee. If, however, exclusive possession to which a person is entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere licence but as a lease. M N. Clubwala v. Fida Hussain Saheb. (1964) 2 S C J 448 : (1964) 6 S C R 642 : (1964) 2 Mad L J (SC) 83 : (1964) 2 Andh W R (SC) 83 : (1964) 1 S C W R 750 : 1964 S C D 842 : AIR 1965 SC 610 (614) (Pr 12).

● —S. 105 — Lease and licence — Distinction — (Easements Act (1882), S. 52) — (Houses and Rents — Delhi Ajmer-Merwara Rent Control Act (21 of 1947), S. 2).

Per Subba Rao, J. (S. K. Das, J., agreeing) : Where the question is whether the document is a lease or a licence it is the substance of the agreement that matters and not the form, for otherwise clever drafting can camauflage the real intention of the parties. There is a marked distinction between a lease and a licence. The following propositions may be taken as well established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form ; (2) the real test is the intention of the parties whether they intended to create a lease or a licence ; (3) if the document creates an interest in the proporty, it is a lease ; but if it only permits another to make use of the property on which the legal possession continues with the owner it is a licence, and (4) if under the document a party gets exclusive possession of the property, prima facie he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease. Applying these tests, held upon the terms of the document, that the document was a lease and not a licence. The solitary circumstance that the rooms let out in the present case were situated in a building wherein a hotel was run could not make any difference in the character of the holding. Under the document there was transfer of a right to enjoy the rooms, and therefore, it created a tenancy in favour of the tenant. Associated Hotels of India Ltd. v. R. N. Kapoor. ILR (1959) Punj 1897 : (1960) 2 S C A 1 : (1960) 1 S C R 368 : 1960 S C J 453 : AIR 1959 S C 1262 (1263, 1269) (Pt B) (Prs 25, 27).

● —S. 105—Lease and profit a prendre—Distinction—(Easements Act (1882), S. 52).

Per Bose, J., — In a lease, one enjoys the property but has no right to take it away. In a profit a prendre one has a licence to enter on the land, not for the purpose of enjoying it, but for removing something from it, namely, a part of the produce of the soil. Shantabai v. State of Bombay. 1958 S C J 1078 : 1958 S C A 727 : 1959 S C R 265 : AIR 1958 S C 532 (535) (Pt C) (Pr 23).

——S. 105—Lease and licence — Distinction — Test —(Easements Act (1882), S. 52).

The difference between the two legal concepts of lease and licence is that while in the case of lease an interest in the property is transferred in a license a right to do something is granted which right expressly does not amount to an interest in the property. The other features of a lease are (1) that it is either expressly or impliedly for a certain time or in perpetuity; (2) that it is in consideration of a paid price or promised or to be paid periodically. The above features although they are not essential features of a licence it cannot be seriously denied that in the case of a licence also the grant may be for a certain specified period and that some fee may be charged either at the time of the grant or periodically for the grant of the licence. If a fee is charged periodically it may have much similarity to what may be called "rent" in the case of a lease. But the fact that a licence is granted for a period or that a fee is charged for the grant of the licence would not remove the essential difference between a lease and a licence which lies in the fact that in the case of a licence no interest in the property as such is transferred to the licensee. 1958 All W R (HC) 70 : AIR 1957 All 369 (372) (Pt B) (Pr 9).

——S. 105—Lease and licence—Difference between —Test for determining whether grant is lease—Test of exclusive possession. See Easements Act (1882), S. 52. 67 Bom L R 452 : I L R (1965) Bom 873 : AIR 1966 Bom 113 (DB).

——S. 105—Lease and licence.

The right to exclusive possession and enjoyment of the property let out to him is an important feature of the right of lessee. However, for the creation of a valid lease it is necessary to prove the presence of some other equally important ingredients as laid down in section 105, so that it cannot be said that merely because a person is given the right to exclusive possession he becomes a tenant even if he does not satisfy the other requirements of the definition of "lease" contained in section 105. However, the statement that a licence is always ruled out as soon as the right to exclusive possession is granted to a party may not be regarded as a correct statement of the law without some qualification.

The trend of recent English decisions is to cast a serious doubt on the correctness of the broad proposition that exclusive possession necessarily and in every case negatives the presence of licence and establishes the presence of a lease. Exclusive possession can be compatible with a licence to which are added certain other contractual rights. That no doubt appears to be the view which has been taken in recent English judgment but even if that may not be the position in India all that can be said would be that the person is not a licensee. That does not necessarily mean that he is a lessee. Case-law discussed. 56 Bom L R 365 : ILR (1954) Bom 615 : AIR 1954 Bom 370 (376, 378) (Pt F) (Prs 9, 10, 14, 16) (DB).

——S. 105 — "Tenant" and "Occupier"—Difference.

The difference between a tenant and an occupier is well known. There must be contract of tenancy before a person can be a tenant. But if there is no contract, and the possession of person is permissive, then it is a case of an occupier. Rent is realisable from the tenant. Profit on the other hand is payable by a person for the use of another's property with his consent, when the rent or the period is not fixed. Occupier is not a tenant. When the rent has been agreed, the tenant pays the agreed rent. Where the rent has not been fixed, the occupier must pay such sum as the occupation is worth. AIR 1952 Cal 915 (918) (Pt B) (Pr 26) (DB).

——Ss. 105 and 52 — Lease and licence—Distinction stated — Nature of transaction must be determined with reference to intention of parties and substance of document,

A lease is different from a licence. In the case of a licence, there is a right to do or continue to do, in or upon, the immoveable property of the grantor something, which does not amount to an easement or an interest in the property, whereas in the case of 'lease' there is a right to enjoy such property and not merely to do something in or upon the property. In order to apply this distinction what is important

is the real intention of the parties to the transaction, the substance of the document and not merely the form of the document which embodied the transaction. In the case of a lease, as provided in S. 108, Transfer of Property Act, there can be a contract between the parties providing for special rights and liabilities between the lessor and lessee. Such special terms, if any, in the document do not clinch the issue and are inconclusive, so also the fact that there is a term in the agreement, whereby it is agreed that no derivative interest or sub-licence, would be created is inconclusive on the question whether the document is a lease or a licence. AIR 1959 S C 1262, Rel. on.

The parties to a transaction cannot turn a lease into a licence merely by stating that one of the parties is a licensee and that the transaction is a licence. Where the main terms of the agreement clearly show a right to enjoy the property was transferred and a provision was made for a breach of the agreement, it must be held that there is a lease and not a licence. **(1961) 2 Guj L R 505.**

——S. 105 — Lease and licence — Distinction—Test.

A mere licence does not create any estate or interest in the property to which it relates; it only makes an act lawful which without it would be unlawful. A lease on the other hand, creates an interest in immovable property. A lessee has the right to exclusive possession of the property leased, but a licensee has only a right to use the property; such right does not amount to an easement or an interest in the property. If a contract is merely for the use of property in a certain way or on certain terms, while it remains in the possession and control of the owner, it is a licence. On the other hand, if an interest in immovable property is transferred and right to exclusive possession of the property is granted, the transaction would be one of lease. Whereas a bare licence grants only a personal privilege to the licensee. a lease creates an estate in the property in favour of the lessee. AIR 1959 S C 1262 (1269), Rel. on. **AIR 1960 J & K 83 (84 to 86) (Pt B) (Prs 6, 8, 10, 11).**

● **——S. 105 — Lease and licence compared.**

In a lease there is a transfer of interest in property whereas in licence no estate in property passes and it can be revoked at any time. Gian Kour v Provincial Rehabilitation Officer. **AIR 1956 J & K 33 (34) (Pt B) (Pr 4) (FB).**

——S. 105 — Lease and licence — Distinction — Intention of parties—When to be ascestained—Easements Act (1882), S, 52.

In determining whether an agreement between the parties creates the relationship of landlord and tenant or merely that of a licensor and licensee the decisive consideration is the intention of the parties. The need for determining whether an intention different from that indicated by the terms of the deed existed can arise only in those cases where such a question is distinctly raised between the parties and they have had an opportunity to lead evidence on that point. Where no such dispute is raised the court would not be justified in imputing to the parties an intention different from that which the language used in the document suggests and which is admitted by the party affected thereby to have been the true intention of the parties.

Although a mere statement in the document that the possession was to be that of a licensee will not be sufficient to turn a lease into a licence but if the document on the face of it contains a stipulation that possession is handed over to the person as a licensee for a fixed period and the person in whose favour the deed is executed himself admits that he was a licensee and the deed describes the relationship to be that of licensor and a licensee, the question of the intention of parties being different from that described in the document does not arise. AIR 1959 S C 1262; 1952 1 All E R 1199; 1951 2 All E R 271, Rel. on. **1961 Jab L J 279 : 1961 M P L J 1223 : ILR (1963) Madh Pra 81.**

——S. 105 — Easements Act (1882), S. 52 — Licensee cannot sue. See Easements Act (1882), S. 52. **AIR 1957 Madh Pra 44.**

——S. 105—Lease and licence— Distinction between — Waste land given for cultivation — Permission to sink well — Exclusive control of grantee — Transaction is lease and not licence.

Transfer of the right to enjoy immovable property is the main characteristic of a lease. In the case of a licence, there is no such transfer. It is in the nature of a privilege personal to the grantee to do something in or upon the immovable property in the possession of the grantor. The lessee's possession to the exclusion of the lessor, therefore, prima facie points to a lease and not to a licence. There may, however be circumstances present which may outweigh that view and indicate a licence, for whether it is the one or the other is essentially a matter of intention.

Where the defendants under an agreement were let into possession of waste lands to be reclaimed and brought under cultivation and were given permission to sink a well also and the transferor reserved no control over or possession of the lands, the transaction is a lease and not a licence. **1961 Mad W N 644 : (1962) 1 Mad L J 128.**

——S. 105 — Distinction between licence and lease indicated. See Easements Act (1882), S. 60. **A I R 1953 Mad 456.**

——S. 105 — Distinction between a tenant and a licencee indicated. See Court-fees Act (1870), S. 7 (xi) (cc). **AIR 1955 Mys 98.**

——S. 105—Lease and licence—Distinction between —(Easements Act (1882), S. 52).

A licence does not create any estate or interest in the property to which it relates, while a lease does. It is essential for the creation of a lease of an immovable property that a lessee should have a right to the exclusive possession of the premises. But, where the grantee takes under the grant only the right to use the premises without exclusive possession, the right granted operates as a licence and not as a lease. For the purpose of deciding whether a particular grant amounts to a lease or a licence regard must be had to the substance of the agreement. **1955 N L J 742 : ILR (1956) Nag 10 : AIR 1955 Nag 306 (308) (Pt A) (Pr 8) (DB).**

——S. 105 — Landlord and tenant — Agricultural tenancy—Abadi — Person occupying site in abadi — Presumption.

There is a presumption that in the absence of an entry to the contrary an occupant of an abadi site since before the thirty years' settlement possesses proprietary rights and is not a mere licensee. A I R 1949 Nag 120, Rel. on. **1951 Nag L J 167 : I L R (1951) Nag 301 : AIR 1951 Nag 8 (8) (Pt A) (Pr 3).**

——S. 105 — Lease and licence —Distinction pointed out — Contract permitting person to go upon land of another and pluck and carry away kendu leaves — Contract is not "lease executed in lieu of advances made" within Explanation (1) to S. 18 (1), Orissa Estates Abolition Act — Such person is not intermediary — (Easements Act (1882), S. 52) — (Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), Ss. 2 (h), 5 (1) and 18 (1), Explanation I.) **A I R 1955 N U C (Orissa) 2472 (DB).**

● **——S. 105—Lessee and licensee—Distinction.**

The cardinal distinction between a lessee and a licensee is that in a lease there is a transfer of in-

terest in land, whereas in the case of a licensee there is no transfer of interest although the licensee acquires the right to occupy the land. A mere demand for possession is sufficient for a tenant-at-will. If a statute provides for the vesting of land in the State from a certain date, such land shall vest and a mere licensee can have no valid objection. Sheo Narayan Chaudhury v. State of Bihar, 1957 B L J R 72 : 1957 Pat L R 1 : ILR 36 Pat 289 : AIR 1957 Pat 226 (228) (Pt B) (Pr 9) (FB).

——S. 105 — Lease and license—Distinction—Easements Act (1882), S. 52—Deed—Construction—Lease or licence.

A licence as defined in S. 52, Easements Act must be distinguished from a lease. A licence does not create any interest or property in the estates of the grantor, and, therefore, a licensee is not entitled to a notice to quit before eviction. On the other hand, a lease as defined in S. 105, Transfer of Ptoperty Act creates an interest in immoveable property, and a notice of the intention to determine the lease is necessary before eviction.

Held on a construction of the document and the surrounding circumstauces that the document created a sub-lease and not a licence in favour of B. AIR 1951 Pat 190 (193) (Pt C) (Pr 9) (DB).

——S. 105 — Lease and licence — Distinction, indicated — If an interest is created in the property, it is a sub-lease, otherwise it is only licence — No sub-lease can be said to have come into existence unless it is proved that the sub-tenant has obtained exclusive possession — Burden of proving sub-lease is on the landlord — False plea of tenant cannot fill in the lacuna in the evidence to be established by the landlord. See Houses and Rents — Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (a) (i). 1965 Cur L J 340 (Punj).

——S. 105—Lease and licence—Distinction—Test to determine.

The essential feature of distinction between a lease and licence is that if the agreement amounts to a lease the occupier as the lessee has an interest in the estate which is protected by law whereas a licensee receives no such benefit in law. Wherever there is an exclusive possession the Courts are entitled to draw an inference of lease but this is not a universal feature. Whether a particular transaction created a lease or a licence is always a question of intention of the parties which is to be inferred from the circumstances of the case and on evidence placed on the record. If the circumstances and the conduct of the parties indicate that the intention was to create a licence despite exclusive possession such a person will remain nothing more than a licensee which carries merely a personal privilege of occupation but no definite interest in the land. What matters is the substance and not the label and it is not the description of the instrument as a lease or a licence which stamps it as such, an instrument may contain the usual words to lease and yet from the intention of the parties it may turn out to be a licence and vice versa. (1952) 1 K B 290; (1958) 1 Q B 513; (1944) 1 K B 296; (1944) 1 K B 541; (1951) 1 K B 149; (1951) 2 K B 498; (1942) 2 All E R 674; (1962) 64 Punj L R 372; 1960 S C J 453; AIR 1959 S C 1262, Ref. (1963) 65 Pun L R 490.

——S. 105—Tenant entering into partnership business — Partner allowed to use rented premises — Tenancy not forfeited—Distinction between lease and license indicated. See Houses and Rents — Pepsu Urban Rent Restriction Ordinance (8 of 2006 BK), S. 13 (2) (i). (1958) 60 Pun L R 650.

——S. 105 — Lease and licence—Distinction—Easements Act (1882), S. 52.

In deciding whether the agreement amounts to a lease, regard must be had to the substance of the agreement, and if the effect of the agreement is to give the holder the exclusive right of occupation of the property, though subject to certain reservations or to a restriction of the purposes for which it may be used, it is a lease; but if the contract is merely for the use of the property in a certain way and on certain terms, while it remains in the possession and control of the owner, it is a licence.

(On construction, held that the agreement in the case did not amount to a lease.) 52 Pun L R 107 : A I R 1950 East Punj 296 (299, 301) (Pt D) (Prs 17, 28) (DB).

——S. 105—Easements Act (1882), S. 52—Lease and licence—Distinction—Held on facts that transaction in question was lease and not licence.

The cardinal distinction between a lease and a licence is that in a lease there is a transfer of interest in immovable property, whereas this is not so in the case of a licence and the licensee acquires a mere right to use the property.

Held, in the facts and circumstances of the case (1) that there was no conflict in the form and substance of the document so far as the substance was concerned. (2) that the intention of the parties was to create a sub-lease in favour of the partnership firm. (3) that the defendant created an interest in the property in question in favour of the partnership firm and so the transfer amounted to a sub-lease and was not merely a licence. (4) that the defendant not only made over his interest in the leasehold property to the partnership firm, but also agreed that he would cease to have his possession over it as long as the partnership continued to be in possession and that the firm would have exclusive possession instead. AIR 1959 S C 1262, Applied. AIR 1953 Sau 137; AIR 1951 Punj 941; AIR 1961 All 827; AIR 1954 Mad 182 and A I R 1953 Sau 1, Disting. 1965 Raj L W 197 : ILR (1966) 15 Raj 450.

——S. 105—Absence of exclusive possession—Cochin Verumpattomdar Act (8 of 1118 M. E.)

In a document executed by the defendant in favour of the plaintiff, the defendant had undertaken to cultivate the vacant space in a certain property for one year. The exact extent of the property or the location of the same where the defendant could raise the crops was not mentioned. It was stated that there were trees and houses on the property and the same were excluded and permission was granted to cultivate the vacant space only.

Held that since the defendant had not been given exclusive possession of the vacant site the extent of which was not possible to be determined it must be held that the defendant had been given only a use of the property for a definite purpose and the transaction would not amount to a lease. The fact that the document was styled as a pattomcheetu and the rent to be paid as pattom was not of much consequence. The defendant would not be a verumpottomdar mentioned in Act (8 of 1118 ME). 1951 Ker L T 44 : AIR 1951 Trav-Co 189 (190) (Pr 4) (DB).

10. Lease or licence — Test for determination.

● ——S. 105—Lease or mortgage—Test to determine, indicated. See T. P. Act (1882), S. 58. AIR 1958 S C 941.

● ——S. 105—Unregistered document granting petitioner right to cut trees in forest—Subsequent vesting of forest in State—Petitioner stopped from cutting trees—Fundamental right whether infringed — Held the document was not a lease but amounted to a license to enter on land coupled with grant to certain trees on it and carry away the wood—It was a profit a

prendre. See Constitution of India, Art. 32. **AIR 1958 S C 532.**

——S. 105—Easements Act (1882), S. 52 — Lease or licence — Cinema owner permitting another to run tea stall or cycle stand — It is licence and not sub-tenancy.

No sub-tenancy is created when the cinema owner permits another person to run a tea-stall or the cycle stand for the benefit of the visitors to the cinema. The transaction in such case is a licence. The person in charge of the tea-stall or the cycle stand is not in exclusive possession of any part of the premises but only permitted for a limited period of the day the use of his premises for a certain purpose. A lessee of a cinema has the righi to provide a tea-stall or a cycle stand for the convenience of the patrons either himself or by a licensee. **1965 All W R (HC) 329.**

——S. 105—Lease or licence — Tests for determination — Value of exclusive possession.

Exclusive possession of land though prima facie an index of tenancy could not be held to be so if the circumstances negative any intention to create a tenancy. If possession of the premises clearly defined is transferred as such and the restrictions on the use are mere impositions, the transaction would be a lease. Exclusive possession over immovable property does indicate apparently that the person in possession has some interest in the property but if the possession is conveyed through a specific agreement or grant the exact legal position can be ascertained without placing too much reliance on the fact of possession alone. Possession is not incompatible with a licence. **1958 All W R (S C) 70 : AIR 1957 All 369 (374) (Pt E) (Prs 18, 22).**

——S. 105—Lease or mortgage and licence— Distinction indicated. See Easements Act (1882), S. 52. **AIR 1955 NUC (All) 2770 (DB).**

——S. 105 — Lease or licence — Qubuliat executed by one party only — Easements Act (1882), S. 52.

Where a qabuliat exhibits a contract between the parties to pay a certain amount every month in lieu of the occupation of the house and is executed by one of the parties only it is not a lease but is a licence. **AIR 1952 All 844 (345) (Pt A) (Pr 7) (DB).**

——S. 105 — Landlord and Tenant — Agricultural Tenancy — Sajhi—He can be licensee and not tenant —Person entered as Sajhi, not paying any produce rent—Plot not let to him by Zamindar — He cannot be deemed to be tenant on basis of entry. **1952 R D (BR) 180**

——S. 105 — Lease or licence — Right to collect cart stand fees auctioned under R. 6 of Rules made under Madras Village Panchayat Act—Suit for recovery of bid amount — Held what was granted was a licence and not a lease of immovable property — Such rights and obligations which flow from it, need not be evidenced by an instrument in writing, much less registered. See Panchayats—Madras Village Panchayats Rules, R. 6. (1964) 2 Andh W R 397.

— S. 105—Lease or Licence — Purchase of right to collect fees at weekly market—**Held**, was a licence and not a lease of immovable property. See Panchayats—Madras Village Panchayats Act (10 of 1950), S. 16 (2) (c). **(1959) Andh L T 676 : (1959) 2 Andh W R 148.**

——S. 105 — Lease or licence — Test indicated. See Registration Act (1908), S. 17. **1958 Andh L T 960.**

——S. 105 — Market — Stall holder—Position of — Merely a licensee who is allowed to occupy a small portion of market for sale of his goods — There is no transfer of any land or building in his favour by way of lease in his favour. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 260. **ILR (1956) Andh 515.**

——S. 105—Lease or licence.

If a person accorded permission to another to build a house on his land the agreement to pay on a future date certain ground rent per annum does not in any way alter the character of the relationship between the parties. If the position originally was that of a licensor and a licensee, and house of a permanent character was built on the strength of the license it cannot be converted into relationship of leasor and lessee, by the execution of such agreement. **AIR 1955 NUC (Andh Pra) 5845.**

——S. 105 — Lease or licence—Land given by Municipality to a tailor for his business—Amount payable referred to as a fee and not rent — Tailor did not erect any of the structures—Status of such person held would be of a licensee and not of a lessee. See Municipalities — Bhopal State Municipalities Act (1916), S. 263, **AIR 1956 Bhopal 43.**

——Ss. 105, 8—Lease or license — (Deed —Construction—Lease)—Tenancy Laws —Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 4).

In a suit to recover possession of immovable property a compromise decree was passed in first appeal, which provided that the possession of the property might be retained with the defendant for a specified period on a condition to pay a rent of Re. 1 a year and if the defendant failed to give possession after that period the plaintiff No. 2 should take possession by executing the decree and that on this condition the defendant had left his contentions in the suit. In execution proceedings of this decree the defendant contended that the case was governed by Bombay Act 67 of 1948 and that he was not liable to be evicted. On the question whether the decree created a lease or a licence:

Held, that in construing a document of such a nature and description one has to read the document as a whole. For the reason that the defendant had raised certain contentions in appeal and he gave up those contentions on condition that he was to remain in possession of the suit property for the specified period upon payment of rent, it could be concluded that the parties intended to create a lease and not a license. **56 Bom L R 893 : ILR (1954) Bom 1256 : AIR 1955 Bom 175 (176) (Prs 6, 8).**

——Ss. 105, 106—Government acquired land—Settlement at certain rental—Expression 'without prejudice to the right and title' in rent receipt—Meaning of—Settlement a tenancy and not a license — Notice to quit served by Government Officer without authority to do so is invalid—Tenancy laws — West Bengal Estates Acquisition Act (1 of 1954), S. 1. 67 Cal W N 1064 : AIR 1964 Cal 183 (183, 184) (Prs 2, 3, 4).

——S. 105 — Lease, licence or easement —Document held to be mere licence and did not require registration—Effectof non-registration -(Deed — Construction) — (Easements Act (1882), Ss. 4 and 52) — Registration Act (1908). Ss. 17, 4).

Held, on a construction of the instrument that (i) it was not a lease but a licence; (ii) that the sludge stored on the lagoon being moveable property the grant of a right to take away the sludge from the lagoon did not create an interest in immovable property; (iii) that the right of free passage of motor cars and lorries over the corporation private road granted to the plaintiff by the indenture was nothing more than a mere licence to use the road for certain purposes; (iv) that the plaintiff was granted an exclusive right to the entire output of sedimentation tank during the period of ten years; and (v) that even assuming that the right of way granted was an

interest in land and as such the deed required compulsory registration the only effect of non-registration was that the plaintiff could not claim right of way through the Corporation private road. The other rights of the plaintiff under the agreement remained unaffected and the document was admissible in evidence to prove those rights and could well be the foundation of an action for breach of licence. ILR (1960) 2 Cal 754: AIR 1960 Cal 123 (133 to 137) (Pt F) (Prs 27, 28, 30, 31, 33, 38).

—S. 105 — Lease or licence — Test for lease is possession must be referable to some right or interest in land. AIR 1955 NU C (Cal) 5604 (DB).

——S. 105 — Licence or lease — Determination of — Test indicated. See Houses and Rents—West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 9. AIR 1953 Cal 147 (DB).

——S. 105 — Lease or licence — Test to determine stated — Grant for manufacturing process involving installation of costly machines by grantee—Premises to be returned on expiry of term in same condition in which it was handed over — Alteration with permission of grantor permissible — Grant held lease and not licence. (Obiter). 54 Cal W N 58:ILR (1950) 2 Cal 443:AIR 1950 Cal 23 (30) (Pt D) (Pr 26) (DB).

——S. 105 — Agreement between a person and his divorced wife — Wife to look after issue of the marriage and in consideration allowed food, clothes and residence in the house of such person—Held, agreement did not create tenancy rights in favour of the divorced wife—It did not amount to family arrangement also — Agreement did not amount to an easement but amounted to mere licence—The licence was revocable. See Easements Act(1882), S. 52. AIR 1964 Guj 44 (DB).

● —S. 105 — J. and K. Evacuee's (Administation of Property) Act (2006), S. 2 (a)—Allottee is not a lessee but merely a licensee. See Jammu and Kashmir Evacuee (Administration of Property) Act (6 of 2006), S. 2 (a). AIR 1956 J & K 33 (FB).

——S 105 — Lease or licence — Test of determining — Easements Act (1882), S. 52.

Exclusive possession or occupation of a plot of land is not an infallible test for deciding whether a document is a lease or licence. The real test for such a determination is the intention of the parties. To ascertain whether a document creates a licence or a lease, the substance and not the form of the document is to be preferred. If the document creates an interest in the property it is a lease; but if it only permits another to make use of the property of which the legal possession continues with the owner, then it is a licence. AIR 1959 S C 1262, Foll. (1963) 1 Ker L R 453.

——S. 105 — Lease or mortgage—Test indicated. See Tenancy Laws — Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 4. 1958 Ker L T 556.

——S. 105 — Lease or licence—Test.

A executed a document styled as varachit in favour of B undertaking his kuthakuppattam land of paddy and lemon grass for pathivaram cultivation. There were fruit bearing trees in the property but nothing was said as to whether A was to take usufructs of these trees and so there was no provision as regards payment of any rent of these. By other clauses, A had no right at all to the property except the right to cultivate and had no right to make any improvements even. Subsequently A assigned his rights to C by a document styled as dehannavila in which A had stated that he had transferred only his right in respect of the crops:

Held, that the natural presumption would be that the landlord continued to be in possession of the fruit trees and that only the land necessary for the paddy cultivation and the lemon grass cultivation was handed over to A. Having regard to all the circumstances, no lease-hold interest was created and A was only a licensee holding the property as varamdar, 1955 K L T 731: 1956 K L T 507, Foll. 1958 K L T 359: 1953 Ker L J 541.

——S. 105 — Intention is decisive consideration to determine whether parties are landlord and tenant or licensor or licensee.

In determining whether an agreement creates between the parties the relationship of landlord and tenant or merely that of a licensor or licensee, the decisive consideration is the intention of the parties. (1942) 2 All E R 674, Halsbury's Laws of England (III Edn.) Vol. 23, p 427 and AIR 1959 SC 1262, Rel. 1963 MP L J (Notes) 218.

——S. 105 — Lease or licence — Test — Employee given quarters of Company for term of service — No rent charged but maintenance charges recovered — Employee held licensee — Termination of service—Employee liable to be evicted — Houses and Rents—M. P. Accommodation Control Act (23 of 1955), S. 4 (k).

If a party gets exclusive possession of the property, prima facie he is considered to be a tenant, but the circumstances may be established to negative the intention to create a lease, The intention of the parties is the real test for ascertaining whether a person is a licensee or a tenant. AIR 1959 SC 1262, Foll.

An employee of a company was given a quarter for residence for the term of his service, no rent was charged but maintenance charges were levied on the employee. After the termination of his service, he refused to vacate the quarter claiming that he was a tenant and not a licensee:

Held, that no interest in the property was created and therefore the employee was a licensee and not a tenant.

Held further that even assuming that the relation between the employee and the company was one of a lessor and lessee, the employee on termination of his service from the company was liable to eviction under S. 4 (k) of the M. P Accommodation Control Act. 1962 M P L J (Notes) 297 : 1962 Jab L J 26.

——S. 105—Lease or licence — Test — Intention of parties — Easements Act (1882), S. 52.

In determining whether an agreement between the parties creates the relationship of landlord and tenant or merely that of a licensor and licensee, the decisive consideration is the intention of the parties.

If the document on the face of it contains a stipulation that possession is handed over to the defendant as a licensee for a fixed period and the defendant admits that the intention of the parties is correctly represented by the language of the deed, the question of the intention of the parties being different from what the language of the deed implies does not at all arise. AIR 1959 S C 1262, Foll. 1961 Jab L J 279 : 1961 M P L J 1223.

——S. 105 — Lease of usufruct of coconut thope—Whether a lease or licence—Principles.

If at the time of the contract it is contemplated that the purchaser should derive a benefit from the further growth of the thing sold, from further vegetation and from the nutriment to be afforded by the land, the contract is to be considered as for an interest in land; but, where the process of vegetation is over, or the parties agree that the thing sold shall be immediately withdrawn from the land the land is to be considered as a mere warehouse of the thing sold, and the contract is for goods. If the plaintiff is to remove the goods immediately upon the grant, then his right of entry upon the land will be in the nature of

licence; but where he is entitled to usufruct from the trees spread over a period of time during which period the usufruct grows out of the soil, then the right to collect the usufruct is in the nature of immovable property and will accordingly amount to a lease. AIR 1949 Mad 148, Rel. on. (1963) 2 M L J 137, Disting. 77 Mad L W 745 : (1965) 1 Mad L J 170 : ILR (1965) 2 Mad 518.

——S. 105—Lease or licence—(Easements Act (1882), S. 52)—(Deed—Construction).

The defendants were the lessees under a lease deed for the year 1954-55 under the first plaintiff. On 19th April, 1955, the first plaintiff and the second plaintiff who claimed to be a tenant under the first plaintiff instituted a suit for a permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties and from entering upon the land on the allegation that as per the lease deed the defendants had surrendered possession on 12th February, 1955 and thereafter the first plaintiff has leased the land to the second plaintiff. There was a compromise between the parties under which the defendants agreed to the suit being decreed as prayed. The compromise was evidenced by two documents of even date. One of them was styled as a licence which gave the defendants and their men permission to enter upon the land for the purpose of raising the crops and taking away the same till 13th March, 1956. This licence automatically expired on 13th March, 1956 and thereafter the defendants were not to enter on the land and if they did so, the plaintiff was entitled to execute the decree. Under the second document the paddy yield in the two bogums for the year 1955-56 on the land had been sold to the defendants in consideration of their paying 56 1/4 salagis of paddy in two instalments of 30 salagis on 30th October, 1955 and 56 1/4 salagis on 13th March, 1956. The said 56 salagis of paddy had to be paid whether or not there was yield.

Held, that the composite documents constituted only a licence and not a lease. (1958) 2 Mad L J 60.

——S. 105 — Lease or licence — Construction—Deed held was merely a licence and not a lease. See Easements Act (1882), S. 52. AIR 1954 Mys 89.

——S. 105—Lease or licence—It is a question of fact in each case whether a particular arrangement amounts to a lease or licence and other cases can merely be a guide in such determination—In circumstances arrangement held, was a lease. See Easements Act (1882), S. 60. AIR 1954 Mys 89.

——S. 105—Lease or licence—(Easements Act (1882), S. 52).

The term 'lease' imports that exclusive possession is given to the transferee of the premises conveyed, while licence on the other hand, is permission to do some act which without permission it would be unlawful to do. Where the entire area of the large piece of Municipal land with numerous constructions on it was not delivered over to the possession of the plaintiff, the Municipality and the public generally and other persons who had interest in the restaurant were free to move about in the area and the Municipality apparently retained full control over the land and its use and enjoyment in spite of the arrangement.

Held, that it was not a lease but a licence. ILR (1953) Mys 578 : 33 Mys L J 4 : AIR 1954 Mys 89 (91) (Pt A) (Pr 5).

——S. 105—Lease or license with a grant—Theka of lakhparsadi for extracting lac for certain period—"Thekadar of proprietary rights"—Meaning—Held on construction that deed did not create an interest in land and therefore it was outside the definition of lease — It was a licence coupled with grant. See Tenancy Laws—C P. Tenancy Act (1920), S. 2 (b). AIR 1952 Nag 325 (DB).

——S. 105 — Lease or licence—Tests for determination, stated — Grantee given exclusive right of occupation — Transaction held lease. 1950 Nag L J 51 : ILR (1950) Nag 218 : AIR 1950 Nag 107 (108) (Pt B) (Prs 7, 8).

——S. 105—Houses and Rents — Orissa House Rent Control Act (31 of 1958), S. 2 (5)—"Tenant"—Who is —Suit to evict tenant after termination of tenancy—Compromise decree—Construction—Intention not to create lease — Tenant held was not statutory tenant but a licensee—He was not protected by the Act. See Houses and Rents—Orissa House Rent Control Act (31 of 1958), S. 2 (5). ILR (1964) Cut 229.

——S. 105—License to collect tendu leaves — Does not amount to any transfer of interest in land — It is merely a grant of a permission to go upon land of proprietor to pluck, gather and carry away tendu leaves — Even though styled as a lease, such a grant does not amount to a lease — In a lease there is warranty of possession, but a mere license conveys no such warranty. See Easements Act (1882), S. 4. AIR 1956 Orissa 156 (DB).

——S. 105—Lease or licence — Court has got to look to the very substance of document and not merely to form of it — Document must be read as a whole in order to be construed correctly — Held on construction that the document could never be anything more than a licence. See Tenancy Laws—Orissa Estates Abolition Act (1 ot 1952), S. 3. AIR 1955 N U C (Orissa) 3420 (DB).

——S. 105 — Word 'letting' includes not only leasehold interest but also interest of licensees. See Municipalities — Bihar and Orissa Municipal Act (7 of 1922), S. 98 (1). AIR 1965 Pat 288 (DB).

——S. 105 — Premises leased to A — Agreement between A and oil company for installation of petrol pump—In circumstances of case, company held was not mere licensee but sub-lessee and hence the tenant could be evicted. See Houses and Rents—East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (2) (ii) (a). 1964 Cur L J 330 (Punj).

——S. 105—Lease or Licence — Nature of document to be determined by its terms and not merely by its form—AIR 1959 S C 1262, Applied. 1963 P L R 490, Rel. on. Houses and Rents — E. P. Urban Rent Restriction Act (3 of 1949), S. 13 (2) (ii). 1965 Cur L J 320 : 67 Pun L R 770.

——S. 105 — Lease and licence:— Test — General principles.

The essential features of 'lease' as distinguished from 'licence' is that it confers a right of possession or real property with an interest even against the landlord whereas 'licence' conveys no estate in the property and is generally revocable at will and without notice. The main test to determine whether agreement for use of immovable property is 'lease' or 'licence' is whether the contract gives exclusive use of the premises as against all the world and, if so, it is a 'lease'. 'Licence' creates no interest in the land, but is simply the authority or power to use it in some specific way, 'Licence' is in the nature of mere leave or liberty to be enjoyed as a matter of indulgence at the will of the party giving the 'licence'. It is a 'license' when a mere privilege is conferred to occupy the premises under the owner. 'Licence' moreover is a personal privilege and can be enjoyed only by the licensee. 64 Pun L R 372 : I L R (1962) 2 Punj 98.

——S. 105 — Transaction held amounted to lease—Suit for pre-emption could not lie. See Punjab Pre-emption Act (1 of 1913), S. 5. (1962) 64 Pun L R 165.

—S. 105—Lease or licence — Permission to occupy premises on rent—Held created only licence and not lease. See Municipalities — Punjab Municipal Act (3 of 1911), S. 47 (2). AIR 1959 Punj 220.

—S. 105 - Lease or license—Test for determination, stated — (Easements Act (1882), S. 52). AIR 1955 N U C (Punj) 1357.

—S. 105—Lease or licence—Permission to cut and remove trees is licence — (Easements Act (1882), S. 52).

A permission to cut the trees or to remove the leaves of trees granted by the proprietor is in the nature of a licence, and does not amount to a lease or transfer of any proprietary interest in the land. AIR 1953 S C 108, Rel. on. 1955 Raj L W 411 : I L R (1955) 5 Raj 950 : AIR 1956 Raj 33 (33) (Pt A) (Pr 5) (DB).

—S. 105—Lease or licence — Test to determine — Transfer of exclusive possession—Document held to be lease—Easements Act (1882), S. 52.

One of the essential conditions of the tenancy is that a tenant should have the right to exclusive possession of the premises and this is the distinction between a lease and a licence. It is not open to the parties to divest it of the legal incidents of a lease by merely calling it a licence or mentioning in the document that the right to possession or other proprietary interest was not thereby transferred to the lessee.

Where therefore the right to exclusive possession is transferred to the other party in consideration of a monthly rent, the transaction is a lease within S. 105 and not a licence, whatever name the parties may choose to give it. (1955) 8 Sau L R 378.

—S. 105—Sub-letting—Test of exclusive possession is main test to be applied in deciding whether an agreement was a lease or a license. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 13 (1) (e). AIR 1953 Sau 137 (DB).

● —S. 105 — Lease or licence — (Easements Act (1882), S. 52—(Houses and Rents — T. C. Buildings (Lease and Rent Control) Order, 1950).

Under a compromise decree passed in a suit for recovery of building and arrears of rent the defendants were given the right to be in possession of a building for a period of one year from a certain date. The defendants undertook to pay a monthly rent of Rs. 40 for that period. If default was made in the payment of the rent the plaintiffs could recover possession of the building even before the expiry of the term with enhanced rent at the rate of Rs. 50 a month.

Held, that those terms amounted to creation of a lease arrrangement. There was a transfer of the right to be in possession of the building for a period of one year. The consideration for the transfer was the agreement by the defendants to make periodical payment of rent at a particular rate. These terms were consistent with the definition of lease as contained in S. 105, T. P. Act. It could not be said that the compromise only amounted to the granting of a permission to the defendants by the plaintiffs to use the building in a certain way and on certain terms while the plaintiff themselves retained its possession and control. In fact what was done by the parties was to extend the original lease arrangement for a further term of one year with some altered terms. There was no doubt that the defendants came within the definition of the terms as given in the T. C. Buildings (Lease and Rent Control) Order, 1950. I L R (1955) Trav-Co 953 : 1955 Ker L T 924 : A I R 1956 Trav-Co I (5) (Pt B) (Pr 8) (FB).

—S. 105 — Lease or licence — Cochin Transfer of Property Act (17 of 1111).

The test whether a document was a lease or not was held to be whether it vested any exclusive interest in immovable property in the transferee or whether it gave him merely a right to enter on the property and to do something thereon. If there is no intention to transfer an interest in the property, the right will be a licence, and not a lease. In the document it was stated that there were trees and houses in the property. The same were excluded and permission was granted to cultivate the vacant space. The exact extent of the property or the location of the same where the defendant could raise the crops were not mentioned in the document. It was also not mentioned that the defendant was to have exclusive possession of the vacant site. Even over this vacant space the plaintiff was exercising the right of possession by planting trees.

Held that there was no exclusive possession. The document though it was styled a Pattam Cheettu and the rent to be paid was Pattom, could not be a lease as contemplated in the Transfer of Property Act. Case law discussed. Chitaley and Rao's T. P. Act quoted with approval. I L R (1951) Trav-Co. 91 (DB).

—S. 105 — Permanent licensee, who is indicated, See Easements Act (1882), S. 52. AIR 1957 Tripura 44.

—S. 105—Lease or licence—Determination — Test—(Easements Act (1882), S. 52.

Each case must be decided on its own facts and regard must be had to the substance of the agreement. Often, it may be solely a question of intention, when the status has to be gathered merely from some ambiguous dealings, and if the terms are equally consistent with a licence and a lease, the intention of the parties may be a useful and a legitimate guide in determining the relationship actually created. AIR 1957 Tripura 44 (45) (Pt B) (Pr 7).

11. Occupation as tenant or servant.

—S. 105 — Occupation as servant on behalf of owner—Occupation is that of owner and there is no lease. AIR 1955 N U C (All) 3833.

12. Possession under void lease—Effect.

—S. 105—Doctrine of part performance—Applicability—Applies to the case of a lease also and a lessee put in possession in part performance of contract to lease can resist suit for eviction. See T. P. Act (1882), S. 53-A. AIR 1963 Andh Pra 239.

[Reversed in AIR 1963 Andh Pra 489].

—S. 105 — Possession given under transaction purporting to create sub-tenancy — Transaction illegal — Such possession is not of a licensee but that of a trespasser. See Easements Act (1882), S. 52. I L R (1959) Bom 1482.

—S. 105—Oral lease reserving yearly rent—Tenant building permanent structure—A person cannot establish a case of estoppel merely by proving that he has built permanent structures relying upon an invalid lease—Estoppel. See T. P. Act (1882), S. 53-A. AIR 1957 Cal 625.

—S. 105 — Oral lease reserving a yearly rent — Not valid — Parties intended to create a lease from year to year but that intention not being expressed in proper legal form cannot be given effect to. See T. P. Act (1882), S. 107. AIR 1957 Cal 625.

—S. 105—Possession under void lease and payment of rent—Effect of.

An oral agreement for a lease is to be implied from payment and acceptance of rent. A lease is, there-

fore, made by possession under a void lease accompanied by payment and acceptance of rent, and such a lease is presumed to be a lease from month to month. 61 C W N 23 : ILR (1957) 3 Cal 636 : A I R 1957 Cal 625 (626) (Pt B) (Pr 8).

——S. 105—Unregistered lease—Suit for rent—Tenancy admitted—Rate of rent actually paid by tenant also proved — Question whether lease-deed is registered or unregistered does not arise. See Registration Act (1908), S. 49. **AIR 1955 N U C (Madh B) 4322.**

——Ss. 105 and 106—Possession under invalid lease—Registered lease granted by Administrator of superseded municipality who had no power to grant such lease—Lease invalid—Permission to construct buildings granted subsequently by the Municipal Committee regularly constituted — Payment and acceptance of stipulated rent from lessee by such municipality for a number of years—Relationship of landlord and tenant is created by necessary implication—Tenancy must be held to have continued on terms contained in lease deed. AIR 1960 Pat 344 (FB), Applied. **1961 M P L J 541 : 1961 Jab L J 806 : 1961 M P C 385 : I L R (1961) Madh Pra 543 : AIR 1961 Madh Pra 324 (327) (Pt D) (Prs 15, 16) (DB).**

——Ss. 105, 53-A — Agricultural lease for more than 5 years—Deed must be registered — Lack of registration strikes documents, not transactions—Agreement prohibited in law — Principle of part performance cannot save possession under void agreement—Registration Act, S. 17.

An agricultural lease in writing for a period exceeding five years is compulsorily registrable. A patta which purported to create permanent occupancy right was, therefore, compulsorily registrable. Not having been registered, it was not admissible in evidence to prove the permanent lease which it sought to bring into being.

The Registration Act strikes at documents and not at transactions. The fact of payment of rent by itself would be sufficient to establish the tenancy.

The principle of part performance enacted in S. 53-A of the Transfer of Property Act applies to agreements which are invalid only for want of registration. But if any agreement is invalid under any other law, neither that provision nor the equity underlying it will validate it by protecting the possession obtained thereunder. **1961 M P L J (Notes) 271.**

——S. 105 — Defendant entering into possession of site as tenant—Lease deed inadmissible in evidence—Defendant cannot be deemed to be licensee—(Easements Act (1882), S. 52). **ILR (1956) Nag 10 : 1955 Nag L J 742 : AIR 1955 Nag 306 (309) (Pt B) (Pr 10) (DB).**

● **——Ss. 105, 108 (b), 112, 106 — Possession of lessee under void lease—Lessee paying rent—Effect —Duration of tenancy — Acquisition of permanent tenancy by prescription.**

The possession of a lessee becomes wrongful from the time of his entry on the basis of a void or invalid lease (i. e., lease created by kabuliyat executed by lessee before 1929 Amendment of T. P. Act), but if he pays rent, which is accepted by the lessor, his possession ceases to be adverse to the lessor, and a relationship of landlord and tenant comes into existence. In other words he no longer remains a trespasser but becomes a tenant. Where there is no period agreed upon between the parties, the duration of a tenancy which comes into existence by payment and acceptance of rent must be determined on the basis of the provisions of S. 106 where no contract, local law or usage to the contrary is proved. In such cases, the duration has to be determined by reference to the object or pursose for which the tenancy is created. The rule of construction embodied in S. 106 applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent, and other circumstances. AIR 1952 S C 23, Rel. on.

Where the lessee pays rent on the basis of a notorious claim of permanent tenancy to the knowledge of the owner, the acceptance of rent by the owner on the basis of the lessee's claim as a permanent tenant will not prevent the acquisition of such a right by the lessee. ILR 30 Pat 964 : A I R 1952 Pat 46, Overruled. Kabuliyat executed by the lessee cannot be looked into as evidence of showing that the lessee asserted at any time that he was a permanent tenant, because the kabuliyat cannot be treated as embodying any contract between the parties. The mere assertion in the kabuliyat by the alleged lessee is not of much consequence because the alleged lessor cannot be saddled with knowledge of such assertion. AIR 1943 All 212, Dissented from. The circumstances that the lessees have made permanent structures upon the lands in suits, and that in one case, the original lessee transferred a portion of the land in his possession to others who also put up structures upon their portion, standing by themselves, cannot enable the Court to come to the conclusion that the defendants were notoriously claiming the right of permanent tenancy because a person may put up a building on land which he does not hold permanently and a person may also sell an interest which is not permanent. Bastacolla Colliery Co. Ltd. v. Bandhu Beldar. **1960 B L J R 245 : 1960 Pat L R 100 : ILR 39 Pat 140 : AIR 1960 Pat 344 (348, 351, 352) (Pt B) (Prs 12, 14, 15, 33, 35, 36, 37) (FB).**

——Ss. 105 and 107—Invalid lease—Possession under —Nature and effect of.

A lease is no doubt invalid, if the registered instrument has not been signed by both the lessor and the lessee. Nevertheless, a lessee in possession is entitled in law to maintain his possession against the whole world except the rightful owner. **AIR 1957 Pat 408 (416) (Pt N) (Pr 28) (DB).**

——S. 105—Possession under void transaction of lease is adverse to true owner—Nature of right acquired by prescription held that of a lessee and not of a licensee. See Limitation Act (1908), Art. 144. **AIR 1957 Pat 321 (DB).**

——S. 105—Possession under invalid lease—Adverse character of — Acquisition of permanent tenancy — (Tenancy Laws—Sonthal Parganas Settlement Regulation (3 of 1872), S. 27) — (Limitation Act (1908), Art. 144) —(Tenancy Laws — Sonthal Parganas Tenancy (Supplementary Provisions) Act (14 of 1949), S. 20).

It is firmly settled that a person in adverse possession of an occupancy holding under invalid lease for more than 12 years will acquire permanent tenancy therein by prescription. Thus where a person is in possession of the disputed land under a kurfa lease from more than 12 years he would acquire a permanent tenancy right by prescription because the kurfa lease being in contravention of the provisions of sub-s. (1) of either S 27 of the Regulation or S. 20 of the Act, his possession was adverse to the recorded tenants from the very inception of the lease. **1957 Pat L R 441 : 1957 B L J R 820.**

——Ss. 105 and 107 — Invalid lease — Possession of part of leasehold — Doctrine of constructive possession of entire leasehold — Applicability — Nature of possession — Limitation Act (1908), Arts. 142 and 144.

The doctrine of constructive possession of the entire lands in the leasehold by proving possession of a part can be pressed in aid by a person who has

the legal title vested in him in the leasehold. A person in possession under an invalid lease is a mere trespasser and it is well settled that a trespasser cannot invoke the aid of the principle of constructive possession. The possession of a trespasser is limited to the lands which are actually in his physical possession. Case law Ref. A I R 1951 Pat 160 (163) (Pt B) (Pr 9) (DB).

13. Commencement of lease.

——S. 105—Commencement of tenancy—Determination of—Custodian in possession of building — Occupant is got necessarily his tenant from date of occupation—No evidence when defendant was admitted to tenancy by custodian—Date of occupation cannot be taken as date of commencement. A I R 1955 N U C (Ajmer) 321.

——S. 105 — Commencement of tenancy — Purchase of property from original landlord — Mere mode of payment of rent on particular day and for particular period would not bring about change as to date of commencement of tenancy.

The defendants took the premises on lease from the predecessor-in-interest of the plaintiff for three years commencing on the 1st of August 1943 and ending with the 31st June 1946, by a registered lease. The plaintiff purchased the premises from the original owner under a registered deed dated 27th September 1946 and the defendants continued in possession of the house. Held, that no fresh tenancy was created with effect from the 27th day of the English Calendar month though the amount of rent was shown as due with effect from a particular date or for a particular period commencing on the 27th day of the month. I L R 30 Mad 109, Rel. on. I L R (1962) 14 Assam 16.

——S. 105—Lease of property not in possession of lessor—Lease would take effect from date lessor gets back possession. See T. P. Act (1882), S. 43. AIR 1960 Cal 609 (DB).

——S. 105—Lease to take effect in future—Validity —Ss. 5 and 43.

Lease of immovable property is, under S. 105 a transfer of a right to enjoy such property for a certain or particular time. This right is an interest in immovable property. Transfer of a lease therefore, is transfer of this interest and if the lease is to take in future, it is transfer of a future interest in immovable property which is a valid and effective transfer under S. 5 even without S. 43. It will be a case not of non-existent property at all. A I R 1960 Cal 609 (617) (Pt F) (Pr 29) (DB).

——S. 105—Change of (Tenancy).

The revenue Courts have no power to change the terms of the contract between the parties and to lay down a different date for the commencement of the tenancy. 1953 Nag L J 147 : I L R (1954) Nag 147 : AIR 1953 Nag 219 (220) (Pt B) (Pr 10).

——Ss. 105, 110—Commencement of lease—Substantial portion of premium paid—Lessor agreeing to put lessee in possession on very date of execution of lease deed — Lease becomes operative on date it was made — Intention to postpone commencement from date on which balance of premium was paid cannot be inferred. AIR 1948 Pat 446, Rel. on; AIR 1949 Pat 364 and AIR 1950 Pat 288, Disting. AIR 1965 Pat 39 (44) (Pt E) (Pr 15) (DB).

14. Term of lease—Mode of determination.

——Ss. 105, 106—Lease of uncertain duration.

S. 105, T. P. Act, does not require that the term or period of the lease should be certain on the date of the lease. The period of a lease can be express or implied. A provision for a period implied by law or usage would be enough. In the absence of a contract or local law or usage to the contrary, a lease will be deemed to be from year to year, if it is for agricultural or manufacturing purposes, and from month to month if it is for other purposes under S. 106. I L R (1953) 5 Assam 207 : AIR 1954 Assam 58 (59) (Pt B) (Pr 10).

——S. 105—Term of lease — Mode of determination, indicated—Held, having regard to all clauses in contract of lease that it was a lease for life-time of tenant. See Transfer of Property Act (1882), S. 8. AIR 1954 Bom 257 (DB).

——S. 105—Lease — Vacant site — Terms of lease—Payment of taxes for superstructures to be made by lessee — Holding over of lease beyond period of lease—Payment by lessor of taxes for superstructures —Suit for reimbursement—How far justified—(Contract Act (9 of 1872), Ss. 69 and 70).

Under the terms of a lease-deed which were clear a vacant site was leased to the lessee for five years, upon which he was allowed to construct superstructures, but by the terms he should give vacant possession to the lessor at the termination of the lease, and the lessee who was in enjoyment of the superstructures should pay the property tax for the same during the period. The property tax at the time of lease was Rs. 9-12-0. The lessee failed to surrender possession of the vacant site. So a suit was filed by the lessor for possession of vacant site and mesne profits and the suit was decreed also with directions to the lessee to move from the site and also to pay mesne profits. Meanwhile the lessor had paid all the property taxes for superstructures raised by the lessee. A fresh suit was filed against the lessee for reimbursement of the amount paid as taxes by the lessor.

Held (1) That on a proper construction of the lease deed the entire municipal taxes due on the superstructures should be paid by the lessee.

(2) That when it was made out that the lessee was to have paid the taxes and the payment of taxes by the lessor were not made as a volunteer, Ss. 69 and 70 of the Indian Contract Act would be satisfied. 1955 Mad W N 298 : (1955) 1 Mad L J 531 : A I R 1955 Mad 555 (557) (Pt B) (Prs 6, 7).

15. Lease for a term certain with a provision for continuation thereafter.

——Ss. 105, 106, 111 and 116 — Lease for term certain with provision for continuation thereafter — Lessee remaining in possession after expiry of term —Tenancy-at-will—Death of lessee — Heritability of lease—Possession of lessee's heir—Nature of—Notice to quit—Necessity of.

A rent-note executed by the lessee was as follows : "I have taken the shop on rent of Rs. 15 per month for the period of eleven months. I shall pay the rent month by month; if I fail the landlord would have the right to eject me at once from the shop. After the expiry of eleven months the landlord can at his will whenever he likes give me a month's notice to vacate and I will vacate without any objection, or I can myself vacate at my will whenever I like after giving a month's notice to the landlord." The period of the lease expired on 23-9-1943 and the lessee continued to be in possession, paying rent per month which was accepted by the lessor. Lessee died in January 1944, and his heir continued in possession. The lessor did not recognise him as his tenant and refused to accept the rent offered by him. He asked him to vacate the shop and on his refusal filed the suit for possession, treating him as a trespasser. The lessor had not given him any notice to quit. The suit was contested on the ground that the heir had become a tenant by inheritance from his father and was not liable to be ejected without a valid notice to quit :

Held, that the lessee was at the time of his death a tenant at will and that his lease was for an indefinite period; the lease, therefore. determined by his death and no interest passed to his heir. As no interest passed to him his possession of the shop was adverse and he could be sued as a trespasser. No notice to quit was required because there was no interest to be determined by a notice: Case law referred. 1951 All L J 179: ILR (1952) 1 All 85: AIR 1950 All 583 (587) (Pr 12) (DB).

16. Periodic leases.

—Ss. 105, 106 and 111 (g)—Delivery of possession —Oral agreement of lease of additional building to tenant — Monthly tenancy — Default of payment of rent for three months — Suit for ejectment—Necessity of notice either under S. 106 or S. 111 (g) — Landlord alleging defendant to be lessee — Defendant need not plead tenancy from month to month —C. P. Code (1908), O. 6, R. 1.

Held, that the defendants were tenants from month to month and not tenant at will and hence a notice either under S. 106 for determination of lease or S. 111 (g) for forfeiture on non-payment of rent for three months, to terminate the tenancy was necessary before the suit was brought for their ejectment. Although the agreement did not itself bring into existence a lease, a lease came into existence when the defendants were put in possession of the new shops. There was also a stipulation which might be presumed to amount to an oral agreement that the rent would be payable monthly. Delivery of possession with an oral agreement would under S. 106 bring into existence a tenancy from month to month. Therefore in the absence of a notice either under S. 106 or under S. 111 (g) the lease in favour of defendant could not terminate and consequently, no suit for their ejectment could lie. Further the plaintiff himself came with the specific plea that the defendants were lessees and never pleaded that they were tenants at will or licensees. Hence there was no question of any requirement, on the part of the defendants to plead that they were tenants from month to month. 1964 All L J 658: 1964 All W R (HC) 564.

—S. 105 — Lease for one year — Person claiming beneficial interest is not entitled to mutation — An annual patta is a lease for one year which confers no right of transfer or inheritance — Lessees alone are entitled to have their names entered in mutation register. See Tenancy Laws — Assam Land and Revenue Regulation (1 of 1886), AIR 1951 Assam 140.

—Ss. 105, 106 — Intention to create permanent lease — No operative lease coming into existence — Party remaining in possession and paying rent — Tenancy is presumed — Tenancy should be deemed from month to month terminable by fifteen days' notice expiring with end of month of tenancy. See T. P. Act (4 of 1882), S. 106. AIR 1955 Cal 502 (DB).

—S. 105 — Unilateral lease by tenant for a term — Landlord cannot eject lessee without notice on efflux of time. See T. P. Act (1882), S. 106. AIR 1955 NUC (Cal) 844 (DB).

—S. 105 — Insolvency of monthly tenant — Rent due subsequent to adjudication but before discharge is debt provable — Monthly tenancy nature of indicated. See Provincial Insolvency Act (1920), S. 34 (2). AIR 1955 NUC (Cal) 756.

● —Ss. 105, 116 and 100—Lease for a year—Rent fixed payable at stated time—Lessee creating charge on another property by way of security for payment of rent — Expiry of terms — Lessee continuing in possession by virtue of statutory tenancy created under S. 4, Cochin Verumpattomdars Act — Charge held operative so long as statutory tenancy lasted.

Held, that all rules concerning ordinary leases do not apply to tenancies, whose periods are enlarged by the statute. In the present case S. 4 of the Verumpattomdars Act, had converted the lease into a "statutory tenancy" even during the period under the lease, which was continued after the period had expired, and no new lease was created, which should have a new registered document to sustain the security for its rent. The effect was that the contractual obligation to pay the agreed rent, the time for its payment and its quantity continued even after expiry of the lease under the statutory tenancy. The security being closely linked with the obligation to pay rent also continued so long as the obligation to pay rent under the lease lasted. Though the statute gave its own security for rent further security was not prohibited and therefore the parties were not precluded from adding to their statutory guarantee. (1945) 2 All E R 430 and AIR 1948 Bom 385 and AIR 1962 Kerala 55, Rel. on. 11 Mad L J 186 and 16 Ind Cas 560 (Mad) and AIR 1926 Mad 398 and 67 Mad L J 455; AIR 1934 Mad 458, Distinguished. Thenu Ittiachen v. Mundi, 1961 Ker L J 893: 1961 Ker L T 731: (1961) 2 Ker L R 354: ILR (1961) 2 Ker 493: AIR 1962 Ker 58 (60) (Pr 5) (FB).

—Ss. 105, 106 — According to rent note, rent settled, for one year — Rent to be paid from month to month as it fell due — Tenant to vacate, at any time when called upon to do so — Tenancy created held one at will and not for fixed period—No notice to quit is required — Even after expiry of 12 months, if tenant continues, tenancy still remains tenancy at will and does not become tenancy from month to month. AIR 1952 Kutch 13 (13) (Pt A) (Pr 2).

—Ss. 105, 106 and 111 (h) — Quit notice must give fifteen days' time and must expire with the end of tenancy month — Month of tenancy may be different from month according to which rent is realised. AIR 1932 P C 279, Rel. on. 1963 MPLJ (Notes) 42.

—S. 105 — Compromise decree operative as lease from year to year — Decree is compulsorily registrable — If not registered monthly tenancy is still created — Registration Act (1908), S. 17.

A compromise decree operative as a lease of immovable property, from year to year, or for any term exceeding one year, or reserving a yearly rent, requires registration, and the decree would not amount to a transfer without registration. The decree of a Court which has the effect of creating a lease of the aforesaid character is compulsorily registrable. Such a decree, if not registered, would not operrate as lease from year to year, for or more than one year. It would, however, create a relationship of landlord and a monthly tenant : AIR 1952 S C 23, Rel. on. ILR (1964) Cut 229.

—Ss. 105 and 110 — S. 110 does not apply to tenancy not for a term—Lease from month to month is not lease for a term—See T. P. Act (1882), S. 110. AIR 1950 Orissa 1.

—Ss. 105, 106 and 108 — Monthly tenancy — Irregular payments of arrears of rent — Implied agreement to pay rent annually cannot be inferred—Landlord and tenant.

Merely from the fact that the landlord had accepted irregular payments of arrears of rent in a case of monthly tenancy, an inference cannot be drawn that the rent was not payable monthly and that there was an implied agreement to pay it annually : AIR 1957 Pat 160 and AIR 1960 M P 124, Disting. 1961 Raj L W 642.

—S. 105 — Lease for a fixed term — Provision for termination by notice held — Effect of.

If a Kabuliat fixes a fixed period for the tenancy for a number of years and at the same time provides for ejectment of the lessee on notice at any time, the term of years fixed in the Kabuliyat falls to the ground and the Kabuliyat can only be treated as creating a month to month tenancy if it relates to a residential house or a shop : 8 All 405, Rel. on. The 5th and 6th terms of a Kabuliyat were as follows :— (5) This lease will be effective for three years. The lessee will not vacate the shop for three years. (6) If the owner wants the shop to be vacated, he will give one month's notice.

Held, that the intention of Cl. (6) was not that the tenant could be asked to vacate the shop even within the period of three years by one month's notice. That clause was put in, in case the tenant held over after the fixed period of three years and thereafter, the landlord required him to vacate the shop. Therefore, the term relating to the period of tenancy being three years did not fall to the ground because of the notice to vacate provided in the Kabuliyat. **ILR (1958) 8 Raj 466 : 1959 Raj L W 242 : AIR 1959 Raj 240 (241) (Pt A) (Prs 6, 7) (DB).**

17. Tenancy at will.

——S. 105—Tenancy at will—Reservation of yearly rent is not incompatible. A I R 1955 N U C (Assam) 2843.

——S. 105 — Tenancy at will — Heritable nature of tenancy is not incident of tenancy at will. AIR 1955 N U C (Assam) 2843.

——S. 105 — Determination of tenancy at will — Landlord can evict even after demand — No specific period is prescribed as to notice that such tenant should have. **AIR 1955 N U C (Assam) 2843.**

——S. 105 — Tenant at will—Incidents of—Possession under void lease—Mode of terminating tenancy.

A tenancy-at-will is to be implied from permissive occupation under a void lease. Such a tenancy-at-will is not a lease. There is no consideration in the shape of either rent or premium. The tenant-at-will is not liable to pay rent. An agreement for payment of reasonable compensation for use and occupation is implied from the permissive occupation. Such compensation is not rent. The tenancy-at-will is thus a license to occupy the property not amounting to an interest in property. Service of a formal notice to quit is not necessary for the termination of the tenancy-at-will ; it is terminable at the will of either the landlord or the tenant. A demand for possession or anything which amounts to a demand for possession is not only sufficient but also is necessary for the termination of the tenancy-at-will. **61 C W N 23 : ILR (1957) 3 Cal 636 : AIR 1957 Cal 625 (626, 627) (Pt D) (Prs 14, 15, 17, 18).**

——Ss. 105 and 106—Possession under invalid lease — Rent accepted — Nature of tenancy — Notice to quit — Validity.

If there is possession under a void or invalid lease, there is a tenancy at will.

Thus where a lessee is in possession of certain premises under a lease which is invalid for want of registration and the rent is paid by the lessee and accepted by lessor every month, by implication of law, there is a tenancy from month to month.

In such a case, one month's notice given by the lessor to the lessee to vacate the premises by the end of certain specified month is a valid notice to quit. **AIR 1953 Cal 349 (351, 352) (Pt C) (Prs 11, 12, 14).**

——S. 105 — Tenancy-at-will—Meaning of—Landlord reserving right to determine lease at any time irrespective of period prescribed—Tenancy amounts to tenancy-at-will. A I R 1955 N U C (Madh-Bha) 3877.

——S. 105—Determination of agricultural tenancy — Tenant-at-will — After determination of tenancy any act of landlord showing an intention to take possession is sufficient to revest the possession in him — Held, further that a lessee cannot be deemed to be a mere tenant-at-will, if he is found to be in possession of land for a considerable long time — See Transfer of Property Act (1882), S. 111. AIR 1956 Manipur 42.

——S. 105 — Defendant forcibly taking possession of land from occupancy tenants—Such persons are not tenants-at-will—See Court-fees Act (1870), S. 7 (xi), (cc). AIR 1955 Nag 184.

——S. 105—Dar-chandanadur—Status of—Interest—Heritability — Notice to quit — Necessity — If governed by T. P. Act or Orissa Tenancy Act.

The term Dar-chandanadar, is a coinage having no legal implication in any of the tenancy or other laws of the country. A Dar-chandanadar is an intermediate landlord and lessor. It cannot be said that the interest of a Dar-chandanadar is not heritable. It may be a tenancy at will, but it is one which is terminable only on notice to quit. Till that is done it must, like any other tenancy pass from father to son. It is settled law that it is only the entire body of lessors or landlords who can terminate the tenancy. The tenure is one that is pre-eminently governed by the T. P. Act. **(1951) 17 Cut L T 67.**

——Ss. 105, 106 and 108 (h) — Tenancy-at-will — Possession under void lease — Payment of rent — — Effect—Determination of tenancy-at-will—Right of lessee to remove structures.

A person entering upon land with the permission of the landlord under a void lease acquires the right of a tenant-at-will. If rent is paid, the lease becomes, in accordance with S. 106 of the Transfer of Property Act, a yearly or a monthly lease according to the purpose for which it is taken. Such a person can acquire by prescription a permanent tenancy also : AIR 1925 Cal 1171 and AIR 1957 Pat 321, Rel. on. A tenancy-at-will can be determined by a mere demand for possession either expressly or by implication.

The tenant is entitled, in view of S. 108 (h), to remove any structure made by him, when the tenancy is determined. **AIR 1961 Pat 350 (352, 353) (Prs 6, 7).**

——Ss. 105 and 111 — Tenancy-at-will — Notice to quit if necessary.

Where the lease states that the lessees may remain in the house 'as long as they please' it must be held as a matter of construction that the tenancy was a tenancy-at-will and not a monthly tenancy in spite of the fact that there is another clause in the document to the effect that the occupation would be on monthly rental : 23 Mad L J 641 and A I R 1941 Pat 228, Rel. on. Even if it can be taken that their tenancy came to an end when the property was purchased by another from the lessor the position of the tenants would not improve where admittedly the same terms and conditions were continued after such purchase because that would mean that the tenants continued to be in occupation as tenants-at-will. Therefore the purchaser was not bound to give them a notice to quit in order to become entitled to obtain a decree for ejectment and damages for occupation. **1957 B L J R 291 : A I R 1957 Pat 490 (490) (Prs 2, 3) (DB).**

——Ss. 105 and 111—Tenancy at will—When arises —Fixed term mentioned in lease — Option to lessor to determine lease whenever he desires—Validity of option.

A tenancy-at-will gives an option to either party to terminate the lease whenever he desires. Where, therefore, the power to terminate is unilaterally conferred only upon the lessor without the corres-

ponding power to the lessee, it will be difficult to hold it to be a case of tenancy-at-will. In the second place, tenancy-at-will can only result in a case where no term is fixed in the demise between the parties and the lease is terminable at the will of the lessor or where entry of the lessee is under a void instrument. A case of tenancy-at-will can arise in certain circumstances only when there is no definite term recited in the document for the continuance of the tenancy and the tenancy is terminable at the option of the lessor. I L R 8 All 405, Distinguished ; (1889) 4 Q B 293 and (1880) 16 Ch D 274, Foll.

Per Rai, J. — Even if the terms of the lease be held to be valid and binding on the parties, after the cancellation of the lease it cannot be the basis of any claim by the lessor at whose instance the lease is cancelled. **1956 Pat L R 575 : I L R 35 Pat 967 : A I R 1957 Pat 350 (352 to 355) (Pt A) (Prs 5, 7, 11) (DB).**

——S. 105—Rent Note though providing for payment of rent per annum containing an agreement by tenant to vacate the premises whenever the landlord desired —Tenancy created is a tenancy-at-will and not one for a period from year to year or reserving a yearly rent — Hence, Rent note is note not compulsorily registrable in order to be admissible in evidence. See Registration Act (1908), S. 17 (1) (d). **1963 Raj L W 451.**

——Ss. 105 and 106 — Tenancy at will — Lessee in rent note writing that he would vacate premises whenever lessor would ask him to do so — Whether the same condition enures for lessee as well—Lessee whether bound to give notice under S. 106.

Where in a rent note the lessee simply writes that he would vacate the premises whenever the lessor would ask him to do so, simply because the lessee has not written in clear terms that he would also be at liberty to determine the lease at his will, it does not follow that he is bound to give notice under S. 106 of the Transfer of Property Act. The tenancy between the parties is, undoubtedly a tenancy at will and both the parties have a right to determine the same, whenever they desire by expressing their will to the other party. **1959 Raj L W 353.**

——S. 105 — Tenancy at will whether can be inherited.

A tenancy at will creates an interest in property like any other lease and just as any other lease envisaged by S. 105 of the Transfer of Property Act can be inherited, tenancy at will also be inherited. **1959 Raj L W 353.**

——S. 105—Tenancy at will — Suit for possession by landlord not barred by limitation. See Limitation Act (1908), Art. 139. **1959 Raj L W 107.**

——Ss. 105, 106 — Tenancy at will can be created only by express agreement — Document of lease neither stamped nor registered — Tenancy is not one at will — No provision as to duration of tenancy— Section 106 comes into play. **A I R 1955 N U C (Raj) 4072.**

——S. 105—Tenancy at will arises by implication of law in cases of permissive occupation—It also arises when tenant expressly agrees to vacate whenever possession is demanded by landlord—Unless contract of lease itself contains condition to put an end to lease at will of landlord or tenant, tenancy cannot be a tenancy at will. **A I R 1955 N U C (Sau) 983.**

——S. 105—Mortgage with possession — Lease back to mortgagor — Term not fixed — Determination of lease — **Held**, it was open to plaintiff to demand possession even after expiry of one year. See T. P. Act (1882), S. 58. **A I R 1955 N U C (Trav-Co) 3468 (DB).**

——Ss. 105, 106, 111—Tenancy at will — No formal notice to quit is necessary. A I R 1955 N U C (Trav-Co) 765.

——S. 105—Mesne profits — Tenant holding over as tenant-at-will — Tenancy can be brought to an end by notice to quit. See Civil P. C. (1908), O. 20, R. 12. **A I R 1953 Trav-Co 369 (DB).**

18. Tenancy by sufferance.

——Ss. 105 and 116—Tenant holding over—Tenancy at will and tenancy at sufferance — Distinction— (Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 29—Lawful possession).

If a tenant under a lease for a definite term retains possession of the premises after the expiration of the term without a new agreement it is open to the landlord either to treat him as a tenant or to turn him out as a trespasser. If the landlord manifest his intention clearly effect must be given to it, for it is the intention of the landlord alone which determines the subsequent nature of the relationship between the parties. If the landlord agrees to the continued occupancy of the tenant the tenancy is one at will. If, however, the landlord omits to indicate his intention and neglects to disturb the tenant's possession a tenancy at sufferance arises. It comes into existence only out of the laches of the owner and is regarded as the most shadowy estate recognized at common law. The difference between a tenancy at will and a tenancy by sufferance is that in the one case the tenant holds by right and has an estate or term in the land, precarious though it may be, and the relationship of the lessor and the lessee subsists between the parties ; in the other, the tenant holds wrongfully and against the will and permission of the landlord, and has no estate at all in the occupied premises. A tenant at sufferance comes in by right and holds over without right. He stands very nearly on the same footing as a trespasser. He is a wrong doer ; he has no term and no estate or title ; he has the mere occupancy or a naked possession without right and wrongfully. He stands in no privity with the owner who may re-enter when he pleases and so terminate the tenancy without notice. A tenant at sufferance cannot by any stretch of reasoning be regarded as being in lawful possession of the immovable property occupied by him. A tenant who continues to remain in possession of the leased premises after the expiry of the lease does not continue to be a tenant unless the landlord consents to his holding over. Such consent may be express or implied but it must be established before the relationship of landlord and tenant can continue. The payment of rent, however, raises only a presumption in favour of the subsistence of the relationship, but this presumption may be rebutted by the other facts and circumstances of the case and in particular by the conduct of the landlord.

Held, on the facts and circumstances of the case that the appellant was a tenant at sufferance and that he continued in possession after the determination of the lease without the consent of the landlord who was the custodian of Evacuee Property and therefore he was not in lawful possession of the property so as to entitle him to claim to the special protection afforded by S. 29, Displaced Persons (Compensation and Rehabilitation) Act, 1954. **60 Punj L R 62 : I L R (1959) Punj 1533 : A I R 1958 Punj 314 (315, 316) (Prs 7, 8) (DB).**

——Ss. 105, 116 — Tenancy at sufferance — What is —Kanomdar holding over after expiry of term, if tenant by sufferance.

A Kanom tenancy is created for a definite period and also for a money consideration. Under this tenure the tenant is entitled not only to hold it for the period of twelve years generally but also to hold

it so long as the Kanom amount remains unpaid. It is not therefore true to say that his title becomes extinguished by the expiry of the term. Nor can it be said that he is a person who holds over without the consent of the landlord for he is there by reason of the charge without payment of which he is not liable to be turned out. He is entitled to hold it whether or not it pleases the landlord. Such tenant cannot therefore be treated on the same footing as a tenant at sufferance. **('49) 1949 Ker L Tim 15 : 1949 Trav C L R 50 (DB).**

19. Lease for life.

——S. 105—Lease for lifetime of two Hindu lessees —Lessees divided from each other— Nature of estate —Tenants-in-common.

A lease is not a mere contract, but is a transfer of an interest in immovable property. The leasehold interest is capable of being inherited or transferred. Being an estate of inheritance, the interest of the lessee vests, on his death, in his heirs, executors or legatees. The period of the lease need not be certain. It is enough if it is fixed with reference to a future event which must happen and on the happening of which the lease will stand determined. The period is 'certain' if it can be made certain on a future date, on the principle id certum est quod certum reddi potest. A lease for the lifetime of the lessor or lessee or of any other living person will be valid in law. A joint tenancy with a right of survivorship might be created by the use of appropriate words in a grant or a lease, but there is no presumption in its favour. Where the plaintiff and his father who had become divided from each other took a lease of 4 annas share in an oil mill, for the entire lifetime of both: **Held**, that the lessees acquired the leasehold interest as tenants-in-common without any right of survivorship inter se. **(1956) 2 Andh W R 1093 : AIR 1957 Andh Pra 619 (621) (Pt A) (Pr 3) (DB).**

20. Lease with a clause for renewal.

● **——S. 105 — Construction of lease — Lease with clause for renewal of — At time of renewal lease rent to be "subject to such fair and equitable enhancement as lessor shall determine"—What is "fair and equitable" stated—Held jurisdiction of Court was not ousted — Lease held was not void for uncertainty.** Damodhar Tukaram Mangalmurti v. State of Bombay, **1959 Nag L J 149; 1959 M P L J 393: (1959) 2 S C A 47 : 1959 S C J 760 : 1959 Supp (2) S C R 180 : AIR 1959 S C 639 (642, 643) (Prs 8, 9, 10).**

——Ss. 105 and 113 — Renewal clause — Expiry of term of lease — Effect — Suit by subsequent lessee to eject previous lessees — Expiry of term of plaintiff's lease during pendency of appeal — His lease deed containing renewal clause — Mere renewal clause though did not create any fresh lease, it could not be said that by mere expiry of lease plaintiffs' right to get possession from previous lessees and to remain in possession till evicted therefrom by the lessor, had come to an end. ILR (1964) 16 Assam 435 : AIR 1965 Assam 55 (61) (Pt E) (Pr 27) (D B).

——S. 105—Lease with clause for renewal — Illustrative case.

Whether a lease contains a covenant for renewal is always a matter of the construction of the terms and intention of the parties to be gathered from the language of the document. Where a lease for 10 years contained a provision that after the expiry of the period of lease, the tenant would be entitled to remain in the suit land on a new Bandobasta only;

Held, (i) that though the words did not very clearly set out the terms and did not incorporate the conditions in details, still it was a clause for renewal. It gave an option to the lessee to continue to remain in possession on a new Bandobasta. 16 Cal L J 217, Rel. on. 13 Cal W N 595, Disting. (ii) The tenant was entitled to renewal of the lease on the same terms as contained in the earlier lease, subject to his payment of a fair rent. **AIR 1959 Assam 22 (23 to 25) (Pt A) (Prs 6, 15) (DB).**

——S. 105 — Covenant for renewal — Enforceability against assignee from lessor or lessee indicated. See T. P. Act (1882), S. 40. **AIR 1959 Assam 22 (DB).**

——S. 105 — Covenant for renewal in lease — Construction.

Held, on a construction of the renewal clause in the lease that the option was with the lessee to ask for a renewal, if he so desired, and it was not for the plaintiffs to offer settlement on fresh terms on the expiry of the original lease. **Held**, further that the conduct of the defendant showed that he had never attorned to the plaintiff by paying rent and by merely continuing in possession after the expiry of the lease it could not be assumed that the defendant, on its own behalf wanted an extension of the lease especilly when he had transferred his interest to a third person after the filing of suit. Consequently, the defendant could not successfully resist the suit for eviction on ground that he had not been given an option to renew the lease. **ILR (1956) 8 Assam 137 : AIR 1956 Assam 116 (118) (Pt B) (Prs 6, 7, 8).**

——Ss. 105 and 111 — Renewal of lease — Option in lease not stating terms of renewal — New lease will be for same period and on same terms as old one — Lessee is not deprived of his right on renewal clause. AIR 1955 N U C (Assam) 2804.

——S. 105—Covenant for renewal in lease — Lessee entitled to renewal on such terms and conditions as may be agreed — Contract is invalid for uncertainty and cannot be enforced — Contract Act (1872), S. 29 —16 Cal L J 217 and AIR 1917 Cal 526, Rel. on; 1959 S C J 716; AIR 1959 S C 639, Dist. **1961 M P L J 541 : 1961 Jab L J 806; 1961 M P C 385; ILR (1961) Madh Pra 543 : AIR 1961 Madh Pra 324 (327, 328) (Pt E) (Prs 18, 19) (DB).**

——S. 105 — Lease— Term for renewal — Construction of.

Where the relevant portion of the renewal clause was: "the lessees shall have the option of five years but subject only to such terms and conditions as may be mutually agreed upon";

Held, that it was an agreement to renew the lease on the original terms. Even if the contention that the renewal was dependent on the agreement between the parties on other terms was accepted, it only meant that the clause provided for an agreement between the parties on terms reasonable, and if the parties were at variance as to those terms then the Courts would step in. **38 Mys L J 106 : ILR (1960) Mys 151 : AIR 1961 Mys 29 (32) (Pt C) (Pr 6) (DB).**

——S. 105—Covenants between landlord and tenant —Nature of indicated — An option to renew the lease runs with the land and the lease hold interest, and so both the lessors' and the lessees' successors-in-title are bound. See T. P. Act (1882), S. 40. **AIR 1954 Orissa 110 (DB).**

——Ss. 105, 111, 116, 40—Option to renew lease, on expiry of original lease—If creates present interest for extended term.

Where in a mining lease there is a clause giving option to the lessee for renewal of the lease on the expiry of the lease, the clause has no effect of creating a present interest in the land, for the extended term, on the date of the execution of the original lease. (1877) 2 Exchequer Division 355, Applied. (1901) 1 Ch D 54 and (1905) 2 Ch D 257, Distinguished.

The legal effect of such a covenant for renewal is different in English Law. The reason is that in English law a contract for the lease of land creates an equitable interest.

Under the equitable rule what ought to be done as a result of a binding agreement is treated as actually accomplished. Hence the person who has an equitable interest under an agreement for lease, if he is entitled to specific performance in the same Court, is treated as if the equitable interest has been converted into the legal interest of the lessee. But the position in the Indian law is different. The right of a person entitled under an agreement for lease is not an equitable interest; it is merely a contractual right. A covenant for renewal of a lease does not operate as a present demise but is only a contract which is enforceable by specific performance, in case of refusal to perform it by the lessor. AIR 1931 P C 79 : 60 Mad L J 538 : 5 I A 164 : AIR 1943 Cal 417 ; A I R 1929 Cal 50, Relied on. **1960 B L J R 105 : I L R 38 Pat 1160.**

——Ss. 105, 111 — Mining lease — Construction — Renewal clause—Effect of.

The renewal clause in the mining lease was in these terms : If the lessee shall be desirous of taking a renewal lease of the premises hereby demised for a further term of thirty years from the expiration of the said term hereby granted and of such desire shall prior to the expiration of such last mentioned term give to the lessor six calendar months' previous notice in writing and shall pay the rents and royalties hereby reserved and observe and perform the several covenants and agreements herein contained and on the part of the lessee to be observed and performed up to the expiration of the said term hereby granted the lessor will deliver to the lessee a renewed lease of the said premises for the further term of thirty years.

Held, that the covenant for renewal was subject to conditions precedent, and the right of renewal only arose when the notice was given by the lessee in terms of the renewal clause, and the lessee had performed all the conditions precedent as mentioned in the renewal clause namely, payment of all rents and royalties and performance of other conditions. **1960 B L J R 105 : ILR 38 Pat 1160.**

——S. 105—Lease for fixed term containing renewal clause—After expiry of term lessee not asking for resettlement but remaining in possession — Lessor not accepting rent from lessee—This is not case of holding over — Lease cannot be said to have been renewed. **1953 B L J R 403 : A I R 1954 Pat 41 (42) (Pt D) (Pr 6).**

——S. 105—Kanom—Renewal clause— Interpretation —An express provision that all covenants in original lease shall be inserted in renewed lease will not include a covenant for a further renewal — See T. P. Act (1882), S. 58. **AIR 1955 Trav-Co 161 (DB).**

21. Lessee holding over after expiration of lease — Effect.

——S. 105—Tenant holding over.

Where a tenant holds over without the consent of his landlord, he is not liable to pay the rent but to compensate the landlord for the damages suffered by him. The Court will in such cases have to determine the amount of damages. **AIR 1953 Ajmer 24 (2) (25) (Pt C) (Pr 7).**

——S. 105—Lessee holding over after determination of lease—Lessor's assent — Would not give him immunity against landlord's claim for eviction— See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12 (1) proviso (b). **AIR 1959 Cal 181 (DB).**

——S. 105—Tenant holding over with landlord's consent—Tenancy cannot be invalid because there was unregistered instrument of istafanama permitting tenant to stay for certain period. **A I R 1955 NUC (Cal) 2884.**

——Ss. 105 and 106—Lessee holding over after expiration of lease—Suit for ejectment— Notice to quit —Necessity.

Where there is a specific period fixed in the lease deed, the suit instituted on the expiry of that period can be maintained even without any notice to quit. **1957 Ker L J 551 : 1957 Ker L T 627.**

——S. 105—Kanoon Ryotwari Gwalior State (Samwat 1974), Ss. 82 (3) and 163 — Extinguishment of tenancy right under S. 82 (2) — Landlord can re-enter— Obligation to approach Court and obtain order for possession—Position in general law indicated—Landlord obtaining possession by force without resort to Court—Possession cannot be said to be wrongful — See Tenancy Laws —Kanoon Ryotwari Gwalior State, Samwat 1974, S. 82 (3). **AIR 1957 Madh-Bha 79 (DB).**

——Ss. 105, 116—Tenant holding over after expiration of lease—Suit for eviction—Allegation by tenant that there was verbal extension of lease — Burden of proof is on tenant to prove extension—Particulars as to time and place of agreement not given by tenant in his written statement — Witnesses said to be present at the time of agreement not examined—In their place other witnesses examined but their evidence found to be unsatisfactory unreliable and unworthy of any credit—Defendant himself not appearing as witness—Burden of proof held not discharged. **1964 Jab L J 736 : 1964 M P L J 502: AIR 1964 Madh-Pra 288 (294) (Pt C) (Pr 20) (DB).**

——S. 105—Tenancy determined by efflux of time — Heirs of ex-tenant of inam lands are not tenants — See Tenancy Laws — Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act (32 of 1954), S. 3. **AIR 1958 Madh-Pra 41 (DB).**

——S. 105—Lessee holding over after expiry of lease —Liability for compensation—Rentals of other properties of same description, value of — (Land Acquisition Act (1894), S. 23) — (T. P. Act (1882), S. 108 (q)).

In a suit for payment of mesne profits by a landlord against his tenant holding over after the expiry of the lease, the rentals of other pieces of property more or less of same description is a recognised method of determining mesne profits. This method is subject to this defect, namely, no two pieces of property can be precisely similar in all their circumstances and conditions. There must be difference always though of varying degrees and no hard and fast rule can be laid down as to the allowances to be made for such differences. But valuation is not an exact science. It is an enquiry relating to a subject abounding in uncertainties where there is more than ordinary guess work and where it would be very unfair to require an exact exposition of reasons for the conclusions arrived at. A certain amount of conjecture is inevitable but Court should be careful not to go too far in this direction. **AIR 1956 Mad 216 (218) (Pt B) (Pr 7).**

——S. 105—Tenant holding over and paying rent — Rent accepted by landlord — Such tenant, for that reason alone, does not necessarily become statutory tenant—It may well be that there is a fresh tenancy created by the acceptance of rent by landlord, if such acceptance is attributable to landlord assenting to a new tenancy after termination of previous one. **(1965) 67 Pun L R 887.**

22. Permanent lease.

(A) Permanent tenancy—Onus of proof.

(B) Principle of lost grant as applied to permanent tenancies.

(C) Permanent tenancy—Construction of leases.

(D) Permanent tenancy — Evidence and proof.

(E) Permanent tenancy — Acquisition of by prescription.

22. Permanent lease.

● —S. 105—Lease—Permanent lease — Lease of village for fixed annual amount — Term not mentioned—Grantee to rehabilitate old and new ryots—Possession on same rent for over 100 years—Lease—If permanent.

The jagirdar of a village granted a Kowl of the same on Tahud (lease) for the fixed sum per year to the appellant's ancestors. No term was mentioned in the Kowl as to its duration; but after reciting that the village had heen granted on Tahud for a certain fixed amount annally, the Kowl went on to say that the grantee should with entire confidence rehabilitate old and new ryots and pay the amount of Tahud annally as per fixed instalments in every crop season,

Held, on construction of the Kowl that on its plain terms it could not be read to confer on the appellants' ancestors a permanent lease on a fixed sum which was not liable to be varied at all. The fact that the appellants and their ancestors had continued in possession for over 100 years on the same rent would not make the Kowl a permanent lease in the face of its plain terms; Raja Rameshwar Rao v. Raja Govind Rao. 1961 S C D 641 : (1962) 1 S C J 689: (1962) 1 S C R 618 : 1961 Andh L T 794 : (1961) 2 Ker L R 181 : AIR 1961 S C 1442 (1445) (Pr 7).

● —S. 105 — Permanent right of occupancy is creature of statute—See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 21. AIR 1956 S C 305.

——S. 105—Permanent tenancy—Essentials—Permanent tenancy does not imply fixity of rent or occupation. Bejoy Gopal Mukherji v. Protul Chandra Ghose. 1953 S C A 217: 1953 S C J 195 : 1953 S C R 930 : AIR 1953 S C 153 (155) (Pt B) (Pr 3).

——Ss. 105 and 111 (f) — Permanent tenancy — Waiver—Acceptance of new agreement—Effect.

A permanent tenancy right must be deemed to have beed waived by acceptance of a new agreement by the tenant. It amounts to a waiver of the old terms and their substitution by new terms. The permanent tenancy must also be deemed to have been impliedly surrendered with the execution of the new agreement. AIR 1957 All 346 (351) (Pt D) (Pr 31).

——Ss. 105, 111 (f) —Permanent lease — Surrender and acceptance of new lease—Effect.

The surrender of the lease of the mortgaged property during the continuance of the mortgage and acceptance of a new lease from the mortgagee would operate in favour of the mortgagor. The mortgagor could, therefore, rely upon the surrender of the permanent lease and if a new agreement was entered into between the lessee and the mortgagee, the mortgagor would not be bound by the permanent lease which was surrendered by means of the aforesaid agreement. AIR 1957 All 346 (351) (Pt E) (Pr 31).

——Ss. 105 and 91 — Agricultural tenancy—Bhej Berari tenure—Nature and incidents of—Mortgage by such tenant—Suit for redemption by zamindar—Compentency of— Debt laws—U. P. Agriculturists' Relief Act (27 of 1934), S. 12.

In the case of a fixed rate tenancy or a permanent lease, on the extinction of the line of the fixed rate tenancy, or of the permanent lessee, the zamindar gets back the estate and is fully competent to redeem the mortgage previously executed by the fixed rate tenant or the permanent lessee.

The holders of Bhej Barari tenure of Tindwari village paid an amount which actually amounted to land revenue together with cess, in proportion to the land in their possession. The settlement of proportionate land revenue was directly made with them at the time of the settlement and their names were entered in the appendix to the khewat of the village. They possessed right to mtge their holdings without the consent of the zamindar but they had no right to sell the land in their possession.

In an appln. under S. 12, U. P. Agriculturists' Relief Act made by the Zamindar claiming to redeem the mtge, excuted by a Bhej Berars tenant who died without leaving any heirs, the question was as to the nature of Bhej Berari tenure and whether the zamindar was entitled to redeem.

Held (1) that Bhej Berars of village Tindwari were kind of sub-proprietors and not tenants of the lands held by them (2) that the Bhej Berars were to be assimilated to the position of a permanent lessee with a limited right of disposal of their holding and that, therefore. the holding reverted to the zamindar on the death of the Bhej Berar tenant without leaving any heirs. 3 Ind. App. 92, Dist.: 24 Cal. 443; 36 Cal. 1003, Rel. on.

(3) that the zamindar was entitled to redeem the mtge. executed by the Bhej Berar tenant in case he dies without leaving any heirs. AIR 1933 Bom 97, Rel. on. AIR 1951 All 655 : (657, 660) (Pt B) (Prs 8, 17, 18)

——S. 105 — Permanent tenancy—Enhanced rent paid without protest for number of years—Effect.

Defendant was in possession from 1888 on a rent of twelve annas per year till 1925 when it was increased to Rs. 4 per year. Enhanced rate at this rate was paid by defendant without protest and a decree at the enhanced rate was passed on 25th May, 1944.

Held, that the tenancy was not permanent. AIR 1927 P C 102 : 52 M L J 663, Rel. 1980 Nag L J (Notes) 64.

——S. 105—Mulgeni tenure—Nature of.

Mulgeni tenants are not sub-proprietors of the land and their rights do not stand on any higher footing than those of ordinary permanent tenants. (1950) 53 Bom L R 315 Foll. 53 Bom L R 800 : AIR 1952 Bom 100 (104) (Pt B) (Pr 10) (DB).

——S. 105—Permanent tenancy—Lease for building purposes.

Permanent tenancy may be inferred when the tenancy is made for building purposes; but the mere fact that a lease of land is made for dwelling purposes does not make it permanent unless there is something to show that the building was intended to be or was in fact a masonry building. (1953) 2 M L J 160: AIR 1954 Mad 412 (414) (Pt D) (Pr 9).

——Ss. 105, 107 and 51 — Permanent lease — Inference — Oral lease of land for construction of building — Lessee constructing building with lessor's knowledge—No inference of permanent lease can be drawn — Lessee not entitled to compensation on ejectment.

Under S. 107 of the Transfer of Property Act no permanent lease can be granted either orally or even by means of an unregistered document. Where an oral lease was given for putting up a building on the land leased and the lessee with the knowledge of the landlord had put up a substantial building on it

and had remained in possession for a period of nine years it cannot be inferred that the lease was a permanent lease. The oral lease being invalid under the law the lessee can be ejected at any time and upon his ejectment the lessee is only entitled to have any superstructure erected by him removed and not to compensation. A I R 1954 Bom 257, A I R 1936 All 385 and AIR 1943 Mad 373, Dist. 16 I C 1 Rel. on. **(1962) 40 Mys L J 861.**

——S. 105—Permanent tenancy—Tenant in continuous possession for more than 100 years — Tenancy renewed from time to time and rent varied — No permanent tenancy.

The fishery was in Khas possession of the landlords, though it had been let out to the defendants on an annual rental of Rs. 100. Defendants used to execute periodical Kabuliyats in favour of the landlords on the basis of annual rent fixed from to time. The rent was being varied from time to time.

Held that the defendants did not acquire permanent tenancy rights though the possession of the defendants continued to be for more than 100 years, since as the result of fresh Kabuliyats being executed by the defendants from time to time, a fresh start each time was given to the lease in their favour. **(1963) 29 Cut L T 256 : ILR (1963) Cut 226 (Orissa).**

——S. 105 — Permanent tenancy — Variation of rent from time to time — Tenancy not permanent one. **A I R 1955 N U C (Orissa) 2479 (DB).**

● **——Ss. 105 and 106 — Permanent tenants—Duration of tenancy.**

Where the defendants admit that there is a relationship of landlord and tenant between them and the predecessors-in-interest of the plaintiffs, but there is no valid lease in their favour, the duration of the tenancy in such a case must be determined by S. 106 of the Transfer of Property Act. They cannot claim acquisition of right as permanent tenants by reason of their possession of land for about fifteen years. A I R 1959 Pat 344 (FB), Rel. on. Dr. Sudhir Kumar Mukherjee v. Nirsi Dhobin. **1961 B L J R 810 : ILR 40 Pat 169 : A I R 1961 Pat 321 (327) (Pt D) (Pr 37) (FB).**

——S. 105—Permanent lease—Under raiyati for fixed period—Has no right in land—Provision in lease that grantee may possess land with his sons, grandsons and other heirs in succession—Not sufficient to confer permanent title. See Tenancy Laws—Tripura Tenancy Act (1 of 1296), T. E. **A I R 1964 Tripura 36.**

22 (A) Permanent tenancy—Onus of proof.

——S. 105——Deliberate avoidance of witness-box—Presumption would be against his contention that he is a permanent tenant. See Evidence Act (1872), **S. 114. A I R 1957 All 346.**

——S. 105—Permanent tenancy—Burden of proof.

The onus of proving that a tenancy is permanent is on the tenant. **A I R 1957 All 346 (351) (Pt C) (Pr 30).**

——S. 105 — Suit for ejectment by a landlord against his tenant—Defendant setting up permanent tenancy — Onus lies on defendant to prove that tenancy was of permanent character. Ses Evidence Act (1872), **Ss. 101 to 103. AIR 1955 N U C (Orissa) 2479 (DB).**

——S. 105 — C. P. Tenancy Act (11 of 1898), Ss. 3, 60—Sub-tenant — Acquisition of permanent tenancy —Tenancy Act confers no right of permanent tenancy on a sub-tenant of raiyati land — It is for tenant to establish that he acquired a right of permanency either under custom, or through a grant. See Tenancy Laws—C. P. Tenancy Act (11 of 1898), S. 3. **A I R 1952 Orissa 165 (DB).**

——S. 105 — Permanent tenancy, defence of, in suit for ejectment—Onus is on tenant. See Evidence Act (1872), Ss. 101 to 103. **A I R 1955 Pat 499 (DB).**

——S. 105 — Ejectment suit—Tenant, not tenant-at-will—Onus lies on plaintiff to show that he has right to eject before the onus shifts to defendant to prove that he has right of permanent tenancy. See Landlord and Tenant. **A I R 1955 Tripura 7.**

22 (B) Principle of lost grant as applied to permanent tenancies.

● **——S. 105** — Lost grant — Presumption of title — Presumption of origin in some lawful title may in certain circumstances be made to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming — But that presumption cannot be made where there is sufficient evidence and convincing proof of nature of grant and the persons to whom it was made. **A I R 1953 S C 195.**

● **——S. 105**—Lost Grant — Doctrine of stated:— No lost grant can be presumed in favour of fluctuating and unascertained body of persons who constitute inhabitants of a village and such a right could only be acquired by custom—Easements Act (1882), Ss. 15, 17 — Riparian rights, fishery. See Government Grants Act (1895), S. 3. **A I R 1951 S C 247.**

——S. 105 — Claim to right of occupancy based on ground of presumption of lost grant—Things that should be proved to raise such presumption — (Evidence Act (1872), Ss. 101, 103 and 114) — (Tenancy Laws—Madras Estates Land Act (1 of 1908), S. 3 (2) and S. 6)—Grant.

Where the tenants desire to establish occupancy rights resting their case on the sole ground of presumption of a lost grant in their favour claiming to have established immemorial possession of the lands continuously, it is necessary and incumbent upon them to trace the history of the different lands in the possession of different tenants and to establish before the Court the length of possession. Long possession, fixed rent, assertion of title as occupancy ryots or tenants in mortgages and sales and partitions, and acting on the footing that for a long time the tenants owned the permanent rights of occupancy, may point to the conclusion that they had acquired permanent rights of occupancy apart from the Act. In contrast with that the frequent changes of tenants, the increase in rents, the pulling out of one tenant from one land and putting in another, admission by tenants not illiterate and ignorant, of the rights of the landholder not only in muchilakas or pattas but in other documents may, all be taken into consideration in arriving at the conclusion whether the landholder or the tenant was the owner of occupancy rights. The circumstances which negative the existence of occupancy rights in the tenant may warrant the conclusion that the landholder was the owner of that right. Similarly circumstances which negative the existence of the kudivaram right in the landholder may establish the right in the other. The evidence therefore has to be considered in its entirety and the conduct of both sides extending over a long period must be considered in detail to come to the conclusion on the question as to who between the two, the inamdar and the tenant was the owner of the kudivaram. **69 Mad L W (Andh) 113 : 1956 Andh L T 33 : 1956 Andh W R 89 : A I R 1957 Andh Pra 632 (638, 639, 641) (Pt F) (Prs 22, 24, 36, 38) (DB).**

[Reversed on another point in A I R 1966 S C 681.]

——S. 105 — Acquisition of rent free title by lost grant—Presumption when arises.

A presumption of lost grant can be reasonably made where there has been non-realisation of rent for several years and where the origin of the tenancy is unknown. But where the Inam register shows

clearly the origin of the tenancy and also shows that some Jodi was actually payable to the zamindar, there can be no question of presuming a lost grant from the mere fact of non-payment in spite of demand. Case law Ref. ('52) 18 Cut L T 33 : AIR 1953 Orissa 92 (94) (Pt C) (Pr 5).

22 (C). Permanent tenancy—Construction of leases.

● —S. 105 — Permanent tenancy — Land let for building purposes — No period fixed — Presumption arises in favour of permanent tenancy — Right given to lessee to surrender lease at any time — It does not affect nature of tenancy — Lessee's right to surrender —Held, on construction of lease-deed that the lease was heritable that it could not be in contemplation that the lease should be only for the life of the grantee and that the lease deed evidenced intention to create permanent tenancy. A I R 1954 Bom 257, Disting. (1962) 2 S C J 85 : 39 Mys L J 1043 : (1962) 3 S C R 876 : A I R 1962 S C 413 :(416, 419) (Prs 9, 10, 13, 15, 16, 18, 19).

—S. 105 — Permanent tenancy — Presumption — Question of fact.

In every case an inference of permanency of tenancy is a question of fact depending upon the facts of each particular case.

Held, that in the circumstances, the facts that an uniform fixed rent had been paid for a long time, that the tenants had been making constructions on the vacant piece of land at their own cost and that they had been in possession of the land for a long time did not raise the presumption that the tenancy was permanent. A I R 1957 All 346 (351) (Pt B) (Pr 30).

—S. 105—Lease for indefinite period — Construction of—Lease of land for building purpose— Lessee entitled to continue even? after expiry of initial period of thirty years —Rent fixed and lessor having no right to increase it — Tenancy transferable and heritable—Lease is a permanent lease.

Ordinarily, a lease which provides that lessee will continue so long as he pays the rent, will be a lease for the lifetime of the lessee; but this is just a presumption of law and cannot be treated as a universal proposition of law as there may be cases of lease wherein there are other terms suggesting that the lease was heritable in which case, on a proper construction of the document, the Court is free to come to the conclusion that the lease is a permanent lease. Each case must therefore turn upon a proper construction of the terms of the document. This principle would also apply to a tenancy for a building purpose in respect of which a presumption may be available namely that such a tenancy is either for the lifetime or in certain cases is a permanent tenancy but in no case is a tenancy at will. A I R 1954 Bom 257 and I L R 3 Cal 210 (P C), Rel. on. Thus where the terms of a lease showed that it was (a) a lease for building purposes; (b) it was to enure, in the first instance for a period of thirty years; (c) the lessee had a right to continue to enjoy all the rights under the lease even after the expiry of the initial period of thirty years; (d) the rent was fixed and the lessor had no right to increase it in any manner; (e) the rights of the lessee were heritable and transferable and the lessee was allowed to construct a pucca structure thereon and even after the death of the original lessee his heirs were allowed to continue without demur and rent was accepted from them:

Held, that in view of the terms of the lease as a whole and taking into account the conduct of the parties the lease was intended to be a permanent lease. I L R (1965) Bom 27 : 66 Bom L R 525 : 1964 Mah L J 668 : A I R 1964 Bom 287 (291, 292) (Pt A) (Prs 15, 16).

—S. 105 — Permanent tenancy— Lease for indefinite period — Circumstances raising inference of permanent tenancy.

In the absence of a provision in the terms of the grant that the tenancy is not to continue after the grantee's lifetime a lease for a definite period does not terminate on the death of the lessee but continues to the heirs for the remainder of the term. A lease for an indefinite period, on the other hand, enures for the lifetime of the lessee only, unless there are words in the document or other circumstances indicating an intention to grant a perpetual lease.

The omission of words of inheritance in a lease does not show conclusively that the lease is not hereditary. Similarly the prohibition on alienation of the leasehold rights does not militate against the permanent character of the tenancy.

A compromise decree containing the terms of a lease provided that the defendant was to continue as a tenant so long as he abided by the conditions about the payment of rent and rendering certain service to the plaintiff. The rent was to be revised after every twelve years and the right of cultivation was not to be assigned. In case of assignment the landlord was entitled to take possession :

Held that though the lease was for an indefinite period taking into consideration the terms of lease, the surrounding circumstances and the subsequent conduct of the parties a hereditary interest was created by the lease. 52 Bom L R 97 : A I R 1950 Bom 161 (Pt A) (Prs 3, 5,6) (DB).

—S. 105 — Permanent tenancy — Construction of leases.

In the absence of any words of inheritance a grant cannot prima facie be construed to create a hereditary interest, though the want of appropriate words conveying such an interest may be supplied by the purpose of the grant, custom or usage, appropriate to such locality, evidence of long uninterrupted enjoyment at a fixed unvarying rent or by subsequent recognition and conduct of parties. These surrounding circumstances must however be unequivocal. ILR (1953) Mys 92 : 32 Mys L J 107 : A I R 1953 Mys 29 (30) (Pt A) (Pr 6).

—S. 105—Permanent tenancy — Construction of leases — (Words and Phrases—Khayam Guttige Kagada).

The words "Khayam Guttige Kagada" which may be translated as "fixed or confirmed lease deed" do not per se imply that the lease is perpetual and inheritable. 32 Mys L J 107 : I L R (1953) Mys 92 : AIR 1953 Mys 29 (31) (Pt B) (Pr 8).

—S. 105—Permanent right of occupancy.

The kabuliyat executed by the defendant recited that on the date of the grant the land was lying fallow and that the defendant took it on lease for the express purpose of putting up a house with a stipulation that he would deliver a certain number of Handis and kudias annually to the plaintiff. The document contained a further recital that the defendant was not liable to eviction though the plaintiff was given the liberty, in case of default in payment, to realise any arrears of rent though a suit. The document purported to confer a permanent right of occupancy upon the defendant.

Held, that the mere fact that the defendant was a permanent tenant did not automatically attract the provision of the Orissa Tenancy Act. The defendant could by no means be described as a 'raiyat' within the meaning of that Act. Undoubtedly the defendant had acquired a right of permanent occupancy and was not liable to eviction, but that right had

been conferred not by the statute but by the terms of the kabuliyat. Occupancy right can be acquired by grant or custom, or by statute or by other means. The relationship of the parties was governed not by provisions of the Orissa Tenancy Act but by those of T. P. Act. Consequently, a suit for recovery of rent would lie in the Civil Court. 21 Cut L T 72 : A I R 1955 Orissa 64 (64) (Prs 3, 4) (DB).

——S. 105—Permanent tenancy—Payment of premium.

The premium or salami, or nazrana is paid once for all, and is not a recurring payment, and, therefore, the payment of a substantial premium is certainly one of the surest indications of permanency. 1955 B L J R 506 : ILR 34 Pat 767 : AIR 1955 Pat 499 (503) (Pt B) (Pr 15) (DB).

——S. 105—Permanent tenancy—Bemiadi lease.

The use of the expression "bemiadi" should not be taken to negative the permanence of the tenancy but at the same time the use of the word 'bemiadi' does not necessarily convey a permanent heritable right to the grantee; yet it may be so. The word 'bemiadi' itself does not conclude the matter. The question whether a "bemiadi" patta created a permanent lease or not cannot be resolved by reference only to the use and meaning of the word; but should be determined after a consideration of all the provisions of the lease by which the rights of the parties are defined, and the circumstances in which and the purpose for which it was granted. The cumlative effect of such provisions coupled with other facts may lead to the inference of a permanent tenancy. 1955 B L J R 506 : ILR 34 Pat 767 : AIR 1955 Pat 499 (502, 503) (Pt C) (Prs 12, 14, 15) (DB).

——S. 105—Lease of non-Jenmom lands—Property — If irredeemable—Document must be examined and its terms construed—Stipulation for renewal and payment of renewal fees cannot by itself be treated as sufficient to draw a presumption in favour of irredeemability. See Tenancy Laws — Travancore Jenmi and Kudiyan Act (5 of 1071). AIR 1955 N U C (Trav-Co) 5110.

22. (D) Permanent tenancy—Evidence and proof.

● ——S. 105 — Permanent tenancy — Evidence — Neither possession for generations at uniform rent, nor construction of permanent structure by itself is conclusive proof of permanent tenancy—It is the cumulative effect of these coupled with several other facts, that may lead to inference of permanent tenancy—Tenancy held permanent. Bejoy Gopal Mukherji v. Protul Chandra Ghose, 1953 SCJ 195 : 1953 S C A 217 : 1953 SCR 930 : AIR 1953 S C 153 (155) (Pt D) (Pr 4).

——S. 105—Permanent Tenancy—Proof—Long possession—Sufficiency.

Even though no term has been mentioned in the lease, still the onus is on the tenant to prove that it is a permanent tenancy. Mere proof of long occupation is no ground to presume that the tenancy is of a permanent nature. The fact that the previous trustee of the Devaswam (i. e. the landlord) knew and acquiesced in a permanant tenancy being granted to the tenant would not bind the succeeding trustee. Nor would the statement made in evidence by the Kariastha of the devaswam that generally the devaswam does not evict any of its tenants constitute an admission of a permanent tenancy in favour of the tenant. Palghat Valia Raja v. T. S. Veeraraghava Iyer, 1961 Ker L T 103: 1961 Ker L J 160 : AIR 1961 Ker 222 (223) (Pt B) (Pr 9) (FB).

——S. 105—Permanent tenancy—Long possession.

Where the origin of the tenancy is known, mere possession, however long, will not confer a permanent right and in such cases it is not for the landlord to explain the possession but for the tenant to show that his holding leads to inference of the permanent tenure. (1953) 2 M L J 160: AIR 1954 Mad 412 (414) (Pt C) (Pr 9).

——S. 105—Permanent lease—Origin of tenancy unknown—Presumption — Permanent tenancy from long possession may be presumed. I L R (1949) 1 Cut 139 : AIR 1952 Orissa 99 (105, 106) (Pt E) (Prs 22, 23) (DB).

22. (E) Permanent tenancy—Acquisition of, by prescription.

——S. 105—Permanent tenancy by adverse possession—Conditions—(Limitation Act (1908), Art. 144).

An oral permanent lease acted upon for more than 12 years and the lessee having been delivered possession of the leased premises, would create permanent tenancy rights in favour of the lessee by adverse possession. AIR 1957 All 346 (352) (Pt F) (Pr 32)

——S. 105—Permanent tenancy—Accrual by adverse possession—(Limitation Act (1908), Art. 144).

A permanent tenancy by adverse possession does not accrue in favour of a lessee who has become a co-sharer in the leased property and as such is not liable to be evicted. AIR 1957 All 346 (352) (Pt H) (Pr 33).

23. Premium or rent.

● ——S. 105—Assessee Tea Company — Lease of tea estates for a term in consideration of premium and annual rent both payable in instalments — Nature of payment whether premium or rent—Determination—Tests —Construction of lease. See Income-tax Act (1922). S. 10 (2). AIR 1965 S C 1871.

● ——S. 105—Premium or Rent — Capital receipt or revenue receipt — Lease of tea estates along with machinery and buildings granted by assessee-lessor — Premium payable in instalments—Receipt, if rent and not premium—Nomenclature of payment — Not decisive — Substance of transaction and intention of parties — Relevant factors — Words and Phrases—'Prumium' — 'Rent' — Indian Income-tax Act, 1922 (Central Act 11 of 1922).

The assessee-company leased out two tea estates along with machinery and buildings to a firm for a period of ten years in consideration of a premium of Rs. 2,25,000 and an annual rent of Rs. 54,000. A part of the premium was to be paid in one lump and the balance in stated instalments. The Income-tax Officer made the assessment treating the instalment of Rs. 11,250 paid towards the premium as a revenue receipt. This was confirmed in appeal by the Department and by the Tribunal on the ground that the amount was really rent. The High Court answered the reference in favour of the assessee holding that it was premium and hence a capital receipt. The Revenue appealed.

Held, the amount paid is premium and not rent and hence a capital receipt. Premium is the consideration paid by the lessee for being let into possession of the leased property, whether the amount is paid in one lump or in instalments. S. 105 of the Transfer of Property Act brings out the distinction between the price paid for the transfer of the right to enjoy the property and the rent to be paid periodically to the lessor. The former is a capital income and the latter a revenue receipt. It is not the form but the substance of the transaction that matters. The nomenclature of the payment cannot be decisive or conclusive, but it helps the Court, having regard to the other circumstances to ascertain the intention of the parties.

Held on facts, under the document there was a transfer of substantive interest of the lessor in the

estates to the lessee and a conferment of a right on the lessee to use the said estates by exploiting same. The parties were businessmen, presumably well versed in the working of tea estates. They must be assumed to have known the difference between the two expressions 'premium' and 'rent'; and they had designedly used those expressions to connote two different payments. The annual rent fixed was a considerable sum and the premium when spread over the priod of ten years would work out to Rs. 22,500 a year. The amount paid is premium and not taxable. (1943) 2 M L J 416 : (1943) 11 I T R 513 : A I R 1943 P C 153; (1957) S C J 646 : (1957) 32 I T R 169 : (1957) S C R 1019 : A I R 1957 S C 729; (1961) 2 S C J 168; (1961) 2 S C R 790 : (1960) 41 I T R 506; AIR 1961 S C 732, Ref. Commissioner of Income-tax, Assam, Tripura and Manipur v. Panbari Tea Co. Ltd., **(1965) 3 S C R 811 : (1965) 2 I T J 242 : (1965) 57 I T R 422 : (1965) 2 S C J 350 : AIR 1965 S C 1871 (1873, 1874) (Prs 6, 7, 9, 10).**

——S. 105—Premium and rent—Distinction — Lease of mine of certain years for lump sum royalty—Receipts are revenue receipts. See Income-tax Act (1922), S. 10. AIR 1956 Andh 229 (DB).

——S. 105—Premium—Applicability of definition to case under Rent Control Act — (Houses and Rents—W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 4).

In the absence of any definition of "premium" in the Rent Control Act, the definition in the Transfer of Property Act should govern a case under that Act.

Where besides the monthly rent a sum of money was also payable by the plaintiff to the defendant as consideration to the defendant for accommodating the plaintiff, such sum of money is clearly premium in terms of S. 105. **ILR (1956) 2 Cal 859 : AIR 1955 Cal 443 (444) (Pt A) (Pr 18),**

24. Rent.

(A) Rent in kind—Payment of money value.
(B) Service as rent.
(C) Variation of rent.
(D) Rent-free grants.

24. Rent.

● **——S. 105—Rent — Meaning of—Word 'rent' used in Rule 18 (4) (ii) is in narrower sense of payment to landlord by a tenant and not in wider sense of money received for user of building on leave and licence where payment received is not rent in its narrower sense — Property is exempt from assessment to tax under Act. See Punjab Urban Immovable Property Tax Act (17 of 1940), S. 4 (l) (g). AIR 1963 SC 1459.**

● **——S. 105—'Rent' — Its use in receipts—Not conclusive in showing that relation of landlord and tenant is created—Transfer of interest by landlord in favour of tenant is necessary — Applicability of Act. See Houses and Rents — Delhi and Ajmer Rent Control Act (38 of 1952), S. 2 (c). AIR 1962 S C 554.**

——S. 105 (1)—Rent—Payment of, to co-owner.

Where the relationship of landlord and tenant is established between A and B, it is just and proper for B to pay his rent to A. His payment to C alleging him to be the joint owner of A does not discharge B from his liability to pay rent to A. **AIR 1951 Ajmer 63 (63) (Pr 2a).**

——S. 105—Subletting—What constitutes—Exclusive possession on terms of rendering service—Effect of—'Rent' — Meaning of stated. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1) (a). 1958 All L J 278.

——S. 105—Suit for licence fee — It is not a suit for "rent" nor a suit to enforce payment of dues when dues are payable to a person by reason of his interest in immovable property." See Provincial Small Cause Courts Act (1885), Sch. 2, Art. 8. AIR 1955 N U C (All) 5810.

——S. 105—Rent—Municipal taxes paid by tenant—(Hyderabad Houses (Rent, Eviction and Lease) Control Act (1954), S. 4).

Municipal taxes paid by a lessee can be regarded as part of the rent. There appears nothing in S. 105, T. P. Act, which may show that such payment on behalf of the lessor would not fall within the meaning of rent. 1958 Andh L T 723.

——S. 105—Rent — Payment of municipal taxes may well be in nature of rent, though not the rent, strictly so called — (Words and Phrases—Rent). See Municipalities—Bombay Provincial Municipal Corporations Act (59 of 1949), S. 139. AIR 1957 Bom 163 (DB).

——S. 105—Place of payment of rent—(Contract Act (1872), S. 49).

Property in Karachi — Express covenant by tenant with landlord to pay rent — Covenant not providing for place where rent is to be paid—Tenancy has to find landlord — Both parties migrating to Bombay—Arrears of rent is payable in Bombay and not to Custodian of Evacuee Property in Pakistan. **55 Bom L R 242 : ILR (1953) Bom 633 : AIR 1953 Bom 280 (281, 282) (Prs 3, 4, 7, 8) (DB).**

——S. 105—Landlord agreeing to pay taxes—Tenant required to pay same — Payment to be regarded as payment of rent to landlord.

Where there is an agreement that the landlord would pay both the owner's and occupier's share of taxes and the tenant is compelled to pay the municipal taxes on behalf of the landlord it should be regarded as payment of rent to the landlord : ILR (1951) Cal 627 and (1957) S C J 177 : AIR 1957 S C 309, Distinguished. **66 Cal W N 414 : 1964 Cal L J 265 : AIR 1962 Cal 608 (610) (Pt C) (Pr 14).**

——S. 105—Ejectment suit against tenant after notice to quit—Suit by sub-tenant against his tenant for recovery of arrears of rent from date of decree in ejectment suit upto date of delivery of possession — Nature of suit —Definition of tenant in Rent Control Acts—Relevancy—(Landlord and Tenant.)

The owner of certain premises let it out to S as a monthly tenant who in his turn let it out to the plaintiffs. The plaintiffs again let it out to the defendants at a monthly rent, After service on S of a notice to quit the owner brought an ejectment suit against him and got a decree on 27th August, 1947, but it was only on 28th October, 1949, that he could get khas possession of the premises by evicting the tenant and all the sub-tenants. The plaintiffs having instituted a suit against the defendants for recovery of arrears of rent from September, 1947, to October, 1949.

Held, (1) that neither in law nor in equity the defendants could resist the claim of the plaintiffs for rent for the period in suit. (2) that the suit was a money suit, for rent governed by the T. P. Act and accordingly considerations based upon the peculiar definition of the term "tenant" in Rent Control Acts were out of place in the suit. **(1959) 63 Cal W N 192.**

——S. 105— "Rent allowable" — Monthly tenant—Advance payment of Rs. 200. It is not "rent allowable"—Indicia of rent. See Houses and Rents— West Bengal Premises Rent Control (Temporary Provisions) Act (38 of 1948). S. 11 (1). AIR 1952 Cal 391.

——S. 105—Rent — Lease providing that municipal taxes and electricity charges would be payable by tenant—Both items form part of rent : (1962) 3 GLR 574 and Civil Rev. Appl. No. 1208 of 1960 D/- 16.4.1963 (Guj), Foll. **(1965) 6 Guj L R 829.**

——S. 105 — Suit to recover 'Sakar'—Sakar is rent. See Limitation Act (1908), Art. 110. **AIR 1964 Guj 122.**

——S. 105 — Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), Ss. 12 (3) (a), 12 (3) (b) — Tenancy where the rent is payable by the month — What is — Rent — Meaning of — Municipal taxes and property taxes paid by tenant to landlord form part of rent—Part of rent not payable by the month—**Held** S. 12 (3) (b) and not S. 12 (3) (a) applied. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (3) (a). **(1962) 3 Guj L R 574.**

——S. 105—Creation of lease—Usufructuary mortgage — Lease back to mortgagor.—Without prejudice to their former relationship of a mortgagor and mortgagee, a new relation that of landlord and tenant is also created by lease — Suit for rent not barred. See Landlord and Tenant. **AIR 1958 Madh Pra 319.**

——S. 105 — Rent — Does not include charges for electricity and installation by landlord. See Houses and Rents — Madras Buldings (Lease and Rent Control) Act (25 of 1949), S. 4. **AIR 1955 Mad 93.**

——S. 105 — Income-Tax Act (1922), S. 10 (2) (i) and (xv)—Lessee of salt pans undertaking to spend money for constructing railway siding — No obligation cast on him to effect that improvement—Expenditure held, was neither rent nor premium nor debitable to revenue, but was capital expenditure. See Income-Tax Act (1922), S. 10 (2) (i) and (xv). **AIR 1953 Mad 632 (DB).**

——S. 105—Immovable property—Right to tap palm trees for extraction of toddy—Lease of — Consideration is "rent" within meaning of S. 105— Settlement by Court of Wards — Certificate proceedings for recovery justified — General Clauses Act (1897), S. 3 (26)—Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 3 (6) and Sch. I, Item 8.

Right to tap palm trees for extracting toddy therefrom is a benefit arising out of land within the meaning of S. 3 (26), General Clauses Act and also of S. 2 (6), Registration Act. Therefore, a lease of such a right is lease of immovable property within the meaning of S. 105 of the Transfer of Property Act and the money paid as consideration for the lease is "rent" within the meaning of S. 105 of the Transfer of Property Act, (1875) 1 C P D 35 and AIR 1926 Pat 125 and AIR 1927 Pat 1 and AIR 1949 Mad 148, Rel. on. AIR 1936 Pat 402 and 403, Dist.

Where such lease has been taken from the property of a person under Court of Wards, the arrears of rent are covered by the definition of "public demand" in S. 3 (6) of the Bihar and Orissa Public Demands Recovery Act (4 of 1914), read with clause 8 of Sch. I of the same Act and certificate proceedings for its recovery are justified. **ILR 41 Pat 353 : AIR 1962 Pat 440 (442) (Pr 5) (DB).**

— S. 105—Privileged tenant — Liability to pay rent indicated. See Tenancy Laws — Bihar Privileged Persons Homestead Tenancy Act (1947) (4 of 1948), S. 2 (j). **AIR 1957 Pat 163 (DB).**

——S. 105 — Rent — Share of fruit on mango trees—Held not a rent. See Provincial Small Cause Courts Act (1887), Sch. II, Art. 8. **AIR 1950 Pat 284 (DB).**

——S. 105—Rent suit—Foundation of decree.

The relationship of landlord and tenant is the very foundation of a decree in a rent suit and as such is a matter necessary to be determined. When a suit for rent is filed, unless the defendant confesses a judgment, the Court must determine the question as to whether the relationship of landlord and tenant has been established between the parties, before a decree can be passed. AIR 1936 Pat 556, Foll. **1954 B L J R 302 : AIR 1954 Pat 443 (445) (Pt A) (Pr 5) (DB).**

——S. 105—Rent or cess—Test—Ragam Sewai.

Whether or not a charge made by the landlord from his tenant is a cess depends on the facts involved in each case, the nature, for example, of the covenant or covenants upon which the claim is founded, the kind of produce to which it relates, its connection with the basic law and the purpose for which the charge is made. It cannot be therefore said that ragam sewai must in all cases constitute rent or that it must in all cases be regarded as a cess. But it may, however, be said that where an agreement to pay a sum (whether in cash or in kind) is intended by the parties to constitute recompense to the landlord for the use, and occupation of agricultural land by a tenant, it would constitute rent notwithstanding that it is called by the parties by a different name. **1950 A W R 593 : ILR (1951) 1 All 656.**

24 (A). Rent in kind—Payment of money value.

——S. 105—Construction — Kabuliat — Rent payable in kind — Fixed quantity of paddy payable as rent — In case of default, fixed sum payable as its price—Default—**Held** landlord was entitled to recover only stipulated sum and not price of crop at market rate. **AIR 1954 Assam 45 (48) (Pt A) (Prs 15, 16).**

——S. 105 — Lease — Covenant to pay paddy or its value — Construction—**Held** the covenant should be construed as the covenant to pay such sum of money as represented value of paddy on due date. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 74. **AIR 1957 Cal 217.**

——S. 105 — Lease fixing rent in kind and mentioning its money value — Default by tenant — Landlord entitled to recover at the market value prevailing on the date at which the commodity should be valued under S. 50, Malabar Tenancy Act, 1930. A I R 1957 Ker 80, Not Foll.; (1949) 1 M L J 191; A I R 1949 Mad 618 and 23 Cochin 254 and A I R 1917 Cal 113, Rel. on. **1960 Ker L J 1317 : 1960 Ker L T 1240 : (1960) 2 Ker L R 725 : A I R 1961 Ker 292 (293) (Pr 2).**

——Ss. 105 and 108 — Rent in kind — Payment of money value is recognised—(Civil P. C. (1908), O. 20, R. 10). **A I R 1955 N U C (Trav.-Co) 5108 (DB).**

24(B). Service as rent.

——Ss. 105, 106—Service as rent — Notice to quit — Necessity—Tenancy laws—Assam (Temporarily Settled Districts) Tenancy Act (3 of 1935), S. 33.

Even apart from the provisions of T. P. Act and, Assam (Temporarily Settled Districts) Tenancy Act on general principles where services are rendered in lieu of rent, a tenancy comes into existence and the tenant would be entitled to a reasonable notice before he can be evicted. Whether the notice is reasonable or is not a question of fact. **ILR (1951) 3 Assam 171 : AIR 1951 Assam 86 (86, 87) (Prs 5, 8, 9).**

24(C). Variation of rent.

——S. 105—Rent—Claim for enhanced rent.

The tenancy connotes privity between the parties and unless there is an express agreement to pay enhanced rent or circumstances or conduct from which one could be inferred a claim for enhanced rent cannot stand. **AIR 1952 Madh Bha 56 (57) (Pt B) (Pr 6).**

——S. 105 — Statutory tenancy — Filing of suit for recovery or increase of rent under Rent Act — Effect of—(Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act (19 of 1947), S. 8).

No act of a plaintiff in instituting suits for the recovery of rents under the Rent Act, can convert what is a contractual tenancy into a statutory tenancy. This is apart from the fact that in each and every suit the plaintiff was unsuccessful. Further, the institution of such a suit cannot be taken as a notice to quit. The various Rent Acts provide certain additional protections to tenants and also for a statutory manner of increase of rent in favour of a landlord. Such provisions, operate to modify the contract of tenancy between the parties. If in pursuance of a statutory provision a party accepts increase of rent, it does not thereby :determine or put an end to the contractual tenancy. The contract remains between the parties until it comes to an end according to ordinary law between landlord and tenant. The rights of the parties under it undergo a change as provided in the particular Rent Act applicable, but otherwise the contractual tenancy continues to subsist. 60 Punj L R 297: AIR 1959 Punj 263 (265) (Pt B) (Pr 7).

——S. 105 — Rent, meaning of, indicated — It cannot be said that Ss. 6 and 8 of Rajasthan Premises Act (17 of 1950) create a repugnancy with Ss. 105 or 108 (1) of T. P. Act in view of provisions of S. 37, Contract Act, which clearly envisages interference with agreement by validly made law. See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 6. AIR 1954 Raj 252 ((DB).

——Ss. 105 and 108—Enhancement of rent fixed.

When a rent is fixed in a lease deed whenever it might have been fixed the liability of the tenant is only to pay that rent unless the tenant has by any supervening cause incurred further liability. Subsequent events including rise in prices are no consideration to effect an alteration in his liability. ('51) 1951 K L T 179 (DB).

24(D). Rent-free grants.

——S. 105 — Niskar — Entry in record of rights as 'Niskar Bhogadakhal Sutra' —Interpretation—(Words and Phrases—"Niskar Bhogadkhal Sutra").

The word "niskar", when it appears in the Record of Rights, by itself does not necessarily mean rent free tenancy, but only means that the tenant is not in fact paying rent to anybody. An entry in remarks column in Record of Rights as 'niskar bhogadkhal sutra' means that the tenant is not actually paying rent to anybody and not that the tenant is not liable to pay rent to anybody. It does not mean that the tenant had acquired rent free title by possession and enjoyment. 93 Cal L J 128 : 58 Cal W N 586 : A I R 1954 Cal 558 (559) (Pt A) (Prs 5, 6) (DB).

——S. 105—Rent-free grant.

Where the defendant is in possession for a very long time under a definite claim that he was a rent free tenant under the plaintiff, the Mohunt of Asthal, and the record of rights has also recorded his status as a rent free tenant the Court will presume that there was a legal necessity authorising the Mohunt to make the rent free grant and the presumption of lost grant will arise. A I R 1951 Cal 385 (387) (Pt A) (Pr 6) (DB).

[Reversed in AIR 1955 SC 228.]

——S. 105 — Rent free title — Burden of proof—Evidence Act (1872), Ss. 101 to 103.

In a suit for assessment of rent by plaintiff who purchased the putni in 1932 and brought his suit within 12 years of his purchase the onus first lies on the plaintiff to establish that the lands in suit formed part of the mal assets of the estate. Once the plaintiff has discharged this onus, then it is for the defendant to show that he is not liable to pay any rent for the lands which formed part of those mal assets. Evidence based on the thakbast statements and the registers kept under the Land Registration Act is of no value on the first question.

Where the record of rights is ambiguous and consistent with their right having arisen either as a nishkar or rent free title based on a grant by the Zamindar or as a nishkar title acquired under one of the putnidars, it is not sufficient to discharge the onus on the defendants: Case law referred. ('51) 55 Cal W N 21.

25. Lease or mortgage.

——S. 105 — Lease or mortgage and licence — Distinction pointed out. See Easements Act (1882), S. 52. AIR 1955 NUC (All) 2770 (DB).

——S. 105 — Lease or mortgage — Held on construction that the document was a mortgage and not a lease. See Transfer of Property Act (1882), S. 58. AIR 1958 Andh Pra 507 (DB).

——S. 105 — Construction — Lease or mortgage.

The question as to whether a document is a lease or a mortgage depends upon the terms of the document. Though the nomenclature is not conclusive it may still be taken into consideration,

Held, on the construction of the document that it was not a mortgage and there was no debt liable to be discharged. (1958) 2 An W R 14.

——S. 105 — Usufructuary mortgage or lease — Construction of deed — Document held a lease and not a mortgage — Mere fact that part of the sums which constitutes the consideration for the lease, is future interest does not make any difference in nature of the document. See T. P. Act (1882), S. 58. AIR 1957 Andh Pra 504.

——S. 105 — Usufructuary mortgage or lease—Mortgage of house with possession — Lease back on same date — Interest on mortgage amount to be charge on house — Rent reserved equivalent to interest — Two documents formed part of one and same transaction — Relationship of landlord and tenant held not created — Section 58. See Transfer of Property Act (1882), S. 58. AIR 1958 Bom 8.

——S. 105 — Transfer of possession for securing repayment of loan — Nature of transaction. held, a usufructuary mortgage and not a lease. See Transfer of Property Act (4 of 1882), S. 58. AIR 1956 Bom 625.

——S. 105 — Lease or mortgage — Intention of parties to be looked to. See Transfer of Property Act (1882), S. 58. AIR 1963 Ker 261 (DB).

——S. 105 — Lease or mortgage — Intention of parties must be looked into — Act (4 of 1961), has not altered this principle. See Transfer of Property Act (1882), S. 58. AIR 1963 Ker 75.

——S. 105 — Usufructuary mortgage and lease — Distinction between — Tests — Transaction held to be mortgage and not lease — Section 4 of Kerala Act 1 of 1957 not applicable. See Transfer of Property Act (1882), S. 58 (d). 1963 Ker L J 125.

——S. 105 — 'Kanom' and 'Possessory mortgage' — Distinction—Tests to determine indicated. See Kerala Agrarian Relations Act (4 of 1961), S. 2 (18). ILR (1961) 2 Ker L R 589.

——S. 105 — Mortgage or lease — Anomalous mortgage and simple usufructuary mortgage — Deed transferring possession to creditor for certain period — Discharge of debt to be out of income — Debtor also contracting for personal liability — Nature of transaction. See Transfer of Property Act (4 of 1882), S. 58. AIR 1953 Madh Bha 9.

——S. 105 — Possessory mortgage — Contemporaneous lease back — Rent corresponding to interest on mortgage debt — Mortgagee's right to sue for eviction on basis of his title as lessor. See Evidence Act (1872), S. 92. **AIR 1963 Madh Pra 265 (DB).**

——S. 105 — Mortgage or lease — **Held** on construction that executant was creating a usufructuary mortgage and was not creating a lease or a sum of money advanced — (Tenancy Laws — Chota Nagpur Tenancy Act (4 of 1908), S. 46 — Contravention). **AIR 1955 NUC (Mad) 3237 (DB).**

——S. 105 — Mortgage with possession or lease — Mortgage with possession is normally treated by two documents, one the panaya deed and the other panaya kychit — Both constitute the mortgage — It is not open to party to these transactions to contend relying on panaya kychit that it is a lease and not a mortgage. See T. P. Act (1882), S. 53. **AIR 1955 NUC (Mad) 1826.**

——S. 105 — Usufructuary mortgage — Right given to mortgagee to induct tenants for appropriating usufruct of land in lieu of interest — Suit for redemption — Settlees on land claiming to be permanent tenants — Settlement of land held not valid beyond period of mortgage and on redemption of mortgage settlees were liable to be evicted — S. A. No. 1714 of 1951, D/- 8.10.1956 (Pat). **Reversed.** See T. P. Act (1882), S. 76. **AIR 1963 Pat 26 (DB).**

——Ss. 105, 58, 68 — A executing rehan bond in favour of B for certain amount of loan—A executing Kabuliat four days after in favour of B agreeing for hunda rent for period of 9 months—Documents held to be part of same transaction of mortgage — Suit for hunda rent held not maintainable — Decree for interest on mortgage money held could not be passed. See T. P. Act (1882), S. 58. **AIR 1962 Pat 413.**

——S. 105 — Usufructuary mortgage and lease back — Mortgage and lease — If part of same transaction — Test indicated — **Held** on construction that two documents were really parts of a single transaction. See Deed — Construction. **AIR 1957 Pat 24.**

——S. 105 — **Mortgage with possession—Mortgagee leasing out premises to mortgagor — Relationship of landlord and tenant if comes into existence — Section 58.**

When a mortgagee with possession allows the mortgagor to remain in possession of the mortgaged property on the mortgagor executing a lease, the relationship of landlord and tenant comes into existence for a tenant is one who occupies the premises of another in subordination to that other's title and with his assent express or implied. It may be that the mortgagee intends to secure on the amount lent an income equal to the interest at a certain rate but he is not precluded from entering into a transaction of this kind. AIR 1957 Punj 57 and AIR 1930 Lah 386, Rel. on; AIR 1955 Pat 357, Dissented from. **ILR (1958) Punj 427 : 59 Punj L R 617 : AIR 1958 Punj 140 (141) (Pr 4).**

——S. 105 — Mortgage of house with possession — Mortgagor executing kabuliat on same date — Rent stipulated equal to monthly interest on mortgage money — Transactions held were independent—Suit for arrears of rent and eviction on basis of rent note — Held maintainable. See T. P. Act (1882), S. 58. **AIR 1963 Raj 69.**

——S. 105 — Mortgage or lease — A transferring property with possession to B as a security for loan — A not liable to pay any interest and B not liable to pay any rent — After repayment of debt B to continue in possession by paying a Vero of Rs. 3 a year — Document is mortgage and not lease. See T. P. Act (1882), S. 58. **AIR 1951 Sau 53.**

——S. 105 — **Tranvancore Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), S. 2—Applicability—Lease and mortgage, distinction.**

In the case of a lease with premium, the premium is the price paid or promised in consideration of the demise. But if the indebtedness continues despite the grant of the lease then the transaction is in effect a mortgage. Once you get a debt with the security of land for the repayment then the arrangement is a mortgage by whatever name it is called. Where however a lease does not intend to create the relationship of debtor and creditor and reserves no right of redemption to the lessor, it is a lease and not a mortgage. Where the amount of Rs. 64 which formed the consideration under a deed was charged on the property and was repayable at time of redemption and also bore interest, it was a definite indication of a usufructuary mortgage and not a lease with premium. **AIR 1957 Trav Co 239 (240) (Pt B) (Pr 6).**

——Ss. 105, 58—Transfer of property with a provision for redemption after 12 years by discharging the amount paid — Transaction held mortgage and not lease — Mortgagor held not entitled to protection of Act—See Debt Laws — Travancore Holdings (Stay of Execution Proceedings) Act (8 of 1950). **A I R 1952 Trav Co 104 (DB).**

26. Service grant.

——S. 105—Service grants — (Deed—Construction—Service grants)—Evidence Act (1872), S. 114).

The word "Devadayam" is not decisive as to whether the inam was granted to the temple or was a personal inam burdened with service. There is no presumption whether the grant is one in lieu of wages or one burdened with service. The question whether the grant was one burdened with service or in lieu of wages turns upon the particular facts of each case.

The temple servants were in possession and enjoyment of the properties from 1898 treating them as their own. They were alienating their shares. The rent value accounts were not sent by the temple in respect of Kavetipalem:

Held, that these facts established beyond doubt that the inam was one granted to the temple servants subject to the performance of services in the temple. The trustee of the temple had consequently no power to dispossess the servants of the lands. **A I R 1957 Andh Pra 477 (480) (Pt A) (Prs 9, 10, 12) (DB).**

——S. 105 — Grant in lieu of wages—Dismissal of grantee.

In a case of inam granted in lieu of wages, without issuing a proper notice an order of dismissal of the grantee passed by the trustee of the temple cannot be regarded as valid. When the order of dismissal was not served on the grantee but it was only published on the notice board of the temple, this does not amount to a valid service of the order of removal. **AIR 1957 Andh 477 (481) (Pt C) (Prs 14, 15) (DB).**

——S. 105—Service tenures—Bhalaloki inam.

Bhalaloki inam is not a service tenure. Bhalaloki means a respectable person and therefore there can be no such service as a Bhalaloki service. **24 Cut L T 52 : I L R (1956) Cut 650.**

27. Resumption of service grants.

——S. 105—Scope—Service inams — Resumption and re-grant—Effect.

In the case of service inams granted or recognised and confirmed by the Government, the legal theory or the common law has been that the ownership rests with the Government, the office-holder merely enjoying the income as his emoluments or wages. The right of the office-holders to the enjoyment of the

usufruct of the land is co-extensive with the duration, of tenure of his office. If, therefore, the office is detached from the land and there is an enfranchisement of the service inam, it has the effect of a resumption and a re-grant to the person named in the fresh title deed. **(1957) 1 Andh W R 60 : A I R 1957 Andh Pra 643 (646) (Pt A) (Pr 11) (DB).**

——S. 105—Service grants—Resumption—Notice.

Before resumption of the lands can take place, there must be reasonable notice. ILR 23 Mad 262, Rel. on. **AIR 1957 Andh Pra 477 (481) (Pt B) (Pr 15) (DB).**

——S. 105—Resumption of service grants.

Resumption consits in putting an end to the grant under which lands are held remitting the services. On the exercise of the right of resumption, the zamindar may recover possession of the land if the land itself had been the subject matter of the grant or if the grant was only of the melwaram in whole or in part and the grantee had been in possession before such a grant he may put an end to the beneficial tenure and impose full assessment, but before he could exercise his right to resume or take possession of the land, he must establish his right to resume and evict the person in possession of the land. That depends upon the nature, extent and terms of the grant. **(1951) 2 Mad L J 664 : A I R 1952 Mad 166 (167) (Pt B) (Pr 3).**

——S. 105 — Grant of lands by jagirdars to their Patels as remuneration for future services — Grant converted into inam by Government of India—Some of the lands not found in possession and enjoyment of rotatory Patel in office — Government held, could resume and regrant such lands again to rotatory working Patel. See Berar Patel and Patwaries Law (1900), Ss. 6, 9 and 20. **AIR 1954 Nag 20 (DB).**

——S. 105—Landlord and Tenant—Grant—Resumption — Grant of concession of non-payment of rent—Resumption—Status of occupancy tenant cannot be taken away.

What is granted alone can be resumed. If it is a grant of land for service, the land itself may be resumed when the service is no longer required. But if it is a grant of concession of non-payment of rent to an occupancy raiyat in lieu of his rendering service to the zamindar, what will be resumed will be that concession and he will be liable to pay the full rent on such resumption, but his status as an occupancy raiyat cannot be taken away. **ILR (1961) Cut 690 : AIR 1962 Orissa 141 (144) (Pt C) (Pr 11) (DB).**

28. Damages for use and occupation.

——S. 105—Damages for use and occupation — Standard rent that might have been determined held could not be taken into consideration in assessing quantum of damages — (C. P. Code (1908), O. 20, R. 12). **AIR 1955 N U C (Ajmer) 2637.**

——S. 105 — Suit on basis of subsisting tenancy—Decree for damages.

A suit for rent on the basis of a subsisting tenancy is different from a suit for mesne profits or damages for use and occupation against a trespasser. The landlord who has not come to Court claiming damages for use and occupation or mesne profits but has sued on the basis of a subsisting tenancy is not entitled to a decree for mesne profits. **1954 A M L J 32 : AIR 1955 Ajmer 65 (66) (Pt C) (Pr 6).**

——S. 105—Damages for use and occupation—Liability of person in possession,

The right to recover damages for use and occupation does not arise out of anything contained in the Transfer of Property Act but it is a right under General Law for the recovery by the owner of damages from a person who has used his property. 9 Cal 908, Rel. on. **AIR 1956 All 272 (272) (Pr 5).**

——S. 105—Damages for use and occupation—Measure of.

Held, that the damages which the plaintiff claimed from the defendant in the suit should be equal to such amount which the defendant could have realised as rent of the premises. The amount which the landlord can be said to get from the premises in suit would be equal to the maximum permissible rent under the Control of Rent and Eviction Act, and he is not entitled to anything more under the guise of damages on the alleged basis of high offers of rent to him by persons who may not have any chance of getting an allotment made in their favour. **AIR 1956 All 187 (191, 194) (Pt E) (Prs 21, 41) (DB).**

——S. 105—Civil P. C. (1908), O. 20, R. 12—Suit for compensation for use and occupation — O. 20, R. 12 does not apply—See Civil P. C. (1908), O. 20, R. 12. **AIR 1956 Cal 148 (DB).**

——S. 105 — Relationship of landlord and tenant — Recovery of arrears of rent.

Finding that there was relationship as landlord and tenat between the parties. Plaintiffs can recover arrears of rent and are not compelled to pray for recovery of mesne profits for use and occupation of the premises. **ILR (1955) 2 Cal 214.**

——S. 105—Landlord and Tenat—Tenant remaining in occupation after expiry of lease — Damages for wrongful use and occupation — Tenant warned by landlord that he will have to pay specified sum as damages for wrongful use and occupation — Liability of tenant to pay damages specified.

Where the tenant after the expiry of the lease remains in occupation of the premises in spite of the fact that the landlord served a notice on him to vacate and warned him that if he remains in occupation he will have to pay a specified sum as damages for wrongful use and occupation of the building, the defendant tenant will be liable to pay that amount provided it is not penal and unconscionable. AIR 1933 Lah 61 and AIR 1929 Pat 717 and AIR 1940 Nag 140 and 2 J and K L R 42, Rel. on. **AIR 1961 J & K 39 (41) (Pt D) (Pr 4) (DB).**

——S. 105—Tenant contumaciously holding over — Damages—It is in discretion of Court. **AIR 1955 NUC (Madh B) 52.**

——S. 105—Power to fix rent by way of damages.

While fair rent may have been fixed by raising rents by a maximum limit of 150 per cent. if the tenants has approached the House Rent Controller in a bona fide and proper way the same standards may not be applied when the Court is granting a decree for eviction and is fixing rent by way of damages or compensation. **32 Mys L J 209 : I L R (1953) Mys 470 : AIR 1954 Mys 42 (45) (Pt C) (Pr 12) (DB).**

——S. 105 — Damages for use and occupation — Premises let to defendant — When a house is let out, at least some portion of the land also if any, in front of the house, either to be used as a passage or for some other needs and requirements is included in the tenancy — Unless the plaintiffs are also able to establish that vacant lands were kept aloof and separate and excluded from the tenancy, the mere existence of the vacant lands would not entitle them to claim damages separately in respect of those lands. **AIR 1954 Pat 214 (222) (Pt E) (Pr 15) (DB).**

——S. 105—Usufructuary mortgage — Lease back to mortgagor — Kerayanama executed by mortgagor lessee only — Validity — Suit for arrears of rent by mortgagee landlord on basis of Kerayanama—Whether maintainable — Claim for use and occupation held

maintainable—Rate of compensation, should be such as would represent interest at 9 p. c. p. a. on sum advanced. See T. P. Act (1882), S. 107. **AIR 1957 Pat 24.**

——Ss. 105 and 107 — Damages for use and occupation.

Registered kabuliyat and patta executed but valid lease not created due to non-compliance with S. 107 — Decree for compensation for use and occupation can be passed against person in possession under that lease — Kabuliyat and patta can for the purpose of granting such decree be looked into to ascertain as to when and in what capacity that person entered into possession and also for getting an indication as to the measure of damages that may be awarded ; 31 All 276 (FB) and AIR 1943 Lah 127 (FB), Followed. **AIR 1954 Pat 304 (306) (Pt A) (Pr 4).**

——S. 105—Termination of tenancy—Ex-tenant continuing in possession—Landlord is entitled to recover damages for use and occupation. See Houses and Rents—East Punjab Urban Rent Restriction Act (3 of 1949), S. 2 (i). **AIR 1955 NUC (Punj) 1886.**

——S. 105 — Amendment of plaint introducing new case — Suit for rent converted into one for damages for use and occupation. See C. P. Code (1908), O. 6, R. 17. **AIR 1955 NUC (Punj) 1886.**

——S. 105—Premises situated within area governed by Rajasthan Premises (Control and Eviction) Act (17 of 1950) — Suit for damages at a higher rate than agreed rent for use and occupation after termination of tenancy by notice—Not maintainable. See Houses and Rents — Rajasthan Premises (Control and Eviction) Act (1950), **S. 5. AIR 1955 NUC (Raj) 1145.**

29. Determination of lease.

——Ss. 105 and 108 (q) — Tenancy other than tenancy at will — Termination of — Notice—Assignment of his rights by tenant without consent of landlord and without delivery of possession to landlord—Tenancy not determined—Assignor as well as assignee can be sued in Court of Controller for order of ejectment. 60 Pun L R 349, Reversed. **1961 S C D 901 : 1962 All W R (H C) 66 : (1962) 2 S C R 17 : (1963) 1 S C J 435 : AIR 1961 S C 1554 (1555, 1556) (Prs 6, 7).**

——Ss. 105, 111—Determination of tenancy — Non-payment of rent—Mere non-payment of rent does not of itself determine the tenancy. See T. P. Act (4 of 1882), S. 111. **AIR 1951 Him Pra 65.**

——S. 105—Landlord and Tenant — Relationship — Non-payment for long time — If terminates relationship.

The plaintiff brought a suit for recovery of the dues payble under a lease granted by the Dewaswam in the year, 1024 in favour of the predecessor of the defendants. The defendants denied the lease and set up a 'Karaima' for the Devaswam, pleaded that the Devaswam had lost its title on account of the dealings with the properties by the defendants and their predecessors, as absolute owners, and repudiated the plaintiff's case, that any dues were paid under the lease at any time.

Held, that mere non-payment of rent by the tenant will not bring about a termination of the tenancy. Since the plaintiff had proved that the suit properties had been held on lease from the Devaswam, the lease must be held to be subsisting notwithstanding that the plaintiff had not been able to prove actual payment of rent by the defendants. Hence the plaintiff was entitled to recover rent for three years preceding the suit. 45 M L J 460 : AIR 1922 P C 272 ; AIR 1948 Mad 275 (FB), Rel. on. AIR 1916 Lah 353, Not foll. AIR 1922 PC 184; AIR 1927 Bom 650: AIR 1949 Bom 137; AIR 1960 Pat 156 and AIR 1955 T C 145, Disting. **1960 Ker L J 1431 : (1960) 2 Ker L R 706 : 1960 Ker L T 1291.**

——S. 105—"Person entitled to possession" — Interpretation—Tenant dispossessed by landlord—Tenancy does not cease—Such tenant can apply under S. 29 (1), Bombay Tenancy and Agricultural Lands Act (67 of 1948), See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29 (1). **I L R (1960) Mys 1.**

——S. 105—Lease—Determination — Punja lands—Custom.

According to the custom relating to the cultivation of these lands no special formality is required for the surrender of the property after the harvest is taken. Although the transaction may not be of the nature of a mere licence it comes to an end as soon as the harvest is taken and pattom is paid to the lessor. If the lessee wants to cultivate the property for the next crop also a fresh arrangement will have to be entered into for the purpose. In the absence of any such arrangement the lessee is not entitled to do the agricultural operations for the next crop. **1953 Ker L T 40 : AIR 1953 T C 353 (354) (Pt B) (Pr 9).**

30. Heritability of lease.

——Ss. 105 and 116 — Death of original lessee — Survival of lease—Holding over by heirs of lessee — Effect.

As a lease is a transfer of an estate of inheritance, it does not terminate with the death of the original lessee, but survives during the remainder of the term of his heirs and representatives and if the heirs and representatives are acknowledged as tenants and they continue in occupation of the premises as tenants after the efflux of the time limited by the original lease, there is holding over. **1958 All W R (HC) 675 : 1958 All L J 573 : AIR 1959 All 33 (35) (Pt B) (Pr 7) (DB).**

——Ss. 105, 108 (j)—Heritability and transferability of lease.

The tenancy rights which are transferable under S. 108 (j) are not necessarily heritable. We can well imagine cases of rights which are transferable and yet which may not be heritable. **56 Bom L R 61 : ILR (1954) Bom 448: AIR 1954 Bom 257 (260) (Pt B) (Pr 9) (DB).**

——S. 105 — Perpetual lease — Lease by limited owner for cultivation for ever—Construction of S. 8 —(Deed — Construction.)

A lease of Sir lands executed by a Hindu widow contained a sentence "I have given over the fields for ever for cultivation" and it was contended that it created a perpetual lease.

Held, (1) that the words must be construed in the light of surrounding circumstances and that the words "always or for ever (hamesha)" in a grant are not inconsistent with limiting the interest given. 11 M L J 160 (PC), Rel. on. (2) That as the widow held only a life estate, she must have intended that the grant should operate only for her life. In the absence of any words creating heritable estate it could not be inferred that the deed created a perpetual lease. **1958 M P L J 361 : 1958 Jab L J 397 : 1958 M P C 398 : AIR 1959 Madh Pra 52 (57) (Pt D) (Pr 24).**

——S. 105—Heritability of lease — English law — Tenant (successor in interest) has no right to prescribe for higher rights without surrendering possession of leased property.

The idea of a tenancy at will or a tenancy by sufferance under the English law of real property cannot be equated to the idea of a lease under the Indian law. Under the Indian law lease is undoubtedly a transaction which combines a contract and a transfer of interest in property. If there is a

transfer of interest in the property, that interest unless it is determined by the terms of the grant under which that interest got transferred must necessarily be a heritable interest. Whether the interest conveyed was or was not heritable must depend entirely upon the wording of the document and the intention of the parties, which the Court can gather from the language employed in the document. ILR 3 Cal 210 and AIR 1930 Mad 434, Expl. and Disting.

Held, on facts that (i) the relationship created by the document between the parties was one of landlord and tenant and that the interest obtained by the executants under it was one which could pass by inheritance or survivorship; (ii) that all the signatories to the document and their successors-in-interest were in possession of the property only in the character of tenants and so long as they continued in possession of the leased property without surrendering it or without giving up possession they could not claim any title higher than that of tenants and could not by any length of possession prescribe for such a higher title. **38 Mys L J 530 : A I R 1961 Mys 35 (36, 37) (Prs 4, 6, 7, 9).**

——S. 105—Tenant whether contractual or statutory —On facts, held that tenant was not statutory tenant on date of his death and that tenancy was heritable—Conduct of landlord's Mukhutar in accepting rent, etc., after determination of tenancy held was evidence of continuation of tenancy — Evidence Act (1872), Ss. 8 and 115—AIR 1961 SC 1067, Foll. **1965 Cur L J 393 (Punj).**

——S. 105 — Houses and Rents — Delhi and Ajmer Rent Control Act (38 of 1952), Ss. 13 and 34 — Civil P. C. 1908, O. 22, R. 5 — Statutory tenancy is not heritable — Ejectment decree against contractual tenant—Application under S. 15 to be put into possession — Death of tenant — His legal representative cannot be substituted — Order of substitution would not be order under Act within meaning of S. 34. See Houses and Rents — Delhi and Ajmer Rent Control Act (38 of 1952), S. 13. **(1960) 62 Punj L R 451.**

——S. 105 —Statutory tenancy — Creation and meaning of — Right of inheritance under — Contractual tenancy — Distinction.

Where a contractual tenancy determines for any cause, and the tenant or the previous tenant under the contractual tenancy remains in possession of the property not under the terms of the contract but pursuant to the provisions of statute like the Rent Act, his possession from the date of the determination of the contractual tenancy, when he starts maintaining the same under the provisions of a statute, is termed a statutory tenancy. This term is not used in the statute itself, but it is a convenient term to express the capacity of a person continuing in possession of property, after the determination of contractual tenancy under the provisions of a particular statute. A contractual tenancy is determined in one of the three ways and that is by efflux of time or forfeiture or on a notice to quit. Such a tenancy, apart from a tenancy-at-will is a right in property, and as such subject to devolution on succession and also subject to assignment. A statutory tenancy under a Rent Act is a personal right to remain in possession of the property, and no more, of which the legal consequence is that the right comes to an end upon the death of the person in whom it resides. **60 Punj L R 297 : AIR 1958 Punj 263 (265) (Pt A) (Pr 5).**

31. Perpetual lease.

——S. 105—Perpetual lease — Lease for unlimited period in favour of person, his heirs, administrators and assigns — Subsequent lease deed held did not sweep away the original lease.

A lease for an 'unlimited period' in favour of the lessee, 'her heirs, administrators and assignees' at a stipulated yearly rental, for a period of ten years, to be liable thereafter to equitable adjustment as may be determined from time to time, according to market rate prevailing at the time is a perpetual lease.

Where a further deed was executed 12 years after the original lease in favour of the lessee for a period of 50 years settling rent for each successive period of ten years, it was held, (considering the recitals in the sale deed executed by the widow of the lessee) that the subsequent deed was in pursuance of the equitable rent adjustment clause in the original lease and did not sweep away the rights of the lessee as perpetual lessee, even though in the subsequent deed there was no reference to the original perpetual lease. **I L R (1960) 2 All 71.**

32. Construction of leases.

● **——Ss. 105 & 109—Landlord and Tenant—Attornment what amounts to — (Per Raghubar Dayal, J.) — Terms of so called deed of attornment differeat from the old — Unexpired period of previous lease being two years—Under deed of so called attornment deed tenancy to continue for five years — New tenancy including some other land besides the land covered by the old lease — Amount of rent also differing — Such a document is not a deed of attornment but is a document accepting fresh tenancy.** Satyanarayanaraju v. Hanumayamma, **1962 (3) SCR 910 : (1962) 2 Mad L J (SC) 35 : (1962) 2 S C J 115: (1962) 2 Andh W R (SC) 35 : (1962) 1 Andh L T 81 : AIR 1967 SC 174 (180) (Pt C) (Pr 21).**

● **——S. 105 — Lease — Construction — Map—Map attached to deed — Lease deed referring to map — Map should be treated as incorporated in lease.** K. S. Nanji and Co. v. Jatashanker Dossa, **1961 B L J R 514 : (1961) 2 Ker L R 15 : AIR 1961 S C 1474 (1477) (Pt A) (Pr 9).**

——S. 105 — Lease containing covenant that on sale by lessee or his heirs or representatives he was to pay one-fourth of sale price to landlord — Construction.

Where the landlord leases a piece of land to another with a covenant for payment of Zare-Chaharum. (i.e., when the lessee, his heirs or representative sells his interest in the land, he, his heirs or representative shall be liable to pay onefourth of the sale price to the landlord), and the lessee builds a house on the land and sells it, the vendor and not the vendee is liable to pay the Zare-Chaharum to the landlord. The covenant imposes a liability on the vendor; it does not even purport to impose any liability on the purchaser qua purchaser. The latter's liability will arise (if it arises at all) if and when he in his turn sells the house. Lala Madho Prasad Marwari v. Raja Jwaleshwari Pratap Narain Singh. **1960 All L J 332: 1960 All W R (HC) 195 : ILR (1960) 1 All 864 : AIR 1960 All 513 (514) (Pr 4) (FB).**

——S. 105 — Lease of lands — Lessee to deliver possession after expiry of term and take resettlement if he wanted—Option not exercised by lessee within a reasonable time after expiry of term — Suit by lessor for ejectment of lessee is maintainable without giving notice to lessee to exercise right of option — Clause is not renewal clause.

In a lease there was a clause that the lesssee should deliver possession of the lands to the lessor after expiry of the term and if he wanted to take fresh settlement of the lands he could do so. The lessee after the expiry of the term neither surrendered possession nor expressed his intention, within a reasonable time of taking fresh settlement. The lessor issued notice of termination of the lease and brought

a suit for his ejectment whereupon the lessee offered to take fresh settlement.

Held, that the suit was not bad on the ground that prior to the institution of the suit no notice had been given to the lessee calling upon him to exercise his right of option. AIR 1933 Cal 477 and AIR 1949 Assam 78, Disting. The clause in the lease which required the lessee to deliver possession and to take a fresh settlement if desired was not a renewal clause and no first option of refusal had been given to him. The lessee continued in possession in spite of the expiry of the term without expressing any intention within a reasonable time of taking fresh; settlement and hence his possession was that of a lessee who was holding over without taking fresh settlement and was liable to be evicted. **ILR (1963) 15 Assam 424 : AIR 1964 Assam 70 (71) (Pt A) (Pr 3) (DB).**

——S. 105 — "Batai patra" whether deed of partnership for cultivation — Question depends on terms of deed — Finding that even after the execution of batai-patra lessee was lawful tenant of the field is pure finding of fact — M. P. Land Revenue Code (2 of 1955). S. 166, Expl. II — Constitution of India, Art. 227. **(1962) Nag L J 166 : 64 Bom L R 485 : ILR (1962) Bom 413.**

——S. 105 — Creation of relationship of landlord and tenant — Lease — Construction — Principles stated. See T. P. Act (1882), S. 8. **AIR 1954 Bom 370 (DB).**

——S. 105 — Compromise decree — Creation of lease — Registration Act (1908), S. 2 (7).

The landlord had determined the lease in favour of his tenant and had sued to eject the tenant. The landlord's claim was resisted by the tenant; but ultimately a compromise decree was obtained by the parties. The compromise decree was passed on October 22, 1947. Clause (1) of the decree provided that the defendant do vacate and cause to be vacated the house in suit by 22nd October, 1949. and give possession to the plaintiff. Clause (2) provided that Rs. 200 had been ascertained to be due to the plaintiff by the defendants in respect of rent and mesne profits as from December 5, 1946, on which date the cause of action had accrued to October 5, 1947. Clause (3) directed the defendant to pay to the plaintiff regularly every month on 5th November, 1947; and on the 5th of every succeeding month Rs. 20 in respect of the mesne profits until the house in suit was handed over. It also gave the right to the plaintiff to take possession of the house in case the defendant failed to pay mesne profits for any three months.

At the end of this period the landlord sought to execute the compromise decree and claimed possession by execution process. The defendant resisted this claim on the ground that the compromise decree made him tenant of the decree-holder and under the provisions of the Rent Restriction Act (47 of 1947), it was not open to the landlord to obtain possession.

Held, (i) that the scheme of the agreement, the absence of any words indicating demised as such, the emphasis on the defendant's undertaking to vacate on or before the specified date, use of the words "mesne profits," liberty left to the defendant to vacate as soon as he liked coupled with the circumstance, under which the contract came to be made, led to the inference that the document did not evidence the creation of a lease hold right; it only enabled the defendant to remain in possession of the property permissively at the latest until 22nd October, 1949 and on the expiration of the said period the decree-holder was entitled to execute the decree. Case law discused.

(ii) There was no undertaking to occupy on the part of the defendant in the compromise decree within the meaning of sub-section (7) of S. 2 of the Registration Act. It would have been perfectly open to the defendant to vacate the premises the next day after the decree was passed. **56 Bom L R 365 : ILR (1954) Bom 615: AIR 1954 Bom 370 (380, 381) (Pt A) (Prs 21, 22) (DB).**

——S. 105 — Partnership or lease — No sharing of profits but one person required to pay fixed sum periodically to the other and carry on business in his own name on the property of the other—Transaction held to be lease and not partnership — Oral evidence showing transaction to be lease held could not be rejected. See Partnership Act (1932), S. 4. **(1964) 68 Cal W N 786.**

——S. 105 — Right of fishery is not land though immovable property within S. 3 (2) of General Clauses Act — Lease within proviso to S. 6 (2) — Protected from extinguishment as an encumbrance—Lessee of fishery beld not intermediaries. See Tenancy Laws — W. B. Estates Acquisition Act (1 of 1954), S. 2 (l). **(1963) 67 Cal W N 764.**

——S. 105 — Deed — Construction — License to import restricted goods — Construction of — Application if can be looked into. See Imports and Exports Control Act (1947), S. 3 (3). **1957 Cri L J 1116 : AIR 1957 Cal 606.**

——S. 105 — Lease — Construction — Held the so called lease was not a lease of the land in usual sense but it was really a sale of goods and not a transfer of any interest in land. See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), S. 5. **AIR 1957 Cal 350.**

——Ss. 105 and 8 — Lessor and lessee — Lease deed — Construction of — Decision on question of — Its value indicated. **AIR 1957 Cal 217.**

——S. 105 — Deed — Construction — Lease—Settlement with cultivating rights only — 'Words and Phrases'—'Projabili' and 'Nijakarkite.'

Where in a lease the expression "projabili" is placed in juxtaposition of the word "Nijakarkite" (cultivation by the lessee himself) and is an alternative to khas cultivation it is reasonable to conclude that the expression 'projabili' means settlement with cultivating raiyats only. **92 Cal L J 298 : ILR (1956) 1 Cal 178 : A I R 1954 Cal 412 (413) (Pt B) (Pr 9) (DB).**

——S. 105 — Consent decree for eviction of tenant passed — Decree adjusted in execution by a compromise under which tenant was allowed to remain in possession for a further period if he paid certain amount per month as mesne profits—Construction of such decree—Whether the right to remain in possession given under the compromise in execution of the decree amounted to a fresh lease, constituting such person a tenant. See Houses and Rents — Saurashtra Rent Control Act (22 of 1951), S. 5 (7). **(1963) 4 Guj L R 710.**

——S. 105—Deed—Construction—Kuzhikanom lease executed in Malabar area — Tenant to clear land for cultivation by felling and removing trees — No assignment of plantation — Tenant held not entitled to appropriate trees.

Madhavan Nair J. (Raman Nayar J. agreeing : M. S. Menon C. J. Contra). — As in the construction of other documents, so in the construction of an agreement to lease, regard must be had to all the relevant and material terms, and an attempt must be made to reconcile the relevant terms if possible and not to treat any of them as idle surplusage. A I R 1959 S C 620; (1963) Modern Law Review 88, Rel. on.

Held.—The addition in the new instrument (kuzhikanom lease) of a recital meaning that there is no assignment of plantation, was very significant. In the context it must mean that the recitals should not be taken to imply an assignment of plantation by

one party to the other. It obviously negatives the susceptibility of the words "cut and remove trees", used earlier in the document to imply a right to appropriate. A grant of kuzhikanom tenancy in 1934 did not normally involve a right to cut the trees on the land. The earlier Kuzhikanom deed of 1910 to another tenant in respect of the same property expressly provided that he should not cut any tree on the land without the written consent of the landlord. The Malabar Tenancy Act, 1930 which admittedly governed the tenancy concerned here, defines kuzhikanom to mean and include a transfer by a landlord to another of garden lands or of other lands or of both, with the fruit bearing trees, if any, standing thereon at the time of the transfer, for the enjoyment of those trees and for the purpose of planting such fruit bearing trees thereon, and S. 58 of the Act saves the rights of a jenmi in any of his holdings—to cut and remove the trees or enjoy the usufruct of trees and pepper vines belonging to him subject to a proportionate reduction of michavaram or rent if by the exercise of such right the tenant's profits are decreased. If the landlord has the right to cut and remove the trees belonging to him, the trees, fruit bearing or otherwise, on the land on the date of the tenancy—the tenant also cannot have the same right. The latter can claim such right only under an assignment of the landlord. The terms of tenancy, embodied in the later instrument did not entitle the lessee to appropriate the trees on the property demised. The lessor was therefore entitled to damages in respect of the trees cut and taken away by the lessee. **1964 Ker L T 550 : 1964 Ker L J 913 : ILR (1964) 2 Ker 222.**

——S. 105 — Lease deed — Reduced to writing—Recitals therein to be relied on for deciding right of parties. See T. P. Act (1882), S. 9. **I L R (1961) 2 Ker 514.**

——Ss. 105, 58 — Deed — Construction — Lease or mortgage.

The nomenclature of a document, by itself, is not conclusive, if the various other recitals in the document evidence a contrary intention. Held that on an entire reading of the document, the impression that was created was that it was the debtor and creditor relationship that was predominant in the whole transaction. The use of the expression 'Pattom' when referring to the income fixed on the property and also as to how exactly it was to be adjusted was not conclusive, to show that the parties intended by the use of that expression to create a landlord-tenant relationship. A I R 1958 S C 941, Foll. **1959 Ker L J 823 : 1959 Ker L R 807 : 1959 Ker L T 854.**

——Ss. 105, 8 — Lease — Right to terminate—Construction.

Where a rent note recites that "when you sell the vanda (enclosure) we shall vacate it", it only means that when the landlord sold the vanda the tenants would vacate it without insisting upon other formalities for termination of the tenancy. Those words do not exclude the landlord's right to terminate the tenancy after a notice. They merely provide for an additional mode of termination of the tenancy. **AIR 1951 Kutch 72 (72) (Pr 2).**

——S. 105 — Landlord and tenant — Unconditional agreement to pay rent—Enforcement of term as to—Court's power to relieve parties from their obligation on grounds of equitable principles.

Where there is an unconditional agreement for payment of rent irrespective of rajeegam and deiveegam Court has no power to relieve against payment of it on the ground that the crops had been lost by cyclone. Courts can only look to the terms of the contract between the parties and enforce them subject to the law. There is no power in Courts to depart from the terms of a contract and relieve a party from his obligation under it on grounds of equitable principles. **(1961) 2 Mad L J 334.**

——S. 105—Lease or inam—Deed providing for payment of rent — Covenants empowering Government to cancel lease for non-payment of rent or breach of any of the covenants and to re-enter on land—Held that in its substance and contents it was a lease and not an inam. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 9. **AIR 1954 Mad 161.**

——S. 105—Landlord and tenant—Rent—Charge for — Partition of land—Effect—Integrity of charge for rent—If broken.

Where the land belonging to a Hindu joint family under a mulgeni lease is partitioned amongst several members of the family, the integrity of the charge for the rental amount created on the land under the lease must be regarded to have been broken and charge is also to be regarded as proportionately partitioned, each piece of land bearing the charge of its proportionate rent. **38 Mys L J 788 : I L R (1960) Mys 874 : AIR 1961 Mys 171 (171) (Prs 7, 9).**

——S. 105—Landlord and tenant—Khasmahal lease—All lessees Muslims—Mother guardian executing lease on behalf of minor sons though father alive—Leasehold property originally acquired by father who made settlement in favour of wife and sons — Lease merely a renewal of original lease executed by father — Clause in lease permitting resumption of leasehold interest without payment of compensation held not void as being adverse to interest of minors—Mohammedan Law—Guardianship.

Held, on facts that from the date of acquisition till the date of settlement the condition in the leasehold property was subsisting and when the father transferred that interest, including the burden imposed by the said clause, to his wife and children, they took the property subject to the limitations and restrictions imposed by that clause in the original lease itself. The de facto guardian, namely the mother did not therefore "create" any new burden adverse to the interests of the minor but merely prolonged a right (subject to that burden) which had been in existence from before. A I R 1918 P C 11, Disting. **(1962) 28 Cut L T 209 : ILR (1962) Cut 27.**

——S. 105—Plaintiff letting in defendant on premises to carry on business — Defendant agreeing to pay monthly 'Lavansa'—No participation by plaintiff in business of defendant—No contribution of capital—No liability for loss and profit—In other proceedings defendant admitting that he was tenant of plaintiff — Plaintiff's suit for ejectment — Defendant held to be tenant and not partner. See Partnership Act (1932), S. 6. **(1962) 4 Orissa J D 31.**

——S. 105—Renewal of lease — Breach in conditions precedent — Specific performance of renewal of lease not to be granted. See Specific Relief Act (1877), S. 24. **1960 B L J R 403.**

——S. 105—Deed—Construction—Lease of tank in Bihar — Principles of construction—User of tank—Mode of—Presumption.

Where a lease in Bihar was drafted in an unequivocal language that the settlee were to remain in possession of the tank, on payment of rent, by removing mud of the said tank, it obviously meant that if the tank silted up, it was open to the settlees to dig the tank. The only purpose therefore, for which the tank was let out, on the natural meaning of the document itself was for such natural use to which it could be put, from the nature of the leasehold, which is generally in Bihar for drinking, washing and bathing purposes, or for rearing and

catching fishes or sometimes for growing water fruits like Singharas, the like. No doubt, the water of a tank can be used also for irrigational purposes, but such use for irrigational purposes is unusual, and uncommon, and such an exceptional use cannot be presumed, or inferred from the nature of the thing, in the absence of such purpose being specifically mentioned in the lease itself. In the absence of such a specific mention of the exact purpose for which the tank was being leased out, its natural, common, usual and general use, to which in the nature of the thing, it can be put, should be presumed. **1957 Pat L R 51 : ILR 36 Pat 471 : AIR 1957 Pat 278 (284) (Pt F) (Pr 55) (DB).**

——S. 105 —Deed —S granting permanent mokarari lease to P — P granted right to prospect and raise minerals—P covenanting to pay four annas share of annual net profit as royalty — P also covenanting to commence work within six years agreeing to be liable to pay Rs. 2,000 per year to S for such period as he would not commence work — Cl. 18 of document empowering P to transfer and encumber right acquired by him under lease or make darmukarrari settlement—should any kist of royalty due by P to S be in arrears and P made darmukarrari settlement, lessees to be liable for current and arrears due to S —Series of sub-leases granted to several persons — **Held**, on construction of various clauses of deed that S was entitled only to Rs. 2,000 per year from P and not to one fourth share of net profits made by sub lessees. **AIR 1952 Pat 409 (413) (Pt A) (Pr 10) (DB).**

——S. 105 — Deed — Construction — Lease of flour mill — Retention in service and payment of remuneration of mechanic part of consideration — Payment—If for and on behalf of lessor.

Where retention of a mechanic in service and payment of his remuneration was a term of the lease deed and was, therefore, a part of the consideration for which the lessor had let out a flour mill, then payment made to the mechanic by the lessee could amount, in effect, to payment made to the mechanic for and on behalf of the lessor. F. A. O. No. 46 of 1956, dated 4 4 1958 (Punj), Reversed. **(1961) 1 Lab L J 494 : (1960) 1 Fac L R 508 : (1960-61) 18 F J R 428 : AIR 1960 Punj 573 (574) (Pt B) (Pr 5) (DB).**

——S. 105 — Creation of lease — Mortgage with possession — Mortgagor remaining in possession and executing rent note—Effect.

The relationship of landlord and tenant comes into being when one party agrees to divest himself of the possession and the other agrees to come into it. The agreement may be express or implied but it cannot exist without such agreement. No particular form of words is necessary. Payment of rent is a usual though not an essential incident of a tenancy.

The owner of a house mortgaged it with possession to the mortgagee and several months later executed a rent note in favour of the mortgagee agreeing to pay a certain sum per mensem by way of rent. The house was later destroyed by floods. The mortgagor constructed a new house on the same site and executed a fresh deed of mortgage in favour of the same mortgagee agreeing orally to pay rent at a certain rate per month.

Held, that as the mortgage was with possession and as the owner of the house continued to stay on in the premises it must be held that he occupied the premises not in his capacity as owner but in his capacity as a tenant of the person with whom the property was mortgaged **58 Pun L R 574 : I L R (1957) Punj 331 : AIR 1957 Punj 57 (58) (Prs 4, 5).**

——Ss. 105 and 8 — Construction of deed — Deed held created relationship of landlord and tenant.

A was a tenant of a shop under one J. J sold the shop to R. A executed a document agreeing to hold the shop as a tenant of R at Rs. 25 a month and fixed the period of tenancy at 2 months. It was stipulated that A would vacate the shop after the expiry of 2 months without any hesitation failing which the landlords were authorised to sue for ejectment :

Held, that while it might have been the intention of R to let A occupy the premises for two months by way of indulgence, the language of the document was unequivocal, and created a relationship of landlord and tenant between R and A. **AIR 1950 Raj 56 (57) (Pt A) (Pr 6).**

——S. 105 — Land tenures — Travancore-Cochin — Sreepadam lands — Incidents of — Rights of Maharaja.

The lands under head Sreepadam form the private property of the Ranis and consist of lands situate outside the Shreepandaravaga freehold villages (Edavaga) in the Chirayinkil Taluk. The Sirkar is entitled to only Rajabhogam on Sreepadam lands while the pattom and thanathu lands of this class generally pay nothing to Government. The thanathu lands of the Sreepadam are enjoyed by the institution by leasing out the properties. The Sreepadom has the right to resume the thanathu at any time and lease them out to others, if that institution had a subsisting interest over the properties. There is no necessity of a command or proclamation by the Sovereign allowing enhancement of pattom. The management of Sreepadam lands was left with the officers appointed for that purpose. Those officers are also allowed to take steps to realise the revenue due to the Sreepadom by resorting to the provisions of the Revenue Recovery Act, 1 of 1068. Where their acts are in the interests of the Sreepadom there is no necessity for His Highness the Maharaja to issue a Proclamation to revise the terms under which the thanathu lands were held by the tenants. **('51) 1951 Ker L T 763 : AIR 1953 Trav Co 180 (181, 182) (Prs 3, 4) (DB).**

——Ss. 105, 106 — Tenants agreeing to pay Rs. 10 per day as compensation — Effect on termination of lease—(Deed—Construction).

The provision by which a tenant agrees to pay Rs. 10 per day as compensation is only meant to give some idea of the proper damages to which the landlord would be entitled if the tenant did not stick to the provisions of his own contract embodied in the lease. It cannot be interpreted to mean that the tenant was not liable to enjoyment at all so long as he continued to pay compensation at the rate of Rs. 10 per diem. The natural interpretation of this clause is that ejectment proceedings would continue and the landlord would be entitled to compensation at an enhanced rate from the date of the termination of the tenancy to the date of his actually recovering possession through Court. **AIR 1956 Tripura 30 (31) (Pt C) (Pr 9).**

33. Zamindari and ryotwari lands—Tenants of.

——S. 105 — Landlord and Tenant — Zamindari tenure — Death of Hindu occupancy ryot leaving no sons — Muchilikas taken thereafter from members of his family say, daughters-in law other than his real heirs the daughters — Rights of original ryot are not extinguished — No fresh rights in favour of persons who executed muchilikas were created. Sunkavilli Suranna v. Goli Sathiraju, **(1962) 3 S C R 653 : (1962) 1 S C J 331 : (1962) 1 M L J (S C) 149 : (1962) 1 Andh W R (SC) 149 : AIR 1962 S C 342 (344) (Pt C) (Pr 3).**

——S. 105—Landlord and Tenant—Hindu ryot in Zamindari village—Properties of—Suit for partition brought by one against others of his descendants —

Question about the rights held in lands by ryot — Held, that ryot was holder of occupancy rights in lands and that the lands were liable to be partitioned.

A suit for partition of the properties owned by a Hindu ryot residing in a permanently settled Zamindari village was, brought by the son of one of his daughters against the descendants of other two daughters of the said ryot after the death of the last surviving daughter. In appeal preferred by the defendants to the Supreme Court, the principal question was whether the ryot had, as claimed by the plaintiff, occupancy rights in the lands or as the contesting defendants contended, he was an annual tenant of the zamindar and that after his death the lands were held on similar tenure by different members of the family of the ryot and that the occupancy right was acquired by the defendants by virtue of the Madras Estates Land Act, 1908.

Held, that there was no evidence as to the terms on which the ryot or his predecessors were inducted on the lands; and the ryot and his descendants were proved to have continued in possession of land uninterruptedly till the enactment of the Madras Estates Land Act, 1908. In the light of the presumption that the zamindar was the owner of the melvaram and the riot the owner of the kudivaram the inference was irresistible that the ryot was the holder of the occupancy rights in the lands and that these rights devolved upon his successors and that the occupancy rights in the lands were not acquired by virtue of the provisions of Madras Estates Land Act, 1908. Hence the decree of the High Court was correct. Sunkavilli Suranna v. Goli Sathiraju, **(1962) 3 S C R 653 : (1962) 1 S C J 331 : (1962) 1 Mad L J (SC) 149 : (1962) 1 Andh W R (SC) 149 : AIR 1962 S C 342 (350) (Pt D) (Pr 17).**

● **——Ss. 105 and 111**—Sub-lease of land by fixed rate tenant on 14th May, 1956 for five years—Rights of sub-tenant on expiry of period — Effect of U. P. Zamindari Abolition and Land Reforms Act, 1950 repealing U. P. Tenancy Act — Suit for ejectment of sub-tenant filed on 31st June, 1951 — Sub-tenant not liable to ejectment — He becomes adhiya and then sirdar under U. P. Act of 1951. See Tenancy Laws—U. P.: Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20(a)(ii). **AIR 1964 All 498 (FB).**

——S. 105—Land Tenures—Ryotwari—Patta is not a document of title — Absence of patta: in one's name does not derogate from his title. **74 Mad L W 742 : (1982) 1 Mad L J 197.**

——S. 105—Settlement of land in favour of A by Khasmahal for agricultural purposes — No document executed—Rent accepted by Khasmahal — A became occupancy raiyat—Government cannot cancel settlement by subsequent order. See Tenancy Laws — Orissa Tenancy Act (2 of 1913), S. 3(9). **I L R (1961) Cut 595.**

34. Zuripeshgi lease.

● **——Ss. 105, 58** — Agricultural income — Assessee taking zarpeshgi lease—Premium paid—Construction —Transaction held not loan — Income held agricultural. See Bihar Agricultural Income-tax Act (7 of 1938), S. 2(a). **AIR 1959 S C 1303.**

35. Kanom leases.

See also T. P. Act (1882), S. 58.

——S. 105—Deed — Construction — Distinction between kanam and mortgage—Tests to determine nature of transaction—Intention of parties to be ascertained. See Tenancy Laws — Kerala Agrarian Relations Act (4 of 1961), S. 2(18), Cl. (a). **AIR 1963 Ker 309 (DB).**

——S. 105—Kanom lease — Deed fixing rent-in-kind and also money value—Landlord whether entitled to recover market value or price fixed in deed — (Malabar law—Kanom).

Where a kanom deed actually mentioned the price of the commodity which had been fixed as part of the yearly dues, it must be taken to be contemporaneous estimate in terms of money for purposes of realisations should there be a default. For, these commodities are not recoverable through Court process. Hence, the landlord is not entitled to recover the market-value of the commodity then prevailing when the liability was incurred, especially when in a previous suit the plaintiff had accepted the price mentioned in the deed as the proper basis for recovery of his dues. 1957 Ker L T (SN) 7. Rel. on. **1957 Ker L T 265: 1957 Ker L J 275 : AIR 1957 Ker 80 (81) (Pr 2).**

——S. 105 — Lease of illom — Adults mentioned in preamble—All not signing — Effect — Failure to join one S in execution, whose parents had joined in execution, held did not render that document invalid—A lease for ten years can be executed by the karnavan of illom with written consent of majority of major members. See Madras Marummakkathayam Act (22 of 1933), S. 32(1)(2). **1957 Ker L J 1157 : 1958 Ker L T 597.**

——S. 105—Kanom deed — Fact that the document partakes character of mortgage and contains some terms other than those ordinarily found in kanom deed does not make it any the less a kanom. See Tenancy Laws — Malabar Tenancy Act (14 of 1930), S. 3(1). **AIR 1950 Mad 612.**

● **——Ss. 105, 58**—'Kanapattom' tenure — Incidents of — Distinction between kanom and usufructuary mortgage indicated. See Debt Laws — (Travancore-Cochin) Holding (Stay of Execution Proceedings) Act (8 of 1950), S. 2. **AIR 1952 Trav-Co 333 (FB).**

——S. 105—Lease and usufructuary mortgage—Construction—Held, document was not a lease—Nomenclature of document as a 'kanapattom' was immaterial for purpose of gathering intention of parties and the tenure created thereby — (Travancore) Ordinance 2 of 1125 — Act 8 of 1950. See Transfer of Property Act (4 of 1882), S. 58. **A I R 1951 Trav-Co 190 (DB).**

36. Cultivatory lease and proprietary lease—Distinction.

——S, 105—Cultivatory lease and proprietary lease—Distinction.

The main distinction between a cultivatory lease and a proprietary lease consists in this that whereas in a cultivatory lease the lessee is entitled to cultivate himself or have the land cultivated by sub-tenants, in a proprietary lease the lessee is entitled to lease out the land to persons who become tenants of the original lessor or in other words, who would become tenants-in-chief and not sub-tenants merely and the lessee is given the power to collect rent from the tenants. In other words, in a proprietary lease the lessee is entitled to become an intermediary between the landlord and the tenants in chief. **1954 All L J 767: 1955 All W R (HC) 184: AIR 1955 All 610 (610) (Pt B) (Pr 1).**

37. Landlord and Tenant.

(A) Landlord and Tenant—Adverse possession.

See Limitation Act (1908), Arts. 142-144.

(B) Tenant encroaching on other land of the landlord—Effect.

37. Landlord and tenant.

——S. 105—Sajhidar—Meaning — Difference between sajhidar and tenant and sajhidar and lessee. See U. P.

Land Record Manual Para. 472. 1966 All L J 149 : 1965 All W R (HC) 841.

——S. 105 – Landlord and Tenant — Relationship—'Tenant' interpretation of. See Houses and Rents — U. P. Cantonments (Control of Rent and Eviction) Act (1952), S. 20. **AIR 1955 N U C (All) 159 (DB).**

——S. 105—Landlord and tenant — A tenant of B—A attorning to purchaser — Plaintiff purchasing from latter — A cannot question plaintiff's title—Evidence Act (1872), S. 116. **A I R 1955 N U C (Assam) 4196.**

——S. 105—Suit for ejectment—Plaintiff must establish exact area in possession of defendant of which plaintiff is landlord—Plaintiff's failure—Suit will not stand even though there is a relationship of landlord and tenant between parties — (Evidence Act (1872), Ss. 101-103). **A I R 1955 N U C (Assam) 4196.**

——S. 105 — Contract for sale between appellant's agent and respondent — Latter agreeing to pay rent pending receipt of required authority from appellant —Relationship of landlord and tenant held established.

Where pending the completion of sale of a house by the appellant's agent to the respondent on the former's obtaining the required authority from the appellant, the respondent agreed to pay rent to the appellant, held that there was a contract of tenancy between the appellant and the respondent and the latter was liable for rent. **A I R 1950 Assam 17 (18) (Pt B) (Pr 12) (DB).**

——S. 105 — Lease to Hindu in his personal capacity — Tenant dying leaving several heirs including married daughters — Heirs whether joint tenants or tenants-in-common vis-a-vis landlord—Notice terminating tenancy to some—Whether valid and binds all heirs — "Family" in S, 106, meaning. See T. P. Act (1882), S. 106. **A I R 1964 Bom 96.**

——S. 105 — Co-operative Housing Society — By-laws and Regulations framed by mutual rights and obligations of society and its members—Members are not tenants in the sense in which that term is used in T. P. Act. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947). **A I R 1962 Bom 154 (FB).**

——S. 105 — Landlord and tenant — Requisition of land—Relationship of landlord and tenant is not created. **A I R 1955 N U C (Cal) 3850.**

——S. 105—Tenancy governed by Bengal Tenancy Act (1885)—Tenure holder—Meaning of — The mere fact that a lessee is empowered to collect rent from tenants would not make him a tenure-holder within the meaning of S. 5 (1). See Tenancy Laws—Bengal Tenancy Act, S. 5 (1). **ILR (1949) 1 Cal 165 (DB).**

——S. 105 — Landlord and Tenant — Possession of tenant.

A tenant may be in possession through a sub-tenant. 22 Pun Re 1876 and 44 Pun Re 1891, Ref. **A I R 1951 Him-Pra 65 (66) (Pt B) (Pr 9).**

——S. 105—Person in permissive occupation — Such occupation will not make him a tenant. See Tenancy Laws — Cochin Proclamation (6 of 1124), S. 5 (1). **1957 Ker L J 973 : 1957 Ker L T 1043.**

——S. 105—Bataidar not a tenant — Tenancy implies creation of subordinate interest. **1962 :M P L J (Notes) 324 : 1962 Jab L J 591.**

——S. 105 — Landlord — Person entitled to receive rent—Tenant A continuing in possession after expiry of lease — Landlord executing another lease for a period in favour of B — Subsequent lease to commence on delivery of possession — Application by B for A's eviction—**Held** on terms of lease executed in favour of B by owners, B was not a person entitled to receive rent and therefore was not a landlord so as to entitle him to maintain petition for eviction. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 2 (3). **1957 Mad W N 393 : 70 Mad L W 73 : (1957) 1 Mad L J 121.**

——S. 105—A maternity home which is a registered society and an association of persons, would be deemed to be a person within the meaning of the term 'landlord' in cl. 2 (4), C. P. and Berar Letting of Houses and Rent Control Order (1949). See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 2 (4). **1956 Nag L J 693 : 1956 M P L J 133 : ILR (1956) Nag 588.**

——S. 105—Landlord and Tenant — Rent receipts — When establishes tenancy.

Payment of rent and acceptance of the same by the landlord and the granting of rent receipts may establish tenancy, provided of course the tenant proves that he was in actual possession of the holding. **(1964) 30 Cut L T 278.**

——S. 105 –Landlord and tenant—Nayagarh State — In the absence of codified revenue law in the State it must be taken as the established law that 12 years' continuous possession by a tenant conferred on him occupancy status. **(1964) 30 Cut L T 160.**

——S. 105—Landlord and Tenant — Relationship — Land settled by Gountia — Relationship of landlord and tenant not created.

Where in a suit to recover land brought by the plaintiffs as next reversioners the defence was that the lands in suit were surrendered by the deceased widows to the Gountia of the village who settled the same with the defendant, and the defendant was, therefore, the tenant protected under Orissa Tenants Relief Act :

Held, that the settlement of land by the Gountia did not create the relationship of landlord and tenant between the plaintiffs and the defendant, and the latter could not claim the said protection. **(1959) 25 Cut L T 473.**

——S. 105 — Landlord and tenant—Landlord suing A only for arrears of rent in respect of certain share of Makadami tenure—**Held**, that landlord had recognized A as a separate tenant in respect of the share and B had no interest whatsoever in respect of such share at any time. **A I R 1955 N U C (Orissa) 2142** (DB).

——S 105—Landlord has been used in a wide sense, so as to include even a person who is not a proprietor — Tenancy can be created by acts indicating the establishing of relation of landlord and tenant. See Tenancy Laws—Bihar Privileged Persons Homestead Tenancy Act (1947) (4 of 1948), S. 2 (1). **A I R 1957 Pat 163 (DB).**

——S. 105 — Lessee — Person whose bid is accepted but who does not take possession is not a lessee. See Panchayats—Punjab Gram Panchayat Act (4 of 1953), S. 6 (5) (b). **(1965) 67 Pun L R 1062.**

——S. 105 — Landlord and tenant — Tenants—Basikhuopahu tenant.

The tenants called Basikhuopahus occupy land for the express purpose of tilling it, and proper cultivation of the land is a condition of their tenure and therefore, a person, who is granted a lease of land for the purpose of quarrying slates from it, cannot be called a Basikhuopahu. **66 Pun L R 966 : A I R 1964 Punj 503 (505) (Pt B) (Pr 8) (DB).**

——S. 105—Auction purchase of evacuee property—Sale certificate not obtained — Attornment by tenant to such auction purchaser — Effect — Auction purchaser can maintain suit for ejectment of tenant under ordinary law — Protection under S. 29 not available—Protection under Delhi Rent Control Act, 1958 is also not available. See Displaced Persons

(Compensation and Rehabilitation) Act (1954), S. 29. AIR 1963 Punj 532 (DB).

——S. 105—Landlord and tenant—Letting is essential —Letting out in Rent Control Act means same thing as leasing out in T. P. Act — Hence there must be a lessor and lessee as contemplated by S. 105 before there can be a landlord and tenant as defined in Rent Act. See Houses and Rents — Delhi and Ajmer Rent Control Act (1952), S. 2 (c). AIR 1956 Punj 181 (DB).

——S. 105 —Trespasser and erstwhile tenant — Distinction—Ejectment of tenant—Suit against tenant's heir or son on his death — Suit whether must be based on title.

The law makes a clear and sharp distinction between a trespasser and an erstwhile tenant. Whereas the trespasser's possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law. Therefore, as far as the Indian law is concerned, an erstwhile tenant can never become a trespasser. And a landlord can only eject his erstwhile tenant by recourse to law and by obtaining a decree for ejectment. What applies to an erstwhile tenant may also apply to the heir or son of an erstwhile tenant living with him at the time of his death even if the tenancy of the said erstwhile tenant terminates with his death.

Held, that if the appellant were to claim that he had inherited the interest of his ancestor's tenancy at will that tenancy was determined by the respondents by giving him a notice and making a demand upon him for possession. In case he said that he did not inherit any interest in the lease, even then he was liable to ejectment as his father and grandfather were. 1959 Raj L W 353.

——S. 105—Landlord and tenant — Creation of tenancy—Trespasser when can become tenant.

Occupation without a contract of lease of another person's land will be nothing but usurpation or trespass, unless the owner of the land is prepared to accept such occupation as tenancy. There is no law in the country which converts such trespass into a right of tenancy. If such possession is to ripen into tenancy, it can be done only by adverse possession for the statutory period of 12 years claiming tenancy right, just as in order to get full title to the property there must be adverse possession for the statutory period claiming full title. AIR 1962 Tripura 1 (7) (Pt B) (Prs 31, 41).

37 (A). Landlord and tenant — Adverse possession.

See Limitation Act (1908), Arts. 142-144.

37 (B). Tenant encroaching on other land of the landlord—Effect.

——S. 105—Scope — Tenant encroaching upon other land—Effect.

When a tenant encroaches on land outside his tenancy but belonging to his landlord he cannot acquire absolute title thereto by adverse possession but obtains only a right of tenancy under his landlord. It is equally well settled that if a tenant encroaches on land contiguous to the land of his tenancy but belonging to other landlords, adverse possession by him by such encroachment would not give him an absolute title thereto but only a leasehold interest in these lands under his own landlord. The mere fact that the other person takes no steps to recover rent from the encroaching tenant does not amount to an acquiescence on the part of that person creating a tenancy in favour of the encroacher. 60 Cal W N 1065 : AIR 1957 Cal 67 (69) (Pt B) (Pr 10) (DB).

SECTION 106

SYNOPSIS

(Transfer of Property Act (1882), S. 106.)

1. Contract to the contrary.
2. Lease for a term certain—Notice.
3. Perpetual lease.
4. Tenancy at will.
5. Lease for indefinite period.
6. Law to the contrary.
7. Presumption of yearly or monthly tenancy under this section.
8. Lease for agricultural or manufacturing purposes.
9. Reservation of yearly or monthly rent.
10. Lease from year to year.
11. Lease from month to month.
12. Possession under invalid lease—Presumption.
13. Notice to quit — General principles — See also Note 26.
14. Determination of lease — See also S. 111, T. P. Act (1882).
15. Waiver of notice.
16. Suit for ejectment — Notice to quit.
17. Denial of lessor's title by lessee and notice to quit.
18. Determination of main lease by notice — Effect on sub-lease.
19. Lessee holding over after expiry of notice to quit—Effect.
20. Notice to quit — Who can give — Joint Hindu family.
21. Notice to quit—Who can give—Co-lessors.
22. Notice to quit—Who can give — Miscellaneous.
23. Notice to quit — To whom to be given.
24. Notice to or by agent.
25. Period of notice.
26. Expiring with the end of year or month of tenancy—See also Note 13.
27. Year or month of tenancy — See also Note 26.
28. Calendar for calculation of time.
29. Form of notice.
30. Mode of service.
31. Service by post.
32. Leases by Government.
33. Notice in cases not governed by this section.
34. Statutory tenancy—See Note 6.

1. Contract to the contrary.

——S. 106 — Contract to the contrary should be valid.

The contract to the contrary, as contemplated by S. 106, T. P. Act need not be an express contract, it may be implied, but it certainly should be a valid contract. If it is no contract in law, the section will be operative and regulate the duration of the lease. Ram Kumar v. Jagdish Chandra. 1952 S C A 79 : 1951 S C J 813 : 1952 Mad W N 120 : 65 Mad L W 219 : 1952 S C R 269 : ILR 31 Pat 91 : AIR 1952 S C 23 (26) (Pt B) (Pr 13).

——S. 106—Notice—Lease of house for manufacturing purpose—'Contract to the contrary.'

Where in the case of lease of house taken for manufacturing purpose, the rent is payable by the month it can be inferred that normal period of six months' notice has been by implication agreed to be cut down to the period that is required to terminate a tenancy which is from month to month. In a case like this an agreement to the contrary can be implied.

1955 All L J 304, Rel. on. 1956 All W R (H C) 711 : 1956 All L J 625.

——S. 106 — 'Contract to the contrary' — Plaint alleging manufacturing lease to be monthly tenancy —No specific denial — Effect — (Civil P. C. (1908), O. 8, R. 5).

Ordinarily in the case of a tenancy for manufacturing purposes, it should be held to be a tenancy from year to year terminable by six months' notice to quit, but there is nothing in law to prevent the parties from coming to an agreement between themselves, under which, irrespective of the nature of the tenancy they should treat the tenancy as a monthly one. Indeed, the opening lines of the section make a saving in favour of such contracts.

(2) Where there is a valid contract between the parties to treat the tenancy as a monthly tenancy, on the terms of S. 106 itself the tenancy is terminable by fifteen days' notice to quit expiring with the end of a month of the tenancy. AIR 1955 Assam 102 (104) (Pt A) (Pr 5) (DB).

——S. 106—To exclude the operation of S. 106, the contract should be a valid contract — It need not be express and may be implied but if it is no contract in law, S. 106 will be operative and will regulate the duration of the lease. ILR (1953) 5 Assam 207 : AIR 1954 Assam 58 (58) (Pt A) (Pr 6).

——S. 106 — Evacuee property — Contractual and statutory tenancy rights — Nature of. See Administration of Evacuee Property Act (1950), S. 2 (f). AIR 1954 Bom 56 (DB).

——S. 106 — Contract to the contrary — Statutory period of notice enlarged by contract with respect to tenant only — Landlord's right to give notice for statutory period.

By an agreement the period of notice may certainly be made longer in the case of the tenant than in the case of the landlord. It cannot be argued that because the period of notice was made longer in the case of the tenant than the statutory period of 15 days, the period was necessarily enlarged in the case of the landlord as well. A landlord can avail himself of the statutory period of notice unless that period is also varied by agreement express or implied. S. A. No. 1144 of 1948, Rel. on. 61 C W N 231 : AIR 1957 Cal 475 (476) (Prs 8, 9).

——S. 106 — Contract to the contrary — Lease for manufacture — Lease deed stating that lease would be determined by one month's notice — Six month's notice not necessary. AIR 1952 Cal 221 (222) (Pt D) (Pr 8).

——S. 106—'Contract to contrary.'

Section 106 is attracted only in the absence of a contract to the contrary. Where the rent deed executed by the tenant expressly provides that he will be liable to vacate the house when an intimation of two weeks is given to him by the landlord and a similar right is reserved in favour of the tenant as well, there is an express contract to the contrary which overrides the provisions of S. 106 of the Transfer of Property Act. Assuming that S. 106 applies, then in this case a written notice sent to the tenant demanding that the tenant should quit at the end of the last day of a month of the tenancy or the beginning of the next day does completely satisfy the requirement of S. 106 of the Transfer of Property Act. 60 Mad LJ 293 : AIR 1931 Mad 352, Rel. on. AIR 1959 J & K 87 (88) (Pt A) (Pr 4).

——S. 106—'Contract to the contrary'—Must be valid —Payment of annual rent—Presumption—Rebuttal.

The contract to the contrary as contemplated by S. 106 need not be an express contract: it may be an implied one. The only qualification is that it must be valid stipulation. If there is a contract to the contrary, then the presumption that the tenancy arising from the payment of annual rent was from year to year is rebutted. Where the term in a lease deed provided that the landlord would be at liberty to demand surrender of possession at any time he chose, with a corresponding right to the tenant it is a contract to the contrary within meaning of S. 106. 1963 Ker L T 1009 : 1963 Ker L J 1125 : AIR 1964 Ker 218 (219) (Pt A) (Pr 8) (DB).

——Ss. 106, 116—Contract to the contrary — Mere absence of provision regarding notice is not contract to the contrary—Proper notice held was necessary — Holding over—Notice, not a term of tenancy — Section 4 of Kerala Compensation for Tenants Improvement Act does not dispense with notice.

The mere absence of any provision regarding notice to quit is not to be construed as a contract dispensing with such notice. 47 I C 19, Disting.

The relevant recital in the document was that, in case the lessor evicts the lessee after the period of six years, the lessor agrees to pay the value of the chamayams already existing at the time of the document and the value of the shop thereafter to be constructed by the lessee according to the local custom and also the amount of Rs. 10 already received, and the lessee agrees then to surrender possession to the lessor.

Held, (i) that thare was not even an undertaking that the lessee will surrender possession without any objection when the value of the building was paid. It was not therefore a contract dispensing with notice to quit. The utmost that could be said was that there was no contract between the parties regarding notice to quit; and in such a case, because a contract dispensing with notice to quit is absent, S. 106 must apply. AIR 1924 Mad 771, Rel. on.

(ii) Even if it were considered that there was a contract to the contrary and that the notice was dispensed with, considering that the lease had expired and the tenant was holding over, S. 116 must apply and the provision as to the notice contained in the expired lease could not be held to be a term of the tenancy arising by holding over, and if so, proper notice to quit was necessary. (1952) 2 MLJ 227, Rel. on.

(iii) that if a proper notice to quit was necessary for the determination of the tenancy, that requirement was not dispensed with or abrogated by S. 4 of the Kerala Compensation for Tenants Improvements Act, which only gave the tenant a right to continue in possession after such valid determination of the tenancy. S. A. No. 318 of 1960, Foll. 1963 Ker L J 556 : ILR (1963) 1 Ker 712.

——S. 106—Contract to the contrary—Section does not apply to cases where period of lease and length of notice are determined in the contract. AIR 1955 NUC (Madh Bha) 4526 (DB).

——S. 106—Applicability—Parties agreeing to give notice of one month while terminating tenancy — Contract fixing different period of notice, which was a contract to the contrary making S. 106, Transfer of Property Act, inapplicable.

There was a special contract between the landlord and the tenant extending the period of quit notice to one month. The question was whether the notice given on 4.9.1959 asking the tenants to vacate by 4-10-1959, when the tenancy commenced on the first of each month, was valid.

Held, that S. 106, Transfer of Property Act, contained but a single rule and where the lease provided for a month's notice being given before the lessee could be asked to vacate, there was a variation of the requirement of the notice expiring with date of the lease. A notice of one month was sufficient even if it

did not expire with the end of the month of tenancy. In S. 106, Transfer of Property Act, the words "by fifteen days' notice expiring with the end of a month of tenancy" contained only one condition and that the contract fixing a different period of notice was a contract to the contrary, making S. 106 inapplicable to the case. AIR 1924 Nag 220, Foll.; AIR 1951 Sau 64, Diss. **1963 MPLJ (Notes) 128.**

——**Ss. 106 and 116**—Contract between the landlord and tenant for six months' notice to determine tenancy—Contract to override provision of S. 106—Lease-deed impliedly providing for continuance of lease after specified period—Tenancy not determined—Section 116 not applicable. 1952 SCR 269 (280), Rel. on. **1962 MPLJ (Notes) 266.**

——**S. 106—Contract to the contrary—Scope of.**

When there is an agreement as to the period of notice, it is a contract to the contrary for all purposes of S. S. 106. **1960 MPC 621 : 1961 MPLJ 107 : AIR 1961 Madh Pra 138 (139) (Pt A) (Pr 1).**

——**S. 106 –Defective notice is not an absolute bar to the suit—Defect not pleaded at proper stage—It is deemed to be waived.**

The defect in the notice under S. 106 of the Transfer of Property Act or even its absence is not an absolute bar to the suit for ejectment. It is subject to "a contract or agreement to the contrary." The shortage of time in the notice or even its absence can be waived by the conduct of the party. 5 IC 699 : ILR 11 Cal 111 and ILR 18 Bom 110, Dist. **1961 MPLJ (Notes) 189 : 1960 Jab L J 549 : 1960 MPC 420.**

——**S. 106—'Contract to the contrary'—Express contract regarding notice—New terms should not be implied. AIR 1951 Mad 408 (408) (Pr 3) (DB).**

——**S. 106 — Contract to contrary — Unregistered lease.**

An unregistered lease cannot be regarded as a contract to the contrary. The contract contemplated by the section must be valid in law. **1955 Nag LJ 742 : ILR (1956) Nag 10 : AIR 1955 Nag 306 (312) (Pt I) (Pr 26) (DB).**

——**Ss. 106 and 116—Contract to contrary—Proof of.**

Where the kind of agreement which a tenant sets up cannot be proved except by registered instrument and there is no registered agreement, the requirement of the law that he must prove an agreement to the contrary, even if such a contract is pleaded cannot be fulfilled. **1955 Nag L J 103 : ILR (1954) Nag 957 : AIR 1955 Nag 27 (29) (Pt C) (Pr 8) (DB).**

——**Ss. 106 and 111 (c) — Landlord and tenant — Lease in respect of land — Covenant in lease giving option to lessor to terminate lease under specified conditions — Nature of — No breach of rule against perpetuities — Heirs of lessor can enforce — Determination of lease according to covenant — Notice under S. 106 not necessary.** Sea Transfer of Property Act (1882), S. 14. **AIR 1962 Pat 201 (DB).**

——**Ss. 106, 105 and 107 — Term as to notice is not of essence of definition of lease — Term can be separated provided instrument is admissible though invalid as lease — Term may amount to contract to contrary within S. 106 — See Transfer of Property Act (4 of 1882), S. 105. AIR 1959 Raj 240 (DB).**

——**Ss. 106, 111 (b), 111, (g) (1), 107 — Scope of S. 111 (b)—Qabuliat executed by lessee for 5 years — Condition of termination on happening of an event — S. 111 (b) applies — Term held binding on lessee.** See Transfer of Property Act (4 of 1882), 111 (b). **AIR 1929 Raj 24.**

——**S. 106 — 'Contract to the contrary.'**

Where the deed of lease contained a provision of informing the lessee one month in advance to vacate the premises this is a contract to the contrary. AIR 1955 Raj 1, Rel. on. **I L R (1957) 7 Raj 262 : 1957 Raj L W 302 : AIR 1957 Raj 118 (119) (Pt B) (Pr 7).**

——**S. 106 — Contract to the contrary — Effect on condition of expiry of notice with end of month.**

Section 106, T. P. Act, provides, among other things, that a lease of immovable property for any purpose other than agricultural or manufacturing purposes is to be deemed to be a lease from month to month, and that such lease is terminable on the part of either the lessor or the lessee by fifteen days' notice expiring with the end of a month of the tenancy, in the absence of a contract or local law or usage to the contrary. If, therefore, there is a contract providing for a different period of notice, then the second provision requiring 15 days' notice expiring with end of a month of the tenancy obviously does not come into play, as it is a concomitant part of the requirement, and forms an indivisible condition. **I L R (1955) 5 Raj 115 : 1955 Raj L W 499 : AIR 1955 Raj 1 (3) (Pr 18) (DB).**

——**Ss. 106, 107 — In the absence of a contract to the contrary — Registration Act not in force when rent note executed — Document can be read in evidence — Defendant is bound to surrender property as provided therein — There being contract to contrary in rent note, S. 106, T. P. Act does not apply —** (Registration Act (1908), Ss. 17, 49). **AIR 1955 N U C (Raj) 4059.**

——**S. 106 — Notice to quit — 'Contract to the contrary'—Specific contract complied with — Brothers, joint tenants — Notice by post addressed to both — Refusal by one — Sufficiency.**

A notice to quit in accordance with a specific contract between the parties is valid under S. 106, Transfer of Property Act though it did not comply with the provision therein that it is terminable by 15 days' notice ending with the month of tenancy; the specific contract is a "contract to the contrary". **AIR 1951 Raj 88 (88) (Pt B) (Pr 4).**

——**S. 106 — Contract to contrary — Condition in** the rent note to the effect that tenant should deliver possession to landlord at whatever time he makes the demand — Condition merely means that tenancy is not for fixed term and does not amount to contract to contrary. **AIR 1953 Sau 119 (121) (Pt C) (Pr 6) (DB).**

——**S. 106 — "Contract to the contrary" — Contract modifying period of notice without specifying time when notice is to expire.**

Section 106 prescribes two separate and independent conditions for validly terminating a monthly lease; first that the notice is to be a fifteen days' notice and secondly that it is to expire with the end of a month of the tenancy, and in order that these should cease to apply the contract to the contrary must specifically provide for them both. If the contract contains a stipulation only as to the period of the notice it modifies the provisions of S. 106 to that extent but does not affect the other requirement of the section, viz., that the notice is to expire with the end of a month of tenancy, and this latter requirement has to be complied with in order that the lease can be validly terminated. AIR 1943 Bom 306, Foll. AIR 1928 Lah 348, AIR 1924 Lah 643 and AIR 1924 Nag 220, Not foll. **4 Sau L R 113 : AIR 1951 Sau 64 (65) (Pr 3).**

——**S. 106 — 'Contract to the contrary' — Kabuliat providing for two months' notice.**

A term in the Kabuliat providing for two months' notice for determining tenancy amounts to a con-

tract to the contrary and hence S. 106, T. P. Act does apply to the case. **AIR 1956 Tripura 30 (31) (Pt B) (Pr 8).**

2. Lease for a term certain — Notice.

●——S. 106 — Termination of tenancy by efflux of time — Question of statutory notice under S. 106 does not arise. Pooran Chand v. Motilal. **1963 S C D 721 : (1963) 1 S C W R 361 : (1963) Supp 2 S C R 906 : AIR 1964 S C 461 (462) (Pt B) (Pr 5).**

——S. 106 — Lease for fixed period—S. 106 does not apply — Lease comes to end by efflux of time. **AIR 1955 N U C (Madh-B) 2086.**

——Ss. 106, 111 — Lease for fixed period determines when period expires—No notice is required. **AIR 1955 N U C (Madh B) 1197.**

——Ss. 106, 110 and 111 (a) — Lease for a fixed period commencing from certain date — Notice asking tenant to deliver possession on expiry of lease — Date of termination not mentioned — Tenant receiving notice more than a month before expiry—Notice is valid.

In case of a tenancy for a fixed period of three years commencing from a specified date, a notice asking the tenant to deliver possession on termination of tenancy, without mentioning any date on which the tenancy would be terminated, and received by the tenant more than a month before the date of expiry of the tenancy is valid. AIR 1932 P C 279, Rel. on. **1961 Jab L J 311.**

——Ss. 106 and 116 — Tenancy for a fixed period — Plaintiff (landlord) not shown to have allowed tenant to continue with express or implied consent—Tenant not holding over not entitled to notice. **1961 M P L J (Notes) 177 : 1961 Jab L J 288.**

——S. 106 — Suit for ejectment — Notice to quit — Tenancy for fixed term expiring by efflux of time — Tenant forfeiting statutory protection under Rent Control Legislation—Notice under S. 106 not necessary to evict tenant.

Where a tenancy is for a fixed term, as soon as the tenant has forfeited the statutory protection offered to him by Rent Control Legislation, the landlord's right to evict the former at once arises on the efflux of that term, and in such a case no notice under S. 106 of the T. P. Act would be necessary. AIR 1962 Raj 100 and AIR 1961 S C 1067, Foll. **1963 Raj L W 27 : I L R (1963) 13 Raj 370 : AIR 1963 Raj 113 (116) (Pt C) (Prs 7, 9).**

——S. 106 — Tenancy for fixed period — After lapse of period occupier continuing to pay rent and landlord accepting it — New tenancy is created — Notice to evict such tenant is necessary. **1960 Raj L W 515 : I L R (1959) 9 Raj 1157.**

——S. 106 — Notice of termination of tenancy — Tenancy becoming one for fixed term under R. 9, of Cochin Non-Residential Rent Control Order of 1118 — Expiry by efflux of time — (Houses and Rents — Cochin Non-Residential Rent Control Order (1118), Rule 9).

Tenancy originally a monthly one — Valid notice of termination served and accepted — Tenant claiming extension of time by six months as per Rule 9 of Cochin Non-Residential Rent Control Order of 1118 — Extension allowed by Rent Controller — Tenancy becomes one for definite term only and expires by efflux of time — Such tenancy is not governed by S. 106 — No notice terminating tenancy is necessary. **I L R (1953) Trav-Co 706 : 1953 Ker L T 551 : AIR 1953 Trav-Co 577 (578) (Pt B) (Pr 5) (DB).**

3. Perpetual lease.

——S. 106 — Landlord and tenant — Permanent tenancy — Presumption — Jodi village — Lands in—Right of occupants — Khadim tenants or permanent tenants—Survey records—Entries in — Weight of as evidence. See Evidence Act (1872), S. 3. **A I R 1953 Mys 44 (DB).**

●——Ss. 106 and 105 — Permanent tenants — Duration of tenancy. See T. P. Act (4 of 1882), S. 105. **A I R 1961 Pat 321 (FB).**

——S. 106 — Deed — Construction — Lease deed — Perpetual lease. See Registration Act (1908), S. 17 (1) (d). **A I R 1955 N U C (Pepsu) 255 (DB).**

——S. 106—Deed—Construction—Permanent tenure.

Document styled as kozhuvirkha panayam—Document expressly stipulating that transaction could be brought to an end at any time at option of either party by claiming redemption or making a demand for the mortgage money — Document held did not create a permanent tenure akin to a kanom. **A I R 1953 Trav-Co 269 (270) (Pt B) (Pr 3).**

4. Tenancy-at-will.

——S. 106 — On failure to pay rent agreed, lessor to eject lessee—Default—No notice is required.

Where the rent note provides that "in case of the lessee's failure to pay the rent agreed, the lessor would be entitled to eject the defendant", no question of notice can arise at all as, when such a contingency arises, the lessor can sue to eject the lessee straightway as a mere trespasser. **1951 All W R (H C) 225 : A I R 1952 All 141 (143) (Pt B) (Pr 9).**

——S. 106—Lease — Nature of — Lease of shop for eleven months — Continuation thereafter at will of landlord — Expiry of term — Lessee continuing in possession and dying sometime later — Lessee's heir in possession—Liability to ejectment.

Where a lease of a shop for 11 months providing for the lessee continuing thereafter continues in possession after the expiry of the term paying rent to the landlord and dies thereafter his son cannot remain in possession claiming to have become a tenant by inheritance. The original lessee was when he died only a tenant at will and so the lease determined by his death and no interest passed to his son. The latter is therefore a trespasser and could be sued without any notice to quit. **1951 All L J 179 : I L R (1952) 1 All 85 : A I R 1950 All 583 (587) (Pr 12) (DB).**

——S. 106—Applicability—Tenancy-at-will.

Section 106 of the Transfer of Property Act has no application at all to a case of tenancy-at-will. **A I R 1959 J & K 87 (88) (Pt B) (Pr 4).**

——Ss. 106, 110—Lease for three years fixing yearly rent—Lessee remaining in possession after expiry of term—Tenancy-at-will—Notice to quit—Validity.

According to the term of the lease fixing yearly rent deed the tenancy could be determined after the expiry of the period of three years only by a demand by the landlord. The tenant continued to be in possession and paid rent from year to year. The landlord filed a suit for recovery of possession after giving notice. It was contended that the suit was not maintainable for want of proper notice.

Held, that as no demand for surrender was made by the landlord the tenant must be deemed to be in possession under the terms of the tenancy created by the lease deed. As that tenancy had not been determined the tenant was not really holding over but was in possession by virtue of the tenancy-at-will created by that document. The tenancy was not from year to year merely because an yearly rent was

reserved in the lease deed or because the rent was paid on an yearly basis after the period specified therein. The tenancy evidenced by the lease deed was a tenancy-at-will and although it was certain for a period of 3 years thereafter the tenancy was one at will and therefore the notice given by the landlord although not expiring with the end of the year or of the month of the tenancy, was a proper notice and that determined the tenancy. A I R 1950 All 583, Rel. on ; 11 T L T 279, Dissented from. 1963 Ker L T 1009 : 1963 Ker L J 1125 : A I R 1964 Ker 218 (219, 220) (Pt B) (Prs 8, 12) (DB).

——S. 106 — Landlord and tenant — Nature of tenancy.

Where though the rent fixed is for a year, it was to be paid from month to month as it became due, it cannot be said that the rent note was executed for a fixed period and where there is also a provision that the tenant would vacate the premises at any time whenever called upon by the landlord to do so, it shows that the tenancy created is one of tenancy at will. In such a case the tenant would not be entitled to the statutory notice. A I R 1952 Kutch 13 (13) (Pt A) (Pr 2),

——S. 106—Contract to contrary — Agreement that tenancy may be determined by either party at any time—This is contract to contrary. A I R 1955 N U C (Madh B) 3877.

——Ss. 106, 105 and 108 (h) — Tenancy-at-will—Possession under void lease — Payment of rent—Nature of tenancy created will be in accordance with S. 106—Determination of tenancy-at-will — Right of lessee to remove structures. See T. P. Act (1882), S. 105. A I R 1961 Pat 350.

——Ss. 106 and 111 — Suit for ejectment of underraiyat and tenant-at-will—Notice to quit—Necessity of.

Whether the tenant is under-raiyat or a tenant-at-will notice to quit or demand of possession or intimation to the tenant determining his tenancy is prerequisite to afford the plaintiffs a cause of action for a suit for ejectment. 1956 B L J R 427 : 1956 Pat L R 86 : A I R 1957 Pat 37 (40) (Pt E) (Pr 8) (DB).

——S. 106 — Tenancy-at-will — Termination of — S. 106 does not apply.

Where the tenants undertake to give vacant possession of the premises whenever the landlords may desire them to do so the tenancy so created is a tenancy-at-will. In a case like that, no notice within the meaning of S. 106 of the Transfer of Property Act is at all necessary to terminate the tenancy.

Held, that S. 106 of the T. P. Act could not in this case be called into operation as it was a tenancy created at a time when the T. P. Act did not apply. 1963 Raj L W 459 : I L R (1963) 13 Raj 990 : A I R 1964 Raj 79 (81) (Pt B) (Pr 15).

——S. 106 — Tenancy-at-will — Lessee in rent note writing that he would vacate premises whenever lessor would ask him to do so — Tenancy is at will and both parties have right to determine the same whenever they desire by expressing their will to the other party. See T. P. Act (1882), S. 105. 1959 Raj L W 353.

——S. 106—No provision as to duration of tenancy—S. 106 comes into play — It will be presumed to be one from year to year or month to month according to purpose of the tenancy and not a tenancy-at-will. A I R 1955 N U C (Raj) 4072.

——S. 106 — Tenancy-at-will — Can only be created by express agreement terminable at will of either party or by implication where no rent is reserved and it is taken for granted that the occupation is terminable at the request of either party at any time. See T. P. Act (1882), S. 105. A I R 1955 N U C (Raj) 4072.

——S. 106—Tenancy-at-will.

Whether tenant is entitled to notice to quit or not depends on his status. In case of tenancy-at-will no formal notice to quit is necessary and a mere demand for possession is enough. A I R 1955 N U C (Trav-Co) 765 (Pt D) (DB).

5. Lease for indefinite period.

——Ss. 106 and 111 (c) — Mortgagee in possession granting lease not for specific period—Determination of lease.

Under S. 111 a lease which determines is a lease which would enure beyond the period of the mortgagee's interest in the property. But where a mortgagee in possession grants a lease, not for any specific period or on a permanent basis, provisions of S. 111 (c) are inapplicable as such a lease could be determined in the manner provided in S. 106. AIR 1955 Kutch 11 (12) (Pt A) (Pr 5).

——S. 106—Period of lease—Contract to the contrary—Lease for indefinite period with option to tenant to terminate it any time—Construction.

There is a statutory presumption for construing a lease of immovable property for other than agricultural or manufacturing purposes as one from month to month and the burden of proving a contract to the contrary lies very heavy upon the tenant and he must have satisfactory evidence to displace the presumption and to establish a definite contract.

Held, on facts that the condition of the lease did not purport to create a lease other than a lease from month to month and the only purpose of the condition was to guarantee to the tenant the protection of the Rent Control legislation that might remain in force from time to time. The Rent Control legislation having ceased to operate in the area in question, the parties must be governed by the general law as embodied in the Transfer of Property Act. Under that law, the landlord had an unqualified right to determine the tenancy by a notice to quit. When this was done, the landlord was entitled to eject the tenant. AIR 1941 Pat 228, Rel, on. ILR 36 Mad 557, Ref. ILR (1960) 10 Raj 1097 : 1960 Raj L W 555 : AIR 1961 Raj 203 (205, 206) (Prs 16, 26, 27).

6. Law to the contrary.

——S. 106 (as amended in U. P.)—Lease governed by U. P. Rent Control Act (3 of 1947)—Composite notice under S. 3 (1) (a) and S. 106—Concurrent running of two periods — Valid. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1) (a). AIR 1965 All 291.

——Ss. 106 and 114—S. 114 only applies where forfeiture for non-payment of rent is incurred under terms of lease — Termination of lease by valid notice to quit — Wilful default in payment of rent—U. P. Temporary Control of Rent and Eviction Act, S. 3 (1) (a)—Effect of—S. 114 not applicable. See Transfer of Property Act (4 of 1882), S. 114. AIR 1961 All 95.

—S. 106 — Ejectment suit against tenant — Conditions under S. 3 (1), U. P. (Temp.) Control of Rent and Eviction Act, 1947—District Magistrate's permission prior to issuing notice under S. 106, T. P. Act not necessary — Relationship of landlord and tenant continues even after notice under S. 106. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1). 1961 All L J 124.

——S. 106 — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 3 (1) (a)—Notice under, should be served personally on tenant — Purpose of notice is different from notice under S. 106, T. P. Act. See Houses and Rents — U. P. (Temporary) Control of

Rent and Eviction Act (25 of 1947), S. 3 (1) (a). **AIR 1960 All 477.**

——S. 106 — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1) — Termination of tenancy by service of notice under S. 106, T. P. Act not barred. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1). **AIR 1960 All 408.**

——S. 106—Plaintiff obtaining permission from District Magistrate under S. 3, U. P. (Temporary) Control of Rent and Eviction Act - Even then notice under S. 106, T. P. Act is necessary. AIR 1952 All 863, Foll. **1952 All L J 727 : 1953 All W R (H C) 18 : AIR 1953 All 218 (219) (Pt A) (Prs 10, 11).**

——S. 106 — Landlord and Tenant — Occupancy rights—Nature of.

Occupancy ryots are not, in the strict sense of the word, mere tenants to whom the right to enjoy the property alone has been transferred; occupancy rights are heritable and transferable and cannot be regarded merely as rights accruing upon a lease. **ILR (1950) 2 Assam 257 : AIR 1950 Assam 133 (136) (Pt C) (Pr 17) (DB).**

● ——S. 106—Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948) (as it stood prior to its Amendment in 1956), Ss. 34 (1), 2 (20) — Protected tenancy for fixed period — Termination by one year's notice—Period of notice need not terminate on any particular date but must not expire earlier than date of expiry of contractual tenancy — T. P. Act (1882), S. 106— Not applicable. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 34 (1). **AIR 1962 Bom 71 (FB).**

● ——S. 106—Applicability—Case under West Bengal Premises Tenancy Act, 1956 — Notice under S. 106, T. P. Act is still necessary. See Houses and Rents—West Bengal Premises Tenancy Act (12 of 1956), S. 13 (6). **AIR 1964 Cal 1 (SB).**

——S. 106—Notice under S. 13 (6) of W. B. Premises Tenancy Act—Notice under S. 106, T. P. Act not required. See Houses and Rents — W. B. Premises Tenancy Act (12 of 1956), S. 13 (6). **AIR 1961 Cal 175 (DB).**

——S. 106 — Bombay Act (57 of 1947) is special Act —Notice under S. 106, T. P. Act not necessary. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (2). **(1962) 3 Guj L R 182.**

——S. 106—Landlord and tenant—Occupancy rights —Acquisition of —Long possession and payment of Batai by tenant — Tenant acquires no occupancy rights.

A tenant enjoying cultivable possession for a long period over twelve years but paying half produce or Batai to the landlord cannot acquire occupancy rights. **AIR 1950 Him Pra 4 (4, 5) (Prs 2, 30).**

——S. 106—Section 106, Transfer of Property Act is not controlled by provisions of Accommadation Control Act — Landlord can sue for eviction of tenant if tenancy is terminated and ground under S. 4 of Accommodation Control Act exists—Composite notice terminating tenancy and demanding arrears of rent given—Notice is not invalid. 1961 M P L J 381, Foll. **1964 M P L J (Notes) 5.**

——S. 106—Contractual tenancy — Notices preceding suit for eviction and rent — Suit not maintainable unless two notices, one under S. 106 of T. P. Act, for determination of tenancy and another under S. 12 (2), of Bombay Rent Act demanding rent are issued — Latter notice can be issued during notice—Period of the former — Two notices can even be combined. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 12 (2). **AIR 1965 Mys 65 (DB).**

——S. 106—Applicability — Does not apply to statutory tenant — His occupation does not confer any right on him and is not required to be terminated by notice under S. 106. AIR 1961 S C 1067, Foll. **1963 Mys L J (Supp) 394.**

——S. 106—Eviction of tenant under Madras Tenants Protection Act (1955) — Prior notice by landlord not necessary. See Tenancy Laws — Madras Cultivating Tenants Protection Act (25 of 1955), S. 3 (2). **ILR (1961) Mys 252.**

——S. 106 — Notice determining lease on obtaining previous permission of Rent Controller — Effect of filing appeal against Controller's orders indicated. See Houses and Rents — C. P. and Berar House Rent Control Order (1947), Cl. 21. **AIR 1951 Nag 203.**

——S. 106— Houses and Rents— Orissa House Rent Control Act (31 of 1958), S. 2 (5)—"Tenant"—Who is —Suit to evict tenant after termination of tenancy—Compromise decree—Construction—Intention not to create lease—Tenant held was not statutory tenant but licensee — He was not protected by the Act. See Houses and Rents — Orissa House Rent Control Act (31 of 1958), S. 2 (5). **ILR (1964) Cut 229.**

——S. 106 — Applicability — Eviction proceedings under S. 7, Orissa House Rent Control Act (1958)— Notice to quit under S. 106 not necessary.

Termination of the tenancy under S. 106, Transfer of Property Act is not a condition precedent to the institution of eviction proceedings under S. 7 of the Orissa House Rent Control Act. This is evident from the definition of "tenant" in S. 2 (5) of the latter Act which includes also a person whose tenancy might have been terminated by a notice under Transfer of Property Act. AIR 1949 Mad 780 and AIR 1949 Mad 139 and AIR 1950 Mad 746 and AIR 1949 F C 124, Rel. on : AIR 1960 All 211 and AIR 1953 Sau 119; Dist. **(1962) 4 O J D 79 : ILR (1962) Cut 152 : 28 Cut L T 173 : AIR 1962 Orissa 173 (175 to 177) (Prs 6, 8, 9, 13, 15) (DB).**

——Ss. 106 and 111 — Impediment of S. 106, T. P. Act no longer controls operation of S. 11 of Bihar Act (3 of 1947). See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11. **1964 BLJR 701.**

——S. 106 — Contractual tenancy — Terminated by notice to quit — Acceptance of amount tendered as rent by legal representative of the tenant, since deceased — Effect — Statutory tenancy—Acceptance of the amount does not amount to waiver of notice to quit—Statutory tenancy is a personal right which is not heritable.

Where a contractual tenancy is terminated by notice to quit, the tenant becomes a statutory tenant. A statutory tenancy under a Rent Act is a personal right enjoyed by the tenant, who has ceased to be a contractual tenant, and it does not create a right which is heritable. AIR 1958 Punj 263 and 62 Pun L R 451, Foll. AIR 1951 Bom 175 and AIR 1954 Bom 56 Rel. on. The mere fact that the arrears of rent tendered by the legal representative of the tenant were accepted by the plaintiff does not make him their tenant. For mere acceptance of the rent does not operate as waiver of notice to quit served upon the tenant since deceased. **AIR 1964 Punj 356 (356, 357) (Prs: 5, 6).**

7. Presumption of yearly or monthly tenancy under this section.

● ——S. 106—Applicability to leases implied by law.

The rule of construction embodied in S. 106, T. P. Act applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. Ram Kumar v. Jagdish

Chandra. 1952 SCR 269 : 1952 SCA 79 : ILR 31 Pat 21 : 1951 S C J 813 : 1952 Mad W N 120 : 65 Mad L W 219 : AIR 1952 S C 23 (26) (Pt A) (Pr 13).

● —S. 106 — **Lease of land for building purposes for ten years fixing yearly rent—Lease inoperative under law — Acceptance of yearly rent — Tenancy from month to month arises by implication of law.**

The defendant executed a registered Kabuliat dated 8.12.1924 in favour of the Receiver who was in charge of the plaintiff's estate by which he purported to take a settlement of land in suit for building purposes for a period of 10 years at an annual rent. The first payment of annual rent was made on 3-3-1925 and the second payment was made on 16-3-26. Since then no further payments were made. The Kabuliat not being an operative document under S. 107, T. P. Act, the question was whether the tenancy created by implication of law was a monthly tenancy under S. 106, T. P. Act.

Held that the tenancy created by implication of law in favour of the defendant should be held to be from month to month since its inception in 1924. The tenancy not being for manufacturing or agricultural purposes it could be regarded as a tenancy from month to month under S. 106 unless there was a contract to the contrary. The stipulation as to payment of annual rent would no doubt raise a presumption that the tenancy was from year to year but being contained in an inoperative document could not come in the way of raising a presumption under S. 106. A lease for one year certain could not be inferred from the payment of annual rent because to do so would be to substitute a new agreement for the parties which they never intended to do. 11 C W N 1124 : AIR 1916 Cal 358, Approved. Ram Kumar v. Jagdish Chandra. 1952 SCR 269 : 1952 S C A 79 : ILR 31 Pat 21 : 1951 S C J 813 : 1952 Mad W N 120 : 65 Mad L W 219 : AIR 1952 S C 23 (26, 27) (Pt C) (Prs 13, 15, 16).

——S. 106—(As amended by U. P. Act 24 of 1954). Notice to quit in terms of amended S. 106 of T. P. Act is legal. See U. P. Civil Laws (Reforms and Amendment) Act (24 of 1954), S. 3. ILR (1961) 2 All 224.

——S. 106— **Notice to terminate tenancy — Form of —Repeated notices demanding payment of rent with threat to terminate tenancy — No intention to terminate tenancy.**

No hard and fast rule or technical formula can be laid down about the language of a notice under S. 106. The precise words are immaterial provided the notice terminates the tenancy. Where the landlord wrote to the tenant, that he had not paid the rent in spite of repeated demands and the notice ended thus (translated in English) : 'Now you will kindly pay by the end of July, 1956 a sum of Rs. 50 in respect of rent and also vacate the house and hand over possession to us or else at the expiry of the period of this notice suitable action will be taken against you in the law Courts' taking into consideration the fact that the landlord had sent repeated notices like this, the notice was capable of the interpretation that it was another demand for rent coupled with a threat to terminate the tenancy and in such a situation the benefit of the doubt should go to the tenant and therefore, this notice did not indicate a clear decision to terminate the tenancy. 1961 All L J 152: 1960 All W R (HC) 96 : AIR 1960 All 544 (545) (Pt A) (Pr 3).

——S. 106—**Presumption of yearly tenancy.**

The presumption laid down in S. 106 applies only in the absence of a contract to the contrary. Where, therefore, there is a specific contract that the rent will be paid from month to month and the lease is for a fixed period of eleven months only, then under the contract it cannot be said that the lease is from year to year and that as such it can only be determined by a six month's notice on the plea that the lease of the premises is for manufacturing purpose. 1955 All L J 304 : AIR 1955 All 679 (680) (Pt A) (Pr 5) (DB).

——Ss. 106, 117—Land let out for agricultural purposes held was non-occupancy tenancy from year to year. AIR 1955 N U C (All) 4168.

——S. 106—**Nature of tenancy — Presumption as to from mode of payment of rent.**

The mode in which rent is expressly payable affords a presumption that the tenancy is of a character corresponding to the nature of the monthly or the annual payment. AIR 1955 Assam 102 (Pt B) (Pr 6) (DB).

——Ss. 106, 116—**Holding over under invalid lease from year to year.**

Normally, in the absence of a written lease a presumption of annual tenancy may be drawn from the fact that rent was payable annually.

Where the agreement of lease for residential purpose is not in writing the stipulation as to payment of annual rent is a condition of an inoperative lease. Section 106, T. P. Act, comes into play and the tenancy, therefore would be from month to month. A fifteen days notice expiring with the end of the month of the tenancy would be valid in law.

To exclude the operation of S. 106 the contract should be a valid contract. It need not be express, and may be implied but if it is no contract in law, S. 106 will be operative and will regulate the duration of the lease. I L R (1953) 5 Assam 207 : A I R 1954 Assam 58 (58) (Pt A) (Pr 6).

——Ss. 106, 105—**Lease of uncertain duration.**

S. 105 does not require that term of lease should be certain on the date of the lease. The period can be express or implied. Provision for a period implied by law or usage would be enough. This is clear from language of S. 106 which provides that in the absence of a contract or usage or local law to the contrary a lease would be deemed to be from year to year if it is for agricultural purpose and from month to month if it is for other purposes. AIR 1954 Assam 58 (59) (Pt B) (Pr 6).

——S. 106 — **Presumption regarding duration of tenancy — When arises (Tenancy Laws— Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 5)**

The presumption as to the duration of tenancy arises under S. 106, T. P. Act only in the absence of a contract or local law or usage to the contrary. The Bombay Tenancy Act clearly displaces this presumption by making it impossible for the landlord to terminate the tenancy either of a protected or non-protected tenant by giving a six months' notice expiring at the end of the year. The tenancy of protected tenant cannot, therefore, be regarded as one from year to year. 55 Bom L R 341 : AIR 1953 Bom 332 (332) (Pt B) (Pr 2) (DB).

——S. 106 — **Lease of bagat land for purpose of residence by erecting non-permanent structures — — Duration — Year to year or month to month— (Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), S. 4 (b)).**

Where the lease deed shows that the tenant took a lease of some bagat lands for the purpose of residence by erecting non-permanent structures for an indefinite period and although an annual rent was reserved, even this was payable in two equal instalments in Aswin and Chaitra of each year, such a lease under S. 106 of the Transfer of Property Act, taken for residential purpose is terminable by fifteen

days' notice expiring with the end of the month of the tenancy and by three months' notice under S. 4 (b) of the Calcutta Thika Tenancy Act. (1957) 99 Cal L J 65 : 61 Cal W N 170.

——Ss. 106 and 105: — Intention to create permanent lease — No operative lease coming into existence — Party remaining in possession and paying rent —Presumption and duration of tenancy.

Where even though the parties intended to create a permanent lease no operative lease came into existence and the defendant remained in possession of the land belonging to the plaintiff with his permission and paid rent to him, a tenancy has to be presumed. There being no valid contract for a permanent lease, the tenancy should be deemed to be from month to month, terminable on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy. 95 Cal L J 230 : AIR 1955 Cal 502 (502, 503) (Prs 6, 8) (DB).

——S. 106 — Unilateral Kabuliat — Implied tenancy from payment and receipt of rent — Tenancy if hit by S. 91, Evidence Act — Presumption under S. 106, T. P. Act arises —If purpose of implied tenancy was residential it would be tenancy from month to month to be reckoned according to British calendar unless there is anything repugnant in the subject or context. See T. P. Act (1882), S. 105. A I R 1955 N U C (Cal) 5584.

——S. 106 — Presumption of monthly tenancy — Building lease — Subsequent agreement raising rent and fixing term of lease rendered void for non-registration —Lessee continuing in possession after expiry of lease — Presumption of monthly tenancy can be drawn in absence of contract to contrary, subsequent agreement being void.

After terminating old lease a new agreement of lease raising the rent and fixing the term of lease for two years was entered into but was not registered as required under the Transfer of Property Act. If the lessee continues in possession even after the expiry of two years period under the new arrangement a presumption of monthly tenancy can be drawn as there was no contract to the contrary for the reason, that the new arrangement was in the eye of law no contract at all. AIR 1952 S C 23, Foll. 1964 Ker L T 455 : 1964 Ker L J 536.

——S. 106—Tenancy not for manufacturing or agricultral purposes — Tenancy deemed to be monthly. 1952 S C R 269, Rel. on. 1963 M P L J (Notes) 77.

——S. 106 — Tenancy of house — Presumption is of monthly tenancy — Rent note saying that Rs. 6 were paid for a year —It does not show clearly tenancy.

In the case of a tenancy of a house the presumption always is that it is a monthly tenancy unless there is something to the contrary.

Where the rent note says that on the date of execution Rs. 6 were paid as rent for the year, that does not show that it is a yearly tenancy. Rents are paid sometimes in a lump sum at the end of a year even though the tenancy may be a monthly one. 1952 Nag L J (Notes) 165.

——Ss. 106, 107 — Lease for residential purposes — Execution by only lessee—Validity.

Where a lease for residential purposes though registered is executed by the lessee only but not by lessor it is not in accordance with the provisions of S. 107, and hence the document has to be completely ignored but when the tenancy is the accepted position it would be governed by the presumption arising under the provisions of S. 106, T. P. Act (1882). ILR (1959) Cut 296.

——S. 106—Presumption of monthly tenancy.

Where the allegation is that a monthly rent is paid in respect of a tenancy for residential purposes and no case of tenancy at will is alleged the tenancy is a monthly tenancy. 19 Cut L T 29 : A I R 1953 Orissa 245 (245) (Pt A) (Pr 5).

——S. 106 — Landlord and tenant — Permanent tenancy — Presumption and inference of — Origin of tenancy not known—Long possession on uniform rate of rent without being evicted and devolution from father and son—Inference of permanent tenancy not justified. See Tenancy Laws — C. P. Tenancy Act (1898), S. 3. A I R 1952 Orissa 165 (DB).

——S. 106 — Usufructuary mortgage and lease back on monthly rent by executing unregistered kirayanama by mortgagor — Acceptance of rent by mortgagee — Presumption as to monthly tenancy applies. See T. P. Act (1882), S. 58. AIR 1961 Pat 133 (DB).

——Ss. 106, 107 — Absence of registration — Court cannot make out new contract for parties — Original terms of tenancy incapable of being proved—Tenancy is one from month to month — A I R 1943 All 279; A I R 1934 Pat 329, Diss. from. A I R 1955 N U C (Raj) 4072.

——Ss. 106 and 107 — Guardian — Perpetual lease of minor's reserving annual rent — Lease not executed by both parties — Presumption of monthly tenancy —If binding on minor—No sanction of Court obtained — Effect — (Guardians and Wards Act (1890), S. 29.

Held, on facts that the lease deed not having been executed in accordance with S. 107 could operate only as a tenancy from month to month by virtue of S. 106 and therefore no sanction of the District Judge under S. 29, Guardians and Wards Act was necessary for the lease. Therefore the widows as well as the minors would be bound by that monthly lease as it was within the competence of the widows to grant such a lease. A I R 1952 S C 23, Rel. on. A I R 1957 Tripura 1 (4) (Pt F) (Pr 12).

8. Lease for agricultural or manufacturing purposes.

——S. 106 (as amended by U. P. Act 24 of 1954) — Termination of lease—Notice—Lease of shop found to be for manufacturing purpose — Such lease is governed by S. 106—Notice of six months is required.

In respect of a tenancy found to be one for manufacturing-purposes, the rule of construction in S. 106 of the Transfer of Property Act lays down that it would be deemed from year to year. Even though the parties fail to carry out their intention by having the terms of the tenancy reduced in writing and get it registered and no yearly tenancy has come into existence in law because of S. 107 of the Transfer of Property Act, yet as far as the applicability of S. 106 is concerned, it is deemed to be from year to year once it is shown that the defendant took the shop in question for manufacturing purposes. And, therefore, for terminating the lease a notice of six months is required under S. 106 of the T. P. Act, (1882). A I R 1952 S C 23, Rel. on.; A I R 1952 All 634 and A I R 1936 Oudh 102 held not good precedents. 1964 All W R 575 : 1964 All L J 1033 : A I R 1965 All 187 (188, 189) (Pr 5).

——S. 106—Lease for manufacturing purposes.

In considering whether a lease is for manufacturing purpose the Court must look to the original intention of the parties which can be gathered from the deed itself and not to the subsequent conduct of the lessee. If after taking a lease for a show-room the lessee, (a manufacturing concern) began to carry on any manufacturing operation upon the premises the lease is not converted into one for manufacturing purposes. The very fact that the lease was only for a

period of one year indicates that the original intention was not to let out the premises for manufacturing purposes. 1951 All W R (HC) 67 : 1951 All L J 154 : A I R 1951 All 396 (398) (Pt D) (Pr 6) (DB).

● —S. 106—Goalpara Tenancy Act (1 of 1929), S. 4 (10)—For purposes of being an under raiyat the land must be one as described in S. 4 (10) — Tenancy for residential purposes and for stacking timber which is commercial purpose—Tenancy is governed by Transfer of Property Act and not Goalpara Tenancy Act — Notice to quit should be under Transfer of Property Act and not under Goalpara Tenancy Act. See Tenancy Laws — Goalpara Tenancy Act (1 of 1929), S. 4 (10). A I R 1952 Assam 100 (FB).

——S. 106 — Purpose of tenancy — Lease to a company — Reference to recital in Memorandum and Articles of Association not proper for deciding such purpose.

As regards the purpose of the tenancy granted to a company it is wrong to refer to the objects as recited in the Memorandum and Articles of Association because in the Memorandum and Articles of Association many objects may be mentioned, but a company may actually be doing a limited business covered by one only of the objects mentioned. Thus the actual business which was being done by the company must be looked into for determining the object of the lease. AIR 1963 Cal 198 (203) (Pt G) (Pr 19).

——S. 106—Lease for manufacturing purpose—Lease of premises for both building and repairing of coaches and motor cars—Lease is for manufacturing purpose.

It is the dominant purpose of the lease that should be considered to govern the lease for deciding the kind of notice required under S. 106. Manufacture must be understood in the popular sense of making articles of trade and commerce by means of machinery. From that point of view preparation of sweetmeats, for sale done in a kitchen does not amount to manufacture. Similarly, printing with a small press set up in a room of a dwelling house cannot also be treated as manufacturing, although the printing and making of magazines and books in rotary press machines may be regarded as manufacturing Where coaches and cars are both built and repaired, the building or manufacture should be taken as the dominant purpose. Coach building and building of bodies of cars and buses may be considered as making of articles of trade and commerce by means of machinery. That being so, the leases in such a case must be regarded as manufacturing leases, and so 15 days notice ending with a month of each tenancy must be held to be insufficient; it is necessary to serve 6 months notice ending with a year of the tenancy. A I R 1952 Cal 320 and A I R 1954 Cal 224 and A I R 1959 Cal 181, Disting. AIR 1963 Cal 198 (204) (Pt I) (Pr 21) (DB).

——S. 106—Lease for manufacturing purpose—What constitutes—Hosiery factory run on premises—Occupation of one room by officer for residence — Still tenancy is for manufacturing purpose.

Where the lessee is running a hosiery factory in the premises the mere fact that one of the rooms is being occupied by one of his officers for residence would not make the purpose of the tenancy a residential purpose or a mixed purpose, i.e., both manufacturing and residential purpose. It would still be a manufacturing purpose. Six months' notice would be necessary. A I R 1924 Bom 115; A I R 1946 Cal 317, Rel. on.; A I R 1952 Cal 320, Disting. 66 Cal W N 414 : 1964 Cal L J 265 : AIR 1962 Cal 603 (609, 610) (Pt A) (Prs 6, 11).

——Ss. 108, 107 and 116 — Manufacturing unregistered lease — Notice to terminate — Applicability of S. 106.

Section 107, does not control S. 106 and, notwithstanding the former section, the latter will apply to a manufacturing lease, whether registered or unregistered so as to make it a lease from year to year for purposes of that section (S. 106), terminable with a six months' notice to quit, or, in other words, to control its duration and period of notice, in the absence of a contract or local law or usage to the contray. The lease will be a lease from year to year for the limited purpose of S. 106, that is, for the limited purpose of its duration and period of notice, the duration being until the notice expires. This will not raise any conflict with S. 107 : 54 C W N 58; A I R 1952 S C 23, Rel. on.; In S. 116, the statute itself indicates by necessary implication, that S. 106 will apply to all leases covered by the statute, whether under registered instruments or not, to supply the omission as to duration and period of notice. 63 Cal W N 29 : ILR (1959) 1 Cal 639 : A I R 1959 Cal 181 (185, 186) (Pt B) (Prs 26, 27) (DB).

——S. 106 — Lease for manufacturing purpose — What is.

A tenancy taken for starting a motor repair 'work' or a motor repairing workshop would not, even ordinarily or prima facie—and, certainly not, necessarily—be for a manufacturing purpose. It would come within the latter part of S. 106 namely, "any other purpose" and it would be terminable on a fifteen days' notice to quit as contemplated therein. I L R (1959) 1 Cal 639 : 63 Cal W N 29 : AIR 1959 Cal 181 (186) (Pt C) (Pr 33) (DB).

——S. 106 — Six months' notice—Right to — Conditions.

Unless a tenant proves that his tenancy is exclusively for agricultural or manufacturing purpose he is not entitled to the benefit of six months' notice as contemplated by the first half of S. 106. 97 Cal L J 1 : AIR 1957 Cal 198 (200) (Pt B) (Pr 5).

——S. 106—Manufacturing purpose — Preparation of sweetmeats for sale.

The use of the word "manufacture" to describe the process of preparation of sweets though not unknown is, generally speaking, not very appropriate and as a general rule it cannot be held that preparation of sweetmeats would answer the test of "manufacture" for purposes of Section 106 of Transfer of Property Act. Normally it does not.

Held, on facts that whatever the meaning of the words "manufacture" may be the lease in question was a lease so much for sale of sweets as for preparing the same in the disputed premises. That being so, it was not solely for manufacturing purposes but was as much for other purposes as well. It was, therefore, a lease for "any other purpose" within the meaning of section 106.

Held, further that the primary purpose of running the sweetmeat shop was to sell sweets, whether manufactured at the spot or brought from elsewhere. Accordingly even applying the test of primary purpose the disputed tenancy would not be held to be one for "manufacturing purposes" so as to require a six months' notice to quit for its termination. ILR (1955) 2 Cal 275 : AIR 1954 Cal 224 (225) (Pt A) (Pr 6).

——S. 106 — Manufacturing purpose, meaning of — Lease for setting up printing press — Printing simplicitor is necesarily a manufacture—Meaning of "manufacturing" explained. AIR 1952 Cal 320 (321, 322) (Pt A) (Prs 10, 13, 16).

——S. 106—A lease for manufacturing purpose must be a lease which at its inception is for that purpose by agreement of the parties and both parties must know that the lease is for manufacturing purpose at the time of the grant. If that is not so, the nature of

the subsequent user by tenant without agreement of the landlord will not convert it into one for manufacturing purpose. **AIR 1952 Cal 320 (322) (Pr 16).**

——Ss. 106 and 107—Scope of—There is no conflict or contradiction between them. (Obiter).

Obiter : Section 107 deals with the creation of a tenancy from year to year by act of parties. Section 106 provides for the case where the lease is for manufacturing purposes but the contract between the parties is silent as to its duration. In such a case the law supplies the omission and enacts that the lease shall be deemed to be a lease from year to year. The attachment of this incident to the lease by operation of law is a very different thing from the creation of a lease from year to year by act of parties. The two sections deal with entirely different matters and there is no conflict or contradiction between the two. **54 Cal W N 58 : I L R (1952) 2 Cal 443 : AIR 1950 Cal 23 (29) (Pt C) (Pr 23) (DB).**

——S. 106 — Plaintiff taking some land on non-agricultural lease from uncles and subleasing some to defendant for residential purposes — Upon death of uncles plaintiff inheriting their interest and amalgamating them with some non-agricultural holding inherited by him from father — Defendant held did not become under-raiyat, within the meaning of S. 4 (3), Bengal Tenancy Act, sub-lease being non-agricultural at inception — Notice under S. 106 held valid—Bengal Tenancy Act (8 of 1885), S. 4 (3). **54 Cal W N 149 : ILR (1950) 2 Cal 268 : AIR 1950 Cal 20 (22) (Pt A) (Prs 7, 9) (DB).**

——S. 106—Agricultural tenancy — Statute does not apply in terms—Equitable principle contained in it may apply—Interpretation of statutes.

Where a particular statutory provision applied in terms, the parties can invite the Court to decide, whether it is mandatory or directory. But where a statute as such has no application, but the Court still acts on its principles on the ground of equity and good conscience, it should only see whether there is substantial compliance. It is, as if they are applicable as broadly directory principles. **1960 Jab L J 998 : 1961 M P L J 398.**

——S. 106 — Lease of plot of land for carrying on groundnut business — Not one for manufacturing purposes — Six months' notice expiring with end of year not necessary. **(1964) 74 Mad L W 638 : ILR (1961) Mad 976 : (1961) 2 Mad L J 435.**

——Ss. 106 and 117—Agricultural lease — Provisions as to notice are applicable on grounds of justice, equity and good conscience—But it is enough if the notice is in fact reasonable.

Though Ss. 105 to 116 are not applicable as such to agricultural leases they would be binding as rules of justice, equity and good conscience. But under S. 117 the provisions as to notice contained in S. 106 are not 'proprio vigore' applicable to agricultural leases. It is enough if the notice is in fact reasonable —(Notice held reasonable). Case law Ref. **65 Mad L W 172 : (1952) 1 Mad L J 227 : I L R (1953) Mad 31 : AIR 1953 Mad 884 (888) (Pt D) (Pr 18) (DB).**

——S. 106—Lease for manufacturing purposes — In determining whether the lease is for manufacturing purposes, the Court has to ascertain the intention of the parties as appearing from the recitals in a deed, if available and not from the subsequent user and conduct of the lessee — Evidence indicating that the defendants were monthly tenants — That also is circumstance leading to the conclusion that the lease was not for manufacturing purposes. AIR 1952 Cal 320, Rel. on. **AIR 1964 Pat 214 (221, 222) (Pt D) (Pr 14) (DB).**

9. Reservation of yearly or monthly rent.

——S. 106—Tenancy month by month—Provision for payment of rent by the year as a term of the tenancy is possible. See Houses and Rents—U. P. (Tem.) Control of Rent and Eviction Act (3 of 1947), S. 3. **AIR 1964 All 210.**

[Overruled on another point in AIR 1965 All 498 (FB).

——S. 106 — Reservation of annual rent does not make tenancy an annual tenancy — It is purpose of tenancy which determines period of notice. A I R 1955 N U C (Assam) 1294.

——Ss. 106, 107 — Unregistered lease though yearly rent reserved—Effect.

Though a yearly rent is reserved, if there is no registered document as is required in such a case under S. 107, it must be held that though the intention may have been to create a lease from year to year, that intention was not expressed in proper legal form and so it cannot be given effect to and the Courts must proceed on the basis that there is no valid agreement between the parties and consequently the rights of parties will be regulated by the law as provided in S. 106 as if no agreement existed at **all.**

The tenancy not being for agricultural or manufacturing purposes must be held to be one from month to month and terminable by a fifteen days' notice expiring with the end of the month of the tenancy.

It is not permissible for the Court to fill up the lacuna in evidence in a matter of this nature by surmising. A I R 1952 S C 23. Foll. **59 Cal W N 526 : 95 Cal L J 165 : I L R (1956) 2 Cal 622 : A I R 1955 Cal 495 (496) (Prs 2, 3) (DB).**

——S. 106—Annual payment of rent—Tenancy whether annual or monthly.

The mere payment of rent annually would not make the tenancy an annual tenancy, if there are clear indications to show that the rent is calculated on a monthly basis. A I R 1919 Cal 529, Disting. **21 Cut L T 231 : A I R 1956 Orissa 95 (95) (Pt B) (Pr 5).**

——S. 106—Annual rent fixed — Tenancy is not from month to month merely because a house stands upon the holding. 18 Cut L T 117 : AIR 1951 Orissa 262 (264) (Pt E) (Pr 9).

——S. 106 — Lease on annual rent — No registered document — Tenant is tenant at will—Tenancy commencing from before Transfer of Property Act — Tenancy is not tenancy at will. 18 Cut L T 117 : AIR 1951 Orissa 262 (264) (Pt F) (Pr 9).

——Ss. 106, 107 — Monthly tenancy—Rent collected yearly—Fifteen days notice is valid. A I R 1965 Pat 311 (313) (Pt C) (Pr 5) (DB).

——S. 106 — Tenancy from month to month—Lease of shop without any term — Reservation of annual rent — Termination of, by notice to quit in accordance with S. 106 is necessary to terminate lease, when T. P. Act is applicable. A I R 1955 N U C (Sau) 983.

10. Lease from year to year.

——S. 106—Notice — Lease for one year—Notice to quit.

Where the lease of a land was only for one year, the defendant had stipulated to give back the land after the expiry of one year, and there was nothing on record to show that the plaintiffs had treated the defendant as a tenant holding over and they neither received any rent from him nor did any act indicating their intention to accept him as a tenant holding over :

Held, in the circumstances of the case that no separate notice to quit was necessary as the lease was for a specific period of one year. **1957 Andh L T 857 : (1957) 2 Andh W R 536.**

——Ss. 106, 107 — Lease for manufacturing purpose —Lease not registered — For purposes of S. 106 it must be deemed to be lease from year to year.

Where the lease is in fact for a manufacturing purpose even though there is no registered lease deed by which the lease was created, it must be deemed to be a lease from year to year for the purpose of the notice under S. 106 and 6 months' notice ending with the year of tenancy is necessary. AIR 1959 Cal 181, Rel. on; A I R 1952 Cal 320, Diss. from. **A I R 1963 Cal 198 (204) (Pt J) (Pr 22) (DB).**

11. Lease from month to month.

——Ss. 106, 107 and 110—Unregistered lease—S. 110 does not apply — Monthly tenancy under S. 106 is created. AIR 1955 N U C (Ajmer) 4791.

——S 106—Monthly tenancy — Notice of ejectment —Sufficiency.

Where the notice required the defendant to vacate the shop 'on 28th of the month or on any date on which the defendant considered that the month of his tenancy expired.'

Held, that it left entirely to the defendant to decide on which date the month of his tenancy expired and he could leave the shop on any month expired. The defendant could not in the circumstances say that he was prejudiced in any way by not getting sufficient notice to vacate the shop. AIR 1952 All 32, Affirmed; A I R 1949 All 173, Foll. **1957 All L J 804 : 1957 All W R (H C) 788 : A I R 1958 All 774 (774) (Pt B) (Pr 5) (DB).**

——S. 166—'For any other purpose.'

Where the tenancy is for 'residential and manufacturing purposes' as distinguished from 'manufacturing purposes' these 'mixed and multiple purposes' would take it outside the earlier clause and bring it within the later residuary clause 'for any other purpose.' AIR 1952 Cal 320, Foll. **93 Cal L J 354 : AIR 1955 Cal 169 (172) (Pt F) (Pr 19).**

——S. 106 — Monthly tenancy nature of, indicated. See Provincial Insolvency Act (1920), S. 34 (2). **AIR 1955 N U C (Cal) 756.**

——S. 106—Suit for ejectment—Notice to quit.

Absence of lease on record to show from which particular date of the month tenancy commenced— No dispute raised by defendant as to what was the month of tenancy or on which particular day of the month tenancy had commenced. Also defendant not traversing in written statement right of plaintiff to determine tenancy with effect from last day of a Bengali month — Presumption that tenancy ran from first day to the last day of a Bengali month, held could be drawn. **92 Cal L J 127 : AIR 1954 Cal 243 (244) (Pr 8).**

——S. 106 — Lease of godown — Termination of monthly tenancy—Notice is essential.

In the case of a lease of a godown to a co-operative society on monthly rent the lease has to be treated as from month to month terminable by a notice as required by S. 106, T. P. Act. In the absence of such notice the mere handing over of the key of the godown to the landlord would not terminate the tenancy and the tenant would be liable to pay the rent. The landlord was not bound to accept the key when it was sent through a peon or by registered post and when the entire rent of the godown from the date of the lease was in arrears. **1963 Ker L T 950 : 1963 Ker L J 806 : ILR (1964) 1 Ker 83.**

——S. 106—Tenancy from month to month — Agreement to pay rent periodically—Validity. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (15 of 1949), S. 7 (2). **AIR 1954 Mad 1016.**

——S. 106 —Nature of tenancy — S an annual tenant — D just occupying and continuing after S and paying rent as paid by S—Landlord unable to show agreement of annual tenancy — Tenancy is monthly one—Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order, 1949, Cl. 13 (3).

In the absence of any express agreement the ordinary law is that the tenancy will be presumed to be from month to month.

S was an annual tenant of the premises and D just went into occupation and continued there when S disappeared from the scene and kept on paying rent as S would have paid. The Rent Controller, in a previous application by the landlord to eject S on the ground that sub-tenancy had been in favour of D, held that a kind of tenancy had been created by acquiescence and knowledge of the landlord. The landlord made another application to eject D on the ground of failure to pay annual rent in advance. The landlord was unable to prove any agreement with D.

Held, that the onus lay on the landlord to prove the agreement and that in the circumstances the tenancy must be presumed to be a monthly one. **1952 Nag L J (Notes) 62 (DB).**

——S 106—Monthly tenancy—Rent collected yearly —Fifteen days notice is valid. AIR 1965 Pat 311 (313) (Pt C) (Pr 5) (DB).

——S. 106 — Monthly tenancy — Irregular payment of arrears of rent — Implied agreement to pay rent annually cannot be inferred. See T. P. Act (1882), S. 105. **1961 Raj L W 642.**

——S. 106 — 'Month to month' — Monthly tenancy according to Hindu calendar — Notice to vacate in such case.

The words 'month to month' or 'year to year' mentioned in S. 106, T. P. Act can be Hindi year or the Bengali year or the English year, as the case may be. Hence, when the tenancy is from month to month according to the Hindi calendar the notice according to S. 106, in the absence of a contract to the contrary, should be for vacating on the date on which the monthly tenancy expires according to the Hindi calendar : AIR 1916 Cal 575; AIR 1937 Cal 941; AIR 1952 Cal 19; AIR 1953 Assam 202, Rel. on. **1960 Raj L W 515 : ILR (1959) 9 Raj 1157.**

——S. 106 — Tenancy from month to month—Lease of shop without any term — Reservation of annual rent — Termination of by notice to quit in accordance with S. 106 is necessary to terminate lease, where T. P. Act is applicable. **AIR 1955 NUC (Sau) 933.**

12. Possession under invalid lease — Presumption.

●**——S. 106 — Lease of house fixing monthly rent and terminable on notice on either side — Lease is for indefinite period — Art. 35 (a) (iv), Stamp Act (1899), applies.** See Stamp Act (1899), Art. 35 (a) (i). **AIR 1961 Andh Pra 1 (FB).**

——S. 106—Lease—Legal title to lands under, found subsequently not with the lessor — Liability of the lessor and the lessee to mesne profits to the rightful owner —Mesne profits —Basis of right —(Civil P. C. (1908), S. 35, O. 20, R. 12).

In a suit filed on 21st January 1948, for ejectment and for recovery of profits, past and future, the plaintiffs, as the lawful owners of certain lanka land (patta to the same having been issued long back in their favour by the 1st defendant Government) questioned the lease dated 7th September 1944 by the

first defendant Government in favour of defendants 2 to 4 for three years in respect of the same land. The 1st defendant Government admitted the title of the plaintiffs to the suit land but pleaded that by an unfortunate mistake they were included in the lease, that on their being appraised of the mistake they caused a survey and check-measurement of the lands and directed on 25th February 1947 immediate exclusion of the suit lands from the lease and that they are prepared to hand over the rents received by them under the lease from defendants 2 to 4 and that they are not liable to any of the claims prayed for in the suit. Defendants 2 to 4 while denying the title of the plaintiffs to the suit land pleaded lawful possession under the lease and even after the expiry of the lease contended that they were tenants holding over and in bona fide possession, that they have not received any notice to quit and that the claim of the plaintiffs for mesne profits is against them was not sustainable and in any event was highly exaggerated :

Held, the rights of the plaintiffs to claim mesne profits depends upon whether the possession of the defendants was wrongful from the inception, i. e., from the date of the lease. So far as the 1st defendant is concerned he can be regarded as being in wrongful possession in the sense that he was taking the rent from the other defendants, though he was not entitled to do so. The 1st defendant therefore cannot retain the rent which is not legitimately his and has to disgorge himself of it. There is no basis for holding the 1st defendant a trespasser and make him liable jointly along with the other defendants for profits on the calculation of what defendants 2 to 4 got out of the land. The measure of damages in this respect can only be profits received by 1st defendant or which might have been received by him with due diligence,

Held further, it is difficult to look upon defendants 2 to 4 as trespassers. They were inducted into possession by the first defendant as lessees in the year 1944. At the time of the lease it was thought by all the parties concerned that the legal title to the lands existed in the Government.

The theory of "relation back" — wrongful possession from the inception can have no application to a case like the present where the title of the plaintiffs was not recognised on the date of the lease.

The plaintiffs before they could succeed in their claim for mesne profits should prove that they made a formal claim. Defendants 2 to 4 could not be viewed as trespassers from the time of their lease. It is only after the title of the plaintiffs to the suit lands has been accepted that their possession should be regarded as wrongful, i. e., after 25th February 1947 and they will be liable to pay mesne profits from that date. **(1954) 2 MLJ (Andhra) 141 : 1954 Andh L T (Civ) 128 : AIR 1955 Andh 36 (37, 38, 39, 40) (Pt A, B, C) (Prs 6, 11, 13, 14, 16).**

——**Ss. 106, 107** — Lease for five years not signed by lessor may be valid for purposes of Registration Act but the Transfer of Property Act would not recognise it as lease unless it is made in the manner laid down in S. 107. See T. P. Act (1882), S. 107. **AIR 1959 Assam 57 (DB).**

——**S. 106**—Annual lease for residential purposes—Deed invalid and unenforceable—Lessees continuing in possession—Monthly tenancy—Notice determining lease not expiring with the end of the month of tenancy — S. 106 is not satisfied. **AIR 1955 N U C (Assam) 2816.**

——**Ss. 107, 107 and 111 (g)** — Registered Kabuliat signed by lessee is invalid as lease — Possession under such lease and acceptance of rent by landlord—Lease by operation of law is created — Provision for re-entry for breach of condition against alienation contained in Kabuliat attaches to such lease—Breach of condition — Notice under S. 111 (g) not given — Decree for possession cannot be passed—(Registration Act (1908), S. 49)—(Evidence Act (1872), S. 91)—(Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (1949), Ss. 9 and 88). **AIR 1960 Cal 40 (43, 44) (Pt B) (Prs 16 to 18, 20).**

——**Ss. 106, 105** — Possession under invalid lease—Rent accepted—Nature of tenancy indicated—Notice to quit — Validity. See T. P. Act (4 of 1882), S. 105. **AIR 1953 Cal 349 (DB).**

——**Ss. 106 and 105** — Possession under invalid lease—Registered lease granted by Administrator of superseded municipality who had no power to grant such lease—Lease invalid — Permission to construct buildings granted subsequently by the Municipal Committee regularly constituted — Payment and acceptance of stipulated rent from lessee by such municipality for a number of years—Relationship of landlord and tenant is created by necessary implication — Tenancy must be held to have continued on terms contained in lease deed See T. P. Act (4 of 1882), S. 105. **AIR 1961 Madh. Pra 324 (DB).**

——**S. 106** — Yearly tenancy not registered — Effect. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13. **AIR 1960 Madh. Pra 124 (DB).**

——**S. 106—Tenant lessee under compulsorily registrable document but unregistered—Landlord applying for eviction under Rent Control Act after serving notice demanding possession within 7 days — Application cannot be dismissed for absence of notice under Section.**

Where the landlord filed an application under the Mysore House Rent and Accommodation Control Act for the eviction of a tenant who was a lessee under a compulsorily registrable document but which was not registered, after serving on him a notice demanding possession within seven days.

Held, that his application was not liable to be dismissed on the ground that it was not preceded by a notice terminating the tenancy as prescribed by S. 106, T. P. Act. 1961 Mys L J 712, Disting ; AIR 1961 S C 1067, Ref. to.

A person in occupation of a property under an unregistered but compulsorily registrable document did not become a monthly tenant who would be protected by the provisions of S. 106, even if rent was paid by him and it was accepted. AIR 1961 Pat 350, Diss. from.

Whether it was correct to treat the tenant in such a case as a mere licensee or a tenant-at-will a notice under S. 106 was not necessary to terminate the tenancy. A tenancy at will could be terminated by any act which was inconsistent with the will to continue the tenancy. A demand for possession such as the one made in the case being an act inconsistent with the will to continue the tenancy was sufficient to terminate the tenancy even without the issue of the notice prescribed by S. 106. AIR 1925 Cal 1171 and AIR 1943 All 279, Ref. to. **(1963) 2 Mys L J 494.**

——**Ss. 106, 111 and 116 — Lease invalid — Lessee entering into possession under lease—Nature of possession—Necessity of notice.**

Where a lease for a term of years or of perpetuity is granted but it is invalid, and the lessee enters into possession under such a lease, a tenancy may arise by implication from the payment of rent by the tenant and its acceptance by the landlord and a presumption of a yearly or monthly tenancy under S. 106 may be drawn in such cases. The lessee can neither be regarded as a tenant-at-will or a tenant at sufferance.

The lessor is not therefore entitled to possession of the property unless the lease is determined in any one of the ways enumerated in S. 111. ILR (1956) Nag 10 : 1955 Nag L J 742 : AIR 1955 Nag 306 (311, 312) (Pt H) (Prs 22, 23, 25) (DB).

● —Ss. 106, 105, 108 (b), 112—Possession of lessee under void lease—Lessee paying rent—Effect—Duration of tenancy has to be determined on basis of S. 106 — Acquisition of permanent tenancy by prescription. See T. P. Act (4 of 1882), S. 105. AIR 1960 Pat 344 (FB).

—S. 106—Lease—Possession of part of leasehold—Constructive possession of whole — Applicability of doctrine—Person in possession under invalid lease—Status of—Nature of possession—Right to claim constructive possession of entire leasehold.

The doctrine of constructive possession of the entire lands in a leasehold by proving possession of a part can be pressed in aid only by a person who has the legal title vested in him in the lease-hold. A person in possession under an invalid lease is a mere trespasser and such a person cannot invoke the aid of the principle of constructive possession of the whole. The possession of a trespasser is limited to the lands which are actually in his possession. AIR 1951 Pat 160 (163) (Pt B) (Pr 9) (DB).

13. Notice to quit—General principles.
See also Note 26.

—S. 106—Delhi and Ajmer Rent Control Act (1952), Ss. 13 (1), 38 — S. 13 is not inconsistent with S. 106 T. P. Act—Court is not entitled to pass ejectment decree, even if landlord has qualified himself for decree under general law—Right to eject under S. 106, T. P. Act has to be established — Notice under S. 106 is therefore necessary — Notice under S. 106, T. P. Act. See Houses and Rents—Delhi and Ajmer Rent Control Act (38 of 1952), S. 13 (1). AIR 1955 N U C (Ajmer) 4734 (a).

—S. 106 — Agricultural tenancy—Service tenure—Resumption of — Tenure holder is entitled to notice before resumption—Absence of notice—Istimrardar is not entitled to decree for possession. AIR 1955 N U C (Ajmer) 4754.

—Ss. 106, 116 — Tenant holding over — Notice to quit—Contract to the contrary.

A let his premises to B on 27th August 1940 for one year. The lease provided that either party might terminate the tenancy after one month's notice. A gave notice to B on 4th November 1942 requiring him to quit the premises on 4th December 1942. B was warned that if he did not vacate he would be liable to pay rent at enhanced rate.

Held that though the special contract as to notice abrogated the first rule in S. 106 regarding 15 day's notice still the notice had to comply with the second rule in that section and was invalid as it did not expire on the last date of a month of the tenancy. B was a tenant holding over after the expiry of one year and he must be deemed to be holding over on the same terms as were laid down in the original lease. AIR 1950 Ajmer 79 (80) (Prs 6, 7).

—S. 106 — Notice to quit—Validity—Notice to be interpreted as a whole — Statement in notice that if rent is not paid within one month landlord would file suit for rent and eviction — Condition held not vague—Contingency and condition distinguished — Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1) (a).

A notice stating that the tenancy shall stand terminated if the tenant does not pay rent within one month of its receipt is valid under S. 106.

A notice like any other document has to be read and interpreted as a whole. No particular words are prescribed for a notice under S. 106, T. P. Act. But it is well settled that the notice to quit should indicate with reasonable clearness and certainty an intention on the part of the person giving it to terminate the existing tenancy at a certain time. A notice, therefore, must not be vitiated by uncertainty or vagueness with regard to the intention of the person giving it. A conditional notice is invalid only if the condition contains this element of uncertainty or vagueness, that is, if the condition is of such a nature that it makes the intention of the person giving it vague or uncertain. [Observations in Mulla's T.P. Act, 4th edition, p. 619, commented upon.]

A notice would be bad if it is to take effect on a contingency, but a contingency is different from a condition which is certain and clear.

The difference between a notice based on an uncertain contingency and a notice terminating the tenancy unles the tenant pays up the arrears of rent is based on principles of equity and justice. The former type of notice places the tenant in an unfair position as he would not know, on the receipt of the notice, the precise fate of his tenancy and would be faced with the difficult problem of staying or finding accommodation elsewhere. But a notice terminating the tenancy unless he pays the rent does not depend upon any event or contingency outside the control of the tenant. It is entirely within his power to make the notice infructuous by promptly paying the rent. A notice stating that the tenancy shall stand terminated unless the tenant pays arrears of rent within the prescribed period is really a notice terminating the tenancy with a proviso in the tenant's favour that it shall stand automatically waived on payment of rent. A tenant cannot object to the validity of a notice which leaves nothing uncertain but gives him an option to treat the notice as waived on payment of rent.

A combined notice demanding rent under S. 3 (1) (a) of the U. P. Control of Rent and Eviction Act and terminating the tenancy unless the rent is paid contains a conditional notice under S. 106, T. P. Act. Such a notice is valid. (1898) I L R 22 Bom 241, Rel. on. 1965 All L J 298.

—S. 106 — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3:— Intention to terminate tenancy, upon failure to pay arrears within one month — Intention to terminate is to be gathered from the whole notice.

The nature and purpose of the notice must be gathered by reading the document as a whole and not from any words read out of context or from any omission to use the formal language of a solicitor. Where the landlord warns the tenant that if he fails to clear the arrears of rent within a month of the receipt of the notice he will be liable to ejectment and in that event he must treat the notice as a "legal notice" and vacate that accommodation within a month, it is clear that the demand that the tenant should vacate the accommodation signifies the termination of the tenancy and the words "legal notice" could only refer to a notice under S. 106 of the Transfer of Property Act. A I R 1960 All 544 and AIR 1960 All 477, Dist. A I R 1963 All 366 (367) (Pt A) (Pr 3).

—S. 106—Notice to be construed liberally—Notice stating that if tenant thought that tenancy commenced on some other date he might vacate on corresponding date — Notice not vague and held valid.

The Transfer of Property Act prescribes no form of notice nor any particular words. The object of the notice under S. 106 is to give the tenant sufficient time to vacate the premises and such a notice should

be liberally construed. The real point in such cases is that the person on whom the notice is served should understand that his tenancy has been terminated and he is required to vacate at the end of the period of the tenancy. If the tenant attacks the notice on the ground of vagueness he must show that its defective language caused him to misunderstand its nature.

Where the notice given by the landlord said "or if you think that the tenancy commenced on some other date, you may vacate the land on the corresponding date."

Held, that the notice was not indefinite and vague and was valid. A I R 1949 All 173, Rel. on, **1963 All W R (HC) 132 : AIR 1963 All 54 (54) (Pr 4).**

——S. 106 — Notice to quit—Copy of notice filed in suit for ejectment — Copy containing no signature of landlord — Presumption is that copy is the true copy of original — Onus is on landlord to prove that original notice contained his signature — Obiter — Evidence Act (1872), Ss. 101-104. AIR 1960 All 410 (412) (Pt B) (Pr 19).

——S. 106 — Notice—Service of—(Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3).

A notice under S. 106 will not be dependent on the existence of permission under S. 3 of Act 3 of 1947. It can be given before the permission simultaneously on the same date when the permission is sought, and accorded, or after the permission has been granted. ILR (1954) 2 All 48 and 1956 All L J 787, Rel. on. **ILR (1959) 2 All 284 : A I R 1960 All 211 (213) (Pt A) (Pr 15) (DB).**

——Ss. 106 and 111—Notice to determine tenancy — Notice to quit—Distinction.

Where on the failure of the tenant to vacate the premises as required by an earlier notice, the landlord gave him another notice which did not convey to the tenant his intention to terminate the tenancy but actually claimed damages for the period which began after the earlier termination of the tenancy and was to end on the day on which the tenant was called upon to vacate the building and deliver possession to the landlord :

Held, that the subsequent notice was not a notice to determine the tenancy but was a notice to quit which satisfied one of the requirements of S. 111. **I L R (1958) 2 All 1 : AIR 1958 All 729 (731) (Pt B) (Pr 6) (DB).**

——Ss. 106 and 111 (h)—Notice to quit — Notice by landlord to vacate rented property—Effect indicated. I L R (1958) 2 All 1 : AIR 1958 All 729 (731) (Pt D) (Pr 6) (DB).

——S. 106 —House leased for ten years—Yearly rent reserved — Termination of lease — Notice to quit — Notice held defective—Eviction held could not be decreed.

Held, (1) that the agreement which evidenced the lease as well as the oral statement of the plaintiff indicated that the lease was from year to year and that the rent was payable for the year and not from month to month; (2) that there was no custom or express contract or special circumstances which made it appear that the rent was payable at any period of time except the last date of the year for which it became due, 27 Mad 143, Rel. on. (3) that no rent was due on 30th October, 1950 and that therefore the notice issued by the p'aintiff on that date for the payment of arrears within one month was a wholly infructuous notice; (4) that rent having become due on 31st December, 1950, the only notice that was given after this date was the notice of 4th May, 1951; (5) that as in law the tenant must have a full period of one month before he could be sued for eviction and as in the present case the suit was instituted within one month from the date of the notice, no decree for eviction could be passed. ILR (1954) 2 All 48, Rel. on. **AIR 1956 All 203 (205) (Prs 5, 6) (DB).**

——S. 106—Notice to vacate house—Validity of.

A notice requiring the tenant to vacate the house on the 26th of the month or on any date on which the tenant considers that his tenancy expires is a valid notice as it permits the tenant to vacate the premises immediately after the expiry of the month of his tenancy. AIR 1949 All 173, Foll. **1951 All W R (HC) 541 : 1951 All L J 24 : 1951 R D (H C) 348 : AIR 1952 All 32 (33) (Pt B) (Pr 3).**

——S. 106 — Proper notice under in case of monthly tenancy.

A notice requiring a tenant to vacate the premises on a date immediately following the date of the expiry of the monthly tenancy is a notice which complies with the provision of S. 106 of the Transfer of Property Act. **1951 A W R (HC) 121 : 1951 All L J 285.**

——S. 106—Notice to quit—Requirements of validity —Period of determination of tenancy —General form —Commencement of tenancy — Burden of proof — (Evidence Act (1872), Ss. 101-104).

The two requirements of the validity of a notice under S. 106, T. P. Act, are — (1) that the notice should expire by the end of the month of the tenancy and (2) that fifteen days' clear notice is to be given to the tenant to vacate the premises. No particular form of the notice has been prescribed. If the tenant knew the commencement of the tenancy and if the notice states that he has to vacate after the expiry of the next month of the tenancy, the tenant could have very well known the date by which he had to vacate the premises.

By merely putting a date which is subsequently found to be incorrect, it cannot be said that the notice becomes valid and by merely putting the notice in the general form without an erroneous date put down in the notice as an alternative will not make the notice any the less valid.

Although in the absence of evidence by the landlord to show when the year or month of the tenancy commenced, his suit for ejectment must fail, the question of burden of proof loses its importance when both the parties have led evidence and on consideration of that evidence the Court below has come to the conclusion : Case law reviewed. **I L R (1960) 12 Assam 1.**

——S. 106—Notice to quit—Validity of notice—Onus is on plaintiff landlord to prove that notice is valid. **AIR 1955 NUC (Assam) 2833.**

——S. 106 — Agreement of lease —Construction—On construction, notice terminating lease held valid. See T. P. Act (1882), S. 105. **AIR 1955 NUC (Assam) 2313.**

——S. 106 — Notice — Validity — Case on facts. See Tenancy laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 34. **ILR (1958) Bom 992.**

——Ss. 106, 108 (p) — Notice under S. 13 (6), W. B. Premises Tenancy Act (1956), can be combined with notice to quit — Stating of grounds for ejectment in notice, not necessary — Per Sen, J. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 13 (6). **AIR 1965 Cal 408 (DB).**

——Ss. 106 and 114 — Relief against forfeiture— Tenant's defence against delivery of possession struck out under S. 17 (3), West Bengal Premises Tenancy Act for failure to deposit and payment — Tenant can still challenge service, validity and sufficiency of notice to quit and claim and qualify for relief under S. 114 of T. P. Act. See Houses and Rents — West

Bengal Premises Tenancy Act (1956), S. 13. AIR 1965 Cal 398.

——S. 106 — Notice to quit mentioning only portion of premises of which possession was demanded — Validity.

Notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law, the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer but what they would mean to tenants presumably conversant with all those facts and circumstances, and further, they are to be construed, not with a desire to find faults in them which would render them defective, but to be construed ut res magis valeat quam pereat. 45 I A 222, Foll.

The notice to quit referred to the defendant's tenancy under the plaintiff as one in respect of the first floor flat of premises No. 4 Moira street, inclusive of furniture, crockery, etc. and demanded possession of the said first floor flat and it expressly mentioned the rental as Rs. 500 per month. It did not, of course, specifically, or, in express terms, mention the garage and the godowns in the ground floor which also were admittedly part of the defendant's above tenancy under the plaintiff.

Held that the description of the said tenancy in manner aforesaid was sufficient to attract the said garage and godowns in view of the express mention of the rental of Rs. 500 per month in the light of the substantially similar description of the defendant's tenancy in the previous correspondence between the parties. Further, the notice to quit was, at the worst, ambiguous. It obviously intended cessation or termination of the defendant's tenancy under the plaintiff of Rs. 500 per month, though purporting to demand possession only of the first floor flat and not expressly of the garage and godowns in the ground floor which admittedly were part of the defendant's said tenancy. The ambiguity, however, could not have misled the defendant. Therefore, the notice to quit was a good and valid notice which duly terminated the defendants tenancy. AIR 1953 Cal 585, Rel. on; 57 Cal 10 and 68 Cal L J 481, Dist. **ILR (1959) 1 Cal 404.**

——S. 106—Commencement of lease.

Where a long series of dakhilas show that rent has all long been paid for one or more full years, and, in making such payment, the year has always been taken to be commencing from the first Baisakh and ending in Chaitra and not as commencing from the date the execution of the lease and there is no indication in the lease that it was to commence from the date of its execution, it must be held that the lease created a tenancy from the commencement of the calendar year or month as the case may be. **(1957) 99 Cal L J 65 : 61 Cal W N 170.**

——S. 106—Termination of tenancy — Notice under S. 106, T. P. Act — Necessity of. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12 (1). **AIR 1955 Cal 226 (DB).**

——S. 106 — Notice to quit — Sufficiency — Month of tenancy whether English or Bengali not stated — Notice not bad. AIR 1955 N U C (Cal) 5586.

——S. 106 — Deed — Construction of — All items must be taken into consideration — Use of word "Dharya" does not always indicate fixity of rent. AIR 1955 N U C (Cal) 848.

——Ss. 106 and 105 — Unilateral lease by tenant for a term — Landlord cannot eject lessee without notice on efflux of time — Calcutta Thika Tenancy Act coming into force during suit — Effect stated—Lease deed does not operate as estoppel. AIR 1955 N U C (Cal) 844 (DB).

——S. 106 — Reasonable notice — What is stated — Civil P. C. (1908), S. 100. **AIR 1951 Cal 269 (270) (Pt B) (Pr 11).**

——S. 106 — Notice to quit — Nature and construction of — Notice should be construed 'ut res magis valeat quam pereat'.

It is well established that a notice to quit being a unilateral act in exercise of a contractual right to put an end to an existing relation of landlord and tenant, must conform strictly to the requirements of law. It is not a consensual document; it is a document which must, on its face and on a fair and reasonable construction, do what the law says that it must do.

A notice to quit though it may not be strictly accurate or consistent in the statements embodied in it may still be good and effective in law; the test of sufficiency would be satisfied if the notice to quit conveys to the tenant that his tenancy would be determined at a certain and definite time expiring with month of the tenancy. The Court must construe the notice to quit not with a view to finding faults in it which would render it defective but must construe it ut res magis valeat quam pereat. (1942) 2 All E R 311, Relied on. **(1962) 3 Guj L R 113 : AIR 1962 Guj 229 (230) (Pr A) (3).**

——S. 106 — Notice to quit — Rooms and adjoining verandah let out — Verandah given after rooms were let out — One notice terminating tenancy given — Sufficiency of. AIR 1959 J & K 87 (89) (Pt C) (Prs 5, 6).

——S. 106—More than fifteen day's notice to vacate shops — Validity.

A notice given for vacating a shop is not invalid merely because it was a notice not of 15 days but of one month and 15 days. **8 J and K L R 191 (DB).**

——S. 106 — Suit for ejectment filed by landlord on the basis of a particular tenancy — No valid notice of termination of tenancy served on the tenant — Tenant without denying title of landlord alleging a different tenancy than that pleaded by the landlord — Though tenant fails to prove the different tenancy alleged by him the suit cannot be decreed in favour of the landlord in the absence of a valid notice terminating the tenancy pleaded by him in his plaint. (1828) 4 Bing. 557, Distinguished. **AIR 1965 Ker 174 (174) (Pr 4).**

——S. 106 — Redemption of mortgage — Tenancy created by mortgagee required to be terminated under S. 106 — Tenant in possession is not bound by decree for redemption to vacate the property — He can obstruct delivery of possession in execution of decree. AIR 1955 Kutch 11.

——S. 106—Splitting up of tenancy—Suit as manager and co-owner in respect of two holdings respectively —During pendency of suit one holding taken by Government—Effect. See Civil P. C. (1908), O. 1, R. 1. **AIR 1956 Madh Bha 35.**

——S. 106 — Notice under — Plea as to invalidity — Requisite facts must be pleaded, otherwise defendant cannot raise the plea. AIR 1955 N U C (Madh B) 3817.

——S. 106—Tenancy from month to month—Sufficiency of notice. See T. P. Act (1882), S. 116. **AIR 1955 N U C (Madh B) 3752.**

——S. 106 — Notice to quit—Validity depends upon terms of notice and facts and circumstances of each case. AIR 1955 N U C (Madh B) 3003.

——S. 106—Court having jurisdiction wrongly holding that notice is not necessary — Revision does not lie — (Civil P. C. (1908), S. 115). **AIR 1955 N U C (Madh B) 2385.**

——Ss. 106 and 111 (a) — Lease determined by efflux of time—Notice must be presumed by implication. AIR 1955 N U C (Madh B) 52.

——S. 106—Quit notice not to be read with strictness of pleadings — Notice need not state commencement or termination of tenancy — Notice asking tenant to vacate on expiry of tenancy month and giving 15 days time is valid. 1964 M P L J (Notes) 211.

——S. 106 — Defect in the notice must be pleaded—Defect not so pleaded deemed to be waived. 1964 M P L J (Notes) 190.

——S. 106 — Conditions for termination of tenancy under T. P. Act and existence of grounds under S. 4 (a) of M. P. Act (23 of 1955) stand on different footing — Right to possession arises when both circumstances co-exist. See Houses and Rents — Accommodation Control Act (23 of 1955), S. 4 (a). 1961 Jab L J 767.

——S. 106 — New ground taken regarding defect in quit notice — Point not urged either in trial Court or in first appeal — It cannot be allowed to be urged in second appeal. See Civil P. C. (1908), S. 100. 1961 M P L J (Notes) 189.

——Ss. 106 and 110—Notice—Construction—Applicability of maxim 'ut res magis valeat quam pereat'—Maxims.

A notice to quit ought not to be construed with a desire to find fault with it but that it should be construed ut res magis valeat quam pereat. A I R 1918 P C 102, Foll.

The defendant's tenancy was for a fixed term of eleven months and capable of being extended thereafter by mutual agreement. The tenancy commenced on 20th April, 1949. The tenant continued even after the term fixed and the landlord accepted rent. By a notice the tenant was called upon to vacate on 21-1-1954.

Held, that the notice was valid. 1959 M P L J 235: 1959 M P C 205 : 1959 Jab L J 249 : A I R 1959 Madh Pra 293 (294, 295) (Pt B) (Prs 9, 10, 12).

——S. 106—Notice to quit—Single tenancy in respect of entire house—Three occupants paying portions of rent—No separation of tenancy—Separate notice — If necessary. 1959 Jab L J 216.

——S. 106—Notice to quit — Wrong particulars as to tenancy.

The notice to quit contained the essential features of such a notice, namely, that it called upon the tenants to quit and deliver possession, and it also prescribed a time within which the possession had to be surrendered.

Held, that so long as there was no defect in respect of these particulars and the period of notice was reasonable, it could not be said that the notice was invalid, because the particulars as regards the tenancy were not accurately set out. 1954 Mad W N 711 : 67 Mad L W 846 : (1954) 2 Mad L J 445 : A I R 1955 Mad 206 (207) (Pt A) (Pr 2).

——S. 106—Houses and Rents — Mysore House Rent and Accommodation Control Act (30 of 1951), S. 8 — Section does not contemplate eviction of tenant from portion of leased premises. See Houses and Rents—Mysore House Rent and Accommodation Control Act (30 of 1961), S. 8. (1964) 2 Mys L J 269.

——S. 106 — Object of — Notice to be liberally construed — Monthly tenancy commencing on 14th of a month — Notice terminating 'after expiry of 14th' held valid.

The object of a notice under S. 106 is only to allow a tenant sufficient time to vacate the premises. Notice should be liberally construed and the only point to be considered in respect of notice is whether the person on whom the notice is served could understand what was really meant by the notice. A I R 1949 All 173 and A I R 1952 Nag 101, Rel. on.

Thus where a monthly tenancy begins on the 14th of each month, a notice terminating it "after the expiry of the 14th of the next month" is valid. 1963 Mys L J (Supp) 394.

——S. 106—Notice under—Requirements. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (87 of 1947), S. 12 (3) (a). A I R 1959 Mys 87.

Held, Overruled by AIR 1963 S C 120 as interpreted in AIR 1965 Mys 65.

——S. 106 — Plea of want of notice — Plea can be raised for first time in second appeal — Civil P. C. (1908), S. 100. 29 Mys L J 68 : A I R 1950 Mys 63 (64) (Pt B) (Pr 2) (DB).

——S. 106—Scope.

Section 106 makes mention of two kinds of leases in which the notice has to be of six months, and in all other cases the notice is of 15 days ending with month of tenancy. 1955 Nag L J 103 : ILR (1954) Nag 957 : A I R 1955 Nag 27 (28) (Pt B) (Pr 7) (DB).

——S. 106—Lease — Court cannot create new agreement.

In the case of leases, the Court cannot create new agreements which the parties to the suit for ejectment of a tenant have not pleaded. A I R 1952 S C 23; 1951 S C J 813, Foll. 1955 Nag L J 103 : ILR (1954) Nag 957 : A I R 1955 Nag 27 (29) (Pt D) (Pr 10) (DB).

——S. 106—Notice to quit—Rules of construction — Liberal construction to be put.

Section 106 does not require that the exact date of the termination of the tenancy should be specified in the notice. Hence, if the tenancy is to expire at the end of a month according to the English calendar it is enough if the landlord says in the notice that the tenant should vacate at the end of the month, without mentioning any particular date.

The English rule of construction to give such a sense to ambiguous words as will effectuate the intention of the parties is based on sound common sense and is applicable to India also. The only difference between the English law and the law in India may be that S. 106 insists on the notice being in writing signed by or on behalf of the person giving it. The notice has not to be given with all the particularity of a pleading. Naturally, therefore, it is not subject to strict interpretation. A liberal construction has to be put upon the notice so as to find out the true intention of the party giving the notice and whether the party served with the notice could understand it in the sense meant by the giver of the notice. Courts should give such constructions as would not work a hardship on the tenant and would not strain the language too much against the landlord.

In addition to the requirement of a reasonable notice the law has placed further restrictions by emergency legislation (Rent Control Laws) on the right of the landlord to evict his tenant. The necessity for a proceeding before the revenue authorities to obtain permission to serve notice on the tenant is itself a lengthy process and sometimes has been known to take years. The Court, therefore, should not be too strict to forge another fetter against the landlord in the exercise of his lawful rights to eject his tenant. 1954 Nag L J 436 : ILR (1954) Nag 624 : A I R 1954 Nag 292 (293) (Prs 5, 6) (DB).

——S. 106 — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (vi) — Splitting up tenancy—Rent controller cannot split up tenancy

and give permission to landlord to serve quit notice regarding portion of tenancy only. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), S. 13 (3) (vi). **A I R 1953 Nag 265 (DB).**

——S. 106—Notice to quit — Construction — Rule as to—Monthly tenancy—Notice asking tenant to vacate by the first of the next month is not invalid.

Notices to quit are to be construed not with a desire to find faults in them which render them defective but are to be construed ut res magis valeat quam pereat. The principal test is to consider what the notice would mean to the tenant who is personally conversant with the terms and circumstances. That would necessarily depend on the form of the notice in each case. 46 Cal 458 (PC) Rel. on.

A notice to quit has not to be worded with the accuracy of a plea.

In the case of a monthly tenancy commencing from the first of each month, the notice is not invalid because the tenant is asked to vacate not by the end of the month but by the first of the next month. Reading the notice as a whole the tenant is not left in doubt as to the termination of the tenancy at the end of that month. AIR 1931 Mad 352; (1895) 1 Q B 378, Rel. on; A I R 1949 Ajmer 38; A I R 1950 Orissa 1, Not Foll. **1952 Nag L J 125 : A I R 1952 Nag 101 (101, 102) (Prs 7, 9).**

——S. 106—Notice — Validity — Validity depends on terms of each notice and circumstances.

Whether a particular notice is valid depends on the terms of the notice in each case and the facts and circumstances of that case.

Where the relevant portion of the notice was "this notice is hereby given to you that you vacate the lands of my client by that last day of your monthly tenancy which last day comes after 15 days of receipt of this notice."

Held, that the notice, was valid. AIR 1921 Pat 307, Foll.; 7 All 899 (FB); ILR 1943 Bom 553; ILR 1944 Cal 84; ILR 1950 Nag 437 and AIR 1950 Ajmer 79, Dist. **1952 Nag L J (Notes) 122.**

——S. 106 — Notice — Construction of — Notice of slightly longer period—Not invalid.

Where a notice to quit in respect of a tenancy for residential purposes commencing on the 18th May, 1930 calls upon the tenant to vacate 'by the midnight of 18th August' instead of 'by the 17th August' the notice should be taken as a valid notice terminating the tenancy. 68 Cal L J 411, Foll.; AIR 1918 PC 102 and AIR 1931 Mad 352, Ref.; AIR 1950 Orissa 1, Disting. **ILR (1959) Cut 296.**

——S. 106 and S. 8—Notice to quit —Construction of —Notice held expired with end of month of tenancy.

The principle for construing the provisions of S. 106, T. P. Act is that the Courts are to put a rational construction of the notice and ought not to split a straw.

In a case of monthly tenancy according to the English calendar the relevant portion of the notice was to the effect that the defendants were to quit the house by the morning of 1-10-1949. This notice was issued by the plaintiff on 26-8-1949 and was served upon the defendants on 27-8-1949.

Held, that it could not be said that the landlord or the tenants intended that the former allowed the latter to remain in the house for any part of the next month of tenancy. The notice, read as a whole, made it absolutely clear that it was to terminate on the expiry of the month of tenancy. (1895) 1 Q B 378 and AIR 1931 Mad 352 and AIR 1918 PC 102, Rel. on. **AIR 1956 Orissa 128 (128) (Pr 6) (DB).**

——S. 106 — Notice to quit before exemption order under Orissa House Rent Control Act. See Houses and Rents — Orissa House Rent Control Act (5 of 1947), S. 2 (4). **AIR 1955 NUC (Orissa) 3229.**

——S. 106 —Notice to quit — Validity—Notice to be so interpreted as to uphold its validity — Tenancy commencing from 1st August — Notice to vacate by midnight of 31st July or 1st August held valid.

Held, on facts that though there was some ambiguity with regard to the point of time by which the tenant was asked to vacate, the proper way to read it was that it gave an option to the tenant to vacate the premises on the midnight of 31st July, 1954, or that of the 1st August, 1954, whenever the tenant thought his tenancy terminated. The absence of the word 'or' between the two dates was of no consequence. The notice was, therefore, valid as being in compliance of S. 106, T. P. Act. AIR 1943 Bom 306 and AIR 1918 P C 102, Rel. on. **I L R (1961) 11 Raj 1196 : 1961 Raj L W 494 : AIR 1962 Raj 100 (102) (Pt A) (Prs 5, 6).**

——S. 106—Quit notice—Requirements of.

All that S. 106 or the T. P. Act requires is that the notice, apart from being of a certain duration as required by law, according to the nature of the tenancy should also be such that it expires at the end of the month or the year of the tenancy, as the case may be. If the lessor who is in doubt as to the correct date of commencement of tenancy, gives a quit notice to the lessee wherein he proposes three alternative dates for the determination of the tenancy and gives the lessee an option to choose any one of the proposed dates, the notice is not bad for uncertainty. What a notice like this does is to give him a full and free choice to choose his own date of the termination of his tenancy. AIR 1949 All 173 and AIR 1921 Pat 307 and AIR 1958 All 774, Rel. on.

The date of commencement of tenancy is not altered simply because the plaintiffs happened to purchase the disputed shop from its previous owners on a particular date. The true date of the commencement of the tenancy month is the date which was in force between a tenant and the previous owner. ILR (1959) 9 Raj 97, Foll. **I L R (1960) 10 Raj 1568 : 1961 Raj L W 576 : AIR 1961 Raj 136 (137, 138) (Pt A) (Prs 5, 9).**

——S. 106 — Tenancies governed by Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), commnecing before 1946—Right of landlord to enhance rent in cases not falling under S. 10 of the Rajasthan Act — No question of notice under S. 106, T. P. Act arises, since the question relates to increase in rent. See Houses and Rents—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 6. AIR 1955 NUC (Raj) 5024 (DB).

——S. 106 — Burden of Proof — Burden of proving determination of tenancy by notice is on plaintiff landlord—(Evidence Act (1872), Ss. 101 to 103). AIR 1955 NUC (Raj) 4072.

——S. 106 — Determination of tenancy — Notice — Clerical error in date, which did not mislead, held did not vitiate notice. AIR 1955 NUC (Sau) 1492.

——S. 106 — Determination of tenancy — Notice to quit not necessary. AIR 1955 N U C (Sau) 1488 (Pt A).

——S. 106 — Determination of tenancy — Notice in alternative form — Notice is valid. AIR 1955 N U C (Sau) 1488 (Pt B).

14. Determination of lease.

See also S. 111, T. P. Act (1882).

——Ss. 106 and 111—Notice complying with S. 111 —Effect of.

Section 106, does not indicate what should be the nature of the notice by which the lease is terminable. All that it lays down is that the lease is terminable by a notice, and consequently, a lease governed by this section will be terminable by any notice which, under any other provision of law, can determine the lease. Thus a lease governed by S. 106, can be determined by a notice which complies with the requirements of S. 111. Of course, the further requirement that the notice should be such as to make the lease terminable with the end of a month of tenancy has also to be satisfied. **I L R (1958) 2 All 1 : AIR 1958 All 729 (731) (Pt C) (Pr 6) (DB).**

——Ss. 106 and 111 — Determination of lease—Essentials.

In a suit for rent the defendant alleged that he had never been a tenant of the plaintiff. The plaintiff by producing evidence succeeded in proving that the defendant was a tenant. In revision, for the first time, the defendant contended that as he had informed the plaintiff when he gave a notice that he was not a lessee, the lease should be deemed to have terminated thereon and that the suit for rent thereafter did not lie.

Held, that for a proper termination of the tenancy the tenant should make over possession to the landlord. In the present case the defendant not only did not make over possession but also denied, having ever got into possession of the premises. Therefore, it became necessary for the Court to determine whether the defendant was a tenant of the plaintiff and the plaintiff could claim rent by proving that he was a tenant. Hence, under the circumstances, it could not be argued by the defendant that the tenancy had terminated : A I R 1937 Lah 121; I L R 22 Bom 348 and AIR 1953 Mad 996, Disting. **1957 All L J 507 : AIR 1958 All 32 (33, 34) (Pt D) (Pr 8).**

——S. 106 — Notice—Necessity — Determination of lease by forfeiture—Effect. See T. P. Act (1882), S. 111 (g). **AIR 1958 Cal 428 (DB).**

——S. 106 — Allotment of house to Government servant—Subsequent retirement from service—Effect—Termination of tenancy—Law applicable—Notice by Rent Controller to vacate house on retirement—Validity — Constitution of India, Art. 226. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13. **AIR 1953 Nag 31 (DB).**

15. Waiver of notice.

——S. 106 — Houses and Rents—U. P (Temporary) Control of Rent and Eviction Act (III of 1947), S. 3 (1) — Notice under S. 106, T. P. Act—Waiver of —Acceptance of rent after notice — Does not create fresh contractual tenancy. AIR 1961 S C 1067, Foll. **AIR 1964 All 393 (393) (Pt A) (Pr 2).**

[Overruled on another point in AIR 1965 All 498 (FB).]

——S. 106—In the absence of any clear and implied statement in the notice to the effect that in case of payment of rent the landlord will not terminate the tenancy but will continue to have the tenant as his tenant, it is not possible to hold that the landlord waives the notice under S. 3 (1) (a), U. P. (Temporary) Control of Rent and Eviction Act (1947) — Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 3 (1) (a). **1960 All W R (H C) 46 : 1960 All L J 70.**

——Ss. 106, 111 (b), 113 — Notice to quit—Waiver—Acceptance of rent for period after expiry of notice is waiver. **A I R 1959 Andh Pra 346 (348, 349) (Prs 9, 10, 11) (DB).**

——S. 106—Notice period of — Question not raised in lower Courts—Waiver.

The question about notice to quit is not purely a question of law, but is a mixed question of law and fact. Hence if under the terms of the contract the tenants are entitled to a notice of one month instead of 15 davs, they may be taken to have waived the same and to have been satisfied with the sufficiency any validity of the notice, when they fail to raise the point in the lower Courts and especially when they raise the point about the factum of service of notice only. **AIR 1956 Assam 113 (114) (Pt C) (Pr 5).**

——Ss. 106 and 108 (p)—West Bengal Premises Tenancy Act (1956), S. 13 (1) (b), (6) — Tenant erecting permanent structure in contravention of S. 108 (p), T. P. Act — Acceptance of enhanced rent within terms of Act does not constitute waiver of right to sue for eviction—Fresh notice of suit not necessary. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 13 (1) (b). **AIR 1965 Cal 408 (DB).**

——Ss. 106 and 113, Illus. (b) — Second notice to quit—First notice is waived. **I L R (1962) 1 Cal 318 (DB).**

——Ss. 106 and 113 — Notice to quit — Waiver—Acceptance of rent after suit — Effect of S. 21 of W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950)—See T. P. Act (4 of 1882), S. 113. **A I R 1956 Cal 106.**

——S. 106—Landlord and Tenant—Creation of new tenancy subsequent to decree for ejectment obtained by landlord—Test—Onus.

The test for deciding the question whether after the decree for ejectment obtained by the landlord the transmission of rent by money order from tenants and the acceptance thereof by the landlord raises an inference of a new tenancy is, whether quo animo the rent was received and what the real intention of both parties was; (1775) 1 Comp. 243, Relied on; (1949) 1 A E R 768; 58 C W N 438, Ref.

In order to find out whether the money transmitted by the plaintiffs tenants as rent was transmitted as such and whether the receipt of the money by the defendant landlord was received by the latter as such, surrounding circumstances may be taken into consideration.

Where at the time when the money was transmitted for the first time the landlord had succeeded up to the lower appellate Court in his suit for ejectment of the tenants and in the suit filed subsequently by the tenants for declaration of tenancy right and for injunction restraining the landlord from executing his decree, the tenants did not suggest any specific date when the new tenancy came into existence nor did they state the terms of the tenancy and in the evidence also, one of the tenants stated that rents were deposited with the Rent Controller up to September and October, 1947, that thereafter no rent was paid for fifteen months and that then there was some change in the law and 'we again began to pay rent, this time by money order.'

Held, that the parties did not intend to bring into existence a new tenancy. The burden of proof lay on the tenants and they failed to discharge it. **I L R (1956) 1 Cal 136 : 58 Cal W N 602 : A I R 1955 Cal 229 (230, 231) (Pt B) (Prs 8, 9) (DB).**

——S. 106—Landlord and Tenant—Notice to quit—Waiver — Continuation of proceedings for fixing standard rent by landlord after service of notice—If amounts to.

The continuation of proceedings for fixing the standard rent under the Rent Control Act by the landlord even after service of the notice to quit on the tenant and the institution of the suit for ejectment, does not amount to a waiver of the notice by the landlord. **55 C W N 471 : ILR (1952) 2 Cal 138 : AIR 1952 Cal 130 (132) (Pt B) (Pr 21) (DB).**

—S. 106 — Agricultural lease—Waiver of notice to quit. See T. P. Act (1882), S. 113. AIR 1954 Madh Bha 37.

—Ss. 106 and 113 — Effect of second notice to quit.

Where a notice to quit has been given, a subsequent notice to quit is of no effect unless it can be interred from other circumstances that a new tenancy has been created after the expiry of the first notice; nor does it amount to a waiver of the first notice in the absence of any proof thereof. I L R (1954) Punj 149 : 55 Punj L R 299 : AIR 1953 Punj 243 (244) (Pt B) (Pr 7) (DB).

16. Suit for ejectment—Notice to quit.

—S. 106—Delivery of possession — Oral agreement to lease additional building to tenant — Monthly tenancy—Default in payment of rent for three months —Suit for ejectment—Notice either under S. 106 for determination of lease or S. 111 (g) for forfeiture on non-payment of rent for three months to terminate the tenancy is necessary — Although agreement did not itself bring into existence the lease, the lease came into existence when the defendant was put into possession. See T. P. Act (1882), S. 105. 1964 All W R (H C) 564 : 1964 All L J 658.

—S. 106—Notice of ejectment—When to be issued —(House and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1) (a).)

It cannot be said that the notice of ejectment required by S. 106 of the Transfer of Property Act should be given after the expiry of one month from the service of notice of demand under S. 3 (1) (a) of the U. P. (Temporary) Control of Rent and Eviction Act. The Transfer of Property Act is the general law of land. The U. P. (Temporary) Control of Rent and Eviction Act is a special and local enactment, and as such overrides the provisions of the general Act so far as it is in conflict therewith. The two acts have to be read together and the provisions of the general Act will stand amended to the extent of the inconsistency with the special Act, S. 3 of the U. P. (Temporary) Control of Rent and Eviction Act creates a bar to the ejectment of the tenant. Unless the bar is removed, no tenant is liable to be ejected. Therefore, that although the notice under S. 106 of the Transfer of Property Act has been given, the tenant is not liable to be ejected until one of the conditions laid down in S. 3 of the U. P. (Temporary) Control of Rent and Eviction Act is fulfilled. Thus in spite of the expiry of the notice given under S. 106 of the Transfer of Property Act, and in spite of the provisions of S. 111 of the Transfer of Property Act, the tenant does not cease to be a tenant till the bar to his ejectment laid down in S. 3 of the U. P. (Temporary) Control of Rent and Eviction Act is lifted. A suit for ejectment filed after the expiry of the two periods, i. e., the period of fifteen days as provided in S. 106 of the Transfer of Property Act and the period of one month as provided in S. 3 (1) (a) of the U. P. (Temporary) Control of Rent and Eviction Act, is rightly instituted. 1956 All L J 787.

—S. 106—Suit for ejectment under S. 6 (8), Bengal Suppression of Immoral Traffic Act, (1933) — Notice under S. 106, T. P. Act not necessary. See Bengal Suppression of Immoral Traffic Act (6 of 1933), S. 6 (8). I L R (1951) 1 Cal 404 (DB).

—S. 106—Notice terminating tenancies — Suit for ejectment—Notice is not necessary. See Houses and Rents — Delhi Rent Control Act (59 of 1958), S. 14. (1965) 67 Punj L R 97.

—S. 106—Suit for declaration of Takshichi taluki interest and for possession after ejectment—Neither party setting up tenancy—Notice not necessary.

In a suit for declaration of Takshichi taluki interest and for actual possession of land after ejectment of the defendants, the plaintiff alleged that the defendants were trespassers and they had been in possession of the disputed land without any right for about 5 years only. The plaintiff had not accepted the defendants as his tenants and defendants also had not contended that they were the tenants of the plaintiff.

Held, that a notice under S. 106, T. P. Act, was not necessary before the institution of the suit. A I R 1954 Tripura 21 (22) (Pt A) (Pr 5).

17. Denial of lessor's title by lessee and notice to quit.

—Ss. 106, 111 (g)—Tenant denying landlord's title in earlier suit—Tenant incurring forfeiture — Landlord intimating that he required premises for his personal use—Institution held intimation of intention to determine lease — Notice of termination held not necessary. See T. P. Act (4 of 1882), S. 111 (g). A I R 1952 All 141.

—Ss. 106, 111 (g) — Suit for ejectment of monthly tenant—Defendant denying landlord's title—Defendant held not entitled to notice to quit. A I R 1951 Assam 70 (72) (Pt B) (Pr 15) (DB).

—Ss. 106, 111 and 54 — Suit for ejectment on the ground of determination of tenancy by forfeiture—Plaintiff alleging sale by defendant and lease back to him — Defendant is entitled to deny tenancy and plead that sale deed was only a mortgage—If defendant's case is upheld suit must be dismissed. See T. P. Act (1882), S. 111. 1963 Jab L J 605.

—Ss. 106 and 111 (d) — Tenant securing sale of tenancy premises—Landlord repudiating sale on the ground of fraud—Court holding sale to be voidable—There is no merger of the estate and the relationship of landlord and tenant which subsisted on the date of sale continued after sale was repudiated.

Held, on facts that the sale having been validly repudiated by the plaintiff, the relationship of landlord and tenant which was subsisting between parties on the date of sale continued uninterrupted. The rights of lessor and lessee would have merged in the larger estate created by sale but as the transaction of sale was voidable and stood repudiated, the rights of lessor and lessee continued to subsist between the parties unimpaired. The doctrine of merger could not be invoked in the case because the entire estate could not be held to be united in the same person due to the sale being ineffective.

The plaintiff was, therefore, entitled to keep alive the old tenancy which began from the 10th of every English month. The notice given was legal. 1954 Nag L J 573, Foll. 1963 M P L J (Notes) 136.

—Ss. 106 and 111 (g) — Requisites of valid notice —Denial of lessor's title — When operates as forfeiture of lease.

A valid notice to quit under S. 106 of the Transfer of Property Act should determine the tenancy by the time of 15 days expiring with the end of the month of tenancy. The notice should specifically state what the month of the tenancy was.

In order to plead in a suit that a denial of the title of lessor or a disclaimer of the tenancy operates as forfeiture of the lease under S. 111 (g) of the Transfer of Property Act, the denial forfeiture must have occurred prior to the suit and should form part of the cause of action on which the suit is based. A denial of tenancy after the suit is instituted will not operate as a forfeiture under S. 111 (g) of the T. P. Act. 73 Mad L W 688 : (1960) 2 Mad L J 351.

—S. 106—Lessor's title denied by lessee — Notice to quit not necessary.

For a suit by a landlord for ejectment of a tenant, no notice of determination of tenancy is necessary where the defendant has, prior to the institution of the suit denied the plaintiff's title as landlord and that there was any contract of tenancy between them. I L R 17 All 45, Rel. on. **I L R 38 Pat 806 : 1959 B L J R 376 : A I R 1959 Pat 562 (569, 570) (Pt E) (Pr 24) (DB).**

——Ss. 106, 108 (h) and 111 (g) — Applicability — Suit for declaration of taksisi Taluki right and for khas possession — Permanent constructions on land by defendant—Defendant's plea of adverse possession—Effect.

Held, that as the plaintiff had not accepted the defendants as her tenants and the defendants also had not contended that they were the tenants or licensees of the plaintiff, the defendants were liable to ejectment even though they had made constructions on the land in question. A I R 1954 Tripura 21, Foll. (2) that there was no question of forfeiture and waiver of forfeiture involved in the case as the defendants had all the while contended that they were in adverse possession. **A I R 1957 Tripura 8 (9, 10) (Pt B) (Prs 10, 11).**

18. Determination of main lease by notice—Effect on sub-lease.

——S. 106—Tenant serving notice under S. 7 (1), U. P. Rent Control and Eviction Act, on the District Magistrate of his having vacated the premises — No notice served by him on the landlord under S. 106 T. P. Act —Premises having been sub-let continuing to be in possession of sub-tenant —Tenancy cannot be said to have been determined but continues to subsist in law—Hence tenant is liable for the rent, even though he has served a notice on the District Magistrate under the Rent Control and Eviction Act. **1963 All L J 329 : 1963 All W R (HC) 281 : AIR 1964 All 18 (18) (Pr 3).**

——S. 106 — Suit for ejectment validly instituted against tenant — Sub-tenant made party — Latter becoming direct tenant under S. 16 (3), West Bengal Premises Tenancy Act 1956 during a pendency of suit —Latter not entitled to notice either under S. 13 (6) of the West Bengal Act or under S. 106, T. P. Act. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 13. **A I R 1962 Cal 563 (SB).**

——S. 106—Sub-tenant—Notice to quit is not necessary to terminate tenancy at sufferance or sub-tenancy created by tenant — Notice to quit served on tenant —Notice on sub-tenant is presumed. **AIR 1955 N U C (Punj) 121.**

19. Lessee holding over after expiry of notice to quit—Effect.

——Ss. 106 and 116 — Expiry of lease by efflux of time:— Tenant continuing in possession by virtue of Rent Control Legislation— Payment and acceptance of rent by landlord—Status of tenant—Notice under S. 106—Necessity.

Where a contractual tenancy to which the rent control legislation applies has expired by efflux of time or by determination by notice to quit and the tenant continues in possession of the premises by virtue of statutory protection, acceptance of rent from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord has assented to a new contractual tenancy. Apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant. The statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the exercise of jurisdiction by the Court is removed the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not, unless the statute provides otherwise, be conditioned.

Held, on facts that A had not acquired the status of a tenant holding over within the meaning of S. 116, T. P. Act and as such notice prescribed by S. 106, T. P. Act was not necessary. Ganga Dutt Murarka v. Kartik Chandra Das. **1961 Andh L T 364 : 1961 S C D 344 : (1961) 3 S C R 813 : (1962) 2 Mad L J (SC) 161 : (1962) 2 Andh W R (SC) 161 : (1962) 2 S C J 584 : A I R 1961 S C 1067 (1069, 1070) (Prs 4, 5, 6).**

——Ss. 106, 107, 116 — Lease — Expiry of — Lease not validly terminated—Lessee continuing in possession of land—Lease is renewed but not continued — Period of lease counts according to nature of tenancy —Protest from lessee against enhancement of rent disentitles lessor to enhanced rent — Yearly lease does not require registration — Year to year lease also does not require registration where lease is result of operation of law and not act of parties.

Section 116 of the Transfer of Property Act provides that if a lessee remains in possession of the leased property after the determination of the lease and the lessor assents to his continuing in possession the lease is, in the absence of an agreement to the contrary, renewed from year to year, or month to month according to the purpose for which the property is leased as specified to S. 106 of the Act.

Held, on facts that since the lessee remained in possession of the leased property after the determination of the lease on 15-7-50, there being no agreement to the contrary the lease being for industrial purposes it must be deemed to have been renewed from year to year as specified in S. 106 of the Transfer of Property Act. There was thus a renewal of lease from 16-7-50 and one of the terms of the lease was that it was a lease from year to year and in terms of S. 106 of the T. P. Act, it was a lease terminable by six months notice expiring with the end of a year of the tenancy. A perusal of S. 116 of the Act would show that the lease had determined but it was renewed. The renewal of the lease would mean that its terms and conditions would be the same as the previous lease except that having regard to the nature of the lease it would be deemed to have been renewed from year to year in view of the specific provisions contained in S. 116 of the T. P. Act. The appellant was not therefore, required to pay more than Rs. 1,000 a year for continuing to be in possession of the land.

As a result of holding over the old lease is terminated but it is renewed. It is not the case of the original lease continuing. The terms of the new lease would however be the same as the old lease except that it would be a lease from year to year or from month to month according to the nature of the tenancy. If a lease is granted for a fixed period of three years and is terminable after the expiry of the period and there is holding over after the termination of the lease the new lease will not be a lease for three years but will be a lease from year to year or from month to month according to the nature of the lease, i.e., if it is a lease for industrial or agricultural purposes it would be a lease from year to year and if it is a lease for any other purpose if would be a lease from month to month.

Since the petitioner had protested against the enhancement of rent and the Government did not take any ejectment proceedings, Government is not entitled to claim rent at the enhanced rate. Where

enhanced rate of rent is proposed by a landlord and the tenant continues to occupy the leasehold property without any protest as to the proposed enhancement in rent, then alone the latter should be deemed to have accepted the proposal. A I R 1933 Oudh 465, Foll.

In order that a tenancy may be vaildly terminated the notice should be in accordance with the provisions of: S. 106, of the T. P. Act, i e., a six months' notice expiring with the end of the year of the tenancy. In the absence of such a notice the holding ever continues, and the tenancy is not terminated.

It is true that an unregistered lease-deed does not create a tenancy and there would then be no question of holding over under S. 116 of the T. P. Act but in order that the provisions of S. 107 of the Act may apply to a lease, it should be a lease from year to year or for a term exceeding one year or it should be a lease reserving a yearly rent; the section does not apply where the lease is only for a year. The term 'year to year' implies that the tenancy continues so long as the party desires it to continue though it is terminable at the option of either party at the end of any year. The lease from year to year is: not ipso facto determined at the end of every year. When a lease is only for a year, it is determined at the end of the year. Where the term used is 'yearly rent' it implies that the lease is for a number of years or at least is not for one year only. The provisions of S. 107 of the T. P. Act do not apply even to a year to year lease where such a lease is the result of operation of law and is not the act of the parties concerned. **1965 All L J 275 : ILR (1965) 2 All 519 : AIR 1965 All 326 (330, 331, 332) (Pt A) (Prs 11, 12, 18, 19, 20, 21) (DB).**

——S. 106 — Holding over—Determination of lease. See T. P. Act (1882), S. 116. **AIR 1958 All 879 (DB).**

——S. 106—Tenant holding over after notice to quit —Effect.

Where a monthly tenancy is determined by a notice to quit and the notice provides that the tenant shall be liable to pay damages for use and occupation at an enhanced rate of rent after the date fixed in the notice and the tenant neither replies nor vacates the house, there can be no tenancy by implication to pay the enhanced rent and the tenant would be liable to pay damages for use and occupation at a reasonable rate not exceeding the enhanced rate stated in the notice for the period of his holding over. AIR 1934 All 115, Dissent from. **AIR 1951 All 853 (855) (Prs 10, 11, 13) (DB).**

——S. 106 — Lessee holding over after determination of lease—Lessor's assent, effect. See Houses and Rents —W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12 (1), Proviso (b). **AIR 1959 Cal 181 (DB).**

——Ss. 106 and 108 (q) — Determination of tenancy by notice—Giving up of possession—Necessity.

In a suit for arrears of rent where the tenancy was found to have been determined by notice under S. 106, the provision of S. 108 (q) can only mean that there is an obligation on the lessee to put the lessor into possession of the property when the lease is determined and it cannot be inferred from this clause that unless the lessee carries the obligation on the lease is not determined. AIR 1954 Nag 305, held obiter : (1947) 1 K B 437 : ILR 22 Bom 348 : (1951) 1 A E R 178, Relied on. If the tenant did not act bona fide, that would only mean that the landlord would be able to claim damages against him in a properly constituted suit and recover the expenses to which the landlord is put on account of the action of the tenant. **62 Cal W N 176 : ILR (1959) 1 Cal 78.**

——Ss. 106, 116—Year or month of tenancy—Tenant holding over with consent of landlord after expiry of term in middle of month — Payment of rent according to English Calendar month — Nature and commencement of tenancy.

Where a tenant after the expiry of the term of his lease on the 25th of the English Calendar month, continued to hold over the premises with the consent of the plaintiff landlord at an enhanced rent which was used to be realised according to the English Calendar month the monthly tenancy would not coincide with the English Calendar month but the month of the tenancy would be from the 25th of one month to the 24th of the following month, and in order to prove that the month of the old tenancy was altered by a fresh agreement the plaintiff must prove that fact by more satisfactory evidence. The mere payment of rent from month to month according to English Calendar would not be sufficient, by itself, to prove the month of the tenancy, because the month of the tenancy may very well be different from the month according to which rent is realised, and the payment of rent according to English Calendar may be merely a mode of payment and nothing more. 59 I A 414, Rel. on. Alteration of the month of a tenancy may be proved either by direct evidence by proving a new agreement by which the month of the original tenancy was expressly altered or by circumstantial evidence showing that whereas formerly rent used to be realised from the middle of one month to the middle of another, subsequently the rent for the broken period of this calendar month was either paid or adjusted and rent was paid from month to month according to English Calendar. If rent used to be realised from month to month according to English Calendar both during the period when the monthly tenancy ran from the middle of one month to the middle of another and during the period when the monthly tenancy coincided with English Calendar month, the mode of realisation of rent is inconclusive. **61 C W N 407 : AIR 1957 Cal 357 (358, 359) (Pt B) (Prs 7, 8, 11) (DB).**

——Ss 106, 116—Lessee holding over—Lease neither agricultural nor for manufacturing purposes -Notice to quit—Requirements. See T. P. Act (1882), S. 116. **AIR 1952 Cal 455.**

——Ss. 106, 116—Tenant holding over without consent of lessor—Dispossession by landlord—Subsequent obtaining of possession — Effect—He can be ejected without any notice. See T. P. Act (1882), S. 116. **AIR 1952 J & K 35.**

——Ss. 106, 116—Lease executed before applicability of T. P. Act — Tenant holding over—He holds over on same terms as mentioned in expired lease -Stipulation in old lease that on failure to pay rent, landlord would be entitled to file suit for ejectment— Same stipulation applies to lease created by holding over—Landlord can file suit without notice determining lease. AIR 1955 N U C (Madh-B) 3694.

——Ss. 106, 116 -Terms as to notice cannot be imported under S. 116 when tenant holds over.

Terms of the expired lease cannot be imported under S. 116 when the tenant holds over. Thus the term in the expired lease that the tenant was to surrender possession after the termination of the period of lease and no notice under S. 106 would be necessary, cannot be imported as one of the terms on which the tenant would hold over under S. 116, after the termination of the lease. Notice therefore would be necessary where tenant holds over. Case law ref. **65 Mad L W 172 : (1952) 1 Mad L J 227 : ILR (1953) Mad 31 : AIR 1953 Mad 894 (887) (Pt C) (Pr 15) (DB).**

——Ss. 106, 116 — Applicability of — Bombay Rents Hotel and Lodging House Rates Control Act (57 of

1947), S. 12 (3) (a)—Payment of rent—Mode of—Renewal by holding over of year to year tenancy into monthly tenancy—Rents payable only by month and not by year. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (3) (a). **(1962) 40 Mys L J 1000.**

——**Ss. 106 and 111**—Pepsu Evacuee (Administration of Property) Ordinance (13 of 2006), S. 14 (2) (3)—Surrender of original lease of evacuee property in favour of Custodian and new lease—Expiry of new lease—Lessee holding over—Notification under S. 14 (2)—Effect of—Revival of lessee rights by subsequent Ordinances replacing Ordinance 13 of 2006—Position of legal representative of original lessee. See Pepsu Evacuee (Administration of Property) Ordinance (13 of 2006), S. 14 (2) (3). **AIR 1953 Pepsu 26 (DB).**

——S. 106 — Lessee continuing in possession after expiry of lease—Suit for possession beyond 12 years, maintainability of. See Limitation Act (1908), Art. 139. **AIR 1955 NUC (Punj) 4959.**

——**Ss. 106, 111, 116** — Tenancy for fixed term — Determination of, by efflux of time — Notice to quit not necessary—Statutory protection under Rent Control Legislation — Forfeiture — Tenant continuing in possession — Nature of possession of tenant. A I R 1961 S C 1067 and AIR 1949 F C 124, Rel. on. **ILR (1961) 11 Raj 1196 : 1961 Raj L W 494 : AIR 1962 Raj 100 (102, 103) (Pt B) (Prs 7, 8, 9).**

——Ss. 106 and 116 — Holding over — Terms of lease.

Where the original deed of lease was for three years under S. 116, of the Transfer of Property Act and the tenant was holding over after the expiry of that period if he did not settle fresh terms of the lease, the nature of the tenancy became from month to month, but all other terms of the original tenancy applied to the tenancy, which was brought about by holding over. **ILR (1957) 7 Raj 262 : 1957 Raj L W 302 : AIR 1957 Raj 118 (120) (Pt C) (Pr 9).**

——S. 106 — Lessee holding over after expiry of notice to quit —Effect —Power to grant damages — (Civil P. C. (1908), S. 100 — Exercise of discretion by lower appellate Court).

Where a notice to quit given by the lessor to the lessee is coupled with a demand for enhanced rate of rent if the lessee should continue in possession after the date fixed in the notice and the lessee continues in possession in spite of such notice then in a suit for ejectment brought by the lessor against the lessee the lessor cannot as of right claim enhanced rate of rent according to the notice because a demand for the enhanced rate given in the notice is in the nature of an offer and unless it is accepted by the lessee, he cannot enforce that condition by his unilateral action.

In such a case the Court has, however, power to award damages to the plaintiff but the grant of damages is in the discretion of Court and the exercise of such discretion by the lower appellate Court would not be interfered with in second appeal unless there are good grounds to do so. **1955 Raj L W 129 : AIR 1955 Raj 167 (173) (Pt H) (Pr 33).**

——S. 106 — (Rajasthan) Rent Control Order, Cls. 3, 5, 8—Termination of tenancy—Liability for damages at rate mentioned in notice. See Houses and Rents — (Rajasthan) Rent Control Order, Cl. 3. **AIR 1952 Raj 111.**

——Ss. 106, 105—Tenants agreeing to pay Rs. 10 per day as compensation—Effect on termination of lease stated. See T. P. Act (4 of 1882), S. 105. **AIR 1956 Tripura 30.**

——Ss. 106 and 116 — Tenancy from year to year—Notice to quit—Necessity for.

The lessee, under a lease under which rent was payable from year to year, continued to hold over after the period of the lease and the lessor accepted rent from him from year to year.

Held, that in view of the provisions of S. 116 the tenancy was from year to year as specified in S. 106, T. P. Act and therefore the lessee could not be ejected until a notice of ejectment as provided under S. 106, T. P. Act was served on him. **A I R 1955 Tripura 26 (26) (Pt B) (Pr 8).**

——S. 106—Contract to the contrary—Lease for fixed term — No provision for notice to quit in case of breach — Lessee holding over after expiry without paying rent—Notice to quit is not necessary—Notice cannot be defective because it is six months' notice. **AIR 1955 NUC (Tripura) 1915.**

20. Notice to quit — Who can give — Joint Hindu family.

——S. 106 — Karta including de facto Kartha of a joint family can validly determine tenancy and sue for eviction of a tenant.

The Karta of a joint family is entitled to file a suit for ejectment without joining other coparceners in the suit as plaintiffs and it it not necessary for the coparceners to join in the notice of ejectment. A person as the de facto Karta of the joint family is competent to file the suit and can validly terminate the tenancy by a notice.

The Letters Patent Appeal which was allowed was against the decision noted in 1962 M P L J (Notes) 345. **1963 M P L J (Notes) 156.**

21. Notice to quit — Who can give — Co-lessors.

——S. 106 — Notice signed by one of joint owners on behalf of all — Presumption — Burden of proof—Evidence Act (1872), Ss. 101 to 104 and 114.

Where a notice of termination though signed by one of the joint owners, says that it was being sent on behalf of all of them, and subsequently all of them state, in the plaint in the suit for ejectment, that they sent a notice of termination it will be presumed that the statement in the notice is correct and the onus will be on the tenant to prove that the notice was not on behalf of all the joint owners. **1965 All W R (HC) 753.**

——S. 106 — Notice to quit — Joint notice by landlord's transferees, owning distinct portions in the property —Single tenant —Notice is not bad —Combined result of common notice was that the tenancy of the tenant in respect of each portion was terminated — No misunderstanding regarding the meaning and effect of such a notice is likely to be caused as the tenant is clearly given to understand thereby that the landlords acting together have terminated his tenancy. **1963 All W R (HC) 514 : 1963 All L J 856 : AIR 1964 All 350 (353) (Pt D) (Pr 7).**

——S. 106 — Notice to quit by some out of several co-owners — Names of 8 out of 9 co-owners mentioned in notice — 9th co-owner joining in array of plaintiffs and also entering witness box and saying that notice was sent on the instruction and on his behalf also — Notice held sent on behalf of all co-owners. **AIR 1955 NUC (All) 2699.**

——S. 106—Who can give notice to quit—Co-lessor —One co-lessor cannot give notice to quit in respect of his share.

Where defendant 1 was a tenant in respect of certain land under the plaintiffs and defendants 2 to 8 and subsequently some portion of the land fell to the share of the plaintiff at a partition, a notice to quit by the plaintiff in respect of the land fallen to his share would be invalid and therefore the plaintiff

could not sue to elect defendant 1 merely from that share. AIR 1957 Assam 70 (70) (Pr 5) (DB).

——S. 106—Notice by firm as landlord—(Civil P. C. (1908), O. 30, R. 1).

The two parties with which a Court is concerned in suits for eviction based on tenancy, are the lessor and the lessee. If the partners collectively, that is to say, as a firm enter into a contract of lease, then they are the landlords and the firm is the lessor, each partner acting as the agent of the other in law. It is not necessary that that the identity of the partners should be disclosed either in the notice or in the suit unless the lessor or lessee makes a demand in accordance with the provisions of O. 30, Civil P. C. ILR (1952) 4 Assam 357 : AIR 1953 Assam 208 (208) (Pt C) (Pr 6) (DB).

——S. 106—Landlord and Tenant—One of the joint lessors cannot sue or terminate lease.

One of the joint lessors alone cannot terminate the contract of lease or sue for possession of the property to the exclusion of other co-owners. 1962 Nag L J (Notes) 47.

——S. 106 — Two companies having distinct legal entities — Common directorate of two companies no bar to creation of tenancy by one company in favour of the other or to termination of tenancy so created or institution of suit for ejectment — Ex parte decree for ejectment against lessee company—Sub-lessee not impleaded in ejectment suit — Effect on sub-lease — Execution against sub-lessee not illegal — Collusive decree what amounts to—Effect. See T. P. Act (1882), S. 105. (1962) 66 Cal W N 1010.

——S. 106 — Co-lessors — Determination of tenancy by one co-lessor—Validity.

Where the tenancy has been created by several landlords, one co-lessor cannot at his own choice and pleasure determine the tenancy or eject a tenant except in cases where he validly represents other co-lessors also. I L R 35 Cal 807 and I L R 29 Mad 29 and I L R 3 Bom 23 and AIR 1935 Bom 262, Rel. on. AIR 1959 J & K 80 (81) (Pt A) (Prs 10, 12).

——S. 106—Suit by co-owners. See Civil P. C. (1908), O. 1, R. 10. AIR 1956 Madh Bha 35.

——S. 106—Quit notice given by one of the managing trustees of a temple is valid — All trustees need not be joined as plaintiffs in suit by temple—Managing trustee for deity is competent to sue — M. P. Public Trusts Act (30 of 1951), S. 32 — Civil P. C. (1908), O. 31, Rr. 1 and 2.

Notice to terminate tenancy was given under instructions from one out of the two managing trustees of a temple and the suit was filed in the name of the deity though the trust was registered in the name of the temple. It was urged that as the trust was not registered in the name of the deity but in the name of the temple, there was no identity established between the plaintiff and the registered public trust.

Held:—The contrast between the two provisions, Rules (1) and (2) of O. 31, Civil P. C., made it clear that a trustee could represent beneficiaries and it was not necessary to join all the trustees compulsorily though the Court in suitable cases might order them or any of them to be impleaded as parties but when the suit was between trustees all the trustees must be joined to the suit. 1953 Nag L J 667, Foll.

The Deity being the owner of the property could act only through some human agency in sending the notice. The notice sent by the managing trustee of the temple, had to be reasonably construed and could not be interpreted in a pedantic manner. Thus interpreted, it was on behalf of no other person but the deity itself. It could not reasonably be inferred in the case that the identity of the person sending the notice and the identity of the plaintiff was different. 1963 M P L J (Notes) 46.

——S. 106—One of the several joint owners cannot determine the tenancy and notice to quit must be given by all.

Held, on facts that the plaintiff's simply starting managing the property consequent to the infirmity of his grandfather would not make him the sole landlord and the plaintiff alone was not entitled to terminate the tenancy or file a suit in his own name for the ejectment of the defendant. 1952 Nag L J 398; AIR 1953 Nag 18 : AIR 1953 Orissa 245, Mulla's T. P. Act 4th Edn., p. 623; 1959 M P L J Note 75, Foll. 1962 M P L J (Notes) 345.

——S. 106—Quit notice by three brothers jointly—Only one brother landlord — Association of strangers does not invalidate the quit notice. AIR 1954 Nag 292, Foll., A I R 1941 Cal 408, Disting. 1962 M P L J (Notes) 32.

——S. 106—Contract of lease with joint landlords—Notice to quit by all necessary.

In India a relation created by contract with several joint landlords continues until there exists a new and complete volition of all to change it. One of several joint owners, whether joint-tenants or tenants in common, cannot determine the tenancy and a notice to quit must be given by all. AIR 1953 Nag 18: 1952 Nag L J 398; A I R 1953 Orissa 245, Mulla's Transfer of Property Act, 4th Edn., p. 623, Rel. on. 1959 M P L J (Notes) 75.

——S. 106—Co-lessors—Notice to quit.

A tenant cannot be ejected at the instance of only one of the landlords where the tenancy has been created by several landlords. All the joint tenants must join in giving notice to the tenant before terminating his tenancy. Case law discussed. 1952 Nag L J 398 : I L R (1953) Nag 672 : A I R 1953 Nag 18 (18) (Pr 3).

——S. 106—Notice to quit—Validity.

Notice given by brothers without joining their mother who has interest in the property at the time of the notice is invalid. 19 Cut L T 29 : A I R 1953 Orissa 245 (245, 246) (Pt B) (Pr 6).

22. Notice to quit—Who can give—Miscellaneous.

——Ss. 106 and 111—Notice determining tenancy—Person entitled to give — Tenant going to Pakistan—Occupation by defendant with landlord's permission—East Punjab Evacuee (Administration of Property) Act, 1947, coming into force — Notice to defendant terminating tenancy for non-payment of rent — No notice from Custodian directing defendant to pay rent to him — Landlord held within his right to determine tenancy and seek ejectment under ordinary law — Defendant held not in possession on behalf of Custodian. AIR 1955 NUC (Ajmer) 4735.

——S. 106—Notice by Advocate on behalf of client—Validity.

Where an Advocate acting under instructions from his client signs a notice and sends it to the tenant, the notice cannot be said to be invalid on the ground that it was not signed by the client. 1959 All W R (HC) 424: 1959 All L J 571.

——S. 106—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cls. 13 (1) and 2 (4) — 'Landlord' as defined in Cl. 2 (4) of Order, interpretation of — Lessor alone has right to make application for termination of lease. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (1). AIR 1953 Nag 251 (DB).

[Overruled on another point in AIR 1954 Nag 151 (FB).]

23. Notice to quit—To whom to be given.

●——Ss. 106, 111 — Joint tenancy—Notice to determine lease to one of the joint tenants sufficient—Suit for ejectment against one of the tenants also good. Kanji Manji v. Trustees of the Port of Bombay. (1962) Supp 3 S C R 461 : 65 Bom L R 258 : 1963 Mah L J 450 : (1963) 2 S C J 134 : AIR 1963 S C 468 (471) (Pt B) (Pr 7).

——S. 106—Notice to quit—To whom to be given.

In the absence of service of notice on both the joint tenants, service must be deemed to be insufficient. When one of the joint tenants was not served it must be held that the tenancy was not validly terminated. AIR 1952 Cal 752, Foll. 1954 A M L J 32 : AIR 1954 Ajmer 65 (66) (Pt B) (Pr 3).

——S. 106 — Joint tenants—Notice terminating tenancy sent to the address of one of them — Tenant refusing to accept—Effect of.

A notice calling upon two joint tenants to quit but sent to the address of one of them is in law a notice addressed to both. The address on the envelop is no part of the notice but only a direction to the post office to deliver the letter to a particular person. A I R 1935 Bom 247, Dissented from. The requirement with regard to service of notice is fulfilled if it is sent by post to the person concerned and it was tendered or delivered personally to him. Section 106, does not say that the notice is not complete unless tenant accepts it, but merely that it should be tendered or delivered.

In case of joint tenants tender of notice on one is sufficient notice on all and it is immaterial whether it is accepted or refused, for the requirements of S. 106 are complied with. If joint tenants are permitted to take shelter behind the refusal of one of them to accept it, it would be impossible for the landlord to serve a valid notice terminating a joint tenancy, because one of the tenants would keep refusing the notice while the others keep out of its way. 1965 All L J 880 : 1964 All W R (HC) 351 : AIR 1965 All 287 (287) (Prs 4, 5).

——S. 106 — Joint lease—Notice to quit addressed to all joint lessees — Service of notice only on one — Provisions of T. P. Act held are sufficiently complied with. 1956 All L J 650, Foll. AIR 1964 All 52 (53) (Pt A) (Pr 1).

——S. 106 — Notice terminating lease and notice demanding rent — Joint lessees — Service on one of lessees — Sufficieney — (Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3).

Held, on facts that the service on one of the joint lessees was sufficient service of the notice under S. 106, T. P. Act. A I R 1918 P C 102; 35 Mad L J 707, Rel. on. Held, further that for the reasons for which the notice under S. 106 has been held to be sufficiently served on all the joint lessees, the notice demanding rent may be taken to have reached all the lessees. 1956 All W R (HC) 543 : 1956 All L J 650.

——Ss. 106, 105 — Lease to Hindu in his personal capacity — Tenant dying leaving several heirs including married daughters:— Heirs joint tenants and not tenants-in-common vis-a-vis landlord — Notice terminating tenancy to some — Valid and binds all heirs—'Family' in S. 106 meaning — Hindu Succession Act (1956), Ss. 11 and 19.

Where a Hindu obtains a lease of certain shop premises in his own right and dies intestate leaving several heirs of the first degree under the Hindu Succession Act, the succeeding heirs hold under the leasehold vis-a-vis the landlord as co-tenants or co-lessees. All the co-lessees or tenants hold as joint tenants in the sense that they have a single tenancy relationsnip with the landlord and they are not different tenants vis-a-vis the landlord, and a notice terminating the tenancy under S. 106, T. P. Act, served on one or some of the co-tenants, would be a valid and good notice to all, provided notice is intended to be notice to all the joint tenants.

The position is not altered even though some of the heirs are daughters who are married and reside at other places in their husband's families. The word "family" in the context in which it is used in S. 106, T. P. Act includes all those who are connected by blood relation or by marriage with each other, and in that sense would cover married daughters.

Even in the case of Hindu families girls who are married and go to the husband's families do not cease to belong to the family of the father. Whatever may be the concept at one time under the existing law, even married daughters take substantial interest in the family and the family property. Thus, the prevailing concept as to "family" far from being restricted, has been considerably expanded by creating interest in the family and substantial interest for many persons who had no such interest in the property, such as widows of pre-deceased heirs, or even married or unmarried daughters or widowed daughters. 65 Bom L R 647 : 1963 Mah L J 883 : I L R (1964) Bom 391 : A I R 1964 Bom 96 (99, 100) (Prs 11, 12, 16, 17, 18).

——S. 106 — Death of lessee — Privity of contract between lessor and personal representatives of lessee —Devolution of lessee's interest on legatee—Assent of executor—Effect stated. See T. P. Act (1882), S. 105. AIR 1955 N U C (Cal) 879 (DB).

——S. 106 — Notice to quit — Validity — Notice to limited company addressed to its managing director by name.

Where the tenant is a limited company, a notice to quit addressed not to the company but to a person who happens to be its managing director is valid in law, when it is understood and treated by the latter as notice to the company. 89 Cal L J 127 : I L R (1954) 2 Cal 75 : A I R 1953 Cal 160 (162 to 164) (Pt E) (Prs 21, 23, 27, 28, 29).

——S. 106 — Notice to one of joint tenants and suit against him is valid.

A notice to one of the joint tenants is sufficient and the suit against one of the joint tenants is good. AIR 1963 S C 468, Rel. on. 1964 M P L J (Notes) 172.

——S. 106 — Residence—Meaning of—Tenant going elsewhere in search of employment — His wife and children living in suit house—Effect.

An establishment home where a person's wife and children live is undoubtedly his residence for the purpose of S. 106, T. P. Act, even though he may be employed elsewhere. A place is a person's residence if he has lived there and has freely exercised his intention of remaining there permanently or for a length of time. If the defendant's family was living in the disputed house at Daulatganj it was undoubtedly his residence even though he was not physically present there at the particular moment. A person can have more than one place of residence. 1960 Jab L J 506 : 1960 M P L J 449 : A I R 1960 Madh Pra 167 (168, 169) (Pt A) (Prs 5, 8).

——S. 106 — Determination of tenancy, partnership firm — Notice addressed to managing partner and acknowledged by firm— Validity — Partnership Aet (1932), Ss. 18 and 24.

Having regard to the provisions contained in Ss. 18 and 24 of the Partnership Act, a notice addressed to a managing partner of a tenant firm and treated by the latter as a notice to quit and acknowledged will be valid under S. 106 of the Transfer of Property Act

so as to determine the tenancy. AIR 1953 Cal 160, Foll.; (1946) 1 All E R 296, Rel. on; AIR 1925 Cal 752, Dist. 1961 Raj L W 616; ILR (1962) 12 Raj 179.

——S. 106—Notice to quit — Joint tenants — Service on one — Validity.

Where a notice to quit sent by post is addressed to both the joint tenants who are brothers but the notice is tendered to and refused by one of them, it would be a sufficient service on both. **AIR 1951 Raj 88 (89) (Pt C) (Pr 7).**

24. Notice to or by agent.

——S. 106—Notice terminating tenancy in writing signed by lawyer on behalf of landlord — Lawyer not subsequently engaged in ejectment suit on behalf of landlord—Notice is valid until contrary is proved.

Per Mithan Lal J. — A presumption of law can also be drawn within the meaning of S. 114 of the Evidence Act that a notice given in the manner, as was done in this case, should be presumed to have been duly given on behalf of the client unless the contrary was proved. AIR 1933 Rang 147, Rel. on. **1961 All L J 353 : ILR (1961) 1 All 678.**

—— S. 106—Notice to quit to agent.

A tenant's servant is his agent and a service upon him is as effective as a service upon the tenant himself. **1951 All W R (HC) 67 : 1951 All L J 154 : AIR 1951 All 396 (398) (Pt E) (Pr 7) (DB).**

——S. 106 — West Bengal Premises Tenancy Act (12 of 1956), S. 13 (6) — Notice by authorised agent of landlord is valid —Only change effected by S. 13 (6) from the law in S. 106, T. P. Act is as regards period of notice. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 13 (6). **65 Cal W N 1119 : 1962 Cal L J 46 : ILR (1962) 2 Cal 180.**

——S. 106 — Notice to or by agent — Notice to quit sent by registered post — Acknowledgment card showing that it was received by some person on behalf of addressee — It must be presumed under S. 114, Evidence Act that notice was duly delivered to addressee through proper person — (Evidence Act (1872), S. 114). **AIR 1955 NUC (Cal) 2889.**

——S. 106 — Quit notice given by counsel under instruction from a partner of firm — Firm registered with Registrar of Firms:—Notice is validly given. **1962 MPLJ (Notes) 288.**

25. Period of notice.

——S. 106—Underlying principle.

The principle underlying the rule contained in S. 106 seems to be that the tenant must have a clear 15 days' time prior to the end of the month of his tenancy, so that he may in the meanwhile remove his effects after arranging for another accommodation. If in addition to these 15 days he is allowed a few hours more, so that he leaves the premises by the first day of the ensuing month, he cannot be said to be prejudiced. Indeed he has little more time to do the needful to comply with the notice served by the landlord. It would be too technical and hairsplitting to hold that, because of the tenant having been given a little more time even after the expiry of the month of the tenancy, he has been prejudiced and the landlord must wait for another month to give somewhat less generous notice and thereby procure his tenant's ejectment. A notice asking the tenant to vacate the houses "by the 1st May, 1947" and not on or by the 30th April, 1947 is not therefore, an invalid notice. **1952 All L J 727 : 1952 All W R (HC) 18 : AIR 1953 All 218 (219) (Pt B) (Pr 13).**

——S. 106—Lessee to the knowledge of lessor using land for manufacturing purpose—Six months' notice necessary.

If the lessee to the knowledge of the lessor requires or uses the land for manufacturing purpose, then in the absence of a contract to the contrary, he is entitled to six 'months' notice. AIR 1924 Bom 115, Relon. **AIR 1963 Cal 198 (203) (Pt H) (Pr 19) (DB).**

——Ss. 106 and 110—Notice to quit Construction—Month to month tenancy — Calculation of period—Omission of first day of month not necessary.

Section 110 has no application to the case of a tenancy from month to month. Therefore, it is not necessary to omit from calculation the first day of the month. The notice to quit would be a valid notice if it expires with the end of the month of tenancy. Hence, where the tenancy from month to month commenced from the 8th of a month, a notice to vacate the premises by the 7th of a month would be a valid notice : Further, notices to quit are not to be construed with a desire to point faults in them. A notice need not be worded with the accuracy of a plea. **I L R (1962) Madh Pra 689 : 1963 MPLJ 157 : 1963 Jab L J 305.**

——S. 106—Period of notice.

Under S. 106, in the absence of a contract to the contrary, the tenant is entitled to a notice for a period equal to half the length of the term of the tenancy, secondly, he is also entitled, without prejudice to this right, to stay on till the end of a full month or a full year of the tenancy, as the case may be. If, the time given is in excess of the half term of the tenancy and the tenant is able to stay on for a half term before the date of the termination of the lease period, the section is complied with and in fact, more than complied with, though the notice terminates the tenancy on a date other than the one on which the lease term itself ends. **1961 Jab L J 140 : 1961 MPLJ 446 : AIR 1961 Madh Pra 232 (233) (Pr 3).**

——S. 106 — Period of notice under — Month means calendar month—Period of month's notice beginning on 28th or later day of January —Termination on 28th February in ordinary years is valid — General Clauses Act (1897), S. 3 (35). **27 Cut L T 210 : I L R (1961) Cut 416 : AIR 1962 Orissa 149 (151, 154) (Prs 7, 13, 14) (DB).**

——S. 106—Notice.

Where the tenants have put up a dwelling house and have been proved to have remained in occupation of the land for as long as 70 years, paying a uniform annual rent, the tenancy cannot be terminated without a reasonable notice being served on them whether the tenancy is agricultural or not. A notice not signed either by the lessor or his agent is of no value. **18 Cut L T 117 : AIR 1951 Orissa 262 (295) (Pt G) (Pr 10).**

26. Expiring with the end of year or month of tenancy.

See also Note 13.

● ——Ss. 106, 111 (g), 113, Illus. (a) and 114 — P's tenant D in arrears of rent for one year — P serving notice on D on April 11, 1959 requiring him to pay arrears within one month and calling upon him to vacate premises by April 30, 1959—D sending cheque on June 25, 1959 for arrears of rent, and also rent due up to June end—P accepting cheque and cashing it—P again giving notice to D on July 9, 1959 requiring him to vacate by end of July, 1959—D failing to vacate—P filing suit for eviction of D on basis of notice dated July 9, 1959 — Notice dated April 11, 1959 held ineffective—P's suit for eviction on basis of notice dated July 9, 1959 held competent—Ss. 16, 17 of Act XLI of 1961 and S. 113, of T. P. Act held inapplicable — P held not to have waived right to sue for eviction. See Houses and Rents —M. P. Accom-

modation Control Act (23 of 1955), S. 4 (a). AIR 1965 S C 101.

——S. 106—Notice to quit—Validity.

A notice to quit must not be interpreted too technically or in a spirit of hair-splitting. A notice requiring the tenant to vacate the premises not on the last day of the month but on the first day of the succeeding month is not invalid merely because it allows one extra day. 1954 A M L J 16 : A I R 1954 Ajmer 62 (62) (Pt B) (Pr 6).

——S. 106—Notice to quit—Monthly tenancy.

Notice calling upon a lessee to vacate by the day following the date of the ending of the monthly tenancy is invalid and ineffectual. 1951 A M L J 48 : AIR 1951 Ajmer 52 (1) (52) (Pt B) (Pr 3).

——S. 106—Notice to quit—Month of tenancy ending on 6th February — Tenant asked to vacate not from 6th but from 7th February—Rent for 7th not demanded—Treating it clerical error, held, words '7th February' did not have effect of extending tenancy as no rent was demanded for that day—Notice was valid. 1965 All W R (HC) 229 : 1965 All L J 607 : AIR 1966 All 165 (166) (Pt A) (Pr 3).

——S. 106—Notice to "vacate within one month" is valid. AIR 1963 All 366 (367) (Pt B) (Prs 5, 6, 7).

——S. 106—Notice—Tenancy to end on 9th of every English month—Notice requiring tenant to vacate by 10th of certain month—Validity. ILR (1958) 2 All 1 : AIR 1958 All 729 (732) (Pt E) (Pr 7) (DB).

——S. 106—Notice—Monthly tenancy beginning on the first of calendar month and ending at end of calendar month — Notice dated 22-4-1951 requiring tenant to vacate on 31-5-1951 — Notice held valid notice. AIR 1955 N U C (All) 3586.

——S. 106 — Notice expiring with end of month of tenancy—Notice held valid.

A monthly tenancy commenced on the first day of each Hindi month. The landlord by his notice had required the tenant to vacate the premises on the first day of the month following the month in which the notice was given. As such, the notice expired with the end of the month of the tenancy. As a further precaution the landlord had allowed the tenant to vacate the premises on such day of the Hindi calendar month as the latter himself believed to be the date on which the tenancy expired.

Held, that the notices given by the landlord were perfectly valid. 1952 R D (HC) 45 : 1952 All W R (HC) 80 : 1951 All L J 702 : AIR 1953 All 598 (598) (Pt B) (Pr 4).

——S. 106—Lease from month to month — Tenancy beginning from 6th of every month—Notice on 20th of previous month — Recital that 15 days notice was given and tenant should vacate on 6th of following month — Notice held not invalid in having asked tenant to vacate on 6th instead of 5th having regard to its entire contents. 1951 A W R (HC) 197 : 1951 All L J 331 : AIR 1952 All 579 (580) (Pt B) (Pr 4).

——S. 106 — Monthly tenancy according to calendar month and ending with last date of month — Notice to quit under S. 106 expiring with the month of the tenancy is valid. 1951 All W R (HC) 67 : 1951 All L J 154 : AIR 1951 All 396 (397) (Pt C) (Pr 5) (DB).

——S. 106 — "Expiring with the end of a month of the tenancy."

Where a landlord in his notice requires a tenant to vacate the premises on a date immediately following the date of the expiry of the monthly tenancy, the notice complies with the provisions of S. 106. 1951 All W R (HC) 121 : 1951 All L J 285 (DB).

——S. 106—Periodic lease under unregistered deed—Lease — Notice to quit expiring with last date of subsequent month—Validity discussed. See T. P. Act (1882), S. 110. AIR 1959 Assam 174 (DB).

——Ss. 106 and 110 — 'Expiring with end of year or month of tenancy'—Notice to quit—Validity.

In the case of monthly tenancy commencing from the 12th of each month the notice purported to ask the defendant to quit by the end of 13.9.1950.

Held, that the notice to quit was valid under S. 106. The date from which the tenancy commenced, viz , the 12th of the month had to be excluded from computation under S. 110. A I R 1932 P C 279, Foll. I L R (1955) 7 Assam 535 : A I R 1956 Assam 20 (23) (Pt C) (Pr 7) (DB).

——S. 106—Notice requiring tenant to vacate on 1st of 'Poush' — Notice is not invalid. AIR 1955 N U C (Assam) 4238.

——S. 106—Validity of notice—Notice to quit on 7th Pous is valid in case of monthly tenancy commencing on 8th Magh. AIR 1955 N U C (Assam) 2786.

——S. 106—Year or month of tenancy.

The year or month of the tenancy at the end of which a notice under S. 106 should expire is not the calendar year or month in which the notice is given. The period, whether it may be the year or the month, is the period calculated with reference to the commencement of the tenancy. ILR (1952) 4 Assam 441 : AIR 1953 Assam 202 (202) (Pt A) (Pr 4).

——S. 106 — Notice to quit 'on a particular date' — Meaning.

The legal connotation of the expression 'to quit on a particular day' is that the person required to quit can remain in occupation till the midnight of that day if he so desires. Where therefore a month to month tenancy expires on the 30th of September, a clear 15 days notice to quit 'on the 30th September' is a perfectly valid notice. I L R (1951) 3 Assam 240 : AIR 1952 Assam 132 (133) (Pt A) (Pr 4) (DB).

——S. 106 — Notice — Construction—Notice under S. 20 (2), Bombay Act (67 of 1948) — Expression 'before the abovementioned date'—Interpretation of —(Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 20 (2)—Words and Phrases—Before the abovementioned date).

Though a notice should as far as possible be liberally construed and must not be allowed to be defeated merely by reason of certain minor errors or inaccuracies, yet where the language of the notice is such that it is difficult to come to the conclusion that the tenant must necessarily have understood the notice to mean that he was required to hand over possession of the properties upon the expiry of a full and clear year as defined in S. 2 (20), the landlord cannot ask for interpretation of the notice upon a liberal construction. AIR 1918 P C 102, Rel. on.

Held, that the expressions 'before the 31st March, 1950' and 'you are to hand over possession to us for our personal cultivation before the abovementioned date,' in the Notice taken together meant that the tenant was called upon to hand over possession of the fields not on 31st March, 1950 itself, latitude being left to him to choose his own time on that day, but even on any date before 31st March, 1950. The landlord used language which was really slipshod and the benefit of slipshod language could not be given to him. AIR 1956 Bom 113 (114) (Prs 5, 6) (DB).

——Ss, 106, 110 — Monthly tenancy commencing from first day of month — Notice to quit expiring on last day of subsequent month—Validity.

Section 110 of the Transfer of Property Act applies only to leases for a term and has no application to monthly tenancies. 48 C W N 76; 50 C W N 481,

Rel. on. Hence when a monthly tenancy commenced on the first day of a month it can be properly and validly determined by service of a notice expiring on the last day of a subsequent month. 61 C W N 407 : A I R 1957 Cal 357 (360) (Pt C) (Pr 12) (DB).

——S. 106—Notice to quit — 'Expiring with the end of a month of tenancy'.

By the notice, the defendant was asked to vacate within the 30th April, but that was followed by another clause, requiring delivery of possession on the 1st of May.

Held, that reading the two clauses together, there could be no question of any ambiguity in the notice to quit, or of any defect and that the notice to quit was legal, proper and sufficient. (1956) 60 Cal W N 308.

——S. 106 — Notice terminating tenancy as per month of tenancy and also mentioning two additional earlier dates on which tenant could determine it — Notice held valid.

Held that so far as the landlord was concerned, he determined the tenancy on 30th November, 1959, which was a date certain and the last day of the month of the tenancy. The notice to quit, therefore, expired with the month of the tenancy. The two other dates suggested by the landlord-plaintiff were not the alternative dates on which the plaintiff sought to terminate the tenancy of the defendant, so as to render the date of termination of the tenancy vague and uncertain but they merely represented the dates earlier in point of time than the actual date of termination of the tenancy, at which the plaintiff was prepared to accept the determination of the tenancy. This did not have the effect of invalidating the notice. (1962) 3 Guj L R 113 : A I R 1962 Guj 229 (231) (Pt B):(Pr 4).

——S. 106—Notice to quit—Lease for 10 years commencing on 12-1-1949 — Notice to vacate on 12-1-1959 expires with end of month of tenancy.

A lease of premises commencing from 12-1-1949 for a term of 10 years ends on the midnight of 12-1-1959 and a notice given by the landlord on 26 8-1958 requesting the lessee to vacate the premises on 12-1-1959 is a notice expiring with the end of the month of the tenancy. A I R 1932 P C 279; 63 M L J 685, Foll. A I R 1961 J and K 39 (40) (Pt A) (Pr 2) (DB).

——S. 106—Notice to quit—Construction—Monthly tenancy commencing from second day of month — Notice to quit by midnight of the last day of the month or on the day when the 'time of the notice expired'—Validity.

Notices to quit, though not strictly accurate or consistent in the statements embodied in them may still be good and effective in law; the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer but what they would mean to tenants presumably conversant with all those facts and circumstances; and further, they are to be construed not with a desire to find fault in them which would render them defective but to be construed ut res magis valeat quam pereat. But these principles are applicable to notices containing mistakes honesty but inadvertently made and not to inaccuracies deliberately inserted for fraudulent purposes. A I R 1918 P C 102, Foll. Where monthly tenancy commenced from the second day of the month and the notice determining the tenancy gave the option to the tenant to vacate either by the midnight of the last day of the month or on the day when the 'time of the notice expired' and it was beyond doubt that the error in the notice was an honest but inadvertent error. A I R 1959 J and K 80 (82, 83) (Pt B) (Prs 15, 20).

——Ss. 106, 110 — Applicability — S. 110 does not apply to monthly tenancy — Notice given to tenant expiring on last day of the month is valid. AIR 1955 N U C (Madh B) 3022 (DB).

——Ss. 106, 110 — Tenancy for one year—Notice to expire at the last date of the month is a bad notice. A I R 1955 N U C (Madh B) 69 (DB).

——S. 106—M. P. Accommodation Control Act (23 of 1955), Ss. 4 (g), 4 (h) — Eviction under — Rent note, dated 4th September, 1944 providing one month's time for vacation—Quit notice, dated 20th November, 1959 determining tenancy on expiry of 31st December, 1959 — Quit notice is not illegal. 1965 Jab L J 905 : AIR 1966 Madh Pra 207 (209) (Pt B) (Pr 12).

——S. 106 — Tenancy commencing from 1st day of English Calendar month — Notice to vacate on 31st July, 1960 is valid—Validity of notice should not be decided on hypertechnical considerations.

The tenancy being a monthly tenancy commencing from 1st of English Calendar month, the landlord served a notice on the tenant calling upon him to vacate the premises on 31st July, 1960. It was contended that the notice was invalid as it did not expire at the end of the month of the tenancy.

Held, that the intention of the plaintiff was to give the tenant time till midnight of 31st July, 1960. Notice was, therefore, not invalid. A notice can require the tenant to vacate at or before the midnight of the last day, but even so as the tenant has the legal right to occupy the premises till the last moment of the midnight, a notice requiring him to vacate on the 1st moment of the next day cannot also be said to be bad. The validity of the notice ought not to depend on such hypertechnical considerations and consequently—Courts have held both notices expiring on the last date and those expiring on the next date to be valid, thus leaving out of account the fraction of a day. No distinction should be drawn between tenancies commencing "at" a particular time or "on" a particular day and "from" the same day, because "at", "on", "from" and "on and from" are for this purpose equivalent expressions and any distinction between them is far too subtle for practical use. 1965 Jab L J 366 : 1965 M P L J (Notes) 62 : ILR (1965) Madh Pra 824 : A I R 1965 Madh Pra 140 (141, 142) (Prs 3, 5).

——Ss. 106, 105 and 111 (h) — Quit notice must give fifteen days time and must expire with the end of tenancy month — Month of tenancy may be different from month according to which rent is realised. A I R 1932 P C 279, Rel. on. See T. P. Act (1882), S. 105. 1963 M P L J (Notes) 42.

——S. 106 — 'Expiring with the end of a month of tenancy' Tenancy commencing on 2nd day of month —Notice determining tenancy from 1st day of the month—Notice is valid. A I R 1954 Nag 292, Rel. on. 1960 M P C 621 : 1961 M P L J 107 : A I R 1961 Madh Pra 138 (139) (Pt B) (Pr 2).

——S. 106 — Notice asking tenant to vacate on last day of tenancy month but before end of tenancy is not valid. 1953 Nag L J 147 ; A I R 1953 Nag 219, Rel. on. 1962 M P L J (Notes) 238 : 1961 M P C 826 : 1961 Jab L J 1175.

——S. 106 — Tenancy commencing on 19th of a month —Landlord giving notice purporting to terminate tenancy on 19th—Notice not invalid.

The tenancy commenced on 19th of a month. The landlord issued notice purporting to terminate the tenancy on 19th. It was contended that the landlord should have terminated the tenancy on the 18th as the month of tenancy commenced on the 19th of a month. The lower Courts interpreted the notice as meaning that the tenant was expected to vacate the premises on the day mentioned. There was no sug-

gestion that the interpretation was wholly unreasonable or that the tenant was misled by the notice. Therefore, the contention that the notice was not valid on this ground was not accepted. **(1962) 40 Mys L J 611.**

——Ss. 106 and 110 and S. 116—Lease for a definite period—Day of commencement not fixed — Notices under S. 106 determining the lease — Exclusion of the date of the lease—If necessary.

Lease deeds, dated 6th August 1944, and 1st January 1946 in respect of portions of a premises in favour of different persons were for a period of 11 months in each case. The tenants were holding over. Notices determining their tenancies were issued on 11th August 1949. Whereby the leases were determined by the midnight of 5th September 1949 and 31st August 1949, respectively and possession was demanded on the mornings of 6th September 1949 and 1st September 1949, respectively. In a suit for eviction founded on such notices the first appellate Court, held the notices were short by 12 hours.

Held, in order to apply the rule of interpretation under S. 110, T. P. Act in the matter of the exclusion of the day in the computation of the period of the lease, it should have been expressed that the lease commenced from a particular day. Where no such day is named the principle of exclusion of the particular date does not arise ; the section itself states that where no day of commencement is named the time so limited begins from the making of the lease.

(i) The time began from the first and sixth of the months when the leases were made ;

(ii) Where the tenants were merely holding over the tenancies from month to month (subsequent to the period of the lease) under S. 116 and commenced on the corresponding dates of the leases ;

(iii) The notices terminating the leases on 31st September 1949 and 5th August 1949, the dates of the end of the months of tenancy in each case and demanding delivery on the morning of the subsequent days conformed to the requirements of T. P. Act, S. 106 and were proper and valid. **I L R (1953) Mys 7 : A I R 1952 Mys 139 (140) (Prs 6, 7).**

——S. 106 — Notice must end with end of month of tenancy.

Where though the period of notice is more than 15 days, the expiry of the period falls in the middle of the month of tenancy and does not end with it as required by S. 106, the notice is not in accordance with law. **29 Mys L J 68 : A I R 1950 Mys 63 (64) (Pt A) (Pr 2) (DB).**

——S. 106, 111 (h) — Monthly tenancy ending with last day of calendar month — Notice to vacate on 1st of next month — Validity. See T. P. Act (4 of 1882), S. 111 (h). **A I R 1956 Nag 125**

——S. 106 — "Expiring with the end of a month of the tenancy."

Where the tenancy commenced on the 13th day of a calendar month the tenant could not be called upon to vacate the premises on 12th. He could be legally called upon to vacate the premises only at the end of that day, viz., the beginning of the next day, that is, the 13th. **1953 Nag L J 147 : I L R (1954) Nag 147 : A I R 1953 Nag 219 (220) (Pt C) (Pr 10).**

——Ss. 106, 110 — Tenancy from month to month—Notice to quit : I L R (1937) Nag 214 : A I R 1937 Nag 139 : 170 Ind Cas 790, Overruled.

A periodical tenancy such as from month to month is not governed by S. 110, T. P. Act, and hence the first day of the month need not be omitted from the period of notice to quit. It is a tenancy to which S. 106 applies and the notice to quit must expire with the end of a month of the tenancy. A I R 1943 Bom 306, Rel. on ; A I R 1932 P C 279, Disting. ; I L R (1937) Nag 214 : A I R 1937 Nag 139 : 170 Ind Cas 790, **Overruled. 1950 Nag L J 153 : I L R (1950) Nag 437 : A I R 1950 Nag 233 (234) (Prs 4, 5) (DB).**

——S. 106 — "Expiring with the end of a month of the tenancy."

The rent deed was dated 8-10-1934 and the notice given to the tenant mentioned that the defendant was to vacate the house "by 7th July 1949, or other date when the month ends".

Held, that though the date of the commencement of the tenancy is to be excluded, and, as such the month of tenancy was to expire on the midnight of 8th July, and not 7th July, as mentioned in the notice, the notice was regularised and validated by insertion of the subsequent clause "or other date when the month ends". A I R 1949 All 173 and A I R 1918 P C 102, Foll. **A I R 1953 Orissa 58 (58) (Pt A) (Pr 3).**

——S. 106 — Monthly tenancy — Notice to quit—Notice should expire on last date of month and not on first day of succeeding month.

In the case of a periodical tenancy, the notice to quit must expire with the expiration of the period of the original tenancy. Thus, where a monthly tenancy commences on the 1st of the month, the notice determining the tenancy should expire on the last day of that month and not on the first day of the succeeding month. (1924) 1 K B 117 and A I R 1943 Bom 306, Rel. on ; A I R 1932 P C 279 and A I R 1944 Cal 84, Disting. **I L R (1949) 1 Cut 231 : A I R 1950 Orissa 1 (2) (Pt C) (Pr 3) (DB).**

——S. 106 — Evidence Act (1872), S. 115 — Monthly tenancy—Rent payable according to English calendar —Notice to quit and vacate on last day of English Calendar month — Objection that notice was invalid on ground the period of notice should have commenced from day of month in which tenancy was created, not taken in pleadings—Tenant held estopped from contending that notice did not coincide with last day of calendar month of tenancy — Notice was held to be valid — Civil P. C. (1908), O. 8 Rr. 3, 5. A I R 1965 Pat 311 (313 to 315) (Pt D) (Prs 6, 11) (DB).

——S. 106—Notice—Expiry of.

A notice expiring on the anniversary of the commencement of the tenancy is not a bad notice. **ILR 30 Pat 1155 : AIR 1952 Pat 69 (69) (Pt B) (Pr 1) (DB).**

——S. 106—Notice to quit on or before 1st of following month—Validity.

A notice requiring the tenant to vacate the premises on or before the 1st of the following month, is a notice expiring with the end of a month of the tenancy, and is a proper notice. **ILR (1953) Punj 100 : 54 P L R 358 : AIR 1952 Punj 422 (423) (Pt B) (Pr 4) (DB).**

——S. 106 — Monthly tenancy — Notice to quit — Validity.

A notice asking the tenant to quit on the next day of the date on which the monthly tenancy terminates is valid. AIR 1954 Ajmer 62, Foll. **ILR (1957) 7 Raj 932 : 1958 Raj L W 491 : AIR 1958 Raj 306 (306) (Pt C) (Pr 4).**

——S. 106—Expiring with end of month of tenancy.

Where a notice terminating a tenancy from month to month commencing on the first of each month reckoned according to the English calendar was given in the following terms, namely, 'I terminate your tenancy with effect from the last day of August, 1945. I hereby demand of you the surrender . . . . . on the said date for which purpose I shall be present at the

premises between 4 and 5 p. m. on 31st August, 1945.'

Held. that the concluding sentence made it quite clear that the termination intended was not at midnight on 31st August, 1945, but at the latest by 5 p. m. on the said date and therefore did not amount to fifteen days' notice 'expiring with the end of a month of the tenancy' which for August, 1945, would be at midnight on 31st August, 1945. **1954 Ker L T 335 : AIR 1954 Trav-Co 467 (467) (Prs 3, 4) (DB).**

27. Year or month of tenancy.

See also Note 26.

——S. 106—Tenant voluntarily leaving house — Sub-tenant inducted by him — No question of notice to latter arises. 31 Cut L T 576 : ILR (1965) Cut 229.

28. Calendar for calculation of time.

●——S. 106 — Houses and Rents — Bombay Rents (Hotel and Lodging House Rates) (Control) Act (57 of 1947), S 27 — Bombay Rents (Hotel and Lodging House Rates) (Control) Rules (1948), R. 4—Scope — Do not convert month of tenancy according to Indian calendar to month of British Calendar—Notice to quit on last date of month according to Indian calendar—Notice to quit on last date of month according to Indian calendar is valid. See Houses and Rents—Bombay Rents (Hotel and Lodging House Rates) (Control) Act (57 of 1947), S. 27. AIR 1963 S C 120.

—S. 106 — Year or month of tenancy — Tenancy running according to Assamese calendar—Notice to quit by 30th Pous 1355 B. S. though month of Pous for that year expiring on 29th — Parties correctly understanding that tenancy was to be terminated by end of Pous — Notice is proper. AIR 1955 N U C (Assam) 2838 (DB).

——S. 106—Notice of termination — Computation of period — Tenancy by Indian Calendar — Notice by English calendar — Notice held not valid. AIR 1955 N U C (Assam) 2833.

——S. 106 — "Fifteen days notice expiring with end of month of tenancy"—Parties can agree that monthly period of tenancy should be reckoned from date different from that on which tenant entered into possession—Such agreement may be express or implied —Tenant proposing that he should pay rent by end of English month—Landlord agreeing — Tenant paying rent as it accrued due in first part of following month — Inference is that parties agreed that period of tenancy should run from the beginning of each month of the English calendar even though tenant entered into possession in the middle of a month of Bengali calendar — Hence 15 day's notice expiring with the end of a month of English calendar and with the end of a month of Bengali calendar is valid. AIR 1955 N U C (Assam) 2047.

——S. 106—Calendar for calculation of time.

Where there is an express or implied contract that the period in a lease from year to year or month to month should be reckoned according to Bengali year and not according to British calendar, a notice expiring with end of the year or the month of the tenancy calculated according to the Bengail calendar will be sufficient to terminate the tenancy. ILR (1952) 4 Assam 441 : AIR 1953 Assam 202 (202) (Pt B) (Pr 5).

——S. 106—'Monthly tenancy' meaning of.

Section 106 of the Transfer of Property Act clearly contemplates any kind of "monthly tenancy" and it is well known that a monthly tenancy may be according to an English calendar, Bengali calendar Sambat calendar and so forth, and may commence on any day of the particular month, say, from the 5th of one to the 4th of the next and so on.

Hence it is incorrect to say that all tenancies from month to month under S. 106 must be according to the English calender in view of S. 33, General Clauses Act. View of Rau J. in 43 C W N 76, Diss. from. **AIR 1952 Cal 19 (20) (Pt A) (Pr 6).**

——S. 106—Notice to quit—Validity.

A notice to quit written in Bengali was given on 20-12-1948 calling upon the tenant to vacate 15 days after the notice within the month of Poush, that is to say, by the first of Magh. The month of the tenancy was the Bengali month.

Held, that the notice to quit was not defective. The intention was to give notice to the tenant to vacate at the end of the Bengali calender month which was known to be the month of tenancy. Out of a sort of extra caution whoever drafted the notice has mentioned the period of 15 days which is required under S. 106 and the meaning there is clearly that the vacating is to take place not less than 15 days after the receipt of the notice and within the month of Poush. **AIR 1952 Cal 19 (20) (Pt B) (Pr 7).**

——S. 106 — Notice to quit must terminate with the end of the month of tenancy—Rent note mentioning both Hindi Miti and English date for commencement of tenancy—Tenancy held was governed by English calendar in the absence of anything specific in the rent note to show that it was to be governed by Hindi calendar — (General Clauses Act (1897), Ss. 3 (33), (59) and S. 4). AIR 1955 N U C (Madh-B) 69 (DB).

——S. 106—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29 (1)—"Person entitled to possession"—Interpretation—Tenant dispossessed by landlord — Tenancy does not cease — Such tenant can apply under S. 29 (1). See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29 (1). ILR (1960) Mys 1.

——S. 106—Calendar for calculation of time.

Section 106 clearly contemplates any kind of 'monthly tenancy'. A monthly tenancy may be according to an English Calendar, Bengali Calendar, Sambat Calendar and so forth, and may commence on any day of the particular month, say, from the 5th of one to the 4th of the next and so on. AIR 1952 Cal 19, Foll.; AIR 1944 Cal 84, Not foll. **1955 Raj L W 129 : AIR 1955 Raj 167 (172) (Pt E) (Pr 30).**

29. Form of notice.

——S. 106—Landlord and Tenant—Notice terminating tenancy of house—Demanding incorrect rent — Validity of notice.

A landlord has to demand only the correct amount of the arrears of rent and not such arrears of rent as would not be recognized by a Court of law. Hence a notice demanding improper arrears of rent would be defective notice and would not entitle the landlord to ask for eviction of the tenant if the latter fails to pay it within one month. (1951) A M L J 34 : A I R 1951 Ajmer 54 (1) (54) (Pt B) (Pr 2).

——S. 106—Notice to quit—First part of notice clearly asking tenant to vacate — Second part of it showing intention of landlord to continue tenancy without effecting termination if tenant pays enhanced rent — Notice is not an effective notice terminating the tenancy.

The notice terminating the tenancy must be unconditional unequivocal and clear that is to say a tenant whose tenancy is intended to be terminated and who is asked to quit has no power left to arrest the effect of it and a tenancy must stand terminated on the expiry of the notice period. But in a case where before the expiry of the notice period and before the tenancy actually comes to an end the

tenant is afforded some alternative or some condition on the compliance of which the existing tenancy continues even though on modified terms such a notice would not be unequivocal, unambiguous and clear notice to quit.

Where the landlords had served a notice to the tenant on 30-12-1959 clearly asking the tenant in the earlier part of the notice to quit and hand over the possession of the accommodation on the expiry of the 30th day of the receipt of the notice and in the second part of the notice the tenant was asked to pay the specified enhanced rent from 1st January 1960.

Held, that the notice in question did not comply with the requirement of law and was not an effective notice terminating the tenancy within the meaning of S. 108. (1879) 4 Ex D 201 and A I R 1921 All 194 and 19 Ind Cas 758 (All), Disting. On the principles of harmonious construction of documents and to avoid conflict the document should be read as a whole and the second part could only be reconciled as showing an intention on the part of the landlords to continue the tenancy without effecting its termination if the tenant agreed to pay the enhanced rent. The offer by the landlords to the tenant to have the tenancy continued on the payment of the enhanced rent could not be construed as an offer for entering into a new contract of tenancy for the simple reason that by his acceptance of that offer on any day before 29th January 1960 the tenant could continue the existing tenancy on a higher rent and avoid the consequences of handing over possession on the expiry of 30th day from the receipt of the notice. **1964 All W R (HC) 595 : 1964 All L J 1105 : A I R 1965 All 323 (324, 325) (Prs 2, 3).**

——S. 106 (as amended in U. P.) — Notice by lessor determining lease —Notice stating that lessor did not want to continue any further relationship of landlord and tenant and calling upon tenant to vacate premises at the expiry of 30 days from receipt of notice—Language of notice held clear and unequivocal and expressly terminated the tenancy. **1965 All L J 915 : AIR 1965 All 291 (292) (Pt B) (Pr 3).**

——S. 106 — Notice by landlord asking tenant to vacate accommodation within 30 days is a valid notice — There is no difference between a notice asking a tenant to vacate within 30 days and another giving him "thirty days time" to vacate—In both cases time allowed will expire on the midnight of 30th day and the tenant can occupy the accommodation up to the end of that day and not beyond that. **(1963) All W R (HC) 553 : A I R 1964 All 416 (416) (Pt A) (Pr 3).**

● ——S. 106 (as amended by U. P. Act 24 of 1954)—Notice to quit — Construction — Vacate premises "within 30 days of service of notice" — Notice valid. (1895) 1 Q B 378 and (1947) 2 All E R 45 and (1954) 3 All E R 214 and A I R 1921 All 194, Rel. on. 1962 R D 187 (All) Overruled AIR 1963 All 581, Approved. Gorakh Lal v. Maha Prasad Narain Singh. **1963 All L J 829 : 1963 All W R (HC) 616 : I L R (1963) 2 All 798 : A I R 1964 All 260 (260, 261) (Prs 3, 4) (FB).**

——S. 106—Suit for ejectment—Notice to quit—Clear intention of terminating tenancy — Misdescription of property—Notice is not invalidated. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (III of 1947), S. 3 (1) (a). **1964 All W R (HC) 356.**

——Ss. 106 and 111 (h)—Termination of tenancy — Notice terminating tenancy and demanding arrears of rent is not invalid—Legal notice does not become illegal because it contains superfluous matter. 1961 All L J 442, Rel. on. **1963 All L J 567 ; 1963 All W R (HC) 490 : ILR (1963) 2 All 729 : A I R 1963 All 581 (582) (Pt A) (Pr 2) (DB).**

[Overruled on another point in A I R 1967 All 1 (FB).]

——Ss. 106 (U. P.) and 111 (h) — Lease from month to month — Notice — Construction — Use of present tense in notice—Validity.

What is required by the provisions of Ss. 106 (as amended in U. P.) and 111 (h) is that in the case of tenancy from month to month terminable on thirty days notice a notice terminating the tenancy should be given and that the tenancy is terminated on the expiry of thirty days. The mere use of present tense in the notice as 'your tenancy is terminated' and not 'your tenancy is terminated today' does not mean that the landlord is terminating the tenancy in presenti. The use of present tense is quite consistent with the termination of the tenancy in future when the act by which the tenancy is to terminate in future is done in presenti. **1963 All L J 567 : 1963 All W R (HC) 490 : ILR (1963) 2 All 729 : A I R 1963 All 581 (583) (Pt B) (Pr 3) (DB).**

[Overruled on another point in A I R 1967 All 1 (FB).]

——S. 106 — U. P. (Temporary) Control of Rent and Eviction Act (III of 1947), S. 3 — Ejectment of tenant — Provisions of S. 106, T. P. Act and S. 3 of U. P. Act III of 1947 are independent and not in conflict with each other—Notice determining lease issued under S. 106, T. P. Act—Tenant also required to pay arrears of rent within 30 days from date of receipt of notice—Notice held not invalid—Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (III of 1947), S. 3. AIR 1952 All 579 : A I R 1952 All 863, Disting. 1961 All L J 124, Foll. **I L R (1962) 2 All 120.**

——S. 106 — Notice calling upon tenant to vacate on expiry of "ek mah" is a valid notice determining tenancy — Reference in notice to date of commencement of tenancy is immaterial because it does not necessarily indicate that the word "mah" was used in the sense of a calendar month—"Mah" can be interpreted to mean a period of 30 days also —As notice is to be interpreted. so as to make it valid and effectual whenever possible tenant is bound to understand the word only in that sense — Interpretation of 'month' found in S. 3 (27), General Clauses Act is to be adopted when the word is used in a statute and hence does not apply to case—Further even when the word is used in a statute it may be interpreted to mean a period of 30 days, I L R 29 Mad 75, Rel. on. General Clauses Act (1897), S. 3 (2). **1962 All L J 222 : 1962 All W R (HC) 176 : I L R (1962) 1 All 761.**

——S. 108—Notice of demand under—Notice asking tenant to pay arrears for certain period without mentioning amount—Sufficient compliance with S. 3 — Notice of demand coupled with notice to quit is valid — Landlord is entitled to decree for eviction and also for arrears of rent. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S 3 (a). **ILR (1962) 1 All 579.**

——S. 106, (as amended by U. P. Act 24 of 1954) — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3—Composite notice is valid.

A composite notice under S. 3 of the U. P. (Temporary) Control of Rent and Eviction Act as well as S. 106, T. P. Act is valid.

Where the notice stated that the tenant should vacate the house within thirty days of the service of the notice and should deliver possession of the house to the landlord next day.

Held, that reading the former clause requiring the tenant to vacate within thirty days, by itself the

notice would be invalid but this clause stood qualified by the subsequent clause of delivering the possession next day. Obviously the intention of the landlord was that the tenant should vacate the house on the 30th day and then deliver possession next day. 1956 A L J 787, Rel. on. 1962 All W R (HC) 822 : 1962 All L J 1035.

—S. 106 — Notice — Reasonable time to vacate — Period of 24 hours—Sufficiency.

When a reasonable period for vacating premises has to be fixed, it cannot be said that the period of twenty-four hours is unreasonable or that it is intended to extend the tenancy for the whole of these twenty-four hours. **ILR (1958) 2 All 1 : AIR 1958 All 729 (732) (Pt F) (Pr 7).**

—S. 106 — Notice to terminate tenancy — Notice signed by sons of deceased landlord not by their mother—Validity — (Hindu Women's Right to Property Act (1937), S. 3)—(Hindu Law—Joint family).

The joint status of a family is not disrupted simply because the widow of a deceased coparcener gets an interest in the joint family property in respect of which she can claim partition. If the joint status of the family continues, the karta of the family must be held to be entitled to be continue managing the affairs of the family and to represent the entire family including the widow in all affairs. Whatever the karta does in the interest of the family must be held to have been done on behalf of all the members including the widow. Where two sons of a landlord who were admittedly managing the affairs of the family, served a notice of ejectment on the tenants they must be deemed to have done so on behalf of the entire family including their mother. The notice of ejectment could not be held to be invalid simply because the mother did not join in signing it. **AIR 1957 All 801 (804) (Pt A) (Pr 5) (DB).**

—S. 106—Notice to quit not properly addressed — Validity.

Where the notice to quit though not properly addressed was accepted by the defendant and he even replied to it, the notice cannot be held to be valid on the mere ground that it was not properly addressed as the defendant was not prejudiced thereby. **AIR 1956 All 187 (191, 194) (Pt D) (Prs 20, 41) (DB).**

—S. 106—Notice need not mention date of expiration of month of tenancy. AIR 1955 NUC (All) 3586.

—S. 106 — Notice to quit with a demand for payment of arrears of rent within period which expires after last day of month of tenancy, is not invalid. AIR 1955 NUC (All) 3569.

—S. 106 — Notice to quit containing provision for liability to pay enhanced rent on failure to vacate — Notice is not bad—Notice may amount to offer which does not give rise to new tenancy, unless it is accepted. AIR 1955 NUC (All) 3569.

—S. 106—Absence of signature—Effect.

Where a notice in manuscript is duly signed by the landlord but what is sent to the tenant is not that notice but a typed copy thereof with the name of the landlord typed at the end of it the document does not comply with the provisions of S. 106 as regards the signature of the landlord and is invalid. **AIR 1951 All 483 (483) (Pr 7).**

—S. 106—Notice to quit — Construction—Test of sufficiency—Notice requiring vacant possession.

The notices to quit though not strictly accurate or consistent in the statements embodied in them may still be good and effective in law; the test of their sufficiency is not what they would mean to a stanger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances; and further, they are to be construed not with a desire to find fault in them which would render them defective but to make such use of them as may be possible (ut res magis valeat quam pereat). A I R 1918 P C 102 : 35 M L J 707 (P C), Relied on. Where a monthly tenancy was terminable by the end of a month of the Gregorian Calendar, a notice requiring the tenant to give vacant possession by the end of June, 1950 cannot be held to be improper. All that the landlord wanted was that the tenant should quit the land by the 30th June, which act by itself would amount to delivery of possession to the landlord. An independent act of delivery of possession to the lessor is not essential in case of the lessee quitting the land under a lease and as such, it could not be construed that the intention of the landlord was that the tenant should give up possession before the midnight of 30th June, 1950. **ILR (1954) 6 Assam 60 : AIR 1956 Assam 96 (96) (Prs 1, 2, 3).**

—Ss. 106, 108 (p)—West Bengal Premises Tenancy Act 1956. S. 13 (6) — Notice under S. 13 (6) can be combined with notice to quit — Stating of grounds for ejectment in notice, not necessary — Per Sen, J. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 13 (6). AIR 1965 Cal 408 (DB).

—S. 106—Notice to quit—Validity—Date of commencement of tenancy between plaintiff landlord and defendant tenant not expressly stated in suit for ejectment but recitals in plaint containing implication that tenancy was according to English Calendar beginning from the first of each English Calendar month and ending on the last day of each English Calendar month—Held, tenancy was terminable by 15 days' notice ending on last day of a calendar month provided it was for a purpose other than manufacturing or agricultural. AIR 1963 Cal 198 (203) (Pt E) (Pr 17) (DB).

—S. 106—Combined notice. See Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), S. 4. (1961) 65 Cal W N 1009.

—S. 106—Notice, sufficiency of—Misdescription.

Where the tenant occupied a flat known as Suit No. 3 and 3-A, but in her notice, she mentioned Suit No. 3 only. But the receipt and the correspondence between the parties made it quite clear that both the parties understood that the tenant was vacating the entire premises which she was occupying.

Held, that there might be slight misdescription in the notice, but that could not mislead either party. The notice was sufficient and legal. **57 C W N 567 : ILR (1955) 1 Cal 130 : AIR 1953 Cal 585 (586) (Pt B) (Pr 11) (DB).**

—S. 106 — Lease from month to month — Notice to quit — Notice demanding possession in the alternative at the end of tenancy which would expire next after fifteen days from receipt of notice — Validity.

A notice to quit demanding possession from a monthly tenant in the alternative "at the end of a month of your tenancy which would expire next after 15 days from the receipt of this notice" is neither vague nor insufficient and not bad in law. (1811) 170 E R 1324, (1847) 175 E R 145, 170 E R 1251 (2) and (1895) 1 Q B 378, Rel. on. Case law referred.

Demand for possession in the alternative form is perfectly, valid and well recognised in law. 3 Camp 117 and (1947) A U E R Vol. 2 p. 45, Rel. on. (General Principles applicable to notice to quit discussed). **88 Cal L J 118 : AIR 1953 Cal 352 (354, 355) (Pt C) (Prs 13, 15).**

——S. 106 — Question of notice to quit, its requirements or its service is not affected by Calcutta Rent Ordinance, 1946 — Notice to quit does not require any ground to be stated — Notice to quit on a certain ground — Suit for ejectment need not be on same ground — Whether suit is on a particular ground or not the only document which should be referred to and which shows cause of action is the plaint and not notice to quit. 89 Cal L J 248 : AIR 1952 Cal 773 (777) (Pt F) (Pr 31).

——S. 106 — Notice to quit — Sufficiency — Reason given in notice—If material.

Where the notice to quit recited that the defendant No. 1 was the tenant and that the defendant No. 2 had merely paid portions of the rent by cheques and that as a matter of abundant caution, the notice was also served on him, the reason given in the notice to quit is not material for determining the question whether the notice under S. 106, T. P. Act, was sufficient or not. The essential requisite is whether the person intended to be bound by the notice was asked to vacate the premises in question. The notice is, therefore, sufficient to determine the tenancy of defendant No. 2 if such a tenancy is ultimately found to be true. AIR 1952 Cal 221 (222) (Pt B) (Pr 8).

——Ss. 106 — Notice to quit with demand for enhanced rent if tenant stays on — Acceptance — Effect of.

A notice to quit with a demand for enhanced rent if the tenant stays in the premises must be deemed to be an offer of a fresh tenancy on revised terms which if accepted, expressly or impliedly, will generate a new contract in supersession of the old.

Where the tenant in reply to such notice not only contested his liability for enhanced rent but also denied the specific arrangement set up by the plaintiff.

Held, that no acceptance of a fresh tenancy could be inferred from the circumstances and therefore the landlord's claim for enhanced rent was unsustainable. 1959 Ker L J 1413 : 1960 Ker L T 65 : (1960) 1 Ker L R 107 : AIR 1960 Ker 216 (218) (Pr 6).

——Ss. 106 and 111 (h) — Notice to quit need not mention any breach committed by the tenant — Notice mentioning a breach committed by tenant not invalid.

A lease of immovable property is determined in any one of several ways detailed in S. 111 of the Transfer of Property Act. Even where forfeiture has been incurred, the landlord may still choose to determine the tenancy by a notice to quit as contemplated by clause (h) of that section. Where, therefore, the tenancy is determined by a valid notice to quit, it cannot be challenged as invalid only on the ground that the notice mentions a breach committed by the tenant. 1963 M P L J (Notes) 44.

——S. 106 — Notice to quit — It is not necessary to specify exact date of termination of tenancy—Exact date of commencement of tenancy unknown—Notice to quit at expiry of next month of tenancy is valid—Notice not to be construed in a manner as would work hardship on the tenant, nor to strain the language too much against the landlord. 1954 N L J 436 : AIR 1954 Nag 292 and (1948) 1 K B 444, Rel. on. 1962 M P L J (Notes) 290.

——S. 106 — Date of commencement of tenancy need not be stated in the notice terminating the tenancy.

The date of commencement of the tenancy need not be mentioned in the notice given under S. 106 of the Transfer of Property Act terminating the tenancy. That section does not require the exact date of the termination of the tenancy to be specified in the notice. The same rule would apply to the commencement of the tenancy. AIR 1954 Nag 292; 1954 N L J 436 Rel. on. 1961 M P L J (Notes) 226 : 1961 Jab L J 80.

——S. 106 — 'Fifteen days' notice' — Notice given more than 15 days before end of month—Validity.

If a notice gives at least 15 days to the tenant and if it expires with the end of the month of tenancy it is a good notice to determine the lease. The period should not be less than 15 days but there is no outside limit; the notice can be given several months before the date on which the landlord desires to determine the lease. 1960 M P C 365 : 1960 M P L J 87 : 1960 Jab L J 190 : AIR 1960 Madh Pra 134 (135) (Pt B) (Pr 4).

——S. 106 — Quit notice — Specification of leased premises—Necessity.

A quit notice under S. 108 of the Transfer of Property Act does not require the specification of the leased premises to be mentioned in the notice. In the absence of any description of the leased premises, the presumption would be that the notice relates to the property which was actually leased out. 1960 M P L J (Notes) 161.

——S. 106—Notice to quit—Notice demanding rent in arrears—If bad.

The plaintiff brought a suit for ejectment and arrears of rent alleging termination of tenancy by notice to quit and non-payment of rent for over a month in spite of notice to pay the arrears of rent. It was contended that the notice of demand was vague and did not mention the rent which was due then.

Held, that since only one month's rent was due to be paid on the date of receipt of notice there could have been no vagueness as the defendant must be credited with the knowledge what his monthly rent was. Moreover a notice demanding rent in arrears is not bad for vagueness. 1959 M P L J (Notes) 163.

——Ss. 106 and 111 — Notice to quit — Time of commencement of tenancy or period of tenancy not mentioned—Notice is not valid.

Notice by the landlord to the tenant to quit to be valid, must determine the tenancy by 15 days expiring with the end of the month of the tenancy. Where neither in the notice nor in the plaint, was there any allegation as to when the tenancy began or what the month of the tenancy was, the provisions of the Transfer of Property Act have not been complied with and the notice is invalid. 73 Mad L W 688 : (1960) 2 Mad L J 351.

—S. 106 — Person giving notice not describing himself as manager—Effect stated. A I R 1955 N U C (Mad) 3229.

——S. 106—Houses and Rents—Bombay Rents Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 12 (2)—Suit for possession by landlord—Essentials—Notice—Form of indicated. See Houses and Rents — Bombay Rents Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 12 (2). (1962) 40 Mys L J 888.

——S. 106—Notice—Validity — Landlord not giving her name—Tenant replying—Notice is not invalid.

The test of sufficiency of the notice is not what it would mean to a stranger ignorant of all facts and circumstances touching the holding to which it purports to refer, but what it would mean to tenant presumably conversant with all the facts and circumstances of the tenancy.

Where the notice did not disclose the name of the landlord but the tenant had given to the landlord a reply of the notice.

Held, that the notice was not rendered invalid. 1952 Nag L J (Notes) 122.

——S. 106 — Monthly tenancy commencing on first day of month — Termination — Notice asking the tenant to vacate at any time on last date of month — Validity.

In a monthly tenancy commencing on the first day of the month when the landlord gives a notice asking the tenant to vacate the premises at any time on the last date of the month, the substance of the demand is that the tenant should vacate before the expiry of the last date and should not reside beyond such expiry. It cannot be urged by a tenant that the notice requires him to vacate before the last date and so does not allow him to stay on the premises on the last day. (1960) 2 O J D 421 : ILR (1961) Cut 122.

——S. 106—Notice not signed either by the lessor or his agent is of no value. 18 Cut L T 117 : AIR 1951 Orissa 262 (295) (Pt G) (Pr 10).

——S. 106—Notice to quit giving option to tenant to vacate on date mentioned in notice or on a later date —Notice not invalid on this account as being vague. A I R 1965 Pat 311 (315) (Pt E) (Pr 13) (DB).

——S. 106—Notice signed by nephew of landlord.

Section 106, T. P. Act, requires that a notice under the section must be in writing signed by or on behalf of the person giving it. There is nothing in the section to show that there must be authority in any particular form to the person who signs the notice on behalf of the persons giving notice. Thus where the landlords are two brothers A and B, a notice of ejectment signed by B's son C, on their behalf is a valid notice. 1952 Raj L W 400.

——S. 106—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947 as applied to Saurashtra), S. 12 (2) — Notice of demand for arrears of rent need not end with month of tenancy. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (2). A I R 1953 Sau 99 (DB).

30. Mode of service.

——S. 106—Notice to quit sent in closed envelope — Refusal to accept delivery — Knowledge of contents can be imputed to addressee — Notice addressed to joint lessees tendered to and refused by one of them — Constructive knowledge to other lessees may be presumed.

Where a closed envelope is tendered to a person and he refuses to accept delivery of the same, he of course, has knowledge of the contents of that envelope but when he does not care to accept delivery of the envelope, the law should impute knowledge of the contents thereof to him, and it is on that basis that refusal to accept delivery of a registered or unregistered notice is regarded as sufficient notice of the contents of the envelope to the addressee. And, if in the case of a joint lease, service of the notice is to be deemed sufficient on the tenant other than the one to whom it was actually tendered (provided he was also one of the addressees) even he may be presumed to have constructive knowledge of the contents of the sealed or closed envelope. A I R 1935 Bom 247, Disseted from. A I R 1964 All 52 (53) (Pt B) (Pr 3).

——Ss. 106 (U. P.) and 111 (h)—Lease from month to month—Termination—Notice—Essentials.

A notice terminating the tenancy may include a demand for possession but a notice only demanding possession cannot be interpreted as a notice terminating the tenancy.

There is a distinction between terminating the tenancy at once and calling upon the tenant to deliver possession after 30 days (in the case of month to month tenancy) and terminating the tenancy after 30 days. In the former case the relationship of landlord and tenant comes to an end at once and the tenant is given a right to remain in possession for 30 days either as a licensee or as a tenant on sufferance whereas in the latter case he remains a tenant for 30 days. But where it is clear from the notice that the landlord did not intend to terminate the tenancy on the date on which he gave notice the mere fact that the notice also required the tenant to deliver possession at the end of thirty days would not mean that the tenancy was terminated on the date of the notice, for though, under the Act only a notice to terminate the tenancy is required and not a notice to deliver possession because it is the tenants' own duty to deliver possession as soon as his tenancy is terminated, it does not follow that a notice terminating the tenancy cannot include in it a demand for delivery of possession or that a notice to deliver possession means that the tenancy has already been terminated. ILR 7 All 899 (B) Dist. 1963 All L J 567 : 1963 All W R (HC) 490 : ILR (1963) 2 All 729 : A I R 1963 All 581 (583) (Pt C) (Pr 3) (DB).

[Overruled on another point in A I R 1967 All 1 (FB).]

——S. 106—W. B. Premises Tenancy Act (12 of 1956), Ss. 17 (4), 13 (1) (i) and 13 (6) — Protection under S. 17 (4) — When available — Tenant away from premises — Nobody else to receive notice — Service by affixing notice at the door held good service. See Houses and Rents—W. B. Premises Tenancy Act (12 of 1956), S. 17 (4). (1961) 65 Cal W N 1239.

31. Service by post.

——S. 106—Service by post.

When a notice is sent by post and evidence given that the notice is so sent, a presumption arises that the letter reached its destination if the evidence also indicates that it was not received back undelivered. Similarly, if evidence is produced to show that the letter was tendered and refused by the addressee, it may be presumed that it was served on him. But where there was an endorsement on the envelope indicating that the tenant had disappeared in order to avoid taking the registered letter, no such presumption can be raised as the letter is received back undelivered. In such case it must be held that the notice was not sent by post. 1954 A M L J 32 : A I R 1954 Ajmer 65 (66) (Pt A) (Pr 2).

——S. 106—Service by post.

Notice sent by registered post returned to lessor with a note on envelop that it had been refused by lessee.

Held, that as the letter was actually returned to the sender, there could be no presumption of its having been received by the addressee and that without adducing evidence indicating the actual tender of the letter to the lessee and its refusal by him the lessor was not entitled to a decree for ejectment. 11 Ind Cas 35 and A I R 1919 Sind 66 (2), Disting. A I R 1954 Ajmer 45 (47) (Pt B) (Pr 10).

——S. 106—Registered letter containing notice sent to tenant in arrears—Letter refused—Presumption of receipt of notice by tenant will be raised.

Where a tenant knows that he is in arrears of rent and receives a registered letter from the landlord but refuses to accept it, it will be presumed that he did it because he thought it contained a notice of demand and the onus is on him to rebut this presumption. 1963 All L J 25 : 1963 All W R (HC) 70 : A I R 1963 All 250 (251) (Pt B) (Pr 5).

——S. 106 (as amended by Act 20 of 1929)—Notice to quit—Service by post — Presumption — (Evidence Act (1872), S. 114).

The purpose of the amendment, evidently, was to make service by post an alternative provision for giving the notice under S. 106. The words requiring the delivery or tender of notice to the lessee 'personally or to one of his family or servants' did not apply to a notice sent by post. Under S. 106 as amended, it is not necessary that a notice sent by a registered post should be delivered personally to the lessee or to one of his family or his servants. Where the notice was received by somebody who signed on behalf of the addressee tenant, it is the duty of the tenant to prove that the person who signed was neither his servant nor agent nor a member of his family and in the absence of proof on this point the presumption which arose in the case of a registered letter delivered at the house in dispute could not be rebutted. **1957 All L J 504 : 1957 All W R (HC) 478 : AIR 1958 All 369 (370, 371) (Pt B) (Prs 5, 6).**

——S. 106—Service of notice by post—Notice to quit duly addressed and sent by registered post is good service. **AIR 1955 N U C (Assam) 2838 (a) (DB).**

——S. 106—Service by post — (General Clauses Act (1897), S. 27).

There is no obligation upon a lessor to prove service of notice upon the lessee if he sends a notice by a registered post properly addressed. **I L R (1952) 4 Assam 357 : AIR 1953 Assam 206 (206) (Pt B) (Pr 6) (DB).**

——S. 106, second part—Modes of service.

The relevant second part of S. 106 prescribes four modes of service of notice, the first by registered post, the second by personal tender and delivery, the third by service at residence by tender and delivery to a family member or servant and the fourth or the last by affixing or hanging in case the above second and third modes of personal service by tender and delivery be not practicable. This much, however, is clear from the language of the statute itself that affixing or hanging up of the notice cannot refer to the said first mode of service by registered post but has reference only to the second and the third mode, namely, personal service and service at residence. **65 Cal W N 1119 : 1962 Cal L J 46 : I L R (1962) 2 Cal 180.**

—— S. 106—Service of notice by registered post — Acknowledgment of receipt by person on behalf of addressee is good service.

It is well-settled that, in the absence of very strong evidence to the contrary, when, in the matter of service by registered post, an acknowledgment comes back, signed or purporting to be signed by some person on behalf of the addressee, it is good service under the law. A I R 1918 P C 102 : 35 Mad L J 707 : 52 Cal W N 659, Rel. on. **65 Cal W N 1119: 1962 Cal L J 46 : I L R (1962) 2 Cal 180.**

——S. 106—Notice by registered post returned with endorsement 'refused'—Sufficiency of service.

Where a registered notice terminating the tenancy of the defendant was returned to the plaintiff with an endorsement 'refused' and the postman concerned was not examined as a witness to give a formal proof of refusal it was held that the notice must be deemed to have been properly served. AIR 1958 Cal 251, Foll; A I R 1915 Cal 313, Disting. **65 Cal W N 690 : I L R (1961) 1 Cal 699.**

——S. 106 — Notice to quit — Service by registered post—Receipt by addressee's husband — Presumption of due delivery—Evidence Act (1872), S. 114, Illus. (f). AIR 1918 P C 102: 35 Mad L J 707, Foll. **65 Cal W N 690 : I L R (1961) 1 Cal 699.**

——S. 106—Notice to quit—Service by post. See Evidence Act (1872), S. 114. **AIR 1957 Cal 479 (DB).**

——S. 106 — Service of notice — Registered cover addressed to premises in which tenant was living—Endorsement of "left" by postal peon—Value of.

Where the tenant was living in the premises to which the registered cover containing the notice to quit was addressed and where it was taken for service by the postal peon, the endorsement of the postal peon, "left" does not conclude the matter, if the notice is proved to have been served on the tenant. 51 Cal W N 650, Applied. **A I R 1952 Cal 221 (222) (Pt A) (Pr 7).**

——S. 106—Service by post—Notice sent by registered post — Cover returned by Postman with endorsement that addressee refused to accept it—Presumption arises under S. 114, Evidence Act that addressee refused to receive it — (Evidence Act (1872), S. 114). A I R 1935 Bom 247, Diss. from. **A IR 1955 N U C (Madh Bha) 3022 (DB).**

——S. 106 — Service by post — Notice by registered post properly addressed—Presumption is that service was effected at time at which the letter would be delivered in the ordinary course of post — (Evidence Act (1872), S. 114)—General Clauses Act (1897), S. 27. AIR 1955 N U C (Madh Bha) 3022 (DB).

——S. 106—Notice under, sent by registered post and returned with postal endorsement "refused"—Letter correctly addressed—Postal endorsement is admissible in evidence even though the postman is not examined and unless rebutted it is sufficient notice under S. 106 —(Evidence Act (1872), S. 16). A I R 1935 Bom 247 (251), Diss. from. Case law reviewed. **65 Mad L W 172 : (1952) 1 Mad L J 227 : I L R (1953) Mad 31 : AIR 1953 Mad 884 (887) (Pt B) (Pr 13) (DB).**

——S. 106 (3)—Notice sent by post — Cover returned as 'refused'—Presumption of valid service. AIR 1915 Cal 313, Rel. on. **1956 Nag L J 441 : AIR 1956 Nag 266 (267) (Pr 7).**

——S. 106 — Notice — Service by Post — Service at changed address—Effect.

An address is meant to properly locate a person. When an addressee of a notice served through post cannot be otherwise located and if we can accept the notice in the changed address without any embarassment to him, he cannot complain that the notice offered to him in his changed address has not been properly offered so as to justify his refusal of the same. **(1960) 2 O J D 421 : I L R (1961) Cut 122.**

——S. 106—Notice by registered post correctly addressed—There is compliance with S. 106—(Evidence Act (1872), S. 114). AIR 1955 N U C (Orissa) 1115.

32. Leases by Government.

——S. 106—Fisheries—Lease by Government—Conditions of lease—Breach of Cl. (7) of conditions — Cancellation of lease and resale—Clause does not render it obligatory to record express order—Omission to record order does not render sale void. AIR 1955 N U C (Assam) 4216.

——S. 106—Lease of fisheries by Government—Resale —Reasonable notice is enough. A I R 1955 N U C (Assam) 4216.

——S. 106—Lease of fisheries by Government—Conditions of lease—Breach of — Government has power to resell, AIR 1955 N U C (Assam) 4216.

——S. 106—Government acquired land — Settlement at certain rental — Rent expression without prejudice to the right and title in rent receipt—Meaning of Settlement held a tenancy and not a license — Notice to quit served by Government Officer without authority to do so is invalid—West Bengal Estates Acquisition Act (1 of 1954), S. 1. See T. P. Act (1882), S. 105. AIR 1964 Cal 183.

——Ss. 106, 105—Settlement of village—Recovery of rent by Government. See T. P. Act (4 of 1882), S. 105. AIR 1958 Manipur 31.

33. Notice in cases not governed by this section.

——S. 106—U. P. Temporary Control of Rent and Eviction Act (3 of 1947) — Notices under S. 3 and S. 106, T. P. Act—Simultaneous service. See Houses and Rents — U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 3. AIR 1955 N U C (All) 866 (DB).

—— Ss. 106, 105 — Case governed neither by T. P. Act nor by Assam (Temporarily Settled Districts) Tenancy Act — Service as rent—Notice to quit. See T. P. Act (4 of 1882), S. 105. AIR 1951 Assam 86.

——S. 106—Tenancy Laws — Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958) (as amended by 30 of 1959), S. 39 — Notice under S. 39 — S. 106, T. P. Act not applicable and hence six months' notice not necessary. See Tenancy Laws—Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958) (as amended by 30 of 1959), S. 39. AIR 1965 Bom 19 (DB).

——S. 106 — Where the plaintiff is an occupancy raiyat under the Bengal Tenancy Act, his sub-leases are not governed by T. P. Act even though their leases were not taken for agricultural or horticultural purposes. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 4 (3). ILR (1956) 1 Cal 124.

——S. 106 — West Bengal Premises Rent Control (Temp. Prov.) Act (1948), S. 11 — Notice to quit — Notice to quit conforming with T. P. Act—Sufficiency. See Houses and Rents—West Bengal Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 11. AIR 1950 Cal 225.

——S. 106 — City Improvement Board Regulations (Hyderabad) R. 21 — Rule 21 is not repugnant to S. 106, T. P. Act or S. 9, Civil P. C. See Constitution of India, Art. 254. AIR 1956 Hyd 10 (DB).

——S. 106—J. and K. Rent Control Order, R. 7, Proviso—Notice to quit. See Houses and Rents—J. and K. House Rent Control Order, R. 7. AIR 1953 J and K 15.

——S. 106—Houses and Rents—T. C. Lease and Rent Control Order (1950), Pre.—Scope and object — Eviction proceeding against tenant—Notice under S. 106, T. P. Act, if necessary discussed — Position of sub-lease indicated. See Houses and Rents — T. C. Lease and Rent Control Order (1950), Pre. 1956 Ker L T 338.

——Ss. 106 and 109 — Gwalior Transfer of Property Act (Samvat 2001), Ss. 102 and 105—Original lease commencing before coming into force of Gwalior T. P. Act—Right of original lessor transferred after the Act—Notice under S. 102—Necessity.

Where the original lease was granted by a firm in 1942 before the Gwalior Transfer of Property Act (Samvat 2001) came into force and on account of partition amongst the members of the firm, the property leased came to the share of one of its members in 1948, after the said Act had come into force.

Held, that the right of the original lessor to eject the tenant without a notice as provided by S. 102 of the Gwalior Transfer of Property Act, was acquired by the new lessor and although the said Act came into force in the meanwhile, a notice as provided by S. 102 (corresponding to S. 106 of the T. P. Act) was not necessary to eject the tenant. Held, further that although S. 102 of the Gwalior Transfer of Property Act was not applicable in the case of leases made prior to the coming into force of the Transfer of Property Act and not containing a forfeiture clause, a reasonable notice determining the tenancy would be necessary. AIR 1953 S C 228, Expl. and Disting: Madh B L J 1955 H C R 522, Dist. AIR 1957 Madh-B 151 (152) (Pt A) (Pr 4).

——S. 106 — Applicability — Does not apply before T. P. Act was in force in Gwalior State—Provision as to notice cannot govern lease executed during that time. AIR 1955 N U C (Madh-B) 4526 (DB).

——Ss. 106 and 111—Tenancy by contract — Determination of—Notice to quit is essential — Provisions of Vidhan do not repeal or abrogate provisions of Transfer of Property Act. See Houses and Rents—Madhya Bharat Sthan Niyantran Vidhan (15 of 1950), S. 4. A I R 1952 Madh B 121 (DB).

——S. 106 — Applicability — Lease of house in Gwalior State—Act not in force at time — Termination of lease—Notice—Necessity.

A lease of a house in Gwalior State was entered into when the T. P. Act was not in force in Gwalior State.

Held, that the provisions of S. 106, T. P. Act not being based on principles of justice equity and good conscience and being merely procedural and arbitrary were not applicable and hence no notice as contemplated in S. 106, T. P. Act was necessary to terminate the tenancy. A I R 1953 S C 228, Foll. 1961 Jab L J 486 : 1961 M P L J 536.

——S. 106 — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 1—Notice — Question regarding right of a person to give notice terminating the tenancy is not dealt with by the order and therefore it falls to be determined by T. P. Act. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order, 1949, Cl. 1. A I R 1953 Nag 251 (DB).

[Overruled on another point in A I R 1954 Nag 151 (F B).]

——S. 106 — Leases prior to T. P. Act came into force—Applicability of equitable principles.

Although the Transfer of Property Act was not in force in Gangpur State prior to the merger (1-1-1948) the equitable principles of the Act could be applied in respect of leases which commenced prior to the coming into force of the said Act. That, however, does not mean that every provision of that Act should be applied to the very letter. Thus, the provision in S. 106 requiring that the notice should expire with the end of the month of the tenancy need not be literally applied, but reasonable notice should suffice. But the question as to what would be reasonable notice would depend upon the facts of each case, and no general rule can be laid down.

Held, in the circumstances, that one month's notice was quite reasonable. 21 Cut L T 231 : A I R 1956 Orissa 95 (95, 96) (Pt A) (Prs 4, 6).

——S. 106 — Applicability — Act does not apply to Delhi and Ajmer-Merwara—Notice to quit served on tenant—Technical defects in notice cannot make it invalid when there is substantial compliance with S. 106 — Notice on day following date of expiration of monthly tenancy served in manner provided by section — Tenant cannot contend that notice is of no effect on that ground. (1952) 54 Punj L R 425.

——S. 106 — Premises let out when the Act was not in force in Bikaner State—Section does not apply to such cases and tenant has to be given only reasonable time to vacate premises—Notice determining tenancy served on tenant on 10th December 1959 and tenant asked to vacate the premises by 1st January 1960—Held, that in the circumstances the 20 days' notice to vacate the premises was reasonable. 1964 Raj L W 213 : I L R (1964) 14 Raj 819.

——S. 106 — Applicability to leases created before Act was applied to area.

The Transfer of Property Act came into force in Marwar, i. e., the former Jodhpur State on 29th March 1949, and therefore the provisions of S. 106 of the Transfer of Property Act are not attracted to a case where the tenancy commenced prior to 29th March 1949. The provision of S. 106 of the Transfer of Property Act requiring the notice to expire with the end of the month of the tenancy is of a very technical nature and this provision cannot be invoked to a case to which the Transfer of Property Act would not apply.

Held, that as the notice to quit in the present case gave more than one month's time to the tenant to vacate it was not invalid. A I R 1933 Lah 134, Dist. 1959 Raj L W 81 : I L R (1959) 9 Raj 97.

——S. 106—Suit for ejectment—Notice to quit should be given before institution of suit — Section does not govern leases executed before enforcement of Act—Incidence of tenancy in such cases is governed by provisions of then existing law — Where under that law reasonable notice only was required oral notice of one month was held to give reasonable time—(Civil P. C. (1908), Ss. 100-101). **A I R 1955 N U C (Raj) 4624.**

——S. 106—Pre — T. P. Act case — Determination of tenancy—Notice to quit not necessary. **A I R 1955 N U C (Sau) 1488.**

——Ss. 106, 109 — Lease created before applicability of T. P. Act—Determination of—Reasonable notice is sufficient. **A I R 1955 N U C (Sau) 1138.**

——S. 106 — Notice in case not governed by the section—Strict requirement of S. 106 is not essential. **A I R 1955 N U C (Sau) 983.**

——Ss. 106 and 111 — Notice to quit — Lease before T. P. Act—Technical requirements of S. 106 are not applicable. **A I R 1955 N U C (Sau) 971.**

——S. 106 — Tenancy entered into prior to coming into force of T. P. Act in former Nawanagar State—Notice given by landlord need not conform to requirements of S. 106. **A I R 1955 N U C (Sau) 967.**

34. Statutory tenancy.

See Note 6.

SECTION 107

SYNOPSIS

(Transfer of Property Act (1882), S. 107.)

1. Scope.
2. This section and section 106.
3. Term of a lease.
4. "Year to year".
5. "For any term exceeding one year."
6. "Reserving a yearly rent."
7. Effect of non-registration.
8. Lease coming within first paragraph created by oral agreement, if can be treated as valid lease under second paragraph.
9. Paragraph 2.
10. Paragraph 3.
11. Proviso.
12. Lease by Government.
13. Lease embodied in a decree or order of a Court.
14. Lease and part-performance.
15. Agreement to lease.

1. Scope.

——S. 107 — Finding as to the nature of tenancy in disregard of effect of S. 107, T. P. Act — Not binding in Second Appeal. See Civil P. C. (1908), S. 100. **1963 All L J 1005.**

——Ss. 107 and 106—Lease for five years not signed by lessor—(Registration Act (1908), Ss. 2 (7), 17, 49).

A lease, where the Transfer of Property Act is in force can be made only in the manner laid down under S. 107 and where that method or manner has not been completely followed, there is no operative lease for purposes of the Transfer of Property Act. Where the document is not signed by the lessor the document may be valid for purposes of Registration Act but the Transfer of Property Act superimposes a further requirement and would not recognise it as a lease unless it conforms to its requirement. Where a lease is inoperative, the defect attaches to it from its very inception. Where a lease of five years is invalid and inoperative, the tenancy that is created by legal implication would only be a monthly tenancy under S. 106, the lease being for residential purposes and not for purposes of manufacture or agriculture. The document may be used for the collateral purpose of showing that defendant came to occupy the property as a tenant. But the term of five years is not enforceable. No lease for five years came into existence in legal contemplation. The tenancy from the beginning was a monthly tenancy under S. 106. It came into existence by implication of law. **I L R (1957) 9 Assam 16 : AIR 1959 Assam 57 (58) (Pr 2) (DB).**

——Ss. 107 and 117—Lease for agricultural purpose —Registration.

In the absence of any notification under S. 117, T. P. Act, the provisions contained in Ch. V will not apply to an agricultural lease. The requirements of S. 107 about execution and registration thus are not necessary to be fulfilled. **ILR (1954) 6 Assam 95 : AIR 1954 Assam 102 (103, 104) (Pt A) (Pr 7).**

——S. 107— Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 7 (3)(a)(ii), Proviso—Tenancy for specified period agreed upon—Oral lease—A lease of immoveable property for more than one year can be created under S. 107, T. P. Act (1882), only by a registered instrument — Without any express provisions in the Madras Building (Lease and Rent Control) Act (1946), validating leases invalid under the T. P. Act it cannot be held that the term fixed under an oral lease can be taken advantage of by a tenant in an application for eviction under S. 7 of the Madras Act (1946). See Houses and Rents—Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 7 (3) (a) (ii). **AIR 1952 Mad 863.**

——S. 107 — Creation of tenancy — Acceptance of rent by landlord's agent.

The mere fact that an agent accepts rents is not sufficient to establish a tenancy against the landlord unless the agent was specially authorised to grant leases in addition to recover rents. **I L R (1951) Nag 895 : 1952 Nag L J 34 : AIR 1952 Nag 398 (401) (Pt F) (Pr 17) (DB).**

——S. 107 — Scope — Surrender of ryoti interest—Subsequent lease by lambardar — Gountia—Lease whether governed by T. P. Act. See Transfer of Property Act (1882), S. 117. **AIR 1957 Orissa 276 (DB).**

——S. 107 — "Mustajir" lease—Nature of—Right to collect rent from tenants on land — If immovable property.

"Immovable property" as defined in the General Clauses Act, includes "benefits to arise out of land." A Mustajir lease is a lease of the right to collect rent from tenants who pay it for use and occupation of land, i. e., of a right to the benefits arising out of the

land; such a lease is therefore a lease of immovable property within the meaning of S. 107, T. P. Act, and also under the Specific Relief Act. AIR 1952 Orissa 116 (117) (Pt A) (Pr 5) (DB).

—S. 107—Tenancy Laws—Bihar Tenancy Act (8 of 1885), S. 148—Lease defining shares of lessors and lessees — Suit for specified share of rent against all lessees holding them jointly and severally liable — Suit not framed in accordance with S. 148 of Bihar Tenancy Act—Court is competent to split up liabilities of different lessees—Lessees held liable for their share only even on equitable principle. 1962 BLJR 774.

—S. 107 — Permanent tenancy after Act—Verbal agreement — Sufficiency — Theory of lost grant not applicable.

However long the possession of the tenant may be and however costly and substantial the building he might have erected these acts of possession by themselves cannot, if the lease was created verbally after the passing of the Transfer of Property Act, and if the parties were aware of the nature of their respective interests in the land, confer a right of permanent tenancy, because this will amount to conferring upon a person a right which the statute enacts shall be conferred only by a registered instrument. The theory of lost grant cannot apply to a case where a tenancy is known to have been created after Transfer of Property Act: 60 M.L J 538; AIR 1931 P C 79, Rel. on. 1960 Pat L R 65 : AIR 1960 Pat 289 (290) (Pt A) (Pr 3) (DB).

—S. 107 — Scope — Lease executed on behalf of Board — Manner of execution—Effect of validity of lease. See Bihar and Orissa Local Self Government Act (3 of 1885), S. 29. AIR 1957 Pat 321 (DB).

—S. 107—Agreement resolving dispute as to interpretation of lease — (Registration Act (1908), S. 17 (1) (d).)

Where an agreement does not alter the terms of the lease but merely resolves a dispute as to its interpretation, it does not require registration. AIR 1952 Pat 409 (414, 415) (Pt E) (Pr 14) (DB).

—S. 107 — Registration Act (1908), S. 17 (1) (d)—Distinction between, pointed out.

A comparison of S. 107, T. P. Act, and S. 17 (1) (d), Registration Act, would show that leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent are compulsorily registrable according to both the Acts. According to the Registration Act, the registration of other leases is optional as provided in S. 18(c) According to the second paragraph of S. 107, T. P. Act, however, all other leases of immovable property may be made in two ways; that is either by a registered instrument, or by an oral agreement accompanied by delivery of possession. 1955 Raj L W 129 : AIR 1955 Raj 167 (169) (Pt A) (Pr 9).

2. This section and section 106.

—Ss. 107 and 106—Scope of — There is no conflict or contradiction between Ss. 106 and 107 (Obiter). AIR 1950 Cal 23 (DB).

3. Term of a lease.

—S. 107 and C. P. and Berar Letting of Houses and Rent Control Order, 1949, Cl. 13 (3) (iii) — Tenant executing rent-note for one year — This does not constitute annual tenancy — Tenancy to be deemed monthly after period of rent-note — Agreement between parties to adjust payment at stipulated intervals — Still tenancy would remain a monthly tenancy—Transfer of ownership of tenement—Transferee can rely upon defaults made by tenant during ownership of his predecessor. 1965 Mah L J (Notes) 46.

4. "Year to year."

—Ss. 107, 5, 106, 116 — Lease — Expiry of—Lease not validly terminated — Lessee continuing in possession of land—Lease is renewed but not continued — Period of lease counts according to nature of tenancy—Protest from lessee against enhancement of rent disentitles lessor to enhanced rent—Yearly lease does not require registration — Year to year lease also does not require registration where lease is result of operation of law and not act of parties. See T. P. Act (4 of 1882), S. 5. AIR 1965 All 326 (DB).

—S. 107 — From year to year —Tenancy from year to year is a tenancy continuing so long as the parties desire to continue it and though terminable at the option of either party at the end of any year, it is not ipso facto terminated at the end of every year. See Registration Act (1908), S. 17 (1) (d). A I R 1954 Assam 102 (DB).

—S. 107 — Lease deemed to be from year to year, is none the less a lease from year to year and must satisfy the requirement of registration subject of course to the provision of S. 53A. A I R 1952 Cal 320 (322) (Pt B) (Pr 15).

—S. 107 — Rent note for one year—It is not a lease under T. P. Act and does not require registration — But it is lease within meaning of S. 2 (7), Registration Act — But rent note for one year does not require registration under S. 17 (1) (d) of Registration Act and can be accepted in evidence. See Registration Act (1908), S. 2 (7). A I R 1955 N U C (Madh B) 1553.

—S. 107 — Lease for one year only — Registration is not necessary. See Registration Act (1908), S. 17. AIR 1955 N U C (Madh B) 69 (DB).

—S. 107—Contract to contrary — Implied contract —Validity.

An implied contract presupposes a valid contract and in the absence of a valid contract, a yearly tenancy cannot come into existence. 1952 S C 23, Ref. to. 1957 Raj L W 141 : ILR (1956) 6 Raj 1014.

5. "For any term exceeding one year."

—S. 107 — Lease for period exceeding one year — Creation of. See Municipality — Hyderabad Municipal Corporation Act (2 of 1956), S. 22 (b) (i) and (c). AIR 1957 Hyd 27 (DB).

—Ss. 107, 51 and 105—Permanent lease—Inference — Oral lease of land for construction of building — Lessee constructing building with lessor's knowledge —No inference of permanent lease can be drawn — Lessee not entited to compensatiou on ejectment. See T. P. Act (1882), S. 105. (1962) 40 Mys L J 861.

—S. 107—Kabuliyat for fixed period of three years executed by lessee alone—Kabuliyat not registered — Effect — Kabuliyat is invalid and cannot have any effect as lease—Monthly tenancy is, however, created. I L R (1958) 8 Raj 466 : 1959 Raj L W 242 : A I R 1959 Raj 240 (241, 242) (Pt B) (Prs 7a, 8) (DB).

—Ss. 107, 111 (b), 111 (g) (1), 106 — Scope of S. 111 (b) — Qabuliyat executed by lessee for 5 years — Condition of termination on happening of an event — S. 111 (b) applies — Term held binding on lessee. AIR 1952 Cal 207, Dissented from. See T. P. Act (4 of 1882), S. 111 (b). AIR 1959 Raj 24.

6. "Reserving a yearly rent."

—S. 107 — 'Reserving a yearly rent' — Expression shows that the lease is not limited to one year only. See Registration Act (1908), S. 17 (1) (d). A I R 1954 Assam 102 (DB).

—Ss. 107 and 105—Oral lease reserving yearly rent —Validity.

By S. 107 of the Transfer of Property Act a lease reserving a yearly rent must be made by a registered instrument. Where an oral lease reserves a yearly rent, the parties intend to create a lease from year to year but that intention not being expressed in the proper legal form cannot be given effect to. The Court cannot make a new bargain between the parties and hold that there is a good and valid lease for at least one year. 61 Cal W N 23 : ILR (1957) 3 Cal 636 : AIR 1957 Cal 625 (626) (Pt A) (Pr 6).

——Ss. 107, 106 — Yearly tenancy not registered — Tenancy is from month to month — Rent payable annually according to agreement—Agreement can be established by conduct — Agreement established — Refusal to accept tender of yearly rent— No default. See Houses and Rents — C. P. and Berar Letting of Houses and Rents Control Order (1949), Cl. 13. AIR 1960 Madh Pra 124 (DB).

——S. 107 — Applicability — 'Reserving a yearly rent.'

The relevant portions of a lease which was a cooly chit, were as follows :

"As I have agreed to take from you for my residence the thatched shed, consisting of 30 carpenter's koles all round, with raised mud flooring and walls, with bamboo roofing with coconut rafters for 2 rooms and terraced with mango planks with coconut door-frames in eastern portion of your Kakkarat paramba, I have agreed to pay you an yearly rent of Rs. 6 and I shall myself repair and put up the thatched roofing every year, and pay you the rent of 8 annas per month and get receipt. I shall surrender the shed whenever you require the same without causing any loss whatever."

Held, that though an yearly rent was to be payable under the document, and the house had to be repaired every year, as long it remained in the occupation of the tenants, and though the mode of payment was just at the rate of 8 annas per month, still the fact remained that whenever the landlord demanded the surrender of the house, the tenants had no option but to quit and deliver vacant possession, without causing any loss whatsoever. These terms did not create a tenancy that could be said to come within the meaning of S. 107 of the Transfer of Property Act. They amounted only to a tenancy at will not necessitating a registered document. (1956) 2 Mad L J 75.

——S. 107 — Lease reserving yearly rent — Absence of registered deed — Admission of evidence — (Registration Act (1908), S. 49).

Where in a suit for ejectment the plea of the tenant attracts the first paragraph of S. 107, T. P. Act, the tenant cannot prove the fact either of a lease from year to year or a lease of immoveable property reserving yearly rent without a registered instrument in his favour. All other evidence, therefore, is shut out under S. 49, Registration Act, and this includes even the admission of the landlord to that effect. 1955 Nag L J 103 : ILR (1954) Nag 957: AIR 1955 Nag 27 (28) (Pt A) (Pr 6) (DB).

——S. 107 — Hisab Bandobasti Sair and Kabuliyat— Nature of — Section 105 — Registration — Necessity — Registration Act (1908), S. 17 (1) (d).

Held, that prima facie Hisab Bandobasti Sair looks like a patta given by the landlord to the settlee and the Kabuliat looked like a Kabuliyat, given by the tenant incorporating the terms mentioned in Hisab Bandobasti Sair. (2) That the former document appeared to be a merely a memorandum containing the terms of the settlement between the parties. It was merely a record of a transaction which had already taken place. It did not create any right, and could not be considered to be a lease within S. 105, T. P. Act. (3) Similarly the Kabuliat also did not amount to a 'lease' within S. 105, T. P. Act. (4) Even assuming them to be a lease, the parties never intended thereby to create a lease exceeding one year, and, therefore, there was no mention 'of reserving a yearly rent' in that lease. Even the mention of yearly rent in Hisab Bandobasti Sair would not make the lease as one 'reserving a yearly rent.' The documents therefore did not require registration under either S. 107, T. P. Act, or under S. 17(1)(d), Registration Act. 1956 B L J R 105.

——S. 107 — Applicability — 'Lease reserving yearly rent' — Meaning of — Registration Act (1908), S. 17 (1) (d).

Section 107, T. P. Act and S. 17 (1) (d) of the Registration Act, the provisions of which are the same, contemplate a lease in which a yearly rent is reserved, but such a lease must be one, which on a proper construction of it, would create a tenancy from year to year, or for more than one year. These sections would not apply to a case where the lease is either for one year only, or for a period less than one year, even though the rent for a year, or even a yearly rent is mentioned. 1956 B L J R 105.

——S. 107 — Applicability — Lease reserving yearly rent — Lease for one year — Kabuliyat embodying terms — If registrable — Rate of interest — (Registration Act (1908), Ss. 17 (1) (a), 47 and 49).

A lease in which a yearly rent is reserved must be one which on the proper construction of it would create a tenancy from year to year.

Held, on facts (1) that the lease being for one year it was not a lease of the kind falling within the first para. of S. 107, but was of a kind covered by Para. 2 of that section; (2) that the kabuliyat, which was not compulsorily registrable under S. 17 (1) (a) of the Registration Act, could be relied upon and looked into for the purpose of proving the oral agreement of the lease and its terms. AIR 1943 Lah 127 (FB), Rel. on. (3) that there was delivery of constructive possession which was quite sufficient for the purposes of S. 107. AIR 1943 Lah 127 (FB), Rel. on. (4) that the facts that the kabuliyat was executed some months after the commencement of the year and the final certificate of registration was endorsed by the Registering Officer after the expiry of the year for which the lease was granted, although the document had been presented for registration about a month after its execution made no difference. AIR 1958 Tripura 14 (15, 16) (Prs 9, 11 to 14).

7. Effect of non-registration.

——S. 107 — Unregistered lease — It does not create tenancy to which S. 110 would apply — Document would be inoperative—By implication of law monthly tenancy under S. 106 would be added. See T. P. Act (1882), S. 106. AIR 1955 NUC (Ajmer) 4791.

——S. 107 — Tenancy of immovable property — No registered lease deed — Inference.

A tenancy from year to year of immovable property as enjoined by S. 107 of the Transfer of Property Act must be created by a registered document. In the absence of a registered lease deed to only inference which can legitimately be arrived at is that the lease is a monthly lease. 1963 All L J 1005.

——S. 107 — Lease—Non-registration—Effect stated. See T. P. Act (1882), S. 105. AIR 1955 N U C (All) 2027.

——Ss. 107, 116 — Applicability — Holding over of tenant who held under an unregistered lease for a year fixing a monthly rent — Nature of the holding over.

Where a tenant was let in under an unregistered lease for a year which however only fixed a monthly rent, if he holds over after that period, he cannot

claim to be holding over as a tenant from year to year as that would be nullifying the provisions of S. 107 of the T. P. Act which requires the yearly lease to be registered. He can be treated only as a tenant from month to month and will be entitled only to a month's notice. 1951 A W R (HC) 72 : AIR 1952 All 634 (635) (Prs 4, 5).

[NOTE: – The reasoning in the decision seems to be wrong as it is clearly in conflict with S. 116, T. P. Act. The lease by holding over under S. 116, though it may be from year to year does not require registration. There seems no question of negativing the provisions of S. 107, as the section does not apply to leases by holding over. But the actual decision may perhaps be justified on the ground that the provision for monthly rent is an "agreement to contrary" within the meaning of S. 116—Ed.]

——S. 107 — Oral contract of lease preceding kabuliyat—Kabuliyat not registered—Effect.

The fact that subsequent to an agreement which is a completed contract of oral lease between the parties, one of the parties executes a kabuliyat for the agreed period, does not alter the fact that there was an oral contract of lease initially nor does it detract from the efficiency or enforceability of the oral contract of lease. 1961 Nag L J (Notes) 86.

——Ss. 107 and 116 — Annual lease — Lease from year to year — No registered deed — Validity.

If possession is given, an oral lease for a year is valid. An oral agreement of lease accompanied by delivery of possession, if for more than one year is valid by delivery of possession for the first year and thereafter the lessee continuing in possession with the assent of the lessor becomes a tenant by holding over under S. 116, T. P. Act. Mulla's T. P. Act, 3rd Edn., p. 657, AIR 1933 Rang 262 : AIR 1934 Pat 369 : 20 I C 715 and 1955 N L J 103, Foll. 1958 Nag L J (Notes) 22.

——S. 107 — Kabuliyat—Use for collateral purpose.

The Kabuliat in a case where the lease is required to be registered cannot operate as a valid lease, it being a unilateral document, executed by the tenant alone, and so hit by S. 107 of the T. P. Act. But user of the kabuliyat to explain the plaintiff's case in the plaint is for a collateral purpose and is not prohibited; AIR 1919 P C 44 : 38 M L J 313, Rel. on. 61 Cal W N 841 : ILR (1957) 1 Cal 233 : AIR 1957 Cal 479 (481) (Pt C) (Prs 16, 17) (DB).

——S. 107—Registered Kabuliyat — Use for founding claim for rent.

Rent is an essential and integral part of the lease and so a registered Kabuliat, it is if invalid as a lease, cannot form the basis of a claim for rent. The document is utterly irrelevant for purposes of the law of limitation in that connection. The particular tenancy must be found from other materials and apart from the said document. 61 Cal W N 841 : I L R (1958) 1 Cal 233 : A I R 1957 Cal 479 (482) (Pt C) (Pr 19) (DB).

——Ss. 107, 108 — Unregistered lease though yearly rent reserved — There is no valid agreement — Rights are regulated by S. 108. See T. P. Act (4 of 1882), S. 108. A I R 1955 Cal 495 (DB).

——S. 107—Kabuliyat executed by lessee—Coustruction of—Lease compulsorily registrable — Not admissible in evidence. See Registration Act (1908), S. 17. AIR 1954 Cal 207 (DB).

——S. 107 — Document entitling grantee to go into possession on paying rent from year to year—Admissibility. ('54) 93 Cal L J 241.

——S. 107 — Registration Act (1908), S. 90 (1) (a) and (d) — Applicability — Lease executed in presence of Assistant Settlement Officer — Such Officer attesting lease — Clauses if apply. See Registration Act (1908), S. 90 (1) (a) and (d). AIR 1951 Cal 361 (DB).

——S. 107—Unregistered lease—Admissible to prove nature and character of possession. See Registration Act (1908), S. 49, Proviso. AIR 1955 Nag 306 (DB).

——S. 107—Unregistered lease deed — Admissibility in evidence—Registration Act (1908), S. 40, Proviso —(Evidence Act (1872), S. 91).

An unregistered lease deed is inadmissible in evidence in view of S. 49, Registration Act, except for the limited purposes specified therein and S. 91, Evidence Act forbids other evidence to prove the lease or its terms. 1955 Nag L J 742: ILR (1956) Nag 10: AIR 1955 Nag 306 (309) (Pt C) (Pr 11) (DB).

——S. 107 — Effect of non-registration stated. A I R 1955 NUC (Orissa) 985.

——S. 107 — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 2 (e) (as modified by Bihar Act 5 of 1953) — Case governed by Act 3 of 1947 — Deed of agreement unregistered — Nature of tenancy — Determination of — Provisions of T. P. Act how far can be invoked stated. See Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), (as modified by Bihar Act 5 of 1953), S. 2 (e). A I R 1956 Pat 305 (DB).

——S. 107 — Settlement of land for building house—Effect of non-registration — Hukumnama is hit by S. 107 — Settlee cannot acquire valid title—He is a mere trespasser. AIR 1955 NUC (Pat) 2481.

——S. 107 — Damages for use and occupation where lease is found invalid. See T. P. Act (1882), S. 105. AIR 1954 Pat 304.

——Ss. 107, 105 —Lease unregistered — Tenancy by payment and acceptance of rent. See T. P. Act (4 of 1882), S. 105. AIR 1961 Raj 17 (DB).

——S. 107 — Unregistered rent note by lessee for one year—It is not admissible as lease deed — Oral agreement accompanied by delivery of possession—Document will be admitted to corroborate fact of such agreement and terms thereof. See Registration Act (1908), S. 17 (1) (d). AIR 1955 Raj 167.

——S. 107—Absence of registration—Effect indicated. See Transfer of Property Act (1882), S. 108. AIR 1955 NUC (Raj) 4072.

8. Lease coming within first paragraph created by oral agreement, it can be treated as valid lease under second paragraph.

——S. 107 — Validity of oral lease. See Civil P. C. (1908), S. 47. AIR 1955 NUC (Assam) 2787 (DB).

——S. 107—Rent note executed by tenant — Registration. See Registration Act (1908), S. 17. A I R 1958 Madh Pra 146.

——Ss. 107 and 116 — Registered instrument of lease falling under Para 1 of S. 107 not executed in manner specified under Para. 3 of that section — Lease if can be construed as one by oral agreement for one year—Subsequent possession if holding over.

A lease of immovable property purported to be made by a registered instrument for a term exceeding one year or from year to year but not executed in the manner specified in the third para of S. 107 is invalid and its invalidity cannot be cured by construing it as a lease for a term of one year made by oral agreement accompanied by delivery of possession and thereafter to be a case of holding over under S. 116: Case law considered. A I R 1951 Pat 160 (161) (Pt A) (Pr 8) (DB).

— S. 107 — Sub-letting or parting with possession— It is not every transaction by lessee with a third party which must amount to transfer sub-letting or parting with possession — Landlord held failed to establish sub-letting — Partnership Act (1932), S. 4. See Houses and Rents — Delhi and Ajmer Merwara Rent Control Act (1947), S. 9 (1) (b) (ii). **A I R 1952 Punj 403.**

9. Paragraph 2.

——S. 107—Qabuliat—Evidentiary value — Qabuliat can be used as corroborative evidence of oral lease for less than a year.

Obiter. — Although a qabuliat cannot be treated as independent evidence of a lease for more than a year or from year to year, or reserving a yearly rent, it can be looked into as corroborative evidence of an oral lease for a period of less than a year. Such a lease is permitted by S. 107 to be made by an oral agreement and it does not violate the principle of T. P. Act or the Evidence Act to look into a qabuliat as corroborative evidence of an oral lease which is otherwise in accordance with law. A I R 1943 Lah 127 (FB), Rel. on. ILR 31 All 276 (FB) and A I R 1930 All 678 and AIR 1924 All 514 and A I R 1943 All 279 and AIR 1953 All 499 and AIR 1946 All 403, Disting. **1962 All L J 773: 1962 All W R (HC) 646: AIR 1962 All 604 (605) (Pt B) (Pr 7).**

——S. 107—Applicability—Monthly tenancy.

Where the lease was neither from year to year nor did it reserve an yearly rent and it was also not for a term exceeding one year, S. 107 has no application and a lease from month to month made orally with delivery of possession would be a perfectly legitimate form of making a lease. **1957 All L J 507 : A I R 1958 All 32 (33) (Pt C) (Pr 7).**

——S. 107 — Lease — Fresh lease— Variation of rent and date of commencement of lease — Attornment — **Held**, fresh tenancy by oral agreement—Unregistered written document cannot be admitted to prove terms —Plaintiff can sue for rent and ejectment. **A I R 1955 NUC (All) 3586.**

——S. 107 — Oral lease not exceeding one year — Kabuliyat by lessee only—Lessee going into possession — Validity of lease — [Evidence Act (1872), S. 114].

As regards leases not exceeding one year, a lease of immovable property can be created by oral agreement accompanied by delivery of possession. Where the lessor did not execute any document and it was the lessee alone who executed a kabuliyat and the lessee was in possession of the property after the execution of the kabuliat.

Held, that it may be presumed under S. 114 of the Evidence Act that there must have been an oral agreement between the lessor and lessee agreeing to the terms on which the lessee was being put in possession of the property and there was therefore, an oral agreement accompanied by delivery of possession which satisfied the requirements of S. 107. **1954 All W R (HC) 167 : ILR (1955) 1 All 622 : AIR 1954 All 475 (480) (Pt B) (Pr 24) (DB).**

——S. 107 — Delivery of possession — Constructive delivery if sufficient.

Obiter : — Delivery of possession, for the purpose of creating a lease, must not necessarily be physical delivery of possession at the time of the agreement : but even constructive delivery of possession may be sufficient for the purpose of constituting a lease under S. 107 of the Transfer of Property Act. AIR 1943 Lah 127 (FB), Rel. on. **AIR 1957 Assam 188 (191) (Pt D) (Pr 6) (DB).**

——S. 107 — Term of lease — Lease determinable at option of lessor is not compulsorily registrable. **AIR 1955 NUC (Hyd) 2969 (DB).**

——S. 107 — Unregistered lease — Suit for rent — Defendant admitting lease and paying rent—Question of registration does not arise. See Registration Act (1908), S. 49. **AIR 1955 NUC (Madh B) 4322.**

——S. 107 — Rent Note to pay rent at Rs. 30 p.m. for 8 months—Registration is not necessary either under Registration Act or T. P. Act — Instrument not being a lease within S. 105, S. 107 does not apply — Document is a lease for purposes of Registration Act—But as it was only for 8 months, it was not necessary to register it under Registration Act—Rent note can be enforced. See T. P. Act (1882), S. 105. **AIR 1955 NUC (Madh B) 3787.**

——S. 107 — Admissibility of unregistered lease — Yearly tenancy — Unregistered rent-note is admissible to show nature of possession—Registration Act S. 49.

In the case of a yearly tenancy the rent-note though unregistered can be used for the collateral purpose, of showing the nature of possession of the tenant as also to prove an admission made by him. **1952 Nag L J (Notes) 165.**

——S. 107, Paragraph 2 — Absence of delivery of possession—Status of person claiming to be lessee — Right to eject trespasser.

In a suit for ejectment the plaintiff is to stand or fall on the basis of his own title. It does not matter if the defendant has not been able to prove his alleged interest or title and he is a mere trespasser. Under S. 107 delivery of possession is essential for the purpose of creating tenancy rights in other kinds of leases in the absence of a registered document in accordance with the provisions of that section. Where there is a great lacuna regarding delivery of possession in favour of the person who claims to be the lessee no title is created in his favour. As such, he is not competent to bring a suit for ejectment even as against a person who is a trespasser. **ILR (1957) Cut 509 : AIR 1957 Orissa 276 (279) (Pt D) (Pr 11) (DB).**

——S. 107—Absence of delivery of possession — Acceptance of rent by landlord—Tenancy if created.

Mere acceptance of rental by the landlord cannot create tenancy under the Act. In addition to the acceptance of rent delivery of possession must be an accepted fact or must be proved in order to enable the person claiming as a lessee to eject a trespasser to fall back upon the provisions of S. 106 and succeed. AIR 1952 SC 23 : 1951 S C J 813, Distinguished. **ILR (1957) Cut 509 : AIR 1957 Orissa 276 (279) (Pt E) (Pr 11) (DB).**

——S. 107—Delivery of possession—Actual delivery —Necessity.

"Delivery of possession", as used in S. 107, T. P. Act, includes constructive possession also when the lessor is in possession of the land through his mortgagee or his tenant and they are attorned to the lessee; but if the lessor is not in possession either actually or constructvely and the land is in possession a trespasser asserting adverse and independent right, actual delivery of possession is compulsory in order to satisfy the conditions of S. 107, T. P. Act **ILR (1957) Cut 509 : AIR 1957 Orissa 276 (279) (Pt F) (Pr 11) (DB).**

——S. 107 — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11 — Unregistered Kirayanama executed and signed by lessee alone — Kirayanama whether admissible in evidence in view of paragraph 2 of S. 107 (Quaere). **1964 B L J R 59.**

[Overruled on another point in AIR 1964 Pat 401 (FB).]

—S. 107 — Transferee from tenant-at-will' raising pucca building—Acquiescence by landlord—Estoppel—Principle of no estoppel against Statute. See Evidence Act (1872), S. 115. AIR 1960 Pat 289 (DB).

—S. 107—Landlord and Tenant—Joint tenancy — Partition—Acceptance by landlord by conduct—Regrant of individual tenancy. AIR 1955 NUC (Punj) 1883.

—S. 107—In the absence of a contract to the contrary—Execution of rent note when Registration Act was not in force in the State—Registration held was not compulsory. See T. P. Act (1882), S. 106. AIR 1955 NUC (Raj) 4059.

—Ss. 107, 106—Guardian executing perpetual lease of minor's houses — Lease reserving annual rent — Lease not executed by both parties—Presumption of monthly tenancy under S. 106 — Lease binding on minor even if no sanction of Court is obtained — (Guardians and Wards Act (1890), S. 29). See T. P. Act (4 of 1882), S. 106. AIR 1957 Tripura 1.

10. Paragraph 3.

—S. 107 Paragraph 2—Applicability — Lease to be executed by both lessor and lessee.

A land which was allowed to be in possession of certain persons as stall holders was granted in perpetual lease by the properietor. The lessee was stated to be "A and his son B" in the lease deed. It was signed by A but it was not known whether he signed it as a "Malik" of a firm or as a partner of a firm or as head of his family describing the family by firm name. He brought suits for eviction of the stall holders, but the suits were objected to on the ground that as there were two lessees he alone was not entitled to bring the suits.

Held, that the objection was not tenable. If A had acted on behalf of a firm the other partners of the firm would be entitled to the benefits derived by him under the deed. If he acted as head and Karta of the family the family would be entitled to the benefit of that transaction. Therefore in whatever capacity he had acted he was the second party to the lease deed. The proprietor purported to transfer to him whatever rights he had in the land and those rights obviously were his proprietary rights. The lease deed which was executed both by the proprietor and A did not contravene the provisions of S. 107 and there was no reason why it should not operate as a valid perpetual lease of the land in favour of A. As such A was the person who was entitled to possession and competent to bring the suits. 1958 All W R (HC) 70 : AIR 1957 All 369 (371) (Pt A) (Pr 6).

—Ss. 107 and 105—Qabuliat—If creates a lease — Admissibility for proving nature of possession.

Sarkat (Qabuliat) executed by lessee alone does not operate as lease—But the deed is admissible in evidence for purpose of determining nature of possession. AIR 1950 All 661 (Pt A).

—S. 107—Rent note signed only by tenant— Effect of. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948) S. 2 (17). I L R (1958) Bom 334.

—S. 107 (before 1929 amendment) — Bemeyadi kabulayat coming into existence before S. 107 of T. P. Act was amended in 1929—Deed containing no restriction on tenant from constructing any pucca structure —Construction carried on with knowledge of landlord — Permanent and mandatory injunction restraining tenant cannot be granted. See Civil P. C. (1908), O. 39, R. 1. (1965) 69 Cal W N 833 : AIR 1966 Cal 97.

—S. 107—Registered Kabuliyat signed by lessee is invalid as lease — Possession under such lease and acceptance of rent by landlord — Lease by operation of law is created — Provision for re-entry for breach of condition against alienation contained in Kabuliyat attaches to such lease—Breach of condition — Notice under S. 111 (g) not given — Decree for possession cannot be passed. See T. P. Act (1882), S. 10d. A I R 1960 Cal 40.

—S. 107 — Unilateral Kabuliat — Implied tenancy from payment and receipt of rent. See T. P. Act (1882), S. 105. AIR 1955 N U C (Cal) 5584.

—S. 107— Kabuliyat executed by lessee alone. See Evidence Act (1872), S. 21. A I R 1955 N U C (Cal) 2889.

—S. 107—Necessity of execution by both lessor and lessee.

It cannot be said that a kabuliyat executed by lessee alone is not a lease on the ground that it is not executed by both the lessor and the lessee. The requirement of S. 107 of joint execution by the lessor and the lessee applies only to a case where a lease of immovable property is made by a registered instrument. Hence a kabuliyat executed by a lessee if unregistered does not come within the mischief of S. 107. AIR 1954 Cal 207 (208) (Pt B) (Pr 4) (DB).

—S. 107, Para. 3 — Bharapatra executed by lessee only, binds the lessor, in absence of fraud. AIR 1952 Cal 352 (352) (Pr 6).

—S. 107 (Before its amendment by Act 20 of 1929) —Lease executed by lessee alone —Validity.

An instrument of lease executed only by the lessee and accepted by the lessor is sufficient to constitute a lease within S. 107 before its amendment by Act 20 of 1929. The facts that the lease is stated to be an indenture and contains mutual covenants by the lessor and the lessee are not conclusive to show that the document to be valid must be executed by the lessor and the lessee. I L R (1951) 2 Cal 444 : A I R 1951 Cal 361 (364) (Pt A) (Pr 47) (DB).

—S. 107—Execution of lease—Formalities.

In the light of the third paragraph added to S. 107 in the year 1929 there is no 'lease' unless the instrument is executed by both lessor and lessee Hence the question of such an instrument being inadmissible in evidence for want of registration does not arise. 1959 Ker L R 218 : 1959 Ker L T 247 : A I R 1959 Ker 400 (400) (Pt A) (Pr 3) (DB).

—Ss. 107 and 105—Unilateral agreement to occupy house and pay rent—Agreement, if lease—Agreement not registered — Admissibility in evidence. See T. P. Act (4 of 1882), S. 105. AIR 1951 Mys 24.

—Ss. 107 and 105 — Rent chit by tenant, if lease deed—Admissibility for want of registration discussed —Suit for rent on basis of rent chit — Registration Act (1908), S. 2 (7). See T. P. Act (4 of 1882), S. 105. AI R 1951 Mys 13.

—S. 107—Primary purpose of lease agricultural—Lessee acquires tenancy right upon acceptance of rent by lessor—Fact that lease is not signed by lessor or lessee is immaterial — Question of applicability of S. 107 cannot be raised for first time in second appeal, question being mixed question of law and fact—Civil P. C. (1908), S. 100.

Where the recitals in the lease deed showed that it was granted for cultivation and residence and no averment was taken up in the pleadings that the primary purpose of the lease was residential the primary purpose of the lease was agricultural and the lessees acquired tenancy right even independent of the lease on acceptance of rent by the landlords. The lease is not invalid on the ground that it was not signed by the lessors and the lessees. Moreover question whether the lease not having been signed by the lessors and the lessees is invalid is a mixed question of law and fact and should be pleaded in the.

written statement and an issue should be framed and evidence gone into. The point cannot be permitted to be taken up for the first time in the second appeal. ILR (1964) Cut 111.

——Ss. 107 and 117 — Lease for agricultural purposes — Unregistered document executed by landlord alone—Planting of banana trees and temporary use of land for other purposes does not affect its character—S. 107 does not apply.

A unilateral unregistered document of lease executed by the landlord would be valid if the lease is for agricultural purposes. Where the origin of the lease was for agricultural purposes the mere raising of the banana trees and the temporary use of the land for any other purpose will not destroy the original character of the lease. Hence by virtue of S. 117, S. 107 of the Transfer of Property Act has no application to such a case. An agricultural tenant could be inducted even without any document and by the mere acceptance of rent by the landlord. (1963) 29 Cut L T 409 : ILR (1963) Cut 643.

——S. 107, Paragraph 3 — Lease not executed by both lessor and lessee is clearly invalid. ILR (1957) Cut 509 : AIR 1957 Orissa 276 (278) (Pt C) (Pr 10) (DB).

——Ss. 107, 105, 106 (before amendment by Act 20 of 1929) — Lease, creation of, before amendment —Valid lease could be created by a patta executed by lessor and not by kabuliyat executed by lessee. See T. P. Act (4 of 1882), S. 105. A I R 1960 Pat 344 (FB).

——S. 107 — Lease — Registered Kabuliyat coupled with acceptance — Sufficiency — (Registration Act (1908), S. 2 (7)).

In the case of an agricultural lease a registered Kabuliayat coupled with the acceptance of the same by the landlord is sufficient to constitute a lease in the eye of law. ILR 36 Pat 1027 : AIR 1959 Pat 89 (101) (Pt M) (Pr 27) (DB).

——Ss. 107 and 105 — Invalid lease — Possession under.

Lease is invalid if registered instrument is not signed by both the lessor and the lessee. Nevertheless the lessee in possession is entitled in law to maintain possession against the whole world except the rightful owner. AIR 1957 Pat 408 (416) (Pt N) (Pr 28) (DB).

——S. 107 — Kabuliyat not executed by lessor — Contract is invalid — Terms of contract cannot be proved by any other evidence—(Evidence Act (1872), S. 91). AIR 1957 Pat 331 (333) (Pt B) (Pr 12) (DB).

——Ss. 107 and 105 — Usufructuary mortgage — Lease back to mortgagor — Kerayanama executed by mortgagor lessee only—Validity—Suit for arrears of rent on basis of Kerayanama — Whether maintainable — Claim for use and occupation — Rate of compensation — Debt Laws — Bihar Money-lenders Act (3 of 1938).

Where a usufructuary mortgagee has leased the mortgage property (house) back to the mortgagor and the alleged kerayanama was executed by the mortgagor lessee only, it is hit by S. 107 and therefore a suit for arrears of rent by the mortgagee landlord on the basis of kerayanama is not maintainable. But the mortgagee landlord is entitled to recover compensation for use and occupation from the mortgagor lessee for the period he was in possession and enjoyed the property. AIR 1944 Pat 35, Rel. on. The contract between the mortgagor and the mortgagee, by which the mortgagee stipulated to realise 24 per cent. of interest from the mortgagor on the house under the veil of house rent is clearly illegal, and is hit by the Money-lenders Act. The rate at which such compensation for use and occupation of the house can be allowed should be such as would represent interest at 9 per cent. per annum on the sum advanced. A I R 1957 Pat 24 (29) (Pt D) (Prs 19, 22, 24, 26).

——Ss. 107, 116 —Scope —Registered instrument of lease for 21 years signed by the lessor alone — Validity of — If may be construed as oral lease for one year and treated as valid.

An instrument purporting to be lease or patta for 21 years, made in writing, registered and signed by the lessor alone, but not signed by both the lessor and the lessee as required by S. 107, T. P. Act, neither constitutes nor creates a valid lease. It cannot be construed to be an oral agreement of lease for one year, as it is within the mischief of S. 107, T. P. Act, and its invalidity cannot be cured by construing it to be a lease by oral agreement accompanied by delivery of possession. So to construe it would defeat the provisions of S. 107. AIR 1951 Pat 160 (161, 162) (Pt A) (Pr 8) (DB).

11. Proviso.

——S. 107, Proviso—Lease of house—Effect of non-registration—Notification—Under Proviso issued by U. P. Government.

By a notification published in the U. P. Gazette, dated 21st June 1905 under S. 107 of the T. P. Act only leases in which the total amount of the rent reserved is below Rs. 50 can be made by an unregistered writing. All other leases if in writing have to be registered. Hence where a lease for a house is for one year and the total amount of rent reserved is more than rupees fifty, it is, if unregistered, inadmissible in evidence except for collateral purposes as provided in S. 49 of the Registration Act. 1956 Andh W R (HC) 711 : 1956 All L J 625.

12. Lease by Government.

——S. 107—Lease of land by Government—T. P. Act does not apply when construing instrument of grant by Government. See Government Grants Act (1895), S. 2. AIR 1965 All 326 (DB).

——S. 107 —Government Grants Act, S. 3 —Lease — Bilateral document — Exclusion of S. 107, T. P. Act. See Government Grants Act (1895), S. 3. AIR 1951 Cal 361 (DB).

——S. 107 — Lease of Government lands—Exemption from provisions of S. 107—Registration of lease deed not necessary—Lessee entering into possession is enough (Per Division Bench).

Per Division Bench—Where a lease of Government lands is exempted by a notification, from the provisions of S. 107 of the Transfer of Property Act, a document creating such a lease does not require registration as provided by S. 90 of the Registration Act. In such case there is a demise of the lands so soon as the lessee takes possession. Ramnarayan v. State of M. P., 1961 Jab L J 1364 : 1961 M P L J (Notes) 295 : 1962 MPLJ 1 : 1962 M P C 118 : ILR (1962) Madh Pra 84 : AIR 1962 Madh Pra 93 (102) (Pt D) (Pr 36) (FB).

13. Lease embodied in a decree or order of a Court.

——S. 107 — Compromise decree creating perpetual lease — Property containing paddy land and house — Document required registration — Being unregistered was unenforceable. See T. P. Act (1882), S. 10. AIR 1955 N U C (Mad) 3950.

——S. 107 — Compromise decree creating perpetual lease—Registration compulsory. See Registration Act (1908), S. 17 (2) (vi). AIR 1955 NUC (Mad) 3950.

——Ss. 107, 105 — Compromise decree varying terms of existing tenancy — Registration is not necessary— (Registration Act (1908), S. 17). See T. P. Act (4 of 1882), S. 105. AIR 1955 Pat 402 (DB).

14. Lease and part performance.

——Ss. 107, 53-A — Registration Act (1908), S. 49 — Statutory tenant, who is—Person remaining in possession after the period fixed in a compromise decree, where lease as contemplated by the agreement was neither executed nor registered, does not become a statutory tenant—S. 53-A of T. P. Act does not confer any right on such person — Such person after the period agreed to in the compromise is over, becomes a trespasser—Suit by such person for declaration of his right as a tenant and for permanent injunction not maintainable. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 2 (1). AIR 1964 Cal 235 (DB).

——Ss. 107, 53-A — Patta for 25 years executed by A in favour of B on monthly rental — Patta not signed by B — B going into possession and effecting improvements in terms of patta — Suit for arrears of rent and eviction of B before expiry of patta—There is no implied tenancy from month to month — Doctrine of part performance held applied.

Held, that the patta, though not a lease was a writing within meaning of S. 53-A. From such a writing the terms necessary to constitute a transfer could be ascertained with reasonable certainty. B in part performance of the contract had taken possession of the subject of the contract. A was debarred from enforcing against B any right other than the right expressly provided by the terms of the contract. And it was expressly provided that B should remain in the premises undisturbed by A, till expiry of 25 years. Thus, S. 53-A came to the aid of B. In this case there was hardly any room for "presumed" or "implied" tenancy because a lease of immovable property for any term exceeding one year can be made only by a registered instrument. AIR 1950 Cal 23, Rel. on. AIR 1944 Pat 35, Approved. After the expiry of 25 years B will have to quit and no notice will be required. AIR 1962 Cal 502 (503, 504) (Prs 6, 11).

——Ss. 107, 53-A—Lease for 10 years—Deed unregistered—If can be relied on for part performance, discussed. AIR 1960 Cal 609 (618) (Pt H) (Pr 33) (DB).

——Ss. 107 and 53-A—Written agreement to lease for a term exceeding one year signed by lessor only — If complete and concluded agreement under S. 53-A discussed — Registration — Registration Act (1908), Ss. 2 (7) and 17 (d). See T. P. Act (4 of 1882), S. 53-A. AIR 1951 Nag 285 (DB).

——S. 107—Document invalid as lease, being without signature of lessee — Facts and circumstances revealing that there was completed contract of lease—Document is sufficient to attract S. 53-A. See T. P. Act (1882), S. 53-A. AIR 1965 Pat 467 (DB).

——Ss. 107, 53-A—Lease executed by lessor alone—Lease is not completed "in manner prescribed therefor" within meaning of S. 53-A. See T. P. Act (4 of 1882), S. 53-A. AIR 1960 Pat 354.

——S. 107—Lease — Doctrine of part performance—S. 53-A has no application to a case where the document upon which a party relies is not a contract of transfer by the lessor but is a kabuliyat executed by the lessee. See T. P. Act (1882), S. 53-A. AIR 1957 Pat 24.

——S. 107, Para. 2—Document of lease not signed by lessor — Document is admissible as evidence of part performance of agreement to grant lease under S. 53-A. See Transfer of Property Act (1882), S. 53-A. 6 Sau L R 378.

15. Agreement to lease.

——Ss. 107 and 105—Kabuliat cannot create lease. See T. P. Act (4 of 1882), S. 105. AIR 1953 All 499.

——S. 107—Agreement to lease — Registration is not necessary. See Registration Act (1908), S. 2 (7). AIR 1955 Nag 170 (DB).

——S. 107—Agreement to lease—Execution by lessor alone—Sufficiency.

Section 107, T. P. Act, only lays down how a lease is to be made and not how an agreement to lease is to be made. There is no provision which requires that a written agreement to lease should be signed both by the lessor and lessee. It is enough if it is executed by the lessor alone. I L R (1950) Nag 799 : 1951 Nag L J 81 : A I R 1951 Nag 285 (286, 287) (Pt B) (Prs 9, 11) (DB).

SECTION 108

SYNOPSIS

(Transfer of Property Act (1882), S. 108.)

1. General.

RIGHTS AND LIABILITIES OF THE LESSOR.

CLAUSE (b)

2. Obligation to give possession.
3. "On the lessee's request".
4. Failure to give possession—Effect.
5. Contract to the contrary.

CLAUSE (c)

6. Scope.
7. Interruption by holder of paramount title.
8. Interruption by trespasser.
9. "Shall be deemed to contract".
10. Effect of breach of covenant.

RIGHTS AND LIABILITIES OF THE LESSEE.

CLAUSE (d)

11. Accession to property.

CLAUSE (e)

12. Scope.
13. "Flood".
14. Proviso.
15. Applicability of doctrine of frustration to leases.

CLAUSE (f)

16. Lessor's neglect to make repairs.

CLAUSE (g)

17. Payment by lessee for lessor.

CLAUSE (h)

18. Lessee's right to remove things attached to earth.

CLAUSE (i)

19. Lessee's right to crops sown by him.

CLAUSE (j)

20. Scope.
21. Absolute transfer.
22. Rights of assignee.
23. Liabilities of assignee.
24. Mortgage or sub-lease by lessee.
25. Lessee continues liable.
26. Rights of lessee against assignee or sub-lessee.
27. Clause not retrospective.

CLAUSE (l)

28. Scope.
29. Rent in kind.
30. Tender or payment at proper place and time.
31. "To lessor or his agent".
32. Payment must be by lessee.
33. Increase in rent.
34. Question of title.
35. Concurrent lease.
36. Non-payment of rent.
37. Suspension, abatement or reduction in rent.

CLAUSE (m)

38. Duty of lessee to restore property in good condition upon termination of lease.

CLAUSE (o)

39. Reasonable use of demised property.
40. Use contrary to agreement.
41. Cutting of trees on land.
42. Working mines and quarries.
43. Any other act which is destructive.

CEAUSE (p)

44. Erection of permanent structures by lessee.

CLAUSE (q)

45. Upon determination of lease, lessee to put lessor into possession.

1. General.

——**Ss. 108 and 109 — Rights of lessor and his transferee in demised property—Nature.**

A lessor has certain primary and auxiliary rights in the demised property. One of the primary rights is the right to evict the lessee from the property in certain circumstances, and as an auxiliary to that right there springs the right to give notice in writing to the lessee of the intention to determine the lease and to ask him to quit the property. It follows from S. 109 of T. P. Act that all the rights, primary and auxiliary, of the lessor to the property stand transferred to his transferee, and the latter becomes substituted for the former for all practical purposes. 1961 All L J 644 : 1961 All W R (HC) 510 : ILR (1961) 2 All 554.

——S. 108—Landlord and tenant—Altering status of tenant—Unilateral act of tenant.

It is not open to a tenant by any unilateral act to alter his character of a tenant. AIR 1951 Him Pra 65 (66) (Pt D) (Pr 10).

——S. 108 — Lease is a bilateral transaction giving rise to certain liabilities and duties both on the part of the lessor and the lessee as specified in S. 108. See Municipalities — Hyderabad Municipal Corporation Act (2 of 1956), S. 22 (2) (b) (i). AIR 1957 Hyd 27 (DB).

——S. 108 — Cls. 4 to 8 of C. P. and Berar Letting of Houses and Rent Control Order (1949)—These clauses are valid—Repugnancy with S. 108, T. P. Act —Clauses are sustained by reason of S. 6 of C. P. and Berar Regulation of Letting of Accommodation Act 11 of 1946 and assent of Governor-General — (Government of India Act (1935), S. 107). See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cls. 4 to 8. AIR 1955 Nag 246 (FB).

——S. 108 — Sections 12 and 13 of Bombay Rents, Hotel and Lodging House Rates (Control) Act (1947) as amended in Saurashtra do not abrogate provisions of T. P. Act. See Houses and Rents — Bombay Rents Hotel and Lodging House Rates (Control) Act (1947), S. 12. AIR 1953 Sau 119 (DB).

RIGHTS AND LIABILITIES OF THE LESSOR
CLAUSE (b)

2. Obligation to give possession.

——S. 108—Tenancy determined by notice to quit—Action in ejectment for purposes of building or rebuilding—Form of decree — Decree keeping tenancy intact while directing tenant to vacate within certain date cannot be passed. See Houses and Rents—W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12 (1) (h). (1964) 68 Cal W N 115.

——S. 108—Possession — Constructive possession—Effect—Held possession of the documents meant in the circumstances of this case constructive possession of the goods. AIR 1963 Cal 163 (173) (Pt C) (Pr 43).

——S. 108—Landlord and tenant—Suit for damages for use and occupation against tenant holding over —No evidence that tenant cultivated land himself—Plaintiff is not entitled to decree merely because tenant failed to surrender possession after expiry of his lease.

In a suit by a landlord against his lessee for damages for use and occupation of the land after the expiry of the lease, the sole criterion to determine whether the plaintiff is entitled to any decree is whether the defendant did or did not actually cultivate the land as a tenant holding over. Where the land is an open field on which there is no homestead or any movable property, there is no necessity to surrender possession to the landlord after the expiry of the lease and in the absence of evidence that the tenant cultivated the land, the plaintiff is not entitled to a decree against the tenant in such a suit on the sole ground that he failed to surrender possession after the expiry of lease. (1949) 2 Mad L J 655 : 1949 Mad W N 729 (1) : AIR 1950 Mad 236 (236) (Pr 2).

——S. 108 (b) — T. P. Act is incorporated in the Bombay Tenancy and Agricultural Lands Act by virtue of S. 3 of the Bombay Act. See Tenancy laws—Bombay Tenancy and Agricultural Lands Act (1948), S. 3. ('59) 37 Mys L J 741 (DB).

——S. 108, Cl. (b) — Obligation to give possession—Delay by lessor — Remedy of lessee — Lessor deliberately setting up third party to obstruct lessee from acquiring possession — Lessee is entitled to mesne profits from date of obstruction to date of delivery of possession — Position would be same even if lessor's default be treated as breach of contract—Contract Act (1872), Ss. 73 and 74. AIR 1965 Pat 39 (43, 44) (Pt B) (Prs 12, 16) (DB).

3. "On the lessee's request."

——S. 108 (b)—'On the lessee's request'—Obligation of lessor to put lessee in possession.

Under Cl. (b) of S. 108 of the T. P. Act, 1882 there is a legal obligation on the lessor to put the lessee in possession on a request being made to him to that effect. Where, however, the lessee is acquainted with the land leased to him, and there is no likelihood of obstruction to his going upon the land and taking possession of it, there is no duty on the lessor to put the lessee in possession unless the latter request him to do so. In the absence of such a request and the consequent failure by the lessor in performing his obligation, the lessee cannot make a case for refund of the consideration money from the lessor on his failure to get possession from a third party. 1963 B L J R 965 : AIR 1964 Pat 59 (59, 60) (Pt A) (Pr 4) (DB).

4. Failure to give possession—Effect.

——S. 108 (b)—Failure to give possession to lessee—Lessee can repudiate contract and claim damages—

T. P. Act and Contract Act have to be read together—Advance paid by lessee and expenses incurred can be recovered — Case is analogous to case of mortgagee whose quiet enjoyment has been disturbed—(Contract Act (1872), Ss. 55 and 73). AIR 1955 NUC (All) 3605.

——Ss. 108 and 111 — Agreement to exchange premises after remodelling — Breach — Suit for specific performance and mandatory injunction—Jurisdiction of High Court — (Specific Relief Act (1877), S. 55). See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 28. AIR 1953 Bom 76 (DB)

——S. 108 (b) — Rental agreement by father and daughter—Vacating of premises by daughter without delivering vacant possession to lessor—Does not put an end to her joint liability for payment of rent.

Where a father and daughter executed a rental agreement and in a suit for rent for recovery of rent the daughter pleaded that she had already vacated the house and went to Madras. Held : that her vacating the house will not avail her to escape the joint liability for rent till delivery of possession was given to the lessor. 1953 Mad W N 48 (2) : (1952) 2 M L J 883 : AIR 1954 Mad 92 (92) (Pr 2).

——S. 108 (b) — Suit for possession by purchaser of tenancy rights on ground of alleged dispossession by landlord—Question whether plaintiff is tenant not required to be decided by Mamlatdar 'for the purposes of the Act'—Jurisdiction of Civil Court to award possession to tenant not taken away by Act. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 85A. (1963) 2 Mys L J 47.

——Ss. 108 (l) (b) and 117 — Failure to give possession—Absence of demand — Right of lessee to claim abatement or suspension of rent — (Evidence Act (1872), S. 115).

The right to recover rent from the lessee arises only when the lessee has been delivered possession of the demised property. This principle applies to all kinds of leases, agricultural and non-agricultural. AIR 1920 Pat 611, Rel. on. The mere absence of demand for possession of the lands which were not delivered by the lessor for certain number of years will not estop the lessee from claiming abatement of rent for all those years. AIR 1958 Pat 457 (457) (Pr 4).

5. Contract to the contrary.

● ——Ss. 108 (b), 105, 112, 106—Possession of lessee under void lease—Lessee paying rent—Effect—Duration of tenancy has to be determined on basis of S. 106 — Acquisition of permanent tenancy by prescription — ILR 30 Pat 964 : A I R 1952 Pat 46, Overruled. See T. P. Act (4 of 1882), S. 105. A I R 1960 Pat 344 (FB).

——S. 108—Landlord and tenant—Ejectment—Right of landlord on determination of tenancy — If dependant on express contract—Inherent right of landlord and liability of tenant.

The right of a landlord for recovery of possession of the properties from a tenant on the determination of the tenancy need not be based on any contract expressly entered into in that behalf. The landlord's right to recover, and the tenant's liability to surrender, the properties leased, on the determination of the lease, are inherent in the very relationship of landlord and tenant and are implied by the law. Section 108, T. P. Act, recognises this obligation of the tenant. 1951 Ker L T 770 : ILR (1951) Trav-Co 522 : AIR 1952 Trav Co 359 (361) (Pt B) (Pr 7) (DB).

CLAUSE (c)

6. Scope.

——S. 108 (c)—Payment of rent and performance of contracts are conditions precedent to the enforceability of the obligation to secure quiet enjoyment. See Houses and Rents — Assam Urban Area Rent Control Act (3 of 1946), Ss. 7, 8. AIR 1951 Assam 62 (DB).

——S. 108 (c)—Scope—Covenant for quiet enjoyment — Breach — Landlord's refusal to give consent to electric installation — Issue of mandatory injunction —(Specific Relief Act (1877), S. 55).

No act of a lessor can be regarded as an actionable breach of a covenant for quiet enjoyment unless it involves some physical or direct interference with the enjoyment of the demised premises and in determining whether the enjoyment of the premises has been disturbed or interfered one must look to the purpose for which the premises were granted. Thus, where the rooms are let out to the tenant for locating a dispensary and a laboratory and the effect of the landlord's refusal to give consent to enable the tenant to have the electric energy on the premises is to make the rooms unfit for that purpose, there would be a breach of the covenant for quiet enjoyment and the tenant would be entitled to a mandatory injunction compelling the landlord to give the necessary consent. The plea of the landlord that he does not wish to give consent as, for some reasons, he wants to get rid of the tenant is no answer to the claim resting on the covenant. 1959 M P C 18 : 1959 Jab L J 120 : 1959 M P LJ 285 : AIR 1959 Madh Pra 191 (192, 193) (Pt A) (Prs 3, 4, 5).

——S. 108 (c) — Lessee taking lease of agricultural field knowing that it was mortgaged — Mortgagee enforcing mortgage—Lessee cannot invoke S. 108 (c) — Contract Act (1872), S. 73.

When a statutory provision does not apply but the principles underlying it are invoked as a matter of equity, the Court is not bound to apply the provision literally, but may well consider whether it is equitable to apply it to the facts of the particular case before it. Where a lessee has taken a lease of an agricultural field knowing that it is under mortgage, it would be inequitable to permit him to invoke the aid of S. 108 (c), T. P. Act as against the lessor if the mortgagee enforces his mortgage and purchases the field himself. A I R 1942 Nag 103, Disting, ILR (1956) Nag 630 : A I R 1956 Nag 115 (116, 117) (Pt A) (Prs 5, 8) (DB).

7. Interruption by holder of paramount title.

——S. 108 (j)—Agricultural lease—Lease by Government — Lessee has no right to mortgage land to third party. A I R 1950 Ajmer 59 (59) (Pt A) (Pr 2).

——S. 108 (c) — A leasing his building to B — C obtaining money decree against A — Attachment and sale of A's interest in building in execution and purchase by D — Possession delivered to D — Suit by B against D under O. 21, R. 103 — Maintainability — B not a representive of A—B's suit not barred by S. 47. See Civil P. C. (1908), S. 47. A I R 1965 Andh Pra 8.

——S. 108 (c)—Contract Act (1872), S. 65 — 'When a contract becomes void' — Transactions hit by estate abolition legislation — Applicability of S. 65 — Liability of transferor to refund consideration and for damages—Damages for breach of covenant for quiet enjoyment not claimable — (Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals Alienated Lands) Act (1 of 1951), S. 6). See Contract Act (1872), S. 65. A I R 1959 Madh Pra 315 (DB).

——S. 108 (c)—Eviction by title paramount—Attornment—Effect.

Where a third party dispossesses both the lessor and the lessee by purchase in execution of a decree by title paramount and the lessee subsequently attorns to such third party by payment of rent, the title of the lessor becomes extinguished and there is a surrender of lease by operation of law. Hence the

lessor is not entitled to claim rent from the lessee subsequent to the period of eviction. **55 Mys H C R 299 : A I R 1950 Mys 9 (10) (Pt B) (Prs 4, 5) (DB).**

——S. 108 — Plea of eviction by paramount title — Tenant must establish that the person who wanted to evict had better title than his lessor — If there is nothing to show this or that the tenant gave notice under S. 108 (n) to his lessor about the claim put forward by the evictor, applicability of the doctrine of estoppel cannot be challeged by the tenant on the ground of eviction by title paramount. See Evidence Act (1872), S. 116. **A I R 1959 Pat 562 (DB).**

8. Interruption by trespasser.

——S. 108, Cl. (c)—Covenant for quiet enjoyment — Breach of—Interruption by third party.

Where gaps in the compound wall were not caused by any physical disturbance by the lessor or any one claiming through the lessor, the lessor is not liable for breach of covenant for quiet enjoyment. Where one of the gaps was the result of some construction by the neighbour, if the action of the neighbour was unlawful, the remedy of the lessee was against the neighbour, not the lessor: A I R 1947 Nag 48, Rel. on. **1955 Nag L J 477 : ILR (1955) Nag 977 : A I R 1955 Nag 202 (203) (Pt D) (Pr 11).**

——S. 108 (c) — Covenant for quiet enjoyment — Disturbance by trespasser — Premium paid by lessee — He cannot recover it from lessor. **1963 B L J R 965 : A I R 1964 Pat 59 (60) (Pt B) (Pr 5) (DB).**

9. "Shall be deemed to contract."

——S. 108 (c)—Effect of breach of covenant—Lessor bringing suit for breach of contract against lessee — Lessee can plead termination of contract on ground that contrary to covenant for quiet enjoyment he was liable to be disturbed by mortgagee of lessor. See T. P. Act, 1882, S. 65-A. **AIR 1955 N U C (All) 1691 (DB).**

——S. 108 (c)—Lease of surface land, does not affect co-owner's right to lay new under-ground drainage. See Co-owners. **AIR 1959 Cal 309 (DB).**

——S. 108 (c) — Rights and liabilities of lessor—Lessee performing terms of contract—Implied covenant of title and quiet enjoyment—Extent of—Son of lessor claiming possession of demised property in suit—Lessor ex parte in suit — Compromise with son on payment of money — Breach of covenant of title and quiet enjoyment—Suit for damages — No notice to father-lessor about the compromise — Suit not improper—Words and Phrases — 'Without interruption'—Meaning.

The plaintiff was the lessee of the property of the defendant. In a suit for partition filed by the minor son of the defendant the plaintiff had to compromise with the minor by paying a sum of Rs. 275 in respect of the leased property. In the partition suit the defendant-father was ex parte. The present suit was for recovery of the sum of Rs. 275 from the defendant.

Held : Under S. 108 (c) of the Transfer of Property Act, the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contract binding on the lessee, he may hold the property during the time limited by the lease without interruption. This provision also means that the title, which has been conveyed by the lessor to the lessee, is a good title and that there is no infirmity in it. The words "without interruption" in S. 108 (c) are not qualified in any way, and have been understood to mean what in England is known as a covenant for quiet enjoyment in an unqualified form. The covenant protects the lessee only against the lawful disturbance, but does not cover tortious entries, eviction or interruption by trespassers. As the plaintiff had done all that he had covenanted to do under the lease deed, the defendant must be deemed under the law as having given a covenant for quiet possession. There could not be a clearer threat when the minor son of the lessor attached the alienation of the father in a suit and prayed for recovery of possession of the leased property. There was an interference with the covenant for quiet enjoyment. The plaintiff need not give any notice to the defendant in the partition suit of the proposed compromise with his minor son. Since the defendant remained ex parte in that suit, he should be fastened with constructive knowledge of entire proceeding in that suit including the compromise decree. The suit for damages without notice is therefore not vitiated. There is no reason why the principle of covenant of title vitiated in a sale deed should not be extended to the covenant for title and quiet enjoyment in a lease deed. **77 Mad L W 202 : 1964 Mad W N 163 : (1964) 2 Mad L J 142 : I L R (1964) 2 Mad 582 : A I R 1964 Mad 514 (515, 516) (Prs 3, 4, 5, 7).**

——S. 108 (c)—Breach of covenant under S. 108 (c)—Damages — Burden is on lessee to prove actual loss—Duty of Court when burden not discharged. See Contract Act (1872), S. 73. **A I R 1965 Pat 179 (DB).**

10. Effect of breach of covenant.

——S. 108 (c)—Liability of lessor and third persons —Contract Act (1872), S. 73.

Where after the lease to the plaintiff the defendant obstructs him in cultivating the field the defendant would be liable for damages to the plaintiff only if his action is tortious. His action would be tortious if he actually dispossesses the plaintiff or if he procures a breach of contract with the plaintiff by the lessor. In the absence of proof of this the lessor would be liable for breach of contract under S. 108 (c). The damages recoverable from him, in such a case cannot be assessed on the basis of a tort but on that of a breach of contract. **1951 Nag L J 530 : I L R (1951) Nag 516 : A I R 1951 Nag 379 (381) (Pt C) (Prs 12, 16).**

——S. 108 (c) — Effect of breach of covenant — Lessee is entitled to claim damages — Pre-requisites of claim for damages—Contract Act (1872), S. 73.

Under S. 108 (c) the lessor is deemed to contract with the lessee that he may hold the property during the time limited by the lease without interruption. This is a right of a quiet enjoyment of the lease property in an unqualified form. The covenant for quiet enjoyment extends against the disturbance of the lessee's possession by the lessor or by persons claiming under him and not to disturbance caused by a trespasser. In other words, the lessee is entitled to enjoy the lease against any unlawful entry, eviction or interruption of any person. This right, however, does not extend against tortious entries, evictions or interruptions. Wrongful acts of trespasser are, no doubt, to be defended by the lessee on his own and the lessor is not liable for damages for that. But if the interruption or dispossession is occasioned by persons claiming by right paramount to the lessor, the covenant for quiet enjoyment in an unqualified form would entitle the lessee to damages from the lessor. Three conditions, however, are necessary to be fulfilled for that purpose ; the eviction must be from something actually forming part of the property demised, the party evicting must have a good title and the lessee must have quitted against his will. **1965 B L J R 679 : A I R 1965 Pat 179 (181) (Pt A) (Pr 6) (DB).**

RIGHTS AND LIABILITIES OF THE LESSEE
CLAUSE (d)

11. Accession to property.

——S. 108 (d)—Adverse possession by lessee — Property enures to lessee as accretion to the lease.

A lessee can acquire additional property belonging to the lessor by adverse possession. The lessee does not, however, get absolute title to that property but such property enures to him as an accretion in his lease.

Held, on facts that the lessee was in possession of the four feet wide strip adjoining land leased to him since 1906 in his capacity as lessee and, therefore, had acquired the strip as accession to his lease-hold property. **I L R (1965) Bom 27 : 66 Bom L R 525 : 1964 Mah L J 668 : A I R 1964 Bom 287 (292, 294) (Pt C) (Prs 18, 26).**

CLAUSE (e)

12. Scope.

●**——Ss. 108 (e), 117—Applicability of S. 108 (e) to agricultural leases**—(Per majority) by reason of S. 117, S. 108 (e) cannot be invoked in the case of agricultural leases (Per Harbans Singh, J.) — A contract of lease may be avoided at the option of the lessee on the happening of an event as contemplated under S. 108 (e). The avoidance of contract in this case, however, depends on the volition of the party concerned. Gurdarshan Singh v. Bishan Singh, **I L R (1962) 2 Punj 5 : 1962 Cur L J 196 : A I R 1963 Punj 49 (52, 54) (Pt B) (Prs 10, 23) (FB).**

13. "Flood".

——S. 108 (e)—Scope—Damage to crop by rains.

Where the only effect of the heavy rains is damage to the crop considerably and the tenant has not the benefit of the full yield, the case falls outside the principle underlying S. 108 (e). **1956 Andh W R 442 : A I R 1957 Andh Pra 71 (73) (Pt D) (Pr 10).**

——S. 108 (e)—Lease for 3 years — Crop destroyed by unexpected flood—Effect.

Defendants had taken a certain property on lease for 3 years from the plaintiff on a certain fixed annual rent. Rent for the first year was paid and the rent for the third year was deposited by the defendants after the suit for lease rent was filed by the plaintiffs. It was contended by the defendants that they were not liable to pay the rent for the middle year as the crop raised in that year was completely destroyed by unexpected floods and it was not possible to raise a second crop during that year.

Held, that even though the lease was for a fixed period of three years, the stipulation was to pay rent due for each of these years separately and at the end of each year. There was a separate agreement as it were in respect of the rent payable each year. The parties might be relieved of their obligations under any of these separate and distinct agreements on the happening of a frustrating event which might not affect their obligations under the other agreements embodied in the same lease transaction. Such an event happened in the middle year and it put an end to the contract relating to the rent for that year. Hence, the defendants lessees were not liable to pay any rent during that year. **1955 Ker L T 624 : I L R (1955) Trav-Co 606 : A I R 1956 Trav-Co 59 (60) (Pt B) (Pr 4) (DB).**

14. Proviso.

——S. 108, cl. (e), proviso and cls. (j), (m) and (o)—Premises let out as godown for storing and stacking purposes — Tenant sub-letting it for residential purposes — Premises destroyed in fire — Tenant's liability for negligence.

Certain premises were let out as a godown for storing and stacking purposes but the tenant sub-let it unauthorisedly in contravention of the terms and conditions of the tenancy. The premises were destroyed in fire.

Held, that the case was covered by cl. (e) proviso and cls. (j), (m) and (o) of S. 108 and hence the tenant would prima facie be liable for damages caused to the premises, and the onus would clearly be on him to show that there was no negligence in the matter either on his part or on the part of the sub-tenants, for whose negligence, also he would, in the context, be liable, or answerable in law. AIR 1941 All 327, Rel. on. 56 Mad L J 517; AIR 1929 P C 69, Distinguished. **ILR (1961) 2 Cal 80 : AIR 1962 Cal 263 (265) (Pr 6) (DB).**

——S. 108 (e)—Liability of lessee to lessor for damage caused by fire—Res ipse loquitur—Doctrine of do not apply. AIR 1959 Pat 348 (349) (Pr 3) (DB).

15. Applicability of doctrine of frustration to leases.

——S. 108 (e) — Doctrine of frustration — Claim for reduction of rent on partial destruction and for suspension of rent on total destruction of leased premises — Claim can only be sustained where doctrine of frustration has been invoked by exercising option under cl. (e).

Clause (e) of S. 108 is based on the principle of frustration of contract, and was enacted to safeguard the rights of the tenant in case of the total destruction of the property leased to him. It gives him the right to escape his liability as a tenant by declaring the lease void. It follows that if the tenant does not exercise the option under cl. (e) that is, does not invoke the doctrine of frustration the lease shall continue for the benefit of both the parties. There is no other provision under the Act providing for a reduction of rent in case of partial destruction of the leased property or for total suspension in case of its complete destruction. **1964 All L J 1120 : 1965 All W R (H C) 81 : AIR 1966 All 225 (226) (Pr 3).**

——S. 108 (e)—Scope—Provision contains modified form of 'Frustration' — Contract Act (1872), S. 56.

Section 108 (e) of the Transfer of Property Act is exhaustive so far as the rights and liabilities of lessor and lessee are concerned. This section has given the various rights and liabilities of the lessor and lessees. There is good reason for the enactment of S. 108 (e) of the Transfer of Property Act which has given an option to the lessee to treat a lease void on the happening of a certain event, for if there is a material destruction it is to the prejudice of the lessee and even after that destruction the lessee wants to continue in possession he has been given an option to remain in possession and fulfill the part of his contract. In such a case if the lessee chooses to continue the terms of the lease it will not at all be prejudicial to the lessor and it has rightly been enacted that in such a case it is the option of the lessee that would bring about frustration if at all this term is applicable in such a case, for frustration would ordinarily mean the dissolution of the contract automatically. This is a modified form of frustration which has been enacted in section 108 (e) of the Transfer of Property Act. AIR 1950 Cal 441; AIR 1963 Punj 49; 64 Cal W N 932; AIR 1952 Cal 571; AIR 1961 Cal 70 and AIR 1952 S C 47, Ref.

Certain premises in occupation of a lessee were acquired by the State and the structures on the premises were demolished. Consequent on the acquistion having been held invalid the premises were returned to the lessor. The lessor determined the lease and contested a suit by lessee alleging inter alia frustration by reason of the structures having been demolished by the State.

Held, that the lessee not having exercised his option to treat the lease as void his tenancy did not come to an end by the acquisition of the premises by the State or by the complete destruction of the construction by the State Government. 1965 All L J 689 : ILR (1965) 2 All 458.

——S. 108 (e)—Applicability.

Comparison of S. 108 (e) with S. 56, Contract Act would show that the doctrine of frustration as enacted in S. 56 of the Contract Act is substantially incorporated in S. 108 (e). Section 108 is a special provision and S. 56 has no application to leases and instead of that section, S. 108 (e) will apply so far as frustration relating to leases is concerned. AIR 1961 Cal 70 (73, 74) (Pt B) (Prs 17, 18) (DB).

——S. 108 (e) — Scope — Frustration of lease—Demolition of premises—Lease — If determines on account of frustration — Contract Act, S. 56—Applicability—Contract Act (1872), S. 56.

A lease does not determine as soon as the building is demolished. By the demolition there would be no frustration. The entire law of the doctrine of frustration as may be applied to leases is to be found in S. 108 (e) of the Transfer of Property Act. Even if the house is destroyed wholly, the lease does not determine unless the lessee so chooses. Section 111, T. P. Act, is the only section which deals with the conditions under which a lease determines. This section does not include frustration as a ground for determination of the lease. Section 108 (e) itself uses the words 'wholly destroyed' and the word 'any' has been used which may mean all which may also mean 'a portion of it' and the option lies with the tenants; so that prima facie even after the building is totally destroyed if the tenant does not exercise his option to terminate the lease, the lease would still be continuing. 64 Cal W N 932 : ILR (1961) 2 Cal 14.

——S. 108 (e)—Lessee agreeing not to claim apportionment of compensation in case of acquisition — Agreement is valid—Lessee undertaking to repair — Entire compensation goes to lessor — (Land Acquisition Act (1894), S. 30). AIR 1955 NUC (Cal) 1541 (DB).

——S. 108 (e) —Frustration— Applicability to leases.

If a specific matter, assumed by the parties to exist or to continue in existence, is accidentally destroyed, the promise made in the contract of lease is discharged. This rule, however, is not attracted where parties have already contemplated and provided for the particular contigency. ILR (1951) 2 Cal 37 : A I R 1950 Cal 44 (Prs 11, 12).

——S. 108 (e)—Contract Act (1872), S. 56—Frustration of contract — Application of the doctrine — Lease of agricultural land for five years — Cyclone damaging crop on part of leased land in one year—Contract not rendered impossible of performance thereby — Doctrine of frustration cannot be invoked. See Contract Act (1872), S. 56. 1962 Mad W N 334.

——S. 108 (e) — Doctrine of frustration — S. 56 is exhaustive and applies only to purely contractual obligations and not to contract creating estate in land already accrued in favour of party.—Contract of lease—Avoidance of under S. 32, Contract Act and S. 108 (e), Transfer of Property Act — Distinction. See Contract Act (1872), S. 32. AIR 1961 Punj 143 (DB).

[Overruled in AIR 1963 Punj 49].

——S. 108 (e) - Doctrine of frustration—Applicability to a lease transaction, considered. See Contract Act (1872), S. 56. AIR 1956 Trav-Co 59 (DB).

CLAUSE (f)

16. Lessor's neglect to make repairs.

——S. 108 (f) — Landlord not carrying out repairs—Tenant has to take recourse of the provisions of S. 7-E of U. P. (Temporary) Control of Rent and Eviction Act and not S. 108 of T. P. Act — Remedies are not in alternative.

For keeping the house wind-proof and water-proof responsibility has been absolutely placed by S. 7-E (1) upon the landlord. He is made bound to make necessary repairs in order to keep the house wind-proof and water-proof. With regard to other repairs it has been provided that the landlord will make other repairs only if he is bound to make them either by law, contract or custom. Sub-section (3) of S. 7-E, does not apply to the first kind of repairs.

In the case of former kind of repairs the legislature has made elaborate provisions in sub-ss. (4), (5) and (6) of S. 7-E. The legislature did not stop after creating a right and leaving the parties to their rights under the Transfer of Property Act, but provided its own remedy which is much more restricted than the remedy given to the tenant under the Transfer of Property Act. Under S. 108 of the T. P. Act, if the landlord is bound to make repairs it is the right of the tenant after giving the notice to make such repairs and to deduct the whole amount from the rent; but under these sub-sections the legislature has restricted this right of a tenant. If the tenant wants the landlord to make the repairs under sub-ss. (4) to (6) of S. 7-E he is to make an application before the Munsiff so that the landlord may be ordered to make the necessary repairs. This means that the opinion of the tenant that the house requires certain kinds of repairs which the landlord is bound to make under the Act is not final. He is to put it to the scrutiny of the Court and follow the procedure laid down in those sub-sections.

The remedy provided by the U. P. (Temporary) Control of Rent and Eviction Act is not in the alternative. It takes away that provided in the T. P. Act. AIR 1963 All 439 (440, 441) (Prs 5 to 8).

——S. 108 (f) — Lessee in exercise of his right to repair under this section can only build up, erect or construct to bring back the structure to its original state but not to replace by structure of a different type — Tiled roof of leased house badly damaged — Lessee though he is entitled to remove and replace the old rotten structure by new one cannot replace the tiled roof by a roof made of cement slabs which is entirely of different type from the old structure: 1959 All W R (H C) 197, Distinguished; A I R 1953 Trav-Co. 462, Rel. on. 1964 All L J 666 : 1964 All W R (HC) 500: AIR 1964 All 417 (417) (Pr 3).

——S. 108 (f) — Right of tenant to deduct expenses of repairs from rent — Cannot be curtailed by local Act—U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 7-E (3) — Section curtailing tenant's right to claim deduction only to one month's rent cannot operate when case is governed by S. 108 (f).

Where under a contract of lease the landlord is bound to make the necessary repairs but in spite of notice by the tenant the landlord fails to carry out the repairs, the tenant has a right under S. 108 (f), T. P. Act to carry out those repairs and to deduct the expenses incurred on repairs from the rent. S. 7-E (3) of the U. P. Temporary Control of Rent and Eviction Act which limits this right of the tenant to a deduction of only one month's rent is contrary to the provisions of the Transfer of Property Act. Where a case is clearly governed by the Transfer of Property Act, the rights of the tenant cannot be curtailed by local Act unless the Transfer of Property Act is

amended. The tenant was therefore right in relying upon his rights under the Transfer of Property Act and deducting the entire cost of repairs from the rent. 1963 All L J 65: 1963 All W R (HC) 41 : A I R 1963 All 251 (252) (Prs 4, 5).

——S. 108 (f) — Tenant doing repairs to house and deducting the charges from the rent and sending the balance to the landlord — Acceptance of cheque by landlord—Effect.

Where a tenant used to do the necessary repairs to the house occupied by him and after deducting the expenses the balance used to be sent to the landlord by the tenant which are all accepted. it would not be open to the landlord subsequently to assert that the expenses were too much and that he accepted the cheques only in part payment of the rent. 1952 A L J 14 : A I R 1953 All 745 (745, 746) (Prs 6, 7).

——S. 108 (f) — Tenant effecting repairs and suing— No agreement or usage as to interest pleaded — Right to interest. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 16. 1958 N L J (Notes) 3.

——S. 108—Landlord has no statutory liability to do repairs to the lease-hold premises unless he expressly covenants himself to do the same and binds himself by such covenant. (1897) 2 C W N 35; A I R 1923 Cal 524; A I R 1958 Nag 202 ; A I R 1927 Bom 115, A I R 1963 Cal 198, Foll. (1964) 2 I T J 644 : (1965) 57 I T R 609; 68 Cal W N 1017.

——S. 108 (f) — In absence of contract lessor not bound to effect repairs to the property leased.

The words in cl. (f) of S. 108 "any repairs which he is bound to make to the property" refer to an express covenant to repair. The lessor would be bound to make any repair only if there is such a contract between the parties. In the absence of such a contract the lessor is not bound to effect any repairs whatever. The onus of proving such express covenant is on the lessee. AIR 1963 Cal 198 (205) (Pt K) (Pr 28) (DB).

——S. 108 (f) — Failure of landlord to carry out repair—Tenant's right to suspension or abatement of rent. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 38 (3). AIR 1957 Cal 232 (DB).

——S. 108 (f) — Expression "wind and water-tight" in S. 38 (3), W. B. Premises Rent Control (Temporary Provisions) Act, 1950 — Construction of — Should be in favour of party who is responsible to keep premises "wind and water-tight"— Under general law it is not competent for party to compel rebuilding or reconstructing premises — S. 38 does not give higher rights. See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 38(3). AIR 1956 Cal 187.

——S. 108 (f) and (m)—Covenant to repair by lessee — Building being in ruinous condition at commencement of lease does not absolve lessee from covenant. AIR 1955 NUC (Cal) 5616.

——S. 108 (f) — Expression "wind and water-tight" in S. 38 (3), West Bengal Premises Rent Control (Temporary Provisions) Act, 1950—Expression ought to be construed strictly in favour of party responsible to keep premises wind and water-tight — It is not competent to compel rebuilding or reconstruction. See Houses and Rents — W. B. Premises Reut Control (Temporary Provisions) Act (1950), S. 38 (3). A I R 1955 NUC (Cal) 3666.

——S. 108 (f) — Calcutta Rent Ordinance, 1946, which is a competent piece of legislation by S. 18 (1) (2) restricts to a large extent the right of a tenant in the matter of expenses of repairs under S. 108 (f) of the T. P. Act and the two remedies cannot be cumulative to the extent the right confined by S. 108 (f) is inconsistent with the right as defined in S. 18 (1) (2) of the Ordinance, the Ordinance intercepts, in the cases specified in S. 18, the operation of S. 108 (f) of the Act. If the tenant does not resort to the provisions of S. 18, he cannot claim by way of set off in a suit for rent the cost of repairs incurred by him. See Houses and Rents — Calcutta Rent Ordinance (5 of 1946), S. 18 (1) (2). AIR 1951 Cal 560 (DB).

——S. 108 — Landlord and Tenant — Compensation for improvements and repairs — Right of tenant — Authority given to tenant under lease to effect repairs and improvement up to specified amount — Right remedy of tenant — Claim to set off in suit for rent— Sustainability. See Hyderabad Civil P. C., S. 110. AIR 1951 Hyd 57 (DB).

——S. 108 (f) — Lessor's duty to make repairs.

A lessee cannot claim the costs of repairs from lessor under S. 108 (f) unless the lessor is under either a contractual or statutory obligation to make repairs. AIR 1955 NUC (Madh Bha) 198.

——S. 108 — Landlord liable to keep the house habitable — Landlord avoiding to effect necessary repairs — Tenant effects repairs at his cost — Tenant entitled to deduct the amount from the rent due. See M. P. Accommodation Control Act (23 of 1955), S. 7. 1962 M P L J (Notes) 232.

——S. 108 (f) — Duty of landlord to effect repairs to property leased out — Right of tenant to adjust cost of repairs towards arrears of rent — (Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 16).

In a suit for arrears of rent, in the absence of any permission from the landlord to adjust the cost of repairs towards the arrears of rent, the tenant cannot plead a counter-claim in respect of the repairs of the house by invoking Cl. 16 (1) of the Rent Control Order when he has failed to secure an order from the Rent Controller. Nor can he invoke S. 108 (f) of the T. P. Act without proof of a covenant making the lessor liable for the repairs. 1954 Nag L J Notes 91, Dissented from. 1955 Nag L J 477 : ILR (1955) Nag 977 : AIR 1955 Nag 202 (203) (Pt A) (Prs 6, 8).

——S. 108 (f) — Bihar Buildings (Lease, Rent and Eviction) Control Act (1947), S. 11 (1)—Section overrides S. 108, T. P. Act. See Houses and Rents—Bihar Buildings (Lease Rent and Eviction) Control Act (3 of 1947), S. 11 (1). AIR 1955 Pat 516 (DB).

——S. 108 (f) — Lease — Covenant by landlord to repair — Breach — Right and remedy of tenant — Abatement of rent or assessment of fair and equitable rent — Claim to — Maintainability — No plea of specific loss or damage by breach — Right to claim damages or compensation by way of eqitable set-off in second appeal — New case — Relief — Power of Court.

In the case of a lease governed by the Transfer of Property Act, a covenant by the lessor to repair the premises cannot be specifically enforced. The remedy of the lessee in the event of a breach of the covenant, is that provided in S. 108 (f), T. P. Act. The lessee's right can only be either by way of a reduction from the rent or by way of a claim for damages or reimbursement of money spent. When the lessee, however, does not make any repairs himself or spend any money on such repairs, he can only claim damages resulting from the default of the lessor to effect repairs. But if the lessee does not specifically plead or prove his claim for damages by way of compensation for any loss which he has suffered by reason of a breach of the landlord's covenant to repair, such relief cannot be granted to him. Where all that the

lessee claims, is an abatement of rent or an assessment of fair and equitable rent, the Court cannot grant any relief. It is not enough for the lessee to merely state that there was some damage to the building which had to be repaired by the landlord, without stating what loss, pecuniary or otherwise that he suffered, and when it is not proved that such damage in any way interfered with his use of the building, that would be no basis for a claim for damages or even for abatement of rent by way of damages. The Court cannot make a contract for the parties and fix a fair and reasonable rent, discarding the amount of rent fixed in the lease as payable by the lessee to the lessor.

Nor can the lessee claim compensation or damage by way of an equitable set-off against the landlord's claim for rent, in second appeal, which was not made in the Courts below. Where he pleads a verbal agreement by the landlord for reduction of rent but the same is found against, the lessee cannot claim damages by way of set-off, when he has not pleaded or set up any such claim in the Courts below. **ILR 30 P L T 231 : AIR 1951 Pat 508 (511, 512) (Pt C) (Prs 6, 7) (DB).**

——S. 108 (f) — Civil suit for costs of replacing door — Not barred by S. 12, Rajasthan Premises (Control of Rent and Eviction) Act. See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 12. **ILR (1959) 9 Raj 242.**

——**Ss. 108 (f) and (m) and 111 — Building lease — Right of tenant to carry out repairs on failure of landlord to do it — Extent of — Tenant entitled to maintain it in such condition as is fit to be used for the purpose for which it was let — Repairs necessitating renewal and replacements of parts — Incidents of lease will continue to attach to subject-matter of lease notwithstanding such alteration — Lessor cannot get premature termination of lease by failing to carry out repairs and allowing the building to be destroyed by natural causes.**

In the case of a lease of a building the tenant is entitled to have the building maintained in such a condition that it is fit to be used for the purpose for which it was taken on rent. Clause (f) of S. 108 of the Transfer of Property Act recognises this right. The duty of attending to the repairs so as to keep the property in a fit condition to be used for the purpose for which it was leased out, is primarily that of the lessor. He cannot by his own neglect to attend to such necessary repairs, make the tenant suffer the consequential hardships and that is why the law has recognised in the tenant, the right to attend to such repairs himself and to debit the expenses against the lessor. Further under clause (m) of the same section, the lessee is bound to keep the property in as good a condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force and to restore possession to the lessor at the termination of the lease. The tenant will be in a position to keep the property in such a good condition only by attending to the necessary repairs from time to time. No general standard regarding the scope and the limitation of such repairs can be prescribed. The necessity for the repair of a particular building will depend on the extent to which it is worn but by lapse of time and on other circumstances. Renewal or replacement of old and worn out parts is inevitable in a building leased, and hence the incidents of the lease arrangement will continue to be fastened to the building in its repaired condition also irrespective of the extent of the repairs that might have been necessitated by the circumstances of the particular case. (1911) 1 K B 905, Rel. on.

In the case of a thoroughly dilapidated hut which the landlord was not prepared to repair or renew he cannot with any sense of propriety or fairness insist on mathematical accuracy being achieved in respect of the pattern and details of the old structure in the course of its repair by the tenant himself. All that can be expected in such a situation is that the structure repaired or renewed must be substantially of the same size and type as the old one, so that the tenant may continue to occupy the same under the subsisting terms of the tenancy in respect of that structure.

Applying these tests to the facts and circumstances of the case it was held that the tenant was strictly within his right in keeping alive the tenancy by repairing and renewing the dilapidated parts of the kutcha hut and thus preventing its destruction. The tenant must be deemed to be retaining possession of the building thus repaired and renewed under the same terms as embodied in the original rent deed. The landlord plaintiff could not be allowed to get a premature determination of the tenancy by the destruction of the subject-matter of the tenancy on account of natural courses by failing to carry out the necessary repairs. **1955 Ker L T 801 : ILR (1955) Trav-Co 1262.**

——**S. 108 (f) — Repairs — Thatched old shed.**

In the case of a thatched old shed made of very flimsy materials like bamboo and arecanut stem repair implies renewal and replacement of parts that have decayed. **AIR 1953 Trav-Co 462 (463) (Pt A) (Pr 5).**

——**S. 108 (f) (m) — Contract to the contrary.**

Even if there is a provision in the lease deed that the lessee should not make any alteration in the structure without the consent of the lessor that does not mean that the lessee is prevented altogether from doing the necessary repair work if the lessor wilfully neglects to do it. In such a case the act of the lessee does not entail the determination of the lease. **AIR 1953 Trav-Co 462 (463) (Pt B) (Prs 4, 5).**

CLAUSE (g)

17. Payment by lessee for lessor.

——S. 108 (g) — Right of lessee to deduct from rent municipal taxes paid by him on demand of Municipal Board — Extent of — Right of lessee to be re-imbursed by lessor — U. P. Municipalities Act (2 of 1916), Ss. 149 and 177. **AIR 1963 All 568 (569) (Prs 7, 8, 9).**

——**S. 108 (g) — Right of tenant to adjust rent towards tax paid by him — (Contract Act (1872), S. 69).**

Generally a tenant is not entitled to claim adjustment of all payments made by him on behalf of the landlord, even though he is interested in such payment, against rent payable by him. A tenant may sue the landlord for reimbursement of the money which he had to pay in order to save his own interest and may recover the money so paid. In order to entitle a tenant to claim adjustment of such payment against rent payable by him something more is required, namely, some sort of contract or understanding that such payment shall be adjusted against rent account. Such adjustment cannot be made by the tenant alone without the concurrence of the landlord. No question of any claim by the defendant by way of set-off however arises in a suit for possession of the disputed premises. Where the tenant had to pay Corporation rates due by the owners and also the occupier because she has been served with a notice of demand by the Corporation of Calcutta, under S. 246 of the Calcutta Municipal Act, 1951 and it appears further from certain correspondence exchanged between the landlords and the tenant that on a previous occasion payment by the tenant towards Corporation rates

had been adjusted against the rent payable by the tenant, it would not be unreasonable to infer that there was some sort of understanding between the landlords and the tenant that Corporation taxes paid by the tenant would be adjusted against rent payable by her and the amount so paid could be adjusted towards the arrears of rent. (1958) 62 Cal W .N 778 : ILR (1959) 2 Cal 490.

——S. 108 (g) — Contract to the contrary — (Lease —Construction).

A lease of premises granted for the purpose of Cinema shows contained a covenant for free admission to effect that the lessee "shall at all times during the period of the lease keep one box containing not less than four seats . . . . . at the disposal of the lessor for the use of herself or other person or persons authorised by her or on her behalf in writing . . . . . A further clause in the lease provided that if the lessee 'fails or neglects to carry out or perform any of the terms, covenants and conditions, then the lessor shall, notwithstanding herein before contained, be at liberty to determine the lease and shall re-enter the said premises." In April 1949, the Bengal Amusements Tax Act 1922 as amended, imposed entertainment tax on free or complimentary passes or tickets as well, if they were for admission to a cinematographic exhibition. The question was whether the liability to pay the entertainment tax on such accommodation under the contract was that of the lessee even though the lessor was liable to pay it under the law, and whether a breach of such condition entitled the lessor to determine the lease.

Held (i) the principle that when a person enters into a contract, there is an implied covenant on his part to do all things necessary to carry it out, means that he will do all things required of him to do, but not also that he will do even the things required of the other party. The words of a contract may, however, be sufficiently wide so as to make one party liable to discharge all obligations of the other, whether existing at the time or coming into existence in future.

(ii) That the proper meaning of such a contract was that the lessee had undertaken no more than to forgo all payments in respect of the box chargeable by himself and had only agreed that as between the lessor and the lessee, the box shall be free. There was no further undertaking, implied in the covenant, that the lessee would also pay on the lessor's behalf a tax imposed on her by the State for witnessing the performances, if such a tax come to be imposed. To pay such a tax would not be to keep the box at the disposal of the lessor, but to remove further difficulties of the lessor with third parties in the way of her availing herself of the box, already placed at her disposal so far as the lessee was concerned. **A I R 1955 N U C (Cal) 2865.**

——Ss. 108 (g), 116 — Liability of lessee to pay property tax —Tax due — Lease deed — Construction — Lessee held liable to pay entirety of municipal property tax due on superstructure put up by him— Since relationship of lessor and lessee ceased upon termination of period of lease and there was no assent to lessee holding over terms of lease deed held were inapplicable. A I R 1955 Mad 555 (557) (Pt B) (Prs 6, 7).

——Ss. 108 (g), 114 — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), Ss. 13 (1) (a), 13 (4), 13 (5) (as amended by Rajasthan Act 9 of 1952)— Validity — No conflict between these provisions and Ss. 108 (g) and 114, T. P. Act. See Houses and Rents— Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 13 (1) (a). AIR 1959 Raj 59 (DB).

CLAUSE (h)

18. Lessee's right to remove things attached to earth.

——S. 108 (h) — Lease of land — Construction of building by lessee — Rights of lessor. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 13. A I R 1958 S C 789.

——S. 108 (h) — Rights and liabilities of lessee—Section deals with right of removal of articles left over after expiry of lease and not with lessee's title to it— Municipal Board failing to remove night-soil deposited on land taken on lease even after delivery of possession to lessee—Board's right to night-soil is not lost. AIR 1954 Mad 985 and A I R 1941 Bom 337 and AIR 1933 Cal 875, Dissent. from and A I R 1958 Cal 148, Rel. on. I L R (1965) 1 All 635 : 1965 All W R (HC) 95 : 1965 All L J 432 : AIR 1965 All 527 (530) (Pt C) (Pr 19) (DB).

——S. 108 (h) and (p) — Temporary construction by sub-lessee—Removal of — Lessor cannot claim compensation.

A lessor can sue for ejectment and possession only in respect of that property which he had let out. Where a sub-lessee had built a temporary construction by his own money and it was not included either in the lessor's claim for ejectment or in the decree the lessor cannot claim in the execution of decree when the premises let out were given back to him in the condition in which they were prior to the passing of the decree, any compensation for the removal of that temporary construction even if such removal was done after the decree. In such a case the sub-lessee is entitled to the benefit of Cl. (h) of S. 108, T. P. Act because he steps into the shoes of the lessee. A I R 1955 All 223 and ILR 16 All 328, Disting. and Expl. **AIR 1961 All 84 (85) (Pt A) (Prs 10, 11, 12).**

——S. 108 (h) and (p) — Temporary construction on leased property not included in decree for ejectment —Right to compensation for removal — Question not covered by S. 47, Civil P. C. See Civil P. C. (1908), S. 47. AIR 1961 All 84.

——S. 108 (e) (p) and (q) — Lease of land and house by A to B— Sub-lease by B to C — House destroyed by fire during subsistence of sub-lease—C constructing house with permission of head lessor A—Effect— B held entitled to recover possession from C without paying value of house constructed — C held was entitled to remove structure without any permission from B.

Under S. 108 (e), T. P. Act, a lease is not automatically determined on the destruction by fire or irresistible force of a substantial portion of the property leased. It is matter of option with the lessee to get rid of the lease or not. He could treat it as void if he so desired. But the law does not compel him to do so. The aspect of the matter makes it all the more necessary that an unambiguous declaration of the lessee's intention to treat the lease as void must be communicated to the lessor. The lessor would not otherwise be able to take appropriate steps on the footing that the lease has come to an end and he is therefore at liberty to deal with the property as he chooses. What is even more important is that a mere declaration of intention to treat the lease as void is not sufficient. The lessee must also yield up possession of the property to the lessor as required by the provisions of S. 108 (q) of the Transfer of Property Act. He cannot continue in possession and yet declare that he has treated the lease as void. That would obviously be an inconsistent and impermissible position to adopt. So long as a lessee has not surrendered to his lessor the possession which he obtained from the latter at the time of the lease, he cannot rid himself of his obligations under the lease. His holding the

possession into which he was inducted by his lessor will estop him from disputing the right of his lessor to evict him and to recover possession from him.

A granted a lease of a plot of land together with the house thereon to B who in turn sub-leased the premises to C but the house was destroyed by fire and C merely obtained the permission of the head lessor A to construct a thatched house on the site and actually constructed a house and remained in possession even after the expiry of his sub-lease. B sued C for possession of the premises.

Held, (i) that the sub-lease in favour of C was not determined under S. 108 (e) by the destruction of the house by fire because C had not surrendered possession to his lessor B. By merely obtaining a permission from the head lessor to erect a hut on the suit property the defendant C could not improve his position; (ii) that for the same reason B's head lease was not determined by destruction of the house when there was nothing to show that plaintiff B ever treated the lease as void; (iii) that the plaintiff B was entitled to recover possession of the property from C without being liable in law to pay any compensation for the house constructed by C. C was however entitled to remove the hut without imparing the site and no permission was necessary for this. (1964) 2 Andh W R 304 : AIR 1965 Andh Pra 167 (170, 171) (Pt B) (Prs 7, 8, 9, 11, 12).

——S. 108 (h)—Clause enacts in substance the principles of Roman civil law and the pre-existing law of the land. AIR 1955 Andhra 62 (64) (Prs 12, 13).

——S. 108 (h) and (o) — Mulgeni Tenants—Right to trees—Extent of.

In determining the right of the mulgeni tenants to cut the trees in the land leased to them, the matter has to be considered in three aspects. The first is with regard to the trees which were upon the land when the mulgeni lease was granted; secondly with regard to the trees which have been planted by the tenants on the land after the grant of the lease; and, thirdly, with respect to the trees which have grown spontaneously after the grant of the lease. Further, a distinction has to be made between timber trees and non-timber trees.

So far as the trees planted by the mulgeni tenant himself since the grant of lease are concerned, the tenant has every right to cut them whether they are timber trees or otherwise. The position is the same also under S. 108 (h), T. P. Act, which though inapplicable to the agricultural leases, embodies the principles recognised as good law.

With respect to the trees that were standing at the time when the lease was granted, the position is governed by S. 108 (o), T. P. Act and the tenants are not entitled to fell or sell timber trees but with respect to non-timber trees, they are entitled to make use of the property and utilize its usufruct as a person of ordinary prudence may use it as if they were his own.

As regards the spontaneous growth after the lease was granted a distinction must be drawn between timber trees and non-timber trees. With respect to the timber trees, the position is that the tenants would not be entitled to cut them. But with respect to non-timber trees, they would be entitled to cut them or to put them to any other use as they pleased. Case law discussed. 53 Bom L R 800 : A I R 1952 Bom 100 (102 to 104) (Pt A) (Prs 4, 5, 6, 9) (DB).

——S. 108 (h) — Scope — Effect of clause (h) is that the lessee is the owner of the building put up by him on the land belonging to the lessor. A I R 1951 Bom 205 (206) (Pt A) (Pr 3).

— S. 108 (h) — Lessee entitled to remove fixtures tion or before the expiration of the lease"—Construction of—(Words and Phrases).

Where a lease provided that the lessee would be entitled "on or before the expiration of the lease" to remove the workshop and the structure, shed or fencing constructed and raised on the leased premises by the lessee after paying all rents and taxes:

Held that the words 'on or before the expiration of the lease' should be taken to have the same meaning as the words 'at any time during the continuance of the lease' mentioned in the original cl. (h) of S. 108 as it stood in 1928. The words had reference to the date of the expiry of the lease, and the meaning should, therefore, be that the tenant's structures should be removed before or on the date of the expiry of the lease. ILR (1957) 2 Cal 613 : A I R 1956 Cal 148 (151) (Pt A) (Pr 8) (DB).

——S. 108 (h) — Tenancy determined — Removal of fixtures—Time for removal.

The intention of cl. (h) of S. 108 is to declare the law and to substitute for a law dependent upon the personal law of the parties or general consideration of equity a definite principle. The uncertainty that prevailed under the clause as it stood prior to the amendment in 1929 regarding the tenant's right of removal of the things he has attached to the earth has now been removed by the amendment of the clause. The tenant can now remove his fixtures so long as he is in possession of property. This being the legal effect of cl. (h) of S. 108 there is no room for invoking the rule in "Thakoor Chunder Pramanik's case, 6 Suth W R 228 (FB)" after the enactment of the Transfer of Property Act. AIR 1933 Cal 875, Rel. on. I L R (1957) 2 Cal 613 : AIR 1956 Cal 148 (152) (Pt B) (Prs 11, 12) (DB).

——S. 108 (h) — Removal of fixtures — Lease determined—Right is not lost.

There is nothing in S. 108 (h) to support the contention that the title of the lessee to the fixtures is lost or extinguished, after the term of the lease, by operation of the clause. The clause does not say so either by express words or by necessary implication. It is not a clause of forfeiture and it is not declared therein that after the expiry of the term of the lease or after the lessee has ceased to be in possession, his title to the fixtures will be forfeited unless there is a stipulation to that effect in the lease. I L R (1957) 2 Cal 613 : A I R 1956 Cal 148 (152) (Pt C) (Pr 13) (DB).

——S. 108 (h) — Landlord and tenant—State similar to that of tenancy created by estoppel.

Lessee constructing shed and giving it on lease to company — Termination of lease to company — Suit by lessee against company and original lessor for declaration of his right to pull down and remove the shed—Suit compromised between company and lessee — Company to continue to use shed for 9 months certain and thereafter for two years at option — Company given right to vacate shed upon two months' notice and removing machineries and fixtures — Decree fixing monthly compensation for use and occupation — Company remaining in possession for 9 months and further two years — No notice to lessee to remove shed — Held tenancy in favour of company was created by estoppel — Lessee held lost no title to the shed which did not vest in lessor and from him, in the company, even if this would be result of S. 108 (h). AIR 1956 Cal 148 (155) (Pt D) (Pr 25) (DB).

——S. 108 (h)—Tenant quitting possession—Fixtures became property of lessor — Tenant loses all rights, title and interest in structures, See Civil P. C. (1908), O. 21, R. 35 (3). ('51) 88 Cal L J 27.

——S. 108 — Covenant by lessor to pay lessee cost of construction of building on determination of lease — Covenant is not a personal covenant but one which

ran with the land. See T. P. Act (1882), S. 40. ('51) 55 Cal W N 656 (DB).

——S. 108 (h) — Planting of trees on State land without permission or title — Being a trespasser not entitled to any compensation on eviction See Transfer of Property Act (1882), S 51. 1965 Ker L T 666 : (1965) 1 Ker L R 489 : 1965 Ker L J 858 : ILR (1965) 2 Ker 173 : AIR 1966 Ker 72 (DB).

——S. 108 — Rule of law that whatever is affixed to the soil belongs to the soil does not apply in India — Mortgagor having only life interest constructing new structure after execution of mortgage deed — Mortgagee is entitled to mortgage decree in respect of new structure. See Transfer of Property Act (1882), S. 63. AIR 1965 Mad 185 (DB).

——S. 108 (h) — Doctrine of acquiescence — Suit for possession against lessee—Equitable estoppel—Relief on—There must be pleading and evidence— Removal of constructions on property held under void lease — Grant of time to lessee for. See Transfer of Property Act (1882), S. 51. ('64) 77 Mad L W 634.

——S. 108 (h) —Lease terminated — Lessee can remove super-structure put up by him but landlord cannot be compelled to pay compensation — Landlord obtaining possession — He cannot be compelled to surrender back land because tenant had not removed the superstructure. If landlord appropriated materials forming part of superstructure tenant can have value thereof assessed and recovered. 76 Mad L W 381 : I L R (1963) Mad 1054 : A I R 1963 Mad 369 (372) (Pt A) (Pr 8) (DB).

——Ss. 108 (h) and 51—Improvements by non-agricultural tenant after notice to quit—No right to compensation—Principle.

A person who has taken a lease of land for non-agricultural purposes is not entitled to claim compensation for improvements to land effected after a notice to quit is served upon him. Section 5 (3) of Travancore-Cochin Compensation for Tenants Improvements Act (10 of 1956) can have no application in such a case even by analogy.

The basic principle under which alone a right to compensation can be claimed by a non-agriculturist tenant is that anything that he does on the land after the determination of tenancy should not be a source of burden on the landlord and act as a restraint upon the right of the landlord to resume possession. 75 Mad L W 62 : 1962 Mad W N 69.

——S. 108 (h)—Presidency Small Cause Courts Act (1882), Ss. 41, 43 and 48 — Power to order bailiff to remove fixtures and give vacant possession indicated —(Civil P. C (1908), O. 21, Rr. 35 and 97). See Presidency Small Cause Courts Act (1882), S. 41. AIR 1954 Mad 985.

——S. 108 (h)—Tenant ordered under S. 41. Presidency Small Cause Courts Act to vacate — Right of tenant to remove fixtures on land ordered to be vacated, extent of. See Presidency Small Cause Courts Act (1882), S. 41. AIR 1954 Mad 985.

——S. 108 (h)—Right to compensation — Relief on equitable grounds. A I R 1955 N U C (Orissa) 979 (DB).

——S. 108 (h) and S. 51 — Improvement made by lessee—He cannot claim compensation — He is entitled to remove materials used.

As a lessee can never believe in good faith that he is absolutely entitled to the leasehold property, he cannot invoke the aid of S. 51, T. P. Act 1882, in claiming compensation for the improvements made by him on the lease-hold property. He is entitled only to remove the structures and materials. AIR 1960 Pat 344 (FB) Foll. I L R 44 Pat 651 : AIR 1964 Pat 363 367) (Pt B) (Pr 21) (DB).

——Ss. 108 (h), 105, 106—Tenancy-at-will — Possession under void lease — Payment of rent — Nature of tenancy created will be in accordance with S. 106— Determination of tenancy-at-will—Right of lessee to remove structures. See T. P. Act (4 of 1882), S. 105. AIR 1961 Pat 350.

——Ss. 108 (h), 51—Lessee under invalid lease paying rent — Creation of relationship of landlord and tenant—Improvements made by lessee—Eviction—He is not entitled to compensation — No estoppel held applied — Lessee can remove structure. 19 Pat L T 791 : AIR 1938 Pat 435, Overruled. See T. P. Act (4 of 1882), S. 51. AIR 1960 Pat 344 (FB).

——S. 108 (h) — Monthly tenant wrongly believing himself to be a permanent tenant building structure is not entitled to compensation on ejectment — He is entitled to remove all things he had attached to earth —In the presence of specific provision in S. 108 (h) there is no scope for applying S. 51. A I R 1957 Pat 331 (333) (Pt A) (Pr 11) (DB).

——S. 108 (h)—Fixation of standard rent—Rental of shops in building built on land taken on perpetual lease from Government — Building does not vest in Government—No bar under S. 3, Delhi Rent Control Act, 1958, to application for fixation of standard rent. See Houses and Rents—Delhi Rent Control Act (59 of 1958), S. 3. (1964) 66 Punj L R 12.

——S. 108 (h)—Structures on land of another. See Transfer of Property Act (1882), S. 3. AIR 1955 Punj 34 (DB).

——S. 108 (h) (before amendment in 1929) — Compensation for improvements.

A tenant effecting improvements over a lease-hold property is entitled to remove them during the subsistence of the tenancy. It is only as regards the unexhausted improvements existing at the time of eviction that the tenant is entitled to claim compensation.

Held, that if the improvements consisted of trees the landlord was entitled to a share of the total value assessed on them, The landlord's share was according to custom 1/4th and that of tenant 3/4th. To speak of the landlord's share of the improvements effected by the tenant, eviction must be contemplated. I L R (1953) Trav-Co 568 : 1953 Ker L T 442 : A I R 1953 Trav-Co 584 (586) (Pt E) (Pr 5).

CLAUSE (i)

19. Lessee's right to crops sown by him.

——S. 108 (i) (h) and (o)—Trees of spontaneous growth —Rights in—(Tenancy Laws — Madras Estates Land Act (1 of 1908), S, 12).

The general and accepted principle is that the trees on a land belong to the owner. They are part of the land and the right to cut and sell them is incidental to the proprietorship of the land. This general principle is subject to the law of fixtures. Under the Roman Law, a tenant is entitled to remove all fixtures, which he has attached to the leasehold property, whereas under English Law, whatever is fixed to the soil subject to some exceptions becomes part of it.

Under S. 108, T. P. Act, which practically embodies the principles of Roman Law in sub-ss. (h), (i) and (o) the lessee must not fell timber or pull down buildings unless the timber has been planted or the building has been erected by the lessee and he must leave the property in the state in which he received it.

There is no provision enabling a tenant to remove trees of spontaneous growth in his lease-hold property. The principles embodied in the T. P. Act are founded on reason and equity and, therefore they are also applied to analogous cases which are not governed by the express provisions of other Acts, or regulated by custom. It follows that unless there is an esta-

blished practice or statutory rules, trees of spontaneous growth on a land belong to the owner.

Tank bed in an estate is not a ryoti land and is not governed by the provisions of S. 12 of the Madras Estates Land Act, and in the absence of custom or a contract enabling a tenant to cut trees of spontaneous growth, they belong to the landholder and the tenant has no right to cut or remove them. **1954 Andh L T** (Civ) 160 : (1954) 2 Mad L J (Andh) 217 : A I R 1955 Andh 62 (64) (Prs 12, 13).

——S. 108 (j) — Heritability and transferability of lease — Mere fact that lessee's interest is made transferable under S. 108 (j) does not necessarily imply that every tenancy is also heritable. **AIR 1954 Bom 257 (Pt B) (Pr 9) (DB).**

——S. 108—Lease—Mulgeni lease — Lessee's right to trees on land at the time of grant and trees growing spontaneously thereafter or planted by him—Timber trees and others—Distinction.

A Mulgeni tenant stands on no higher footing than a tenant in perpetuity — He cannot be regarded as a sub-proprietor of the land.

In the case of trees which a lessee under mulgeni lease (permanent tenant) has himself planted, he would be entitled to cut them and to use them, because they could be regarded as things which he has attached to the earth. His right to cut them is, however, subject to the condition that he leaves the property in the state in which he leaves it. The right, is the same whether the trees are timber trees or otherwise.

In the case of trees which were in existence when the lease was granted, the mulgeni tenants are not entitled to fell or sell timber trees, but with respect to non-timber trees they are entitled to make use of the property and utilize the usufruct thereof as a person of ordinary prudence may use the same as if they were his own.

In the case of trees which are the result of spontaneous growth after the grant of the mulgeni lease the lessee is not entitled to cut timber trees, but with respect to other trees, he would be entitled to cut them or to put them to any other use as he pleased. 53 Bom 315, Approved; 24 Bom 31 ; 27 Bom 373; 38 Bom 716; 12 Bom L R 831; 22 Bom L R 118; 17 Mad 218; 33 Mad 253; 34 Mad 271, Foll. **AIR 1952 Bom 100 (102, 103, 104) (Pt A) (Prs 4, 5, 6, 7).**

——Ss. 108 (i) and 111 (h)—Loss caused to landlord —Landlord's right to question notice or termination of agency.

When once a proper notice has been given and the tenancy has been properly terminated, the landlord's right would be not to question the notice or the termination of the tenancy, but to claim damages for any loss caused to him by reason of any wilful negligence or default on the part of the tenant. 22 Bom 348 and AIR 1937 Lah 121, Rel. on. **('52) 1952-1 Mad L J 459 : 65 Mad L W 1215 : AIR 1953 Mad 996 (997) (Pt C) (Pr 5).**

——S. 108 (i) — Tree planted on another's land — Ownership—Co-sharers — Trees planted in common land.

It is a well-known maxim that whatever is affixed to the soil becomes in contemplation of law a part of it and is subjected to the same rights of property as the soil itself. It follows as a corrollary that if a person plants a tree in the land of another the owner of the soil becomes owner also of the tree. To put it in slightly different language a stanlug tree belongs not to the person by whom it was planted but to the owner of the land from which it draws its support and sustenance. 57 Punj L R 6 : AIR 1955 Punj 63 (64) (Pt B) (Prs 5, 11) (DB).

CLAUSE (j)

20. Scope.

——S. 108 (j)—Relinquishment and assignment of tenancy—Distinction. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 19 (1). **AIR 1952 SC 156.**

——S. 108 (j)—Covenant allowing assignment with lessor's consent — Consent not to be unreasonably withheld—Effect of the clause.

The words "such consent, however, not to be unreasonably withheld in the case of respectable or responsible person" contained in the covenant in a lease allowing the lessee to assign his interest only with the lessor's written consent do not amount to a separate or independent covenant by the lessor that he would not refuse consent except upon reasonable grounds in the case of respectable or responsible person, but they limit or qualify the lessee's covenant not to assign the demised premises without the consent in writting of the lessor. In other words, those words have the effect of relieving the lessee from the burden of the covenant if the lessor withholds his consent unreasonably in case of proposed assignment to a respectable or resposible person. Kamala Ranjan v. Baijnath. 1951 S C J 13 : 1950 S C R 840 : 64 Mad L W 341 : 1951 Mad W N 361 : I L R (1952) 1 Cal 111 : AIR 1951 SC 1 (4) (Pt A) (Pr 9).

——S. 108 (j)—Covenant not to assign except on lessor's written consent — Lessor not to withhold unreasonably in case of respectable person—Agreement to assign to respectable person — Lessor withholding consent — Assignment whether breach of covenant—Specific performance of the agreement—Specific Relief Act (1877), S. 12.

Where a lease contains a covenant not to assign without first obtaining the written consent of the lessor and such consent is not to be unreasonably withheld in case of respectable or reasonable person, an assignment by the lessee to a respectable person, without lessor's consent, does not amount to the breach of covenant on the part of the lessee. Even if it amounted to a breach of covenant entitling the lessor to forfeit the lease and sue for possession, such a course would affect only the assignee and not the lessee who has already parted with the lease for a valuable consideration. The lessee cannot therefore resist the assignee's suit for specific performance of the agreement to assign the lease on this ground. Kamala Ranjan v. Baijnath, 1951 S C J 13 : 1950 S C R 840 : 64 Mad L W 341 : 1951 Mad W N 361 : I L R (1952) 1 Cal 111 : AIR 1951 S C 1 (5) (Pt C) (Pr 14).

——S. 108 —Landlord and Tenant—Custom—Transfer of house by raiyat.

In spite of the change brought about by the conversion of an agricultural village into a town, it is still open to a party to show that the pre-existing custom of non-transferability of portion as has ceased to be agricultural continued to exist and remained alive. In such a case the party cannot avail itself of the general presumption of law, but it can adduce any oral or documentary evidence in support of the legal relationship that it seeks to establish in order to prove its case.

Held, on the facts of the case—that the wajib-ularz in question forbade everyone including a raiyat from building a house without obtaining the permission of the Zamindar, once a house has fallen in ruins. 1954 All W R (HC) 94 : 1954 All L J 187 : AIR 1954 All 441 (442 to 444) (Pt C) (Prs 12, 16) (DB).

——S. 108 (j) — Right of tenant to remain in possession of house is transferable and saleable propetry. S. 6 (1) (d) of the Assam Urban Areas Rent Control

Act, 1956 does not take it out of the purview of S. 108 (j). AIR 1959 Assam 61 (62,·63) (Pt B) (Pr 3) (DB).

——Ss. 108 and 58 (c) — Conditional sale deed by defendant providing for plaintiff to be in possession — Defendant executing kabuliyat and cultivating as tenant — Plaintiff's suit for possession maintainable. 1959 Nag L J (Notes) 134 (Bom).

——Ss. 108 (j), 111 — Month to month tenancy — Determination.

A tenancy from month to month under the Transfer of Property Act does not determine on the death of the tenant except under a special contract to that effect. Obviously then, it passes to his heirs, or in other words, it is heritable. A tenancy from month to month under the Transfer of Property Act is also clearly assignable. 60 Cal W N 39 : ILR (1957) 2 Cal 214 : AIR 1957 Cal 173 (176) (Pt B) (Pr 15).

——S. 108 (j)—S. 14, West Bengal Premises Tenancy Act, 1956 prohibits transfer or assignment of tenancy rights by the tenant without previous consent in writing of the landlord — Sale by official receiver of business of tenant firm, without landlord's consent is void and does not pass rights of the firm in the tenancy or its right to retain possession of the premises. See Houses and Rents — West Benal Tenancy Act (12 of 1956), S. 14. (1957) 61 Cal W N 887.

——S. 108 (j)—Condition restraining alienation.

Where it is established that one of the conditions of his tenancy was that the tenant must carry on business on the premises let, then the application of S. 108 (j) is excluded. AIR 1953 Cal 729 (730) (Pt A) (Pr 6).

——Ss 108 (j), 58, 68 — Lessee can mortgage demised property with possession and lease back. See T. P. Act (4 of 1882), S. 58. AIR 1950 Madh Bha 72 (DB).

——S. 108 (j) — Lease — Covenant not to assign, or sublet, or transfer without prior sanction — Such sanction can be refused on grounds connected with property actually leased or character of proposed transfer or character of assignee or sub-lessee but not for any wholly extraneous reasons—Madhya Pradesh Minor Mineral Rules (1961), R. 18.

In regard to a provision or a covenant in a lease allowing the lessee to transfer the lease only on prior sanction or consent of the lessor, the law is well settled that the lessor is not entitled to refuse sanction or consent for wholly extraneous reasons and the grounds for refusal should have a rational connection with the property actually leased or the character of the proposed transfer or the assignee or the sub-lessee; that the lessor cannot withhold the sanction for obtaining some collateral advantage or for imposing on the intended assignor or transferor any greater burden that had been imposed by lease; and that the sanction cannot be withheld arbitrarily or vexatiously. (1925) 1 Ch 575, Foll. 1965 M P L J 51 : 1965 Jab L J 130 : AIR 1965 Madh Pra 153 (158) (Pt D) (Pr 11) (DB).

——S, 108 (j)—Landlord obtaining decree for ejectment—Right of sub-tenant to appeal. See C. P. Code (1908), S. 96. AIR 1955 NUC (Punj) 121.

21. Absolute transfer.

——S. 108 (j)—Absolute transfer — Position of transferee—(Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12 (1) Proviso (b)).

Under the general law (T. P. Act), a tenancy is transferable in the absence of any contract to the contrary, and the transferee becomes, on such transfer, a tenant under the general law. For acquiring that status, the transferee has not to depend on the recognition of the landlord and the latter cannot treat him except as a tenant. The tenant, therefore, is entitled to a proper notice to quit before a suit for eviction is instituted against him and the suit against him for his eviction would be a suit for eviction of an ex-tenant. There is nothing in the W. B. Premises Rent Control (Temporary Provistons) Act, 1950, to affect that position, and a transferee of the tenancy (transferee tenant) would prima facie come within proviso (b) to S. 12 (1) of that Act unless the relative transfer falls outside its scope. 63 Cal W N 29 : ILR (1959) 1 Cal 639 : AIR 1959 Cal 181 (184, 187) (Pt A) (Prs 21, 36) (DB).

——S. 108 (j)—Permanent tenancy — Right to transfer.

Where it is clearly established that pucca houses originally stood on the holding and the tenancy is found to be a permanent tenancy, transferability may be assumed. This is an exception to the general rule that the tenancies of homestead lands created prior to the coming into force of the T. P. Act are non-transferable. ILR (1954) Cut 33 : 20 Cut L T 373 : AIR 1954 Orissa 132 (136) (Pt E) (Pr 16) (DB).

22. Rights of assignee.

——Ss. 108 and 58 (c)—Field ostensibly transferred—Transferor executing Kabuliyat — Transferee filing suit for recovery of lease-money — Suit maintainable. 1959 Nag L J (Notes) 133 (Bom).

23. Liabilities of assignee.

——S. 108 (j) — Liability of assignee from lessee to pay rent. AIR 1951 Cal 251 (252, 253) (Pt B) (Prs 7, 12) (DB).

——S. 108 (j)—Assignee of lessee—Rights and liabilities.

An absolute assignee of the whole of the interest of lessee is liable by privity of estate for all the burdens of the lease irrespective of the fact whether he enters into possession or not and the ground upon which he is so held liable is that the whole of the assignor's interest has passed to him by the deed. Assignor having no longer any interest is no longer liable by privity of estate though he still remains liable by contract if he is party to the original lease. AIR 1939 P C 14, Rel. on. 1963 Jab L J 953 : AIR 1964 Madh Pra 129 (135) (Pt B) (Pr 11) (DB).

——S. 108—Covenants between landlord and tenant —It is primarily binding on them—Upon assignment of the reversion, it may also be binding on the grantee —Benefit of the covenant may also pass to assignee—If covenant is by lessor for benefit of lessee and directly touches or concerns the land. it runs with the land in favour of the assignee — Option to renew lease runs with the land and the lease-hold interest and so both lessor's and lessee's successors-in-interest are bound. See T. P. Act (1882), S. 40. AIR 1954 Orissa 110 (DB).

——S. 108 (j)—Arrears of rent—Improvements effected by assignee of portion of leasehold—Right of landlord to set-off against arrears due from original lessee or other assignees—(Landlord and tenant).

Unlike in the case of a mortgage the relationship between a lessor and lessee arising on the contract of lease is purely legal. The mortgagor may have been assigned remedies analogous to that of a trustee as against the mortgagee in particular situations. There is no scope however for introducing trust relationship as between the lessor and the lessee. In the matter of arrears of rent their relationship cannot be anything more than that of debtor and creditor. The improvements effected by the assignee of a portion of the lease-hold in his portion of the holding cannot be available for set-off of arrears barred or otherwise

due from the original lessee or his other assignees. The proportionate rents that accrued due as against him in respect of his own portion could of course be set off. 57 Trav L R 1051 (FB), Rel. on. **ILR (1956) Trav-Co 738 : AIR 1957 Trav-Co 228 (229) (Pr 5) (DB).**

——S. 108 (j) — Assignee of lease not in possession — Liability of assignee.

An assignee of a lease is liable by privity of estate for all the burdens of the lease, burdens, which are imposed upon him by the mere assignment whether he enters into possession or not. (1939) 1 Cal 283 (PC), Foll. **('49) 1949 Ker L Tim 15 (DB).**

24. Mortgage or sub-lease by lessee.

——Ss. 108 (j), 111 and 116 — Person remaining in possession after determination of tenancy—Becomes statutory tenant — He can remain in possession but cannot enforce terms of original tenancy—Sub-lessee from a statutory tenant under the Act acquires not right of tenant. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (1). **AIR 1965 S C 414.**

——S. 108 (j)—Scope — Possession of mortgagee of tenancy rights does not confer rights of adhivasi. See Tenancy laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 20. **1957 All L J 548.**

——S. 108—Agreement to sub-let without landlord's permission is invalid under Cl. 12A of C. P. and Berar Rent Control Order. See Houses and Rents—C. P. & Berar Regulation of Letting of Accommodation Act (11 of 1946), S. 2. **1963 Mah L J (Notes) 80.**

——S. 108 (j) — Government of India Act (1935), S. 107 (2) and Sch. 7, List 3, Entry 8 — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 12-A is ultra vires as contravening S. 108 (j), T. P. Act in so far as it takes away the tenant's right to give sub-lease. See Government of India Act (1935), S. 107 (2). **AIR 1959 Bom 98.**

——S. 108 (j) — Sub-lease of portion of land is not covered by prohibition in S. 27 (1), Bombay Tenancy and Agricuitural Lands Act, 1948—Sub-lease does not entail forfeiture of the lease. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 27. **(1959) 61 Bom L R 1123.**

——S. 108 (j) — Power of tenant to sublet is subject to a contract to contrary—Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 11 (3).

The provisions of S. 108 (j), T. P. Act which authorise a tenant to sublet the whole or any part of his interest in the property are subject to a contract or local usage to the contrary as the opening words of S. 108 show. Hence where a tenant is forbidden from subletting the premises under the terms of the lease, a sub-tenant in possession cannot contend that the premises are lawfully sublet to him for the purpose of claiming the benefit of S. 11 (3), West Bengal Premises Rent Control (Temporary Provisions) Act. **55 Cal W N 492 : AIR 1952 Cal 141 (142) (Pt B) (Pr 6).**

——Ss. 108, 111 — Landlord and tenant — Mortgage by tenant of lease-hold interest — Subsequent voluntary surrender by tenant in favour of landlord — Mortgagee's claim for mortgage amount against tenancy rights — Maintainability — Landlord and Tenant—Surrender.

A and B had a lease-hold interest over suit property. One V was the kanamdar of the property. The Kanom right of V was purchased by C in 1959. A and B had executed a registered mortgage in favour of D for Rs. 200 in 1948. In 1956 A and B surrendered their lease-hold interest over the property to landlord C without making any reference to the mortgage. D, the mortgagee filed suit for realisation of mortgage amount by sale of the tenancy right of A and B over the property. The question was whether the mortgage right on the lease-hold interest of A and B would be extinguished by the surrender of the lease-hold interest in favour of C.

Held, C must be deemed to have notice of the registered mortgage. A voluntary surrender by a tenant stood on a different footing from an extinction of the tenant's rights by operation of law. In the latter case the encumbrance created by the tenant would terminate on the extinction of the tenant's right in the property. But A and B could not derogate from their grant by putting an end to their estate by a voluntary surrender. It was open to D to enforce the claim under hypothecation as against the tenancy right of A and B in the property, even though that right had been surrendered by them to C. A I R 1946 Nag 419, Foll. **(1964) 1 Ker L R 71 : 1963 Ker L J 1170.**

——S. 108 (j) — Delhi and Ajmer Rent Control Act (1952), S. 13 (1) (c) (i) — Sub-letting. See Houses and Rents — Delhi and Ajmer Rent Control Act (38 of 1952), S. 13 (1) (c) (i). **A I R 1959 Punj 508 (DB).**

——S. 108 (j) — Transfer or assignment and sub-letting—Distinction—Houses and Rents—East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (2) (ii) (a)—Scope.

The distinction between an assignment or transfer of a lease and sub-letting of the premises is that, in the former case the lessee conveys his entire term and in the latter case he retains for himself a reversionary interest, however, small. The test of a sub-lease is that there should remain a reversionary interest in the estate vesting in the sub-lessor. In the case of a tenancy which has already been terminated, or where the tenancy, being at-will, is determinable at any time, there can be no sub-letting by a tenant to a sub-tenant. In the absence of evidence the ingredients of a sub-lease cannot be presumed. Where, apart from sub-letting, the landlord did not allege transfer by his tenant of the entire lease-hold rights to the petitioner, the case did not warrant any inference that the provisions of S. 13 (2) (ii) (a) of the Punjab Urban Rent Restriction Act, 1949, had been infringed. **(1958) 60 Punj L R 349.**

[Reversed in AIR 1961 S C 1554].

——S. 108 (j) — Landlord giving consent for sub-letting—Effect is not that landlord enters in contractual relationship with sub-tenant—Consent amounts merely to waiver of right to eject tenant for sub-letting — (Houses and Rents—Delhi and Ajmer-Merwara Rent Control Act (19 of 1947), S. 9). **AIR 1955 N U C (Punj) 121.**

25. Lessee continues liable.

——S. 108—Consent of landlord—Lease providing that the term "lessee" used in the lease would include his representative and assigns—Held, clause could not be interpreted as landlord consenting to an assignment by lessee. See Houses and Rents—Delhi Rent Control Act (59 of 1958), S. 14 (1) Proviso (b). **(1965) 2 S C W R 934: A I R 1966 S C 346.**

——S. 108 (j) — Liability of lessee — Assignment of lease—Lessee has right to assign lease unless there is contract to contrary — Lessee's liability does not end by mere assignment—Lessor may by consenting to assignment of lease or by accepting rent from assignee release lessee from liability. **64 I T R 506 : (1965) 2 I T J 883 (Cal) (DB).**

——S. 108 (j)—Place of worship—What constitutes—Lessee allowing persons of locality to use leased property as place of worship without permission of

lessor—Such user cannot convert place into place of worship. See Penal Code (1860), S. 295. 1961 (1) Cri L J 82 : A I R 1961 Ker 28 (DB).

——S. 108 (j)—Sub-tenant — Liability to pay arrears of rent—Sub-tenant is not liable. A I R 1955 N U C (Madh B) 3391.

——S. 108, Cl. (j) — Sale of leased property by lessee — Notice sent to lessor that transferee was the only person from whom rent should be recovered — Lease continues — Lessee remains liable for rent despite notice. (1965) 1 Mys L J 731 : A I R 1966 Mys 147 (148) (Pt A) (Pr 4).

——S. 108, Cl. (j) — Assignment of lease—Privity of contract between lessor and lessee — Lessee or his heirs are not divested of their liability by assignment — Effect of assignment — Privity of estate between lessor and assignee — Distinction between liability under privity of contract and liability under privity of estate. (1965) 1 Mys L J 731 : AIR 1966 Mys 147 (149, 150) (Pt B) (Prs 7, 9, 14).

——S. 108 (j) — Sub-lease — Sub-lessee not liable to pay rent for lease.

Under S. 108, clause (j), a lessee is entitled to sub-lease his tenancy, but that does not exempt him from the liability to pay rent for the lease, in the absence of any out and out assignment in favour of the sub-lessee so as to throw the burden of the liability upon him. 1961 Raj L W 45 : ILR (1960) 10 Raj 938 : A I R 1961 Raj 17 (18) (Pt B) (Pr 6) (DB).

——S. 108 (j) — Legal heirs of deceased — Liability for rent due after transfer.

A lessee's liability for rent is founded both on privity of contract and privity of estate. Admittedly, the lessee does not ipso facto cease to be liable for rent by a transfer of his interests to a third party. The liability of the lessee based on privity of contract does not end when his life ends. Those who succeed him will continue to be liable on his covenant whether they obtain possession or not provided they have sufficient assets of the deceased in their hands to meet the demand. ILR (1955) Trav Co 211 : 1955 Ker L T 426 : A I R 1955 Trav Co 223 (224) (Prs 4, 7) (DB).

26. Rights of lessee against assignee or sub-lessee.

——S. 108 — Landlord and tenant — Sub-letting by lessee—Patta cancelled — Lessee is entitled to better consideration than lessor. A I R 1955 N U C (Assam) 4187.

——Ss. 108 (j) and 40 — Lessor and sub-lessee — Privity of contract — Covenants in principal lease — Sub-lessee how far bound. See T. P. Act (4 of 1882), S. 40. A I R 1952 Pat 409 (DB).

27. Clause not restrospective.

——Ss. 108 (j) and 10 — Lease before T. P. Act — Applicability of S. 108 — Transferability of lease—Rule against—Validity of.

Whether a tenancy created prior to enactment of the Transfer of Property Act was transferable or not has to be decided quite apart from the provisions of S. 108, which are not applicable to such a tenancy. According to decided case, tenancy of homestead, before the T. P. Act was not transferable; if the original letting was for the purpose of building cutcha structure, it was transferable, according to some authorities, and not transferable according to some; and if the original letting was for building puccka structures, it was transferable. Hence, the tenancy of land created before the Transfer of Property Act with the express purpose of construction of pucca building for the purpose of residence was ordinarily transferable and the condition against alienation provided as one of the terms of the kabuliyat would be void, as infringing the rule against perpetuities. 12 W R 495, Foll. Page, J., in A I R 1927 Cal 39, Dissent from. 93 Cal L J 219 : I L R (1956) 2 Cal 107 : AIR 1954 Cal 541 (543) (Pt A) (Prs 12, 13) (DB).

CLAUSE (l)

28. Scope.

——S. 108 (l)—Agreement to pay Ursana — Nothing to show that landlord called upon tenant to vacate premises during period of Urs and he refused to do so—Liability of tenant to pay Ursana does not arise. A I R 1955 N U C (Ajmer) 4749.

——Ss. 108 (l) and 58 (d) — Usufructuary mortgage of a house — Mortgagor continuing to reside in it under a rent note executed simultaneously is a tenant and as such liable to pay rent — No relief can be claimed by mortgagor under U. P. Agriculturists Relief Act in respect of the rent.

Where a landlord after executing a usufructuary mortgage of his house continues to reside in it by simultaneously executing a rent note in favour of the mortgagee, he becomes the tenant of the mortgagee with liability to pay rent under the agreement. The money which the mortgagor pays is not interest on the loan but rent for use and occupation of the house. The relationship remains that of landlord and tenant even if the parties have stipulated that the mortgagee after receiving the suit shall not be entitled to any interest under the usufructuary mortgage because, firstly, interest is not essential for a usufructuary mortgage which can be free of interest and secondly, the mortgagor's right to occupy the property is based on the tenancy which also creates his liability to pay rent for use and occupation of the property to which he would not otherwise be entitled under the mortgage. In such a case, and as the sum claimed by the mortgagee is as rent and not as interest on the mortgage, no question of granting any relief to the mortgagor under the U. P. Agriculturists' Relief Act can arise. The Act did not exempt an agriculturist from payment of rent for a house occupied by him as tenant. 1964 All W R (H C) 47 : A I R 1964 All 370 (371) (Pt A) (Prs 3, 4, 5).

——S. 108—Landlord and tenant — Suit by landlord for mesne profits alleging defendants to be trespassers because of termination of tenancy or alternatively for rent if they are tenants — Suit maintainable—Court is not justified in asking plaintiff to make choice. 1964 Mah L J (Notes) 82.

——S. 108 — Theatre owned by plaintiff and L in equal shares — Defendant taking on lease from 29.8.1955 to 29.10.1955 agreeing separately to pay rent of share of each — Defendant vacating on 1-10.1955 with consent of L — Plaintiff had knowledge of the fact that defendants had vacated—Liability to plaintiff for rent from 1-10-1955 to 29-10-1955 — Mere knowledge on the part of plaintiff of defendant's vacating would not non-suit the plaintiff unless it was established on evidence that L was agent of plaintiff. 1961 Nag L J (Notes) 64.

——S. 108—Bombay Rents, Hotel and Lodging House Rates Control Act (1947), S. 18 (2) — Appropriation under — Limit of — Deposit receipt providing for appropriation—Effect — (Contract Act (1872), S. 59). See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 18 (2). A I R 1956 Bom 647.

——S. 108 (l)—Death of lessee — Privity of contract between lessor and personal representatives of lessee —Devolution of lessee's interest on legatee — Assent of executor — Effect. See T. P. Act (1882), S. 105. A I R 1955 N U C (Cal) 879 (DB).

——S. 108 (l)—Rent — Agricultural lands — Suit for assessment under general law — Maintainability—

Arrears for anterior period — If can be claimed—Landlord, if entitled to interest on such arrears.

It is now undisputed that the right to have the rent assessed even in respect of agricultural lands is not limited to proceedings to be instituted under the Bengal Tenancy Act. In a suit for assessment of rent there may also be a claim for arrears for the anterior period provided the tenant is found to have been in possession during such period and was holding either as a tenant or otherwise. The amount of arrears is payable not as rent but as compensation for use and occupation, where until the Court determines the fair and equitable rent the amount cannot be reasonably ascertained by the tenant. The landlord is entitled to claim in the suit the arrears calculated on the basis of rents and cesses for the period anterior to the filing of the suit at the rate fixed by the Court, but he will not be entitled to any interest or compensation on the amount decreed. **A I R 1951 Cal 448 (448) (Pt A) (Pr 3).**

——S. 108 (l)—Agricultural tenancy—Suit for assessment of fair and equitable rent—Claim for arrears of rent in respect of period anterior to suit also made —Defendant in possession as tenant and holding recorded as liable to assessment — Claim for arrears can only be allowed as compensation for use and occupation and not as rent — Plaintiff is not entitled to claim damages or interest on arrears in such a case. **A I R 1951 Cal 448 (451, 452) (Pt C) (Prs 23, 24, 28).**

——S. 108 (l)—Landlord and tenant — Principles governing apportionment of compensation and solatium — Apportionment not necessarily in proportion to the respective incomes derived by the parties— 1958 Ker L J 613 : I L R (1958) Ker I404 and 1958 Ker L T 559 : A I R 1959 Ker 8, Overruled. See Land Acquisition Act (1894), S. 30. **A I R 1961 Ker 222 (FB).**

——S. 108, Cl. (l) — "Rent" includes payment for electric installations, furnishings and amenities, provided landlord supplies them and it forms part of agreement. A I R 1957 S C 309, Foll. **1963 M P L J (Notes) 68.**

——S. 108 (l) — Government Nazul plots sold by auction—Lessee entering into possession of property on acceptance of his bid — Lease deed executed on future date—Liability to pay rent—It arises from date of possession. See Landlord and tenant — Lease. **A I R 1962 Madh Pra 93 (FB).**

——S. 108 (l) — Suit for ejectment and rent — Fair rent fixed representing real value of premises—Assessment of mesne profits on the basis of fair rent is proper. A I R 1953 Nag 186 : I952 Nag L J 393, Not applicable. **1961 M P L J (Notes) 226 : 1961 Jab L J 80.**

——Ss. 108, cl. (l) and 111—Landlord and tenant—Rent—Payment of—Surrender of unexpired portion of lease not accepted by landlord — Liability for payment of rent does not cease — Appointment of receiver made to save property from lying fallow does not change possession — Civil P. C. (1908), O. 40, R. 1.

Where the unexpired portion of a lease is surrendered by the tenant but the landlord does not accept it, the tenant does not cease to be liable for the rent. The fact that the landlord gets a receiver appointed in a suit for recovery of rent does not absolve the tenant from his liability of paying the rent when the purpose for which the receiver is got appointed is to save the property from lying fallow and getting deteriorated in fertility and the possession of the receiver is not intended for the landlord's benefit. The appointment of the receiver does not in such a case operate to change possession and the tenant is liable to pay rent even for the period during which the receivrr was in possession. ILR 24 Cal 296 : AIR 1923 Cal 63 ; AIR 1955 Mad 252 : (1955) 1 M L J 439 and A I R 1936 All 495 (FB), Dist. **75 Mad LW 378 : 1962 Mad WN.653 : (1962) 2 Mad L J 394 : AIR 1962 Mad 439 (442) (Pt A) (Pr 16).**

——S. 108, cl. (l) — Landlord and tenant — Rent — Payment of — Properties of tenant mentioned as security for payment of rent — Extent of security confined to one year's rent—Tenant making payment of security by privately selling some of properties—Landlord cannot enforce charge on properties given as security. **1962 Mad W N 653 : 75 Mad L W 378 : (1962) 2 Mad L J 394 : AIR 1962 Mad 439 (442) (Pt B) (Pr 17).**

——S. 108 (l) — Suit for rent — Joint owner or a co-sharer—If could sue for proportionate rent—Agreement to pay and receive proportionate rent—Exception to rule—How proved.

It must be taken as well established that a joint owner or a co-sharer is not entitled as such to sue for proportionate rent; but it has been held that though this is undoubtedly the established rule, nevertheless, if the parties, namely, the landholders and the tenant agree to accept and pay proportionate rent according to shares, there is nothing illegal in such an arrangement. There can be an exception to: the general rule where there is an agreement between the parties and presumably this agreement can be proved in one or other of the ways known to law. AIR 1936 Mad 402, Foll. **(1953) 1 M L J 814 : AIR 1953 Mad 854 (854) (Pt A) (Pr 3).**

——S. 108 (l) — Monthly tenancy—Payment of rent must be every month on stated date as agreed, unless there is contract to the contrary. **AIR 1955 NUC (Nag) 1185 (DB).**

——S. 108 (l) — Rent—Suit against several co-sharer inamdars in separate possession — Competency of—Liability of co-sharer inamdars—If joint and several.

Where there are several co-sharer Inamdars in separate possession of their shares, a single suit against all of them by the zamindar for recovery of rent (Jodi) is not maintainable, because the co-sharer inamdars are not jointly and severally liable. **18 Cut L T 33 : AIR 1953 Orissa 92 (95) (Pt D) (Pr 7).**

——S. 108 — Rent note executed by motgagor—Suit for arrears of rent alone is competent.

A right which arises to the mortgagee to sue for rent on the basis of a rent-note executed in his favour by the mortgagor with respect to the mortgageed property, creates an independent obligation, and, therefore, a suit by him for arrears of rent is perfectly competent, except where the mortgage-deed specifically provides that on failure to pay rent a suit for the entire money could be filed : AIR 1957 Raj 32, Rel. on. **1963 Raj L W 451 : ILR (1963) 13 Raj 980.**

——S. 108 (l)—Scope and applicability.

Emphasis in cl. (l) is on payment or tender at proper time and place. The clause has nothing to do with the fixation of rent and therefore the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which give power to the Courts to scale down the agreed rent, cannot be said to be repugnant to cl. (l) but are only supplementary to it. **ILR (1954) 4 Raj 958 : AIR 1954 Raj 252 (256) (Pr 12) (DB).**

——S. 108 (l) — Decree for rent — Adjustment of amount paid or deposited in Court cannot be directed in decree — Tenant is entitled to credit for these amounts. **AIR 1955 NUC (Trav-Co) 5108 (DB).**

——S. 108 — Rent fixed in a lease deed—Liability of tenant is only to pay that rent, unless he has by supervening causes incurred further liability — The

fact that subsequent events including rise in prices might enable him to make profit is no consideration to effect alteration in his liability. ('51) 1951 K L T 179 (DB).

29. Rent in kind.

—S. 108 —Rent in kind—Payment of money value. See T. P. Act (1882), S. 105. AIR 1955 NUC (Trav-Co) 5108 (DB).

—S. 108 — Landlord and tenant—Thiruppuvaram holder.

A Thiruppuvaram holder is entitled to price of paddy at the nirag rate (i. e., price prevailing in market on date of plaint for recovery of arrears) and is also entitled to interest upon the arrears of rent. 52 Trav L R 443 (FB) and 29 Trav L J 688, Foll. 1952 Ker L T 677 : AIR 1953 Trav-Co 117 (117) (Pr 3).

30. Tender or payment at proper place and time.

—S. 108 (1)—Proper time and place of payment.

In the absence of any specific agreement between the landlord and tenant as to the time and place of payment of rent the latter is bound to pay or tender the same at the proper time and place.

Held, on facts that the proper place for paying rent was the landlord's residence in Nagpur. 1961 Nag LJ (Notes) 46 (Bom).

—Ss. 108, 84—East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 — Application under, for eviction of tenant on ground of non-payment of rent — Tenant's plea that he had tendered the arrears of rent to landlord—Landlord denying factum of tender cannot question its validity. See Houses and Rents —East Punjab Urban Rent Restriction Act (3 of 1949), S. 13. AIR 1951 Him Pra 72.

31. "To lessor or his agent".

—S. 108 (1) — Payment of rent to another alleged to be joint owner—If discharges his liability.

When once the relationship of landlord and tenant is found to be proved, any payment made by the tenant to some one who is not the landlord on the ground of his being a joint owner would not relieve him of his liability for the payment of the rent to the landlord. 1948 A M L J 36 : AIR 1951 Ajmer 63 (63) (Pr 2a).

—S. 108 (1)—Joint lessors—Payment of rent to one —Effect stated. See Contract Act (1872), S. 38. AIR 1957 Madh Pra 5.

32. Payment must be by lessee.

● —S. 108 (1) — Several lessees — Inter se partition of mokarrari interest amongst mokarraridars — Effect.

An inter se partition of the mokarrari interest amongst the mokarraridars cannot affect their liability qua the lessor for the payment of the whole rent, as several tenants of a tenancy in law constitute but a single tenant, and qua the landlord they constitute one person, each constituent part of which possesses certain common rights in the whole and is liable to discharge common obligations in its entirety. Such partitions amongst several lessees inter se are usually made for convenience of enjoyment of the leasehold but they do not in any way affect the integrity of the tenancy or make each holder of an interest in it as a separate holder of a different tenancy.

Similarly the allegation of partition inter se among the several owners of a lakhraj holding subject to mokarrari interest cannot in any way affect the integrity of the lease in the absence of an allegation of a fresh contract between the split up owners of the holding and the different owners in the mokarrari interest. Badri Narain Jha v. Rameshwar Dayal Singh. 1951 All L J (SC) 20 : 1951 S C J 252 : 1951 S C R 153 : 64 Mad L W 531 (1952) S C A 429 : ILR 30 Pat 664 : AIR 1951 S C 186 (189) (Pt B) (Pr 10).

—S. 108 (1) — Liability of transferee from lessee— Section does not intend to deal with question of liability of transferee from lessee — Liability is determined on general principles of law—Lessor cannot sue sub-lessee for cesses on covenant between himself and lessee. AIR 1955 NUC (Cal) 5918 (DB).

—S. 108 (1)—Liability of transferee from lessee for rent —Contractual liability to pay rent can be apportioned by consumers of lessor and lessee — One of lessees transferring undivided portion of leasehold premises—Transferee become co-lessee — Rent is not apportioned because of transfer—Liability is joint and several so far as successors are concerned. AIR 1955 NUC (Cal) 5918 (DB).

—S. 108—Usufructuary mortgage followed by lease back at rent reserved — Right and liabilities of parties —Suit for eviction and arrears of rent by mortgagee-lessor against mortgagor — Lessee—Maintainable. See Transfer of Property Act (1882), S. 58 (d). (1961) MPLJ (Notes) 299.

—S. 108 (1)—Lessor allowed to recover rent from sub-tenants failing to recover portion from the sub-tenants—Right to claim from lessee.

If the lessor is authorised by the lessee to collect the rents from the sub-tenants and appropriate the same towards the rent payable by the lessee he would become an agent of the lessee coupled with interest, and would be entitled to collect the rent from the sub-tenants in spite of the subsequent direction of the lessee not to do so. The lessor even if he had collected only a portion of the rent from the sub-tenants would not be entitled to claim the balance of rent from the lessee where he defaulted to collect a portion of rents from the sub-tenants and allowed the claims against the sub-tenants to get barred in spite of his undertaking to collect the rents from the sub tenants. 1960 Mad W N 618 : AIR 1961 Mad 28 (31) (Pt D) (Pr 11).

—S. 108 (1) — Agricultural tenancy — Liability — Holding mortgaged in parts to various mortgagees— Mortgagees in possession — Some responsible to pay rent on portion mortgaged to them to landlord— Rents not split up with consent of landlord — Liability to pay rent implies liability for entire rent payable in respect of holding. ILR 31 Pat 365 : AIR 1952 Pat 286 (287) (Pt A) (Pr 5a)(DB).

—S. 108—Landlord and Tenant — Rent —Liability for—Usufructuary mortgage and lease back for term — Mortgagor (lessee) transferring ownership and possession to third party — Holding over by transferee—Liability of transferee in possession for rent for period of term and for mesne profits after expiry of term—Principles —Privity of estate—When arises.

Mere transfer of possession by a lessee without a transfer also of his rights or interests as a lessee to another will not make the transferee liable to the landlord for rent; such a transfer does not create an estate in the transferee nor is possession necessary to fasten liability on the transferee if the lessee transfers his interests as lessee. To fasten liablility on the principle of privity of estate on the transferee, the transfer must be of the leasehold, whether or not it is accompanied by possession. This is the true rule in cases where the lessee has an estate to transfer. A tenant holding over after the expiry of his lease has only a tenancy on tenancy and such a tenancy is not one which can be transferred. But a tenant who continues in possession after the expiry of the term without the consent of the landlord is not even a tenant

on sufferance but a trespasser, who has no transferable interest at all. Where the transfer is by the owner of the property who is in possession under a lease executed by him to his usufructuary mortgagee (he having taken the properties on lease from the mortgagee for a fixed term) of his rights of ownership of the properties possessed by the lessee antecedent to the lease, and is not a transfer of any tenancy interest in any manner, no question of liability based on the principle of privity of estate can arise at all and the transferee from the mortgagor-lessor cannot be made liable to the landlord for rent. But the party in possession, in the same way as the lessee from whom he has derived possession would be liable for damages for use and occupation, i. e.. for mesne profits. 1951 **KLT 770 : ILR (1951) T C 522 : AIR** 1952 T C 359 (361, 362) **(Pt C) (Prs 8, 11).**

33. Increase in rent.

——S. 108 (l)— Landlord and Tenant — **Increase in assessments by Government — Liability of tenant to pay excess over by the rent agreed.**

Where the Government has increased the assessment of the land, and the assessment exceeds the amount of rent, the Court is, on equitable considerations, entitled to call upon the tenant to make good to the landlord the amount he has to pay to the Government as assessment in excess of the rent which was actually recovered by him. AIR 1925 Bom 168, Rel. on. AIR 1956 Bom 243 **(244) (Pt A) (Pr 6).**

——S. 108 (l)—Increase of rent—The landlord is not entitled during the subsistence of the lease to enhance the rent except on an agreement. **ILR (1953) Trav Co 568 : 1953 Ker L T 442 : AIR 1953 Trav Co 584 (587) (Pt F) (Pr 6).**

34. Question of title.

——S. 108 (l) — Landlord and tenant — Rent suit— Issues such as question of title to property of alleged landlord vis-a-vis alleged tenant should not ordinarily be gone into in rent suit. Obiter. **1964 Kas L J 82 : AIR 1964 J and K 65 (66) (Pt C) (Pr 4).**

35. Concurrent lease.

——S. 108, Cl. (1)—**Concurrent lease — Right to recover rent.**

Where after a lease has been granted, another lease of the same properties is granted, the term being concurrent with the existing lease, the concurrent lease operates as a grant of the reversion upon the existing term and would entitle the concurrent lessee to recover the rent from the earlier lessee. Where, therefore, the lessor grants a usufructuary mortgage of the properties when both the leases had sometime to run, the right of the mortgagee to recover rent would be only to proceed against the concurrent lessee and not against the original lessee. **1951 Mad W N 485 : AIR 1951 Mad 718 (719) (Pr 8).**

36. Non-payment of rent.

——S. 108 (l)—Non-payment of rent. See C. P. Code (1908), S. 47. **AIR 1955 N U C (Assam) 2787 (DB).**

——S. 108 (l)- Due payment, what is — No payment of rent made for several years, but only when the lessor had gone to the Court—There is no due payment of rent. See Specific Relief Act (1877), S. 22. **A I R 1955 N U C (Cal) 2934 (DB).**

——S. 108—**Default in payment of arrears of rent — What amounts to.**

Where in reply to notices demanding arrears of rent, the defendant denied the plaintiffs' title to the land and also asserted that he had no right to recover any rent from him, the defendant must be deemed to have made default in payment of arrears of rent. **1961 Jab L J 427 : 1962 M P L J (Notes) 65 : ILR (1962) Madh Pra 443 : AIR 1961 Madh Pra 237 (238) (Pt A) (Pr 6).**

——S. 108 — Suit by landlord for arrears of rents at rate according to agreement — Tenant cannot plead that rent agreed was in excess of standard rent without having first filed suit for fixation of standard rent. See Houses and Rents—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950). **1964 Raj L W 12.**

——Ss. 108 (l) and 111 — No forfeiture of lease on account of non-payment of rent unless there is clause in deed — 'Buta Hak' tenure — Order of Dewan held not one of forfeiture — Order held without jurisdiction — Order of Huzur confirming order held equally without jurisdiction — Order held subject to scrutiny of Civil Court—(C. P. Code, S. 9). AIR 1953 Sau 94 (95) **(Pt D) (Pr 5).**

37. Suspension, abatement or reduction in rent.

——S. 108 (l) — Suit for rent of house — Reduction on ground of house being out of repairs—Permissibility. See T. P. Act (1882), S. 108 (f). **A I R 1955 N U C (Ajmer) 1414.**

——S. 108 (l) — Suit for rent of house — Deduction on ground of rent being above standard rent is not permitted in Small Cause Court — (Houses and Rents — Delhi and Ajmer Rent Control Act (38 of 1952), S. 33. **AIR 1955 N U C (Ajmer) 1414.**

——S. 108 (f) and (1) — Suit for rent of house — Reduction on ground of house being out of repairs is not permitted. **AIR 1955 N U C (Ajmer) 1414.**

——S. 108 (l) — Lease—Total destruction—Claim for suspension of rent — When can be sustained indicated. See Transfer of Property Act (1882), S. 108 (a). **1964 All L J 1120 : 1965 All W R (HC) 81 : A I R 1966 All 225.**

——S. 108 (b) — **Lessee wrongfully dispossessed by lessor from portion of leased premises—Lessee liable to pay proportionate rent — Doctrine of suspension of payment of rent not applicable.**

Where a lessee is wrongfully dispossessed by the lessor from a portion of the premises leased, the lessee is liable to pay rent for the premises in his possession inspite of the rent being a lump sum.

The principles of the English Common Law doctrine 'suspension of payment of rent' have no application in India and is opposed to the principles of justice, equity and good conscience. There is no principle of justice, equity and good conscience which would permit a lessee to retain possession of a portion of the leased land without paying any rent on the plea that he had been wrongfully dispossessed from a portion of the land leased. The question in such a case is one of enforcement of the contract of lease. The lessee can treat the contract as at an end and give up possession of the demised property or sue the lessor for damages of breach of contract. If he retains possession of any portion of the property he cannot be heard to say that he has discharged his obligation to pay rent in respect of the premises in his possession. Case law discussed. **1965 All L J 1019 : ILR (1965) 2 All 980.**

——S 108 (1) — Doctrine of suspension of rent — Applicability — House let out on rent payable for the house as a whole — Landlord dispossessing tenant from a part of house leased — No provision in agreement for payment of rent for portion of accommodation — Landlord is not entitled to claim any rent so long as the tenant remains dispossessed of portion of leased property — Doctrine of suspension of rent applies. A I R 1961 Assam 52 and AIR 1951 Cal 338 and A I R 1925 P C 97, Rel. on; A I R 1943 P C 24,

Distinguished. A I R 1964 All 343 (343, 344) (Prs 2, 5).

——S. 108 (l)—Doctrine of suspension of rent — Applicability—Portion of premises taken out of tenant's possession with his consent — Possession restored—Plea not raised in written statement—Doctrine held did not apply—Houses and Rents — U. P (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-E— Civil P. C. (1908), O. 8, Rr. 3, 5.

Where a portion of the accommodation was taken out of the possession of the tenant with his consent, the doctrine of suspension has no application.

A portion of the upper storey was felled by the landlord with the consent of the tenant. As it was not reconstructed or repaired, the tenant made an application under S. 7-E of the U. P. (Temporary) Control of Rent and Eviction Act. Upon the Court's order directing the landlord to construct and repair the demolished portion of the premises, that was done. Later on the landlord brought a suit for ejectment and recovery of arrears ot rent and the tenant stated in the written statement that as the landlord had felled down certain portion of the accommodation, the tenant was entitled to a proportionate reduction of rent. It was not, stated that he withheld the payment of rent because he was deprived of a portion of the demised premises :

Held that it: was a case in which neither the doctrine of suspension was pleaded in the written statement nor had it any application on the facts found. There was also no question of any proportionate reduction of rent because of the restoration of the accommodation. A I R 1925 P C 97; AIR 1943 P C 24, Considered and Disting. 1962 All L J 1035 : 1962 All W R (HC) 822.

——S. 108 (l)—Lessee evicted by lessor from portion of leased premises—Payment of proportionate rent.

Where a lessee is put in possession of the leased premises but is subsequently evicted by the lessor from a portion of the premises, the lessee is liable to pay rent for the premises in his possession in spite of the rent being a lump sum, in the sense that it is not stated in the lease as being apportionable with reference to particular portion of the leased premises, provided it is possible for the Court to determine the proportionate rent of premises in possession of the lessee. 1951 All W R (H C) 158 : A I R 1952 All 125 (127) (Pr 13).

——S. 108 (l)—Eviction by paramount title.

Eviction by title paramount destroys the effect of the grant and the corresponding liability for payment of rent. But eviction by a decree-holder of a tenant pending an appeal which is ultimately allowed during the period when execution of the decree was stayed cannot be described as eviction by paramount title. 1954 Andh L T (Civil) 95 : (1954) 2 Mad L J (Andhra) 67 : 67 Mad L W 1051 : AIR 1954 Andhra 43 (44) (Pr 5).

——S. 108 (1)—Eviction of tenant from part of holding—Effect—Suspension of rent.

The eviction of a tenant, from a part of the demised premises entails suspension of the entire rent so long as the eviction lasts, irrespective of the fact that the tenant may be in possession of the residue. It is not necessary for the Court in such cases to find out from how much land the tenant had been dispossessed. The test is whether there has been an actual physical expulsion with the intention of depriving the tenant of the enjoyment of the demised premises or from a part thereof.

Where as a result of the landlord's keeping the logs in one of the rooms of the house let out to the tenant, great inconvenience had been caused to the tenant who was unable to occupy the whole house freely:

Held, that the act of the landlord was a tortious one and there had been actual dispossession of the tenant. The rent payable being for the whole holding, the landlord was not entitled to any rent until the mischief was removed. It was the duty of the landlord and not of the tenant to remove it. AIR 1951 Cal 338, Rel. on. I L R (1958) 10 Assam 121 : AIR 1961 Assam 52 (52) (Pr 2).

——S. 108 (b) and (l)—Landlord and tenant — Suspension of rent — Landlord's failure to give possession of part of premises - Effect.

The doctrine of suspension of rent has no application in India in cases of failure of the landlord to give possession to the tenant of the part of the demised premises.

The restatement of the law in A I R 1943 P C 24; (1943) 1 Mad L J 514 regarding suspension of rent, made after a consideration of the dictum in AIR 1925 P C 97 is more suited to Indian conditions than the statement of the law in any of the decisions preceding it.

The observations in AIR 1943 P C 24 : (1943) 1 Mad L J 514, were never intended to apply only to agrarian tenancies. The purpose of referring the special difficulties of the application of the doctrine of suspension of rent was only to show that the observations should apply with greater force to agrarian tenancies. It was never intended to exclude urban or metropolitan non-agricultural tenancies from the scope of the law laid down in the aforesaid decision. The particular difficulties of agrarian tenancies were treated as merely matters which gave a special 'edge of unreason' to the application of the doctrine of suspension of rent to such tenancies. (1959) 63 Cal W N 922: I L R (1960) 2 Cal 439: AIR 1960 Cal 346 (350, 351) (Pt A) (Prs 18, 22) (DB).

[Reversed on facts in AIR 1966 S C 1361 (C N 263) Point (a).]

——S. 108—Landlord and Tenant—"Hajat Kami".

'Hajat Kami — Hajat Kami, when applied to rent, would mean relief given to the tenant on account of his want or necessity — Principles stated — Kabuliat not mentioning 'Hajat' — Hajat granted after creation of tenancy — Held that tenant was not entitled to 'hajat'. I L R (1951) 1 Cal 133 : AIR 1955 NUC (Cal) 1064 (DB).

——S. 108 (l)—Rent—Eviction from part of property by landlord—Abatement or suspension.

Where the rent was a lump rent for the whole land leased and the landlord has dispossessed the tenant in a high-handed manner from a portion of the land, the landlord is not entitled to claim any rent on the basis of the contract with the tenant, as the former has acted tortuously in not allowing the tenant to hold the land peacefully. The mere fact that the area dispossessed is a small one is not of an overriding importance so as to dissaude the Court from applying the principles of justice, equity and good conscience if the Court finds that the act of the landlord was definitely a tortuous one. If and when the landlord chooses to put the tenant again in possession of the portion from which the latter had been dispossessed, he will be entitled to the rent and not till then : 70 I A 18, Disting., 12 Suth W R 109, Rel. on. I L R (1952) 1 Cal 59 : A I R 1951 Cal 338 (341) (Prs 28, 29) (DB).

——S. 108 (l) — Silting up of property leased — Tenant can claim abatement of rent from fair rent fixed or from contract rent it no fair rent is fixed.

The tenant's remedy by way of abatement is independent of his statutory right to have the fair rent fixed. If fair rent has already been fixed and if a

portion of the property is silted up, the tenant is entitled to abatement even of the fair rent in proportion to the extent silted up to the extent included in the lease. Similarly, if there has been no fixation of fair rent and there is silting the tenant is entitled to abatement and he is entitled to claim such abatement from the contract rent. That right to claim abatement he does not lose by not pursuing his remedy under the Malabar Tenancy Act before the Rent Court by way of an application for fixation of fair rent. (1962) 1 Ker L R 207: A I R 1962 Ker 239 (239) (Pt A) (Pr 2).

——S. 108 (l) — Agricultural tenancy — Arrears of michavarom—Commutation.

The commutation price of paddy on account of arrears of michavarom should be the rate prevalent at the time it became payable, that is to say paddy payable in each year should be valued at the rate prevalent in that year. 1954 Ker L T 463, Foll. 1956 Ker L T 313.

——S. 108 (l)—Enhanced rent—Right to—Agreement —Necessity.

A tenancy connotes privity between the parties and unless there is an express agreement to pay enhanced rent or circumstances or conduct from which one could be inferred, a claim for enhanced rent cannot stand. AIR 1952 Madh B 56 (57) (Pt B) (Pr 6).

——S. 108 (e) — Remission of rent — Lessee if can claim apart from contract—Lease of shandy tope for a term of years at annual rent — No provision for remission on account of loss due to unexpected cause —Lessee not entitled to remission for loss suffered due to cyclones — Doctrine of frustration does not apply—Contract Act (1872), S. 56.

Where the lease of shandy tope fixing a certain amount as annual rent for a period of five years, did not provide for remission for loss due to unexpected causes beyond the control of the parties, the lessee cannot claim in law remission merely for the reason that the shandy was hit by two cyclones during the period of lease and that for some period on account of the effects of cyclone, the shandy did not form properly or regularly and the lessee did not get any income. In such cases the Court cannot constitute itself into an authority for granting remission on an ex gratia basis to him. The Court has to interpret the terms of the contract, and proceed to grant remission only if the terms provide for it. The Courts have a duty to enforce the contract between the parties, and in the absence of any provision for remission on account of losses, no such remission can be granted by the Courts.

On the facts of the case the doctrine of frustration as laid down in S. 56, Contract Act, did not apply since by reason of the cyclone there was no supervening circumstance making the contract impossible of performance or unlawful. A I R 1963 Mad 94 (95, 96) (Prs 5, 8) (DB).

——S. 108 — Landlord and tenant — Rent — Remission—Lessee undertaking to pay stipulated rent unconditionally 'despite act of State or God' — Unexpected circumstances introduced by passing of Mad. Act 14 of 1952 rendering contract more onerous — Relief from obligation on equitable grounds — Contract Act (1872), S. 56 — Applicability.

Where a lessee, who took on lease a large block of lands belonging to a devasthanam as a commercial or speculative venture and later sublet large portions of his holding to various tenants) undertook to pay the annual rent stipulated in the lease deed unconditionally 'despite act of State or God,' the Court has no power or jurisdierion to relieve the lessee from the obligations undertaken by him on what may be called equitable grounds. The lessee will, therefore, not be entitled to any remission by reason of the advent of unexpected circumstances introduced by the coming into the statute book of Madras Act 14 of 1952. The lessee cannot claim any relief under S. 56 of the Contract Act. The mere fact that a contract has been rendered more onerous does not by itself give rise to frustration. There is no frustration, where performance of contract is physically and legally possible though commercially unprofitable. ILR (1962) Mad 273 : 74 Mad L W 716 : AIR 1962 Mad 122 (124 to 126) (Prs 11, 11a, 15, 17, 18, 19).

——S. 108 (b), (c), (l) — Interruption of quiet enjoyment of possession — Suspension or abatement of rent.

When there is sufficient interruption—substantial interference—it need not be physical dispossession—lessee can plead that his obligation to pay rent or balance of rent due to the lessor be held under suspension or must be held to have abated by reason of the conduct of the lessor. 1960 Mad W N 618 : AIR 1961 Mad 28 (30) (Pt B) (Pr 8).

——S. 108 (b) (c) (1) — Partial eviction by lessor — Lessee not repudating lease — If liable to pay proportionate rent — Land sub-let — Effect.

A tenant may on partial eviction repudiate the whole lease; but if he does not and remains in possession of a portion,he is estopped from pleading nonliability for the rent of the portion in his occupation and he will be liable to pay rent but will be entitled to damages in respect of the eviction and he can set off the damages as against the rent in the landlord's action for rent. But if the annual rent is payable in in one lump sum at the end of the lease period the rent cannot be apportioned. So also where the land is sub-let and the lessor by starting collection of rent from snb-tenants effectively interrupted the lessee from collecting the rent from the entire area no allocation of rent is possible. The lessor should be made to bear the consequences brought about by his own unauthorised and high-handed action of collecting the rents from the sub-tenants and if he is not able to collect the entire rents from them, he cannot look to the lessee to make good the uncollected portion. 23 Mad L J 119 and 54 M L J 354 : AIR 1928 Mad 380, Rel. on. 1960 Mad W N 618 : AIR 1961 Mad 28 (30, 31) (Pt C) (Prs 8, 9, 10).

——S. 108 (c) — Unconditional leases excluding Rajikam and Deivikam — Equitable principles to grant remission — Court has no power.

The lessee is liable to pay in accordance with the contract and there is no power in the Court to relieve him against the obligations under it by invoking any equitable principles. The Court cannot grant remission on equitable principles in the case of unconditional leases excluding Rajikam and Deivikam. The proper forum for agitating this question of remission of rent is the local Conciliation Officer as the civil Court is barred from going into these matters by the tenancy laws. (1959) 1 Mad L J 244.

——S. 108 (l) — Eviction by paramount title from part of demised premises — Whole of rent is not suspended but rent has to be apportioned. AIR 1954 Mad 402 (406) (Pt C) (Pr 11) (DB).

——S. 108 (l) — Severance of reversion — Partition of land subject to mulgeni lease—Integrity of charge for rent on land created under lease deed broken and rent also proportionately partitioned. See Landlord and Tenant — Severance of reversion. AIR 1961 Mys 171.

——S. 108 (l) — Abatement of rent — Assessment of fair and equitable rent — Covenant by landlord to repair — Breach — Right of tenant — Specific performance — Damages by way of compensation — When can be awarded — Specific plea and proof —

Necessity. See T. P. Act, S. 108 (f). AIR 1951 Pat 508 (DB).

—S. 108 (l)—Rent—Reduction—Cosharer landlords — Reduction of share by one or some only — Effect — Transferee from such co-sharers — If bound by such reduction — Right to recover rent at original rate —·Absence of reduction by other co·sharers and absence of evidence of permanent reduction — Inference—Tenure, if one and entire as regards area and rent.

A tenure or holding is an entire thing and cannot carry two rentals. Though the co·sharer landlords in the case of an entire tenancy, may. by private arrangement between themselves, realise their shares of rent separately they are not entitled each separately to alter the rent of the tenure.

The right of several co-sharers to collect separately their shares of the entire rent of the undivided holding rests as an arrangement between them and the tenants as to the mode in which the entire rent shall be collected, but which preserves intact the original tenancy both as regards the area of holding and the rent paid. Where one or some co·sharer landlords accepted a reduced rent from their tenants for some years on the ground that the produce had dwindled down as crops were being damaged by insects, that can only be regarded as a temporary reduction or a temporary remission it being open to a co-sharer to remit a portion of the rent for some years. A purchaser from such co-sharers is not bound by that temporary reduction and is entitled to recover rent at the original rate. The tenant cannot plead as against transferee that the transferor landlord had accepted rent at a reduced rate and that the transferee also was only entitled to the reduced rent, when it is found that rent was being paid to the other co-sharer landlord at the original rate without any reduction at all, unless the tenant makes out a case for a permanent reduction of rent and that the rent was reduced permanently for justifiable reasons. ILR 28 Pat 844: AIR 1950 Pat 22 (24) (Pt C) (Pr 9).

—S. 108 (l) — Suspension of rent — Doctrine of— Landlord tortiously depriving tenant of use of part of premises — Doctrine applies.

In a case where the landlord tortiously deprives a tenant of the use of a part of the demised premises so long as the deprivation continues, the landlord cannot even claim the rent for the rest of the premises which the tenant still continues to occupy. AIR 1961 Assam 52, Foll.; AIR 1935 Pat 38 and AIR 1951 Cal 338; AIR 1929 Cal 395 and AIR 1929 Cal 568 and AIR 1925 P C 97, Rel. on. 15 Ind Cas 711 (Mad) and AIR 1961 Mad 28, Not foll. 64 Punj L R 538 : ILR (1962) 2 Punj 489 : AIR 1962 Punj 385 (387) (Pr 11).

——S. 108, Cl. (l) and S. 111 (d) — Shop owned by three persons jointly leased on rent — Tenant purchasing share from one — Suit by others to recover arrears of rent and eviction — Landlords not entitled to a decree for eviction of the tenant from the entire shop — They are only entitled to a decree for joint possession and for proportionate rent. ILR (1960) 10 Raj 753 : 1960 Raj L W 219 : AIR 1961 Raj 18 (20, 21) (Pt B) (Prs 14, 15).

CLAUSE (M)

38. Duty of lessee to restore property in good condition upon termination of lease.

——S. 108 (m) — Ejectment — Material alteration in accommodation by tenant indicated — What is. See Houses and Rents—U. P. Temporary Control of Rent and Eviction Act (3 :of 1947), S. 3 (l) (c). 1964 All L J 991.

——S. 108, Cl. (m) — Destruction of property by fire not due to negligence of the tenant—Question of restoration, held, did not arise since there was no property to be restored. 67 Bom L R 352 : 1965 Mah L J 537 : ILR (1965) Bom 783 (DB).

——S. 108 — Objections to alterations by company lessee—Right of landlord of Company to object. See Companies Act (1956), S. 17. AIR 1965 Cal 16.

——S. 108 (m) — Question of law — Conversion by tenant of verandah into room. See Civil P. C. (1908), S. 100. AIR 1962 Cal 78 (DB).

——S. 108 (m)—Right of tenant—Nature and extent of—Under general law it is not competent for a party to compel rebuilding or reconstruction — S. 38 (3) of W. B Premises Rent Control (Temp. Prov.) Act, 1950 does not give any higher rights to the tenant than what are found in the ordinary law. See Houses and Rents—W. B. Premises Rent Control (Temporary Provisions) Act (1950), S. 38 (3). AIR 1955 N U C (Cal) 3666.

——Ss. 108 (m) and 106 — Suit for ejectment by tenant against his sub-tenant after expiry of sub-tenancy—Sub-tenant if can plead that he had taken fresh lease from landlord direct—Liability to restore possession — Evidence Act (1872), S. 116.

In a suit for ejectment by a tenant against his sub-tenant on the ground of expiration of the sub-tenancy, the sub-tenant cannot plead that the plaintiff's title to the property had come to an end by a notice from the landlord and that he had obtained a fresh lease direct from the landlord. The defendant being the sub-tenant of the plaintiff, the landlord cannot terminate the sub-tenancy by a notice and therefore there being no threat of ouster from the landlord the defendant cannot set up the landlord's title in answer to the claim of the plaintiff to whom he is bound to restore possession under S. 108 (m), T. P. Act. AIR 1926 Mad 187; AIR 1951 Mad 284; AIR 1939 All 670 and AIR 1931 Lah 243, Dist. AIR 1952 Kutch 19 (20) (Pr 6).

——S. 108 — Extinguishment of tenancy right under S. 82 (3), Kanoon Ryotwari Gwalior State (1974 Smvt.) —Landlord has right to re-enter— There is no obligation to approach Court and obtain order for possession —This is also the general law. See Tenancy Laws—Kanoon Ryotwari Gwalior State, Samwat 1974, S. 82 (3). AIR 1957 Madh-B 79 (DB).

[Reversed in AIR 1968 S C 820].

——S. 108 (m)—Defendant terminating tenancy and offering possession—Premises not in state of proper repairs—Offer refused—Section does not compel defendant to remain in possession—Right of plaintiff.

There is nothing in S. 108 (m) to compel the tenant, who has terminated the tenancy and who has offered to deliver vacant possession and whose offer has been refused more than once, to remain in the premises until the premises, which a recalcitrant tenant might have purposely or otherwise damaged, is put in a state of proper repair. If he fails to comply with any demand, however legitimate it might be from the landlord, the remedy of the landlord would be to sue for damages for the neglect or default or other deliberate acts of the tenant. ('52) 1952-1 Mad L J 459 : 65 Mad L W 1215 : AIR 1953 Mad 996 (997) (Pt B) (Pr 5).

——S. 108 (m)—Waste by tenant.

Omission on the part of a tenant of land to put manure would only lead to lesser returns in the crop and there can be no detriment to the land itself. 1950 Raj L W 52 : AIR 1951 Raj 120 (121) (Pt C) (Pr 10).

——S. 108—Waste.

"Waste" in law is any authorised act of a tenant in possession which tends to the destruction of the tenement or otherwise to the injury of the inheritance.

ILR (1953) Trav-Co 595 : AIR 1954 Trav-Co 239 (240) (Pt B) (Pr 5).

CLAUSE (O)

39. Reasonable use of demised property.

——S. 108 (o) — Right of tenant to make use of accommodation in any lawful manner, extent of. See Houses and Rents—U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. 1959 All L J 343.

——S. 108 (o)—Clause enacts in substance the principles of Roman civil law and the pre-existing law of the land. (1954) 2 Mad L J (Andhra) 217 : AIR 1955 Andhra 62 (64) (Prs 12, 13).

——S. 108 (m), (o) and (p)—Contravention of.

Constructions of a temporary character and which have been made with easily removable materials do not come within the mischief or prohibition of the statute, namely, the Transfer of Property Act, Cls. (m), (o) or (p) of S. 108.

The mere conversion of the store-room into a bath room or even into a lavatory would not necessarily bring the tenant within the mischief of the statute, nor do the cutting of one or two small holes for inserting a small pipe would have that effect.

A commode cannot be called a permanent structure within the meaning of Cl. (p) of S. 108 of the Transfer of Property Act which apparently contemplates some structure or construction and the commode would not come within that description. ILR (1959) 1 Cal 404.

——Ss. 108 (m), (o) and 105 — Tenant taking electric connection in portion let out to him — It cannot be held that he had no right to take electric connection so as to improve those premises and also to increase his own convenience, and comfort. AIR 1959 Pat 1 (FB) and (1892) 2 Ch 253, Foll. AIR 1965 Pat 413 (414, 415) (Prs 6, 8, 9).

——S. 108 (o) and (p) — Lease of house — Tenant putting up temporary shed in compound — No trespass—(Landlord and Tenant). AIR 1955 NUC (Trav-Co) 4116.

40. Use contrary to agreement.

——S. 108 (o) — Premises used by lessee in manner contravening S. 108 (o), T. P. Act (1882) — S. 9A of Calcutta House Rent Control Order (1943) not attracted. See Houses and Rents — Calcutta House Rent Control Order (1943), S. 9A. AIR 1952 Cal 221.

41. Cutting of trees on land.

——S. 108 (o)—Lessee of residential premises cutting bamboos growing in compound — Offence — (Penal Code (1860), S. 378).

The tenant of leased premises, has no right to cut bamboos from the bamboo clumps growing in the compound. The cutting of bamboos does amount to felling timber within meaning of S. 108 (o), T. P. Act. Bamboos are used for building purposes. A lessee is not entitled to fell timber. If the bamboos be considered to be a product of the leased property in view of the fact that fresh bamboos sprout on the cutting of bamboos, the lessee can only use the products. The product of such bamboos cannot be said to be the product of the leased property. The word 'product' in Cl. (o) of S. 108 refers to such substance which can be appropriated without destroying the main object. Such products in the case of a bamboo would be several. The bamboo itself is not to be deemed as the product which can be used by the lessee by cutting it down and then disposing it of or using it himself. Tenant who so cuts the bamboos not bona fide is guilty under S. 379, Penal Code. 1957 All L J 917 : 1957 All W R (HC) 878.

——S. 108 — Raman Nayar J. — In the absence of a contract or local usage to the contrary, a lessee may not fell or sell standing timber whether the trees were there when he entered on the property or came into existence subsequently. 1964 Ker L T 550 : 1964 Ker L J 913 : ILR (1964) 2 Ker 222,

——S. 108 (h), (o) — Trees planted by tenant — Right to.

It is a well-recognised principle of law that what is fixed to the soil goes with the soil (Quicquid plantatur solo solo cedit.) When a tenant plants trees on his holding, the property in such trees attaches, in absence of a contract or custom to the contrary to the land and passes with it. Thus, where a tenant plants trees on the Sardeshmukhi land the property in the trees passes to the landlord on the expiry of his lease and then to the next lessee in absence of reservation of rights in trees. 1 Madh B L R 497 : AIR 1950 Madh B 39 (40) (Pr 2).

——S. 108 (o) — Cutting of trees by lessee — When amounts to voluntary waste.

It is well-settled principle that a lessee has no right to cut or destroy trees which existed on the leased premises when the lease was created, but that trees which have subsequently been planted on those premises by the lessee or which have spontaneously grown after the commencement of the lease may be so removed or cut by him. Where, therefore the trees removed by the lessee existed at the time of creation of the lease the removal by him was an act of voluntary waste for which he would be liable to pay damages to the landlord. (1963) 2 Mys L J 416 : AIR 1964 Mys 179 (180) (Pt A) (Pr 4).

——S. 108 (o) — Mulgeni tenancy to continue from generation to generation—Landlord having no right to resume— His right to possession to arise only on reversion — Property charged for recovery of rent due—Tenant cutting trees existing at time of creation of lease —Measure of damages awardable to landlord during currency of the lease. (1896) A C 490, Rel. on. (1963) 2 Mys L J 416 : AIR 1964 Mys 179 (181, 182) (Pt C) (Prs 13, 14, 15).

42. Working mines and quarries.

——S. 108 — Tenancy created by zamindar — Ownership of the underground rights.

A zamindar is presumed to be the owner of the underground rights in the tenancies created by him in the absence of evidence that he ever parted with them. Sukhdev Singh v. Maharaja Bahadur of Gidhaur. (1952) S C A 1 : 1951 S C J 386 : 1951 A L J (SC) 141 : ILR 30 Pat 931 : (1951) S C R 534 : AIR 1951 S C 288 (293) (Pt D) (Pr 19).

——S. 108 (o) — Permanent settlement of estate — Proprietor having mineral rights—Permanent tenure-holder under proprietor does not acquire mineral rights in absence of express term — Lease by tenure-holder transferring mineral rights is not valid —Lessee working mines — Subsequent law declaring such lease void because lessor himself could not get mining rights—Effect stated — Maxim "tantum prescriptum qantatum possessum" applicability — Temporary suspension of working of mine — Effect. See T. P. Act (1882), S. 8. AIR 1959 Cal 195 (DB).

——S. 108—Deed—Right to minerals.

A lease provided as follows "that you together with your sons grandsons etc, and representatives in succession, shall enjoy and possess the entire lease-hold land as you like by holding khas possession thereof by settling the same with tenants by reclaiming the patis lands to culturable lands by constructing Kutcha and pucca houses, well, tanks, bandh, bricks, brick kiln, lime kiln etc., in the lease hold land as you like or by getting the same done (by others)

and by installing machinery and factory houses according to necessity and be competent to gift away and sell the same according to your sweet will. At the end of the document, however the following condition was imposed: "You (the lessee) shall have no concern with the underground minerals, stones etc. of the leasehold land".

Held that on the true construction of the lease, the lessee had not been given any right in the underground minerals stone etc. The right to make bricks brick kilns and lime kilns as granted in the lease was limited to the making of bricks and brick kilns for domestic purposes that is for use in the construction of houses on the leased land, and that it was not an unrestricted or unlimited right to manufacture bricks for commercial purposes and to take them out of the land and dispose them of to strangers. A I R 1943 Pat 31, ILR 20 Pat 98, I L R 45 Cal 87, Rel. on. **AIR 1952 Pat 387 (389) (Prs 10, 11) (DB).**

43. Any other act which is destructive.

——S. 108 (o)—Voluntary waste by tenant—What is —Law relating to — Remedy of landlord — (Houses and Rents—Madras Buildings (Lease and Rent (Control) Act (15 of 1946), S. 7 (2) (iii).

To constitute voluntary waste by destruction of the premises the destruction must be wilful or negligent; it is not waste if the premises are destroyed in the course of reasonable user and any user is reasonable if it is for a purpose for which the property was intended to be used, and if the mode and extent of the user is apparently proper, having regard to the nature of the property and what the tenant knows of it, and in the case of business premises, to what, as an ordinary business man, he ought to know of it. It is not every act of waste on the part of the tenant which will entitle the landlord to obtain an order of eviction and what should be the nature and extent of the waste will depend on the circumstances of each case. The principle is that a lessee is bound to take care of the demised premises as a man of ordinary prudence would under similar circumstances take of his own property.

Where the tenant without the knowledge of the landlord deliberately overloaded the floor which he knew was not in a condition to bear additional weight and constructed the overhead tank in such a manner as to prove dangerous to the safety of the building,

Held, that the tenant had committed an act of waste within the meaning of S. 7 (2) (iii), Madras Buildings (Lease and Rent Control) Act. **A I R 1956 Mad 54 (56) (Prs 6, 7).**

——S. 108 (o)—For permission to terminate tenancy under C. P. and Berar Letting of Houses and Rent Control Order (1947) landlord should not only prove act of waste on part of tenant, but also that the said act was likely to impair materially the value or utility of the house—Raising of temporary shed without altering or demolishing any part of the house except portion of the front compound wall is not an act of waste. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1947), Cl. 13 (3) (VIII). **AIR 1956 Nag 60 (DB).**

CLAUSE (P)

44. Erection of permanent structures by lessee.

● **——S. 108** — Demised premises belonged to the Board which was a local authority and were outside the operation of S. 4, Bombay Rents, Hotels and Lodging Houses Rates Control Act (1947). The fact that the lessee incurred expenses in putting up the building was precisely the consideration for the lessor for granting him a lease for 999 years not only of the building but of the land as well at what may be a cheap rent which the lessor may not have otherwise agreed to do. By the agreement the building became part of the land and the property of the lessor and the lessee took a lease on that footing. The lessee or a person claiming title through him could not now be heard to say that the building did not belong to the lessor. On forfeiture he re-enters on what has all along his own property. The interest of the lessor in the demised premises could not possibly be described as a contingent interest which would become vested on the expiry or sooner determination of the lease. The City Civil Court had jurisdiction to entertain the suit. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 4. **AIR 1953 SC 16.**

——S. 108 — Waiver — Unauthorised alterations by tenant—Forfeiture—Suit for damages and injunction —Decree—Effect—Forfeiture — If waived. See T. P. Act (1882), S. 111 (b) (g). **AIR 1959 All 33 (DB).**

——S. 108 (e), (p) and (q)—Lease of land and house by A to B—Sub-lease by B to C—House destroyed by fire during subsistence of sub-lease — C constructing houses with permission of head lessor A—B held entitled to recover possession from C without paying value of house constructed — C held entitled to remove structure without permission from B. (1964) 2 An W R 304: **AIR 1965 Andh Pra 167 (170, 171) (Pt B) (Prs 7, 8, 9).**

——S. 108 (p) — West Bengal Premises Tenancy Act (12 of 1956), S. 13 (6) — "Permanent structure" — Meaning of — Test for deciding whether structure is permanent or not—Structure raised by tenant with 3 walls of bricks and mortar and roof of corrugated sheets over leased premises held permanent—1958 All L J 871, Dissented from. AIR 1964 Cal 1; AIR 1962 Cal 78; AIR 1954 Cal 224, Rel, on.; AIR 1959 All 33, Disting. **AIR 1965 Cal 408 (411, 413, 414, 415) (Pt A) (Prs 5, 6, 24, 33, 44) (DB).**

——Ss. 108 (p), 106 — Tenant erecting permanent structure in contravention of S. 108 (p), T. P. Act — Acceptance of enhanced rent within terms of Act does not constitute waiver of right to sue for eviction —Fresh notice of suit, not necessary. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 13 (1) (b). **AIR 1965 Cal 408 (DB).**

——S. 108 (p) — West Bengal Premises Tenancy Act (12 of 1956), S. 13 (6)—Question whether structure is permanent or not is mixed question of fact and law. **AIR 1965 Cal 408 (411) (Pt D) (Pr 5) (DB).**

● **——S. 108 (p)—Permanent structure—Tests.**

The question whether a particular construction is a permanent structure or not for the purpose of Cl. (p) of S. 108, T. P. Act, depends on the facts of each case and no hard and fast rule can be laid down with regard to this matter. In the absence of relevant materials, no answer can be given to the question whether a room with two inches thick brick built walls and a corrugated iron roof, is a permanent structure within the meaning of Cl. (p) of S. 108 of the Transfer of Property Act. Suraya Properties Private Ltd. v. Bimalendu Nath Sarkar. **67 Cal W N 977: ILR (1966) 1 Cal 111: AIR 1964 Cal 1 (4, 6, 13, 14, 21, 23) (Pt A) (Prs 10, 20, 33, 35, 71, 101, 102) (SB).**

——S. 108 (p) — 'Permanent structure'—Meaning of —Mixed question of law and fact.

The word 'permanent' in clause (p) of S. 108 appears to have been used in contra-distinction to what is temporary. If the work of conversion or construction is substantial or brings about a substantial change in the character of the premises and it is not merely a small physical change of a temporary or unsubstantial nature, such work of construction falls within the mischief of the clause. The test of remo-

vability or demolition is not an invariable test. It is a mixed question of fact and law in each case whether the extent or degree of construction or erection is such as to make it partake of the character of permanent structure or not. AIR 1954 Cal 224; 63 C W N 565, Rel. on. 65 Cal W N 626 : AIR 1962 Cal 78 (79 to 81) (Pt D) (Prs 4, 11) (DB).

—S. 108 (p)—Constructions of a temporary character and which have been made with easily removable materials do not come within the mischief or prohibition of T. P. Act S. 108 (m), (o) or (p). ILR (1959) 1 Cal 404.

—S. 108 (p)—Scope of—If controls S. 2 (5), Calcutta Tenancy Act. See Tenancy Laws — Calcutta Thika Tenancy Act (1949), S. 2 (5). (1959) 63 Cal W N 824.

—S. 108 — Thika Lessee holding over — Right to erect permanent structures. See T. P. Act (1882), S. 116. (1959) 63 Cal W N 565.

—S. 108 (p)—Construction of permanent structure without lessors' consent—[Houses and Rents—West Bengal Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 11 (1), Proviso (a)].

Where the tenant of a sweetmeat shop constructed a surface drain upon the floor of the verandah and made many holes in the walls to run water-pipe fittings through them, drove angles in the walls for supporting a 20 gallon water-reservoir which had been placed upon the said angles, and further constructed a pucca masonry wall over 31 feet in height upon the floor of the verandah by digging open a part of its floor and had practically converted a substantial part of the said open verandha into a closed room and also made a pucca construction of sufficient height to serve as a receptacle of refuse matters and all these had been done without the landlords' permission and even despite protest from the landlord;

Held, that the tenant contravened Cl. (p) of S. 108 T. P. Act inasmuch as the pucca constructions were permanent structures within the meaning of the said clause and that this contravention of Cl. (p) was sufficient to disentitle the tenant to the protection of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948. (vide S. 11, sub-s. (1), proviso (a) of the Act). ILR (1955) 2 Cal 275 : AIR 1954 Cal 224 (225) (Pt B) (Pr 9).

—S. 108—Lease—Covenant by lessor to pay value of improvements to lessee after expiry of lease—Nature of—If binds assignee of part of reversion—Reversion sold free from encumbrances — Lessor's liability to pay lessee value of improvements.

A lease of land contained a covenant that the lessee would build structures on the land at his own cost and that on the expiry of the lease the lessor would pay to the lessee half the value of the building and one-third of the value of privy and water taps if so constructed by the lessee.

Held, that the covenant was not a personal one but ran with the land and bound the lessor's assignee, whether the assignment was of a part or of the whole of the reversion. But where the agreement of sale provided that the property was sold free from all encumbrances and that all claims affecting the said property would be paid out of the sale proceeds thereof, vendor was liable to pay the lessee the sums provided for in the lease. In the first place the covenant to pay a share of the expenses for the constructions by the lessee might be regarded as an encumbrance. Further the covenant in question involved a claim affecting the reversion. (1951) 55 C W N 656 : ILR (1953) 1 Cal 34.

—S. 108—Possession and title — A person building on land of another, rights of — Rights of owner of land—Suit for possession of building—Suit cannot be decreed without considering the question of title to land—See Possession. AIR 1963 Ker 297.

—S. 108 (b) — Tenant holding over, building on demised land — Landlord becoming owner of construction under agreement — Subsequent coming into force of the Madras City Tenants Protection Act 1919—Tenant cannot claim compensation or exercise option under S. 9 of the Act. See Tenancy Laws — Madras City Tenants Protection Act (4 of 1919), S. 2 (4). AIR 1964 Mad 285 (DB).

—Ss. 108 Cl. (h), 51 — Improvements by lessee — Doctrine of "equitable estoppel" in Ramsden v. Dyson, (1865-66) 1 H L 129, applicability — Erection of pucca superstructure on vacant site with consent of landlord—Tenant is entitled to claim compensation for superstructure at the time of eviction—Evidence Act (1872), S. 115. See T. P. Act (4 of 1882), S. 51. AIR 1961 Mad 293.

—S. 108—Chalgeni tenant—Right to claim improvements. See T. P. Act (1882), S. 6 (e). AIR 1955 N U C (Mad) 2430.

—S. 108—Landlord and tenant—Customary law — Chalgeni tenants from South Kanara are entitled to value of improvements—(Customary Law). AIR 1955 N U C (Mad) 2430.

—Ss. 108 (p) and (h), 51 —Construction of permanent structures for non-agricultural purposes by tenant—Right of landlord to removal during lease — Doctrine of estoppel by acquiescence—Applicability.

Where a tenant erects a permanent structure on the land for non-agricultural purposes, and during the continuance of the lease, the lessor objects to their erection and there is no waiver or acquiescence on the part of the lessor, then S. 108 (p) must operate and the landlord is entitled to ask for removal of the permanent structures. 27 Mad 211, Rel. on ; A I R 1935 All 1040, Disting.

The prohibition in Cl. (p) however, may not apply when according to the contract of the parties, the land is let for the erection of a dwelling house or shop thereon.

When a tenant raises the plea of equitable estoppel, it is incumbent upon him to show that the conduct of the owner, whether consisting in abstinence from interfering, or in active intervention, was sufficient to justify the legal inference that he had by plain implication, contracted that the right of tenancy under which. the lessee originally obtained possession of the land should be changed into a perpetual right of occupation : 21 All 496 (P C), Foll.

Where due to doubtful character of the structure it was difficult for the landlord to take prompt action for the removal of the structures, the mere erection by the tenant of permanent structures upon the land let to him in the knowledge of and without interference by the lessor will not suffice to raise the equitable right against the latter. 21 All 496 (PC), Foll. ; 40 C W N 52, Ref. A I R 1951 Pat 600 (601, 602) (Prs 5, 6, 7) (DB).

—S. 108 (o) (p)—Landlord and tenant—Lease of house — Tenant putting up temporary shed in compound — No trespass. See T. P. Act (1882), S. 108 (o) and (p). AIR 1955 N U C (Trav-Co) 4116.

—S. 108 (p) — Applicability—Permanent constructions on land by occupant — Effect. See T. P. Act (1882), S. 108. AIR 1957 Tripura 8.

CLAUSE (Q)

45. Upon determination of lease, lessee to put lessor into possession.

—Ss. 108 (q) and 105 — Tenancy other than tenancy at will—Termination of — Notice—Assignment of his rights by tenant without consent of landlord

SECTION 109

SYNOPSIS

(Transfer of Property Act (1882), S. 109.)

1. Scope.
2. "Transfers the property".
3. "Property leased or any part thereof".
4. "All the rights, and if the lessee so elects, be subject to all the liabilities of the lessor".
5. Election by lessee.
6. Notice.
7. Proviso—Arrears of rent.
8. Apportionment of rent.

1. Scope.

——S. 109 – Applicability — Lessor not having subsisting title on date of transfer.

S. 109 clearly and obviously deals with cases where a lessor while there is a subsisting lease in his favour transfers his interests in the land to a third party, and in that case the third party or the transferee takes it subject to certain liabilities if the lessor's tenants or lessees so elect. Where at the date of the so-called transfer the lessor had no interest, left in the property leased no question can arise of the lessor transferring the property to the transferee.

Open plots of land belonging to the Municipality were let out to one A who erected structures thereon and let out tenements in these structures to various tenants. The Municipality filed a suit against A for ejectment and a consent decree was arrived at whereby it was provided that A was to deliver up vacant possession of plots, clear of all structures standing thereon and in case of failure to do this before certain date A was to give up possession of the said plot together with structures thereon to the Municipality.

Held, that S. 109 did not apply as on the date of so-called transfer the lessor A had no interest in the property leased. **AIR 1956 Bom 364 (365, 366) (Pt A) (Prs 3, 5) (DB).**

——S. 109 — Principles of S. 109 — Applicability to joint family property — Suit for ejectment by the coparcener or coparceners to whom the property in possession of a tenant is allotted on partition alone can terminate the tenancy — Notice by such a coparcener or coparceners alone is valid. See Transfer of Property Act (1882), S. 5. **AIR 1965 Madh Pra 1.**

——S. 109 — Lessor has right to sue previous lessee in ejectment, to give possession to new lessee. **AIR 1955 NUC (Punj) 1608.**

2. "Transfers the property".

——Ss. 109 and 5 — Transfer of property — If includes partition — Lease of part of joint property by plaintiff-co-sharer to defendant — Leased property falling to lot of others on partition—Relationship of landlord and tenant between plaintiff and defendant —If ceases to exist—Evidence Act, S. 116.

Partition being a mixture of surrender and a conveyance of rights in a property, is a transfer of property within the meaning of S. 5 and S. 109 of the Transfer of Property Act. Where part of a joint property was leased to the defendant by the plaintiff co-sharer but on partition such property fell to the lot of other co-sharers, on the date of partition the relationship of landlord and tenant ceased to exist between the plaintiff and the defendant. Thereafter the defendant is not debarred from pleading that he is not bound by any relationship of a landlord and tenant so far as he and the plaintiff are concerned. **10 J & K L R 176 : AIR 1952 J & K 18 (18, 19) (Prs 3, 4).**

——S. 109 — Partition — Co-sharers becoming joint lessors of building — Separate suits by co-sharers for their share of rent — Maintainability. See T. P. Act (1882), S. 37. **AIR 1963 Pat 85 (DB).**

——S. 109 — Permanent lease by widow — Widow in possession on reversion which becomes her absolute property on coming into force of Hindu Succession Act — Reversioner will have no claim to it. See Hindu Succession Act (1956), S. 14. **AIR 1962 Pat 131 (DB).**

——Ss. 109 and 106 — Tenancy commencing from first of calendar month—Transfer of rights by lessor —Effect.

If the tenancy between the lessor and the lessee commenced on the first of the calendar month, a new tenancy in favour of the purchaser from the lessor could not be created on 4th July 1950, simply because the property was transferred to him on that date. S. 109 of the Transfer of Property Act clearly lays down that if the lessor transfers the property leased, or any part thereof, or any part of interest therein, the transferee in the absence of a contract to the contrary shall possess all the rights, and if the lessee so elects, be subject to all the liabilities of the lessor as to the property transferred. It further lays down that the lessor, shall not by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him. Therefore, if the plaintiff transferee wanted to terminate the tenancy, he should have given a notice expiring with the end of the month of the tenancy according to the contract between lessor on the one hand and the lessee on the other. **1959 Raj L W 81 : ILR (1959) 9 Raj 97.**

——Ss. 109 and 5 — "Transfers the property" — Includes partition. See Transfer of Property Act (4 of 1882), S. 5. **AIR 1955 Raj 167.**

3. "Property leased or any part thereof".

——S. 109 — Suit for ejection from shop and house —Decree for ejectment from house alone — Decree held was not wrong. **AIR 1955 NUC (Ajmer) 4140.**

——S. 109 — A leasing out to B and C some pieces of jahagir land in Kolhapur State in 1947 and 1948 for four years ending in 1951 and 1952 respectively — In 1949 Kolhapur State merging with Bombay State—Bombay Tenancy Act made applicable to erstwhile Kolhapur State — Subsequently A granting for 12 years lease to D which was an industrial and commercial company — Held that: (1) by virtue of S. 3 of Tenancy Act, S. 105, T. P. Act applied; (2) that the right given to D to recover rent and the right to recover possession from B and C after expiry of their period constituted a transfer of limited interest of the landlord and by virtue of Ss. 5 and 109 such transfer was valid. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 88 (1) (b). **AIR 1956 Bom 749 (DB).**

——S. 109 — Lessee of part of interest in property—Transfer may be of a part of such property or a part of the lessor's interest — Transferee is a landlord and is entitled to apply under S. 7 (3) of the Madras Buildings, Lease and Rent Control Act. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 2. **AIR 1954 Mad 514.**

4. "All the rights, and if the lessee so elects, be subject to all the liabilities of the lessor."

——S. 109—Rights of transferee of lessor —Landlord and tenant both in occupation of house—Sale to third person along with lease making old landlord tenant-in-chief — Decree for ejectment of tenant-in-chief —

Ejectment of tenants in execution—Legality— Rights of tenants not affected –They cannot be ejected without permission of District Magistrate— U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3. AIR 1964 All 453 (454) (Pr 2).

——S. 109 — Sale of house by the landlord during tenancy — Transferee acquires all the rights of the landlord— Fact that the transferee from the landlord is a sub-tenant of the property sold does not abridge his rights of ownership. 1963 All W R (HC) 514 : 1963 All L J 856 : AIR 1964 All 350 (352) (Pt B) (Pr 4).

——S. 109—Transferees from a lessor under different sale deeds — Property transferred in possession of a single tenant—Tenancy is not split up by reason of sale in portion — Transferees jointly seeking permission for the ejectment of the tenant —Permission granted by the District Magistrate under a common order — Permission is not invalid or bad in law in view of the provisions of S. 109 of the T. P. Act. Besides under the Rent Control Act, the District Magistrate has no power to grant permission for ejectment from a portion of accommodation occupied by the tenant. See Houses and Rents—U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S, 3. AIR 1964 All 350.

——S. 109 — Rights of lessor and his transferee in demised property — Nature. See Transfer of Property Act (1882), S. 108. ILR (1961) 2 All 554,

——S. 109 — Second lease by lessor is permissible — On second lease reversionary rights rest in subsequent lessee — Such lessee can eject provious lessee—AIR 1954 Mad 514; AIR 1932 All 314 and AIR 1931 All 649, Rel. on. ILR (1964) 16 Assam 435 : AIR 1965 Assam 55(57) (Pt A) (Prs 4, 5) (DB).

——S. 109 — Transfer of portion of leased land— Transferee's right to terminate lease. See Tenancy laws—Berar Regulation of Agricultural Leases Act (24 of 1951), S. 9. 1957 Nag L J 625.

——Ss. 109 and 55 (1)—Lessor selling property leased— In absence of contract to the contrary vendee acquires all rights of lessor — Vendor executing Kirayanama in favour of vendee making himself liable as tenant to vendee—This is contract to the contrary by lessor-vendor who had leased the property — The lessees do not become lessees of vendee by virtue of S. 109 but become sub-lessees of vendor — Ejectment decree against tenant i. e. vendor — Original lessees, now sub-lessees cannot resist execution of ejectment decree. 1956 MBLJ (HCR) 56.

——S. 109—Transferee acquires rights of lessor only in absence of contract to contrary.

Under S. 109 it is only in the absence of a contract to the contrary that the transferee acquires all the rights of the lessor on the transfer of the property leased.

M who had let out his house to a tenant sold it to M D and executed a kirayanama in respect of entire house in his favour. M D then sold it to N. N obtained a decree for ejectment against M and in execution proceedings sought to dispossess M's tenants. The tenants objected on the ground that they had become tenants of M D and were not bound by the decree obtained by N against M alone.

Held, that the kirayanama executed by M in favour of the M:D was a contract to the contrary and therefore the tenants of M did not become the tenants of M D. They became only sub-tenants. As their title was derived from the tenant M, they were bound by the decree against M and could not resist possession in execution of the ejectment decree against M. 1955 MBLR (Civ) 629 : 1956 MBLJ 958.

——S. 109—Property owned by joint lessors—Assignee becomes the sole lessor and can validly terminate the lease.

Originally the house was taken on lease by the tenant from the plaintiff and his brothers. The family properties later were partitioned and the suit house fell to plaintiff's share. The defendant contended that the fact of partition and the house having been assigned to the plaintiff's share in that partition was not enough, in addition there should have been attornment by the tenant in favour of the plaintiff before he could sue.

Held, that under S. 109 of the Transfer of Property Act the transferee of a lessor was entitled to the same rights as the lessor had. In the instant case, all the brothers were lessors jointly and in the partition the property was assigned to one of them which amounted to a transfer of interest by one to the other. Under the circumstances, the plaintiff had acquired the rights of the lessors and could validly terminate the lease 1963 MPLJ (Notes) 129.

——S. 109—Person entitled to receive rent — Tenant A continuing in possession after expiry of lease — Landlord executing another lease for a period in favour of B — Subsequent lease to commence on delivery of possession—Application by B for A's eviction—On terms of the lease in favour of B, B held not a person entitled to receive rent and therefore was not a landlord so as to entitle him to maintain petition for A's eviction under S. 7 of Madras Buildings (Lease and Rent Control) Act, 1949. See Houses and Rents—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 2 (3). (1957) 70 Mad L W 73 : (1957) 1 Mad L J 121.

——S. 109 — Lease created before applicability of T. P. Act to Saurashtra — Determination of by transferee of landlord—Reasonable notice is sufficient. See Transfer of Property Act (1882), S. 106. AIR 1955 NUC (Sau) 1138.

——S. 109— Assignee of part of premises — Suit for ejectment against tenant from that part is maintainable — (Landlord and Tenant).

A suit for ejectment of a tenant from part of the demised premises is maintainable at the instance of the holder of a superior lease in respect of that part of the premises. It is, however, necessary that the lessor also is made a party to the suit so that the decision relating to apportionment of rent may be binding on the lessor also. AIR 1920 Mad 838 : 37 MLJ 47 (FB); 17 Cochin 79 and 18 Cochin 449, Rel. on. 33 Cal L J 516 and 33 Cal L J 316, Dissented from. 1956 Ker L T 409 : I L R (1956) Trav Co 788 : AIR 1956 Trav Co 265 (266) (Pr 5).

5. Election by lessee.

——S. 109—Statutory attornment under S. 109 of Transfer of Property Act pre-supposes clear and undisputed title in the transferor—Transfer held to be fictitious and lessee not accepting transferee as his landlord — No statutory attornment — Remedy of transferee is to file suit for declaration and possession making lessor and lessee party to it. 1964 M P L J (Notes) 132.

——S. 109— Attornment.

On the transfer by sale of a property which is subject to a lease, whatever shows the assent of the tenant to the alienation of the reversion and his recognition of the alienee as landlord is a valid attornment. A promise to pay rent to the alienee and a tenant's continued occupancy under the tenancy with notice of alienation amounts to a recognition of the purchaser as his landlord. 1960 Mad W N 705 : (1961) 2 M L J 176 : 73 Mad L W 692 : AIR 1961 Mad 200 (203) (Pt A) (Pr 13).

6. Notice.

——Ss. 109 and 106 — Gwalior Transfer of Property Act (Samvat 2001), Ss. 102 and 105 — Original lease commencing before coming into force of Gwalior T. P. Act — Right of original lessor transferred after the Act coming into force — Notice under S. 102 though not necessary, reasonable notice necessary. See T. P. Act (4 of 1882), S. 106. **A I R 1957 Madh Bha 151.**

——S. 109 — Notice by original landlord to tenant after he parts with his rights and sells property to another—Notice cannot have any legal effect or bind latter in any way. **30 Mys L J 145 : ILR (1952) Mys 368 : AIR 1953 Mys 62 (63) (Pt A) (Pr 7) (DB).**

7. Proviso—Arrears of rent.

——S. 109 — Transferee of house along with arrears of rent — Can make demand for arrears of rent — Character of liability as arrears of rent does not change. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1) (a). **AIR 1963 All 47 (DB).**

——S, 109, Proviso — Assignee's title — When complete—Payment to assignor—When protected.

Under the Indian Law a letter of attornment is not necessary to complete the title of the assignee of the reversion. Under S. 109 the title of the assignee is complete on the execution of the deed of assignment and is not postponed till the notice of assignment. But nevertheless under the proviso to S. 109, the lessee is under no obligation to pay rent to the assignee if he has paid it to the assignor without having reason to believe that there was an assignment. Thus where the tenant knows that in spite of the letter of attornment and in spite of the purported assignment, the assignor was holding himself out as his landlord in all the proceedings in Court to which the tenant was party, the tenant must be held to have no reason to believe that any transfer had been made in favour of the assignee and consequently under the proviso to S. 109, Transfer of Property Act, the tenant is not liable to pay rent to the transferee and is fully justified in depositing the rent in the name of the assignor. **I L R (1957) 2 Cal 426 : AIR 1957 Cal 627 (629, 630) (Pt A) (Prs 6, 9) (DB).**

——S. 109 — Applicability—'In the absence of a contract to the contrary' — Possessory mortgage by B in favour of A of his house — House in occupation of B's tenant C — C not attorning to A — Suit by A against C for eviction and arrears of rent — A held not entitled to evict C or claim arrears of rent — S. 109 could not be relied upon. A I R 1955 N U C (Madh B) 3089 (DB).

——S. 109 — Tenancy premises sold—New landlord entitled to receive rent from the date of purchase — Tenant can be saved from liability if he pays rent to previous landlord before receiving intimation of sale — Payment after notice of sale to previous landlord is not binding on new landlord. **1965 M P L J (Notes) 4.**

——Ss. 109, 8—Arrears of rent—Right of ex-proprietor to recover — Liability of lambardar and tenants. See C. P. Land Revenue Act (2 of 1917), S. 188 (2). **AIR 1951 Nag 299.**

——S. 109—'Arrears of rent.'

It is true that according to S. 109 the transferee is not entitled to arrears of rent due before the transfer but where the tenancy is for a fixed term of one year and the rent accrues due only at the end of the year and the lessor has given a clear notice to the lessee that the transferor from him alone would be entitled to the rent from the beginning of the tenancy, the transferee is entitled to sue for arrears of rents for a period even prior to the transfer. **1955 Raj L W 129 : AIR 1955 Raj 167 (172) (Pt G) (Pr 31).**

8. Apportionment of rent.

——S. 109—Transfer of leased premises to different persons - Nature of tenant's possession — Division of obligation to pay rent—Form of suit for.

Under S. 109, where there is a single obligation to pay the rent to a particular landlord that obligation gets divided into several obligations where the initial landlord effects transfer of the leased premises in parts to different transferees. It is open for the initial landlord, the assignees and the lessee to amicably settle the proportion at which the rent is to be paid to different transferees in pursuance of this divided obligation. But where there is no such amicable settlement it can be done by means of a suit. The tenant is lawfully in possession of the premises and by the subsequent act of the initial landlord of selling the leased premises to different purchasers his possession does not become ipso facto wrongful. He continues to be in possession in his own right as a tenant. He would be liable for payment of rent the proportion of which would be determinable in a suit designed for the purpose in the absence of any amicable settlement amongst all the parties concerned. But a suit for the recovery of damages or mesne profits on the ground that the defendant is in wrongful possession of the property is improper. **1960 M P C 107 : 1960 M P L J 172 : 1960 Jab L J 264 : AIR 1960 Madh Pra 247 (1) (247) (Pr 4),**

SECTION 110

——S. 110 — Unregistered lease—It does not create a tenancy to which S. 110 would apply. See Transfer of Property Act (1882), S. 106. **A I R 1955 N U C (Ajmer) 4791.**

——S. 110—Lease not mentioning date of commencement of lease — Lease when commences — Lessee holding over—Effect.

Where in a lease deed no date of commencement is mentioned the tenancy must be held to commence on the day the lease is made. This legal position will not be affected even if the lessee holds over after expiry of the lease and the lessor accepts rent for the period. **('51) 1951 R D (HC) 34 : 1951 All W R (HC) 225 : AIR 1952 All 141 (142) (Pt A) (Pr 7).**

——S. 110 — Applicability — Periodic lease under unregistered deed—Lease is from month to month — Notice to quit expiring with last date of subsequent month—Validity of—S. 106.

Section 110 of the Transfer of Property Act does not apply to a case, where the tenancy has been found to be a tenancy from month to month and where the tenancy cannot be deemed to have commenced under any valid periodic lease in which the tenant on the expiry of the term held over. Where a periodic lease was granted under unregistered deed, the deed cannot be looked into to ascertain the commencement of the lease. In such a case, the lease must be considered to be an oral one from month to month. Where the lease is unregistered, and inadmissible as such, even if it is periodic lease, it must be held to be a tenancy from month to month from its very inception; to such a lease S. 110 is not attracted. Section 110 applies only to leases for a term. Therefore, where a monthly tenancy commenced on the 1st day of a month it could be properly and validly determined by service of a notice expiring on the last day of the subsequent month. A I R 1956 Assam 20, Distinguished; A I R 1952 S C 23; 1951 S C J 813 and A I R 1957 Cal 357, Rel. on. **A I R 1959 Assam 174 (174) (Pt A) (Pr 3) (DB).**

—Ss. 110, 106—Monthly tenancy commencing from 12th of each month — Notice to quit — Date from which tenancy commenced viz., 12th of the month had to be excluded from computation under S. 110. See T. P. Act (4 of 1882), S. 106. A I R 1956 Assam 20 (DB).

—S. 110 — Does not apply to oral monthly lease. A I R 1955 N U C (Assam) 2786.

—S. 110—Lease for 2 years from 1-7-1955 — Lease expires on midnight of 1-7-1957. 63 Mad L J 685 : A I R 1932 P C 279, Foll. A I R 1961 Cal 175 (176) (Pt A) (Pr 5) (DB).

—S. 110, first paragraph—Date of commencement of lease—Agreement to grant lease—Effect of.

The provision in S. 110, T. P. Act that 'where no day of commencement is named, the time so limited begins from the making of the lease applies only when a lease has been made in the way required by law as provided in S. 107 of the Transfer of Property Act. The provision cannot possibly have the same effect when only an agreement to execute a lease in future is being considered as it has where the lease has been executed. In the latter case, namely, where the lease has been executed in accordance with law and no day of commencement is named, the day of commencement is, by operation of law as provided in this section, the day of the making of the lease. Where, however, the lease has not been made, the date of the making of the lease is not yet ascertained and so there can be no question of the time of the lease beginning, in fact, from the making of the lease. To say this is however, not to say that the provision of S. 110 cannot or should not be taken into consideration in reading the mind of the parties to an agreement for the lease. The knowledge of the provisions of S. 110 of the Transfer of Property Act as regards the commencement of the lease and the conduct of the parties as influenced thereby are important circumstances to be taken into consideration in deciding whether an agreement has been reached by the parties as regards the date of commencement of the lease. A I R 1919 Cal 837, Rel. on.

Held, that in view of the surrounding circumstances of the case and in view of the provisions of S. 110 of the Transfer of Property Act it was reasonably clear that the parties intended that the date of execution of the lease would be the date of commencement of the lease and that was why no necessity was felt of entering into any express agreement as to the date of the commencement of the lease. The absence of any express stipulation as to the date of the commencement of the lease did not prevent the agreement for lease from being a concluded agreement. A I R 1960 Cal 361 (366, 367, 374, 375) (Pt B) (Prs 13, 22, 78, 79) (DB).

—Ss. 110, 111 (h) and 116—Tenant holding over—Termination of tenancy.

The mere fact that rents are paid and received according to the English Calendar months is not sufficient to show that the month of the tenancy runs according to the English Calendar month. The manner or mode of payment of rents may be an important element or factor to be considered on the point, but it cannot be the sure indication of the month of the tenancy in all cases.

Held, on the facts and circumstances of the suit which was one for ejectment of a tenant holding over and which involved the question of the validity of issue of notice to quit that the month of tenancy even after the expiry of the original registered lease continued as before; that is, ending with the 7th of an English calendar month, and there was no change in that respect. 61 Cal W N 407 : A I R 1957 Cal 357, Rel. on. 61 Cal W N 528 : A I R 1957 Cal 649 (650, 651) (Pt A) (Prs 14, 15) (DB).

—S. 110—Tenancy—Tenancy according to Bengali Calendar—Tenancy of non-agricultural land for seven years commencing from 1344 B.S. expiring with end of Ashar 1351 B.S.—Suit for ejectment in 1950 after service of notice to quit with Bengali month of Chaitra 1356 B.S. — Notice held valid and sufficient—S. 110, even if it applied would not affect the position or make any difference. See Tenancy Laws — W. B. Non Agricultural Tenancy Act (20 of 1949), S. 9 (1) (b) (iii). A I R 1957 Cal 479 (DB).

—S. 110—Applicability — Monthly tenancy commencing from first day of month — Section 110 does not apply — Notice to quit expiring on last day of subsequent month — Validity. See T. P. Act (1882), S. 106. A I R 1957 Cal 357 (DB).

—S. 110, Second Paragraph—Applicability.

The second paragraph of S. 110 comes into operation when the date of termination is not mentioned in the lease. 58 Cal W N 696 : A I R 1955 Cal 226 (227) (Pt A) (Pr 3) (DB).

—S. 110 — Applicability — Does not apply to a monthly tenancy. See Transfer of Property Act (1882), S. 106. A I R 1955 N U C (Madh B) 3022 (DB).

—S. 110 — Tenancy for one year — Notice to quit expiring at the last date of the month is a bad notice. See T. P. Act (1882), S. 106. A I R 1955 N U C (Madh B) 69 (DB).

—S. 110 — Tenancy for a fixed term of eleven months — Tenancy commenced on 20-4-1949 — In computing date of termination of tenancy that day, i. e. 20th will have to be excluded as provided under S. 110. See Transfer of Property Act (1882), S. 106. A I R 1959 Madh Pra 293.

—Ss. 110, 106 and 116 — Lease for fixed period—Date of commencement not fixed — Tenant holding over without further agreement—Notice of eviction—Lease must be deemed to have commenced from 1st of the month when it was made—Question of exclusion of particular day, held did not arise. See T. P. Act (4 of 1882), S. 106. A I R 1952 Mys 139.

—S. 110—Tenancy from month to month—Can be validly determined by notice expiring on last day of a subsequent month. I L R (1937) Nag 214 : A I R 1937 Nag 139. Overruled. See T. P. Act (1882), S. 106. A I R 1950 Nag 233 (DB).

—S. 110—Applicability to monthly tenancy.

Provisions of S. 110 of Transfer of Property Act are not applicable to a monthly tenancy as it is not a case where any time has been limited by the lease. Hence, the date of expiry of a monthly tenancy commencing on the first day of the month would be the last date of the month and not the 1st of the next month. (1960) 2 Orissa J D 421 : I L R (1961) Cut 122.

—S. 110—Applicability — Whether section applies to written lease only—(Quaere). I L R (1949) 1 Cut 231 : A I R 1950 Orissa 1 (4) (Pt A) (Pr 9) (DB).

—Ss. 110 and 105—Applicability — S. 110 does not apply to tenancy not for a term — Lease from month to month is not lease for a term. ILR (1949) 1 Cut 231 : A I R 1950 Orissa 1 (4) (Pt B) (Pr 9) (DB).

—Ss. 110 — Commencement of lease — Substantial portion of premium paid — Lessor agreeing to put lessee in possession on very date of execution of lease deed—Lease becomes operative on date it was made—Intention to postpone commencement from date on which balance of premium was paid, cannot be inferred. See T. P. Act (4 of 1882), S. 105. AIR 1965 Pat 39 (DB).

—S. 110 — Applicability to State where T. P. Act is not in force.

In a State where the Transfer of Property Act is not in force, a notice of ejectment served in time on the tenant in accordance with S. 106 of the Act will not be invalid simply on the ground that it did not strictly comply with the technical provisions of S. 110 omitting to include the first day of the following month as the end of the month of the tenancy. 57 Punj L R 473 : 1LR (1955) Punj 1274 : AIR 1955 Punj 238 (239) (Pr 6).

SECTION 111

SYNOPSIS

(Transfer of Property Act (1882), S. 111.)

1. Scope.
2. Clause (a)—Determination by efflux of time.
3. Renewal of lease.
4. Clause (b)—Term limited conditionally.
5. Clause (c)—Cessor of lessor's interest.
6. Death of lessor and lessee.
7. Clause (d)—Merger.
8. Surrender—General.
9. Express surrender—Clause (e).
10. Implied surrender—Clause (f).
11. Clause (g)—Forfeiture—General.
12. Forfeiture for breach of condition.
13. Forfeiture for denial of title.
14. Notice of intention to determine lease on forfeiture.
15. Re-entry on forfeiture.
16. Clause (h)—Notice to quit or determine the lease.
17. Lease and Rent Control legislation.
18. Tenancy at will.
19. Joint lessors—Termination of lease.
20. Possession after determination of lease.

1. Scope.

● —S. 111 (g) — Principles embodied in S. 111 (g) are equally applicable to tenancies to which T. P. Act does not apply. A I R 1965 S C 1923 (1928) (Pt A) (Pr 11).

—S. 111 — Right to determine tenancy and eject tenant — Basis of right — Right to evict and right to bring suit for eviction — Distinction. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3. 1965 All W R (HC) 161 : 1965 All L J 249.

—S. 111 — Vacancy — Meaning of — Sub-letting amounts to vacancy—Abandonment of tenement also covered by the definition—Termination of a tenancy in any of the manners laid down in S. 111 is not enough to justify a District Magistrate's passing an allotment order in respect of it, the accommodation must be vacant. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 2 (b). 1962 All L J 553.

[Overruled on another point in A I R 1966 All 280].

—S. 111 — Determination of tenancy — Modes of indicated. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. 1959 All L J 343.

—S. 111 — Applicability — Notice complying with S. 111—Lease governed by S. 106 can be determined by such notice. See Transfer of Property Act (1882), S. 106. A I R 1958 All 729 (DB).

—S. 111 — Determination of lease — Essentials for indicated. See Transfer of Property Act (1882), S. 106. A I R 1958 All 32.

—S. 111 — Termination of lease — What would amount to — Gift by Riyaya of houses—Right of the zamindar.

The mere execution of a deed of gift by itself does not amount to abandonment entitling the zamindar to recover possession. In such cases of prohibited transfers two questions will always arise between the zamindar on the one hand and the transferor and the transferee on the other. The first is whether the transfer as between the transferor and transferee is itself valid according to law transfer of property and if is valid then whether such a transfer is prohibited either by the general law or by any custom or contract as between the zamindar and the transferor. If the transfer itself is invalid it conveys no title and is no transfer in law. The zamindar would in such a case automatically fail to recover possession. But if the transfer is valid then it becomes inoperative against the zamindar and as the person having the title he can recover possession.

Where a Riyaya made a gift of houses and the donees were in possession it was held that the transferee had renounced his rights but that the transferee did not get any rights against the zamindar who was therefore entitled to possession. 1951 All W R (HC) 11.

—S. 111—Applicability — Suit for recovery of possession and arrears of rent—Plaintiff making averment relying upon provisions of S. 13 (1) (g) of Bombay Rents Act (57 of 1947)—Held the view that the suit fell under S. 111, T. P. Act was beyond the scope of plaint itself. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 13 (1) (g). A I R 1957 Bom 201 (DB).

—S. 111—Tenancy can be determined in any of the modes laid down in S. 111 — Once tenancy is determined under S. 108 (q) the lessee is bound to put the lessor into possession of property. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 28. AIR 1953 Bom 76 (DB).

—S. 111 — Decree — Executability — Declaratory decree — Not executable — Judgment-debtors, held, were not liable to ejectment without giving notice as required by S. 111 and execution of decree was barred by provisions of T. P. Act - Decision of single judge dated 4-6-1964, Reversed. See Civil P. C. (1908). S. 47. 1965 Kash L J 369 : AIR 1966 J and K 13 (DB).

—S. 111—Determination of lease by tenant—Duty of lessee.

A tenancy cannot be terminated by merely vacating the house or not paying the rent. It is necessary for the tenant to inform the landlord and deliver vacant house to him for surrendering the tenancy. 1960 M P L J (Notes) 116.

—S. 111 — Lease invalid — Lessee entering into possession under lease and paying rent — Presumption of monthly or yearly tenancy under S. 106 may arise — Lessee is neither tenant-at-will or tenant-at-sufferance — Lease has to be determined in one of the ways mentioned in S. 111. See T. P. Act (1882), S. 106. AIR 1955 Nag 306 (DB).

—S. 111 — Applicability — Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11.

Section 111, T. P. Act, has no application to the proceeding for eviction under the Bihar Buildings (Lease, Rent and Eviction) Control Act. AIR 1949 Mad 780, Rel. on. ILR 30 Pat 366 : AIR 1951 Pat 529 (532) (Pt D) (Pr 11) (DB).

—Ss. 111 and 1 — Applicability — To State of Punjab.

Section 111 of the T. P. Act has no application to the Punjab. The provisions of this section have not been applied as a rule of equity, justice or good conscience by any of the High Court in the territories to which this provision is not made applicable under S. 1 of T. P. Act. ILR (1963) 2 Punj 1 : 1963 Cur L J 377 : AIR 1964 Punj 210 (211) (Pt A) (Pr 4) (DB).

——S. 111 — Rajasthan Minor Mineral Concession Rules, 1959, R. 17 (21) — Provisions of T. P. Act do not apply to mode and manner of determination of lease granted under the Rules. See Rajasthan Minor Minoral Concession Rules (1959), R. 17 (21). 1964 Raj L W 380.

——S. 111 — Notice to quit — Lease executed before the T. P. Act will be governed not by provisions of that Act but by local law — Hence technical requirements of notice under S. 106 are not applicable to notice to quit given in such a case. See T. P. Act (1882), S. 106. AIR 1955 NUC(Sau) 97i.

——S. 111 — Building lease — Right of tenant to carry out repairs on failure of landlord to do it— Extent of—Tenant entitled to maintain it in such condition as is fit to be used for the purpose for which it was let—Repairs necessitating renewal and replacements of parts — Incidents of lease will continue to attach to subject-matter of lease notwithstanding such alteration — Lessor cannot get premature termination of lease by failing to carry out repairs and allowing the building to be destroyed by natural causes. See T. P. Act (1882), S. 108 (f). ILR 1955 Trav-Co 1262.

——Ss. 111, 105—Ejectment suit—Tenant, not tenant-at-will — Onus — Tenant building house on land with landlord's permission — Effect — (Easements Act (1882), S. 60).

In suit for ejectment the burden of proof lies on the plaintiff to show that he has a right to eject the defendant before the onus shifts to the defendant to prove that he has right of permanant occupancy.

Where the defendants are not tenants-at-will, their rights are to be governed by the terms of the agreement. Where in such a case the landlord has allowed the defendants to build a house on the land, the defendants cannot be ejected so long as the house continues to exist on the site, where the licencor has not proved that he had specifically reserved the right to revoke the licence at any time he liked. AIR 1955 Tripura 7 (8) (Prs 7, 8).

2. Clause (a) — Determination by efflux of time.

● ——Ss. 111, 105 — Sub-lease of land by fixed rate tenant on 14.5.1946 for five years — Rights of sub-tenant on expiry of period — Effect of U. P. Zamindari Abolition and Land Reforms Act, 1950 repealing U. P. Tenancy Act — Suit for ejectment of sub-tenant filed on 31-6-1951 — Sub-tenant not liable to ejectment — He becomes adhivasi and then sirdar under U. P. Act of 1951. 1963 All L J 288, Overruled. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20 (a) (ii). AIR 1964 All 498 (FB).

——S. 111 — Lease determining by efflux of time — Surrender of leased property during pendency of suit — No further act by lessor, such as a notice to quit is necessary to determine lease. See T. P. Act (1882), S. 52. (1963) 2 An W R 465.

——S. 111 — Expiry of period in rent note executed after Hyderabad Rent Control Order — Effect — Tenant does not become trespasser. See Houses and Rents — Hyderabad Houses (Rent, Eviction and Lease) Control Act (20 of 1954). 1959 Andh L T 206.

——S. 111 (a) — Applicability — 'Annual tenancy'— Tenancy commencing at end of one cultivating season and termination at end of succeeding cultivating season — Termination of — Notice of termination is necessary under Bombay Land Revenue Code. S. 84. See Bombay Land Revenue Code, S. 84. AIR 1952 Bom 361.

——S. 111 (a) — Agricultural lease for fixed period is terminable by decree of Court — Suit for ejectment lies even though tenant is not in actual possession — (Tenancy Laws— Bengal Tenancy Act (8 of 1885), S. 89). 56 Cal W N 174 : AIR 1952 Cal 567 (568, 569) (Pt A) (Pr 7).

——Ss. 111 (a) and 117 — Scope — Principle underlying — Applicability to agricultural leases.

Clause (a) to S. 111 of the T. P. Act which provides that a lease of immovable property determines by efflux of time limited thereby is necessarily not a recognition of the principle of justice, equity and good conscience and in any case it cannot be applied to agricultural leases which are governed by special laws in the absence of a notification to that effect by the State Government. 1953 S C J 306 : (1953) 1 M L J 715 ; AIR 1953 S C 228, Rel. on. AIR 1963 Him Pra 34 (35) (Pt A) (Pr 6).

——S. 111 — Lease for fixed period ending on January 16, 1951 — On that date if automatically determined by efflux of time. See T. P. Act (1882), S. 106. AIR 1955 NUC (Madh B) 1197.

——S. 111 (a) — Determination of tenancy by efflux of time — Position of tenant after termination of tenancy would be that of licencee or trespasser. AIR 1955 NUC (Madh B) 52.

——S. 111 (a) — Lease determined by efflux of time— Notice under S. 106 not necessary. See T. P. Act (1882), S. 106. AIR 1955 NUC (Madh B) 52.

——S. 111 (a)—Lease for a fixed period commencing from certain date — Notice asking tenant to deliver possession on expiry of lease — Date of termination not mentioned — Tenant receiving notice more than a month before expiry — Notice is valid. See T. P. Act (4 of 1882), S. 106. 1961 Jab L J 311.

——S. 111 (a) — Determination of lease by efflux of time — Lease providing for enhanced rent if lessee did not vacate but continued in possession, after expiry of term—Lessee continuing in possession after expiry of term but paying no rent — No evidence to show that lessor assented to continuance of lessee as tenant — Lease held determined after expiry of term—Ejectment suit—Date of determination of lease is starting point of limitation—Limitation Act (1908), Art. 139. I L R (1964) Cut 374 : A I R 1965 Orissa 11 (12) (Pt A) (Prs 3, 5).

——Ss. 111 and 114 — Suit for ejectment of lessee expressly based upon expiry of term of lease and not on determination by forfeiture —:Relief under S. 114 could not be granted. 1960 B L J R 403.

——Ss. 111 (a), 116 — Lessee before determination of lease by efflux of time applying to Custodian under S. 5-A of East Punjab Evacuees' (Administration of Property) Act (14 of 1947) — Custodian impliedly assenting to continuance in possession — Lessee does not become trespasser.

Section 111, cl. (a) which deals with the termination of leases by efflux of time has to be read with S. 116. Where before the determination of the lease by efflux of time the lessee applies to the Custodian for the confirmation of the lease under S. 5-A, East Punjab Evacuee's (Administration of Property) Act, 1947, and the Custodian impliedly assents to his continuing in possession, the lessee does not become trespasser. A I R 1950 East Punj 175 (179) (Pt B) (Pr 22).

——Ss. 111 and 116—Tenancy for fixed term—Determination of, by efflux of time — Notice to quit not

necessary—Statutory protection under Rent Control Legislation—Forfeiture—Tenant continuing in possession — Nature of possession of tenant. See T. P. Act (1882), S. 108. AIR 1962 Raj 100.

3. Renewal of lease.

——S. 111—Covenant for renewal runs with the land — Both the lessor and the lessee and their successors in title are bound by it — Lessee is not liable to be ejected, where he has exercised that option before expiry of term against assignee from lessor or lessee. See T. P. Act (1882), S. 40. AIR 1959 Assam 22 (DB).

——S. 111 — Renewal of lease — If the option in a lease does not state terms of renewal, the new lease will be for same period and on same terms as original lease in respect of essential conditions thereof except as to covenant for renewal. See T. P. Act (1882), S. 105. AIR 1955 NUC (Assam) 2804.

——S. 111—Renewal of lease.

Ordinarily, a lease will be determined after the expiration of the term of the first renewal. This does not, however, mean that there will be no renewal at all thereafter and the lease will be deemed to be exhausted after the first renewal. The lease may contain a covenant for perpetual renewal. Even if there is no such agreement, the lessor in his discretion may allow the lessee to remain in possession of the leasehold and may renew the lease with the consent of the lessor. There is no legal bar to such a renewal after the expiry of the first renewal. 1957 B L J R 662 : I L R 36 Pat 532.

4. Clause (b)—Term limited conditionally.

——S. 111 (b) or (g) — Distinction between Cls. (b) and (g) — Indicated — Lease to company — Clause determining lease on liquidation and also providing for re-entry—Liquidation of company—Applicability of Cls. (b) and (g) — Notice to determine lease by some of lessors — Lease whether determines — Right to possession—Companies Act (1913), S. 178.

In forfeiture "the term created by the instrument" is defeated on the happening of a particular event or the doing of a particular act — that is sub-cl. (g). In sub-cl. (b) on the other hand, the term does not come to an end on the doing of an act or the happening of an event. It applies where the time is limited conditionally on the happening of some event and that event happens.

In (b) the term is fixed conditionally and depends upon the happening of a future event. In (g) the term is brought to an end by a defeasance clause. This is the difference between (b) and (g).

A lease for a term of 99 years, granted to a company, contained, among others, the following clause: "In case the company goes to liquidation voluntarily or otherwise, this lease shall cease to be operative and the Company shall forthwith make over possession of the abad (the property in question) to the proprietors". The Company went into voluntary liquidation. Later a compulsory winding up order was also made.

Held (i) that sub-cl. (b) did not apply to the case under consideration. The term in the case was not fixed conditionally on the happening of some event within the meaning of sub-clause (b).

(ii) The lease contained an express condition on the breach of which forfeiture was incurred.

(iii) The notice to determine the lease was not a good notice. Therefore there was no determination of the lease by forfeiture. Therefore the liquidator under S. 178, Companies Act, was entitled to possession.

(iv) Queere: Whether 'insolvency' in Cl. (g) included 'liquidation' of a company. (1902) A C 187, Ref. A I R 1952 Cal 207 (208 to 210) (Prs 13, 16, 24, 30, 31, 32, 34).

——S. 111 (b)—Applicability.

A lease was for a fixed period of 40 years and the time for which the lease was granted was not limited conditionally. On the contrary, the condition was one of defeasance that if the lessees carry on any other business than manufacture of salt or its bye-products, the lease shall stand cancelled automatically.

Held, that the lease was not governed by Cl. (b) of S. 111. AIR 1957 Orissa 35 (37) (Pt C) (Pr 9) (DB).

——Ss. 111 (b) and (g) 3, (1) —Scope of — Kabuliat executed by lessee for 5 years — Condition of termination on hapening of an event — Binding character of—Ss. 106 and 107.

Cases in which the term itself is limited conditionally on the happening of some event and cases in which the term is defeated under a condition in the lease on the happening of an event would all fall under Cl. (b) if they do not fall under Cl. (g) (1). If the term is defeated on account of a default on the part of the lessee then alone the case can come under Cl. (g) (1). If however the term is defeated by the happening of a particular event then it is a case in which time is limited conditionally on the happening of some event within the meaning of cl. (d). A I R 1952 Cal 207, Diss. from. 1959 Raj L W 162 : I L R (1959) 9 Raj 31 : A I R 1959 Raj 24 (26, 27) (Pt A) (Prs 13 to 16).

5. Clause (c)—Cessor of lessor's interest.

——S. 111 (c) — Effect of redemption on lease by mortgagee—On mere redemption of mortgage without the mortgagor exercising his option of putting an end to tenancy, the tenancy does not automatically and ipso facto lapse on date of redemption. See T. P. Act (1882), S. 76 (a). AIR 1954 All 16 (DB).

——S. 111 (c) — Monthly tenancy created by mortgagee in possession—Subsequent suit for redemption by mortgagor — Decree for redemption — Tenancy terminates and tenant is not entitled to protection from eviction. See T. P. Act (1882), S. 76 (a). AIR 1963 Bom 42 (DB).

——S. 111—Lease by mortgagee in possession—When interest of mortgagee comes to an end, the lease created by him also determines. See T. P. Act (4 of 1882), S. 76. AIR 1958 Bom 53.

——S. 111 (c) — Sub-tenancy lawfully created by tenant—Sub-tenant cultivating land — Sub-lease will be determined by expiry of period of the head lease. 59 Bom L R 101, Overruled. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (47 of 1948), S. 4. AIR 1957 Bom 195 (FB).

——S. 111 — Suit for redemption — Tenant of mortgagee made party to suit but not party to compromise between mortgagor and mortgagee—Decree not binding on tenant — Lease in favour of tenant however came to an end on decree for redemption of mortgage and he could not continue in possession—Actual possession and not mere symbolical possession should be given to mortgagor — Remedy for mortgagor against order of trial Court ordering symbolical possession was by way of appeal and not suit. See Civil P. C. (1908), O. 21, R. 36. AIR 1963 Guj 328.

——S. 111 (c)—Lessor's interest in property ceasing —Termination of lease — Conflict between Evacuee Propeity Act and House Rent Control Act—Effect of.

The power given by Ss. 8 and 11 under the Hyderabad Administration of Evacuee Property Regulation to the Custodian as lessor of the evacuee property are inconsistent with the provisions of the Hyderabad Houses (Rent, Eviction and Lease) Control Act. Therefore, a tenant holding the premises under the

Custodian cannot assert that during the period the property vested in the Custodian she got some statutory rights which continue even after the interest of the lessor (Custodian) has ceased. It follows that, in the absence of such statutory rights in favour of the tenant, the general rule of law, that the termination of the superior tenure affects all sub-tenures will apply. ILR (1955) Hyd 71 : AIR 1955 Hyd 98 (100) (Pt B) (Pr 8) (DB).

——S. 111 (c) — Lease by usufructuary mortgagee—Duration—Redemption by mortgagor—Effect.

The general rule is that a person cannot by transfer or otherwise, confer a better title on another than he himself has. A usufructuary mortgagee, therefore, cannot create an interest in the mortgaged property which will enure beyond the termination of his interest as mortgagee. It follows that he may grant leases not extending beyond the period of a mortgage; any lease granted by him must come to an end at redemption. AIR 1952 S C 205, Rel. on.

The interest of a tenant of a mortgaged house therefore comes to an end on redemption of the mortgage and the mortgagor is entitled to actual possession of the house in execution of his decree for redemption. ILR (1952) Hyd 1012 : AIR 1953 Hyd 129 (129) (Pt A) (Prs 4, 5).

——S 111 (c)—Tenant from usufructuary mortgagee — Redemption — On termination of mortgagee's interest in property by redemption, lease also terminates under S. 111 (c). See also Houses and Rents—Hyderabad House Rent Control Order (1353 F), Cl. 8. AIR 1953 Hyd 129.

——S. 111 (c) — Mortgagee in possession granting lease not for specific period — S. 111 (c) does not apply—Determination of lease will be in manner provided by S. 106. See T. P. Act (4 of 1882), S. 106. AIR 1955 Kutch 11.

——S. 111 (c)—Order commandeering house—Effect of, on existing tenancy — Under S. 111 (c), when the lessor's power to dispose of property terminates the lease itself terminates. See Houses and Rents—Madhya Bharat Sthan Niyantran Vidhan (1950), S. 14. AIR 1955 N U C (Madh B) 3060.

——S. 111 (c) — Redemption of usufructuary mortgage - Lessee from mortgagee cannot continue after redemption—Nature and extent of lessee's title after redemption. See T. P. Act (1882), S. 60. 1961 M P L J 924.

——S. 111 (c)—Original lease registered — Surrender of portion—Registered instrument necessary.

Though no writing is ordinarily necessary for surrendering a tenancy, if the original lease is registered, the surrender of a portion of the tenancy with an abatement of rent can only be effected by a registered instrument as in such a case the surrender involves a variation of the original contract of tenancy. Oral evidence as regards such surrender is inadmissible under S. 92 of the Evidence Act. 63 Ind Cas 483 (Cal), Foll. 1960 Mad W N 618 : AIR 1961 Mad 28 (30) (Pt A) (Pr 7).

——S. 111 (c)—Usufructuary mortgage — Interest of lessee from mortgagee terminates on redemption. See Evidence Act (1872), S. 115. AIR 1956 Mad 301.

——S. 111 — Tenant of mortgagee — Status of—If mortgage is redeemed and owner becomes entitled to possession the tenants of mortgagee cannot set up title as against such owner. See Houses and Rents—Punjab Urban Rent Restriction Act (6 of 1947), S. 2(1). AIR 1953 Punj 297 (DB).

——S. 111—Decree for redemption against mortgagee and his tenant — Tenant if can claim protection from eviction—Title of tenant of a mortgagee is precarious and comes to an end upon termination of interest of mortgagee in the property as is provided by S. 111. See Houses and Rents—East Punjab Urban Rent Restriction Act (3 of 1949), S. 2 (c) and (i). AIR 1951 Punj 404 (DB).

——S. 111—Tenant inducted by mortgagee in possession—Redemption of mortgage — Eviction by mortgagor - Tenant cannot be evicted notwithstanding termination of his tenancy on redemption. See Houses and Rents—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 13. 1965 Raj L W 333 : ILR (1965) 15 Raj 780 : AIR 1966 Raj 19 (DB).

——S. 111 (c)—Plea of cesser of landlord's interest is not denial of his title. See Evidence Act (1872), S. 116. AIR 1957 Raj 357.

——S. 111—Lease by mortgagee — Effect of redemption—Lease determines when lessor's interest ceases —Mortgage redeemed — (Subsidiary rights, such as lease rights created by mortgagee ipso facto, come to end) — Lessee must be treated as trespasser, unless fresh lease is held to have been created by conduct of parties — Plaintiff is entitled to mesne profits from date of payment of mortgage money—(C. P. Code (1908), O. 20, R. 12). AIR 1955 N U C (Trav-Co) 3476 (DB).

6. Death of lessor and lessee.

——S. 111—Month to month tenancy—Does not determine on death of tenant except under a special contract to that effect. See Transfer of Property Act (1882), S. 108(j). AIR 1957 Cal 173.

——Ss. 111 and 117-A—Death of deemed tenant under S. 4 prior to 1956 amendment — Deemed tenancy not heritable — Distinction between deemed tenancy and contractual tenancy indicated. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (56 of 1948), S. 2(18). AIR 1964 Guj 183 (DB).

7. Clause (d)—Merger.

——S. 111 (d)—Merger—Lessee acquiring share in leased property — Acquisition by Mokarraridar of portion of lakhraj interest — (Landlord and tenant—Lease, merger.)

If the lessor purchases the lessee's interest, the lease no doubt is extinguished as the same man cannot at the same time be both a landlord and a tenant, but there is no extinction of the lease if one of the several lessees purchases only a part of the lessor's interest. In such a case the leasehold and the reversion cannot be said to coincide. Hence, in the case of an estate which is subject to lakhraj and mokarrari interests, mere purchase by one of the several joint holders of the mokararri interest, of portions of the lakhraj interest cannot bring about an extinction of the lease or break its integrity. There is no coalescence of the interest of the lessor and the lessee in the whole of the estate and that being so, the mokarrari interest of the purchaser does not merge in his lakhraj interest. 1951 All L J (SC) 20 : 1951 S C J 252 : 1951 S C R 153 : 64 Mad L W 531 : (1952) S C A 429 : I L R 30 Pat 664 : AIR 1951 S C 186 (188, 189) (Pt A) (Prs 9, 10).

——S. 111 (d)—Sale of demised property to tenant determines lease even though sale is one with a condition for repurchase — Tenant's possession after reconveyance of property in the absence of fresh agreement of tenancy is wrongful — Tenant remains full owner of property from date of his purchase until resale by him in the absence of provision for keeping tenancy right alive either in sale deed or the agreement to reconvey — Hence execution of agreement to reconvey makes no difference to applicability of section to the case. AIR 1951 S C 186, Rel. on. I L R 24 All 487, Disting. 1963 All W R (HC) 766 : 1964 All L J 13 : I L R (1964) 1 All 292 : AIR 1964 All 542 (543) (Prs 12, 13) (DB).

——S. 111 (d)—Merger — To constitute merger there must be union of entire interest of the lessor and the lessee—Usufructuary mortgage of tenancy land—Purchase of equity of redemption by sole proprietor — There is no complete merger of proprietary and tenancy rights. **1952 All L J (Rev) 234 : 1952 All W R (Rev) 209 : 1952 R D (BR) 286.**

—— S 111 (d)—Applicability—Merger of under raiyati interest — Broad English Law of merger does not apply to India especially in mofussil and generally speaking law of merger contained in S. 111 (d). See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 22 (3). **AIR 1954 Cal 219.**

——Ss. 111 (d) and 63—Merger—To constitute merger there must be union of entire interest of lessor and lessee — Putni sale — Darputnidar depositing amount under S. 13 (4), Bengal Putni Regulation — He subsequently acquiring interest of another darputnidar in execution of his rent decree — Position of depositing darputnidar being that of mortgagee there is no merger of darputni purchased by him — Bengal Tenancy Act (8 of 1885), S. 168 A — Trusts Act (1882), S. 90. **I L R (1952) 2 Cal 183 : A I R 1950 Cal 1 (5) (Pt B) (Prs 21, 22) (DB).**

——Ss. 111 (d), 111 (f)—Merger—Lease—There is no merger unless the interest of lessor and of lessee become vested in same person in same right — Lease is not extinguished if lessee purchases or acquires part of reversion only — Lease of plots by Raja of Indian State to the Government of Punjab—Rights of lessor inhering in the Raja—Merger of State in Union of India — There cannot be merger of interests of lessor and lessee on the merger of State with Indian Union — There is no implied surrender of the lease also — Implied surrender occurs by the creation of a new relationship or by relinquishment of possession. **AIR 1964 Him Pra 19 (24) (Pt D) (Pr 26).**

——S. 111 (d)—Merger—Agricultural lease — Tenant purchasing landlord's interest — Whether there is merger is question of intention—Suit for pre-emption by plaintiff—During pendency of suit by amendment in law of pre-emption tenant acquiring preferential right—Tenant who had purchased landlord's interest whether remains to be tenant for defeating plaintiff's right—Held, there was no merger. **1962 Kash L J 203 : A I R 1962 J & K 79 (81 to 83) (Pt B) (Prs 4, 7, 10 to 13).**

——S. 111 (d)—Tenant securing sale of tenancy premises — Landlord repudiating sale on the ground of fraud — Court holding sale to be voidable — There is no merger of estate and the relationship of landlord and tenant which subsisted on date of sale continued after sale was repudiated. See T. P. Act (1882), S. 108. **1963 M P L J (Notes) 136.**

——S. 111 (d)—Merger— Principle — Tenancy right and right of mortgagee—If affected.

The general principle of merger is that a derivative right automatically merges into the parent right, if the holder of the former happens at any subsequent period to acquire the latter and it will also merge if a person holding the residue of the parent right (or reversion to the derivative right) acquires the latter. The most important requirement is that there should be a derivative relationship and the rights should belong to the same genus.

The lessee's right and the mortgagee's right are not mutuallay inter-related, but derived by independent routes from the right of proprietorship. Certainly neither of them can co-exist with the proprietor's right, and merge into it if either of them rests in a person who has already got the reversion. But they do not swallow each other because they are not mutually derivative.

While the tenancy right will merge into the right of the proprietor if it is acquired by the tenant, it will not so merge if the tenant acquires only the mortgagee's right. There can be no merger of the tenancy right into the right of the mortgagee. AIR 1953 Trav-Co 384; (1956) 2 Mad L J 235 : A I R 1957 Mad 212, Diss.; I L R 24 All 487; 12 Ind Cas 734, Rel. on. **1960 Jab L J 934 : 1961 M P L J 66.**

——Ss. 111 (d) and 58—Tenant becoming mortgagee —No merger of right—Mortgage redeemed — Tenant reverts to former position.

Where a tenant takes a mortgage from his landlord of any property then the effect of the mortgage is merely to render the tenant's right dormant and the parties on redemption revert to their former position. 7 Nag L R 154, Foll. In order that there may be a merger so as to destroy the tenancy, the two estates which are supposed to coalesce must be vested in the same person at the same time and in the same right. The two estates must wholly coalesce. A mortgagee is no doubt a transfer of interest, but it is not a transfer of all the rights, of the owner. In a mortgage some rights are transferred to the mortgagee and some remain vested in the mortgagor. Therefore, when the lessor mortgages with the tenant the property occupied by him as a tenant, there is no transfer to the tenant of the whole property. Clause (d) of S. 111 of the Transfer of Property Act has, therefore, no applicability in such a case. **1960 M P L J (Notes) 173.**

——S. 111 (d) — Determination of lease by merger of interest.

Where the lease-hold right and the reversion coincide there is a merger of the lesser estate in the greater, i. e., leasehold rights are merged in the reversion. There cannot, however, be any merger unless the lessee acquires the reversion by a valid transaction. **ILR (1954) Nag 634 : 1954 Nag L J 573 : AIR 1954 Nag 328 (330) (Pt B) (Pr 8) (DB).**

——S. 111—Under tenure merging in Putni tenure—Under tenure-holder had no right left in under tenure. See T. P. Act (1882), S. 5. **AIR 1957 Pat 706.**

——S. 111 (d) — Doctrine of merger—Doctrine may be applied to Santhal Parganas — Raiyat acquiring landlord's right — There can be no merger — Merger takes place where tenant acquires immediate reversion — Santhal Parganas Settlement Regulation (3 of 1872). **AIR 1955 NUC (Pat) 3987.**

——S. 111—Merger apart from section.

Where merger is pleaded apart from provisions of S. 111 it will have to be determined in each case as to what was the intention of the owner of the bigger estate, whether he intended to keep the smaller estate alive or whether he intended at the time he acquires the bigger estate that the smaller estate should merge and be wiped out. **ILR (1963) 2 Punj 1 : 1963 Cur L J 377 : AIR 1964 Punj 210 (211) (Pt B) (Pr 5) (DB).**

——S. 111 (d) — Merger of interests of lessee and lessor — Mortgage of house with possession executed in favour of tenant — Determination of lease by merger in mortgage — Suit for redemption — Mortgagor held entitled to actual possession on redemption. See Transfer of Property Act (1882), S. 60. **AIR 1962 Punj 48.**

——S. 111 (d) —Lease —Doctrine of merger—Applicability — Leased property — Mortgaged to lessee — Effect — Mortgage deed containing a condition that on repayment of the mortgage amount lease to be revived—Mortgagor redeeming the mortgage—Effect —Lease in such circumstances could not be said to have been determined and lessee did not become a trespasser. **(1963) Raj L W 594 : I L R (1964) 14 Raj 272 : A I R 1964 Raj 120 (121, 122) (Pt A) (Prs 4, 6).**

——S. 111 (d)—Shop owned by three persons jointly leased on rent — Tenant purchasing share in shop from one of lessors—Suit by others to recover arrears of rent and eviction—Tenant cannot be evicted from entire shop. See T. P. Act (4 of 1882), S. 108, Cl. (l). AIR 1981 Raj 18.

8. Surrender — General.

——S. 111 — Abandonment — Burden of proof — It must be proved affirmatively by one who sets it up, by unimpeachable evidence. See Easements Act (1882), S. 62 (f). AIR 1959 Andh Pra 551 (DB).

——S. 111 — Surrender by one of several tenants — Validity of — There is nothing in provisions of S. 111 (d) to support the contention that one of the tenants or lessees of a joint tenancy cannot surrender his right. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 5 (3) (b). AIR 1957 Bom 217 (DB).

——S. 111 (f)—Surrender—Essentials of—Requisition order — Possession of Government under, does not operate as surrender.

Surrender consists in the yielding up of the term by tenant to landlord. There must be delivery of possession by the tenant to the landlord and the acceptance of possession by the landlord. It is a mutual act between the landlord and the tenant. Where the Government takes possession of the property under a requisition order under S. 75 (a) of Defence of India Rules, 1939, there is no mutuality in it because they take possession both from the landlord and from the tenant. It cannot therefore operate as surrender so as to terminate the tenancy. 51 Bom L R 797: AIR 1950 Bom 89 (91) (Pt C) (Prs 9, 10).

——S. 111 — Surrender, what constitutes — Tenant holding over after expiry of lease executing Istafanama undertaking to hand over possession after certain period — Provision for delivery of possession on future date would not make Istafanama ineffective as deed of surrender. AIR 1955 NUC (Cal) 2884.

——S. 111 — Scope — Relinquishment of tenancy by tenant — To be effective must be accompanied with surrender of possession. See Tenancy Laws — Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act (15 of 1954), S. 49. AIR 1965 Him Pra 58.

——Ss. 111, 108 (l) — Landlord and tenant—Rent—Payment of—Surrender of unexpired portion of lease not accepted by landlord — Liability for payment of rent does not cease — Appointment of receiver made to save property from lying fallow does not change possession — Civil P. C. (1908), O. 40, R. 1. 75 Mad L W 378: (1962) 2 Mad L J 394: AIR 1962 Mad 439 (442) (Pt A) (Pr 16).

——S. 111 — Surrender of original lease of evacuee property in favour of Custodian and new lease — By execution of new lease in favour of Custodian held the old lease had determined on that day. See Pepsu Evacuee (Administration of Property) Ordinance (13 of 2006), S. 14 (2) (3). AIR 1953 Pepsu 26 (DB).

——S. 111 — Permanent lease jointly in favour of two sons — One surrendering in favour of father and migrating to Pakistan — Father and the other not migrating — Rights under surrender — Surrendered share taken over as evacuee property — Legality — Error apparent on face of record — (Administration of Evacuee Property Act (1950), Ss. 7 and 8) — (Constitution of India, Art. 226) — AIR 1931 Nag 159 and 8 Cal W N 315, Rel. on. ILR (1957) Punj 1146: 59 Punj L R 399: AIR 1957 Punj 197 (199, 200) (Pt C) (Prs 4, 5, 7).

——S. 111 — Scope of S. 40—Administration of Evacuee Property Act (1950) — Meaning of transfer—Surrender, if comes within it — Surrender does not involve alienation of an estate. See Administration of Evacuee Property Act, S. 40. AIR 1957 Punj 197.

——S. 111—Abandonment.

Where the land is entirely dependent on rainfall for irrigation and if there is no rain then there is no question of any harvest, it cannot possibly be held that merely by failing to cultivate the land for one harvest the tenant has abandoned his tenancy. 56 Punj L R 252: 1954 Cri L J 1518: ILR (1955) Punj 80: AIR 1954 Punj 232 (233) (Pt A) (Pr 7) (DB).

——Ss. 111, 108, 101 — Surrender of lease pending attachment and after sale — Obstruction by lessor through Court, to delivery of possession to auction-purchaser, decree-holder, dismissed — Suit by lessor —Surrender held operated as assignment—Lessor was transferee pending attachment and was not entitled to obstruct—His suit was not maintainable. AIR 1955 NUC (Trav-Co) 1040.

9. Express surrender — Clause (e).

——S. 111 (e) — Lease of reversion — Surrender — Validity.

In England it has been held that where the subject-matter of the lease is a reversion, it is "a matter lying in grant, and not in livery, and of which therefore, there could be valid surrender in fact otherwise than by deed." Under S. 111 (e) of the Transfer of Property Act, if a lessee yields up his interest under the lease the lessor by mutual agreement between them, there is an express surrender or surrender in fact. In India, a surrender may be oral and may be inferred from the acts and conduct of the parties, there being no statutory provision like S. 3 of the English Statute of Frauds that a surrender should be evidenced by a document in writing or, like S. 3 of 8 and 9 Vic., C. 106, requiring deed for the purpose. (1956) Andh W R 1093: AIR 1957 Andh Pra 619 (622) (Pt C) (Pr 6) (DB).

——S. 111 (e) — Transfer of interest of co-sharer in common property — Validity — Lease of interest by co-sharer in favour of another — Surrender — Lease would stand terminated. See T. P. Act (1882), S. 7. AIR 1956 Andh Pra 619 (DB).

——S. 111 (e)—Mutual agreement—Necessity.

In the absence of mutual agreement there cannot be any express surrender for determination of a tenancy. (1958) 62 Cal W N 176.

——S. 111 (e) — Contract to transfer tenancy rights —Surrender after contract — Effect — By accepting the surrender the landlord cannot claim to ignore the obligation incurred by the tenant under the earlier contract to transfer and deal with the holding as if tenant was not bound by any valid and legal agreement with regard to holding when he made surrender. A I R 1955 N U C (Madh B) 3706.

——S. 111 (e) and (f)—Landlord and tenant—Tenant accepting usufructuary mortgage from his landlord —Redemption of mortgage—Effect—Tenancy cannot be said to have revived — Tenant not entitled to continue in possession. See Transfer of Property Act (1882), S. 60, AIR 1963 Madh Pra 296 (DB).

——S. 111 (e) and (f) — Express or implied surrender —Lessee surrendering key of premises to counsel of lessor — Lessor instructing counsel to return key—Lessor allowing another tenant to occupy the premises and accepting rent from him—Held, there was surrender by first lessee. 18 Mad L W 496: I L R (1965) 2 Mad 219: AIR 1966 Mad 19 (20) (Pr 3).

——S. 111 (e)—Termination of lease by surrender—Lease by more than one person — Surrender must be by all lessees.

If there is a plurality of lessees the surrender must be by all the lessees in favour of the lessor. Under the lease which is an indivisible joint one, a right to enjoy immovable property is created in favour of the lessees jointly and a surrender by one of such lessees cannot prejudice or affect the rights of the other lessees. 1952 Q B 788, Rel. on; A I R 1957 Bom 217; I5 C W N 680 : AIR 1931 Nag 159, Disting. **(1963) 76 Mad L W 431 : (1964) 2 Mad L J 242 : I L R (1964) 1 Mad 443.**

——Ss. 111 (e), 52—Surrender to person without title—Effect—When affected by lis pendens.

Surrender to a person having no title cannot operate as a surrender. It will, however, operate as an assignment and if it does operate as an assignment, it would not be vitiated by lis pendens unless the transfer is given by a defendant in the suit the proceedings in which operate as lis pendens. **AIR 1953 Tra Co 12 (13) (Pt B) (Pr 5).**

10. Implied surrender — Clause (f)

——S. 111 (f)—Permanent tenancy—New agreement—Amounts to waiver of old terms—Permanent tenancy must also be deemed to have been impliedly surrendered — (Evidence Act (1872), S. 115). See T. P. Act (4 of 1882), S. 105. **AIR 1957 All 346.**

——S. 111 (f)—Permanent lease—Acceptance of new lease during continuance of old lease operates as surrender. See T. P. Act (4 of 1882), S. 105. **A I R 1957 All 346.**

——S. 111 — Determination of lease by implied surrender—Express surrender and implied surrender — Distinction pointed out—Taking of new lease which is ab initio void during currency of a subsisting lease does not operate to determine old lease by implied surrender. **(1964) 2 Andh W R 304 : AIR 1965 Andh Pra 167 (169) (Pt A) (Prs 5, 6).**

——S. 111 (f) — Determination of lease by implied surrender—Mortgage of leased property in favour of lessee — Terms of mortgage not inconsistent and irreconcilable with those of lease—No extinguishment of lease by implied surrender. **(1964) 2 Andh W R 669; (1965) 1 Andh L T 132 : ILR (1965) Andh Pra 665 : AIR 1965 Andh Pra 86 (89) (Pt A) (Pr 14) (DB).**

——S. 111 (f) — A principle embodied in S. 111 (f), applies to agricultural leases — Usufructuary mortgage of property in favour of lessee—Lessee already in possession—No condition as to sale of property on non-payment of mortgage amount — There is no surrender — Lease continues. **(1964) 2 Andh W R 325; ILR (1965) Andh Pra 743; AIR 1964 Andh Pra 539 (544) (Prs 18 to 21) (DB).**

——S. 111 (f)—Doctrine of implied surrender—Law in India.

Implied surrender is recognised and provided for by S. 111, Cl. (f) of the Transfer of Property Act and the illustration thereto, which refers to a lessee accepting from his lessor a new lease of the property leased, to take effect during the continuance of an existing lease. The illustration is obviously not exhaustive of cases of implied surrender. A surrender by operation of law determines the lease and involves an extinction of the rights of the lessee in respect of the properties surrendered as from the date of the surrender and the estate vests immediately in the lessor. If a lessee for years accepts a new lease by indenture of part of the lands it is a surrender for that part only and not for the whole and though a contract for years cannot be so divided, as to be avoided for part of the years and to subsist for the residue, either by act of the party or act in law, yet the land itself may be divided, and the tenant may surrender one or two acres either expressly or by act of law, and the lease for the residue will stand good and untouched. **(1956) Andh W R 1093 : AIR 1957 Andh Pra 619 (624 to 626) (Pt E) (Prs 12, 14, 15, 17, 18) (DB).**

——S. 111 (f) — Requisitioning order under — Effect on tenancy — Order does not operate as surrender—Tenancy vested in tenant remains unaffected. See Defence of India Rules, 1939, R. 75 (a). **A I R 1950 Bom 89.**

——S. 111 — Person entitled to right to property—A lease unless it is actually cancelled is not determined by mere institution of a suit for its cancellation—Hence lessee can continue the suit instituted by him for possession of demised property from a trespasser. See Specific Relief Act (1877), S. 42, **AIR 1955 N U C (Cal) 5604 (DB).**

——Ss. 111, 116 — Defendant's tenancy determined by notice — Defendant holding over — Government requisitioning premises and handing over same to defendant—Position of defendant — He holds under Government — His possession after requisition period is wrongful—There was held yielding over possession to plaintiff landlord when premises were taken over by Government — In alternative there was implied surrender. **A I R 1952 Cal 455 (463 to 466) (Pt E) (Prs 17, 18, 19, 26).**

——S. 111 — Implied surrender does not depend on intention.

Implied surrender or surrender by operation of law occurs (1) by creation of new relationship or (2) by relinquishment of possession. It does not depend on the intention of the parties like express surrender. It has to be implied from the conduct of the parties or such facts as relinquishment of possession by the lessee and taking over possession by the lessor. **AIR 1952 Cal 455 (464) (Pt F) (Pr 19).**

——S. 111 (f)—Acceptance of new lease—Effect.

If a lessee accepts a new contract of tenancy, it operates as a surrender of the old tenancy, for a new lease cannot be granted unless the old is surrendered. Such a surrender takes place by operation of law and the intention of the parties is immaterial : (1852) 7 Exch 319, Ref. **('51) 55 C W N 518 : 87 Cal L J 345 : ILR (1952) 2 Cal 167: AIR 1952 Cal 196 (197) (Pt C) (Pr 11) (DB).**

——Ss. 111 (f), 58 (d)—Implied surrender of lease—Test of — Property leased to a person—Usufructuary mortgage of same property in favour of same person—Terms of mortgage incompatible with those of earlier lease — Held there was implied surrender of lease. AIR 1953 Trav-Co 584, Rel. On. **1961 Ker L T 138; 1961 Ker L J 206; AIR 1961 Ker 293 (294, 295) (Pt A) (Prs 2, 4).**

——S. 111 (f)—Question of surrender of lease when lessee takes a mortgage of lease hold property is primarily one of intention of parties to be gathered from reading document as a whole. See Tenancy law—Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2 (1). **1958 Ker L T 540.**

——S. 111 (f)—Taking of mortgage by lessee—Implied surrender when and how to be gathered indicated. **AIR 1957 Ker 38 (38, 39) (Pr 2) (DB).**

——S. 111 (f) — Implied surrender — Lessee also acquiring rights of mortgagee in possession—Effect.

Implied surrender by operation of law only happens, in the case of a lease, where the lessee acquires a right or begins to occupy a new status fundamentally incompatible with that of the lessee. But there is no impossibility in a person being a mortgagee in possession and the lessee at the same time. There can

be no surrender by operation of law. 1960 Jab L J 934 : 1961 M P L J 66.

——S. 111 (f) — Possessory mortgage in favour of lessee—Implied surrender of lease.

Where a possessory mortgage is executed in favour of a lessee under a verumpattam lease, the lessee's interest gets merged in the mortgage rights at its acquisition as a large and superior interest and on accepting the possessory mortgage there is an implied surrender of the lease hold. 1953 Trav-Co 584. Foll. 24 All 487, Not foll. 60 Mad L W 614; (1956) 2 Mad L J 235 : AIR 1957 Mad 212 (213) (Pr 6).

——S. 111 (f) — New lease during continuance of original lease but after attachment of lease-hold—New lease is void under S. 64, C. P. C. and does not operate as implied surrender — Subsequent sale in execution — Possession of lessee continues under original lease and cannot be disturbed—(Civil P. C. (1908), S. 64). ('52) 1952 Mad W N 217 : 1952-2 Mad L J 34 : AIR 1953 Mad 399 (399) (Pr 4).

——S. 111 — Lease—Second lease during the pendency of the first lease —Effect of.

Where the lessor grants the lease of his property in favour of a lessee and while that lease was subsisting grants a second lease in favour of another, it operates as an assignment of the reversion and this entitles the second lessee to recover the rent from the earlier lessee and also to possession of the properties on the termination of the earlier lease. 1951 Mad W N 485: (1951) 1 Mad L J 165 : AIR 1951 Mad 718 (719) (Pr 8).

——S. 111 (f)—Mere non-payment of rent by the tenant, even though for number of years does not amount to implied surrender. (1960) ILR 45 Pat 55.

——S. 111 — Lease — Implied surrender— Administration of Evacuee Property Act (1950), S. 12—East Punjab Evacuee's (Administration of Property) Act (14 of 1947), S. 9-A.

A surrender of lease can be implied by the conduct of the parties evidencing the giving of consent to a new relationship. A new lease operates as a surrender of the old lease and similarly the creation of relationship of licensor and licensee in substitution of the relationship of landlord and tenant amounts to the surrender of the former lease. When a surrender takes place by operation of law, the rule of estoppel bars a party from disputing what he has surrendered. (1844) 13 M & W 285 and (1900) 1 Q B 426, Rel. on.

Plaintiff acquired the suit premises in exchange for his own property situated at a place now in Pakistan. The exchange had been registered prior to partition of the country and the defendant who was in occupation of a portion of the premises started paying rent to plaintiff thereafter. The premises were, however, declared to be evacuee property and the defendant executed an agreement with the Custodian stating that he was in occupation of the premises as a licensee of the Custodian. As result of litigation between the plaintiff and the Custodian the property was declared to be non-evacuee property. Thereafter plaintiff, by a notice required the defendant to vacate the premises and on latter's failure filed a suit for a mandatory injunction.

Held, that after the defendant executed the agreement with the Custodian the old lease came to an end and as the lease and the licence with respect to the same premises could not contemporaneously co-exist, the previous lease was deemed to have been surrendered with the Custodian who had the power not only to amend the terms of any lease under which any evacuee property was held or occupied by a person but even to terminate any lease, regardless of the fact whether it had been amended before or after the commencement of the statute, vide, S. 9-A of East Punjab Act 14 of 1947 and S. 12 of the Administration of Evacuee's Property Act, 1950. (1963) 65 Pun L R 490.

——Ss. 111 (f), 60 — Prior lease in favour of a person —Lease not of permanent character — Subsequent usufructuary mortgage in his favour — Two relationships incompatible — First relationship comes to end when subsequent relationship arises for operation. 1963 Raj L W 265 : ILR (1963) 13 Raj 568 : AIR 1963 Raj 110 (112, 113) (Pr 7, 8, 9).

——S. 111, Cl. (f)—Principle underlying clause.

The principle underlying Cl. (f) of S. 111 is that whenever a certain relationship exists between two parties in respect of a subject matter and a new relationship arises as regards the identical subject-matter if the two sets of relationships cannot co-exist as being inconsistent and incompatible that is to say, if the latter can come into effect only on termination of the earlier that would be deemed to have been terminated in order to enable the latter to operate. ILR (1953) Trav Co 568 : 1953 Ker L T 442 : AIR 1953 Trav-Co 584 (586) (Pt C) (Pr 5).

——S. 111, Cl. (f)—Implied surrender.

The acceptace by the lessee, who takes possessory mortgage of his lease-hold from the lessor, of the obligation to surrender the property on redemption by payment of the price of redemption, namely, all the mortgage money and value of improvements necessarily implies the non-existence of his rights to possession of the property as lessee. There is, therefore, an implied surrender of the lease, with the execution and acceptance of the possessory mortgage. ILR (1953) Trav-Co 568 : 1953 Ker L T 442 : AIR 1953 Trav-Co 584 (586, 587) (Pt D) (Prs 5, 6).

11. Clause (g)—Forfeiture—General.

——Ss. 111, 114, 106 — Relief against forfeiture—Determination of monthly tenancy by valid notice—Determination is not in exercise of right of forfeiture —S. 114 is not attracted. See under T. P. Act (1882), S. 106. 1965 All W R (H C) 229 : 1965 All L J 607 : A I R 1966 All 165.

——S. 111 (g) — Successive forfeitures — Landlord can rely on the last act—Starting point of limitation —(Limitation Act (1908), Art. 143).

In case of successive forfeitures it is open to a landlord to rest his claim for recovery of possession on the foot of forfeiture on the latest act of denial of title or the breach of the conditions of the lease. A I R 1953 S C 228, Rel. on. A I R 1960 Andh Pra 166 (168) (Pt B) (Pr 15).

——S. 111 (g) — Applicability to eviction under S. 13 of the Andhra Tenancy Act—(Tenancy Laws—Andhra Tenancy Act (18 of 1956), S. 13).

The conditions which occasion forfeiture in accordance with Clause (g) of S. 111 of the Transfer of Property Act can in no sense be made applicable to eviction under S. 13 of the Andhra Tenancy Act. The ejectment of the lessee on the ground of forfeiture mentioned in the second proviso to S. 112 of the Transfer of Property Act itself is not the same as the eviction provided for on the termination of the tenancy in S. 13 of the Andhra Tenancy Act, 1956. There is also another additional reason; while the lease under the Transfer of Property Act is in its nature contractual, the tenancy created under Act 18 of 1956 creates a statutory relationship between the landlord and tenant, regulation of which has been provided for in that Act itself. (1959) 10 S T C 394 : 1959 Andh L T 654 : (1959) 2 Andh W R 135.

[Overruled in A I R 1964 Andh Pra 31.]

——S. 111 (g) — Section 111 (g) can only apply to non-payment of rent provided there is an express clause in lease that on tenant failing to pay rent land-

lord would be entitled to re-enter—It is only in case that a forfeiture would result — Tenant relying on S. 14, Bombay Tenancy Act (67 of 1948) — Neither S. 111 (g) nor principle underlying it applies. See also Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 14. **A I R 1953 Bom 332 (DB).**

——Ss. 111 (g) and 114—Scope of S. 114—'Forfeiture' —Meaning of — Word 'forfeiture' in S. 114 has a technical meaning which must be ascertained by reference to S. 111 (g) — Forfeiture in this technical sense is incurred in case the lessee breaks an express condition which provides that on breach thereof lessor may re-enter—Even in such a case lessor has to give notice in writing to lessee of his intention to determine lease. See T. P. Act (4 of 1882), S. 114. **A I R 1953 Bom 129 (DB).**

——Ss. 111 (g), 117—Principle of S. 111 (g)—Applicability to agricultural leases.

As a result of amendment of S. 111 (g) in the year 1929 in the case of disclaimer of the lessor's title by the lessee it is incumbent on the lessor to give notice in writing to the lessee of his intention to determine the lease before a suit could be filed by him against the lessee for eviction. This rule embodied in the amended S. 111 (g) applies to agricultural leases as a principle of justice, equity and good conscience. **52 Bom L R 909 : I L R (1951) Bom 293 : A I R 1951 Bom 283 (284) (Pr 7) (DB).**

[Overruled in A I R 1953 S C 228, in so far as it was held that S. 111 (g) contained the principle of justice, equity and good conscience.]

——S. 111—Lease — Condition against alienation—Forfeiture—Partial transfer—Effect of.

In the absence of a specific provision to the contrary a part transfer or part assignment of a lease does not amount to a breach of condition of covenant against alienation or assignment and does not entail a forfeiture on that ground. To entail a forfeiture transfer of the whole would be necessary, and such transfer of the whole, again, must be without the lessor's consent. (1951) 1 K B 752 and (1902) 1 Ch 727 and (1924) 1 K B 525, Rel. on ; (1923) A C 578, Dist. **A I R 1960 Cal 609 (614, 617) (Pt A) (Prs 19, 31) (DB).**

——Ss. 111 (g) and 114-A — Notice under S. 111 (g) cannot be waived—Distinction between notice under S. 114-A and one under S. 111 (g).

Since S. 111 (g) does not contain any clause like 'in the absence of a contract to the contrary' the statutory requirement of notice specified in S. 111 (g) of the Transfer of Property Act cannot be waived by contract and must prevail. The notice mentioned in S. 114-A of the Transfer of Property Act is an altogether different notice which has to be given in order to give an opportunity to the lessee to avoid forfeiture in cases where a breach of condition is capable of remedy and such a notice is not required in a case of alienation ; but the notice under S. 111 (g) of the Transfer of Property Act is a different notice and it cannot be said that that notice is also not required in case of alienation.

It may appear to be anomalous that even in a case of complete alienation by the lessee such notice under S. 111 (g) of the Transfer of Property Act should be required and the landlord should not be able to obtain possession as against the alienee whom he has never recognised as a lessee, but has all along treated him as a trespasser, but such appears to be the law and the law has to be applied strictly. **A I R 1960 Cal 40 (43, 44) (Pt C) (Prs 18, 19).**

——S. 111 (g)—Forfeiture—Basic requirements of—Time when forfeiture takes effect.

Forfeiture of a lease requires the operation of two factors, one is a breach by the lessee of an express condition of the lease which provides for re-entry on such breach and the other is a notice by the lessor expressing his intention to determine the lease. These are the two basic requirements of forfeiture. The moment a breach of such an express condition providing for re-entry is committed by the lessee the lease becomes voidable by the lessor but the forfeiture is not complete unless and until the lessor elects to avail of the breach by giving notice of his intention to determine the lease.

The actual date of the forfeiture is the date of the notice of the forfeiture. Where a forfeiture has been incurred for breach of any condition the lessor must do some act evidencing his intention to avail of the forfeiture and that act under the Transfer of Property Act is to give notice to determine the lease and the lease will be avoided from that time only. (1924) 1 Ch 236. Ref. **A I R 1952 Cal 47 (50, 51) (Pt C) (Prs 17, 23).**

——S. 111 (g) — Lease — Determination of, by forfeiture — Right of re-entry — Must be conferred expressly on the breach of an express condition of lease—Such a right cannot be implied in or inferred from other terms of the lease. (1965) 6 Guj L R 512: I L R (1965) Guj 473 : A I R 1967 Guj 36.

——S. 111 (g)—Scope—Suit for ejectment on ground of non-payment of rent — Relief against forfeiture under S. 114, T. P. Act applies only to a case where lease is determined under Cl. (g) of S. 111 and not where it is determined under Cl. (h) of S. 111. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 12 (1). A I R 1964 Guj 9 (DB).

[Overruled on another point in A I R 1967 S C 1078.]

——S. 111 (g)—Applicability to agricultural lease.

The provision contained in S. 111 (g) cannot apply to an agricultural lease as a principle of justice, equity and good conscience. **(1954) 2 Mad L J 83 : 1954 Mad W N 254 : 67 Mad L W 327 : ILR (1955) Mad 227 : A I R 1954 Mad 739 (740) (Pt A) (Pr 2) (DB).**

——Ss. 111 (g) and 114 — 'Where a lease of immovable property has determined by forfeiture'—Meaning of. See T. P. Act (1882), S. 114. **A I R 1961 Mys 131 (DB).**

——Ss. 111, 116 — "During the continuance of the tenancy—S. 116 is not exhaustive — Rule in S. 116 is grounded on tenant being still on premises—Estoppel continues so long as tenant does not surrender possession — Forfeiture or service of notice to vacate does not make any difference to applicability of rule. See Evidence Act (1872), S. 116. **AIR 1955 Nag 234 (DB).**

——S. 111 (g)—Applicability — Lease prior to coming into force of T. P. Act.

The provision of S. 111 (g) as to notice in writing as the preliminary to a suit for ejectment based on forfeiture of a lease is not based upon any principle of justice, equity or good conscience and cannot govern leases made prior to the coming into force of the Transfer of Property Act, 1882, or to leases executed prior to 1st April, 1930. The rights and obligations under those leases have to be determined according to the rules of law prevailing at the time and the only rule applicable seems to be that a tenant cannot by his unilateral act and by his own wrong determine the lease unless the lessor gives an indication by some unequivocal expression of intention on his part of taking advantage of the breach. 1953 S C J 306 : (1953) 1 Mad L J 715 : A I R 1953 S C 228, Foll. **('58) 24 Cut L T 433.**

——S. 111 (g) — Transaction held amounted to lease —Suit for pre-emption could not lie. See Punjab Pre-emption Act (1 of 1913), S. 5. (1962) 64 Pun L R 165.

——S. 111—Ejectment—Forcible ejectment — Right of landlord.

It is not open to a landlord to forcibly eject the tenants from the land which is in their possession. He must proceed against them in accordance with law. 61 Pun L R 134 : A I R 1959 Punj 532 (533) (Pt B) (Pr 6).

——S. 111 (g)—Relief against forfeiture—Word "forfeiture" has a technical meaning which must be ascertained by reference to S. 111 (g) — Held on facts that S. 114 had no application to the case and no relief against forfeiture could be granted to the tenant. See Transfer of Property Act (1882), S. 114. AIR 1955 N U C (Sau) 4099 (DB).

——Ss. 111 (g) and 2 (c) — Leases not governed by the Act, determination of—(Houses and Rents—Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947). S. 13 (e)).

A lease executed in the former Nawanagar State before the T. P. Act was made applicable to the territory comprised in that State will not be governed by the provisions of T. P. Act in view of S. 2 (c) but will be governed by the Common Law principles which were usually held applicable by all Courts in India. In such a case it is not necessary for the landlord to do any overt act showing an intention to determine the lease nor is any notice to determine the lease necessary. The mere institution of a suit for ejectment on the allegation that tenant has transferred his interest in the lease and has failed to pay the arrears of rent is a sufficient indication of landlord's intention to determine the lease and no separate notice is necessary to determine it.

Even if the lease does not reserve to the landlord a right to re-enter in the event of the tenant committing breach of any of the conditions of lease, the landlord will be entitled to recover possession by reason of S. 13 (e) of the Bombay Rent Act which is applicable to the suit if he succeeds in showing that the tenant has transferred his interest in the premises. A I R 1953 Sau 113 (118, 119) (Pt F) (Prs 16, 17) (DB).

——S. 111 (g)—Applicability to agricultural tenancy (Quaere) — (Tenancy Laws — Rewa Land (Revenue and Tenancy) Code (1935)—Forfeiture)—Whether or not the principles embodied in S. 111 (g) are applicable to agricutural tenancy under the Rewa Tenancy Code. A I R 1955 N U C (Vin-Pra) 1674.

12. Forfeiture for breach of condition.

——S. 111 (g) — Monthly tenancy — Default of payment of rent for three months — Suit for ejectment—Notice either under S. 106 for determination of lease or S. 111 (g) for forfeiture on non-payment of rent, to terminate the tenancy was necessary before suit was brought for their ejectment. See T. P. Act (1882), S. 105. 1964 All L J 658.

——Ss. 111 (g), 112 and 113 — Unauthorised alterations by tenant — Forfeiture — Suit for damages and injunction—Decree—Effect—Waiver—S. 108.

Where the tenants substantially and materially damage the leased building and caused material alterations in it without the consent of the lessors, this amounts to a breach of the implied covenants mentioned in clauses (m), (o) and (p) of S. 108 of the Transfer of Property Act. The breach of the conditions only makes the lease voidable and the forfeiture would not be complete unless and until the lessors give notice that they have exercised their option to determine the lease under S. 111, clause (g) of the Act. The forfeiture under S. 111, clause (g) would be deemed to have been waived not only by acceptance of rent which becomes due since the forfeiture but by the act on the part of the lessors in filing a suit for damages for alterations done and for injunction restraining the tenants from making further alterations. The act of the plaintiffs in compromising the suit and accepting an amount for the alterations in the building amounts to an act on the part of the lessors showing an intention to treat the lease as subsisting. In these circumstances and in view of S. 113 of the Transfer of Property Act the notice given under S. 111, clause (h) must be deemed to have been waived with the express or implied consent of the persons to whom it was given by an act of the persons giving it, showing an intention to treat the lease as subsisting and the suit for ejectment instituted after the notice and having waived the breach by compromise in the previous suit cannot be maintained. 1958 All W R (HC) 679 : 1958 All L J 574 : A I R 1959 All 33 (36) (Pt D) (Pr 15) (DB).

——Ss. 111 (g), 114-A—Suit for ejectment on breach of condition — Absence of notice under S. 114-A—Effect.

Determination of a lease by forfeiture on a breach of condition can take place only after a notice in writing to determine the lease had been served upon the lessee.

The right to institute a suit for ejectment accrues only after requirements of S. 114-A have been complied with. The section requires that the plaintiff should allege in the plaint that the requirements of the section have been complied with. Where there is no evidence to show that the lease had been validly determined by notice as required by S. 114-A the suit cannot be decreed. 1954 All L J 346 : 1954 All W R (HC) 369 : A I R 1954 All 649 (650) (Prs 5, 6, 7).

——S. 111 (g)—Permanent lease—Forfeiture—Condition against non-transferabliity — Effect of, on forfeiture clause.

Broadly speaking, a permanent lease is liable, like any other lease to be forfeited on breach of a condition which provides that on breach thereof the lessor may re-enter. A condition against non-transferability in the perpetual leases is not illegal or void and is binding on the parties. It has however to be carefully examined that when a perpetual lease authorises the tenant to transfer the property but also provides for the forfeiture of the lease in case of some default, what is the effect of such a condition. AIR 1964 Andh Pra 528 (530) (Pt B) (Pr 7).

——S. 111 (g)—Forfeiture for breach of condition as to payment of rent—Notice of intention to determine lease on forfeiture—Provision as to, does not embody any principle of justice, equity and good conscience —Lease executed prior to Act — Notice not necessary for forfeiture. 51 Bom L R 987 : I L R (1949) Bom 883 : AIR 1950 Bom 123 (125, 126) (Prs 5, 6) (DB).

——S. 111 (g)—Lease — Stipulation restraining subletting—Breach of—Absence of provision for re-entry — No forfeiture of lease. See T. P. Act (1882), S. 10. (1961) 65 Cal NW 1050.

——S. 111 (g) — Forfeiture for breach of an express condition — S. 111 (g) does not mean that the only express condition contemplated by it is a condition to the effect that on its own breach the lessee may re-enter — Under S. 111 (g) it is the condition broken and not the provision for re-entry which is required to be express. AIR 1955 NUC (Cal) 2865 (DB).

——Ss. 111 and 105 — Determination of tenancy — Non-payment of rent.

Mere non-payment of rent does not of itself determine the tenancy. AIR (7) 1920 Lah 217, Ref. AIR 1951 Him Pra 65 (66) (Pt C) (Pr 9).

——S. 111 — Non-payment of rent — Forfeiture — Absence of provision for re-entry—Effect.

Even in cases not governed by the Transfer of Property Act, unless there is provision for re-entry, breach of condition or covenant including one regarding payment of rent will not entail forfeiture. AIR 1914 Lah 472; AIR 1929 Oudh 529, Ref. 1959 M P L J (Notes) 163.

——S. 111 (g)—Forfeiture for breach of condition—Covenant not to assign without landlords' consent —Forfeiture on ground of breach — Co-lessees—Assignment by one lessee of his interest in favour of co-lessee —Assignment is not breach of covenant. 62 Mad L W 653 : (1949) 2 Mad L J 423 : 1949 Mad W N 814 : AIR 1950 Mad 25 (26) (Pr 3) (DB).

——S. 111 (g)—Forfeiture on breach of condition — No clause as to re-entry—Effect.

A lease deed may contain a clause that the lessee's title will be existinguished on the breach of a condition mentioned in the deed. But this is not sufficient for the purpose of enforcing forfeiture as contemplated under S. 111, Cl. (g). It is definitely to be provided that the lessor will re-enter or resume possession. There is no particular form for the clause of re-entry. But the clause or clauses in the lease-deed must sufficiently show that on the breach of the conditions the landlord reserves to himself the right of taking over possession. AIR 1957 Orissa 35 (36) (Pt A) (Pr 5) (DB).

——S. 111 (g)—Forfeiture by breach of condition—Prohibition 'to do any other business'—Strict proof.

In order to incur the liability of forfeiture of tenancy, it must be held that the tenant has violated the condition embodied in the lease. Where one of the terms of a lease deed is that the lease will stand cancelled automatically in case the lessee does any other business on the property leased, then in such a context doing a business always connotes a course of conduct where some element of habitually and systematically doing a particular thing is indicated. Mere stray, occasional and spasmodic acts on the part of the lessee, even if proved, cannot be taken to mean that the lessee was carrying on a business. In order that the lessor may be allowed the right of re-entry on the cancellation of the lease on account of a forfeiture clause, very strict proof is necessary. AIR 1955 Orissa 122 and 1908 A C 46 Rel. on. AIR 1957 Orissa 35 (37) (Pt D) (Pr 9) (DB).

——S. 111—Lease — Determination of—Foreiture — Non-payment of rent — Perpetual tenure—Relationship of grantor and grantee — Law of forfeiture in absence of definite contract does not apply. AIR 1952 Orissa 99 (106) (Pt F) (Pr 24) (DB).

——S. 111 (e) — Landlord and Tenant — Lease in respect of land — Covenant in lease giving option to lessor to terminate lease under specified conditions—Nature of—No breach of rule against perpetuities — Heirs of lessor can enforce — Determination of lease according to covenant — Notice under S. 106 not necessary. See T. P. Act (4 of 1882), S. 14. AIR 1962 Pat 201 (DB).

——S. 111—Breach of covenant—Waiver of forfeiture by receipt of rent — Acceptance of rent held was not only condonation of breaches in the past but was a licence for breaches in future. See Houses and Rents —Delhi and Ajmer-Merwara Rent Control Act (1947), S. 9 (1) (b). AIR 1952 Punj 82 (DB).

——S. 111 (g)—Suit for ejectment on ground of non-payment of rent—T. P. Act not applicable at time suit was brought — No notice of forfeiture held was necessary. AIR 1955 NUC (Raj) 4050.

——S. 111 — Tenant occupying certain portion of tenancy under rent note—Later he occupying portion of house not included in rent note—His act cannot be regarded as breach of any term of tenancy—He is at the most a trespasser of portion unauthorisedly occupied—Contract Act (1872), S. 73. See Houses and Rents—Bombay Rents Hotel and Lodging House Rates (Control) Act (1947), S. 12(2). AIR 1953 Sau 119 (DB).

——S. 111—No forfeiture of lease on account of non-payment of rent unless there is clause in deed — "Buta Hak" tenure — Order of Dewan held not one of forfeiture—Order held without jurisdiction—Order of Hazur confirming order held equally without jurisdiction—Order held subject to scrutiny of civil Court —(Civil P. C., S. 9). See T. P. Act (1882), S. 108 (1). AIR 1953 Sau 94.

——Ss. 111 (g) and 112—Condition against alienation in a lease—Right of re-entry not reserved to lessor — Breach of condition — No suit against alienee on ground of forfeiture—Waiver of forfeiture. See T. P. Act (4 of 1882), S. 10. AIR 1956 Tripura 9.

13. Forfeiture for denial of title.

❶ ——S. 111 (g)—Applies to parmanent tenancies.

Permanent tenancies are within the rule of S. 111(g) and are liable to forfeiture if there is a disclaimer of the tenancy or a denial of the landlord's title. Raja Muhammad Amir Ahmad Khan v. Municipal Board Sitapur. (1965) 1 S C W R 848 : 1965 S C D 788 : AIR 1965 SC 1923 (1928) (Pt B) (Pr 11).

❷ ——S. 111 (g) — Statement by person claiming to have permanent and heritable interest in land, the land "belonged to him" and that he was "owner" of it—Statements held did not amount to denial of landlord's title — No forfeiture — F. A. No. 63 of 1950. Dated 7-4-1961 (All LB), Reversed. Raja Muhammad Amir Ahmed Khan v. Municipal Board, Sitapur. (1965) 1 S C W R 848 : 1965 S C D 788 : AIR 1965 SC 1923 (1929, 1930) (Pt C) (Prs 14, 15, 16).

——Ss. 111 (g) and 112 — Forfeiture of lease for denial of title — Waiver — Tenant's denial of lessor's title — Notice before suit for ejectment is not necessary — Lessor does not waive forfeiture by accepting rent due for the period prior to denial. AIR 1955 NUC (Ajmer) 4418.

——S. 111 (g) — Forfeiture of tenancy — Denial of title — Principles — Putting landlord to proof of his title — Does not amount to denial of his title.

The principles that govern the forfeiture of tenancy are firstly that the denial of the landlord's title must be unequivocal. Secondly, when the landlord's title is denied in writing, the writing should be construed as a whole without giving undue emphasis to one or the other part of it. Thirdly, the onus of proving forfeiture of tenancy rights lies on the landlord plaintiff and lastly, the lessee may in good faith and for his own protection put the transferee of his lessor to strict proof of his title to the demised property before making payment to him.

Held, on a consideration of written statement by the lessee in the previous rent suit that it could not be said that there was any unambiguous repudiation of the title so as to invite forfeiture of tenancy, but the tenant had only put the landlord to proof of his title. AIR 1953 All 797, Reversed. 1961 All L J 644 : 1961 All W R (HC) 510 : ILR (1961) 2 All 554.

——S. 111 (g) — Scope and applicability — Forfeiture of tenancy — Denial of title of transferee of lessor — Lessor's title not denied—Tenancy forfeited. AIR 1926 Cal 1205. Dissented. 1961 All W R (HC) 510 : 1961 All L J 644 : ILR (1961) 2 All 554.

——S. 111 (g) (2) — Setting up title in third person — What constitutes — Alleging landlord to be only a co-sharer with another person — Effect — Section 105.

The expression 'setting up a title in a third person' in S. 111 (g) (2) does not mean setting up full title in

a third person or asserting that the landlord had no title to the property at all. The definition of lease in S. 105 clearly shows that the terms 'lease,' 'lessor' and 'lessee' go together and in connection with a particular transaction would have reference only to the particular property covered by the lease, the particular person who transfers the right to enjoy that property and the person who accepts the transfer from such a transferor. In view of these definitions, a lessee would be said to renounce his character as such when he denies either that he holds that property as a lessee or states that he though a lessee of that particular property is not a lessee from the person who let it out to him. Where therefore the lessee alleges in his written statement that the person from whom he has taken the lease holds only a partial proprietary right in the leased property and another person is also a co-sharer therein he states, in effect that the person is not his lessor and the lease in his favour is determined by forfeiture on account of his renouncing his character as lessees of that person by setting up a title in a third person. **AIR 1958 All 847 (848, 849) (Pt A) (Prs 9, 10. 17) (DB).**

—S. 111 (g) — Denial of title of landlord — Meaning of, stated — (Words and Phrases). See Houses and Rents—U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S, 3 (1). **AIR 1958 All 847 (DB).**

—S. 111 (g) — **Forfeiture for denial of title.**

Owner of property by will bequeathing property to deity — Deity by its sarbarkar suing tenant for rent—Tenant in his written statement stating that will was never executed and that plaintiff was not owner of property — Further assertion that sarbarkar was very clever man — Denial could not be read as mere omission to admit plaintiff's title with view to putting him to proof of it but is disclaimer of title. **AIR 1953 All 797 (798) (Pt A) (Prs 8, 10).**

[Reversed on another point in ILR (1961) 2 All 554].

—S. 111 (g) — **Forfeiture for denial of title.**

If the title of the heir of the landlord is denied, the denial acts as a forfeiture of the tenancy, and the heir is entitled to eject the tenant on this ground. 1926 Cal 1205, Dissented from. Case-law discussed. **AIR 1953 All 797 (799) (Pt B) (Pr 11).**

[Reversed on another point in ILR (1961) 2 All 554].

—S. 111 (g) — **Forfeiture for denial of title.**

When the title of the real heir or of the original lessor is denied, it certainly amounts to setting up a title in somebody else, because the property does not remain in vacuum. **AIR 1953 All 797 (799) (Pt C) (Pr 19).**

[Reversed on another point in ILR (1961) 2 All 554].

—Ss. 111 (g), 106 — Tenant denying landlord's title in earlier suit — Tenant incurs forfeiture—Landlord intimating that he required premises for his personal use — Institution held intimation of intention to determine lease — Notice of termination held not necessary. **('51) 1951 R D (HC) 34 : 1951 All W R (HC) 225 : AIR 1952 All 141 (143) (Pt C) (Pr 10).**

—S. 111 (g) (2) — **Disclaimer — Tenant questioning the extent of the landlord's title.**

Courts always lean against forfeiture.

To constitute a disclaimer as contemplated by S. 111 (g) (2) of the T. P, Act there must be a distinct and unequivocal renunciation of the tenancy. Where the tenant does not set up a title to the whole of the property in himself or a title to the whole in others but merely questions the extent of the landlord's title admitting that a part of the title vested in the landlord, there is no disclaimer as contemplated by law and hence there can be no forfeiture in such a case. **1951 A W R (HC) 24.**

—S. 111 (g) — **Forfeiture by denial of title—Knowledge of landlord essential.**

To incur forfeiture of a lease, the denial of the landlord's title must be direct and unequivocal and must be made to the knowledge of the landlord. 34 Mad L J 170 : AIR 1919 Mad 1106 and AIR 1920 Mad 256. Rel. on. Observations in AIR 1922 Mad 290 : 38 Mad L J 275, held obiter. **AIR 1960 Andh Pra 166 (167) (Pt A) (Prs 9, 10).**

—S. 111 — Denial of title — What is—Two persons claiming rent — Tenant depositing rent in Bank and asking them to establish their rights — No denial of title. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 7 (f), Proviso. **(1957) 2 An W R 397,**

—S. 111 (g) — Denial of title — Notice of intention to accept disclaimer not given by landlord — Title suit by landlord as distinguished from ejectment suit, is maintainable **AIR 1955 NUC (Assam) 2816.**

—S. 111 (g) —:Eviction for denial of title — **Held** that since there was an arrangement of tenancy and the tenant denied relationship of landlord and tenant long before and there was no question of adverse possession for statutory period, the tenant was liable to be evicted. See Civil P. C. (1908), S. 47. **AIR 1955 NUC (Assam) 2787 (DB).**

—S. 111 — Ejectment — Compromise decree giving title to property — Plaintiff's suit for ejectment of tenant without suit for declaration of title is maintainable. **AIR 1955 NUC (Assam) 2045.**

—S. 111—Jote rights — Suit by Jotdar for eviction of tenant—Plea of sale by tenant — Purchaser joined as defendant — Purchaser setting up higher title by purchase from superior landlord—Jotedar must prove his title to land and show that lease in his favour is valid and subsisting — Till this is proved he cannot eject the purchaser. **AIR 1955 N U C (Assam) 1290.**

—S. 111 (g)—Suit for ejectment of monthly tenant—Defendant denying landlord's title — Defendant held not entitled to notice to quit. See T. P. Act (4 of 1882), S. 106. **AIR 1951 Assam 70 (DB).**

—S. 111 (g) (2)—Denial of landlord's title—Forfeiture of tenancy—Tenancies governed by Bombay Tenancy Act (67 of 1948) cannot be terminated on ground of forfeiture by disclaimer of landlord's title by tenant. See Tenancy laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 14. **59 Bom L R 59.**

—Ss. 111 (g) (2); 105 — **Change of character of tenant—Unilateral act.**

It is well-established that it is not open to a tenant by any unilateral act to alter his character of a tenant. 186 Pun Re 1888, Ref. **AIR 1951 Him Pra 65 (66) (Pt D) (Pr 10).**

—S. 111 (g) — Notice — Houses and Rents—M. B. Sthana Niyantran Vidhan :(15 of 1950), S. 4 (f) — Notice of ejectment already given — Disclaimer of title—No fresh notice is required. **AIR 1955 N U C (Madh-B) 1814 (DB).**

—Ss. 111, 106 and 54 — Suit for ejectment on the ground of determination of tenancy by forfeiture—Plaintiff alleging sale by defendant and lease back to him — Defendant is entitled to deny tenancy and plead that sale deed was only a mortgage — If defendant's case is upheld suit must be dismissed. **1963 Jab L J 605.**

—S. 111 (g) — Eviction of tenant — Decree under S. 4 (f) of M. P. Accommodation Control Act—Denial of landlord's title—Must have been before institution of suit—Denial in written statement not enough and not a ground for ejectment. See Houses and Rents—M. P. Accommodation Control Act (23 of 1955), S. 4.

1961 M P L J 7 : 1961 M P C 52 : 1961 Jab L J 5 : ILR (1960) Madh Pra 864.

——S. 111—Denial of title — Suit by landlord for eviction of tenant—Tenant disputing landlords' title and alleging another person to be landlord.

Impleading of the other person as party is not necessary for adjudicating upon dispute—Tenant can examine such person as witness. (1963) 76 Mad L W 79 : (1963) 2 Mad L J 251.

——S. 111 (g) — Denial of tenancy—Denial must be before the suit for ejection.

For S. 111 (g) to operate the forfeiture alleged must have occurred prior to the suit, so that it would be part of the cause of action upon which the suit was based. A denial of the tenancy, after the suit is instituted, and a claim of independent title by prescription advanced only through the written statement and at no earlier stage, would not work out any such forfeiture of the lease. 36 Mad L J 543 : AIR 1919 P C 1. Foll. (1960) 73 Mad L W 688 : (1960) 2 Mad L J 351.

——S. 111 (g) — Denial of title of lessor by lessee—Forfeiture and determination of lease.

The renouncing of his character as a lessee by setting up a title in a third person or by claiming a title in himself makes the lease voidable but does not ipso facto put an end to the lease. The lessee is thereby exposed to the risk of forfeiting his lease and the lessor is given the right if he so elects to determine the lease. There is, therefore, no determination of lease by forfeiture unless and until the lessor gives notice that he has exercised the option to determine the lease. ILR (1954) Nag 634 : 1954 Nag L J 573 : AIR 1954 Nag 328 (329) (Pt A) (Pr 6) (DB).

——S. 111—Jus tertii—Plea of—(C. P. Code (1908), S. 11)—Per Hidayatullah J.

While a plea of jus tertii can effectively be taken in suit for ejectment, jus tertii is no defence, unless the defendant can show that the act complained of was done by the authority of the true owner.

Subsequent events are not notice to afford one of the parties the advantage of a jus tertii unless the third party comes forward and accepts the claim. Chhotekhan v. Ubedulla. 1953 N L J 254 : ILR (1953) Nag 702 : AIR 1953 Nag 361 (363) (Pt E) (Pr 5) (FB).

——S. 111 (g)—Forfeiture for denial of title.

To entitle the plaintiff to a decree for ejectment on the ground of determination of the tenancy by forfeiture, there must be both disclaimer and manifestation of intention to determine the lease and these must be prior to the institution of the suit. Further, the case of forfeiture cannot be considered unless it was set up in the plaint.

If the defendant does not set up a title in a third person or claims a title in himself but simply denies the title of the plaintiff who is not the lessor but claims as heir to the lessor, there is no disclaimer. 1953 Nag L J 497 : ILR (1953) Nag 932 : AIR 1953 Nag 353 (355) (Pt A) (Prs 6, 7, 9) (DB).

——S. 111 (g) and (h)—Repudiation of title of lessor —Sufficient notice under Cl. (h)—Case on facts. AIR 1955 N U C (Orissa) 979 (DB).

——S. 111 — Under-raiyat with occupancy status—Heritability — Custom not established — His heir is trespasser and liable to be ejected.

It is well settled that the interest of an under-raiyat (dar raiyati interest) with occupancy status is not heritable under the law though it may be heritable by custom. Where in a suit for eviction the defence was that the defendants had acquired permanent occupancy rights in the disputed lands from their father who had acquired those rights by prescription, and both the Courts below concurrently held that the custom of heritability was not established, the status of the defendants was nothing more than that of a trespasser and they were liable to be ejected. AIR 1930 Pat 582 and AIR 1936 Pat 384. Foll. 1963 B L J R 623 : AIR 1964 Pat 31 (32) (Pt A) (Pr 6) (DB).

——S. 111 (g)—Chandna holding—Transfer by tenant without landlord's consent — No abandonment of holding or repudiation of landlord's title by tenant—Landlord is not entitled to obtain decree for possession. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S 44. AIR 1953 Pat 199 (DB).

——S. 111 (g)—Scope — Denial of landlord's title—Notice to quit—Omission to sue to eject — Suit for rent only—Fresh denial of title in suit—Fresh suit to eject on ground of disclaimer—Maintainability without fresh notice—Waiver.

Where a tenant denies his landlord's title and the latter determines the tenancy by a notice to quit, but does not sue for ejectment and sues only for rent and gets a decree, but in the course of that suit the tenant again denies the landlord's title, a fresh notice to determine the tenancy is essential in order to entitle the landlord to sue the tenant for ejectment. A fresh notice of his intention to determine the tenancy should be given, and the landlord cannot take advantage of the previous notice, as he has waived the same by omitting to sue to eject the tenant on the ground of the prior disclaimer. AIR 1951 Pat 190 (193) (Pt A) (Pr 8) (DB).

——Ss. 111 (g) and 117 — Suit for possession of agricultural land on the ground that the tenancy had been forfeited by the tenants by their denial of the plaintiff's title as landlord — Suit is not liable to fail for want of notice to tenants of landlord's intention to exercise his right of forfeiture. AIR 1953 S C 228, (1953) 1 M L J 715 : AIR 1919 Mad 897, 35 M L J 129, Rel. on. 66 Punj L R 231 : ILR (1964) 1 Punj 616 : AIR 1964 Punj 449 (450) (Pt A) (Pr 5) (DB).

——Ss. 111 (g) and 117 — Tenant sticking to his original tenancy and merely questioning the validity of the alleged transfer made by the landlord in favour of his son — It does not amount to a repudiation of the landlord's title which entails a forfeiture of the tenancy. A I R 1926 Cal 1205; 12 C W N 587, Rel. on; A I R 1953 All 797, Distinguished. 66 Pun L R 231 : I L R (1964) 1 Punj 616 : A I R 1964 Punj 449 (450) (Pt B) (Pr 10) (DB).

——S. 111 (g) — Forfeiture of tenancy for denial of title — Averments in plaint that defendants denied title of landlord by refusing to pay rent — Averments not denied definitely by defendants but adverse title set up in themselves — Held that there was denial of title and forfeiture of tenancy. 65 Pun L R 1057 : AIR 1964 Punj 298 (299) (Prs 5, 6).

——S. 111 — Payment of rent to superior landlord — Does not absolve tenant from liability to immediate landlord—Estoppel. See Evidence Act (1872), S. 116. AIR 1959 Punj 564.

——Ss. 111 (g), 117 — Agricultural land — Tenant repudiating tenancy by claiming title in himself — Forfeiture of tenancy—Rule of equity—Punjab Laws Act (1872), S. 6.

In the absence of any law, usage or custom to the contrary, the principles of Chapter V of the Transfer of Property Act are applicable to leases for agricultural purposes as rules of justice, equity and good conscience. Therefore tenancy of agricultural land is forfeited by repudiation by the tenant of the tenancy by claiming in himself the title to the land. A I R 1919 Mad 12; AIR 1948 Mad 275, Rel. on. AIR 1952 Punj 52 (53) (Pt B) (Prs 6, 7).

——S. 111 (g) — Restoration of evacuee property to owner—Lessee of property from the Custodian deemed a tenant of owner — Denial of title by a tenant when entitles landlord to possession, pointed out. See Administration of Evacuee Property Act (1950), S. 16 (3). 1963 Raj L W 619.

——S. 111 (g) — Waiver of forfeiture— Termination of tenancy by denial of title of landlord — Notice indicating positive intention of landlord to exercise right of ejectment—Acceptance of rent till termination of tenancy does not amount to waiver. See Transfer of Property Act (1882), S. 112. I L R (1962) 12 Raj 172.

——S. 111 (g) — Applicability—Permanent constructions on land by occupant — Plaintiff not accepting them as tenant — Occupant also not contending that they were tenants — Occupants held were liable to ejectment — There was no question of forfeiture. See T. P. Act (1882), S. 106. AIR 1957 Tripura 8.

14. Notice of intention to determine lease on forfeiture.

● —S. 111 — Joint tenancy — Notice to determine lease to one of the joint tenants sufficient — Suit for ejectment against one of the tenants also good. See T. P. Act (4 of 1882), S. 106. AIR 1963 S C 468.

● ——S. 111 (g) — Notice of intention to determine lease on forfeiture.

The provision in S. 111 (g) as to notice in writing as a preliminary to a suit for ejectment based on forfeiture of a lease is not based on any principle of justice, equity or good conscience and cannot govern leases made prior to the coming into force of the Transfer of Property Act, 1882, or to leases executed prior to 1st April, 1930. The rights and obligations under those leases have to be determined according to the rules of law prevailing at the time and the only rule applicable seems to be that a tenant cannot by his unilateral act and by his own wrong determine the lease unless the lessor gives an indication by some unequivocal expression of intention on his part of taking advantage of the breach.

The statement in A I R 1948 Mad 275 (F.B) that Ss. 105 to 116 of the Transfer of Property Act are founded upon principles of reason and equity cannot be accepted either as correct or precise. Of course, to the extent that those sections of the Act give statutory recognition to principles of justice, equity and good conscience they are applicable also to cases not governed by the Act. (1946) 2 Mad L J 229; AIR 1947 Mad 68; 231 Ind Cas 276 and ILR 1951 Bom 293; A I R 1951 Bom 283; 52 Bom L R 909, Overruled. Namdeo Lokman Ladhi v. Narmadabai, 1953 S C J 306 : 1953 S C A 517 : 1953 Mad W N 592 : (1953) 1 M L J 715 : 55 Bom L R 517 : 55 Pun L R 312 : 1953 S C R 1009 : AIR 1953 S C 228 (230 to 232) (Pt A) (Prs 17, 20, 23).

——S. 111 — Notice determining tenancy — Person entitled to — Tenant migrating to Pakistan—Defendant occupying premises with consent and permission of landlord — Coming into force of E. P. Evacuee (Administration of Property) Act, 1947 — Landlord giving notice subsequently to defendant terminating his tenancy for non-payment of rent—Landlord held was within his right to determine the defendant's tenancy and to seek his ejectment under ordinary law of the land. See T. P. Act (1882), S. 106. AIR 1955 N U C (Ajmer) 4735.

——Ss. 111 (g), 114-A — Notice to whom to be given — These sections require notice to the tenant and no notice is to be given to an assignee of a part of the lessee's interest. I L R (1961) 13 Assam 101 : A I R 1961 Assam 70 (72) (Pt D) (Pr 6) (DB).

——Ss. 111 (g), 114-A — Combined notice under two sections — There is no bar under the Act to combine the two notices in one. I L R (1961) 13 Assam 101 : AIR 1961 Assam 70 (72) (Pt E) (Pr 6) (DB).

——Ss. 111 (g) and 106: — Notice of intention to determine lease on forfeiture due to disclaimer of title, not given — Landlord cannot depend on forfeiture under S. 111 (g). AIR 1955 N U C (Assam) 2816.

——S. 111 (g) — Forfeiture of lease — Proper notice contemplated by lease should be given. A I R 1955 N U C (Bom) 5321 (DB).

——S. 111 (g) — Provision for re-entry for breach of condition against alienation contained in Kabuliyat attached to lease—Breach of condition—Notice under S. 111 (g) not given—Decree for possession cannot be passed. See Transfer of Proprrty Act (1882), S. 106. AIR 1960 Cal 40.

——S. 111 (g)—Determination of lease by forfeiture —Notice—S. 106.

Where the lease deed clearly stipulated that in case of default for three consecutive months in payment of rent, the lessee would be liable to vacate the premises and the lessor would be entitled to terminate the lease and exercise the right of re-entry and the notice served on the lessee stated that as tenant-defendant had neglected to pay rent from October, 1950, that is for more than three consecutive months, the landlord 'hereby forfeits and terminates the lease' and that the tenant was 'to quit, vacate and deliver peaceful possession' of the premises to the landlord on the expiry of June, 1951.

Held, that the notice was one under S. 111 (g) and not under S 106, T. P. Act, and it fully satisfied the requirements of S. 111 (g). There was therefore a valid determination of the lease. 62 Cal W N 753 : (1958) 1 Cal L J 110 : ILR (1958) 1 Cal 671 : A I R 1958 Cal 428 (429) (Pt A) (Pr 5) (DB).

——S. 111 (g) — Service tenure — Suit for possession by landlord in 1925 returned for presentation to proper Court—Suit for resumption of land again brought in 1944—Determination of tenancy—Adverse possession—Suit barred by—Notice to forfeit tenancy held necessary—Determination of licence—(Easements Act (1882), S. 62) — (Landlord and tenant — Forfeiture of tenancy)—(Adverse possession)—(Easements—Termination of licence.) See Limitation Act (1908), Art. 144. A I R 1956 Cal 79 (DB).

——S. 111—Notice to quit—Time of commencement of tenancy or period of tenancy not mentioned — Notice is not valid. See T. P. Act (4 of 1882), S. 106. (1960) 73 Mad L W 688 : (1960) 2 Mad L J 351.

——Ss. 111 (g) and 114-A — Two separate notices — Necessity.

Two notices in writing, namely, one under S. 111 (g) and one under S. 114-A are not necessary. Section 114-A was added by an amendment of 1929 and must be deemed to have specified the nature of the notice required under S. 111 (g). 1952 Mad W N 871 : (1952) 2 Mad L J 758 : 66 Mad L W 1079 : ILR (1953) Mad 615 : AIR 1953 Mad 313 (315) (Pt A) (Pr 7) (DB).

——S. 111 (g)—Defendant-tenant not raising plea of want of notice — Plea cannot be allowed to be raised in appeal for first time. See Civil P. C. (1908), O. 6, R. 6. A I R 1965 Pat 156 (DB).

——Ss. 111 (g) and 114 - Forfeiture—Notice—Necessity — Provision for automatic forfeiture on non-payment of rent—Legality.

The provision as to notice by the lessor has been inserted in S. 111 (g) for the benefit of the lessee and is a protective stipulation which cannot be set at nought by the contract entered into between the parties; and construing the provisions of S. 111 (g) in

the context of the English principle of equity embodied in S. 114 of the Act that a forfeiture clause for non-payment of rent is merely security for the rent, the provision as to notice contained in the section cannot be waived by the act of parties. There is, therefore, no forfeiture of lease where the finding of fact is that a notice has not been given by the lessor to the lessee of the forfeiture of the tenancy for non-payment of rent even though an express term in the registered lease provides for an automatic forfeiture on non-payment of rent. 1960 Pat L R 116 : 1960 B L J R 560 : ILR 39 Pat 603 : A I R 1960 Pat 525 (526) (Pr 3) (DB).

15. Re-entry on forfeiture.

——S. 111 (g)—Forfeiture for breach of express condition for payment of rent — Lessor's re-entry after notice to the lessee and lessor's possession thereafter are not unlawful. ILR (1960) 2 Cal 167.

——Ss. 111 (g), 114A — Suit by dispossessed lessee to recover possession from lessor who has re-entered upon forfeiture—S. 114A not applicable—S. 111 (g) is applicable—Notice expressing intention to determine lease and re-enter is sufficient compliance. See T. P. Act (1882), S. 114A. ILR (1960) 2 Cal 167.

——S. 111 (g) — Forfeiture — Lessor re-enters upon lessee's failure to pay rent—Large sum due by lessee for arrears of rent—Lessee cannot be relieved against forfeiture.

In a case where the lessee has failed to pay rent amounting to thousands of rupees and has further defaulted in payment of taxes and in keeping the premises in good and substantial repair and condition, he cannot be relieved against forfeiture, which is a discretionary relief which equity grants. (1895) C D 581, Ref. ILR (1960) 2 Cal 167.

——S. 111—No ejectment without right of re-entry.

The rule that there will be no ejectment of the transferee of the lessee, in the absence of a provision of a right of re-enty or equivalent provision applies to leases before the Transfer of Property Act, as a rule of justice, equity and good conscience. 93 Cal L J 219 : ILR (1956) 2 Cal 107 : A I R 1954 Cal 541 (542) (Pt B) (Pr 4) (DB).

——S. 111 (g) — Applicability — Wasidari Rules, R. 25—On failure to observe 'condition' of lease, land to be 'liable to resumption' by lessor—Lessor's right to re-enter.

The words 'liable to resumption' in R. 25 of the Wasidari Rules connote that after the lessee commits a breach of the terms of the lease, the lessor (i.e., the State Government) is entitled to resume the property, i.e., to re-enter the property and take possession of it. It is well settled that a lessor while enforcing his right of forfeiture has every right to take possession of the premises without his having to resort to Court to obtain an order for possession provided it is done peaceably and without actual resistance. (S) A I R 1955 Cal 601. Foll. Bhagat Rajinder Kumar Sawhney v. State of J and K. A I R 1961 J and K 50 (51) (Pt A) (Pr 2) (FB).

16. Clause (h) — Notice to quit or determine the lease.

——S. 111 (h) — Termination of tenancy — Notice—Notice terminating tenancy and demanding arrears of rent is not invalid — Legal notice does not become illegal because it contains superfluous matter. See T. P. Act (1882), S. 106. A I R 1963 All 581 (DB).

[Overruled on another point in A I R 1967 All 1].

——S. 111 (h)—Lease from month to month—Notice — Construction — Use of present tense in notice as "your tenancy is terminated" and not "your tenancy is terminated to-day" does not mean that landlord is terminating the tenancy in presenti. See T. P. Act (1882), S. 106 (U. P.) A I R 1963 All 581 (DB).

[Overruled an another point in AIR 1967 All 1.]

——S. 111 (h)—Lease from month to month—Termination—Notice—Essentials indicated. See T. P. Act (1882), S. 106 (U. P.). AIR 1963 All 581 (DB).

[Overruled on another point in AIR 1967 All 1].

——S. 111 — Notice to determine tenancy and notice to quit — Distinction pointed out. See Transfer of Property Act (1882), S. 106. AIR 1958 All 729 (DB).

——S. 111 (h)—'Notice to quit'—Notice by landlord to vacate rented property is notice to quit. See Transfer of Property Act (1882), S. 106. AIR 1958 All 729 (DB).

——S. 111 (h)—Monthly tenancy—Ejection of tenant—Restrictions imposed by special law — Landlord's right under general law — Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (a).

The general law permits the ejectment of a tenant after giving him 15 days notice terminable with the month of the tenancy. But the special law, namely the U. P. (Temporary) Control of Rent and Eviction Act, .1947, has imposed certain conditions upon the exercise of that right one amongst them being that the tenant should make a wilful default in the payment of rent within one month of the service of notice of demand. Where, however, the tenant makes such default the parties would be relegated to the general law and according to the general law the landlord would be entitled to evict the tenant after giving the requisite notice. Landlord's suit after giving such notice under the general law is competent even though the tenant tenders thereafter the whole rent due. ('51) 1951 All W R (H C) 197 : 1951 All L J 331 : AIR 1952 All 579 (579, 580) (Pt A) (Pr 3).

——S. 111 (h) — Powers under — Antecedent notice to quit not a pre-condition — S. 111 (h), T. P. Act not applicable. See Houses and Rents — Hyderabad Houses (Rent Eviction and Lease) Control Act (20 of 1954). 1960 Andh L T 40.

——S. 111 (h)—Notice to quit—Waiver—If landlord accepted rent for seven months successively for period after notice to quit, circumstances go to show that he intended to treat terminated tenancy as continuing. See T. P. Act (4 of 1882), S. 106. AIR 1959 Andh Pra 346 (DB).

——S. 111 (h) — Notice to quit — Effect on under-lease.

A valid notice to quit determines not only the original demise but any under-lease which the tenant might have made. (1959) 63 Cal W N 192.

——S. 111 (h) — Notice to quit sent by registered post — Sufficiency — Notice shall be deemed to be effected—(General Clauses Act (1897), S. 27).

A soon as it is proved that the letter containing the notice to quit is properly addressed, prepaid and posted by registered post, service shall, under S. 27, General Clauses Act, be deemed to be effected. This 'deeming' has been held to amount to a presumption, which, unless rebutted, would prove the fact of service. Even if, therefore, the actual refusal by the addressee is not proved, service of the notice may well be held to be proved. 62 Cal W N 193 : ILR (1957) 1 Cal 156 : AIR 1958 Cal 251 (252) (Pt A) (Pr 3) (DB).

——S. 111 (h) — Notice to quit sent by registered post — Notice returned with endorsement 'refused'—Presumptions available indicated. See Evidence Act (1872), S. 114. AIR 1958 Cal 251 (DB).

——S. 111 (h) — Tenant holding over—Termination of tenancy — Notice to quit — Tenancy when terminated indicated. See T. P. Act (1882), S. 110. AIR 1957 Cal 649 (DB).

——S. 111—Notice to quit—Limited company tenant — Notice to person who was managing director — Notice treated as notice to company — Notice held valid notice on company tenant.

Each case must be taken by itself and one decision on the meaning of a notice to quit in one context does not afford much guidance for interpretation of a notice in different words in a different context. It is necessary to look at the intention of the landlord, and when language is used which leaves the effect of the notice open to doubt, the rule of construction is to make it sensible and not insensible. Where instead of addressing the quit notice to a limited company which was the tenant it was addressed to a person who was the managing director himself and the name of the company was written after the name of the managing director with a "Limited" appended after the name, and the notice was treated by the addressee and the company as a notice to the company itself.

Held that the notice was valid notice to the tenant. (1946) 1 K B 280, 45 I A 222, (1900) 1 Q B 23, Rel. on. 1897 A C 22; 8 East 227, Ref. ('52) 89 Cal L J 127 : ILR (1954) 2 Cal 75 : AIR 1953 Cal 160 (160 to 164) (Pt E) (Prs 21, 23, 27, 28, 29).

——Ss. 111 (h), 114 — Scope — Suit for ejectment on ground of non payment of rent — Relief against forfeiture under S. 114, T. P. Act, is available only when lease is determined under cl. (g), of S. 111 and not where it is determined under cl. (h) of that section. See Houses and Rents—Bombay Rents, Hotel and Lodging House (Control) Act (67 of 1947), S. 12 (1). AIR 1964 Guj 9 (DB).

[Overruled on another point in AIR 1967 S C 1078].

——S. 111 (h) — Waiver of notice to quit — What constitutes—Suit for ejectment—Landlord receiving rent after institution of suit — Suit not withdrawn —Action on part of landlord does not amount to waiver of notice under S. 111 (h). See T. P. Act (4 of 1882), S. 113. AIR 1962 J & K 2 (DB).

——S. 111 (h)—Notice to quit need not mention any breach committed by the tenant—Notice mentioning a breach committed by tenant not invalid. See Transfer of Property Act (1882), S. 106. 1963 M P L J (Notes) 44.

——S. 111 (h) — Quit notice must give fifteen days' time and must expire with the end of tenancy month —Month of tenancy may be very well different from the month according to which rent is realised. See T. P. Act (1882), S. 105. 1963 M P L J (Notes) 42.

——S. 111 — Ejectment sought under S. 111 (h) — Section 114 not applicable. See T. P. Act (4 of 1882), S. 114. AIR 1961 Madh Pra 56.

——S. 111 (a)—Lease for a fixed period commencing from certain date — Notice asking tenant to deliver possession on expiry of lease — Date of termination not mentioned—Tenant receiving notice more than a month before expiry — Notice is valid. See Transfer of Property Act (4 of 1882), S. 106. 1961 Jab L J 311.

——Ss. 111 (h) and 113 — Waiver of notice — It is a matter of bilateral agreement between landlord and tenant — If landlord has not agreed to revive tenancy there is no waiver of notice — Mere acceptance of money remitted by tenant does not amount to waiver. AIR 1949 F C 124 and AIR 1953 All 745, Dist.; AIR 1953 Nag 219, AIR 1954 Cal 460 and S. A. No. 189 of 1955, dated 24.9.1958, Rel. on. 1961 M P L J (Notes) 224.

——S. 111 (h):— Acceptance of rent is ordinarily a strong circumstance to draw an inference that notice to quit has been waived—But that by itself is not sufficient to show waiver —Intention to treat lease as subsisting is essential, See T. P. Act (1882), S. 113. AIR 1960 Madh Pra 192 (DB).

——S. 111 (h)—Notice to quit — Waiver of —Giving second notice — Tenancy after waiver is not fresh tenancy but is the same old tenancy that existed before. See T. P. Act (1882), S. 113. AIR 1960 Madh Pra 192 (DB).

——Ss. 111, 116 and 113 — Applicability of S. 116— Conditions for— Determination of lease by notice to quit —Waiver of such notice — Section 116 will not apply; 1953 Nag L J Short Note No. 24 and AIR 1959 Bom 292, Dissented from. See T. P. Act (4 of 1882), S. 116. AIR 1960 Madh Pra 192 (DB).

——S. 111 (h)—Notice to quit—Waiver of— Acceptance of rent when amounts to waiver — Act showing landlord's intention to treat lease as subsisting is necessary. See T. P. Act (1882), S. 113. A I R 1960 Madh Pra 16.

——S. 111 (h)—Lease terminated by notice — Landlord refusing to take possession — Continuance of lease.

When the lease has been terminated by a valid notice as provided for under S. 111 and when possession has been offered and the landlord had refused to take possession it cannot be held that the lease would still continue in favour of the landlord. 65 Mad L W 1215 : ('52) 1952-1 Mad L J 459 : AIR 1953 Mad 996 (997) (Pt A) (Pr 5).

——S. 111 (h)—Loss caused to landlord — Landlord cannot challenge notice or termination of agency but must sue for damages for wilful negligence of tenant. See T. P. Act (4 of 1882), S. 108 (m). A I R 1953 Mad 996.

——S. 111 (h)—Civil P. C. (1908), S. 115—New point —Contention whether landlord has terminated contractual tenancy of petitioner — Contention can be raised in revision. See Civil P. C. (1908), S. 115. (1964) 1 Mys L J 8.

——S. 111 (h)—Determination of tenancy — Failure to pay rent:— Notice calling upon tenant to hand over possession—No notice to determine tenancy.

A notice issued to the tenant calling upon him to hand over possession since he has failed to pay the rent is not a notice whereby the tenancy is determined under S. 111 (h). (1964) 1 Mys L J 8.

——S. 111—Notice for determination of lease—Municipality is not out side the provisions of T. P. Act— If it has granted a lease, notice must be given before the same can be terminated. See Easements Act (1882), S. 60. AIR 1954 Mys 89.

——Ss. 111 (h), 106— Monthly tenancy ending with last day of calendar month — Notice to vacate on 1st of next month—Validity.

A notice to quit on a day which is a periodical recurrence of the day on which the tenancy began is not ineffective.

Thus where a monthly tenancy commenced from the 1st of the month and ended with 30th or 31st of each month as the case may be, and the tenant was asked by 15 days notice to vacate on 1st February.

Held, that the notice terminated the tenancy by giving 15 days notice ending with the calendar month of the tenancy. Since the tenant was entitled to remain in possession till the midnight of the 31st January, he was naturally asked to vacate the premises on the following day. This was obviously a concession to the tenant. The notice was, therefore,

not invalid. 1955 Nag L J 755 : ILR (1956) Nag 13 : AIR 1956 Nag 125 (127) (Pt C) (Prs 7, 8).

——S. 111 (h) — Waiver of notice to quit did not depend upon election of any party but upon consent of both. See T. P. Act (4 of 1882), S. 113. AIR 1956 Nag 125.

——S. 111 (h)—Act showing an intention to treat the lease as subsisting—Waiver of notice to quit—Acceptance of rent as such for period subsequent to notice — Creation of new tenancy. See T. P. Act (1882), S. 113. AIR 1955 NUC (Orissa) 1853.

——S. 111 (h) — Repudiation of title of lessor—Sufficient notice under Cl. (h) — Case on facts. See T. P. Act (1882), S. 111 (g). AIR 1955 N U C (Orissa) 979 (DB).

——Ss. 111 (h), 106—Applicability—Tenancy-at-will—Notice to quit — Necessity — Tenant in possession for long time and putting up building paying uniform annual rent—Right of.

It is not the law that in the case of every tenancy-at-will the landlord can straightaway re-enter without even making a demand for possession. Even in the case of a tenancy-at-will, a notice to quit is necessary before determining the tenancy, in the absence of a contract to the contrary where the tenant has put up a dwelling house and has been proved to have remained in possession continuously for about 70 years, paying a uniform annual rent, the tenancy cannot be determined without a proper and reasonable notice being served on him. 18 Cut LT 117 : AIR 1951 Orissa 262 (265) (Pt G) (Pr 10).

——S. 111 (h)—Notice to quit—Validity—Notice not signed by lessor or his agent—Sufficiency.

A notice to quit which is served on the lessee, but which is not signed either by the lessor or by his agent, is not a proper or valid notice and is of no effect; no value can be attached to the same. 18 Cut L T 117 : AIR 1951 Orissa 262.

——S. 111 (h)—Lease — Demised property occupied by trespasser — Tenant determining lease by giving notice to landlord under S. 111 (h)—Tenant also serving notice on trespasser — Failure of tenant to hand over possession to landlord—Suit by landlord against tenant to recover damages for use and occupation—Landlord is not entitled to recover damages. See T. P. Act (1882), S. 108 (q). AIR 1959 Pat 139 (DB).

[Overruled on another point in AIR 1965 Pat 374.]

——Ss. 111 (b) and 113 — Distillery licence containing condition for determining licence by Excise authorities on notice — Notice kept in abeyance for some years — Its subsequent revival with shorter notice period is illegal — Principle of Ss. 111 (h) and S. 113 of T. P. Act is applicable. See Punjab Excise Act (1 of 1914), S. 21 (b). AIR 1965 Punj 217 (DB).

——S. 111 (h)—Tenancy Laws — Travancore Holdings Stay of Eviction Proceedings Act (21 of 1124), (as amended by Act 8 of 1950), S. 4 — Tenant holding over after determination of tenancy — His liability to surrender holding and to pay mesne profits.

Ordinarily when a tenant unlawfully withholds possession of the holding from the landlord after the tenancy is determined, the landlord can be allowed to recover mesne profits instead of the rent he was till then entitled to receive. But as by virtue of the provisions of the Travancore Holdings (Stay of Eviction Proceedings) Act, 1124, M. E., as amended by Act 8 of 1950, if even after a decree for surrender the landlord cannot recover possession unless the tenant entails forfeiture in terms of proviso (a) to S. 4 of Act 8 of 1950, then in a suit for eviction it will be illogical and unsound to make the tenant liable for mesne profits. In such a case the plaintiff will only be entitled to recover rent from the defendant at the specified rate and not mesne profits. 1955 Ker L T 622 : I L R (1955) Trav-Co 1016 : AIR 1956 Trav-Co 86 (87) (Prs 2, 3) (DB).

17. Lease and Rent Control Legislation.

● ——Ss. 111 (g), 106, 113 — M. P. Accommodation Control Act (1955), Ss. 4 (a), (g), (h), (j), (k), 5—M. P. Accommodation Control Act, 41 of 1961, Ss. 4, 16, 17 — P's tenant, D in arrears of rent for one year — P serving notice on D on April 11, 1959 requiring him to pay arrears within one month and calling upon him to vacate premises by April 30, 1959—D sending cheque on June 25, 1959, for arrears of rent, and also rent due up to June end — P accepting cheque and cashing it—P again giving notice to D on July 9, 1959 requiring him to vacate by end of July 1959—D failing to vacate — P filing suit for eviction of D on basis of notice dated July 9, 1959 — Notice dated April 11, 1959 held ineffective—P's suit for eviction on basis of notice dated July 9, 1959, held competent — Sections 16, 17 of M. P. Act 41 of 1961 and S. 113 of T. P. Act held inapplicable — P held not to have waived right to sue for eviction. See Houses and Rents — M. P. Accommodation Control Act (23 of 1955), S. 4 (a). AIR 1965 S C 101.

● ——S. 111 — Houses and Rents — Bombay Rents (Hotel and Lodging House Rates) (Control) Act (57 of 1947), S. 12—Scope and object — Section operates against landlord only after contractual tenancy is determined in accordance with S. 111, T. P. Act — Suit for recovery of possession under S. 12 — Not maintainable unless tenancy is determined and notice under S. 12 (2) is served. See Houses and Rents — Bombay Rents (Hotel and Lodging House Rates) Control) Act (57 of 1947), S. 12, AIR 1963 S C 120.

——S. 111—Rights of Landlord — Delhi and Ajmer-Merwara Rent Control Act (19 of 1947), S. 9 (1).

Section 9 (1) only further restricts the right of a landlord to eject his tenant. It does not confer any right on the landlord. The landlord will in addition to establishing his right to a decree for ejectment under the general law have to comply with provisions of Act (19 of 1947). AIR 1955 N U C (Ajmer) 321.

● ——S. 111 — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Ss. 14, 31, 29—Landlord terminating tenancy under S. 31 — Subsequent application under S. 29, read with S. 14 is not untenable. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 14. AIR 1963 Bom 79 (FB).

——S. 111 — Expression 'lawfully determined' in S. 13 (2) of W. B. Rent Control Act (1950) means determination of tenancy under S. 111, T. P. Act as well as withdrawal of statutory protection afforded under S. 12 (1) of Rent Control Act. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 13 (2). A I R 1955 Cal 226 (DB).

——S. 111—Houses and Rents—Bombay Rents Hotel and Lodging House Rates (Control) Act, S. 12—Tenancy determined otherwise than by forfeiture — Tenant seeking protection from eviction must bring his case within four corners of Act — Court has no discretion to give relief against eviction apart from provisions of Act. See Houses and Rents—Bombay Rents Hotel and Lodging House Rates (Control) Act, S. 12. (1962) 3 Guj L R 529.

——S. 111—Hyderabad Transfer of Property Act, S. 93 — Applicability — Notice to quit — Necessity in case of ejectment under Rent Control Order.

The provision relating to notice to quit under S. 93, Hyderabad Transfer of Property Act, is inapplicable to cases of ejectment under the Rent Control Order

and it is not therefore necessary for a landlord, wishing to proceed under the Order, to issue a notice to quit under the Transfer of Property Act, before commencing ejectment proceedings under the Rent Control Order. **I L R (1951) Hyd 542 : A I R 1951 Hyd 111 (111, 112) (Pr 3) (DB).**

——S. 111—(Jammu and Kashmir) — Ejectment of tenant on ground that plaintiff requires land bona fide for personal cultivation—Facts to be proved.

In a suit for ejectment of a tenant on the ground that the plaintiff requires the land bona fide for personal cultivation, it is necessary for the trial Court to find out whether the plaintiff is in cultivating possession of any land and if so, to what extent. If it is found that the plaintiff has already 17 Kanals of Abi or 33 Kanals of Khushki, then he is out of Court and cannot seek ejectment of the tenant on the ground that he needs the land for cultivating it personally but in case it is found that the plaintiff is not in possession of any land then enquiry has to be made whether he bona fide requires the land for cultivating it personally. It will further be necessary to give a clear finding in regard to compensation claimed by the defendant.

The mere fact that a person is advanced in age and has retired from service should not be considered to be a disqualification for cultivating the land personally. A person may not be able to attend to all the details of cultivation personally. What is required is that he should engage himself personally in the cultivation of land and for that purpose he may get the assistance of his other relations and friends and with their help discharge the various details of work connected with the cultivation of land.

The mere fact that the plaintiff is residing at some distance from the land would not be sufficient circumstance to hold that he is not prepared to till the land personally. He may shift to the land during the time when it is to be cultivated and then return to his house, which is a few miles away, when his presence is no more required on the land. **AIR 1954 J & K 53 (54) (Prs 2 to 4).**

——Ss. 111, 106—Tenancy by contract.— Determination of—Notice to quit is essential—Provisions of M. B. Sthan Niyantran Vidhan do not repeal or abrogate provisions of Transfer of Property Act. See Houses and Rents—Madhya Bharat Sthan Niyantran Vidhan (15 of 1950), S. 4. **AIR 1952 M B 121 (DB).**

——S. 111 — Ejectment suit brought by Landlord against tenant decreed—Sub-tenant. party to suit, cannot plead protection of his status under Madras Buildings (Lease and Rent Control) Act. See Houses and Rents:— Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 2 (4).) **AIR 1953 Mad 356 (DB).**

——S. 111 — Landlord obtaining order from House Rent Controller fixing fair rent — He cannot prosecute suit for eviction on basis of termination of tenancy.

A landlord who applies under the House Rent Control Order for the fixation of a fair rent to be paid by a tenant in occupation, on getting this done cannot continue to prosecute any suit in a civil Court for eviction on the basis of a termination of the tenancy on preceding facts. The landlord may prosecute a suit for eviction on the basis of termination of his tenancy under the ordinary law, but he cannot do so after obtaining a fixation of fair rent by the House Rent Controller on an application on the basis of a clear and specific recognition of the continuation of the tenancy : (1920) 2 K B 161, Rel. on; AIR 1949 Mad 765, Expl. **1949 Mad W N 543 : (1949) 2 Mad L J 339 : AIR 1950 Mad 60 (61) (Pt B) (Pr 4).**

——S. 111 (h)—Houses and Rents—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 7 (1) and (3) (d) — S. 7 (1) is not self-contained provision —Section does not override provisions of T. P. Act—Landlord cannot seek possession so long as tenancy continues. See Houses and Rents —Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 7 (1). **(1964) 1 Mys L J 8.**

——S. 111—Eviction for non-payment of rent — Suit for —Exemption order under second proviso to S. 5 (a), Orissa House Rent Control Act (1951)—Not necessary. See Houses and Rents—Orissa House Rent Control Act (11 of 1951), S. 5 (a). **(1961) 27 Cut L T 81.**

——S. 111—Ejectment of tenant for non-payment of rent—Landlord not required to obtain exemption under S. 5, Proviso 2 to Orissa Rent Act (11 of 1951). See Houses and Rents — Orissa House Rent Control Act (11 to 1951), S. 5 (a). **(1959) 25 Cut L T 240.**

● **——S. 111 — Scope — Lease of building — Lease not determined in accordance with S. 111 — Landlord cannot maintain action for eviction of tenant under S. 11 of Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947) — 1964 BLJR 59, Overruled;** (1891) 2 Q B 267, ILR 12 Mad 353; ILR 15 Bom 407, AIR 1949 Mad 127; AIR 1950 Mys 63; AIR 1953 Sau 113; AIR 1963 S C 120 and AIR 1964 Cal 1; Rel. on.; AIR 1951 S C 115 and AIR 1949 Mad 780, Disting. Niranjan Pal v. Chaitanyalal Ghosh. **1964 B L J R 583 : ILR 43 Pat 91: AIR 1964 Pat 401 (404, 405, 408) (Pt C) (Prs 14, 15, 18 to 20, 32) (FB).**

——S. 111 — Houses and Rent — Bihar Buildings (Lease, Rent and Eviction) Act (3 of 1947), S. 11 (1) (d) case under Bihar Act — Section 11 of Bihar Act is a self-contained provision — Notice under S. 111 before institution of suit for eviction is not necessary — It is not necesary to go outside Bihar Act to determine whether tenant is liable to be evicted or not. See Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Act (3 of 1947), S. 11 (1) (d). **1964 BLJR 59.**

[**Overruled** in AIR 1964 Pat 401 (FB).]

——S. 111:— Delhi and Ajmer Merwara Rent Control Act (1947), S. 8—Notice of increase of rent and determination of contractual tenancy. See Houses and Rents — Delhi and Ajmer Merwara Rent Control Act (19 of 1947), S. 8. **AIR 1958 Punj 263.**

—— S. 111—Delhi and Ajmer Merwara Rent Control Act (1947), S. 9—Right to evict tenant under Rent Act how affects contractual tenancy indicated. See Houses and Rents — Delhi and Ajmer Merwara Rent Control Act (19 of 1947), S. 9. **AIR 1958 Punj 263.**

——S. 111 (g)— Applicability—Contract of tenancy requiring notice of termination — Application under S. 7, United State of Rajasthan Buildings (Lease and Rent Control) Ordinance—Notices — Necessary. See Houses and Rents — Rajasthan Building (Lease and Rent Control) Ordinance (22 of 1948), S. 7. **1958 Raj L W 121 : ILR (1958) 8 Raj 137.**

——Ss. 111 and 108—Bombay Rents Hotel and Lodging House Rates (Control) Act (1947), S. 12; and S. 13 (as extended to Saurashtra) — Sections do not abrogate provisions of T. P. Act. See Houses and Rents—Bombay Rents Hotel and Lodging House Rates (Control) Act (1947), S. 12. **AIR 1953 Sau 119 (DB).**

——S. 111—Tenancy must be duly determined either by a notice to quit or by efflux of time or under one or other of the clauses of S. 111, T. P. Act, before a landlord can sue to evict his tenant on any of the grounds mentioned in S. 13 (1), Bombay Rent Act. See Houses and Rents.— Bombay Rents Hotel and Lodging House Rates (Control) Act (1947), S. 13, **AIR 1953 Sau 113 (DB).**

18. Tenancy-at-will.

——S. 111—Tenancy for a fixed term — Tenancy at will—Lease for an indefinite period—Termination—Heritability.

A tenancy for a fixed term determines only by efflux of time, the death of the tenant during the term has absolutely no effect and his legal representatives continue to be tenants for the remainder of the term. A tenancy for a fixed term is an interest in land which is heritable.

But the interest of a tenant at will is not heritable and this is one of the features which distinguish a tenancy at will from a tenancy from year to year.

A lease for an indefinite period is also said to be determined by the death of the lessee. 1951 A L J 179 : ILR (1952) 1 All 85 : AIR 1950 All 583 (587) (Pr 12) (DB).

——S. 111 — Agricultural lease — Tenancy-at-will—Agricultural lease.

Where a document purporting to be an agricultural lease provided that the lease was determinable when the lessor required the land.

Held, the termination of the lease could not take effect forthwith but only from the month of Ani in a year. Agricultural lease cannot normally be at will as it would be highly inconsistent with the requirements of agricultural operation, and as such it would not also come to an end by the death of a lessor. 1961 Mad WN 644 : (1962) 1 Mad L J 128.

——Ss. 111 and 105, 117—Determination of agricultural tenancy — Tenant-at-will.

After the determination of the tenancy, any act of the landlord showing an intention to take possession is sufficient to revest the possession to him. But if the landlord fails to prove that the tenancy was determined in accordance with the local custom, the mere claim of the landlord to have let out the land to other tenants will not affect the rights of the original tenants .

Held, further that a lessee cannot be deemed to be a mere tenant-at-will, if he is found to be in possession of the land for a considerably long time and such a tenant cannot be ejected except in accordance with local custom. AIR 1956 Manipur 42 (44) (Pt C) (Pr 9).

——S. 111—Ejectment—Suit for— Burden of proof—Suit alleging tenancy-at-will — Duty of plaintiff to prove case and title to eject—Plea of permanent tenancy — Failure to prove uniform rate of rent—Effect of—(Evidence Act (1872), Ss. 101, 103.)

A landlord suing to eject a tenant on the ground of his being a tenant-at-will, has the onus heavily on him to prove the nature of the tenancy of the defendant; and he cannot be allowed to make out his title by reason of the failure of the defendant to prove affirmatively that he has been paying rent at a uniform rate without variation, though that would undoubtedly be a material element in ascertaining the nature of the tenancy, when he sets up permanent rights. The plaintiff has to prove his title to eject. 18 Cut L T 117 : AIR 1951 Orissa 262 (264) (Pt C) (Pr 7).

——S. 111 — Tenancy-at-will — Notice to quit not necessary. See Transfer of Property Act (1882), S. 105. AIR 1957 Pat 490 (DB).

——S. 111—Tenancy-at-will — When arises — Fixed term mentioned in lease — Option to lessor to determine lease whenever he desires is void for repugnancy See Transfer of Property Act (1882), S. 105. AIR 1957 Pat 350 (DB).

——S. 111 — Suit for ejectment of under-raiyat and tenant at will—Notice to quit or demand of possession or intimation to tenant determining his tenancy is necessary. See T. P. Act (1882), S. 106. AIR 1957 Pat 37 (DB).

——S. 111—Tenancy at will — No formal notice to quit is necessary and a mere demand for possession will suffice. See T. P. Act (1882), S. 105. A I R 1955 N U C (Trav-Co) 765 (DB).

——Ss. 111 and 105 — Tenant holding over as tenant at will—Tenancy can be brought to end by notice to quit. See also (1) C. P. Code (1908), O. 20, R. 12. AIR 1953 T C 369 (DB).

19. Joint lessors—Termination of lease.

——S. 111—Presumption of death, when can be raised—Ejectment suit by one of joint lessors—Other co-lessors alleged to have died—No evidence as contemplated by S. 108, Evidence Act given — Case held should be decided, not by applying S. 108, but by applying S. 107 — Suit by one joint lessor held not maintainable. See Evidence Act (1872), S. 108. (1964) All L J 46S.

——S. 111—Joint lessors — Termination of lease by notice to determine lease by both lessors—Possession after determination of lease — Right of one of co-sharers to eject trespasser even though other co-sharer does not join.

A suit for ejectment and arrears of rent was brought by A and B, two joint owners of a shop after the tenancy was determined by notice by both the owners. The suit was decreed by the trial Court which also awarded damages from date of suit till date of ejectment. In appeal by the tenant a compromise was arrived at between the tenant and 'A' one on the lessors. According to the compromise, 'A' agreed to give up the arrears of rent and claim for damages.

Held, since the tenancy of the appellant (tenant) was determined by notice by both owners of the shop, it came to an end. The possession of the appellant was no better than that of a trespasser and this fact was confirmed by the decree of the trial Court. The compromise could not and did not change the status of the appellant which was no other than that of a trespasser. One of the co-sharers is quite competent to eject a trespasser even though the other co-sharer does not join. In this view, 'B' could validly continue the appeal and seek ejectment of the appellant. AIR 1956 All 175 (177) (Pt D) (Pr 11).

——S. 111—Possession—Suit for—Plaintiff co-sharer entitled to exclusive possession—Court has no discretion but grant relief of possession. AIR 1955 N U C (All) 2741 (DB).

——S. 111—Joint lessors—Termination of lease must be brought about by all defendants tenants under one of landlords exclusively—Decree for eviction not bad for non-joinder of other landlords as plaintiffs. AIR 1955 N U C (Assam) 4231 (DB).

——S. 111 — Part owner cannot sue tenant of the entire property for possession.

When only a part of property is owned by the plaintiff and the other part is owned by some other person, such a plaintiff cannot sue in ejectment a person, in occupation, who may have attorned to him, unless the other owner joins in the suit. 1962 Nag L J (Notes) 47.

——S. 111 — Two companies having distinct legal entities — Common directorate of two companies no bar to creation of tenancy by one company in favour of the other or to termination of tenancy so created or institution of suit for ejectment—Ex parte decree for ejectment against lessee company—Sub-lessee not impleaded in ejectment suit — Effect on sub-lessee — Execution against sub-lessee not illegal—Collusive

decree what amounts to—Effect. See T. P. Act (1882), S. 105. (1962) 66 Cal W N 1010.

——S. 111—Suit for eviction of tenant—Question of title is not germane—Suit by one of the several co-owners can be maintained if the tenant dealt with him as sole landlord. 7 C L J 251, Foll. 1964 M P L J (Notes) 64.

20. Possession after determination of lease.

●——S. 111 — Person remaining in possession after determination of tenancy—Becomes statutory tenant —He can remain in possession but cannot enforce terms of original tenancy—Sub-lessee from a statutory tenant under the Act acquires no right of tenant. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (1). AIR 1965 S C 414.

——Ss. 111 and 116 — Tenancy for fixed period — Premises in occupation of sub-tenants after expiry of period—Tenant holding over—Tenancy when determined—Tenant liable to pay rent.

On 4th July 1957, a landlord let out the premises to the tenant for 3 months and the tenant was allowed to sublet the premises. The actual possession of the premises was not with the tenant but with sub-tenants. In a suit by the landlord for arrears of rent from 1st January 1950 to 31st December 1952, it was contended by the tenant that as he was not in actual possession of the premises no decree could be passed against him.

Held, that though the tenancy was for three months the tenant had been holding over because his sub-tenants were in possession of the premises. Ordinarily where a tenancy was for a fixed term, it is for the tenant to give notice to the landlord saying that he has vacated the premises. Where the tenant has inducted sub-tenants on the premises then until he gives notice to the landlord terminating his tenancy or gives vacant possession to him the tenancy must be deemed to subsist. The tenant was therefore liable to pay rent. 1958 Nag L J (Notes) 85.

——Ss. 111, 43 — Joint family property—Father and son—Son selling property representing himself as sole owner—Tenancy existing on land sold — Purchaser terminating tenancy and bringing suit for possession against tenant — Suit held maintainable—At the date of institution of suit the tenant is in position of a trespasser. See Hindu Law. AIR 1956 Bom 624.

——S. 111 (a)—Tenant remaining in occupation after expiry of lease—Damages for wrongful use and occupation—Tenant warned by landlord that he will have to pay specified sum as damages for wrongful use and occupation — Liability of tenant to pay damages specified. A I R 1961 J & K 39 (41) (Pt D) (Pr 4) (DB).

——S. 111 (g) — Person continuing in possession of land after termination of tenancy claiming ownership —Not a tenant within S. 2 (4) — Not entitled to protection under the Act. See Tenancy Laws—Madras City Tenants Protection Act (3 of 1922), (before its Amendment in 1960), S. 2 (4). A I R 1965 Mad 442 (DB).

——S. 111—Lessee continuing possession after expiry of lease — Suit for possession beyond 12 years after expiry of lease. See Limitation Act (1908), Art. 139. AIR 1955 N U C (Punj) 4959.

SECTION 112

SYNOPSIS

(Transfer of Property Act (1882), S. 112.)

1. Scope.
2. Acceptance of rent.
3. Effect of waiver.
4. Second proviso.

1. Scope.

●——Ss. 112, 114 and 114-A — Contract — Specific performance—Sale of portion of hypotheca to mortgagee in satisfaction of mortgage debt and lease back to mortgagor for fixed period — Stipulation for payment of rent regularly with forfeiture clause—Separate agreement executed on same day giving lessee option to repurchase during period of lease — Agreement to stand cancelled in case of default in payment of rent — Default in payment — Notice determining lease and cancelling agreement—Suit for specific performance of agreement to repurchase — Agreement held in nature of privilege of concession and not penalty — Conditions not having been strictly complied with forfeiture could not be relieved against—Subsequent acceptance of payment held did not amount to waiver — Specific performance cannot be granted—Specific Relief Act (1877), S. 24. 1949 F C R 537 : 1950 S C J 1 : (1950) 1 Mad L J 683 : A I R 1950 F C 38 (41, 42, 43, 50, 51, 54, 57, 58) (Pt A) (Prs 10, 12, 16, 17, 36, 37, 49, 56, 57).

——S. 112—'Any other act'.

Waiver of one's rights cannot be inferred when a clear intention not to waive a right already acquired is ascertainable. A I R 1955 All 680 (683) (Pt B) (Pr 10) (DB).

——Ss. 112, 116—Waiver of forfeiture — Principle—Determination of tenancy under S. 6 (8) of Bengal Act 6 of 1933 by landlord by notice — Waiver of (Bengal Suppression of Immoral Traffic Act 6 of 1933), S. 6 (8)).

The principle is that a forfeiture can be waived only in the sense that the right to forfeit can be waived, that is to say, before the forfeiture has been actually effected or incurred.

Thus, where a landlord, purporting to act under S. 6 (8) of the Bengal Act 6 of 1933, served a notice on the tenant determining his tenancy and calling upon him to quit, vacate and make over possession of the premises to him and subsequently he sued the tenant for possession, the forfeiture takes place by the service of the notice and there can be no waiver of the forfeiture by any act on the part of the landlord, viz., by his demanding rent for a period subsequent to the date of the service of the notice.

Further S. 116 cannot be said to apply, because there was no act which could be said to amount to an assent by the landlord to the tenant continuing in possession. A I R 1955 N U C (Cal) 1100.

——S. 112—Applicability to suit for ejectment under S. 6 (8) of Bengal Act 6 of 1933 — (Bengal Suppression of Immoral Traffic Act (6 of 1933), S. 6 (8)).

Section 112 deals only with a forfeiture under S. 111, Cl. (g) of the Transfer of Property Act. Obviously the determination of the lease intended by the notice based on S. 6 (8) of the Bengal Act 6 of 1933 is not a determination on any of the grounds mentioned in Cl. (g) of S. 111, T. P. Act and hence S. 112 does not apply to the case. A I R 1955 N U C (Cal) 1100.

——S. 112—Forfeiture—Waiver of — Knowledge of forfeiture as foundation of waiver.

Waiver is an intentional relinquishment of a known right. The foundation of waiver is knowledge of the person who is said to waive his rights, and there cannot be waiver in ignorance. This principle is recognised in the first proviso of S. 112. Unless, therefore, the lessor is aware that forfeiture has been incurred there cannot be any question of waiver of forfeiture. The governing principle in a case of waiver is whether the lessor has shown an intention

to treat the lease as subsisting after forfeiture. The words "the lessor showing an intention to treat the lease as subsisting" in the first paragraph of S. 112 illustrate this principle of waiver. The word "Other" in the expression "by any other act" shows that the two other acts mentioned previously in that section, viz. (1) acceptance of rent which becomes due since the forfeiture and (2) distress for such rent are regarded by the Statute as two typical acts which show the intention of the lessor to treat the lease as subsisting. 83 Cal L J 327, Foll. **A I R 1952 Cal 47 (50) (Pt B) (Pr 17).**

——S. 112 — Concept of waiver is based on agreement.

In the ultimate analysis on juristic foundation the concept of waiver is in essence based on agreement. In other words the landlord must agree to waive the forfeiture or more accurately the breach of the express condition which leads to forfeiture. Such agreement may be imported from any provision contained in the statute or may be by express conduct of the lessor from which an agreement will be implied as a necessary corollary to the act or conduct of the lessor. It is neither desirable nor possible to lay down any hard and fast rule which can be said to exhaust the categories of acts which can be regarded as showing an intention of the lessor to treat the lease as subsisting. Each case must be decided on its own merits. **A I R 1952 Cal 47 (51) (Pt D) (Pr 18).**

● **——Ss. 112, 105, 108 (b), 106—Possession of lessee under void lease—Lessee paying rent—Effect—Duration of tenancy has to be determined on basis of** S. 106 — Acquisition of permanent tenancy by prescription—I L R 30 Pat 964 : A I R 1952 Pat 46, Overruled. See T. P. Act (4 of 1882), S. 105. **A I R 1960 Pat 344 (FB).**

——S. 112—Waiver of forfeiture.

Where a lease makes a perversion of the user of the demised premises in breach of covenant in the lease and the landlord being fully aware of the continuing breach acquiesces in it for a long period by accepting rent even though he had served notice to quit on the tenant on that ground, it will be presumed that the landlord has either released the covenant or waived the forfeiture and he will not be entitled to eject the tenant on that ground. **A I R 1954 Punj 41 (42) (Pt A) (Pr 7).**

——S. 112—Rent suit for subsequent period—It does not amount to waiver of forfeiture allowed by decree for previous period. **A I R 1965 Tripura 35 (36) (Pt B) (Pr 6).**

2. Acceptance of rent.

——S. 112 — Forfeiture of lease for denial of title—Waiver — Notice before suit for ejectment is not necessary — Lessor does not waive forfeiture by accepting rent due for the period prior to denial. See T. P. Act (1882), S. 111 (g). **A I R 1955 N U C (Ajmer) 4418.**

——S. 112 — "Rent due since forfeiture"—Right of lessor to demand rent due prior to date of forfeiture —Demand of such rent whether amounts waiver of forfeiture.

A lessor is entitled to payment of rent which accrued due prior to the date of forfeiture. Section 112 provides that a forfeiture is waived among other things "by acceptance of rent which has become due since the forfeiture." The words "due since the forfeiture" are words which qualify the word "rent" in that section. Therefore, demand and acceptance of rent which became due before the forfeiture does not constitute waiver. (1959) 157 E R 941, Rel. on. **AIR 1952 Cal 47 (50, 51) (Pt A) (Prs 14, 16, 23).**

——S. 112—Mere acceptance of rent after notice of ejectment would not amount waiver of right of landlord to eject tenant — There ought to be expressed intention to waive his right to eject a tenant — See Hyderabad T. P. Act, S. 130. **A I R 1953 Hyd 97.**

——S. 112 — Forfeiture — Waiver—Breach of covenant by tenant — Landlord continuing to accept rent with full knowledge—Effect of.

If a landlord who is aware of the breach of the terms of a covenant by the tenant continues to receive rent without raising any objection for a period of at least six years, he must be held to have waived the breach and is not entitled to eject the tenant. Such acceptance of rent is not only condonation of breach in the past but is a licence for breaches in the future. **53 P L R 136 : A I R 1952 Punj 82 (87, 88) (Pt B) (Prs 21, 25, 26) (DB).**

——Ss. 112 and 111 (g) — Waiver of forfeiture — Determination of tenancy by denial of title of landlord—Notice indicating positive intention of landlord to exercise right of ejectment — Acceptance of rent till termination of tenancy does not amount to waiver. **1961 Raj L W 623 : I L R (1962) 12 Raj 172.**

——S. 112—Acceptance of rent deposited, without prejudice to landlord's right to pursue remedy of eviction — Right to forfeit tenancy is not waived. **AIR 1955 N U C (Sau) 974 (DB).**

3. Effect of waiver.

——S. 112 — Unauthorised alterations by tenant—Forfeiture incurred—Suit for damages and injunction —Damages allowed and injunction granted—Forfeiture is waived — Subsequent notice to quit and suit for ejectment is not maintainable. See T. P. Act (4 of 1882), S. 111 (b). **AIR 1959 All 33 (DB).**

——Ss. 112, 113 and 116 — Second notice to quit— Waiver of forfeiture — Effect of—Tenancy running after waiver is not a fresh tenancy—See T. P. Act (4 of 1882), S. 113. **AIR 1951 All 478.**

——S. 112—Forfeiture — Waiver of—Waiver of past or particular breach whether is waiver for ever.

Waiver of past breaches does not preclude the lessor from enforcing a forfeiture when the same or any other condition is subsequently broken, it being understood that the condition is such that the breach thereof provides for re-entry. Thus, where a lease deed provides a covenant against sub-letting with the permission of the landlord, the fact that the landlord had given his consent in writing for subletting a portion of the premises to a person does not mean that the lessee can go on subletting the premises to other persons or parties in breach of the covenant. For, waiver of a particular breach does not mean waiver for ever. AIR 1940 Pat 140, Foll. **AIR 1952 Cal 47 (51) (Pt E) (Pr 19).**

——S. 112—Forfeiture—Breach of condition of continuing nature—Waiver in respect of.

The argument that subletting is an act of a continuing nature and that where the breach is of a continuing nature waiver of a particular breach is a waiver for ever is not acceptable. Where the breach is of a continuing nature the continuance of the breach after the waiver will justify a forfeiture and it will not be open to the lessee to say that because past breaches of the same condition have been waived its future breaches or continuing breaches after waiver are also to be deemed to have been waived and condoned. The only limitation on this principle is that in the case of the breach of a condition not to sublet, the waiver operates during the continuance of the entire period of the interest which the particular subletting created. But when the entire period of the offending sublease is over the past waiver

will not protect fresh breach of the same covenant not to sublet. Thus, a waiver of the benefit of a covenant or condition in a lease only extends to the particular breach of the covenant or condition to which it relates and is not a general waiver of the benefit of that covenant or condition. Dumpor's case, 4 Co. Rep. 119a held not followed in India. AIR 1952 Cal 47 (51) (Pt F) (Pr 20).

——S. 112 — Covenant not to erect structure — Breach of — Continuing breach — Waiver of forfeiture.

The breach of a covenant in a lease not to erect any structure on the land is not a continuing but a single breach. If it is waived by subsequent acceptance of rent, it cannot be availed of thereafter. AIR 1950 Cal 256 (258) (Pt A) (Pr 17).

——S. 112 — Lease money payable in instalments — Waiver of breach—Effect.

It is well settled that a mere waiver of past breaches does not preclude the lessor from enforcing a forfeiture when the same or another condition is subsequently breached. When the breach is of a continuing nature, the same rule applies, and continuation of the breach after the waiver will certainly justify a forfeiture :

Held, on facts that the mere fact that the lessor did not enforce the terms of forfeiture as provided in the contract when the lessee made default in delaying payment of the instalments of the lease money, did not preclude the lessor from enforcing its right under the contract when the lessee failed to comply even after issue of notice to him calling upon him for due performance. ILR (1959) Cut 56 : 25 Cut L T 376.

4. Second proviso.

——S. 112—Rent sale—Landlord purchasing holding —Sale confirmed but no delivery of possession obtained—Same holding put to sale by landlord for arrears of rent for subsequent period—Sales not taking place as tenant had deposited decretal dues—Effect—Right of landlord to make settlement.

In execution of a rent decree the landlord purchased the holding. Though the sale was confirmed the landlord did not take out a sale certificate nor obtained delivery of possession of the holding. In execution of a rent decree in respect of subsequent period the landlord again brought the holding to sale and purchased it himself but before the sale was confirmed it was set aside by the tenant depositing the decretal dues. The plaintiff who had taken a settlement of the holding from the landlord during the second execution brought a suit for declaration of his title and possession.

Held, that as the landlord had not evicted the tenant in spite of his purchase in the first rent sale and had brought the same holding to sale in the subsequent execution, the tenant continued to remain as tenant under the landlord and therefore the landlord had no right to make a settlement with the plaintiff. The plaintiff therefore had no right to bring the suit. ILR (1958) 10 Assam 39.

——S. 112 — Decree for eviction and arrears of rent —Acceptance of rent after decree does not operate as waiver of forfeiture — There being a decree, no private arrangement or acceptance of money can extend lease — If the decree-holder has done any act which signifies the renewal of the lease, then it can be recorded as an adjustment of the decree by the Court under O. 21, R 2, C. P. Code—Where this was not done mere acceptance of money does not change the position. AIR 1955 NUC (Madh B) 3812.

——S. 112 — Scope—Acceptance of rent—Waiver—Exception.

S. 112 is intended only for the benefit of the landlord and whether or not there was a waiver of forfeiture depends upon the action of only one party, namely, the landlord independent of the tenant. Further acceptance of rent which has become due since the forfeiture constitutes waiver. But if a suit for ejectment of the lessee on the ground of forfeiture, has, in the meantime, been instituted, the acceptance of rent after the institution of the suit will not amount to waiver. ILR 38 Pat 247 : 1958 B L J R 766 : 1958 Pat L R 406 : AIR 1959 Pat 128 (129) (Pt A) (Pr 6) (DB).

SECTION 113

SYNOPSIS

(Transfer of Property Act (1882), S. 113.)

1. Scope.
2. "With the express or implied consent".
3. Act showing an intention to treat the lease as subsisting.
   - (A) Acceptance of rent.
   - (B) Second notice to quit.
   - (C) Acts not amounting to waiver.

1. Scope.

●——S. 113, Illus. (a) — P's tenant, D in arrears of rent for one year — P serving notice on D on April 11, 1959 requiring him to pay arrears within one month and calling upon him to vacate premises by April 30, 1959—D sending cheque on June 25, 1959, for arrears of rent, and also rent due up to June end —P accepting cheque and cashing it—P again giving notice to D on July 9, 1959 requiring him to vacate by end of July 1959 — D failing to vacate — P filing suit for eviction of D on basis of notice dated July 9, 1959—Notice dated April 11, 1959 held ineffective —P's suit for eviction on basis of notice dated July 9, 1959, held competent — Sections 16, 17 of M. P. Act 41 of 1961 and S. 113 of T. P. Act held inapplicable — P held not to have waived right to sue for eviction. See Houses and Rents — M. P. Accommodation Control Act (23 of 1955), S. 4 (a). AIR 1965 S C 101.

——S. 113—Scope—Notice determining lease given —Suit by landlord for ejectment brought — There can be no waiver after such suit.

A waiver under S. 113 can be brought about by the action of the landlord if after determining the tenancy by notice the landlord chooses to accept rent again from the tenant. In such an event under S. 113 a notice for determination of the lease already given by the landlord to the tenant will be deemed to have been waived. No question of waiver arises after the landlord has brought a suit on the basis of a valid notice given for determination of the lease. After such a suit has been brought, there can be no waiver though it is always open to a landlord to renew the lease at any time he pleases. AIR 1956 All 175 (176, 177) (Pt B) (Pr 10).

——S. 113 — Applicability — Right of one of joint lessors to waive notice.

A waiver to be effective and binding must be made by the entire body of joint owners and it is not open to one of the joint owners to waive notice. After a tenancy is determined by the two joint owners, the possession of the tenant is that of a trespasser. If the tenant wants back his tenancy rights, it could be done only by grant of a fresh lease by the two joint owners. One of the joint owners cannot create or restore back the lease. AIR 1956 All 175 (176) (Pt C) (Pr 10).

—S. 113—Suit by subsequent lessee for ejectment of previous lessees—Lessor made party to suit—Expiration of term of plaintiff's lease during pendency of appeal — His right to get possession remains unaffected. See Civil P. C. (1908), O. 41, R. 27. **AIR 1965 Assam 55 (DB).**

—S. 113 — Application for possession of land on ground of personal bona fide cultivation, after notice of ejectment - Tenancy can be treated to have terminated — Passing of actual order for possession not necessary — Landlord not taking out execution of order of possession but filing suit for rent for period subsequent to application for possession — Action held not only waived notice of ejectment but also order of possession. See Tenancy Laws — Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958), S. 36 (2), **AIR 1963 Bom 179 (DB).**

[Overruled in AIR 1968 Bom 13 (FB).]

—S. 113 — Landlord terminating tenancy under S. 31—Subsequent application under S. 29 read with S. 14 is not untenable. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 14. **AIR 1963 Bom 79 (FB).**

—S. 113, Illus. (a) — Notice in ejectment served with permission from Rent Controller — Subsequent acceptance of rent — Effect — Waiver of notice. See Houses and Rents—C P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13. **AIR 1959 Bom 292 (DB).**

—Ss. 113 and 116 — Applicability and scope — S. 116 has no application to cases of termination of tenancies by notice to quit—S. 113 excludes S. 116—Both sections cannot apply to particular case. **AIR 1955 NUC (Cal) 5909.**

—S. 113—Applicability — Claim of rent for period subsequent to notice.

It is now well settled that in order to make S. 113, T. P. Act, applicable, it is not enough to have an unilateral act on the part of the landlord, but there must be agreement.

A mere mistake of the draftsman of the plaint in a suit for ejectment in claiming rent for a period subsequent to the notice determining the tenancy is not evidence that the landlord had agreed to a new tenancy, particularly when he is at the same time also asking for possession and mesne profits. **AIR 1955 NUC (Cal) 1100.**

—S. 113—New plea — Waiver of notice—Question whether notice given by landlord was or was not waived by him subsequently is a question of fact and has to be specifically pleaded—Cannot be allowed for first time in second appeal. See Civil P. C. (1908), S. 100. **AIR 1955 NUC (Madh B) 3016.**

—S. 113 — Applicability to agricultural leases — Though S. 113 is inapplicable to agricultural lease, it is based on general principles applicable to leases — Hence will have to be applied to agricultural leases. See T. P. Act (1882), S. 117. **AIR 1954 Madh B 37.**

—Ss. 113, 106 — Agricultural lease — Waiver of notice to quit.

In the case of agricultural leases only reasonable notice to quit is essential and question of conforming to provisions of S. 106, T. P. Act does not arise. But this reasonable notice to quit will be waived only where there is in effect an agreement to restore the old tenancy.

Section 113 makes it clear that in order that there should be waiver of notice to quit there must be consent express or implied of the person to whom notice is given and there must be some act on the part of the person giving notice showing the intention to treat the lease as subsisting, so that after the notice to quit is given parties must be ad idem as regards continuance of old relation. **I L R (1953) M B 193 : AIR 1954 Madh B 37 (38) (Pt B) (Pr 9).**

—Ss. 113, 116 and 111—Applicability of S. 116 — Conditions for—Determination of lease by notice to quit — Waiver of such notice—Section 116 will not apply. See T. P. Act (4 of 1882), S. 116. **AIR 1960 Madh Pra 192 (DB).**

—Ss. 113 and 114 — Agricultural leases governed by special Act, such as Quanoon Mal Gwalior — Principle of S. 114 cannot be applied — Per Khan, J. **1960 M P C 329 : 1960 M P L J 861 : 1960 Jab L J 882.**

—S. 113—Waiver of notice to quit — Acceptance of rent — Intention — (Houses and Rents — Mysore House Rent and Accommodation Control Act (30 of 1951), Ss 2 (9) and 8 (3)).

Under S. 113, T. P. Act there can be a waiver only if both the parties, the party who has given the notice and the party who has received the same intentionally agree to waive the notice. The payment of the rent by the tenant for a period subsequent to the termination of the tenancy and acceptance of the same has been laid down as a statutory proof of the intention of both the parties to treat the lease as subsisting. Undoubtedly it is one of the modes of proof of the agreement to treat the lease as subsisting. It is a conclusive proof. Where the landlord claims possession under S. 8 (3) of the Mysore House Rent and Accommodation Control Act after serving a notice to quit thereby terminating the contractual tenancy the tenant immediately becomes a statutory tennant as defined in S. 2 (9) and does not become a trespasser. He is still liable to pay the rent. Hence, merely because he pays the rent there can be no inference that he intended to continue the tenancy. Again the landlord cannot take possession merely on the basis of the termination of the tenancy. He must satisfy the Controller that he comes within S. 8 of the Mysore House Rent and Accommodation Control Act. Before he could occupy the house an order of the Controller is necessary. He is entitled to rent as such till the tenant vacates the house. Hence, the receipt of the rent cannot show that he intended the tenancy to continue. Illustation (a) to S. 113, T. P. Act is not applicable to leases which are subject to control laws. AIR 1954 Cal 460; AIR 1951 Cal 342; AIR 1957 Cal 627; AIR 1957 Pat 206 and AIR 1948 Bom 335, Rel. on. 6 Mys L J 45, Disting. **36 Mys L J 134 : ILR (1958) Mys 104 : AIR 1958 Mys 113 (115) (Pt B) (Pr 8).**

—S. 113—Determination of lease by forfeiture and by waiver of notice to quit — Distinction.

There is a distinction between determination of a lease by forfeiture and determination of a lease by waiver of a notice to quit. In the latter lease the tenancy is determined and the subsequent notice is of no effect unless other circumstances form the basis for inferring creation of a new tenancy after the expiry of the first notice. The mere fact that the tenant continues in possession and a suit is not instituted are insufficient. Where forfeiture of a lease is incurred, the lease is voidable and can be waived by the lessor without the assent of the lessee. But the waiver of a notice to quit depends upon the consent of both. In illustration (b) to S. 113 the consent of the lessee is implied by his remaining in possession. **1955 Nag L J 755 : ILR (1956) Nag 13 : AIR 1956 Nag 125 (127, 128) (Pt E) (Pr 10).**

—S. 113 — Temporary lease by Deputy Commissioner — Lease determined — Lessee continuing in possession thereafter — Arrears of rent recovered by certificate proceedings by Khasmahal athorities — Khasmahal authorities and Deputy Commissioner held

should have known the legal implication of certificate proceedings and acceptance of rent — Lease held renewed from year to year. See T. P. Act (1882), S. 116. (1962) 4 Orissa J D 31.

——S. 113 — Waiver of notice to quit — Consent of parties — Necessity of — Repudiation of tenancy and disclaimer of landlord's title — Mere demand of rent — Effect.

The most important thing to notice is that waiver of notice to quit does not, like waiver of forfeiture depend upon the will of one party namely the landlord but upon the consent of both the landlord and the tenant. There cannot be waiver of notice to quit under S. 113 without the express or implied consent of the persons to whom the notice is given. Where there is a repudiation of the tenancy and disclaimer of the title of the landlord by the tenant a mere demand of rent for the period subsequent to the expiration of the notice cannot constitute waiver of notice to quit for the simple reason that in such a case there can be no question of consent of the tenants either express or implied to the waiving of the determination of the tenancy. Further, the question whether or not there was waiver of notice to quit is purely a question of intention of the parties. In order, therefore, to determine whether or not in a particular case there was waiver of notice to quit one has to see whether from the conduct of the landlord and tenant, by demand and acceptance of rent or by demand followed by express promise to pay, or otherwise an intention to treat the lease as subsisting can be inferred, and this would certainly depend upon the facts and circumstances of each case. When it is a question of intention it is plain that not even the payment and acceptance of rent by the landlord after the notice to quit much less a mere demand of rent necessarily waives the notice. I L R 38 Pat 247 : 1958 B L J R 766 : 1958 Pat L R 406 : A I R 1959 Pat 128 (129, 130) (Pt B) (Prs 6, 7) (DB).

——S. 113—Tenancy determined by notice to quit—Suit instituted for eviction — Combination of claim for rent and damages—Effect.

When the tenancy has been legally determined by a notice to quit and a suit also is instituted by the landlord for the eviction of the tenants a mere combination of the claim for both rent and damages for the period subsequent to the expiration of the notice does not operate as waiver of the notice. A I R 1917 Pat 469 and A I R 1945 Bom 132 and A I R 1953 Nag 219, Rel. on. I L R 38 Pat 247 : 1958 Pat L R 406 : 1958 B L J R 766 : A I R 1959 Pat 128 (130) (Pt C) (Pr 7) (DB).

——S. 113—Distillery licence containing condition for determining licence by Excise authorities on notice — Notice issued under S. 21 (b) Punjab Excise Act (1914), and under licence condition—Notice kept in abeyance for some years—Its subsequent revival with shorter notice period is illegal—Principle of Ss. 111 (h) and 113 of T. P. Act is applicable. See Punjab Excise Act (1 of 1914), S. 21 (b). AIR 1965 Punj 217 (DB).

——S. 113 — Applicability — Tenant continuing in possession after notice to quit by virtue of protection under Rent Control Legislation — Section not applicable.

Section 113 does not apply in the case of a statutory tenant, that is a person who is entitled to remain in possession of the premises by virtue of the provisions of Rent Control Act. It is not open to a landlord to evict such a tenant unless he is able to bring his case within the four walls of the Rent Control Act, and the tenant remains in possession on account of the protection afforded to him by the Act. Again, a mere offer or acceptance of rent after the notice to quit had been given does not and cannot bring about a waiver of the notice.

The correct legal position in such a case is that the tenant offers the rent not because he gives his consent to the creation of a new contractual tenancy or the subsistence of the old contractual tenancy but because he offers rent to fulfil his obligations under the provisions of the Rent Act, and similarly, the landlord accepts rent not because he shows thereby an intention to create a new tenancy or to treat the old contractual tenancy as subsisting but because prima facie he is entitled to accept the rent so long as the tenant remains in possession. (1951) 2 All E R 271 Rel. on. 1963 Raj L W 27 : I L R (1963) 13 Raj 370 : AIR 1963 Raj 113 (115) (Pt B) (Pr 6).

2. "With the express or implied consent."

——S. 113 — Implied waiver of notice — Conduct of lessor—Acceptance of rent after expiry of notice for three successive months —Amounts to waiver. A I R 1958 Cal 627, Dist. ILR (1962) 14 Assam 397 : AIR 1962 Assam 148 (148, 149) (Pt B, (Prs 5, 6).

——S. 113 — Waiver of notice to quit — Lessee remaining in possession after notice—Effect.

Where the first notice to quit is bad in law, a second notice to quit can be served without any express waiver of the first notice and a suit based on the second notice is maintainable.

Section 113 of the T. P. Act permits the waiver of the notice by the express or implied consent of the person upon whom it is served. When the tenant on the receipt of the first notice continues to remain in possession of the disputed property he thereby gives his implied consent to the waiver of the notice. The giving of a second notice to quit is a waiver of the first notice so far as the person giving notice is concerned. Further, if the first notice is bad in law it is hardly a notice which should call for any waiver. I L R (1960) 10 Raj 1568 : 1961 Raj L W 576 : A I R 1961 Raj 136 (138) (Pt B) (Pr 11).

3. Act showing an intention to treat the lease as subsisting.

(A) Acceptance of rent.

(B) Second notice to quit.

(C) Acts not amounting to waiver.

3. Act showing an intention to treat the lease as subsisting.

——S. 113 — Permission under S. 3 (a) U. P. Temporary Rent Control and Eviction Act—Long interval between default in payment of rent and filing suit caused by intervening notice under S. 106 — It does not show intention to continue lease.

There should be some inherent conflict between the conduct of the landlord in bringing a suit for his tenant's ejectment and his previous conduct or attitude towards that tenant necessarily suggesting an intention to continue the tenancy. A mere permission obtained by the landlord under S. 3 (a) of the U. P. Temporary Rent Control and Eviction Act does not entitle him to file a suit for ejectment straightway. He has still to serve a notice on the tenant under S. 106 of the Transfer of Property Act. The notice given to the tenant under S. 106 of the Transfer of Property Act therefore would not only account for part of the interval of time between the default and the suit but serve as strong evidence of the landlord's intention to terminate the lease and negative all idea of a waiver on his part. A I R 1952 All 579, Rel. on. 1952 All W R (H C) 290 : 1952 All L J 373 : A I R 1952 All 863 (864, 865) (Pt C) (Prs 12, 13).

——S. 113—Proceedings for standard rent, if waiver —Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 9.

Where the landlord, even after the service of notice to quit and the institution of the suit for ejectment continues his proceedings for fixing the standard rent, the fact is not sufficient to show that the landlord had waived the notice to quit. **55 C W N 471 : I L R (1952) 2 Cal 138 : A I R 1952 Cal 130 (132) (Pt B) (Pr 21) (DB).**

——S. 113 — Proceeding for fixing standard rent — If amounts to waiver.

Where a landlord institutes a proceeding for fixing a standard rent before the Rent Controller before the date of the notice of ejectment and continues it after that and during the hearing of the suit for ejectment, he cannot be said to have waived the notice. **55 Cal W N 75 : A I R 1950 Cal 515 (515, 516) (Pt A) (Prs 3, 4).**

——S. 113 — Waiver — Real point to be decided is whether or not in notice to quit, landlord has expressed his intention to continue tenancy in event of tenant paying entire amount of rent due from him until that date—If there is no such indication there is no waiver of right. See Houses and Rents — M. B. Sthan Niyanthran Vidhan (Smt. 2006), S. 4 (a). **AIR 1954 Madh B 26.**

——S. 113 — Notice to quit — Waiver—Consent of tenant—Continuance in possession.

Where a tenant refuses to comply with the notice of the landlord to pay an enhanced rent or to quit the premises and continues in possession, he must be deemed to have accepted the enhanced rent and thus consented to the waiver of notice on the part of the landlord within the meaning of S. 113, T. P. Act. Illustration (b) to S. 113 also supports this view. **1957 M P C 328 : 1957 M P L J 383 : 1957 Jab L J 593 : AIR 1957 Madh Pra 233 (234) (Prs 5, 6).**

——S. 113, Illus. (b)—Act showing intention to treat lease as subsisting — Question depends upon facts and circumstances of each case — Second notice to quit — Not sufficient by itself to infer waiver — Illus. (b) must be read subject to parent provision in the section itself.

It is quite manifest from the provisions of S. 113 that in order to constitute waiver there must be an intention not only on the part of the lessor but also on the part of the lessee to treat the lease as subsisting. In order, therefore, to determine whether or not in a particular case there was waiver of notice to quit, the Court has to see whether from the conduct of the landlord and tenant, by demand and acceptance of rent or by demand followed by express promise to pay or otherwise an intention to treat the lease as subsisting can be inferred and this would certainly depend upon the facts and circumstances of each case. The question under S. 113 is whether the act of the landlord is such as necessarily leads to the inference that there was an intention of creating a renewal of the tenancy or as treating the tenant as still subsisting. It is a question of fact to be determined in each case : (1947) 1 All E R 116 and Woodfall on 'Landlord and Tenant' (26th Edition), p. 1004, Rel. on. The phrase "showing an intention to treat the lease as subsisting" in S. 113 is clear to indicate that to amount to waiver there must be evidence of such intention. The parent provision of S 113 containing the said phrase requires that there must be evidence showing an intention to treat the lease as subsisting. The illustrations must be read subject to this parent provision in the section itself. Thus viewed illus. (b) to S. 113 is subject to the governing provision of the section itself, namely that there must be evidence "showing an intention to treat the lease as subsisting." **I L R (1964) Cut 374 : A I R 1965 Orissa 11 (13) (Pt B) (Pr 8).**

3 (A). Acceptance of rent.

——S. 113—Acceptance of rent by agent of landlord after notice to quit contrary to express intention of principal to the knowledge of tenant — Notice held not waived. AIR 1955 N U C (All) 168.

——S. 113—Notice to quit sent—Acceptance of rent for period prior to date when tenant asked to vacate —It is no waiver.

After a landlord has served a notice on his tenant asking him to leave the premises within a certain time, if within that time rent already due from the tenant for a period falling prior to the date on which the tenant has to vacate is accepted by the landlord, such acceptance cannot entail a deprivation of his right to follow up his notice by a suit for ejectment. A I R 1949 Cal 571, Rel. on; A I R 1949 All 610, Disting. **1952 All W R (HC) 290 : 1952 All L J 373 : AIR 1952 All 863 (864, 865) (Pt B) (Prs 11, 12).**

——S. 113 — Acceptance of rent during ejectment proceedings—Waiver.

If the landlord actively continues the prosecution of the case or appeal with regard to the ejectment of the tenant mere acceptance of rent by him cannot be treated as waiver so as to deprive him of the right of ejectment in pursuance of the decree which he had obtained. **1951 All L J 331 : 1951 A W R (HC) 197 : AIR 1952 All 579 (580) (Pt D) (Pr 6).**

——S. 113 — Acceptance of rent—When amounts to waiver.

Illustration (a) to the section shows that in order that acceptance of rent may amount to a waiver of the notice to quit the rent accepted must be for a period after the notice. **A I R 1951 All 478 (480) (Pt C) (Pr 14).**

——Ss. 113, Illustration (a) and 106 — Scope of — Landlord accepting rents after notice to quit — 'Waiver' of notice to quit — Tenant setting up permanent tenancy or a lease for particular period —Failure to prove—Effect.

Section 113, Illustration (a) of the Transfer of Property Act is analogous to the provision in English Law but with this difference that while in the English Law the consequence of waiver would be that the whole tenancy would be terminated and a new tenancy created, such is not the case under the Indian Law. It only purports to continue the sold tenancy. Practically it amounts to the landlord withdrawing the notice to quit.

In a case even where the tenant sets up the permanent tenancy or a lease for a particular period in contradistinction to a tenancy from month to month or from year to year and is not able to establish that, he would not be debarred from putting forward the plea of waiver if he can establish that the landlord accepted rents subsequent to the expiration of the period of tenancy. The acceptance of rent by the landlord for the period of 7 months amounts to an intention to continue the old tenancy and as such the tenant could not be evicted on the termination of the period fixed in the notice to quit. **A I R 1927 Pat 305**, Disting. **(1959) 1 Andh W R 143 : ILR (1959) Andh Pra 868 : A I R 1959 Andh Pra 346 (348, 349) (Prs 9, 10, 11) (DB).**

——S. 113 — Scope—Thika tenancy—Notice to quit —Mere acceptance of rent—No waiver. See Tenancy Laws—Calcutta Thika Tenancy Act (2 of 1949), S. 3. **(1958) 62 C W N 319.**

——S. 113 — Acceptance of rent after notice to quit —Waiver — Effect of Rent Control Acts — (Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12 (1)).

waiver of the right of the landlord to eject a tenant. There ought to be evidence of an express intention on the part of the landlord to waive his right to eject a tenant. ILR (1953) Hyd 110 : A I R 1953 Hyd 97 (97) (Pt A) (Pr 2).

——S. 113—Act of the party—Acceptance of rent.

When any act on the part of the landlord is relied upon that act must be of the landlord or some person authorised by him or who is authorised even without his knowledge or consent to continue or restore the old tenancy. Illustration (a) to S. 113 is quite clear and when it is proved that the landlord accepts rent for the period subsequent to the expiration of notice, the notice is waived as from the fact of payment by the tenant his consent is implied;

Held, on facts that the payment of rent in the case was not to the landlord but to his servant who was not authorised to accept it and hence there being no act on the part of the landlord, the notice was not waived. I L R (1953) Madh Bha 193 : A I R 1954 Madh Bha 37 (38, 39) (Pt C) (Prs 10, 16).

——Ss. 113 and 111 (h)—Acceptance of rent—When amounts to waiver — Intention to treat lease as subsisting is essential.

Ordinarily acceptance of rent is a strong circumstance from which an inference can be drawn that the notice to quit has been waived. But that by itself is not sufficient to show waiver. Under S. 113, T. P. Act in order to constitute waiver there must be an intention not only on the part of the lessor but also on the part of the lessee to treat the lease as subsisting. Thus where the evidence did not show any circumstance in which the landlord accepted rent after notice to quit but there was evidence to show that the tenant told the landlord that he (the tenant) himself was going to vacate the house as he found it too small for his requirements, it was manifest that there was no agreement to treat the tenancy as continuing and that the notice was not waived on account of the acceptance of rent by the landlord. A I R 1949 F C 124, Rel. on. 1960 Jab L J 277 : 1960 M P L J 375 : 1960 M P C 229 : AIR 1960 Madh Pra 192 (193) (Pt A) (Pr 3) (DB).

——Ss. 113 and 111 (h)—Notice to quit — Waiver of —Acceptance of rent when amounts to waiver — Act showing landlord's intention to treat lease as subsisting is necessary—(Evidence Act (1872), S. 115).

In order to constitute waiver under S. 113, T. P. Act, there must be an intention not only on the part of the lessor but also on the part of the lessee to treat the lease as subsisting. Therefore, mere payment and acceptance of rent by the landlord after the notice to quit cannot by itself necessarily constitute waiver. The assent of a landlord for the continuance of a tenancy must be founded on the acceptance of rent as such and in clear recognition of the tenancy rights asserted by the person who pays it. AIR 1949 F C 124, Rel. on. Further, the payment and acceptance of rent for a period after the expiry of the notice terminating the contractual tenancy so long as the Accommodation Control Act is in force cannot necessarily be taken as a waiver of notice terminating the contractual tenancy and showing an intention on the part of the landlord to treat the contractual tenancy as subsisting. 1960 Jab L J 417 : 1960 M P L J 705 : 1959 M P C 548 : A I R 1960 Madh Pra 16 (17) (Prs. 3, 4, 5).

——S. 113—Intention to treat the lease as subsisting —Landlord accepting rent during pendency of suit and continuing suit — This does not indicate intention to continue tenancy.

If during the pendency of a suit, rent or an amount equivalent to rent is accepted and the suit is continued, then it must be said that the landlord has no intention to withdraw the notice to quit. Mere acceptance of rent, to which a landlord is entitled even on eviction, does not ipso facto indicate that he wants the tenant to continue. 1960 Jab L J 427 : 1960 M P L J 631 : 1960 M P C 376.

——S. 113 — Notice to quit — Ejectment suit pending — Acceptance of rent — Suit continued — No waiver of notice.

The mere acceptance of rent by the landlord after a notice to quit without more, at a time when his suit for eviction is pending in a law Court does not amount to waiver. It is the intention of the parties which must be determined. In order that an act may constitute waiver it must signify the landlord's intention to forego his right of ejectment. What is required is a consensus ad idem between the parties to renew the lease or to treat it as subsisting. Such an intention cannot be implied where a landlord pursues his pending suit for eviction. Merely by acceptance of rent, it cannot possibly be said that the lessor intends to treat the lease as subsisting unless he withdraws the suit. 1960 M P C 329 : 1960 M P L J 861 : 1960 Jab L J 882.

——S. 113 — Notice to quit—Waiver—Mere acceptance of rent—Effect.

The mere acceptance of rent by the landlord would not by itself be conclusive to show any waiver of the notice to quit served by the landlord. 1960 M P L J (Notes) 36.

——S. 113—Suit for ejectment — Payment by defendant.

Where not only had the landlord served the notice to quit but he had actually instituted the suit for ejectment and for damages for use and occupation, if without insisting upon the plaintiff withdrawing his suit for ejectment and for damages for use and occupation the defendant made certain payments those payments cannot be taken to be inconsistent with the plaintiff's right which he sought to enforce by the suit. In those circumstances, it could not be held that the plaintiff had waived the rights asserted by him. AIR 1917 Pat 469, Rel. on. 1953 Nag L J 147 : ILR (1954) Nag 147 : AIR 1953 Nag 219 (220) (Pt D) (Pr 12).

——Ss. 113 and 111 (h) — Act showing an intention to treat the lease as subsisting — Waiver of notice to quit — Acceptance of rent as such for period subsequent to notice — There is creation of new tenancy. AIR 1955 N U C (Orissa) 1853.

——Ss. 113 and 116—Acceptance of rent after notice to quit — Effect.

The onus is on the tenant to prove that the landlord agreed to the holding over of the tenancy, or to a new tenancy coming into existence after the expiry of the previous tenancy. In the absence of such an evidence the mere claim of rent after the notice to quit for the period after the expiry of the term of the lease, though the tenant may be continuing in possession, would not necessarily establish the requisite consensus an idem between the parties to renew the lease or treat the lease as subsisting, or create a new tenancy coming into existence; and would not thus operate, either as waiver of the notice to quit under S. 113, or S. 116, T. P. Act. AIR 1917 Pat 469 and AIR 1954 Cal 460, Rel. on. 1956 BLJR 658 : ILR 35 Pat 894 : AIR 1957 Pat 206 (209) (Pt C) (Pr 25) (DB).

——S. 113—Notice to quit—Waiver—Acceptance of rent after expiration of notice.

The question of waiver is one of intention and acceptance of rent by the landlord after the expiration of a notice is not in itself a waiver on his part of the notice so given. It is merely a circumst nce which must be considered along with other

circumstances of the case and from which an intention to waive may or may not be drawn. (1775) 98 E R 1066, Rel. on.

Held, in the circumstances of the case that an intention to waive, on the part of the landlord could not be drawn. ILR (1957) Punj 86 : 58 Pun L R 328 : AIR 1956 Punj 246 (246, 247) (Prs 6, 8) (DB).

——S. 113—Act indicating intention to waive—Payment of rent after notice does not necessarily mean waiver of notice — Waiver is a question of fact. AIR 1955 NUC (Sau) 971.

3 (B) Second notice to quit.

● ——S. 113 — P's tenant, D in arrears of rent for one year — P serving notice on D on April 11, 1959 requiring him to pay arrears within one month and calling upon him to vacate premises by April 30, 1959 — D sending cheque on June 25, 1959, for arrears of rent, and also rent due up to June end — P accepting cheque and cashing it — P again giving notice to D on July 9, 1959 requiring him to vacate by end of July 1959 — D failing to vacate — P filing suit for eviction of D on basis of notice dated July 9, 1959—Notice dated April 11, 1959 held ineffective —P's suit for eviction on basis of notice dated July 9, 1959, held competent — Sections 16, 17 of M. P. Act 41 of 1961 and S. 113 of T. P. Act held inapplicable — P held not to have waived right to sue for eviction. See Houses and Rents — M P. Accommodation Control Act (23 of 1955), S. 4 (a). AIR 1965 S C 101.

——Ss. 113, 111 (b), 112 and 108 — Unauthorised alterations by tenant—Forfeiture incurred—Suit for damages and injunction — Damages allowed and injunction granted—Forfeiture is waived — Subsequent notice to quit and suit for ejectment is not maintainable. See T. P. Act (4 of 1882), S. 111 (b). AIR 1959 All 33 (DB).

——Ss. 113, 112, 116 — Second notice to quit is a waiver of first notice to quit. AIR 1951 All 478 (480, 481) (Pt D) (Prs 16 to 18).

——S. 113 — Second notice giving further time and claiming payment of rent — First notice for vacating premises deemed to have been waived. See T. P. Act (1882), S. 116. AIR 1955 NUC (Madh B) 3752.

——Ss. 113 and 111 (h)—Notice to quit—Waiver of, by giving second notice—Nature of tenancy.

Although first notice can be said to have been waived by the giving of the second notice, the tenancy that runs after the waiver is not a fresh tenancy but is the same old tenancy that existed before. If the old tenancy continues, then the giving of a second notice to quit, when the first notice is found to be defective or is waived, cannot in any way affect the permission granted to the landlord by the Rent Controller to serve on a tenant a notice to quit. 1960 Jab L J 277 : 1960 M P L J 375 : 1960 M P C 229 : AIR 1960 Madh Pra 192 (193) (Pt B) (Pr 4).

——Ss. 113, 111 (h) — Fresh notice to determine tenancy—Effect of—Fresh permission of Rent Controller—Necessity—(Houses and Rents—C. P. and Berar House Rent Control Order (1947), Cl. (7).

Under S. 113 giving a second notice to quit does not mean that a new lease has come into existence. All that it means is that by giving a second notice, the lessor expressed an intention to treat the previous lease as subsisting provided the lessee agreed to the waiver.

Where, therefore, the landlord after obtaining the permission of a Rent Controller issued a notice to determine the lease and on its expiry sent another notice and it being invalid sent a third notice, on contention that the first notice was waived by the subsequent notices giving rise to a fresh tenancy which could be determined by a fresh notice after obtaining afresh the permission of the Rent Controller.

Held, that the waiver of a notice to quit did not depend upon the election of any party but upon the consent of both. If the first notice was waived, the third notice, which was valid, did determine the tenancy. (1947) 1 All E R 116, Rel. on. 1955 Nag L J 755 : ILR (1956) Nag 13 : AIR 1956 Nag 125 (127) (Pt D) (Pr 9).

——S. 113 — Effect of second notice to quit—It does not amount to waiver of first notice in absence of any proof thereof. See T. P. Act (1882), S. 106. AIR 1953 Punj 243 (DB).

——S. 113, Illus (b) — Waiver of notice to quit — Intention of parties — Notice asking tenant to execute fresh rent note sent during routine administration of trust property—Earlier notices not waived.

The question of waiver is one of fact dependent on the intention of the party or parties concerned. Where in respect of certain trust property notices were given to the tenant specifically asking him to quit the premises, a subsequent notice in which the tenant was asked to execute a fresh rent note in favour of the trustees could not have the effect of waiving the earlier notices, in view of the intention of the trustees in sending the subsequent notice. As the properties under the trust were let out before the trustees were appointed and as it was thought that fresh rent notes should be executed in the name of the trustees after they assumed office, routine notices were issued to all the tenants including the tenant in question and there was no intention on the part of trustees to waive the earlier notices. 1963 Raj L W 27 : ILR (1963) 13 Raj 370 : AIR 1963 Raj 113 (115) (Pt A) (Pr 5).

3 (C). Acts not amounting to waiver.

——S. 113, Illus. (a) — Notice to quit — Waiver — Conditions for — Deposit of rent in Court by tenant under Rent Control Act — Withdrawal of, by landlord does not constitute waiver.

Under S. 113, the notice is deemed to be waived only if the landlord by express words or by implication or by his conduct intends to treat the lease as subsisting. The acceptance of rent under the circumstances mentioned in illus. (a) to S. 113 will no doubt amount to the tacit consent of the landlord to continue the tenancy. But where the amount is deposited in Court under the provisions of Rent Control Act there cannot be tender of the rent by the lessee to the landlord and acceptance by him. Mere withdrawal of the amount by the landlord under the Rent Control Act does not therefore constitute waiver, in the absence of any evidence to show thal the landlord intended to keep the lease subsisting. AIR 1965 Assam 55 (58) (Pt C) (Pr 11) (DB).

——S. 113—Waiver of notice terminating tenancy — Suit for ejectment—Use of word 'rent in connection with period after termination of tenancy in para relating to reliefs—Mere use of word 'rent' in absence of intention to continue tenancy cannot amount to waiver of notice — Civil P. C. (1908), O. 7, R. 7—AIR 1964 All 374, Rel. on. 1964 All L J 1143.

——S. 113 — Notice of ejectment — Waiver — What constitutes — Acceptance of rent by landlord for period prior to termination of tenancy—No waiver. 1961 All W R (HC) 783 : 1961 All L J 637.

——S. 113 — Waiver of notice to quit—What constitutes—Notice to quit followed by notice demanding possession — No waiver. AIR 1953 Cal 349 (352) (Pt D) (Prs 15, 16).

——Ss. 113, 111 (h) — Waiver of notice to quit — What constitutes — Suit for ejectment — Landlord receiving rent after institution of suit — Suit not withdrawn — Action on part of landlord does not amount to waiver of notice under S. 111 (h).

Under the Rent Control Act after a contractual tenancy is determined, the tenant does not become a trespasser but a statutory tenant. A statutory tenant in order to protect himself from being ejected on the ground of non-payment of rent may pay a sum of money intending it to be rent of the permises to the landlord which the landlord may receive not as rent but as compensation for use and occupation of the permises. Once a suit for ejectment has been instituted it cannot be said that by mere receipt of rent the lessor indicates his intention to treat the lease as subsisting unless he withdraws the suit. Where the landlord had instituted the suit for ejectment and the tenant during the pendency of the suit without any indication whatsoever that he was paying rent for the period after the expiry of the lease in respect of the suit property sent a sum by M. O. to the landlord which the landlord received, it cannot be said that that act on the part of the landlord constituted waiver of the notice to quit. AIR 1954 Cal 460 and AIR 1956 All 175, Rel. on. **AIR 1962 J and K 2 (3) (Pr 2) (DB).**

——Ss. 113 and 111 (h) — Waiver of notice—It is a matter of bilateral agreement between landlord and tenant—If landlord has not agreed to revive tenancy there is no waiver of notice — Mere acceptance of money remitted by tenant does not amount to waiver. See T. P. Act (1882), S. 111 (h). **1961 M P L J (Notes) 224.**

——S. 113—Notice—Waiver—Landlord acknowledging payment of portion of arrears of rent and stating that in spite of such payment the tenant was still in arrears of rent — This cannot amount to waiver of notice. **1960 M P L J 449 : 1960 Jab L J 506 : AIR 1960 Madh Pra 167 (169) (Pt B) (Pr 10).**

——S. 113—Waiver of notice—What constitutes — Determination of contractual tenancy by notice to quit — Tenant remaining in possession as statutory tenant—Subsequent acceptance of rent by landlord does not necessarily constitute waiver of notice to quit.

Held that in view of the fact that in Alwar where the property in dispute was situated, Rajasthan Premises (Control of Rent and Eviction) Act, 1950 was in force and the tenant was bound to pay the rent regularly so that he might not become a defaulter liable to ejectment on that ground; and the fact of the filing of the appeal, it could not be held that the landlord had waived the notice requiring the tenant to quit. AIR 1959 A P 346; (1959) 1 An W R 143, Dist. **1961 Raj L W 531.**

SECTION 114

SYNOPSIS

(Transfer of Property Act, (1882), S. 114.)

1. Scope.
2. "Pays or tenders".
3. "Rent in arrear".
4. "The Court may pass an order".
5. Consent decree providing for forfeiture.
6. Relief against forfeiture for breaches of other conditions.

1. Scope.

——S. 114—Relief against forfeiture — When can be claimed—Determination of monthly tenancy by valid notice — Determination is not in exercise of right of forfeiture — S. 114 is not attracted — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 3 (1) (a) — Section does not create any right to forfeit but merely imposes three months' bar on right to eject tenant. **1965 All W R (HC) 229 : 1965 All L J 607 : AIR 1966 All 165 (166) (Pt B) (Pr 4).**

——Ss. 114 and 111—Applicability of S. 114—Ejectment sought on basis of notice to quit—S. 114 does not apply.

The provisions of S. 114 will be attracted only when a forfeiture occurs. Where in a suit for ejectment is sought on the basis of a notice to quit and under S. 111, T. P. Act one of the modes of determining a lease being by serving upon a lessee a notice to quit and that has been done by the plaintiff in the suit, no question arises of the applicability of the provisions of S. 114. Moreover before S. 114, could be applied, it has to be shown that one of the terms of the lease was that the landlord will have a right to re-enter if the rent for any particular period remained unpaid. AIR 1952 All 584, Foll. **1965 All W R (HC) 161 : 1965 All L J 249.**

——S. 114—Applicability—Lease not determined by forfeiture—Section not attracted—Relief under section is discretionary. **ILR (1964) 16 Assam 1 : AIR 1964 Assam 102 (104, 105) (Pt B) (Prs 8, 9, 10) (DB).**

——Ss. 114 and 111 (g) — Scope of S. 114—Forfeiture — Meaning of—Plea under S. 114 first time in second appeal.

Section 114, T. P. Act gives jurisdiction to the Court to grant relief to the tenant against forfeiture for non-payment of rent and there can be no doubt that this power can be exercised even by the appellate Court. But the word 'forfeiture' used in S. 114 has a technical meaning which must be ascertained by reference to S. 111 (g) of the said Act. Forfeiture in this technical sense is incurred in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter, and even in such a case the lessor has to give notice in writing to the lessee of his intention to determine the lease. In proceedings against the sub-tenant where the lessee was not on record and the plea under S. 114 was not made in the Courts below the High Court will not entertain the plea for the first time in second appeal though the plea raises a mixed question of the fact and law. **54 Bom L R 833 : I L R (1953) Bom 98 : AIR 1953 Bom 129 (133) (Pt D) (Pr 11) (DB).**

——Ss. 114, 106—W. B. Premises Tenancy Act (1956), Ss. 13, 17 — Relief against forfeiture — Tenant's defence against delivery of possession struck out under S. 17 (3) for failure to deposit and payment as required under S. 17 (1) and (2) — Tenant can still challenge service, validity and sufficiency of notice to quit and claim and qualify for relief under S. 114 of T. P. Act (1882). See Houses and Rents — West Bengal Premises Tenancy Act (1956), S. 13. **A I R 1965 Cal 398.**

——S. 114 — Applicability — Tenant unable to get benefit of Ss. 12 and 14 of W. B. Act (17 of 1950) — Claim to benefit under S. 114, T. P. Act — (Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), Ss. 12 (1) and 14).

Even if the tenant is unable to get the protection of S. 12 or S. 14 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, it may still be possible for him to get the special relief under S. 114 of the Transfer of Property Act. There is no doubt that S. 12 gives considerable protection to the tenant. Section 14 gives further protection even where a landlord would be otherwise entitled to a decree for ejectment on the ground of default within the meaning of S. 12 (1) (i) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. But these two sections should not be consi-

dered to exhaust all the protection under the law. There is no express or implied repeal of S. 114, T. P. Act. 62 Cal W N 753 : (1958) 1 Cal L J 110 : I L R (1959) 1 Cal 671 : A I R 1958 Cal 428 (430) (Pt B) (Pr 7) (DB).

——S. 114—Scope—Relief against forfeiture - Default in payment of rent — Suit for ejectment and recovery of rents — On payment of all arrears of rent with interest and full costs of suit, Court passed the order that lessee is relieved against forfeiture and he shall hold property — Property leased as if forfeiture had not occurred — Held that the result of the order was that effects of forfeiture were wiped out and lease continued to be operative. See Specific Relief Act (1877), S. 22. AIR 1955 N U C (Cal) 2934 (DB).

——S. 114 — Tenant liable to be evicted may claim protection of S. 114. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12. (1962) 3 Guj L R 182.

——S. 114 — Section 114, T. P. Act is not applicable to agricultural leases unless made so applicable by contract — Matter in such cases to be governed by specific provision of special Act. See Tenancy Laws — Vindhya Pradesh Land Revenue and Tenancy Act (1953), S. 194 (1). 1962 M P L J (Notes) 304.

——S. 114 — Scope—Section cannot be deemed to be abrogated by the M P. Accommodation Control Act — Barrier under S. 4 of M. P. Accommodation Control Act lifted by tenant's failure to pay arrears of rent within one month of service of notice — Rights and liabilities of parties are to be determined under T. P. Act. 1960 M P L J 1199 : 1960 Jab L J 1098 : ILR (1963) Madh Pra 117 : A I R 1961 Madh Pra 56 (57) (Pt A) (Prs 2, 6).

——S. 114 — Agricultural lease governed by special Act, such as Quanoon Mal Gwalior — Principle of S. 114 cannot be applied. See T. P. Act (1882), S. 113. 1960 M P C 329 : 1960 M P L J 861.

——S. 114—Applicability—Notice to quit—No term regarding re-entry—Effect.

Where the tenancy is terminated by means of a notice to quit and not as a result of forfeiture and in the rent-note there is no term regarding re-entry, the principle underlying S. 114 of the Transfer of Property Act does not apply. A provision of re-entry cannot be read in the statutory provision in S. 4 (a) of the Madhya Bharat Sthan Niyantran Vidhan, or S. 4 (a) of the Madhya Bharat Accommodation Control Act. M B L R 1952 (Civil) 379, Diss. 1959 M P L J (Notes) 163.

——S. 114 — Case governed by T. P. Act—S. 114 not applicable in terms—Relief against forfeiture cannot be given on principles of justice, equity and good conscience embodied in S. 114. A I R 1953 S C 228 and A I R 1951 Nag 207, Rel. on; A I R 1927 Mad 239 and A I R 1958 Mad 232, Dist. 38 Mys L J 1095 : I L R (1960) Mys 1270 : A I R 1961 Mys 131 (134) (Pt C) (Pr 12) (DB).

——Ss. 114 and 108 — Requirements of S. 114, indicated—Houses and Rents — C. P. and Berar House Rent Control Order (1947), Cl. 13. See T. P. Act (4 of 1882), S. 108. AIR 1951 Nag 207.

——S. 114—Applicability—Suit for evicting monthly tenant after service of notice to quit.

Section 114, provides for relief against forfeiture, that is to say, when a lease determines by forfeiture under Cl. (g) of S 111 of the Act and not for a simple suit for evicting a monthly tenant after service of notice to quit in accordance with S. 106 of the Act. (1957) 23 Cut L T 316.

——Ss. 114 and 111 (g) — Forfeiture — Notice of intention to determine lease — Waiver of notice — There can be no forfeiture of lease if notice is not given by lessor to lessee of forfeiture of tenancy for non-payment of rent even though the registered lease provides for automatic forfeiture on non-payment of rent. See Transfer of Property Act (4 of 1882), S. 111 (g). AIR 1960 Pat 525 (DB).

——S. 114 — Suit for ejectment of lessee expressly based upon expiry of term of lease and not on determination by forfeiture — Relief under S. 114 could not be granted. See T. P. Act (1882), S. 111. 1960 B L J R 403.

——S. 114—Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (2) (i) proviso — Expression 'arrears of rent' in the proviso—Means rent due on date of application and not due on date of deposit — Principles of equity or S. 114, T. P. Act not applicable. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (2) (i). ILR (1961) 1 Punj 315.

——Ss. 114 and 108 (g) — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), Ss. 13 (1) (a), 13 (4), 13 (5) (as amended by Rajasthan Act 9 of 1952) — Validity — No conflict between these provisions and Ss. 108 (g) and 114, T. P. Act — Repugnancy when arises. See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950) (as amended by Rajasthan Act 9 of 1952), S. 13 (1) (a). AIR 1959 Raj 59 (DB).

——S. 114 — Proceedings under United State of Rajasthan Building (Lease and Rent Control) Ordinance, 1922 for ejectment on ground of non-payment of rent — Arrears of rent not deposited on first day of hearing—Protection to tenant — Deposit of rent—Protection can be claimed under S. 114, T. P. Act and under Rajasthan Act 17 of 1950 which has in meanwhile come into force. See Houses and Rents—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 13 (a) (i), Proviso. A I R 1955 N U C (Raj) 1248.

——S. 114—Applicability—Execution proceedings.

The section is clearly confined to the stage of the proceedings before the passing of a decree. After a decree has been passed, the executing Court has no power to lessen the rigour of the decree so far as it relates to eviction because the judgment-debtor expresses his willingness and readiness to pay the rent decreed. AIR 1951 Raj 148 (149) (Pt C) (Pr 3).

——S. 114—Scope—Agricultural lease.

Obiter. — No doubt S. 114 does not apply to agricultural leases but there are decisions in which it has been held that where a lease does not come within the purview of the Transfer of Property Act, the Court exercising the power which it possessed even previous to that Act, will relieve against forfeiture of non-payment of rent on such conditions as may appear equitable on the facts of each particular case. AIR 1927 Mad 239 and AIR 1916 Mad 680 (2): 29 M L J 381 and AIR 1944 Nag 229, Rel. on. 9 Sau L R 126 : AIR 1956 Sau 44 (46) (Pt E) (Pr 5) (DB).

——S. 114 — Agricultural lease — Relief against forfeiture.

Though the Court may have the jurisdiction to relieve against forfeiture of agricultural leases, the essential requirement is that the agricultural lease is determined by forfeiture as contemplated by S. 111 (g) of the Act. 9 Sau L R 126 : AIR 1956 Sau 44 (46) (Pt F) (Pr 5) (DB).

——Ss. 114, 111 (g) and (h)—S. 12 (3), Rent Control Act, is not inconsistent with S. 114 — Meaning of forfeiture may be ascertained by reference to S. 111 (g)—Rent note not proving for forfeiture — Notice under S. 111 (g)—S. 114 has no application—(Houses and Rents — Saurashtra Rent Control Act (XXII of 1951), S. 12 (3)). A I R 1955 N U C (Sau) 4099 (DB).

2. "Pays or tenders."

——S. 114 — Mere expression of willingness to pay cannot be sufficient and cannot amount to tender. 1963 All W R (HC) 188 : 1963 All L J 132 : I L R (1962) 2 All 420.

3. "Rent in arrear."

——S. 114 — Relief against forfeiture — Equitable relief—'Lessee pays the rent in arrear'—Reasonable construction—Rent should include amount to date of tender and not only to date of termination of tenancy by notice — Delay in making tender of amount—Court refused to relieve tenant.

Section 114 T. P. Act, is designed to provide a relief against forfeiture.

The relief against forfeiture provided in S. 114 is based on equitable principles. The purpose of this section appears to be to extend a special indulgence in favour of a tenant who is prepared to purge himself of his conduct as a persistent defaulter by making an honest offer to clear off his entire liability. A more reasonable construction of this section will be to interpret the word 'rent' in such a manner as to include in it the entire amount which the tenant is liable to pay to the landlord by way of rent upto the date of tender. AIR 1931 Cal 457, Rel. on.

The relief itself being an equitable one, the party who comes to Court seeking such relief must come with clean hands. ILR (1961) 2 All 530 : 1961 All L J 568 : 1961 All W R (HC) 431 : AIR 1962 All 65 (66, 67) (Prs 6, 7, 8, 10) (DB).

——S. 114 — 'Rent in arrear' — Decree for time-barred arrears — (Justice, equity and good conscience).

When granting the extraordinary relief against forfeiture the Court has jurisdiction to decree time-barred arrears also where it is fully warranted by considerations of justice, equity and good conscience under which the relief against forfeiture is granted. 1957 Mad W N 711 : 70 Mad L W 1006 : AIR 1958 Mad 232 (235) (Pt B) (Pr 12) (DB).

4. "The Court may pass an order."

● —S. 114—The Court may pass an order.

The granting of relief against forfeiture under S. 114 is no doubt in the discretion of the Court but in exercising the discretion, each case must be judged by itself, the delay, the conduct of the parties and the difficulties to which the landlord has been put should be weighed against the tenant. AIR 1916 Mad 680 (2), Approved.

It is a maxim of equity that a person who comes in equity must do equity and must come with clean hands and if the conduct of the tenant is such that it disentitles him to relief in equity, then the Court's hands are not tied to exercise it in his favour.

Hence the contention that though S. 114 confers a discretion on the Court, that discretion except in cases where third party interests intervene must always be exercised in favour of the tenant irrespective of the conduct of the tenant cannot be accepted. Namdeo Lokman Ladhi v. Narmadabai. 1953 S C A 517 : 1953 Mad W N 592 : 1953 S C J 306 : (1953) 1 M L J 715 : 55 Bom L R 517 : 55 Pun L R 312 : 1953 S C R 1009 : A I R 1953 S C 228 (234) (Pt C) (Prs 29, 31).

——S. 114 — Forfeiture of tenancy for non-payment of rent—Trial court passing decree for his ejectment —Tenant claiming relief under section in appellate court — Appellate court has power to grant relief. 1963 All W R (H C) 188 : 1963 All L J 132 : I L R (1962) 2 All 420.

——S. 114 — Exercise of discretion — Irregularity in payment of rent—Tenant's failure to pay whole rent either after notice of demand or when about to be sued—Court has good cause for not exercising discretion in tenant's favour. 1951 A W R (HC) 197 : 1951 All L J 331 : A I R 1952 All 579 (580) (Pt C) (Pr 5).

——S. 114—Relief against forfeiture—Discretion.

The Court has discretion under S. 114, T. P. Act, to grant the relief against forfeiture or to refuse the same. Where it did not appear that the conduct of the tenants in withholding payment of rent to the landlord without any adequate cause, even though they had paid rent for about a year and a half, the High Court held that there was no justification for any such relief. AIR 1956 Assam 113 (113) (Pt B) (Pr 4).

——S. 114 — Grant of relief against forteiture — Court's discretion — Principles governing exercise of —Tenant guilty of chronic non-payment of rent and harassing landlord with frivolous litigation for long period— A I R 1953 S C 228, Rel. on. 66 Cal W N 449 : AIR 1962 Cal 591 (592) (Pr 2).

——S. 114 – Non-payment of rent — Forfeiture — Relief against when may be refused — Held. circumstances which weighed with the court in A I R 1958 Cal 428 in refusing relief to the tenant under S. 114 were present at least substantially in the present case also. A I R 1960 Cal 609 (614) (Pt I) (Pr 18) (DB).

——S. 114—Relief against forfeiture— Discretion of Court—Interference in appeal.

In a suit for arrears of rent and ejectment on ground of forfeiture of lease the defendant raised the false defences that there was no default and there was no determination of lease. The defendant did not pray for relief under S. 114, T. P. Act but in appeal the time of hearing arguments he put in an additional ground for the first time that the trial Court had wrongly refused him relief under S. 114 and made a conditional offer to pay the arrears of rent with interest and full costs of suit if it was held that the tenancy was determined under S. 114. The Court refused to grant the relief in the exercise of its discretion.

Held, that in the circumstances of the case it could not be said that the appellate Court had not exercised the discretion properly or judicially and therefore the High Court would not interfere with that discretion and grant relief against forfeiture especially when the defendant Company had gone into liquidation. 62 Cal W N 753 : (1958) 1 Cal L J 110 : ILR (1958) 1 Cal 671 : A I R 1958 Cal 428 (431) (Pt C) (Pr 12) (DB).

——S. 114—Scope—Power of appellate Court.

The High Court in second appeal is not precluded from granting relief against forfeiture because a tenant did not make an application for it on the Court below and pay the arrears at a stage prior to the decree of the trial Court. 25 Mad L J 486, Foll. ILR (1950) All 523, Not Foll. 70 Mad L W 1006 : 1957 Mad W N 711 : A I R 1958 Mad 232 (236) (Pt C) (Pr 13) (DB).

——S. 114—Scope—Power of Court to give relief in cases not covered by the section — (Justice, equity and good conscience).

The Court has power to give relief against forfeiture independently of the provisions S. 114, if justice equity and good conscience requires it. Therefore though an agricultural lease does not come within the purview of the section a Court exercising the powers which it had possessed even prior to the Act, will relieve against forfeiture for non-payment of

rent on such conditions as may appear equitable on the facts of each particular case. In granting the relief in such a case the Court is not bound by the conditions laid down in the section. 1957 Mad W N 711 : 70 Mad L W 1006 : A I R 1958 Mad 232 (236) (Pt D) (Pr 14) (DB).

—— S. 114 — 'Court may pass an order'.

The principle that relief against forfeiture should not be granted to a tenant who set up a false claim of having paid the arrears cannot be accepted as universally applicable. It all depends on the circumstances of each case. 70 Mad L W 1006 : 1957 Mad W N 711 : A I R 1958 Mad 232 (236) (Pt E) (Pr 14) (DB).

—S. 114— Rent in arrears — Court can grant relief against forfeiture only if tenant deposits full arrears of rent with costs of suit in Court before hearing. AIR 1955 N U C (Sau) 974 (DB).

5. Consent decree providing for forfeiture.

——S. 114—Consent decree providing for forfeiture.

Where the compromise decree did create or continue the relationship of landlord and tenant between the decree-holder and the judgment-debtor, and the forfeiture which the decree-holder seeks to enforce has resulted from the judgment-debtor's failure to pay the amount of rent within the stipulated period the judgment-debtor is entitled to the relief against forfeiture. 31 Bom 15 (FB) held still good law. 53 Bom L R 100 : I L R (1951) Bom 240 : A I R 1951 Bom 290 (291, 292, 294) (Prs 3, 7) (DB).

——S. 114—Scope—Suit for arrears of rent and ejectment — Consent decree specifically designated as money decree — Repetition of recital that tenant had executed fresh lease deed which was to run from 28 days before date of decree and that landlord was entitled to eject tenant in case of default of two instalments—Decree held not a decree for ejectment. Therefore, the tenant could not be ejected in execution proceedings of the said consent decree. A I R 1957 J & K 16 (16, 17) (Pr 2) (DB).

——S. 114 — Delhi and Ajmer-Merwar Rent Control Act (1947), S. 9 — Conditional decree for ejectment passed by consent—Condition not fulfilled — Execution not barred under S. 9. See Houses and Rents—Delhi and Ajmer-Merwar Rent Control Act (19 of 1947), S. 9. AIR 1951 Punj 438.

6. Relief against forfeiture for breaches of other conditions.

● ——S. 114 — Termination of tenancy for non-payment of rent —Termination taking place by virtue of Statutory provision under Bombay Act, S. 114, T. P. Act being inconsistent with S. 3 of Bombay Act relief against forfeiture under S. 114 cannot be granted. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. 67 of 1948), S. 3. A I R 1962 S C 753.

● ——S. 114 — Sale of hypotheca to mortgagee in satisfaction of mortgage debt and lease back to mortgagor for fixed period — Separate agreement giving lessee option to re-purchase during period of lease — Agreement to stand cancelled in case of default in payment of rent —Default—Notice determining lease and cancelling agreement—Suit for specific performance of agreement to repurchase — Conditions not having been strictly complied with forfeiture could not be relieved against. Shanmugam Pillai v. Annalakshmi Ammal, 1949 Fac L R 537 : 1950 S C J 1 : (1950) 1 Mad L J 683 : A I R 1950 F C 38 (41, 42, 43, 50, 54, 57, 58) (Pt A) (Prs 10, 12, 16, 17, 36, 37, 49, 56, 57).

——Ss. 114 and 106—Applicability—Termination of lease by valid notice to quit — Wilful default in payment of rent— U. P. Temporary Control of Rent and Eviction Act, S. 3 (1) (a)—Effect of.

Section 114 of the Transfer of Property Act applies to cases where the forfeiture relied upon by the plaintiff is one incurred under the terms of the lease. The removal of a bar from the way of the plaintiff-landlord's instituting a suit for ejectment mentioned in S. 3 (1)(a) of the U. P. Control of Rent and Eviction Act is not in any sense a forfeiture of any rights under the lease or under the terms of the tenancy which the defendant held.

Where the terms of the lease do not provide for forfeiture on non-payment of rent and the tenancy is determined by a valid notice to quit under S. 106, S. 114 cannot be brought in aid to protect the tenant from ejectment. A I R 1922 Cal 394 and A I R 1958 Cal 428 and 1949 All W R 539, Dist. A I R 1961 All 95 (95, 96) (Pr 1).

——S. 114 — Suit for ejectment on ground of non-payment of rent—Protection under S. 12 (1)—Conditions precedent — Relief against forfeiture under S. 114, T. P. Act not avaliable in cases falling under S. 12 of Bombay Rent Act (1947). See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 12 (1). A I R 1964 Guj 9 (DB).

——S. 114—Houses & Rents — Bombay Rents Hotel and Lodging House Rates (Control) Act, S. 12 — Tenancy determined otherwise than by forfeiture — Tenant seeking protection from eviction must bring his case within four corners of Act—Court has no discretion to give relief against eviction apart from provisions of Act. See Houses & Rents—Bombay Rents Hotel and Lodging House Rates (Control) Act, S. 12. (1962) 3 Guj L R 529.

——Ss. 114 and 111—Scope—If mutually exclusive.

Section 114 can be invoked to give relief to a tenant when a lease is determined by the landlord on the ground of forfeiture. Where a landlord brings a suit for eviction of his tenant on the ground that he has determined the tenancy under S. 111 (h), the eviction is not sought on the ground of forfeiture so as to attract S. 114. 1960 M P L J 1199 : 1960 Jab L J 1098 : I L R (1963) Madh Pra 117 : AIR 1961 Madh Pra 56 (57) (Pt B) (Prs 3, 4).

——S. 114 — Lessee to incur forfeiture of lease, on default of payment of rent—Subsequent agreement between lessor and lessee for sale of demised land — Agreement to be performed within period of seven years — Condition of lease as to regular payment of rent, made condition of agreement to sell—Default in payment of rent — Condition held not essence of contract of sale — Vendee-lessee can be relieved against the same. See Specific Relief Act (1877), S. 24 (b). AIR 1960 Mad 203 (DB).

——Ss. 114 and 111 (g)— 'Where a lease of immovable property has determined by forfeiture'—Meaning of.

The expression 'where a lease of immovable property has determined by forfeiture,' in S. 114 means that it has been determined in the manner as indicated in S. 111 (g) of the Transfer of Property Act. Therefore, when there is no forfeiture as contemplated by S. 111 (g) no relief can be given under S. 114, T. P. Act. AIR 1953 Bom 129, Foll. 38 Mys L J 1095 : I L R (1960) Mys 1270 : AIR 1961 Mys 131 (132) (Pt A) (Pr 5) (DB).

——S. 114—Default in payment of rent — Protection under Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950) is not available — Section 114, T. P. Act cannot be invoked. See Houses and Rents—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 13. AIR 1961 Raj 120.

SECTION 114-A

● —Ss. 114-A, 112 and 114—Specific performance—Sale of portion of hypotheca to mortgagee in satisfaction of mortgage debt and lease back to mortgagor for fixed period — Stipulation for payment of rent regularly with forfeiture clause—Separate agreement executed on same day giving lessee option to repurchase during period of lease—Agreement to stand cancelled in case of default in payment of rent — Default in payment—Notice determining lease and cancelling agreement—Suit for specific performance of agreement to repurchase — Agreement held in nature of privilege of concession and not penalty — Conditions not having been strictly complied with forfeiture could not be relieved against — Subsequent acceptance of payment held did not amount to waiver —Specific performance cannot be granted — Specific Relief Act (1877), S. 24, Shanmugam Pillai v. Annalakshmi Ammal, **1949 Fac L R 537 : 1950 S C J 1 : (1950) 1 Mad L J 683 : AIR 1950 F C 38 (41, 42, 43, 50, 54, 57, 58) (Pt A) (Prs 10, 12, 16, 17, 36, 37, 56, 57).**

—S. 114-A—Suit for ejectment on breach of condition—Absence of notice under S. 114-A—Suit cannot be decreed. See T. P. Act (1882), S. 111 (g). **AIR 1954 All 649.**

—Ss. 114-A and 111 (g)—Sections 111 (g) and 114-A require notice to tenant — No notice is to be given to an assignee of a part of the lessee's interest. See T. P. Act (1882) S. 111 (g). **AIR 1961 Assam 70 (DB).**

—Ss. 114-A, 111 (g)— Combined notice under two sections — There is no bar under the Act to combine the two notices in one. See Transfer of Property Act (4 of 1882), S. 111 (g). **AIR 1961 Assam 70 (DB).**

—S. 114-A — Notice under S. 111 (g) cannot be waived — Distinction between notice under S. 114-A and one under S. 111 (g). See T. P. Act (1882), S. 111 (g). **AIR 1960 Cal 40.**

—Ss. 114-A and 111 (g)—Suit by dispossessed lessee to recover possession from lessor who has re-entered upon forfeiture — S. 114-A not applicable—S. 111 (g) is applicable — Notice expressing intention to determine lease and re-enter is sufficient compliance. **ILR (1960) 2 Cal 167.**

—S. 114-A—Breach of covenant to keep free seats in cinema house—Forfeiture—Relief— (West Bengal Amusement Tax (Amendment) Act (11 of 1949), Ss. 3, 4).

The covenant in a lease of cinema houses ran as follows:

"The company shall at all times during the period of the lease keep one box containing not less than 4 seats in each of the said Cornwallis Theatre and Crown Cinema at the disposal of the lessor for the use of herself or of person or persons authorised by her or on her behalf in writing and if the lessor so desires in writing the company shall instead of four seats in the box permit 6 persons in the stall and 8 persons in the gallery or in the pit to view the performance which will be held in the aforesaid two demised premises". By another clause it was provided that the company shall pay both the Owner's and Occupier's shares of rates and taxes and other outgoings and imposition payable in respect thereof during the said term of the lease.

Held, (i) that these seats mentioned in the covenant were free in the sense that no price was charged or paid in respect thereof, by the lessor.

(ii) The words of sub-section (3) (b) of S. 3 of the Amended Act were such that the person who was admitted on free ticket was liable to pay the entertainment tax. But the covenant required the lessee to discharge for and on behalf of the lessor such liability for tax on free and complimentary tickets or passes. The lessee did infringe its liability under the covenant to provide free seats to the lessor if it attempted to realise the tax from the lessor.

(iii) There being the breach of the covenant and as the lessor having given the necessary notice of forfeiture, forfeiture must follow as a matter of legal consequence. As one of the clause of the lessee's covenant in the lease provided clearly that the breach of any condition mentioned in the lease will entitle the lessor to re-enter and the breach in this case was capable of remedy and the lessor failed to remedy, therefore, under S. 114-A of the Transfer of Property Act the Court had no power, when the conditions mentioned in that section were satisfied to grant any relief against forfeiture. **90 Cal L J 263 : A I R 1953 Cal 536 (537, 538 to 542) (Prs 15, 21, 30, 31, 37, 40, 43).**

—S. 114-A — Section merely defines form in which notice under S. 111 (g) is to be issued in cases where breach of condition is capable of being remedied — Single notice is sufficient. See T. P. Act, S. 111 (g). **AIR 1953 Mad 313 (DB).**

—S. 114-A—Technical defects.

The object of S. 114-A is that the lessor should have clear information as regards the breaches complained of and he should have an opportunity of remedying them if possible. Once the purpose of this provision is substantially complied with mere technical defects should not prevent the lessor from availing herself of the right of forfeiture if she was otherwise entitled to it. The commonsense view of the matter should be taken in construing S. 114-A. **(1952) 2 M L J 758 : 1952 Mad W N 871 : 66 Mad L W 1079 : ILR (1953) Mad 615 : AIR 1953 Mad 313 (315) (Pt B) (Pr 8) (DB).**

—S. 114-A — Scope — Mandatory —Notice before suit.

The provisions of S. 114-A regarding further notice requiring the lessee to remedy his breach is mandatory, provided the breach is capable of being remedied. If the breach is irreparable or irremediable, no notice under S. 114-A is necessary and the landlord is entitled to evict the lessee if the conditions of forfeiture are fulfilled. But if any other remedy is available or the injury is reparable, a notice under S. 114-A is compulsory. **AIR 1957 Orissa 35 (39) (Pt E) (Pr 14) (DB).**

—S. 114-A—Forfeiture for non-payment of rent—Necessity for notice.

In case of forfeiture only one notice is required and not one under S. 111 (g) and another under S. 114-A. But the argument that no notice of ejectment is necessary at all in cases relating to forfeiture for non payment of rent is not correct. **AIR 1955 Tripura 26 (26) (Pt A) (Pr 6).**

SECTION 115

—S. 115—Surrender by lessee—Effect on rights of under-lessee.

In view of S. 115 the surrender by a lessee does not prejudice the rights of the under-lessee which include the right to continue in possession. **1959 All L J 188.**

——S. 115 — A lessee by surrender cannot destroy rights created by him in favour of under-lessee — Lessee can only give title to his lessor by surrender on same extent as he could give by way of an assignment. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 7. 1957 All W R (HC) 732 : 1957 All L J 731.

——S. 115 — Applicability and scope — Lessee transferring his interest by way of mortgage — Lessor giving notice to lessee under Ss. 111 (g) and 114-A and obtaining decree — Held, mortgagee could not be regarded assignee of lessee's entire interest — It was not open to him to set up plea that even after forfeiture of lease he was entitled to remain in possession. See T. P. Act, S. 108 (j) (q). AIR 1961 Assam 70 (DB).

——S. 115 — Landlord and tenant — Tenant closing original business because of old age and carrying on another business in partnership with apother person — Use of premises by partnership is permissive — This does not amount to sub-letting.

Held, on facts that the burden was entirely on the landlord to establish sub-letting. The mere fact that a tenant permits the tenancy premises to be utilised by a partnership in which he is a partner, does not mean that the relationship of a landlord and tenant is created between the tenant and the partnership. It is open to a partner to permit the use of his property by the partnership. Such permissive user is only by way of licence and will not create in the partnership the rights of a sub-tenant or a tenant. Ordinarily, the tenancy pre-supposes user by the tenant to the exclusion of the landlord. The use by the partnership being only permissive, the tenant cannot be deemed to have sub-let the premises to the partnership. The relation between the tenant and the partnership cannot be deemed to be that of a landlord and tenant in the circumstances of the case. 1954 N L J 100, Diss. 1964 Mah L J (Notes) 86.

——S. 115 — Surrender of lease — Effect on sub-lease.

Section 115, T. P. Act, provides that a surrender, express or implied, of a lease does not prejudice an under-lease of the property. The section proceeds on the principle that a man is not permitted to derogate from his own grant. As between the parties to the transaction a surrender by the lessee puts an end to his interest but it does not affect third persons who have acquired an interest from him. Such a surrender operates as an assignment to the lessor of the lessee's interest and thus brings the under-lessee into immediate relations with the lessor. 55 C W N 518 : 87 Cal L J 345 : ILR (1952) 2 Cal 167 : AIR 1952 Cal 196 (197) (Pt B) (Pr 15) (DB).

——S. 115 — Sub-tenancy to be co-extensive with tenancy—Eviction suit against tenant—Compromise decree according to which portion occupied by sub-tenant was to be restored to landlord and rent of premises to continue with tenant—Decree amounted to surrender of part of premises, not affecting rights of sub-tenant—If it were case of forfeiture the matter would be different — Decree held could not be executed against sub-tenant unless it was executed against tenant. AIR 1955 NUC (Madh B) 3788.

——Ss. 115, 111 (e) —Landlord and tenant—Surrender —Contract to transfer tenancy rights—Surrender after contract — Landlord cannot ignore the previous contract to sell. AIR 1955 NUC (Madh B) 3706.

——S. 115 — Decree for ejectment against lessee and his sub-lessee — Sub-lessee has right of appeal — Decree becoming final as against lessee — Appeal by sub lessee alone would be incompetent. See Civil P. C. (1908), S. 96. AIR 1950 Madh Bha 19 (DB).

——S. 115 — Order of eviction against tenant — Order is binding on sub-tenant also. See Houses and Rents—Madras Buildings (Lease and Rent Control) Act (18 of 1960), S. 18. (1965) 2 Mad L J 265 : ('65) 78 Mad L W 489.

——S. 115 — Ejectment suit brought by Landlord against tenant decreed — Sub-tenant, party to suit, cannot plead protection of his status under Madras Buildings (Lease and Rent Control) Act. See Houses and Rents—Madras Buildings (Lease and Rent (Control) Act (15 of 1946), S. 2 (4). (1952) 2 Mad L J 179 : AIR 1953 Mad 356 (DB).

——S. 115 — Consent decree for ejectment against tenant — Nature of — Fraud or collusion not proved —Sub-tenant held liable to ejectment. See Houses and Rents—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 13. 1961 Raj L W 895.

SECTION 116

SYNOPSIS

(Transfer of Property Act (1882), S. 116.)

1. Scope.
2. Holding over—What amounts to.
3. Lessee holding over after expiration of lease — General.
4. Effect lessee's legal representative remaining in possession.
5. "Accepts rent or otherwise assents to his continuing in possession."
6. Clause for renewal.
7. "In the absence of an agreement to the contrary."
8. Possession under invalid lease.
9. Holding over—Liability for damages.
10. Suit for possession—Limitation.

1. Scope.

——Ss. 116, 106 — Holding over — Determination of lease.

If there was holding over, notice under S. 106 of the Transfer of Property Act was necessary. If the notice did not end with the end of the month of tenancy, it was an invalid notice. On account of that invalidity the tenant could not have been ejected, and continued to be a tenant of the land. During the continuance of that tenancy the plaintiff by obtaining a lease could not eject the defendant. 1958 All L J 427 : 1958 All W R (HC) 546 : AIR 1958 All 879 (880) (Pt A) (Pr 6) (DB).

——S. 116 — Initial date in the case of holding over — Rent note not mentioning any date as to commencement of tenancy. See T. P. Act (4 of 1882), S. 110. AIR 1952 All 141.

——S. 116—Scope and applicability.

Section 116 of the T. P. Act deals with the effect of holding over and the question of holding over arises only when the lease has been determined. There cannot possibly arise any question of holding over when the lease has not been determined and the possession continues in accordance with the terms of the lease.

A tenant holding over after the determination of his lease is presumed to have become a tenant from year to year or month to month as the case may be, only when the landlord accepts rent from him or otherwise assents to his continuing in possession. The acceptance or rent or the assenting to the continuing in possession must obviously take place after the determination or the lease. ILR (1952) 1 All 85 : 1951 A L J 179 : AIR 1950 All 583 (585) (Pr 6).

——S. 116—Applicability—Lease for fixed period — Defendant not vacating — Plaintiff giving notice to vacate and claiming damages for occupation at enhanced rate — Defendant not paying and plaintiff not accepting any rent—Effect.

Defendant occupied plaintiff's premises on lease for a fixed period which expired on 17-10-1944. As defendant did not vacate plaintiff gave him notice to vacate and demanded damages at enhanced rate of Rs. 1,300 per year for occupation after 17-10-1944. As defendant still did not vacate plaintiff sued for ejectment. It was not defendant's case that plaintiff had accepted rent for period subsequent to 17-10-1944 or that he assented to continuance in possession of defendant and that any new tenancy came into existence as a result of acceptance of the plaintiff's offer of enhanced rent. Defendant did not accept plaintiffs offer; on the other hand in the written statement repudiated liability to pay at the enhanced rate of Rs. 1,300.

Held, that S. 116 of the Transfer of Property Act was not attracted. **1960 Nag L J (Notes) 60.**

——S. 116 — Manufacturing unregistered lease — Notice to terminate. In S. 116 statute itself indicates by necessary implication, that S. 106 will apply to all leases covered by statute, whether under registered instruments or not. See T. P. Act (1882), S. 106. **AIR 1959 Cal 181 (DB).**

——Ss. 116, 105 — Creation of tenancy — S. 116 has no application where landlord has no alternative but to allow tenant to remain in possession and to accept rent payable by tenant. See T. P. Act (4 of 1882), S. 105. **AIR 1956 Cal 120 (DB).**

——S. 116 — Applicability and scope—S. 116 has no application to cases of termination of tenancies by notice to quit — S. 113 excludes S. 116 — Both sections cannot apply to particular case. See T. P. Act (1882), S. 113. **AIR 1955 N U C (Cal) 5909.**

——S. 116 — Waiver of forfeiture—Principle—Determination of tenancy under S. 6 (8) of Bengal Act 6 of 1933 by landlord by notice — Waiver of — Held on facts S. 116 cannot be said to apply because there was no act which could be said to amount to an assent by landlord to tenant continuing in possession See T. P. Act (1882), S. 112. **A I R 1955 N U C (Cal) 1100 (DB).**

——S. 116 — Suit for possession and rent — Plea regarding sufficiency of notice — Tenant cannot for first time in appeal be allowed to raise objection to sufficiency of notice to quit after having failed in first Court on his plea of title. See Civil P. C. (1908), O. 41, R. 1. **AIR 1955 Him Pra 44.**

——S. 116 — Lease executed before applicability of T. P. Act — Tenant holding over—Notice to quit not necessary. See T. P. Act (1882), S. 108. **A I R 1955 N U C (Madh B) 3694.**

——S. 116 — Lease executed before applicability of Act — S. 116 does not apply. See T. P. Act (1882), S. 2 (c). **AIR 1955 N U C (Madh B) 3694.**

——S. 116—Lease deed impliedly providing for continuance of lease after specified period—Tenancy not determined — S. 116 not applicable. See T. P. Act (1882), S. 106. **1962 M P L J (Notes) 266.**

——S. 116 — Presumption regarding tenancy being continued — Necessary conditions — Evidence Act (1872), S. 114—Civil P. C. (1908), Ss. 100-101.

For the application of S. 116, one of the two conditions must be satisfied, namely, either the landlord should have accepted the rent from the lessee, or should have assented to his continuing in possession as a tenant. It is only on showing that one of these two conditions has been satisfied that a presumption regarding the tenancy being continued from month to month can arise. **1961 Jab L J 1334: 1960 M P L J (Notes) 123 : I L R (1960) Madh Pra 486.**

——S. 116 — Statutory tenant—Eviction proceeding pending against tenant—Premises sold pending such proceeding — Attornment by tenant and payment of rent to purchaser—Held that new tenancy was not created between the purchaser and the tenant.

Where during the pendency of an eviction proceeding started against a statutory tenant by the landlord the premises are sold, and the tenant attorns to the purchasers, the attornment of the tenant to the purchasers will not be sufficient to enable the Court to draw an inference of a new contract of lease between the purchasers and the tenant subsequent to the date of purchase de hors the lease from the transferor landlord under which the tenant was admittedly holding prior to the purchase.

Held, on the facts of this case that the purchasers did neither abandon nor waive their rights to enforce the eviction order by entering into a new contract, express or implied; that fresh application for eviction filed by the purchasers could not amount to a waiver of their pre-existing right to enforce the previous eviction order and that there was no scope for applying the doctrine of election in this case. A I R 1956 Mad 301 : (1956) 1 Mad L J 276, Disting. **(1961) 2 M L J 176 : 1960 Mad W N 705 : 73 Mad L W 692 : AIR 1961 Mad 200 (203, 204, 205) (Pt B) (Prs 14, 22, 26, 28).**

——S. 116—Liability of lessee to pay property tax — Tax due — Lease deed — Construction—Lessee held liable to pay entirety of municipal property tax due on superstructure put up by him — Since relationship of lessor and lessee ceased upon termination of period of lease and there was no assent to lessee holding over, terms of lease deed held were inapplicable. See T. P. Act (4 of 1882), S. 108 (g). A I R 1955 Mad 555.

——S. 116 — Terms as to notice cannot be imported under S. 116 when tenant holds over. See T. P. Act (4 of 1882), S. 106. AIR 1953 Mad 884.

——S. 116 — Acceptance of rent after order of eviction—T. P. Act (1882), S. 116, has no application. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (15 of 1945), S. 7. AIR 1950 Mad 746 (DB).

——Ss. 116, 106 and 111 — Lease invalid — Lessee entering into possession under lease and paying rent —Presumption of monthly or yearly tenancy under S. 106 may arise—Lessee is neither tenant-at-will nor tenant-at-sufferance—Lease has to be determined in one of the ways mentioned in S. 111. See T. P. Act (4 of 1882), S. 106. AIR 1955 Nag 306 (DB).

——S. 116 — Right of landlord to evict tenant for non-payment of rent — Tenancy determined by valid notice—Tenant still in occupation—He is not a tenant within meaning of S. 13, Orissa House Rent Control Act (1951). See Houses and Rents — Orissa House Rent Control Act (11 of 1951), S. 5 (a). (1961) 27 Cut L T 81.

——S. 116 — Holding over — New tenancy—Conditions necessary—Delay in instituting suit for ejectment—Does not amount to assent.

Before a new tenancy comes into operation by application of S. 116, two conditions must be satisfied, (1) that the tenant must continue in possession after the termination of the tenancy and (2) that the lessor accepts rent from the lessee which is only one of the ways of signifying his assent, or otherwise assents to his continuing in possession.

Mere delay in instituting an action for ejectment by the landlord does not amount to his assent to the

continuance of the tenant's possession and a new tenancy as contemplated by 116, T. P. Act does not come into existence. ILR 42 Pat 674 : 1962 B L J R 908 : A I R 1962 Pat 446 (447 to 449) (Prs 7, 9, 11) (DB).

● —S. 116—Scope of—Statutory bar to automatic renewal—Leases governed by Bihar Building (Lease, Rent and Eviction) Aet—(Houses and Rents — Bihar Building (Lease Rent and Eviction) Act (3 of 1947), Ss. 11 and 12).

The renewal of a tenancy by application of S. 116, T. P. Act takes place only when there is no agreement to the contrary. If there is an agreement, the acceptance of rent after determination of the lease will not give rise to a renewal of tenancy. In the case of leases to which the Bihar Building (Lease, Rent and Eviction) Act applies there is a statutory bar to the automatic renewal even if there is no agreement to the contrary in the lease itself. Under that Act the tenant can extend the lease only by serving a notice upon the landlord as required by S. 12 of that Act. That being so the mere acceptance of the rent in the absence of such notice will not bring about a renewal. In that respect the provisions of S. 116, T. P. Act. must be deemed to be cut down by the special provisions of the Tenancy Act. Digambar Narain Chaudhary v. Commr. of Trihut Division. 1958 B L J R 659 : 1958 Pat L R 332 : ILR 37 Pat 1307 : AIR 1959 Pat 1 (6) (Pt D) (Pr 13) (FB).

——Ss. 116, 105—Civil P. C. (1908), Ss. 100 and 101 — Questions of law and fact — Nature of tenancy— — Whether a tenancy, contractual at inception, has terminated and tenant has since become a statutory tenant is not a pure question of law—Such question depends on facts and circumstances of each case. (1965) 67 Pun L R 887.

——S. 116 — Scope — Principles apply to leases of agricultural lands.

The principle underlying S. 116 is based upon consideration of equity and justice and in the absence of anything to the contrary can also be made applicable to cases not governed by the Transfer of Property Act. The principles are applicable to leases of agricultural lands. 1963 Raj L W 627 : I L R (1963) 13 Raj 1137 : AIR 1964 Raj 89 (90) (Pt B) (Pr 12).

——S. 116—Unregistered rent note—Value of—Useful only to show nature of tenant's continued possession —It is ineffectual to prove conditions under which tenant continues in possession after expiry of term. See Registration Act (1908), S. 49, Proviso. AIR 1954 Sau 8.

● ——S. 116 — Suit for recovery of rent during holding over—Period of limitation is only three years. See Limitation Act (1908), Art. 116. A IR 1955 Trav-Co 146 (FB).

——S. 116 — Tenancy at sufferance — What is — Kanomdar holding over after expiry of term cannot be treated on same footing as a tenant at sufferance — Kanomdar is entitled to hold it whether or not it pleases the landlord. See T. P. Act (1882), S, 105. 1949 Ker L T 15 : 1949 T C LR 50 (DB).

2. Holding over—What amounts to.

——S. 116 — Holding over — What amounts to— Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), Ss. 3, 31.

Before a tenant could be said to be holding over, two conditions must be satisfied: firstly that the tenant must remain in possession after the expiration of the period of the lease and secondly the landlord or his representative must accept rent or otherwise assent to the assessee continuing in possession.

Where there was no allegation in terms of these conditions and only thing alleged in favour of the contention of holding over was that there was a delay of two years and 7 months before the filing of an application under S. 3 (vi) of the Calcutta Thikka Tenancy Act, for ejectment.

Held, that when a tenant continues in possession after the terms of the lease has come to an end, he is a tenant at sufferance until the landlord either accepts rent or otherwise shows his assent to the tenant continuing to be on the land, when he becomes a tenant by holding over. In the absence of proof about acceptance of rent or consent by a landlord, mere long delay could not be said to indicate consent. 53 Cal W N 73 (FC), Foll. ; 60 Cal W N 39, Dist. (1963) 67 Cal W N 456.

——S. 116 — Tenancy by 'holding over' is new tenancy—Protection under S. 9 (1) (b) (iii), West Bengal Non-agricultural Tenancy Act — (Tenancy Laws — West Bengal Non-agricultural Tenancy Act (20 of 1949), S. 9 (1) (b) (iii)).

The tenancy by holding over is a 'new tenancy in law', although, practically speaking, the terms of this new tenancy may be the same as of the old or the determined or expired tenancy. The tenant 'holds over' not under the expired kabuliyat or registered lease or 'lease in writing' but really 'in spite of it'.

Even apart from S. 116, T. P. Act or the general law of 'holding over' as between landlord and tenant, a tenancy by 'holding over' would appropriately come within the expression 'without a (any) lease in writing' as used in the West Bengal Non-agricultural Tenancy Act, 1949. The provisions of S. 7 (4), West Bengal Non-agricultural Act do not warrant or compel a different construction.

Where the period of the tenancy by 'holding over' is more than one year but less than twelve years 'even when taken along with the period of the 'expired' lease in writing' which preceded it, it will have the lesser protection of S. 9 (1) (b). If the period of the tenancy by 'holding over is by itself not less than twelve years' it will have the greater protection of S. 7 (2). If, however, this period be less than twelve years but it is 'twelve years or more' when taken along with the period of the 'expired lease in writing' in the wake of which it followed, it will still have the higher protection of S. 7, as contained in S. 7 (4).

Therefore a tenant of non-agricultural land holding over without lease in writing, after the expiry of registered lease for five years is entitled to the protection of S. 9 (1) (b) (iii) of the Act of 1949. ILR (1956) 2 Cal 370 : 58 Cal W N 651 : A I R 1954 Cal 539 (540) (Pt B) (Prs 5 to 10).

——S. 116 — Tenant admitting receipt of notices by landlord — There could be no holding over after service of notices. AIR 1955 NUC (Madh B) 52.

——S. 116—Holding over — What is—Onus of proof —(Landlord and Tenant).

The expression "holding over" means that the relationship of landlord and tenant was allowed to continue with the consent of both parties, and it is for the tenant to prove the overt acts by which the relation was allowed to continue. These overt acts may be either the receipt of the rent by the landlord or his assenting to the cotinuance of the tenancy by other acts.

Simply because the landlord waited for so many years for instituting the suit after the formal delivery of possession in execution of a decree for arrears of rent against the tenant, the tenant cannot be deemed to have held over. A I R 1955 Pat 158 (160) (Pt A) (Pr 6) (DB).

——S. 116 — Holding over — Agreement that lessee should continue in possession till final decision as to fresh lease — Possession of lessee under agreement does not constitute holding over.

Section 116 in terms states that unless there is an agreement to the contrary, assent by the lessor to continuance of possession and acceptance of rent from the lessee after the expiry of the lease would constitute holding over. Where the lease had expired and the lessee continued in possession under an express agreement to do so till the lessor reached a final decision as to granting of fresh lease, there is no holding over by the lessee. **31 Pat L T 100 : AIR 1950 Pat 222 (224, 225) (Pt B) (Pr 7) (DB).**

——S. 116—Landlord and Tenant — Tenant holding over—Tenant not getting possession on strength of his lease — Tenant can never be tenant holding over after expiry of lease period. **AIR 1964 Tripura 36 (39) (Pt D)(Pr 13).**

3. Lessee holding over after expiration of lease—General.

●——S. 116 —Person remaining in possession after determination of tenancy — Becomes statutory tenant — He can remain in possession but cannot enforce terms of original tenancy — Sub-lessee from a statutory tenant under the Act acquires no right of tenant. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (1). **AIR 1965 SC 414.**

●——Ss. 116, 106 — Contractual tenancy — Expiry of lease by efflux of time—Tenant continuing in possession by virtue of protection granted under Rent Control Legislation — Payment and acceptance of contractual rent or statutory rent by landlord—Status of tenant holding over not acquired — Notice under S. 106 not necessary. See T. P. Act (4 of 1882), S. 106. **AIR 1961 SC 1067.**

——S. 116 — Lease — Expiry of—Lease not validly terminated—Lessee continuing in possession of land — Lease is renewed but not continued — Period of lease counts according to nature of tenancy—Protest from lessee against enhancement of rent disentitles lessor to enhanced rent. See T. P. Act (4 of 1882), S. 5. **AIR 1965 All 326 (DB).**

——Ss. 116, 112 and 113 — Second notice to quit — Waiver of forfeiture — Effect of — Fresh tenancy if comes into existence—Position of holding over compared. See T. P. Act (4 of 1882), S. 113. **AIR 1951 All 478.**

——S. 116—Applicability—Tenancy for fixed period—Premises in occupation of sub-tenants after expiry of period—Tenant holding over—Tenancy when determined—Tenant to give notice to landlord or deliver vacant possession. See T. P. Act (1882), S. 111. **1958 Nag L J (Notes) 85.**

——S. 116—Nature of possession of tenant holding over without consent — (Specific Relief Act (1877), S. 9).

Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after termination of the tenancy, his possession is juridical and that possession is protected by statute. Under S. 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court under S. 9 and claim possession against the true owner. Therefore, the law makes a clear and sharp distinction between a trespasser and an erstwhile tenant. Whereas the trespasser's possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law. Therefore, as far as the Indian law is concerned, an erstwhile tenant can never become a trespasser. It may or may not be that in English law in certain circumstances he can become a trespasser and it does seem that the landlord can enter the premises and deprive the erstwhile tenant of his possession, but in India a landlord can only eject his erstwhile tenant by recourse to law and by obtaining a decree for ejectment. **56 Bom L R 308 : ILR (1954) Bom 950 : AIR 1954 Bom 358 (360) (Pt B) (Pr 4) (DB).**

——S. 116 — Scope—Lessee in occupation after determination of lease—Municipal taxes for period subsequent to determination of lease—If rent—Municipalities—Calcutta Municipal Act (W. B. Act 33 of 1951), S. 202 — (Tenancy Laws — Calcutta Thika Tenancy Act (W. B. Act 2 of 1949), S. 6.)

Where after the expiry of the term of the lease, the tenant continued in possession without executing a fresh lease and the landlord obtained a decree for recovery of municipal taxes in respect of the period subsequent to the expiry of the lease.

Held, that the consolidated rate of municipal taxes which could be legally recovered from the tenant was not part of rent and since the municipal taxes for the period subsequent to the expiry of the lease were claimed on the basis of statutory liability and not under any liability accruing from the lease deed, it could not be said that there was any waiver on the part of the landlord or any recognition of the tenancy by holding over under the provisions of S. 116 of the T. P. Act. **65 Cal W N 488 : ILR (1961) 1 Cal 287.**

——Ss. 116 and 111—Defendant's tenancy determined by notice—Defendant holding over—Government requisitioning premises and handing over same to defendant—Position of defendant. He holds under Government—His possession after requisition period is wrongful. See T. P. Act (4 of 1882), S. 111. **AIR 1952 Cal 455.**

——Ss. 116 and 106—Tenant holding over without consent of lessor—Dispossession by landlord — Subsequent obtaining of possession—Effect—He can be ejected without any notice.

A tenant holding over after the expiry of the period of his lease without the consent of the lessor will be treated as a tenant by sufferance and can be sued for ejectment at any time without any previous notice to quit. If such a tenant is dispossessed by the lessor and after some days he again obtains possession, the original lease will not be renewed and he can be ejected without any notice to quit as required by S. 106. AIR 1935 Pat 271, Rel. on. Chitaley's T. P. Act S. 116, N. 2, Ref. **11 J and K L R 59 : AIR 1952 J and K 35 (35) (Pr 2).**

——Ss. 116 and 106 — Lease for three years fixing yearly rent — Lessee remaining in possession after expiry of term — Tenancy at will. See Transfer of Property Act (4 of 1882), S. 106. **AIR 1964 Ker 218 (DB).**

●——S. 116—Lease for a year—Rent fixed payable at stated time—Lessee creating charge on another property by way of security for payment of rent—Expiry of term — Lessee continuing in possession by virtue of statutory tenancy created under S. 4, Cochin Verumpattomdars Act — Charge held operative so long as statutory tenancy lasted. See T. P. Act (1882), S. 105. **A I R 1962 Ker 58 (FB).**

——Ss. 116, 105 — Tenant holding over — Tenancy at will and tenancy at sufferance—Distinction pointed out—Possession of tenant at sufferance distinguished from possession of trespasser. See T. P. Act (4 of 1882), S. 105. **AIR 1958 Punj 314 (DB).**

——Ss. 116, 106, 111 — Tenancy for fixed term — Determination of, by efflux of time — Notice to quit not necessary — Statutory protection under Rent Control Legislation—Forfeiture — Tenant continuing

in possession — Nature of possession of tenant. See T. P. Act (4 of 1882), S. 106. AIR 1962 Raj 100.

——S. 116—Holding over—Terms of lease—Original deed for three years — Tenant was a person holding over after expiration of period if he did not settle fresh terms of lease. See T. P. Act (1882), S. 106. AIR 1957 Raj 118.

4. Effect of lessee's legal representative remaining in possession.

——Ss. 116 and 105 — Death of original lessee—Survival of lease — Holding over by heirs of lessee—See Transfer of Property Act (4 of 1882), S. 105. A I R 1959 All 33 (DB).

——Ss. 116, 105, 106 and 111—Lease for term certain with provision for continuation thereafter—Lessee remaining in possession after expiry of term—Tenancy-at-will—Death of lessee—Heritability of lease—Possession of lessee's heir—Nature of—Notice to quit was necessary as there was no interest to be determined by a notice. See T. P. Act (1882), S. 105. AIR 1950 All 583 (DB).

——S. 116 — Death of lessee — Privity of contract between lessor and personal representatives of lessee —Devolution of lessee's interest on legatee—Assent of executor—Effect. See T. P. Act (1882), S. 105. AIR 1955 N U C (Cal) 879 (DB).

5. "Accepts rent or otherwise assents to his continuing in possession."

■ ——S. 116 — Acceptance of rent for period subsequent to determination of lease, long before expiry —Landlord's consent to continuing in possession, if can be inferred.

For the application of S. 116 two things are necessary: (1) the lessee should be in possession after the termination of the lease; and (2) the lessor or his representative should accept rent or otherwise assent to his continuing in possession. The use of the word 'otherwise' suggests that acceptance of rent by the landlord has been treated as a form of his giving assent to the tenant's continuance of possession. There can be no question of the lessee "continuing in possession" until the lease has expired and the context in which the provision for acceptance of rent find a place clearly shows that what is contemplated is that the payment of rent and its acceptance should be made at such a time and in such a manner as to be equivalent to the landlord assenting to the lessee continuing in possession. Where the landlord had accepted rent for a period subsequent to the determination of the lease by efflux of time nearly a year before the expiry of the lease, the consent of the landlord to the tenants' continuing in possession cannot be inferred: AIR (36) 1949 Cal 47, Affirmed.

The fact that the payment was made at a time when there was no question of the lessor assenting to the lessee's continuing in possession and neither party treated the payment as importing such assent, is sufficient to take the case out of the mischief of S. 116. Karnani Industrial Bank Ltd. v. Province of Bengal, 1951 S C J 407: 1951 All L J 625: 64 Mad L W 977: 1951 S C R 560: 89 Cal L J 62: (1952) S C A 1: A I R 1951 S C 285 (287) (Pt A) (Prs 9, 10).

——S. 116 — Suit by landlord for ejectment after terminating tenancy—Landlord, during pendency of suit accepting rent — Conduct of landlord inducing belief in tenant that on payment up to date landlord was willing to renew tenancy — Landlord cannot contend that there was no renewal. AIR 1964 All 374 (376) (Pr 9).

——S. 116—Tenant holding over—Assent of landlord —Creation of new tenancy — Demand for rent—Repudiation of tenancy — Suit on title—Limitation [Limitation Act (1908), Arts. 139 and 144].

The assent of the landlord to the continuance in possession of the tenant, after the determination of the tenancy, would create a new tenancy and make the tenant a tenant holding over in accordance with the provisions of S. 116 of the Transfer of Property Act. In order to create a tenancy at sufferance the tenant should have lawfully entered into possession in recognition of the landlord's superior title and should have con inued to remain in possession in the same right after the termination of the tenancy without asserting any title hostile to that of the landlord and without his assent or dissent. The continuance in possession should be due to the laches of the owner in not asking for payment of the rent or vacation of the premises or taking over possession of the property.

Where the tenant had remained in possession after the determination of the tenancy the requirements of S. 116 are satisfied by giving the notice demanding rent for the period after the termination of the tenancy and the landlord must be deemed to have assented to his continuing in possession and the tenant at sufferance becomes a tenant from month to month.

Where the defendants being the legal representatives of the tenant holding over are not tenants on sufferance but hold the property under an independent title of their own then Art. 139 would not apply at all. If, on the other hand, they hold the property in the same right as the deceased tenant being his legal representatives, there is no reason why the position should be different and the landlord should not be able to give his assent to their continuing in possession as he could have done if the deceased was alive. 31 Mad 163, commented and dissented from.

The Courts in England seem to have taken a slightly different view and no fresh tenancy after the termination of tenancy seems to arise in England unless both parties agree. Case law Ref. 1954 All W R (HC) 167: I L R (1955) 1 All 622: AIR 1954 All 475 (477 to 480) (Pt A) (Prs 11, 12, 13, 19, 23) (DB).

——S. 116 — Applicability—Expression "otherwise assents to his continuing in possession" in S. 116 does not involve notion of communication of agreement—Mere non-collection of rent or failure to institute a suit for a short while might not denote assent of landlord as envisaged in S. 116 — See Limitation Act (1908), Art. 139. (1959) 2 Andh W R 561: 1959 Andh L T 934: ILR (1960) 2 Andh Pra 539.

——S. 116 — Assent need not be communicated to tenant holding over — There must be some act indicating willingness of lessor to allow lessee to continue in possession — To such case Art. 139, Limitation Act (1908) does not apply. (1959) 2 Andh W R 56: 1959 Andh L T 934: I L R (1960) 2 Andh Pra 539.

——S. 116 — Conditions for applicability—Holding over—Offer of rent must be on express ground that lessee intended to continue in possession and its acceptance must be with full knowledge of nature of such offer — It is question of fact — Assam Non-Agricultural Urban Areas Tenancy Act (12 of 1955), S. 5 — Tenancy created under S. 116, T. P. Act can be regarded as contractual tenancy for purposes of S. 5.

Before S. 116, T. P. Act can be attracted it is first necessary that the lessee after the determination of the lease remains in possession and secondly, that the lessor or his legal representative either accepts rent or otherwise assents to his continuing in possession. In order that the acceptance of rent should amount to an assent of the lessor to retain the lessee

in possession of the property, it has to be established that the offer of rent was made on the express ground that the lessee intended to continue his lease and when the acceptance was made it was done with full knowledge of the nature of the offer. This is a question of fact which will have to be determined from the circumstances of each case. AIR 1949 F C 124 and AIR 1961 S C 1067, Dist.

A tenancy created under S. 116, T. P. Act itself is based on an offer and acceptance and thus it can be regarded as a contractual tenancy and if the terms of the old tenancy can be looked into as part of the terms of the new tenancy, there is no bar to the applicability of S. 5 of Assam Act (12 of 1955), to the tenancies created under S. 116. **I L R (1963) 15 Assam 120 : A I R 1963 Assam 137 (139, 141): (Pt B) (Prs 10, 14) (DB).**

——S. 116—Holding over— Lessor's assent—Proof—Necessity.

It is not enough for the purpose of holding over that the possession should be continued after the termination of the lease but the lessor or his legal representative should also accept rent from the lessee or under lessee or otherwise assent to his continuing in possession. **I L R (1959) 11 Assam 254 : A I R 1959 Assam 236 (237) (Pt B) (Pr 5).**

——S. 116 — 'When the tenancy is determined'— Determination by efflux of time —:Tenant continuing in possession and landlord accepting rent from him—He would be deemed to be a tenant holding over under S. 116 — (Evidence Act (1872), S. 116). See Limitation Act (1908), Art. 139. **AIR 1956 Assam 20 (DB).**

——S. 116 – Accepts rent or otherwise assents to his continuing in possession.

The question of otherwise assenting to the tenant's continuing in possession can be proved by evidence and circumstances in the case as also by legal presumption is also a mode of proof. 'Prima facie such an assent could be proved also by the presumptions arising out of S. 116, Evidence Act and the general presumption in law that the tenant's occupation of the land has to be attributed to some lawful title unless it is proved or shown to be otherwise. **I L R (1955) 7 Assam 535 : AIR 1956 Assam 20 (22) (Pt B) (Pr 6) (DB).**

——Ss. 116 and 126 — Landlord filing suit for ejectment after notice— Tenant remitting amount of rent by money-order — Landlord accepting — Effect on suit.

The landlord served a quit notice on the tenant and sued him on 10th October, 1956 for ejectment. He claimed arrears of rent from 1st January 1956 to 31st July, 1956 and damages from :1st August, 1956 to 9th October, 1956. The defendant sent Rs. 360 on 18th October, 1956 and Rs. 144 on 8th December, 1956 by money-order which were accepted by the landlord. At the trial the defendant pleaded that as the plaintiff had received the amount of rent, his ejectment suit should be dismissed.

Held, that the defendant having made the payments to the landlord, without insisting on him to withdraw the suit, the landlord cannot be deemed to have waived his rights asserted by him in the suit. The mere fact of receipt of the money-orders cannot have the effect of waiver of the notice to terminate the tenancy and the plaintiff's claim for ejectment is not affected. 1958 NLJ 250 and AIR 1926 Cal 763, Dist.; 1953 NLJ 147; AIR 1953 Nag 219; ILR (1954) Nag 147, Rel. on. **1960 Nag L J (Notes) 52.**

——S. 116 – 'Accepts rent or otherwise assents to his continuing in possession' — Old lease expiring — Landlord refusing to accept rent at old rent but granting instalment to pay rent at enhanced rate — Assent of landlord for tenant's holding over cannot be inferred : AIR 1949 S C 124, Disting; AIR 1951 S C 285, Expl.; AIR 1961 S C 1067, Foll.; 66 C W N 338 (DB), Ref. **(1965) 69 Cal W N 53.**

——S. 116—Houses and Rents—West Bengal Premises Tenancy Act (12 of 1956) — Lease one to which Act does not apply—Tenant retaining possession after expiry of lease does not become a statutory tenant— Lessee refusing to vacate in accordance with terms of lease is a trespasser and is liable to be ejected and to pay mesne profits—Lessor withdrawing rent deposited with Rent Controller, under the order of Court — He cannot be said to have assented to the lessee continuing in possession within the meaning of S. 116, T. P. Act. **1964 Cal L J 127: (1962) 66 Cal W N 872.**

——S. 116 — Expiry of lease — Continuance of lease when amounts to new tenancy.

By Section 116 of the Transfer of Property Act a new tenancy is implied from the continuing possession of the demised property by the lessee after the determination of the lease and the assent of the lessor to the continuing occupation by acceptance of rent or otherwise. The implication of the new tenancy rests upon the presumed intention of the parties and is subject to any agreement to the contrary. The presumed intention may be negatived and it may be shown that the parties never intended to create a new tenancy. AIR 1949 F C 124, Rel. on. **(1962) 66 Cal W N 338 : 1961 Cal L J 1 : ILR (1962) 1 Cal 1.**

——S. 116 — Lessee holding over after determination of lease —:Lessor's assent. See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12 (1), Proviso (B). **AIR 1959 Cal 181 (DB).**

——S. 116 — Tenant holding over with consent of landlord after expiry of term in middle of month — Payment of rent according to English Calendar month — Nature and commencement of tenancy stated. See T. P. Act (1882), S. 106. **AIR 1957 Cal 357 (DB).**

——S. 116—Assent of landlord—Necessity.

Mere continuance of possession after the expiry or determination of his lease would not entitle the tenant to claim a tenancy by holding over. There must also be the landlord's assent to such possession by acceptance of rent or otherwise. In the absence of an agreement to the contrary, the tenant's continuance of possession after the termination of the lease, coupled with the landlord's assent, would constitute a tenancy by holding over and the lease would be renewed from year to year or from month to month, according to the purpose of the tenancy under S. 106 of the Transfer of Property Act. The landlord's assent again may be express or implied and, it may be inferred from circumstances. Mere absence of dissent would not be enough but if it continues for a sufficiently long period, it may, with the aid of other circumstances, and in the absence of any contrary indication, reasonably give rise to an inference of assent. **60 Cal W N 39 : ILR (1957) 2 Cal 214 : AIR 1957 Cal 173 (175) (Pt A)(Pr 10).**

——S. 116—'Assents to his continuing in possession'.

Where in law no notice was necessary it cannot be held merely from the fact that a notice had been given that there was evidence of the fact that the landlord assented to the tenant's continuing in possession. So also no importance can be attached to the fact that in the said notice it was stated that the defendant was holding as a monthly tenant and the plaintiffs were his landlords when under the Rent Act a person occupying the premises even after the expiry of the period of the tenancy is a 'tenant'. **59 Cal W N 827 : ILR (1957) 2 Cal 773 : A I R 1956 Cal 120 (122) (Pt B) (Pr 5) (DB).**

cannot be regarded such an unequivocal act of the landlord as to bring into existence a new tenancy as envisaged in S. 116 of the Transfer of Property Act. If the accepsance of rent is no longer an unequivocal act under the Tenancy Act it is incumbent upon the tenant to prove more than mere acceptance of rent for creation of new tenancy by holding over. Digambar Narain Chaudhary v. Commr. of Trihut Division. **1958 B L J R 659 : 1958 Pat L R 332 : I L R 37 Pat 1307 : AIR 1959 Pat 1 (4, 5) (Pt B) (Pr 10) (FB).**

●——S. 116— Assent of landlord to tenant holding over — Delay in institution of suit for eviction after expiry of term—Not sufficient to raise presumption of landlord having allowed tenant to hold over. Digambar Narain Chaudhary v. Commr. of Trihut Division. **1958 B L J R 659 : 1958 Pat L R 332 : I L R 37 Pat 1307 : A I R 1959 Pat 1 (5) (Pt C) (Pr 12) (FB).**

——S. 116—Acceptance of rent after notice to quit—In absence of proof that landlord agreed to holding over of tenancy it would not establish requisite consensus ad idem between parties to renew lease or treat lease as subsisting or create a new tenancy coming into existence—(Evidence Act (1872), Ss. 101-104). See T. P. Act (4 of 1882), S. 113. **A I R 1957 Pat 206 (DB).**

——S. 116—Intention to continue tenancy—No holding over.] **AIR 1955 N U C (Pepsu) 4003.**

——S. 116 — Lessee before determination of lease by efflux of time applying to Custodian under S. 5A of East Punjab Evacuees' (Administration of Property) Act (14 of 1947) — Custodian impliedly assenting to continuance in possession — Lessee does not become trespasser. See T. P. Act (1882), S. 111 (a). **AIR 1950 East Punjab 175.**

——S. 116 — Tenant holding over and paying rent—Rent accepted by landlord — Such tenant, for that reason alone, does not necessarily become statutory tenant — It may well be that there is a fresh tenancy created by the acceptance of rent by landlord, if such acceptance is attributable to landlord assenting to a new tenancy after termination of previous one. **(1965) 67 Pun L R 887.**

——S. 116—Eviction order under Pepsu Urban Rent Restriction Ordinance—Landlord accepting rent subsequently —Effect.

Unless the landlord and the tenant consciously agree to enter into a fresh lease and unless the landlord clearly given up his rights under the eviction order already passed by the Rent Controller under the Pepsu Urban Rent Restriction Ordinance (VIII of 2006Bk.), the mere acceptance of an amount, whether described as rent or as damages would not make the eviction order incapable of execution. The provisions of S. 116, T. P. Act, assuming that they are in force in the territory in question would be excluded by the special provisions contained in the Pepsu Urban Rent Restriction Ordinance. (1947) 1 M L J 354, A I R 1947 Mad 436 and A I R 1951 Cal 342, Disting. **62 Punj L R 166 : I L R (1960) Punj 296 : AIR 1960 Punj 385 (386) (Pr 6).**

——S. 116 — Holding over — Assent of landlord — Proof — Mere continuance of possession after expiry of lease not sufficient—Demand for rent by landlord essential. **1963 Raj L W 627 : ILR (1963) 13 Raj 1137 : AIR 1964 Raj 88 (90, 91) (Pt A) (Prs 12, 13).**

——S. 116—"Accepts rent"—Suit brought for arrears of rent for three years — It cannot be assumed that rent was accepted for period between expiry of term and period for which arrears were claimed. **AIR 1955 NUC (Raj) 4059.**

——S. 116 — Improvements — Mode of assessment—After expiry of lease tenant paying rent and landlord accepting the same — Improvements are to be valued at time of redemption on terms previously agreed to, though such redemption is long after expiry of period fixed. See Landlord and tenant—Improvements. **AIR 1953 Trav-Co 299 (DB).**

——S. 116 — Lease on yearly rent — Lessee holding over after expiry of lease period — Lessor accepting rent—Tenancy became one from year to year—Lessee cannot be ejected without notice to quit. See T. P. Act (4 of 1882), S. 106. **AIR 1955 Tripura 26.**

6. Clause for renewal.

——Ss. 116 and 117—Terms of renewed lease.

Section 116, T. P. Act does not apply to an agricultural lease in view of S. 117. Even if the principle behind S. 116 is allowed to operate a strict adherance to its requirements would not be necessary.

The defendant executed a kabuliyat by which he agreed to take settlement of the land for agricultural and residential purposes for a term of one year from 1st Baisakh 1351, B. S. to Chaitra, 1351 B. S., as a non-occupancy tenant on Rs. 10 as its annual paikast rent which was payable on the first Pous of the said year against a receipt. He further agreed in express terms that he shall vacate the land without any notice on the expiry of the term of settlement and would be liable to punishment as a trespasser if he failed to comply. The defendant continued in possession after the expiry of the first year by paying rent to the landlord plaintiff. After the expiry of the second year the plaintiff gave a 15 days' notice to quit and on failure to comply sued for ejectment.

Held, that as the contract was renewed by conduct of the parties without any kind of qualification, there was no justification for importing into it the principle or the theory of renewal from year to year. Hence the lease for the second year was in terms of the original lease and the condition that the tenant shall vacate at the expiry of the second year was part of it. Notice of ejectment to the defendant was not, therefore, necessary. **ILR (1954) 6 Assam 95 : AIR 1954 Assam 102 (104, 105) (Pt D) (Prs 10, 11, 12) (DB).**

——S. 116—Calcutta Thika Tenancy Act (2 of 1949) —Distinction between tenancy by "holding over" and tenancy under renewal clause — Tenant remaining in possession under renewal clause in lease for more than twelve years — Tenant not entitled to protection under S. 2 (5) of Calcutta Thika Tenancy Act —Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), S. 2 (5).

There is a fundamental distinction between a tenancy by "holding over" under S. 116 of the Transfer of Property Act by mere assent of the landlord (including acceptance of rent as a form of such assent) and a tenancy or right under a renewal clause. In the first case, the tenancy, though it may continue the old possession under the old terms, would in law, be a new tenancy de hors the lease and in spite of its determination. In the other case, the tenancy or the rights in question arise under the lease itself though under its renewal clause, by reason of the exercise of the lessee's option thereunder. In the latter case, the holding over and continuance of possession is under the original lease, which has not expired or determined but survives in or by reason of its renewal clause, which sustains the said holding over or continuance of possession, the same being under and referable to the said clause, or, for the matter of that, the original lease itself, while, in the former case, the holding over and continuance of possession is referable to the statute (S. 116 of the Transfer of Property Act) and is under it and cannot stand upon the original lease, which has determined and cannot support or sustain

the same. The lease for the optional or further period under the renewal clause would not have been an independent lease but would have been a part and an integral part of the original lease, which, in essence, was for a fixed or firm period of twenty years and an optional or further period of six years, the latter to come into effect on exercise of the option by the tenant. In the case of holding over under S. 116 of the Transfer of Property Act, however, it would have been under the 'renewal' or the new or statutory lease under the said section, distinct from and independent of the original lease, which stood determined, though, normally the terms of these two serve, of course, the period, would in the absence of an agreement to the contrary, be practically the same. The holding under the above statutory "holding over", therefore, would not be a holding under the said orignal lease.

Where lessee remained in possession after expiry of lease for more than twelve years and paid rent at an enhanced rate as per terms of a renewal clause contained in the original lease deed and the lessor accepted the rent.

Held, that the lessee must be deemed to have remained in possession, under the renewal clause of the lease as person who had exercised the option given to him by the renewal clause and whose right so to do had been acknowledged by the lessor and acted on by both parties. Hence the lessee was not entitled to the protection under S. 2 (5) of the Calcutta Thika Tenancy Act : AIR 1952 S C 23 and AIR 1951 S C 285, Disting. AIR 1927 Cal 725 and AIR 1933 Cal 477, Rel. on. **68 Cal W N 1036 : AIR 1965 Cal 55 (58) (Prs 14, 16) (DB).**

——S. 116—Term of lease expired—Tenant holding over—Lease is renewed with all conditions.

Where the lessee after the expiry of the period fixed by the document of lease holds over, under S. 116 of the Transfer of Property Act it is the lease that is renewed with all the terms and conditions contained in the document of the lease which are not inconsistent with an annual tenancy. It is not correct to say that by holding over the same contract does not continue and only a new tenancy is created. (1927) 1 K B 130, Rel. on. (1865-66) 1 Ex 159 and (1917) 1 K B 252, Disting. **AIR 1962 Cal 597 (601) (Pt D) (Pr 18) (DB).**

——Ss. 116, 106 — Payment of rent — Mode of—Renewal by holding over of year to year tenancy into monthly tenancy—Rents payable only by month and not by year. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (3) (a). **(1962) 40 Mys L J 1000.**

● ——S. 116 — Stipulation in expired lease creating charge for outstanding rent in term of lease—Landlord can enforce it even in respect of arrears accruing after expiry of original term.

In the case of a tenant holding over, all the stipulations contained in the expired lease deed will be deemed to be imported into an implied lease by holding over unless they are altogether unconnected with the transaction of lease, e. g., a covenant to purchase the reversion, or are inconsistent or incompatible with a yearly or monthly lease, e. g., a covenant fixing a period of over a year or month as the duration.

The stipulation contained in an expired lease, providing a security or creating a charge for the outstanding rent is a term of the lease within the meaning of S. 116, Transfer of Property Act and the landlord would be entitled to enforce the security or charge even in respect of arrears accruing after the expiry of the original term of the lease and during the currency of a lease by implication created by holding over : 1946 Trav L R 152 and 1948 Trav L R 362, Overruled. Devaki Amma v. Krishna Kammathi, ILR (1955) T-C 392 : 1955 Ker L T 173 : AIR 1955 T-C 146 (148 to 150) (Pt A) (Prs 5, 10) (FB).

7. "In the absence of an agreement to the contrary."

——Ss. 116, 106 — Tenant holding over—Notice to quit—Contract to the contrary — Notice held invalid —Tenant must be deemed to be holding over on same terms as were laid down in original lease. See T. P. Act (1882), S. 106. **AIR 1950 Ajmer 79.**

——S. 116—Oral lease for less than a year — Tenant continuing in possession of expiry of lease becomes monthly tenant — On his death his rights devolve on his heirs. 1950 All 583 and AIR 1940 Cal 89, Rel. on. **1962 All L J 773 : 1962 All W R (HC) 646 : AIR 1962 All 604 (606) (Pt C) (Pr 8).**

——S. 116—"Agreement to the contrary"—By holding over tenant does not acquire greater right than he possessed under original lease.

Renewal of a lease from year to year or from month to month, according to the purpose for which the property is leased, is to be presumed only when there is no 'agreement to the contrary.' Where there is an agreement to the contrary, it cannot be said that by holding over the tenant acquires greater rights than what he possessed under the original lease.

Where the original lease is not an yearly lease, holding over will be deemed to be a tenancy from month to month. **1955 All L J 304 : A I R 1955 All 679 (680) (Pt B) (Pr 7) (DB).**

——Ss. 116, 107—Unregistered lease for one year for manufacturing purpose — Holding over after expiry of period — Holding over is not from year to year — See T. P. Act (1882), S. 107. **AIR 1952 All 634.**

——S. 116—Tenant—Person continuing in possession after expiry of lease is tenant—Assent of landlord not necessary — In the absence of any material to show that there were any changes, person must be held to have continued as a tenant under same terms and conditions as before — See Houses and Rents—W. B. Premises Tenancy Act (12 of 1956), S. 2 (h). **A I R 1961 Cal 175 (DB).**

——S. 116 — Thika lessee holding over—He cannot build permanent structures—S. 108.

Section 116 has nothing to do with the question whether the tenant is entitled to put a permanent structure or not and the expression 'in the absence of an ageeement to the contrary' which occurs in that section cannot be read as being of general application, apart from the terms of that section, in deciding what the rights of the tenant are as regards the erection of structures. As a matter of fact, S. 108 (p) clearly provides that the lessee must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes. Consequently, where a thika tenant for three years holds over after the expiry of the lease, the lessee has no right to erect a permanent structure without the lessor's consent. **(1959) 63 Cal W N 565.**

——Ss. 116, 110 and 111 (h)—Tenant holding over—Termination of tenancy — Notice to quit—Tenancy when terminated—Held, on facts and circumstances of suit that month of tenancy even after expiry of original continued as before and there was no change in that respect—Hence notice to quit was valid—See T. P. Act (4 of 1882), S. 110. **A I R 1957 Cal 649 (DB).**

——Ss. 116, 106 — Lessee holding over — Lease neither agricultural nor for manufacturing purposes —Notice to quit.

If after the expiry of a lease of immovable property the tenant holds over and there is no agree-

ment as to the terms of the holding over, then under S. 106 it must be deemed to be lease from year to year terminable by six months' notice or a lease from month to month terminable by 15 days' notice according to the purpose for which the property was leased. Where the lease in question was not for agricultural or manufacturing purposes under S. 116 read with S. 106, T. P. Act the lease is renewed from month to month terminable by 15 days' notice expiring with the end of the month of the tenancy. AIR 1934 Cal 135; 32 Cal 123, Rel. on. **A I R 1952 Cal 455 (460, 461) (Pt B) (Prs 12, 14).**

——**S. 116**—Contract to the contrary—Mere absence of provision regarding notice is not contract to the contrary—Proper notice held was necessary — Holding over — Notice not a term of tenancy—S. 4 of Kerala Compensation for Tenants Improvement Act does not dispense with notice—See T. P. Act (1882), S. 106. **ILR (1963) 1 Ker 712.**

——**Ss. 116, 105** — Tenant holding over after expiration of lease — Suit for eviction — Allegation by tenant that there was verbal extension of lease—Burden of proof is on tenant to prove extension—Particulars as to time and place of agreement not given by tenant in his written statement — Witnesses said to be present at the time of agreement not examined—In their place other witnesses examined but their evidence found to be unsatisfactory, unreliable and unworthy of any credit — Defendant himself not appearing as witness — Burden of proof held not discharged. See T. P. Act (4 of 1882), S. 105. **A I R 1964 Madh Pra 288 (DB).**

——**Ss. 116 and 105** — Creation of fresh lease—Civil P. C. (1908), O. 23. R. 3, O. 40, R. 1 — Settlement in eviction suit during pendency of appeal in interlocutory matter, held did not create fresh lease but was interim arrangement during pendency of appeal. See T. P. Act (4 of 1882), S. 105. **AIR 1964 Madh Pra 288 (DB).**

——**S. 116 — Provision ragarding payment of compensation for improvement.**

If there is no agreement fixing the terms of a new lease the terms of the old lease must be deemed to be applicable. Where the tenant holds over after the expiration of the term, he holds subject to all the covenants in the lease which are applicable to the new situation.

Where the clause in each of the original leases specifically provided that the tenants had no right to make any kind of improvements, and even if they made any improvements, they had no right to any compensation.

Held, that the clause in question in the original lease was a provision in the nature of a covenant as to the user of the premises. This must be held to be one of the terms of the tenancy by holding over. The tenant must therefore be held to be subject to the covenant in respect of improvements contained in the original lease. **1954 Mad W N 711 : 67 Mad L W 846 : (1954) 2 M L J 445 : AIR 1955 Mad 206 (207) (Pt B) (Pr 3).**

——**S. 116** — 'Tenant' — Tenant holding over—Not liable to be evicted under decree for possession or for means profits. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 2 (4). **AIR 1953 Mad 473 (DB).**

——**S. 116** — Implied terms of holding over—Terms of old lease continue. **A I R 1955 N U C (Manipur) 2453.**

——**Ss, 116, 106, 110** — Lease for fixed period—Date of commencement not fixed — Tenant holding over without further agreement — Notice of eviction — Exclusion of time under S. 110. See T. P. Act (4 of 1882), S. 106. **AIR 1952 Mys 139.**

——**S. 116**—Contract to the contrary — Proof of — If agreement set up by tenant cannot be proved except by a registered instrument and there is no registered agreement, the requirement that he must prove an agreement to contrary, even if such a contract is pleaded cannot be fulfilled. See T. P. Act (1882), S. 106. **AIR 1955 Nag 27 (DB).**

8. Possession under invalid lease.

——**S. 116**— Holding over under invalid lease from year to year — Tenancy would be month to month in view of S. 106. See T. P. Act (4 of 1882), S. 106. **AIR 1954 Assam 58.**

——**S. 116** —Annual lease—Tenant contending that he was annual tenant and entered into possession under agreement to grant lease from year to year—No registered deed. See T. P. Act, S. 107. **(1958) Nag L J (Notes) 22.**

——**S. 116— Possession in pursuance of invalid lease —Effect.**

Where in pursuance of an invalid lease the plaintiff has obtained possession of the land and has paid rent to the landlord for several years and has obtained rent receipts the plaintiff will be deemed to be a tenant from month to month under S. 116. **A I R 1951 Pat 483 (484) (Pt A) (Pr 3) (DB).**

——**S. 116** — Registered instrument of lease falling under para. 1 of S. 107 not executed in manner specified under para. 3 of that section is invalid — Invalidity cannot be cured by construing it as a lease for a term of one year made by oral agreement accompanied by delivery of possession and thereafter to be a case of holding over under S. 116. See T. P. Act (4 of 1882), S. 107. **.AIR 1951 Pat 160 (DB).**

9. Holding over — Liability for damages.

——**S. 116 -Landlord and Tenant— Tenant of house not replying to demand of enhanced rent after expiry of term of lease — Effect —Intention not to accept enhanced rent indicated expressly or impliedly — How affects measure of damages for use and occupation of the house.**

Where a tenant of a house does not reply to the notice of the landlord demanding payment of enhanced rent from a certain date after the termination of the tenancy period, it should be deemed that the tenant agreed to the payment of the enhanced rent. But where the tenant indicates his intention not to accept the enhanced rent either by directly saying so or by saying that he would vacate the house by a certain date even though he does not vacate on that date, he cannot be held to have impliredly agreed to the payment of the enhanced rent. In such a case the measure of damages for use and occupation of the house cannot be the enhanced rent demanded in the notice, but has to be found out by the Court upon the materials on the record. **1951 A L J 192 : A I R 1951 All 853 (855) (Prs 10, 11, 12) (DB).**

——**S. 116**— Landlord and tenant — Holding over — Damages—Lease for ten years—Lessee holding over—Lower Courts granting compensation to lessor by way of rent for period of holding over — No circumstances to show that rent would have appreciated considerably after expiry of ten years—High Court will not interfere — Civil P. C (1908), S. 100—Landlord and tenant — Holding over—Damages. **77 Mad L W 551 : (1964) 1 Mad L J 110.**

——**S. 116 — Landlord and Tenant— Holding over— Measure of damages—Assessment of mesne profits— C. P. and Berar Rent Control Order.**

The C. P. and Berar Rent Contral Order governs the relationship of landlord and tenant for the limited purpose of that order. It has absolutely no relevance



——S. 117 — Lease for agricultural purposes — Unregistered document executed by landlord alone — Planting of banana trees and temporary use of land for other purposes does not affect its character — By virtue of S. 117. S. 107 does not apply. See T. P. Act (1882), S. 107. ('63) 29 Cut L T 409.

——S. 117—Scope—S. 107—(Tenancy Laws—Orissa Tenancy Act (2 of 1913), S. 232).

The principle that if originally the holding was agricultural a subsequent lease for non-agricultural purpose will not take it out of the operation of the Orissa Tenancy Act and the lease cannot be governed by the provisions of the Transfer of Property Act, can have an application where there was a termination of the ryoti interest and cessation of the ryoti holding by the surrender by the original ryot of the entire ryoti holding in favour of the lamborder-Gountia and a subsequent leasing by the lamborder-Gountia of the entire lands which were formerly the subject-matter of the entire holding for non-agricultural purposes. The subsequent tenancy, will be governed by the provisions of the Transfer of Property Act as between the Gountia and the lessee. S. T. No. 416 of 1952 (Orissa) (Unreported); 8 C W N 454 and 15 Cal L J 672, Distinguished. **I L R (1957) Cut 509 : A I R 1957 Orissa 276 (278) (Pt B) (Pr 9) (DB).**

——S. 117 — Test to determine whether lessee is governed by Orissa Tenancy Act indicated. See Tenancy Laws—Orissa Tenancy Act (2 of 1913), S. 4. **AIR 1954 Orissa 132 (DB).**

——S. 117:— C. P. Tenancy Act (2 of 1898), Ss. 3, 60 —Sub-tenant — Acquisition of permanent tenancy — So far Tenancy Act is concerned it confers no right of permanent tenancy on sub-tenant of raiyati land —It is for tenant to establish that he acquired a right of permanency either under custom or through a grant. See Tenancy Laws — C. P. Tenancy Act (2 of 1898), S. 3. **AIR 1952 Orissa 165 (DB).**

● ——S. 117—Dar-Chandnadari lease for residential purpose is governed by provisions of T. P. Act and not by Orissa Tenancy Act. See Tenancy Laws — Orissa Tenancy (Amendment) Act (10 of 1946), S. 3. **AIR 1951 Orissa 153 (SB).**

——Ss. 117, 108 (b) and (l) — Failure to give possession — Absence of demand for possession — Will not estop lessee to claim abatement or suspension of rent —(Evidence Act (1872), S. 115). See T. P. Act (4 of 1882), S. 108 (b). **AIR 1958 Pat 457.**

——S. 117 — Applicability—Lease—If falls under or under Bihar Tenancy Act—Test.

Whether a lease is governed by the Bihar Tenancy Act or the T. P. Act is determined by the dominant purpose of the lease. **ILR 31 Pat 187 : AIR 1952 Pat 239 (241, 242) (Pt C) (Prs 8, 10, 12, 13) (DB).**

——S. 117 — Suit for possession of agricultural land on the ground that the tenancy had been forfeited by the tenants by their denial of the plaintiff's title as landlord — Suit is not liable to fail for want of notice to tenants of landlord's intention to exercise his right of forfeiture. See T. P. Act (1882), S. 111(g). **AIR 1964 Punj 449 (DB).**

● ——S. 117 — By reason of S. 117, S. 108 (e) cannot be invoked in case of agricultural leases. See T. P. Act (1882), S. 108 (e). **AIR 1963 Punj 49 (FB).**

——S. 117 — Agricultural land—Tenant repudiating tenancy by claiming title in himself — Forfeiture of tenancy — Rule of equity — In absence of any law, usage or custom to contrary, principles of Chapter V, T. P. Act are applicable as rule of justice, equity and good conscience — Punjab Laws Act (1872), S. 6. See T. P. Act (1882), S. 111 (g). **AIR 1952 Punj 52.**

2. "Agricultural purposes."

——Ss. 117, 107 and 105—"Agricultural purposes"— Nature of lease is to be determined after considering main purpose of lease — Lease of 44 cents of garden land on stipulation for payment of rent for small house constructed on it—**Held,** lease must be treated as one for agricultural purposes, since bulk of land was admittedly used was cultivation purposes and stipulation for payment of rent was part of main contract — Held, further that lease did not require registration since it did not fall within terms of S. 107 by reason of S. 117 : AIR 1938 Cal 589, Rel. on. S. A. No. 684 of 1957, dated 22-11-1960 (A. P.), Affirmed. Registration Act (1908), Ss. 17 and 49. **ILR (1964) Andh Pra 603 (DB).**

——S. 117—Lease for agricultural purposes.

A lease whereby a land is settled for purposes of reclamation and for bringing the area under cultivation is a lease for agricultural purposes. **('51) 55 C W N 171 : ILR (1951) 2 Cal 444 : AIR 1951 Cal 361 (367) (Pt E) (Pr 108) (DB).**

——S. 117 — Agricultural Tenancy — Lease of land for thrashing floor—It is for an agricultural purpose — Landlord and Tenant — Agricultural Tenancy — Lease for agricultural purpose.

It is not the actual use of the land but the original purpose of the tenancy which determines the question of applicability of the Transfer of Property Act or the Tenancy Act. A purpose ancillary to cultivation is agricultural in nature. Lease of land for being used as thrashing floor is for an agricultural purpose. **ILR (1964) Cut 289.**

——S. 117 — Question whether transaction is non-agricultural lease — Extraneous evidence will be admissible only if terms of lease are not decisive and free from ambiguity. See Evidence Act (1872), S. 92. **AIR 1957 Orissa 276 (DB).**

——S. 117—Lease held agricultural one and governed by Tenancy Law and not by T. P. Act (1882) S. 117. See Tenancy Laws — Orissa Tenancy Act (2 of 1913). **AIR 1951 Orissa 262.**

● **——S. 117 and S. 105 — Applicability—Main lease for agricultural purposes and sub-lease for non-agricultural purposes—Bihar Tenancy Act — Applicability.**

From the provision in S. 117 of the Transfer of Property Act, 1882, it is manifest that where a lease, which includes a sub-lease, is for a purpose other than agricultural purpose, the Transfer of Property Act will apply and that a sub-lease granted for an agricultural purpose will not be governed by the Transfer of Property Act even though the person who has granted the sub-lease held the land as a lessee under the Act. Conversely, where a sub-lease is created for a purpose other than agricultural purpose it will be governed by the Transfer of Property Act and not by the Bihar Tenancy Act even though the original tenancy is governed by the Bihar Tenancy Act. AIR 1944 Pat 87 (FB), Rel. on.; 5 B R 541; AIR 1939 Pat 409 : 181 Ind Cas 172 and 22 Pat L T 821 : AIR 1942 Pat 71 : 196 Ind Cas 849 and ILR 27 Pat 194 : AIR 1949 Pat 444, **Overruled.** Suddir Kumar Mukherjee v. Nirsi Dhobin. **1961 B L J R 810 : ILR 40 Pat 169 : AIR 1961 Pat 321 (323, 327) (Pt A) (Prs 10, 35) (FB).**

——S. 117—Scope—Lease for agricultural purposes.

Where at the time of executing the Kabuliat both the parties understood that the area was being settled for agricultural purposes there is no necessity to execute a document in accordance with the provisions of S. 107. The settlement in favour of the lessee would confer a valid title on him to maintain a suit for ejecting a trespasser although he might have sub-

sequently intended to build a house on the area. AIR 1957 Pat 692 (693) (Pt A) (Pr 9) (DB).

——S. 117—Lease of tank—Not a lease for agriculcultural purposes within meaning of S. 117. See Tenancy Laws — Bihar Tenancy Act (8 of 1885) S. 5 (2). AIR 1957 Pat 278 (DB).

——S. 117 — Lease of tank in Bihar — Held on construction that only purpose for which tank was let out was for such natural use to which it could be put, from the nature of lease hold, which generally in Bihar for drinking, washing and bathing purposes. AIR 1957 Pat 278 (284) (Pt F) (Pr 55) (DB).

3. Agricultural lease may be made orally.

——S. 117 — Oral lease of agricultural land is perfectly valid if proved. See Registration Act (1908), S. 17. AIR 1959 Assam 60 (DB).

——S. 117 — Death of deemed tenant under S. 4 of Bombay Tenancy and Agricultural Lands Act prior to 1956 amendment—Deemed tenancy not heritable — S. 111, T. P. Act not applicable to agricultural leases by reason of S. 117. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948) S. 2 (18). AIR 1964 Guj 183 (DB).

——S. 117—Registration Act (1908), Ss. 17 (1) (d) and 49—S. 17 and S. 117, T. P. Act—Distinction — Lease falling under S. 117 — Necessity of registration — Effect of S. 49 and S. 91, Evidence Act — (Evidence Act (1872), S. 91). See Registration Act (1908), S. 17 (1) (d). AIR 1960 J and K 63.

——S. 117 — Agricultural leases by unregistered deeds — Provisions of Transfer of Property Act inapplicable — Lease can be proved by other evidence.

Plaintiffs took agricultural land on lease from the lambardar under an unregistered patta and paid consideration of Rs. 300 as nazrana. They filed a suit for declaration of their title as occupancy tenants of that land. The question arose whether the lease could be created only by a registered instrument and whether all oral evidence in support of that lease was, therefore, inadmissible.

Held, that S. 117 of the Transfer of Property Act excluded agricultural leases from the operation of its own provisions. That being so, such leases could be made orally. It was a case where, though a registered document was not necessary to effectuate the transaction, a deed was in fact executed and not registered. In such a case, the transaction was not rendered nugatory by the unregistered deed. The Patta could not be used as evidence for creation of the lease. The unregistered lease deed could not be submitted in evidence to prove its terms. However the other evidence of cretation of the lease was admissible. AIR 1949 Nag 218 : 1949 N L J 575, Foll. (1961) M P L J (Notes) 260.

——S. 117—Agricultural lease—Unregistered patta—Possession delivered to lessee and rent accepted —Lease can be proved by possession and acceptance of rent—Suit by lessee against trespasser for ejectment—Terms of lease need not be proved. See Registration Act (1908), S. 17 (1) (d). A I R 1964 Orissa 16.

——S. 117—Agricultural lease — Creation of registered lease—Necessity.

A lease for agricultural purpose can be created orally and by delivery of possession. A registered document is not essential. ('60) 26 Cut L T 147.

● ——S. 117—Agricultural lease for a term exceeding one year—Must be registered—Unregistered lease not admissible in evidence—No other evidence of its terms can be given under S. 91, Evidence Act. See Registration Act (1908), S. 17. AIR 1964 Pat 1 (FB).

——S. 117 — Lease for agricultural purposes—Non-registration—Onus to prove the lease to be for agricultural purpose lies on lessee.

Under the general law a lease for a period of more than one year has to be effected by a registered document; and if it is a case governed by the Bihar Tenancy Act, the onus is on the plaintiff to establish that the lease taken by him was for agricultural purpose and, therefore, it did not require any registration. 1962 B L J R 811.

——S. 117—Kabuliat granting right to pluck mango fruit and mahua flower for three years—Absence of registration — Deed not admissible in suit for rent — Oral evidence not admissible. See Registration Act (1908), S. 17 (1) (d). AIR 1961 Pat 308 (DB).

——S. 117 — Oral lease for agricultural purposes — Validity—Bihar Tenancy Act.

There is no provision in the Bihar Tenancy Act, which defines lease or prescribes the mode for the creation of an agricultural lease. The long standing practice to treat a kabuliyat, executed by the lessee and accepted by the lessor, as the instrument creating a tenancy has not in any way been affected by the Transfer of Property Act. An agricultural lease may be made orally and if the subsequent acts and conduct of the parties disclose that the lease so created was acted upon the lease is a valid lease in law. 1956 B L J R 108 : AIR 1957 Pat 92 (93, 94) (Pt B) (Pr 10).

——Ss. 117 and 106 — Agricultural lease—Alteration of rent—Proof—Verbal declaration is sufficient.

A lease in respect of agricultural lands comes under the operation of S. 117, and for such a lease a registered instrument cannot be necessary under the law. A verbal settlement is sufficient, and hence in such a case, to prove alteration of rent, a verbal declaration would be sufficient. ILR 28 Pat 844 : AIR 1950 Pat 22 (23) (Pt A) (Pr 6) (DB).

SECTION 118

See also T. P. Act (1882), S. 54.

● ——S. 118 — Scope — Several transactions taking place on same day — No identity in parties price or property —Terms of S. 118 could not be given go bye. AIR 1958 Andh Pra 743 (750) (Pt D) (Pr 30) (FB).

——S. 118—Scope—Transaction of barter of goods.

Definition of "Exchange" is not limited to immovable property — It applies not only to exchange of land but also to barter—Barter and sale — Distinction stated. See Madras Food Grains Control Order (1951). 1958 Andh L T 350.

——Ss. 118, 54 — Sale or exchange—Deed of agreement between A and B — A agreeing to purchase B's property for certain amount and B agreeing to purchase A's proparty for same amount — Each party to execute sale deed in favour of other at future date —Nobody to get any money from another but parties to adjust themselves — Held it was agreement for execution of two documents of sale each to be executed by one in favour of other and not for executing a deed of exchange — A obtaining possession of B's property in terms of agreement — Held there was no failure of consideration and B was entitled to sue A for specific performance of contract of sale. A I R 1961 Cal 193 (194) (Pt A) (Pr 5).

——Ss. 118 and 120—Exchange of tarwad immovable property for convenience of enjoyment is invalid — Word 'sale'—Meaning — Right of alienee — Alienee before being ousted entitled to get back his property. See Travancore Nayar Act (2 of 1600 M.E.), S. 25. 1963 Ker L J 395.

——S. 118—'Exchange'—What is.

Where what was done was to exchange one property for another and some amount was paid to equalise the values of the two properties such a transaction comes clearly within the definition of 'exchange' as given in S. 118. A I R 1937 All 665, Rel. on. 35 Mys L J 418 : ILR (1957) Mys 167.

——S. 118 — Sale and Exchange — Distinction. See T. P. Act (1882), S. 54. A I R 1954 Orissa 105.

——S. 118 — Oral exchange of occupancy holding with delivery of possession — Transfer valid as between parties though not binding on landlord — Registration not necessary. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 28-A (as amended by Bihar Act 11 of 1938). 1960 Pat L R 159.

——Ss. 118, 5 & 10, 54 and 122 — Partition — Share falling to co-sharers — Nature of right stated. See T. P. Act (4 of 1882), S. 5. AIR 1957 Pat 570 (DB).

——S. 118—Sale or exchange. See T. P. Act (1882), S. 54. AIR 1954 Punjab 115.

SECTION 119

——S. 119 (Before amendment in 1929) — Scope of —Bona fide purchaser — Warranty of title.

Section 119, before the amendment in 1929, would not entitle a party to the exchange to recover the property exchanged from an alienee of the parties because the warranty of title in exchange to which it gives the statutory recognition was never extended to such alienees. As that was the case of an ordinary assignee a bona fide purchaser could not be in a worse position. Section 119 before amendment related only to the rights of the parties to the exchange inter se and their heirs. (1940) 1 M L J 248 : A I R 1940 Mad 426, Diss. (1959) 1 Andh W R 411 : AIR 1959 Andh Pra 384 (385, 386) (Pt A) (Pr 6) (DB).

——S. 119 — Compromise decree providing for exchange—Exchange failing—Bona fide purchaser — If protected.

Held, that on one of the parties losing what he got the transfer by the other party to a third person would cease. To a claim by the party losing there could be no defence of the transfer being bona fide. (1959) 1 Andh W R 411 : AIR 1959 Andh Pra 384 (385) (Pt B) (Pr 6) (DB).

——S. 119 — Party failing to get possession of property exchanged —Nature of remedy.

The principle underlying S. 119, T. P. Act, should also apply to the case where instead of a subsequent deprivation of transfer there is no transfer at all. 1956 Mad W N 32 : (1956) 1 Mad L J 335 : AIR 1956 Mad 285 (287) (Pr 7) (DB).

——S. 119 — Party deprived of property obtained in exchange — Other party not in possession.

His only remedy is to claim compensation for the loss suffered. 1951 M W N 418 : (1951) 1 M L J 701 : AIR 1952 Mad 602 (603) (Prs 4, 5).

——S. 119—Plaintiff exchanging land with defendant —Plaintiff losing on third person pre-empting—Plaintiff knowing of right of pre-emption—Plaintiff cannot claim damages. See T. P. Act (1882), S. 55 (2). 1952 Nag L J (Notes) 132.

SECTION 120

— S. 120—Exchange of tarwad immovable property for convenience of enjoyment is invalid. See Travancore Nayar Act (1600 M E), S. 25. 1963 Ker L J 395.

——S. 120—Plaintiff exchanging land with defendant —Plaintiff losing on third person pre-empting—Plaintiff knowing of right of pre emption—Plaintiff cannot claim damages. See T. P. Act (1882), S. 55 (2). 1952 Nag L J (Notes) 132.

SECTION 122

See also Hindu Law — Gift

SYNOPSIS

(Transfer of Property Act (1882), S. 122.)

1. Scope.
2. "Voluntarily".
3. "Without consideration".
4. Competency to receive.
5. Gift to Hindu Idol, etc.
6. "Existing moveable or immoveable property".
7. "Accepted by or on behalf of the donee".
8. Donor dying before acceptance.
9. Advancement.
10. Gift or sale.
11. Gift or will.
12. Gift or family settlement.

1. Scope.

——S. 122 — Gift for specific purpose — Purpose failing — Donor is entitled to refund of amount — Trusts Act (1882), S. 94. AIR 1961 All 418 (420) (Pt A) (Pr 5).

——S. 122—Gift for building female hospital—Gift utilised for building female ward attached to existing General Hospital—The ward when in use will serve all the purposes of a hospital. AIR 1961 All 418 (420) (Pt B) (Pr 8).

——S. 122 — Gift — A depositing his own money in bank in joint names of A and B — Deposit payable to either or survivor — Deposit does not constitute gift to B on A's death. (1961) 1 Andh W R 65 : 1961 Andh L T 142 : (1962) 32 Com Cas 120 : AIR 1961 Andh Pra 320 (321) (Pt A) (Pr 4).

——Ss. 122 and 123—Joint family—Ancestral house —Gift by father in favour of his wife and son without consent of son—Validity. See Hindu Law—Joint family. AIR 1956 Bhopal 66.

——S. 122 — Gift of immovable property by Mahomedan grandfather to minor grandsons — Delivery of possession accepted on behalf of minors by their mother—Gift—If complete. See Mahomedan Law—Gift. AIR 1960 Bom 210.

——S. 122—Gift—Restrictive clause — Construction. See T. P. Act (1882), S. 10. 1957 Ker L T 1119.

——S. 122 — Family settlement — Nature of—Not a gift. See Hindu Law — Family settlement. AIR 1962 Mad 160.

——S. 122 — Maintenance of Hindu widow—Rule of apportionment will apply — Assignee of instalment of maintenance — Death of widow before date of instalment — Assignee will get only proportionate amount of maintenance. A I R 1955 N U C (Mad) 3178.

——Ss. 122 and 8—Gift for maintenance of donee— Estate given is not necessarily limited to life of donee if the words are clear that absolute estate was given — Hindu Law— Gift. See T. P. Act (4 of 1882). S. 8. AIR 1952 Nag 55.

——Ss. 122 and 8—Gift—Intention—Gift for "Choli bangadi" or "Haldi Kunkum" — Meaning of words explained. See T. P. Act (4 of 1882), S. 8. AIR 1952 Nag 55.

——S. 122 — Gift of property by husband in favour of his wife — Wife taking no steps for mutation in her name—Husband declared insolvent subsequently —No inference about benami character of gift transaction could be drawn merely from such non-mutation or from payment of municipal taxes and rent of the property through her husband. See Pro-

vincial Insolvency Act (1920), S. 53. ILR (1964) Cut 274.

——S. 122 — Person dealing in shares—Donation to charities—Crediting amount donated but not debiting account in account year—Transfer of shares in next accounting year — Claim of revenue loss by such transfer could not be allowed as there was no valid gift. See Income-tax Act (1922), S. 10 (2). (1964) 51 ITR 6 (Pat).

——S. 122—Gift—Essentials stated. See Income-tax Act (1922), S. 6. AIR 1958 Punj 250 (DB).

——S.122—Deed of gift—Construction.

Owner stating in gift deed "jis tarah ke main malih our qabi arazi mazkur par the ab isi tarah se Jug Lal Mazkur rahega"—Wording sufficient to divest donor of all rights which he possessed including right to shamilat. AIR 1953 Punj 135 (136) (Pt A) (Pr 4) (DB).

——Ss. 122 and 8—Gift of immovable property under Muhammadan Law — Condition against alienation being repugnant to gift, is void — Donee acquires saleable title. 6 Sau L R 157 : AIR 1953 Sau 180 (187) (Pt B) (Pr 15) (DB).

[Reversed on another point in AIR 1959 S C 1383].

●——S. 122—Gift—Intention of parties—(Marumakkathayam law—Gift). See Evidence Act (1872), S. 92. AIR 1957 Trav-Co 77 (FB).

——S. 122 — Gift deed — Construction — Principles. See T. P. Act (1882), S. 8. AIR 1955 NUC (Trav-Co) 1249.

——S. 122 — Gift — Validity. See T. P. Act (1882), S. 6 (h). AIR 1954 Trav-Co 348.

——S. 122 — Gift — Acceptance by or on behalf of donee. AIR 1952 Trav-Co 47 (48, 51) (Pt A) (Prs 4, 12) (DB).

2. "Voluntarily".

——S. 122 —.Construction — 'Voluntarily' — Meaning of.

A gift when accepted can be said to have been 'voluntarily' made within the meaning of that word in S. 122 even though the deed evidencing it is, after due execution, registered against the wishes of the donor. AIR 1927 P C 42; 52 Mad L J 346, Rel. on. (1958) 2 Andh W R 343 : A I R 1958 Andh Pra 213 (215) (Pt A) (Pr 5).

——S. 122—Party in dominating position must have used the position to obtain unfair advantage for himself — Transaction unfair on its face — Burden is on such party to prove that the other party was not induced to make the transaction by undue influence. See Contract Act (1872), S. 16. AIR 1962 Pat 168 (DB).

——S. 122 —Donor under influence of donee — Confirmation of gift.

There can be no acquiescence in, or confirmation of a transaction of gift by the donor until the donor knows his rights and is free from the influence of the donees. (1887) 36 Ch D 145, Rel. on. AIR 1962 Pat 168 (173) (Pt A) (Pr 11) (DB).

——Ss. 122, 5, 10, 54 and 118 — Partition — Share falling to co-sharers — Nature of right—It is not a gift. See Transfer of Property Act (4 of 1882), S. 5. AIR 1957 Pat 570 (DB).

3. "Without consideratson."

——Ss. 122, 54—Consideration and motive.

Per Sapru J. — Consideration cannot be confused with motive behind an act.

The legal conception of consideration is not the same as the dictionary meaning of the term.

Where the motive behind the deed of gift was an unequivocal intention on the part of the transferor to give to the transferee a title which would act as a safeguard against any claim for the pre-emption in respect of other property intended to be sold, the transaction for that reason cannot be called sale. ILR (1953) 1 All 374 : A I R 1952 All 149 (153) (Pt C) (Prs 15, 16).

——S. 122—Joint family — Dravida School — Father Manager — Alienation — Sale-deeds in respect of joint family land and house in favour of concubine — False recital of cash consideration — Real consideration being past cohabitation — Documents are not sales but gifts — Such gifts being beyond competence of father, were also invalid and not binding on family — Effect of subsequent partition. See Hindu Law—Mitakshara. AIR 1963 Andh Pra 177 (DB).

——S. 122—Gift deed—Stipulation — What amounts to—Expression of desire in gift deed that donee will maintain donor not a stipulation. 77 Mad L W 65 : (1964) 1 M L J 276 : A I R 1964 Mad 309 (310) (Pt A) (Pr 2).

——S. 122 — 'Consideration' — Meaning of—Alienation requiring alienee to discharge debts and maintain wife of alienor — Transaction is not a gift. 74 Mad L W 16 : 1961 Mad W N 42 : A I R 1961 Mad 405 (406, 407) (Pt B) (Prs 8, 9, 12).

——S. 122 — Power of father under Mitakshara to gift property out of affection to son-in-law. See Hindu law—Gift. AIR 1954 Manipur 22.

●——S. 122 — Gift — Payment by one brother to another — Payment in consideration of latter giving up his claim —Payment is not a gift — See Hindu law —Gift. AIR 1950 Mys 33 (FB).

——S. 122 — Gift subject to condition that donee should maintain donor — Gift cannot be revoked for failure of donee to maintain donor. See Transfer of Property Act (1882), S. 126. AIR 1962 Orissa 130.

——S. 122—Gift—Revocable gift — Conditions to be performed by donee provided for in gift deed after operative portion. See Hindu law. A I R 1955 N U C (Trav-Co) 1046 (DB).

4. Competency to receive.

——S. 122—Gift to after born persons—Validity.

Where the donees under a settlement deed do not constitute a tarwad they are entitled to take the gift only as co-tenants. In that case the gift to the after-born persons would be invalid. A I R 1958 Ker 301 (303) (Pt B) (Pr 7) (DB).

——S. 122— 'Gift'— Gift Tax— Hindu Law — Joint family of grand-father, father and sons — Partition— Son in the womb—Right of after born son—Transfer by grand father of his share to after grandson—If a taxable gift. See Gift Tax Act (18 of 1958), S. 2 (xii), (1964) 2 I T J 361 : (1964) 54 I T R 425 (Mys).

——S. 122 — Gift in favour of minor — Validity— Mode of acceptance.

(Obiter.) A gift can be made in favour of a minor and it would be valid if accepted by or on behalf of the donee. The possession of the father or guardian of the minor is practically the only mode in which the minor can accept or exercise possession; there is nothing in S. 122 of the Transfer of Property Act to limit acceptance of a gift to an express acceptance. The acceptance of a gift may be express or implied; in the case of a gift, actual or constructive possession by the decree is undoutedly proof of acceptance. (1961) 3 Orissa J D 201.

——S. 122—Minor—Competency to accept.

So long as the acceptance of a gift does not impose any obligation on the minor, a minor can accept a gift. ILR 20 Mad 147; 39 I C 46 and 19 Mad L J 752, Rel. on; 5 P L T 305, Disting. **1956 Pat L R 558 : 1957 B L J R 62.**

5. Gift to Hindu Idol, etc.

——Ss. 122, 123 and 5—Dedication to Hindu deity — It is not gift — It would be endowment if owner divests himself of his rights of ownership therein—Section 123 not applicable—Deity is not 'living person.' **(1965) 58 I T R 721 : AIR 1966 All 100 (101, 102) (Prs 5 to 8, 11) (DB).**

——S. 122—"Gift" — Dedication to Hindu deity is a transfer within the meaning of S. 5-A (7) (iii) of W. B. Estates Acquisition Act—Provisions cannot be restricted to transfers to living persons—Provisions of Transfer of Property Act do not apply. See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), S. 5-A. (7) (iii). **AIR 1963 Cal 551 (DB).**

——S. 122—Hindu Law — Religious Endowments—'Bharamelpupathram'—Trippatidanam, meaning of—See Hindu Law—Religious Endowments. **AIR 1956 Trav-Co 196 (DB).**

6. "Existing moveable or immoveable property."

——S. 122 — Contingent or vested interest—Will—Testator giving certain amount to his son — Payment of amount with interest deferred to a future date—Vested interest if created — See Civil P. C. (1908), S. 60 (1) (m). **1960 Ker L J 705.**

——S. 122 — Hindu executing gift deed of land in favour of his wife prior to coming into force of Hindu Succession Act — Criterion to decide whether it passes absolute or limited interest to donee—Deed providing for transfer of all rights of donor in property to donee, and specifying that she was to be owner — But deed also containing provision that donee would not be entitled to transfer property in any manner whatever — Deed held to pass limited interest only to donee — S. 10, T. P. Act held inapplicable. See Hindu Law. **1963 Cur L J 556 (Punj).**

7. "Accepted by or on behalf of the donee."

——S. 122 — Applicability—Section applies to bhumidari rights— No gift of such rights unless acceptance is proved. **1963 All W R (HC) 655 : 1963 All L J 1088 : ILR (1964) 1 All 375 : AIR 1964 All 419 (419) (Pr 2) (DB).**

——S. 122—Essentials.

Gift is not complete unless it is accepted by the donee. **1954 All W R (HC) 108 : AIR 1954 All 595 (597) (Pt A) (Pr 5).**

——Ss. 122, 123—Acceptance by donee — Necessity.

Acceptance of gift by the donee being necessary a gift which is not accepted, even though a registered document has been executed, will not operate to transfer the property to the donee. **1951 All W R (H C) 11.**

——S. 122—Acceptance of gift may be antecedent to deed of gift.

Acceptance of a gift is not something which has necessarily to take place only after the transfer is completed or effected. The law does not require that there should be proof that there was acceptance only after the deed was executed. There can be cases where it may be possible to draw an inference as to the acceptance of a gift even from acts anterior to the execution of a deed of gift. (1958) 2 Andh W R 343 : AIR 1958 Andh Pra 213 (215) (Pt B) (Pr 8).

——Ss. 122 and 123 — Accepted by or on behalf of donee.

Section 122 requires that a gift to be valid must be accepted by or on behalf of a donee and such acceptance must be made during the life time of the donor and while the latter is still capable of giving. If the donee dies before acceptance, the gift is void.

Delivery of possession which is essential under the Hindu Law to complete a gift is now rendered unnecessary. What is now required is that the transfer must be effected by a registered document satisfying the conditions laid down in S. 123.

Whether a gift is known or unknown to the donee, there is no presumption in favour of acceptance of a gift in India. The provisions contained in S. 122 negative such a presumption. 41 I C 389, Not foll.

The acceptance of a gift may be either express or may be implied. Whether there has been an acceptance or not must depend on the facts of each particular case. **ILR (1951) 1 Cal 295.**

——Ss. 122, 123 — Gift of property in possession of tenant — Acceptance of gift by donee.

The recitals in a deed of gift clearly showed that the property was then outstanding with tenants and what remained with the donor was only the right to collect rent from them; and that right to collect rent was transferred to and accepted by the donee under the terms of the gift.

Held, that there was acceptance of the gift by the donee. **AIR 1963 Ker 344 (346) (Pt B) (Pr 7).**

——Ss. 122, 123 and 126—Acceptance by donee—Need for.

If there is acceptance of the gift after execution of the deed; even though the registration was postponed to a later date, the gift would become irrevocable. What the law requires is acceptance of the gift after its execution though the deed may not be registered. Anterior negotiations or talks about the transfer of property by way of gift would not amount to acceptance. Acceptance may be implied but the facts relied on must be acts of positive conduct and not merely passive acquiescence. **(1954) 1 M L J 194 : 66 Mad L W 841 : AIR 1954 Mad 215 (217) (Pt A) (Pr 7).**

——Ss. 122 and 123—Acceptance by donee — There must be acceptance before donor's death—Donee not present at execution or registration — Document and property all along with donor till death—No title passes—Gift is void. **1952 Nag L J (Notes) 72.**

——Ss. 122, 123—Gift by husband to wife—Requirements, for validity of gift—Registered gift deed handed over to wife—Sufficient indication of handing over of possession—Wife enjoying usufruct of property—Gift held validly completed — Non-mutation of property in wife's name not decisive of non-acceptance — Suit for setting aside a gift as being induced by undue influence is governed by Art. 91 of Limitation Act (1908). **AIR 1964 Orissa 212 (Prs 6 to 11).**

——S. 122—Gift in favour of wife and daughters—Acceptance by wife — Donees getting their names mutated in pursuance of deed of gift which came from their custody — Held that there was acceptance of gift by all. See Hindu Law — Gift. **AIR 1963 Orissa 50.**

——Ss. 122, 123 — Gift of money in form of fixed deposit and cash certificates—Acceptance and delivery of possession—What amounts to.

Held on facts that there was no evidence of acceptance by the donees in this case. On the contrary notices were sent to the Bank demanding payment of interest to him which was contrary to the terms of the gift and therefore amounted to repudiation of the gift itself. (2) that in view of the Bank's position — that it did not and could not act as agent for the donees, there was no delivery as required by law. Accordingly

In the absence of acceptatce and delivery of the goods gifted, the said transaction did not constitute a valid gift in law. ILR (1962) Cut 625 : AIR 1962 Orissa 74 (77) (Pt A) (Pr 8) (DB).

——S. 122 — Gift — Formalities — Acceptance. See Hindu Law. AIR 1955 N U C (Tra-Co) 1046 (DB).

——S. 122—Gift—Acceptance is essential— Donee to maintain donor— Effect — Will not make gift conditional one — It will be regarded only as pious wish. 1954 Ker L T 234 : AIR 1954 Trav-Co 404 (404) (Pt A) (Pr 3) (DB).

——S. 122—Acceptance of gift — Evidence of.

The question whether the gift was accepted by the donee depends upon the evidence and circumstances of the case. One such circumstance is the fact that the original gift deed was produced in court by him. Further the fact that the denee paid the tax for the property from that year is sufficient to show acceptance. ILR (1953) Trav-Co 1161 : 1953 Ker LT 870 : 1954 Cr L J 642 : AIR 1954 Trav-Co 348 (350) (Pt A) (Pr 9).

——S. 122—Acceptance of gift—Indications for.

The donee's receiving the document from the donor after due execution thereof, and presenting it for registration and getting it registered as sufficient indications of the acceptance of the gift. AIR 1953 Trav-Co 336 (337) (Pt B) (Pr 5) (DB).

——S. 122 — Gift — Acceptance by or on behalf of donee is one of requisites of a valid gift. 1951 Ker L Tim 479 : A I R 1952 Trav-Co 47 (48, 51) (Pt A) (Prs 4, 12) (DB).

8. Donor dying before acceptance.

——S. 122—Donor dying before acceptance—Effect.

Even if the mutation application by the donee may by implication suggest that the gift was accepted by the donee yet it cannot avail the donee to prove the gift where it had been made after the death of the donor. 1956 Pat L R 558 : (1957) B L J R 62.

9. Advancement.

——S. 122 — Husband depositing certain ornaments with bank for safe custody on joint names of himself and wife with direction that they should be delivered to either or survivor—This does not amount to gift as the husband retains dominion over them. 1950 All L J 932 : ILR (1951) 2 All 439 : A I R 1951 All 529 (540) (Pt H) (Pr 73) (DB).

——S. 122 — English rule of advancement may be applied to Indian conditions because of the changed and changing circumstances of Indian Society. See Evidence Act (1872), Ss. 101-104. ('56) 60 Cal W N 886.

——S. 122—Advancement—Deposit in joint names of father and daughter — Presumption of advancement not extended to Mahomedans in India. See Mahommadan Law. A I R 1959 Madh Pra 359 (DB).

——S. 122—Advancement.

Father with large sums of money in his hands taking promissory note in the name of his daughter who was not sufficiently well-to-do—Intention must be to make a gift of that money to daughter. A I R 1957 Mad 573 (575, 577) (Pt B) (Prs 10, 22) (DB).

——S. 122 — Benami — Advancement—Sale by husband to wife — Presumption when can arise, stated. See T. P. Act (4 of 1882), S. 39. A I R 1951 Trav-Co 195 (DB).

10. Gift or sale.

——S. 122—Sale and gift—Subsequent affirmation of gift can be made. See Hindu Law. A I R 1957 Bom 280 (DB).

——S. 122 — Hyderabad Transfer of Property Act — Gift of house by Mahomedan to wife in lieu of dower — If amounts to sale or transfer requiring writing and registration. See T. P. Act (1882), S. 54. A I R 1952 Hyd 3.

——S. 122—Deed of transfer — Consideration paid— Nature of deed explained. See T. P. Act (1882), S. 54. A I R 1954 Pat 280 (DB).

——S. 122 — Transaction whether gift or sale — Construction—Rules of. See T. P. Act (1882), S. 54. AIR 1959 Punj 117 (DB).

——S. 122—Gift or sale. See Punjab Pre-emption Act (1 of 1913), S. 4. A I R 1954 Punj 116.

11. Gift or will.

——S. 122—Deed — Construction — Deed providing that plaintiff to enjoy property after death of executants — By effecting improvement immediately after execution plaintiff accepting deed — Deed held to be gift and not will. 1958 Ker L J 747 : 1956 Ker L T 516.

——S. 122—Current account in sole name of J., converted into joint, either or survivor account, in names of J and F— Death of J leaving will—Will bequeathing a small amount to F and residuary estate to C— No direction in will with regard to joint account — F held was entitled to the amount standing to credit of joint account on J's death—(Trusts Act (1882), S. 81). 1955 Mad W N 891 : 68 Mad L W 865 : (1955) 25 Com Cas 457 : A I R 1956 Mad 56 (58) (Prs 6, 7) (DB).

——S. 122—Gift or trust—Deposit with defendant — Plaintiff suing for it on death of depositor — Defendant pleading oral gift by depositor to S—Entry in defendant's books showing amount to be paid to S on depositor's death — There is no valid gift in praesenti nor a valid will or testamentary trust — Donee impleaded—It is impossible to hold in second appeal that a case of trust was pleaded or proved. Succession Act, S. 57 — Trusts Act, S. 6. 1952 Nag L J (Notes) 33 (DB).

——Ss. 122, 8—Gift or will—Mere reservation of life interest or provision for maintenance did not necessarily indicate that deed was will. 1956 B L J R 88 : A I R 1956 Pat 345 (347) (Pt A) (Pr 6) (DB).

——S. 122—Gift-deed—Gift and will—Held on construction that the gift gave the full estate and not the widow's estate — Will held gave only life-estate. 54 Pun L R 457 : A I R 1952 Punj 120 (121) (Pt A) (Prs 9, 10).

——S. 122—Will and gift—Distinction. See Succession Act (1925), S. 2 (h). A I R 1956 Trav-Co 127 (DB).

——S. 122—Will or gift.

In construing a deed, the entire document should be considered and not merely particular words, terms or even clauses and this has to be done in the light of the surrounding circumstances.

Nomenclature of the document is not conclusive. But in ascertaining the true intention of the maker the name by which he called the instrument has to be borne in mind and must not be lightly brushed aside.

The fact that a deed is registered as a deed of gift is also not conclusive though it is undoubtedly one of the several tests to ascertain whether the document in question is a gift or a will.

Reading the document in question as a whole it was held that rights over the properties comprised therein vested in the executees from the date of the document subject to the life estate in favour of executant and that the document was therefore a gift

and not a will. A I R 1953 Trav-Co 336 (337) (Pt A) (Pr 3) (DB).

12. Gift or family settlement.

——S. 122—Hindu joint family—Manager executing settlement deed in favour of widow in pursuance of ante-adoption agreement — Gift or family settlement. See Hindu law — Family Arrangement. AIR 1957 Andh Pra 572 (DB).

SECTION 123

SYNOPSIS

(Transfer of Property Act (1882), S. 123.)

1. Scope.
2. Hindu law.
3. Mahomedan law.
4. Gifts of immovable property.
5. Registration and operation of gift.
6. Delivery of property.
7. "Attested by at least two witnesses."
8. Law in places to which T. P. Act is not extended.

1. Scope.

——Ss. 123, 122 and 5—Dedication to Hindu deity—It is not gift—It would be endowment if owner divests himself of his rights of ownership therein—S. 123 not applicable—Deity is not 'living person'. See T. P. Act (4 of 1882) S. 122. (1965) 58 I T R 721 : AIR 1966 All 100 (DB).

——Ss. 123, 122—Acceptance by donee—There must be acceptance before donor's death—Donee not present at execution or registration—Document and property all along with donor till death—No title passes. See T. P. Act (1882), S. 122. 1952 Nag L J (Notes) 72.

——Ss. 123 and 8—Gift or will—Construction—Tests for determination indicated. AIR 1955 N U C (Trav-Co) 2562 (DB).

2. Hindu law.

● ——S. 123—Hindu — Widow — Gift of reasonable portion of property to daughter on marriage — Deed executed after two years of marriage—Effect stated. See Hindu law—Widow. AIR 1957 S C 434.

——S. 123—Ancestral house—Gift by father in favour of his wife and son without consent of son—Validity. See Hindu law—Joint family. AIR 1956 Bhopal 66.

——S. 123—Gift of immovable property by Hindu—Delivery of possession — If essential under Hindu Law.

Section 123 is applicable to gifts under Hindu law. The emphasis so far as the transfer of immoveable property under S. 123 is on the execution of an instrument properly executed and not so much on the actual delivery of the property. AIR 1960 Mys 97 (99) (Pt B) (Pr 7) (DB).

——S. 123—Hindu law—Stridhan—Gift by P to J on condition of giving maintenance or allowing possession for life time of self and wife B—P in possession dying—J disturbing possession—B suing—In compromise B given portion by way of maintenance—Property does not become stridhan of B—Deed—Construction. 1951 Nag L J (Notes) 192.

3. Mahomedan law.

——Ss. 123 and 129 — Gift by a Mahomedan — Property subject to usufructuary mortgage — Gift of equity of redemption can be made -Donor should deliver possession as he himself has over property—As donor has no tangible possession over property unequivocal declaration will be enough—Conduct of donor before and after may be taken into account—Conduct seven years after gift cannot be taken into consideration—Failure to change name in Municipal Registers is not circumstance to hold that donor had not done all that he could possibly do to transfer possession—Gift by deed—Validity. 23 Bom 682; 6 Bom 650, Diss. from. AIR 1955 All 255 (255, 256) (Prs 2, 4).

● ——S. 123—Oral gift by Muslim lady—Subsequent document evidencing transaction executed as ekarar-nama—Test to decide whether amounts to deed of gift—Document held a gift deed liable to stamp duty and registration. See Registration Act (1908), S. 17. AIR 1962 Andh Pra 199 (FB).

——Ss. 123 and 129 — Gift by Mahomedan—S. 123 does not apply—Registration necessary if reduced to writing—(Registration Act (1908), S. 17 (1) (a).)

In order to create a valid gift of movable or immovable property, writing is not essential under Mahomedan law. The provisions of S. 123 read with S. 129 do not apply to Mahomedan gifts. But if a gift is reduced to writing, it requires to be registered under S. 17 (1) (a) of the Registration Act. AIR 1955 N U C (Andhra) 3607.

——S. 123—Gift by Mahomedan—Essentials of stated. See Mahomedan law. AIR 1955 N U C (Andhra) 3607.

——Ss. 123, 54 and 129—Hyderabad T. P. Act, Ss. 54, 110 — Transfer of immoveable property in lieu of dower — Transaction being unilateral act was a gift and not a sale. See T. P. Act (4 of 1882), S. 54. AIR 1952 Hyd 3 (DB).

——S. 123—Gift of immovable property — Gift deed registered — Registration cannot dispense with delivery of possession which is one of essential requirements of valid gift under Mahomedan law. See Mahomedan law. AIR 1960 Madh. Pra 260.

——Ss. 123 and 129—Gift—Delivery of possession—What amounts to — Donor and donees living jointly in house gifted—Effect—Inference. See Mahomedan law. AIR 1958 Mad 527.

——Ss. 123 and 129 — Scope of Transfer of Property by a Mahomedan in lieu of dower—Stamp duty and registration is necessary. See Registration Act (1908), S. 17 (1). ILR (1960) 10 Raj 1470.

4. Gifts of immovable property.

——S. 123—Gift of immovable property—Oral gift—Gift does not confer valid title on donee. AIR 1953 Assam 19 (19) (Pt A) (Pr 4).

——Ss. 123 and 122 — Gift of property in possession of tenant — Right to collect rent left with donor—Transfer of that right by donor and acceptance by donee—Held, that there was acceptance of gift by donee. See T. P. Act (4 of 1882), S. 122. AIR 1963 Ker 344.

——Ss. 123, 122 — Registered gift deed handed over to wife — Sufficient indication of handing over of possession—Wife enjoying usufruct of property—Gift held validly completed — Non mutation of property in wife's name not decisive of non-acceptance. See T. P. Act (4 of 1882), S. 122. AIR 1964 Orissa 212.

5. Registration and operation of gift.

——S. 123—Gift deed registered within three months before petition though executed beyond that period—Can be treated as act of insolvency See Provincial Insolvency Act (1920), S. 9 (1) (c). 1962 All L J 1101.

——Ss. 123, 31, 126 — Deed of gift and condition of revocation in separate documents—Effect stated. See T. P. Act (4 of 1882), S. 31. AIR 1951 All 599.

——S. 123—Self-acquired property—Registration not required. See Hindu Law—Partition. AIR 1951 Bom 4 (DB).

——Ss. 123 and 130—Unilateral document of gift — Registration not required—Scope of S. 16(1) and the third proviso of the Income-tax Act — (Contract Act (1872), S. 2 (h)—Income-tax Act (1922), S. 16). (1959) 37 ITR 91 : AIR 1959 Cal 434 (436 to 439) (Pt A) (Prs. 7, 8, 10, 11, 17) (DB).

——S. 123—Transfer—Gift—Invalidity—Registration —Jurisdiction of Revenue Court—Requirement about compulsory registration of a deed of gift under general law of transfer is not applicable where transfer is of occupancy holding to a person other than persons specified in S. 46 (3) of C. P. Tenancy Act. See Tenancy Laws—C. P. Tenancy Act (11 of 1898), S. 46 (3) and (5). AIR 1954 Orissa 195 (DB).

6. Delivery of property.

——S. 123—Gift of money by assessee by book entries — Assessee not a banker — Book balance of smaller amount than gifted amount—Book entries and memorandum asserting delivery of amount held constituted no delivery to validate gift. (1965) 2 ITJ 450 : AIR 1967 All 82 (DB).

——S. 123—Acceptance of gift—Donor handing over to donee registered deed of gift and donee accepting it—It is not necessary to prove delivery of possession. AIR 1955 NUC (Assam) 2851.

——Ss. 123 and 129—Gift—Delivery of possession — Onus—Recital in deed that possession was delivered —Effect of. See Mahomedan Law—Gift. AIR 1958 Mad 527.

——S. 123 — Gift to wife with condition that she should remain with him till his death and render him service — On failure gift not to be valid—Gift deed not registered and placed in hands of third person—Transfer not registered—House rent sent to donor in Rangoon where both donor and donee resided — Delivery of possession held not given to wife — Gift held not complete and valid. See Mahomedan Law—Gift. AIR 1955 Mad 600.

——Ss. 123 and 122—Gift of money in form of fixed deposit and cash certificates — Acceptance and delivery of possession—What amounts to. See T. P. Act (4 of 1882), S. 122. AIR 1962 Orissa 74 (DB).

——S. 123 — Assessee dealing in shares — Assessee donating to charities some amount—Crediting amount donated but not debiting his account in account year —Transfer of shares in next accounting year—Claim of revenue loss by such transfer—Held it could not be allowed as there was no valid gift. See Income-tax Act (1922), S. 10 (2). (1964) 51 I T R 6 (Pat).

——Ss. 123 and 130—Gift of money not in possession of donor but deposited with third party—Amounts to transfer of actionable claim — Registration of instrument not necessary. See T. P. Act (1882), S. 130. 1963 Raj L W 45.

——S. 123—Delivery of property—Donor and donees having accounts in banking firm—Donor instructing firm to transfer certain amount to donees by making book entries—Entries made accordingly — Firm not having sufficient cash balance on date of entry — Absence of delivery of gifts cannot be inferred from state of cash balance. (1958) 34 I T R 259 (Bom) Rel. on. 1961 Raj L W 340 : ILR (1961) 11 Raj 70 : (1961) 42 I T R 650 : AIR 1962 Raj 152, (154, 155) (Prs 8, 10) (DB).

——S. 123 — Donor and donee living in the house gifted—Gift registered—Delivevy of possession.

Where the donor and the donee lived in the same house and the gift of the house is made subsequently by a registered deed, it is not necessary that the donor should leave the house in order to complete the gift. ILR (1958) 8 Raj 350 : 1958 Raj L W 491 : AIR 1958 Raj 199 (201) (Pt B) (Pr 9) (DB).

——S. 123—Gift of amount — Pro-note registered — Non-delivery of possession—No ground for objecting the gift. 1950 Ker L T 6 : 1950 TCLR 532 : AIR 1950 Tra Co 73 (76) (Pt A) (Pr 8) (DB).

7. "Attested by at least two witnesses".

——Ss. 123 and 3—Attesting witness—Who is—Mere identification before sub-registrar — No attestation — Deed of gift held invalid. See T. P. Act (4 of 1882), S. 3. AIR 1959 Cal 243 (DB).

——S. 123—Delivery of possession which is essential under Hindu Law to complete a gift is now rendered unnecessary. What is now required is that transfer must be effected by a registered document. See T. P. Act (1882), S. 122. ILR (1951) 1 Cal 295.

8. Law in places to which T. P. Act is not extended.

——S. 123—Execution of gift deed before application of T. P. Act to Gwalior State — S. 123 cannot be applied. See Hindu Law. AIR 1955 NUC (Madh Bha) 199.

——S. 123—Custom in Golla community that upon remarriage of widow jewels presented to her on her previous marriage by family of her late husband revert to his family—Gift is not absolute—Custom is not affected by S. 5 —Hindu Widow's Remarriage Act (1856). See Hindu Widow's Remarriage Act (1856), S. 5. AIR 1950 Mad 271.

——S. 123—Applicability—Gift by Hindu at Maxwell Bazar, Imphal in 1935 — Transfer not effected by registered instrument — Validity. See Hindu Law — Gift. AIR 1954 Manipur 22.

——S. 123—Scope.

By Notification No. 183 St. dated the 27th April 1935, under S. 1 of the Transfer of Property Act, S. 123 was extended to all Municipal Committees of the Punjab and thereafter in order to make a valid gift it was necessary that there was a written instrument signed by or on behalf of the donor and attested by two witnesses and registered. 55 Punj L R 381 : AIR 1953 Punj 304 (304) (Pt A) (Pr 4) (DB).

——S. 123 — Registered instrument — Evidence of transfer of possession—Hindu Law—Gift.

Where the Transfer of Property Act is not in force and a gift is made by a registered instrument, and there is nothing to show that the donor, in any way, repudiated the gift in his lifetime, the evidence required to show that there was such transfer of possession as would make the gift complete under the Hindu Law would not be much. ILR (1957) 7 Raj 487 : 1957 Raj L W 248 : AIR 1957 Raj 128 (130) (Pt B) (Pr 14) (DB).

SECTION 126

SYNOPSIS

(Transfer of Property Act (1882), S. 126.)

1. Scope.
2. Agreement for revocation.
3. Paragraph 2 — General.
4. "Save as aforesaid a gift cannot be revoked — Paragraph 3.

1. Scope.

● ——S. 126 — Person transferring assets to woman in consideration of their forthcoming marriage — S. 16 (3) (a) (iii), Income-tax Act held not attracted. See Income-tax Act (1922), S. 16 (3) (a) (iii). AIR 1964 S C 587.

——S. 126—Gift with a condition—Person accepting gift with condition—Condition not fulfilled — Donor

is entitled to refund of amount of gift. **ILR (1960) 2 Andh Pra 560 : (1960) 1 Andh W R 326 : AIR 1960 Andh Pra 605 (610) (Pt C) (Pr 13) (DB).**

——S. 126 — Registration and operation of gift — Acceptance of the gift after execution of deed even though registration was postponed would make the gift irrevocable. See T. P. Act (1882), S. 123. **AIR 1954 Mad 215.**

——S. 126 — Condition against alienation in gift is void — Case does not fall under S. 126. See T. P. Act (1882), S. 10. **AIR 1956 Punj 255**

——S. 126 — Absolute gift with a defeasance clause —Effect of — Not repugnant to S. 126. See T. P. Act (1882), S. 28. **AIR 1957 Trav-Co 167 (DB).**

——S. 126—Gift — Enjoyment of profits postponed till after death of donor — No right to revoke gift unless there was express reservation in that behalf in the deed itself. **1951 Ker L T 479 : AIR 1952 Trav-Co 47 (50) (Pt C) (Pr 10) (DB).**

2. Agreement for revocation.

——Ss. 126, 31 and 123—Deed of gift and condition of revocation in separate documents — Effect. See T. P. Act (4 of 1882), S. 31. **AIR 1951 All 599.**

——S. 126 — Donee agreeing to maintain donor till death — Donee failing to maintain as per agreement —Donor can revoke the gift. **1965 M P L J (Notes) 59.**

——S. 126—Gift—Donor reserving right of revocation — Such a clause is permissible. See Hindu Law — Religious Endowments—Alienation. **AIR 1965 Orissa 201 (DB).**

——S. 126—Revocability of Gift—Mistake of law.

Under S. 126 T. P. Act, a mistake of law is not a ground justifying the revocation of a gift. **ILR (1950) Cut 374 : AIR 1951 Orissa 132 (136) (Pt G) (Pr 10) (DB).**

——Ss. 126 and 11—Agreement for revocation.

Where under a gift-deed the doing unequivocally and unconditionally transfers all his rights over certain property to the donee with absolute powers to deal with the same from the date of gift, a subsequent clause in the deed to the effect that on the death of the donee the property shall not devolve on any of her heirs but will revert to the donor will be repugnant to the absolute estate created in favour of the donee and to the legal incidents of such estate and as such the provision will be ineffective and wholly void. Such a provision cannot be said to be an agreement for the suspension or revocation of the gift within the meaning of S. 126. **1952 Ker L T 686 : AIR 1953 Trav-Co 115 (116) (Prs 2, 3).**

3. Paragraph 2 — General.

——S. 126 — Contract Act (1872), Ss. 16 (1), (3) and 19-A — Gift under mental distress — Cancellation of gift is valid. **(1964) 2 Andh L T 405 : AIR 1966 Andh Pra 104 (105 to 107) (Prs 2, 5, 8).**

——S. 126 — Gift deed by old illiterate widow in favour of her only relation — Sufficient to raise presumption as to undue influence—Burden of proof is on donee to prove that donor exercised independent will — Contract Act (1872), Ss. 16 and 19A. **AIR 1951 Him Pra 54 (54, 55) (Pt A) (Prs 5, 6).**

——S. 126 — Voluntary gift by child to parent — Presumption of undue influence arises — Onus lies on donee not only to prove that donor was emancipated but also that he had acted independently. See Contract Act (1872), S. 16. **AIR 1961 Mad 190 (DB).**

——S. 126 — Mere mistake of law —:No ground for revocation of gift. **ILR (1950) Cut 374 : AIR 1951 Orissa 132 (136) (Pt G) (Pr 10) (DB).**

——S. 126 — Setting aside gift deed on ground of undue influence—(Contract Act (1872), S. 19-A).

Where a gift is challenged on the ground of undue influence, it is necessary for the donee to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the Court that the donor was acting independently of any influence from the donee and with the full appreciation of what he was doing. 1949 T C L R 172, Foll. **AIR 1954 Trav-Co 407 (417) (Pt A) (Pr 46) (DB).**

4. Save as aforesaid a gift cannot be revoked—Paragraph 3.

——S. 126—Revocation of gift—Registration—Subsequent sale-deed —Effect — (Registration Act (1908), S. 47).

A completed gift which has been subsequently registered cannot be revoked by a registered sale-deed executed after the gift but before its registration. **1954 All W R (HC) 108 : A I R 1954 All 595 (597) (Pt B) (Prs 6, 8).**

——S. 126 — Gift subject to condition that donee should maintain donor — Gift cannot be revoked for neglect to maintain donor. **1956 Andhra W R 632 : AIR 1956 Andhra 195 (197) (Pt B) (Pr 9).**

——S. 126—Unconditional gift in consideration of donee maintaining donor—Failure of consideration—Gift cannot be revoked. See Hindu Law—Gift. **A I R 1962 Him Pra 4.**

——S. 126—Gift of property to wife and children—Subsequent sale by settlor of some items of property absolutely to eldest son for conveniently discharging settlor's debt and not in exercise of the power of revocation which settlor reserved to himself under gift deed. See Marumakkathayam Law — Gift. **AIR 1957 Ker 81 (DB).**

——S. 126—Deed of gift reciting that on failure of donee to maintain donor, he would have right to take back property—Donee held to have fulfilled condition — Revocation of gift by donor not valid. **1960 M P L J (Notes) 9.**

——Ss. 126, 122—Gift subject to condition that donee should maintain donor — Gift cannot be revoked for failure of donee to maintain donor. **AIR 1962 Orissa 130 (131) (Pr 6).**

——S. 126—Conditions to be performed by donee provided for in gift deed after operative portion — Conditions held pious wishes of donor but did not give him right to revoke on non-observance of these conditions. See Hindu Law — Gift. **AIR 1955 N U C (Trav-Co) 1046 (DB).**

——S. 126—Gift with a condition—Validity

Where the operative portion of a deed of gift is followed by a direction that the donee should continue to be subservient to donor as she used to be, it is only a pious wish of the donor and not a condition and the deed operates as a complete and irrevocable gift. **I L R (1953) Trav-Co 1121 : AIR 1954 Trav-Co 348 (351) (Pt C) (Pr 10).**

SECTION 127

——S. 127—Gift — Gift of undivided share by a coparcener in favour of his minor wife and mother burdened with obligation to pay maintenance to donor cannot be held to be void ab initio. See Hindu Law—Gift. **AIR 1957 Audh Pra 1012 (DB).**

——S. 127—Sole proprietor executing leases in favour of a minor son represented by mother as guardian

before date of vesting — Leases are really gifts with obligation to pay rent—Not void. See Tenancy Laws —Madhya Pradesh Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act (1 of 1851), S. 3(1). 1964 Jab L J 575.

——S. 127—Gift followed by direction to donee to maintain donor—Effect of such direction.

Where there is an out and out transfer by way of gift followed by a direction to the donee to maintain the donor the latter direction is only a pious wish and not a condition. It will not give any right to the donor to revoke the gift if the conditions are not observed. 2 T L J 105; 23 T L J 637, Rel. on. 1951 Ker L Tim 479 : A I R 1952 Trav-Co 47 (49) (Pt B) (Pr 7) (DB).

SECTION 128

——S. 128—Gift not of whole property does not make a universal donee.

Where under the deed of gift A gifted to B a 1/54th share of the property and he remained owner of the 1/54th share that he had purchased, the fact that B got his name mutuated over the entire 1/27th share would not make him a universal donee. AIR 1954 All 770 (771) (Pt A) (Pr 4) (DB).

——S. 128—Universal donee is a 'legal representative' of the deceased testator — Decree against the donor prior to his death—Decree holder can proceed against property in the hands of donee in execution of his decree — Fresh suit for establishing such right not necessary. See Civil P. C. (1908), S. 2(11). AIR 1964 Mad 78.

——S. 128—Universal donee — Widow owning stridhana property as well as limited interest in her husband's estate—Surrender by the widow of properties in favour of her daughter—Donor's whole property is not transferred — Donee not liable for the debts of the donor. 1961 Mad W N 54 : (1962) 1 Mad L J 224 : AIR 1961 Mad 291 (292) (Prs 4, 5, 6).

——S. 128—"Valuable consideration" — Acceptance of liability by donee to discharge debt of donor and to maintain him for lifetime out of profits and income of property transferred, is not valuable consideration—Condition of quid pro quo is satisfied. AIR 1925 Oudh 28; 30 Mad L J 415, Doubted, See Provincial Insolvency Act (1920), S. 53. AIR 1955 Pat 458 (DB).

——S. 128—Plaint basing liability of defendants as "universal donee" — It cannot be said that no plea under S. 128, T. P. Act was raised in pleading and that therefore no liability can be fastened on defendant under S. 128. See Civil P. C. (1908), O. 6, R. 2. 1962 Raj L W 455.

——S. 128—Act not in force in Marwar when gift took place—Principle of section applied.

The principle which S. 128 enunciates saddles a universal donee with an obligation to pay the debts and liabilities of the donor to the extent of the property received by the donee. This doctrine in essence appears to be an extension of the principle of the maxim "Qui sensit commodum debet et sentire onus", he who receives the advantage ought also to suffer the burden. The rule embodied in S. 128 is not a rule of mere legal technicality but is based on canons of natural justice, morality and public policy.

The principle applies to gift which took place before the Act was applied in Marwar. 1962 Raj L W 455.

——S. 128—Principle of section applies to liabilities also—Sale of property by donor—Vendee paying consideration — Donor gifting away all his property subsequently — Sale set aside after gift — Liability of donor to pay back the consideration arose before the date of the gift when he took the sale price regardless of the fact when the sale was set aside and the same passed on to the universal donee. 1962 Raj L W 455.

——S. 128 — Suit on hypothecation against father alone — Before suit property gifted in favour of sons —Sons held to be universal donees — Decree against father — Pending execution father dying — Creditor decree-holder cannot execute decree against donee — Civil P. C. S. 52. 1951 Ker L Tim 453 : ILR (1951) Trav-Co 357 : A I R 1952 Trav-Co 23 (26, 27, 28) (Pt A) (Prs 12, 13, 18) (DB).

SECTION 129

——S. 129 — Gift by a Muhammadan to a Hindu — Revocation of — Law applicable — Personal law of donor applies. See Letters Patent (All), Cl. 14. A I R 1963 All 469.

——S. 129—Gift by a Muhammadan — Property subject to the usufructuary mortgage — Gift by deed is valid. See T. P. Act (1882), S. 123. A I R 1955 All 255.

● ——S. 129—Oral gift by muslim lady—Subsequent document evidencing transaction executed as ekrarnama — Test to decide whether amounts to deed of gift — Document held a gift deed liable to stamp duty and registration. See Registration Act (1908), S. 17. A I R 1962 Andh Pra 199 (FB).

——S. 129 — Gift by Muhammadan—S. 123 does not apply—Registration is necessary if reduced to writing. See T. P. Act (1882), S. 123. AIR 1955 N U C (Andh Pra) 3607.

——Ss. 129 and 130—Estate Duty Act, 1953 (Central Act 35 of 1953) S. 9—Gift by Mahomedan—Is complete on execution of instrument — Non-acceptance by donee—Does not render gift inoperative.

That S. 130 of the T. P. Act, is a specific provision dealing with a transfer of an actionable claim, including a gift of an actionable claim, and it must prevail and override the provisions of the Mohamedan Law. Under the section if the gift of an actionable claim is effected by the execution of an instrument in writing signed by the transferor, such transfer shall become complete and effectual upon the execution of such instrument. The requirements of the Mohamedan Law as to the declaration, acceptance and delivery of gifts are not necessary in the case of a gift of an actionable claim effected under S. 130. An instrument in writing under S. 130 need not be, and is not required to be, in any particular form, and should not be construed in as strict a manner as a Court would do a deed of conveyance, and so long as the intention of the donor to give a gift is made manifest in the instrument in writing, it would be sufficient. Under S. 130 there can be a valid transfer of a part of an actionable claim. A I R 1936 Pat 527; A I R 1917 Mad 20; (1932) 34 B L R 837; (1938) 1 M L J 56 : 47 L W 118 : 176 I C 617 : A I R 1938 Mad 236, Ref. (1965) 1 I T J 751 : ILR (1964) Guj 452 : (1964) 5 Guj L R 621 : (1964) 53 I T R (E D) 51.

——S. 129—Transfer of immoveable property in lieu of dower — It is a simple gift and formalities laid down in S. 123 not applicable — (Muhammaden Law — Marriage — Dower). See T. P. Act (1882), S. 54. A I R 1952 Hyd 3 (DB).

——S. 129—Gift — Essentials—Delivery—Gift of immovable property registered — Registration cannot dispense with delivery of possession under Mahomedan Law. See Mahomedan Law. A I R 1960 Madh-Pra 260.

——S. 129 — Gift — Delivery of possession—Onus — Recital in deed of gift by deceased that possession is delivered — Onus is on persons claiming under deceased, that no delivery took place (Evidence Act

(1872), Ss. 17, 18, 19 and 101-104). See Mahomedan Law. **A I R 1958 Mad 527.**

——S. 129—Gift—Delivery of possession—Donor and donee living jointly in house, the subject matter of donation — Donor need not remove himself from house in order that gift might be operative. See Mahomedan Law. **A I R 1958 Mad 527.**

——S. 129 — Rule of Muhammadan Law — Muhammadan Law applies to gifts of Muhammadans in Bihar—Bengal, Agra and Assam Civil Courts Act (12 of 1887), S. 37 (2) — Muslim Personal Law (Shariat) Application Act (1937), S. 2. A I R 1936 Rang 430 (FB) and A I R 1937 Rang 240, Ref.; A I R 1929 Pat 417; 14 Pat L T 599; ILR 15 Cal 684 and A I R 1927 P C 22, Rel. on. **A I R 1963 Pat 229 (232) (Pt C) (Pr 11) (DB).**

——S. 129 — Exemption of Muhammadan gifts from certain provisions of Act — Not hit by Art. 14 of the Constitution. See Constitution of India, Art. 14. **A I R 1963 Pat 229 (DB).**

——S. 129—Transfer of property by a Muhammadan in lieu of dower — Stamp duty and registration is necessary. See Registration Act (1908), S. 17 (1). **ILR (1960) Raj 1470.**

SECTION 130

See also T. P. Act (1882), S. 3

SYNOPSIS

(Transfer of Property Act (1882), S. 130.)

1. Scope.
2. "Transfer".
3. Assignment of rents and profits.
4. Assignment of part of debt.
5. Transfer by operation of law.
6. Form of assignment.
7. No particular words are necessary to constitute assignment.
8. Registration not necessary.
9. Agreement between debtor and creditor that debts would be paid from a fund in the hands of third person, if assignment.
10. Completeness of transfer and notice to debtor.
11. Transfer of mortgage debt.
12. All rights and remedies of the transferor shall rest in the transferee.
13. Sub-section (2).
14. Exception.

1. Scope.

● ——S. 130 — Debt arising in foreign country — Is property and actionable claim — It has no location except notionally under arbitrary rules—Determination of legal liability raises complex questions of private international law — Two distinct lines of thought (i) Lex situs and (ii) proper law of contract. Applicability of lex situs and (ii) proper law of contract dismissed. See Constitution of India, Art. 51. **A I R 1955 S C 590.**

● ——S. 130 — Judgment debt — Transfer — Debt is property — It is a chose in action and heritable and assignable. See T. P. Act (1882), S. 3. **A I R 1955 S C 376 (1).**

——Ss. 130, 3 and 6 — Assignment of debt as part of assets of firm to one of partners—It is not transfer of actionable claim — S. 130 is not applicable to such case. A I R 1964 All 15 (16) (Pt B) (Pr 7).

——S. 130 — Right to purchase shares or an option to do so is assignable and can be attached. See Civil P. C. (1908), S. 60 (1). **69 Cal W N 815 : A I R 1966 Cal 134.**

——S. 130 — Principles relating to equitable assignments stated. See T. P. Act (1882), S. 6. **A I R 1964 Cal 470 (DB).**

——S. 130—Assignment of debt—Proper law—Assignment of claim due under life insurance policy—Validity of — Held, was determined by Indian law in this case—T. P. Act (1882), S. 130. See Constitution of India, Art. 51. **A I R 1964 Cal 141.**

——S. 130 — Mahomedan Law — Applicability of S. 130 — Gift of actionable claim, created by instrument in writing — Proof of acceptance by donee is not necessary — Mahomedan Law—Gift. A I R 1936 Pat 527 and A I R 1917 Mad 20, Foll. **(1964) 5 Guj L R 621 : (1964) 53 I T R (E D) 51 : I L R (1964) Guj 452.**

——S. 130—Scope—Right to enforce reserve liability of shareholder—If actionable claim — Transfer of, by way of English mortgage — Rights of transferee discussed — (Companies Act (1913); S. 186). A I R 1955 S C 604, Rel. on. **A I R 1958 Mad 34 (39, 40) (Pt B) (Prs 19, 22, 25).**

——S. 130 — Conditional assignment of policy — Validity and effect of — (Insurance Act (1938), S. 38 (7)).

Before the enactment of S. 38, Insurance Act, transfer of a life insurance policy constituting as it did, an actionable claim was governed by S. 130, T. P. Act.

The effect of an assignment is, it operates to completely divest the assignor of any right under it, and the effect of the condition is only to make the assignment inoperative upon the subsequent happening of either of the two contingencies. **(1955) 25 Com Cas (Ins) 7 : A I R 1955 Mad 459 (460) (Pt A) (Pr 4).**

——S. 130 — Scope — Assignment of document and negotiability of instrument compared — Negotiable Instruments Act S. 14.

Per Hidayatullah, C. J. — An assignment creates rights 'in rem' destroys the rights of stoppage 'in transitu' and the assignee of the document of title to goods becomes an owner of the goods and can even give a better title than he possesses. But though a holder in due course can give a discharge, he cannot give a better title than he himself possesses. The negotiability by assignment as such is different but it is a kind of negotiability nevertheless. **1956 Nag L J 791 : 1956 M P L J 215 : A I R 1957 Nag 31 (41) (Pt C) (Pr 67) (DB).**

——S. 130 (2)—'Proceedings'—Meaning of — Would include proceeding in execution or a proceeding for payment of decretal money after deposit in Court. A I R 1951 Pat 415, Rel. on. **1962 B L J R 813 : A I R 1963 Pat 30 (33) (Pt B) (Pr 6) (DB).**

——S. 130—Assignment of decretal debt by Mahomedan — S. 130 applies — Oral gift not valid. **1962 B L J R 813 : A I R 1963 Pat 30 (33) (Pt C) (Prs 5, 6) (DB).**

——Ss. 130 and 3—Actionable claim — Decretal debt is actionable claim — Civil P. C. (1908), O. 21, R. 16. See T. P. Act (4 of 1882), S. 3. **A I R 1951 Pat 415 (DB).**

——S. 130 — Assignment of actionable claim (debt) and pay order — Distinction—Words and Phrases—Pay order.

The consequences of a pay order and an assignment of an actionable claim (debt) are not same in law. In the case of pay order the liability of the party on whom the pay order is given continues towards the maker of the pay order if he does not pay as desired, but in the case of an assignment, the assignee becomes, entitled as of right to the payment. Again, a pay order is revocable but not so an assignment. Yet again, a pay order fails on the death of a

drawer but an assignment does not. 1962 Raj L W 588 : I L R (1962) 12 Raj 925.

2. "Transfer".

——S. 130 — Plaintiff held manager of property and not assignee of rent — He cannot sue for arrears of rent after he ceases to be manager. A I R 1955 N U C (Ajmer) 4723.

——S. 130—'Transfer'—Contracter giving sole power-of-attorney in favour of bank advancing him money on overdrafts — All rights to receive payment of any bill surrendered—Effect—No transfer of actionable claim. A I R 1951 Assam 56, Disting. A I R 1958 Assam 22 (23, 24) (Pt A) (Pr 6) (DB).

——S. 130 — 'Transfer' — Mere conferment of power to withdraw amount — Would not amount to transferring interest in that amount. 49 Cal W N 494 and A I R 1951 Assam 56, Disting. 1958 Nag L J 279 : 60 Bom L R 1012.

——S. 130—Appointment of receiver to collect debts does not operate as an assignment of the debts. See Civil P. C. (1908), S. 20. A I R 1955 Mad 526 (DB).

3. Assignment of rents and profits.

——S. 130 — Actionable claim — Debts — Arrears of rent are assignable. See Houses and Rents — W. B. Premises Tenancy Act (12 of 1956), S. 17. A I R 1960 Cal 378 (DB).

4. Assignment of part of debt.

——S. 130—Transfer of a part of an actionable claim is permissible. (1964) 5 Guj L R 621 : (1964) 53 I T R (E D) 51 : I L R (1964) Guj 452.

——S. 130—Gift of actionable claim by Mahommadan to his son—No acceptance by son — Requirements of Muhammadan Law as to acceptance and delivery not necessary — Transfer of part of actionable claim is valid. See T. P. Act (1882), S. 129. (1964) 5 Guj L R 621 : (1964) 53 I T R (E D) 51 : (1965) 1 I T J 751 (Guj) : I L R (1964) Guj 452.

5. Transfer by operation of law.

● ——S. 130 — Transfer of property in promissory note—Modes of — Act not exhaustive — Transfer of Pronote in partition—Transfer is by operation of law —S. 130, T. P. Act not applicable — Holder can sue on note without assignment or endorsement. See Negotiable Instruments Act (1881), S. 8. A I R 1961 Mad 518 (FB).

6. Form of assignment.

——Ss. 130 and 3 — Right to proceeds of business—Transfer of—Form of instrument. See T. P. Act (4 of 1882), S. 3. A I R 1951 Assam 56 (DB).

——S. 130—Instrument in writing under—No particular form is necessary—So long as the intention of the donor to give a gift is made manifest in an instrument in writing, it would be sufficient. A I R 1932 Bom 446 and A I R 1933 Mad 236, Foll. (1964) 5 Guj L R 621 : (1964) 53 I T R (E D) 51 : I L R (1964) Guj 452.

——S. 130—Transfer of a debt — No particular form is required — Assignment of promissory note by endorsement—Rights of transferee depend on what is transferred whether the debt or merely the instrument. (1965) 2 Mad L J 512 : A I R 1966 Mad 50 (50, 51) (Prs 2, 3).

——S. 130—Assignment how effectuated.

An assignment of an actionable claim must conform strictly to the provisions of S. 130. And to effectuate an assignment there must be words of transfer in the instrument. 20 Cut L T 162 : (1954) 24 Com Cas (Ins) 59 : I L R (1953) Cut 630 : A I R 1954 Orissa 44 (48) (Pt E) (Pr 15) (DB).

——S. 130 — Widow — Reversioner — Dayabhaga School — Right of reversioner to enforce actionable claim created by widow. See Hindu Law — Widow. A I R 1954 Pat 32.

7. No particular words are necessary to constitute assignment.

——Ss. 130 & 137 — Endorsement by one of payees of pronote in favour of the other — Endorsement invalid — But creditor has right to decree on alternative remedy — Section 137, T. P. Act, held no bar. See Negotiable Instruments Act (1881), S. 51. AIR 1960 Andh Pra 174.

——S. 130 — Transfer of promissory note otherwise than by indorsement of suit by assignee of promissory note is maintainable. See Negotiable Instruments Act (1881), S. 46. AIR 1956 Andhra 9.

[Overruled on another point in AIR 1964 SC 1526.]

——S. 130 — Assignment of actionable claim — No particular form necessary—Notice to debtor—Subsequent payment to original creditor not binding on assignee. (1961) 31 Comp Cas 91 : AIR 1960 Assam 191 (194) (Pt A) (Pr 7) (DB).

——Ss. 130, 137, 132 — Railway Receipt—Negotiability — Fetters in Ss. 130 and 132 do not apply—Benefit under can be assigned by endorsement simpliciter—See T. P. Act (4 of 1882), S. 137. AIR 1963 Cal 399.

——S. 130—Transfer of railway receipt in respect of insured goods to insurance company—Transfer is good, valid and enforceable. Suit No. 1020 of 1954, dated 26-11-1958 (Cal) Foll. 63 Cal W N 806 : AIR 1959 Cal 563 (564) (Pt A) (Pr 6).

——S. 130 — Goods consigned to self under Railway Receipt — Railway Receipt endorsed in favour of another—Endorsee not entitled to sue Railway merely by reason of endorsement — See Railway's Act (1890), S. 72. I L R (1964) Guj 928 : (1964) 5 Guj L R 879 : AIR 1966 Guj 6 (DB).

——Ss. 130 and 134 — Banking Company — Winding up of—Claim by depositor in bank preferred under S. 45-D, Banking Companies Act, 1949 — Depositor claiming right of set-off under S. 529, Companies Act, 1956 read with S. 46, Provincial Insolvency Act, 1920 in respect of loan obtained by him from bank against deposit—Transaction evidence by documents by which deposit receipt was passed as security for loan—Transaction held not to amount to transfer of deposit under Ss. 130 and 134. See Companies Act (1956), S. 528. AIR 1963 Ker 128.

——S. 130 — Bank holding power of attorney to collect bills due to executant and appropriate collection towards bank advance—Order for payment to bank also endorsed on bill in question—Money due remains property of executant until collected and appropriated by bank — Hence it can be validly attached by creditor of the executant. See Civil P. C. (1908), S. 60. AIR 1963 Madh Pra 132 (DB).

——S. 130—Assignment of fixed deposit receipt — No particular form necessary. 1956 Mad W N 537 : AIR 1956 Mad 570 (572) (Pt A) (Pr 11).

——S. 130 — Money due to judgment-debtor lying with a company — At request of judgment-debtor company agreeing to pay it to his creditor and making suitable changes in his account—This amounts to equitable assignment — Another creditor cannot attach the money thereafter — See Civil P. C. (1908), O. 21, R. 46. AIR 1961 Mys 196

——S. 130 — Endorsee of railway receipt—Right to bring suit for damages for short delivery—(Railways Act (1890), S. 72.)

Per Thambe, J.—Agreeing with Hidayatullah, C. J., Kaushalendra Rao J, Contra. — An unqualified endorsement on a railway receipt has the effect of not only transferring to the endorsee the property in the goods covered by the railway receipt but also of transferring to him the right and benefit of the contract of carriage evidenced by the railway receipt. He has, therefore, a right to maintain an action to enforce its performance in his own name, or to sue to recover damages occasioned by failure to perform the contract. AIR 1947 Bom 169 and A I R 1923 Rang 1 and A I R 1929 Lah 590 and A I R 1954 All 747 and AIR 1955 N U C (Bom) 2049, Dissented from. **1956 Nag L J 791 : 1956 M P L J 215 : A I R 1957 Nag 31 (39, 42, 46) (Pt G) (Prs 50, 70, 103) (DB).**

——S. 130—Partition—Pronote falling to share of one member — Suit on original debt or promissory note maintainable — Endorsement or assignment of pronote not necessary — Negotiable Instruments Act (1881), S. 8 or Transfer of Property Act (1882), S. 130 no bar—See Hindu Law—Partition. **AIR 1961 Orissa 152.**

——S. 130 — Decree assigned to third person—Application by latter to Court for payment of decretal amount to him—Application not strictly governed by O. 21, R. 16, Civil P. C.—Even without such application, Court could direct payment to assignee. See Land Acquisition Act (1894), S. 26. **AIR 1963 Pat 30 (DB).**

——S. 130—Scope — Chose in action—Elements of valid assignment—(Contract Act (1872), S. 37.)

An assignment in a law is an act by which one person transfers to another or causes to vest in another his right or title to something before the object of the transfer has become property in possession of the assignor. It is the transfer or setting over the right to fruits of cause of action from one person to another.

A valid and enforceable contract of assignment comes into being when it is executed by parties possessing legal capacity to contract, when it is supported by consideration, when it is not contrary to law or to public policy, when it is not tainted with fraud or illegality and when it is not the result of an agreement between the assignor and the assignee that they shall divide the property sued for between them in consideration of the assignee carrying on the suit in his own name and possibly a'so at his own expense. A person who wishes to obtain a decree on the basis of a deed of assignment must allege and prove a valid assignment in order to show that he had a cause of action.

Held, on the evidence on record, that the assignment was champertous and not supported by any consideration. **59 Punj L R 361 : I L R (1957) Punj 1555 : AIR 1958 Punj 52 (53) (Pt A) (Pr 3).**

——S. 130 — Assignment of joint promissory note in partition — Instrument in writing not necessary — Partition not a transfer as contemplated by T. P. Act. See T. P. Act (1882), S. 2. **ILR (1963) 13 Raj 963.**

8. Registration not necessary.

——Ss. 130, 122 — Unilateral document — Registration—(1955) 28 I T R 528 (Mad), Not foll.

Unilateral document in the nature of a gift where the settlor purported to bind himself to do certain things which were in the nature of voluntary covenants, whether regarded as a gift or transfer of an actionable claim, does not require registration to make it valid. See T. P. Act (4 of 1882), S. 122. **AIR 1959 Cal 434 (DB).**

——Ss. 130 and 123—Gift of money not in possession of donor but deposited with third party—Amounts to transfer of actionable claim — Registration of instrument not necessary. A I R 1945 All 409, Foll. 1963 Raj L W 45 : ILR (1963) 13 Raj 465.

9. Agreement between debtor and creditor that debts would be paid from a fund in the hands of third person, if assignment.

——S. 130—Agreement by plaintiff to advance funds to defendant for purchase of stamps — Stamp papers kept with plaintiff as security for advances—Amounts realised by sale to be handed to plaintiff towards payment of the advances — Nature of agreement—It amounts to an equitable assignment.— Attachment of stamps in execution of a decree against defendant by another — Permissibility — Plaintiff has right to get preferential payment from sale proceeds. **(1965) 2 Andh W R 160 : A I R 1965 Andh Pra 410 (412 to 414 (Prs 8, 10, 13, 16, 17, 19).**

——S. 130 — Insurance — Life policy — Postal life Insurance policy — Assignment in favour of sons — Later surrender of policy made by Insurant to obtain surrender value himself — Request for surrender of policy after assignment refused — Policy reassigned in favour of assured and insurance authorities requested 'action may kindly be taken in the matter'.

Held, that assuming S. 130, T. P. Act, was applicable, there was no valid surrender. The first letter surrendering the policy had no validity. The second letter too sent after the reassignment did not have that effect. It followed that the heirs of L were entitled to the policy amount and not only to the surrender value. Appeal No. 340 of 1953, dated 3-3-1958 (Andh Pra), Affirmed. **AIR 1961 Andh Pra 67 (70) (Prs 14, 16, 17) (DB).**

——S. 130—Bank advancing money to Government contractor for contract work — Power-of-attorney authorising Bank to demand and receive payment of bills for works done and deposit same in loan account of contractor.

Power of attorney did not go to show that any charge was created against that money or there was even any lien except that the Bank had a right to collect the money and hold the same for the debtor's benefit. AIR 1958 Assam 22 and AIR 1954 Assam 23, Rel. on; AIR 1931 All 62 and AIR 1926 Nag 206, Disting. **A I R 1959 Assam 167 (169) (Prs 8, 9) (DB).**

——S. 130 — Power of attorney authorising Bank to collect bills due to a contractor from military officers —Operation as assignment of debt—Notice to debtor —(Contract Act (1872), S. 188)—(Powers of Attorney Act (1882), S. 2).

A, a bank, started an overdraft account in B's name in order to finance B in carrying out certain military contracts. B executed a power of attorney in A's favour, authorising A to collect all bills and to receive all payments in respect of the contract. A copy of the power of attorney was sent to and was duly noticed by the military authorities. On finding that certain amount due under a bill on which B had obtained overdraft facility, was paid directly to B, in spite of the repeated demand for it by A, A sued both B and the Union of India claiming that a charge was created with respect to the bills under S. 130, in favour of the holder of the power of attorney who became an assignee and the Government, as a debtor was bound to pay to A, the assignee, after the express notice.

Held, (1) that the authority to collect the bills did not ipso facto signify that the power to collect those bills no longer remained with B.

(2) that the power of attorney was not irrevocable,

(3) that no charge was created or assignment made in favour of the bank and there was therefore no legal obligation on the part of the military authorities or the Government to pay up the sum covered by the

bill. ILR (1953) 5 Assam 115 : AIR 1954 Assam 23 (25, 26) (Pt A) (Prs 7, 9, 13) (DB).

—S. 130—Pay order and assignment—Distinction—Endorsement on bill that third person will realise debt—Instrument held was assignment and not pay order — Deed — Construction — Stamp Act (1899), Ss. 2 (2), (3), 40 (1) (b), Sch. I, Art. 1. 66 Cal W N 483 : AIR 1962 Cal 654 (656) (Pr 5) (DB).

—S. 130—Equitable assignment by debtor to creditor of debt due from third party.

There must be some communication between the debtor and the creditor from which intention of parties would be deemed in equity to be a transaction under which debtor assigns his right to recover debt to the creditor. 1950 K L T 509.

—S. 130 — Assignment of liability—Third person undertaking to pay amount due under promissory note and executing fresh promissory note in favour of same creditor—Such person is assignee of original debtor—(Contract Act (1872), S. 62). See Debt Laws—Madras Agriculturists Relief Act (4 of 1938), S. 8, Explanation III. AIR 1956 Mad 364 (DB).

10. Completeness of transfer and notice to debtor.

—S. 130—Notice to debtor—Necessity.

Under S. 130, mere execution of the deed of transfer by itself does not prohibit the debtor from dealing with the debt unless it is proved that he had notice of assignment in accordance with the provisions of S. 131 of the Transfer of Property Act. Although the debtor is no party to the transfer, S. 130 provides an exception and is to be strictly complied with. A I R 1958 Assam 22 (25) (Pt B) (Pr 12) (DB).

—Ss. 130, 131—Assignment of debt by heirs of deceased creditor — Succession certificate by heirs after notice to debtor—Succession Act (1925), S. 381.

Where after an assignment of a debt by the heirs of the deceased creditor and notice of assignment by the assignee to the debtor the assignors obtain succession certificate and recover the debt from the debtor by virtue of the certificate, the debtor obtains a valid discharge of the debt. AIR 1950 Kutch 49 (1) (49) (Pr 4).

—S. 130 — Assignment of fixed deposit receipt — Notice to Bank not necessary — Banker has no right of set off against assignee—Contract Act, S. 171.

Under S. 130 of the Transfer of Property Act title passes to and vests in the assignee or transferee on the execution of the transfer deed and no further action on his part such as sending a notice to the debtor as under the English law, is necessary to complete his title. AIR 1935 Mad 1003; 69 M L J 803, Rel. on. 1956 Mad W N 537 : A I R 1956 Mad 570 (573, 574) (Pt C) (Prs 19, 20, 22).

—S. 130—Assignment of actionable claim—Notice of assignment to debtor not given—Effect.

The giving of notice of assignment of actionable claim to the debtor is not essential to effectuate an assignment, but where no such notice is given, the debtor cannot be expected to attorn to the assignee, and if, in ignorance of the assignment, he pays the debt to the assignor, the assignee can have no remedy against the debtor. 1962 Raj L W 588 : I L R (1962) 12 Raj 925.

—Ss. 130, 131 — Notice of transfer of actionable claim.

Delivery of a copy of the plaint in the suit for the recovery of the debt by the transferee along with the summons served on the debtor cannot be deemed to be a notice of transfer of the debt. 1950 Raj L W 284 : AIR 1951 Raj 74 (76) (Pt B) (Pr 11) (DB).

—S. 130—Completeness of transfer.

The words "shall be complete and effectual upon the execution of such instrument" mean that it takes effect from the execution of the instrument irrespective of the notice to the debtor so far as the transferor and the transferee are concerned. It does not mean that the assignment once having been executed cannot be challenged on grounds, including want of consideration, on which any other contract can be impeached. 1950 Raj L W 284 : AIR 1951 Raj 74 (77) (Pt E) (Pr 20) (DB).

11. Transfer of mortgage debt.

—Ss. 120 and 134—Bond in trust for subscribers of Chitty for proper conduct — Deposit with bank as security — It is mortgage-debt under S. 134. See Travancore Chitties Act (26 of 1120), S. 17 (1). 1963 Ker L T 611.

—S. 130—Sale of equity of redemption—Principle of caveat emptor—Applicability.

Where a sale deed expressly provides for indemnity in case the vendee's title is affected on account of any undisclosed encumbrances, no heed to the argument based on the doctrine of caveat emptor can be paid. I L R (1955) T C 220 : A I R 1956 Trav Co 80 (83) (Pt B) (Pr 5) (DB).

12. "All rights and remedies of the transferor shall vest in the transferee."

—Ss. 130, 3 and 6 — Assignment of rights under contract.

In order that an assignment should be effective all the interest of the assignor under the contract must be transferred and conveyed to the assignee. The only question that the Court has to consider with regard to assignments is whether if the debtor paid the assignee, he would get a complete and proper discharge.

A's contract with B, as sole proprietor of A and sons—Assignment of benefits under the contract by A to C does not affect B's liability to pay A and in law to pay his assignee C—B cannot plead against C's claim on the ground that since the assignment was made by A as Karta the other co-parceners of the joint family may make claim against him contending that the assignment was not made for the benefit or legal necessity of the family, and that therefore, he apprehended that by paying the assignee he could not get a complete discharge — The apprehension is baseless because the co-parceners having no privity of contract with him could not sue B under the contract. 55 Bom L R 901 : ILR (1954) Bom 424 : (1954) 25 I T R 207 : AIR 1954 Bom 167 (170) (Pt B) (Pr 7) (DB).

—S. 130 — Creditor — Transfer of debt owed by Company—Transferee and not transferor is creditor of Company. See Companies Act (1956), S. 439 (2). AIR 1965 Ker 241.

—S. 130—Applicability — All assets and liabilities transferred under agreement — Pronote in favour of transferor not duly endorsed to transferee — Title passes to transferee and he is entitled to the amount due under the pronote. See Negotiable Instruments Act (1881), S. 51. AIR 1954 Mad 820.

—S. 130 — Assignment of railway receipt — Effect of.

There is no particular mode of assignment prescribed by the statute. The rights and benefits arising out of a contract of carriage of goods can be transferred in any manner. The only thing to be considered is whether the intention of the transferor to transfer the rights is made clear by the mode adopted. An unqualified endorsement on a railway receipt by

the consignee to the effect that the goods consigned should be delivered to the endorsee indicates such an intention. 1956 Nag L J 791 : 1956 M P L J 215 : AIR 1957 Nag 31 (45) (Pt F) (Pr 97) (DB).

——Ss. 130, 134—Assignment of actionable claim — Effect.

The very moment a transfer of actionable claim has taken place by the execution of an instrument of transfer, the rights and remedies of the transferor become vested in the transferee, and then the transferor, as it were, gets out of the picture and it is the transferee who takes his place and then is competent to sue the third party in his own name without making the transferor a party thereto. But the assignee takes the actionable claim subject to all the liabilities and equities to which the transferor was subject in respect of it at the date of the transfer. The plea of his being a bona fide transferee without notice cannot avail him. 1962 R L W 588 : ILR (1962) 12 Raj 925.

——Ss. 130, 3, 6—Assignment of rights under contract — Contract to deliver goods — Damages specified in case of breach — Breach—Suit by assignee to recover earnest money and damages—Maintainability—(Contract Act (1872), S. 74). See T. P. Act (4 of 1882), S. 3. AIR 1952 Raj 187 (DB).

13. Sub-s. (2).

——S. 130 (2)—Actionable claim, what is—Hypothecation bond of standing crops — Transfer of rights under such bond—Suit by transferee to recover debt held not maintainable. See T. P. Act (1882), S. 3. AIR 1963 Assam 11 (DB).

14. Exception.

——Ss. 130, 132—Applicability — Hypothecation of life insurance policy with a stipulation that mortgagor should pay the premiums—Mortgagee is not bound to pay premiums — Ss. 130 and 132 do not apply. I L R (1961) 1 Andh Pra 89 : AIR 1961 Andh Pra 183 (190) (Pt F) (Pr 66a) (DB).

SECTION 130-A

——Ss. 130-A (6) (e), 92—Motor insurance—Assured assigning all his rights to insurer — Insurer can sue third party in his own name not because he is subrogated to rights of assured but because of express assignment of all rights by assured. See T. P. Act (4 of 1882), S. 6 (e). AIR 1965 Mad 159.

SECTION 131

——Ss. 131, 130 — Assignment of debt by heirs of deceased creditor — Succession certificate by heirs after notice to debtor—Recovery of debt from debtor —Discharge of debt is valid—Succession Act (1925), S. 381. See T. P. Act (4 of 1882), S. 130. A I R 1950 Kutch 49 (1).

——S. 131 — Endorsement of refusal by Postman — Evidence Act (1872), S. 114.

If an endorsement purports to be of an officer of the Post Office that the addressee had refused to receive the document, it can be presumed that the document was tendered & refused. Such presumption can be rebutted, and in proper cases only by a denial by the addressee. 1950 Raj L W 284 : AIR 1951 Raj 74 (75) (Pt A) (Pr 10) (DB).

——Ss. 131 and 130 — Service of summons in a suit together with a copy of the plaint—Is not a notice of transfer of debt. 1950 Raj L W 284 : AIR 1951 Raj 74 (76) (Pt B) (Pr 11) (DB).

——S. 131—Notice by transferee—Validity.

The notice of transfer is to be given by the transferor and if given by the transferee it should be alleged or shown that the transferor had refused to sign the notice although that circumstance need not be mentioned in the notice. 1950 Raj L W 284 : AIR 1951 Raj 74 (76) (Pt C) (Pr 12) (DB).

SECTION 132

——Ss. 132, 130 — Hypothecation of life insurance policy with a stipulation that mortgagor should pay the premiums — Mortgagee is not bound to pay premiums—Ss. 130 and 132 do not apply. See T. P. Act (4 of 1882), S. 130. AIR 1961 Andh Pra 183 (DB).

——Ss. 132, 137, 130—Railway Receipt—Negotiability —Fetters in Ss. 130 and 132 do not apply—Benefit can be assigned by endorsement simpliciter. See T. P. Act (4 of 1882), S. 137. A I R 1963 Cal 399.

——S. 132—Assignment of debt—Inactivity of debtor —Estoppel—(Evidence Act (1872), S. 115.)

Where a debtor on receiving notice of the assignment of the debt, sees that the assignee is deceived and yet stands by and allows him to be defrauded, he will not be allowed to set up an equity which he has against the assignor. (1852) 3 H L C 702, Rel. on. 1956 Mad W N 537 : A I R 1956 Mad 570 (574) (Pt D) (Pr 23).

——S. 132—Railway receipt having series of endorsements—Last endorsee can bring suit against railway. See T. P. Act (1882), S. 137. AIR 1957 Nag 31 (DB).

——S. 132—Sale of equity of redemption — Title in property lost before sale—Failure of consideration — Right enforceable against assignee that could be available against assignor. See Contract Act (1872), S. 25. AIR 1956 Trav-Co 80 (DB).

● ——S. 132—Effect of attachment of debt. See Civil P. C. (1908) S. 64. AIR 1954 Trav-Co 243 (FB).

SCETION 134

——S. 134 — Bond in trust for subscribers of chitty for proper conduct — Deposit with Bank as security —It is mortgage debt under S. 134. See Travancore Chitties Act (1120), S. 17 (1). 1968 Ker L T 611.

——S. 134—Partition — Debt secured on mortgage is partible — Hence a Hindu widow is entitled to a share in mortgage debt — Hindu Women's Rights to Property Act (1937) (before its amendment by Madras Act 26 of 1947), Ss. 1, 3. See Hindu Law—Partition. AIR 1951 Mad 809.

——Ss. 134, 130 — Assignment of actionable claim— Effect — Assignee takes subject to all liabilities and equities of transferor. See T. P. Act (1882), S. 130. 1962 Raj L W 588.

SECTION 135-A

——S. 135-A (3)—Contract Act (1872), S. 41—Carriage of goods by sea—Partial loss—Claim of consignee satisfied by Insurance Company—Rights of insurers as subrogee — Suit for damages against carriers by consignee—Held not maintainable.

Sub-section (3) of S. 135-A deals with partial loss of goods in transit by sea and when the Insurance Company makes a full payment of the claim made by the consignee in respect of such loss, the Insurance Company, as insurer is subrogated to all the rights and remedies of the consignee as from the time of the casualty. But the insurer cannot maintain an action in his own name although there is subrogation of the claims of the insured unless there is an assignment of the claim by the insured in favour of the insurer. A I R 1957 Cal 190, Rel. on. Further, the consignee after having received the compensation for the loss from the insurers cannot again sue the carrier for recovery of damages for the loss of goods in transit. AIR 1963 S C 250 Rel. on. A I R 1964 Cal 362 (364, 365) (Pt B) (Prs 14, 17, 20).

—S. 135-A—"Policy of Marine Insurance"—Insurance Act (1938), S. 2 (13-A).

Where the Insurance Company undertook to carry the goods to the places of destination by railway, motor and lorry, etc., covering various risks including non-delivery.

Held, that the Company intended to do marine insurance business and the policies were marine insurance policies and they must be governed by the provisions of S. 135-A. (1958) 1 Cal L J 58 : 62 Cal W N 539 : (1958) 28 Com Cas (Ins) 43.

—S. 135-A (1)—Applicability.

Sub-section (1) of S. 135-A confers an independent right of suit on the assignee of a marine insurance policy.

Where all that was transferred under the letter was the right, title and interest in such of the goods as had not been delivered by the railways concerned, there was no assignment of the interest of the insured in the policies in question and the petitioner was not entitled to come under sub-s. (1) of S. 135-A. (1958) 1 Cal L J 58 : 62 Cal W N 539 : (1958) 28 Com Cas (Ins) 43.

—S. 135-A (2) and (4) — Scope of — Suit in name of insurer—Maintainability.

If an insurer is subrogated to all the rights and remedies available to the insured there is no reason why he should be denied the right or enforcing such rights and remedies by a suit. Thus an insurer who has paid for a total loss of an apportionable part of some goods carried for transit by land by a railway administration can maintain a suit in his own name against the carrier for reimbursement of the amount paid to the insured for the loss. (1958) 1 Cal L J 58 : 62 Cal W N 539 : (1958) 28 Com Cas (Ins) 43.

—S. 135-A—Marine Insurance of transit by land—Validity—(Insurance Act (1938), S. 2 (13-A).

It cannot be said that transit by land cannot be subject-matter of a marine insurance. 98 Cal L J 106 : ILR (1957) 2 Cal 649 : AIR 1957 Cal 190 (197)(Pt C) (Pr 33).

—S. 135-A—Goods insured under marine insurance partially damaged in transit — Insurer paying for partial loss — Rights of — Subrogation — No right to file suit against carriers in own name. 98 Cal L J 106: ILR (1957) 2 Cal 649 : AIR 1957 Cal 190 (197, 198) (Pt D) (Prs 33, 35, 36).

—S. 135-A—Goods insured under marine insurance partially damaged in transit—Insurer settling claim by payment in respect of damage —Subrogation—No assignment of rights under policy in favour of insurer — Insurer is not entitled to maintain suit in his own name against carrier. 1965 Ker L J 86 : 1965 Ker L T 178 : I L R (1965) 1 Ker 237 : (1965) 35 Com Cas 295 : (1965) 1 Ker L R 233 : AIR 1965 Ker 214 (215, 216) (Prs 12, 14, 18) (DB).

—S. 135-A (2), (3) — Insurer's right to sue independently of insured.

An insurer who has paid for a total loss of an apportionable part of insured goods carried by a Railway administration can maintain a suit in his own name under Sub-s. (2) against the carrier for reimbursement of the amount paid to the insured-consignee for the loss. To such a case sub-s. (3) does not apply. I L R (1958) 1 Cal 544, Rel. on : I L R 38 Cal 28 and A I R 1926 Mad 544 : Held no longer good law: A I R 1957 Cal 190, Disting. 63 Punj L R 294 : (1961) 31 Com Cas (Ins) 31 : ILR (1961) 1 Pun 271 : AIR 1961 Punj 157 (159) (Pt A) (Pr 7).

SECTION 137

● —S. 137—Railway receipt is a document of title. See Income-tax Act (1922), S. 4 (1) (a), AIR 1961 S C 426.

—S. 137—Railway receipt is mercantile document of title of goods — It is possible to transfer title in goods by mere endorsement—Shortage in delivery of goods sent by Railway—Suit for value by endorsee of Railway receipt not maintainable. See Contract Act (1872), S. 161. AIR 1954 All 747 (DB).

[Overruled in AIR 1956 All 338.]

—Ss. 137, 58—Pledge and mortgage—Distinction—Mortgagee acquires general property in thing mortgaged but pledgee has only special property — There can be mortgage or pledge of shares — Instrument of security along with blank transfers without more does not mean mortgage — (Contract Act (1872), Ss. 172, 176.) See T. P. Act (4 of 1882), S. 58. AIR 1960 Andh Pra 273 (DB).

—S. 137 — Endorsement by one of payees of pronote in favour of the other — Endorsement invalid—But creditor has right to decree on alternative remedy —Section 137, T. P. Act, held no bar. See Negotiable Instruments Act (1881), S. 51. AIR 1960 Andh. Pra 174.

—S. 137 — Transfer of promissory note otherwise than by indorsement is valid—Transfer in writing as chose in action—Suit by assignee of promissory note is maintainable. See Negotiable Instruments Act (1881), S. 46. AIR 1956 Andh 9.

[Overruled an another point in AIR 1964 S C 1526.]

—S. 137—Railway receipt endorsed to endorsee — Rights of endorsee under such railway receipt. See Sale of Goods Act (1930), S. 2 (4). AIR 1964 Cal 290 (DB).

—Ss. 137, 130, 132 — Railway Receipt — Negotiability — Fetters in Ss. 130 and 132 do not apply—Benefit can be assigned by endorsement simpliciter. 67 Cal W N 279 : AIR 1963 Cal 399 (402) (Pt C) (Pr 16).

—S. 137—Suit on assigned railway receipt — Doctrine of assignment provides cause of action. See Civil P. C. (1908), S. 20 (c). AIR 1959 Cal 563.

—S. 137—Shares—Nature of property—It is moveable property—(Companies Act 1913), S. 28) — (Sale of Goods Act (1930), S. 2 (7)). AIR 1955 N U C (Cal) 5348 (DB).

—S. 137—Negotiable Instruments Act (1881), S. 13—Sale of Goods Act (1930), S. 2 (4)—Document of title—Title to railway receipt does not pass by endorsement — Railway receipt is not a negotiable instrument. See Railways Act (1890), S. 72. ILR (1964) Guj 928 : (1964) 5 Guj L R 879 : AIR 1966 Guj 6 (c) (DB).

—S. 137 — Transfer of Negotiable Instruments — Agreement to transfer all assets and liabilities of concern — Transferee is entitled to amount due under promissory note which was in favour of transferor concern — It is unnecessary to consider the effect of Ss. 130 and 137 in such a case. See Negotiable Instruments Act (1881), S. 51. AIR 1954 Mad 820.

—S. 137—'Document of title' — Railway receipt—Assignability—Railways Act (1890), S. 72 — Sale of Goods Act (1830), S. 2 (4).

Per Hidayatullah C. J. — Whenever a new document is used to base a suit, the question arises and the Courts try to find out (a) if it is a document of title in goods, i.e., a negotiable document, or (b) whether in the ordinary course of business it is regarded as so negotiable. However, if a document has received recognition in the law as a document assignable by endorsement or delivery, the question cannot

arise. The railway receipt is so named in the Sale of Goods Act, the Transfer of Property Act, the Railways Act and the Factories Act. 1956 Nag L J 791 : 1956 M P L J 215 : AIR 1957 Nag 31 (41) (Pt B) (Pr 64) (DB).

——S. 137—Railway receipt—Mercantile document.

A railway receipt being a 'mercantile document of title to goods' the mode of assignment prescribed in S. 130 is not applicable to assignment of a contract of carriage of goods contained in a railway receipt. The assignee's rights are also not subject to equities. 1956 Nag L J 791 : 1956 M P L J 215 : AIR 1957 Nag 31 (44) (Pt E) (Pr 95) (DB).

——S. 137—Railway receipt by endorsement—Effect.

Per Tambe, J.—(Agreeing with Hidayatullah, C. J.) —The title to the railway receipt passes to the endorsee by endorsement and the endorsee has a right of action. A bona fide endorsee is not prejudiced by any defect in title of the assignor provided the endorsement is not obtained by practising fraud or forgery. The effect of S. 137, T. P. Act, is that a railway receipt is in effect clothed with all the essential characteristics of negotiability though it may not be a negotiable instrument in its strictest sense. 1956 Nag L J 791 : 1956 M P L J 215 : AIR 1957 Nag 31 (41, 46) (Pt H) (Prs 69, 107 to 109) (DB).

——Ss. 137 and 132 — Railway receipt having series of endorsements—Right of last endorsee to bring suit against railway—(Railways Act (1898), S. 72).

Per Tambe, J.—(Agreeing with Hidayatullah, C. J.) —Where there is a series of endorsements on the railway receipt the last endorsee can institute a suit in his own name, without proving that he is a holder for value, since that will be presumed unless rebutted. He can give a valid discharge to the carrier and thus sue and is not required to prove that all intervening transactions were bona fide and for value. Case law ref. 1956 Nag L J 791 : 1956 M P L J 215 : AIR 1957 Nag 31 (42, 47) (Pt I) (Prs 71, 118) (DB).

TRANSFER OF PROPERTY (AMENDMENT) SUPPLEMENTARY ACT (CENTRAL ACT 21 of 1929)

SECTION 63

■ ——S. 63 — Amending Act of 1929 does not by necessary intendment provide for retrospective effect being given to Ss. 92 and 95. See T. P. Act (4 of 1882), S. 92. AIR 1956 Mad 354 (FB).

TRANSFER OF PROPERTY AND THE INDIAN REGISTRATION (BOMBAY AMENDMENT) ACT (BOMBAY ACT 14 of 1939)

SECTION 2

● ——S. 2 — Applicability — Act did not apply to notices in respect of suits or proceedings in which property outside Greater Bombay was subject-matter in dispute. See Transfer of Property and the Indian Registration (Bombay Amendment) Act (14 of 1939), S. 3. AIR 1965 S C 414.

SECTION 3

● ——Ss. 3, 2—Applicability — Act did not apply to notices in respect of suits or proceedings in which property outside Greater Bombay was subject-matter in dispute. Anand Nivas Private Ltd. v. Anandji Kalyanji Pedhi, (1964) 5 Guj L R 111 : (1965) 1 S C A 172 : (1964) 4 S C R 892 : AIR 1965 S C 414 (421, 424, 426, 427) (Pt C) (Prs 22, 23, 32, 37, 38, 39),

TRANSFER OF PROPERTY (BOMBAY PROVISION) FOR UNIFORMITY AND AMENDMENT ACT (BOMBAY ACT 57 of 1959)

SECTION 3

● ——S. 3—Act did not apply to notices in respect of suits or proceedings in which property outside Greater Bombay was subject-matter in dispute. AIR 1965 SC 414.

TRANSFER OF SHARES

See (1) Companies Act (1956), S. 41, Sch. I, Tab. A Reg. 21.
(2) Statutory cross references under "Companies—Shares".

Application for.
See Companies Act (1956), Ss. 108, 110.

Registration of.
See Companies Act (1956), Ss. 108, 111.

Restrictions on.
See Companies Act (1956), S. 82.

TRANSFER OF SHARES AND DEBENTURES

See Companies Act (1956), S. 108.

TRANSFER OF SUIT

See (1) Civil P. C. (1908), Ss. 22, 23, 24 and 151.
(2) Letters Patent (Bom. Cal. and Mad.), Cl. 13

TRANSFER OF TERRITORY

See (1) States Reorganisation Act (1956), S. 3.
(2) Bombay Reorganisation Act (1960).

TRANSFER OF TITLE

Sale of goods, upon.
See Sale of Goods Act (1930), Ss. 28-30.

TRANSFERRED TERRITORY

Defined.
See States Reorganisation Act (1956), S. 2.

TRANSITIONAL PROVISIONS, RE. PUBLIC SERVICE

See Constitution of India, Art. 313.

TRANSLATION OF DOCUMENT

Production of, in evidence.
See Evidence Act (1872), S. 162.

TRANSLATION OF PROCEEDING IN COURT

See Civil P. C. (1908), S. 137,

TRANSMISSION MACHINERY

Defined.
See Factories Act (1948), S. 2.

TRANSMISSION OF PAPERS TO APPELLATE COURT

See Civil P. C. (1908), O. 41, R. 13.

TRANSMISSION OF RECORD TO SUPREME COURT

See Civil P. C. (1908), O. 45, R. 8.

TRANSMISSION OF SHARES

See Companies Act (1956), S. 108.

TRANSPORT

See (1) Carriage by Air Act (1934).
(2) Merchant Shipping Acts (1894), (1923) and (1958).

(3) Motor Vehicles Act (1939).
(4) Railways Act (1890).
(5) Road Transport Corporation Act (1950).

State Transport Undertaking.
See (1) Motor Vehicles Act (1939), Ss. 68A to 68I.
(2) Road Transport Corporation Act (1950).

TRANSPORTATION

Sentence of.

Commutation of.
See (1) Criminal P. C. (1898), S. 383.
(2) Penal Code (1860), S. 55.

TRANSPORT BY SEA OF EXCISABLE GOODS

See Central Excises and Salt Act (1944), S. 30.

TRANSPORT MOTOR VEHICLES

Control of.
See Motor Vehicles Act (1939), Ss. 42-68.

Defined.
See Motor Vehicles Act (1939), S. 2 (33).

TRANSPOSITION OF PARTIES

See Civil P. C. (1908), S. 107, O. 1, R. 10.

TRAP

Laying of.
See Criminal P. C. (1898), S. 161.

TRAVANCORE ABKARI ACT (4 of 1073 M. E.)

SECTION 8

——Ss. 8, 20, 26 — Mandamus cannot be issued to vacate erroneous administrative orders — Grant of licence upon wrong interpretation of statutory rule — Error of decision — Writ cannot be issued. See Constitution of India, Art. 226. **A I R 1961 Ker 318 (DB).**

SECTION 14

——S. 14 — Scope — Rules under S. 26 — Force of — Rules are not inconsistent with S. 14—Government's power to accept or reject bid—Order of Government directing resale violates Art. 14 of the Constitution — Order is liable to be quashed. See Constitution of India, Art. 14. **AIR 1960 Ker 164 (DB).**

SECTION 15

——Ss. 15 and 29 — Provisions of Travancore Act dealing with manufacture, levy of duty and issue of licences relating to medicinal preparations containing alcohol are repealed. See Medicinal and Toilet Preparations (Excise Duties) Act (1955), S. 19. **A I R 1965 Ker 135.**

SECTION 20

——S. 20 — Mandamus cannot be issued to vacate erroneous administrative orders — Grant of licence upon wrong interpretation of statutory rule — Error of decision — Writ cannot be issued. See Constitution of India, Art. 226. AIR 1961 Ker 318 (DB).

SECTION 24

——Ss. 24 and 36 — Arrears from Abkari contractor —Recovery of—Resort to provisions of T. C. Revenue Recovery Act (7 of 1951)—(T. C. Revenue Recovery Act (7 of 1951), S. 36).

Under S. 24, resort to the provisions of the T. C. Revenue Recovery Act for realising the amount due by way of arrears from an Abkari contractor is legal and where the Tahsildar conducts a sale for this purpose in the manner prescribed by S. 36 of the T. C. Act (7 of 1951), the Tahsildar does not act without jurisdiction in conducting the sale. 1958 Ker L T 1133 ; 1957 Ker L J 1095.

SECTION 26

——S. 26 — Rules under — Rr. 16, 51 being inconsistent with Rr. 33 and 141 under Central Act, namely Medicinal and Toilet Preparations (Excise Duties) Act, cannot be sustained. See Medicinal and Toilet Preparations (Excise Duties) Act (1955), S. 19. **AIR 1965 Ker 135.**

——S. 26 and R. 13 of the Abkari Rules — Statutory Rules — Rule making power vested in executive — Court cannot transfer words from their places to convey supposed intended meaning. See Interpretation of Statutes. **AIR 1961 Ker 318 (DB).**

——S. 26 — Rules under, have force of law — Rules are not inconsistent with S. 14 of Act — Power to accept or reject bid not given to Government — Order of Government directing resale violates Art. 14 of Constitution — Order is liable to be quashed. See Constitution of India, Art. 14. **A I R 1960 Ker 164 (DB).**

——S. 26 — Rules under S. 26, Travancore Abkari Act, R. 12 — Rule does not vest arbitrary power with Board of Revenue — Board not acting under rule nor declining to act — No mandamus can be issued against Board. See Constitution of India, Art. 226. AIR 1960 Ker 164 (DB).

——S. 26 (as continued by United State of Travancore and Cochin Administration and Application of Laws) Act (1125), S. 26)—Rules under, R. 46 — If mandatory—Non-compliance—Effect.

Rule 46 is mandatory and has a statutory force. The importance of the explanation of the licensee for the excesssive wastage in spirit, and of the opinion thereon of a responsible officer-in-charge, stationed at the spot, is not to be disregarded, and though the account books and registers maintained are evidentiary of the quantity used, they are not conclusive as to liability for duty on excess quantity. If the officer-in-charge has failed to demand an explanation from the licensee for excessive use of spirit, the licensee cannot be held liable for excessive wastage of spirit. 1960 Ker L T 603.

——S. 26 — Cochin Abkari Act (1 of 1077), S. 29—Rules framed on 17th January, 1953 — Rules dealing with licence fee, gallonage fee, etc. — Validity — (Constitution of India, Arts. 19 (1) (g) and 47).

Rules, dated 17th January, 1953, framed by His Highness the Rajpramukh under Travancore Abkari Act (4 of 1073) and under Cochin Abkari Act (1 of 1077) dealing with licence fee, gallonage fee and limit of quantity of liquor saleable at a time to non-licencees are ultra vires the rule making power and have the force of law as if enacted in the respective Acts. The provisions of Art. 265 of the Constitution that no tax shall be levied or collected except by authority of law are satisfied in this case as the rules, dated 17th January, 1953, constitute law within the meaning of that article.

Assuming that the freedom to practise any profession or to carry on any occupation, trade or business that the petitioners have under Cl. (1) (g) of Art. 19 extends to traffic in intoxicating liquors, the impugned rules are reasonable restrictions which could be imposed upon that freedom under Cl. (6) of that article.

All the tests mentioned in A I R 1953 Mad 476 by which the reasonableness of a restriction is measured, operate to uphold the impugned rules as the purposes of public security, public order, public health and public morality which are the ultimate objects to be achieved by prohibition and restrictions calculated to bring about a progressive reduction of the liquor traffic are steps in the right direction as they lead towards prohibition and are legitimate and necessary. ILR (1954) T C 806 : AIR 1954 Trav-Co 504 (509, 511) (Pt A) (Prs 9, 11) (DB).

——S. 26—Rules (1953) framed under, R. 8—Deposit.

The deposit is only a security and must be there so long as the right and duty of collecting gallonage fee is on the licensee and cannot be released so long as the licence or any liability of the licensee subsists. ILR (1954) T C 806 : A I R 1954 Trav-Co 504 (510) (Pt D) (Pr 10) (DB).

——S. 26 (as amended by Act (6 of 1125) — Abkari Rules under — Selection of site for liquor shop — Restriction on—Validity of — Constitution of India, Arts. 13 (2) and 19.

In testing whether the restriction imposed by Abkari Rules (given in Cochin Excise Manual, Vol. 1, page 230, Clauses 1 and 2) namely, an unfettered discretion on the statutory body constituting the Administrative Head of the Excise Department to approve or not to approve a selected site for a liquor shop it cannot be forgotten that the property concerned is the property in an Excise licence and the trade or business is trade or business under that licence. Hence the interests of general public demand that there must be a controlling voice to decide where a liquor shop shall be located. It cannot, therefore, be held that the power conferred on the Board of Revenue is an unreasonable restriction on the exercise of any fundamental right and hence void. A I R 1950 S C 211; A I R 1950 Bom 363 (FB), Rel. on. ('51) 1951 K L T 158 ; I L R (1951) Trav-Co 496: A I R 1951 Trav-Co 197 (200 to 202) (Pt C) (Prs 8, 9).

SECTION 29

——S. 29—Medicinal and Toilet Preparations (Excise Duties) Rules (1956), Rr. 33 (xi), 141—Provisions of Travancore Act dealing with manufacture, levy of duty and issue of licenses relating to medicinal preparations containing alcohol are repealed — Rules under Travancore Act, Rr. 16, 51 being inconsistent with Rr. 33 and 141 under Central Act cannot be sustained. See Medicinal and Toilet Preparations (Excise Duties) Act (1955), S. 19. AIR 1965 Ker 135.

SECTION 39

——S. 39—Scope and object—Default of person executing bail bond to appear before Abkari Inspector —Procedure to be adopted—Cr. P. Code (5 of 1898), S. 514.

There is no provision in the Travancore Abkari Regulation for the Inspector to forfeit the bond. On the other hand provision is made enabling him to forward the bond to the Magistrate having jurisdiction to try the offence against the accused and S. 39 provides that in such a case the Magistrate may proceed to compel payment of the penalty in the manner provided in the Cr. P. Code treating the default of appearance before the Inspector as if the party had defaulted to appear in a case of a bond taken before him to appear before his own Court. The procedure which the Magistrate has to follow is prescribed in S. 514, Cr. P. Code. (1965) M L J (Cr) 833 (Ker) : 1964 (2) Cri L J 93.

——S. 39—Report by Inspector under S. 39 — Proper action by Magistrate is to forfeit bail bond under S. 514, Criminal P. C.

Section 39 of the Travancore Abkari Regulation is specifically introduced to meet a case of a person executing a bond before prohibition officers and failing to appear before them, and the intention of the legislature would appear to have been that the Magistrate should proceed in the same manner and with the same power as if the default had been made by a person bailed to appear before his own Court. Consequently, where a report under S. 39 is made by an Inspector to a magistrate the proper order is the forfeiture of bail bond under S. 514, Criminal P. C. ILR 18 Mad 48, Rel. on.; AIR 1953 M B 94, Dist. 1964 Ker L J 51 : 1964 Ker L J 212 : 1964 (2) Cri L J 93.

SECTION 51

——Ss. 51 (a) and 54—Seizure of liquor — No provision in the Act or rules that liquor seized should be sent for chemical analysis — Excise Officer's opinion whether expert evidence—Evidentiary value.

There is no provision in the Travancore Abkari Act or the rules that the liquor should be sent for chemical analysis. The Excise Officers may be considered as experts on the question whether a certain liquid is illicit liquor or not. But before the Officer's opinion is accepted, the Court should ascertain the grounds on which his opinion is based so as to test it. (1965) M L J (Cri) 135 : 1962 Ker L J 9 : (1962) 1 Ker L R 145 : 1962 Ker L T 31 : ILR (1962) 1 Ker 471.

——Ss. 51 (a), 54 — Liquid whether illicit or not—Finding of Court based on Excise Officer's opinion —Liquid not chemically analysed — Finding not vitiated—Excise Officer as expert witness — Evidentiary value—Evidence Act (1872), S. 45.

The finding of a Court on the question whether a certain liquid is illicit or not, based on an Excise Officer's opinion cannot be said to be wrong for failure to chemically analyse the liquid as there is no provision in the Abkari Act or the rules thereunder that the liquor should be sent for chemical analysis. An Excise Officer is an expert on this particular question and a Court can accept it after ascertaining the grounds on which it is based. 1962 Ker L T 31 : 1962 Ker L J 9 : 1962-1 Ker L R 145 : ILR (1962) 1 Kerala 471.

SECTION 51A

——Ss. 51-A and 61—Conviction under — Confiscation of bottles and glasses — If part of punishment—'Confiscate'—If synonymous with 'forfeit'—Criminal P. C. (1898), S. 517.

A comparison of S. 61 of the Act and S. 517 of Cr. P. Code shows that confiscation is not a part of the sentence for an offence but is only one of the modes by which Courts can dispose of property which comes before it in criminal trials. Forfeiture unlike confiscation is not a mode of disposal of property coming before Courts in criminal trials but is an established form of punishment. It is recognised as such under S. 53, I. P. Code, which enumerates the difference that can be awarded under the Code. Hence to use the term 'confiscate' as synonymous with 'forfeit' is not quite correct. Where therefore, a Magistrate while awarding a sentence of fine under S. 51-A of the Act also ordered the confiscation of bottles and glasses it was held that the confiscation was not a part of the sentence and as such an appeal filed against the sentence was incompetent in view of S. 414 of Cr. P. Code. AIR 1954 All 642, Distinguished. 1961 Ker L J 125 : (1961) 1 Ker L R 223 : 1961 Ker L T 169 : ILR (1961) 1 Ker 374.

SECTION 54

——S. 54—Seizure of liquor — No provision in the Act or Rules that liquor seized should be sent for chemical analysis — Excise officer's opinion whether expert evidence—Evidentiary value. See Travancore Abkari Act (1073 M E) S. 551 (a). 1962 Ker L J 9 : (1962) 1 Ker L R 145 : 1962 Ker L T 31 : (1965) M L J (Cri) 135 : ILR (1962) 1 Ker 471.

SECTION 61

——S. 61—Conviction under—Confiscation of bottles and glasses — If part of punishment—Confiscate—If synonymous with 'forfeit'—Cr. P. Code (1898), S. 551A.

See Travancore Abkari Act (4 of 1073 ME), S. 511A. 1961 Ker L T 169 : ILR (1961) 1 Ker 374.

TRAVANCORE ABKARI RULES

RULE 13

——R. 13 — Mandamus cannot be issued to vacate erroneous administrative orders — Grant of licence upon wrong interpretation of statutory rule—Error of decision—Writ cannot be issued. See Constitution of India, Art. 226. AIR 1961 Ker 318 (DB).

RULE 73

——R. 73 — Statutory Rules — Rule-making power vested in executive — Court cannot transfer words from their places to convey supposed intended meaning. See Interpretation of Statutes — Statutory Rules. AIR 1961 Ker 318 (DB).

——R. 73 — Mandamus cannot be issued to vacate erroneous administrative orders — Grant of license upon wrong interpretation of statutory rule — Error of decision—Writ cannot be issued. See Constitution of India, Art. 226. AIR 1961 Ker 318 (DB).

TRAVANCORE AGRICULTURAL INCOME-TAX ACT (1 of 1119 M E)

SECTION 7

——S. 7 (2) (c) — Travancore Income-tax Act (23 of 1121), S. 14 (3) (c) — Immature plants — Expenses on maintenance of whether allowable.

It is impossible to include within the expression 'the expenses of cultivating the crop from which such agricultural income is derived' the expenses incurred by the assessee on the maintenance of plants which were immature and had not begun to yield. 'Such agricultural income' in the section must mean agricultural income from which the deduction is claimed and 'the expenses of cultivating the crop' must mean the expenditure on the mature trees from which that income was earned. The word 'crop' does not mean the plantation as a whole or an adventure in agriculture but the produce itself that yielded the income. For a deduction to be permissible as far as agricultural income is concerned it is not enough if the expenditure was not in the nature of capital expenditure and was in respect of the agricultural operations of the assessee during the accounting year. It must be far more intimately related—so related as to form a link in the claim of causation to the crop that earned the profits or gains which form the basis of the assessment. AIR 1921 Bom 391, Disting. ILR (1954) Trav-Co 1290 : 1955 K L T 360 : AIR 1956 Trav-Co 17 (17, 18) (Prs 3, 5) (DB).

——S. 7 (2) (c) and (g) — Permissible deduction — Expenses incurred for replantation of trees.

As regards agricultural income, both in respect of computation as also in respect of deductions, the provisions of the Travancore Agricultural Income-tax Act, 1119, constitute the sole guide which have, therefore, to be applied regardless of hardship, principles of business or any other consideration. (1869) L R 4 H L 100, Foll.

There is no place in the scheme adumbrated in the said Act, for any replantation or any expenditure in respect of such a process. The Act no doubt authorises deductions of the expenses of cultivating the crop from which agricultural income is derived. This, however, does not include the expenses of replantation. Where, therefore, an amount spent by the assessee represents the expenditure incurred for replanting a portion of the estate, a portion on which yielding trees were standing originally the amount is not a permissible deduction under S. 7. 1952 Ker L T 453 : ILR (1953) Trav-Co 221 : AIR 1953 Trav-Co 14 (16, 17) (Prs 3, 4, 5) (DB).

SECTION 10

——S. 10—Assignment for year 1120—S. 10 applies—Christian brothers cannot be treated as joint tenants with respect to their ancestral property — Assessment should be on share of income of each of co-owners — Tenancy-in-common did not lose its character, because common manager was appointed — (Travancore Income-tax Act (21 of 1121), S. 1 (3)). AIR 1955 NUC (Trav-Co) 2216 (DB).

TRAVANCORE ACRICULTURISTS RELIEF ACT (3 of 1112 M E)

See under Debt Laws.

TRAVANCORE ANCIENT MONUMENTS PRESERVATION ACT (1 of 1112 M E)

SECTION 2

● ——S. 2 — Ancient Monuments Preservation Act, 1904, S. 2 — "Ancient Monuments" — Is definition comprehensive enough to take in an archaeological site or remains, and whether the Acts apply to both ancient monuments strictly so called and to archaeological sites or remains? (Quaere), AIR 1965 S C 1514 (1517) (Pt C) (Pr 12).

SECTION 3

● ——S. 3 — Notification under — Act continues to hold the field in respect of monuments in question, even after extension of Ancient Monuments Preservation Act (7 of 1904) to Travancore Area and the passing of Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951) and the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) — The Fort Wall in question built round the Sree Padmanabhaswamy temple was a historical monument and was treated as such and was not an archaeological site for exploration and study and, therefore, the State Government was within its right to issue the impugned notification under S. 3 of the State Regulation. Joseph Pothen v. State of Kerala, 1965 Ker L T 633 : 1965 S C D 893 : (1965) 2 S C R 868 : 1965 Ker L J 660 : AIR 1965 S C 1514 (1517) (Pt B) (Pr 10).

TRAVANCORE ARBITRATION ACT (11 of 1115 M E)

PREAMBLE

——Preamble — Rules under S. 74, Travancore Co-operative Societies Act, R. 38 — Reference to single arbitrator — Concurrence of party not necessary — Statute providing for forum for adjudication—Provisions made regarding details — Subsequent statute cannot in absence of inconsistency or express terms, operate to abrogate provisions of earlier one — (Interpretation of Statutes—Later Acts)—(Civil P. C. (1908), Pre.). See Co-operative Societies — Travancore Co-operative Societies Act (5 of 1112), S. 74. AIR 1955 Trav-Co 260 (DB).

SECTION 11

——S. 11—Arbitration without intervention of Court —Award—Application under repealed provisions of O. 39, R. 20, Tr. C. P. C. for filing award in Court and passing decree thereon—Petition can be treated as a suit for passing decree in terms of award — S. 11 does not affect such right — (Arbitration Act (1940), Ss. 14 (2) and 17.)

In an arbitration without the intervention of the Court an award was made by the Arbitrator and it was accepted by all the parties. Subsequently how-

ever one of the parties raised objections to the award and thereupon the petitioner filed an application under O. 39, R 20, Tr. Civil P. C. for giving notice to the arbitrator for filing the award in Court and then passing a decree thereon. This application was made when the provisions of O. 39, Rr. 17 to 21 had been repealed by S. 3, Travancore Arbitration Act 11 of 1115. The petition was tried as a suit and at the stage of argument the defendants contended that as the petition was filed under O. 39, R. 20, C. P. C. which was repealed it was not maintainable and that under S. 11 (2) of the Arbitration Act (11 of 1115) the plaintiff had no right to approach the Court in the first instance to cause the award to be filed in Court and to enforce it without first requesting the arbitrators to file the award. The Court accepted the contention and dismissed the suit. The plaintiff appealed.

Held, that when an award is produced in Court under S. 11, the Court has only to hear objections as provided for in the subsequent sections and pass an order to have it filed in Court. No decree on the same need be passed and the award itself could be executed as if it is a decree; but the provisions in Act 11 of 1115 do not take away the rights of a party to file a suit to enforce the award, so that a decree could be passed by the Court on the basis of the award. 1947 T L R 799 and A I R 1926 Cal 938, **Rel. on.**

Virtually, the plaintiffs' petition was to have a decree passed on the award, which the Court could have done, even if it found that the petition filed quoting the repealed provisions of the Civil Procedure Code was not maintainable. The plaintiff must therefore be allowed to treat their petition as a plaint and continue the suit after paying the necessary Court-fees in the Court below. **AIR 1952 Trav-Co 540 (541) (Pr 2) (DB).**

TRAVANCORE BAR COUNCILS RULES

RULE 2

●——Rr. 2 (d) and (e), 32—Question whether particular counsel should appear in a case for a client on ground of likehood of his being a material witness—Question has to be decided by the Bar Council and not by the Court. Nesamony, A. v. Yesuvaidyan Devadasan. **1953 Ker L T 462 : ILR (1953) Trav-Co 1052 : AIR 1953 T C 575 (576) (Prs 6, 8) (SB).**

RULE 32

●——R. 32 — Question whether particular counsel should appear in a case for a client on ground of likelihood of his being a material witness — Question has to be decided by the Bar Council and not by the Court. See Travancore Bar Councils Act (7 of 1122 M E), R. 2 (d) and (e). **AIR 1953 Trav-Co 575 (SB).**

TRAVANCORE CHILD MARRIAGE RESTRAINT ACT (21 of 1116 M. E.)

SECTION 11

——S. 11 — Marriage below age prescribed by Act is not invalid — Absence of notification under S. 11 exempting such marriage makes no difference—Marriage once duly solemnised, although without consent of guardian, is valid—Plea about want of guardian's consent cannot be allowed for first time in Letters Patent Appeal.

Contravention of the provisions of the Act does not render marriage in Travancore-Cochin invalid. A marriage below the age prescribed in the Act is not rendered invalid by any of the provisions in the Act and the fact that such marriages have not been exempted by the Government by issuing a notification as provided by S. 11 has not the effect of rendering such marriages invalid. So also, a marriage once performed and solemnised is a valid marriage though it be without the consent of the guardian. When no objection about the want of guardian's consent is raised in the trial Court or in the appeal from its decision, it is to be presumed that the marriage took place with the guardian's consent, specially when it is raised after a long interval at the stage of Letters Patent Appeal. In any case, the defendant, not having raised the plea earlier, cannot be allowed to raise it for the first time at the stage of a Letters Patent Appeal. **76 Mad L W 737 : ILR (1964) 1 Mad 273 : (1964) 2 Mad L J 334 : A I R 1964 Mad 237 (238) (Pt B) (Prs 5, 6) (DB).**

TRAVANCORE CHITTIES ACT (3 of 1094 M. E.)

SECTION 27

——S. 27—Limitation Act (1908), Art. 132 — Starting point of limitation — Chitty security bond with default clause—Default — Suit to recover remaining subscriptions in one lump — Travancore Chitties Act (3 of 1094), S. 27 — Starting point of limitation, how far affected by S. 27 — Travancore Act (26 of 1120), S. 32. See Limitation Act (1908), Art. 132. 1962 Ker L J 1259.

——S. 27—Suit on hypothecation bond — Demand in writing — Proof of—Mere production of a receipt by Post Office will not amount to such proof. See Travancore Limitation Act (6 of 1100), Art. 120. AIR 1955 N U C (Trav-Co) 3465 (DB).

SECTION 28

——Ss. 28 and 36—Decree in favour of foreman against a prized subscriber for arrears of subscriptions—Decree against foreman for chitty money due to a non-prized subscriber— Attachment of the former by the subscriber decree-holder — Assigment to third party by the foreman—Voidable under S. 28.

Former F of a chitty was a debtor to a non-prized subscriber N who had obtained a decree therefor. F obtained a decree against a prized subscriber in arrears on the footing of a security bond executed by that subscriber D. F assigned it immediately to S a third party. N attached the decree so assigned to S. The heirs of S applied in execution against D and notice was served on N who opposed it. The executing Court and the appellate Courts held the assignment was without consideration but dismissed N's objections. On appeal,

Held: Under S. 36 the chitty assets of the foreman must first be applied to the chitty debts due by the foreman. The object of the provision is that the chitty assets should be made available for payment of prized and non-prized subscribers.

Section 28 (1) of Chitties Act provides the transfers of the rights of the foreman against the prized subscribers shall be voidable at the instance of a non-prized subscriber and sub-s. (2) throws on the transferee the burden of proving that such transfer was not intended to defeat and delay the claim of a non-prized subscriber.

The assignment of the assets of the chitty by the foreman F to S for no consideration, when there was a decree against him for a claim by a non-prized subscriber N is void as against N.

It is not necessary for N to file a separate suit to avoid the transfer. **1952 Ker L T 697 : AIR 1952 T C 497 (498) (Pr 2) (DB).**

SECTION 36

——S. 36—Defeating or delaying non-prized subscriber — Decree in favour of foreman against prized subscriber for arrears of subscriptions — Decree against foreman for chitty money due to a non-prized subscriber—Attachment of the former by the sub-

scriber decree-holder — Assignment to third party by foreman — Voidable under S. 28—Under S. 36 Chitty assets of the foreman must first be applied to the chitty debts due by the foreman — Object of the section is that chitty assets must be made available for payment of prized and non-prized subscribers. See Travancore Chitties Act (3 of 1094), S. 28. AIR 1952 Trav-Co 497.

TRVANCORE CHITTIES ACT (26 of 1120 M. E.)

SECTION 6

——Ss. 6 and 7 — Distinction between Ss. 6 and 7—Chitty transaction of less than hundred rupees in value — Default of foreman in obtaining licence — Liability of foreman for prize money.

Where chitty transactions to which S. 6 applies are forbidden by law, those under S. 7 are not. Hence the default of foreman in obtaining a licence to conduct the chitty under S. 7 will not secure him immunity from liability to pay prize money is a chitty of less than one hundred rupees. 1952 Ker L T 593 : AIR 1953 Trav-Co 44 (45) (Pr 3).

SECTION 7

——S. 7 — Distinction between Ss. 6 and 7 — Chitty transaction of less than hundred rupees in value — Default of foreman in obtaining licence—Liability of foreman for prize money — Default in obtaining licence will not secure him immunity from liability to pay prize money in such a case as transactions under S. 7 are not forbidden by law — (Contract Act (1872), S. 23). See Travancore Chitties Act (26 of 1120 M. E.), S. 6. AIR 1952 Trav-Co 44.

SECTION 17

——Ss. 17 (1), 19 (2) — Travancore Chitties Rules, R. 44 — Banker and customer — Foreman of chitty depositing amounts in bank — Bank undertaking to pay interest — Liquidation of bank — Foreman of chitty, whether entitled to preferential payment—Nature of relationship between banker and depositor and creditor.

The appellant, the foreman of a chitty, made certain deposits in a bank in pursuance of Ss. 17 (1) and 19 (2) of the Travancore Chitties Act, 1120. When the bank went into liquidation the question arose whether the appellant was entitled to preferential payment with regard to such deposits :

Held, that the relationship between banker and customer is a contractual one; and normally it is one of debtor and creditor with no right to any preferential payment. In order to sustain a claim for preferential payment and an abrogation of the healthy rule that equality is equity, it has to be established that the relationship was not that of a debtor and creditor. It has to be established that the bank, in a given case, was something else; for example a bailee or a trustee, and not a mere debtor to its customer. The deposits under Ss. 17 and 19 of the Travancore Chitties Act, 1120; are no doubt deposits for a special purpose. But that by itself will not sustain a claim for preferential payment. The presumption is that when a bank receives money it is intended that the bank should use the money; and the burden is on the depositor to show that the understanding was different. There is nothing on record to show that the money deposited was not intended to be used as a part of the general assets of the bank. Therefore even though the deposits were made for a special purpose, they were general deposits creating only the relationship of debtor and creditor and were not entitled to any preferential payment. The bank was neither a bailee nor a trustee. If a general deposit is properly made by a trustee in his name as trustee, the bank does not become a trustee of the money but a debtor to the trustee. The trustee becomes a creditor of the bank and holds his claim against the bank in trust for the beneficiaries of the trust. The bank is as free to use the money deposited by a trustee as it is to use any other funds which are placed on general deposit with it. Where a bank undertakes to pay interest on the deposit, it is clearly the intention of the parties that the bank should have the use of the money and that it becomes a debtor and not a trustee. 1965 Ker L J 60 : (1965) 1 Com L J 103 (Ker).

——Ss. 17 (1), 19 (2)—Deposits under—Nature of—Foreman depositing money to bank — Banks undertaking to repay debt only with Chitty — Registrar's consent — Bank does not become trustee — Banker and Customer—Trusts Act (1882), S. 94.

Deposits under S. 19 (2) are ordinary deposits in current account. If the money cannot be paid owing to the prize winner's default the foreman is bound by S. 19 to invest the money in an approved bank mentioned in the variola instead of keeping it himself so that it can be withdrawn and paid to the prize winner when the default ceases, and that the foreman is not to withdraw the money for any other purpose. The words, 'purposes other than those for which the same has been held in deposit' refer to the purposes for which the foreman holds the money in the shape of the bank deposit.

On money being invested in a bank, the relationship created between the investor and the bank is that of a mere creditor and debtor. Even if the bank knew that the depositor occupied a position akin to that of a trustee and is bound to apply the money in a particular way, the only duty cast on the bank is that it should not be a party to a breach of trust as, for example, by knowingly paying the money for a personal purpose of the depositor : A I R 1962 S C 1764, A I R 1940 Mad 178 and (1940) 2 M L J 559 : AIR 1941 Mad 48, Foll.

Deposits under S. 17 (1) are interest bearing fixed deposits in the foreman's name on the face of them no different from any ordinary fixed deposit. A fixed deposit, like any other deposit, is only a loan, although for a stated term, and like any other deposit, the relationship it creates between the depositor and the bank is, in the absence of a special arrangement whether express or implied, impressing it with the character of a trust, that of an ordinary debtor and creditor. The essence of the matter is whether the deposit is a species of trust.

Where the depositor, a foreman of a chit fund lends money to the bank and the bank at his request or at the request of the Chitty Registrar or both gives an undertaking to the Chitty Registrar that the debt will be repaid only with the Chitty Registrar's consent, the fact that the depositor gives the debt due to him as security to a third party or the bank's undertaking not to pay the depositor without the consent of a third party cannot make the bank a trustee for its creditor. There being no agreement by the bank to hold the money as an agent or stakeholder for the purpose of satisfying the Chitty security bond, the Bank does not become trustee of the depositor. (1963) 2 Com L J 51 : 1963 Ker L J 788 : (1963) 33 Com Cas 922 : 1963 Ker L T 611.

——S. 17 (1) — Bond in trust for subscribers of Chitty for proper conduct — Deposit with bank as security—It is mortgage of debt under Ss. 134, 130, T. P. Act—Transfer of Property Act (1882), Ss. 134, 130.

The bond executed by the foreman under S. 17 (1) in favour of or in trust for the subscribers of the chitty for the proper conduct thereof gives the deposit with the bank as security. It is duly stamped and amounts to a mortgage of the debt due under

the deposit as contemplated by S. 134, read with S. 130 of the Transfer of Property Act. (1963) 2 Com L J 51 : 1963 Ker L J 788 : (1963) 33 Com Cas 922 : 1963 Ker L T 611.

——S. 17 (1) — Bank running Chitty, charging its property in favour of trustees for subscribers—Bank going into liquidation—Rights of subscribers.

Where the bank running a Chitty subjected its property to a charge in favour of two of the subscribers to the Chitty to be held in trust for the subcribers to the Chitty, the Bank is in no way a trustee of the property for the Chitty subscribers but is a beneficial owner of the property. It is the two subscribers and not the Bank that are trustees. The Chitty subscribers are merely in the position of secured creditors and must work out their rights in the winding-up proceedings. 1959 Ker L T 1237 : 1960 Ker L J 143 : (1960) 30 Com Cas 135 : I L R (1960) Ker 597 : A I R 1960 Ker 243 (245) (Pt D) (Pr 9).

SECTION 19

——S. 19 (2) — Banker and Customer — Foreman of Chitty depositing amounts in Bank—Bank undertaking pay interest — Liquidation of Bank — Foreman of Chitty, whether entitled to preferential payment — Nature of relationship between banker and depositor and creditor—See Travancore Chitties Act (1120 ME) S. 17 (1). (1965) 1 Com L J 103 (Ker) : 1965 Ker L J 60.

——S. 19 (2)—Bond in trust for subscribers of Chitty for proper conduct—Deposit with Bank as security—It is mortgage of debt under Ss. 134, 130 of T. P. Act—See Travancore Chitties Act (1120 ME) S. 17 (1). (1963) 2 Com L J 51 : 1963 Ker L J 788.

SECTION 22

——Ss. 22 and 64 (1) (f) — Government Notification No. S. R. 5/3380/B (51) RD, dated 28-7-1951 is not ultra vires—What is prescribed by it is fee and not tax. AIR 1955 NUC (Trav-Co) 2211.

SECTION 32

——S. 32 (1)—Bond for future instalments executed by a prized subscriber to a chit fund — Default in payment of instalment — Suit for recovery of entire amount not governed by the Article. See Limitation Act (1908), Art. 75. AIR 1964 Ker 234.

——S. 32 (1) — Limitation Act (1908), Art. 75—Chit fund transaction—Default in subscriptions — Right to consolidated payment of all future subscriptions—Demand in writing is obligatory—Absence of demand—Presumption as to waiver of right — Suit for instalments which accrued due within three years prior to suit not barred—Provisions of Art. 75, Limitation Act compared. See Limitation Act (1908), Art. 75. 1963 Ker L T 68.

——S. 32—Limitation Act (1908), Art. 132—Starting point of limitation—Chitty security bond with default clause—Default—Suit to recover remaining subscriptions in one lump — Travancore Chitties Act (3 of 1094), S. 27 — Starting point of limitation, how far affected by S. 27. See Limitation Act (1908), Art. 132. 1962 Ker L J 1259.

SECTION 42

——Ss. 42 and 50 — Company running chitty — Winding-up—Ordinary debt due by company—Set-off against chitty debt due to it — Permissibility — (Travancore-Cochin Insolvency Act, 1955 (2 of 1956), Ss. 28, 47)—(Companies Act (1956), S. 529).

The money due from a prized subscriber to the chitty is undoubtedly a chitty asset, and on this asset the chitty creditor have a charge. It is their security, and under S. 28 (6) of the Kerala Insolvency Act the bankruptcy of the foreman does not affect their power to realise the security. Therefore the winding-up of a company which is a foreman should not affect the power and the chitty creditors are entitled to insist that the liquidator, acting on their behalf, should realise the security in full without any deduction by way of set off in respect of a liability of the company by which they are in no way bound. The ordinary creditors of the company are not entitled to have the money due to them set-off against the money due from them to the chitty. (1962) 32 Comp Cas 113 : 1959 Ker L T 1307 : 1960 Ker L J 153 : ILR (1960) Ker 158 : AIR 1960 Ker 168 (168, 169) (Prs 2, 6).

SECTION 50

——S. 50—Company being foreman of chitty—Company wound up — Ordinary debt due by foreman company cannot be set off, against chitty debt due to it — (Travancore-Cochin Insolvency Act, 1955 (2 of 1956), Ss. 28, 47)—Companies Act (1956), S. 529). See Travancore Chitties Act (26 of 1120), S. 42. AIR 1960 Ker 168.

SECTION 64

——S. 64 (1) (f) — Government Notification No. S. R/5/3380/B (51)R.D. dated 28-7-1951 — Is not ultra vires. See Travancore Chitties Act (26 of 1120 M. E.), S. 22. AIR 1955 NUC (Trav Co) 2211.

TRAVANCORE CHRISTIAN GUARDIANSHIP ACT (11 of 1116 M. E.)

PREAMBLE

——Pre—Retrospective effect—Paternal uncle.

Right to guardianship of the property of minor must be rested on an order of Court or on some personal law. A person deriving authority in this manner would be a de jure guardian. So far as the Christian Community in the Travancore State is concerned there is no written personal law or any uniform custom as regards the position of the paternal uncle as guardian before the Travancore Act 2 of 1116. The Act is not a declaratory Act and has no retrospective effect. Hence the paternal uncle is incompetent to alienate the interest of the minors and such an alienation is absolutely void. 1951 Ker L T 223 : ILR (1951) Trav Co 150 : AIR 1951 Trav Co 118 (121) (Pt B) (Pr 9) (FB).

TRAVANCORE CHRISTIAN SUCCESSION ACT (2 of 1092 M. E.)

PREAMBLE

——Pre—Syrian Christians—Succession—Daughter—Position before Travancore Christian Succession Act not different—Daughter given stridhanam—She is not entitled to any further right in property left by her mother or father when a son is alive. AIR 1965 Ker 220 (220) (Pr 3).

——Pre—Children who are entitled to succeed under the Act are only legitimate children. 1955 Ker L T 259 : AIR 1955 Trav Co 182 (183) (Pt B) (Pr 4).

——Pre—Christians formerly govered by Hindu Law—Effect of Act on their right in family property, stated. It appears to have been assumed in several decisions of the Travancore High Court that on the passing of the Act Christians who were formely governed by Hindu Law of succession acquired rights as tenants in common in family property. AIR 1955 NUC (Trav Co) 5055.

——Pre — "Stridhanam" — Definition — Right of daughter to succeed to father's property — Custom among Latin Christians of the Seven Hundred sect—Daughter not entitled to a share but only to stridhanam. See Custom—Succession. AIR 1952 T C 176 (178) (DB).

SECTION 1

——S. 1 — If repealed by S. 6 of Act (3 of 1951) — (Part B States (Laws) Act (3 of 1951), S. 6)—Succession Act (1925), S. 29 (2).

The Travancore Christian Succession Act has not been repealed by reason of the introduction of the Indian Succession Act into the Travancore-Cochin State by the Part B States (Laws) Act of 1951. ILR (1956) T C 1078 : 1956 Ker L T 559 : AIR 1957 Trav Co 1 (2) (Pt A) (Pr 6) (DB).

SECTION 3

● ——S. 3 — Christians governed by Hindu law in matters of succession — Intestacy occurring before Act — Widow succeeding — Death of widow after Act—Effect.

Where in the case of Indian Christians governed in the matter of succession by the priniples of Hindu law, intestacy has occurred long before 1092, when the Travancore-Cochin Succession Act (2 of 1092), came into force, the provisions of the Act have no application. In this case it was held that even if intestacy is considered to have occurred after the coming into force of the Act, on the death of the widow who had succeeded to the widow's estate upon the death of the last full owner before the Act and that therefore the Act applied, it would make no difference, since the person succeeding after the widow under the Act would be the same as the person who would succeed, if intestacy is considered to have occurred before the Act upon the death of the last full owner. 2 Trav L T 574 : 25 Trav L J 708, Foll. 1944 Trav L R 595, Not foll. Arumugham v. Sebastian, 1954 Ker L T 448 : ILR (1954) T C 826 : AIR 1954 Trav Co 497 (498) (Pr 3) (FB).

SECTION 14

——S. 14 — Nature of widow's interest in husband's properties—Life interest over one half of immovable property—No right of alienation—She has no right to represent estate of deceased husband.

The position of a widow under the Christian Succession Act is entirely different from the position of a widow under the Hindu Law. So far as a Hindu widow is concerned, the property becomes vested in her, and for the time being she is the full owner thereof, although her interest is characterised as a limited estate but a Christian widow, inheriting under the Christian Succession Act gets only a life interest over one-half of the immovable property left by the deceased and the right terminates on her death or remarriage. She has no right to alienate the property as such although it is open to her to transfer her life-interest. In the case of Christians there is no question of the estate of a deceased being represented by one of the legal representatives. A I R 1955 Trav-Co 20 ; A I R 1956 Trav.Co 107 and A I R 1956 Trav-Co 147, Rel. on. 1963 Ker L J 138 : 1963 Ker L T 271.

SECTION 15

——Ss. 15, 16, 17 and 24—Right of Christian widow in deceased husband's property — Right includes power of disposal — A I R 1955 Trav-Co 20 ; A I R 1956 Trav-Co 107, Disting. It is open to her to make transfers, assignments or alienations but all these rights will come to an end with her death or remarriage — Widow has saleable interest in property which could be attached and sold in execution of any decree obtained against her. 1960 Ker L T 463 : 1960 Ker L J 707 : I L R (1960) Ker 271.

SECTION 16

——S. 16 — Right of Christian widow in deceased husband's property — Right includes power of disposal. See Travancore Christian Succession Act (2 of 1092), S. 15. I L R (1960) Ker 271.

SECTION 17

——S. 17 — Right of Christian widow in deceased husband's property — Right includes power of disposal. See Travancore Christian Succession Act (2 of 1092), S. 15. 1960 Ker L J 707 : I L R (1960) Ker 271.

● ——Ss. 17, 19, 24, 25 and 30 — Roman Catholic Christians—Succession.

Sections 17 and 19 of the Christian Succession Act read together show that the husband is a legal heir of his deceased wife and that he would be entitled to a one-half share of the wife's properties. Section 25 prescribes that the residue will be divided among the heirs of the different groups mentioned there according to the preference laid down in the section. The limitation that the wife or the husband inheriting the other spouse's properties shall only have a life interest is provided in S. 24, but that section is by S. 30, specifically not made applicable to the Roman Catholic Christians of the Latin Rite inhabiting the taluks mentioned in the section. While the husband was therefore entitled absolutely to a one-half share the other half share alone devolved on other heirs. Prakasi Gomez v. Francis Vitalis Periera, 1958 Ker L J 1022 : 1958 Ker L T 962 : A I R 1959 Ker 87 (88) (Pr 4) (FB).

——S. 17 — Intestate succession — Original owner dying leaving behind widow and plaintiff as heir—Right of heir to share on death or re-marriage of widow—Nature of—Alienation by mother as guardian of plaintiff—Setting aside — Limitation — (T. P. Act (1882), S. 19). See Limitation Act (1908), Art. 44. A I R 1956 Trav-Co 107 (DB).

——Ss. 17 and 24—Widow succeeding to intestate—Reversioners after her death—Position of — Heirs of last owner take vested interest — Position under Hindu Law discussed—(Hindu Law—Reversioners) —(Hindu Law—Widow's estate).

Under the Hindu Law, a reversioner cannot be said to have a vested right in the property taken by the widow of the last owner. The right of a reversionary heir expectant on the death of a Hindu widow is a 'spes successionis' and is not transferable or attachable property. A widow's estate under the Hindu Law is not a mere life estate. The widow is the owner of the property inherited by her, subject to certain restrictions on alienation and subject to its devolving upon the next heir of the last full owner upon her death. The whole estate is for the time vested in her, and she represents it completely. Case law Ref.

But the position of a widow under the Travancore Christians Succession Act is entirely different. Under S. 24 of the Act what the widow gets is only a life interest terminable at death or remarriage. She can only enjoy the property till her death or marriage. She has absolutely no power to alienate the property. In no sense, can she be said to be the owner of the property.

The persons who take the property on the termination of the life interest of the widow are those heirs of the original owner who are entitled to succeed to the estate on his death and not those who will be entitled to succeed to the estate at the time of the termination of the widow's life interest. This means that those who are the heirs of the original owner at the time of his death get a vested interest in the property subject to the life estate taken by the widow. If one of such heirs dies before the termination of the widow's life estate his right will devolve on his heirs. The right of a person who succeeds to an estate subject to a life interest created in favour of another is clearly not a mere 'spes successionis'. It is a vested interest and is transferable property. It is property which is capable of being attached and sold

in execution of a decree. When the widow dies her life interest in the properties terminate and the auction purchasers become the full owners of the properties. I L R (1954) Trav-Co 442 : A I R 1955 Trav-Co 20 (22, 23) (Prs 6, 7, 8).

SECTION 24

——S. 24 — Right of Christian widow in deceased husband's property — Right includes power of disposal. See Travancore Christian Succession Act (2 of 1092), S. 15. **I L R (1960) Ker 271.**

● ——S. 24—Roman Catholic Christians—Succession —Limitation on spouse's right to inherit the other. See Travancore Christian Succession Act (2 of 1092), S. 17. **A I R 1959 Ker 87 (FB).**

——S. 24 — Intestate succession — Original owner dying leaving behind widow and plaintiff as heir— Right of heir to share on death or re-marriage of widow—Nature of—Alienation by mother as guardian of plaintiff—Setting aside — Limitation — (T. P. Act (1882), S. 19). See Limitation Act (1908), Art. 44. **A I R 1956 Trav-Co 107 (DB).**

——S. 24—Widow succeeding to intestate — Reversioners after her death — Position of — Heirs of last owner take vested interest — Position under Hindu law discussed. See Travancore Christian Succession Act (2 of 1092), S. 17. **A I R 1955 Trav-Co 20.**

SECTION 25

● ——S. 25—Roman Catholic Christians—Succession — Residue — Division of, among heirs of different groups. See Travancore Christian Succession Act (2 of 1092), S. 17. **AIR 1959 Ker 87 (FB).**

——S. 25, Group 3 and S. 29 — Brother of deceased existing—Sister's sons—Right of succession.

Under the Travancore Christian Succession Act the sister of a deceased person is not his heir when he has left behind a brother. Accordingly in such a circumstance the sister's sons are not entitled to claim any share in the estate of their deceased maternal uncle. **I L R (1956) Trav-Co 1078 : 1956 Ker L T 559 : AIR 1957 Trav-Co 1 (2) (Pt B) (Pr 7) (DB).**

——Ss. 25 and 2—Applicability of Act — Hindu is entitled to succeed his Christian brother.

The Travancore Christian Succession Act applies to all cases of intestate succession to the property of an Indian Christian irrespective of the question whether the person who claims to succeed to the estate is a Christian or not. The fact that the Hindu Law disqualifies a Christian to inherit the property of a Hindu is no reason why a Hindu should not inherit the property of a Christian under the Christian Succession Act if that Act does not disqualify a Hindu from so inheriting. In deciding that question one ought not to be influenced by consideration of mutuality or reciprocity of the law. Thus, a Hindu Nadar, is entitled to succeed to the estate of his Christian brother who died intestate after the coming into force of the Travancore Christian Succession Act. (1944) T L R 595 (FB); 9 Mad 467, Rel. on; **1956 Ker L T 632 : I L R (1956) Trav-Co 1085.**

——S. 25—Christian dying intestate—His Hindu brother is entitled to inherit. **AIR 1955 N U C (Trav-Co) 1160.**

SECTION 29

——S. 29—Brother of deceased existing—Sister's sons cannot succeed. See Travancore Christian Succession Act (2 of 1092), S. 25, Group 3. **AIR 1957 Trav-Co 1 (DB).**

SECTION 30

■ ——S. 30—Scope of — Custom of male and female sharing equally in intestate's properties — Essentials to be proved.

What S. 30 does is to grant an immunity from the operation of Ss. 24, 28 and 29 to all Roman Catholic Christians of the Latin Rite according to the customary usage among whom the male and female heirs of an intestate share equally in the property of the intestate. It follows that in order to obtain the immunity it is not enough if the plaintiff proves that she is a Roman Catholic Christian of the Latin Rite; she must also establish that she belongs to a class of Roman Catholic Christians of the Latin Rite among whom the usage specified does obtain. Residence in one of the taluks specifically mentioned in the section is not essential to obtain the immunity provided by the section. The words 'and other taluks' show that residence in any of the taluks of Travancore State will suffice. A. S. No. 381 of 1959 (Kerala), Approved. Kesava Kurup Kunjupillai Kurup v. Sebestian Eluprasya Fernandez. **1963 Ker L J 675: 1963 Ker L T 737; ILR (1963) 2 Ker 353 : AIR 1963 Ker 365 (368) (Pr 8) (FB).**

——S. 30—Applicability of Act to succession opened earlier — Roman Catholics of Latin Rite in Quilon — Succession before enactment of Act governed by custom—Daughters of Roman Catholics of Latin Rite paid Stridhanam of at the time of marriage — Female heirs of an intestate — Share equally with sons in father's property according to Custom (Travancore)— Succession. 30 T L J 470, Foll ; 13 T L R 215; 6 T L R 26, Not foll. **1960 Ker L J 1453 : 1960 Ker L T 1134.**

● ——S. 30—Roman Catholic Christians—Succession —Makes S. 24 inapplicable to Roman Catholic Christians of Latin Rites inhabiting the taluks mentioned in the section. See Travancore Charistian Succession Act (2 of 1092), S. 17. **AIR 1959 Ker 87 (FB).**

——S. 30—Applicability—Latin Christians of Quilon Taluk — Male and female heirs share equally — (Custom—Travancore-Cochin — Succession) — (Civil P. C. (1908), O. 6, R. 17).

Section 30 expressly recognises the customary usage among certain classes of the Roman Catholic Christians of the Latin rite in the taluks of Karunagapally, Quilon, Chirayinkil, Trivandrum and Nayyattinkara, of male and female heirs sharing equally the properties of the intestate and directs that nothing in the provisions of the Christian Succession Act relating to intestate succession should be deemed to affect the said custom.

Where therefore a suit for redemption brought by a purchaser of equity of redemption from a son of a Latin Christian female mortgagor was dismissed by the trial Court on the ground that according to the custom the plaintiff's transferor was not entitled to succeed to the assets of his mother, and at the appellate stage the plaintiff applied for leave to amend the plaint in order to convert the suit into one for partition and redemption of one-half of the plaint property.

Held, that the parties to the suit being Latin Catholic Christians living in Quilon Taluk, the amendment should have been allowed. **1956 Ker L T 289.**

——S. 30—Applicability.

Section 30 does not apply to all Latin Christians in Travancore. It applies only to certain classes of Latin Christians. **A I R 1952 Trav-Co 176 (178) (Pt C) (Pr 11) (DB).**

TRAVANCORE CINEMATOGRAPH ACT (1 of 1102 M. E.)

SECTION 8

——S. 8—Rules—S. (ii-A), R. 1 (1) (3)—Shortest route along public road or public lane — (General Clauses Act (1897), S. 11) — (Travancore-Cochin Interpretation and General Clauses Act (7 of 1125), S. 10).

Where there are four routes and routes I and IV exceed a mile in length and routes II and III are both less than a mile in length but are essentially amphibian in character it is impossible to consider the latter as routes along a public road or a public lane. Only routes I and IV need be considered. 1953 Ker L T 419 : A I R 1953 Trav-Co 298 (299) (Prs 4, 5, 7) (DB).

TRAVANCORE CIVIL COURTS ACT
(2 of 1084 M. E.)

See also Travancore-Cochin Civil Courts Act (22 of 1951).

SECTION 9

—Ss. 9 and 10 — Suit validly instituted in District Court — Plaint returned on the ground of pecuniary jurisdiction for presentation to Munsiff's Court — No question of suit being barred by limitation on the date of presentation to Munsiff's Court can arise. See Civil P. C. (1908), S. 15. AIR 1964 Ker 314.

SECTION 10

—S. 10—Suit validly instituted in District Court—Plaint returned on the ground of pecuniary jurisdiction for presentation to Munsiff's Court — No question of suit being barred by limitation on the date of presentation to Munsiff's Court can arise. See Civil P. C. (1908), S. 15. AIR 1964 Ker 314.

SECTION 12

—S. 12—Entertainment of claims under Rs. 100 as original suits—S. 33 of Tranvancore Act 5 of 1071 does not expressly prohibit entertaining such claims as original suits — It lays down summary procedure for their recovery — Exercise of ordinary jurisdiction in respect of such claims is a mere irregularity. See Tenancy Laws—Travancore Jenmi and Kudiyan Act (5 of 1071), S. 33. AIR 1952 Trav. Co 439 (DB).

SECTION 14

—S. 14 (d) — Application for attachment of immovable property — No affidavit or verified petition as to non-availability of personal property — Effect on attachment and sale—(Civil P. C. (1908), O. 21, R. 90).

Section 14 (d) of the Civil Courts Act (2 of 1084) requires that the Court must, before issuing process against immovable property, be satisfied that the judgment-debtor under a small cause decree had no personal property which can be proceeded against. The Court shall in all such cases record in its own hand-writing its reasons for doing so and in no case shall such execution be allowed unless the decree-holder supports his application by a verified statement as is provided for in the case of plaints under the Code of Civil Procedure. It may be that an affidavit of the decree-holder may be enough and a verified petition might not be essential. It may further be that a specific order of Court granting sanction to attach may not be necessary. But it is essential that the Court should be satisfied that the judgment-debtor has no sufficient personal property to satisfy the decree. 1957 Ker L T 174 : ILR (1957) Ker 267 : A I R 1957 Ker 74 (75) (Pr 4).

SECTION 18

● —S. 18—Custom or usage modifying law pleaded—Principle to be followed—Sree Bandara Chetties in Trivandrum being Hindus are governed by Hindu Mitakshara law unaffected by custom in matters of inheritance and succession.

The principle to be followed when a custom or usage modifying the law applicable to the parties is pleaded is that such custom or usage should be established to be ancient and invariable by evidence. It is only by means of such evidence that the Courts can be assured of its existence and that it possesses the conditions of antiquity and certainty on which alone its legal title to recognition depends. 14 Moo Ind App 585, Followed.

Held, after considering the evidence and cases relied on by the plaintiffs that the custom pleaded by the plaintiffs had not been proved and therefore, the parties to the case being Hindus were governed by Hindu Mitakshara law, by virtue of S. 18, Travancore Civil Courts Act. 1960 Ker L T 1195 : ILR (1960) Ker 1366 : A I R 1961 Ker 149 (152, 153) (Prs 10, 14) (FB).

TRAVANCORE CIVIL COURTS GUIDE
(1099 M E.)

See under High Court Rules and Orders.

TRAVANCORE CIVIL PROCEDURE CODE
(8 of 1100 ME)

See also Civil Procedure Code (5 of 1908)

PREAMBLE

—Pre.—Scope—Retrospective effect.

The rules contained in Rules 104 and 105 of O. 21 were provisions regulating procedure. Hence they can have retrospective effect and will govern all pending proceedings, 1958 Ker L T 379.

SECTION 8

—S. 8 (as amended by Act (25 of 1121))—Retrospective effect.

The amendment of the section has not in any way destroyed or curtailed the plaintiff's rights under the decree. His right to realise the decree amount from the judgment-debtor and his properties remains unaffected. But a change in the procedure to be followed in the matter of executing the decree has been affected by S. 8 as amended by Act 25 of 1121). It is a well-recognised principle that such changes in the law of procedure are retrospective in effect. Consistent with this principle it has to be held that the procedure prescribed by S. 8 as amended is applicable not only to proceedings in execution started after the amended section came into force but also to the execution proceedings which were initiated prior to the amendment of the section and which were pending on the date when the amendment came inte force. The Court could proceed with any application in furtherance of execution only if the required sanction was also produced along with the application. But the Court is not justified in totally rejecting the proclamation schedule filed by the decree-holder. The new procedure insisting on the production of Government sanction along with the application to proceed in execution against kandukrishy lands was brought into force during the pendency of the execution proceedings started in accordance with the procedure that was till then in force. In such a situation the decree-holder should have been allowed a reasonable time to obtain and produce the Government sanction as required by S. 8 and the case should have been adjourned for that purpose. The Travancore Civil Procedure Code has now been replaced by the Indian Civil Procedure Code which does not contain any provision similar to that contained in S. 8 of the Travancore Code. Thus the decree-holder is now entitled to proclaim and sell the attached properties for realising the decree amount due to him by following the procedure prescribed by the Indian Code and he is not obliged to produce any Government sanction in respect of kandukrishy lands. The judgment-debtor is not in any way prejudiced by the new situation brought about by the Indian Civil Procedure Code having been made applicable to the State of

Travancore. **A I R 1952 Trav-Co 357 (358) (Pr 2) (DB).**

SECTION 31

——S. 31—**Accounting between mortgagor and mortgagee.**

Section 31 cannot be applied in matter of accounting between mortgagor and mortgagee. 21 Bom 815, Ref. **A I R 1952 Trav-Co 552 (553, 554) (Pt D) (Pr 7) (DB).**

TRAVANCORE CIVIL PROCEDURE CODE (4 of 1010 M E)

SECTION 21

——S. 21—Interest - Decree directing future interest passed when S. 4 of Act 1010 was in force — Decree-holder cannot realise towards future interest after date of decree an amount which is more than a moiety of the principal. 21 T L J 1033 and 24 T L J 388, Rel. on. **('50) 1950 Trav-Co L R 437 (DB).**

SECTION 31

——S. 31 — **Hypothecation bond containing stipulation that arrears of interest will be treated as principal and interest calculated thereon — Stipulation should not be treated as one for compound interest.**

Plaintiffs cannot take advantrge of a provision that arrears of interest will also be treated as principal carrying interest, contained in the bond, so as to claim compound interest which is prohibited under law. No doubt, the parties are at liberty to enter into a contract that the interest due at the end of each year would be treated as a separate principal by itself carrying further interest at the stipulated rate. In such a case the amount due by way of arrears of interest for each year would be treated as a fresh loan. The necessary consequence is that the interest due on such amounts also will have to be limited to a moiety up to the date of the suit as per S. 31, Travancore Civil P. C. **1950 Ker L T 497 : A I R 1951 Trav-Co 39 (Pt A) (Pr 2).**

——S. 31—**Interest charged on interest—Not allowed.**

There is no justification at all to strain the wording of S. 31 so as to cover cases of claims for interest on interest also. To do so would be clearly going against the statutory limitation imposed by the section. In the absence of a clear stipulation to treat the arrears of interest as principal amount, a mere stipulation in a bond that in case of default to pay up the interest on the due date such interest should also carry further interest, does not amount to an agreement between the parties to treat the defaulted interest as a principal amount by itself. The arrears still remain the arrears of interest only and there being only one principal amount, interest on that amount alone can be allowed upto one half of it upto the date of suit under S. 31. No interest can be allowed on the arrears of interest also. **('51) 1951 Ker L Tim 382 : ILR (1951) Trav-Co 272 (DB).**

TRAVANCORE-COCHIN ADAPTATION AND APPLICATION OF LAWS ORDER (1125 M.E.) (1949).

PREAMBLE

——Preamble — Scope — **If valid and in force after 26-1-1950 — Power of Government to issue notifications under State laws after 26-1-1950, referring to order and without reference to Adaptation of Laws Order, 1950 — Constitution of India, Arts. 366 (10) and 372 (1).**

The Travancore-Cochin Adaptation and Application of Laws Order, 1125, has not become ineffective, but is still good law, after 26-1-1950, as an existing "State law" in view of Art. 372 (1) of the Constitution of India which came into force on 26-1-1950. It is an existing State law within the meaning of Art. 366 (10) of the Constitution and R. 2 (1) of the Adaptation of Laws Order, 1950. These provisions give sufficient authority to the Government of Travancore-Cochin State to issue Notifications, Orders, etc, as they were doing before, e. g., under the Salt Act. There is therefore, no legal impediment, after 26-1-1950 to the State Government issuing the Notifications as before; the omission to refer expressly to the Adaptation of Laws Order, 1950, and the reference to the Order of 1125 in the Notifications, cannot render the said notifications invalid, if they are otherwise valid. **1950 K L T 159 : 1950 T C L R 162 : AIR 1952 Trav-Co 14 (19) (Pr 18).**

TRAVANCORE-COCHIN ADMINISTRATION AND APPLICATION OF LAWS ACT (6 of 1125 ME) (1949)

SECTION 2

——S. 2 — Existing law of Cochin — Service Regulation and Standing Orders of Cochin — Violation of — Effect — Service Regulation and Standing Orders being no more than executive, violation thereof cannot be corrected under Art. 226 — Interference under Art. 226. See Constitution of India, Art. 226. **AIR 1958 Kerala 79 (DB).**

SECTION 6

——S. 6 — "District Court" in S. 108, Cochin Civil P. C. includes "District Court" in erstwhile Travancore State in view of Ss. 6 and 9 of United State of Travancore and Cochin Administration and Application of Laws Act. See Civil P. C. (1908), S. 136. **AIR 1952 Trav-Co 545 (DB).**

SECTION 9

——S. 9 — "District Court" in S. 108, Cochin Civil P. C. includes "District Court" in erstwhile Travancore State in view of Ss 6 and 9 of United State of Travancore and Cochin Administration and Application of Laws Act. See Civil P. C. (1908), S. 136. **AIR 1952 Trav-Co 545 (DB).**

TRAVANCORE-COCHIN ADMINISTRATION AND APPLICATION OF LAWS ORDINANCE (1 of 1124 ME) (1949)

PREAMBLE

● ——Preamble—Existing law—Travancore Taxation on Income (Investigation Commission) Act (14 of 1124), S. 1 (3) came into force at once and hence the Act was an existing law from the date of its passing right upto 1-7-1949 and was consequently continued by the ordinance. Thangal Kunju Musaliar v. Venkatachalam Patti. **29 I T R 349 : 1956 S C A 259 : 1956 S C J 323 : (1955) 2 S C R 1196 : AIR 1956 S C 246 (258) (Pt C) (Pr 38).**

SECTION 2

● ——S. 2 (b) - Commencement of Travancore Taxation on Income (Investigation Commission) Act — Existing law—Travancore Act 1 of 1124 S. 1 (3) will be an existing law coming within definition in S. 2 (b) of the Ordinance. See Travancore Taxation on Income (Investigation Commission) Act (14 of 1124), S. 1 (3). **AIR 1954 Trav-Co 131 (FB).**

SECTION 3

● ——S. 3 (1) — **'Existing law'—Travancore Taxation on Income (Investigation Commission) Act (14 of 1124) was existing law for S. 3 (1).**

By Ordinance No. 1 of 1124, subsequently re-enacted by Act (6 of 1125), the existing laws of Travancore were continued in force in the territory of the erstwhile State. Admittedly, the Travancore Investi-

gation Act, 1124 received the Royal assent on 7th March, 1949 and was published in the Gazette, dated 15th March, 1949, as such it became law of Travancore in March, 1949, even though by S. 1 (3) of the Act its operation was deferred to a date to be appointed by the Government by notification in the Gazette which came to be only on 22nd July, 1949. If a particular enactment was on the statute book before 1st July 1949 (the date on which Act 1 of 1124 came into force) it has to be regarded as 'existing law' on that date, unless it has been abrogated in the meanwhile. Mohammad Abdul Kader v. Commr. of I. T., **ILR (1961) 1 Ker 517 : 1961 Ker L J 529 : 1961 Ker L T 558 : AIR 1962 Ker 38 (40) (Pt A) (Pr 6) (FB).**

● —S. 3 (1)—Commencement of Travancore Taxation on Income (Investigation Commission) Act—Existing law—S. 1 (3) of Travancore Act 1 of 1124 was an existing law within the meaning of that term in S. 2(b) and it will have its existence continued under the provisions of S. 3 (1) of the Ordinance and will have sufficient potency to bring rest of the enactment in force on 22-7-1949 when the notification was issued by T. C. Government. See Travancore Taxation on Income (Investigation Commission) Act (14 of 1124), S. 1 (3). **AIR 1954 Trav-Co 131 (FB).**

TRAVANCORE-COCHIN AGRICULTURAL INCOME-TAX ACT (22 of 1950)

PREAMBLE

—**Preamble** — Tax on income from cultivation of tobacco—Not excise duty—Levy of tax is not invalid. See Constitution of India, Sch. 7, List 1, Entry 84. **AIR 1961 Ker 111 (DB).**

—**Preamble — Income for 1126-ME — Assessable under Travancore Income-tax Act (23 of 1121).**

The assessment of the income for 1126 (accounting period 1125-M.E) is governed by the Travancore Income-tax Act, 23 of 1121 and not by the Travancore Cochin Agricultural Income-tax Act, 1950. AIR 1959 Ker 279, Foll. **1959 Ker L R 464 : 1959 Ker L J 537 : 1959 Ker L T 626.**

SECTION 1

● —S. 1—(as amended by Act (8 of 1957) — Scope and force of. See Constitution of India, Art. 372 (3) (b). **AIR 1959 Ker 182 (FB).**

SECTION 2

—**S. 2 (a) (1) — Income-tax Act (1922), S. 2 (1) (e) —Agricultural lands 'assessed to land revenue'— Lands in respect of which royalty cess is payable are such lands — Rent or revenue derived from such lands is agricultural income — Constitution of India, Art. 366 (1)—(Constitution of India, Art. 366 (1).)**

Agricultural lands, in respect of which quit rent and royalty are payable under the Settlement patta, are not tax-free lands and they should be considered as assessed to land revenue, as royalty cess is an item of land revenue. Any rent or revenue derived from such lands will therefore be liable to agricultural income-tax under the Act. The Travancore Act is a post-Constitution enactment. Therefore by virtue of Art. 366 (1) of the Constitution the words, 'and is either assessed to land revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such' in S. 2 (1) (e) of the Indian Income-tax Act, 1922, must be held to be implicit in the definition of 'agricultural income' in S. 2 (a) (1) of the Travancore Act : 1960 K L J 517, AIR 1961 S C 487 : 1961 S C J 495, Rel. on. **(1963) 48 I T R 339 (Ker).**

● —**S. 2 (10) (as amended by Act 8 of 1957) — Necessity of existence of taxable territory during whole of previous year — Malabar becoming part of Kerala on 1-11-1956—Act extended to Malabar with effect from 1-4 1957—Petitioners required to file returns for financial year 1957-58 showing agricultural income derived during previous years ending on 31-3-1957 — Legality of order — Theory of territorial nexus** — See Travancore Cochin Agricultural Income-tax Act (22 of 1950), S. 3. **AIR 1959 Ker 182 (FB).**

● —**S. 2 (kk) (as amended by Act 8 of 1957) — Scheme of Act—Assessment of tax of Malabar Nambudiri family governed by Madras Nambudiri Act (21 of 1933) — Assessment of such families under S. 3 (4) is not in anyway wanting in validity.** See Travancore-Cochin Agricultural Income-tax Act (22 of 1950), S. 3 (4). **AIR 1959 Ker 182 (FB).**

—**Ss. 2 (a), 5 (j) and (n) (i) — Applicability — Amount spent on upkeep and maintenance of immature rubber plants—Not a permissible deduction.**

It is impossible to say that the amounts spent on the upkeep and maintenance of the immature rubber plants were laid out or expended 'for the purpose of deriving the agricultural income', much less that they were laid out or expended 'wholly and exclusively' 'for that purpose'. 'The agricultural income', in the context, can only mean the agricultural income obtained in the accounting year concerned and not the agricultural income of any other period. The fact that there is a provision like S. 5 (n) (i) is no reason to depart from the plain meaning of a provision like S. 5 (j) of the Act. Therefore under the Travancore Cochin Agricultural Income Tax Act in calculating the assessable agricultural income of a rubber estate already planted and containing both mature yielding rubber trees and also immature rubber plants which have not come into bearing, the annual expenses incurred for the upkeep and maintenance of such rubber plants, are not a permissible deduction. 1958 Ker L J 33 : I L R (1958) Ker 308 : (1958) Ker L T 298.

[Reversed in AIR 1961 SC 604].

SECTION 2-A

● —**S. 2-A (as amended by Kerala Agricultural Income-tax (Amendment) Act (11 of 1959)) — 'Previous year' defined for Madras area merged in Kerala State — Constitutional validity—Constitution of India, 1950, Art. 14, if violated.**

Under the Travancore-Cochin Agricultural Income-tax Act, 1950, the basis of assessment for any year is the agricultural income of the 'previous year'. With effect from 1st November, 1956, the said Act was extended to the Madras areas of Kasaragod Taluk and Malabar District, which were added to the Travancore Cochin area under the State Reorganization Act, 1956, so as to form the State of Kerala. In a petition moved by certain assessees, the Kerala High Court held that the extension of the Act to the Madras areas from 1st November, 1956 onwards did not authorise assessments of agricultural income accruing in that area for the assessment year 1957-58, because no tax can be levied for the period before 1st November, 1956 and even the period from 1st November, 1956 to 31st March, 1957, being less than 12 months, cannot serve as the "previous year" for that assessment year. The agricultural Income-tax (Amendment) Ordinance II of 1959 was thereupon promulgated which was replaced by the Agricultural Income-tax (Amendment) Act, 1959, for charging agricultural income-tax on income accruing in the Madras area from 1st November, 1956 till 31st March, 1958 or at the option of the assessee, from 1st November, 1956 till such date, before 31st March, 1958, to which the assessee's accounts are made up. The entire total agricultural income of such previous year was to be brought to tax in the assessment year

1958-59, but at the rates applicable to the average proportionate income of 12 months out of such previous year.

The petitioner held lands in Kasaragod Taluk in the Madras area, deriving agicultural income. The Agricultural Income-tax Officer assessed the petitioner's agricultural income for the assessment year 1958-59, relevant to the previous year 1st November, 1956 to 31st March, 1958 at Rs. 87, 745-36, demanding a tax of Rs. 21,920-41, the average net annual income rates provided by S. 2-A of the Act. The petitioner challenged the validity of the assessment on the ground that the said section offends Art. 14 of the Constitution.

Held, that the classification is founded on an intelligible differentia between the assessees of the two parts of the Kerala State, which originated from historical reasons. The said differences have rational relationship to the object of the amending Act, which was not to discriminate against the agriculturists of the Madras area, but to bring them in line with agriculturists from the rest of the Kerala State. The assessees of the Madras area under the Act formed one class and S. 2 A applies to all of them. The fact that in the case of one of the crops the assessees in the Malabar area harvested earlier cannot be a ground for holding that the law has made an unjust discrimination between persons belonging to the same class, but that is due only to the fortuitous circumstance of some assessees gathering crops earlier than others It cannot be said that the Legislature has arbitrarily, selected the most advantageous period for the purpose of fixing the rate of taxation. The Court cannot, for obvious reasons, meticulously scrutinize the impact of the tax burden on different persons or interests. Where there is more than one method of assessing tax and the Legislature selects one out of them, the Court will not strike down the law on the ground that the legislature should have adopted another method, which, in the opinion of the Court is more reasonable, unless the Court is convinced that the method adopted is capricious, fanciful, arbitrary or clearly unjust.

The impugned section is a temporary provision intended to apply only for one year to tide over a difficult situation brought about by the reorganisation of States. The Legislature has selected one of the many methods open to it, and though the method selected may not be as good as others, it is not liable to be struck down as unreasonable. Khandige Sham Bhat v. The Agricultural Income-tax Officer, Kasaragod. (1963) 3 S C R 809 : (1963) 1 S C J 140 : (1963) 1 I T J 103 : (1963) 48 I T R (SC) 21: (1963) Ker L J 196 : AIR 1963 SC 591 (595 to 598) (Pt B) (Prs 9 to 13).

SECTION 3

——S. 3 (4)—Charge of super-tax — S. 3 (4) applies. See T. C. Agricultural Income-tax Act (22 of 1950), S. 58. ILR (1963) 2 Ker 8.

● ——Ss. 3 and 4 and 2 (10)—Applicability—Malabar becoming part of Kerala on 1-11-1956—Act extended to Malabar with effect from 1-4 1957 — Person required to file returns for financial year 1957-58 showing agricultural income derived during previous year ending on 31-3-1957 — Legality — Theory of territorial nexus—(Constitution of India, Art. 245).

A necessary condition for the levy of tax for the financial year commencing with 1-4 1957 must be that the taxable territory for the purpose of the Act was in being during the whole of previous year. (1955) 28 I T R 386 (Orissa), Rel. on.

The former Malabar District was disintegrated from the Madras State and became under the States Reorganisation Act (1956) a part of Kerala only as and from 1-11-1956. The Travancore Cochin Agricultural Income Tax Act, (1950) as amended by Act, VIII of 1957, had been extended on 6 8-1957 to the whole of Kerala including the former Malabar District but with effect from the 1st April 1957. The Income-tax Officers concerned required the petitioners to include in their returns for the financial year 1957-58 their agricultural income derived from land situated in Malabar and received by them during their previous year i.e, the year ending on 31-3-1957 or on any day anterior to it but within that year as the case may be. The petitioners raised the question as to whether the Travancore Cochin Agricultural Income-Tax Act, 1950, as amended by Act 8 of 1957, has effectively and validly authorised the levy of agricultural income-tax for the assessment year 1957-58 on the income derived from land situated in Malabar and received by the petitioners during the previous year.

Held, (i) that the general principle was well settled that a territorial nexus or connection may be enough to save extra-territorial legislation. However, the test of territorial nexus should be satisfied in respect of every year for which the taxation is proposed. So understood there would be no territorial connection established in this case unless the statutory test laid down in S. 4 of the Act was satisfied by the situation within the State and during the year concerned of the land yielding the income sought to be assessed. In fact the fetter of extra-territoriality could never be got over because the legislation here was in essence territorial. A I R 1957 S C 699 and AIR 1948 P C 118, Rel. on. (ii) that even otherwise the period was less than the 12 months required to constitute a previous year under the definition in S. 2 (o) of the Act and no assessments under the Act could be validly had, for the income during such period. (iii) that the Act as made operative from 1-4-1957 purported to levy for the first assessment year under it, tax on income which was foreign both as derived and as received. This certainly was overstepping the limits of extra-terrioriality and the tax must to that extent be bad. (1945) 90 Law Ed. 116, Disting. Ananthanarayana Iyer v. Agricultural Income Tax and Sales Tax Officer. 1958 Ker L T 1144 : 1958 Ker L J 1286 : ILR (1959) Ker 125 : 1959 Ker L R 1 : A I R 1959 Ker 182 (186 to 189) (Pt B) (Prs 10, 16, 17, 19) (FB).

● ——Ss. 3 (4) and 2 (kk) — Scheme of Act—Assessment of tax of Malabar Nambudiri family governed by Madras Nambudiri Act (21 of 1933).

The scheme of the Travancore Cochin Agricultural Income Tax Act, 1950, is to treat certain family groups as units of assessment but with varying concessions as to rate of chargeability attached and dividing them for the purpose broadly into two categories, viz., (i) those governed by Aliyasanthana law or Marumakkathayam law or simply the rule of impartibility, e.g., Nambudiries of Travancore and Cochin, Moothathus, etc., and (ii) Hindu undivided families consisting of brothers only or brothers and their branches. By virtue of S. 2 (kk) Nambudiri families of Malabar governed by the Madras Nambudiri Act, 1933, to whom the rule of impartibility did not apply are properly fitted into the second category. Hence the assessment of such families as under S. 3 (4) of the Act is not in any way wanting invalidity. Ananthanarayana Iyer v. Agricultural Income Tax and Sales Tax Officer. 1958 Ker L T 1144 : 1958 Ker L J 1286 : ILR (1959) Ker 125 : 1959 Ker L R 1 : A I R 1959 Ker 182 (190) (Pt E) (Pr 27) (FB).

——Ss. 3 (5) and 29—"Hitherto assessed."

Section 29 (1) deals with Hindu undivided families and Marumakkathayam tarwads "hitherto assessed as undivided". The words "hitherto assessed" must refer to assessments under the Tranvancore-Cochin Agricultural Income-tax Act and not to assessments under any other enactment and where the assessee

had never been assessed as an undivided Marumakkathayam tarwad under that Act prior to the assessments in controversy S. 29 would have no application to the case and the case would be governed by S. 3 (5). 1958 Ker L J 435 : ILR (1958) Ker 757.

SECTION 4

● —S. 4 (as amended by Act 8 of 1957)—Necessity of existence of taxable territory during whole of previous year — Malabar becoming part of Kerala on 1.11.1956—Act extended to Malabar with effect from 1.4.1957 — Petitioners required to file returns for financial year 1957.58 showing agricultural income derived during previous years ending on 31.3.1957 — Legality of order — Theory of territorial nexus. See Travancore-Cochin Agricultural Income-tax Act (22 of 1950), S. 3. A I R 1959 Ker 182 (FB).

SECTION 5

● —S. 5 (j)—Rubber estate containing both mature and immature plants—Expenses incurred for maintenance and upkeep of immature plants—Held permissible deduction under S. 5 (j). (1910) 5 Tax Cas 529, Rel. on; A I R 1955 S C 89 : (1955) 1 Mad L J (SC) 118: 1955 S C J 205, Disting; ILR (1958) Ker 308, Reversed. Travancore Rubber & Co., Ltd. v. Commr. of Agricultural I. T., Kerala, 1961 S C J 306 : (1961) 3 S C R 279 : 1961 Ker L T (SC) 31 : (1961) Ker L J 402 : (1961) 1 Andh W R (SC) 55 : (1961) 1 Mad L J (SC) 55 : (1961) 41 I T R (751) : AIR 1961 S C 604 (606) (Prs 7, 8).

——S. 5 (j) — Rubber estate containing both mature and immature plants — Expenses incurred for maintenance and upkeep of immature plants is not a permissible deduction. ILR (1958) Ker 308 : 1958 Ker L J 33 : (1958) Ker L T 298.

[Reversed in A I R 1961 S C 604].

——S. 5 (j)—Scope — If residuary provision—S. 5 (n) (1)—If excludes S. 5 (j).

A residuary provision normally winds up a section (or an Act). Section 5 (j) is not to be deemed to be a residuary provision, the application of which is excluded by any other specific provision in S. 5, particular by S. 5 (n) (i). 1958 Ker L J 33 : ILR (1958) Ker 308 : (1958) Ker L T 298.

[Reversed on another point in AIR 1961 S C 604]

SECTION 9

——S. 9 (1) First Proviso—Settlement deed covering agricultural properties — Settlement not ex facie revocable — Settlement effected in favour of three sons of the settlor, two of whom were minors—Settlement deed enjoining upon sons to contribute to maintenance of their mother from out of income of properties settled on them — Deed further stipulating upon sons to grant 'stridhanam' to their sister by settling upon her properties of equal value from out of properties settled upon them individually — Deed also providing that the stridhan deed was to be effected with the knowledge and consent of their mother and in case of obstruction to or delay in execution of stridhan deed by the sons the settlor was given full right and authority to execute stridhan deed by selecting at his sweet will properties from out of the properties settled upon the sons—Held, that the last clause gave the settlor the right to reassume power over the assets transferred and hence the deed must be deemed to be revocable within the meaning of proviso to S. 9 (1). (1958) 33 I L T 492 Foll. (1951) 21 I T R 135, Dist. (1945) 13 I T R 105 and (1948) 16 I T R 301, Ref. (1964) 53 I T R 764 (DB) (Mad).

——S. 9 (1), Third Proviso—Scope and applicability.

The third proviso to S. 9 (1) of the Act takes a case out of the scope of S 9 (1) if the settlement is not revocable for a period exceeding six years or during the lifetime of the settlor, and from which agricultural income the settlor derives no direct or indirect benefit. In order to invoke this third proviso both the above conditions should exist. It is true that the latter condition that the settlor derives no direct or indirect benefit from the agricultural income is satisfied in the instant case. But the first condition that the settlement is not to be revocable for the period specified is not complied with. The third proviso has thus no application to the instant case. (1964) 53 I T R 764 (DB) (Mad).

SECTION 17

——Ss. 17 (2) and 35 — Re-assessment — Notice — Validity—Requirement of return essential—(Income-tax Act (11 of 1922), Ss. 22 (2) and 34).

The requirements of a notice under S. 17 (2) of the Travancore Agricultural Income tax Act are required in a notice under S. 35 thereof. Since a return of income or particulars as to the total agricultural income is the central requirement of a notice under S. 17 (2) which cannot be dispensed with an omission to call for such a return in a notice under S. 35 is fatal.

Period of time in a notice under S. 17 (2) has to be related to a specific act or must qualify a specific requirement in a notice and hence specification of time limit alone is not a requirement that would validate the notice.

Where a notice stated that the assessee's income from cocoanuts had escaped assessment and called upon him to file objections to the proposal to reassess his income.

Held, that the notice was not in compliance with the requirements of a notice prescribed by S. 35 or 17 (2) of the Act. A I R 1955 Bom 227 ; AIR 1940 P C 124, Rel. on. 1961 Ker L J 508 : 1960 Ker L T 1295 : I L R (1961) Ker 226.

SECTION 34

——Ss. 34 and 71 (2)—Section 71 (2) if attracts S. 46, Travancore Income-tax Act — (Travancore Income-tax Act (23 of 1121), S. 46).

Section 71 (2) will attract S. 46, Travancore Income-tax Act, to cases in which every proceeding in respect of the assessments concerned was initiated only after the Travancore Cochin Agricultural Income-tax Act came into force. Section 34 of the Agricultural Income-tax Act does not contain any provision on the lines of S. 46 (3), Travancore Income-tax Act, and therefore the Commissioner is in error in rejecting a revision petition for failure to pay the fees prescribed by S. 46. AIR 1957 Trav Co 260 (260) (Pr 5) (DB).

SECTION 35

——S. 35—Reassessment—Notice—Validity—Requirement of : return essential. See Travancore Cochin Agricultural Income-tax Act (22 of 1950), S. 17. 1960 Ker L T 1295 : ILR (1961) Ker 226.

SECTION 58

——Ss. 58, 3 (4) — Charge of supertax — S. 3 (4), applies.

There is nothing in S. 3 (4) which precludes its application to the charge of super-tax. The rate of super-tax on the total agricultural income of an undivided Hindu family consisting of brothers only shall be calculated in the same way as the rate of agricultural income-tax on the said income of the family is calculated : A I R 1961 S C 609 Foll. 1963 Ker L J 474 : I L R (1963) 2 Ker 8 : 1963 Ker L T 519.

SECTION 71

——S. 71 (2)—Section if attracts S. 46, Travancore Income-tax Act—Section will attract S. 46 to all cases in which assessment proceeding was initiated only after the Act came into force. See Travancore-Cochin Agricultural Income-tax Act (22 of 1950), S. 34. AIR 1957 Trav-Co 260 (DB).

SCH. 1 PART 1

——Sch. I, Part I, First Proviso — 'Hindu undivided family' does not mean only a Hindu Coparcenary — Term 'members' includes also persons who have no right in the family property like wives of coparceners and unmarried daughters. AIR 1935 Bom 412, Rel. on. (1960) 2 Ker L R 614 : 1960 Ker L J 1156.

TRAVANCORE COCHIN BAR COUNCIL RULES

RULE 30

——R. 30 — Advocate engaged by Receiver in insolvency proceeding — Payment of his fees—Fixation of —Rule 30 is no impediment in fixation— S. 80 of the Kerala Insolvency Act, 1956 — Court can fix reasonable remuneration for work done by advocate. See Bar Councils Act (1926), S. 16. 1962 Ker L T 652.

TRAVANCORE-COCHIN BOARD OF REVENUE ACT (9 of 1950)

SECTION 9

——S. 9 — Jurisdiction of Government:— Waiver of irregularities — Defect of procedure is cured by submission to jurisdiction—(Civil P. C, (1908), S. 9). AIR 1955 N U C (Trav-Co) 1097.

SECTION 11

——S. 11—Application for review—Delay—Express Order condoning—Necessity—Discretion of Board.

No express order condoning delay in preferring an application for review is prescribed by S. 11, it being sufficient that the Board 'sees fit' to do so; the object is to leave it to the unfettered discretion of the Board, to entertain the application or not. 1960 Ker L T 603.

TRAVANCORE-COCHIN BOARD OF REVENUE ORDINANCE (2 of 1950):

SECTION 6

●——S. 6—Revision petition under S. 50 of Act 1 of 1068 transferred to Board of Revenue — Dismissal by Board as time-barred — Second revision to Government—Power to entertain. See Travancore Revenue Recovery Act (1 of 1068), S. 50. AIR 1957 Trav-Co 116 (FB).

SECTION 9

■ ——S. 9, Proviso — Travancore Revenue Recovery Act (1 of 1068), S. 50, Proviso — T. C. Revenue Recovery Act (7 of 1951), S. 55, Proviso — Revision— Order setting aside auction sale without notice— Validity.

Having regard to the imperative language of the proviso to S. 9, the persons who obtain orders cancelling revenue sales without making proper enquiries and ascertaining who would be the persons that would be affected by the order, would be doing so at their peril and the orders cancelling the revenue sales would themselves be liable to be set aside as passed in contravention of this proviso if impugned by the affected persons to whom notice had not been given. The rights and liabilities of the Government vis-a-vis the auction-purchaser and his heirs and assignees as well as the Government's rights and duties in the matter of recovering arrears of tax would also be affected by an order cancelling the sale. Government also has, therefore, a duty to see that the notice required under S. 50 of the Revenue Recovery Act and S. 9 of the Board of Revenue Act is given to the persons mentioned in those sections before a revenue sale is set aside. 1956 Ker L T 697 : AIR 1957 Trav-Co 116 (118) (Pt B) (Pr 6) (FB).

TRAVANCORE-COCHIN BUILDINGS (LEASE AND RENT CONTROL) ORDER (1122 ME)

See under Houses and Rents.

TRAVANCORE-COCHIN BUILDINGS (LEASE AND RENT CONTROL) ORDER (1950)

See under Houses and Rents.

TRAVANCORE-COCHIN CIVIL COURTS ACT (22 of 1951)

See also Travancore Civil Courts Act (2 of 1084 ME).

PREAMBLE

——Preamble — Retrospective operation]— Act does not show that its provisions will apply to proceedings started before its commencement. See Tenancy Laws —Travancore Jenmi and Kudiyan Act (5 of 1071), S. 33. AIR 1954 Trav-Co 125 (DB).

SECTION 11

——S. 11—Jurisdiction—Notification making changes in territorial jurisdictions — Suit instituted prior to notification — Appeal — Forum—There is nothing in the notification indicating that any change in the jurisdiction of the original Court, because of the territorial changes. See C.P. Code (1908), S. 96. AIR 1957 Trav-Co 43 (DB).

SECTION 12

——S. 12—Suits for removal of manager—Such a suit is incapable of valuation for Court-fee purposes — Valuation for jurisdiction has to be determined with reference to language of S. 12—Market value of property under charge of manager or trustee to be removed should determine jurisdiction—(Court-fees Act (1870), Sch. 2. Art. 17 (vi)) — (Suits Valuation Act (1887), S. 8). See Travancore-Cochin Court-fees Act (2 of 1125), Sch. 2, Art. 8, Cl. 2. AIR 1957 Trav-Co 225.

——S. 12—Establishment of new Subordinate Judge's Court in particular area over which District Court was exercising jurisdiction — Effect on original jurisdiction of District Court—Ordinary original jurisdiction which the District Court had over the area is taken away and it is transferred to the new subordinate Judge's Court. See C. P. Code (1908), S. 15. AIR 1957 Trav-Co 69 (FB).

SECTION 13

——S. 13 — Decree passed by civil court in its small cause jurisdiction—S. 7, Civil P. C., applies—No revision lies under S. 115. See Civil P. C. (1908), S. 7. AIR 1953 Trav-Co 41 (DB).

SECTION 14

——S. 14 (e) — Applicability to cases pending when the subsequent Civil Courts Act came into force. See Tenancy Laws—Travancore Jenmi and Kudiyan Act (5 of 1071), S. 33. AIR 1954 Trav-Co 125 (DB).

——S. 14—Decree passed by civil Court in its small cause jurisdiction—S. 7, Civil P. C. applies—No revision lies under S. 115. See Civil P. C. (1908), S. 7. AIR 1953 Trav-Co 41 (DB).

SECTION 19

—S. 19—Decree passed by civil Court in its small cause jurisdiction—S. 7, Civil P. C. applies—No revision lies under S. 115, C. P. C. See Civil P. C. (1908), S. 7. AIR 1953 Trav-Co 41 (DB).

SECTION 20

—S. 20—Repugnancy between S. 7, Civil P. C. and S. 20, T. C. Act 22 of 1951 — S. 20 is void to that extent—(Civil P. C. (1908), S. 7). See Constitution of India, Art. 254. AIR 1953 Trav-Co 41 (DB).

TRAVANCORE-COCHIN CIVIL RULES OF PRACTICE (1956)

See under High Court Rules and Orders.

TRAVANCORE-COCHIN COMPENSATION FOR TENANTS IMPROVEMENTS ACT (10 of 1956)

See under Tenancy Laws.

TRAVANCORE COCHIN CO-OPERATIVE SOCIETIES ACT (10 of 1952)

See under Co-operative Societies.

TRAVANCORE-COCHIN COURT-FEES ACT (2 of 1125 ME)

See also under Court-fees Act (1870).

SECTION 3

Sub-s. 3 (c).

—S. 3 (c)—Suit for accounts by agent—Held plaintiff was entitled to frame his suit as one for accounts and value it for Court-fees accordingly. See Court-fees Act (1870), S. 7 (iv) (f). AIR 1957 Trav-Co 264.

Sub-s. 3 (2).

—S. 3 (2)—Suit for wrongful termination of service—Relief for future emoluments during pendency of suit—Not covered by S. 3 (2)—No Court-fee payable—Court-fees Act (1870), S. 7 (2).

The petitioner filed a suit for wrongful termination of his services and amongst reliefs claimed future emoluments by way of compensation from the date of the plaint till reinstatement and did not pay any Court-fee on the relief. In revision against an order levying a Court-fee under S. 3 (2) of Travancore Cochin Court-fees Act.

Held, that since the relief did not rest on withholding of some earned periodical payments but on the petitioner not being allowed to earn the salary by performing his duties it was a relief for damages pendente lite and no Court-fee was payable. AIR 1935 Pat 160, Rel. on; AIR 1959 Bom 436, Dist. 1961 Ker L J 1086 : (1961) 2 Ker L R 473 : 1961 Ker L T 896.

Sub-s. 3 (4).

—S. 3 (4) (f)—Valuations for Court-fee and jurisdiction — Suit for declaration with consequential relief—Court-fee of Rs. 10 paid for declaration — Relief valued at Rs. 10,000 for jurisdiction — Court cannot pin down plaintiff to value of jurisdiction in respect of consequential relief — Proper course —Court-fees Act (1870), S. 7 (iv) (c).

The valuation for the purpose of Court-fee need not be the same as the valuation for jurisdiction. AIR 1930 Cal 686, Rel. on.

Where, in a suit for declaration, the plaintiff after paying a fixed Court-fee of Rs. 10 for declaration has valued that relief at Rs. 10,000 for purposes of jurisdiction it is not right for the Court to pin down to the plaintiff to the value of Rs. 10,000 given for purposes of jurisdiction in respect of the consequential relief prayed by him. The proper course for the Court is to return back the plaint to the plaintiff for amendment, so that the plaintiff may elect on a single valuation for both the purposes. 27 M L J 497: AIR 1915 Mad 573; and AIR 1918 Mad 502 (1), Rel. on. 1962 Ker L J 1270.

—S. 3 (4) (e)—Suit for accounts — Essentials—Suit claiming fees for services rendered — Not a suit for accounts — Court-Fees Act (1870), S. 7 (iv) (f).

The mere fact that the plaintiff asks for an account or brings his suit on account or that accounts have to be gone into in order to determine the account, if any, due to the plaintiff, will not make the suit a suit for an account. The defendant must first be an accounting party, in other words, must stand in some such relation to the plaintiff as that of agent or bailee or receiver or trustee or partner or mortgagee. AIR 1932 Mad 565; AIR 1935 Cal 359; AIR 1947 Bom 255, Rel. on.

Where the relationship between the parties was that of a debtor and creditor, a suit claiming fees for services rendered was held as one for recovery of specific sum and not as a suit for accounts. (1961) 1 Ker L R 337 : 1961 Ker L T 369.

—S. 3 (4) (e)—Suit for partition and separate possession by person in joint possession — Schedule 2, Art. 17B (Mad), applies. See Court-fees Act (1870), S. 7 (iv) (b). AIR 1961 Ker 142.

—S. 3 (4), (5) — Suits for removal of manager — Suit is incapable of valuation for purposes of Court-fee—Suit for Court-fee purposes neither covered by S. 3 (4) nor by S. 3 (5). See Travancore-Cochin Court-fees Act (2 of 1125 ME); Sch. II, Art. 8; Cl. 2. AIR 1957 Trav-Co 225.

—S. 3 (iv) (c)—Final decree in suit for accounts—Appeal by plaintiff — Appellant seeking to make defendant liable for more amounts than found by lower Court—Valuation for court-fee—In appeal the suit does not lose its character of being an account suit so as to entitle the Court or the parties to treat it as a money decree. See Court-fees Act (1870), S. 7 (iv) (f). AIR 1952 Trav-Co 43 (DB).

Sub-s. 3 (5).

—S. 3 (5) (a) — Determination of Court-fee—Basis of — Suit for possession on basis of title—Defendant admitting plaintiff's title but claiming leasehold right — Court-fee — (Court-Fees Act (1870), S. 7 (v) (a)).

The amount of court-fee payable has to be determined on the allegations in the plaint as to the plaintiff's cause of action and the prayers therein and not with reference to the defendant's contention in answer to those allegations. Where the plaintiff sues for recovery of possession of properties on the basis of his full title in them and the defendant, while admitting the plaintiff's title to the properties, claims therein a leasehold right, the plaintiff has to pay court-fee on the market value of the properties under S. 3 (5) (a). AIR 1935 Mad 569; 68 Mad L J 755, Disting. 1959 Ker L J 273 : 1959 Ker L R 285 : 1959 Ker L T 199.

—S. 3 (5) (b)—Suit for eviction of Verumpattamdar under S. 8 of Cochin Act—Court-fee payable. See Tenancy Laws—Cochin Verumpattamdars Act (8 of 1118), S. 4. AIR 1955 NUC (Trav-Co) 1908 (DB).

—S. 3 (5)—Applicability — "Land"—Ezhuwa joint family — Alienation by senior members — Suit by junior members impugning same as without consideration and legal necessity and without bona fides and for possession and mesne profits — Court-fee payable— Decree—Appeal by alinee — Court-fee on aggregate value of possession and mesne profits—Sufficiency—Declaration—Court-fees.

In a suit brought in 1120 by certain junior members of an Ezhuwa family for recovery of possession of immovable leasehold properties alienated by the senior members of the family in 1102, impugning the alienation on the ground that it was unsupported by consideration and was without bona fides or family necessity, a decree was passed in terms of the plaint; the alienee of one of the items of property appealed against the decree in 1125, valuing it for purposes of Court-fee as one arising from a suit for possession of immovable property and he paid Court-fee on that basis on the market-value of the item of property of which he was the alienee. The suit in the trial Court was also valued likewise. The trial Court had decreed mesne profits as well, and the appellant therefore paid Court-fee on the total valuation and not separately on the two reliefs of possession and mesne profits granted by the trial Court. The question having been raised by the office as to whether the proper Court-fee had been paid.

Held, (1) that S. 3 (5) of the Travancore-Cochin Court Fees Act (1125), which came into force pending the appeal applied to the appeal, and Court-fee was paid on the market value of the subject-matter, which was to be taken, in cases of dispute, as ten times the annual gross profits of such land, building or garden, when capable of yielding annual profits, minus the assessment paid, if any, (2) that in that view the Court fee paid on the memorandum of appeal on the basis of the market-value was correct and proper, and no court-fee was necessary in respect of the declaration as to the validity of the alienation impugned; that the declaration sought as regards the alienation, i.e., its validity need not be made the subject of a separate Court-fee under the Court-Fees Act, governing the appeal, the two reliefs — declaration and consequential relief of possession—being incapable of being split up for purposes of Court-fee or jurisdiction; (3) that the leasehold right in the property being alone the subject-matter of the suit and appeal, Court-fee had to be paid on the market-value of such right only and not on the entirety of the rights over the properties; the leasehold right alone constituted "land" under S. 3 (5) for purposes of Court-fee in the suit and appeal; and (4) that under S. 3 (5) of the T. C. Court Fees Act, Court-fee is payable on the aggregate of the value of the two reliefs by way of possession and mesne profits and not separately on the value of each relief. 14 Mad 26; 27 Mad 480; 38 Mad 922 (FB); 38 Mad 1184; (1950) 1 M L J 408; 17 Coch L R 4; 17 Coch L R 246, Foll. **1950 T C L R 581 : 1950 Ker L T 559 : AIR 1951 Trav-Co 142 (146) (Pr 12) (DB).**

Sub-section 3 (9).

——S. 3 (9)—Suit for redemption—Dispute in appeal solely relating to price of redemption — Court-fee in appeal — To make the provision of the section applicable to an appeal from a decree for redemption, the appeal must be for the recovery of the property mortgaged — Where it does not so relate, court-fee has to be paid ad valorem. See Court-fees Act (1870), S. 7 (ix). **AIR 1954 Trav-Co 204 (DB).**

Sub-section 3 (10).

——S. 3 (10) (1) (d)—Suit for eviction of Verumpattamdar under S. 8 of Cochin Act of 1118 — Court-fee payable. See Tenancy Laws — Cochin Verumpattamdars Act (8 of 1118), S. 4. **AIR 1955 N U C (Trav-Co) 1908 (DB).**

SECTION 5

——S. 5—Suit for partition and separate possession by person in joint possession — Schedule 2, Art. 17-B (Mad), applies. See Court-fees Act (1870), S. 7 (iv) (b). **AIR 1961 Ker 142.**

SECTION 6

——S. 6—Objection by defendant as to improper valuation of plaint and non-payment of proper court-fee — Court deciding to issue commission can direct plaintiff to deposit costs of such commission—In case defendant's objection is ill-founded Court will direct reimbursement by defendant. See Court-fees Act (1870), S. 9. **AIR 1961 Ker 129.**

SECTION 8

——S. 8 Part 3, Sch I, Art, 1—Suit for partition—Defendants claiming that some property has been left out — Defendants are not liable to pay Court-fees on it—Practice—(Travancore-Cochin Stamp Act (1 of 1125), S. 3 (14)—Court-Fees Act (1870), S. 7 (iv) (b)—Stamp Act (1899), S. 2 (15)).

Third part of S. 8 purports to cast a liability on the defendants to pay court-fees "according to the provisions of this Act". Section 8 cannot by itself make a defendant liable to pay court-fee if he is not otherwise bound to pay the same under the provisions of the Act. A claim by a defendant in a suit for partition that there are more partible properties than are stated in the plaint does not fall within Art. 1 of Sch. I.

The practice of Civil Courts in the erstwhile States of Travancore and Cochin to collect Court-fees from defendants who claimed their share in partition suits, has no statutory basis. 34 Cochin L R 221, Rel. on.

There is nothing in the law which requires a defendant in a partition suit to pay court-fees in order to have his share separately allotted to him. He is merely to ask for it in his written statement and it is open to the Court to order the shares of the defendant in a partition suit to be separated amongst themselves. The decree that is finally drawn up in the partition suit has to be stamped as an instrument of partition under the Stamp Act and except the stamp duty levied on the decree, no other Court-fee is payable by the defendant. The right of State to some revenue on the claim of the defendant is satisfied by the direction in the Stamp Act that the decree as finally drawn up should be stamped as an instrument of partition and except that stamp duty no other duty is payable by the defendant.

Moreover the claim of the defendants to the partition of certain properties which are not included in the plaint, by itself cannot cast a burden on the defendant to pay court-fee on the value of such property. There is only one suit for partition and the question is what the partible properties are. It is open for any of the defendants to point out that the list of properties furnished by the plaintiff is incomplete. If the Court be satisfied that more properties have to be brought in to be partitioned, that will be done and at the time of drawing up the final decree stamp duty will be collected on the value of such properties also. Vasudeva Vadhyar v. Govinda Bhatt, **I L R (1954) Trav-Co 146 : 1954 Ker L T 510 : AIR 1954 Trav-Co 315 (315, 316) (Prs 2, 3, 4) (FB).**

——S. 8, Explanation—Cross-objection claiming mesne profits — Court-fee has to be paid on quantum of the claim for the period between date of suit and date of decree appealed against. See Court-fees Act (1870), S. 11. **AIR 1954 Trav-Co 174 (DB).**

SECTION 9

——S. 9—Finality attaching to orders under—Question regarding category in which suit falls and not regarding adequacy of court-fees—Order is revisable.

A revision may not lie at the instance of the defendant regarding the adequacy of stamp paid on the plaint. But where the question is as to whether the suit comes under S. 3, sub s. (4), Cl. (e) or Art. 8, Cl. 8 of Sch. II of the Travancore-Cochin Court-fees Act, the question really is as to the category under which the suit comes and a revision at the instance

of the defendant is maintainable. AIR 1953 S C 28; AIR 1929 Mad 396; AIR 1944 Mad 315 (FB) and AIR 1954 Trav-Co 178 (FB), Rel. on. **(1960) 2 Ker L R 4 : I L R (1960) Ker 891 : 1960 Ker L T 1297 : A I R 1961 Ker 142 (143, 144) (Pt A) (Prs 11, 12).**

● —S. 9 –Order as to Court-fee even if wrong is not revisable under S. 115, Civil P. C. See Civil P. C. (1908), S. 115. **AIR 1954 Trav-Co 178 (FB).**

[Overruled in AIR 1961 Ker 146 (FB).]

—S. 9—'Every question relating to valuation' — Meaning of the expression—Refers only to the actual assessment or appraisement of the value of the suit or value See Court-fees Act (1870), S. 12. **AIR 1954 Trav-Co 29.**

SECTION 11

—S. 11 (i)—Amount or value of claim—Interpretation — Mode of calculating Advocate's fee. See Bar Councils Act (1926), S. 16. **AIR 1957 Trav-Co 170 (DB).**

● —S. 11—Applicability.

Section 11 applies only to suits, or appeals and not applications. **In re Court-fee Ref. No. 1 of 1950. 1952 Ker L T 642 : I L R (1952) Trav-Co 991 : AIR 1953 Trav-Co 104 (108) (Pt C) (Pr 10) (FB).**

SECTION 22

● —S. 22—Application for probate or letters of administration—Court-fee to be calculated according to law in force on date of grant. See Court-fees Act (1870), S. 19-I. **AIR 1934 Trav-Co 520 (FB).**

SECTION 36

● —S. 36—Court-fee on application for return of document—Exemption.

The notification of the Travancore Government, dated 25-1-1915, which is embodied in R. 617 (1) of the Travancore Civil Courts Guide, 1944, and R. 605, sub-r. 6, 7 and 8 of the Guide, constitute the law relating to the payment of court-fee on applications for the return of documents from Court so far as the Travancore area of the State is concerned.

As regards the law in Cochin area an application presented by any person, whether a party to the suit or not, for the return of documents produced by him in Court, whether before or after the disposal of the suit is not liable to be taxed.

Thus the law relating to this matter is not the same in the Travancore area and in the Cochin area. It is a matter for the consideration of the State whether the law should not be made uniform in both the areas of the state. **1952 Ker L T 642 : I L R (1952) Trav-Co 991 : A I R 1953 Trav-Co 104 (107) (Pt A) (Pr 4) (FB).**

SCHEDULE 1, ARTICLE 1

—Sch. 1, Item 1—Liquidation proceedings of banking company — Debtor filing affidavit claiming dues from company—Set-off — Court-fee. See Court-fees Act (1870), Sch. 1, Art. 1. **AIR 1959 Ker 11.**

● —Sch. 1, Art. 1—Suit for partition — Defendants claiming that some property has been left out — Defendants are not liable to pay Court-fees on it — Practice prevailing in erstwhile Courts of Travancore and Cochin States to collect Court-fees from such defendants has no statutory basis. See Travancore Cochin Court-fees Act (2 of 1125), S. 8, Part 3. **AIR 1954 Trav-Co 315 (FB).**

SCHEDULE 1, ARTICLE 6

—Sch. I, Art. 6 — Order on application under Art. 226 of Constitution — Appeal — Court-fee payable is only Rs. 2. See Court-fees Act (1870), Sch. II. Art. 11. **AIR 1958 Ker 338 (DB).**

SCHEDULE I, ARTICLE 11

● —Sch I, Art. 11 — Application for probate or letters of administration — Court-fee to be calculated according to law in force on date of grant. See Court-fees Act (1870), S. 19-I. **AIR 1954 Trav-Co 520 (FB).**

SCHEDULE 2, ARTICLE 1

● —Sch. II, Art. 1 (a) — Court-fee on application for copies of documents—(T. C. General Clauses Act (7 of 1125), S. 12).

There is nothing in the T. C Court-fees Act which makes S. 12 (2) of the T. C. General Clauses Act inapplicable to the interpretation of the word "document" in Art. 1 (a) of Sch II. According to the rule of interpretation contained in that section the words "application for a copy of any document" in Art. 1 (a) must be interpreted to mean "application for the copies of any documents".

The rules governing this matter are : (1) An application for copies of more than one document in one suit or proceeding can be taxed only with the fee prescribed for one application, namely, one and a half anna. (2) If the documents of which copies are applied for are in more than one suit or proceeding, separate application will have to be filed in each of the suits or proceedings and each application will have to be taxed with a fee of one and a half anna. (3) For obtaining more than one copy of any one document separate applications will have to be filed for each copy and if one application is filed for the purpose it will be treated as many applications as there are copies applied for and taxed accordingly. The same principles will apply to applications for urgent copies also **1952 Ker L T 642 : I L R (1952) Trav Co 991 : A I R 1953 Trav Co 104 (109) (Pt B) (Prs 11, 13) (FB).**

SCHEDULE 2, ARTICLE 5

—Sch. 2, Art. 5—Case transferred to another officer for administrative purpose — Does not mean that it is not the case in which the vakalat was originally filed. See Court-fees Act (1870), Sch. 2, Art. 10. **1956 Cri L J 421 (1) : AIR 1956 Trav-Co 110.**

SCHEDULE 2, ARTICLE 8

—Sch. 2, Art. 8 (viii) — Applicability — Suit for partition and separate possession by person in joint possession — Sch. 2, Art. 17B (Mad), applies. See Court-fees Act (1870), S. 7 (iv) (b), (v). **A I R 1961 Ker 142.**

—Sch. 2, Art. 8 (3) — Suit under O. 21, R. 63 of C. P. Code—Cour-fee payable is Rs. 10—Court-fees Act (1870), Sch. 2, Art. 17 (i).

A suit for setting aside a claim, order passed in execution and for other incidental reliefs is a suit filed under O. 21, R 63 of the C. P. Code and the Court-fee dayable is only Rs. 10 under Sch. 2, Art. 8 (3). The other reliefs are either superfluous or such as would necessarily follow on the main prayer being allowed. 9 T L J 316; A I R 1933 Mad 439 and 17 Mad L J 618, Rel. on. **1961 Ker L J 1088 : (1961) 2 Ker L R 438 : 1961 Ker L T 804.**

—Sch. 2, Art. 8 — Decree for mortgage amount obtained—Exclusion of some items of property from liability —Prayer for inclusion of those items—Estimate of relief at money value not possible—Payment of Rs. 10 as court-fee held proper. **(1961) 1 Ker L R 18 : 1961 Ker L T 19.**

—Sch. 2, Art. 8 (2) — Temple properties — Defendant appointed manager by some of the trustees without consent of others—Suit by other trustees for removal of defendant 1 and restoration of temple properties—Fixed court-fee of Rs. 15 under Sch. II, Art. 8 (2) sufficient—1955 K L T 17, Rel. on; 1960

K T 1361, Foll. — Court-fees Act, 1870), S. 17. (1961) 1 Ker L R 19 : 1961 Ker L T 3

——Sch. 2, Art. 8, Cl. (2), S. 3, (4) (5) — Suit for removal of manager — (Travancore Cochin Civil Courts Act (22 of 1951), S. 12) — Court-fees Act (1870), Sch. 2, Art, 17 (vi) — Suits Valuation Act (1887), S. 8.

A suit for the removal of a person from a management is incapable of valuation for purpose of Court-fee. Where under the scheme of the compromise decree, the manager for the time being of the common properties is only a trustee the Court-fee payable on a plaint to remove a trustee is specifically provided in Cl. (2) of Art. 7 of Sch. 2, Court-fees Act. Court-fee prescribed is Rs. 15. In a suit to remove a trustee or a manager, the plaintiff cannot put his own 'valuation for purposes of jurisdiction. Section 3 (4) of the Court-fees Act which entitled a plaintiff to put his own valuation for purposes of court-fee does not cover a suit of the present nature, nor is there any provision that even in the case of suits falling thereunder, the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction, shall be the same. There is no Suits Valuation Act in force now, applicable to the Cochin area of the State. Just as S. 3 (4) does not cover suits like the present even for Court-fee purposes, S. 3 (5) does not either. Nor is there any provision that even in respect of suits falling under S. 3 (5) valuation for purposes of Court-fees and jurisdiction will be the same. The valuation for jurisdiction has to be determined with reference to the language of S. 12 of the Civil Courts Act. The market value of the property under the charge of the manager or the trustee to be removed, should determine jurisdiction. 1956 Ker L T 775 : I L R (1956) Trav-Co 971 : AIR 1957 Trav-Co 225 (226, 227) (Prs 5 to 8).

TRAVANCORE-COCHIN COVENANT
ARTICLE 21

——Art. 21 — Power of Maharaja of Cochin to grant suspension, remission or commutation of sentence cannot be invoked or exercised after commencement of Constitution. See Constitution of India, Art. 72. 1955 Ker L T 727 : ILR (1955) Trav-Co 788.

——Art. 21—Constitution of India, Arts. 72 (1), 291, Cl. (1), 362 — Maharaja of Cochin cannot invoke powers of suspension remission, or commutation of death sentences reserved to him under Art. 21, after commencement of Constitution.

After the commencement of the Constitution, no individual, or body or institution in the territory of India can exercise any executive, or judicial or legislative power unless the Constitution confers it or countenances its exercise.

The powers of suspension, remission or commutation of death sentences passed in respect of offences committed in the territory of Cochin under Art. 21 of the Covenant entered into by the Ruler of Travancore and Cochin for the formation of the United State of Travancore and Cochin cannot survive the passing of the Constitution of India, after which, no power of Sovereignity continues to vest in the members of the Princely Order. The Maharaja of Cochin cannot, therefore, after the commencement of the Constitution invoke the powers reserved in him under Art. 21 of the Covenant.

Art. 362 of the Constitution has nothing to do with the executive power like the suspension, remission or commutation of a sentence passed by a competent Court but concerns itself only with the guarantee or assurance given under such Covenant or Agreement as is referred to in Cl. (1) of Art. 291 with respect to the personal rights privileges and dignities of the Ruler of an Indian State. 1955 Ker L J 727 : ILR (1955) Trav-Co 788.

TRAVANCORE-COCHIN CRIMINAL RULES OF PRACTICE

See under High Court Rules and Orders.

TRAVANCORE-COCHIN ELECTRICITY DUTY ACT (4 of 1950)

SECTION 3

——Ss. 3 (1) and (2) and 9 (2) (a) (b) — Delegation of powers by legislature to executive — Levy of tax and fixation of rate of tax is legislative function — Constitutional validity of—S. 3 (1) and (2) and S. 9 (a) and (b) were unconstitutional for excessive delegation. See Constitution of India, Art. 265. 78 Mad L W 662: 1965-2 Mad L J 254 : AIR 1966 Mad 220.

SECTION 9

——Ss. 9 (2) (a) and (b) — Delegation of powers by legislature to executive — Levy of tax and fixation of rate of tax is legislative function — Constitutional validity of — Section was unconstitutional for excessive delegation. See Constitution of India, Art. 265. 78 Mad L W 662 : (1965) 2 M L J 254 : AIR 1966 Mad 220.

TRAVANCORE-COCHIN ENTERTAINMENTS TAX (VALIDATION OF LEVY AND COLLECTION) ACT (26 of 1955)

SECTION 3

——S. 3—Validity—(Constitution of India, Arts. 31, 19 (1) (g)).

What S. 3 provides is that notwithstanding the omission to frame bye laws under S. 12 of Act (6 of 1951) (Trav-Co. Local Authorities Entertainment Tax Act) all orders passed and all actions taken in connection with the levy of or collection of entertainment tax by local authorities are valid. If the Act is not otherwise invalid the collection of tax in respect of the antecedent period cannot be taken to interfere with the right to carry on the trade or profession. There is no scope for applying the principles laid down by the Supreme Court in AIR 1952 S C 115, to such case.

Clause (1) of Art. 31 of the Constitution must be regarded as concerned with deprivation of property otherwise than by imposition or collection of tax. Even though the validating Act makes the levy or collection of tax in respect of the period before the date of passing of the bye-laws valid it cannot be said that Art. 31 of the Constitution has been violated. The fact that Act (26 of 1955) is retrospective in its operation is no ground for invalidating it. It was open to the Legislature acting within the sphere of its constitutional authority to pass a validating statute or to give retrospective effect to the new statute notwithstanding the fact that the earlier law governing the same matter was declared by the courts of law as invalid, unenforceable or inoperative. Section 3 of Act (26 of 1955) does not violate any of the provisions of Part III of the Constitution. As regards the criminal prosecutions launched by the Panchayat and the Municipality the same cannot stand in view of the proviso to S. 3 of Act (26 of 1955). 1958 Ker L T 550 : ILR (1958) Ker 940 : 1958 Ker L J 1093 : AIR 1959 Ker 43 (44, 45) (Prs 6, 7, 10) (DB).

TRAVANCORE-COCHIN FISHERIES ACT (34 of 1950)

SECTION 4

——S. 4—Rules under—Validity.

Section 4 contemplates only two purposes for which the Government may make rules, (i) for the purpose of licensing fishing and (ii) for the purpose of protecting and preserving fish and, consequently a rule and order which purport to have been made under S. 4 and which are avowedly for the purpose of avoiding unhealthy competition between classes of fishermen are clearly in excess of the powers conferred on the Government by the section. (1960) 2 Ker L R 40 : 1960 Ker L J 1005 : 1960 Ker L T 653.

TRAVANCORE-COCHIN FOOD GRAINS (DISTRIBUTION, RATIONING AND MOVEMENT) CONTROL ORDER (1950)

PREAMBLE

——Preamble — Applicability — Acts contravening Order committed before publication of Order — There is no violation of Order—Charge could only be framed under Paddy (Acquisition and Movement) Control Order dated 12-4-1950 issued under S. 3, Public Safety Measures Act which was in force at the time — But orders (1950) were held illegal and void — Thus in any view of matter conviction could not be sustained. AIR 1955 NUC (Trav-Co) 3477.

CLAUSE 15

——Cls. 15, 16, 24 — Conviction for contravention of —Defective charge—Evidence lacking—Accused not called upon to explain circumstances — Conviction quashed — (Criminal P. C. (1898), Ss. 342 and 221). AIR 1955 NUC (Trav-Co) 3477.

CLAUSE 16

——Cl. 16—Conviction for contravention of—Defective charge — Evidence lacking —Accused not called upon to explain circumstances—Conviction quashed. See Travancore-Cochin Food Grains (Distribution, Rationing and Movement) Control Order (1950), Cl. 15. AIR 1955 NUC (Trav-Co) 3477.

CLAUSE 24

——Cl 24—Conviction for contravention of—Defective charge — Evidence laking — Accused not called upon to explain circumstances—Conviction quashed. See Travancore-Cochin Food Grains (Distribution, Rationing and Movement) Control Order (1950), Cl. 15. A I R 1955 N U C (Trav-Co) 3477.

TRAVANCORE-COCHIN FOREST ACT 1951 (3 of 1952)

See also Kerala Forest Act, 1961 (4 of 1962)

SECTION 27

——S. 27—Kerala Forest Act (4 of 1962), S. 85 (1)—Offence under S. 27 committed in 1958—Complaint filed in 1962 when Act 3 of 1952 not in force being repealed by Forest Act of 1962 — Accused can be convicted under repealed Act — Travancore-Cochin General Clauses Act (1125), S. 4—Kerala Forest Act (4 of 1962), S. 85 (1).

A person accused of an offence alleged to have been committed by him in 1958 under S. 27 of the Travancore Cochin Forest Act, 1952 can be convicted for that offence even though when the complaint was filed in June 1962, the Travancore-Cochin Forest Act of 1952 was not in force, having been repealed by the Forest Act, 1962.

Section 4 of the Travancore-Cochin General Clauses Act provides a specific saving of penalty, forfeiture or punishment incurred in respect of offences committed against any enactment so repealed, unless a different intention appears. The new Act nowhere evinces an intention which is inconsistent with the continuance of the rights and liabilities accrued or incurred or under the repealed Act. Section 4 is applicable even to a case where the repeal of an enactment is followed by a fresh enactment. A I R 1955 S C 841, Rel. on. 1963 Ker L J 397 : 1964 Mad L J (Cri) 192 : 1963 Ker L T 478.

SECTION 47

——Ss. 47 to 51 — Validity — Provisions contravene Arts. 19 (1) (f) and (g) and 31, Constitution of India —Entire group of the sections has to be struck down as unconstitutional — Provisions are void so far as private forests and their owners in the Malabar area of Kerala State are concerned. See Constitution of India, Art. 13. A I R 1964 Ker 287.

SECTION 48

——Ss. 48, 59, 50, 51 — Kerala Forest Act, 1961 (4 of 1962) —Validity—Provisions contravene Arts. 19 (1) (f) and (g) and 31 — Entire group of the sections has to be struck down as unconstitutional — Provisions are void so far as private forest and their owners in the Malabar area of Kerala State are concerned. See Constitution of India, Art. 13. A I R 1964 Ker 287.

SECTION 101

——Ss. 101 (1) and 101 (3)—Scope—Timber Transit Rules under Travancore Forest Act (2 of 1068), Rr. 11 and 26—Validity — Conviction under S. 35 of the later Act and Rule—Legality.

There is nothing in R. 11 of the Timber Rules inconsistent with the new Act and hence this rule may be deemed to be a rule passed under S. 38 of Act (3 of 1952). This rule does not provide for penalty for contravening that rule. The provision for penalty is contained in R. 26. Since Act (2 of 1068) of Travancore was repealed in toto by sub-s. (1) of S. 101 of Act (3 of 1952), Travancore-Cochin, it is obvious that S. 35 of the repealed Act could no longer be invoked for any purpose. It is wrong to assume that this section is alive for the purpose of R. 26 of the Timber Transit Rules even after the repeal of the Act as a whole. Only such of the rules as are consistent with the new Act are saved by sub-s (3) of S. 101. Rule 26 is clearly inconsistent with the new Act because that rule proceeds on the assumption that S. 35 of Act (2 of 1068) is in force, while as a matter of fact, that section has gone out of the statute book with the repeal of that Act. The failure to pass the required rules cannot be remedied by invoking the section of a repealed statute or a rule framed under that statute but which is inconsistent with the provisions of the new Act. 1958 Ker L T 53 : 1958 Mad L J (Cri) 130: 1958 Ker L J 121 : 1958 Cri L J 1184 : A I R 1958 Ker 262 (263, 264) (Prs 5, 6).

(TRAVANCORE-COCHIN) GENERAL SALES TAX ACT (11 of 1125, M. E.)

See under Sales Tax.

(TRAVANCORE-COCHIN) GENERAL SALES TAX RULES (1950)

See under Sales Tax—(T. C) General Sales Tax Rules (1950).

TRAVANCORE-COCHIN GOVERNMENT LAND ASSIGNMENT ACT (33 of 1950)

SECTION 3

——Ss. 3, 4, 5 — Procedure under is mandatory—Assignments of lands — Mandatory procedure not followed—Assignments are without jurisdiction.

Government being in certain cases bound to follow a procedure that gives adequate safeguards to persons

having claim, cannot, without rational classification and having regard to the guarantee of equality before law, be authorised to follow at its will another procedure where such safeguard is not available. The Act confers no other power of assignment on the Government, which is not controlled by Ss. 4 and 5.

Section 4 partly enacts the procedure for a quasi-judicial Tribunal, and the rules of judicial procedure intended for safeguarding claims of parties are mandatory. Hence under the Act any assignment by the prescribed authority must be after the stages under Ss. 4 and 5 been gone through, and there is no dispensing power in the Government.

Where, therefore, Government assigned lands without complying with the mandatory provisions of procedure and there were claims against the assignments, the assignments were held to be without jurisdiction. **(1961) 2 Ker L R 559 : 1961 Ker L T 1121 : 1961 Ker L J 1192 : I L R (1961) 2 Ker 627.**

SECTION 4

——S. 4 — Procedure under, is mandatory — Assignments of lands — Mandatory procedure not followed —Assignments are without jurisdiction. See Travancore-Cochin Government Land Assignment Act (33 of 1950), S. 3. 1961 Ker L J 1192 : I L R (1961) 2 Ker 627.

SECTION 5

——S. 5—Procedure under is mandatory—Assignments of lands — See T. C. Government Land Assignment Act (33 of 1950), S. 3. 1961 Ker L J 1192 : ILR (1961) 2 Ker 627.

TRAVANCORE-COCHIN HIGH COURT ACT (5 of 1125ME) (1949)

SECTION 6

——Ss. 6, 15, 20 and 21—Trivandrum Bench—Filing powers—Trivendrum Bench is not the High Court of Kerala—It can only hear and dispose of such cases as are directed to be posted before it by the Chief Justice—It cannot do anything else on behalf of the High Court and in particular, it cannot receive cases—See States Re-organization Act (1956), S. 51 (3). AIR 1958 Ker 188 (DB).

SECTION 8

● —Ss. 8, 25 — Applicability — U. S. T. C. High Court Ordinance (II of 1124), Cl. 8) — (Travancore High Court Act (IV of 1099), Ss. 11, 12)—(Constitution of India, Art. 214).

The review application was made on 22nd August, 1946, to the Travancore High Court. The preliminary objection to the maintainability of the review application was decided on 29th June, 1949, and was rejected. The Court of review then on 21st December, 1951, dismissed review application on merits. The defendants obtained on 14th April, 1952, special leave of the Supreme Court to prefer the appeal against the decision of the High Court. It was contended that in the changed circumstances the review application had become infructuous and should have been dismissed by the High Court in limine.

Held, that the application for review was properly made to the Travancore High Court and the Travancore High Court had to decide whether to admit or to reject the application. The judgment to be pronounced on the application for review did not require, under any provision of law, to be confirmed by the Maharaja or any other authority. It was a proceeding properly instituted and was pending on the 1st July, 1949, and consequently under S. 8 of Ordinance No. II of 1124 had to be continued in the High Court of the United State as if it had commenced in the said High Court after the coming into force of the said Ordinance. The application for review was rejected by the High Court. If, however, the High Court had admitted the review then such admission would have had the effect of reviving the original appeal which was properly filed in the Travancore High Court under S. 11 of the Travancore High Court Regulation (IV of 1099). That appeal, so revived, having been commenced prior to the coming into force of Ordinance No. II of 1124 would, under S. 8 of that Ordinance, have had to be continued in the High Court of the United State as if it had commenced in that High Court after such date.

The position would be the same if on this appeal before the Supreme Court, the Supreme Court now admitted the review, for, upon such admission the appeal filed in the Travancore High Court would be revived and then, having been commenced in the Travancore High Court and continued in the High Court of the United State by virtue of S. 8 of Ordinance No. II of 1124 the appeal so revived would, under S. 8 of the Act of 1125, have to be continued in that High Court as if it had commenced in that High Court after the coming into force of that Act. In other words, the old appeal, if restored by the Supreme Court, would, by the combined operation of S. 8 of Ordinance II of 1124 and S. 8 of the Act of 1125 be an appeal pending in the High Court of the United State. Under the present Constitution Travancore-Cochin has become a Part B State and under Art. 214 of the Constitution the High Court of the United State of Travancore-Cochin has become the High Court of the Part B State of Travancore-Cochin and shall have the jurisdiction to exercise all the jurisdiction of and administer the law administered by the High Court of the United State.

Such appeal must accordingly be disposed of under S. 25 of the last mentioned Act. That section does not require any confirmation of the judgment passed on the rehearing of the appeal by the Maharaja or Rajpramukh or any other authority. Assuming, however, that the appeal if restored will have to be governed by S. 12 of the Travancore High Court Regulation (IV of 1099), even then the provisions of S. 11 would have to be applied 'as far as may be' and it may well be suggested that the portion of S. 11 which requires the confirmation by the Maharaja, would, in the events that have happened, be inapplicable. Hence the review application had not become infructuous, Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius. **1955 S C A 1354 : (1955) 1 S C R 520 : 1954 S C J 736 : I L R (1954) T C 867 : 1954 Ker L T 385 : A I R 1954 S C 526 (537) (Pt A) (Pr 31).**

● ——S. 8—Applicability — S. 8 of Ordinance II of 1124 and S. 8 of the Act had no application to proceedings closed before the date of the Ordinance—Decree of former High Court of Cochin did not become decree of High Court of the United State of Travancore and Cochin—Suit decree did not operate as res judicata — Being foreign judgment was not conclusive on issue as to title to property situate beyond its territorial jurisdiction.

Paragraph 2 of S. 8 of Ordinance II of 1124 has reference to 'any such proceedings as aforesaid' and is thus related to paragraph 1. The opening words in paragraph 1, 'all proceedings commenced prior to the coming into force of this Ordinance' normally refer to proceedings which were pending at the time and not to those which were dead or had ceased to be pending, may be, a long time before, say even thirty or fifty years. The plain and natural meaning of the word 'depend' in paragraph 1 is 'be pending' and that the words 'shall be continued' and 'depend' have to be read conjunctively for greater clarity and emphasis and not disjunctively to mean little or nothing. Therefore S. 8 of the Ordinance aforesaid

applies only to proceedings which were commenced before the date in which it came into force and were pending on that date. Paragraph 1 of S. 8 of the Act of 1125 does not take in proceedings which were commenced and concluded prior to the date of the Ordinance, because they were not to be continued by virtue of S. 8 of the Ordinance. For that reason, paragraph 2 of S. 8 of the Act also has no application to proceedings which had closed before the date of Ordinance II of 1124. A decree of the Travancore High Court or of the Cochin High Court did not become a decree of the High Court of the United State of Travancore and Cochin under the Ordinance or the Act, and, the decree of the Cochin High Court was, therefore, a foreign judgment which could not operate as res judicata. As a foreign judgment the judgment of the Cochin High Court was not conclusive between the parties on the issue as to the title to the suit property situate in the former State of Travancore. AIR 1963 S C 1, Rel. on. Parukutty Amma Parvathi Amma v. Sankara Kurup Rama Kurup. **1963 Ker L J 697 : 1963 Ker L T 730 : ILR (1963) 2 Ker 361 : A I R 1964 Ker 4 (5 to 7) (Pt A) (Prs 3, 7, 8) (FB).**

——Ss. 8 and 18 (2)—Scope and effect—Jurisdiction of High Court—Company—Liquidation—Proceedings pending in District Court—Application for certiorari by shareholders—Forum—Jurisdiction of High Court—Competency of company Court.

The fact that liquidation proceedings are pending in a District Court in respect of a company does not operate as a bar to certain shareholders of that company applying to the High Court for the issue of a writ of certiorari on behalf of the company. It cannot be said that the Court in which the liquidation proceedings are pending is the proper forum to entertain the application and not the High Court. What the applicants invoke by means of their application is the extraordinary jurisdiction vested in the High Court as a Court of record and whether the High Court ultimately grants the reliefs asked for or not, the jurisdiction invoked is one which the High Court alone has and not the company Court. S. 18 of the Travancore-Cochin High Court Act, 1125, gives power to the High Court to issue to any person or authority including in appropriate cases Government directions orders or writs in the nature of mandamus, prohibition, quo warranto and certiorari, throughout the territories of Travancore-Cochin. S. 8 of the Act provides that such proceedings commenced prior to the commencement of the Act shall be continued and depend in the High Court as if they had commenced in the High Court after the Act. The High Court consequently has jurisdiction to entertain such applications in respect of the company under liquidation notwithstanding that liquidation proceedings are pending in another Court. **1950 T C L R 162 : 1950 K L T 159 : AIR 1952 T C 14 (18) (Pt G) (Pr 14).**

SECTION 9

——S. 9 (1)—Appointment of a Judge who has passed the age of sixty years — Validity — Constitution of India, Arts. 217, 224 and 376.

Per Sankaran, J. — There is nothing in the High Court Act or in the Indian Constitution to indicate that a person who is qualified and fit to hold office as a High Court Judge would be deemed to be disqualified and unfit for the place merely because he has passed the age of sixty years. In fact no such age limit finds a place among the qualifications prescribed for a High Court Judge, in Cl. (2) of S. 9 of the High Court Act and in Cl. (2) of Art. 217 of the Indian Constitution. There is also no provision expressly prohibiting the appointment by the competent authority, of a person who is duly qualified and fit and who is above sixty years of age, as a High Court Judge. On the other hand, Art. 224 of the Indian Constitution provides for entertaining the services of retired High Court Judges, on the High Court Bench under certain circumstances.

The expression "every permanent Judge shall hold office until he attains the age of sixty years" in S. 9 (1) of the Travancore-Cochin High Court Act cannot be construed to mean that it operates as an absolute bar against a Judge being retained in service beyond the age of sixty years or that a judge on completing sixty years of age becomes disqualified to hold office.

Moreover, under Art. 376 of the Constitution which contains a temporary and transitional provision the President can ignore Art. 217 (1) and fix the retiring dates of the Judges specified in Art 376 (2), no matter whether that date is either above or below the age of sixty of the Judge concerned. **1950 Ker L T 439 : 1950 Trav-Co L R 306 : AIR 1951 Trav-Co 45 (52) (Pt D) (Pr 25) (DB).**

SECTION 15

——S. 15—Trivandum Bench—Filing powers Bench cannot receive cases directly. See States Re-organization Act (1956), S. 51 (3). AIR 1958 Ker 188 (DB).

SECTION 18

——S. 18 (2)—Transport Authority is quasi-judicial body — Violation by it of provisions under Motor Vehicles Act—Writ can be issued. See Constitution of India, Art. 226. **AIR 1953 Trav-Co 74.**

——S. 18 (2) — Travancore Companies Act, Ss. 210, 245—Company in liquidation—Application by shareholders for writs of certiorari for quashing certain notifications by Government—Applicability of Ss. 210 and 245, Travancore Companies Act — Application is maintainable. See Companies Act (1913), S. 171. **AIR 1952 Trav-Co 14.**

——S. 18 (2)—Certiorari — Writ of against Government when can be issued. See Constitution of India, Art. 226. **AIR 1952 Trav-Co 14.**

——S. 18 (2) — Jurisdiction — Writ of certiorari (or prohibition) against Government in respect of executive or administrative acts—If can issue—Notification under Salt Act, without jurisdiction and beyond powers conferred by Act—Writ of certiorari to quash and prohibition against implementing Notifications.

It cannot be laid down as a broad proposition of law that no writ of certiorari (or prohibition) can issue against the Government of a State with respect to its administrative or executive acts. Where the action of the Executive Government is ultra vires their powers the writ will undoubtedly issue. In such cases no more appropriate cases of intervention by the High Court can be found when the acts are ultra vires. Such intervention is essential to safeguard the rule of law. The writ of certiorari is a legitimate remedy where executive or administrative acts of the Government are in excess of their jurisdiction and powers. S. 18 (2) of the Travancore-Cochin High Court Act leaves no room for any doubt; it empowers and authorises the High Court to issue such prerogative writs or directions or order to any person or authority throughout the territories of the State, including in appropriate cases Government. Where Notifications are issued by Government under the Salt Act, which does not empower them to act in the way mentioned in such Notifications, they are really no Notifications under the Act, but without jurisdiction. The High Court will consequently issue a writ of certiorari directing such Notifications to be removed into the Court to be quashed, and will also issue a writ prohibiting the Government from taking any further action by way of implementing the invalid Notifications or from doing other acts in pursuance thereof, such as entering upon or taking

possession of lands or buildings or salt factories established therein. But no writ need issue as against the agents or servants of the Government who may act or take action in the name of the Government. 1950 T C L R 162 : (1950) K L T 159 : AIR 1952 T C 14 (19) (Pt G) (Pr 19).

——S. 18—Powers of Court — Writ against executive officer in respect of administrative order. See Constitution of India, Art. 226. AIR 1951 Trav-Co 197.

SECTION 20

——S. 20 (4) (A), Item 10 and S. 21 (1) (as amended by S. 15 (3) and S. 16 (1) of Act 1 of 1952 —Effect of amendment — Right of appeal against order passed by Single Judge under Art. 226 of the Constitution not affected.

The right of appeal against the orders of a Single Judge had been expressly conferred by cl. (3) of S. 18 of Act 5 of 1125. Even though that provision was deleted by Act 1 of 1952 the addition of the new provisions in clause (3) of S. 15 and cl. (1) of S. 16 of Act 1 of 1952 clearly indicated that the right of appeal was intended to be retained. Act 5 of 1125, and the later Act, Act 5 of 1959, clearly conferred the right of appeal against orders passed by a Single Judge on applications under Art. 226 of the Constitution. There is nothing in the intermediate Act 1 of 1952 to indicate that this right was taken away. Indo-Mercantile Bank, Ltd. v. Commr., Quilon Municipality. 1960 Ker L J 1135 : 1960 Ker L T 1901 : (1960) 2 Ker L R 464 : ILR (1960) Ker 1435 : AIR 1961 Ker 96 (98) (Pt C) (Pr 4) (FB).

——S. 20 — Trivandrum Bench — Filing powers — Cannot receive cases directly. See States Re-organization Act (1956), S. 51 (3). AIR 1958 Ker 188 (DB).

SECTION 21

——S. 21 (1) (as amended by S. 15 (3) and S. 16 (1) of Act 1 of 1952) —Effect of amendment — Right of appeal against order passed by Single Judge under Art. 226 of the Constitution not affected. See Travancore-Cochin High Court Act (5 of 1125), S. 20 (4) (A), Item 10. A I R 1961 Ker 96 (FB).

——S. 21—Trivandrum Bench—Filing powers—Trivandrum Bench is not the High Court of Kerala — It can only hear and dispose of such cases as are directed to be posted before it by the Chief Justice—It cannot do anything else on behalf of High Court and in particular it cannot receive cases. See States Reorganization Act (1956), S. 51 (3). A I R 1958 Ker 188 (DB).

——S. 21 (ii) (b)—'Original jurisdiction'—Meaning.

The terms 'original jurisdiction' is well understood and means jurisdiction to entertain cases in a Court of first instance, as distinguished from appellate jurisdiction. An interlocutory order passed in an appeal, is an order passed in exercise of appellate jurisdiction and not of original jurisdiction since the case itself was not entertained in the court of first instance. 1957 Ker L T 1221 : ILR (1958) Ker 141.

——S. 21 — Single judge cannot declare that case decided by another judge is fit for appeal.

A Division Bench can hear and decide appeals against judgments passed by a single judge under sub-clause (c) of clause 4 of S. 20, only where the judge who passed the judgment makes the necessary declaration. The Judge who passed the judgment alone is competent to declare that the case is a fit one for appeal to a Division Bench. Hence single judge of the High Court is not competent to declare that a case decided by another judge is a fit one for appeal. 1956 Ker L T 506 : ILR (1956) Trav-Co 877.

SECTION 24

——S. 24—Appeal—Procedure—Rules of High Court providing for hearing of appeals by certain number of judges — Merely regulate working of High Court and do not confer any right on appellant — Order of reference to Full Bench made by Travancore Cochin High Court before States Reorganisation Act—Appeal transferred to Madras High Court under States Reorganisation Act — Appellant cannot claim any right to have his appeal heard by Full Banch of Madras High Court. See Civil P. C. (1908), Ss. 96 and 100. A I R 1962 Mad 304.

SECTION 25

——S. 25—Suit instituted before repeal of Travancore High Court Act — Appeal filed after repeal of S. 25 of Act 5 of 1125—Appellants cannot claim that appeal should be heard only by a Full Bench under either of the Acts—See Travancore High Court Act (4 of 1099 ME), S. 11. AIR 1964 S C 907.

——S. 25 — Applicability. See Travancore Cochin High Court Act (5 of 1125), S. 8. AIR 1954 S C 526.

——S. 25—Retrospective operation—Provision enabling a Division Bench of two judges to hear appeals specified in S. 25 (now deleted) clearly has retrospective operation. See Travancore-Cochin High Court (Amendment) Act (1 of 1952), S. 15 (4). A I R 1953 Trav-Co 53 (DB).

TRAVANCORE-COCHIN HIGH COURT (AMENDMENT) ACT 1951 (1 of 1952)

PREAMBLE

——Preamble — Act is within competency of State Legislature in view of Entry No. 3 in State List and Entry No. 13 in Concurrent List — (Constitution of India, Sch. 7, List II, Entry No. 3 and List III, Entry No. 13). A I R 1953 Trav-Co 53 (54) (Pt A) (Pr 6) (DB).

——Preamble—Validity of Act— Unless the contrary is established the Court has to presume that the impugned Act has been validly enacted—(Constitution of India, Art. 200)—(Evidence Act (1872), S. 114, Illustration (e)). A I R 1953 Trav-Co 53 (54, 57) (Pt B) (Prs 6, 19) (DB).

SECTION 15

——Ss. 15 (4) and 18 — Retrospective operation — (Travancore Cochin High Court Act (5 of 1125), S. 25)—(Civil P. C. (1908), Ss. 96 and 100).

There is no doubt that a right of appeal provided for by the Civil Procedure Code is a vested right that could not be defeated by a subsequent legislation. But except in urging that an appeal filed in the High Court under the provisions of Civil P. C. should be heard and decided by High Court, no litigant has vested right to compel that it should be heard by a particular number of Judges. The Judges exercise the powers conferred by the statute and when the new provision is that a matter attended to by three Judges can be disposed of by two judges, it is only one affecting the procedure to be followed by High Court. Such law will apply to all pending proceedings in High Court.

The provision in Act 1 of 1952 enabling a Division Court of two Judges to hear appeals specified in S. 25 Travancore Cochin High Court Act (5 of 1125 ME), now deleted, has retrospective operation. A I R 1953 Trav-Co 53 (60) (Pt C) (Pr 30) (DB).

SECTION 18

——Ss. 18 and 15 (4) — Retrospective operation. See Travancore Cochin High Court (Amendment) Act 1951 (1 of 1952), S. 15 (4). A I R 1953 Trav-Co 53 (DB).

TRAVANCORE-COCHIN HIGH COURT ORDINANCE (2 of 1124-ME) (1949)

SECTION 6

●—S. 6 — Power of High Court to issue writs of mandamus, prohibition, etc.

Section 6 of the Ordinance (2 of 1124) under which the High Court of Travancore and Cochin is constituted provides that this Court shall be a Court of record. Though it does not state what exactly are the jurisdictional powers of the Court of record, it must be held that they are not inferior to those of a Court of record which is a superior Court elsewhere. That the Court of Travancore and Cochin is a superior Court does not admit of any doubt for there is no other Court exercising jurisdiction over this Court. It is one of the powers of a Court of record, especially of a superior Court elsewhere, that it has and should have the power to issue the prerogative writs such as mandamus, certiorari etc. Nothing shall be intended to be out of the jurisdiction of the superior Court except that which especially appears to be so. There is no provision in the Ordinance which limits this power by words express or implied. So on proper cause being shown, this Court will issue any one of the prerogative writs which a Court of record and a superior Court will issue elsewhere under similar circumstances. Muthuswami Iyer Subramania Iyer v. United State of Travancore Cochin, 1949 Trav-Co L R 270 : A I R 1950 Trav-Co 97 (99) (Pt D) (Pr 7) (FB).

SECTION 8

●—S. 8 — Applicability. See Travancore-Cochin High Court Act (5 of 1125 ME), S. 8. A I R 1954 S C 526.

●—S. 8 — Applicability — S. 8 of Ordinance II of 1124 and S. 8 of the Act had no application to proceedings closed before the date of the Ordinance — Decree of former High Court of Cochin did not become decree of High Court of the United State of Travancore and Cochin—Such decree did not operate as res judicata — Being foreign judgment was not conclusive on issue as to title to property situate beyond its territorial jurisdiction. See Travancore-Cochin High Court Act (5 of 1125 ME), S. 8. A I R 1964 Ker 4 (FB).

●—Ss. 8, 25 and 26 — Judgment under S. 11, Travancore High Court Act, 4 of 1099, by Full Bench — Review by Full Bench of present High Court — Jurisdiction—Travancore High Court Act (4 of 1099) S. 11.

In the case of a judgment passed under S. 11 of the Travancore High Court Act, 4 of 1099 by a Full Bench, after the repeal of that Act by United State of Travancore-Cochin High Court Ordinance, if a review of that judgment is admitted, an effective judgment can be passed by a Full Bench of the present Travancore-Cochin High Court, and S. 11 of the Travancore High Court Act 4 of 1099 is no bar to the review being admitted. There is no provision in S. 25 of the Ordinance for submitting the judgment passed by the Full Bench to the Raj Pramukh for his confirmation. It is not necessary to consider whether His Highness the Raj Pramukh has got the right to confirm a judgment passed under S. 11 of the Travancore High Court Act 4 of 1099, in view of the repeal of the Act by Ordinance 2 of 1124. Mar Basselious Catholicos v. Mar Poulese Athanasius, 1952 Ker L T 69 : I L R (1952) Trav-Co 1031 : A I R 1952 Trav-Co 120 (124) (Pt A) (Pr 12) (FB).

[Reversed on another point in AIR 1954 S C 526].

SECTION 25

●—S. 25—Judgment under S. 11, Travancore High Court Act 3 of 1099, by Full Bench — Review by Full Bench of present High Court — Jurisdiction. See Travancore-Cochin High Court Act (5 of 1125 ME), S. 8. AIR 1952 Trav-Co 120 (FB).

[Reversed on another point in AIR 1954 S C 526.]

SECTION 26

●—S. 26— Judgment under S. 11, Travancore High Court Act 3 of 1099, by Full Bench — Review by Full Bench of present High Court—Jurisdiction, See Travancore-Cochin High Court Ordinance (2 of 1124 ME), S. 8. AIR 1952 Trav-Co 120 (FB).

[Reversed on another point in AIR 1954 S C 526].

TRAVANCORE COCHIN HIGH COURT RULES

See under High Court Rules and Orders.

TRAVANCORE-COCHIN HINDU RELIGIOUS INSTITUTIONS ACT (15 of 1950)

PREAMBLE

●—Preamble:— Cochin Devaswom Board is "other authorities" within meaning of Art. 12 of Constitution. See Constitution of India, Art. 12. A I R 1956 Trav-Co 19 (FB).

●—Preamble—Validity.

The Act as a whole must be held 'intra vires' and whether any particular section does or does not offend the Constitution will be a matter for special investigation. AIR 1954 S C 282; A I R 1954 S C 388 and AIR 1954 S C 400, Foll. Kumaran Nambudiri v. Cochin Devaswom Board. 1954 Ker L T 551 : A I R 1954 Trav-Co 515 (517) (Pt C) (Pr 5) (FB).

SECTION 1

●—S. 1 — Act does not offend Art. 14 of Constitution. See Constitution of India, Art. 14. A I R 1956 Trav-Co 19 (a) (FB).

—S. 1, Cl. (3), Part II, S. 124; Cl. (e)— Jurisdiction — Part II is not confined to territorial limits of former Cochin area — S. 124 applies to suit by or against Board in whatever part of integrated State suit is instituted. A I R 1953 Trav-Co 33 (33, 34) (Pr 1) (DB).

SECTION 2

●—Ss. 2 (b) and 61 (6) — No vital difference between two definitions.

There is no vital difference between the two definitions, namely, those contained in S. 2 (b) and S. 61 (6). The provision, namely, "but shall not include any Hindu Religious Institutions belonging to and under the sole management of a single family" in S. 2 (b) only means that any religious institution which is not dedicated or used as of right by the Hindu Community or any section thereof is outside the purview of Part I and the same is the position in Part II as well. P. M. Bramadathan Nambooripad v. Cochin Devoswam Board 1955 Ker L T 516 : I L R (1955) T C 741 : AIR 1956 Trav-Co 19 (24) (Pt J) (Pr 21) (FB).

●—Parts I (Ss. 2 to 60) and II (Ss. 60 to 130) — Difference between these parts.

There is no provision for the imposition of superintendence in Part II while there is a provision in that behalf in Part I of the Act. This difference between the two parts is not material. P. M. Bramadathan Nambooripad v. Cochin Devaswom Board. 1955 Ker L T 516 : ILR (1955) TC 741 : AIR 1956 Trav-Co 19 (25) (Pt L) (Pr 25) (F B)

SECTION 3

—Ss. 3, 24 and 25 — 'Industry' — Maramat section of Travancore Devaswom Board functioning under T. C. Hindu Religious Institution Act, 1950 is 'industry' within S. 2 (j). See Industrial Disputes

Act (1947), S. 2 (j). AIR 1963 Ker 250.

SECTION 9

——S. 9 — Application for removal of more than one member is maintainable—Singular includes plural — Interpretation of Statutes — T. C. Interpretation and General Clauses Act (7 of 1125), S. 12 — General Clauses Act (1897), S. 13 (2).

Section 12 of the T. C. Interpretation and General Clauses Act, 1125, which applies to the T. C. Act 15 of 1950, provides that in all Acts, words in the singular shall include the plural.

A member of the Board in S. 9 must then be construed to include the plurality of members of the Devaswom Board. It would then follow that an application for removal of all or any of the members of the Board must be found to be competent under S. 9 of the Act. 1965 Ker L J 1042.

——S. 9 — Application for removal of member of Board on ground of misbehaviour — For maintainability of application, misbehaviour should not be a "proved misbehaviour."

An application under S. 9 of the Act has not to be based on "proved misbehaviour", that is to say, on some misbehaviour that has already been proved in some prior proceeding. An application based on allegations of misbehaviour can be heard under the section. 'Proved misbehaviour' is mentioned in the section as ground for removal from office of a member of the Board and not as ground for an application under the section. An application calling for an enquiry into charges of misbehaviour or incapacity on the part of members of the Board can be moved under S. 9 of the Act. 1965 Ker L J 1042.

——Ss. 9, 31—Members of Devaswom Board reducing Nivedyam quantity in view of food control and expenses — No violation of "heretofore usages".

Consistent with the Hindu faith that idols in temples are only representations of the Divinity for purposes of concentration in worship for the ordinary people and that the Divinity is the omnipresent and omnipotent power, which manifests in various forms of Life and Energy in the universe, one cannot think that the efficacy of worship or the vitality of an idol is dependant, not on the concentration or devotion in worship but on the volume of materials offered in the service.

Held, that the prior usage was not to regard Nivedyam, Namaskaram, Masavisesham and Attavisesham as immutable but was to allow reductions of Nivedyam and termination of ceremonies. The acts of the members of the Devaswom Board in the same line reducing the quantum of some of these items and abolishshing some for the purpose of limiting the expenditure within the means and in view of controls over rice could not then be violations of "heretofore usages" of Devaswom.

It is common knowledge that prices of produces have risen above ten times of what they had been during the period 1090 to 1100 M. E. when most of the Pathivus have been fixed. Such rise in prices justifies aboliton of items of less religious merit. In the circumstances, the stoppage of Namaskarams and overlapped ceremonies could not be characterised as acts of "misbehaviour" within meaning of S. 9. 1965 Ker L J 1042.

——Ss. 9, 24 — Misbehaviour on part of members of Devaswom Board — Acts calculated to bring down expenses of temples and for cultural advancement of Hindu community or for national causes—No misbehaviour—High Court's duty in matter, pointed out.

The Travancore Devaswom Board, constituted under Act 15 of 1950, is a high functionary to whom "all rights, authority and jurisdiction belonging to or exercised by the Ruler of Travancore" as Sovereign of the State over the Devaswoms and Hindu religious institutions have been assigned. Even the power of assuming religious institutions run by private individuals or families has been assigned to them under S. 37 of the Act. To remove the members of such a high body, the Court has to be convinced of a grave misbehaviour or serious incapacity on their part Section 9 does not compel the High Court to remove any member of the Board on proof of any misbehaviour on his part. It gives a large discretion to this Court in the matter, and a discretion vested in a Court of law is not a blank cheque. Its exercise must not be arbitrary or fanciful, but judicial and judicious. The members of the Board are certainly of a higher status than the trustees of a Devaswom, and any consideration of their conduct has to be done with a greater sense of responsibility.

Held on facts (1) If all the available funds are directed to renovation of temples and nothing to cultural advancement the interest of the community would only be prejudiced.

(2) When the religious organisations of other communities in the State undertake enducational activities through schools and colleges of their own, it would prejudice the interests of the Hindu community if it alone stood aloof in the field and the establishment of such enducational institutions is within the purview of S. 24 of the Act.

(3) For the proper supervision and control of the large number of institutions entrused to the management of the Devaswom Board and for the organisations and consolidation of the Hiudus and for the promotion of their cultural and religious activities, frequent travels have to be undertaken by the members of the Board. It cannot then be said that they are guilty of any misbehaviour in undertaking travels or drawing allowances fixed therefor. in the absence of proof that travels were undertaken for different purposes.

(4) Delivery of excess gold out of accumulated offerings for a national purpose for value offered by Government in Gold Bonds overlooking advantages of a private sale to dealers, is not an unworthy conduct, much less a misbehaviour. 1965 Ker L J 1042.

SECTION 24

——S. 24 — Misbehaviour on part of members of Devaswom Board — Acts calculated to bring down expenses of temples and for cultural advancement of Hindu community or for national causes — No misbehaviour — High Court's duty in the matter ponited out. See T. C. Hindu Religious Institutions Act (15 of 1950), S. 9. 1965 Ker L J 1042.

——S. 24—The words "shall" and "may" in section do not indicate that whatever follows "shall" is obligatory and whatever follows "may" is not.

It cannot be contended that whatever follows the word "shall" in S. 24 is obligatory and whatever follows the word "may" is non-obligatory. If such a construction is adopted, contribution to other Devaswoms not under the management of the Board, whether in or outside the State, would be an obligatory item which being of unlimited scope might exhaust the entire fund in every year never leaving anything for the cultural advancement of the Hindu community, even in matters of faith, piety or morality, which latter would be a non-obligatory item. Likewise, renovation or repair of unserviceable temples would be an obligatory item, while construction of a new temple in a fast expanding area where the Hindus crowd in large numbers without an institution for the conduct of their religious services, would be a non-obligatory item. Such cannot be the inten-

tion of the Section. The word "shall" should be construed as calling for a primary consideration and the word "may" for secondary consideration. If that be the correct construction, there is no compulsion to prefer always the items in the first series to those in the second. Whether a particular item of work is to be preferred to the other may depend largely on the circumstances of the case at hand. **1965 Ker L J 1042.**

——S. 24—Maramat section of Travancore Devaswom Board functioning under T. C. Hindu Religious Institutions Act, 1950 is "industry" within S. 2 (j) of Industrial Disputes Act 1947. See Industrial Disputes Act (1947), S. 2 (j). **AIR 1963 Ker 250.**

SECTION 28

——S. 28 (3) — Service Inam property attached to specific services — Alienation by holder contrary to past usage—Performance of services discontinued—Property can be resumed by Devaswom Board under S. 28 (3)—Grant—Service inam grant—Resumability—Services discontinued—Power of grantor to resume.

Where the property in suit is service Inam attached to specific services, thadivetu in this case, the alienation of the property by the holder contrary to the provisions of the Act has to be treated as null and void at the option of the Travancore Devaswom Board and their power to resume the property in such circumstances cannot be denied. It is not the law that once the property is given for the continued performance of services (thadivetu service in this case) in future and afterwards the services happen to be abolished, by such abolition and without more, the property becomes the absolute property of the grantee and lost to the grantor. On the contrary, the true rule ought to be, that on the burden of the services being litted, the condition subject to which the grant was made ceases to operate and therefore the property itself becomes resumable at the instance of the grantor. 40 Mad L J 537 : AIR 1922 P C 154 and I L R 9 Bom 198, Disting. **1964 Ker L J 191 : (1964) 1 Ker L R 1 : I L R (1964) 2 Ker 126 : 1964 Ker L T 641.**

●——S. 28 (3)—Board's jurisdiction—(Constitution of India, Art. 226).

The jurisdiction conferred on the Board by S. 28 (3) is confined to lands given for future services. It does not extend to lands given in lieu of past services which become the lands of the grantee, that is to say, in respect of which the grantee is not bound to continue to perform any service. No question of any default of any service can arise in such a case and therefore where the question raised before the Board was whether the lands sought to be resumed were granted to the family of the petitioner for past services or not the question is beyond the competence of the Board to decide and its order should be quashed as ultra vires of Board's powers. K. Narayanan v. Devaswom Board, **1954 Ker L T 374 : I L R (1954) Trav-Co 846 : A I R 1954 Trav-Co 470 (471) (Pt B) (Pr 1) (FB).**

SECTION 31

——S. 31—Members of Devaswom Board reducing Nivedyam quantity in view of food control and expenses — No violation of "heretofore usages". See Travancore-Cochin Hindu Religious Institutions Act (15 of 1950), S. 9. **1965 Ker L J 1042.**

SECTION 32

——S. 32—Application against members of Board for appointment of auditor to check accounts of Devaswom—Procedure indicated.

The consideration of audit reports under S. 32 of the Act is done by the High Court at a public hearing. Under S. 32 (12) of the Act a copy of the audit report to be given "to any person who duly applies or the same". On getting a copy he can intervene when the relevant audit reports are taken for consideration in the High Court and press his views and solicit the Court to pass appropriate orders thereon. No separate independent application is maintainable for this purpose against the members of the Board in which the Devaswom Board, whose accounts are sought to be audited, is not a party. A proceeding against the members of the Board cannot in the light of S. 4 of the Act be reckoned as a proceeding against the Board. **1965 Ker L J 1042.**

SECTION 48

●——S. 48 — Validity. See Constitution of India, Art. 14. **AIR 1954 Trav-Co 515 (FB).**

SECTION 50

●——S. 50 — Unassigned lands — (Travancore Land Conservancy Act (4 of 1091), S. 6, Explanation).

The expression 'unassigned' is not used in the Land Conservancy Act and the Explanation to S. 6 of that Act cannot be used for construing that expression in S. 50 of Act 15 of 1950. A lease does not constitute an assignment within the meaning of this section. Assignment, for purposes of this section, must connote the creation of an interest smaller than by way of absolute assignment. An assigned land under S. 50 will continue to retain its character as such so long as it continues to be in the possession of the assignee and it will not be metamorphosed into unassigned land for purposes of S. 50 during the period of such continuance in the possession of the tenant. If the landlord Devaswom has to recover possession of property leased to a tenant resort to the ordinary civil Courts according to law is the remedy to be pursued. Resort to the Land Conservancy Act is not authorised. Section 50 which applies only to unassigned lands would, therefore, apply only to cases where the land has not left the possession of the Devaswom into other hands with the right for them to retain possession until evicted in due course of law. Eipu Varkey v. State, **1954 Ker L T 437 : I L R (1954) Trav-Co 841 : AIR 1954 Trav-Co 471 (472) (Pt A) (Prs 2, 3) (FB).**

SECTION 60

●——Part II (Ss. 60 to 130) — Difference between Parts I and II—There is no provision for the imposition of superintendence in Part II while there is a provision in that behalf in Part I. See Travancore-Cochin Hindu Religious Institutions Act (15 of 1950), Part I. **AIR 1956 Trav-Co 19 (FB).**

SECTION 61

——Ss. 61 (6) and 93 — 'Dedication and use as of right'—Jurisdiction to frame scheme.

Where a temple was built by a rich family belonging to the Gowda Saraswath Brahmin community and it was later on dedicated by the family to and used as of right by that community:

Held, that even accepting the aspect of communal ownership that could only be true of a particular generation and as regards the next or future generations, the idea of 'dedication to and use as of right' taken in by the definition, must necessarily come into play. If, therefore, the temple and its properties could be deemed to be an 'institution' there could be no doubt the Cochin Devaswom Board had got the necessary jurisdiction to frame a scheme. **AIR 1957 Trav-Co 307 (309) (Pt C) (Pr 10).**

——S. 61 (6)— Framing of scheme under—No infringement of fundamental right. See Constitution of India, Art. 26 (d). **AIR 1957 Trav-Co 307.**

■——S. 61 (6)—No vital difference between the two definitions, namely those contained in S. 2(b) and

S. 61 (6). See Travancore-Cochin Hindu Religious Institutions Act (5 of 1950), S. 2(b). AIR 1956 Trav-Co 19 (FB).

SECTION 62

——S. 62 — Contractual domestic tribunal — Procedure—Principles of natural justice including rule of bias, applicability—Cochin Devaswom Board feeling aggrieved by false denials of their statements by Principal of College managed by them, themselves holding inquiry into misconduct and dismissing principal — Inquiry is biassed in violation of principles of natural justice and dismissal order is illegal. See Domestic Tribunal. AIR 1961 Ker 282 (DB).

SECTION 63

——Ss. 63, 64 — Restrictions imposed by Ss. 63 and 64 in choosing members of Cochin Devaswom Board — Do not violate the provisions of any of the Arts. 14, 15 (1), 19 (1) (f) and (g) and 26. See Constitution of India, Art. 14. AIR 1956 Trav-Co 19 (FB).

SECTION 66

——S. 66 (vi) — Section 66 of the Act does not offend Arts. 19, 26 and 254 of the Constitution. See Constitution of India, Art. 19. AIR 1956 Trav-Co 19 (FB).

——S. 66 — 'Office-holder' — Chairman of Municipality.

A Municipality constituted under the Cochin Municipal Act is a local authority whose 'office-holders' are disqualified for membership of the Devaswom Board under S. 66 (iii) of T. C. Hindu Religious Institutions Act, 1950.

As to what exactly is meant by the term 'office-holder' in the section has to be resolved with reference to the provisions of that Act itself. S. 87 (i) of the Act refers not merely to office-holders but also officers and servants and on going through the various sections of the Act where the terms occur it is clear that though the words 'officer' and 'servant' have been created as interchangeable or as denoting two gradations in the official hierachy, the word 'office-holder' has been kept distinct and separate by the legislature as denoting something superior to the officers and servants of the Board and of the institutions under its control or management, something quite different from an employee serving under a contract of employment. Hence the contention that the term 'office-holder' in S. 66, means only an 'officer' and as the Chairman is not an officer of a Municipality under the Cochin Municipal Act but one of the Municipal authorities specified in S. 6 of that Act he cannot be considered as disqualified under S. 66 (iii) of the Act, is not sustainable.

The contention that as the chairmanship of the Municipality carried no remuneration but only a conveyance allowance the chairman cannot be deemed to be a holder of an office within the meaning of the Act has no warrant because an office without fees or perquisites will nonetheless be an office and the only test will be whether the particular office honorary or lucrative—is the creature of a statute and is of a public nature. 1954 Ker L T 723 : ILR (1954) Trav-Co 1295 : AIR 1955 Trav-Co 42 (43) (Pt A) (Prs 2, 3, 4) (DB).

——S. 66—Quo warranto—Election—Disqualification existing on date of nomination and election — Disappearance of disqualification on date of assuming office under election whether a ground for refusing writ. See Constitution of India, Art. 226. AIR 1955 Trav-Co 42 (DB).

——S. 66—Material date on which there should be a disqualification.

The material date with reference to which the existence or otherwise of the disqualification should be considered is the date of the nomination and the election and not the date on which the person in question assumed office as a member of the Board. 1954 Ker L T 723 : ILR (1954) Trav-Co 1295 : AIR 1955 Trav-Co 42 (43) (Pt B) (Prs 6, 7) (DB).

SECTION 67

——S. 67 (2)—Applicability—(Constitution of India Art. 226).

S. 67 has nothing to do with the disqualification enumerated in S. 66 (iii) if it did not supervene after the election but existed at the time of the election itself. The remedy of the aggrieved party in such a case is not by an application under S. 67 (2), but in proceedings for an appropriate writ or direction under Art. 226 of the Constitution. 1954 Ker L T 723 : AIR 1955 Trav-Co 42 (45) (Pt C) (Pr 11) (DB).

SECTION 79

——S. 79—Provisions contained in S. 79 are intra vires. See Constitution of India, Art. 19 (1) (f). AIR 1956 Trav-Co 19 (FB).

SECTION 81

——S. 81 — Provisions contained in S. 81 are intra vires. See Constitution of India, Art. 19 (1) (f). AIR 1956 Trav-Co 19 (FB).

SECTION 83

——S. 83 — Provisions contained in S. 83 are intra vires. See Constitution of India, Art. 19 (1) (f). AIR 1956 Trav-Co 19 (FB).

SECTION 84

——S. 84 — Provisions contained in S. 84 are intra vires. See Constitution of India, Art. 19 (1) (f). AIR 1956 Trav Co 19 (FB).

SECTION 86

——S. 86 — Provisions contained in S. 86 are intra vires. See Constitution of India, Art. 19 (1) (f). AIR 1956 Trav-Co 19 (FB).

SECTION 87

——S. 87 (3) — Validity — Section embodies a discrimination as far as trustees of Devaswoms in Cochin portion of the State is concerned — Hence it is hit by Art. 14 and should be considered ultra vires. See Constitution of India, Art 14. A I R 1954 Trav-Co 515 (FB).

SECTION 90

——S. 90—Adjudication annulled.

A person whose petition has been dismissed or whose adjudication has been annulled is not affected by S. 90. What the section really means is that person whose application for adjudication is pending and any person adjudicated as an insolvent while the order of adjudication is in force are within the mischief of the section. Kumaran Nambudiri v. Cochin Devaswom Board, 1954 Ker L T 551 : A I R 1954 Trav-Co 515 (517) (Pt D) (Pr 7) (FB).

SECTION 91

——S. 91—Hereditary trusteeship—Board has power to appoint stranger as trustee. A I R 1955 N U C (Trav-Co) 5778.

——S. 91—Preparation of scheme—Question of hereditary trusteeship does not arise. See Travancore-Cochin Hindu Religious Institutions Act (15 of 1950), S. 93. A I R 1955 N U C (Trav-Co) 5778.

SECTION 93

——S. 93 — Persons taking active part in matter of framing scheme — Right to question validity of scheme—(Evidence Act (1872), S. 115).

It is not open to persons who take active part in the matter of the framing of a scheme by the Devaswom Board to question the jurisdiction of the Board to frame the scheme or the validity of the scheme. A I R 1957 Trav-Co 307 (309) (Pt A) (Pr 6).

——S. 93—Jurisdiction to frame scheme — "Dedication to and use as of right" — If the temple could be deemad to be an institution, the Board had necessary jurisdiction to frame a scheme. See Travancore-Cochin Hindu Religious Institutions Act (15 of 1950), S. 61 (6). A I R 1957 Trav-Co 307.

——S. 93 — Framing of scheme under — Does not amount to infringement of fundamental right guaranteed under Article. See Constitution of India, Art. 26 (d). A I R 1957 Trav-Co 307.

——Ss. 93, 91—Preparation of scheme — Question of hereditary trusteeship does not arise. A I R 1955 N U C (Trav-Co) 5778.

SECTION 111

——S. 111—Expenses incurred by Board for appearing in suit in connection with affairs of Devaswom —To be met by Devaswom.

Held, that a reading of S. 111, in Part I of the Act, in juxta-position with the corresponding Ss. 44 and 56 of Part I of the Act, shows that all matters that are provided for in Ss. 44 and 56 of Part I of the Act in regard to the Travancore Devaswoms are covered by S. 111 in Part II relating to Cochin Devaswoms. It must then follow that all expenses incurred by the Board in regard to the affairs of the Devaswoms inclusive of expenses incurred by them for appearance in litigations in connection with the Devaswoms, have to be met by the Devaswom concerned. The levy of the expenses made by the Cochin Devaswom Board which gave rise to the suit must therefore be found lawful. 1963 Ker L J 27.

SECTION 113

● ——S. 113 (2)—Scope—If ultra vires — (Constitution of India, Art. 14).

Provisions of sub-s. (2) of S. 118 of Travancore-Cochin Hindu Religious Institutions Act, 1950, relating to Devaswoms whose management is "assumed" under Cochin-Hindu Religious Institutions Act (1 of 1081) are not ultra vires Art. 14 of the Constitution. Availability of a quick and coercive process to Devaswom Board for recovery of arrears of pattom, michavaram, renewal fees and other dues does not violate Art. 14. There is a difference no doubt between the procedure available to an ordinary jenmi and the Devaswom Board; but in the background and the circumstances of the case, the difference does not amount to discrimination or a denial of the equality guaranteed by Art. 14. There is a rational basis for the differential treatment and the provisions impugned do not in any way violate Art. 14 of the Constitution. A I R 1955 S C 191 : 1955 S C J 163 and A I R 1956 S C 479 : (1956) S C J 492 and A I R 1957 Mad 23 : (1956) 2 Mad L J 185, Rel. on. Govindan Nair v. Secy. Cochin Devaswom Board, 1957 Ker L T 697 : 1957 Ker L J 652 : I L R (1957) Ker 792 : A I R 1957 Ker 188 (189, 190) (Prs 6, 10) (FB).

SECTION 114

● ——S. 114 — Section 114 does not violate Arts. 14 and 19 of the Coustitution. See Constitution of India, Art. 14. A I R 1956 Trav Co 19 (FB).

SECTION 124

——S. 124, Cl. (e)—Applicability—Section 124 applies to suit by or against Board in whatever part of integrated State suit is instituted. See Travancore-Cochin Hindu Religious Institutions Act, S. 1, Cl. (3), Part II. A I R 1953 Trav-Co 33 (DB).

TRAVANCORE-COCHIN HOLDINGS (STAY OF EXECUTION PROCEEDINGS) ACT (8 of 1950)

See under Debt Laws.

TRAVANCORE-COCHIN INDEBTED AGRICULTURISTS RELIEF ACT (3 of 1956)

See under Debt Laws.

TRAVANCORE-COCHIN INDIAN COMPANY RULES (1952)

RULE 159

——R. 159 — Companies Act (1913), Ss. 229, 168—Scope—Insolvent Company — Interest on debts due to creditors — Interest up to the date of petition for winding up only admissible. See Companies Act (1913), S. 229. 1963 Ker L T 268.

TRAVANCORE-COCHIN INDUSTRIAL DISPUTES ACT (16 of 1950)

SECTION 1

——S. 1 — Industrial Disputes Act (Central) has replaced Travancore-Cochin Industrial Disputes Act—Central statute has to prevail over the statute passed by the State Legislature — Industrial Disputes Act (1947) (as amended by Act 48 of 1950), S. 1). See Constitution of India, Art. 254. A I R 1952 Trav-Co 371.

SECTION 10

——S. 10 — Government Notification referring to General Act (14 of 1947)—Effect.

Assuming that Travancore-Cochin Industrial Disputes Act would stand replaced by the Central Industrial Disputes Act only to the extent of positive repugnancy the fact that the Government notification making a reference to Industrial Tribunal cites the Central Act as that under which they derive authority would not render the Notification invalid as Government have the power vested in them otherwise, S. 10 of the Central Act being word for word the same as S. 10 of the State Act. The mistake can be rectified at any time. ('51) 1951 Ker L T 121 : I L R (1951) Trav-Co 458 : A I R 1951 Trav-Co 203 (207) (Pt B) (Pr 16).

TRAVANCORE-COCHIN INSOLVENCY ACT 1955 (2 of 1956)

SECTION 28

——Ss. 28 and 47 — Company foreman of chitty — Company wound up—Ordinary debt due by foreman company cannot be set-off against chitty debt due to it. See Travancore Chitties Act (26 of 1120), S. 42. AIR 1960 Ker 168.

SECTION 29

——S. 29—Sale of joint family property — Extent of right acquired by auction-purchaser — The interest obtained by the purchaser must be limited to the insolvent's share in the property. See Provincial Insolvency Act (1920), S. 28-A. A I R 1957 Kerala 144 (DB).

SECTION 47

——S. 47—Company being foreman of chitty — Company wound up — Ordinary debt due by foreman company cannot be set off against chitty debt due to it — Companies Act (1956), S. 529. See Travancore Chitties Act (26 of 1120), S. 42. AIR 1960 Ker 168.

TRAVANCORE-COCHIN INTERPRETATION AND GENERAL CLAUSES ACT (7 of 1125 ME)

See also Travancore General Clauses Act (2 of 1072 M E)

SECTION 2

● ——S. 2—Object of enactment—The Act is enacted in order to shorten language used in parliamentary legislation and to avoid repetition of the same words in the same piece of legislation. See General Clauses Act (1897), S. 3. **AIR 1958 S C 1.**

Sub-section 2 (6).

● ——S. 2 (6)—"Good faith"—Test — The definition in Travancore General Clauses Act is different from the one in the Indian General Clauses Act — Which test should be applied explained. See Provincial Insolvency Act (1920), S. 53. **AIR 1958 S C 1.**

Sub section 2 (26).

——S. 2 (26)—Roman Catholic Church — Is a person capable of holding property — As such it can be an agriculturist. See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), S. 2 (a). **1962 Ker L T 240**

Sub-section 2 (28).

——S. 2 (28) —The word "public" as used in S. 326 (13) Travancore District Municipalities Act must be understood in the sense in which it is defined in S. 2 (28), Travancore General Clauses Act, and would include a section of the public. Hence, a canteen run by a company exclusively for its employees and which is not open to the general public will attract the provisions of Cl. (13) of S. 326. See Municipalities —Travancore District Municipalities Act (23 of 1116), S. 326 (13). **A I R 1950 Trav-Co 103.**

SECTION 4

——S. 4 (c)—Order for eviction passed under Cl. 9 of Travancore-Cochin Building (Lease and Rent) Control Order 1950 is to be deemed an Order under S. 17 of the Kerala Building (Lease and Rent) Control Act 1959 — Control Order of 1950 and Travancore-Cochin Act of 1950 repealed — Order of eviction under the repealed Travancore-Cochin Buildings (Lease and Rent) Control Order, 1950 is still executable under S. 14 of the Kerala Buildings (Lease and Rent Control) Act of 1959 by virtue of S. 33 thereof. Even if the Provision had not been there the eviction would still be executable by virtue of S. 4 (c) of the Travancore General Clauses Act (7 of 1125ME). See Houses and Rents—Kerala Buildings (Lease and Rent) Control Act (16 of 1959), S. 14. **1963 Ker L J 170 : 1963 Ker L T 308 : I L R (1963) 1 Ker 402.**

——S. 4 — Travancore-Cochin Forest Act (3 of 1952), S. 27—Offence under S. 27, committed in 1958—Complaint filed in 1962 when Act 3 of 1952 was not in force being repealed by Forest Act of 1962—Accused can be convicted under repealed Act. See Travancore-Cochin Forest Act (3 of 1952), S. 27. **1963 Ker L T 478.**

——S. 4 (c) — Sales Tax — General Sales Tax Act (11 of 1125), Ss. 3 (5), 5 (vii), 15 — Dealer taxed on first purchase under Madras Act IX of 1939 — Subsequent repeal of Madras Act and change of taxable point by Kerala Act — Effect — S. 4 (c) of Travancore-Cochin Interpretation and General Clauses Act applies — Right of dealer under S. 3 (5) not to be taxed again held not affected by the repeal and the fresh enactment. See Sales Tax — General Sales Tax Act (11 of 1125), S. 3 (5). **1961 Ker L J 1284.**

——S. 4 (6) (c) (e) — Debt Laws — Travancore Debt Relief Act (2 of 1116), S. 16 — Application under, cannot be withdrawn — Repeal of Act by Act (31 of 1958) as amended by Act (11 of 1961) — Proceedings under Act (2 of 1116) do not abate. See Debt Laws—Travancore Debt Relief Act (2 of 1116) S. 16. **1961 Ker L T 457.**

——S. 4 (c)—Repeal of Madras Act — Effect — Right under S. 8 of Madras Act is not taken by S. 22 of Kerala Act (31 of 1958). See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), S. 22. **ILR (1960) Ker 139.**

SECTION 8

——S. 8 — Not applicable to provisions in S. 3 of Indebted Agriculturists Act. See Debt Laws—(T. C.) Indebted Agriculturists Relief Act (3 of 1956), S. 3. **1963 Ker L T 187.**

SECTION 10

——S. 10—Shortest route along public road or public lane—(General Clauses Act (1897), S. 11)—See Travancore Cinematograph Act (1 of 1102), S. 8. **AIR 1953 T C 298 (DB).**

SECTION 12

——S. 12—Singular includes plural—See Travancore Cochin Hindu Religious Institutions Act (15 of 1950), S. 9. **1965 Ker L J 1042.**

● ——S. 12 — Court-fee on application for copies of documents—Rules governing the matter indicated—See Travancore-Cochin Court-fees Act (2 of 1125), Sch. 2, Art. 1 (a). **AIR 1953 Trav-Co 104 (FB).**

SECTION 13

——S. 13 (1) — T. C. Co-operative Societies Act (X of 1952), Ss. 61, 86 — Government cannot review its own order passed in revision.

Section 13 (1) of the Interpretation and General Clauses Act cannot apply to a power the exercise of which results in a proceeding which is final in itself. The finality of the decision or order provided in S. 61 of the Co-operative Societies Act indicates only that a further exercise of the power is not contemplated by the legislature. The power of revision conferred by S. 86 of the Co-operative Societies Act is therefore one which is not within the purview of S. 13 of the Interpretation and General Clauses Act.

The revisional power of Government in the matter being only a statutory power, the limits of its extent must be sought in the statute that conferred the power itself. All that is found in the statute with reference to its exercise is in S. 61, of the Act and the power having been once exercised the Government becomes functus officio in the matter. Admittedly no further power to review that order is provided for in the statute, or even in the rules. The contention that the Government can review or modify its prior decision must be overruled. **1961 Ker L T 728 : 1961 Ker L J 642 : I L R (1961) 2 Ker 326.**

SECTION 20

——S. 20 — Power to cancel exemption from sales tax—In view of S. 20 of the Act the power of removing such a ban is co-extensive with the power granted by S. 6 (1) of the T. C. General Sales Tax Act to impose the ban. See Sales Tax—Travancore-Cochin General Sales Tax Act (2 of 1125), S. 6 (1). **AIR 1957 Trav-Co 314 (DB).**

——S. 20—General Clauses Act (1897), S. 21—Order sanctioning opening of market—Government is empowered to cancel it. See Panchayats—T. C. Panchayats Act (2 of 1950), S. 69 (2). **A I R 1957 Trav-Co 220.**

SECTION 23

——S. 23 — Repeal may be express or by necessary implication — Repeal of Act by Central Act—Where

the later Act has in substance and in effect repealed the earlier Act, section will be attracted—(Industrial Disputes Act (1947) (as amended by Act (48 of 1950), S. 7). See General Clauses Act (1897), S. 24. AIR 1952 Trav.Co 371.

——S. 23 — Applicability — State law impliedly repealed by reason of conflict with Central Law—Effect. 1951 K L T 121 : I L R (1951) T C 458 : AIR 1951 T C 203 (219) (Pt C) (Pr 18).

TRAVANCORE COCHIN IRRIGATION ACT (7 of 1956)

SECTION 2

——Ss. 2 (5) (d) and 36—Suit for damages caused by draining operations — Draining water from fields not being irrigation work within meaning of S. 2 (5) (d). Section 36 is not attracted—Suit is maintainable. 1965 Ker L T 320 : ILR (1965) 1 Ker 295.

SECTION 36

——S. 36—Suit for damages caused by draining operations—Draining water from fields not being irrigation work within meaning of S. 2 (5) (d), S. 36 is not attracted — Suit is maintainable. See Travancore-Cochin Irrigation Act (1956). S. 2 (5) (d). 1965 Ker L T 320 : ILR (1965) 1 Ker 295.

TRAVANCORE-COCHIN KANOM TENANCY ACT (24 of 1955)

See under Tenancy Laws.

TRAVANCORE-COCHIN KOLE CULTIVATION AUTHORITY RULES (1953)

RULE 12

——R. 12 — "On account of water used for purposes of irrigation" — Meaning of — Demand notices relating to dewatering charges for Kole cultivation — Provisions of Revenue Recovery Act—Application of. See Travancore-Cochin Revenue Recovery Act (7 of 1951), S. 2 (a). 1957 Ker L J 386.

TRAVANCORE-COCHIN LAND CONSERVANCY ACT (19 of 1951)

SECTION 6

——Ss. 6, 7 and 9 — Applicability — Kuthagapattam lessee of Government land.

Where the petitioner was a Kuthagapattom lessee as evidenced by receipts obtained by him for the payment made for occupation of Government land, the provisions of Ss. 6 and 7 of the Act are not attracted and in view of that the fine of Rs. 3 imposed upon him under S. 6 and the prohibitory assessment under S. 7 have to be quashed as being illegal. But the last portion of the order directing realisation of the value of trees was not justified by the provisions of S. 9. 1959 Ker L R 246.

SECTION 10

——S. 10 — Vesting of street under S. 205, Trivandrum City Municipal Act (IV of 1116)— Power of Tahsildar in respect of such street. See Municipalities—Trivandrum City Municipal Act (4 of 1116), S. 205. (1958) Mad L J (Cr) 159 : 1958 Ker L J 172.

TRAVANCORE-COCHIN LAND TAX ACT (15 of 1955)

See also Kerala Land Tax Act (13 of 1961).

SECTION 4

● ——Ss. 4, 5-A and 7 — (As amended by Act 10 of 1957)—Constitutionality — If confiscatory, discriminatory and imposes unreasonable restrictions.

Per Majority : (A. K. Sarkar, J., dissenting) : The Travancore Cochin Land Tax Act, 1955, is struck down as unconstitutional. Apart from being discriminatory and imposing unreasonable restrictions on holding property the Act is clearly confiscatory in character and effect. While the provisions of Ss. 4 and 7 are declared to be unconstitutional in view of the provisions of Art. 14 of the Constitution, all these operative sections of the Act namely, Ss. 4, 5-A and 7, must be held to offend Art. 19 (1) (f) of the Constitution also. No question of severability arises because these are the main provisions of Act which are declared invalid. A I R 1958 S C 538, Applied.

Per A. K. Sarkar, J.—The Act is valid except S. 7 which offends Art. 14 and which is severable. Kumathat Thathunni Moopil Nair, etc. v. State of Kerala. (1961) 3 S C R 77 : (1961) 2 S C A 125 : (1961) 2 S C J 269 : 1961 Ker L T (SC) 11 : 1961 Ker L J 143 : A I R 1961 S C 552 (598, 559) (Pt B) (Prs 8, 9, 10).

——S. 4—Imposition of land tax on edavagai lands—Validity — Basis of power of taxation—Effect of acquisition of Edavagai rights — Imposition held not ultra vires—Constitution of India, Sch. 7, Entry 45 — Edavagai Rights Acquisition Act (27 of 1955), Ss. 2, 3, 4.

No tax can be struck down on the ground that it appears to the judicial mind as unwise or unjust. It is clear from Ss. 2, 3 and 4, of the Edavagai Rights Acquisition Act that what was acquired was the Chief's rights, and it is difficult to understand how the acquisition of those rights can possibly affect the right of the State to tax the lands concerned.

The right to basic tax is in no sense a manifestation of the Chief's right to Melvaram. It is a right founded on the Constitution and not on the acquisition of the rights of the Edavagais.

The fact that the State had not imposed any land tax till now in respect of these lands, does not mean that the State had lost its right to do so.

Hence the imposition of basic tax on the Edavagai lands was not ultra vires the Constitution. 1960 Ker L J 112 : 1960 Ker L T 378 : ILR (1960) Ker 345.

——S. 4 — Jenmi's lands demised on kanom and Verumpattam — Person liable to pay tax due to Government. See Tenancy Laws — Kanom Tenancy Act (24 of 1955), S. 3 (1). 1957 Ker L T 225.

SECTION 5

——S. 5 — Jenmi's lands demised on kanom and Verumpattam — Person liable to pay tax due to Government. See Tenancy Laws — Kanom Tenancy Act (24 of 1955), S. 3 (1). 1957 Ker L T 225.

SECTION 5 A

● ——S. 5-A — (As amended by Act 10 of 1957) — Constitutionality—Act is confiscatory, discriminatory and imposes unreasonable restrictions on holding property — Ss. 4 and 7 offend Art. 14 and Ss. 4, 5A and 7 offend Art. 19 (1) (f)—Whole Act is invalid as its main provisions are unconstitutional. See Travancore-Cochin Land Tax Act (15 of 1955), S. 4. A I R 1961 S C 552.

SECTION 7

● ——S. 7—(as amended by Act 10 of 1957)—Constitutionality — Act is confiscatory, discriminatory and imposes unreasonable restrictions on holding property—Ss. 4 and 7 offend Art. 14 and Ss. 4, 5A and 7 offend Art. 19 (1) (f) — Whole Act is invalid as its main provisions are unconstitutional. See Travancore Cochin Land Tax Act (15 of 1955), S. 4. A I R 1961 S C 552.

SECTION 11

——Ss. 11, 12—Scope — Levy referred to in S. 12 in under Entry 45 of List II of the Seventh Schedule to Constitution and not under entry 49.

It cannot be said that in view of Ss. 11 and 12 of the Travancore-Cochin Land Tax Act, 1955, namely T. C. Act 15 of 1955, as amended and extended to Malabar area by Kerala Act 10 of 1957, no further levy by way of cess or tax can be made by the State Government and therefore, the levy of land cess under Madras Act 14 of 1920, as amended, is invalid, illegal and void. The prohibition that is contained in S. 12 of the T. C. Act is clear, namely, that except irrigation or water cess referred to in S. 11, all cesses whether charged on land or not and customarily levied as public revenue due to Government are abolished. The levy under the Madras District Boards Act (14 of 1920 as amended by Kerala Act 4 of 1958) is a levy imposed by virtue of power conferred upon the State Government under Entry 49 of List II of the Seventh Schedule to the Constitution and which has to be paid over to the District Board concerned for being untilised for the purposes mentioned in S. 112 of the Madras Act. Such a levy cannot certainly be considered to be a cess customarily levied as a public revenue due to the Government. It is only such cess as is customarily levied as public revenue due to Government that is covered by S. 12. Such levy is land revenue under Entry 45, List II of the Seventh Schedule to the Constitution. **ILR (1962) 2 Ker 400 : 1962 Ker L J 1312 : 1962 Ker L T 826 : A I R 1963 Ker 31 (42) (Pt E) (Pr 62).**

SECTION 12

——S. 12—Scope—Levy referred to in S. 12 is under Entry 45 of List II of the Seventh Schedule to Constitution and not under entry 49, See Travancore-Cochin Land Tax Act (15 of 1955), S. 11. **A I R 1963 Ker 31.**

TRAVANCORE COCHIN LOCAL AUTHORITIES ENTERTAINMENTS TAX ACT (6 of 1951)

SECTION 2

● ——Ss. 2 (8), 5 (1) (a), 6 (1) — Payment for admission—Is totality of payment inclusive of entertainment tax—S. 5 (1) (a) is not designed only for evasion of tax.

It seems implicit in the definition in S. 2 (8) that payment for admission is the totality of the payment made by a person for securing admission to an entertainment, without excluding any part of it without which he would not be admitted. Entertainments to which admission is by tickets are treated as a separate category by the Act for the purpose of the levy, assessment, and collection of entertainments tax. The combined effect of S. 5 (1) (a) and S. 6 (1) is that no person shall be admitted to an entertainment except on a ticket of admission, the full value of which is inclusive of the entertainments tax payable thereon which is indicated by the label issued by the local authority to be stamped on it. This is the manner as prescribed by the Act, for the collection of tax. In effect, in such cases the tax is passed on to the person admitted for payment to the entertainment and is collected by the proprietor by the sale of ticket to him stamped with the label issued by the local authority. Though the term 'price of admission' is exclusive of the entertainments tax for the purpose of R. 10 of the Local Authorities Entertainments Tax Rules, it is inclusive of it for the purpose of R. 3; this concept of 'price of admission' in R. 10 is not to be confused with the concept of 'payment for admission', in the Act and in R. 12. It cannot however be said that S. 5 (1) (a) of the Act is designed only for the purpose of preventing evasion of the tax by the proprietor or that there is nothing in the Act or in the Rules to indicate that the proprietor is only an agent of the local authority for collecting the tax. (Held, that mandamus shall issue to the Commissioner, Municipal Council, or the issue of labels indicating the proper entertainments tax payable for each ticket of admission for stamping the same, in cases not covered by S. 4 of the Act, as a condition precedent to the levy and collection of entertainments tax). A I R 1961 Mad 525, Rel. on. M. Ismail v. Commr. Mattancharry Municipal Council. **1963 Ker L T 1080 : 1963 Ker L J 1222 : ILR (1964) 1 Ker 1 : AIR 1964 Ker 79 (79 to 81) (Prs 2, 3, 5, 7) (FB).**

SECTION 3

——Ss. 3, 11 and 12 — Levy of tax — Bye-laws not made at all—Effect—Levy of tax by recourse to rules made under S. 11—Validity.

Section 12 contains a mandatory provision and until the condition laid down in the section is fulfilled a local Authority cannot levy entertainment tax under S. 3 of the Act. The bye-laws made under S. 12 are the pre-requisite to enforce the decision under S. 3 and it is only where such bye-laws have been made that the rules issued by the Government under S. 11 may be made to supplement them in matters not covered by the bye-laws. When bye-laws have not at all been made under S. 12 the local Authority cannot levy entertainment tax by recourse to the rules framed by the Government under S. 11. **1957 Mad L J (Cr) 407 : 1957 Ker L T 704 : ILR (1957) Ker 762 : 1957 Ker L J 704.**

SECTION 5

● ——Ss. 5 (1) (a) and 6 (1)—Payment for admission—Is totality of payment inclusive of entertainment tax—S. 5 (1) (a) is not designed only for evasion of tax. See Travancore-Cochin Local Authorities Entertainments Tax Act (6 of 1951), S. 2 (8). **AIR 1964 Ker 79 (FB).**

SECTION 7

——S. 7 (1) (b) —Applicability—Club not conducted for profit staging drama — Admission of persons thereto on payment—Drama was an entertainment—What was done with collections has no bearing on question whether case falls under S. 7 (1) (b). **(1960) 1 Ker L R 221 : ILR (1960) Ker 441 : 1960 M L J (Cr) 270 : 1960 Ker L J 607 : 1960 Ker L T 360.**

——S. 7 (1) and (2) — Dispute as to whether entertainment falls under S. 7 (1) — Dispute has to be referred to Government under S. 6 (2)—Liability to tax can be established only by decision of Government. **(1960) 1 Ker L R 221 : ILR (1960) Ker 441 : 1960 M L J (Cr) 270 : 1960 Ker L J 607 : 1960 K L T 360.**

TRAVANCORE-COCHIN LOCAL AUTHORITIES ENTERTAINMENTS TAX RULES (1951)

RULE 3

● ——Rr. 3, 10 and 12 — Payment for admission—Is totality of payment inclusive of entertainments tax—S. 5 (1) (a) is not designed only for evasion of tax. See Travancore-Cochin Local Authorities Entertainments Tax Act (6 of 1951), S. 2 (8). **AIR 1964 Ker 79 (FB).**

RULE 12

● ——R. 12 — Payment for admission—Is totality of payment inclusive of entertainment tax—S. 5 (1) (a) is not designed only for evasion of tax. See Travancore-Cochin Local Authorities Entertainments Tax Act (6 of 1951), S. 2 (8). **AIR 1964 Ker 79 (FB).**

TRAVANCORE-COCHIN MEDICAL PRACTITIONERS ACT (9 of 1953)

SECTION 2

——Ss. 2(j) and 6 Proviso—'Recognised qualifications' — Interpretation — Definition in S. 2(j) has to be applied. AIR 1955 N U C (Trav-Co) 2213.

SECTION 6

——S. 6, Proviso—'Recognised qualifications'—Interpretation—S. 2 (j) has to be applied. See Travancore-Cochin Medical Practitioners Act (1953), S. 2 (j). AIR 1955 N U C (Trav-Co) 2213.

TRAVANCORE-COCHIN MOTOR VEHICLES ACT (10 of 1125 ME) (1949)

SECTION 60

——S. 60—Applicability—Held that the permit issued was void ab initio and its cancellation by the Board was proper and the provisions of S. 60 were not attracted. See Motor Vehicles Act (1939), S. 60. AIR 1954 Trav-Co 140 (DB).

SECTION 64

——S. 64—Rules under—Applicability and scope. See Motor Vehicles Act (1939), S. 133 (3). AIR 1954 Trav-Co 140 (DB).

SECTION 72

● ——S. 72—Travancore District Municipalities Act (23 of 1116 M. E.), Ss. 286, 287—Special and general statutes—Repeal by implication — S. 72 of T. C. Act 10 of 1125 does not impliedly repeal Ss. 286 and 287 of Act 23 of 1116 M. E. — Interpretation of statutes.

This presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together. 18 Calif, 438, Rel. on. A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality. Therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the Court should try to give effect to both the enactments as far as possible.

Section 72 of the Travancore-Cochin Motor Vehicles Act cannot be considered to have impliedly repealed Ss. 286 and 287 of the Travancore-Cochin District Municipalities Act. The proper way of construing the two sets of provisions would be to regard S. 72 of the Travancore-Cochin Motor Vehicles Act as a provision in coutinuity with Ss. 286 and 287 of Travancore District Municipalities Act so that it could be availed of by the appropriate authority as and when it chose. In other words the intention of the legislature appears to be to allow the two sets of provisions to co-exist because both are enabling ones. 1960 Ker L J 252 : (1966) 1 Ker L R 344 ; ILR (1960) Ker 338 : 1960 Ker L T 46, Reversed. Municipal Council v. T. J. Joseph, (1963) 1 S C W R 584 : (1964) 1 S C A 442 : (1964) 2 S C R 87 : (1964) 2 S C J 759 : 1963 Ker L T 432 : 1933 Ker L J 1091 : AIR 1963 S C 1561 (1564 to 1566) (Prs 9, 12, 17).

SECTION 73

——S. 73—Repeal of—Sections: impliedly repealed by T. C. Act 10 of 1125 Travancore-Cochin Motor Vehicles Act, S. 72. See Municipalities — Travancore District Municipalities Act (1116) S. 286. ILR (1960) Ker 338 : 1960 Ker L J 252 : (1960) 1 Ker L R 344 : 1960 Ker L T 46.

SECTION 89

——S. 89 (1)—Applicability—Transfer of ownership of motor vehicles — Certificate of insurance containing provision for assent of insurer — No consent obtained—Effect — R. 14 (c) of Rules for Insurance of Motor Vehicles.

Only a compliance with the provisions of R. 14 (c) of the Rules for the Insurance of Motor Vehicles (Notification No. D. Dis. 17/50 Addl. Fin. (Ins.) published in the Gazette Extraordinary, dated 13-4-1951) will entitle the transferee of a motor vehicle to claim the benefits of the insurance which stood in the name of the transferor. Further if the certificate of insurance contains a provision that the approval of the insurer is necessary for the transfer of the benefit of the policy to the transferee along with the transfer of the ownership of the vehicle and no such approval is obtained the vehicle runs without the cover of a policy and the transferee is liable for an offence for contravention of provisions of S. 89 (1). AIR 1956 Cal 555, Rel. on. 1960 Ker L T 404 : (1960) 1 Ker L R 449 : 1960 Ker L J 366 : 1960 Mad L J (Cri) 288 : 1960 Cri L J 1461 : AIR 1960 Ker 341 (341, 342) (Prs 3, 4).

SECTION 90

——S. 90 (4)—Scope of S. 90 (4). See Motor Vehicles Act (1939), S. 95 (5). 1957 Ker L T 1002.

SECTION 91

——S. 91—Third party's rights against insurer—How and where to be worked out. See Motor Vehicles Act (1939), S. 96. 1957 Ker L T 1002.

TRAVNCORE-COCHIN PADDY (ACQUISITION AND MOVEMENT) CONTROL ORDER (1950)

PREAMBLE

——Preamble — Validity—Order having been issued by the State in exercise of powers derived from S. 3 of the Public Safety Measures Act, 1950, which has to be declared null and void for want of previous sanction of the President, is devoid of legal sanction behind it and is void. See Constitution of India, Art. 246 (3). 1954 Cri L J 63 : AIR 1954 Trav-Co 34 (DB).

——Preamble — Delegation of legislative powers to executive — Power conferred upon the executive for regulating the acquisition of paddy under the order cannot amount to delegation of legislative powers. See Constitution of India, Art. 246. AIR 1952 Trav-Co 455 (458).

——Preamble — It is not correct to say that S. 17 (4) of Essential Supplies Temporary Power Act will not save the order but will only save executive orders passed by the State. See Essential Supplies (Temporary Powers) Act, S. 17 (4). AIR 1952 Trav-Co 455.

——Preamble—Nature of.

The Order cannot come under the category of exproprietary legislation. ILR (1951) Trav-Co 655 : AIR 1952 Trav-Co 455 (Pt C) (DB).

——Preamble — Order not ultra vires. See Public Safety — Travancore-Cochin Public Safety Measures Act, S. 3. AIR 1951 Trav-Co 241 (Pt D)(Pr 7) (DB).

CLAUSE 7

——Cl. 7—Purchasers of standing crops—Rights of.

If the petitioners are not the lessees of the land but only persons who had become entitled by purchase at an auction to the right to reap the crops on the land they cannot urge that they should be furnished with the seed for the next year's cultivation on the basis of their being stock holders. ILR (1951) Trav-Co 655 : AIR 1952 Trav-Co 455 (456, 457) (Pt A) (Pr 9) (DB).

CLAUSE 16

——Cl. 16—The Government when it is dealing with an appeal under Cl. 16 from an order of Civil Supplies Commissioner cannot be deemed to be a Court of law and and is not bound to post the appeal for hearing to a particular date and give an opportunity to the parties to appear and argue their cases before appeal is disposed of. 1951 Ker L T 268 : ILR (1951) Trav-Co 691 : AIR 1951 Trav-Co 241 (243) (Pt A) (Pr 4) (DB).

——Cl. 16—Appeal under—Disposal without hearing appellant — Legality — Quashing of — Certiorari — Power of High Court. See Constitution of India, Art. 226. 1950 Ker L T 617.

TRAVANCORE-COCHIN PADDY (CULTIVATION AND MOVEMENT) CONTROL ORDER (1950)

CLAUSE 1

——Cl. 1 — Date of coming into force—Date of issue or date of publication in Gazette — Public Safety Measures Act, S. 2 (13)—"Notified order".

The Paddy (Cultivation and Movement) Control Order must be held to have come into force on the date on which it was published. Though it bears an earlier date, if it is published on a later date in the Gazette, the order has to be treated as a valid order only from the date of such publication, having regard to the definition of a "notified order" in S. 2 (13) of the Public Safety Measures Act, under which the Paddy Control Order as issued. A notified order means an order notified in the Gazette. 1950 Ker L T 617.

TRAVANCORE-COCHIN PANCHAYAT ACT (2 of 1950)

See under Panchayats.

TRAVANCORE-COCNIN PANCHAYAT MARKET RULES (1954)

See under Panchayats.

TRAVANCORE-COCHIN PANCHAYAT RULES (1951)

See under Panchayats.

TRAVANCORE-COCHIN PLACES OF PUBLIC RESORT ACT (8 of 1951)

SECTION 3

——S. 3—Act not repealed by S. 6 of Act 32 of 1958 —Offence under S. 13 — Charge of failure to take licence — Accused already holding licence under Cinemas Regulation Act—Acquittal of accused on the ground that S. 6 of Act 32 of 1958 has repealed all the provisions of Places of Public Resort Act and that there no need for getting licence under the latter Act was held as not correct — Cinemas (Regulation) Act (32 of 1958), S. 6. 1961 Ker L J 593 : (1961) 2 Ker L R 101 : 1961 Ker L T 533.

——Ss. 3 and 13 — Prosecution for conducting show without licence — Prosecution failing to prove whether place was enclosed with an area of more than 500 feet—Accused entitled to acquittal.

Under S. 3 it is only if the place, where the cinema show is conducted, is an enclosed place or building with an area of more than 500 sq. feet that a licence would be necessary. It is not a matter for presumption but of proof. Where the prosecution fails to prove this essential ingredient the accused cannot be convicted under S. 13 read with S. 3 of the Act. (1961) 2 Ker L R 32.

SECTION 8

——Ss. 8 (1) (g), 8 (1) (a) — Possession of fermented wash for illicit distillation — Offence is under S. 8 (1) (g) and not under S. 8 (1) (a) which applies only to possession of liquor—Case triable as warrant case and is punishable with imprisonment which may extend to two years. (1960) 1 Ker L R 372 : 1960 Ker L J 375 : 1960 Ker L T 479 : 1960 Mad L J (Cri) 378.

SECTION 13

——Ss. 13 and 3—Prosecution for conducting show without licence—Prosecution failing to prove whether place was enclosed with an area of more than 500 sq. feet — Accused entitled to acquittal. See Travancore-Cochin Places of Public Resort Act (7 of 1951), S. 3. (1961) 2 Ker L R 32.

TRAVANCORE-COCHIN POLICE ACT (2 of 1952)

SECTION 26

——S. 26—Vires—Constitution of India, Art. 19 (3).

Reasonable restrictions can amount to a total prohibition of the exercise of the right even when the prohibition is strictly circumscribed in time and operative area to suit the exigencies of definite threats to public order. Prohibition, contemplated by S. 26 of the Police Act is of this type and therefore the section is intra vires of the Constitution. AIR 1952 T C 347, Foll. 1953 Ker L T 678 : ILR (1953) Trav-Co 930 : 1954 Cri L J 110 : AIR 1954 Trav-Co 47 (48) (Pr 8) (DB).

SECTION 30

——S. 30—Scope—Attachment of pathway—Legality.

Under S. 30, there is no provision for an attachment of the pathway or the police taking possession of it. Besides. before taking action under that section the District Magistrate should be satisfied that such action is necessary "in order to prevent or suppress any riot or grave disturbance of the peace".

Held, that there was nothing in the order impugned to show that the Magistrate apprehended any riot or grave disturbance of the peace and considered it necessary to take action under S. 30 in order to prevent it, and the direction was liable to be quashed. ILR (1957) Kerala 538 : 1957 Ker L T 592 : (1957) Ker L J 515.

SECTION 51

——S. 51 — Indecent or disorderly behaviour under —Mere use of threatening and angry words not amounting to such offence.

The use of threatening words uttered in an angry tone does not constitute riotous or disorderly behaviour within the meaning of S. 51 of the Police Act. The section recognises a distinction between the use of insulting or threatening language and indecent or disorderly behaviour by classifying them separately. 1962 Ker L T 29 : 1962 Ker L J 1 : 1962-1 Ker L R 143.

——S. 51 — Examination of principal witness— Witness not served — Disposal of case without examining such witness is not justified. 1959 Ker L T 496.

TRAVANCORE-COCHIN PREVENTION OF EVICTION OF KUDIKIDAPPUKARS ACT (13 of 1955)

See under Tenancy Laws.

TRAVANCORE-COCHIN PRIVATE SECONDARY SCHOOLS SCHEME

RULE 8

——R. 8 (7) — Manager appointing teacher who is not qualified — Liability to pay for his services— (Contract Act (1872), S. 70).

The scheme does not create any relationship contractual or otherwise between the teachers in a private school and the Government. The teachers are appointed by the management in its own right and not on behalf of the Government, the departmental approval being only a condition for earning the grant. R. 8 (7) does not mean that the appointment is a contingent appointment, contingent on due approval, so that if the approval is withheld, there is no contract, no appointment, and no service. Approval is a condition of the grant and if a manager appoints a person who is not qualified, he takes the risk of approval being withheld and consequently the grant. But that cannot in any way, affect his liability to pay the teacher he has appointed and whose services he has had. And even if the refusal of approval by the department has the effect not merely of terminating the appointment but of rendering the contract altogether non-existing the management would be liable to pay the teacher a proper salary for his services in accordance with the principle embodied in S. 70 of the Contract Act. **1959 Ker L T 1008 : 1959 Ker L J 1165 : AIR 1960 Ker 133 (134) (Prs 3, 4).**

RULE 12

——R. 12 (3)—Reasonable classification, what is — Travancore-Cochin Private Secondary School Scheme, R. 12 (3)—Previous service classified into continuous and non-continuous—Inequality held not unreasonable. See Constitution of India, Art. 14. AIR 1957 Trav-Co 265.

TRAVANCORE-COCHIN PROCLAMATION (1869) (1044 ME)

PREAMBLE

——Pre. — Succession — Convert to Islam from Hinduism—Right of Hindu collaterals to succeed — Effect of Proclamation of 29-6-1869. See Mahomedan Law—Succession. AIR 1955 Trav-Co 180 (DB).

TRAVANCORE-COCHIN PROHIBITION ACT (13 of 1950)

See under Prohibition.

TRAVANCORE-COCHIN PUBLIC HEALTH ACT (16 of 1955)

See also Travancore Public Health Act (3 of 1121 M. E.)

PREAMBLE

——Pre.—Notice issued under repealed Travancore Public Health Act, 3 of 1121, instead of under Travancore-Cochin Public Health Act, 1955—Notice not invalid. 1963 Ker L J 976 : 1964 (1) Cri L J 190 : AIR 1964 Ker 29 (31) (Pt A) (Pr 17).

SECTION 12

——Ss. 12 and 160—Enquiry of Sanitary Inspector working in Municipality—Order by Executive Authority — Validity — Applicability of provisions of Cochin Municipal Act — (Municipalities — Cochin Municipal Act (18 of 1113), S. 69 and rules under).

The provision in the Cochin Municipal Act and rules relating to disciplinary action against a Sanitary Inspector is a matter relating to Public Health and to the extent it is repugnant to the provision in S. 12 of the Public Health Act, it is void. The executive authority is therefore incompetent to conduct the enquiry, against a Sanitary Inspector. **1959 Ker L R 1439 : 1960 Ker L J 84 : 1960 Ker L T 391.**

SECTION 42

——S. 42 — Prohibitory order under S. 42 by Health Inspector and Taluk Health Officer—District Collector and District Superintendent of Police not entitled, when their assistance is sought to enforce order to consider its validity and permit its breach—Rule of law—Constitution of India, Art. 226.

Where a Health Inspector and Taluk Health Officer, acting under S. 42 of the Travancore-Cochin Public Health Act (14 of 1955), issues an order, prohibiting certain church authorities, from effecting burials in a cemetery as that was detrimental to public health it is not open to the District Collector and District Superintendent of Police, charged with the duty to maintain law and order, when their assistance is sought to enforce the order, to consider the legality or correctness of the order, when they are not appellate or revisional authority constituted under the T. C. Public Health Act, and permit the church authorities to effect burials in breach of the prohibitory order, on the view that they were not bound to give any assistance to enforce the said prohibitory order as those authorities were not satisfied that the prohibitory order could have any legal sanction or validity since proceedings initiated by the Public Health Authority were without jurisdiction. If the church authorities felt aggrieved by the proceedings initiated by the Health Inspector, or hurt by the prohibitory order, on the ground that it is an illegal order, or an order passed without jurisdiction, or an order which would not have been issued by that authority under the provisions of the statute, it was perfectly open to them to approach either that officer to modify or cancel that order, or to straightway challenge that order by adopting any proceedings known to law. **1963 Ker L T 976 : 1964 (1) Cr L J 190 : AIR 1964 Ker 29 (35) (Pt B) (Prs 32, 33).**

——S. 42 — Existence of nuisance — Health Officer himself must be satisfied.

Section 42 postulates the 'satisfaction' of the Health Officer himself as the condition precedent to any order for abating nuisance. Where, therefore, an order was issued by the Health Officer on the basis of 'satisfaction' not of himself but that of his official superiors, held, the order was not sustainable, the action of the Health Officer in issuing the order being not independent but inspired. **1957 S C J 803 : AIR 1952 S C 16, Rel. on. 1964 Ker L J 143 : 1964 Ker L T 15.**

TRAVANCORE-COCHIN PUBLIC SAFETY MEASURES ACT (5 of 1950)

See under Public Safety.

TRAVANCORE-COCHIN PUBLIC SERVICE COMMISSION BUSINESS RULES

RULE 5

——R. 5—Punishment—Order by Public Service Commission debarring clerk from service purporting to act, on the report of his last Superior, refusing to entertain his application against his termination—Such an order clearly amounts to an order of punishment — Order having been passed without further notice violates the rules of natural justice in passing the order behind the back — Order is ultra vires the power of the Commission. See Constitution of India, Art. 311. AIR 1958 Ker 352 (DB).

——Rr. 5 (a), 5 (b)—Refusal to re-register—Grounds of—Satisfaction of Commission—Principles.

It is obvious that the Commission can refuse re-registration under R. 5 (b) only if they are satisfied that the work and conduct of the candidate are not satisfactory. The emphasis is on the satisfaction of the Commission and not of the departmental superior. The natural implication is that the Commission has the liberty to ignore any adverse remarks that may be made against a particular candidate by a departmental superior and to form its own independent conclusion whether the work and conduct of the candidate had been so unsatisfactory as to justify a

re-registration of his name. A duly qualified candidate can be denied the opportunity of trying his chances of selection at the hands of the Public Service Commission, only on very substantial and valid grounds clearly proved against him. A candidate who has been appointed to the public service can be removed from such service for any misconduct on his part, only after the alleged misconduct has been duly inquired into, with notice to the candidate concerned, and after it is definitely found that he is guilty of such misconduct. Refusal to re-register his name is also in substance and in effect a denial of the candidate's right to be re-employed and to have his seniority maintained on the basis of the date of earliest effective advice, and hence re-registration can be refused only if any misconduct is proved against him in the manner indicated above.

As the head of the department, a superior officer is perfectly within his right in disclosing his feelings about the conduct of the applicant by making the remark which he thought the candidate deserved, and such a remark is not liable to be reviewed by the High Court. But if on a consideration of all the relevant circumstances it is seen that in making such an adverse remark the head of the department was induced by malice towards the candidate concerned, the Public Service Commission will be perfectly justified in ignoring such adverse remarks, instead of acting upon the same as a proper basis for condemning the candidate and denying him his legitimate right to get re-employment. **1958 Ker L T 580 : AIR 1958 Ker 352 (354, 355) (Pt B) (Prs 4, 5, 6) (DB).**

TRAVANCORE-COCHIN PUBLIC SERVICE COMMISSION (CONSULTATION) REGULATIONS (1952)

SECTION 6

——S. 6 (1) and (2) (a)—Applicability—Order of suspension by way at substantive punishment — Would normally attract Art. 320(3)(c) but by virtue of S. 6(1) and (2) (a) of the Regulations framed under that Article previous consultation with the Commission is not necessary. See Constitution of India, Art. 320 (3) (c). **AIR 1958 Ker 72 (DB).**

TRAVANCORE-COCHIN PUBLIC SERVICE COMMISSION ORDINANCE (6 of 1124, M. E.)

SECTION 3

——S. 3 (5)—Scope.

Per Sankaran, J.—The bar imposed by S. 3 (5) of the Act is against further employment under the Government of Travancore and Cochin. The office of a Judge of the High Court cannot be said to be an employment under the Government of the United States of Travancore and Cochin. Hence the appointment of Sri. C. Kunhi Raman as the Chief Justice of the Travancore High Court :is not contravention of S. 3 (5) of the Act merely because he was acting as a Chairman of the Public Service Commission in the State. **1950 Ker L T 439 : 1950 Trav. Co L R 306 : AIR 1951 Trav-Co 45 (51) (Pt F) (Pr 28) (DB).**

SECTION 4

——S. 4(2)—Word 'shall' if directory or mandatory—In the context it is only directory. See Constitution of India, Art. 320 (3). **AIR 1958 Ker 85 (DB).**

● ——S. 4 — Dismissal without consultation with Public Service Commission.

After the Ordinance came into force on 16-7-1949 an order was passed on 13-9-1949 dismissing a person serving under the Government in a civil capacity, within the meaning of Cl. (c) of the section, without consultation with the Public Service Commission. Admittedly at that time the Rajpramukh had not notified regarding any of the matters falling under subs. (2) of Cl. (c) of the section. On the application of that person under Art. 226.

Held, the mandatory provisions of S. 4 regarding the necessity for an antecedent consultation with the Public Service Commission before taking action against the petitioner had been violated and that such violation was fatal to the order of dismissal. S. Mahadeva Iyer v. State. **1954 Ker L T 427 : I L R (1954) Trav-Co 1000 : A I R 1954 Trav-Co 469 (470) (Pt C) (Pr 3) (FB).**

TRAVANCORE-COCHIN REMOVAL OF CIVIL DISABILITIES ACT (20 of 1950)

PREAMBLE

——Preamble — Succession — Convert to Islam from Hinduism — Right of Hindu collaterals to succeed — Effect of Proclamation of 29-6-1869 — By the proclamation the State relinquished all claims to such property and it was declared that natural heirs of the deceased would inherit the estate—Proclamation was different in scope from the Caste Disabilities Removal Act 21 of 1850. See Mahomedan Law — Succession. **AIR 1955 Trav-Co 180 (DB).**

TRAVANCORE COCHIN REQUISITIONING AND ACQUISITION OF PROPERTY ACT (1 of 1956)

SECTION 1

——S. 1—Object and fields of operation of two Acts are different — Cochin Act held not repealed by Act 1 of 1956. See Cochin Land Acquisition Act (2 of 1070), S. 1. **1960 Ker L T 181.**

TRAVANCORE-COCHIN REVENUE RECOVERY ACT (1 of 1908)

SECTION 1

——S. 1—Extinguishment of right of redemption by operation of law — Sale for arrears of Government revenue—Held, on facts of the case that the rights of the sub-mortgagee on account of whose default the revenue sale was occasioned, became vested in the appellant and defendant 2 in whom also became vested the rights of the purchaser at the revenue sale. See T. P. Act (1882), S. 60. **AIR 1953 Trav-Co 563.**

TRAVANCORE-COCHIN REVENUE RECOVERY ACT (7 of 1951)

See also Travancore Revenue Recovery Act (1 of 1068 M.E.)

SECTION 1

——Ss. 1 (c), 2 and 5 — Revenue sale of land after notice to Pattadar conveys to purchaser full ownership over it.

Notwithstanding the fact that the pattadar has in fact no right at all to the property sold under a revenue sale for arrears of tax due on it, or has only a mortgage or lease-hold right in it, and the ownership of the property really vests in any other person, the revenue sale after notice to the pattadar would convey to the purchaser the full ownership over it, free of all encumbrances, and will be binding on the real owner also. By his default to have his name brought in the Revenue records as the registered holder, and by allowing the name of the person who has no right in the property or has only a mortgage or leasehold interest in it to stand in the records as the registered holder, the real owner has put forward that person as the ostensible owner of the property ; and having done so, he cannot be heard to say, after he has defaulted to pay the tax on the property and

after the revenue sale for the arrears of tax. that the registered holder was not the real owner of the property but only the ostensible owner and that the proceedings taken against the registered holder were not binding on him. The right sold under a revenue sale for arrears of tax due on the property sold, and referred to in the sale certificate as the defaulters' right is the right of the "land-holder". It is not merely the right which the registered holder (the ostensible owner) has in fact in the property but the full right of ownership which for purposes of the Revenue Recovery Act is deemed to be with him. The rights of the real owner, freed from all encumbrances, pass under the revenue sale to the auction-purchaser, he gets the property absolutely as his, free of all encumbrances. **1956 Ker L T 313.**

SECTION 2

——Ss. 2 (a) and 62—"On account of water used for purposes of irrigation" — Meaning of — Demand notices relating to dewatering charges for Kole cultivation — Provisions of Revenue Recovery Act if can be invoked — (Travancore-Cochin Public Safety Measures Act (5 of 1950), Ss. 4 and 7)—Travancore-Cochin Kole Cultivation Authority Rules (1953), R. 12)—Words and Phrases).

Irrigation means the supplying of land with water by means of channels or streams, a process which should be considered as the very opposite of the dewatering undertaken by the Kole Cultivation Authority. It follows that there is no statutory or contractual basis for invoking the provisions of the Revenue Recovery Act for the recovery of the amounts specified in the demand notices relating to dewatering charges of Kole lands and issued by the Kole Cultivation Authority exercising powers under Ss. 4 and 7 of the Public Safety Measures Act under R. 12. **1957 Ker L J 386 : 1957 Ker L T 431.**

——S. 2—Revenue sale of land after notice to pattadar conveys to purchaser full ownership over it. See Travancore Revenue Recovery Act (7 of 1951), S. 1 (c). 1956 Ker L T 313.

SECTION 4

——Ss. 4 and 62 — Proceedings for recovery of sales tax arrears — Payments to proverthicar—Validity—Receipts in proper form not issued —Effect—(Sales Tax—T.-C. General Sales Tax Act (11 of 1125), S. 13) —(Sales Tax—T.-C. General Sales Tax Rules (1950), R. 15).

Section 4 makes it clear that payment of revenue to the Proverthicar is a valid payment. It also provides that the person making the payment is entitled to a receipt signed by the officer to whom such payment is made. The section does not contemplate any particular form of receipt. A direction in the Village Manual published by the Government in 1945 to the village officers to issue receipts in the proper form does not mean that the payment validly made will not be binding on the State if the receipt for the payment is not issued in the proper form. Where proceedings under the Travancore-Cochin Revenue Recovery Act have been initiated for the recovery of arrears of sales tax from the plaintiff, the Proverthicar being an officer auhorised to receive payment under S. 4 of the Act, payments made to him:are validly made and constitute a valid discharge so far as the plaintiff is concerned. That payment to the Proverthicar is not one of the modes provided for by R. 15 of the T.-C. General Sales Tax Rules, 1950, has no bearing on the question. **I L R (1957) Ker 31 : (1957) 8 S T C 503 : 1957 Ker L T 193 : A I R 1957 Ker 40 (41) (Pt A) (Prs 3, 4) (DB).**

——S. 4 — Public servant acting within the scope of his authority receiving payments and embezzling money—Liability of State for fraudulent act of public servant. See Constitution of India, Art. 300. A I R 1957 Ker 40 (DB).

——S. 4 — Jenmi's lands demised on kanom and Verumpattam — Person liable to pay tax due to Government. See Tenancy Laws — Kanom Tenancy Act (24 of 1955), S. 3 (1). 1957 Ker L T 225.

SECTION 5

——S. 5—Revenue sale of land after notice to pattadar conveys to purchaser full ownership over it. See Travancore Revenue Recovery Act (7 of 1951), S. 1 (c). 1956 Ker L T 313.

SECTION 6

——S. 6—Revenue Sale—Interest sold is of defaulting landholder and not of Government. See Travancore Revenue Recovery Act (1 of 1068), S. 5. 1962 Ker L T 1277.

——S. 6 — Jenmi's lands demised on kanom and Verumpattam — Person liable to pay tax due to Government. See Tenancy Laws — Kanom Tenancy Act (24 of 1955), S. 3 (1). 1957 Ker L T 225.

SECTION 7

——S. 7—Prosecution and conviction—Arrears of tax specified and warrant issued to Collector—Procedure —Competency of State to proceed under Travancore-Cochin Revenue Recovery Act. See Sales Tax—Travancore-Cochin General Sales Tax Act (11 of 1125), S. 13. I L R (1958) Ker 291.

[Reversed in A I R 1961 S C 617.]

SECTION 24

——S. 24, 32 — Travancore Revenue Recovery Act (1088 M.E.), S. 23-A—Notice of demand under—Condition precedent for declaring a transaction void under S. 32—Section 23-A of Travancore Revenue Act and S. 24 (1) of T.-C. Revenue Recovery Act are substantially same — But a notice under S. 23-A issued long after repeal of the Travancore Act cannot be treated as notice under S. 24 of T.-C. Revenue Recovery Act—Title in property sought to be attached vested in third party prior to issue of valid notice—Property cannot be proceeded against for dues of the defaulter. A I R 1961 S C 200, Dist. 1965 Ker L J 1100 : (1965) 2 Ker L R 338.

——S. 24—Territorial jurisdiction — Writ of prohibition against Collector within jurisdiction of High Court from executing demand notice issued by I. T. O. outside jurisdiction—Though High Court has no jurisdiction to quash the order of I. T. O. Bombay, it has jurisdiction to prohibit recovery of the same in pursuance of a demand issued under S. 24, T.-C. Revenue Recovery Act. See Constitution of India, Art. 226. A I R 1961 Ker 315.

SECTION 29

——S. 29 — Scope of S. 32—Effect of attachment on implementation of prior engagement—All antecedent engagements are not null and void — Private rights cannot be affected by statutes except by express words or by implication. See Travancore Cochin Revenue Recovery Act (7 of 1951), S. 32. AIR 1955 NUC (Trav-Co) 2214 (DB).

SECTION 32

——Ss. 32, 29 — Scope of S. 32 — All antecedent engagements are not null and void — Private rights cannot be affected by statute except by express words or by implication—Transactions subsequent to attachment are null and void—(Interpretation of Statutes)

—C. P. Code (1908), S. 64). AIR 1955 NUC (Trav-Co) 2214 (DB).

SECTION 34

——S. 34 (1) — Setting aside revenue sale — Powers of Board of Revenue — No period of limitation for revision petition. See Travancore Revenue Recovery Act (1 of 1068), S. 50. (1963) 1 Ker L R 36.

SECTION 36

——S. 36—Public auction by Tahsildar—Absence of strangers to bid—Bid by Tahsildar on behalf of State for nominal sum—Legality. See T. C. Revenue Recovery Act (7 of 1951), S. 63. 1957 Ker L R 1095: 1958 Ker L T 1133.

——S. 36—Applicability — Arrears from Abkari contractor — Recovery of—Procedure. See Travancore Abkari Act (4 of 1073), S. 24. 1957 Ker L J 1095: 1958 Ker L T 1133.

——S. 36 (3)—Action sale under—State, if vendor.

Where immovable property belonging to an abkari contractor is sold by public auction under the Revenue Recovery Act, the fact that the sale was under a coercive process of law and not at his request or with his consent cannot make the contractor anything less than a vendor or the Tahsildar anything other than his statutory agent for the purpose of conducting the sale. It cannot be said that the State was the vendor at the auction. (1957) Ker L J 345: 1957 K L T 289.

——S. 36 (3) — Sale is not bad because of nominal character of price obtained. (1957) Ker L J 345: (1957) K L T 289.

——S. 36 (2)—Scope—Non-compliance with—Effect.

Where the amount shown in the sale notice as due from the defaulter is lower than the amount actually due from him as shown in the proceedings of the sale, there is only an irregularity which does not render the sale void. 1957 Ker L T 289: (1957) K L J 345.

SECTION 39

——Ss. 39, 55 and 56 — Scope of — Revenue sale — Setting aside — Procedure — Application for writ — Competency. See Constitution of India, Art. 226. 1957 Ker L J 1095: 1958 Ker L T 1133.

SECTION 55

●——S. 55—T. C. Board of Revenue Ordinance (No. 2 of 1950), S. 6—Revision petition under S. 50 of Act 1 of 1068 transferred to Board of Revenue—Dismissal by Board as time barred—Second revision to Government — Held that T. C. Revenue Recovery Act 7 of 1951 which replaced the Travancore Revenue Recovery Act, 1068 alter the Constitution came into force, did not contain any provision conferring general power of revision on the Government. See Travancore Revenue Recovery Act (1 of 1068), S. 50. AIR 1957 Trav-Co 116 (FB).

●——S. 55, Proviso—Revision under — Order setting aside auction sale without notice to affected parties—Validity — Duty of Government — It is the duty of Government to see that notice required under S. 50 of Travancore Revenue Recovery Act and S. 9 of the Board of Revenue Act is given to persons mentioned in those sections before a revenue sale is set aside. See T. C. Board of Revenue Act (11 of 1950), S. 9 Proviso. AIR 1957 Trav-Co 116 (FB).

SECTION 59

——S. 59 — Applicability — Mortgagee deliberately committing default in payment of Government revenue—Property sold in revenue sale and purchased by mortgagor—Mortgagee holds the same for benefit of mortgagor. See Trusts Act (1832), S. 90. AIR 1959 Ker 94 (DB).

SECTION 62

——S. 62—Scope — Recovery of arrears of income-tax—Collector's power to delegate powers to Tahsildar. Under S. 62 all sums declared by any other law in force to be recoverable as arrears of public or land revenue can be recovered under Revenue Recovery Act—Hence proceedings taken by the Tehsildar on the authority of the Collector are within his jurisdiction. See Income-tax Act (1928), S. 46 (2). AIR 1959 Ker 341.

——S. 62 — Proceedings for recovery of sales tax arrears—Payments made to Proverthicar—Validity — Proverthicar being an officer authorised to receive payment under S. 4 of the Act, payments made to him are validly made and constitute a valid discharge so far as the plaintiff is concerned. See Travancore-Cochin Revenue Recovery Act (7 of 1951), S. 4. AIR 1957 Ker 40 (DB).

——S. 62—Applicability—"On account of water used for purposes of irrigation" — Meaning of — Demand notice relating to dewatering charges for Kole cultivation — Provisions of Revenue Recovery Act if can be invoked. See Travancore-Cochin Revenue Recovery Act (7 of 1951), S. 2 (a). 1957 Ker L T 386.

——S. 62 — Recovery of tax and penalty — Use of machinery provided by State Acts for recovery of arrears of land revenue—Legality — Section attracts by virtue of its own force the provisions of different local Acts in different States — For realising the arrears the Central Legislature has chosen to utilise the existing law and the existing machinery in the particular areas and that is all—Therefore no question of illegality or want of jurisdiction arises in the matter. See Income tax Act (1922), S. 46 (2). AIR 1956 Trav-Co 184.

SECTION 63

——S. 63—Public auction by Tahsildar—Absence of strangers to bid—Bid by Tahsildar on behalf of State for nominal sum—Legality—S. 36.

Where the Tahsildar, who was conducting an auction sale under the provisions of the Act, bid the property on behalf of the State in the absence of strangers to bid at the action, the Tahsildar does not act without jurisdiction. The position of the Tahsildar is not that of the vendor of the property. The defaulter whose property is put up for auction is the real vendor, the Tahsildar who is conducting the auction being only the statutory authority specially empowered to conduct the auction and thus to effect the sale on behalf of the owner of the property. It is also incorrect to say that the auction sale in the case was in favour of the Tahsildar. It was the State who bid at the auction, and the bid was made on behalf of the State by the Tahsildar acting as the agent of the State. Since the Tahsildar was not bidding the property or acquiring any interest therein for himself, directly or indirectly, it cannot be said that he has violated the mandate contained in S. 63 of the Revenue Recovery Act, in bidding the property for and on behalf of the State S. 36 (6), which is an enabling provision can have no application to the situation where the bid is made by the officer himself as the agent of the State and that fact is recorded in the sale accounts. Whether the Tahsildar had the authority to bid as the agent of the State, is a matter for his own subjective satisfaction and where he is so satisfied, there is no necessity to produce any special written authority. The non-production of such a written authority cannot render the sale illegal. When there is only one bidder, there is no scope for competition. But all the same there is nothing wrong or illegal in accepting his bid as the highest bid: it cannot be quashed merely for the reason that the sale was for a

nominal account. Even if there has been an error in calculating the amount due from the defaulter, it would not amount to an illegality rendering the sale void. 1958 Ker L T 1133 : 1957 Ker L J 1095.

TRAVANCORE-COCHIN SHOPS AND ESTABLISHMENTS ACT (9 of 1125 ME) (1949)

PREAMBLE

——Pre.—Complaint by Labour Officer.

There is no provision in the Travancore Cochin Shop Act like for example S. 46 of the Hyderabad Shops Acts and in the absence of such a provision there is no reason why a complaint filed by the Labour Officer before the Second Class Magistrate should not be considered as a complaint of facts constituting the offence under S. 190 (1) (a) of Criminal P. C. See Criminal P. C. (1898), S. 4 (1) (h). **1957 Cri L J 637 : AIR 1957 Ker 55 (DB).**

SECTION 41

——Ss. 41, 45—Scope—Non-compliance—Effect.

It is clear from the wording of sub-s. (3) of S. 41 that a non-compliance with a decision of the appellate authority has not been made penal and the conviction therefor for a contravention of the provisions of that sub-section cannot be sustained. The provisions of S. 41 which if contravened will constitute an offence liable to be punished under S. 45 (1) are those embodied in sub-s. (1) of S. 41. **1957 Ker L T 273 : 1957 Ker L J 292 : (1957) Mad L J (Cri) 106 : 1957 Cri L J 637 : ILR (1957) Ker 353 : (1957) 1 Lab L J 631 : AIR 1957 Ker 55 (56) (Pt A) (Prs 3, 4) (DB).**

——Ss. 41 (3), 51 — 'Shall be final' — Meaning and effect of—Distinction—(Interpretation of Statutes).

Under S. 51 the decision given by the Commissioner of Labour cannot be questioned in a Court of Law. There is no such prohibition in Cl. (3) of S. 41. Where in the same Act the decisions under two sections are final with respect to the matters mentioned therein and in one of the sections it is specifically stated that that decision cannot be questioned in a Court of law and in the other section there is no such prohibition the ordinary and legitimate inference is that where there is no such prohibition in a section the Court of Law can question the legality although the decision may be final as between the parties. 1957 Cri L J 399, Rel. on. **1957 Ker L T 273 : 1957 Ker L J 292 : (1957) Mad L J (Cri) 106 : 1957 Cr L J 637 : I L R (1957) Ker 353 : (1957) 1 Lab L J 631 : A I R 1957 Ker 55 (56) (Pt B) (Pr 6) (DB).**

——S. 41—Jurisdiction under—(Constitution of India, Art. 226).

Notice, dated 30-4-1951 to dispense with services of employee — Appeal by employee under S. 41 of the Act before Labour Commissioner— Meanwhile employer intimating employee by order dated 28-5-1951 that notice of 30-4-1951 was cancelled and he was placed under suspension from 30-4-1951 onwards — Order, dated 30-11-1951, passed by Labour Commissioner reinstating employee — Petition by employer under Art. 226 of the Constitution against Labour Commissioner's order— **Held**, that order of dispensation of services having been cancelled by employer long prior to passing of Labour Commissioner's order dated 30-11-1951 there was nothing to adjudicate upon in appeal — Employer was entitled to conduct inquiry against employee and to substitute his own conclusion — Labour Commissioner in passing the order had wrongly assumed jurisdiction which was not available to him under the Act — Since the order was without jurisdiction and in excess of his legal authority the order was liable to be quashed under Art. 226 of the Constitution. **I L R (1953) T C 104 : AIR 1953 Trav-Co 325 (325, 326) (Prs 2, 4) (DB).**

SECTION 45

——S. 45—Non-compliance with S. 41 (3).

It is clear from the wording of S. 41 (3) that a non-compliance with a decision of appellate authority has not been made penal and a conviction therefor for a contravention of the provisions of that sub-section cannot be sustained. See Travancore-Cochin Shops and Establishments Act (9 of 1125), S. 41. **1957 Cri L J 637 : AIR 1957 Ker 55 (DB).**

SECTION 51

——S. 51—"Shall be final" — Under the section the decision given by the Commissioner of Labour cannot be questioned in a Court of Law — There is no such prohibition in S. 41 (3) — It merely lays down that the decision is final—Where there is no prohibition in the provision that the decision cannot be questioned the Court of law can question its legality — (Words and Phrases — Shall be final) — (Interpretation of Statutes). See Travancore-Cochin Shops and Establishments Act (9 of 1125 ME), S. 41 (3), 1957 Cri L J 637 : AIR 1957 Ker 55 (DB).

TRAVANCORE-COCHIN SHOPS AND ESTABLISHMENTS RULES (1950)

RULE 9

——R. 9 (1)—Word 'from' — Meaning —(Words and Phrases—'from').

The word "from" in R. 9 (1) is much akin to 'after' and when used in reference to the computation of time, e. g., from a stated date, prima facie it excludes the day of that date. **1956 Ker L T 609 : (1957) 2 Lab L J 445 (TC).**

TRAVANCORE-COCHIN STAMP ACT (1 of 1125 ME) (1949)

SECTION 3

——S. 3 (14)—Suit for partition—Defendants claiming that some property has been left out—Defendants are not liable to pay Court-fees on it — Practice. See Travancore-Cochin Court-fees Act (II of 1125), S. 8, Part 3. **AIR 1954 Trav-Co 315 (FB).**

SECTION 31

——S. 31 — Power of Collector with regard to compulsory levy — Instrument partly conveyance and partly agreement found unstamped—Grantee producing it in Court—Executant held not liable — Duty of Collector in such case. See Stamp Act (1899), S. 48. **AIR 1957 Trav-Co 251.**

SECTION 35

——S. 35—Impounding—If the sub-registrar feels that the instrument presented for registration is not properly stamped he has no option but to impound it and send it to District Collector for being dealt with by him. See Stamp Act (1899), S. 33. **A I R 1955 N U C (Trav-Co) 1653 (DB).**

——S. 35—Notice to executant.

There is no provision made in the Travancore-Cochin Stamp Act to issue notice to executor of a document before the Collector decides proper stamp duty payable upon an instrument. See Stamp Act (1899); S. 33. **AIR 1955 N U C (Trav-Co) 1658 (DB).**

——S. 35 — Decision of Collector as to proper stamp duty—Is final—It is not liable to be upset in proceedings under Art. 226 of the Constitution. See Constitution of India, Art. 226. **A I R 1955 N U C (Trav-Co) 1658 (DB).**

——S. 35 — Adjudication by Collector — If party at whose instance document was brought into the Court wants first an adjudication by the Collector as to proper stamp duty and penalty leviable on it. Court has only to accede to that request. See Stamp Act (1899), S. 35. AIR 1953 Trav-Co 559 (DB).

SECTION 37

——S. 37—Penalty under—Whether criminal matter. Though penalty under the Stamp Act savoured of punishment that would not make it a fine like one imposed by a Criminal Court. See Stamp Act (1899), S. 48. AIR 1955 N U C (Trav-Co) 1658 (DB).

——S. 37—Impounding.

If the Sub-registrar thinks that the instrument presented to him for registration is not properly stamped he has no option but to impound the document and send it to the Collector for being dealt with by him. See Stamp Act (1899), S. 33. AIR 1955 N U C (Trav-Co) 1658 (DB).

——S. 37—Adjudication by Collector.

If the party insists upon a prior decision as to proper stamp duty and penalty leviable on a document produced by him, the Court has only to accede to the request and not impose a decision which the party did not want. See Stamp Act (1899), S. 35. AIR 1953 Trav-Co 559 (DB).

SECTION 38

——S. 38 — Expression 'Admitted in evidence' is not conclusive of question whether document has been admitted in evidence or not — Suit on promissory notes. See Civil P. C. (1908), O. 13, R. 4. ILR (1963) 1 Ker 639.

——S. 38 — Promissory note insufficiently stamped, admitted in evidence — Defendant precluded from raising objection as to its admissibility again — 'Admitted in evidence', meaning of — Stamp Act (1899), S. 36, Civil P. C. (1908), O. 13, R. 3.

The objection as to inadmissibility of a document on the ground of its being improperly stamped has to be decided there and then when the document is tendered in evidence. The party challenging the admissibility of such a document has to be alert to see that the document is not admitted in evidence by the Court, for if the document is once admitted in evidence, he cannot subsequenlty rely on the fact that he had taken the point of inadmissibility at an early stage of the proceeding as the written statement or that an issue on the point had been raised at the trial of the suit. The expression 'admitted in evidence' means' let in as a part of evidence'. Where, therefore, a promissory note whose admissibility in evidence was challeged on the ground of insufficiency of stamp was exhibited with an endorsement which bore the letters 'Pd' over the signature of the presiding Officer of the Court, which meant 'proved' and denoted a stage further than and after that of admission.

Held that as the promissory note was admitted in evidence the defendant was precluded from raising the same objection at any stage of the suit or the proceeding. Dicta : that though there was a little difference in the language of S. 38 of T. C. Stamp Act and S. 36 of the Indian Stamp Act the relevant part of S. 38 that once a document is admitted in evidence, such admission shall not be called in question, means simply, that it shall never be called in question after such admission, as no point of time is indicated for the conclusiveness of the admission, except that at which the admission in evidence takes place. A I R 1961 S C 1655; (1962) 1 K L R 508, Followed. (1963) 1 Ker L R 141 : ILR (1963) 1 Ker 473.

——S 38 — Admitted in evidence — Means let in as part of evidence — Judicial consideration of question of sufficiency of stamp not necessary. See Stamp Act (1899), S. 36. A I R 1962 Ker 265 (DB).

——S. 38—"Where the instrument has been admitted in evidence"—Unless the Court admitted a document not properly stamped after applying its mind consciously to the question whether the document was admissible or not, the document could not be deemed to have been admitted in evidence. See Stamp Act (1899), S. 36. AIR 1957 Ker 105.

——S. 38 — Admissibility of document not duly stamped—Question raised for first time in revision—Bar. See Stamp Act (1899), S. 36. 1956 Ker L T 558.

SECTION 40

——S. 40 (2) — Adjudication by Collector — If the party producing a document insists on a prior decision by the Collector as to proper stamp duty and penalty leviable on it, the Court has to accede to the request and cannot impose a decision which the party does not want. See Stamp Act (1899), S. 35. A I R 1953 Trav-Co 559 (DB).

SECTION 42

——S. 42 — Collector's power to proceed under — When arises — Certificate issued by Collector without jurisdiction — Presumption under S. 42 (2) does not arise—Collector treating promissory note as bond and issuing certificate on that basis — Decision of Collector not conclusive—Stamp Act (1899), S. 40 — Kerala Stamp Act (17 of 1959), S. 39.

The procedure prescribed in sub-clause (a) and (b) of S. 42 (1) is to be resorted to only in the case of instruments other than those chargeable with a duty of two annas or less than two annas only or a bill of exchange or a promissory note. In case the instrument falls under the excepted categories the Collector cannot proceed under the section. The presumption under Cl. (2) of S. 42 does not arise when the certificate of the Collector is issued without jurisdiction : A I R 1926 All 359, Rel. on.

Thus where the Collector treated a promissory note as a bond and levied and collected deficit Court-fee and penalty on that basis and issued a certificate stating that the stamp duty and penalty were collected :

Held, that the decision of the Collector that the instrument was a bond was not conclusive and that the Court was competent to go into the question and declare that it was a promissory note and hence was not properly stamped: A I R 1941 Lah 65, A I R 1935 Sind 46 and ILR 25 Mad 51, Dist. 1963 Ker L T 354 : ILR (1963) 1 Ker 443 : 1963 Ker L J 223.

SECTION 50

——S. 50 — Power of Collector with regard to compulsory levy — Instrument partly conveyance and partly agreement found unstamped — Grantee producing it in Court—Executant held not liable—Duty of Collector in such case. See Stamp Act (1899), S. 48. A I R 1957 Trav-Co 251.

TRAVANCORE COCHIN VAKILS ACT (3 of 1075 ME) (1900)

——Civil Courts Guide, R. 499 — Misappropriation by lawyer of money received by him on behalf of client—Fiduciary relationship of debtor and creditor set up in defence, not proved—Lawyer held guilty of fraudulent misconduct and suspended from practice for two years. See Legal Practitioners Act (1879), S. 13. A I R 1964 Ker 192 (SB).

TRAVANCORE-COCHIN VEGETABLE OILS AND OILCAKES (FORWARD CONTRACT) PROHIBITION ORDER (1950)

PREAMBLE

——Pre.—Travancore-Cochin Public Safety Measure Act (5 of 1950), S. 3 — Validity — Section is ultra vires for lack of sanction of President under Art. 304 (b), Proviso — Art. 304 controls Art. 246 — Art. 304 (b), Proviso does not affect validity of repeal under S. 73 of the Act — Repeal under S. 73 is valid —As S. 3 of the Act is void, notifications issued under it are also invalid and cannot continue under S. 73 (2) —Suit contract entered into in February 1952 not affected by notifications under Essential Supplies (Temporary Powers) Act (1946), also. See Constitution of India, Art. 304 (b), Proviso. **AIR 1964 Ker 92 (DB).**

TRAVANCORE-COCHIN VEHICLES TAXATION ACT (14 of 1950)

PREAMBLE

——Pre. — Validity of. See Constitution of India, Art. 304. **AIR 1958 Ker 398 (DB).**

——Pre. — Constitutional validity — Constitution of India (1950), Art. 304—Applicability—If in conflict with Companies Act (1913) — Constitution of India (1950), Arts. 254 and 304 — Applicability — Interpretation of Statutes.

In pith and substance the T. C. Vehicles Taxation Act (14 of 1950), is not legislation dealing with respect to trade or commerce but is legislation enacted by virtue of the powers conferred on the State Legislature under Entry 57, List II (State List) of the Seventh Schedule of the Constitution. The Scheme of the Act is to collect a tax from vehicles using the public road in the State. Therefore the proviso to Art. 304 of the Constitution has no application at all. There is no conflict between the Vehicles Taxation Act (14 of 1950 T. C.) and the Indian Companies Act, 1913. Therefore there is absolutely no scope for the application of Art. 254 of the Constitution. When a law is impugned what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the Legislature, then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. (1957) 1 M L J (SC) 59 : (1957) M L J (Cr) (SC) 88 : (1957) 1 Andh W R (SC) 59 : (1957) S C J 216 : (1957) S C R 399, Followed; 1957 K L T 897; 1957 M L J (Cr) 53 (NRC), Affirmed. **1958 M L J (Cri) 813 : 1958 Ker L J 413 : 1958 Ker L T 631 : ILR (1938) Ker 666 : AIR 1958 Ker 398 (398, 399) (Pt A, B) (Prs 11, 12, 14) (DB).**

——Pre.—Scope—Companies Act—If conflicts with T. C. Act. See Constitution of India, Art. 254. **AIR 1958 Ker 398 (DB).**

——Pre. — Validity — Want of sanction under Art. 304 (b) proviso — Effect — Entry 57 of List II of 7th Schedule to the Constitution — Scope. See Constitution of India, Art. 304 (b), Proviso. **1958 Cri L J 380 : AIR 1958 Kerala 52.**

SECTION 1

——S. 1—Validity—Tax trade or commerce—(Constitution of India, Art. 304 (b) (Proviso), Sch. 7, List II, Entry 57).

The pith and substance of the Act is not to tax "trade or commerce" within the meaning of Art. 304 (b); but only to impose a tax on vehicles using any public road in the State, which is a matter within the legislative competence of the State, under Entry 57, in List II of the Seventh Schedule of the Constitution. Therefore, the Act does not fall within the scope of Art. 304 (b) and is not hit by the proviso. AIR 1958 Kerala 398, Foll. **1959 Ker L J 651 : ILR (1959) Ker 749 : 1959 Ker L T 829 : 1959 Ker L R 1239 : AIR 1960 Ker 58 (63) (Pt C) (Pr 17) (DB).**

SECTION 2

——Ss. 2 (1) (b), 3 and 6 — Empty goods vehicle driven on public road without paying tax — Offence —(Motor Vehicles Act (1939), S. 2 (8)).

A motor vehicle constructed or adapted for use for the carriage of goods is at all times a goods-vehicle whether or not it is actually carrying goods. A vehicle driven along a public road uses that road whether it is empty or loaded, and a goods-vehicle uses the road whether or not it is carrying goods. Therefore, where, under S. 3, T. C. Vehicle Taxation Act, read with the notification issued thereunder, the tax was due in respect of the vehicle, and without paying the same the vehicle was driven along a public road the owner of the vehicle commits an offence under S. 6. A plea that the vehicle was being tested for an inspection with a view to obtain a certificate of fitness will not bring the case within exemption. **ILR (1958) Ker 372 : 1958 Ker L T 3 : 1958 Ker L J 119 : 1958 Cri L J 1031 : 1958 Mad L J (Cri) 138 : AIR 1958 Ker 249 (249, 250) (Prs 1, 2) (DB).**

——Ss. 2 (2) and 3 (1) — Notification dated 25th July 1950, issued under S. 3 (1) — Weight laden — Definition of laden weight if can be applied to term.

The definition of the term "laden weight" in S. 2 (2) cannot be applied to the term "weight laden" occurring in the notification. **ILR (1955) T C 889 : 1955 Ker L T 946 : AIR 1956 Trav-Co 85 (86) (Pt B) (Pr 7) (DB).**

SECTION 3

——Ss. 3, 5 and 8, Schedule 3—Cycle-rickshaws whether exempted from payment of tax.

Cycle-rickshaw will not come within Item 3 of Schedule III of T. C. Vehicles Taxation Act, 1950 because even though it is a three-wheeled vehicle it is not drawn or pushed by human agency, but is one which is propelled. So cycle-rickshaw cannot come within any of the items in Schedule III and come in only within the item rickshaw and rickshaw being exempted from the payment of the tax, the accused is not bound to pay any tax. **(1966) M L J (Cri) 33 : 1965 Ker L T 879.**

——S. 3 (1)—Taxation laws — Tax on motor vehicles —Differential treatment to motor vehicles plying in different areas on account of difference in density of traffic and road conditions — Discrimination not opposed to Art. 14—No violation of Art. 19 (1) (f) (g). See Constitution of India, Art. 14. **AIR 1961 Ker 72 (DB).**

——Ss. 3, Proviso and 18 — Scope of — If complete with each other—(Interpretation of Statutes).

The proviso to S. 3 is intended to confine the power delegated to Government under S. 3 (1) and (2), which is to fix the rates of the tax, within prescribed limits, while S. 18 (1) is inserted to delegate to Government, a different power, which was to alter the limits themselves to any extent. The purpose intended to be served thus being distinct and different, the two provisions can very well stand together, whatever be their validity. There is no disharmony between them, and therefore no scope for applying the principle of harmonious construction of different parts of a statute to these provisions. **1959 Ker L J 651 : ILR (1959) Ker 749 : 1959 Ker L T 829 : 1959 Ker L R 1239 : AIR 1960 Ker 58 (60) (Pt A) (Pr 3) (DB).**

——S. 3—Empty goods vehicle driven on public road without paying tax — Offence held committed — (Motor Vehicles Act (1939), S. 2 (8))—See Travancore-Cochin Vehicles Taxation Act (14 of 1950), S. 2 (1)(b). 1958 Cri L J 1031 : AIR 1958 Ker 249 (DB).

——S. 3 (1) — Vehicle driven for purpose of being registered — Tax under T. C. Vehicles Taxation Act, if attracted—See Motor Vehicles Act (1939), S. 22 (2). AIR 1956 Trav-Co 85 (DB).

——S. 3 (1)—Notification D/- 25-7-1950 issued under S. 3 (1)—Weight laden — Definition of laden weight if can be applied to term — See Travancore-Cochin Vehicles Taxation Act (14 of 1950), S. 2 (2). AIR 1956 Trav-Co 85 (DB).

——S. 3 (1)—Estoppel against statute — Estoppel in matter of statutory levy under T. C. Vehicles Taxation Act — See Evidence Act (1872), S. 115. AIR 1956 Trav-Co 85 (DB).

——S. 3 (1)—Any user attracts tax.

The provisions of the Act and the Rules and Notifications issued thereunder make it quite clear that any user—it does not matter for what purpose—will attract the tax. ILR (1955) T C 889 : 1955 Ker L T 946 : AIR 1956 Trav-Co 85 (86) (Pt D) (Pr 9) (DB).

——S. 3—Route buses — Certificate of fitness — Payment of arrears of—Condition precedent. See Motor Vehicles Act (1939), S. 38. AIR 1955 N U C (Trav-Co) 2560.

SECTION 4

——S. 4 (1) (a)—Construction — Registered owner—Liability to pay tax.

Section 4 (1) (a) is an instance in which it is necessary to read the conjunction 'or' and 'and' one for the other, to carry out the intention of the legislature. The contention, therefore that the tax shall be paid by the registered owner if he is in possession or control of the vehicle, and if he is not in possession or control, by the person having actual possession or control over the same, is not warranted by the section. The tax can therefore be recovered from the registered owner of the vehicles. 1959 Ker L T 410 : 1959 Ker L J 388 : ILR (1959) Ker 464.

——S. 4 (1) (a)—Scope — Alternatives— If mutually exclusive.

The alternatives provided in S. 4 (1) (a) of the Act are not mutually exclusive. Both the registered owner and the person having possession or control of the motor vehicles are liable for the tax. Attempts to realise the tax from either of them will not exonerate the other and the liability of both of them will continue as long as the arrears subsist and have not liquidated. AIR 1930 Mad 510, Relied on. 1958 Ker L J 628 : 1958 Ker L T 537.

——Ss. 4 (1) (d), 8 and 11—Notification T4-7879/49 P. W. C-D/ 20-1-1951 issued under S. 11 — Accused paying tax in respect of eight buses — Right to put on road two reserve buses.

Two things are clear from the Notification (1) that the operators are entitled to one reserve bus free of tax for every seven route buses (or part thereof) in respect of which the tax has been duly paid; and (2) that a reserve bus can be put on the road only in lieu of a route bus for which the tax has been duly paid. It follows that if an operator has paid the tax in respect of at least eight of his route buses, he is entitled to put on the road two reserve buses and if he does so, there would be no violation of Ss. 4 (1) (d) and 8. 1953 Cri L J 1600 : A I R 1953 Trav-Co 425 (426) (Prs 6, 7) (DB).

SECTION 6

——S. 6—Empty goods vehicle driven on public road without paying tax — Offence held committed — (Motor Vehicles Act (1939), S. 2 (8)). See Travancore-Cochin Vehicles Taxation Act (14 of 1950), S. 2 (1) (b). 1958 Cri L J 1031 : AIR 1958 Ker 249 (DB).

SECTION 7

——Ss. 7 (1), 8 — Non-payment of tax—Prosecution —Plea that accused has claim for recovery against Government—Sustainability.

The accused must establish that non-payment of tax was justified and the fact that he has a vital claim for recovery of a sum equal to or more than the tax due does not mean that he can violate the provisions of the Act for payment of tax and display of the tax license. The position would be different if he had obtained an order exempting him from payment of tax on this ground. The mere fact that in the event of conviction the Court can direct recovery of the arrears of tax as though it were fine cannot convert the prosecution into a proceeding for recovery of tax. 1959 Ker L J 894 : 1959 Ker L T 896 : 1959 Ker L R 803 : 1959 Mad L J (Cr) 815.

——Ss. 7 (1) and 8 — Non-payment of tax—Offence —Accused claiming refund of higher amount wrongly collected—Claim established only later—Effect.

The accused must establish that non-payment of tax was justified and the fact that he has a vital claim for recovery of a sum equal to or more than the tax due does not mean that he can violate the provisions of the Act for payment of the tax and display of the tax licence. On the date of the default in question he could not assert such a claim as his claim had been established only much later. The position would have been different if he had obtained an order exempting him from payment of tax on this ground. So long as there is no reason for non-payment of tax, he must be held guilty of the offences.

The mere fact that in the event of conviction the Court can direct recovery of the arrears of tax as though it were fine cannot convert, the prosecution into a proceeding for recovery of tax.

The Government should in fairness refund the excess amount collected from the accused or adjust the same towards tax on vehicles due from the accused, whichever course is preferred by the accused. 1959 Ker L R 803 : 1959 Ker L J 894 : 1959 Ker L T 896 : (1959) M L J (Cr) 815.

SECTION 8

——S. 8 — Route buses — Certificate of fitness—Payment of arrears of tax — Condition precedent. See Motor Vehicles Act (1939), S. 38. AIR 1955 N U C (Trav-Co) 2560.

——S. 8 — Accused paying tax in respect of eight buses—Right to put on road two reserve buses. See Travancore-Cochin Vehicles Taxation Act (14 of 1950), S. 4 (1) (d). AIR 1953 T C 425 (DB).

SECTION 11

——S. 11 — Accused paying tax in respect of eight buses—Right to put on road two reserve buses. See Travancore Cochin Vehicles Taxation Act (14 of 1950), S. 4 (1) (d). AIR 1953 T C 425 (DB).

SECTION 12

——S. 12—Policy and guiding principles for levy of tolls not indicated in Act—S. 12 amounts to excessive delegation of legislative powers (T. C.) notification dated 28-4-53 held invalid. See Constitution of India, Art. 245. AIR 1962 Ker 298.

SECTION 18

——S. 18—Taxation laws — Tax on motor vehicles—Differential treatment to motor vehicles plying in different areas on account of difference in density of traffic and road conditions — Discrimination not opposed to Art. 14 — No violation of Art. 19 (1) (f) and (g) — Travancore-Cochin Vehicles Taxation (Amendment and Validation) Act (42 of 1959), S. 3 (1). See under S. 3 (1) — See Constitution of India, Art. 14. **AIR 1961 Ker 72 (DB).**

——S. 18—Taxation laws — Tax on motor vehicles — Differential treatment to motor vehicles plying in different areas on account of difference in density of traffic and road conditions — Discrimination not opposed to Art. 14 — No violation of Art. 19 (1) (f) and (g)—Travancore-Cochin Vehicles Taxation (Amendment and Validation) Act (42 of 1959), S. 3 (1). See Constitution of India, Art. 14. **A I R 1961 Ker 72 (DB).**

——S. 18—Scope of—No disharmony — Principle of harmoneous construction not applicable — (Interpretation of Statutes)—See Travancore-Cochin Vehicles Taxation Act (14 of 1950), S. 3, Proviso. **AIR 1960 Ker 58 (DB).**

——S. 18 (1) — Notification enhancing maxima specified in Schedules 1 and 2 — Validity—If ultra vires—Delegation of legislative functions—Principles —(Constitution of India, Arts. 245, 265).

The essential legislative function consists in the determination or choice of the legislative policy, and of formally enacting that policy, into a binding rule of conduct. 1957 S C J 527 ; A I R 1951 S C 332 and AIR 1954 S C 569 ; 1954 S C J 661 ; (1954) 2 Mad L J 344 and AIR 1954 S C 465 ; 1954 S C J 637 ; (1954) 2 Mad L J 211, Rel. on.

No delegation of power which amounts to "abdication" total or partial, and to "self-effacement" on the part of the legislature or the effect of which is the "creation of a parallel legistative body", can be permitted. The power delegated must be canalised and confined within proper limits. The possibility of abuse of the power delegated was also accepted as one of the tests of the validity of the delegation. It is implied in Art. 265 of the Constitution that the imposition or the levy of a tax, is an essential legislative function. The chief characteristics of a tax are, of course, its quantum, its incidence, meaning the person or class of persons on whom it is imposed and the mode of its recovery or collection. Under the T. C. Vehicles Taxation Act, 1950, though by S. 3 (1) and (2) and the proviso, the legislature had formulated a policy that the maxima shall in no case be exceeded in conferring the power under S. 18 (1), it laid down no policy, settled no principle, furnished no standard, and prescribed no limit, but permitted and sanctioned an inroad being made into its own policy. A delegation of that kind is objectionable, and cannot be maintained. The scope of the delegation of power under S. 18 (1) is wider than the fixation of rates. A I R 1958 S C 909, Rel, on. The delegation of power under S. 18 (1) of the Act, to the extent that it authorises Government to fix rates in excess of the maxima prescribed in Schedules 1 and 3 of the Act as passed by the legislature, is bad in law, and is void and ineffectual. The impungned notifications issued thereunder are, therefore, ultra vires the powers of Government and are void. **1959 Ker L J 651 : I L R (1959) Ker 749 : 1959 Ker L T 829 : 1959 Ker L R 1239 : AIR 1960 Ker 58 (60 to 62) (Pt B) (Prs 4, 5, 8 to 10, 15) (DB).**

SCHEDULE 1, ENTRY 4

——Sch. 1, Entry 4 — Taxation laws—Tax on motor vehicles — Differential treatment to motor vehicles plying in different areas on account of difference in density of traffic and road conditions—Discrimination not opposed to Art. 14 — No violation of Art. 19 (1) (f) and (g). See Constitution of India, Art. 14. **AIR 1961 Ker 72 (DB).**

TRAVANCORE-COCHIN VEHICLES TAXATION (AMENDMENT AND VALIDATION) ACT, (CENTRAL ACT 42 of 1959)

SECTION 3

——S. 3 (1)—Taxation laws — Tax on motor vehicles — Differential treatment to motor vehicles plying in different areas on account of difference in density of traffic and road conditions—Discrimination not opposed to Art. 14—No violation of Art. 19 (1) (f) and (g)—Travancore-Cochin Vehicles Taxation Act (14 of 1950), Ss. 3 (1), 18, Sch. 1, Entry 4. See under S. 3 (1) of Act (14 of 1950). See Constitution of India, Art. 14. **AIR 1961 Ker 72 (DB).**

TRAVANCORE-COCHIN VILLAGE PANCHAYAT RULES (1951)

See under Panchayats.

TRAVANCORE COMPANIES ACT (9 of 1114 M. E.)

SECTION 142

——S. 142—A charge created under an hypothecation bond will not affect the rights of one under the lease deed, executed by the company in his favour where the charge is not registered under S. 142. See Companies Act (1956), S. 125. **AIR 1957 Trav-Co 6 (DB).**

SECTION 192

——S. 192 (1)—Construction and scope — Right to apply in case of company being wound up—If confined to liquidator only.

Section 192 (1) of the Travancore Companies Act (corresponding to S. 153(1), Indian Companies Act) cannot be construed as restricting or confining the rights to apply for ordering a meeting of the creditors or members under S. 192(1), in the case of a company which is being wound up, to the liquidator only. **(1953) 23 Com Cas 161 : I L R (1952) Trav-Co 319: 1952 Ker L T 148: AIR 1952 Trav-Co 243 (244) (Pt A) (Pr 2) (DB).**

SECTION 210

——S. 210—Proceedings against Company—Application for issuing a writ of certiorari to quash certain Government notifications by certain share-holders of a company under liquidation is not a proceeding against Company and S. 210 cannot apply. See Companies Act (9 of 1114 M. E.), S. 171. **AIR 1952 Trav-Co 14.**

——Ss. 210, 245—Company in liquidation—Application by share-holders for writs of certiorari for quashing certain notifications by Government—Applicability of Ss. 210 and 245, Travancore Companies Act—Application is maintainable. See Companies Act (1913), S. 171 **AIR 1952 Trav-Co 14.**

SECTION 245

——S. 245—Aggrieved person — Civil P. C. (1908), S. 96.

Where the District Judge disallows an objection on behalf of the appellant to the jurisdiction of the Court to deal with a petition for reconstruction of the Company in liquidation but the District Judge dismisses the petition for considering a scheme for reconstruction the decision is in favour of the appellant although one of the findings was opposed to his contention. He cannot, therefore, be regarded as an aggrieved person who is competent to file an appeal

from the order. 1951 Ker L T 141: ILR (1951) Trav-Co 73 : AIR 1952 Trav-Co 100 (100) (Pr 1) (DB).

——Ss. 245, 210—Company in liquidation—Application by share-holders for writs of certiorari for quashing certain notifications by Government — Applicability of Ss. 210 and 245, Travancore Companies Act—Application is maintainable. See Companies Act (1913), S. 171. AIR 1952 Trav-Co 14.

SECTION 284

——S. 284 — Right of secured creditor — Decree obtained on security—Prior to winding up—Jurisdiction of winding up — Judge to call for proof of debt or inquire into validity or extent thereof—(Companies Act (1913), S. 229).

Section 284 of the Travancore Companies Act does not deprive a secured creditor of his security or the benefit thereof by reasons of the winding up. A secured creditor who has obtained a decree long before the winding up proceedings is entitled to stand outside the winding up proceedings altogether. The winding up Judge cannot compel him to prove his debt or subject it to his scrutiny; nor has the Judge jurisdiction to annul or modify a secured creditor's security or decree. The winding up Court has no jurisdiction to call for proof of his debt or to inquire into the extent or validity of the debt or decree. ILR (1951) Trav-Co 315 : 1951 Ker L T 754 : AIR 1952 Trav-Co 46 (46, 47) (Prs 3, 5) (DB).

SECTION 285

——S. 285—Scope—"Bonus" if "wages"—Employees of company—Bonus sanctioned and payable to them—If wages—Right to rank as preferential creditors—Travancore Payment of Wages Act, 1116.

'Bonus' as used in the Travancore Companies Act does not come under the category of "wages" within the meaning of Travancore Payment of Wages Act. Since 'bonus' cannot be held to come within the category of wages in the Companies Act, there is no warrant for recognising the employees of a company in liquidation, in respect of bonus sanctioned and payable to them, as preferential creditors within the meaning of S. 285 of the Travancore Companies Act. I L R (1951) Trav-Co 635: 1951 Ker L T 598 : 1952 Com Cas 96 : A I R 1952 Trav-Co 99 (100) (Pr 2) (DB).

SECTION 287

——S. 287—Jurisdiction—Alienation by Company—Applications by Official Liquidator alleging fraudulent preference—Power of Court to declare invalid.

When a question arises as to whether a particular alienation made by a company which is being wound up is invalid because it amounts to a fraudulent preference within the meaning of S. 287, Travancore Companies Act, the Court certainly is invested with power under the section to declare as to its validity or invalidity on the application of the Official Liquidator. I L R (1951) Trav-Co 700 : 1950 Ker L T 703 : AIR 1954 Trav-Co 164 (164) (Pr 2).

TRAVANCORE CONTRACT ACT (10 of 1115 M. E.)

See also under Contract Act (1872).

SECTION 24

——S. 24 — "Public Service" — Employment outside territorial limits of State is not Public Service for purposes of section. See Contract Act (1872), S. 23. 1950 Ker L T 221.

SECTION 40

—— Ss. 40, 55 and 56—Applicability—Chitty contract—Time, if of essence—Subscriber bidding at auction but not getting paid his prize money on date of next bid as stipulated due to collapse of chitty — Right to forgo prize amount or to insist on payment of all paid up subscriptions in full—In such contract time must be regarded as of the essence of the contract—The subscriber who has not been paid the amount of the bid is entitled to waive his right to claim the prize amount and to go back to his right to claim the paid up subscriptions in full. 1950 Ker L T 745 : I L R (1951) Trav-Co 685 (DB).

SECTION 55

——Ss 55, 56—Chitty—Contract—Nature of—Bidder of ticket at auction for less amount than amount of his paid-up subscriptions not paid prize amount on stipulated date due to collapse of chitty — Right to claim full amount of subscriptions—Travancore Contract Act.

The subscriber who has not been paid the amount of the bid is entitled to waive his right to claim the prize amount and to go back to his right to claim the paid-up subscriptions as a non-prized subscriber. Sections 40, 55 and 56 of the Travancore Contract Act will apply and the bidder can insist upon being paid back all the subscriptions duly paid by him towards his ticket in the chitty up to the date of the collapse of the chitty. 22 T L J 1274; 11 T L T 454, Disting. 1950 Ker L T 745 : ILR (1951) Trav-Co 685 (DB).

SECTION 70

——S. 70 — Scope — The decree in the suit by the subsequent mortgagee made the mortgagor personally liable for the debt due thereunder and he was therefore "bound by law to pay" the same. The case therefore falls directly within the scope of S. 70. See Contract Act (1872), S. 69. ('50) 1950 Ker L Tim 238 (DB).

TRAVANCORE-CO-OPERATIVE SOCIETIES ACT (5 of 1112 ME)

See under Co-operative Societies.

TRAVANCORE COTTON YARN DEALERS LICENSING ORDER (1124 ME)

CLAUSE 6

——Cl. 6—Validity—A scheme of distribution adopted by the officer with the approval of the State Government cannot be questioned. See Constitution of India, Art. 19 (1) (g). AIR 1952 Trav-Co 260.

TRAVANCORE COURT-FEES ACT (6 of 1087 ME)

See also Court-fees Act (1870).

SECTION 3

● ——Ss. 3 (v) and 3 (iv) — Suit for setting aside partition arrangement made in pursuance of compromise decree and fresh partition — Plaintiff not in possession — Recovery and possession of plaintiff's share asked for — Relief by way of rendition of accounts also sought — Suit held fell under S. 4 (v), Cochin Court-fees Act (2 of 1080 ME) — Relief for rendition of account held distinct relief. See Court-fees Act (1870), S. 7 (v). A I R 1952 Trav-Co 509 (FB).

SECTION 4

● ——S. 4 (1) (iii), (v) (a) — Suit for removal of defendant from trusteeship and for possession of trust property — The plaintiffs are not bound to pay "ad valorem" court-fee on the value of the properties under Cls. (1), (3) and (v) (a) of S. 4 but need pay only fixed fees under Sch. II, Art. 8, Cls. (2) and (7). See Court-fees Act (1870), S. 7 (i). A I R 1954 Trav-Co 178 (FB).

[Overruled on another point in A.I R 1961 Ker 146 (FB).]

——S. 4 (5) (d) and Sch. II, Art. VIII (7) — Suit to avoid Melapattam — No prayer for possession — S. 4 (5) (d) applies—Computation of court-fee.

The suit is one for avoiding an alienation with respect to a limited interest in the property and as such is governed by S. 4 (5) (d). In such a case it is for the plaintiff to declare the market value of the subject-matter of the suit and it is only in case of dispute that the computation prescribed by the section has to be followed. AIR 1952 Trav-Co 71 (71) (Prs 1, 2) (DB).

SCHEDULE 1, ARTICLE 7

——Sch. 1, Art. 7—Schedule 1, Art. 7, corresponding to Sch. 1, Art. 6, of Indian Act applied only to civil proceedings and not to proceedings in criminal Court. See Court-fees Act (1870), Sch. 1, Art. 6. AIR 1953 Trav-Co 212 (DB).

SCHEDULE 1, ARTICLE 10

——Sch. 1, Art. 10 — A copy of judgment or order of a criminal Court should be affixed with court-fee stamp according to the provisions of Sch. 1, Art. 10 of the Act, corresponding to Sch. 1, Art. 9 of the Indian Act, the expression 'judicial proceeding' in that Article would cover as judgment or order of a criminal Court. See Court-fees Act (1870), Sch. 1, Art. 9. AIR 1953 Trav-Co 212 (DB).

SCHEDULE 2, ARTICLE 8

● —Sch. II, Art. 8, Cls. (ii) and (vii) — Suit for removal of defendant from trusteeship and for possession of trust property. See Court-fees Act (1870), S. 7 (i). AIR 1954 Trav-Co 178 (FB).

[Overruled on another point in A I R 1961 Ker 146 (FB).]

● ——Sch. II, Art. 8, Cl. (ii) — Scope — Covers all suits for removal of a trustee no matter whether it is a public trust or only a private trust. A I R 1954 Trav-Co 178 (190) (Pt D) (Pr 40) (FB).

[Overruled on another point in A I R 1961 Ker 146 (FB).]

——Sch. II, Art. 8 (vii) — A suit brought by a trustee or manager to remove the defendant from such office and to recover possession of the trust properties from him, would fall under Art. 17, Cl. (6), Sch. II, Court-fees Act, 1870. Further court-fee cannot be levied 'ad valorem' on the market value of the property. See Court-fees Act (1870), Sch. II, Art. 17 (vi). AIR 1954 Trav-Co 51 (DB).

——Sch. II, Art. 8 (7) — Suit to avoid Melpattom — No prayer for possession — S. 4 (5) (d) applies — Computation of court-fee. It is for the plaintiff to declare the market value of the subject matter of the suit and in case of dispute the computation prescribed by the section has to be followed. See Travancore Court-fees Act (6 of 1087 ME), S. 4 (5) (d). AIR 1952 Trav.Co 71 (DB).

TRAVANCORE CRIMINAL PROCEDURE CODE (8 of 1117 ME)

See also under Criminal P. C. (1898).

SECTION 4

——S. 4 (1) (d) and S. 186 (b) — A Magistrate can take cognizance of even non-cognizable offence upon a report by a police officer. See Criminal P. C. (1898), S. 190 (1) (b) (a). 1953 Cri L J 288 : AIR 1953 Trav-Co 43.

SECTION 103

——S. 103 — Interim bond under S. 113 (3) — High Court will not interfere — Proceedings under S. 103 converted into proceedings under S. 143 — Interim bond to be cancelled. See Criminal P. C. (1898), S. 107. AIR 1955 N U C (Trav-Co) 6008.

——Ss. 103, 115, 244 — Initiation of proceedings under S. 103, Travancore Criminal P. C. on complaints — Complainants and other witnesses not appearing on several hearings — Magistrate should proceed under S. 115, Tr. Cr. P. C. and terminate proceedings and discharge the persons proceeded against — He cannot acquit them under S. 244, Tr. Cr. P. C. See Criminal P. C. (1898), S. 107. A I R 1952 Trav-Co 268.

——Ss. 103 and 143 — Applicability — Dispute—Existence of — Time of dispute — Dispute easily resolvable — If excludes S. 143 and attracts S. 103 — Procedure.

It is only in cases where the land or property in question is admittedly or indisputably in the possession of one of the parties and the party out of possession attempts to trespass on the property that S. 143 becomes inapplicable and S. 103 comes into operation. 1951 Ker L T 243.

——S. 103—Proceedings under—Discretion of Magistrate — Magistrate may proceed either under S. 103 or under S. 143 depending on the circumstances of each case. See Criminal P. C. (1898), S. 107. ('51) 1951 Ker L T 154.

SECTION 113

——S. 113 — Interim bond under S. 113 (3) — High Court will not interfere — Proceedings under S. 103 converted into proceedings under S. 143 — Interim bond to be cancelled. See Criminal P. C. (1898), S. 107. A I R 1955 N U C (Trav-Co) 6008.

——S. 113 (3)—Scope—Compliance—What amounts to—Duty of Magistrate—Defect in form of order—Not a ground for interference in revision. 1952 Cri L J 1111 : AIR 1952 Trav-Co 262 (263) (Pt A) (Prs 3, 4) (DB).

——S. 113 (1) and (3)—Construction and scope—Enquiry under S. 113 (1) — When commences — Stage when parties appear or brought before Court or when order under S. 108 is read and explained to all of them—Order for security referring only to police report is unsatisfactory—The order must clearly show that the emergent action under S. 117 (3), Criminal P. C. (corresponding to S. 113 (3), Travancore Criminal P. C.) was called for and that the requirements of the section are fulfilled. ILR (1951) T C 302 : 1951 K L T 696 : 1952 Cri L J 1111 : A I R 1952 Trav-Co 262 (263) (Pt B) (Pr 5) (DB).

——S. 113 — Person appearing voluntarily before Magistrate prior to date fixed for appearance—Proceedings at the inquiry stage — Interim bond can be demanded for keeping peace till the inquiry is complete. See Criminal P. C. (1898), S. 117 (3). 1951 Ker L Tim 396.

SECTION 115

——S. 115—Proceedings under S. 103—Complainants and State witnesses absent—Procedure—Order of acquittal under S. 244 — Propriety — (Criminal P. C. (1898), S. 107).

Under S. 115 the Court can terminate the proceedings and discharge the accused. There can be no acquittal under S. 244. 1927 Cal 343, foll. 1952 Cri L J 1271 : A I R 1952 Trav-Co 268 (269) (Pr 2).

SECTION 137

——S. 137 — Scope — Non-compliance — Effect on proceedings and order — (Criminal P. C. (1898), S. 133).

An order passed contrary to the provisions of S. 137, Criminal P. C., and without complying with its requirements is illegal and cannot be sustained;

the defect is not curable by the curative provisions of the Code. ILR (1951) Trav-Co 123 : 1952 Cri L J 1250 : 1951 Ker L T 51 : A I R 1951 Trav-Co 228 (228) (Prs 2, 3).

SECTION 143

——S. 143 — Interim bond under S. 113 (3) — High Court will not interfere — Proceedings under S. 103 converted into proceedings under S. 143 — Interim bond to be cancelled. See Criminal P. C. (1898), S. 107. A I R 1955 N U C (Trav.Co) 6008.

——S. 143 — Criminal P. C. (1898), Ss. 145 and 344 — Proceedings under S. 145—Stay of, pending civil suit —It is proper in such a case to stay the criminal proceedings till the disposal of the suit. See Criminal P. C. (1898), S. 145. A I R 1952 Trav-Co 207.

——S. 143 — Dispute for possession of building and business therein — Police report for action under S. 143 — Order by Magistrate after hearing parties— Order if judicial and revision if maintainable — The order passed is judicial and a revision in the High Court is maintainable. See Criminal P. C. (1898), S. 145. 1951 Ker L T 243.

——S. 143—Proceedings under—Discretion of Magistrate—Magistrate may proceed either under S. 103 or under S. 143 depending on the circumstances of each case. See Criminal P. C. (1898), S. 107. 1951 Ker L T 154.

——S. 143 — Proceedings under S. 103 — Conversion into proceedings under S. 143 — Discretion of Magistrate—The magistrate can initiate proceedings under S. 143 depending on the circumstances of each case. See Travancore Criminal P. C. (8 of 1117 ME), S. 103. 1951 Ker L T 154.

——S. 143 — Police declaring in report emergency of action — It is within the discretion of the Magistrate to decide whether there is or is not emergency. See Criminal P. C. (1898), S. 145 (4) Second proviso. 1951 Ker L T 115.

SECTION 144

——S. 144 — Decision of a competent Court—Continuation of attachment thereafter — Failure to give notice before handing over possession — Effect — Attachment can continue — Failure to give notice is at the worst only an irregularity and does not vitiate order of the Magistrate removing the attachment and ordering the receiver to hand over possession. See Criminal P. C. (1898), S. 146. 1953 Cri L J 1827 : A I R 1953 Trav-Co 589.

SECTION 162

——Ss. 162 and 301 — Warning to the accused—Requirements of—When the confession contains a certificate of a momorandum at its foot as required by S. 164 a presumption arises under S. 90 of the Evidence Act that all the necessary formalities have been duly complied with and that the statements contained in the memorandum are true and correct. See Criminal P. C. (1898), Ss. 164 (2) and (3) and 364. 1952 Cri L J 1304 : A I R 1952 Trav-Co 305 (DB).

SECTION 184

——S. 184 — "Court of Session" — Proper Court to which commitment should be made — Order of committal to wrong Court — Liability to be quashed — Procedure when defect discovered before trial — (Criminal P. C. (1898), S. 531).

The Court of Session mentioned in S. 184, Travancore Criminal P. C., is the Court which would have territorial jurisdiction over the place where the offence is alleged to have been committed, in view of S. 175 of that Code. The Sessions Court to which a commitment is made should necessarily be a Court competent to try the case under S. 175. Where the commitment for trial is, however, made to a Court which is not the Court having jurisdiction, and the defect is discovered before the trial commences, the order of commitment need not be quashed as illegal; the proper and legal course, is to transfer the case for trial to the Sessions Court which has jurisdiction to try it, the order of commitment being deemed to be one made to that Court and not to the wrong Court. ILR (1951) Trav Co 310 : 1951 Ker L T 401 : A I R 1952 Trav-Co 56 (57, 58) (Prs 4, 7).

[Overruled in A I R 1956 Trav-Co 29 (DB)].

SECTION 186

——S. 186 (b) and (a) and S. 4 (l) (d) — Cognizance of non-cognizable offence on police report — Can be taken by the magistrate. See Criminal P. C. (1898), S. 190 (1) (b) and (a). 1953 Cri L J 288 : A I R 1953 Trav-Co 43.

SECTION 194

——S. 194 (1)—'While acting or purporting to act in discharge of his official duty'—It must be held that the act of S. I. was done in the discharge of his duties and therefore sanction for his prosecution was essential. See Criminal P. C. (1898), S. 197. 1954 Cri L J 256 : AIR 1954 Trav-Co 127.

SECTION 195

——S. 195—Husband in possession of property belonging to his wife—Complaint of fanciful nature — No legal grievance—Person aggrieved—Meaning of. The question whether a person is aggrieved within the meaning of the section is merely a question of fact, depending on the particular circumstances of each case. 1950 Ker L T 534.

SECTION 201

——S. 201—Scope—Power of Magistrate—Dismissal of complaint on sworn statement of complainant and police report — Opportunity to complainant to show police report to be wrong — If to be given—Travancore Criminal Court Circular No. 18 of 1066—Applicability—(Criminal P. C. (1898), S. 203).

Under S. 201, the Magistrate is entitled to dismiss a complaint on considering the sworn statement, if any of the complainant as also the investigation by the police directed by him; it is not obligatory upon him to give an opportunity to the complainant to show that the police report is wrong, which is enjoined in Travancore Criminal Court Circular No. 18/1066. This Circular has reference only to a case where the complaint is made to the police and they refer the complaint as false or unproved to the Court; it has no application to the case of a complaint presented to the Magistrate by the complainant which latter case is governed by S. 201. 55 Cri L J 218 : 1951 Ker L T 414 : AIR 1954 Trav-Co 136 (136) (Pr 3).

SECTION 215

——S. 215—"Point of law" — Order of commitment not supported by evidence—Quashing of.

The High Court can set aside or quash the order of commitment under S. 215' Criminal P. C. 1953 Ker L T 307 : 1952 Cri L J 791 : I L R (1951) Trav-Co 605 : AIR 1952 Trav-Co 158 (159) (Pt B) (Pr 4).

SECTION 219

——S. 219 (2) — Framing of charge—Offences of falsification of accounts or forgery besides criminal breach of trust or dishonest misappropriation — —Nature of charge to be framed—Criminal P. C. (1898), S. 234.

The Court is to frame a separate charge for each distinct act of breach of trust or misappropriation and to include in that charge acts of falsification of accounts or forgery connected therewith and not

have one charge for the gross sum misappropriated, another charge for as many falsifications as could be tried together without offending S. 231 and a third charge for forgery, if any. 1951 Ker L T 252 (DB).

SECTION 223

——S. 223 –Scope—Charge of bigamy — Amendment by addition of charge of enticing away married woman and charge of adultery.

In a prosecution on a charge of bigamy the charge may legally be amended so as to include a charge against the man of enticing away a married woman under S. 501. Travancore Penal Code, but it cannot be so amended as to add a charge against him of the offence of adultery. 5 A I Cr D 569.

SECTION 244

——S. 244 — Applicability—Case started on Police report and not on complaint—Acquittal under S. 244 —Legality of.

Section 244, Travancore Criminal P. C., can apply only if the prosecution has been started on a complaint. Where the proceedings have been started on a police report and not upon a complaint, S. 244 cannot be invoked and an acquittal of the accused under S. 244 is not warranted and is illegal. 5 A I Cr D 470.

——S. 244—Prosecution on police report — Acquittal on absence of complainant—Validity.

Section 244 does not refer to a case which was taken cognizance of on a Police Report. The order made by the Magistrate acquitting the accused under that section on absence of the complainant is, therefore incorrect. Unreported decision in Cr. App. Nos. 91 and 93 of 1951 dated 23-7-1951, Foll. 1952 Cri L J 1584 : AIR 1952 Trav-Co 476 (476) (Pr 1) (DB).

——S. 244 — Applicability — Case under S. 103— Absence of complainants and state witnesses—Procedure—Proper order. Under S. 115 the Court can terminate the proceedings and discharge the accused. There can be no acquittal under S. 244. See Travancore Criminal P. C., S. 115. 53 Cri L J 1271 : AIR 1952 Trav-Co 268.

——S. 244, Proviso — Complaint by public servant —Criminal P. C. (1898), S. 247, Proviso.

Where the evidence of the complainant who is a public servant has already been recorded the Magistrate in acquitting the accused under S. 244 on a subsequent date does not exercise a judicial discretion, especially when the complainant had engaged an Advocate to represent him. 1951 Ker L T 147 : AIR 1951 Trav-Co 25 (25) (Pr 3) (DB).

SECTION 250

——Ss. 250, 430, 436—Criminal P. C (1898), Ss. 253, 517, 520, 523 — "When an inquiry or a trial in any Criminal Court is concluded."

The accused was discharged under S. 250 and in the same order the property in dispute was ordered to be confiscated. The order of confiscation of property was made under S. 430 and not under S. 436, and the revision petition was not the proper remedy open to the party. See Criminal P. C. (1898), S. 253. AIR 1954 Trav-Co 196 (DB).

——S. 250 (2) — Criminal P C (1898), S. 253 (2)— Complaint 'prima facie' disclosing offence—Accused discharged before examining witnesses — Duty of Court.

Before discharging the accused it was the duty of the Court to issue steps to the witnesses in the complaint and the Court was wrong in discharging the accused without taking the evidence which the complainant was prepared to adduce. See Criminal P. C. (1898), S. 253 (2). AIR 1954 Trav-Co 121.

SECTION 254

——S. 254 — Applicability — Plea of guilty not accepted.

The Magistrate ought to proceed under S. 256 and ought not to convict the accused on the evidence adduced by the prosecution before the charge is framed. See Criminal P. C. (1898), S. 256. 1953 Cri L J 1814 : AIR 1953 Trav. Co 588 (DB).

SECTION 262

——S. 262 (2) — Plea of guilty — Magistrate is not bound to convict on the plea. See Criminal P. C. (1898). S. 255 (2). 1953 Cri L J 1814 : AIR 1953 Trav-Co 588 (DB).

SECTION 281

——S. 281—Procedure—Deaf and dumb accused— Duty of Court to endeavour to communicate with accused—Reference after sentence—Propriety.

Where the accused is a deaf and dumb person, who cannot understand the proceedings, the duty of the Magistrate, if a case is made out against the accused upon the evidence adduced by the prosecution, is to record a finding of conviction, and make a reference to the High Court under S. 281, Travancore Criminal Procedure Code. There is no provision for passing a sentence before the Magistrate refers the case to the High Court. It is only the High Court which must pass the necessary sentence or order. In such cases the Magistrate must also make an endeavour in the course of the trial to communicate with the accused through some person acquainted with the method of doing so. ILR (1951) T C 85 : 1951 K L T 29 : 5 A I Cr D 179 : 52 Cr L J 654 : AIR 1951 T C 125 (127) (Prs 5, 6, 7) (DB).

SECTION 291

——S. 291—Scope of—Bench of Magistrate—Change in Constitution during hearing — Judgment by three members none of whom has been present throughout or has heard evidence of all witnesses—Is illegal and not curable irregularity under S. 446. 1952 K L T 40 : 1952 Cri L J 869 : AIR 1952 T C 175 (176) (Pr 4) (DB).

SECTION 302

——S. 302 — Judgment pronounced on a Sunday — Validity.

There is no prohibition against pronouncing judgment on Sundays and other holidays. Courts in India have been doing judicial acts and recognising their validity on Sundays or other holidays. 1951 K L T 243 : 5 A I Cr D 696.

——S. 302 — Judgment pronounced on Sunday — If valid—There is no prohibition against giving a judgment on Sundays or holidays if necessary notice is given regarding such pronouncement. See Criminal P. C. (1898), S. 366. 1951 K L T 243.

SECTION 305

● ——Ss. 305 and 470 — Relative scope—Former, if subject to S. 470—Power of High Court to review or alter judgment - Grounds for exercise— Error of law —If justification for review (Criminal P. C. (1898), Ss. 369, 561A and 471).

It cannot be disputed that S. 305, Travancore Cr. P. Code, applies to the High Court also. It cannot be held that the section has to be read subject to S. 470. S. 470, Travancore Criminal P. C. does not confer any new power on the High Court. It only reserves the power which the High Court possessed before the section was enacted. The words "save as otherwise provided by this Code", etc., cannot have reference to S. 470. The words only refer to the express provisions of the Code which empower the Court to

alter or review its judgment in certain specified cases, e.g., Ss. 326, 359, 395 and 400.

The High Court has therefore no power to review or alter its judgment in a criminal case, except in the case mentioned in S. 369, Indian Cr. P. Code, or where the Court has acted without jurisdiction or where it has decided the case without giving an opportunity to a party for being heard and S. 407, Travancore Procedure Code (S. 561-A, Indian Criminol Procedure Code) does not confer on the High Court any such power. Though the Court has passed an order on a view of the law which is not in consonance with the strict law, it cannot be said to have acted without jurisdiction or to have abused the process of the Court or caused any grave injustice to any party, so as to justify an alteration or review of judgment. State v. Aiyappan Pillai, **1952 All W R (Supp) 79 : ILR (1952) T C 285 : 1952 K L T 248 : 1952 Cri L J 930 : AIR 1952 T C 210 (211, 212, 217, 218) (Prs 5, 6, 30, 31, 33) (FB).**

SECTION 342

——S. 342—Applicability—Conviction based on evidence and not plea of guilty—S. 412, Criminal P. C. held did not apply—Appeal held maintainable. See Criminal P. C. (1898), S. 412. **1953 Cri L J 1814 : AIR 1953 Trav-Co 588 (DB).**

SECTION 343

——S. 343—Repeal of — Section 25 of the Code of Criminal Procedure Amending Act gave retrospective operation to the Code of 1898 so as to make its provisions applicable to pending cases in Criminal Courts in any Part B State. The appeal was, therefore, incompetent. See Code of Criminal Procedure Amending Act (1951), S. 25. **AIR 1955 N U C (Trav-Co) 140.**

SECTION 346

——Ss. 346 and 350—Acquittal—Appeal from — Interference—Powers of High Court — Finding of fact —Interference — Option of that Judge on credibility of witnesses — Finding arrived at by indulging in speculation, unwarranted by evidence and contrary to S. 105, Evidence Act—Finality.

Sections 346 and 350, Travancore Cr. P. C., give to the High Court full power to review at large the evidence upon which an order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. There is no restriction imposed upon the appellate Court in dealing with an order of acquittal on a question of fact. If the conclusion of fact arrived by the trial Judge is not warranted by the evidence in the case, and has been arrived at by indulging in speculation as to what should have happened without any suggestion made in the evidence or in the cross-examination of the witnesses for the prosecution the conclusion cannot be accepted, more so, when the speculation is both unwarranted and opposed to the provisions of S. 105 of the Evidence Act. In such a case the trial Judge must be held to have misdirected himself, and the acquittal will be set aside. 1949 T L R 191, declared obiter and Diss. 61 I A 393 ; AIR 1934 P C 227 ; AIR 1950 P C 30; 50 C W N 1 (PC); 56 All 354, Foll. 4 All 148, Not foll. **1950 K L T 227 : 4 A I Cr D 707.**

SECTION 349

——S. 349 (2)—Scope — Non-compliance — Effect—Appeal from conviction of compoundable offence on private complaint — Notice served on Public Prosecutor and not on complainant — If vitiates order of acquittal in appeal—Illegality—If cured—S. 446.

The provisions of S. 349 (2), Travancore Criminal P. C., are not mandatory and the fact that notice of appeal by the accused against his conviction of a compoundable offence on a private complaint is served on the Public Prosecutor and not on the complainant does not amount to any violation of any mandatory provision which vitiates the order of acquittal passed on appeal. The defect, or irregularity, if any, is amply curable by S. 446, Travancore Criminal P. C. **I L R (1951) Trav-Co 183 : 55 Cri L J 336 : 1951 Ker L T 381 : A I R 1954 Trav-Co 162 (162) (Pr 3).**

SECTION 350

——S. 350—Powers of appellate Court — Conviction by trial Court of two offences — Award of one sentence only—Procedure — Duty of appellate Court—Enhancement of sentence.

Where an accused is convicted at a trial of the offences under Ss. 421 and 469, Travancore Penal Code, the proper course for the trial Court is to award separate sentences for each. Where that Court does not do so, it is open to the appellate Court under S. 350, Travancore Criminal P. C., to direct that the sentence passed by the trial Court should be apportioned for the two offences of which the accused has been convicted, provided such direction does not amount to an enhancement of the sentence, it being a fundamental rule that whatever the appellate Court does, it shall not enhance the sentence. 48 Cri L J 182, Ref. **5 A I Cr D 274 : 1951 Ker L T 261.**

SECTION 358

——S. 358 — Jurisdiction — Order passed by Magistrate with jurisdiction — Order under S. 142 by Magistrate not empowered to act—Legality — Revision—Interference—Power of High Court.

When a Court has no jurisdiction to pass effective orders as regards matters brought before it, but assumes jurisdiction and passes an order, the High Court is competent, and has jurisdiction under S. 358, Criminal P. C. to interfere in revision to correct the mistake and call the Magistrate to order. An order under S. 142, Criminal P. C., by a Magistrate who has not been empowered by Government to act under the section, is void and is liable to be set aside in revision. **5 A I Cr D 432.**

SECTION 362

——S. 362—Scope—Powers of revision—If confined to judicial orders only — Proceedings under S. 143—Order in revision—Maintainability.

The powers of revision are not confined to the case of orders which are judicial ; a revision petition is maintainable even if an order under S. 143, Criminal P. C., is not a judicial order. The High Court has power to revise the order in the case of "any proceeding" and not merely a judicial proceeding. **1951 Ker L T 243 : 5 A I Cr D 696.**

——S. 362—Powers of High Court—Illegality brought to notice of High Court — Jurisdiction to interfere—Magistrate taking cognizance on police report submitted in pursuance of complaint by complainant—The party who originally preferred the complaint to police has no locus standi to apply for deletion of one section of Penal Code from reports or for withdrawal — Order of acquittal following on allowing application — Legality of — Not only the order of acquittal but the entire order including the order directing the deletion of a section from the police report will be set aside. 5 A I Cr D 426.

——S. 362 — Power of High Court — Discretion of Magistrate — Decision as to case being one of emergency under S. 143 (4), Proviso 2 — Interference in revision. See Travancore Criminal P. C., S. 143 (4), Proviso 2. **5 A I Cr D 345.**

——S. 362—Quashing committal — Powers of High Court — Interference with proceedings of lower Court—When to be exercised.

While it cannot be disputed that the High Court has jurisdiction to interfere at any stage of the proceedings before the Court below and quash the same in the interests of justice. The power to quash proceedings has to be exercised sparingly and when the High Court is satisfied that sufficient grounds exist for that course. **4 A I Cr D 778 : A I R 1951 Trav-Co 35 (36) (Pr 1).**

SECTION 384

●——Ss. 384, 305 and 470 — Criminal P. C. (1898), Ss. 369, 561-A and 471 — Power of High Court to review or alter its judgment in criminal case. 15 Trav-Co L J 85 ; 20 Trav-Co L J 378, Overruled. See Travancore Criminal P. C. (8 of 1117 M.E.), S. 305. A I R 1952 Trav Co 210 (FB).

●——S. 384, Proviso — Power of Court — Order of detention of lunatic accused with relative or guardian—Legality.

Under S. 384, Travancore Criminal P. C., and R. 7 of the Rules under the Travancore Lunacy Act, it is not strictly open to the Court, when passing a detention order, to allow the accused to be kept in the custody of a relative or guardian pending orders from Government ; the Court on the other hand has to direct the detention of the accused in a lunatic asylum. State v. Aiyappan Pillai, 1952 All W R (Supp) 79 ; I L R (1952) Trav-Co 285 ; 1952 Ker L T 248 ; 1952 Cri L J 930 ; A I R 1952 Trav-Co 210 (211, 212, 217, 218) (Prs 5, 6, 30, 31, 33) (FB).

——S. 384 — Criminal P. C. (1898), Ss. 471, 475— Travancore Criminal P. C., S. 384 — Detained in safe custody, meaning of — It means detained in such a manner and place as the Court thinks fit. See Criminal P. C. (1898), S. 471. A I R 1952 Trav-Co 52.

——S. 384—Scope — Duty of Court — Direction for accused to be kept in custody of relatives—Legality —Jurisdiction of Court—"Detained in safe custody" —Meaning of—Procedure — Travancore Lunacy Act —Rules under—Application.

The expression "detained in safe custody" in S. 384, Criminal P. C., does not mean detained in the custody of relatives or friends, but detained in safe custody in such manner and place as the Court thinks fit. The Court under the section has to detain the accused in safe custody and report the matters to the Government, which is given power to direct that the accused shall be delivered to any relative or friend of his for safe custody. The Court is not given power to do so and it has no jurisdiction to give such a direction. The rules under the Travancore Lunacy Act cannot have any application to the provisions of S. 384, Travancore Criminal P. C. I L R (1951) Trav-Co 175: 1951 Ker L T 276 ; A I R 1952 Trav-Co 52 (52, 53) (Prs 1, 2).

SECTION 399

——S. 399 (4)—Scope — Offer by husband to maintain wife if she lived with him — Refusal — When justified.

A wife claiming maintenance is not entitled to refuse an offer by the husband to maintain her unless she is able to make out that there is sufficient reason for her refusing to live with him. An unfounded imputation of unchastity about the wife by the husband is a sufficient reason for her refusing to live with him. 54 Cri L J 72 : I L R (1951) Trav-Co 593 : 1951 Ker L T 655 : A I R 1952 Trav-Co 562 (563) (Pt A) (Pr 1).

——S. 399 — Criminal P. C. (1898), S. 488 — Wife applying for separate maintenance — Husband's offer to maintain her if she lived with him — Burden is on wife to show sufficient reason for her refusal to live with him. See Criminal P. C. (1898), S. 488. A I R 1952 Trav-Co 562.

——S. 399—Criminal P. C. (1898), S. 488—Unfounded imputation of unchastity — Wife can refuse to live with husband. See Criminal P. C. (1898), S. 488. A I R 1952 Trav-Co 562.

SECTION 402

——S. 402—Power of Court under — Application by person detained under Preventive Detention Act— Scope of inquiry and duty of Court—The information obtained and relied on by the Magistrate need not satisfy the strict rules regarding admissibility of evidence before a judicial tribunal. See Preventive Detention Act, Ss. 3 and 7. 52 Cr L J 1089 : A I R 1951 T C 217 (DB).

——S. 402—Writ of Habeas Corpus —Whether S. 34 Cl. (1) does not oust Court's jurisdiction to entertain application under S. 402.

Section 34, Cl. (1) does not operate as a complete ouster of the jurisdiction of the High Court. See Public Safety—Travancore Emergency Powers Act (1 of 1122), S. 29 (1). 1950 Ker L T 544 (DB).

SECTION 407

——S. 407—Scope — If controls powers of Court of Session or High Court under S. 409—Section 407 does not in any way control the absolute power vested in those Courts. See Criminal P. C. (1898), S. 498. 53 Cri L J 909 : AIR 1952 T C 182 (DB).

SECTION 408

——Ss. 408 and 409—Bail—Factors to be considered in disposing of bail applications.

It would be a relevant circumstance for High Court in disposing of applications for bail to consider whether there are reasonable grounds for believing that the prisoner is guilty of a non-bailable offence. See Criminal P. C. (1898), S. 498. ('50) 1950 Ker L T 223.

SECTION 409

——Ss. 409, 407 — Criminal P. C. (1898), Ss. 498 and 496 — Scope — Powers of High Court and Court of Session are not controlled by S. 496. See Criminal P. C. (1898), S. 498. AIR 1952 Trav-Co 182 (DB).

——S. 409 — Scope — Powers of Sessions Judge — Person proceeded against under S. 104 — Order for interim bond — Subsequent cancellation and committal to custody on ground of breach of conditions of interim bond—Order by Sessions Judge for release on bail—Jurisdiction.

Under S. 409, Travancore Criminal P. C, the High Court and Court of Session have very wide powers to admit to bail any person who is detained in jail. It is open to the Sessions Judge if he is moved by that person to enlarge him on bail under S. 409. It cannot be said that the Sessions Judge has no jurisdiction to enlarge him on bail in view of S. 407; that section does not in any way control the absolute power vested in the court of Session and the High Court under S. 409. 58 All 589, Foll. 1951 Ker L T 620 ; 1952 Cri L J 909 : A I R 1952 Trav-Co 182 (182) (pt A) (Pr 2) (DB).

——Ss. 409 and 408—Bail—High Court's jurisdiction —Circumstances to be considered.

The jurisdiction of High Court under S. 409 is not fettered by S. 408. It would be reasonable to consider whether grounds exist for believing that the prisoner is guilty of a non-bailable offence. That the offence may be repeated and that the Sessions Judge

had refused to exercise his discretion should be taken into consideration. See Criminal P. C. (1898), S. 498. ('50) 1950 Ker L T 223.

SECTION 413

—S. 413—Application for discharge—Forfeiture of bonds—Criminal P. C. (1898), S. 502.

The Magistrate is bound to take the necessary step for the arrest of the accused when once the surety has applied for an order of discharge and before taking such steps, it will not be proper to seek to enforce the bond against the sureties. When the accused surrenders to the Court or is brought before it as per the action taken under S. 413 the sureties are ipso facto discharged and there will be no further question of forfeiture of their bonds. 1950 Ker L T 670 : AIR 1951 Trav-Co 24 (24) (Pr 2).

SECTION 430

——Ss. 430, 250, 436—Criminal P. C. (1898), Ss. 253, 517, 520, 523—"When inquiry or a trial in any Criminal Court is concluded". See Criminal P. C. (1898), S. 253. AIR 1954 Trav-Co 196 (DB).

——Ss. 430 and 436 — Applicability — Prosecution under Travancore Act 1 of 1122 for contravention thereof—Act expiring after launching of prosecution and before trial—Discharge of accused under S. 250—Order of confiscation — Revision —Competency—Order, if one under S. 430 or 436—Remedy.

The accused having been discharged under S. 250 Criminal P. C. the order of confiscation fell under S. 430, Travancore Criminal P. C., and since the appropriate remedy was an appeal under S. 430 (4) and not a revision application S. 436 did not apply and the revision application was not competent. I L R (1951) T C 290 : 1954 Cri L J 487 : 1951 Ker L T 377 : AIR 1954 T C 196 (196) (Pr 5) (DB).

SECTION 436

——S. 436—Applicability — Prosecution under Temporary Act—Act expiring before trial — Discharge of accused under S. 250—Order of confiscation—If falls under S 436 or 430 — Remedy — Appeal or revision. The order of confiscation fell under S. 430 of the Code, and since the appropriate remedy was an appeal under S. 430 (4) and not a revision application S. 436 did not apply and the revision application was not competent. See Travancore Criminal P. C., Ss. 430 and 436. 1954 Cri L J 487 : AIR 1954 T C. 196 (DB).

——Ss. 436, 430, 250— Criminal P. C. (1898), Ss. 253, 517, 520, 523 — "Where an inquiry or a trial in any Criminal Court is concluded". See Criminal P. C. (1898), S. 253. AIR 1954 Trav-Co 196 (DB).

SECTION 446

——S. 446—Scope — Non-compliance with S. 349 (2) — If fatal or cured by S. 446—The defect, or irregularity, if any is curable under the provisions of the section. See Travancore Criminal P. C., S. 349 (2). 1954 Cri L J 336 : AIR 1954 T C 162.

——S. 446 — Applicability— Bench of Magistrates—Charge during trial — Judgment by Magistrates none of whom has heard evidence of all witnesses—Legality—Defect—If curable. See Travancore Criminal P. C. S. 291. AIR 1951 Trav-Co 187.

——S. 446 — Person proceeded against voluntarily appearing before Magistrate before date fixed — Proceedings at inquiry stage—Interim bond for keeping peace can be demanded. See Criminal P. C. (1898), S. 117 (3). 1951 Ker L T 396.

SECTION 470

● ——S. 470—If governs S. 305 — Inherent power to alter or review judgments.

The High Court has no power to review or alter its judgments. The section does not govern S. 305. See Criminal P. C. (1898), S. 369. AIR 1952 Trav-Co 210 (FB).

TRAVANCORE DEBT RELIEF ACT (2 of 1916)

See under Debt Laws.

TRAVANCORE DEVASWOM PROCLAMATION (1121 ME)

SECTION 3

——Ss. 3 and 4—Trustees of temple suing Devaswom Board for recovering money belonging to temple — Decree.

When the person asking for a relief is bound to restore the subject-matter immediately on getting it to the person from whom it is sought to be recovered, such relief should not be granted.

The plaintiffs not being entitled to retain the money for any time after recovery in view of Ss. 3 and 4 and the Board being the proper custodian of the money under those sections it is not proper to grant a decree to the plaintiffs for recovery of the money. 1953 Ker L T 318 : A I R 1953 Trav-Co 478 (478, 479) (Pr 5) (DB).

SECTION 4

——Ss. 4 and 3—Trustees of temple suing Devaswom Board for recovering money belonging to temple—Decree—Grant of decree is not proper. See Travancore Devaswom Proclamation (1121 M.E.), S. 3. AIR 1953 Trav Co 478 (DB).

SECTION 6

——S. 6 (1)—Employees of Devaswom Board—Status of—If government servants — (Constitution of India, Art. 311).

The employees of the Devaswom Department who were Government servants till 10-8-1123 ceased to hold office under the Government after that date.

As the petitioners ceased to be servants of the Government after 10-8-1123 the question whether Art. 311 of the Constitution or Art. 346 of the Travancore-Service Regulations violated does not arise. 1958 Ker L T 1190 : ILR (1958) Kerala 949.

TRAVANCORE DISTRICT MUNICIPALITIES ACT (23 of 1116 ME)

See under Municipalities.

TRAVANCORE DRAMATIC PERFORMANCES ACT (2 of 1115 ME)

SECTION 2

——S. 2 (1) — Order prohibiting performance of drama—Author not heard—Legality — (Constitution of India, Art. 226)—(Natural justice.)

A very salutary canon of natural justice is violated and the order has to be quashed. 1957 Ker L T 267 : 1957 Ker L J 9 : A I R 1957 Ker 75 (76) (Pr 3).

——S. 2—District Magistrate cannot exercise power of prohibition when he is not specially empowered to act under section — Notice empowering him to act only under S. 6 and no other cannot be construed to empower him by implication to act under S. 2. 1953 Ker L T 336 : A I R 1953 Trav-Co 238 (239, 240) (Pt B) (Prs 5, 8).

SECTION 9

——S. 9 — Absence of notification under Sub-s. (1)—Licence under section is not necessary—Cancellation of such non-necessary permission is unnecessary.

1953 Ker L T 336 : A I R 1953 :Trav Co 238 (239) (Pt A) (Pr 3).

TRAVANCORE EDAVAGAI ACT (3 of 1109 ME)

See under Tenancy Laws.

TRAVANCORE EDUCATION CODE (1909)

PREAMBLE

——Pre.—Scope—Statutory authority of.

The Travancore Education Code is only a body of executive instructions having no statutory authority. The rules therein can be amended by the Government in exercise of its executive authority, and they do not have the force of law. 1958 Ker L T 233 : 1958 Ker L J 357 : ILR (1958) Kerala 558 : A I R 1958 Ker 290 (295) (Pt B) (Pr 15) (DB).

——Pre. — Travancore Education Code — Effect — Application for writ — Maintainability — Education Code and Orders by Government or Department issued from time to time have no statutory force and the infringement of the provisions of the Code or such Orders cannot be made subject matter of judicial review. See Constitution of India, Art. 226. 1958 Ker L T 124.

——Pre. — Private Secondary School Scheme—Sanskrit School recognised as academic school — Latter orders of Government regarding conversion of Sanskrit schools into academic schools—Effect—School is entitled to all benefits of scheme. 1958 Ker L T 124.

RULE 68A

——R. 68-A—Evidence as to age — School Admission Registers—Entries in—Evidentiary value—Failure to examine parents or guardians in support of school records—Effect — Probative value of such entries in comparison with entries in electoral roll—Elections—Setting aside—Minority votes—Proof. Entries in the—School registers are of far less evidentiary value than the entries in the electoral roll and are, therefore, of little avail to show that age shown in the electoral roll is wrong. See Evidence Act (1872), S. 35. A I R 1963 Ker 18 (DB).

RULE 145

——Rr. 145 (n) and 146 (a) and (g) — Madras Grant-in-aid Code, R. 2—Madras Elementary Schools Rules, Part II, Chap. I, R. 14 — Grant-in-aid — Right under Art. 19 (1) (f), if infringed — Discrimination —(Constitution of India, Arts. 19 (1) (f), 19 (1) (g) and 14 and 13).

Neither under statute, nor under any principle of common law, have the school institutions or their managers any title to, or property in grants-in-aid until they are actually paid. Government are free to determine the manner in which they will, if they chose, give recognition and aid. No person can claim a fundamental right to run a recognised aided school. The rules governing these matters are not laws and there can be no question of offending Art. 14 which speaks of equality before the law and the equal protection of the laws. That article can apply only if the rule complained against is a law within the meaning of Art. 13. 1958 Ker L T 233 : 1958 Ker L J 357 : ILR (1958) Ker 558 : A I R 1958 Ker 290 (298, 299) (Pt G) (Prs 34, 36, 37, 39) (DB).

TRAVANCORE EMERGENCY POWERS ACT (1 of 1122 ME)

See under Public Safety.

TRAVANCORE ESSENTIAL COMMODITIES (CENSUS) ORDER (1117 ME)

SECTION 1

——S. 1—Scope—Failure to send weekly returns — Accused sending fortnightly returns under instructions of authority concerned — Plea of being misled by authority—Sustainability in defence.

A party is expected to know the law or the rules in force and is not entitled to plead in defence to a charge that he was misled by the authorities. 5 A I Cr D 322.

TRAVANCORE EVIDENCE ACT (7 of 1117 M E)

See also Evidence Act (1872).

SECTION 32

——S. 32 (1)—Applicability — Dying declaration — Admissibility — Conditions — Person surviving for 4½ months after statement — Effect—First information to Police by deceased — Use of as substantive evidence—"Legality".

In order that a statement may be admissible as a dying declaration under S. 32 (1) of the Evidence Act it need not necessarily refer to the cause of the death of the person making such a statement. When a statement is made by a person as to any of the circumstances of the transaction which resulted in his death, that statement will be admissible in evidence in a case in which the cause of the death of that person is a point in issue where the statement refers to what took place at the time of the occurrence or incident, between the accused and the deceased and it contains a statement falling within the second part of S. 32 (1) of the Evidence Act, that will be admissible in evidence as a dying declaration, although the person making the statement survived for about 4½ months after the statement was made and died only subsequently. Similarly the first information report given by the deceased to the Police, if it falls under S. 32 (1), may be admitted and relied upon as substantive evidence and not merely as corroborative evidence. 53 Cr L J 386 : (1950) K L T 306 : 5 A I Cr D 41 : AIR 1952 TC 70 (70, 71) (Prs 4, 5) (DB).

SECTION 45

● ——Ss. 45, Illustration (c) and 73 — Practice of taking thumb impression of accused — Validity — (Identification of Prisoners Act (1920), S. 5) — (Travancore Identification of Prisoners Act (11 of 1112), S. 5)—The practice of taking thumb impression of accused under the direction of the Court is valid and in strict compliance with S. 45, Illustration (c) and S. 73 of Evidence Act and S. 5 of Identification of Prisoners Act (1920) — 1950 Ker L T 80 : AIR 1950 Trav-Co 5 : 51 Cri L J 569, Overruled. See Evidence Act (1872), S. 45, Illus. (c). AIR 1952 Trav-Co 482 (FB).

SECTION 73

●——S. 73—"Any person" includes accused—Court has no power to compel accused to write out contents of document. See Evidence Act (1872), S. 73. AIR 1952 Trav-Co 482 (FB).

● ——Ss. 73, 45, Illustration (c)—Practice of taking thumb impression of accused—Validity—(Identification of Prisoners Act (1920), S. 5) — The practice of taking thumb impression of the accused under Court's direction is valid — Travancore Identification of Prisoners Act (11 of 1112), S. 5)—1950 Ker L T 80 : AIR 1950 Trav Co 5 : 51 Cri L J 569, Overruled. See Evidence Act (1872), S. 45, Illus. (c). AIR 1952 Trav-Co 482 (FB).

TRAVANCORE EZHAVA ACT (3 of 1100 ME)

SECTION 3

——S. 3 (b) — Normal rule of Marumakkathaym Law relating to acquisition of property by Karanavan is saved—(Tarwad—Marumakkathayam Law). AIR 1955 NUC (Trav-Co) 2205 (DB).

SECTION 4

——S. 4 (11)—'Makkathayam property'—Meaning of. See Ezhava Act (3 of 1100), S. 32. **1957 Ker L T 756.**

SECTION 8

● ——Ss 8 and 11—Applicability and scope—Petition for dissolution of marriage—Jurisdiction to entertain petition, is governed by Travancore Act and not by Hindu Marriage Act. See Hindu Marriage Act (1955), S. 4. AIR **1958 Ker 39 (FB).**

SECTION 9

——S. 9—Constitutional validity — (Constitution of India, Arts. 14 and 15).

It was contended on behalf of an Ezhava wife that S. 9 should be struck off as offending against Arts. 14 and 15 of the Constitution in that while it fixes the maximum compensation payable by a husband at Rs. 2 000 it fixes the maximum compensation payable by a wife at the lesser figure of Rs. 500; **Held**, that such inequality or discrimination as there is in this provision is in favour of the wife, and it does not lie in the mouth of the petitioner (wife) who has been thus favoured to complain against it. It is also clear that the difference in the sums payable as compensation is founded on a reasonable classification, an obvious basis for the classification being that, as a rule, a husband has more means than a wife. **1957 Ker L T 326 : 1957 Ker L J 379 : I L R (1957) Ker 459 : AIR 1957 Ker 94 (94) (Pt C) (Pr 3) (DB).**

SECTION 11

■ ——S. 11 — Hindu Marriage Act (1955), Ss. 4, 19, 29 (2)—Section 4 does not repeal Travancore Ezhava Act, 1100—Petition for dissolution of marriage under S. 8 of Travancore Act — Jurisdiction to entertain petition is governed by Travancore Act and not by Central Act. See Hindu Marriage Act (1955), S. 4. **AIR 1958 Ker 39 (FB).**

——S. 11—Six months period—Computation.

The period of six months in S. 11 is not a period of limitation but is opportunity given for the purpose of repentance and reconciliation. That opportunity was in a way affected by reason of the pendeney of the Revision petition in the High Court or by the stay ordered by it, and it might even be said that these favoured rather than hindered a reconciliation. But, however that might be there is no provision in the Act suspending the period once it has begun to run. **1957 Ker L T 326 : 1957 Ker L J 379 : I L R (1957) Ker 459 : AIR 1957 Ker 94 (94) (Pt A) (Pr 2) (DB).**

SECTION 13

——S. 13 — Suit relating to tarwad properties — Mother as guardian.

There is nothing in the Travancore Ezhava Act to indicate that the mother is in any way disqualified from functioning as the guardian of her minor children. See C. P. C. (1908), O. 32, R. 3. **AIR 1959 Ker 169 (DB).**

——S. 13—Minor child—Right of father.

The father is not the legal guardian of his minor children regarding their right and interest in their tarwad property. **1959 Ker L R 574 : 1959 Ker L T 897 : 1957 Ker L J 688.**

SECTION 15

——Ss. 15 to 19, 32, 33 and Parts IV and VII (ii) —Scope — Makkathayam property—Property given exclusively for benefit of donee — Devolution of—Rule—Malabar law—Succession.

Section 32 makes it clear that it is open to any individual to give property for the exclusive benefit of any of his wives or for the exclusive benefit of any of his children without his children or other children, as the case may be, getting any right over that property. In such a case the property given by the husband or the father, as the case may be would be the separate property of the donee for whose exclusive benefit he gave it, notwithstanding the fact that it is makkathayam property falling within the definition of that term given in the Ezhava Act and so intestate succession in respect of such makkathayam property given exclusively for one individual alone will be governed by the provisions in Part IV which govern intestate succession both in respect of self-acquired and separate properties. Makkathayam property and separate property are not mutually exclusive terms, and a property which is makkathayam property of one individual can at the same time be his separate property. It is not therefore correct to say that the devolution of Makkathayam property will not be affected by the provisions in Part IV of the Ezhava Act. Nor is it correct to say that the devolution of Makkathayam property is governed by Part VII (ii) of the Act which only provides for the quantum of the share an individual is to get on partition of the makkathayam property given by a person to his wife and children in common and has nothing to do with intestate succession in respect of makkathayam property given either solely to one individual or in common to him and others. When makkathayam property is given and belongs exclusively to one individual, ordinarily, intestate succession in respect of that property will be governed by the provisions in Part IV, and since S. 33 of the Ezhava Act allows any individual member of an Ezhava tarwad to get himself or herself exempted from the operation of the provisions in Part IV of the Act, when an individual has obtained exemption from Government under that section the rules of intestate succession laid down in Part IV will not apply to him or her; in such a case, when exemption is obtained intestate succession will be governed by the rules of ordinary Marumakkathayam law. Under the ordinary Marumakkathayam law, the children of a pre-deceased son are never the heirs of an intestate female. When a female dies leaving no member in her own thavazhi, i. e, no issue in the female line under the ordinary Marumakkathayam law as obtaining in Travancore, her, mother's thavazhi takes the properties left by the intestate. Her issue in the male line gets no right at all to the properties left by her. **1957 Ker L J 1028 : 1958 Ker L T 8.**

SECTION 18

——Ss. 18 and 19—Effect of.

The effect of Ss. 18 and 19 is that when an Ezhava female dies leaving only a child by a pre-deceased son and no other issue such child will be her heir and will take the whole of her self-acquired or separate property even though that grand child is not a member of her thavazhi as that term is understood in ordinary Marumakkathayam law. Because of Explanation II to S. 19 the expression 'thavazhi' occurring in Part IV of the Ezhava Act has a special meaning different from what it means under the ordinary Marumakkathayam law and includes not only the issue in the female line but also the issue both in the male and female lines how-low-soever. **1957 Ker L J 1028 : 1958 Ker L T 8.**

● ——Ss. 18 and 19, Explanation (2) — Explanation, if takes in all issues of intestate female — Heirs, if take properties as tenants-in-common or as joint tenants—(Marumakkathayam Law—Thavazhee.)

Explanation II to S. 19 would take in all the issues of the intestate female including both the descendants of her daughters and the descendants of her sons, and not merely the members of her thavazhee

as that term is understood in ordinary Marumakkathayam Law, among the group of persons on whom, under S. 18, her self-acquired and separate properties would devolve on her death : 1945 Trav L R 122, Approved.

The heirs under S. 18 take the properties devolving on them as tenants-in-common and not as joint tenants. 1945 Trav L R 122, Explained and distinguished. Nanu Divakaran v. Velumpi Nani. 1954 Ker L T 812 : ILR (1954) Trav-Co 1280 : AIR 1955 Trav.Co 71 (73) (Prs 5, 8) (FB).

SECTION 19

● —S. 19, Explanation II — Expression 'thavazhee' in case of intestate female includes her issue how-low-soever—Son's son would be issue how-low-soever. Kunju Kesavan v. M. M. Philip. (1964) 3 S C R 634 : 1963 Ker L J 962 : (1963) 2 Ker L R 238 : (1963) 2 S C W R 275 : A I R 1964 S C 164.

—S. 19, Expl. I—Acquisition or accretions to joint property by manager — Nucleus — Sufficiency of—Nature of property acquired — Burden of proof—Allowance of compensation to Manager.

The presumption of Marumakkathayam Law is that when it is established that the family had joint property the nature and value of which may have formed the nucleus of the property in question, one alleging that the property was self acquired has to prove that the property in dispute was acquired without the help of the joint family property. The Manager is entitled to reasonable compensation for his exertions. See Marumakkathayam Law — Joint family. 1962 Ker L T 99.

[Overruled in AIR 1963 Ker 354.]

● —S 19, Explanation (2) — Explanation, takes in all issues of intestate female including the descendants of daughters and sons also. See Travancore Ezhava Act (III of 1100, M. E.), S. 18. A I R 1955 Trav-Co 71 (FB).

SECTION 21

● —S. 21—Scope — Alienation of Tarwad property not in conformity with conditions of S. 21—The section does not effect the capacity of the karnavan to represent the tarwad but only lays down the conditions under which his alienations may be rescinded by other members of the tarwad—Alienation is voidable and not void—Junior member not required to sue for recission—Possession passing to alienee—Where alienation is not followed by possession, it is open to the tarwad to urge the invalidity of the transaction in defence to a suit by the alienee—Such plea is not barred by lapse of time. AIR 1916 P C 172; 31 M L J 362 and A I R 1935 Bom 326 and AIR 1946 Oudh 129 and A I R 1949 E P 29 and AIR 1919 Mad 650 : 35 M L J 652, Rel. on—Suit for possession by member—Limitation — 25 Cochin 603 (FB), held overruled by 37 Cochin 556 (FB) : 1961 Ker L J 910 : 1961 Ker L T 1127, Overruled—If possession continues unchallenged with alienee for 12 years, he gets an indefeasible right to property; 14 Ind App 148 (PC) and AIR 1918 Mad 724; AIR 1951 Mad 817 : 33 M L J 309 and (1951) 1 M L J 265 and AIR 1953 Bom 424 Rel. on.

The indefeasible title to the property is by force of S. 28, Limitation Act ; A I R 1949 Pat 197; AIR 1957 Pat 502; A I R 1929 Mad 16; A I R 1928 All 726 (FB) and AIR 1930 Bom 135 Rel. on. ILR 32 Cal 296 (PC) and A I R 1960 S C 85 : 1960 S C J 96, Disting. Chacko Mathew v. Ayyappan Kutty. 1962 Ker L J 177 : I L R (1962) 1 Ker 242 : 1962 Ker L T 61 : (1962) 1 Ker L R 413 : A I R 1962 Ker 164 (177 to 180, 182) (Pt A) (Prs 55, 61, 64, 71, 72, 73, 77, 79, 89) (FB).

SECTION 22

—S. 22 — Consent of major members—Objection by third person.

So far as the outside world is concerned it has to be taken that the mortgage deed is executed by competent persons and that a stranger to the tarwad cannot invoke the provisions of S. 22. Case law Rel. on. 1952 Ker L T 695 : A I R 1952 Trav-Co 549 (550) (Pr 4) (DB).

SECTION 27

—S. 27—Acquisition of mortgage right by married woman during coverture — Presumption that it is acquired with funds supplied by husband cannot apply to Ezhava woman who works to earn—Hindu Law—Stridhan—Presumption—Husband and wife—Advancement—Presumption.

A presumption that, where the acquisition, of mortgage right is during coverture, it is made within funds supplied by the husband cannot apply to Ezhava woman who works to earn. 10 T L R 136 and 1956 K L T 42, Disting. ; A I R 1956 S C 559, Foll. 1964 Ker L T 305.

SECTION 28

● —Ss. 28, 29, 30—Suit for partition—Jurisdiction of Court.

The ordinary jurisdiction of a Civil Court to entertain a partition suit instituted by one or more members of an Ezhava tarwad, which is essentially a suit of a civil nature, is not in any way barred by Ss. 28, 29 and 30. There is nothing in these sections or in any of the other sections of the Act to prevent a partition being effected in an Ezhava tarwad with the consent of all the members of that tarwad. 1947 T L R 167 and A I R 1952 Trav Co 563, Dist. Velayudhan Gopala Panickan v. Velumpi Kunji. 1958 Ker L J 138 : 1958 Ker L T 253 : I L R (1958) Ker 389 : AIR 1958 Ker 178 (182) (Pt. C) (Pr 7) (FB).

—Ss. 28, 29, and 30—Partition—Consent.

Under Ss. 28, 29 and 30 the members of an undivided Ezhava tarwad cannot get divided from their lineal ascendant during her life-time without her consent. However under S. 30 each collateral thavazhee represented by the majority of the adult members thereof may claim an outright partition of property over which the tarwad has the power of disposal. AIR 1953 T C 460 (461, 462) (Pt B) (Pr 3) (DB).

SECTION 29

● —Ss. 29, 30—Suit for partition — Jurisdiction of Court—(Civil P. C. (1908), S. 9.

The ordinary jurisdiction of a Civil Court to entertain a partition suit instituted by one or more members of an Ezhava, is not in any way barred by Ss. 28, 29 and 30. See Travancore Ezhava Act (3 of 1100 M E), S. 28. AIR 1958 Ker 178 (FB).

—S. 29—Partition—Consent. Under Ss. 28, 29 and 30 the members of an undivided Ezhava tarwad cannot get divided from their lineal ascendant during her life-time without her consent. See Travancore Ezhava Act (3 of 1100, M. E.), S. 28. AIR 1953 T. C. 460 (DB).

SECTION 30

—S. 30—Partition—Consent. Under Ss. 28, 29 and 30 the members of an undivided Ezava tarwad cannot get divided from their lineal ascendant during her life time without her consent. See Travancore Ezhava Act (3 of 1100 M. E,), S. 28. A I R 1953 T C 460 (DB).

—S. 30—Suit for partition by sub-tavazhi, when Tarwad is intact without any partition being effected by collateral tavazhi.

Held, on facts of the case, that the suit was not maintainable because it was not a su by a collateral

tavazhi as defined in the Travancore Regulation III of 1100 which alone was competent to maintain a suit for partition among the members of the community to which that Regulation applied. 1947 T L R 167, Rel. on. 1951 Ker L T 731 : AIR 1952 Tra-Co 563 (564) (Pr 2) (DB).

SECTION 32

● ——S. 32 — Gift by person of some of his property to his wife and some to his grandson—There is contrary intention within S. 32 — Each takes property exclusively.

Where by a gift deed the donor gave some of his properties to his wife and other to his grandson he thus divided his properties between his wife and grandson and showed a contrary intention within the meaning of S. 32. The intention manifested that each was to take exclusively. Kunju Kesavan v. M. M Philip. 1993 Ker L J 962 : (1963) 2 Ker L R 238 : (1964) 3 S C R 634 : (1963) 2 S C W R 275 : A I R 1964 S C 164 (166, 167) (Pt B) (Prs 8, 9, 11).

——S. 32—Self-acquired property of male Paravar—Devolution—Children whether take specific shares.

One-half of the property acquired by a male member of a Paravar family devolves on his children and the other half on his seshakars. The children inherit the property as a group and not as tenants-in-common each having a specific share. The change brought about by S. 32, Ezhava Act is not applicable to Paravars also. See Malabar Law. 1958 Ker L T 113.

——S. 32—Applicability—The change brought about by S. 32 of the Ezhava Act is not applicable to Paravars. See Marumakkathayam Law—Succession. 1958 Ker L T 113 : 1958 Ker L J 331.

——S. 32—Effect of—Gift of Makkathayam property in favour of wife after the Act—If enures for benefit of wife alone or wife and children.

The effect of S. 32 is that ordinarily, makkathayam property obtained after the passing of the Act should be taken by the wife and children as tenants-in-common even though the instrument by which the property was acquired stands in the name of one individual alone, but if a contrary intention is expressed in the instrument effect should be given to that intention. 1957 Ker L J 1028 : 1958 Ker L T 8.

——S. 32 — 'Makkathayam property' — Meaning of —S. 4 (11).

Makkathayam property withim the meaning of Ss. 4 (11) and 32 posits a group of beneficiaries consisting of a wife and children though the acquirer on behalf of the group is the wife or a child. 1957 Ker L T 756 : 1957 Ker L J 750.

● ——S. 32 — Special custom of inheritance among misradayis—Legal effect of if abrogated.

As per the special custom that prevailed among misradayis each of the wives of a deceased misradayi Ezhava, along with the children born to her from him, will get an equal share in the half share of his assets. The legal effect of the custom has not been abrogated by S. 32. ILR (1956) Trav-Co 150 : 1956 Ker L T 195 : AIR 1956 Trav-Oo 167 (170) (Pt B) (Pr 7) (FB).

● ——S. 32—Applicability.

Section 32 of the Act is of general application and it is applicable to Marumakkathayee Ezhavas and misradayi Ezhavas alike. ILR (1956) Trav-Co 150 : 1956 Ker L T 195 : AIR 1956 Trav-Co 167 (170) (Pt D) (Pr 6) (FB).

——S. 32 — Applicability of Act to Makkathayam properties obtained before Act — (Marumakkathyam Law).

The Ezhava Act does not alter these rules of Marummakkathayam Law in relation to Makkathayam properties obtained before it came into force. AIR 1953 Trav-Co 460 (461) (Pt A) (Pr 2) (DB).

SECTION 33

——Ss. 33 and Parts IV and VI (ii)—Scope—Makkathayam property — Property given exclusively for benefit of donee—Devolution of—Whether governed by rules in Part IV or Part VI (ii) — Effect of exemption under S. 33. See Travancore Ezhava Act (1100), S. 15. 1958 Ker L T 8.

● ——S. 33—Scope of —Conditions for exemption.

There is nothing in S. 33 to indicate that the applicants' sworn statement is a condition precedent to the granting of the exemption applied for. The only two conditions postulated by the section are that there must be an application presented within a period of six months from the commencement of the Act and that Government must, after making such inquiry as may be necessary, be satisfied as to the truth of the application. Krishnan Nilkantan v. Karumpan Kesavan. ILR (1956) Trav-Co 87 : 1956 Ker L T 262 : AIR 1956 Trav-Co 161 (164) (Pt C) (Pr 11) (FB).

● ——S. 33 (1) (i) — Right to apply for and revoke exemption—Nature of.

The right of an individual to apply under S. 33 (1) (i) and to get exemption from the operation of Part IV of the Ezhava Act, is a purely personal right. Krishnan Nilkantan v. Karumpan Kesavan, ILR (1956) Trav-Co 87 : 1956 Ker L T 262 : AIR 1956 Trav-Co 161 (165) (Pt D) (Pr 13) (FB).

● ——S. 33—Scope — Notification on application of relatives of party after his death — Government's jurisdiction.

The Ezhava Act contains no provision conferring any express power or jurisdiction on Government to alter or modify a notification issued under S. 33. Krishnan Nilkantan v. Karumpan Keshavan, ILR (1956) Trav-Co 87 : 1956 Ker L T 262 : AIR 1956 Trav-Co 161 (166) (Pt E) (Pr 15) (FB).

● ——S. 33 — Notification at instance of third party —Validity.

A notification on an application of another member either revoking or modifying a prior notification cannot be issued after the death of the member, contemplated by S. 33 (1) (i) so as to divert the course of succession which had opened at the moment of the death of that member. Krishnan Nilkantan v. Karumpan Kesavan, ILR (1956) Trav-Co 87 : 1956 Ker L T 262 : AIR 1956 Trav-Co 161 (167) (Pt F) (Pr 16) (FB).

——S. 33 (1)—Application under S. 33 (1) — Waiving of benefit conferred by Act by Karnavan — Result is to surrender in favour of tarward any special or exclusive right which Karnavan could have claimed in respect of acquisitions made in his name. AIR 1955 NUC (Trav-Co) 2205 (DB).

PART 4

——Part IV — Explanation—"Shall be treated as that person's self-acquisition"—Scope and applicability of Explanation indicated. AIR 1955 NUC (Trav-Co) 2205 (DB).

TRAVANCORE FACTORIES ACT (8 of 1114 ME)

SECTION 75

● ——S. 75 — Limitation—Period of six months expiring on holiday — Complaint presented on next

day of sitting of Court—If barred—General Clauses Act (Travancore), S. 10.

The period of six months prescribed in S. 75 of the Travancore Factories Act is governed by S. 10 of the General Clauses Act, 1072; if therefore that period of six months expires on a gazetted holiday, the complaint under the Factories Act can be presented on the next day when the Court sits. A complaint so presented cannot be dismissed as being beyond time. The Factories Act being an Act passed long after the General Clauses Act, S. 10 of the latter Act (as also the rest of Chap. II) will apply to the Factories Act, when no contrary intention appears in the latter enactment. State v. Govindan Asan and Sons. **(1952) 2 Lab L J 5 : I L R (1952) T C 218 : 1952 K L T 211 : 1952 Cri L J 901 : A I R 1952 T C 188 (190) (Pr 6) (FB).**

TRAVANCORE FOREST ACT (2 of 1068 ME)

SECTION 6

——S. 6 — Squatter is not entitled to notice under S. 6. AIR 1955 N U C (Trav.Co) 5081 (DB).

——S. 6 — Notice — Awareness of proceedings is no substitute for notice — Individual written notice is essential. AIR 1955 N U C (Trav-Co) 5081 (DB).

SECTION 33

——S. 33—Repeal—Effect of—Conviction under R. 26 and S. 35 of old Act for contravention of R. 11 of Timber Transit Rules — Legality. The conviction is not sustainable in law and had to be quashed. See T. C. Forests Act (3 of 1952), S. 101 (1). 1958 Cri L J 1184 : AIR 1958 Ker 262.

SECTION 35

——Ss. 35, 33 — T. C. Forest Act (3 of 1952), Ss. 101 (1), 101 (3)—Repeal of Travancore Act 2 of 1068 and rules thereunder — Conviction under R. 26 and S. 35 of old Act for contravention of R. 11 of Timber Transit Rules—Legality—(Travancore Timber Transit Rules, Rr. 11, 26). The conviction is not sustainable in law. See T. C. Forest Act (3 of 1952), S. 101 (1). 1958 Cri L J 1184 : AIR 1958 Ker 262.

TRAVANCORE GENERAL CLAUSES ACT (2 of 1072 ME)

See also (1) General Clauses Act (1897).

(2) Travancore-Cochin Interpretation and General Clauses Act (7 of 1125 ME) (1949).

SECTION 2

——S. 2 — "Immovable property" — Term applies to property over which family has mortgage right. See Travancore Malayala Brahmin Act (3 of 1106), S. 5. AIR 1952 Trav. Co 368 (DB).

——S. 2 (6)—Good faith—Definition explained.

Good faith in act or belief requires due care and attention to the matter in hand. The absence of good faith means simply carelessness or negligence. **1950 Ker L T 573 : 1950 T C L R 707 : AIR 1951 Trav-Co 55 (61) (Pt C) (Pr 21) (DB).**

SECTION 10

●——S. 10 (1)—Applicability—Travancore Factories Act, S. 75—Period of six months expiring on holiday — Presentation of complaint on next working day is not barred. See General Clauses Act (2 of 1897), S. 10 (1). AIR 1952 Trav-Co 188 (FB).

TRAVANCORE GOVERNMENT LAND ASSIGNMENT ACT (3 of 1097 ME)

——Completed contract for assignment of land — Sanction for registry of land as Puthuval — Observance of Rr. 51, 52 of Rules framed under Act whether necessary pointed out—(Contract Act (1872), S. 2 (h). AIR 1955 N U C (Trav-Co) 5107 (DB).

——Suit to enforce registry of land—2 Trav L J 502; 57 Trav L R 1015 and 57 Trav L R 1065, Applied. AIR 1955 N U C (Trav-Co) 5107 (DB).

TRAVANCORE HIGH COURT ACT (4 of 1099 ME)

See also Travancore-Cochin High Court Act (5 of 1125 ME) (1949).

SECTION 9

——S. 9 — Case referred to third Judge — Case, if ought to be sent back to referring Bench.

The practice is to draw up a decree in conformity with the majority opinion without the case going back to the referring Bench and the practice is in full consonance with the plain language of S. 9. **AIR 1952 Trav-Co 60 (60) (Pt A) (Pr 2) (DB).**

SECTION 11

●——S. 11 (1)—Travancore-Cochin High Court Act (5 of 1125), S. 25 — Suit instituted before repeal of Travancore High Court Act—Appeal filed after repeal of S. 25 of Act 5 of 1125 — Appellants cannot claim that appeal should be heard only by a Full Bench under either of the Acts. Ittyavira Mathai v. Varkey Varkey. (1963) Ker L J 952 : (1963) 2 Ker L R 277 : (1963) Ker L T 1133 : (1963) 2 S C W R 326 : (1964) 1 S C R 495 : AIR 1964 S C 907 (914) (Pt D) (Pr 16).

●——S. 11—Applicability. See Travancore-Cochin High Court Act (5 of 1125), S. 8. AIR 1954 S C 526.

●——S. 11 — Judgment under S. 11, Travancore High Court Act 4 of 1099, by Full Bench — Review by Full Bench of present High Court—Jurisdiction—If a review of judgment is admitted, an effective judgment can be passed by the Full Bench of the present Travancore-Cochin High Court and S. 11 of Travancore High Court Act 4 of 1099 is no bar to the review being admitted. See Travancore-Cochin High Court Ordinance (2 of 1124 ME), S. 8. A I R 1952 Trav. Co 120 (FB).

[Reversed on another point in AIR 1954 S C 526].

SECTION 12

●——Ss. 12, 11 — Applicability. See Travancore-Cochin High Court Act (5 of 1125 ME), S. 8. A I R 1954 S C 526.

TRAVANCORE HINDU INHERITANCE (REMOVAL OF DISABILITIES) ACT (18 of 1114 ME)

SECTION 4

——S. 4 — Supervening lunacy—If ground of exclusion—Nair governed by customary law—If excluded.

A Nair, who is an adult member of his tarwad, is not excluded by his supervening insanity from his rights to a share in the tarwad properties and is therefore entitled to bring a suit to enforce his right to such share. **74 Mad L W 41 : 1961 Mad W N 82 : (1962) 1 Mad L J 358 : 1961 Ker L T 271 : A I R 1961 Mad 345 (346, 347) (Pt B) (Prs 4, 5, 7) (DB).**

TRAVANCORE HINDU LAW OF INHERITANCE (AMENDMERT) ACT (3 of 1111 M. E.)

SECTION 2

——S. 2—Scope and effect—Alienation by mother of last male holder—Suit by paternal uncle of deceased—Sister and sister's son of deceased alive and not

made parties to suit—Maintainability of suit—Hindu law—Reversioners.

Where the nearest reversioners have not been made parties to the suit the suit by the remoter reversioner (father's brother) cannot be maintained. AIR 1951 Trav-Co 213 (215) (Pt B) (Pr 6) (DB).

TRAVANCORE HINDU RELIGIOUS ENDOWMENTS ACT (3 of 1079 M. E.)

SECTION 5

——Ss. 5, 6 and 8—Modes of interference by State in management of Devaswoms—Assumption of management by State—Position of trustee.

The Act contemplates two modes of interference by the State in the management of Devaswoms. One is assumption of management as per the provisions of S. 5 (1) and the other is the exercise of superintendence in the management as per S. 5, sub-s. (2). When it is a case of assumption the Ooralan or trustee who was taking part in the management of the Devaswom prior to the date of assumption loses all his right in that Devaswom from that day. His duties also end. This is made plain by S. 8. ILR (1956) Trav-Co 16 : A I R 1957 Trav-Co 316 (318, 319) (Prs 3, 4) (DB).

SECTION 6

——Ss. 6, 5 and 8—Modes of interference by State in management of Devaswoms—Assumption of management by State—Position of trustee. See Travancore Hindu Religious Endowments Act (3 of 1079), S. 5. AIR 1957 Trav-Co 316 (DB).

SECTION 8

——Ss. 8, 5 and 6—Modes of interference by State in management of Devaswoms—Assumption of management by State—Position of trustee. See Travancore Hindu Religious Endowments Act (3 of 1079), S. 5. AIR 1957 Trav-Co 316 (DB).

TRAVANCORE IDENTIFICATION OF PRISONERS ACT (11 of 1112 M. E.)

SECTION 5

——S. 5—Practice of taking thumb impression of accused under the direction of the Court is valid. See Evidence Act (1872), S. 45, Illustration (c). 1953 Cri L J 1 : 52 Ker L T 310 : AIR 1952 Trav-Co 482 (FB).

TRAVANCORE INCOME TAX ACT (8 of 1096 M. E.)

SECTION 4

——S. 4 (vi) and S. 8—Business or an adventure in the nature of trade—Single transaction of purchase and sale of shares. The transaction relating to sale of shares in this case was capital appreciation and not Revenue Receipt. See Income-Tax Act (1922), S. 6 (4). AIR 1959 Ker 298 (DB).

SECTION 8

——S. 8—Business or an adventure in the nature of trade—Single transaction in purchase and sale of shares was capital appreciation and not Revenue Receipt. See Income-Tax Act (1922), S. 6 (4). AIR 1959 Ker 298 (DB).

——S. 8 (2) (vii)—"Machinery having become obsolete"—Meaning of—A machinery can become obsolete not only by use and being worn out alone. A machinery can become obsolete by becoming out of date or performing its functions indifferently. See Income-Tax Act (1922). S. 10 (2) (vii). AIR 1959 Ker 298 (DB).

——Ss. 8 (2) (iii) and (ix) and 32 — Income-Tax Act (1922), Ss 10 (2) (iii) and 42—Non-resident assessee—Assessment.

Interest on the part allocated to borrowed capital at the average rate at which the assessee had taken deposits was an allowable deduction for purpose of income-tax, particularly under S. 8 (2) (iii) & (ix). See Income-Tax Act (1922), S. 10 (2) (iii). AIR 1953 Trav. Co 316 (DB).

SECTION 32

——Ss. 32, 8 (2) (iii) and (ix)—Income-Tax Act (1922) S. 10 (2) (iii) and 42—Non-resident assessee — Assessment. See Income-Tax Act (1922), S. 10 (2) (iii). AIR 1953 T C 316 (DB).

SECTION 50

——S. 50 (5)—Duty of Court—Party causing reference not interested in reference being answered — Court should decline to answer questions referred. See Income Tax Act (1922), S. 66 (5). AIR 1957 Trav-Co 267 (DB).

TRAVANCORE INCOME-TAX ACT (23 of 1121 M. E.)

SECTION 1

——S. 1 — Applicability — Income for 1126 M. E.—Assessable under Travancore Act (23 of 1121)—Assessment would be as per law current during the sssessment year. See Travancore-Cochin Agricultural Income-tax Act (22 of 1950). 1959 Ker L T 626.

——S. 1 (3)—Assessment for year 1120 — Applicability of S. 10—Agricultural income of co-tenants.

The law in force in the year of assessment was, therefore, Act I of 1119, as the law that applies is the law that is in force in the year of assessment.

The tenancy-in-common did not lose its incidents because the co-tenants chose to have a joint Manager. See Agricultural Income-Tax Act (1 of 1119), S. 10. AIR 1955 NUC (Trav-Co) 2216 (DB).

SECTION 3

——Ss. 3, 4, 9—Constitution of India, Art. 226—Assessment to Income-tax—Grounds not discussed—Error apparent on record would not be ground for interference of the High Court in certiorari—(Income-tax Act (1922), S. 23). See Constitution of India, Art. 226. AIR 1953 Trav-Co 296.

SECTION 4

——S. 4—Assessee, a public limited company incorporated in England with registered office in London —It owned tea, rubber and cardomom estates — 11 of its 32 estates were in British India — Principal Office of its agents and secretaries was at Quilon — During year ending 31-3-1946 assessee drew 5 cheques for Rs. 12 lakhs on Imperial Bank of India, Calicut and handed them to Imperial Bank of India, Trivendrum—The amount held not to be profits under S. 4 (1) (a) in Travancore State—(1953) 23 I T R 230 Rel. on.—Opening balance for the year remained at Rs. 5,50,464/— Only that amount and not the whole held taxable under S. 4 (1) (b) (iii).— Income-tax Act (1922), S. 4. (1964) 52 I T R 186 (Ker).

——Ss. 4, 3, 9 — Constitution of India, Art. 226 — Assessment to income-tax—Grounds not discussed — Error apparent on record which would not be a ground for the interference of the High Court in certiorari. (Income-tax Act (1922), S. 23). See Constitution of India, Art. 226. AIR 1953 Tav-Co 296.

SECTION 7

——S. 7 (8)—Repeal of Travancore Income-tax Act (1121 M. E.) — Effect — S. 7 (8), Travancore Cochin

Act not kept alive. See Finance Act (1950), S. 13. AIR 1960 Mad 320 (DB).

SECTION 9

——Ss. 9, 3 and 4 — Constitution of India, Art. 226— Assessment to income-tax — Grounds not discussed —Error apparent on record would not be a ground for interference of the High Court in certiorari — (Income-tax Act (1922), S. 23). See Constitution of India, Art. 226. AIR 1953 Trav-Co 296.

SECTION 10

——S. 10 (1) and S. 13 (4) (c) — Computation of taxable agricultural income — Special contribution to Employees' Provident Fund — Allowable deduction —S. 14, not exhaustive. See Travancore-Cochin Income tax Act (23 of 1121), S. 14 (3) (g). 1963 Ker L J 175.

SECTION 13

●——Ss. 13. 18 (2) (c) and 52 (1) — Set-off of loss against profits under same head—Business loss—Loss outside Travancore — Set-off against profits in Travancore —Applicability of S. 32 (1), Proviso. See Income-tax Act (1922), S. 24 (1). AIR 1959 S C 713.

——Ss. 13 (4) (c) and 10 (1)—Computation of taxable agricultural income — Special contribution to Employee's Provident Fund — Allowable deduction — S. 14 not exhaustive. See Travancore Income-Tax Act (1121 M E), S. 14 (3) (g). 1963 Ker L J 175.

——Ss. 13 and 18 (2) (c) — Income-Tax Act (1922), Ss. 10 and 14 (2) (c) — Banking business carried in former State of Travancore & Cochin and former British India — Assessee at Travancore claiming deduction of loss incurred in business at Cochin and in British India—Deduction can be allowed — A I R 1950 All 270 and 1955-28 I T R 45 (All), Dissented from. See Income-tax Act (1922), S. 10. AIR 1956 Trav-Co 51 (DB).

SECTION 14

——S. 14 (3) (c) — Scope — Computation of Agricultural Income —Special Contribution to Employees' Provident Fund by the Assessee not allowable deduction under the section.

Section 14 (3) (c) of the Act specifies one of the allowances to be made in computing agricultural income and that allowance is limited to expenses incurred by the assessee in actually raising the crop from which the agricultural income is derived. 1963 Ker L J 175 : 1963 Ker L T 245.

——Ss. 14 (3) (g), 10 (1), 14 (4) (c) — Computation of taxable agricultural income—Special contribution to Employees' Provident Fund—Allowable deduction —S. 14 not exhaustive.

A contribution or deposit by way of additional remuneration is a payment which in the hands of the recipient is chargeable under the head 'salaries' and therefore contribution made by the assessee to its Employees' Provident Fund is a permissible deduction in computing the taxable agricultural income, though it is not an allowance specifically enumerated in S. 14 (3) or the Rules, because the enumeration of allowable deductions in S. 14 (3) is not exhaustive. A I R 1958 S C 783 : 1958 S C J 963 : (1958) 2 M L J (SC) 168 : (1958) 2 Andh W R (SC) 168, Rel. on. 1963 Ker L J 175 : 1963 Ker L T 245.

——S. 14 (3) (c) — Travancore Agricultural Income-tax Act (1 of 1119), S. 7 (2) (c) — Immature plants —Expenses on maintenance of, are not allowable. See Travancore Agricultural Income-tax Act (1 of 1119), S. 7 (2) (c). AIR 1956 Trav-Co 17 (DB).

SECTION 17

——S. 17—Income-Tax Act (1922), S. 13 — Valuation of closing stock.

When the actual price of the closing stock is known or easily ascertainable from the records the stock may be valued at the option of the assessee at the average cost price of the entire stock purchased in the course of that year and need not be at the actual cost of the closing stock for the purpose of ascertaining the real profits earned during the year. Case law Ref. See Income-Tax Act (1922), S. 13. A I R 1953 Trav-Co 17 (DB).

SECTION 18

●——Ss. 18 (2) (c), 13 and 32(1) — Income-Tax Act (1922), Ss. 24 (1), 14 (2) (c) and 10 — Set-off of loss against profits under same head, S. 24 (1) or the Proviso 1 thereto cannot apply — Business loss—Loss outside Travancore — Set-off against profits in Travancore— S. 32 (1), Proviso, Travancore Act does not apply. See Income-tax Act (1922), S. 24 (1). A I R 1959 S C 713.

——Ss. 18 (2) (c) and 13 — Income-Tax Act (1922), Ss. 10 and 14 (2) (c) — Banking business carried in former States of Travancore and Cochin and former British India—Assessee at Travancore claiming deduction of loss incurred in business at Cochin and in British India —Deduction can be allowed—AIR 1950 All 270 and 1955-28 I T R 45 (All), Dissented from. See Income-tax Act (1922), S. 10. AIR 1956 Trav-Co 51 (DB).

SECTION 20

——Ss. 20 (3) (a) Cls. (iii) and (iv), 37— Scope of — Transfer in favour of wife and children in 1941— Applicability of S. 20—(Income Tax Act (1922), S. 16 (3) (a) Cl. (iii).

The sub clauses (iii) and (iv) of S. 20 (3) (a) are not intended to subserve the same purpose as S. 37. Section 37 deals with settlement, etc., which in the opinion of the Income Tax Officer, have been effected for the purpose of evading liability to assessment. Sub-clauses (iii) and (iv), on the other hand, deal with transfer of assets otherwise than for adequate consideration. The sub-clauses are intended to widen the area of taxable income by including in that category certain forms of income, which but for the said provisions would not have been taxable at all.

A transfer of assets in favour of wife and children may be, in certain cases, only an arrangement for providing maintenance to these dependent relations. If expenditure is incurred directly by the assessee for such purpose out of his income, he could not claim any allowance. 1957 Ker L J 63 : (1957) 32 I T R 161 : 1957 Ker L T 1308 : ILR (1957) Ker 89.

SECTION 31

——S. 31 — Income-Tax Act (1922), S. 23A — Scope and applicability —(Point conceded).

The mischief of S. 23A is attracted if the company has distributed by way of dividends within the twelve months immediately following the expiry of the accounting year less than 60 per cent of its total income of the accounting year as reduced by the amount of taxes payable by the company. See Income-tax Act (1922), S. 23A. A I R 1956 Trav-Co 155 (DB).

SECTION 32

●——S. 32 — Assessee company incorporated in former State of Travancore, showing losses for years 1946-48—Assessment for calendar year 1950 — Right to carry forward loss of year 1946—Right is governed by S. 32, Travancore Income Tax Act and not by S. 24 (2), Indian Income-Tax Act—Scope of—Para. 3. See Income-Tax Act (1922), S. 24 (2). AIR 1962 S C 974.

●——S. 32 (1)—Applicability—Proviso.

Section 24 (1) of the Indian Income-Tax Act (corresponding to S. 32 (1) of Travancore Act) was meant for a set off of profits arising under different heads. Where profits and losses to be adjusted arose under the same head, S. 24 (1) or the Proviso 1 thereto (corresponding to S. 32 (1) of the Travancore Act or the Proviso to it) cannot apply. See Income-Tax Act (1922), S. 24 (1). AIR 1959 S C 713.

——S. 32 (1)—Income Tax Act (1922), S. 24 (1)—Applicability.

Section 32 (1) only enables an assessee to set off the loss under one head of income against the profits under another head and the proviso also can apply only to such cases. But where there is only one head of income there is no scope for the application of S. 32 (1) or the proviso to that section. See Income-Tax Act (1922), S. 24 (1). AIR 1956 Trav-Co 51 (DB).

SECTION 35

——S. 35 (4) and (5) — Claim for exemption on basis of succession—Evidence of succesion not sufficient — Omission to give relief was not a mistake apparent on face of record—Assessment was held correct and was sustained. See Constitution of India, Art. 226. A I R 1957 Ker 25 (DB).

SECTION 37

——S. 37—Scope of—Transfer in favour of wife and childre in 1941 — Applicability of S. 20 — The subcls. (iii) and (iv) of S. 20 (3) (a) are not intended to subserve the same purpose as S. 37, which deals with settlement etc. which in the opinion of the Income Tax Officer were effected for avoiding liability to assessment. See Travancore Income Tax Act (23 of 1121), S. 20 (3) (a), Cl. (iii). ILR (1957) Ker 89.

SECTION 46

——S. 46 — Applicability and scope — T. C. Agricultural Income Tax Act, S. 46 — If attracts S. 46—Section 71 (2) of T. C. Agricultural Income Tax Act will attract S. 46, Travancore Income Tax Act. See Travancore-Cochin Agricultural Income Tax Act (22 of 1950), S. 34. A I R 1957 Trav-Co 260 (DB).

——S. 46—Income Tax Act (1922), S. 33A—Powers of Commissioner—Order not to be prejudicial to assessee. See Income Tax Act (1922), S. 33A. A I R 1956 Trav-Co 198 (DB).

SECTION 47

●——S. 47 (1)—'Assessment'—Meaning of — Used in comprehensive sense — Effect of recommendations of Finance Inquiry Committee — S. 13 (1) not void. See Finance Act (1950), S. 13 (1). A I R 1958 S C 795.

——S. 47—Finance Act (1950), S. 13—Part B State — Travancore-Cochin — Repeal of Travancore Income Tax Act (1121 ME) — Effect — S. 7 (8), T. C. Act not kept alive. See Finance Act (1950), S. 13. A I R 1960 Mad 320 (DB).

——S. 47—Power to be reassessed—If saved by S. 13 of the Finance Act — (Finance Act (1950), S. 13) — (Constitution of India, Arts. 278 and 295).

Section 13 of Indian Finance Act, 1950, saves the provisions of S. 47 of the Travnncore Income Tax Act, 1121, for purposes of re-assessment. The word 'levy, assessment and collection' in S. 13, Finance Act, 1950, include all the processes by which the tax is ascertained demanded and realised and 're-assessment' being one of those processes comes within the ambit of the phraseology employed. A I R 1954 Trav Co. 137 (FB), Foll.; A I R 1955 Mys 49 and A I R 1955 Mys 99, Not foll. A I R 1957 Trav-Co 303 (304, 305) (Pt B) (Prs 7, 11) (DB).

——S. 47 — Parallel proceedings under S. 47 and Taxation on Income (Investigation Commission) Act, 1124 if repugnant to good faith — (Travancore Taxation on Income (Investigation Commission) Act (1124), S. 5)—(Constitution of India, Art. 226)—Taxation on Income (Investigation Commission) Act (1947), S. 5). A I R 1957 Trav-Co 303 (304) (Pt C) (Pr 4) (DB).

●——S. 47 — Effect of — The combined effect of Art. 277 of the Constitution and S. 13 of Finance Act, 1950, is to effect a valid continuance of the operation of the Cochin Income-tax Act, 1117 and the Travancore Income-tax Act, 1121 for the purposes of levy, assessment and collection of income-tax and super-tax in respect of period indicated in S. 13, Finance Act. See Constitution of India, Art. 277. A I R 1954 Trav-Co 137 (FB).

●——S. 47—Re-assessment. See Finance Act (1950), S. 13. A I R 1954 Trav-Co 137 (FB).

SECTION 48

——S. 48 — Income-tax Act (1922), S. 35 — Scope—Set-off of loss carried over from previous year allowed—Rectification proceedings—Jurisdiction of income-tax officer.

Where it is not a case of correction of mistake evident on the face of record of assessment within the meaning of S. 35 but amounts to a revision and re-assessment in the guise of rectification proceeding it is not contemplated by that section. Jurisdiction under S. 35 of the Indian Income-tax Act to correct by way of rectification is limited. See Income-tax Act (1922), S. 35. A I R 1957 Trav-Co 217.

SECTION 110

——S. 110 (1) — Service of notice by affixture—Validity — Indian income-tax coming into force—Effect of—Such service is valid after Indian Income-tax Act came into force. See Income-tax Act (1922), S. 63. A I R 1960 Mad 320 (DB).

SECTION 113

——S. 113 — Decision on finding of fact perverse—High Conrt has jurisdiction to interfere—Income-tax Act (1922), S. 66.

Decisions of facts by Taxing Authorities under this Act, are not always immune from the scrutiny of the High Courts. If the decision be what no reasonable man can arrive at or if it be due to misdirection on a point or order, the binding nature of the decision ceases. 1960 Ker L T 343 : 1960 Ker L J 315 : (1960) 1 Ker L R 444 : I L R (1960) Ker 469.

——S. 113 — Assessee claiming that his brother and himself were tenants in common of properties from which income is derived — Assessing authority not considering evidence regarding source of purchase money—Error of law—Assessment held improper.

One of the tests for ascertaining whether a person alone owns the property is to find whether he alone has furnished the money with which the property has been acquired. 1960 Ker L T 343 : 1960 Ker L J 315 : (1960) 1 Ker L R 444 : I L R (1960) Ker 469.

TRAVANCORE INQUIRY RULES (1196 M.E.)

RULE 1

——R. 1—'Superior public servant'—Superior servant—Distinction.

The definition of superior/inferior public servant in Art. 252 and R. 1 of Travancore Service Regulations and Travancore Inquiry Rules is not the same, and the classification is not made on the same basis. See Travancore Service Regulations, Art. 252. 1958 Mad L J (Cri) 249 : 1958 Ker L T 106.

TRAVANCORE INSOLVENCY ACT (1090 M.E.)

SECTION 33

——S. 33—Applicability—Administration suit—Preliminary decree—Accounting and adjusting of parties —Amounts realised by creditor before date of preliminary decree — If can be taken into account—The amounts realised prior to the preliminary decree are not to be taken into account in adjusting the rights of the parties. See Travancore Civil P. C., O. 20. R. 13 (2). **A I R 1951 Trav-Co 97 (DB).**

SECTION 35

●——S. 35 — Res judicata — Matter not decided in adjudication proceeding—Res judicata in proceedings for avoiding transfer—**Held**, that the question under S. 35 is still open. See Civil P. C. (1908), S. 11. **A I R 1958 S C 1.**

●——S. 35—Burden of proof—The onus is upon the Official Receiver to prove that a conveyance which he is seeking to set aside is not made in good faith and for valuable consideration. See Provincial Insolvency Act (1920), S. 53. **A I R 1958 S C 1.**

●——S. 35—"Good faith"—Essentials — Travancore General Clauses Act — Indian General Clauses Act. See Provincial Insolvency Act (1920), S. 53. **A I R 1958 S C 1.**

●——S. 35—"Good faith"—Meaning of—The definition in Travancore General Clauses Act is different from the one in the Indian General Clauses Act. Both definitions explained. See Provincial Insolvency Act (1920), S. 53. **A I R 1958 S C 1.**

SECTION 36

——S. 36 — Scope of inquiry—Pleading and trial—Procedure for.

In an inquiry on an application by the Official Receiver to annul a transfer by the insolvent under S. 36, Travancore Insolvency Act, 1090, the parties are expected to disclose their respective cases in their pleadings and the Court should hold the trial in the same manner as a regular original suit is tried. **1950 Trav-Co L R 707 : (1950) Ker L T 573 : A I R 1951 Trav-Co 55 (71) (Pt K) (Pr 47) (DB).**

——S. 36 — Procedure — Single petition to annul several transfers—Propriety—Proper procedure.

Except where the alienations of transfers sought to be annulled are the outcome of a scheme of fraud and conspiracy between the insolvent on the one hand and the alienees on the other, a joint application to annul several transfers and a joint trial are not the proper procedure to be adopted. The receiver should make a separate independent application to annul each transfer. **1950 Ker L T 573 : 1950 Trav-Co L R 707 : A I R 1951 Trav-Co 55 (71) (Pt L) (Pr 48) (DB).**

SECTION 53

●——S. 53 — Burden of proof is on the Official Receiver. See Provincial Insolvency Act (1920), S. 53. **AIR 1958 S C 1.**

●——S. 53—Provincial Insolvency Act (1920), S. 53 —Travancore (Insolvency) Regulation (8 of 1090), S. 35—Avoidance of transfer—Burden of proof lying on Receiver how to be discharged. See Provincial Insolvency Act (1920), S. 53. **AIR 1958 S C 1.**

●——S. 53—Provincial Insolvency Act (1920), S. 53 — Travancore (Insolvency) Regulation (8 of 1090), S. 35—Good faith—Transferee should be found wanting in bona fides. See Provincial Insolvency Act (1920), S. 53. **AIR 1958 S C 1.**

●——S. 53—Provincial Insolvency Act (1920), S. 53 — Travancore (Insolvency) Regulation (8 of 1090), S. 35 — Good faith — Test laid down in Travancore General Clauses Act different from that in Indian General Clauses Act — Which test should be applied — (General Clauses Act (1897), S. 3(22)) — United State of Travancore and Cochin Interpretation and General Clauses Act (7 of 1125), S. 2(6). See Provincial Insolvency Act (1920), S. 53. **AIR 1958 S C 1.**

TRAVANCORE INSOLVENCY ACT (8 of 1108, M. E.)

SECTION 1

——S. 1—Debt owing by debtor to creditor — Existence—Such an obligation can be enforced as debt, and can form the foundation of an application to adjudge the party as insolvent. See Provincial Insolvency Act (1920), S. 9. **AIR 1954 Trav-Co 419 (DB).**

——S. 1—Provincial Insolvency Act (1920), Ss. 53, 54 and 55—Protection order — Position before and after Travancore Insolvency Amendment Act (1108)—Rule of relation back — Avoidance of transactions under Ss. 53 and 54 and T. P. Act, S. 53—Kuri security bond —Payment by paid-up subscribers to non-prized subscribers under direction of foreman after his default—T. P. Act (1882), S. 53 — (Civil P. C. (1908), S. 100). See Provincial Insolvency Act (1920), S. 53. **AIR 1953 Trav-Co 321 (DB).**

SECTION 4

● ——Ss. 4 and 14—Scope and Applicability—Withdrawal of insolvency petition before adjudication as a result of compromise among creditors—Order granting leave does not constitute res judicata so far as question whether compromise is beneficial to minors and binding on them — (Civil P. C. (1908), S. 11 and O. 32, R. 7). See Provincial Insolvency Act (1920), S. 4. **AIR 1956 Trav-Co 27 (FB).**

——S. 4(1), Proviso—Jurisdiction—Claim by Receiver to property covered by sale-deed to stranger as belonging to insolvent — Power of Insolvency Court to decide.

The proviso to Cl. (1) of S. 4 of the Travancore Insovency Act places an express limitation on the Insolvency Court. Where the Official Receiver applies to the Insolvency Court praying for a declaration that the properties covered by a sale-deed executed by the insolvent and others in favour of the insolvent's wife really belongs to the insolvent, and that the vendee was only a benamidar for the insolvent, the Insolvency Court can proceed to investigate and adjudicate upon the claim put forward by the Official Receiver, only if it is satisfied that it is one arising out of the insolvency of the debtor or if the respondent (vendee) has agreed to such an investigation and adjudication by that Court. See Provincial Insolvency Act (1920), S. 4. **AIR 1951 Trav-Co 139 (DB).**

SECTION 14

● ——Ss. 14 and 4—Scope and Applicability—Withdrawal of insolvency petition before adjudication as a result of compromise among creditors—Order granting leave does not constitute res judicata so far as question whether compromise is beneficial to minors and binding on them — (Civil P. C. (1908), S. 11 and O. 32, R. 7). See Provincial Insolvency Act (1920), S. 4. **AIR 1956 Trav-Co 27 (FB).**

SECTION 28

——Ss. 28, 37, 43—Execution of decree against insolvent without sanction and without receiver on record —Auction sale is valid—Annulment of adjudication—No order of vesting property in any person—Assignee of rights of auction purchaser seeking redemption with respect to property sold — He is entitled to decree. See Provincial Insolvency Act (1920), S. 28. **AIR 1955 Trav-Co 241 (DB).**

SECTION 37

——Ss. 37, 28, 43—Execution of decree against insolvent without sanction and without receiver on record —Auction sale is valid—Annulment of adjudication—No order of vesting property in any person—Assignee of rights of auction-purchaser seeking redemption with respect to property sold—He is entitled to decree. See Provincial Insolvency Act (1920), S. 28. **AIR 1955 Trav-Co 241 (DB).**

SECTION 43

——Ss. 43, 28, 37—Execution of decree against insolvent without sanction and without receiver on record —Auction sale is valid—Annulment of adjudication—No order of vesting property in any person—Assignee of rights of auction-purchaser seeking redemption with respect to property sold — He is entitled to decree. See Provincial Insolvency Act (1920), S. 28. **AIR 1955 Trav-Co 241 (DB).**

SECTION 77

——S. 77—Distinction between Ss. 77 and 75, Provincial Insolvency Act.

Section 77, imposes no limitations whatever as to appeals against orders passed in the exercise of insolvency jurisdiction. Unlike the Provincial Insolvency Act no leave of the Insolvency Court or the High Court is required to entertain an appeal against any order in insolvency. See Provincial Insolvency Act (1920), S. 75(3). **AIR 1955 Trav-Co 49 (DB).**

● —— S. 77 — Decision in proceeding under S. 16, Travancore Debt Relief Act is not appealable. See Debt Laws—Travancore Debt Relief Act (2 of 1116), S. 16. **AIR 1954 Trav-Co 259 (FB).**

TRAVANCORE JENMI AND KUDIYAN ACT (5 of 1071, M. E.)

See under Tenancy Laws.

TRAVANCORE JUDGMENT-DEBTOR'S TEMPORARY RELIEF PROCLAMATIONS (1110, M. E.)

See under Debt Laws.

TRAVANCORE KRISHNANVAKA MARUMAKKATHAYEE ACT (7 of 1115 ME)

——Tarwad—Partition—Every member of the tarwad even those who have been acting very much to the prejudice of the tarwad, is entitled to get his legitimate share at the time of partition, out of the assets then available for partition. See Marumakkathayam Law—Partition. **A I R 1955 N U C (Trav-Co) 1103 (DB).**

TRAVANCORE KSHATRIYA ACT (7 of 1108)

SECTION 2

——S. 2 (1)—Pandalais are Malayala Kshatriyas. AIR 1955 N U C (Trav-Co) 5060 (DB).

SECTION 26

● ——S. 26 (1) (b) — Applicability—Malayala Brahmins having marital relations with Pandalai females —Law applicable.

Pandalai were and are commonly recognised as Malayala Kshatriyas. It follows that Pandalai are governed by the Travancore Kshatriya Act (7 of 1108) and that S. 26 (1) (b) of the said Act is applicable to Malayala Brahmins having marital relations with Pandalai females. Oman Pandalai Ambu Pandalai v. Kesavaru Sambhuvaru. **I L R (1955) Trav-Co 486 : 1956 Ker L T 480 : AIR 1957 Trav-Co 19 (24 to 27) (Prs 13, 15) (FB).**

SECTION 43

● ——Ss. 43 and 46—Interest of member of Kshatriya Tarwad in Tarwad properties is liable to attachment and sale in execution—Permissibility, See Civil P. C. (1908), S. 60. **AIR 1961 Ker 105 (FB).**

SECTION 46

● ——Ss. 46, 43—Civil P. C. (1908), S, 60—Interest of member of Kshatriya Tarwad in Tarwad properties is liable to attachment and sale in execution — Hindu Succession Act (1956), Ss. 7, 30. See Civil P. C. (1908), S. 60. **AIR 1961 Ker 105 (FB).**

TRAVANCORE LAND ACQUISITION ACT (11 of 1089 ME)

——Land Acquisition Act (1894), S. 23 — Mode of assessment of compensation — The value to be ascertained is the value to the seller of the property in its condition at the time of expropriation with all its existing advantages and with all its possibilities excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired. See Land Acquisition Act (1894), S. 23. **AIR 1953 Trav-Co 242 (DB).**

SECTION 3

——Ss. 3 (b) and 18 — Scope — 'Person interested', meaning of.

A "person interested" does not mean a person whose interest the Collector is prepared to admit. "Person interested" includes all persons claiming an interest in the compensation. See Land Acquisition Act (1894), S. 3 (b). **AIR 1957 Kerala 152 (DB).**

SECTION 4

——Ss. 4 and 6 — Procedure for acquisition — Not discriminatory—Act not invalid—Act is an "existing law" within protection of Art. 31 (5) (a) of Constitution—Constitution of India, Arts 14, 19 (1) (f).

What is guaranteed under Art. 14 of the Constitution is equality before the law or the equal protection of the laws. The law here means the statute, and the equality that is assured is under the same law enacted by the State, and not under different laws where the persons come to stay on account of a merger of different States. The Travancore Land Acquisition Act enacted in 1914, is obviously an 'existing law' within the protection of Art. 31 (5) (a). Hence Art. 19 (1) (f) is not attracted. AIR 1963 S C 151, Foll. **(1964) Ker L J 85 : 1964 Ker L T 155.**

[Reversed in AIR 1966 Ker 187].

——Ss. 4 and 6 — Land Acquisition Act (1894), Ss. 4 and 6—Declaration under S. 6 giving full description and particulars of land required — Absence of notification under S. 4 is not fatal to acquisition proceeding. See Land Acquisition Act (1894), S. 4. **AIR 1952 Trav-Co 522 (DB).**

SECTION 6

——S. 6 — Declaration for acquisition of land for expansion of Company manufacturing tyres — Acquisition is for public purpose — Test to determine whether purpose is public or not is to see whether it is apt to serve the general interest of the community — Constitution of India, Art. 31 (2)—Public purpose.

The Act does not contain any provision for acquisition of land for Companies. It authorises acquisition for public purposes only. But a public purpose need not be a State purpose. Hence an acquisition on behalf of a company is justified if it is to serve a public purpose. **(1964) Ker L J 85 : 1964 Ker L T 155.**

[Reversed in AIR 1966 Ker 187].

between landlord and tenant to apportion compensation—Application for reference by tenant alone—Jurisdiction to award enhanced compensation to landlord. See Land Acquisition Act (1894), S. 18. AIR 1956 Trav-Co 210 (DB).

SECTION 24

——S. 24—Omission to make claim — Effect—Duty of the party.

The provisions of S. 25 are mandatory. Sub-s. (2) of it prescribes a penalty for the omission to make a claim as required by S. 9 (2), Land Acquisition Act (1894) unless it is properly accounted for, and it is the party, who wants to be exempted from the penal consequences prescribed by it, that should move the Court to permit him to make the claim for enhanced compensation. See Land Acquisition Act (1894), S. 25 (2). AIR 1955 N U C (Trav-Co) 1668 (DB).

——S. 24 (2) — Claim to compensation before land acquisition officer.

The three plots in the three land acquisition cases belonged to the same party and had filed his written statement making the claim for compensation in one of the cases and referred to the three plots which formed the subject-matter of the three land acquisition proceedings and claimed compensation for all the plots.

Held, that the party was not to be defeated because he had not filed separate written statements in all the three cases but had only made a joint claim in the main case. AIR 1953 T C 235 (235) (Pt A) (Pr 2) (DB).

SECTION 27

——Ss. 27, 18, 21 and 37 — Reference under S. 27—Court has jurisdiction to implead persons as additional defendants — Land Acquisition Act (1894), Ss. 18, 30, 53.

The Court hearing a reference under S. 27 (1) has therefore power to implead a person although that person has not been a party to the award or the reference.

Section 21 has no application at all, to the reference under S. 27. S. 21 can apply only to a reference made under S. 18 of the Act. 1963 K L J 136; AIR 1927 Cal 352; AIR 1942 Sind 82, Rel. on.; AIR 1942 Cal 53, Expl. AIR 1956 Cal 263; 30 T L J 324; AIR 1930 P C 64; AIR 1946 Pat 447, Not foll. ILR (1963) 2 Ker 74 : 1963 Ker L J 724 : 1963 Ker L T 595.

——Ss. 27, 18 — Land Acquisition Act (1894), Ss. 18, 31—Scope of—Persons interested in land having distinct shares—Joint award — Reference by one of the sharers only — Court if can entertain claim of other sharers, who did not apply for reference and who accepted the award. See Land Acquisition Act (1894), S. 18. AIR 1959 Ker 136 (DB).

SECTION 28

——S, 28 (2), Third proviso — Land Acquisition Act (1894), S. 31 (2), Third proviso — Scope — Right to institute separate suit in respect of apportionment of compensation is not conferred on the plaintiff by the third proviso to S. 28 (2) of the Act—(Civil P. C. (1908), S. 9). 7 Cal W N 538 and 10 Cal W N 991 and AIR 1926 Lah 321, Dissented from. See Land Acquisition Act (1894), S. 31 (2), Third proviso. AIR 1957 Trav-Co 202 (DB).

SECTION 34

——Ss. 34 (1) and 6 — Declaration regarding public purpose under S. 6—Government has power to cancel declaration. See Travancore Land Acquisition Act, S. 6. AIR 1953 Trav-Co 100.

——S. 34 (1)—Proceedings under—Nature of.

Whatever be the name given to the proceedings, if it amounts to a withdrawal under S. 34 (1) of the whole or any part of the proceedings in the matter of acquiring land under the Land Acquisition Act, then such act is immune from question at the instance of any subject. AIR 1953 Trav-Co 100 (101) (Pt B) (Pr 4).

SECTION 35-A

——Ss. 35-A and 18 — Land Acquisition Act (1894), Ss. 50 and 18—Reference under—Necessary parties—Company for which land is alleged to have been acquired—Not a necessary party. See Land Acquisition Act (1894), S. 50. 1963 Ker L J 136.

——Ss. 35-A and 6—Land Acquisition Act (1894), S. 4—Public purpose — Acquisition of land for private polytechnic institute — Polytechnic already possessed of 25 acres—Additional land needed for construction of staff quarters and providing hostel facilities — Requirements of public purpose satisfied—S. 35-A no bar to exercise of power of acquisition by State Government. See Land Acquisition Act (1894), S. 4. AIR 1962 Ker 252.

SECTION 37

——S. 37—Reference under S. 27 — Court has jurisdiction to implead persons as additional defendants. See Travancore Land Acquisition Act (11 of 1089), S. 27. 1963 Ker L J 724.

SECTION 40

——Ss. 40, 12 (2), 18 (2) (b), proviso — Applicability of S. 18 (2) (b), proviso latter part—Reference—Limitation for—Notice of award—Service of — Propriety—Notice served on Samprathy of plaintiff—Service proper — Reference filed after two months from service of notice to Samprathy — Barred by limitation — Limitation Act (1908), S. 5, not applicable to acquisition proceedings—Period of limitation cannot be enlarged. AIR 1955 Mad 406, Foll; AIR 1918 Mad 589, Dissented.; AIR 1959 Pat 83 : 1963 K L T 171 : AIR 1960 Bom 499, Dist.

Provisions of S. 40 of the Travancore Land Acquisition Act regarding service of notice have to be observed in effecting service of notices under the Act. If, however, a party, in response to an irregularly served notice, participates in the further proceedings before the Land Acquisition Officer, he cannot turn round and attack the proceedings on the ground that service of notice was not proper. Further a notice under S. 12 (2) of the Act not served in accordance with the provisions of S. 40 of the Act would not bind a party; but where the party admits that he had authorised his samprathy to receive notice on his behalf, the service of notice on the Samprathy would at best be irregular but not illegal. (1965) 2 Ker L R 372 : ILR (1966) 1 Ker 45 : 1965 Ker L T 1090.

——S. 40 (3) — Service of notice to person made on his wife — Not duly served on person. 1963 Ker L J 46 : 1963 Ker L T 170.

TRAVANCORE LAND CONSERVANCY ACT (4 of 1091)

SECTION 3

——S. 3 (1) — Navigable river in Travancore-Cochin forming boundary mark of two pakuthies and Taluka—Ownership of bank or bed—The owner of lands on one side of the river cannot claim any right over the bank or bed of the river. See Water-course. AIR 1955 N U C (Trav-Co) 5104 (DB).

SECTION 6

● ——S. 6, Explanation — Unassigned lands — The explanation to S. 6 cannot be used for construing the expression "unassigned" in S. 50 of T. C. Hindu Religious Institutions Act. See T. C. Hindu Religi-

ous Institutions Act (XV of 1950), S. 50. A I R 1954 Trav-Co 471 (FB).

SECTION 9

——S. 9.— Trees planted on Government land—Not covered by expression 'any crop or other product raised on land'—Trespasser not entitled to any compensation for them.

Trees planted on the State land, therefore, must be dealt with under the general law; and since a mere trespasser is devoid of rights, the State is not bound to pay compensation in respect of the trees planted by him or allow him to remove them after his dispossession. 1965 Ker L T 666 : (1965) 1 Ker L R 489 : ILR (1965) 2 Ker 173 : 1965 Ker L J 858 : AIR 1966 Ker 72 (76) (Pt C) (Pr 11) (DB).

——S. 9 — Right to trespasser to improvements effected by him — (Transfer of Property Act (1882), S. 51).

The order awarding compensation to the trespasser on Government land in respect of the improvements by him was proper, 1953 Ker L T 599 : A I R 1953 T C 349 (350) (Prs 6, 7, 8) (DB).

SECTION 18

——S. 18—Cause of action—Subsequent accrual of.

The cause of action arising after the suit was filed, would not stand in the way of the plaintiff claiming relief, as in granting relief the Courts are competent to take into account all subsequent events after suit. See C. P. Code (1908), O. 7, R. 7. A I R 1955 N U C (Trav-Co) 536 (DB).

——S. 18—Error apparent on face of record—Review petition is maintainable. See C. P. Code (1908), O. 47, R. 1. AIR 1955 N U C (Trav-Co) 536 (DB).

——S. 18—Cause of action—When arises—Proceedings started by Tahsildar under S. 7 containued in appellate and revisional courts—Cause of action under S. 18 would arise only with passing of order by revisional court. AIR 1955 N U C (Trav-Co) 536 (DB).

TRAVANCORE LAND CUSTOMS ACT (2 of 1091 M E)

——Notification under, dated 7-1-1946 — Interpretation. See Travancore Sea Customs Act (1088). (1961) 1 Ker L R 489 : 1961 Ker L T 395.

TRAVANCORE LAND TAX PROCLAMATION (1121 M E)

PREAMBLE

● ——Preamble, Ss. 3, 4, 5, 6, 15 and 16 — Proclamation applies to all lands in State except those coming under S. 6 irrespective of whether they are subject to any land tax or not.

The proclamation was meant to levy a basic tax upon all the lands in the State irrespective of the question whether they were or were not then subject to any land tax. This conclusion is confirmed by S. 6 of the Proclamation where the classes of lands outside the ambit of the Proclamation have been excluded and the second clause of which provides for the exemption from basic tax levied under the Proclamation of any land or class of lands thereafter.

The use of the word 'any' after the words 'in lieu of' in S. 5 (2) is meant to connote the idea that the basic tax was in lieu of existing tax, if any. The provisions contained in the Preamble which refers to all lands and the 4th section which enact that there shall be charged or levied in respect of all lands in the State of whatever description would show that this is the true interpretation of the second clause of the 5th section. 1954 Ker L T 603 : ILR (1954) T C 1011 : AIR 1954 Trav-Co 522 (523) (Pt A) (Pr 2) (FB).

SECTION 3

——S. 3 — Proclamation applies to all lands in State except those coming under S. 6 irrespective of whether they are subject to any land tax or not. See Travancore Land Tax Proclamation (1121), Preamble. AIR 1954 Trav-Co 522.

SECTION 4

● ——Ss. 4 and 6 —Order imposing basic tax on desa ozivoos lands — Validity — The proclamation by its Preamhle as also by the 4th section envisages a scheme for levying basic tax on all lands in the State to which the Proclamation will apply. See Constitution of India, Art. 14. AIR 1954 Trav-Co 522 (FB).

● ——S. 4—Proclamation applies to all lands in State except those coming under S. 6 irrespective of whether they are subject to any land tax or not. See Travancore Land Tax Proclamation (1121), Preamble. AIR 1954 Trav-Co 522 (FB).

SECTION 5

● ——S. 5—Proclamation applies to all lands in State except those coming under S. 6 irrespective of whether they are subject to any land tax or not. See Travancore Land Tax Proclamation (1121), Preamble. AIR 1954 Trav-Co 522 (FB).

SECTION 6

● ——S. 6—Order imposing basic tax on desa ozivoos lands—Validity—The orders of Government were not discriminatory and as such did not offend Art. 14 of the Constitution. See Constitution of India, Art. 14. AIR 1954 Trav-Co 522 (FB).

● ——S. 6—Proclamation applies to all lands in State except those coming under S. 6 irrespective of whether they are subject to any land tax or not. See Travancore Land Tax Proclamation (1121), Preamble. AIR 1954 Trav-Co 522 (FB).

● ——S. 6 (2)—Exemption under, when operative.

Under S. 6 (2) of the Proclamation the act of exemption or the process of exemption is the notification in the Government Gazette. The notification is the act. If there is no notification there is not the act. The notification is not, therefore, merely evidence of the act or order. It is the act itself. In order to attract the application of Cl. 2 of S. 6 there must be a notification.

Held, on facts of the case that there being no notification of the Government in the Gazette under S. 6 (2) exempting the lands of the petitioner from the operation of the Proclamation, the steps taken by the Government towards exempting the lands were of no effect even though the Government merely sanctioned certain lands being exempted. Vasudevan Nambooripad v. Trav-Co. State. 1954 Ker L T 603 : ILR (1954) T C 1011 : AIR 1954 Trav-Co 522 (524) (Pt B) (Pr 3) (FB).

SECTION 15

● ——S. 15—Proclamation applies to all lands in State except those coming under S. 6 irrespective of whether they are subject to any land tax or not. See Travancore Land Tax Proclamation (1121), Preamble. AIR 1954 Trav-Co 522 (FB).

SECTION 16

● ——S. 16 — Proclamation applies to all lands in State except those coming under S. 6 irrespective of whether they are subject to any land tax or not. See Travancore Land Tax Proclamation (1121), Preamble. AIR 1954 Trav-Co 522 (FB).

TRAVANCORE LIMITATION ACT (6 of 1100 M E)

See also under Limitation Act (1908).

PREAMBLE

——Preamble—Pronote executed in 1946—Suit instituted in 1952 held was within limitation. See Limitation Act (1908), S. 30 as added by Act 3 of 1951. AIR 1960 Ker 137 (DB).

——Preamble, Art. 137 — Cause of action already barred — No extension of limitation in favour of Government — Limitation Act (1908), Preamble, Art. 149).

The Article cannot be in voked in respect of claims which had become barred by limitation prior to the date on which the Government acquired the right to institute suits for the enforcement of the same. Case-law referred. ILR (1954) Trav-Co 267 : AIR 1954 Trav-Co 451 (455) (Pt E) (Pr 8) (DB).

——Preamble—Money left with vendee for payment to decree-holder of vendor—Failure—Suit for enforcing lien and personal remedy—Limitation—Starting point — Law applicable — The cause of action both for enforcing the lien on the properties and enforcing the personal remedy against the vendee arose on the day the properties were sold in Court auction. The law applicable was the one in force at the time when the cause of action arose. See Limitation Act (1908), Preamble. AIR 1952 Trav-Co 466 (DB).

SECTION 7

● —S. 7—Execution by attaching decree-holder — Original decree-holder under disability — Period of limitation applicable would be the same as in S. 7 of the Act. See Civil P. C. (1908), O. 21, R. 53 (2). AIR 1956 Trav-Co 13 (FB).

●——S. 7—Benefit under—Assignee of person under disability — Whether entitled to—Quaere — Whether an assignee from a person under disability would be entitled to the benefit of S. 7 of the Act. AIR 1956 Trav-Co 13 (14) (Pt A) (Pr 4) (FB).

SECTION 8

——S. 8 — Benefit under — If confined to original person under disability—If available to assignees or transferees from such person.

There is no warrant for the view that the benefit accruing to a person under S. 8 is a personal benefit which cannot be availed of by others who have acquired the rights of that person. It cannot be said that the section confers any such exclusive personal right in favour of a person under disability. Unlike under S. 6 the benefit is available also to others who acquire their rights from that person. 1951 K L T 557 : AIR 1952 Trav-Co 33 (34) (Prs 3, 4) (DB).

■——S. 8—The term "discharge" used in S. 8 of the Act, is not confined to the discharge of pecuniary liability only but also includes release of rights in respect of immovable property and even the right to institute suit. See Limitation Act (1908), S. 7. AIR 1950 Trav-Co 57 (FB).

SECTION 14

——S. 14 — Applicability — Conditions — Defect of jurisdicttion or other cause of like nature — Meaning of. Where there is a defect of jurisdiction of such a character as to make it impossible for the Court to entertain a suit either at its inception, or at all events as to prevent it from deciding it on the merits, then the case would come under the category denoted by the expression 'other cause of a like nature' occurring in S. 14 of the Travancore Limitation Act. See Limitation Act (1908), S. 14. AIR 1951 Trav-Co 26 (DB).

SECTION 15

——S. 15—Stayed by iniunction or order—The period for which further execution of the decree in execution of which the property was purchased, was stayed cannot be excluded under S. 15 of the Act. See Limitation Act (1908), S. 15. AIR 1954 Trav-Co 383.

SECTION 17

——S. 17—Legal representative — Right to institute suit when accrues—(Limitation Act (1908), S. 17).

The legal representative gets only the rights of the deceased person and can get no higher rights. Therefore, if the deceased person, if he was alive could have brought the suit only in 1121 M.E. his death earlier, would not entitle his legal representative to bring the suit earlier. A I R 1936 P C 309; 71 Mad L J 831, Rel. on. 1957 Ker L T 1161 : 1957 Ker L J 1104 : ILR (1958) Ker 169.

SECTION 18

——S. 18 and Art. 151—Fraud vitiating sale and fraud keeping judgment-debtor in ignorance of his right to apply—Distinction — Fraud antecedent to sale—Allegations of absence of notice under O. 21, Rr. 22 and 66 — Judgment-debtor coming to know sale only within a week of application—S. 18 applies—Limitation under Art. 166 starts only from date of such knowledge. See Limitation Act (1908), S. 18. A I R 1964 Ker 88.

—— S. 18—Applicability—'Knowledge' — Particulars required to constitute.

The knowledge required by S. 18, Limitation Act, is not mere suspicion; it must be such knowledge as would enable the person defrauded to seek his remedy in Court. It must be knowledge that a particular decree was passed against him in a particular suit in favour of a particular person and for a particular sum. 47 Bom 85; 30 T L J 311, Appl. 1950 Ker L T 653 : 1950 Trav Co L R 647 : AIR 1951 Trav Co 107 (108, 109) (Pt B) (Prs 5, 6).

SECTION 19

——Ss. 19 (1) and 21 (1)—Payment and acknowledgment by hypothecator — Binding effect on hypothecated property and its alienee before payment — (Limitation Act (1908), Ss. 19 (1) and 20 (1)).

Such an acknowledgment is binding not only upon the hypethecator but also upon the hypothecated property and third parties to whom the title to the hypothecated property had passed before the payment and acknowledgment. 2 T L J 213; A I R 1942 Mad 200 and A I R 1943 Mad 395, Foll. 1957 Ker L T 1163 : 1957 Ker L J 1104 : ILR (1958) Ker 169.

●——S. 19 (1)—Acknowledgment under—Essentials — Acknowledgment by person not liable at time of acknowledgment — Does not amount to acknowledgment in law. See Limitation Act (1908), S. 19. A I R 1964 Mad 169 (FB).

●——S. 19 — Acknowledgment after assignment of equity of redemption — Will not be a valid acknowledgment so as to bind the assignee. See Limitation Act (1908), S. 19. A I R 1953 Trav-Co 196 (FB).

——S. 19—Statement in writing expressly or impliedly saying that debt has been discharged — Statement will not amount to sufficient acknowledgment. See Limitation Act (1908), S. 19, Expl. 1. AIR 1952 Trav-Co 518 (DB).

——S. 19 — Written statement containing denial of liability — Alternative plea that time for payment has not yet come — There is no valid acknowledgment. See Limitation Act (1908), S. 19. AIR 1952 Trav-Co 518.

——S. 19, Expl. IV—Scope—Joint decree—Acknowledgment by one judgment-debtor — Effect of — If saves limitation as against others—Art. 166, Expl. 1—Effect of.

In the case of a joint decree passed against several persons an acknowledgment of liability by one of them will not save limitation against the others, but will be effective as against the judgment-debtor who makes such acknowledgment. ILR (1952) Trav-Co 28 : 1951 Ker L T 683 : AIR 1952 Trav-Co 310 (313) (Pt B) (Pr 11) (DB).

——S. 19 and Art. 166 — Redemption decree against several mortgagees — Acknowledgment of right of redemption by one only — If saves limitation for execution against all or even as against party acknowledging—Piecemeal execution of redemption decree.

In view of the doctrine of indivisibility of a mortgage, it must be held that an acknowledgment by one only of several mortgagees of the liability to be redeemed is not sufficient to keep the right to redeem alive even as regards the interest of the party acknowledging. There cannot be a piecemeal execution of a redemption decree which on its terms is one and indivisible. ILR (1952) Trav-Co 28 : 1951 Ker L T 683 : A I R 1952 Trav-Co 310 (314) (Pt D) (Pr 17) (DB).

——Ss. 19 and 20 — 'Agent duly authorised' — Debt due by Nair woman — Acknowledgment or part payment by husband — If saves limitation — Implied agency—If exists between spouses.

No agency exists as between a husband and wife belonging to the Nair Community, and the fact of matrimonial relationship between the debtor and the person making the endorsement or part-payment will not therefore lead to any implication as to the existence of an agency or an authority to make the acknowledgment or part-payment to either of the spouses to act on behalf of the other in any transaction. In the absence of proof therefore of authority given to act as agent of the debtor, an acknowledgment or part-payment made by the husband of a Nair woman in respect of a debt due by her, cannot operate to save limitation under S. 19 or S. 20. A I R 1952 Trav-Co 255 (256) (Pt A) (Pr 3).

——S. 19—Co-judgment-debtors:— Acknowledgment by one — If saves limitation against others. An acknowledgment made by one of the several persons jointly liable under a decree otherwise than as agent of his co-judgment-debtors, cannot operate to save limitation as against any of the judgment-debtors other than the person making the acknowledgment. See Limitation Act (1908), S. 19. A I R 1952 Trav-Co 78 (DB).

——S. 19—Acknowledgment—Admission of execution of document giving rise to liability coupled with denial of liability due to limitation in written statement—Expression of willingness to discharge obligation if found enforceable by Court — Sufficiency to save limitation.

The expression of willingness to pay, though on conditions, taken along with the admission of the source of the liability would be an acknowledgment of liability sufficient, to save the claim from being barred by limitation under S. 19, Travancore Limitation Act. 1950 Ker L T 640 : A I R 1951 Trav-Co 93 (94) (Pr 1) (DB).

SECTION 23

——S. 23—Applicability—Newly added defendants—(Civil P. C. (1908), O. 34, R. 1)—(Contract Act (1872), S. 43).

A the mother of B, C and D executed a hypotheca in favour of E and F minors and their mother G. Subsequently on 22-6-1110, E instituted a suit in forma pauperis for partition of his family properties. The right under the hypothecation bond was included as a partiable asset and the prayer with respect to it was that there should be a decree for recovery of the amounts due thereunder and that those amounts should also be divided among the sharers. Likewise a claim under another hypothecation bond was also included in the suit ; and similar prayers were made regarding the amounts due under that bond as well. The pauper application was in due course registered as a suit. In that suit B, C and D were not impleaded but A alone was the defendant. On 13-12-1118, E moved the Court that as besides partition, recovery of the amounts as per two hypothecation bonds were also included in the suit, the suit was open to the objection of multifariousness and that the claims for the amounts due as per two bonds may be registered as two separate suits besides the suit for partition. The Court allowed the prayer and directed E to file separate plaints in respect of the bonds. The new plaint in respect of the claim under the hypothecation bond executed by A was filed on 26-3-1119 and in that B, C and D were also added as parties which was going beyond the direction given by the Court in the matter.

Held, that the suit against B, C and D was barred as it must be considered to have been instituted against them only on 26-3-1119. This view was based not on S. 22, Indian Limitation Act, which was different from the law enacted in S. 23, Travancore Limitation Act which governed the case but was based on the fact that no substitution or addition of any defendants as envisaged in S. 23, Travancore Act ever took place in this case. **Held**, that as against A there ought to be a decree for the full amount of the principal with interest thereon and not only for so much of the debt as was found by the trial Court to be binding on B, C and D. A executed the bond in her own right and as the guardian of the minors and therefore she was in her personal capacity liable for the whole debt. The lower Court therefore was wrong in limiting the decree to a part of the claim, when its finding was that the suit as against her was not barred by limitation. AIR 1957 Trav-Co 305 (307) (Prs 5, 6) (DB).

——S. 23—Additional party impleaded at subsequent stage—Period of limitation will be calculated on basis of date of plaint —(Civil P. C. (1908), O. 1, R. 10 (2)). AIR 1952 Trav.Co 408 (409) (Pt B) (Pr 2) (DB).

——S. 23—Limitation Act (1908), Ss. 18 & 22 and Art. 166 — Suit to set aside sale on ground of fraud instituted by sons of judgment-debtor within limitation — Addition of judgment-debtor as co-plaintiff after limitation—Effect.

Notwithstanding the fact that a new relief was claimed in respect of another item the cause of action for the suit remained the same and therefore S. 23, Travancore Limitation Act was applicable to the case. Consequently the suit was not barred by limitation even as regards A. AIR 1952 Trav-Co 397 (398) (Prs 4, 5) (DB).

SECTION 27

——S. 27—'Without interruption'— An agreement for an altered mode of enjoyment of an easement would not amount to a discontinuance of the easement itself. See Limitation Act (1908), S. 28. AIR 1955 N U C (Trav-Co) 6002.

SECTION 29

——S. 29—Principle of—The ordinary rule is that the expiry of the period prescribed for the commencement of an action results in the contemplated remedy being barred though not in an extinguishment of the right or title. The provision contained in S. 28 is an exception to this general rule. See Limitation Act (1908), S. 28. AIR 1954 Trav-Co 451 (DB).

——S. 29, Art. 122— Starting point under Art. 122—Failure to institute suit within limitation — Effect—(Indian Limitation Act (1908), S. 28).

Under Art. 122 the cause of action for avoiding the kanam deeds executed by the manager of a deva-

swom and for seeking recovery of possession of the properties from the tenants in possession on the strength of such documents arises on the date when such deeds were executed. The Ooralars of such Devaswom were bound to institute suits for reliefs in such directions within twelve years from the dates of transfer under the documents. The result of the non-exercise of such a right within the period prescribed by Art. 122 was that the Devaswom lost that right for ever by virtue of S. 29 of the Travancore Limitation Act which corresponds to S. 28 of the Indian Limitation Act. **ILR (1954) Trav.Co 267 : AIR 1954 Trav.Co 451 (453) (Pt C) (Pr 6) (DB).**

SECTION 109

——S. 109—Suit for past profits on basis of registered agreement— The claim for past profits from 1118 for nearly five years till date of suit was within time. See Limitation Act (1908), Art. 116. **AIR 1952 Trav-Co 498 (DB).**

ARTICLE 8

——Art. 8—Suit under — Order rejecting objection to delivery by person setting up independent title — Appeal dismissed for default — Restoration application also dismissed — Appeal rejected — Suit to set aside order dismissing objection — Starting point— The time runs from the date of the order of the execution Court rejecting objection to delivery and not from the date of the order passed on an infructuous and incompetent appeal or revision against the order. See Limitation Act (1908), Art. 11-A. **AIR 1955 Trav-Co 51 (FB).**

ARTICLE 9

——Art. 9—Decree against joint family — Suit for setting aside sale. The sale held in execution of the decree would be binding on the son if debt incurred was not for immoral or illegal purposes. As the interest of the son is also sold in execution he is not entitled to recover possession without setting aside the sale. See Limitation Act (1908), Art. 12. **A I R 1956 Trav-Co 262 (DB).**

——Art. 9 (a) — Decree in contravention of S. 31 of Travancore Nayar Act. The decree would be null and void. See Travancore Nayar Act (2 of 1100), S. 31. **AIR 1954 Trav-Co 60 (FB).**

——Arts. 9 and 165—Applicability — Decree against minor — Execution — No proper representation of minor—Sale —If binding —Suit by minor to set aside —Limitation —Execution proceedings held not binding on minor —Suit for declaration that minor is not bound by sale can be treated as application under S. 47, Civil P. C. (1908)—Limitation is under Art. 181, Limitation Act. (Civil P. C. (1908), S. 47). **1952 Ker L T 1 : ILR (1951) Trav-Co 728 : AIR 1952 Trav-Co 136 (DB).**

ARTICLE 23

——Art. 23—Claim for damages against Union of India for loss to goods consigned by railway — Suit validly instituted in Munsif's Court within the period of limitation — Change of law pending suit prescribing District Court as forum for institution of such suit — Plaint returned for presentation to such Court represented by plaintiff—No question of the suit in District Court being barred by limitation can arise. See Limitation Act (1908), S. 3. **ILR (1964) 1 Ker 355.**

ARTICLE 26

——Art. 26 — Improvement on land by trespasser — Suit for compensation on eviction — Governed by Art. 120 and not by Art. 36. See Limitation Act (1908) Art. 36. **1965 Ker L T 666 : (1965) 1 Ker L R 489 : ILR (1965) 2 Ker 173 : 1965 Ker L J 858 : A I R 1966 Ker 72 (DB).**

ARTICLE 35

——Art. 35—"Person bound by an order" — Person proceeding under S. 145, Criminal P. C. in individual capacity as manager of school and filing suit for possession of this building in identical capacity as the owner of property : **Held**, there was only one capacity in which he functioned. See Limitation Act (1908), Art. 47. **AIR 1952 Trav-Co 434 (DB).**

——Art. 35—Final order—Order respecting possession of immovable property under S. 145, Criminal P. C. —Applicability — The mere observation by the High Court in the concluding portion of the order that the peaceful possession of a particular party to the proceeding should be maintained until that party is evicted in due course of law will not make it a final order within the meaning of Art. 35. See Limitation Act (1908), Art. 47. **AIR 1952 Trav-Co 195 (DB).**

——Art. 35—Applicability—'Order respecting possession of property' — Order of High Court quashing preliminary order under S. 128, Criminal P. C.— Observation in such order respecting possession— Effect of.

Article 35 does not apply where there has been no order for possession by a Magistrate under S. 128, Travancore Criminal P. C. Where in proceedings under S. 128, two orders are contemplated, the preliminary order passed by the Magistrate is itself quashed by the High Court it cannot be said that any observation made by the High Court in quashing the preliminary order is a 'final order' under S. 128, so as to attract the operation of Art. 35, Limitation Act. **1951 Ker L T 210 : AIR 1952 Trav-Co 195 (197) (Pt B) (Prs 8, 9) (DB).**

ARTICLE 50

——Art. 50—'Money received for the plaintiff's use — Meaning — Suit for recovery of excess freight. Article 62 will apply to the suit, and the suit brought more than three years from the last payment by the plaintiff is barred by limitation. See Limitation Act (1908), Art. 62. **AIR 1957 Trav-Co 61 (DB).**

ARTICLE 53

——Art. 53 — Unregistered chitty security bond— Suit —When barred against surety.

If the suit is not brought against the surety within 3 years of the first default is barred by limitation. See Limitation Act (1908), Art. 83. **1949 T C L R 88.**

ARTICLE 54

——Art. 54—'Where a day is specified for payment'.

When the day is clearly specified by implication on account of the terms of the bond, the requirements of the first column in Art. 66 would be fulfilled. See Limitation Act (1908), Art. 66. **AIR 1958 Ker 246 (DB).**

ARTICLE 72

——Art. 72—Limitation Act (1908), Art. 85 — Object of. See Limitation Act (1908), Art. 85. **A I R 1953 Trav-Co 391 (DB).**

——Art. 72—Limitation Act (1908), Art. 85 —"Mutual open and current account"—An account is open when the balance is not struck or though struck is not accepted or acknowledged as correct, a running or continuous account is an account current. See Limitation Act (1908), Art. 85. **A I.R 1953 Trav-Co 391 (DB).**

ARTICLE 84

——Art. 84—Applicability—Starting point—Mortgage dues paid to mortgagee — Mortgagee once again recovering the amount from person to whom the mortgaged property was allotted in partition in family of mortgagor — Suit by person for recovery of

amount— Limitation. The suit being within 3 years within time. See Limitation Act (1908), Art. 97. A I R 1955 N U C (Trav-Co) 3469.

ARTICLE 91

——Art. 91 — Limitation Act (1908), Preamble, Arts. 83, 111 and 132 — Money left with vendee for payment to decree-holder of vendor — Failure—Suit for enforcing lien and personal remedy—Limitation —Starting point—Law applicable.

The cause of action arose on the date the properties were sold in the Court auction. The claim was not barred under Art. 91 and the law of limitation applicable to the case was the one in force at the time when the cause of action arose. See Limitation Act (1908), Preamble. A I R 1952 Trav-Co 466 (DB).

ARTICLE 101

——Art. 101 — Compromise containing contract and fixing time of performance — Suit for specific performance—Limitation—Computation—Day on which compromise was executed—Exclusion of.

In computing the period of limitation prescribed by Art. 101 of the Travancore Limitation Act for a suit for specific performance of a contract embodied in a compromise fixing a period of time for performance of the contract the day on which the compromise was signed must be excluded. 1951 Ker L T 191.

ARTICLE 103

——Art. 103—Applicability—Starting point — Mortgage dues paid to mortgagee—Mortgagee once again recovering the amount from person whom the mortgaged property was allotted in partition in family of mortgagor—Suit by person for recovery of amount—Limitation — The suit being within 3 years as not barred by limitation. See Limitation Act (1908), Art. 97. A I R 1955 N U C (Trav-Co) 3469.

——Art. 103—Compensation for breach of contract.

The suit for claim would come under Art. 103 (corresponding to Art. 115, Limitation Act (1908)) and the plaintiffs are bound to sue within 3 years from the date of breach of contract to make annual payment. See Limitation Act (1908), Art. 115. A I R 1953 Trav-Co 193 (DB).

ARTICLE 104

——Art. 104 — In respect of jenmon lands there is charge on kanom holding for michavarom and other dues—Suit for recovery of such dues — Limitation—The suit is governed by Art. 119 and not by Art. 104 and the plaintiff is entitled to recover the arrears of dues for 12 years before the date of suit. See Limitation Act (1908), Art. 116. 1956 Ker L T 313.

——Arts. 104 and 109 — Limitation Act (1908), Arts. 116 and 120 — Suit for past profits on basis of registered agreement—The claim for past profits from 1118 for nearly five years till date of suit was within time. See Limitation Act (1908), Art. 116. A I R 1952 Trav-Co 498 (DB).

ARTICLE 105

——Art. 105—Absence of words 'on demand'.

It does not affect the application of Art. 105, since a promissory note in which no time for payment is specified is one payable on demand under S. 18 of the Negotiable Instruments Act. See Limitation Act (1908), Art. 73. A I R 1955 Trav-Co 141 (DB).

ARTICLE 109

——Art. 109 — Improvement on land by trespasser—The Article applicable is Art. 120 and not Art. 36, Limitation Act (1908). See Limitation Act (1908), Art. 36. 1965 Ker L T 666 : (1965) 1 Ker L R 489 : I L R (1965) 2 Ker 173 : 1965 Ker L J 858 : A I R 1966 Ker 72 (DB).

——Arts. 109 and 136—Applicability — Mortgage of service inam land—Validity — Suit for possession on payment of mortgage debt — Article 109 and not Art. 136 applies. See Limitation Act (1908), Art. 120. A I R 1959 Ker 38 (DB).

——Art. 109 — Suit for recovery of excess freight—Art. 62, Limitation Act will apply. The suit brought more than 3 years from the last payment by the plaintiff is barred by limitation. See Limitation Act (1908), Art. 62. A I R 1957 Trav-Co 61 (DB).

——Art. 109 — Limitation Act (1908), Art. 120—Applicability — Suit against surety for recovery of money withdrawn by him from Court — Starting point.

Article 109 applied, and the starting point of limitation was the complete exoneration of the surety from the obligation undertaken by him under the security bond executed by him to Court. See Limitation Act (1908), Art. 120. A I R 1952 Trav-Co 546 (DB).

● ——Arts. 109 and 132 — Applicability — 'Right or interest' in immovable property — What amounts to establish right of plaintiff to collect revenue from occupants of lands, to restrain Government from making collections and for recovery of collections wrongly made—Limitation.

A suit for possession under Art. 132 of the Limitation Act, assumes that the defendant is in possession and that the plaintiff seeks to eject him. There must be a prayer in such a suit, express or implied, for dispossessing some one from the property or from the interest therein for which the claim is made in suit. But suits which are declaratory in their nature are governed by Art. 109 and not by Art. 132. A right to be placed on the revenue registers is not a right or interest in immoveable property. A claim to recover tax or revenue wrongly collected by the Government from tenants in possession of the lands, which the plaintiff claims he is entitled to collect is a claim sounding in damages, and a suit for recovery of the same, is not concerned in any manner with any right, title or interest in immoveable property (lands concerned). It is a claim personally against the wrongdoer and suit to enforce such a claim cannot obviously be regarded as a suit to recover any interest in immoveable property within the meaning of Art. 132, Travancore Limitation Act, the cause of action for the suit arises out of the tortious conduct of the defendant. State v. Ganpathi Valia Raja, 1951 Ker L T 316 : I L R (1951) Trav-Co 194 : A I R 1951 Trav-Co 232 (235, 236) (Prs 8, 16) (FB).

ARTICLE 118

——Art. 118 — Limitation Act (1908), Art. 131—Suit for recovery of arrears of payment periodically due — Article 118, Travancore Limitation Act, does not apply. See Limitation Act (1908), Art. 131. A I R 1953 T C 193 (DB).

ARTICLE 119

——Art. 119 — In respect of Jenmon lands there is charge on kanom holding for michavaram and other dues — Suit for recovery of such dues—Limitation—The suit is governed by Art. 119 and the plaintiff is entitled to recover the arrears of dues for 12 years before the date of suit. See Limitation Act (1908), Art. 116. 1956 Ker L T 313.

——Art. 119 — Unpaid purchase money — Vendor's lien—Suit—Limitation.

Money kept in the hands of a vendee to pay off prior encumbrances is in substance a part of the

purchase money due to the vendor and the vendor is entitled to recover the same from the vendee and as a first charge on the property sold and the suit in regard to it is governed by Art. 119. See Transfer of Property Act (1882), S. 55 (4) (b). **A I R 1955 N U C (Trav·Co) 5072.**

——**Art. 119** — Otti mortgage — Suit for personal remedy against mortgagor — Limitation—The period of limitation is 12 years from the date of dispossession, under Art. 119 of the Act. See Limitation Act (1908), Art. 132. **AIR 1955 Trav-Co 207.**

ARTICLE 120

——**Art. 120 — Principle of — Hypothecation bond securing instalments—Default clause—Effect.**

In enacting Art. 120 the principle was recognised that in a case of hypothecation bond securing instalments and providing a default clause, the creditor, by a demand in writing, could affect the nature and the incidents of the cause of action itself so as to practically make unimportant the distinction between the date of the accrual of the cause of action and the date of the commencement of limitation. There is, therefore, no justification for considering instalments accruing after date of demand as separate and distinct from the instalments which accrued due before date of the demand. The only limitation which the third column of the Article would impose is that the demand should be in writing and it should have been made before the last instalment fell due. If this happens all the instalments that stood defaulted makes up but one claim and that claim is enforceable in suit filed within 12 years of the date of demand. **1956 Ker L T 848 : A I R 1956 Trav·Co 239 (239, 240) (Pt A) (Prs 4, 5) (DB).**

——**Art. 120** — Suit on hypothecation bond payable in instalments—Demand in writing before last instalment fell due—Demand must be proved—Production of receipt issued by Post Office is not satisfactory proof—Secondary evidence of contents of notice can be given by producing copy — (Travancore Chitties Act (3 of 1094), S. 27) — (Evidence Act (1872), S. 66). **AIR 1955 N U C (Trav·Co) 3465 (DB).**

——**Art. 120 — Chitty subscription—Default — Suit for future subscription in one lump sum — Limitation.**

The suit is governed by Art. 120, and since filed within 12 years is within time. Instalments which were due within 12 years from the date of the suit can be recovered but those beyond 12 years are barred by limitation. See Travancore Limitation Act (6 of 1100), Art. 132. **1949 T C L R 125.**

ARTICLE 122

——**Art. 122—Scope of—Applicability.**

The Article is intended to protect a transferee who had reasonable grounds for believing that his transferor had power to convey and did convey an absolute interest. It is applicable only when a suit is brought against the transferee of the trustee or mortgagee. See Limitation Act (1908), Art. 134. **1958 Ker L J 182.**

——**Art. 122—Transfer of mortgage right.** The transfer of mortgage right cannot come under a transfer contemplated by Art. 122 of the Act. See Limitation Act (1908), Art. 134. **A I R 1955 N U C (Trav-Co) 5088 (DB).**

——**Art. 122—Applicability—Suit to set aside kanam deeds executed by previous manager of devaswom — (Indian Limitation Act (1908), Arts. 134, 134 (a), 134 (b) and 134 (c).)**

A suit to set aside the kanam deeds executed by a parson who was managing the properties of certain devaswom for the time being on behalf of the Ooralars is governed by Art. 122 of the Travancore Limitation Act. **ILR (1954) Trav·Co 267 : A I R 1954 Trav-Co 451 (453) (Pt B) (Pr 6) (DB).**

——**Art. 122** — Starting point — The cause of action under Art. 122, arises on the date when the deeds are executed. See Travancore Limitation Act (6 of 1100), S. 29. **AIR 1954 Trav-Co 451 (DB).**

——**Art. 122**—Applicability—Unless actual possession is given to the transferee on the date of the transfer, Art. 122 cannot apply to the transaction. See Limitation Act (1908), Art. 134 (Before Amendment of 1929). **AIR 1954 Trav-Co 317 (DB).**

——**Art. 122** — Nature of possession — Continued physical possession is not essential for bringing the case under Art. 122. See Limitation Act (1908), Art. 134. **AIR 1954 Trav-Co 317 (DB).**

——**Art. 122** — Nature of transfar. A transfer of the mortgaged property by the mortgagee in favour of a third party for valuable consideration will be attracted by Art. 122, only when such transaction is made in denial or in defiance of the mortgagor's title to the property. See Limitation Act (1908), Art. 134. **A I R 1954 Trav-Co 317 (DB).**

——**Arts. 122 and 132** —Applicability—Hindu widow —Alienation by —Suit by reversioner for possession—Limitation—Starting point—Under Art. 122, Limitation Act the mortgagor is bound to bring the suit within 12 years of the date of transfer. See Travancore Limitation Act, Art. 129. **AIR 1951 Trav-Co 26 (DB).**

ARTICLE 126

——**Art. 126** — Failure to bring suit under O. 21, R. 103 does not extinguish title of person entitled to bring suit—Obstruction — Petition by person in possession of property entitled to redeem property proceeded against in execution of decree — Possession delivered to decree-holder—Defeated obstructor not filing suit to set aside adverse order—Suit by obstructor for redemption of property brought within 12 years of dispossession in execution proceedings held to be within time and also not barred by O. 21, R. 103. See Civil P. C. (1908), O. 21, R. 103. **ILR (1963) 2 Ker 154.**

——**Art. 126—Suit by auction purchaser.**

In computing period of limitation under Art. 138 (corresponding to Art. 126 of Travancore Act) the time during which the further execution of the decree in execution of which property was purchased, was stayed cannot be excluded under S. 15 of the Limitation Act. See Limitation Act (1908), S. 15. **AIR 1954 Trav-Co 383.**

——**Art. 126—Applicability— Auction-purchaser in execution sale obtaining actual or symbolical delivery—Subsequent suit for possession—Limitation.**

Article 126 of the Travancore Limitation Act applies to a suit by a purchaser at a sale in execution when the judgment-debtor is in possession at the date of the sale; it has no application to a suit when the auction-purchaser has obtained through Court actual or constructive delivery of possession. In the latter case, the suit by the auction-purchaser to recover possession of the property from the judgment-debtor or from one holding the same under the judgment-debtor is qua owner and not qua auction-purchaser. **1951 K L T 530 : ILR (1951) T C 383 : AIR 1952 Trav-Co 86 (87, 89) (Prs 4, 9) (DB).**

ARTICLE 129

——**Art. 129— Applicability — Alienation by Hindu widow—Suit by reversioner for possession — Limitation—Arts. 122 and 132—Applicability.**

A transfer of her husband's estate by a Hindu widow, even when not supported by legal necessity,

is operative for her life, but it would not bind the reversioners. The latter seeking to recover possession must do so by a suit instituted within 12 years after the death of the widow. Art. 129, Limitation Act governs such a suit and not Arts. 8, 122 or 132. 1950 K L T 416 : AIR 1951 Trav-Co 26 (30, 31) (Pt F) (Prs 16, 17) (DB).

ARTICLE 130

●——Art. 130—Decree in contravention of S. 31 of Travancore Nayar Act is null and void so far as the Tarwad and its properties are concerned. The suit for possession will be governed by Art. 130 of the Act. See Travancore Nayar Act (2 of 1100), S. 31. AIR 1954 Trav-Co 60 (FB).

ARTICLE 132

——Art. 132—Redemption by co-mortgagor.

The case of a co-mortgagor redeeming the shares of the other co-mortgagors, is merely an instance of subrogation and he stands in the shoes of the original mortgagee in respect of the shares of the other co-mortgagors. The suit is governed by Art. 148 and not by Art. 144, Limitation Act (1908). See Transfer of Property Act (1882), S. 92. AIR 1955 N U C (Trav-Co) 537 (DB).

● ——Art. 132—Applicability — 'Right or interest' in immovable property — Meaning of — Nature of suit contemplated by Article—Right to collect revenue or tax from tenants on lands and to recover tax wrongly collected by Government defendant—Limitation. See Travancore Limitation Act, Art. 109. AIR 1951 Trav-Co 232 (FB).

ARTICLE 136

——Arts. 136 and 109 — Limitation Act (1908), Arts. 120 and 148 — Mortgage of service inam land—Validity — Suit for possession on payment of mortgage debt — Art. 120 and not Art. 148 applies. See Limitation Act (1908), Art. 120. AIR 1959 Ker 38 (DB).

——Art. 136—Limitation Act (1908), Art. 148—Mortgagee creating a sub-mortgage — The latter agreeing to pay taxes — On default of payment of taxes, property sold in revenue auction — Suit by mortgagee against sub-mortgagee for damages — Limitation—(Transfer of Property Act (1882), S. 76 (c)). The limitation for such a suit is 50 years under Art. 136 of the Act. See Limitation Act (1908), Art. 148. AIR 1956 Trav-Co 49.

——Art. 136—Redemption by co-mortgagor.

The case of a co-mortgagor redeeming the shares of other co-mortgagors, is merely an instance of subrogation and he stands in the shoes of the original mortgagee in respect of the shares of the other co-mortgagors. The suit is governed by Art. 148 and not Art. 144 of Limitation Act (1908). See Transfer of Property Act (1882), S. 92. AIR 1955 N U C (Trav-Co) 537 (DB).

——Arts. 136 and 122 — Object — Article 122 of the Travancore Limitation Act is in the nature of an exception to Art. 136 and is intended to afford protection to the person who claims to be in possession of the property under a transfer independent of the rights under the mortgage in favour of the transferor. See Limitation Act (1908), Art. 134. AIR 1954 Trav-Co 317 (DB).

ARTICLE 137

——Art. 137 — Cause of action already barred—No extension of limitation in favour of Government. See Travancore Limitation Act (6 of 1100), Preamble. AIR 1954 Trav-Co 451 (DB).

——Art. 137—Starting point—(Limitation Act (1908), Art. 149).

The third column of Art. 137 states that the starting point of limitation for such a suit will be the same as the starting point for a similar suit by a private person. 21 Trav L J 972, held not correct. ILR (1954) Trav-Co 267 : AIR 1954 Trav-Co 451 (455) (Pt G) (Pr 9) (DB).

ARTICLE 148

——Art. 148—Dismissal for absence of party—Held, that he could not claim ignorance of suit as a sufficient ground for not taking proper steps earlier. See C. P. Code (1908), O. 9, R. 9. AIR 1954 Trav-Co 352.

ARTICLE 151

——Art. 151—Limitation Act (1908), S. 18, Art. 166—Fraud vitiating sale and fraud keeping judgment-debtor in ignorance of his right to apply—Distinction—Fraud antecedent to sale — Allegations of absence of notices under O. 21, Rr. 22 and 66 —Judgment-debtor coming to know sale only within a week of application—Section 18 applies — Limitation under Art. 166 starts only from date of such knowledge — See Limitation Act (1908), S. 18. AIR 1964 Ker 88.

ARTICLE 164

——Art. 164—Limitation Act (1908), Art. 180—Starting point—Execution sale confirmed when application to set aside ex parte decree pending — Application for delivery by decree-holder auction-purchaser—Starting point is date of dismissal of application to set aside ex parte decree. See Limitation Act (1908), Art. 180. A I R 1952 Trav-Co 318 (DB).

ARTICLE 166

——Art. 166:— Part B States Laws Act (1951), S. 6, Second Proviso—Registration of decree effected by filing memorandum of decree — Effect of second Proviso on limitasion — (Limitation Act (1908), Art. 182(5))—The Second Proviso adopts a "deeming" provision quite contrary to what is contemplated under S 6. See Part B States Laws Act (1951), S. 6. AIR 1959 Ker 5 (DB).

——Art. 166—Decree passed after Indian Limitation Act was made applicable — Decree not registered — Execution — Limitation for. Held, that the decree being an unregistered one and passed after the Indian Limitation Act became law in this State, was governed by Art. 182 of the Indian Limitation Act and not Art. 166 of the Act. See Limitation Act (1908), Art. 182. AIR 1958 Ker 270 (DB).

● ——Art. 166 (2) — Civil P. C. (1908), O. 44, R. 1 O. 41, R. 1, O. 33, R. 2, S. 149—Order rejecting application for leave to appeal as pauper—Memorandum of appeal is not rejected—Court should direct applicant to pay court-fees on memo of appeal within time fixed—Memo to be numbered and registered on payment of court-fee—For limitation appeal will be deemed to have been filed on date of presentation of application — Unless memo is registered and numbered, there can be no appeal within Art. 182 (2)—Rejection of appeal after registration for non-payment of court-fee or on ground of limitation—It cannot be said that there was no appeal—Appeal wrongly admitted is still an appeal for purposes of Art. 182 (2) —Court-fee not paid within time — Application for extension of time rejected — This is not rejecting appeal since there is no appeal to be rejected—Limitation for execution in such case is governed by Art. 182 (1) and not Art. 182 (2) — Limitation Act (1908), Art. 182 (2) — (16 Cal 250 and AIR 1931 Pat 422, Dissented from.) See Civil P. C. (1908), O. 44, R. 1. AIR 1955 Trav-Co 209 (FB).

——Art. 166 — Decree registered under Travancore Registration Act — Application for execution under

Art. 182—Period of limitation. The execution petition filed within six years was within time. See Limitation Act (1908), Art. 182. **A I R 1955 Trav-Co 186 (DB).**

——**Art. 166 — Redemption decree against several mortgagees — Piecemeal execution — Permissibility.** See Travancore Limitation Act, S. 19. **A I R 1952 Trav. Co 310 (DB).**

——**Art. 166 (5)—'In accordance with law'—Redemption decree against several mortgagees—Execution application against one or some only—Effect of.**

When a decree for redemption of a mortgage of immovable property is passed jointly against several co-mortgagees, an application against one or some of them only cannot be regarded as an application 'in accordance with law' within the meaning of Art. 166 (5) of the Travancore Limitation Act. **1951 K L T 683 : I L R (1952) Trav-Co 28 : A I R 1952 Trav Co 310 (314) (Pt D) (Pr 17) (DB).**

——**Art. 166 (5) — Step-in-aid — Essentials — Joint decree against several persons — Execution application against one — When saves limitation against others.**

To attract the application of Art. 166 (5), Limitation Act, some action on the part of the decree-holder in the form of a particular application is needed. Further it is only an execution application filed when the decree is alive that it would extend the life of the decree and not when it is filed after the decree is dead. In order that an application against one judgment-debtor under a joint decree may extend the period of limitation for execution against the rest by a further period allowed by law, the decree should have been kept alive against them when the application against the joint debtor is filed. When the subsequent application is filed against all the debtors, it would be open to such of them as were not made parties in the previous application to show that even on the date of the last application the execution of the decree was barred. **1951 K L T 683 : ILR (1952) Trav-Co 28 : A I R 1952 Tra-Co 310 (314) (Pt E) (Pr 18) (DB).**

——**Art. 166—Limitation Act (1908), Art. 182, Cls. (2) and (3) — Decree one but in several distinct parts against judgment-debtors — Appeal by some of the judgment-debtors only in respect of their distinct parts of the decree—Execution against non-appealing judgment-debtors in respect of their part of decree —Starting point of limitation — (Civil P. C, (1908), S. 48)—(Travancore Civil P. C., S. 41) — The date of the appellate decree is the starting point under S. 48 of Civil P. C.** See Limitation Act (1908), Art. 182. **AIR 1952 T C 269 (DB).**

——**Art. 166—Starting point—Decree for redemption of mortgage on deposit of mortgage amount and value of improvements—Execution — Limitation—Starting point. Where under the decree the plaintiffs get the right to redeem the properties only on payment of the mortgage amount and the value of improvements, the period of limitation for recovery of possession of the properties does not run from the date of deposit of the amounts.** See Trav. Lim Act, Art. 166 (5). **AIR 1952 T C 78 (DB).**

——**Art. 166 — Limitation Act (1908), Art. 182 — Rights and liabilities under decree separate and several — Application by one party does not enure for benefit of other.** See Limitation Act (1908), Art. 182. **AIR 1952 Trav-Co 78 (DB).**

——**Art. 166 — Limitation Act (1908), Art. 182 — Travancore Limitation Act, Art. 166 — Redemption decree — Redemption only on payment of mortgage amount and value of improvement—Starting point for recovery of possession—The period of limitation does not run from the date of deposit of those amounts.** See Limitation Act (1908), Art. 182. **AIR 1952 Trav-Co 78 (DB).**

——**Art. 166 (5)—Applicability—Suit for redemption of mortgage — Decree for redemption on deposit of mortgage amount and value of improvements due to several defendants — Costs awarded to defendants — Application by one defendant for costs after set-off of value of improvements due to him — It does not save limitation against any of the other judgment-debtors. 1951 Ker L T 492 : ILR (1951) Tra-Co 486 : AIR 1952 Tra-Co 78 (80) (Pt C) (Pr 10) (DB).**

——**Art. 166 (5)—Step-in-aid — Decree in suit filed in forma pauperis — Execution by State to realise court-fee charged on decree for plaintiff—If saves limitation for execution by plaintiff decree-holder.**

In respect of a decree passed in favour of a pauper plaintiff giving a charge in favour of the State on the decree in respect of court-fee due to the State, execution by the State to realise amount of court-fee due to it after attachment of the plaintiff's rights under the decree, operates as a step-in-aid and saves limitation in favour of the plaintiff for execution by him. **AIR 1952 T C 69 (70) (Pr 2) (DB).**

ARTICLE 182

——**Art. 182, Expl. 1—Scope—Joint decree—Decree kept alive against one debtor — If necessarily kept alive against others as well. The view that where a decree is alive against one of the several judgment-debtors it is alive against all the joint judgment-debtors cannot be accepted.** See Travancore Limitation Act, S. 19, Expl. 4. **AIR 1952 Trav-Co 310 (DB).**

TRAVANCORE LUNACY RULES

——**Applicability to S. 384, Travancore Cr. P. Code —Any rule made under Travancore Lunacy Act cannot have application to the provisions of S. 384, Travancore Cri. P. C., which is meant to apply to criminal lunatics or persons who at the time they committed a heinous crime could not understand the nature of such act, as a result of unsoundness of mind.** See Travancore Cr. P. Code, S. 384. **A I R 1952 T C 52.**

TRAVANCORE MALAYALA BRAHMIN ACT (3 of 1106 ME)

SECTION 1

——**S. 1—Parties governed by Act—Applicability of Hindu law — Alienation of illom property—Right of woman-member of illom by marriage to question its validity—If at the time of her marriage there was no member of the illom who could have questioned the debt she is not competent to do it.** See Hindu Law. **AIR 1954 Trav-Co 371 (DB).**

——**S. 1 — Applicability — Nambudiri Illom—Debts by Karnavan incurred prior to Act—Law applicable — Binding nature of — Burden of proof — Duty of creditor.**

The Travancore Malayala Brahmana Act cannot be applied to transactions entered into anterior to the coming into force of that Act; such cases have to be decided according to the law prevailing at the time of those transactions.

Under that law, debts contracted by the Karnavan of the illom would be presumed to be binding on the illom or tarwad. This presumption also extends to debts contracted by junior members on behalf of the illom if they had the antecedent consent of, or if they had been afterwards accepted and ratified by, the Karnavan. Junior members who are not parties to the contracting of debts are entitled to impeach such debts as not binding on them and to show how they are not binding. The onus may be discharged by

showing that the moneys borrowed were actually used for non-illom purposes or that the financial position of the illom was such that no loan at all need have been taken. If this is shown the burden shifts on to the creditor who may either prove the existence of necessity or bona fide inquiries by him as to the existence of necessity as a result of which he was satisfied as to the necessity on the faith of which he lent the money. If he shows this he would get a decree though in fact it might be found that no necessity really existed. The creditor is not bound to see to the application of the money lent. It is not also necessary for a creditor who advances money for discharging an existing debt of the illom or family when the Karnavan, the senior Anandiravan and several other Anandiravans all alike admit the existence and binding character of that debt, to make any further inquiry as to the existence of the debt. 6 M I A 393, Foll. (1951) K L T 78 : ILR (1951) T C 185 : AIR 1951 T C 162 (163 to 165) (Prs 5, 7) (DB).

SECTION 2

——S. 2 (1) — "Embrandiris" are Malayala Brahmins within the definition of S. 2 (1). 1961 Ker L T 5.

SECTION 5

——S. 5—Kanom of Illom — Property — Validity—Essentials.

Three things are necessary for the validity of a kanom of illom property by a karnavan. There must be consideration, there must be illom necessity, and there must be the written consent of all the major members of the illom. Absence of written consent required by statute renders a transaction bad.

An acceptance or acquiescence are matters for pleading and not merely for evidence, and in the absence of a pleading on the matter, no amount of evidence is of any avail. ILR (1963) 2 Ker 238 : AIR 1964 Ker 144 (146) (Pt C) (Prs 5, 6).

——S. 5 — Property belonging to Illom — Sale of—Validity—Conditions of.

The sale of a property belonging to Malayala Brahmin Illom effected subsequent to the passing of the Malayala Brahmin Act can be upheld as valid only if all the three conditions specified in S. 5 and fully satisfied, viz., that the sale was for consideration, that it was for proper necessity binding on the Illom and that all the major members of the Illom have given their written consent to the sale. 1957 Ker L J 258 : I L R (1957) Kerala 367 : 1957 Ker L T 799 : AIR 1957 Ker 103 (104) (Pt A) (Pr 2).

——S. 5—Object—Transaction in violence of section—Validity.

The plain purpose of the Section is to restrict the power of the Karnavan in the matter of transactions mentioned in the section in a particular manner. What is prohibited by the section is a transaction as mentioned in that section which has not had the consent in writing of all the adult members of the family. The provision is clearly mandatory and would render any transaction in violence of it, void and inoperative as against the members for whose benefit the provision was made and whose consent has not been obtained as provided therein. AIR 1952 Trav-Co 368 (369) (Pt A) (Prs 5, 7) (DB).

——S. 5 — "Immovable property"—Term applies to property over which family has mortgage right—(General Clauses Act (1897), S. 3 (25))—(Travancore General Clauses Act (2 of 1072), S. 2). AIR 1952 Trav-Co 368 (369) (Pt C) (Pr 7) (DB).

——S. 5—"Immovable property."

It is not necessary that the various kinds of transactions which are prohibited under section 5 must all be available in respect of an item of property in order that it may be regarded as immovable property under section 5, because transactions must be read not collectively but distributively. A I R 1952 Trav-Co 368 (369) (Pt D) (Pr 6) (DB).

SECTION 8

——S. 8—Applicability — Presumption as existence of necessity.

If the plaintiff has let in evidence to prima facie satisfy the Court that he made enquiries about the existence of necessity and has also acted in good faith in the absence of any counter-evidence on this point the Court is bound to proceed on the basis that there was a necessity existing at the time of the loan. 1959 Ker L J 979 : 1959 Ker L T 1338.

SECTION 15

——S. 15 — Hindu Law — Succession — Act is not comprehensive — Purpose of Chap. IV—See Hindu Law—Succession. AIR 1956 Trav-Co 74 (DB).

——Ss. 15 and 16—Nair Act (11 of 1100), S. 21 (1)—Malayalam Brahmin dying intestate leaving daughter by Nair wife — Divided member of illom living—Share of daughter is one-half of property. AIR 1955 N U C (Trav-Co) 4119 (DB).

SECTION 16

——S. 16—Hindu Law—Succession — Succession of self-acquired and separate property.

Section 16 does not purport to be a complete statutory provision relating to succession to self acquired and separate properties of a Malayalam Brahmin. See Hindu Law—Succession. AIR 1956 Trav-Co 74 (DB).

——Ss. 16, 15—Nair Act (11 of 1100), S. 21 (1)—Malayalam Brahmin dying intestate leaving daughter by Nair wife—Divided member of illom living—Share of daughter is one-half of property. See Travancore Malayalam Brahmin Act (3 of 1106), S. 15. AIR 1955 N U C (Trav-Co) 4119 (DB).

TRAVANCORE MEDICAL PRACTITIONERS ACT (7 of 1119, ME)

SECTION 22

——S. 22 (1) (iii)—Scope—While the Medical Council is bound to register an applicant who holds a recognised qualification it is in the discretion of the Medical Council to register or not to register him under the other provisions of S. 22. See Constitution of India, Art. 226. AIR 1954 Trav-Co 201.

SECTION 23

——S. 23 and S. 22 (1) (iii)—Scope. See Constitution of India, Art. 226. AIR 1954 Trav-Co 201.

SECTION 25

——S. 25—Order passed under—Remedy against. See Constitution of India, Art. 226. A I R 1954 Trav-Co 201.

SECTION 31

——S. 31—Scope of.

Section 31 would appear to be a provision made for rectifying entries made in the register fraudulently or incorrectly and do not, at any rate, include an instance of a non-entry owing to the rejection of an application for registry. AIR 1954 Trav-Co 201 (202) (Pt B) (Pr 3).

SECTION 32

——S. 32—Remedy of appeal not availed of — Subsequent application for registration — Maintainability. See Constitution of India, Art. 226. AIR 1954 Trav-Co 201.

SECTION 38

——Ss. 38 and 39—Offence under S. 39.

What is indictable under S. 39 is not the conferring, granting or issuing degrees, diplomas, licences, etc., as such by unauthorised bodies or institutions but such bodies conferring, granting or issuing any degree, diploma, licence or certificate or other document which is identical with or is a colourable imitation of any degree, diploma, licence, certificate or other document granted by an institution authorised under S. 38. In the absence of proof that such authorised bodies or institutions exist and that such bodies or institutions confer degrees, diplomas etc., no question of any contravention of S. 39(1) can possibly arise, or be made out. **I L R (1953) Trav-Co 315: 1953 Cri L J 1408 : A I R 1953 Trav Co 324 (326) (Pr 4) (DB).**

SECTION 39

——S. 39—Offence under S. 39. See Travancore Medical Practitioners Act (7 of 1119), S. 38. **1953 Cri L J 1408 : AIR 1953 Trav-Co 324 (DB).**

TRAVANCORE MOTOR VEHICLES ACT (1 of 1117, M. E.)

SECTION 54

——Ss. 54 (4) and 60 (e)—Aggrieved person—Person making no representation — Right to apply for writ of mandamus—(Constitution of India, Art. 226(1))—(Motor Vehicles Act (1939), Ss. 57 (4) and 64 (f)).

A person who does not make a representation as required by S. 54(4) cannot be said to be a person aggrieved by the decision of Government in appeal against the order of the Transport Authority and is not entitled to apply for a writ of mandamus. **1952 Ker L T 306 : A I R 1952 Trav-Co 443 (444) (Pt B) (Pr 10).**

SECTION 60

——S. 60—Transport Authority publishing notification in Gazette—Notification to effect that no further applications would be entertained for permits for running buses along certain routes until otherwise notified — Thereafter A applying for route — Major portion of Application rejected by Transport Authority—On appeal Government ordering issue of permit — Notification held was not statutory notification having force of law — Decision of Government held was not ultra vires — (Travancore Motor Vehicles Rules, R. 138) — (Motor Vehicles Act (1939), S. 64). **1952 Ker L T 306 : A I R 1952 Trav-Co 443 (444) (Pt A) (Pr 8).**

——Ss. 60 (e) and 54 (4)—Aggrieved person—Person making no representation—Right to apply for writ of mandamus — (Constitution of India, Art. 226(1)) — (Motor Vehicles Act (1939), Ss. 54(4) and 64(f))— He is not entitled to apply for a writ of mandamus. See Travancore Motor Vehicles Act (1 of 1117, M. E.), S. 54(4). **AIR 1952 Trav-Co 443.**

SECTION 83

——S. 83 (1) (a)—Gist of offence — Disobedience of direction to stop vehicle—Absence of proof of police officer being in uniform—Offence, if committed.

The gist or essence of the offence of contravention of S. 83 (1)(a), Travancore Motor Vehicles Act, is the disobedience by the driver of a motor vehicle of a direction to stop the vehicle given by a police officer in uniform. To bring the guilt home to the driver it must be proved that the police officer who gave the direction to stop was in uniform at the time. In the absence of such proof no offence under S. 83 (1)(a) can be said to be committed by the driver who fails to obey the direction. **1950 Ker L T 650 : 5 A I Cr D 68 : 52 Cri L J 1075 : A I R 1951 Trav-Co 215 (216) (Pr 5) (DB).**

TRAVANCORE MOTOR VEHICLE RULES (1952)

See Motor Vehicle Rules (1952) (Kerala).

TRAVANCORE NANJINAD VELLALA ACT (6 of 1101, M. E.)

SECTION 17

——S. 17—Scope.

It cannot be said that S. 17 is intended to cover cases where the widow or widows co-exist with the mother of the deceased when the succession opens. When there are no lineal descendants the section entitles the widow to enjoy the whole of the intestate's property until her death or re-marriage without any power of alienation. **I L R (1952) Trav-Co 214 : AIR 1952 Trav-Co 355 (356) (Pr 3) (DB).**

SECTION 26

——S. 26—Determined share of female member of tarwad—Succession.

Section 26 clearly provides that the undivided share of every member of Nanjinad Vellala tarwad determined as at the time of death of that member shall be treated as his separate property. In the instant case there being no child or any lineal descendants of her mother and her husband having remarried, the share devolved on her father. **A I R 1951 Trav-Co 74 (75) (Pr 2) (DB).**

SECTION 30

——Ss. 30 and 34 — Maintenance—Absolute right to partition conferred by S. 30 on members of tarwad does not debar them of the right to sue for maintenance under the pre-existing law : (1875) 12 Bom H C R 94, Not followed. **77 Mad L W 357 : (1965) 1 Mad L J 68 : ILR (1964) 2 Mad 44.**

TRAVANCORE NAYAR ACT (1 of 1088 ME)

SECTION 1

——S. 1—Adverse possession—Mortgagee in possession — Sale of equity of redemption to mortgagee without consent of all adult members of tarward — Under the Nair Act the written consent of all the adult members of the tarwad is necessary for a sale of tarwad property even in case where it is supported by consideration and tarwad necessity. See Limitation Act (1908), Art. 144. **AIR 1955 N U C (Trav-Co) 1914 (DB).**

——S. 1 —Karnavan —Alienation —Consideration — Barred debt—(Malabar law—Tarwad — Alienation—Karnavan).

Even if the debt was barred by limitation, it was competent for the karnavan before the Nair Act and for all adult members thereafter, to pay the creditor and relieve the family of its indebtedness. If the recovery of a debt becomes barred by the law of limitation, it does not mean that the debt is extinguished ; it means merely that the remedy through Court is unavailable. A barred debt will constitute good consideration for an agreement to pay and will also therefore be good consideration for an alienation. **1954 Ker L T 171 : A I R 1954 Trav-Co 401 (401) (Pt A) (Pr 3).**

SECTION 13

——Ss. 13 and 17 — Scope — Nair male leaving separate property and Makkathayam and marumakkathayam heirs — (Travancore Nayar Act (2 of 1100), S. 10 (c)—Limitation Act (1908), Art. 44).

Section 13 contemplates a case where a deceased Nair male leaves both makkathayam marumakkathayam heirs and has therefore no application to a case where he has left no undivided marumakkathayam heirs. Under S. 17 the heirs take the property in equal shares with right to individual partition.

What the law enacts is that the shares would constitute the separate property of the heirs, or in other words they take the property as tenants-in common. 26 Trav L J 284 (FB), Rel. on. When the shares which the widow and children obtain in the property constitute the separate property of each of them then under S. 10 (c) of the Nair Act (II of 1100) the mother is the legal guardian and the time to question the alienation effected by her as guardian of her minor children is that prescribed by Art. 44, Limitation Act. Krishnan Nair Sivasankaran Nair v. Sankaran Krishnan Namboodri. 1957 Ker L J 719 : 1957 Ker L T 807 : ILR (1957) Ker 798 : A I R 1958 Ker 30 (30) (Pr 3) (FB).

SECTION 17

● —Ss. 17, 13—Scope—Nair male leaving separate property and no marumakkathayam heirs — (Travancore Nair Act (2 of 1100), S. 10 (c))—(Limitation Act (1908), Art. 44). See Travancove Nayar Act (1 of 1088 ME), S. 13. AIR 1958 Ker 30 (FB).

● —S. 17—Gift by paternal uncle—Benefit to tarwad of donee — Presumption of Marumakkathayam law if applies —(Nair Act (2 of 1100), S. 44A)—Marumakkathayam law —Gifts — Gifts by paternal uncle—Presumption of benefit to tarwad of donee)—(Evidence Act (1872), S. 114). AIR 1957 Trav-Co 77 (80) (Pt A) (Prs 13, 14) (FB).

—S. 17—Section not applicable — Transfer of Property Act applies—Gift in favour of more persons than one — Donees take as tenants in common — On construction of deed, held, that donees took as tenants-in-common unborn children sharing in gift — Effect. (Transfer of Property Act (1882), Ss. 13, 14, 45). AIR 1953 Trav-Co 89 (89, 90) (Prs 3, 4) (DB).

SECTION 19

—S. 19—T. P. Act (1882), S. 5—Partition.

Where immovable property has been partitioned among co-sharers by metes and bounds there is a transfer. See Transfer of Property Act (1882), S. 5. AIR 1959 Ker 235 (DB).

[Overruled in AIR 1963 Ker 66 (FB).]

SECTION 25

—S. 25—Applicability—Section applies only to suits against a tarwad and not to suits instituted by the Karnavan for and on behalf of tarwad. 27 T L J 908: A I R 1954 Trav-Co 487, Rel. on. 1960 Ker L J 866 : 1960 Ker L T 658.

SECTION 26

● —Ss. 26, 4—"Dissolved" includes natural termination of marriage by death of party — (Words and phrases—Dissolved). See Travancore Nayar Act (1 of 1088), S. 4. AIR 1955 Trav-Co 235 (FB).

● —Ss. 26, 12—Section 26 is not repugnant to S. 12. See Travancore Nayar Act (1 of 1088), S. 12. A I R 1955 Trav-Co 235 (FB).

SECTION 31

—S. 31—'Impleading Karnavan as such' — Compliance with section—It is not necessary to mention that karnavan is impleaded 'as such'. A I R 1955 N U C (Trav-Co) 5098.

TRAVANCORE NAYAR ACT (2 of 1100 ME)

SECTION 1

—S. 1—Tarwad—Acquisition made in name of lady — Presumption — Applicability to acquisition made after Nayars Act. See Marumakkathayam Law. ILR (1956) Trav-Co 1195.

—S. 1—Applicability.

Thala Nayars are governed by the Nayar Act. AIR 1953 Trav-Co 125, (126) (Pr 2).

—S. 1—Nair is bound to maintain his wife and children—Desertion by husband is a valid ground for award of separate maintenance— Obligation to maintain is personal and so long as the wife and children have no right over separate and self-acquired properties of husband during his life-time they cannot claim charge on those properties. 1950 T C L R 484.

SECTION 2

—S. 2 (7)—"In the absence of such male member" —Meaning of — Temporary absence of Karnavan—Right senior female—"Karnavan".

The senior female member cannot take up Karnavanship merely because the Karnavan of the tarwad is temporarily absent from the tarwad. 1957 Ker L T 653 : 1957 Ker L J 670.

SECTION 4

● —Ss. 4 and 8 (1) — Dissolution of marriage — 'Mutual consent evidenced by a registered instrument', meaning of — Mutual consent and registered instrument manifesting this mutual consent are both conditions preceding effective dissolution of marriage — Subsequent marriage performed after alleged mutual consent but prior to execution and registration of document evidencing mutual consent — Subsequent marriage held void.

Held, that the dissolution of prior marriage was effected only after the date the subsequent marriage took place. Thus the subsequent marriage having been performed during the continuance of the prior marriage, was void. Nangu Amma Devaki v Appi Parameswaram. 1965 Ker L T 760 : (1965) 1 Ker L R 557 : ILR (1965) 2 Ker 231 : 1965 Ker L J 874 : AIR 1966 Ker 41 (41, 42) (Prs 1, 2) (FB).

● —Ss. 4, 26—"Dissolved".

The word 'dissolved' in S. 26 means not only dissolution by act of parties or through Court of law but includes also a natural termination of the marriage by the death of the wife. Govindan Nair Neelakantan Nair v. Narayani Amma. ILR (1955) Trav-Co 147 : 1955 Ker L T 309 : AIR 1955 Trav-Co 235 (238, 240) (Pt B) (Prs 14, 18) (FB).

SECTION 5

● —S. 5—Hindu Marriage Act (1955), Ss. 29 (2), 13 and 30—Scope of S. 29 (2)—Saving of right of dissolution under custom or special enactment such as S. 5, Travancore Nayar Act — Effect — Still parties can invoke S. 13 for dissolution of Hindu marriage. See Hindu Marriage Act (1955), S. 29 (2). A I R 1961 Ker 311 (FB).

SECTION 7

—S. 7 (4)—Rules under, Rr. 35 to 39, 46 and 47 — Power of High Court—Dismissal of petition for dissolution of marriage—Interference by High Court.

The powers of the High Court in hearing appeals under the Nair Act are very limited and it is not open to the High Court to go behind the verdict and see whether there is sufficient evidence to justify the same. 1963 K L T 700, Rel. on. 1958 Ker L T 447 : 1957 Ker L J 869.

—S. 7 (4) and (6):— Remedy by way of appeal and remedy by way of application under O. 9, Civil P. C. —There is nothing inconsistent with them — (Civil P. C. (1908), O. 9, R. 13). AIR 1955 N U C (Trav Co) 5071 (DB).

—S. 7 (2) (a) — Petition by wife for dissolution of marriage — Compromise agreeing dissolution—Court has power to grant dissolution on compromise, while husband denies allegation of cruelty and desertion —

(Husband and wife—Dissolution of marriage). A I R 1955 N U C (Trav-Co) 1158 (DB).

——S. 7 (3)—Rules under Rr. 46 and 47—Powers of High Court in appeal.

The powers of the High Court in appeal against decisions in matrimonial causes under the Nair Act are limited. Section 7 (4), Travancore Nair Act, provides for an appeal to the High Court by an aggrieved party from any decision of the District Munsiff relating to dissolution or award or both; but this right is subject to rules, framed under the Act. 1953 Ker L T 700 : ILR (1953) Trav-Co 994 : A I R 1954 Trav-Co 158 (159) (Pt A) (Pr 4) (DB).

——S. 7 (8)—Finding of fact—No interference.

The decision on the facts in respect of the grounds for dissolution is the decision of the delegates. The question whether the husband was guilty of habitual cruelty is a question of fact and the trial Court is bound to accept the finding returned by the delegates and it is not open to the High Court, to examine the evidence on this point afresh.

Decisions on Indian Divorce Act, under which the appellate Court can go into questions of fact are irrelevant. 1953 Ker L T 700 : ILR (1953) Trav-Co 994 : AIR 1954 Trav-Co 158 (159) (Pt B) (Pr 5) (DB).

——S. 7 (6)—Rules of pleadings given in Civil P. C. apply to proceedings under Act — Points not pleaded in trial Court cannot be allowed to be pleaded in appellate Court. 1953 Ker L T 700 : I L R (1953) Trav-Co 994 : A I R 1954 Trav-Co 158 (159) (Pt C) (Pr 6) (DB).

——S. 7 — Dissolution of marriage on ground of husband's adultery and habitual cruelty — Adultery not proved — Dissolution can be decreed on proof of habitual cruelty. 1953 Ker L T 700 : ILR (1953) Trav-Co 994 : A I R 1954 Trav-Co 158 (159) (Pt D) (Pr 5) (DB).

——S. 7 — Award of compensation—Interference by appellate Court.

Trial Court ordering dissolution of marriage and awarding certain amount as compensation to wife—Trial Court believing evidence adduced by the wife regarding the position, means and circumstances of the parties — Appellate Court refused to interfere. 1953 Ker L T 700 : ILR (1953) Trav-Co 994 : A I R 1954 Trav-Co 158 (160) (Pt E) (Pr 7) (DB).

——S. 7 (4)—Applicability—Sub-s. (4) applies only to decision relating to dissolution of marriage or award of compensation—Order refusing to re-open decision relating to dissolution of marriage does not come within ambit of sub-section. 1953 Ker L T 209 : AIR 1953 Trav-Co 37 (38) (Pt A) (Pr 2) (DB).

——Ss. 7 (6) and 8—Rules under — R. 18—Order refusing to set aside ex parte order dissolving marriage—Appeal under provisions of Civil P. C.—Maintainability.

The sub-s. (6) of S. 7 of the Nair Act and R. 18 read along with S. 141 of the Civil P. C., do not make an order refusing to set aside an order passed ex parte dissolving a marriage appealable. 1953 Ker L T 209 : A I R 1953 Trav-Co 37 (39) (Pt B) (Pr 5) (DB).

——S. 7 (3) (a) — Provision is mandatory — Court is bound to award compensation even wife does not appear and contest petition. 1953 Ker L T 209 : AIR 1953 Trav-Co 37 (40) (Pt D) (Pr 10) (DB).

——S. 7 — Dissolution of marriage by agreement — Matters to be taken into consideration in awarding compensation.

Where on an application for dissolution of marriage on ground of wife's legal cruelty (wilful desertion) the wife denies the allegations but agrees to the dissolution and the marriage is declared as dissolved the Court while determining the compensation to be awarded to the wife should confine itself to the consideration of the position, means and circumstances of the parties and is not entitled to enquire into the truth or otherwise of the allegations in the petition. 1951 Ker L T 782 : ILR (1951) Trav-Co 394 : A I R 1952 Trav-Co 558 (558) (Pr 4) (DB).

SECTION 8

● ——Ss. 8 (1), 4—Dissolution of marriage—'Mutual consent evidenced by a registered instrument", meaning of — Mutual consent and registered instrument manifesting this mutual consent are both conditions preceding effective dissolution of marriage — Subsequent marriage performed after alleged mutual consent but prior to execution and registration of document evidencing mutual consent— Subsequent marriage held void. See Travancore Nayar Act (2 of 1100 M. E.), S. 4. 1965 Ker L T 760 : (1965) 1 Ker L R 557 : ILR (1965) 2 Ker 231 : 1965 Ker L J 874 : AIR 1966 Ker 41 (FB).

——Ss. 8, 7 (6)—Rules under —Rule 18—Order refusing to set aside ex parte order dissolving marriage—Appeal under provisions of Civil P. C. — Maintainability:— (Civil P. C, (1908), Ss. 4 (1) and 141 and O. 43, R. 1 (d). No special provision is made in the Nair Act for appeal. See Travancore Nair Act (1100), S. 7 (6). AIR 1953 Trav-Co 37 (DB).

SECTION 10

——S. 10 (2) — Hindu Minority and Guardianship Act (1956), S. 6 (a) — Nayar Hindus of Travancore — Father's application for guardianship and custody of children from their mother — Subsequent divorce between parents—Law applicable—Travancore Nayar Act could not apply — Application to be decided on merits. 1960 Ker L T 1227 : 1961 Ker L J 29 : A I R 1961 Ker 154 (154) (Pt A) (Pr 3).

——S. 10—Constitution of India, Arts. 246 (2), 254 — Existing laws on matters in concurrent list — Power of Parliament to repeal or amend not restricted. 1960 Ker L T 1227 : 1961 Ker L J 29 : AIR 1961 Ker 154 (154, 155) (Pt B) (Pr 4).

●——S. 10 (c)—Property left by Nair male.

When shares which the widow and children obtain in the property constitute the separate property of each of them, then under S. 10 (c) the mother is the legal guardian, and the time to question the alienation effected by her as guardian of her minor children is that prescribed by Art. 44, Limitation Act. See Travancore Nayar Act (1 of 1088), S. 13. A I R 1958 Ker 30 (FB).

——S. 10 (1), Proviso—Marumakkathayam Tarwad—Partition—Father executing partition deed for minors—Validity—(Hindu Law—Partition)—(Malabar Law—Tarwad—Partition).

The participation of the father of the minor members of a tarwad as their father and guardian in the execution of a partition deed executed by all the adult members of the tarwad does not render that partition invalid. 33 Trav LJ 71, Appr.; AIR 1951 Trav-Co 118 (FB) and ILR (1955) Trav-Co 680, Disting. 1957 Ker L T 176 : ILR (1957) Kerala 298 : 1957 Ker L J 177 : AIR 1957 Kerala 69 (72) (Pt A) (Pr 5) (DB).

——S. 10—Who are competent to act as guardians of minor — Guardianship of married girl will be with husband—In case of others, it is with father except in cases coming under S. 10 (2). AIR 1955 NUC (Trav-Co) 2202 (DB).

SECTION 11

——S. 11—Transfer of Property Act (1882), S. 6 (a)—Deed of divorce by father and mother—Provision for

son's maintenance — Son not entitled to claim share in father's property—Father dying intestate — Extinguishment of son's right. See T. P. Act (1882), S. 6 (a). AIR 1952 Trav-Co 351 (DB).

SECTION 12

●——Ss. 12, 26—Section 26 is not repugnant to S. 12. Govindan Nair Neelankantan Nair v. Narayani Amma, (1955) Ker L T 309 : ILR (1955) T C 1467 : A I R 1955 Trav-Co 235 (239) (Pt C) (Pr 15) (FB).

SECTION 18

——S. 18—Tarwad—Partition— Interest of members —Alienation before partition — Right of divided member to set aside.

After tarwad or thavazi becomes divided, a divided member cannot maintain a suit on behalf of the tarwad or thavazi as such to set aside and alienation effected before the division. 1958 Ker L T 890 : 1958 Ker L J 916.

——S. 18—Scope — Divided Thavazhi — Property of deceased member — Mesne profits — Liability of Karnavan.

In a suit for possession and mesne profits of properties of a deceased member of a thavazhi, whatever may be the position so far as an undivided thavazhi is concerned, there is no scope for imposing liability for mesne profits on the erstwhile Karnavan of a disintegrated thavazhi. 1957 Ker L T 62 : 1957 Ker L J 202.

SECTION 21

——S. 21 (1)—Malayalam Brahmin dying intestate leaving daughter by Nair wife—Divided members of illom living—Share of daughter is one-half of property. See Malayalam Brahmin Act (3 of 1106 M. E.), S. 15. AIR 1955 NUC (Trav.Co) 4119 (DB).

SECTION 22

——S. 22—Gift by husband to wife — Provision that she could dispose of property as she pleased — Children do not get any interest in property. 1963 Ker LJ 241.

——S. 22—Gift by husband in favour of wife for her and children's maintenance— Effect — They take as tenants-in-common.

Where the husband has executed a gift deed in favour of his wife to provide for maintenance expense of not only the wife but also her subsisting children, though technically the document stands in the name of the wife. The wife and her children will not take the gift as tarwad property but only as tenants-in-common. AIR 1952 Trav-Co 141; 1947 Trav L J 426, Relied on. 1959 Ker L J 970 : 1959 Ker L R 935 : 1959 Ker L T 1002.

——S. 22 — Share of after-born children in property gifted to wife by husband.

Where property is acquired by the wife from the funds provided by her husband for the acquisition, children who are born only later are not entitled to claim any share in the properties. 1957 Ker L J 708 : 1957 Ker L T 765 : ILR (1957) Kerala 678.

——S. 22 — Gift in favour of wives — Nature of property—Gift subsequent to Act—Wives take as tenants-in-common — Incidents of tarwad are not attached. AIR 1955 NUC (Trav-Co) 3459 (DB).

——S. 22—Gift in wife's name — Children's right to get share therein.

Under S. 22, it is unnecessary that the gift of a property by the husband to the wife is to be in the name of the Children also even if it stands in the sole name of the wife, the Children would get a share in the same unless a contrary intention was expressed in the instrument of gift. 1947 T L J 426, Foll. 32 T L J 665, Dissent from. AIR 1952 Trav-Co 141 (Pt:B)(Pr 7) (DB).

——Ss. 22 and 41—Act 1 of 1088—S. 17—Construction and scope—Scope and effect of—Makkathayam or Putravakasam property — Bequest or gift by husband or father to wife (or widow) or children — Nature of estate or interest — Tarwad property or individual partible property—Gift in name of wife only or one or some of the children only — Presumption as to.

The presumption, in the absence of any indication to the contrary, was, therefore, that the property gifted was taken by the donee and her children as their impartible sub-tarwad property. Marumakkattayam Law never recognised partibility in respect of such property. 32 T L J 665 ; 57 T L R 913 ; (1948) T L R 447, Diss. 1950 Ker L T 396 : 1950 T C L R 449 : AIR 1951 Trav-Co 83 (86) (Prs 14, 16) (DB).

SECTION 23

——S. 23 — Scope and applicability indicated. AIR 1955 NUC (Trav-Co) 2202 (DB).

SECTION 25

——Ss. 25 and 26 — Exchange of taward immovable property for convenience of enjoyment is invalid — Word 'sale' in S. 25—Meaning — Right of alienee — Alienee before being ousted entitled to get back his property — Contract Act (1872), Ss. 64 and 65 — — Transfer of Property Act (1882), Ss. 54, 55, 118 and 120.

An exchange of tarwad immovable property for the property of another is within the mischief of S 25 of the Travancore Nayar Act, the word 'sale' therein having been used in a generic sense to mean an outright alienation, such an exchange cannot therefore be made by a karnavan unless it is supported by adequate tarwad necessity.

A mere convenience of enjoyment cannot be a necessity and an exchange made for such a purpose is invalid. 1962 K L T 952, Rel. on.

The alienee of such an invalid alienation before being ousted from tarwad properties has to be given back his property. 1961 K L T 1022, Rel. on. (1963) 1 Ker L R 480 : 1963 Ker L J 395.

——Ss. 25, 26, 27 — Marumakkathayam Law — Tarwad—Alienation — Legal necessity—Sale of tarwad property for acquiring mortgage rights in another immovable property not one for legal necessity — Manifest advantage, what is — Evidence Act (1872), Ss. 101 to 104 — Alienation of Tarwad property—Burden of proof of legal necessity.

An alienation of immovable properties of a tarwad by competent persons for the purpose of acquiring other properties can be upheld only if such acquisition is to the manifest advantage of the tarwad. The acquisition contemplated by the rule, however, is the acquisition of immovable properties and not of some rights only in such properties. Acquisition of mortgage rights in immovable property by sale of tarwad property, therefore, does not constitute legal necessity binding on the tarwad. Tarwad necessity has to be established by the alienee of the impugned sale. AIR 1953 Trav-Co 642; 1959 K L T 897; 1961 K L T 1018, Foll. 1962 K L T 540; 1954 K L T 912 : 1957 K L T 577 and A S No. 575 of 1953 (T C H C), Disting. (1962) 2 Ker L R 375 : 1962 Ker L T 804 : I L R (1962) 2 Ker 636.

——S. 25 — Acquisition of mortgage right — Equity of redemption not belonging to tarwad — Not a tarwad necessity.

Acquisition of a mortgage right in a property, the equity of redemption whereof does not belong to the

tarwad, cannot be a necessity of the tarwad to alienate any of its properties. 1961 Ker L J 1226 : 1961 Ker L T 1018.

——S. 25—Sale deed executed by two members of Sub-Tarwad—Not question for 18 years — Cannot be impeached by a stranger. (1961) 1 Ker L R 433.

——S. 25—Tarwad—Managing member — Alienation — Essential requirement — Alienation by sole major member—No presumption of necessity — Alienation for acquiring fresh acquisitions — When can be upheld.

Under S. 25 for an alienation by the karnavan or managing member of a tarward to be valid three requirements are essential (1) consideration, (2) tarward necessity and (3) the written consent of all the major members of the tarward. The lack of any one of these conditions will necessarily make the transaction void, ineffective and not binding on the tarwad. 1953 K L T 452, Foll. 1961 Ker L T 626.

——S. 25—Tarwad — Decree against Karnavan in his individual capacity—Execution against tarwad or its properties. It cannot be stated that any decree obtained against the sub-tarwad karnavan in his individual capacity was as karnavan. A decree obtained in contravention of the provisions of S. 31 of the Act is null and void, so far as that tarwad and its properties are concerned. See Travancore Nayar Act (2 of 1100), S. 31. AIR 1958 Ker 98 (DB).

——S. 25—Sale of tarwad property — Consideration and necessity—Burden of proof—Duty of vendee.

In the case of sales of tarwad property, when consideration for the sale transaction was found, tarwad necessity for the same cannot be presumed. Vendees are bound to prove consideration as well as necessity. 1957 Ker L J 617 : 1957 Ker L T 577.

——Ss. 25, 26, 28 and 44 (c) — Karnavan, alienation by, for consideration — Necessity is not presumed, in case of alienation after the Act — It is a matter of proof. 1954 Ker L T 171 : AIR 1954 Trav-Co 401 (402) (Pt B) (Pr 5).

——S. 25—Alienation of tarwad property—Presumption of necessity. When the alienation is for consideration and with the written consent of all the adult members of the tarwad a presumption of necessity will arise. See Malabar Law—Marumakkathayam—Tarwad—Alienation of Tarwad property—Presumption of Necessity. AIR 1953 Trav-Co 542 (DB).

SECTION 26

——Ss. 26 and 25 — Exchange of tarwad immovable property for convenience of enjoyment is invalid—Word "sale" in S. 25 — Meaning—Right of alienee—Alienee before being ousted entitled to get back his property — See Travancore Nayar Act (1100 ME), S. 25. (1963) 1 Ker L R 480.

——Ss. 26, 25, 27 — Tarwad — Alienation — Legal necessity — Sale of tarwad property for acquiring mortgage rights in another immovable property is not one for legal necessity — Manifest advantage, what is — See Marumakkathayam Law — Tarwad. 1962 Ker L T 804.

——S. 26 — Karnavan, alienation by, for consideration — Necessity is not presumed, in case of alienation after the Act — It is a matter of proof. See Travancore Nair Act (2 of 1088), S. 25. AIR 1954 Trav-Co 401.

SECTION 27

——S. 27 — Tarwad — Alienation—Legal necessity—Sale of tarwad property for acquiring mortgage rights in another immovable property is not one for legal necessity—Manifest advantage, what is — See Marumakkathayam Law — Tarwad. 1962 Ker L T 804.

SECTION 28

——S. 28 — Karnavan, alienation by, for consideration—Necessity is not presumed in case of alienation after the Act — It is a matter of proof. See Travancore Nair Act (2 of 1088), S. 25. AIR 1954 Trav Co 401.

SECTION 31

——S. 31—C. P. Code (1908), S. 47, O. 34, R. 1—Hypothecation of tarwad properry — Subsequent partition—Property allotted to a sub-tarwad—Suit to enforce mortgage — Sub-tarwad not impleaded as party — Decree not binding on members of sub-tarwad—Karnavathi of sub-tarwad joined as subsequent encumbrancer and not in her representative capacity—Objection by her — S. 47, C. P. Code not applicable.

Held, that the karnavathi of the sub-tarwad was party to the suit only as a subsequent encumbrancer and not as representative of her sub-tarwad and the objections by her could not be regarded as objections on behalf of the sub-tarwad and as such; they were not within the purview of S. 47, C. P. Code. Krishna Pillai Balakrishna Pillai v. Lakshmi Amma Gourikutty Amma. 1965 Ker L T 835 : 1965 Ker L J 797 : I L R (1965) 2 Ker 292 : (1965) 2 Ker L R 97 : AIR 1966 Ker 18 (19) (Prs 6, 9, 10) (FB).

——S. 31 — Decree in contravention of it binds tarwad—Attachment in execution of such decree void—Claim petition filed by member rejected — Failure to bring suit under O. 21, R. 63 within time—No bar to fresh suit later on. See C. P. Code (1908), O. 21 R. 63. AIR 1960 Ker 332.

——S. 31—Suit against tarwad — Karnavan need not be impleaded as such.

It was not necessary under S. 31 that in the party array the Karnavan must be described as such. It is enough if the decree discloses that it is against the tarwad with necessary parties on record. There must be sufficient indication to show that the decree claimed is against the tarwad. AIR 1954 Trav-Co 487, Rel. on, 1959 Ker L T 984 : 1959 Ker L R 917 : 1959 Ker L J 1095.

——S. 31—Tarwad—Decree against Karnavan in his individual capacity — Execution against tarwad or its properties — (Travancore Nayar Act (I of 1088), S. 25.)

A decree obtained against a member or members of a Nayar Tarwad in contravention of the provisions of S. 31 of the Act (II of 1100) is null and void, so far as that Tarwad and its properties are concerned. If, in execution of such a void decree purported to have been obtained against the tarwad properties belonging to the same are sold, then the Court sale will also be null and void. AIR 1954 Trav-Co 60 (FB), Rel. on. 1957 Ker L J 1006 : AIR 1958 Ker 98 (102) (Pr 25) (DB).

——S. 31—Decree not obtained according to S. 31 — Validity — Stranger to tarwad accepting validity of decree and undertaking to pay decree debt cannot challenge validity of decree. A I R 1955 N U C (Trav-Co) 5995.

——S. 31 — Hypothecation bond executed by common Karnavan of undivided tarwad — Subsequent partition—Suit by creditor without impleading Karnavan and senior Anandaravan of divided branch of tarwad—Decree is binding on all other branches not represented by their Karnavans and senior Anandaravans. AIR 1955 N U C (Trav-Co) 3473 (DB).

[Overruled in AIR 1966 Ker 18 (FB)].

——S. 31 — Decree against members of tarwad — Anandaravan was not impleaded—Decree is not binding on tarwad — Sale of tarwad property — Right of

tarwad in property is not affected. **A I R 1955 N U C (Trav-Co) 1664 (DB).**

● **——S. 31—Applicability—Suit instituted by or on behalf of tarwad.**

The language of the section does not admit of a construction so as to extend its operation to proceedings started on behalf of the tarwad.

Starting proceedings in Courts for enforcing claims of the tarwad is a part of the management and no restraint has been placed upon the karnavan in the matter of initiating actions. This consideration also corroborates the conclusion that the scope of the operation of S. 31 is confined to the case where the tarwad is arrayed as a defendant or as a party proceeded against. 1951 Ker L T 144 : AIR 1951 Trav-Co 225, Overruled. Govinda v. Narayanan. **1954 Ker L T 620 : I L R (1954) Trav-Co 737 : AIR 1954 Trav-Co 487 (491) (Pt B) (Pr 12) (FB).**

● **——S. 31—Suit by Karnavan on behalf of tarwad—Decree in favour of tarwad—Appeal—Karnavan not described as such—Effect.**

To regard the decree of a lower Court in favour of the karnavan or other member on behalf of the tarwad otherwise than as a stage in the whole litigation and as creating a right in favour of the tarwad immediately, of which it could be deprived only in an appeal to which it is made a respondent in the manner provided by S. 31, would be fraught with very serious consequences which could not have been contemplated by the Legislature. The competency of the plaintiff to represent his cause continues and should continue in all the various stages of the litigation. Govinda v. Narayanan. **1954 Ker L T 620 : ILR (1954) Trav-Co 737 : A I R 1954 Trav-Co 487 (491, 492) (Pt C) (Prs 13, 14) (FB).**

● **——S. 31—Decree in contravention of S. 31—[Travancore Limitation Act (VI of 1100), Arts. 9 (a), 130] [Limitation Act (1908), Arts. 12, 142].**

A decree obtained against a member or members of a Nayar tarwad in contravention of the provisions in S. 31 of the Nayar Act (II of 1100) is null and void so far as that tarwad and its properties are concerned. 1949 Trav L R 14 (FB); 24 Trav L J 734, Overruled. Kamakshi Amma v. Gangadharan Pillai. **1953 Ker L T 706 : ILR (1953) Trav-Co 886 : AIR 1954 Trav-Co 60 (65, 66) (Pt A) (Prs 26 to 29) (FB).**

SECTION 34

——S. 34 (2)—Scope—Consent not obtained—Suit—If barred—Civil P. C. (1908), O. 33, R. 1.

It is enough if the consent prescribed in the section be made out in the course of the suit—Non-procurement of such consent before the institution of the suit cannot be taken to debar a suit for partition. A I R 1958 Ker 158 : 28 Trav L J 821, Foll. Application for leave to sue as a pauper by a person who is not possessed of means to pay the Court-fee on the plaint cannot be refused on the ground that consent as required by S. 34 (2) has not been obtained. **1960 Ker L J 1253 : (1960) 2 Ker L R 536 : 1960 Ker L T 1247.**

——Ss. 34 to 37—Scope—Jurisdiction of Civil Court to entertain partition suit—If affected.

It is clear from a reading of Ss. 34 to 37 that they do not deal with the jurisdiction of the Civil Court to entertain a suit for partition by one or more members of a Nayar tarwad. There is nothing in those sections to show that the Court's jurisdiction in that matter is either expressly or impliedly barred. If a decree for partition has been passed ignoring the restrictions and limitations imposed by Ss. 34 to 37 the utmost that could be said is that it is a wrong decree; but it cannot be said that it is a decree passed without any jurisdiction and that the decree and all other proceedings in the suit are void ab initio. **1957 Ker L J 1206 : 1958 Ker L T 211 : A I R 1958 Ker 158 (160) (Pt B) (Pr 5) (DB).**

——Ss. 34 and 36 — Partition of tarwad — Property allotted to Groups — Members of individual Groups do not take inter se as tenants-in-common.

Under Ss. 34 and 36 of the Nair Act a female descendant and her children can claim partition of their share of the tarwad properties with the consent of the female ascendant. **A I R 1953 Trav-Co 436 (436) (Pr 2) (DB).**

SECTION 35

——Ss. 35, 36 and 37, 34 — Sections whether deal with jurisdiction of Civil Court to entertain partition suit — (Civil P. C. (1908), S. 9)—Sections. 34 to 37 do not deal with the jurisdiction of the Civil Courts to entertain a suit for partition. See Travancore Nayar Act (2 of 1100 M E) S. 34. A I R 1958 Ker 158 (DB).

——S. 35—Applicability.

Section 35 has no application to a case in which there are more than one adult member in the tarwad at the time of the partition. The section applies only to a tarwad consisting of one adult member and minors. **1957 Ker L T 176 : I L R (1957) Ker 298 : 1957 Ker L J 177 : A I R 1957 Ker 69 (73) (Pt B) (Pr 7) (DB).**

SECTION 36

——S. 36—Applicability to voluntary partition.

Section 36 applies only to compulsory partitions and not to voluntary partition. **1957 Ker L T 176 : I L R (1957) Ker 298 : 1957 Ker L J 177 : A I R 1957 Ker 69 (73) (Pt C) (Pr 8) (DB).**

——S. 36—Partition of tarwad — Property allotted to Groups — Members of Individual Groups do not take inter se as tenants in common. See Travancore Nair Act (2 of 1100), S. 34. **A I R 1953 Trav-Co 436 (DB).**

SECTION 37

——S. 37 — Right of senior anandiravan of collateral thavazhi to demand outright partition of tarwad—Right ceases on his death and goes to next senior anandiravan — His widow and children do not succeed to the right — Suit for partition by senior anandiravan — Death of plaintiff — His wife and children cannot continue suit — (Civil P. C. (1908), O. 22, R. 3).

The right conferred by S. 37 on the senior anandiravan of a collateral thavazhi to claim an outright partition of property over which the tarwad has power of disposal on behalf of that thavazhi is a right conferred on him by virtue of his status as the senior anandiravan of that thavazhi. That right ceases with his death and is not one which will devolve on his wife and children. **A I R 1952 Trav-Co 402 (403) (Prs 2, 3) (DB).**

SECTION 39

● **——S. 39—Tarwad — Partition — Share taken by female member — Nature of property — Does not retain character of tarwad property — Remains her absolute property even on birth of daughter to her (Majority view).**

(Majority view, M. S. Menon, C. J. dissenting) :— In effect, S. 39 of the Travancore Nayar Act has declared that the share of a member, whether male or female allotted on tarwad partition, is alienable and heritable, and this is without any reservation, condition or limitation. In other words, such share constitutes his or her separate property descendible to the heirs on intestacy.

The property obtained by a Nair female towards her share under an outright partition in her tarwad, therefore does not any longer retain the character of tarwad property, and even on the birth of a daughter to her, it does not cease to be her separate property or become the property of her tavazhi so as to destroy her absolute powers of disposal in respect of that property. 1954 Ker L T 862 : A I R 1955 Trav-Co 55 (FB), Dissented from.

M. S. Menon, C. J. (Contra) : — Property has often been the vehicle of dormant rights and liabilities, apart from consent or contract ; and there is nothing incongruous in saying that the property that a female member obtains in tarwad partition becomes her tavazhi property on her becoming a mother. Two things coalesce to produce the result ; the antecedents of the property and the arrival of the child. Kalliyani Amma Bhavani Amma v. Narayani Amma Madhavi Amma, 1963 Ker L J 755 : 1963 Ker L T 859 : I L R (1963) 2 Ker 377 : (1963) 2 Ker L R 181 : A I R 1963 Ker 358 (360 to 365) (Prs 3, 6, 11, 13, 15, 17, 19, 24) (FB).

[Overruled in A I R 1968 Ker 82 (FB).]

● —S. 39—Suit for partition of tarwad — Written statement by member claiming share — Severance of status, if effected—(Malabar Law—Partition—Severance of status).

A claim in a written statement by a member of a Marumakkathayam community to whom the right to compulsory partition of his share in the family property has been extended by legislation, would effect a severance of status for him from the rest of the family. Lekshmikutty Amma v. Madhavan Pillai, 1957 Ker L J 1119 : 1957 Ker L T 1196 : I L R (1958) Ker 1 : A I R 1958 Ker 111 (118) (Pt B) (Pr 16) (FB).

—S. 39—Disruption of joint status.

Disruption of the joint status tantamounts to partition within the meaning of S. 39. 1954 Ker L T 934: I L R (1954) Trav-Co 233 : A I R 1954 Trav-Co 433 (435) (Pt B) (Pr 7) (DB).

SECTION 40

—S. 40—Acquisition or accretions to joint property by manager — Nucleus — Sufficiency of — Nature of property acquired—Burden of proof — Allowance of compensation to Manager. See Marumakkathayam Law—Joint family. 1962 Ker L T 99.

[Overruled in A I R 1963 Ker 354.]

—S. 40—Marumakkathayam Law—Joint family—Acquisition or accretions to joint property by manager —Nucleus — Sufficiency of — Nature of property acquired—Burden of proof — Allowance of compensation to manager — Travancore Ezhava Act (3 of 1100), S. 19, Expl. 1.

Presumption in regard to acquisitions of a managing member of a tarwad is that they enure to the tarwad ; but under the Marumakkathayam Law reasonable compensation has to be allowed to the manager for his diligence, skill and labour in making such acquisition. A I R 1947 P C 189 : (1954) 1 Mad L J 630 : 1954 S C J 408 : A I R 1954 S C 379 ; A I R 1961 S C 1268, Applied. 1962 Ker L T 99 : 1962 Ker L J 943 : I L R (1962) 2 Ker 149.

[Overruled in A I R 1963 Ker 354.]

—S. 40 — Manager's right to additional one-fourth share—Condition for accrual of right.

Section 40 confers on the person in management of the tarwad the right to get one-fourth of properties acquired during his management only if the acquisition was made by him with the help or aid of the income from the tarwad property and not when the properties were acquired by him with the help of the sale proceeds or of the funds raised by hypothecating or mortgaging tarwad property itself. If acquisition is of the second type it would not be a case of acquisition with the help or aid of income of tarwad property which is the condition prescribed by the section for entitling him to get one-fourth of the acquired property. ILR (1958) Ker 889 : 1958 Ker L T 782 : 1958 Ker L J 530 : AIR 1959 Ker 116 (117) (Pt A) (Pr 2) (DB).

—S. 40 — Civil P. C. (1908), S. 97 and O. 6, R. 2 — Suit for partition of tarwad properties — Manager claiming acquired properties as self-acquisitions—No claim made for higher share under S. 40, Travancore Nair Act even in second appeal against preliminary decree—Right of manager to claim such share at final partition—He will be precluded by S. 97 of the Civil P. C., from claiming the one-fourth share at the time of final partition. See Civil P. C. (1908), S. 97. A I R 1959 Ker 116 (DB).

—S. 40—Partition, suit to set aside—Non inclusion of properties acquired by karnavan — Effect. It is no ground for setting aside the partition if no prejudice is caused by the non-inclusion of the items of properties in the partition deed. See Malabar Law—Tarwad. AIR 1955 N U C (Trav-Co) 5070 (DB).

● —S. 40 — Trees planted by a Karnavan in the ordinary course of husbandry cannot be treated as acquisitions falling under S. 40. A I R 1951 Trav-Co 98 (100) (Pt B) (Pr 8) (FB).

SECTION 41

—S. 41 — Gift by father and his brother — Recital that property owned by them are given out of love and affection — There is no contrary intention contemplated by section — Presumption in section will apply even if it is gift by father along with his brother. 1959 Ker L T 1200 : 1959 Ker L J 1331.

—S. 41—Sale deed executed in favour of sister and brother — Sister minor and not mentioned as party to document — Recital to effect that properties have to be enjoyed in their right of management—Recitals do not amount to expression of contrary intention within section. 1959 Ker L T 1200 : 1959 Ker L J 1331.

—S. 41—Acquisitions made by Marumakkathayee woman — Character of—Presumption.

Formerly, it was held that under Marumakkathayam Law, the acquisitions of a woman, in the absence of the evidence to the contrary, were to be presumed to have been made out of funds supplied by her husband for the benefit of his wife and children. But it cannot be held that this presumption was intended to govern for all times acquisitions made by Marumakkathayam ladies. And this presumption cannot hold good in respect of acquisitions made after the customary law itself has been very much modified by statutes. In respect of such acquisitions the normal presumption under common law must prevail, ownership being determined in accordance with the apparent tenor of the title deed. Thus, the presumption recognised in the earlier decisions no longer holds good and cases of this nature have to be decided on the evidence adduced, without the aid of this presumption. ILR (1956) T C 1195, Foll, 1957 Ker L J 708 : 1957 Ker L T 765 : ILR (1957) Kerala 678.

● —S. 41—Presumption (Govinda Pillai and Joseph Vithayathil, JJ., in the order of reference). Under S. 41 the descendants in the female line of the donees or devisees start with a presumption that the properties are tarwad properties unless there is evidence to the contrary. Kamakshi Amma v. Gangapahran Pillai. 1953 Ker L T 706 : ILR (1953) Trav-Co 886 : A I R 1954 Trav-Co 60 (62) (Pt B) (Prs 9, 10) (FB).

——S. 41 — Acquisitions to made by female during coverture—Presumption.

The presumption, in the case of Marumakathayees, was that acquisitions made by a female during coverture were with funds advanced by the husband for the benefit of herself and her children. A I R 1952 Trav. Co 141 (142) (Pt A) (Pr 5) (DB).

——S. 41 — Property gifted by father before Regulation (1 of 1088)—Nature of property.

In the absence of evidence to the contrary property acquired by gift from the father before Regulation I (1) of 1088 came into force has to be treated by Courts as the tarwad property of the donee and of their thavazhy. The properties gifted were sub-tarwad properties liable for division. A I R 1951 Trav-Co 83 (86) (Prs 14, 16) (DB).

SECTION 44

——Ss. 44 and 10 — Saving of customary usages in—Pertain to matters not specifically dealt with in Act—Mother incompetent to deal with properties of minor sons. (1964) 2 Ker L R 162 : 1965 Ker L J 265 : 1964 Ker L T 952.

——S. 44 (a) — Act applicable to Thala Nairs — Custom in derogation of provisions of Act—S. 44 (a) precluded from setting it up. 16 T L J 583 and A I R 1953 T C 125, Foll. (1960) 1 Ker L R 123 : 1960 Ker L T 579.

——S. 44 (c) — Karnavan, alienation by, for consideration — Necessity is not presumed, in case of alienationtion after the Act — It is a matter of proof. See Travancore Nair Act (2 of 1088), S. 25. A I R 1954 Trav. Co 401.

——S. 44—Evidence Act (1872), S. 112—During continuance of valid marriage.

The children born during the period would be the children of the husband only and not of his younger brother also even though they may have conducted themselves as husband and wife. See Evidence Act (1872), S. 112. A I R 1953 Trav-Co 470 (DB).

SECTION 44A

● ——S. 44-A — Gift by paternal uncle — Benefit to tarwad of donee—Presumption of Marumakkathayam law if custom or usage in community saved by section — The principle of the common law as extended to gifts by near relation was not in the nature of a custom or usage in the community saved by the operation of S. 44 (a). See Nair Act (1 of 1088-M.E.), S. 17. A I R 1957 Trav-Co 77 (FB).

TRAVANCORE NEGOTIABLE INSTRUMENTS ACT (2 of 1075 M.E.)

SECTION 18

——S. 18 — Absence of words "on demand" does not affect the application of Art. 105 of the Travancore Limitation Act, as a promissory note in which no time for payment is specified is one payable on demand under S. 18. See Limitation Act (1908), Art. 73. A I R 1955 Trav-Co 141 (DB).

TRAVANCORE NEWSPAPERS ACT (5 of 1101 M. E.)

SECTION 5

● ——S. 5 (i)—The requirements of S. 5 of the Act would be satisfied by indicating or describing such words which in the opinion of government contravene one or all the several provisions of this section. See Press (Emergency Powers) Act (1931), S. 4 (1). AIR 1950 Trav-Co 83 (FB).

● ——S. 5 (i)—Distinction between this section and S. 124A, Penal Code —Penal Code (1860), S. 124A — Travancore Penal Code, S. 117.

The Newspaper Act is wider in scope as it hits not only cases contemplated by the Penal Code but also other cases which are "likely" or may have a "tendency" directly or indirectly to excite disaffection. See Press (Emergency Powers) Act (1931), S. 4 (1). 51 Cri L J 1536 : AIR 1950 Trav-Co 83 (FB).

● ——S. 5 (i)—Press (Emergency Powers) Act (1931), S. 4 (1) (d) — Incitement to people to rebellion, if necessary to bring publication within section—Penal Code (1860), S. 124-A—Travancore Penal Code S. 117. It would come within the mischief of the section if it is proved that the publication tends to or is likely to create feelings of disaffection, hatred, or contempt towards Government and not necessarily to incite people to rebellion. See Press (Emergency Powers) Act (1931), S. 4 (1) (d). 51 Cri L J 1536 : AIR 1950 Trav-Co 83 (FB).

● ——S. 5 (i) (a) — Press (Emergency Powers) Act (1931), S. 4 (1) (d)—Article attempting to lower Minister in public estimation—Penal Code (1860), S. 124 A — Travancore Penal Code S. 117. An article which attempts to lower a Minister in the estimation of the public is libellous of the Minister but not seditious of Government, See Press (Emergency Powers) Act (1931). S. 4 (1) (d). 51 Cri L Jour 1536: AIR 1950 Trav-Co 83 (FB).

● ——S. 5 (i) (a) — Attack on Ministry, if attack on Government—An attack on the Ministry is an attack on Government for purposes of sedition under the Act. See Press (Emergency Powers) Act (1931), S. 4 (1) (d). 51 Cri L J 1536 : AIR 1950 Trav-Co 83 (FB).

● ——S. 5 (1)—Right to criticise Government—Limits —The liberty to criticise Government is not unlimited. See Press (Emergency Powers) Act (1931), S. 4 (1). Expls. II and III. 51 Cri L J 1536 : AIR 1950 Trav-Co 83 (FB).

● ——S. 5 (i) (e)—Press (Emergency Powers) Act (1931), S. 4 (1) (h) — Newspaper articles—Statement therein that one section of community is in greater power than another — Statement cannot be said to create hatred against former. 51 Cri L J 1536 : AIR 1950 Trav-Co 83 (95, 98) (Pt H) (Pr 35) (FB).

● ——S. 5 (ii)—Applicability—Conditions necessary.

In order that a newspaper could be held guilty of habitual publication of defamatory matter, it must be established that the instances are so many that they can be said to be a habit with the newspaper and secondly that it is punishable under S. 503, Travancore Penal Code which is possible only if it is shown to be not covered by one or other of the eight exceptions enumerated in the section. 1949 Ker L T 27 : 1949 TCLR 190 : 51 Cri L J 1536: AIR 1950 Trav-Co 83 (98) (Pt I) (Pr 37) (FB).

TRAVANCORE PARTNERSHIP ACT (12 of 1115 M. E.)

SECTION 57

——Ss. 57, 59—Registration of firm when complete. The registration of the firm is effected only when the entry of the statement is recorded in the Register of Firms and the statement is filed by the Registrar as provided in S. 59. See Partnership Act (1932), S. 58. AIR 1955 Trav-Co 155 (DB).

SECTION 58

——S. 58 — Registration of firm when complete. See Partnership Act (1932), S. 58. AIR 1955 Trav-Co 155 (DB).

SECTION 68

——S. 68 (2)—Person suing must be shown as partner of firm. See Partnership Act (1932), S. 69 (2). AIR 1955 Trav-Co 155 (DB).

——S. 68 (2)—Registration pending suit — Maintainability of suit. The registration of the firm is a condition precedent to its right to institute a suit of the nature mentioned in S. 69 (2) of the Act. See Partnership Act (1932), S. 69 (2). AIR 1955 Trav.Co 155 (DB).

TRAVANCORE PAYMENT OF WAGES ACT (20 of 1116 M. E.)

SECTION 2

——Ss. 2 (7), 15 and 23—Wages—Unascertined bonus—Jurisdiction of Courts—Not barred by S. 22. See Payment of Wages Act (1936), S. 2 (vi). AIR 1957 Ker 16.

——S. 2—"Wages" — Definition of — Applicability to Companies Act.

The word "bonus" does not come under the category of "wages". To recognise the employees of a company in respect of bonus as preferential creditors within the meaning of S. 230, Companies Act (1913), is not warranted. See Travancore Companies Act, S. 285. AIR 1952 Trav-Co 99 (DB).

SECTION 15

——Ss. 15, 22, 2 (7)— Wages — Do not include unascertained bonus—Jurisdiction of Courts—Not barred by S. 22 — (Civil P. C. (1908), S. 9). See Payment of Wages Act (1936), S. 2 (vi). AIR 1957 Ker 16.

SECTION 22

——Ss. 22, 15, 2 (7) — Wages — Do not include unascertained bonus — Jurisdiction of Courts — Not barred by S. 22—(Civil P. C. (1908), S. 9). See Payment of Wages Act (1936), S. 2 (vi). AIR 1957 Ker 16.

TRAVANCORE PENAL CODE (1 of 1074 ME).

See also under Penal Code (1860).

SECTION 117

● —S. 117— Press (Emergency Powers) Act (1931), S. 4 (1)—Distinction between this section and S. 124A Penal Code—Penal Code (1860), S. 124-A—Travancore Newspaper Act (5 of 1101), S. 5 (i). See Press (Emergency Powers) Act (1931), S. 4 (1). 51 Cri L J 1536 : AIR 1950 Trav-Co 83 (FB).

● — S. 117—Press (Emergency Powers) Act (1931), S. 4 (1) (d)—Incitement to people to rebellion, if necessary to bring publication within section—Penal Code (1860), S. 124-A—Travancore Newspapers Act (5 of 1101), S. 5 (i), See Press (Emergency Powers) Act (1931), S. 4 (1) (d). 51 Cri L J 1536 : AIR 1950 Trav-Co 83 (FB).

● —S. 117, Expls. II and III—Right to criticise Government — Limits—Penal Code (1860), S. 124-A Expls. II and III—Travancore Newspapers Act (5 of 1101), S. 5 (i). See Press (Emergency Powers) Act (1931), S. 4 (1), Expls. II and III. :51 Cri L J 1536 : AIR 1950 Trav Co 83 (FB).

●—S. 117 — Article to lower Minister in public estimation — It is libellous of the Minister but not seditious of Government. See Press (Emergency Powers) Act (1931), S, 4 (1) (d). 51 Cri L J 1536 : AIR 1950 Trav. Co 83 (FB).

● — S. 117—Attack on Ministry — Is an attack on Government for purpose of sedition. See Press (Emergency Powers) Act (1931), S. 4 (1) (d). 51 Cri L J 1536 : AIR 1950 Trav-Co 83 (FB).

SECTION 182

——S. 182—Unauthorised creation of place of public worship — Conviction under S. 82 held proper. AIR 1955 N U C (Trav-Co) 1067.

SECTION 207

——S. 207—Stay of trial—"Offender" harboured not tried or convicted—Stay of trial of person accused of harbouring, offender.

The trial of a person accused of an offence under S. 207, Travancore Penal Code, of harbouring "an offender", must be stayed and should not be proceeded with until after the disposal of the concerned offender whom the accused is alleged to have harboured. 1950 Ker L T 628 : 52 Cri L J 470 : 5 A I Cr D 72 : I L R (1951) Trav-Co 61 : AIR 1951 Trav-Co 90 (91) (Pr 3).

SECTION 410

——S. 410 — Charge-sheet disclosing no offence — Power of High Court.

The High Court has power to quash a case where the complaint or the police charge-sheet, discloses no offence at-all against the accused. See Penal Code (1860), S. 405. 1951 Ker L T 344 (DB).

TRAVANCORE POLICE ACT (4 of 1095 M. E.)

SECTION 23

——Ss. 23 and 24 (e)—Scope of—Notification prohibiting use of megaphones, loudspeakers, etc., while using public streets without permit or licence — If ultra vires and invalid.

It cannot be said that the notification is ultra vires as beyond the terms of S. 24(e) in that it prohibits all traffic. There is no total prohibition of traffic but only a regulation of traffic as contemplated by S. 23. 1951 Ker L T 587.

TRAVANCORE PREVENTION OF EVICTION ACT (22 of 1124 M. E)

See under Tenancy Laws.

TRAVANCORE PRIMARY EDUCATION ACT (8 of 1121 M. E.)

PREAMBLE

——Preamble—Travancore Primary Education Rules, R. 18—Education Code, if part of rules.

Rule 18 of the Travancore Primary Education Rules says that as a condition of recognition private school shall conform to the provisions of the Education Code as amended from time to time. It is difficult to understand how, by reason of this, the rules in the Education Code can be deemed to be rules made under S. 15 of the Act. The effect of the rule is not to incorporate the Education Code as part of the rules but to require conformance with it as a condition of recognition, and the rule itself contemplates the amendment of the Code from time to time by some outside agency. 1958 Ker L T 233 : 1958 Ker L J 357 : I L R (1958) Ker 558 : A I R 1958 Ker 290 (295) (Pt A) (Pr 14) (DB).

TRAVANCORE PRIMARY EDUCATION RULES

RULE 18

——R. 18—Education Code, if part of rules — Effect of the rule is not to incorporate the Education Code as part of the Rules. See Travancore Primary Education Act (8 of 1121), Preamble. AIR 1958 Ker 290 (DB).

TRAVANCORE PROBATE AND ADMINISTRATION ACT (2 of 1105 M. E.)

SECTION 16

——S. 16—Word "may" if to be interpreted as "shall" —Discretion of Court. See Succession Act (1925), S. 228. AIR 1951 Trav.Co 229 (DB).

——S. 16—Construction and scope—If mandatory—Discretion of Court to try question of genuineness or validity of will or to refuse grant, 'May' it means 'Shall'.

Section 16 of the Travancore Probate and Administration Act is an enabling section and is not mandatory. The word 'may' cannot be interpreted as "shall" so as to make it the duty of the Court in Travancore to make the grant mentioned in the section automatically on the production of a properly authenticated copy of a will with respect to which an application is made under the will merely on the ground that that will had been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State of Travancore. No doubt the word 'may' sometimes is used as meaning 'shall' but in the context in which it occurs in S. 16, it cannot be held that it has a compulsory meaning. The Court has a discretion to try or not to try the question of the genuineness or validity of the will, but the discretion is of the Court and a caveator cannot as of right claim to have such a question tried over again. Nor can it be said that S. 16 leave no discretion to the Court to refuse the grant asked for when the requirements of the section have been satisfied. I L R (1951) Trav-Co 126 : 1951 Ker L T 53 : AIR 1951 Trav-Co 229 (230) (Pt B) (Pr 8) (DB).

——S. 16—Scope—Application for and grant of probate — Legality — Power of Court—(Succession Act (1925), S. 228).

Section 16 of the Travancore Probate and Administration Act authorizes a Court to grant letters of administration with a copy of the will annexed and not to grant probate of the will. Probate can neither be applied for by the party nor granted by the Court under S. 16. I L R (1951) Trav-Co 126: 1951 Ker L T 53: AIR 1951 Trav-Co 229 (232) (Pt D) (Pr 15) (DB).

SECTION 52

——S. 52—Application for revocation of probate — Forum — Order refusing probate vacated by High Court—District Judge issuing probate—Proper forum for revocation is the District Judge and not the High Court. See Succession Act (1925), S. 264 (1). A I R 1953 Trav-Co 122 (DB).

TRAVANCORE PROCLAMATION (6 of 1124 M. E.)

SECTION 4

——S. 4—Mesne profits—Decree for redemption giving right to recover mesne profits—Redemption stayed—No right to recover mesne profits can arise because the possession can be considered as that of the mortgagees. See Civil P. C. (1908), O. 20, R. 12. AIR 1952 Trav-Co 517 (DB).

TRAVANCORE PROHIBITION ACT (7 of 1123 M. E.)

See under Prohibition.

TRAVANCORE PUBLIC CANALS AND PUBLIC FERRIES RULES (1096 M. E.)

RULE 41

——R. 41—Rules 41 and 73 — Collisions in canals — Non-compliance by persons in charge of boat—Non-observance is prima facie negligence unless, it can be shown that the departure from the regulations, neither wholly nor partly, caused the collision—Evidence of negligence. See Tort—Negligence. AIR 1952 Trav-Co 143 (DB).

RULE 74

——Rr. 74 and 113 (1) (a)—Rules under—Fixation of timing in the abstract, i. e., unconnected with a vessel or an owner or agent of a vessel is not contemplated—Original jurisdiction in the matter vests in Executive Engineer—Government is not competent to fix a timing for the first time. AIR 1955 N U C (Trav-Co) 6004 (DB).

——R. 74—Rules under — Any person prepared to comply with the conditions under the Act and rules can be granted timing—A person to whom an opportunity to become an applicant is not afforded is aggrieved—Order passed without jurisdiction — Person entitled to be a grantee by appropriate authority is person aggrieved and can apply under Art. 226 in respect of that order. A I R 1955 N U C (Trav-Co) 6004 (DB).

RULE 113

——R. 113 (1) (a) — Fixing of timing — Nature of — Authority to fix timing—Timing fixed by Government—Validity — It is beyond Government's competence for the first time to fix a timing — Timing should be in respect of a vessel either denoting it by name or as belonging to the owner or agent—Fixing timing in the abstract is not contemplated by the rule. See Travancore Public Canals and Public Ferries Rules R. 74. AIR 1955 N U C (Trav-Co) 6004 (DB).

TRAVANCORE PUBLIC HEALTH ACT (3 of 1121 ME)

(See also Travancore-Cochin Public Health Act (16 of 1955))

PREAMBLE

——Preamble—Jurisdiction—Notice issued under repealed Travancore Public Health Act (3 of 1121), instead of under Travancore-Cochin Public Health Act, 1955—Notice not invalid. 1963 Ker L J 976 : (1964) 1 Cri L J 190 : AIR 1964 Ker 29 (31) (Pt A) (Pr 17).

SECTION 42

——S. 42 — Satisfaction of existence of nuisance is condition precedent—Notice issued by Health Officer pursuant to Government order is void for want of legal foundation. AIR 1955 N U C (Trav-Co) 2201 (DB).

SECTION 47

——S. 47 — Action under, in absence of default on part of Health Officer, cannot be taken. AIR 1955 N U C (Trav-Co) 2201 (DB).

SECTION 152

——S. 152 — Camplaint — Express authorisation—Necessity.

An express authorisation to the complainant to prefer a complaint is an essential requirement under S. 152.

A notice was issued to the accused under S. 42 by a Sanitary Inspector, but the accused failed to comply with it. The Inspector reported non-compliance to the Health Officer. As directed by the latter a notice to show cause why the accused should not be prosecuted was issued to him and was duly served. The Health Officer then passed an order to prosecute and the complaint was preferred pursuant to this order.

Held, that there was a valid authorisation to the complainant to lodge the complaint. AIR 1942 Mad 347 (2), Rel. on. 1959 Ker L T 559 : 1959 Ker L R 353 : I L R (1959) Ker 623 : 1959 Ker L J 723 : 1959 Mad L J (Cri) 874 : 1960 Cri L J 348 : AIR 1960 Ker 81 (82) (Pr 3) (DB).

TRAVANCORE PUBLIC SERVANTS (INQUIRIES) ACT (11 of 1122 ME)

SECTION 1

——S. 1 — 'Our Government' — Means 'Council of Ministers' — (Words and Phrases)—(Constitution of India, Art. 166).

The expression "Our Government" in the Travancore Act means the Maharaja's Government, in other words, the Government of the State of Travancore. After the integration of the two States of Travancore and Cochin and the formation of the United State of Travancore-Cochin the expression "Our Government" has to be construed according to the new set-up of Government and when the Council of Ministers had come into being, it is obvious that the expression "Our Government" as adapted to fit in with the new Constitution means "The Council of Ministers." Under the Constitution, the Rajpramukh or the Governor as head of the State is in such matters merely a constitutional head and he is bound to accept the advice of his Ministers.

Where therefore, the order of the Government appointing the Enquiry Commissioner was issued after the council of ministers had passed a resolution to that effect, which must be presumed to have been communicated to the Rajpramukh in the normal course of business, it cannot be held to be ultra vires and without jurisdiction. P. Joseph John v. State of Trav-Co., **(1955) S C J 221 : (1956) 1 Lab L J 235 : (1955) 1 M L J (S C) 134 : 1955 An W R (SC) 134 : 1955 S C A 85 : (1955) 1 S C R 1011 : 1955 Ker L T 351 : AIR 1955 S C 160 (165) (Pt C) (Pr 9).**

SECTION 2

——Ss. 2 and 22 — Government servant — Misbehaviour by — Enquiry into — Manner of enquiry — No right in servant to dictate. See Constitution of India, Art. 311 (2). **AIR 1962 Ker 43 (DB).**

——S. 2 — Suspension during pendency of enquiry into conduct — Permissibility—R. 12 (1) (a) of Kerala Civil Services Rules 1957 applies to enquiries under S. 2. See Kerala Civil Services (Classificaiion, Control and Appeal) Rules (1957), R. 12 (1) (a). **AIR 1958 Ker 374 (DB).**

——S. 2 — Satisfaction of Government — Enquiry— **(Public Servants (Inquiries) Act (1850), S. 2).**

The foundation for ordering a formal and public inquiry is the Government's satisfaction that there are sufficient grounds for making such an inquiry into the truth of any imputation of misconduct by a person in the service of the Government and not removable from office without their sanction. **1958 Ker L T 320 : 1958 Ker L J 752 : (1958) 2 Lab L J 724 : AIR 1958 Ker 374 (375) (Pt A) (Pr 1) (DB).**

——S. 2—Enquiry cannot be ordered in case of 'irregularities'.

'Misconduct' of a servant comprises positive acts and not mere neglects or failures. It is a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand; it is a violation of definite law; a forbidden act. It differs from carelessness. 'Irregularity' is not misconduct. Where the notification under the Act, speaks of imputations not of 'misconduct' but 'Irregularity', the notification is defective. This is not cured by reading the notification along with the charges framed, since they do not form part of the notification and do not accompany it. **1958 Ker L T 320 : 1958 Ker L J 752 : (1958) 2 LabLJ 724 : AIR 1958 Ker 374 (375) (Pt B) (Prs 2, 3) (DB).**

SECTION 21

——S. 21 — Power of State Government to go behind findings of Enquiry Commissioner.

The contention that the State Government has no power to go behind the findings recorded by the Commissioner appointed to make enquiry under the Travancore Public Servants (Inquiries) Act, 1122, cannot be accepted, because under S. 21 of the Act power is given to the Government to finally pass such orders as it considers just and proper. There is no provision in the Act which debars the State Government when the report is received by them and acting under S. 21, from interfering with the findings of the Enquiry Commissioner. **AIR 1963 Ker 92 (99, 100) (Pt C) (Prs 45, 46).**

SECTION 22

——S. 22—Government servant—Misbehaviour by—Enquiry into — Manner of enquiry — No right in servant to insist on a public inquiry in his case. See Constitution of India, Art. 311 (2). **AIR 1962 Ker 43 (DB).**

TRAVANCORE REGISTRATION ACT (2 of 1087 ME)

PREAMBLE

——Preamble — Sale-deed — Registration in wrong office by inclusion of imaginary property—Sale deed was not invalidated thereby. **AIR 1951 Trav-Co 42 (DB).**

SECTION 10

——S. 10 (a) — Letter evidencing agreement to remit portion of debt created under hypothecation and debt bonds — Registration of, not compulsory. See Registration Act (1908), S. 17 (b). **AIR 1956 Trav-Co 257 (SB).**

——S. 10 (2) (v) — Security bond in favour of Court and incorporated in the order accepting the same is exempted from registration. See Registration Act (1908), S. 17 (2) (vi). **AIR 1953 T C 364 (DB).**

——Ss 10, 15, 42 — Non-compliance with S. 15 — **(Registration Act (1908), Ss. 17, 49).**

Decrees and orders of civil Courts will be valid and effective as against the immovable property comprised therein even if no memorandum as required by S. 15 in respect of such decrees and orders has been forwarded to the Sub-Registrar's Office. **1953 Ker L T 387 : AIR 1953 T C 364 (366) (Pt B) (Pr 5) (DB).**

SECTION 15

——S. 15 — Scope — Decree passed after Indian Limitation Act made applicable — Non-registration — Effect on limitation for execution — Decree was governed by Art. 182 of the Indian Limitation Act and not by Art. 166 of Travancore Cochin Limitation Act. See Limitation Act (1908), Art. 182. **AIR 1958 Ker 270 (DB).**

——S. 15 — Non-compliance with S. 15 — Will not invalidate decrees and orders of civil Courts. See Travancore Registration Act (2 of 1087), S. 10. **AIR 1953 T C 364 (DB).**

——S. 15 — Claim to have charge created over property by decree — Extinguishment of right over immovable property.

It is only a thing that exists that can be extinguished. When the plaintiff claims to have a charge created over a property by the decree or where the suit is one to enforce an alleged charge, but the Court decides that no charge existed, in either case it can hardly be said there is extinguishment of any right over immovable property. **1952 Ker L T 542 : AIR 1952 Trav-Co 454 (455) (Pr 5) (DB).**

SECTION 23

——S 23 — Sale-deed registered by Sub-Registrar at Headquartess of District — Substantial portion of property not within District — Validity of registration not affected thereby. See Registration Act (1908), S. 30 (2). **AIR 1952 Trav-Co 105 (DB).**

——S. 23 — Scope — Sub-Registrar at Headquarters of District — Powers of — Sale-deed comprising six items of property — Registration by Sub-Registrar in

whose sub-district only one item (tree) alleged to exist — Validity of registration.

A sale-deed was registered in the office of the Sub-Registrar of Trivandrum; the deed was in respect of five items of immovable property which were not within that sub district but outside; the sixth item was a mango tree standing on a Trivandrum property alleged to belong to the vendor. It was contended that the sixth item was fraudulently inserted and the registration was thus a fraud on the registration law as the registration in Trivandrum was in contravention of the provisions of S. 20 of the Travancore Registration Act. It was also contended that a tree was not immovable property, that it was non-existent and that the property on which it was alleged to be standing did not belong to the vendor, and that the deed was therefore void and inoperative.

Held, that in view of the fact that the Sub-Registrar who registered the rale-deed was the Sub-Registrar at the headquarters of a District who could validly register without regard to the situation of the property under S. 23 of the Travancore Registration Act, it could not be held that the registration was invalid, irrespective of whether the mango tree was immovable property or not and whether its inclusion in the deed was fraudulent ane to evade the law of registration. **1952 Ker L T 436 : AIR 1952 Trav-Co 105 (108) (Pt A) (Pr 10) (DB).**

SECTION 42

——S. 42 — Non-compliance with S. 15 — Will not affect validity of decrees and orders of civil Courts. See Travancore Registration Act (2 of 1087), S. 10. **AIR 1953 T C 364 (DB).**

TRAVANCORE REGISTRATION OF BIRTHS AND DEATHS ACT (7 of 1096 ME)

SECTION 17

——S. 17 — Entries in register of births and deaths — Evidentiary value—(Evidence Act (1872), S. 35).

An entry in the register of births and deaths cannot be acted upon without other evidence regarding the identity of the persons concerned when they were not sufficient indications in the entry regarding their identity. Section 17 of Travancore Act (7 of 1096) only obviates the necessity to produce the register itself to prove the entry, and it is only by invoking S. 35 of the Evidence Act that the entries in the register can be taken as furnishing proof of the truth of the facts stated in the entries. 22 Trav L J 28, Disting. Without some evidence or admission of the parties about the identity of the parents and the child mentioned in the Register of Births and Deaths, it is not safe to accept a mere entry in that register as proof of the age of the child concerned solely on the ground that there is a similarity in the mother's name and that the certified copy or the register itself has been produced as relating to the particular child by the party on whom rested the burden of proof regarding the child's age: AIR 1931 All 307 and AIR 1938 Cal 120; AIR 1949 Orissa 22, Rel. on. **1957 Ker L T 368 : 1957 Ker L J 358 : ILR (1957) Ker 408 : AIR 1957 Ker 106 (107) (Pr 4).**

TRAVANCORE REGULATION (4 of 1010ME)

SECTION 21

——S. 21 — Scope — Section should be regarded as appended to every decree passed whatever be its language — Interest in excess of 50 P. C. of principal amount cannot be awarded — This does not apply to interest on costs. **AIR 1955 N U C (Trav-Co) 5075 (DB).**

TRAVANCORE REGULATION (5 of 1067ME)

SECTION 12-B

——S. 12-B—Rules under — R. 10 as re-numbered in 1938 — Honorary Magistrates — Term of office — Judges of village Panchayat Court appointed for period of two years — These Judges invested with powers of Second Class Magistrates and directed to sit on Bench Court — Term of some of them expired — They continue in office until their successors have taken charge — Such members have jurisdiction to sit in trial and hear and decide cases — Criminal P. C. (1898), S. 16. **1962 Ker L J 1057 : ILR (1962) 2 Ker 531 : 1962 Ker L T 975 : 1963 (2) Cri L J 21 : 1963 Mad L J (Cri) 387 : AIR 1963 Ker 200 (202) (Pt B) (Pr 11) (DB).**

——S. 12-B—Rules under R. 7—Criminal P. C. (1898), Ss. 350A and 537—Non-compliance with S. 350A — Effect — This was not a mere irregularity but a vital illegality which cannot be cured by S. 537. See Criminal P. C. (1898), S. 350-A. **AIR 1952 Trav-Co 175 (DB).**

TRAVANCORE REVENUE RECOVERY ACT (1 of 1068 M E)

See also Travancore-Cochin Revenue Recovery Act (7 of 1951)

PREAMBLE

——Preamble—Sale under—Extinguishment of right of redemption by operation of law. See Transfer of Property Act (1882), S. 60. **AIR 1953 Trav-Co 563 (DB).**

——Preamble—Revenue sale—Demand notices issued to pattadars — One pattadar insolvent — Property vesting in Official Receiver—No notice to official Receiver is necessary. **AIR 1953 Trav Co 35 (36) (Pt A) (Pr 5) (DB).**

SECTION 1

——Ss. 1 (c) 2, 5, 39—Revenue sale — Effect. (Travancore-Cochin Revenue Recovery Act (7 of 1951), Ss. 2 (c), 3, 6, 44).

For purposes of the Revenue Recovery Act, the registered holder for the time being of the property is the "land holder" and the defaulter contemplated in that Act is the landholder as defined in S. 1 (c). Even if the registered holder is not the real owner of the property, for purposes of the Revenue Recovery Act he, and he alone, can be treated as the land holder or owner, and a sale after notice to him will convey not merely the rights which he in fact has in respect of the property but the full ownership of the property which has to be deemed as vesting in him by virtue of the provisions of S. 1 (c). The combined effect of Ss. 2, 5 and 39 is that notwithstanding the fact that the pattadar has in fact no right at all to the property sold under a revenue sale for arrears of tax due on it, or has only a mortgage or lease-hold right in it, and the ownership of the property really vests in any other person, the revenue sale after notice to the pattadar would convey to the purchaser the full ownership over it, free of all encumbrances, and will be binding on the real owner also. By his default to have his name brought in the Revenue records as the registered holder, and by allowing the name of the person who has no right in the property or has only a mortgage or lease-hold interest in it to stand in the records as the registered holder, the real owner has put forward that person as the ostensible owner of the property; and having done so, he cannot be heard to say, after he has defaulted to pay the tax on the property and after the revenue sale for the arrears of tax that the registered holder was not the real owner of the property but only the ostensible owner and that the proceedings

taken against the registered holder were not binding on him. 1956 Ker L T 313.

——S. 1—Compulsory sales for recovery of Government dues — Applicability of doctrine of lis pendens to revenue sales in Travancore Cochin—Doctrine cannot be extended so as to affect a revenue sale held during pendency of a suit regarding title or ownership of property sold. See T. P. Act (1882), S. 52. AIR 1955 NUC (Trav-Co) 1043 (DB).

SECTION 2

——S. 2—Revenue sale—Effect. See Travancore Revenue Recovery Act (1 of 1068), S. 1 (c). 1956 Ker L T 313.

——Ss. 2 and 39 — Scope and effect of—Sale for revenue—Effect on other charges — Doctrine of Lis pendens — Cannot be extended so as to affect a revenue sale under the Act held during the pendency of suit regarding title or ownership of property sold. See T. P. Act (1882), S. 52. AIR 1952 T C 230 (DB).

——Ss. 2, 39—Sale for arrears of revenue — Effect—Transfer of Property Act (1882), S. 52.

A sale held for arrears of revenue is valid and will extinguish prior encumbrances. Pending suits or decree based on mortgages or other charges created by a landholder would not in any way affect a revenue sale held under the Act for arrears of tax due from the land sold or from that land and other lands included in the same patta or Thandaper, and the auction-purchaser gets the land purchased free of all encumbrances. 28 T L J 226, Rel. on. Observations in 1949 T L R 36 held obiter; 26 Cal 966 and A I R 1939 Mad 256, Ref. 1950 T C L R 333 : AIR 1952 Trav-Co 61 (61, 62) (Prs 3, 7).

——Ss. 2 and 39—Scope and effect of — Revenue sale held pending execution of mortgage or charge decree — If affected by lis pendens — Title of purchaser.

The effect of Ss. 2 and 39 of the Travancore Revenue Recovery Act that buildings upon the land, and its products thereof are regarded as security for the public revenue on such land, and that all lands brought to sale on account of arrears of revenue due thereon shall be sold free of all encumbrances. A revenue sale consequently puts an end to all the charges on the land sold, whether those charges had merged in a decree of Court or not. The fact that the revenue sale is held pending execution of a charge decree in respect of the land sold is no ground for holding that the revenue sale is affected by lis pendens and will not affect the rights of the purchaser at the sale in execution of the charge decree. It has therefore to be held that pending suits or decrees based on mortgages of charges created by a landholder would not in any way affect a revenue sale held under the Travancore Revenue Recovery Act (1 of 1068) for arrears of tax due from the land sold or from that land and other lands of the defaulter included in the same patta or Thandapper and the purchaser at the revenue sale gets the land purchased by him free of all encumbrances. AIR 1939 Mad 256, Appl.; (1949) T L R 36, Diss. and declared obiter. 28 T L J 226, Foll. 1950 Ker L T 322.

SECTION 5

——Ss. 5, 41 — Revenue Sale—Interest sold is of defaulting landholder and not of Government — Travancore-Cochin Revenue Recovery Act (7 of 1951), S. 6.) AIR 1927 PC 135, Diss. 1962 Ker L J 1277.

——S. 5—Revenue sale — Effect. See Travancore Revenue Recovery Act (1 of 1068), S. 1 (c). 1956 Ker L T 313.

——S. 5—Compulsory sales for recovery of Government dues — Applicability of doctrine of lis pendens to revenue sales in Travancore Cochin — Doctrine cannot be extended so as to affect revenue sales. See T. P. Act (1882), S. 52. AIR 1955 N U C (Trav-Co) 1043 (DB).

SECTION 23

——S. 23 — Sale proceedings — Notice in name of deceased Thandapper-holder — Procedure indicated — His legal representatives not brought on record — Sale proceedings are not valid. AIR 1955 N U C (Trav-Co) 5092 (DB).

——S. 23—Civil Court's decision affecting immovable property — Duty of revenue officers — Demand notice not given to tarwad to whom property belongs —Effect.

The revenue officers are bound to take note of a Civil Court's decision affecting immovable property and make the necessary alteration in the mutation registers. If instead of doing that they persist in going forward with the sale proceedings already initiated by them in the names of the Thandapper holders who have been declared by the Court to have no right over the property sought to be sold, the demand notices as well as other notices issued in respect of the sale to such Thandappar hodelrs cannot affect the rights of the tarwad to which it really belongs. ILR (1951) Trav-Co 96 (DB).

——S. 23—Sale proceedings conducted with name of dead person on record—Validity of sale.

Where all proceedings right up to the sale are conducted with the name of a dead person on record and after issuing all the notices to such a dead person and served by affixture at the residence of his reputed heir, the irregularity affects the jurisdiction of the revenue authorities to conduct the sale and renders the sale absolutely void. 1932 Mad 664 and 1942 Mad 230, Rel. on. ILR (1951) Trav-Co 96 (DB).

——S. 23—Sale in violation of section — Validity of sale.

In view of S. 23, the revenue authorities can get jurisdiction to attach and sell the properties only after a proper demand notice has been issued to the Thandapper holders and only on finding that the notice has not been duly honoured. Where a sale has violated such mandatory provisions contained in S. 23 and has not been conducted for recovery of the amount for which the demnnd had been made in the notice, the entire sale is rendered void. ILR (1951) Trav-Co 96 (DB).

SECTION 23-A

——S. 23-A—S. 23A of Travancore Revenue Recovery Act and S. 24 (1) of T. C. Revenue Recovery Act are substantially same — But a notice under S. 23-A issued long after repeal of the Act cannot be treated as notice under S. 24 of T. C. Revenue Recovery Act. See Travancore Cochin Revenue Recovery Act (1951), S 24. 1965 Ker L T 1100 : 1965 Ker L J 1022 : (1965) 2 Comp L J 316 : (1965)2 Ker L R 432: ILR (1966) 1 Ker 78 : AIR 1966 Ker 169.

——S. 23-A—Notice of demand— Service — Applicability of O. 5. R. 17, Civil P. C.

By a notice of demand, dated 2-7-1110, K was called upon to pay the prohibitory assessment and fine within seven days from the date of notice. This notice was served on him by affixure on 19-7-1110, i. e. ten days after the expiry of the period of seven days fixed in the notice. A subsequent notice issued under S. 23-A, Revenue Recovery Act, on 21-7-1110 was served by affixture on 27-7-1110 on the ground that K was not present in his house when the notice was taken to him and that he had gone out of station.

Held, that the notice of demand, dated 2 7.1110 could not be regarded as a proper notice. Further

the service of notice under S. 23-A on K was not proper because under O. 5, R. 17, Civil P. C. which was applicable to such notices, it was the duty of the officer to use all reasonable diligence to effect personal service of the notice before substituted service was resorted to. Consequently there being no proper service of demand notice the revenue sale held on such notice was without jurisdiction and void: AIR 1953 Trav.Co 494 (FB), Rel. on. **AIR 1957 Trav-Co 257 (258) (Pt A) (Prs 5, 6) (DB).**

● —**S. 23-A — Effect of non-compliance — (C. P. Code (1908), O. 5, Rr. 17 and 18.)**

The provision contained in S. 23-A relating to the issue and service of demand notice is mandatory and a sale held without the service of such notice will be void.

A compliance with that provision is a condition precedent for conducting a sale under the Act. It is only if that condition is satisfied that the revenue authority will get jurisdiction to sell the immovable property of the defaulter under the Act. A sale held without the issue of a notice as prescribed by the section will, therefore, be void and not merely voidable. Case law ref.

If the issue of a written demand is a necessary condition for conducting a sale under the Act it necessarily follows that the service of that demand is an equally necessary condition. It is only if the notice is served in the manner prescribed in the Code of Civil Procedure that it can be said that the notice has been served on the defaulter. A sale held without such service of notice will therefore be a nullity.

In order to confer jurisdiction on the Tahsildar to conduct a sale under the Act it is necessary that the demand notice should satisfy the requirements mentioned in S. 23-A in all material particulars subject to the maxim 'de minimis non curat lex.'

But the only mandatory provisions relating to the service of demand notice that has to be strictly complied with is that relating to the service itself and not the one relating to the manner in which statutory proof of such service should be prepared. Any defect in the record prepared for that purpose cannot amount to non-compliance with the mandatory provision of the section and cannot, therefore, affect the jurisdiction of the revenue authority to conduct a sale under the Act. **ILR (1953) T C 405 : 1953 Ker L T 802 : AIR 1953 Trav Co 494 (506 to 508, 513) (Pt C) (Prs 28 to 32, 34, 52) (FB).**

● —**S. 23-A—Service of notice.**

When there are more than one Thandapper holders it is necessary that the demand notice should be served on all of them. Then only can it be said that there has been a service of the demand notice as provided in S. 23-A (2). **ILR (1953) Trav-Co 405 : 1953 Ker L T 802 : AIR 1953 Trav Co 494 (514) (Pt I) (Pr 54) (FB).**

SECTION 23-B

● —**S, 23-B—Immovable property must be attached before it is sold for arrears of revenue. See Travancore Revenue Recovery Act (1 of 1068), S. 24. AIR 1953 Trav-Co 494 (FB).**

SECTION 24

● —**Ss. 24 and 23B—Scope — Sale without attachment—(C. P. Code (1908), S. 51 and O. 21, R. 11.)**

The provision in S. 24 relating to attachment is mandatory and an attachment in the manner prescribed by S. 24 is a condition precedent for selling the property. Omission to attach the property under the section will therefore affect the jurisdiction of the revenue authority to sell it and a sale held without attachment will be null and void.

The main object of the provision is to give an opportunity to all persons who may have an interest in the property proposed to be sold to avoid the sale by paying the arrears of revenue within the appointed time. In view of the fact that a sale under the Act will extinguish the rights not only of the party to the proceedings, namely, the Thandapperholder, but also of all other persons who may have an interest in the property due importance has to be attached to the provision. There is also nothing in the Act which shows that the party to the proceedings, namely, the Thandapperholder, can waive the benefit of the provision so as to prejudice the rights of other persons who may have an interest in the property.

Section 51 (b) and O. 21, R. 11 (2) (j) (ii), Civil P. C. (1908), makes it clear that a sale may be held under the Code without attachment. But S. 23-B of the Revenue Recovery Act provides that if the arrear of revenue is not paid in terms of the demand notice "the immovable property of the defaulter may be attached and sold" implying thereby that it is necessary that the property should be attached before it is sold. There is nothing in the Act to show that a property may be sold under the Act without attachment.

Difference between a revenue sale and a Court sale fully discussed. Eravi Pillay Krishna Pillay v. Maluk Mohamed Sahul Mohd. **I L R (1953) T C 405 : 1953 Ker L T 802 : A I R 1953 Trav-Co 494 (509, 510, 513) (Pt D) (Prs 39, 40, 41, 52) (FB).**

● —**S. 24—Notice of attachment, particulars and publication of.**

The provisions contained in S. 24 relating to the particulars of the notice of attachment, and the publication of the same are mandatory provisions which should be complied with in all material particurlas in order that the revenue authority may have jurisdiction to sell an immovable property under the Act. But the last provision of the section which directs that "the publication shall also be reported to the Division Peishkar" cannot be said to be a mandatory provision. That does not relate to the mode of effecting the attachment. That is obviously a directory provision and failure to comply with it cannot in any manner affect the jurisdiction of the revenue authority to sell the property. Eravi Pillay Krishna Pillay v. Maluk Mohamed Sahul Mohd. **ILR (1953) T C 405 : 1953 Ker L T 802 : AIR 1953 Trav-Co 494 (511, 513) (Pt E) (Prs 45, 52) (FB).**

SECTION 32

—**S. 32—Notice of sale not published before thirty days period — Notice of sale served by affixture — Person concerned in civil jail—Held, there was no proper publication of sale and therefore revenue sale was vitiated by illegality and irregularity. AIR 1957 Trav-Co 257 (259) (Pt B) (Prs 7, 8) (DB).**

● —**S. 32—Effect of non-compliance.**

A revenue sale held without proclamation or in contravention of the notice of proclamation or against the provisions of sub-ss. (1) and (3) of S. 32 will not be a sale under the Revenue Recovery Act and will therefore be void. If the provisions of S. 32 (2) have been substantially complied with it can be said that there has been a proclamation. Failure to strictly comply with the requirements of the section relating to the publishing and the conducting of the sale may make the sale only voidable and not void.

The question whether in a particular case there has been a proclamation in the real sense will have to be decided on the facts of the case. If the requirements of S. 32 (2) as to the particulars of the notice of proclamation and as to the publication of the same have been substantially complied with it can be said that there has been a proclamation of the

sale. But if they have not been even subsequently complied with and the so-called proclamation was in fact no proclamation at all as contemplated by the section the sale cannot be said to be one held under the Act and will be void. Eravi Pillay Krishna Pillay v. Maluk Mohamed Sahul Mohd. ILR (1953) T C 405: 1953 Ker L T 802 : A I R 1953 Trav-Co 494 (513) (Pt F) (Prs 50, 52) (FB).

——S. 32 — Procedure prescribed by section not strictly adhered to before sale was conducted—Defect renders sale void. I L R (1951) Trav-Co 96 (DB).

SECTION 34

——S. 34 (1)—Setting aside revenue sale—Powers of Board of Revenue — No period of limitation for revision petition - See Travancore-Cochin Revenue Recovery Act (1068 ME), S. 50. (1963) 1 Ker L R 36.

——Ss. 34, 35, 36 — Non-payment of sirkar tax—Revenue sale by Tahsildar—Sale confirmed by Division Peishkar — Auction purchaser's title becomes complete on confirmation before the issue of certificate of sale under S. 34 (6) — Object of sale certificate is to prove the fact of purchase—It is not by issue of certificate that purchaser obtains title to property — Non-issue or non registration after issue of certificate does not affect title of purchaser. AIR 1952 Trav. Co 479 (480) (Pt B) (Pr 4) (DB).

SECTION 35

——Ss. 35, 39 — Scope of — (Kilimanoor and Edappali) Estates Rent Recovery Act (IV of 1068), Ss. 6, 8—Sale for arrears of rent — 'Free of all encumbrances' — Meaning — Claim developed by adverse possessor—(Limitation Act (1908), Art. 144).

Section 35, Revenue Recovery Act, indicates only the procedure as to the steps to be taken before issue of the sale certificate to the purchaser. What is the extent of the right which is conferred on the revenue auction purchaser has to be gathered from the substantive provisions of Ss. 6 and 8, Estate Rent Recovery Act (IV of 1068), which provide that the sale of land made for arrears of rent due thereon, under the authority of the Act shall be 'free of encumbrances.' The term 'encumbrances' of which the revenue auction purchaser would be free comprehend the claims developed by the adverse possessor, in the property possessed and the purchaser gets his title under his revenue sale free from the prescriptive title which had not yet matured but is in the course of acquisition by reason of the adverse possession upto the date of revenue sale. 1955 Ker L T 198, Foll.; AIR 1938 Mad 835; (1938) 2 M L J 337 and (1947) 2 Mad L J 387, Distinguished. I L R (1956) Trav-Co 452 : AIR 1957 Trav-Co 14 (17, 18) (Pt D) (Prs 17, 22) (DB).

——Ss. 35, 36 and 34 — Non-payment of sirkar tax—Revenue sale—Sale confirmed— Auction-purchaser's title becomes complete on confirmation before the issue of certificate of sale under S. 34 (6)—Non-issue or non-registration after issue of certificate does not affect title of purchaser. See Travancore Revenue Recovery Act (1068), S. 34. A I R 1952 Trav-Co 479 (DB).

SECTION 36

——Ss. 36, 35 and 34 — Non-payment of sirkar tax—Revnue sale — Sale confirmed — Auction-purchaser's title becomes complete on confirmation before the issue of certificate of sale under S. 34 (6)—Non-issue or non-registration after issue of certificate does not affect title of purchaser. See Travancore Revenue Recovery Act (1068), S. 34. A I R 1952 Trav-Co 479 (DB).

SECTION 39

——S. 39 — Revenue sale — Effect. See Travancore Revenue Recovery Act (1 of 1068), S. 1 (c). 1956 Ker L T 313.

——S. 39—Sale of land for arrears of rent — 'Free of all encumbrances'—Meaning—Included claim developed by adverse possessor — Purchaser in revenue sale will get his title free from the prescriptive title which had not yet matured. See Travancore Revenue Recovery Act (1 of 1068), S. 35. A I R 1957 Trav-Co 14 (DB).

——S. 39—Compulsory sales for recovery of Government dues — Applicability of doctrine of lis pendens to revenue sales in Travancore-Cochin. See T. P. Act (1882), S. 52. AIR 1955 N U C (Trav-Co) 1043 (DB).

——S. 39—Sale for tax due on property sold and on other properties of defaulter.

A sale held for arrears of revenue is valid and would extinguish prior encumbrances even though it was held for recovery of arrears due on the land sold as well as other lands belonging to the defaulter. If more amount than that actually due to the State, on account of arrears of tax and incidental expenses in connection with the realisation of the same, is realised by the sale, the effect of the provision under S. 39 that the sale will be free of all encumbrances, will not be taken away. The excess amount thus realised is directed to be paid to the Thandapper holder. Instead of paying that, if the Government appropriated that towards tax from that Thandapper holder on account of other properties belonging to him, the right and the immunity conferred on the auction purchaser would not be taken away because the sale was for something more than that was actually due from the land sold. Thus if the several revenue auctions were for tax due also on the property sold, the sales would wipe away all prior eucumbrance on the property. 28 T L J 226, Rel. on. A I R 1952 Trav-Co 551 (551, 552) (Pr 1) (DB).

——S. 39 — Sale of property for land revenue due from other property—Setting aside of.

A property which belongs to A, but which is included in the Thandapper of B cannot be sold free of all encumbrances for arrears of state land revenue due, not from the property sold, but from other properties belonging to B. The sale is not binding on A and is liable to be set aside. 28 T L J 226 (FB), Foll. 1952 Ker L T 552 : A I R 1952 Trav-Co 450 (451) (Pr 7) (DB).

——S. 39 — Applicability of S. 52 of T. P. Act to revenue sales — Doctrine of lis pendens cannot be extended to revenue sales. See Transfer of Property Act (1882), S. 52. A I R 1952 Trav-Co 230 (DB).

——S. 39—Sale for arrears of revenue — Effect—Sale held for arrears of revenue is valid and will extinguish prior encumbrance. (T. P. Act (1882), S. 52.) AIR 1952 Trav-Co 61.

——S. 39—Sale of land for revenue due on that land as well on other land of defaulter—If free of all encumbrances—Valid sale — It should be for arrears of land sold alone.

There is no warrant for the view that the land sold in revenue auction could be free of all encumbrances only if such sale was for arrears of tax due on that land. A sale for arrears of revenue is a valid sale and will extinguish prior encumbrances even though the sale was held for recovery of arrears of revenue due on the land sold as well as other lands belonging to the defaulter. (1950) Ker L T 322.

——S. 39 — Scope and effect of — Revenue sale held pending execution of mortgage or charge decree — If affected by lis pendens — Title of purchaser. See Travancore Revenue Recovery Act (1 of 1068 M.E.), S. 2. 1950 Ker L T 322.

SECTION 41

——S. 41—Revenue sale — Interest sold is of defaulting landholder and not of Government. See Travan-

core-Cochin Revenue Recovery Act (1068 M.E.), S. 5. 1962 Ker L J 1277.

● —S. 41—Provision is directory.

The provision contained in S. 41 is not mandatory and failure to comply with that provision will not make the sale void. The section is obviously meant only as a direction to the revenue authorities not to attach and sell more land than what is sufficient to discharge the arrears of revenue due from the defaulter. An omission to comply with this direction can amount only to an irregularity and cannot in any sense affect the jurisdiction of the revenue authority to hold the sale. Eravi Pillay Krishna Pillay v. Maluk Mohamed Sahul Mohd. I L R (1953) Trav-Co 405 : 1953 Ker L T 802 : A I R 1953 Trav-Co 494 (513) (Pt G) (Prs 51, 52) (FB).

SECTION 50

—Ss. 50, 34 (1) — Setting aside revenue sale — Powers of Board of Revenue — No period of limitation for revision petition.

So far as the power of the Board of Revenue to set aside a revenue sale is concerned that power is derived from S. 50. Section 50 gives wide jurisdiction to the revisional authority to set aside the sale on any ground it thinks proper. It is not restricted to grounds mentioned in S. 34 (1). This wide jurisdiction is intended to meet cases which do not strictly come within the restricted operation of S. 34 (1).

No period of limitation is prescribed and the Board is competent to entertain the revision petition even after expiry of a long period. A I R 1957 Trav-Co 284 and A I R 1957 Trav-Co 116, Foll. (1963) 1 Ker L R 36.

—S. 50 — Jurisdiction of Government to review prior decision dismissing revision petitions for cancellation of revenue sale — (General Clauses Act (1897), S. 21).

The Government has no jurisdiction to review its prior decision dismissing revision petitions under S. 50 for cancellation of revenue sale. The Act does not provide for review by any of the authorities having jurisdiction to confirm or set aside the sale. The power to review prior decisions does not exist where it has not been expressly conferred. A I R 1953 Trav-Co 439, Rel. on. As soon as the revision petitions were decided, the Government became functus officio and thereafter the only jurisdiction that could be exercised was one to correct any inadvertent slip or error in the order. The inherent power to rectify such errors does not include the power to reverse the former order in its entirety and to pass a fresh order. Such power can be exercised only by way of review. Section 21 of the General Clauses Act does not include the power of review in cases of this kind. Where on the strength of an order passed by the Government, without jurisdiction, setting aside the revenue sale in review, the owner obtains possession of the property sold, he will not be entitled to resist a suit for possession by the purchaser where the revenue sales have not been proved to be void. 1958 Ker L J 176 : 1958 Ker L T 25.

● —S. 50—T. C. Board of Revenue Ordinance (No. II of 1950), S. 6 —T. C. Revenue Recovery Act (7 of 1951), S. 55—Revision—Dismissal by Board as time-barred —Second revision to Government — Power to entertain.

After the integration of the States of Travancore and Cochin the general power of revision of the Dewan under S. 50 of the Travancore Revenue Recovery Act 1068 was transferred from the Government to the Board of Revenue under S. 6 of the U. S. T. C. Board of Revenue Ordinance (XII of 1124) which was replaced by T. C. Board of Revenue Ordinance (II of 1950) after the constitution came into force. On account of this transfer of revisional powers certain revision petition was transferred from the Government to the Board of Revenue and while the Travancore-Cochin Board of Revenue Ordinance (II of 1950) was in force the Board heard that revision petition and dismissed it as barred by limitation on 17-2-1950. The party however filed another revision petition on 7-9-1950 which was allowed by the Government and the order of the Board of Revenue was set aside. In an application under Arts. 226 and 227 against the order of the Government.

Held, that the revisional powers under S. 50 of the Travancore Revenue Recovery Act must be held to have been exercised by the Board of Revenue in the case and there was no scope for a further exercise of the same revisional powers on a subsequent occasion by the Government. (2) That the Travancore-Cochin Revenue Recovery Act (VII of 1951) which replaced the Travancore Revenue Recovery Act (I of 1068) after the Constitution came into force did not contain any provision conferring general powers of revision on the Government. Therefore the assumption of jurisdiction on a subsequent revision petition by the Government under the Revenue Recovery Act was clearly contrary to law and the order of the Government on the second revision petition purporting to have been passed in exercise of the revisional powers under the Revenue Recovery Act was passed without jurisdiction. Sister Mary Aloysious v. Madhavan Pillai Kumara Pillai. 1956 Ker L T 697 : A I R 1957 Trav-Co 116 (117, 118) (Pt A) (Pr 4) (FB).

● —S. 50 Proviso—Revision under — Order setting aside auction sale without notice to affected parties —Not legal. See Travancore-Cochin Board of Revenue Act (10 of 1950), S. 9, Proviso. A I R 1957 Trav-Co 116 (FB).

SECTION 51

● —S. 51— Scope.

Section 51 of the Act in terms applies only to parties to sale proceedings from whom arrears of revenue are due or are alleged to be due.

Further S. 51 is only an enabling provision. The effect of S. 51 is to confer on person aggrieved by order passed or proceedings taken by Revenue officers under the Revenue Recovery Act the right to sue the State in respect of such orders or proceedings, and such right they will have even if the proceedings taken are for arrears of revenue alleged to be due from them while in fact no arrears were due and also in respect of proceedings which purport to have been taken under the Act although they are not sanctioned by the provisions of the Act. The right to sue to set aside a wrongful sale of one's property is an undisputed civil right which cannot be said to have been created for the first time by the provision contained in the section.

The suit to set aside a revenue sale is really a suit against the purchaser in the revenue sale. The Government may be a proper party in such a suit but the suit cannot be said to be a suit against the Government. Eravi Pillay Krishna Pillay v. Maluk Mohamed Sahul Mahd. I L R (1953) Trav-Co 405 : 1953 Ker L T 802 : A I R 1953 Trav-Co 494 (502) (Pt B) (Pr 15) (FB).

—S. 51—Applicability — Sale conducted without jurisdiction — Sale impeached by person whose title to property is not lost by such sale — Limitation for suit — (Travancore Limitatton Act (6 (VI) of 1110), Art. 130).

The period of one year prescribed by S. 51 of the Act applies only to a suit to set aside the revenue sale by a person who has been a party to the sale proceedings and not to a suit by a person who was not a party to such proceedings. That section has no application

to cases where the sale itself was conducted without jurisdiction and where it is impeached by the plaintiff whose title to the property is not lost by such a sale. In the case of a suit by such a plaintiff, the suit is governed by the 12 years' rule prescribed by Art. 130 of the Travancore Limitation Act. 1948 T L R 131 and 1948 T L R 103 Rel. on. I L R (1951) Trav-Co 96 (DB).

TRVANCORE ROYAL PROCLAMATION (1042 ME)

See under Tenancy Laws

TRAVANCORE RULES REGULATING ENQUIRIES INTO CONDUCT OF PUBLIC SERVANTS (1072 ME)

RULE 1

——R. 1 — Public servant holding office during pleasure of Ruler—Dismissal of — Effect of rules on powers of Ruler—(Constitution of India, Art. 311).

The Rules of 1072, though termed as Rules, are not Rules made under the rule-making power in any statute but themselves constitute a primary and independent legislative measure and as a part of the statute law of the State are binding on the Sovereign as well as on the subject. In other words from the date of the enactment of the Rules public servants could not be dismissed at His Highness's pleasure. A I R 1937 P C 31 and A I R 1951 Mad 882, Disting. Further even assuming that public servants hold office at the pleasure of His Highness the Maharaja the exercise of such pleasure must be made by him and he could not delegate that power because if he could the pleasure would be not of His Highness but of the person to whom the delegation is made. AIR 1956 Trav-Co 35 (39, 40) (Pt A) (Prs 15, 16, 17).

TRAVANCORE SALT ACT (3 of 1088 ME)

SECTION 11

——Ss, 11 and 14—Construction—Powers of Government under — Cancellation of licence of private owner — What vests in Government — Right to take over salt-factory and establish Government factory—Notifications closing salt-works of private person, cancelling his licence and establishing factory of Government — Ultra vires.

By a relinquishment or cancellation of a licence under the first part of S. 14, what is left at the disposal of the Government is only the "salt works" and not the salt factory. Salt-works and salt-factory are differently defined in the Act, in S. 3, Cls. (j) and (k). A salt-work is therefore a smaller unit included in the larger one "salt-factory." 'Salt-works" do not mean the same thing as a salt-factory. The proprietary right vests in the Government under S. 14 (a) and what is sought to be purchased by them is the proprietary right in the "salt-works" and not in the "salt-factory."

No statute can or will be construed as depriving the subject of his rights unless the language is clear in that behalf. Reference to a part can under no circumstances be held to be a reference to the whole. Nor can a person or an authority take possession of the whole in the name of a part or a portion. The Salt Act, throughout, makes a distinction between a salt-factory and a salt-work and when the statute states (in S. 14) that the salt-works shall be at the disposal of the Government or that it shall vest in them or that its value shall be paid in the prescribed manner it cannot be held that it refers to the salt-factory.

Hence Travancore Government Notification No. 1-2-2471/42, D. D. dated 10-12 1949, issued under Ss. 11 and 14 of the Salt Act, closing down the salt-factory of a private individual, not belonging to the Government, cancelling the licence or taking over the factory, is ultra vires the powers vested in the Government under Ss. 11 and 14. The cancellation of the licence is also without jurisdiction.

In the same way, the Notification of the Government, dated 15-12-1949, establishing a salt-factory in the premises or property in the possession of a private individual is also invalid and ultra vires. Under S. 11, the Government may establish a salt-factory only in land which is the property of the Government or other land in which the owner thereof shall permit such establishment, Where the licensee of a salt-factory or salt-works, has, under an agreement with the Government, the right to retain possession of the properties comprised therein with all their improvements for a term of years, and when lie has not committed any breach of the agreement so as to enable or entitle the Government to resume possession, and the licensee has not given any consent for the Government to establish salt-factory in the property, such a Notification establishing a salt-factory there, is without jurisdiction and unauthorised. Section 11 cannot enable the Government to establish a salt-factory in that property when the period of the licensee under the agreement has not expired and the agreement is still in force. 1950 K L T 159 : 1950 T C L R 162 : AIR 1952 Trav-Co 14 (19) (Pt E) (Pr 20).

SFCTION 14

——S. 14 — "Salt-works" — If means or identical with salt-factory — Power to close salt-factory of private owner after cancelling licence of owner in respect of salt-works — Salt-factory established by the company at its own costs in lands let out to it by Government for 50 years — Factory coming into existence before Act 3 of 1088 ME was enacted — Governmeot have no power under Ss. 11 and 14 issuing notification closing down the factory before expiry of 50 years and establishing a factory of their own. See Travancore Salt Act, S. 11 (2). AIR 1952 T C 14.

TRAVANCORE SEA CUSTOMS ACT (5 of 1088ME)

PREAMBLE

——Preamble — Travancore Land Customs Act (2 of 1091 M.E.) — Notification under dated 7-1-1946 — Interpretation —Travancore Land Customs Act (1091).

Clause (1) of the notification, dated 7-1-1946 under the above Acts makes it clear that goods imported by land, sea or backwater into Travancore are exempt from customs duties if they are the produce or manufacture of British India or of the territories of the Cochin State : There is no justification for reading a further qualification into the provision to the effect that they should also be imported directly into Travancore from British India or the Cochin State and not through some other territory. (1961) 1 Ker L R 489 : 1961 Ker L J 338 : 1961 Ker L T 395.

SECTION 170

——S. 170 — Order passed in appeal — Finality of, under S. 170 — Jurisdiction of Civil Court when not barred — Civil P. C. (1908), S. 9 — Sea Customs Act (1878), S. 188.

The finality conferred on orders in appeal by S. 170 can possibly apply only to acts which are within the purview of the Act and not to actions which are not warranted by the Act or are prohibited by it. Even the ordinary civil Courts would have jurisdiction to entertain suits and afford relief against the acts or orders of the Customs authorities. The aggrieved party is not bound to pursue the statutory remedies provided by the Sea Customs Act. (1940) 2 M L J 140: AIR 1940 P C 105 and (1955) 1 M L J 422 : AIR

1955 Mad 187, Foll. (1961) I Ker L R 439 : 1961 Ker L J 338 : 1961 Ker L T 395.

TRAVANCORE SERVICE INAM PROCLAMATION (1068 ME)

SECTION 2

——Ss. 2, 3 — Applicability — Temple service.

The Proclamation deals only with cases where the grant had been made by the Government in connection with specific State services. Where it is not claimed that the temple service which was attached to the plaint property had anything to do with the State at any time, and it was a private Devaswom that had initiated the service such Devaswom service it continued to remain in spite of the State's assumption of management of the Devaswom. The power of the Government under S. 2 of the Proclamation to resume their service inams and their freedom from question by way of suit under S. 3 on exercise of such power, could not therefore apply in the circumstances. There was no bar to the maintainability of the suit for declaration that the proceedings started by the defendant for recovery of possession of the suit properties from the plaintiff were unsustainable and for issue of injunction restraining the defendant from taking possession of the property and for other appropriate reliefs, by virtue of the Service Inam Proclamation of 1068. ILR (1956) Trav.Co 684 : AIR 1957 Trav-Co 269 (270) (Pt A) (Pr 6) (DB).

SECTION 3

——S. 3 — Temple service — Proclamation deals only with cases where the grant had been made by the Government in connection with specific State services — Power of Government to resume their service inams and their freedom from question by way of suit under S. 3 on exercise of such power could not therefore apply to temple service initiated by a Private Devaswom. See Travancore Service Inam Proclamation (1068), S. 2. AIR 1957 Trav-Co 269 (DB).

TRAVANCORE SERVICE REGULATIONS

ARTICLE 1

●——Contravention of—Right of action—Executive orders passed after enquiry — Variation of—Effect—Birth date fixed for service book—Effect of—(Constitution of India, Arts. 300 and 310).

The Travancore Service Regulations have no statutory force ; they are mere rules of guidance for the Government and their officers and their contravention by Government do not give the person aggrieved by such contravention any right of action against the Government before a Civil Court. The mere fact that an executive order has behind it the approval of the Maharaja, does not clothe the said order with any statutory force.

Held, that the effect of the Government's order after enquiring was only that in respect of all future Government transactions the date entered in the Service Book would be considered to be the date of birth of the officer concerned. There was no rule or other provision of law enjoining any public authority to accept that date as the plaintiff's date of birth. The Department of Education was governed by its own rule and there was no rule making it incumbent on the department to alter the registers maintained by the department to conform to Service Book entries or to entries in Birth Registers. (2) That the executive Government could revise or vary its orders even when the original order was after an enquiry unless it was an enquiry as contemplated by any statutory provision, and hence the Press Note and the Government action pursuant thereto was not only valid but even non-justiciable. A I R 1953 Trav-Co 140 and A I R 1954 Trav.Co 32, Rel. on. K. Mohammed v. State of Kerala, 1957 Ker L J 570 : 1957 Ker L T 608 : I L R (1957) Ker 685 : A I R 1958 Ker 1 (2, 3) (Prs 6, 8, 9) (FB).

ARTICLE 252

——Art. 252—'Superior servant'—Position and status of—'Superior public servant'—Difference—(Travancore) Inquiry Rules (1896), R. 1.

The 'superior servant' of Art. 252 of the Travancore Service Regulations is an entirely different thing from the 'superior public servant' of the Inquiry Rules. The Travancore Service Regulations defines 'superior service' for the purpose of determining the two kinds of service qualifying for pension, and it does not pretend to lay down any rules as to the authorities competent to remove public servants. The Inquiry Rules make separate provisions for enquiries into the conduct of 'superior public servants' and of 'inferior public servants' and for that purpose, lay down that a superior public servant shall be a public servant not removable from the office without the sanction of His Highness the Maharajah. Those rules make no attempt to say who are the public servants not removable without such sanction. For that the rules or orders governing the removal of public servant have to be considered. 1958 Mad L J (Cri) 249 : 1958 Ker L T 106.

ARTICLE 352-F

——Art. 352 (F) (C) — Government Press note, dated 20th February 1950—Validity.

Article 352 (F) (C) of Travancore Service Regulations which states that the date of birth of a Government servant, which has been accepted and recorded in the service register shall form conclusive evidence on the same cannot bind the discretion of the state and a later decision as embodied in the Press note, dated 20th February 1950, to accept the date of birth in the College admission register as the correct age for purposes of superannuation is well within the competence of the Government. A I R 1954 Trav.Co 32 and A I R 1958 Ker 1, Rel. on. 1959 Ker L T 129: 1959 Ker L J 194 : (1959) 2 Lab L J 507 : I L R (1959) Ker 278.

——Art. 352-F (e)—Ordering directing retirement on basis of date other than given in Civil List — Retirement in pursuance of general Government decision on basis of his date of birth as entered in College records in preference to one given in Civil List—Order did not amount to a dismissal or removal from service. See Constitution of India, Art. 311 (2). A I R 1954 Trav-Co 32 (DB).

TRAVANCORE SOLDIERS LITIGATION ACT (7 of 1116 M.E.)

SECTION 3

——Ss. 3 (b) (iii) and 11—Exemption from limitation on ground that plaintiff was serving under war conditions specified in S. 3 (b) (iii)—Proof.

A discharge certificate from army on account of demobilisation is not sufficient proof. That the particular unit to which the plaintiff belonged was in a state of mobilisation should be proved by production of proper certificate from the military authorities. See Soldiers Litigation Act (Travancore Act 7 of 1116 M.E.), S. 11. A I R 1958 Ker 228 (DB).

[Overruled on another point in A I R 1964 Ker 8 (FB).]

SECTION 11

——Ss. 11 and 3 (b) (iii)—Scope — Exemption from limitation on ground that plaintiff was serving under war conditions—Proof of.

Where the plaintiff claims exemption from limitation under S. 11 on the ground that he was serving

under war conditions as specified in S. 3 (b) (iii) i. e., serving with a unit which for the time being was mobilised, the question is one of fact which has to be proved by the plaintiff. A certificate of discharge from army on account of demobilisation is not sufficient to prove it. From the fact that demobilisation took place only on 7th August 1947, it cannot be assumed that the Unit in which he was serving was being mobilised throughout the whole period. 'Demobilisation' in the context only means discharge from the army and it cannot be assumed from the use of the expression demobilisation that the unit was in a state of mobilisation until that date. The meaning of the expression 'to mobilise' in relation to the Army means to make armed forces ready for war. A new recruit has to pass through different stages of training and even then the Unit may not be mobilised for war at all. That the particular unit to which the plaintiff belonged was in a state of mobilisation should have been proved by production of a proper certificate from the military authorities. A I R 1958 Ker 228 (228) (Pt B) (Pr 2) (DB).

[Overruled on another point in A I R 1964 Ker 8 (FB).]

TRAVANCORE SPECIFIC RELIEF ACT (13 of 1115 M.E.)

See under Specific Relief Act (1877).

TRAVANCORE TAXATION ON INCOME (INVESTIGATION COMMISSION) ACT (14 of 1124 M.E.) (1949)

PREAMBLE

● ——Preamble—Existing law — Section 1 (3) came into force immediately on the passing of the Act—The Act was therefore an existing law from the date of passing right up to 1-7-1949 and was consequently continued by Ordinance 1 of 1124. See United State of Travancore and Cochin Administration and Application of Laws Ordinance (1 of 1124 M.E.). A I R 1956 S C 246.

● ——Preamble—Keeping in force by Parliament Act (14 of 1124) by Act of 1950 not illegal. See Opium and Revenue Laws (Extension of Application) Act (1950), S. 3. A I R 1962 Ker 38 (FB).

SECTION 1

● ——S. 1 (3) — Notification issued on 26th July, 1949, bringing the Act into operation as from 22nd July, 1949, is valid.

The notification issued on 26th July, 1949, bringing the Travancore Taxation on Income (Investigation Commission) Act into operation as from 22nd July, 1949, cannot be said to be invalid. In exercise of the power conferred by S. 1 (3) the Government surely had the power to issue the notification bringing the Act into force on any date subsequent to the passing of the Act. There can therefore be no objection to the notification fixing commencement of the Act on the 22nd July, 1949, which was a date subsequent to the passing of the Act. The Act has not been given a retrospective operation, that is to say, it has not been made to commence from a date prior to the date of its passing. It is true that the date of commencement as fixed by the notification is anterior to the date of the notification but that circumstance does not attract the principle disfavouring the retrospective operation of a Statute. A. Thangalkunju v. M. Venkitachalam, (1956) 29 I T R 349 : 1956 S C A 259: 1956 S C J 323; (1955) 2 S C R 1196: AIR 1956 S C 246 (258) (Pt D) (Pr 39).

● ——S 1 (3) — Commencement of Act — Existing law — Travancore and Ccohin Administration and Application of Laws Ordinance (I of 1124), Ss. 2 (b) and 3 (1).

Sub-section (3) of S. 1 of the Travancore Taxation on Income (Investigation Commission) Act, 1124 came into force immediately on the passing of the Act under S. 22 of Act VI of 1123 by His Highness the Maharaja of Travancore on the 24th Kumbhom 1124 (7th March, 1949), and the operation of the other sections of the Act alone was postponed to such date as the Government may by notification in the Government Gazette appoint. Hence sub-s. (3) of S. 1 will be an existing law coming within the definition of that term in S. 2 (b) of the United State of Travancore and Cochin Administration and Application of Laws Ordinance 1124 (1 of 1124), it will have its existence continued under the provisions of S. 3 (1) of that Ordinance, and it will have sufficient potency to bring the rest of the enactment into force on the 22nd July 1949 when the notification concerned was issued by the Government of Travancore Cochin.

The Government however had no right to notify a date anterior to the date of the notification (viz., 26th July, 1949), as the date on which the Act shall come into force. Thangalkunju Musaliar v. Venkitachalam Potti, 1954 Ker L T 23 : I L R (1953) T C 1145 : 25 ITR 120 : AIR 1954 Trav Co 131 (134) (Pt B) (Prs 13, 14) (FB).

● ——S. 1—If extant—Constitution of India, Art. 372 (1)—Opium and Revenue Laws (Extension of Application) Act, (1950), as amended by Central Act (44 of 1951), S. 3).

The Travancore Taxation on Income (Investigation Commission) Act, 1124 is still in force by virtue of Art. 372 (1) of the Constitution; it has been amended twice by the Central Legislature which after 26th January, 1950, is the competent Legislature as far as legislation regarding income other than agricultural income is concerned; as a result of the action of the Central Legislature the Act did not lapse on 16th August, 1950, or on any date subsequent thereto; and the Central Commission has all the powers this day that the Travancore Commission had under the enactment and no more. Thangalkunju Musaliar v. Venkitachalam Potti, 1954 Ker L T 23 : I L R (1953) T C 1145 : 25 I T R 120 : A I R 1954 Trav-Co 131 (135) (Pt C) (Pr 17) (FB).

SECTION 3

● ——S. 3 (1)—'Existing Law' — Travancore Taxation on Income (Investigation Commission) Act 14 of 1124) was existing law for S. 3 (1). See United Estates of Travancore-Cochin Administration and Application of Laws Ordinance (1 of 1124), S. 3 (1), AIR 1962 Ker 38 (FB).

SECTION 5

● ——S. 5 (1) — Section 5 (1) is not discriminatory and violative of the fundamental right guaranteed under Art. 14. See Constitution of India, Art. 14. AIR 1956 S C 246.

● ——S. 5 (1)—Reference by Government in respect of evasion of tax for certain years—Power of investigation Commission to cover other period.

Under S. 5 (1) the Government could refer any case or points in a case. There is nothing in that subsection which requires that a 'case' referred thereunder must cover the entire period mentioned in S. 8 (2). Indeed, the Government might have reason to believe that an assessee evaded the tax only in, say two years and not in others and in such a case the Government could only refer the case for investigation of evasion during those two years only but could not refer any case for other years as to which they had no reasonable belief. Therefore in such a situation the reference must be limited to the particular years in which the evasion was believed to have taken place, it makes no difference whether one calls the matter referred a 'case' or 'points in a case'. It follows, therefore, that, in order to ascertain whether,

in a given case the reference covers the entire period or only a shorter period, one has only to look at the order of reference. Where the operative part of the reference clearly records the fact that the Government had prima facie reasons for believing that the petitioner has to a substantial extent evaded payment of taxation on his income for 1942 and 1943 and that they considered that this was a fit case for reference to the Income-tax Investigation Commission under S. 5 (1), the Commission or the authorised official appointed by it has no jurisdiction to cover any period beyond those specific years 1942 and 1943. A. Thangalkunju v. M. Venkitachalam, (1956) 29 I T R 349; 1956 S C A 259 : 1956 SCJ 323; (1955) 2 S C R 1196: AIR 956 SC 246 (257) (Pt B) (Pr 34).

● —S. 5—Section is not discriminatory. See Constitution of India, Art. 14. AIR 1962 Ker 38 (FB).

● —Ss. 5, 8 (2)—Reference in due time as provided in S. 5 — There is no limitation of time for making assessment. Mohammad Abdul Kadar v. Commissioner of Income-tax, I L R (1961) 1 Ker 517: 1961 Ker L J 529; 1961 Ker L T 558; AIR 1962 Ker 38 (43) (Pt E) (Pr 16) (FB).

—S. 5 — Quaere—Parallel proceedings under S. 47 of Travancore Income-tax Act and Taxation on Income (Investigation Commission) Act, 1124 if repugnant to good faith. See Travancore Income-tax Act (1921), S. 47. AIR 1957 Trav-Co 303 (DB).

—S. 5 — Scope of inquiry—Order for investigation relating to period 1120 — Direction to produce accounts in respect of period 1119-1123—Legality.

Where the order of the Government directing investigation under the Travancore Taxation on Income (Investigation Commission) Act, 1124, relates only to the evasion of payment of income-tax for the year 1120, the fact that the petitioner (assessee) was called upon to produce his accounts bank pass books and other such documents not merely in respect of that year but for the years 1119-1123 cannot possibly enlarge the ambit of the investigation directed by the Government. A I R 1957 Trav-Co 303 (304) (Pt A) (Pr 5) (DB).

● —S. 5—Scope of inquiry by Central Commission in cases referred to it — Constitution of India, Art. 226.

Where the only reference made to the Central Investigation Commission prior to the last day of Makarom 1125 (11th February, 1950), was the reference of Evasion Cases Nos. 1 and 2 of 1125 relating to evasion of income-tax by the petitioner in relation to years 1942 and 1943 pending before the State Commission, held, that the Central Commission had no jurisdiction to go beyond the years covered by those cases and any attempt to enlarge the scope of inquiry was without any legislative warrant and could be prohibited by a writ of prohibition under Art. 226. Thangalkunju Musaliar v. Venkitachalam Potti, 1954 Ker L T 23; I L R (1953) T C 1145 : 25 I T R 120; AIR 1954 Trav-Co 131 (134) (Pt D) (Pr 13) (FB).

SECTION 8

● —S. 8 (2)—There is nothing in S. 8 (2) which justifies the contention that action may be taken thereunder only once. If an unauthorised direction is given under S. 8 (2) there is nothing in that provision which prevents rectification of that order. See Opium and Revenue Laws (Extension of Application) Act (1950), S. 3, Cl. (c). AIR 1961 S C 210.

● —S. 8 (2)—'Any Income-tax Authority' — It includes Chief Revenue Authority — (Words and Phrases).

In construing the provisions of S. 8 (2) of the Act, the words 'any income-tax authority' would include the Chief Revenue Authority which was an Income-tax authority under the Travancore Act (8 of 1096). It may also be noted that S. 4 of the Travancore Act (17 of 1122) continued all proceedings and petitions pending before the Chief Revenue Authority and provided that the same may be disposed of by the said authority or by such authority as may be appointed by the Government for the purpose as if the said Travancore Act (8 of 1096) had not been repealed. It, therefore, follows that the Chief Revenue Authority was included within the expression "any income-tax authority' in S. 8(2) of the Act and the assessment orders of the petitioner for the years 1942 and 1943 which were concluded by the Chief Revenue Authority could be affected or overridden by any order which might be passed by the Government under S. 8 (2) of the Act. A. Thangalkunju v. M. Venkitachalam, (1956) 29 I T R 349 : 1956 S C A 259 : 1956 S C J 323 : (1955) 2 S C R 1196 : AIR 1956 S C 246 (259) (Pt E) (Pr 41).

● —S. 8.(2)—Escaped income case referred to Investigation Commission under Act 14 of 1124—Report submitted and accepted by State Government and directions issued under S. 8(2)—Demand notice issued by Income-tax Officer without passing order of assessment — Act of 1950 coming into force after notice — Jurisdiction of Central Government to issue fresh directions under S. 8(2). See Opium and Revenue Laws (Extension of Application) Act (1950), S. 3(c). AIR 1962 Ker 38 (FB).

● —Ss. 8 (2) and 5—Reference in due time as provided in S. 5 — There is no limitation of time for making assessment. See Travancore Taxation on Income (Investigation Commission) Act (14 of 1124), S. 5. AIR 1962 Ker 38 (FB).

● —S. 8—Order under S. 8(2)—Validity. See Opium and Revenue Laws (Extension of Application) Act (1950) as amended by Act (44 of 1951), S. 3. AIR 1955 Trav Co 15 (SB).

TRAVANCORE TIMBER TRANSIT RULES

RULE 11

—R. 11—Conviction under R. 26 and S. 35 of old Act for contravention of R. 11—Legality—Repeal of Act 2 of 1068 — Effect — Failure to pass the required rules cannot be remedied by invoking the section of a repealed Act or a rule framed under that Act but which is inconsistent with the provisions of the new Act. See Travancore-Cochin Forests Act (3 of 1952), S. 101(1). 1958 Cri L J 1184 : AIR 1958 Ker 262.

RULE 26

—R. 26—Repeal of Travancore Forest Act 2 of 1068 and rules thereunder — Conviction under R. 26 and S. 35 of Travancore Forest Act (1068), for contravention of R. 11 of Timber Transit Rules—Legality—As the lower Courts acted illegally in relying on old provisions for entering a conviction against accused, conviction is unsustainable in law and has to be quashed. See Travancore-Cochin Forests Act (3 of 1952), S. 101(1). 1958 Cri L J 1184 : AIR 1958 Ker 262.

TRAVANCORE TOBACCO ACT (1 of 1087 M. E.)

PREAMBLE

● —Preamble — Corresponding Law — Cochin Tobacco Act (7 of 1084) and the Travancore Tobacco Act (1 of 1087) along with the Rules corresponding to Central Excises and Salt Act (1944) and were repealed by S. 13(2) — Rules abrogated in 1958 — Petition under Art. 226 of the Constitution in 1955 and 1956—Petitioner even after abrogation of Rules would be entitled to declaration of invalidity of Rules. See Finance Act (1950), S. 13(2). AIR 1962 S C 922.

——Preamble — Kanyakumari District in Madras State — If forms part of Kerala State — (States Reorganisation Act (1956), S. 120)—(Kerala Adaptation of Laws Order (1956), S. 5 (2)).

In view of S. 120 of the States Reorganisation Act, 1956, and Cl. 5(2) of the Kerala Adaptation of Laws Order, 1956, the present Kanyakumari District of the Madras State does not form part of the 'State of Kerala' for the purposes of the Travancore Tobacco Act, and the purchases from the Kanyakumari District of the Madras State cannot be considered as purchases from A class or B class licensees 'in the State' and all movements of tobacco from the Kanyakumari District of the Madras State to the Kerala State can be considered only as 'import' as per S. 5(2) of the Kerala Adaptation of Laws Order, 1956. 1958 Ker L J 325 : 1958 Ker L T 743.

SECTION 31

——S. 31 — Right of Maharaja of Travancore to absolutaly delegate legislative function — (Constitution of India, Art. 245).

In view of the words 'with our sanction' in the section it is difficult to cut down the section as invalid on the ground that there is an absolute delegation of legislative function. Even if the section amounted to such a delegation the Maharaja at the time he made it had on the basis of the sovereignty which he claimed and exercised had the sole and untrammelled discretion to delegate all or any of his powers to such person or persons as he deemed fit. He was an absolute ruler and the inhibition against the delegation of legislative power and the maxim, delegata potestas non potest delegare had no application to him. T. K. Abraham v. State of Trav-Co. 1957 Ker L J 1146 : I L R (1958) Ker 148 : (1957) Mad L J (Cri) 855 : 1957 Ker L T 1184 : AIR 1958 Ker 129 (131) (Pt A) (Prs 7, 10) (FB).

[Reversed on another point in AIR 1962 S C 922.]

——S. 31—Rules under—Validity of — (Constitution of India, Art. 14).

The levy imposed by the Act and the rules framed thereunder do not violate the equality granted by Art. 14 of the Constitution. AIR 1952 S C 123 : 1952 S C J 168 and A I R 1954 S C 314 : 1954 S C J 390 : (1954) 1 Mad L J 619. Rel. on. T. K. Abraham v. State of Trav-Co. 1957 Ker L J 1146 : I L R (1958) Ker 148 : (1957) Mad L J (Cri) 855 : 1957 Ker L T 1184 : AIR 1958 Ker 129 (132) (Pt B) (Pr 11) (FB).

[Reversed on another point in AIR 1962 S C 922].

——S. 31 — Rules under, Rr. 14 and 16 — Levy of licence fee under — If violates Art. 19(1)(g) of the Constitution. T. K. Abraham v. State of Trav-Co. 1958 Ker L J 1146 : I L R (1958) Ker 148 : (1957) Mad L J (Cri) 855 : 1957 Ker L T 1184 : A I R 1958 Ker 129 (132) (Pt C) (Pr 13) (FB).

[Reversed on another point in AIR 1962 S C 922].

——S. 31 — Licence fee under—Nature of—Effect of application of Central Excises and Salt Act to Travancore State from 1st April 1950—(Constitution of India, Art. 277 and Sch. VII, List 1, Item 84).

Taxes are compulsory contributions exacted by Governments from private individuals and groups for meeting the costs of public services. Although the licence fee levied under the Act being one imposed for the purpose of augmenting the revenues of the State is a tax it is not a duty levied upon a manufacturer or producer in respect of a commodity manufactured or produced. Therefore the levy cannot be said to be a duty of excise coming within the ambit of Entry 84 of the Union List and that it had become inoperative when the Central Excises and Salt Act of 1944 was extended to the Travancore State with effect from 1st April 1953. T. K. Abraham v. State of Trav-Co., 1957 Ker L J 1146 : ILR (1958) Ker 148 : (1957) Mad L J (Cri) 855 : 1957 Ker L T 1184 : AIR 1958 Ker 129 (133) (Pt E) (Prs 20, 23) (FB).

[Reversed on another point in AIR 1962 S C 922].

——S. 31 — Licence fee under — If tax on profession, trade, calling or employment—(Constitution of India, Art. 276 (2) and Sch. VII, List 2, Entries 60 and 62).

As the base of the levy under the Act is neither an occupation nor the income derived therefrom but the commodity concerned, namely the tobacco stocked by the license it is not a tax on occupation or its income which should be restricted to the annual sum of Rs. 250 under Art. 276 (2) of the Constitution. On the other hand the levy is a luxury as tax, a tax coming under Entry 62 of the State List. Both the motives which induce the State to impose tax on articles which are deemed to be luxuries; namely the desire to restrict the expenditure of money in certain directions or to tax the rich or that part of the expenditure of all classes that is regarded as a superfluity or as socially undesirable, have played their part in the taxation of tobacco in the State of Travancore. T. K. Abraham v. State of Trav-Co., 1957 Ker L J 1146 : ILR (1958) Ker 148 : (1957) Mad L J (Cri) 855 : 1957 Ker L T 1184 : AIR 1958 Ker 129 (134) (Pt F) (Prs 25 to 28) (FB).

[Reversed on another point in AIR 1962 S C 922].

TRAVANCORE UNIVERSITY ACT (1 of 1113 ME)

SECTION 28

——S. 28 (b)—Government servant working in institution under University — Power of University to take displinary action.

The petitioner was appointed to the service of the State on the advice of the Public Service Commission and he entered service in the Education Department. It was while he was employed in the pre-University School that the said institution was brought under the University and converted into the Intermediate College. The position of the petitioner was that of a Civil servant under the Government and he was governed by the rules applicable to employees holding appointments under Government by virtue of S. 28 (b), Travancore University Act. The petitioner was suspended from service for one year by an order passed at a meeting of the syndicate presided over by a Vice-Chancellor.

Held, that when the institution in which the petitioner was employed was brought under the control of the University, the petitioner also came under the disciplinary control of the University. Thus the University had the power and the jurisdiction to take appropriate action against the petitioner for misdeeds proved against him. Hence the order of suspension passed by the University could not be said to be ultra vires the University authorities. (1958) 2 Lab L J 399 : 1957 Ker L J 988 : 1957 Ker L T 1070 : ILR (1958) Ker 131 : AIR 1958 Ker 72 (73) (Pt A) (Pr 4) (DB).

——S. 28 (b) — Order R. Dis. 9033 51/G.S., dated 3-4-1951, Pt. (1)(2) — University servant — Order of dismissal — Non-compliance with rules embodied in order — Order will be quashed — (Constitution of India, Art. 311). AIR 1955 N U C (Trav-Co) 1673 (DB).

TRAVANCORE VAKILS ACT (3 of 1075 ME)

PREAMBLE

——Preamble—Rules under Act—R. 449—Scope—Duty of vakil to account for every cash received on behalf of client — Irregularity in the matter treated

as professional misconduct. See Legal Practitioners Act (1879), S. 13. AIR 1964 Ker 192 (193) (SB).

SECTION 13

——Ss. 13 and 14 — Vakil taking up permanent appointment under Government — Vakil ceasing to practice for 5 years continuously.

A clerk in a Munsiff's Court got special study leave to qualify himself to be a vakil and having qualified, got himself enrolled and after practising for four years, rejoined his permanent place in government service and after 14 years of further service, retired and started practice on the basis of the original sanad granted to him. The District Judge ordered that he should not practise and should surrender the original sanad under S. 13 of the Regulation as he had accepted permanent government service thereafter. A revision petition was filed.

Held, action was called for under S. 14 of the Regulation whereunder a vakil who has ceased to practice for 5 years may be ordered by the High Court to surrender the sanad to an officer or Court appointed by the High Court He can then apply for issue of another sanad if he is entitled to it. Such a remedy is not open if action is taken under S. 13.

Quaere.—If rejoining a permanent appointment, wherein a person had a lien, after enrolment, amounts to acceptance of a permanent appointment or not under S. 13. AIR 1952 Trav-Co 496 (497) (Pr 2) (DB).

SECTION 14

——S. 14 — Vakil wholly absenting from practice for five years—Action called for under S. 14—Vakil has to deliver up his sanad in compliance with an order made by High Court—In such a case he is entitled to apply for a fresh sanad if he is qualified to do so —No such remedy is open to party if action is taken under S. 13. See Travancore Vakils Act (3 of 1075 ME), S. 13. AIR 1952 Trav-Co 496 (DB).

TRAVANCORE WILLS ACT (6 of 1074 ME)

PREAMBLE

——Preamble — Will essentials — Registry in wrong book, effect —(Hindu Law —Wills —Succession Act (1925), S. 63).

A will is the legal declaration of the intention of a testator with respect to the property which he desires to be carried into effect after his death. A will need not to be in any particular form. It is sufficient if it contains the testamentary wishes of the deceased.

Under Travancore Wills Act no special form is required to constitute testamentary disposition. It is enough if the document is attested by two witnesses and it is registered. The circumstance that the registry is in Book No. 1 and not in the Book appropriate for the registration of a will is not one that would invalidate the document. 1953 Ker L T 749 : AIR 1954 Trav-Co 197 (197) (Pr 2).

SECTION 15

——S. 15 — Muhammadan testator—Oral will—Validity of—After the enactment of the Travancore Wills Act, rules of Mohamedan law allowing oral wills must be deemed to have been abrogated by provisions of the Act so far as Muhamedens in Travancore area were concerned. See Succession Act (1925), S. 58. AIR 1955 NUC (Trav-Co) 6005.

——S. 15—Attestation of will—Proof—Deposition of one of the attesting witnesses that they saw executant sign the document and that both of them attested the same document is enough proof. See Succession Act (1925), S. 63. AIR 1952 Trav-Co 195 (DB).

TRAVANCORE WORKMEN'S COMPENSATION ACT (13 of 1114 ME)

SECTION 15

——S. 15—Scope — Injury to Workman caused by accident due to tortious act of another — Payment of compensation by master — Right to recover same from wrongful party responsible for accident—Common law — Right under. See Workmen's Compensation Act (1923), S. 3. AIR 1951 Trav-Co 171 (2).

TRAVELLING BY RAILWAY WITHOUT PASS OR TICKET

See Railways Act (1890), Ss. 68, 112, 113.

TREASURE TROVE

See (1) Madhya Bharat Treasure Trove Act (44 of 1949).

(2) Treasure Trove Act (6 of 1878).

TREASURE TROVE ACT (6 of 1878)

SECTION 7

——Ss. 7 and 18—Enquiry by Collector — Nature of —Quasi-judicial—Procedure—(Constitution of India, Art. 226).

A Collector who proceeds to hear a case under the provisions of the Treasure Trove Act, acts in a quasi-judicial capacity and the procedure to be followed by him must be of a quasi-judicial character. He must follow the procedure prescribed by or under the statute by which the tribunal has been created or, in the absence of such procedure, by the procedure which has been devised by the tribunal itself. It is of the utmost importance, however, that the procedure should be consistent with the rules of natural justice, that the elementary and fundamental principles of a fair and impartial trial should be observed and that the positive provisions of the statute should be complied with. Notice of hearing should be given particularly if the statute so requires. The right to a hearing embraces the right to a reasonable opportunity to know the claims of the opposing party — the right to know the witnesses against him, the right to cross-examine those witnesses, the right to offer evidence in explanation or rebuttal, and the right to test, explain or refute. Requirement of a full hearing means one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety from the standpoint of justice and law, of the steps asked to be taken: (1923) 261 U S 184, Rel. on.

As the title to treasure trove belongs to the finder against all the world except the true owner, one of the important issues which always arises in such cases, is whether the person who claims to be the finder of the treasure is in fact the finder thereof. The strict or technical rules of evidence contained in the Evidence Act do not apply to proceedings, before administrative tribunals and failure to apply such rules does not invalidate such proceedings, provided the provisions of law are not departed from and the substantial rights of the parties are not violated. A tribunal has power to direct the course of the proceedings and the judicial or quasi-judicial officer is said to be biased or prejudiced when he has a leaning or inclination to or against a party which so sways his mind to one side as to prevent him from holding the scales evenly between the parties or deciding the case impartially between them. The personal interest, which disqualifies a judicial or quasi-judicial officer must be an interest direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial or merely speculative or theoretical. The fact that an administrative officer acts both as prosecutor and judge does not operate as a disqualification. (1910) 2 I R 271, Rel. on. An officer otherwise disqua-

lified may still act, if his failure to act would nullify the law or close the doors of justice. The jurisdiction of the Collector to hear and determine a case under the Act is exclusive. AIR 1956 Punj 235, Reversed. **61 Punj L R 794 : ILR (1959) Punj 1975 : AIR 1960 Punj 82 (84, 85) (Prs 6 to 8, 10, 12, 13) (DB).**

——Ss. 7 and 18—Collector's powers.

The Collector when holding an inquiry under S. 7, Treasure-trove Act exercises quasi-judicial powers and under S. 18 he has all the powers that a civil Court has under the Code of Civil Procedure. **AIR 1956 Punj 235 (237) (Pt A) (Pr 5).**

[Reversed on another point in AIR 1960 Punj 82.]

——S. 7—Constitution of India, Art. 226 — Certiorari —Bias—Collector's order under Treasure-trove Act— Likelihood of prejudice or bias in exercising his discretionary powers—This is sufficient to oblige High Court to grant writ of certiorari. See Constitution of India, Art. 226. **AIR 1956 Punj 235.**

SECTION 9

——S. 9—Applicability.

Treasure discovered on 7-7-1948 — M. B. Treasure Trove Act came into force on 17-7-1949 — M. B. Act does not apply retrospectively — It does not apply therefore to the treasure discovered on 7-7-1948. **AIR 1955 N U C (Madh B) 2983 (DB).**

SECTION 11

——Ss. 11, 12 and 15—Constitution of India, Art. 226 —Certiorari —Error apparent on face of record—Collector's order under Treasure-trove Act.

Sections 11 and 12 come into operation only when the property is declared owner less under S. 9. S. 15 becomes operative only when a claimant other than the finder files a suit in a civil Court. Where no claimant has obtained a declaration from a civil Court it must be held that the order of Collector holding that the treasure belonged to a certain person or that it was recovered from the land belonging to that person is vitiated by errors apparent on the face of the record. See Constitution of India, Art. 226. **AIR 1956 Punj 235.**

SECTION 15

——S. 15 — Certiorari — Error apparent on face of record—Collector's order under Treasure-trove Act— (Treasure-trove Act (1878), Ss. 11, 12 and 15).

Sections 11 and 12 come into operation only when the property is declared ownerless under S. 9. S. 15 becomes operative only when a claimant other than the finder files a suit in a civil Court. Where no claimant has obtained a declaration from a civil Court, it must be held that the order of Collector holding that the treasure belonged to a certain person or that it was recovered from the land belonging to that person is vitiated by errors apparent on the face of the record. See Constitution of India, Art. 226. **AIR 1956 Punj 235.**

SECTION 18

——Ss. 18, 7—Enquiry by Collector—Nature of proceedings—Quasi-judicial—Procedure — (Constitution of India, Art 226) — AIR 1956 Punj 235, Reversed. See Treasure Trove Act (1878), S. 7. AIR 1960 Punj 82 (DB).

——S. 18—Collector's powers.

The Collector when holding an enquiry under S. 7 Treasure-trove Act exercises quasi-judicial powers and under S. 18 he has all the powers that a civil Court has under the Code of Civil Procedure. See Treasure-trove Act (6 of (1878), **S. 7. AIR 1956 Punj 235.**

[Reversed on another point in AIR 1960 Punj 82].

TREATIES

See (1) Civil P. C. (1908), S. 9—Act of State.
(2) Constitution of India, Art. 51.

Suit in respect of.
See Civil P. C. (1908), S. 9.

TREATISES

Evidence of.
See Evidence Act (1872), Ss. 56, 57 and 60.

TREES

See (1) Civil P. C. (1908), S. 16.
(2) General Clauses Act (1897), S. 3 (26).
(3) Penal Code (1860), S. 379.
(4) Transfer of Property Act (1882), S. 3.

TRESPASS

See (1) Cattle Trespass Act (1871).
(2) Electricity Act (1910), S. 20.
(3) Penal Code (1860), Ss. 441, 460.
(4) Tort.

Criminal.
See (1) Penal Code (1860), Ss. 441, 447.
(2) And Statutory cross references under "Criminal law—Criminal trespass".

—House trespass.
See Penal Code (1860), Ss. 442-460.

Railway land, trespass on.
See Railways Act (1890), S. 122.

Suit for.
—Forum.
See Civil P. C. (1908), S. 16.

Suit for compensation.
—Limitation.
See Limitation Act (1908), Art. 39.

Suit for damages.
See Tort.

TRESPASSER

Improvements by.
See T. P. Act (1882), S. 51.

TRIAL

See Civil P. C. (1908), O. 17, R. 1.

Bar of.
See (1) Constitution of India, Art. 20 (2).
(2) Criminal P. C. (1898), S. 403.

Criminal.
For Statutory cross references see under "Criminal trial".

Irregularity in.
See Criminal P. C. (1898), Ss. 529-537.

Joint.
See Criminal P. C. (1898), Ss. 233 to 235, 239.

Place of.
For Statutory cross references see under "Criminal trial—Place of inquiry or trial".

Summary.
See Criminal P. C. (1898), S. 260.

TRIAL BY COURT MARTIAL

See Army Act (1950), Ss. 125, 153, 164.

TRIAL BY JURY

See (1) Criminal P. C. (1898), Ss. 297, 298, 299, 304, 307 & 537.
(2) Statutory cross references under (i) "Criminal trial—Jury"—(ii) "Criminal trial — Sessions trial" and (iii) "Criminal trial — Trial by jury".

TRIAL IN ABSENCE OF ACCUSED

See Criminal P. C. (1898), S. 540A.

TRIAL IN CAMERA

See (1) Civil P. C. (1908), S. 151.
(2) Criminal P. C. (1898), Ss. 352, Proviso and 561A.

TRIAL IN SUMMONS CASE

See Criminal P. C. (5 of 1898), Ss. 241-249.

TRIAL IN WARRANT CASE

See Criminal P. C. (5 of 1898), Ss. 251, 259.

TRIAL OF OFFENCES AFFECTING ADMINISTRATION OF JUSTICE

See Criminai P. C. (1898), Ss. 195, 476-487.

TRIAL OF PERSON PREVIOUSLY CONVICTED

See Criminal P. C. (1898), S. 348.

TRIBAL AREAS

See Constitution of India, Sch. 6, Para 20.

Administration of.

See Constitution of India, Art. 244.

TRIBAL AREAS IN ASSAM

Administration of.

See Constitution of India, Sch. 6.

TRIBAL AREAS REGULATION (HYDERABAD REGU. 3 of 1359 Fasli)

RULE 26

——R. 26 — Civil P. C. (1908), S. 115 — Subordinate Court — Assistant agent acting under Tribal Areas Regulation is subordinate Court—Revision lies against his orders. See Civil P. C (1908), S. 115. **AIR 1955 Hyd 271 (DB).**

TRIBES

Scheduled.

See Statutory cross references under "Scheduled tribes".

TRIBUNAL

Domestic or Quasi-Judicial

See (1) Civil P. C. (1908), S. 9.
(2) Constitution of India, Arts. 226 and 32.

Election.

See Representation of the People Act (1951), Ss. 2, 98, 99.

TRIBUNAL OF ARBITRATION OF BENGAL CHAMBER OF COMMERCE RULES

See also Arbitration Rules of Bengal Chamber of Commerce and Industries Tribunal (1956).

RULE 10

——R. 10—Award by Bengal Chamber of Commerce —Order remitting award for consideration by Court to be newly constituted—New Court appointed—One of appointed arbitrators unwilling to serve on the Court—Re-constitution of Court under rules of Bengal Chamber of Commerce by appointment of somebody in his place is legal. See Arbitration Act (1940), S. 16. **AIR 1956 Cal 361.**

RULE 11

——R. 11—Misconduct—No proper hearing — Arbitration by Bengal Chamber of Commerce—One party filing typed list of points of argument — Typed list not written statement—Each point taken from statements already on record — Failure to give opportunity to other party to file reply to such list held no misconduct See Arbitration Act (1940), S. 30. **AIR 1956 Cal 361.**

RULE 17

——R. 17 — Misconduct — Arbitration by Bengal Chamber of Commerce—Principles of natural justice —Applicability of—Refusal to allow questions either irrelevant or covered by written submissions in cross-examination—No misconduct—See Arbitration Act (1940), S. 30. **AIR 1956 Cal 361.**

TRIBUNAL OF BAR COUNCIL

See Bar Councils Act (1926), S. 11.

TRIPURA ACT (1 of 1327 T E)

SECTION 9

——S. 9—Alienation violating S. 9.

Section 9 does not make the alienation absolutely void but the Minister could avoid the same — No attempt to avoid alienation — S. 9 does not make alienation void or inoperative. **A I R 1956 Tripura 9 (16) (Pt G) (Pr 36).**

TRIPURA ADMINISTRATION ORDER (1949)

CLAUSE 5

——Cl. 5—Contract Act—S. 19 — Settlement of land with plaintiffs by Regent Maharani—Settlement obtained by fraud—Settlement being not with genuine consent, is not legal—Chief Commissioner has power to undo settlement after integration of State with Union — (Agartala Town Settlement Act (1348 T E), S. 12). See Contract Act (1872), S. 19. **A I R 1955 Tripura 23.**

——S. 5—Agartala Town Settlement Act—Ss. 11, 12 —Settlement of Uccha Swatwa rights — Settlement vitiated by fraud — Interference by Chief Commissioner—Judgment of Chief Commissioner is final and cannot be challenged in Civil Court — It is in no manner a nullity — See Agartala Town Settlement Act (1348 T E), S. 11. **AIR 1955 Tripura 23.**

(TRIPURA) BIDHAN SHAHAR BANDOBASTIO OF AGARTALA (1346 TE)

See under Bidhan Shahar Bandobastio of Agartala (1348 T E).

TRIPURA (COURTS) ORDER (1950)

CLAUSE 8

——Cls. 8 and 43—Petition pending in Judicial Committee before commencement of Order—Abolition of Judicial Committee — Petition transferred to Court of Judicial Commissioner — Petition is entertainable by that Court. **1952 Cri L J 1213 : A I R 1952 Tripura 7 (8) (Pt A) (Pr 12).**

CLAUSE 34

——Clause 34 — Material irregularity in exercise of jurisdiction — Attachment before judgment—Objection to, allowed without investigation — Procedure contrary to law and natural justice—Order set aside. See Civil P. C. (1908), S. 115. **AIR 1957 Tripura 45.**

——Cl. 34—Other remedy open—(Civil P. C. (1908), S. 115).

Under S. 115, Civil P. C., or paragraph 34 of the Tripura Courts Order, the only remedy which, if still open, has been specifically laid down as barring revision is the remedy of appeal. That being so, where there is any remedy other than appeal open to a party, the question whether revisional powers should or should not be exercised should be decided on the particular facts and circumstances of each case. One such instance is whether the remedy by a separate suit was doubtful. Another circumstance which is taken into consideration in favour of the exercise of revisional jurisdiction, even though another remedy by way of suit be available, is that the alternative remedy by suit would not be equally prompt or certain and put the aggrieved party to additional expense. **AIR 1956 Tripura 26 (27) (Pt A) (Pr 4).**

CLAUSE 43

——Cls. 43 and 8—Petition pending in Judicial Committee before commencement of Order — Abolition of Judicial Committee — Petition transferred to Court of Judicial Commissioner — Petition is entertainable by that Court—See Tripura (Courts) Order (1950), Cl. 8. **1952 Cri L Jour 1213 : AIR 1952 Tripura 7.**

TRIPURA ESSENTIAL SUPPLIES (TEMPORARY POWERS) ACT (1358 T E)

——Tripura State Cotton Cloth and Yarn Control Order as amended in 1949 continues to be in force in Tripura by reason of S. 5, Tripura State (Administration) Order, 1950 — Extension of Essential Supplies Temporary Powers Act, 1946 to Tripura—Effect of — Tripura Essential Supplies (Temporary Powers) Act (1358 T E) stood repealed by virtue of S. 5 of the Merged State Laws Act—Merged States (Laws) Act (1950), S. 5 and Schedule)—(Tripura State (Administration) Order (1950), S. 5) — (Part C States Laws Laws Act (1950), Ss. 3, 4) — See Tripura State Cotton Cloth and Yarn Control Order (1358 T E). **AIR 1952 Tripura 18.**

TRIPURA EXCISE ACT (1296 T. E.)

SECTION 5

——Ss. 5, 8 — **Foreign liquor imported prior to Notification—Licence not necessary.**

Foreign liquor which was not liable to duty as having been imported from outside prior to the Notification imposing the duty was not a 'prohibited intoxicant' under S. 5 of Tripura Excise Act and hence no licence was necessary for the sale of such liquor. Conviction under S. 8 for not producing the licence was, therefore, unsustainable. **1960 Cr L J 1141 : AIR 1960 Tripura 25 (28) (Pt B) (Pr 14).**

SECTION 8

——Ss. 8, 5—Foreign liquor imported prior to Notification — Licence not necessary—Conviction under S. 8 for not producing licence is not sustainable — See Tripura Excise Act (1296 TE), S. 5. **1960 Cr L J 1141 : AIR 1960 Tripura 25.**

TRIPURA FOREST ACT (2 of 1297 T E)

SECTION 5

——S. 5 — **Notification under—Prosecution for contravention — The notifications cannot be treated as notifications under S. 20 of the Indian Forest Act, 1927.**

Hence prosecutions of the various petitioners under S. 26 (1) of the Indian Forest Act are illegal and the conviction on such prosecutions cannot be sustained. **1961 (1) Cr L J 562 (Tripura).**

[Reversed in AIR 1965 S C 147].

TRIPURA GARU BEDAM NIANTRAN BIDHI (ACT FOR REGULATING CONTROL OF UNCONTROLLED CATTLES) (1353 T E)

SECTION 1

——S. 1—Act is not repealed by Merged State Laws Act (1949), S. 5 read with Part C State Laws Act (1950), S. 3. **AIR 1955 N U C (Tripura) 5115.**

TRIPURA INDEBTED LANDLORDS ESTATES ADMINISTRATION ACT (1 of 1332 T E)

SECTION 13

——S. 13—During management of Talukdar's estate A obtaining settlement and investing money knowing all facts and without being induced by talukdar to invest money — After satisfaction of debts estate revesting in talukdar — He is not estopped from denying A's ryoti rights. See Evidence Act (1872), S. 115. **AIR 1957 Tripura 13.**

TRIPURA LAND REVENUE AND LAND REFORMS ACT (43 of 1960)

See under Tenancy Laws.

TRIPURA LAND REVENUE AND LAND REFORMS RULES (1961)

See under Tenancy Laws.

TRIPURA LIMITATION ACT

SECTION 92

—— S. 92 — Dispossession is a question of fact. See Limitation Act (1908), Art. 142. **A I R 1954 Tripura 8.**

ARTICLE 33

——Art. 33—Salary deposited with employer— Starting point for a suit to recover is the date of unqualified demand. Article applicable is 33 of Tripura Limitation Act (Art. 60 of the Indian Limitation Act). See Limitation Act (1908), Art. 60. **AIR 1953 Tripura 5.**

ARTICLE 70

——Art. 70—Army occupying land—Injury to plaintiff's estate—Limitation applicable to suit for compensation—Indian Limitation Act will apply if the cause of action was alive and was not barred under Art. 70 of the Tripura Limitation Act on 16th April 1950 when Indian Limitation Act was enforced in the Tripura State. See Limitation Act (1908), Art. 120. **AIR 1957 Tripura 33.**

——Art. 70 — "Right to sue" means a right to seek relief, that is, a right to prosecute by law to obtain relief by means of legal procedure. See Limitation Act (1908), Art. 120. **AIR 1957 Tripura 33.**

TRIPURA MERGER AGREEMENT (1949)

ARTICLE 8

——Art. 8 (1)—Former employee of Tripura State — Rights of, on merger into Union — Employee asked to get himself medically examined—Refusal and consequent retrenchment —Option was with the Administration— If option was exercised and employee was retrenched on payment of retrenchment benefits in addition to pension he has no right to file writ petition—Art. 8 of Tripura Merger Agreement did not create legal right in civil servants of merged State to claim service in New State—AIR 1957 Madh Bha 100, Rel. on.—Order does not amount to removal from service within Art. 311. AIR 1954 Madh Bha 177 Rel. on; AIR 1959 Madh Bha 136, Disting—Constitution of India, Arts. 311, 226. **AIR 1961 Tripura 29 (31, 32) (Prs 9, 15 to 17).**

TRIPURA MUNICIPALITIES ACT (2 of 1349 T. E.)

See under Municipalities.

TRIPURA PUBLIC DEMANDS RECOVERY ACT

SECTION 20

——S. 20 (2) — Application to set aside sale held under Tripura Public Demands Recovery Act — Delay — S. 20 (2) only requires that the Certificate Officer should be satisfied that there are reasonable grounds for entertaining the application after the expiry of the period of 30 days. See Civil P. C. (1908), O. 21, R. 90. **AIR 1955 Tripura 5.**

SECTION 24

——S. 24—Provisions of Civil P. C; do not apply. See Civil P. C. (1908), O. 21, R. 85. **AIR 1955 Tripura 10.**

SECTION 25

——S. 25— Civil Court has no power to set aside sale on ground that 3/4 of the purchase price was not deposited within 15 days. See Civil P. C. (1908), O. 21, R. 85. **AIR 1955 Tripura 10.**

SECTION 38

——S. 38—Discretion under — Exercise of — Can be exercised in matters for which no clear provisions are made. See Civil P. C. (1908), O. 21, R. 85. **AIR 1955 Tripura 10.**

TRIPURA RULES OF THE JUDICIAL COMMISSIONER'S COURT.

See under High Court Rules and Orders.

TRIPURA STATE (ADMINISTRATION) ORDER (1950)

CLAUSE 5

—Cl. 5—Tripura State Cotton Cloth and Yarn Control Order (as amended in 1949) continues to be in force in Tripura — Extension of Essential Supplies Temporary Powers Act, 1946 to Tripura—Effect of—The Tripura State Cotton Cloth and Yarn Control Order (1358 T. E) is not repealed—It continues in force by virtue of cl. 5, Tripura State (Administration) Order (1950). See Tripura State Cotton Cloth and Yarn Control Order (1358 T. E.), Cl. 1. AIR 1952 Tripura 18.

TRIPURA STATE COTTON CLOTH AND YARN CONTROL ORDER (1358 T. E.)

CLAUSE 1

—Cl. 1 (as amended in 1949) — Continuance in force even after merger—Merged State (Laws) Act, 1949, S. 5 and Sch.—Effect of—Tripura State Administration Order (1950), S. 5.

Tripura State Cotton and Yarn Control Order (1358, T. E.) is one anterior to the Tripura State Essential Supplies (Temporary Powers) Act (1358 T.E.) and the Order has not taken its origin from the latter Act. It is an independent law of the State by itself.

The Merged State Laws Act (1949), in its Schedule includes the Essential Supplies (Temporary Powers) Act 1946 and therefore it applied to the State and by virtue of the provisions of S. 5 of the 1949 Act any corresponding law in force in the State is no doubt repealed. Therefore the Essential Supplief Act (1358 T. E) is thereby repealed. But the Central Essential Supplies Act 1946, is an enabling Act. They have nothing in common and the Order in question is not repealed It continues in force by virtue of S. 5 of Tripura State (Administration Act) 1950. 1952 Cri L J 1642 : AIR 1952 Tripura 18 (20) (Pt A) (Prs 12, 13).

TRIPURA STATE COURTS ORDER

CLAUSE 34

—Cl. 34 — Civil P. C. (1908), S. 115, O. 6, R. 17 — Case decided — Order allowing amendment of plaint —Amendment not introducing new cause of action—New matter beyond controversy not raised— Amendment only to bring real matter in controversy before Court — Allowing amendment did not amount to case decided — Lower Court held did not act illegally or with material irregularity in exercise of its jurisdiction — Amendment held properly allowed — Since petitioners had accepted costs, there was no injustice done to them. See Civil P. C. (1908), S. 115. AIR 1955 Tripura 27.

TRIPURA TENANCY ACT (1 of 1296 T. E.)

See under Tenancy Laws.

TRIVANDRUM CITY MUNICIPAL ACT (4 of 1116 M. E.)

See under Municipalities.

TRUST

See (1) Charitable and Religious Trusts Act (1920).
(2) Civil P. C. (1908), S. 92.
(3) Constitution of India, Sch. 7, List 3, Entry 10.
(4) Bombay Public Trusts Act (1950).
(5) M. P. Public Trusts Act (30 of 1951).
(6) Mussalman Wakf Act (1923).
(7) Trusts Act (1882).

Acceptance of.
See Trusts Act (1882), S. 10.

Author of.
See Trusts Act (1882), S. 3.

Beneficial interest, what is.
See Trusts Act (1882), S. 3.

Beneficiary.
See Trusts Act (1882), S. 3.
—Follow trust property, right to.
See Trusts Act (1882), S. 63.
—Rights and liabilities.
See Civil P. C. (1908), O. 31, R. 1.
—Who can be.
See Trusts Act (1882), S. 9.

Breach of.
See (1) Civil P. C. (1908) S. 92.
(2) Criminal P. C. (1898), S. 182.
(3) Penal Code (1860), S. 403.
(4) Trusts Act (1882), Ss. 3, 23.
—Criminal.
See (1) Army Act (1950), S. 52.
(2) Penal Code (1860), Ss. 20, 405—409.
—Suit against trustee to make good the loss.
Limitation.
See Limitation Act (1908), Art. 98.

Co-trustee.
—Loan to.
See Trusts Act (1882), S. 54.
—Whether can act singly.
See Trusts Act (1882) S. 48.

Creation of.
—Essentials.
See Trusts Act (1882), S. 6.
—Mode of.
See Trusts Act (1882), S. 5.
—Will, creation by.
See Trusts Act (1882), S. 5.

Defined.
See (1) Specific Relief Act (1877), S. 3.
(2) Trusts Act (1882), S. 3.

Disclaimer of.
See Trusts Act (1882), S. 10.

Following trust property.
See Trusts Act (1882), Ss. 63, 64.

Investment of trust property.
See Trusts Act (1882), Ss. 3, 20.

Liability to income-tax.
See Income-tax Act (1922), S. 10.

Obligations, in nature of.
See Trusts Act (1882), Ss. 81—96.

Private.
See (1) Bombay Public Trusts Act (1950), S. 2 (13).
(2) Civil P. C. (1908), S. 92.

Public.
See (1) Bombay Public Trusts Act (1950), S. 2 (13).
(2) Civil P. C. (1908), S. 92.

Revocation of.
See Trusts Act (1882), S. 79.

Subject of.
See Trusts Act (1882), Ss. 5, 8.

Suit relating to.
See Civil P. C. (1908), S. 92.

Trustee.
—Accounts, duty to keep.
See Trusts Act (1882), S. 19.
—Acquisition by, of trust property wrongfully converted.
See Trusts Act (1882), S. 34.
—Application by, for directions.
See (1) Charitable and Religious Trusts Act (1920), S. 7.
(2) Trusts Act (1882), S. 34.
—Appointment of.
See Civil P. C. (1908), S. 92.

—Arbitration, power to refer to.
See Trusts Act (1882), S. 43.
—Care required from trustee.
See Trusts Act (1882), S. 15.
—Co-trustee.
Trustees to act jointly.
See Trusts Act (1882), S. 48.
—Death of.
See Trusts Act (1882), S. 70.
—Debenture-holder, trustee for.
See Companies Act (1956), S. 119.
—Decree against.
See Civil P. C. (1908), O. 31, R. 1.
—De facto.
See Civil P. C. (1908), S. 92.
—Defined.
See (1) Limitation Act (1908), S. 2 (11).
(2) Trusts Act (1882), S. 3.
—Delegation by.
See Trusts Act (1882), S. 47.
—De son tort.
See Civil P. C. (1908), S. 92.
—Disabilities of.
See Trusts Act (1882), Ss. 47 to 54.
—Discharge of.
See Trusts Act (1882), S. 71.
—Disclaimer by.
See Trusts Act (1882), S. 10.
—Duties and liabilities of.
See Trusts Act (1882), Ss. 13 to 23.
—General authority of.
See Trusts Act (1882), S. 36.
—Investment of trust property.
See Trusts Act (1882), S. 20.
—Liability to income-tax.
See Income-tax Act (1922), Ss. 40, 41.
—New trustee.
See Trusts Act (1882), Ss. 73, 74.
—Official.
See Official Trustees Act (1913).
—Opinion or advice of court, right to obtain.
See Trusts Act (1882), S. 34.
—Protection of title to trust property.
See Trusts Act (1882), S. 13.
—Reimbursement of expenses of.
See Trusts Act (1882), S. 32.
—Removal of.
See (1) Civil P. C. (1908), S. 92, O. 40, R. 1.
(2) Trusts Act (1882); S. 71.
—Rights and powers of.
See Trusts Act (1882), Ss. 32 to 44.
—Several trustees, death or discharge of one.
See Trusts Act (1882), S. 44.
—Suit against to follow trust property.
Limitation.
See Limitation Act (1908), S. 10.
—Suit by or against.
See Civil P. C. (1908), O. 31, R. 2.
—Vacating office.
See Trusts Act (1882), Ss. 71 to 76.
—Wrongful purchase by.
See Trusts Act (1882), S. 62.

TRUSTEES ACT (27 of 1886)

PREAMBLE

——Preamble—Preamble and S. 3.

Parties not governed by English Law — Act has no application. 1952 All L J 259 : 1952 All W R (HC) 345 : ILR (1953) 2 All 872 : A I R 1952 All 825 (828) (Pt D) (Pr 12) (DB).

SECTION 3

——S. 3 -Parties not governed by English Law—Act has no application. See Trustees Act (27 of 1866), Preamble. A I R 1952 All 825 (DB).

TRUSTEES AND MORTGAGEES POWERS ACT (28 of 1866)

SECTION 8

——S. 8 — Sale in pursuance of power in mortgage is not liable to be impeached on account of want of publicity or want of notice as required either by the instrument of mortgage or by the law. See Transfer of Property Act (1882), S. 69 (3). AIR 1955 Mad 331 (DB).

SECTION 13

——S. 13—Receiver appointed by trustees for debenturer holder is agent of company.

A company by two debentures mortgaged and charged all its properties, assets immovable and movable, and the undertaking to the trustees for the debenture holders of the company to secure the repayment of all principal moneys and interest due on debentures. The trustees appointed a receiver of the properties of the company :

Held, that the legal position of a receiver appointed by mortgagees in each case would turn upon the construction of the mortgage deed and that on construction of the indentures the receiver must be deemed to be the agent of the company and represented the company for all practical purposes. (1953) 23 Com. Cas 351 : 1953 Mad W N 713 : ILR (1954) Mad 463 : (1953) 2 Mad L J 630 : A I R 1954 Mad 369 (372, 373) (Pt A) (Prs 9, 10, 11, 12) (DB).

TRUSTS ACT (2 of 1882)

PREAMBLE

——Pre.—Settlement deed — Construction — Trustees to partition property in certain proportions amongst sons of settlors — Right of beneficiaries to deal with their interest — Beneficiaries could deal lawfully and validly with their beneficial interest in the property but not their legal estate — Sale by trustees passed a valid title in favour of the vendee. AIR 1954 Cal 432 (435, 436) (Pt B) (Prs 15, 16, 18).

SECTION 1

——S. 1—Applicability.

Act has no application to public or private religious or charitable endowment — Under Hindu Law trust can be created without registered deed — Trusts for erection of Goshala is a trust for charitable and religious purposes according to Hindu Law — Essentials for valid trust for charitable purposes under Hindu Law indicated—(Hindu Law—Religious Endowment —Dedication). 1953 All W R (HC) 77 : A I R 1953 All 449 (450) (Pt B) (Pr 10) (DB).

——Ss. 1 and 23 — Applicability — Public Trust — Manager of temple using temple funds in his business —Liability to pay compound interest — Rule of dam dupat—Applicability.

Though the provisions of the Trusts Act are not applicable to public trusts in view of S. 1 of that Act the principles underlying them being based on general principles and rule of English law can be applied to them. In matters which are not provided for, the Courts in India apply the principles and Rules of English law on the subject unless they are inconsistent with the rules and practice of this Court. A I R 1937 Bom 374 and 1 Bom L R 667, Rel. on. Where the trustees who were the managers of a public temple have used the funds of the temple in their business or have so mixed it with their own funds that it is impossible to say that they have not so used it they are liable to be charged compound interest with half yearly rests. In such a case even if the trustee be regarded as a debtor of the cestuique trust in the large sense, the debt would be ex delicto and not one founded on lending or contract, and, therefore, the rule of damdupat has no application. 62 Bom L R 308 : 1960 Nag L J 353 : ILR (1960) Bom

675 ; A I R 1960 Bom 438 (441, 442) (Pt A) (Prs 9, 11, 12) (DB).

[Reversed on another point in AIR 1965 S C 1692].

——S. 1—Manager of a temple — Must be deemed to be in the position of trustee vis-a-vis the temple and its properties. A I R 1960 Bom 438 (440) (Pt B) (Pr 6) (DB).

[Reversed on another point in AIR 1965 S C 1692].

——S. 1—Public charitable trust — Determination of —Bombay Public Trusts Act, S. 11 — Applicability— (Transfer of Property Act (1882), S. 18)—(Civil P. C. (1908), S. 92—(Deed—Construction).

In order to determine whether a deed of trust is a valid public charitable trust, it is necessary to see what is the dominant intention of the testator namely who are the real objects of his bequest and secondly whether the purpose is a charitable purpose and whether the class indicated as the object of charity forms at least a section of the public. The proper approach is to take all the clauses of the deed together to read all the clauses, harmonize them with each other and to deduce therefrom namely from the whole document what is the paramount intention of the settlor and what is the object of the charity. Where the main and paramount intention of the settlor was to benefit the members of his family and thereafter the members of his caste who might need assistance from such funds there could be no public charitable trust created. A I R 1956 Bom 81 (83, 85, 86) (Pt A) (Prs 17, 23, 24).

——S. 1—Scope—Trust created before Act — If governed by Act—Applicability of S. 83.

Section 83 which is contained in Chap. IX of the Act would apply to trust created before its enactment. At any rate, the principles underlying that statutory provision would certainly apply. Those indeed were no new principles, invented or introduced for the first time in this country. Section 83 merely modified the law of the resulting trusts. Such trusts were no new innovations but were known and recognised in the law of trusts in this country—both Hindu and Mahamedan, and widely applied from long before the Act of 1882. (1931) L R 58 I A 279, Foll. ILR (1955) 2 Cal 109.

——S. 1 — Rules regulating trusts — Applicability to Mahomedan wakf—Not applicable. A I R 1953 Hyd 193 (200) (Pt D) (Pr 10).

——Ss. 1, 74 — Act applies to private trusts only and not to religious or charitable endowments to Religious trust — Public or Private Trusts — Tests for determination indicated—Appointment of trustees for religious trust — S. 74 does not apply. A I R 1955 N U C (Madh B) 3799.

——S. 1—Private or public Trusts — Tests for determination of public or private trusts—Public trusts are for benefit of public or some considerable portion of it while in private trusts beneficial interest is vested in specified individuals—Dedication for worship of a family idol is private endowment — Long course of user by public denotes public trusts. 1963 M P L J (Notes) 266.

——Ss. 1, 20 and 54 — Applicability — Act does not apply to public or private religious or charitable endowments—Principles of general law governing the relationship of trustee, and cestui que trust embodied in Ss. 20 and 54 may, however, be considered. (1964) 53 I T R 292 : ILR (1965) 2 Mad 113 (DB).

——S. 1 — Madras Agricultural Income-tax Act (5 of 1955), Ss. 4 (b) and 4 (3) — Scope—Property need not be held under public trust — Partial dedication — Income applied for performance of religious or charitable purpose alone is exempt — Application of income by trustee is irrelevant. See Madras Agricultural Income-tax Act (5 of 1955), S. 4 (b). (1962) 75 Mad L W 293.

——S. 1 — Public and private trust—Distinction between. See Bihar Hindu Religious Trusts Act (1 of 1951), S. 2 (1). 1963 B L J R 20.

SECTION 3

SYNOPSIS

(Trusts Act (1882), S. 3.)

1. Scope.
2. "For the benefit of another,"
3. Trust property.
4. Beneficiary.
5. Breach of trust.
6. Obligation in nature of trust.

1. Scope.

● ——S. 3 — Difference between trust and charge — Intention of testator — Property bequeathed to heirs with direction to pay increasingly to charity on happening of certain contingencies — Last contingency taking place — Held direction created trust and not charge. See Will—Construction of. (1962) 2 S C R 28.

——Ss. 3, 6, 23 and 48—Creation of trust—Co-trustee — Breach of trust — (Negotiable Instruments Act (1881), S. 13—Deposit receipt)—Evidence Act (1872), Ss. 101 to 104.

Held, on facts that the Hundis issued by reason of the Rajinama must be taken to be part of the Rajinama in as much as they were referred to therein by description under the heading, "Details of the Hundis". The Rajinama and the Hundis were integrally one and must be read together. The entire set-up of the Rajinama and the subsequent actings showed that all the parties concerned including Periakaruppa himself had confidence in Chockalingam who was no other than the paternal uncle of Muthayi Achi, the mother of the minor. Undoubtedly para. 3 of the Rajinama indicated that the amount was to be deposited to the order of Periakaruppa as also Chockalingam and that both together were to have mel parve (supervision). But whatever might be the connotation of this provision, it did not appear reasonable to attribute to Periakaruppa the undertaking of the responsibility of a trustee on its basis. Trusteeship is a position which is to be imputed to a person on clear and conclusive evidence of transfer of ownership and of the liability attached to such ownership on account confidence reposed, and on such liability having been accepted by the alleged trustee. There was no clear and conclusive proof of any of these elements in the present case so far as Periakaruppa was concerned. By virtue of the direction to pay in paras. 1 and 2 of the Rajinama the compromise brought about between Periakaruppa on one side and Alagappa and junior Periakaruppa on the other the retationship of debtor and creditor. Until the hundis were realised that relationship would continue. There was no transfer of ownership till then. There was absolutely nothing to indicate that the provisional retention of the amount in Chockalingam's firm for that period was unreasonable or that Periakaruppa had any notion that Chockalingam was financially in embarrassed circumstances and that he made use of the funds. Under law, the investment of funds by a trustee with himself would constitute breach of trust. But before a co-trustee can be made liable therefor some kind of knowledge or connivance or gross negligence or the like contributing factor on his part has got to be made out. The burden was on the plaintiff, junior Periakaruppa to make out clearly that by the Rajinama Periakaruppa became a trustee for the minor's fund and incurred liability therefor for his co-trustee's breach. If he was

anxious for the minor boy's welfare to the extent of taking responsibility for his money on himself though it be jointly with Chokalingam clearer and decisive language was to be expected. This had not been made out. 20 Bom 448 and A I R 1914 Bom 286 and A I R 1940 Mad 157 and (1902) 1 Ch 889, Rel. on. Ranganathan Chettiar v. Periakaruppan Chettiar. 1958 S C J 58 : 1958 S C R 214 : (1958) 1 M L J (SC) 36 : (1958) 1 Andh W R (S C) 36 : A I R 1957 S C 815 (826 to 832) (Pt C) (Prs 14, 15, 17, 18, 21).

——S. 3—"Trust" — Essentials of—Trust and debt—Distinction—Deposit as security for performance of agreement — Interest payable on deposit—Deposit held, on construction of terms of agreement to be debt and not trust.

The essential quality of a debt is that the ownership of the debt amount is transferred to the debtor with complete dominion and control over the amount and a full right to spend it in any manner he likes without being liable to render accounts to the creditor. In the case of a trust, the trustee is always liable to render account to the trust and is not free to spend that amount in any manner he likes. On the other hand he has got to spend it and utilise it only for the specific purposes for which the trust was created. The payment of interest is a paramount consideration for determining whether or not a particular advance is a debt or a trust.

Held, that the deposit constituted a debt and not a trust. The deposit money came to the mills as their own money. They had full control and dominion over it. AIR 1942 All 119 (FB), Foll. I L R (1962) 1 All 865 : A I R 1962 All 370 (371, 372, 374) (Prs 2, 3, 12) (DB).

——S. 3—Retention of money for purpose of payment is no trust. See Transfer of Property Act (1882), S. 65. AIR 1954 All 348.

——S. 3—Limitation Act (1908), S. 10—Trust—Meaning of — Section applies to express trust and not to any other kind of trust. See Limitation Act (1908), S. 10. AIR 1959 Andh Pra 186 (DB).

——S. 3 — Trusts — Trustee — "Trutee 'de facto", 'trustee de son tort' —Constructive trustee—Meaning of explained — Limitation Act (IX of 1908), S. 10—Applicability of explained. (1958) 2 Andh W R 164: A I R 1959 Andh Pra 186 (188, 189) (Pt B) (Prs 17, 19, 21) (DB).

——S. 3—Trust and power — Distinction— Whether testator created trust or gave power—Tests indicated. See Will—Construction. AIR 1957 Bom 218 (DB).

——S. 3 — "Trust" — Disposal of residuary estate—Held, on construction of relevant provisions in will and codicil that what the testator created was not a trust but a power and no question of uncertainty arose. See Succession Act (1925), S. 89. A I R 1957 Bom 218 (DB).

——S. 3—Deposit of sum for specific purpose—Condition of payment of interest attached — Obligation in nature of trust.

Per Chakravarti C. J.—The test as to whether there is a loan or a trust in the case of a deposit of sum for specific purpose appears to be this. Where money is paid merely on condition of repayment and payment of interest till then, there is only a loan; but where the main condition on which money is paid shows that the corpus of the fund is being handed over in confidence to be held for the benefit of some person or object the provision for payment of interest is only a provision for an increase or improvement of the fund and there is no loan but a trust despite such provision which does not in any way negative a trust. 59 Cal W N 891 : (1955) 25 Com Cas 357 : A I R 1956 Cal 188 (191) (Pt F) (Pr 11) (DB).

——S. 3—Creation of trust—(Banker and customer).

A joint Hindu family firm holding a fixed deposit for one year in defendant Bank—After expiry of period part of deposit withdrawn in cash by one of partners who was authorized to operate the account and the remaining amount together with interest was allowed to be kept in floating suspense account in name of another partner B, on instructions of firm—Bank giving effect to these instructions with a view to conceal its inability to pay and deceive public—Bank suspending payments due to financial crisis—Scheme framed under S. 153-A, Companies Act for payment of liabilities in which fixed deposit of firm was also included — Held that unpaid balance of fixed deposit due to firm did not change its original character and no trust was created in favour of B by the transaction —B was not therefore entitled to any preference over other creditors of Bank. 34 Mad 128, applied. 12 J & K L R 97 : A I R 1954 J & K 34 (38)(Pr 7) (DB).

——S. 3 — Trust and power of appointment — Distinction stated. See Will — Construction. AIR 1965 Mad 519 (DB).

——S. 3 — Construction of deed.

Income-tax Act (1922), S. 16 (1) (c) Proviso 3 (Income-tax Act (1961), Ss. 60 to 63) — Scope, applicability — Trust deed to be interpreted as not to be repuguant to the settled law on the subject—Assessee transferring his shares in companies to a Trust — Assessee, himself a trustee investing trust funds in such companies — No dominant control over the affairs of the company — Assessee, held, did not receive any benefit from such borrowings — Exemption under Proviso 3, held, applied — Dividends on such shares not taxable See Income-tax Act (1922), S. 16 (1) (c), Proviso 3. (1964) 53 ITR 292 : ILR (1965) 2 Mad 113 (DB).

——S. 3 — Wakf— Alienation by trustee—Beneficiary can bring suit for possession — The possession if ordered in his favour will be on behalf of trust. See Muhummadan Law — Wakf. AIR 1957 Mad 194 (DB).

——Ss. 3 and 63 — Creation of trust — Vesting of property in trustee essential—Loanees from Government — Entrustment of money to agent for discharge of loan by payment into treasury — No trust created — Non-payment — Suit by Government for recovery of money by following it into hands of another — Maintainability — What Government has to plead and prove.

Certain agriculturists who had received loan from the Government, entrusted certain amounts of money to a Government agricultural overseer, for payment into treasury on their behalf towards discharge of their loan. Part of the amount so collected was paid into the treasury and rest was detained, being kept with the respondent, another agricultural overseer.

Held, that till the money was paid into the treasury and accepted by Government towards the discharge of the loan, the ownership therein remained with the loanees themselves. Further by the entrustment of money to the Government Overseer no trust as defined by S. 3, Trusts Act was created. The entrustment of money by the loanees was in the nature of an entrustment to an agent, the legal title remaining with the loanees. The Government could lay no cause of action under the provisions of S. 63, Trusts Act. 60 Mad L J 355; AIR 1931 Mad 251, Rel. on. AIR 1962 Orissa 4 (6, 7) (Prs 4, 5) (DB).

——S. 3 — Gift Deed — Assessee making a gift of perpetual annuity out of income from his estate — Annuity made a charge on revenue of the estate — Donor retaining to himself all beneficial interest in the property in question except the gift of annuity — Deed was a gift deed. See Orissa Agricultural Income

6. Obligation in nature of trust.

——S. 3 — Limitation Act, S. 10—Trustees—Trustee de son tort, de facto trustee and constructive trustee — Distinction. See Limitation Act (1908), S. 10. AIR 1959 Andh Pra 186 (DB).

——S. 3 — Obligation created not in trust but in contract.

Where under one of the terms of a bilateral agreement the company (one of the parties) binds itself in express terms to hold the deposit of a sum belonging to the other party for the specific purpose of due performance by the other party of its obligations, the obligation does not create an obligation in trust but an obligation in contract. 59 Cal W N 891 : (1955) 25 Com Cas 357 : AIR 1956 Cal 188 (195) (Pt D) (Pr 22) (DB).

——S. 3—Plaintiff advancing money for payment into Court to enable defendant to obtain reconveyance — Possessory mortgage to be executed of property so reconveyed—On defendant failing to obtain reconveyance, defendant undertaking to obtain refund from Court and to pay the same to plaintift in adjustment of amount borrowed — Character of funds deposited in Court — Money held in trust by defendant — On failure of purpose, money cannot be proceeded against by his creditors.

Held, on facts that the amount lent by the plaintiff was impressed with the character of a trust. The money was earmarked for a particular purpose of purchase of property which was agreed to be mortgaged and it was incumbent upon the defendant to carry out that undertaking and the money in the circumstances could not become his, but it was money intended for a particular purpose. Because the property could not be purchased, though it may be due to circumstances beyond the control of the defendant, the right of the plaintiff to this money could not be considered to be taken away. In the circumstances, the right of the plaintiff to this money on the failure of the purpose continuing, the defendant is in the position of a trustee and the property in the amount could not be held to have passed to the defendant and the amount was not liable to be proceeded against by his creditors in execution of the decrees against him. 1956 Mad W N 288 : (1956) 2 Mad L J 101 : 69 Mad L W 289 : AIR 1956 Mad 574 (576) (Pt A) (Prs 8, 9).

SECTION 4

——Ss. 4, 5, 6, 94 — Composition deed — Some of properties earmarked for payment of debts being immovable properties — Deed not registered — Section 94 held is attracted — Debtor holds property for benefit of creditors.

Where the debtor has executed a composition deed, has earmarked the properties (some of which are immovable properties) for the payment of debts and has also named the persons to whom the payment is to be made, as some of the trust properties are immovable, the deed ought to be registered. Excluding the lack of registration, the composition deed possesses all the features of a trust. In the circumstances, it is what is known to Equity, a constructive trust. A trust does not fail because no trustee has been named. If the debtor retained the property after the execution of the composition deed he must be deemed to be a trustee. The case attracts the application of S. 94. Thus it would be in consonance with justice, equity and good conscience to hold that debtor who has been holding the property mentioned for the benefit of all creditors, must satisfy the just demand of the plaintiff which is one of the creditors. AIR 1937 Cal 180, Rel. on. 1962 Jab L J 764 : 1962 M P L J 1102 : 1962 M P C 428 : ILR (1964) Madh Pra 721 : AIR 1963 Madh Pra 51 (53, 54) (Pt C)(Prs 15, 17 to 19, 22) (DB).

SECTION 5

■ ——Ss. 5 and 6 — Income-tax Act, S. 16 (1) (c), (3) (b) — Declaration that certain shares of companies were held by assessee upon trust for 7 years or life of settlee, whichever was shorter, to pay dividends to wife — Trust irrevocable — Dividend income held liable to be included in total income of assessee under S. 16 (3) (b). See Income-tax Act (1922), S. 16 (1) (c). AIR 1961 S C 1023.

——S. 5 — Applicability — Essential condition — Merely holding property on behalf of another is no trust. See Limitation Act (1908), S. 10. AIR 1957 All 553 (DB).

——S. 5 — If can be implied from use of part of income in charity.

No trust can be implied from the mere fact that the owner used a part of the income of the property in charity. The trust has to be declared and there must be independent evidence thereof. AIR 1951 Cut 39 (41) (Pt B) (Pr 10).

——Ss. 5, 6, 4, 94 — Composition deed — Some of properties earmarked for payment of debts being immovable properties—Deed not registered—Section 94, held, is attracted — Debtor holds property for benefit of creditors. See Trusts Act (2 of 1882), S. 4. AIR 1963 Madh Pra 51 (DB).

——Ss. 5 to 8—Credit entries in favour of employees in employer's accounts of amounts payable as dearness allowance and bonuses — Trust if created in favour of employee.

Where the employer has credited the employees in his account books with the dearness allowances and bonuses and represented to the Income-tax Department that those amounts so set apart have been paid over to the employees from year to year it would certainly constitute a trust in favour of the employees especially when loans to the employees have been debited, and repayments of loans and also salaries have been credited in such accounts. The cash has been sufficiently allocated and separated from the general funds of the employer. The principle embodied in Ss. 5 to 8 of the Trusts Act will come into operation in such a case. There was either a trust or a relationship of depositor and depositee created. 1952 Mad W N 717 : (1952) 2 M L J 308 : AIR 1953 Mad 16 (18, 19) (Prs 7, 8, 9).

——Ss. 5 and 6 — Movable property — Valid trust — Condition to be fulfilled.

When the subject-matter of a trust is movable property, the property can be transferred to the trustee by the physical act of handing it over. But in order that a valid trust may be created even in such a case, the provisions of S. 6 must further be satisfied. ('52) 1952-21 ITR 169 (181) (Cal) (DB).

——Ss. 5 and 6—Creation of trust—What amounts to transfer to and vesting in trustees—When effected—All emblems of ownership and entire dominion over property vested in trustees—Effect.

A trust in respect of movable property is created by a declaration of the intention creating such a trust, the purpose of the trust, the beneficiary and the trust property, and by transfer of the trust property to the trustee or trustees. If after the creation of the trust the author of the trust has no interest in the trust property except under certain rules and conditions and the entire dominion over the trust property is to all intents and purposes vested in the trustees, it has to be held that there is a transfer of interest in favour of the trustees, especially when all the emblems of ownership are all vested in the trustees, and none else has any control over it. I L R 29 Pat 713 : A I R 1951 Pat 488 (493) (Pr 13).

[Reversed on another point in A I R 1956 S C 336.]

SECTION 6

SYNOPSIS

(Trusts Act (1882), S. 6).

1. Scope.
2. "Indicates with reasonable certainty".
3. Declaration of intention.
4. Purpose.
5. Beneficiary.
6. Transfer of trust property.
7. Rights of third parties.
8. Trust for the benefit of creditors.
9. Other illustrative cases.

1. Scope.

——S. 6—Scope—Wakf Alalaulad—"Trust property" —Difference between trust held under Mussalman Wakf Validating Act and Trusts Act stated. See U. P. Agricultural Income-tax Act (3 of 1948), S. 9. **A I R 1958 All 38.**

——S. 6 — When the subject-matter of a trust is movable property the property can be transferred to the trustee by the physical act of handing it over. But in order that a valid trust may be created even in such a case the provisions of S. 6 must further be satisfied. See Trusts Act (1882), S. 5. **('52) 1952-21 I T R 169 (Cal) (DB).**

——S. 6—Deed—Construction — Entry in Goshwara Register.

An entry in a Goshwara Register was to the following effect :

"Mutation is effected in the name of Dharamsala under the management of B with the following condition attached : That produce of the land shall be used for the Langar (free Kitchen). In case it is not used for Langar the property shall revert to L or her daughters."

Held, that the entry did not evidence any unconditional 'Shankalap' or dedication by L. The effect of the arrangement evidenced by the Goshwara appeared to be no more than that L constituted B her agent, for the purpose of realising the income of the land and spending it on a particular object, subject to the cardinal condition that that agency will terminate and possession of property will revert to the owner, the moment the income was diverted to some other use. **9 J & K L R 89 : A I R 1951 J & K 6 (8) (Pt B) (Pr 13) (DB).**

——S. 6—Validity — Non-execution or non-performance of a condition—Effect of.

A trust is nonetheless a valid trust notwithstanding that one of the conditions is not executed. **I L R (1950) Cut 374 : A I R 1951 Orissa 132 (135) (Pt C) (Pr 8) (DB).**

——S. 6 — Validity — Immediate existence of legal estate—If essential.

A trust of property does not depend on the immediate existence of a legal estate in a trustee to support it. A trust may be constituted without communication to the trustee or to one cestui que trust, nor is a trust affected by the fact that no trustee is named or by the fact that the trustee who is named either refuses or is unable, through death or otherwise unable to act. **I L R (1950) Cut 374 : A I R 1951 Orissa 132 (136) (Pt E) (Pr 10) (DB).**

——S. 6 — Validity and completeness — Question of intention that might go to determine the nature and extent of the trust is not entirely foreign to the consideration of its validity and completeness where the trust is the result of a series of negotiations between two parties. A I R 1951 Orissa 132 (138) (Pt J) (Pr 21) (DB).

——Ss. 6, 7—Income-tax Act, S. 66 (2) — Question of law and fact—Question as to creation and validity of trust. See Income-tax Act (1922), S. 66 (2). A I R 1960 Punj 219 (DB).

——Ss. 6, 3 and 19—Civil P. C. (1908), S. 9—Suit for accounts—Liability to account—Circumstances under which arises — Trust defined and distinguished from contract—Principal and Agent — Relationship which does not amount to — (Contract Act (1872), Ss. 182 and 213). See Civil P. C. (1908), S. 9. A I R 1959 Punj 92 (DB).

——S. 6—Contract and sub-contract — Settlement of payment of later date on happening of contingency— Trust is not created — Suit for accounts does not lie. See Contract. A I R 1955 N U C (Punj) 3429.

2. "Indicates with reasonable certainty".

——S. 6—Charitable trusts—Trustees left with absolute discretion to choose specific charitable objects and to apply fund at such time as they think fit— Trust not invalid for uncertainty — (Charitable and Religious Trusts Act (1920), S. 3) — (Income-tax Act (1922), S. 4 (3) (i)). See Trusts — Charitable trusts. **A I R 1956 Cal 164 (DB).**

——S. 6—Trusts — Property capable of being ascertained—A trust will be raised. A I R 1951 Orissa 132 (137) (Pt I) (Pr 17) (DB).

3. Declaration of intention.

——S. 6—Will—Interpretation — Division based on another will is of no assistance—Intention of testator is to be gathered from language used—Will construed —Half property held should be held in trust — (Will —Construction)—(T. P. Act (1882), S. 8). A I R 1955 N U C (All) 1704 (DB).

——S. 6—Person declaring that he held certain shares upon trust for 7 years to pay income to wife — Trust is created—Not revocable. See Income-tax Act (1922), S. 16 (3) (b). (1958) 33 I T R 383 (Bom).

——S. 6—Creation of—Admission and mere entries.

The mere fact that the property has been treated by the District Court as a trust property cannot amount to dedication in favour of the trust. Mere entries in the account books by themselves cannot also amount to dedication. Similarly, the admissions based on mistake of fact or law will not be of any avail to make the property dedicated in favour of the temple. **(1953) 2 Mad L J 42 : 1953 Mad W N 285 : 1953 Cri L J 1441 : A I R 1953 Mad 787 (789) (Pt A) (Pr 10) (DB).**

——S. 6 — Credit entries in defendant's books — Do not create trust. See Master and Servant — Bonus— Right to. A I R 1953 Mad 433.

——S. 6—Creation of—Oral declaration to depositee to hold deposit for another—There is trust—Transfer as contemplated by Transfer of Property Act is not necessary.

A valid oral declaration to a depositee that the money should be held thenceforward for the benefit of another person would constitute a trust. It is not necessary in such a case that there must be a transfer, such as is contemplated under the Transfer of Property Act of the actionable claim. A depositee if directed to hold the property in trust for the benefit of another holds it thereafter as owner and quatrustee and gives effect to the trust embodied in the declaration. 1952 Nag L J (Notes) 33 (DB).

——S. 6 — Creation and validity — Essentials — Acceptance by trustee of position as such—Necessity — Declaration of trust by settlor and latter constituting himself trustee — Sufficiency — Trust — If fails for want of trustee or for refusal or willingness of trustees to act — Principles.

A trust in the accepted sense of word is the creation of an obligation by the owner to the intent that he may hold the property for the benefit of some other person or object. As soon as the trust is declared according to the requirements of the law the legal ownership passes to the trustee and he is bound to apply the income arising out of the property to the use and benefit of the cestui que trust. In order to make a voluntary declaration of trust binding upon the author of the trust, he must completely part with all his interests in the property to the trustee or declare himself to be a trustee of the property for the benefit of the cestui que trust. If therefore the settlor has done everything that is required to be done under the law, the trust takes effect at once, if nothing in fact remains to be done by the settlor or donor. A trust does not fail for want of a trustee and if a trustee refuses to accept before the trust takes effect, the person in possession becomes a constructive trustee. Even a disclaimer by the trustee does not avoid the trust. When the settlor constitutes himself the trustee the question of acceptance of the position of trustee does not arise. A trust may be constituted without communication to a trustee, and the validity of a trust is not affected by the fact that the trustee is unable or unwilling to act. ILR (1950) Cut 374: AIR 1951 Orissa 132 (134) (Pt A) (Pr 6) (DB).

4. Purpose.

——S. 6 — Charitable trust — Trustee left with absolute discretion to choose specific charitable objects and to apply fund at such time as they think fit—Trust whether invalid for uncertainty — (Trusts Act (1920), S. 6) — (Charitable and Religious Trusts Act (1920), S. 3)—Income tax Act (1922), S. 4 (3) (i). (1956) 29 I T R 781 : AIR 1956 Cal 164 (165 to 168) (Prs 4, 7, 9, 12, 14) (DB).

——S. 6 — Trust — Dedication in form of charity — Directions to pay certain amounts to settlor's relatives from income of dedicated property — Deed remains deed of dedication. ILR (1964) 2 Mad 832: AIR 1967 Mad 175 (177, 178) (Pt A) (Pr 11) (DB).

——S. 6—Validity — Charitable or religious purpose —Gift to University for teaching of karumakanda — Validity of.

A study of karumakanda is as much a charitable purpose as the study of physical sciences. A gift to the general public use which extends to the poor as well as to the rich is a charitable gift. The teaching of karumakanda is a charitable purpose and when a gift of property is made in trust for the purpose of teaching karumakanda it is not a gift for the performance of any particular ritual. It cannot therefore be said that a trust for objects which include the teaching of karumakanda, is a religious endowment, and when made in favour of a University, is invalid or ineffective. ILR (1950) Cut 374 : AIR 1951 Orissa 132 (134) (Pt B) (Pr 7) (DB).

——S. 6—Validity — Postponement of particular application of charitable gift — If renders gift void — Principles — Intention and understanding of parties —Relevancy in deciding validity.

The fact that the particular application of a charitable gift in trust is postponed does not render the gift void, when the gift, as distinguished from its application, is immediate.

If the purpose itself were to fail, the Court will none the less apply the cy pres doctrine and give effect to the object of the trust. The settled principle is that if the donor declares his intention in favour of defined objects which happen to fail from whatever cause the general purpose being charity, such purpose will be carried into effect notwithstanding the indefiniteness or failure of its immediate object. Ray C. J.: In the case of a trust which is the result of a series of negotiations between two parties, the question of intention and common understanding between them that might go to determine the nature and extent of the trust is not entirely foreign to the consideration of its validity and completeness. ILR (1950) Cut 374 : AIR 1951 Orissa 132 (136, 137) (Pt H) (Prs 12, 15) (DB).

5. Beneficiary.

——S. 6 — Uncertainty as to beneficiaries — Held on facts — Beneficiaries could not be said to have been indicated with reasonable certainty. See Income-tax Act (1922), S. 10 (2) (v). AIR 1953 S C 476.

——S. 6—Beneficiary.

Section 6 has reference to the stage at which the trust is being created. The beneficiary defined by S. 3 and contemplated by S. 6 is not the person who may come to be in actual receipt of the benefit at some future point of time, but the person who is intended by the trustee to be benefited at the creation of the trust, and to whom the benefit goes under the provisions of the trust itself, whether immediately or in a certain contigency, but without the aid of a further choice at someone's discretion. ('52) 1952-21 I T R 169 (180, 181) (Cal) (DB).

——S. 6 — Trusts — Private — Adverse possession — Failure of line of trustees — Trust reverts to donor's widow — Adverse possession of trust property by another — Next heir can sue for possession on widow's death — (Hindu Law — Widow — Adverse possession) — (Limitation Act (1908), Arts. 142 and 144).

In the case of private trust of endowment created by the donor for the benefit of himself and his family, the donor and his heirs have a beneficial interest therein. It may be that such interest may not entitle them to enjoy the income from the property. The spiritual benefit accruing to them under the family trust would certainly create sufficient interest in them. The trusteeship is not merely bare right of management without any kind of benefit whatsoever. There is a benefit, namely, the spiritual benefit in the person who performs the mandagappadi prescribed under the trust document. If that is so the trusteeship would be analogous to the shebait office in Northern India. When therefore the widow of the deceased donor takes possession of the property as a trustee on the failure of the line of the trustee, she takes it back as one of the founders and she purports to act as a trustee, such trusteeship combining in itself the right of management as well as the right to the beneficial enjoyment e. g. the spiritual benefit conferred on her by virtue of the performance of the mandagappadi. This would entitle her to act as if the trusteeship belonged to the family of the donor and that she was only having an interest of a Hindu widow. Under the substantive principles of Hindu law adverse possession against her would not amount to adverse possession against the reversion. The only right which the person who was appointed as trustee by the widow, can prescribe against her is her 'right i. e., a limited right as a Hindu widow and the adverse title acquired by him would not subsist beyond her lifetime. The next heirs of the donor would be entitled to maintain the suit after her death. (1964) 72 Mad L W 646.

6. Transfer of trust property.

——S. 6 — Involves transfer of property. See Oudh Estates Act (1 of 1869), S. 11 (as amended by Act 3 of 1910). ILR (1964) 2 All 191.

——S. 6 — C depositing some money with A — Oral direction by C that after his death money is to be paid to S — As there could be no oral gift a case of

trust in presenti was sought to be made out—Held there could be no valid gift or will or testamentary trust as there was no transfer of interest by the settlor to the trustee. See T. P. Act, S. 120. **1952 Nag L J (Notes) 33.**

——S. 6—Gift deed — Assessee making a gift of perpetual annuity out of income from his estate — Annuity made a charge on revenue of the estate—Deed was a gift deed. See Orissa Agricultural Income-tax (24 of 1947), S. 8. **AIR 1955 N U C (Orissa) 3228 (DB).**

——S. 6 — Trusts — Constitution of — Trust does not fail for want of trustee—Test of completeness is whether anything, in fact, remains to be done on the part of the donor — Voluntary declaration of trust when binding—He must have completely parted with all his interest in the property to the trustee. **AIR 1951 Orissa 132 (134) (Pt A) (Pr 6) (DB).**

——S. 6—Express trust—A entrusting certain sum to B without reserving authority in himself—B required to pay interest on such sum to C — Held there was express trust and S. 10 Limitation Act applied. See Limitation Act (1908), S. 10. **1964 Raj L W 412 : AIR 1966 Raj 70.**

7. Rights of third parties.

——S. 6—Rights of third parties — Stranger to contract when can sue—Public Trust—Settlor setting lines of succession for trusteeship — Claimant for trusteeship though no party to trust deed can sue to enforce rights under trust deed. See Contract Act (1872), S. 2. **AIR 1965 Ker 203 (DB).**

8. Trust for the benefit of creditors.

——S. 6—Creation of trust — No indication to vest property in trustees — No transfer of ownership—Power of management or collection of income not given to trustees—Trust not created.

A businessman, who was heavily indebted, appointed a 'Niptara Committee' for paying off his creditors and with that intention executed a deed in favour of the committee. There was nothing in the document which would constitute vesting of the property in the committee. Although the debtor had stated that he was giving possession of the property and the account-books to the committee, there was no indication that he was transferring ownership to the committee or divesting himself of his title to it.

He had no doubt promised that he and his muneems would co-operate with the committee and the members of the committee agreed to help him. But neither the power of management or disposition of property or collection of income or removal and appointment of servants was given to the committee, nor was there any undertaking given by him that he would not deal with the property so long as the committee was in existence.

Held, that under circumstances no valid trust was created and the ownership of the property did not vest in the Committee. AIR 1938 Cal 818, Distinguished. **Madh BLR 1956 Civil 427 : 1956 Madh BLJ 984 : AIR 1956 Madh B 236 (238) (Pt A) (Pr 24) (DB).**

9. Other illustrative cases.

●——S. 6 — Transfer for valuable consideration — Under a trust mortgagees obliged to pay certain sum to charity — In discharge of such obligation mortgagees transferring mortgage interest to charity — Held transfer was for valuable consideration. See Debt Laws — Madras Agriculturists Relief Act (4 of 1938), S. 9-A (10) (ii) (b) (as amended in 1943). **(1965) 2 S C J 469 : (1965) 2 Andh W R (SC) 74 : (1965) 2 Mad L J (SC) 74 : AIR 1966 S C 193.**

——S. 6—M obtained a loan from Imperial Bank—B a timber merchant stood surety for M—B paid the Bank debt and debited the amount in his books to the account of M — In Income-tax return he claimed this amount to be deduction as bad debt—Held the loss was not connected with the timber business and could not be set off against the trading profit of that business or claimed as a revenue loss at all See Income-tax Act (1922), S. 10 (1) (c). **('52) 1952-21 I T R 142 (Cal) (DB).**

——S. 6—Contract Act, S. 69—'Bound by law to pay' —Includes obligations under contract or tort—Obligation of vendee under sale deed to discharge usufructuary mortgage on property — Money left in the hands of vendee — Vendee not paying mortgagee—Payment by mortgagor vendor—No trust was created by the vendor in his favour by reason of direction to the vendee to pay the consideration for discharging the mortgage debt due by him. S. 69, Contract Act applied. See Contract Act (1872), S. 69. **AIR 1961 Mad 170 (DB).**

——Ss. 6, 7, 8, 5, 88 and 94 — Employer crediting bonus and dearness allowance in favour of employee —Employer taking benefit in income-tax — Employer is trustee for the amount. See Trusts Act (2 of 1882), S. 5. **AIR 1953 Mad 16.**

——S. 6 — Companies Act, S. 229 — Trust money—Claim to preferential payment — As the deposit contained all the elements of trust contemplated in S. 6 the depositor is entitled to preferential payment from the company. See Companies Act (1913), S. 229. **AIR 1952 Mad 481.**

——S. 6—Transfer of trust property.

Where a deity has no property of its own and the expenses of any celebration have to be met from collections and contributions provided by the villagers, obvious it would be impossible for the poojari or trustee to do anything without their active co-operation and assistance. But this does not mean that the villagers become the trustees. It is more material to consider what amount of control the villagers exercised over the moneys they placed in the hands of the poojaris or trustees. 2 M L J 247, Referred. **1951 M W N 574 : 1951-2 M L J 232 : 64 Mad L W 940 : AIR 1952 Mad 257 (257) (Pt A) (Pr 4).**

SECTION 7

——Ss. 7, 6—Income-tax Act, S. 66 (2) — Question of law and fact—Question as to creation and validity of trust. See Income-tax Act (1922), S. 66 (2). **AIR 1960 Punj 219 (DB).**

SECTION 8

●——S. 8 — "Property" — Meaning of — Business is property. See Income-tax Act (1922), S. 4 (3) (1). **AIR 1957 S C 846.**

SECTION 9

——S. 9—Trust for benefit of person and his wife—Subsequent dissolution of marriage — Wife remarrying another person — Not entitled to benefits. **I L R (1960) 2 Cal 348 : AIR 1960 Cal 36 (39) (Prs 19, 20).**

SECTION 10

——S. 10—Bankrupt trustee can act as trustee. See Trusts Act (1882), S. 70. **AIR 1954 Cal 432.**

——Ss. 10, 3—Testator bequeathing property not belonging to him—Executor under the will does not become a trustee as regards the beneficiary in respect of it — Estoppel under S. 10 does not arise in such circumstances. See Trusts Act (1882), S. 3. **AIR 1961 Mad 256.**

——S. 10—Trustee—Same person if may be trustee and cestui que trust.

A person may both be a trustee and a cestui que trust or one of the trustees and one of the cestui que

trusts. I L R (1950) Cut 374 : A I R 1951 Orissa 132 (135) (Pt D) (Pr 9) (DB).

SECTION 11

——S. 11—Charitable trusts — Administration of — Intention of donor—Cy-pres.

It is one of the cardinal rules governing execution of charitable trusts that the intention of the donor must be observed and cy-pres principle has been evolved as an auxiliary to this rule and is never allowed to defeat it. If the charity can be administered according to the directions of the founder the law requires that it should be so administered. The Court will not allow any departure from them on grounds of expediency. 56 Pun L R 73 : AIR 1954 Punj 150 (156) (Pr 5).

SECTION 13

● **——S. 13—Trusts—Public, religious and charitable trust—'De facto' manager—Rights of—He can sue on behalf of the trust and for its benefit to recover properties and monies in the ordinary course of management—(Civil P. C. (1908), S. 92. AIR 1954 S C 5 (8) (Pt A) (Pr 30).**

——S. 13—De facto trustee looking after trust for 5-6 years can maintain suit for recovery of trust property. 1953 All W R (H C) 77 : A I R 1953 All 449 (452) (Pt E) (Pr 17) (DB).

——S. 13—De facto trustee — Right to sue on behalf of institution.

When trust property is without a de jure trustee owing to any defects in the machinery for the appointment of trustee or owing to the unwillingness of the de jure trustee to act, a de facto trustee, who is in possession and management of the institution for the time being, may be allowed to maintain a suit on behalf of the institution for the recovery of trust property held adversely by a stranger so long as the action is for the benefit of the real owner, namely, the institution. The right of a person other than a de jure trustee to maintain a suit for possession of trust properties cannot be decided in the abstract and must necessarily depend on the facts of each case. The same rule is equally applicable to wakf and Hindu religious endowments. Case-law discussed. 1955 Andh WR 462 : AIR 1956 Andh 19 (21) (Pr 11) (DB).

——Ss. 13, 80 and 82—Position of benamidar — Conflict among real owners — Benamidar's right to take steps to preserve property.

It is true that under Ss. 80 and 82 of the Trust Act a benamidar holds the property for and on behalf of the real owner in consequence of which there would be resulting trust in respect of the property in favour of the real owner. But then it would be falacious to urge from those sections that the legal ownership in such property vests in the benamidar as it does in the case of a trustee. What those sections really mean is that benamidar is in fiduciary relationship with the real owner and, therefore, has all the obligations of a person in such fiduciary position towards the real owner. A benamidar is no more than an ostensible owner of the property he holds benami though his acts in certain circumstances would be binding upon the real owner. That is because the real owner holds kim out to third parties as an owner of the property. It is, however, impossible to say as in the case of a trustee that any rights in the property either vest in him or that under S. 13 and the sections following thereafter of the Trusts Act any obligations therein set out fall on him. Where there is a conflict amongst the real owners, the benamidar would not be entitled fo take action for preservation of the property, nor can he file a suit or proceeding when he is not supported by the real owners and where they are opposed to maintaining it. 60 Bom L R 740 : A I R 1959 Bom 102 (104) (Pt A) (Pr 11).

——S. 13—Trusts and Trustee — De facto trustee — Trustee acting under defective title—Right to sue to recover possession of property belonging to deity — Proper directions—(Hindu Law —Religious endowment).

Where a person purports to act as a trustee of the property of a deity on the authority of a will executed by a person who had no authority to execute a will devising his right of management to any one, the former must be regarded as a de facto trustee and his son, who manages the property after him must also be regarded as a de facto trustee and he is entitled to file a suit to recover possession of the property of the deity in the hands of the defendants who deny the title of the deity. The fact that the plaintiff while pretending to make a claim for and on behalf of the deity was in substance seeking to advance his own interests is no ground for non-suiting the plaintiff, the interests of the deity being capable of being protected by proper directions such as by putting the plaintiff on terms. AIR 1956 Bom 615 (616) (Pr 4).

——Ss. 13, 15—Breach of trust—No madrasa attached to mosque when trurtees took over management — Thay are not guilty of breach of trust for demolition of madrasa—(Civil P. C. (1908), S. 92).

Where the madrasa, library and musafirkhana which were attached to a mosque had ceased to exist when the trustees appointed by a scheme framed under S. 92, Civil P. C., took over the management of the mosque from the receiver, they cannot be charged with breach of trust for the disappearance of these institutions. **('59) 37 Mys L J 234 (DB).**

——Ss. 13 and 15 — Resignation by one trustee — Resignation not accepted but trustee asked to continue and trustee continuing as such — He can file suit for accounts against co-trustees. See Trusts — Co-trustees. AIR 1963 Punj 187 (DB).

——Ss. 13, 15, 19, 23—Applicability.

If a trustee acts in such a manner that his action can be fettered by some body else in the discharge of his duties then the trustee becomes responsible for any loss that is occasioned in such circumstances. A trustee must not lodge the money in such a manner as to put it out of another. (1835) 6 E R 1354, Rel. on. Where the defendant undertakes to encash a bank-draft belonging to the plaintiffs from his (defendant's) bank without remuneration, the defendant acts as the plaintiff's agent. But when the draft is encashed in the bank the defendant becomes taustee for the amount and he is under a liability to pay the amount to the plaintiff. It is his duty to act diligently. Delay in obtaining a check-book to withdraw the amount and his allowing the money to remain in the bank longer than is necessary would make the defendant liable for the amount, if the bank in the meanwhile goes into liquidation and suspends payment. **I L R (1959) 9 Raj 1186 : AIR 1960 Raj 166 (168) (Pr 7).**

——S. 13 — De facto Trustee — Protection of Trust property—Right to sue.

In the matter of trusts it is the de facto trustee who has the right to take steps for the protection of the trust. If the taking of the management of the trust by the plaintiffs is in any way defective, that is a matter which can be agitated separately between the persons really entitled to the management thereof and the persons who have, so to say, usurped that management. But so far as the third party is concerned, it is the de facto trustee who has a right to take steps for the protection of the trust property. **1958 Raj L W 461 : ILR (1958) 8 Raj 456,**

——S. 13 — De facto trustee — Competency to bind trust property (Hindu Law—Religious Endowments) —Religious Endowment).

A de facto trustee or trustee de son tort is a person who without title, chooses to take upon himself the characteristics of a trustee. The de facto trustee in order to exercise any act of management as regards the trust properties must be one who is in actual possession of the properties. AIR 1937 Cal 559; AIR 1940 Mad 617 and AIR 1949 Mad 721 (FB), Rel. on.

Where certain leases executed by the duly appointed trustees, were sought to be renewed by persons who were not trustee while the previous leases were outstanding and the properties were in possession of those lessees, the renewals did not secure any benefit for the trust and were the result of dissensions in the village and consequent scramble for possession of trust properties :

Held, that the deeds renewing the lease were invalid documents not binding on the trust. **I L R (1954) T C 81 : AIR 1954 Trav-Co 254 (256) (Pr 7) (DB).**

SECTION 14

● **——Ss. 14 and 19—Trustee not to mix private property with trust property.**

A trustee must not mix private property with trust property, because if he does so, he undertakes a heavy burden of proving that any particular property is his, as distinct from the trust. Narayan Bhagwantrao v. Gopal Vinayak. **(1960) 1 S C R 773 : (1960) 2 S C A 153 : 1960 S C J 263 : AIR 1960 SC 100 (114) (Pt J) (Pr 43).**

——S. 14 — Trustee — Duty of — Mixing up of trust property with own funds—Effect—Purchase of property by trustee out of blended fund—Presumption—Right of beneficiary to claim as trust estate—Claim by trustee as own — Burden of proof—Inquiry as to purchase being out of corpus or income — Propriety.

A trustee wherever the trust property may be placed, must always be careful not to amalgamate it with his own; if he does so the cestui que trust will be entitled to every portion of the blended property which the trustee cannot prove to be his own. If he does not conform to the law or to the provisions of the deed of trust he would be guilty of a breach of trust. If he mixes up the trust property with his own, and uses the mixed fund in the purchase of any property, he has first to make good to the trust estate whatever has been utilised out of the same. The beneficiary or the cestui que trust would be entitled to go against the whole of that property as having been purchased out of the trust fund mixed up with the trustee's own property. Unless and until the trustee establishes successfully before a Court of law that no part of the trust property formed part of the consideration for the purchase of the property and that he had purchased it out of his own separate properties, the presumption should rightly be in favour of holding the property as having been purchased out of the trust fund and the beneficiary or cestui que trust would be entitled to that property and the trustee cannot claim it as his own. The burden is on the trustee or the person or persons deriving title from him (by transfer or purchase) to prove that the property had been acquired out of his separate property. Further once it is proved that there was a mixed fund made up of the trust properties as well as of the personal properties of the trustee, it is not open to the Court to inquire as to whether the property was purchased out of the corpus or from the income. 48 Mad 597, Foll. **ILR (1952) Bom 226 : 53 Bom L R 883 : AIR 1952 Bom 106 (110) (Pr 4).**

——S. 14—Adverse possession by person in fiduciary capacity—Title against cestui que trust or his representatives cannot be claimed unless trust is discharged — Art. 142, Limitation Act does not apply.

No one who is in the position of a trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf either to the trust or to its representatives until he has obtained a proper discharge from the trust by re-delivery. I L R 34 Mad 257 (PC) and I L R 34 Mad 211 and (1854) 5 De G M and G 78 and (1848) 2 De G and Sm 122, Rel. on. It would not make any essential difference that it is not cestui que trust against which the plea of adverse possession is being raised but against the heirs-at-law or successor of that beneficiary. AIR 1935 All 458 (1), Foll.

The principle does not imply that there is any perpetual bar against the pleading of adverse possession by a person in possession under such circumstances. What is implied is that the foundation of it must be the assertion of an hostile title, by a redelivery of the property obtained on a fiduciary basis, or at least some clear declaration which has that effect.

The principle of Art. 142 of the Limitation Act will not have any application. A person in such possession which had its foundation in a fiduciary obligation, without discharge of it by re-delivery to the trust or its representative, cannot plead that it is for that representative to show that within 12 years of his suit, he was in possession. **76 Mad L W 619 : 1963 Mad W N 549 : AIR 1963 Mad 353 (355) (Prs 8, 9) (DB).**

——Ss. 14, 95 — Disabilities of trustee — He cannot invoke formal will in him as against cestui que trust. **AIR 1955 NUC (Nag) 952.**

——S. 14—Breach of trust — Trustee setting up title —It is ground for his removal.

A holder of trust property cannot be permitted to set up a title for himself in it. The assertion of the trustee that the property is his own is by itself a sufficient ground for his removal from the position of a trustee (Mahant). Moreover non-maintenance of accounts and non-observance of celibacy by the Mahant as required by the sect are also grounds : 11 Lah 142, Relied on. **(1963) 65 Pun L R 94 : (1963) Cur L J 4.**

[Reversed on another point in AIR 1967 SC 1415.]

SECTION 15

■ **——S. 15—Obligations of trustee.**

A trustee cannot be asked to invest his own money for the benefit of cestui que trust. The trustee is under no obligation to find a heavy sum of money and to invest it on the purchase of new shares for the benefit of the cestui que trust, and to recover the amount after having invested it in them. Mathalone R. v. Bombay Life Assurance Co. Ltd. **(1953) S C J 548 : 50 Bom LR 30 : (1954) 24 Comp Cas 1 : 1954 S C R 117 : 1954 S C A 1039 : (1953) 2 M L J 259 : AIR 1953 SC 385 (393) (Pt E) (Pr 25).**

——Ss. 15 and 23 — Liability of trustee — Wilful neglect or default causing loss to beneficiary — The trustee is liable and it is only then that the question of reimbursement would arise. **AIR 1964 Andh Pra 412 (414) (Pt D) (Pr 13).**

——Ss. 15, 13, 20, 46 — Co-trustees—Resignation by one trustee — Resignation not accepted but trustee asked to continue and trustee continuing as such — He can file suit for accounts against co-trustees. See Trusts—Co-trustees. **AIR 1963 Punj 187 (DB).**

——Ss. 15, 13, 19, 23—Defendant getting bank draft of plaintiff encashed through his bank — Money credited to defendant's account — Long delay on part of defendant to give check for amount to plain-

tiff — Meanwhile bank suspending payment—Defendant held in position of trustee and liable for amount. See Trusts Act (2 of 1882), S. 13. **AIR 1960 Raj 166.**

SECTION 17

——S. 17 — Trustee refusing to act or dying before exercising the power—Court will execute the power.

If the trustee has an imperative power committed to him, his non-execution of the power will not prejudice the cestui que trust and the Court will execute it if by any possibility, it can be done. In such cases the law regards the trustee as the instrument to execute the intention of the testator and if he refuses to act or dies before exercising the power, the Court assumes the office. **1956 Andh W R 582.**

——Ss. 17, 18 — Discretionary power of trustee nature of — Interference by Court — When permissible.

Where a power which is purely discretionary is given to a trustee, the Court cannot exercise such power or compel the trustees to exercise such power in any particular manner, but can restrain them from exercising it in any improper manner. If, however, there is a duty coupled with the power, then the Court can compel the trustee to perform that duty. If the trustees refuse to exercise their discretion at all, the Court will treat it as a trust, and direct an inquiry how much ought to be allowed for maintenance and the Court if it considers that the trustees were acting capriciously, can interfere. But if, by the instrument creating the power, the discretion is made absolute and uncontrollable, the Court cannot interfere. The power may be conferred upon the donee either beneficially or in trust. In the latter case the power is merely part of the machinery of the trust. Thus, if property is conveyed to trustees upon certain trusts, with power of sale, the power is a trust-power, and must be exercised, if at all, solely for the purposes of the trust, but the trustees have a discretion as to exercising it, with which the Court will not interfere, so long as the trustees in fact exercise their discretion in good faith. The Court will interfere if trustees refuse to exercise their discretion, or do so capriciously. But there is an intermediate class of cases, where a power of selection is given to a donee who is not otherwise a trustee, and such a power is said to be a 'power in the nature of a trust', since the Court understands the donor of the power as creating a trust for the objects, subject only to the donee's power of the objects although the power has not been exercised, and although the Court cannot directly enforce its exercise. Ferwell on Powers, 3rd Edn. p. 54; 2 A C 300; 3 A C 795; 21 Ch D 571; 34 Ch D 136; 62 L T (NS) 752; (1894) 1 Ch D 324: 1917 (2) Ch D 379; L R 1 A L Sc 11; 29 Ch D 913, Ref. **(1965) 69 Cal W N 1010.**

SECTION 19

——S. 19 —Trustee not to mix private property with trust property. See Trusts Act (1882), S. 14. **AIR 1960 S C 100.**

——S. 19 —Trustee—Legal representative—Liability to account—Burden of proof—(Succession Act (1925), S. 306).

A suit for the recovery of a specific sum of money is not the only remedy available to the cestui que trust against the legal representative of a deceased trustee and a suit for accounts, which, in substance, is really a suit for the recovery of the amount that might be found due to the cestui que trust on taking the accounts of the trust estate would be maintainable. The only difference between a suit for accounts against a trustee and a suit for accounts against the legal representative of the deceased trustee is as regards the mode of accounting by such legal representative and as regards the onus of proving the truth and propriety of the several transactions to which the accounts and vouchers relate. Mode of accounting and the onus of proof explained. **1956 Andh L T 750 : 1956 Andh W R 908.**

——S. 19 — Suit for accounts — Suit against representative of deceased agent or trustee whether lies—Contract Act (1872), S. 213.

Where a suit for accounts is filed originally against the agent or the trustee and after the institution of such suit the agent or trustee dies whether before or after the preliminary decree the suit can be proceeded with against the heirs and legal representatives of the deceased agent or trustee. Further, if the suit against the representatives of a deceased agent is not a suit for accounts but a suit for the recovery of a specific sum of money then even if in determining the validity of the plaintiff's claim account has to be gone into such a suit is maintainable. But a suit for accounts pure and simple without any claim for any specific sum of money against the representatives of a deceased agent is not maintainable: 17 Cal W N 5; 46 Cal W N 865; ILR (1947) 1 Cal 48, Rel. on; 51 Cal W N 157, Disting.; AIR 1945 Bom 21, Dissent. **AIR 1951 Cal 182 (189, 190) (Pr 17).**

——S. 19 — Properties of Shebait — Trustees can be appointed—Person acting as trustee cannot challenge trust—Estoppel. See Hindu Law—Religious Endowment. **AIR 1963 Punj 187 (DB).**

——S. 19—Trusts—Co-trustee—Suit by, for accounts—Some property of trust ceasing to be under operative control of trustees — Suit by co-trustee for accounts against president of board of trustees is maintainable even though the plaintiff co-trustee is not a beneficiary. 65 Pun L R 236 : ILR (1963) 1 Punj 320 : AIR 1963 Punj 187 (193) (Pt E) (Pr 15) (DB).

——S. 19 — Some property of trust ceasing to be under operative control of trustees — Suit by co-trustee for accounts against president of board of trustees is maintainable, even though the plaintiff co-trustee is not a beneficiary. See Trusts — Co-trustees. **AIR 1963 Punj 187 (DB).**

——Ss. 19, 12, 15, 20, 46—Co-trustees—Resignation by one trustee—Resignation not accepted but trustee asked to continue and trustee continuing as such—He can file suit for accounts against co-trustees. 65 Pun L R 236 : ILR (1963) 1 Punj 320 : AIR 1963 Punj 187 (194) (Pt F) (Pr 17) (DB).

——Ss. 19, 3 and 6 — Civil P. C. (1908), S. 9 — Suit for accounts — Liability to account — Circumstances under which arises stated — Trust defined and distinguished from contract — Principal and Agent — Relationship which does not amount to — (Contract Act (1872), Ss. 182 and 213). See Civil P. C. (1908), S. 9, AIR 1959 Punj 92 (DB).

——Ss. 19, 13, 15, 23—Defendant getting bank draft of plaintiff encashed through his bank — Money credited to defendant's account — Long delay on part of defendant to give check for amount to plaintiff — Meanwhile bank suspending payment — Defendant held in position of trustee and liable for amount. See Trusts Act (2 of 1882), S. 13. AIR 1960 Raj 166.

SECTION 20

——S. 20 — Cash moneys in hand of trustees—Investment of—Should be invested in approved securities. See Bombay Public Trusts Act (29 of 1950), S. 35. AIR 1954 S C 388.

——S. 20—Trusts — Rules of the Governing Council of the Kayasthi Pathashala, Allahabad, R. 7 (1)—Admission form containing suggestion for utilizing money. Does not affect membership of person concerned. AIR 1955 NUC (All) 5811 (Pt C).

——S. 20 — Applicability — Act does not apply to public or private religious or charitable endowments —Principles of general law governing the relationship of trustee, and cestui que trust embodied in Ss. 20 and 54 may. however, be considered. See Trusts Act (1882), S. 1. (1964) 53 ITR 292 : ILR (1965) 2 Mad 113 (DB).

SECTION 23

●——S. 23—Trusts—Public Trusts —Trustee—Liability of -- Liability for interest —Suit against trustees to render proper accounts of trust property — Charity Commissioner scrutinizing accounts and specifying amount of trust funds and interest thereon due from trustees — High Court holding trust funds were used by trustees in their business and that compound interest was chargeable—No allegation in plaint that trustees used funds in their business, nor evidence establishing that trustees used to pay compound interest on trust money in their hand — Finding held halting and that trustees were not liable for compound interest AIR 1960 Bom 438, Reversed. Hukumchand Gulabchand Jain v. Fulchand Lakhmichand Jain. 1965 MPLJ 673 : (1965) 3 Law Rep 88: (1965) 3 SCR 91 : 1965 Mah L J 609 : AIR 1965 S C 1692 (1695) (Pt A) (Pr 17).

■——S. 23—Public Trusts — Trustee, liability of—Public Religious Trust — Trustee retaining trust money in his own hands uninvested—If liable to pay interest—S. 23, Trusts Act, 1882, cannot be used for charging interest—Charitable and Religious Trusts Act, 1920 makes no provision therefor—Interest can be allowed on equitable grounds — Trustee is liable to pay simple interest generally at the rate of 4 per cent.

When a trustee of a public religious trust retains trust money in his own hands univested, interest can be allowed to be charged thereon on equitable grounds only. The Indian Trusts Act does not apply to public or private religious or charitable endowments and, therefore, the provisions of S. 23 thereof cannot be used for charging interest from the trustee. The Charitable and Religious Trusts Act has no provision which provides for charging the trustees with interest. Unless a trustee is expressly otherwise authorised or required under the terms of his trust he must duly and promptly invest all capital trust money coming to his hands, and all income which cannot be immediately applied for the purposes of the trust. Therefore, when a trustee in breach of his duty retains the trust money in his own hands uninvested or mixes it with his own money or property, he, besides being required to account for the principal trust money, becomes liable to pay interest thereon. Halsbury's Laws of England, III Edn. Vol. 38, Paras. 1691, 1812 and 1814, Rel. on. Hukumchand Gulabchand Jain v. Fulchand Lakhmichand Jain. (1965) 3 Law Rep 88 : (1965) 3 S C R 91 : 1965 M P L J 673 : 1965 Mah L J 609 : AIR 1965 S C 1692 (1695, 1696) (Pt B) (Prs 19, 20, 12).

●——S. 23 — Public Trusts—Trustee, liability of—Public religious Trust—Trustee retaining trust funds in his hands uninvested—Trustee as individual is not borrower of trust funds—Rule of Damdupat does not apply while holding trustee liable to pay interest on equitable grounds — AIR 1960 Bom 438, Affirmed, Hukumchand Gulabchand Jain v. Fulchand Lakhmichand Jain. (1965) 3 Law Rep 88 : (1965) 3 S C R 91 : 1965 M P L J 673: 1965 Mah L J 609: AIR 1965 S C 1692 (1697, 1698) (Pt C) (Prs 32, 35, 37).

●——S. 23 - Co-trustee—Breach of trust.

Under the law the investment of funds by a trustee with himself would constitute breach of trust. But before a co-trustee can be made liable therefor some kind of knowledge or connivance or gross negligence or the like contributing factor has got to be made out. See Trusts Act (1882), S. 6. AIR 1957 SC 815.

——S. 33—Sum constituting trust money in the Company's hands —Claim for interest are same rules about interest as any other debt provable in liquidation proceedings — No special treatment can be claimed because the money is trust money— Rules applicable. See Companies Act (1913), S. 229. AIR 1954 All 129.

——Ss. 23 and 15 — Liability of trustee — Wilful neglect or default causing loss to beneficiary — The trustee is liable and the question of reimbursement would arise. See Trusts Act (2 of 1882), S. 15. AIR 1964 Andh Pra 412.

——S. 23—Debtor appointed under will of creditor as executor — Liability to pay interest subsequent to death of testator. See Trusts Act (1882), S. 67. AIR 1958 Andh Pra 262 (DB).

——S. 23—Liability to pay interest.

Where the trustee collects a sum of money from a person from whom the amount is due and instead of bringing the same in the estate accounts improperly utilises it for himself he is liable to pay interest on that amount from the date of its collection from the debtor. AIR 1958 Andh Pra 262 (266) (Pt B) (Pr 15) (DB).

——S. 23—Liability to pay interest — Delay in accounting for capital monies or debts realised.

The rule of law applicable to income, namely that the Court will not charge with interest an executor who has been guilty of delay in accounting should not be applied to capital moneis or debts realised but unaccounted for or uninvested by reason of laches of the executor. (1867) 2 Ch A 225, Foll ; (1957) An W R 29 and AIR 1930 P C 185; 59 Mad L J 121, Distinguished. AIR 1958 Andh Pra 262 (266) (Pt C) (Pr 16) (DB).

——S. 23—'Breach of trust'—Meaning of.

A permanent alienation of temple lands by a trustee is prima facie a breach of trust and no presumption can be made in favour of a breach of duty or misconduct. ILR 49 Mad 337, Foll. (1957) I An W R 60 : AIR 1957 Andh Pra 643 (648) (Pt D) (Pr 17) (DB).

——Ss. 23 and 1— Scope and applicability — Public Trust — Manager of temple using temple funds in his business—Liability to pay compound interest — Rule of damdupat not applicable. See Trusts Act (2 of 1882), S. 1. AIR 1960 Bom 438 (DB).

[Reversed on another point in AIR 1965 S C 1692.]

——S. 23—Breach of trust — Rights of beneficiary — He can approach District Judge and get trustee removed—He can also hold trustee personally liable. AIR 1955 NUC (Bom) 5300 (DB).

——S. 23 — Breach of trust—Expenses honestly incurred by trustees — Honestly is not criterion—It must be seen where the loss falls—If it falls on beneficiary, trustee should re-imburse him. A I R 1955 N U C (Bom) 5300 (DB).

——S. 23 — Removal of trustees — Beneficiary and trustee at loggerheads — By itself it is no ground for removal of trustee — Trustee making fantastic claim against trust—He can be removed. AIR 1955 N U C (Bom) 5300 (DB).

——S. 23—Trustee — Breach of trust—Person who is neither trustee nor beneficiary — Right to correct breach.

A person who is neither a trustee nor a beneficiary under a trust deed will have no locus standi to correct private breaches of trust unless such breaches are unconstitutional or ultra vires. (1959) 63 Cal W N 914 : I L R (1960) 2 Cal 311 : A I R 1960 Cal 120 (123) (Pt E) (Pr 16) (DB).

——S. 23—Suit to recover sums deposited with State for securing liquor contracts — No agreement to pay interest — Interest claimed on ground of wrongful detention of dues on ground of constructive trust could not be allowed as the relation between depositor and depositee could not be said to partake the character of constructive trust. See C. P. Code (1908), S. 34. **AIR 1957 Madh Bha 50 (DB).**

——S. 23 — Sale for low price — Sale by trustees—Highest price not secured by negligence of trustees—Purchaser aware that he was purchasing at low price —Sale cannot be upheld. **A I R 1955 N U C (Mad) 3934 (DB).**

——S. 23—Breach of trust—Trustees deciding to pay 50 per cent of unsecured liabilities — One creditor paid full amount due on pro-note with interest—Action constitutes breach of trust. **A I R 1955 N U C (Mad) 3934 (DB).**

——Ss. 23, 52 — Breach of trust—Trustees transferring properties to their nominees or relations—Purchasers directed to pay to creditors — In not selling properties for money and delegating powers to third persons trustees commit gross breach of trust. **A I R 1955 N U C (Mad) 3934 (DB).**

——S. 23—Partition — Suit for—Duty of manager to bring into hotchpot assets in his hands—He is trustee for the assets in his possession — Failure is a breach of trust—If manager actually receives interest on the investments of the family he will be liable by virtue of S. 23 to pay interest—See Hindu Law — Partition. **AIR 1953 Nag 195 (DB).**

——Ss. 23, 13, 15, 19—Defendant getting bank draft of plaintiff encashed through his bank — Money credited to defendant's account—Long delay on part of defendant to give check for amount to plaintiff—Meanwhile bank suspending payment — Defendant held in position of trustee and liable for amount—See Trusts Act (2 of 1882), S. 13. **AIR 1960 Raj 166.**

SECTION 32

——S. 32—Right to indemnity.

It is well settled that a trustee is not entitled to claim indemnity till he suffers an injury for which he has to be indemnified. Mathalone, R. v. Bombay Life Assurance Co. Ltd., (1954) S C R 117. **56 Bom L R 30 : (1954) 24 Comp Cas 1 : 1954 S C A 1039 : (1953) S C J 548 : (1953) 2 M L J 259 : AIR 1953 S C 385 (392) (Pt D) (Pr 21).**

SECTION 34

——S. 34 — Co-trustees — Joint execution—Trust 'otherwise provides'—Co-trustees—Discretion in trust deed to trustees to act according to unanimous or majority decisions — Construction — Clause held did not provide for exception to S. 48 — Conveyance of trust property—All trustees not joining in execution —Conveyance invalid and passed no title to alinees. See Trusts Act (1882), S. 48. **AIR 1962 S C 633.**

——S. 34—Suit for administration of trust — Nature of—Court's power to make new trust—Calcutta High Court Original Side Rules, Chapter XIII.

The nature of a suit for administration of a trust is the same as that of a suit for administration of an estate with the only difference that instead of the estate of the deceased, a trust estate has to be administered for the purposes of the trust. In a suit for administration of trust, the Court has no power to make a new trust, by directing certain alteration to be made in the old trust deed by a new deed. Far less does it possess such power in a proceeding started under Chapter XIII of the Original Side Rules of the Calcutta High Court, read with S. 34 of the Trusts Act. Possessing both jurisdiction and power to make a particular order, if it passes the order in a case, where it should not have been done, the order does not become a nullity. 48 Cal 138, Foll.; 63 C W N 467, Dist. **(1961) 65 Cal W N 649 : I L R (1962) 1 Cal 159.**

——S. 34—Trusts — Administration—Private trust—Suit for administration — Power of High Court to frame scheme.

It is permissible for the High Court in a suit for administration of the trust relating to a private trust to frame a scheme for the proper management of the trust. To deny such power to the Court will be to hold that a trust will be allowed to fail because of a proper scheme for administering and upholding it. L R 49 I A 100, Disting. **89 Cal L J 224 : I L R (1954) 2 Cal 41 : A I R 1952 Cal 763 (768) (Pt E) (Pr 36).**

——S. 34—Scope.

Wholly providing for the trustee's right to apply to Court for opinion etc., in the management of trust property, S. 34 embodies at the same time, the limitations governing the question to be asked namely, that they should be "present," i. e., not future or contingent or hypothetical, and also be other than questions of detail or difficulty or importance, not proper in the opinion of the Court for summary disposal. 15 Mad L J 292, Foll. **1957 Ker L J 295 : I L R (1957) Ker 381 : 1957 Ker L T 471 : A I R 1957 Ker 171 (173) (Pt C) (Pr 9) (DB).**

——Ss. 34, 47, 48 — Joint execution—Three trustees appointed — Transfer by two cannot convey entire estate in property—Remedy is to apply for directions under S. 34 — See Trusts Act (1882), S. 47. **A I R 1955 N U C (Mad) 3934 (DB).**

——S. 34—Joint execution.

The law does not empower a single trustee to transfer property so as to bind other trustee or the cestui que trust. The remedy in such a case would be for the majority of the trustees who decide upon the transfer of the property to apply to the Court for directions under S. 34 of the Act. See Trusts Act (1882), S. 48. **(1954) 2 Mad L J 486 (DB).**

——S. 34 — Trust not authorising sale of property—Court has no power to authorise sale except in cases of emergency, in cases not foreseen or provided for by the author of the trust where the circumstances require that something should be done. **A I R 1951 Mys 6 (7) (Prs 4, 6).**

SECTION 36

——Ss. 36, 37—Right to trustee to sell trust property —Succession Act (1925), S. 307.

A trustee as such has no right to sell the trust property unless the deed of trust confers such a power. There is no such express power conferred by the Act upon the trustee. The limitation imposed by S. 36, Trusts Act on the power of a trustee to lease the trust property is suggestive of this fact. A trustee no doubt is a legal owner of the property, the beneficial ownership in the same vesting in the beneficiary or the cestui que trust. Merely because the property is vested in the trustee or the legal owner the trustee is not entitled to sell the same.

When the testator expresses his confidence in an executor whom he appoints under the terms of his will that the executor will continue to manage the properties in the same manner as he (the testator) was doing during his lifetime, it predicates the care and caution as also the prudence in the management of the properties of which the testator himself was capable. He expects that the executor will manage the properties as prudently and with the care same and caution as he himself was managing the same. That does not, however, import a power to sell of the type which the testator as the owner of the properties

possessed. 53 Bom L R 883 : I L R (1952) Bom 226: AIR 1952 Bom 106 (109, 112, 118) (Pt B) (Prs 5, 6, 25, 26) (DB).

——S. 36 — Religious Endowment — Debts—Trustee incurring debt on promissory note without indicating that he did not intend to incur personal liability — Decree against trust property cannot be passed — Trust is not bound by such decree. See Hindu Law—Religious Endowment. AIR 1953 Mad 624.

SECTION 37

——Ss. 37, 36 — Right of trustee to sell trust property —A trustee as such has no power to sell the trust property unless the deed confers such a power—There is no such express power conferred by the Act upon the trustee—Succession Act (1925). S. 307. See Trusts Act (1882), S. 36. AIR 1952 Bom 106 (DB).

SECTION 41

——S. 41 — Fund applicable to maintenance of children at discretion of trustees — Power of Court to control discretion in guardianship proceedings.

Where trustees under a will had a discretion to exercise in the matter of the application of the income for the benefit of the minor legatees, the Court cannot control such discretion without notice to the trustees and on an application in the guardianship proceedings. ('49) ILR (1949) 1 Cal 187 (191).

SECTION 43

——Ss. 43 and 48 — Reference to arbitration by one trustee without concurrence of co-trustees — Competeacy—(Arbitration Act (1940), S. 21).

It is not within the competence of a trustee to refer a matter in which the trust is interested to the arbitration without obtaining the concurrence of the co-trustees for in view of the provisions of S. 21, Arbitration Act it is necessary for a valid reference that all the interested parties should join the application for reference. When two or more trustees are appointed for the administration of a trust, they all form but one collective trustee and they must exercise jointly all those powers that call for their discretion and judgment unless the instrument of trust authorises a sole trustee to execute the trust and the powers thereof. It is open to the body of co-trustees to authorise one of them to perform acts which have been agreed to by all and which cannot conveniently be performed by them all, but the trustee who is so authorised is considered to be an agent of all co-trustees and not as an individual trustee. A I R 1955 Punj 31. Foll. ILR (1958) Punj 361: 59 Punj L R 615: AIR 1958 Punj 102 (103) (Pr 6).

SECTION 44

——Ss. 44, 76 — Deed providing for certain number of trustees and filling up vacancies—Death of trustee —Serviving trustees—Right of to represent estates.

The existence of a provision in a trust deed for a particular number of trustees and a provision for filling up vacancies in their places does not, in law, necessarily or merely by itself, debar the surviving trustees from representing the trust estate, in case there is any outstanding vacancy in the number of trustees. Where their number does not fall below the minimum number of trustees required under the deed, the surviving trustees would be quite competent to represent the trust estate. 1932 M W N 297 : AIR 1917 Mad 730; AIR 1941 All 387; 60 E R 499 and A I R 1949 Mad 654 ;(1949) 1 Mad L J 291, Rel. on. 64 Cal W N 488 : I L R (1960) 2 Cal 900: A I R 1960 Cal 489 (491) (Pt B) (Pr 13) (DB).

SECTION 46

● ——Ss. 46 and 47—Religious or Charitable Endowments Public or Private — Wakf created for management of school — Trustees appointed — Duties and liabilities of — Renouncement of — Trustees cannot renounce — Trustees cannot also delegate all their functions — Held, such power was not given by trust dead. See Mahomedan Law — Religious or Charitable Endowments. AIR 1963 S C 309.

——Ss. 46, 13, 15, 20 — Co-trustees — Resignation by one trustee — Resignation not accepted but trustee asked to continue and trustee continuing as such — He can file suit for accounts against co-trustees. See Trusts—Co-trustees. AIR 1963 Punj 187 (DB).

SECTION 47

● ——S. 47—Trust imposing obligation upon trustees to sell trust properties at the highest price and to distribute sale proceeds amongst creditors of tutors of trust—Sale of trust properties leaving it to respective purchasers to pay debts of creditors — Delegation of duty — Violation of S. 47 — Sales invalid. L. Janakirama Iyer v. P. M. Nilakanta Iyer. 1962 Mad W N 699 : 1962 Supp (1) S C R 206 : A I R 1962 S C 633 (645) (Pt H) (Pr 29).

——S. 47 — Delegation of duties by trustee — Term requiring two trustees to act under one—Validity.

No trustee can delegate his powers and duties to another trustee. An agreement to do so is illegal and void.

Where therefore the provisions of original will creating the trust appoints three trustees and does not provide for the delegation of duty by them, a term in a subsequent settlement requiring two trustees to act according to the directions of the third who is to be the managing trustee, thus making them merely his agents, violates the fundamental principles of the law of trustees and is not covered by any of the exceptions noted in S. 47. 89 Cal L J 224 : I L R (1954) 2 Cal 41 : A I R 1952 Cal 763 (767) (Pt B) (Prs 28, 29).

——Ss. 47, 48, 34 — Joint execution — Three trustees appointed — Transfer by two cannot convey entire estate in property—Remedy is to apply for directions under S. 34. AIR 1955 NUC (Mad) 3934 (DB).

——S. 47, Explanation — Guardian of minor appointing special attorney in regular course of business — Attorney can borrow money, when negotiation and terms of loan are done at instance of guardian.

Where the guardian a pardanashin lady appoints a special attorney in the regular course of business and the appointment is necessary for the proper managment of ancestral business of the minor, the delegation is perfectly authorised by S. 47 of the Trusts Act. The guardian can legally delegate power to borrow money to her Mokhtarkhas and the loan incurred by him is valid and binding on the minors, the act of the special attroney being simply an act of ministerial nature requiring no exercise of any discretion on his part when the guardian herself negotiates and settles the terms of the loan and everything is done at her instance and with her knowledge. AIR 1922 P C 209, Distinguished. 1959 B L J R 769 : AIR 1960 Pat 271 (280) (Pt B) (Prs 70, 71).

——S. 47 — Trustee—Powers of, to appoint another as trustee.

Trusteeship by its very nature is not transferable or alienable. The trustee of a property has no power whatsoever to appoint another as trustee of the same property. Such a deed of trust created by the trustee is void ab initio. 3 I C 549, Rel. on. ('49) 1949 T C L R 70 (DB).

SECTION 48

● ——Ss. 48 and 34 —Co-trustees—Joint execution — Trust 'otherwise provides'—Co-trustees — Discretion in trust deed to trustees to act according to unanimous or majority decisions—Construction—Clause

held did not provide for exception to S. 48 — Conveyance of trust property — All trustees not joining in execution — Conveyance invalid and passed no title to alienees.

Under S. 48, all acts which the trustees intend to take for executing the trust must be taken by all of them acting together. If one of the trustees refuses to join in the execution of the trust, Section 34 provides for the remedy. But S. 48 also contemplates that if a trust deed under which more trustees than one are appointed expressly provides that the execution of the trust may be carried out not by all but by one or more, then of course the matter would be governed by the special provision of the trust deed.

Held, in the instant case that, reading the clause as a whole, it did not allow two of the three trustees to act without joining the third trustee in the actual action to be taken in the execution of the trust. Thus read this clause conforms to the statutory provisions contained in S. 48 of the Trust Act and was not intended to provide for an exception to the said provisions at all. Therefore, where only two out of three trustees had joined in the execution of the sale deeds of the trust properties in the administration of the trust, the sale deeds must be held to be invalid and could pass no title to the alienees: (1945) 1 Mad L J 97; AIR 1945 P C 23, Rel. on., L. Janakirama Iyer v. P. M. Nilakanta Iyer. **1962 Mad W N 699 : 1962 Supp (1) S C R 200 : AIR 1962 S C 633 (641, 642) (Pt D) (Prs 18 to 21).**

——S. 48 — Co-trustee — Breach of trust — Some kind of knowledge or connivance or gross negligence or the like contributing factor on the part of the co-trustee has got to be made out. See Trusts Act (1882), **S. 6. AIR 1957 S C 815.**

——S. 48 — Scope—One of two trustees filing suit — Plaint—Not nullity — The defect can be removed at any stage by allowing amendment of the plaint. See Civil P. C. (1908), O. 1, R. 9. **AIR 1939 All 579.**

——S. 48—Term of settlement requiring two trustees to act under one — Validity.

Where the instrument of trust appoints three persons to at as trustees, it is the duty of every one of them to exercise and give the benefit of his individual judgment and discretion in respect of all matters concerning the trust. Where therefore a subsequent settlement provides that one of the trustees called as a managing trustee should be the supreme trustee and the other two trustees should act according to his directions, such a provision is illegal as it contravenes S. 48. **89 Cal L J 224 : ILR (1954) 2 Cal 41 : AIR 1952 Cal 763 (767) (Pt C) (Prs 30, 31).**

——S. 48 — Several trustees—Powers of — Power of beneficiary trustee to consent to splitting up of division of rent.

When there are trustees more than one, it is essential that they must join together in the performance of any duty which the trust deed imposes upon them. When a settlor has made a settlement with the trustees, each one of the trustees has got to exercise his individual judgment and discretion on every matter. The exceptions which exist with regard to this principle are well settled. If there is a direction to the contrary in the deed of settlement all the trustees need not join in any particular act, they also need not act together in the matter of receiving the income of the trust estate or in regard to other affairs where delegations of the trustees' duties is permissible under the law. In the absence of a direction to the contrary in the deed of settlement, it is not competent to one of the trustees, even though he was a beneficiary trustee, to consent to the splitting up of division of the rent. **('49) ILR (1949) 1 Cal 165 (175) (DB).**

——S. 48 — Application for leave to sue in forma pauperis by one of several trustees — No defect. See Civil P. C. (1908), O. 33, R. 3. **AIR 1965 Guj 207 (DB).**

——Ss. 48, 50 to 53, 88 and 92 — Hindu Law — Religious endowment — Trustee — Powers of — He cannot deal with trust property for his personal advantage. One co-trustee cannot sue other for accounts except where latter misappropriates trust funds. See Hindu Law. **AIR 1964 Ker 204.**

——S. 48—Administration of trust vesting in several trustees — Powers must be exercised in joint capacity — One trustee acting with sanction and approval of others—Section—Proof.

Where the administration of a trust is vested in several trustees, they form as it were but one collective trustee and they must exercise the powers of their office in their joint capacity. The acts of one trustee done with the sanction and approval of other co-trustees may be regarded as acts of all of them. But such sanction or approval must be strictly proved. **1960 M P L J (Notes) 152.**

——S. 48 — Joint trustees — Suit relating to endowed property — Parties — All trustees must join. See Madras Hindu Religious Endowments Act (2 of 1927), S. 84. **(1960) 1 Mad L J 157.**

——S. 48—"Where the instrument of trust otherwise provides"—Trust deed providing that trustees should act unanimously or according to decision of majority —Meaning is that decision could be taken either unanimously or by majority. **AIR 1955 N U C (Mad) 3934 (DB).**

——S. 48 — 'Execution of trust' — Expression means taking all necessary steps for carrying out objects of trust. **AIR 1955 N U C (Mad) 3934 (DB).**

——Ss. 48, 47, 34—Joint execution — Three trustees appointed — Transfer by two cannot convey entire estate in property—Remedy is to apply for directions under S. 34. See Trusts Act (1882), S. 47. **AIR 1955 N U C (Mad) 3934 (DB).**

——S. 48—Conditional vesting of property in trustees —Such vesting is against law and cannot be given effect to. **AIR 1955 N U C (Mad) 3934 (DB).**

——S. 48—Notice of termination of tenancy — All the trustees need not join in issuing.

If there are more than one trustee who are in management of the trust property, and even if it can be said that all those trustees are the landlords of a particular tenant, the tenant will not be entitled to continue to be in possession of the property leased to him which belongs to the trust even if anyone of the landlords, namely, trustees, is unwilling to continue the tenancy and brings about its termination by issuing a notice to quit. **40 Mys L J 57 : ILR (1961) Mys 209 : AIR 1962 Mys 71 (71, 72) (Prs 3, 6).**

——S. 48—Decision of majority—(Religious endowment—Joint trustees).

The majority decision, in order to be binding on the entire body of the trustees, should have been arrived at after due deliberations by all the trustees. Where it was an act of the majority alone it will not be binding on the minority. **I L R (1953) Nag 850 : 1953 Nag L J 667 : A I R 1954 Nag 92 (94) (Pt A) (Pr 13).**

——S. 48—Suit by one of several trustees—(Religious endowments—Trustees).

Where although the agreement not to pre-empt was the outcome of the decision of the majority of the three out of the five panchas, it was evidently not for the benefit of the Sansthan whose interest they

were bound to protect, the pre-emption suit could be maintained by one of the panchas as the suit was for the benefit of the Sansthan. The non-joinder of the two remaining recalcitrant panchas who figured as witnesses in the litigation against the Sansthan does not at all effect the representation of the Sansthan. ILR (1953) Nag 850 : 1953 Nag L J 667 : AIR 1954 Nag 92 (95) (Pt D) (Pr 22).

——S. 48—Public trust—Suit—All trustees not made parties—Effect.

Even if it is not a private trust all the trustees must be made parties. Even under the general law, the principles of S. 48 of the Act applies, that is to say, all the trustees must be made parties to the suit, otherwise the suit must be dismissed for non-joinder of necessary parties. 1958 Pat L R 383.

——Ss. 48 and 43—Reference to arbitration by one of trustees without concurrence of co-trustees not competent—(Arbitration Act (1940), S. 21). See Trusts Act (1882), S. 43. AIR 1958 Punj 102.

SECTION 49

——Ss. 49 and 17—Discretionary power of trustee—Interference — By Court—Permissible if the trustees refuse to exercise their discretion or do so capriciously. See Trusts Act (1882), S. 17. (1965) 69 Cal W N 1010.

SECTION 50

——Ss. 50, 51, 52 and 53 — Trustee—Powers of—He cannot deal with trust property for his personal advantage — One co-trustee cannot sue other for accounts except where latter misappropriates trust funds. See Hindu Law—Religious Endowment. AIR 1964 Ker 204.

——S. 50—Deed appointing trustees mentioning that trustees would not be entitled to any remuneration—Trustee accepting trust in spirit of service—Trustee put to trouble and expenditure in realising trust money—He is not entitled to reimburse himself in suit for accounts. AIR 1963 Punj 187 (Pt H) (DB).

SECTION 51

——S. 51—Dissolution of partnership—Some stocks mixed up with goods of one of partners — Mode of accounting. See Partnership Act, S. 46. A I R 1959 All 330.

SECTION 52

——S. 52—Alienations by trustees in favour of near relative of one of the trustees are bad under S. 52. Janakiram Iyer v. Nilakanta Iyer. 1962 Mad W N 699 : 1962 Supp (1) S C R 206 : A I R 1962 S C 633 (645) (Pt G) (Pr 29).

——S. 52—It is desirable that trustee should not purchase trust property. A I R 1955 N U C (Mad) 39 (DB).

——Ss. 52, 23—Breach of trust—Trustees transferring properties to their nominees or relations—Purchasers directed to pay to creditors—In not selling properties for money and delegating powers to third persons trustees commit gross breach of trust. See Trusts Act (1882), S. 23. AIR 1955 N U C (Mad) 3934 (DB).

——Ss. 52, 53—Trustee cannot act in name of member of family. AIR 1955 N U C (Mad) 3934 (DB).

——S. 52 — Trust deed providing for distribution of trust properties with consent of creditors according to amount payable to them — No power of purchase held was conferred on trustees under S. 52 — Prohibition against tsustee for sale is absolute — No exceptions are permitted. A I R 1955 N U C (Mad) 3934 (DB).

——S. 52—No trustee may buy—Prefix of negative to the clause was to emphasise denial of power and to make it positive prohibition — (Interpretation of Statutes—'May') — (Words and Phrases — 'No trustee may'). AIR 1955 N U C (Mad) 3934 (DB).

SECTION 53

——Ss. 53, 52—Trustee cannot act in name of member of family. See Trusts Act (1882), S. 52. A I R 1955 N U C (Mad) 3934 (DB).

——S. 53—Applicability to constructive trustee.

The principles of S. 53 would apply to constructive trustees also. 19 Ind Cas 844, Rel. on. (1957) 23 Cut L T 301.

——S. 53 — Sale in favour of trustee—Validity.

Held, that the sale in favour of the Perumaveli Matom would be inoperative in law against the Devaswom. ILR 48 Cal 1019, Foll. ILR (1956) Trav-Co 634 : A I R 1957 Trav-Co 269 (271) (Pt B) (Pr 7) (DB).

SECTION 54

——S. 54—Applicability—Act does not apply to public or private religious or charitable endowments—Principles of general law governing the relationship of trustee, and cestui que trust embodied in Ss. 20 and 54 may, however, be considered. See Trusts Act (1882), S. 1. (1964) 53 I T R 292 : ILR (1965) 2 Mad 113 (DB).

——S. 54 — Simple mortgage by 'A' — 'A' after becoming trustee creating a usufructuary mortgage in favour of trust—It was a re-investment of the trust money on a different form of security—It was taken out of the Provisions of Madras Agriculturists Relief Act—Liability arising out of breach of trust under S. 54, Trusts Act — Nature of. See Debt Laws—Madras Agriculturists Relief Act (5 of 1938), S. 4 (f). (1957) 2 Mad L J 411.

——S. 54—A elected as trustee — A indebted to trust under decree and under usufructuary mortgage — A undertaking to deposit decretal amount — Election held was valid. AIR 1955 N U C (Trav-Co) 5780.

SECTION 56

——S. 56—Applicability — (Negotiable Instruments Act (1881), S. 31).

The provisions of the Trusts Act cannot be made applicable to deposits held by a bank and the bank cannot be said to be a trustee for the payee. I L R (1954) 1 All 208 : (1953) 23 Com Cas 433 : AIR 1953 All 637 (639) (Pt C) (Pr 12).

——S. 56 — Conveyance of trust property to cestui que trust after majority but before 21—Legality.

The trustee can convey the trust property to the cestui que trust after he had obtained majority even though he has not attained the age of 21 by virtue of the provisions of S. 56 of the Trusts Act. 1951 All L J 218 : I L R (1952) 2 All 421 : A I R 1952 All 564 (573) (Pt D) (Pr 51) (DB).

——S. 56—Contract Act (1872), S. 2 (d)— Stranger to contract—Right to sue—Family arrangement—Suit by person benefited to enforce — Maintainability. See Contract Act (1872), S. 2 (d), AIR 1957 Andh Pra 965 (DB).

——S. 56 — Before registration of company partnership not merely expanded but new Company formed —New Company registered — New Company cannot avail of provisions of S. 263 — Leasehold interest of partnership cannot be said to be transferred to the Company without registered deed by partners — Partners not trustees of company—Relationship of landlord and tenant however established between landlord and company by acceptance of rent by landlord from

Company. See Companies Act (1913), S. 263. **A I R 1963 Cal 198 (DB).**

——S. 56—Settlement—Construction.

Ordinarily in the absence of any provision to the contrary in the settlement, a person who is given a vested interest in a fund is entitled not only to claim the income of the fund but also to require the trustees to transfer the fund to him. **(1965) 55 I T R (ED) 1 : (1964) 1 I T J 201 : AIR 1965 Guj 9 (13) (Pt E) (Pr 3) (DB).**

SECTION 59

——Ss. 59 and 63 — Wakf — Alienation by trustee— Beneficiary can bring suit for possession. The possession if ordered in his favour will be on behalf of trust. See Mahomedan Law — Wakf. A I R 1957 Mad 194 (DB).

SECTION 60

——S. 60—Trust —Construction—Trust deed making office of trustee hereditary and providing that on death or resignation of any trustee, successor to be appointed by remaining trustees and if they fail to do that within prescribed period claimant to trusteeship, has to apply to District Court for getting him appointed — One trustee resigning — His son claiming that he had become trustee automatically on resignation by father — Held simply because of hereditary right to trusteeship, son did not become trustee, he would become trustee only by reason of appointment either by remaining trustees or by Court: AIR 1958 S C 937 and AIR 1964 S C 254, Rel. on. 1964 Ker L J 539 : AIR 1965 Ker 203 (205) (Pt C) (Pr 9) (DB).

SECTION 61

——S. 61—Power in the nature of the trust. Held, on facts : There being no obligation imposed on the trustees no trust was created even though the money had been transferred to the trustees. For the same reason there was no power in the nature of trust which could be exercised by Court. See Income-tax Act (1922), S. 10 (2) (v). **AIR 1953 S C 476.**

——S. 61 — Contract with Government under which petitioner allowed to move goods — Government supplying wagons — Petitioner executing documents and surety bonds given by other persons — Contract providing that in case of breach of conditions sureties liable to pay amount of bonds to Government—Right given to Government held did not debar Government to prevent breach of contract by taking hold of goods because petitioner's possession of wagons was on behalf of Government and he was not free to move or deal with them as he liked. **AIR 1953 Pepsu 9 (12) (Pt D) (Pr 11).**

SECTION 62

——Ss. 62, 63 — Suit by beneficiary for declaration and for direction as to delivery of possession of trust property to receiver or administrator— **Art. 134 of** Limitation Act (1908) applies to such suit. See Limitation Act (1908), Art. 120. **A I R 1955 N U C (Mad) 3934 (DB).**

——S. 62 —Civil P. C. (1908), O. 21, Rr. 72 and 73, O. 40, R. 1 and S. 47 — Purchase of property by decree-holder — Receiver without sanction of Court— Purchase is not nullity but voidable at instance of judgment-debtors in execution proceedings and not by suit. See Civil P. C. (1908), O. 21, R. 72. **A I R 1953 Mad 822 (DB).**

SECTION 63

——S. 63 —Scope — Improper alienation of trust properties—S. 63 not exhaustive of remedies available to beneficiary —Suit by beneficiary for removal of trustee, for appointment of new trustee and for delivery of possession of trust properties improperly alienated to new trustee — Not prohibited by S. 63— Limitation Act (1908), S. 10. Janakirama Iyer v. P. M. Nilakanta Iyer. **1962 Mad W N 699 ; 1962 Supp (1) S C R 206 : A I R 1962 S C 633 (639, 640) (Pt B) (Prs 14, 15).**

——S. 63 — Applicability — Doctrine of tracing property or receipts thereof.

Paragraph 2 of S. 63, Trusts Act, only recognises the right of the beneficiary to follow up property whatever shape it might take and in all its transmutations. A cestui que trust can seize upon the fund or property into which it has been converted. But this doctrine cannot be extended to cases where the trustee transfers his own properties (which are not traceable to the funds of the beneficiary) to third parties. The right of the cestui que trust or beneficiary is only to claim the specie or its equivalent in whosesoever hand it be. The property of the trustee which was not purchased with the trust money cannot answer that description. I L R 33 Mad 134, Distiog. **(1957) 2 Andh W R 573 : A I R 1958 Andh Pra 329 (330) (Pt A) (Pr 9).**

——Ss. 63, 64 and 66 — Trustee mixing up trust property with his own property— Purchase of new property by trustee in his own name — Presumption — Property subsequeatly transferred by trustee — Suit by beneficiary to recover property from transferee — Onus of proof — Evidence Act (1872), Ss. 101 to 103.

Where an executor under a will, who is in the position of a trustee, amalgamates the trust estate with his own managing it as one unit, and subsequently purchases new property out of such mixed estate in his own name, the presumption is that the property has been purchased by the trustee out of the trust fund mixed up though it may be with his own property. Unless and until the trustee succeeds in establishing before a Court of law that no part of the trust property formed part of the consideration for the purchase of that property and he had purchased it out of his own separate property or properties, he would not be able to claim the property as his own, and the beneficiary or the cestui que trust would be entitled to that property.

If the trustee transfers such property to a third person and the beneficiary brings a suit against the transferee for recovery of such property, the onus of proving that the property in suit was purchased from the mixed fund is not on the plaintiff but the onus is on the defendant to prove that the property had been acquired by the trustee from his self-acquisitions. Once it is proved by the plaintiff that there was a mixed fund made up of the personal properties of the trustee as well as the trust property, the plaintiff's part of the case is established and it is not open to the Court to enquire as to whether the property was purchased from the corpus or from the income. 48 Mad 597, Applied. **53 Bom L R 883: ILR (1952) Bom 226 : AIR 1952 Bom 106 (110 to 112) (Pt A) (Pr 5a) (DB).**

——Ss. 63, 66 and 94— Company obtaining property by fraud — Part of property so obtained pledged and the rest sold—Company becomes constructive trustee with respect to the proceeds — Owner of goods entitled to preferential payment to the extent of the proceeds. See Companies Act (1956), S. 529. AIR 1964 Ker 135 (DB).

——Ss. 63, 64 and 94 —Purchase of property benami with stolen money — Trust if created — Subsequent transferee with notice of trust — Liability to restore property—(T. P. Act (1882), S. 52).

Exhibit A1 an assignment of kanam right in the plaint property, was taken by defendant 2 in the name of his mother defendant 1 with the money stolen from the plaintiff intending to have it for his own benefit.

Held that defendants 1 and 2 must be deemed to have acquired their rights under Ex. A1 and to have been holding the plaint property as trustees for the plaintiff.

Held further that defendant 3 who had subsequently taken an assignment of the rights under Ex. A1 without any valuable consideration and with the money stolen from the plaintiff was not protected under S. 64, Trusts Act and defendant 4 who was an assignee from defendant 1 pendente lite also took the property subject to the result of the suit. 1957 Ker L T 961 : 1957 Ker L J 907 : ILR (1958) Ker 39.

——Ss. 63, 64, 66, 88 — Hire purchase agreement — Assignment of right to use goods — Assignee becomes trustee and is bound to protect goods. AIR 1965 Mad 257 (DB).

——S. 63 — Trusts — Administrator of Mills diverting its funds to personal use — Company (mills) in liquidation — Doctrine of tracing trust monies — Trust pursuit rule — Doctrine of Election — Principles of application.

Two applications were filed before the High Court by the Official Liquidator one on behalf of the company K in liquidation for directing the second respondent — Trust to pay certain liquidated sum out of the amounts in its hands belonging to T the first respondent, and to retain the balance pending settlement of accounts between the company in liquidation and the first respondent. The second application was also by the Official Liquidator for an injunction restraining the Alagappa Textiles (Cochin) from paying to any party or otherwise disposing of a sum in their hands to the credit of first respondent or directing them to pay the sum to the Official Liquidator. The High Court held that the sole remedy available to the Official Liquidator was to take possession of all shares purchased by first respondent from and out of the funds of K mills in liquidation, while he was the managing administrator of the company, as 20,000 shares had been already sold under orders of Court and moneys realized, the remedy still available to the Official Liquidator, was only to proceed against first respondent for criminal breach of trust, and deliberate flouting of the Court's orders concerning his utilization of the certain funds of the K mills which were entrusted to him. Upon the doctrine of election, the High Court was of the view that the Official Liquidator had elected to pursue the property of the beneficiary, K mills wrongfully converted to other uses by the fiduciary, first respondent, in the form, of the shares. Having done this the Official Liquidator could not pursue the moneys retained by the trust or the moneys standing to the credit of the first respondent with the Textiles. The Official Liquidator was also entitled to proceed against the remaining 13,500 shares. The Board of Directors administering the K mills as a going concern, in succession to the Official Liquidator filed appeal against the High Court decision.

Held, that in the context of the incontrovertible facts it was impossible to hold that the doctrine of election estopped the Board of Directors from further progress under the Trust pursuit rule. That doctrine implied a knowledge of alternative, and a choice of one of two alternatives. The trust was undoubtedly a transferee for valuable consideration, without notice of the claim of the beneficiary as far as the moneys received by it from the first respondent were concerned. Hence it would not be equitable or justified to permit the Board of Directors to pursue moneys in the hands of Trust any further under the trust pursuit rule. The shares were 'goods' within the meaning of S. 2 (7) of the Sale of Goods Act. The delivery of share certificates with blank transfers signed by the transferor, amounted to conveyance of good title in the shares to the purchaser; and registry of shares was not necessary for vesting title. AIR 1926 P C 38 and AIR 1956 Pat 32, Rel. on. (1965) 1 Comp L J 89 : ILR (1964) 2 Mad 244 : (1965) 1 Mad L J 234.

——Ss. 63, 64 — Company — Liquidation — Administrator appointed by Court to carry on affairs — Later flouting orders of Court and committing acts of misappropriation and diversion of funds of company to private uses — Right of liquidator to proceed against transferees of funds and property of company — Extent of and limits to — Election — Doctrine of — Principles — Trust pursuit rule — Essentials — Bona fide transferee without notice — If protected — Shares in company — If 'goods' — Transfer of scrip with blank transfers — If conveys title without registry — Sale of Goods Act (3 of 1930), S 2 (7).

Where, in liquidation proceedings of a company, an administrator is appointed by Court directing him to do certain acts and giving him powers to act in a specified manner, but he disobeys the order and directions of the Court and commits acts of misappropriation and diversion of the funds of the company (in liquidation), the liquidator can proceed against such funds in the hands of the transferees. The doctrine of election implies a knowledge of alternatives and a choice of one of two alternatives. When applying the doctrine to the trust pursuit rule, i. e, pursuing trust property in the hands of transferees from the trustee, if there is a clear and sharp conversion of trust moneys into other forms of property, the pursuing beneficiary, having knowledge of such conversion and a choice of alternatives, has the right to elect either to take the property purchased or to have a charge on it for the amount of the trust money, but not both. But this principle cannot be applied to a case, where, for instance, there has been a partial conversion, to a limited extent, and the beneficiary seizes the property so made available under the trust pursuit rule; that does not imply that his claim to the balance of funds, not embodied in some other form of property, is also extinguished or lost, so as to estop the beneficiary from further progress under the trust pursuit rule. Where the party in whose hands trust moneys are sought to be pursued is a transferee for valuable consideration without notice of the claims of the beneficiary who seeks to pursue them, the beneficiary must stop short of such pursuit in respect of such moneys. The beneficiaries cannot recover moneys whether obtained by fraud or misuse by a fiduciary which are in the hands of persons who are alienees for valuable consideration, without notice of the fraud on the trust, as such a transferee is protected under S. 65, Trusts Act. If the claimant's moneys are handed over by way of transfer to a person who takes for value without notice of the claimant's equity, the claim (like all equitable claims in like circumstances) is extinguished. Equity will follow the trust money only to the extent to which it can be identified; where there is a mingling which makes identification impossible, tracing cannot be further pursued. 78 Mad L W 214 : ILR (1964) 2 Mad 244 : (1965) 1 Comp L J 89 : (1965) 1 M L J 234.

——S. 63 — Suit by beneficiary for declaration and for direction as to delivery of possession of trust property to receiver or administrator — Art. 134 applies to such suit. See Limitation Act (1908), Art. 120. AIR 1955 N U C (Mad) 3934 (DB).

——S. 63 — Quasi trustees in possession of land belonging to temple as trustee — No adverse possession. See Limitation Act (1908), S. 10. AIR 1954 Mad 258 (DB).

——Ss. 63 and 3 — Creation of trust — Vesting of property in trustee essential — Loanees from Government — Entrustment of money to agent for discharge of loan by payment into treasury — No trust created as the title to the money remained with the loanee —

Non-payment — Suit by Government for recovery of money by following it into hands of another—Not maintainable — What Government has to plead and prove. See Trusts Act (1882), S. 3. AIR 1962 Orissa 4 (DB).

——S. 63—Suit by trustee for recovery of trust property — Status as trustee not established—Claim as individual worshipper of Mosque, held not maintainable—(Civil P. C. (1908), O. 6, R. 2). AIR 1955 N U C (Trav-Co) 1670 (DB).

SECTION 64

——Ss. 64, 63 and 66 — Trustee mixing up trust property with his own property—Purchase of new property by trustee in his own name—Presumption is that the property is purchased out of the trust funds —Property subsequently transferred by trustee—Suit by beneficiary to recover property from transferee—Onus of proof is on the defendant to prove that the property has been acquired by the trustee from his self acquisitions. See Trusts Act (1882), S. 63. AIR 1952 Bom 106 (DB).

——S. 64 — Hire purchase agreement — Rights of owner and hirer—Assignment of right to use goods—Assignee becomes trustee and is bound to protect goods—Assignee allowing owner to wrongfully seize goods and purchasing them himself — Assignee is liable for loss suffered by hirer. AIR 1965 Mad 257 (DB).

——S. 64—Purchase of property benami with stolen money—Trust is created—Subsequent transferee with notice of trust not protected by S. 64 — Liable to restore property. See Trusts Act (1882), S. 63. 1957 Ker L T 961 : 1957 Ker L J 907 : ILR (1958) Ker 39.

——S. 64 — Quasi trustees in possession of land belonging to temple as trustee—No adverse possession. See Limitation Act (1908), S. 10. AIR 1954 Mad 258 (DB).

SECTION 65

——Ss. 65 and 90 — Mortgaged property sold for arrears of revenue—Default of mortgagee—Purchase by stranger—Latter selling it to mortgagee —Mortgagee if revived — Right of mortgagor to redeem—(Transfer of Property Act (1882), Ss. 76 (c) and 60.:

If a mortgaged property sold for arrears of revenue owing to the default of the mortgagee and purchased by a stranger, is subsequently purchased by the mortgagee himself, the mortgage is revived and attaches itself to the property and could be redeemed by the mortgagor or his heirs or assigns. Though the property vested in the stranger purchaser at the revenue sale free of the mortgagee, still, if the defaulting mortgagee purchases the property from the stranger purchaser, then as between him and the mortgagor the position is the same as if the defaulting mortgagee himself had purchased at the revenue sale. The reason of this rule appears to be that a person cannot be allowed to take advantage of his own wrong and make a profit at the expense of the person wronged by pleading that there had been a statutory extinction of the mortgage. 26 Mad 385 : 13 M L J 129, Foll.; AIR 1936 Pat 434, Not foll. 69 Mad L W (Andhra) 65 : 1956 Andhra W R 595 : AIR 1957 Andh Pra 430 (432, 433) (Prs 4, 6 to 9).

SECTION 66

——Ss. 66, 86 — Money received under fraudulent contract — Amounts identified—Rights of the parties —Receiver is charged with trust for benefit of person defrauded. See Trusts Act (1882), S. 86. A I R 1955 All 676 (DB).

——S. 66 — Dissolution of partnership—Some stocks mixed up with goods of one of partners — Mode of accounting the goods of dissolved partnership must be held in fiduciary relationship. The property and the profits derived therefrom must be available for distributions among the partners of the dissolved firm. See Partnership Act (9 of 1932), S. 46. A I R 1952 All 330 (DB).

——Ss. 66 and 64—Trustee mixing up trust property with his own property — Purchase of new property by trustee in his own name — Presumption is that property has been purchased by the trustee out of trust funds — Property subsequently transferred by trustee — Suit by beneficiary to recover property from transferee — Onus of proof is on the defendant to prove that the property had been acquired by the trustee from his self-acquisitions. See Trusts Act (1882), S. 63. AIR 1952 Bom 106 (DB).

——Ss. 66, 63 and 94 — Companies Act (1956), S. 529 — Winding up — Preferential payment — Company obtaining property by fraud — Part of property so obtained pledged and the rest sold — Company becomes constructive trustee with respect to the proceeds — Owner of goods entitled to preferential payment to the extent of the proceeds. See Companies Act (1956), S. 529. AIR 1964 Ker 135 (DB).

——S. 66 — Hire purchase agreement — Rights of owner and hirer — Assignment of right to use goods — Assignee becomes trustee and is bound to protect goods — Assignee allowing owner to wrongfully seize goods and purchasing them himself — Assignee is liable for loss suffered by hirer. AIR 1965 Mad 257 (DB).

——S. 66—Right of beneficiary to preferential payment — Trust money mixed up with family business in Burma—Fund not traceable in India—Beneficiary held not entitled to charge over properties of trustees in India.

In order to entitle beneficiary to a preferential payment, there must be a fund to which the trust money is traceable which is still available. Where the fund is not there, no question of tracing can arise.

Stridhana moneys of A were invested by her husband V in the family business in Burma. V's creditors in India applied for adjudicating him as insolvent and in a composition scheme certain sum was brought from Burma to India for distribution to creditors. The composition scheme failed and A applied for a charge for her stridhanam moneys over P's Indian assets in lieu of the amount brought from Burma.

Held, that beyond the sum which was received at the time of the composition and paid over to the creditors, no other sum of money from that place was traceable in any of the Indian assets. There were no doubts other properties in Burma over which A could continue to have a charge or a right to preferential payment therefrom. It may also be that by reason of the fact that the composition had failed, she could take appropriate proceedings to get back the sum paid to the creditors. But in liue of what was paid to the creditors, A could not have a charge over other Indian assets to the acquisition of which no part of the money from Burma could be traced. 1880-13 Ch D 696, Rel. on; A I R 1930 Mad 24, Disting. 1962 Mad W N 298 : AIR 1962 Mad 406 (409, 410) (Prs 9, 10) (DB).

SECTION 67

——S. 67 — One set of partners in firm forming limited company for carrying on same business of firm—Other partners have no right—S. 67, Trusts Act has no relevance as there was no question at all of any trust or fiduciary relationship between the limited company and the other partners to sue for accounts of such business. See Partnership Act (1932), S. 37. AIR 1952 Bom 337.

SECTION 68

—S. 68 — Insufficiency of assets of deceased to satisfy all creditors in full—Right of creditors under S. 323 of Succession Act — Non-rateable payment to some creditors by administrator — Unsatisfied or dissatisfied creditors have no right enforceable against other creditor who have received in excess of their rateable proportion except where such creditors receiving in excess knew that the administrator was acting in violation of trust. See Succession Act (1925), S. 323. AIR 1951 Mad 296 (DB).

SECTION 70

—Ss. 70, 71, 73 and 10 — Bankrupt trustee can act as trustee—(Presidency Towns Insolvency Act (1909), Ss. 10, 103-A and 119).

A bankrupt trustee can act as a trustee after his order of adjudication and when his order of adjudication is in operation and has not been annulled, he is competent to sell as trustee the trust property.

The insolvency of a trustee will not ipso facto discharge him from his office of a trustee. The mere fact of insolvency of a trustee will not discharge him but some further step will have to be taken to effect his discharge. The further step is the appointment of a new trustee in his place. Until, therefore, a new trustee is appointed in the place of the bankrupt trustee, the bankrupt trustee must be held to continue his office of trustee.

This result appears to follow from the construction of Ss. 70, 71 and 73 of the Trusts Act. Chapter V of the Trusts Act dealing with the disabilities of trustees in Ss. 46 to 54 does not affect this result.

This view is also fortified by the Presidency Towns Insolvency Act and its relevant section on the point.

Implications of Ss. 103-A and 119 of Presidency Towns Insolvency Act considered.

Section 10 of the Trusts Act cannot be construed as having the effect that the moment a trustee becomes insolvent he ceases to be a trustee by the very order of his adjudication. I L R (1956) 2 Cal 114 : 58 Cal W N 853 : 93 Cal L J 244 : A I R 1954 Cal 432 (433 to 435) (Pt A) (Prs 6, 7, 8, 11, 12).

SECTION 71

—Ss. 71 and 72—Extinction of trust by fulfilment—Trustee is automatically discharged — District Judge has no jurisdiction to order discharge in sense to release trustee from obligation to render accounts.

The District Judge cannot under Ss. 71 and 72 give a discharge to the trustee in the sense of a release from his liability to render account. When a trustee has ceased to be a trustee by the fulfilment of the object of the trust he is under a liability to render account to the beneficiaries. As the settlement of accounts cannot be done by the District Judge, his discharge or release from liability cannot be ordered by him. Sections 71 and 72 therefore, when they authorise the District Judge to discharge a trustee refer a case in which a trustee wishes to go out of his office during the subsistence of the trust when another person may be appointed in his place. The District Judge therefore has no jurisdiction to discharge a trustee when he has been discharged automatically by the extinction of the trust and even if there is such jurisdiction there is no jurisdiction to release him from his liability to render accounts. ILR (1953) 2 All 872 : 1952 All L J 259 : 1952 All W R (H C) 345 : A I R 1952 All 825 (827) (Pt A) (Pr 11) (DB).

—S. 71—Bankrupt trustee can act as trustee. See Trusts Act (1882), S. 70. AIR 1954 Cal 432.

SECTION 72

—Ss. 72 and 71 — Extinction of trust by fulfilment —Trustee is automatically discharged — District Judge has no jurisdiction to order disgharge in sense to release trustee from obligation to render accounts. See Trusts Act (1882), S. 71. A I R 1952 All 825 (DB).

SECTION 73

—S. 73—Bankrupt trustee can act as trustee. See Trusts Act (1882), S. 70. AIR 1954 Cal 432.

—Ss. 73, 74—Executor and trustee—Persons cannot become executors when they are appointed as trustees in the will — Removal of trustee— Proper remedy— S. 301 of the Succession Act is not the proper remedy —Breach of trust by trustee — Remedy for his removal is by a suit — Ss. 73 and 74, Trusts Act not applicable to disputed case where suit is the proper remedy. See Succession Act (1925), S. 301. AIR 1956 Sau 51.

SECTION 74

—S. 74—Applicability to religious Trust—Public or private trusts — Test — Religious trust what is—Appointment of trustees for religious trust—S. 74 does not apply. See Trusts Act (1882), S. 1. A I R 1955 N U C (Madh B) 3799.

SECTION 76

—Ss. 76, 44 — Trust deed providing for certain number of trustees and filling up vacancies — Death of trustee — Surviving trustees are not necessarily debarred from representing estate. See Trusts Act (2 of 1882), S. 44. AIR 1960 Cal 489 (DB).

—S. 76 — Two trustees instituting suit for recovery of rent against tenant — Death of one of trustees in course of proceedings — Trial Court holding that surviving trustee could continue the suit—Held, that the decision of the Court should be deemed to be one under O. 22, R. 3, Civil P. C. and a correct one. 11 Hare 188, Foll. Madh B L R 1956 (Civ) 837 : 1957 Jab L J (MB) 46.

SECTION 77

SYNOPSIS

(Trusts Act (1882), S. 77.)

1. Scope.
2. Clause (a)—Purpose is fulfilled.
3. Clause (b)—Purpose becomes unlawful.
4. Clause (c) — Fulfilment of purpose becomes impossible.

1. Scope.

—S. 77—Discharge of trustees — Does not result in extinction of trust — Order does not bar beneficiaries from setting up validity of trust in subsequent action. ILR (1964) 2 All 191.

2. Clause (a)—Purpose is fulfilled.

—S. 77 (a), (c)—Execution of trust in 1932 — Trust not extinquished by coming into force of U. P. Encumbered Estates Act—Debt Laws — U. P. Encumbered Estates Act (25 of 1934), Ss. 18, 19, 35.

On the 29th August 1932 one Raja Bishwanath Saran Singh Bahadur executed a deed of trust appointing himself and eight other persons as trustees. One of the main purposes of this trust was the liquidation of the huge debts incurred by the author of the trust :

Held the effect of the provisions of Ss. 18, 19 and 35 of the U. P. Encumbered Estates Act (25 of 1934) was to extinguish all rights of secured creditors in the landed property, and to vest such property in the debtor free of all encumbrances. The purpose of the trust deed also was a similar one—The Encum-

bered Estates Act only provided a machinery whereby the purpose of the trust could be achieved more expeditiously. The debts due from Raja Bishwanath Saran Singh had not been liquidated, and the proceedings under the Encumbered Estates Act closed prior to the date of the institution of the suit concerning the trust. Under the circumstances it could not be said that the trust was extinguished as a result of the coming into force of the U.P. Encumbered Estates Act or the institution of proceedings thereunder. In the present case the purpose of the trust had not been completely fulfilled. On the other hand the purpose was in the course of fulfilment. It cannot be said that the Encumbered Estates Act has resulted in the destruction of the trust property. Therefore neither Clause (a) nor Clause (c) of S. 77 of the Trusts Act could be invoked in support of the argument that the trust which came into existence by virtue of the trust deed stood extinguished as a result of the coming into force of the Encumbered Estates Act. ILR (1964) 2 All 191.

——S. 77 (a) (c)—Execution of trust in 1929—Trust not extinguished by coming into force of U. P. Act 1 of 1951 and U. P. Act 15 of 1953 — U. P. Zamindari and Land Reforms Act (1 of 1951), Ss. 27, 65 — U. P. Zamindars Debt Reduction Act (15 of 1953).

Trust executed on the 29th August 1932 by a Zamindar — One of the main purposes of this trust was the liquidation of the huge debts incurred by the author of the trust.

Held, that as a result of the passing of the U. P. Zamindari Abolition and Land Reforms Act, the property which was the subject matter of the trust deed would be replaced by two kinds of properties. The first would be the properties which might be said to be the vestige of the old landed property, and the second would be compensation. As to the first, these would be interests in land like bhumidhari rights and other rights remaining in the landed property. This would be immovable property, The trust, instead of operating on the estate which was the subject matter of the trust deed in 1932, would now operate on these new properties which had taken the place of the old properties. It could not, therefore, be said that the replacement of the new properties for the old ones had resulted in the complete fulfilment of the purpose. Section 77 (c) also could not be invoked because it could not be said that the purpose had become impossible as a result of the replacement of the old rights by the new ones. Further, it could not be said that the trust property was completely destroyed. These properties remained existing, although the rights therein had been modified and had assumed a new form and title. The debts which were payable from the estate would now be realisable from the compensation money.

The U. P. Zamindars Debt Reduction Act, 1952 (U. P. Act No. 15 of 1953), was promulgated for the purpose of meeting a situation that was created by the U. P. Zamindari Abolition and Land Reforms Act (1 of 1951). The trust could not be said to have been extinguished either under cl. (a) or cl. (c) of S. 77 of the Indian Trusts Act as a result of the coming into force of the U. P. Zamindars' Debt Reduction Act. Far from making it impossible, this Act gave a practical shape to the possibility while saving some amount to the holder of the land in case of secured debts. AIR 1961 S C 1790, AIR 1923 Lah 93, Disting. ILR (1964) 2 All 191.

——S. 77—Provision in trust deed that trust to come to end on wife's death or son's attaining certain age, whichever later — Trust is extinguished upon death of wife or son's attaining that age whichever is later —Trustee stands discharged but liability to render account remains.

After making provisions for the wife and sons the trust deed declared, "this trust will come to an end at the death of Mrs. D (wife of the executor) provided K. D. (one of the sons of the executor) has also attained the age of 23 years. It is also provided that when this trust comes to an end as provided above, the trust property or the sale proceeds thereof, as the case may be, shall be divided in equal shares among my said two sons."

Held that the words of the deed were absolutely clear that the trust was to come to an end at the death of Mrs. D or when K. D. attained the ege of 23 years, whichever was later and the property was to be divided after the trust had come to an end. The trustee, therefore stood automatically discharged from his office upon the death of Mrs. D and on K D's attaining the age of 23 years. But this discharge did not mean that the trustee was relieved from his duty of renderlng accounts and delivering the trust property to the beneficiaries. **1952 All L J 259 : 1952 All W R (H C) 345 : ILR (1953) 2 All 872 : AIR 1952 All 825 (827) (Pt B) (Pr 7) (DB).**

——S. 77 (a) — A depositing money with Bank for specific purpose—Purpose fulfilled — Bank going into voluntary liquidation — A is not preferential creditor. See Companies Act (1913), S. 183. **AIR 1953 Punj 98 (DB).**

3. Clause (b)—Purpose becomes unlawful.

——Ss. 77 (b), (c), 83 — Trust deed providing for liquidation of debts of author of trust and entailment of property— Entailment not legally possible— Purpose regarding payment of debts would not be affected — Trust not extinguished—Tenancy laws— Oudh Settled Estates Act (5 of 1917), Ss. 3, 15.

One of the main purposes of this trust was the liquidation of the huge debts incurred by the author of the trust. There was a provision in the trust deed for entailment of property within a year after liquidation of the debts.

Held, that the entailment of the estate by the trustees would not be legally permissible or possible. It could not be said that as a result of the impossibility of entailment of the estate, the trust itself had failed altogether. The two purposes were clearly severable and independent of each other. The second purpose began only after the first one was achieved or had ended. In case there was a failure of the purpose at the second stage, under the Trusts Act a resulting trust would follow for the benefit of the author of the trust or his legal representatives. It could not be said that the trust was extinguished under cls. (b) and (c) of S. 77 of the Trusts Act, 1882, because of the legal impossibility of entailment of the estate under the Oudh Settled Estates Act. AIR 1922 Cal 116; L R 99 A 70, Disting; AIR 1949 Cal 288; L R 64 I A 5; AIR 1941 Cal 272; AIR 1947 F C 122, Rel. on. **ILR (1964) 2 All 191.**

4. Clause (c) — Fulfilment of purpose becomes impossible.

——S. 77 (c) — Execution of trust in 1929 — Trust not extinguished by coming into force of U. P. Act 1 of 1951 and U. P. Act 15 of 1953. See Trusts Act (1882) S. 77 (a). **ILR (1964) 2 All 191.**

——S. 77 (c) — Scope — Trust put an end to not by mere act or assertion on part of trustees but by objective fact that fulfilement of trust had become impossible and that trust had extinguished under S. 77 (c), Trusts Act 1882 — S. 10 would not apply. See Limitation Act (1908), S. 10. **ILR (1963) Andh Pra 517.**

——S. 77 — Failure of object of charitable inam — Resumption of land and inam by Government—After

resumption, trust becomes completely extinguished and there cannot be trustees — Resumed charitable inam when its value is less than Rs. 12/- per annum does not attract doctrine of cypres in its re-assignment and its assessment can be credited to general revenue. Government as representing public has right to resume land of charitable inam and its assessment and right to grant that land on patta. Simply because land is granted on patta after resumption to ex-trustees of charity it cannot be inferred that regrant was made to them in capacity of trustees and not as individuals, to attract S. 88. See Trusts Act (1882), S. 88. **ILR (1963) Andh Pra 517.**

——Ss. 77 (c) and 83 — Trusts in fovour of creditors — After paying creditors residue and surplus to be held in trust for settlors and their next-of-kin — Payment of all creditors impossible — Resulting trust — Judgment contemplating future contingencies — Finding is not res judicata — (Civil P. C. (1908), S. 11). **AIR 1955 N U C (Cal) 839 (DB).**

——S. 77— Charitable gift—Particular application of, postponed — Gift is rendered void — Failure of purpose — Doctrine of cypres may be applied and effect must be given to the object of the trust. **AIR 1951 Orissa 132 (136, 137) (Pt H) (Prs 12, 15) (DB).**

——S. 77 — Cypres — Doctrine of — Scope.

The cypres doctrine broadly stated would connote that when a general charitable intention is expressed by the donor it would not be permitted to fail on the ground that the mode, if specified, cannot be executed, and, the law would substitute another mode as near as possible to the mode specified. But when the particular mode of application is the essence of the donor's intention and that mode becomes incapable of being performed then the Court cannot possibly have any power to direct any other charitable application in place of the one which has failed.

Petitioner who claimed to be a trustee in respect of certain religious institution situted at a place in Pakistan, claimed from the Government property under the compensation law to enable him to establish an institution of which he should be allowed to act as a trustee on lines similar to those on which the previous institution used to be run in village in West Pakistan by seeking application of cypres doctrine.

Held, that the petitioner was not entitled to any allotment of property on the basis of doctrine of cy pres. **ILR (1963) 1 Pun 385.**

SECTION 78

——S. 78 (b) — Settlor reserving power to vary conditions of trust by will alone and in no other way or act — Power to vary terms by another trust deed during his lifetime — Equitable considerations.

Where in a trust deed the settlor reserves to himself the power to vary the terms and conditions of the trust deed created by him by 'his instrument of will alone and in no other way or act' the manner of exercise of that power must be regarded as essential. The general law is that essential conditions for the exercise of a power, under a deed, must be observed; otherwise the exercise of such power shall be void. This general law, however, admits of an equitable exception, namely, where the defective exercise of such power is for the fulfilment of some moral obligation. (1805) 10 Ves 370, Rel. on. **65 Cal W N 649 : ILR (1962) 1 Cal 159.**

——S. 78 — Revocation of trust.

Where the only beneficiaries under a settlement deed are the settlor, his wife and his three sons of whom one is dead and all consent to the revocation of the trust created by the settlor, the settlor is entitled to revoke the trust. **AIR 1957 Cal 118 (119) (Pt B) (Pr 7).**

——S. 78 — Insurance Company — Policy holders' trust fund — Right of company to alter trust deed without consent of policy holders — (Companies Act (1913), S. 21).

The policy-holders cannot certainly interfere with the right of the Insurance Company to amend its articles of association. But, clearly, the policy holders have got a right of say, if they are beneficiaries of the policy holders' trust fund that the terms of the original trust deed could not be altered without their consent. **69 Mad L W 37 : 1956 Mad W N 95 : ILR (1956) Mad 1014 : (1956) 26 Com Cas (Ins) 12 : (1956) 1 Mad L J 344 : AIR 1956 Mad 316 (318, 321) (Pt A) (Prs 7, 15) (DB).**

——Ss. 78 and 79 — Circumstances when irrevocable transfer may be deemed recoverable—Property settled under trust for payment of assessee's debt and for education of children and other charitable object — Trust irrevocable—Fact of indirect benefit to assessee did not make it revocable. See Income-tax Act (1922), S. 16 (1) (c), Proviso 1. **ILR (1961) 1 Punj 466.**

SECTION 79

——S. 79 — Property settled under trust for payment of assessees' debts and for education of children and other charitable object — Trust irrevokable — Fact of indirect benefit to assessee did not make it revocable. See Income-Tax Act (1922), S. 16 (1) (c), Proviso 1. **ILR (1961) 1 Punj 466.**

SECTION 80

——S. 80 — Criminal breach of trust by partner by criminally misappropriating partnership property — Section 405, Penal Code applies — Section 80, Trusts Act which although does not apply directly to partnership assets indicates that a partner is bound in a fiduciary capacity to protect the interests of another partner — The view that a partner cannot be entrusted with property or domain with partnership property run counter to the provisions of Ss. 80 and 94, Trusts Act. See Penal Code (1860), S. 405. **1959 Cri L J 1302 : AIR 1959 Bom 486 (DB).**

——Ss. 80, 13 and 82 — Position of benamidar under Sections — Conflict among real owners — Benamidar cannot take steps to preserve property. See Trusts Act (1882), S. 13. **AIR 1959 Bom 102.**

——Ss. 80, 81 — Purchase of property by husband in wife's name — Evidence establishing that wife provided funds — Presumption rebutted. AIR 1962 Mad 487 (488, 489) (Prs 3, 4, 8).

——S. 80 — Husband and wife — Advancement — Doctrine of advancement in favour of wife or son, has no application in India — Title deed in favour of wife — Consideration paid by husband — There is strong presumption that property was acquired benami—Presumption can be rebutted by showing that husband gifted the property to wife — Subsequent conduct of relations, held led to inference that it was advancement — Presumption — Rebuttal. A I R 1955 NUC (Orissa) 958.

——Ss. 80, 81, 82 — Advancement — Evidence Act (1872), Ss. 101-103—Benami—Proof of.

The exception in English law by way of advancement in favour of wife or child does not apply in India, but the relationship is a circumstance which

is taken into consideration in India in determining whether the transaction is benami or not, and the criterion in these cases is to consider from what source the money is paid. In such a case the onus is not on the plaintiff to prove that the intention was not to acquire the properties for the benefit of the wife in whose name they are acquired, rather, they clearly indicate that, unless there is any evidence to show the intention of the acquirer to acquire the properties for the benefit of the wife, the acquisitions in the name of the wife are for the benefit of the acquirer. **1965 BLJR 800 : AIR 1966 Pat 110 (125, 126) (Pt D) (Prs 51, 53) (DB).**

——S. 80 — Husband and wife — Advancement — Transaction in the name of wife—No presumption in Hindu law that it is husband's transaction — Onus of proving benami is on persons asserting it—The question must depend not merely upon direct oral evidence but on, amongst others, the circumstances such as the source of purchase money. **AIR 1964 Pat 543 (DB).**

SECTION 81

——S. 81 — Power in the nature of trust—Scheme of granting payment of pension to the staff and officers of the Bank — Bank given sole discretion of granting, withdrawing, modifying or determining of pension—Granting of pension not at all obligatory—Held, beneficiaries were not indicated with reasonable certainty. No trust was created though money had been transferred to the trustees, there being no obligation on them. There was for the same reason no power in the nature of trust which could be exercised by Court. See Income-tax Act (1922), S. 10(2)(v). **AIR 1953 S C 476.**

——S. 81—Condition precedent and vesting of legacy. Held, on facts the payment Rs. 50 per month did not constitute a condition precedent to the vesting of legacy—That S. 81, Trusts Act could not be availed of as the intention of 'A' had to be gathered as on the date of the execution of the will and not at any subsequent time thereafter and that intention was to effect a testamentary disposition of the remainder in favour of B. See Succession Act (1925), S. 128. **AIR 1953 S C 205.**

——S. 81 — Banker and Customer — Bills entrusted for collection—Nature of relationship—Customer becomes the creditor and the bank a debtor — Winding up of bank—The amount collected became ordinary assets of the bank and not impressed with any trust —Customer's right to rank as preferential creditor cannot succeed. See Companies Act (1956), S. 530. **AIR 1958 Bom 100 (DB).**

——S. 81—The universal application of the principle of benami in every case in India is not correct — Cases arising under Malabar Marumakkathayam Law, where the circumstances of the nominee being the wife or children is held to operate by rebutting the resulting trust are exceptions to the principle—Purchase by father with his own money in the name of father not necessarily benami—Proof of intention not to benefit wife or children necessary. See Marumakkathayam Law. **1958 Ker L T 902.**

——S. 81 — Source of consideration is not the only test — Purchase in name of concubine—Property and title deeds, in her possession for long time — She paying rent—Consideration paid by paramour — Property held purchased for her benefit — Purchase held not benami. **(1963) 2 Mad L J 151.**

——S. 81 — Current account in sole name of J., converted into joint, either or survivor account, in names of J and F—Death of J leaving will—Will bequeathing a small amount to F and residuary estate to C—No direction in will with regard to joint account—F, held was entitled to the amount standing to credit of joint account on J's death. See T. P. Act (1882), S. 123. **AIR 1956 Mad 56 (DB).**

——Ss. 81, 82 — Benami — Advancement — Applicability—Tavazhi—Purchase in name of wife and of two children separately in separate deeds — No presumption can be raised that the said sale deeds were taken for the benefit of Tavazhi. See Marumakattayam Law—Tavazhi. **AIR 1954 Mad 987 (DB).**

——S. 81—A executing a sale deed benami in favour of B to defeat creditors — Fraud not carried out—A can repudiate the transaction as benami and recover possession — It is a case to establish that A did not intend to dispose of the beneficial interest in the property to the transferee and he must hold it for his benefit. See Evidence Act (1872), S. 92. **AIR 1954 Mad 84 (DB).**

——Ss. 81, 80, 82 — Benami — Evidence — Purchase in the name of wife—Consideration paid by husband —Payment of money is not the conclusive but only a vital test to determine the nature of transaction — Surrounding circumstances, the position of the parties, their relations to one another, the motives which could govern their action and their subsequent conduct are all to be taken into account to decide the character of the transaction. **30 Mys L J 111 ; ILR (1952) Mys 90 : AIR 1953 Mys 89 (89, 90) (Pt B) (Prs 3a, 3b, 3c) (DB).**

——Ss. 81, 82 — Benami — Advancement not applicable in India — Deed in the name of wife even though the consideration paid by the husband — Presumption is of benami nature — Presumption is rebuttable. See Husband and wife. **AIR 1955 NUC (Orissa) 958.**

——S. 81 — Advancement—The doctrine of advancement not applicable in India — In cases of benami transactions in the name of wife or son the criterion is to consider from what source the money is paid. See Trusts Act (1882), S. 80. **1965 B L J R 800 : AIR 1966 Pat 110 (DB).**

——Ss. 81, 82 — Advancement — Transaction in the name of wife — No presumption in Hindu law that it is husband's transaction—Onus of proving benami is on persons asserting it — The question must depend not merely upon direct evidence but on, amongst others the circumstances such as the source of purchase money. **AIR 1964 Pat 543 (Pt A) (DB).**

——Ss. 81 to 83 — Source of consideration not conclusive — Purchase of house by Hindu father in son's name—Purchase money advanced by father — Held on facts purchase was not benami. **(1965) 67 Pun L R 31.**

SECTION 82

SYNOPSIS

(Trusts Act (1882), S. 82.)

1. Scope.
2. Intention and presumption.
3. Advancement.
4. "Transferee must hold property, etc."
5. Other illustrative cases.

1. Scope.

——S. 82—Benami—Transaction partly benami.

There can be a sale deed in the name of two persons, one of whom is a benamidar for a third person. AIR 1944 All 130 and AIR 1922 Bom 107, Dist. **1951 All W R (H C) 428 : 1951 A L J 449 (DB).**

—S. 82 — Benami—Nature of transactions—Words and phrases — Benami.

Word 'benami' is popularly used to denote two classes of transactions even though each differs from the other in the legal character and incidents. In one sense, it means a transaction which is sham or unreal. In the other sense it is used for the transaction which is genuine but the real purchaser is not one who is shown to be such. The ostensible purchaser is a mere name lender and the beneficial interest in fact rests with the real owner. When a dispute arises as to whether a person named in the deed is the real transferee, one has to enquire into the question as to who paid the consideration for the transfer. This practice of putting property into a false name, that is, in the name of a person other than the real owner, is not uncommon. (1963) 47 I T R 516 : ILR (1963) Andh Pra 636 (DB).

● —Ss. 82 and 88 — Applicability and scope — Benami Sales — Nature of, effect of — Section 66, Civil P. C — Applicability — Suit by plaintiff against defendant (an auction purchaser) on the ground that defendant was only a benamidar falls within S. 66, Civil P C. (1908), irrespective of the fact that the certified purchaser happened to be agent of the plaintiff even before the particular transaction took place. Section 82 applies to all sales of benami nature. Section 88 applies when the person making use of fiduciary position buys some property and that would enure for the benefit of the beneficiary. It does not cover benami purchases. See Civil P. C. (1908), S. 66. AIR 1962 Andh Pra 49 (FB).

—S. 82 — Applicability—Transaction not benami.

Section 82, Trusts Act, contains only the principle of benami. It does not apply to a transaction which cannot in any sense be described as a benami one. (1957) 2 An W R 573 : AIR 1958 Andh Pra 329 (330) (Pt B) (Pr 9).

—S. 82 — Benami — Law, relating to — Applicability to movable property and to carrying on business in benami — Business in co-partnership with one's own benamidar — Valid — Partnership Act (1932), S. 4 — Rights of benamidar.

The law of benami is applicable generally to all kinds of properties including movable property. The share in the partnership is a property and the ostensible partner may very well be not the real partner but only a benamidar of the real partner.

Benamidar has all the rights of the ostensible owner and he can institute suit in his own name and the defendant is not entitled to non-suit him on proof that he is nothing more than a benamidar. When two persons enter into a partnership agreement, there is an agreement between two real persons even though one is benamidar of the other. It satisfies all the conditions laid down in S. 4 of the Partnership Act. It would be a good partnership in the eye of law.

Having regard to the accepted law that a benamidar can sue and be sued against, the third party cannot question the existence of partnership. Whether one of the partners holds the share for the benefit of the other partners, is no concern of anybody else. In determining the relationship between the partners one of which is the benamidar of the other, and in adjusting their rights inter se, there is no reason why the rules regarding benami transactions cannot be made applicable. There is nothing inconsistent in this.

There is nothing in the law of partnership to prevent the plaintiff from making a case that apart from having a share in his own name he was holding a further share in the partnership in the benami of his son. AIR 1962 Cal 569 (575) (Pt A) (Pr 20).

—S. 82 — Benami transaction by alien — Immovable property — Alien claiming it as his own — Not valid — A non-state subject cannot be permitted in J. and K. State to purchase immovable property in the name of benamidar and then claim it as his own. See J. and K. Transfer of Property Act (42 of 1977), S. 139. AIR 1965 J and 83 (DB).

—S. 82 — Benami — What constitutes—A associating himself with others, so called benamidars in acquisition of property — This is fundamentally opposed to the concept of benami — Acquisition cannot be held to be made in the names of others benami for A. 1960 Ker L J 44 : 1960 Ker L T 1366.

—S. 82 — Scope.

A darkhast grant of a site by the Government without any consideration does not come within the scope of S. 82. 1954 Mad W N 298 : ILR (1954) Mad 1195 : (1954) 2 M L J 35 : 67 Mad L W 315 : AIR 1954 Mad 811 (812) (Pt A) (Pr 9) (DB).

—Ss. 82 and 88 — Suit for declaration of title and recovery of possession alleging that defendants were benamidar in Court-auction purchaser — Section 66 (1) is attracted and hence suit not maintainable — Section 82, Trusts Act, excludes from its scope S. 66 (1), Civil P. C. See Civil P. C. (1908), S. 66 (1). AIR 1965 Pat 384 (DB).

—S. 82 —Benami —Sale deed in favour of A and B —Suit by A for declaration that B was only nominal party — Transaction can be declared partly genuine and partly benami.

One type of benami transaction arises where two persons combine to jointly purchase a property and one of them is the real purchaser and the other is a nominal one. In such a case there would not be anything wrong if the Court holds that of the two purchasers of the property, the one was the real purchaser and the other was only a nominal one. When the Courts come to a conclusion like that, they do something in the nature of holding that a transaction is partly genuine and partly unreal. For, the attack in such a case is not as regards the genuineness or otherwise of a transaction but is only with reference to some of the parties thereto. AIR 1944 All 130, Diss. from; AIR 1922 Bom 107, Disting. 1963 Raj L W 92 : ILR (1963) 13 Raj 377.

2. Intention and presumption.

● —S. 82 — Benami transaction in order to circumvent Service Rules—Benami arrangement not tainted with illegality as service rules were not shown to be statutory rules. See Contract Act (1872), S. 23. AIR 1965 S C 1364.

—S. 82 — Benami — Tests.

In order to decide whether a sale deed is benami for another it is necessary to consider the following relevant factors : (1) Motive for taking the sale deed in the name of another, (2) custody of the sale deed and the connected vouchers, (3) passing of consideration and (4) possession of the property. (1961) 2 Andh W R 271 : 1961 Andh L T 974 : ILR (1962) Andh Pra 413 : AIR 1962 Andh Pra 226 (228) (Pt A) (Pr 6) (DB).

—S. 82—Benami—Test of—Evidence.

The essence of a benami is the intention of the parties. The source of sale-price also plays a large part in the determination of the nature of the transaction.

Thus where a sale-deed alleged to be benami did not disclose any intention on the part of the vendor to benefit persons other than the vendee and the money required for the purchase was found by mortgaging the very properties which were the subject-matter of the sale and the debt was discharged by sale of some of the properties covered by it :

Held, that the essential elements of a benami transaction were lacking. 1956 Andh W R 943 : A I R 1956 Andh 225 (227) (Pt A) (Prs 10 to 12) (DB).

——S. 82 — Benami sale in name of daughter — Possession with father and his joint family — Presumption of daughter's ownership.

Where the consideration for a certain promissory note was paid by A but the sale deed executed by the debtor in discharge of his debt was executed in the name of A's daughter B and it was contended by C, B's husband, that the property belonged to B.

Held, that it had to be proved that A intended to provide the consideration for the benefit of his daughter, but there was no evidence to show that A who lent joint family moneys and obtained the promissory note in the name of his daughter intended to make a gift of those moneys to her or that he wanted the properties purchased in her name to belong to her exclusively.

(2) that the fact that possession was not delivered to B but continued with the joint family was conclusive evidence that A treated it as joint family property belonging to himself and his sons and that no beneficial interest was intended to be given to B.

(3) That no valid gift from A to B could therefore be inferred from the facts. **AIR 1955 N U C (Andhra) 5835.**

——S. 82 — Benami — Ingredients—Motive is important factor. AIR 1955 N U C (Cal) 1542 (DB).

——S. 82—Benami—Determination—Decision should be based on legal evidence and not on suspicion. AIR 1955 N U C (Cal) 1542 (DB).

——S. 82 — Benami — Evidence of—Source of consideration.

The best criterion for determining whether a transaction is or is not benami is the source of purchase money. A I R 1931 Lah 419 and AIR 1949 F C 88, Rel. on. **AIR 1955 Him Pra 2 (3) (Pt B) (Pr 7).**

——S. 82 — Benami — Test of — Factors to be taken int consideration stated.

In order to find out whether a transaction is benami, one must have regard to the following facts, viz., (i) the source from which the purchase money was derived; (ii) the possession of the property, i. e., (a) the party in possession, and the nature and character of his possession; (b) whether possession was taken after the alleged gift or purchase—if not taken, why not; (iii) the position of the parties and their relation to one another; (iv) the circumstances, pecuniary or otherwise, of the alleged transferor; (v) his motive in making the alleged transfer; (vi) the custody and production of the title-deed, and (vii) the previous and subsequent conduct of the parties. But it must be noted that each of these circumstances taken by itself is of no particular value and affords no conclusive proof of the intention to transfer the ownership from one person to the other. But a combination of some or all of them and a proper weighing and appreciation of their value would go a great way towards indicating whether the ownership has been really transferred, or where the real title lies. **AIR 1955 Mad 648 (649) (Pt A) (Pr 19) (DB).**

——S. 82 — Benami — Patta in name of defendant — Defendant alleged to be benamidar — Evidence and proof — Stated. A I R 1965 Manipur 27 (28, 29) (Prs 5 to 7, 9).

——S. 82 — Benami — Gift of property by husband in favour of his wife — Wife taking no steps for mutation in her name — Husband declared insolvent subsequently - No inference about benami character of gift transaction could be drawn merely from such non-mutation or from payment of municipal taxes and rent of the property through her husband. See Provincial Insolvency Act (1920), S. 53. ILR (1964) Cut 274.

——S. 82 — Benami Transactions — Essentials of benami —Nature—Consideration of motive, relationship between parties and source of consideration necessary—Transaction in question held benami.

To determine whether a transaction is of a benami nature, the actual points to be considered are (i) was there any motive for a benami; (ii) was the alleged benamidar so connected with the alleged principal as to render it probable that he should be selected as a benamidar; (iii) in whose possession and custody was the document of title; (iv) who was in possession; and (v) from which source did the consideration come.

Thus where it was admitted that the source of money for the Fixed Deposits and cash certificates was the plaintiff's savings Bank account with the Bank; that the relationship was of brother and sister as between the 1st defendant and the plaintiff, and that of aunt and nephew as between the plaintiff and the other defendants; that the possession and custody of the documents was with the plaintiff and as regards motive it was clear that the plaintiff never really intended to part with monies, and the idea of an out and out gift was never in her mind; the transactions in question namely the fixed Deposits and Cash Certificates, though standing in the name of the defendants, were all benami, the real owner in respect thereof being the plaintiff herself. **ILR (1962) Cut 625 : A I R 1962 Orissa 74 (77, 78) (Pt B) (Pr 9) (DB).**

——S. 82 — Benami — Tests to decide the nature of transactions indicated — The onus of proving the allegation is on the person alleging the benami character of the transaction. See Evidence Act (1872), Ss. 101-103. AIR 1955 N U C (Orissa) 715.

——S. 82—Benami—Tests—Question of fact—Second appeal.

In determining the question of benami, motive for the transaction, relationship between the parties, payment of consideration, custody of the document and possession over the property are the main tests. The decision on all these points is a decision on questions of fact. **1958 B L J R 330 : 1958 Pat L R 143 : I L R 37 Pat 658 : A I R 1958 Pat 434 (436) (Pt A) (Pr 3) (DB).**

——S. 82 — Property purchased in joint names of husband and wife the former contributing money — Presumption of advancement — Onus — Rule in India — Husband in affluent position and no motive for entering into benami transaction — Transaction held for advancement of wife—(Husband and wife — Advancement) (Benami transactions)—(Evidence Act (1872), S. 114).

The general principle of equity, applicable both in England and in India, is that in the case of a voluntary conveyance of property by a grantor, without any declaration of trust, there is a presumption of a resulting trust in favour of the grantor, unless it can be proved that an actual gift was intended. But the presumption may be rebutted in either of two ways.

The principle applies in India. Section 82 of the Trusts Act recognises that money may have been contributed by another person towards the purchase with the intention of giving beneficial interest to the person in whose name the purchase is made. In this context the relationship of husband and wife, between the person who contributes money and the person in whose name it is taken will be very important factor in determining whether the transaction was really meant for the benefit of the wife or not.

The onus lies in the first instance on the defendant who pleads that these transactions are benami The

mere suspicion that the purchases might not have wholly been made with the lady's money will certainly not suffice to establish that the purchases were benami, nor even the suspicion that money belonging to the husband whether in a small measure or a larger measure, must have also contributed to these purchases. Even in cases where there is positive evidence that money had been contributed by the husband and not by the wife, that circumstance is not conclusive in favour of the benami character of the transaction though it is an important criterion. AIR 1933 Mad 8, Rel. on.

Where the purchase of the house was made in the joint names of the husband and wife and there is evidence to indicate that at the material time the husband was in an affluent circumstance and there was no motive why he should enter into benami transaction, and it was therefore impossible to suggest that he was involved in debt at the time or that there was any motive on his part for entering into benami transaction with view to defeat or delay creditors.

Held that the transaction of the purchase of the house was not benami and that the husband made the purchase for the advancement of his wife. A I R 1939 Pat 462, Distinguished; A I R 1945 P C 10; A I R 1928 P C 172, Rel. on. **I L R 30 Pat 1197 : AIR 1952 Pat 61 (63 to 65) (Prs 7, 9, 10, 11) (DB).**

—S. 82—Benami—Test—To see whether a purchase was benami for another, is to see the source of payment — If money comes from another, the transaction is benami, **AIR 1955 NUC (Sau) 1454.**

—S. 82—Benami—Test—Intention of husband — (Husband and wife).

The fact that purchases were made by the husband who paid the price out of his own funds is not itself a conclusive test for determining whether the transaction was benami or not. This depends upon the intention of the parties. Thus, where the intention of the husband when he made the purchases in favour of his wife was to benefit the wife who he expected would continue to live with him as his wife throughout his natural life the transactions cannot be held to be benami. **AIR 1952 Trav. Co 426 (426, 427) (Prs 4, 7) (DB).**

3. Advancement.

—S. 82—Benami — Purchase of property by wife —Thongh consideration for sale transsction proceeded from husband his subsequent conduct showing his admission that title to property vested in wife — Purchase by wife cannot be held to be benami for husband but she is herself the owner of the property — Fact that the husband was in possession and management of the property or that he was receiving the rents does not affect the position — In ordinary Hindu families property belonging exclusively to a female member would also be normally managed by the manager of the family. Kanakarathanammal v. Lognath. (1964) 6 SCR 1 : (1964) 1 S C W R 565 : AIR 1965 S C 271 (274) (Pt A) (Pr 8).

—S. 82—Advancement—Deposit by Hindu in Bank in joint names of himself and another— Amount payable to either or survivor — Death of depositor— Resulting trust—Money becomes absolute property of deceased and is payable to his heirs in absence of contrary intention. See Banker and Customer. (1962) 1 Andh W R 51 : AIR 1962 Andh Pra 260.

—S. 82 — Presumption of advancement does not apply in India—Wife having her own funds—Acquisition by her out of them—There is no resulting trust in favour of husband.

The theory of presumption of advancement under the English Law is not applicable to India. There is no presumption in India that what stands in the name of the wife belongs to the husband. Before any presumption of a resulting trust in favour of the husband is sought to be raised, it must be shown that the husband purchased the properties from his funds in the name of the wife.

Where the wife was possessed of her own funds and acquisitions in her name were made out of them, and the husband treated the acquisitions as belonging to her, there is no resulting trust in favour of the husband. The rule laid down in AIR 1925 P C 181 is limited to cases where the acquisition in the name of the wife is unexplained by either proved or admitted facts. **AIR 1962 Andh Pra 173 (184) (Pt D) (Pr 31) (DB).**

—S. 82—A depositing his own money in bank in joint names of A and B— Deposit payable to either or survivor— Deposit does not constitute gift to B on A's death—Burden of proof lies on B to prove that gift was made. AIR 1961 Andh Pra 320 (321) (Pt A) (Pr 4).

—Ss. 82, 83—Benami—Purchase of property in the name of near relation —No presumption of advancement in India — Evidence nevertheless to prove intention to make near relation beneficial owner admissible— Purchase of shares in the name of son— Son becoming working director of company by virtue of those shares—Remuneration received as director —Son entitled to retain such remuneration though not the shares and dividend.

A benami transaction is one when one buys property in the name of another, or gratuitously transfers his property to another without indicating an intention to benefit the person in whose name the property is purchased or to whom the property is transferred. When the person in whose name the property is purchased is an outsider, this intention not to benefit is presumed in law. When, however, property is purchased in the name of a near relation, as for example, wife or son, in England, in such cases, there is a presumption of advancement and it is presumed that the nominal owner was intended to have beneficial interest in the property as well. But there is no such presumption in India and a Hindu or a Mahomedan purchasing property in the name of wife or son is never presumed to intend that the wife or the son would have beneficial interest in the property. In India he is held to be a mere benamidar having no beneficial interest in the property.

If it is proved that the purchase money is paid by one different from the person whose name appears as purchaser in the conveyance, the person paying the purchase money is considered in law to be the beneficial owner, unless the contrary is proved. Evidence may be adduced that the person advancing the money to purchase in the name of the wife or son intended the wife or son not merely to be the nominal owner but the beneficial owner as well. So also, evidence may be adduced that the transfer to the wife or son though without monetary consideration was intended to be a real transfer whereby the transferee was intended to be beneficial owner of the property transferred.

Where the consideration money for the purchase of shares in the name of the son was paid by the father and the evidence tendered did not indicate that the father intended that the beneficial interest in the shares should be in the registered holder (son), it must be held that the registered holder (son) was nothing more than a benamidar of the father in respect of those shares and after the father's death, those shares were divisible amongst his heirs according to the law of inheritance. The father's estate was beneficially entitled to the shares and also all dividends paid and payable in respect of those shares.

But there is no inflexible rule of law that a director of a company is not entitled to retain his remuneration as director for services rendered to the company as such director merely because he had no beneficial interest in the holding—he was only holding the shares as the trustee of a trust. View of Warrington, J. in (1907) 2 Ch 76, Foll.; View of Harman, J. in 1948 Ch 284, Dissent. from.

Where the intention of the settlor-cum-beneficiary (father) is clear that the son in whose name the shares in a company are purchased, would be a working director of the company which was a potentially remunerative office, the rule embodied in S. 88, Trusts Act, does not stand in the way of the son retaining the director's fee for his own benefit and the remuneration is not to be treated as part of the estate of the father, to be divisible as such amongst his heirs. AIR 1962 Cal 569 (576, 579, 580) (Pt B) (Prs 43, 44, 48, 49, 50).

——S. 82—English rule of advancement — (T. P. Act (1882), S. 122).

There is no reason why the rule of advancement as in vogue in England should not be applied to Indian conditions particularly in the changed and changing circumstances of the Indian Society. (1956) 60 Cal W N 886.

——S. 82 — Benami — Advancement — Practice in Hyderabad State — Burden of proof—(Evidence Act (1872), Ss. 101 to 103)—(Benami).

The law of benami in India is not a branch of Hindu or Mohammadan Law. It is merely an application of equitable general rule which is laid down in the Trusts Act. The Hyderabad High Court has followed the rule with due recognition of the exception known to English Law that if the father or husband purchases any property in the name of his son or wife though with his money, benami cannot be necessarily presumed unless such intention is made out by any circumstances. So far as the general practice in the Hyderabad State is concerned benami purchases or sales are not made without any sufficient cause. Any such transaction is always made with some motive and set purpose and unless such purpose is apparent from the record, the transaction in the name of a child or the wife cannot be presumed to be benami. The initial burden therefore lies on the person alleging benami.

In order to displace the doctrine of resulting trust gift must be proved. But the evidence may not be direct or even documentary but only of circumstances. It should however, be sufficient to show that advancement or gift was intended. Possession of the property, custody of the title deeds and conduct of the parties and the motive behind the transaction are the most effective circumstances of proof in this regard. ILR (1956) Hyd 282: AIR 1956 Hyd 52 (55) (Prs 18, 26 to 28) (DB).

——S. 82—Benami—Practice of— Is prevalent among Mahomedans — Doctrine of advancement not applicable in India — Cases under Marumakkathayam Law —Are an exception to the principle of benami — There must be further proof that the father did not intend to benefit the wife and children in whose name the sale deed was taken. See Marumakkathayam Law. 1958 Ker L T 902.

——S. 82 — Deposit in bank by father in name of himself and son payable to either or survivor — Principle of advancement does not apply in India — Survivor is intended to take it merely as trustee — It is not benami transaction.

The doctrine of advancement, which is recognized by the English Law, has no place in India. Accordingly when the owner of the property directs that another's name should be included, he does not give him anything by way of advancement. He continues to be the owner, and if the other nominal holder does take the money he is answerable as a trustee to the heirs of the original owners: AIR 1928 P C 172, Foll. AIR 1932 P C 13, Disting.

In the case of 'either or survivor' deposits, it is directly intended that the survivor should take it. In fact, this is often the purpose of making such a deposit, enabling somebody on behalf of the real owner's estate to collect the moneys without the delay or difficulty that might otherwise be experienced. But it is equally clear that when he does take it he takes it as a trustee and nothing more. "Benami" properly so called, is not a case of both the names i. e., of the real owner and the resultant trustee appearing together, but of the latter alone being shown while the former stays in the background. In such a situation it is always X, the nominal holder, and Y, who is not named but who is the real holder or the beneficiary. Thus, it is never intended in a benami transaction that the nominal holder should at all take the property. However, in certain circumstances it might turn out that he has taken the property. In that event he will hold it as a trustee. 1965 Jab L J 1196: AIR 1965 Madh Pra 107 (111, 112) (Pt G) (Pr 53) (DB).

——S. 82 — Benami — Advancement — Doctrine of advancement in favour of wife or son, has no application in India—Title deed in favour of wife — Consideration paid by husband—There is strong presumpthat property was acquired benami — Presumption can be rebutted by showing that husband gifted the property to wife — Subsequent conduct of relations, held led to inference that it was advancement — Presumption — Rebuttal. AIR 1955 N U C (Orissa) 958.

——S. 82 — Benami — Advancement — Purchase in name of wife — The presumption is that it was benami — No presumption of advancement — The presumption is rebuttable. AIR 1951 Orissa 22 (Pt C) (DB).

——S. 82—Advancement — The doctrine of advancement does not apply in India but the relationship is a circumstance which is taken into consideration in India in determining the benami nature of the transaction and the criterion in these cases is to consider from what source the money is paid. In such a case the onus is not on the plaintiff to prove that the intention was not to acquire the properties for the benefit of the wife in whose name they are acquired, rather, they clearly indicate that unless there is any evidence to show the intention of the acquirer to acquire the properties for the benefit of the wife the acquisitions in the name of the wife or for the benefit of the acquirer — See Trusts Act (2 of 1882), S. 80. 1965 B L J R 800 : AIR 1966 Pat 110 (DB).

——S. 82—Benami—Source of consideration not conclusive—Purchase of house by Hindu father in son's name — Purchase money advanced by father— Held on facts purchase was not benami—Trusts Act (1882), Ss. 81, 83 — Nature of transaction — Hindu Law — Acquisition—Benami. (1965) 67 Pun L R 31.

——S. 82—Nature of transaction—Source of purchase money is principal criterion in deciding whether transaction is benami or not — Property purchased in the name of near relations of person paying the purchasing money— Doctrine of advancement which assumes that the property should be deemed to have been intended to be absolutely conveyed to the relations does not apply in India— Burden of proving an advancement or gift lies upon the setting up the case. 6 Moo Ind App 53 (PC) and 49 Mad L J 109 : AIR 1925 P C 181 and AIR 1928 Lah 397 and AIR 1932 Lah 193 (1) and 1960 S C J 1072; AIR 1960

S C 213, Rel. on. AIR 1962 Punj 185 (190) (Pt B) (Pr 12) (DB).

——S. 82— Benami — Burden of proof—Conveyance in wife's name—Presumption.

As benami purchases in the names of wives are very frequent in India, slight evidence would be required to show that the purchase was made really for and on behalf of the husband, the wife being a mere benamidar. The exception of English law that when a purchase is made by a person in the name of his child or wife, though with his own money, the transaction is presumed to have been made by way of advancement is not recognised in India. Indeed, in this country, where a purchase is made by a person with his own money it is prima facie assumed to be for his benefit, whether it is made in the name of a child, wife or a stranger. The criterion in these cases in India is to consider from what source the money comes with which the purchase money is paid. (1952) 54 Pun L R 193.

——S. 82—Benami — Property acquired by father — Name of minor son also shown in 'Putta' of property —Title in property whether conferred on son.

The doctrine of advancement is not followed in India. The fact that minor's name is included in the document of title does not confer any title in him unless it is proved that the minor had any independent source of income and the minor's money was utilized in the acquisition of the property. 6 Bom 717 ; AIR 1936 Nag 185; 35 Ind Cas 12, Ref. 1951 Raj L W 377 : ILR (1951) 1 Raj 417 : AIR 1952 Raj 28 (29, 30) (Pt B) (Pr 6) (DB).

——S. 82 —: Benami transactions — Purchase of property in name of wife — Doctrine of advancement — Tests — Source of consideration — Transaction held real and not benami — (Advancement) — (Benami) — (Husband and wife — Advancement). 1952 Ker L T 353 : AIR 1952 Trav-Co 559 (559) (Pr 2) (DB).

4. "Transferee must hold property etc."

●——S. 82—Benami—Benami transaction motivated by design to achieve unlawful purpose — Suit by real owner for declaration of his title and recovery of possession of property from ostensible owner — Defence of 'pari delicto' — Case where principle 'pari delicto' does not apply. (1960) A C 167; 35 Ind App 98 P C., Rel. on.; (1945) 1 K B 65, Disting. Surasaibalini Debi v. Phanindra Mohan Majumdar. (1965) 1 I T J 526 : (1965) 1 S C J 583 : (1965) 1 S C R 861 : A I R 1965 S C 1364 (1369) (Pt C) (Pr 14).

——Ss. 82, 13 and 80 — Position of benamidar under Sections — Conflict among real owners — Benamidar cannot take steps to preserve property. See Trusts Act (1882), S. 13. A I R 1959 Bom 102.

——S. 82—Suit for specific performance of agreement to sell — Auction-purchase benami for judgment-debtor—Funds solely supplied by judgment-debtor — Agreement between date of sale and date of deposit of balance of sale price under which auction-purchaser agreeing to convey property to judgment-debtor—Suit for specific performance of agreement to sell—S. 66, Civil P. C. (1908), bars suit. See Civil P. C. (1908), S. 66. A I R 1951 Mad 943 (DB).

——S. 82 — Property purchased by A and B in name of A—A selling same and retaining sale proceeds—A is trustee for B's share in sale proceeds — Suit for recovery of share is governed by Art. 120 and not Art. 62, Limitation Act (1908) — Time does not run from the date of the knowledge of the sale. See Limitation Act (1908), Art. 120. A I R 1951 Mad 547.

5. Other illustrative cases.

——S. 82—Insurable interest — What is — Carriers — Consignment of goods insured against road risk — Insurance charges added in expenses in consignment notes — What is insured is interest of carriers on account of themselves for the benefit of bailor of goods carrier is a trustee for the owner and owner is the beneficiary — Goods lost in the transit — Bailor's suit on non-delivery of goods against carrier and Insurance Company is maintainable. A I R 1964 Cal 209 (Pt F).

——S 82—Benami—Proof — Source of consideration is not the only test—Purchase in name of concubine —Property and title deeds in her possession for long time—She paying kist—Consideration paid by paramour — Property held purchased for her benefit — Purchase held not benami—Trusts Act (1882), S. 81.

The plaintiff was the concubine of the defendant. She filed a suit for declaration of her title to the suit property and recovery of possession. The property was in the possession of the plaintiff and she had been paying the kist. Title deeds were also with her. The only fact proved was that the consideration was paid by the defendant. In second appeal by plaintiff:

Held, that though there was a finding that consideration was paid by the defendant, it was still necessary to consider the surrounding circumstances. If these surrounding circumstances indicated that the payment of consideration though by paramour, was with the intention to benefit the concubine, surely that will justify the finding of title in favour of the plaintiff.

The judgment of the Lower Appellate Court involved an error of law in giving a decision about the benami title. The finding of benami had therefore to be set aside. Held further, on evidence that the consideration was paid by the defendant with the intention of benefiting the plaintiff who was his concubine for many years. 76 Mad L W 261 : (1963) 2 Mad L J 151.

——S. 82—Resulting trust — Trust of legal estate results to the man who advances purchase money — Where feoffment is made without consideration the use results to feoffer—Held, on facts that the transaction was fraudulently shown to be gift to M, when it was in fact sale for consideration provided by A, that S. 82 was attracted and that M must be regarded as holding field for benefit of A. A I R 1955 N U C (Nag) 952.

SECTION 83

——S. 83 — Applicability of provisions of section to public or private religious and charitable trust — Doctrine of cy pres — Donations of money on condition that female hospital to be built through agency of donor—Death of donor—Money is to be refunded —Case not remanded.

The plaintiff's father advanced an amount of Rs. 30,000/- to Government of U. P. for construction of a female hospital. The Government also agreed to contribute an equal amount for the construction. The amount by the donor was advanced on the understanding that the hospital would be constructed on the approved site, according to the approved plan and at an early date through his agency. His efforts failed to start construction work and he died subsequently. The Government however undertook to construct a female hospital on another site and also in different circumstances.

Held, that the conditions were essential terms of the agreement and the object of the Trust had failed because a female hospital in the proposed name could no longer be constructed on that site, through the agency of the donor who had already died. Hence the plaintiff became entitled to get back the money subscribed.

It is true that the provisions of the Trust Act are not in terms applicable to private or public religious and charitable trusts, but nevertheless the general

principles underlying S. 83, are attracted in analogous circumstances. The doctine of cy pres is generally applied to trusts created by wills and not those created by deeds or words of mouth. The doctrine can have no application; here there is no general intention for charity. A I R 1934 Oudh 329; A I R 1921 Cal 605 and 1960 A P 605, Rel. on.

Held, that there was no reason also to remand the case for non-joinder of other donors. 1965 All L J 893 : ILR (1965) 2 All 820.

——S. 83 — Trust deed providing for liquidation of debts of author of trust and entailment of property—Entailment not legally possible—Purpose regarding payment of debts would not be affected — Trust not extinguished. See Trusts Act (1882), S. 77 (b). **ILR (1964) 2 All 191.**

——S. 83—Cy pres Doctrine — Applicability to gifts inter vivos—Money collected for specific purpose — Purpose failing—Application of money.

The preponderance of authority is in favour of the application of the doctrine of cy pres to wills and not to deeds or gifts inter vivos. In gifts inter vivos where the moneys have been raised for a particular purpose it is incumbent upon the trustee to apply the money specifically for that object and if that object cannot be fulfilled there would be a resulting trust in favour of the donor or contributor. Where the donor's intention can be given effect to, the court has no authority to sanction any deviation from them on the ground of any expediency. Where donations are collected for construction of a hospital at a certain place, there being no general charitable intentions by the donor the moneys cannot be applied cy pres if the object fails. ILR 1 Cal 303; A I R 1921 Cal 389; AIR 1934 Oudh 329; (1801) 1 East 442; A I R 1938 Mad 641; A I R 1937 P C 240; A I R 1936 All 197, Rel. on: (1902) 1 Ch 876 : (1905) 2 Ch 48 : (1954) 1 All E R 887: (1954) 2 All E R 59, Dist. I L R (1960) **2 Andh Pra 560 : (1960) 1 Andh W R 326 : AIR 1960 Andh Pra 605 (610, 611) (Pt D) (Prs 14, 16, 17) (DB).**

——S. 83—Resulting trust—Cy pres application.

On the failure of the object of the trust, there is what is called the resulting trust in favour of those who had given the property. It is equally well established that equity treats trust for charitable purposes as an exception to this rule of resulting trusteeship. In charitable cases the rule is that where a person makes a valid gift, whether by deed or by will, and either particularises no object or declares a trust in favour of particular objects which fail, or does not exhaust the subject-matter of the gift, the Court, if it can find a general intention in favour of charity, will not suffer the property or the surplus after giving effect to the charitable trust, to result to the giver or his estate but will execute the general intention of charity by a cy pres application of the trust property. **(1959) 1 Andh W R 357 : A I R 1960 Andh Pra 35 (37) (Pt A) (Pr 7) (DB).**

——S. 83 — Section is not applicable to moneys in existing Provident Fund remaining undistributed to individual employees—Once the contribution is made, the employer is divested of his dominion over the same—The contribution vests in the Board of Traders of the Provident Fund — S. 69 (5) of the Employees' Provident Fund Act lays down that the sums remaining undistributed would be transferred to the general reserve account of the Fund. **(1960) 1 Fac L R 63: 61 Bom L R 425: (1960) 2 Lab L J 301 : I L R (1960) Bom 580 : A I R 1961 Bom 157 (165) (Pt H) (Pr 13) (DB).**

——S. 83 — Trust created by assessee company in favour of A providing for payment of annuity on his retiring from service on attaining age of fifty five — Money paid to trustees to purchase policy securing annuity to A—Contingent trust—Trust not completely exhausted — Resulting trust in favour of assessee company — Money paid to trustees is not expenditure within S. 10 (2) (xv), Income-tax Act (1922). See Income-tax Act (1922), S. 10 (2) (xv). **A I R 1956 Cal 281 (DB).**

——S. 83—Trusts in favour of creditors — After paying creditors, residue and surplus to be held in trust for settlor and their next of kin — Payment of all creditors impossible — Resulting — Trust Judgment contemplating future contingencies — Finding is not res judicata. See Trusts Act (1882), S. 77 (c). **AIR 1955 NUC (Cal) 839 (DB).**

——S. 83 — Resulting trust as a result of complete execution of the trust without exhausting the trust property is "trust for specific purpose", to attract the provisions of S. 10, Limitation Act. See Limitation Act (1908), S. 10. **ILR (1955) 2 Cal 109.**

——S. 83—Applicability—Trust created before Act — S. 83 applies — At any rate the principles underlying that provision would certainly apply. See Trusts Act (1882), S. 1. **ILR (1955) 2 Cal 109.**

SECTION 84

——S. 84 — Mortgage deed in favour of C though amount lent by A—A can file suit upon the mortgage. Harish Chandra v. Bansidhar Mohanty, (1965) 2 S C W R 284 : (1965) 2 S C A 766 : (1966) 1 S C J 145 : A I R 1965 S C 1738 (Pt B).

——S. 84 — Transfer for illegal purpose — Benami transaction to achieve unlawful purpose — Suit by real owner for declaration of his title and recovery of possession of property from ostensible owner — Defence of 'pari delicto' — Case where principle 'pari delicto' does not apply. Surasaibalini Debi v. Phanindra Mohan Majumdar, **(1965) 1 I T J 526 : (1965) 1 S C J 659: AIR 1965 S C 1364.**

——S. 84 — Fraudulent transfer — Both transferor and transferee in equal fraud—Fraud carried out and creditors of transferor defrauded — Possession with transferor—Suit for possession by transferee — Fraud can be pleaded in defence — Court will not help transferee. See T. P. Act (1882), S. 53. **A I R 1962 S C 370.**

——S. 84—Scope of — Maxim pari delicto potior est conditio possidentis — Applicability—(Contract Act (1872), S. 65—(Maxims).

Section 84 contemplates the transferee being in possession of property belonging to the transferor. If he comes into possession of any such property, he is to hold it in trust. This section constitutes an exception to the doctrine embodied in the maxim, in 'pari delicto potior est conditio possidentis'. The maxim has no application to cases falling under S. 65 of the Contract Act but only to cases falling under this section. The maxim — it is expressed in two or three ways—only protects a party in actual possession of an advantage; it cannot be the foundation of an enforceable right. A defendant may, in certain circumstances, retain the benefit which he has received. A plaintiff cannot seek the aid of this maxim **AIR 1960 Andh Pra 190 (Pt E) (Prs 12, 13).**

——S. 84 — Transfers for immoral objects — Setting aside—Plea of particeps criminis by defendant — No applicability of principles laid down in Ayerst v. Jenkins, (1874) 16 Eq 275 in India — Lease of house by owner for running brothel — Right of executors and trustees of will of owner to recover back property with aid of Court is not affected — Relief whether can be denied on grounds of public policy. See T. P. Act (1882), S. 6 (h) (2). **AIR 1958 Cal 713 (DB).**

——S. 84—Applicability—Sale void ab initio to knowledge of parties—S. 84, Trusts Act has no application

to such a case. See Contract Act (1872), S. 65. A I R 1955 NUC (Madh B) 3875 (DB).

——S. 84 — Avoidance by fraudulent grantor — Contemplated fraud not carried out—The grantor though in pari delicto is entitled to the assistance of Court to recover the property he has parted with. See T. P. Act (1882), S. 53. AIR 1953 Mad 545.

——S. 84 — Oral surrender of land by occupancy tenant — Landlord is not quasi-trustee for tenant under S. 84, Trusts Act (1882). See Tenancy Laws — C. P. Tenancy Act (10 of 1920), S. 89. AIR 1955 NUC (Nag) 5684.

——S. 84—Right to claim refund—Could accrue only after fixation of standard rent as provided by S. 5 of Rajkot Act — Fixation of rent not completed before repeal of Rajkot Act by Saurashtra (Application of Central and Bombay Act) Ordinance 25 of 1948) — Tenant has no right to claim refund of rent paid — S. 84, Trusts Act has no application. See Houses and Rents—Rajkot Bhadut Sanrakshan Dhara, 1947, S. 5. AIR 1954 Sau 77 (DB).

——S. 84 — Saurashtra (Application of Central and Bombay Act) Ordinance S. 9 repealing Rajkot State Bhadut Saurakshan Act—Payment of rent by a tenant according to contract is ipso facto illegal ab initio. It becomes illegal only to the extent of excess rent when standard rent is fixed by the Samity — Standard Rent not fixed by samity — Tenant has no right to claim refund under State law which is saved by S. 9 (1) of the Ordinance. Receipt of rent not void obliging the landlord to return the payments made under S. 65 of Contract Act or S. 84, Trusts Act. See Saurashtra (Application of Central and Bombay Acts) Ordinance (25 of 1948), S. 9. AIR 1952 Sau 93.

SECTION 86

——S. 86—Contract obtained by fraud — Rights of defrauded party — Rescission of contract — Notice to agent of defrauding party — Scope of S. 19, Contract Act and S. 30, Sale of Goods Act—Applicability of S. 86, Trust Act — Insolvency of defrauding party pending suit by defrauded party—Suit is not barred—Scope of S. 28 (2), Provincial Insolvency Act. See Contract Act (1872), S. 19. AIR 1963 All 459 (FB).

——Ss. 86, 66 — Money received under fraudulent contract—Amounts identified—Rights of the parties.

Equity protects a person who has been defrauded and therefore declares that if the amounts paid by him can be traced in the hands of the person who has received it, the receiver is charged with a trust for the benefit of the person defrauded. This principle is embodied in S. 86, Trusts Act. A I R 1955 All 676 (678) (Prs 4, 5) (DB).

SECTION 87

——Ss. 87 and 23 — Debtor appointed under will of creditor as executor—Liability to pay interest on debt subsequent to death of testator — (Civil P. C. (1908), S. 34).

Where a debtor is appointed as an executor under the will of creditor he holds the amount of the debt as a trustee and is bound under the terms of S. 20 to invest the sum in approved securities, and if he fails to do so, he is liable to pay interest under the terms of S. 23 from the date of his appointment as an executor, i.e., the date of the death of the testator. A I R 1954 S C 388, Rel. on. AIR 1958 Andh Pra 262 (265, 266) (Pt A) (Pr 14) (DB).

SECTION 88

SYNOPSIS

(Trusts Act (1882), S. 88.)

1. Scope.
2. Partner.
3. Agent.
4. Director of Company.
5. Other persons bound in a fiduciary capacity.
6. Gains any pecuniary advantage.
7. Hold for the benefit of such person.

1. Scope.

——S. 88—Scope.

Section 88 embraces all dealings entered into by a person occupying fiduciary position under circumstances in which his own interests are or may be adverse to that of the beneficiary and a benefit thereby accrues to that person. S. 88, however, is not exhaustive of all cases of fiduciary relationships, and a trustee, executor, partner, agent, director of a company, legal adviser are all instances of persons occupying a fiduciary character. 1956 Andh L T 720 : 1956 An W R 911.

——S. 88—Scope—Applicability to persons who have agreed to enter into partnership.

Section 88, Indian Trusts Act, is attracted in the case of claims by one partner against another and such trust may arise either from actual fraud (as indicated in Ss. 89 and 90) or from constructive fraud (referred to in Ss. 91 to 93) as also from some equitable principle independent of the existence of any fraud as indicated in S. 94 of that Act.

Where there was no subsisting partnership but an agreement to enter into partnership which, if entered into, would have cast certain duties and resposibilities upon each of the parties.

Held, that it was doubtful whether in the peculiar circumstances of the case the provisions of S. 88 would be attracted. 95 Cal L J 230 : AIR 1956 Cal 41 (44) (Pt B) (Pr 21) (DB).

——S. 88 — Trustee and beneficiary — Doctrine of unjust enrichment—Origin and scope of—Burden of proof of good faith of transaction—Trust—Contract Act (1872), Ss. 69 and 70.

Constructive fraud is a creation of Courts exercising equity jurisdiction, directed against conduct which might be free from moral turpitude or actual evil design, but which might cause injury in a confidential relationship, or of the public interest. The principle has received recognition in S. 88 of the Trusts Act. A transaction of purchase by a person occupying a fiduciary position under circumstances in which his own interests are or may be adverse to those of the person who owns the property and whose interests he is bound to protect, is always regarded by the Courts with the utmost jealousy. If such a transaction is impeached by the beneficiary whose interests have been adversely affected the purchaser must show that there has been no fraud, or concealment or advantage taken by him of information acquired by him by virtue of his position. He must also show that the beneficiary had independent advice, and every kind of protection in connection with the transaction of purchase. 1956 An W R 911, Rel. on.

The doctrine of unjust enrichment was originally based in English Law upon the principle of assumpsit or 'had and received'. It underwent certain changes through judicial interpretation, and came to be based more and more on the doctrine of restitution. In India the principle was developed under Ss. 69 and 70 of the Contract Act, and it is generally recognised that these sections (Ss. 69 and 70) are wider in scope than the doctrine as applies in England and go far beyond it. ILR (1960) Mad 407 : (1960) 2 Mad L J 401 : AIR 1960 Mad 410 (418, 419) (Pt A) (Prs 25, 26) (DB).

——S. 88 — Applicability—Adult members utilising family funds on business venture of partnership firm —This does not make the joint family a partner of the

firm — The other members of the family would be entitled only to recover from the business assets of the partnership under S. 88, Trusts Act their shares of the joint family funds invested with interest thereon or their share of profits earned by those investments. See H. L.—Joint family. **AIR 1954 Mad 282.**

——S. 88—Adverse dealings.

For the application of the latter part of S. 88 of the Trusts Act the question whether the trustees were guilty of any sharp practice or lack of good faith is not material. **('57) 23 Cut L T 301.**

——**Ss. 88, 90—Right of beneficiary to claim equitable relief—(Civil P. C. (1908), S. 11).**

Until an advantage was actually gained by the constructive trustee against the interests of the beneficiary the right of the beneficiary to ask for equitable relief under the principles of either S. 88 or S. 90 of the Trusts Act would not arise.

Held, that when the mortgagor judgment-debtor's objection petition under S. 47 of the Civil Procedure Code was rejected by the executing Court the mortgagee decree-holder gained some advantage by the principles of res judicata inasmuch as the judgment-debtors were precluded from re-agitating the matters which had been disposed of by the order of the Court. But that advantage arising out of the principles of res judicata during the progress of the execution case would not be the advantage referred to either in S. 88 or S. 98 of the Trusts Act. That was merely a step in the whole process which culminated in the purchase of the mortgaged property by the mortgagee decree-holder, and it was then that the advantage in derogation of the rights of the beneficiary accrued to the mortgagee decree-holders. 19 Ind App 107, Dist. **('57) 23 Cut L T 301.**

——**Ss. 88 and 82** — Civil P. C (1908), S. 66 (1) — Suit for declaration of title and recovery of possession alleging that defendants were benamidars in Court auction purchase — S. 66 (1) is attracted and hence suit not maintainable — S. 82, Trusts Act, excludes from its scope S. 66 (1), Civil P. C. — Section 88, Trusts Act has no application where purchaser is benamidar. See Civil P. C. (1908), S. 66 (1). **AIR 1965 Pat 384 (DB).**

——S. 88—Partnership Act, S. 37—Principle of S. 37 is that there exists a fiduciary relationship between the surviving partner and his former partner or the representative of that partner — The principle is recognised in S 88, Trusts Act. See Partnership Act (1932), S. 37. **AIR 1954 Pat 53 (DB).**

2. Partner.

● ——**Ss. 88 and 90—Distinction and scope.**

Whereas S. 88 makes a specific reference to partners and agents, etc., S. 90 in terms applies to a tenant for life, a co-owner, a mortgagee, or any other qualified owner of any property—Section 90 therefore, in terms cannot apply to the case of a partnership Gavararaju Chetty v. Sitaramamurthy Chetty, **(1959) 1 M L J (SC) 188 : (1959) S C J 570 : (1959) 1 Andh W R (S C) 188 : (1959) Supp (1) SCR 73 : AIR 1959 S C 190 (197) (Pt A) (Pr 15).**

● ——**Ss. 88, 90—Scope—Partners—Renewal of lease by one partner—Effect.**

Under English law there is no absolute rule of law or equity that a renewal of a lease by one partner, must necessarily enure for the benefit of all the partners. There is a presumption of fact, as distinguished from a presumption of law, that there is an equity in favour of the renewal of the lease enuring for the benefit of all the partners. But such a presumption being one of fact is rebuttable, and must, therefore, depend upon the facts and circumstances of each case. The Indian Legislature has substantially adopted the English law quoted above while enacting the rules laid down in the Trusts Act, particularly, Ss. 88 and 90 of the Trusts Act.

Held, on facts all facts and circumstances which pointed to only one conclusion namely, that the renewal of the lease was not intended to be for the benefit of all quandam partners. Those facts and circumstances amply rebutted any presumption of fact that the lease should enure to the benefit of all the parties. (1949) 1 Mad L J 400 : A I R 1949 Mad 860, **Reversed.** Gavararaju Chetty v. Sitaramamurthy Chetty. **(1959) 1 Mad L J (SC) 188 : (1959) S C J 570 : (1959) 1 Andh W R (SC) 188 : (1959) Supp (1) S C R 73 : AIR 1959 S C 190 (197) (Pt B) (Pr 17).**

——**S. 88—Fiduciary relationship between parties—Principle recognised by S, 88 — It does not change nature of suit governed by Art. 106, Limitation Act.**

The partners of a firm hold a fiduciary relationship towards their deceased partner's representatives as regards his interest in the partnership property. Section 88 of the Trusts Act, 1882, only gives a statutory recognition to this principle. And if the profits or the pecuniary advantage of gain can only be determined after taking the account of the dissolved partnership, then the suit for rendition of account would be governed by Art. 106 of the Limitation Act. By applying the provisions of S 88 of the Trusts Act, the nature of the suit does not change. AIR 1934 P C 138, Rel. on. **AIR 1964 All 53 (60) (Pt F) (Pr 31).**

——S. 88—Civil P. C. (1908), S. 51, Proviso, Cl. (c)—Partner when acts in fiduciary capacity — Decree against partner of dissolved firm, who was accounting party — Decree held not for amount for which judgment-debtor was bound to account in fiduciary capacity—Partnership Act (1932), Ss. 4, 5, 9, 12 (a), 15, 18 and 48. See Civil P. C. (1908), S. 51, Proviso, Cl. (c). **AIR 1961 All 19.**

——S. 88 — Co-owners under Muhammadan law — Fiduciary relationship — K a Muhammadan carrying on business in partnership with others — K dying — Dissolution of partnership in absence of contract to contrary—Business carried on by K's sons with others — No fiduciary capacity between remaining partners and the plaintiff not maintainable—Suit by plaintiffs claiming through daughter of K for dissolution of partnership and accounts. See Partnership Act (1932), S. 37. **AIR 1958 Andh Pra 48 (DB).**

——**Ss. 88, 80 and 94**—Indian Penal Code, Ss. 405, 406 and 403 — Criminal breach of trust by partner—S. 405, Indian Penal Code applies—S. 80, Trusts Act though not applicable directly indicates that the partner is bound in a fiduciary capacity to protect the interest of another partner. AIR 1951 Cal 69 (FB) and AIR 1950 Nag 99, Dissented from. See Penal Code (1860), S. 405. **1959 Cri L J 1302: AIR 1959 Bom 486 (DB).**

——S. 88, Illus. (d) — Applicability — Illustration (d) cannot go beyond the scope of the section itself; and before a partner can lay claim to any purchase made by another partner, the conditions laid down in the section will have to be alleged and proved. AIR 1938 Mad 929 : (1938) 2 Mad L J 790, Rel. on. A I R 1952 Punj 284, Disting. **(1959) 61 Bom L R 103 : I L R (1959) Bom 680.**

——S. 88—On dissolution of partnership, one of partners retaining assets of firm without settlement of account and applying them in continuing the business for his own benefit — He may be ordered to account for these assets—This principle does not apply where suit is not founded on fiduciary relationship of partners. (Partnership Act (1932), S. 16). **AIR 1955 N U C (Madh Bha) 3082.**

—Ss. 88, 90 — Partnership between plaintiff and defendant in textiles dissolved — Deed of dissolution provided that in respect of licences for textile goods plaintiffs should be entitled to ½ quota and defendant ½ — Plaintiff applying to Export Trade Controller for his quota — Defendant objecting and defendant allotted full quota — Plaintiff suing defendant for declaration and damages — Defendant held could not be made liable as trustee for plaintiff in respect of plaintiff's quota after dissolution of partnership — Defendant, however, was liable for breach of contract — Measure of damages would not be profit made by defendant but would be loss sustained by plaintiff. See Contract Act (1872), S. 73. **AIR 1950 Mad 289 (DB).**

—S. 88—Applicability — Partnership and not any partner or partners utilising funds belonging to a partner for financing another company—Profits made by such company to go to the partnership — Held, there was no question of a partner availing himself of a character and gaining for himself a pecuniary advantage—S. 88 held not applicable. **1962 Mys L J (Supp) 395.**

—S. 88—Partner utilising partnership property for making profit for himself—Liability to account.

Section 88, Trusts Act, enjoins upon the partner who remains in possession of the partnership assets uberrima fides, as regard the interests of the other partner, that the former must account for the profits which have been accruing as a result of the working of partnership assets attributable to the share of the former partner. Strictly speaking a partner is not a trustee of the other partner, but there is no denying the fact, that the partners stand in a fiduciary relation to one another and in such a case equity will never permit the surviving partner to trade or to utilize the property of the other for his exclusive personal profit. If he makes a profit, it must be paid over to the owner of the property. the use of which produced the profit. Courts in England have always acted upon the above equitable principle. **59 Punj L R 372 : I L R (1957) Punj 1306 : AIR 1958 Punj 5 (10) (Pt E) (Pr 13).**

—S. 88—Applicability of first part of section—"By availing himself of his character".

The first part of S. 88 obviously contemplates that the pecuniary advantage to be gained by a partner or other person in a fiduciary capacity must be in dealing with some third party, and the words "by availing himself of his character" clearly imply that at time when the transaction takes place which results in the pecuniary advantage, the partner must be purporting to deal with the third party as a partner acting on behalf of the partnership, and also that the third party must be under the impression that he is dealing as such. **58 Punj L R 11 : AIR 1956 Punj 49 (56) (Pt C) (Pr 33) (DB).**

—S. 88—Applicability of second part of section.

When it is clear that a particular benefit can no longer be secured on behalf of an estate or a partnership, the fiduciary relationship ends and an individual partner or beneficiary of the estate is free to look after his own interests and secure the benefit for himself. **58 Punj L R 11 : A I R 1956 Punj 49 (58) (Pt D) (Prs 40, 41) (DB).**

3. Agent.

—Ss. 88, 82—Civil P. C. (1908), S. 66 — Scope — Suit against certified purchaser acting as agent of plaintiff even prior to purchase in dispute — Suit barred by S. 66—Applicability. See Civil P. C. (1908), S. 66. AIR 1962 Andh Pra 49 (FB).

—S. 88 — Applicability — Secretary of Company managing the company — Secretary buying estate of Company after negotiating with shareholders of Company—Effect.

A fiduciary relationship may arise in the context of a jural relationship or it may not. Where confidence is reposed by one in another, and that leads to a transaction in which there is a conflict of interest and duty in the person in whom such confidence is reposed, fiduciary relationship immediately springs into existence. The fact that an adequate price was not paid, would certainly lead to the inference that there was an 'unjust enrichment' of the trustee. Independent advice need not necessarily be from a lawyer. But where a fiduciary relationship exists and a climate exists which was probably taken advantage of by the fiduciary, and there is an obvious element of 'unjust enrichment,' the absence of such independent advise does become a material factor in judging the case.

Held, on facts that in respect of the attempted sale of the estate the defendant-company was in a position of agents for sale of O. V. Estates Ltd. The defendant-company dealt with the plaintiffs knowing that they were the parties who had the power and the right to effect the transaction. The fact that the O. V. Estates Ltd., was a different jural entity made no difference in the context of this real situation. The defendant-company were secretaries exercising fairly wide powers and functions of looking after the estates under the directions and were not merely administrative assistants. The defendant-company were actively engaged in aiding the plaintiffs to sell the estates. They were conscious of the conflict between interest and duty, particularly when they themselves became possible competitors. It could not be doubted, upon those facts, that a fiduciary relationship existed between the plaintiffs and the defendant company. **73 Mad L W 330 : 1960 Mad W N 946 : ILR (1960) Mad 407 : (1960) 2 Mad L J 401 : AIR 1960 Mad 410 (419 to 421) (Pt B) (Prs 27, 29, 32, 33) (DB).**

—Ss. 88 and 94 — Bihar Land Reforms Act (21 of 1950), S. 3—Notification under in respect of A's estate in Bihar — Possession not taken over immediately — Grant of lease by A to B during interval to collect biri leaves from jungles in estate — Premium paid by B again to State of Bihar on demand — Suit by B for recovery of premium paid twice against A and State of Bihar—State of Bihar not estopped from denying A's title — Section 65, Contract Act, attracted to A's liability—Possession of A before it was taken over by Government not that of agent or constructive trustee not applicable. S. 27 Sale of Goods Act and S. 41, T. P. Act. See Contract Act (1872), S. 65. AIR 1962 Pat 140 (DB).

[Reversed in AIR 1968 S C 90].

4. Director of Company.

—S. 88—Purchase of property in the name of near relation—No presumption of advancement in India—Evidence nevertheless to prove intention to make near relation beneficial owner admissible — Purchase of shares in the name of son—Son becoming working director of company by virtue of those shares—Remuneration received as director — Son entitled to retain such remuneration though not the shares and dividend. See Benami. AIR 1962 Cal 569.

—S. 88—Applicability.

In order to apply S. 88 of the Trusts Act to the transaction of sale of the company's lands to its Directors it is necessary to show that the directors have gained for themselves any pecuniary advantage by selling the lands of the company to themselves and their relations at a lower price. **(1964) 34 Com Cas 902 : (1964) 54 I T R 113 : (1964) 2 Com L J**

276: (1964) 2 I T J 611 : A I R 1965 Pat 58 (64) (Pt B) (Pr 19) (DB).

5. Other persons bound in a fiduciary capacity.

——Ss. 88 and 77 (c)—Failure of object of charitable inam—Resumption of land and inam by Government—After resumption, trust becomes completely extinguished and there cannot be trustees — Resumed charitable inam when its value is less than Rs. 12/- per annum does not attract doctrine of cy pres in its re-assignment and its assessment can be credited to general revenue under Standing Order No. 54 (7) of Board of Revenue Standing Orders, Vol. 2, PP. 41 and 42—Government as representing public has right to resume land of charitable inam and its assessment and right to grant that land on patta—Whether intention of Government in granting patta after resuming inam was land should be held subject to trust or not is question of fact — Simply because land is granted on patta after resumption to ex-trustees of charity it cannot be inferred that regrant was made to them in capacity of trustees and not as individuals, to attract S. 88 : ILR 42 Mad 161 (FB), Disting; ILR 40 Mad 939 and AIR 1923 Lah 93 and A. S. No. 450 of 1928 Dt. 20-10-1933 (Mad) and (1950) 11 M L J 177, Rel. on. Government Grants Act (1895), S. 3. Civil P. C. (1908), S. 92. **ILR (1963) Andh Pra 517.**

——S. 88—Inam — Dharmadayam—Land dedicated to public benefit — Determination of public trust—Tests—Grantor continuing to hold land after grant—Resultant change — Grantor holds lands as grantee and trustee of public charity — Effect of resumption and remission of cist—Grant of ryotwari patta—Presumption — Alienation of trust property—Not binding on trust — Civil Procedure Code (V of 1908), S. 92—Applicability.

In a suit filed for a declaration that the property therein described constituted a public charitable trust and for setting a scheme for the proper administration of the trust and for other allied reliefs, the trial Court held that the land dedicated as 'Dharmadayam' does not possess all the characteristics of trust property on the grounds, among others, (1) that it was not defined anywhere as trust property; (2) it remained in the name of the grantor as the grantee; and (3) that the remission of cist alone is not sufficient to treat it as trust property. In appeal to the High Court :

Held, the description in the Inam Register and the title-deed makes it clear that the land was Dharmadayam, namely, public charity inam. The effect of the grant is that, the grantor, who was the original private owner of the land, with full powers, made a grant of the right and title in the land along with the trees, i. e., his tope, to a public charity, and, as a result, he began to hold the land as a trustee of the charity, which was to be permanent.

The grandson of the founder selling the trees could have been in his capacity as inamdar and a trustee of the charity tope. As such, he was bound to treat the income as the property of the trust. In fact, he was incurring expenses on behalf of the trust in taking steps to evict encroachers of the tope.

It is true that remission of the cist by itself would not be sufficient to convert the property into trust property, if it were not otherwise trust property. But, in fact, the remission of cist in this case was granted by the Government because the latter found that it was trust property namely, charitable inam. The resumption proceedings and the issue of patta did not affect the fact that the property belongs to the trust and did not have the effect of converting the trust property into private property. The patta issued in favour of the persons must be deemed to be held by them on behalf of and for the benefit of the trust. The alienations of property which were made on the basis that the property was private property of the alienors cannot bind the trust and does not affect the right, title and interest of the trust as regards the property so alienated. (1959) 1 Andh W R 357, Applied. **(1963) 2 Andh W R 62.**

——Ss. 88 and 94—Applicability—Persons bound in fiduciary capacity — Licensees appointed under Madras Food Procurement Order — (Madras Food Procurement Order (1946) — Contract Act (1872), Ss. 69 and 70)—(Constitution of India, Art. 265).

The right to recover money from a person who stands in a fiduciary relationship and which money has been received for and on behalf of another person, has been regarded as an equitable right.

Where certain millers were appointed by the Government under the provisions of the Madras Food Procurement Order, 1946, as licensees to act as their medium to purchase paddy from the producers and sell to such person and at such rates as directed by the Government and they were bound to pay to the Government the difference between the sale and purchase price but receive remuneration for their services.

Held, that a fiduciary relationship had been established between the licensees and the Government. The profits and advantages gained by the millers because of their appointment as licensees under the Food Procurement Order would go for the benefit of the Government. A I R 1925 P C 161 and (1940) 1 M L J 465; AIR 1940 Mad 489, Distinguished; 1951 A C 507 : A I R 1929 Mad 409 : 56 M L J 525 and 1918 A C 563, Rel. on. **Held**, further that the millers were bound to pay difference in price to the Government on the ground of unjust enrichment. (1942) 2 All E R 122; (1760) 2 Burr 1005; (1940) 4 All E R 20, Rel. on; 127 L T 822; (1955) 1 M L J 346, Distinguished. **(1959) 1 Andh W R 44 : ILR (1958) Andh Pra 671 : AIR 1959 Andh Pra 352 (358 to 358) (Pt C) (Prs 15, 16, 18, 21) (DB).**

[Reversed in A I R 1965 S C 1773.]

● ——S. 88 — Co-sharers in exclusive possession and making use of the common property for personal purposes without the knowledge or consent of other co-sharers—Co-sharer in exclusive possession was in fiduciary capacity and held liable on equitable grounds to pay compensation for diversion of the property—Exclusion—Compensation. See Co-sharers. **AIR 1954 Assam 33 (FB).**

——S. 88—Equitable set-off—Limitation — Claim for equitable set-off by tenant—No fiduciary relationship between lessor and lessee. See Civil P. C. (1908), O. 8, R. 6. **ILR (1956) Bom 805.**

——S. 88—Person having interest in lease along with other persons, obtaining renewal in his name alone—Lease held enured for benefit of all — This was so even in case of Crown lease — Crown Grants Act (1895), S. 3. **AIR 1955 N U C (Cal) 2867 (DB).**

——S. 88 — Hire purchase agreement — Rights of owner and hirer—Assignment of right to use goods—Assignee becomes trustee and is bound to protect goods—Assignee allowing owner to wrongfully seize goods and purchasing them himself—Assignee is liable for loss suffered by hirer. See Contract — Hire Purchase agreement. **AIR 1965 Mad 257 (DB).**

——S. 88—Mohamedan law—Joint family — Acquisition—Presumptions under Hindu law do not apply—Purchase of property by one member—Other member entitled to claim benefit of purchase provided he is to make out a case of either a partnership or that there was relationship of principal and agent or any fidu-

ciary relationship between the parties. See Mahomedan law—Joint Family. AIR 1961 Orissa 92 (DB).

—S. 88 — Decree against father of the minor in favour of guardian before he was appointed as guardian — Guardian purchasing property in Court sale—Leave of Court not obtained—Purchase valid — Purchase by guardian not as trustee. See Guardians and Wards Act (1890), S. 29. AIR 1959 Mad 468.

—Ss. 88, 5 to 8 and 94—Employer crediting bonus and dearness allowance in favour of employee — Employer taking benefit in income-tax — Employer is trustee for the amount. See Trusts Act (2 of 1882), S. 5. AIR 1953 Mad 16.

—Ss. 88, 90 — Partition—Joint enjoyment—Subsequent acquisitions are common property — The de facto manager stood in fiduciary relationship with other brothers. See Hindu Law—Partition. AIR 1957 Orisia 63 (DB).

—S. 88—Suit by company and one another allowed to be dismissed — Costs imposed on both plaintiffs—Co-plaintiff making full payment of costs and claiming from official liquidator—He could not be allowed preferential treatment. See Companies Act (1956), S. 530. AIR 1962 Punj 530.

—S. 88—Bank collecting money from customer of plaintiff and remitting amount to plaintiff by draft—Draft dishonoured for want of sufficient credit of the bank — Bank going into liquidation—Plaintiff is entitled to rank as preferential creditor—Fiduciary relationship between Bank and plaintiff held did not end upon sending draft. See Banker and Customers. AIR 1962 Punj 121 (DB).

6. Gains any pecuniary advantage.

—S. 88—Religious endowment — Trustee—Powers of—He cannot deal with trust property for his personal advantage—One co-trustee cannot sue other for accounts except where latter misappropriates trust funds. See Hindu law—Religious Endowment. AIR 1964 Ker 204.

7. Hold for the benefit of such person.

—S. 88—Scope—Section not exhaustive—Principle embodied is wide enough to cover cases of transferees taking property with notice of transferor's defective title.

The principle underlying S. 88 is quite clear, in that a person who is in a fiduciary position and is bound to protect the interests of another person and who takes advantage of the same and makes profit or derives benefit or acts in any manner adverse to the interests of that person he would be liable to that person. The principle embodied in the section is wide. It embraces all cases of dealings entered into by the person under circumstances in which his own interests may be adverse to that of the beneficiary. This section also is held not to be exhaustive and is wide enough to cover the case of those transferees who had taken the property with notice of the transferor's defective title.

The plaintiffs being minors and inexperienced to carry on the management of the lands and bus service, the first defendant undertook the management on a fixed salary and executed a letter agreeing to render proper accounts to the plaintiffs. The first defendant set up a false claim to the properties of the minors and a day before a suit was filed by the plaintiffs for declaration of their title to and for possession of the properties, the first defendant transferred the buses to the second defendant who shortly thereafter, in his turn, transferred it to the third defendant. The finding of the Court was that the defendants acted in collusion with one another to deprive the plaintiffs of their property.

Held, that the plaintiffs would be entitled to follow the first defendant's property into whosoever hands it went provided those persons had knowledge and notice that the property was that of the plaintiffs and all those persons would be accountable to the plaintiffs. The defendants were not only accountable for the profits made out of the specified buses but also as to what had been done with those profits; and if any property had been purchased out of it, the plaintiffs would also be entitled to the property and the income made from out of it. (1939) 2 Mad L J 208 ; AIR 1939 Mad 313, Rel on. (1964) 2 An W R 30 : AIR 1964 Andh Pra 522 (525) (Pr 5) (DB).

—S. 88—Trustee not to take personal advantage.

He, who has the management of property either as an express trustee or in some fiduciary character, is not permitted to gain any personal profit by availing of his position. The rule goes so far that if the trustee sells the land to a bona fide purchaser without notice and afterwards becomes the owner of the land, though for good and valid consideration, the trust revives again and he is bound to restore the land to the trust. (1959) 1 Andh W R 357 ; AIR 1960 Andh Pra 35 (39) (Pt C) (Pr 11) (DB).

—S. 88—Claim by principal against agent for advantage gained by latter — Limitation — (Limitation Act (1908), Arts. 90, 120).

A was one of the directors and also the sole managing agent of certain company and was thus bound in a fiduciary character to protect the interests of the company. But availing himself of this character and utilising the premises and staff of the company as well as his credit with the company by reason of the position which he occupied, A gained for himself a pecuniary advantage in the sum of Rs. 8,510. The company sued to recover the amount claiming that A must hold that the advantage so gained for the benefit of the company.

Held, that in view of the nature of the claim, Art. 90, Limitation Act did not apply. This was a case where the basis of the claim was not neglect or misconduct but the advantage taken by a person in a fiduciary capacity of his position to make a gain under S. 88, Trusts Act. A was bound to give it up to the person to whom he owed the fiduciary duty. To such a suit there was no other article applicable and therefore Art. 120 applied. (1953) 1 M L J 577 ; 1953 Mad W N 234 ; 66 Mad L W 283 ; (1953) 23 Com Cas 107 : ILR (1953) Mad 1087 ; AIR 1953 Mad 694 (695) (Pt C) (Pr 7) (DB).

SECTION 89

—S. 89—Gift tainted by undue influence — Transferee from donee is also affected if he has notice. (1960) 2 Mad L J 355: AIR 1961 Mad 190 (Pt B) (Pr 25) (DB).

SECTION 90

SYNOPSIS

(Trusts Act (1882), S. 90.)

1. Scope.
2. Co-owner.
3. Mortgagee.
4. "Gains an advantage in derogation."
5. "By availing himself of his position as such."
6. Co-sharers.
7. Purchase by mortgagee.
8. Lease — Renewal.
9. Other illustrative cases.

1. Scope.

●—90—Practice — Pleading — Vires of Act challenged — Court is not restricted to pleadings of State

—Court will consider whether validity can be sustained under any provisions of Constitution. M/s. Barrakur Coal Co. Ltd. v. Union of India, (1961) 2 S C A 523 : AIR 1961 SC 954 (956) (Pt F) (Pr 2).

—S. 90—Distinction.

Whereas S. 88 makes a specific reference to partners and agents etc. S. 90 in terms applies to a tenant for life, a co-owner, a mortgagee, or any qualified owner of any property. S. 90, therefore, in terms cannot apply to the case of a partnership. See Trusts Act (1882), S. 88. AIR 1959 SC 190.

—S. 90—Oudh Estates Act Ss. 3, 22—Primogeniture sanad — Accretion — Succession — Villages substituted by Government and fresh sanad granted before Act 1 of 1869 — Other villages also exchanged by Government after Act — Taluqa held by Rani, widow of deceased taluqdar, at exchange time — Exchange deed describing new properties given as granted to 'Rani and to her heirs and assigns for ever' —On the principle embodiel in S. 90, Trusts Act the exchanged villages must be held to be part of the estate and also estate within S. 3 of Oudh Estates Act. See Oudh Estates Act (1 of 1869), S. 3. AIR 1952 All 6 (FB).

——S. 90 — Applicability — Conditions — Principle underlying.

The principle underlying S. 90, Trusts Act, is that no person who is in a fiduciary capacity or position can make a profit to the detriment of those interested. He must not utilise his position to obtain an advantage. In order to invoke this section it is essential that it should be proved that the person is placed in fiduciary capacity and secondly, that he gained an advantage by virtue of such position. (1957) 1 Andh W R 169: AIR 1957 Andh Pra 337 (339) (Pt B) (Pr 7) (DB).

——S. 90—Applicability.

Before the benefit of S. 90 is invoked it must be shown (i) that the party against whom relief is sought, availed himself of his position; (ii) that he gained an advantage by so doing; (iii) that the advantage was gained in derogation of the right of the person interested in the property. In other words, a person who is a limited owner by reason of his position must not utilise that position to obtain an advantage to the detriment of his co-owners. It is not necessary that the other persons should make out that the advantage was obtained fraudulently or by misrepresentation or by suppression of the true facts. All that the section says is that if there is a person in a fiduciary relation to another he cannot take advantage of his position so as to gain something exclusively for himself which otherwise he would not have obtained but for the position which he held. AIR 1957 Mad 472 (483) (Pt F) (Pr 34) (DB).

——S. 90—Principle of section.

Section 90 is based on the principle of constructive trust and is an extension of the principle that a trustee shall not be allowed to make profit out of the trust. AIR 1957 Mad 472 (482) (Pt H) (Pr 30) (DB).

——Ss. 90, 88—Contract Act (1872), S. 73 — Partnership between plaintiff and defendant in textiles dissolved — Deed of dissolution provided that in respect of licences for textile goods plaintiffs should be entitled to ¼ quota and defendanf ¾ — Plaintiff applying to export Trade Controller for his quota—Defendant objecting and defendant allotted full quota — Plaintiff suing defendant for declaration and damages —Defendant held could not be made liable as trustee for plaintiff in respect of plaintiff's quota after dissolution of partnership — Defendant, however, was liable for breach of contract — Measure of damages would not be profit made by defendant but would be loss sustained by plaintiff. See Contract Act (1872), S. 73. AIR 1950 Mad 289 (DB).

——S. 90—Purchase by mortgagee.

A mortgaged his property to B—A and B were joint debtors of C as principal debtor and surety respectively — C obtained money decree and in execution thereof put A's interest in property to sale — C purchased it himself but B obtains rights of C by assignment and took delivery of possession — Suit for redemption by legal representatives of A—Contention that B was only a trustee for A as he was the mortgagee and as such could not keep the benefit for himself—Held that assignment by B was not obtained by fiduciary relationship with mortgagor and case did not come under S. 90. 1953 Ker L T 85 : ILR (1953) Trav Co 388 : AIR 1953 Trav-Co 375 (376) (Pt A) (Pr 2).

—S. 90—Applicability to Travancore—Mortgage —Sub-mortgage — Advantage obtained as sub-mortgagee — If available to mortgagee and mortgagor.

The principles embodied in S. 90 are of general application and have been applied in Travancore.

Where A obtains the advantege of a puduval registry in his favour by availing himself of his position as possessory sub-mortgagee under B, A would hold such advantage as trustee for his mortgagors (B). That advantage will constitute an accretion to the mortgage property which would enure to the benefit of the mortgagor. 1951 Ker L T 7 : ILR (1951) Trav-Co 209 : AIR 1951 Trav-Co 109 (117) (Pt E) (Pr 19) (FB).

2. Co-owner.

——S. 90 — Co-tenants — On death of sole tenant name of defendant recorded as sole tenant in 1308F—Defendant belonging to family—Brothers of deceased living at time of death and succeeding to tenancy as co tenants — No evidence of adoption of defendant by deceased tenant — Possession of defendant held possession on behalf of all unrecorded co-tenants as well. ('52) 1952 R D (BR) 174.

——S. 90—Co-owner in possession of entire property — Liability of, to other co-owners — Nature of — (Co-owners).

The relationship of one co-owner towards another is not strictly of a fiduciary character in the sense that there is an obligation on the part of the co-owner to protect the interest of the other co-owner. The liability ordinarily of one co-owner in possession of the share of all is only to make over the share of the profits of the others to them. He is accountable only for the rents and profits actually received and not what he ought to have received. If he fails to pay the share it can only amount to a breach of the agreement to pay the share whenever it fell due. The possession of a co-owner of the share of the other co-owner cannot be regarded to be in derogation of the rights of the other co-owners within the meaning of S 90 of the Trusts Act. 1897 A C 180; AIR 1923 Mad 147 : 43 Mad L J 406, Rel. on. It is only in a case where it is established on the facts that the co-owner by his dealings derived a benefit or advantage to himself, that S. 90 of the Trusts Act would apply and he would be regarded as being in a fiduciary position. AIR 1934 Mad 686 : 67 M L J 563; AIR 1931 Mad 553 : 61 Mad L J 139, Rel. on. The test, therefore, would be as so whether the co-owner utilised the common funds or common property and derived a benefit therefrom. (1957) 1 And W R 169 : A I R 1957 Andh Pra 337 (339) (Pt C) (Prs 7, 8) (DB).

——Ss. 90, 94 and 95 — Tenants-in-common — Partition of joint family property — One member left in enjoyment of entire property without any agreement in that behalf—Separate account of income received

out of share of other members not maintained — Subsequent acquisitions by member in possession cannot be regarded as acquired for family—Member not a trustee for other co-sharer members and S 90, Trusts Act does not apply. See Hindu Law—Tenants in common. AIR 1960 Bom 159 (DB).

——S. 90 — Applicability—Inquiry before Tehsildar regarding grant on darkhast of kumki land — Statement made by co-owner, on his own behalf and not on behalf of all, that he made all improvements and was, therefore, entitled to darkhast grant — Other co-owner not raising any objection to statements — S. 90 does not apply. AIR 1965 Ker 221 (221) (Pt B) (Pr 6)

——S. 90 — Scope — Mortgage of property to joint family — Partition — Sale of property by one brother — Sale if affected by section — Property if available for partition — (Hindu Law — Partition).

A property was mortgaged to the family of the plaintiff. The mortgagor wanted to sell a portion of the property in order to save the remaining portion to himself. But the family filed a suit on the mortgage and obtained a decree One A also obtained a simple money decree against the mortgagor and attached the equity of redemption. By this time the properties in the village in which the mortgaged property was situate had fallen to the share of the defendant as a result of a partition between the plaintiff and his brothers, the defendant being one of them. The defendant arranged to get the money decree assigned in the name of one V who purchased the equity of redemption in Court sale. Secondly the defendant entered into negotiations with the mortgagor who conveyed the property to the defendant. The defendant got the auction sale set aside by paying off V and also discharged the mortgage decree. There was no evidence to show that the defendant had utilised joint family funds for purchasing the property.

Held, that the purchase was made when the defendant was a tenant-in-common and he did not stand in a fiduciary capacity vis-a-vis his brothers. There was no feeling of trust or confidence between the brothers and therefore none of the ingredients under S. 90 was made out. The property was therefore the separate property of the defendant and could not be made available for partition amongst his brothers. AIR 1957 Mad 472 (487) (Pt J) (Pr 45) (DB).

——Ss. 90, 88 — Partition — Joint enjoyment — Subsequent acquisitions are common property — The de facto manager stood in fiduciary relationship with other brothers. See Hindu Law — Partition. AIR 1957 Orissa 63 (DB).

——S. 90—M, B, and C were joint creditors of D—D executing bond in the name of M alone — Death of M — 'A' the son of M used to receive payments from D and pay B and C their share—D's estate taken over by Haisiat Court — A putting forward his claim and recovering the amount of debt — B and C suing A for their share — Obligation in the nature of trust was created between the parties when A representing himself and B and C got money from the Haisiat Court in full satisfaction of the bond — Limitation Act, Art. 62 applied. See Limitation Act (1908), Art. 62. 1952 Raj L W 501 : I L R (1952) 2 Raj 459 (DB).

——S. 90 — Co owners — Grant of patta in name of one — Rights of others.

The grant of patta to co-owner even in respect of kandukrishi lands would not deprive the other co-owners of their right over the properties and the transferee from the other co-owner of his interest gets the rights conveyed by the transfer. The case comes within the operation of S. 90 of the Trusts Act. AIR 1952 Tra-Co 571 (572) (Pt A) (Prs 3, 4) (DB).

——S. 90 — Co-owner in possession acquiring properties with joint funds — Nature of acquisition.

If a co-owner in possession of co-ownership property acquires other property even with the use of co-ownership funds in his possession the acquisition will not perforce become co-ownership property. The acquirer's obligation will not be to account for the co-ownership funds utilised by him. In this respect a co-owner's position is different from that of a manger of a Hindu family, whether father or not. 1955 Ker L T 440 : AIR 1955 T C 279 (279) (Pt B) (Pr 2) (DB).

3. Mortgagee.

——S. 90 — Trustees for the debenture holders — Right to carry on business to pay off debenture debt — No liability to pay for occupation of mortgaged property — Liability to submit accounts as mortgagees in possession—Liquidation of Company—Settlement accounts — Reopening of not permissible. See Company Law. AIR 1962 Andh Pra 274 (DB).

——S. 90 — T. P. Act (1882), S. 111 (d) — Merger—To constitute merger there must be union of entire interest of lessor and lessee — Putni sale—Darputnidar depositing amount under S. 13 (4), Bengal Putni Regulation — He subsequently acquiring interest of another darputnidar in execution of his rent decree — Position of depositing darputnidar being that of mortgagee there is no merger of darputni purchased by him — Bengal Tenancy Act (VIII of 1885), S. 168-A — T. P. Act (1882), S. 63. See T. P. Act (1882), S. 111 (d). AIR 1950 Cal 1 (DB).

——S. 90 — Applicability — Kandukrishi lease in favour of plaintiff — Mortgage of plaintiff's rights to defendant — Government granting patta to defendant during subsequent settlement — Relationship of mortgagor and mortgagee between the parties is extinguished. 28 Trav L R 184 and 29 Trav L R 100, Rel. on; AIR 1954 S C 336, Disting—Suit for redemption — Plaintiff had no further right to redeem. 1960 Ker L T 800 : AIR 1961 Ker 124 (125) (Pr 7).

——S. 90 — Mortgagee.

Where there is an obligation cast on the mortgagee and there is a breach of that obligation, the consequences mentioned in S. 90, follow and it is wholly irrelevant to consider whether the transaction is under the circumstances profitable or not. (1953) 2 M L J 17 : 66 Mad L W 565 : 1953 Mad W N 372 : I L R (1955) Mad 425 : AIR 1954 Mad 144 (146) (Pt B) (Pr 8) (DB).

——S. 90 — T. P. Act (1882), S. 63 — Acquisitions by mortgagee — Mortgagor cannot claim acquisitions from mortgagee in circumstances which do not bring mortgagee within S. 90, Trusts Act (1882). See T. P. Act (1882), S. 63. (1965) 2 Law Rep 639.

——S. 90 — Orissa Tenancy Act, S. 225—Mortgagee in possession under S. 225—Such a mortgagee holds the position of a quasi-trustee as against the tenant under S. 90 read with S. 95 of the Trusts Act. See Tenancy Laws — Orissa Tenancy Act (2 of 1913), S. 225. AIR 1951 Orissa 300 (DB).

4. "Gains an advantage in derogation."

——S. 90—Beneficiary has no right to claim equitable relief until an advantage was actually gained by the constructive trustee against the interests of the beneficiary—See Trusts Act (1882), S. 88. ('57) 23 Cut L T 301.

——S. 90—Applicability—Mortgagee gaining advantage—Mortgagee of lease-hold property responsible for payment of portion of rent — No attempt to pay such portion to mortgagor or landlord — Sale of property

on account of default of mortgagor and mortgagee and purchase by landlord and subsequent settlement of mortgaged portion with mortgagee — Mortgagee must be held to have gained advantage within S. 90 —Mortgagor has right to redeem such portion. AIR 1952 Pat 286; AIR 1951 Pat 566 and 21 Pat L T 699 and AIR 1954 S C 336, Rel. on; AIR 1958 Pat 353 and AIR 1956 Pat 434, Dis. **AIR 1960 Pat 423 (423, 424) (Prs 2, 3, 4).**

5. "By availing himself of his position as such."

● —S. 90 and Illustration (c) to it — Applicability —Mortgagee of portion of holding paying almost the entire amount of rent but defaulting in not paying a trifling portion and mortgagor defaulting in payment of his entire portion of rent—Purchase by mortgagee in rent sale—If enures to benefit of mortgagor.

The mortgaged property was part of a larger holding and the mortgagee agreed to pay a portion of the rent of the entire holding and the mortgagor agreed to pay the balance rent payable in respect of it. The mortgagor defaulted in payment of the rent payable by them. The mortgagee paid almost the entire amount of the rent payable by him but defaulted in payment of a trifling sum. In the rent sale the mortgagee purchased the property. The mortgagor claimed that the purchase enured to their benefit.

Held, the portion of the rent which the mortgagee failed to pay was so small that it is impossible to say that the property was brought to sale for it or that his default was made mala fide or with the ulterior object of the property being put up for sale and his becoming the purchaser of it. The mortgagee did not gain any advantage by availing himself of his position as such or of a situation brought about by his own default. The real effective cause of the sale was the default of the mortgagor alone. In the circumstances, S. 90 of the Indian Trusts Act and Illustration (c) to it are not attracted and the purchase by the mortgagee does not enure for the benefit of the mortgagor. The rent sale and certificate sale extinguished the right of redemption. Sachidanand Prasad v. Babu Sheo Prasad Singh. **(1965) 2 S C W R 825 : 1965 B L J R 841 : (1965) 2 S C J 458 : A I R 1966 S C 126 (127) (Pr 8).**

● —S. 90—Applicability — Default to pay rent on part of both mortgagor and mortgagee— Rent decree and sale in execution—Mortgagee purchasing the land —S. 90 applies—Mortgagor is entitled to redeem.

Where both the mortgagor and mortgagees are liable to pay rent and rent decree and sale in execution of it are brought about because of the default of both of them and the mortgagee purchases the mortgaged land in execution sale, the fact that the mortgagor had made a default, does not alter the position that the mortgagee had also defaulted in paying the rent he was liable to pay. By his default he has contributed to the position that a suit had to be brought for arrears of rent and ultimately to the position that the property was put to sale in execution of the decree obtained in the suit. This contribution to the bringing about of the sale was a direct result of his position as a mortgagee. When, therefore, he purchased the property himself at the sale in execution of the rent decree he clearly gained an advantage by availing himself of his position as a mortgagee. Section 90 is applicable to such a case and the mortgagor is entitled to redeem the mortgaged property. This is the position in law even if the mortgagee's liability was to pay less than the major portion of the rent of the holdings. A. F. A. D. No. 1335 of 1952, dated 4th March, 1958 (Pat). Reversed. Smt. Basmati Devi v. Chamru Sao. **(1964) 1 S C W R 683 : 1964 B L J R 751 : (1964) 7 S C R 633 : (1965) 1 S C J 556 : (1965) 1 Andh W R (S C) 109 : (1965) 1 Mad L J (S C) 109 : 1965 S C D 879 : (1965) 2 Andh L T 403 : ILR 43 Pat 570 : AIR 1964 S C 1707 (1708, 1709) (Prs 12, 13, 16).**

● —S. 90—Applicability—Essential conditions.

The following three conditions shall be satisfied before S. 90 of the Trusts Act can be applied to a case : (1) the mortgagee shall avail himself of his position as mortgagee; (2) he shall gain an advantage; and (3) the gaining should be in derogation of the right of the other persons interested in the property. The section, read with illustration (c), clearly lays down that where an obligation is cast on the mortgagee and in breach of the said obligation he purchases the property for himself, he stands in a fiduciary relationship in respect of the property so purchased for the benefit of the owner of the property. The principle is comprised in the latin maxim commodum ex injuria sua nemo habere debet that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act. Mrutunjay Pani v. Narbada Bala Sasmal. **1961 Ker L T (S C) 54 : 1961 S C D 559 : (1962) 1 S C R 290 : (1962) 1 Mad L J (S C) 75 : (1962) 1 Andh W R (SC) 75 : (1962) 1 S C J 149 : (1962) 1 S C A 573 : 27 Cut L T 286 : (1961) 1 Ker L R 512 : AIR 1961 S C 1353 (1354, 1355) (Pt A) (Pr 5).**

● —S. 90, (c) — Purchase of equity of redemption by mortgagee — Effect — Purchase by reason of default by mortgagee—Right of redemption not affected —Provisions of S. 90 are attracted to the case. See Transfer of Property Act (1882), S. 60. **AIR 1961 S C 1353.**

—S. 90—Usufructuary mortgage — Holding by occupancy tenant in 1913—Possession of holding not given to mortgagee — Zamindar ejecting tenant for arrears of rent — Zamindar resettling tenancy with mortgagee—S. 90 of Trust Act held not applicable —Mortgagee not an Asami Tenant not entitled for possession — See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 202 (c). **1961 All L J 856.**

—Ss. 90 and 65 — Mortgaged property sold for arrears of revenue owing to default of mortgagee and purchased by stranger—Latter selling it to mortgagee—Mortgage is revived and can be redeemed by mortgagor—(Transfer of Property Act (1882), Ss. 76 (c) and 60). AIR 1936 Pat 434, Not foll — See Trusts Act (1882), S. 65. **AIR 1957 Andh. Pra 430.**

—S. 90—Purchase by mortgagee—(Transfer of Property Act (1882), S. 76).

So long as the mortgagees were defaulters it was not open for them to contend that the revenue sale was not brought about by their default. The mortgage interest would continue to exist notwithstanding the sale brought about by the default of the mortgagor and the mortgagee. The mortgagees by availing themselves of their position as such gained an advantage in derogation of the rights of the mortgagors and they should be deemed to hold the advantage so gained, for the benefit of the mortgagors. AIR 1952 Pat 286, Rel. on; A I R 1925 Mad 288 : 47 Mad L J 755, Dist. **1958 Ker L T 973 : 1958 Ker L J 1057 : AIR 1959 Ker 178 (179) (Ft A) (Prs 6, 8) (DB).**

—S. 90 — Applicability — Mortgagee deliberately committing default in payment of Government revenue—Property sold in revenue sale and purchased by mortgagee—Mortgagee holds the same for benefit of mortgagor — (T. P. Act (1882), S. 76) — (Kerala Revenue Recovery Act, S. 59).

When a person enters into possession of property as mortgagee and deliberately fails to pay the Government revenue and the property is sold under Revenue Recovery Act and is purchased nominally

by a third person but for the benefit of the mortgagee, the purchase falls within the purview of S. 90, Trusts Act. The mortgagee is bound to hold the property with all its liabilities in relation to the mortgagors and the mortgagors would be entitled to redeem the mortgage.

To such a case, S. 59 of the Kerala Revenue Recovery Act has no application. There is no question of setting aside the revenue sale. 1958 Ker L J 565 : 1958 Ker L T 712 : AIR 1959 Ker 94 (96, 97) (Prs 21, 26, 30) (DB).

——S. 90—Applicability—Mortgagee gaining advantage – Duty of — (Transfer of Property Act (1882), Ss. 76, 60).

When a mortgagee defaults to make a payment which he was bound to make and the mortgaged property is consequently sold in execution of a decree or under the Revenue Recovery Act and the mortgagee either purchases it at the execution sale or the Revenue sale in the name of a benamidar for him or purchases it from a bona fide purchaser in execution, S. 90 of the Trusts Act would be attracted and the mortgagee has to hold the property for the benefit of the mortgagors and has to submit to redemption by them. Section 90 does not strike down every advantage gained by a mortgagee. For attracting it advantage should have been gained by him availing himself of his position as a mortgagee or because he was the mortgagee and it must have been gained in derogation of the right of the mortgagor. 1958 Ker L J 87 : 1958 Ker L T 869 : A I R 1958 Ker 230 (234, 235) (Pt B) (Prs 10, 12) (DB).

——S. 90 — Transfer of Property Act (1882), S. 76—Obligation of mortgagees to pay tax on property—Failure to fulfil—Effect of — Sale of property for tax arrears—Purchase by mortgagees themselves — They cannot claim that original owner had lost his right to redeem—They cannot take advantage of their own wrong. See Transfer of Property Act (1882), S. 76. 1956 Ker L T 322.

——S. 90 — Mortgagor and mortgagee — Mortgagee denying title of mortgagor — Held, on facts — No estoppel—Suit by mortgagor — The contention raised under S. 90, Trusts Act could not also help the plaintiff as there was nothing to show that the defendant utilised his position as mortgagee for obtaining the assessment. See Evidence Act (1872), S. 115. A I R 1955 N U C (Mad) 3147.

——S. 90, Illus. (c)—"With a view to".

When the breach of an obligation must necessarily result in the properties being brought to sale, it must be taken that the breach was made with a view to the properties being put up for sale, for a person must be taken to intend the natural and probable consequence of his act. Likewise, when that person purchases the properties himself at the sale, it is a legitimate inference to draw that it was with that intention that the properties were allowed to be brought to sale. (1953) 2 Mad L J 17 : 66 Mad L W 565 : 1953 Mad W N 372 : I L R (1955) Mad 425 : A I R 1954 Mad 144 (146) (Pt A) (Pr 7) (DB).

——S. 90 — Mortgagee committing breach of obligation.

Where there is a deliberate breach of an obligation contained in the mortgage-deed resulting in the sale of the mortgaged properties and the purchase is by the defaulting usufructuary mortgagee, the equity under S. 90 will fasten upon the property in his hands. There need not be something more than a mere breach of covenant and further it is not necessary that there should be fraud or unfair conduct on the part of the defaulting mortgagee such as suppression of notice to the parties concerned. A I R 1949 Mad 200, Foll.; A I R 1916 P C 227 ; A I R 1927 All 747, Rel. on ; A I R 1943 Mad 202 ; A I R 1936 Pat 434, Distinguished. (1953) 2 Mad L J 17 : 66 Mad L W 565 : 1953 Mad W N 372 : I L R (1955) Mad 425 : A I R 1954 Mad 144 (147, 149) (Pt D) (Prs 10, 16) (DB).

——S. 90, Illustration (c) — Mortgagee in possession required to pay rent of mortgaged property—Default—Sale of property for arrears of rent — Purchase by mortgagee—Right to redeem, if extinguished — Suit for redemption, if maintainable—Limitation—(Limitation Act (1908), Arts. 120 and 148) — (Transfer of Property Act (1882), Ss. 60 and 72 (b)).

A mortgage bond, inter alia, provided that "if for any reason the mortgagor does not pay the arrears of rent for which the landlord brings a suit and attached the property and puts it to sale, the mortgagee shall pay up the arrears to the landlord amicably and obtain receipt in acknowledgment of payment, or the mortgagee shall on behalf of the mortgagor deposit the arrears of rent in Court and release the property from attachment and sale".

The mortgagee who was put in possession of mortgaged property however made a default in the payment of arrears of rent on account of which the property was put to sale and was ultimately purchased by him. The sale was confirmed and possession was taken by the mortgagee through Court. More than six years after the confirmation of sale the mortgagor brought a suit for redemption of the mortgage.

Held, (1) that the recitals in the mortgage bond were not simply an embodiment of the rights conferred upon the mortgagee by the provisions of S. 72 (b), T. P. Act, but amounted to an obligation on the part of the mortgagee to make payment of arrears of rent; (2) that since the mortgagee was in possession of the property since the date of the mortgage which was not discharged and that mortgagee-purchaser was guilty of a serious breach of duty imposed upon him by the terms of the mortgage on account of which the property was put to sale, the case was well covered by the principles underlying the provisions of S. 90, Illustration (c), Trusts Act ; (3) that the mortgage was continuing and the plaintiff's right to redeem had not been destroyed or extinguished. A I R 1954 S C 336 and A I R 1951 Pat 566, Foll. ; A I R 1926 Cal 363 (FB), Distinguished. I L R (1955) Cut 697 : 21 Cut L T 520 : A I R 1956 Orissa 61, (62, 63) (Pt B) (Prs 5, 6, 8) (DB).

——S. 90 — Mortgagee taking advantage of his position, fraudulently purchasing equity of redemption in breach of agreement—Effect—Mortgagor entitled to redeem.

Where the mortgagee who holds an instalment decree against the mortgagor agrees not to execute the decree for the balance, but in breach of the agreement and trust which the mortgagor reposed in him, the mortgagee executes the decree with a view to extinguish the right of redemption of the mortgagor and actually by suppressing the process puts up the equity of redemption to sale and purchases the same himself at court sale, the provisions of S. 90, Trusts Act, clearly apply, and the mortgagee must hold the advantage gained by him for the benefit of the mortgagor, i. e., he cannot resist the claim of the mortgagor to redeem the property. Though S. 90 is not exhaustive and even if S. 90 were not applicable, the general equitable principle remains that if a person who is in fiduciary relationship with another has gained an advantage to the detriment of that person who is interested in the property he shall not be entitled to hold the benefit for himself. No man can take advantage of his own wrong. 1959 B L J R 805: A I R 1960 Pat 250 (252) (Prs 8, 9, 10).

——S. 90 — Applicability and scope — Rent sale of mortgaged property—Purchase by mortgagee—Right

of redemption—Extinction of—(Transfer of Property Act (1882), S. 60).

In order that the principle of S 90, Trusts Act, should apply it must be shown that the mortgagees in possession by availing themselves of their position as such have gained any advantage.

Where, in execution of a decree for arrears of rent for the period prior to the execution of mortgage, the property was sold summarily and purchased by the mortgagee, and in a subsequent suit for redemption both the lower Courts had found that the mortgagors themselves were the defaulters and the mortgagees in possession did all what they could do as being such.

Held, that the mortgagees did not avail of their position as such for gaining any advantage. They purchased the mortgaged properties to save their own interest inasmuch as if they would have allowed the mortgaged properties to be sold in execution of decrees for rent, they would have suffered a loss as the sale would have been free from encumbrances. Section 90, Trusts Act, therefore, had no application. It followed that the mortgage was entirely extinguished by the auction sale and the right of redemption did not subsist. A I R 1951 Pat 568 and A I R 1952 Pat 286; A I R 1954 S C 336. Disting.; 1958 B L J R 252 : A I R 1958 Pat 649 (651, 653) (Pt B) (Prs 6, 10) (DB).

——S. 90, Illus. (c) — Applicability — Purchase by mortgagee.

In order to avail oneself of the provisions of S. 90, Trusts Act, it must be shown that the mortgagee by availing himself of his position as mortgagee, has gained certain advantage in derogation of the rights of other persons namely, the mortgagors. In the absence of any collusion or fraud or employment of any unfair means by the mortgagees, in bringing about the sale of the mortgaged properties the question of resulting trust coming into being in favour of the mortgagors does not arise.

Held, on the facts of the case that there was no default made or any fraud practised or any unfair means used by the mortgagees in bringing about the sale of the holding a part of which had been mortgaged to them. I P A No. 38 of 1941, dated 10-3-1942 (Pat) and A I R 1951 Pat 566 and A I R 1952 Pat 286 and A I R 1952 Pat 486 and A I R 1954 S C 336, Distinguished; AIR 1957 Pat 452 and A I R 1957 Pat 497, Rel. on. 1958 B L J R 64 : A I R 1958 Pat 353 (355, 356) (Pt A) (Pr 11) (DB).

——S. 90 — Revenue sale—Purchase by mortgagee — Effect.

The mortgagee cannot be allowed to hold for himself the advantage gained by the default for which she was responsible. Section 90 applies only when the mortgagee by availing himself of his position as such gains any advantage. The expression 'by availing himself of his position as such' obviously signifies that in discharge of his duties he committed some act in breach of the terms of the mortgage. If the mortgagee made good the trust and did all that was enjoined upon him by the mortgage then no question of trust comes in. In other words, there must be some causal connection between the acts of commission or omission on the part of the mortgagee and the advantage which he gained. A I R 1954 S C 336, Distinguished. 1957 Pat L R 178 : 1957 B L J R 513 : A I R 1957 Pat 452 (453, 454) (Pt A) (Prs 7, 8, 9) (DB).

——S. 90—Applicability — Purchase by mortgagee—(Transfer of Property Act (1882), S. 60).

Where the mortgagee in possession by committing default in payment of the landlord's rent suffers the mortgaged property to be sold and buys it himself, or in the name of his benamidar he cannot claim the property to be his own in derogation of the mortgagor's interest in the property. The mortgage interest will continue to subsist on account of the trust imposed on the estate held by the mortgagee. The property would be stamped with a trust in favour of the mortgagor. AIR 1952 Pat 286. Rel. on. 1956 Pat L R 36 : AIR 1957 Pat 136 (138) (Pt C) (Pr 10).

——S. 90 — Mortgagee in possession committing default in payment of rent — Property sold in execution of rent decree obtained by landlord and purchased by mortgagee in name of benamidar — S. 90 applies—Mortgagor's interest subsists.

Where the mortgagee in possession by committing default in payment of the landlord's rent suffers the mortgaged property to be sold and buys it himself in the name of his benamidar, he cannot claim the property to be his own in derogation of the mortgagor's interest in the property. In other words, the mortgage interest will continue to subsist on account of the trust imposed upon the estate held by the mortgagee and the mortgagor will be entitled to redeem. The mortgagee cannot be allowed to take advantage of his own default. Fraud or misrepresentation or suppression of facts need not necessarily lead to the advantage gained; S. 90 does not contemplate the presence of these elements which by themselves are sufficient to vitiate all transactions. Different considerations would however arise where the interest in the property has passed on to a purchaser unaffected by the mortgage and thereafter the mortgagee whose mortgage is extinguished on account of the purchase buys the property from that purchaser and acquires an independent title through him just as much as any other transferee would do; provided always that the purchase by the third party and the subsequent transfer to the mortgagee is not found to be a mere artifice on the part of the mortgagee to acquire the property for himself. 10 M I A 540; 44 I A 30, 30 Pat 391, Rel. on. ILR 31 Pat 365 : AIR 1952 Pat 286 (288) (Pt C) (Pr 6) (DB).

6. Co-sharers.

——S. 90—Scope— Default by co-sharer in paying rent — Holding purchased by co-sharer in execution of rent decree—Property, if held by him on behalf of all—(Co-sharers) —(Landlord and Tenant).

If any co-sharer defaults in paying the rent or if any portion of the rent remains unpaid, the landlord can bring the entire holding to sale but that does not imply any obligation on the part of one co-sharer to pay the entire rent. Consequently, where such co-sharer purchases the holding in execution of the rent decree, he cannot be deemed to hold the property on behalf of all the co-sharers. A I R 1952 Pat 286, Distinguished.

Even if the other co-owners pay their share of the rent and the person who defaults in paying his share purchases the property in his name. Section 90 would not be attracted unless it is further shown that he by availing himself of his position as such, gained an advantage in derogation of the rights of the other persons interested in the property. There must be a relation of mutual confidence between the other co-sharers and the defaulter must also be shown to be guilty of some sharp practice. A I R 1919 Cal 431 and A I R 1954 Orissa 23, Rel. on. 23 Cut L T 280 : ILR (1957) Cut 478 : AIR 1957 Orissa 151 (152, 153) (Prs 6, 7).

——S. 90—Co-sharer purchasing property in revenue sale.

For granting equitable relief under S. 90 a co-sharer who purchased the property in the revenue sale must be guilty of some kind of sharp practice which would be inconsistent with any relation of mutual confidence between co-sharers. Where there can be no question of one co-sharer being misled by

the other and the latter is not guilty of any sharp practice the equitable principles of S. 90 cannot be invoked. ILR (1953) Cut 531 : 19 Cut L T 402 : AIR 1954 Orissa 23 (28) (Pt E) (Pr 17) (DB).

●——S. 90 — Bihar Land Reforms Act (30 of 1950), Ss. 6, 3, 4 and 2 — Co-sharer in constructive possession — Suit for partition — Act coming into force pending suit — Effect on maintainability of suit —Plaintiff cannot be non-suited but the result will be that the decree passed will enure to the benefit of the successor-in-interest of the plaintiff i.e. the State. ILR 36 Pat 1231 ; A I R 1958 Pat 279 and AIR 1958 Pat 626, Overruled — (Civil P. C. (1908), O. 22, R. 10) See Tenancy Laws —Bihar Land Reforms Act (30 of 1950), S. 6. AIR 1958 Pat 630 (FB).

[Not approved in AIR 1965 S C 524.]

——S. 90—Bihar Tenancy Act, S. 171 (1) — Statutory mortgagee in possession—Fiduciary relationship with all co-sharers created.— Advantage gained as mortgagee on account of his fault cannot prejudice the right of co-owners — Mortgagee making default in payment of rent and purchasing the property himself —Equity of redemption held by co-owners is not extinguished (T. P. Act (1882). S. 60) — (Co-sharers). See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 171 (1). AIR 1953 Pat 27 (DB).

——S. 90—Co-owners and Co-sharers—Acquisition of property by one with help of joint funds — Property belongs to him jointly with others. A I R 1953 Trav-Co 305 (305) (Pr 2) (DB).

7. Purchase by mortgagee.

●——S. 90 —Sales of tenancy in execution of decree for rent — Purchase by mortgagee in possession — Right of tenant to redeem—Suit for — In the absence a special statutory provision to the contrary the case was govesned by S. 90, Trusts Act—A was entitled to a decree for redemption. See Transfer of Property Act (1882), S. 60. AIR 1954 S C 336.

——S. 90 —Usufructuary mortgage— Right to redeem —Extinction of, by sale for arrears of land revenue— Subsequent sale by auction purchaser in favour of mortgagee — No evidence to establish revenue sale benemi for mortgagee — S. 90, Trusts Act not applicable — Suit for redemption held not maintainable. See Transfer of Property Act (1882), S. 60. AIR 1963 Assam 176 (DB).

——S. 90 — Purchase by mortgagee.

The fact that the mortgagors were impleaded as parties to the action brought on his mortgage by the prior mortgagee, A, does not detract from the obligations of B, the subsequent mortgagee, to pay the mortgage amount to A as provided in the subsequent mortgage-deed or to alter the quality of B's title founded on a sale of the mortgaged property which was brought about by B's default. (1953) 2 M L J 17 : 66 Mad L W 565 : 1953 Mad W N 372 : ILR (1955) Mad 425 : AIR 1954 Mad 144 (147) (Pt C) (Pr 9) (DB).

——S. 90 — Transfer of Property Act (1882), S. 76 (c) — Charges of public nature — Liability of mortgagee — Extends to payment of charges accruing during subsistence of mortgage — Purchase by mortgagee at sale for arrears falling due before mortgage transaction — No duty is cast upon mortgagor in regard to prior arrears — Mortgagee not a trustee for mortgagor in respect of it — Before the principle of S. 90, Trusts Act could be attracted it must be shown that the advantage gained by the mortgagee is referable to some act or omission which as mortgagee he was under a duty to refrain from. See Transfer of Property Act (1882), S. 76 (c). 1963 Mys L J (Sup) 1.

——S. 90 — Applicability — Usufructuary mortgage — Liability to pay rent on both mortgagee and mortgagor — Both committing default—Sale in execution of decree for rent—Property purchased by mortgagee — Section 90 not applicable — Right of redemption is lost — (Transfer of Property Act (1882), S. 60). AIR 1954 S C 336 and AIR 1952 Pat 286 and AIR 1960 Pat 423. Distinguished. AIR 1961 Pat 439 (442) (Pr 12) (DB).

●——S. 90 — Applicability —Mortgagee in possession —Purchase by, of tenancy land in execution of decree for arrears of rent which mortgagee was entitled to receive — Section 90, Trusts Act not attracted —His purchase stands on the same footing as that of a stranger—No advantage of his position as mortgagee can be said to have bee taken. See T. P. Act (1882), S. 63. AIR 1958 Pat 302 (FB).

——S. 90 — Mortgage — Sale for arrears of rent — Purchase of property by landlord—Extinguishment of equity of redemption — Mortgagee obtains settlement of land from purchaser — Suit by mortgagor for redemption — No fraud or collusion between mortgagee and landlord in making default in paying rent decree and taking settlement—Right of redemptions did not revive — Section 90, Trusts Act did not apply — Mortgagee could not be said to have obtained advantage in derogation of the rights of mortgagors by taking advantage of his position as mortgagee —(T. P Act (1882), S. 60). AIR 1939 Pat 382, Rel. on; AIR 1952 Pat 286; AIR 1951 Pat 566 and AIR 1954 S C 336, Disting. 1957 B L J R 158 : AIR 1957 Pat 497 (497) (Pr 2) (DB).

——S. 90 — Purchase by mortgagee.

(Ramaswami, J.) :—The mortgagee clearly stands in a position of fiduciary relationship and he cannot avail himself of his position as such to gain advantage in derogation of the rights of the mortgagor; and if the mortgagee obtains a money decree against the mortgagor and purchases the equity of redemption in execution sale, the mortgagee must under the express provision of S. 90 hold the advantage so gained for the benefit of the mortgagor. It is not necessary for the application of the equitable principle that the mortgagor should sue for setting aside the money decree or the sale. His suit for redemption is in effect "to confess and avoid that sale, by imposing a trust on the estate which passed under it". It is not necessary therefore that the decree or sale should be set aside in order to grant to the mortgagor a decree for redemption. In the eye of law the sale certificate which mortgagees have obtained would enure to the benefit of the mortgagor and the property would be stamped with a trust in favour of the mortgagor. AIR 1955 Pat 66 (75) (Pt E) (Pr 33) (DB).

8. Lease—Renewal.

●——Ss. 90, 88 — Partners — Renewal of lease by one partner — No presumption of law that it necessarily enures for the benefit of all the partners. There is a presumption of fact that there is an equity in favour of the renewal of the lease enuring for the benefit of all partners. But such a presumption being one of fact is rebuttable, and must, therefore, depend upon the facts and circumstances of each case — AIR 1949 Mad 860, Reversed. See Trusts Act (2 of 1882), S. 88. AIR 1959 S C 190.

9. Other illustrative cases.

——Ss. 90 and 95 — T. P. Act (1882) S. 76 (g) — Mortgagee in possession —He holds fiduciary character — Duty to keep accounts pointed out — He is liable for waste. See T. P. Act (1882), S. 76 (g) AIR 1955 Cal 569 (DB).

——S. 90 — Vindhya Pradesh Gram Panchayat Ordinance — Clauses 15, 16 — Collection by Sarpanch at private initiative for specific purpose — Collections not deposited in Panchayat fund—Sarpanch is trustee for amount. See Panchayats—Vindhya Pradesh Gram Panchayat Ordinance (24 of 1949), Cl. 15. AIR 1959 Madh Pra 407 (DB).

——Ss. 90 and 94 — Suit for partition of Hidu joint family business — Defendant appointed receiver of business pendente lite — Defendant purporting to convert family business into personal business without leave of Court — Later on business purchased by defendant in his own right — Right of coparceners to obtain accounting could be founded on S. 90 and S 94 might also apply — Defendant was accountable up to date of his purchase.

In a suit for partition of a Hindu joint family business, the defendant was by the order of the Court, virtually appointed as a receiver of the family business pedente lite. However, the defendant on 4th July, 1954 purported to close the family business and declared his intention to run it on his own account on and from 10th July, 1954, without the leave of the Court. The parties then agreed that the best way out of the difficulty would be to sell the entire business. The sale was held on 5th November, 1954 on which date the defendant became the purchaser of the business in his own right. The suit was ultimately dismissed for default. In a subsequent suit by the plaintiff for accounts :

Held, that the date up to which the defendant was accountable was not 9th July, 1954 but 5th November, 1954. Up to 5th November, 1954, at least the rights of the other coparceners to obtain strict accounting with regard to the business could be founded upon the explicit terms of S. 90 and even upon the terms of the latter part of that section and the principles of S. 94 might also conceivably apply. The defendant could not unilaterally, without first releasing himself from his obligation to the Court by an order of the Court, terminate his responsibility and convert the joint family business into a personal business. Before the benefit of S. 90 can be demanded it must be shown that the party against whom relief is sought availed himself of his fiduciary position, gained an advantage, by so doing, and that the advantage was gained in derogation of the rights of the person interested in the property. Since the defendant had the benefit of an order virtually constituting him Receiver of Court, he was really continuing, the business, at least up to the date when he became the purchaser in his own right, in derogation of the other parties pendente lite, who presumably could equally have laid claims to the conduct of the business. Hence the principles of S. 90 will apply. **(1964) 1 Mad L J 103 : 1964 Mad W N 107 : AIR 1964 Mad 205 (208) (Pt A) (Prs 8, 11) (DB).**

——S. 90 — Benami purchase by usufructuary mortgagor at revenue sale brought about by his own default — Effect of on right to redeem. See T. P. Act (1882), S. 60. AIR 1954 Mys 187.

——S. 90 — Part owner of mortgagee rights recovering full amount of mortgage money — Principle of S. 90 applies.

An assignee of mortgagee rights for Rs. 1,400 executed a gift deed in favour of the plaintiff, her daughter to the extent of Rs. 1,000 keeping to herself the remaining interest over the mortgage. She then executed hypothecation bonds for Rs. 1,400 in favour of the defendant. After losing the property to one who had a superior title, the defendant brought a suit against the mortgagor and recovered the full amount of mortgage-money. At the time of this suit he was aware that his hypothecation was subject to the rights of the plaintiff. In a suit brought by the plaintiff to recover her Rs. 1,000 under the gift ;

Held that the plaintiff had every equity in her favour, that the principle of S. 90, Trusts Act applied and that as the defendant had been enriched at the expense of the plaintiff he should make restitution to the plaintiff. 41 Mad 923, Dist. **A I R 1952 Trav-Co 515 (516, 517) (Prs 4, 5) (DB).**

SECTION 91

——S. 91 — Specific Relief Act, S. 27 (b) — Sale and reconveyance deeds—Pre-emption of property—Right to pre-empt arises in the sale deed itself—Suit by vendor against vendee and pre-emptor for specific performance of reconveyance -S. 27, Specific Relief Act, does not apply—Vendor has no right to claim specific performance against pre-emptor — Pre-emptor not trustee within Trusts Act (1882), S. 91 — Pre-emption. See Specific Relief Act (1877), S. 27 (b). **A I R 1951 All 563.**

——S. 91 — Benefit of obligation arising out of contract can be enforced against transferee with notice. See T. P. Act (1882), S. 40. **A I R 1958 Bom 194.**

——S. 91—Specific Relief Act, S. 27 (b) — Transferee without notice—Prior and subsequent buyer—Subsequent buyer making payment of purchase-money in good faith without notice — He is protected by S. 27 (b) — Notice by prior buyer after execution by subsequent buyer of kobala but before its registration does not affect his protection. See Specific Relief Act (1877), S. 27 (b). **A I R 1962 Cal 40 (DB).**

——S. 91 — Sale with agreement of reconveyance — Rights and objection of transferee from vendee with notice of agreement—Right of pre-emptor with notice —Pre-emptor with notice of agreement of reconveyance cannot resist its enforcement by vendor. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 26-F. **A I R 1955 Cal 21 (DB).**

——S. 91 — Non-obstante clause — Scope—Does not affect S. 19 of Trusts Act. See Tenancy Laws — Kerala Agrarian Relations Act (4 of 1961), S. 6. **1961 Ker L J 705.**

——S. 91 — Part performance — Pleadings—Tenant purchasing house by agreement with landlord but continuing occupation as tenant — Purchase of house by plaintiff with prior knowledge of purchase by tenant — Suit for specific performance by tenant against plaintiff and landlord — Ejectment suit by plaintiff during pendency of tenant's suit — Plea of part performance by tenant not permissible — S. 91, Trusts Act, can be pleaded only if tenant succeeds in suit for specific performance—Plaintiff not in possession as trustee till then. See Transfer of Property Act (1882), S. 53-A. **A I R 1961 Madh Pra 237.**

——S. 91—The provision does not affect the principle of S. 22, Limitation Act. See Limitation Act (1908), S. 22. **A I R 1964 Mad 386.**

——S. 91 — Scope and effect of—Title of subsequent purchaser with notice of the prior agreement to sell it in favour of another is subject to the obligations under S. 91 of the Trusts Act. See T. P. Act (1882), S. 54. **A I R 1953 Mad 409.**

——S. 91 — Constructive trust — G owner of land — under a contract with N, N was to spend money for constructing a building on the plot and G agreed to give it in the possession of B (N's wife) and allow her to receive the rent till the amount spent by N was fully repaid — G selling the property to defendants 2

and 3 who claimed rent from the tenants of the building—Suit by B against G and defendants 2 and 3 —Held under the circumstances G held the property as a constructive trustee for the benefit of B and defendants 2 and 3 who stepped into the shoes of G they should also hold the property as trustees—B was entitled to receive the rent till the whole amount was repaid. A I R 1955 N U C (Manipur) 4337.

——S. 91 - T. P. Act (1882), S. 14 — Applicability— Special contract for pre-emption — Nature of — Rule of perpetuities held not offended—Specific Relief Act S. 27 or S. 91, Trusts Act do not take the contract to buy or sell land out of category of personal contracts and make those contracts binding on the land. See T. P. Act (1882), S. 14. A I R 1956 Nag 243 (DB).

——S. 91 — Defendant 2 agreeing to sell property to defendant 1 on 1-9-1943 but selling to plaintiff on 24-3-44—Plaintiff having notice of the agreement in defendant 1's favour — Suit by defendant 1 against defendant 2 for specific performance of agreement in his favour — Decree by compromise and defendant 2 executing sale deed in favour of defendant 1—Plaintiff suing defendants 1 and 2 for possession on the strength of sale deed of 24-3-1944 — Defendant 1 not aware of sale in plaintiff's favour — Defendant could resist plaintiff's claim on the ground that plaintiff had no notice of the prior agreement in his favour. ('52) 1952 Nag L J(Notes) 69.

——S. 91—Contract of sale—Sale cannot be completed for want of permission of third party—Third party not amenable to jurisdiction of Court — Remedy of party aggrieved — S. 52, T. P. Act or S. 91, Trust Act does not apply. See Specific Relief Act (1877), S. 19. A I R 1964 Orissa 176 (DB).

——S. 91 — "To the extent necessary to give effect to the contract"—Bar of remedy — Case on facts - S. 91 cannot help when the remedy by specific performance is barred. AIR 1955 N U C (Pat) 1596 (DB).

SECTION 92

——S. 92—Trustee—Powers of—He cannot deal with trust property for his personal advantages — One co-trustee cannot sue other for accounts except where latter misappropriates trust funds. See Hindu law—Religious endowments. AIR 1964 Ker 204.

SECTION 93

——Ss. 93 and 68 — Succession Act, Ss. 323, 360 and 307 (1)—Insufficiency of assets of deceased to satisfy all creditors in full—Right of creditors under S. 323—Non-rateable payment to some creditors by administrator — Right of unsatisfied or disatisfied creditors against administrator and other creditors who have received in excess of their reteable proportion — See Succession Act (1925), S. 323. A I R 1951 Mad 296 (DB).

SECTION 94

SYNOPSIS

(Trusts Act (1882), S. 94.)

1. "Person in possession not having the whole beneficiary interest."
2. "For the benefit of persons having interest."
3. "Property to the extent necessary to satisfy just demands."
4. Liability to pay interest.

1. "Person in possession not having the whole beneficiary interest."

——S. 94—Companies Act (1913), S. 105-C—Transferor of shares has no duty to acquire further shares for transferee — (A I R 1950 Bom 76, Reversed). See Companies Act (1913), S. 105-C. A I R 1953 S C 385.

——S. 94—Dissolution of partnership — Some stocks mixed up with goods of one of partners — Mode of accounting — The goods of dissolved partnership must be held under fiduciary relationship—The property and the profits derived therefrom must be available for distribution among the partners of the dissolved firm. See Partnership Act (9 of 1932), S. 48. AIR 1952 All 330 (DB).

——S. 94 — Applicability — Constructive trust—K, a Mohamedan carrying on business in partnership with others—K dying—Dissolution of partnership in absence of contract to contrary — Business carried on by K's sons with others — Suit by plaintiff claiming through daughter of K for dissolution of partnership and accounts—Plaintiff's claim could not be sustained on the basis of S. 37, Partnership Act — The plaintiffs being Mohamedans could not claim the business either as a family asset or on any principles of constructive trust. See Partnership Act (1932), S. 37. AIR 1958 Andh Pra 48 (DB).

——Ss. 94, 95 and 90 — Tenants-in-common—Partition of joint family property — One member left in enjoyment of entire property without any agreement in that behalf — Separate account of income received out of share of other members not maintained—Subsequent acquisitions by member in possession cannot be regarded as acquired for family — Member not a trustee for other co-sharer members and S. 90, Trusts Act does not apply. AIR 1960 Bom 159 (DB).

——Ss. 94, 80 and 88—Penal Code (1860), Ss. 405, 408 and 403—Criminal breach of trust by partner — S. 405, I. P. C. applies — The view that a partner cannot be entrusted with partnership property or domain over it runs counter to the provisions of S. 80 read with S. 94, Trusts Act, Section 80 of Trusts Act which although does not apply directly to partnership assets indicates that a 'partner is bound in a fiduciary character to protect the interests of another person. AIR 1951 Cal 69 (FB) and AIR 1950 Nag 99, Dissented from. See Penal Code (1860), S. 405. 1959 Cri L J 1302 : AIR 1959 Bom 486 (DB).

——S. 94 — Insurable interest — What is — Carriers — Consignment of goods insured against road risk — Insurance charges added in expenses in consignment notes — What is insured is interest of carriers on account of themselves for the benefit of bailor of goods — Carrier is a trustee for the owner and owner is the beneficiary — Goods lost in the transit — Bailor's suit on non-delivery of goods against carrier and Insurance Company is maintainable. A I R 1964 Cal 209.

——S. 94 — Companies Act (1913), S. 86F—Contract by managing director without consent of directors with other private company of which he is member—Contract is not void — Managing director is not liable to make restitution—See Companies Act (1913), S. 86F. AIR 1959 Cal 715.

——S. 94—Contract Act (1872), Ss. 65, 187 — Bihar Land Reforms Act (30 of 1950), S. 3 — Notification under in respect of A's estate in Bihar — Possession not taken over immediately — Grant of lease by A to B during interval to collect biri leaves from jungles in estate — Premium paid by B again to State of Bihar on demand — Suit by B for recovery of premium paid twice against A and State of Bihar—State of Bihar not estopped from denying A's title—S. 65, Contract Act, attracted to A's liability — Possession of A before it was taken over by Government not that of agent or constructive trustee — Applicability of S. 27, Sale of Goods Act and S 41, T. P. Act not applicable — 7 B R 624 : AIR 1941 Pat 510: 193 Ind Cas 851, Overruled. See Contract Act (1872), S. 65. AIR 1962 Pat 140 (DB).

[Reversed in AIR 1968 S C 90].

2. "For the benefit of persons having beneficiary interest."

——S. 94 — T. P. Act (1882), S. 122—Gift for specific purpose—Purpose failing—Donor is entitled to refund of the amount. See T. P. Act (1882), S. 122. AIR 1961 All 418.

——Ss. 94 and 88 — Persons bound in a fiduciary capacity — Licensees appointed under Madras Food Procurement Order — That a fiduciary relationship had been established between the licensees and the Government. The profits and advantages gained by the millers as licencers would go to the benefit of the Government—Madras Food Procurement Order, 1946) —(Contract Act (1872), Ss. 69 and 70)—(Constitution of India, Art. 265. See Trusts Act (2 of 1882), S. 88. AIR 1959 Andh Pra 352 (DB).

——S. 94—Banker and Customer—Bills entrusted for collection—Nature of relationsphip between—Winding-up of bank the amount collected became ordinary assets of the bank and not impressed with any trust—Customer's right to rank as preferential creditor cannot succeed. See Companies Act (1956), S. 530. AIR 1958 Bom 100 (DB).

[Reversed in AIR 1965 S C 1773].

——S. 94 — Executors and Trustees — Powers of — Under the will executors appointed trustees also — It is only after administration of estate is complete that they function as trustees simpliciter. AIR 1961 Cal 411 (415, 416) (Pt C) (Pr 13).

——Ss. 94,63, 66 — Companies Act (1913), S. 529 — Winding up — Preferential payment — Company obtaining property by fraud — Part of property so obtained pledged and the rest sold — Company becomes constructive trustee with respect to the proceeds — Owner of goods entitled to preferential payment to the extent of the proceeds. See Companies Act (1956), S. 529. AIR 1964 Ker 135 (DB).

——S. 94 — Travancore Chitties Act (26 of 1120), Ss. 17 (1), 19 (2) — Deposits under — Nature of — Foreman depositing money to bank — Bank's undertaking to repay only with chitty Registrar's consent—Bank does not become trustee. See Travancore Chitties Act (26 of 1120), S. 17 (1). 1963 Ker L T 611.

——S. 94 — Composition deed — Some of properties earmarked for payment of debts being immovable properties — Deed not registered — S. 94, held is attracted — Debtor holds property for benefit of creditors. See Trusts Act (1882), S. 4. AIR 1963 Madh Pra 51 (DB).

——S. 94 — Suit for partition of Hindu joint family business — Defendant appointed receiver of business pendente lite—Defendant purporting to convert family business into personal business without leave of Court — Later on business purchased by defendant in his own right — Right of Co-parceners to obtain accounting could be founded on S. 90 and S. 94 might also apply — Defendant was accountable upto date of his purchase. See Trusts Act (1882), S. 90. (1964) 1 M L J 103 : AIR 1964 Mad 205 (DB).

——S. 94 — Joint account in the name of A and B — —Money supplied only by A — There is a resulting trust in favour of A in the absence of proof to the contrary. AIR 1955 N U C (Mad) 3179.

——S. 94—Evidence rebutting presumption of a resulting trust is admissible — Affidavit of bank agent stating that A had consulted him for giving the funds to B after her death was admitted in evidence. See Evidence Act (1872), S. 9. A I R 1955 N U C (Mad) 3179.

——Ss. 94, 5 to 8 and 88—Employer crediting bonus and dearness allowance in favour of employee—Employer taking benefit in income-tax — Employer is trustee for the amount. See Trusts Act (2 of 1882), S. 5. AIR 1953 Mad 16.

——S. 94 — Constructive trust— G owner of land— Agreement between G and N that N should spend money for the construction of the building on the land — The building to be given in possession of B (N's wife) to sub-let and receive rent till the amount spent by N was repaid — Held G and those who stepped in the shoes of G were constructive trustees for B and could not affect the right of B to recover rent till the amount got repaid. See Civil P. C. (1908), O. 1, R. 1. AIR 1955 N U C (Manipur) 4337.

3. "Property to the extent necessary to satisfy just demands."

● ——S. 94 — Companies Act (1913), S. 34 and Table A, Reg. 18 — Transfer of shares—Relationship of trustee and cestui que trust is established between transferor and transferee and the transferor holds the shares for the benefit of the transferee to the extent necessary to satisfy the demands of S. 94, Trusts Act. See also Companies Act (1913), S. 34. AIR 1953 S C 385.

● ——S. 94—"To satisfy just demands."

A requisition made on the trustee by some disclosed and other undisclosed beneficiaries cannot be regarded as a proper direction to him, which he could be called upon to obey. If the directions given to the trustee are of an inconclusive nature, and are in law ineffective, then the trustee cannot be mulcted in damages for not obeying them even if his attitude towards the beneficiary is not what it should have been. AIR 1950 Bom 76, Reversed. R. v. Bombay Life Assurance Co., Ltd. (1953) S C J 548 ; 56 Bom L R 50 : (1954) 24 Com Cas 1 ; 1954 S C R 117 ; 1954 S C A 1039 ; (1953) 2 M L J 259 ; AIR 1953 S C 385 (393) (Pt F) (Prs 24, 26).

——S. 94 — Extent of liability — Sale of mortgaged property by mortgagor—No obligations on the vendee to pay off the mortgage debt — Stipulations in the deed that certain sum of money left in the hands of the vendees so that they may pay off the mortgege debt — Suit by mortgagee against vendee — Held vendee held the money as an agent of the mortgagor and not as a trustee—Assuming him to be trustee no rights superior to the rights available against the vendor could be enforced against the trustee. See T. P. Act (1882), S. 65. AIR 1954 All 348.

——S. 94 — Purchase of property benami with stolen money—Trust is created—Subsequent transferee with notice of trust — Liable to resotore property. See Trusts Act (1882), S. 63. ILR 1958 Ker 39.

4. Liability to pay interest.

——S. 94—Scope — Suit to recover sums deposited with State for securing liquor contracts — No agreement to pay interest — Interest claimed on ground of wrongful detention could not be allowed — It cannot be claimed on ground of constructive trust. See Civil P. C. (1908), S. 34. AIR 1957 Madh B 50 (DB).

SECTION 95

——Ss. 95, 90—T. P. Act (1882), S. 76 (g)—Mortgagee in possession — He holds fiduciary character — Duty to keep accounts pointed out—He is liable for waste. See T. P. Act (1882), S. 76 (g). AIR 1955 Cal 569 (DB).

——S. 95 — Constructive trustee — Acquisition of advantage dependent upon one person holding position jointly with others — Position entirely under control of person deriving benefit — Such person to that extent may be subject to disabilities of a constructive trustee — He cannot derive any benefit by reason of his position as trustee — Presumption is irrebutable. AIR 1955 N U C (Madh B) 2091 (DB).

——S. 95—Disabilities of the trustee. See Trusts Act (1882), S. 14. AIR 1955 N U C (Nag) 952.

—S. 95—Orissa Tenancy Act — S. 225— Mortgagee in possession under S. 225 — Such a mortgagee holds the position of a quasi trustee as against the tenant under S. 90 read with S. 95 of the Trusts Act. See Tenancy Laws — Orissa Tenancy Act (2 of 1913), S. 225. AIR 1951 Orissa 300 (DB).

—S. 95—"Trustee" referred to in S. 185, Companies Act means express trustee and not constructive trustee. See Companies Act (1913), S. 185. AIR 1953 Pat 390 (DB).

SECTION 96

—S. 96—Scope— If controlled by T. P. Act (1882), S. 59-A.

Section 96 of the Trusts Act is controlled by and should be read subject to S. 59-A of the Transfer of Property Act. Section 96 would not protect a person, if the right, which he has acquired, is hit by or is an evasion of any law for the time being in force. Section 96 would be of no avail to such a person. AIR 1916 Mad 350; 24 M L J 592, Rel. on 1956 Pat L R 36 : AIR 1957 Pat 136 (138) (Pt D) (Pr 11).

TURN OF WORSHIP

Suit in respect of
See Civil P. C. (1908), S. 9.

TURNOVER

See Sales Tax — Central Sales Tax Act (1956), S. 2 (j).

UBERRIMA FIDES DOCTRINE OF

See Words and Phrases—"Uberrima fides."

UDAIPUR STATE MAUFI RULES (1946)

RULE 4

—Rr. 4 and 22—Grant to Mosque — Alienation by mutavallies — Validity — Subsequent acquisition of land by State and substitution of cash grant — Right of alienee to question—Legality—(Civil P. C. (1908), S. 20.

On finding that the Mutawallies of certain Mosque had mortgaged the muafi land granted to the mosque, the State Government declared the alienation illegal, restored the land to the mosque and resumed the excess portion of land in possession of the alienee. As regards the land restored to the Mosque, the State (i. e. the former State of Udaipur) passed an order of acquisition of the muafi land and granted an annual cash grant as compensation. The mortgagee sued the State for declaration that the order of the State acquiring the land was illegal and for injunction.

Held, that in view of Rr. 4 and 22 of the Muafi rules which were in force in the former State of Udaipur alienation of Devasthani Muafi had been borbideen at all times and in any shape or manner whatsoever and, it was open to the State to hold it to be illegal and restore the muafi to the Devasthan concerned. The order of resumption was therefore in no way illegal. (2) that the second part of the order acquiring the land and paying cash compensation to the mosque pertained rightly and properly to the Mosque who could question it but it was not open to the mortgagee to question the order of acquisition by by suit. It being a matter between the State and the Mosque, the suit was not well founded and could not succeed. 1958 Raj L W 90: ILR (1958) 8 Raj 226.

RULE 22

—R. 22—Grant of land to mosque — Alienation by muttavallies — Validity — Subsequent acquisition of land by State and substitution of cash grants is in no way illegal. Alienee has no right to question the legality of the order. See Udaipur State Muafi Rules (1946), R. 4. 1958 Raj L W 90 : ILR (1958) 8 Raj 226.

ULTRA VIRES

Statutes
See (1) Government of India Act (1935), S. 100.
(2) Constitution of India, Preamble, Arts. 245, 246, 250-254.
(3) Interpretation of Statutes.
(4) Civil P. C. (1908), Preamble.

UMPIRE

See Arbitration Act (1940), Ss. 8, 10 and 11.

Appointment of in arbitration.
See Arbitration Act (1940), Ss. 8, 10.

UNAUTHORISED TELEGRAPH

See Telegraph Act (1885), S. 20.

UNBORN PERSON

Transfer for benefit of.
See T. P. Act (1882), S. 13.

UNCERTAINTY IN CONTRACT

See Contract Act (1872), S. 29.

UNCLAIMED PROPERTY

Police to take charge of.
See Police Act (5 of 1861), S. 25.

UNCONSCIONABLE BARGAIN

See Contract Act (1872), S. 16.

UNDERVALUATION OF COURT-FEES

See Court-fees Act (1870), Ss. 7 (iv), 12.

Time to pay deficit.
See Court-fees Act (1870), S. 10.

UNDISCHARGED INSOLVENT OBTAINING CREDIT

See Provincial Insolvency Act (1920), S. 72.

UNDISCLOSED PRINCIPAL

See Contract Act (1872), S. 230.

UNDIVIDED INDIA

Defined.
See Citizenship Act (1955), S. 2.

UNDUE INFLUENCE

For statutory cross references see also under (i) "Contract" and (ii) "Succession—Will."

Contract induced by.
See Contract Act (1872), Ss. 14, 16, 18, 24 and 74.

Corrupt practice in election.
See Representation of the People Act (1951), S. 123.

Execution of will.
See Succession Act (1925), S. 61.

Elections, in.
See Penal Code (1860), S. 171C.

Plea of.
See Civil P. C. (1908), O. 6, R. 4.

UNDUE PREFERENCE

See (1) Presidency Towns Insolvency Act (1909) S. 56.
(2) Provincial Insolvency Act (1920), S. 54.
(3) T. P. Act (1882), S. 53.

UNION OF INDIA

For Statutory cross references see under "Constitution of India" — "Union of India."

UNION PUBLIC SERVICE COMMISSION

For Statutory cross references see under "Constitu. of India" — "Services."

UNION PUBLIC SERVICE COMMISSION (CONSULTATION) REGULATIONS

REGN. 5

——Regn. 5 (2) — Order of dismissal of Civil Servant passed by President under Art. 310 read with Art. 311 (2), Proviso (c) — Consultation with Public Service Commission — Necessity — Article 320 (3) (c) will not govern such case — 1957 Nag L J 201, Dist. — (Constitution of India, Art. 320 (3) (c). **1958 Nag L J 50 : 60 Bom L R 241 : ILR (1958) Bom 514 : AIR 1958 Bom 283 (289. 290) (Pt D) (Pr 28) (DB).**

UNION SERVANTS

Dismissal of.

See (1) Constitution of India, Art. 311.
(2) Government of India Act, S. 240.

UNION TERRITORIES (LAWS) ACT (30 of 1950)

SECTION 2

● ——S. 2 — C. P. and Berar Sales Tax Act—Extended to Vindhya Pradesh — Validity — Part C States (Laws) Act (1950), S. 2 — Notification under No. S. R. O. 6 D/- 29-12-1950 extending C. P. Act 21 of 1947 to V. P. with modifications — Central Government Notification No. 52 ECON — Effect of — Government of Part C States Act (49 of 1951), Ss. 21, 22 — Part C States (Miscellaneous Laws) Repealing Act (66 of 1951) — Vindhya Pradesh Laws Validating Act (6 of 1952). S. 7 — Vindhya Pradesh Sales Tax Ordinance (2 of 1949), See Sales Tax — C. P. and Berar Sales Tax Act (21 of 1947), S. 2. **AIR 1962 S C 981.**

UNITED KHASI JAINTIA HILLS AUTONOMOUS DISTRICT (APPOINTMENT AND SUCCESSION OF CHIEFS AND HEADMEN) ACT (1959)

SECTION 1

——S. 1 — Nature of the Act — Codifies customary law — Application of principles of provisions to pending proceeding — Not incorrect — Interference under Art. 226, where necessary. **I L R (1963) 15 Assam 366 : A I R 1963 Assam 186 (188) (Pt C) (Pr 7) (DB).**

SECTION 5

——S. 5 — Who may apply — Person deprived of his right to be nominated for Siemship — Such person is 'Party concerned' and can apply. See Constitution of India, Art. 226. **AIR 1965 Assam 83 (DB).**

——S. 5 — Reference under, when can be made — Words 'relating to or connected with,' 'election,' 'party' — Meanings of. AIR 1952 S C 64, Rel. on. **ILR (1964) 16 Assam 558 : AIR 1965 Assam 83 (85) (Pt B) (Pr 6) (DB).**

——S. 5 — 'Publication' — Meaning of — Mere knowledge of person about the result of election is not sufficient. **ILR (1964) 16 Assam 558: AIR 1965 Assam 83 (85, 86) (Pt C) (Pr 7) (DB).**

SECTION 6

——S. 6 (b), Proviso 2 — Removal from office — Opportunity of being heard not given — Removal deserves to be set aside.

Where the Executive Committee is tentatively of the opinion that the Siem should be removed from the office because he has lost the confidence of the majority of his electors or the people of his Elaka, he can be removed only after being heard in due compliance with the principle of natural justice. When there is no such opportunity afforded to the petitioner before the order of his removal, the order of his removal deserves to be quashed. **ILR (1962) 14 Assam 139.**

UNITED KHASI AND JAINTIA HILLS AUTONOMOUS DISTRICT MANAGEMENT AND CONTROL OF MARKETS ACT (5 of 1953)

PREAMBLE

——Preamble — Villagers holding market on land belonging to Government — Permissive user — District Council taking over management of market and right to collect tolls under Act — No infringement of fundamental rights under Art. 19 (1) (g), or Art. 19 (1) (f) See Constitution of India, Art. 19 (1) (g). ILR (1960) 12 Assam 26.

——Preamble — Competency of District Council to pass Act — (Constitution of India, Sch. VI, Paras. 3 and 8.

In exercise of its legislative functions the District Council has authority to enact the law in regard to management and control of markets. The District Council could therefore pass the Act by virtue of the powers vested in it under Paras. 3 and 8 of the Sixth Schedule of the Constitution. **ILR (1956) 8 Assam 511 : AIR 1956 Assam 162 (163) (Pt A) (Pr 3) (DB).**

SECTION 5

——Ss. 5, 8, 7—District Council held had power to enact United Khasi-Jaintia Hills Autonomous District (Management and Control of Markets) Act. See Constitution of India, Sch. VI, Para. 3. ILR (1960) 12 Assam 26.

——Ss. 5 and 9 (a) —Rules not prescribed under S. 9 (a)—Executive Member of District Council—Power to interfere with management of markets—S. 9 clearly provides that the markets shall be managed by the Siems and their Durbars subject to Control of District Council according to their rules prescribed—Rules not having been prescribed, there is no warrant in law for arbitrary interference by the Executive Member of the District Council. ILR (1956) 8 Assam 511 : AIR 1956 Assam 162 (163) (Pt B) (Pr 3) (DB).

SECTION 7

——Ss. 7, 8 and 5—District Council held had power to enact United Khasi-Jaintia Hills Autonomous District (Management and Control of Markets) Act. See Constitution of India, Sch. 6, Para 3. ILR (1960) 12 Assam 26.

SECTION 8

——Ss. 8, 5 and 7 —District Council held had power to enact United Khasi-Jaintia Hills Autonomous District (Management and Control of Markets) Act. See Constitution of India, Sch. 6, Para 3. ILR (1960) 12 Assam 26.

SECTION 9

——S. 9 — Rules not prescribed under S. 9 (a)—Executive Member of District Council — Has no power to interfere with management of markets. See United Khasi-Jaintia Hills Autonomous District (Management and Control of Markets) Act (5 of 1953), S. 5. AIR 1956 Assam 162 (DB).

——S. 9—Order by Executive Member affecting petitioner's right to sell his commodities on land—Opportunity to be heard should be given — (Constitution of India, Arts. 32 and 226). ILR (1956) 8 Assam 511 : AIR 1956 Assam 162 (164) (Pt C) (Pr 4) (DB).

UNITED KHASI AND JAINTIA HILLS AUTONOMOUS DISTRICT (ADMINISTRATION OF JUSTICE) RULES (1953)

CLAUSE 43

——Cl. 43—Neither S. 197, Criminal P. C. nor its spirit applies to Khasi and Jaintia Hills District. See

Criminal P.C. (1898), S. 197, 1957 Cri L J 832 : AIR 1957 Assam 125 (DB).

RULE 5

—R. 5 (2) (b)—Pator not elected to village Court—Position of. ILR (1957) 9 Assam 164,

RULE 18

—Rr. 18, 21, 32 — Subordinate District Council Court not competent to try offences under S. 147, I.P. Code, under R. 21—District Council Court cannot under R. 32 (2) transfer to itself any case which the Subordinate District Council Court had no jurisdiction to try—District Council Court cannot transfer to itself a case under S. 147, I. P. Code from the Subordinate District Council Court and try it himself—Offence under S. 342, I. P. Code is however triable by Subordinate District Council Court by virtue of R. 18 and such case can be transferred to itself under R. 32 by the District Council Court—Accused jointly tried for offences under Ss. 147 and 342, before Subordinate District Council Court transferring case under R. 32 to itself and trying the same — Accused held prejudiced—Conviction quashed—Case held not fit to be ordered to be retried. 1965 (2) Cr L J 72 : ILR (1964) 16 Assam 375 : A I R 1965 Assam 51 (51, 52) (Prs 3, 4) (DB).

RULE 21

—R. 21 — Subordinate District Council Court not competent to try offences under S. 147, I. P. Code under R. 21 -District Council Court cannot under R. 32 (2) transfer to itself any case which the Subordinate District Council Court had no jurisdiction to try—District Council Court cannot transfer to itself a case under S. 147, I. P. Code from the Subordinate District Council Court and try it himself—Offence under S. 342, I. P. Code is however triable by Subordinate District Council Court by virtue of R. 18 and such case can be transferred to itself under R. 32 by the District Council Court—Accused jointly tried for offences under Ss. 147 and 342, before Subordinate District Council Court transferring case under R. 32 to itself and trying the same — Accused held prejudiced — Conviction quashed — Case held not fit to be ordered to be retried. See United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules (1953), R. 18. 1965 (2) Cri L J 72 : AIR 1965 Assam 51 (DB).

RULE 22

—R. 22—Who can take action under S. 145, Criminal P. C.—In view of R. 22, the Assistant to Deputy Commissioner has power to take action similar to one contemplated under S. 145, Criminal P. C. See Criminal P. C. (1898), S. 145, 1963 (1) Cri L J 565 : AIR 1963 Assam 38.

—R. 22—Rule is valid provision—Deputy Commissioner has power under the Rule to try disputes of nature contemplated by S. 145. Criminal P. C.—Constitution of India, Art. 372 and Sch. 6, Paragraph 4. ILR (1962) 14 Assam 244 : 1963 (1) Cr L J 417 : AIR 1963 Assam 31 (36) (Pt B) (Prs 13, 14) (DB).

RULE 32

—R. 32—Subordinate District Council Court not competent to try offences under S. 147, I. P. Code, under R. 21—District Council Court cannot under R. 32 (2) transfer to itself any case which the Subordinate District Council Court had no jurisdiction to try — District Council Court cannot transfer to itself a case under S. 147, I. P. Code from the Subordinate District Council Court and try it himself—Offence under S. 342, I. P. Code is however triable by Subordinate District Council Court by virtue of R. 18 and such case can be transferred to itself under R. 32 by the District Council Court—Accused jointly tried for offences under Ss. 147 and 342, before Subordinate District Council Court transferring case under R. 32 to itself and trying the same — Accused held prejudiced — Conviction quashed — Case held not fit to be ordered to be retried. See United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules (1953), R. 18. 1965 (2) Cri L J 72 : AIR 1965 Assam 51 (DB).

UNITED NATIONS

See Constitution of India, Art. 51.

UNITED STATE OF GWALIOR INDORE AND MALWA (MADHYA BHARAT) CIVIL COURTS ACT 43 of 1949)

See Madhya Bharat Civil Courts Act (43 of 1949).

UNITED STATE OF GWALIOR, INDORE AND MALWA (MADHYA BHARAT) GAMBLING ACT (51 of 1949).

See Madhya Bharat Gambling Act (51 of 1949).

UNITED STATE OF GWALIOR, INDORE AND MALWA (MADHYA BHARAT) HIGH COURT OF JUDICATURE ACT (8 of 1949)

SECTION 2

■ —S. 2 (b)—'Arising in the said States'.

The words 'arising in the said States' do not refer to proceeding arising in a Princely State These words can well be taken to refer to a proceeding arising in the areas of an erstwhile Princely State subsequently included in the United State. So understood an appeal from the decision of a single Judge of the Indore High Court to the Division Bench of the United State is a proceeding arising in the areas of the erstwhile Indore State after the inclusion of that State in the United State for it was filed after such inclusion. It is therefore clearly a proceeding of the second kind mentioned in S. 2 (b). Gulab Chand v. Kudilal, (1959) 1 S C A 162 : 1958 M P L J 632 : 1958 M P C 641 : 1958 Jab L J 485 : 1959 S C J 173 : 1959 S C R 313 : AIR 1958 S C 554 (557) (Pt A) (Pr 9).

■ —Ss. 2 (b) and 25 — Retrospective operation — Proceeding pending before Act came into force—(Interpretation of Statutes).

The rule is clear that provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Where the language of a statute plainly gives it a retrospective operation, the rule has no application. Section 25 does not contain any words to show that it was intended to have retrospective operation. It only provides for the future. It gives a new sight of appeal and such appeal can of course only be filed after the Act has come into force. But the language of S. 2 (b), applies S. 25 to a proceeding which was pending on a date before the Act came into force, and therefore gives a right of appeal from a judgment of a Divisional Bench passed in that proceeding whenever it may have been passed, that is to say irrespective of whether it was passed before the Act or after it. The necessary result of applying S. 25 to the proceedings mentioned in S. 2 (b) is to disturb vested rights and in order that a statute may have a retrospective operation it is not necessary to find words in it expressly stating that it will have such operation notwithstanding that will disturb vested rights : AIR 1951 Madh. B 1 (FB), Reversed. Gulab Chand v. Kudilal, (1959) 1 S C A 162 : 1958 M P L J 632 : 1958 M P C 641 : 1958 Jab L J 485 : 1969 S C J 173 : 1959 S C R 313 : AIR 1958 S C 554 (558, 559) (Pt B) (Prs 12 to 16).

—Ss. 2 (b), 23 — Retrospective effect — Civil P. C. (1908), Pre.

The right of appeal is governed by the law in force at the time of the institution of the suit. But this is subject to the limitation that the new statute does not alter the position either by express provision or by necessary implication. Gwalior was included in the United States on the 16th June 1948. Where a case was pending on that date and also pending on 18th January 1949 when the Madhya Bharat High Court of Judicature Act came into force, the Madhya Bharat High Court of Judicature Act applies to that case and the party is, therefore, entitled to claim benefit of S. 23, provided the essential conditions are satisfied. **AIR 1951 Madh.B 165 (168) (Pt B) (Pr 12).**

● **——Ss. 2 (b) and 25 — Applicability — Decision of Division Bench becoming final before the Act—Sections do not apply—No appeal lies to Full Bench.**

There is nothing in the language of S. 25 either in express words or by the necessary implication to compel a Court to hold that the section is to apply also to decisions which are final the date of the coming into force of the Act and thus have a retrospective operation affecting the vested rights of the parties This section read with S. 2 (b) of the Act does not lead to any definite conclusion one way or the other. The combined effect of these two sections is to state in general terms that a decision given by a Division Bench of the Madhya Bharat High Court of Indore State in the proceedings mentioned in S. 2 (b) is, subject to certain conditions appealable to a Full Bench. This is not an express provision making the decisions of a Division Bench final at the date when the Act came into force appealable. Nor is it the necessary implication of the two sections that such decisions are appealable : AIR 1950 M B 112 (FB), Affirmed; Case law discussed.

Per Kaul C. J. — Section 25 of the Act confers a right of special appeal which did not exist previously, but being a right of appeal it is a matter of substance and not one relating to mere procedure. This new provision would, on general principles not be applicable to proceedings which finished before the new Act came into force and the decisions made wherein had become final. Before S. 25 is applied to the case, it must be shown that the statute has made the intention of the Legislature in this behalf clear either by express words or by necessary implication. Section 25 does not say that it shall have retrospective operation so as to be applied to cases which were finally decided by the highest Court in which appeals pertaining to them could lie under then existing law. There is also nothing in S. 2 (b) to suggest that the Act or any section thereof was to have retrospective effect.

Moreover, general provisions in an enactment cannot be relied on to give it retrospective operation so as to take away vested rights. Gulabchand v. Kudilal, **ILR (1952) Madh Bha 15 : AIR 1951 Madh Bha 1 (9, 23, 24) (Pt C) (Prs 26, 27, 105 to 107) (FB).**

[Reversed in AIR 1958 S C 554.]

● **——S. 2 (b)—'Pending proceedings' — Meaning—Whether retrospective.**

Per Shinde J.—In order to give retrospective operation to a statute it is necessary that the statute should make an express provision or its language should convey a necessary and distinct implication to that effect. Examining the language of S. 2 (b) in the light of this canon there is no express provision in S. 2 (b) to the effect that proceedings pending on 16.6.1948, but determined before the Act came into force, are also to be included in the word "pending proceedings". The language of the section does not raise any such necessary and distinct implication either. The words "pending proceedings" therefore do not include cases which had been determined and had thus become final under the Ordinance before the Act came into force: 1905 A C 369; AIR 1949 All 225 (FB) and AIR 1927 P C 242, Referred. Gulabchand v. Kudilal. **I L R (1952) Madh-Bha 15 : A I R 1951 Madh.Bha 1 (12, 13) (Pt F) (Prs 42, 47) (FB).**

[Reversed in AIR 1958 S C 554]

● **——S. 2—Scope.**

Having regard to the scope and object of the Act, S. 2 does no more than define the jurisdiction of the High Court, Sub-s. (a) of this section defines the jurisdiction in relation to persons and territory, while sub-s. (b) defines the jurisdiction in relation to subject-matter. Gulabchand v. Kudilal, **I L R (1952) Madh-Bha 15 : A I R 1951 Madh.Bha 1 (8) (Pt H) (Pr 24) (FB).**

[Reversed in AIR 1958 S C 554.]

■ **——Ss. 2 (b) and 25—Sections if retrospective.**

There is no provision in the High Court Act which makes S. 25 retrospective so as to apply to judgment decrees, orders and sentences which are final at the date of coming into force of the Act and there is nothing in the wording of Ss. 2 (b) and 25 of the Act which would compel a Court to hold that they were intended to have such a retrospective effect. **1 Madh-B L R 229 : AIR 1950 Madh B 112 (116) (Pt A) (Pr 7) (FB).**

SECTION 6

● **——S. 6 — Existing and current law binding on Madhya Bharat High Court.**

The Indore High Court having ceased to exist, the Indore High Court Act, 1948, cannot be said to have survived — If the Indore High Court Act cannot be regarded as operative, it follows that it is not an existing or current law which the M. B. High Court is required to apply under S. 6, M. B. High Court Act, to Civil, Criminal and other proceedings. AIR 1953 Madh.B 209 (FB), Rel. on. : Case law referred. See United State of Gwaliar, Indore and Malwa (Madhya Bharat) High Court of Judicature Act (8 of 1949), S. 23. **ILR (1952) Madh-Bha 557 : AIR 1953 Madh.Bha 217 (FB).**

SECTION 23

——S. 23—Substantial question of law—Decision of single Judge in revision — Appeal — Maintainability. See Constitution of India, Art. 133. **AIR 1955 Madh Bha 66 (DB).**

——S. 23—Decision of single Judge not appealable at time of institution of suit—Right of appeal subsequently conferred if can be availed of.

A party's right of appeal within the High Court itself is founded on the provisions relating to the jurisdiction and powers of the High Court and not an extension of the vested right already existing. Hence though the appellants had at the time of the institution of the suit no right of appeal from the decision of a Single Bench of the High Court, the appellants could take advantage of the right of appeal subsequently conferred under S. 23 of the High Court Act.

Decision in Second Appeal No. 24 of 1950 (M B) (Indore—F B) held no longer good law in view of AIR 1953 S C 357 : 1953 2 MLJ 215 : 1953 SCJ 509. **Madh B L J 1954 H C R 1052 : M B L R 1954 (Civ) 195 : ILR (1955) M B 1 : AIR 1955 Madh Bha 28 (32) (Pt D) (Pr 9) (DB).**

——S. 23 — Execution proceedings — Order for appointment of interim receiver to collect rents during proceeding for certification — Order whether one passed under S. 47 or O. 40, R. 1 — Order if appealable under S. 23, M. B. High Court of Judicature Act. See Civil P. C. (1908), S. 2 (2). **AIR 1955 NUC (Madh B) 4316 (DB).**

——S. 23 (b) — Order of single Judge of High Court passed under S. 115, C. P. Code — Appeal under

S. 23 (b) is not competent. AIR 1955 NUC (Madh B) 3754 (DB).

—S. 23—Order of single Judge passed in revisional jurisdiction—No appeal lies. AIR 1955 NUC (Madh B) 3362.

—S. 23 (as amended in 1950) — Appeal presented after amendment — Certificate from single Judge is necessary. AIR 1955 NUC (Madh B) 3015 (DB).

—S. 23 — Suit mainly for declaration of share in partnership business and for taking of accounts — Relief of payment of profits as might be found due — Value exceeding Rs. 1,000 — Appeal — Jurisdiction. See Madhya Bharat High Courts Act (8 of 1949), S. 27. AIR 1955 NUC (Madh B) 2389 (DB).

—S. 23 —Scope —Single Judge —Order of, in revisional jurisdiction—Appeal is not maintainable. AIR 1955 NUC (Madh B) 2090 (DB).

—S. 23 — Certificate of fitness — Principles that should guide High Court in dealing with application under S. 23, stated — Letters Patent (Cal), Cl. 15. AIR 1955 NUC (Madh B) 1203.

—S. 23—Certificate of fitness—(C. P. Code (1908), S. 109).

The test for determining whether a case is a fit one under S. 23 of the Act, is to see whether the point involved is one of great public or private importance or is of such a nature that the decision thereon might result in a precedent governing numerous cases or whether there are any other exceptional circumstances justifying the grant of a certificate. The mere existence of a substantial question of law is not sufficient. A question of private importance means private importance to both the parties to the litigation and not merely to one of them. The construction of Holkar State Revenue Circular No. 13 of 1908, Cls. (3), (4) and (5), has been decided by a series of cases of Madhya Bharat High Court. Held, that this was certainly not a matter of public importance because it affected merely the parties of the case, and not a large body of persons or community, and there was no reason to grant a certificate. AIR 1941 All 9; AIR 1932 Bom 218; AIR 1934 Pat 466, Rel. on. Madh B L R 1954 Civ 89 : Madh B L J 1954 H C R 512 : AIR 1954 Madh Bha 150 (150, 151) (Prs 9, 10).

—S. 23 (a)—'District Judge'.

The expression 'District Judge' used in S. 23 (a) includes an 'Additional District Judge'. ILR (1953) Madh B 134 : AIR 1954 Madh Bha 42 (43) (Pt B) (Pr 8).

● —Ss. 23, 24, 37, 6 — Existing and current law binding on Madhya Bharat High Court.

Majority view : Madhya Bharat High Court is not a successor Court of the High Courts of the Covenanting States. It is a new Court and the powers and jurisdiction of the Court are those conferred under the Madhya Bharat High Court Ordinance No. 2 of 1948 and the Madhya Bharat High Court Act (8 of 1949), under which it has been established and is continuing.

The Indore High Court having ceased to exist, the Indore High Court Act, 1948, cannot be said to have survived. If the Indore High Court Act cannot be regarded as operative to-day, it follows that it is not an existing or current law which the Madhya Bharat High Court is required to apply under S. 6 of the Madhya Bharat High Court to civil, criminal and other proceedings. C. S. A. No. 354 of 1951, Uday Bhan v. Firm Shankar Lal, Relied on. Case law referred,

Per Khan J.—In ascertaining the jurisdiction of the Madhya Bharat High Court, it is not only S. 23 and S. 24 of the Madhya Bharat High Court of Judicature Act (which define its civil and criminal and appellate jurisdiction) that are to be looked at, but all the relevant sections of the Act have also to be considered. Thus S. 6 and S. 37 of the Act cannot be left out of account.

The scope of the jurisdiction of the High Court is widened by Ss. 6 and 37 of the Act. In so far as these sections enjoin on the High Court to apply the laws of the Covenanting State also, (including the right of appeal which may exist under some law of any of the Covenanting State) till such time as they were modified. In this view of the matter if the Indore High Court Act of 1948 had really provided for an appeal from the decision of a Division Bench then having regard to Ss. 6 and 37 of the Madhya Bharat High Court of Judicature Act, such an appeal was competent. A I R 1951 S C 252, Expln. and Rel. on. Gokul Das v. Mohan Kunwar Bai, ILR (1952) Madh B 557 : AIR 1953 Madh Bha 217 (219, 221) (Pt C) (Prs 6, 21, 22) (FB).

● —S. 23—Powers and jurisdiction.

When a new High Court is created then its powers and jurisdiction must be determined according to its own Constitution, and not the Constitution of the old Court, the pending cases of which have been transferred to the new Court for disposal. The Indore High Court having ceased to exist on the establishment of the Madhya Bharat High Court in 1948, the Constitution of the Indore High Court and the Rules of that Court cannot be said to have survived.

Hence, it is not the Constitution of the Indore High Court, but the Madhya Bharat High Court of Judicature Act, 1949 and the Rules framed by the M. B. High Court under that Act, that must be taken into consideration while considering the question of the powers and jurisdiction of the M. B. High Court, and the practice and procedure of the Court. (1949) M B L R 8; AIR 1951 S C 253. Rel. on. Udaybhan v. Firm Shankar Lal, ILR (1952) Madh B 536 : AIR 1953 Madh Bha 209 (211) (Pt B) (Pr 5) (FB).

—S. 23 — Appeal under — Concurrent findings of fact —How far binding—Civil P. C. (1908), S. 100.

An appeal under S. 23, Madhya Bharat High Court of Judicature Act not being an appeal from any court subordinate to the High Court S. 100, Civil P. C. will not apply to such appeal. This, however, does not warrant the High Court departing from the general rule which forbids a review of the evidence for the third time where there are concurrent findings of two lower courts on a pure question of fact.

Unless it is shown with absolute clearness that some blunder or error is apparent in the way in which the Judges have dealt with the fact, a review of evidence third time will not be justified. It is only when there had been any principle of evidence not properly applied or if there had been written documents referred to on which the appellants could show that the Courts below had been led into error or, when the existence of a document does not appear from the judgment of the First Appellate Court to have been appreciated by it, and no effect whatever is given to the statutory presumption arising from the document that the evidence can be re-examined. In fact, the question that has to be determined in such appeals is not what conclusion the High Court would have arrived at if the matter had for the first time come before it, but whether it has been established that the judgments of the two Courts below are clearly wrong. In appeals from the decree of a Judge on the Single Bench the onus lies heavily on the appellants to show that the conclusion arrived at by the Judge is legally erroneous. The High Court has also to pay respect to the opinion which a Judge who has watched and listened to the witnesses had formed as to their credibility. AIR 1947 P C 19;

14 I A 7; AIR 1940 P C 192; AIR 1937 Lah 644; AIR 1948 P C 20, Ref. **AIR 1953 Madh Bha 184 (186) (Pt A) (Pr 10) (DB).**

——S. 23—Special appeal against judgment by High Court in second appeal — Court will not go behind concurrent findings of fact — Appellant will not be allowed to raise new and inconsistent pleas — Case law referred—(Letters Patent (Cal), Cl. 15). **AIR 1953 Madh Bha 7 (8, 9) (Prs 11, 14, 17) (DB).**

——S. 23(b)—"Appellate Civil Jurisdiction"—Letters Patent (Cal), Cl. 15.

Unlike the High Courts Act of 1861 and the Letters Patent of 1865 ot the Madhya Bharat High Court of Judicature Act has clearly conferred revisional jurisdiction on the High Court in S. 22. Section 23 that follows directly after, therefore, would not be silent with regard to the revisional jurisdiction if the Legislature had intended to provide an appeal against the decision given in revisional jurisdiction. An appeal lies under S. 23 from only that decree which is passed in exercise of appellate, as distinct from, revisional, jurisdiction by a single Judge. There is no reason to include revisions in appeals under the Madhya Bharat High Court of Judicature Act as both appellate and revisional jurisdictions have been separately mentioned. Omission of revisional jurisdiction in S. 27 does not lead to the irresistible conclusion that the words 'appellate jurisdiction' used in cl. (b) of S. 23 are used in a broad sense. Case law discussed. **A I R 1951 Madh Bha 165 (167, 168) (Pt A) (Prs 8, 11).**

——Ss. 23(b) and 2(b)—Order in revision by a single Judge — Appeal under S. 23(b), if lies — "Appellate Civil Jurisdiction" if includes "Revision" — Retrospective effect of S. 23 (b).

Where R applied in revision against an order of the District Judge holding his Court had jurisdiction in a certain suit before him and the revision was dismissed, he applied for a certificate under S. 23(b) proviso of the Madhya Bharat High Court of Judicature Act to prefer an appeal therefrom. It was opposed on the ground that no appeal from an order in revision by a single Judge is provided for and no appeal was provided for at the time of initiation of the proceedings.

Held, Unlike the High Court's Act, 1861 and the Letters Patent (Madras), the Madhya Bharat High Court of Judicature Act clearly confers revisional jurisdiction on the High Court under S. 22. Section 23 which follows immediately would not be silent with regard to the revisional jurisdiction if the Legislature had intended to provide an appeal against a decision given in revisional jurisdiction. The proviso to S. 23(b) lends support to the view. An appeal under S. 23 lies only from the decree passed in exercise of appellate, as distinct from revisional jurisdiction by a single Judge. There is no reason to include revisions in appeals under the Act as both revisional and appellate jurisdictions have been separately mentioned. Omission of revisional jurisdiction in S. 27 does not lead to the irresistible conclusion that the word "appellate jurisdiction" in S. 23(b) is used in a broad sense to include revisional jurisdiction. (22 Mad 68, discussed and explained. 14 All 226 and cases following Ref,)

No doubt the right of appeal is governed by the law in force at the time of institution of the suit; but it is not absolute and is subject to limitations that the new statute does not alter the situation by express provision or by necessary implication. In the instant case, S. 2(b) of the Judicature Act provides that the provisions of the Act are applicable to all proceedings pending at the time of the enforcement thereof. If otherwise appeal is permitted by the Act the objection, that the Act will not be retrospective in operation and hence no appeal lies, has to fail. **AIR 1951 Madh Bha 165 (168) (Pt B) (Pr 12).**

SECTION 24

● ——S. 24—Existing and current law binding on Madhya Bharat High Court—Indore High Court Act, 1948 not an existing or current law, as it cannot be said to have survived the Indore High Court which ceased to exist. See United State of Gwalior, Indore and Malwa (Madhya Bharat) High Court of Judicature Act (8 of 1949), S. 23. **AIR 1953 Madh Bha 217 (c) (FB).**

SECTION 25

● ——S. 25—Rule that statute is not to have retrospective operation — Applicability — S. 2(b) whether applies S. 25 to proceeding pending before Act came into force—Result of applying section retrospectively is to disturb vested rights—(Interpretation of Statutes) —(Civil P. C. (1908), Preamble), AIR 1951 Madh Bha 1 (FB), Reversed. See United State of Gwalior, Indore and Malwa (Madhya Bharat) High Court of Judicature Act (8 of 1949), S. 2(b). **AIR 1958 S C 554.**

● ——S 25(2)—Conviction in the exercise of appellate jurisdiction—Appeal.

Per Dixit J.—The Judges of the Division Bench of the High Court in affirming in appeal the conviction and sentence of the accused for the offence of robbery cannot be said to have convicted the accused of robbery in the exercise of their appellate jurisdiction. As such so far as the conviction of the accused for the offence of robbery is concerned the accused have no right of appeal under S. 25(2), High Court Act. Fakirchand v. The State **1955 Cri L J 1073; M B L J 1955 H C R 316; A I R 1955 Madh Bha 119 (123) (Pt G) (Pr 29) (FB).**

● ——Ss. 25 and 25-A—Jurisdiction — Appeal from judgment of Division Bench — (Indore High Court Act (IV of 1948), Ss. 21(c), 23).

Section 21(c) of the Indore High Court Act did not give right of further appeal in the High Court from a decision of a Division Bench; on the contrary, such an appeal was expressly prohibited by S. 23 of that Act.

Even assuming that S. 21(c) did confer on the appellant such a right, it is further clear from the opening words of S. 21(c) namely, "save as otherwise provided by any law for the time being in force" that if any other statute prohibits an appeal within the High Court from a decision of a Division Bench, then S. 21(c) would give way and the provisions of the other statute would prevail. Hence as the Madhya Bharat High Court Act, 1949, negatives the existence of any such right of appeal, the appellant cannot exercise the right said to have accrued to him under S. 21(c) of the Indore High Court Act.

Section 25 of the Madhya Bharat High Court Act, 1949, which repealed the Madhya Bharat High Court Ordinance No. 2 of 1948, no doubt, provided for appeals to a Full Bench in certain cases from decisions of a Division Bench. But on 25th January, 1950, by Ordinance No. (1 of 1950), a new S. 25-A was inserted in the Act and the new section took away the jurisdiction of that Court to hear and determine any appeal from a decision of a Division Bench given after 25th January, 1950.

It follows from this that whatever might have been the law prior to 25th January, 1950, the High Court has now no jurisdiction at all to entertain any appeal from a decision of a Division Bench given after 25th January, 1950. Gokul Das v. Mohan Kunwar Bai. **ILR (1952) Madh Bha 557:AIR 1953 Madh Bha 217 (220) (Pt A) (Pr 9) (FB).**

● ——Ss. 25 and 25-A—As amended by Ordinance 1 of 1950 — Decisions of Division Bench given after

25-1-50 — Jurisdiction of High Court to hear appeals against decisions — Constitution of India, Arts. 225 and 372.

Per Full Bench.—The Madhya Bharat High Court has no jurisdiction to hear and determine appeals from decisions of any Division Bench of that High Court given after 25-1-50 by virtue of the combined effect of S. 25A, Madhya Bharat High Court of Judicature Act read with Art. 225 of the Constitution of India. Consequently, a special appeal filed under S. 25 of the High Court of Judicature Act against the decision of a Division Bench of the High Court given on 16-5-51 rejecting the appeal filed by the convict against his conviction and death sentence must be rejected as incompetent. :Buldeo Singh v. The State, **52 Cri L J 1467 : AIR 1951 Madh Bha 149 (153) (Pt A) (Pr 21) (FB).**

● **—S. 25—Criminal appeal under—Interference in —Practice of High Court.**

The right of special appeal under S. 25 of the High Court Act was provided when the Judicial Committee was abolished. Hence the Madhya Bharat High Court when exercising the powers under S. 25 can interfere with the decision of the lower Court only when substantial and grave injustice has been done. As a general rule, it cannot go into the question of evidence.

Held, in the circumstances of the case that, as no question of substantial and grave injustice was involved in the case, no interference was called for in the concurrent finding of conviction of the lower Courts. Sirjeram v. State, **1952 Cri L J 134 : Madh B L J 1955 H C R 974 : AIR 1952 Madh Bha 1 (2) (Pt B) (Pr 4) (FB).**

● **—S. 25 — Applicability — Decision of Division Bench becoming final before the Act — Sections do not apply—No appeal lies to Full Bench. See United State of Gwaliar, Indore and Malwa (Madhya Bharat) High Court of Judicature Act (8 of 1949), S. 2 (b). AIR 1951 Madh Bha 1 (FB).**

[Reversed in AIR 1958 S C 554].

—Ss. 25, 2 (b) — Sections if retrospective. See United State of Gwaliar, Indore and Malwa (Madhya-Bharat) High Court of Judicature Act (1949), S. 2 (b). AIR 1950 Mndh B 112 (FB).

● **—S. 25 (2) — No appeal lies to Full Bench from conviction under S. 385, Gwalior Penal Code, and sentence of 10 years — Gwalior Penal Code, S. 385. 51 Cri L J 1265 : A I R 1950 Madh B 76 (81) (Pt G) (Pr 27) (FB).**

● **—S. 25 (1) — Scope—'Question of principle pertaining to law' — Meaning of — (C. P. Code (1908), S. 100).**

Section 25 (1) of the Madhya Bharat High Court of Judicature Act 1949 is differently worded from S. 100, C P. Code. An appeal under S. 25 of the Act is not limited to questions of law or any other particular questions. The words 'Special appeal shall lie to the Full Bench of the High Court' as used in S. 25 (1) mean, in the context of that provision, no more than this ; that a person can go to the Full Bench in appeal from a decision of a Division Bench if the appeal satisfies the requirements stated in the two provisos to S. 25 (1) and the Full Bench shall have jurisdiction to entertain the appeal. If therefore, an appeal involves some question of principle pertaining to law, then it is open to the appellant to urge questions of law as well as of facts. The question whether in an appeal under S. 25 (1) the High Court should disturb a finding of fact, and, if so, under what conditions, is entirely different and does not in any way affect the competency of the appeal.

A principle of law means a rule of axiom of law, while a question of law is one which arises when a conclusion is reached on the application of the rules and principles of law to certain proved facts and circumstances. In the determination of cases, it is not the function of the Court to decide principles of law in abstract. They are considered when the question of their applicability to the facts and circumstances proved arises.

The expression 'if the appeal involves some question or principle pertaining to law' in the second proviso to S. 25 (1) of the Madhya Bharat High Court of Judicature Act, 1940, far from curtailing the right of appeal, makes it more liberal than in a case where it is provided that no appeal shall lie against any decree or order unless a substantial question of law is involved in the appeal. All that is necessary is that the appeal should 'involve some question of principle pertaining to law' no matter whether the principle of law is elementary and well-established or whether it is one lying in the field of divided and controversial opinion.

Where the appeal involves a considerations of the principles as regards construction of documents and of the principles embodied in and underlying S. 23 of the Contract Act the appeal is competent.

(It was also held that it was too late for the respondents to raise the objection to the competency of the appeal, when they had not raised it before the Full Bench of the Madhya Bharat High Court hearing the appeal for the first time, but after the case was remanded by the Supreme Court for disposal on merits. Gulabchand Gambhirmal v. Kudilal Govindram. **1959 Jab L J 78 : 1959 M P C 143 : 1960 M P L J 334 : A I R 1959 Madh Pra 151 (157) (Pt A) (Pr 10) (FB).**

● **—S. 25 (1)—Questions of fact,**

It is open to the appellant to raise questions of fact in an appeal under S. 25 (1). In dealing with questions of fact it would be proper to follow the practice always acted upon by the Privy Council in regard to findings of fact. There must be some justification for interfering with any finding of fact of the first appellate Court challenged by the appellant. Gulabchand Gambhirmal v. Kudilal Govindram. **1960 M P L J 334 : 1959 M P C 143 : 1959 Jab L J 78 : AIR 1959 Madh Pra 151 (158) (Pt B) (Pr 11) (FB).**

● **—S. 25 (1) — Question of law—Construction of contract—(C. P. Code (1908), S. 100).**

The finding of the Division Bench that the agreement was void for uncertainty as regards price was based solely on the construction of the last clause itself of the agreement which had been misconstrued by the Division Bench. The construction put by the Division Bench, did not depend an any surrounding circumstances or extraneous evidence or on any meaning of a term as understood in common language. What the Full Bench, in appeal under S. 25 (1) did was to construe the deed as a whole and to consider the legal effect of certain terms and expressions used therein and arrived at the conclusion that the price was fixed.

Held, that it could not be argued that the construction of the agreement having been decided by the Division Bench on the document together with other circumstances or extraneous evidence and on what they meant by certain terms and words used in the last clause of the agreement, the question as to its construction was one of fact and and not of law and that no question arose of legal problems bearing on the construction of the document. Therefore it could not be said that the conclusion of the Full Bench involved a disturbance of any finding of fact. Gulabchend Gambhirmal v. Kudilal Govindram. **1959 M P C 143 : 1959 Jab L J 78 : 1960 M P L J**

334 : A I R 1959 Madh Pra 151 (162) (Pt H) (Pr 19) (FB).

● —S. 25 (1)—Scope—Inference from fact—Interference—(C. P. Code (1908), S. 100.)

Finding that a certain agreement to sell a share in the managing agency to the plaintiff was a bribe to the plaintiff who was a member of an enquiry committee to enquire into a dispute in which the party was interested is one of fact which cannot be interfered with in appeal under S. 25 (1) unless there are special circumstances which would justify such a course.

The finding that the contract to sell two and a half annas share to the plaintiff was as a bribe to him is no doubt an inference from certain primary facts and circumstances specifically found but that does not make it any the less a finding of fact.

But where the finding is not based on evidence or is based on evidence which is not legal, the decision that there is no evidence to support a finding or that it is based on evidence which could not in law be considered is a decision of law. That being so, the Full Bench can consider whether the finding is based on legal evidence. Gulabchand Gambhirmal v. Kudilal Govindram. 1959 M P C 143 : 1959 Jab L J 78 : 1960 M P L J 334 : A I R 1959 Madh Pra 151 (163) (Pt I) (Pr 22) (FB).

SECTION 25-A

● —S. 25-A—'Notwithstanding anything contained in S. 25'—Meaning.

The words "Notwithstanding anything contained in S. 25" which occur in S. 25 (A) only override the provisions of S. 25. They do not limit the deprivation of jurisdiction only to appeals falling under S. 25. The words only mean that S. 25 shall be no impediment to the non-existence of the jurisdiction. If the intention had been to limit the taking away the jurisdiction of the High Court only to appeals under S. 25, then one would have found the qualifying words "under S. 25" after the words "any appeal" and before the word "from" in S. 25A. But as it is S. 25-A uses the unqualified words "any appeal" which mean that any appeal whether under S. 25 or under any other provisions of law. Gokul Das v. Mohan Kanwar Bai. I L R (1952) Madh B 557 : A I R 1953 Madh B 217 (220) (Pt B) (Pr 9) (FB).

SECTION 27

—Ss. 27, 23 — Rules under S. 27—Rule relating to jurisdiction for hearing appeals — Suit for money — Test stated — Suit mainly for declaration of share in partnership business and for taking of accounts — Relief of payment of profits as might be found due — Value exceeding Rs. 1,000 — Appeal:— Single Judge had no jurisdiction to hear and decide second appeal under rules then prevailing. A I R 1955 N U C (Madh B) 2389 (DB).

● —S. 27 — M. B. High Court Rules, Ch. I, Rule 1 (11)—Change in Rule—Appeal to be heard by Single Bench — Right of appellant—(Constitution of India, Art. 133)—(Civil P. C. (1908), S. 109).

In exercise of the powers vested by S. 27 of the M. B. High Court of Judicature Act, 1949, on 24th December, 1951, the Rules of the M. B. High Court were altered so as to provide inter alia that an appeal from an appellate decree of a District Court in which the value of the subject-matter in appeal or of the subject-matter in appeal and any cross-objection therein under O. 41, R. 22, Civil P. C., did not exceed Rs. 4,000 could be heard and disposed of by a Judge, sitting alone.

Held (1) that this new R. 1 (ii) of Chapter 1 of the Rules of Madhya Bharat High Court governed appeals arising out of cases instituted before the 24th December, 1951, that is, before the rule came into force.

(2) that on a consideration of the provisions of Art. 133, Constitution of India, read with Ss. 109 and 110 of the C. P. Code, the appellant against whom a suit for recovery of Rs. 2,893 had been filed had no right of appeal to the Supreme Court under sub-clause (a) or (b) of Cl. (1) of Art. 133 and that he would not be entitled to claim that leave to appeal under sub-cl. (c) must be given to him as a matter of right. That being so, the alteration in the rule about the jurisdiction of the Single Judge and the Division Bench did not affect any substantive right of the appellant to appeal to the Supreme Court. Udaybhan v. Firm Shankar Lal. ILR (1952) Madh B 536 : A I R 1953 Madh Bha 209 (211) (Pt A) (Pr 5) (FB).

● —S. 27—Extent of power to make rules.

The power to make rules includes the like power to vary, rescind and amend those rules. It is thus within the power of the M. B. High Court to provide by rules framed nnder S. 27 whether the jurisdiction in appeals to it under S. 23 of the M. B. High Court of Judicature Act, 1949, read with Ss. 96 and 100 of C. P. Code is to be exercised by a single Judge or by a Bench of two or more Judges. Such a rule would be one not affecting the right of appeal but exclusively regulating the procedure of the hearing of the appeal. And, therefore, if under the rules of the Court or under a statutory provision an appeal is to be heard by a particular member of Judges, it is not a vested right of any party. A litigant has no vested right in the procedure as such surrounding the hearing of appeal in the High Court. He has under S. 23 of the M. B. High Court of Judicature Act read with Ss. 96 and 100 of the C. P. Code a right of appeal to the High Court and not to any particular Bench of the High Court. ILR (1937) All 191; 56 Cal 512; A I R 1950 Nag 177 (FB), Rel. on. Udaybhan v. Firm Shankar Lal. I L R (1952) Madh B 536 : A I R 1953 Madh B 209 (211 to 213) (Pt C) (Prs 5, 7, 8) (FB).

SECTION 29

● —S. 29 (b) — Full Bench decision — Power of Single Judge to doubt and refer it for reconsideration—(Precedents).

In view of S. 29 (b) it is clear that a Single Judge can entertain a doubt in respect of a full Bench ruling and can write to the Chief Justice for reconsideration of it by a larger Full Bench. In the reference to the Chief Justice the Single Judge can express his doubts on the decision of the Full Bench but he is not authorised to state that that decision is erroneous. Chandulal v. Baboolal, Madh B L J 1955 H C R 1284 : I L R (1952) M B 1 : AIR 1952 Madh Bha 171 (171, 172) (Pt A) (Prs 3, 5) (FB).

● —S. 29 (b) — Motion for reference to larger Bench—Should not come from counsel.

The motion to refer a matter to a Full Bench or to a larger Bench should normally come from the Judges themselves and not from counsel when they find that they are fettered by a decision in a previous case which appears to them to require further consideration. Gulabchand v. Kudilal. I L R (1952) Madh Bha 15 : A I R 1951 Madh Bha 1 (2) (Pt A) (Pr 4) (FB).

[Reversed on another point in AIR 1958 S C 554].

SECTION 31

—S. 31 — Apportionment of business — No departure from practice unless for cogent reasons — Writ petition presented to wrong bench — Act of party deliberate — Court refused to transfer it and returned it to party. AIR 1955 N U C (Madh B) 4324 (DB).

SECTION 37

—S. 37 — Section does not go contrary to principle enunciated in S. 37, Civil P. C — (Civil P. C. (1908), S. 37 (b)). **A I R 1955 N U C (Madh Bha) 5357 (DB).**

● —S. 37 — Existing and current law binding on Madhya Bharat High Court—Indore High Court Act, 1948 not such a law. See United State of Gwaliar, Indore and Malwa (Madhya Bharat) High Court of Judicature Act (8 of 1949), S. 23. A I R 1953 Madh Bha 217 (FB).

UNITED STATE OF GWALIOR, INDORE AND MALWA HIGH COURT ORDINANCE (2 of 1948)

CLAUSE 5

●—Cl. 5 — Full Bench decision of Indore High Court — Decision is binding on all Courts including Division Benches and single Judge of Madhya Bharat High Court — Madhya Bharat Ordinance (1 of 1948), Cl. (3). **A I R 1950 Madh Bha 31 (Pt A) (Pr 13) (FB).**

SECTION 23

—S. 23 — Word "suit" in section includes execution proceedings.

The word "suit' in the section would include execution proceedings. Consequently, special appeal uuder the section can also lie from orders in execution proceedings. A I R 1918 Cal 925; 20 W R 421 (FB); 12 Mad 116 and 18 All 481 (FB), Ref. **1 Madh B L R 130: A I R 1950 Madh Bha 12 (13) (Pt A) (Pr 2) (DB).**

UNITED STATE OF GWALIOR, INDORE AND MALWA (MADHYA BHARAT) MAINTENANCE OF PUBLIC ORDER ORDINANCE (5 of 1948)

See Public Safety — Madhya Bharat Maintenance of Public Order Ordinance (5 of 1948).

UNITED STATE OF GWALIOR, INDORE AND MALWA (MADHYA BHARAT) REGULATION OF GOVERNMENT ACT (1 of 1948)

See Madhya Bharat Regulation of Government Act (1 of 1948).

UNITED STATE OF GWALIOR, INDORE AND MALWA (MADHYA BHARAT) REVENUE ADMINISTRATION AND RYOTWARI LAND REVENUE AND TENANCY ACT (2007 Samvat) (66 of 1950)

See under Tenancy Laws — Madhya Bharat Land Revenue and Tenancy Act (2007 Samvat) (66 of 1950).

UNITED STATE OF RAJASTHAN ABOLITION OF LAGATS ORDINANCE (13 of 1948)

See under Rajasthan Abolition of Lagats Ordinance (13 of 1948).

UNITED STATE OF RAJASTHAN ADMINISTRATION ORDINANCE (1 of 1948)

See Rajasthan Administration Ordinance (1 of 1948).

UNITED STATE OF RAJASTHAN BUILDINGS (LEASE AND RENT CONTOL) ORDINANCE (22 of 1948)

See Houses and Rents—Rajasthan Buildings (Lease and Rent Control) Ordinance (22 of 1948).

UNITED STATE OF RAJASTHAN COVENANT

See Rajasthan State Covenant.

UNITED STATE OF RAJASTHAN JAGIRDARS (ABOLITION OF POWERS) ORDINANCE (27 of 1948)

See Tenancy Laws—Rajasthan Jagirdars (Abolition of Powers) Ordinance (27 of 1948).

UNITED STATE OF RAJASTHAN PANCHAYAT RAJ ORDINANCE (7 of 1948)

See Panchayats — Rajasthan Panchayat Raj Ordinance (7 of 1948).

UNITED STATE OF TRAVANCORE-COCHIN ADMINISTRATION AND APPLICATION OF LAWS ACT (6 of 1125 M. E.)

See Travancore Cochin Administration and Application Laws Act (6 of 1125 ME).

UNITED STATE OF TRAVANCORE AND COCHIN ADMINISTRATION AND APPLICATION OF LAWS ORDINANCE (1 of 1124 ME) (1949)

See Travancore-Cochin Administration and Application of Laws Ordinance (1 of 1124 ME) (1949)

UNITED STATE OF TRAVANCORE AND COCHIN HIGH COURT ACT (5 of 1125 ME) (1949)

See Travancore-Cochin High Court Act (5 of 1125 ME) (1949).

UNITED STATE OF TRAVANCORE AND COCHIN HIGH COURT ORDINANCE (2 of 1124 ME) (1949)

See Travancore-Cochin High Court Ordinance (2 of 1124 ME) (1949).

UNITED STATE OF TRAVANCORE AND COCHIN PUBLIC SERVICE COMMISSION ORDINANCE (6 of 1124 ME) (1949)

See Travancore-Cochin Public Service Commission Ordinance (6 of 1124 ME) (1949)

UNIVERSAL OR RESIDUARY LEGATEE

Grant of probate or letters of administration to.
See Succession Act (1925), S. 232.

UNIVERSITIES

See (1) Agra University Act (8 of 1926), Ss. 2 (a), 34 (2).
(2) Andhra University Act (1926), S. 27.
(3) Benares University Act (1915).
(4) Bihar State Universities (Patna University of Bihar, Bhagalpur and Ranchi) Act (14 of 1960).
(5) Calcutta University Act (18 of 1951).
(6) Calcutta University B. T. Examination Rules.
(7) Calcutta University Regulations.
(8) Calcutta University School Code.
(9) Constitution of India, Arts. 12 and 226 and 32.
(10) Delhi Universities Act (8 of 1922), Ss. 7-A (7), 45.
(11) East Punjab University Act (7 of 1947).
(12) East Punjab University Regulations.
(13) Gauhati University Act (16 of 1947).
(14) Gujarath University Act (1949).
(15) Jabalpur University Act (21 of 1956).
(16) Jadhavpur University Act (33 of 1955).
(17) Jammu and Kashmir University Act (1 of 2005 Smt.).
(18) Jammu and Kashmir University Calendar.
(19) Jodhpur University Act (17 of 1962).

(20) Lucknow University Act (5 of 1920).
(21) Madhya Bharat Vikram University Act (18 of 1955).
(22) Madras University Act (7 of 1923).
(23) Mysore University Act (23 of 1956).
(24) Nagpur University Act (5 of 1923).
(25) Osmania University Act (Andhra Pradesh Act 9 of 1959).
(26) Patna University Act (25 of 1951).
(27) Panta University Act (3 of 1962).
(28) Punjab University Act (7 of 1947).
(29) Punjab University Regulations.
(30) Rajasthan University Act.
(31) Sagar University Act (16 of 1946).
(32) Travancore University Act (1 of 1113 ME).
(33) University of Bihar Act (27 of 1951).
(34) Utkal University Act (13 of 1943).
(35) Utkal University Regulations.
(36) Utkal University Statutes.
(37) Uttar Pradesh Universities Ordinance (1 of 1959).

UNIVERSITIES ACT (CENTRAL ACT 8 of 1904)

SECTION 25

——S. 25—Calcutta University Regulations—R. 4-B—'Two following examinations' — Meaning of — The words must mean the examinations in which the candidate could sit and would not include an examination at which he could not sit by an order of the University itself. See Calcutta University Regulations, Chap. 31, Regn. 4-B. **1957 Cri L J 1238 : A I R 1958 Cal 83.**

——S. 25 — Regulations under, Calcutta University Regulations, Chap 25, Regns. (5), (6) and (8) — Disciplinary action—Sub-committee appointed by Examination Board to investigate — Committee reporting direct to Syndicate — Syndicate in confirming report acts without jurisdiction. See Calcutta University Regulations, Chap. 25, Regn. (5). **A I R 1957 Cal 428.**

——S. 25 — Regulations under, Calcutta University Regulations, Chap. 25, Regn. (5)—Disciplinary action — Enquiry by Examination Board — Opportunity to candidates to defend themselves. See Calcutta University Regulations, Chap. 25, Regn. (5). **A I R 1957 Cal 428.**

——S. 25 (1)—Regulations under—Chap. 16, Regn. 7 —Scope.

The National Council of Education, Bengal, with its object to foster education on patriotic lines held three examinations, last being the Final School Standard examination. Calcutta University accepted this examination as equivalent to the Matriculation examination of the University. The petitioner a student of the Calcutta University had appeared at the School final examination and also at the final school standard examination of the Council as an external or private student. He failed in the former but passed in the latter but submitted an application through the College authorities of the Ashutosh College together with all necessary documents, migration fee and registration fee, in order to obtain sanction to his migration. He then got admission to the College. Meanwhile, the Syndicate decided that no student who has passed the final school standard can be admitted to any College if he has failed in any test examination or the School final examination of the Board of Secondary Education, West Bengal. The Registrar of the University issued circulars to the Colleges to the effect that any student who has passed Final School Standard examination may be admitted to College provided his guardian makes a declaration that the student has not failed at the test examination of any school or School Final examination of the Board and in case declaration is found false, admission shall stand dismissed. Principal of Ashutosh College asked petitioner's father to make the declaration against which this petition for mandamus.

Held, that this was not a bona fide case of migration. The University was entitled to take a view that the petitioner failed to come up to its own standard but somehow passed the examination of another institution whose examination has been recognised but held suspect and there was nothing illegal in it, because the facilities of mutual recognition extended to sister universities or educational institutions are not meant to be used as devices to circumvent the educational programme of the University, or to destory its own standards. In such an eventuality, the Syndicate has the power to refuse sanction and it must be allowed to use that power. High Court is not called upon to interfere.

The contention that even if the Syndicate has power to refuse sanction to migration, it has no power to ask the college to remove a student from the rolls is not tenable. Since the Syndicate can refuse its permission, there is no reason why it cannot impose conditions for granting such permission. Besides, since the admission was provisional, and the college was entitled to put an end to it, it was in the interest of the student himself since the admission was not capable of being sanctioned by the University.

Result of the relevant regulations, resolutions and circulars summarised. **AIR 1953 Cal 783 (786) (Pt A) (Prs 12, 13).**

——S. 25—Regulations under—Constitution of India, Arts. 14 and 19 (1) (g).)

If the Syndicate of a University makes special rules for students who migrate to it from another University that is not discrimination. All categories of students cannot be treated alike. To treat students migrating from another University as a separate class, from students passing the University's own examinations, is not an unreasonable classification and certainly has a rational basis.

Study in an University is not an "occupation" within the provisions of Art. 19 (1) (g). The dictionary meaning is "Employment, business, calling" none of which are applicable to academical pursuit simpliciter. A teacher may be said to have an occupation. A student cannot be said to be following any occution, in the generally accepted sense of the term. The regulations of the Calcutta University regarding the migration of students do not therefore violate Art. 19 (1) (g). **AIR 1953 Cal 783 (787) (Pt B) (Prs 15, 16).**

——S. 25—Writ against University — Duty of Board of Examiners to act judicially—Jurisdiction of Court to interfere—Universities Act, 1904, S. 25 — Regulations under, Chap. XXV Reg. 8. See Constitution of India, Art. 226. **AIR 1952 Cal 594.**

——S. 25—Calcutta University Regulations, Ch. XXV — Unfair practice by student at examination — Concellation of his examination—Power of Syndicate — Constitution of India, Art. 226.

Under the provisions of Ch. XXV of the Regulations of the Calcutta University, the body which has jurisdiction to consider cases of breaches of discipline arising in connection with examinations and to modify the results of such examination is the Examination Board. When it has considered the results of the examination and cases of breaches of discipline it is then under a duty to forward a report to the Syndicate. The Syndicate has no power to vary the findings of the Examination Board. It may confirm such findings or if it disagrees with them it may refer them back to the Board for reconsideration. It is clear from the above that the Syndicate is not empowered to consider questions of malpractices and breaches of discipline and that it is a matter for the

Examination Board. Accordingly, a resolution passed by the Syndicate cancelling the examination of a student accepting a report made to it by a sub-committee of the Examination Board that the student was guilty of unfair practices at the examination without any finding or report whatsoever from the Examination Board itself, is clearly contrary to the Rules of the University, and has no legal effect. A writ of mandamus may be issued under Art. 226 of the Constitution directing the University to forbear from giving effect to the said resolution. (1952) 56 C W N 730.

UNIVERSITY OF BIHAR ACT (BIHAR ACT 27 of 1951)

PREAMBLE

——Premble—Statute XIII Art. 2 (2-a), (vii) and (x) — Function of University under Art. 2 (2-a) (vii) — —Interpretation of Art. 2 (2-a) (x).

The only function of the University under Statute XIII, Art. 2 (2-a) (vii), is to determine the allocation of three seats among the categories of founders, donors and benefactors. There is no authority given to the Syndicate under this Statute to nominate any particular person in any of these three categories. Further, the language of Statute XIII, Art. 2 (2-a) (x), on a proper interpretation means that the Syndicate should nominate a member of Legislature after consulting the Governing Body with regard to the merits and demerits of the individual proposed to be nominated. When this procedure has not been followed the nomination of a person is ultra vires and illegal. **1964 B L J R 202.**

SECTION 10

——Ss. 10 (5) and 12—Powers of the Vice-Chancellor—Power of affiliation vested only in the senate — Under no rule or regulation could the Vice-Chancellor exercise that power. See Constitution of India, Art. 226. **AIR 1954 Pat 486 (DB).**

SECTION 20

——S. 20—Statutes under — Mandamus—Petitioner must have a legal right to enforce its performance. See Constitution of India, Art. 226. **AIR 1962 S C 1210.**

——S. 20 (2)—Powers regarding affiliation of Colleges—Are vested only in the senate—Under no rule or regulation could the Vice-Chancellor exercise that power. See Constitution of India, Art. 226. **AIR 1954 Pat 486 (DB).**

SECTION 22

——S. 22 (1) — Powers and duties of Syndicate. See Constitution of India, Art. 226. **A I R 1954 Pat 486 (DB).**

SECTION 58

——S. 58—Scope of—Power of affiliation of colleges. See Constitution of India, Art. 226. **A I R 1954 Pat 486 (DB).**

UNIVERSITY OF BIHAR (BHAGALPUR AND RANCHI) AMENDMENT ACT (13 of 1962)

SECTION 4

——S. 4—Master and Servant — Termination of services of college lecturer—Without previous notice—Provision for notice not made in statute — Termination held violated principles of natural justice and was therefore illegal—Bihar State Universities.

Held, that although S. 4 of Bihar Act 13 of 1962, did not expressly say that notice must be given to the teacher who is to be affected prejudicially by the order of the Chancellor, it is well established as a matter of law that in such a case a notice is necessary. As a matter of necessary legal implication the Chancellor was bound to act, in accordance with natural justice before exercise of the statutory power conferred by S. 4 of the statute. Therefore even on the assumption that S. 4 of the Bihar Act 13 of 1962, is intra vires (point not decided) the order of the Chancellor dated the 20th June 1962, without notice to the petitioner was ultra vires and illegal as it violated the principle of natural justice and was liable to be quashed by a writ of certiorari under Art. 226. (1885) 10 A C 229 and 1911 A C 179 and (1863) 14 C B (N S) 180 and (1878) 3 A C 814 (824), Applied. **1964 B L J R 606 : A I R 1964 Pat 41 (42 to 44) (Prs 4, 5, 8) (DB).**

UNIVERSITY OF CALCUTTA REGULATIONS

CHAPTER 46

——Chap. 46 — Conferment of degrees — Person admitted to degree not entitled to Diploma in original without attending a convocation — Till the convocation is held only provisional certificate can be granted. (Calcutta University Act (W. B. 18 of 1951), S. 10 (2)). **(1964) 68 Cal W N 403.**

UNIVERSITY OF RAJPUTANA ACT (1946)

See also Rajasthan University Act

PREAMBLE

——Preamble — Ordinance under — Ordinances 144 and 145 — Calculation of percentage of lectures—Duration of lecture.

The calculation of the attendance of a candidate for the purpose of Ordinance 145 should be done separately in each subject and not along with the attendance of the candidate in other subjects. If a Professor delivers a lecture for two hours each day it shall have to be computed as one lecture, and no more. **A I R 1955 N U C (Raj) 1490 (DB).**

——Preamble — Ordinances under—Ordinances 144 and 145—"Subject" means as specified in Ordinance 256 and not 48. **A I R 1955 N U C (Raj) 1490 (DB).**

SECTION 30

——S. 30 — Quo warranto cannot be claimed as of right — University Ordinance not followed — High Court will not interfere. See Constitution of India, Art. 226. **I L R (1961) 11 Raj 206.**

——S. 30 — Qualification for post of Professor of Pathology — Recommendations of medical council have no statutory foundation but are merely recommendatory. **1961 Raj L W 326 : I L R (1961) 11 Raj 206.**

——S. 30—University Ordinance No. 65 — Applicant for post of Professor in Pathology must have post-graduate degree in addition to five years teaching experience — The clause does not insist on post-graduate degree before he acquires teaching experience. **1961 Raj L W 326 : I L R (1961) 11 Raj 206.**

UNIVERSITY OF SAGAR ACT (M. P. ACT 16 of 1946)

SECTION 14

——S. 14 (4) — Ordinance 33, Para. 12 — Powers of Vice-Chancellor — Vice-Chancellor passing order regarding admission of failed students into second year class—Order violating provisions of Ordinance 33—Order held illegal—Student admitted to second year class in accordance with order cannot be admitted to third year though he passes second year examination and satisfies other conditions of order. **1965 Jab L J 405 : 1965 M P L J 387 : A I R 1965 Madh Pra 217 (218) (Prs 4, 5) (DB).**

——Ss. 14 (5), 32—Ordinances made under, Nos. 12 and 13 — Disciplinary action against student under

S. 14 (5) — Vice Chancellor discharging administrative function—Fundamental rights not affected—No regular inquiry necessary—Action held competent—Natural justice—Principles of.

The Vice-Chancellor of Saugar University, acting under S. 14 (5) read with Ordinances Nos. 12 and 13, debarred a student from appearing in any examination of the University for two years. The student had earlier contravened an order of the Vice-Chancellor directing the students not to resort to any propaganda for or against the University.

Held, that though Ordinances Nos. 12 and 13, in so far as they purport to deal with the maintenance of discipline amongst students, would be ineffective, it was within the power of the Vice-Chancellor to make the impugned order under S. 14 (5). (2) That in making any order for the maintenance of discipline under S. 14 (5), the Vice-Chancellor discharged an administrative function. The very object of disciplinary action would be defeated if in such cases the giving of a notice, an opportunity of hearing and a regular enquiry was held to be essential before the taking of any action. A I R 1959 S C 107; A I R 1960 Madh Pra 157, Foll.; 1942 (2) A E L R 150; A I R 1956 All 539, Distinguished; A I R 1959 Orissa 196, Dissented. (3) That where an administrative action affected the fundamental right of a person, an opportunity to the person affected by the administrative action to explain his conduct might be necessary. But here there was no question of any infringement of a fundamental right of the student. (4) That the rules of natural justice varied with the circumstances of the case, the nature of the urgency, the rules under which the statutory authority acted and the subject-matter that was being dealt with. **1961 M P C 123 : 1961 Jab L J 241 : 1961 M P L J 371.**

——S. 14 (4)—Termination of employee's services by Vice-Chancellor acting under S. 14 (4) without reference to Executive Council — Court cannot enquire into propriety of action. A I R 1954 S C 217 : 1954 S C J 264, Rel. on. **1960 M P L J 515 : 1960 Jab L J 397 : 1960 M P C 336 : (1960) 1 Fac L R 147 : I L R (1960) Madh Pra 37 : A I R 1960 Madh Pra 208 (211) (Pt B) (Pr 9) (DB).**

SECTION 32

——S. 32 — College Code — Scope and object of—Governed affiliation of colleges with University — Relation of employee with governing body of a college was governed by contract between the two — Code had no application to the contract. 1961 M P L J 239, Foll. **1962 M P L J (Notes) 176.**

——S. 32—Ordinance under—Ordinance 19, Arts. 12, 13, 14, 15 — Quasi-judicial and administrative orders —Executive Council of University—Order disqualifying examinee for misconduct — Action is administrative — Opportunity to examinee of being heard not obligatory. See Constitution of India, Art. 226. **AIR 1961 Madh Pra 356 (DB).**

——S. 32— Ordinance 19, Art. 13 — Subjective satisfaction— What constitutes — Subjective satisfaction whether can be challenged in Court of Law. See Constitution of India, Art. 226. **AIR 1961 Madh Pra 356 (DB).**

——S. 32—Ordinances under—Ordinance 19, Arts. 12, 13, 14 and 15 — Use of unfair means by examinee—University authorities can cancel his result even after he is declared to have passed examination. **1961 M P C 225 : 1961 Jab L J 913 : 1961 M P L J 828 : A I R 1961 Madh Pra 356 (358) (Pt A) (Prs 3, 5) (DB).**

——S. 32 — Order made under Ordinances 12 and 13 — Disciplinary action against student under S. 14 (5)—Vice-Chancellor discharging administrative function — Fundamental rights not affected — No regular inquiry necessary — Action held competent. See University of Saugar Act (16 of 1946), S. 14 (5). **1961 Jab L J 241 : 1961 M P L J 371.**

——Ss. 32, 6 (6), 24 (1) and 32 —Scope and Effect of—University ordinance No. 20—Vaildity—Teachers of affiliated college — Right of against governing body — Order of dismissal of temporary lecturer — Remedy.

Held, on facts that a teacher of an affiliated college who had no order of appointment and was working only on the basis of a letter, could not be regarded as permanent teacher of the college and had no remedy under the Code in respect of order of dismissal passed against him. **1960 M P C 694 : 1961 Jab L J 120 : 1961 M P L J 239.**

SECTION 49

——S. 49 — Probationer— Termination of service before expiry of probationary period— Notice not required—Omission to give notice where required does not render order of termination illegal — Remedy of probationer for recovering salary for notice period —Section does not stand in the way of probationer's filing a suit for recovery of the salary for the notice period. **1960 M P L J 515 : 1960 Jab L J 397 : 1960 M P C 236 : A I R 1960 Madh Pra 208 (212) (Pt C) (Pr 10) (DB).**

UNLAWFUL ASSEMBLY.

See (1) Penal Code (1860), Ss. 141, 142, 143, 144, 149.
And (2) Statutory cross references under (i) "Criminal law" and (ii) "Criminal Trial".

UNLAWFUL CONSIDERATION

Contract for

See Contract Act (1872), Ss. 23, 24.

Negotiable instrument obtained for.

See Negotiable Instruments Act (1881), S. 58.

UNLAWFUL CONTRACT

See Contract Act (1872), S. 23.

UNLAWFUL OBJECT OR CONSIDERATION

Contract for

See Contract Act (1872), Ss. 23, 24.

Transfer for

See T. P. Act (1882), S. 6 (h).

UNLAWFULLY ENGAGING IN TRADE BY PUBLIC SERVANT

See Penal Code (1860), S. 168.

UNNATURAL OFFENCE

See Penal Code (1860), S. 377.

UNPAID PURCHASE MONEY

Suit for.

—Limitation.

See Limitation Act (1908), Art. 111.

UNPAID SELLER

Defined.

See Sale of Goods Act (1930), S. 45.

Lien of.

See Sale of Goods Act (1930), Ss. 46, 49 and 54.

UNPROFESSIONAL CONDUCT

See (1) Chartered Accountants Act (1949), S. 21.
(2) Legal Practitioners Act (1879), S. 13.

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SECTION 4

——S. 4 — Untouchability — Meaning—The word in the Act has been used in the same sense as in Art. 17 of the Constitution. See Untouchability (Offences) Act (22 of 1955), S. 3. **AIR 1958 Mys 84 (DB).**

——S. 4 (iv)—Applicability—Private well—Right of access to use of well by public — Proof — Permissive use by villagers — Not sufficient.

Section 4 (iv) of the Untouchability Offences Act does not apply to private wells. The owner of a private well being free to regulate the use of his well by co-villagers, the fact that such owner permitted other people in the village to draw water from the well, would not be a proof of the fact that every villager has a right of access to or right to use the well. The prosecution must affirmatively establish that the public had a right of access to or use of the well in question before the offence under S. 4 (iv) can be said to have been established. **(1962) 28 Cut L T 157 : ILR (1962) Cut 256.**

SECTION 5

——S. 5 (b) and 12—Gist of offence under—Segregation of Harijan students into a separate division whether amounts to an offence — Discrimination — Meaning of—Constitution of India (1950), Arts 15, 16 and 29.

What is required by S 5 (b) of the Untouchability (Offences) Act, is the doing of any act which discriminates against any such person on the ground of untouchability. In other words, there is no requirement that the discrimination should only or solely be on the ground of untouchability. It will be noted that the section does not speak of any mens rea or intention with which the act should be committed. The section is entirely different from the wording of Arts. 15, 16 and 29 of the Constitution which says that the discrimination should only or solely be on the ground of untouchability. Under S. 5 of the Act even if the discrimination is not solely or only on the ground of untouchability and if untouchability is only one of the grounds of discrimination the person practising such discrimination would be guilty of the offence. So if one of the reasons for the segregation of the Harijan students is on the ground of untouchability the offence is made out. When the attempt of the accused to prove the contrary has failed the presumption arises and the Court would be justified in holding that the act was committed on the ground of untouchability. On the language of the Articles of the Constitution and on the language of S. 5 of the Act it is clear that every person who is singled out for differential treatment is the victim of discrimination and to that extent there is discrimination. Therefore by segregating the Harijan students into a separate division the accused has clearly committed the offence. **(1965) MLJ (Cri) 32 : 1964 Ker L T 1015 : (1964) 2 Ker L R 226 : 1965 Ker L J 206; ILR (1965) 1 Ker 97.**

SECTION 6

——S. 6—Refusing to render service to a Harijan is offence — Joint trial of three accused persons—Legality—Cr. P. C. (1898), S. 239.

The applicants (barbers) who had a hair-cutting saloon were convicted for refusing to render service of cutting hair of complainant on the ground of his being a Harijan. They were sentenced to pay a fine of Rs. 100 each. It was contended that the accusations made in the complaint were against three persons and since each one of them refused to render service, separate offences were constituted and there should have been separate trials.

Held, that the trial was proper inasmuch as there was a positive allegation of all the accused having conspired not to cut the complainant's hair on the ground of his caste. A joint trial was permissible under S. 239 of the Criminal Procedure Code. The prosecution had only to prove that the complainant was ready and willing to pay for the service that he demanded to be rendered. **1963 M P L J (Notes) 52.**

SECTION 7

——S. 7—A person organising recitation of Ramayan —Public invited and allowed to make offerings—Place public but cannot be said to be a public place of worship nor Ramayan can be said to be object of worship — Conviction not justified. See Untouchability (Offences) Act (1955), S. 3. **1965 M P L J (Notes) 13.**

——S. 7—Offence under—Abolition of untouchability under Art. 17 of the Constitution — Effect—No right to use private well accrues—Refusal by owner to allow use of his well—No offence committed — Constitution of India, Art. 17.

By the abolition of untouchability under Art. 17 of the Constitution no right accrues to pano Boys in Orissa to use a privately owned well. Consequently the owner who refuses to allow the use of his well by such boys does not commit any offence under S. 7 of the Untouchability Offences Act. (1962) 28 **Cut L T 157 ; ILR (1962) Cut 256.**

SECTION 12

——S. 12—Gist of offence under—Segregation of Harijan students into a separate division whether amounts to an offence—Discrimination — Meaning of (Constitution of India, Arts, 15, 16, and 29). See Untouchability (Offences) Act (1955), S. 5 (6). **(1965) Mad L J (Cri) 32 : (1964) Ker L T 1015.**

USAGE

See (1) Banker and Customer.
(2) Custom.
(3) Easements Act (1882), Ss. 2, 18.
(4) Evidence Act (1872), Ss. 13, 35, 48.
(5) Hindu Law.

Negotiable instruments, usage relating to.
See Negotiable Instruments Act (1881), S. 1.

USED MOTOR VEHICLES CONTROL ORDER (1944)

PREAMBLE

——Preamble — Order not ultra vires. See Motor Vehicles Spare Parts Control Order (1944) and Used Motor Vehicles Control Order (1944). **1952 Cri L J 400 : A I R 1952 Ajmer 17.**

USE OF FIRM NAME AFTER DISSOLUTION OF FIRM

See Partnership Act (1932), S. 53.

USE OF TRADE MARK

See Trade and Merchandise Marks Act (1958), S. 2.

USING FALSE TRADE-MARK

See Penal Code (45 of 1860), S. 480.

USING FORGED DOCUMENT AS GENUINE

See Penal Code (1860), S. 471.

USING MOTOR VEHICLE IN UNSAFE CONDITION

See Motor Vehicles Act (1939), S. 121.

USING MOTOR VEHICLE WITHOUT PERMIT

See Motor Vehicles Act (1939), S. 123.

USING OF EVIDENCE KNOWN TO BE FALSE

See Penal Code (1860) S. 196.:

USUFRUCTUARY MORTGAGE

See T. P. Act (1882), Ss. 52, 62.

USURIOUS LOANS ACT (10 of 1918)

See under Debt Laws.

USURY

See Enactments under "Debt Laws".

USURY LAWS REPEAL ACT (28 of 1855)

SECTION 2

——S. 2 - Scope — Section does not destroy jurisdiction of Court to give relief against penal clause.

The law laid down in S. 2 applies only to a primary contract. It does not destroy the equitable jurisdiction of the Court to give relief against a penal clause for which an express provision is made in S. 74 of the Contract Act. AIR 1952 Pat 271 (273) (Pt C) (Pr 8).

UTERINE BLOOD

Defined.

See Hindu Marriage Act (1955), S. 3.

UTKAL UNIVERSITY ACT (ORISSA ACT 13 of 1943)

PREAMBLE

——Preamble — Regulation of Academic Council of University has statutory force—General principles of interpretation of statutes will apply. See Interpretation of Statutes. A I R 1955 Orissa 151 (DB).

——Preamble — Decision of Academic Council and that of Syndicate—Inconsistency in.

Where there is an inconsistency between the decision of the Academic Council and that of the Syndicate, the Academic Council's decision alone will prevail inasmuch as it is within its exclusive jurisdiction to prescribe the courses of study. In exercising its statutory power of prescribing text-books the Syndicate cannot go beyond the courses of study prescribed by the Academic Council and if it does so its action will be in excess of its jurisdiction. I L R (1954) Cut 644 : A I R 1955 Orissa 151 (155) (Pt C) (Pr 14) (DB).

SECTION 1-A

——S. 1-A—Validity — Provision that out of 14 registered graduates, elected to Senate, four to be from Merged States — Not discriminatory. See Utkal University Act (13 of 1943), S. 8 (3) (iv). A I R 1957 Orissa 159.

——Ss. 1-A and 8 (as amended by Act (9 of 1947) — Extension of Act to Merged States — Notifications, necessity of, after Adaptation of Laws Order, 1950 —Absence of notification extending Act—Notification to hold election of registered graduates from Merged States under S. 8 (3) (iv) of the Act—Validity—(Orissa Merged States (Laws) Act (4 of 1950), S. 4). ILR (1957) Cut 326 : A I R 1957 Orissa 159 (161) (Pt A) (Pr 6).

SECTION 5

——S. 5 (6) — Vice-Chancellor can hold another balloting out, suo motu, on discovering the first to be wrong and irregular. See Utkal University Act (Orissa Act No. 13 of 1943), S. 12. A I R 1952 Orissa 359.

——S. 5—Dispute, relating to election to University—Fellowship, decided by Vice-Chancellor — Court of law cannot question decision, unless it is on ground of vires or bona fides. See Constitution of India, Art 226. A I R 1952 Orissa 359.

SECTION 8

——S. 8 (as amended by Act 9 of 1947) — Extension of Act to merged States — Notifications, necessity of, after Adaptation of Laws Order, 1950 — Absence of notification extending Act—Notification to hold election of registered graduates, from Merged States—Validity — (Orissa Merged States (Laws) Act (4 of 1950), S. 4). See Utkal University Act (13 of 1943) (as amended by Act 9 of 1947), S. 1-A. A I R 1957 Orissa 159 (DB).

——Ss. 8 (3) (iv), 1-A — Validity of —Out of 14 registered Graduates elected to senate, four to be from Merged States — Classification is a reasonable one and not descriminatory even after the States became part of State of Orissa—(Constitution of India, Arts. 14, 15 (4)). ILR (1957) Cut 526 : A I R 1957 Orissa 159 (161, 162) (Pt B) (Prs 7 and 9).

——S. 8 (3) (iv) — University statute under Act, Ch. XV, Law 9 (3) (d)—Notification for election of registered graduate "belonging" to merged territories—Notification held vague — (Constitution of India, Art. 226 — Quo warranto — Who can apply). ILR (1957) Cut 526 : A I R 1957 Orissa 159 (163, 164) (Pt C) (Prs 11, 12, 14, 15).

——S. 8 (3) — Balloting out of one fifth of elected fellows—Meaning. See Utkal University Act (Orissa Act 13 of 1943), S. 12. A I R 1952 Orissa 359.

SECTION 12

——S. 12—Writ of Quo Warranto — University Elections of Fellows — Balloting out — Writ petition by a Fellow of University — Persons affected not parties—Matter to be considered in granting and refusing the writ. See Constitution of India, Art. 226. A I R 1952 Orissa 359.

——S. 12—Balloting out of University Fellows under S. 12, Utkal University Act, irregular—Persons affected directly not making complaint — Irregularity not producing any material consequences to the interest of the University, or any tangible repercussion on proper functioning of University as democratic body —Petition for writ by relator, held would be rejected. See Constitution of India, Art. 226. A I R 1952 Orissa 359 (DB).

——Ss. 12 and 8 — Balloting out 'one-fifth of elected fellows' — Meaning of — Powers of Vice-Chancellor —Second "balloting out"—Legality—S. 5 (6).

Per Das, C. J. and Panigrahi, J., Narasimham, J. ; dissenting : The one-fifth of the elected fellows under S. 12 of the Act is to be calculated on the number of "fellows" that could be elected under S. 8 (3) of the Act and not with reference to the elected fellows who had been returned on the first election.

(Per Panigrahi, J.) : Where the Vice-Chancellor discovers that he had committed a mistake in carrying out the "balloting out", which power was vested in him he has also the power suo motu to cancel the same and 'ballot out' a second time in accordance with the statute. If the law empowers any person to do a thing it gives the power to do everything for the purpose of carrying it out. The power subsists until the purpose is accomplished. In the absence of any specific provision to the contrary it cannot be held the second balloting out is void or illegal.

Per Das, C. J. : The power exercised in balloting out is executive and not judicial. In the exercise of an executive function the power to review or correct one's own act or decision is inherent unless there is a statutory prohibition against it. Judicial or quasi judicial 'acts alone cannot be so reviewed or

cancelled except under the authority of statutory provisions. The Vice-Chancellor in correcting what is admittedly a mistake has acted within his powers and it could not be said that any vested rights were affected thereby. The result of publication has not given a finality to it. Even if it amounted to a "proceeding" of the University and fell within S. 5 (6) that would not prevent as a matter of law his exercising the power to correct the mistake by cancellation of his mistaken action. The power of correction of the higher authority does not preclude the power of correction of the original authority.

Per Panigrahi, J. :—The Vice-chancellor's action in cancelling the first balloting out and holding a second is not a "proceeding" falling within the purview of S. 5 (6) so that it can be annulled by the Chancellor. Even if it be so there is no authority against the Vice-Chancellor himself annuling it. AIR 1952 Orissa 359 (369, 379, 381) (Pt A) (Prs 20, 53, 61).

—Ss. 12 and 5 (6) — Vice-Chancellor can hold another balloting out, suo motu, on discovering the first to be wrong and irregular.

Per Panigrahi, J. — Where the Vice Chancellor discovers that the balloting out carried out by him was wrong he has power to hold suo motu a second balloting out. The principle of law that should be applied is that if the law enables something to be done it gives the power at the same time to do everything that is indispensable for the purpose of carrying out the object in view. That power subsists until the purpose is accomplished—Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest—When anything is granted, that also is granted without which the thing granted cannot exist. In the absence of any specific provision to the contrary it cannot be said that the act of the Vice-Chancellor in holding another balloting out is either void or illegal. Even if it be considered to have been an error it is an excusable error which could be rectified by the wrong doer himself and not a culpa gravis justifying the interference of the Court

Per Das, C. J. — The Vice-Chancellor is entitled to correct his own mistake, or review his own act, provided of course, such correction or review is bona fide, and not for any ulterior purpose or arbitrary, which is the pre-requisite for all valid exercise of statutory powers. In such matters, there is a broad distinction between the exercise of executive functions and the exercise of judicial or quasi-judicial functions. As regards the latter, it is beyond dispute that power of going back on or modifying a prior act or decision must be derived from a specific law or statute; but in the exercise of executive functions the power to review one's own act or decision or to correct one's own mistake, is inherent, unless there is some other statutory provision which limits or prohibits it; or unless as a result of such executive action, other present and vested rights are affected. If in the present case, either the balloting itself or the notification and the publication of the results of balloting can under the scheme of the Act and of the Statutes be held to interfere with any present and vested rights of the Fellows of the University, it could not be said notwithstanding that the balloting is an executive act, that the act is open to cancellation or review by the Vice-Chancellor. But the balloting conducted so much in advance of the elections cannot be said to have legally affected any vested rights at that stage.

Though balloting is a preliminary step for such election a notification of the results of balloting is not necessarily a notification issued under Cl. (2) of Law 9 of Chap. 15. If the Vice Chancellor has adopted the procedure of publishing the results of balloting in the Official Gazette, that was only a bona fide step taken to give publicity. Such publication cannot impart to the results of balloting any further legal consequence. Therefore the fact that the result of first balloting has been published by the Vice-Chancellor does not necessarily give it a finality so far as he is concerned.

Applicability of S. 14, Orissa General Clauses Act, considered.

Per Panigrahi, J.— The Vice Chancellor's action in cancelling the first and holding the second ballot is not a "proceeding" of the University which falls within the purview of the powers of the Chancellor under S. 5 so that it can be annulled by the Chancellor. Even assuming it to be so, it cannot be said that it was not in conformity with the Act or the Statutes as neither the Act nor the Statutes lay down how he is to perform the act. The power to annul is no doubt lodged in the Chancellor but there is no authority for the view that the University cannot annul its own proceedings.

Per Das, C. J.—Even if the balloting amounted to a proceeding, and fell within the scope of the powers of the Chancellor under S. 5 (6) that would not by itself, preclude, as a matter of law, the power of the Vice-Chancellor, if any, to correct his own mistake by adopting the form of cancellation of his previous mistaken action. The power of correction by a higher authority is not necessarily inconsistent with the co-existence of the power of the original authority to correct its own mistake. AIR 1952 Orissa 359 (370, 371, 372, 373, 382, 383) (Pt D) (Prs 24, 25, 26, 27, 28, 63 and 64).

UTKAL UNIVERSITY REGULATIONS

REGULATION 20

—Regs. 20 (8), 2 (2), 20 (9) — Scope — Candidate passing I. A. Examination admitted to three-year degree course as per Reg. 2 (2)—Candidate obtaining in aggregate more than 50 per cent. of marks in Part 1 and Part 2 of Final Examination — Cannot claim to be declared to have passed the final examination with distinction as per Reg. 20 (8). ILR (1964) Cut 177.

UTKAL UNIVERSITY STATUTES

CHAPTER 9

—Chap 9, Law 3 (2) — Standing Order No. 4 — Failure to comply with - Effect—Waiver of notice.

The failure to comply strictly, with the provisions of notice contained in the Standing Order No. 4 is not a mere irregularity. It invalidates the meeting and the business transacted thereat unless it is not reasonably practicable to summon a particular person, who is not present at the meeting and has no notice of it, by reason of his address being unknown or his being out of reach.

Where in an ordinary meeting of the Syndicate an urgent question is raised without giving any previous notice, the question of notice may be waived if all the members are present but no question of such waiver arises when an important member is absent. Moreover, where the meeting is called not for any personal benefit but for the purpose of public duty it is not competent for any person to waive it.

Similarly the duration of the notice as required by the Standing Order No. 4 has also to be strictly construed.

Held that as Standing Order No. 4 was contravened and all the members of the Syndicate had not waived the notice, the resolution passed by the Syndicate at that meeting was invalid and inoperative. ILR (1951) Cut 407 : 17 Cut L T 320 : AIR 1952 Orissa 1 (6) (Pr 14) (DB).

[Reversed in AIR 1954 S C 217.]

CHAPTER 22

—Chap. 22, Law 2—Syndicate—Power of, directing fresh examinations. See Utkal University Statutes, Chap. 23, Law 8. AIR 1952 Orissa 1 (DB).

CHAPTER 23

—Chap. 23, Law 8, Ch. 22, Law 2 — Syndicate — Power of directing fresh examination.

Though it is true that if Law 8 of Chap. 23 is read independent of other provisions of the Statutes it suggests that the Syndicate has only the power to publish the results of the examinations as reported by the Board of Examiners and has no power to disapporve the results, the last para of Law 2 of Chap. 22 expressly states that the results when passed by the Board of Examiners shall be submitted for the approval and publication by the Syndicate, and the power of approval must necessarily include the power of disapproval also, if for any sufficient reason it holds that the examination has not been conducted in a fair manner. This however does not mean that the Syndicate can arbitrarily throw away the report of the Board. ILR (1951) Cut 407 : 17 Cut L T 326 : AIR 1952 Orissa 1 (5) (Pt D) (Pr 10) (DB).

[Reversed on another point in AIR 1954 S C 217.]

UTTAR PRADESH ABOLITION OF ZAR-E-CHAHARAM ACT (30 of 1951)

PREAMBLE

—Preamble — Act is not retrospective. 1954 All L J 726 : 1955 All W R (HC) 50 : ILR (1955) 1 All 557 : AIR 1955 All 59 (62) (Pt B) (Pr 19) (FB).

UTTAR PRADESH ACQUISITION OF PROPERTY (FLOOD RELIEF) TEMPORARY POWERS ACT (39 of 1948)

SECTION 9

—S. 9 (1), Proviso 1 — Premature petition—Potential threat not enough—Land of petitioners acquired under U. P. Acquisition of Property (Flood Relief) Temporary Powers Act — Orders for compensation not issued — Provision of Act cannot be challenged on ground of inadequacy of compensation. See Constitution of India, Art. 226. AIR 1962 All 606 (DB).

—S. 9 (1), Proviso 1 — Validity — Acquisition of land — Compensation — No provision for full market value of property acquired — 1st proviso to S. 9 (1) is invalid — Severability of proviso from enacting section and Act — Interpretation of Statutes — Government of India Act (1935), S. 299 — Constitution of India, Arts. 31-A, 31 (2).

Obiter.—S. 299 of the Government of India Act, 1935, embodies the general principle of the law of Eminent Domain and provides for compensation, meaning thereby the full value of the property sought to be acquired. In so far as the first proviso to S. 9 (1) of the Act provides that the value of the land on the date of publication or on the first day of September 1939, whichever is less be treated to be the value of the property acquired, there is no provision providing adequate compensation or the full market value. The proviso is, therefore, in the teeth of the provisions of S. 299 and it was not competent for the U. P. Legislature to have enacted that proviso to S. 9 (1). AIR 1951 All 674 (FB) and AIR 1954 S C 170, Rel. on.

If the proviso to S. 9 is taken away, the enacting clause is not affected. Even without the proviso S. 9 (1) of the Act can function properly and there would be no difficulty in its being administered. (1939) 2 Mad L J Supp 45 : AIR 1939 F C 74, Rel. on.

Where the lands which are being acquired are bhumidari plots, the proviso also cannot be saved by Art. 31-A of the Constitution, as such lands do not come within the purview of the expression 'estate' occurring in Art. 31 A. Bhumidari rights are not proprietary rights. The word 'estate' in Art. 31-A contemplates proprietary rights, i. e., the rights of intermediaries and not the rights of tenants. AIR 1957 All 153 and AIR 1961 S C 1790, Rel. on. Similarly, the Act cannot be saved by Cl. (2) of Art. 31 of the Constitution as it is not covered by Cl. (6) of the Article. The Act was passed in 1948. Therefore, it could not be a law which had been enacted not more than 18 months before the commencement of the Constitution. AIR 1962 All 606 (607, 608) (Pt B) (Prs 2 to 5) (DB).

UTTAR PRADESH ADMINISTRATION OF EVACUEE PROPERTY ORDINANCE (1 of 1949)

PREAMBLE

—Preamble — Invalid statute — If validated by Government of India (Third Amendment) Act — (Government of India Act (1935), S. 83 (3)) — (Government of India (Third Amendment) Act (4 of 1949)—(Constitution of India, Arts. 213, 245, 246).

A statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objections but must be re-enacted. Section 88 of the Government of India Act did not authorize the Governor of the United Provinces to make an ordinance like the Ordinance No. 1 of 1949. The Government of India (Third Amendment) Act (4 of 1949, adding in List 3 of Sch. 7 of the Government of India Act, 1935, the matter "custody, management and disposal of property declared by law to be evacuee property" did not validate the Ordinance No. 1 that was ultra vires the Governor before it came into force. The Ordinance No. 1, therefore, remained void even after 25th August 1949, when the Government of India (Third Amendment) Act came into force and there did not come into existence any vesting of any property in the Custodian. AIR 1954 S C 728, Rel. on. 1957 All L J 509 : 1957 All W R (H C) 573 : AIR 1957 All 561 (565) (Pt A) (Pr 4) (DB).

[Overruled on another point by AIR 1961 SC 365 as interpreted in AIR 1966 All 499].

SECTION 2

—S. 2 (d) — Evacuee property — Interest of a co-tenant evacuee in certain plots is evacuee property. AIR 1955 NUC (All) 1412.

SECTION 5

—S. 5—Vesting of evacuee property in custodian—Administration of Evacuee Property Ordinance (20 of 1949), S. 41—Administration of Evacuee Property Ordinance (27 of 1949), S. 55 — Administration of Evacuee Property Act (31 of 1950), S. 58 (3) — Effect of—Life of Ordinance cannot be extended by another Ordinance—(Government of India Act (1935), S. 88). AIR 1955 NUC (All) 1412.

SECTION 6

—S. 6 — 'May notify' — Absence of notification — It does not affect the matter — It does not avoid vesting of property. AIR 1955 NUC (All) 1412.

SECTION 16

—S. 16 — Interpretation — Right of occupancy temporarily vesting in custodian — Permanent extinguishment shall not be affected. AIR 1955 NUC (All) 1412.

UTTAR PRADESH AGRICULTURAL INCOME-TAX ACT (3 of 1949)

PREAMBLE

——Preamble — Escaped income — Circumstances under which arises — (Income-tax Act (1922), S. 34 —(Income-tax Act (1961), Ss. 147 to 153).

An escape arises (1) when the time limit for passing an assessment order expires or (2) when an assessing authority erroneously refuse to tax income for any reason whatsoever. (1964) 54 ITR 506 : 1964 All L J 85 (DB).

——Preamble — Jointly interested — Each person concerned must have interest which is joint with that of each other person. AIR 1955 NUC (All) 3293 (DB).

——Preamble — Recovery of tax—Burden of proof—Avoidance of tax—(Income-tax Act (1922), S. 1).

The burden is on the State to prove that it is entitled to ascertain revenue before it can recover it and, if the subject can without infringing the law, escape liability, then the subject certainly can do so and it would be no ground for Courts to order recovery of any revenue on the ground that, if the recovery was not ordered, then it would amount to the State being deprived of that revenue. ILR (1953) 1 All 817 : 1952 All W R (HC) 517 : 1952 All L J 557 : AIR 1953 All 25 (28) (Pt E) (Pr 22) (DB).

SECTION 1

——S. 1—Interpretation of fiscal statutes—Principles indicated. See Interpretation of statutes — Taxing statute. ILR (1959) 2 All 353.

——Ss. 1, 3. 5 and 15 — Act coming into force from 1-7-1948 — Income of previous year, i. e., 1947, can be taxed—Agricultural income is assessed on income of previous year. AIR 1955 NUC (All) 2281.

SECTION 2

SYNOPSIS

(U. P. Agricultural Income-tax Act (1949), S. 2.)

1. Agricultural income.
2. Additional collector—Assessment by.
3. Person.
4. "Holds."
5. Previous year.
6. Total Agricultural Income.
7. Proceeding under the principal Act.

1. Agricultural income.

——Ss. 2 (i) and 3—Arrears of rent — Land not held by assessee—No proof that land was used for agricultural purposes—Not liable to tax.

An income on which tax is sought to be levied must be on agricultural income. If there is no proof or finding that the land was used for agricultural purposes in the previous year, income from such land, of earlier years, would not constitute agricultural income within the meaning of the definition in the Act and would be exempt from tax. 1961 All W R (HC) 671 : 1961 All L J 880.

——S. 2 (1) (a)—Ubari—When it amounts to a release or assignment of revenue, the tenure is ubari — Payment of quit rent is neither a land revenue nor a cess. AIR 1924 Nag 133, Rel. on. 1961 All W R (HC) 598 : 1961 All L J 478.

——S. 2 (1) (a)—Scope and applicability.

By a certain resolution certain Jagirdars were exempted from payment of cess in return for their maintenance of roads, schools, etc., in their jagir. Though the resolution in terms means that they would have been liable to be assessed to cess, if they had not undertaken to maintain roads, schools, etc., it could not mean that the jagir lands were subject to cess assessed and collected by an officer of the Provincial Government within the meaning of S. 2(1)(a). 1961 All W R (HC) 598 : 1961 All L J 478.

——S. 2 (1) (a) and (b)—Sale of khair trees—Income—Taxability.

Aboriculture is also agriculture and products, such as timber, which are raised from the land by basic and subsequent operations which involve the expenditure of human labour and skill in the subsequent operations as well as in the basic operation of planting into the soil constitute 'agriculture'. Therefore, the income derived from the sale of khair trees, being income derived by agriculture is liable to be assessed under S. 2 (1) (b) and not under S. 2 (1) (a). 32 I T R 466, Foll. 1961 All W R (HC) 314 : 1961 All L J 253.

——S. 2 (1) (b)—Sale of grain stock of previous year—Amount not part of income of assessment year. See U. P. Agricultural Income-tax Act (3 of 1949), S. 6(3). I L R (1959) 2 All 353.

——S. 2 (1) (a)—"Agricultural income" — Malikana received by assessee from Government—Income Tax Act (1922), S. 2 (1)).

Under a Government notification, the predecessor-in-interest of the assessee was divested of all rights and interest in the land situated in Pargana S. of which he was a jagirdar and instead he was granted a right to one/fourth of the net collections of land revenue of this Pargana after deducing Tahsil expenses.

Held, that the income received by the assessee was agricultural income. AIR 1960 All 264, Rel. on. 1959 All W R (HC) 684 : 1959 All L J 798.

——Ss. 2 (1), 5 and 6—Scope—Deduction of proportionate land revenue in determining assessable agricultural income.

Agricultural income has been placed in several classes and each class of income is computed either under S. 5 or S. 6. Where that income is derived from land upon which land revenue is paid the land revenue relative thereto is deducted in determining the assessable agricultural income. Under S. 5 land revenue is deducted in respect of land from which that type of income is derived which falls to be determined under S. 5, and under S. 6 land revenue is deducted from that type of land from which that type of agricultural income is derived which is indicated in S. 6, so that even though land revenue may have been compositely fixed for all the land of an assessee liable to land revenue at a total figure and all the land treated as one unit, yet for the purpose of deduction the total must be broken up and apportioned. For the purposes of deduction under S. 5 and S. 6 it is apparent that it must be determined to what the proportionate land revenue which a particular plot of land which yields agricultural income attracts and then that land revenue has to be deducted. It follows therefore that under S. 5 proportionate land revenue and not the entire land revenue has to be deducted. I L R (1958) 2 All 663.

——S. 2—Income—(Income-tax Act (1922), S. 4).

Held, that the assessee made no business of growing fruit trees for sale. The sale was made by the assessee because, he apprehended that he would be divested of his rights in the land on which the trees were growing—an apprehension which proved to be correct. The circumstances, showed an absence of that regularity or expected regularity in the receipt of the sale proceeds of the trees which was an essential constituent of income for tax purposes. AIR 1932 P C 138; A I R 1957 S C 729, Foll. (1958) 34 I T R 426 (All).

2. Additional collector—Assessment by.

● —S. 2 (4) (a) (as amended by U. P. Act 14 of 1956) —Assessment year 1952-53 — Proceedings started by Additional Collector on 10th January, 1953—Collector quashing those proceedings on 26th November, 1955 — After passing of amending Act, on review Collector setting aside his order — Fresh assessment by Additional Collector — No question of limitation arises. AIR 1963 S C 1394; AIR 1963 S C 1356, Dist. Kunwar Trivikram v. State of U. P. (1965) 1 I T J 558 : 1965 All W R (HC) 407 : (1965) 1 S C R 336 : (1964) 2 S C W R 250 : (1965) 1 S C J 595 : (1965) 57 I T R 17 : AIR 1965 S C 1267 (1268, 1269) (Prs 7, 8).

3. Person.

●—S. 2 (11)—Trustees holding land for the benefit of beneficiaries would certainly be covered by the definition of person contained in S. 2(11). See Agricultural Income-tax Act (3 of 1949), S. 11(1). AIR 1957 S C 887.

—S. 2 (11)—'Person' — Several persons jointly purchasing certain land and forming Co-operative Society which was registered under Co-operative Societies Act — Society cultivating land belonging to its members — Held, Society was association of individuals and therefore was 'person' under S. 2(11)—Before Society could be said to hold land, enjoyment of interest in land by it was not necessary — Society was distinct from members constituting it and therefore it was not chargeable to tax as common manager under S. 11 unless it was appointed as such. ('64) 54 I T R 503 (All) (DB).

—S. 2 (11)—'Person'—Capacity of assessee as person —If to be established with reference to each item of agricultural income.

When considering the question whether the assessee is a 'person' within the meaning of that word as defined in S. 2 (11) of the Agricultural Income Tax Act it is not at all necessary that the capacity of the assessee as a person must be established with reference to each item of the agricultural income sought to be taxed. All that is required under the Act is that the assessee must be a 'person' inasmuch as he himself owns or holds property as an individual for himself and secondly he must be receiving income which satisfies the definition of agricultural income. 1959 All W R (HC) 684 : 1959 All L J 796.

—S. 2 (11) — Mutawalli holding trust property—His double personality — He is deemed to be two different persons in his two capacities and the assessment of the income from the two different sources must be separate. See U. P. Agricultural Income-tax Act 1948 (3 of 1949), S. 3. AIR 1958 All 38 (DB).

—Ss. 2 (11), 10—Hindu undivided family — Karta also lambardar of agricultural property — Separation of one coparcencer — Karta continuing to manage family property including share of separated member —Assessment as Hindu undivided family—Validity —(Hindu law— Partition.)

Once there is disruption of a joint Hindu family by the separation of one coparcener, the presumption of Hindu Law that the family was an undivided Hindu family ceases to exist. Thereafter there is neither a presumption that the remaining members continued to be joint nor is there a presumption that they all became separate. The question has to be decided as one of fact on the evidence available. Where the assessee besides being the head of the joint Hindu family was also a lambardar of the agricultural property, the fact that even after the alleged separation of a coparcener, the assessee continued to manage the family property including the share of the coparcener who had separated so that the amounts continued to be maintained jointly by the assessee provides no material at all for an inference that the family had continued to remain joint. Where there was ample material to show that the family did not continue to remain joint after the separation of the coparcener, the assessment of the assessee in the status of a Hindu family is wrong in law. When there is a lambardar he is under law entitled to manage property on behalf of all the co-sharers. After realising the agricultural income he divides that income between the co-sharers. This is irrespective of the fact whether the other co-sharers belong to the same family as he does or are entirely strangers. 1957 All L J 436 : (1957) 31 I T R 895 : (1957) All W R (HC) 429 : AIR 1958 All 35 (35, 36) (Prs 3, 4) (DB).

—S. 2 Cl. (II), Explanation — Explanation whether should be given effect to—Explanation was added by the Legislature to clarify the meaning of the word 'person' as used in the principal Act. See Constitution or India, Art. 372. AIR 1955 N U C (All) 3533.

—S. 2 (11) — Section 3 of Amendment Act 14 of 1953 which clarified the definition of person in S. 2 (11) of the principal Act is not ultra vires—Definition of person in S. 2(11) makes no reference to the period of time when the person should have owned or held property —S. 3 of the Amending Act does not change the meaning of the word 'person'. See U. P. Agricultural Income-tax (Amendment) Act (XIV of 1953), S. 3. AIR 1955 N U C (All) 2280.

—S. 2 (11)—Estate taken over under U. P. Abolition of Zamindari and Land Reforms Act—Individual not "person" within meaning of S. 2 (11)—Assessment—The only use of the word "person" in S. 3 is in connection with the total agricultural income of the previous year—The income of the previous year should be of 'person' and therefore whether an individual to be assessed to tax was a person in the previous year or not would depend on whether the person owned or held property in the previous year or not. See U. P. Agricultural Income-Tax Act (1948), (III of 1949) S. 3. AIR 1955 N U C (All) 2280.

4. "Holds".

—Ss. 2 (11), 3 and 4 — Person ceasing to own or hold property —Not a person within Act—Not liable to tax — Holding some other agricultural land — No basis for taxation from another income. 1961 All W R (HC) 671 : 1961 All L J 880.

—S. 2 (11), Explanation (added by Act (14 of 1953) —Scope — Assessee ceasing to own zemindari on 1st July 1952—He is liable to pay income-tax for 1952-53. AIR 1955 N U C (All) 4156 (DB).

—S. 2 (11), 11—"Holds" — It cannot be said that "holds" means "holds" but does not "own". A I R 1955 N U C (All) 3293 (DB).

—S. 2 (11)—Individual ceasing to hold property —No bar to his being assessed to tax for that year on income of previous year. See U. P. Agricultural Income-Tax Act 1948 (3 of 1949), S. 3. A I R 1955 N U C (All) 2281.

5. Previous year.

● —Ss. 2 (13), 3 and 6 (d) — Assessment of agricultural income-tax for assessment year ending on 30-6-1953 — Tax is in respect of income during previous year ending on 30-6-1952 — Rule 8-A applies to its recovery. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 8-A. AIR 1965 S C 909.

6. Total agricultural income.

—Ss. 2 (16), 5 and 6 (2) (b) — "Total agricultural income" — Loss incurred under S. 6 (2) (b)—Set-off against income.

Total agricultural income in accordance with the definition contined in S. 2 (16) of the Act is the aggregate of the income under S. 5 and income under S. 6. In computing the total agricultural income on which an assessee is chargeable to agricultural income-tax any losses which he may sustain in any of the two sources which go to make up his total agricultural income have to be set off against the total earnings of the two sources of the assessee. Therefore the loss incurred by the assessee under S. 6 (2) (b) should be set off against the income under S. 5 of the Agricultural Income tax Act to determine the total agricultural income of the assessee. **A I R 1942 Pat 276 (FB), Rel. on. I L R (1959) 1 All 729 : 1959 All L J 633 : A I R 1959 All 637 (638, 639) (Pt A) (Prs 1, 2, 7, 10) (DB).**

7. Proceeding under the principal Act.

● —S. 2 U. P. Act (14 of 1956), Ss. 2, 10, 11 — Assessment without jurisdiction validated by U. P. Act 14 of 1956 — Assessee given right to apply for review of orders made under U. P. Act 3 of 1949 — Assessment order set aside under Art. 226 — Review of order under Art 226, under U. P. Act 14 of 1956 is not maintainable — Review application dismissed by Single Judge—Order is "judgment" under Cl. 10 of Letters Patent (All.) and Chap. 8, R. 5 of Allahabad High Court Rules and appealable—Constitution of India, Art. 226 — Letters Patent (All), Cl. 10 — High Court Rules and Orders — Allahabad High Court Rules, Chap. 8, R. 5.

Under the U. P. Agricultural Income-tax Act, 1948 (3 of 1949), an Additional Collector made an order of assessment, which was set aside under Art. 226 by a Single Judge of the Allahabad High Court on the ground that the assessment was without jurisdiction. All the assessments by the Additional Collectors, however, were validated by the State of Uttar Pradesh by Ordinance II of 1956 subsequently replaced by U. P. Act 14 of 1956 with retrospective effect. It was further provided by Act 14 of 1956 that if in any proceeding under the U. P. Agricultural Income-tax Act, any Court or authority had set aside any assessment made by an Additional Collector on the ground that he had no jurisdiction to make it, any party to the proceeding might apply for review under S. 11 of the U. P. Act 14 of 1956. An application for review made to the Single Judge who had passed an order under Art. 226, was dismissed on the ground that the U. P. Act 14 of 1956 did not apply to orders under Art. 226. An appeal against the order was taken to a Division Bench but was dismissed, on grounds (1) that the order dismissing review application was not a "judgment" within meaning of Chap. VIII, R. 5 of the Allahabad High Court Rules and was not therefore appealable and (2) that the U. P. Act 14 of 1956 had no application to an order made under Art. 226. In the appeal by special leave before the Supreme Court :

Held, that the application under Art. 226 was not a "proceeding under the Principal Act" i.e., U. P. Agricultural Income-tax Act, 1948 (3 of 1949) nor a continuation of a proceeding under the Act, and S. 11 of the Act therefore did not apply to the order of the Single Judge under Art. 226. 1958 All L J 61, Affirmed.

It could not be contended that a petition under Art. 226 was a continuation of the proceedings under the U. P. Act (14 of 1956). While Art. 226 confers a discretionary power on the High Court, the second part of S. 11 of the Act (U. P. Act 14 of 1956) enjoins on the High Court to make an order in a particular way. Such a construction to the section as would bring it into conflict with Art. 226 of the Constitution and which would have the effect of invalidating it to that extent should not be given. On the other hand, if the construction confining the first part only to an order made by any Court or authority, other than the High Court in exercise of its jurisdiction under Art. 226 of the Constitution, is adopted both the parts fall in a piece, and it would not only be giving a natural meaning to the express words used in the section but also be saving the section from the vice of constitutional invalidity.

The Supreme Court refused to treat the application filed before the High Court as one under O. 47, Civil P. C., on the ground that the prayer was very belated one and that it would bring in many controversial questions.

Held, Per Sinha C. J., Subba Rao, Rajagopala Ayyangar and Venkatarama Aiyar JJ. (Mudholkar J. not expressing any opinion) :

That the order of the Division Bench dismissing the application for review of the order under Art. 226 was a "judgment" within the meaning of Cl. 10 of the Letters Patent (All.), as well as Ch. VIII, R. 5 of the Rules of the Court (All.) as the new Act (U. P Act 14 of 1956) created a right and the order decided a question relating to this right and the order therefore was appealable. 1958 All L J 61, Reversed. State of Uttar Pradesh v. Dr. Vijay Anand Maharaj. **(1962) 45 I T R 414 : 1962 All L J 819 : I L R (1962) 2 All 695 : (1963) 1 S C A 378 : (1963) 1 S C R 1 : A I R 1963 S C 946 (948 to 953) (Prs 4, 7, 9 to 12, 14).**

SECTION 3

● —S. 3 — Assessment of agricultural income-tax for assessment year ending on 30-6-1953 — Tax is in respect of income during previous year ending on 30-6-1952 — Rule 8-A applies to its recovery. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 8-A. AIR 1965 S C 909.

—S. 3 — Person ceasing to own or hold property — Not a person within the Act — Not liable to tax — Holding some other agricultural land — No basis for taxation from another income. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 2 (i). 1961 All W R (HC) 671 : 1961 All L J 880.

—S. 3—Arrears of rent—Land not held by assessee—No proof that land was used for agricultural purposes — Not liable to tax. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 2 (i). 1961 All W R (HC) 671 : 1961 All L J 880.

—S. 3 and Schedule—Schedule of Rates—Condition (b) applies only to Part I and not to both parts. ILR (1959) 2 All 353.

—S. 3 and paras. (a) and (b) of Part I of Schedule — Expression "Agricultural Income-tax" clauses — If includes super-tax.

The expression "agricultural income-tax" in paragraphs (a) and (b) of Part I of the Schedule in the Act does not include 'super tax'. The two are not the same entity. Under S. 2 of the Act the tax on agricultural income was categories under two distinct heads, one called agricultural income-tax and the other termed agricultural super-tax. Not only have these two categories been separately dealt with for the purpose of computation but they have been spoken of as two separate types of tax. The fact that in the Schedule there were two separate parts made is a clear indication of the intention of the legislature to keep those two parts separate and that nothing of the one part was going to affect, add to or detract from the provisions of the other part. **1959 All L J 641 : ILR (1959) 2 All 149.**

—Ss. 3, 2 (11) and 9 — Mutawalli holding trust property—Double capacity.

A Muttawalli when receiving the income from a trust property receives it in his capacity as manager

1. Determination of income.

——S. 6 — Income — Mode of determination — Loss under one head cannot be set off against income from another head, as there is no express provision in this Act unlike Income-tax Act. See U. P. Agricultural Income-tax Act (3 of 1949), S. 5. **(1964) 54 ITR 506 : 1964 All L J 85.**

——S. 6 — Scope — Deduction of proportionate land revenue in determining assessable agricultural income. See U. P. Agricultural Income-tax Act (3 of 1949), S. 2 (1). ILR (1958) 2 All 663.

2. Permission to change method of computation — Nature of.

——S. 6 (1), Proviso 1 — Mandamus, writ of — Mandamus where duty is discretionary — Where Senior Member, Board of Revenue, had exercised his discretion to grant permission under S. 6 (1), Proviso, to make a change in the method of computation of income for the purposes of the Act, honestly and on full consideration of the materials before him and had refused permission, there is no scope for the High Court to interfere by means of writ of mandamus. See Constitution of India, Art. 226. **AIR 1953 All 25 (DB).**

——S. 6 (1), Proviso — Judicial and official acts — Performance of — Presumption as to — Where a statute has conferred the privilege of exercising a discretion on a responsible officer, the Court can legitimately make a presumption that he has not acted capriciously. See Evidence Act (1872), S. 114, Illus. (e). **AIR 1953 All 25 (DB).**

——S. 6 (1), Proviso 1 — Interpretation — Proviso is not limited in its application to variation of method of computation of income in the course of a year.

The first proviso to S. 6 (1) means that once and only once during the course of an assessee's "assessable life," can be unfettered, exercise the option given to him under S. 6 (1) of the Act and if once he has exercised his option, he cannot without the permission of the Board take the other alternative.

There is not the slightest indication in the proviso that the restriction placed by it upon the variation in the method of computation related only to any one year and that the assessee is at full liberty to vary the method of computation every year.

If after the commencement of U. P. Agricultural Income Tax Act, an assessee has once selected one method of computation of agricultural income, he cannot vary it subsequently in any year without the permission of the Board of Revenue. **ILR (1953) 1 All 817 : 1952 All W R (H C) 517 : 1952 All L J 557 : AIR 1953 All 25 (27, 30) (Pt A) (Prs 14, 31) (DB).**

——S. 6 (1), Proviso 1 — Discretion under — Exercise of — Consideration as to loss of revenue — Relevancy.

A consideration of loss in the revenue, which can justly be collected by the imposition of a tax, is not irrelevant consideration in disposing of an application to the Board of Revenue for permission to change the method of computation of income. (1891) Appeal Cases 173, Rel. on.

As the very name of the authority indicates, the Board of Revenue in its administrative capacity has to take into consideration the effect of the permission it may grant under the proviso of S. 6 (1) upon the revenues of the State. The object of the Act is to raise revenues for the state by imposing a tax on agricultural income. If the Board acts in the above manner it acts within the spirit of the Act. **ILR (1953) 1 All 817 : 1952 All W R (H C) 517 : 1952 All L J 557 : AIR 1953 All 25 (30) (Pt C) (Pr 34) (DB).**

——S. 6 (1), Proviso 1 — Validity — Provision does not infringe Art. 14 or Art. 19 (f) of the Constitution of India (Constitution of India, Arts. 14 and 19 (f).)

The absolute and unfettered discretion given to the Board of Revenue to grant or refuse permission to an assessee under S. 6 (2) Proviso to make a change in the method of computation of his income, does not infringe Art. 14 of the Constitution: 1952 All L J 274 and 1952 All L J 278, Ref.

No question of the infringement of Art. 19 (f) arises in the case. **1952 All W R (H C) 517 : 1952 All L J 557 : ILR (1953) 1 All 817 : AIR 1953 All 25 (29) (Pt F) (Prs 24, 25) (DB).**

——S. 6 (1), Proviso — Grant of permission to assessee to change method of computation of his income — Board of Revenue acts in its executive capacity — (Constitution of India, Art. 226 — Judicial or administrative order.)

In considering the question whether or not to grant the premission under the proviso to S. 6 (1), Board of Revenue acts in its executive capacity. The usual procedure of judicial authorities is not prescribed for the Board when dealing with such a matter. **ILR (1953) 1 All 817 : 1952 All W R (HC) 517 : 1952 All L J 557 : AIR 1953 All 25 (30) (Pt H) (Pr 32) (DB).**

3. Option of computation of income.

——S. 6 (1) (a) read with S. 15 (4) — U. P. Agricultural Income-Tax Rules, 1949, R. 5 — Option of computation of income — Declaration in prescribed form — To accompany every return filed — Change in option not prohibited.

Section 15 (4) of the Act expressly lays down that it is the right of an assessee to file any number of returns so long as the assessee discovers any omission or wrong statement in returns filed earlier. No distinction between an original return or a return filed subsequently is made under the section. An assessee can change his option as many times as he files the returns till the filing of the return becomes impossible by reason of the completion of his assessment. Hence the assessing authority must proceed to assess in accordance with the option expressed by the assessee in the return on the basis of which the tax is levied on the assessee. **(1962) 46 I T R 417 (All).**

4. Assessment for year ending on 30th June 1954.

——S. 6 (2) (a) (as amended by Act 14 of 1953) — Assessment for year ending 30th June, 1954 — Taxability.

In making the assessment for the year ending 30th June, 1954, the assessee is liable to be assessed on rent of his land multiplied by 12½ under S. 6 (2) (a) of the Act as amended by Act 14 of 1953. **1963 All L J 1017.**

5. "Income of assessment year."

——S. 6 (d) — Assessment of agricultural income-tax for assessment year ending on 30-6-1953 — Tax is in respect of income during previous year ending on 30-6-1952 — Rule 8-A applies to its recovery. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 8-A. **AIR 1965 S C 909.**

——Ss. 6 (3), 2 (1) (b) — Sale of grain stock of previous year — Amount not part of income of assessment year — (U. P. Agricultural Income Tax Rules (1949), R. 15).

When S. 2 uses the words "any income derived from land by agriculture", it means any income derived during the year. Further, S. 3 clearly shows that if part of the produce has been sold the value of that produce will be taken as income and as regards the balance the assessing authority shall determine the value to the best of his judgment. In case no sales have been effected, it will be the value of the total produce according to the best judgment. Rule 15 also makes it clear that what the Legislature wanted was the value of the yield of the accounting year and

not the actual sales which were to be taken into consideration. The sale proceeds of the old grain stock sold during previous year cannot, therefore, be included in the agricultural income of the assessment year. ILR (1959) 2 All 353.

6. Expenses incurred.

—S. 6 (2) (b) (iv) — Deduction claimed by assessee as expenses incurred—Salaries paid to Farm Manager, Cashier, Time-keeper and Fieldman employed by assessee—Assessee has to prove that their duties were connected with acts of raising crops. 1963 All L J 1082 : (1964) 52 I T R 745 : A I R 1964 All 439 (440) (Pt C) (Pr 6) (DB).

—S. 6 (2) (b) (iv) — U. P. Agricultural Income-tax Rules (1949), R. 13—Rule 13 laying down that certain expenses incurred by assessee to be treated as expenses under S. 6 (2) (b) (iv) — Rule is ultra vires of the State Government. 1963 All L J 1082 : (1964) 52 I T R 745 : A I R 1964 All 439 (440) (Pt D) (Pr 7) (DB).

—S. 6 (2) (b) — Deductions — Of loss in produce due to natural calamity—Propriety.

In cases governed by S. 6 (2) (b) no question of any deduction on account of loss in the produce resulting from natural calamity arises. For in such a case the assessee is assessed on the gross proceeds of sale of the produce of his land on the basis of actual produce in the same year in similar land in the neighbourhood. In arriving at the actual produce of the land abnormality, in the circumstances arising from natural calamities like floods and frost, have to be and are considered. 1962 All W R (H C) 607 : 1962 All L J 684 : I L R (1963) 1 All 22.

—S. 6 (2) (b) (v) — Irrigation productive or protective work for benefit of land — Meaning—Use of punctuation in interpreting statute — Expenses over tubewells, other irrigation works, repairs and maintenance of pathways and roads — If exempted. See U. P. Agricultural Income-tax Act (3 of 1949), S. 5 (d). I L R (1959) 2 All 353.

7. Assessment of total income.

—S. 6 (2) (b)—Assessment to tax—Based on actual income received by sale of produce—Lands given to Sazhidars — Half the actual produce realised by the assessee — Tax could be levied only on the half produce realised. 1962 All W R (H C) 607 : 1962 All L J 684 : I L R (1963) 1 All 22.

—S. 6 (2) (b) — Computation of income — Board adopting correct method—No question of law.

Under S. 6 (2) (b), computation of the income has to be made by first computing the gross proceeds of sale of all the produce and then certain deductions have to be made from the amount so determined. Even in the case of best judgment assessment, the assessment has to be made by the assessing authority by first determining the gross proceeds of sale of all the produce to the best of his judgment, then determining the amount of deductions permissible to the best of his judgment and, thereafter, taking the difference as the amount of taxable income. Where the Board adopts the correct method, no question of law fit for reference to the High Court would arise. 1960 All W R (H C) 15 : 1960 All L J 14.

—S. 6 (2) (b)—"Total agricultural income" — Loss incurred under S. 6 (2) (b) — Loss should be set off against income under S. 5 to determine total agricultural income of the assessee. See U. P. Agricultural Income-tax Act (3 of 1949), S. 2 (16). A I R 1959 All 637 (DB).

SECTION 8

—S. 8—Delegation of legislative powers—Principles —Rule 17 not covered by S. 44 (2) or S. 8 — Rule acted upon bona fide by assessee—State cannot challenge validity retrospectively—Rule held effective in respect of past transactions. See U. P. Agricultural Income-tax Rules (1949), R. 17. I L R (1959) 2 All 353.

SECTION 9

—S. 9—Mutawalli holding trust property—Double capacity — A mutawalli when receiving a income from trust property receives it in his capacity as manager of the property and is another person when he derives his agricultural income from his personal property. He derives it in an entirely different capacity and is, consequently, a different person. Under S. 3, therefore, he is deemed to be two different persons in his two capacities and the assessment of the income from the two different sources must be separate. See U. P. Agricultural Income-tax Act (3 of 1948), S. 3. A I R 1958 All 38 (DB).

—S. 9 — Wakf Alal-aulad — Trust property held by Mutawalli—Assessment — Mode of — Difference between trusts under Mussalman Wakf Validating Act and Trusts Act — (Mussalman Wakf Validating Act (1913), S. 5)—(Trusts Act (1882), S. 6.)

In the case of a trust governed by S. 9, U. P. Agricultural Income-tax Act, the income received from the trust property should be assessed separately from the income received as his personal income by the Mutawalli. A Mutawalli of a trust referred to in S. 5, Mussalman Waqf Validating Act, 1913, does not stand on the same footing as an ordinary trust governed by Trusts Act. In the case of a trust governed by the Trusts Act, the trust property as well as the income derived from the trust property vest in the trustee who is to be deemed owner of the property as well as the income. A Mutawalli of a Waqf Alal-aulad is on the other hand, merely the manager of the trust property. The income received by him as a mere manager of the trust property must, therefore, be assessed separately from his personal income. (1958) 34 I T R 421 : A I R 1958 All 38 (38) (Pt A) (Prs 2, 3) (DB).

SECTION 10

—S. 10 — Coparcener — Hindu widow acquiring interest in joint family property by virtue of S. 3 (2) of Hindu Women's Rights to Property Act, does not become coparcener — Her share need not be separately assessed—Hindu Women's Rights to Property Act (1937), S. 3 (2) — Hindu Law — Joint family—Coparcener.

The word 'coparcener' in S. 10 of the U. P. Agricultural Income-tax Act, bears the same connotation as it does in Hindu Law. A widow who becomes entitled to enjoy by virtue of S. 3 (2) of the Hindu Women's Rights to Property Act, the same interest in the joint family property, as her husband had, is not a coparcener within the meaning of S. 10 of the U. P. Agricultural Income-tax Act and her share of the agricultural income need not be separately assessed to tax. (1964) 53 I T R 770 : (1964) 2 I T J 727 : 1964 All W R (H C) 61.

—S. 10—Assessee head of Hindu undivided family and also lambardar of agricultural property — Separation of one coparcener — Effect — Assessee continuing to manage family property including share of separated member — Assessment of assessee in status of Hindu undivided family — Validity. See U. P. Agricultural Income-tax Act (3 of 1949), S. 2 (11). A I R 1958 All 35 (DB).

—S. 10—Application under S. 24 (4)—Jurisdiction of High Court—When arises—Finding that family is joint — Section 10 indicates that the expression undivided Hindu family is used in the Act in the sense of a coparcenary — Hence a disruption of the family is itself sufficient to absolve members from liability to tax as undivided Hindu family — High Court can

interfere if they find that the facts and circumstances upon which the inference of jointness was based do not justify the inference that family had no intention to separate. See U. P. Agricultural Income-tax Act (3 of 1949), S. 24 (4). **A I R 1956 All 156 (DB).**

SECTION 11

● —Ss. 11 (1), 2 (11)—S. 11 (1) can only come into operation where the land from which agricultural income is derived is held by such common manager, receiver, administrator as agent of persons jointly interested in such land or in the agricultural income derived therefrom — Trustees do not hold the land from which agricultural income is derived on behalf of the beneciaries but they hold it in their own right though for the benefit of the beneficiaries. W. G. Holdsworth v. State of U. P., **1957 All L J 946 : 1957 S C J 81 : (1958) 33 I T R 472 : A I R 1957 S C 887 (890, 891) (Prs 15, 16, 17, 23, 24).**

——S. 11—Scope and applicability — Assessment of Agricultural income arising from land solely owned by him — Payment of guzara amounts charged on land—S. 11 whether applies.

Section 11 provides for representative assessment, that is it provides for the recovery of tax vicariously. The persons enumerated in the section who are treated as assessee do not hold any beneficial interest at all in the agricultural income which is so taxed. They are assessed only in their capacity as a common manager or receiver or administrator or in a like capacity. They are not the beneficiaries of the income taxed but inasmuch as they hold land from which agricultural income is derived at the time of the assessment they are liable to pay the agricultural income tax assessable thereon. But the recovery of the levy is merely on the basis of a representative or vicarious liability. Where the assessee is being assessed in respect of agricultural income arising from his own land and he is not a manager or receiver or an administrator or the like on behalf of any other person, nor has any person along with him a joint interest in the land, the mere fact that guzara has to be paid by the assessee to the guzaradars does not create any interest in favour of the guzaradars at all in the land which is being assessed to agricultural income-tax. The assessee, if he so chose, could pay the guzara from income derived from sources other than the lands charged, and merely because the assessee is bound to pay the guzara amounts would not clothe the assessee with the character of a common manager receiver, administrator or the like. Section 11, therefore, does not enter into the picture at all and cannot be applied to such a case. **ILR (1958) 2 All 663.**

——S 11 (1) — 'On behalf of' means only 'for the benefit of'. **A I R 1955 N U C (All) 3293 (DB).**

——S. 11 (1)—'Receiver, administrator or the like'—Trustee, official trustee and Administrator General are included. **A I R 1955 N U C (All) 3293 (DB).**

——S. 11—'Holds'—Meaning of — It cannot be said that "holds" means holds but does not own. See U. P. Agricultural Income tax Act 1948 (3 of 1949), S. 2 (11). **A I R 1955 N U C (All) 3293 (DB).**

SECTION 14

● —Ss. 14, 44 (2), (o) (as amended by Act 14 of 1956) — U. P. Agricultural Income-tax Rules (1949) (as amended in 1956), R. 18 — Assessee having property in several districts—Jurisdiction of Additional Collector.

By the amending Act, assessment proceedings held by an Additional Collector who is invested with the powers of a Collector under Act 3 of 1901 shall be deemed always to have been properly taken.

Where therefore, in a case where property of an assessee was situate in several districts, the Additional Collector had assessed the agricultural income-tax and super-tax under the U. P. Act 3 of 1949, prior to its amendment by Act 14 of 1956.

Held, after the amendment, that the Additional Collector was competent to do so. ILR (1956) 2 All 643 : AIR 1955 N U C (All) 2707, **Reversed.** State of U. P. v. Raja Syed Mohammad Saadat Ali Khan, **1961 All L J 79 : 1961 All W R (H C) 109 : (1961) 41 ITR 737 : (1961) 1 S C R 82 : (1961) 2 S C J 35 : AIR 1960 S C 1283 (1284, 1285) (Pt A) (Prs 4, 5).**

——Ss. 14 (2) and 16 (3)—Difficulty in giving effect to the provisions explained — Position pointed out—(Obiter).

Who is an assessing authority (whether the Sub-Divisional Officer or the Collector), depends upon the gross income, but what is the gross income can be determined only when it is assessed under S. 16 after the issue of notice under S. 15 (3). The notice under S. 15 (3) is required to be issued by the assessing authority; it is not understood how, before it is known what the gross agricultural income of the assessee is going to be, it can be said whether a Sub-Divisional Officer is the assessing authority or the Collector and how without its being determined at this stage who is going to be the assessing authority a notice can be issued at all. **(1964) 54 I T R 506 : 1964 All L J 85 (DB).**

——Ss. 14 and 44—Applicability. See U. P. Agricultural Income-Tax (Amendment) Act (14 of 1956), S. 11. **1957 All L J 477.**

——Ss. 14 and 44 (2) (o) and R. 18 (1) (a)—Property situate is several districts — Additional Collector to make assessment has no jurisdiction to exercise extra-territorial jurisdiction — (U. P. Land Revenue Act (3 of 1901). Ss. 14 and 14-A). **A I R 1955 N U C (All) 2707 (DB).**

[Reversed in A I R 1960 S C 1283].

——Ss. 14, 44 (2) (o) — Rule 18 (1) (a) under S. 44 (2) (a) — Assessee having income from properties situate in several districts — Assessing authority is Collector of district where assessee permanently resides. **A I R 1955 N U C (All) 2688 (DB).**

——S. 14 (2) a) and (b) — Gross agricultural income not exceeding rupees one lac—Notice to assessee by Collector is not illegal. **A I R 1955 N U C (All) 2278.**

SECTION 15

——Ss. 15 (1), 15 (3) and 16 (2)—Notice under S. 15 (1) was to be issued only in the first assessment year, viz. fasli 1356 — Notice under S. 15 (3) to be issued every year - There could be two notices, one under S. 15 (1), the other under S. 15 (3), only in the first assessment year—Notice filed in response to a notice under S. 15 (3) cannot be deemed to be a return filed in response to the general notice under S. 15 (1) since the period fixed in the general notice expired before the first notice under S. 15 (3) or by the end of fasli 1356, the first assessment year—Second notice under S. 15 (3) itself to an assessee, the assessee cannot be compelled to file return — Any return filed in response to a second S. 15 (3) notice cannot be treated as return in response to a notice under S. 15 (1). **1963 I T J (Sup) 131 : (1964) 53 I T R 592 : 1964 All L J 277 (DB).**

——Ss. 15 (3) and 25 — Notice under S. 15 (3) after the assessment year and notice under S. 25 after one year from expiry of the assessment year, cannot be given even if so directed by the Revisional or Appellate authority. A I R 1949 Pat 418, Rel. on; 1960 A L J 703, Dist. **(1964) 54 I T R 506 : 1964 All L J 85 (DB).**

—S. 15 (3) — Non-compliance — Effect — Agricultural income—Assessment proceedings — Notice calling for return — Essentials of validity — Failure to specify period of not less than thirty days — If fatal —Assessment following on invalid notice — Legality —Waiver of requirement — What constitutes — Mere filing of return by assessee — Effect of. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 25. 1963 All L J 1079.

—S. 15—Proof—No evidence—Deduction claimed cannot be disallowed.

Where there is no material or evidence before the Board, the Board has no power or jurisdiction to disallow any part of the deduction claimed by the assessee company. AIR 1915 S C 65, Foll. 1960 All WR (H C) 89 : 1960 All L J 149.

—S 15 (3) — Vesting of Zamindari in State on 1-7-1952 — Relevant income for assessment for 1952-1953 is the income of the previous year. See U. P. Agricultural Income-tax Act (3 of 1949), S. 5. AIR 1955 NUC (All) 2687 (DB).

—S. 15 — Act coming into force from 1-7-1948— Income of previous year, i. e., 1947, can be taxed— Agricultural income is assessed on income of previous year. See U. P. Agricultural Income-tax Act (3 of 1949), S. 1. AIR 1955 NUC (All) 2281.

—Ss. 15 (3) and 44—Rules under S. 44, R. 22 (2)—Period of notice.

Rule 22 framed under the Agricultural Income-tax Act provides that the period within which the return has to be specified in the notice and it should not be less than thirty days nor more than forty-five days from the date of the delivery of notice. Where the period specified in the notice is thirty days and the return is filed after thirty days although before expiry of forty-five days, the return is filed beyond time. 1953 All L J 292 : AIR 1953 All 622 (623) (Pt A) (Pr 1) (DB).

SECTION 16

—S. 16 (3)—Difficulty in giving effect to the provisions explained—Position pointed out—(Obiter). See U. P. Agricultural Income-tax Act (3 of 1949), S. 14 (2). (1964) 54 I T R 506 : 1964 All L J 85 (DB).

—S. 16 (3)—Word 'sajhidar'—Meaning of.

A Sajhidar is a partner in cultivation. He is neither a servant nor an employee on wages of the person whose Sajhidar he is. The yield which results from his cultivation is the earning jointly of the two persons. The share that the Sajhidar gets is thus his share of the produce and not a substitute for any wage payable to him. Lands under cultivation of third persons—Owner cannot be assessed to income-tax if no proof is available that owner received income for such cultivation. 1961 All W R (H C) 166 : 1961 All L J 149.

—Ss. 16, 21, 22—Order of assessment—Finality.

The assessments are subject to modification in appeal but when no appeals are filed against them either by the State or by the assessee they become final. They cannot be held to have lost their finality simply because there was a chance of their being questioned in revision at a later date. It is not open to the State to circumvent all the provisions of S. 25 of the Agricultural Income-tax Act by making a belated petition to the revising authority and attempting in that way to have the income of the appellant re-assessed after the period of limitation fixed for that purpose has expired. AIR 1938 P C 175 : (1938) 2 M L J 115, Foll. ILR (1958) 1 All 374 : (1960) 39 ITR 687 : 1958 All LJ 183 : 1958 All WR (HC) 259 : AIR 1958 All 528 (532) (Pt B) (Pr 22) (DB).

—S. 16 (4) — Best judgment assessment — Allowances and deductions—Burden of proof—Income-tax Act (1922), S. 23 (4)—(Evidence Act, 1872, S. 106).

The assessing authority in exercising powers under S. 16 (4) no doubt acts in a quasi-judicial capacity and he cannot act capriciously or in an arbitrary manner. The law does not, however, cast any burden on the assessing authority in making the assessment under S. 16 (4), upon the failure of the assessee to furnish full and proper particulars about allowance or deduction, to embark upon an investigation of those points which must necessarily be within the special knowledge of the assessee. The burden of proving a claim to an allowance or deduction is on the assessee, who must allege the same. ILR (1957) 2 All 100.

SECTION 19

—S. 19 — Assessment proceedings are judicial proceedings — Principles of natural justice must be followed — If pleading of person sought to be bound by proceeding necessary—Death of assessee pending revision before Board — His heirs not impleaded — Decision of Board held nullity and not binding on heirs — Prejudicial order against assessee—Reasonable opportunity to show cause must be given — Tax liability of deceased — Notice to heirs essential — Notice against dead person — Service of not valid. See U. P. Agricultural Income-tax Act (3 of 1949), S. 22. 1962 All W R (HC) 21.

—S. 19—Vesting of Zamindari in State on 1-7-1952 —Relevant income for assessment for 1952-53 is the income of the previous year. See U. P. Agricultural Income-tax Act (3 of 1949), S. 5. AIR 1955 NUC (All) 2687 (DB).

SECTION 21

—S. 21 (5), Proviso — Enhancement of assessment —Notice to assessee—Requirement of—Prior notice when not necessary for enhancement.

The proviso to S. 21 (5) requires that no enhancement of an assessment shall be made by the Commissioner unless the assessee has had a reasonable opportunity of showing cause against it. But the said proviso does not speak of a show cause notice being served on or given to the assessee before the date fixed for hearing of the appeal. In fact, no particular notice is required by the proviso to be given to the assessee. So long as the assessee is made aware of the intention to enhance the tax and he was heard against the proposed enhancement and the assessee did not want any more or other opportunity in the form of time, etc. the tax could be enhanced even if no notice of the proposal was served upon or given to the assessee at least a day prior to the date on which the appeal was heard. 1962 All W R (HC) 607 : 1962 All L J 684 : ILR (1963) 1 All 22.

—S. 21 — Order of assessment — Finality—Assessments are subject to modifications in appeal but when no appeals are filed against them either by the State or by the assessee, they become final. See U. P. Agricultural Income-tax Act (3 of 1949), S. 16. AIR 1958 All 528 (DB).

SECTION 22

—Ss. 22, 24 (7) — Jurisdiction of High Court is confined to deciding only questions of law arising out of Revision Board's order.

Jurisdiction of High Court under S. 24 (7) is confined to deciding questions of law arising out of the Revision Board's order passed under S 22 and referred by it. No question, not even of law, which does not arise out of the order passed by the Board can be referred by it to the High Court, and High Court has no jurisdiction to decide such question. 1963 All L J 1082 : (1964) 52 I T R 745 : AIR 1964 All 439 (440) (Pt A) (Pr 3) (DB).

——S. 22—Limitation for revision.

Section 22 does not prescribe any period of limitation within which an application for revision under S. 22 has to be made to the Board. The revisional jurisdiction of the Board is discretionary. If, in exercise of its discretion it decides to revise an order though application under S. 22 was made after undue delay, it is a matter of discretion and cannot be said to infringe any law. **1963 All L J 1032 : (1964) 52 I T R 745 : A I R 1964 All 439 (440) (Pt B) (Pr 4) (DB).**

——S. 22 —Board in exercise of its revisional powers cannot revise an earlier order made by it.

The revisional powers of Board under S. 22 of the U. P. Agricultural Income Tax Act is restricted to orders passed by subordinate authorities only and does not extend to its own orders. The revisional jurisdiction is certainly wide. It is expressly subject to two provisions and the limitations placed by the mention of the circumstances in which it can be exercised. It is to be exercised in respect of a proceeding before an authority subordinate to itself and cannot be exercised in respect of a proceeding before its own self. It could revise any order passed by the assessing authority or by the Commissioner but could not revise any order passed by itself because it cannot be said to be subordinate to itself. Any order passed by the Board becomes final and cannot be altered in any manner other than that laid down by S. 22 (2) of the Act and the Board cannot correct its own earlier order. **1963 I T J (Sup) 131 ; (1964) 53 I T R 592 : 1964 All L J 277 (DB).**

——S. 22—Board's Revisional Powers — Section has to be read in the context of the other provisions of the Act — No jurisdiction to direct the assessing authority to issue a notice after the expiry of the period prescribed—Absence of clause 'Subject to the provisions of this Act' in the section does not mean absolute revisional jurisdiction unrestricted by the provisions of the Act. A I R 1938 P C 175, Foll. (1964) 54 I T R 506 : 1964 All L J 85 (DB).

——Ss. 22 and 44 and Rules, R. 25-C — Revision petition, signing of—By applicant alone — Necessity —Procedure adopted by Board—Validity.

No form of revision application has been prescribed either under the U. P. Agricultural Income-tax Act or under the Rules framed thereunder. It follows that there is nothing in the Act or the Rules to require an applicant, in a revision, to sign the revision application personally and on the principle of qui facit per alium facit per se which is to a limited extent, countenanced by the U. P. Agricultural Income-tax Act itself. The same can be got done through another so long as that other is duly authorised.

The procedure adopted by the Board, without the prior approval of the State Government in requiring revision applications to conform to any particular form or to be signed personally by the applicants is without the authority of law. 1958 A L J (Rev) 69, **Overruled. 1962 All W R (H C) 811 ; 1962 All L J 982.**

——Ss. 22, 19 and 41 — Assessment proceedings are judicial proceedings — Principles of natural justice must be followed — Impleading of person sought to be bound by proceeding necessary—Death of assessee pending revision before Board — His heirs not impleaded — Decision of Board held nullity and not binding on heirs—Prejudicial order against assessee— Reasonable opportunity to show cause must be given —Tax liability of deceased — Notice to heirs essential—Notice against dead person — Service of—Not valid. AIR 1954 S C 545 : 1954 S C J 611, Rel on. 1962 All W R (HC) 21.

——Ss. 22, 24 — Commissioner hearing appeal — If subordinate to Board — Board can revise Commissioner's order. 1960 All W R (H C) 15 ; 1960 All L J 14.

——S. 22 — Order of assessment—Finality — Assessments are final only when no appeal is filed against them either by the State or by the assessee—See U. P. Agricultural Income-tax Act (3 of 1949), S. 16. AIR 1958 All 528 (DB).

——Ss. 22, 25 — Powers of Board — (Constitution of India, Art. 226.)

Section 25, clearly provides that it is not open to the assessing authorities after the period of the limitation mentioned in the section to assess or reassess any income which ought to have been assessed earlier. If the assessing authority is definitely prohibited from making such an assessment or re-assessment, it can hardly claim to be entitled to do so under direction of the Revision Board. It is obvious that the Revision Board cannot authorise the assessing authority to do something which under the law that authority is not entitled to do. In that sense S. 22 is clearly subject to the other provisions of the Act including S. 25. No period of limitation is however provided for the exercise of the revisional powers of the Board under S. 22. Though the application under S. 22 is made after a very great delay the application cannot be rejected as time barred. The board is entitled to entertain the application. It has jurisdiction to deal with it and to decide it. No writ of prohibition can, therefore, be issued preventing the Board either from entertaining the application or from dealing with it. **ILR (1958) 1 All 374 : (1960) 39 I T R 687 ; 1958 All L J 183 : 1958 All W R (HC) 259 : A I R 1958 All 528 (531) (Pt A) (Prs 16 to 21) (DB).**

——Ss. 22 and 25 — Revision—Limitation—Revision filed after period prescribed by S. 25—Board cannot give relief so as to enable escaped income to be assessed under S. 25.

Though section 22 provides no period for the filing of a revision, there is no power in the Revision Board in revision to direct the taxing of escaped assessment under its revisional powers in a case where a revision had been filed beyond the period of one year which was the period at the relevant time within which an escaped assessment could be taxed under section 25 of the Agriculturists' Relief Act. **I L R (1958) 2 All 663.**

——S. 22—Commissioner is authority subordinate to Revisional Board under S. 22—(Point conceded). ILR (1958) 2 All 663.

——Ss. 22 and 44 (1) — Rules under R. 25-D (1) — Validity.

(Obiter).—The Revision Board is not a Court within the meaning of Item I of List II of the Seventh Schedule to the Government of India Act, 1935, and the Provincial Legislature had in consequence no power to legislate with regard to fees to be taken therein. A I R 1956 S C 66 : 1956 S C J 155; (1937) 2 K B 309, Rel. on. **1958 All W R (HC) 408 : (1958) 34 ITR 880 : 1958 All L J 214.**

——S. 22—Question of law — Limitation under S. 25 applies to application under S. 22. See U. P. Agricultural Income-tax Act (3 of 1949), S. 24 (4). A I R 1956 All 156 (DB).

SECTION 23

——S. 23 — Communication to assessee — Copy of judgment obtained by clerk of assessee's counsel— No communication. See U. P. Agricultural Income-Tax Act (3 of 1949). S. 24. ILR (1959) 2 All 353.

SECTION 24

——S. 24 (7)—Jurisdiction of High Court is confined to deciding only questions of law arising out of Revision Board's order. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 22. A I R 1964 All 439 (DB).

——S. 24 (7) -Scope—Evidence showing the partition in the family of assessee produced,— Applications directing mutation in name of separated members produced — Board holding that the assessee had no intention to separate on the ground that the properties allotted were not equal to share of each member under Hindu Law — Conclusion, held was erroneous. ('63) 14 S T C 394 (All) (DB).

——S. 24—Reference under—Powers of High Court.

In a reference under S. 24, the High Court may be able to re frame a question and recast it but it will not be possible for them to frame an entirely new question and answer it. ILR (1959) 2 All 353.

——Ss 24, 23—Communication to assessee—Copy of Judgment obtained by clerk of assessee's counsel — No communication.

In S. 23 there is a mandatory provision that the authority which passes the final order under S. 22 shall communicate such order to the assessee and, therefore, the final order on the revision application of the assessee, should be communicated by the Board to the assessee. It cannot get rid of that responsibility and later on say that since the assessee had come to know of the order (in this case by obtaining the copy of the judgment through the clerk of his counsel), it was not its duty to communicate—What S. 23 contemplates, is a communication of the complete order of the Board, rather a true copy of the judgment delivered by the Board or by any authority, and it would be the date from the receipt of such communication that the limitation would run under S. 24 (2). ILR (1959) 2 All 353.

——S. 24 — Scope — Board can refer questions suo motu—Power not dependent on sub-s. (2) — Distinction between S. 24 and S. 66, I. T. Act - (Income Tax Act (1922), S. 66.)

Section 66 of the Income Tax Act is not equivalent to S. 24 of the Agricultural Income Tax Act. There is sub-s. (1) in S. 24 of the Agricultural Income Tax Act, which has no equivalent and parallel enactment in section 66.

The two powers in sub-s. (1) and sub-s. (2) of S. 24 are wholly independent of each other. The power under sub-s. (1) to refer a question suo motu can always be exercised irrespective of the fact whether any reference has been made under sub-s. (2) or not. ILR (1959) 2 All 353.

——S. 24 (4)— Powers of High Court.

Whatever may have been the ground upon which the Board has refused the application the only affirmative course open to the High Court, if it is not satisfied as to the correctness of the Board's decision is to require a case to be stated. No distinction is made in the procedure to be followed in cases where the Court finds that the Board, after considering an application for a reference on its merits has erroneously come to the conclusion that no question of law arises and cases in which it finds that the Board has wrongly rejected the application or refused to make a reference on the ground that it is time barred or is otherwise incompetent. Bearing in mind that a reference can lie and a case be stated only on a question of law arising out of the order made by the Board under S. 22, it follows that the question whether the decision of the Board that an application made to it under S. 24 (2) is time-barred is not a question which can be made the subject of a reference and must therefore be decided finally by the High Court. If it is of the view that the Board's decision on that question is wrong, then it must examine to the order made by the Board in exercise of its revisional powers and only if it is satisfied that that order passed under S. 22 raised a question of law will order a case to be stated though in a case in which the Board has not considered the application made to it in its merits the High Court will not have the advantage of having before it the opinion of the Board. 1958 All W R (HC) 408 : (1958) 34 I T R 880 : 1958 All L J 214.

——S. 24 (2) — Application under—Requirements.

There is no rule that requires the application under S. 24 (2) to be accompanied by a copy of the order made under S. 22, 1958 All W R (HC) 408 : (1958) 34 I T R 880 : 1958 All L J 214.

—S. 24—Reference—Necessary conditions — Question of law.

The position for making a reference under S. 24 is as follows : (1) When the point for determination is a pure question of law, the decision of the Revision Board is open to reference to the Court under S. 24 (1) of the Act. (2) Where the point for determination is a mixed question of law and fact, while the finding of the Board on the facts found is final, its decision as to the legal effect of those findings is a question of law which can be reviewed by the Court upon a reference. (3) A finding on a question of fact is open to attack as erroneous in law when there is no evidence to support it or if it is perverse. (4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact.

Where after the best judgment assessment, the assessee filed a return along with an application for rectification, whereupon the authority made a re-assessment and the Revision Board held that the assessing authority did not rectify any mistake which was apparent on the face of the record but wrote out a fresh assessment order upon the materials which were subsequently furnished by the assessee :

Held, that no question of law arose in the case which the Revision Board was called upon to refer to the High Court for opinion after drawing up a statement of the case under S. 24 of the Act. ILR (1957) 2 All 100.

——S. 24 — Judgment, meaning of — Reference by Revision Board to High Court — Judgment answering reference — Appeal — Expression judgment does not include a judgment given by the Court in consultative or advisory capacity and hence no appeal lies against the judgment of Revision Board in reference made to it under S. 24. See Constitution of India, Art. 133 (1). AIR 1956 All 392 (DB).

——Ss 24 (4), 10 — Application under S. 24 (4) — Jurisdiction of High Court—When arises — Finding that family is joint — Sufficiency of evidence — (Income-tax Act (1922), S. 66 (2)).

If the Revision Board bases its conclusions of fact on material which is legal evidence, the sufficiency or otherwise of that material cannot be questioned by the Court, which must accept as final the finding of the Board. The material on which the Board bases its conclusion must however be relevant; if it be irrelevant, or such as not to warrant the inference drawn by the Board the Court will have jurisdiction to intervene. In such cases, the question to be considered by the High Court is whether there is evidence to support that finding, or stated in another way, whether the facts found by the Board justify the inference which they have drawn. 1906 A C 455; 1928 A C 234 ; (1942) 24 Tax Cas 498 and AIR 1954 S C 253 ; 1954 S C J 294 (SC), Rel. on. S. 10 of the U. P. Act indicates that the expression 'undivided

Hindu family' is used in the Act in the sense of a coparcenary. Hence for the purpose of the Act the disruption of the joint family is itself sufficient to absolve the members of the family from liability to tax as an undivided Hindu family. The facts found out by the Revision Board may justify the inference that there has been no separation of the joint family property but that is quite a different thing and the High Court can intervene if they find that the facts and circumstances upon which the Revision Board placed reliance do not justify the inference that the family had no intention to separate. **(1956) 30 I T R 647 : 1955 All L J 646 : ILR (1956) 2 All 722 : AIR 1956 All 156 (157) (Pt A) (Prs 10, 11, 12, 14) (DB).**

——Ss. 24 (4), 22, 25—Question of law — Limitation under S. 25 whether applies to application under S. 22.

A question of law does arise as to whether the Revision Board had power under S. 22 to revise an order of assessment in a manner prejudical to the assessee after the period laid down in S. 25 of the Act had expired. **(1956) 33 I T R 647 : 1955 All L J 646 : ILR (1956) 2 All 722 : AIR 1956 All 156 (157) (Pt B) (Pr 7) (DB).**

——S. 24 (4)—Opposite party in proceedings under.

(Obiter). — The opposite party in cases arising out of application under S. 24 (4) should be the U. P. Government and not the Commissioner, Agricultural Income-tax, who is merely an appellate Court from an order made by the assessing authority. **1953 All L J 292 : AIR 1953 All 622 (623) (Pt B) (Pr 2) (DB).**

SECTION 25

——S. 25—Notice under S. 15 (3) after the assessment year and notice under S. 25 after one year from expiry of the assessment year, cannot be given even if so directed by the Revisional or Appellate authority. See U. P. Agricultural Income-tax Act (3 of 1949), S. 15 (3). **(1964) 54 I T R 506 : 1964 All L J 85 (DB).**

——Ss. 25 and 15 (3) — Non-compliance — Effect — Agricultural Income — Assessment proceedings — Notice calling for return — Essentials of validity — Failure to specify period of not less than thirty days —If fatal — Assessment following on invalid notice — Legality —Waiver of requirement — What constitutes —Mere filing of return by assessee — Effect of.

It is well settled that a notice seeking to initiate proceedings for assessment of income which has escaped assessment or has been assessed at too low a rate is a jurisdictional notice; the issue of the notice is a condition precedent to the assumption of jurisdiction for assessing such income. A notice issued to the assessee requiring him to file a return on the next day is not a notice containing the requirements of S. 15 (3) and therefore is not a notice issued in accordance with S. 25, and is not a valid notice. The notice must not merely require the assessee to furnish a return but must require the assessee to furnish a return within a specified period, that period being not less than thirty days, according to S. 25 read with S. 15 (3) of the U. P. Agricultural Income-tax Act. It is only then that it is a notice containing the requirements of S. 15 (3) as specified in S 25. An assessment following an invalid notice must be held to be bad in law and illegal. The mere filing of a return as required by an invalid notice (calling for a return the next day) does not, in itself, establish that the assessee has waived his objection to the notice.

A waiver of a privilege or a right, to be effective, must be based upon full knowledge of the privilege or right to which the persons waiving it is entitled. The burden is on the part pleading the waiver to prove all the facts constituting waiver. AIR 1955 Bom 227; AIR 1960 S C 1232 ; AIR 1957 S C 425 ; AIR 1959 S C 149 and (1954) A L J 622, Ref. **(1964) 1 I T J 320 : 1963 All L J 1079 : (1964) 52 I T R 625 : ILR (1964) 1 All 462.**

——S. 25 — Powers of Board — It is not open to the assessing authorities after the period of limitation mentioned in the section to assess or re-assess any income which ought to have been assessed earlier—It is thus obvious that the Revision Board cannot authorise the assessing authority to do something which that authority is not entitled to do under the law. **AIR 1958 All 528 (531) (Pt A) (Prs 16 to 21) (DB).**

——S. 25—Revision—Limitation—Revision filed after period prescribed by S. 25—Board cannot give relief so as to enable escaped income to be assessed under S. 25. See U. P. Agricultural Income-tax Act (3 of 1949), S. 22. **I L R (1958) 2 All 663.**

——S. 25—Question of law — Limitation under S. 25 applies to application under S. 22. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 24(4). **AIR 1956 All 156 (DB).**

SECTION 26

——S. 26 — Applicability — Assessee failing to file return — Best judgment assessment — Return filed subsequently—Re-assessment—Effect.

Section 26, deals with errors apparent on the face of the record. It cannot cover a case where a re-assessment has been made by discovery of new facts. **I L R (1957) 2 All 100.**

SECTION 30

——Ss. 30, 32 (2)—Agricultural Income-tax — Recovery proceedings—'Proceeding'—Suits in civil Courts not included—Tax arrears—Civil suit for recovery—Limitation — Period of one year prescribed for proceedings for recovery — Inapplicable to suits — Limitation — Revision — District Court and High Court—Powers—Res judicata — Prior writ proceedings for quashing recovery proceedings — Taking alternative mode of recovering tax arrears—No plea by the State—Subsequent suit in civil Court—Bar of res judicata—Not applicable—Words and Phrases—'Recovery proceedings'—Civil Procedure Code (5 of 1908), S. 115 — Provincial Small Cause Courts Act (11 of 1887) (U. P. Amendment), S. 25.

The State of Uttar Pradesh filed suits against the assessees, in the Court of Small Causes, for the recovery of arrears of agricultural income-tax and penalty. The Court of Small Causes dismissed the suits as barred by limitation provided for institution of proceedings under S. 32(2) of the Act and this was confirmed by the District Judge in a revision petition filed by the State. The State preferred the revision petitions to the High Court under S. 115 of the Civil P. C. In a prior writ petition filed by the assessee challenging the recovery proceedings taken by the Collector, the State did not plead that they could or would seek remedy before the civil Court to recover the tax dues On the question if the word 'proceedings' in S. 32(2) includes suits in civil Courts and if the principle of res judicata bars the remedy.

Held, that the suit for recovering the tax arrears is not either barred by limitation or by res judicata. The word 'proceedings' occurring in S. 32(2) of the Act does not include a suit in a civil Court. The period of limitation of one year from the date on which the last instalment fixed under S. 30 of the Act falls due, prescribed for proceedings for the recovery of any sum payable under the Act, is not applicable to a suit instituted in a civil Court for recovering such arrears of tax. A suit instituted for the recovery of an amount is a step which can lead to the recovery of the amount but it is not a step which can be said to amount to a recovery proceeding. Such suits would be governed by the ordinary law of limitation. In quashing the recovery proceedings instituted by the

Collector, the High Court will not refuse to exercise its extraordinary jurisdiction under Art. 226 of the Constitution simply because by seeking the alternative remedy the State would be able to recover the arrears of tax and penalty. It can even be said that where the proceedings taken by the Collector are without jurisdiction, the State should not put forward any defence and should leave it to the High Court to quash the recovery proceedings. Thereafter the State can decide what further action to take. When it is not necessary for the State to oppose the writ petition. it cannot be stopped from later instituting a suit. which, it can, under the law. Where the District Judge does not exercise the revisional jurisdiction conferred under S. 25 of the Small Causes Court Act in modifying the order of the Court of Small Causes, the High Court under S. 115 of the Civil P. C., can exercise the jurisdiction by passing a suitable order. (1962) All L J 353; (1941) 9 I T R 673 : AIR 1942 Pat 87, Ref. (1965) 2 I T J 740 (All).

——S. 30 — Assessee depositing tax under S. 30 of U. P. Agricultural Income-tax Act (3 of 1949) — Reduction in tax liability because of fresh assessment made on remand — Application for refund of excess tax paid — Limitation for R. 34, proviso not applicable. See U. P. Agricultural Income-tax Rules (1949), R. 34, Proviso. 1962 All W R (HC) 12.

——S. 30 (2) — Expression 'Communication of the order'—Meaning of — Amount of tax not specified in Order—No communication of order within meaning of S. 30 (2) — No service of notice of demand or of any order in which the amount of tax is specified—No date on which the first instalment fell due—The assessee could never be a defaulter — Amount cannot be realized in recovery proceedings under S. 32. 1961 All W R (HC) 755 : 1961 All L J 965 : I L R (1962) 1 All 5.

SECTION 31

——S. 31—Matter falling within discretion of assessing authority—Certiorari will not issue. See Constitution of India, Art. 226. I L R (1966) 1 All 234 : 1965 All L J 1102.

——S. 31—Assessment orders quashed but not notice of demant—Penalty orders need not fall.

An order which is not a nullity has legal effect until it is set aside. It cannot be ignored. The assessment order and the notice of demand following it has full legal effect, and the assessee is bound to deposit the tax required of him. The liability to make that payment flows from the notice of demand. The liability continues so long as the notice of demand is not quashed. Therefore, because the assessment orders are quashed the penalty orders need not fall. I L R (1966) 1 All 234 : 1965 All L J 1102.

——S. 31 — Order imposing penalty without prior notice and opportunity to assessee to be heard is bad in law — Constitution of India, Art. 226 — Natural justice.

Where the order is a punitive measure, intended to penalise the assessee for omitting to pay the entire tax arrears within the time specified under the statute prior notice to the assessee giving him an opportunity of being heard is necessary before imposing penalty. There may be a number of reasons which would justify the omission to make such payment and therefore, the order imposing penalty upon the assessee without prior notice to him and without an opportunity to be heard would be bad in law. ILR (1966) 1 All 234 : 1965 All L J 1102.

——Ss. 31, 32 — Penalty for non-payment of tax — Order for recovery—Separate orders—Necessity.

Under the scheme of the U. P. Agricultural Income-tax Act, there has to be first an order imposing the penalty under S. 31, followed by an order directing its recovery as arrears of land revenue under S. 32. This is even further clarified by the provisions of sub. rr. (3) and (4) of R. 28 of the rules framed under that Act. When the Act and the rules themselves clearly require two separate orders to be made, one imposing penalty under S. 31 and the other directing the recovery of the penalty as arrears of land revenue under S. 32, an order which clearly indicates that it is a mere direction can only be held to be an order under S. 32.

Hence, where the proceedings for recovery of amounts of penalty are not based on any order imposing the penalties under S. 31 of the Act, the proceedings are void. ILR (1960) 2 All 812 : 1960 All W R (HC) 412 : 1960 All L J 542.

SECTION 32

——S. 32 (2)—Proceeding contemplated by S. 32 (2) is a mere 'recovery proceeding' and not a suit — Period of limitation prescribed under section would not apply to suits, for recovery of arrears of agricultural income-tax and penalty.

The proceeding for the recovery of the sum payable under the Act as contemplated by S. 32 (2) thereof is a mere "recovery proceeding" and not a suit instituted or to be instituted before the Court of law. Consequently the period of limitation laid down in sub-s. (2) of S. 32 applies to the recovery proceeding and not to suits and suits instituted for the recovery of arrears of agricultural income-tax and penalty shall be governed by the ordinary law, i.e., the provisions contained in the Limitation Act : 1962 All L J 353 and (1941) 9 I T R 673, Rel. on. (1965) 2 I T J 740 (All).

——S. 32 — Arrears of agricultural income tax due from assessee—Amount to debt — Amount of arrears of tax must be included in the aggregate value of debts owed by the assessee — Exception (ii) has no application to such arrears. See Wealth Tax Act (1957), S. 2 (m) Exception (ii). A I R 1963 All 488 (DB).

——Ss. 32 (1) and 32 (2) — Recovery proceedings — When commence—Realisation of tax—Procedure for — Notice by Tahsildar is writ of demand issued during recovery proceeding — Proceedings are not initiated by such notice — Tenancy laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 288, 280 (1).

Proceedings for recovery of agricultural income-tax should be deemed to commence from the date of the request made by the assessing authority under the U P. Agricultural Income-tax Act to the Collector to take steps for realisation of the arrears of tax and other dues. For the realisation of the agricultural income-tax, the Collector has to follow the procedure, provided under S. 280 of the U. P. Zamindari Abolition and Land Reforms Act, for the realisation of arrears of land revenue. Hence a notice by the Tahsildar is in fact a writ of demand under S. 280 (1) of the U P. Zamindari Abolition and Land Reforms Act, which is issued in the course of the recovery proceedings.

Held, on facts that the proceedings for recovery were well within one year as contemplated in sub. s. (2) of S. 32 and recovery proceedings could not be held to be invalid as being out of time. 1962 All W R (HC) 275 : (1962) 43 I T R 247 : 1962 All L J 358.

——S. 32 (1) — Scope—Section not exhausive in respect of modes of recovery. See Income-tax Act (1922), S. 46. 1962 All L J 353.

——Ss. 32 (1), 32 (2)—Dismissal of appeal by assessee on 5th March, 1956—Information reaching assessing officer on 16th January, 1958 — Recovery proceeding

initiated on 16th January, 1958 — **Held** barred by limitation and incompetent. **1962 All W R (HC) 250 : (1962) 46 I T R 620 : 1962 All L J 353.**

——S. 32 (2) — Arrears of tax—Deduction from compensation money payable to assessee—Communication to compensation officer—Not constituting commencement of proceedings within S. 32 (2) — Also, not a process within S. 279 (c) of Zamindari Abolition Act —Proceedings for recovery as arrears of land revenue held barred by time — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 279 (c). 1961 All W R (HC) 147 : 1961 All L J 116.

——S. 32 — Penalty for non-payment of tax — Order for recovery — Separate orders are necessary. See U. P. Agricultural Income Tax Act (3 of 1948), S. 31. 1960 All W R (HC) 412 : 1960 All L J 542 : ILR (1960) 2 All 812.

——S. 32 (2)—Rules under Act R. 28 (4)—S. 32 (2) is no bar against taking step-in-aid of recovery of sums due under Act after expiry of one year.

Section 32 (2) places a restriction on the commencement of the proceedings for the recovery of any sum due under the Act beyond one year from the date on which the last instalment falls due. It does not, however, provide that the proceedings once commenced within the stipulated period must further be completed within that period. In other words, there is no restriction under it against taking steps in-aid of recovery after the expiry of the period of one year. Under R. 28 (4) it is by moving the Collector to recover the arrears etc. as arrears of land revenue that the proceedings for the recovery of the amount are commenced.

If this is done within one year from the date when the last instalment fell due and the first writ of attachment issued within that period is unable to satisfy the demand a second writ of attachment issued after the prescribed period would not be barred by S. 32 (2). 1960 All W R (HC) 299 : 1960 All L J 412.

SECTION 41

——S. 41—Assessment proceedings are judicial proceedings — Principles of natural justice must be followed—Impleading of person sought to be bound by the proceeding necessary — Death of assessee pending revision before Board — His heirs not impleaded — Decision of Board held nullity and not binding on heirs—Prejudicial order against assessee — Reasonable opportunity to show cause must be given — Tax liability of deceased — Notice to heirs essential — Notice against dead person—Service of — Not valid. See U. P. Agricultural Income-tax Act, 948 (3 of 1949), S. 22. 1962 All W R (HC) 21.

SECTION 43

——S. 43—Scope and applicability — U. P. Agricultural Income Tax rules (1949), R. 35A.

Section 43, which is described as an indemnity clause, is both a clause empowering the making of the deduction mentioned therein and providing for an indemnity. The result of the assessee exercising the powers given to him under S. 43 of the Act is that the assessee reimburses himself in respect of the tax which he has paid to the taxing authority qua the amount which he has to pay to the guzaradars. The guzaradars receive their guzaras less the amount of tax which has been deducted by the assessee from the guzara. In this way the net result is achieved that the assessee only pays agricultural income tax on his 'real income'.

There is nothing in the Act to suggest that only a proportionate amount of the agricultural income paid by the assessee can be deducted from the sum paid to the guzaradars. No method of deduction is prescribed. There is nothing to prevent the assessee from treating the income less the guzara amount as his real income, determining what the agricultural income tax payable by him on such real income would be, and then passing on the rest of the tax which he has paid at the higher slab rate to the guzaradars concerned.

Rule 35A has been framed so that by the method of refund the ultimate position is attained that the assessee will pay tax only on his "real agricultural income" and every guzaradar will pay agricultural income tax only at that rate which the amount of his guzara attracted. The agricultural income tax authorities having collected tax on the total agricultural income of the assessee (including the amounts which the assessee will pay to the guzaradars) will not suffer any loss by making a refund in accordance with R 35A of the Act, because the intention clearly is that the total amount of agricultural income tax payable by the assessee and the guzaradars should not exceed the aggregate of the tax payable by each of them individually on the 'real agricultural income' which they actually receive. **ILR (1958) 2 All 663.**

SECTION 44

——S. 44 (2) (o) — (As amended by Act 14 of 1956) — U. P. Agricultural Income-tax Rules (1949) (as amended in 1956), R. 18 — Assessee having property in several districts — Assessment of agricultural income-tax—Additional Collector has jurisdiction to assess income-tax after amendment of Act in 1956. ILR (1956) 2 All 643 : AIR 1955 NUC (All) 2707, **Reversed.** See U. P. Agricultural Income-tax Act (3 of 1949). (As amended by Act 14 of 1956), S. 14. **AIR 1960 SC 1283.**

——S. 44—Rules under, R. 25-C—Revision petition—Signing of—By applicant alone—Necessity — Procedure adopted by Board — Validity. See U. P. Agricultural Income-tax Act (1949), S. 22. **1962 All L J 982.**

——S. 44 — Validity of R. 17 — Delegation of legislative powers — Principles—Rule 17 not covered by S. 44 (2) or S. 8—Rule acted upon bona fide by assessee—State cannot challenge validity retrospectively —Rule held effective in respect of past transactions. See U. P. Agricultural Income Tax Rules (1949), R. 17. **ILR (1959) 2 All 353.**

——**S. 44 (1) and (2)—Distinction—Carry out purpose of Act—Meaning of—Scope of sub-sections (1) and (2)—R. 17 not procedural — (Words and phrases — 'Carry out') — U. P. Agricultural Income Tax Rules (1949), R. 17) — (Constitution of India, Art. 245 — Delegated Legislation).**

The words 'carry out' mean 'to carry into practice', i. e. to make practical rules by means of which the Act could be brought into force. The words 'carrying out the purposes of this Act' in S. 44 (1) really mean authorising the State Government to make procedural or adjective law as distinct from substantive law which either takes away or confers vested rights. Sub-section (2) of S. 44 gives rather details of those items on which the State Government is authorised to make substantive law.

In recent times the tendency of the modern legislation has been to lay down general principles and to avoid going into the administrative or practical details. It is within the competence of the Legislature to do so. But there are certain safeguards which have to be observed in delegating this power. So far as the procedural power is concerned, it can be given without any reservations and, therefore usually the first clause of the rule-making section is always in general terms and authorises an authority to make rules 'to carry out the purposes of the Act,' but, where besides the power of making the Act practicable other powers are given, they are always

specified usually in the enabling section. The first power has been thus given in sub-section (1) and the second under sub-section (2) of S. 44.

Rule 17 cannot be called a procedural rule as it exempts certain income from being taken. **ILR (1959) 2 All 353.**

——S. 44 (1)—Rules under, R. 25-D (1)—Validity.

(Obiter) — The State Government's rule-making power is restricted to the making of rules for carrying out the purposes of the Act. The broad purpose of the Act is stated in the preamble as being the imposition of a tax on agricultural income, and the only section in which provision is made for the collection of a fee appears to be S. 24 (2), that is to say the fee of Rs. 100 or such less amount as may be prescribed which must accompany an application under the sub-section. In these circumstances the State Government has no power to levy by rule another fee, namely a fee payable on the application itself and Rule 25-D (1) is therefore ultra vires. **1958 All W R (HC) 408 : (1958) 84 I T R 880 : 1958 All L J 214.**

——S. 44 (1)—Rules under, Rr. 25-D, 26 — Application accompanied by treasury challan.

Although R. 25 D (1) purports to make the application chargeable with a Court-fee and the requirement of R. 26 is that the application is to be accompanied by a court-fee, nowhere in the Act or rules is it laid down in what manner such Court-fee is to be paid. In the absence of any such provision the Board was not entitled to demand that the payment of either fee must be by means of court-fee stamps and there was a sufficient compliance with R. 26 if the application was accompanied by a Treasury Challan showing that the appropriate fee has been deposited in the Treasury. Further the fact that the fee prescribed by R. 25 D has not been paid does not entitle the Board to refuse to accept the application. All that the rule says is that the fee is chargeable; how or when that fee is to be collected is not provided. **1958 All W R (HC) 408 : (1958) 34 I T R 880 : 1958 All L J 214.**

——S. 44 (2) (o)—Property situate in several districts — Additional Collector to make assessment has no power to exercise extra territorial jurisdiction. See U. P. Agricultural Income-tax Act (3 of 1949), S. 14. **AIR 1955 NUC (All) 2707 (DB).**

[Reversed in AIR 1960 SC 1283 (DB).]

——S. 44 (2) (o)—Rules under R. 18 (1) (a)—Assessee having income from properties situate in several districts—Assessing authority is Collector of district where assessee permanently resides. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 14. **AIR 1955 NUC (All) 2688 (DB).**

——S. 44—Rules under R 22 (2)—Period of notice — Period within which the return has to be made has to be specified in the notice and it should not be less than thirty days nor more than forty-five days from the date of delivery of notice. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 15 (3). **AIR 1953 All 622 (DB).**

UTTAR PRRDESH AGRICULTURAL INCOME TAX (AMENDMENT) ACT (14 of 1953)

SECTION 3

——S. 3—Scope of the section—Section is not ultra vires—(Constitution of India, Art. 372) — (U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 2 (11). **AIR 1955 NUC (All) 2280.**

UTTAR PRADESH AGRICULTURAL INCOME TAX (AMENDMENT) ACT (14 of 1956)

SECTION 2

■ ——Ss. 2, 10 and 11—Assessment without jurisdiction validated by U. P. Act (14 of 1956)—Assessee given right to apply for review of orders made under U. P. Act 3 of 1949—Assessment order set aside under Art. 226—Review of order under Art. 226 under U. P. Act 14 of 1956 is not maintainable—Review application dismissed by Single Iudge — Order is judgment under Cl. 10 of Letters Patent (All) and Chap. 8, R. 5 of Allahabad High Court Rules and appealable. See U. P. Agricultural Income-tax Act (1948) (3 of 1949), S. 2. **AIR 1963 S C 946.**

SECTION 10

● ——Ss. 10, 11, 2—Assessment without jurisdiction validated by U. P. Act 14 of 1956—Assessee given right to apply for review of orders made under U. P. Act 3 of 1949 — Assessment order set aside under Art. 226—Review of order under Art. 226, under U. P. Act 14 of 1956 is not maintainable : 1958 All L J 61, Affirmed — Review application dismissed by Single Judge — Order is "judgment" under cl. 10 of Letters Patent (All) and Chap. 8, R. 5 of Allahabad High Court Rules and appealable : 1958 All L J 61, Reversed. See U. P. Agricultural Income-tax Act (3 of 1949), S. 2. **AIR 1963 S C 946.**

SECTION 11

● ——Ss. 11, 10 and 2— Assessment without jurisdiction validated by U. P. Act (14 of 1956) — Assessee given right to apply for review of orders made under U. P. Act (3 of 1949) — Assessment order set aside under Art. 226 of the Constitution of India—Review of order under Art 226 under U. P. Act (14 of 1956) is not maintainable. 1958 All L J 61, Affirmed. Review application dismissed by Single Judge — Order is 'judgment' under cl. 10, Letters Patent (All) and Chap. 8, R. 5 of Allahabad High Court Rules and appealable. 1958 All L J 61, Reversed. See U. P. Agricultural Income-tax Act (3 of 1949), S. 2. **A I R 1963 S C 946.**

● ——S. 11—Scope of—Assessment order inconsistent with Amending Act — Remedy —Power of appellate Court to deal with appeal in light of amended law.

For setting aside an adverse order inconsistent with the provisions of the amending Act of 1956, a proceeding for review under S. 11 is not the only remedy which is open to an aggrieved party. A court of appeal, in an appeal properly before it, must give effect to the law as it stands if the law has, at some stage anterior to the hearing of the appeal, been amended retrospectively and a provision for review like the one contained in S. 11 of the amending Act does not affect the power of the Appellate Court to deal with the appeal in the light of the amended law. State of U. P. v. Raja Syed Mohammad Saadat Ali Khan. **1961 All L J 79 : 1961 All W R (H C) 109 : (1961) 41 I T R 737 : (1961) 1 S C R 82 : (1961) 2 S C J 35 : AIR 1960 S C 1283 (1285) (Pt B) (Pr 9).**

——S. 11—Applicability to order of High Court in writ proceedings.

Section 11 of the Amendment is intended to provide for the review of orders which have been passed in any proceedings under the principal Act, namely the U. P. Agricultural Income-tax Act, 1948 and cannot apply to orders passed by High Court in exercise of its jurisdiction under Art. 226 of the Constitution. ILR (1957) 1 All 274, Foll. **1958 All W R (H C) 133 : 1958 All L J 61.**

——S. 11 — Applicability — (Constitution of India, Art. 226)—(U. P. Agricultural Income-tax Act (3 of 1949), Ss. 14, 44).

Section 11 applies only to cases in which the assessment has been set aside in any proceedings under the principal Act. Where the assessment has not been set aside in any proceedings under the principal Act but in exercise of the jurisdiction vested in the High Court under Art. 226 of the Constitution petitions

under S. 11 are not maintainable. **(1957) All W R (H C) 452 : 1957 All L J 477.**

U. P. AGRICULTURAL INCOME TAX RULES (1949)

RULE 5

——R. 5 — Option of computation of income—Declaration in prescribed form — To accompany every return filed — Change in option not prohibited. See U. P. Agricultural Income-tax Act (3 of 1949), S. 6 (1) (a) read with S. 15 (4). **(1962) 46 I T R 417 (All).**

RULE 13

——R. 13—Rule is ultra vires of the State Government. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 6 (2) (b) (iv). AIR 1964 All 439 (DB).

RULE 15

——R. 15—Sale of grain stock of previous year—Amount not part of income of assessment year. See U. P. Agricultural Income-tax Act (3 of 1949), S. 6 (3). ILR (1959) 2 All 353.

RULE 17

——R. 17—Carry out purpose of Act—Meaning of — Scope of sub-sections (1) and (2) — Rule 17 not procedural. See U. P. Agricultural Income-tax Act (3 of 1949), S. 44 (1). ILR (1959) 2 All 353.

——R. 17—Validity—Delegation of legislative powers —Principles — Rule 17 not covered by S. 44 (2) or S. 8 — Rule acted upon bona fide by assessee — State cannot challenge validity retrospectively—Rule held effective in respect of past transactions — (U. P. Agricultural Income Tax Act (3 of 1949), Ss. 44, 8)—(Constitution of India, Art. 245).

It is well settled principle of constitutional law that a legislature cannot delegate its essential function. The legislative policy regarding a legislature must be clearly and explicitly explained in the statute itself, but when such powers are delegated they should be canalised and be within limits. Certain details e. g. fixing the maximum rate of imposition of a tax, authorising the executive to determine the rate can be delegated to a subordinate authority.

So far as R. 17 is concerned, no clause under sub-section (2) of S. 44 covers it. Sub-section (1) of S. 44 also does not apply to a rule like R. 17, which is not a procedural law for carrying out the purpose of the Act.

But if a rule has been made by the State purporting to be within its powers for the benefit of the subject, and acting on the basis of which the subject has incurred liabilities and entitled himself to a benefit, the State on its own motion cannot ask the Court to have the law declared later on as ultra vires. The law, in that event, should be interpreted in favour of the subject and in a way that lesser injustice results from its interpretation.

Thus, though R. 17 was not purported to have been framed under S. 8 it had been made under S. 44 and it having been laid before the Legislature and having been acted upon bona fide by the assessee, who had derived advantage, it is not now open to the State to have the law declared ultra vires retrospectively, to affect the past and completed transactions having taken place on the basis of that rule. The answer may have been different if no benefit to the subject had accrued and the State had derived unfair benefit by means of the ultra vires rule.

Held, that so far as the past transactions were concerned R. 17 would be deemed to be effective. I L R (1959) 2 All 353.

——R. 17—Scope—'And' when read as 'or' — Explanation not independent of Rule — Donation to fund or institution not approved by State — Not covered by Rule—(Interpretation of Statutes—And and or).

"And" should be read as "and" and "or" as "or" ordinarily and unless there are strong and sufficient reasons to read one for the other, it is not open to a Court to treat them as synonyms. "And" is used generally in a conjunctive or cumulative sense requiring the fulfilment of all the conditions that it joins together, while "or" is a disjunctive conjunction equivalent to the word "either" and is antithesis of "and".

There is no reason for reading 'and' in Rule 17 as 'or'. Further, Explanation to R. 17 is not to be interpreted and applied independently of the rule and the Explanation to R. 17 is controlled by the rule itself.

The contention, therefore, that in order to avail of the advantage of R. 17 a 'fund' or 'institution' to which a donation is given should be either 'charitable' as explained in the Explanation or 'approved by the State Government', cannot be accepted and hence where a school, a hospital or any other charitable institution is not recognised by the State 'Government or approved by it for the purpose of this rule, it cannot be included in R. 17.

Moreover, a law should be so interpreted that it should not impute redundancy to the legislature or to the rule making authority. If the contention of the assessee that a charitable purpose need not be approved by the State Government is accepted then the words "and is approved by the State Government for the purpose of the rule" in R. 17 would be redundant. ILR (1959) 2 All 353.

——R. 17—Notification under—Approval of or grant from State Government — Supervision of hospitals by Civil Surgeon.

Neither the supervision of hospitals by the Civil Surgeon does amount to an approval of those hospitals, nor the payment of travelling and daily allowances to him can be treated as a grant. A grant in the notification means any grant paid either in cash, kind or even in service but it should be a real grant in the form of a donation. Either there should be some amount paid in cash as a grant or maintenance or there should be free of charge, regular and proper services of a doctor paid by the State available in any of the hospitals. The meaning of grant cannot be extended any further.

Further, an inspection by the Civil Surgeon does not amount to an approval of the Hospital by the State Government 'for the purposes' of R. 17. I L R (1959) 2 All 353.

——R. 17 — Donation—Scholarships paid directly to students.

If an amount is donated to an educational institution recognised by the State, e.g., a University, a college or any other school, which is either recognised by the State Government or by any of the local authorities then, in that event, it would amount to a donation to that institution within the meaning of R. 17 whether it is paid for the purpose of maintenance of the school, for payment as scholarships to students, for prize distribution for Jubilee celebrations or for any other purpose connected with the institution. But if the amount is paid directly to students who may be the students of a recognised school the donation would not come within the purview of R. 17. ILR (1959) 2 All 353.

RULE 18

——R. 18 (as amended in 1956) — Assessee having property in several districts — Assessment of agricul-

tural income-tax — Additional Collector was competent to assess income-tax on agricultural income after amendment of the Act in 1956. A I R 1955 N U C (All) 2707, Reversed. See U. P. Agricultural Income tax Act (3 of 1949), S. 14. A I R 1960 S C 1283.

—R. 18 (2) — Notification No. 1748/AIT-5, D. 26-5-1949 issued by Board of Revenue — Subsequent amendment in R. 18 (2)— Assessment under Notifications — Legality — (General Clauses Act (1897), S. 24).

Where it was contended that the Notification No. 1748/AIT-5, D/- 26-5-1949 made by the Board of Revenue under R. 18 (2), should not be held to be operative for the assessment made in 1955 when the words 'Board of Revenue' no longer existed in R. 18 (2).

Held, that a notification made under a rule by a competent authority continues to be valid unless withdrawn or superseded by the succeeding authority and it will be deemed that the rule continues in force as if issued by the authority succeeding the earlier authority. The notification made by the Board of Revenue in 1949, therefore, continued to be good, and the assessmeut was not without jurisdiction. 1958 All W R (HC) 620 : 1958 All L J 509.

—R. 18 (1) (a)—Property situate in several districts — Additional Collector to make assessment has no jurisdiction to exercise extra-territorial jurisdiction — (U. P. Land Revenue Act (3 of 1901), Ss. 14 and 14-A). See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 14. A I R 1955 N U C (All) 2707 (DB).

[Reversed in A I R 1960 S C 1283].

RULE 25-C

—R. 25-C — Revision petition, signing of — By applicant alone — Necessity — Procedure adopted by Board—Validity. See U. P. Agricultural Income-tax Act (3 of 1949), S. 22. 1962 All L J 982.

RULE 34

—R. 34, Proviso — Assessee depositing tax under S. 30 of U. P. Agricultural Income-tax Act (3 of 1949) — Reduction in tax liability because of fresh assessment made on remand—Application for refund of excess tax paid— Limitation for — Proviso not applicable — U. P. Agricultural Income-tax Act (3 of 1949), S. 30.

There is no rule, in the rules framed under the U. P. Agricultural Income-tax Act, which prescribes the limitation for an application for the refund of the excess profits tax, deposited by the assessee to which the assessee becomes entitled, in consequence of the reduction of the tax liability, under the fresh assessment, framed by the Assessing Authority, in consequence of the remand order of the Appellate authority. The proviso to R. 34 does not apply to such a case. 1962 AllW R (HC) 12.

RULE 35-A

—R. 35-A — Scope and applicability — See U. P. Agricultural Income-tax Act (3 of 1949), S. 43. ILR (1958) 2 All 663.

U. P. AGRICULTURAL SERVICES RULES

RULE 21

—R. 21 — (Framed under Civil Services (Classification, Control and Appeal) Rules, 1930, R. 55 (3)— R. 21 silent on manner of disciplinary proceedings— Disciplinary proceedings will be governed by R. 55(3) by reason of proviso to R. 3 — Probationer's services cannot be terminated without giving show cause notice. 1964 All L J 1000.

U. P. AGRICULTURAL TENANTS ACQUISITION OF PRIVILEGES ACT (10 of 1949)

See under Tenancy Laws.

U. P. AGRICULTURAL TENANTS ACQUISITION OF PRIVILEGES (AMENDMENT) AND MISC. PROVISIONS ACT (7 of 1950)

See under Tenancy Laws.

U. P. AGRICULTURISTS' RELIEF ACT (27 of 1934)

See under Debt Laws.

UTTAR PRADESH ARMS RULES

RULE 148

—R. 148 — Scope — Rule 148 is valid as administrative Rule—Commissioner has power to give directions to District Magistrate on question of renewal of licence—(Arms Act (1878), S. 17—Arms Rules, R. 41). 1958 All W R (HC) 687 : 1958 All Cr R 464 : 1958 All L J 586.

UTTAR PRADESH ARMS RULES AND ORDERS (1935)

RULE 17

—R. 17 — Sikh carrying more than one sword — Word 'kripans' in the said rule has been used in relation to Sikhs and emblems — The rule is not intended to mean that a Sikh should possess without a licence any number of arms for the possession of which others have to take a licence—Constitution of India, Art. 25, Explanation I. See Arms Act (1878), S. 19 (f). AIR 1952 All 53.

—R. 17 — Kripan — Meaning of — Constitution of India, Art. 25, Explanation 1.

Kripan means a sword and its size or shape has not been prescribed by the Sikh religion; it may be a sword of any size or shape. ILR 5 Lah 308, Rel. on. 1951 R D (HC) 275 : 1952 Cri L J 218 : AIR 1952 All 53 (55) (Pt A) (Pr 13).

UTTAR PRADESH BAR COUNCIL RULES

RULE 1

—R. 1, Proviso 8 — 'Bona fide practised'—Meaning —Graduate in law working as Public Prosecutor for more than 3 years — Right to be enrolled as advocate under R. 1, Proviso 8. See Bar Councils Act (1926), S. 9. AIR 1959 All 341 (DB).

UTTAR PRADESH BOARD OF REVENUE (DECLARATION OF PROCEDURE AND VALIDATION) ACT (30 of 1953)

PREAMBLE

—Preamble — Validity of Act — Act is not void on ground that it infringes provisions of Art. 14 of Constitution — (Constitution of India, Art. 14). AIR 1955 NUC (All) 1517.

—Preamble — Judgment of concurrence by one of members of Revenue Board quashed on ground that he did not hear parties — Case sent back to Board for disposal according to law — State Legislature passing Act (30 of 1953, authorising Member who had not heard the parties to sign concurrence with judgment written by another member who had heard the parties — Judgment in case signed by another member purporting to act under the new Act—There is no disregarding of the decision of the High Court. See Constitution of India, Art. 226. AIR 1954 All 660 (DB).

—Preamble—Validity—There is no discrimination —(Constitution of India, Art. 14).

U. P. Act 30 of 1950, prescribes a Special Procedure in all cases coming before the Revenue Board and the same procedure is applicable to every case before it. There is no discrimination. Act is not invalid on this ground. **1954 A L J 656 : AIR 1954 All 660 (661) (Pt B) (Pr 6) (DB).**

——Preamble—Validity—Act is not invalid because a member of the Board of Revenue who has not heard the parties can sign concurrence to the judgment written by another who heard the parties — (Constitution of India, Art. 226 — Rule of natural justice that parties should be heard).

In India no so-called rule of natural justice that no case shall be decided without giving the parties an oppartunity to be heard can invalidate an Act passed by our legislatures within their legislative competence.

So the U. P. Act 30 of 1953 is not invalid on the ground that it allows a Member of the Revenue Board who has not heard the parties to sign the judgment written by another member who has heard the parties. **1954 A L J 656 : AIR 1954 All 660 (661) (Pt C) (Prs 7, 8) (DB).**

——Preamble — Act does not amend C. P. Code and did not require sanction of President for its validity —(Constitution of India, Art. 254 (2)).

The C. P. Code is not applicable to proceedings in Revenue Courts, except to the extent that the revenue law makes it applicable and the U. P. Act (30 of 1953) provides that in Revenue Courts the procedure laid down in the Act shall be followed; and thus there is no question of this Act amending the C. P. Code and therefore requiring the sanction of the President. Act is not invalid on this ground. **1954 ALJ 656 : AIR 1954 All 660 (661) (Pt D) (Pr 9) (DB).**

——Preamble—Enactment is not ultra vires of legislature.

The Board of Revenue was constituted by U. P, Acts and it is the U. P. Legislature which is competent to lay down the procedure according to which the Board of Revenue is to act in exercising its judicial powers. Obviously, until the passing of Act (30 of 1953) the procedure in writ cases arising under the U. P. Tenancy Act was governed by the procedure laid down in the Code of Civil Procedure with the amendments to it made by the U. P. Tenancy Act itself. That procedure which was applicable to the Board of Revenue has been amended by Act (30 of 1953) and in passing such an enactment the U. P. Legislature has not in any way exceeded its legislative powers. **1954 All L J 152 : 1954 All W R (HC) 256 : AIR 1954 All 454 (454) (Pt B) (Pr 2).**

SECTION 3

——Ss. 3 and 4—Member passing judgment in appeal —Case sent to another Member for orders — Such member passing order without hearing parties—Order is valid. AIR 1955 NUC (All) 1517.

——Ss. 3 and 4—'Appeal' includes review—(Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 273).

The power of review possessed by the Board under S. 373, U. P. Tenancy Act is a power which is supplementary to the exercise by it of its powers of appeal reference or revision. It is a statutory power which it exercises as part of its appellate, reference and revisional jurisdiction, as the case may be, and not otherwise.

Hence, the word 'appeal' in Ss. 3 and 4 of the U. P. Board of Revenue (Declaration of Procedure and Validation) Act, 1953, includes an application for the review of a decree or order made on appeal.

Where, therefore, a review application is heard and allowed by a single member and the order is concurred in subsequently by another member of the board, the order is not rendered invalid merely because it is concurred in without hearing the parties. **1954 All L J 430 : A I R 1955 N U C (All) 171.**

——S. 3 — Hearing of appeal by one only of the two members giving decision—C. P. Code (1908), O. 41, R. 30).

The use of the words "except where it is expressly provided to the contrary, in the second part of S. 3" mean that there should be some express provision of law requiring that hearing must be given by more than one member. Order 41, Rule 30, C. P. Code, does not now apply to proceedings before the Board of Revenue because of the first paragraph of this section and therefore cannot be said to make any express provision to the contrary within the meaning of this section so as to require every member of a Court to give a hearing to the parties and as laying down that an appeal cannot be heard by one member and must be heard by more than one of all the members of the Board of Revenue. **1954 All LJ 152 : 1954 All W R (HC) 256 : AIR 1954 All 454 (454) (Pt C) (Pr 2).**

SECTION 4

——S. 4 — One Member of Board passing order without hearing parties —Sections 3 and 4 have the effect of validating his order. See U. P. Board of Revenue (Declaration of Procedure and Validation) Act (30 of 1953), S. 3. **AIR 1955 N U C (All) 1517.**

——S. 4 — 'Appeal' includes review. See U P. Board of Revenue (Declaration of Procedure and Validation) Act (30 of 1953), S. 3. **1954 All L J 430 : A I R 1955 N U C (All) 171.**

UTTAR PRADESH BRICKS CONTROL ORDER (1956)

CLAUSE 3

——Cl. 3 (2)—Clause is discriminatory and unreasonable and must be declared to be unconstitutional. See Constitution of India, Art. 14. **1965 (2) Cr L J 326 : AIR 1965 All 412.**

——Cl. 3 (2)—Constitution of India, Art. 19— Clause not hit by article. See Constitution of India, Art. 19. **1965 (2) Cr L J 326 : AIR 1965 All 412.**

——Cls. 3 (2) and 9 — Applicant contravening Cl. 3 (2)—Clause declared unconstitutional —Acquittal of applicant and restoration of bricks forfeited ordered.

Contravention of an unconstitutional and invalid clause is no offence and cannot justify an order of forfeiture under Cl. 9 of the Order. Where therefore the accused was convicted for contravention of Cl. 3 (2) of the Order and was awarded a fine and his stock of bricks was forfeited and Cl. 3 (2) was declared to be unconstitutional :

Held, that the accused deserved acquittal of the offence of which he was convicted and the restoration of bricks, ordered to be forfeited or, in case of sale of bricks the refund of the sale proceeds. **1964 All L J 451 : ILR (1964) 1 All 748 : 1965 (2) Cr L J 326 : AIR 1965 All 412 (415) (Pt C) (Pr 34).**

CLAUSE 9

——Cls. 9 and 3 (2)—Applicant contravening Cl. 3(2) — Clause declared unconstitutional — Acquittal of applicant and restoration of bricks forfeited, ordered. See U. P. Bricks Control Order (1956), Cl. 3 (2). **1965 (2) Cri L J 326 : AIR 1965 All 412.**

UTTAR PRADESH BUTTER, GHEE AND FAT LIENSING RULES (1930)

RULE 3

——Rr. 3 and 11—Validity — Rules are discretionary and so long as the discretion is not used arbitrarily,

unjustly and oppressively, it is not open to challenge. U. P. Prevention of Adulteration Act (6 of 1912). See Constitution of India, Art. 19 (1) (g). A I R 1957 All 548 (DB).

RULE 11

—R. 11 — Validity — Rule is discretionary—U. P. Prevention of Adulteration Act (VI of 1912). See Constitution of India, Art. 19 (1) (g). 1957 Cri L J 915 : AIR 1957 All 548 (DB).

UTTAR PRADESH CANTONMENTS (CONTROL OF RENT AND EVICTION) ACT (10 of 1952)

See Under Houses and Rents.

UTTAR PRADESH CEMENT CONTROL ORDER (1948)

CLAUSE 1

—Cl. 1—U. P. Cement Control Order, 1948 is valid —(Government of India Act (1935), S. 59.) See U. P. Control of Supplies (Temporary Powers) Act (2 of 1947), S. 1 (4). 1955 Cri L J 1025 : AIR 1955 All 397 (DB).

UTTAR PRADESH CEMENT CONTROL ORDER (1953)

CLAUSE 5

—Cl. 5—Order refusing renewal of licence—Quashing of. See Constitution of India, Art. 226. AIR 1955 N U C (All) 1740.

—Cl. 5 — Order refusing to renew licence — No appeal lies. AIR 1955 N U C (All) 1740.

CLAUSE 6

● —Cls. 6, 7 and 9 —Offence— No proof as to controlled price — Conviction of the accused is illegal. See Essential Supplies Act (1946), S. 7. 1960 Cr L J 423 : AIR 1960 S C 283.

CLAUSE 9

● —Cls. 9, 6 and 7—No proof as to controlled price — Conviction of accused is illegal. See Essential Supplies (Temporary Powers) Act (1946), S. 7. 1960 Cri L J 423 : AIR 1960 S C 283.

UTTAR PRADESH CEMENT CONTROL ORDER (1955)

CLAUSE 3

—Cl. 3—Scope—Bringing cement from outside the district without licence is punishable and not possession of cement without licence. 1965 All W R (HC) 117 : 1965 All Cr R 122 : 1965 All L J 77.

CLAUSE 5

—Cl. 5 — Refusal to renew licence — Appeal — Maintainability.

An appeal to the Controller against an order of the District Magistrate refusing to renew a licence is competent. The word "refusing" mentioned in sub-cl. (c) applies equally to the refusal mentioned in sub-cl. (a) and that mentioned in sub cl. (b). It is impossible to believe that the rule-making authority intended to permit an appeal against the supension cancellation or revoking of a licence but denied such right against a refusal to renew a licence, That would be inconsistent with the other terms of the clause. 1959 All W R (HC) 166.

—Cl. 5—Scope—Interim order passed by appellate authority — District Magistrate not complying with order —Issue of mandamus — (Constitution of India, Art. 226).

An appellate quasi-judicial or administrative tribunal or authority has no power to issue interim orders unless such power is specifically conferred on it by the statute which has created it; where the statute mentions no such power the conclusive presumption is that the legislature did not intend the tribunal or authority to enjoy such power. The Cement Controller is invested only with those powers which are expressly recited in sub-cl. (c) of Cl. 5 of the Order and neither under that clause nor any other clause of the order, nor under any provision of the parent Act namely, the Industries (Development and Regulation) Act (LXV of 1951) under which the Order has been can he possess any greater power. Under Cl. 5 (c) he is entitled to pass only final orders and therefore it clearly follows he has no authority to pass interim orders pending the final decision of an appeal before him. As there is no power in the Cement Controller to pass interim orders there can also be no legal or statutory duty upon the District Magistrate to obey his order and hence a writ of mandamus cannot be issued to him. 1959 All W R (HC) 166.

UTTAR PRADESH CHILDREN ACT (1 of 1952)

SECTION 17

—Ss. 17, 29—Scope.

The seduction and indulgence in immoral behaviour is made punishable under the Act if it is done with a girl under the age of 16. As the complainant was a girl under the age of 16 the accused could be punished under S. 17 in addition to their being punished under the Penal Code. But this does not mean that the benefits of S. 29 of the Children Act could not be extended to them, if they were children at this time. 1954 All L J 256 : 1954 Cr L J 1288 : 1954 All W R (HC) 191 : A I R 1954 All 580 (582) (Pt C) (Pr 11) (DB).

SECTION 29

—Ss. 29, 75 — Applicability of Section 29 during pendency of appeal.

If a person is arrested in connection with offences under the Act itself and if he is a child on that date, he can get the benefit of the Act. Otherwise, a person must be a child on the date on which an application, oral or written, is made for extending the benefit of S. 29. Where the accused were not arrested in connection with any offence provided for by the Act the Court can extend the benefit of S. 29 of the Act only if the accused is a child when an oral request is being made to the appellate Court, when the accused is over 16 years of age the Court cannot deal with him under S. 29 on the ground that he was a child when he committed the offence and he was also a child when the proceedings were initiated against him and even when the Court below convicted him. 1954 All L J 256 : 1954 Cri L J 1288 : 1954 All W R (H C) 191 : A I R 1954 All 580 (582) (Pt B) (Pr 10) (DB).

—S. 29 — Scope — Benefits of the section can be extended to accused if they were children at the time of the offence. See U. P. Children Act (1 of 1952), S. 17. 1954 Cri L J 1288 : A I R 1954 All 580 (DB).

SECTION 75

—S 75—Applicability of S. 29 during pendency of appeal. See U. P. Children Act (1 of 1952), S. 29. 1954 Cri L J 1288 : A I R 1954 All 580 (DB).

UTTAR PRADESH CINEMAS REGULATION ACT 1955 (3 of 1956)

PREAMBLE

—Preamble — Scope and object of Act — It deals with licensing of cinema house and education and health of community.

The U. P. Cinemas Regulation Act, 1955, does not make provision for the licensing of places alone where cinematograph films may be exhibited. The preamble of the Act is evidently not so restricted but is wider and will include within its ambit provision for regulation of exhibition of films by means of cinematograph. A purpose evident from provisions contained in Ss. 3, 5, 6 and 7 of the Act is that the scheme of licensing is not confined to the using of a place for cinematogroph exhibition on grounds of public safety, etc., but factors such as the educational and scientific advancement of the people and their health can also properly be taken into consideration in determining the conditions and restrictions to be included in a licence. The Act has thus at least two objects in view, one the licensing of the place where cinematograph exhibition can be held and two, the education and health, etc, also of the community making use of them. **A I R 1961 All 600 (603) (Pt A) (Pr 7).**

SECTION 3

——**Ss. 3 and 8** — Exhibition of film in unlicensed building—Offence continues so long as the exhibition lasts—If after an interval another exhibition opens, it is a repetition of the act and not its continuation—Giving daily exhibition is not a continuing offence and the person concerned is not liable for daily fine. **1960 All Cri R 254 : 1960 All L J 512 : 1960 All W R (H C) 387 : 1961 (1) Cri L J 202 : A I R 1961 All 88 (88, 89) (Pt B) (Prs 4, 5).**

SECTION 5

——**S. 5 (2)** — Licence to show cinematograph — Imposition of conditions in—Power of State Government to give direction to licensing authority in respect of — Power is not arbitrary and discretionary. See Constitution of India, Art. 14. **A I R 1961 All 600.**

——**S. 5 (2)** — Reasonable restriction — Order passed laying restrictions on cinema house proprietors in respect of daily shows—Order impugned as infringing Art. 19 (1) (g) — Reasonability of Order to be tested with reference to object of Act—Held, the impugned order was reasonable and valid. See Constitution of India, Art. 19 (1) (g). **A I R 1961 All 600.**

——**S. 5 (2) and S. 13—Scope of S. 5 (2)—Failure to make rules under S. 18 does not affect power of licensing authority to impose conditions under S. 5 (2).**

The failure on the part of the State Government to make rules in exercise of its rule-making power under S. 13 of the Act has not affected the power of the licensing authority, or of the State Government itself to act in the direction of imposing terms, conditions and restrictions subject to which licence can be granted under sub-s. (2), S. 5. So far as sub-s. (2) exists it does not limit down the power of the licensing authority to include in the licence such conditions only as might have been prescribed by rules made under S. 13. Section 13 as well does not in turn curtail the power belonging to the licensing authority under sub-s. (2) of S. 5 to the terms, conditions and restrictions provided for under its provisions. None of the two sections has thus placed any limitation on the power of the State Government or of the licensing authority that it will in the matter of determining conditions, etc., be confined to the provision existing in the rules framed under the Act. **A I R 1961 All 600 (605) (Pt C) (Prs 20, 21).**

SECTION 8

——S. 8—Exhibition of film in unlicensed building—Not a continuing offence — Sentence of daily fine—Legality—'Continuing offence'—Meaning of—If after an interval another exhibition opens, it is a repetition of the Act and not its continuation. See U. P. Cinemas Regulation Act (3 of 1956), S. 3. **1961 (1) Cri L J 202 : A I R 1961 All 88.**

——S. 8 — Conviction on plea recorded under S. 243 —No admission of guilt by accused — Procedure under Chapter 20 not followed—Conviction bad. See Criminal P. C (1898), Chap. 20. **1961 All Cri R 61 : 1961 All L J 108.**

SECTION 13

——**S. 13**—Failure to make rules under S. 13 does not affect power of licensing authority to impose conditions under S. 5 (2). See U. P. Cinemas Regulation Act, 1955 (3 of 1956), S. 5 (2). **A I R 1961 All 600.**

U. P. CINEMATOGRAPH RULES (1951)

RULE 14

——R. 14 — Criminal P. C. (1898), Chapter 20 and Ss. 243, 244 (vi)—Conviction on plea recorded under S. 243—No admission of guilt by accused—Procedure under Chapter 20 not followed—Conviction bad. See Criminal P. C. (1898), Chap. 20. **1961 All Cri R 61 : 1961 All L J 108.**

UTTAR PRADESH CIVIL LAWS (REFORMS AND AMENDMENT) ACT (24 of 1954)

PREAMBLE

● ——**Preamble — First appeal pending in High Court in suit decided prior to enactmant of the Act of less than ten thousand rupees valuation—If could be transferred under S. 24, Civil P. C, (5 of 1908) to District Judge or Additional Judge empowered under the Act to hear and dispose of such appeals. 1962 All L J 544, Reversed.**

A first appeal in a suit decided prior to the enactment of the U. P. Civil Laws (Reforms and Amendment) Act (24 of 1954), involving a valuation of less than ten thousand rupees could not be transferred by the High Court under S. 24 of the Civil P. C. (5 of 1908) to a District Judge or Additional District Judge empowered under that Act to hear and dispose of such appeals. In the face of S. 3 (1) of the Act it is impossible to hold that the District Courts were competent to hear appeals of the valuation of ten thousand rupees or less in suits decided before the Act came into force, and appeals from which were pending before the High Court. (1962) All L J 544, Reversed, Lakshmi Narain v. The First Additional District Judge, Allahabad. **(1963) 2 S C J 479 : 1963 All L J 515 : 1963 All W R (HC) 936 : (1963) 1 S C W R 354 : (1964) 1 S C R 382 : I L R (1963) 2 All 694 : A I R 1964 S C 489 (491, 492) (Pt A) (Prs 6, 7).**

——**Preamble** — Application for execution of decree — Limitation — Old law providing for 3 years' limitation — U. P. Act XXIV of 1954 extending the period to six years coming into force before the expiry of the 3 year period provided under the old law—Decree-holder entitled to take advantage of the extended period. See Limitation Act (1908), Art. 182. **AIR 1964 All 120.**

SECTION 3

——**S. 3**—Appeal—Forum for—Appeals filed in High Court under Bengal, Agra and Assam Civil Courts Act—Act amended — District Judges to hear appeals from decrees in suits valued upto Rs. 10,000—High Court can transfer appeals to District Judges—Vested rights of litigants to have appeals disposed of by High Court not affected—Determination of competency of District Judges—Principle. See Civil P. C. (1908), S. 24. **AIR 1962 All 503 (DB).**

——**S. 3 (1)—Scope — Rights acquired prior to enforcement of Act can be taken away by S. 24, C. P. Code.**

Sub-section (1) of S. 3 which reserves rights acquired prior to the enforcement only means that a right already acquired must not be deemed to have been taken away by any provision of the Amending Act and not that it must not be deemed to be taken away by any other provision such as that contained in S. 24, Civil P. C. **1962 All L J 544 : 1962 All W R (HC) 571 : AIR 1962 All 503 (504) (Pt B) (Pr 3) (DB).**

—S. 3 (2)—Period of limitation extended by (U P) Amending Act (1954)—Amendment coming into force after starting of limitation—Decree-holder entitled to extended period — S. 3 (2) of U. P. Act not applicable to execution—See Limitation Act (1908), S. 182. **1962 All L J 649.**

—S. 3 — Section saves only rights acquired before amendment — Tenancy for indefinite period — No vested right in tenancy of future months — Notice to quit in terms of amended S. 106 of T. P. Act is legal —Transfer of Property Act (1882), S. 106 (as amended by U. P. Act 24 of 1954). **ILR (1961) 2 All 224.**

—S. 3 — Retrospective operation — Right of appeal vests in party at initiation of proceeding — S. 3 does not apply to suits initiated before Act — Appeals which lay to High Court under old law, still continue to lie to High Court, provided suit is instituted before Act. (Interpretation of Statutes — Retrospective effect) — (Civil P. C. (1908), Pre) **A I R 1955 N U C (All) 3546 (DB).**

UTTAR PRADESH CIVIL LAWS (REFORMS AND AMENDMENT) AMENDMENT ACT (9 of 1963)

SECTION 2

—S. 2 — Amendment Act of 1963 is not invalid. See Constitution of India, Art. 254 (2). **1964 All L J 930.**

UTTAR PRADESH CIVIL SERVICE (EXECUTIVE BRANCH) RULES (1941)

RULE 23

—Rr. 23 and 24 — Government servant appointed by clear vacancy—Status of, after expiry of period of probation — Order of termination of probation after five years—No opportunity to hear given—Order held invalid. See Constitution of India, Art. 311. **1 L R (1959) 1 All 226.**

[Overruled on another point in A I R 1961 All 450 (FB).]

—R. 23 — Period of Probation — How extended—Retrospective effect of order of extension.

Under Rule 23, the period of probation, is a fixed period and though it can be extended in appropriate cases, it has nevertheless to be a fixed period and not continue indefinitely. An extension in the period of probation does not take place except by a written order which should contain the date upto which this is done.

As one obvious effect of letting the period of probation to be extended even subsequently with retrospective operation would be to divest the Government servant concerned of certain rights already accrued in his favour, the power to extend that period of probation contained in Rule 23 will not entitle the Governor to extend it after the original period has expired. Unless the rule has expressly provided that any particular power conferred by it shall be exercisable with retrospective effect also, the power can be used prospectively only whenever it will have the effect of divesting any rights already accrued. **I L R (1959) 1 All 226.**

[Overruled in AIR 1961 All 450 (FB).]

RULE 24

—R. 24 — Government servant appointed by clear vacancy—Status of, after expiry of period of probation — No opportunity to hear given — Order held invalid. See Constitution of India, Art. 311. **I L R (1959) 1 All 226.**

[Overruled on another point in AIR 1961 All 450 (FB).]

RULE 25

—R. 25 — U. P. Civil Service (Executive Branch) Rules (1941) are only for the guidance and do not form terms of the contract between the crown and the Civil Servant. See Constitution of India, Arts. 310-311. **AIR 1951 All 205 (Pt B) (DB).**

[Reversed on another point in AIR 1955 S C 600.]

—Rr. 25, 29 — Civil Servant — Right to demand salary — No statutory obligation on Crown to pay salary — See Government of India Act (1935), S. 240. **AIR 1951 All 205 (DB).**

[Reversed on another point in AIR 1955 S C 600.]

RULE 29

—Rr. 29, 25 — Civil Servant — Right to demand salary — No statutory obligation to pay salary — See Government of India Act (1935), S. 240. **A I R 1951 All 205 (DB).**

[Reversed on another point in AIR 1955 S C 600.]

UTTAR PRADESH CIVIL SERVICE (JUDICIAL BRANCH) RECRUITMENT RULES (1940)

CLAUSE 2

—Cl. 2 — Civil and Sessions Judges — Position as members of U. P. Judicial Service.

Civil and Sessions Judges were not in the regular line of the U. P. Judicial Service upto 27-2-1942. With effect from 28-2-1942, Civil and Sessions Judges became officers in the regular line of the U. P. Judicial Service. **A I R 1959 All 393 (402) (Pt M) (Pr 79) (DB).**

UTTAR PRADESH CIVIL SERVICE (JUDICIAL BRANCH) RULES (1951)

RULE 6

—R. 6 — Rules 6 and 32 are two different methods of appointment — No preference can be given to one source over the other. See U. P. Civil Service (Judicial Branch) Rules (1951), R. 32 (2). **(1964) 8 Fac L R 375 (All).**

RULE 14

—R. 14—Governor's opinion challenged as infringement of fundamental right under Art. 16 — Government not bound to disclose its reasons. See Constitution of India, Art. 16. **AIR 1961 All 361.**

—R. 14—Relevancy of political activities of candidate—Participation in R. S. S. Satyagraha—Relevancy in determining fitness for service.

The opinion which the Governor has to form under R. 14 is whether the character of the candidate is such as to fit him for the service. Further, it is open to the authority recruiting persons for Government service to refuse to appoint candidates who have shown themselves not to be amenable to proper discipline or who appear to lack a sense of responsibility, and in the case of appointment to the judicial service the requirements must naturally be even more stringent than for other kinds of posts : AIR 1958 S C 520, Rel. on. Where the Governor's opinion about the petitioner's fitness of character under Rule 14 has been arrived at on a consideration of two grounds, (a) his political activities and (b) certain other undis-

closed matters; and the political activities are held to be a non-existent or irrelevant ground, then despite the other undisclosed grounds the opinion is vitiated as a whole. AIR 1954 S C 179, Rel. on.

Held, that the petitioner's participation in the Satyagraha movements sponsored by the R. S. S. and the Jan Sangh in 1949 and 1953 was a matter that could legitimately be considered by the Governor when deciding under R. 14 whether his character was such as to fit him for the judicial service; and that consequently it cannot be said that the opinion arrived at by the Governor regarding his unfitness was vitiated by reason of its being based on irrelevant considerations. Held further, that the High Court was not concerned with the precise weight that might have been or ought to have been attached by the Governor to the material in question. AIR 1961 All 361 (364) (Pt B) (Prs 9, 10, 12).

RULE 22

——R. 22—R. 6 and R. 32 are two different methods of appointment — No preference could be given to one source over the other—R. 22 is applicable only to appointments made under R. 6 and not to those made by the Governor under R. 32 (2). See U. P. Civil Service (Judicial Branch) Rules (1951), R. 32 (2). (1964) 8 Fac L R 375 (All).

RULE 32

——Rr. 32 (2), 6 and 22 — Constitution of India, Art. 16—R. 6 and R. 32 are two different methods of appointment — No preference can be given to one source over the other — R. 22 is applicable only to appointments made under R. 6 and not to those made by Governor under R. 32 (2) - Question of seniority of public servant is justiciable—Person appointed under R. 32 (2) belongs to same service as persons recruited under R. 6 and hence he cannot be discriminated against — Art. 16 of Constitution bars discrimination not only at time of entering into service of State, but also throughout service — Judicial Officer accepting service in the State Judicial Branch, on repeated assurances by Government—It is not open to Government to retract from them — Principle of legal or equitable estoppel would apply—Evidence Act (1872), S. 115. (1964) 8 Fac L R 375 (All).

UTTAR PRADESH CLOTH CONTROL OF MOVEMENT (SUPPLEMENTARY) ORDER, 1947.

See U. P. (Supplementary) Cloth Control of Movement Order 1947.

UTTAR PRADESH COAL CONTROL ORDER (1953)

CLAUSE 3

■ ——Cl. 3 (2) (b) — Validity — Reasonable restrictions—(Constitution of India, Art. 19 (6)).

An unrestricted power has been given to the State Controller to make exemptions and even if he acts arbitrarily or from improper motives, there is no check over it and no way of obtaining redress. Cl. 3 (2) (b) of the Control Order is, therefore, prima facie unreasonable. However, this portion of the Control Order, even though bad, is severable from the rest. Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh. 1954 S C J 238 : 1954 S C A 204 : 1954 S C R 803 : 1954 A L J 203 : AIR 1954 S C 224 (227) (Pt B) (Pr 7).

——Cls. 3 and 4—Scope—Effect of Government notification, dated 12th March, 1954—Sale of coal without licence—Sellers are guilty. See Essential Supplies (Temporary Powers) Act, S. 7. 1958 Cr L J 595 : AIR 1958 All 368 (DB).

CLAUSE 4

● ——Cl. 4 (3) -Validity — Reasonable restrictions—(Constitution of India, Art. 19 (1) (g) and (6)).

The provision of Cl. 4 (3) must be held to be void as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under Art. 19 (1) (g) of the Constitution and not coming within the protection afforded by Cl. (6) of the Article. Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh, 1954 S C J 238 : 1954 S C A 204 : 1954 S C R 803 : 1954 A L J 203 : AIR 1954 S C 224 (227) (Pt C) (Pr 8).

CLAUSE 7

● ——Cls. 7 and 8 — Validity — Reasonable Restrictions.

Clauses 7 and 8 of the Control Order do not impose unreasonable restrictions upon the freedom of trade. Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh, 1954 S C J 238 : 1954 S C A 204 : 1954 S C R 803 : 1954 A L J 203 : AIR 1954 S C 224 (228) (Pt D) (Pr 12).

CLAUSE 8

● ——Cl. 8—Validity—Reasonable retrictions—Cls. 7 and 8 do not impose unreasonable restrictions upon the freedom of trade. See U. P. Coal Control Order (1953), Cl. 7. AIR 1954 S C 224.

UTTAR PRADESH COAL CONTROL ORDER (1959)

CLAUSE 6

——Cl. 6 — Coal stock allotted to one partner frozen by authority and given in custody of other partner—When without written authority from State Coal Controller the other partner transfers Coal, his act amounts to fraudulent or dishonest disposal of coal and mischief within S. 425, I. P. C. — Offence under S 425, I. P. C., can very well be committed against one's own property. 1964 All W R (H C) 263.

UTTAR PRADESH CONSOLIDATION OF HOLDINGS ACT (8 of 1939)

See under Tenancy Laws.

UTTAR PRADESH CONSOLIDATION OF HOLDINGS ACT 1953 (5 of 1954)

See under Tenancy Laws.

UTTAR PRADESH CONSOLIDATION OF HOLDINGS (AMENDMENT) ACT (16 of 1957)

See under Tenancy Laws.

UTTAR PRADESH CONSOLIDATION OF HOLDINGS (AMENDMENT) ACT (38 of 1958)

See under Tenancy Laws.

UTTAR PRADESH CONSOLIDATION OF HOLDINGS RULES (1954)

See under Tenancy Laws.

UTTAR PRADESH CONTROLLED COTTON CLOTH AND YARN DEALERS LICENSING ORDER (1948)

CLAUSE 1

——Cl. 1 — Prosecution under Essential Supplies (Temporary Powers) Act (1946), complaint by Public servant — Consideration for. See Essential Supplies (Temporary Powers) Act (1946). AIR 1955 N U C (All) 5505.

CLAUSE 2

—Cl. 2 — Ready-made clothing — Meaning of — Ready made clothing must mean clothing which is ready for immediate use and which is meant for such use. See Cotton Cloth and Yarn Control Order (1945), Cl. 3 (a). **1953 Cri L J 612 : A I R 1953 All 245 (DB).**

CLAUSE 3

—Cl. 3 — Order of State Government cancelling appointment of district importer without recording any reasons—Order held not in compliance with the law and was liable to be set aside. See U. P. Controlled Cotton Cloth and Yarn Dealers Licensing Order (1948), Cl. 12. **AIR 1952 All 61 (DB).**

CLAUSE 4

—Cl. 4 — Validity — Provisions of the clause must be held to be void as imposing unreasonable restriction upon freedom of trade — (Cotton Textiles (Control) Order (1948), Cls. 6 (a), 11 — Validity). See Constitution of India, Art. 19 (1) (g). **1956 Cri L J 1141 : A I R 1956 All 562.**

CLAUSE 6

—Cl. 6 — Order of State Government cancelling appointment of district importer without recording any reasons—Validity—Constitution of India, Art. 226. See U. P. Controlled Cotton Cloth and Yarn Dealers Licensing Order (1948), Cl. 12. **A I R 1952 All 61 (DB).**

CLAUSE 11

—Cl. 11—Validity—Clause is ultra vires. See Constitution of India, Art. 19 (1) (g). **1956 Cri L J 1141 : A I R 1956 All 562.**

—Cl. 11 — Refusal to renew licence in Form B-1, under U. P. Controlled Cotton and Yarn Dealers' Licensing Order, 1948, on grounds irrelevant to the consideration of application for renewal — Order of refusal quashed and direction to consider application on merits issued. See Constitution of India, Art. 226. **A I R 1954 All 144 (DB).**

—Cl. 11 — Before refusing licence the applicant must be heard — Licence refused without hearing applicant—Order quashed — (Constitution of India, Art. 226

Mootham, J. — A man must not be deprived of his property without being given an opportunity of being heard. The loss of a man's right to carry on his business may be no less serious in its consequences than the loss of his property; and under the Constitution the right to hold property and the right to carry on a business are equally fundamental rights possessed by every citizen. If there be authority founded upon the plainest principles of justice that (in the absence of statutory provisions to the contrary) a man be not deprived of his property without being heard there is no reason why that principle should not be applied to the protection of another fundamental right namely the right to carry on business. English Case-law, Ref.

The Licensing Authorities, before refusing the applicant a license under Cl. 11, to do business must hear him. (Renewal of license refused without hearing applicant — Order quashed under Art. 226). **1953 All W R (HC) 723 : ILR (1954) 2 All 453 : AIR 1954 All 144 (149, 150) (Pt B) (Prs 20, 23) (DB).**

CLAUSE 12

—Cls. 12, 3 and 6 — Order of State Government cancelling appointment of district importer without recording any reasons — Validity — Constitution of India, Art. 226.

The petitioner was a holder of a licence in form B issued by the District Magistrate under Cl. 6 of U. P. Controlled Cotton Cloth and Yarn Dealers' Licencing Order, 1948. On 17-5-1951 the State Government suddenly and without any warning passed an order terminating the appointment of the petitioner as the District Importer of goods without recording the reasons as required by Cl. 12 of the order. The petitioner thereupon applied under Art. 226, Constitution of India for quashing the order.

Held, that the issue of a license in form B to the petitioner amounted to his appointment as a district importer and the cancellation of his appointment as district importer had the effect of cancelling the licence which could only be done under Cl. 12. Normally, the powers of cancelling a licence is exercised by the licensing authority but under Cl. (3) of the Licensing Order the State Government could also exercise all the powers which are exercisable by the licensing authority. The State Government was, therefore, competent to issue an order cancelling the licence of the petitioners under clause 12 of the Licensing Order but subject to the limitation mentioned therein. Consequently the State Government when passing an order which had the effect of cancelling the licence of the petitioner was bound to record its reasons in writing as required by Cl. 12 and this not having been done, the order was clearly not in compliance with law and was liable to be set aside. **1952 R D (HC) 32 : 1952 All W R (HC) 153 : A I R 1952 All 61 (62) (Pr 2) (DB).**

U. P. CONTROL OF RENT AND EVICTION ACT (3 of 1947)

See under Houses and Rents.

U. P. CONTROL OF RENT AND EVICTION RULES (1949)

See under Houses and Rents.

UTTAR PRADESH CONTROL OF SUPPLIES (CONTINUANCE OF POWERS) ACT (43 of 1948)

PREAMBLE

● —Preamble—Delegation of Legislative power — Principles stated—Power to extend life of Statute—Delegation to non-legislative body—Validity—U. P. Control of Supplies (Temporary Powers) Act (2 of 1947), S. 1 (4)—U. P. Control of Supplies (Continuance of Powers) Act (43 of 1948).

The power conferred upon a Legislature to make laws cannot be delegated or transferred by it to any other body or authority. Such a Legislature, though it may have plenary powers within the limits set by the Constitution of the State, cannot give up those powers and thus pass on the duty of making laws to another authority. Such a procedure would amount to a surrender of its Legislative powers, a self-effacement which is not permitted by any constitutional law.

The duration of a statute is a matter for determination by the Legislature itself. It is of the nature of an essential legislative act. Delegation of such power is not permitted by law. There is no real anology between "conditional Legislation" which authorises a non-legislative authority to determine the commencement or termination of an Act and an act done in exercise of a power to determine the life of an enactment itself. Ram Kishan v. State. **1951 All L J 64 ; 52 Cri L J 333 : 1951 All W R (HC) 128 : AIR 1951 All 181 (191, 192, 194, 195) (Prs 46, 49, 57 and 60) (FB).**

UTTAR PRADESH CONTROL OF SUPPLIES (CONTINUANCE OF POWERS) ORDINANCE (8 of 1948)

PREAMBLE

● —Preamble—Delegation of Legislative power is not permitted by law — Power to extend life of

Statute is with the legislature itself—There is no real analogy between "conditional legislation" which authorises a non-legislative authority to determine the commencement or termination of an Act and an act done in exercise of a power to determine the life of an enactment itself — U. P. Control of Supplies (Temporary Powers) Act (2 of 1947), S. 1(4) — U. P. Control of Supplies (Continuance of Powers) Act (43 of 1948). Ram Kishan v. State. **1951 All L J 64 : 1951 All W R (HC) 128 : 52 Cri L J 333 : A I R 1951 All 181 (191, 192, 194, 195) (Prs 46, 49, 57 and 60) (FB).**

CLAUSE 2

——Cl. (2)—Effect of — Extension of period of duration of the Act stated. See U. P. Control of Supplies (Temporary Powers) Act (2 of 1947), Preamble. **1955 Cri L J 1025 : AIR 1955 All 397 (DB).**

UTTAR PRADESH CONTROL OF SUPPLIES (TEMPORARY POWERS) ACT (2 of 1947)

PREAMBLE

——Preamble—Period of duration—(U. P. Control of Supplies Continuation Ordinance (8 of 1948), Cl. (2))—(U. P. Laws (Expiration) Act (28 of 1950), S. 3).

The life of U. P. Act (2 of 1947) was extended first by the U. P. Ordinance (8 of 1948) and thereafter by U. P. Act (42 of 1948) until 30th September, 1950. The next step was the U. P. Act (30 of 1950) and although it did not receive the assent of the President till 25th October, 1950, by reason of S. 3 of the earlier Act (28 of 1950), Act 30 of 1950 shall be deemed to have taken effect from 30th September, 1950.

There is nothing in the Constitution which prevents the Legislature from giving retrospective operation to statutes whether by means of some provision of the Statute itself or by means of another statute. The only limitation is that no one can be punished for a crime, which was not a crime at the date at which it was committed. This was specifically guarded against by S. 3 of the Act (28 of 1950). There could thus be no legal challenge to the validity of Act (28 of 1950) and, by reason of that Act, Act (30 of 1950), was deemed to have taken effect from 30th September, 1950. Thus in law there was no gap between the date of expiration of Act (2 of 1947) (as extended from time to time) and the date of the enforcement of the Extending Act (30 of 1950). Act (2 of 1947) was therefore still in force on 17th September, 1952 when the offence was said to have been committed. **1955 Cri L J 1025 : A I R 1955 All 397 (399) (Pt B) (Prs 13, 14) (DB).**

SECTION 1

——S. 1(4) — Power of Provincial Government — Nature of — U. P. Cement Control Order, 1948 — Validity — (Government of India Act (1935), S. 59) : AIR 1951 All 181 (FB) held no longer good law in view of AIR 1951 S C 332 in AIR 1955 All 48 (FB).

The words 'or if the Provincial Government by notified order so directs, of two years beginning from that date' in S. 1(4) of the U. P. Act (2 of 1947) do not amount to delegation by the Legislature of its powers and a notification of the U. P. Government, dated 26th September, 1947, directing that Act (2 of 1947) should continue to remain in force till 30th September, 1948, was valid—A I R 1955 All 48 (FB), Foll.; AIR 1951 All 181 (FB), **held no longer good law** in view of AIR 1951 S C 332 in AIR 1955 All 48 (FB).

Consequently, the U. P. Cement Control Order, 1948, which was promulgated under the powers conferred by Act (2 of 1947) as extended by the above notification was also valid.

In view of S. 59 (1), Government of India Act, which was then in force, the issue of the above notification in the name of the Governor did not indicate that it was not the action of the Provincial Government. **1955 Cri L J 1025 : A I R 1955 All 397 (398) (Pt A) (Prs 7, 8) (DB).**

——S. 1 (4) — If ultra vires — If in force after 3rd December, 1947 — If can be deemed to be in force on that date in view of U. P. Ordinance (8 of 1948) and U. P. Act (43 of 1948).

Sub-section (4) of S. 1 of the U. P. Control of Supplies (Temporary Powers) Act (2 of 1947), in so far as it vests power in the Provincial Government by notified order to direct that the Act shall continue in force for two years beginning with 1st October, 1947, is ultra vires the powers of the Provincial Legislature.

The U. P. Control of Supplies (Temporary Powers) Act, 1947, was not in force on 3rd December, 1947, nor would it be deemed to be in force on that date in view of the U. P. Ordinance (8 of 1948) and the U. P. Act (43 of 1948). **1951 All Cri R 23 : 1951 All W R (HC) 128 : 52 Cri L J 333 : 5 A I Cr D 306 : 1951 All L J 64 : I L R (1952) 1 All 376 : A I R 1951 All 181 (194) (Pr 60) (FB).**

[Held no longer good law in view of AIR 1951 S C 332 as interpreted in AIR 1955 All 48 (FB).]

UTTAR PRADESH CO-OPERATIVE SOCIETIES RULES (1936)

See under Co-operative Societies.

UTTAR PRADESH COTTON CLOTH AND YARN (CONTROL) ORDER (1943)

CLAUSE 1

——Cl. 1—Grant of licence—Discretionary—Dealeres have no legal right to obtain licence—Suit in respect of grant of licence—Not maintainable. **I L R (1962) 2 All 751.**

UTTAR PRADESH COURT OF WARDS ACT (4 of 1912)

SECTION 3

——Ss. 3, 44—Person ceasing to be ward if legally entitled to obtain possession from Court of Wards.

The Court of Wards Act only authorises the Court of Wards to deal with properties of 'Wards' or in certain eventualities of those who succeed to, or are heirs of Wards. In order to constitute a person a ward within the meaning of S. 3 two conditions are necessary, (i) he must be a disqualified proprietor, and (ii) his property must be under the superintendence of Court of Wards. If the declaration by the Government that the petitioner is unfit to manage her estate has become void, the petitioner has ceased to be a disqualified proprietor and can no longer be deemed to be a ward. The Court of Wards can thus no longer, under the very provisions of the Court of Wards Act, deal with her property nor do any of the limitation on the powers of 'wards' apply to her so that she becomes free to manage and enjoy her property as she pleases and this she can only do if the wrongful possessor restores the property to her. **I L R (1955) 1 All 162 : A I R 1954 All 608 (622) (Pt G) (Pr 84) (DB).**

SECTION 7

——Ss. 7, 16 and 37—Ward of Court — Position of cannot be equated to that of a minor—Ward not properly represented in suit — Proceedings not rendered void. See U. P. Court of Wards Act (4 of 1912), S. 56. **AIR 1958 All 710 (DB).**

SECTION 8

—S. 8 (1) (b) — Court of Wards assuming superintendence of Ward's estate by virtue of declaration made by Government under S. 8 (1) (b), U. P. Court of Wards Act long before Constitution— Assumed Superintendence must be declared void after the Constitution though whatsoever was done by the Court of Wards or whatever liabilities were imposed by the Court of Wards before the Constitution came into force could not be set aside. See Constitution of India, Art. 13 (1). AIR 1954 All 608 (DB).

—S. 8 (1) (b)— If discriminatory against females—(Constitution of India, Art. 15).

A comparison between the provisions of S. 8 (1) (b) and S. 8 (1) (d) of the U. P. Court of Wards Act will clearly reveal that the discrimination is against the woman. While it is left to the absolute discretion of the Government—Subjective and non-justiciable —To declare a female proprietor unfit to manage her estate without any rules being laid down to determine what constitutes incapacity to manage, and she is not even allowed to represent her case before the declaration is made, in the case of a male not only must certain conditions be fulfilled before he can be declared unfit to manage his estate but he must be given the fullest opportunity to have his objections heard. Even though the law may be a benign one there can be no doubt that the discrimination is against the female. Thus the denial to women of the right of representation and the absence in S. 8 (1) (b) of any rules similar to those in S. 8 (1) (d) cannot but be regarded as hostile to women and consequently the discrimination is against 'women.' AIR 1952 All 746, considered and followed. ILR (1955) 1 All 162 : AIR 1954 All 608 (618) (Pt D) (Prs 53, 54).

—S. 8 (1) (b)—Validity—If discriminatory only on ground of sex—(Constitution of India, Arts. 12, 15, 16).

Section 8 (1) (d) of the U. P. Court of Wards Act applies to estates of males as well as females. It lays down certain standards which are to guide the Government in determining whether the person concerned is incapable of managing his or her property and it allows to the person concerned a full opportunity of being heard. If the necessary conditions exist :the estate of a female as well as that of a male may be placed in charge of the Court of Wards, but in the case of females, something more is provided : it is, by S. 8 (1) (b) of the Act, left at the absolute discretion of the Government, even if the conditions imposed by cl. (d) of the same sub-section do not exist, to declare the proprietor incapable of managing her estate. This differentiation is based solely on the sex of the proprietor and the fact that the differentiation is to be made by the Government and not by the Legislature is immaterial because the word 'State' in Art. 15 includes, by reason of Art. 12, a Government also and differentiation by the Government is as much hit by Art, 15 as differentiation :by the Legislature. The fact that Government chooses to proceed in respect of an estate under S. 8 (1) (b) of the Court of Wards Act and not under S. 8 (1) (d) is based only on the sex of the proprietor, since no action can be taken under S. 8 (1) (b) against males.

While classification is permissible it cannot be classification based on any of the factors mentioned in Arts. 15 and 16 In the present case it is based on sex which is a factor on which discrimination is forbidden by Art. 15. It is, therefore, bad without anything more having to be proved.

A classification which the Constitution forbids cannot possibly be said to be reasonable. Moreover it has been held that a provision which leaves the choice to subjective discretion — not justiciable of any executive authority is not reasonable.

The provisions of S. 8 (1) of the Court of Wards Act confer an uncontrolled and arbitrary power not open to challenge in a Civil Court of declaring any proprietor-provided she is a female—unfit to manage her property. Even if it be considered that this is a permissible classification and discrimination it is unreasonable and must be declared to be void. I L R (1955) 1 All 162 : AIR 1954 All 608 (619, 620, 621) (Pt E) (Prs 58, 71, 73, 77) (DB).

—S. 8 (1) (b) — Validity —(Constitution of India, Art. 19 (1) (f)).

The provisions of S. 8 (1)(b) abridge the fundamental right of a ward under Art. 19 (1) (f) when a Court of Ward assumed superintendence of his estate and as such they are invalid. The contention that the word 'holds' in Art. 19 (1) (f) means own and not possess and, therefore, when a person is deprived of possession of his property Art 19 (1) (f) is not infringed, cannot be accepted. AIR 1952 All 746, considered and foll.

In this case it was held that since the petitioner had already been deprived of the management and possession of his estate before the Constitution came into force, he did not by reason of Art. 19 (1) (f) become entitled to be restored to possession. ILR (1955) 1 All 162 : AIR 1954 All 608 (621) (Pt F) (Prs 78, 79) (DB).

—S. 8 (1) (b)—Validity of legislation questioned—Intention with which law is made is irrelevant. See Interpretation of Statutes. AIR 1952 All 746 (DB).

—S. 8 (1) (b) — Action under, is quasi-judicial act —Writ of certiorari can issue — (Constitution of India, Art. 226, certiorari.)

The declaration of the State Government under S. 8 (1) (b) of the U. P. Court of Wards Act 1912 by which the superintendence of the estate of a person is assumed by the Court of Wards is a quasi-judicial act and as such it is possible for the High Court to issue a writ of certiorari in respect of it. AIR 1952 All 63 and AIR 1952 All 99, Foll. Disting. ILR (1953) 1 All 29 : 1952 All W R (H C) 284 : 1952 All L J 283 : AIR 1952 All 746 (747) (Pt B) (Pr 8) (DB).

—S. 8 (1) (b) — Discrimination only on ground of sex only — Provision infringes Arts. 14, 15 and 19 (1) (f) Constitution of India and is void — Constitution of India, Arts. 13, 14, 15 and 19 (1) (f).

Section 8 (1) (b) has become void under Art. 13 of the Constitution as it infringes Arts. 14, 15 and 19 (1) (f) of the Constitution.

The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Art. 14. To get out of its reach it must appear that not only the classification has been made but also that it is based upon a reasonable ground, on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection. In the present case the classification is based only on the ground of sex—a classification which is not permissible now in a matter like this, in view of the provisions of Art. 15 of the Constitution.

Whatever may have been the position prior to the commencement of the Constitution, Section 8 (1) (b) of the Court of Wards Act classifies female proprietors in an arbitrary manner and places them in a more disadvantageous position than the male proprietors, who cannot be declared incapable of managing their property without their being given an opportunity of showing cause and whose incapacity to manage the property is confined to the five reasons specified in clause (b) of that sub-section. AIR 1952 S C 75; 1951 A L J 578, Ref.

After the enactment of Art. 15 of the Constitution, the impugned provision must be held to be an un-

reasonable restriction upon the right of a citizen to hold his or her property in so far as it deprives a female proprietor of a right to hold and enjoy her property only on the ground of her sex. As such Art. 19 (1) (f) is also infringed. **I L R (1953) 1 All 29 : 1952 All W R (HC) 284 : 1952 All L J 293 : AIR 1952 All 746 (747 to 749) (Pt C) (Prs 9, 10, 11, 13, 16) (DB).**

——S. 8— Capacity in which Government acts when it exercises its powers to make a notification under — Government in exercising its powers in issuing a notification under S. 8 discharges quasi-judicial functions — Its actions are therefore open to review by High Court by a writ of certiorari. A I R 1952 All 63, Foll. See Constitution of India (1950), Art. 226. **AIR 1952 All 99 (DB).**

——S. 8 (1) and (2) — **Essential conditions for exercise of jurisdiction — Notification under—Function of Government is quasi-judicial — Writ of certiorari when can be issued—Constitution of India, Art. 226.**

The Government, in exercising its powers in issuing a notification under S. 8, U. P. Court of Wards Act, 1912 discharges quasi-judicial functions so that its actions are open to review by the High Court by a writ of certiorari. AIR 1952 All 63 (DB), Foll.

Sub-section (2) of S. 8 empowers the State to make a declaration subject to two conditions. One is that a detailed statement of grounds on which it is proposed to disqualify a proprietor should be furnished to him and the second is that he should be afforded an opportunity of showing cause why such a declaration should not be made. If either of these essential preliminary conditions is not satisfied, the law does not recognise the existence of any power in the State to make such a declaration. This clearly means that until these conditions have been satisfied there is no jurisdiction in the State to make a declaration. (1906) 2 K B 501; (1874) 5 P C 417 and A I R 1947 Bom 108, Ref.

Section 8 (2), Court of Wards Act does not require that the proprietor should be furnished with all the facts in addition to the statement of grounds. Where the notice contains specific allegations against the disqualified proprietor and a detailed statement of the grounds, it is sufficient compliance with S. 8 (2).

Sub-section (2) of S. 8 of the Act enjoins a duty on the Government itself to ensure that the opportunity of showing cause is adequate and, therefore, the Government must, on its own initiative adopt such a procedure that an opportunity does become available to the person, against whom a declaration is said to be made, to adduce evidence.

The expression "opportunity of showing cause" in S. 8 (2) of the Act connotes an opportunity of leading evidence in support of one's allegations and in controverting such allegations as are made against one. A mere opportunity to submit a written explanation is not enough. Civ. Misc. Case No. 342 of 1950, D/- 20-3-1951, Rel. on; 1911 A C 179; 1915 A C 120 and AIR 1948 P C 121, Ref.

Consequently where the State Government has failed to give an adequate opportunity of showing cause to the petitioner prior to the making of declaration under S. 8 of the Act its action is without jurisdiction and the declaration will be quashed by a writ of certiorari. **I L R (1952) 2 All 949 : AIR 1952 All 99 (101 to 104) (Pt A) (Prs 4 to 7, 11) (DB).**

——S. 8 — Failure to follow procedure under the U. P. Court of Wards Act — Government exceeds its jurisdiction in making the declaration—Court would quash the declaration made by the Government. See Constitution of India, Art. 226. **A I R 1952 All 63 (DB).**

SECTION 9

——**Ss. 9, 17—Proof of debt—Failure to notify under S. 17.**

Proof of a debt in proceedings under S. 9, U. P. Court of Wards Act is not a sufficient ground for failure to notify under S. 17 of the same Act, which requires all persons having claims against the estate to notify those claims after it has been taken over by the Court of Wards. **AIR 1950 All 698 (698) (Pt C) (Pr 13).**

SECTION 11

——**S. 11 — Section does not take away High Court's jurisdiction to issue writ of certiorari—Constitution of India, Art. 226.**

The High Court, exercising its powers of issuing a writ under Article 226 of the Constitution, cannot be said to be a civil Court. The civil and criminal jurisdiction of the High Court is exercised by virtue of Article 225 of the Constitution. Article 226 gives an additional power which is exercised by virtue of this provision of the Constitution and not by virtue of the High Court being either a criminal or a civil Court. Even if the High Court could be deemed to be a civil Court, S. 11 of the U. P. Court of Wards Act, 1912, could not take away the power of the High Court to issue a writ under Article 226 of the Constitution because no law made by a State Legislature can, in any way, curtail the powers granted to the High Court by the Constitution. 53 Bom L R 621, Rel. on. **ILR (1952) 2 All 949 : A I R 1952 All 99 (104) (Pt B) (Pr 8) (DB).**

——S. 11 — **Finality—Effect—Constitution of India, Art. 226.**

The provisions of S. 11 do not bar the High Court from issuing a writ, direction or order under Art. 226 of the Constitution if it finds that the Government has contravened the provisions of the statute which empowered it to act in infringement of the rights of a citizen. **1952 All L J 342 : I L R (1952) 2 All 783 : AIR 1952 All 63 (70)(Pt C) (Pr 49) (DB).**

SECTION 12

——**S. 12 — Failure of Collector taking possession under Court of Wards Act to report under S. 34 (1)— If affects rights of Collector to bring suits in Revenue Courts. See U. P. Land Revenue Act (3 of 1901), S. 34 (1) (5). 1951 All W R (Rev) 118.**

SECTION 13

——**S. 13 — Scope — Section if provides any remedy to disqualified proprietor.**

Section 13 of U. P. Court of Wards Act does not permtt a proprietor to challenge the right of superintendence of the person or property on the ground that the declaration under S. 8 of the Act was not valid so that this section would not provide any remedy at all to the disqualified proprietor. **I L R (1952) 2 All 949 : AIR 1952 All 99 (104) (Pt C) (Pr 9) (DB).**

SECTION 16

——**S. 16 — Ward of Court — Position of cannot be equated to that of minor — Ward not properly represented in suit — Proceedings not rendered void — Effect of non-compliance of S. 56. See U. P. Court of Wards Act (4 of 1912), S. 56. AIR 1958 All 710 (DB).**

SECTION 17

——**Ss. 17, 18—Omission to produce documents under S. 17—Extinguishment of claim under S. 18.**

Under the provisions of S. 17 it is incumbent upon the person having a claim to produce the document or documents in support of such a claim and his failure to do so would be taken to be a non-compli-

ance with the provisions of S. 17 and his claim would be deemed to have been extinguished under S. 18. AIR 1950 All 696 (698) (Pt B) (Pr 11).

——S. 17 — Proof of debt — Failure to notify under S. 17 — Proof of debt in proceedings under S. 9 not sufficient ground for failure to notify under S. 17. See U. P. Court of Wards Act (1912), S. 9. AIR 1950 All 696.

SECTION 18

——Ss. 18, 17 — Omission to produce documents under S. 17—Failure would be taken as non-compliance with provisions of S. 17 and his claim would be deemed to have been extinguished. See U. P. Court of Wards Act (1912), S. 17. AIR 1950 All 696.

SECTION 27

● ——S. 27—Contesting parties to appeal two wards of the same Court of Wards — Compromise petition signed by Deputy Commissioner as representing each of the estates — Compromise decree is not nullity — Failure to appoint another guardian for appellant who was of unsound mind could not affect its validity. See Civil P. C. (1908), O. 23, R. 3. AIR 1960 S C 444.

SECTION 37

● ——S. 37 (a) — Family settlement — It does not amount to transfer — It does not also create an interest.

The transactions of a family settlement entered into by the parties who are members of a family bona fide to put an end to the dispute among themselves, is not a transfer. It is not also the creation of an interest. For, in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even semblance of a claim on some other ground as say, affection. AIR 1914 P C 44 and ILR 33 All 356 (PC) and AIR 1918 P C 196, Rel. on. Ram Charan Das v. Girja Nandini Devi, (1965) 2 SCWR 837 : (1965) 3 S C R 841 : (1966) 1 SCJ 61 : AIR 1966 SC 323 (329) (Pt B) (Pr 11).

● ——Ss. 37, 53 — Consent of Court of Wards to adoption by Hindu widow, the ward — This does not bar the jurisdiction of Civil Court to enquire into legality of adoption on grounds of personal law such as non-existence of deceased husband's authority.

S. 37 does not make the sanction of the Court of Wards accorded to the ward to adopt to cure illegalities or breaches of the personal law. Nor does the sanction make up for incompetence arising under the personal law. It is obvious that if the adoption is void by reason of personal law of the person adopting, the consent of the Court of Wards cannot cure it. Nor would the consent take the place of the essential ceremonies or the religious observances where necessary. Those matters would have to be determined according to the personal law in Civil Court of competent jurisdiction.

The section merely puts the exercise of discretion by officers acting under the Court of Wards Act beyond question. Thus, if the Court of Wards gave or refused its consent to a proposed adoption, a suit would not lie either to cancel the consent or to compel it. The section, however, does not go to the length that after the consent of the Court of Wards the adoption itself cannot be questioned at all. There are no words in the section to this effect nor can such a result be implied. If the Court of Wards gave its concurrence to a proposed adoption, the bar created by S. 37 of the Act would be removed, but it would not make the adoption immune from attacks in a Civil Court on any grounds on which adoptions are usually questioned there. It cannot be contended that the reasons for the consent of the Court of Wards are a part of the consent and are within S. 53 (1). No doubt, the Court of Wards reaches its own conclusion for purpose of S. 37 that the deceased husband of the widow (ward) had accorded authority to the widow to adopt a son, but if the adoption was questioned in a Civil Court, the Civil Court would not be ousted of its jurisdiction to decide the question. All that the Civil Court would be compelled to hold would be that the requirements of the Court of Wards Act as to the consent of the Court of Wards were fulfilled. AIR 1960 All 339, Affirmed. Dwarka Nath v. Lalchand, (1965) 2 Law Rep 749 : (1965) 3 S C R 27 : (1965) 1 S C W R 947 : ILR (1965) 2 All 250 : AIR 1965 S C 1549 (1551) (Pt A) (Prs 5, 6).

——Ss. 37, 53—Court of Wards granting sanction to ward, a Hindu widow, to adopt—Adoption—If open to attack on ground of husband's want of authority. ILR (1960) 1 All 481 : AIR 1960 All 339 (344) (Pt A) (Prs 13, 14, 15) (DB).

——S. 37 (a)—Applicability — Family settlement to which ward is party—Validity.

Section 37 (a) places a disability on wards and prohibits them to transfer or create any charge on, or interest in, any part of the property which is under the superintendence of the Court of Wards. There is no question of a transfer or of the creation of any charge or interest in a family settlement. Hence a family settlement to which a ward is a party is not hit by S. 37 (a). 1959 All W R (HC) 85 : AIR 1959 All 473 (482) (Pt J) (Prs 33, 35) (DB).

——S. 37—Ward of Court — Position of cannot be equated to that of minor — Ward not properly represented in suit—Proceedings not rendered void—Effect of non-compliance of S. 56. See U. P. Court of Wards Act (4 of 1912), S. 56. A I R 1958 All 710 (DB).

——S. 37—Gift of property without consent of Court of Wards is invalid. A I R 1955 N U C (All) 5504 (DB).

——S. 37 — Interest in property — Grant of land by disqualified proprietor for planting fruit trees and to enjoy fruits and timber therefrom generation after generation—Grantee given exclusive possession — It amounts to grant of interest in property and as such void under S. 37—Easements Act (1882), S. 52.

Under the U. P. Court of Wards Act, the estate vests in the Court of Wards. The disqualified proprietor has no right to deal with it and it is the Court of Wards which is competent to grant leases, licenses, or execute other deeds dealing with that property. Even the personal rights of the disqualified proprietor are to some extent limited. He cannot create debts for which his Estate, which is in the possession of the Court of Wards, can be made liable. Hence while the Court of Wards is in possession of the property, the disqualified proprietor executes a deed of gift by which the grantee is given exclusive possession of the land with a right to plant trees on it and to enjoy the fruits and the timber, generation after generation. The mere right to appropriate the fruits and the timber would make it a licence coupled with a grant. 15 A L J 886, Rel. on. 1904 A C 405, Ref. 1952 All L J 330 : 1952 All W R (HC) 350 : A I R 1952 All 805 (807) (Pr 5) (DB).

SECTION 38

● ——S. 38 — S. 56 is only directory and not mandatory—Tests—Effect of non compliance with section—

Litigation between two wards of the same Court of Wards — Failure to appoint representatives under S. 56 — Compromise decree passed in suit is not nullity—Directory provision and one giving discretionary power — Distinction. See U. P. Court of Wards Act (4 of 1912), S. 56. AIR 1960 S C 444.

——S. 38 — Compromise between wards of Court — Same Deputy Commissioner in charge of their estates acting on their behalf — Validity. See Civil P. C. (1905), O. 23, R. 3. AIR 1958 All 710 (DB).

SECTION 44

——S. 44 — Person ceasing to be ward if legally entitled to obtain possession from Court of Wards — The Court of Wards can no longer deal with the ward's property nor do any of the limitation on the powers of ward apply. See U. P. Court of Wards Act (4 of 1912), S. 3. AIR 1954 All 608 (DB).

SECTION 45

——S. 45—Scope.

Section 45 applies to property which has legally vested in the Court of Wards by reason of the declaration under S. 10 of the Act and the superintendence of which has been continued by them even after the death of the ward. It is immaterial that an item of property was either in the possession of the ward or of his transferee or heirs. In the eye of law, unless such property was released from superintendence, it would remain under the superintendence of the Court of Wards even after the death of the ward. 1954 All W R (H C) 75 : 1953 All L J 595 : AIR 1954 All 164 (165, 166) (Pt A) (Pr 10) (DB).

SECTION 49

——S. 49 (2)—Applicability.

Section 49 clearly deals with the property, the superintendence of which has been retained by the Court of Wards under the provisions of S. 45. If the superintendence over a property would be deemed to have been retained by the Court of Wards under the provisions of S. 45 the provisions of Cl. (2), S. 49 would apply to that property also. 1954 All W R (HC) 75 : 1953 All L J 595 : AIR 1954 All 164 (165, 166) (Pt B) (Pr 10) (DB).

SECTION 53

● ——S. 53—Consent of Court of Wards to adoption by Hindu widow, the ward — This does not bar the jurisdiction of Civil Court to enquire into legality of adoption on grounds of personal law such as non-existence of deceased husband's authority. See U. P. Court of Wards Act (4 of 1912), S. 37. A I R 1965 S C 1549.

——S. 53—Court of Wards granting sanction to ward, a Hindu widow, to adopt — Adoption can be challenged in Court of law, on ground of husband's want of authority. See U. P. Court of Wards Act (4 of 1912), S. 37. AIR 1960 All 339 (DB).

SECTION 55

● ——S. 55—S. 56 is only directory and not mandatory—Tests — Effect of non-compliance with section —Litigation between two wards of the same Court of Wards—Failure to appoint representative under S. 56 — Compromise decree passed in suit is not nullity — Directory provision and one giving discretionary power—Distinction. See U. P. Court of Wards Act (4 of 1912), S. 56. AIR 1960 S C 444.

● ——S. 55—Contesting parties to appeal two wards of the same Court of Wards—Compromise petition signed by Deputy Commissioner as representing each of the estates — Compromise decree is not nullity — Failure to appoint another guardian for appellant who was of unsonnd mind : could not affect its validity. See Civil P. C. (1908), O. 23, R. 3. AIR 1960 S C 444.

——S. 55—Law in accordance with law—Meaning of —Law refers to all laws in force on the date of execution application—Decree against ward under superintendence of Court of Wards in U. P. Execution application against ward by his arrest and detention —Collector in charge of property not impleaded — Application not one in accordance with law. See Limitation Act (1908), Art. 182 (5). AIR 1963 All 280.

——S. 55 — Ward of Court — Position of cannot be equated to that of minor—Ward not properly represented in suit — Proceedings not rendered void — Effect of non-compliance of S. 56. See U. P. Court of Wards Act (4 of 1912), S. 56. A I R 1958 All 710 (DB).

——S. 55 — Estate of minor under management of Court of Wards — Execution of decree obtained by Manager—Minor wards whether entitled to benefit of S. 6 of Limitation Act. See Limitation Act (1908), S. 6. AIR 1952 All 851 (DB).

SECTION 56

● ——Ss. 56, 38, 55, 57 and 58 — Scope of — Suit between wards under same Court of wards—Procedure as to appointment of representatives.

Per Sarkar and S. K. Das, JJ. ; (Subba Rao, J., Contra.). The provision in S. 56, U. P. Court of Wards Act relating to the appointment of a representative for each of the wards of Court who have conflicting interest in a suit is only directory and not mandatory. A I R 1955 S C 233, Rel. on. Section 55 deals only with the name in which a ward may sue or be sued. Section 56 contemplates a stage where two or more wards are already parties to a litigation. It contemplates the wards suing or being sued, in the name of the Collectors in charge of their properties or of other persons appointed under S. 55. Notwithstanding this, S. 56 does not provide that the representatives appointed under it shall replace the Collector or the person appointed under S. 55, on the record of the litigation. Therefore if S. 56 is read as a directory provision, S. 55 would not become otiose. The position of a ward is the same whether the case is governed by S. 56, S. 57 or S. 58. Since the appointment of representatives was not intended by the legislature to be obligatory under Ss. 57 and 58, no more could the legislature have intended the appointment of representatives under S. 56 obligatory.

A compromise decree passed in a suit between two wards whose estates are under the management of the same Court of Wards is not rendered a nullity merely because the provision of S. 56 relating to the appointment of representative is not complied with. By virtue of S. 56 read with S. 38 the Court of Wards could itself settle a litigation in which two of its wards were involved even where representatives had been appointed under S. 56. The appointment of representatives could not, hence, have been intended to be obligatory. Drigraj Kuer v. Raja Sri Amar Krishna Narain Singh. ILR (1960) 1 All 572 : 1960 S C J 594 : 1960 All W R (HC) 283 : (1960) 2 S C R 431 : 1960-2 S C A 260 : A I R 1960 S C 444 (448 to 451) (Pt A) (Prs 20, 21, 22, 24, 25, 27).

——S. 56—"By any lawful agreement or compromise" — Compromise between rival claimants who are wards of Court — Absence of appointment of representative—Compromise if unlawful — Compromise if detrimental to interest of one party — If can be gone into. See Civil P. C. (1908), O. 23, R. 3. A I R 1958 All 710 (DB).

——Ss. 56, 7, 16, 37, 55 and 64 — Scope — Ward of Court—Position of—Cannot be equated with that of

minor—Ward not properly represented in suit—Proceedings not rendered void — Effect of non-compliance of S. 56—(Interpretation of statutes) — Ss. 7, 16 and 37—Effect of. AIR 1954 S C 210, Rel. on. ILR (1958) 1 All 33 : AIR 1958 All 710 (714, 715) (Pt A) (Prs 22, 23) (DB).

SECTION 57

● ——Ss. 57, 58 — S. 56 is only directory and not mandatory—Tests — Effect of non-compliance with section — Litigation between two wards of the same Court of Wards — Failure to appoint representative under S. 56—Compromise decree passed in suit is not nullity—Directory provision and one giving discretionary power — Distinction. See U. P. Court of Wards Act (4 of 1912), S. 56. AIR 1960 S C 444.

SECTION 58

● ——S. 58—Scope—Suit between Wards under same Court of Wards — Procedure as to appointment of representatives—Appointment of representatives was not intended by the legislature to be obligatory under Ss. 57 and 58 — Legislature could not have intended appointment of representatives under S. 56 obligatory. See U. P. Court of Wards Act (1912), S. 56. AIR 1960 S C 444.

——S 58—Award under S. 58 of the U. P. Court of Wards Act—Can be implemented under S. 17 of the Arbitration Act — Award, however, ought to be filed in the Court by the Arbitrator himself or by any one duly authorised by him in that behalf. See Arbitration Act (1940), S. 14 (2). AIR 1964 All 185 (DB).

——S. 58—Award between wards under the superintendence of the same Court of Wards—Award is between two parties i. e. two wards who are the real parties to the dispute — Such an award can be enforced under the Arbitration Act. See Arbitration Act (1940), S. 17. AIR 1964 All 185 (DB).

SECTION 59

——S. 59 — Failure of Collector taking possession under Court of Wards Act to report under S. 34 (1)—If affects rights of Collector to bring suits in Revenue Courts. See U. P. Land Revenue Act (1901), S. 34 (1) (5). 1951 All W R (Rev) 118.

SECTION 61

● ——S. 61—Contesting parties to appeal two wards of the same Court of Wards — Compromise petition signed by Deputy Commissioner as representing each of the estates — Compromise decree is not nullity — Failure to appoint another guardian for appellant who was of unsound mind could not affect its validity. See Civil P. C. (1908), O. 23, R. 3. AIR 1960 S C 444.

——S. 61 (4)—Compromise between Wards of Court — Same Deputy Commissioner in charge of their estate acting on their behalf—Under Ss 38 and 61 (4) such a compromise is perfectly valid if the Court has applied its mind to the question whether it is for the benefit of the estate of the ward and has acted bona fide. See Civil P. C. (1908), O. 23, R. 3. AIR 1958 All 710 (DB).

SECTION 64

——S. 64—Ward of Court — Position of—Cannot be equated with that of minor — Ward not properly represented in suit — Proceedings are not rendered void. See U. P. Court of Wards Act (4 of 1912), S. 56. AIR 1958 All 710 (DB).

——S. 64—Suit under S. 214, U. P. Tenancy Act by Court of Wards. Sub-section (5) of S. 34 is no bar to the Collector or the manager bringing a suit in the Revenue Court under S. 214, U. P. Tenancy Act (1939). The Collector takes possession and custody of property and and manages it according to the rules framed under S. 64 of the Court of Wards Act (1912). See U. P. Land Revenue Act (3 of 1901), S. 34 (1) (5). 1951 Rev Dec 117 : 1951 A W R (Rev) 118.

UTTAR PRADESH DEBT REDEMPTION ACT (13 of 1940)

See under Debt Laws.

UTTAR PRADESH DEBT REDEMPTION RULES (1941)

See under Debt Laws.

UTTAR PRADESH DEPUTY INSPECTOR OF SCHOOLS SERVICE RULES (1944)

RULE 17

——Rr. 17 and 19 — Person appointed to substantive post of Deputy Inspector of Schools on two years probation—Probation period expiring—No automatic confirmation. 1959 All L J 79 : (1959) 2 Lab L J 155 : AIR 1959 All 536 (538) (Pt A) (Prs 8, 10).

[Overruled on another point in AIR 1961 All 450 (FB).]

——R. 17—Scope—Order extending period of probation with retrospective effect cannot be passed — Order of reversion passed during such extended period—Validity—Procedure—(Constitution of India, Art. 311).—(Civil Service (Classification Control and Appeal) Rules, R. 55). 1959 All L J 79 : (1959) 2 Lab L J 155 : A I R 1959 All 536 (539) (Pt B) (Prs 14, 16).

[Overruled in AIR 1961 All 450 (FB).]

RULE 19

——R. 19 — Scope—Person appointed to substantive post of Deputy Inspector of Schools on two years' probation—Probation period expiring—No automatic confirmation. See U. P. Deputy Inspector of Schools Service Rules (1944), R. 17. AIR 1959 All 536.

[Overruled on another point in AIR 1961 All 450 (FB).]

UTTAR PRADESH DISCIPLINARY PROCEEDINGS (ADMINISTRATIVE TRIBUNAL) RULES (1947)

RULE 1

——R. 1—Certiorari — Finding of a Domestic Tribunal though recommendatory and not a final order, could be quashed in a suitable case — See Constitution of India, Art. 226. ILR (1963) 1 All 432.

——R. 1—Validity — Rules not hit by Art. 14 of the Constitution on the ground that police officers can also be proceeded against under U. P. Police Regulations. (U. P. Police Regulations)—(Constitution of India, Art. 309). A I R 1961 S C 1245 and 1961 S C (Notes) 141, Foll. ILR (1963) 1 All 432 (DB).

RULE 2

——Rr. 2 (e), 4 (1) — Charge of personal immorality—Love affair with one woman—Sufficiency to constitute habit.

The word "habit" implies a tendency or capacity resulting from the frequent repetition of the same act.

Where all the acts committed by the Government servant were committed in one transaction and relating to one woman, and there was no allegation against him that he had sex relations with any other woman, no habit could be attributed to him on the basis of the single transaction though consisting of several acts and it cannot be held that he was suffering from any vicious habits relating to sex within the

meaning of R. 4 (1). AIR 1960 All 754 (761) (Pt D) (Pr 14).

——R. 2 (d) — "Failure to discharge the duties properly" — Non-observance by Government servant of conduct rules amounts to such failure—U. P. Government Servants Conduct Rules, Rr. 10 (2), 11.

The expression "failure to discharge the duties properly" in R. 2 (d) is used in a wider sense as including failure to observe all the rules which are intended for the guidance of Government servants while they are holding any office under the Government. Acquisition of immovable property contrary to R. 10 (2) and R. 11 of the Government Servant's Conduct Rules, therefore, amounts to a failure to discharge one's duties properly. (1956) 2 Lab L J 1 : 1956 All L J 193 : ILR (1957) 1 All 206.

RULE 4

● ——R. 4 (2) — Disciplinary action against Government servant — Inquiry in respect of — Inquiry by whom to be made — See Constitution of India, Art. 311 (2). AIR 1963 S C 1618.

— R 4 (1) (b) — Constitution of India, Art. 226—Writ of certiorari—Error on face of record—Charge under R. 4 (1) (b) of U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 — Failure to discharge duties properly—Tribunal's finding against the delinquent — Guilt or innocence of the accused could be established only upon elaborate argument and interpretation of statutory provisions — Tribunal's finding did not suffer from an error apparent on the face of the record — Writ could not issue. See Constitution of India, Art. 226. I L R (1963) 1 All 432.

——R. 4 (1) (b) and (d) — Averments in the charge-sheet attracting the above rules—Reference to Tribunal valid and Tribunal has jurisdiction to go into the matter — Jurisdiction of Court or Tribunal depends on the averments in the plaint or concerned document and not on the decision reached after enquiry. AIR 1960 All 754, Reversed. (Civil P. C. (1908), O. 7, R. 1). ILR (1963) 1 All 432 (DB).

——Rr. 4 (1) (d) and 2 (e)—"Personal immorality"—Ingredients and meaning of word "habit"—Single Judge's view affirmed. (Words and Phrases — "Habit.")

Three things are necessary to establish personal immorality; (1) a habit relating to drink, sex and gambling, (2) reducing the utility of the public servant and (3) the result of which reduction in utility is to cause damage to the Government or to the official generally in public esteem.

So long as the acts of immorality are confined to one woman, though repeated, it cannot constitute a "habit" within the meaning of the definition of "personal immorality." AIR 1927 Pat 126; AIR 1924 Nag 19 and Aver's Law Lexicon (1940). ILR (1963) 1 All 432 (DB).

——Rr. 4 (1) and 2 (e)—Charge of personal immorality—Love affair with one woman—Does not amount to habit relating to sex — See U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), R. 2 (e). AIR 1960 All 754.

——R. 4—'Co-opt' — Meaning of—Power of assessor to put questions to witnesses.

The word 'co-opt' in R. 4 means "to elect into a body by the votes of its existing members." The assessor in the case of the Tribunal Rules is therefore elected into the Tribunal though for the limited purpose of assisting it and does not become a part of the Tribunal, and there is nothing in the rules which prevents the assessor from putting some questions to the witnesses with the permission of the Tribunal. AIR 1960 All 754 (760) (Pt C) (Pr 12).

——R. 4 (1) — Matter not covered by rules — Reference and report by tribunal—Value of.

Where the charges which the Tribunal has found proved against the petitioner could not have been referred to it by the Governor and could not have been enquired into by the Tribunal, the reference to the Tribunal and the report recorded by it are without jurisdiction and are liable to be quashed.

Further, though the provisions of Indian Evidence Act do not govern the proceedings before the Tribunal there are certain basic principles of evidence which no Tribunal can ignore and one of them is that evidence of doubtful nature, e. g., unsigned statements of a person, who has not been produced before the tribunal, recorded at the back of an accused person by an investigating officer who is also the prosecutor, should not be accepted. The findings of the Tribunal being based on such inadmissible evidence the procedure followed by it cannot be held to be appropriate. A I R 1960 All 754 (762) (Pt E) (Prs 15, 16).

[Reversed in I L R (1963) 1 All 432 (445).]

——R. 4 (1) — Charges against gazetted officer—Officer requesting inquiry by tribunal under rules—Governor must so refer. A I R 1960 All 505 (506, 507) (Prs 7, 8) (DB).

RULE 8

● ——R. 8 — U. P. Police Regulations, Regn. 490—Enquiry against police officer for misdemeanours—No substantial difference between the procedures under the two sets of Rules. See Police Act (1861), S. 7. A I R 1961 S C 1245.

——R. 8—Procedure—Civil Service Rules — Distinction.

Rule 8 of the Tribunal Rules may reveal that the procedure for trial provided by rule this is summary and there are no set rules of procedure which can guide and control it in the conduct of the trial. All that is intended to convey by that rule is that the Tribunal is not bound by formal rules of procedure and evidence but can conduct its proceedings in a way which may result in a fair trial. A fair trial is fully contemplated by R. 8 and is guaranteed by the fact that one of the members of the Tribunal is a judicial officer having vast experience in the conduct of Court trials. The words in sub-rule (1) of Rule 8 are 'such enquiry as may be appropriate' without adding the words 'as may appear to the Tribunal'. This means that whether or not there has been an appropriate enquiry has got to be determined by an objective and not subjective test. There is, therefore, no marked difference between the procedure prescribed by R. 8 of the Tribunal Rules and R. 55 of the Civil Service Rules which from their language may on a first glance appear and it cannot be held that the procedure provided by R. 8 is more onerous and less favourable than the one provided by R. 55 of the Civil Rules. A I R 1960 All 754 (757) (Pt A) (Pr 6).

——Rr. 8, 12—Validity—If discriminatory.

In order to pass the test of permissible classification two conditions must be fulfilled, namely : (1) that the classification must be founded on intelligible differentia which differentiates persons or things which are grouped together from those which are left out of the group and (2) that the differentia must have a rational relation with the object sought to be achieved by the statute. 1955 S C J 163 : A I R 1955 S C 191, Rel. on.

A perusal of U. P. Tribunal Rules shows that those rules are not meant to govern the cases of all the Government servants but only those who are charged with the offences mentioned in R. 4 of the Rules. These rules therefore apply only to a class which they have created unlike the Civil Service Rules

which apply to a large number of Government servants. The rule-making authority has thus created a special class and there is a rational relation of the differentia which distinguishes persons or things of that class to the object sought to be achieved by the rules creating that class.

Further, R. 12 provides that in cases which can fall under these rules, these rules alone will be applicable and other rules would not apply. The Tribunal Rules having been framed later in time will prevail over the Civil Service Rules in cases where they overlap.

There might have been some scope for holding that Art. 14 of the Constitution hits the Tribunal Rules if the Tribunal Rules could be held to be more onerous and less favourable than the Civil Service Rules but as this is not so and as Tribunal Rules apply to a particular class of cases, the Rules are not hit by Art. 14. **A I R 1960 All 754 (759, 760) (Pt B) (Prs 7, 8, 9).**

RULE 9

●——R. 9 — U. P. Police Regulations, Regn. 490— Enquiry against police officer for misdemeanours— No substantial difference between the procedures under the two sets of Rules. See Police Act (1861), S. 7. **A I R 1961 S C 1245.**

RULE 10

●——R. 10 — Recommendations made by Tribunal regarding punishment — Compulsory acceptance of recommendations by Governor — Provision as to— Validity — To the extent that R. 10 requires the Governor to accept the recommendation of the Tribunal the rule may be regarded as inconsistent with the Constitution—The partial invalidity of R. 10 does not affect the remaining rules. See Constitution of India, Art. 311 (2). **A I R 1961 S C 1245.**

——R. 10 — Validity of — Rule abridging power of Governor to act according to his best judgment — If binding on Governor. See Government of India Act (1935). S. 24 (5). **(1956) 2 Lab L J 1 : 1956 All L J 193 : I L R (1957) 1 All 206.**

——R. 10 (a)—Discretion of Governor in dismissing servant—Disciplinary Rules are administrative rules —Considerations inducing Governor to dismiss servant are not justiciable—(Constitution of India, Arts. 311 (2), 309, 310 and 226).

Where the Governor did exercise his discretion and did not act on mere recommendation of the Tribunal appointed under U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, in ordering the dismissal of a police subordinate officer, and the officer had opportunity of showing cause against action proposed to be taken against him, it is not material that the Governor purported to act under R. 10 (1) of the disciplinary rules.

Moreover it makes no difference whether the Governor in arriving at his decision acted on the advice of the Tribunal or on an independent examination of the facts. Subject to the provisions of the Constitution the servant holds his office at the Governor's pleasure when the Governor has signified his pleasure, the considerations which induced him to do so are not justiciable.

The Governor's power to dismiss at pleasure is subject only to the express provisions of the Constitution. Power is conferred upon the Governor by Art. 309 to make rules regulating the conditions of service of civil servants of the State Government, but such power is subject, inter alia, to the provisions of Art. 310, and no rules can be made which fetter or restrict his power to dismiss at pleasure. The Disciplinary Rules were made prior to the commencement of the Constitution, and assuming they were validly made, they can have no greater effect or stand on a higher footing than rules made by the Governor under Art. 309. These rules (except R. 10 (1)) are administrative rules, and the contravention of their provisions will not confer upon the dismissed servant a cause of petition. **A I R 1954 All 629 (632) (Pt B) (Prs 17 to 19) (DB).**

——R. 10 (1) — Dismissal of Subordinate Police Officer — Governor need not consult Public Service Commission—(Government of India Act, 1935, S. 266 —Constitution of India, Art. 320 (3)).

Rule 10 (1) of the Disciplinary Rules provides that the Governor 'shall not be bound to consult the Public Service Commission on the Tribunal's recommendations. This provision was made under S. 266 (3) of the Government of India Act, 1935 which is in substantially the same terms as Cl. (3) of Art. 32) R. 10 (1) of the Disciplinary Rules was a vaild and effective provision in the case of a civil servant who was not a police officer of the subordinate ranks and the provision continued to be valid and effective after the Constitution came into force.

The case of a police officer of the subordinate ranks stands upon a somewhat different footing; for sub-s. (4) of S. 266 of the Government of India Act provides that nothing in that section shall require a Public Service Commission to be consulted in the case of the subordinate ranks of the various police forces in India as respects any of the matters mentioned in paragraphs (a), (b) and (c) of sub-s. (3) of that section. Paragraph (c) of sub-section (3) is similar in terms of sub-cl. (c) of Art. 320 (3) of the Constitution. Rule 10 (1) is therefore so far as the case of such officer is concerned, redundant and it assumed importance only upon the coming into force of the Constitution for the latter contains no provision corresponding to S. 266 (4) of the 1935 Act.

But the fact that the Rule was merely superfluous as regards the case of a particular class of Government servants prior to the commencement of the Constitution does not make it a rule which is invalid as regards that class after the Constitution came into force. The position prior to the Constitution was that consultation with the Public Service Commission was made unnecessary by S. 266 (4) and by the Rule. The Constitution repealed the section but it did not affect the validity of the rule; and it is not, therefore, necessary for the Governor to consult the State Public Service Commission prior to the dismissal of a Subordinate police officer. **A I R 1954 All 629 (633) (Pt C) (Prs 21, 22) (DB).**

RULE 12

——R. 12 — Validity — Classification permitted by Art. 14 — Tests — R. 8 held not discriminatory. See U. P. Diciplinary Proceedings (Administrative Tribunal) Rules (1947), R. 8. AIR 1960 All 754.

UTTAR PRADESH DISTRICT BOARD MANUAL

PAGE 207 RULE 1

——Page 207, R. 1 (d) — Provision of Law whether mandatory or directory—Mode of determination—No hard and fast rule can be laid down in this regard —R. 1 is mandatory and a breach of it cannot be treated as a mere irregularity. See Interpretation of Statutes. AIR 1964 All 169 (DB).

——Page 207, R. 1—Appointment of secretary—Board referring to State Government matter relating to interpretation of relevant rule before appointment— Writ petition against appointment by member of Board who voted for resolution to refer to Government challenging jurisdiction to refer matter to

Government — If barred—Estoppel. See Constitution of India, Art. 226. AIR 1959 All 589.

[Overruled on another point in AIR 1964 All 169.]

——Page 207, R. 1 (2) (d)—"In whose term"—Meaning of.

The expression "in whose term" in R. 1 (2) (d) relates to the board and not to the member of the board and therefore, where a person was a member of the Board during the term of the Board which appoints his son-in-law as Secretary of the Board, the appointment is in contravention of the rule. AIR 1959 All 589 (593) (Pt F) (Pr 11).

[Overruled on another point in AIR 1964 All 169.]

——Page 207, R. 1 (2) (c)—Application for appointment as Secretary — Certificate of medical fitness and riding certificate—If to be enclosed.

The rule does not require that the application for appointment as Secretary must be accompanied by a certificate of medical fitness for outdoor duties and a riding certificate. All that is necessary is that the applicant must hold a riding certificate signed by a district officer at the time of his appointment and must be medically fit for outdoor active service. AIR 1959 All 589 (593) (Pt C) (Pr 11).

[Overruled on another point in AIR 1964 All 169.]

CH. 3 R. 3A

——Ch. 3, R 3-A — Termination of service of servant drawing Rs. 40 per month — Validity of notice — Powers of Secretary — Held that under S. 82 of the Act the power appointing the petitioner as well as his successor on that post vested in the Secretary of the District Board who was therefore competent to issue notice under R. 3A of Ch. III of the District Board Manual. See U. P. District Boards Act (1922), S. 82. AIR 1955 N U C (All) 2025.

UTTAR PRADESH DISTRICT BOARDS ACT (10 of 1922)

SECTION 26-A

——S. 26-A—Term of District Board.

It is quite clear from S. 26-A that the term of a District Board is four years. In any case the first proviso to S. 26-A does mention the term of the Board and therefore it cannot be said that the Act does not contemplate any term for a board. AIR 1959 All 589 (594) (Pt G) (Pr 12).

[Overruled on another point in AIR 1964 All 169.]

SECTION 40

——S. 40 — U. P. District Board Manual, Ch. III, R. 3-A—Termination of service of servant drawing Rs. 40 per month — Validity of notice — Powers of Secretary— Secretary has power to appoint secretary or his successor and hence notice issued by him was valid. See U. P. District Boards Act (10 of 1922), S 82. AIR 1955 N U C (All) 2025.

——S. 40 (d) — Complaint by President — Validity See U. P. District Boards Act (X of 1922), S. 182. AIR 1955 N U C (All) 2019.

——Ss. 40, 71 and 90—Power of Chairman to suspend pending inquiry.

"Suspension pending inquiry" is in the very nature of things, something temporary. This power is intended only to enable an inquiry or investigation to be made fair and impartial conditions. It does not involve any punishment and is not to be confused with it. The power of suspension pending inquiry is different from the power of dismissal or punishment and consequently the Chairman has the power to suspend the secretary pending an inquiry. ILR (1952) 2 All 965 : 1952 R D (BR) 34 : 1952 All L J 56 : 1952 All W R (HC) 146 : A I R 1952 All 681 (683) (Pt A) (Pr 9) (DB).

[Overruled in AIR 1960 All 473 (FB).]

——Ss. 40 and 91 — Power of Chairman to appoint informal committee—Constitution of India, Art. 226.

While a report by the committee of inquiry is not a condition precedent for action under S. 91 it is for the Board and Board alone to appoint a committee of inquiry. The chairman cannot appoint a committee of inquiry. The procedure adopted by the Chairman of an informal committee is not one calculated to give a fair chance to the Secretary but at the same time the High Court cannot give any relief to the applicant Secretary in the matter as the committee has no statutory or legal extistence. There is no law which prevents three four or five persons belonging to the Board to confer together. 1952 R D (BR) 34 : 1952 All L J 56 : 1952 All W R (HC) 146: ILR (1952) 2 All 965 : A I R 1952 All 681 (883) (Pt B) (Pr 12) (DB).

[Overruled on another point in A I R 1960 All 473 (FB).]

SECTION 45

——S. 45 (b)—President of the Local Board incapacitated due to illness — Vice-President can exercise his powers and terminate services of employee. AIR 1961 All 292 (293) (Pt B) (Pr 4).

SECTION 70

——S. 70 — Grant of leave preparatory to retirement from 14-8-1956 to 14-8-1957 to I, the Secretary of a Board—Lien of I on the permanent post suspended and S appointed in his place—Appointment of S held bad in law. See U. P. District Boards Act (10 of 1922), S. 80. AIR 1964 All 169 (DB).

SECTION 71

——S. 71 (as amended in 1933) — Resolution for suspension of Secretary after resolution for his dismissal is passed—Validity—AIR 1948 All 199 : ILR (1948) All 42 : 1947 A L J 690, Reversed. See U. P. District Boards Act (10 of 1922), S. 90. AIR 1952 SC 362.

——Ss. 71 and 90 (3)—Law capable of only one construction — Plain construction must be given effect to. See Interpretation of Statutes. 1962 All L J 1111 : ILR (1963) 2 All 210.

——Ss. 71, 90 (3) — Suspension of Secretary — Procedure is same as for dismissal under S. 71—Suspensions ordered by ordinary resolution passed by simple majority—Not valid — No appeal lies under S. 71 — Proper remedy is by writ petition — Constitution of India, Art. 226. 1960 A L J 167 (FB) and L R 31 Ch D 607, Foll. 1962 All L J 1111 : I L R (1963) 1 All 210.

——S. 71 — Power to dismiss includes power to suspend—Board and not its President, has power to suspend Secretary — 1952 All L J 56 : AIR 1952 All 681, Overruled. See U. P. District Boards Act (10 of 1922), S. 90 (3). AIR 1960 All 473 (FB).

——Ss. 71, 85, 90 and Rules 4, 5 — Suspension of Secretary—Board has power, provided he is not Government servant—In case he is Government servant, power to suspend for period of enquiry is subject to limitation placed by R. 5 (iii)—There is no limitation on power of suspension for period pending assent of Government which suspension is permissible under S. 85 (4). AIR 1955 NUC (All) 2018.

——S. 71 — Power of Chairman to suspend pending inquiry — Chairman has power to suspend the secre-

the Government or if the Government passed orders dismissing his appeal, if any, the resolution for his dismissal would become effective without any sanction of the Government. The words used therefore in S. 90, sub-s. (3) "pending the orders of any authority whose sanction is necessary for his dismissal" are inappropriate to the case in question and could not cover the case of a suspension in question.

The powers of dismissal and suspension given to the Board are defined and circumscribed by the provisions of Ss. 71 and 90 of the Act and have to be culled out from the express provisions of those sections. When express powers have been given to the Board under the terms of these sections it would not be legitimate to have resort to general or implied powers under the law of master and servant or under S. 16 of the U. P. General Clauses Act. AIR 1948 All 199, Reversed. Hira Devi v. District Board, Shahjahanpur. **1952 S C J 533 : 1952 All L J 717 : 1953 S C A 6 ; 1952 S C R 1122 ; ILR (1953) 1 All 642 ; AIR 1952 S C 362 (365) (Pt A) (Prs 14, 15).**

——S. 90 - Order of suspension under—Limitation of three months applicable when suspension is awarded as punishment — Suspension pending inquiry may continue beyond three months. **ILR (1965) 1 All 739 ; AIR 1966 All 26 (29) (Pt A) (Pr 9) (DB).**

——S. 90 (3)—Law capable of only one construction —Plain construction must be given effect to. See Interpretation of Statutes. **1962 All L J 1111.**

——S. 90 (3)—Suspension of Secretary—Procedure is the same as for dismissal under S. 71 — Suspension ordered by ordinary resolution passed by simple majority — Not valid — No appeal lies under S. 71— Proper remedy is by writ petition. See U. P. District Boards Act (1922), S. 71. **1962 All L J 1111.**

● ——Ss. 90 (3), 71 and Sch. I, Col. 2 — Power to dismiss includes power to suspend — Board and not its President, has power to suspend Secretary. 1952 All L J 56 : AIR 1952 All 681, **Overruled.** Ram Sewak Misra v. President, District Board, Allahabad, **ILR (1960) 1 All 334 ; 1960 All L J 167 ; 1960 All W R (HC) 93 ; AIR 1960 All 473 (474, 475) (Prs 8, 9, 15) (FB).**

——S. 90—Suspension of Secretary—Powers of Board —If the Secretary is a Government servant, power to suspend for period of enquiry is subject to limitation placed by R. 5 (iii). See U. P. District Boards Act (10 of 1922), S. 71. **AIR 1955 NUC (All) 2018.**

——S. 90 — Power of Chairman to suspend pending inquiry - Chairman has power to suspend the Secretary pending inquiry. See U. P. District Boards Act (1922), S. 40. **AIR 1952 All 681 (DB).**

[Overruled in AIR 1960 All 473 (FB)].

SECTION 91

● ——S. 91 (k) — Control and regulation of trade, callings and profession — Power of District Board to frame bye-laws and prescribe fees has not been taken away by S. 111, U. P. Panchayat Raj Act. See U. P. District Boards Act (10 of 1922), S. 174. **AIR 1961 S C 356.**

● ——S. 91 (q) — Regulations under Act and licence fee charged cannot be struck down on the ground of fees charged on owners of mills under other Acts and provisions with different purpose. See U. P. District Boards Act (10 of 1922), S. 174. **AIR 1961 S C 356.**

——S. 91 — **Chairman, if can appoint committee of inquiry — Relief against action of committee not legally appointed.**

It is only the Board that can appoint a committee of enquiry and not the Chairman and if he does appoint one, it is not a legally constituted committee. If any action is taken on the strength of the advice given by such a committee, the Court cannot give relief in such a case. **1952 R D 34 ; 1952 All W R (HC) 146 : 1952 A L J 56 ; ILR (1952) 2 All 965 ; AIR 1952 All 681 (683) (Pt B) (Pr 12) (DB).**

[Overruled on another point in AIR 1960 All 473 (FB)].

SECTION 93

● ——S. 93 (3) —Power of Town Area Committee to regulate offensive trade if prevails over that of District Board under S. 174 (1)(k) read with S. 93(3). See Municipalities—U P. Town Areas Act (2 of 1914), S. 26(a). **1959 Cri L J 533 ; AIR 1959 S C 450.**

——S. 93—Flour mill in Town Area — Licence fee — District Board has no power to charge. See U. P. District Boards Act (10 of 1922), S. 174. **AIR 1955 N U C (All) 2012.**

SECTION 106

——S. 106—Flour mill in town area — Licence fee— District Board has no authority to charge. See U. P. District Boards Act (10 of 1922), S. 174. **AIR 1955 N U C (All) 2012.**

——**S. 106—Scope—Levy of fee—Court has power to determine whether amount of fee fixed by bye-law is reasonable or not — Constitution of India, Art. 19 (1) (f).**

The word 'fee' in S. 106 by itself denotes as to what kind of levy the District Board can impose. The legal significance of the word 'fee' is quite clear and its object is to recover money necessary for defraying the expenses of carrying out the purpose for which it is levied. The 'fees' that a District Board can impose must be 'fees' and not 'tax'. It cannot be said that the only restriction imposed on the District Board in determining the amount of fees is that which goes beyond the reasonable restrictions which may be imposed under Art. 19 (1)(f) of the Constitution. That restriction is certainly there, but the District Boards are statutory bodies having only those rights which are conferred upon them by the statute. The statute does not authorise them to impose taxes but only gives them a power to levy certain fees, and the Courts are entitled to determine whether they are reasonable. **1954 All LJ 405 : AIR 1954 All 675 (679) (Pt F) (Pr 17).**

SECTION 107

● ——**S. 107—Scope—Employee of person under contract with Board—Molestation or obstruction of—No offence under S. 107.**

Section 107 does not make obstruction or molestation of an employee of the persons under contract with the Board an offence. The section speaks of the obstruction or molestation of two classes of persons. One class of persons consists of persons employed by the District Board under the Act. The second class of persons consists of those who are under contract with the Board under the Act. An employee of the persons under contract with the Board does not come under any of the two classes. Bachehoo Lal v. State of U. P. **(1963) 2 S C W R 166 : I L R (1963) 2 All 928 : 1964 Mad L J (Cri) 409 : (1964) 2 S C J 194 ; 1964 All W R (HC) 452 ; 1964 All Cri R 319 ; 1964 (1) Cri L J 76 (77) (Prs 5, 6) (SC).**

SECTION 108

——**S. 108—Plaintiff assessed to tax under Act—Suit for declaration that District Board was not entitled to charge more than Rs. 50 per annum in view of S. 2, Professions Tax Limitation Act—Suit decreed— Appeal—Act amended before hearing of appeal validating imposition of tax up to Rs. 2,000 — Effect if could be given to amendment in appeal—(Professions**

——S 114 — Any one person—There is no indication either in the provisions of S. 142-A of the Government of India Act, 1935 or in the provisions of the Professions Tax Limitation Act which should justify interpreting the expression "any one person" in the restricted manner as not applying to juristic person. See Professions Tax Limitation Act (1941), S. 2. AIR 1955 NUC (All) 1694 (DB).

4. Government servant—If can be taxed.

——S. 114 (a) —Government servant—If can be taxed as resident.

Under S. 114 (a) in order to empower the District Board to levy a tax the assessee must either be residing in the rural area or carrying on business in the rural area. If one of the aforesaid conditions is fulfilled, the District Board's power to impose a tax on the assessee can be exercised. Therefore, where a Government servant is residing in a rural area, he can be taxed as resident though not on the ground that he was carrying on business. 1960 All L J 164.

——S. 114—Service under the Government.

The essence of service lies in the control which the alleged master exercises or can exercise over the manner in which the alleged servant carries out the duties he had undertaken to perform.

The agreement referred to the plaintiff company as licencees and purported to be in connection with the licence given to the plaintiff-company by the Governor-General in Council as represented by the Chief Operating Superintendent, East Indian Railway Administration. The licensees agreed to undertake the catering in the refreshment rooms at various railway stations and to run tea stalls.

Held, that the licensee plaintiff company was absolutely free to use its own discretion in respect of the matters about which nothing was said in the agreement in connection with the supervisory control of the Governor-General in Council, and the plaintiff company could not be said to be a servant of the Governor General in Council.

The payment of the annual rent for the use of the refreshment rooms and electric fittings including fans to the East Indian Railway Administration was not consistent with the relationship of master and servant and fitted in well with the status of the plaintiff company as licensees who had been allowed the use of those rooms and electric fittings.

The term that the licensees were to supply and maintain all necessary articles of furniture, etc., in the said refreshment rooms at their own expenses was inconsistent with the ordinary relationship of master and servant. If the plaintiff company was the servant, such articles would have been normally supplied by the master.

The term that the Administration agreed that telegrams ordering refreshments would be accepted for despatch by the said Railway free of charge did not fit in with the alleged relationship of the master and servant. The same could be said with respect to the stipulation by which the Railway Administration agreed to free carriage by rail of various articles required to be used in the said refreshment rooms and restaurant cars. Further, if a servant gets articles on behalf of his master, the loss, if any would be expected to be borne by the master and not by the servant. AIR 1955 NUC (All) 1694 (DB).

5. Carried on business — Meaning.

——S. 114—'Carried on business', interpretation of — Distinction between 'business' and 'service' pointed out — Servant on fixed salary cannot be said to carry on business. AIR 1955 NUC (All) 172 (DB).

——S. 114—Carried on business, interpretation of—Act contains no definition of 'business' — Analogy of Income-tax Act is not helpful — (Interpretation of statutes — Meaning of words) — Interpretation of statutes — Fiscal Acts) — (C. P. Code (1908), Pre.) (Income-tax Act (1922), S. 2 (4)). AIR 1955 NUC (All) 172 (DB).

——S. 114—'Carried on business' interpretation of—Dictionary meaning is not of much benefit — Word 'business' has to be interpreted in primary meaning with reference to Act — Section 114 is a taxing provision and must be strictly construed — Expression means that person has control and direction of business which is carried on for purposes of gain or profits — Income-tax Act (1922), S. 2 (4) — Interpretation of statutes — Meaning of words) — (Words and phrases — 'Business')— (C. P. Code (1908), Pre.) AIR 1955 NUC (All) 172 (DB).

6. Appeal.

——Ss. 114, 108—Plaintiff assessed to tax under Act —Suit for declaration that District Board was not entitled to charge more than Rs. 50/- per annum in view of S. 2, Professions Tax Limitation Act — Suit decreed—Appeal — Act amended before hearing of appeal validating imposition of tax up to Rs. 2,000—Effect if could be given to amendment in appeal—(Professions Tax Limitation Act (1941), Ss. 2 and 3 B (as inserted by Professions Tax Limitation (Amendment and Validation) Act (1949), S. 2) — (Interpretation of Statutes)—(Civil P. C. (1908), Preamble). AIR 1957 All 527 (529 to 531, 535) (Pt B) (Prs 3 to 5, 7, 22) (DB).

——Ss. 114, 128 and 129 — Imposition of tax — Remedy of appeal not adequate — Petition under Art. 226 is maintainable—(Constitution of India, Art. 226). AIR 1955 N U C (All) 172 (DB).

7. Explanation.

——S. 114 (as amended by U. P. Act XVI of 1934) —Explanation—Scope.

Liability to tax on circumstances and property is founded either on residence or the carrying on of business within the rural area. The only meaning that can properly be attributed to the last sentence of the Explanation to S. 114 is that a servant of Government or of a local body cannot be made liable to tax on the ground that he carries on business. It does not exclude his liability on the alternative basis, namely residence. Where the petitioner, who was a Tahsildar resided within the rural area, he was liable to circumstance and property tax and in determining his total taxable income for the purposes of assessment his salary as a Government servant could be included. 1959 All L J 158.

——S. 114—Explanation—Scope—Servants of private persons are excluded from Explanation—(Interpretation of Statutes—Saving clauses)—(C. P. Code (1908), Pre) AIR 1955 N U C (All) 172 (DB).

——S. 114—Explanation whether creates discrimination amongst servants and servants without any reasonable basis — (Quaere) — (Constitution of India, Art. 14). AIR 1955 N U C (All) 172 (DB).

SECTION 115

——S. 115 (1)—Portion of S. 115 (1) violates Art. 14 —Such invalid portion can be separated from other portion — See Constitution of India, Art. 14. AIR 1960 All 382.

——Ss. 115, 116, 117, 118, 119, 120 and 121—Assessment of tax on individuals is not contemplated by the sections. See U. P. District Boards Act, (10 of 1922), S. 114. AIR 1960 All 382.

SECTION 128

—S. 128 — Remedy under if adequate. See U. P. District Boards Act (10 of 1922), S. 114. **A I R 1955 N U C (All) 172 (DB).**

SECTION 129

● —S. 129—Scope—Section held not onerous. See Constitution of India, Art. 226. **A I R 1964 All 534 (FB).**

—S. 129—Effect of, on remedies of assessee. See U. P. District Boards Act (10 of 1922), S. 114. **A I R 1955 N U C (All) 172 (DB).**

SECTION 131

—S. 131—Liability of assessee to be assessed to tax on ground that income during assessment year was less than Rs. 200 — Civil suit to challenge does not lie. See Civil P. C. (1908), S. 9. **1965 All L J 814 : AIR 1966 All 182.**

—S. 131 (2)—Power to review given by S. 131 (2) is not limited by Civil P. C. (1908), O. 47, R. 1. **AIR 1955 N U C (All) 2013.**

—S. 131—Jurisdiction of Civil Court—(Civil P. C. (1908), S. 9).

If, under the provisions of the District Boards Act, the District Board could not have taxed the plaintiff-company, a suit for declaration that the tax had been levied illegally could be instituted in the Civil Court. AIR 1948 All 382, Foll. **AIR 1955 N U C (All) 1694 (DB).**

—S. 131 — Illegal imposition of tax by Board—Jurisdiction of Civil Court—Civil P. C. (1908), S. 9.

Where the imposition of tax by a District Board is illegal and beyond the powers given to it under the bye-laws, a Civil Court has jurisdiction to interfere and order a refund of the tax: AIR 1948 All 382 (FB); A I R 1945 All 273; AIR 1944 All 223, Rel. on; 1936 A W R 107, Disting. **A I R 1952 All 418 (418) (Pt B) (Pr 5).**

SECTION 136

—S. 136 — Modification or cancellation of assessment—Power of District Board.

The matters which can be raised before the board under the section are only such matters as relate to the recovery from the assessee of the tax for which he had been assessed. The Board, however, has no power under the section to vary an assessment which has been confirmed or modified by the appellate authority. The section does not empower the Board to revise the assessment list or to remit any part of the tax for which a demand has been made. **1958 All W R (HC) 494 : 1958 All L J 342.**

SECTION 148

—Ss. 148, 174 (2) — Bye-laws under — Bye law 5 framed by the District Board of Kanpur imposing fee of one-eighth of income though imposed as fee was in substance tax and therefore ultra vires—Tax and fee — Distinction pointed out. **A I R 1955 N U C (All) 2701.**

SECTION 157

—Ss. 157 and 172 (1) and R. 9, made under S. 157 — Scope and effect — Power of District Board to grant a permanent lease of Nazul land without sanction of Collector.

It is obvious from a perusal of Ss. 157 and 172 (1) of the U. P. District Boards Act, that the rules made by the Provincial Government under S. 157 shall have the statutory force and would be as binding as any statutory provision in the Act. Rule 9 of the Rules framed clearly lays down that a lease for a period exceeding ten years but not exceeding 30 years shall receive the sanction of the Collector and when the term exceeds thirty years the previous sanction of the Commissioner shall be obtained.

When a lease of Nazul land comes within this rule and is made without the sanction as prescribed therein, it would be an invalid lease. Further the statute contemplates an express approval and not an implied one. **1950 All L J 925.**

SECTION 172

● —S. 172 (2)—Rules under—Rule 3-A and Notification dated 25-3-1946—Validity of R. 3-A—Engineer in service of District Board—Termination of employment — Procedure in R. 3-A followed—Order held proper — Rule in Notification D/- 25-3-1946, not applicable. See U. P. District Boards Act (10 of 1922), S. 82. **AIR 1964 S C 1680.**

—S. 172 (a)—Provision of Law whether mandatory or directory—Mode of determination. See Interpretation of Statutes. **AIR 1964 All 169 (DB).**

—S. 172 — Government Notifications of 31st December 1955 and 24th June 1958 in respect of age of retirement of employees of District Boards providing 55 years as the age of retirement and 58 years respectively — Age of superannuation at the time 60 years—Validity of. See U. P. District Boards Act (1922), S. 173. **(1965) 1 Lab L J 126 : 1964 All L J 1065.**

—S. 172 — Rules under, regarding Officers and Servants, R. 5 (iii)—Rule is confined only to Government servants — (Interpretation of Statutes) — (C. P. Code (1908), Pre.) **AIR 1955 N U C (All) 2018.**

—S. 172 — Rules under S. 172 — If mandatory — R. 9 of Chap. VIII of the Rules — Lease by District Board without previous sanction of Collector — Validity.

It is obvious from a careful perusal of Ss. 157 and 172 that the rules made by the Provincial Government under S. 172 shall have the statutory force and would be as binding as any statutory provision in the Act itself.

Consequently a lease granted by a District Board and falling within the purview of R. 9 without the previous sanction of the Collector as required by the rule is invalid.

The sanction contemplated by the rule is an express sanction and not an implied one. **1950 All L J 925 (DB).**

SECTION 173

—Ss. 173, 174, 172 — Government Notifications of 31st December, 1955 and 24th June, 1958 in respect of age of retirement of employees of District Boards providing 55 years as the age of retirement and 58 years respectively — Age of superannuation at the time 60 years — Validity of — Constitution of India, Arts. 309, 14, 16.

Held on facts (1) that the notification was invalid in so far as it purported to reduce the superannuation age of the employee from 60 to 58 years and it was incumbent on the Board to give the required one year's notice to him, if the Board intended to terminate his service before he attained the age of 60 years. The power vested in the State Government under S. 173 (2) is of the same nature and content as the power which has been given to the Board under S. 173 (1). The power initially vested in the Board under S. 173 does not possess any legislative content so as to supersede contractual obligations and, on the other hand, is administrative in nature. The Board will not be competent to frame any regulation which may change the service conditions of its employees to their detriment with retrospective effect. As the Governor exercises a similar power under S. 173 (2),

it is not open to him to make the notification retrospective so as to effect the service conditions of the employees of the Board without their consent. Power vested in Governor under S. 173 (2) is not analogous to one which he enjoys under the proviso to Article 309 of the Constitution. Under Art. 309 the power vested in him being co-extensive with that of the legislature possesses a legislative content. That is not the case when he is exercising a power under S. 173 (2) which is administrative in character.

The powers exercised by the State Government for making rules and by the Board for making by-laws under Ss. 172, 174 of the Act respectively partake of a legislative character as they affect the public in general and provide for the fundamentals of the administration of local bodies. That is not the case, however, with the power which is exercised by the Board or by State in making regulations under S. 173 of the Act inasmuch as they are only in respect of matters relating to the internal management of the Board and do not concern the public at large or the fundamentals of the District administration. Regulations framed in exercise of this power, cannot have legislative content and must be held to be administrative in nature incapable of affecting the vested rights of the employees under their service agreement with the Board with retrospective effect. (2) That the continuance of Government Notifications of 31st December, 1955 and 24th June, 1958 reducing the superannuation age of District Board employees from 60 to 55 and then to 58 results as an arbitrary discrimination against them and as such they were hit by Arts. 14 and 16 of the Constitution. The decision of the State Government to provide different ages of superannuation for the employees of the local bodies of the urban and rural areas was not founded on any reasonable basis. There was no intelligible differentia between the aforesaid two classes of employees for fixing different ages of superannuation for them. A I R 1964 S C 400, Rel. on. **(1965) 1 Lab L J 126 : 1964 All L J 1065.**

——S. 173 — Regulation regarding dismissal, removal or reduction of officers and servants of the District Boards — 'Removal' — Order terminating services of petitioner stating that he was not duly qualified — It is not removal — Action is not disciplinary action and has not been taken as penalty. **AIR 1955 N U C (All) 3550.**

——S. 173 — Rules regarding officers and servants of the District Boards and Officers and Servants of Government lent to the District Board — R. 3-A (iv) — Reasonableness of power given under R. 3-A (iv) is not to be judged from criteria for reasonableness of restriction imposed on exercise of fundamental rights — Power is subject to control of State Government—R. 3-A (iv) is not unreasonable — It is not beyond rule-making power of State Government. **AIR 1955 N U C (All) 3550.**

——S. 173 — U. P. District Board Manual, Ch. III. R. 3-A — Termination of service of servant drawing Rs. 40 per month — Validity of notice — Powers of Secretary. See U. P. District Boards Act (10 of 1922), S. 82. **AIR 1955 N U C (All) 2025.**

SECTION 174

SYNOPSIS

(U. P. District Boards Act (1922), S. 174.)

1. Scope.
2. Licence fee—Legality.
3. Offensive trade.
4. Bye-laws ultra vires.
5. Appeal.

1. Scope.

●——**Ss. 174 and 91 (k)—Scope—Power of District Board to frame bye-laws and prescribe fees — If taken away — U. P. Panchayat Raj Act, S. 111 — Scope and effect of.**

The U. P. Panchayat Raj Act 26 of 1947, does not provide for control or regulation of trade, calling and profession mentioned in S. 91 (q) of the U. P. District Boards Act X of 1922 and hence the power of District Boards under S. 174 of that Act to frame bye-laws and to prescribe fees in that behalf has not been taken away by S. 111 of the Panchayat Raj Act.

Sections 15 and 16 of the Panchayat Act which provide for the duties of a Gaon Panchayat does not contain any provision corresponding to S. 91 (q) of the District Boards Act.

The power of regulation or control cannot be held of be covered by Cl. (c) of S. 15 of the Panchayat Raj Act. In the context of both the District Boards Act and the Panchayat Raj Act, the word 'sanitation' as used in S. 91 of the District Boards Act and S. 15 of the Panchayat Raj Act is confined to its ordinary meaning in relation to conservancy and drainage and the like with reference to the necessity of avoiding disease and cannot be given such a wide meaning as to inculde control or regulation of trades callings or practices. It must therefore be held that the Panchayat Raj Act does not provide for control and regulation of trades callings or practices like S. 91 (q) of the District Boards Act. The prescribed authority have no powers to frame bye-laws to control and regulate trades, callings and practices under S. 111 of Panchayat Raj Act independently on the basis of the wide words used therein. Since Ss. 15 and 16 of the Act do not deal with control and regulation of trades, callings and practices and there is no other provision of the Act which imposes a duty on Gaon Panchayats to control or regulate trades callings or practice the power under S. 111 does not extend to prescribing bye-laws for that purpose.

What S. 37 (d) of the Panchayat Raj Act refers to is what is provided in item 60, List 2 of Seventh Schedule of the Constitution and not fees properly so called. District Board, Ghazipur v. Lakshmi Narain Sharma, **(1962) 1 S C J 319 : ILR (1961) 1 All 373 : 1961 All L J 260 : 1961 All W R (HC) 305 : (1961) 2 S C R 81 : A I R 1961 S C 356 (358, 359) (Pt A) (Prs 4, 5, 6).**

●——**S. 174—Bye-law under sub-s. (2) (1), prohibiting holding of market—Validity—(Constitution India, Art. 19 (1) (g)).**

Sub-sections (1) and (2) (1) of S. 174, U. P. District Boards Act, 1922, show that the power of the Board to make bye-laws is to be exercised for the purpose of promoting or maintaining the health safety and convenience of the inhabitants of the area within its jurisdiction and that this power includes the power to regulate markets as mentioned in sub-s. (2) (1).

Where therefore certain District Board frames a bye-law to the effect that no person shall establish or maintain or run any cattle market in the District within its jurisdiction of the bye-law is not one passed for regulating the market but for prohibiting a person from holding it. Such a bye-law in face of the provisions of S. 174 is obviously beyond jurisdiction. The bye-law as well as the order under it interferes with the fundamental right of the petitioner under Art. 19 (g) as it prevents him from carrying on the business of holding the market. It is thus in conflict with Art. 19 (1) (g) and is void. Tahir Hussain v. The District Board, Muzaffarnagar. **A I R 1954 S C 630 (631, 632) (Prs 2, 4).**

——**S. 174**—Notifications of Government D/- 31-12-1955 and 24th June 1958 in respect of age of retire-

ment of employees of District Boards providing 55 as age of retirement and 58 years respectively—Age of superannution at the time 60 years—Validity of. See U. P. Dittrict Boards Act (1922), S. 173. (1965) 1 Lab L J 126 : 1964 All L J 1065.

—S. 174 — Bye-laws under — Power to make bye-laws for purpose of promoting health, safety and convenience under S. 111, Panchayat Raj Act prevails over power of District Board under the section. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 111. AIR 1956 All 433 (DB).

—S. 174 (2) (k)—Proof of expenditure of prescribed fees —It is not duty of District Board in every case to produce account books — Presumption is that requirements of S. 174 (k) have been fulfilled—(Evidence Act (1872), S. 114). A I R 1955 N U C (All) 2019.

—S. 174 — By-law regulating slaughter-houses — Prohibiting slaughter of bullocks within the area of the District Board — Validity — Art. 19 (1) (g) of Constitution if infringed.

A District Board is authorised by S. 174 of the U.P. Act X of 1922 to make by-laws for the purpose of regulating slaughter-houses and offensive and obnoxious trades calling or practices and prescribing fees. The power to regulate must be deemed to include the power to prohibit the same at particular places.

A by-law prohibiting the slaughter of bullocks at a slaughter-house within the limits of the District Board is not therefore prima facie ultra vires the powers under S. 174 of the Act.

The by-law does not prohibit the carrying on of any profession or trade and is not in contravention of Art. 19 (1) (g) of the Constitution ; further Art. 19 (6) of the Constitution expressly saves the operation of any existing law in so far as it imposes any reasonable restrictions in the interests of the general public. 1952 All W R (HC) 525 : 1952 All L J 672 : 1952 All Cr R 139 : 1953 Cr L J 332 : A I R 1953 All 95 (96) (Pr 2).

—S. 174—Bye-laws under, bye-law to manufacture of bricks before bye-laws came into force — Power of Board to impose tax.

The bye-laws framed under the Act by the District Board Lucknow are not retrospective in operation —Hence under Bye-law 6 the liability to tax can only arise if the manufacture of bricks or any act mentioned therein is after the bye-laws came into force. A Board clearly acts beyond its powers conferred by the bye-law if it imposes tax on sale of bricks which have been manufactured before the bye-laws came into force. AIR 1952 All 418 (418) (Pt A) (Pr 5).

2. Licence fee—Legality.

■ —Ss. 174 and 91 (q)—Regulations under Act and licence fee charged—Legality.

The fact that certain fees are levied on owners of mills under the U. P. Rice and Dal Mills Control Order, 1948 and the U. P. Pure Food Act cannot bar the District Boards from levying any further licence fees under S. 91 (q) of the U. P. District Boards Act read with S. 174 thereof. The fees levied under the Control Order of 1948 which depends for its existence on the Essential Supplies Act and under the U. P. Pure Food Act are for different purposes of those Acts. The fee charged by the District Board is for regulation of obnoxious trades and the purpose of this regulation is different from the purpose for which fees are levied under the Essential Supplies Act and the Pure Food Act. Under these circumstances there is no reason for striking down the regulatory provisions made under the District Boards Act and the licence-fee charged thereunder. The fact that there may be some overlapping between the regulatory provisions made under the U. P. Pure Food Act and those made under the District Boards Act can have no relevance on the validity of the bye-laws and the licence fee charged under them. District Board, Ghazipur v. Lakshmi Narain Sharma. (1962) 1 S C J 319 : ILR (1961) 1 All 373 : 1961 All L J 260 : 1961 All W R (HC) 305 : (1961) 2 S C R 81 : AIR 1961 S C 356 (360) (Pt B) (Pr 7).

● —S. 174 (1) (k) — Power of 'regulation' includes power of issuing license — Town Area Committee would thus have power to frame bye-laws requiring taking out of licences in case it exercises its power of regulation under S. 26 (a) of the Town Areas Act in the same way as the District Board has the power of framing bye-laws under S. 174 (1) (k) requiring those carrying on certain trades to take out licences. See Municipalities—U. P. Town Area Act (2 of 1914), S. 26 (a). 1959 Cr L J 533 : AIR 1959 S C 480.

—S. 174 (2) (k)—Bye-laws under — Imposition of heavy licence-fee for running brick-kiln—Validity.

Section 174 (2) (k) of the U. P. District Boards Act provides that the District Board has power to frame bye-laws regulating slaughter-houses and offensive, dangerous and obnoxious trades, callings or practices and prescribing fees to defray the expenditure incurred by a Board for this purpose. This power is only confined to charging fee enough to defray expenditure incurred by the Board for that purpose. No fee can be charged to increase the general revenue of the Board.

Certain powers are given to the Board to impose taxes but it is not permissible for the Board under the garb of a licence fee to impose taxes. Hence the District Board has no power to impose heavy licence fee under S. 174 (2) (k) of District Boards Act for running a brick-kiln. AIR 1955 All 541 (542) (Pt C) (Pr 4).

—S. 174 — License fee — (Constitution of India, Art. 226—Extent of power).

If the licence fee has been imposed under S. 174 for regulating an offensive, dangerous or obnoxious trade, then the fee that can be charged must be more or less commensurate to defray the expenditure incurred by the Board and it cannot be any arbitrary sum with the object of making it a general source of revenue.

Held, that 'prima facie', it could be said that the income from the licence fee was such that it was necessarily in excess of the expenditure and was being used by the Board for purpose of augmenting their general revenue. In the summary proceedings under Art. 226 of the Constitution it was not possible to hold that the licence fee that was fixed by the District Board was excessive. 1954 All W R (H C) 615 : 1954 All L J 697 : AIR 1955 All 184 (185, 186) (Pt A) (Prs 9, 15) (DB).

—Ss. 174, 93, 106 and 175—Municipalities—(U. P. Town Areas Act (2 of 1914), S. 26)—Flour mill comes within description of offensive trade — Flour mill in Town Area — Licence fee — District Board has no authority to charge — Conviction for not taking out licence is illegal. AIR 1955 N U C (All) 2012.

—S. 174 (1)—Scope—Sub-section does not empower Board to make bye-law imposing licence fees or taxes.

Section 174 (1) authorises the Board to make bye-laws consistent with the Act for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants and for the furtherance of the administration of the district under this Act, but it does not say whether a bye law framed under this sub-section may also impose licence fees or taxes. It gives a general power to the District Board to make bye-laws for the purposes mentioned therein. The clauses contained in sub-s. (2) are really illustrations

of the power contained in sub-s. (1), and they show what nature of power has been conferred on the Board by S. 174 (1). The power, contained in sub-s. (1) should be read as ejusdem generis to the powers contained in the different clauses of sub-s. (2).

Even if it be assumed that it had the power to levy licence fees, its powers should be read to be the same as contained in the different clauses enumerated in sub-s. (2).

If the fees imposed by this bye-law cannot be validated under S. 174 (2) (k), it cannot be validated under S. 174 (1). **1954 All L J 405 : AIR 1954 All 675 (678) (Pt E) (Pr 16).**

——S. 174 (2) (k)—Licence-fee.

The licence-fee contemplated by S. 174 (2) (k) is a fee which will only cover, more or less, the actual and special expenses incurred by the board in regulating the trade and it cannot be levied for the purpose of augmenting the general revenue. **1953 All L J 60 : 1953 All W R (H C) 114 : ILR (1954) 1 All 127 : AIR 1953 All 415 (416) (Prs 5, 6) (DB).**

3. Offensive trade.

——S. 174 (1) (k)—Running of flour mill—If offensive trade—Power of Town Area Committee to regulate — Running of a flour mill with aid of power by accused was held be offensive trade and therefore the Town Area Committee as well as the District Board had power to regulate the trade. See Municipalities—U. P. Town Areas Act (2 of 1914), S. 26 (a). 1959 Cri L J 533 : AIR 1959 S C 480.

——S. 174 (1) (k) — Power of Town Area Committee to regulate offensive trade prevails over that of District Boards under S. 174 (1) (k) read with S. 93 (3), U. P. District Boards Act. See Municipalities—U. P. Town Areas Act (2 of 1914), S. 26 (a). 1959 Cri L J 533 : AIR 1959 S C 480.

——S. 174 (2) (k) — Offensive, dangerous and obnoxious trade — Running a flour mill is such a trade. AIR 1955 N U C (All) 2019.

4. Bye-laws ultra vires.

——S. 174 (1) — Muzaffarnagar Kolhus and Karhais Bye-laws, Cl. (7)—Validity of.

To the extent that Muzaffarnagar Kolhus and Karhais (Pans) bye-laws have been made applicable to persons letting out kolhus and karhais, the bye-laws are void. The effect of the inclusion of persons letting out on hire the kolhus and the karhais amongst 'owners' has the result of making these bye-laws partially invalid. **1963 All L J 317 : I L R (1963) 2 All 251.**

——S. 174 (2) (k) — Bye-laws framed by District Board Saharanpur, Bye-law No. 1—Words "regulating slaughter-houses" in Cl. (k) do not mean to include prohibition of slaughter—Bye-law No. 1 is ultra vires —(Words and Phrases). 1956 Cri L J 661 : A I R 1956 All 335 (335) (Pt A) (Pr 6).

——S. 174 (2)—Bye-laws under — Bye-law 5 framed by District Board of Kanpur—Validity—Tax and fee —Distinction—Bye-law though imposing as a fee was in substance a tax and was ultra vires. See U. P. District Boards Act (10 of 1922), S. 148. A I R 1955 N U C (All) 2701.

——S. 174 (2) (k) and S. 174 (1)—Bye-laws under—Bye-law 6, imposing licence fee for working factory crushing sugarcane or flour mills, sawing-mills, etc., is ultra vires—Fees and taxes, distinction — Constitution of India, Arts. 265, 13 (1), Sch. 7, List I, Item 96; List II. Item 66 ; List III Item 47.

Byel-aw No. 6 of the bye-laws framed by the District Board of Saharanpur, under S. 174 (2) (k), U P. District Boards Act, which were published in the Gazette, dated the 28th May 1949, imposing a licence fee mentioned in bye-law 3 for working of factories (sugar factories, saw mills, oil mills, rice mills, etc.,) is ultra vires the Board.

Held, that the amount of licence fee fixed under the bye-law was not fixed with the object of meeting merely the expenses of regulating the trade or of meeting the expenses that became necessary by virtue of the framing of these bye-laws, but that the fee was fixed with a view to enhance the general revenues of the District Board.

The main characteristics of a licence fee are, that the fee is imposed on trade or calling itself, and not on the income derived from the trade or calling; that the licence fee cannot be imposed for raising the general revenues but only for purposes of being spent over the regulation of the trade or calling; and that it must bear a relation to the expense that was expected to be incurred in doing so.

The burden of proving that the levy is not what it purports to be on the face of it, lies on the person, who says that it is not fee but a tax. The question is really one of fact.

The Court cannot accept that there is a rational nexus between the amount of the fee and the expenses, and the same are very close to each other because the Board the levying authority says that it is so. If allegations like these accepted it would amount to accepting the ipse dixit of the Board.

Where definite facts have been asserted in the affidavit filed by the petitioners along with the petitions, which have given the approximate amount of money recovered as the licence fee by the Board every year, and it is also said that not a single officer, of the Board visited or inspected any of the factories belonging to the petitioners and to others, nor has the District Board spent anything on the working of the by-law under which the licences had been issued, and there is a clear assertion that there has been no increase in the staff of the Public Health Department at all since the introduction of the bye-law and no special staff has been employed by the Board for the purpose of regulating the petitioners' trades, nor has any additional expenditure been incurred due to the enforcement of these bye-laws, in controverting these assertions, the Board should file their accounts.

Mere extracts from the account-books typed on separate sheets of paper which are not even copies of the account books, cannot be of any possible assistance. The omission of the District Board to file the account books, in spite of an opportunity being given to it, goes against the District Board, and this fact can be taken into consideration in coming to a conclusion on the facts that have to be decided in the case. **1954 All L J 405 : A I R 1954 All 675 (677, 679, 680) (Pt A) (Prs 7, 10, 16, 21 to 23).**

5. Appeal.

——S. 174 (2) (k) — Other remedy open — District Board imposing heavy licence fee on brick kiln owner — Appeal against assessment order is not equally efficacious as writ petition — Writ petition is maintainable. See Constitution of India, Art. 226. A I R 1955 All 541.

——S. 174 (2) (k) — Appeal under S. 186, scope of—Challenging validity of bye-law itself — Maintainability of writ application. See U P. District Boards Act (10 of 1922), S. 186. A I R 1954 All 675.

SECTION 175

——S. 175—Bye-law prohibiting slaughter of cow in slaughter house—Flesh of cow recovered from house of accused — Conviction illegal. 1956 Cri L J 661 : A I R 1956 All 335 (336) (Pt B) (Pr 7).

——S. 175—Flour mill in town area — Licence fee—Power to charge. See U. P. District Boards Act (10 of 1922), S. 174. A I R 1955 N U C (All) 2012.

SECTION 177

——S. 177—Presumption of validity of bye-laws. See Evidence Act (1872), S. 114. A I R 1955 N U C (All) 2019.

SECTION 182

——S. 182 (40) (d) — Complaint by President for breach of bye-law is valid. A I R 1955 N U C (All) 2019.

SECTION 186

——Ss. 186 and 174 (2) (k) — Appeal under S. 186—Scope of — Challenging validity of bye-law itself — Maintainability of writ application—(Constitution of India, Art. 226).

The appeal that is provided by S. 186, is against any order or direction made by a Board under a bye-law passed under S. 174 (2) (k) of the Act, but it does not provide for an appeal to challenge the validity of the bye-law itself. Section 186 does not confer any right of appeal against the resolution of a Board passing a bye-law.

Consequently the writ application challenging the validity of the bye-law, cannot be attacked on ground that the applicants should have moved under S. 186. 1954 All L J 405 : AIR 1954 All 675 (678) (Pt D) (Pr 15).

SECTION 192

● ——Ss. 192 (1) and (3)—U. P. General Clauses Act (1 of 1904), S. 4 (2) —'Act done' — Meaning — Omission to do an act is not always included in 'act done' —Expression 'act purporting to have been done in official capacity' — Meaning — Suit by contractor against Board for recovery of price under works contract and for damages for non-payment—Contractor not challenging validity of contract — Suit in substance for specific performance of contract and not for breach of contract—S. 192 is not attracted — Limitation is not governed by S. 192 (3)—AIR 1952 All 382 (FB) and AIR 1923 All 267 (1), Overruled; AIR 1934 All 436; AIR 1936 All 18 (FB) and AIR 1962 All 174 (FB), Approved; AIR 1930 Oudh 105, Dissent from; AIR 1928 Oudh 297; AIR 1934 PC 96, Rel. on. Zilla Parishad (District Board) v. Smt. Shanti Devi, 1965 All L J 221 : 1965 All W R (HC) 146 : ILR (1965) 1 All 783 : AIR 1965 All 590 (593 to 597) (Prs 9, 10, 13 to 17, 28) (FB).

——S. 192 (1) and (3)—'Immovable property'—Meaning and test of—Suit relating to — Limitation—Trees to be cut and removed are not immoveable property (T. P. Act (1882), S. 3)—Registration Act (1908), Ss. 2 (6), 2 (9) — (U. P.) General Clauses Act (1 of 1904), S. 4 (23). 1956 :All L J 872 : 1956 All W R (HC) 343 : AIR 1956 All 680 (682, 683) (Pt A) (Prs 14, 19, 23) (DB).

——S. 192 (1)—Notice under—Validity.

Where the notice under S. 192 (1) was given before the accrual of the cause of action, that is, when no tree had been cut and in the notice the amount of compensation was not mentioned and, as a matter of fact it could not be mentioned at that time :

Held, that the notice did not amount to sufficient compliance with the terms of S. 192 (1) and it was not a valid notice. AIR 1943 Bom 138, Dist. 1956 All L J 872 : 1956 All W R (HC) 343 : AIR 1956 All 680 (683) (Pt B) (Pr 27) (DB).

——S. 192 (3) — Special or local law — Period prescribed by S. 192 (3), U. P. District Boards Act — S. 23, Limitation Act 1908, has no application in view of S. 29 (2) of that Act — Suit for injunction restraining breach of plaintiff's exclusive right of ferry—Limitation. See Limitation Act (1908), S. 23. AIR 1953 All 104 (DB).

SCHEDULE 1

● ——Sch. 1, Col. 2 — Power to dismiss includes power to suspend — Board and not its President, has power to suspend Secretary — 1952 All L J 56 : AIR 1952 All 681, Overruled. See U. P. District Boards Act (10 of 1922), S. 90 (3). AIR 1960 All 473 (FB).

UTTAR PRADESH DISTRICT BOARDS RULES

RULE 4

——R. 4—Suspension of Secretary—Powers of Board, See U. P. Districts Act (10 of 1922), S. 71. AIR 1955 NUC (All) 2018.

RULE 5

——R. 5—Suspension of Secretary—Powers of Board See U. P. District Boards Act (10 of 1922), S. 71. AIR 1955 NUC (All) 2018.

UTTAR PRADESH DRUG RULES (1945)

RULE 45

——R. 45—Failure to give protocols is fatal defect—Conviction of person from whom sample was taken cannot be sustained. See Drugs Act (1940), S. 25. 1959 Cri L J 1136 : AIR 1959 All 634.

RULE 49

——R. 49, Proviso 3 — Who can be appointed as ex-officio inspectors — Officer of P. H. Department, who is also a medical practitioner can be appointed as ex-officio Inspector. See Drugs Act (1940), S. 33 (1). 1958 Cri L J 312 : AIR 1958 All 163.

——R. 49, Proviso 3—Scope—Proviso 3 is ultra vires. See Drugs Act (1940), S. 33 (1). 1958 Cri L J 312 : AIR 1958 All 163.

RULE 51

——R. 51 (7) — Inspector appointed for inspection of retail shops—Can search any premises. See Drugs Act (1940), S. 33 (1). 1958 Cri L J 312 : AIR 1958 All 163.

UTTAR PRADESH EDUCATION CODE (1936)

PARA 7

——Chap. 2, Paras. 7 and 14 — Permanent Assistant Clerk in office of Secretary Board of High School and Intermediate Education — He holds a civil post in the State—Temporary appointment in higher scale — Transfer by Director of Education as noter and drafter to office of District Inspector of Schools—Assistant Clerk disregarding such order — Removal from service — Transfer and removal sanctioned by Governor—Transfer held did not amount to reduction in rank—Transfer and removal could not be questioned on ground that they were by authority subordinate to appointing authority. See Constitution of India, Art. 311. AIR 1962 All 413 (DB).

——Chap. 2, Para (7)—Board of Intermediate Education is not part of Education Department — Administrative order of transfer of employee of Board — If transfer is in fact in way of punishment, the Director has no power to transfer him. See Constitution of India, Art. 311 (2). A I R 1957 All 70.

PARA 14

——Chap. 2, Para. 14 — Permanent Assistant Clerk in office of Secretrary Board of High School and Intermediate Education—He holds a Civil post in the State — Temporary appointment in higher scale — Transfer by Director of Education as noter and drafter to office of District Inspector of Schools — Assistant clerk disregarding such order — Removal

from service — Transfer and removal sanctioned by Governor — Transfer held did not amount to reduction in rank — Transfer and removal could not be questioned on ground that they were by authority subordinate to appointing authority. See Constitution of India, Art. 311. **A I R 1962 All 413 (DB).**

PARA 90

——Para. 90, Cl. (5) — **Examination Board — Powers of**—Admission to class directly connected with High School Examination secured by fraud—Student passing examination — Right of Examination Board to cancel certificates.

Where a student having failed in the examination of VIII Standard was not entitled under the Rules to get admission to IX Standard, but his father, in the application for admission in another school, made false statements, and on the basis of that fraud, which was wilfully connived at by the student himself, secured admission to the IX Class and thereby succeeded in securing undue admission to the High School Examination, it was a case within the provisions of cl. (1) of Ch. VI of the Regulations made by the U. P. Board of High School and Intermediate Education, and the punishment by way of cancellation of his certificate for High School Examination was within the competence of the Board, although on the facts of the case, the student could have also been punished under Para. 90, Cl. (5) of the U. P. Educational Code. Civil Misc. Writ No. 138 of 1957, dated 23-1-1959 (All) and Civil Misc. Writ No. 748 of 1954, D/- 5-4-1955 (All) and Civil Misc Writ Nos. 946 and 947 of 1954, dated 18-1-1955 (All), Disting. **A I R 1960 All 653 (654) (Prs 8, 10) (DB).**

——Para. 90, Cl. (5) — Rules for guidance of English schools and Intermediate Colleges, Rule 98 — Student entering institution is bound by the rules —Order of rustication passed by Inspector of Schools under R. 98 (r) after a report from head of the institution and on admission of charges against him cannot be interfered with by a writ — Constitution of India, Art. 226—Interference with disciplinary action taken by school authorities. **A I R 1954 All 636 (636, 637) (Prs 3, 4).**

PARA 96

——Para. 96 (r) — **Nature of powers conferred on Inspector of Schools.**

The powers conferred upon an Inspector by the rule are intended as an extension of and not as a substitute for the disciplinary powers of the principal on whom rests the responsibility for the maintenance of discipline. The rule does not confer upon the Inspector a power to pass an order of rustication unless the principal is of opinion that such an order is necessary and requests the Inspector to make it. The initiation of the making of an order of rustication must come from the principal. The mere concurrence of the principal in an order the Inspector proposes to make is not sufficient to clothe the latter with the power to order rustication. **1958 All W R (HC) 200 : (1958) All L J 117.**

PARA 358

——Para. 358 (2)—Enforcement of contractual rights — Agreement under U. P. Educational Code — Arbitration Board constituted in breach of provisions of agreement regulating conditions of service under Para. 358 (2) of the Code — Dispute being of contractual nature, High Court would decline to interfere under Art. 226 of Constitution—Another remedy open under Arbitration Act. See Constitution of India, Art. 226. **A I R 1957 All 737 (DB).**

APPENDIX X

——Appendix X, Form of agreement, Cls. (7) and (10) —**Dismissal of employee by managing committee on ground of inefficiency — Prior approval of Inspector of Schools not obtained—Power of Inspector to direct re-instatement of employee.**

Where the Principal of an educational institution is dismissed by the Managing Committee of the institution on the ground of inefficiency without obtaining prior approval of the Inspector of Schools as required by cl. (10) of the agreement, the effect is only to make the resolution of the Managing Committee dismissing the employee invalid as against the contracting parties. It is, however, for the contracting party, the dismissed employee, to seek his remedy in accordance with the provisions of the agreement or through proper Court. But no power is given to the Inspector of Schools to direct his re-instatement. Such a direction would be without jurisdiction and illegal. **1956 All L J 790.**

UTTAR PRADESH ELECTION MANUAL VOL. 1, PAGE 283, RULE 6

——Vol. 1, Page 283, (1952 Edn.), R. 6 (2) — 'At any stage' in R. 17 of O. 6, Civil P. C.—Applicability to election petition—'In hearing of election petitions' —When Election Tribunal is required to pass an order on application for amendment under R. 17, O. 6, Civil P. C. after hearing of election petition has commenced, the order passed would be in pursuance of procedure to be followed in hearing of election petition. See Civil P. C. (1908), O. 6, R. 17. **AIR 1955 NUC (All) 1750.**

UTTAR PRADESH ELECTION PETITION (PRESIDENT OF MUNICIPAL BOARDS) RULES (1949)

See under Municipalities.

UTTAR PRADESH ELECTRICITY (DUTY) ACT (33 of 1952)

SECTION 3

——S. 3, Explanation I — **Commercial purpose — What is—Water works installed by licensee Municipal Board as part of statutory duty — Energy consumed by Board for water works is not for commercial purpose—Board not liable to pay duty under S. 3 on such consumption—(Words and Phrases)—(U. P. Municipalities Act (2 of 1916), S. 7 (1) (j) and 129 (h).**

Municipal Board in U. P. as a licensee under the Electricity Act 1910, is not liable to pay any duty under S. 3 Explanation I of U. P. Electricity (Duty) Act, 1952, in respect of the energy consumed by it for working the water works installed by it as a part of its statutory duty under U. P. Municipalities Act.

The words commercial purposes in S. 3, Explanation would cover an undertaking the object of which is to make a profit out of the undertaking. It is the aim and not the effect which has to be taken into consideration.

The restrictions contained in S. 129 of the U. P. Municipalities Act indicate that a Municipal Board is not entitled to run a water works on a profit basis.

In that view it cannot be contended that the water works installed by the Municipal Board was for commercial purposes. **1957 All W R (HC) 466 : I L R (1957) 2 All 407 : 1957 All L J 496.**

UTTAR PRADESH ELECTRICITY SUPPLY (LICENSED UNDERTAKING—WAR COST) ORDER

CLAUSE 4

——Cl. (4)—Authorised levy of surcharge for supply of electrical energy — Writ petition against — Maintainability—Held that as the consumer had been pay-

ing surcharge without demur since 1944, it was too late for him to complain after enforcement of Constitution in 1950 that the charge was improper. See Constitution of India, Art. 226. A I R 1959 All 220.

UTTAR PRADESH EMPLOYEES' INSURANCE COURT RULES (1952)

RULE 17

——R. 17 — Employees' State Insurance Act (1948), Ss. 96 (1) (b), 75 (2), 68 and 94 — Validity of R. 17 — The rule is matter of procedure and is covered by S. 96 (1) (b) — Rule is not ultra vires — Claim under S. 75 (2) — Limitation—Proceedings under Ss. 68 and 94 — Limitation — AIR 1964 Madh Pra 75, Not foll. 1964 All L J 946 : (1965) I Lab L J 1 : (1964) 9 Fac L R 345 : (1965-66) 29 F J R 194 : ILR (1965) 1 All 133 : AIR 1965 All 410 (411) (Prs 8 to 10, 12, 13) (DB).

UTTAR PRADESH ENCUMBERED ESTATES ACT (25 of 1934)

See under Debt Laws.

UTTAR PRADESH ENCUMBERED ESTATES RULES

See under Debt Laws.

UTTAR PRADESH ENTERTAINMENTS AND BETTING TAX ACT (8 of 1937)

SECTION 2

——S. 2 (7) (as amended in 1948) — Gate-keeper is not a proprietor.

Obiter.—A gate-keeper, whose sole function is to allow persons inside the hall and who has no control over the show, is not a person contemplated by the word 'proprietor' in the Act, as he cannot be said to be responsible for management of the entertainment. (1952) 3 S T C (Supp) 32 : ILR (1953) 2 All 862 : 1952 R D (HC) 152 : 1952 All L J 265 : 1952 Cri L J 1513 : AIR 1952 All 835 (836) (Pt B) (Pr 4) (DB).

SECTION 3

——Ss. 3, 4 (1) and 5 — 'Person who has some duty to perform in connection with the entertainment'— Meaning of — Persons engaged for publicity outside place of entertainment admitted without ticket — Proprietor is guilty under S. 5.

The exemption under S. 4 cannot possibly refer to persons who have some duty to perform outside the place of entertainment about whose entry inside the place of entertainment no question in such cases arises. Therefore, for the purposes of S. 4 of the Act persons who have some duty to perform in connection with the entertainment inside the place of entertainment must be treated differently from the persons who have some duty to perform in connection with the entertainment outside that place.

Hence band-men and board boys who are engaged for the purposes of publicity and for distribution of handbills outside the place of entertainment cannot be considered to be persons who have 'some duty to perform in connection with the entertainment' and if they are admitted in the cinema house without any ticket and free of charges the proprietor would be guilty under S. 5 of the Act. 1952 All L J 658 : 1952 Cri L J 1433 : 1952 All W R (HC) 255 : AIR 1952 All 799 (800, 801) (Prs 10, 11, 13).

——S. 3 — Swimming pool — No music or entertainment provided there when pool is kept open for bathing — It is not a place of entertainment within the meaning of the Act — No entertainment tax can be levied on the admission charges to the swimming pool. ILR (1961) 1 Punj 66.

SECTION 4

——S. 4 (1) — 'Person who has some duty to perform in connection with the entertainment' — Meaning of — Persons engaged for publicity outside place of entertainment admitted without ticket — Proprietor is guilty under S. 5. See U. P Entertainments and Betting Tax Act (1937), S. 3. 1952 Cri L J 1433 : AIR 1952 All 799.

SECTION 5

——S. 5 — Complaint alleging offence punishable under S. 5 — Person competent to file — Matter governed by Criminal P. C.—Criminal P. C. (1898), Ss. 4 (1) (h), 198 and 199.

No provision of U. P. Act 8 of 1937 deals with the competence of any particular officer to make a complaint alleging an offence punishable under the provisions of S. 5 of the Act. Hence, the matter is governed by the provisions of the Criminal Procedure Code. A limitation upon the power of a person to present a complaint before a Court of criminal justice has to be specific as it is under the provisions of Ss. 198 and 199, Criminal P. C. In the absence of specific provisions to regulate such a matter, the general procedural provisions of law govern it. AIR 1935 All 938, 18 All 465, Foll. AIR 1929 Cal 639, Ref. to. 1965 All WR (HC) 724 : 1965 All Cri R 493 : 1966 All L J 7.

——S. 5 (3) — "Proprietor" — Meaning of — Both licensee and manager constructively liable — Conviction of manager held not justified. 1959 All Cri R 131 : 1959 All W R (HC) 121 : 1959 All L J 102.

——S. 5 (3)—Persons found without tickets or entertainment tax tickets during exhibition of advertisement slides—Offence.

Where during the exhibition or advertisement slides, prior to the commencement of the film advertised for show in a theatre certain persons were found without tickets or entertainment tax tickets, and the requisite passes were torn off from the pass-book prior to the starting of the main show.

Held that no entertainment could be said to be in progress during the exhibition of advertisement slides and therefore it could not be said that those persons had entered or obtained admission to an entertainment without payment of tax. In this view, no contravention of S. 6, sub-s. (3) of the Act was made out. (1952) 3 S T C (Supp) 32 : ILR (1953) 2 All 862 : 1952 R D (HC) 152 : 1952 All L J 265 : 1952 Cri L J 1513 : AIR 1952 All 835 (836) (Pt A) (Pr 3) (DB).

——S. 5 — 'Person who has some duty to perform in connection with the entertainment' — Meaning of — Persons engaged for publicity outside place of entertainment admitted without ticket—Proprietor is guilty under S. 5. See U. P. Entertainment and Betting Tax Act (1937), S. 3. 1952 Cri L J 1433 : AIR 1952 All 799.

——S. 5—Notice to petitioners by Entertainment Tax Officer appointed under the Act to pay entertainment tax on charges levied by them from persons using swimming pool owned by them—Notice is a serious threat to petitioners that their fundamental rights are about to be infringed — Preliminary objection to the petition under Art. 226 — Challenging validity of the notice on the ground that they should wait till proceedings under S. 5 of the Act were taken against them — Objection held not sustainable. See Constitution of India, Art. 226. ILR (1961) 1 Punj 66.

SECTION 9-A

——S. 9-A—Revocation of licence to carry on cinema house under S. 9-A of the U. P. Entertainment and Betting Tax Act — Opportunity of being heard must be given to proprietor — Rule of natural justice ap-

plies. See Constitution of India, Art. 19. 1960 All L J 894.

——S. 9-A—Rule as to alternative remedy and refusal to act under Art. 226—Nature of—Rule is one of self-discipline and not absolute. See Constitution of India, Art. 226. 1960 All L J 894.

——S. 9-A — Scope — Revocation or suspension of licence to run Cinema House — District Magistrate has discretion under S. 9-A. 1960 All W R (HC) 685 : 1960 All L J 894.

UTTAR PRADESH EXCISE ACT
(4 of 1910)

SECTION 3

——Ss. 3, 10, 50, 60, 70 — Offence under S. 60—Report by Police Officer—Magistrate can take cognizance — All police officers are excise officers. 1950 A W R 345, Dissented from. A I R 1955 N U C (All) 902.

Sub-sec. 3 (2).

——S. 3 (2) — "Excise office" — Police Officer when becomes competent to file complaint as Excise Officer. See U. P. Excise Act (4 of 1910), S. 70 (1) (a). 1957 Cr L J 1048 : AIR 1957 All 654 (DB).

——S. 3 (2) — S. 70 in respect of offence under S. 60 — Offence under S. 60 (b) — Report made by Police Station Officer — Magistrate can take cognizance of offence—(Police Act (1861), Ss. 20, 23, 24)—See U. P. Excise Act (1910), S. 70. A I R 1955 N U C (All) 3600 (DB).

Sub-sec. 3 (4).

——Ss. 3 (4), 10 and 50 — Notification dated 13-7-1910 under S. 50—Effect—Arrest by Chaukidar.

In view of the notification, the Chaukidar became an Excise Officer and an arrest by him under the provisions of section 50 was a valid arrest in pursuance of the Excise Act. I L R 6 Luck 646, Rel on. 1952 All W R (HC) 112 : 1952 All L J 138 : 1952 R D (HC) 177 : 1952 All Cr R 46 : 1952 Cri L J 1181 : AIR 1952 All 533 (533) (Pt A) (Pr 3).

Sub-sec. 3 (12).

——S. 3 (12) — Opium — Recovery of—Search without warrant is not legal — Definitions of 'excisable articles' and 'intoxicating drugs' in the Act indicates that opium is not covered by the U. P. Excise Act. See U. P. Opium Smoking Act (3 of 1934), S. 19. AIR 1955 N U C (All) 5499.

Sub-sec. 3 (22).

——S. 3 (22) (a)—Opium—Search without warrant—Not legal — Definitions of "excisable articles" and "intoxicating drugs" in the Act indicates that opium is not covered by the U. P. Excise Act. See U. P. Opium Smoking Act (3 of 1934), S. 19. AIR 1955 N U C (All) 5499.

SECTION 10

——Ss. 10 (2) and 53 — (U. P.) Excise Manual, Vol. III, Pt. II, R. 120J — Search by second officer of Police Station is valid — By virtue of notification under S. 10 (2) (e), second officer is also empowered to conduct search under S. 53 — In making these searches, he acts in his capacity as Excise Officer and not as a police officer—See U. P. Opium Smoking Act (3 of 1934), S. 19-A. 1956 Cri L J 449 : A I R 1956 All 234.

——S. 10—S. 70 in respect of offence under S. 60—Offence under S. 60 (b) — Report made by Police Station Officer — Magistrate can take cognizance of offence—Police Act (1861), Ss. 20, 23, 24. See U. P. Excise Act (4 of 1910), S. 70. AIR 1955 N U C (All) 3600 (DB).

——S. 10 — Offence under S. 60—Report by police officer — Magistrate can take cognizance—All police officers are excise officers — See U. P. Excise Act (4 of 1910), S. 3. AIR 1955 N U C (All) 902.

——Ss. 10, 3 (4) and 50 — Notification dated 13-7-1910 under S. 50—Effect—Arrest by Chaukidar, held valid—See U. P. Excise Act (1910), S. 3 (4). 1952 Cr L J 1181 : AIR 1952 All 533.

SECTION 11

——S. 11—Scope — Natural justice—Order made by Excise Commissioner was made to avoid what he called practical difficulties — Held, that the basis of the order was administrative convenience, and there had been no violation of any rule of natural justice in regard to notice, to party interested—No rules had been prescribed making it obligatory to give notice. See Constitution of India, Art. 226. A I R 1959 All 460 (DB).

SECTION 35

——S. 35 (1) (a) — Order cancelling licence—Nature of—Not judicial or quasi-judicial order — No procedure is prescribed—(Constitution of India, Art. 226). AIR 1955 N U C (All) 2654.

——S. 35 (1) (a) — Order by Collector cancelling licence on direction of Government is not illegal. AIR 1955 N U C (All) 2654.

SECTION 36

——S. 36—Application surrendering licence without notice is not valid surrender—One month's notice in writing is necessary — Application itself might be treated as notice. AIR 1955 N U C (All) 1762.

——S. 36, Proviso — Applicability — Licence fee not paid — Acceptance of surrender — Proviso does not come into play unless entire licence fee is paid. AIR 1955 N U C (All) 1762.

SECTION 40

——S. 40—Rules under R. 366 — Licencing Board—Constitution of — Nomination of municipal members by Collector instead of Administrator — Held, not valid — Hence there was no proper constitution of Board inasmuch as there were no representatives of the Municipal Board. AIR 1957 All 773 (776) (Pt A) (Pr 10).

——S. 40—Rules under, Rr. 323, 357—Scope of—Permission to black listed person to bid at auction refused—Authorities held did not act contrary to law. AIR 1955 N U C (All) 1993.

SECTION 47

——S. 47—Rules under R. 278—Report of Chemical Examiner—Necessity.

It is not essential that every intoxicant produced in a case should be analysed by the Chemical Examiner. It is only when the Excise Inspector or other officer prosecuting considers it necessary, that he is to move the Magistrate to send the intoxicant to the Chemical Examiner. 1952 All W R (HC) 112 : 1952 All L J 138 : 1952 R D (HC) 177 : 1952 All Cri R 46 : 1952 Cri L J 1181 : A I R 1952 All 533 (534) (Pt C) (Pr 6).

SECTION 50

——Ss. 50 and 60—Police Head Constable arresting accused for selling illicit liquor and seizing intoxicants—Accused tried under S. 60 (i) — Ingredients of S. 60 (a) neither disclosed by evidence nor put to accused — Held, Head Constable had no power under S. 50 to arrest and seize articles, hence steps taken by him were null and void — S. 246, Criminal P. C., was not applicable to convict accused under S. 60 (a) of Excise Act — Criminal P. C. (1898), S. 246—AIR 1936 P C 253, Rel. on. 1965 All Cri R 184 : 1965 All W R (HC) 252 : 1965 All LJ 20.

——S. 50—Offence under S. 60 — Report by police officer — Magistrate can take cognizance — All police officers are excise officers. See U. P. Excise Act (4 of 1910), S. 3. **AIR 1955 N U C (All) 902.**

——Ss. 50, 3(4) and 10 — Notification dated 13-7-1910 under S. 50—Effect—Arrest by Chaukidar held valid. See U. P. Excise Act (1910), S. 3(4). **1952 Cri L J 1181 : AIR 1952 All 533.**

——Ss. 50 and 60—Prosecution by police officer.

All police officers are Excise Officers within the meaning of S. 50 by reason of the notification dated 13-7-1910 under S. 50, and the prosecution initiated by a Sub-Inspector of Police cannot be objected to. 1950 All L J 444, Rel. on; AIR 1950 All 436, Not foll. **1952 All W R (H C) 112 : 1952 All L J 138 : 1952 R D (H C) 177 : 1952 All Cri R 46 : 1952 Cri L J 1181 : AIR 1952 All 533 (534) (Pt B) (Pr 4).**

SECTION 53

——Ss. 53, 10 (2) (e)—(U. P.) Excise Manual, Vol. III, Pt. II, R 120-J — Search by second officer of Police Station is valid. See U. P. Opium Smoking Act (3 of 1934), S. 19-A. **1956 Cri L J 449 : AIR 1956 All 234.**

——S. 53—(U. P.) Excise Manual, Vol. III, Pt. II, R. 120-J — Search by second officer of Police Station —Grounds not recorded—Not regular—But irregularity being procedural will not vitiate search. See U. P. Opium Smoking Act (3 of 1934), S. 19-A. **1956 Cri L J 449 : AIR 1956 All 234.**

——S. 53 — Search without warrant — Not legal — S. 53 empowers an Excise Inspector to search without a warrant—But definitions of "excisable articles" and "intoxicating drugs" in the Act indicate that opium is not covered by the U. P. Excise Act—Recovery of opium is governed by Opium Act and Opium Smoking Act, and neither of these two Acts empowers an Excise Inspector to search a house without a search warrant. See U. P. Opium Smoking Act (3 of 1934), S. 19. **AIR 1955 N U C (All) 5499.**

SECTION 60

——S. 60—Trial under — Procedure — Acquittal for persistent absence of investigation officers is improper — Magistrate can only stop the proceedings without pronouncing judgment. See Criminal P. C. (1898), S. 245. **1966 All Cri R 10 : 1965 All W R (HC) 833 :: 1965 All L J 1126.**

——S. 60—U. P. Restaurant (Consumption of Liquor) Rules, 1952, R. 10 — Absence of knowledge of proprietor of restaurant about liquor used to be sold in restaurant is not complete defence under R. 10 — Held, on facts, that proprietors were entitled to benefit of doubt and to be acquitted of charge under S. 60 read with R. 10. **1965 All Cri R 532 : 1965 All W R (HC) 792.**

——Ss. 60, 50—Police Head Constable arresting accused for selling illicit liquor and seizing intoxicants — Accused tried under S. 60 (i) — Ingredients of S. 60 (a) neither disclosed by evidence nor put to accused—Held, Head Constable had no power under S. 50 to arrest and seize articles, hence steps taken by him were null and void — S. 246, Criminal P. C., was not applicable to convict accused under S. 60 (a), Excise Act. **1965 All Cri R 184 : 1965 All W R (HC) 252 : 1965 All L J 20.**

——S. 60 (a)—Trying Magistrate himself taking part in his executive capacity in procedure undergone for obtaining Chemical Examiner's report on article recovered from accused—If particular officer has taken part in his executive capacity in a procedure ultimately leading to charge-sheeting of accused, he should not himself sit and try such accused person in his judicial capacity. See Criminal P C. (1898), S. 1. **1965 All W R (HC) 836.**

——S. 60—Scope—Where the conviction for possession of liquor is based on the uncorroborated testimony of a chance witness and other unsatisfactory evidence, the conviction is not sustainable. **1965 Cri R 299 : 1965 All W R (HC) 453.**

——S. 60 (a) and (f)—'Possession'—Meaning of—Connotes conscious and voluntary act — Incriminating article recovered from Kotha of house — House in occupation of more than one member of family — Possession of individual member is question of fact and not of presumption — Burden of proof is on prosecution — Evidence Act (1872), Ss. 101 to 104, 114—Words and Phrases—"Possession".

Held, on facts that the prosecution failed to establish that the materials recovered were in possession and control of the accused. Their conviction could not be based on the mere presumption that they had knowledge of the existence of the material because they were members of a family and in joint occupation of the house **1964 All Cri R 223 : 1964 All L J 562 : 1964 All W R (HC) 320.**

——S. 60—Conviction for an offence under — If involves moral turpitude—No absolute standard can be laid down for deciding the question—It will depend on circumstances in which offence was committed—Conviction held a technical one and could not be considered to be in respect of an offence involving moral turpitude. See Panchayats — U. P. Panchayat Raj Act (26 of 1947) (as amended by U. P Act (2 of 1955), S. 5-A (b). **1963 (2) Cri L J 489 : A I R 1963 All 527.**

——S. 60 (a) — Illicit liquor — Evidence of Excise Inspector — Value of — He is an expert on question whether certain liquid is illicit liquour or not — But before giving opinion he has to examine it and has also to furnish data on which his opinion is based — His bald statement that contents of bottles was illicit liquor is not sufficient to prove that fact. See Evidence Act (1872), S 51. **1959 Cri L J 13 : A I R 1959 All 53.**

——S. 60 (f)—Recovery of cherua, tasla and handi—Recovery by itself without any satisfactory evidence to connect them with distillation of illicit liquor is not enough to establish charge under S. 60 (f)— **1956 All W R (H C) 216 : 1959 Cri L J 13 : AIR 1959 All 53 (54) (Pt B) (Pr 9).**

——S. 60 (b)—Section 70 in respect of offence under S. 60 — Offence under S. 60 (b) — Report made by Police Station Officer — Magistrate can take cognizance of offence — (Police Act (1861), Ss. 20, 23, 24). See U. P. Excise Act (4 of 1910), S. 70. **AIR 1955 NUC (All) 3600 (DB).**

——S. 60 — Offence under S. 60 — Report by police officer—Magistrate can take cognizance—All officers are excise officers — See U. P. Excise Act (4 of 1910), S. 3. **AIR 1955 NUC (All) 902.**

——S. 60 (a)—Possession of illicit liquor—Proof.

Prosecution under S. 60 (a) for possession of illicit liquor on report of Excise Sub-Inspector—Fact in issue was whether liquor possessed was of illicit origin — Excise Sub-Inspector not examined to prove fact in issue but Excise Clerk proving report of Excise Sub-Inspector who had been transferred—In absence of circumstances which would make report admissible under S. 32 or some other section of Evidence Act it could not take place of sworn statement of maker thereof to prove that liquor was of illicit origin — Accused deprived of the advantage of testing accuracy of Sub-Inspector's opinion by questions in cross-examination — Conviction of accused under S. 60 (a) held was not proper. **1953 All W R (H C) 628 : 1953**

All L J 686 : 1954 Cr L J 455 : AIR 1954 All 214 (215) (Pt A) (Pr 3).

——S. 60—Prosecution by police officer cannot be objected. See U. P. Excise Act (1910), S. 50. 1952 Cri L J 1181 : AIR 1952 All 533.

——S. 60—Punishment — Sufficiency.

A sentence of six months' imprisonment cannot be said to be too severe for the offence of illicit distillation of liquor. 1950 All L J 444 : 1950 All W R 466 : 1950 All Cri Cas 148 : AIR 1950 All 610 (611) (Pt C) (Pr 5).

——Ss. 60 (a) and 70 — Case reported by Station Officer—Conviction under S. 60 (a)—Legality.

Where a case is reported by the Station Officer and not by the Excise Officer, a Magistrate cannot legally take cognizance of the offence under S. 60 (a) and, consequently, conviction of the accused under S. 60 (a) is bad. 1950 All L J 263 : 51 Cri L J 1152 : 1950 All W R 345 : 1950 All Cri Cas 106 : AIR 1950 All 436 (437) (Pt A) (Pr 3).

SECTION 64

——S. 64—Continuing offence—Offence of default in payment of instalment in subsequent months towards licence fee. See Criminal P. C. (1898), S. 403. 1956 Cri L J 189 : AIR 1956 All 141.

SECTION 70

——S. 70 (1) (a)— Police officer when competent to file complaint as Excise Officer — S. 3 (2).

Even though one may be a police officer by appointment, one may, for certain purposes, be clothed with the office of an excise officer provided that one is invested by the Local Government or the State Government, by notification with one more of the powers under S. 10 of the Act. And if a police officer is so invested with powers, irrespective of the purpose for which the powers may have been conferred upon him, he comes under the definition of an Excise Officer and therefore becomes entitled to make a complaint or report on which a Magistrate can take cognizance of the offences mentioned in S. 70 (1) (a) of the Act. Rule 48 of Part II of Vol. I of the U. P. Excise Manual shows that all police officers, from chaukidar upwards, are competent as excise officers to make a complaint or report in respect of offences mentioned in S. 70 (1) (a) of the Act and the proper Magistrate will have jurisdiction to take cognizance of those offences on such a report. Notification No. 578 of 13-7-1910, by the State Government, invests all police officers in charge of stations, among other persons, with the powers specified in S. 50 of the Act in respect of offences punishable under S. 60, Cls. (b), (c), (d), (f) and (i). AIR 1924 All 267; Govt. Appeal No. 31 of 1952 (All), Foll.; AIR 1953 All 436 and AIR 1956 All 234, held not good law. 1957 Cri L J 1048 : AIR 1957 All 654 (655) (Pt A) (Prs 4, 6) (DB).

——S. 70 (1) (a)— Special authority to make complaint is not necessary. 1957 Cri L J 1048 : AIR 1957 All 654 (655) (Pt B) (Pr 5) (DB).

——Ss. 70, 10, 60 (b), 3 (2)—Offence under S. 60 (b)—Report made by Police Station Officer — On whom limited power under S. 10 is conferred—He is not competent to file complaint in respect of S. 60 unless power is expressly conferred — He cannot be considered excise officer — But he was competent to lay complaint under powers under S. 20 Police Act—Magistrate can therefore take cognizance of offence—(Police Act (1861), Ss. 20, 23, 24). AIR 1955 NUC (All) 3900 (DB).

——S 70—Offence under S. 60—Report by police Officer—Magistrate can take cognizance—All officers are excise officers. See U. P. Excise Act (4 of 1910), S. 3. AIR 1955 NUC (All) 902.

——S. 70—Station officer making report under S. 70—His making report can be treated as exercising his powers under the Police Act. See Police Act (1861), S. 20. 1954 Cri L J 744 : AIR 1954 All 342.

——S. 70—'Excise Officer'—Meaning of.

A station officer in charge of a police station is an 'excise officer' within the meaning of S. 70. 1950 All L J 444 : 1950 All W R 466 : 1950 All Cri Cas 148 : AIR 1950 All 610 (610, 611) (Pt A) (Prs 2, 3).

——Ss. 70 and 60 (a) — Case reported by Station Officer and not by Excise Officer—Conviction under S. 60 (a) is bad. See U. P. Excise Act (4 of 1910), S. 60. 51 Cri L J 1152 : AIR 1950 All 439.

UTTAR PRADESH EXCISE MANUAL PARAGRAPH 384

——Paras. 384 and 385 — Powers of District Magistrate—Grant of licences.

The grant of a licence within the municipal limits can only be done by the advice of the Municipal Excise Advisory Committee and the Collector is not right in acting upon the recommendation made by the District Advisory Committee. Paragraph 384 (1) of the Excise Manual authorises the Excise Advisory Committee to hold its meeting by the 31st October. In case the Advisory Committeee fails to convene the meeting within that time, it may be said that two options are open to the District Magistrate. He may either convene a meeting of the Excise Advisory Committee under cl. (3) of para. 384 of the Excise Manual and then act on its recommendation under para. 385 or to exercise his own powers and grant a licence. The District Magistrate having exercised his option to convene a meeting of the Advisory Committee, cannot subsequently say that the proceedings of the District Advisory Committee should be treated as a nullity and the order granting the licence should be considered not one under para. 385, but one in the exercise of his independent right. 1958 All W R (H C) 110 : 1958 All Cri R 9 : 1957 All L J 919.

RULE 120-J

——Vol. III, Pt.II, R. 120-J—Search by second officer of Police Station is valid. See U. P. Opium Smoking Act (3 of 1934), S. 19-A. 1956 Cri L J 449 : AIR 1956 All 234.

——Vol. III, Pt. II, R. 120-J — Search by second officer of Police Station — Grounds not recorded—But irregularity being procedural will not vitiate search. See U. P. Opium Smoking Act (3 of 1934), S. 19-A. 1956 Cri L J 449 : AIR 1956 All 234 (b).

RULE 357

——R. 357 (4-A) — Solvency certificate by outside bidders — Absence of — Officer conducting the sale recording special reasons for dispensing with certificate—Sale does not contravene the rule. ILR (1962) 2 All 409.

——Rr. 357 (5), 358 (8)—Failure of auction purchaser to make an advance deposit entitles officers to cancel sale, hold re-sale and recover deficient amount — Third party cannot challenge validity of sale on ground of failure to make advance deposit. ILR (1962) 2 All 409.

——R. 357 (5)—Auction purchasers convicted under Ss. 60 and 62, Excise Act by trial Court — Appeal pending in High Court — Before final decision in the appeal they cannot be said to be unfit for grant of licence. ILR (1962) 2 All 409.

RULE 358

——R. 358 (9)—Auction sale of toddy shops—As rule contains specific provisions for the manner of conducting such sales it must govern all sales — Words "ordinarily" in the rule indicate that the direction for individual sale of each toddy shop is not an invariable rule—Nothing in the Manual prohibits the adopting of the group system by lumping together several shops and auctioning them in one lot — Such a lump sale is not beyond jurisdiction and void. **ILR (1962) 2 All 409.**

——R. 358 (9)—Overt or covert monopoly — Prohibition against creation of — Number of shops grouped into one lump and sold — Similar lump sales held in respect of other shops as well — No monoploy can be said to have been created by such sales — Further as there was a public auction in which any member of the public was entitled to bid Arts. 14 and 19 of the Constitution cannot also apply — Constitution of India, Arts. 14 and 19. **ILR (1962) 2 All 409.**

——Rr. 358 (8), 357 (5)—Failure of auction purchaser to make an advance deposit entitles officer to cancel sale, hold resale and recover deficient amount—Third party cannot challenge validity of sale on ground of failure to make advance deposit. **ILR (1962) 2 All 409.**

UTTAR PRADESH EXCISE RULES

See U. P. Excise Act (4 of 1940), S. 40.

UTTAR PRADESH FACTORIES WELFARE OFFICERS RULES (1949)

RULE 5

——R. 5 — Rules made under S. 49 (2) of Factories Act (1948), Rr. 5, 7, 8 and 9 are invalid. See Factories Act (1948), S. 49 (2). **AIR 1952 All 109 (DB).**

RULE 6

——R. 6 — Rules made under S. 49 (2), Factories Act (1948). R. 6 is a valid rule. See Factories Act (1948), S. 49 (2). **AIR 1952 All 109 (DB).**

RULE 7

——R. 7—Rules made under S. 49 (2) of Factories Act (1948), Rr. 5, 7, 8 and 9 are invalid. See Factories Act (1948), S. 49 (2). **AIR 1952 All 109 (DB).**

RULE 8

——R. 8 — Rules made under S. 49 (2) of Factories Act (1948), Rr. 5, 7, 8 and 9 are invalid. See Factories Act (1948), S. 49 (2). **AIR 1952 All 109 (DB).**

RULE 9

——R. 9 — Rules made under S. 49 Factories Act (1948), Rr. 5, 7, 8 and 9 are invalid. See Factories Act (1948), S. 49 (2). **AIR 1952 All 109 (DB).**

UTTAR PRADESH FACTORIES WELFARE OFFICERS RULES (1955)

RULE 3

——R. 3—Welfare Officer—Revision of grade—Jurisdiction of State Government—Nature of — Natural justice—Opportunity of being heard before passing of order—Is necessary—Party not availing of opportunity offered by the Inspector of Factories—Effect—State Government not bound to extend further opportunity before ordering revision of grade. See U. P. Factories Welfare Officers Rules (1955), R. 6. **(1965) 8 Fac L R 97 : 1965 All L J 886.**

RULE 6

——Rr. 6 and 3—Welfare Officer—Revision of grade—Jurisdiction of State Government — Nature of — Natural justice — Opportunity of being heard before passing of order—Is necessary— Party not availing of opportunity offered by the Inspector of Factories—Effect — State Government not bound to extend further opportunity before ordering revision of grade. — Natural justice. **(1965) 11 Fac L R 97 : 1965 All L J 836.**

RULE 21

——R. 21— Supersession of Rules of 1949 by Rules of 1955—Rules of 1955 govern service condition of Welfare Officer in service though appointed earlier. See Constitution of India, Art. 311. **AIR 1964 All 411.**

UTTAR PRADESH FACTORIES RULES (1935)

RULE 97

——R. 97 — Rule is not repugnant to S. 7, Factories Act (1948). See Factories Act (1948), S. 7. **AIR 1955 N U C (All) 2730 (DB).**

——R. 97—Absence of Manager at time of inspection —Failure to produce register by Assistant Manager on demand — Manager commits breach of S. 62 and is guilty under S. 92. See Factories Act (1948), S. 62. **AIR 1955 N U C (All) 2730 (DB).**

UTTAR PRADESH FACTORIES RULES (1950)

RULE 3

——R. 3 (3)—Failure to obtain certificate of stability of building — Continuing offence. See Factories Act (1948), S. 92. **1957 Cri L J 616 : AIR 1957 All 343 (2) (DB).**

——R. 3—Manufacturing process — Mere packing of finished goods for despatch cannot be called a manufacturing process. See Factories Act (1948), S. 2 (k). **AIR 1955 N U C (All) 2710.**

RULE 6

——R. 6, 13 — Breach of, by a firm — In absence of notice under Chap. 10 of Factories Act that the firm has nominated one of its members to be occupier of factory, all partners would be individually liable for prosecution under S. 92. See Factories Act (1948), S. 2 (n). **1956 Cri L J 2 : AIR 1956 All 4.**

——R. 6—Manufacturing process — Mere packing of finished goods for despatch cannot be called a manufacturing process. See Factories Act (1948), S. 2 (k). **AIR 1955 N U C (All) 2710.**

RULE 13

——Rr. 13, 6—Breach of, by a firm — In absence of notice under Chapter X of Factories Act that the Firm has nominated one of its members to be occupier of factory, all partners would be individually liable for prosecution under S. 92. See Factories Act (1948), S. 2 (n). **1956 Cri L J 2 : AIR 1956 All 4.**

RULE 125

——R. 125—Non-compliance with R. 125 — Accused getting no opportunity to file appeal — It is open to Chief Inspector of Factories to file a complaint against accused. See Factories Act (13 of 1948), S. 107. **AIR 1955 N U C (All) 4906.**

RULE 130

——R. 130 (b)—Breach of — Cognizance after three months — Conviction, held bad and set aside. See Factories Act (1949), S. 106. **1953 Cri L J 1915 : AIR 1954 All 27.**

UTTAR PRADESH FIRST OFFENDERS PROBATION ACT (6 of 1938)

SECTION 3

——S. 3—'Restraint of Court'—Revision against order maintaining conviction but releasing accused on

probation — No Court-fees is payable. See Court Fees Act (1870), S. 19 (xvii). 1964 All L J 665 : A I R 1967 All 81.

——S. 3—Penal Code (1860), S. 457—Offence under —S 3 does not apply.

Where one of the several persons is apprehended in the act of committing lurking house trespass or house breaking by night, with certain property belonging to the person whose house is broken open or trespassed upon the offence is of a serious character and not of a trivial nature within S. 3.

Section 3 makes an exception in the case of an offence of theft simpliciter and not in the case of an offence under S. 457, I. P. C. 1960 All W R (HC) 135 ; 1960 All Cri R 116 : 1960 All L J 209.

——S. 3 — Provisions of section not to be lightly applied — Discretion must be exercised judicially. 1960 All W R (HC) 135 : 1960 All Cri R 116 ; 1960 All L J 209.

——S. 3 — Conviction and release on probation — Appeal lies under S. 408, Criminal P. C. (1898). See Criminal P. C. (1898), S. 408. 1959 Cri LJ 677 ; AIR 1959 All 351.

——S. 3 —'Convicted'—Meaning of—If same as found gulity—Person released after due admonition — If "convicted" of an offence involving moral turpitude under S. 5-A (h), U. P. Panchayat Raj Act — Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 5-A).

Before an offender can be released after due admonition under S. 3, U. P. First Offender's Probation Act, the Court has to find him guilty of the offence with which he is charged, and it is immaterial whether the section states that the offender is 'convicted' of the offence or that he is 'found guilty' of the offence. The two expressions have the same meaning. Hence, a person who is released after admonition under S. 3 in respect of an offence of theft must be held to have been convicted of an offence involving moral turpitude within the meaning of Cl. (h) of S. 5-A, U. P. Panchayat Raj Act and is disqualified from being chosen as a sarpanch. 1959 All L J 678.

——Ss. 3, 4—Applicability — Applies only to offences punishable upto two years' imprisonment —Conviction under S. 411, Penal Code — S. 3 will not apply— (Penal Code (1860), S. 411. A I R 1955 N U C (All) 3547 (DB).

——S. 3—Order under —Appeal—If lies.

The U. P. First Offenders Probation Act does not confer any right of appeal against an order made under S. 3 of the Act. 1950 A W R 678 : A I R 1951 All 442 (442) (Pr 4).

SECTION 4

—— S. 4—Applicability—Tests of —Accused 13 years of age committing offence under S. 376, I. P. C.— Order giving benefit of S. 4 held proper.

The test for excluding the application of S. 4 of the Act is that the offence complained of should be punishable with death or imprisonment for life and nothing less than it, even in the alternative. Thus the criterion to determine the applicability of S. 4 of the U. P. First Offenders Probation Act is the minimum penalty prescribed under a particular section and not the maximum penalty. AIR 1954 All 580 Dist.

In a sessions trial under S. 376, Penal Code the offence was brought home to an accused. A, of 13 years of age for committing rape on minor girl of about 6 years. The Sessions Judge gave him benefit of S. 4 of U. P. First Offenders Probation Act. A was ordered to execute personal bond for Rs. 500/- with two sureties in like amount and be of good behavour for 2 years. In case of breach A was to undergo R. I. for 2 years under S. 376, I. P. C. In revision by State.

Held, that keeping in view the young age of A it was not in the interest of justice or the larger interest of the society that he should have been sent to jail and be thus allowed to come in contact with hardened criminals. The sentence was not enhanced. The order of Sessions Judge was an appropriate and proper order, because under S. 376, I. P. C. A could also have been convicted to imprisonment of 10 years and of fine. 1962 All Cri R 316 : 1962 All W R (HC) 561 ; 1962 All L J 720.

——S. 4 — The words "Punishable with death or transportation for life" — Cannot mean 'punishable with death or in the alteranative with transportation for life" — The plain meaning is "an offence not punishable with death or an offence not punishable with transportation for life." 1956 Cri L J 659 : 1955 All L J 757 : 1955 All W R (HC) 607 : A I R 1956 All 326 (327, 328) (Pt A) (Prs 3, 8) (DB).

——S. 4 (1)—Order to be passed under.

The Magistrate ought to have ordered the opposite party to be of good behaviour and to keep the peace during the period of probation—Further he ought not to have laid down that he would be called upon to receive severe punishment if he repeated the offence; he had no jurisdiction to pass such an order. He should have confined himself to the order that he was required to pass under S. 4 and ought not to have gone out of his way to pass an arbitrary order. 1956 Cri L J 659 ; 1955 All L J 757 : 1955 All W R (HC) 607 ; AIR 1956 All 326 (328) (Pt B) (Pr 9) (DB).

——Ss. 4, 3—Applicability — Applies only to offences punishable upto two years—Conviction under S. 411, Penal Code, S. 3 will not apply. See U. P. First Offenders Probation Act (6 of 1938), S. 3. A I R 1955 N U C (All) 3547 (DB).

——S. 4—Offence under S. 376, Penal Code.

Section 4 does not apply to a person who is convicted of an offence punishable with death or transportation for life. An offence under S. 376, Penal Code, is punishable with transportation for life. 1954 All L J 256 : 1954 Cri L J 1288 : 1954 All W R (HC) 191 : AIR 1954 All 580 (581, 582) (Pt A) (Pr 9).

——S. 4 (1)— Offender convicted of offence punishable with fine only—Applicability of Act.

The U. P. First Offenders Probation Act does not apply to those cases where the offence with which the offender is charged and punished is punishable with fine alone. Further, a convicted person cannot get relief in respect of a sentence of fine also even though he may have been sentenced to a term of imprisonment as well. 1953 All L J 466 : 1953 Cri L J 1848 : AIR 1954 All 9 (9) (Prs 2, 3).

UTTAR PRADESH FLOUR, RICE AND DAL MILLS CONTROL ORDER (1948)

CLAUSE 3

——Cl. 3 — Contravention of — No person can be punished. See Essential Supplies (Temporary Powers) Act (1946), S. 7. 1954 Cri L J 388 ; A I R 1954 All 183.

——Cl. 3 — Interpretation of. See Interpretation of Statutes — Penal Clause. 1954 Cri L J 388 ; A I R 1954 All 183.

——Cl. 3—'Flour mill' does not mean its owner.

There is no reason for holding that the words 'Flour Mill' in Cl. 3 should mean the owners of a flour mill even if they are not present in it, and not some other person connected with it, such as a manager or a lessee or a servant or the owner's son or brother. 1953 All W R (HC) 601 ; 1953 All L J 661 ; 1954 Cr L J 388 ; A I R 1954 All 183 (184) (Pt B) (Pr 3).

CLAUSE 8

——Cl. 8—Contravention of Cl. 3 — No person can be punished. See Essential Supplies (Temporary Powers) Act (1946), S. 7. 1954 Cri L J 388 : A I R 1954 All 183.

UTTAR PRADESH FLOUR, RICE AND DAL MILLS CONTROL ORDER (1951)

CLAUSE 6

——Cl. 6—Scope of — Refusal to renew licence must also be for reasons connected with object with which Control Order was issued—Control Order or Essential Supplies Act is not concerned with questions of nuisance or inconvenience caused to persons who may be residing in vicinity of Mills — 'May' in Cl. 6 means 'shall' — Licence cannot be refused to be renewed excepting on grounds mentioned in Cl. 6—Essential Supplies (Temporary Powers) Act (1946), Preamble and S. 3 (2). A I R 1955 N U C (All) 3300 (DB).

UTTAR PRADESH FOODGRAINS CONTROL ORDER (1943)

CLAUSE 4

——Cl. 4, Proviso (as amended on 5th May, 1943)—Interpretation of Market rate prevailing on 28th April 1943 is market rate of ready goods and not future goods. A I R 1955 N U C (All) 3566 (DB).

UTTAR PRADESH FOODGRAINS CONTROL ORDER (1948)

PREAMBLE

——Preamble — Offences under if covered by S. 40, Penal Code — In view of S. 40, Penal Code, exceptions enumerated in Chap. 4 apply to those offences. See Penal Code (1860), S. 40. A I R 1955 N U C (All) 880.

UTTAR PRADESH FOODGRAINS CONTROL ORDER (1949)

CLAUSE 3

——Cl. 3 (2)—Scope—Expression 'for sale'—Meaning of—(Words and Phrases—For sale).

Where in a trial for purchase of controlled foodgrains without licence the accused persons conceded that they did buy foodgrains, but urged that, in absence of the proof that the purchase was for the purpose of sale it did not amount to offence under Clause 3 (2).

Held, that the expression "for sale" was confined to the verb "store" immediately preceding the expression "for sale". So the buying under sub-cl. (2) of Cl. 3 need not be for sale.

Held further that in view of Proviso 6 to Cl. 3 such an interpretation would not hit the ordinary consumer, who buys grain for his personal use. In case an accused person wants to take the benefit of Proviso 6, he must however plead and bring his case under that proviso. Where the accused persons made no such attempt the Court may take it that, their case does not fall under Proviso 6. 1958 Cri L J 114 (Prs 5, 6, 7) (All).

——Cl. 3 (2)—Storing for sale — Interpretation of—Mere possession of articles or carrying them for sale is no offence. See Essential Supplies (Temporary Powers) Act (1946), S. 7. A I R 1955 N U C (All) 2023.

——Cl. 3 (1)—Interpretation — Provision ambiguous —Benefit should be given to accused—Mens rea.

The provisions of law as stated in Cl. 3 are ambiguously worded and in interpreting the same benefit should be given to the accused.

The words 'store for sale' in Cl. 3 (1) imply that the person contravening the provision shall have the power to sell the stored commodity. But where the position of the godown keeper was merely that of a bailee, the goods having been left at his godown not 'for sale' but for safe custody, on payment of hire money for the use of space, he could not be convicted for stocking the articles in his godown than the owner of the land in the open bazar can be convicted for allowing the prohibited goods to be kept on his land for the purpose of sale by their owners.

Further, mens rea is ordinarily the basis of all criminal offences unless its application is specifically excluded by the words of the statute. In the case of a godown keeper mens rea is lacking. 1952 All L J 571 : 1953 Cri L J 336 : A I R 1953 All 101 (102, 103) (Pt A) (Prs 5, 6).

CLAUSE 8

——Cl. 8—Officers breaking open shop for inspection without authority — Prosecution cannot be started as result of illegal search. A I R 1955 N U C (All) 3521.

CLAUSE 9

——Cl. 9—Report of facts constituting offence. See Essential Supplies (Temporary Powers) Act (1946), S. 11. A I R 1955 N U C (All) 3521.

——Cl. 9—Licence in form B under U. P. Foodgrains Order issued to firm — Non-compliance with conditions of licence—Liability of servants. See Essential Supplies (Temporary Powers) Act (1946), S. 7. A I R 1955 N U C (All) 3521.

UTTAR PRADESH FOODGRAINS (CONTROL, REQUISITION AND DISTRIBUTION) ORDER (1963)

CLAUSE 3-B

●——Cls. 3-B, 18, 19—Defence of India Rules (1962) R. 5—Possession of foodgrains in excess of prescribed quantity—Seizure of grains—Legality — Such possession constitutes contravention of order under R. 5—Lawful excuse — What is — Absence of alternative provision in the order — Not lawful excuse—A I R 1949 All 473 (FB), Overruled ; A I R 1948 All 38 (FB), Approved. State of U. P. v. Firm Deo Dutt Lakhan Lal, I L R (1965) 2 All 917 : 1965 All W R (H C) 546 : 1965 All L J 862 : 1965 All Cri R 348 : A I R 1965 All 73 (80 to 82) (Pt D) (Prs 23, 26 to 29) (FB).

CLAUSE 18

●——Cls. 18, 19 and 3-B — Defence of India Rules (1962), R. 5 — Possession of foodgrains in excess of prescribed quantity—Seizure of grains — Legality—Such possession constitutes contravention of order under R. 5—Lawful excuse — What is — Absence of alternative provision in the order—Not lawful excuse. See U. P. Foodgrains (Control Requisition and Distribution) Order (1963), Cl. 3-B. 1965 All W R (H C) 546 : 1965 All L J 862 : 1965 All Cri R 348 : A I R 1966 All 73 (FB).

——Cl. 18 — Defence of India Rules (1962), R. 5—Foodgrains Control Order providing provision to dispose of foodgrains in excess of permitted quantity within 15 days of prescribed date but providing no provision regarding excess foodgrains, remaining undisposed of after prescribed date — Authorities seizing excess quantity of foodgrains from petitioners after prescribed date — Act of seizure held in excess of authority conferred by Para. 18 of Order—'Lawful excuse' meaning of—A I R 1949 All 473, Foll.; A I R 1948 All 38, held not in conflict with A I R 1949 All 473. 1964 All Cri R 512 : 1964 All W R (H C) 707.

UTTAR PRADESH FOODGRAINS DEALERS LICENSING ORDER (1963)

CLAUSE 4

——Cls. 4 (2) and 5, Proviso—Provision in Cl. 4 (2) is mandatory—Provision not complied with—Benefit of proviso to Cl. 5 not available to the licensee. 1965 All W R (H C) 136 : 1965 All L J 672.

UTTAR PRADESH FOODGRAINS (FUTURES AND OPTIONS PROHIBITION) ORDER (1945)

PREAMBLE

● ——Preamble—U. P. Foodgrains (Futures and Options Prohibition) Order (1951), Cl. 9—Section is not invalid — Supreme Court judgment dated 15-5-1952 does not declare Cl. 9 invalid — Interpretation and effect of the judgment stated — U. P. Foodgrains (Futures and Options Prohibition) Order, 1945, is not revived. See U. P. Foodgrains (Futures and Options Prohibition) Order (1951), S. 9. A I R 1955 S C 8.

——Preamble—Essential Supplies Temporary Powers Act (1946), Ss. 3, 4 — Notification No. PY. 603 (2) I, dated 21-10-1946 as amended by Notification No. C. G. 603 (2)-III (1), dated 5-3-1947 and Notification No. PY 603 (2)-VI (1), dated 15-11-1947 — Notification No. C. G. 603 (2)-III (2), dated 5-3-1947 and Notification No. PY. 603 (2)-VI (2), dated 15-11-1947—Effect of.

The U. P. Foodgrains (Future and Options Prohibition) Order, 1945, was continued in force first by S. 5, Essential Supplies (Temporary Powers) Ordinance, 1946 and then by S. 17, Essential Supplies (Temporary Powers) Act, 1946 but was withdrawn by S. 9, U. P. Foodgrains (Futures and Options Prohibition) Order, 1951. By Notification No. PY. 603 (2)-I, dated 21-10-1946, the Central Government directed that the powers conferred on it by S. 3 (1) of the 1946 Ordinance should, in relation to foodstuffs, be exercisable by the Provincial Government. By Notification No. C. G. 603 (2)-III (1), dated 5-3-1947 and Notification No. PY 603 (2), VI (1) dated 15-11-1947, the earlier Notification No. 603 (2)-I, dated 21-10-1945, was amended by inserting therein the words 'edible oils and oilseeds' and 'pulses other than gram' and thereby excluding those commodities from the scope of the legislation. As a result of these amendments the Provincial Governments could not, from and after the respective dates of those amending Notifications, make any order controlling production supply, distribution of or trade and commerce in those commodities. These Notifications did not purport to affect Notifications that had been previously made. But simultaneously with these amending Notifications two or more Notifications were issued, namely, Notification No. C. G. 603 (2)-III (2), dated 5th March, 1947, and Notification No. PY. 603 (2)-VI (2); dated the 15th November, 1947. By these Notifications the Central Government directed that no order made or deemed to be made under the Act by a Provincial Government should have effect so as to prohibit or restrict the movement of edible oils and oilseeds and pulses other than gram or to regulate or control the price, production or distribution of those commodities in any way. As a result of the joint operation of these Notifications the 1945 Order ceased to have effect so as to prohibit or restrict the movement of edible oils and oilseeds and pulses other than gram or to regulate or control the price, production or distribution of those commodities. Trade or commerce in any commodity cannot be controlled unless the price, production, distribution and movement of that commodity can also be controlled. It follows, therefore, that these two Notifications of 1947 quite effectively superseded the 1945 Order so far as it purported to regulate or control the price, production, distribution and movement of or trade and commerce in edible oils and oil-seeds and pulses other than gram. Chamber of Commerce v. State of U. P. 1955 All W R 61 : 1955 All L J 82 : (1955) 1 S C R 838 : 1955 S C J 16 : AIR 1955 S C 8 (12) (Pt A) (Pr 13).

UTTAR PRADESH FOODGRAINS (FUTURES AND OPTIONS PROHIBITION) ORDER (1951)

CLAUSE 9

● ——Cl. 9 — Validity — Supreme Court Judgment, dated 15-5-1952—Interpretation and effect of—U. P. Foodgrains (Futures and Options Prohibition) Order, 1945, is not revived.

It is wholly incorrect to say that the judgment pronounced by the Supreme Court on 15-5-1952 declared the U, P. Foodgrains (Futures and Options Prohibition) Order, 1951, ultra vires and invalid in its entirety. That judgment only declared it invalid to the extent of the restrictions complained of by the then petitioners, namely, in so far as it purported to restrict dealings in edible oils and oilseeds and pulses other than gram. The rest of that Order of 1951 and n particular Cl. 9 by which the 1945 Order had been withdrawn remained unaffected by that judgment. In the circumstances, the Order of 1945 cannot be regarded as having been revived by the judgment in respect of edible oils and oilseeds and pulses other than gram in spite of the express withdrawal of that order by Cl. 9 of the Order of 1951 which otherwise remains operative. Chamber of Commerce v. State of U. P. 1955 All W R 61 : 1955 All L J 82 : (1955) 1 S C R 838 : 1955 S C J 16 : A I R 1955 S C 8 (13) (Pt B) (Pr 14).

UTTAR PRADESH FOODGRAINS MOVEMENT CONTROL ORDER (1947)

CLAUSE 3

——Cl. 3 — Attempt to contravene — Trial for—Validity.

It was not necessary for the Provincial Government to have reproduced the provision making an attempt to contravene the order punishable in the Foodgrains (Movement) Control Order, 1947, as the Order was passed in accordance with the powers given under S. 3 of Essential Supplies (Temporary Powers) Act, and under S. 8 of the Act an attempt to contravene the order is deemed to amount to a contravention of that order and is punishable as such. ILR (1950) All 809.

——Cl. 3 (1) (b) — Conviction under — Repeal of Order—Effect on penalty imposed.

The criminality of an offence is to be judged with reference to the laws existing at the time at which it was committed and the mere revocation of the Order of 1947 will not exonerate the applicant convicted under it from the penalty which that order imposed. 1950 All L J 693.

CLAUSE 4

——Cl. 4—Confiscation under—Question of confiscation of the controlled foodgrain under Cl. 4 is at the discretion of the Magistrate. 1950 All L J 693.

UTTAR PRADESH FOODGRAINS (MONEMENT) CONTROL ORDER (1948)

——Order is valid. A I R 1952 All 621 (623) (Pt E) (Pr 9).

CLAUSE 3

——Cl. 3 (ii)—Corridor—Creation of—Order of District Magistrate, if necessary.

An order of the District Magistrate is not necessary to create corridor. If the District Magistrate has not

issued an order fixing a corridor of less width than that fixed in the control order, the corridor in his district will be taken to be of just ten miles width. AIR 1952 All 621 (622) (Pt A) (Pr 4).

—Cl. 3 (ii)—Width of corridor — Burden of proof —Evidence Act (1872), S. 106.

It is obligatory upon the prosecution to prove that the corridor in a district is of 10 miles width and it cannot prove this without proving that the District Magistrate has not reduced the width. Even if it is a negative fact it is a fact within the special knowledge of the prosecution. The prosecution must prove that the place to which the accused were carrying the foodgrain was really inside the corridor, as a matter of a fact, and cannot rely upon what the accused thought. AIR 1952 All 621 (622) (Pt B) (Pr 5).

—Cl. 3 (ii) —"Or such lesser . . . . may prescribe" Words if inserted by way of exception — Burden of proof—Evidence Act (1872), S. 105 — Interpretation of Statutes—Exception.

Where an exception is contained in the definition itself, the prosecution must prove not only that the case is covered by the main or positive provision but also that it is not covered by the exception. The subsequent exemption is a matter of defence and it is for the accused to show that he is exempted from the penalty.

The words "or such lesser distance as the District Magistrate having jurisdiction in the area may prescribe", do not create an exception to the rule that the corridor would be of 10 miles width and hence it cannot be contended that if an accused wants to bring his case within an exception he must prove that it is covered by the exception. AIR 1952 All 621 (623) (Pt C) (Pr 6).

UTTAR PRADESH FOOD GRAINS MOVEMENT CONTROL ORDER (1949)

CLAUSE 3

—Cl. 3 (iv)—Trial for contravention of U. P. Food Grains (Movement) Control Order, 1949—Mens rea—Proof of. See Essential Supplies (Temporary Powers) Act (1946). AIR 1955 NUC (All) 3562.

—Cl. 3 (ix) — Clause does not contain any mandatory provision — It only contains saving provision. I L R (1954) 1 All 546 : 1953 All W R (HC) 225 : 1953 All L J 283 : 1953 Cri L J 1269 : AIR 1953 All 545 (545) (Pt A) (Pr 1) (DB).

—Cl. 3 (vii)—'Carrying'.

Taking back rice from mill amounts to 'carrying'. I L R (1954) 1 All 546 : 1953 All W R (HC) 225 : 1953 All L J 283 : 1953 Cri L J 1269 : AIR 1953 All 545 (545) (Pt B) (Pr 3) (DB).

—Cl. 3 (vii)—Constitutionality — (Constitution of India, Art. 19 (1) (g) and (6)).

Even if Cl. 3 (vii) restricts the right guaranteed by Art. 19, the restriction is reasonable and therefore the provision is not unconstitutional. ILR (1954) 1 All 546 : 1953 All W R (HC) 225 : 1953 All L J 283 : 1953 Cri L J 1269 : AIR 1953 All 545 (545) (Pt C) (Pr 3) (DB).

—Cl. 3 (vii) — Constitionality — (Constitution of India, Art. 14).

Clause 3 (vii) does not make an arbitrary and unreasonable distinction between carriage by rail or motor vehicle and carriage by other means. It is, therefore, not unconstitutional. ILR (1954) 1 All 546 : 1953 All W R (HC) 225 : 1953 All L J 283 : 1953 Cri L J 1269 : AIR 1953 All 545 (546) (Pt D) (Pr 7) (DB).

—Cls. (iv), (v), (vi)—Report under S. 11, Essential Supplies Act need not mention particular clause of Order which has been contravened—Mention of facts constituting offence is enough—Facts showing contravention of Sub Cls. (iv), (v) and (ix) of Cl. (3) of Order, 1949 — Charge of Magistrate also correctly enumerating facts—Held there was no error. 1953 All L J 181 : 1953 All W R (HC) 335 : 1953 Cri L J 999 : AIR 1953 All 443 (443) (Pt B) (Pr 3).

SCHEDULE 6

—Sch. 6, Para, 2—Interpretation—Addition or subtraction of words—Law should be interpreted as not to make any words redundant if it is possible to interpret it so as to utilize the meaning of all words used in the legislation. See Interpretation of Statutes. AIR 1953 All 774.

UTTAR PRADESH FOODGRAINS PROCUREMENT ORDER (1949)

CLAUSE 1

—Cl. 1 — Validity of order — (Essential Supplies (Temporary Powers) Act (1946), S. 3 (2) (f)).

The Order goes beyond the powers conferred by the Cental Government on the Provincial Government under S. 3 (2) (f) of the Essential Supplies (Temporary Powers) Act and, as such, is ultra vires 1953 All L J 208 : 1953 Cri L J 1075 : 1953 All W R (HC) 377 : AIR 1953 All 475 (476) (Pr 8) (DB).

UTTAR PRADESH FOODGRAINS (RESTRICTIONS ON BORDER MOVEMENTS) ORDER (1959)

CLAUSE 4

—Cl. 4—Accused transporting rice without licence and thus contravening U. P. Food Grains (Restrictions on Border (Movements) Order (1959), Cl. 3 — Constable seizing rice and apprehending accused not authorised to do so within meaning of Cl. 4 of Order — No conviction. See Essential Commodities Act (1955), S. 7 (a). 1965 All Cr R 17 : 1964 All W R (HC) 743.

UTTAR PRADESH FOREST RULES

RULE 6

—R. 6—Rule not framed within rule-making power —Contravention of rule does not make out offence under S. 33. See Forest Act (1927), S. 30. 1953 Cri L J 764 : AIR 1953 All 355 (DB).

UTTAR PRADESH FOREST SERVICE RULES

RULE 16

● —R. 16—Scope of — Probationer—Confirmation —Conditions—Automatic confirmation after expiry of probationary period—If effected—(Constitution of India, Arts. 310 and 311).

A Government servant on probation is not to be deemed to be confirmed on the expiry of the period of of his probation, if no orders confirming him in his substantive post or extending his period of probation are passed by the competent authority. AIR 1957 Punj 191 and AIR 1958 Mad 216, Rel. on; AIR 1959 All 536 and ILR (1959) 1 All 226, Overruled.

If within a reasonable time the authority does not pass an order confirming him or extending his period of probation or terminating his service it will still not lead to the assumption that he has been confirmed; his remedy would simply be to apply for a mandamus calling upon the authority to pass an appropriate order within a certain time. Rule 16 of the U. P. Forest Service Rules required certain conditions to be fulfilled before a person was confirmed. AIR 1957 Punj 191 and AIR 1958 Mad 216, Rel. on. Chief

Conservator of Forests, U P. Nainital v. D A. Lyall. ILR (1961) 1 All 128 : (1961) 2 Lab L J 251 : 1961 All L J 458 : AIR 1961 All 450 (454 to 456) (Prs 13 to 15, 23) (FB).

UTTAR PRADESH FUNDAMENTAL RULES

——Applicability—Rules apply to municipal servants since no rules under the U. P. Municipalities Act are framed. I L R (1961) 1 All 732 : 1961 All L J 350 : 1961 All W R (H C) 292 : AIR 1961 All 580 (582) (Pt C) (Pr 5) (DB).

RULE 24

——R. 24 — Plaintiff serving in one Government department employed in another Government department upon dismissal from former Department—Dismissal set aside — Suit for arrears of pay from both departments — Maintainability — Plaintiff held not entitled to draw salary from the former Department but entitled to increments under U. P. Fundamental Rules— Suit in substance held one for damages. See Contract Act (1872), S. 73, Explanation. ILR (1965) 2 All 144 : AIR 1966 All 129 (DB).

RULE 53

——R. 53—Abatement of appeal in personal action — Suit for declaration that plaintiff was wrongfully dismissed from service and for arrears of pay—Dismissal —Death of plaintiff pending his appeal —Right of legal representatives to claim arrears. See Civil P. C. (1908), O. 22, R 11. AIR 1956 All 114 (DB).

RULE 56

——R. 56—Powers of Governor—He can make rules with retrospective effect. Sea Constitution of India, Art. 309, Proviso. AIR 1962 All 328 (FB).

——R. 56 — Scope — Government servant cannot claim extension of service upto 60 years as of right.

Latter part of R. 56 (a) enables the Government to retain a Government servant after the completion of 55 years. The Government servant cannot claim extension of service as a matter of right. Retention in service beyond 55 years is in the discretion of Government. A Government servant cannot claim extension in Government service upto 60 years, simply because he got extension of service by a few months after completing 55 years under the proviso to R. 56 (a) of the Fundamental Rules and under the second notification dated 25-5-61. Ram Autar Pandey v. State of Uttar Pradesh. I L R (1962) 1 All 793 : 1962 All L J 31 : (1962) 1 Lab L J 148 : A I R 1962 All 328 (334) (Pt D) (Pr 34) (FB).

——R. 56—Scope—Does not confer vested right on Government servant.

What to say of a vested right, not even a right was intended to be conferred by R. 56. A Government servant could not, therefore say that because at one stage 58 was the age of superannuation according to the rule a right was conferred upon him under which he could insist that he should be retained in service till that age and that the rule making authority had lost its right to charge the rule and to reduce the age of superannuation to a lower figure. Ram Autar Pandey v. State of Uttar Pradesh. ILR (1962) 1 All 793 : 1962 All L J 31 : (1962) 1 Lab L J 148 : A I R 1962 All 328 (337) (Pt F) (Prs 51) (FB).

UTTAR PRADESH GAON SAMAJ MANUAL

PARA. 63

——Para 63, second proviso — The proviso would have application only if special instructions have been issued by the Collector or the State Govt. before holding of auction—Effect of non-compliance would be that the second proviso would have no application and Rules contained in Para. 63 would continue to apply. 1957 All W R (HC) 756 : (1957) All L J 763 : AIR 1957 All 487 (489, 490) (Pt A) (Prs 6, 8).

——Para. 63, Second Proviso — Inconsistent with Arts. 14 and 19 (1) (g) of Constitution as the directions issued are arbitrary and cannot be said to be a reasonable restriction on the person's right to carry on trade of fishery—(Constitution of India. Arts. 14 and 19 (1) (g)). (1957) All L J 763 : 1957 All W R (H C) 756 : AIR 1957 All 487 (490) (Pt B) (Pr 9).

PARA. 79

——Para. 79 (7) — Tenancy laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 177 — Rule is only directory — Lease in respect of land fetching rent of below Rs. 100, registered—Absence of attestation by Revenue Officer — Dispute is not invalid. See Tenancy Laws —U. P. Zamindari Abolifion and Land Reforms Rules (1952), R. 177. 1964 All L J 837.

PARA. 131

——Para. 131—Non-compliance with para not fatal to presentation of writ petition or appointment of counsel. See Constitution of India, Art. 226. 1965 All W R (HC) 515 : 1965 All L J 858.

UTTAR PRADESH GENERAL CLAUSES ACT (1 of 1904)

SECTION 3

——S. 3 (29)—'Indian Law'—Meaning of—Pointed out. See Bar Councils Act (1926), S. 1 (3). AIR 1955 All 269 (FB).

SECTION 4

——S. 4 (2)—'Act done'—Meaning—Omission to do an act is not always included in 'act done'. See U. P. District Boards Act (X of 1922), S. 192 (1). AIR 1965 All 590 (FB).

——S. 4 (2) — A Govt. Notification No. 4464 (11/XXXVI-B-257 (LL) 1954, dated 14-7-1954, Cls. 29 and 33—Dismissal of workman without permission of Regional Conciliation Officer pending dispute before Appellate Tribunal — Prosecution under S. 14 read with Cl. 33 — Protection under S. 22. See U. P. Industrial Disputes Act (28 of 1947), S. 14. 1958 All L J 17.

——S. 4 (23)—'Immovable property'—Meaning and test of—Suit relating to—Limitation—Trees to be cut and removed are not immovable property—See U. P. District Boards Act (10 of 1922), S. 192 (1). AIR 1956 All 680 (DB).

——S. 4 (9)—Additional Collector—His status as Collector. See U. P. Land Revenue Act (12 of 1901), S. 14-A (4). AIR 1955 N U C (All) 2724.

——S. 4 (10) — "Commencement of Act" — Act extended to area—Words 'commencement of Act' must be interpreted to mean the date on which the Act became applicable to that area. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3. AIR 1953 All 686 (DB).

——Ss. 4 (10), 5—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 14—Act coming into force on 1st March 1947 — Decree against tenant passed on 14th February 1947—Effect—Tenant held entitled to benefit of S. 14. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 14. AIR 1950 All 666.

SECTION 5

——S. 5 (2)—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 4 (4) — Act amended by U. P. Act 24 of 1952 — Act whether was extinct before Amending Act came into force — Held, Old

Act was revived while it was in process of becoming extinct. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 4 (4). A I R 1960 All 218.

● —Ss. 5, 22, 30—Applicability — U. P. Sales Tax (Amendment) Ordinance (1956) had come into operation on 31.3.1956—S. 22, held had no application to notification No. S. T. 905/X dated 31-3-1951. See Sales Tax — U. P. Sales Tax (Amendment) Ordinance (1956). A I R 1957 All 475 (FB).

—S. 5 — Unless contrary is expressed, U. P. Act shall be construed as coming into operation immediately on expiry of the day preceding its commencement. See Houses and Rents—U. P. Temporary Control of Rent and Eviction (Amendment) Act (1952). AIR 1956 All 100.

—S. 5 (2)—"Commencement of Act"—Act extended to area — Words 'commencement of Act' must be interpreted to mean the date on which the Act became applicable to that area. See Houses and Rents —U. P (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3. A I R 1953 All 686 (DB).

—S 5 — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 14—Act coming into force on 1-3-1947 — Decree against tenant passed on 14th February 1947 — Effect — Tenant held entitled to benefit of S. 14. See Houses and Rents—U. P. Temporary) Control of Rent and Eviction Act (3 of 1947), S. 14. A I R 1950 All 666.

SECTION 6

—S. 6 (c)—Section does not affect operation of S. 7 (2) of the U. P. Kshettra Samitis and Zilla Parishads Act (33 of 1961). See Panchayats — U. P. Kshettra Samitis and Zilla Parishads Act (33 of 1961), S. 7 (2). 1965 All L J 576.

—S. 6 — Applicability — U. P. Act (27 of 1934) repealed by U. P. Zamindari Abolition and Land Reforms (Amendment) Act (16 of 1953) — Mortgages of Sir plots as well as of one which was in fixed rate tenancy — Mortgagees not becoming Asamis of sir plots—Proceedings can be continued except for plot held in fixed rate tenancy. See Debt Laws — U. P. Agriculturists Relief Act (27 of 1934), S. 12. 1965 All W R (HC) 299 : 1965 All L J 363.

—S. 6 — Applicability — Does not apply to amendments in an existing Act but saves proceedings already started under a repealed Act. AIR 1964 All 156 (165) (Pt L) (Pr 28) (DB).

—Ss. 6, 24 — Applicability — Apply only to valid Acts subsequently repealed—Act declared unconstitutional — Has no existence — Sections cannot apply to its repeal by subsequent enactment—U. P. Public Land (Eviction and Recovery of Rent and Damages) Ordinance (IV of 1959), S. 16.

It is in cases of a valid enactment repealed subsequently that Ss. 6 and 24 of the U. P. General Clauses Act, 1904, would be applicable; but where the enactment is unconstitutional and has been declared unconstitutional it shall have to be presumed as if the Act had never been passed and was never in force.

Sections 6 and 24 of the U. P. General Clauses Act are not applicable to the repeal of the U. P. Government Land (Eviction and Rent Recovery) Act, 1953, which was declared unconstitutional by a competent Court, and the saving clause contained in the repealing S. 16 of the Ordinance will not be of any help. A I R 1962 All 350 (352) (Pt A) (Pr 7).

—S. 6 — Repeal of U. P. Agriculturists Relief Act —Effect—Mortgagor's right of redemption not affected—Only decree for redemption can be passed under the Act — Parties to approach Revenue Court for possession. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S 339. 1961 All L J 273.

—S. 6 (c) — Lucknow University Act (1920), S. 23 as amended by U. P. Act (6 of 1958), S. 11 — Statutes of 1958, R. 211—Appointment of Dean under Statutes of 1956 — Statutes replaced and rescinded by new Statutes during term of Deanship — Appointment of another professor—Legality—Rights of former Dean not destroyed. See Lucknow University Act (1920), S. 23 as amended by U. P. Act (6 of 1958), S. 11. AIR 1959 All 618 (DB).

● — Ss. 6 (c), (e) — Provincial Small Cause Courts Act (1887), S. 25—Section 25 does not confer right or privilege. See Provincial Small Cause Courts Act (1887), S. 25. A I R 1958 All 409 (FB).

● —S. 6 (b) — Provincial Small Cause Courts Act (1887), S. 25—Application for revision — High Court calling for record — "Thing duly done". See Provincial Small Cause Courts Act (1887), S. 25. A I R 1958 All 409 (FB).

—S. 6 — Applicability — Amendments — (General Clauses Act (1897), S. 6.)

Section 6 deals with the effect of repeal of Acts. Admittedly it does not deal expressly with the effect of amendment of an Act, but there is no other law which lays down the effect of amendment of an Act. It is not correct to say that when an Act is repealed and another Act is re-enacted, S. 6 cannot apply. As a matter of fact a majority of repealing Acts are those which re-enact the law. In essence there is no distinction between such laws and laws which merely profess to amend. If the amendment of the existing law is small, the Act professes to amend; if it is extensive, it repeals the law and re-enacts it. A I R 1938 All 3. Dissented from. ILR (1958) 1 All 635 : A I R 1958 All 404 (406) (Pt B) (Pr 2) (DB).

—S. 6 — Application under S. 12 of the U. P. Agriculturists Relief Act, 1934 allowed and redemption ordered—Subsequent repeal of Act by U. P. Act 1 of 1951 — Effect on decree, stated. See Debt Laws — U. P. Agriculturists Relief Act (27 of 1934), S. 12. 1957 All W R (HC) 850.

—S. 6—Applicability — U. P. Zamindari Abolition and Land Reforms (Amendment) Ordinance, 1954 — Not a repealing Ordinance—S 6 held not applicable. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act 1950 (1 of 1951), S. 332 (5). 1957 All W R (HC) 623 : 1957 All L J 628.

[Overruled on another point in A I R 1959 All 659].

—S. 6—Repeal of U. P. Tenancy Act (1939)—Effect of, on suit prior to its commencement—Issue relating to tenancy rights of plaintiffs to be referred to Revenue Courts under S 288 of U. P. Tenancy Act. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 332. 1957 All W R (HC) 536 : 1957 All L J 544.

—S. 6 — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 344 — Rules under R. 61—Amendment of — Appeal filed after amendment — Question of Court-fee on appeal must be decided with reference to amended rule. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 344. A I R 1956 All 413.

—S. 6 - U. P. Tenancy Act (17 of 1939), Ss. 180, (as amended in 1947), 242 — Suit pending in Civil Court —Effect of amendment — Proceedings held without jurisdiction. See U. P. Tenancy Act (17 of 1939), S. 180. A I R 1953 All 254.

[Overruled in A I R 1955 N U C (All) 2689.]

SECTION 10

● —S. 10—Award—Time for making—Extension — (U. P. Industrial Disputes Act (28 of 1947), S. 3 (d).

— Order under dated 15-3-1951) — Held, original period of the order dated 15-3-1951, expired on 9.6.1951 and the State Government validly extended period up to 30-6-1951 — Industrial Tribunal was a Court within meaning of S. 10 and therefore, 30-6-1951 being a public holiday and 1-7-1951 being Sunday the decision pronounced on 2-7-1951, was well within time and was valid and binding on parties, Vishwamitra Press Kanpur v. Its Workers. 1953 S C A 378 : 1953 S C R 272 : 1953 S C J 13 : (1953) 1 M L J 189 : (1953) 1 Lab L J 184 : A I R 1933 S C 41 (42) (Prs 5, 7).

SECTION 13

——S. 13 — U. P. Panchayat Raj Act (26 of 1947), S. 111—Words "a Gaon Panchayat" include plural—See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 111. AIR 1956 All 433 (DB).

SECTION 14

● ——Ss. 14, 21—U. P. Industrial Disputes Act (28 of 1947), S. 6 (1) — State Government has no power to extend time for making award 'ex post facto'—S. 14 does not in terms, or by necessary implication, give any such power of extension of time nor can any support be derived from S. 21 to validate award passed after expiry of time originally fixed. Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers Union. (1953) 1 Lab L J 186 : (1953) 1 Mad L J 427 : 1953 All L J 144 : 1953 S C R 489 : 1953 S C J 104 : 1953 S C A 586 : AIR 1953 S C 95 (96, 97, 98) (Prs 1, 4, 5, 6).

SECTION 16

● ——S. 16—Resolution for suspension of Secretary after resolution for his dismissal is passed—Board held not competent to pass resolution till matter is decided on appeal, if any preferred to Government—Powers of suspension and dismissal are defined in Ss. 91 and 71 of U. P. District Boards Act — Hence it would not be legitimate to have resort to general or implied powers under S. 16 of U. P. General Clauses Act. A I R 1948 All 199 : I L R (1948) All 42 : 1947 A L J 690, Reversed. See U. P. District Boards Act (10 of 1922), S. 90. AIR 1952 S C 362.

——S. 16 — Pradhan of Gaon Sabha—Power of State Government to suspend—S. 16, U. P. General Clauses Act has no application. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 95 (1) (g). 1965 All L J 663 : AIR 1966 All 158.

——S. 16—Report of President of Board against Executive Officer under consideration of State Government — State Government has no power to suspend Executive Officer pending consideration. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 69-A (4). AIR 1961 All 580 (DB).

——S. 16—Municipalities — U. P. Municipalities Act (2 of 1916), S. 74 and U. P. General Clauses Act (1 of 1904), S. 16—Power expressly given to the President under S. 74 of the Municipalities Act to appoint servants includes an implied power to terminate their services on giving reasonable notice. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 74. 1961 All L J 52.

SECTION 18

——S. 18 — Sanction under S. 3 of U. P. Act (3 of 1947) can be given by District Magistrate or by any person to whom his powers are delegated—Sanction given by latter person continues to be valid even if successor District Magistrate has not separately delegated to him such powers — See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), Ss. 3 and 2 (d). AIR 1950 All 108.

SECTION 21

● ——S. 21—Subsequent notification by Government order, dated 19th December, 1956—Modification not effective unless published, in Gazette. See Forest Act (1927), S. 4. AIR 1963 S C 1019.

● ——Ss. 21 and 14 — Industrial Disputes Act (28 of 1947), S. 6 (1) — State Government has no power to extend time for making award 'ex post facto'—S. 14 does not in terms, or by necessary implication, give any such power of extension of time nor can any support be derived from S. 21 to validate award passed after expiry of time originally fixed, Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers Union. (1953) 1 Lab L J 186 : (1953) 1 Mad L J 427 : 1953 All L J 144 : 1953 S C R 489 : 1953 S C J 104 : 1953 S C A 586 : AIR 1953 S C 95 (96, 97, 98) (Prs 1, 4, 5, 6).

——S. 21 — 'Order' — Meaning of—Judicial or quasi judicial orders not covered by the term — Section does not confer power to review such orders since the word 'order' is associated with notifications, rules and bye-laws—AIR 1951 All 836, Foll. I L R (1965) 1 All 739 : A I R 1966 All 26 (32) (Pt C) (Pr 13) (DB).

——S. 21—Reference of dispute to Tribunal — Power of Government to review its earlier decision—Principle of res judicata not applicable. See Industrial Disputes Act (1947), S. 10. AIR 1962 All 70.

——S. 21—Judicial or quasi-judicial orders and administrative orders — Power to modify — Order of allotment by Rent Control and Eviction Officer—Power to modify or cancel — (Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (III of 1947), S. 7)—(Words and Phrases—Judicial or quasi-judicial order) — (Constitution of India, Art. 226).

The power of an authority to modify its own order or the order of a co-ordinate or subordinate authority varies according to the nature of the order. Ordinarily finality attaches to a judicial or a quasi-judicial order. If the authority passing the order wishes to modify or rescind the said order, it has to act within the provisions of law conferring power of review. Similarly, if it is desired to modify or cancel judicial or quasi-judicial order passed by a subordinate authority or an authority exercising concurrent jurisdiction, the power must be expressly conferred by some provisions of law.

Greater latitude is permissible in the case of an administrative or executive order. Such an order may be modified or revoked by the authority passing it under S. 21, U. P. General Clauses Act (1 of 1904).

The term 'judicial or quasi-judicial' has been given a liberal interpretation so as to include orders by tribunals or authorities other than the regular Courts of justice.

To constitute a quasi-judicial or a judicial order, the authority passing the order should be under an obligation to hear the parties, to make an enquiry, to weigh the evidence and to base its conclusion thereon. Its decision should be based on the result of the enquiry and not on its own discretion.

An order of allotment passed under S. 7, Rent Control and Eviction Act is an executive or administrative order and not a judicial or quasi-judicial order.

Hence the Rent Control and Eviction Officer can modify or cancel his previous order of allotment. But this power can be exercised so long as the allottee acting in pursuance of the order does not take possession of the accommodation. 1955 All L J 252 : AIR 1955 All 501 (502 to 504) (Pt A) (Prs 6, 7, 9, 11, 13, 15) (DB).

——S. 21—District Magistrate as superior authority cannot upset order of allotment of Rent Control and Eviction Officer — (Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7).

Where a power is exercised by a public servant under statutory sanction, that power can be exercised by him alone and not by any superior authority. The superior authority may give him suggestion and may even ask him to reconsider his decision leaving to him the freedom to change its mind or not. If in such circumstances the officer who originally passed the order, changes his mind and arrives at a contrary conclusion; the order will be perfectly valid because it would be the order of the original authority and not of the higher authority.

But the higher authority cannot by its own order set aside the order of the inferior authority and assume to itself an appellate or revisional power which has not been conferred upon it by the statute. Hence the District Magistrate acting not as an authority of co-ordinate jurisdiction but as a superior authority cannot upset the order of allotment of the Rent Control and Eviction Officer. 1955 All L J 252 : AIR 1955 All 501 (504) (Pt C) (Pr 21) (DB).

——S. 21 — Order of allotment by Rent Control and Eviction Officer — If can be cancelled in pursuance of order of superior authority—(Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7).

The Rent Control and Eviction Officer cannot lawfully cancel his own order when that cancellation is not the result of the exercise of his own discretion but is brought about in pursuance of an order of a superior authority. The revised order although passed by the Rent Control and Eviction Officer could not be upheld by invoking the aid of S. 21, U. P. General Clauses Act. 1955 All L J 252 : AIR 1955 All 501 (505) (Pt D) (Pr 26) (DB).

——S. 21 — Time fixed under notification can be extended — U. P. Industrial Disputes Act (28 of 1947), S. 6. AIR 1955 NUC (All) 1264 (DB).

——S. 21 — There is no time-limit for exercise of power — Power can be exercised even after expiry of time fixed by notification — Acts done before extension of time cannot be validated. AIR 1955 NUC (All) 1264 (DB).

——S. 21 — Permission under S. 3, U. P. Act (3 of 1947) granted by delegate of District Magistrate — District Magistrate cannot revoke it — Under S. 21, Rent Control Officer can presumably rescind the order which had been previously passed by him. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 2 (d). AIR 1952 All 819 (DB).

SECTION 22

● ——S. 22—Validity—There is nothing discriminatory in amended provision of S. 22. See Constitution of India, Art. 14. AIR 1957 All 475 (FB).

● ——S. 22 — Scope of stated. See Sales Tax — U. P. Sales Tax Act (15 of 1948), S. 3-A. AIR 1957 All 475 (FB).

● ——Ss. 22, 30 and 5 — Applicability — U. P. Sales Tax (Amendment) Ordinance (1956) had come into operation on 31-3-1956—S 22, held, had no application to notification No. 2-S-T 905/x dated 31-3-1956. See Sales Tax — U. P. Sales Tax (Amendment) Ordinance (1956). AIR 1957 All 475 (FB).

● ——S. 22 (as amended by Act 5 of 1957) — "In the exercise of any power exercisable thereunder"—Meaning of.

The words "In the exercise of any power exercisable thereunder" mean simply "under that Act"; and if that be so, the provision is sufficiently clear, the effect of the amendment being to enable any power to issue notifications conferred by an Act (to which S. 22 applies) to be exercised prior to the Act coming into force, although the notification will not of course have effect until that event occurs. Adarsha Bhandar v. Sales Tax Officer, 1957 All L J 654 : (1957) 8 STC 666 : (1957) All W R (HC) 692 : AIR 1957 All 475 (482) (Pt H) (Pr 36) (FB).

SECTION 24

——Ss. 24, 6 — Applicability — Apply only to valid Acts subsequently repealed — Act declared unconstitutional — Has no existence—Sections cannot apply to its repeal by subsequent enactment—U. P. Public Land (Eviction and Recovery of Rent and Damages) Ordinance (4 of 1959), S. 16. See U. P. General Clauses Act (1 of 1904), S. 6. AIR 1962 All 350.

SECTION 27

——S. 27—Power to amend rule—Binding nature of such amendment pointed out. See General Clauses Act (1897), S. 21. AIR 1954 All 343 (DB).

SECTION 30

● ——Ss. 30, 22 and 5 — Applicability — U. P. Sales Tax (Amendment) Ordinance (1956) had come into operation on 30-3-1956—S. 22, held, had no application to notification No. 2-S-T 905/x dated 31-3-1956. See Sales Tax — U. P. Sales Tax (Amendment) Ordinance (1956). AIR 1957 All 475 (FB).

UTTAR PRADESH GHEE MOVEMENT CONTROL ORDER (1945)

——Order made under R. 81, Defence of India Rules —Defence of India Rules ceasing on 30th September 1946 — Order if still continues to be in force thereafter.

Even though the Defence of India Act, 1939, and the Defence of India Rules made thereunder generally ceased to operate on 30th September 1946, yet the U. P. Ghee (Movement) Control Order, 1945, issued by the Governor in exercise of the powers conferred by R. 81, sub-r. (2), Defence of India Rules, continued in force from 1st October 1946, in view of S. 5 of the Ordinance 18 of 1946 and after the repeal of that Ordinance in view of S. 17, sub-s. (2), Essential Supplies (Temporary Powers) Act (24 of 1946). 1950 All L J 475 : 1950 All Cri Cas 205 : 1950 All W R 592 : AIR 1950 All 657 (659) (Pt B) (Pr 5).

CLAUSE 3

——Cl. 3 — Contravention of Cl. 3, if punishable under S. 7, Essential Supplies (Temporary Powers) Act, 1946—Interpretation of Statutes—"Order deemed to be made".

The omission of the words "or Order deemed to be made" which occurred in the penalty provision in S. 8, Essential Supplies (Temporary Powers) Ordinance (18 of 1946 from its corresponding S. 7, Essential Supplies (Temporary Powers) Act, 1946 does not mean that the Legislature considers that the contravention of such Order is not punishable. When a certain Order is said to be deemed to be an Order made under a certain section, it must mean that for all purposes, that Order has been passed under that particular section. It is deemed to be an Order under that section, because it was not actually passed under that section, but in all other respects it is as good as an order passed under that section. Hence, the contravention of clause 3, U. P. Ghee (Movement) Control Order, 1945 is punishable under S. 7, Essential Supplies (Temporary Power) Act (24 of 1946). 1950 All L J 475 : 1950 All Cri Cas 205 : 1950 All W R 592 : AIR 1950 All 657 (659) (Pt C) (Prs 6, 7).

UTTAR PRADESH GOONDAS ACT (1 of 1932)

See under Public Safety

UTTAR PRADESH GOVERNMENT INDUSTRIAL MANUAL (1950)

——Examination Rules for Government Technical Institutions, R. 4 — Constitution of India, Art. 226 — Writ of Mandamus — When can be issued — Not for enforcing non-statutory or contractual or private rights—No mandamus for declaring result of examination held under Executive Orders. See Constitution of India, Art. 226. AIR 1959 All 681.

——Examination Rules for Government Technical Institutions, R. 4 — Scope — Taking into account course marks—Purpose of—Should be considered for passing also — Rr. 6 and 16. AIR 1959 All 681 (682, 683) (Pt A) (Prs 5, 6, 7).

——Examination Rules for Government Technical Institutions, R. 4—Nature of—If Government Orders —Statutory force—(Constitution of India, Art 154).

The Manual appears to be nothing more than a compilation of various Government orders issued by the U. P. Government from time to time. It is not proved that these orders were issued under any statutory authority. The rules are therefore merely executive orders. Further, Art. 154 of the Constitution merely specifies the authority which is invested with the executive power of the State, authorises him to exercise it either himself or through officers subordinate to him. Therefore, Art. 154 is not of itself sufficient to clothe a Government order with the attributes of a statutory notification so as to bring it within the rules relating to the issue of a writ of mandamus. AIR 1959 All 681 (683, 684) (Pt B) (Pr 11).

U. P. GOVERNMENT LAND (EVICTION, RENT AND RECOVERY) ACT (29 of 1958)

See under Tenancy Laws

U. P. GOVERNMENT PREMISES (RENT, RECOVERY AND EVICTION) ACT (39 of 1952)

See under Houses and Rents

U. P. GOVERNMENT SERVANTS CONDUCT RULES (1946)

——Validity—Rules published only in English version and not in Hindi version — Validity of Rules not affected. See Constitution of India, Art. 348. 1962 (2) Cri L J 459 : AIR 1962 All 507.

——Validity — Do not infringe Art. 16 of the Constitution. See Constitution of India, Art. 16. AIR 1959 All 47.

RULE 10

——R. 10 (2) — U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), R. 2 (d) — "Failure to discharge the duties properly"—Non-observance by Government Servant of conduct rules amounts to such failure. See U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), S. 2 (d). (1956) 2 Lab L J 1 (All).

RULE 11

——R. 11—U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), R. 2 (d) — "Failure to discharge the duties properly" — Non-observance by Government Servant of conduct rules amounts to such failure. See U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), S. 2 (d). (1956) 2 Lab L J 1 (All).

RULE 25

——R. 25—Validity—Barring Government servant of his right of access to Court of law does not amount to discrimination—R. 25 restrains Government servants from having recourse to Courts of law only in vindication of official acts — Discretion conferred on Government in respect of grant of sanction to Government servant to approach Court of law not arbitrary—Discrimination between Police Officer and Government servant of other kind not unfair and unreasonable—Rule 25 — Held, not discriminatory, void or inoperative. See Constitution of India, Art. 13. 1962 (2) Cri L J 459 : AIR 1962 All 507.

——R. 25 — 'Any rule or regulation made by competent authority' — Interpretation — Expression refers not only to rules made under the Act such as rules made by Inspector General of Police under S. 12 or by State Government under S. 46 — It refers to rules and regulations in general, without such restriction—U. P Government Servants' Conduct Rules made by the Governor in exercise of powers conferred by proviso to Art. 309 of the Constitution are rules made by competent authority and come within scope of S. 29 — Hence breach of R. 25 of those Rules by a Police Officer is punishable under that section. See Police Act (1861), S. 29. 1962 (2) Cri L J 459 : AIR 1962 All 507.

RULE 27

——R. 27 — Prohibition of bigamy — Not invalid—Constitution of India, Art. 25. See Hindu Marriage Act (1955), S. 5 (i). AIR 1961 All 334 (DB).

——R. 27—Validity—Rule does not infringe Art. 25 of the Constitution. See Constitution of India, Art. 25. AIR 1957 All 411.

U. P. GUR CONTROL (MOVEMENT) ORDER (1945)

——Ultra vires — Order not ultra vires Provincial Legislature—Government of India Act (1935), S. 297.

The prohibition contained in S. 297, Government of India Act, is confined to the action of the Provincial Legislature or Government in the exercise of the power entrusted to it by virtue of an entry in the Provincial Legislative List relating to trade and commerce, etc. In other words, where the Provincial Legislature or Government makes any law or takes any executive action in the exercise of the power conferred upon it under the Provincial Legislative List, namely, List 2 of Sch. 7 to the Government of India Act, then and then alone does S. 297 come into play and prevents the Provincial Legislature or Government from prohibiting or restricting the entry into or export from the Province of goods of any class or description. This does not mean, however, that the Provincial Government cannot take any action prohibited under S. 297 in exercise of the powers which may be validly conferred upon it under some other provision of law, e.g., by an enactment of the Central Legislature. The U. P. Gur Control Movement Order was made in exercise of the powers conferred upon the Provincial Government not by virtue of the entry in the Provincial Legislative List but by virtue of a Central enactment, namely, the Government of India Act and the Defence of India Rules. As such, no objection can be taken to its validity : AIR 1949 All 463, Disting. 51 Cri L J 721 : 1950 All L J 212 : 1950 All W R 400 : 1950 All Cri Cas 114 : ILR (1951) 1 All 552 : AIR 1950 All 232 (233) (Pt A) (Pr 10).

CLAUSE 2

——Cl. 2 (b)—Gur—Meaning of — 'Gur Shakkar' is clearly included within the meaning of Gur in Cl. 2 (b). 51 Cri L J 721 : 1950 All L J 212 : 1950 All W R 400 : 1950 All Cri Cas 114 : ILR (1951) 1 All 552 : AIR 1950 All 232 (234) (Pt B) (Pr 15).

UTTAR PRADESH GUR PRICE CONTROL ORDER (1946)

CLAUSE 3

——Cls. 3 and 4—Price of jaggery powder controlled by Gur U. P. Control Order, 1946—Contract for sale

and purchase of jaggery powder at rates higher than controlled rates, illegal. See Contract Act (1872), S. 23. 1962 All L J 767 : AIR 1963 All 206 (DB).

—Cls. 3 and 4—Contract for sale and purchase of jaggery powder illegal under the Order—Absence of specific words in Order makes no difference.

Where a contract for sale and purchase of jaggery powder is illegal by reason of the provisions of the Gur Control Order, 1946, the mere want of specific words in the Order making the contract void will not save the contract from the evil effects of the Order. The intention of the Order is to be gathered from the whole of the Order. 1962 All L J 767 : AIR 1963 All 206 (209) (Pt C) (Pr 12) (DB).

CLAUSE 4

—Cl. 4 — Price of jaggery powder controlled by U. P. Gur Price Control Order, 1946 — Contract for sale and purchase of jaggery powder at rates higher than controlled rates, illegal. See Contract Act (1872), S. 23. AIR 1963 All 206 (DB).

—Cl. 4—Contract for sale and purchase of jaggery powder illegal under the order—Absence of specific words in order makes no difference. See U. P. Gur Price Control Order (1946), Cl. 3. AIR 1963 All 206 (DB).

UTTAR PRADESH HIGH COURT (ABOLITION OF LETTERS PATENT APPEALS) ACT (14 of 1962)

SECTION 3

● —S. 3—Appeal from appellate decree of single Judge — Memorandum with deficit court fee filed on 8th November, 1962 — Deficit made good on 20th December, 1962 and appeal admitted on 3rd January, 1963 — Held, that no appeal was pending on 12th November, 1962 within S. 3(2) of the U. P. Act—The appeal held not maintainable. See Court-fees Act (1870), (as amended in U. P.), S 4. AIR 1964 All 552 (FB).

—S. 3—Memorandum of appeal insufficiently stamped presented on 9-7-1962 — Deficiency made good on 18.2.1963 — Appeal, held could not be pending on 13.11.1962 and was not saved by S 3(2) — S. 3 does not infringe Art. 14 and is constitutionally valid — Constitution of India, Art. 14. 1964 All L J 510.

UTTAR PRADESH HIGH COURTS (AMALGAMATION) (AMENDMENT) ORDER (1948)

PREAMBLE

—Preamble—Mere erroneous mention of sub-s. (1) instead of sub-s. (2) of S. 229, Government of India Act (1935) in Preamble does not make amendment illegal—Government of India Act (1935), S. 229.

Under no provision of law it is necessary that the authority that has been given power to issue certain directions or orders shall, while issuing those directions or orders, state under what specific power such orders or directions are being issued by it and that unless this is done such directions or orders would be invalid. The Governor-General had the power under sub-s. (2) of S. 229, Government of India Act to add a further proviso to Art. 8 of the U P. High Courts (Amalgamation) Order, 1948, and the United Provinces High Courts (Amalgamation) (Amendment) Order, 1948 was issued in the exercise of that power. The mere fact that in the preamble to that Order sub-s. (1) was erroneously mentioned in place of sub-s. (2) of S. 229, Government of India Act, would not make the order illegal. 51 Cri L J 513 : AIR 1950 All 162 (166) (Pt C) (Pr 14).

UTTAR PRADESH HIGH COURTS (AMALGAMATION) ORDER (1948)

CLAUSE 3

● —Cls. 3 and 14—Appeal over which Oudh Bench has jurisdiction filed in Allahabad High Court—Chief Justice can direct appeal to be heard at Allahabad : A I R 1952 All 550 : 1952 Cri L J 982, Overruled.

The jurisdiction of the Court at Allahabad extends over the whole of the Uttar Pradesh. It is not restricted to those parts of the State over which the Lucknow Bench for the time being does not exercise jurisdiction. A I R 1952 All 550 : I L R (1951) 1 All 568 ; 1952 Cri L J 982, Overruled. If correctly interpreted the propositions that follow from Cls. 3 and 14 of the Amalgamation Order are these. (1) The new High Court is one and indivisible. (2) The new High Court can sit at Allahabad or such other places as may be appointed by the Chief Justice and the Governor but at least two Judges of the High Court must sit at Lucknow. (3) The Judges sitting at Lucknow can deal only with cases arising in Oudh. (4) The rest of the High Court which is not sitting at Lucknow is to deal ordinarily with the cases arising outside Oudh, but continues to have the power and jurisdiction which can be exercised throughout the State including the area of Oudh, That power has not been taken away. (5) That even while a Bench of the High Court is sitting at Lucknow to deal with Oudh cases, the Chief Justice may direct a particular case or a particular class of cases arising in Oudh to be heard at Allahabad. If therefore the appellant presented his appeal to the Court at Allahabad, it cannot be said that the appeal was presented to an authority which could not entertain it. The appeal cannot therefore be ordered to be returned for presentation to proper Court. Nor can it be dismissed as improperly presented. In fact under the second proviso to Cl. 14 of the Amalgamation Order the Chief Justice can even direct that the appeal be heard at Allahabad. A I R 1949 All 190 and A I R 1950 All 485, Disting. Union of India v. Chheda Lal Ram Autar. I L R (1958) 2 All 72 : 1958 All L J 392 : 1958 All W R (HC) 510 : A I R 1958 All 652 (653, 656) (Prs 8, 22, 23) (FB).

CLAUSE 8

● —Cl. 8 (2), Proviso—Absence of roll of advocates after Amalgamation Order—Advocates enrolled before Order—Right to practice before new High Court. See Bar Councils Act (38 of 1926), Ss. 8(2), 14 (1). 51 Cri L J 1035 : AIR 1950 F C 71.

● —Cl. 8 (2), Proviso—Amendment of, by Order of November 1948—Amending Order was a supplementary order removing a lacuna in the original orders and was legal and prevented ex-Judge Advocate, who had given an undertaking not to practice before the Allahabad High Court, from practising before the new High Court at Allahabad after the passing of the Amalgamation Order. AIR 1950 All 162, Affirmed. See Government of India Act (1935), S. 229. 51 Cri L J 1035 : AIR 1950 F C 71.

—Cl. 8 (2), Second Proviso, Cl. 18—Direction issued by Chief Justice on 25-11-1948 under second proviso to Cl. 8 (2) held not ultra vires Art. 19 (1)(g) of the Constitution — Proviso to S. 2 of Supreme Court (Advocates Practice in High Courts) Act whether invalidated such direction—After application of Ss. 14 and 19 (2) of Bar Councils Act to new High Court, Cl. 8(2), second proviso to Order of 1948 stood repealed — Direction, dated 25-1-1948 could not be quashed by a writ of certiorari. I L R (1960) 2 All 709 : AIR 1962 All 391 (395 to 400, 402 to 404) (Prs 13 to 15, 17, 18, 20 to 22, 31 to 33) (DB).

—Cl. 8—High Court can no longer admit as an Advocate a person under the rules made under S. 9,

Bar Councils Act. See Bar Councils Act (1926), S. 9(1). 1959 All L J 822 : I L R (1959) 2 All 537.

● —Cl. (8) — Notification under issued in 1928 — Application of Ss. 3 to 16 to Amalgamated High Court — Indian Law — Meaning of stated. See Bar Councils Act (1926), S. 1 (3). **A I R 1955 All 269 (FB).**

● —Cl. (8) — Enrolment of Advocates—Non-existence of Bar Council—Effect stated. See Bar Councils Act (1926), S. 8. **AIR 1955 All 269 (FB).**

—Cl. 8 (2) — Allahabad High Court —.Creation of new Bar Council and Preparation of new roll — Advocate's right to practise in new High Court continues by proviso to Cl. 8 (2). See U. P. High Court Amalgamation Order (1948), Cl. 17 (c). **1954 Cri L J 1485 : AIR 1954 All 728 (DB).**
[Overruled in AIR 1955 All 269 (FB).]

—Cl. 8 and proviso (added by Amendment Order in 1948) — Validity — Ex-Judge of Allahabad High Court practising as advocate of Avadh Chief Court at time of amalgamation — Order by Chief Justice prohibiting such advocate from practising before new High Court sitting at Allahabad or in Courts subordinate thereto in districts under jurisdiction of Allahabad High Court before amalgamation is valid —Bar Councils Act (1926), Ss. 1 (2) and 14 — Government of India Act (1935), S. 229 (2). **51 Cri L J 513 : AIR 1950 All 162 (167) (Pt A) (Pr 16).**

CLAUSE 9

—Cl. 9 — Gift by a Muhammadan to a Hindu — Revocation of — Law applicable — Personal law of donor applies. See Letters Patent (All), Cl. 14. **AIR 1963 All 469.**

CLAUSE 14

—Cl. 14—Senior vacation judge has not all powers of vacation judge — Has no power to direct appeal that should be heard by Lucknow Bench, to be heard by Allahabad Bench — U. P. High Court Amalgamation Order (1948), Cl. 14—Powers are conferred on Chief Justice as persona designata. See High Court Rules and Orders — Allahabad : High Court Rules, R. 10 (2). **1966 Cri L J 383 : 1965 All Cri R 495 : 1965 All W R (HC) 731 : 1965 All L J 1155 : AIR 1966 All 174 (DB).**

—Cl. 14 — Notification No. 76/14-39, dated 5-5-1961 issued under — Validity of—Application under S. 561-A, Criminal P. C. from Faizabad district can be disposed of by High Court at Allahabad — Criminal P. C. (1898), S. 561-A.

The Notification No. 76/14-39, dated 5-5-1961 issued under Cl. 14 of U. P. High Courts (Amalgamation) Order (1948) is neither ultra vires nor without jurisdiction. But that notification does not confer exclusive jurisdiction on the Lucknow Bench. In spite of the notification, dated 5-5-1961, it is possible to have the application under S. 561-A, Cr. P. Code from district Faizabad disposed of by High Court at Allahabad. **1964 All Cr R 207 : 1964 All W R (HC) 304 : 1964 All L J 448.**

—Cl. 14—Scope—Origin of case in Meerut area — Final order passed by authority functioning at Lucknow — Writ petition before Lucknow Bench — Maintainability—(Constitution of India, Art. 226).

Held, that the Lucknow Bench could not entertain a petition. It was only when a case arose within an area which was amenable to the jurisdiction of the Lucknow Bench under the Amalgamation Order that it could entertain and hear such petitions. The Amalgamation Order which replaced the earlier Letters Patent was a kind of Charter which created a new High Court and Lucknow Bench was the integral part of it. The reference to the expression "jurisdiction and powers for the time being vested" in Cl. 14 of the said Order must refer to all such powers and jurisdictions of the new High Court, as it possessed by virtue of being a High Court whether those powers and jurisdictions were there or not at the date when the Amalgamation Order was made. Held, further that writ applications are not different and outside the connotation of the word 'case' in Cl. (14) of the Amalgamation Order. A I R 1959 All 460 and AIR 1958 All 652 (FB), Foll. **I L R (1959) 2 All 108 : AIR 1959 All 722 (723, 724) (Prs 3 to 7).**

—Cl. 14—Powers of Lucknow Bench.

The phrase 'cases arising' must relate to the origin of a case, that is, these words must refer to the place or area of origin of the dispute. The Lucknow Bench possesses all the plenary powers of the new High Court. The powers which are exercised by Judges sitting at Lucknow are those which are vested in the Judges of the Allahabad High Court;: there is no restriction on those powers. What is, so to speak, restricted by the provisions of the Proviso of Cl. 14 is the territory from where a cause has arisen in respect of which such powers could be exercised. Though the record was at Allahabad, the Lucknow Bench could issue a writ quashing the order borne on that record. **I L R (1959) 1 All 529 : 1959 All L J 514 : 1959 All W R (HC) 380 : A I R 1959 All 460 (461, 462, 463) (Pt A) (Prs 7, 9 to 11, 16) (DB).**

● —Cls. 14, 3 — Appeal over which Oudh Bench has jurisdiction filed in Allahabad High Court — Chief Justice can direct appeal to be heard at Allahabad. A I R 1952 All 550 : I L R (1951) 1 All 568 : 1952 Cri L J 982, **Overruled.** See U. P. High Courts Amalgamation Order (1948), Cl. 3. **AIR 1958 All 652 (FB),**

—Cl. 14 — Proviso 1—Transfer application—Case pending within jurisdiction of Lucknow Bench — Allahabad Bench cannot entertain application — (Cr. P. Code (1898), S. 526).

Where the case out of which an application for transfer arises is pending within the area over which the Lucknow Bench exercises jurisdiction, the application cannot be entertained by the Allahabad Bench and the fact that a prayer has been made for the transfer of the case to Allahabad makes no difference. **1953 All W R (HC) 464 : 1953 All L J 462 : 1954 Cri L J 16 : AIR 1954 All 28 (28) (Pr 4).**

—Cl. 14 — First Proviso—'In respect of cases arising in such areas in Oudh.'

The word 'cases' refers to the cases which come up for decision before the High Court and not to the cases pending in lower Courts which may have given rise to the cases coming up before the High Court. Where the case the High Court is dealing with is a Criminal Miscellaneous case for transfer of another case that is pending in the Court of the Special Magistrate at Lucknow, the case for transfer is a case which has arisen in Lucknow and consequently under the proviso to Cl. (14) the Bench sitting at Lucknow can hear the case for transfer and exercise the jurisdiction and power for the time being vested in the Allahabad High Court in respect of it. **1952 All L J 574 : 1953 Cri L J 334 : A I R 1953 All 99 (101) (Pt A) (Pr 8) (DB),**

—Cl. 14—Lucknow Bench—Powers of.

In ordering transfer of a case from any Court subordinate to it the Lucknow Bench can direct that the case be tried by any Court subordinate to the Allahabad High Court whether that Court is situate in Oudh or anywhere else in Uttar Pradesh. **1952 All L J 574 : 1953 Cri L J 334 : AIR 1953 All 99 (101) (Pt B) (Pr 5) (DB).**

—Cl. 14 — Lucknow Bench constituted under — Scope of its jurisdiction — Revision filed in Allahabad High Court — Administrative order of the Chief

Justice that it be listed before the Lucknow Bench—Jurisdiction of that Bench to hear it.

The Judges who are nominated by the Chief Justice to sit at Lucknow under the power conferred on him by Art. 14 of the U. P. High Courts (Amalgamation) Order must confine themselves to the exercise of jurisdiction and power for the time being vested in the High Court 'in respect of cases arising in such areas in Oudh as the Chief Justice may direct'. Revision application filed in Allahabad High Court against the dismissal of an appeal in a criminal case heard by a Magistrate in Bareilly cannot be said to be a case arising in Avadh merely by reason of the fact that the Chief Justice passed an administrative order that it be listed before the Lucknow Bench and so the Lucknow Bench :constituted as it is under the first proviso of Art. 14 of the Order would have no jurisdiction to hear the same. 1950 All W R (H C) 30 : 1950 All Cri Cas 12 : 1952 Cri L J 982 : ILR (1951) 1 All 568 : AIR 1952 All 550 (553, 554) (Pt A) (Prs 8, 10) (DB).

[Overruled in AIR 1953 All 652 (FB).]

—Cl. 14—Application under S. 526, Criminal P. C. for transfer of case pending in Court at Lucknow to Court at Allahabad—Forum —Criminal P. C. (1898), S. 526.

It is open to the Judges of the High Court of Allahabad whether they sit at Allahabad or at Lucknow to order the transfer of a case under S. 526, Criminal P. C. from any subordinate Court in any part of the State to any other subordinate Court in any other part of the State. Under the proviso to Art. 14, however, an application under S. 526 for the transfer of a case pending before a subordinate Court in Lucknow to a subordinate Court at Allahabad should be made before the Bench of the High Court at Lucknow. 1950 All L J 403 : 1950 All W R 465 : 51 Cri L J 1302 : 1950 All Cri Cas 146 : AIR 1950 All 485 (485) (Prs 3, 4).

CLAUSE 17

—Cl. 17—Power of District Judge to transfer contentious probate matter to civil Judge — Amalgamation of Chief Court and Allahabad High Court—Effect stated. See Oudh Courts Act (39 of 1925), S. 31. 1959 All L J 821.

● —Cl. 17 (c)—Notification under issued in 1928—Application of Ss. 3 to 16 to Amalgamated High Court — Indian Law — Meaning of stated. See Bar Councils Act (1926), S. 1 (3). AIR 1955 All 269 (FB).

—Cls. 17 (c) and 8 (2) — Creation of new Bar Council and preparation of new roll — [Bar Councils Act (1926), S. 3].

Clause 17 (c) does not contemplate the creation of a new Bar Council and preparation of a new roll of Advocates of the new High Court. As a new roll is not to be prepared, there arises no question of payment of any fee. An advocate's right to practice in the new High Court continues by the proviso to Cl. 8 (2). It cannot be made dependent upon his paying any fee. ILR (1954) 2 All 191 : 1954 All L J 477 : 1954 Cri L J 1485 : 1954 All W R (H C) 529 : AIR 1954 All 728 (734) (Pt F) (Pr 22) (DB).

[Overruled in AIR 1955 All 269 (FB).]

U. P. HIGHER JUDICIAL SERVICE RULES

:RULE 19

—R. 19—Construction of rule—Rule governs appointment of Civil and District Sessions Judges and it contemplates appointment in a substantive, temporary or officiating vacancy. See Constitution of India, Art. 309, AIR 1963 All 415.

U. P. HINDU WOMEN'S RIGHTS TO PROPERTY (EXTENSION TO AGRICULTURAL LAND) ACT (11 of 1942)

SECTION 2

—S. 2—Right of widow to claim share in rent of agricultural land prior to 1942—Question is mixed question of law and fact and cannot be raised in second appeal. See Civil P. C. (1908), S 100-101. AIR 1951 All 636 (DB).

U. P. HOMEOPATHIC MEDICINES ACT (8 of 1952)

SECTION 3

—Ss. 3 (I) (b) and 39—Enquiry committee appointed under U. P. Homeopathic Medicine Act—Not a Court—Member of Homeopathic Board moving resolution to replace Committee previously appointed by a new committee does not commit cotempt of Court. See Contempt of Courts Act (1952), S. 3. 1964 (1) Cr L J 362 (All).

U. P. IMPOSITION OF CEILING ON LAND HOLDINGS ACT 1960 (1 of 1961)

See under Tenancy Laws.

U. P. INDUSTRIAL DISPUTES ACT (28 of 1947)

PREAMBLE

● —Preamble—Industrial Employment (Standing Orders) Act (1946), S. 1— Schemes of two Acts are different—There is no conflict between the two Acts. See Industrial Employment (Standing Orders) Act (1946), S. 1. (1965-66) 29 F J R 76 : AIR 1966 S C 1471.

—Preamble—Matter of supersession and promotion of a workman taken up by workmen as a class —It is Industrial dispute. See Industrial Disputes Act (1947). S. 2 (k). (1961) 3 Fac L R 295 : (1962) I Lab L J 1 (All).

—Preamble— Inconsistency between State Act and Central Act — Matter in concurrent list — President's assent to State Act—State Act prevails. See Constitution of India, Art. 254. AIR 1961 All 321.

● —Preamble—Validity of Act — (Constitution of India, Art. 254 (2)—(Industrial Disputes Act (1947)).

Per V. Bhargava, J.—The U. P. Industrial Disputes Act, 1947 was reserved by the Governor of Uttar Pradesh for the assent of the Governor-General whose assent was obtained on December 21, 1947, and thereafter the Act was published in the U. P. Government Gazette, dated January 10, 1948. Since this Act of the State Legislature had received the assent of the Governor-General, if there be any repugnancy between its provisions and the provisions of the Central enactment contained in the Industrial Disputes Act (Act No. XIV of 1947), the U. P. Industrial Disputes Act, 1947 would prevail in Uttar Pradesh over the repugnant provisions of the Industrial Disputes Act, 1947. :It must therefore be held that the U. P. Industrial Disputes Act, 1947 is valid and binding in the State of Uttar Pradesh. Basti Sugar Mills, Ltd. v. State of Uttar Pradesh. 1954 All W R (H C) 428 : 1954 All L J 452 : ILR (1954) 1 All 457 : AIR 1954 All 538 (546) (Pt E) (Pr 14) (FB).

[Reversed on another point in AIR 1961 S C 420.]

SECTION 2

SYNOPSIS

(U. P. Industrial Disputes Act (1947), S. 2.)

1. "Appropriate Government".
2. "Award".
3. "Employer".

4. "Industrial dispute."
5. "Settlement".
6. "Workman".

1. "Appropriate Government".

——S. 2 (1)—Appropriate Government in respect of controlled industry — Specification. See Industrial Disputes Act (1947), S. 2 (a) (i). AIR 1958 All 80 (DB).

——S. 2 — Dispute in controlled industry—"Appropriate Goverment" in relation to. See Industrial Disputes Act (1947), S. 2 (1) (a). AIR 1957 All 643 (DB).

2. "Award".

——S. 2 (c) — Reference by Union which did not represent all workmen—Award given on it is invalid. See U. P. Industrial Disputes Act (28 of 1947), S. 5-B. (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : I L R (1965) 2 All 716 (DB).

——Ss. 2 (c), 6, 6-A (as amended by U. P. (Act 23 of 1957)—Word 'award' as defined in S. 2 (c) does not include an award of an Adjudicator given under the G. O. dated 14-7-1957 read with U. P. Act (28 of 1947) as unamended—Word "award" in Ss. 6 and 6-A cannot be construed in a wider sense than the definition clause so as to include such award. A I R 1964 All 156 (161) (Pt D) (Pr 17) (DB).

——S. 2 (c) — Industrial Disputes Act (1947), Ss. 2 (b), 2 (k) and 2-A—It continues to be industrial dispute even though workman and union absent themselves from proceedings before Labour Court.

The definition of award does not show that the industrial dispute ceases to be an industrial dispute if the workman or the Union representing his case ceases to take interest in the proceedings before the Labour Court or absents himself or itself from proceedings before the Labour Court. If there was an industrial dispute between the workman and the employer which was referred for arbitration the dispute continues to be an industrial dispute even though the workman and the Union absented themselves from the proceedings before the Labour Court. (1964) 1 Lab L J 722 (All).

——S. 2 (c)—Decision of Labour Court, which does not determine the industrial dispute referred to it, is not an award. (1964) 8 Fac L R 269 : (1964) 1 Lab L J 607 (All).

3. "Employer".

● ——Ss. 2 (i) (iv), 2 (z)—Work in industry done by workmen employed through contractor — Owner of industry is the employer of them.

Though the definition of the word 'workman' in S. 2 (z) does not contain any words to show that the contract labour was included therein, the words used in the section are by themselves sufficiently wide to bring in persons doing work in an industry whether the employment was by the management or by the contractor of the management. The definition of 'employer' was extended by sub-clause (iv) of S. 2 (i) with the purpose of making the owner of the industry, in the circumstances mentioned in sub-clause (iv), the employer of the workmen engaged in the work which is done through contract and the words used in the sub-clause are clearly sufficient to achieve this purpose. It, therefore, follows from S. 2 (z) read with S. 2 (i) (iv) that the owner of the industry is in an employer even in respect of the workmen employed by a contractor to do the work of the industry. Basti Sugar Mills Ltd. v. Ram Ujagar, (1963) 7 Fac L R 253 : (1963) 2 Lab L J 447 : (1963-64) 25 F J R 1 : (1964) 2 S C R 838 : (1964) 2 S C J 811 : A I R 1964 S C 355 (357) (Pt A) (Prs 6, 7).

●——S. 2 (i) (iv)—Validity — Amounts to a restriction in the interest of general public within Art. 19 (6) of the Constitution.

Assuming that the result of the definition of employer in sub-clause (iv) of S. 2 (i) is the imposition of some restrictions on the employer's right to carry on trade or business, it cannot be doubted for a moment that the imposition of such restrictions is in the interest of the general public. For, the interests of the general public require that the device of the engagement of a contractor for doing work which is ordinarily part of the industry should not be allowed to be availed of by owners of industry for evading the provisions of the Industrial Disputes Act. It cannot therefore be doubted that the definition is in the interest of the general public within Art. 19 (6) of the Constitution and is valid. Basti Sugar Mills Ltd. v. Ram Ujagar, (1963) 7 Fac L R 253 : (1963) 2 Lab L J 447 : (1963-64) 25 F J R 1 : (1964) 2 S C R 838 : (1964) 2 S C J 811 : A I R 1964 S C 355 (357) (Pt B) (Pr 8).

——S. 2 (1) (iv)—Industrial disputes—Bonus—Workmen employed by contractor—Right to receive bonus from employer—Bonus shall be payable to workmen employed by a contractor by that employer who is owner of industry and not by contractor who actually engages them. See Industrial Disputes Act (1947), Sch. 3, Item 5. (1961) 3 Fac L R 178 (All).

4. "Industrial dispute".

● ——Ss. 2, 3, 8 and 23—Rules under S. 23—Rules 4, 5, 10, 15 (1), 26, 27 and 28—Individual dispute whether an industrial dispute — Reference—Validity—(Industrial Disputes Act (1947), Ss. 2 (k), 18, 36)—(General Clauses Act (1897), S. 13 (2))—(Interpretation of Statutes—Rules framed under Act).

Held, on a consideration of the relevant provisions of the U. P. Industrial Disputes Act, 1947, and the rules framed thereunder, that the dispute in the instant case, did not fall within the definition of an industrial dispute as used in that Act or S. 2 (k) of the Central Act. Hence, the reference of that dispute by the Government was bad. (1953) 1 Lab L J 757 (FB). Overruled; A I R 1957 S C 104 and A I R 1953 S C 58, Rel. on.

The use of the word 'workmen' in the plural in the definition of 'industrial dispute' does not by itself exclude the applicability of the Act to an individual dispute because under S. 13 (2) of the General Clauses Act, unless there is anything repugnant in the subject words in the singular shall include the plural and vice versa. The provisions of the Act lead to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded unless it acquires the general characteristics of an industrial dispute, viz., the workmen as a body or a considerable section of them make common cause with the individual workman and thus create conditions contemplated by S. 3 of the U. P. Act which is the foundation of State Governmental action under that Act. Rule 26 is indicative of the intention of the Act being applicable to collective disputes and not to individual ones. Rules 4, 5 and 15 of the Rules cannot be a valid foundation for sustaining the argument that an individual dispute was within the definition of "industrial dispute". The prohibition under R. 26 of the U. P. Act and S. 33 of the Central Act against any change in conditions of service during the pendency of the proceedings the object of which is to ensure discipline and industrial truce during that period also supports the basic idea of collectiveness in 'industrial disputes'. Moreover, these rules, cannot be read in such manner as would be tantamount to enlarging the scope of the expression "industrial dispute" and the powers conferred on the State Government under S. 3 of the U. P. Act.

The cardinal rule in regard to promulgation of bye-laws or making rules is that they must be legi fidei rationi coosona, and, therefore, all regulations which are contrary or repugnant to statutes under which they are made are ineffective. If the expression "industrial dispute" as ordinarily understood and construed conveys a dispute between an employer on the one hand and the workmen acting collectively on the other, then the definition of those words cannot be widened by a statutory rule or regulation promulgated under the Statute or by executive fiat. Newspapers, Ltd. v. State Industrial Tribunal, U. P., 1957 Mad W N (S C) 46 : 1957 S C R 754 : I L R (1957) 2 All 495 : (1957) S C J 566 ; (1957) 2 Lab L J 1 : (1957) Mad L J (Cri) 540 : (1957-58) 12 F J R 129 ; 1957 S C A 390 : A I R 1957 S C 532 (536, 537, 539, 540) (Pt A) (Prs 13 to 15, 18, 19, 21, 22, 37, 39).

——Ss. 2 (1) and 5 — A single reference by Labour Commissioner to the Industrial Tribunal regarding disputes between several employers and their workmen is not illegal. (1962) 5 Fac L R 268 ; (1962) 2 Lab L J 698 (All).

——S. 2—Dispute between A and its six workmen—Workmen not shown to be represented by Union in agreement for arbitration — Union representing them during proceedings — A's objection disallowed — A continued to take part in the proceedings — Dispute held to be 'industrial dispute' — Proceedings not vitiated and A held not prejudiced. A I R 1960 All 294, Rel. on. (1962) 4 Fac L R 163 : (1962) 1 Lab L J 682 (All).

——S. 2 (1) — Dispute between workman and employer — Workman not represented by any union — There is no industrial dispute — Reference of dispute to Tribunal is without jurisdiction. AIR 1961 All 298 (299) (Prs 4, 6, 8).

——Ss. 2 (1) and 23 — Parties—Union—U. P. Industrial Dispute Rules (1957), Rr. 40, 6.

According to the scheme of the Act and the Rules, the parties to an industrial dispute are the employer and workmen. A Union or a Federation of Unions may come into the picture only as a representative of either party. A Union or Federation of Unions cannot be treated as a party to the dispute in its own right. (1960) 1 Lab L J 44 : 1959 All L J 745.

——S. 2—"Industrial dispute"—Meaning of — Question of retrenchment of employee — Industrial Disputes Act (1947), S. 2 (k)).

The definition of industrial dispute lays down two essential requirements. One requirement is that the dispute should be between an employer and another employer or between an employer and workmen or between workmen and workmen. The second requirement is that the dispute should be connected with the employment or non-employment or the terms of employment or the conditions of labour of any person. Where the dispute that is referred relates to the retrenchment of certain employees it is clearly covered by the expression "non-employment of any person". As long as the dispute is connected with the employment or non-employment, etc. of 'any person' it will be an industrial dispute provided, of course, the two parties to the dispute are either employers and employers, or employers and workmen or workmen and workmen. The words "any person" could only mean those persons in whom the workmen themselves were directly and substantially interested. ILR (1958) 1 All 434 : AIR 1958 All 80 (88) (Pt H) (Pr 10) (DB).

——S. 2—Industrial Disputes — What is — Essential requirements for a dispute to become industrial dispute, indicated. See Industrial Disputes Act (1947), S. 2 (k). A I R 1955 N U C (All) 2664.

——S. 2—Industrial Dispute — Single workman. See Industrial Disputes Act (1947), S. 2 (k). A I R 1954 All 516.

——S. 2—Industrial dispute—Meaning — Cause of a dismissed workman taken up by Trade Union — On reference by Union matter referred for adjudication —Held there was industrial dispute.

A dismissed employee falls within the definition of a "workman" and a dispute raised by him in connection with his non-employment does fall within the purview of the term "industrial dispute". A I R 1949 F C 148 and A I R 1949 F C 111, Rel. on.

A dispute between an employer and an isolated workman may or may not be an industrial dispute within the Act, but when such dispute is taken over by a Trade Union which moves the proper authorities and a reference is thereon made by the State Government to an Industrial Tribunal for adjudication, there is a dispute between an employer and a trade union which represents the workmen in that line and as such amounts to an 'industrial dispute' within S. 2 of the Act. A I R 1951 Mad 191 and A I R 1951 Mad 616, Disting.; 55 C W N 256, Not foll.

It does not cease to be an industrial dispute merely because the Union did not make a demand for his reinstatement to the employer after his dismissal and before moving the Board A I R 1952 Cal 72, Foll. (1953) 1 Lab L J 1 : (1952-53) 4 F J R 479 : 1952 All L J 353 ; A I R 1952 All 992 (995) (Pt C) (Prs 17, 18) (DB).

5. "Settlement".

● ——S. 2 (t) — Applicability — Judgment of Labour Appellate Tribunal—Appeal against, by special leave pending — Compromise by parties — S. 6-C does not operate as bar — S. 2 (t) or procedure prescribed by R. 5 (1) not attracted. Compromise agreement was not "settlement' within meaning of S. 2 (t). See Constitution of India, Art. 136. A I R 1961 S C 429.

6. "Workman".

● ——S. 2 — Employed in any industry — Includes persons employed in operations incidental to main industry — Spinning and Weaving Mills providing bungalows with attached gardens to its officers and directors—Malies engaged to look after gardens are employed in the industry and are workmen. See Industrial Disputes Act (1947), S. 2 (s). A I R 1964 S C 737.

● ——S. 2 (1)—Inspectors, salesmen and retail salesmen of Company manufacturing matches at its factories—Writing work taking up seventy-five per cent. of the time of these categories of sales staff — Held, that the finding that they were 'workmen' within the meaning of the Act was not erroneous. Western India Match Co., Ltd. v. Their Workmen. (1964) 3 S C R 560 : (1963) 7 Fac L R 256 : (1963) 2 Lab L J 459 : (1964-65) 26 F J R 56 : (1965) 1 S C J 141 ; A I R 1964 S C 472 (474) (Pt A) (Pr 7).

● ——S. 2 — Standing Orders under — Definition of workman — Includes workman employed through contractor—Employed by factory means every person employed to do work of factory.

The words 'employed by the factory' used in the definition of workman in the Standing Orders, in their ordinary grammatical sense, include every person who is employed to do the work of the factory. The use of the word 'by' has nothing to do with the question as to who makes the appointment. The reason why 'by' was used instead of 'in' appears to be to ensure that if a person has been employed to do the work of the industry, whether the work is done inside the factory or outside the factory, he will get the benefit of the Standing Orders. The words "employed by a factory" are therefore wide enough to include workmen employed by the contractors of factory also. Basti Sugar Mills, Ltd. v. Ram Ujagar, (1963) 7 Fac L R 253 : (1963) 2 Lab L J 447 : (1963-64) 25 F J R 1 ; (1964) 2 S C R 838 : (1964) 2

S C J 811 : A I R 1964 S C 355 (358) (Pt C) (Prs 10, 12).

——S. 2 (2) — Workman — Notification, dated 27th April, 1961, Apt. V — Welfare Officer appointed in factory is not workman.

Where from the rules prescribing the service conditions of a Welfare Officer appointed in a factory under S. 49 (1) of the Factories Act, 1948, it can be gathered that a Welfare Officer is only concerned with the managerial or administrative work, he cannot claim to be a "workman" within the meaning of Appendix V to the Order contained in the Notification published in the U. P. Gazette, Extraordinary, dated 27th April, 1961. He cannot, therefore, claim that he should be allowed to continue in service up to the age of 58 years as prescribed in that Order. A I R 1964 All 411 (416) (Pt C) (Pr 15).

——Ss. 2 (i) (iv), 2 (z)—Workmen employed by contractor—Are also workmen of owner of industry and as such entitled to amenities and benefits enjoyed by other workers — Primary responsibility lies on contractor — Industrial Disputes Act (1947), S. 2 (s).

The definition of 'employer' as contained in S. 2 (i) of the Act is not exhaustive: it is illustrative in the sense that it merely indicates who come within the category of employers. Consequently, the actual employer of the worker does not cease to be an 'employer'. In other words, the workmen employed by a contractor are the workmen of both the contractor and of the owner of industry who employs the contractor. They are the workmen of the owner for purposes connected with the object of the enactment and also the particular benefit claimed, and of the contractor in other respects.

Further, the workman shall be entitled to all the amenities and privileges to which the workmen of the industry are entitled, unconcerned by whom such amenities or benefits are to be provided. If under the contract between the owner of an industry and the contractor, the amenities or benefits are to be provided by the contractor, the intitial responsibility shall be of the contractor but if for some reason he is not able to provide such amenities or benefits, the workmen shall have the right to claim such amenities or benefits from the other employer, namely, the owner of the industry. A I R 1957 S C 264, Rel. on. Case Law referred to. (1961) 3 Fac L R 178 : (1962) 1 Lab L J 455 (All).

——S. 2 (z)—Contractor—When a workman of owner of industry— Industrial Disputes Act (1947), S. 2 (s).

The qusetion whether a person who is given contract for the execution of a work should be treated as contractor or workman will depend upon whether the contract was for service or of service. If the contract was for service, the person would be a contractor and cannot be placed in the category of an employee or workman for purposes of the Act, on the other hand, if the contract was of service, even though the person is called a contractor, he shall in the eye of law, be a workman.

The main test for determining whether the contract is for service or of service is the existence of the right in the master to supervise and control the work done by the servant, not only in the matter of directing what work the servant is to do, but also the manner in which he shall do his work. AIR 1957 S C 284 and A I R 1958 S C 388, Rel. on. (1961) 3 Fac L R 178 : (1962) 1 Lab L J 455 (All).

——Ss. 2 (1) and 3 (b)—Doctor and Compounder are not 'workmen'—G. O. No. 167 (ST.) (II)/XVIII, dated 11-1-1950 —Validity of.

The persons of the medical staff, namely the doctor and the compounder do not answer the definition of 'workman' as adopted by the Act by S. 2 (1). It follows, therefore, that the State Government cannot by an order under S. 3 (b) of the U. P. Industrial Disputes Act, 1947, give directions regarding their treatment and conditions of employment and that, therefore so much of para. 1 of the G. O. No. 167 (ST.) (II)/XVIII, dated 11-1-1950, is beyond the competence of the U. P. Government as relates to the doctor and compounder. (1955) 2 Lab L J 1 : I L R (1956) 1 All 216 : A I R 1955 All 578 (579) (Pt A) (Pr 7) (DB).

——S. 2 — 'Workman' — 'Dismissed employee—[Industrial Disputes (1947), S. 2 (s)].

A dismissed employee falls within the definition of a 'workman' and a dispute raised by him in connection with his non-employment does fall within the purview of the term 'industrial dispute'. 1954 All W R (HC) 502 : A I R 1954 All 516 (517) (Pt A) (Pr 6).

SECTION 3

SYNOPSIS

(U. P. Industrial Disputes Act (1947), S. 3.)

1. Interpretation.
2. Validity of the section.
3. Condition precedent in the order of State Government.
4. Ingredients of Order and presumptions thereunder.
5. Order of reference of dispute to adjudicator.
6. Industrial dispute once withdrawn if can be referred afresh.
7. Clause (b)—Orders relating to terms and conditions of employment.
(A) Order for payment of bonus if can be passed.
8. Representation of parties.
9. Jurisdiction and powers of Industrial Courts.
10. Conciliation Board.
11. Notifications under—Miscellaneous.
12. Writ under Art. 226 of the Constitution.
13. Appeal.

1. Interpretation.

——S. 3—Interpretation of Statutes — Court to avoid absurdity—Intention of legislature to be ascertained. See Interpretation of Statutes. (1965) 11 F L R 388 (All).

——S. 3 — 'Securing' means make secure or safe and not to get hold or possession of (some desirable) as result of effort or of (words and phrases). A I R 1955 N U C (All) 1732 (DB).

——S. 3—Interpretation of —Word 'for' interpreted. AIR 1955 N U C (All) 1732 (DB).

2. Validity of the section.

——S. 3, Cls. (c), (d) and (g)—Validity—S. 3 so far as Cls (c), (d) and (g) are concerned does not are suffer from excessive delegation and is not unconstitutional on that ground. See Constitution of India, Art. 245. AIR 1961 S C 1381.

——S. 3—Validity —Government's powers under—If arbitrary.

The normal way of dealing with an industrial dispute under the Act would be to have it dealt with judicially either by conciliation or by adjudication and that judicial process cannot be circumvented by resort to executive action. But there may be an emergency and the Government may have to act promptly "for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or maintaining employment." It was, therefore, necessary to arm it with additional powers for dealing with such an

emergency. Clause (b) of S. 3 was apparently enacted for this purpose. An order made thereunder would be in the nature of a temporary or interim order as would be clear from the words "for such period as may be specified" appearing therein and from the second proviso to S. 3. Under this proviso where an industrial dispute is referred for adjudication under Cl. (d) an order made under Cl. (b) cannot be enforced after the decision of the adjudicating authority announced by or with the consent of the State Government. It would therefore, follow from this that where the Government has made an executive order, under Cl. (b) of S. 3, it is open to the aggrieved party to move the Government to refer the industrial dispute for conciliation or adjudication under Cl. (d) of Section 3.

Under S. 3 the Government has no doubt a discretion whether or not to refer a dispute for conciliation or adjudication under Cl. (d) but if it has acted under Cl. (b) on the ground that it was in the public interest to do so it would not be open to it to refuse to refer the dispute. In case the State Government is recalcitrant it could be forced to do its duty by the issue of a writ of mandamus under Art. 226 of the Constitution. By limiting the operation of Cl. (b) to an emergency it cannot be said that any violence is done to the language used by the legislature. On the above construction of Cl. (b) of S. 3 no question of discrimination at all arises under Article 14 of the Constitution. Similarly the fact that action was taken by the Government under Cl. (b) in an emergency in the public interest would be a complete answer to the argument that the action is violative of Art. 19 (1) (g) of the Constitution. State of U. P. v. Basti Sugar Mills Co. Ltd., (1961) 2 S C R 330 : (1961) 2 Fac L R 101 : (1962) 2 Lab L J 379 : (1963) 1 S C J 778 : ILR (1961) 1 All 384 : (1960-61) 19 F J R 211 : (1961) 1 Lab L J 220 : A I R 1961 S C 420 (425, 426) (Pt B) (Prs 9, 10, 11).

——S. 3 (b) — Validity — Provision does not violate Art. 14 of the Constitution. See Constitution of India, Art. 14. (1965) 11 F L R 388 (All).

——S. 3 (b) (c) and (d) — Clauses (b), (c) and (d) of S. 3 are valid. AIR 1954 All 538 (FB) and AIR 1954 All 550, Foll.; A I R 1954 S C 465 and AIR 1951 S C 332, Rel. on. A I R 1956 All 689 (691) (Pt A) (Pr 5) (DB).

——S. 3 (c) (d) (g) — Section is not ultra vires and unconstitutional on ground of delegation of essential legislative powers to a non-legislative body. See Constitution of India, Art. 245. A I R 1955 N U C (All) 1732 (DB).

——S. 3 (b) and (c) — Validity — (Constitution of India, Art. 245).

Clauses (b) and (c) of Section 3 of the U. P. Industrial Disputes Act 1947, are valid and not ultra vires the legislature on ground of delegation of essential legislative power to the executive. AIR 1954 All 538 (FB); A I R 1954 All 550, Foll. AIR 1954 All 705 (708) (Pt A) (Pr 2).

[Overruled on another point in AIR 1961 S C 420.]

——S. 3—Validity—Delegation of legislative power—What amounts to—(Constitution of India, Art. 245).

There can be no doubt that the U. P. Industrial Disputes Act is legislation on the subject of industrial and labour disputes, a matter within the competence of the State Legislature, and S. 3 of the Act cannot therefore be successfully challenged on the ground of legislative incompetence.

Even on the alternative view that in order to be valid the legislation must lay down a policy for the guidance of the delegates of the power of subordinate legislation, such a policy is laid down in the opening words of S. 3 namely 'securing the public safety or convenience or the maintenance of public order or supplies and services essential for the life of the community, or for maintaining employment.' The power conferred by the Uttar Pradesh Legislature on the State Government by S. 3 of the U. P. Industrial Disputes Act, 1947, to constitute industrial courts cannot therefore be impugned on the ground that it amounts to the delegation of an essential legislative function. AIR 1954 All 538 (FB); AIR 1952 All 868 (FB) and AIR 1951 S C 332 : (1951) S C J 527, Foll. 1954 All W R (H C) 448 : 1954 A L J 576 : I L R (1955) 1 All 761 : AIR 1954 All 550 (551, 552) (Pt A) (Prs 5, 8) (DB).

——S. 3 — Validity — (Constitution of India, Article 245).

Per Full Bench. — S. 3 of the U. P. Industrial Disputes Act, 1947 was not beyond the competence of the legislature and cannot be declared ultra vires on the ground that it delegates legislative or rule-making power of an unspecified character to the Executive Government.

The powers given by S. 3 may be and are indeed of a most wide character, but that fact alone cannot affect its validity. The remedy against delegated legislation is not judicial but political control with which Courts have no concern. A I R 1951 S C 332; 1951 S C J 527 and A I R 1952 All 868 (FB), Applied, Basti Sugar Mills Ltd. v. State of U. P. 1954 All W R (HC) 428 : 1954 A L J 452 : I L R (1954) 1 All 457 : A I R 1954 All 538 (541, 542, 546, 547) (Pt A) (Prs 6, 7, 15) (FB).

[Reversed on another point in AIR 1961 S C 420].

——S. 3 — If offends Arts. 19 (1) (f) and 31 of the Constitution—[Constitution of India, Arts. 19 (1) (f) and 31].

Per Full Bench. — The provisions of S. 3 of the U. P. Industrial Disputes Act, 1947, are not invalid on the ground that they offend the fundamental rights guaranteed under Arts. 19 (1) (f) and 31 of the Constitution.

Section 3 does not purport to interfere, in any manner, with the right of a citizen to acquire, hold or dispose of property. It only deals with orders that might be made in relation to strikes, lock-outs, terms and conditions of employment, appointment of Industrial Courts, settlement of Industrial disputes and closure; non-closure and exercise of control over any public utility service or any subsidiary undertaking and similar matters. It cannot, therefore, be said that this section empowers the executive Government to interfere with the right of a citizen to acquire, hold or dispose of property.

An order passed under S. 3 of the Act for payment of bonus or retainer allowance in connection with the regulation of employment in a factory can, in no way be said to interfere with the right of the proprietors of the factory to acquire, hold or dispose of property.

Article 31, however, permits deprivation of property of a person by authority of law, and as the law, under which the order purports to have been made by the State Government is a valid law, so that, if the orders fall within the purview of S. 3, they cannot be challenged on the ground that they infringe the fundamental right guaranteed by Art. 31 of the Constitution as no property is being taken possession of or acquired for public purposes. Even if Cl. (2) of Art. 31 be held applicable the U. P. Industrial Disputes Act would not be affected by Cl. (2) of Art. 31, as provided in sub-cl. (a) of Cl. (5) of Art. 31 of the Constitution. Basti Sugar Mills, Ltd. v. State of Uttar Pradesh, 1954 All W R (HC) 428 : 1954 A L J 452 : I L R (1954) 1 All 457 : A I R 1954 All 538 (542, 547) (Pt F) (Prs 8, 16) (FB).

[Reversed on another point in AIR 1961 S C 420]

3. Condition precedent in the order of State Government.

——S. 3—Formation of opinion by Government under S. 3 of the U. P. Act—Burden of proving that it was necessary to make Government order for one of the purposes mentioned in S. 3 would be on State Government—See Evidence Act (1872), Ss. 101-103. **AIR 1956 All 689 (DB).**

——S. 3 — Condition precedent to exercise of power by State Government under S. 3.

Under S. 3, U. P. Industrial Disputes Act, the power of the State Government to promulgate general or special order under Cls. (a) to (g) of that section could only be exercised if in the opinion of the Provincial Government, it became necessary or expedient so to do for one or more of the purposes mentioned, viz., securing the public safety or convenience or the maintenance of public order or supplies and service essential to the life of the community or for maintaining employment. The power of the State Government to pass orders under various clauses of S. 3 is thus subject to a condition precedent, that such an opinion should be formed by the State Government, (Point conceded). **A I R 1956 All 689 (692) (Pt B) (Pr 7) (DB).**

——S. 3—Order purporting to have been made under S. 3 of U. P. Act—Order not containing expression of compliance of condition precedent—Presumption as to such compliance cannot be made—(Evidence Act (1872), S. 114).

Where there is no expression of the opinion formed by the State Government in regard to the matter mentioned in S. 3, U. P. Industrial Disputes Act, in the order purported to have been made under that section, and the contents and language of that order do not indicate that that order was limited in its purposes to those mentioned in S. 3, it is not possible to hold that under the general provision made under S. 114, Evidence Act, a presumption can be drawn that before that order was passed, the State Government has formed an opinion about the necessity or expediency of making it for one of the purposes in S. 3. A I R 1947 All 191 (FB), Disting. **AIR 1956 All 689 (694) (Pt D) (Pr 10) (DB).**

——S. 3 (d) and (e):— Exercise of power under Cl. (d) is independent of power under Cl. (e).

Under S. 3, U. P. Industrial Disputes Act, the provisions in Cl. (d) for referring any industrial dispute for conciliation or adjudication is not necessarily governed by and is not subject to the appointment of an industrial Court under Cl. (e) of that section. This power for referring the industrial dispute for conciliation and adjudication can be exercised even without appointing Industrial Courts under Cl. (e). **AIR 1956 All 689 (697) (Pt I) (Pr 13) (DB).**

4. Ingredients of order and presumptions thereunder.

——S. 3 — Ingredients of order passed under S. 3 published in part — Order does not become invalid because these parts are not reproduced in subsequent order and persons are informed of these parts of order by making reference to earlier notification. See Constitution of India, Art. 226. **AIR 1956 All 689 (DB).**

——S. 3—Presumptions that can and that cannot be drawn under S. 21 (3) with respect to order passed under S. 3 See U. P. Industrial Disputes Act (28 of 1947), S. (21) 3. **AIR 1956 All 689 (DB).**

——S. 3—Order of subsequent date referring to order of prior date — Former order found to be of legal effect—Validity of subsequent order.

Where an order made on a subsequent date under S. 3 is self-contained and is a valid order and lays down that the issue with respect to an industrial dispute is to be adjudicated in accordance with the procedure indicated in an order made on a prior date, the fact this order of prior date is of no legal effect, for the reason that it does not comply with the condition precedent laid down in S. 3, is immaterial. **AIR 1956 All 689 (697) (Pt J) (Pr 13) (DB).**

5. Order of reference of dispute to adjudicator.

● ——Ss. 3, 2, 8 and 23—Rules under S. 23—Rules 4, 5, 10, 15 (1), 26, 27 and 28—Individual dispute whether an industrial dispute—Reference to individual dispute by Government—Validity—1953-1 Lab L J 757 (FB), Overruled. See U. P. Industrial Disputes Act (1947), S. 2. **AIR 1957 SC 532.**

● ——S. 3—Bona fide closure of business — Dispute arising with reference thereto is outside the purview of Industrial Disputes Act. See Industrial Disputes Act (1947), S. 10. **AIR 1957 SC 95.**

● ——S. 3—Date of dispute and not date of notification determines power of State to make reference. See Industrial Disputes Act (1947), S. 10. **AIR 1957 SC 95.**

● ——S. 3 — Industrial dispute — Conditional offer made by management of industry to trade union — Condition not accepted. See Contract Act (1872), S. 2 (b). **AIR 1957 SC 95.**

● ——S. 3 — Conciliation proceedings pending—Dismissal of workmen with permission of Assistant Regional Conciliation Officer — Such dismissal itself can form industrial dispute—Scope of enquiry before Regional Conciliation Officer, before granting permission to dismiss, stated—What Cl. 24 (1) of U. P. Government Order dated 10-3-1948 under U. P. Act (28 of 1947) does is to prevent party to pending proceeding from challenging written permission—Written permission only removes ban on dismissal during pendency of proceedings—Discretion in dismissing is of employer. In case of dismissal, industrial dispute would arise. See Industrial Disputes Act (1947), S. 2 (k). **AIR 1953 SC 241.**

——S. 3 — Order under — G. O. No. U.464 (LL) XXXVI-B 257 (LL)/1954 dated 14-7-1954, Cl. 11 — Order of reference of dispute to adjudicator — Absence of recital required by Cl. 11 in order — Not fatal—Evidence can be adduced to remedy defect.

An order of reference of a dispute to an adjudicator is not bad in law merely because of the absence of a recital in the referring order that the State Government had applied its mind to the facts of the caes and had thought it proper, after considering the nature of the dispute, or considering the convenience of the parties, to refer the matter of dispute to an adjudicator. The absence of such recital is not fatal and the defect can be remedied by showing by other evidence that in fact the order was made after such opinion had been formed. AIR 1961 SC 1381; AIR 1952 SC 317; AIR 1954 SC 359; AIR 1955 SC 41 and Sp. App. No. 376 of 1955, dated 22-4-1957 (All), Rel. on. **AIR 1964 All 156 (158) (Pt A) (Pr 8) (DB).**

——S. 3 — Reference of dispute to labour Court is purely administrative decision — Principles of res judicata do not apply — Civil P. C. (1908), S. 11 — Scope—Applicability.

Whether a certain industrial dispute should be referred to a Labour Court or not is purely an administrative decision. The principle of res judicata does not apply to administrative decisions.

Held on facts that though the Labour Commissioner thought in February 1959 that it was not

worthwhile referring the industrial dispute to a Labour Court, it was open to the State Government to arrive at a different conclusion in view of the circumstances, which existed in February 1960. The decision made in February 1960 was not barred by the general principle of res judicata. AIR 1955 All 549, Rel. on. **(1963) 1 Lab L J 340 (All).**

—S. 3 — Reference of dispute to Labour Court — U. P. Industrial Disputes Rules (1957), Rr. 4, 5 — **Held** on facts that reference cannot be said to be barred on ground that parties did not follow procedure prescribed by Rr. 4 and 5. U. P. Industrial Disputes Rules (1957), Rr. 4, 5. **(1963) 1 Lab L J 340 (All).**

——S. 3 — Notification under — Factual existence of disputes and necessity to issue notification — Matters not justiciable — Courts are competent only to go into question whether the dispute referred constituted an industrial dispute or not. See Industrial Disputes Act (1947), S. 10. **AIR 1953 All 80 (DB).**

——Ss. 3, 4, 8—U. P. Government Order No U-464 (L.L.)/36 B—257 (L.L.)/1954, (Dated 14-7-1954), Paras. 3, 5 (3), 11—Reference of industrial dispute in certain concern by workers' union of industry when there was workers' union of concern itself—Validity — Dispute referred to industrial Tribunal by State Government — Reference — If open to challenge on ground of competency of workers' union of industry to make reference.

Held, that the reference of the dispute by the State Government to the Industrial Tribunal could not be called in question as the State Government had got such power under para. 11 of the Government Order and the proceedings would not be vitiated even if the workers' union of the industry was not competent to refer the dispute for settlement on behalf of the workmen of the concern when there was workers' union of the concern itself.

Obiter ; The workers' union of the industry would, under Para. 3 of the Government Order, be entitled to make the reference even without the authority of the workers' union of the concern. **(1957) 1 Lab L J 32 ; (1956-57) 11 F J R 107 : AIR 1956 All 597 (599) (Pt A) (Pr 13) (DB).**

——S. 3 (b) — Doctor and Compounder are not "workmen" — G. O. No. 167 (ST) (II)/XVIII, D/-11-1-1950 is beyond competence of U. P. Government as relates to the doctor and compounder. See U. P. Industrial Disputes Act (28 of 1947), S. 2 (1). **AIR 1955 All 578 (DB).**

——S. 3 — State Government considering it inexpedient to refer certain dispute for adjudication—State Government can refer same dispute subsequently.

The opinion as to the necessity or expediency for referring an industrial dispute for adjudication for one of the purposes mentioned in S. 3 has to be formed by the State Government at the time when the State Government decides to make a reference of the dispute for adjudication. It is impossible to contend that the necessity or expediency of making a reference of a particular industrial dispute must or will remain the same at all times because, at different times, different circumstances may exist.

It is really for the State Government to judge for itself, when forming its opinion whether there had been change of circumstances. It is even doubtful whether the State Government can be called upon to give in Court his reasons for changing its opinion and holding that it was necessary or expedient to refer the dispute for adjudication when it had held earlier, that it was not so. The correctness of such an opinion is not open to judicial scrutiny by Courts. **AIR 1955 All 549 (551) (Pt B) (Pr 6).**

——S. 3 — Reference mentioning company by name in which it carries on business is valid — (C. P. Code (1908), O. 30, R. 10). **AIR 1955 NUC (All) 1733.**

——S. 3 (d)—Existence of industrial dispute—Determination—Jurisdiction of Court.

If the dispute is an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. **1954 A W R (HC) 448 : 1954 All L J 576 : ILR (1955) 1 All 761 : AIR 1954 All 550 (552) (Pt B) (Pr 9) (DB).**

6. Industrial dispute once withdrawn if can be referred afresh.

——S. 3 — Industrial dispute once withdrawn if can be referred afresh.

There is no provision in U. P. Industrial Disputes Act of 1947 or in the orders passed under that Act, laying down that a dispute once withdrawn from the Regional Conciliation Board cannot be referred to it afresh. It is only in cases where there might have been a decision of the industrial dispute by an award that a question may arise whether that award is or is not valid on the ground that a previous dispute had been withdrawn. No such question would arise where there has been no award at all and the order sought to be enforced is not an award in an industrial dispute but an order of the State Government in the exercise of other powers granted to it by the Statute. **AIR 1954 All 705 (710) (Pt D) (Pr 8).**

[Overruled on another point in AIR 1961 SC 420].

7. Clause (b) — Orders relating to terms and conditions of employment.

(A) Order for payment of bonus if can be passed.

7. Clause (b) — Orders relating to terms and conditions of employment.

● ——Ss. 3 (b), 3 (g) — Notification under — Applicability—Notification No. 3754 (LL.) XVIII 894 (L.)/1948 dated 6th December 1948—Reference to industrial employees therein — Not limited to persons employed in manufacturing process — Malies employed by mills coming within definition of workmen—Held entitled to benefits under the notification —1956 Lab A C 549 (Lati-Luck), Overruled. J. K. Cotton Spinning and Weaving Mills Co., Ltd. v. Labour Appellate Tribunal of India, (1963) 7 Fac L R 289 ; (1964) 3 SCR 724 ; (1963) 2 Lab L J 436 : (1963.64) 25 FJR 93 : ILR (1964) 1 All 17 ; AIR 1964 SC 737 (741, 742) (Pt B) (Prs 15 to 17).

——S. 3 (b)—Order for retrospective enforcement of terms—Validity.

An order under the section can be only with respect to the period following the making of the order and cannot be a retrospective order. An order which provides for the enforcement of the terms from the date of the settlement itself is a bad order so far as it related to the period from the date of settlement to the date of the making of the order and cannot operate to that extent. **AIR 1958 All 688 (691) (Pt D) (Pr 19) (DB).**

——S. 3 (b) — U. P. Government Order, D/- 1.10-1951 laying down certain Standing Orders — Order directing employers to pay workmen wages for un-

availed leave—Whether invalid. See Government of India Act (1935), S. 107. AIR 1956 All 401.

——S. 3 (b)—No power to Government to issue order having retrospective effect.

The State Government cannot make an order under S. 3 (b) of the Act to be operative retrospectively. Hence, the direction given in para. 2 of the G. O. No. 167 (ST.) (II)/XVIII, dated 11-1-1950 cannot be given by the State Government in the exercise of its powers under the Act. AIR 1954 All 538 (FB), Foll. **(1955) 2 Lab L J 1 : ILR (1956) 1 All 216 : AIR 1955 All 578 (580) (Pt B) (Pr 8).**

——S. 3 (b)—Regional Conciliation Board established under G. O No. 781 (L)/XVIII, dated 10th March 1948—Findings under Para. 15 of Order — Value of —Appeal to Labour Appellate Tribunal—Validity of its decision.

The findings of the Industrial Court under para. 15 of the G. O. No. 781 (L)/XVIII, dated 10th March 1948 do not amount to a decision or an award; they are mere findings which are submitted to the Government which ultimately passes an order under S. 3 (b), U. P. Industrial Disputes Act. When the Industrial Court gives no decision, no appeal can validly lie to the Labour Appellate Tribunal against its findings; any order by the Labour Appellate Tribunal in such an appeal is invalid and deserves to be quashed. AIR 1954 All 705, Foll. **(1955) 2 Lab L J 1 : ILR (1956) 1 All 216 : AIR 1955 All 578 (580) (Pt C) (Pr 9) (DB).**

——S. 3 (b), (d) and Proviso 2 — Applicability and scope — Cl. (2) of Proviso to S. 3 applies to all orders under Cl. (b) — Order under S. 3 (b) — Question can still be referred to Industrial Tribunal — Labour Appellate Tribunal treating cl. (b) as binding upon it, refusing to apply its own mind to question raised before it—Appellate Tribunal held failed to exercise jurisdiction on erroneous view of law — It is error apparent on face of judgment—Certiorari can issue—(Constitution of India, Art. 226). **AIR 1955 N U C (All) 3296.**

——Ss. 3 (b) and 6—Reference to Regional Conciliation Board regarding reinstatement of employee—Award—Appeal to Industrial Court—Court confirming findings of Board and making recommendations to Government for reinstatement of employer and payment of past wages—Order of Government, dated 3-12-1949, directing enforcement of those findings—Validity—(Constitution of India, Art. 226).

The petitioner, a sugar company, struck off the name of R, one of its employees, from the register of employees. Opposite party No. 4 which was a registered trade union, thereupon applied to the Regional Conciliation Board (Sugar), Gorakhpur, for reinstatement of R. This reference to the Board was made under S. 3, U. P. Industrial Disputes Act, 1947 read with the general order of the U. P. Government contained in the Notification No. 781 (L)/XVIII, dated 10.3 1948. On 6th July, 1949 the Board gave a decision against the petitioner, directing the petitioner to re-instate R and to pay him arrears of salary for the period which elapsed between the order of dismissal and his re-instatement. On 13th July, 1949, the petitioner filed an appeal against this order before the Industrial Court (Sugar), Lucknow. On this appeal, the findings were given by the Industrial Court (Sugar) Lucknow, on the 15th of September, 1949 and the Court sent its recommendations to the Government. The finding recorded by the Industrial Court was to the following effect; 'I therefore, agree with the decision of the Board below that R who was a permanent hand of the factory, should be reinstated to his post with continuity of service and the entire wages paid to him for the period of his involuntary unemployment within 15 days from the date of the enforcement of this report by the Government, and I recommend accordingly.' On 3-12-1949, the Government issued a notification directing that the findings of the Industrial Court (Sugar), Lucknow, be enforced.

Held, (i) on a consideration of the General Order, dated the 10th of March, 1948, that the Industrial Court, constituted under that order, was not given any power to give an award or even to decide the appeal filed before it against the award of the Regional Conciliation Board. What the Industrial Court did on the 15th of September, 1949, was to record its opinion on the points in dispute, frame its recommendations and forward them to the Government for orders. It was, therefore, in the nature of a report by the Industrial Court to the State Government containing its recommendations with reasons therefor. There was no adjudication of any industrial dispute or an award in any such dispute. Consequently, Section 6 of the U. P. Industrial Disputes Act, 1947, would not apply to it at all and that report could not be enforced by the Government as an award under S. 6 of the Act. No doubt, when issuing the notification on the 3rd of December, 1949, the Government purported to exercise the powers conferred on it by S. 3 read with S. 6 of the U. P. Industrial Disputes Act but the mere mention of the powers under S. 6 of the Act would not make that order an order under S. 6.

(ii) The second part of the recommendation of the Industrial Court was for payment of wages for the period of unemployment which had already expired on the date on which the findings were enforced by the State Government. This part of the order of the State Government was, therefore, clearly retrospective as it related to payment of wages for a past period which had expired before the order under S. 3 (b) was passed by the Government. Such orders for payment of wages in respect of periods already expired cannot be validly passed under S. 3 (b) and this part of the order was therefore clearly illegal and its enforcement must be restrained by issue of a writ of mandamus. AIR 1954 All 538 (FB), Foll.

(iii) The order passed on the 3rd of December, 1949, was not an order of the nature contemplated by S. 3 (b) of the U. P. Industrial Disputes Act, 1947. It was an order of the State Government which, in effect, gave its decision on the industrial dispute relating to enforcement of certain terms and conditions of service and not an order requiring the petitioner to observe terms and conditions of service specified in the order. This part of the order was therefore, beyond the competence of the State Government, acting in exercise of its powers under S. 3 (b). Enforcement of that part of that order after the 26th of January, 1950, would be action taken on an order which had no validity in law even when passed and such action by the opposite parties must be restrained by the issue of a writ of mandamus. **AIR 1954 All 705 (710 to 714) (Pt E) (Prs 9, 10, 12, 14).**

[Overruled on another point in AIR 1961 S C 420].

——S. 3 (b) — 'Terms and conditions of service', meaning of —(Constitution of India, Art. 309).

In S. 3 (b) of the U. P. Industrial Disputes Act, 1947, the expression 'conditions of employment' was used in order to cover the words 'employment, non-employment and conditions of labour' which were used in the definition of an industrial dispute.

The words 'terms and conditions of employment' used in S. 3 (b), cannot be considered to be narrower than the expression 'conditions of service' used in the Government of India Act, 1935, and the Constitution and; therefore, would surely cover terms and conditions relating to removal and dismissal of the workmen. Reinstatement is different from re-employment.

In the case of re-employment, a person, at the time of his re-employment, is not deemed to be in service and his re employment really amounts to a fresh recruitment or appointment. The position in the case of re-instatement is different as re-instatement implies continuance of previous service. It is true that the effect of re-instatement in one respect is the same as the effect of re-employment, viz., that the person reinstated or re-employed comes back into the service of the employer from the date on which the order for re-instatement or re-employment is made effective but there is one very important distinction. In the case of re-instatement, there is continuity with the previous service whereas, in the case of re employment, there is a fresh start of a new service. Re-instatement and re-employment cannot, therefore, be dealt with on the same basis and even if the word 're-employment' be held to be covered by the words 'recruitment or appointment', there is no reason to hold that the word 're-instatement' must also be similarly covered by these words. Re-instatement in service, which brings into effect continuity of the previous service, is clearly an order relating to terms and conditions of service, or, terms and conditions of employment. AIR 1954 All 705 (713) (Pt F) (Pr 13).

[Overruled on another point in AIR 1961 S C 420.]

——S. 3 (b)—Nature of order that can be passed by Government.

The expression 'to observe for such period as may be specified, such terms and conditions of employment as may be determined' gives an indication that Cl. (b) of S. 3 of the U. P. Industrial Disputes Act, 1947, is meant for the purpose of passing orders by which the Government gives directions about what the terms and conditions of employment should be and not how a particular term and condition of employment already in existence should be acted upon. It appears from the language that this provision was not meant for the purpose of dealing with individual disputes arising out of the application of a term or condition of employment and no power was granted to the State Government, under this provision of law, to sit as an adjudicator to decide a dispute that might have arisen relating to the working and actual application of terms and conditions of employment already in force. The provision was for the purpose of enabling the State Government to vary the agreed terms and conditions of employment for purposes specified in S. 3 of the U. P. Industrial Disputes Act, 1947, under the pressing necessities or expediency justifying such course of action. AIR 1954 All 705 (714) (Pt G) (Pr 14).

[Overruled on another point in AIR 1961 S C 420.]

7 (A). Order for payment of bonus if can be passed.

● ——S. 3 (b) — State Government—Power to make payment of bonus for past period a condition of employment of workmen.

Though Cl. (b) of S. 3 cannot be given a retrospective effect it is open to the State Government to make the payment of bonus for a past period to the workmen a condition of their employment in future and augment their past wages. By giving a direction to the employer to pay such bonus the State Government does not give a retrospective operation to the clause. (1956) 2 Lab L J 11 (All), Approved; AIR 1954 All 538, Reversed; AIR 1954 All 705, Overruled. **(1961) 2 S C R 330 : (1961) 2 Fac L R 101 : (1962) 2 Lab L J 379 : (1963) 1 S C J 778 : I L R (1961) 1 All 384 : (1960-61) 19 F J R 211 : (1961) 1 Lab L J 220 : AIR 1961 S C 420 (424) (Pt A) (Prs 4, 5).**

——S. 3 (b) — Notification under, directing payment of bonus by sugar factories — Notification held not made in colourable exercise of power. W. P. Nos. 2909 and 2910 of 1962, Foll. (1965) 11 F L R 398 (All).

——S. 3—Order for payment of bonus — Contravention of Art. 19 (1) (f)—(Constitution of India, Art. 19 (1) (f).)

An order for the payment of a bonus made under S. 3 of the U. P. Industrial Disputes Act cannot in any way be held to interfere with the right of the employer to acquire, hold or dispose of property, within the meaning of Art. 19 (1) (f) of the Constitution. **A I R 1954 All 538 (FB), Foll. 1954 A W R (HC) 448 : 1954 All L J 570 : (LR (1955) 1 All 761 : AIR 1954 All 550 (553) (Pt C) (Pr 10) (DB).**

● ——S. 3 (b) — Order directing payment of bonus and retainer allowance if can be passed.

Per V. Bhargava J. — Since bonus can be a term or condition of employment an order can be made under Cl. (b) of S. 3 relating to payment of bonus. As regards the order relating to payment of retainer allowance there can be no doubt at all that such order is specifically made for the purpose of regulating the terms and conditions of employment. Such an order can be passed under S. 3 (b) of the U. P. Industrial Disputes Act. Basti Sugar Mills, Ltd. v. State of Uttar Pradesh, **1954 All W R (HC) 428 : 1954 A L J 452 : I L R (1954) 1 All 457 : A I R 1954 All 538 (547) (Pt H) (Pr 18) (FB).**

[Reversed on another point in AIR 1961 S C 420.]

● ——S. 3 (b) — Order under directing payment of past bonus—Notification No. 1425 (SH) (II)/XVIII-13 (ST)-50. dated 5th July, 1950—Validity.

Per Malik, C. J. and Bhargava, J. — (Sapru, J. dubitante).

The order of the U. P. Government contained in Notification No. 1425 (ST) (II)/XVIII-13 (ST)-50, dated 5th July, 1950, and passed under S. 3 (b), U. P. Industrial Disputes Act, 1947 in so far as it directs the sugar factories to which the notification applies, to pay bonus in respect of the past years 1947-48 and 1948-49 is ultra vires and invalid as the U. P. Government had no authority to pass an order determining the conditions of service of the workmen with retrospective effect and in any case such bonus could be payable only to the workmen who were in service in those years. The order relating to payment of retaining allowance is valid and effective.

Clause (b) of S. 3 of the U. P. Industrial Disputes Act cannot be given any retrospective effect. The language of this provision is such as to give a clear impression of the intention of the legislature that orders under it must be purely prospective so as to govern future terms and conditions of service. The use of the words, 'requiring to observe for such period', is a clear indication that the order should lay down the course of conduct to be followed by the employers, workmen or both in future during the period which is to be specified in the order. There cannot be any question of making an order, requiring employers or workmen to observe, for the specified period, terms and conditions of employment which relate to the past employment before the passing of the order. So far as past disputes with regard to terms and conditions of employment are concerned, the power, that was granted to the State Government to regulate them, is laid down in Cls. (c) and (d) of S. 3 of the Act whereby an industrial dispute relating to such past terms and conditions of service can be referred for conciliation or adjudication and for such purposes, the State Government can appoint Industrial Courts. Consequently under S. 3 (b) of the U P. Industrial Disputes Act, the State Government's power was restricted to passing orders regulating terms and conditions of employment to be observed during a specified period after

the date of the order and no order could be passed by the State Government so as to alter terms and conditions of service which had already been observed in the past. Basti Sugar Mills, Ltd. v. State of Uttar Pradesh. 1954 A W R (HC) 428 : 1954 A L J 452 : I L R (1954) 1 All 457 : A I R 1954 All 538 (540 to 543, 548 to 550) (Pt I) (Prs 3, 9, 20, 21, 23, 25) (FB).

[Reversed in AIR 1961 S C 420.]

8. Representation of parties.

● —Ss. 3, 4, 8 — Cause of workman can be taken up by unregistered association of workmen. Newspapers Ltd., Allahabad v. U. P. State Industrial Tribunal. (1960) 2 Lab L J 37 : (1960-61) 19 F J R 1 : AIR 1960 S C 1328 (1329) (Pt A) (Pr 4).

—S. 3 — U. P. Government Notification No. U-464 of 14 7-1954 — Clauses 17 and 21 — Rules under — Rule prohibiting lawyer from representing parties — Lawyer-Director of employer company — Allegation that such person purposely made director — Burden of proof is on workers to show that he was made director to represent company — Mere assertion in counter-affidavit is not enough. A I R 1955 N U C (All) 1711.

9. Jurisdiction and powers of Industrial Courts.

● —S. 3—Statutory Order made under S. 3, Cl. 9 (7) — Industrial Tribunal — Its decision in writing is to be pronounced in open Court — Nature of this requirement — It is mandatory — Its non-observance renders award nullity — However Government can require Tribunal to cure defect.

Held, on the construction of the provisions of the Act and various clauses of the Statutory Order that the clear intention of the Legislature was to make it imperative that judgments should be pronounced in open Court by the Tribunal and judgments not so pronounced would therefore be a nullity. However, the proceedings that were had before the Tribunal would not become null and void if it be held Cl. 9 (7) of the Statutory Order to be imperative. The Government can always require the Tribunal to pronounce its decision in open Court extending, if necessary for the purpose, the time fixed for giving its decision. Either party to the proceeding can also ask the Government to call upon the Tribunal to pronounce its award in open Court. As soon as the Tribunal pronounces its award in open Court, the proceedings will become fully effective. A I R 1917 P C 142, Disting. State of Uttar Pradesh v. Lakshmi Ice Factory, Lucknow. (1962) Supp 3 S C R 59 : (1962) 1 Lab L J 281 : (1963) 1 S C J 320 : I L R (1963) 1 All 10 : A I R 1963 S C 399 (401 to 403) (Pt A) (Prs 7, 10, 17).

● —Ss. 3, 5—Company employing contractor for certain work — Dispute between contractor and his workmen regarding terms of work—Dispute referred to Tribunal—Company neither made a party nor any issue concerning company included in reference — Company subsequently added as party — Question whether workmen were employees of company or not raised and decided by tribunal — Decision held to be without jurisdiction as the matter was not referred at all to the tribunal nor did it arise out of any matter specified in the reference order. U. P. Electric Supply Co., Ltd. v. Its Workmen. (1960) 3 S C R 189 : (1960) 1 Lab L J 806 : 1960 S C J 705 : AIR 1960 S C 818 (819) (Pr 5).

—S. 3 — Reference of Industrial dispute outside provisions of statutes — Award on such reference is without jurisdiction — Civil suit to set aside award, is not barred — Civil P. C. (1908), S. 9 — Industrial Disputes Act (1947), Ss. 2 (k), 17 (2).

A civil Court has jurisdiction to entertain a suit in respect of an adjudication made by a tribunal if it is shown that the award or the adjudication was wholly without jurisdiction or was founded on a reference made outside the provisions of the statutes.

Where, in respect of an industrial dispute raised by a workman in his individual capacity, the State Government made a reference to the adjudicator who made an award, and the employer filed a civil suit to set aside the award.

Held, that the dispute raised by a workman in individual capacity was no industrial dispute within the definition of that term. The reference to adjudication was, therefore, against the provisions of S. 3 of the U. P. Industrial Disputes Act and the award therefore was wholly without jurisdiction and the jurisdiction of the civil Court to entertain the suit was not barred. A I R 1963 S C 1547; A I R 1964 S C 322, Rel. on. (1965) 10 Fac L R 219: (1965) 2 Lab L J 593 (All).

—S. 3—Order under—G. O. No. U-464 (LL.) XXXVI-B-257 (LL)/1954, dated 14-7-1954, Cl. 7—Applies in terms only to a Tribunal and not to an Adjudicator—Adjudicator need not pronounce award in open Court in presence of parties—Award not void for failure to do so. AIR 1964 All 156 (160) (Pt C) (Pr 14) (DB).

—S. 3—Contract of service between employer and employee—Termination of service according to contract—Power of Adjudicator to go behind and modify same.

Held, on facts: that it was not open to the Adjudicator to go behind the agreement entered into between the parties and the Adjudicator had gone beyond his jurisdiction in modifying the agreement and in directing restoration or reinstatement of the employee and making him permanent for all time; when he was only temporarily employed for certain period.

If the employee knowing full well that he was being employed temporarily accepted the employment, he may himself be defrauding, but so far as the employer is concerned, his action in terminating the services of the employee according to the agreement cannot be questioned. AIR 1959 All 639, Foll.

In certain circumstances, for good and substantial reasons a certain agreement may be modified by Industrial Tribunals, which probably ordinarily they would not be entitled to do; but if there are no reasons given, a solemn agreement entered into between the parties will always stand. AIR 1956 S C 231 and AIR 1957 S C 1, Rel. on. (1960) 1 Fac L R 564 : AIR 1960 All 734 (737, 738) (Pt B) (Prs 15, 17).

—S. 3—Agreement arrived at in conciliation proceedings—Enforcement against non-parties—(Industrial Disputes Act (1947), S. 18).

Though the U. P. Industrial Disputes Act has been framed on the model of the Central Act, a provision similar to S. 18 of the latter Act is conspicuous by its absence in the U. P. Act. Therefore an agreement arrived at in conciliation proceedings under the U. P. Act cannot be binding on persons who are not parties to it. Nor could the Courts hold the principle of S. 18 of the Central Act to be applicable to such a case, when the legislature itself did not consider it fit to recognise it, on any grounds of expediency.

Held, also that cl. (5) of the G. O. issued by the State on 15-3-1951 did not authorise the enforcement of the agreement against non-parties to it because what it dealt with was the question relating to who could be called and heard when conciliation proceedings were started by some of the workers of an organisation only and not with the question of the enforcement of the agreement at all. AIR 1958 All 688 (690) (Pt B) (Prs 12, 13) (DB).

—Ss. 3 (b) and 6 — Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 — Findings of Industrial Court — Nature of, stated — No appeal lies to Appellate Tribunal directly from order of Industrial Court. **AIR 1955 N U C (All) 3287.**

—S. 3 — Dispute referred to Industrial Tribunal under Act — Order by Tribunal — Question whether order is within jurisdiction — Reference to Industrial Disputes Act (14 of 1947) is irrelevant — Question has to be decided on consideration of the U. P. Act and the order of the U. P. Government referring the dispute to the Tribunal — (Industrial Disputes Act (1947). **AIR 1955 N U C (All) 2026.**

—S. 3—General order of Government referring dispute to Tribunal — Clause in order, empowering Tribunal to direct employers to pay travelling expenses and leave pay of representatives of workers, representing their case — Such direction must be included in costs in award — Amount can be recovered as arrears of land revenue—(Industrial Disputes Appellate Tribunal Act (1950), S. 2 (c):(iii)—(Constitution of India, Art. 226). **AIR 1955 N U C (All) 2026.**

10. Conciliation Board.

—S. 3 (b)—Regional Board should exercise its discretion and not merely follow directions given in Government Order.

Where the Regional Conciliation Board considers the directions given in the Government Order as good directions on equitable principles, there is nothing wrong in its giving effect to them. But the Board must consider freely on the merits of such directions before giving effect to them. The Board is not to give effect to those directions, for it should in its own discretion come to the conclusion that a decision on those lines would be just in connection with a particular industrial dispute. **(1955) 2 Lab L J 1 : I L R (1956) 1 All 216 : A I R 1955 All 578 (581) (Pt F) (Pr 14) (DB).**

—S. 3—Constitution of Conciliation Board—Government order appointing regional conciliation Board referring to Electricity and Engineering industries as being represented in panel—No separate panel constituted for industries in that area — Intention held to be to form Conciliation Board for particular area out of panel formed in Government's order — Constitution of Board to conciliate dispute in the industries held not defective. **AIR 1955 N U C (All) 1264 (DB).**

11. Notifications under—Miscellaneous.

● —Ss. 3 (g) and 6—Cl. 9 (7) of the Standing Order issued under S. 3 is within powers contemplated in S. 3 (g) — Clause 9 (7) is not in conflict with S. 6. See U. P. Industrial Disputes Act (28 of 1947), S. 6. **AIR 1963 S C 399.**

● —Ss. 3 and 8—U. P. Government Order under, dated 10.3.1948, Cls. 5 (a) and 23 — Applicability—Enquiry pending before conciliation officer — Application by employer—Competency.

The scheme of the U. P. Government order shows that while two modes are provided in cls. (5) (a) and 5 (b) for the commencement of proceedings for settlement of industrial disputes generally, a special provision is made in cl. 23 that if an enquiry is proceeding before a Regional Conciliation Board or the Provincial Conciliation Board or an appeal is pending before the Industrial Court, no workman shall be discharged except with the written permission of the Regional Conciliation Officer or the Additional Conciliation Officer concerned.

Clause 5 (a) of the order has no application in a case where the special provisions of cl. 23 are applicable. Hence where an inquiry is in fact pending before a Conciliation Officer cl. 23 pplies in respect of any discharge or dismissal of workman and the employer cannot take advantage of cl. 5 (a) and such an application cannot in law be entertained by the Board. J. K. Cotton Spinning and Weaving Mills, Co., Ltd. v. State of U. P. **(1962) 1 S C J 417 : (1961) 3 S C R 185 : (1961) 2 Fac L R 529 : I L R (1961) 2 All 493 : (1960-61) 19 F J R 436 : (1961) 1 Lab L J 540 : AIR 1961 S C 1170 (1173 to 1175) (Pt A) (Prs 4, 8, 10 to 12).**

● —Ss. 3, 6 and 6-A (as amended by U. P. Ordinance 1 of 1953)—General order under S. 3 specifying time within which award on reference to Tribunal have to be submitted—General order amended by enlarging time — Effect on reference—Submission of award beyond time originally fixed—Effect of S. 3 of Amending Ordinance 1 of 1953—Award if validated—(U. P. Industrial Disputes (Amedment) Ordinance (I of 1953), S. 3).

Where the award was submitted long after 40 days within which it had to be submitted and there was no order of enlargement of time and the appeal before the Tribunal was filed after the commencement of the U. P. Industrial Disputes (Amendment) Ordinance (1 of 1953), S. 3 (2) and not S. 3 (3) of the Ordinance applies and the award by virtue of S. 3(2) is validated and its validity cannot be questioned merely on the ground that it was submitted after the period within which it should have been submitted State of U. P. v. M/s. Swadeshi Cotton Mills Co., Ltd. **1958 S C R 971 : (1958) 1 Lab L J 9 : (1957 58) 13 F J R 411 : 1958 S C J 567: AIR 1958 S C 187 (191 to 193) (Pt A) (Prs 7, 10, 13).**

● —S. 3(f)—Essential Supplies (Temporary Powers) Act (1946), S. 3 (4)—Mill producing cotton yarn closed—Thereafter orders handing over management of mill to authorised controller passed—Orders held were invalid—Deprivation of property. See Constitution of India, Art. 13 (1). **AIR 1955 S C 624.**

● —Ss. 3 and 6—Government Order No. 388 (xi) (xviii)/37 (II) 50 dated 2nd March, 1951, amending cls. 4 and 7 (3) of Original Order dated 10th March 1948—Award of Regional Conciliation Board, consisting of three members signed by two who alone were present on the last date of hearing — Award is not void and inoperative (Industrial Dispute Award—Signing of). Atherton West & Co. Ltd.; Kanpur v. Suti Mill Mazdoor Union. **1953 SCJ 333 : 1954 S C A 57 : 1953 SCR 780 : AIR 1953 S C 241 (243) (Pt A) (Pr 12).**

● —S. 8 (d)—Industrial dispute referred to Industrial Tribunal by notification dated 24.4.1951—Time for making award expiring on 9.6.1951 and further notification extending time upto 30.6.1951—30.6.1951 a public holiday and 1.7.1951 a Sunday — Industrial Tribunal was a Court and hence award made and pronounced on 2.7.1951 was well within time and was valid and binding on parties. Vishwamitra Press, Kanpur v. Its Workmen, **1953 S C J 13 : 1953 S C R 272 : (1953) 1 Lab L J 184 : (1953) 1 Mad L J 189 : 1953 S C A 378 : AIR 1953 S C 41 (42) (Prs 5, 7).**

—S. 3 — Enforcement of terms of an agreement which could not be enforced as an agreemeat against all workers.

Even if an agreement arrived at a conciliation proceeding with some of the workers only cannot be enforced as an agreement against others who were not parties to it, it is open to the Government if it considered the terms of the agreement to be reasonable and is of the opinion that it is necessary to enforce those terms against all the workers for any purposes mentioned in the section, to do so by an order made under the section. If therefore it is clear from the order that the Government did mean to pass an independent order under the section, that is a good order even though it substantially followed the

agreement arrived at between the employer and some of the workers only. AIR 1958 All 688 (691) (Pt C) (Prs 15, 16, 18) (DB).

——Ss. 3 and 8 — Order under made by Governor, dated 15th March 1951, Cl. 17—Applicability.

The award of an Industrial Tribunal or an adjudicator may impose upon an employer the duty of doing some act which extends over a period of time, such, for example, as re-instatement, of dismissed employees, or it may impose upon the employer an obligation to pay a sum of money. In the first case the obligation is one of a continuing nature, in the second it is not; and the terms of cl. (17) are such as to make its provisions applicable to obligations of the first kind only. (1956) 2 Lab L J 297 : 1956 All L J 381 : (1956-57) 11 F J R 148 : AIR 1956 All 730 (731) (Pt A) (Pr 5) (DB).

——Ss. 3 and 8 — Order under, made by Governor, dated 15th March, 1951, Cl. 17 — Period within which amount under award is to be recovered — (Industrial Disputes (Appellate Tribunal) Act (1950), S. 20 (1).

Money due from an employer under an award has not necessarily to be recovered within the period during which that award remains in operation. 1956 All L J 381 : (1956-57) 11 F J R 148 : (1956) 2 Lab L J 297 : AIR 1956 All 730 (731) (Pt C) (Pr 6) (DB).

——S. 3—Authority, permitted to make order subject to condition — Condition not observed — Order has not force of law. See Constitution of India, Art. 226. AIR 1956 All 689 (DB).

——S. 3—Pending proceedings—Effect of Gen. Order No. U-64 (LL) dated 14th July, 1954 (U. P.) — It has to be treated as fresh reference which is a valid reference. AIR 1955 NUC (All) 1733.

——S. 3 — U. P. Government Order No. U 686 (LL) XXXVI—(B)—257 (LL)—1954, dated 8th September, 1954—Construction effect and validity of considered —(Constitution of India, Art. 226). AIR 1955 N U C (All) 1732 (DB).

——S. 3 — Order under passed on basis of report submitted under S. 14 by a Court of inquiry—Validity—(Constitution of India, Art. 226).

The State Government, in order to proceed under S. 3 of the U. P. Industrial Disputes Act, 1947 has to form an opinion that it is necessary or expedient to make an order under that section for securing the public safety or convenience or the maintenance of the public order or supplies and services essential to the life of the community, or for maintaining employment. If the State Government comes to that opinion it is thereafter empowered to pass general or special order making provisions for the matters mentioned in cls. (a) to (g) of that section. The provisions of S. 3 and the remaining provisions of the U. P. Industrial Disputes Act, 1947, nowhere prescribe the materials on which this opinion of the State Government is to be formed, nor do they prescribe any procedure for arriving at that opinion. Clearly, therefore the State Government is entitled to form its opinion on any or all material and information available to it.

Since S. 3 merely requires the opinion of the State Government as a preliminary to the exercise of powers under that section, the High Court is not competent to see whether the opinion arrived at by the State Government is or is not correct. There being no bar in any law to taking into account the report of a Court of Enquiry appointed under the Industrial Disputes Act, 1947, an order passed under S. 3 of the U. P. Industrial Disputes Act, 1947, on the basis of such report cannot be challenged on the ground that the reference to the Court of Enquiry of the industrial dispute itself was not valid and was not in accordance with the provisions of the Industrial Disputes Act, 1947.

Held, that the order contained in U. P. Government Notification No. 1425 (ST) (II)/XVIII-50, dated 5th July, 1950 could not be challenged on ground that the Government was not competent to refer the dispute to a Court of inquiry and make the recommendation made by it binding on the parties as those matters were irrelevant to the validity of the order. Basti Sugar Mills, Ltd. v. State of Uttar Pradesh, 1954 All W R (HC) 428 : 1954 A L J 452 : I L R (1954) 1 All 457 : AIR 1954 All 538 (544) (Pt D) (Pr 13) (FB).

[Reversed on another point in AIR 1961 S C 420.]

——Ss. 3, 4 and 8—Government order No. 615 (LRL)/XVIII-7 (LL)/51, dated 15th March 1951, Cl. 10 and Govt, Order No. 3092 (T. D) XVIII-28 (T. D.), 1951, dated 28th June 1951, Cl. 16 — Power of Governor to extend time.

Clause 16 of G. O. No. 3092 authorising Adjudicator and Tribunal to hear dispute and pronounce its decision within 40 days (excluding holidays) from date of reference, i. e., 28th June 1951—Period of 40 days extended upto 15th September 1951 and again up to 30th September 1951 and lastly up to 1st November 1951 by orders dated 31st August 1951; 24th September 1951 and 17th October, 1951 respectively—Award by adjudicator made on 1st November 1951 — Appeal against—Tribunal modifying it—Writ application by employer on ground that adjudicator became functus officio after 14th August 1951 when the period of 40 days expired and that therefore, the Governor could not extend the period as the effect of such order would amount to reviving the right of the adjudicator to make an award — Extension held valid it being not necessary that such orders should have been passed before the expiry of the period which was sought to be extended—The adjudicator held remains seized of the references till he makes his award or till the reference to him is withdrawn by the Governor and that so long as he remained seized of reference Governor could make order extending period of decision and thus making him competent to make award—No valid objection, held could be taken to adjudicator's making award within any such extended periods—(Ss. 508, 514 and 521 of C. P. Code (1882), compared.) I L R (1954) 2 All 378 : AIR 1953 All 624 (626, 627) (Pt A) (Prs 6, 8, 12) (DB).

12. Writ under Art. 226 of the Constitution.

——Ss. 3, 6-A, 8—U. P. Govt. Notification No. U-464 (LL)/xxxvi-B-257 (LL)-1954, D/- 14-7-1954, Cls. 3, 11—Individual dispute espoused by wholly foreign trade union—Reference of—Validity—Power of High Court to interfere under Art. 226, Constitution of India.

If the services of an employee are terminated and there is no apprehension of any strike or lock-out in that concern, then the machinery of the Industrial Disputes Act does not come into operation. It is only when the services are terminated and that creates resentment in the majority of the workmen that there would be a danger of strike or lock-out or of violence and there would be a necessity to bring the machinery of Industrial Disputes Act into operation.

The services of a temporary clerk were terminated. His cause was espoused by a union of an entirely different industry and of which he was not a member on the date when his services were terminated. The State Government referred the dispute to the Adjudication :

Held, (i) that the dispute was only an individual dispute and not an industrial dispute, and the State Government had no jurisdiction to refer it for adjudication : 1957 S C J 566 ; 1957 M L J (Cri) 540 ; AIR 1957 S C 532, Applied.

(ii) The High Court could interfere under Art. 226, Constitution of India, with the discretion of the State

Government in treating the dispute as an industrial dispute and quash the order of reference and the award by the Adjudicator : 1957 S C J 566 ; 1957 M L J (Cri) 540 : A I R 1957 S C 532, Foll. (1960) 1 Fac L R 564 : A I R 1960 All 734 (737, 738) (Pt A) (Prs 12, 13, 18).

——S. 3—Notification under — Does not incorporate in it any decision or determination by any judicial or quasi-judicial authority—No writ can be issued for quashing such notification. See Constitution of India, Art. 226. AIR 1958 All 80 (DB).

——S 3—Mandamus against Government—G. O. No. 615 dated 15.3.1951, Cl. 10 issued under Ss. 3, 4 and 8 of U. P. Industrial Disputes Act—Interpretation of —Cl. 10 empowered the Government to refer at any time any dispute to Industrial Tribunal or to any other person — Condition precedent to this being done, however is that the State Govt. is of opinion that any industrial dispute exists or is apprehended— Court is not competent to direct the Government to refer dispute regarding which order of reference is silent. See Constitution of India, Art. 226. AIR 1956 All 367 (DB).

——S. 3—Right of employee's union — Trade unions can be parties before Industrial Tribunal—If Labour Appellate Tribunal decides case against employee's union, they are directly affected by result of decision, and are entitled to apply for a writ of certiorari. See Constitution of India, Art. 226. A I R 1955 N U C (All) 3296.

——S. 3 — Application for writ of prohibition — Investigation into question of fact — Question as to employee being a workman. See Constitution of India, Art. 226. AIR 1955 N U C (All) 2664.

——S. 3—Reference under, valid—Proceedings before conciliator need not be valid — Prayer to quash the proceedings will not be granted, since it will serve no useful purpose — Constitution of India, Art. 226. AIR 1955 N U C (All) 2664.

——S. 3 — Reference under — It is in discretion of Adjudicator to go into certain dispute again after lapse of long period — High Court will not express any view on the matter in application under Art. 226 —(Constitution of India, Art. 226). AIR 1955 N U C (All) 2664.

——S. 3—Order under — G. O. No. 615 dated 15th March 1951, Cl. 10 — Power of Government to refer dispute for adjudication is discretionary—Exercise of discretion not arbitrary — Writ of Mandamus cannot be issued. See Constitution of India, Art. 226. A I R 1955 N U C (All) 1764.

——S. 3—Representation — Government Notification No. U-464 of 14-7-54, Cls. 17 and 21 — Director of company who is a practising lawyer can represent the company as a director — Lawyer-director not allowed to represent company — Writ under Art. 226 can be issued — Industrial Disputes Act (1947), S. 36 (ii)—Companies Act (1913), S. 2 (11))— (Constitution of India, Art. 226 — Discretion of Tribunal). A I R 1955 N U C (All) 1711.

——S. 3 — Reference of Industrial dispute to Industrial Tribunal and Industrial Appellate Tribunal of India on its own motion and not on report of conciliation Board—Invalidity of report and of proceedings before Board are not material for consideration of writ application. See Constitution of India, Art. 226. AIR 1954 All 516 (DB).

13. Appeal.

● ——Ss. 3 and 8—Scope — Appeal lies from adjudication of Courts and tribunals only—Tribunal, meaning of—Conciliation Officer exercising powers under Cl. 29 of Order of U. P. Governor under Ss. 3 and 8 of U. P. Industrial Disputes Act — Not a tribunal within Art. 136—Appeal against his order or direction not competent. See Constitution of India, Art. 136. AIR 1963 S C 677.

● ——Ss. 3 and 8—Industrial Tribunal — Authority, meaning of—Conciliation Officer exercising authority under Cl. 29 of the Order under U. P. Industrial Disputes Act — No appeal lies under S. 4 against his order. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 2 (c). AIR 1963 S C 677.

SECTION 4

● ——S. 4—Representation — Cause of workman can be taken up by unregistered association of workmen. Newspapers Ltd. Allahabad v. U. P. Industrial Tribunal, (1960) 2 Lab L J 37 ; (1960-61) 19 F J R 1 ; AIR 1960 S C 1328 (1329) (Pt A) (Pr 4).

——S. 4—Order of reference — Contents and form of —Nature of dispute and convenience of parties — Consideration by Government — Need not be specifically mentioned — Industrial Disputes Act (1947), S. 10.

The Government is not required to specifically say in the order of the reference that it has considered the nature of dispute and the convenience of the parties before referring the matter to the Adjudicator. The fact that the Government referred the dispute to the Adjudicator for decision indicates that it considered it necessary to do so. Spe. App. 347 of 1959 (All) : A I R 1959 S C 308, Rel. on. (1962) 1 Lab L J 1 (All).

——S. 4—U P. Government Order No. U. 464 (LL)/36 B 257 (LL)/1954 (dated 14-7-1954), Paras 3, 5 (3), 11—Reference of industrial dispute in certain concern by workers' union of industry when there was workers' union of concern itself—Validity — Dispute referred to Industrial Tribunal by State Government —Reference cannot be called in question on ground of competency or workers' union of industry to make reference. See U. P. Industrial Disputes Act (28 of 1947), S. 3. A I R 1956 All 597 (DB).

——S. 4—Mandamus against Government—G. O. No. 615 dated 15.3-1951, Cl 10 issued under Ss. 3, 4 and 8 of U. P. Industrial Disputes Act — Interpretation of—Court is not competent to direct Government to refer dispute regarding which order of reference is silent. See Constitution of India, Art. 226. AIR 1956 All 367 (DB).

——S. 4 — Notification under — Requirements — Specification of dispute.

When a dispute is actually referred all that is required by S. 4 is that the matters referred should be specified. The specification may be made either by giving the details in that order itself, or by making some earlier notification, which had already received adequate publicity, a part of the order referring the dispute. If the latter course is chosen, it has still to be held that the order, referring the dispute for adjudication does not specify the matters for adjudication. AIR 1955 All 549 (550) (Pt A) (Pr 5).

——S. 4 — G. O. No. 615 dated 15th March 1951 Cl. 10 — Power of Government to refer dispute for adjudication is discretionary— Exercise of discretion not arbitrary — Writ of Mandamus cannot be issued. See Constitution of India, Art. 226. AIR 1955 N U C (All) 1764.

——S. 4 — Reference of Industrial dispute to Industrial and Industrial Appellate Tribunal of India on its own motions and not on report of conciliation Board —Invalidity of report of and of proceedings before Board are not material for consideration of writ application. See Constitution of India Art. 226. AIR 1954 All 516 (DB).

——Ss. 4, 3 and 8— Government Order No. 615 (LL) XVIII-7 (LL)/51, D/- 15-3-1951, Cl. 10 and Govern-

ment Order No 3092 (T D.) XVIII-28 (T. D.)/-1951, D/- 28-6-1951, Cl. 16 — Governor can make order extending period of decision and thus making adjudicator competent to make award—No valid objection held could be taken to adjudicator's making award within any such extended periods. See U. P. Industrial Disputes Act (28 of 1947), S. 3. A I R 1953 All 624 (DB).

SECTION 4-I

——Ss. 4-I, 4-K — Award — Employer desiring to change conditions of service—Notice—Procedure.

In the U. P. Industrial Disputes Act, if award has once been given it will continue to have its effect until it has been varied with a notice under S. 4-I.

When once an award is given it will remain in force as contemplated by the Act. But after the expiry of the period, if the award is of a permanent character giving certain benefits for goods the award would be deemed to the part and parcel of the conditions of service and each party would be bound by the award. Section 4-I gives the power to the employer to effect any change in the conditions of service, but the only condition is that such change shall not be effected without giving notice to be workmen likely to be affected and the period of notice fixed is 21 days. If acting under the powers given to the employer under S. 4-I, he has given notice to change the terms and conditions of the service and, if the employees are not satisfied it is open to them to raise an industrial dispute. **(1962) 1 Lab L J 309 : (1961) 3 Fac L R 92 : A I R 1961 All 321 (324, 325) (Pt D) (Prs 10, 12, 13, 15).**

SECTION 4-K

——Ss. 4-K and 11-A—Power of State Government to make reference—Delegation of—Validity.

The State Government cannot be said to act in excess of the provisions of S. 11-A when it delegates to the Deputy Labour Commissioner the function of making reference of an industrial dispute under S. 4-K. **(1965-66) 29 F J R 441 ; (1965) 2 Lab L J 346 : (1965) 10 Fac L R 256 : AIR 1966 All 130 (132) (Pt A) (Pr 6).**

——S. 4-K — Reference of industrial dispute once refused—State Government not barred from referring again — Previous refusal to refer does not operate as res judicata or an estoppel. **1964 All L J 42 : (1964) 1 Lab L J 724 : ILR (1964) 1 All 560 : A I R 1964 All 328 (329) (Pt A) (Pr 3) (DB).**

——Ss. 4-K and 5-C — Labour Court (Gorakhpur) Rules (1957), R. 33 (ii) of Ch. IV — Rule does not empower Labour Court to decide industrial dispute referred without going into merits. **(1964) 8 Fac L R 269 (All).**

——Ss. 4-K and 11-A—Dispute referred for adjudication—Withdrawal of reference by State Government —Reference of same dispute a second time to Tribunal by the Deputy Labour Commissioner — Validity— Power of State Government to delegate its authority to the Deputy Labour Commissioner — State Government has authority to delegate its powers under S. 4-K to Deputy Labour Commissioner under S. 11-A —Withdrawal of reference by State Government will not bar the Deputy Labour Commissioner from making a reference under S. 4-K read with S. 11-A, if he is satisfied about the existence of a dispute. 1958 All L J 863. Writ No. 664 of 1958 dated 18-9-1958, AIR 1961 S C 1095 Rel. on ; AIR 1958 S C 1018 Dist. **(1963) 7 Fac L R 26 : (1964) 1 Lab L J 122 : I L R (1963) 1 All 119 (DB).**

——S. 4 (k) — Reference by Labour Commissioner to the Industrial Tribunal on basis of report of Conciliation Officer — No indication in order that dispute referred was one which arose after closure of business by the employers—Reference is not incompetent on the ground of lack of jurisdiction being apparent on the face of the order—It is for employers to raise the contention before the tribunal and adduce evidence and the tribunal has jurisdiction to decide the question. **(1962) 5 Fac L R 268 : (1962) 2 Lab L J 698 (All).**

——S. 4-K (as amended) — Government can validly delegate its power to satisfy itself of the existence of an industrial dispute.

The power of the Government to satisfy itself of the existence of an industrial dispute as a condition precedent to the making of a reference to the Labour Court is capable of delegation. The forming of an opinion as to the existence of the dispute is a condition precedent to the exercise of the power of reference and the condition cannot be divorced from the power itself. The State Government has the power to delegate any power exercisable by it under the Act to any officer or authority subordinate to it. The authority to delegate the powers enables not only the delegation of those powers but also the power of performing the conditions necessary for the exescise of the powers : W. P. No. 664 of 1955, D/- 16-9-58 (All) and (1961) 1 All E R 446, Rel. on. **(1962) 1 Lab L J 308 : (1961) 3 Fac L R 82 (All).**

——S. 4-K—Two references regarding disputes between same parties — Labour Court making joint award — Validity of — Jurisdiction of Labour Court not affected.

Held on facts, that there could be no objection to the Labour Court adopting reasonings in an earlier award in making an award in the other case. The Labour Court could make a detailed award in one case and pass a brief order by way of award in another case. If the Labour Court makes a joint award to be applicable to both the cases there can in substance be no illegality. At the most it would be an irregularity which would not vitiate the proceedings. The High Court could interfere with the award of the Labour Court only if it had committed some material irregularity in the exercise of jurisdiction. Making of a joint award was not a material irregularity. **(1961) 2 Fac L R 500 : (1961) 2 Lab L J 184 (All).**

——Ss. 4-K and 5-B—Existence of industrial dispute —Jurisdiction to decide—Outside purview of High Court—(Constitution of India, Art. 226).

Whether an industrial dispute in fact existed or not is a matter which is within the exclusive jurisdiction of the referring authority to determine. It is outside the purview of High Court's scrutiny to see for itself whether an industrial dispute existed or not. **1958 All L J 863 : (1959) 1 Lab L J 227 : AIR 1959 All 369 (371) (Pt A) (Pr 6).**

——Ss. 4-K and 5-B — Industrial dispute — Dispute with regard to designation attached to any post.

Where the designation attached to any office is directly linked with the conditions of service of an employment pertaining to that office, the designation itself becomes a part and parcel of the terms of employment, and hence where the change in the designation of post affects the terms of employment of persons holding them, it cannot be successfully urged that the dispute with regard to the designation is not such as can be referred under the Industrial Disputes Act. **1958 All L J 863 : (1959) 1 Lab L J 227 : AIR 1959 All 369 (371, 372) (Pt B) (Prs 9, 11).**

——Ss. 4-K and 11-A — Delegatian of powers exercisable by State Government—Validity.

Section 4 K in providing that where the State Government is of opinion that an industrial dispute exists, it may refer the dispute to a Labour Court, etc., has conferred on the State Government a legal ability or authority to make a reference to a Labour

Court. It cannot be said that the Legislature has providing as aforesaid in S. 4-K conferred power on the State Government which it alone must always perform, and cannot delegate it to other authority. 1958 All L J 863 : (1959) 1 Lab L J 227 : AIR 1959 All 369 (372) (Pt E) (Pr 18).

—Ss. 4-K and 11-A —:Scope — Duty and power — Distinction pointed out — Delegation under S. 4-K is of power, not of duty — Subordinate authority forming opinion that there is industrial dispute — Opinion held was without jurisdiction—1958 All L J 863; W. P. No. 664 of 1958, D/- 16.12.1958 and W. P. No. 968 of 1958, D/- 15-12-1958, Dissented from. ILR (1959) 2 All 141.

SECTION 5

● —S. 5—Company employing contractor for certain work — Dispute between contractor and his workmen regarding terms of work — Dispute referred to Tribunal — Company neither made a party nor any issue concerning company included in reference — Company subsequently added as party — Question whether workmen were employees of company or not raised and decided by tribunal — Decision held to be without jurisdiction as the matter was not referred at all to the tribunal nor did it arise out of any matter specified in the reference order. See U. P. Industrial Disputes Act (1947), S. 3. AIR 1960 S C 818.

—Ss. 5 and 2 (1) — A single reference by Labour Commissioner to Industrial Tribunal regarding disputes between several employers and their workmen is not illegal. See U. P. Industrial Disputes Act (1947), S. 2 (1). (1962) 2 Lab L J 698 (All).

SECTION 5-B

—Ss. 5-B, 2 (c) — U. P. Industrial Disputes Rules (1957), R. 8 — Reference by Union which did not represent all workmen not valid.

Under S. 5-B and rule 8 and in a case of voluntary reference to arbitration the reference must be by all the concerned workmen or by a Union or Unions representing all the workmen involved or by five representatives of those workmen. Where a Union which did not represent all the workmen made voluntary reference of disputes which involved all workmen the reference is not valid reference under S. 5-B and an award given on it is invalid and must be quashed. (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

—S. 5-B (4)—Powers of arbitrator under.

The Arbitrator can investigate only those disputes which are referred to him for arbitration and no others. The power of adjudication which an arbitrator exercises is derived by him from the agreement of the parties. The arbitrator in deciding matters other than those referred to him clearly goes beyond the jurisdiction conferred upon him by the parties. Such award given by the arbitrator, therefore, cannot be held valid and in accordance with law. (1964) 2 Lab L J 65 : (1964) 8 Fac L R 306 (All).

SECTION 5-C

—Ss. 5-C and 4-K — Labour Court (Gorakhpur) Rules (1957), R. 33 (ii) of Ch. IV — Rule does not empower Labour Court to decide industrial dispute referred without going into the merits. (1964) 8 Fac L R 269 : (1964) 1 Lab L J 607 (All).

SECTION 6

● —S. 6 and S. 31 (g) — Standing Order issued under S. 3, Cl. 9 (7)—Clause 9 (7) is not in conflict with S. 6.

S. 6 requires that the Tribunal shall submit its award to the Government; it thus necessarily contemplates the making of the award. Neither S. 6 nor any other provision in the Act provides how the award is to be made. Under S. 3 (g) however the Government has power by general or special order to provide for incidental or supplementary matters necessary for the decision of an industrial dispute referred for adjudication under any order made under S. 3. The provision as to the pronouncement of the decision in open Court in Cl. 9 (7) of the Statutory Order clearly is within the powers contemplated in S. 3 (g). S. 6 does not prohibit the making of such a provision. Its main purpose is to direct that the Tribunal shall submit the award to the Government so that it may be enforced. It has nothing to do with the manner in which the Tribunal is to make its award. A rule duly framed under the Act requiring the Tribunal to pronounce its decision in open Court is therefore not in conflict with S. 6. State of Uttar Pradesh v. Laxmi Ice Factory, Lucknow, (1963) 1 S C J 320 : (1962) Supp 3 S C R 59 : ILR (1963) 1 All 10 : (1962) 1 Lab L J 281 : AIR 1963 S C 399 (404) (Pt B) (Pr 20).

● —S. 6 — (As amended by U. P. Ordinance I of 1953)—General order under S. 3 specifying time within which award of references to Tribunal have to be submitted — Effect—Reference—General order amended by enlarging time — Effect on reference — Submission of award beyond time originally fixed — Effect of S. 3 of Amending Ordinance 1 of 1953 — Award if validated. See U. P. Industrial Disputes Act (1947), S. 3. AIR 1958 SC 187.

● —S. 6—Government Order No. 388 (XI) (XVIII) 37 (LL) 50, dated 2-3-1951 amending Cls. 4 and 7 (3) of Original Order dated 10-3-1948 — Award of Regional Conciliation Board, consisting of three members signed by two who alone were present on the last date of hearing — Award is not void and inoperative. See U. P. Industrial Disputes Act (1947), S. 3. AIR 1953 SC 241.

● —S. 6 (1)—Extension of time — U. P. General Clauses Act (1 of 1904), Ss. 14 and 21.

The State Government has not the power to extend the time for making an award ex post facto, i. e., after the time limit originally fixed therefor has expired. S. 14 of the U. P. General Clauses Act does not in terms, or by necessary implication, give any such power of extension of time nor can any support be derived from S. 21 of that Act to validate the award passed after the expiry of the time originally fixed, though the order giving extension ex facie purports to modify the original order fixing the time limit. Strawboard Manufacturing Co., Ltd. v. Gutta Mill Workers' Union. (1952) 4 F J R 456 : (1953) 1 Lab L J 186 : 1953 S C A 536 : 1953 S C J 104 : 1953 All L J 144 ; (1953) 1 M L J 427 : 1953 S C R 439 : AIR 1953 SC 95 (95 to 98) (Prs 1, 4, 5, 6).

—S. 6—Settlement not registered—Award in terms of settlement—Held not invalid. See U. P. Industrial Disputes Act (28 of 1947), S. 6 B. (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

—S. 6 (1)—Award already given by Labour Court — Government has no power to withdraw reference subsequently. See U. P. Industrial Disputes Act (28 of 1947), S. 6-G. (1965) 10 Fac L R 24 (All).

—Ss. 6 and 6-A (as amended by U. P. Act 23 of 1957 — Word 'award' as defined in S. 2 (c) does not include an award of an Adjudicator given under the G. O. Dated 14-7-1954 read with U. P. Act 28 of 1947 as unamendeed — Word 'award' in Ss. 6 and 6-A cannot be construed in a wider sense than the definition clause so as to include such award. See U. P. Industrial Disputes Act (28 of 1947), S. 2 (c). AIR 1964 All 156 (DB).

——S. 6—Award unmerited promotions of workers — Dispute — Disputing workmen awarded same emoluments and privileges as promoted workmen — Validity. See Industrial Disputes Act (1947), S. 17. AIR 1962 All 70.

——S. 6—Award under — Enforcement—Procedure indicated. See Industrial Disputes Act (1947), S. 19. AIR 1961 All 321.

——S. 6 — Powers of Adjudicator — Case of supersession or promotion—Adjudicator can compare merits of workmen concerned — Industrial Disputes Act (1947), S. 11.

In order to determine whether or not the petitioner employee was victimised and wrongly not promoted a comparison has got to be made between his merits and those of the employee who has superseded him. The Tribunal can go into such questions. (1961) 3 Fac L R 295 : (1962) 1 Lab L J 1 (All).

——Ss. 6, 14—Award not delivered and singned in open Court but sent to Government — Notification enforcing award — Legality. (1959) 2 Lab L J 695 : ILR (1960) 2 All 1.

——S. 6 (1)—Writ of certiorari — Issue of—Tribunal abolished and its record removed out of jurisdiction of High Court — Existence of copy of decision with State Government—Effect. See Constitution of India, Art. 226. AIR 1958 All 80 (DB).

——S. 6—Findings of Industrial Court — Nature of —No appeal lies to Appellate Tribunal directly from order of Industrial Court. See U. P. Industrial Disputes Act (28 of 1947), S. 3 (b). AIR 1955 NUC (All) 3287.

——S. 6 — Time fixed under Notification can be extended — (U. P. General Clauses Act (1 of 1904), S. 21). AIR 1955 NUC (All) 1264 (DB).

——S. 6—Applicability.

Reference to Regional Conciliation Board regarding reinstatement of employee—Award—Appeal to Industrial Court—Court confirming findings of Board and making recommendations to Government for reinstatement of employee and payment of past wages—Order of Government dated 3rd December 1949 directing enforcement of those findings—Validity—Order held beyond competence of State Government, acting in exercise of its powers under S. 3. See U. P. Industrial Disputes Act (28 of 1947), S. 3 (b). AIR 1954 All 705.

[Overruled on another point in AIR 1961 SC 420.]

——S. 6 (1)—Authority of adjudicator.

Under the provision the adjudicator is bound to make an award unless the reference to him has been revoked, and in case he fails to pronounce the award within the time allowed, he should take steps to have the necessary period extended. ILR (1954) 2 All 378 : AIR 1953 All 624 (626) (Pt C) (Pr 11) (DB).

——S. 6 (1) — G. O. No. 3092 (T. D.) XVIII-28 (T. D.)/1951, dated 28-6-1951 — Powers of Adjudicator and Tribunal—(Constitution of India Art. 226.)

Under the Act or the Order the adjudicator or the Appellate Tribunal was not restricted with respect to the matters which should be taken into consideration by them in coming to a conclusion on the question referred about the justifiability of the retrenchment of the workmen. [Held, that neither the adjudicator nor the Appellete Tribunal exceeded their jurisdiction in taking into consideration the various points they did consider in arriving at the conclusion and no case was made out for the issue of a writ in the nature of certiorari quashing them.] ILR (1954) 2 All 378 : AIR 1953 All 624 (630) (Pt E) (Prs 25, 26) (DB).

SECTION 6-A

●——Ss. 6-A, 3 and 6 (as amended by U. P. Ordinance 1 of 1953) — General order under S. 3, specifying time within which award of references to Tribunal have to be submitted—Effect—Reference—General order amended by enlarging time—Effect on reference — Submission of award beyond time originally fixed — Effect of S. 3 of Amending Ordinance 1 of 1953—Award if validated. See Industrial Disputes Act (1947), S. 3. AIR 1958 S C 187.

——S. 6-A — Settlement not registered — Award in terms of settlement — Not invalid. See U. P. Industrial Disputes Act (28 of 1947), S. 6 B. (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

——S. 6-A—Award already given by Labour Court—Government has no power to withdraw reference subsequently. See U. P. Industrial Disputes Act (28 of 1947), S. 6-G. (1965) 10 Fac L R 24 (All).

——Ss. 6-A, 3 and 8 — U. P. Govt. Notification No. U-464 (LL) Y XXXVI-B-257 (LL)-1954 D/- 14-7-1954, Cls. 3, 11 — Individual dispute espoused by wholly foreign trade union — Not industrial dispute—Reference of such dispute to Adjudicator is without jurisdiction — Power of High Court to interfere under Art. 226, Constitution of India. See U. P. Industrial Disputes Act (1947), S. 3. AIR 1960 All 734.

——S. 6-A — Award given within extended time is valid. AIR 1955 N U C (All) 3287.

SECTION 6-B

——S. 6-B (2) — Question whether application for registration is compulsory—Existence of word "may" and not of "shall"—Effect—Interpretation of Statutes —Mandatory and discretionary provisions — Civil P. C. (1908), Preamble—Interpretation of Statutes—Words and Phrases—'May'.

It cannot be accepted that the use of the word 'may' and not 'shall' occurring in S. 6B (2), indicated that it was compulsory that an application for the registration of a settlement of dispute should be made and that it was purely in the discretion of a party or the parties to apply or not to apply for the same. The word 'shall' could not have fitted in the context of S. 6B (2). The use of that word in the sentence would not bave indicated as to which of the parties was bound to apply for registration. The insistence on both the parties being bound to apply could not have gone well with the words "any one of them." (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

——Ss. 6-B, 6 and 6-A — Applicability and scope — Industrial disputes referred to Arbitrator — Settlement of, not registered — Award made in terms of settlement—Validity.

The settlement of disputes contemplated by S. 6-B is not a compromise arrived at between the employer and the workers in respect of industrial dispute before a Labour Court or an Industrial Tribunal or an Arbitrator and in respect of which an award is to be made. The operation of S. 6-B is confined to settlements which are not made in an industrial dispute before a Labour Court or an Industrial Tribunal or an Arbitrator and in respect of which no award is required to be made. The provision is a self-contained one. Provisions of Sections 6 and 6-A also are self-contained for awards. These sections together provide for two different matters. Sections 6 and 6-A make provision for awards of all sorts including the awards made by an Arbitrator on the basis of a compromise. Obviously S. 6-B will not apply to them. On the principle that special will exclude the general, even if it is held that S. 6-B is wide enough to comprehend a settlement incorporated in an award the provisions of Ss. 6 and 6-A would exclude S. 6-B and would apply. Consequently the settlement incorporated in an award is binding not by virtue of S. 6-B (1) but by

——S. 6-H—Scope and applicability.

The word 'money', used in Cl. (1) of S. 6-H must be deemed to refer only to determinate sums of money, i.e. sums which are either expressly set forth in the award itself or which may be arrived at by mere arithmetical calculation. But where the amount in question can only be determined after evidence has been led on disputed questions of fact, there is no "money" due within the meaning of cl. (1) ; such an indeterminate amount is merely a 'benefit' which is capable of being computed in terms of money", which must be determined by a Labour Court under the provisions of Cl. (2). (1960) 1 L L J 336; AIR 1955 Pat 49, Rel. on. **(1960) 2 Lab L J 461 : 1960 All W R (H C) 500 : 1960 All L 7 635.**

SECTION 6-I

——S. 6-I (3). Proviso — U. P. Industrial Disputes Rules (1957), R. 40 (3), Proviso—Proviso to sub-r. (3) of R. 40 is not ultra vires the proviso to sub-s. (3) of S. 6-I. **(1965) 2 Lab L J 8 : (1964) 9 Fac L R 340 (All) ; ILR (1965) 1 All 274.**

——S. 6-I (3)—U. P. Industrial Disputes Rules (1957), R. 40 (3)—Provisions are not violative of fundamental rights under Art. 19 (1) (c) of Constitution. AIR 1962 SC 171, Foll. **(1965) 1 Lab L J 8 ; (1964) 9 Fac L R 340 (All) ; ILR (1965) 1 All 274.**

——S. 6-I (3) — Section 6-I does not apply to application for conciliation proceedings — Defect in proceedings before Conciliation Board does not affect validity of proceedings before Labour Court. **(1964) 8 Fac L R 174 : (1964) 1 Lab L J 717 ; AIR 1964 All 454 (454) (Pt A) (Prs 2, 3) (DB).**

——S. 6-I (3) — U. P. Industrial Disputes Rules (1957). R. 40— Representation, objection to — Not allowable in appeal.

An objection that written statement signed by an officer of Indian National Trade Union Congress is prohibited under R. 40, without approval of the Federation, cannot be allowed in appeal, when not taken before Labour Court. **(1964) 8 Fac L R 174 : (1964) 1 Lab L J 717 : AIR 1964 All 454 (455) (Pt B) (Pr 5) (DB).**

——S. 6-I—Right to form trade unions comes within Art. 19 (1) (a) of Constitution—State cannot circumvent article by placing restrictions on objects or purposes of association — Rejection of application of federation of trade unions to represent to its members —This would be restriction within Art. 19 (4). See Constitution of India, Art. 19 (1) (c). **AIR 1960 All 45.**

——S. 6-I—Proviso to R. 40 (3) of U. P. Industrial Disputes Rules is ultra vires of S. 6-I. See U. P. Industrial Disputes Rules (1947), R. 40 (3). **AIR 1960 All 45.**

——S. 6-I (3) — Sub-section is unreasonable restriction on right to form association—Hence ultra vires of Art. 19 (1) (c) of Constitution—Constitution of India, Art. 19 (1) (c) and (4). **(1959-60) 17 Fac J R 290 ; (1960) 1 Lab L J 745 ; AIR 1960 All 45 (53) (Pt H) (Pr 30).**

——Ss. 6-I and 23, 2 (1)—Applicability—Rules under S. 23, R. 40—Scope — Representation of Workers by Federation of Unions —Federation registered but two years not elapsing — Effect—Refusal to permit federation to represent — If take out dispute out of category of industrial dispute — S. 2 (1) — Delegation contained in S. 6-I—Validity — U. P. Industrial Disputes Rules (1957), R. 40) - (Constitution of India, Arts. 14, 19 (1) (a), 19 (1) (c)) — (Interpretation of Statutes — Retrospective effect—Vested right) —(Civil P. C. (1908) Preamble — Interpretation of Statutes)— AIR 1957 S C 532 : 1957 S C J 566 : 1957 M L J (Cr) 540, Disting. **(1960) 1 Lab L J 44 ; 1959 All L J 745.**

SECTION 6-K

● ——Ss. 6K, 6R — Industrial Disputes Act (1947), Ss. 25-J and Chap. V-A — Dispute relating to lay off compensation — Provisions of Chap. V-A of the Central Act are applicable by virtue of S. 25-J (2) notwithstanding Ss. 6-K and 6-R of the U. P. Act —Standing Order giving more favourable benefits will prevail over provisions of Act by virtue of proviso to S. 25-J (1). See Industrial Disputes Act (1947), S. 25-J. **(1965-66) 29 F J R 76 : AIR 1966 S C 1471.**

SECTION 6-N

——S. 6-N (c)—U. P. Industrial Disputes Rules (1957), R. 42—Retrenchment of workmen— Giving of notice under S. 6-N (c) is mandatory — But words "in the prescribed manner" in S. 6-N (c) and Rule 42 are merely directory— Substantial compliance therewith is sufficient — Notice given four days after wages in lieu of notice are given — Purpose of section is not defeated. A I R 1960 S C 610, A I R 1961 S C 849, Foll. AIR 1962 S C 1500, Rel. on. **(1964) 1 Lab L J 730 ; (1964) 8 Fac L R 1 ; 1964 All L J 704.**

SECTION 7

——Ss. 7 and 14—Scope — Powers of Board and of Examination Committee — Certain powers not delegated to Committee—Board can exercise those powers. **1959 All W R (HC) 226 : 1959 All L J 149.**

——S. 7—Settlement cannot be enforced on workers not parties to conciliation — (Industrial Disputes Act (1947), S. 18 (d).) **AIR 1955 N U C (All) 3554.**

SECTION 8

● ——S. 8 —Appeal lies from adjudication of Courts and tribunals only—Tribunal, meaning of—Conciliation Officer exercising powers under Cl. 29 of Order of U. P. Governor under Ss. 3 and 8 of U. P. Industrial Disputes Act — Not a Tribunal within Art. 136 of the Constitution—Appeal against his order or direction not competent. See Constitution of India, Art. 136. **AIR 1963 S C 677.**

● ——S. 8 — Order under U. P. Industrial Disputes Act—Industrial Tribunal — Authority, meaning of— Conciliation Officer exercising authority under Cl. 29 of Order under U. P. Industrial Disputes Act — No appeal lies under S. 4 against his order. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 2 (c). **AIR 1963 S C 677.**

● ——S. 8—U. P. Government Order under D/- 10-3-1948, Cls. 5 (a) and 23—Cl. 5 (a) does not apply where Cl. 23 applies — Enquiry pending before conciliation officer —Application by employer under Cl. 5 (a) cannot be entertained by Board. See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1961 S C 1170.**

● ——S. 8 — Industrial dispute referred by State Government for adjudication under its notification issued under Ss. 3, 4 and 8—Cause of workman can be taken up by unregistered association of workmen. Newspapers Ltd. Allahabad v. U. P. Industrial Tribunal. **(1960) 2 Lab L J 37 ; (1960-61) 19 F J R 1 ; AIR 1960 S C 1328 (1329) (Pt A) (Pr 4).**

● ——Ss. 8, 2, 3 and 23—Rules under S. 23 Rules 4, 5, 10, 15 (1), 26, 27 and 28—Individual dispute whether an industrial dispute — Reference of individual dispute by Government — Validity. See U. P. Industrial Disputes Act (1947), S. 2. **AIR 1957 S C 532.**

——S. 8 — U. P. Government Notification No. U-464 (LL)Y XXXVI-B-257 (LL)-1954 D/- 14-7-1954, Cls. 3, 11— Individual dispute espoused by wholly foreign trade union —Not industrial dispute — Reference of such dispute to Adjudicator is without jurisdiction—

Power of High Court to interfere under Art. 226, Constitution of India. See U. P. Industrial Disputes Act (1947), S. 3. **A I R 1960 All 734.**

——S. 8—Order under Ss. 3 and 8 made by Governor dated 15th March 1951, Cl. (17) — Period within which amount under award is to be recovered. See U. P. Industrial Disputes Act (28 of 1947), S. 3. AIR 1956 All 730 (DB).

——S. 8—Order under Ss. 3 and 8 made by Governor dated 15th March 1951, Cl. (17)—Period within which amount under award is to be recovered. See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1956 All 730 (DB).**

——Ss. 8, 4 and 3 — U. P. Government Order No. U 464 (LL)/36B-257 (LL)/1954 (dated 14-7-1954), Paras. 3, 5 (3), 11—Reference of industrial dispute in certain concern by workers' union of industry when there was workers' union of concern itself—Validity — Dispute referred to Industrial Tribunal by State Government—Reference cannot be called in question on ground of competency of workers' union of industry to make reference. See U. P. Industrial Disputes Act (28 of 1947), S. 3. AIR 1956 All 597 (DB).

——S. 8—Mandamus against Government—G. O. No. 615 dated 15-3-1951 Cl. 10 issued under Ss. 3, 4 and 8 of U. P. Industrial Disputes Act — Interpretation of — Court is not competent to direct Government to refer dispute regarding which order of reference is silent — See Constitution of India, Art. 226. **A I R 1956 All 367 (DB).**

——S. 8—Order under — G. O. No. 615, dated 15-3-1951, Cl. 10—Power of Government to refer dispute for adjudication is discretionary—Exercise of discretion not arbitrary — Writ of Mandamus cannot be issued. See Constitution of India, Art. 226. **AIR 1954 N U C (All) 1764.**

——S. 8—Reference of Industrial dispute to Industrial Tribunal and Industrial Appellate Tribunal of India on its own motion and not on report of Conciliation Board. Invalidity of report of and of proceedings before Board are not material for consideration of writ application. See Constitution of India, Art. 226. **AIR 1954 All 516.**

——Ss. 8, 4—Government Order No. 615 (LL) XVIII-7 (LL)/51, D/- 15-3-1951, Cl. 10 and Govt. Order No. 3092 (T. D.) XVIII-28 (T. D.)/1951, D/- 28-6-1951, Cl. 16—Governor can make order extending period of decision and thus make the adjudicator competent to make award. See U. P. Industrial Disputes Act (28 of 1949), S. 3. **AIR 1953 All 624 (DB).**

SECTION 11-A

——Ss. 11-A, 4K — Power of State Government to make reference—Delegation of—Not invalid. See U.P. Industrial Disputes Act (28 of 1947), S. 4-K. **(1965) 2 Lab L J 346 : (1965) 10 Fac L R 256 : (1965-66), 29 F J R 441 : AIR 1966 All 130.**

——S. 11-A — Notification under S. 11-A— Conflict between Hindi and English version— Latter would prevail. See U. P. Industrial Disputes Act (1947), S. 6H. **1963 All W R (HC) 98 : ILR (1963) 1 All 128.**

——Ss. 11-A, 4-K —Delegation of powers exercisable by State Government under S. 4-K—Not invalid. See U. P. Industrial Disputes Act (28 of 1947), S. 4-K. **AIR 1959 All 369.**

——S. 11-A—Scope—Duty and power—Distinction— Delegation under S. 4K is of power, not of duty — Subordinate authority forming opinion that there is industrial dispute—Opinion held was without jurisdiction. See U. P. Industrial Disputes Act (28 of 1947), S. 4-K. **ILR (1959) 2 All 141.**

SECTION 12

——S. 12—Dispute between workman and employer — Workman not represented by any union — There is no industrial dispute — Reference of dispute to Tribunal is without jurisdiction. **(1961) 2 Lab L J 195 : AIR 1961 All 298 (299) (Prs 4, 6, 9).**

SECTION 14

——Ss. 14 and 6-H — Award made by adjudicator granting bonus to workmen — Company distributing bonus to workmen excluding clerks — Second reference to Labour Court to decide whether clerks are entitled to bonus is not wrong — Ss. 6-H and 14 no bar — S. 14 has nothing to do with the implementation of an award. See Industrial Dispues Act (1947), S. 10 (1). **(1964) 8 Fac L R 274 : (1964) 1 Lab L J 719 (All).**

——Ss. 14 and 22—Government Notification No. 4-464 (LL)/XXX VI-B-257 (LL), 1954, dated 14-7-1954, Cls. 29 and 33 — Dismissal of workman without permission of Regional Conciliation Officer pending dispute before Appellate Tribunal — Prosecution under S. 14 read with Cl. 33 — Good faith — 'Act done' includes illegal omission — Protection under S. 22 (U. P. General Clauses Act (1 of 1904), S. 4 (2)—(Words and Phrases—'Act done')—(General Clauses Act (1897), S. 4 (17).

The applicant had dismissed an employee pending a dispute before the Appellate Tribunal under bona fide impression that since permission from the Appellate Tribunal which was higher authority had been obtained, no permission of the Regional Conciliation Officer was required. He has also very good reasons to arrive at that conclusion because in several of the cases Regional Conciliation Officers had also rejected the applications for permission on that very ground. The applicant was prosecuted under S. 14, U. P. Industrial Disputes Act and Cl. 33 of the Government Notification for failure to obtain the permission of the Regional Conciliation Officer for dismissing the employee.

Held that even assuming but without deciding that the permission of the Regional Conciliation Officer was necessary under Cl. 29 in the circumstances of the case, the applicant must be taken to have acted in good faith within the meaning of S. 22 in the absence of any allegation or circumstances of bad faith on the part of the applicant. Thus, if that omission, though may be illegal was bona fide it would amount to 'act done' within the meaning of S. 22 and the applicant was protected under that section. (Proceeding quashed). **1959 All L J 17 : 1958 All W R (HC) 146 : 1959 All Cr L 130 : (1959) 1 Lab L J 1 : ILR (1959) 2 All 421.**

——S. 14 — Order of State Government enforcing award prohibiting the employers from declaring a lockout for two months and workers from going on strike and declaring each one of them, if they commit a breach of the order, could be prosecuted under S. 14 — It cannot be said that injunction against employers is dependent upon workers not going on strike — Strike of workers within two months — Strike not in breach of contract — Strike does not give employer right to declare lockout under S. 24 of Central Act — Industrial Disputes Act (1947), S. 24. **AIR 1955 N U C (All) 2685.**

SECTION 16

——S. 16—Discretion of District Magistrate—Nature of: — It is not a statutory duty of District Magistrate to make report in every case where offence under S. 14 has been committed — Writ of mandamus cannot be issued to direct him to perform his duty which is only administrative and within his discretion —

(Constitution of India, Art. 226). A I R 1955 N U C (All) 3544.

SECTION 17

——S. 17 — Adjudication proceedings pending—Certifying officer's jurisdiction to certify or amend standing orders under Industrial Employment (Standing Orders) Act, 1946 if taken away.

Section 17 does not take away the jurisdiction, which the certifying officer has under the Industrial Employment (Standing Orders) Act of 1946 to certify the standing orders and to amend them while the adjudication proceedings ordered by the Government under S. 3 (d), Industrial Disputes Act, are pending. The only effect of S. 17 is that any standing orders certified or amended by the certifying officer, if they are inconsistent with the order under the U. P. Industrial Disputes Act, would be superseded for such time as the order remains in force and would revive as soon as the order comes to an end. 1950 All W R 128 : 1950 All L J 618 : A I R 1950 All 308 (309) (Pt B) (Pr 5).

SECTION 19

——S. 19 (1) — Worker claiming higher post raising industrial dispute — Worker appointed to post on officiating basis cannot claim to be heard when his case was supported by management — Constitution of India, Art. 226—Natural justice—Principles of.

A person holding an officiating appointment has no right to that post, firstly, because he has no lien on the post and, secondly, because the officiating appointment is in the nature of a stopgap arrangement which comes to an end when the post is filled by a permanent incumbent. The mere fact that he was officiating in certain post, therefore, would not create any substantive right in his favour.

During the illness of the Head Mistri in the spinning Department of the Mill, one of the Mistries was placed as Head Mistri and in the vacancy thus caused by the promotion of the Mistri, one S was appointed as officiating Mistri. Aggrieved by this, R who was a confirmed Assistant Mistri, made a claim to that post and on a reference of the industrial dispute, an award was passed in his favour. S, by a writ petition, challenged that award on the ground that the proceedings on reference were held behind his back, which was against the provisions of S. 19 (1) and of the principles of natural justice. The stand taken by the Mill which was a party to the proceeding was that it had not taken a final decision about the permanent appointment of Mistri but that S had been given officiating appointment as a temporary measure:

Held that the impugned order of reference and the award did not affect S, because he could not claim to hold the post of officiating Mistri as of right. By the impugned award R was held entitled to the permanent post of Mistri and as a consequence the vacancy in that post ceased to exist. This brought about an automatic termination of the officiating arrangement in which S was working. In the circumstances, there could not be any question of his being affected by the order of reference or by the impugned award. AIR 1962 All 70, Disting.; AIR 1958 S C 36, Rel. on.

Held further that the mill which was a party to the adjudication, had stoutly defended their action in appointing S as officiating Mistri. It had fully supported the point of view of S that he had the requisite experience and was a fit person to hold the post of officiating Mistri. In these circumstances it could not be said that the case of S had gone by default. It could not, therefore, be said that the award was against the principles of justice. (1965) 10 Fac L R 199 (All).

SECTION 21

——Ss. 21 (3) and 3 — Presumptions that can and that cannot be drawn under S. 21 (3) with respect to order passed under S. 3.

Under S. 21 (3) the Court is bound to presume that the order was passed by that very authority which purported to pass the order under S. 3. The Court must also presume that that authority passed the order in exercise of that very power under which the order purports to have been passed. But there is no presumption under this provision of law that the exercise of the power was necessarily after complying with the condition precedent to the exercise of the power laid down in the Act.-AIR 1945 P C 156; (1945) 2 M L J 325, Disting. AIR 1956 All 689 (694) (Pt G) (Pr 10) (DB).

SECTION 22

——S. 22 (y)—Payment of Wages Act (1936), S. 2 (VI) — Wages - Definition alone applies after the wages of the workmen are fixed — Definition of wages in U. P. Act 28 of 1947 applies only when there is a dispute about the rate of wages payable to the employee. See Payment of Wages Act (1936), S. 2 (VI). (1965) 11 Fac L R 395 (All).

——S. 22 — Government Notification No. 464 (LL)/ XXXVI-B-257 (LL) 1954, D/- 14-7-1954, Cls. 29 and 33 — Dismissal of Workman without permission of Regional Conciliation Officer pending dispute before Appellate Tribunal — Prosecution under S. 14 read with Cl. 33 — Protection under S. 22. See U. P. Industrial Disputes Act (28 of 1947), S. 14. 1958 All L J 17.

SECTION 23

——S. 23—Rules under S. 23—Rules 4, 5, 10, 15 (1), 26, 27 and 28—Individual dispute whether an industrial dispute — Reference of individual dispute by Government — Validity. See U. P. Industrial Disputes Act (1947), S. 2. AIR 1957 SC 532.

UTTAR PRADESH INDUSTRIAL DISPUTES (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT (1 of 1957)

SECTION 6-A

——S. 6-A — Reference to S. 6-A in S. 8 to S. 6-A which was brought in by U. P. Act (1 of 1957) and not to original S. 6-A. See U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act (23 of 1957), S. 8. AIR 1964 All 156 (DB).

SECTION 16

——Ss. 16, 17—Pending proceedings—State Government referring industrial dispute to adjudicator under U. P. Act (28 of 1947) — Proceedings will be deemed to be pending before Government even during period the matter is before Adjudicator — Award given by Adjudicator prior to Act — Enforceability after amended Act came into force. AIR 1964 All 156 (161 to 163) (Pt E) (Prs 18, 20, 23, 24) (DB).

——S. 16—"Authority constituted under U. P. Industrial Disputes Act, 1947" — Authority constituted includes not only authority created by 1947 Act but also authority contemplated by it such as State Government — S. 16 therefore applies even to proceedings before State Government. AIR 1964 All 156 (162) (Pt G) (Pr 20) (DB).

SECTION 17

——S. 17—Pending proceedings—State Government referring industrial dispute to adjudicator under U. P. Act 28 of 1947 — Proceedings will be deemed to be pending before Government even during period the matter is before Adjudicator — Award given by Adjudicator prior to Act—Enforceability after amended Act came into force. See U. P. Industrial Disputes.

(Amendment and Miscellaneous Provisions) Act (1 of 1957), S. 16. AIR 1964 All 156 (DB).

——S. 17—Section is directory and not mandatory.

Section 17 is not mandatory. That section uses the word 'May' which prima facie suggests that it is not mandatory but directory. Apart from it, it is an enabling section which confers some power on the Government which power it would not otherwise have. The Government cannot be forced to exercise that power, and a perusal of the section itself leads to the conclusion that it is not mandatory but directory in nature. A I R 1964 All 156 (163) (Pt H) (Prs 21, 22) (DB).

UTTAR PRADESH INDUSTRIAL DISPUTES (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT (23 of 1957)

SECTION 8

——S. 8 — "Principal Act" in section refers to U. P. Act (23 of 1947) as amended by U. P. Act (1 of 1957) — Reference to S. 6-A in S. 8 is to S. 6-A which was brought in by U. P. Act (1 of 1957) and not to original S. 6-A.

The preamble shows that Act No. 23 of 1957 was clearly brought in to amend the 1947 Act. At the time when Act 23 of 1957 was enforced S. 16 was already a part of the 1947 Act having been inserted therein by virtue of Act (1 of 1957). Consequently, the words "principal Act" clearly mean U. P. Act No. 23 of 1947 as amended by U. P. Act No. 1 of 1957. Reference to S. 6-A in the words added to S. 16 obviously is to S. 6-A which was brought in by Act 1 of 1957 and cannot refer to the original S. 6-A which stood repealed by Act 1 of 1957. View of Mathur, J., in Civil Misc. Writ Petns. Nos. 731 of 1958 connected with 732 to 735 of 1958 dated 3-5-1960 (All), Dissented from. AIR 1964 All 156 (163, 164) (Pt F) (Prs 24, 26 (DB).

UTTAR PRADESH INDUSTRIAL DISPUTES (AMENDMENT) ORDINANCE (1 of 1953)

SECTION 3

● ——S. 3 — General order specifying time within which award has to be submitted — General order amended by enlarging time — Effect on reference — Submission of award beyond time originally fixed — Effect of S. 3 of Amending Ordinance (1 of 1953) — Award, if validated. See U. P. Industrial Disputes Act 28 of 1947 (as amended by U. P. Ordinance 1 of 1953), S. 3. AIR 1958 SC 187.

● ——S. 3 — Scope, purpose and interpretation — Applicability of clauses of section.

There can be little doubt, that the main purpose of the Ordinance was to validate orders of extension of time within which an award had to be submitted as well as to prevent its validity being questioned merely on the ground that it had been submitted beyond the specified time or any enlargement thereof. Where no judicial proceedings against an award were pending it was the intention of the Ordinance that the award shall not be questioned merely on the ground that it was submitted after the specified period for its submission or any enlargement thereof. Although S. 3 (2) of the Ordinance is not happily worded there is no real conflict between its provisions and the provisions of Cl. (3) of the section. The words "as if S. 6-A had been in force at all material dates" have to be given some meaning and they cannot be regarded as redundant. The words in question can only apply to that part of the clause which refers to an enlargement of time for the submission of the award, which is the only purpose of S. 6-A of the Act. If S. 3 (2) of the Ordinance is read in this way an intelligible meaning is given to it which is consistent with S. 6-A of the Act and not in conflict with S. 3 (3) of the Ordinance. The awards referred to in S. 3(2) are awards against which no judicial proceeding was pending at the commencement of the Ordinance. The provisions of S. 3 (2) and (3) are not in conflict with each other. State of U. P. v. M/s. Swadeshi Cotton Mills Co., Ltd., (1958) 1 Lab L J 9 : (1957-58) 13 F J R 411 : 1958 S C J 567 : 1958 S C R 971 : AIR 1958 S C 187 (193) (Pt B) (Pr 12).

U. P. INDUSTRIAL DISPUTES ORDER (1954)

CLAUSE 7

——Cl. 7 — Under G. O. No. U-464 — (LL) XXXVI/B-257 (LL) 1954 dated 14-7-1954 — Applies in terms only to a Tribunal and not to an Adjudicator—Adjudicator need not pronounce award in open Court in presence of parties—Award not void for failure to do so. See U. P. Industrial Disputes Act (28 of 1947), S. 3. AIR 1964 All 156 (DB).

CLAUSE 11

——Cl. 11—Order of reference of dispute to adjudicator—Absence of recital required by Cl. 11 in Order —Not fatal — Evidence can be adduced to remedy defect. See U. P. Industrial Disputes Act (28 of 1947), S. 3. AIR 1964 All 156 (DB).

U. P. INDUSTRIAL DISPUTES RULES (1947)

RULE 40

——R. 40(3), Proviso — Proviso is ultra vires—(U. P. Industrial Disputes Act (28 of 1947), S. 6-I) — (Constitution of India, Art. 19 (1) (c)). (1959-60) 17 F J R 290 : (1960) 1 Lab L J 745 : AIR 1960 All 45 (53) (Pt F) (Pr 29).

——R. 40 (4) — Sub-rule is hit by Art. 14 of Constitution—Sub-rule is unreasonable restriction on right to form association — (Constitution of India, Arts. 14 and 19 (1) (c) and (4)). (1959-60) 17 F J R 290 : (1960) 1 Lab L J 745 : AIR 1960 All 45 (53) (Pt G) (Pr 30).

U. P. INDUSTRIAL DISPUTES RULES (1957)

RULE 4

——Rr. 4 and 5 — Reference of dispute to Labour Court — Held on facts that reference cannot be said to be barred on ground that parties did not follow procedure prescribed by Rr. 4 and 5. See U. P. Industrial Disputes Act (28 of 1947), S. 3. (1963) 1 Lab L J 340 (All).

RULE 5

● ——R. 5 (1)—Applicability — Judgment of labour appellate tribunal — Appeal against, by special leave, pending—Compromise by parties — Procedure prescribed by R. 5 (1) not attracted. See Constitution of India, Art. 136. AIR 1961 S C 429.

——Rr. 5, 26 and 27—Settlement of dispute by some of office bearers of Union—Authority on behalf of all workers not proved — President of Union who was not signatory objecting the settlement—Settlement held not binding on all workmen—Award in terms of such settlement held was invalid. (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

——Rr. 5 and 4 — Reference of dispute to Labour Court — Held, on facts that reference cannot be said to be barred on ground that parties did not follow procedure prescribed by Rr. 4 and 5. See U. P. Industrial Disputes Act (28 of 1947), S. 3. (1963) 1 Lab L J 340 (All).

RULE 8

——R. 8—Reference by Union which did not represent all workmen not valid. See U. P. Industrial Disputes Act (28 of 1947), S. 5-B. (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

RULE 26

——Rr. 26, 27 and 5— Settlement of dispute by some office bearers of Union — Authority on behalf of all workers not proved — President of Union who was not signatory objecting the settlement—Settlement held not binding on all wokmen — Award in terms of such settlement held was invalid. (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

RULE 27

——Rr. 27, 26, 5 — Settlement of dispute by some office bearers of Union — Authority on behalf of all workers not proved — President of Union who was not signatory objecting the settlement — Settlement held not binding on all workmen—Award in terms of such settlement held was invalid. (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

RULE 40

——R. 40 (4)—Power conferred on labour Commissioner, under rule, is not an unguided power which can be exercised arbitrarily so as to violate Art. 14 of the Constitution. (1965) 1 Lab L J 8 : (1964) 9 Fac L R 340 : ILR (1965) 1 All 274.

——R. 40—Representation, objection to—Not allowable in appeal. See U. P. Industrial Disputes Act (28 of 1947), S. 6-I (3). AIR 1964 All 454 (DB).

——R. 40 (3) — Provisions are not violative of fundamental rights under Art. 19 (1) (c) of Constitution. See U. P. Industrial Disputes Act (28 of 1947), S. 6-I (3). (1964) 9 Fac L R 340 (All).

——R. 40 (3). Proviso — Proviso to sub-R. (3) is not ultra vires the proviso to sub-S. (3) of S. 6, U. P. Industrial Disputes Act (1947). See U. P. Industrial Disputes Act (28 of 1947), S. 6-I (3), Proviso. (1964) 9 Fac L R 340 (All).

RULE 42

——R. 42—Patent error of law. See Constitution of India, Art. 226. (1964) 8 Fac L R 1 (All).

——R. 42—Rule is directory—Retrenchment of workmen—Giving of notice under S. 6-N (c) is mandatory —But words "in the prescribed manner" in section and R. 42 are merely directory — Substantial compliance therewith is sufficient — Notice given four days after wages in lieu of notice are given—Purpose of section is not defeated. See U. P. Industrial Disputes Act (28 of 1947), S. 6-N (c). (1964) 8 Fac L R 1 (All).

U. P. INTERMEDIATE EDUCATION ACT (2 of 1921)

SECTION 3

——Ss. 3 and 7—Permanent Assistant Clerk in office of Secretary Board of High School and Intermediate Education—He holds a civil post in the State—Temporary appointment in higher scale — Transfer by Director of Education as noter and drafter to office of District Inspector of Schools—Assistant clerk disregarding such order—Removal from service—Transfer and removal sanctioned by Governor — Transfer held did not amount to reduction in rank — Transfer and removal could not be questioned on ground that they were by authority subordinate to appointing authority. See Constitution of India, Art. 311. AIR 1962 All 413 (DB).

——S. 3 (1) (c)—"Principal of Intermediate College" —Interpretation—Principal holding some other office also — Eligibility for election — (Interpretation of Statutes—Plain language).

The contention that under S. 3 (1) (c), U. P. Intermediate Education Act, if a person along with the office of a Principal of an Intermediate College holds any other office such as the Principalship of a Degree College, he is not eligible for election to the membership of the Board is not tenable because, it is an accepted principle of interpretation of statutes that no words are to be added to the words in the Statute and there are no words in S. 3 (1) (c) which justify an interpretation that the Principal referred to in that section means a Principal who does not hold any other office. 1957 All L J 247.

SECTION 7

——Ss. 7, 11 and 15 — Quasi-judicial act — Statutory educational authority — Board of High School and Intermediate Education under U. P. Intermediate Education Act—Examinee securing undue admission to examination — Action against — Board acts quasi-judicially—Order cancelling his examination or refusing to declare result is penal—Denial of opportunity to candidate—Natural justice violated. See Constitution of India, Art. 226. AIR 1963 All 41 (DB).

——S. 7 — Permanent Assistant Clerk in office of Secretary Board of High School and Intermediate Education — He holds a Civil post in the State — Temporary appointment in higher scale—Transfer by Director of Education as noter and drafter to office of District Inspector of Schools—Assistant clerk disregarding such order — Removal from service — Transfer and removal sanctioned by Governor — Transfer held did not amount to reduction in rank—Transfer and removal could not be questioned on ground that they were by authority subordinate to appointing authority. See Constitution of India, Art. 311. AIR 1962 All 413 (DB).

——Ss. 7, 15—Regulations under—Chapter VI, Regn. I (1)(4) — Examination Committee — Power of, to exclude examinee from subsequent examinations not ultra vires. I L R (1960) 2 All 248 : 1960 All L J 343 : AIR 1960 All 535 (537, 538) (Prs 7 to 13) (DB).

——S. 7 (5)—Scope and effect — Regulations framed under S. 15 (2) — Chap. 12, Regn. 10 — Cl. (v) of Regn. 10 — Construction of — It is not intended to create a fifth category.

The only reasonable construction that can be put on Cl. (v) of Regn. 10 in Chap. 12 is that is not meant to create a fifth category of students eligible to appear as private candidates at the High School examination but is intended to lay down a condition that a person has to fulfil in order to be eligible for admission to the High School Examination as a private candidate, even if he falls within one of the four categories enumerated in Cls. (i) and (iv) of the Regulation. If he left a recognised institution at the stage mentioned in this clause he must fulfil the condition laid down in it about time also. The fact that the clause containing the additional condition was numbered as Cl. (v) cannot show necessarily that it was intended to create a fifth category. 1957 All W R (HC) 534 : 1957 All L J 540.

SECTION 11

——S. 11—Board of High School and intermediate Education under U. P. Intermediate Education Act—Examinee securing undue admission to examination—Action against — Board acts quasi judicially — Order cancelling his examination or refusing to declare result is penal—Denial of opportunity to candidate—Natural justice violated. See Constitution of India, Art. 226. AIR 1963 All 41 (DB).

——Ss. 11 and 15 — Regulations under S. 15, Regn. 5 (ii) and (v) — Meaning and effect of — Short attendance — Candidate permitted by Principal to sit for examination provisionally — Board disallowing and cancelling examination — Competency.

In order to ascertain the effect of Cls. (ii) and (v) of Regn. 5, those clauses must be examined in the background of the other provisions of Chap. XII. The regulations in Chap. XII make provision, inter alia for the admission to the Board's examinations of two classes of candidates (1) regular and (2) private. The distinction between the two is that whereas private candidates offer themselves for examination (Regn. 8 (i) regular candidates do not do so; they are 'sent up' (Regn. 4(1) or 'presented' (Regn. 5(ii) by the institution which they attend. The presentation for the Examination is by the institution, and Cls. (ii) and (v) of Regn. 5 impose an obligation on every recognised institution to send up only such candidates who have attended the institution for the prescribed number of days. If, notwithstanding the fact that a candidate has not attended the institution for the prescribed period, the institution sends him up for the Examination then he has not been duly presented, and the Board is not under any obligation to examine him or, if it has, ignorance of the fact, examined him, to declare the result of that examination. Viewed in this light, Cls. (ii) and (v) of Regn. 5 are mandatory provisions inasmuch as they impose an obligation, not on the candidate, but on the institution which he attends. If a candidate is presented by his institution in defence of the provisions of Cl. (ii) or of Cl. (v) of Regn. 5 such a candidate acquires no right in law to compel the Board to declare the result of his examination unless the Board has condoned the infraction of this Regulation. 1959 All W R (HC) 226 : 1959 All L J 149 (DB).

——S. 11(1)—Grant or withdrawal of recognition to an institution — Matter arises out of administrative business. AIR 1955 N U C (All) 4163.

SECTION 12

——S. 12 (2)—Board of Intermediate Education is not part of Education Department—Administrative order of transfer of employee of Board — If transfer is in fact by way of punishment, the Director has no power to transfer him. See Constitution of India, Art. 311(2). AIR 1957 All 70.

SECTION 13

●——Ss. 13 and 15 — Examinations Committee acts quasi-judicially. See Constitution of India, Art. 226. AIR 1962 S C 1110.

——Ss. 13, 14 and 15 — Regulations under S. 15, Chap. VI, Para. 1 (1) — Students using unfair means at examination—Cancellation of results by Examination Committee in ex parte proceedings — Failure to provide opportunity of being heard held vitiated the order — Provisions empowering the Board or committee to cancel results of examination did not infringe students' rights under Art. 19(1)(f)—(Constitution of India, Arts. 19 (1) (f) and 226). AIR 1956 All 539 (555) (Pt A) (Pr 117) (DB).

SECTION 14

——S. 14—Regulations under S. 15, Chap. VI, Para. 1 (1)—Students using unfair means at examination — Cancellation of results by Examination Committee in ex parte proceedings—Failure to provide opportunity of being heard, held vitiated their order — Provisions empowering the Board or the Committee to cancel results of examination did not infringe student's rights under Art. 19(1)(f) See U. P. Intermediate Education Act (2 of 1921), S. 13. AIR 1956 All 539 (DB).

SECTION 15

●——S. 15 — Examinations Committee under U. P. Intermediate Education Act — Action in cases of examinees using unfair means — Committee acts quasi-judicially — Principle of audi alteram partem applies. See Constitution of India, Art. 226. AIR 1962 SC 1110.

——S. 15 (2) (c) — U. P. Education Code Appendix VI — Award directing reinstatement of Principal — Filing of award in Court—Maintainability—Specific Relief Act (1877), S. 21 (b)—Arbitration Act (1940), S. 14 (2).

The Principal of a High School, after submitting his resignation, withdrew the same before it was accepted by the Management of the School. The Executive Committee of the School, however, accepted the resignation with immediate effect. The Principal moved the Deputy Director of Education for reinstatement. The Deputy Director who was the chairman of the Standing Regional Arbitration Board called for the meeting of the Board which gave an award directing reinstatement of the Principal with three months salary. The School Committee paid the amount but did not reinstate the Principal. So the Principal moved the State Government and the latter suggested him to obtain a decree from the Court. The principal thereupon made an application under S. 14 (2).

On contention that in view of S. 21 (b) of the Specific Relief Act no suit for declaration based on a contract of personal service was maintainable and therefore the Arbitration Board could not give decision of reinstating the Principal.

Held (i) that a suit based on a contract of personal service was not maintainable unless the order of dismissal or discharge was a nullity or there was an infringement of a statutory provision. In the instant case, the Principal had not been dismissed from service but was discharged by termination of the agreement. According to the agreement of service the notice of termination of the agreement was to be valid only after Inspector had given approval. That agreement was on the lines of Appendix VI of the U. P. Educational Code.

The whole of the Educational Code including Appendix VI could be a part of the Regulations and disregard thereof would amount to disregard of statutory provisions. The Managing (Executive) Committee of the School had not obtained the approval of the Inspector and consequently the notice of termination was not valid and had no legal effect. The termination of service thus amounted to the breach of a statutory provision and the Courts of law could grant the declaration that the order of discharge was invalid and, that in the eye of law, the Principal continued to be still in service. The decision of the Arbitration Board directing reinstatement of the Principal in substance, amounted to such a declaration.

(ii) That the award of the Arbitration Board was not incapable of performance on the ground that the School had been recognized for Intermediate Examination also and the status of the Institution has been changed. 1965 All L J 1116.

——S. 15—Board of High School and Intermediate Education under U. P. Intermediate Education Act—Examinee securing undue admission to examination —Action against—Board acts quasi judicially—Order cancelling his examination or refusing to declare result is penal—Denial of opportunity to candidate—Natural justice violated. See Constitution of India, Art. 226. AIR 1963 All 41 (DB).

——S. 15 — Regulations under Chap. XII, Regulation 5 (vi) and (ii)—Person cannot be deemed to be a

condidate unless he is presented for the examination under Regulation 5 (ii) or he has supplicated for such presentation after filling in the prescribed application form—Expression 'detained candidate' — Meaning of — Student not supplicating for examination — Not a detained candidate — Detention must be under some regulation—Percentage of attendance of student not supplicating for examination because of his own difficulties and not because he was prohibited under some regulation —Calculation to be as per Cl. (2) and not as prescribed in Cl. (4) of Regulation 5—Educational institutions—Candidate — "Detained"— Meaning. ILR (1962) 1 All 280.

——Ss. 15, 7 — Regulations under — Chapter VI, Reg. 1 (1), (4)—Examination Committee—Power of, to exclude examinee from subsequent examinations — Not ultra vires. See U. P. Intermediate Education Act (1921), S. 7. AIR 1960 All 535 (DB).

——**S. 15 (as amended by U. P. Act 5 of 1941) —** Regulations under Chap. VI, R. 1 (1) Constitution of India, Art. 226—Mandamus — Object of—Powers of High Court—Orders that can be passed indicated. See Constitution of India, Art. 226. AIR 1959 All 226 (DB).

——S. 15 — Regulations under, Chapter VI, Part I, Cl. (1)—Examination Committee — Power to punish examinees—Opportunity to be heard given — Second opportunity not given—Order not vitiated.

According to the provisions of Part I of Chaper VI of the Regulations, the Examination Committee has power to punish the examinee for using unfair means at the examination. It can punish him also where he is guilty of a moral offence or indiscipline at the examination. The expression 'at the examination' in Cl. (1) means that acts of indiscipline can also be displayed outside the examination hall and they may still be acts displayed at the examination. The beating of an invigilator at the place of the centre after he comes out of the examination hall, particularly when the cause for doing so is the conduct of the invigilator inside the examination hall, is undoubtedly indiscipline at the examination. The rules of natural justice only require that the person charged is given an opportunity. It is not necessary for the Examinations Committee, once the examinee had been afforded the necessary opportunity by the Inspector, to repeat the process again. The mere fact, therefore, that an opportunity was not given over again by the Examinations Committee will not vitiate the order passed by it. 1959 All L J 277.

——**S. 15 (2) (e)—Board of High School and Intermediate Education Rules, Chap. XII, Rule 5 (iii)—Applicability to detained candidate.**

The detained candidates have been treated as separate and distinct from failed candidates and the two expressions have been used to indicate these two classes of candidates in R. 5 (v). A detained candidate is a candidate who was detained at an earlier examination for any reason whatsoever. A detained candidate does not come within the meaning of the last paragraph of R. 5 (xii). Hence the percentage in the case of detained candidates has to be calculated on one academical year's attendance and it is open to the head of recognised institution to condone a deficiency in attendance of not more than 10 lectures in the case of such candidates. 1957 All L J 493.

——**S. 15—Education Code framed under— Arbitration Board—Jurisdiction of—Nature and extent.**

The Educational Code has statutory authority inasmuch as, it is framed under S. 15, U. P. Intermediate Education Act, 1921 under Para. 151-B of the Code, the Arbitration Board comes into being as a statutory body whether there are any pending disputes or not and functions as a tribunal under the authority of law. Statutory obligation is cast on this Board to decide the disputes as are referable to them. Their jurisdiction does not depend upon the withdrawal of either grant-in-aid or recognition of the institution in case the reference to them was possible at the time when the dispute arose.

The fact that an award, if made by the Board, may not be enforceable by the Education Department is no ground to refuse to do the arbitration. 1957 All W R (H C) 365 : 1957 All L J 162.

——Ss 15, 14 and 13 — Regulations under S. 15, Chap. VI, Para. 1 (1)—Students using unfair means at examination — Cancellation of results by Examination Committee in ex parte proceedings — Failure to provide opportunity of being heard, held vitiated their order—Provisions empowering the Board or the committee to cancel results of examination did not infringe student's rights under Art. 19 (1) (f). See U. P. Intermediate Education Act (2 of 1921), S. 13. AIR 1956 All 539 (DB).

—— S. 15—Regulations under Chap. VI, Para. 1 (1)—Examinations Committee considering cases under Para. 1 (1) —Committee not required to act judicially or quasi-judicially —(Constitution of India, Art. 226). AIR 1956 All 539 (541, 545, 551, 553) (Pt B) (Prs 7, 8, 33, 79, 93) (DB).

——S. 15 — Regulations under — Chapter XII, R. 5, Chapter VI, R. 1—Cancellation of result.

The principal has no power to condone shortage of attendance but the failure to attend the requisite number of meetings disentitles candidate to appear in the examination. Once however a student has been allowed to appear in the examination there is no provision under the Act or the regulations under which the examinations committee could cancel the result of a student. There is no power given to the examination committee to cancel the result on the ground that the attendance of a candidate is short although he has been duly recommended by the authorities of the institution and he had been duly permitted to appear in the examination. 1956 All L J 628.

——S. 15—Regulations under — Order withdrawing recognition—Order is to be pased only as consequence of failure of institution to carry out Board's direction —Para. 17 does not apply when no action is taken under Chap. VII. AIR 1955 NUC (All) 4163.

SECTION 16

——**S. 16-C (3)—Expression 'modify'—Meaning of—Regional Appellate Committee has powers to enhance punishments—Words and Phrases—'Modify'.**

Ordinarily the word 'modify' is used in the sense of reducing the rigidity or severity and not in the sense of enhancing a punishment. But it cannot be said that 'modify' is a synonym for 'reduce'. Sometimes it is used in the sense of enhancing also. In the context of S. 16-C (3) (c) the word has been used in a broader sense including the power to enhance. The Regional Appellate Committee has jurisdiction to enhance punishments inflicted by the Inspector. AIR 1959 S C 586, Foll. 1961 All L J 722.

SECTION 16-A

——Ss. 16-A, 16-D to 16-G (as amended by U. P. Act XXXV of 1958)—Nomination paper filed by Lecturer of a recognised College — College receiving grant-in-aid from State Government — Held, nomination paper could not be rejected. See Panchayats—U. P. Kshetra Samiti and Zilla Parishad Adhiniyam (33 of 1961), S. 13-C. 1964 All L J 840.

SECTION 16-G

——S. 16-G (as amended in 1958)—Regulations under Reg. 26 (1) (b) — Order of termination cannot be

regarded as one if of dismissal. See Constitution of India, Art. 311 (2). AIR 1965 All 252 (DB).

——S. 16-G (as amended in 1958)—Regulations under Chap. III, Reg 28 (1) (b)—'Abolition of subject'—Interpretation of — Abolition of all classes in subject not necessary. 1964 All L J 1116 : ILR (1965) 1 All 324 : AIR 1965 All 252 (253) (Pt B) (Pr 5) (DB).

——Ss. 16-G (3), 16 G (4)—Appeal against Inspector's decision — Committee cannot give direction about re-instatement. 1965 All L J 1069 : ILR (1965) 2 All 994.

U. P. JAIL MANUAL

PARA. 421

——Para. 421—Scope — Provision does not authorise cutting of hair of undertrial prisoner without his consent except on medical grounds — Direction that the person can be forced to do so will amount to an assault—I. P. Code (1860), S. 351. 1965 All L J 754 : ILR (1965) 2 All 507.

PARA. 443

——Para. 443 (b)— Identification parade—Refusal to admit counsel for accused—Criminal P. C. (1898), S. 340.

Not only the counsel of the accused has a right to be present at the time of the identification parade but he has further a right to satisfy himself that all the requirements of law as laid down in para. 443 have been fully complied with. Refusal on the part of the Magistrate to admit the accused's counsel at the time of the identification parade is negation of the right granted to him by law. 1951 All L J 433 : AIR 1952 All 589 (589) (Pr 3) (DB).

PARA. 742

——Para. 742—Under Trial Prisoner—Hunger strike—Offence. See Prisons Act (1894), S. 52. 1959 Cri L J 283 : AIR 1959 All 164 (DB).

——Ch. 28, Para. 742 — 'On hunger strike' — Person starting hunger strike outside jail continuing it after admission to jail—When liable for prosecution under S. 52 indicated. See Prisons Act (1894), S. 52. 1959 Cri L J 283 : AIR 1959 All 164 (DB).

——Para. 742 — Security prisoners going on hunger strike—Prisoners governed by U. P. Security Prisoners Rules, 1944, R. 43—Offence committed under R. 43—Previous sanction of Inspector General of Prisons for prosecution is not necessary. See Prisons Act (1894), S. 52. AIR 1955 N U C (All) 1519 (DB).

RULE 689

——Rr. 689 and 711—Scope.

Rules 689 and 711 have nothing to do with petitions addressed to a Court of law. 1954 Cri L J 354 : 1953 All W R (H C) 719 : AIR 1954 All 351 (352) (Pt A) (Pr 4).

RULE 711

——R. 711—Scope — It has nothing to do with petitions addressed to a Court of law. 1954 Cri L J 354 : AIR 1954 All 351 (DB).

UTTAR PRADESH KANS ERADICATION ACT (22 of 1951)

SECTION 3

——Ss. 3, 4, 6 and 7—Act is valid—It does not abridge rights of cultivators — Provisions are not arbitrary—Person who has taken benefit cannot refuse payment of costs. See Constitution of India, Art. 19 (1) (f). 1961 All L J 370.

SECTION 4

——Ss. 4, 6, 7 and 3—Act is valid—It does not abridge rights of cultivators — Provisions are not arbitrary—Person who has taken benefit cannot refuse payment of costs. See Constitution of India, Art. 19 (1) (s). 1961 All L J 370.

SECTION 6

——Ss. 6, 7, 4 and 3 — Act is valid — It does not abridge rights of cultivators—Provisions are not arbitrary — Person who has taken benefit cannot refuse payment of costs. Constitution of India, Art. 19 (1) (f). 1961 All L J 370.

SECTION 7

——Ss. 7, 6, 4 and 3—Act is valid—It does not abridge rights of cultivators — Provisions are not arbitrary—Person who has taken benefit cannot refuse payment of costs. See Constitution of India, Art. 19 (1) (f). 1961 All L J 370.

UTTAR PRADESH KEROSENE CONTROL ORDER (1962)

——Conditions 10 and 12—Contravention of—Liability of partners of firm—Charge framed against partners cannot be struck down as illegal—They can establish their innocence at subsequent stage. See Essential Commodities Act (1955), S. 10. 1965 All Cri R 397 : 1965 All L J 1026 : 1965 All W R (H C) 608.

UTTAR PRADESH KHANDSARI SUGAR MANUFACTURERS LICENSING ORDER (1959)

CLAUSE 3

——Cl. 3—Validity.

The provision in Cl. 3 requiring a licence for installing power crushers and Bels in the manufacture of rab, which is not the manufacture of Khandsari Sugar, is beyond the powers delegated to the State Government by the Central Government, and is therefore illegal. 1960 All L J 553 : 1960 All W R (HC) 408 : AIR 1960 All 650 (652) (PcB) (Prs 10 to 12).

UTTAR PRADESH KSHETRA SAMITIES AND ZILLA PARISHADS ADHINIYAM (33 of 1961)

See under Panchayats

UTTAR PRADESH KSHETRA SAMITIES (ELECTION OF PRAMUKHS AND UP-PRAMUKHS AND SETTLEMENT OF ELECTION DISPUTES) RULES (1962)

See under Panchayats

UTTAR PRADESH KUMAUN NAYABAD AND WASTE LAND ACT (32 of 1948)

SECTION 11

——S. 11 (b)—Suit under, for cancellation of grant—Subsequent declaration that no grant should be made—Existence of easement rights held could not be presumed—Declaration held not retrospective—(Kumaun Nayabad and Waste Land Rules, R. 20). AIR 1955 N U C (All) 3291.

UTTAR PRADESH KUMAUN NAYABAD AND WASTE LAND RULES

RULE 20

——R. 20 — Suit under, for cancellation of grant—Subsequent declaration that no grant should be made—Effect stated. See (U. P.) Kumaun Nayabad and Waste Land Act (32 of 1948), S. 11 (b). AIR 1955 N U C (All) 3291.

U. P. LAND ACQUISITIONS (REHABILITATION OF REFUGEES) ACT (26 of 1948)

SECTION 2

——S 2 (ii)—"Court" if includes—Acquisition Officer. See U. P. Land Acquisition (Rehabilitation of Re-

fugees) Act (26 of 1948), S. 11. AIR 1958 All 154 (DB).

——S. 2 (viii) — Notification declaring Improvement Trust as 'builder'—Effect of—(U. P. Town Improvement Act (1919), Ch. IV).

Even if a scheme for the erection of houses, shops and workshops for the use of refugees may not be improvement scheme which comes within the ambit of Ch. IV of the Town Improvement Act, the effect of a declaration that an Improvement Trust is a 'builder' within the meaning of U. P. Land Acquisition (Rehabilitation of Refugees) Act, 1948, is, in law, to constitute it a 'builder' for the purposes of that Act, and if necessary statutorily to enlarge its objects to enable it to perform its functions thereunder. 1954 All L J 673 : AIR 1955 All 12 (18, 19) (Pt G) (Pr 27) (DB).

[Reversed on another point in AIR 1961 SC 14].

SECTION 3

——S. 3—Absence of notice to owner—Effect.

Service of notice under S. 3 of the Act on the owner of the property is an essential part of the process of requisition. Without it the requisition is not valid in law although the owner had knowledge of the proceedings. 1957 All L J 117 : 1957 All W R (HC) 350.

——Ss. 3, 9 and 15 — Rules under S. 15, R. 4 — Requisition of land under S. 3—Notice on Zamindari but absence of notice on occupier or tenant — Requisition order is illegal — Land cannot be acquired under S. 9. AIR 1955 NUC (All) 349 (DB).

SECTION 9

——S. 9 (2) — Compensation for acquisition of land —Basis for calculation — Market value as it obtained on 1-9-1939 and not on notification under S. 9 (2) should be taken—1954 ALJ 673 held no longer good Law. See U. P. Land Acquisition (Rehabilitation) of Refugees Act (26 of 1948). S. 11. 1965 All L J 999.

——S. 9 — Rules under S. 15, R. 4 — Requisition of land under S. 3 — Absence of nctice on occupier or tenant — Requisition is invalid. See U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), S. 3. AIR 1955 NUC (All) 349 (DB).

SECTION 11

——S. 11—Validity—Not invalid. See Constitution of India, Art. 31-B. AIR 1961 S C 14.

——Ss. 11 and 9 (2) — Compensation for acquisition of land—Basis for calculation — Market value as it obtained on 1-9-1939 and not on notification under S. 9 (2) should be taken.

In view of the Fourth Amendment of the Constitution, the compensation for land acquired under S. 3, has to be calculated on the basis of S. 11, that is, with reference to the market value of the property as it obtained in 1-9-1939 and not as it obtained on the date of the notification under S. 9 (2). 1954 ALJ 673 held no longer good law; AIR 1958 All 154; AIR 1961 S C 14, Relied on. 1965 All L J 999.

——Ss. 11 and 2 (ii)—Order awarding compensation — Power of Land Acquisition Officer to review — C. P. Code (1908), O. 47, R. 1. AIR 1932 All 598 and AIR 1957 All 67, Foll. ILR (1957) 2 All 88 : AIR 1958 All 154 (156, 157) (Pt A) (Prs 5, 6) (DB).

——S. 11—Order awarding compensation—Power of Land Acquisition Officer to set aside — Constitution of India, Art. 226. ILR (1957) 2 All 88 : AIR 1958 All 154 (157) (Pt D) (Pr 9) (DB).

——S. 11 — Validity—(Constitution (Fourth Amendment) Act (1955), S. 5 — Effect of — Constitution of India, Art. 31-B—Retrospective operation—(Government of India Act, 1935), S. 229).

Though the two provisos of S. 11 (1) of the Act were invalid being in contravention of the provisions of S. 299, Government of India Act, after the inclusion of the Act in the 9th Schedule of the Constitution by S. 5 of the Constitution (Fourth Amendment) Act, 1955, it must be held that by virtue of Art. 31-B of the Constitution every provision of the U. P. Act is valid and enforceable. AIR 1955 SC 47; 1955 SCJ 1, Foll. Art. 31-B is retrospective in operation and the U. P. Act must be deemed to be valid at least from the date the Constitution came into force. ILR (1957) 2 All 88 : AIR 1958 All 154 (158) (Pt E) (Prs 13, 14) (DB).

——S. 11 — Validity — Not invalid. See Constitution of India, Art. 31-A. AIR 1958 All 154 (DB).

——S. 11—Not ultra vires—Effect of Fourth Amendment of the Constitution.

By the Fourth Amendment of the Constitution, the U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), has been included in the Ninth Schedule of the Constitution. The result is that by virtue of provisions of Art. 31-B this Act should be deemed to be valid and also to have always been valid. S. 11 of the Act cannot, therefore, be held ultra vires the State Legislature. AIR 1955 All 12 held no longer good law. 1956 All W R (H C) 10 : 1956 All L J 90 : AIR 1956 All 416 (416) (Prs 2, 3) (DB).

——S. 11 (1), Provisos — Validity — [Constitution of India, Art. 31 (2) and (5) (a)].

The provisions with regard to compensation when land is acquired, to be found in the two provisos to sub-section (1) of S. 11 of the U. P. Land Acquisition (Rehabilitation of Refugees) Act, are invalid. But the invalid provisions can be severed from the remainder of the Act. Denuded of the offending provisos to S. 11 (1), and the first paragraph of that sub-section not being called in question in these proceedings the Act must be held to make provision for compensation within the meaning of Art. 31 (2). 1954 All L J 673 : AIR 1955 All 12 (15, 16, 17, 19) (Pt A) (Prs 6, 14, 15, 30) (DB).

[Reversed on another point in AIR 1961 SC 14].

——S. 11 (1), Provisos—Contravene Art. 14—(Constitution of India, Art. 14). 1954 All L J 673 : AIR 1955 All 12 (17, 18) (Pt D) (Prs 16, 17, 19, 20, 23, 24, 25) (DB).

[Reversed on another point in AIR 1961 SC 14].

SECTION 15

——S. 15—Rules under—Rule 4—Requisition of land under S. 3—Absence of notice on occupier or tenant —Requisition is invalid. See U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), S. 3. AIR 1955 NUC (All) 349 (DB).

U. P. LAND RECORDS MANUAL

PARA A 72

——Para. A 72 — Sajhidar — Meaning — Difference between Sajhidar and Tenant and Sajhidar and Lessee—(Transfer of Property Act (1882), S. 105).

The Sajhi is a partner in cultivation with a right to share in the produce grown on the land. He has no right of occupancy in the land itself. So far as use of the land is concerned for the purposes of carrying on the business of partnership by means of cultivation, he is merely a licensee and has no interest in the land. 1966 All L J 149 : 1965 All W R (HC) 841.

RULE 84

——R. 84—Entry in diary—When necessary.

The entry in the diary is necessary only if the tenant says that he has already surrendered the holding. Otherwise it is not necessary to make an entry in the diary unless the person in possession is sought to be recorded in class 20 of the khatauni. It is not necessary to make an entry in the diary if the gair gabiz davadar qabiz entry is shown in the 'remarks column' only. 1952 All W R (Rev) 245 : 1952 All L J (Rev) 299 : 1952 R D (B R) 375.

U. P. LAND REFORMS (AMENDMENT) ACT (18 of 1956)

See under Tenancy Laws.

U. P. LAND REFORMS (AMENDMENT) ACT (37 of 1958)

See under Tenancy Laws.

U. P. LAND REFORMS RULES (1952)

See under Tenancy Laws.

U. P. LAND REFORMS (SUPPLEMENTARY) ACT (31 of 1952)

See under Tenancy Laws.

U. P. LAND REVENUE ACT (3 of 1901)

SECTION 4

——Ss. 4 (8) and 34 (5)—'Revenue Courts'—Consolidation Courts constituted under U. P. Consolidation of Holdings Act are not revenue Courts within the meaning of S. 4 (8):— Hence S. 34 (5) does not bar a person from setting up his claims in the consolidation Courts even though he has not applied to be recorded as heirs in the revenue papers. 1964 All W R (H C) 593: AIR 1964 All 424 (425) (Pt B) (Pr 2).

——S. 4 (4) — Proprietor of miscellaneous zamindari plots is not agriculturist. See Debt Laws—U. P. Debt Redemption Act (13 of 1940), S. 2 (1) and (3). A I R 1952 All 693.

SECTION 7

——S. 7 — Powers of Revenue Board of Review. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 273. AIR 1956 All 698 (DB).

——S. 7 (2)—U. P. Tenancy Act (7 of 1939), S. 273—Case arising out of U. P. Zamindari Abolition and Land Reforms Act — One single member of Board can review his or his predecessor's order. See Tenancy Laws —U. P. Tenancy Act (17 of 1939), S. 273. A.I R 1960 All 93 (DB).

——Ss. 7 and 8— Applicability — Appeal under U. P. Zamindari Abolition and Land Reforms Act — Law governing—Concurrent judgment of two members — Necessity for altering or reversing decree or order. 1960 All W R (HC) 14 : 1960 All L J 26.

SECTION 14

——S. 14 (4) — Additional Collector — His status as Collector discussed (Tenancy Laws — U. P. Land Utilisation Act (5 of 1948), S. 3)]— (U. P. General Clauses Act (I of 1904), S. 4 (9)). AIR 1955 N U C (All) 2724.

——S. 14 — Property situate in several districts;— Power of Additional Collector to make assessment. See U. P. Agricultural Income-tax Act (4 of 1948), S. 14. AIR 1955 N U C (All) 2707 (DB).

SECTION 14A

——S. 14-A (3) and (4) — Additional Collector — He has power to receive election petition under U. P. Municipalities Act—(Municipalities—U. P. Municipalities Act (II of 1916), S. 22 (2)). 1954 All L J 601, Foll. 1960 All W R (HC) 203 : 1960 All L J 304.

——S. 14-A (3)—Power of Assistant Collector to pass order under U. P. Land Utilisation Act, 1948. See Tenancy Laws — U. P. Land Utilisation Act (5 of 1948), S. 3. AIR 1955 N U C (All) 2724.

——S. 14-A—Property situate in several districts — Power of Additional Collector to make assessment. See U. P. Agricultural Income-Tax Act (4 of 1948), S. 14. AIR 1955 N U C (All) 2707 (DB).

SECTION 18

——S. 18 (as amended by Act X of 1961)—Panchayats —U. P. Panchayat Raj Act (26 of 1947), Ss. 2 (ss), 12-C (1) —U. P. Panchayat Raj Rules (1947) Rules 24, 25 (5)—Election petition under R. 24—Officers designated as Sub-Divisional Officers I and II appointed-Sub-Divisional Officer II has no jurisdiction to entertain petition — Even Additional Sub-Divisional Officer has no such jurisdiction—Collector not authorised to desigate Additional Sub-Divisional Officer — District Magistrate cannot confer jurisdiction on him to entertain election petition. See Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 2 (ss). 1964 All L J 145.

——S. 18 (1)—"Sub-Divisional Officer" —Meaning of. See Panchayats — U. P. Panchayat Raj Rules (1947), R. 24. AIR 1958 All 7.

SECTION 23

——Ss. 23 and 234 (B)—New service —Effect of non-amendment of S. 23— Validity of Rules under S. 234 (b), if affected.

Section 23 no doubt provides for appointment of Patwaris to each halka and that section has not yet been amended, but it does not take away the right of the Governor to create a new service for each halka or group of halkas if he so desires. In the alternative even if it be considered to be same service the mere fact that it has been given a new name would not necessarily affect the question of the validity of the rules framed under S. 234 (b). ILR (1958) 2 All 800 : AIR 1954 All 813 (816) (Pt D) (Prs 16, 17) (DB).

SECTION 28

——Ss. 28 and 33—Scope — Entry in record of rights as occupant under S. 20 — Entry in records of 1356 Fasli in contravention of express order of a competent authority not contemplated by the section — Benefit of S. 20 not available to such person—Explanation :III not exhaustive. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20 (b) (i). 1953 All L J 537.

SECTION 30

——Ss. 30 (1) and 34 (1) (as amended by U. P. Zamindari Abolition and Land Reforms Act (1 of 1951)—Minor succeeding to tenancy rights of grandmother — Possession of land not obtained — No duty to make report—Constructive possession—Sufficiency. 1959 All L J 617 : 1959 All W R (HC) 437 : I L R (1959) 1 All 809.

SECTION 32

——S. 32 — Mortgagee in possession of proprietary rights is not an intermediary. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 32. 1965 All L J 1013.

——Ss. 32, 33 and 53 — Regulation No. XIX of 1795, S. 2 — "Estate" — Scope of definition in S. 3 (8) — "Area included in one entry" — Meaning of expression — Provisions of Act relating to acquisition — Interpretation of — Pargana Agori (Barhar Raj) —

Vesting of, in the State under S. 4 — Only areas included in Khewats relating to year immediately prior to year of enforcement of Act and limited to cultivated and culturable portions of villages and not entire areas of villages, held to have vested in the State. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 3 (8). I L R (1963) 1 All 636.

——S. 32—Khasra entry—Value to be attached.

A khasra unlike a khatauni is not a record of rights prepared under Cl. (e) of S. 32 of the U. P. Land Revenue Act and an entry in the khasra is not entitled to be given the weight which has to be given to entries in the khatauni. **1951 All W R (Rev) 125 : 1951 R D 98.**

——Ss. 32, 33, 44, 46 and 57— Khatauni — Admissibility and presumptive value of. See Evidence Act (1872), S. 35. **AIR 1960 Cal 724 (DB).**

SECTION 33

——S. 33 — Entry in record of rights as occupant under S. 20, U. P. Act (1 of 1951) — Entry in records of 1356 Fasli in contravention of express order of authority — Benefit of S. 20 not available — See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 20 (b) (i). **1963 All L J 537.**

——Ss. 33 and 41-A — Application under S. 33 for correction of village papers — Application transferred to Panchayati Adalat — Adalat has power to decide application itself — (U. P. Panchayat Raj Act (26 of 1947), Ss. 51, 71 and R. 96). **A I R 1955 N U C (All) 2655 (DB).**

——Ss. 33 and 42—Correction of papers proceedings —Question whether defendant grove-holder — Decision on, does not operate as res judicata — Civil P. C. (1908), S. 11. 15 R D 720, Disting. **1951 All W R (HC) 515 : 1952 R D (BR) 127 : 1952 All L J 109 : AIR 1953 All 398 (399) (Pr 3).**

——Ss. 33 and 39 — **Entry corrected in respect of several plots.**

No appeal preferred against order of correction — Omission of landholder from sir and khudkasht holdings due to omission of his name from khewat — Admission by one of sir and khudkasht holders that entries were obviously incorrect—**Held**, this was a fit case in which correction was justified even though entry was long standing. **1952 All L J (Rev) 300 : 1952 R D (BR) 373 (DB).**

——S. 33—Summary proceeding.

In a summary proceeding under S. 33 of the U. P. Land Revenue Act intricate questions like admission of co-tenancy and estoppel are not fit to be decided. **1952 All L J (Rev) 21 : 1951 R D 264 : 1952 All W R (Rev) 2.**

——Ss. 33 and 39 — Application for correction of khatauni — Title of applicant admitted—Application cannot be thrown out on ground that he is not in actual possession but only in constructive possession of his share. **1952 R D (BR) 239.**

——Ss. 33, 42, 44 — **Proceedings under S. 33 — Presumption.**

The decision in a proceeding for correction of an entry under S. 33, in which no issues have been framed, nor procedure prescribed under the U. P. Tenancy Act has been followed does not operate as res judicata. The entry so made will, however, be presumed to be true under S. 44. **1951 R D 16 : 1951 All W R (Rev) 15 (17).**

——S. 33 — Khatauni under U. P. Land Revenue Act are admissible and have presumptive value. See Evidence Act (1872), S. 35. **AIR 1960 Cal 724 (DB).**

SECTION 34

——S. 34 — Property temporarily entrusted to Receiver in case — S. 34 (1) does not apply to him — Suit by him for recovery of rent is maintainable, 1934 R D 430. Disting.; 1951 R D 117, Rel. on. —C. P. Code (1908), O. 40, R. 1. **1965 All W R (HC) 209 : 1965 All L J 417.**

——S. 34 (5) — Section 34 (5) does not bar a person from setting up his claims in the consolidation Courts even though he had not applied to be recorded as heirs in the revenue papers. See U. P. Land Revenue Act (3 of 1901), S. 4 (8). **AIR 1964 All 424.**

——S. 34 (1) and (5) (as amended by U. P. Zamindari Abolition and Land Reforms Act (1 of 1951).— Scope—If retrospective.

Sub-sections (1) and (5) of S. 34 cannot be said to apply to cases of succession or transfer which took place before they were amended by the U. P. Zamindari Abolition Act. The first provision casts a duty upon a person to make a report to the Panchayati Adalat and the second imposes a penalty for the omission to make the report. Sub-section (5) really is penal in nature and reading it along with sub-s. (1) it is not possible to say that these two provisions were intended to have retrospective operation. Therefore, the provisions of S. 34 of the U. P. Land Revenue Act, as amended by the U. P. Zamindari Abolition Act, are applicable only to cases of transfer or succession which took place after the date of the amendment. 1959 All L J 617 : (1959) All W R (HC) 437 : ILR (1959) 1 All 809.

——S. 34 (5)—Res judicata—Applicability. See Civil P. C. (1908), S. 11. **1952 R D (BR) 269.**

——Ss. 34 and 39 — **Presumption of correctness as regards entries based on mutation Court's order — Remedy of person aggrieved.**

An entry based on the mutation Court's order must be presumed to be correct and the person who questions it after a long lapse of time would have to establish his title by a regular suit in the civil Court. **1952 R D 78 : 1952 All L J (Rev) 70.**

——S. 34—U. P. Regulation of Agricultural Credit Act (14 of 1940), S. 26—Section if relates to proceedings under Ss. 34 and 35, U. P. Land Revenue Act, and not to proceeding in civil Court — Suit for pre-emption of protected land sold without permission — Ex post facto permission under S. 26(2), proviso, cannot be obtained by pre-emption. See Debt Laws— U. P. Regulation of Agricultural Credit Act (14 of 1940), S. 26. **AIR 1951 All 555.**

——S. 34 (1) and (5) — Failure of Collector taking possession under Court of Wards Act to report under S. 34(1)—Rights of Collector to bring suits in Revenue Courts not affected. **1951 R D 117 : 1951 All W R (Rev) 118.**

——S. 34(1)(5)—Suit under S. 214, U. P. Tenancy Act by Court of Wards — U. P. Court of Wards Act (4 of 1912), Ss. 12, 59, 64 — Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 214.

Under S. 12 of the Court of Wards Act the Court of Wards merely assumes superintendence of the property of any proprietor; the estate does not vest in the Court of Wards. The Collector or the Manager takes possession and custody of the property and manages it according to rules made under S. 64 of the Act. Therefore, the Collector or the Manager who takes possession of an estate under the Court of Wards Act is not bound to make the report required by sub-s. (1) of S. 34. Sub-section (5) of the section is therefore, no bar to the Collector or the Manager bringing a suit in the Revenue Court under S. 214 of the U. P. Tenancy Act. **1951 R D 117 : 1951 All W R (Rev) 118.**

SECTION 35

——S. 35 –U. P. Regulation of Agricultural Credit Act (14 of 1940). S. 28 — Section relates to proceedings under Ss. 34 and 35, U. P Land Revenue Act, and not to proceeding in civil Court — Suit for pre-emption of protected land sold without permission — Ex post facto permission under S. 28(2), proviso, cannot be obtained by pre-emption. See Debt Laws—U. P. Regulation of Agricultural Credit Act (14 of 1940), S. 26. AIR 1951 All 555.

SECTION 36

——S. 36 — Proceedings under — Deletion of S. 36 during pendency by U. P. Act (1 of 1951) — Right involved should be determined according to S. 36. See Tenancy Laws—U. P. Land Tenures (Legal Proceedings) Removal of Difficulties) Order (1952), S. 2. 1952 Rev Dec (BR) 367 : 1952 All W R (Rev) 233 : 1952 All L J (Rev) 252.

——S. 36—Applicability. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 28(5). 1952 All L J (Rev) 252.

——S. 36 — Ex-proprietary right — How and when arises.

Ex-proprietary rights arise from the date of transfer of Sir and not from the date of completion of proceedings under S. 36 of the U. P. Land Revenue Act and can be claimed so long as the ex-proprietor retains possession and not necessarily through Court. 1952 R D 80 : 1952 All L J (Rev) 92 : 1952 All W R (Rev) 159.

——S. 36—Creation of a waqf all-al-aulad — Effect on sir land — Exproprietary rights of waqif when arise.

On the creation of the waqf all-al-aulad the sir do not become the sir of the Almighty but become the exproprietary tenancy of the waqif. Where however, exproprietary rights arise only in an undefined portion of sir area no declaration of exproprietary rights can be given until the exproprietary holding is carved out under S. 36, Land Revenue Act. 1945 R D 165, Foll. 1952 R D (BR) 116.

——S. 36—Sale of proprietary rights by co-sharer — Land recorded as sir of other co-sharers — Vendees cannot be recorded as khudkasht-holders thereof. 1950 All W R Rev 41 : 1950 R D 176.

——S. 36 — Patwari's reports — Purposes for which could be the basis.

A patwari's reports could be the basis of the proceedings only in connection with report for mutation proceedings. After this stage it is the landholder or tenant or any other co-sharer, who can come forward and move the Collector to specify the land held by an exproprietary tenant and to fix its rent. 1950 R D 176.

SECTION 37

——S. 37—Waqif one of several joint Sir holders not claiming ex-proprietary rights—Effect.

Where a waqif one of several joint sir holders does not claim ex-proprietary rights on the creation of the waqf, the entire area becomes the Sir of the remaining co-sharers. 1952 R D 116.

SECTION 39

——S. 39—Entry corrected in respect of several plots —Effect stated. See U. P. Land Revenue Act (1901), S. 33. 1952 All L J (Rev) 300 (DB).

——S. 39 — Presumption of correctness as regards entries based on mutation Court's order—Remedy of aggrieved person. See U. P. Land Revenue Act (1901), S. 33. 1952 All L J (Rev) 70.

——S. 39—Application for correction of khatauni — Title of applicant admitted — Application cannot be thrown out on ground that he is not in actual possession. See U. P. Land Revenue Act (3 of 1901), S. 33. 1952 R D (BR) 239.

——S. 39 — Presumption of correctness as regards entries based on mutation Court's order — Remedy of person aggrieved. See U. P. Land Revenue Act (1901), S. 34. 1952 R D (BR) 78.

SECTION 40

——Ss. 40 and 44 — Order of Tahsildar under S. 40 recording names of persons in revenue paper—Order is not final—Civil or revenue Court can go behind it. (Civil P. C. (1908), S. 9). 1964 All W R (H C) 118.

——S. 40 (2) — "Order as to possession" — Party already in possession—Effect.

The only order as to possession mentioned in S. 40 is the order putting a party, whose name is ordered to be entered in the Khasra on the basis of a summary enquiry into title, into possession. If a party has been found to be in possession and on this finding his name is ordered to be entered in the paper the order is of an entry of his name and cannot be said to be an order as to possession. The order as to possession means an order regarding possession as much as an order putting a party into possession. When only an entry is made, even though on the basis of possession, there is no order as to possession; there may be a finding as to possession but not an order. 1957 All L J 783 : 1957 All W R (H C) 771 : AIR 1958 All 48 (54) (Pt B) (Pr 10) (DB):

[Overruled on another point in AIR 1959 All 1].

——S. 40—Jurisdiction of Civil Court.

Section 40 (2) does not curtail the power of a civil Court; its object is simply to preserve its power to decide a question of title. It does not mean that a civil Court has no power except in regard to a case covered by S. 40 (3). Therefore, a suit in a civil Court would not be barred on the ground of anything contained in S. 40, Land Revenue Act. 1957 All L J 783: 1957 All W R (H C) 771 : A I R 1958 All 48 (54) (Pt C) (Pr 10) (DB).

[Overruled on another point in AIR 1959 All 1.]

——Ss. 40 and 234 — Order in mutation proceedings —Appeal to Supreme Court—Does not lie. C. P. Code (5 of 1908), Ss. 109 and 110. 1951 All W R (Rev) 145 : 1951 R D 159.

——Ss. 40, 44—Suit for declaration as to right to tenancy—Maintainability.

A right to tenancy can be claimed under Ss. 59, 61 of the U. P. Tenancy Act in a Revenue Court alone and therefore a suit for declaration as to the right to tenancy is not barred under S. 44 of the U. P. Land Revenue Act. Even a decision as to possession under S. 40 of the U. P. Land Revenue Act does not operate as res judicata in a suit for declaration. 1947 A W R 39; 1947 R D 208 and 1943 R D 97, Rel. on. 1951 R D 239 : 1951 All W R (Rev) 190.

——Ss. 40 (3) and 44 — Applicability of S. 40 (3) — Decision regarding possession under S. 40 (1)—Binding nature

Sub-s. (3) of S. 40 of the U. P. Land Revenue Act is applicable to an order or decision under sub-s. (1) as well as sub s. (2)) of the section.

An aggrieved party from such an order or decision is entitled to establish his right in any civil or revenue Court having jurisdiction.

In a suit for establishing the right the decision regarding possession under S. 40 (1) is also open to retrial and such a decision is not binding even on a revenue Court under S. 44 of the Act. 1951 R D 229: 1951 All W R (Rev) 214.

SECTION 41-A

——S. 41-A—Application under S. 33 for correction of village papers — Application transferred to Panchayati Adalat— Adalat has power to decide application itself. See U. P. Land Revenue Act (3 of 1901), S. 33. AIR 1955 N·U C (All) 2655 (DB).

SECTION 42

——S. 42— Correction of papers proceedings—Question whether defendant grove-holder — Decision on, does not operate as res judicata—(Civil P. C. (1908), S. 11). See U. P. Land Revenue Act (1901), S. 33. 1951 All W R (H C) 515 : AIR 1953 All 398.

SECTION 44

——Ss. 44 and 57—Entries in Annual register maintained under S. 33 of the Act — Entries in the Record of Rights under S. 32 of the Act — Correctness— Presumption of - Question not conclusive—Evidence to rebut allowed in civil Courts. 1952 All L J 310 : AIR 1953 All 378 (378) (Pr 4).

—— S. 44—Decision regarding possession under S. 40 (i)—Such a decision is not binding on revenue Court under S. 44. See U. P. Land Revenue Act (1901), S. 40 (3). 1951 All W R (Rev) 214.

——Ss. 44 and 40 (3)—Binding nature of decision in a disputed correction case — Scope and limits.

Section 44 of the U. P. Land Revenue Act makes the decision in a disputed correction case binding on all revenue Courts subject to the provisions of S. 40(3) of the Act. So a suit for declaration as to the right to tenancy is not barred under S. 44 of the Act. 1951 All W R (Rev) 190 : 1951 R D 239.

——S. 44 — Evidence Act (1872), S. 85—Khatauni under U. P. Land Revenue Act are admissible and have presumptive value. See Evidence Act (1872), S. 35. AIR 1960 Cal 724 (DB).

——S. 44—Presumption as to entry.

The entry in the khatauni can at best be a piece of evidence under S. 44 of the U. P. Land Revenue Act leading to the presumption that the state of affairs recorded therein at the time when it was recorded was correct. The presumption arising out of that entry can in no case prove the fact of possession of the persons recorded therein at a time prior to the date of its record. 1953 BLJR 296 : AIR 1953 Pat 267 (270, 271) (Pt C)(Pr 13).

SECTION 45

——Ss. 45, 197 and 201—Appointment of lambardar—Proclamation—Necessary — Proceedings—Judicial — S. 201 — Applicable. 1952 All L J (Rev) 343 : 1952 R D 159.

——S. 45— Litigation relating to appointment of Lambardar — Parties to litigation — Evacuee or his Mukhtar-e-am—Neither evacuee as defined in S. 2 (d) (i) and (ii) of the Administration of Evacuee Property Act, 1950 (31 of 1950) nor his Mukhtar-e-am who has not been managing property of the evacuee with the approval of custodian has any locus standi to indulge in the litigation. 1952 All L J (Rev) 126 (1) : 1952 R D (B R) 131.

——S. 45 — "Cosharer"—Coparceners of Joint Hindu family are each separately a cosharer. 1952 All W R (Rev) 45 : 1952 R D (BR) 49 : 1952 All L J (Rev) 22 (Pr 3).

——S. 45—Lambardar—Appointment of — Procedure —Consideration of amount of revenue payable by nominee or his supporters. 1952 All W R (Rev) 45 : 1952 R D (BR) 49 : 1952 All L J (Rev) 22 (Pr 4).

——S. 45 — Case of appointment of lambardar— Question whether person not recorded is co sharer or not cannot be decided by Board.

The question whether a person who is not recorded in the Khewat, is or is not a co-sharer cannot be decided by the Board in appeal in a case of appointment of a lambardar. It is only the civil Court which can decide it. 1952 All W R (Rev) 3 : 1951 R D 257.

——S. 45 (2) and Revenue Manual, Paras. 218 and 219—Lambardar—Vacancy—Nomination—Time.

Neither S. 45 (2) of the U. P. Land Revenue Act nor para. 218 of the Revenue Manual prescribe any period of limitation beyond which no valid nomination of a candidate for a vacant post of a lambardar can be made and so the nomination or objection received by a Tahsildar before he makes a report under S. 219 of the Revenue Manual can be taken into consideration. 1951 R D 257 : 1952 All WR (Rev) 3.

——Ss. 45 and 213 — Lambardar — Evacuee — Dismissal of — Appeal from — Locus standi — Starting point of limitation.

In 3rd appeal from an order of dismissal of a lambardar-evacuee and appointment of lambardar under S. 45 of L. R. Act 3 of 1901 (U. P.)

Held, neither an evacuee as defined in S. 2 (d) (i) and (ii) of the Administration of Evacuee Property Act of 1950, nor his mukhtar-e-am who is an 'unauthorised person' under sub-s. (j) of S. 2, appears to have locus standi in a case under S. 45.

'Communication', for purposes of S. 201 of the Act, to the 'evacuee' must be deemed to have taken place on his knowledge of the order of dismissal (i.e.), when he executed the mukhtarnama on 18-4-48. Hence the application of 7-10-1948 for restoration is barred. 1952 R D 131 : 1952 All L J (Rev) 126 (1).

——Ss. 45, 227 and 210 — Under Ss. 45 and 227 the Collector or the Assistant Collector can appoint as Lambardar only the person nominated by other co-sharers and they have no jurisdiction to appoint any one not so nominated by the other co-sharers. Where there has been no proper proclamation issued under S. 45 and the co-sharers had never nominated any one for appintment as lambardar, it cannot be said that the other co-sharers had any notice of the proceedings or were parties thereto. If in such a case they do not file an appeal within time, it cannot be held that the order appointing a person as lambardar was binding on them. ILR (1950) All 316.

SECTION 56

——S. 56—Cess, meaning of — Right of proprietor of village to recover par jote for shops. See U. P. Land Revenue Act (3 of 1901), S. 91. AIR 1955 NUC (All) 4167.

——S. 56 — Evidence Act (1872), S. 35 — Khatauni under U. P. Land Revenue Act are admissible and have presumptive value. See Evidence Act (1872), S. 35. AIR 1960 Cal 724 (DB).

SECTION 57

——S. 57—Settlement map—Presumption of correctness—Rebuttal. 1957 All L J 944 : AIR 1958 All 168 (170) (Pt D) (Pr 14).

——S. 57 — Presumption as to entries in annual registers—Scope of.

Under S. 55 of the U. P. Land Revenue Act the rents payable by tenants are to be recorded in the annual register and under S. 57 of the Act all the entries in the record of rights prepared under Ch. IV (in which S. 55 occurs) shall be presumed to be true until the contrary is proved. So this presumption will still remain even when an attempt is made to prove that it is wrong but the evidence is not accepted by the Court. 1951 All W R (HC) 514 : 1952 All L J 110 : 1952 R D 128.

SECTION 118

——S. 118 — Nature and incidence of tenancy created by.

Though S. 118 of the U. P. Land Revenue Act creates some sort of tenancy, it cannot be said that this tenancy would be of such a nature as would be governed by the provisions of the Tenancy Act. As the liability is only to pay ground rent in respect of the land, it must be presumed that the right acquired is that of constructing or maintaining a building or buildings on that land. Such a right would be a transferable right. This right is not different in village abadis from those in cities and towns. 1951 All W R (HC) 221 : AIR 1952 All 124 (125) (Pr 3).

——S. 118—Right acquired under—Right is transferable. 1951 R D (HC) 47.

SECTION 126

——S. 126 — Amendment of, by Act 2 of 1941 — Effect.

The amendment of S. 126 in 1941 only means that after the amedment the exproprietary rent is also to be fixed after the partition had been confirmed; but it does not mean that a claim for ex-proprietary rights could be maintained and accepted by Courts even after the partition is confirmed, because of this amendment. 1951 R D 7 (8).

——S. 126 — Effect of its amendment by Act II of 1946.

The amendment of S. 126 of the U. P. Land Revenue Act by the Amendment Act II of 1946 only lays down the principle and the basis on which the exproprietary rent is to be fixed. This only means that after this amendment such rent is also to be fixed after the partition had been confirmed; but it does not mean that a claim for exproprietary rights could be maintained and accepted by Courts even after the partition is confirmed, because of this amendment. 1951 R D 7.

——S. 126 — U. P. Tenancy Act (17 of 1939), S. 26—S. 26 has no applicability in cases of transfer of khudkasht land in partition proceedings. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 26. 1950 All W R (Rev) 62.

SECTION 141

——Ss. 141 to 188—Ch. IV—Value to be attached to entries in village records.

The entries in village records do not raise any presumption of correctness unless they have been made under Ch. IV of the U. P. Land Revenue Act. But they are good evidence of facts recorded and should be accepted in the absence of more reliable evidence. 1951 All W R (Rev) 42 : 1951 R D 34.

——Ss. 141 to 188 — Ch. VIII—Remedies not available to third persons.

The provisions of Ch. VIII provide remedies only to the defaulter or a person claiming under him and not to a third person. The remedy of the latter lies in the Civil Court. 1950 All L J 546, Rel. on. 1951 R D 109 : 1951 All W R (Rev) 194.

——Ss. 141 to 188 — Ch. VIII—Proceedings under—Nature of — U. P. Land Revenue Manual, Rr. 911, 912.

The proceedings under Chap. VIII of the U. P. Land Revenue Act are non-judicial and the Board has no jurisdiction in the matter. 1951 R D 109 : 1951 All W R (Rev) 194.

SECTION 142

——Ss. 142, 144—Co-sharers of mahal—Liability for land revenue — Measure of the contribution by each co-sharer. See U. P. Land Revenue Act (3 of 1901), S. 144. AIR 1952 All 636 (DB).

——S. 142 — Right of pre-emption. See U. P. Land Revenue Act (3 of 1901), S. 72. AIR 1953 Punj 107 (DB).

SECTION 144

——Ss. 144, 142, 58 —Co-sharers of mahal—Liability for land revenue — Measure of the contribution by each co-sharer. See U. P. Land Revenue Act (1901), S. 58. AIR 1952 All 636 (DB).

——S. 144—Payment of haq lambardari to lambardar—Presumption.

There may be a presumption that if haq lambardari is payable to the lambardar, it was in fact paid. But the presumption is rebuttable. The question must be decided as a question of fact. 1951 All L J 281 (Pr 6) (DB).

——Ss. 144, 234 — Perfect partition — Claim to lambardari dues — Tenancy Laws — U. P. Tenancy Act (XVII) [17] of 1939), S. 245 (1).

Where there has been a perfect partition the lambardar has no right to make any collection of rents and other due in the patti in which he is not a cosharer. He therefore does not satisfy the requirements of R. 238 (1) framed under S. 234 in such a case and cannot claim lamdarbari dues from the cosharers in that patti. 1951 All W R (HC) 265.

SECTION 145

——S. 145—Remission allowed by mistake—Jurisdiction of Government to recover amount in the absence of certificate under section. See Constitution of India (1950), Art. 226. AIR 1954 All 4 (DB).

——S. 145 — Constitution of India, Art. 226—Certiorari. See Constitution of India, Art. 226. AIR 1954 All 4 (DB).

SECTION 146

——Ss. 146, 173 and 175—U. P. Revenue Department Manual, Para. 1023 (c) — Sub-divisional Officer sending Kurk Amin to sell fruit bearing trees—Sale is merely irregular. AIR 1955 N U C (All) 2298 (DB).

——S. 146 — Right of pre-emption. See U. P. Land Revenue Act (3 of 1901), S. 72. AIR 1953 Punj 107 (DB).

SECTION 149

——Ss. 149 and 227 — Attachment of assets held by Court — Proper procedure (Civil P. C. (1908), O. 21 R. 52).

Where the Assistant Collector receives a certificate under S. 46 (2) of the Income-Tax Act and seeks to attach assets held by a Court, the proper procedure for the attachment of such assets is in terms of O. 21, R. 52, Civil P. C. Where that procedure was not adopted but instead an ordinary warrant of attachment, without specification of any property sought to be attached, was signed by the Assistant Collector and the writ of attachment did not even show as to whom it was addressed nor did it contain any seal of the Court or the signature of the officer by whom it was issued, there can be no doubt whatsoever that the Assistant Collector moved in an irregular manner and the proceedings in attachment had not been taken in accordance with law. ILR (1958) 2 All 684 : AIR 1958 All 636 (638, 639) (Pt E) (Pr 9) (DB).

SECTION 152

——S. 152—Co-sharers of Zamindari estate—Interest of A transferred to B under S. 152, U. P. Land Revenue Act—Abolition of Zamindari — Transfer also comes to end—A alone is entitled to claim rehabilitation grant. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 73-A. (1964) All W R (HC) 287.

SECTION 161

——S. 161 — Sale of property for realization of Income-tax dues under S. 162, U. P. Land Revenue Act without attachment is not free of encumbrances—See Income-tax Act (1922), S. 46. AIR 1955 N U C (All) 1698 (DB).

——S. 161 (2) — Realisation of income-tax arrears—Procedure — Attachment of house belonging to assessee—Procedure followed is one under Civil P. C. —See Income tax Act (1922), S. 46. AIR 1955 N U C (All) 1698 (DB).

SECTION 162

——S. 162 — Sale of property for realisation of Income-tax dues under S. 16, U. P. Land Revenue Act without attachment is not free of encumbrances—See Income-tax Act (1922), S. 46. AIR 1955 N U C (All) 1698 (DB).

——S. 162—Sale of other properties of defaulter.

It is clear from the provisions of S. 162 of the U. P. Land Revenue Act that when there is a sale of the other immovable properties of the defaulter, it conveys to the purchaser only the right, title and interest of the defaulter in the property sold and that the interests of others in the properties cannot be affected. It follows that the interests of a mortgagee over the properties cannot be affected and the sale can only be subject to the mortgage. When a suit on the mortgage is pending and the sale is during its pendency, it will be affected by the doctrine of lis pendens embodied in S. 52 of the Transfer of Property Act. ILR (1950) All 240 : A I R 1952 All 298 (299) (Prs 4, 5).

SECTION 164

——S. 164 — Sale by Assistant Collector for recovery of arrears of income-tax is valid. (Income-tax Act (1922), S. 46 (2). AIR 1955 N U C (All) 6.

——Ss. 164 and 177—Sale certificate issued by Assistant Collector —Sale properly confirmed — Omission of Collector to sign — Auction-purchaser is not adversely affected. AIR 1955 N U C (All) 6.

SECTION 173

——S. 173 — U. P. Revenue Department Manual, Para. 1023 (c) — Sub-Divisional Officer sending Kurk Amin to sell fruit bearing trees — Sale is merely irregular—See Tenancy Laws — U. P. Land Revenue Act (3 of 1901), S. 146. A I R 1955 N U C (All) 2298 (DB).

SECTION 174

——S. 174 — Revenue sale — Procedure — Regular observance—Presumption—See Evidence Act (1872), S. 114. AIR 1955 N U C (All) 6.

——S. 174 — Confirmation was made "in accordance with laws" in sale certificate—It means confirmation by Commissioner, even though sale certificate was signed by Tahsildar. AIR 1955 N U C (All) 6.

SECTION 175

——S. 175 — U. P. Revenue Department Manual Para. 1023 (c) — Sub-divisional Officer sending Kurk Amin to sell fruit bearing trees — Sale is merely irregular. See Tenancy Laws — U. P. Land Revenue Act (3 of 1901), S. 146. A I R 1955 N U C (All) 2298 (DB).

SECTION 177

——S. 177 — Sale certificate issued by Assistant Collector — Sale properly confirmed — Omission of Collector to sign — Auction purchaser is not adversely affected. See U. P. Land Revenue Act (3 of 1901), S. 164. AIR 1955 NUC (All) 6.

SECTION 183

——S. 183—Suit in Civil Court questioning proceedings under Chap. VIII on allegation of mala fides or lack of power — Suit not barred. See Civil P. C. (1908), S. 9. AIR 1961 All 145 (DB).

SECTION 192

——S. 192—U. P. Panchayat Raj Act (26 of 1947), S. 12-C—Question of persona designata—Determination of — Sub-Divisional Officer — Powers of, under Panchayat Raj Act—See Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 12-C. AIR 1957 All 484 (b) (FB).

SECTION 197

——S. 197 — Appointment of lambardar — Proclamation necessary — Proceeding judicial—S. 201 applies. See U. P. Land Revenue Act (1901), S. 45. 1952 All L J (Rev) 343.

——S. 197 — U. P. Revenue Court Manual, R 376—Mutation order in the absence of a valid proclamation—Validity—Remedy.

Where a mutation order is passed without valid proclamation as required by S. 197 of the U. P. Land Revenue Act and R. 376 of the U. P. Revenue Court Manual, it is an absolute nullity and such an application to re-open the case can be made even after the order has been passed. 1952 All L J (Rev) 77 : 1952 R D 121 : 1952 All W R (Rev) 108.

——Ss. 197, 198 and 201 — Non-compliance with S. 197 — No valid proclamation — Order passed ex parte by S. D. O., appointing lambardar is nullity — S. D. O., starting lambardari proceedings afresh — Proceedings are not illegal — The prescribed period of 10 days for restoration application is to be counted from date of communication of the order. 1952 R D (BR) 159.

SECTION 198

——S. 198—Non-compliance with S. 197—No valid proclamation — Order appointing lambardar is a nullity. See U. P. Land Revenue Act (1901), S. 197. 1952 R D (BR) 159.

——S. 198—Mutation order in the absence of a valid proclamation—It is a nullity. See U. P. Land Revenue Act (1901), S. 197. 1952 R D (BR) 121 (DB).

SECTION 201

——S. 201 — Appointment of lambardar—Proclamation necessary — Proceeding judicial — S. 201 applicable. See U. P. Land Revenue Act (1901), S. 45. 1952 All L J (Rev) 343.

——S. 201—Non-compliance with S. 197 — No valid proclamation—Order of appointment of lambardar is a nullity. See U. P. Land Revenue Act (1901), S. 197. 1952 R D (BR) 159.

——S. 201 — Appointment of lambardar — Judicial proceeding—S. 201 applies. See U. P. Land Revenue Act, Ss. 45, 197 and 201. 1952 R D 159.

SECTION 205

——S. 205 — Consolidation officer is not empowered to refer dispute pending before him to arbitration under Consolidation Act or by S. 205 of Land Revenue Act or by Arbitration Act—Consolidation Officer, even assuming that he is a Court, is not a Civil Court within meaning of S. 2 (o) of Arbitration Act. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 41. 1964 All W R (HC) 89.

SECTION 207

——S. 207—"Person".

The word "person" in S. 207 can have no reference to person not party to the case before the

revenue Court. 1953 All L J 246 : 1953 All W R (HC) 379 : ILR (1954) 2 All 148 : AIR 1953 All 547 (547) (Pt B) (Pr 5) (DB).

SECTION 210

——S. 210 — Application for mutation — Passing of U. P. Act (1 of 1951) during pendency of appeal — Effect of amendment of S. 210—Order appealable to Collector and not to Commissioner—(Tenancy Laws —U. P. Zamindary Abolition and Land Reforms Act (1 of 1951), S. 339). 1961 All W R (HC) 595.

——Ss. 210, 45 and 227 — Appointment of lambardar —Appeal against. See U. P. Land Revenue Act (1901), S. 45. ILR (1950) All 316 (DB).

SECTION 212

——S. 212 (c) — Concurrent finding of fact reached by first two Courts — Finding not based on mistake of fact—Finding cannot be reserved in second appeal. 1952 All L J (Rev) 300 : 1952 R D (BR) 373 (DB).

——S. 212 (c) — Khasra entry — Question whether entry is to be believed or not is question of fact and decision cannot be disputed in second appeal. 1952 All W R (Rev) 245 : 1952 All L J (Rev) 299 : 1952 R D (BR) 375.

——S. 212 — Scope of powers under—Applicability of principles of S. 100, C. P. Code.

The U. P. Land Revenue Act prescribes under S. 212 a special provision for second appeal which is not governed by S. 100, C. P. Code. The principles of the latter section have, of course been reproduced in that section to be followed in the case of a concurrent order by the two lower Courts. These principles would not be applicable when the original order has been varied or reserved in appeal by the first appellate Court. (See Cl. (b) of S. 212). 1952 All L J (Rev) 21 : 1951 R D 264 : 1952 All W R (Rev) 2.

SECTION 213

——S. 213 — Lambardar — Evacuee—Dismissal of—Appeal from—Locus standi — Starting point of limitation. See U. P. Land Revenue Act (1901), S. 45. 1952 All L J (Rev) 126 (1).

——S. 213—Decision not offending against any specified law or usage or custom having force of law — Decision cannot be challenged in third appeal even by way of cross-objection. 1951 R D 228 : 1951 All W R (Rev) 205.

SECTION 219

——S. 219 — U. P. Zamindari Abolition and Land Reforms Rules (1952), R. 285-I — U. P. Revenue Manual, Para 913 — Order of Commissioner setting aside sale under U. P. Z. A. and L. R. Rules, R. 285-I on ground of irregularity in sale proclamation — Order, however, failing to record finding that party had suffered substantial injury — Order reversed by Government under S. 219 of Land Revenue Act without hearing petitioner — Held, order of Government contravened para 913 of Revenue Manual read with R. 119 of Revenue Court Manual and also violated principles of natural justice and omission of commissioner to record finding as to substantial injury was not sufficient for not interfering with impugned order — Constitution of India, Art. 226. 1965 All L J 612 : 1965 All W R (H C) 826.

——Ss. 219 and 220 — Applicability — Proceedings under U. P. Zamindari Abolition and Land Reforms Act. 1959 All L J 611 : 1959 All W R (H C) 432 : ILR (1959) 2 All 173 : A I R 1960 All 93 (95) (Pt B) (Pr 5) (DB).

——S. 219—Order passed by Sub-Divisional officer under Panchayat Raj Act — Revision—Maintainability — U. P. Panchayat Raj Act (26 of 1947), Ss. 71 and 89.

Section 219 confers revisional jurisdiction on the Board against the order of an officer subordinate to it. A Sub-Divisional Officer exercising jurisdiction under the U. P. Panchayat Raj Act, which is a self-contained Act with its special procedure, is not subordinate to the Board, and therefore, S. 219, U. P. Land Revenue Act, does not apply. The sections dealing with revision in the U. P. Panchayat Raj Act are Ss. 71 and 89 and it is nowhere laid down either in these sections or in any other part of the Act that the Sub-Divisional Officer's order is subject to revision. Moreover, on facts, held that no material injustice had been caused by the order in question). 1952 All L J (Rev) 99 (2) : 1952 R D (BR) 137.

——S. 219—Order passed in proceeding under U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949)—Revision — Maintainability—Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 6.

No revision lies from an order passed under the U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949) : 1951 R D 263 and 1951 R D 273, Ref. 1952 All L J (Rev) 89 : 1952 R D (B R) 147 (DB).

——S. 219—Order by Panchayati Adalat in revenue proceedings — Revision to Revenue Board — Maintainability — U. P. Panchayat Raj Act (26 of 1947), S. 85 (5).

The Revenue Board has got no power to revise an order passed by a Panchayati Adalat even in a proceeding under the U. P. Land Revenue Act. 1952 All L J (Rev) 33 : 1952 All W R (Rev) 41 : 1951 R D 281.

——S. 219 — Power of Revenue Board in Revision — Orders appointing Ghar-Padhans, Malguzars, etc, in Kumaun Division — Board can entertain revision against orders. 1952 R D (B R) 357 : 1952 All W R (Rev) 202 : 1952 All L J (Rev) 219.

——S. 219 — Revision—Competency — Proceedings under Ch. VIII of the Act.

Proceedings under Ch. VIII of the U. P. Land Revenue Act are non-judicial and further under the provisions of that chapter the remedy is provided only for the defaulter or to any person claiming under him. No third party has a remedy. So a revision by the wife of a person whose property has been sold in lieu of dues certified to be recoverable as land revenue would not be maintainable. 1951 All W R (Rev) 194 : 1951 R D 209.

SECTION 220

——Ss. 220 and 219—Case arising out of proceedings under U. P. Zamindari Abolition and Land Reforms Act — Case not governed by S. 220 (3) — See U. P. Land Revenue Act (3 of 1901), S. 219. AIR 1960 All 93 (DB).

——S. 220 — Power to review his own order — Not conferred on Deputy Director of Consolidation—See Tenancy Laws—U. P. Consolidation of Holdings Act (1953) (5 of 1954), S. 41. 1960 All L J 836.

——S. 220 — Board can review its own order passed on review under U. P. Tenancy Act — O. 47, R. 9 has no application — See U. P. Tenancy Act (17 of 1939), S. 273. AIR 1955 N U C (All) 2294 (DB).

——S. 220 — Scope of Board's power to review.

The Board has now the powers to review its orders including orders passed in the course of business connected with the settlement. 1951 All W R (H C) 298 : 1951 All L J 572.

SECTION 223

——S. 223 (k) — Civil P. C. (1908), S. 54—"Estate", meaning of — Jurisdiction of Civil Court to partition if ousted by U. P. Land Revenue Act (3 of 1901), Ss. 106 and 233 (k). See Civil P. C. (1908), S. 54. AIR 1952 All 191.

SECTION 227

——Ss. 227 and 149 — Attachment of assets held by Court—Proper procedure indicated—See U. P. Land Revenue Act (3 of 1901), S. 149. A I R 1958 All 636 (DB).

——S. 227 — Under Ss. 45 and 227 the Collector or the Assistant Collector can appoint as lambardar only person nominated by other co-sharers — See U. P. Land Revenue Act (1901), S. 45. ILR (1950) All 316 (DB).

SECTION 228

——S. 228—U. P. Panchayat Raj Act (26 of 1947), S. 12-C—Question of persona designata—Determination of — Sub-Divisional Officer — Powers of under Panchayat Raj Act—See Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 12-C. A I R 1957 All 484 (FB).

SECTION 233

——S. 233 (m) — Civil P. C. (1908), S. 9 — Suits expressly barred — Suit in Civil Court questioning proceedings under Chap. VIII on allegation of mala fides or lack of power — Suit not barred — See Civil P. C. (1908), S. 9. AIR 1961 All 145 (DB).

——S. 233 (m)—Applicability and scope — (Co-operative Societies Act (1912), S. 42).

Before the prohibition contemplated by S. 233 (m) can operate, the claim must be realisable as revenue under the Act. The claim to recover amounts on a requisition being made by the Registrar of Co-operative Societies can only be realisable under the U. P. Land Revenue Act, if the Registrar could ask for its recovery under S. 42 (a), Co-operative Socities Act and whether the Registrar could do so would depend upon whether the sum could be properly ordered to be recovered as a contribution under S. 42 (2) (b) of the Co-operative Societies Act. If the liquidator could not make such an order then that order could not be sent to the Collector, nor could the Collector realize anything under that order. AIR 1957 All 492 (494, 495) (Pt E) (Pr 10).

——S. 233 (b) — Bar of suit under — Civil suit for removal of lambardar. See U. P. Rev. Manual, R. 234. AIR 1951 All 382.

——S. 233 (b)—Plaintiff in substance laying claim to office of lambardar—Suit is barred by section. A I R 1951 All 382 (383) (Pt B) (Pr 8).

——S. 233 (m) — Suit by third party, who is not defaulter is not excluded : 19 All 127 ; 1896 A W N 199 ; 1905 A W N 237 ; 11 Luck 106 ; A I R 1935 Oudh 325 ; 155 I C 92 ; 11 O W N 1060 ; AIR 1934 Oudh 431 ; 151 I C 414 ; 11 Luck 28 ; AIR 1935 Oudh 253 ; 154 I C 704 and 1937 O W N 298 ; AIR 1937 Oudh 249 ; 167 I C 554, Overruled, Radha Kishan v. Ram Nagar Co-operative Society. A I R 1951 All 341 (346, 347, 354) (Pt A) (Prs 30, 38, 88) (FB).

——S. 233 (k) — Civil Court and not Revenue Court has jurisdiction to effect partition of building on land in a mahal. ILR (1950) All 326.

——S. 233 (k)—Compromise decree for partition of bunjar plot in a Mahal — Civil Court has no jurisdiction to execute decree—Executing Court is competent to decide that it has no jurisdiction to execute it. ILR (1950) All 328.

SECTION 234

——S. 234 (b)—New service—Effect of non-amendment of S. 23 of Act—Validity of Rules under S. 234 (b), if affected. See U. P. Land Revenue Act (3 of 1901), S. 23. AIR 1954 All 813 (DB).

——S. 234 (f) — Rules under R. 234 — Removal of Lambardar—Competency of Civil Court.

If a person feels aggrieved against the appointment of a lambardar or if he thinks that he had been guilty of misconduct his remedy lies in making an application under R. 234 to the Collector or the Assistant Collector for the lambardar's dismissal on the ground that he has neglected to perform his duties. It does not lie within the competence of the Civil Courts to remove a lambardar by a decree in a suit. AIR 1951 All 382 (383) (Pt A) (Pr 7).

——S. 234 — Rules framed under R. 238 (1)—Scope of — Remuneration of the lambardar — Conditions necessary to entitle him.

According to R. 238 (1) of the rules framed under S. 234 of the U. P. Land Revenue Act two conditions are necessary to be complied with to entitle a lambardar to claim remuneration. They are firstly that the land revenue should have been paid into the Government treasury and secondly, the lambardar should have been entitled to collect the amount on account of such co-sharer's share. So if there has been a perfect partition and the lambardar is not a co-sharer in the patti of the co-sharer sought to be made liable, the former would not be entitled to make collection in that patti and so would not satisfy the conditions laid down in R. 238 (1) and so cannot claim his dues. 1951 All W R (HC) 265.

——S 234—Order in mutation proceedings — Appeal to Supreme Court — Does not lie. See U. P. Land Revenue Act (1901), S. 40. 1951 All W R (Rev) 145.

U. P. LAND REVENUE MANUAL

PARA. 118

——Para. 118—Applicability—Partition of Zamindari property—Plaintiff allotted house together with site—House in possession of co-sharer defendant — Effect. 1959 All L J 31.

PARA. 218

——Para. 218 — Nomination of a candidate for the vacant post of lambardar—No period of limitation for such nomination laid down in Para. 218 and S. 45 (2) of the U. P. Land Revenue Act — Nominations or objections received by Tahsildar before he makes his report under Para. 219 may be taken into consideration. See U. P. Land Revenue Act (3 of 1901), S. 45. 1951 R D 257.

PARA. 219

——Para. 219 — Nomination of a candidate for the vacant post of lambardar — No period of limitation laid down in Para. 218 and S. 45 (2) of U. P. Land Revenue Act—Nominations or objections received by Tahsildar before he makes his report under Para. 219 may be taken into consideration. See U. P. Land Revenue Act (3 of 1901), S. 45. 1951 R D 257.

PARA. 911

——Para. 911—The proceedings under Chap. 8, U. P. Land Revenue Act are non-judicial and the Board has no jurisdiction into the matter. See U. P. Land Revenue Act (3 of 1901), Ch. 8. 1951 All W R (Rev) 194.

PARA. 912

——Para. 912—The proceedings under Chap. 8 of the U. P. Land Revenue Act are non-judicial and the Board has no jurisdiction in the matter. See U. P.

Land Revenue Act (3 of 1901), Ch. 8. 1951 All W R (Rev) 194.

U. P. LAND TENURES (LEGAL PROCEEDINGS) (REMOVAL OF DIFFICULTIES) ORDER (1952)

See under Tenancy Laws.

U. P. LAND TENURES (REGULATION OF TRANSFERS) ACT (15 OF 1952)

See under Tenancy Laws.

U. P. LAND UTILIZATION ACT 1947 (5 OF 1948)

See under Tenancy Laws.

U. P. LARGE LAND HOLDINGS TAX ACT (31 of 1957)

PREAMBLE

● ——Preamble — Constitutional validity — Act was within competence of U. P. Legislature. See Constitution of India (1950), Sch. 7, List 2, Entry 49. AIR 1962 S C 1563.

● ——Preamble — Constitutional validity—Act is not a colourable piece of legislation — Constitution of India, Arts. 245, 246 and 265.

The tax levied by the Act is not confiscatory. Besides the scheme of the Act does not disclose any constitutional infirmity either in its charging sections or in the sections providing for the procedure for the levy of the tax and its recovery. Hence, the Act cannot be struck down as a colourable piece of legislation. Raja Jagannath Baksh Singh v. State of Uttar Pradesh, (1963) 1 S C R 220 : (1962) 46 I T R 169 : 1962 All L J 799 : 1962 All W R (H C) 649 : (1962) 1 S C A 679 : AIR 1962 S C 1563 (1573) (Pt J) (Pr 24).

● ——Preamble — Incidence of tax — Tax is on land and not on person. See Constitution of India, Sch. 7, List 2, Entry 49. AIR 1960 All 136 (FB).

● ——Preamble—Tax under—Not land revenue. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 251. AIR 1960 All 136 (FB).

● ——Preamble—Validity — Not violative of Art. 14. See Constitution of India, Art. 14. AIR 1960 All 136 (FB).

SECTION 2

——S. 2 (15) — Forthwith—Forthwith means within reasonable period. See U. P. Large Land Holdings Tax Act (31 of 1957), S. 7 (a). 1965 All W R (HC) 38 : 1965 All L J 243 : AIR 1966 All 34.

——Ss. 2 (16) and 4, Expl. 1 — Scope and applicability of S. 4 — Clubbing of property — Circumstances necessary for—Family — Deity, Sarbarkar, and guardian of minor sarbarkar, no family — Constitution of India, Art. 226 — 'Error apparent on the face of the record'. 1962 All W R (HC) 57.

SECTION 3

——S. 3 (2) — U. P. Large Land Holdings Tax Rules, Rr. 6 and 9—Remission of tax relates to chargeability or otherwise of tax — Assessing authority can entertain such a claim — Authority of the Collector in this behalf arises only when assessee commits default in payment. 1962 All W R (HC) 149.

● ——S. 3 (1), Proviso and basis of assessment — Tax is on holding and not on annual value — Act comes under List 2, Entry 49. See Constitution of India, Art. 245. AIR 1960 All 136 (FB).

● ——S. 3 (1). Proviso — Constitution of India, Arts. 245, 246, Sch. 7, List 2, Entry 49 — U. P. Large Land Holdings Tax Act (31 of 1957), Ss. 3 (1), Proviso 5 — Tax is on holding and not on annual value—Act comes under List 2. Entry 49. See Constitution of India, Art. 245. AIR 1960 All 136 (FB).

SECTION 4

——S. 4—Landholder's wife inheriting some land—Tenants acquiring sirdari rights over land and possession — Assessing authority including in landholder's holding sir land of wife — Authority held had no jurisdiction to do so.

The petitioner was a landholder. His wife inherited some land from her mother, but she was left with no right over the land, the tenants having acquired sirdari rights over it and being in possession of it. The assessing authority having included in the petitioners holding the sir land of his wife :

Held, that it could not be said that the wife held or occupied the land during the assessment year. If she did not hold or occupy, her husband still less held or occupied it. Even it the petitioner's wife held or occupied the land, it could not be said that it was held or occupied by the petitioner and could not be included in his holding. So long as it was not held or occupied by him it could not be included in his land holding and the assessing authority acted without jurisdiction in doing so. 1964 All L J 933.

——S. 4—Land held or occupied by sons of assessee cannot form part of his land holding.

Under S. 4, land held or occupied by the sons of the assessee cannot form part of his land holding. The scheme of the Act is that the same land cannot be included in two land holdings and two persons cannot be assessed to a holding tax on it. Therefore, the words 'held' and 'occupied' must be treated as synonyms and the phrase 'held or occupied' must be interpreted so as to be applicable to only one landholder.

The assessing authority should first start with land and find its landholder and then find the annual value of the aggregate of all land held or occupied by him on the first day of July of the assessment year. Proceeding in this manner the Sub-Divisional Officer, should find whether the assessee's sons are the landholders, being intermediaries personally cultivating it or holding it as sir or khudkasht or persons holding or occupying it otherwise than as asamis, sub-tenants, tenants of sir or sirtans. The assessee cannot be its land holder because even though he might be an intermediary it is not in his personal cultivation and he did not hold or occupy it. 1962 All W R (HC) 668 : 1962 All L J 842.

——S. 4—Assessment proceedings—Nature of.

An assessment proceeding is a judicial proceeding and the officers and authorities charged with the duty of discharging judicial functions must apply their mind to the evidence or material which is produced before them and draw their inferences after consideration of those materials and the evidence. 1962 All W R (HC) 149.

——S. 4, Expl. 1 — Scope and applicability of S. 4 — Clubbing of property — Circumstances necessary for —Family — Deity, sarbarkar, and guardian of minor sarbarkar, no family—Constitution of India, Art. 226 —"Error apparent on the face of the record." See U. P. Large Land Holdings Tax Act (1957), S. 2 (16). 1962 All W R (HC) 57.

SECTION 5

● ——S. 5 (1)—Scope — Requirements for multiple—U. P. Government Notification, dated 23-4-59 complies with prescribed requirements.

The word 'may' used in S. 5 (1) in the context cannot mean 'shall' or 'must'. S. 5 (1) has prescribed the maximum limits of the multiple which may be adopted. Having prescribed the maximum beyond which the multiple will not go, discretion has been left to the State Government to make suitable adjustment according to the requirements of local conditions and varying qualities of lands.

In prescribing the multiple under the Notification issued by the U. P. State Government on 23.4.58, the State Government has classified lands and has varied the multiple accordingly. Therefore, there can be no doubt that the notification issued by the State Government under S. 5 (1) has complied with the statutory requirements prescribed therefor. Raja Jagannath Baksh Singh v. State of Uttar Pradesh. (1963) 1 S C R 220 : (1962) 46 I T R 169 : 1962 All L J 799 : 1962 All W R (HC) 649 : (1962) 1 S C A 679 : AIR 1962 S C 1563 (1569) (Pt E) (Prs 13, 14).

● —S. 5 (1) and Schedule—Constitutional validity — Not void on ground of contravention of Arts. 14, 19 (1) (f) and 31 (2) of the Constitution — Constitution of India, Arts. 14, 19 (1) (f) and 31 (2).

Section 5 (1) of the U. P. Large Land Holdings Tax Act, does not offend against Art. 19 (1) (f), Art. 14 and Art. 31 of the Constitution and so is not invalid on that ground.

Tax has been levied on land holdings, subject to the important proviso that holdings, the area whereof does not exceed thirty acres, would not be taxed. The basis adopted for levying the tax is ultimately the rent payable for the land or lands in question and taking the basis of the said rent the annual value of the land is required to be determined by adopting a suitable multiple. Section 5 (1) prescribes the maximum limit of this multiple and leaves it to the discretion of the State Government to adjust the multiple as local conditions and conditions of land may require. The discretion left to the State Government cannot be said to be unfettered or uncanalised, so as to amount to an unreasonable restriction. The notification dated 23-4-58, issued by the State Government prescribing the multiple has clearly complied with the requirement of S. 5 (1). Accordingly, the challenge to the validity of S. 5 (1) on the ground that it contravenes Arts. 14 and 19 (1) (f) must fail.

Nor can the rates fixed by the Schedule of the Act be challenged as contravening Arts. 14 and 19. The tax being on land holding, the measure of the tax is fixed in the light of the annual value of the land holding. In other words the land holding is taxed on the basis of its annual value and the Schedule cannot be successfully challenged as being inconsistent with Arts. 14 and 19 (1) (f).

As the Act does not offend against Art. 14 or Art. 19 or any of the fundamental rights the Act cannot be challenged on the ground that it contravenes Art. 31 (2) of the Constitution. Raja Jagannath Baksh Singh v. State of Uttar Pradesh. (1963) 1 S C R 220 : (1962) 46 I T R 169 : 1962 All L J 799 : 1962 All W R (HC) 649 : (1962) 1 S C A 679 : AIR 1962 S C 1563 (1571, 1572) (Pt H) (Prs 18, 19, 20).

● —Ss. 5, 3 (1), Proviso 5 — Constitution of India, Arts. 245, 246, Sch. 7, List 2 Entry 49 — Tax is on holding and not on annual value — Act comes under List II. Entry 49. See Constitution of India, Art. 245. AIR 1960 All 136 (FB).

● —S. 5—U. P. Large Land Holdings Tax Act not invalid. See Constitution of India, Art. 245. A I R 1960 All 136 (FB).

SECTION 7

—Ss. 7 (2) and 2 (15)—'Land'—Definition of—Land held for agricultural purposes though not in fact brought under cultivation is 'land'—Sirdar not entitled to use such land for industrial or residential building purposes except by acquiring Bhumidhari rights and thereafter obtaining declaration and exemption — Application for such declaration rejected by Department—Petitioner held liable to assessment under Act—U. P. Z. A. and L. R. Act (I of 1951), Ss. 3 (14), 134, 143, 144 and 146. 1966 All W R (HC) 38 : 1965 All L J 243 : AIR 1966 All 34 (36, 37) (Pr 10).

● —Ss. 7, 11, 12 — Assessing authority issuing notice under S. 7—If judge of his own cause.

It cannot be said that the authority who issue notice is the judge of his own cause. Under the impugned Act, by means of S. 11 an appeal, and by means of S. 12 a revision have been provided against the order of assessment.' Both the appellate and the revising authorities are independent persons, and neither of them can be said to have a bias in favour of the assessing authority and against the assessee. Oudh Sugar Mills, Ltd. v. State of U. P. 1959 All L J 754 : 1959 All W R (HC) 544 (2) : I L R (1960) 1 All 487 : AIR 1960 All 136 (151) (Pt H) (Pr 46) (FB).

SECTION 8

—S. 8—Assessment under U. P. Large Land Holdings Act — Whether objection for exclusion of areas was not considered or decided—Is question of fact—Relief under Art. 226 not open — Other remedies abandoned — Jurisdiction of High Court cannot be invoked. See Constitution of India, Art. 226. 1962 All W R (HC) 147.

SECTION 10

—S. 10 — Order of assessment — Order based on information obtained behind back of assessee—Appeal and Revision — Contention that Assessing Authority had no jurisdiction to pass order on information obtained behind his back — Orders of appellate and revisional authorities not dealing with contention—Held, order of assessment violated principles of natural justice and was ultra vires, null and void—Orders in appeal and revision were also bad in law—Merger of one order in the other could not restrict powers under Art. 226 to quash all of them—Constitution of India, Art. 226. 1965 All L J 991.

SECTION 11

—S. 11 — Question of exclusion of certain areas in assessment proceedings is question as respects "the liability of the land to be assessed to tax" — Matter lies within S. 11. 1962 All W R (HC) 147.

● —Ss. 11, 12 — Assessing authority issuing notice under S. 7 cannot be said to be judge of his own cause. See U. P. Large Land Holdings Tax Act (31 of 1957), S. 7. AIR 1960 All 136 (FB).

SECTION 12

—S. 12—Revisional powers of the Board — Extent of — Board can interfere only on question of jurisdiction.

The powers of revision conferred on the Board of Revenue under S. 12 are limited to interference on a question of jurisdiction alone. The Board has, however no power to interfere with a finding either of fact or of law. In view of the limited scope of their powers under the section the Board cannot by itself enter upon an examination of the evidence and after such examination reverse a finding of fact recorded by the assessing authority. 1961 All L J 503, Foll. 1962 All W R (HC) 149.

—S. 12 — Revisional jurisdiction of Board of Revenue —When can be exercised — Determination of rent payable for land holding—Question within competence of Commissioner — Interference by Board under S. 12 on ground that it was wrongly decided —Board held exceeded its jurisdiction. 1952 S C J

633 : (1953) 1 Mad L J 100 ; A I:R 1953 S C 23 ; 1959 S C J 495; (1956) 1 Mad L J (SC) 171 : (1959) 1 Andh W R (SC) 171 : A I R 1959 S C 492, Foll. 1961 All WR (HC) 426 : 1961 All L J 503.

SECTION 16

——S. 16—Rectification—Alternative remedy—Constitution of India, Art. 226—Writ—Delay.

Under S. 16 rectification can be made of 'any mistake apparent on the face of the record.' Such rectification can be made within one year of the date of the order :suo motu by the authority whose order is sought to be rectified or on an application by the assessee.

Rectification of an order on the application of a party so far as this High Court is concerned, is an alternative remedy and where a party resorts to it, it cannot be argued that it is not a proper remedy. And hence a petition for writ filed shortly after the date on which order refusing rectification was passed could not be said to have been delayed and relief to the party could not be denied on that ground. (AIR 1951 All 746 : 1951 All L J 576; 1954 All L J 172 and 1958 All L J 844, Applied.) 1962 All W R (HC) 57.

SECTION 29

——S. 29—Rules under — R. 6-A — Applicability — Rule applies to all pending proceedings on date when it came into force and to any subsequent proceeding: Decision of Mathur, J. in Writ Petition No. 2797 of 1958 D/- 29-2-1960 (Allahabad) Affirmed. 1965 All L J 717.

SCHEDULE

——Schedule and S. 5 (1)—Constitutional validity —Not void on ground of contravention of Arts. 14, 19 (1) (f) and 31 (2) of the Constitution—Constitution of India, Arts. 14, 19 (1) (f) and 31 (2). See U. P. Large Land Holdings Tax Act (31 of 1957), S. 5 (1). AIR 1962 SC 1563.

U. P. LARGE LAND HOLDINGS TAX RULES

RULE 6

——Rr. 6 and 9—Remission of tax relates to chargeability or otherwise of tax—Assessing authority can entertain such a claim—Authority of the Collector in this behalf arises only when assessee commits defalut in payment. See U. P. Large Land Holdings Tax Act (31 of 1957), S. 3 (2). 1962 All W R (HC) 149.

RULE 6-A

——R. 6-A—Rule applies to pending proceedings on date where it comes into force and to any subsequent proceedings. See U. P. Large Land Holding Tax Act (31 of 1957), S. 29. 1965 All L J 717.

——R. 6-A—Applicability—Benefit of rule cannot be claimed only by disabled subletting landholder — Tenancy law—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 167 (1).

There is nothing in R. 6-A to suggest that its benefit can be claimed only by the disabled subletting landholder or that it applies only when the assessee himself was a disabled landholder. The only conditions for the applicability of the rule are that (1) the land holding should have been legally sublet and (2) it should have been sublet by a disabled landholder mentioned in S. 167 (1) of U. P. Zamindari Abolition and Land Reforms Act. R. 6-A does not refer to the landholder or the assessee at all, it only refers to the land holding and the tax charged thereon. Therefore while applying it one has not to consider who the landholder is or who the assessee is. The article 'a' before disabled landholder in R. 6-A means 'any'. There is nothing in the Act or in the rules framed thereunder to suggest that the benefit of the rule was not intended to be given to a landholder if he had not sublet the land holdings. 1964 All L J 933.

U. P. LAWS (EXPIRATION) ACT (28 of 1950)

SECTION 3

——S. 3 — Though the U. P. Act 30 of 1950 did not receive the assent of the President till 25-10-50 by reason of S. 3 of the earlier Act 28 of 1950 the Act 30 of 1950 shall be deemed to have taken effect from 30-9-1950. See U. P. Control of Supplies (Temporary Powers) Act (2 of 1947). 1955 Cri L J 1025 : AIR 1955 All 397 (DB).

U. P. LEGISLATIVE ASSEMBLY RULES OF PROCEDURE AND CONDUCT OF BUSINESS (1958)

RULE 67

——R. 67 — Reference by Speaker to Committees of Privileges. Reference is valid —Court has no jurisdiction to scrutinise what was done in the House. See Constitution of India, Art. 208. 1954 Cri L J 691 : AIR 1954 All 319 (DB).

RULE 189

——R. 189 (3)—Reference by Speaker to Committees of Privileges — Reference is valid — Courts have no jurisdiction to scrutinise what was done in the House. See Constitution of India, Art. 208. 1954 Cri L J 691 : AIR 1954 All 319 (DB).

——R. 189—Speaker ordering member to withdraw from House—Nature of Order.

Per Sapru, J.—The action of the Speaker of a State Legislature in ordering a member to withdraw from the House is in the nature of a punishment for the parliamentary offence of disorderly behaviour and not in the nature of preventive action. The notion of preventive action can have no application to a case where the Speaker takes disciplinary steps against a member. It is not for what a member threatens to do before the legislature starts actually functioning, but for what he does when it is in actual session that he can be dealt with by the Speaker.

Per Mukerji, J.—The action of the Speaker in having a member removed from the House for unruly behaviour is not a punishment and is not, strictly speaking, 'expulsion' within the meaning of R. 63 (4). When a member is asked by the Speaker to withdraw from the House for disorderly conduct under the powers conferred on him by R. 189 (1) and on his refusal to withdraw the Speaker has put him out of the House under the powers vested in him by sub-R. (3) of R. 189, the action of the Speaker is not really punitive action, but is preventive action. 1954 Cri L J 691 : ILR (1955) 1 All 25 : AIR 1954 All 319 (332, 339) (Pt M) (Prs 33, 34, 67) (DB).

——R. 189—State Assembly—Not a Court of Justice. See Constitution of India, Art. 194 (3). 1954 Cri L J 691 : AIR 1954 All 319 (DB).

RULE 198

——R. 198 — Words "other authorities" as referred to in Art. 12—Meaning of—House of legislature is separate entity not coming under Art. 12 or Art. 79. See Constitution of India, Art. 194 (3). 60 Bom L R 279 : ILR (1957) Bom 218.

RULE 278

——R. 278 (1), (2), (3), (4), (5), (6) — Validity of — Constitution of India, Arts. 190 (3) and 208 — Rules are not violative of Art. 190 (3) and are also intra vires Art. 208 (1). See Constitution of India, Art. 190 (3). AIR 1965 All 536.

——R. 278 (3)—Constitution of India, Art. 190 (3) (b) —Resignation expressed to be operative from future date is valid — 'Addressed to Speaker'—Connotation of—Resignation becomes effective only if it is received by Speaker — 'Shall thereupon become vacant' —

Meaning of — 'Thereupon' means in consequence of resignation and cannot be construed in sense of 'resign his office' as used in Arts. 124 (2), 179 (b), 56 (1) (a), 67 and 156 (2)—Provision in Rule 278 (3) of U. P. Legislative Assembly Rules of Procedure and Conduct of Business regarding specifying date and time of resignation is not contrary to provisions of Art. 190 (3) (b). See Constitution of India, Art. 190 (3) (b). **AIR 1965 All 536.**

——R. 278 — Premature Petition — Application for writ of quo warranto against member of legislature on basis that he has tendered his resignation — Resignation under rules of Procedure of House was to become effective only when Speaker had determined its genuineness — Writ petition before decision of Speaker is premature. See Constitution of India, Art. 226. **AIR 1965 All 536.**

U. P. LOCAL BODIES (APPOINTMENT OF ADMINISTRATORS) ACT (17 of 1953)

SECTION 3

——S. 3—Scope of exercise of powers by Administrator.

Section 3 expressly provides that the Administrator will be deemed in law to be the Board and consequently for the exercise of the powers which vested in the Board, the Administrator will be deemed to the Board and such power can be exercised by the Administrator. The Administrator being a single individual, the question of majority or of special resolution contemplated by R. 6 (a) does not arise. When a legislature gives certain powers to a statutory body with a certain limitation placed on that power, it is open to the Legislature to take away that power and to vest in some other individual or a statutory body and it cannot be said that if consequent to the substitution of the statutory body by another individual, certain limitations of the Board given in the statute cannot be effected. In such a case it cannot, therefore, be said that the executive in the exercise of the power delegated to it, has done anything which materially affects the policy underlying the Municipalities Act. AIR 1954 S C 569, Disting. **1955 All WR (HC) 734 : 1956 All L J 71 : AIR 1956 All 181 (184, 185) (Pt D) (Prs 9, 11).**

U. P. MAINTENANCE OF PUBLIC ORDER (AMENDMENT AND PROCEEDINGS) VALIDATION) ACT (11 of 1949)

See under Public Safety.

U. P. MAINTENANCE OF PUBLIC ORDER (PROCEEDINGS VALIDATION) ORDINANCE (2 of 1949)

See under Public Safety.

U. P. MAINTENANCE OF PUBLIC ORDER (TEMPORARY) ACT (4 of 1947)

See under Public Safety.

U. P. MANUAL OF GOVERNMENT ORDERS (1954)

PARA 62

——Para. 62 — Property does not include human beings — Order passed by Magistrate for custody of abandoned child of about 2½ months — Order is one passed in executive capacity and is not subject to revision. See Criminal P. C. (1898), S. 523. **1955 Cri L J 261 : AIR 1955 All 81.**

PARA 63

——Para. 63 — Property does not include human beings — Order passed by Magistrate for custody of abandoned child of about 2½ months — Order is one passed in executive capacity and is not subject to revision. See Criminal P. C. (1898), S. 523. **1955 Cri L J 261 : AIR 1955 All 81.**

PARA 72

——Para. 72—Simultaneous departmental and Criminal Proceedings — There is no provision requiring stay of departmental proceedings pending Criminal Proceedings — Art. 20 (3) has no application. See Constitution of India, Art. 20 (3). **1962 (1) Cri L J 554 : AIR 1962 All 232.**

PARA 106

——Para. 106 — Civil Service Regulations (U. P.), Art. 465 — Retirement from service — Government servant of ministerial, subordinate or inferior service rendering 25 years of qualified service cannot claim retirement as of right — Option needs approval from superior authority. See Civil Service Regulations (U. P.), Art. 465. **AIR 1963 All 554.**

RULE 1

● ——App. 19, R. 1—Confession—Place of recording — Confession recorded in jail — Not proper. See Criminal P. C. (1898), S. 164. **1957 Cri L J 559 : AIR 1957 S C 381.**

RULE 10

——R. 10 — Departmental rule fixing age-limit for appointment not having statutory force — Appointment in contravention of rule not invalid. See Constitution of India, Art. 226. **1961 All L J 170.**

U. P. MANUAL OF RULES AND ORDERS RELATING TO THE DEPARTMENT OF LEGAL REMEMBRANCER TO GOVERNMENT

PARA 41

——Para. 41 — Dismissal of application — Mere dismissal of petition is no reason for not awarding costs to the Government Advocate — The fixed remuneration he receives from the Government does not cover such fees in connection with the contempt of Court cases in view of Para. 43 of the Manual. See Contempt of Courts Act (1952), S. 3. **AIR 1955 NUC (All) 3585 (DB).**

PARA 43

——Para. 43 — Dismissal of application — Mere dismissal of petition is no reason for not awarding costs to the Government Advocate — The fixed remuneration he receives from the Government does not cover such fees in connection with the contempt of Court cases in view of para. 43 of the Manual. See Contempt of Courts Act (1952), S. 3. **AIR 1955 NUC (All) 3585 (DB).**

U. P. MEDICAL ACT (3 of 1917)

SECTION 25

——Ss. 25, 26 — Erasing of name from register of Medical Practitioners — (Constitution of India, Article 226).

S. 25 does not enable the Council to remove the name of a person simply because he has been struck off the register of graduates of the body which originally granted the degree. In so doing the Council acts without jurisdiction and it is a proper case in which a writ of prohibition should issue restraining the Council from proceeding further with any steps to erase the name of the person from the register of medical practitioners. There is no question of infamous or disgraceful conduct in a professional respect in such a case and S. 26 does not apply. **1953 All L J 518 : ILR (1954) 2 All 335 : AIR 1953 All 580 (583, 584) (Pt A) (Prs 13, 16) (DB).**

SECTION 26

——S. 26 — S. 25 does not enable the Council to remove the name of a person simply because he has been struck off the register of graduates of the body which originally granted the degree — In so doing the Council acts without jurisdiction and it is a proper case in which a writ of prohibition should issue restraining a Council from proceeding further with any steps to erase the name of the person from the register of medical practitioners. There is no question of disgraceful or infamous conduct in a professional respect in such a case and S. 26 does not apply. See U. P. Medical Act (3 of 1917), S. 25. AIR 1953 All 580 (DB).

U. P. MEDICAL MANUAL

CHAP V, RULE 166

——Ch. V, R. 166, Cls. 8, 177 and 235 — Certificate as to age by Medical Officer—Value of. 1959 All W R (HC) 140.

U. P. MINING CONCESSIONS AND MINERAL DEVELOPMENT RULES (1940)

——Right to obtain mining lease—Not a fundamental right to be protected under Art. 19 (1) (f) or Art. 31 of the Constitution. See Constitution of India, Art. 19 (1) (f). AIR 1958 All 621 (DB).

——Statutory basis for Rules.

The 1940 Rules were a continuation of the 1936 Rules with adaptation and modification which in turn can be traced back to 1913 and 1894, and they have a statutory basis which is to be found in S. 1 of the Government of India Act (1859). I L R (1954) 1 All 582 : AIR 1954 All 393 (398, 408, 409) (Pt F) (Prs 23, 24, 83) (DB).

RULE 6

——R. 6—Limestones and clay.

Because the words "Limestone" and "Clay" have been joined by the conjunction "and" it cannot be argued that the minor mineral referred to in the rule is a combination of limestone and clay and not pure limestone. ILR (1954) 1 All 582 : A I R 1954 All 393 (400, 409) (Pt I)(Prs 31, 84) (DB).

RULE 31

——Rr. 31 (i) and 33—Scope —Right to mining lease.

Rules 33 and 31 (i) deal with separate matters; the former with the licensee's right to the grant of a mining lease, the latter with the Collector's power to extend the period of the licence. The licensee's right to a mining lease becomes complete and unassailable in law as soon as he within the period of his licence applies for it in the prescribed manner. That right is not dependent on the issue of the mining lease during the period of the licence, nor can it be taken away by failure on the part of the authorities to issue the mining lease before the license has expired. ILR (1954) 1 All 582 : A I R 1954 All 393 (397) (Pt E) (Pr 17) (DB).

RULE 33

——R. 33—Scope—Right to mining lease. Rules 33 and 31 (1) deal with separate matters; the former with the licensee's right to the grant of a mining lease, the latter with the Collector's power to extend the period of license. The licensee's right to a mining lease becomes complete and unassailable in law as soon as he, within the period his licence, applies for it in the prescribed manner. See U. P. Mining Concession and Mineral Development Rules (1940), R. 31 (1). AIR 1954 All 393 (DB).

U. P. MINIMUM WAGES RULES (1952)

RULE 23

——R. 23 — Employee is entitled to weekly holiday with wages. See Minimum Wages Act (1948), S. 13. AIR 1960 All 724.

——R. 23 — No weekly holidays — Employee is not entitled to additional remuneration besides wages for work done on weekly holidays — But he is entitled to compensation. See Minimum Wages Act (1948), S. 13. AIR 1960 All 724.

U. P. MOTOR VEHICLES RULES (1940)

See under Motor Vehicles Rules (1940) (U.P.)

U. P. MOTOR VEHICLES TAXATION ACT (5 of 1935)

SECTION 4

——S. 4—Motor Vehicles Rules, R. 33 — R. 33 is not mandatory — R. T. A. refusing to grant permit and fitness certificate to owner — Authorities cannot demand tax under S. 4. 1964 All L J 863 : ILR (1964) 2 All 982.

——S. 4 (2)—Rules under Act, R. 5—'Prescribed authority'—State Transport Authority has power to classify routes disapproving classification made by R. T. A. 1961 All L J 249 : A I R 1961 All 374 (376) (Pt A) (Pr 4).

——S. 4 (2)—U. P. Motor Vehicles Taxation Act (5 of 1935), S. 4 (2) and Rr. 5 and 6 framed thereunder—State Transport Authority —Classification of route as 'A' class route — Action is purely administrative and not judicial — Notice to pesrons affected not necessary —Absence of notice —Rule of natural jutice not contravened — Classification does not amount to change of route or conditions of permit—No interference under Art. 226. See Constitution of India, Art. 226. AIR 1961 All 374.

U. P. MOTOR VEHICLES TAXATION RULES (1935)

RULE 4

——Rr. 4 to 6 — State Transport authority in appeal changing classification of routes to higher class—Permit-holder not entitled to hearing before change of classification. See Motor Vehicles Act (1939), S. 48 (3) (xxi). A I R1962 All 412 (DB).

RULE 5

——Rr. 5 and 6—Scope of—State Transport authority —Classification of route as 'A' class route — Action is purely administrative and not judicial—Absence of notice — Rule of natural justice not contravened—Classification does not amount to change of route or conditions of permit—No interference under Art. 226. See Constitution of India, Art. 226. AIR 1961 All 374

RULE 33

——R. 33 — R. T. A. refusing to grant a permit and fitness certificate to owner — Authorities cannot demand tax under S. 4. See U.P. Motor Vehicles Taxation Act (5 of 1935), S. 4. (1964) All L J 863.

U. P. MUNICIPAL ACCOUNT CODE

See under Municipalities.

U. P. MUNICIPAL ELECTION RULES

See under Municipalities.

U. P. MUNICIPALITIES ACT (2 of 1916)

See under Municipalities.

U. P. MUNICIPALITIES (AMENDMENT) ACT (7 of 1953)

See under Municipalities.

Definition of waqf given by Muhammadan Authors of commentary is enlarged by the Act and covers permanent dedications and grants recognised not only by the Musalman law but also by usage, as religious, pious or charitable — Dedication for purposes of tomb — Shrine held in veneration by public and Urs held since time immemorial — Object of dedication held pious and covered by definition of waqf given by Act. 1953 All W R (H C) 527 : 1953 All L J 587 : AIR 1954 All 88 (91, 92) (Pt A) (Prs 14, 15) (DB).

SECTION 4

——Ss. 4 and 5—Waqf registered under U. P. Muslim Waqfs Act (13 of 1936) — Neither fresh survey nor fresh registration is condition precedent for application of the Act of 1960 — Notice issued under S. 55 of 1960 Act is within jurisdiction and not ultra vires — See U. P. Muslim Waqfs Act (16 of 1960), S. 55. AIR 1965 All 333.

——S. 4 — Determination of waqf as Shia or Sunni—Test indicated — (Muhammadan Law — Wakf). AIR 1955 N U C (All) 1262 (DB).

SECTION 5

● ——S. 5 (2)—Limitation—Suit claiming declaration that properties in suit were not covered by U. P. Muslim Waqf Act—Suit filed beyond period of limitation prescribed by S. 5 (2)—S. 15, Limitation Act not applicable to save limitation. See Limitation Act (1908), S. 15 (1). AIR 1959 S C 198.

● ——S. 5 (1)—Properties duly notified under S. 5 (1) it is incumbent upon the persons who wish to file a suit against the Board to give a requisite notice under S. 53 before instituting the suit — Effect. See U. P. Muslims Waqf Act (XIII of 1936), S. 53. AIR 1959 S C 198.

● ——S. 5 (2) — "Any person interested in a waqf"—Means any person interested in what is held to be a waqf. Siraj-ul-Haq Khan v. Sunni Central Board of Waqf, U. P. 1959 S C R 1287 : I L R (1959) 1 All 81 : 1959 All L J 83 : 1959 S C J 367 : AIR 1959 S C 198 (203, 204) (Pt A) (Pr 16).

——S. 5—Declaration by Commissioner—Sunni waqf—Finality.

After a declaration by the Commissioner of Waqfs after due inquiry that a particular waqf is a sunni waqf governed by the Act, it is open to the party aggrieved, to file a suit for a declaration that the waqf is not such a waqf to which the Act applied. But subject to the decision of the suit, the decision of the commissioner is final and conclusive. 1959 All L J 486.

——S. 5 (2)—Suit for declaration — Starting point of limitation—Limitation commences only from date on which complete report of Commissioner of waqfs is received officially by Central Board and not from date when it is unofficially received in complete form — (Muhammadan Law — Waqfs.) AIR 1955 N U C (All) 1262 (DB).

——S. 5 — Trustees removed by decree of Court—Court issuing notice to removed trustees not to interfere 'in any' in the affairs of the waqf — Held, Notice did not restrain the removed trustees from bringing a suit for a declaration that the properties comprised in the waqf were not to be governed by the provisions of the Muslim Waqfs Act—They could bring a suit within the time prescribed by S. 5, Muslim Waqfs Act. See Limitation Act (1908), S. 15. 1954 All 88 (DB).

——S. 5—Notification under, scope of.

It is not necessary under the law that all the property appertaining to a waqf should also be notified in the Gazette under the provisions of S. 5. All that is necessary is that the waqf which is sought to be claimed as a Muslim waqf should be clearly indicated in the notification.

In the instant case the notification regarding the property did not make a mention of all the items of the property and the word "waghaira" was put at the end to cover items of such property as were omitted.

Held, that a wafq property would not cease to be a waqf property, if there is no notification in respect of it, and if any item of property was left out either by an oversight or due to the impression that the word "waghaira" would include all such property, the items of property not clearly mentioned would not cease to be waqf property.

That the disputed properties were included in the expression "waghaira". 1953 All W R (H C) 527 : 1953 All L J 587 : AIR 1954 All 88 (93) (Pt F) (Pr 16-E) (DB).

SECTION 8-A

—— S. 8-A — S. 8-A is retrospective in operation and affects vested rights in pending actions. 1953 All L J 504 : 1953 All W R (H C) 594 : AIR 1954 All 124 (125) (Pt B) (Pr 6) (DB).

SECTION 18

——S. 18—Powers of Board — Extent of — Power to remove Mutawalli.

According to S. 18 (1) of the Act it is the general superintendence of the waqf which vests in the Board and not its direct management. The word 'superintendence' connotes supervision of the management. The use of the word 'ensure', which means 'to make certain, to secure, or to guarantee', signifies that the management is to be done by others and that the act of the Board is restricted to making certain that the others take suitable steps towards the proper maintenance, control and administration of the wakf or endownment. Hence the power which S. 18 confers on the Board is a power of supervision and not a power of taking over the management itself. Section 58 of the Act which empowers the Board to remove a mutawalli from his office in certain circumstances would also be redundant if the power of removal was given to the Board under S. 18 of the Act. 1958 All L J 567 : 1958 All W R (H C) 670 : AIR 1959 All 16 (18, 19) (Pt C) (Prs 20, 21, 22, 24, 25) (DB).

SECTION 51

——S. 51—Applicability and scope—Suit relating to rights of mutwalli of public wakf — Compromise without sanction of Central Board—Consent decree—Validity.

Section 51 is not confined to suits mentioned in S. 48. It refers 'inter alia', to suits relating to title to property, whereas such suits are not within the purview of S. 92, Civil P. C., or of S. 48, Muslim Wakfs Act. Therefore, where one of the plaintiffs claimed to be the mutawalli of the public waqf and contested the right of one of the defendants to that office, the suit related to the rights of the 'Mutwalli' and the bar imposed by S. 51 directly applied to the suit. As the suit was compromised without the sanction of the Central Board the consent decree passed in accordance with it by the appellate Court was invalid. I L R (1956) 1 All 586 : 1955 All L J 850 : 1955 All W R (H C) 731 : AIR 1956 All 94 (95) (Pt A) (Pr 8) (DB).

SECTION 52

——Ss. 52 and 2 (2) (ii) (c)—Graveyard proved to be private—Provisions of S. 52 not applicable.

Clause (c) of S. 2 (2) (ii) excludes the operation of the Act to waqfs created solely for the maintenance of private inambaras, tombs and grave-yards. Where therefore, the graveyard in question is a private

graveyard, S. 52 will not be applicable to it. AIR 1942 Cal 467, Disting. 1965 All W R (H C) 296 : 1965 All L J 898.

SECTION 53

●——S. 53—Properties duly notified under S. 5 (1)—Suit against Sunni Central Board of Waqf—Notice under S. 53 is necessary before instituting the suit against the Board. Siraj-ul-Haq Khan v. Sunni Central Board of Waqf, U. P. ILR (1959) 1 All 8 ; 1959 S C R 1287 ; 1959 All L J 83 ; 1959 S C J 367 ; AIR 1959 SC 198 (207, 208) (Pt D) (Pr 25).

——S. 53—Scope.

Provisions are analogous with those of S. 80, C. P. Code — Subject-matter of dispute, waqf property — Notice under S. 53 held essential before institution of suit. 1953 All W R (HC) 527 ; 1953 All L J 587 ; AIR 1954 All 88 (94) (Pt I) (Pr 20) (DB).

SECTION 56

——S. 56—Petitioner claiming certain property to be his own — U. P. Sunni Central Board of Waqfs appointing committee of management and secretary for disputed property — Property already declared to be waqf property under the Act by Board—Board acting under S. 56 of the Act and not at instance of any person —Board cannot be said to be acting mala fide—Constitution of India, Art. 226. AIR 1965 All 333 (337, 339) (Pt B) (Prs 17, 20).

——S. 56—Scope — Board's power to remove Mutawalli.

The only power which the Board can exercise under S. 56 is the power of appointing a person to act as a mutawalli for a limited period when there has occurred a vacancy in the office of a mutawalli of a Waqf and there is no one competent to be appointed under the terms of the deed of waqf or where the right of any person to act as mutawalli is disputed. This section does not authorise the Board to remove a mutawalli. It only authorises the Board to appoint a mutawali. 1958 All L J 567 : 1958 All W R (HC) 670 ; AIR 1959 All 16 (18) (Pt B) (Pr 17) (DB).

——S. 56—Mutawalli appointed by Collector refusing to act—Procedure — Board of Waqfs—Power to appoint temporary mutawallis.

The Collector as the second mutawalli was given the power to nominate a committee of four persons to assist him and also, if necessary, to divest himself and to transfer the management of the waqf under the orders of the Government. But the Collector intimated to the Secretary, Sunni Central Board of Waqfs, U. P. Lucknow that he had no objection if the Central Board of Waqfs made arrangement for the administration of the said waqf and that the waqf property had never come into his possession as mutawalli. It was obvious that the Collector disclaimed the mutawallishiip and was not willing to act as such.

Held, that there was vacancy in the office of the mutawalli and inasmuch as there was no other competent person nominated under the deed, the Sunni Central Board of Waqfs was entitled to act under S. 56 of the Act and to appoint temporary mutawallis. This was not a case where any mutawalli has been dismissed or superseded and fresh mutawallis had been appointed. The temporary mutawallis had a locus standi to bring a suit for ejectment of the trespassers. 1959 A L J 486.

——S. 56 — Waqf governed by Act—Appointment of successor Mutawalli, by death-bed nomination — Appointment held not valid—Abrogation of Muslim Law —Law applicable—(Muhammadan law— Waqf—Mutawalli—Appointment). AIR 1955 N U C (All) 2742 (DB).

SECTION 59

——S. 59—Applicability—Conditions — Supersession of Committee of Supervision—Effect of.

It is necessary for the application of the provisions of S. 59 (1) that the supervision of a waqf be vested in a committee (2) that such a committee be in existence when the section came into force, and (3) that such a committee be appointed by the waqf or any competent Court or authority. When a committee of supervision has been superseded under sub-S. (2) of S. 59 no further committee of supervision will be constituted. The result must be that the Board thereafter begins to exercise supervision, which till then was exercised by the committee of supervision subject to the terms of the proviso contained in sub-S. (1) of S. 59. 1958 All L J 567 : 1958 All W R (HC) 670 : AIR 1959 All 16 (17, 18) (Pt A) (Prs 10, 15, 16) (DB).

U. P. MUSLIM WAKFS ACT (16 of 1960)

SECTION 19

——Ss. 19 and 48 — Power of appointing any person as mutwalli is to be exercised as per Proviso to S. 19 —Right to manage property is secular and has not been taken away by S. 19 — Provisions of Constitution of India, Art. 26 are not attracted—Constitution of India, Art. 26.

A duty has been cast on the Board to be guided by the directions of the waqf while acting under S. 48 of the Act. Therefore, it is not correct to urge that under S. 48 the Board has unfettered power to appoint any person as mutawalli. The right to manage the property of a waqf is a secular right and is not hit by Art. 26 of the Constitution. Under S. 19 of the Act only general superintendence of all waqfs vests in the Board. The Act does not deprive religious institutions to manage their own affairs either in religious matters or in the administration of property in accordance with law. The Board can only ensure that the waqfs are properly governed and the rights of administration of properties are not taken away by S. 19 of the Act : AIR 1934 Cal 328 and AIR 1945 All 261 (FB), Disting. AIR 1965 All 333 (343) (Pt G) (Pr 47).

SECTION 33

——S. 33—Section is not discriminatory and is not hit by Art. 14. See Constitution of India, Art. 14. AIR 1965 All 333.

SECTION 48

——S. 48 — Right to manage property is secular and has not been taken away by S. 19 — U. P. Muslim Waqfs Act, 1960—Provisions of Constitution of India, Art. 26 are not attracted. See U P. Muslim Waqfs Act (1960), S. 19. AIR 1965 All 333.

SECTION 49

——S. 49 — Mutawalli cannot complain about violation of Art. 19 (1) (f), and neither Art. 25 nor Art. 26 can help him. See Constitution of India, Art. 19 (1) (f). AIR 1965 All 333.

SECTION 50

——S. 50 — Mutawalli cannot camplain about violation of Art. 19 (1) (f). See Constitution of India, Art. 19 (1) (f). AIR 1965 All 333.

SECTION 55

——S. 55 — Reasonable classification and discrimination—Act is not hit by Art. 14 of the Constitution. See Constitution of India, Art. 14. AIR 1965 All 333.

——S. 55 — Validity cannot be challenged under Arts. 19 (1) (f), 25 or 26. See Constitution of India, Art. 19 (1) (f). AIR 1965 All 333.

——S. 55 — Notice under — Validity of — Waqf registered under U. P. Muslim Waqfs Act (13 of 1936) after taking necessary proceedings regarding survey and report of Commissioner of Waqf — Neither fresh survey nor fresh registration is condition precedent for application of the Act of 1960 — Notice issued under S. 55 is within jurisdiction and not ultra vires — U. P. Muslim Waqfs Act (13 of 1936), Ss. 4 and 5. AIR 1965 All 333 (339, 340) (Pt D) (Prs 26, 27, 28, 29).

——S. 55 — Filling in vacancies amongst members of Managing Committee — Civil Court has jurisdiction. See Religious Endowments Act (1863), S. 10. 1965 All L J 1170 : ILR (1966) 1 All 153.

SECTION 60

——Ss. 60, 75, 76—Reference to Tribunal — Tribunal appointing receivers — Appeal against order is barred — No revision also lies — Civil P. C. (1908), O. 40, R. 1, O. 43, R. 1 (s), S. 115. 1963 All L J 607 : AIR 1963 All 537 (540, 541) (Pt C) (Prs 9, 10, 11) (DB).

SECTION 71

——S. 71—Proviso to S. 71 does not bar jurisdiction of tribunal to stay proceedings before Board or directions given by it. See U. P. Muslim Waqfs Act (1960), S. 72. 1964 All L J 1145.

SECTION 72

——Ss. 72 and 71 — Proviso — Proviso to S. 71 does not bar jurisdiction of Tribunal to stay proceedings before Board or direction given by it. 1964 All L J 1145.

SECTION 75

——Ss. 75, 76 and 60—Reference to Tribunal—Tribunal appointing receivers — Appeal against order is barred — No revision also lies — Civil P. C. (1908), O. 40, R. 1, O. 43, R. 1 (s), S. 115. See U. P. Muslim Waqfs Act (16 of 1960), S. 60. AIR 1963 All 537 (DB).

U. P. (NAGAR KSHETRA) BHUMI AUR BHAVAN KAR ADHINIYAM (12 of 1962)

See under Panchayats.

U. P. NAGAR MAHAPALIKA ADHINIYAM (2 of 1959)

See under Municipalities.

U. P. NAGAR MAHAPALIKA AGYA (1959)

See under Municipalities.

U. P. NACAR MAHAPALIKA (NAGAR PRAMUKH AUR UPNAGAR PRAMUKH KE NIRVACHAN KE SANCHALAN) AGYA (1959)

See under Municipalities.

U. P. NAGAR MAHAPALIKA (SABHASADON KE NIRVACHANKA SANCHALAN) AGYA (1959)

See under Municipalities.

U. P. OFFICIAL LANGUAGE ACT (26 of 1951)

SECTION 2

——S. 2 (2)—State Government notification superseding town area committee under S. 36, U. P. Town Areas Act, issued in English — Invalid. See Constitution of India, Art. 345. AIR 1961 All 365.

——S. 2 — Notification published in Hindi and English in U. P Gazette — Conflict between two versions — Which prevails — (Land Acquisition Act (1894), Ss. 4 and 6)—Constitution of India, Art. 348).

Held, that the Hindi notification, and not English notification, under S. 4 of the Land Acquisition Act must be treated as the authoritative text of the notification published in the Gazette and must prevail. Held, further that as the Hindi version of the notification under S. 4 suffered from vagueness and was incapable of conveying a clear discription of the land sought to be acquired, the very foundation of the proceedings for acquisition suffered from vagueness. It amounted to an illegality. 1959 All L J 685 : AIR 1959 All 792 (793, 794) (Prs 4, 6, 7, 8, 9).

——S. 2—Hindi edition of U. P. Gazette is the official gazette — Publication in Hindi Gazette (H.P.), if publication in Newspaper. See U. P. Road-side Land Control Act (10 of 1945), S. 3 (1). 1959 All L J 692 : 1959 All Cr R 413.

U. P. OILSEEDS AND OILSEEDS' PRODUCTS CONTROL ORDER (1945)

——Essential Supplies (Temporary Powers) Act (1946), S. 7 — Offence of contravening conditions of licence — Failure to maintain proper stock register — Proof of knowledge of accused essential — Words in condition of licence capable of two interpretations — Accused offering reasonable and substantial explanation — Offence held was not committed. See Essential Supplies (Temporary Powers) Act (1946), S. 7. 1956 Cri L J 1661 : AIR 1956 All 615 (DB).

——If kept alive by S. 17 of Essential Supplies (Temporary) Powers Act 18 of 1946.

The word "edible" has to be understood in its ordinary dictionary sense namely, "eatable or fit to be used as food". Linseed oilseeds has to be taken as an edible oilseed. It is therefore an article of foodstuff and would be an essential commodity within the meaning of S. 2 of the Essential Supplies Temporary Powers Act. So, in so far as the U. P. Oilseeds and Oilseeds' Products Control Order refers to linseed oilseeds, it must be deemed to have been kept alive by S. 17 of the Act. 1951 All Cri R 18 : 1951 A W R (HC) 99 : 52 Cr L J 879 : 1951 A L J 348 : 5 A I Cr D 9 : AIR 1951 All 595 (596) (Pr 5).

——If ultra vires—Government of India Act (1935) S. 297 — Applicability.

Section 297 of the Government of India Act, 1935, applies to Acts passed by the Provincial Legislature by virtue of the entry in the Provincial List relating to trade and commerce within the Province. In case the Provincial Legislature passes an Act not by virtue of the Entry in the Provincial Legislative List but under some other authority given to it, S. 297 can have no application. The U. P. Oilseeds and Oilseeds Products Control Order, 1945, was passed under the delegated authority given to the Provincial Government by the Central Government under the defence of the India Rules made in accordance with the Defence of India Act. The order was kept alive by the Essential Supplies Ordinance and Essential Supplies Act, 1946, which were passed under the authority given to the Central Legislature by the India (Central Government and Legislature) Act, 1946. So the U. P. Oilseeds and Oilseeds' Products Control Order is a valid piece of legislation. ILR (1950) All 824 : 1950 A L J 819 : AIR 1951 All 404 (407) (Pt A) (Pr 15).

CLAUSE 7

——Cls. 7, 13 — Failure to maintain stock register correctly.

The U. P. Oilseeds and Oilseeds' Products Control Order (1945) is kept alive by S. 17 of the Essential Supplies (Temporary Powers) Act (1946). Where an order granting a licence in Form B is made under the U. P. Oilseeds and Oilseeds' Products Control Order (1945) and the licensee does not maintain the stock Register correctly he contravenes the provisions of the Control Order or of any order made thereunder within the meaning of Cl. 13. To such a case Cl. 7 does

not apply. Further Cl. 13 is not controlled by Cl. 7. 1951 Rev Dec 120.

CLAUSE 8

——Cls. 8 and 13—Accused exporting alsi seeds outside Province without permit on 13-3-1946 in contravention of Cl. 8 — Govt. of India Notifn. No. C. G. 603 (2), III (2) dated 5.3-1947 by which power of Provincial Government to restrict inter-provincial movement of edible oil-seeds was taken away—Effect of—Notification held not retrospective—Accused held could be tried and convicted under Cl. 13 even after passing of notification by virtue of S. 1 (4), Defence of India Act (as amended by Defence of India (Second Amendment) Ordinance) (12 of 1946). AIR 1951 All 404 (408) (Pt B) (Pr 23).

——Cl. 8—Order is not ultra vires.

The Control Order in question does not go bevond the provisions of S. 2, Defence of India Act or Cl. (a) of sub r. (2) of R. 81, Defence of India Rules and merely seeks to carry out the purposes for which the Defence of India Act and the Defence of India Rules have been framed. Clause (a) of sub-s. (1) of S. 297, Government of India Act, does not apply. The power given to the Central Government under sub-s. (4) of S. 2, Defence of India Act to delegate any power or duty which by rule under sub-s. (1) is conferred or imposed upon it, to the Provincial Government cannot be regarded as ultra vires the powers of the Central Legislature : AIR 1949 F C 175 and AIR 1949 All 463, Disting. 1950 All W R 93 : 1950 All Cri Cas 45 : 51 Cri L J 405 : AIR 1950 All 99 (100) (Pr 5).

CLAUSE 13

——Cl. 13—Breach of condition in licence—Element of mens rea is not excluded by S. 7 — See Essential Supplies (Temporary Powers) Act (1946), S. 7. 1956 Cri L J 1156 : AIR 1956 All 610 (DB).

——Cls. 13 and 8—Accused exporting alsi seeds outside Province without permit on 13-3-1946 in contravention of Cl. 8 — Government of India Notifn. No. C. G 603 (2), III (2) dated 5-3-1947 by which power of Provincial Government to restrict inter-provincial movement of edible oil-seeds was taken away—Effect of — Notification held not retrospective — Accused held could be tried and convicted under Cl. 13 even after passing of notification by virtue of S. 1 (4), Defenee of India Act (as amended by Defence of India (Second Amendment) Ordinance) (12 of 1946). See U. P. Oilseeds and Oilseeds' Products Control Order (1945), Cl. 8. AIR 1951 All 404.

——Cl. 13 — Where an order granting a licence in form B is made under the U. P. Oilseeds and Oilseeds' Products Control Order (1945) and the licensees do not maintain the stock register correctly he contravenes the Control Order or any order made thereunder within the meaning of Cl. 13. To such a case Cl. 7 does not apply. Clause 13 is not controlled by Cl. 7. See U. P. Oilseeds and Oilseeds' Products Control Order (1945), Cl. 7. 1951 Rev Dec 120.

U. P. OPIUM SMOKING ACT (3 OF 1934)

SECTION 2

——S. 2 (7) — (U. P.) Excise Manual, Vol. 3, Pt. 2, R. 120J—Search by second officer of Police Station is valid—In making these searches, he acts in his capacity as excise officer and not as a police officer. See U. P. Opium Smoking Act (3 of 1934), S. 19-A. 1956 Cri L J 449 : AIR 1956 All 234.

SECTION 9

——S. 9—Illegal possession of opium not punishable under S. 9—Opium Act (1878), S. 9.

Section 9, U. P. Opium Smoking Act, provides for presumption raised by presence of opium and of opium smoking apparatus. It does not provide for any offence. On the other hand, S. 9, Opium Act, makes the illegal possession of opium an offence. 51 Cri L J 980 : AIR 1950 All 364 (365) (Pt A) (Pr 1).

SECTION 12

——Ss. 12, 13, 14 and 25 — Complaint under—Who can file—Second officer of Police Station empowered as Excise officer—Complaint by—Effect of notification under S. 10 (2) (e)—For the purpose of filing complaints, the Police Officer is not Excise Officer. The trial Court is debarred from taking cognisance of the offence under Ss. 12, 13 and 14 of the Opium Act on a complaint filed by such Police Officer. See U. P. Opium Smoking Act (3 of 1934), S. 25. 1956 Cri L J 449 : A I R 1956 All 234.

SECTION 14

——S. 14—(Plea of guilty)—Statement of accused as follows—Question—Did you on 15-3-53 in the company of B & S assemble at the house of B with a view to smoke opium : Answer — Yes. I had assembled there along with others for the purpose of smoking opium. Held, that it was a plea of guilty—(Criminal P. C. (1898), Ss. 255, 271). 1957 All L J 595 : 1957 All W R (H C) 569 : 1957 Cri L J 1199 : A I R 1957 All 753 (753, 754) (Pt B) (Pr 4) (DB).

——S. 14—If ultra vires — (Constitution of India, Arts. 19 (1) (b) and 19 (3)).

Section 14 is a reasonable restriction in the interest of public, on the exercise of the right of assembly provided by Art. 19 (1) (b) and does not offend Art. 19 (1) (b) and is not ultra vires 1957 All L J 595 : 1957 All W R (H C) 569 : 1957 Cri L 1199 : AIR 1957 All 753 (754) (Pt C) (Pr 5) (DB).

——S. 14—Scope and effect of — (Opium Act (1878), Ss. 14 and 9).

Section 14 of the U. P. Opium Smoking Act, 1934, provides for penalty. It is S. 14 of the Opium Act of 1878 which provides for entry, arrest and seizure and not penalty and it is again S. 9 of the Opium Act of 1878 which provides for penalty for illegal cultivation of poppy etc. 1957 All L J 595 : 1957 All W R (H C) 569 : 1957 Cr L J 1199 : AIR 1957 All 753 (754) (Pt D) (Pr 6) (DB)

SECTION 19

——S. 19—Search without warrant to recover crude opium—Search is not legal — U. P. Excise Act (IV of 1910), Ss. 3 (12) and (22-a) 53 — (Opium Act (1878), S. 14). AIR 1955 N U C (All) 5499.

——Ss. 19, 19A—Search without warrant.

An excise Inspector is vested with the power of conducting of search if he feels that by procuring the necessary warrant there would be undue delay and the offender might escape. If in the opinion of the Excise Inspector there is an emergency, he can without procuring a warrant conduct the search. No doubt there is a condition laid down in S. 19A that if such a search is to be conducted the officer conducting the search should record his reasons. The absence of this record will, however, not make the search illegal. It will only necessitate a greater scrutiny of the evidence of recovery. AIR 1956 All 234, Rel. on. I L R (1957) 1 All 8 : 1958 Cri L J 120 (121) (Pt A) (Pr 2) (DB).

SECTION 19-A

——Ss. 19-A and 19 — Excise Inspector can, without procuring a warrant, conduct the search in case there is emergency in his opinion. AIR 1956 All 234, Rel. on. See U. P. Opium Smoking Act (1934), S. 19. I L R (1957) 1 All 8 : 1958 Cri L J 120 (All) (DB).

——S. 19-A—(U. P.) Excise Manual, Vol. III, Part II, R. 120-J—(U. P. Excise Act (IV of 1910), Ss. 53, 10 (2), 2 (7)) — Search by second officer of Police station —Valid — Effect of Notification under S. 10 (2) (e) — (Criminal P. C. (1898), S. 96). Rule 120J made under Opium Smoking Act overrides the earlier notification under S. 10 (2) (e) of the Excise Act — No authority to conduct a search under S. 19-A, Opium Smoking Act is now validly conferred on such persons who are made Excise officers by the notifications. **1956 All W R (H C) 440 : 1956 All L J 475 : 1956 Cr L J 449 : AIR 1956 All 234 (235, 236) (Pt A) (Prs 5, 7).**

—S. 19-A — (U. P.) Excise Manual, Vol. III, Part II, R. 120-J — Search by second officer of Police station—Grounds not recorded—Effect of irregularities —Search is not vitiated—(Criminal P. C. (1898), Ss. 537 and 96)—(U. P. Excise Act (IV of 1910), S. 53). **1956 All W R (H C) 440 : 1956 All L J 475 : 1956 Cr L J 449 : AIR 1956 All 234 (236) (Pt B) (Pr 7).**

SECTION 25

——S. 25—Compliance with—Criminal P. C. (1898), S. 4 (h).

All that is required for a person to bring his allegations under the definition of a complaint is to bring to the notice of a Magistrate either orally or in writing the gist of the illegal act or omission committed by an offender with a view that action may be taken against him. In those cases where the police prosecutes offenders, only charge sheets which are called challans are submitted. Those challans are equivalent to complaints filed in other cases.

The prosecution was launched by an Excise Inspector—The name of the offender, the date of the offence, the articles recovered from the possession of the accused, the names of witnesses, the section of the U. P. Opium Smoking Act under which an offence was committed given in charge sheet—This charge sheet fulfils the requirements of S. 25 of the U. P Opium Smoking Act, because it is the report of the Excise Inspector and fulfils definition in S. 4 (h) of Criminal P. C. **I L R (1957) 1 All 8 : 1958 Cr L J 120 (121) (Pt B) (Pr 3) (DB).**

——Ss. 25, 12, 13, 14—Complaint under — Who can file—Second officer of police Station empowered as Excise Officer—Complaint by—Effect of notification under S. 10 (2) (e)—For filing complaints he is not an Excise officer — The trial Court is debarred from taking cognisance of the offence under Ss. 12, 13, 14 of the Opium Act on a complaint filed by such police officer—(Interpretation of Statutes) — (AIR 1924 All 267 and AIR 1950 All 610, Dissented from; AIR 1950 All 436, Rel. on.) **1956 All L J 475 : 1956 All W R (H C) 440 : 1956 Cr L J 449 : AIR 1956 All 234 (236, 237) (Pt C) (Prs 9, 13, 14).**

——S. 25—Compliance with—No form of complaint is laid down — Charge-sheet submitted by Excise Inspector through Excise Officer — Magistrate can take cognisance on it. **AIR 1955 N U C (All) 5499.**

U. P. PADDY (RESTRICTION ON MOVEMENT) ORDER (1958)

CLAUSE 3

——Cl. (3) — Essential Commodities Act (1955), S. 3 —Constitution of India, Arts. 301, 302, 303 and 304— Cl. (3) of Order is not ultra vires and is not hit by Arts. 301 to 304.

The provisions of Cl. (3) of the U. P. Paddy (Restriction on Movement) Order (1958) are not ultra vires and are not hit by Arts. 301 to 304 of the Constitution. AIR 1961 S C 232, Disting.

The freedom of trade, commerce and intercourse guaranteed under Art. 301 is subject to any law framed by the Parliament under Art. 302. The impugned Order has been framed under S. 3 of the Essential Commodities Act (1955), passed by the Parliament. The Act is a piece of legislation contemplated by Art. 302 and is fully protected by it. The impugned Order merely carries out the purposes of the Act and is in the nature of delegated legislation. Cl. (3) of the impuged Order regulates the movement of paddy within the State of U. P. and it cannot be said to be a case of discrimination between one State and another. **1962 All Cr R 385 : 1962 All W R (H C) 684 : 1963 (1) Cr L J 35 : 1962 All L J 831 : A I R 1963 All 29 (30, 31, 32) (Pt B) (Prs 5, 6, 8) (DB).**

U. P. PANCHAYAT RAJ ACT (26 OF 1947)

See under Panchayats.

U. P. PANCHAYAT RAJ (AMENDMENT) ACT (19 of 1957)

See under Panchayats.

U. P. PANCHAYAT RAJ RULES (1947)

See under Panchayats.

U. P. PARGANA OF KASWAR RAJA ACT (6 of 1915)

SECTION 4

——S. 4 (4)—Scope—Record of Rights—Entries in—Conclusive character—If attaches to persons recorded as in possession.

The provisions of Cl. (4) of S. 4 of the Pargana of Kaswar Raja Act, 1915, make conclusive only the nature or class of the tenure as entered in the Record of Rights prepared in 1319-F and not the persons recorded as possessing that tenure. **1952 R D 97 : 1952 All W R (Rev) 200 : 1952 All L J (Rev) 59.**

U. P. PARTITION MANUAL

See under Tenancy Laws.

U. P. POLICE REGULATIONS

See under Police Act (1861), S. 7

U. P. POLICE RULES

RULE 236

——R. 236 — (Framed under S. 46 (2), Police Act)— Police doing surveillance entering accused's house and beaten. Accused held guilty under S. 353, I.P.C. See Penal Code (1860), S. 353. **AIR 1955 N U C (All) 2781 (DB).**

U. P. POLICE SERVICE RULES (1942)

RULE 20

——Rr. 20 (iii), Cl. 21—Appointment of Officers under the U. P. Provincial Armed Constabulary Act of 1948 is valid and the rules being framed under Art. 309 of the Constitution are applicable to them. **(1964) 2 Lab L J 320 : 9 Fac L R 215 : 1964 All L J 432.**

U. P. POLICE TRAINING COLLEGE MANUAL

RULE 23

●——Pt. III, R. 23—Rules in the Manual —Whether statutory—Misconduct of cadet under training—Enquiry and expulsion from college—Cadet has no right to cross-examine witnesses at enquiry—Natural justice. See Police Act (1861), S. 46 (2) (c). **1964 (2) Cri L J 625 : AIR 1964 All 540 (FB).**

U. P. PREVENTION OF ADULTERATION ACT (6 of 1912)

SECTION 2

——S. 2—Definition of food is wide enough to include katha as article of food. **AIR 1955 N U C (All) 169.**

—S. 2—(U. P. Pure Food Act (32 of 1950), S. 2 (e)) —Mustard and linseed oils are articies of food. A I R 1951 All 595, Foll. 1953 All L J 499 : 1953 All W R (HC) 583 : 1954 Cr L J 165 : ILR (1954) 2 All 272 : AIR 1954 All 97 (98) (Pt B) (Pr 7) (DB).

—Ss. 2 and 4—Mustard seed.

Not only mustard oil but mustard seed also is food. Mustard seeds are used in cooking, etc. and are also used with spices for flavour. 1953 All W R (HC) 367 : 1953 All L J 374 (1) : 1953 Cri L J 1628 : AIR 1953 All 713 (714) (Pt B) (Pr 3) (DB).

SECTION 4

—S. 4 (1)—Report of Chemical Analyst that Katha was adulterated — Conviction under section can be maintained. AIR 1955 N U C (All) 169.

—S. 4 — Adulteration of vegetable ghee—(U. P. Pure Food Act (32 of 1950), S. 4).

Unless it is shown that there is a rule or regulation under the Act which requires that the vegetable ghee should contain sesame oil in a certain proportion an accused cannot be convicted under S. 4. 1953 All L J 499 : 1953 All W R (HC) 583 : 1954 Cr L J 165 : ILR (1954) 2 All 272 : AIR 1954 All 97 (98) (Pt C) (Pr 9) (DB).

—Ss. 4 and 2—Mustard seed is also food. See U. P. Prevention of Adulteration Act (VI of 1912), S. 2. 1953 Cri L J 1628 : AIR 1953 All 713 (DB).

—S. 4 —It is not only the poison that can be confiscated but the mustard seeds also with which it is mixed. See Poisons Act (1919), S. 6 (2). A I R 1953 All 713 (DB).

—S. 4 (1) Proviso—"To the prejudice of purchaser."

Where the matter or ingredient added to the article of food is not injurious to the health of the purchaser, if it is shown that the addition was required for the production or preparation of the article the sale of the article would not be deemed "to the prejudice of the purchaser" under S. 4 (1). But where it is established that the addition of fats and oils, which was apparently not injurious to the health of the purchaser was made with the object of increasing the bulk of the ghee and its weight and this was obviously done fraudulently the sale of ghee was "to the prejudice of the purchaser," and as such it was covered by S. 4. 1951 All W R (HC) 423 : 1951 All Cri Cas 85 : 1951 All L J 556 : AIR 1952 All 82 (82) (Pr 6).

SECTION 6

—S. 6, Proviso (a) —Invoice is not warranty—(U.P. Pure Food Act (32 of 1950), S. 6).

An invoice is merely a description of the articles sold and cannot be said to be a warranty given in accordance with the provisions of proviso (a) to S. 6. 1953 All L J 499 : 1953 All W R (HC) 583 : 1954 Cr L J 165 : I L R (1954) 2 All 272 : A I R 1954 All 97 (97, 98) (Pt A) (Pr 6) (DB).

SECTION 12

—S. 12 — Prosecution without valid sanction — Complaint allowed to be withdrawn — Subsequent complaint upon valid sanction not barred. See Criminal P. C. (1898), S. 403. 1957 Cri L J 332 : A I R 1957 All 129.

—S. 12 —Sanction: under, by Medical Officer who is authorised in that behalf by Chairman of Municipality — Valid. A I R 1952 All 209 (210) (Pt A) (Prs 5, 6).

SECTION 15

—S. 15 (2) — Summons under — Mere omission of names of prosecutor — Legality — Accused not prejudiced — Criminal P. C. (1898), S. 537. A I R 1952 All 209 (210) (Pt B) (Pr 7).

—S. 15—Proceedings after sanction within limitation not instituted — Fresh sanction to enable case being filed cannot be granted.

It is not open to a body having once failed to institute proceedings after the first sanction to get the period of limitation under S. 15 extended by getting a fresh sanction and thereby going against the provisions of the section. 51 Cri L J 335 : ILR (1950) All 964 : AIR 1950 All 92 (93) (Pr 3).

SECTION 17

—S. 17 — Conviction after coming into force of repealing Act— Validity (U. P. Pure Food Act (32 of 1950), S. 50).

In view of the provisions of the U. P. Pure Food Act which has repealed U. P. Prevention of Adulteration Act, a conviction under S. 17 of the latter Act after the former Act came into force is not illegal. 1957 Cri L J 915 : AIR 1957 All 548 (548, 549) (Pt A) (Prs 1, 2) (DB).

U. P. PREVENTION OF BLACK MARKETING (TEMPORARY POWERS) ACT, 1947 (22 of 1948)

SECTION 3

● —S. 3 (1) (i)—Provisions of, are ultra vires Provincial Legislature—Government of India Act (1935), S. 100 and Sch. VII, List I, Entry 1.

Section 3 (1) itself makes no reference to the maintenance of public order. It is directed solely against persons who habitually indulge in black-marketing. It does not require that the Provincial Government should before directing the detention of a person, be satisfied that his actions are likely to disturb public order.

Rule of pith and substance cannot be invoked in such a case as that rule has been evolved for determining whether a particular statute is legislation with respect to matters in one or the other of the Lists in Sch. VII.

It is true that black-marketing in essential commodities may at times lead to a disturbance of public order but activities such as these are so remote in the chain of relation to the maintenance of a public order that preventive detention on account of them cannot fall within the purview of entry 1 of List. II, Sch. VII of the Government of India Act, 1935.

Section 3 (1) (i) is not, therefore, within the power of the Provincial Legislature to enact : AIR 1949 All 513 (FB), Affirmed. 1950 Mad W N 257 (2) : 1950 Mad W N (Cri) 61 (2) : 51 Cri L J 1011 : 1950 S C J 47 : 1949 F L R 657 : 1950 Raj L W 49 : AIR 1950 FC 67 (68, 69) (Pt A) (Prs 6, 7, 8).

U. P. PREVENTION OF COW SLAUGHTER ACT (1 of 1956)

PREAMBLE

● —Preamble — Constitution of India, Arts. 19 (1) (g) and 48—U. P. Act 1 of 1956—Directness of Legislations — The effect of U. P. Prevention of Cow Slaughter Act (1 of 1956) on the rights of butchers is direct. See Constitution of India, Art. 19 (1) (g). AIR 1958 SC 731.

● —Preamble—Validity of — The Act is valid in so far as it prohibits the slaughter of cows of all ages and calves of cows male and female but in so far as it purports to totally prohibit the slaughter of breeding bulls without prescribing any test or requirements as to age or usefulness it offends against Art. 19 (1) (g) and is to that extent void. See Constitution of India, Art. 19 (1) (g). AIR 1958 SC 731.

● ——Preamble—Constitution of India, Art. 25 (1) — Scope — U. P. Act 1 of 1956 — Not hit by Art. 25 of the Constitution. See Constitution of India, Art. 25 (1). AIR 1958 SC 731.

● —Preamble — Constitution of India, Arts. 48, 245 and 246 and Sch. VII, List. II, Entry 15 — Statutes enacted under — U. P. Prevention of Cow Slaughter Act (1 of 1956) is enacted in pursuance to the directive principles contained in Art. 48 and in exercise the powers conferred by Arts. 245 and 246 read with entry 15 in List. II. of Sch. 7. See Constitution of India, Art. 48. AIR 1958 SC 731.

SECTION 2

——Ss. 2 (d), 5 and 8—Contravention of S. 5—Burden of proof—Prosecution must prove that the flesh found with the accused is 'beaf' as defined in and prohibited under the Act. See U. P. Prevention of Cow Slaughter Act (1 of 1956), S. 5. 1964(1) Cri L J 327 : AIR 1964 All 106..

SECTION 3

● ——S. 3—Validity — If unreasonable restriction on rights of butchers.

Not being content with fixing an unreasonably high age limit of 20 years for the slaughter of bulls and bullocks, S. 3 of the U. P. Act imposes a double restriction by saying that the animal must be over twenty years in age and must also be permanently unfit and unserviceable; and in the case of a bullock, the unfitness must be for 'any kind of agricultural operation' and not merely for draught purposes. It further provides that the animal shall not be slaughtered within twenty days of the date of the issue of the certificate and that any person aggrieved by the order of the competent authority may appeal to the State Government within 20 days. These restrictions really put a total ban on the slaughter of bulls and bullocks even after they have ceased to be useful. Therefore S. 3 imposes unreasonable restrictions on the right of the butchers as to slaughter of bulls and bullocks and thus infringes their fundamental right to carry on their trade and profession and is to that extent void : AIR 1958 SC 731 : 1958 S C J 975 : 1958 M L J (Cr) 727, Rel. on. Abdul Hakim Qurashi v. State of Bihar. (1961) 2 S C R 610 : (1962) 2 S C J 523 : 1961 All W R (HC) 215 : 1961 All Cr R 95 : (1961) 1 S C A 713 : 1961 (1) Cri L J 573 : AIR 1961 SC 448 (456, 457) (Pt D) (Pr 15).

● ——S. 3—Constitution of India, Art. 14 — Reasonable classification—Test—Presumption in favour of constitutionality — The U. P. Prevention of Cow Slaughter Act not hit by Art. 14 of the Constitution. See Constitution of India, Art. 14. AIR 1958 SC 731.

● ——S. 3—Constitution of India, Art. 25 (1)—Scope — U. P. Act 1 of 1956 — Not hit by Art. 25 of the Constitution. See Constitution of India, Art. 25 (1). AIR 1958 SC 731.

——Ss. 3 and 8—Offence of slaughtering cow—Accused pleading not guilty on ground of absence of blood at place where he was dismembering parts of slaughtered cow — He, however, failing to prove how he came in possession of that cow—Held, on facts, that offence was established beyond doubt. Evidence Act (1872), S. 3. 1965 All Cri R 302 : 1965 All W R (HC) 468.

——S. 3 (as amended by Ordinance 2 of 1958) — If void or constitutionally defective.

The defect with which S. 3 originally suffered as regards bulls and bullocks has been removed by U. P. Prevention of Cow Slaughter (Amendment) Ordinance, II of 1958. It has now been laid down as to which bullocks and bulls could be slaughtered. Those bulls and bullocks which are unfit for use can also be slaughtered only when a certificate has been obtained from the competent authority and not otherwise. Hence, S. 3 as it stands now, is neither void nor constitutionally defective. AIR 1958 SC 731, Disting. 1960 All W R (HC) 566 : 1960 All Cr R 360 : 1960 All L J 759.

——S. 3—Constitution of India, Art. 19 (1) (g)—U. P. Act 1 of 1956—Validity—The Act is valid in so far as it prohibits the slaughter of cows of all ages and calves of cows male or female but in so far as it purports to totally prohibit the slaughter of breeding bulls without prescribing any test or requirement as to age or usefulness, it offends against Art. 19 (1) (g) and is to that extent void. See Constitution of India, Art. 19 (1) (g).: AIR 1958 All 731.

SECTION 5

——Ss. 5, 8, 2 (a) — Contravention of S. 5 — Burden of proof—Prosecution must prove that the flesh found with the accused is "beef" as defined in and prohibited under the Act.

The flesh of bull or young bullock is not, under the Prevention of Cow Slaughter Act beef, if the requisite certificate under S. 3 (1) (b) of the competent authority of the area in which it was slaughtered is obtained, or it is suffering from any contagious or infectious disease notified as such by the State Government (S. 4 (1) (a)) or it is subjected to experimentation in the interest of medical and public health research (S. 4 (1) (b)); therefore in a prosecution for contravention of S. 5 of the Act for the slaughter of a bull or bullock, the burden of proof is upon the prosecution to show that none of the conditions justifying the slaughter of the bull or bullock existed. Where, therefore, the prosecution had failed to prove beyond doubt that the flesh found from the accused amounted to 'beef' within the meaning of the Act and that its sale or transport was prohibited under S. 5 of the Act, the accused could not be convicted under S. 8 (1) of the Act for contravention of the provisions of S. 5, thereof. (1964) 1 Cri L J 327 : AIR 1964 All 106 (108) (Pt A) (Prs 14, 15).

SECTION 8

——Ss. 8 and 3 — Offence of slaughtering cow — Accused pleading not guilty on ground of absence of blood at place where he was dismembering parts of slaughtered cow — He, however, failing to prove how he came in possession of that cow — Held, on facts, that offence was established beyond doubt. 1965 All Cri R 302 : 1965 All W R (HC) 468.

——S. 8—Contravention of S. 5 — Burden of proof—Prosecution must prove that the flesh found with the accused is 'beaf' as defined in and prohibited under the Act. See U. P. Prevention of Cow Slaughter Act (1 of 1956), S. 5. 1964 (1) Cri L J 327 : AIR 1964 All 106.

——S. 8 (1), (2), (3) — Offences punishable under S. 8 (1) and (2) — Burden of proving that slaughtered cow belonged to the exempted class is on the accused. (1964) 1 Cri L J 327 : AIR 1964 All 106 (107) (Pt C) (Pr 11).

——S. 8 — Sentence under — Facts to be taken into consideration.

In awarding punishment under the U. P. Prevention of Cow Slaughter Act the Courts must primarily bear in mind the aims and objects of the enactment whether the animal slaughtered was a young and pedigreed cow or bull or an old and useless animal. The burden of proving that the animal slaughtered was a useless one lies on the accused. The Courts will also take into account the antecedents, age and character of the offender.

If the offence has been committed with deliberation with the intention of injuring the feeling of a

particular community, or in defiance of a prohibitory order passed under S. 144, Criminal Procedure Code, then that would be a case in which a deterrent sentence by way of imprisonment would be the proper punishment. The maximum penalty provided for the offence should be awarded only in cases of the gravest character: AIR 1958 All 198, Rel. on; (1951) S C J 820 : AIR 1952 S C 14 and 1952 S C J 201:: (1952) 1 M L J 754 : AIR 1952 S C 159 and (1957) 2 Mad L J (S C) 69 : (1957) 2 An W R (SC) 69 : (1957) S C J 527; A I R 1957 S C 614 and AIR 1922 Pat 267, Applied. **1961 All L J 499 : 1961 All W R (HC) 416 : 1961 All Cri R 235 : 1962 (1) Cri L J 237 : AIR 1962 All 141 (143) (Pr 14) (DB).**

——S. 8 — Attempt to slaughter and preparing for slaughter -Distinction—Mere preparation for slaughter of cow is no offence.

Making an animal ready for slaughter by tying it with rope and throwing it down on the ground is nothing more than mere preparation for its slaughter. Attempt to slaughter must imply some act more proximate to the actual killing. Similarly, merely arming oneself with a knife would only amount to preparation. The stage of attempt would be reached when the knife is raised or pointed at the animal with the intention of inflicting the fatal blow.

In the case of attacks on human beings, mere preparation by itself may amount to an offence under S. 351, Penal Code, but preparation for the slaughter of an aoimal is no offence. Criminal Revn. No. 373 of 1958 (All), Disting. **1962 (1) Cri L J 7 : 1962 All Cri R 86 : 1962 All W R (HC) 92 : AIR 1961 All 22 (23) (Prs 10, 11).**

——S. 8—Evidence—Accused caught while cutting the flesh of slaughtered cow—Blood still dripping—Presumption—Evidence Act, S. 114, Illus. (a)—Applicability.

Where a cow was slaughtered many hours back, it may not be proper to utilise the provisions of S. 114, Evidence Act. However, where fresh blood was flowing from the dead body, proving thereby that the cattle had been slaughtered very recently, it may be presumad that the persons present near the dead body and found cutting the flesh into pieces and skinning the dead body are likely to be those who had actually slaughtered it. Whether the Courts can presume the existence of facts under S. 114 of the Evidence Act or not shall depend upon the facts of an individual case. Any explanation that an accused gives for his presence at the spot and his conduct shall also be a material evidence. The principle contained in illustration (a) can rightly be applied to such a case. **1959 All W R (HC) 430 : 1959 All Cri R 334 : 1959 All L J 598.**

——S. 8—Sentence—Court must take serious view of offence.

Considering the religious feelings of the majority community and the fact that in the past many a riot had taken place on account of cow-slaughter, resulting in deaths of innocent persons, and the fact that beaf cannot be said to be staple food of poor people in India, the offence of cow-slaughter must be viewed seriously. One year's rigorous imprisonment will not be severe. AIR 1958 All 198, Dissented from. **1959 All W R (HC) 430 : 1959 All Cri R 334 : 1959 All L J 598,**

——S. 8 (1) — Offence under—Sentence—Considerations. See Criminal P. C. (1898), S. 32. **1958 Cri L J 316 : AIR 1958 All 198.**

——S. 8 (1)—Accused found cutting cow which was slaughtered about six hours — Presumption that he killed it, if arises — (Evidence Act (1872), Ss. 114, 3) —(Criminal P. C. (1898), S. 367)—AIR 1952 S C 343, Applied. **ILR (1957) 2 All 147 : 1958 Cri L J 316 : AIR 1958 All 198 (206) (Pt C) (Pr 31).**

U. P. PREVENTION OF CRIMES (SPECIAL POWERS TEMPORARY) ACT, 1948 (5 of 1949)

See under Public Safety.

U. P. PRIMARY EDUCATION RULES

RULE 4

——R. 4 (x)—'Trained' implies training imparted by a duly constituted training college.

The word 'trained' implies training imparted by a duly constituted training College. Therefore it cannot be said that any kind of training is sufficient for the appointment to a post where the statutory qualification is regular training of teaching. A 'deemed' trained teacher is not qualified to hold the post. **AIR 1965 All 151 (153) (Pt C) (Pr 8).**

U. P. PRIVATE FORESTS ACT (6 of 1949)

PREAMBLE

——Preamble, Ss. 12 and 13 — Art. 19 (1) (f) of the Constitution is not infringed. See U. P. Private Forests Protection Act (6 of 1949), S. 12. **AIR 1954 All 753 (DB).**

——Preamble — Act does not offend Art. 31 (2) of the Constitution—(Constitution of India, Art. 31 (2).)

The U. P. Private Forests Act does not offend Art. 31 (2) of the Constitution and as such is not unconstitutional. Private owners have not been divested of any of their rights in forests, groves or trees. The restrictions imposed are all subject to permits being given by the Forest Officer. The property remains the property of the owner. His right to transfer the same is left intact. Certain restrictions have, however, been imposed on the exercise of ownership in the larger public interest. It cannot be said that the provisions of the Act amount either to a dispossession of the owners or to the acquisition of property of private owners by the State. Art. 31 (2), therefore, has no application at all. **1954 A W R (HC) 540 : AIR 1954 All 753 (755) (Pt B) (Pr 6) (DB).**

SECTION 3

——S. 3 (15) — 'Private forest'—Meaning—Definition of 'private forest' in U. P. Private Forests Act, 1948, does not apply. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 8. **AIR 1955 N U C (All) 3292 (DB).**

——S. 3 (3) — Private forest—Definition in U. P. Private Forests Act not applicable to U. P. Zamindari Abolition Act — Contract in respect of private forest — The contract became void from the date of vesting of the estate in the State of Uttar Pradesh. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1950), S. 8. **A I R 1955 N U C (All) 1738.**

——S. 3 (3) — Notification under — Forest—Meaning of.

If there are no trees standing or, if there are only sparsely scattered trees, the area could not be called forest within the meaning of the notification, unless it had been described by boundaries or by numbers or by reference to the village. **A I R 1955 N U C (All) 853.**

——S. 3 (3)—Scope.

Unless the notification makes it out that the land is declared to be a forest for the purposes of the U. P. Private Forests Act, 1948, the land cannot be treated as 'forest' and the provisions of the Act cannot be made applicable to it. **1954 A W R (HC) 540 : AIR 1954 All 753 (756) (Pt D) (Pr 11) (DB).**

SECTION 12

——Ss. 12 and 13—Art. 19 (1) (f) of the Constitution is not infringed — (Constitution of India, Art. 19 (1) (f) and (5)).

The U. P. Private Forests Act is not unconstitutional on ground of infringement of Art. 19 (1) (f) of the Constitution.

It is not possible to hold that the State was not entitled to impose restrictions against the indiscriminate felling of trees in forests and groves when it is now well known that such forests are a national asset of great value. The State was entitled to see that there is no indiscriminate cutting down of trees in order to sell the wood and get money before the landlords lost their zemindari rights and the trees or the forests vested in the State.

Sections 12 and 13 make it clear that the only object behind the restrictions was to see that the forest wealth of the country is not denuded by the short-sighted policy of some of the owners.

The provision of the Act restricting the right of an owner, or a transferee from him, to fell a tree is not unreasonable especially as there is no absolute restriction and he has been given a right to obtain a permit irom the Forest Officer. **1954 A W R (HC) 540 : A I R 1954 All 753 (755) (Pt C) (Prs 7, 8) (DB).**

SECTION 15

——S. 15 (2) — Offender charged with offence under S. 15 (1) — Offence required to be tried by Magistrate second or third class — Offences tried by Magistrate first class—As jurisdiction of Magistrate first class is excluded by S. 29, Criminal P. C. the trial is void under S. 530 (p), Criminal P. C.

Section 29 of Criminal P. C. says that offences under any other law shall be tried by that Court which that law mentions and it is only wnen no Court is mentioned that the eighth column of the Second Schedule is applicable. Sub-section (2) of S. 15 of U. P. Private Forests Act, 1948, mentions the Courts by which offences under S. 15 (1) are triable and S. 29 (1) of Criminal P. C. excludes the application of the second part of the Second Schedule. The words of sub-s. (1) of S. 29 are peremptory. A case under S. 15 (1) of the U. P. Private Forests Act, therefore, is triable only by the two Courts named therein, namely, Magistrates of the Second and the Third Classes and not by any other Magistrate.

The words "subject to the other provisions of the Code" occurring in sub-s. (1) of S. 29, Criminal P. C., cannot be referred to bring in the provisions of the Third Schedule of Criminal P. C. What S. 15 (2) of the U. P. Act does is to prescribe a particular Court and in view of the words of S. 29 (1) of Criminal P. C. no other Court can try offences under S. 15 (1) of the U. P. Act even though the powers of those Courts may be superior to those of Magistrates of the Second and the Third Classes.

As there is no jurisdiction in the Magistrate of first class to try an offence under sub-s. (1) of S. 15 of the U. P. Private Forests Act, 1948, the trial by such a Magistrate is void under S. 530 (p) of Criminal P. C. AIR 1952 All 873 and AIR 1953 All 179, Appr.; AIR 1962 All 405, Affirmed. State of U. P. v. Sabir Ali **1964 All L J 742 : (1964) 2 Cri L J 606 : (1964) 1 S C W R 745 : 1965 S C D 571 : 1965 Mad W N 33 : (1964) 7 S C R 485 : (1965) 1 S C J 301 : 1965 Mad L J (Cri) 153 : 1965 All W R (HC) 311 : 1965 All Cri R 226 : I L R (1964) 2 All 932 : A I R 1964 S C 1673 (1675, 1676) (Prs 4, 5, 6).**

——S. 15 (1) and (2) — Offence triable under special law — Trial of — Such offence is to be tried by Court mentioned in that law—S. 29, Criminal P. C.—Interpretation of — Offence under S. 15 (1) of U. P. Act — Magistrate first class has no jurisdiction to try it. See Criminal P. C. (1898), S. 29. **1962 (2) Cri L J 305 : AIR 1962 All 405.**

——S. 15—Scope.

Section 15 (2) should not be so read as to empower a Magistrate of the 1st Class to try cases mentioned in S. 15 (1) and if a trial is made by a Magistrate of the 1st Class, it is ultra vires and bad in law. **1952 All W R (HC) 628 : 1952 All Cr R 172 : 1952 R D (HC) 385 : 1953 All L J 14 : 1953 Cri L J 444 : AIR 1953 All 179 (179, 180) (Prs 2, 3, 4, 5).**

——S. 15 (2) — Trial by First Class Magistrate — Legality—(Criminal P. C. (1898), S. 530 (p).)

Section 15 (2) does not mention Magistrate of the first class at all and the effect of this deliberate omission is necessarily to debar him from trying any offence under S. 15 of the said Act. The trial of the said offence by such Magistrate and the proceedings consequent thereon are, therefore, void under S. 530 (p) of the Criminal P. C. **1952 Cri L J 1556 : 1952 All Cr R 105 : 1952 All W R (HC) 307 : A I R 1952 All 873 (873) (Pt A) (Pr 2).**

U. P. PROVINCIAL ARMED CONSTABULARY ACT (40 of 1948)

PREAMBLE

——Preamble—Constitution of India, Sch. 7, List 2, Item 3 — U. P. Provincial Armed Constabulary Act (40 of 1948) is a valid enactment — It is covered by word "Police" in item 3, List 2, Sch. 7. See Government of India Act (1935), Sch. 7, List 2, Item 3. **1955 Cri L J 901 : AIR 1955 All 370.**

——Preamble — Constitution of India, Art. 14—U. P. Provincial Armed Constabulary Act (40 of 1948) — Act is fully supported on principle of valid and justifiable classification. See Constitution of India, Art. 14. **1955 Cri L J 901 : AIR 1955 All 370.**

SECTION 3

——Ss. 3, 4, 5 and 12 — Officer appointed under the Act and later absorded in the Uttar Pradesh Police — Service in the Armed Constabulary to count for purposes of promotion, seniority and pension — Appointment under the Act is substantive in character. Adjutants are members of the regular Police Force.

It cannot be the intention of the legislature that service in the Provincial Armed Constabulary is to count only if and when that constabulary is liquidated, and the officer re-enlisted. By schedule statement under Ss. 2, 3 and 4 the officer binds himself not to obtain discharge at his own request and the State Government agrees to the following two stipulations:— (i) that in the event of the force being liquidated the officer will be re-enlisted in the U. P. Police Force; and (ii) in the event of the officer continuing in U. P. Police his services in the Provincial Armed Constabulary will be counted for promotion and pension. 'Adjutants' are gazetted Police Officers and appointments to the posts are substantive in character. **(1964) 2 Lab L J 320 : 9 Fac L R 215 : 1964 All L J 432.**

SECTION 4

——S. 4—Signing of statement set forth in schedule —P, appointed as Adjutant in 1947 in Military Police, signing statement—Statement entitling P to have his services in the P. A. C. counted for promotion and pension in U. P. Police—Substantive appointment of P as Dy. S. P. in U. P. Police Cadre from 9th November, 1955 — Subsequent order fixing seniority of P in U. P. Police service on basis of his substantive appointment and not on basis of initial appointment—Order challenged on ground, inter alia of barring promotion to Indian Police Service — Validity —

Distinction between 'U. P. Police Service' and 'U. P. Police Force'—Decision of Seth, J., dated 3rd January, 1964, Reversed — Police Service (Appointment by Promotion) Regulations, 1955, Cls. 4 and 5 (2). (1965) 10 Fac L R 301 : 1965 All L J 667.

——S. 4—Officer appointed under the Act and later absorbed in the Uttar Pradesh Police — Service in armed Constabulary to count for purposes of promotion,-seniority and pension—Appointment under the Act is substantive in character — Adjutants are members of the regular Police Force. See U. P. Provincial Armed Constabulary Act (40 of 1948), S. 3. (1964) 2 Lab L J 320 : 9 Fac L R 215 : 1964 All L J 432.

SECTION 5

——S. 5—Officer appointed under the Act and later absorbed in the Uttar Pradesh Police — Service in armed Constabulary to count for purposes of promotion, seniority and pension—Appointment under the Act is substantive in character — Adjutants are members of the regular Police Force. See U. P. Provincial Armed Constabulary Act (40 of 1948), S. 3. (1964) 2 Lab L J 320 : 9 Fac L R 215 : 1964 All L J 432.

SECTION 12

——S. 12—Officer appointed under the Act and later absorbed in the Uttar Pradesh Police — Service in armed Constabulary to count for purposes of promotion, seniority and pension — Appointment under the Act is substantive in character — Adjutants are members of the regular Police Force. See U. P. Provincial Armed Constabulary Act (40 of 1948), S. 3. (1964) 2 Lab L J 320 : 9 Fac L R 215 : 1964 All L J 432.

U. P. PUBLIC GAMBLING (AMENDMENT) ACT (34 of 1952)

SECTION 4

——S. 4—Arhar field though an open space not adjacent to or abutting a public street but separated from it by another field — It is not a public place even under the extended definition under the explanation added to the section by S. 4 of the U. P. Public Gambling (Amendment) Act 30 of 1952. See Public Gambling Act (1867), S. 13. 1957 All L J 282 : 1957 All W R (HC) 412.

U. P. PUBLIC HEALTH SERVICE RULES

RULE 11

——R. 11—Scope and applicability.

Rule 11 applies to the cases when a person is appointed to a post. It cannot be held to be a ground for withholding the confirmation and even if it was a valid ground for withholding the confirmation it cannot apply in a case where the petitioner has completed his period of probation and the period has not been extended by the State Government. A I R 1956 All 330 (331, 332) (Pt A) (Pr 6).

RULE 19

——R. 19—Period of probation coming to an end—Employee not dispensed with but allowed to continue—Effect.

(Obiter)—If Government does not exercise its right under R. 19 to dispense with a member of the service during or at the end of his period of probation but retains him in its employment, it must be deemed to have confirmed him in his appointment. 1958 All L J 536 : AIR 1958 All 844 (846) (Pt B) (Pr 7) (DB).

——Rr. 19, 20 and 21—Constitution of India, Art. 311—Civil Services (Classification, Control and Appeal) Rules, Rr. 49, 55 — Petitioner serving in U. P. Public Health Service — Petitioner continuing in service for more than year after completing prescribed period of probation—Subsequent order of discharge on ground that he was physically unfit—Rr. 49, Explanation and 55 applied — Had a right of notice and hearing. See Constitution of India, Art. 311. AIR 1956 All 330.

U. P. PUBLIC LAND (EVICTION AND RECOVERY OF RENT AND DAMAGES) ACT (13 of 1959)

See under Tenancy Laws.

U. P. PUBLIC LAND (EVICTION AND RECOVERY OF RENT AND DAMAGES) ORDINANCE (4 of 1959)

See under Tenancy Laws.

U. P. PUBLIC SERVICE COMMISSION (LIMITATION OF FUNCTIONS) REGULATIONS (1954)

——Service of Lekhpals is new and since it was constituted under the orders of the Governor the proviso to Art. 309 of the Constitution gave him that power. See Constitution of India, Art. 309, Proviso. AIR 1954 All 813 (DB).

U. P. PURE FOOD ACT (32 of 1950)

PREAMBLE

● ——Preamble—U. P. District Boards Act, Ss. 174 and 91 (q) — Regulations under Act and licence fee charged cannot be struck down on the ground of fees charged on owners of mills under other Acts and provisions with different purpose. See U. P. District Boards Act (10 of 1922), S. 174. AIR 1961 S C 356.

SECTION 2

——S. 2 (j) and (k)—Scope—Authority under—Power of, to institute prosecution under Central Act of 1954. Prosecution launched by Municipality before notification under the Prevention of Food Adulteration Act—Authority under U. P. Pure Food Act held continued — Municipality held competent to institute prosecution. See Prevention of Food Adulteration Act (1954), S. 20. 1960 Cri L J 199 : A I R 1960 All 119 (DB).

——S. 2 (e)—Adulteration of vegetable ghee unless it is shown that under some rule or regulation under the Act the vegetable ghee should contain sesame oil in a certain proportion an accused cannot be convicted under S. 4. See U. P. Prevention of Adulteration Act (6 of 1912), S. 2. 1954 Cri L J 165 : A I R 1954 All 97 (DB).

SECTION 4

——Ss. 4, 10, 42—Adulterated ghee—Report of Public Analyst — Contents and nature of should reveal the factual data—Public Analyst expressing opinion not proper — (Cr. P. Code (1898), S. 510)—AIR 1956 All 520 and 1956 All L J 340, Rel. on. 1957 All L J 647 : 1957 All W R (HC) 676 : 1958 Cri L J 8 : AIR 1958 All 34 (34, 35) (Pt A) (Pr 3) (DB).

——Ss. 4 and 5 — Accused convicted under S 5 but acquitted under S. 4 — Appeal by accused against conviction—No appeal against acquittal on behalf of state—Acquittal cannot be converted into conviction —(Criminal P. C. 1898), S. 423 (1) (b)). 1957 All W R (HC) 387 : 1957 All L J 323.

——S. 4 — Non-compliance with S. 342, Criminal P. C.—Prosecution under S. 4/42, U. P. Pure Food Act —Accused's attention not expressly drawn to public Analyst's report — Accused asked whether ghee was adulterated—Held the question gave sufficient notice to the accused as regards the case which he had to meet. See Criminal P. C. (1898), S. 342. 1957 All W R (HC) 386 : 1957 All L J 322.

——S. 4—Scope of—Prosecution under S. 4/42 of the U. P. Pure Food Act—Accused admitting that sample was taken from his shop but regarding the question whether ghee was adulterated he replied that he did not know — Held that the accused nowhere pleaded guilty. See Criminal P. C. (1898), Ss. 255 and 342. **1957 All W R (HC) 386 : 1957 All L J 322.**

——S. 4 — Mustard and linseed oils are articles of food. See U. P. Prevention of Adulteration Act (6 of 1912), S. 4. **1954 Cri L J 165 : AIR 1954 All 97 (DB).**

SECTION 5

——S. 5—Accused convicted under S. 5 but acquitted under S. 4 — Appeal by accused against conviction—No appeal against acquittal on behalf of State—Acquittal cannot be converted into conviction. See U. P. Pure Food Act (32 of 1950), S. 4. **1957 All W R (HC) 387 : 1957 All L J 323.**

——S. 5—Addition of colour to dal.

Section 5 will not apply to a case where the accused is found to have added colour to dal prepared by him in his factory if there is no evidence that the addition of the colour is injurious to the public health. **1957 All W R(HC) 387 : 1957 All L J 323.**

SECTION 6

——S. 6—Invoice is not warranty. See U. P. Prevention of Adulteration Act (6 of 1912), S 6, Proviso (a). **1954 Cri L J 165 : AIR 1954 All 97 (DB).**

SECTION 10

——Ss. 10, 4 and 42 — Adulterated ghee — Report of Public Analyst — Contents and nature of — Public Analyst expressing opinion—Not proper — Not specifying what S. 10 requires to specify—Not also in the form prescribed by the rules — No finding can be recorded on the basis of such a certificate that the ghee purchased from the accused's shop was adulterated ghee. See U. P. Food Act (32 of 1950), S. 4. **1958 Cri L J 8 : AIR 1958 All 34 (DB).**

——S. 10 — Evidence Act, Ss. 3, 4 — Conclusive evidence and conclusive proof—Meaning of—Object of the provisions—Declaring certain facts to be conclusive proof of another an artificial probative effect is given by law to certain facts and no evidence is allowed to be produced with a view to combating that effect. See Evidence Act (1872), S. 3. **1956 Cri L J 1031 : AIR 1956 All 520.**

——Ss. 10, 47—U. P. Pure Food Rules (1952), R. 18—Presumption under S. 10 not conclusive but rebuttable—Section does not contravene Art. 14 or Art. 19 (Constitution of India, Arts. 14, 19) — (Evidence Act (1872), Ss. 3, 4). **1956 All W R (H C) 207 : 1956 Cri L J 1031 : 1956 All L J 276 : AIR 1956 All 520 (522, 523) (Pt C) (Pr 11).**

——S. 10 —:Report of Public Analyst — Evidentiary value — May be regarded as evidence of facts stated therein without formal proof—Report not giving any data of quantitative analysis—Must be rejected. **1956 All W R (HC) 207 : 1956 All L J 276 : 1956 Cri L J 1031 : AIR 1956 All 520 (523) (Pt E) (Pr 12).**

SECTION 30

——S. 30—Rules under Act, R. 4—'Wilfully obstructs any person acting in performance of duty under this Act'—Meaning of.

Where the accused who was passing by the road with a bucket of milk in his hand was asked by Food Inspector to stop but the accused instead of complying with the request took to his heels and when chased by the peon threw away the milk from which the Food-Inspector intended to take sample, the accused will be deemed completely to have obstructed the performance of the duty by the officer within the meaning of S. 30 of the Act. It is not necessary that there should have been resistance in the sense of some force having been used by the accused. 7 All L J 1174, Disting. **1957 Cri L J 1384 : AIR 1957 All 829 (830, 831) (Prs 4, 5, 7, 8, 9).**

SECTION 34

——S. 34—Offence committed in 1955 — Prosecution launched by Assistant Medical Officer prior to the enforcement of the rules made by the State Government under the Prevention of Food Adulteration Act —On that date A. M. O. had no authority to launch prosecution — Food Inspectors appointed under the U. P. Pure Food Act were conferred the powers to prosecute by the Act itself namely by S. 34. They did not derive this power under any rules. See Prevention of Food Adulteration Act (1954), S. 7. **1957 Cri L J 615 : AIR 1957 All 343 (1) (DB).**

SECTION 42

——Ss. 42, 10 and 4 — Adulterated ghee — Report of Public Analyst — Contents and nature of — Public Analyst expressing opinion — Not proper — Not specifying what S. 10 requires to specify — Not also in the form prescribed by rules — No finding can be recorded on the basis of such a certificate that the ghee purchased from the accused shop was adulterated ghee. See U. P. Pure Food Act (32 of 1950), S. 4. **1958 Cri L J 8 : AIR 1958 All 34 (DB).**

——S. 42 — Prosecution under S. 4/42 of the U. P. Pure Food Act — Accused admitting that sample was taken from his shop but regarding the question whether ghee was adulterated he replied that he did not know — Held that the accused nowhere pleaded guilty. See Criminal P. C. (1898), S. 255. **1957 All W R (HC) 386 : 1957 All L J 322.**

——S. 42 — Non-compliance with S. 342, Criminal P. C.—Prosecution under S 4/42, U. P Pure Food Act —Accused's attention not expressly drawn to public analyst's report — Accused asked whether ghee was adulterated—Held the question gave sufficient notice to the accused as regards the case which be had to meet. See Criminal P. C. (1898), S. 342. **1957 All W R (H C) 386 : 1957 A L J 322.**

SECTION 47

——Ss. 47 and 10 — U. P. Pure Food Rules (1952) R. 18 — Presumption under S. 10 not conclusive but rebuttable — Section does not contravene Art. 14 or Art. 19 — (Evidence Act (1872), Ss. 3, 4). See U. P. Pure Food Act (32 of 1950), S. 10. **1956 Cri L J 1031 : AIR 1956 All 520.**

SECTION 50

——S. 50 — Scope — Conviction under S. 17 of old Act after coming into force of Act of 1950 not legal. See U. P. Prevention of Adulteration Act (6 of 1912), S. 17. **1957 Cri L J 915 : AIR 1957 All 548 (DB).**

U. P. PURE FOOD RULES (1952)

RULE 18

——R. 18 — Presumption under S. 10 not conclusive but rebuttable — Section does not contravene Art. 14 or Art. 19. See U. P. Pure Food Act (32 of 1950), S. 10. **1956 Cri L J 1031 : AIR 1956 All 520.**

U. P. RABI FOODGRAINS PRICE CONTROL ORDER (1950)

CLAUSE 3

——Cls. 3 and 5 — Scope and applicability.

Where a District Magistrate sells a certain foodgrain at rates higher than the controlled rates with

the intention of trapping certain grain dealers who induldge in forbidden purchase, the sale would nonetheless be a sale by a District Magistrate to which Cl. 5 will apply and the purchaser will not be guilty under Cl. 3. Clause 5 does not give protection to the seller as such but gives protection to the transaction of sale which must include both the seller as also the purchaser. The question of guilty intention of the purchaser does not arise as Cls. 3 and 5 do not take into account the intention either of the seller or the purchaser. 1953 All L J 309 : 1953 Cri L J 1538 : ILR (1954) 1 All 685 : AIR 1953 All 691 (692) (Pt A) (Prs 5, 6).

——Cl. 3—Consistency with S. 9, Sale of Goods Act — (Sale of Goods Act (1930), S. 9).

Clause 3 is not inconsistent with S. 9 of the Sale of Goods Act, 1930. 1953 Cri L J 1538 : 1953 All L J 309 : ILR (1954) 1 All 685 : AIR 1953 All 691 (692, 693) (Pt C) (Pr 7).

CLAUSE 5

——Cl. 5—Scope and applicability — Clause 5 does not give protection to the seller as such but gives protection to the transaction of sale which must include both seller and purchaser. The question of guilty intention of the purchaser does not arise as Cls. 3 and 5 do not take into account the intention of the seller or the purchaser. See U. P. Rabi Foodgrains Price Control Order (1950), Cl. 3. 1953 Cri L J 1538: AIR 1953 All 691.

(U. P.) RAMPUR STATE THEKEDARI AND PATTEDARI ABOLITION ACT, 1953 (10 of 1954)

See under Tenancy Laws.

U. P. REGULARISATION OF REMISSIONS ACT (14 of 1938)

See under Tenancy Laws.

U. P. REGULATION OF AGRICULTURAL CREDIT ACT (14 of 1940)

See under Debt Laws.

U. P. REGULATION OF AGRICULTURAL CREDIT RULES (1941)

See under Debt Laws.

U. P. REGULATION OF SALES ACT (36 of 1934)

SECTION 5

——Ss. 5 and 9, Proviso — Automatic transfer.

Section 5 does not provide that there shall be an automatic transfer of interest by an order under S. 5. It only lays down that the Collector shall transfer to the decree-holder the agricultural land or the amount of the agricultural land determined in accordance with S. 2 (2) in full satisfaction of the decree. The transfer has to be effected in accordance with the provisions of law. The words 'a transfer of land under S. 5 has been completed' in the Proviso to S. 9 are also significant and go to show that something more than a mere order under S. 5 is necessary to complete the transfer. 1942 All 224 and 1946 Oudh Appeals 193, Ref. to. ('52) 1952 All W R (H C) 171 : 1952 R D (H C) 185 : 1952 All L J 227 : AIR 1953 All 379 (380) (Pr 4) (DB).

SECTION 9

——Ss. 9 and 5—Automatic transfer — No automatic transfer under S. 5 — The transfer has to be effected in accordance with the provisions of law—The words 'transfer of land under S. 5 has been completed' in the proviso to S. 9 are also significant and go to show that something more than mere order under S. 5 is necessary to complete the transfer. See U. P. Regulation of Sales Act (1934), S. 5. AIR 1953 All 379 (DB).

U. P. REGULATIONS (1941)

REGN. 3

——Regn. 3(1) — Government of India Act (1935), S. 266 (3) — Regulations are law in force within Art. 372 (3) of Constitution and continued in force till the new Regulations were made — Consultation with Public Service Commission — Not necessary. See Government of India Act (1935), S. 266 (3). AIR 1954 All 813 (DB).

U. P. REMOVAL OF SOCIAL DISABILITIES ACT (14 of 1947)

PREAMBLE

——Preamble—Act not rendered invalid by Arts. 17 and 23 of the Constitution. See Constitution of India (1950), Art. 23. 52 Cri L J 899 : AIR 1951 All 615.

SECTION 1

——S. 1 —Freedom of religion—U. P. Act 14 of 1947 is saved by Art. 25 (2). See Constitution of India, Art. 25. 1954 Cri L J 1317 : AIR 1954 All 601 (DB).

——S. 1—Act is not ultra vires.

The U. P. Removal of Social Disabilities Act (XIV of 1947), falls under the Government of India Act, 1935, Sch. VII, List 2, Item 34; for such a piece of legislation is covered by the word 'charities' in that item which is a word of very wide scope and meaning. And hence the U. P. Removal of Social Disabilities Act is not ultra vires the State Legislature. AIR 1947 F C 1; 1946 F L J 57; (1946) 2 M L J 17, Rel. on. AIR 1949 Bom 168, Diss. from. I L R (1955) 1 All 793 : 1954 All L J 355 : 1954 Cri L J 1317 : AIR 1954 All 601 (603) (Pt A) (Pr 20) (DB).

——S. 1 — U. P. Removal of Social Disabilities Act, 1947 not void. See Constitution of India, Art. 35. 1953 Cri L J 1103 : AIR 1953 All 483 (DB).

SECTION 3

——S. 3 (iv)—'Make a bridegroom alight'.

In S. 3 (iv) of the Act, the phrase 'make a bridegroom alight from a dola-palki' implies that the bridegroom has been made to alight from the dola-palki against his wishes. The phrase imports an element of compulsion. Where the bridegroom himself alights from the dola-palki because he wishes to observe the custom of the village the action of a person who tells him of the custom and persuades him in observing it but does not impose any restriction in the way of the brigdegroom proceeding in a dola-palki if he so wished, does not make him liable for the punishment of an offence under the section. 1953 All L J 211 : 1953 Cri L J 1103 : AIR 1953 All 483 (484) (Pt A) (Pr 4) (DB).

——S. 3 (iv)—Custom as defence.

Where an accused compels the bridegroom to alight from the dola-palki against wishes, it would be no justification for him to urge that there was a custom disallowing going through the village in dola-palki, which equally applied to the upper as well as to the scheduled caste—Though S. 3 (iv) of the Act refers to a scheduled caste alone it is confined to a custom restricted to scheduled caste only and hence the mere fact that the custom applied both to the higher as well as to the scheduled caste is immaterial. 1953 All L J 211 : 1953 Cr L J 1103 : A I R 1953 All 483 (484) (Pt B) (Pr 5) (DB).

——S. 3 (iv) — Mere attempt to stop dola-palki—No offence under S. 3 (iv). 1953 All L J 211 : 1953 Cri L J 1103 : A I R 1953 All 483 (484) (Pt C) (Pr 6) (DB).

——S. 3—Refusal to render service.

Where the bundles of clothes were actually offered for washing to the dhobis by Chamars and they refused to accept them there is a refusal actually to render service and not merely a threat of or preparation for a refusal. 1951 All L J 282 : 1951 All W R (HC) 305 : 1951 All Cri Cas 59 : 52 Cri L J 899 : AIR 1951 All 615 (616, 617) (Pt A) (Pr 2).

——S. 3—Refusal to render service.

Where the barbers were not called upon to shave any of the Chamars there and then in future their act of refusal is simply a threat or preparation for refusal to render service and no offence is committed thereby. 1951 All L J 282 : 1951 All W R (HC) 305 : 1951 All Cri Cas 59 : 52 Cri L J 899 : A I R 1951 All 615 (616, 617) (Pt B) (Pr 2).

——S. 3 — Refusal on ground of person belonging to scheduled caste.

The refusal by the dhobis to wash the clothes of Chamars for the reason that if they did so they would lose the custom of the other Hindus would be a refusal to render service on the ground that the Chamars belonged to a scheduled caste. The loss of custom of the other Hindus would be a consequence only of the fact that the Chamars belonged to a scheduled caste. 1951 All L J 282 : 1951 All W R (HC) 305 : 1951 All Cri Cas 59 : A I R 1951 All 615 (617) (Pt C) (Pr 3).

——S. 3—Refusal on same terms.

Where the Dhobis' refusal to render service to Chamars flatly and therefore there was no discussion of the terms there is a refusal to render service on the same terms on which they were rendering it in the ordinary course of business. 1951 All L J 282 : 1951 All W R (HC) 305 : 1951 All Cri Cas 59 : 52 Cri L J 899 : AIR 1951 All 615 (617) (Pt D) (Pr 4).

U. P. REQUISITION OF MOTOR VEHICLES (EMERGENCY POWERS) ACT (27 of 1947)

SECTION 3

——S. 3 — Suit against Government on tort—Delegation of power — Officer requisitioning motor vehicles under S. 3 in exercise of power delegated to him under S. 9—Tortious act of Government — Officer acts as its agent. See Constitution of India, Art. 300. AIR 1962 All 233.

——S. 3 — Suit against Government for recovery of damages — Bar of suit — Essential condition for — Requisitioning of vehicle mala fide — No protection of Government under S. 10. See U. P. Requisition of Motor Vehicles Emergency Powers Act (U. P. 27 of 1947), S. 10. AIR 1962 All 233.

——Ss. 3, 4 and 7 — Object of vesting of power to requisitioning motor vehicles—Abuse of such power.

Sections 3, 4 and 7 of the U. P. Requisition of Motor Vehicles Emergency Powers Act, 1947, when read together indicate that the purpose of requisitioning vehicles is to enable the Government in times of emergency to use private vehicles. Hence an order requisitioning a motor vehicle with the motive of depriving its owner of its use because he is suspected of belonging to a political organisation considered by the Government to be undesirable is mala fide and an abuse of the powers under S. 5. A I R 1962 All 233 (238) (Pt D) (Pr 25).

SECTION 4

——Ss. 4, 3 and 7 — Object of vesting of power to requisitioning motor vehicles is to enable the Government in times of emergency to use private vehicles. Hence an order requisitioning a motor vehicle with the motive of depriving its owner of its use because he is suspected to belong to a political organisation undesirable in the opinion of Government is mala fide and abuse of power. See U. P. Requisition of Motor Vehicles Emergency Powers Act (U. P. Act 27 of 1947), S. 3. AIR 1962 All 233.

——S. 4—Scope and operation of section 4.

Section 4 operates only when a valid order of requisition has been passed. It does not apply to an order which is invalid and the requisition amounts to a tortious act. In such a case the Court can award damages by way of compensation. Further the jurisdiction of the Civil Court is barred only if the Government makes an order awarding compensation, but not where it refuses to perform its duty under the section. Deliberate inaction by the Government cannot oust the jurisdiction of the Civil Court to award compensation which is due to the owner of the requisitioned vehicle under the general law of the land. AIR 1962 All 233 (239) (Pt G) (Prs 30, 31).

——S. 4—S. 4 does not create right to compensation —It merely provides convenient procedure for assessment of compensation.

The right to compensation of an owner whose motor vehicle is requisitioned under the Act does not depend upon the will of the Government but on the general law which entitles any person whose property is taken away to demand compensation. Section 4 does not create the right but merely provides a convenient procedure for the assessment of the compensation. AIR 1962 All 233 (239) (Pt H) (Pr 31).

SECTION 7

——Ss. 7, 3 and 4 — Object of vesting of power to requisitioning motor vehicles is to enable the Government in times of emergency to use private vehicles—Order requisitioning motor vehicle of a person suspected to belong to a political organisation undesirable in the opinion of the Government is mala fide and abuse of such power. See U. P. Requisition of Motor Vehicles Emergency Powers Act (U. P. Act 27 of 1947), S. 3. A I R 1962 All 233.

SECTION 9

——S. 9—Suit against Government on tort—Delegation of power — Officer requisitioning motor vehicles under S. 3 in exercise of power delegated to him under S. 9—Tortious act of Government—Officer acts as its agent. See Constitution of India, Art. 300. A I R 1962 All 233.

SECTION 10

——S. 10 — Suit against State Government on tort—Tortious act of Government or its servants—Government cannot claim immunity. See Constitution of India, Art. 300. A I R 1962 All 233.

——Ss. 10 and 3 — Suit against Government for recovery of damages—Bar of suit—Essential condition for—Requisitioning of vehicle mala fide—No protection of Government under S. 10.

Ordinarily no suit lies for recovery of damages caused by any order of requisition passed under S. 3. But the essential condition of this immunity is that the act which causes the damage to the vehicle requisitioned must have been done in good faith. However, that section gives no protection for any act which is mala fide or an abuse of the powers conferred by the Act. And in such a case, the State cannot avail of the protection of S. 10. A I R 1962 All 233 (238) (Pt E) (Pr 28).

SECTION 11

——S. 11—Requisitioning of motor vehicles — Order requisitioning impugned — Court will examine order —Order if found made mala fide and an abuse of the powers under S. 3 — Court will declare it invalid. A I R 1962 All 233 (238, 239) (Pt F) (Pr 29).

U. P. RESTAURANT (CONSUMPTION OF LIQUOR) RULES (1952)

RULE 10

——R. 10 — Absence of knowledge of proprietor of restaurant about liquor used to be sold in restaurant is not complete defence under R. 10—Held, on facts, that proprietors were entitled to benefit of doubt and to be acquitted of charge under S. 60 read with R. 10. See U. P. Excise Act (4 of 1910), S. 60. **1965 All Cri R 532 : 1965 All W R (H C) 792.**

U. P. REVENUE COURT MANUAL

CHAPTER 40

——**Chap. 40—Proceeding under—Nature of—Order against dead person—Maintainability.**

The proceedings under Chap. 40, Revevue Manual, are judicial proceedings and as such, orders passed in connection with these proceedings should be passed in a judicial manner, i. e., they should be passed after hearing the party or parties concerned and after giving them the necessary opportunity to support their application or objections as the case may be. Hence an order passed against a dead person cannot be maintained, it being not a judicial order. **1951 R D 174 : 1951 All W R (Rev) 177.**

PARA. 74

——**Paras. 74 and 75** — Service of summons by affixture—Requisites — Non-observance of the provisions of Para. 75—Service by such affixture not due service. See Civil P. C. (1908), O. 41, R. 21. **1952 All L J (Rev) 170.**

PARA. 91-B

——**Para. 91-B** — Ex parte decree for thak money by Revenue Court — Application for setting aside dismissed—Appeal — Copy of formal order not filed—*It* does not justify rejection of appeal — Such rejection is refusal to exercise jurisdiction. See Civil P. C. (1908), O. 41, R. 1. **A I R 1953 All 714 (DB).**

PARA. 94

——**Para. 94**—Civil P. C. (1908), O. 32, R. 7 — Applicability to mutation proceedings by virtue of para. 94 of the U. P. Revenue Court Manual — Compromise without leave — Compromise can be challenged at the instance of the minor under O. 32, R. 7. **A I R 1950 All 700 (DB).**

PARA. 166

——**Para. 166—Second appeal—Failure to give certificate required under Para. 166 — Findings on facts cannot be challenged.**

Where the appellants' counsel has failed to give a certificate, as required by para. 166, Revenue Court Manual, that the grounds of appeal were well founded on facts, the appellants cannot be allowed to challenge the findings of facts in second appeal. 7 R D 360 : 9 R D 362, Rel. on. **1951 R D 268 (DB).**

PARA. 119

——**Para. 119** — Order of Commissioner setting aside sale under U. P. Z. A. and L. R. Rules, R. 285-I, on ground of irregularity in sale proclamation — Order, however, failing to record finding that party had suffered substantial injury — Order reversed by Government under S. 219 of Land Revenue Act without hearing petitioner — Held, order of Government contravened Para. 913 of Revenue Manual read with Para. 119 of Revenue Court Manual and also violated principles of natural justice and omission of Commissioner to record finding as to substantial injury was not sufficient for interfering with impugned order — Constitution of India, Art. 226. See U. P. Land Revenue Act (3 of 1901), S. 219. **1965 All W R (H C) 826 : 1965 All L J 612.**

PARA. 168

——**Para. 168**—Para. 168 says that the legal representatives of a party should be brought on record, if the deceased party, if alive, be a necessary party. See Civil P. C. (1908), O. 22, R. 4. **('51) 1951 R D 63.**

PARA. 170

——**Para. 170** — Power to dismiss appeal. M, a member of Revenue Board purporting to dismiss appeal before him by his own judgment but referring case to his colleague R only with object to overrule previous decision of the Board — R differing with M and agreeing with previous decision —M therefore allowing appeal without giving any party opportunity to be heard again — Held M did not purport to act under S. 152 or under O. 47, R. 4— O. 21, R. 3 took away his jurisdiction to alter his order of dismissal— His subsequent order allowing appeal was without jurisdiction and liable to be quashed. See Civil P. C. (1908), O. 20, R. 3. **AIR 1955 NUC (All) 3553.**

——**Para. 170** — Single member of Board of Revenue giving judgment modifying or reversing order or decree under consideration—Judgment sent to other member for concurrence — Latter cannot give judgment without hearing parties as required by O. 41, R. 30, Civil P. C. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 243. **AIR 1953 All 264.**

——**Para. 170 — Interpretation — Both members of Board if should be present to hear an appeal.**

Under R. 170 of the U. P. Revenue Court Manual it is not necessary for both the members to be present to hear an appeal, but the order or decree of one member has, however, to be concurred in by the other member. **1951 All W R (H C) 635 : 1951 A L J 548 : ILR (1951) 2 All 552 : AIR 1952 All 90 (90, 91) (Pr 3) (DB).**

[Overruled in AIR 1953 All 264.]

——**Para. 170** — In a review under S. 273, U. P. Tenancy Act a single member vested with all or any of the powers of the Board shall have no power to alter or reverse a decree or order passed by the Board or by any member other than himself. See Tenancy Laws —U. P. Tenancy Act (17 of 1939), S. 273. **('52) 1952 All W R (Rev) 33 : 1952 All L J (Rev) 9.**

PARA. 171

——**Para. 171** — In a review under S. 273, U. P. Tenancy Act a single member vested with all or any of the powers of the Board shall have no power to alter or reverse a decree or order passed by the Board or any member other than himself. See Tenancy Laws —U. P. Tenancy Act (17 of 1939), S. 273. **('52) 1952 All W R (Rev) 33 : 1952 All L J (Rev) 9.**

PARA. 187

——**Paras. 187 and 188** — Revision application dismissed in default of applicant by Additional Commissioner—Dismissal before amendment of Paras. 187 and 188—Application for restoration after amendment —Application can be restored by Board and not by Additional Commissioner. **1952 All W R (Rev) 238 : 1952 R D (B R) 370 : 1952 All L J (Rev) 274.**

PARA. 188

——**Para. 188** — Revision application dismissed in default of applicant by additional commissioner — Dismissal before amendment of Rr. 187 and 188 — Application for restoration after amendment —Application can be restored by Board and not by Additional Commissioner. See U. P. Revenue Court Manual,

Para. 187. 1952 All W R (Rev) 238 : 1952 R D 370 : 1952 All L J (Rev) 274.

PARA. 190

——Para. 190—Applicability—Revision arising out of case under S. 232, U. P. Zamindari Abolition and Land Reforms Act—Neither U. P. Tenancy Act nor rules framed thereunder including R. 190 apply. Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951). S. 232) — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules, 1951, R. 186). 1959 All L J 611 : 1959 All W R (HC) 532 : ILR (1959) 2 All 173 : AIR 1960 All 93 (95, 96) (Pt C) (Pr 6) (DB).

——Para. 190 — In a review under S. 273, U. P. Tenancy Act a single member vested with all or any of the powers of the Board shall have no power to alter or reverse a decree or order passed by the Board or by any member other than himself. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 273. ('52) 1952 All W R (Rev) 33 : 1952 All L J (Rev) 9.

PARA. 234

——Para. 234 — Lambardar—Removal — Proper remedy — Competency of Civil Court to remove him—U. P. Land Rev. Act (3 of 1901), S. 233 (b).

The remedy of the person who feels aggrieved against the appointment of a lambardar or thinks that he had been guilty of misconduct is to make an application under Para 234 of the U. P. Revenue Court Manual to the Collector or, Assistant Collector for the lambardar's dismissal on the ground that he has neglected to perform his duties. It is not competent for a Civil Court to remove a lambardar by a decree in a suit. Further such a suit would be barred by S. 233 (b) of the U. P. Land Revenue Act also. A I R 1951 All 382 (383) (Pt A, B) (Prs 7, 8).

PARA. 544

——Paras. 544 and 545 – Contravention of—If confers a right of action on member of the public to sue Government.

Paragraphs 544 and 545 of the U. P. Revenue Court Manual are in the nature of directions given by the Government which it expects its officers to follow. They are not rules forming part of the law of the land and cannot be enforced in a Court of law. A contravention of the rules may lead to a departmental punishment of the officer concerned but it cannot confer a right on a member of the public to sue Government for their breach. AIR 1952 All 327 (328) (Pt A) (Prs 8, 10).

PARA. 545

——Para. 545 (1)—Para is of statutory force under proviso to R. 2, U. P. Municipal Rules—Collector not given absolute discretion — Nature of the discretion is judicial and reasonable. See Municipalities — U. P. Municipalities Act, S. 296. AIR 1952 All 465 (DB).

PARA. 768

——Paras. 768 and 1010 — Collector delegating his power to conduct sale to an officer of less than 7 years standing under Para. 1010—Order standing to postpone sale passed by such officer is not without jurisdiction by virtue of para. 768. 1951 R D 1 : (1951) All W R (Rev) 44 (46).

PARA. 913

——Para. 913—Order of Commissioner setting aside sale under U. P. Z. A. and L. R. Rules, R. 285-I, on ground of irregularity in sale proclamation — Order, however, failing to record finding that party had suffered substantial injury — Order reversed by Government under S. 219 of Land Revenue Act without hearing petitioner — Held. order of Government contravened Para. 913 of Revenue Manual read with R. 119 of Revenue Court Manual and also violated principles of natural justice and omission of Commissioner to record finding as to substantial injury was not sufficient for interfering with impugned order — Constitution of India, Art. 226. See U. P. Land Revenue Act (3 of 1901). S. 219. 1965 All W R (HC) 826 : 1965 All L J 612.

PARA. 969

——Para, 969 (2)—Decree of Civil Court—Execution by Collector — Third party — Claims to property — Jurisdiction.

Where a decree of a civil Court is transferred for execution by the Collector and a third party claims in his own right the property to be sold and prefers a claim to the sale officer, the objection to the sale must be referred to the civil Court and the sale Officer has no jurisdiction to decide it himself. 1952 All W R (Rev) 110 : 1952 R D 135 : 1952 All L J (Rev) 318.

PARA. 983

——Paras. 983, 987 and 1011B — Paras. 983 and 987 which provide for preparation and issue of sale proclamation are analogous to O. 21, Rr. 66 and 67, Civil P. C.—Revision application under Para. 1011B mentioning incorrectly infringement of O. 21, R. 66, C. P. C. — Revision cannot fail on that account even though O. 21, R. 66 is not applicable. 1951 R D 5 : 1951-21 All W R (Rev) 44 (45).

PARA. 987

——Para. 987 — Publication of proclamation—Publication by beat of drums is only one of alternative methods prescribed by law—Mere absence of beat of drums does not render sale proceedings illegal or irregular. 1951 R D 5 : 1951-21 All W R (Rev) 44 (46).

PARA. 988

——Para 988—Date of sale beyond thirty days from date of affixation of proclamation in Court house but before thirty days from date of publication in newspaper—Sale is not invalid on this ground. 1951 R D 5 : 1951-21 All W R (Rev) 44 (46).

PARA. 1001

——Para. 1001 (3) — Bar of civil suit — Suit to set aside sale by Collector of land protected under S. 17 of the U. P. Debt Redemption Act.

When a Collector sells in execution of a civil Court decree, land of an agriculturist which is protected land under S. 17 of the U. P. Debt Redemption Act, he does something which is within his power to do and his action cannot be challenged in any civil Court in view of sub-para (3) of Para. 1001 of the U. P. Revenue Court Manual. ILR (1950) All 520.

PARA. 1010

——Paras. 1010, 1011 and 1012-B—Decree of Civil Court—Execution by Collector—Procedure—Special rules in Chap. 40 of Manual — Orders of Assistant Collector — Appealable to Collector — Revisional powers—Board of Revenue.

In view of Para. 1012-B of U. P. Revenue Manual the proceedings relating to execution of decrees of Civil Courts by the Collector are governed by the special rules in Chap. 40 of the Manual. Para. 1011 provides for any appeal to Collector from all orders passed by an Assistant Collector under the delegated powers (Para. 1010). The rules for sale of land in cases of execution of Civil Court decrees by the Collector invest the Board with revisionary powers.

(1935 R D 386, Foll.) 1952 R D 135 : 1952 All W R (Rev) 110 : 1952 All L J (Rev) 318.

—Para. 1010—The officers empowered under R. 768 by the Provincial Government can exercise all the powers of the Collector including those that have been excepted under Para. 1010 and it cannot be said that when such an officer refuses to postpone a sale it is without jurisdiction because it is not seven year's standing. See U P. Revenue Court Manual Para. 768. 1951 R D 5 : 1951 All W R (Rev) 44.

PARA. 1011

—Para. 1011 and 1012-B — Proceedings for execution of Civil Court decree by Collector—Order of Assistant Collector and Collector — Appeal and revision against—Maintainability.

In view of Para. 1012-B the proceedings for execution of Civil Court decree by Collector are governed by the special rules in Chapter 40 of the Revenue Manual. Under Para. 1011 all orders passed by an Assistant Collector under powers delegated to him by the Collector under Para. 1011 are appealable to the Collector and under the rules for the sale of land in execution of Civil Court decrees the orders of the Collector are revisable by the Board of Revenue. 1952 All W R (Rev) 110 : 1952 R D (B R) 135 (DB).

PARA. 1011-B

—Para. 1011-B — Appeal to additional Commissioner in a case of sale—Appeal not being maintainable—Additional Commissioner treating it as revision —Grounds of appeal filed vague and no case for interference in revision disclosed — Additional Commissioner held was not justified in setting up a new case — His recommendation for fresh protracted inquiry could not, therefore, be accepted. 1952 R D (B R) 132 : 1952 All L J (Rev) 76.

—Para. 1011B—"Case decided"—Order refusing to postpone sale of agricultural land — Appeal against, dismissed by Collector—Order is open to revision — Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 275—Civil P. C. (1908), S. 115. 1951 R D 5 : 1951-21 All W R (Rev) 44 (45).

—Paras. 1011B, 983 and 987 — Paras. 983 and 987 which provide for preparation and issue of sale proclamation are analogous to O. 21, Rr. 66 and 67, Civil P. C.—Revision application under Para. 1011B mentioning incorrectly infringement of O. 21, R. 66, Civil P. C.—Revision cannot fail on that account even though O. 21, R. 66 is not applicable. 1951 R D 5 : (1951) 21 All W R (Rev) 44 (45).

PARA. 1012B

—Para. 1012B — In view of Para. 1012B of U. P. Revenue Court Manual the proceedings relating to the execution of decree of Civil Court by the Collector are governed by the special rules in Chap. 40 of the Manual. See U. P. Revenue Court Manual Para. 1010. 1952 All L J (Rev) 318 : 1952 All W R 110 : 1952 R D 135.

PARA. 1023

—Para. 1023 (c) — Sub-divisional Officer sending Kurk Amin to sell fruit bearing trees—Sale is merely irregular. See Tenancy Laws — U. P. Land Revenue Act (3 of 1901), S. 146. A I R 1955 N U C (All) 2298 (DB).

PARA. 1631

—Vol. II, Para. 1631—Boundary between districts —Deep stream of a river — Changing course—Boundary also altered—Jurisdiction of criminal Courts — Practice contrary to law—Validity.

The note to Para. 1631 that 'whatever may be the course of the deep stream of the Ghogra the following villages for the purposes of criminal jurisdiction will always form the part of Abamgarh Dt. shows that the Para. provides the boundary changes with the course of the river and the jurisdiction of the criminal Courts also with it except for the named villages. The jurisdiction is to be determined on which side of the river the place is to be found. This is made clearer from Para. 1362 providing for alteration only by notification of Civil and Revenue jurisdiction.

Practice contrary to law in the above matter is no warrant of its validity. It is the practice that is vitiated by the law and not that the law is submerged by practice. 1953 Cri L J 186 : 1952 A L J 641 : AIR 1953 All 24 (24) (Pt A) (Pr 4).

U. P. RICE AND DAL MILLS CONTROL ORDER (1948)

—U. P. District Boards Act — Ss. 174 and 91 (q)—Regulations under Act and licence fee charged cannot be struck down on the ground of fees charged on owners of mills under other Acts and provisions with different purpose. See U. P. District Boards Act (1 of 1922), S. 174. AIR 1961 S C 356.

U. P. ROAD SIDE LAND CONTROL ACT (10 of 1945)

SECTION 2

—S. 2 (6) (Prior to and after amendment in 1965) and S. 3 (1) — Notification under S. 3 (1) issued in 1955 declaring certain area on Lucknow-Jhansi road as controlled area — Road becoming national highway from 15-4-1957 on coming into force of National Highways Act (1956) — National Highways Act not retrospective — Notification does not become invalid although road becomes national highway and area declared controlled area remains so even after coming into force of National Highways Act — Held, further that in any case after amendment of definition of 'road' in S. 2 (6) of U. P. Act in 1965 national highway was 'road' with retrospective effect from 15-4-1957 and so notification could be issued in respect of national highway — Therefore notification validly issued before 15-4-1957 remained valid inspite of passing of National Highways Act. W. P. 477 of 1962 D/- 20-4-1964 (All), Reversed. National Highways Act (1956), S. 2. 1966 All L J 257 : 1966 All W R (HC) 276 : 1966 All Cri R 160 : ILR (1966) 1 All 447.

—S. 2 (6) — National highway whether a "road" —National Highways Act (1956), S. 5.

National highway is invariably a metalled road and it would be a road within the meaning of S. 2 (6) of the Act if it is maintained by the State Government.

In case all the expenses incurred in the maintenance are borne by the Central Government, it can be said with some force though it must be added that no final opinion is being expressed on the point, that the State Government acted as an agent of the Central Government and even though the work was undertaken by the State Government or by its officers, the road was being maintained by the Central Government. Where the State Government bears a part of the maintenance charges, both shall stand in the category of principals, though part of the expenses incurred by the State Government are to be reimbursed by the Central Government. In such a case the State Government would also be maintaining the road and the national highway shall be a road as contemplated by S. 2 (6) of the Act. 1964 All Cri R 379 : 1964 All W R (HC) 512.

SECTION 3

—S. 3 (1) — Notification under S. 3 (1) issued in 1955 declaring certain area on Lucknow-Jhansi road

as controlled area—Road becoming national highway from 15.4-1957 on coming into force of National Highways Act (1956) – National Highways Act not retrospective — Notification does not become invalid although road becomes national highway and area declared controlled area remains so even after coming into force of National Highways Act — Held, further that in any case after amendment of definition of 'road' in S. 2 (6) of U. P. Act in 1956 national highway was 'road' with retrospective effect from 15-4.1957 and so notification could be issued in respect of national highway — Therefore notification validly issued before 15-4-1957 remained valid inspite of passing of National Highways Act. See U. P. Roadside Land Control Act (10 of 1945), S. 2 (6) (Prior to and after amendment in 1965). **1966 All L J 257 : 1966 All W R (H C) 276 : 1966 All Cri R 160 : ILR (1966) 1 All 447.**

——S. 3—Scope of Sub-s. (7) — Publication of declaration under S. 3 (1) — Burden of proof lies upon accused to show that procedure prescribed under Sub-ss. (2) to (5) had not been complied with.

When the legislature lays down in sub-s. (7) of S. 3 that a declaration made under sub-s. (1) is conclusive evidence of the fact that the area to which it relates is a controlled area, it must be held that after the publication of the declaration in the Official Gazette, the area so notified is to be treated as a controlled area to which the provisions of the U. P. Act, 1945 shall apply. AIR 1960 All 734, Approved;

Considering that the declaration under sub-s. (1) is accompanied with penal consequences, and it places restriction on the fundamental right of citizens, a lenient view in favour of the subject must be taken, namely, that in spite of sub-s. (7) of S. 3, the declaration made under sub s. (1) can be regarded null and void, if it is proved that the necessary formalities had not been complied with. When there is a presumption as to the validity of the declaration, the burden of proof shall lie upon the person challenging the declaration to show that it is not valid, namely, that the necessary formalities had not been complied with. **1964 All Cri R 379 : (1964) All W R (H C) 512.**

——Ss. 3 (1), (2) and 13 (a) — No previous publication of proposal to declare road-side area as controlled area—Notification under S. 3 (1) is not valid—Publication in Hindi Gazette (U. P.), if publication in newspaper—U. P. Official Language Act (26 of 1951). **1959 All W R (H C) 494 : 1959 All Cr R 413 : 1959 All L J 692.**

U. P. ROAD TRANSPORT SERVICES (DEVELOPMENT) ACT (9 of 1955)

SECTION 1

● ——S. 1—Validity — The validity of the Act could not be tested on the basis of the Constitution (Fourth Amendment) Act 1955 but only on the relevant articles as they existed prior to the amendment—See Constitution of India, Art. 13. **1959 S C J 1069 : AIR 1959 S C 648.**

● ——S. 1—Scope—If retrospective.

The U. P. Act is prospective, i.e., comes into force only from the date of the passing of the Act and the procedure prescribed applies only to schemes that are initiated under the provisions of U. P. Act. Deepchand v. State of U. P. **I L R (1959) 1 All 293 : (1959) Supp (2) S C R 8 : 1959 S C J 1069 : 1959 S C A 377 : AIR 1959 S C 648 (665, 666, 667) (Pt E) (Pr 30).**

● ——S. 1 – Scheme under Act—Validity and force of. Under Art. 254 (1) of the Constitution the law under the U. P. Act subsists to support the schemes framed thereunder and it becomes void only in respect of schemes framed under the Central Act. See Constitution of India, Art. 254. **1959 S C J 1069 : AIR 1959 S C 648.**

——S. 1—Validity of U. P. Road Transport Services (Development) Act (9 of 1955) cannot be attacked. See Constitution of India, Art. 19 (1) (g). **AIR 1957 All 320 (DB).**

[Reversed on another point in AIR 1959 S C 648.)

——S. 1 — Art. 301, Constitution of India, does not affect operation of U. P. Act — See Constitution of India, Art. 301. **AIR 1957 All 320 (DB).**

[Reversed on another point in AIR 1959 S C 648].

SECTION 3

● ——S. 3 — Scheme originally framed under the section could be validly notified under S. 68-C, Motor Vehicles Act (1939) (as amended by Act C of 1956). See Motor Vehicles Act 1939. (As amended in 1956), S. 68-C. **AIR 1965 S C 991.**

——Ss. 3 (1), 4 (2) (h), 10 — Scope—Transport vehicles—Private carriers—Renewal of permits—Formalities.

Road transport service means transport service by a public service vehicle. Consequently, no notification under S. 3 (1) can be issued pertaining to the running of private carriers. Similarly the term 'transport vehicles' used in S. 4 (2) (h) cannot be given the general meaning as laid down in the definition clause of the Motor Vehicles Act. Vehicles, the number of which can be reduced, shall, therefore, be public service vehicles and not private carriers.

On similar grounds S. 10 of the Act cannot place any restriction on the powers of the Regional Transport Authority to renew permits of private carriers. Hence, the provisions of the Act and also the scheme framed under S. 4 cannot in any way prohibit or restrict the renewal of permits of private carriers. **1960 All W R (H C) 469 : 1960 All L J 583.**

——S. 3—Effect of Constitution (Fourth Amendment) Act on U. P. Road Transport Service (Development) Act (9 of 1955) — The shadow which is cast on the legislation on account of Art. 13 of the Constitution when the Act is passed so far as the rights of citizens are concerned is removed as soon as the Constitution (Fourth Amendment) Act, 1955 came into force), See Constitution of India, Art. 13 (2) (As Amended by Constitution (Fourth Amendment) Act (1955)). **A I R 1957 All 320 (DB).**

[Reversed in A I R 1959 S C 648]

——S. 3—Monopoly rights — State monopoly in stage carriage business—Reasonable classification. See Constitution of India, Art. 14. **AIR 1957 All 320 (DB).**

[Reversed on another point in AIR 1959 S C 648.]

——S. 3—Monopoly rights — Discriminatory exercise of discretion vested in State — The discretion to be exercised by the State will be a regulated discretion guided by statutory rules. See Constitution of India, Art. 14. **A I R 1957 All 320 (DB).**

[Reversed on another point in AIR 1959 S C 648].

——S. 3—Monopoly rights — Stage carriage business — Selection of particular route by State — Effect on operators on such route — The operators operating on that particular route can also be regarded as a separate catogory by themselves which can be made subject of the special legislation. See Constitution of India, Art. 14. **A I R 1957 All 320 (DB).**

[Reversed on another point in A I R 1959 S C 648]

——S. 3 — Delegated legislation — S. 3 of Act is not void. See Constitution of India, Art. 245. **A I R 1957 All 320 (DB).**

[Reversed on another point in A I R 1959 S C 648].

—S. 3—Act is valid.

The U. P. Road Transport Services (Development) Act of 1955 (U. P. Act 9 of 1955) is a valid piece of legislation. **A I R 1957 All 320 (331, 332) (Pt J) (Pr 40) (DB).**

[Reversed on another point in A I R 1959 S C 648].

SECTION 4

—S. 4 (2) (4)—The term Transport Vehicle used in S. 4 (2) (4) cannot be given the general meaning as laid down in the definition clause of the Motor Vehicles Act. See U. P. Road Transport Services (Development) Act (9 of 1955), S. 3 (1). **A I R 1960 All W R (H C) 469 : 1960 All L 583.**

—S. 4 (4)—Transfer of permits to other routes how to be made.

Under S. 4, sub-s. (4) it has been provided that in providing for the transfer of permits to other routes under sub-s. (2) (i), regard shall be had to the provisions of S. 47 (1) or S. 55 (1) of the Motor Vehicles Act. In view of this provision it cannot be said that an arbitrary power of transfer of permits has been given. While making such an order of transfer of permits to other routes regard will be had to the provision of S. 47 of the Motor Vehicles Act. The transfer will thus have to be made having regard to the transport facilities on the route on which the permits are to be transferred. **AIR 1957 All 320 (332) (Pt K) (Pr 42) (DB).**

[Reversed on another point in A I R 1959 S C 648].

—S. 4 — U. P. Road Transport Services (Development) Act (9 of 1955), S. 4—Applicability of Art. 166 to notification under S. 4 — Art. 166 does not apply. See Constitution of India, Art. 166. **A I R 1957 All 320 (DB).**

SECTION 5

● —Ss. 5 and 11—Validity — Having regard to the entire scheme of compensation provided by the Act and S. 11 (5) in particular it must be held that the Act provides for adequate compensation for the interest acquired within the meaning of Art. 31 (2) of the Constitution. See Constitution of India, Art. 31 (2) (Before Constitution (Fourth Amendment) Act, 1955). **1959 S C J 1069 : A I R 1959 S C 648.**

SECTION 10

—S. 10—Applicability.

Temporary permit — Grant of — Considerations — Temporary permit on notified routes for carrying passengers on occasion of fair — Availability of Government buses—Not a ground for refusal to grant temporary permit. See Motor Vehicles Act (1939), S. 62. **ILR (1962) 2 All 77.**

—S. 10 — S. 10 of the Act cannot place any restriction on the power of the Regional Transport Authority to renew permits of private carriers. See U. P. Road Transport Services (Development) Act (9 of 1955), S. 3 (1). **1960 All W R (HC) 469 : 1960 All L J 583.**

—S. 10 (1) (d) — Applicability — If confined to permits mentioned in final scheme.

There is nothing in S. 10 (1) (d) restricting its application to those permits only which are specifically mentioned in the scheme under S. 8. On the contrary the clause covers any permit or class of permits. The opening words of S. 10 indicate the time and the occasion when the power under cl. (d) can be exercised. That may be done after the scheme under S. 8 has been published and has come into force. The power can be exercised only during the period when the scheme is in force but once the scheme is enforced cl. (d) empowers the State Government or any officer to do any of the acts mentioned in cl. (d) in respect of any permit or class of permits **1959 All L J 609.**

SECTION 11

● —S. 11—Constitution of India, Art. 31 (2) — (Before Constitution (Fourth Amendment) Act, 1955) — U. P. Transport Service (Development) Act whether deprives stage carriage operators of their property or interest in commercial undertaking — Act whether provides for adequate compensation. See Constitution of India, Art. 31 (2) (before Constitution (Fourth Amendment) Act, 1955). **A I R 1959 S C 648 (h).**

—S. 11 and Sch. 1 — Premature cancellation of permits of stage carriage permit-holders — They have right to claim compensation. See Constitution of India, Art. 19 (1) (g). **A I R 1957 All 320 (DB).**

[Reversed on another point in A I R 1959 S C 648].

RULE 10

—R. 10 — Motor Vehicles Act, Ss. 44 (5), 68 and 68-F — Power under S. 68 F can be delegated by R. T. A. — Rule framed under S. 44 (5) authorising such delegation is valid. See Motor Vehicles Act (1939), S. 44 (5). **AIR 1961 All 214.**

SCHEDULE 1

—Sch. 1 — Constitution of India, Arts. 19 (1) (g) and (6) and 31 (2) — U. P. Road Transport Services (Development) Act (9 of 1955). S. 11 and Sch. I — Premature cancellation of permits of stage carriage permit-holders—They have a right to compensation. See Constitution of India, Art. 19 (1) (g). **A I R 1957 All 320 (DB).**

[Reversed on another point in AIR 1959 S C 648].

U. P. RULES OF EXECUTIVE BUSINESS (1937)

RULE 14

● —Rr. 14, 15 — Authentication of notification by Secretary is valid—Omission of words "of the Governor" after the words "By order"—Held, not material. 1961 All L J 506 : 1961 All W R (HC) 542, held no longer good law. See Constitution of India, Art. 166 (2). **AIR 1962 All 240 (b) (FB).**

U. P. SALES OF MOTOR SPIRIT TAXATION ACT (1 of 1939)

SECTION 7

—S. 7 — Contravention of servant of licensee — If can be convicted.

A mere servant of a licensee could not be prosecuted for a contravention of S. 6 of the U. P. Sales of Motor Spirit Taxation Act, unless it is established that he himself was a retail dealer. An examination of the scheme of the rules made under the Act shows that in the rules there is a distinction between a retail dealer and a servant employed by him and that it is the former and not the latter who is answerable for contraventions of the provisions of the Act and the rules. **1950 All L J 689 : 49 Cri L J 609 : I L R (1948) All 379 : AIR 1949 All 73 (74, 75) (Prs 7, 11).**

U. P. SALES TAX ACT (15 of 1948)

See under Sales Tax.

U. P. SALES TAX (AMENDMENT) ACT (40 of 1952)

See under Sales Tax.

U. P. SALES TAX (AMENDMENT) ORDINANCE (9 of 1956)

See under Sales Tax.

U. P. SALES TAX TEMPORARY RULES (1948)

Ses under Sales Tax.

U. P. SALES TAX (VALIDATION) ACT (15 of 1958)

See under Sales Tax.

U. P. SALT CONTROL ORDER (1947)

SECTION 2

——S. 2 (a)—Sea-salt comes under definition of salt and cannot be said to be exempt. 1953 All W R (HC) 52 : 1953 All L J 128 : AIR 1953 All 459 (460) (Pt B) (Pr 3) (DB).

U. P. SECURITY PRISONERS RULES (1944)

RULE 43

——R. 43—Security prisoners going on hunger strike — Prisoners governed by U. P. Security Prisoners Rules, 1944, R. 43—Offence committed under R. 43—Previous sanction of Inspector General of Prisons for prosecution is not necessary. See Prisons Act (1894), S. 52. AIR 1955 N U C (All) 1519 (DB).

——R. 43 (b) — Offence against prison-discipline — Release of security prisoner —Rule does not apply and he cannot be punished. See Prisons Act (1894), S. 52. AIR 1955 N U C (All) 1519 (DB).

——R. 43—Presumption as to opinion of Superintendent of jail — Jurisdiction of Magistrate — The very fact that he forwarded the prisoners to the Magistrate sows that he had formed the opinion that he could not himself adquately punish them. See Prisons Act (1894), S. 52. AIR 1955 N U C (All) 1519 (DB).

——R. 43—'Opinion of the Superintendent'—Correct provisions under which the prisoners render themselves liable or the dates on which they have committed offence not stated by Superintendent—It cannot be said merely from this fact that he has not given any thought to the question whether he can punish them adequately himself or not. See Prisons Act (1894), S. 52. AIR 1955 N U C (All) 1519 (DB).

U. P. SHOPS AND COMMERCIAL ESTABLISHMENTS ACT (22 of 1947)

PREAMBLE

——Preamble—Act is not ultra vires. 1960 All Cri R 205 : 1960 All L J 429 : 1960 All W R (HC) 314 : (1960) 2 Lab L J 379 : 1961 (1) Cri L J 199 : A I R 1961 All 79 (82) (Pt C) (Pr 8).

——Preamble—Objects of two Acts are different and they do not overlap—(Obiter). See Pavment of Wages Act (1936). 1961 (1) Cri L J 199 : AIR 1961 All 79.

——Preamble—If infringes Art. 14 or Art. 19 (1) (g) of the Constitution of India.

On the contentions that S. 4 denies equality among halwais exempting as it does certain classes of halwais from the provisions of the Act and therefore infringes Art. 14 and the Act also infringes the rights under Art. 19 (1)(g) the freedom to practise the profession of halwai.

Held, the provisions of S. 4 (a) to (e) are not discriminatory in its character; it is only a reasonable classification of the subject of the law and it deals alike with all of a certain class. Article 14 of the Constitution is not therefore infringed.

Nor is Art. 19 (1) (g) infringed by the Act. Because the restrictions and obligations imposed by the Act are reasonable restrictions on the exercise of the right of freedom of profession in the public interest; the underlying principle is to prevent 'sweating of labour.' (1952-53) 4 F J R 203 : 1952 All L J 409 : 1952 All W R (HC) 363 : A I R 1952 All 773 (775) (Pts A, B) (Prs 14, 15) (DB).

SECTION 2

● ——S. 2 (3) — Reference to Factories Act, 1934 — It reference to Factories Act, 1948.

The definition of a 'commercial establishment' in S. 2, Cl. (3) of the above U. P. Act, includes the clerical and other establishments of a factory to which the provisions of the Factories Act, 1934, do not apply. By virtue of S. 8 of the General Clauses Act (1897), the reference to the Factories Act, 1934, must be construed as a reference to the Factories Act of 1948 which repealed the earlier Act and re-enacted it. Hence, notwithstanding the repeal of the Factories Act, 1934, the definition of 'commercial establishment' in S. 2, Cl. (3) includes only clerical and other establishments of a factory to which the Factories Act, 1948, does not apply. State of Uttar Pradesh v. M. P. Singh, (1959-60) 17 F J R 395 : 26 Cut L T 255 : (1960) 1 Lab L J 270 : 1960 All W R (HC) 179 : 1960 All L J 232 : 1960 Cri L J 750 : 1960 S C J 499 : 1960 Mad L J (Cri) 415 : (1960) 2 S C R 605 : (1960) 1 Fac L R 520 : I L R (1960) 1 All 368 : A I R 1960 S C 569 (570) (Pt A) (Pr 4).

●——S. 2 (3)—'Commercial establishment'.

The diverse provisions of the Factories Act, 1948, are intended to benefit only workers employed in a factory, i. e., in the precincts or premises of a factory. Field workers who are employed in guiding, supervising and controlling the growth and supply of sugar-cane to be used in a sugar factory are not employed either in the precincts of the factory or in the premises of the factory; and if these workers are not employed in a factory, the provisions of the Factories Act, 1948, do not apply to them and they fall within the definition of 'Commercial establishment' in S. 2 (3). Criminal References Nos. 28, 29 and 30 of 1955, D/- 31-10-55 (All), Reversed. State of Uttar Pradesh v. M P. Singh, (1959-1960) 17 F J R 395 : (1960) 1 Lab L J 270 : 1960 All L J 232 : 1960 S C J 499 : 26 Cut L T 255 : 1960 All W R (HC) 179 : 1960 Cri L J 750 : 1960 M L J (Cri) 416 : (1960) 2 S C R 605 : (1960) 1 Fac L R 520 : ILR (1960) 1 All 368 : AIR 1960 S C 569 (570) (Pt B) (Pr 5).

——S. 2 (6) and S. 10 — Employer, meaning of — Closing of shop—No employee engaged by employer —Employer has still to close shop under S. 10.

The word "employer" as defined in S. 2 (6) of the U. P. Shops and Commercial Establishments Act includes a person having charge of or owning the business of a shop or commercial establishment, and is not confined to a person employing someone to assist him in the conduct of his business. Therefore. S. 10 will operate in the case of every person having charge of or owning the business of a shop and every such person is under a legal obligation to comply with the provisions of the Act, even though he may not have an employee working in the shop or commercial establishment. 1958 All L J 484, Foll; 1958 All L J 333; 1958 All W R (HC) 465, Overruled. 1961 (2) Cri L J 742 : 1962 All W R S C 62 : 1962 All Cri R 63 : AIR 1961 All 599 (600) (Pt A) (Pr 5) (DB).

——S. 2, Cls. (3) and (12) — Railway City Booking Agency 'shop' or 'commercial establishment'.

In a sense the railway carries on a business when it carries goods and passengers on hire but the words 'trade or business' used in the Act have been used in the ordinary sense of those words and not in the sense of the undertaking by the railways. Inasmuch as the city booking agency is also a unit of the railway it cannot be subjected to any greater restrictions than the railway stations themselves. As the booking office and the parcel office at the railway stations cannot be considered to be either a shop or a commercial establishment the city booking agency cannot also be included within those expressions.

1960 All Cr R 205 : 1960 All L J 429 : 1960 All W R (HC) 314 : (1960) 2 Lab L J 379 : 1960 (1) Cri L J 199 : AIR 1961 All 79 (81, 82) (Pt B) (Pr 4).

——S. 2 (6)—The word employer in U. P. Shops and Commercial Employments Act contemplates owner who has engaged some employees to help him running his business — Owner who has no employees is not a employer. See Interpretation of Statutes. 1958 All Cri R 308 : 1958 All W R (HC) 465 : (1958) 1 Lab L J 734 : 1958 All L J 333.

[Overruled in AIR 1961 All 599].

——S. 2 (3) — Owner using word 'factory' for commercial establishment—Effect.

The mere use of the word 'factory' by the owner for his commercial establishment will not convert the concern into something other than a commercial establishment. 1958 All WR (HC) 586 : (1958-59) 15 F J R 59 : 1958 All L J 484 : (1958) 2 Lab L J 679 : 1958 All Cri R 385.

——S. 2 (o)—'Employer'—Owner of business.

Undoubtedly the word 'employer', according to its ordinary meaning in the English language signifies a person who employs somebody else. But it is competent for the Legislature to enact that in a particular Act the word shall include the owner of a business, whether or not anybody is employed therein and that seems to be the effect of the definition in S. 2 (6). AIR 1942 Bom 39, Approved. 1958 All W R (HC) 586 : (1958-59) 15 F J R 59 : 1958 All L J 484 : (1958) 2 Lab L J 679 : 1958 All Cri R 385.

——S. 2 (6)—Applicability—Shop-keeper—If should be employer also—S. 10.

'Employer' by itself indicates that some one is employed by him. Where there is no evidence that the owner of a shop has employed any workman he does not become an employer, merely because he is an owner of a shop. Similarly, if a shop-keeper employs only the members of his family for running his business concern, the provisions of the U. P. Act (22 of 1947) do not apply to the employment of such persons. (1958) 1 Lab L J 734 : 1958 All L J 338 : 1958 All W R (HC) 465 : 1958 All Cri R 308.

[Overruled in AIR 1961 All 599].

SECTION 4

——Ss. 4 and S. 10—Members of family of employer keeping shop open on close day — S. 10 cannot thus be evaded. See U. P. Shops and Commercial Establishments Act (22 of 1947), S. 10. 1961 (2) Cri L J 742 : AIR 1961 All 599 (DB).

——S. 4 (c) — 'Government office' — Railway City booking agency.

Held, on facts that under the agreement the business of the agency belonged to the railway administration and the respondent was only an agent or employee of the railway administration and instead of being paid a monthly salary or daily wage his remuneration was adjusted on the basis of commission. It must, therefore, be held that the agency was an office of the Railway. The Railway in the country belonged to the Central Government. The booking agency therefore was an 'office of the Government' within the meaning of Cl. (c) of S. 4 of the Act. That being so the provisions of the Act would not apply to the instant case. 1960 All Cri R 205 : 1960 All L J 429 : 1960 All W R (HC) 314 : (1960) 2 Lab L J 379 : 1961 (1) Cri L J 199 : AIR 1961 All 79 (79, 80, 81) (Pt A) (Prs 1, 2, 3).

——S. 4 (e) — Applicability — Proprietors of shop—Right to benefit of S. 4 (e).

Where both the applicants are employers, (they being the proprietors of the shop) neither of them is entitled to the benefit of S. 4 (e) because neither of them can be said to be a member of the family of an employer. 1960 All L J 103 : (1960) 1 Lab L J 431 : 1960 All Cri R 109.

——S 4 — Constitution of India, Art. 14 — Equality before law—The inequalities complained of between halwais and restaurant-keepers and persons mentioned in Cls. (a) to (e) do not come within the constitutional inhibitions of Art 14. See Constitution of India, Art. 14. AIR 1952 All 773 (DB).

SECTION 6

——S. 6—Keeping the shop open or closed—Meaning of — It means open or closed for business and not physically.

The word 'open' or 'closed' when used in relation to a shop and commercial establishment necessarily means 'open' or 'closed' for the purpose for which the shop or the commercial establishment exists. The terms do not only mean physically closing the doors or physically opening the doors. Where the shop was closed for business but the door was open and the manager was looking into the accounts, the shop was not open within the meaning of the Act though it was physically open. (1951) S C J 475 : (1951) 2 Mad L J 139 : AIR 1951 S C 315, Disting. 1961 All L J 151 : 1961 All Cr R 67 : 1961 All W R (HC) 168 : (1961) 2 Lab L J 673 : 1962 (1) Cri L J 625.

SECTION 10

——Ss. 10, 2 (6)—Employer, meaning of—Closing of shop—No employee engaged by employer—Employer has still to close shop under S. 10—(1958) All L J 333 : 1958 All W R (HC) 465, Overruled. See U. P. Shops and Commercial Establishments Act (22 of 1947), S. 2 (6). 1961 (2) Cri L J 742 : AIR 1961 All 599 (DB).

——S. 10 and S. 4 — Members of family of employer keeping shop open on close day — S. 10 cannot thus be evaded.

Section 10 of the U. P. Shops and Commercial Establishment Act makes it obligatory on an employer to keep his shop closed on a 'close day'. He cannot evade the mandate of the law by asking the members of his family to keep his shop open on a close day. If he does so he will be guilty of breach of the law. (1951) S C J 475 : (1951) 2 Mad L J 139 : AIR 1951 S C 315, Rel. on. 1961 (2) Cri L J 742 : 1962 All W R (H C) 62 : 1962 All Cri R 63 : AIR 1961 All 599 (640) (Pt B) (Pr 7) (DB).

——S. 10—Close day — Declaring particular day as close day — Absence of declaration of such day by employer — Declaration of such day by District Magistrate is proper.

Where there is nothing on the record to indicate that an employer has ever moved the District Magistrate for declaring a particular day as close day in his shop, nor is there evidence to show that he has really closed his shop on any other day of the week, the order of the District Magistrate declaring Sunday as a close day for all commercial establishmenis in the town under his jurisdiction is in accord with S. 10 of the Act. 1961 (2) Cri L J 743 : 1962 All W R (H C) 62 : 1962 All Cri R 63 : AIR 1961 All 599 (600) (Pt C) (Pr 10) (DB).

——Ss. 10, 27—"Employer."

The word "employer" used in the Act has a special meaning given to it for the purposes of the Act and not the popular meaning. It simply means a person having charge of or owning the business of a shop; there arises no question whether he has employed any person in the shop or not. It is not correct to say that one cannot be an employer of a shop unless there is an employee or that a person cannot be convicted

under S. 27 of the Act unless he has employed employees in the shop. 1958 All L J 333, Diss. from. 1960 All L J 102 : (1960) 1 Lab L J 431 : 1960 All Cri R 109.

——Ss. 10, 12—Scope — Payment of extra remuneration to employee—Right of employer to open shop on close day. 1959 All W R (HC) 485 : 1959 All Cri R 403 : (1960) 1 Lab L J 50 : 1959 All L J 688.

——S. 10 — Opening of a shop or a commercial establishment on a close day merely for preparing accounts is not contrary to the provisions of S. 10. Govt. Appeal No. 977 of 1957 (All), Rel. on. 1959 All W R (HC) 485 : 1959 All Cri R 403 : (1960) 1 Lab L J 50 : 1959 All L J 688.

——S. 10—Validity of—Where a person who wants to work on every day and his working in this manner does not affect any one else, it cannot be considered to be a reasonable restriction if he is stopped from earning his livelihood. See Constitution of India, Art. 19 (1) (g). 1958 All L J 333.

[Overruled on another point in AIR 1961 All 599].

——S. 10 (3) — Selection of closing day — Choice of employer and not of District Magistrate. (1958) 1 Lab L J 734 : 1958 All L J 333 : 1958 All W R (HC) 465 : 1958 All Cr 308.

[Overruled on another point in AIR 1961 All 599]

——Ss. 10, 27 — Arbitrary fixation of close day by authority — Non-compliance with arbitrary order, is no offence. AIR 1952 All 367 (367, 368) (Pr 2).

SECTION 12

——S. 12 — Contravention of — Employees working every day of week though not putting in actual work for more than 48 hours — Employer not giving one whole day's holiday contravenes provisions of S. 12.

The effect of the words 'whole day' must be that the holiday enjoined in S. 12 must be for the full period of 24 hours. The first portion of the proviso means that the provisions of S. 12 will not apply to such persons who, for some reason, had not worked on any one or more days in the week. The words, 'total period of employment' in the proviso cannot be interpreted to indicate the total period of actual work and the words, 'six days' in the proviso should not be interpreted as meaning six days of 8 hours a day, that is equivalent to 48 hours in all. There is nothing in the Act to support the contention that the word, "day" should, in any circumstances, be treated as equivalent to 8 hours' work. 1950 All W R 26 : 1950 All L J 10 : 1950 All Cri Cas 8 : (1950) 51 F J R 151 : 51 Cri L J 752 : ILR (1951) 2 All 32 : AIR 1950 All 241 (241, 242) (Prs 6, 8, 9, 10) (DB).

SECTION 27

——S. 27 — Arbitrary fixation of close day by authority — Non-compliance with arbitrary order, is no offence. See U. P. Shops and Commercial Establishments Act (1947), S. 10. AIR 1952 All 367.

SECTION 29

——S. 29 — Limitation — Starting point the date of commission of offence and not the date of detection —Offence under S. 16 committed on 7-6-1954—Complaint filed on 17-12-1954 that is within 6 months from the date of inspection which took place in the first week of December, held barred. 1957 All L J 962.

U. P. SHRI BADRINATH TEMPLE ACT (16 of 1939)

SECTION 3

● ——Ss. 3 (b) and 4—Construction of—Gift made to any person for his personal benefit within precincts of temple—If vests in donee or temple.

Under the general law, nobody can be prevented from accepting a gift which another person may be inclined to make in his favour, and it is immaterial in such cases at what place the gift is actually made.

If a legislation wants to take away the proprietary right which a person acquires under the ordinary law, it must express its intention in clear and unambiguous terms. There is nothing in the Sri Badrinath Temple Act which lays down that a gift made to any person inside the temple and intended for the benefit of that person shall not belong to him.

The definition of endowment in S. 3 (b) of the Act is no doubt couched in very wide language and includes in its scope gifts of property made to anyone within the precincts of the temple. But there is an apparent conflict between S. 3 (b) and S. 4 of the Act which deals with vesting of property and under which a gift does not vest in the temple at all unless it is made for the benefit of the Temple or for the convenience, comfort or benefit of the pilgrims. Interpretation of Ss. 3 (b) and 4 in AIR 1947 All 419, Disapproved.

Quaere — Whether the expression gifts of property made to anyone in S. 3 (b) of the Act should not be construed to mean gifts made to any one for the benefit of the temple or for other purposes as are specified in S. 4. Nar Hari Shastri v. Badrinath Temple Committee, 1952-2 Mad L J 255 : 1952 S C J 310 : 1952 S C A 664 : (1952) S C R 849 : ILR (1953) 1 All 42 : AIR 1952 S C 245 (251) (Pt B) (Prs 27, 28).

SECTION 4

● ——S. 4—Construction of—Gift made to any person for his personal benefit within precincts of temple — It vests in donee. See U. P Shri Badrinath Temple Act (1939), S. 3 (b). AIR 1952 S C 245.

SECTION 25

● ——S. 25 (m) and (n) — Bye-laws under—Bye-law (8)—Validity.

Bye-law (8) of the Puja Bye-laws which forbid the acceptance of the gift by any person within the temple, unless he comes within the category of persons specifically authorised by the committee to receive the same, is a perfectly legitimate bye-law which it was quite competent for the committee to enact under the terms of Clauses (m) and (n) of Section 25 of the U. P. Shri Badrinath Temple Act. For the purpose of preventing over-crowding within the temple and to ensure order, decency and worshipful behaviour on the part of those who enter into it, the committee was quite justified in framing this bye-law which lays down in substance that whatever gifts a pilgrim might be desirous of making and which is unconnected with the offerings to the deity, shall be made outside the temple precincts and not inside it. The bye-law in question is not in any way, inconsistent with the provisions of the Act. It is certainly confined to the circumstances contemplated by the Statute itself and is not repugnant to the general principles of Hindu Law. It does not take away the proprietary right of any person which is recognised under ordinary law. Nar Hari Shastri v. Badrinath Temple Committee. 1952 S C J 310 : 1952-2 Mad L J 255 : (1952) S C A 664 : 1952 S C R 849 : ILR (1953) 1 All 42 : A I R 1952 S C 245 (251, 252) (Pt C) (Prs 30, 31).

● ——S. 25—Religious Endowments—Public Temple — Right of entrance into temple for purpose of worship or darshan — Nature and extent of — Deoprayagi pandas of Badrinath — Right of, to enter Badrinath Temple along with their Yajmans and to take gifts—Declaratory suit—Civil P. C. (1908), S. 9. See also Hindu Law—Religious Endowments—Public Temple. AIR 1952 S C 245.

U. P. SPECIAL POWERS ACT (14 of 1932)

SECTION 3

● —S. 3 — The entire section is invalid. See Constitution of India, Art. 19 (2). 1960 S C J 567 : 1960 M L J (Cr) 340 : 1960 Cri L J 1002 : A I R 1960 S C 633.

—S. 3—Validity—Offends Art. 19 (1) (a) and saved by Art. 19 (2) of the Constitution. See Constitution of India, Art. 13. 1955 Cri L J 623 : A I R 1955 All 193 (DB).

—S. 3 — Detention under Habeas Corpus—Constitutionality of Act can be challenged on ground of infringement of Art. 19 of the Constitution. See Constitution of India, Art. 226. 1955 Cri L J 623 : AIR 1955 All 193 (DB).

U. P. STAMP RULES (1942)

RULE 3

● —R. 3 — Instrument duly stamped — Mortgage executed in U. P. relating to property in West Bengal — Deed registered in West Bengal and stamped according to law of W. B. — Stamp Duty payable — The officers of the State of U. P. can rightly hold that the original Mortgage deed was not duly stamped. See Stamp Act (1899), S. 3 (U. P.) A I R 1963 S C 1307.

U. P. STATE INDUSTRIAL TRIBUNAL STANDING ORDER (1951)

ORDER 19

● —Orders 19 (a), 20 (a) — Termination of service —Rights of workmen and management — (Industrial Dispute—Retrenchment.)

The management has a right to determine the size of its labour force and to effect retrenchment where necessary. It forms a part of managerial discretion and cannot be interfered with unless it is coloured with the element of victimisation or unfair labour practice. This principle is implicit in Standing Orders 19 (a). Reading the body of Standing Order 19 (a) along with the proviso in the light of the above principle it is evident that the only right the workman has, when his services are lawfully terminated after service of due notice and so forth, is to question the order on only two grounds : (1) that he has been discharged for reasons not connected with his employment, and (2) that the reason of discharge communicated to him is not genuine. There is nothing in these Standing Orders to indicate that retrenchment is a measure of last resort and that an employer must continue to lay off his workmen however uneconomical that may be to the business; still less that he must lay them off in rotation and thus affect other workmen who would not be affected by a legitimate order of retrenchment. That cuts at the root of the above principle. The question of retrenchment cannot be made to depend on the duration of the shortage of raw materials or even on the fact that those retrenched will be thrown out of employment but on the effect that an omission to retrench will have on the business. In some cases, laying off even for 6 or 8 or 9 months might make the employer-Company bankrupt. J. K. Iron and Steel Co., Ltd., Kanpur v. Iron and Steel Mazdoor Union, Kanpur. (1956) 1 Lab L J 227 : (1955-56) 9 F J R 419 : 1956 S C J 270 : 1956 Lab A C 147 : 1956 S C A 843 : (1955) 2 S C R 1315 : A I R 1956 S C 231 (236, 237) (Pt B) (Prs 31, 33, 34, 40).

ORDER 20

● —Order 20 (a) — Termination of service—Rights of workmen and management indicated. See U. P. State Industrial Tribunal Standing Order (1951), S. 19 (a). AIR 1956 S C 231.

ORDER 22

● —Order 22 — Industrial Disputes Act, Ss. 7, 11— Scope and authority of adjudicator — Adjudicator's award may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law — The scope of adjudication by Industrial Tribunals is much wider than that of an arbitrator making an award — Tribunals are subject to the overriding jurisdiction of the Supreme Court under Art. 136 See Industrial Disputes Act (1947), S. 7. AIR 1956 S C 231.

U. P. STATE LAW OFFICERS RULES (1942)

RULE 7

—R. 7 — (Substituted on 20th December, 1957) under Art. 309 of Constitution — Scope—Not retrospective See Constitution of India, Art. 311 (2). AIR 1959 All 169 (DB).

RULE 14

—R. 14—Scope of—The petitioner according to the special terms of his appointment was entitled to the protection afforded by R. 14 in that he could not be removed unless he has had a reasonable opportunity of being heard in his defence. See Constitution of India, Art. 311 (2). A I R 1959 All 169 (DB).

U. P STATE LEGISLATURE MEMBERS (PREVENTION OF DISQUALIFICATION) SUPPLEMENTARY ACT, 1956 (3 of 1957)

SECTION 2

—S. 2 — Scope — Powers given to Parliament and State Legislature — State Legislature is given power to remove and not to create disqualification—Elections — U. P. State Legislature Members (Prevention of Disqualification) (Supplementary) Act, 1956 (U. P. Act 3 of 1957), S. 2—Effect of amendment of S. 2 by U. P. Act (5 of 1960). See Constitution of India, Art. 191 (1). A I R 1962 All 128 (DB).

U. P. STATE ROAD TRANSPORT ACT (2 of 1951)

PREAMBLE

● —Preamble—Act infringes Art. 19 (1) (g) and is unconstitutional—(Constitution of India, Arts. 13 (2), 19 (1) (g) and (6)).

The U. P. State Road Transport Act violates the fundamental right guaranteed under Art. 19 (1) (g) of the Constitution and is not protected by Act. Article 19 (6) as it stood at the time of the enactment and as such must be held to be void under Art. 13 (2) of the Constitution. A I R 1954 All 257, Reversed. Saghir Ahmad v. State of U. P. (1954) 2 Mad L J 622 : 1954 S C J 819 : 1954 S C A 1218 : (1955) 1 S C R 707 : 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : I L R (1955) 1 All 211 : A I R 1954 S C 728 (738, 739) (Pt H) (Pr 23).

● —Preamble—Validity—Act infringes, Art. 31 (2) —(Constitution of India, Art. 31 (2)).

The U. P. State Road Transport Act is unconstitutional and invalid as it offends the provision of Art. 31 (2) of the Constitution. The effect of prohibition of the trade or business of the appellants by the impugned legislation amounts to deprivation of their property or interest in a commercial undertaking within the meaning of Art. 31 (2) of the Constitution. The fact that the buses belonging to the appellants have not been acquired by the Government is not material. The property of a business may be both tangible and intangible. Under the statute the Government may not deprive the appellants of their buses or any other tangible property but they are depriving them of the business of running buses on hire on public roads. A I R 1954 All 257, Reversed. Saghir

Ahmad v. State of U. P. (1954) 2 Mad L J 622 : 1954 S C J 819 : 1954 S C A 1218 : (1955) 1 S C R 707 : 1955 All L J 38 : 1955 All W R 23 : 68 Mad L W 8 : ILR (1955) 1 All 211 : A I R 1954 S C 728 (739, 740) (Pt J) (Prs 24, 25).

● ——Preamble—Constitution of India, Arts. 301 and 19 (1) (g) — Whether conflicts with the guarantee of freedom of inter-state and intra-state trade, commerce and intercourse (Quaere)—Points and different views indicated — Relative scope of Art. 19 (1) (g) and Art. 301 indicated. See Constitution of India, Art. 301. A I R 1954 S C 728.

——Preamble — State does not acquire any property or interest in commercial undertaking—(Constitution of India, Art. 31.)

The right to compensation under the Constitution does not arise on mere deprivation of property. The right to compensation arises only when after deprivation there has been a vesting in the State of that property or there has been deprivation by acquisition. The petitioner's common law right to use the 'public highways' in a particular manner under a permit cannot be any right in property or an interest in an undertaking within the meaning of Art. 31 of the Constitution.

Under the Motor Vehicles Act everyone who could obtain the necessary permit was entitled to run buses or motor vehicles on such routes as were permitted. The State could, and as a matter of fact, did run motor bus services on many of the routes on which private operators operated their services. By depriving the private operators of their right to run buses on certain routes and by deciding to run those routes itself the State did not acquire the right which was of the petitioners, whether such right was 'property' or an interest in a commercial or industrial undertaking. The vehicles which were being operated by the private operators have not been acquired by the State, nor has any other tangible property which was used by the petitioners for their business been acquired. What has been done is that the petitioners have been prohibited from operating their buses on certain routes. This right of the petitioners has in no way been vested in the State inasmuch as, the State always had an equal right with the petitioners to run their buses on those routes. The right to compensation is available when there has been in substance and in reality an acquisition.

Moreover what was done by the impugned Act was to place reasonable restriction on the rights of the petitioners and there was no 'taking' of any property of the petitioners. When once it is found that the restriction imposed is reasonable and there is no actual 'taking' then no question of compensation can arise.

Consequently, the Uttar Pradesh State Road Transport Act is not ultra vires inasmuch as it makes no provision for compensation, for, there was no occasion to make any provision for any compensation. ILR (1951) 1 All 269 : A I R 1954 All 257 (272, 273, 274) (Pt E) (Prs 59, 61, 62a, 63, 66, 67, 68) (DB).

[Reversed in A I R 1954 S C 728].

——Preamble—Act is not hit by Art. 301—Scope and applicability of Art. 301 — (Constitution of India, Art. 301).

By Art. 304 it is competant for the Legislature of a State to impose such reasonable restrictions on the freedom of trade, commerce or intercourse as may be required in the public interest. There, however, is a, proviso that no Bill or amendment for the purposes mentioned above shall be introduced or moved in the Legislature of a State without the previous sanction of the President. The guarantee contained in Art. 301, therefore, is not an unqualified guarantee. Article 301 more or less is complementary to the general provision contained in Art. 19 (g), inasmuch as Art. 301 gives a kind of territorial protection to trade, commerce and intercourse a protection which incidentally enures to the benefit of those who engage in trade, business and commerce or carry on intercourse of the type visualised under this Article. The protection which Art. 301 contemplates is what may be termed, 'trade in motion' so that the restriction has to be, when it is being judged, restriction on the flow of goods as such, and not in the flow of goods through the agency or medium of any particular individual or group of individuals.

In order to determine whether there has been an infringement of Art. 301 of the Constitution or not, the 'pith and substance' of the enactment must be seen.

Uttar Pradesh State Road Transport Act, 1950, (2 of 1951) is not hit by the provisions of Art. 301 of the Constitution. ILR (1951) 1 All 269 : A I R 1954 All 257 (274, 275) (Pt F) (Prs 71, 72, 74) (DB).

[Reversed on another point it A I R 1954 S C 728].

——Preamble—Extra-territorial operation.

The Act could certainly give power to the State Government not to let any one operate his bus within the territory of the State irrespective of the fact whether he was operating his bus on a permit obtained from an authority within the State or because of a permit granted to him by an authority outside the State. Under the Act no power has been conferred on the State Government to operate extra-territorially. ILR (1951) 1 All 269 : AIR 1954 All 257 (278) (Pt K) (Pr 84) (DB).

[Reversed on another point in A I R 1954 S C 728.]

SECTION 3

● ——S. 3—If infringes Art. 14 of the Constitution —(Constitution of India, Art. 14).

The impugned legislation does not offend Art. 14 of the Constitution and is not invalid on that ground. Section 3 of the Act authorises the State Government to declare that the road transport service in general or on particular routes should be run and operated by State Government exclusively or by the State Government in conjunction with railway or partly by the State Government and partly by others in accordance with the provisions of the Act. On a proper construction of this section the State is only to choose to whom permits should be given and the granting of permits would necessarily be regulated by the provisions of Motor Vehicles Act. On this construction the discretion to be exercised by the State would be a regulated discretion guided by statutory rules. Saghir Ahmad v. State of U. P. 1954 S C J 819 : (1954) 2 Mad L J 622 : 1954 S C R 1218 : (1955) 1 S C R 707 : 1955 S C A 1218 : 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : ILR (1955) 1 All 211 : AIR 1954 S C 728 (741) (Pt L) (Pr 28).

——S. 3 — Act cannot be challenged on ground that it infringed Art. 19 (6) — (Constitution of India, Art. 19 (6), before its amendment.)

The State cannot take advantage of Art. 19 (6) in its amended form in judging the validity of U. P. Act II of 1951 passed before the amendment.

The right which has been affected by the U. P. Act II of 1951 is not any unrestricted right to use the national highways because there was after the passing of the Motor Vehicles Act, no such right.

The right of the individual to utilize motor vehicles for purposes of trade was restricted to such an extent under the Motor Vehicles Act as to be almost non-existent; the right was only available when a permit for the exercise of that right was available to the person from the appropriate authority under the Motor Vehicles Act. The impugned Act (U. P. Act 2

of 1951), when it takes away that right of the individual if it does so then, it is not taking away any right of the individual to carry on any occupation, trade or business. Whether a restriction is reasonable or not has to be judged in the setting of time and circumstances. It has also to be viewed in the light of the economic and social needs of the community obtaining at any particular time. It may further have to be judged in certain cases having regard to geographical conditions.

A monopoly in favour of the State in respect of services essential to the life of a community held could not be said to be an unreasonable restriction on the rights of the individuals if the U. P. legislature has thought it fit to create one by Act II of 1951.

The Act could not therefore, be challenged on the ground that it infringed Art. 19 (g) of the Constitution. **ILR (1951) 1 All 269 : A I R 1954 All 257 (264, 265, 266, 267, 283, 285) (Pt A) (Prs 26, 27, 33, 34, 112, 120) (DB).**

[Reversed on another point in AIR 1954 S C 728.]

——S. 3—Act is not discriminatory—S. 3 is not ultra vires—(Constitution of India, Art. 14.)

Whenever there is a proper classification, viz., a classification which bears a reasonable and just resemblance to the subject-matter of the legislation then it cannot be contended that the legislation was in the teeth of the guarantee contained in Art. 14. All reasonable classification which have a proper and just resemblance to the subject-matter of the legislation cannot be hit by the guarantee contained in Art. 14. Therefore, the only question that arises for determination in this connection is whether the classification visualised or indicated in Cl. (6) (ii) of Art. 19 is a reasonable classification. Having in mind the scope of the U. P. Act 2 of 1951 which necessarily would fall within the scope of sub cl. (ii) of Cl. (6) the classification indicated must be held at least after the amendment became effective to be a reasonable classification in relation to the field of legislation which is indicated in that sub-clause. The idea of the State coming into the field of trade and commerce was not for the first time visualised by the Constitution-makers when they put in Cl. (6) (ii) in Art. 19 of the Constitution.

The question whether a classification is reasonable and proper or not be judged more on common sense than on legal subtleties.

Classification is almost inherent in the concent of a monopoly. Therefore the only question that arises for determination is whether this classification is reasonable or not. Equal protection claims under Art. 14 always are examined with the presumption that the State action is reasonable and just. Unless it can be shown that the discrimination that has been resorted to or the power to discriminate has been given without reason it cannot be said that there is unequal treatment.

It cannot be contended reasonably that the State Government would 'without reason' discriminate or that there is in S. 3 of the impungned Act a power to discriminate 'without reason' given to the State Government. Therefore S. 3 of the impugned Act does not confer on the State Government a power which could be utilized by them arbitrarily for making discrimination:— Section 3 of the impugned Act is not ultra vires. **ILR (1951) 1 All 269 : AIR 1954 All 257 (269, 270, 271) (Pt B) (Prs 46, 48, 49, 50, 51) (DB).**

[Reversed on another point in AIR 1954 S C 728.]

——S. 3—Act cannot be challenged on ground that it intringed Art. 19 (6). See U. P. State Road Transport Act (2 of 1951), Preamble. A I R 1954 All 257 (DB).

SECTION 4

——Ss. 4, 5 and 6 (2)—Applicability.

Notification under, publishing scheme—Objections for consideration of 'Governor' invited—No 'prescribed authority' under Act—Objections considered by Deputy Secretary of Government — **Held**, that the power that the State Government could exercise under the provisions of S. 5 (2) of the Act could properly be called the exercise of executive power—it certainly was not the exercise of a judicial power of the State even though the nature of the power was quasi-judicial. Under S. 5 (2) objections had to be considered either by the State Government or if the State Government so directed by the 'prescribed authority'; that there could be no delegation of this power that is to say the State Government could not nor could the 'prescribed authority' if there was any under S. 5 (2), delegate the power to anybody else to consider the objection. This was so because of the provisions of S. 10 of the Act; that the State Government had by the rule framed by it under the Act constituted the Transport Commissioner 'the prescribed authority' under the provisions of S. 5 (2) and, therefore it was either for the State Government itself or for the Transport Commissioner to hear those objections. The notification stating that the Governor was to consider the objections indicated that it was the State Government which was to consider them. The hearing of the objections by the Deputy Secretary must, therefore, be deemed to have been a hearing by the Governor through an officer subordinate to him in view of fact that the ultimate notification that was published after the objections had been entertained and heard and stated that 'the Governor is pleased to order the publication of the scheme hereto annexed which has been confirmed under sub-s. (2) of S. 5 of the said Act.' The schemes finally published held were not open to challenge on the ground that the petitioners had either no opportunity of raising objections or that the objections had been decided by an improper authority or that the procedure followed in deciding those matters was an illegal procedure. **ILR (1951) 1 All 269 : A I R 1954 All 257 (276, 277, 278) (Pt H) (Prs 77, 78, 79, 80) (DB).**

[Reversed on another point in AIR 1954 S C 728.]

——Ss. 4 and 5—Rules under Act, R. 3—Publication of scheme is not the essence of the matter. I L R (1951) 1 All 269 : A I R 1954 All 257 (278) (Pt I) (Pr 82) (DB).

[Reversed on another point in A I R 1954 S C 728.]

——Ss. 4 and 5 — Notification under, in English and Hindi—Contradiction between—Under Art. 348 (1) (b) (iii), notification in English must prevail over Hindi notification. I L R (1951) 1 All 269 : A I R 1954 All 257 (278) (Pt J) (Pr 83) (DB).

[Reversed on another point in A I R 1954 S C 728.]

SECTION 5

——S. 5 — Applicability — Notification under, publishing scheme — Objections for consideration of Governor invited—No prescribed authority under the Act — Objections considered by Deputy Secretary to Government—Held, the hearing of the objections by the Deputy Secretary must be deemed to have been a hearing by the Governor. See Uttar Pradesh State Road Transport Act, 1950 (2 of 1951), S. 4. A I R 1954 All 257 (DB).

[Reversed on another point in A I R 1954 S C 728.]

——S. 5 — Rules under Act, R. 3 — Publication of scheme is not the essence of the matter. See Uttar Pradesh State Road Transport Act, 1950 (2 of 1951), S. 4. A I R 1954 All 257 (DB).

[Reversed on another point in A I R 1954 S C 728.]

——S. 5—Notification under, in English and Hindi—Contradiction between — Under Art. 348 (1) (b) (iii), notification in English must prevail over Hindi notification. See Uttar Pradesh State Road Transport Act, 1950 (2 of 1951), S. 4. A I R 1954 All 257 (DB).

[Reversed on another point in A I R 1954 S C 728.]

SECTION 6

——S. 6 (2)—Applicability—Notification under, publishing scheme — Objections for consideration of Governor invited — No 'prescribed authority' under the Act—Objections considered by Deputy Secretary of Government—Held, the hearing of the objections by the Deputy Secretary must be deemed to have been a hearing by the Governor—The schemes finally published held were not open to challenge on the ground of want of opportunity to raise objections or that the objections were decided by improper authority. See Uttar Pradesh State Road Transport Act, 1950 (2 of 1951), S. 4. A I R 1954 All 257 (DB).

[Reversed on another point in A I R 1954 S C 728.]

SECTION 7

——S. 7—Validity.

Section 7 gives a right to the executive authority to make certain orders in respect of specified matters; by this section the executive authority has not been vested with the power to either cancel or modify any previous legislation. Section is not therefore ultra vires. I L R (1951) 1 All 269 : A I R 1954 All 257 (275) (Pt G) (Pr 75) (DB).

[Reversed on another point in A I R 1954 S C 728.]

SECTION 11

——S. 11 (2)—Validity.

The provisions of S. 11 (2) of the Act are ultra vires the State Legislature. A I R 1952 All 866, Foll. I L R (1951) 1 All 269 : A I R 1954 All 257 (271, 272) (Pt D) (Pr 54) (DB).

[Reversed on another point in A I R 1954 S C 728.]

U. P. SUBORDINATE REVENUE EXECUTIVE (TAHSILDARS) RULES (1944)

RULE 14

——R. 14 — Termination of probation and reversion to substantive post as punishment — No opportunity to show cause given — Order violates Art. 311 (2)—Civil Service (Classification, Control and Appeal) Rules, R. 55 violates Art. 311 (2) — Merely asking for explanation is not giving opportunity to show cause —Order under R. 14 of the Subordinate Revenue Executive (Tahsildars) Rules, 1944, nature of—Order of punishment by reversion of probationary Tahsildar cannot subsequently be converted retrospectively into an order under R. 14, Subordinate Revenue Executive (Tahsildars) Rules. See Constitution of India, Art. 311 (2). A I R 1963 All 377 (DB).

[Reversed in A I R 1966 S C 1842.]

RULE 17

——R. 17 — Amendment to, made on 8-1-1963 with retrospective effect from 15.3-1962—Such retrospective amendment held could be made. See Constitution of India, Art. 309, Proviso. A I R 1964 All 356.

——R. 17—Rule held not dsicriminatory. See Constitution of India, Art. 14. A I R 1954 All 356.

U. P. SUGAR-CANE CESS ACT (22 of 1956)

SECTION 1

——S. 1 (3)—Validity of.

In reality S. 3 of the impugned Act did not become law until the 23rd June 1956, but the Legislature has expressly stated that that section is to be treated as if it had become law on the 26th January 1950. The petitioner's liability for payment of the tax imposed by that section is to be determined on the assumption that the section was in force since the 26th January 1950, and it makes no difference whether the tax is levied on goods or on their entry. In either case the charging section must be considered in law to have been in force prior in time to the entry of the sugar-cane in respect of which the State Legislature seeks to recover the tax from the petitioners. A I R 1957 All 159 (165) (Pt G) (Pr 29) (DB).

SECTION 3

● ——S. 3 — Validity — Local area — Meaning of—Premises of factory not a local area — Section not within Entry 52 of List 2 and hence ultra vires.

Majority view, Ayyangar, J. contra : — The proper meaning to be attached to the words 'local area' in Entry 52 of the State List in the Seventh Schedule of the Constitution, (when the area is a part of the State imposing the law) is an area administered by a local body like a municipality, a district board, a local board, a union board, a panchayat or the like. The premises of a factory is, therefore, not a local area. It must therefore be held that S. 3 of the U. P. Sugarcane Cess Act, 1956, empowering the Governor to impose a cess on the entry of sugarcane into the premises of a factory did not fall within Entry 52 of the State List. There is no escape from the conclusions that this law was beyond the legislative competence of the State Legislature. The law as enacted in S. 3 of the U. P. Sugarcane Cess Act, 1956, must therefore be struck down as invalid. I L R (1942) All 302 : A I R 1942 All 156, Overruled ; Writ Petn. No. 327 of 1956, dated 29th October 1956 (All), Reversed.

Per Ayyangar, J.—Section 3 of the U. P. Act would be invalid only in so far as it seeks to levy a tax on cane entering a factory from within the same local area in which the factory is situate and that in all other cases the tax is properly levied. A I R 1941 F C 72, Rel. on. Diamond Sugar Mills, Ltd. v. State of Uttar Pradesh, (1961) 1 S C J 652 : (1961) 2 S C A 51 : (1961) 3 S C R 242 : I L R (1961) 1 All 573 : A I R 1961 S C 652 (658, 662) (Pt A) (Prs 25, 26, 45, 49).

——S. 3 (1)—Constitutional validity—The Court will incline towards the constitutionality of an enactment. See Constitution of India, Art. 14. A I R 1957 All 159 (DB).

——S. 3 (1)—Validity. S. 3 (1) neither permits discrimination nor does it exceed the permitted limits of delegated legislation. See Constitution of India, Arts. 14 and 254 (1). AIR 1957 All 159 (DB).

——S. 3 (1)—Local area—It cannot be contended that tax under S. 3 (1) is not such a tax under entry 52 because the cess is levied on the entry of goods into an area which is not a local area within the meaning of entry 52 of the State list. See Constitution of India, 7th Sch. List 2, Entry 52. AIR 1957 All 159 (DB).

——S. 3 (1)—Legislation—Competency of—It cannot be said that the cess imposed by the impugned act is a duty of excise and consequently ultra vires of the State legislature. See Constitution of India, 7th Sch. List 1, Entry 84 and Entry 52. AIR 1957 All 159 (DB).

——S. 3 (3)—Validity.

The provision for payment of interest of unpaid tax cannot be regarded otherwise than ancillary to the provision for payment of tax, and if the latter can be made retrospective in operation so also can the former. The tax imposed must be regarded as a cess at the rate of three annas a maund with interest there-

on at 6 per cent. per annum from the date prescribed under S. 3 (2) until payment. AIR 1957 All 159 (166) (Pt J) (Pr 35) (DB).

——S. 3—Scope—Absence of notification—Effect.

No notification purporting to impose a cess on a factory issued under S. 3 of the impugned Act or S. 20 of the 1953 Act — Demand of cess held invalid so far as it purported to be demand under the impugned Act. AIR 1957 All 159 (167) (Pt L) (Pr 42) (DB).

SECTION 9

——S. 9 (2)—Scope and effect of—If invalid.

Section 9 (2) does not purport to enact that the earlier notifications shall be valid but it enacts that such notifications are to be treated for all purposes as notifications made under the impugned Act and is valid. If the impugned Act be a valid piece of legislation then all notifications duly made under it, or deemed to be so made, will also be valid. AIR 1957 All 159 (165, 166) (Pt H) (Pr 30) (DB).

——S. 9 (2)—Validity.

The impugned Act must be read as whole, and in construing S. 3 (1) the provisions of S. 9 (2) cannot be ignored or disregarded. The State Government is vested under S. 3 (1) with the power to issue notifications; but it is at the same time, by virtue of S. 9 (2) obliged to take into consideration the fact that earlier notifications are, in law, notifications made under the impugned Act which it can no doubt modify or abrogate but cannot ignore. It cannot therefore be said that S. 9 (2) is ineffective as the earlier notifications have not been re-issued. AIR 1957 All 159 (166) (Pt I) (Prs 31, 32) (DB).

U. P. SUGARCANE (REGULATION OF SUPPLY AND PURCHASE) ACT (24 of 1953)

PREAMBLE

● ——Preamble—Constitution of India, Art. 254 (2)—U. P. Sugarcane (Regulation of Supply and Purchase) Act (24 of 1953) is not repugnant to Industries (Development and Regulation) Act (65 of 1951) (as amended by Act 26 of 1953) and to Essential Commodities Act (10 of 1955). See Constitution of India, Art. 254 (2). AIR 1956 S C 676.

● ——Preamble — Constitution of India, Art. 254 (2), Proviso — Scope — U. P. Sugarcane (Regulation of Supply and Purchase) Act (24 of 1953) and U. P. Sugarcane Regulation of Supply and Purchase Order, 1954 are not repealed by S. 16 of Essential Commodities Act (10 of 1955) or by Cl. 7 of Sugarcane Control Order, 1955. See Constitution of India, Art. 254 (2), Proviso. AIR 1956 S C 676.

● ——Preamble—Constitution of India, Art. 19 (1) (c) —Notification under, dated 27-9-1954—Act and notification do not violate fundamental right guaranteed by Art. 19 (1) (c). See Constitution of India, Art. 19 (1) (c). AIR 1956 S C 676.

● ——Preamble — Constitution of India, Arts. 19 (1) (f) and (g) and 31—Notifications under—Notifications dated 27-9-1954 and 9-11-1955—Act and notifications do not infringe fundamental right guaranteed by Art. 19 (1) (f) and (g) and Art. 31. See Constiturion of India, Art. 19 (1) (f). AIR 1956 S C 676.

● ——Preamble — Constitution of India, Art. 245—Delegated legislation — It is not piece of delegated legislation and is not void. See Constitution of India, Art. 245. AIR 1956 S C 676.

● ——Preamble — Constitution of India, Art. 304—Act is not void on ground that it is violative of Art. 301 — See Constitution of India, Art. 301. AIR 1956 S C 676.

SECTION 15

● ——S. 15—Validity—Fundamental rights guaranteed under Art. 14, Constitution are not violated — Constitution of India, Art. 14. Tika Ramji v. State of Uttar Pradesh, 1956 S C J 625 : 1956 S C A 979 : 1956 All W R (HC) 657 : 1956 S C R 393 : AIR 1956 S C 676 (708) (Pt F) (Pr 47).

SECTION 22

——Ss. 22 and 29—Rules 87 and 96—Offences under Sugarcane Act and Rules — Questions of mens rea in such offences.

Held on facts that the conviction and sentence of the occupier for breach of R. 87 was wholly justified. Rule 81 which deals with a purchasing agent and not with a weighment clerk who is an employee of the factory has no application. Offences under the Sugarcane Act are not criminal in any real sense but are acts which, in public interest, are prohibited under a penalty. The question of mens rea in such offences does not arise. The offences under the rules framed under the U. P. Sugarcane Act are of a technical nature wherein the presence of the element of mens rea is not necessary for constituting an offence arising out of the breach of those rules. AIR 1948 All 276, Rel. on. But held that the occupier could not be convicted under R. 96 in view of the decision of the High Court in Cr. R. 1026 of 1961. Cr. R. 1026 of 1961, Followed. 1964 All L J 1043.

——S. 22 — U. P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954, Rr. 96 and 97—Weighment clerk in sugar mill—Failure to deliver parcha to cartman after weighment—Offence. 1960 All L J 84.

SECTION 29

——S. 29—Held on facts that the conviction and sentence of the occupier for breach of Rule 87 was wholly justified—Rule 81 deals with purchasing agent and not with a weighment clerk—Offences under the Sugarcane Act are not criminal in any real sense but are acts which are prohibited, in public interest, under a penalty. The question of mens rea in such offences does not arise. See U. P. Sugarcane (Regulation of Supply and Purchase) Act (1953), S. 22. 1964 All L J 1043.

U. P. SUGARCANE CESS (VALIDATION) ACT (CENTRAL ACT 4 of 1961)

SECTION 3

● ——S. 3—Order imposing penalty for non-payment of cesses due, passed after 3-2-1961, cannot be sustained. Lakshmi Kant Jhunjhunwala v. State of U. P. 1965 All L J 386 : ILR (1965) 2 All 24 : AIR 1965 All 420 (423) (Pt A) (Pr 8) (FB).

● ——S. 3 — Is invalid. See Constitution of India, Art. 245. AIR 1965 All 420 (FB).

U. P. SUGAR FACTORIES CONTROL ACT (1 of 1938)

SECTION 15

——Ss. 15 (1), 27 (5) (b) — Essentials to constitute offence under S. 27 (5) (b)—Specification of area and factory under S. 15 (1)—Where the order under S. 15 (1) contains the words. 'I hereby reserve villages supplying cane at the following centers' which words do not indicate with precision the area intended to be reserved and under the heading "Name of factory" only the name of the place is mentioned and there is no evidence that there is no other sugar factory at the place, other than the one in question, the two requirements of the section are not fulfilled. See U. P. Sugar Factories Control Act (1 of 1938), S. 27 (5) (b). 51 Cri L J 709 : AIR 1950 All 337 (DB).

SECTION 18

● ——S 18 (2) — Agreement contemplated under S. 18 (2) – Use of prescribed form—Absence of signature of complaining party and omission to fill in the Schedule and to mention area of crop and yield from it—Agreement accepted on both sides and acted upon —Agreement binding between parties — Omissions not material and not sufficient to render agreement invalid—Arbitration clause in agreement — Enforceable if agreed to, even without signature of complaining party. AIR 1956 All 725, Affirmed. Arbitration Act (1940), S 2 (a). Banarasi Das v. Cane Commr., Uttar Pradesh. (1963) Supp 2 S C R 760 : ILR (1963) 2 All 643 : AIR 1963 S C 1417 (1423, 1425) (Pt A) (Prs 16, 22, 23).

——Ss. 18 and 30—Rules framed under S. 30—R. 23 —Existence of agreement—Necessity—Requisites of valid agreement—(Contract Act (1872), S. 10).

In order that the Cane Commissioner may have jurisdiction under R. 23 to decide the dispute, it must first be found that there was an agreement such as is referred to under S. 18 (2) of the Act. S. 18 however does not specifically require that the agreement shall be signed by the parties, and though the form makes provision for the signatures of the parties the omission of the signatures does not vitiate the written agreement, for the signatures are not an essential part of the form. Therefore, if the agreement is substantially in the form prescribed by the rules and the variation is in respect of a matter which is immaterial, the provisions of the rules cannot be said to have been violated or not complied with. 1956 A L J 578 : 1956 All W R (HC) 847 : ILR (1957) 1 All 232 : AIR 1956 All 725 (728) (Pt A) (Prs 10, 12, 13) (DB).

——S. 18 (2) — Agreement required must be written and not oral.

The agreement referred to in S. 18 (2) is a written agreement and not an oral one 1956 All L J 689 : ILR (1958) 1 All 91.

——Ss. 18 and 19 — Sugar Factories Control Rules (1938), R. 23 (1) — Occupier of factory not signing agreement with grower — Cane Commissioner still gets jurisdiction under R. 23 (6).

According to the scheme of the Sugar Factories Control Act and the Rules an offer for the sale of cane is to be made by the grower or the Co-operative Society in the reserved area in Form No. 13 and an agreement in Form No. 12 is to be executed between the Society or the grower and the factory. This agreement in Form No. 12 contains ten paragraphs and the last paragraph provides that any dispute between the parties regarding the matter pertaining to the agreement shall be referred to arbitration in the manner provided in the rules. S. 18 (2) of the Act makes it obligatory on the occupier or manager of a factory to enter into this agreement and to purchase the cane offered by the Society or the grower. According to R. 23 (1) of the Sugar Factories Control Rules any dispute touching this agreement or the one mentioned in S. 19 (2) must be referred to the Cane Commissioner for decision or, if he so directs, to arbitration, but no suit shall lie in a civil or revenue Court in respect of any such dispute.

The object of S. 18 (2) is to compel the occupier or manager to sign the agreement made for him by the officers of the Department and the only thing that is left for him is to sign the agreement. On a plain reading of the wording of S. 18 (2), the proper interpretation is that it does refer to the agreement both before and after the signatures, and it it refers to an unsigned agreement also, the provisions of R. 23 (1) are attracted and any dispute touching the signed, or unsigned agreement must be referred to the Cane Commissioner for decision, who may send it to arbitration, if he so considers proper. It cannot therefore be said that if no such agreement as is provided in S. 18 (2) or 19 (2) is executed the provisions of R. 23 (1) do not come into play at all and that the Cane Commissioner acquires no jurisdiction under this rule to decide the matter himself or to refer it to arbitration. 1954 All W R (HC) 631 : AIR 1955 All 86 (89, 90) (Pt A) (Prs 6, 8, 9).

——S. 18 (2) — U. P. Sugar Factories Control Rules (1938). R. 23 (1) — Agreement not in form No. 12— R. 23 (1) would not apply.

If there is some agreement which is not in Form No. 12 as prescribed by the Rules, the provisions of R. 23 (1) would not apply to it. A specific agreement having been referred to in R. 23 it is that agreement and that agreement alone which would attract the provisions of the Rule. Every agreement to purchase cane whether oral or in writing which is not in the form prescribed by the Rules (Form No. 12) would not be an agreement referred to in S. 18 (2). 1954 All W R (HC) 631 : AIR 1955 All 86 (90, 91) (Pt C) (Pr 11).

——S. 18 (2)—Provisions are mandatory.

Generally speaking, the language of each statute along with other circumstances has to be seen in order to find out whether the statutory direction is mandatory or directory. In cases, however, where the disobedience of a provision is made penal it can safely be said that the provision is mandatory.

The provision in S. 18 (2) concerning the form of agreement is mandatory. The word used here is 'shall' and a penalty for intentionally failing to enter into an agreement is also provided for by S. 27 (3) of the Act. 1954 All W R (HC) 631 : AIR 1955 All 86 (91) (Pt D) (Pr 12).

——S. 18 (2) — Rules under R. 23 — Jurisdiction of Cane Commissioner arises only when there is agreement under S. 18 (2) in form No. 12, Appendix III, Schedule, to Act—It is agreement written and signed —Oral agreement — Cane Commissioner exercising jurisdiction—Decision will be quashed under Art. 226 —(Constitution of India, Art. 226). AIR 1955 N U C (All) 3596.

——Ss. 18 (2), 19 (2), 30 — Rules under S. 30:— R. 23 (1) — Matter touching or pertaining to agreement— Interpretation of—A a sugar company and B a union through which individual cane growers supplied cane to A making an agreement—B undertaking to realise outstanding demands against individual cane growers and making themselves liable to pay entire amount due to A—The amount was to be deducted from the price of cane supplied — A deducted the amount and paid the balance to B — Held, the dispute whether A could or could not deduct the amount from the price of the cane supplied was not a question touching or pertaining to the agreement. AIR 1955 N U C (All) 3298.

SECTION 19

——S. 19—Occupier of factory not signing agreement with grower—Cane Commissioner still gets jurisdiction under R. 23 (6). See U. P. Sugar Factories Control Act (1 of 1938), S. 18. AIR 1955 All 86.

——S. 19 (2)—Agreement under — Matter touching or pertaining to agreement—Interpretation of—A was a sugar Company — B was a Union through whom individual cane growers supplied cane to A—Agreement between A and B—B undertaking to realise outstanding demands against individual cane growers and making themselves liable to pay entire amount due to A—The amount was to be deducted from the price of the cane supplied—A deducted the amount due and paid the balance to B — Held, the dispute whether A could or could not deduct the amount from the price of the cane supplied was not a question touching or pertaining to the agreement. The

dispute could not be referred to the Cane Commissioner. See U. P. Sugar Factories Control Act (1 of 1938), S. 18 (2). AIR 1955 NUC (All) 3298.

SECTION 27

——Ss. 27 (5) (b) and 15 (1) — Essentials to constitute offence under S. 27 (5) (b) — Specification of area and factory under S. 15 (1).

The essential element required to constitute an offence under S. 27 (5) (b) is the existence of a proper order under S. 15 (1) specifying the area reserved from which the accused is alleged to have purchased sugarcane in contravention of S. 18, and also specifying the factory for which the area is reserved.

Where the order under S. 15 (1) contains the words "I hereby reserve villages supplying cane at the following centres" which words do not indicate with precision the area intended to be reserved and under the heading "Name of factory" only the name of the place is mentioned and there is no evidence that there is no other sugar factory at the place, other than the one in question, the two requirements of the section are not fulfilled. 1950 All L J 100 : 1950 All W R 248 : 1950 All Cri Cas 87 : 51 Cri L J 709 : AIR 1950 All 337 (337, 338) (Prs 5, 6, 8) (DB).

SECTION 30

● —S. 30 (2) (u) — Validity—Difference in procedure for disputes being decided by Cane Commissioner and Arbitrator or Board of Arbitration — Art. 14 of the Constitution, not violated — Provision for appeals against certain orders or decisions in Rules—Not ultra vires rule-making power. See U. P. Sugar Factories Rules (1938), R. 23. AIR 1963 SC 1417.

——Ss. 30 and 18 — Rules framed under S. 30—R. 23—Existence of agreement—Necessity—Requisites of valid agreement—If the agreement is substantially in the prescribed form and the variation is in respect of immaterial matters the provision cannot be said to have been violated. See U. P. Sugar Factories Control Act (1938), S. 18. AIR 1956 All 725 (DB).

——S. 30 — Rules framed under R. 23 — Validity — Powers of Cane Commissioner — Words 'award' and 'decision' — Meaning—R. 23 held can survive independently of sub-rule (6) which sub-rule is invalid. 1956 All L J 578 : 1956 All W R (HC) 847 : I L R (1957) 1 All 232 : AIR 1956 All 725 (729, 730) (Pt C) (Prs 15, 16, 17, 21, 25 26, 27, 29) (DB).

——S. 30—Sugar Factories Control Rules (1938), Rule 23 (1)—Cane Commissioner is not the final authority to decide the question of interpretation of the Rules—He is not the final judge to decide whether he has jurisdiction or not to deal with matter. 1954 All W R (HC) 631 : AIR 1955 All 86 (90) (Pt B) (Pr 10).

——S. 30 (2) (v) — U. P. Sugar Factories Control Rules (1938), Rule 23—"A Decision" of Cane Commissioner and "award" of arbitrator are not the same—Against award provided but no appeal against decision of Cane Commissioner — There is no discrimination—No infringement of 'Art. 14.'

The expressions "decision by the Cane Commissioner" and "the award by the arbitrators" in S. 30 (2) (v) have been used in a manner so as to clearly indicate that the decision is something different from an award and it would be doing violence to the language used in R. 23, if it were held that the decision by the Cane Commissioner is also called an award by the arbitrator.

Rule 23 of the Sugar Factories Control Rules permits the Cane Cammissioner to decide the dispute himself or to refer it for arbitration and also that an appeal lies against the decision of the arbitrator or the Board of arbitration but no appeal lies against the decision of the Cane Commissioner. It is true that the right of appeal is a valuable right and giving one person a right of appeal and denying the same another similarly situated will generally be taken to be an act of improper discrimination, but the other test is whether in the circumstances of a particular case this denial of right of appeal has substantially prejudiced the party.

No substantial prejudice is caused to a person by deprivation of this right of appeal when the dispute is determined by the Cane Commissioner himself. In view of the position of the Cane Commissioner, a denial of right of appeal against his decision cannot be said to be an act of improper discrimination. The provision of this law is not discriminatory and it does not deny equality of law or equal protection of laws and is thus not inconsistent with Art. 14. 1954 All W R (HC) 631 : AIR 1955 All 86 (92, 93, 94) (Pt E) (Prs 17, 18, 19).

——S. 30 — Rule under S. 30 — R. 23 (1) — Matter touching or pertaining to agreement—Interpretation of—A was a sugar company—B was a union through whom individual cane growers supplied cane to A—Agreement between A and B—B undertaking to realise outstanding demands against individual cane growers and making themselves liable to pay entire amount due to A—The amount was to be deducted from the price of the cane supplied — A deducted the amount due and paid the balance to B — Held, the dispute whether A could or could not deduct the amount from the price of the cane supplied was not a question touching or pertaining to the agreement. The dispute could not be referred to the Cane Commissioner. See U. P. Sugar Factories Control Act (1 of 1938), S. 18 (2). AIR 1955 NUC (All) 3298.

U. P. SUGAR FACTORIES CONTROL RULES (1938)

RULE 19

——Rr. 19 (12) and 25 — Roads leading to weigh bridge not kept metalled — Existence of pits and trenches on either side of the parking space—Liability of Manager of factory.

Where though roads leading to weigh bridges were made, if they are not kept metalled and in proper condition as required by R. 19 (12) of the U. P. Sugar Factories Control Rules, the manager of the factory would be liable to be convicted under R. 25 of the rules. Similarly, where though parking space is provided for carts waiting their turn, it is found divided by digging pits and trenches, the manager of the factory would be liable as in the previous case. 1951 All W R (HC) 214.

RULE 23

● ——R. 23—Validity—If disputants voluntarily agree to follow procedure there can be no discrimination—Difference in procedure for disputes being decided by Cane Commissioner and arbitrator or Board of Arbitration—Art. 14 of the Constitution, not violated—Provision for appeals against certain orders or decisions in Rules — Not ultra vires rule-making power — Constitution of India, Art. 14—U. P. Sugar Factories Act (1 of 1938), S. 30 (2) (u)—Rule-making power—Sope of cl. (u) of sub-s. (2).

Per majority (Raghubar Dayal, J., contra) :

Rule 23 (6) of the U. P. Sugar Factories Control Rules, 1938 is not ultra vires the Provincial Government and the rule as a whole does not offend Art. 14 of the Constitution. Clause (u) of S. 30 (2) of U. P. Sugar Factories Act, conferred a general power to make rules for the resolving of disputes either by the Cane Commissioner or if he so directs, by arbitration sub-r. (6) of R. 23 providing for an appeal against the decision of the arbitrators must be considered as a rule giving effect to the provision of S. 30 (2) (u) providing for the resolving of disputes by arbitration. Sub-r. (6) was thus within the rule-making

power of the Provincial Government. AIR 1956 All 725, Affirmed.

Raghubar Dayal, J., contra.

The entire R. 23 is to be struck down both because in the present form it is discriminatory and because sub-r. (6) is void inasmuch as the State Government had no power to enact it and it is not severable from the rest of the rule.

There is nothing in sub-r. (1) of R. 23 to suggest that the Cane Commissioner can refer the dispute to arbitration by arbitrators only when the parties agree to have the dispute so settled. In the absence of such a provision, the discretionary power of the Cane Commissioner cannot be restricted.

It is clear from the various provisions of R. 23 that there is a difference in the procedure for the dispute being decided by the Cane Commissioner and the dispute being decided by the arbitrator or Board of Arbitration. In the former case, the decision of the Cane Commissioner is final and enforceable by the Civil Court referred to in sub-r. (8). In the latter case, the award of the sole aribitrator or the Board of Arbitration is appealable. It follows that the procedure provided by R. 23 for decision of the dispute touching the agreement is such that parties similarly situated may have the dispute decided by different persons and by different procedures according to the inclination of the Cane Commissioner. The rule therefore offends against Art. 14 of the Constitution and is void.

The right to appeal is a substantive right and is to be conferred on a party by or under the Act. Sub-r. (6) of R. 23 providing for an appeal to the Commissioner against the order of the arbitrator or Board of Arbitration is void in the absence of a provision in the Act providing for an appeal. Sub-r. (6) is not severable Therefore, the entire R. 23 is to be struck down both because in its present form it is discriminatory and because sub-r. (6) is void inasmuch as the State Government had no power to enact it and it is not severable from the rest of the rule. Banarsi Das v. Cane Commissioner, Uttar Pradesh. **(1963) Supp 2 S C R 760 : ILR (1963) 2 All 643 : AIR 1963 SC 1417 (1426, 1427, 1428, 1429, 1430) (Pt B) (Prs 27, 31, 34, 36, 37, 43, 44, 45).**

—— R. 23—Rules framed under S. 30—R. 23 — Existence of agreement — Necessity — Requisites of valid agreement — Must be in the prescribed form—Variations immaterial matters does not violate the provision of law. See U. P. Sugar Factories Control Act (1938), S. 18. AIR 1956 All 725 (DB).

—— R. 23 — Rules framed under R. 23 — Validity — Powers of Cane Commissioner — Words 'award' and 'decision' — Meaning — R. 23 held can survive independently of sub-r. (6) which sub-rule is invalid. See U. P. Sugar Factories Control Act (1 of 1938), S. 30. AIR 1956 All 725 (DB).

—— R. 23 (1)—Arbitration Act, S. 2—'Dispute touching or pertaining to agreement' meaning of—Jurisdiction of Cane Commissioner — A a sugar company and B a union through which individual cane growers supplied cane to A entered into an agreement—B undertaking to realise outstanding demands against individual cane growers and making themselves liable to pay entire amount due to A—The amount was to be deducted from the price of the cane supplied—A deducted the amount and paid the balance to B—Held the dispute whether A could or could not deduct the amount from the price of the cane supplied was not a question touching or pertaining to agreement. The dispute could not be referred to the Cane Commissioner. See Arbitration Act (1940), S. 2. AIR 1956 All 601.

—— R. 23 (1)—Scope and applicability.

There must be an agreement in writing before the provisions of sub-r. (1) of R. 23 can be attracted to it, and if there is no such agreement in writing the cane commissioner will have no jurisdiction to decide the dispute between the sugar factory and the Cane Growers Co-operative Society. Special A. No. 158 of 1954 D/- 2-2-1956, Disting. **1956 All L J 689 : ILR (1958) 1 All 91.**

——R. 23 (1)—Occupier of factory not signing agreement with grower — Cane Commissioner still gets jurisdiction under R. 23 (6). See U. P. Sugar Factories Control Act (1 of 1938), S. 18. AIR 1955 All 86.

——R. 23 (1) — Cane Commissioner is not the final authority to decide the question of interpretation of the Rules—He is not the final judge to decide whether he has jurisdiction or not to deal with matter. See U. P. Sugar Factories Control Act (1 of 1938), S. 30. AIR 1955 All 86.

——R. 23 (1)—Agreement not in form No. 12—R. 23 (1) would not apply. See U. P. Sugar Factories Contol Act (1 of 1938), S. 18 (2). AIR 1955 All 86.

——R. 23 — Cane Commissioner acting under has to act judicially — Error of law on face of record of subordinate Court—High Court can quash it. Constitution of India, Art. 226. AIR 1955 NUC (All) 3596.

U. P. SUITS VALUATION RULES (1942)

RULE 3

● —R. 3 (e)—Suit for possession of land only without claiming any relief in respect of buildings and garden standing thereon—Whether affects buildings and garden — Market value of buildings and garden should be included in valuation for jurisdiction. See Suits Valuation Act (1887), S. 3. AIR 1957 All 402 (FB).

● ——R. 3 (e) — Scope — If ultra vires — Rule is not ultra vires. See Suits Valuation Act (1887), S. 3. AIR 1957 All 402 (FB).

U. P. (SUPPLEMENTARY) CLOTH (CONTROL OF MOVEMENT) ORDER (1947)

CLAUSE 3

——Cl. 3 — Order has not been withdrawn or rescinded by general permit issued by Textile Commissioner.

The Provincial Order of 1947 (U. P. Supplementary) Cloth (Control of Movement) Order (1947) had not been withdrawn or rescinded by Notification No. 101/19-Tax, 1/48 dated the 10th Sept. 1948 and the General permit issued by the Textile Commissioner and the movement of cloth within the sector in defiance of that order remained an offence.

The Textile Commissioner had at the most co-ordinate authority with Provincial Government and although he recommended that the Provincial authorities should act in a particular manner, he cannot override or cancel the orders of the Provincial authority, nor did he purport to do so in the above circular. **1951 All Cri R 47 : 1951 All W R (HC) 563 : 52 Cri L J 760 : AIR 1951 All 243 (244) (Prs 10, 11)**

U. P. (TEMPORARY) ACCOMMODATION REQUISITION ACT (25 of 1947)

See under Houses and Rents.

U. P. (TEMPORARY) CONTROL OF RENT AND EVICTION ACT (3 of 1947)

See under Houses and Rents.

U. P. TEMPORARY CONTROL OF RENT AND EVICTION (AMENDMENT) ACT (24 of 1952)

See under Houses and Rents.

U. P. (TEMPORARY) CONTROL OF RENT AND EVICTION ORDINANCE (3 of 1946)

See under Houses and Rents.

U. P. (TEMPORARY) CONTROL OF RENT AND EVICTION RULES (1947)

See under Houses and Rents.

U. P. TEMPORARY CONTROL OF RENT AND EVICTION RULES (1949)

See under Houses and Rents.

U. P. TEMPORARY POSTPONEMENT OF EXECUTION OF DECREES ACT (10 of 1937)

See under Debt Laws.

U. P. (TEMPORARY) STORAGE REQUISITION ACT (12 of 1947)

SECTION 3

——S. 3—Proviso—Prior sanction.

Where the building was never used for storage purposes the order of requisition could be passed by the Collector only with the prior sanction of the State Government. The subsequent sanction cannot ratify the act of the Collector. 1953 All W R (HC) 74 : 1953 All L J 23 : AIR 1953 All 444 (444, 445) (Prs 2, 3) (DB).

U. P. TENANCY ACT (17 of 1939)

See under Tenancy Laws.

U. P. TENANCY (AMENDMENT) ACT (10 of 1947)

See under Tenancy Laws.

U. P. TOWN AREAS ACT (2 of 1914)

See under Municipalities.

U. P. TOWN AREAS CIRCUMSTANCES AND PROPERTY TAX (ASSESSMENT AND COLLECTION) RULES

See under Municipalities.

U. P. TOWN AREAS (CONDUCT OF ELECTION OF CHAIRMAN) RULES (1953)

See under Municipalities.

U. P. TOWN AREAS (PREPARATION AND REVISION OF ELECTORAL ROLLS) ORDER (1953)

See under Municipalities.

U. P. TOWN IMPROVEMENT ACT (8 of 1919)

See under Municipalities.

U. P. TOWN IMPROVEMENT (APPEALS) ACT (3 of 1920)

See under Municipalities.

U. P. TREASURY MANUAL

PARA 1476

——Paras. 1476, 1476A — Constitution of India, Art. 311—Tahsildar employed by Government Treasurer in U. P. — Not a State employee on ground of direct relationship with State — But being appointed by State servant is himself employee of State—Art. 311 applies to his removal. See Constitution of India, Art. 311. AIR 1961 All 515.

U. P. UNIVERSITIES ORDINANCE (1 of 1959)

——Validity—If affect powers of High Court—(Constitution of India, Arts. 200, Proviso and 213, Proviso (c).)

The validity of U. P. Ordinance (1 of 1959) cannot be challenged on the ground that it is hit by Art. 213, Proviso (c) read with Art. 200, Proviso. This Ordinance in no way purports to affect the powers of the High Court. It may have affected the rights of a party before the High Court but the powers of the High Court have remained the same. If an Act is passed during the pendency of a case which affects the rights of the parties, it cannot be said that there has been any derogation from the powers of the High Court which endangers the position of that Court which by the Constitution it is designed to fill. ILR (1959) 2 All 267 : AIR 1960 All 205 (207) (Pt A) (Pr 8) (DB).

CLAUSE 4

——Cl. (4) — If retrospective — (Interpretation of Statutes).

Clause (4) of the Ordinance makes it clear that it is meant to have retrospective effect. It has been clearly mentioned there, that the term of a member "shall be and be deemed to have been determined with effect from the date or dates mentioned in the orders and notifications." Therefore, this Ordinance was to come retrospectively into effect from the date on which previous notifications had been issued. Unless a Legislature makes an Act specifically retrospective, it shall not affect an existing vested right and if according to the interpretation the Ordinance has not only impliedly and by its intention but expressly taken away the rights retrospectively, then by no manner of interpretation of Statutes, it can be said that the vested rights have been preserved. It is only when a right is vested that a Statute will be deemed to be prospective. It is open to a Legislature to take away a vested right by legislation particularly if it had been vested by a legislation itself: (1941) 1 M L J 746 : AIR 1941 F C 16 and AIR 1950 Bom 236, Dist.; AIR 1936 P C 49; 70 Mad L J 105, Rel. on. ILR (1959) 2 All 267 : AIR 1960 All 205 (208, 209) (Pt C) (Pr 16) (DB).

U. P. VILLAGE ABADI ACT (1947) (3 of 1948)

SECTION 2

——S. 2—Scope.

The village Abadi Act is not concerned with the cessation of sir rights of zamindars in the land. It only provides for the raising of a presumption of the consent of the owner in case a building was found to exist on the land in August, 1947. 1953 All W R (HC) 118 : 1953 All L J 197 : ILR (1954) 1 All 675 : AIR 1953 All 406 (409) (Pt H) (Pr 15) (DB).

SECTION 4

——S. 4 (b) — Applicability to joint land. 1958 All W R (HC) 693 : 1958 All L J 593.

——S. 4 — Retrospective effect — Section does not apply to pending suits in respect of constructions on sahan darwaza made prior to coming into force of Act. AIR 1950 All 505 (506) (Pt B) (Pr 9).

U. P. WHEAT RESTRICTION ON MOVEMENT ORDER (1949)

CLAUSE 3

——Cl. (3) — Prosecution under Essential Commodities Act for contravention of Cl. 3 of Wheat Restriction on movement order—Held on facts that the act of the accused amounted to an attempt to transport grain to another block across the river in contravention of Cl. (3) of the Order, since but for the interrup-

tion the commission of the offence would have been complete – Attempt—Meaning –Preparation and attempt—Distinction. See Penal Code (1860), S. 511. 1962 (2) Cri L J 161 : AIR 1962 All 359 (DB).

——Cl. (3)—Essential Commodities Act (10 of 1955), Ss. 1 and 3 — Validity of Cl. (3) — Norm for regulation of permits provided in Preamble to U P Act (10 of 1955) — Clause does not violate Art. 19 (1) (g) of Constitution.

It cannot be said that Cl. (3) of the U. P. Wheat (Restriction on Movement) Order, 1949, does not provide for norms regulating the grant of permits because the order has been promulgated under the powers given by the Essential Commodities Act, the object of which, as mentioned in the preamble, was to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. The preamble lays down the policy and in a way prescribes the norms in accordance with which a permit is to be granted, Cl. (3) of the Order is not, therefore, hit by Art. 19 (1) (g) of the Constitution. 1962 All L J 13 : 1962 All W R (HC) 46 : 1962 All Cr R 58 : 1962 (2) Cri L J 161 : AIR 1962 All 359 (363) (Pt B) (Pr 20) (DB).

——Cl (3) — Restriction on trade — Nature—U. P. Wheat (Restriction on Movement) Order, 1949, Cl. (3) —Validity — Clause does not violate Arts. 301, 302 and 303 of the Constitution. See Constitution of India, Art 301. 1962 (2) Cri L J 161 : AIR 1962 All 359 (DB).

U. P. ZAMINDARI ABOLITION AND LAND REFORMS ACT 1950 (1 of 1951)

See under Tenancy Laws.

U. P ZAMINDARI ABOLITION AND LAND REFORMS (AMENDMENT) ACT 1952 (16 of 1953)

See under Tenancy Laws.

U. P. ZAMINDARI (ABOLITION AND LAND REFORMS) ORDER (1952)

See under Tenancy Laws.

U. P. ZAMINDARI ABOLITION AND LAND REFORMS RULES (1952).

See under Tenancy Laws.

U. P. ZAMINDARS DEBT REDUCTION ACT (15 of 1953)

See under Debt Laws.

VACATION

See Income-tax Act (1922), S. 10 (1).

VACCINATION ACT (CENTRAL ACT 13 of 1880)

SECTION 16

——Ss. 16, 17, 18, 19, 20, 21 and 22—I. P. C., S. 353 —"While discharging his duty as a public servant"— If the vaccinator vaccinates a child without the consent of the father he cannot be said to be discharging his duty as such public servant under the law. See Penal Code (1860), S. 353. AIR 1954 Madh Bha 33.

VAGABONDS

Arrest of, without warrant.
See Criminal P. C. (1898), S. 88.

VAGABONDS AND HABITUAL OFFENDERS

Arrest of.
See Criminal P. C. (1898) S. 55.

VAKALTNAMA

See (1) Civil P. C. (1908), O. 3, R. 4; O. 41, R. 1.
(2) Stamp Act (1899), S. 2 (21), Art. 48.

Fresh.
See Civil P. C. (1908), O. 3, R. 4; O. 7, R. 10; O. 9, Rr. 9, 13; O. 21, R. 10.

VAKIL

Right to practice.
See Legal Practitioners Act (1879), S. 4.

VALIDITY OF LAWS

See (1) Civil P. C. (1908), Preamble.
(2) Constitution of India, Preamble, Arts. 245, 246, 248, 250 and 254.
(3) Interpretation of Statutes and
(4) Statutory cross references under "Constitution of India—Legislation".

VALUABLE SECURITY

Defined.
See Penal Code (1860), S. 30.

Forgery of.
See Penal Code (1860), S. 467.

VALUATION

Suits, of.
See Suits Valuation Act (1887).

VALUATION FOR COURT-FEES

Decision as to.
See Court-fees Act (1870), S. 12.

VALUATION FOR COURT-FEES AND JURISDICTION

See Court-fees Act (1870), S. 7.

VALUATION FOR JURISDICTION

See Suits Valuation Act (1887), S. 8.

VALUATION FOR PURPOSES OF ESTATE DUTY

See Estate Duty Act (1953), Ss. 2, 39, 40.

VALUE OF SUBJECT MATTER OF APPEAL

See (1) Civil P. C. (1908), S. 110.
(2) Constitution of India, Art. 133.

VALUE PAYABLE POSTAL ARTICLES

See Post Office Act (1898), Ss. 34, 35.

VARIANCE BETWEEN JUDGMENT AND DECREE

See Civil P. C. (1908), S. 11.

VARIANCE BETWEEN PLEADINGS AND PROOF

See Civil P. C. (1908), O. 6, R. 2.

VARIATION OF COTRACT

See Contract Act (1872), Ss. 62 and 63.

VEGETABLE OIL PRODUCT CONTROL ORDER (1947)

——'Dealer' — Person need not exclusively deal in vegetable oil product — Person dealing also with grocery is 'dealer'. AIR 1955 NUC (Cal) 1800 (DB).

CLAUSE 4

——Cl. 4—Adulteration of vegetable oils—Meaning of—No standard fixed under Act—Notification under control order specifying standard for vegetable oil — Vegetable oil not conforming to that standard held

adulterated. See Municipalities — Calcutta Municipal Act (33 of 1951), S. 5 (1) (c)·(v). I L R (1958) 1 Cal 297.

——Cl. 4 (1) — Substitution of 'person' for producer —Effect.

The amendment of Cl. 4 (1) by substitution of the word 'person' for 'producer' by notification No. G O. M. S No. 938, Food and Agriculture, dated 16.5-1950 makes all persons, who stock such goods which are not up to the standard, liable. 70 Mad L W 863 : 1958 Cr L J 387 : (1957) Mad L J (Cr) 797 : AIR 1958 Mad 130 (131) (Pt A) (Pr 5).

——Cl. 4 (1) — Trial for contravention — Giving of portion of oil to dealer for testing—Necessity.

If persons are to be made liable for stocking oil which does not conform to the standard they should be given an opportunity of getting the oil tested through Court. In other words, in food adulteration cases, if the stuff is to be tested by food analyst a portion of the quantity taken must be given to the seller, so that it necessary he can have the test carried out through Court, and thus verify whether the test carried out by the analyst is correct or not. 70 Mad L W 863 : 1958 Cr L J 387 : (1957) Mad L J (Cr) 797 : AIR 1958 Mad 130 (131, 132) (Pt B) (Pr 7).

CLAUSE 5

——Cl. 5 (1)—Notification under—Notification No. S. R. O. 1090, dated 23-12-1950 is not ultra vires of the Essential Supplies (Temporary Powers) Act 1946. See Constitution of India, Art. 19 (1) (g). AIR 1955 NUC (Cal) 1800 (DB).

CLAUSE 8-A

——Cl 8-A—Order No. 2 VP (2)/49, dated 17.12.1949 —Order authorises any police officer not below the rank of Sub-Inspector to exercise the powers of Controller under Cl. 8-A — Sub-Inspector has authority to inspect and search premises for ascertaining whether there is breach of the Control Order. AIR 1955 N U C (Cal) 1800 (DB).

VEGETABLE OILS AND OILCAKES (FORWARD CONTRACTS PROHIBITION) ORDER (1119 M. E.)

CLAUSE 5

——Cl. 5—Exclusion in the Notification — Exclusion applies only where there are delivery orders, railway receipts or bills of lading in respect of contracts and they on their face show that contracts are not transferable to third parties—1950 Mad W N 679, Diss. from. AIR 1955 N U C (Trav Co) 1656 (DB).

VEGETABLE OILS AND OILCAKES (FORWARD CONTRACTS PROHIBITION) ORDER (1944)

——Contract for forward transaction for supply of oilcakes entered into in 1957 — It is a valid contract —Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1944, which expired in 1946, is not kept alive either by Essential Supplies (Temporary Powers) Ordinance, 1946, Essenlial Supplies (Temporary Powers) Act, 1946, General Clauses Act 1897, S. 24, or by Oilcakes (Removal of Control) Order, 1952, Cl. 6.

The Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1944, which expired on 30th September, 1946, is not kept alive by the Essential Supplies (Temporary Powers) Ordinance (No. 18 of 1946) which came into force from 1st October, 1946, and thereafter by the Essential Supplies (Temporary Powers) Act, 1946, as oilcakes were not included in the definition of essential commodity in S. 2 (a) and no order in respect of oilcakes was notified as required by S. 3. S. 5 of the Ordinance and thereafter of the Act kept alive the Prohibition Order of 1944 in respect of those commodities only which were included in the definition of essential commodities. The word "matter" in S. 5 is also qualified by the expression 'specified' in S. 3. Accordingly the Ordinance kept alive only those matters which were specified in S. 3, that is the commodities which were defined as essential commodities under the Ordinance. Thus, while promulgating the Ordinance it was not the intention to keep alive the Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order of 1944.

The consequences which follow from the repeal and re-enactment or the arguments of supersession or inconsistency which would have perhaps been applicable in a case of repeal have no application as the Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order of 1944 lapsed by efflux of time on 30th September, 1946. The provisions of S. 24 of the General Clauses Act cannot apply to such a case. AIR 1958 Madh Pra 162, Rel. on.

Even though by S. 4 of the Essential Supplies (Temporary Powers) Amendment Act, 1950, an amendment was incorporated in S. 2 of the main Act of 1946 and cattle fodder including oil cakes for the first time was included as an essential commodity, yet this amendment or the Act of 1946 was not given retrospective effect. 1952 S C J 496 : (1952) 2 Mad L J 332 : AIR 1952 S C 335 and AIR 1958 Ker 195, Rel. on.

On 26th February 1957 the defendant firm entered into a contract of forward transaction for supply of 250 bags of oilcakes. The delivery was to take place on 13th May, 1957. No delivery of the goods was given and the plaintiff brought the suit for recovery of damages. The main defence to the case was that the contract was of a wagering nature and that forward transactions in vegetable Oil and Oilcakes having been banned by the Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1944, the plaintiff could neither enforce the contract.

Held, that there being no notified order of the Central Government under S. 3 of the Essential Supplies (Temporary Powers) Act the contract was valid. AIR 1963 All 234 (236, 237, 238) (Prs 12, 13, 14, 17).

——Order is continued by Essential Supplies (Temporary Powers) Ordinance (1946)—(Essential Supplies (Temporary) Powers Ordinance (1946), Ss. 3, 5). AIR 1955 N U C (Mad) 2416.

——Forward contract — Enforceability — Benefit of exclusion—Availability—Test.

In a suit for recovery of damages for breach of a contract to sell groundnut oil, the plaintiff's case was that they had applied for delivery of goods on the date mentioned in the contract but that the defendants wanted more time and ultimately as the market was rising the defendants with a view to escape from their liability under the contract alleged that the contract was cancelled at the instance of plaintiff. Therefore the plaintiff claimed the difference in the market rate and the price stipulated in the contract. The defence raised contained a plea that by reason of the provisions of the Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order, 1944, the contract became invalid and unenforceable.

Held, that unless there is a prohibition in the contract preventing the parties from transferring a delivery order or a railway receipt or a bill of lading even though the contract on its face does not contemplate such delivery order, the benefit of the exclusion does not apply. In the circumstances it follows that the plaintiff is not entitled to the benefit of the exclusion and the contract is unenforceable and hence he will not be entitled to damages for

breach of contract. ILR (1951) Mad 723 : (1951) 1 Mad L J 147.

[Overruled in AIR 1964 S C 1526].

CLAUSE 1

——Cl. 1—A contract object of which is to evade the provisions of the Forward Contracts Prohibition Order 1944 is illegal and unenforceable. See Contract Act (1872), S. 23. AIR 1953 Mad 845.

CLAUSE 2

——Cls. 2 (iii) and 5—Forward contracts of wager—Determination of nature test — There must be intention of both parties not to transfer goods—Ascertaining of intention — Pucca Adithiya — Position of — Forward contract in groundnut oil through pucca adithiya — Goods not actually transferred—Pucca adithiya paying difference to seller of goods—Suit by adithiya to recover amount from purchaser—Transaction found by lower Courts as wagering conrract—Conclusion held was finding of fact — **Held**, further that contract was prohibited also by Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order, 1944. See Contract Act (1872), S. 23. **(1965) 1 Andh W R 60 : AIR 1965 Andh-Pra 136 (DB).**

——Cls. 2 (iii) and 5—Exemption notification — Applicability — Contract entered into by pucca adatia with third party on behalf of constituent containing provision for its non-transferability — Contract between pucca adatia and constituent need not contain such provision — Oil Seeds (Forward Contract Prohibition) Order (1943). Cls. 1 (ii), 5. (1962) 1 Andh W R 331 : (1962) 2 Andh L T 41 : AIR 1962 Andh. Pra 350 (356, 357) (Pt B) (Pr 16) (DB).

——Cl. 2 — Contract in oilcakes on 5-12-1950 — Legality:— 1944 Order relating to oilcakes whether continues in force after 30-9-1946.

The Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1944, is not continued or kept in force by virtue of S. 5 of the Central Ordinanance No. 18 of 1946, so far as oilcakes are concerned. Nor does S. 17, read with S. 3 of the Central Act (24 of 1946) keep alive or continue in force the 1944 Order regarding oilcakes. The amendment of S. 2 of Act (24 of 1946), by S. 4 of Act (52 of 1950), for the first time included oilcakes as an essential commodity with effect from 16-8-1950. The amendment is not retrospective and therefore the amendment can take effect only from 16-8-1950. Therefore, unless a special notified order is made, controlling the oilcakes, by virtue of the powers conferred on the Central Government under Central Act (24 of 1946), a contract entered into in oilcakes on 5-12-1950 is not in any way opposed to any law, because there has been really no notified order regarding those commodities. By the mere amendment of the 1946 Act by the 1950 Act, the Order of 1944 relating to oilcakes will not spring back to life. The Central Government could not have issued an order regarding oilcakes under the provisions of Central Act (24 of 1946) till it was amended by Central Act (52 of 1950). After the amendment by Central Act (52 of 1950), unless a notified order is issued by the Government, there will be no prohibition for dealing with the oilcakes. AIR 1952 SC 335 and AIR 1951 Bom 397, Rel. on. Accordingly the suit contract is not in any way affected by the provisions of the Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order of 1944 which has ceased to have effect regarding oilcakes from 1st October, 1946. 1958 Ker L J 708 : AIR 1958 Ker 195 (198, 199. 200, 201) (Pt A) (Prs 22, 25, 27, 28, 29, 32, 37, 38) (DB).

CLAUSE 3

——Cls. 3 and 5 — Notification under Cl. 5, dated 8-1-1944—Exemption under — Forward contract — Contract must ex facie contain prohibition of its transfer to third parties — Contract Act (1872), S. 23 —Forward contract prohibition by order — Arbitration agreement in contract is also illegal.

The test for ascertaining whether a forward contract is exempted from prohibition of Cl. 3 of the Order is to find whether there is ex facie and/or direct provision in the contract in suit providing that the contract is not transferable to third parties.

Held, that the forward contract in suit did not ex facie provide that the bill of lading against the contract was not transferable to third parties and as such was not covered by the exemption notification dated 8th January, 1944. Hence, the contract being in contravention of the order was illegal and invalid and the arbitration clause must be held to be not binding between the parties. Suit No. 602 of 1952 dated 25th February, 1959 (Bom). List, Appeal No. 134 of 1954 dated 9th March, 1956 (Bom) Rel. on. See Arbitration (Protocol and Convention) Act S. 7 (1) (a)—Contract Act (1872), S. 23. **(1962) 64 Bom L R 113 : 1962 Nag L J 709.**

——Cl. 3—C. I. F. Contract for supply of ground nut oil on future date—Validity.

A contract providing for delivery, as contemplated by the Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order (1944) must be any contract under which the goods covered by it will move. It follows that even if contract be a c.i.f. contract and even if so far as the seller is directly concerned, the delivery is only up to the ship and no further, there is still delivery within the meaning of the Order, because the goods are actually moved and they are destined for being landed at the port of destination for the benefit of the buyer. **ILR (1959) 2 Cal 325 : AIR 1959 Cal 328 (333) (Pt E) (Pr 18) (DB).**

——Cl. 3—Forward contract—Contract on 24-7-1944 for supply of groundnut and delivery to be made within the month of August, 1944—Contract held, to be forward contract. **AIR 1955 NUC (Cal) 2904 (DB).**

——Cl. 3—Contract Act, S. 30—Forward Contract is an executory contract become a wagering contract when the parties by common consent agree to speculate only in differences according to the rise and fall in the prices in the market and the delivery of the goods is not in contemplation of either. See Contract Act (1872), S. 30. AIR 1956 Mad 110.

——Cl. 3 — Government notification No. P and S. C. 1 (A)/44, dated 8th January, 1944—Plaintiff claiming exemption granted by notification must prove not only that suit contract is one for specified quality or article and for a specified delivery but also that the benefits under it are not transferable. AIR 1957 Madh Pra 90, Rel. on. 1964 Raj L W 362 : ILR (1964) 14 Raj 840 : AIR 1964 Raj 232 (233, 234) (Pt A) (Prs 7, 8).

CLAUSE 4

——Cl. 4 (ii)—Limitation—Suit for damages—A suit for damages under the Order is governed by Art. 120 and not by Art. 115 of the Limitation Act (1908). See Limitation Act (1908), Arts. 115 and 120. AIR 1957 Andhra Pra 79 (DB).

——Cl. 4—Validity—(Defence of India Rules (1939), R. 81 (2) (a), (b) and (f).)

The provisions of Clause 4 of the Order do not go beyond the power conferred by Cls. (a), (b) and (f) of sub-rule (2) and none of the provisions of the Order is void or ultra vires. (1953) 1 Mad L J 575 : 1953 Mad W N 253 : ILR (1954) Mad 171 : 66 Mad L W 326 : AIR 1953 Mad 711 (712) (Pt A) (Prs 4, 6) (DB).

CLAUSE 5

——Cl. 5—Notification under—Groundnut oil manufactured by seller held fell within notification.

Where a notification issued under Cl. 5 of the Order excluded from the provisions of the order "forward contracts for specific qualities or types of any article to which the said Order applies",

Held. that the groundnut oil manufactured by the plaintiffs and agreed to be sold by them to the defendants would bear its own distinctive mark and identity and could popularly be said to belong to a specific quality or type of groundnut oil. 1960 All L J 46.

——Cl. 5—Forword contracts of wager—Determination of nature — Test — There must be intention of both parties not to transfer goods—Ascertainment of intention, a question of fact — Pucca Adithiya—Position of Forward contract in groundnut oil through pucca adithiya — Goods not actually transferred — Pucca adithiya paying difference to seller of goods—Suit by adithiya to recover amount from purchaser—Transaction found by lower Courts as wagering contract — Conclusion held was finding of fact — Held further that contract was prohibited also by Vegetable Oils and Oil Cakes (Forward Contrats Prohibition) Order, 1944. See Contract Act (1872), S. 23. AIR 1965 Andh Pra 136 (DB).

——Cls. 5 and 2 (iii) — Exemption notification—Applicability — Contract entered into by pucca adatia with third party on behalf of constituent containing provision for its non-transferability — Contract between pucca adatia and constitueut need not contain such provision. See Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order (1944), Cl. 2 (iii). AIR 1962 Andh Pra 350.

——Cl. 5 — Notification under Cl. 5 dated 8-1-44 — Exemption under—Forward contract—Contract must ex facie contain prohibition of its transfer to third parties — Contract Act (1872), S. 23 — Forward Contract prohibition by order—Arbitration agreement in contract is illegal. See Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order (1944), Cl. 3. (1962) 64 Bom L R 113 : 1962 Nag L J 709.

——Cl. 5 — Notification allowing exemption — Requirement for exemption.

In order to qualify for ememption under the notification issued under Cl. 5 of the Order the contract must inter alia be in regard to articles of a specific quality. Oil of a specific quality would be oil of a particular specification, connected, it might be, with the place of its origin or some grade which had been given to it after analysis and examination. Consequently, crude groundnut oil of fair average quality, in respect of which allowance up to a certain percentage for moisture and impurities is granted, cannot be said to be oil of a specific quality. And as the oil concerned is not oil of the specific quality, the contract relating to the supply of such oil on a future date is outside the exemption under the notification. ILR (1959) 2 Cal 325 : A I R 1959 Cal 328 (333, 334) (Pt F) (Pr 19) (DB).

——Cl. 5—Notification dated 8-1-1944 — Scope—No contract, custom or special provision of law prohibiting transfer of railway receipt contemplated under contract—Same is transferable to third parties. AIR 1955 N U C (Cal) 2904 (DB).

——Cl. 5 — Notification under Cl. 5 — Intention of notification—Supply of oil—Delivery of oil drums at godown of plaintiffs — Held, contract was exempted under notification. A I R 1956 Mad 110 (112, 113) (Pt B) (Prs 12, 13).

CLAUSE 7

——Cl. 7 (1) (e)—Arbitration (Protocol and Convention) Act (6 of 1937), S. 7 — Forward contract in vegetable oil with foreign buyer—Arbitratiou clause, integral part of contract—Dispute referred to foreign arbitration — Contract being illegal, award is illegal and cannot be enforced in India—Law applicable is Indian where award is sought to be enforced—Contract Act (1872), Ss. 1 and 28 — International law—Private—Contract.

If the contract is illegal, the awards given by arbitrators in pursuance of arbitration clause in the contract will not be enforceable either under Act VI of 1937 or under general principles of law, applicable to the enforceability of the contracts themselves or of foreign awards made as a consequence of any terms in such contracts. As a principle of both of law and practice and of private international law, a Court will not enforce a contact which is illegal by its own lex fori.

Whether the seller in India entered into forward contract with a buyer in Italy to supply oil to him and the contract was prohibited by Vegetable Oils and Oilcakes (Forward Contracts Probibition) Order 1944 and was not saved by the exception Cl. 7 (1) of the Order, inasmuch as the contract was transferable a suit to enforce the foreign award given on the contract in pursuance of the arbitration clause in the contract, is not maintainable against the seller in India.

Observations :—In the light of dicta in AIR 1962 S C 1810, it has certainly to be held that the observations in (1950) 1 Mad L J 557 and (1951) 1 Mad L J 147 and AIR 1954 Mad 528 to the effect that the contract to come under the exception mentioned in Cl. 7 (1) of the Order, should ex facie contain a prohibition as to transfer, would need reconsideration, and might no longer be the correct exposition of law.

The contracts being opposed to the law in this country and the clause with regard to reference to arbitration being an integral part of the contract, the entire subsequent proceedings of arbitration and award would also be tainted by the same infirmity. AIR 1961 S C 1285 and AIR 1962 S C 1810 and AIR 1963 S C 90 and A I R 1963 Cal 140, Rel. on. 78 Mad L W 68 : I L R (1964) 2 Mad 90 : AIR 1964 Mad 532 (535, 536) (Pt A) (Prs 11, 12, 13, 14) (DB).

VEGETABLE OILS AND OILSEEDS (FORWARD CONTRACTS PROHIBITION) ORDER (1944)

CLAUSE 3

——Cls. 3, 5—Forward Contracts in respect of ground nut oil in October and November. 1947 — Contracts held were not enforceable. AIR 1955 N U C (Orissa) 3973 (DB).

CLAUSE 5

——Cls. 5 and 3 — Forward Contracts in respect of ground.nut oil in October and November 1947 — Contracts held were not enforceable. AIR 1955 N U C (Orissa) 3973 (DB).

VEIL OF CORPORATION, LIFTING OF

See Companies Act (1956), Ss. 34 and 38.

VENDOR AND PURCHASER

See (1) Contract Act (1872), Ss. 70, 73, 76, 146.
(2) Limitation Act (1908), Arts. 83, 116.
(3) Sale of Goods Act (1930), Ss. 31, 61.
(4) T. P. Act (1882), Ss. 3, 54 to 56.
(5) Trusts Act (1882), Ss. 90, 94, and
(6) Statutory Cross-references under (i) "Sale of Goods" (ii) "Transfer of property".

Duties of.

See Sale of Goods Act (1930), S. 31.

Delivery of Goods and payment of price.

See Sale of Goods Act (1930), S. 32.

Sale by description.
See Sale of Goods Act (1930), S. 15.

Sale of Goods pledged.
See Contract Act (1872), S. 176.

VENDOR AND VENDEE

See (1) Sale of Goods Act (1930).
(2) T. P. Act (1882), Ss. 54 to 56 and
(3) Statutory Cross-references under "Sale of Goods."

VENDOR WITH IMPERFECT TITLE

Specific performance of contract for sale.
See (1) Specific Relief Act (1877), S. 18.
(2) T. P. Act (1882), S. 43.

VENERAL DISEASE

Defined.
See Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), S. 2.

VERDICT OF JURY

See Criminal P. C. (1898), Ss. 301, 306.

VERIFICATION OF ADJUDICATION PETITION

See Provincial Insolvency Act (1920), S. 12.

VERIFICATION OF PETITION FOR PROBATE

See Succession Act (1925), S. 281.

VERIFICATION OF PLEADING

See Civil P. C. (1908), O. 6, R. 15.

VERIFICATION OF STATEMENTS IN MATRIMONIAL PROCEEDINGS

See Divorce Act (1869), S. 47.

VESTED INTEREST

See T. P. Act (1882), S. 19.

VESTED RIGHTS

See T. P. Act (1882), S. 19.

VESTING OF LEGACY

For Statutory Cross-references see under "Succession—Legacy".

VEXATIOUS ACCUSATION

See Criminal P. C. (1898), S. 250.

VEXATIOUS AND FRIVOLOUS PROSECUTION

See (1) Criminal P. C. (1898), S. 250.
(2) Tort—Malicious prosecution.

VEXATIOUS COMPLAINT

See (1) Criminal P. C. (1898), S. 250.
(2) Tort.

Compensation.
See Criminal P. C. (1898), S. 250

VEXATIOUS LITIGATION

See Madras Vexatious Litigation (Prevention) Act (1949).

VEXATIOUS SEARCH

See (1) Opium Act (1878), S. 18.
(2) Tort, and
(3) Statutory cross-references under "criminal trial".

VICARIOUS LIABILITY

See Tort—Vicarious liability.

Criminal case
See Penal Code (1860), S. 40.

VICE-PRESIDENT OF INDIA

For Statutory cross-references see under "Constitution of India".

VIKRAM UNIVERSITY

See Madhya Bharat Vikram University Act (18 of 1955).

VIKRAM UNIVERSITY ACT (18 of 1955)

See Madhya Bharat Vikram University Act (18 of 1955).

VILLAGE CHOUKIDARI ACT (BENG. ACT 6 of 1870)

See (Bengal) Village Choukidari Act (1870).

VILLAGE COMMUNITY

See Custom (Punjab).

VILLAGE HEADMAN

See Civil P. C. (1908), S. 2 (17).

VILLAGE MUNSIF

See Civil P. C. (1908), S. 15.

VILLAGE OFFICES

See Statutory cross-references under "Village Servants".

VILLAGE PANCHAYATS

See Enactments under "Panchayats".

Promotion of
See Constitution of India, Art. 40.

VILLAGE SERVICE GRANT OR TENURE

See Government Grants Act (15 of 1895), S. 3.

VILLAGE SERVANTS

See (1) Andhra Pradesh (Andhra area) Hereditary Village Offices Act (3 of 1895).
(2) Bombay Hereditary Offices Act (3 of 1874).
(3) Madras Hereditary Village Offices Act (3 of 1895).
(4) Madras Proprietary Estates Village Services Act (2 of 1894).

VINDHYA PRADESH ABOLITION OF JAGIRS AND LAND REFORMS ACT (11 of 1952)

See under Tenancy Laws.

VINDHYA PRADESH (ADMINISTRATION ORDER (1960)

CLAUSE 5

——Cl. 5 — Existing laws — Vindhya Pradesh Sales Tax Ordinance (1949).

The heading of Cl. (5), Vindhya Pradesh (Administration) Order, 1950, shows that the expression "laws in force" was used in the sense of "existing laws". The Vindhya Pradesh Sales Tax Ordinance, 1949, continued as an existing law under the Vindhya Pradesh (Administration) Order, 1950 and was validly brought into force with effect from 1st April, 1950, under the Chief Commissioner's Notification published in the Gazette, dated 30th March, 1950. AIR 1952 Bom 16, Rel. on; AIR 1951 Vindhya Pra 39, Not Foll. **AIR 1956 Vin Pra 46 (47) (Pt A) (Pr 7).**

——Cl. 5 —"Existing law"—Law in force — Meaning and import of. See Sales Tax — V. P. Sales Tax Ordinance, Ss. 1 (3) and 6 (2). **AIR 1951 Vin Pra 39.**

VINDHYA PRADESH APPLICATION OF LAWS (AMENDMENT) ACT (2 of 1953)

——Applicability of Proviso — Suit for ejectment of trespasser wrongly instituted and pending in civil Court—Tenancy Laws—Ajaigarh (Tenancy Laws Act (1 of 1947), S. 65) — (Tenancy Laws — Rewa Land Revenue and Tenancy Code (1935)).

In a suit for ejectment brought by a tenant a declaration of his tenancy rights is implicit in the relief sought. The forum cannot be changed by asking for a superfluous relief of declaration. Under S. 65, Ajaigarh Tenancy Laws Act a suit for ejectment in which the case of the plaintiff in the plaint was that he was the tenant of the plot and the defendants were trespassers lay in the revenue Court. Whether the plaintiff chose to call that a suit for possession or a suit for ejection that did not alter its nature. Such a suit when brought in a civil Court was wrongly instituted and the plaint would have been ordered to be returned for presentation to the proper Court but not dismissed on the ground that on the plaint allegations it should have been filed in the revenue Courts. But when the suit is pending in the civil Court after the V. P. Application of Laws Amendment Act, 1953, the plaint in the suit would not be ordered to be returned because under the Rewa Land Revenue and Tenancy Code a suit for ejectment of a trespasser lay in the civil Court and if the plaint is returned it would have to be again presented to the civil Court. The proviso to the V. P. Application of Laws Amendment Act will not apply to the case because under the proviso it is only proceedings which have been instituted in the proper Courts and which are pending on the date of commencement of the Act that shall be continued and completed as if there had been no change in the law. **AIR 1954 Vin Pra 40 (40) (Pr 1).**

VINDHYA PRADESH APPLICATION OF LAWS ORDINANCNE (4 of 1948)

SECTION 2

● ——S. 2—As amendded by Ordinance 20 of 1949—Effect.

The effect of these two ordinances was to extend to the entire state of Vindhya Pradesh with effect from 9-8-1948 the criminal law previously in force in the Rewa State, viz , the Indian Penal Code and the Criminal Procedure Code with adaptations mutatis mutandis. But even assuming that section 2 of the Ordinance failed to achieve its purpose on account of misconception as to the previous publication of any particular Rewa law in the Rewa Gazette that Rewa law would continue to be in force in the Rewa portion of United State of Vindhya Pradesh, as the Vindhya Pradesh law therefor, on the principle that on change of sovereignty over an inhabited territory the pre-existng laws continue to be in force until duly altered. 1 Moo Ind Ind App 175 (P C), Foll. Shiv Bahadur Singh v. State of V. P. **(1953) S C R 1188 : 1953 S C A 803 : 1953 S C J 563 : 1953 Cri L J 1480 : AIR 1953 S C 394 (400, 401) (Pt H) (Prs 16, 17, 18).**

● ——S. 2—Effect—Merger of Rewa State in Vindhya Pradesh—Order of Maharaja of Rewa fixing pension of its servant prior to merger — Order has effect as private Act — Binding on new State. See Constitutional Law. AIR 1961 Madh Pra 154 (FB).

[Reversed in AIR 1966 S C 820].

——S. 2—Construction and scope — Rewa Code of 1935—If extended to Garruli State. 1959 M P L J 796: 1959 M P C 469 : 1959 Jab L J 373.

(VINDHYA PRADESH) BANK OF BUNDELKHAND REALIZATION OF ADVANCES ORDINANCE (57 of 1949)

SECTION 1

——S. 1—Scope—Retrospective operation.

Ordinance No. 57 of 1949, does not create any new liability. It only provides a special procedure for the enforcement of a pre-existing liability. Such a procedural law or Ordinance can operate retrospectively. **AIR 1951 Vin Pra 11 (13) (Pr 18).**

SECTION 3

——Ss. 3 and 5—Scope—Section not void as offending against Articles 14 and 31 of the Constitution. See Constitution of India, Arts. 14 and 31 (1). AIR 1951 Vin Pra 11.

SECTION 5

——S. 5—Validity.

Section 5 of the Bank of Bundelkhand Realization of Advances Ordinance (57 of 1949) does not violate any fundamental right. **AIR 1951 Vind Pra 11 (13) (Pt C) (Pr 13).**

VINDHYA PRADESH CLOTH AND YARN DEALERS LICENSING ORDER (No. 3 of 1948)

——Cotton Textiles Control Order—If properly made and duly published—Authentication.

The V. P. Cloth and Yarn Dealers Licensing Order (III of 1948) and the V. P. Cotton Textiles Control Order, which were ostensibly made under the V. P. Essential Supplies Ordinance (XI of 1948) on 30-1-1949, cannot be said to have been properly made, because, though made in the name of the Government of V. P., were made by the Secretary to Revenue Minister, in charge of Food and Civil Supplies, and cannot be deemed to have been made by the Government or the Rajpramukh of Vindhya Pradesh; in the absence of any authenticated copies signed by the Rajpramukh or any order by him authorising either the Minister or the Secretary to the Minister to make such orders.

Further then the printed list of contents described as Extraordinary Gazette which accompanied the cyclostyled material, in which were included both the orders, mentioned only the Licensing Order (3 of 1948) but not the Textiles Control Order, only the first may be presumed to have been published in the Gazette and not the second as no presumption of publication would attach to the second order. **AIR 1951 Vin Pra 47 (48) (Pt A) (Pr 5).**

CLAUSE 2

——Cl. 2 (j)—Vindhya Pradesh Cotton Textiles Control Order, Cl. 33 — Deputy Commissioner not appointed licensing authority under Cl. 2 (j) passing order under V. P. Order Cl. (3) of 1948—D. C. purporting to act under delegation of powers from Textile Commissioner under Textiles Control Order — Order of D. C. Held invalid. AIR 1951 Vindh Pra 47 (49) (Pt C) (Pr 9).

VINDHYA PRADESH COTTON TEXTILES CONTROL ORDER (1948)

——Order not duly published. See V. P. Cloth and Yarn Dealers Licensing Order, 1948. AIR 1951 Vin Pra 47.

CLAUSE 33

——Cl. 33;—Scope—Delegation of Powers by Textile Commissioner to Deputy Commissioner—Validity and effect of to make Deputy Commissioner a Licensing authority under the V. P. Cloth and Yarn Licensing Order. See V. P. Cloth and Yarn Licensing Order, Cl. 2 (j). AIR 1951 Vindh Pra 47.

——Cl. 33 — Essential Supplies (Temporary Powers) Act S. 4—Vindhya Pradesh Cotton Textiles Control Order, S. 33—Delegation of powers by Textile Commissioner is a second delegarion which is not possible under the Central Act of 1946. See Essential Supplies (Temporary Powers) Act (1946), S. 4. AIR 1951 Vindh Pra 47.

VINDHYA PRADESH CRIMINAL LAW AMENDMENT (SPECIAL COURTS) ORDINANCE (5 of 1949)

See under Public Safety.

VINDHYA PRADESH FOOD GRAINS MOVEMENT AND CONTROL ORDER

CLAUSE 3

——Cl. 3 (2)—Ingredients for offence under Cl. 3 (2) are different from those of offence under Cl. 3 (1) — Nature of defence indicated. A I R 1955 N U C (Vindh Pra) 1093.

VINDHYA PRADESH GRAM PANCHAYAT ORDINANCE (24 of 1949)

See under Panchayats.

VINDHYA PRADESH GRAM PANCHAYAT RULES (1949)

See under Panchayats.

VINDHYA PRADESH LAND REVENUE AND TENANCY ACT (30 of 1955)

See under Tenancy Laws.

VINDHYA PRADESH LETTING OF HOUSES AND RENT CONTROL ORDER (1950)

See under Houses and Rents.

VINDHYA PRADESH LAWS VALIDATING ACT (6 of 1952)

SECTION 7

——S. 7—C. P. and Berar Sales Tax Act, S. 2—As extended to Vindhya Pradesh — Valid—Notification under No. S. R. O. 6 D/- 29-12-1950 extending C. P. Act 21 of 1947 to V. P. with modifications in exercise of powers conferred by S. 2, Part C, State Laws Act. 1950 —Central Government Notification No. 52 ECON — Effect of—The Act was to come in force in Vindhya Pradesh from 1-4-1951. Government of Part C States Act (49 of 1951), Ss. 21, 22—Part C States (Miscellaneous Laws) Repealing Act (66 of 1951) effaced V. P. Sales-tax Ordinance 2 of 1949—V. P. Act (6 of 1952) does not re-extend the C. P. & Berar Sales Tax Act to V. P.—Vindhya Pradesh Sales Tax Ordinance (2 of 1949), repealed. See Sales-tax — C. P. & Berar Sales-tax Act (21 of 1947), S. 2. AIR 1962 S C 981.

VINDHYA PRADESH ORDINANCE (15 of 1949)

SECTION 2

——S. 2—Offence under — Possession of mixture of pure ghee and vegetable ghee.

A person found in possession of mixture of vegetable ghee and pure ghee is not guilty of an offence under S. 2 of the Ordinance which prohibits import, sale and possession of vegetable ghee only. 1952 Cri L J 150 : AIR 1952 Vin Pra 3 (4) (Pr 8).

VINDHYA PRADESH ORDINANCE (48 of 1949)

——Adaptations of S. 4, Penal Code and S. 188, in Criminal P. C. in V. P.—Legality —Constitution of India, Art. 20.

Adaptations to S. 4 Penal Code and S. 188, Criminal P. C. by the Raj Pramukh of V. P. in May and in September 1949, by V. P. Ordi. XLVIII (48) of 1949 are not repugnant to existing central law, but are just the bringing of the V. P. laws in line with that of the Dominion Legislature.

Apart from the finding these adaptations can, even if brought in for the first time in May and September 1949, act retrospectively.

Article 20, Constitution of India, has no application because the new law does not create any offence. 52 Cri L J 561 : A I R 1951 Vindh Pra 17 (34) (Pt K) (Prs 111, 112).

VINDHYA PRADESH ORDINANCE (56 of 1949)

——Appeal from decision of Special Judge's Court created by V. P. Ordinance (56 of 1949 lies to the Judicial Commissioner's Court — Single Judge is competent to hear it — (Interpretation of Statutes) — (Bhopal and V. P. Judicial Commissioner's Court Act (41 of 1950), S. 7). 52 Cri L J 561 : AIR 1951 Vin Pra 17.

VINDHYA PRADESH SALES TAX ORDINANCE (2 of 1949)

See under Sales Tax.

VINDHYA PRADESH SUGAR (CONTROL) ORDER (1950)

——Validity of.

The Vindhya Pradesh Sugar (Control) Order 1950 is not properly made, as it purports to have been made under the Vindhya Pradesh Essential Supplies (Temporary Powers) Ordinance 1948 which had already been repealed by the Part C States Laws Act 1950.

Further the Chief Commissioner was not competent to make the order which he made on 1.5.1950 even under the Essential Supplies (Temporary Powers) Act, 1946, as the power to make such an Order was not delegated to him under that Act. 1953 Cri L J 70 : AIR 1952 Vin Pra 86 (87) (Pt A) (Prs 6, 7).

VINDHYA PRADESH TENDU LEAVES ACT, 1953 (6 of 1954)

SECTION 3

——S. 3 (2) (c)—Licence to purchase tendu leaves —Condition in licence restricting it to purchases from contractors only—Condition not justified by S. 3 (2) (c) of the Act nor does R. 4 save it. It is therefore ultra vires and void. See Constitution of India, Art. 19 (6). AIR 1960 S C 994.

VINDHYA PRADESH TENDU LEAVES RULES (1954)

RULE 4

——R. 4—Scope—Licence to purchase tendu leaves —Condition restricting it to purchases from contractors only—Condition not saved by S. 3 (2) (c) of the Act or R. 4 and is therefore ultra vires and void. See Constitution of India, Art. 19 (6). AIR 1960 S C 994.

VIS MAJOR

See (1) Contract Act (1872), S. 56.
(2) Tort—Negligence.
(3) Words and Phrases.

VOIDABLE CONTRACTS

See Contract Act (1872), Ss. 2 (i), (3), 19, 19A and 64.

VOIDABLE MARRIAGE

See (1) Hiudu Marriage Act (1955), Ss. 11, 12.
(2) Mahomedan Law.

VOIDABLE SALE
See (1) Limitation Act (1908), Arts. 44 & 97.
(2) T. P. Act (1882), S. 53.

VOID AGREEMENTS
See Contract Act (1872), Ss. 23, 25, 27, 28, 29, 30.

VOID BEQUESTS
See Succession Act (1925), Ss. 112, 113, 114.

VOID CONTRACTS
See Contract Act (1872). Ss. 2 (j), 20 & 23 to 30.

VOID, CONTRACTS BECOMING
See Contract Act (1872), S. 65.

VOID ELECTION
Grounds for
See Representation of the People Act (1951), S. 100.

VOID MARRIAGE
See (1) Christian Marriage Act (1872), S. 4.
(2) Hindu Marriage Act (1955), Ss. 11, 12.
(3) Mahomedan Law.

Spouse cannot claim maintenance.
See Criminal P. C. (1898), S. 488.

VOLUNTARILY CAUSING GRIEVOUS HURT
See Penal Code (1860), S. 322.

VOLUNTARILY CAUSING HURT
See Penal Code (1860), S. 321.

VOLUNTARY PAYMENT
See Contract Act (1872), Ss. 69, 70.

VOLUNTARY REFERENCE OF INDUSTRIAL DISPUTE
See Industrial Disputes Act (1947), S. 10A.

VOLUNTARY WINDING UP
See Statutory cross-references under (i) "Companies" and (ii) "Insolvency".

VOTE
Right to
See Representation of the People Act (1951), S. 62.
—Fundamental right, if
See Constitution of India, Arts. 226 and 32.

VOTES
See (1) Constitution of India, Arts. 324-326.
(2) Representation of the People Act (1951), Ss. 62-63 and
(3) Statutory cross-references under "Elections".

VOTING
Method and manner of.
See Representation of the People Act (1951), S. 63.

VRITTI
See (1) Civil P. C. (1908), Ss. 9, 60.
(2) T. P. Act (1882), S. 6.

Suit in respect of.
See Civil P. C. (1908), S. 9.

VYAWAHARA MAYUKH
See Hindu Law—Texts.

WAGE BOARD
See Industrial Disputes Act (1947), S. 15, Sch. 2, Item 6.

WAGERING AGREEMENTS AND CONTRACTS
See Contract Act (1872), S. 30.

WAGES
See (1) Industrial Disputes Act (1947), S. 2 (rr), Sch. 3, Item 1.
(2) Minimum Wages Act (1948).
(3) Payment of Wages Act (1936),
(4) Working Journalists (Fixation of Rates of Wages) Act (1958).
(5) Workmen's Compensation Act (1923), S. 2 (1) (m).

Absence from duty.
See Payment of Wages Act (1936), S. 9.

Advances, deductions for.
See Payment of Wages Act (1936), S. 12.

Attachment.
See Civil P. C. (1908), S. 60.

Deductions from,
—Advances.
See Payment of Wages Act (1936), S. 12.
—Damage or loss.
See Payment of Wages Act (1936), S. 10.
—Decision of claims arising out of.
See Payment of Wages Act (1936), S. 15.
—Permissible deduction.
See Payment of Wages Act (1936), S. 7.
—Services rendered, deduction for.
See Payment of Wages Act (1936), S. 11.

Defined.
See (1) Employees' State Insurance Act (1940), S. 2.
(2) Industrial Disputes Act (1947), S. 2 rr.
(3) Minimum Wages Act (1948), S. 2 (h).
(4) Payment of Wages Act (1936), S. 2.

Kind, wages in.
See Minimum Wages Act (1948), S. 11.

Leave period, during.
See Factories Act (1948), S. 80.

Minimum.
See (1) Madhya Pradesh Minimum Wages Fixation Act (16 of 1962).
(2) Minimum Wages Act (11 of 1948).

Minimum wages.
—Fixing of.
See Minimum Wages Act (1948), Ss. 3, 4, 5.
—Payment of.
See Minimum Wages Act (1948), S. 12.

Overtime,
See Minimum Wages Act (1948), S. 14.

Responsibility for payment of.
See Payment of Wages Act (1936), S. 3.

Suit for.
—Limitation.
See Limitation Act (1908), Arts. 7, 102.

Time for payment.
See Payment of Wages Act (1936), S. 5.

Wage period.
See Payment of Wages Act (1936), S. 4.

Worker working for less than normal working day.
See Minimum Wages Act (1948), S. 15.

WAGES IN KIND
See Minimum Wages Act (1948), S. 11.

WAGING WAR
See (1) Constitution of India, Art. 53.
(2) Penal Code (1860), S. 121.

Conspiracy to wage war.
See Penal Code (1860), S. 121A.

WAIVER
See (1) Civil P. C. (1908), Ss. 9, 80, 100-101 and O. 6, R. 2, O. 21, R. 10.

Constitution of India, Art. 226.
Contract Act (1872), S. 55
(2) Evidence Act (1872), Ss. 110, 115.
(3) Limitation Act (1908), Art. 74.
(4) T. P. Act (1882), S. 113.

Notice to quit, waiver of.
See T. P. Act (1882), S. 113.

Notice under S 80, Civil P. C. (1908).
See Civil P. C. (1908), S. 80.

Privilege, waiver of, by prince or chief.
See Civil P. C. (1908), S. 86.

WAJIB-UL-ARZ

See also (1) Civil P. C. (1908), S. 9.
(2) Custom.
(3) Evidence Act (1872), Ss. 35, 49.
(4) Enactments under "Tenancy Laws".

Construction.
—Meaning of words — "Zamindar" Meaning of. See Words and Phrases—'Zamindar". AIR 1955 All 59 (FB).

Evidentiary value.
See Evidence Act (1872), S. 35.

Jubbal State.

——Jubbal State — Scope and applicability — It is optional with the State to make the grant or not of the escheated estate or not, but once it elects to do so, it is bound to follow the order of precedence in the clause. The command is imperative and its obedience has the natural consequences of nullifying the grants made to the strangers. See Civil P. C. (1908), S. 9. **AIR 1954 Him Pra 6 (9, 10) (Pt B) (Prs 11, 14).**

Raigarh District.

——Raigarh Districts, Ss. 28 and 30—Minor ryot—If can allow holding to lie fallow.

There is no reason to suggest that the word "ryot" occurring in S. 28 of the Wajib-ul-arz refers only to adult ryots. The words "Nabalig ryot" occurring in S. 30 (a) of the Wajib-ul-arz suggests that ryots can be minors also, and that such minors will be deemed to be ryots. A "minor ryot" may lease out the holding till he attains the age of 18 years but he certainly cannot allow the holding to lie fallow. **1951 Nag L J 196 (Rev).**

WAKF

See (1) Bengal Wakf Act (13 of 1934).
(2) Bihar Wakfs Act (8 of 1948).
(3) Mahomedan Law—Wakf.
(4) Mussalman Wakf Act (1923).
(5) Mussalman Wakf Validating Act (1913).
(6) U. P. Muslim Wakfs Act (13 of 1936).
(7) Wakf Act (29 of 1954).

Defined.
See (1) Mussalman Wakf Act (1923), S. 2 (e).
(2) Mussalman Wakf Validating Act (1913), S. 2 (1).

WAKF ACT (CENTRAL ACT) (29 of 1954)
SECTION 3

——S. 3 (1)—Scope—Wakf-alal-aulad of Talukdari property by Muhammadan talukdar—Wakf for benefit of wakif, his family and descendants, generation after generation — Validity — Wakf violates rule against perpetuity in S. 12 and is invalid. See Tenancy Laws — Oudh Estates Act (1 of 1869), S. 2. **AIR 1962 S C 1722.**

SECTION 3

——Ss. 3 (1), 28—Nature of Wakfs with which Act deals — Distinction between Wakfs recognised by Muslim law and religious endowments recognised by Hindu law on the one hand and public charitable trusts as contemplated by English law on the other — Trust executed by Nizam of Hyderabad on 14th June, 1954 — Construction — Trust held not a wakf and did not fall within provisions of Act. Nawab Zain Yar Jung v. Director of Endowments, **(1964) 1 S C J 285 : (1964) 1 Mad L J (SC) 84 : (1964) 1 Andh W R (SC) 84 : (1963) 1 S C R 469 : AIR 1963 S C 985 (988, 989, 992) (Prs 9, 10, 11, 12, 13, 20).**

——Ss. 3 (g) and 46 (1) — "Net income" calculation of—Expenses of cultivation to be deducted.

In calculating "net income" for the purpose of S. 46 (1) read with S. 3 (g) the expenses of cultivation must be deducted. "Total income" in S. 3 (g) is income "exclusive" of the expenses of cultivation and "net income" is the total income so defined 'minus' the revenue, cess, rates and taxes payable to the Government or any local authority. (1964) **2 Ker L J 435 : (1964) 2 Ker L R 469 : 1964 Ker L T 367 : (1964) 2 I T J 352 : AIR 1964 Ker 310 (311) (Prs 3, 5, 7, 9, 10, 12) (DB).**

——Ss. 3 (1), 5 (2) — Dedication of properties for charity by testator — Document also creating charge in favour of his two relations on a small extent of income for duration of their lives—Held, that as the document notwithstanding the dispositions in favour of the relations substantially endowed the properties for charity permanently the Wakf Board had jurisdiction to treat the wakf as one coming under the Act—Held also that though the wakf deed mentioned charitable and secular objects, an allocation of income from the wakf properties between the two objects was not necessary before the Wakf Board made a notification under S. 5 (2). **AIR 1965 Mad 121 (122) (Prs 7, 8) (DB).**

——S. 3—Definition of term in Act—It has to be read with due regard to scheme of Act. See Interpretation of Statutes. **AIR 1964 Mad 18 (DB).**

——S. 3 (l)—Wakf—Mutawalli—Vesting of power of alienation of wakf property in — Not inconsistent with wakf under Mahomedan Law. See Mahomedan Law—Wakf. **AIR 1964 Mad 18 (DB).**

——S. 3 (l)—Wakf — Muslim religion does not prohibit charity whereunder non-Muslim is likely to be beneficiary. See Mahomedan Law—Wakf. **AIR 1964 Mad 18 (DB).**

——S. 3 (l)—Wakf—Meaning of — Mode of creating wakf.

Under Mohammadan law, wakf, means permanent dedication of properties for any purpose recognised by law as, religious, pious or charitable. It can be created by adopting his favourite mode of creating wakf or by endowing properties conforming to the law of trusts. **AIR 1964 Mad 18 (20) (Pt A) (Pr 9) (DB).**

——S. 3 (a) and (l) — Beneficiary — In case of public utility wakf should be intended exclusively for Muslim community. **AIR 1964 Mad 18 (22, 23) (Pt F) (Pr 20) (DB).**

——Ss. 3 (a), (l), 25 and 32—Wakf created for object of public utility—When it is not for benefit of Muslim community exclusively it is excluded from operation of Act. **AIR 1964 Mad 18 (23) (Pt G) (Prs 22, 23) (DB).**

——S. 3 (l) — Wakfs — Wakf by immemorial user—Land used for Masjid and for Moharam festival from time immemorial — Land is wakf—Evidence of express dedication not necessary. See Mahomedan Law—Wakfs. **AIR 1962 Orissa 95.**

SECTION 5

——S. 5 (2)—Dedication of properties for charity by testator — Document also creating charge in favour of his two relations on a small extent of income for duration of their lives — Held, that as the document

notwithstanding the dispositions in favour of the relations substantially endowed the properties for charity permanently to the Wakf Broad had jurisdiction to treat the Wakf as one coming under the Act —Held also that though the wakf deed mentioned charitable and secular objects, an allocation of income from the wakf properties between the two objects was not necessary before the Wakf Board made a notification under S. 5 (2). See Wakfs Act (1954), S. 3 (1). AIR 1965 Mad 121 (DB).

SECTION 11

——Ss. 11, 18, 52, 62, 63 and 67—Validity—(Constitution of India, Art. 26 (b) and (d).)

The provisions of Ss. 11, 18, 52, 62, 63 and 67 do not run counter to Art. 26 (b) and (d) of the Constitution and are valid. 1960 M P C 22 : 1960 Jab L J 158 : 1959 M P L J 771 : AIR 1959 Madh Pra 377 (381, 382) (Pt C) (Prs 36, 39 to 42).

SECTION 18

——S. 18 (1) (b) — Removal from membership — Requisites for satisfaction of Government must be honest and bona fide -Chairman adopting course not approved by Board — Member opposing move of Chairman — No prejudice to interest of Wakf—Government removing member for alleged discourteous action — Order held not bona fide and therefore not valid. (1959) 1 M L J (SC) 5 : 1959 S C J 6 : (1959) 1 Andh W R (SC) 5 : AIR 1959 S C 107 : (1947) 2 K B 630, Rel. on. (1963) 2 Andh W R 356 : (1964) 1 Andh L T 96 : AIR 1964 Andh Pra 244 (245, 246, 247) (Prs 5, 6, 7, 8).

——Ss. 18, 11, 52, 62, 63 and 67—Provisions do not violate Art. 26 (b) and (d) of the Constitution — (Constitution of India, Art. 26 (b) and (d)). See Muslim Wakfs Act (1954), S. 11. AIR 1959 Madh Pra 377.

SECTION 25

——Ss. 25, 3 (a), (l) and 32—Wakf created for object of public utility — When it is not for benefit of Muslim community exclusively it is excluded from operation of Act. See Wakf Act (1954), S. 3 (a). AIR 1964 Mad 18 (DB).

SECTION 28

●——Ss. 28, 3 (1) — Nature of Wakfs with which Act deals—Distinction between Wakfs recognised by Muslim law and religious endowments recognised by Hindu law on the one hand and public charitable trusts as contemplated by English law on the other—Trust executed by Nizam of Hyderabad on 14-6-1954 —Construction — Trust held not a wakf and did not fall within provisions of Act. See Wakf Act (1954), S. 3 (1). AIR 1963 S C 985.

SECTION 32

——Ss. 32, 3 (a), (l), 25 — Wakf created for object of public utility — When it is not for benefit of Muslim community exclusively it is excluded from operation of Act. See Wakf Act (1954), S. 3 (a). AIR 1964 Mad 18 (DB).

SECTION 42

——S. 42—Scope—Board appointing a committee of Management, pending decision of dispute—Legality.

Held, that the action of the Board in appointing a Committee of individuals to take over management of the Wakf in face of the dispute could not be said to fall outside the terms of S. 42 of the Muslim Wakfs Act. 1960 M P C 22 : 1960 Jab L J 158 : 1959 M P L J 771 : AIR 1959 Madh Pra 377 (380) (Pt B) (Pr 18).

——S. 42 — Application under S. 42 of Wakf Act (1954)—Wakfs Board has jurisdiction to go into question — Application under Art. 226, premature. See Constitution of India, Art. 226. AIR 1963 Mad 132.

SECTION 43

——S. 43 — Application for removal of mutawali — Wakf Board has jurisdiction to enquire into allegations. AIR 1963 Mad 132 (133) (Pt A) (Prs 3, 4).

SECTION 46

——Ss. 46 (1), 3 (g) — "Net income", calculation of —Expenses of cultivation to be deducted. See Wakf Act (1954), S. 3 (g): AIR 1964 Ker 310 (DB).

SECTION 52

——Ss. 52, 11, 18, 62, 63 and 67—Provisions do not violate Art. 26 (b) and (d) of the Constitution—(Constitution of India, Art. 26 (b) and (d). See Wakfs Act (1954), S. 11. AIR 1959 Mad Pra 377.

SECTION 55

——Ss. 55, 69—Scope and interpretation—S. 55 whether impliedly repeals Ss. 92 and 93, C. P. Code or S. 18, Religious Endowments Act, 1863, so far as wakfs are concerned — Application by any person or authority other than Board for sanction of Collector under S. 93, C. P. Code for institution of suit under S. 92 against trustees of Wakf—Maintainable—Sanction of Board required under S. 55 (2) is in addition to that required under S. 92. C. P. Code. ILR (1962) 2 Ker 187 : 1962 Ker L J 902 : 1962 Ker L T 544 : AIR 1962 Ker 343 (343, 346, 352) (Prs 2, 14, 57) (FB).

——S. 55 (2) — Sanction of Wakf Board to file suit—Conditions — Whether judicial act — Interference under Art. 226 of the Constitution — Granting of sanction by Advocate General under S. 92 of Civil P. C. — Nature of—It is not judicial act. AIR 1964 Mad 247 (250, 251) (Pt B) (Prs 12, 13, 14, 16, 18, 20, 22) (DB).

——S. 55 (2)—Suit relating to a wakf—Order of the Wakfs Board according or refusing sanction to file suit—Writ of certiorari.

The consent or sanction accorded by the Wakfs Board under S. 55 (2) of the Act is only an administrative act of the Board and outside the purview of correction by the issue of a writ of certiorari. 73 Mad L W 649 : ILR (1961) Mad 493 : (1961) 2 MLJ 77 : AIR 1961 Mad 244 (246, 247) (Prs 15, 18).

——S. 55 (1) and (2)—Decision of Board as to filing of suit itself or granting consent to another to file — If judicial or quasi judicial—Correction by certiorari. It is not judicial or quasi-judicial and is out-side the purview of correction by certiorari. See Constitution of India, Art. 226. AIR 1961 Mad 244.

SECTION 59

——S. 59 — Dispute concerning wakf properties in Mysore State — Proceedings under S. 145 — Mysore Muslims Wakf Board is party interested in wakf and is entitled to be impleaded in proceedings. See Cr. P. Code (1898), S. 145 (5). 1962 (2) Cri L J 77 : AIR 1962 Mys 128.

SECTION 62

——Ss. 62, 11, 18, 52, 63 and 67 — Provisions do not violate Art. 26 (b) and (d) of the Constitution—(Constitution of India, Art 26 (b) and (d)) See Wakfs Act (1954), S. 11. AIR 1959 Madh Pra 377.

SECTION 63

——Ss. 63, 11, 18, 52, 62 and 67 — Provisions do not violate Art. 26 (b) and (d) of the Constitution—(Con-

stitution of India, Art. 26 (b) and (d). See Wakfs Act (1954), S. 11. AIR 1959 Madh Pra 377.

SECTION 67

——Ss. 67, 11, 18, 52, 62 and 63 — Provisions do not violate Art. 26 (b) and (d) of the Constitution—(Constitution of India, Art. 26 (b) and (d)). See Wakfs Act (1954), S. 11. AIR 1959 Madh Pra 377.

SECTION 69

——Ss. 69, 55 — Scope and Interpretation — S. 55 whether impliedly repeals Ss. 92 and 93, Civil P. C. or S. 18, Religious Endowments Act, 1863, so far as wakfs are concerned — Application by any person or authority other than Board for sanction of Collector under S. 93, Civil P. C. for institution of suit under S. 92 against trustees of Wakf—Maintainable—Sanction of Board required under S. 55 (2) is in addition to that required under S 92, Civil P. C. See Wakf Act (29 of 1954), S. 55. AIR 1962 Ker 343 (FB).

WALI-UD-DOWLA SUCCESSION ACT (HYD. ACT 16 of 1950)

See Hyderabad Wali-ud-dowla Succession (Decision of Disputes) Act (16 of 1950).

WANDERING AND DANGEROUS LUNATIC

See Lunancy Act (1912), S. 14.

WANT OF JURISDICTION

See (1) Civil P. C. (1908), Ss. 11 and 115.
(2) Constitution of India, Arts. 226 and 32; 227.

WANTONLY GIVING PROVOCATION WITH INTENT TO CAUSE RIOT

See Penal Code (1860) S. 153.

WAR

See (1) Civil P. C. (1908), S. 9—Act of State.
(2) Contract Act (1872), S. 56.
(3) Constitution of India, Arts. 51, 53, 226 and 32, 352.
(4) Penal Code (1860), Ss. 121 to 127.

WARDS

See (1) Bengal Court of Wards Act (9 of 1879).
(2) Guardians and Wards Act (1890).
(3) Hindu Law—Guardianship.
(4) Mahomedan Law—Guardianship.
(5) Mysore Guardians and Wards Act, S. 16.

WAREHOUSE

Defined
See Sea Customs Act (1878), S. 3.

WAREHOUSE KEEPER

Responsibiliy of.
See Sea Customs Act (1878), S. 123.

WAREHOUSING PORT

See Sea Customs Act (1878), S. 3.

WAR INJURIES ORDINANCE (CENTRAL ORDINANCE 7 of 1941)

SECTION 4

——S. 4 — Wrong decision on fact condition precedent to jurisdiction—Such decision may be questioned and the Superior Court has power to quash it by certiorari. See Constitution of India, Art. 226. AIR 1952 Cal 112.

——S. 4—(As amended by Ordinances 1 and 39 of 1942)—War injury—Jurisdiction of Commissioner of workmen's Compensation — Workmen's Compensation Act (1923), S. 19.

The War injuries are regarded as a special class of injury outside the intention and scope of previous legislation and compensation for such injuries is to be determined and paid in accordance with the scheme framed and by the authorities appointed under the Ordinance. (1944) 2 All E R 415; (1946) A C 543, Rel. on. ILR (1952) 2 Cal 412 : 88 Cal L J 137 : 56 W N 73 : AIR 1952 Cal 112 (115, 116) (Pt D) (Prs 26, 29).

WAR MEASURES

See (1) Defence of India Acts (1939) and (1962).
(2) Defence of India Rules (1939).

WARRANT CASE

See (1) Criminal P. C. (1898), Ss. 4 (1) (w) and 251-259 and
(2) Statutory Cross-references under "Criminal Trial.

Acquittal in.
See Criminal P. C. (1898), S. 258.

WARRANT FOR GOODS

Stamp duty.
See Stamp Act (1899), Art. 65.

WARRANT FOR LEVY OF FINE

See Criminal P. C. (1898), Ss. 386, 387.

WARRANT OF ARREST

See Statutory cross references under "Criminal Trial."

WARRANTY

See (1) Sale of Goods Act (1930), Ss. 12 and 13.
(2) T. P. Act (1882), S. 55.

Of title.
See T. P. Act (1882), S. 55.

WAR RISKS (GOODS) INSURANCE ORDINANCE (9 of 1940)

SECTION 7-A

——S. 7-A—Scope — Section 7-A, is the only other provision under which the liability for payment of the premium can be ascertained. See Income-tax Act (1922), S. 10 (2) (iv). AIR 1958 All 612 (DB).

WASHING FACILITIES IN FACTORY

See Factories Act (1948), S. 42.

WASTE

See (1) Hindu Law—Widow.
(2) T. P. Act (1882), S. 76 (Waste by mortgagee in possession), S. 66 (Waste by mortgagor).

Mortgagor by.
See T. P. Act (1882), S. 66.

Mortgagee in possession, by.
See T. P. Act (1882), S. 76.

WASTE LAND

See (1) Custom.
(2) Easements Act (1882), S. 18.
(3) Limitation Act (1908), Arts. 142 and 144.

WASTE LANDS CLAIMS ACT (23 of 1863)

SECTION 1

——S. 1 — Istahar served for 15 days instead of 90 days as required by section — Merely an irregularity. (1962) 28 Cut L T 23.

WATAN

See Bombay Hereditary Offices Act (3 of 1874), S. 4.

WATAN ACT (BOMBAY)

See Bombay Hereditary Offices Act (1874).

WATER CESS

See Madras Irrigation Cess Act (7 of 1865).

WATER CHANNEL

See Easements Act (1882), Ss. 7, 15, 18.

WATER COURSE

See Easements Act (1882), S. 7.

WATER RIGHTS

See Easements Act (1882), Ss. 7, 15, 18.

WATERS

See Statutory cross-references under "Irrigation."

Territorial.

See Constitution of India, Art. 297.

WATER WAYS

See Inland Steam Vessels Act (1917).

WAY

See Statutory cross-references under "Highway".

WEALTH

See Wealth-tax Act (1957).

WEALTH TAX ACT (CENTRAL ACT 27 of 1957)

SECTION 1

——S. 1 — Act is within legislative competence of Parliament under List 1, Entry 86. See Constitution of India, Art. 246. AIR 1963 Mys 111 (DB).

——S. 1—Validity of Act — Act does not contravene Art. 14. See Constitution of India, Art. 14. AIR 1964 Orissa 128 (DB).

——S. 1—Retrospective effect — Computation of net wealth, with reference to assets of previous year on 31st March 1957 justified.

A statute is not retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing. The assets of an individual on 1st April, 1957 are alone liable to wealth tax, but they must necessarily include the assets acquired by him in the previous year. AIR 1962 S C 1006 and (1848) 116 E R 811, Rel. on. (1965) 56 I T R 298 : 1963 I T J (Supp) 146 : ILR (1964) Cut 1 : 30 Cut L T 299 : AIR 1964 Orissa 128 (134) (Pt G) (Pr 19) (DB).

SECTION 2

Sub-section 2 (c).

——Ss. 2 (c) and 2 (e) (v)—Lease in favour of assessee for term of 25 years — Lease-deed enabling either party to determine lease at an earlier time by notice —Leasehold interest of assessee is not an "asset" within the meaning of section.

Where the Government had granted a lease in favour of the assessee in respect of certain salt pans and the covenant in the lease deed, while it purported to be a grant of a lease for a term of 25 years, enabled either party, by notice, to determine the lease at an earlier time, the leasehold interest in the pans was not an 'asset' within the meaning of S. 2 (e) (v) and its value was not includable in the net wealth of the assessee. ILR (1939) Bom 320, Dist. ILR (1965) 1 Mad 577 : (1964) 54 I T R 687 : (1965) 1 I T J 41 : (1965) 1 Mad L J 54 : AIR 1965 Mad 182 (183, 184) (Pt A) (Prs 4, 6, 7) (DB).

Sub-section 2 (d).

——Ss. 2 (d), (g), 45 (d) and 3 — Exemption under S. 45 (d) can be claimed from date of registration of company and not from date it goes into production —See Wealth Tax Act (1957), S. 45 (d). AIR 1965 Ker 101 (DB).

——Ss. 2 (d), 5 (1) (xxi) and Second Proviso — Wealth-tax—Exemption—Company—New and separate unit—When set up — Period of exemption, where operations begun before Wealth-tax Act.

Held, on facts of the case that the proper meaning to be assigned to the expression "set up" in S. 5 (1) (xxi) of the Wealth-tax Act is ready to commence business."

"Setting up" does not mean commencement of the operations for establishment of the factory. The resolution of the Board of Directors, the orders placed for purchasing machinery, and the licence obtained from the Government for constructing the factory are merely initial stages towards setting up however necessary and essential they may be to further the achievement of the end. It is not, however the actual functioning of the factory or its going into production that can alone be called setting up of the factory. Where, though the unit is set up after the Act, the operations for its establishment are commenced earlier than the Act, the exemption will be available to the assessee only for a period of the first assessment years under the Act, in view of the language of the proviso to S. 5 (1) (xxi) and the definition of the expression "assessment year' in S. 2 (d). I L R (1963) Mad 45: (1963) 2 M L J 13: (1963) 1 I T J 604 : (1962) 46 I T R 820 : AIR 1963 Mad 19 (21) (Prs 7, 8, 9) (DB).

Sub-section 2 (e).

——S. 2 (e) (i), 2 (m) (ii). 5 and 25—Zamindari Abolition Compensation Bonds – Retention as security for arrears of agricultural income-tax—Bonds, assessable assets—Agricultural income-tax, whether deductible debt—Wealth-tax Proceedings — Whether administrative or quasi-judicial—Revision by Commissioner —Alternative remedy by way of appeal not availed — Whether amenable to certiorari—Words and Phrases 'Assets in respect of which wealth tax is not payable' — U. P. Agricultural Income-tax Act, 1949 (U. P. Act III of 1949), S. 32.

The proceedings are not amenable to certiorari. When performing their duties under the Wealth-tax Act, 1957, the Wealth-tax Officers and the Commissioners act neither judicially nor quasi-judicially but administratively. The Commissioner's jurisdiction in revision is discretionary. He is not required to hear the assessee before refusing to exercise it. Agricultural income-tax is not a debt which is secured on, or which has been incurred in relation to, any asset in respect of which wealth-tax is not payable under the Wealth-tax Act. Agricultural income-tax is not a tax on agricultural land. The U. P. Agricultural Income-tax Act, 1949 (Act III of 1949) does not contain any provision charging agricultural land with payment of agricultural income-tax. Wealth-tax is not payable on agricultural land, but that is because it is not an asset at all within the meaning of S. 2 (e) (i) of the Wealth-tax Act, and not because it is an assets excluded from wealth tax liability under S. 5. (1960) 40 I T R 200 : (1960) 2 Andh W R 398 ; AIR 1959 A P 508; AIR 1957 Cal 319; (1948) 2 M L J 14 (P C) ; L R 74 I A 306 : I L R (1947) Lah 809 ; AIR 1948 P C 102; AIR 1949 Mad 358 ; AIR 1959 S C 107; AIR 1960 S C 606; AIR 1959 S C 308; AIR 1962 S C 1110; AIR 1962 S C 1217; AIR 1961 S C 609; AIR 1953 Punj 27 ; L R 48 I A 176; 37 M L J 139 : (1919) I L R 45 Mad 146 (P C); (1947) 2 M L J 16 : L R 74 I A 50 ; AIR 1953 Punj 55 ; 8 I C 327 ; AIR 1953 Punj 245 ; (1960) 1 S C J 1065 : (1960) 1 S C R 890; AIR 1956 Cal 450; AIR 1954 S C 202, Ref. I L R (1965) 1 All 171 : (1963) 2 I T J 377; AIR 1963

All 488 (491, 493, 494) (Pts A, F, G) (Prs 7, 12, 13, 14) (DB).

——Ss. 2 (e) (v), (m), 3, 5 (1) (ii) and 7—Wealth-tax—Status — Hindu male having deceased father's estate—Wife and daughters, but no male issue—Hindu undivided family or individual.

As the wife and daughters constituting the other members of his undivided family did not have any rights of ownership over the assets, the assets belonged to him alone on the material dates. AIR 1937 P C 36; (1963) 2 M L J 322 : (1963) 2 I T J 248 : (1963) 48 I T R 959 : I L R (1963) Mad 604 ; (1964) 53 I T R 613 ; (1958) 34 I T R 20 (ED); AIR 1962 S C 59 : AIR 1954 S C 379 ; (1964) 51 I T R 790 ; AIR 1935 Bom 412; AIR 1937 P C 239, Ref. (1965) 2 Andh W R 321 : 65 I T R 579 : (1965) 2 I T J 429 : AIR 1965 Andh Pra 447 (450) (Pt A) (Prs 9, 13, 14) (DB).

——S. 2 (e)—"Assets"—Shares in a limited company —Are assets includible in wealth of an assessee. See Wealth Tax Act (1957), S. 4 (1). AIR 1963 Andh Pra 486 (DB).

——Ss. 2 (e), 4 (1), (2), (18)—Assessee an ex jagirdar — Commutation amount receivable by him for liquidation of his rights in the jagir — Is an asset includible in his net wealth — See Wealth Tax Act (27 of 1957), S. 4 (1). AIR 1963 Andh Pra 486 (DB).

——Ss. 2 (e), 4 (1), Sch., R. 2 — Assets — Shares in Limited company — Are assets includable in net wealth of an assessee.

A perusal of several provisions of the Act makes it undeniably clear that shares in a limited company held by an assessee are assets owned by him and not by the company. I L R (1964) Andh Pra 501 (1963) 1 I T J 497 : (1963) 1 Andh W R 409 : (1963) 50 I T R 216 : AIR 1963 Andh Pra 486 (487) (Pt A) (Pr 2) (DB).

—— S. 2 (e) (i) — 'Agricultural land'—Meaning of—Includes water tank and roads but does not include bridges and water pipes in tea gardens—Forest growing spontaneously not agricultural land. 1965) 2 I T J 850 : 69 Cal W N 428 : AIR 1966 Cal 9 (10, 11, 12, 13) (Prs 4, 5, 6, 7, 9) (DB).

——S. 2 (e) (i)—Agricultural land—Land not actually put to any use — Test to determine whether it is agricultural or non-agricultural — Capacity of land for being put to agricultural use is not determining factor—Other factors to be considered — Plot situate in residential, Town planning Scheme area, lying uncultivated for many years, though assessed for agricultural purposes held non-agricultural land. AIR 1942 F C 27 and AIR 1944 Mad 401 and AIR 1944 Cal 421, Explained; AIR 1951 Orissa 11 and AIR 1963 Mys 111, Disting. (1965) 1 I T J 82; (1965) 56 I T R 608 : AIR 1965 Guj 259 (260, 262) (Prs 4, 9) (DB).

——S. 2 (e) (iv) — Annuity — Definition — Trust deed—Grant of annuity in favour of assessee — Out of income from trust fund only — Corpus to be kept intact—Balance of income — Gift over to charity — Estate sufficient to pay annuity—Bequest of a simple annuity — No right to commutation into lump sum grant — Exclusion from net wealth of assessee — Annuity — Grant out of estate of testator or out of particular fund — To provide an annuity or a direction to purchase annuity — Distinction between two classes — Commutation into lump sum possible in latter class—Principle of latter class embodied in the Succession Act — Indian Succession Act, 1925 (Central Act XXXIX of 1925), S. 174.

An annuity is a right to receive de anno in annum a certain sum; it may be given for life, or for a series of years; or during any particular period, or in perpetuity. Generally an annuity given is for the life unless a contrary intention appears from the deed.

On the terms of the deeds it was held that the annuity was of a simple bequest of an annuity, and that the commutation into a lump sum would amount to breach of trust on the part of the trustees. The assessee was held entitled to exclude the annuity from the computation of his net wealth. L R (1891) 1 Ch 707; L R (1876) 3 Ch D 148; L R (1876) 3 Ch 714; (1860) 28 Beav 637; 54 E R 511; 2 De G M & G 652; 42 English Reports 1027 : L R (1938 Ch 556, Rel. on. L R (1939) Ch 573 : L R (1940) 1 Ch 966, Disting. (1964) 1 I T J 299 : (1964) 53 I T R 393 : (964) 5 Guj L R 1061 : AIR 1964 Gui 240 (244, 245, 246, 247, 248) (Prs 5, 6, 7, 8, 9) (DB).

——S. 2 (e) (v) — Wealth-tax — Lease of immovable property for a term of twenty-five years — Interest determinable on notice on the valid exercise of option of either party — Not an interest available for a period exceeding six years—Not an asset includible in the net wealth. I L R (1939) Bom 320, Ref. I L R (1965) 1 Mad 577 : (1964) 54 I T R 687 : (1965) 1 I T J 41 : (1965) 1 M L J 54 : AIR 1965 Mad 182 (183, 184) (Pt A) (Prs 4, 6, 7) (DB).

——S. 2 (e) — Land used as an airfield cannot be termed agricultural land though originally it was agricultural land. See Words and Phrases — "Agricultural Land". AIR 1963 Mys 111 (DB).

SUB-SECTION 2 (m)

SYNOPSIS

(Wealth Tax Act (1957), Sub-s. 2 (m)).

1. Applicability.
2. Constitutionality.
3. "Net wealth."
4. "Debts owed."

1. Applicability.

——S. 2 (m), Exception (ii) — Arrears of agricultural income-tax due from assessee — Amount to debt — Amount of arrears of tax must be included in the aggregate value of debts owed by the assessee—Exception (ii) has no application to such arrear. (1963) 2 I T J 377 : ILR (1965) 1 All 171 : AIR 1963 All 488 (494, 495) (Pt G) (Pr 14) (DB).

——Ss. 2 (m) and 3 — Wealth — It must belong to assessee. AIR 1965 Andh-Pra 447 (448, 449) (Pt B) (Pr 3) (DB).

——Ss. 2 (m), 7 (1) and (2) (a)—Wealth tax—Business with regular accounts—Balance-sheet—Assets shown at cost, without depreciation—Wealth-tax computation — Assets, whether bound to be valued at cost—Written down value for purposes of income-tax — How far indicative of real value.

Even though the written down value may not in all cases represent the real value of the assets, in normal cases it will give the Wealth-tax Officer a fair idea of its proper value unless the plant and machinery are of a rare type or are of a quality which is not generally available in India and for which there is a great demand. No such uncommon feature is to be found in the present case. (1963) 1 I T J 58 : (1963) 48 I T R 31 : 67 C W N 22 : AIR 1963 Cal 392 ; (1963) 49 I T R 832 ; (1963) 2 I T J 255 : (1964) 52 I T R 482 : (1963) 4 Guj L R 741 : AIR 1964 Guj 154, Ref. (1965) 1 I T J 769 (Cal).

——S. 2 (m) — Applicability — Valuation under Gift Tax Act—Method of determination being different from that under Wealth Tax Act it is error to compute value of gift in the mode laid down by Wealth Tax Act. See Gift Tax Act (1958), S. 6. AIR 1961 Cal 649.

[Reversed on another point in AIR 1965 Cal 70.]

——Ss. 2 (m), 5 (1) (xvi) (before amendment) and 4— 'Held by assessee' — Meaning of—Certificates which stand in name of others are not entitled to exemption though the beneficial ownership vests in the assessee — 21 Ch D 849; 1892 A C 598; (1893) 1 Q B 327, Rel. on. (Interpretation of Statutes — Fiscal Enactments). (1964) 54 I T R 740 : (1964) 5 Guj L R 431.

2. Constitutionality.

—S. 2 (m)—Constitutionality—Whether encroaches on field covered by Sch. 7, List II, Entry 49 of the Constitution. There is no conflict and no overlapping of jurisdiction in the case of the two entries. See Constitution of India, Sch. 7, List 1, Entry 86. AIR 1962 Ker 110 (DB).

——S. 2 (m) — Constitutional validity — Whether pertains to field covered by Sch. 7, List II, Entry 46 of Constitution. A tax on agricultural income as its base or object would fall within Entry 46 in the State List. See Constitution of India, Art. 246. AIR 1962 Ker 110 (DB).

3. "Net wealth"

——Ss. 2 (m) and 5 — "Net wealth" — Zamindari Abolition Compensation bonds of assessee kept by Board of Revenue as security—Bonds do not cease to be assessee's property. (1963) 2 I T J 377 : I L R (1965) 1 All 171 : AIR 1963 All 488 (494) (Pt F) (Pr 13) (DB).

——Ss. 2 (m), 3 and 7 —' Net wealth' — Company's balance sheets — Amounts appearing as liabilities — Whether deductible in determining net wealth of company.

Held, on the facts and in the circumstances of the case that the amounts appearing in the Company's balance sheets as on 31st March, 1957 and 31st March, 1958 after 31st March, 1958 as liabilities for taxes in respect of which the assessments were still pending and dividends which were proposed but not declared were not deductible in determining the net wealth of the company for the assessment years 1957-58 and 1958-59. AIR 1965 Cal 70, Dist. AIR 1964 Guj 154, Dissent from. (1963) 50 I T R 267 (Bom) and AIR 1963 Cal 392, Rel. on. (1965) 2 I T J 846 : AIR 1966 Cal 6 (6, 7, 8, 9) (Prs 1, 4, 7, 9) (DB).

——S. 2 (m) — 'Net wealth' — Valuation of shares in private company — Shares to be valued by reference to company's total assets — Debts and liabilities of company should not be ignored—Valuation must be based on company's real wealth and not artificial wealth computed under S. 2 (m). See Gift Tax Act (1958), S. 6 (3). AIR 1965 Cal 70 (DB).

——Ss. 2 (m) and 3—Net wealth—Computation—'Debt' —Provisions made by assessee to meet future liability, whether deductible in computing the net wealth of the assessee. See Wealth Tax Act (1957), S. 3. AIR 1965 Ker 209 (DB).

——S. 2 (m)—Calculation of 'net wealth' — Income-tax liability of assessee not matured into debt at the date of valuation cannot be allowed to be deducted.

On the date of valuation as the rate at which the income-tax should be calculated was unavailable it must be held that the income-tax liability did not mature into a debt on that date and therefore it could not be allowed to be deducted from the net wealth of the assessee. AIR 1945 PC 62 and AIR 1964 SC 880, Rel. on. (1964) 1 I T J 423 : ILR (1964) 1 Ker 569 : 1964 Ker L T 276 : 1964 Ker L J 768 : (1964) 54 I T R 332 : AIR 1965 Ker 66 (67, 68) (Prs 6, 7, 8, 9, 13) (DB).

[Overruled in AIR 1966 SC 1370].

——Ss. 2 (m), 7 — Net wealth — Amount set apart in balance sheet of assessee on recommendation of directors for payment of dividends cannot be deducted from net wealth — It amounts to liability only upon declaration at general meeting of share-holders — In this respect there is no difference between dividends payable to preference share-holders and ordinary share-holders. AIR 1963 Mad 274 (277, 278, 279) (Prs 11, 16, 17, 18, 22) (DB).

4. "Debts owed".

——Ss. 2 (m), 7 (2) (a) — Debt owed by assessee — Provision for payment of tax—Not a debt.

A provision for payment of income-tax and super tax in the balance sheet of the assessee is not a debt owed on the valuation date within the meaning of S. 2 (m) and if not, as such deductible in the computation of the net wealth. AIR 1963 Cal 392, Rel. on.

(Obiter) It cannot be said that such provisions for payment of income-tax and super tax in the assessee's balance sheet should be deductible in view of the words 'net value' in S. 7 (2) (a) of the Act. AIR 1966 Cal 6, Rel. on. (1965) 2 I T J 850 : 69 Cal W N 428 : AIR 1966 Cal 9 (13) (Pt B) (Pr 8) (DB).

——S. 2 (m)—"Debts owed by the assessee"—Valuation of company's assets—Deduction—Dividend proposed but not declared—It is not "debt owed".

A dividend proposed by the directors does not become a debt until it is declared by the company in a general meeting. (1963) 48 I T R 31 : (1963) 1 I T J 58 : 67 Cal W N 22 : AIR 1963 Cal 392 (395) (Pt B) (Pr 6) (DB).

[Reversed on another point in AIR 1966 SC 1370].

——S. 2 (m)—"Debts owed by the assessee"—Assets of company—Provision made for payment of income-tax and super-tax for accounting year — Meaning of "debt owed"—Liability to pay is not "debt owed"—Amount cannot be deducted.

A debt must be for a liquidated sum of money and it can be either owed or accruing. To merit deduction in the computation of net wealth as contemplated by S. 2 (m) of the Act, the liability must not only be a debt but one solvendum in praesenti. Hence, a debt accruing will not be within the section : it must be a debt owed. Although the assessee is liable to pay income-tax on the valuation date the actual amount of the liability is not ascertained until sometime thereafter by the passing of the Finance Act and determination made by the Income-tax Authorities. In any case no debt is owed by the assessee on the valuation date. The provision, therefore, for payment of income-tax and super-tax in respect of the year of account of the assessee-company, not being a "debt owed", is not deductible in computing the net wealth of the assessee. (1963) 48 I T R 31 : (1963) 1 I T J 58 : 67 Cal W N 22 : AIR 1963 Cal 392 (395, 396, 397, 399) (Pt C) (Prs 7, 9, 12, 16, 38) (DB).

[Reversed in AIR 1966 SC 1370].

——S. 2 (m) — Wealth Tax Rules (1957), Form A — Annexure to Form A — Expressions "liabilities" and "current liabilities" in—These do not control meaning of "debt owed" in S. 2 (m).

The use of the expression "liabilities" and "current liabilities" in the annexure to Form A in the Wealth Tax Rules, 1957, cannot control the meaning of the expression "debts owed" that can be taken into account. Form A does not apply in the case of Companies and further the Forms cannot prevail over the section of the Act. (1963) 48 I T R 31 : (1963) 1 I T J 58 : 67 Cal W N 22 : A I R 1963 Cal 392 (397, 399) (Pt D) (Prs 15, 36) (DB).

[Reversed on another point in AIR 1966 SC 1370].

——S. 2 (m) — 'Debt' owed by assessee—What is—Sum set apart as estimated provisions for meeting future tax liability and final instalment due under S. 18-A, Income-tax Act — Whether such a debt — Income-tax Act (1922), S. 18.A.

The sum set apart by an assessee as an estimated provision for meeting the tax liability in future under S. 18-A of the Income-tax Act is not a debt owed by the assessee on the relevant valuation date within the meaning of S. 2 (m) of the Act.

However, in computing the net wealth of the assessee the final instalment due under S. 18 A of the Income Tax Act which is payable on 15th March, in a financial year constitutes a debt owed by the assessee within the meaning of S. 2 (m) of the Act. (1963) 2 I T J 246 : (1963) 48 I T R 49 : AIR 1963 Cal 112 (113, 114) (Prs 5, 6) (DB).

—— Ss. 2 (m), 4 (3), 6 and 7—Expression 'debts owed by assessee on the valuation date' in S. 2 (m) — Scope and meaning of — Advance payment of income-tax and demand under provisional assessment under S. 18-A, Income-tax Act if deductible from computation of wealth tax—Nature of liability to tax — Does not depend on assessment or on Annual Finance Acts—Application of global valuation—Written-down value and market value — Balance-sheet — Valuation how to be made—Valuation under S. 7 (2) — Words 'as a whole' govern the word 'business'. (1963) 4 Guj L R 741 : (1963) 2 I T J 255 : (1964) 52 I T R 482 : ILR (1963) Guj 1101 : AIR 1964 Guj 154 (160, 161, 164, 165, 167, 168, 169, 170, 171, 172, 173, 174) (Pt A) (Prs 6, 17, 18, 20, 25, 29, 30, 31, 32, 35, 36, 37, 38, 39, 40, 41, 43) (DB).

——S. 2 (m) (iii) — Wealth Tax — Debts owed—Income-tax demand on assessee — Settlement between assessee and Central Board of Revenue—Not under any provisions of Income-tax Act but an executive act—Liability of assessee settled at a lower sum payable at instalments—Default rendering agreement void and enabling recovery of original arrears of tax—Settled liability — Debts owed on the date of the agreement—Not arising under the provisions of Income-tax Act—Computation of net wealth—Deductible—Words and Phrases—"Debts owed."

Held, the sums are deductible as debts owed. The essential requisites of a debt are: an ascertained or readily calculable amount; an absolute unqualified and present liability in regard to that amount with the obligation to pay forthwith or in future within a time certain; the obligation must have accrued and must be subsisting and should not be that which is merely accruing. In construing the expression whether it is "owed" regard cannot be had to payability on a particular date.

A settlement between the assessee and the Central Board of Revenue, not made under any provision of the Income-tax Act, but made as an executive act by which the Government, in view of the impossibility of recovering the total amount demanded, was willing to accept a lesser amount, on agreement in case of default in payment at stated intervals, the agreement would become void and the Government had the right to recover any amounts over and above the settled figure, both in law and fact would put an end to the old claim under the Income-tax Act and bring into existence a new claim altogether. This debt would come into existence on the date of the agreement and being not one made under the provisions of the Income-tax Act at all, it would not fall under the mischief of S. 2 (m) (iii) of the Wealth Tax Act of 1957. (1955) Andh W R 226 : (1955) 28 I T R 189, Ref. (1965) 1 Mad L J 539 : (1965) 58 I T R 301 : (1965) 1 I T J 589 : AIR 1966 Mad 74 (76, 77) (Prs 5, 6) (DB).

——S. 2 (m) — 'Debt owed' — Meaning of—Covers amount relating to advance tax demanded under S. 18A, Income-tax Act and amount payable as per notice under S. 29 of that Act but not amount reserved by assessee for tax liability in anticipation of assessment. (1963) 1 Mad L J 319 : ILR (1964) 1 Mad 520 : (1963) 33 Com Cas 407 : (1963) 48 I T R 1005 : (1963) 1 I T J 343 : AIR 1963 Mad 356 (358, 359, 360) (Prs 7, 11, 14, 15, 19, 21) (DB).

——Ss. 2 (m), 4 (3)—Assessment to estate duty made subsequent to valuation date — It is not "debt" liable to be deducted. (1963) 48 I T R 959 : (1963) 2 I T J 248 : (1963) 2 M L J 322 : ILR (1963) Mad 604 : AIR 1963 Mad 280 (283) (Pt B) (Pr 14) (DB).

——Ss. 2 (m), 3, 7 (1) and 7 (2) — Global valuation method—Company—Balance-sheet — Proposed dividends represented as "current liabilities and Provisions"—Whether allowable in computing net value of assets of business as a whole — Provision for preference dividends, whether stands on a different footing—Company Law — Dividend, when becomes debt of company.

The provision for the proposed dividends made in the balance-sheet as on the valuation date does not operate as an accrued liability and the dividends do not assume the character of debts owed by the company. (1963) 1 M L J 242 : 76 Mad L W 151 : (1963) 33 Com Cas 217 : (1963) 48 I T R 816 : (1963) 1 I T J 241 : ILR (1963) Mad 489 : AIR 1963 Mad 274 (277, 278, 279) (Prs 11, 16, 17, 18, 22) (DB).

——S. 2 (m)—"Debts owed by assessee"—Meaning of debts—Debt may be present or future and ascertained or unascertained — Provision for payment of agricultural income-tax — It is a deductible liability. 1964 Kant L J 16 : (1964) 51 I T R 790 : AIR 1964 Mys 204 (211) (Pt B) (Prs 41, 44) (DB).

Sub section 2 (q).

——S. 2 (q) — Valuation of buildings for assessment of wealth-tax—Valuation though discretionary with Wealth-tax Officer his approach should be judicial—Considerations in valuation — Central Board of Revenue Circular No. 3 W. T. of 1957, D/- 28-9-1957—Scope of—Fixation of true net value—Duty of taxing department — Assessee questioning valuation before Tribunal—Tribunal cannot dismiss appeal on ground that valuation has not been shown to be unreasonable—Lacuna in S. 24 (6), Proviso pointed out. See Wealth-Tax Act (1957), S. 7. (1964) 51 I T R 146 (Mad).

——Ss. 2 (q), 4 (1) (a) (iii) and 3—Assessee transferring his shares in company in favour of trust created by him for benefit of his minor children—Interpretation of trust deed — Value of shares transferred held could be included in computing assets of assessee for purposes of Wealth Tax Act. See Wealth Tax Act (1957), S. 4 (1) (a) (iii). (1965) 58 I T R 492 : AIR 1966 Mys 27 (DB).

SECTION 3

SYNOPSIS

(Wealth Tax Act (1957), S. 3.)

1. Validity.
2. Individuals—Meaning of.
3. Nature and incidence of tax.
4. Hindu undivided family.
5. "Net wealth."

1. Validity.

——S. 3—Section is valid in so far as it purports to tax net wealth of Hindu undivided family—Word 'individuals' in Entry 86 in List I, Sch. 7 of Constitution, includes Hindu undivided family — Interpretation of legislative entries.

Section 3 of the Wealth Tax Act, 1957 (27 of 1957), in so far as it purports to levy a charge on wealth tax in respect of the net wealth of a Hindu undivided

family at the specified rate, is valid because Parliament was competent to legislate in respect of Hindu undivided families under Entry 86, List 1, Sch. 7 of the Constitution. AIR 1961 All 487, Affirmed. (1959) 37 I T R 191 (Bom) and AIR 1961 Andh Pra 75 and AIR 1961 Andh Pra 355 and (1964) 52 I T R 372 (Mys) and (1964) 53 I T R 504 (Mad) and AIR 1957 S C 832, Ref.

What the Entries purport to do is to describe the area of legislative competence of the different legislative bodies, and so it would be unreasonable to approach the task of interpretation in a narrow or restrictive manner. AIR 1955 S C 58 and AIR 1965 S C 1375, Rel. on. Banarasi Dass v. Wealth Tax Officer, Spl. Circle, Meerut, **(1965) 2 S C A 829 : (1965) 2 S C R 355 : ILR (1965) 1 All 932 : (1965) 56 I T R 224 : (1965) 1 S C J 428 : (1965) 1 I T J 455 : AIR 1965 S C 1387 (1389, 1390, 1391, 1392) (Prs 6, 7, 8, 10, 14).**

● **——S. 3—Validity—Constitution of India, Art. 248, Sch. 7, List 1, Entries 86, 97 — (Majority view — Upadhya, J., dissenting).**

The Wealth Tax Act, is intra vires the Parliament in so far as it imposes wealth tax on the assets of a Hindu undivided family. Jugal Kishore v. Wealth Tax Officer, **(1962) 44 I T R 94 : ILR (1961) 1 All 785 : 1961 All L J 408 : AIR 1961 All 487 (489, 490, 491, 496, 497, 499, 500, 501, 502) (Pt A) (Prs 4, 6, 10, 27, 31, 34, 36, 37, 40, 42, 43) (FB).**

——S. 3—Constitutional validity — If ultra vires——Constitution of India, Sch. 7, List 1, Entry 86—'Individuals'—Hindu undivided family—If covered.

The expression 'individuals' in Entry 86, List I and Sch. 7 does not mean only a human being but is wide enough to include a group of persons forming a unit. AIR 1957 S C 832, Rel. on. The Entry 86 of List 1 to the 7th Schedule is comprehensive enough to justify the imposition of the wealth tax on a Hindu undivided family. Wealth Tax Act is not, therefore, ultra vires in so far as it gives power to tax assets of a Hindu undivided family. **ILR (1961) 2 Andh Pra 459 : (1960) 40 I T R 567 : AIR 1961 Andh Pra 75 (77, 78, 79) (Pt B) (Prs 15, 16, 17, 18, 25).**

——S. 3—Validity — If ultra vires—(Constitution of India. Sch. VII. List I. Entry 86 — 'Individual'—(Income-tax Act (1922), S. 3).

The Act in so far as it authorised levy of wealth tax on the net wealth of a Hindu undivided family is not ultra vires the Union Parliament. The expression 'individual' in Entry No. 86 includes a body of individuals which is known as a Hindu undivided family. Parliament is therefore competent to enact laws imposing a tax on the capital value of the assets of a Hindu undivided family, as the wealth tax. **(1959) 37 I T R 191 : 61 Bom L R 1433 : AIR 1960 Bom 191 (192, 193) (Pt A) (Prs 4, 6, 9) (DB).**

——S. 3 — Constitutional validity — Does not violate Art. 14 of the Constitution of India. **(1965) 2 Ker L R 515 : 1965 Ker L J 1122 : 1965 Ker L T 1238 : ILR (1965) 2 Ker 707 : AIR 1966 Ker 77 (84, 85, 88, 89, 90, 91, 92, 93, 94) (Pt B) (Prs 12, 14, 37, 38, 42, 43, 56, 61, 68, 71, 72) (DB).**

——S. 3 — Constitutional validity—Classification between Hindu and non-Hindu undivided families — Whether violates Art. 14 of the Constitution — The Hindu undivided families of wealth have been singled out by the Act from other similar joint families in the country and the State has thereby denied equal protection of law to the former. The provisions of the Act relating to Hindu undivided families are severable and to that extent the Act has to be struck down. See Constitution of India, Art. 14. **AIR 1962 Ker 110 (DB).**

——S. 3—Constitutional validity — Whether pertains to field covered by Sch. 7, List II, Entry 46 of Constitution—A tax on agricultural income as its base or object would fall within Entry 46 in the State List. See Constitution of India, Art. 246. **AIR 1962 Ker 110 (DB).**

——S. 3 — Constitutionality—Whether encroaches on field covered by Sch. 7, List II, Entry 49 of the Constitution—There is no conflict and no overlapping of jurisdiction in the case of the two entries. See Constitution of India, Sch. 7, List I, Entry 86. **AIR 1962 Ker 110 (DB).**

——Ss. 3 and 4 — Validity — Does not contravene Art. 19. See Constitution of India, Art. 19 (1) (f). **AIR 1964 Orissa 128 (DB).**

——S. 3—Validity — Section not open to challege on ground of authorising tax so as to make it oppressively burdensome. See Constitution of India, Sch. 7, List I, Entry 86. **AIR 1964 Orissa 128 (DB).**

2. Individuals—Meaning of.

——S. 3—Assets, obtained by assessee in partition of joint Hindu family property — Assessee living with his wife and two minor daughters — Assessee is to be taxed as individual and not as Hindu undivided family. See Wealth Tax Act (27 of 1957), S. 2 (e). AIR 1965 Andh Pra 447 (DB).

——S. 3—Wealth — It must belong to assessee. Under S. 3, the assets must be property belonging to the assessee, who may be either an individual or a Hindu undivided family or a company. See Wealth Tax Act (27 of 1957), S. 2 (m). **AIR 1965 Andh Pra 447 (DB).**

——S. 3—'Individuals'—Meaning of—Includes Hindu undivided family — Validitv—S. 3 is intra vires. See Constitution of India, Art. 246. **AIR 1961 Andh Pra 355 (DB).**

——S. 3—Wealth-tax—Assessee, a group of trustees—Assessable as an individual — Words and Phrases — 'Individual'.

Held, the group of trustees falls within the scope of the term 'individual' and assessable to wealth-tax as individual. The word 'individual' is wide enough to include a group of persons forming a unit. The mention of the Hindu Undivided Family as a unit of taxation under S. 3 of the Act is not intended to exclude other groups of persons which are capable of being treated as a unit. (1962) 46 I T R 953 : AIR 1957 SC 832; AIR 1965 SC 1387, Ref. **(1965) 57 I T R 202 : 67 Bom L R 671 : 1965 Mah L J 818 : (1965) 2 I T J 295 (Bom).**

——S. 3—Individual—Joint trustees can be assessed as 'individual' under S. 3.

Joint trustees must be taken to be a single unit in law, and there is nothing wrong in treating such a unit as an individual holding property, and becoming assessable under S. 3. **66 Cal W N 176 : (1962) 46 I T R 953 : AIR 1962 Cal 295 (301, 302) (Pt C) (Prs 17, 18).**

——S. 3—'Individual' — Meaning and interpretation of—Includes non-Hindu families like Mappila Marumakkathayam Tarwad. **(1965) 2 Ker L R 515 : 1965 Ker L J 1122 : 1965 Ker L T 1238 : ILR (1965) 2 Ker 707 : AIR 1966 Ker 77 (80, 81, 82, 87, 88, 92, 93) (Pt A) (Prs 3, 4, 7, 30, 61, 66, 67) (DB).**

——S. 3—'Individual' does not comprehend Mappila Marumakkathayam Tarwad.

The term "individual" as employed in S. 3 of the Act in juxtaposition with "Hindu undivided families" and the other provisions in the Act, which differentiate between these two units of assessment, leave no room for doubt, that the term 'individual' in the Act cannot comprehend a Hindu undivided family; if so, it cannot comprehend a Mappila Marumakkathayam Tarwad either. **ILR (1961) 2 Ker 368 : 1961**

Ker L J 1046 : 1961 Ker L T 905 : (1962) 13 S T C 277 : AIR 1962 Ker 110 (119) (Pt D) (Pr 17) (DB).

——S. 3 — Assessee, the sole surviving member of Hindu undivided family cannot be regarded as undivided Hindu family — He is liable to assessment to wealth tax as individual. (1963) 48 I T R 959 : (1963) 2 I T J 248 : (1963) 2 M L J 322 : I L R (1963) Mad 604 : AIR 1963 Mad 280 (283) (Pt A) (Prs 12, 13) (DB).

3. Nature and incidence of tax.

——Ss. 3 and 19 — Wealth tax cannot be assessed in respect of wealth of the deceased from after the financial year next to financial year in which he died. 48 I T R 59 (SC), 51 I T R 345 (SC), Rel. on. 1965 Mah L J (Notes) 55.

——S. 3 and S. 21 (1) (before amendment in 1964)— Waqf represented by Mutawali — Assessability to tax —Property, though held by Mutawallli, 'for benefit of' beneficiaries and not 'on behalf of' beneficiaries is taxable under S. 21 (1). 63 I T R 787 : ILR (1965) 2 Ker 407 : 1965 Ker L T 997 : (1965) 2 I T J 653 : AIR 1966 Ker 108 (109, 110) (Prs 6, 7, 8, 9, 10, 11) (DB).

——S. 3 — Assessee owner-trader — Assessee paying wealth-tax — Payment of wealth-tax cannot be exclusively for purpose of carrying on business — Payment cannot constitute admissible deduction under S. 10 (2) (xv), Income-tax Act (1922). See Income-tax Act (1922), S. 10 (2)(xv). AIR 1965 Ker 146 (DB).

——Ss. 3, 45 (d), 2 (d) (q) — Exemption under S. 45 (d) can be claimed from date of registration of company and not from date it goes into production. See Wealth Tax Act (1957), S. 45 (d). AIR 1965 Ker 101 (DB).

——Ss. 3, 2 (m)—Nature and incidence of tax—Tax is on value of net wealth in hands of assessee belonging to him as owner and purpose for which wealth is employed is immaterial. (1963) 2 I T J 424 : (1963) 50 I T R 809 : ILR (1964) 1 Mad 93 : (1963) 2 Mad L J 508.

——Ss. 3, 2 (m) — Income-tax Act (1922), Ss. 10 (2) (xv), 10 (1) — Payment of wealth tax in respect of capital asset of trading company — Payment cannot be claimed as proper allowance in computation of business income under S. 10 (2) (xv) or 10 (1) of Income-tax Act (1922). (1963) 2 I T J 424 : (1963) 2 Mad L J 508 : (1963) 50 I T R 809 : ILR (1964) 1 Mad 93.

——S. 3 — Valuation of buildings for assessment of wealth-tax — Valuation though discretionary with Wealth-tax Officer his approach should be judicial— Considerations in valuation — Central Board of Revenue Circular No. 3 W. T. of 1957, D/- 28-9-1957— Scope of—Fixation of true net value —Duty of taxing department — Assessee questioning valuation before Tribunal—Tribunal cannot dismiss appeal on ground that valuation has not been shown to be unreasonable—Lacuna in S. 24 (6), Proviso pointed out. See Wealth-tax Act (1957), S. 7. (1964) 51 I T R 146 (Mad).

——Ss. 3, 4 (1) (a) (iii), 2 (q) — Assessee transferring his shares in company in favour of trust created by him for benefit of his minor children—Interpretation of trust deed—Value of shares transferred held could be included in computing assets of assessee for purposes of Wealth Tax Act. See Wealth Tax Act (27 of 1957), S. 4 (1) (a) (iii). (1965) 58 I T R 492 : AIR 1966 Mys 27 (DB).

4. Hindu undivided family.

——S. 3—Expenditure-tax Act, 1957 (Central Act (29 of 1957), S. 3 — Equality—Tax laws — Principles— Hindu undivided family and Mappilla tarwad of Malabar—Dissimilar and distinct subjects — Hindu undivided family — Charge to Wealth-tax and Expenditure-tax—Not discriminatory.

The charging sections of Wealth Tax Act and Expenditure-tax Act do not offend Art. 14 of the Constitution in seeking to assess the Hindu Joint family. The two entities, Hindu joint family and Mappilla tarwad are not similar but different. No law including a tax law can deny equal protection to all citizens. But equal protection would not prohibit reasonable classification for taxation resting on a fair and substantial relation to the object of the legislation. It is not the state of mind of the Legislature but the piece of legislation and its operational effect that determines the constitutional validity. The degree of incidence of taxation would not have a bearing on the question of the constitutionality of the enactments.

The wealth or expenditure of Mappilla tarward is not altogether outside the ambit of the Acts. A Karnavan, whatever may be the capacity in which he or she owns or expends, is certainly an 'individual' within the meaning of the said expression under the two Acts, and is assessable as such. AIR 1962 Ker 110 : 170 U S 283 ; 301 U S 412 ; 296 U S 404 ; AIR 1951 S C 41; 302 U S 277 ; 301 U S 495 ; 294 U S 97; L R (1906) A C 360 ; ILR (1957) Mad 694 ; AIR 1957 Mad 603 ; AIR 1952 S C 75 ; (1897) ILR 22 Mad 494; 9 M L J 37 ; (1903) ILR 27 Mad 77 ; 14 A L J 1083 ; 18 Bom L R 384 ; 21 C W N 410 ; L R 43 I A 269 ; 31 M L J 804 ; (1916) ILR 38 All 552 (PC) ; (1915) ILR 39 Mad 317 ; 29 M L J 481 (FB) ; (1928) 55 M L J 208 ; AIR 1962 S C 287 ; (1901) ILR 25 Mad 149 ; 11 M L J 353 ; (1916) 32 M L J 137 ; 21 C W N 553, Ref. (1964) 2 I T J 271 : (1964) 2 M L J 273 : (1964) 53 I T R 504 : ILR (1964) 2 Mad 988.

——S. 3 — Hindu undivided family—Meaning of— Family consisting of widow of a deceased sole coparcener and an unmarried daughter — Widow holding ancestral properties of her husband as widow's estate—Constituted Hindu undivided family prior to but not after Hindu Succession Act—Effect of Hindu Succession Act is to alter status of widow to an individual for purposes of taxation laws. (1964) 54 ITR 430 : (1964) 2 I T J 33 : ILR (1964) Cut 339 AIR 1964 Orissa 274 (276, 278, 279) (Pt A) (Prs 7, 17, 19, 20) (DB).

5. "Net wealth."

——S. 3—Scope — Though net wealth is to be ascertained as on date of previous year tax is to be levied at rates specified in Schedule in the given financial year.

The said date is only for the purpose of fixing the point of time with reference to which the quantum of wealth which will bear the tax is to be ascertained. Under S. 3 the unit of period for which the tax is levied is the unit of the financial year. The valuation date, which is the date with reference to which the net wealth is to be computed is the last day of the previous year. The rates specified in the schedule, which will apply to the net wealth will, therefore, be the rates, which are specified in the Schedule in the given financial year in which the tax is charged. 67 Bom L R 659 : (1965) 2 I T J 290 : (1965) 58 I T R 161 : 1965 Mah L J 907 : ILR (1965) Bom 1054 : AIR 1966 Bom 166 (167) (Pt B) (Prs 4, 5) (DB).

——S. 3—Company's balance sheets — Amounts appearing as liabilities — Whether deductible in determining net weath of company. See Wealth Tax Act (27 of 1927), S. 2 (m). (1965) 2 I T J 846 : AIR 1966 Cal 6 (DB).

——Ss. 3 and 2 (m)—'Net wealth' — Computation — Debt — Provisions made by assessee to meet future liability whether deducible in computing the net wealth of the assessee—Words and Phrases —'Debt'.

The deduction of future liability in computing the net wealth of the assessee depends on the question whether such liability for that period constitutes a a debt owned by the assessee on the valuation date or not. The amounts apparently constituting debts owned by the assessee on the valuation date should only be deducted before arriving at the net wealth to be assessed. The amounts which did not satisfy that they were debts on the valuation date cannot constitute valid deductions. One of the essentials of a debt is an ascertained or readily calculable amount. All debts are liabilities but all liabilities are not debts. AIR 1965 Ker 66 and AIR 1963 Mad 356, Rel. on. **(1964) 54 I T R 587 : AIR 1965 Ker 209 (209, 210) (Prs 5, 10) (DB).**

SECTION 4

——Ss. 4 (1), (2), (18), 2 (e) — Assessee, an ex-jagirdar — Commutation amount receivable by him for liquidation of his rights in the jagir—Is an asset includible in his net wealth—Hyderabad (Abolition of Jagirs) Regulation (59 of 1358-F), S. 7 — Hyderabad Jagirs (Commutation) Regulation (25 of 1359-F), Ss. 3, 4, 7.

The commutation amount paid to a jagirdar under Jagir Abolition Regulation and the Jagirs Commutation Regulation being a capitalised amount of the value of the Jagir taken over by the Government, distributable either monthly, quarterly or annually cannot therefore be called an annuity. **ILR (1964) Andh Pra 501 : (1963) 1 I T J 497 : (1963) 1 Andh W R 409 : (1963) 50 I T R 216 : AIR 1963 Andh Pra 486 (487, 488, 489) (Pt B) (Prs 3, 4, 5) (DB).**

——Ss. 4 (3), 2 (m), 6 and 7 — Expression "debts owed by assessee on the valuation date" in S. 2 (m)— Scope and meaning of—Advance payment of income-tax and demand under provisional assessment under S. 18-A, Income-tax Act if deductible from computation of wealth-tax — Nature of liability to tax — Does not depend on assessment or on annual Finance Acts—Application of global valuation—Written down value and market value — Balance sheet — Valuation how to be made stated — Valuation under S. 7 (2)— Words "as a whole" govern the word "business". See Wealth Tax Act (1957), S. 2 (m). AIR 1964 Guj 154 (DB).

——S. 4 (1) (a) (iii) —Wealth tax—Transfer of assets— Income payable by transferees to transferor's minor son for life—Transfer, whether for minor's benefit— —Assets, whether includible in transferor's net wealth—Words and Phrases — 'Transfer' — 'For the benefit of.'

The amount is includible in the net wealth of the assessee since the assets had been transferred by the individual otherwise than for adequate consideration for the benefit of the minor child. The deed of trust transferred and conveyed to the trustees the properties and the effect of the provisions was the resultant benefit to the minor son, who can enforce his claim by an action. Whether such transfer results in the transfer of assets or only the income of such assets is not material or relevant under the section. What is relevant is whether such assets are transferred for the benefit of the minor child. **(1965) 55 I T R 441 : (1964) 1 I T J 97 (Guj).**

——S. 4 (1) (a) (iv)—'Otherwise than under an irrevocable transfer' — If power of revocation exists in transferor, the property is deemed to be the property of transferor.

Section 4 (1) (a) (iv) provides that a person to whom assets have been transferred by another individual 'otherwise than under an irrevocable transfer' would be bound to include the value of such an asset in the computation of his net wealth. If there exists a power of revocation in the transferor, the property, for the purpose of S. 4, is deemed to be the property of the transferor for the payment of wealth-tax. **(1964) 54 I T R 687 : ILR (1965) 1 Mad 577 : (1965) 1 I T J 41 : (1965) 1 Mad L J 54 : AIR 1965 Mad 182 (184) (Pt B) (Prs 7, 8) (DB).**

——Ss. 4 (3), 2 (m)—Assessment to estate duty made subsequent to valuation date — It is not "debt" liable to be deducted. See Wealth Tax Act (27 of 1957) S. 2 (m). **AIR 1963 Mad 280 (DB).**

——Ss. 4 (1) (a) (iii), 2 (q) and 3—Assessee transferring his shares in company in favour of trust created by him for benefit of his minor children—Interpretation of trust deed — Value of shares transferred held could be included in computing assets of assessee for purposes of Wealth Tax Act. AIR 1963 S C 433, Disting. **(1965) 58 I T R 492 : (1965) 1 Law Rep 533 : AIR 1966 Mys 27 (29, 30, 31) (Pt B) (Prs 11, 12, 17) (DB).**

[**Reversed** in AIR 1967 SC 135].

——S. 4—Validity—Section is not outside legislative competence of Parliament. See Constitution of India, Seventh Sch., List I, Entry 86. **AIR 1964 Orissa 128 (DB).**

SECTION 5

——Ss. 5 and 2 (m)—Net wealth — Zamindari Abolition Compensation bonds of assessee kept by Board of Revenue as security — Bonds do not cease to be assessee's property. See Wealth Tax Act (27 of 1957), S. 2 (m). **AIR 1963 All 488 (DB).**

——Ss. 5 (1) (ii), 2 (e) and 3 — Assets obtained by assessee in partition of joint Hindu family property — Assessee living with his wife and two minor daughters—Assessee is to be taxed as individual and not as Hindu undivided family. See Wealth Tax Act (27 of 1957), S. 2 (e). **AIR 1965 Andh Pra 447 (DB).**

——Ss. 5 (1) (xxi) and 45 (d)—Establishment of new unit — Exemption can be claimed for 5 years from date of commencement of operations to establish the unit and not from date of its establishment.

The argument that the five years contemplated by second proviso should be read subject to the main clause and so the period should be calculated from the date of the setting up of the new unit, subject to the further restriction that the period should not exceed five years from the commencement of the operations for the establishment of the unit is not correct. **(1964) 2 I T J 430 : (1964) 2 Andh W R 350 : AIR 1965 Andh Pra 4 (5, 6) (Prs 8, 9, 17, 18) (DB).**

——S. 5 (1) (xviii)—Award for gallantry or for merit by Government—Exemption from tax—Not available to commutation amount paid to Jagirdar under Hyderabad Jagirs Commutation Regulation (1359 F).

The exemption under S. 5 (1) (xviii) does not apply to commutation amount paid to a jagirdar on liquidation of his rights in the Jagir held by him. AIR 1960 Andh Pra 42, Applied. **(1963) 1 I T J 497 : (1963) 1 An W R 409 : (1963) 50 I T R 216 : ILR (1964) Andh Pra 501 : AIR 1963 Andh Pra 486 (489) (Pt C) (Pr 7) (DB).**

——Ss. 5 (1) (viii), (xii) and (xiii)—Exemption from tax—Gold casket and other gold articles shaped like household utensils kept in show case—Articles cannot be exempted under Cl. (viii) either as piece of furniture or as household utensils for daily use—Exemption has reference to the use and purpose of the article and not to its shape or form — Articles intended to give pride of possession and not intended for sale are provided for in Cls. (xi) and (xii) — Household utensils—Other articles intended for personal use of the assessee—Intended for the personal or household use — Connotation of. (1965) 67 Bom L R 666 : (1965) 57 I T R 207 : 1965 Mah L J 902 : I L R (1965) Bom 1062 (DB).

——S. 5 (1) (i)—Wealth-tax—Exemption—Religious and charitable trust — Provision for religious ceremonies for settlor after his death and his deceased relations—Maintenance and support of settlor's indigent relations—Trust, whether entitled to exemption.

The circumstance that a direction has been given that in considering the case of such indigent persons preference be given to the relations, does not affect the validity of the trust or does not in any manner derogate from the trust being one for public purpose of a charitable nature. AIR 1959 S C 1060, Ref. (1965) 1 I T J 829 : (1965) 58 I T R 46 : ILR (1965) Bom 1040.

——S. 5 (1) (xxi)—"Setting up" —Meaning of — "Set up" would mean "ready to commence business" — Assessee manufacturing grey cement setting up new unit for manufacturing white cement - Date of "setting up" of new unit should be taken as date on which trial run was completed : AIR 1963 Mad 19, Rel. on. Words and Phrases—"Setting up". 1964 Ker L J 956 : 1964 Ker L T 543 : (1964) 54 I T R 583 : (1964) 2 I T J 789 : AIR 1965 Ker 183 (184) (Pt A) (Pr 8) (DB).

——S. 5 (1) (xxi)—"Separate unit"—Meaning—Assessee manufacturing grey cement setting up new unit for manufacturing white cement — New unit using kiln of old unit — Assessee is not entitled to exemption from wealth tax under section.

The word "separate", means "disconnected, independent, distinct". The sharing of a common kiln between the old and the new unit certainly precludes the conclusion that the units are separate, and hence it must be held that the exemption claimed under section cannot be granted. 1964 Ker L J 956 : 1964 Ker L T 543 : (1964) 54 I T R 583 : (1964) 2 I T J 789 : AIR 1965 Ker 183 (185) (Pt B) (Prs 11, 13) (DB).

——Ss. 5 (1) (xxi) and 27 — Question of law—What is — Tribunal when to be directed to state a case — Question concluded by judicial decision — If still to be allowed to be raised - Question decided by High Court pending in appeal in Supreme Court — Question of law to be allowed to be raised — New and separate unit by way of substantial expansion of undertaking — Assets employed in the set-up - Unit, when set-up — Exemption to wealth-tax under S. 5 (1) (xxi).

Held, since the previous decision of the High Court interpreting S. 5 (1) (xxi) of the Act is pending before the Supreme Court, the High Court has to direct the Tribunal to refer the question of law arising under the section. (1965) 1 M L J 333 : (1965) 56 I T R 384 : ILR (1965) 2 Mad 487 : 78 Mad L W 273 : (1965) 1 I T J 395 : AIR 1966 Mad 41 (43, 44, 45) (Prs 2, 3, 4, 5, 6, 7, 8, 9) (DB).

——S 5 (1) (xxi) and 2nd proviso — Expression 'set up'— Meaning — Does not mean 'commences operation' within meaning of proviso.

The proper meaning to be assigned to expression 'set up' in S. 5 (1) (xxi) of the Wealth Tax Act would be 'ready to commence business'. The expression cannot be strained in the light of 2nd proviso to the section and cannot mean that commencement of operation within the meaning of 2nd proviso. A I R 1955 Bom 13, Rel. on. (1962) 46 I T R 820 : I L R (1963) Mad 45 : (1963) 1 I T J 604 : (1963) 2 Mad L J 13 : AIR 1963 Mad 19 (21) (Prs 7, 8, 9) (DB).

——S. 5 — Creation of trust deed by assessee just before passing of Act — Whether a device to avoid tax.

A valid deed of trust created by an assessee, after the Wealth Tax Bill was introduced in Parliament cannot therefore be said to be a device created merely for avoiding wealth tax when there is no allegation that is not genuine, or when it does not evidence an illegal transaction. (1965) 58 I T R 492 : (1965) 1 Law Rep 533 : AIR 1966 Mys 27 (28) (Pt A) (Pr 7) (DB).

[Reversed on another point in AIR 1967 SC 135].

SECTION 6

——Ss. 6, 7—Expression "debts owed by assessee on the valuation date" in S. 2 (m) — Scope and meaning of—Advance payment of income-tax and demand under provisional assessment under S. 18-A, Income-tax Act if deductible from computation of wealth tax - Nature of liability to tax—Does not depend on assessment or on annual Finance Acts — Application of global valuation—Written down value and market value — Balance sheet — Valuation how to be made stated — Valuation under S. 7 (2) — Words "as a whole" govern the word "business". See Wealth Tax Act (1957), S. 2 (m). AIR 1964 Guj 154 (DB).

SECTION 7

——Ss. 7 (2) (a), 27—Wealth-tax — Assessee a Company — Valuation of assets—Global valuation as per balance-sheet — Debts due to assessee shown on the assets side—Computation of net wealth — Claim for deduction of debts as bad and doubtful—Adjustment and going behind balance-sheet—Officer empowered to make on disclosed materials and allow deduction — Reference — High Court — Valuation of assets — Power of the Officer to make adjustments — Only contention put forward before the Tribunal — Question if the amounts are bad and doubtful — Not one arising out of the order of the Tribunal. (1965) 2 Comp L J 106 : (1965) 2 I T J 277 (Bom).

——Ss. 7 (2) (a), 2 (m) — Debt owed by assessee — Provision for payment of tax—Not a debt. See Wealth Tax Act (27 of 1957), S. 2 (m). 69 Cal W N 428 : (1965) 2 I T J 850 : AIR 1966 Cal 9 (DB).

——S. 7 — Company's balance sheets — Amounts appearing as liabilities—Whether deductible in determining net wealth of company—See Wealth Tax Act (27 of 1957), S. 2 (m). (1965) 2 I T J 846 : AIR 1966 Cal 6 (DB).

——Ss. 7 (1), 2 (m) — Wealth-tax — Business with regular accounts — Balance-sheet—Assets shown at cost, without depreciation—Wealth-tax computation — Assets whether bound to be valued at cost — Written down value for purposes of income-tax — How far indicative of real value. See Wealth Tax Act (1957), S. 2 (m). (1965) 1 I T J 769 (Cal).

——S. 7 (2) (a)—Assets of company—Valuation of—Valuation of assets shown by company in its balance-sheet—Wealth Tax Officer is entitled to accept this valuation. (1963) 48 I T R 31 : (1963) 1 I T J 58 : 67 Cal W N 22 : A I R 1963 Cal 392 (394, 395) (Pt A) (Prs 4, 5) (DB).

[Reversed on another point in AIR 1966 S C 1370].

——S. 7 (2) (a) — Net value of depreciable assets of assessee — Ascertainment of — On facts, adjustments held could not be made in balance sheet by substituting written down value computed under Income-tax Act for value of block assets shown in balance sheet. (1964) 2 I T J 792 (Guj) : (1965) 56 I T R 544 : AIR 1967 Guj 12 (14) (Pt A) (Pr 2) (DB).

——S. 7 (2) (a) — Computation of net wealth of assessee under section — Contingent liability can be taken into account — Estimated value of contingent liability of assessee to pay gratuity should be deducted in computing net wealth. (1964) 2 I T J 792 : (1965) 56 I T R 544 : A I R 1967 Guj 12 (14, 15) (Pt B) (Pr 3) (DB).

——S. 7 (2) (a)—Value of assets as shown in balance sheet — Valuation is not sacrosanct — Value of plant and machinery — Balance sheet showing their cost-

——S. 25—Revision by assessee — Assessee need not be heard.

The Commissioner's jurisdiction in revision is discretionary and therefore he is not bound to issue any notice to the assessee and to hear him. As the Commissioner is not bound to revise an order, he is not required to hear the assessee before refusing to do so. AIR 1948 P C 102, Rel. on. AIR 1962 S C 1217, Dist. **(1963) 2 I T J 377 : I L R (1965) 1 All 171 : A I R 1963 All 488 (492, 493) (Pt D) (Pr 10) (DB).**

——S. 25, Proviso (a)—Revision—When lies—Scope of the proviso.

A revision application to the Commissioner cannot be filed without waiving the right of appeal to the Appellate Tribunal as provided under Proviso (a) to S. 25. **(1963) 2 I T J 377 : I L R (1965) 1 All 171 : AIR 1963 All 488 (493) (Pt E) (Pr 11) (DB).**

SECTION 27

——S. 27—Claim for deduction of debts as bad and doubtful — Power of the officer to make adjustments —Reference. Held, the claim of the assessee has been properly allowed. See Wealth Tax Act (1957), S. 7 (2) (a). **(1965) 2 Comp L J 106 : (1965) 58 I T R 433 (Bom).**

——S. 27 (1) and (5) — Wealth-tax — Debts owed — Reserve for gratuity — Reserve for leave wages — Whether deductible—Practice—Case stated by the Tribunal—Paucity of data—Non-annexure of necessary papers—Need for supplemental case.

The assessee claimed deduction for purposes of wealth-tax for two items, viz., reserve for gratuity for employees and reserve, for leave salary to employees on the ground that they are debts owed. On reference to the High Court at the instance of the Commissioner of Wealth-tax.

Held, that the facts necessary to answer the question properly are not available either in the orders of the Tribunal or in the statement of case and all that can be said is that if the two reserves represent debts owed by the assessee on the valuation dates concerned the assessee is entitled to deduction. In the light of the paucity of data and the necessary papers it can only be said that only those liabilities which have matured into debts, i. e., only those liabilities which can be considered as a debitum in presenti which is payable either in presenti or in futuro are deductible. (1964) 1 I T J 423 : (1964) K L T 276 : (1964) 54 I T R 332 ; (1963) 48 ITR 1005, Ref. **(1964) 2 I T J 778 : (1964) 54 I T R 337 (Ker).**

——S. 27—Reference to Court — When necessary — Not every question of law must be referred but only arguable question of law, not being simple or self-evident—Application for reference—Court will consider not correctness of Tribunal's decision on point of law but its decision on question whether there is point of law on which case should be stated. **(1965) 1 M L J 333 : (1965) 1 I T J 395 : 78 Mad L W 273 : (1965) 56 I T R 384 : ILR (1965) 2 Mad 487 : A I R 1966 Mad 41 (43, 44, 45) (Prs 2, 3, 4, 5, 6, 7, 8, 9) (DB).**

SECTION 31

——S. 31 (3)—Appeal—Application for stay of execution —Essentials —Discretion, exercise of—S. 23.

Under the Act, an appeal is preferred under S. 28. After preferring an appeal, an application has to be made under S. 31 (3), to the Wealth Tax Officer for stay, and the Wealth Tax Officer may in his discretion treat the assessee as not being in default as long as such appeal was undisposed of. A judicial exercise of discretion involves a consideration of the facts and circumstances of the case in all its aspects. The difficulties involved in the issues raised in the case and the prospects of the appeal being successful is one such aspect. The position and economic circumstances of the assessee is another. The amount involved is also a relevant factor. If any point is involved which requires an authoritative decision, that is to say, the precedent, that is a point in favour of granting a stay. Quick realisation of tax may be an administrative expediency, but by itself it constitutes no ground for refusing a stay. A I R 1958 Cal 524, Foll. 64 Cal W N 85 : (1959) 37 I T R 267 : AIR 1959 Cal 114 (114, 115, 116) (Prs 1,3).

SECTION 45

——Ss. 45 (d) and 5 (1) (xxi) — Establishment of new unit — Exemption can be claimed for 5 years from date of commencement of operations to establish the unit and not from date of its establishment — See Wealth Tax Act (27 of 1957, S. 5 (1) (xxi). AIR 1965 Andh-Pra 4 (DB).

——Ss. 45 (d), 2 (d) (q) and 3 — Exemption under S. 45 (d) can be claimed from date of registration of company and not from date it goes into production.

A company was registered on 8-11-1959. The construction of the factory was completed only in Dec. 1953. Exemption under S. 45 (d) was granted to the company for assessment years 1957-58, 1958-59 and 1959-60. **(1964) 54 I T R 50 : (1964) 2 I T J 607 : 1964 Ker L T 435 : 1964 Ker L J 705 : I L R (1964) 1 Ker 642 : A I R 1965 Ker 101 (101, 102) (Prs 4, 5, 6, 9, 10, 11, 12) (DB).**

[Reversed on another point in AIR 1967 S C 1534].

WEALTH TAX RULES (1957)

FORM A

——Form A—Annexure to Form A—Expression "liabilities" and "current liabilities" in — These do not control meaning of "debt owed" in S. 2 (m). See Wealth Tax Act (1957), S. 2 (m). A I R 1963 Cal 392 (DB).

[Reversed on another point in AIR 1966 S C 1370].

RULE 2

——Sch. R. 2 and Ss. 4 (1), 2 (e)—Assets—Shares in limited company—Are assets includible in net wealth of an assessee—See Wealth Tax Act (27 of 1957), S. 4 (1). AIR 1963 Andh-Pra 486 (DB).

RULE 4

——Rr. 4 and 7—Expression 'debts owed by assessee on the valuation date' in S. 2 (m)—Scope and meaning of. See Wealth Tax Act (1957), S. 2 (m). A I R 1964 Guj 154 (DB).

RULE 7

——R. 7 and Ss. 2 (m), 4 (3), 6 and 7 — Expression "debts owed by assessee on the valuation date" in S. 2 (m)—Scope and meaning of—Advance payment of income-tax and demand under provisional assessment under S. 18-A, Income-tax Act if deductible from computation of wealth tax—Nature of liabilit to tax—Does not depend on assessment or on annua Finance Acts — Application of global valuation — Written down value and market value—Balance sheet —Valuation how to be made stated—Valuation under S. 7 (2)—Words "as a whole" govern the word "business". See Wealth Tax Act (1957), S. 2 (m). A I R 1964 Guj 154 (DB).

WEEK

Defined.

See (1) Employees' State Insurance Act (1948), S. 2.
(2) Factories Act (1948), S. 2.
(3) Mines Act (1952), S. 2.

WEEKLY HOLIDAYS

See (1) Factories Act (1948), S. 52.
(2) Weekly Holidays Act (1942).

SECTION 6

——S. 6—Essential Supplies (Temporary Powers) Act (1946), S. 7 (1) — Goods seized—Proper order to be passed in respect thereof. See Essential Supplies (Temporary Powers) Act (1946), S. 7 (1). 1952 Cri L J 349 : AIR 1952 Cal 139 (DB).

SECTION 12

●——S. 12 (1) — Section is discriminatory and is therefore ultra vires—(Constitution of India, Art. 14).

The section is discriminatory, because there is nothing which compels Government to charge persons under S. 3 of the Black Marketing Act in all cases falling within that section. It is open to Government to charge them under the Essential Supplies Act on the very same facts with very different results.

For these reasons, therefore, S. 12 (1) of the West Bengal Black Marketing Act, 1948 is ultra vires the Constitution. Ramkisen v. State of W. B. ILR (1954) 1 Cal 259 : 56 Cal W N 659 : 1952 Cri L J 1441 : AIR 1952 Cal 639 (642, 643, 644) (Prs 37, 41, 45, 46) (SB).

——S. 12—Tribunal—Jurisdiction—Tribunal constituted under Act has no jurisdiction to try offences under West Bengal Black Marketing Ordinance. 51 Cri L J 546 : A I R 1950 Cal 125 (127) (Pt C) (Pr 9) (DB).

——Ss. 12 (2) and 14—Special Tribunal—Jurisdiction —No jurisdiction to try offence under S. 474, Penal Code.

The cases for trial which can be allotted under S. 12 by the Provincial Government are cases of offences under the Act. The Tribunal constituted under the Act has no jurisdiction to try an offence under S. 474, Penal Code. 51 Cri L J 546 : A I R 1950 Cal 125 (127, 128) (Pt D) (Prs 14, 15) (DB).

SECTION 14

——S. 14—Special Tribunal has no jurisdiction to try offences under S. 474, Penal Code. See West Bengal Black Marketing Act (1948), S. 12. 51 Cri L J 546 : AIR 1950 Cal 125 (DB).

SECTION 26

——S. 26 — Effect on offences committed before Act —Section 26 has not the result of making offences under the West Bengal Black Marketing Ordinance also offences under the West Begal Black Marketing Act. 51 Cri L J 546 : AIR 1950 Cal 125 (126) (Pt B) (Pr 7) (DB).

(WEST BENGAL) CALCUTTA AND SUBURBAN POLICE (AMENDMENT) ACT (35 of 1948)

SECTION 2

●——Ss. 2 and 3—Validity of Act — Government of India Act (1935), S. 299, Sch. 7, List 2, Entries 3, 13, 18.

The West Bengal State Legislature had legislative competence to pass the (West Bengal) Calcutta and Suburban Police (Amendment) Act (35 of 1948) which introduced Ss. 61-A and 38-A in Calcutta Police Act, 1866, and Calcutta Suburban Police Act, 1866, respectively. The State Legislature was competent to pass the Act by reason of Entry 3 relating to police. Entry 13 relating to local Government and Entry 18 relating to communication, road, etc., under List 2 of the Seventh Schedule of the Government of India Act, 1935. 65 Cal W N 213 : ILR (1961) 2 Cal 594 : A I R 1961 Cal 125 (131, 140) (Pt A) (Prs 17, 59) (SB).

SECTION 3

●——Ss. 3, 2 — Act was within legislative competence of West Bengal Legislature — Government of India Act (1935), S. 299, Sch. 7, List 2, Entries 3, 13, 18. See (W. B.) Calcutta and Suburban Police (Amendment) Act (35 of 1948), S. 2. AIR 1961 Cal 125 (SB).

WEST BENGAL CATTLE LICENSING ACT (1 of 1959)

PREAMBLE

——Preamble—Validity — Legislation impeding free flow of trade and commerce violates Art. 301—W. B. Cattle Licensing Rules (1960) — Act and rules are intra vires and valid and do not violate Art. 301. See Constitution of India, Art. 301. AIR 1964 Cal 409.

WEST BENGAL CATTLE LICENSING RULES (1960)

——Validity—Legislation impeding free flow of trade and commerce violates Art. 301—W. B. Cattle Licensing Act (1 of 1959), Pre.—W. B. Cattle Licensing Rules (1960)—Act and rules are intra vires and valid and do not violate Art. 301. See Constitution of India, Art. 301. AIR 1964 Cal 409.

WEST BENGAL CEMENT CONTROL ACT (26 of 1948)

PREAMBLE

——Preamble—Relationship of principal and agent how created—Stockist of cement under West Bengal Cement Control Act (1948) is not constituted agent of Government. See Contract Act (1872), S. 182. AIR 1963 Cal 79.

SECTION 3

——Ss. 3, 16—Scope of S. 16—W. B. Cement Contral Ordinance (9 of 1948) made applicable to Darjeeling on 26-8-1948—Earlier Notification in respect of other parts of West Bengal—Effect — Orders passed under Ordinance did not become law — S. 16 could not apply. See W. B. Cement Control Act (26 of 1948), S. 16. ILR (1956) 2 Cal 41.

SECTION 16

——Ss. 16, 3 – Scope of S. 16—W. B. Cement Control Ordinance (9 of 1948), made applicable to Darjeeling on 26-8-1948 — Earlier Notification in respect of other parts of West Bengal—Effect—Orders passed under Ordinance did not become law — S. 16 could not apply.

When there was no order issued for Darjeeling under the Ordinance, S. 16 could not produce the effect that the order passed for other districts of Bengal before the Ordinance became law in Darjeeling would become law in Darjeeling after the expiry of the W. B. Cement Control Ordinance (9 of 1948) Hence there could not be any contravention of the order made under S. 3 of the Act in the district of Darjeeling. ILR (1956) 2 Cal 41.

WEST BENGAL CEMENT CONTROL ORDER (1948)

CLAUSE 3

——Cls. 3 and 7—Permit, if a matter of right.

In view of the provisions in Cls. 3 and 7 of the Order the power of granting "a written order" for the acquisition of cement is a matter of absolute discretion of the Director of Consumer Goods. No person can, therefore, claim, a permit for a monthly quota of cement as a matter of right. 57 Cal W N 790 : AIR 1954 Cal 159 (161, 162) (Pt A) (Prs 6, 9) (DB).

CLAUSE 7

——Cl. 7 — Permit, if a matter of right. See West Bengal Cement Control Order (1948), Cl. 3. AIR 1954 Cal 159 (DB).

W N 313 and AIR 1931 PC 149, Dist. (1965) 69 Cal W N 921 : AIR 1966 Cal 488 (491, 492) (Pt B) (Prs 12, 13) (DB).

SCHEDULE 1, ITEM 7

—Sch. I, Item 7 and S. 5 (4) — Relating to or arising out of — Meaning — Suit to declare mortgage decree void falls under Sch. I, Item 7 — Suit cannot be entertained by City Civil Court. (1962) 66 Cal W N 767 : 1962 Cal L J 183.

SCHEDULE 1, ITEM 11

—Sch. I, Item 11 and Ss. 2 (5), 5 (2) and (4) — Court which can grant stay—Suit in City Civil Court — Application for stay under S. 34, Arbitration Act (1940), City Civil Court has jurisdiction to grant stay. See Arbitration Act (1940), S. 34. AIR 1963 Cal 621 (DB).

—Sch. I, Item 11 and S. 5 (4) — Court which can grant stay—City Civil Court — Power of High Court apart from S. 34, Arbitration Act (1940), to stay suit by issuing injunction on plaintiff — Petitioner applying for injunction after taking part in City Civil Court suit — Petitioner not entitled to ask for stay. See Arbitration Act (1940), S. 34. AIR 1959 Cal 583.

WEST BENGAL CITY CIVIL COURT AND WEST BENGAL PREMISES TENANCY :(AMENDMENT) ACT (27 of 1957)

See under Tanancy Laws.

WEST BENGAL CITY SESSIONS COURT ACT (20 of 1953)

SECTION 5

—Ss. 5 and 6 — City Sessions Court — Jurisdiction to grant bail—City Sessions Court can exercise powers under S. 498 in cases in which it has jurisdiction to try particular offence. See Criminal P. C. (1898), S. 498. 1962 (2) Cr L J 41 : AIR 1962 Cal 368 (DB).

SECTION 9

—S. 9 (as amended by W. B. Act 26 of 1956) — Trial before City Sessions Court in West Bengal — S. 269 (4) not applicable—Amendment by W. B. Act (26 of 1956), is valid. See Criminal P. C. (1898), S. 269 (4). 1964 (1) Cr L J 30 : AIR 1964 Cal 30 (DB).

WEST BENGAL CIVIL SERVICE RULES

RULE 24

—R. 24 — Permanent Government Servant transferred to temporary deparment — Introduction of a Scheme by Government providing for absorption into comparable posts after reversion from such department—Reversion to old post with financial advantages —Writ on ground of loss of prospects in old post—Not maintainable — Art. 16 not applicable. See Constitution of India, Art. 226. AIR 1962 Cal 587.

RULE 75

—R. 75 (a)—Retention of service for the purpose of conducting a departmental enquiry is not proper and extension of service beyond date of compulsory retirement for this purpose is illegal. See Constitution of India, Art. 310. (1965) 2 S C A 884 : AIR 1966 S C 447.

WEST BENGAL CLINICAL ESTABLISHMENT ACT (56 of 1950)

PREAMBLE

—Preamble—Act does not infringe Art. 19 (1) (f) of Constitution. See Constitution of India, Art. 19 (1) (g) and (6). AIR 1955 NUC (Cal) 5922.

—Preamble—Act and Rules framed thereunder are not ultra vires. See Constitution of India, Art. 245. AIR 1955 NUC (Cal) 5922.

—Preamble — Constitutionality — (Constitution of India, Arts. 19 (1) (g) and 19 (6)).

The Government can prescribe the qualifications necessary for running a physical therapy establishment or working therein. Physical therapeutics is a branch of medical science. To practise it, requires specialised knowledge, technical training and proper equipment.

The West Bengal Clinical Establishment Act and the rules thereunder, have not made it impossible for a citizen under any reasonable circumstances to carry on the occupation of a physico-therapist. The restrictions are not unreasonable simply because they are somewhat exacting : they have been imposed in the interest of the general public. 92 Cal L J 17 : AIR 1954 Cal 138 (139, 140) (Prs 9, 10, 11).

SECTION 8

—S. 8 (2) (f) (as amended in 1954) — Recognition of institution by Government — Mere Government grant cannot be considered as recognition. 57 Cal W N 297 : 1963 (1) Cri L J 579 : AIR 1963 Cal 261 (273) (Pt L) (Pr 44) (DB).

—S. 8 (2) (d) — Exemption of "Chamber" or "Clinic" — To be exempt it must belong to registered medical practitioner. AIR 1955 NUC (Cal) 5922.

SECTION 9

—S. 9—West Bengal Clinical Establishments Rules (1951) (as amended by Notification No. 2210/2-A, 9/52—9-8-1952), R. 11 (iii) (c)—Validity—[Constitution of India, Arts. 14 and 19 (1) (g)].

The provision contained in R. 11 (iii) (c) of the rules, therefore, infringes the provision of Art. 19 (1) (g) and Art. 14 of the Constitution and as such is ultra vires and void. 58 Cal W N 705 : AIR 1954 Cal 571 (575) (Prs 12, 14).

WEST BENGAL CLINICAL ESTABLISHMENTS RULES

RULE 11

—R. 11 (11) framed under the Act — Prescribing foreign qualification—Discrimination between citizen possessing foreign qualification and citizen not possessing same. See Constitution of India, Art. 14. AIR 1955 N U C (Cal) 5922.

—R. 11 (iii) (c) (as amended by Notification No. 2210/2-A—9/52 — 9-8-1952) — Validity. The provisions infringe the provisions of Art. 19 (1) (g) and Art. 14 of the Constitution and as such is ultra vires and void. See West Bengal Clinical Establishment Act (56 of 1950), S. 9. AIR 1954 Cal 571.

WEST BENGAL CLOSING OF CANALS ACT (2 of 1959)

SECTION 3

—Ss. 3 and 4—Validity—Art. 31 (1) does not afford against legislative expropriation—Substantial abridgement of right of ownership — No compensation payable under Art. 31—Closing of canals for considerations of healthy growth of city of Calcutta — Action of Government is saved under Art. 19 (5) and (6) — West Bengal Closing of Canals Act is valid. See Constitution of India, Art. 31. AIR 1964 Cal 45.

WEST BENGAL COMMISSIONERS OF MUNICIPALITY (FIRST GENERAL ELECTION) ORDER (1963)

See under Municipalities.

WEST BENGAL COTTON CLOTH AND YARN CONTROL ORDER (1948)

CLAUSE 13

—Cl. 13 (1)—Notification by Director of Textiles —If operative outside Calcutta.

Any notification issued by the Director of Textiles appointed by the State Government under Cl. 13 (1), can be operative only in Calcutta and the same cannot be operative in any District outside Calcutta. 1954 Cri L J 308 : 56 C W N 535 : AIR 1954 Cal 82 (83) (Pt A) (Pr 3) (DB).

—Cls. 13, 14—Notifications under, are not invalid. See Essential Supplies (Temporary Powers) Act (1946), S. 3. 1953 Cri L J 1170 : AIR 1953 Cal 492 (DB).

CLAUSE 14

—Cls. 14 and 13 — Notifications under, are not invalid. See Essential (Temporary Powers) Supplies Act (19 46), S. 3. 1953 Cri L J 1170 : AIR 1953 Cal 492 (DB).

—Cl. 14—Seizure of cloth by person not competent within meaning of Notification—It cannot affect validity of conviction for contravention of provisions regarding submission of monthly returns. I L R (1953) 2 Cal 117 : 56 C W N 789 : 1953 Cri L J 1170 : AIR 1953 Cal 492 (493) (Pt A) (Pr 5) (DB).

CLAUSE 15

—Cls. 15, 18 (1) and 19 (1)—Seized goods—Order for sale—Propriety—Proper order to be made. Proper order to pass will be to direct the Magistrate to consider in the first place whether the seized goods will be necessary for proving the ingredients of an offence under which the charges have been framed. See Essential Supplies (Temporary Powers) Act, 1946, S. 7 (1). 53 Cri L J 349 : AIR 1952 Cal 139 (DB).

CLAUSE 18

—Cl. 18—Non-display of price list—Accused cannot be assumed to have had cloth stamped with price in his shop at the relevant time—In the absence of evidence he cannot be held to have contravened the provisions of clause. 1953 Cri L J 927 : A I R 1953 Cal 406 (406) (Pt A) (Pr 2) (DB).

—Cl. 18 (1)—Failure to keep price list hanging in absence of cloth—No offence.

When there is nothing on the record to show that at the relevant time the accused had in his shop cloth of the description mentioned in Cl. 18 of the Control Order the failure to hang a price list in his shop cannot be construed to be an offence of violation of the provisions of the said Order. 56 Cal W N 386 : 1953 Cri L J 742 : AIR 1953 Cal 322 (323) (Pr 2).

—Cl. 18 (1) — Prosecution must show that there was in shop cloth with prices stamped on them.

In the absence of evidence that there was or could have been in the shop at the relevant time, any kind of cloth with the price stamped thereon, the accused cannot be said to have contravened Cl. 18 (1) of the said Order, by not hanging a list showing the prices. 1952 Cri L J 1032 : AIR 1952 Cal 493 (494) (Prs 5, 6) (DB).

—Cls. 18 (1), 19 (1) and 15—Goods seized—Proper order to be passed in respect thereof. See Essential Supplies (Temporary Powers) Act (1946), S. 7 (1). 1952 Cri L J 349 : AIR 1952 Cal 139 (DB).

CLAUSE 19

—Cl. 19—Production of duplicate cash memo.

Prosecution must establish that there was sale of cloth before question of production of duplicate cash memo can arise. 1953 Cri L J 927 : A I R 1953 Cal 406 (406, 407) (Pt B) (Pr 3) (DB).

—Cl. 19 (1), 18 (1) and 15—Goods seized—Proper order to be passed in respect thereof. See Essential Supplies (Temporary Powers) Act (1946), S. 7 (1). 1952 Cri L J 349 : AIR 1952 Cal 139 (DB).

CLAUSE 29

—Cl. 29—Forfeiture of property—Offence in connection with property must be established. See Essential Supplies (Temporary Powers) Act (1946), S. 7 (1). 1955 Cri L J 1583 : AIR 1955 Cal 631 (DB).

WEST BENGAL COTTON CLOTH AND YARN MOVEMENT CONTROL ORDER (1950)

CLAUSE 4

—Cl. 4 (2)—Validity—Not repugnant with Cotton Textiles (Control of Movement) Order (1948)—(Cotton Textiles (Control of Movement) Order (1948)). A I R 1955 N U C (Cal) 2880 (DB).

—Cl. 4 (2) — Sentence — Export of mill made cloth — Ban lifted four months after — Substantive sentence of imprisonment is not called for—(Essential Supplies (Temporary Powers) Act (1946), S. 7). AIR 1955 N U C (Cal) 2830 (DB).

WEST BENGAL CRIMINAL LAW AMENDMENT ACT (6 of 1930)

See under Public Safety.

WEST BENGAL CRIMINAL LAW (AMENDMENT) (SPECIAL COURTS) ACT (21 of 1949)

See under Public Safety.

WEST BENGAL CRIMINAL LAW AMENDMENT (SPECIAL COURTS) AMENDING ACT (12 of 1952)

See under Public Safety.

WEST BENGAL CRIMINAL LAW AMENDMENT (SPECIAL COURTS) AMENDING ACT (24 of 1960)

See under Public Safety.

WEST BENGAL ESTATES ACQUISITION ACT (1 of 1954)

See under Tenancy Laws.

WEST BENGAL ESTATES ACQUISITION RULES (1954)

See under Tenancy Laws.

WEST BENGAL ESTATES ACQUISITION (SECOND AMENDMENT) ACT (25 of 1957)

See under Tenancy Laws.

WEST BENGAL EVACUEE PROPERTY ACT (5 of 1951)

SECTION 4

—S. 4 (1)—Transfer to a non-evacuee—Transferee's application for removal of occupier of property — Jurisdiction to order removal.

The whole scheme of the Act is that if an evacuee had to leave West Bengal for reasons over which he had no control, his property was to be protected by the State and made over to him or his heirs if they come back and claim it within a specified time. When the evacuee has transferred the property to a non-evacuee, there can be no longer any question of protecting the property of an evacuee or making it over to him or to his heirs and therefore the provisions of the Act would no longer apply. At any rate those provisions could not be invoked by the transferee and the Magistrate could not act on the invitation of such person and pass an order for the eviction

of the person in occupation of the property. I L R (1959) 1 Cal 458.

WEST BENGAL EXCISE COMPILATION
PART 2, RULE 2

——Part 2, Rr. 2 (a) and 73 (3) — Change of site of liquor shop — Procedure to be followed indicated — (Bengal excise Act 5 of 1909). AIR 1955 N U C (Cal) 4290.

PART 2, RULE 73

——Part 2, R. 73 (3)—Application for change of site of liquor shop to Collector—Subsequent constitution of Excise Licensing Board — Competency of to grant application—The Board was appropriate authority to deal with the application. See Bengal Excise Act (9 of 1909), S. 7 (2). AIR 1955 NUC (Cal) 4290.

——Part 2, R. 73 (3)—Change of site of liquor shop—Procedure to be followed indicated. See West Bengal Excise Compilation, Part 2, R. 2 (a). AIR 1955 N U C (Cal) 4290.

——Part 2, Rr. 73 to 78 — Application for change of site — Objections must be invited and considered before passing order—(Bengal Excise Act (9 of 1909), Ss. 31 and 33). AIR 1955 NUC (Cal) 4290.

WEST BENGAL FIRE SERVICES ACT (18 of 1950)

SECTION 38

——S. 38—Scope — Section does not repeal S. 386 of Calcutta Municipal Act (3 of 1923) as applied to Howrah Municipality.

As a result of Gazette Notification No. 260 M of 18th January, 1932, S. 386 of the Calcutta Municipal Act (3 of 1923) was extended to the Municipality of Howrah with the modification that in place of the words 'Corporation of Calcutta', the word 'Commissioners" was substituted. The effect of the extension by the Notification under Ss. 540 and 541 of the Calcutta Municipal Act was that to the Municipality of Howrah, an amended Act with an amended S. 386 was applicable and not S. 386 of the Act 3 of 1923. S. 38 of Act 18 of 1950 provides that that section repeals S. 386 of the Act 3 of 1923 to the extent therein mentioned. It does not apply to S. 386 as modified and is inapplicable to the Municipality of Howrah. It cannot be said therefore that S. 38 repeals S. 386 of the Act (3 of 1923) as it applies to the Howrah Municipality. Thus modified it is not S. 386 of the Calcutta Municipal Act but a different section. AIR 1931 PC 149, Rel. on; 64 Cal W N 572, Reversed. Chairman of the Municipal Commissioners of Howrah v. Shalimar Wood Products (Private), Ltd. (1963) 1 S C A 405 : (1963) 1 S C R 47 : (1965) 2 S C J 236 : (1962 (2) Cri L J 636 : 1962 S C D 804 : AIR 1962 SC 1691 (1693, 1694) (Prs 6, 8).

WEST BENGAL FOOD GRAINS CONTROL ORDER (1951)

CLAUSE 1

——Cl. 1 (4), Proviso — Bengal Food Grains Control Order (1945), Para 1 (5), Proviso — Notification No. 19562 D. C. S., D/- 3-10-1947 issued under Proviso does not survive repeal of order. See Bengal Foodgrains Control Order (1945), Para 1 (3), Proviso. 1955 Cri L J 1249 : AIR 1955 Cal 478 (DB).

——Clause 1 (3), Proviso and (4) Proviso — No repugnancy between provisos.

There is no repugnancy between the Proviso to sub-para. (3) of para. 1 and the Proviso to sub-cl. (4) of cl. 1 and the latter does not make the former redundant. 60 Cal W N 202 : 1955 Cri L J 1249 : AIR 1955 Cal 478 (479) (Pt A) (Pr 5) (DB).

CLAUSE 2

——Clauses 2 (a) and 5 (1) (b) — Driver of lorry if carrier.

The provisions of Cl. 5 (1) (b) read with Form E leave no room for doubt that the driver of a lorry who is not the owner thereof cannot be said to be a carrier within the meaning of Cl. 2 (a). 60 Cal W N 202 : 1955 Cr L J 1249 : AIR 1955 Cal 478 (480) (Pt E) (Pr 8) (DB).

CLAUSE 3

——Cls. 3, 4 (c), 13 (2) and 17 — Clauses 3, 4 (c), 13 (2) and 17 of W. B. Food Grains Control Order confer arbitrary and uncontrolled powers on State Government—License can be cancelled, revoked or modified without assigning reasons or without issuing notice—Power of delegation unrestricted — Provisions are therefore invalid. See Constitution of India, Art. 19 (1) (g) and (6). 1955 Cri L J 1249 : AIR 1955 Cal 478 (DB).

CLAUSE 4

——Cls. 4 (c), 3, 13 (2) and 17 — Clauses 3, 4 (c), 13 (2) and 17 of W. B. Food Grains Control Order confer arbitrary and uncontrolled powers on State Government—License can be cancelled, revoked or modified without assigning reasons or without issuing notice—Power of delegation unrestricted — Provisions are therefore invalid. See Constitution of India, Art. 19 (1) (g) and (6). 1955 Cri L J 1249 : AIR 1955 Cal 478 (DB).

CLAUSE 5

——Cls. 5 (1) (b), and 2 (a) — Driver of lorry who is not owner is not a carrier. See W. B. Food Grains Conrtol Order (1951), Cl. 2 (a). 1955 Cri L J 1249 : AIR 1955 Cal 478 (DB).

CLAUSE 13

——Cls. 13 (2), 17, 3 and 4—Cls. 3, 4 (c), 13 (2) and 17 of W. B. Food Grains Control Order confer arbitrary and uncontrolled powers on State Government—License can be concelled, revoked or modified without assigning reasons or without issuing notice—Power of delegation unrestricted — Provisions are therefore invalid. See Constitution of India, Art. 19 (1) (g) and (6). 1955 Cri L J 1249 : AIR 1955 Cal 478 (DB).

CLAUSE 17

——Cls. 17, 13 (2), 3 and 4 (c)—Cls. 3, 4 (c), 13 (2) and 17 of W. B. Food Grains Control Order confer arbitrary and uncontrolled powers on State Government — License can be cancelled, revoked or modified without assigning reasons or without issuing notice—Power of delegation unrestricted—Provisions are therefore invalid. See Constitution of India, Art. 19 (1) (g) and (6). 1955 Cri L J 1249 : AIR 1955 Cal 478 (DB).

WEST BENGAL FOOD GRAINS (DISPOSAL AND ACQUISITION) ORDER (1947)

CLAUSE 1

——Cl. 1 — Order whether empowers possession or acquisition of property — Constitution of India, Art. 31 (2) and (5).

It is extremely doubtful whether the Order is a piece of legislation empowering possession or acquisition of a piece of property. The order merely requires a person to sell a certain quantity of foodgrains to the State. But apart from this, Art. 31 (5) (a) saves the existing law. The Order in question was promulgated in 1947 more than 18 months before the Constitution, the time limit referred to in Art. 31 (6) of the Constitution. AIR 1952 Cal 61 (64) (Pt E) (Pr 12).

WEST BENGAL FOODGRAINS (INTENSIVE PROCUREMENT) ORDER (1952)

——Validity of order—Constitution of India, Arts. 25 and 26.

The West Bengal Foodgrains (Intensive Procurement) Order, 1952, in so far as it authorised the State to acquire the entire produce of a land dedicated to a deity or in trust does not infringe the rights conferred by either Art. 25 or Art. 26 and is not unconstitutional on that ground.

Desirability of amending the Order by making some provision for deity and performance of the trust pointed out. **58 Cal W N 73 : AIR 1954 Cal 241 (242, 243) (Pt A) (Prs 3, 5, 6, 9, 10, 11).**

——Validity of order—[Constitution of India, Arts. 19 (1) (f) and 31]. The order is intra vires. AIR 1953 Cal 548, Foll. 57 Cal W N 798 : AIR 1954 Cal 97 (97, 98) (Pt A) (Pr 3).

——Validity — The Essential Supplies (Temporary Powers) Act and the W. B. Foodgrains (Intensive Procurement) Order, read with the specification of prices etc. under notification No. 10365 F. D. fixes the amount of compensation and the manner and principle of its determination, and therefore is sufficient compliance with Art. 31 (2) of the Constitution. See Constitution of India, Art. 31 (2). AIR 1954 Cal 56.

——Hearing of appeals in batches—Appellate Officer should bear in mind that if by doing so individual cases do not get proper treatment on merits there is a denial of justice to parties concerned and a failure to protect their statutory rights. **57 C W N 684 : AIR 1953 Cal 719 (720) (Pr 3) (DB).**

——Order is reasonable and in public interest. See Constitution of India, Art. 19 (1) (f) (g), (5) (6). AIR 1953 Cal 548.

——Validity—(Constitution of India, Art. 14).

The classification of 'producers' who owned ten acres or more, affected by the Order is a reasonable classification, bearing a just relation to the object sought to be attained. Nothing in the Essential Supplies (Temporary Powers) Act (1946) read with the order, offends against the fundamental right of equal protection guaranteed by Art. 14 of the Constitution. **57 C W N 397 : ILR (1955) 1 Cal 401 : AIR 1953 Cal 548 (559) (Pt N) (Prs 47, 48).**

CLAUSE 2

——Cl. 2 (1)—"Director".

Provision in the definition of 'Director' empowering the director to authorise any officer to exercise the powers of the director are not ultra vires. AIR 1953 Cal 756 (757) (Pt B) (Pr 5).

CLAUSE 3

——Cl. 3—Estimate of director.

The Director is entitled to base his estimate on reliable data furnished by a committee of experts and specially on results of actual crop-cutting experiments. AIR 1953 Cal 548, Foll. AIR 1953 Cal 756 (757, 759) (Pt D) (Pr 7).

CLAUSE 5

——Cl. 5—Scope — The granting of a right of appeal under the clause means that the producer must be given an opportunity to show that the estimate of the Director regarding surplus yield is wrong. See Constitution of India, Art. 226. AIR 1954 Cal 97.

FORM A

——Form A—Validity.

Held, that as the petitioner company was in entire possession of whatever lands it cultivated and there were no tenants or Adhiars or Bhagdars whatever the mistake in the translation of the directive in Form 'Ka' had not misled it and thereby vitiated the acquisition. The available surplus was calculated according to the declaration in Form 'B' or Form 'Kha' in which there was no defect. AIR 1953 Cal 756 (757) (Pt C) (Pr 6).

WEST BENGAL FOODGRAINS (MOVEMENT CONTROL) ORDER (1951)

—Disposal by confiscation of property. The disposal of property while the same was "in esse" was proper under S. 517, Cr P C. See Criminal P. C. (1898), S. 517. AIR 1955 NUC (Cal) 4284 (DB).

CLAUSE 3

——Cl. 3 (1)—Crossing the border — Proof of exact border by proper evidence necessary—Essential Supplies (Temporary Powers) Act (1946), S. 7 (2) and (3) —Trial under. AIR 1955 NUC (Cal) 4270 (DB).

——Cl. 3 (2) and (3)—Bona fide resident.

The question whether a person is a bona fide resident or not of the corridor area is relevant only in connection with movement from one point of the corridor to another point in the corridor under sub-cl. (3). That question is entirely irrelevant in connection with movement under sub-para. (2) from outside the corridor into the corridor. **57 C W N 275 : 1953 Cri L J 929 : AIR 1953 Cal 408 (408) (Pt A) (Pr 3) (DB).**

——Cl. 3 (3) — Burden of proof — (Evidence Act (1872), S. 105).

Where a person is charged for contravening Para. 3, sub-para. (3) of the Order, the burden of proving that the accused person is not a bona fide resident of the area is on the prosecution. **57 C W N 275 : 1953 Cri L J 929 : AIR 1953 Cal 408 (409) (Pt B) (Prs 8, 9) (DB).**

——Cl. 3 — Order whether ultra vires as contravening Constitution of India, Art. 15 (1).

The West Bengal Food Grains (Movement Control) Order no doubt requires a permit for food grains to be moved from a cordoned area to a place outside it but this restriction is not motivated by the fact that a citizen was born at a particular place. Hence that Order does not contravene Art. 15 (1) of the Constitution. AIR 1952 Cal 61 (63) (Pt A) (Pr 6).

——Cl. 3 — Order whether contravenes Constitution of India, Art. 19.

The State is empowered under Art. 19 (5), to enact laws which may impose reasonable restrictions on the exercise of the rights conferred by cls. (d), (e) and (f) of Art. 19 (1) in the interest of the general public. And as the Order has been made in the interest of the general public the restriction imposed on free movement of goods is not an unreasonable restriction on the fundamental right of the citizen either under Art. 19 (1) (d) or under Art. 19 (1) (f) or under Art. 19 (1) (g). AIR 1952 Cal 61 (63, 64) (Pt B) (Prs 7, 8, 9).

CLAUSE 7

——Cl. 7—Order if contravenes Constitution af India, Art. 20 (2).

From the terms of cl. 7 of this Order, it does not follow that person concerned will be prosecuted and punished for the same offence more than once and hence it does not contravene Art. 20 (2) of the Constitution. AIR 1952 Cal 61 (64) (Pt C) (Pr 10).

CLAUSE 8

——Cl. 8 — Order if contravenes Constitution of India, Art. 31 (1).

The provision of cl. 8 of the Order has not the effect of expropriating the owner of the vehicles in which the prohibited article has been carried. It merely provides for its seizure. AIR 1952 Cal 61 (64) (Pt D) (Pr 11).

CLAUSE 10

——Cl. 10 and Explanation — "Person" — Essential Supplies (Temporary Powers) Act (1946), S. 7 (2):(b) Proviso) — (General Clauses Act (1897), S. 3 (39)).

If two persons are in joint possession over twice the maximum quantity prescribed, they become liable for contravention of the Order if they do not belong to the same household and they cannot set up the fictition of being in separate possession of half the quantity each. 57 C W N 375: 1953 Cri L J 1123: AIR 1953 Cal 476 (477) (Pt B) (Pr 5) (DB).

WEST BENGAL FUNDAMENTAL RULES
Vol. 2 App. 3 Rule 3

——Vol. 2, App. 3, R. 3 — Public servant under suspension — No criminal charge pending—Effect on duration of suspension — The order of suspension cannot continue after the date on which the charge ceases to be pending anywhere. AIR 1958 Cal 239 (240, 241) (Pt A) (Pr 5).

WEST BENGAL GAMBLING AND PRIZE COMPETITION ACT (32 of 1957)

SECTION 5

——Ss. 5, 6—Search in accordance with provisions of S. 5—Presumption under S. 6 arises.

If the search is in accordance with S. 5 of the Act and as a result of the search, instruments of gaming have been found in the gaddi there is a presumption under S. 6 in the absence of any evidence on record from which the contrary is made to appear and when the Magistrate has come to the finding that the gaddi was being used as a common Gaming House at the relevant time it cannot be said that the gaddi has not been proved to be a 'common gaming house.' AIR 1930 Cal 365; AIR 1930 Cal 369, Rel. on. 68 Cal W N 717 : 1965 (2) Cri L J 825 (826) (Pt A) (Pr 5) (Cal).

SECTION 8

——S. 8—Seizure of cash money—Legality — Magistrate has powers to seize such cash money—(Criminal P. C. (1898), S. 517).

Section 8 provides for disposal of cash money seized in the common gaming house. Under that section the trying Magistrate has jurisdiction to pass an order forfeiting the money seized. AIR 1944 Mad 125, Rel. on; AIR 1948 Cal 116, Disting. 68 Cal W N 717 : 1965 (2) Cri L J 825 (826) (Cal).

SECTION 19

——S. 19 (d)—Validity of Act—Prize competition, if covered by Entry 34 of List II, Sch. VII, Constitution of India — (Constitution of India, Sch. VII, List II, Entry 34) —(Prize Competition Act (42 of 1955), Ss. 4, 5).

Held, that the prize competitions carried on by the petitioner in his magazine 'New India' were of a nature which has been characterised as 'gambling' and came within the mischief of the West Bengal Act and the rules thereunder, which were perfectly valid, the local Legislature having power under Item 34 of List II of the 7th Schedule of the Constitution, to promulgate such a law. The law being valid, the rules were unexceptionable. AIR 1957 S C 699 and AIR 1957 S C 628, Foll. 1959 Cr L J 307: AIR 1959 Cal 141 (145) (Prs 9, 10).

WEST BENGAL GOVERNMENT SERVANTS CONDUCT RULES (1959)

RULE 4

——R. 4—Scope of — Deals also with private life of public servant—Leaves standard of proper behaviour to subjective satisfaction of disciplinary authority — Rules held defective in that respect — Association of public servant with girls taking intoxicating drinks alleged to be unbecoming conduct — Held case not covered by R. 4—R. 4 not retrospective — Constitution of India, Arts. 309, 311. (1964) 8 Fac L R 31 : 1964-1 Lab L J 462 : 68 Cal W N 215 : AIR 1964 Cal 503 (514, 515) (Pt D) (Pr 51, 53, 54).

——R. 4 — Disciplinary action against public servant on charge of unbecoming conduct — Finding challenged by writ petition — Duty of High Court — Misconduct — What amounts to—Constitution of India, Art. 226 — Words and Phrases — Misconduct — The word misconduct is a sufficiently wide expression and covers any conduct which in any way renders a man unfit for his office or is likely to tamper or embarrass the administration. (1964) 8 Fac L R 31 : (1964) 1 Lab L J 462 : 68 Cal W N 215 : AIR 1964 Cal 503 (514, 515) (Pt G) (Prs 49, 50, 55).

WEST BENGAL HINDU SOCIAL DISABILITIES REMOVAL ACT (37 of 1948)

PREAMBLE

——Preamble and S. 3 (c) — Act whether ultra vires Constitution of India, Arts. 14, 15, 19 (1) (g).

Held that the general scheme of the Act is to protect the lower castes against being discriminated against by the higher castes and to make all castes or classes of Hindus equal in the social, civil and religious fields. This Act and, in particular, Cl. (c) of S. 3 cannot be said to be ultra vires because it offends against Art. 19 (1) (g) of the Constitution. The Act or any provisions therein do not offend against Art. 14. Nor does it offend against Art. 15 of the Constitution.

(Per Harries C. J. —"I find it difficult to appreciate the argument, as to how the Act can be ultra vires because of the use of the word "class" in S. 3). 55 Cal W N 676 : 52 Cri L J 1399 : AIR 1951 Cal 167 (168, 169) (Pt B) (Prs 7, 9, 10, 11, 12, 13) (DB).

SECTION 2

——S. 2 (a)—Definition of 'Hindu', whether being wide renders Act ultra vires.

The term "Hindu" is defined in S. 2 (a) in a very wide manner. But the Act is not rendered ultra vires by reason of such definition. 55 Cal W N 676 : 52 Cri L J 1309 : AIR 1951 Cal 167 (168) (Pt A) (Pr 7) (DB).

SECTION 3

——S. 3 (c) and Preamble — Act, if ultra vires of Constitution — Constitution of India, Arts. 14, 15 and 19.

The West Bengal Hindu Social Disabilities Removal Act 1948, is not ultra vires the Constitution.

The Act and in particular, S. 3 (c) cannot possibly be said to be ultra vires, because it offends against Art. 19 (1) (g) of the Constitution.

It cannot also possibly be said that the Act is ultra vires because it offends against Art. 14 of the Constitution. Art. 14 is directed against discrimination and what the Act wishes to abolish is discrimination by Hindus.

The Act does not offend against Art. 15 of the Constitution. The Act does not discriminate against any citizen only on the ground of caste, or religion, or race.

It is also difficult to appreciate the argument as to how the Act can be ultra vires because of its appli-

cation to particular "Classes" of Hindus. If the Act was ultra vires in so far as it applied to "class" the words "or class" where they appear are clearly severable in the Act and the Act would still be intra vires, in so far as it applied to "caste". 55 C W N 676 : 52 Cri L J 1399 : A I R 1951 Cal 167 (168, 169) (Pt B) (Prs 7 to 13) (DB).

——S. 3 (c) — Services performed by barber whether come within S. 3 (c)—(Obiter).

Obiter.—Whether the service performed by a barber comes within Cl. (c) of S. 3. The words "civic, social or religious practices" are extremely wide and it may well be contended that they embrace practically all services which one Hindu could render to another, certainly services rendered for payment. 55 Cal W N 676 : 52 Cri L J 1399 : A I R 1951 Cal 167 (169, 170) (Pt C) (Pr 14) (DB).

WEST BENGAL INDUSTRIAL DISPUTES RULES (1947)

RULE 77

——R. 77—Notice of retrenchment—Non-compliance with rule — Retrenchment otherwise lawful — Retrenchment would not fail—See Industrial Disputes Act (1947), S. 25.F (c). (1964) 2 Lab L J 172 (Cal).

WEST BENGAL INDUSTRIAL DISPUTES RULES (1958)

RULE 22

——R. 22 — Non-appearance of either party before Tribunal on fixed day—Tribunal refixing another day for hearing with notice to Union only and not firm — Held, Tribunal went wrong—It could have exercised discretion under R. 22 or should have given notice to both parties. 7 Fac L R 195 : (1963) 2 Lab L J 478 (Cal).

RULE 74

——R. 74 — Application for computation of amount under S. 33-C (1) due under an award — Can only be made to a Labour Court specified under S. 33-C (2)—Every Labour Court has no jurisdiction to entertain such applications. See Industrial Disputes Act (14 of 1947), S. 7 (1). AIR 1964 Cal 102 (DB).

WEST BENGAL JUTE GOODS ACT (5 of 1950)

SECTION 2

——S. 2—Contract relating to jute goods—Settlement contract — Nature and validity—The settlement contract is within the operation of the Act, reason being that in the settlement contract the agreement or consideration is to pay the difference with reference to a contract which itself was entered on the forward basis. See Contract Act (1872), S. 23. A I R 1953 Cal 618.

[Overruled on another point in AIR 1960 Cal 90.]

——S. 2 — Validity of jute contracts — Burden of proof.

The West Bengal Jute Goods Act has not made all contracts, void and unenforceable. Before a contract could be made void and unenforceable under the statute it must be shown that it is a contract within the meaning of S. 2 of the statute. That depends again on the proof of certain facts. It is for the party who alleges those facts to exist to prove them and take all necessary steps to produce such proof. AIR 1953 Cal 618 (620) (Pt C) (Pr 18).

[Overruled on another point in A I R 1960 Cal 90.]

WEST BENGAL JUTE GOODS (CONTROL) ACT (4 of 1950)

SECTION 4

——S. 4 (1) (a)—"Any person" and "to such persons" —Interpretation of.

The phrase "any person" which appears earlier in sub-s. (1) (a) must be construed as any person other than the Jute Controller. Further the phrase "to such persons" which also occurs in that clause must mean persons other than the Jute Controller. (1951) 55 Cal W N 423 (DB).

——S. 4 (1) (a) — Order of Controller to sell jute to himself—Validity of.

The controller cannot direct a person holding stocks of jute goods to sell those stocks to himself as Controller under the powers given in S. 4 (1) (a) of the Act. (1951) 55 Cal W N 423 (DB).

——S. 4 (1) (a) — Sale to Controller whether can amount to sale to State Govt.

A sale to the Jute Controller as Jute Controller will not amount to a sale to Government. (1951) 55 Cal W N 423 (DB).

WEST BENGAL JUTE GOODS FUTURES ORDINANCE (5 of 1949)

SECTION 1

●——S. 1—Competency of Provincial Legislature to legislate. The Provincial Legislature was competent to legislate. See Government of India Act (1935), Sch. 7, List 2, Item 27. AIR 1955 S C 182.

●——S. 1—Object of the Ordinance.

The object of the Ordinance is not to avoid wagering contracts, which are already void under the ordinary law of the land. The mischief which the Ordinance was intended to redress was that created by the highly speculative transactions namely the chain contracts, Bhuwalka Bros. Ltd. v. Dunichand, 56 Cal W N 685 : A I R 1952 Cal 740 (746) (Pt D) (Pr 43) (SB).

[Reversed on another point in A I R 1955 S C 182].

●——S. 1—Ordinance is intra vires—Government of India Act (1935), Sch. 7, List 2, Item 27, List 3, Item 10).

The real character of the Ordinance is to regulate the jute trade within the province. This is the pith and substance of the Ordinance. The ordinance is covered by Item 10 of the List 2 and is intra vires. Bhuwalka Bros. Ltd. v. Dunichand, 56 Cal W N 685 : AIR 1952 Cal 740 (749) (Pt G) (Prs 68, 69) (SB).

[Reversed on another point in A I R 1955 S C 182.]

SECTION 2

●——S. 2 (1) (b) (i) — Dealing in jute goods — "Involving the actual delivery of possession"—Meaning of "involving" — Construction of words "actual delivery of possession" — A I R 1952 Cal 740 (SB), Reversed—(Sale of Goods Act (1930), S. 33.)

The words used in S. 2 (1) (b) (i) of the Ordinance are "involving the actual delivery of possession thereof". The word "involving" in the context means resulting in and this condition will be satisfied if the chain contracts as entered into in the market result in actual delivery of possession of goods in the ultimate analysis. A I R 1952 Cal 740 (SB). Reversed. Duni Chand Rataria v. Bhuwalka Bros. Ltd. 1955 S C J 168 : 1955 S C A 599 : (1955) 1 S C R 1071 : AIR 1955 S C 182 (187) (Pt A) (Pr 14).

●——S. 2 (1). (b)—No intermediate transactions in chain contract—No actual delivery of possession is involved.

Taking and keeping a delivery order is no evidence of receipt of the goods except in the case of a bill of lading, transfer of which only effects transfer of the actual possession of goods. Case law referred. (Nature of chain contracts fully explained). Bhuwalka Bros. Ltd. v. Dunichund, 56 Cal W N 685 : AIR 1952 Cal 740 (745, 746) (Pt C) (Prs 34, 36, 40) (SB).

[Reversed in AIR 1955 S C 182].

●——S. 2 — Contracts which come within its mischief.

If a contract is made by a person who habitually deals in the sale or purchase of Jute goods involving the actual delivery of possession thereof with another person who does not habitually deal in such sale or purchase, the contract is within the mischief of the Ordinance. Likewise if a person who is not a habitual dealer within the meaning of S. 2 (b) (i) enters into a contract with a person who is such a dealer, the Ordinance hits the contract. Bhuwalka Bros Ltd. v. Dunichand, **56 Cal W N 685 : AIR 1952 Cal 740 (747) (Pt E) (Prs 46, 47, 49) (SB).**

[Reversed on another point in AIR 1955 S C 182.]

SECTION 3

●——S. 3 (2) (c) (i) — Applicability — Both parties habitual dealers — Contract not within S. 3 (2) (c) (i).

It is only when both the buyer and the seller are habitual dealers in the sale or purchase of jute goods involving the actual delivery of possession, that the contract between them is not within the mischief of S. 3 (2) (c) (i) of the Ordinance. If one of the parties to the contract is not a habitual dealer in such sales or purchases, the contract is hit by the Ordinance. Bhuwalka Bros. Ltd. v. Dunichand, **56 Cal W N 685 : AIR 1952 Cal 740 (745) (Pt B) (Pr 33) (SB).**

[Reversed on another point in AIR 1955 S C 182.]

●——S. 3 (2) (c) (ii) — Chain contract — Effect of Settlement contract — Orignal contract before the Ordinance — Settlement after due date — Effect.

The practical effect of a settlement contract is to wipe out the original contract. There is no question of taking or giving delivery of goods any more. It is only payment or receipt of the difference. But in law the position is different. The original contracts and the settlement contracts remain outstanding till the due dates arrive. On that day the contracts are performed by payment of the difference. In other words there is set-off as regards delivery under the original contract against delivery under the settlement contract and the difference is paid. 46 Cal 534, Rel. on.

Thus where an original contract is made before the date of the notification under S. 3 (1) of the Ordinance and the settlement contract is made after that date, both contracts remain outstanding till the due date, with the effect that the settlement contract is rendered void by S. 3 (2) (c) (i) of the ordinance and the original contract has to be settled on the basis of the last closing rate in a notified market under S. 3 (2) (c) (ii), the buyer being entitled to that difference only and nothing more. Bhuwalka Bros. Ltd. v. Dunichand, **56 Cal W N 685 : AIR 1952 Cal 740 (747) (Pt E) (Prs 46, 47, 49) (S B).**

[Reversed on another point in AIR 1955 S C 182.]

WEST BENGAL KEROSENE CONTROL ORDER (1947)

CLAUSE 5

——Cl. 5 — License in form A — Contravention of — Effect stated — (Essential Supplies (Temporary Powers) Act (24 of 1946), S. 7). **AIR 1955 N U C (Cal) 917 (DB).**

WEST BENGAL LAND ACQUISITION AND REQUISITION RULES (1948)

RULE 3

——R. 3 (1) — Service of requisition order — Copy of order should bear personal signature of Collector — Affixation of lithographic signature is not sufficient compliance of R 3 (1)—Words and phrases—'Endorsed' — Means personal signature. **ILR (1962) 1 Cal 109 : 65 Cal W N 869 : AIR 1962 Cal 269 (272) (Pt B) (Pr 21).**

WEST BENGAL LAND DEVELOPMENT AND PLANNING ACT (21 of 1948)

PREAMBLE

——Preamble — Act not repugnant to Land Acquisition Act (1894) — Even if repugnancy is assumed S. 2 of State Act will prevail, only to the extent of amendment introduced by West Bengal Land Development and Planning (Amendment) Act, 1955. See Constitution of India, Art. 254 (2). **(1965) 69 Cal W N 801 : AIR 1966 Cal 359 (DB).**

——Preamble — Validity of Act — Reasonableness of provision — Power of Court to go into—Constitution of India, Arts. 19 and 31.

It is not open to the Court to go into the question of reasonableness of the provisions of the W. B. L. D. & P. Act and declare the Act or any of its provisions ultra vires on the ground that the requirements of Art. 19 (5) have not been satisfied. AIR 1952 Cal 912 (914) (Pt B) (Prs 8, 14).

——Preamble — Validity of Act — Settlement of immigrants — If public purpose — Constitution of India, Art. 31.

The settlement of immigrants is a public purpose, and the Act is, therefore, not ultra vires in so far as it purported to acquire lands for settlement of immigrants. **89 C L J 301 : AIR 1952 Cal 679 (681, 682) (Pt D) (Pr 4).**

——Preamble — Validity of Act — Government of India Act (1935) Sch. 7, List 1, Entry 17 & List II, Entry 9 — Constitution of India Art. 246 & Sch. 7, List 1, Entry 17 & List III, Entry 27.

The Act is in pith and substance a legislation dealing with compulsory acquisition of property. It is quite competent for the State Legislature now under the Constitution to legislate for rehabilitation of refugees from foreign countries and such a legislation cannot be impugned on the ground that it is an extra-territorial legislation. 55 C W N 297, Rel. on. **89 Cal L J 301 : AIR 1952 Cal 679 (681, 682) (Pt E) (Prs 4, 5).**

——Preamble — Validity of Act — Reasonableness of provisions — Constitution of India, Art. 19.

The Act does not offend Art. 19 of the Constitution. If the legislation purports to be a legislation relating to acquisition of property under Art. 31 of the Constitution then the application of Art. 19 is excluded. So, the question of reasonableness of restrictions on the fundamentat right guaranteed under Art. 19 (1) (b) to acquire, hold and dispose of property, becomes immaterial. **89 C L J 301 : AIR 1952 Cal 679 (682) (Pt F) (Pr 5).**

——Preamble — Validity of Act — Discrimination between citizens and non-citizens — Constitution of India, Art. 14.

It cannot be contended that the Act offends Art. 14 of the Constitution inasmuch as it discriminates between the citizens and non-citizens. **89 C L J 301 : AIR 1952 Cal 679 (682) (Pt G) (Pr 6).**

——Preamble — Validity of Act — Absence of provision for payment of compensation — Constitution of India, Art. 31 (2).

Although proviso (b) to S. 8 of the Act is ultra vires, the proviso is severable from the other provisions of the Act and the rest of the Act therefore can stand as a valid piece of legislation. The expression "so far as may apply" in S. 8 makes it clear that the provisions as to compensation are applicable to acquisition under the Act. The Act is, therefore, not hit by Art. 31 (2) of the Constitution. **89 C L J 301 : AIR 1952 Cal 679 (682,683) (Pt H) (Prs 7, 8).**

The decision of the Government as to the "public purpose" is conclusive and cannot be questioned in a Court of law. **55 C W N 463 : AIR 1951 Cal 97 (99) (Pt D) (Pr 14).**

——S. 4—'Public purpose'—Acquisition of land for settlement of refugees.

Acquisition of land for settlement of refugees is acquisition for a public purpose and is within the competence of the Government of the State of West Bengal. **55 C W N 463 : AIR 1951 Cal 97 (99) (Pt E) (Pr 15).**

——Ss. 4 and 7—Notification for acquisition of land under S. 7—Validity.

A notification for the acquisition of land under S. 7 of the Act must be held to be invalid if it is made at the same time and in the same gazette in which the declaration under S. 4 is made. **55 C W N 463 : AIR 1951 Cal 97 (100) (Pt G) (Pr 18).**

SECTION 5

——Ss. 5, 7, 2 (d) (i), 6, 8 (before the amendment by W. B. Act 23 of 1955)—Acquisitions under the Act—Classes of—Acquisition under S. 7 in cases of urgency—Preparation of scheme under S. 5 not necessary—A I R 1954 Cal 248, Reversed. See W. B. Land Development and Planning Act (21 of 1948), S. 7. AIR 1961 SC 16.

——Ss. 5, 6 and 4—Notification under S. 4—Satisfaction of Government—Declaration under S. 6—Prerequisites—Validity of notification under S. 4 and declaration under S. 6—The matter of satisfaction under S. 4 of the Act is not a case covered by item 18 of para 2 of the Standing Order and the Secretary or the Asstt. Secretary could, therefore, lawfully discharge the functions of the State Government under S. 4 of the Act. W. B. Land Development and Planning Act (1948), S. 4. AIR 1959 Cal 552 (DB).

——S. 5 — West Bengal Land Development and Planning Rules, R. 5 (1) (a)—Scope — Preparation or approval of scheme by Land Planning Committee—If necessity. 1959 Cal L J 15.

——S. 5 and R. 5 (1) (2) (3)—Procedure.

What the Act contemplates is that the State Government will ask the prescribed authority, to frame a scheme and the prescribed authority shall do so and in the course of so doing, cause a local enquiry to be made by the Collector under R. 5 (2) and then submit a report with its own recommendations. If after or about the time when the notification under S. 4 was published, the Government sent a copy of the tentative scheme to the Land Acquisition Collectors' Office and directed the Land Acquisition Collector to submit a report under R. 5 (2) of the Rules, the provisions of S. 5 (1) and Rr. 5 (1) (a), 5 (2) and 5 (3) are completely ignored by Government. **AIR 1955 N U C (Cal) 2327 (DB).**

SECTION 6

——Ss. 6. 2 (d) (i), 5, 7, 8 (before the amendment by W. B. Act 23 of 1955)—Acquisitions under the Act—Classes of — Acquisition under S. 7 in cases of urgency—Preparation of scheme under S. 5 not necessary — A I R 1954 Cal 248, Reversed. See W. B. Land Development and Planning Act (21 of 1948), S. 7. AIR 1961 S C 16.

——S. 6 (1) (1a)—Notification under, reciting fact of satisfaction of Governor or State Government—Use of words 'it appears' not sufficient compliance — Notification is ultra vires—Words and Phrases — 'So satisfied' not equivalent to 'it appears'. (1965) 69 Cal W N 1067.

——S. 6—West Bengal Rules of Business—Rr. 19, 20 —Standing orders by Minister in charge in the Department of Land and Revenue — Validity — The standing orders are valid. See Constitution of India, Art. 166 (3). **AIR 1960 Cal 113.**

——Ss: 6, 4, 5—Notification under S. 4—Satisfaction of Government — Declaration under S. 6 — Prerequisites—Validity of notification under S. 4 and declaration under S. 6. See W. B. Land Development and Planning Act (1948), S. 4. A I R 1959 Cal 552 (DB).

——S. 6—Validity of declaration—West Bengal Land Development and Planning Rules (1948), R. 5 (2).

A declaration made under S. 6 without complying with requirements of R. 5 (2) in respect of giving opportunity to the person concerned to make representation against the development scheme is invalid.

(Scheme of S. 5 and R. 5 with regard to preparation of development scheme discussed). **57 Cal W N 271: AI R 1953 Cal 568 (569, 570) (Prs 8, 9).**

——S. 6 — Declaration made under — It must be published in Official Gazette. See W. B. Land Development and Planning Act (21 of 1948), S. 4. **AIR 1952 Cal 912.**

——Ss. 6 & 8—Rules under S. 14—R. 5 (2)—Notifications made before Constitution—Non-compliance with R. 5 (2)—Effect—Constitution of India Art. 226.

Where no notice, whether individual or general, was given to the persons interested under rule 5 (2), giving them an opportunity to make representations against the scheme and no local enquiry, as contemplated by rule 5 (2), was ever held in conection with the preparation of the scheme, the declaration under S. 6 is not validly made and as S. 8 (a) presupposes the existence of a valid declaration under S. 6, the Notification under S. 8 (a) is also bad. The Notification under S. 6 being ultra vires any step taken to enforce such Notification or any action taken pursuant to such Notification can be challenged under Art. 226 of the Constitution of India. Being an ultra vires Notification, it gives a recurring cause of action to the party affected and therefore the High Court has power under Art. 226 to give relief to the party even though Notifications under Ss. 4 and 6 were made before the Constitution of India came into force. AIR 1950 M B 46, Rel. on. **A I R 1952 Cal 891 (892, 893) (Prs 12, 13).**

——S. 6—Declaration under—Notice under R. 8 of Rules framed under Act:— Validity — (West Bengal Land Development and Planning Rules (1948), R. 8.)

In the circumstances the declaration made under S. 6 and the notice served under R. 8 on the petitioners must be held to have been validly made inasmuch as there had been substantial compliance with the Act and the Rules framed thereunder. **56 Cal W N 183 : AIR 1952 Cal 874 (877) (Pt C) (Prs 14, 15).**

——S. 6—Release of portion of land acquired under S. 6—Validity—Non-publication of release—Effect—(Land Acquisition Act (1894), S. 48).

It is open to the Government to release portions of the lands from acquisition under the Land Development Act—Non-publication of notification declaring the fact of withdrawal from the acquisition does not make the notifications issued under section 4 and S. 6 read with S. 7 of the W. B. L. D. Act or any proceedings taken thereunder invalid. **AIR 1952 Cal 870 (871, 872) (Pt A) (Pr 3).**

——Ss. 6, 4 and 7 — Notification under published simultaneously with notification under S. 4 — Validity.

A Notification purported to be made under S. 6 read with S. 7, Land Development Act, is invalid, if published simultaneously with the Notification under S. 4 of the Act. **AIR 1952 Cal 687 (688) (Pt A) (Pr 5).**

Land Development and Planning Act (21 of 1948), S. 7. AIR 1961 S C 16.

● ——S. 8, Proviso (b) — 'Condition' — Validity — Measure of compensation — Scope for legislative discretion—Any principle for determining compensation which denies to the owner any increment in value cannot result in the ascertainment of the true equivalent of the land appropriated. See Constitution of India, Art. 31 (2). AIR 1954 S C 170.

● ——S. 8—Validity—The provisions of S. 8 are held unconstitutional and not saved by Art. 31 (5) of the Constitution. See Constitution of India, Art. 31 (5) and (6). **AIR 1954 S C 170.**

● ——S. 8—Constitutionality—Constitution of India, Art. 31 (5) (b)—Scope and object.

The provision in S. 8 of the W. B. Land Development and Planning Act, relating to the conclusiveness of the declaration of Government as to the nature of the purpose of the acquisition held is unconstitutional and is not saved by Art. 31 (5) of the Constitution. State of West Bengal v Mrs Bela Banerjee. **1954 S C J 95 : (1954) 1 M L J 162 : 1954 S C A 41 : 93 C L J 264 : 1954 S C R 558 : AIR 1954 S C 170 (172) (Pt A) (Pr 3).**

● ——S. 8 Proviso (b) — Validity — Constitution of India, Art. 31 (2)—Measure of compensation — Scope for legislative discretion—Principle which determines compensation which denies increment in value. **AIR 1954 S C 170 (172, 173) (Pt B) (Prs 6, 8).**

——S. 8 (i), Proviso (b)—Validity—Provisions though contravening S. 299 (2) of Government of India Act (1935) were protected by Art. 31-B and Ninth Schedule of the Constitution of India — Amendment in proviso (b) made in Sept. 1955 also held valid—Government of India Act (1935), S. 299 (2)—Constitution of India, Art. 31-B and Ninth Schedule. AIR 1955 S C 17 and AIR 1960 S C 32; AIR 1961 S C 16 and AIR 1955 S C 781, Rel. on. AIR 1952 S C 252; AIR 1954 S C 17; A I R 1959 S C 459; AIR 1959 Mad 548; AIR 1958 Bom 94; AIR 1959 J and K 35 (FB), AIR 1959 S C 648 and AIR 1954 S C 728, Explained and Dist. **AIR 1965 Cal 177 (182, 183) (Pr 23) (DB).**

——S. 8 — Reference under — Application signed by authorised pleader and not by claimant — Reference is competent. See Land Acquisition Act (1894), S. 18 (1). **AIR 1964 Cal 277 (DB).**

——S. 8 (1), Proviso (b) — Compulsory acquisition of land—Determination of compensation—Alteration of original object of acquisition with retrospective effect —State Government cannot do it for express purpose of paying lower rate of compensation. **(1962) 66 Cal W N 4 : 1961 Cal L J 163.**

——Ss. 8 and 6—Rules under S. 14—R. 5 (2) — Notifications made before Constitution—Non-compliance with R. 5 (2) - Effect—Constitution of India, Art. 226 —See West Bengal Land Development and Planning Act (1948), S. 6. **AIR 1952 Cal 891.**

——Ss. 8 and 1 — Constitution of India, Art. 31 (2)—Object of—Validity—Act does not contravene Art. 31 (2)—See Constitution of India Art. 31 (2). **AIR 1952 Cal 870.**

——S. 8 and R. 8—Taking of possession— Failure to give public notice — Effect on subsequent proceedings.

Before a person can be deprived of possession of his property, it is only in the fitness of things that he should have some notice of the intended dispossession. The rule casts a duty upon the Collector to give notice. Although there is this duty upon the Collector to give notice, the omission to give such notice does not vitiate the subsequent proceedings. **AIR 1952 Cal 870 (873) (Pt E) (Prs 13, 14).**

——S. 8 and Explanation to Proviso (a) — Validity— Constitution of India, Arts. 19 (1) (f) and (5) and 31 (2).

The provision in S. 8 making the declaration of Government conclusive as to the nature of the purpose of the acquisition is ultra vires Art. 31 (2) of the Constitution and therefore void. But the Explanation to proviso (a) of S. 8 does not offend against Art. 19 (1) (f) or Art. 19 (5) and is therefore intra vires and valid. **AIR 1952 Cal 554 (559) (Pt B) (Pr 42) (DB).**

——S. 8—Constitution of India, Art. 19 (1) (f) and (5) —Statute providing for compulsory acquisition. It would have to comply with Cl. (5) of Art. 19—See Constitution of India, Art. 19 (1) (f). **AIR 1951 Cal 111 (DB).**

——S. 8, Proviso (b)—Constitution of India, Arts. 19, 31 (2)—Applicability to provisions as to compensation —The provisions of Art. 31 (2) would apply and not the general provisions of Art. 19—See Constitution of India, Art. 19. **AIR 1951 Cal 111 (DB).**

——S. 8, Proviso (b) — Constitution of India, Art. 31 (2)—Compensation—Meaning of — The principles on which and the manner in which compensation is to be determined as laid down in the latter portion of Proviso (b) are no better than if it has been stated that whatever the market value of the land might be it could be acquired at the rate of "X" rupees per bigha or acre. The provisions as to compensation in S. 8 clearly offend against the provisions of Cl. (2) of Art. 31 and are therefore, void — See Constitution of India, Art. 31 (2). **AIR 1951 Cal 111 (DB).**

——S. 8, Proviso (b) — Latter portion — Severability from other portion of the proviso.

No objection can possibly be taken to proviso (b) to S. 8 if the last portion of the proviso which is void were deleted. The impugned provision fixing the maximum price of the land at its market value on 31st December 1946, is severable from the remainder of the proviso and could be eliminated from the Act leaving the Act quite workable. **AIR 1951 Cal 111 (115, 119) (Pt I) (Prs 38, 64) (DB).**

——S. 8—Severability from other portions of the Act.

Assuming that the provisions in S. 8 relating to the purpose of the acquisition and the nature of the land acquired are ultra vires, it cannot be said that the whole Act is ultra vires if these impugned provisions and the latter portion of proviso (b) which is void are deleted therefrom. The Act would be still a workable Act. **AIR 1951 Cal 111 (119, 120) (Pt J) (Prs 62, 67, 69) (DB).**

——S. 8—"So far as may be apply", meaning of.

The words "so far as may be apply" in S. 8, are common words of legislation by incorporation, and is an expression interchangeable with expressions "mutatis mutandis" and "as far as applicable" and like expressions. **55 C W N 463 : AIR 1951 Cal 97 (98, 99) (Pt A) (Prs 7, 11).**

——S. 8 — Section continues to be constitutional in view of Constitution (Fourth Amendment) Act, 1955 —Constitution of India, Arts. 31, 31-A, 31-B, 305, Sch. 9.

By reason of the amendment of the Constitution by the Constitution (Fourth Amendment) Act, 1955, by which Arts. 31, 31-A and 305 and the 9th Schedule mentioned in Art. 31-B were amended, the decision of the Supreme Court in AIR 1954 S C 170, declaring S. 8 of the West Bengal Land Development and Planning Act 1948 as amended by West Bengal Act (XXIX of 1951), to be unconstitutional is no more good law. **AIR 1962 Tripura 13 (14, 15) (Prs 10, 11, 12).**

SECTION 14

——S. 14 — Wether ultra vires — Constitution of India, Art. 19.

It cannot be said that because S. 14 is not mandatory in terms the Act can be held to be ultra vires. It cannot be held that the Act is ultra vires because there is no provision in the Act for allowing representations to e made to Government by the owners against the acquisition of the land. AIR 1951 Cal 111 (118) (Pt G) (Prs 57, 58, 60) (DB).

——S. 14 — Rules under — Rule 5 (2) — Validity — Constitution of India, Art. 19.

The Act, as it now stands, does give the owners a right to be heard before the land is acquired and therefore it cannot be said to be unreasonable on that ground. AIR 1951 Cal 111 (118, 119) (Pt H) (Pr 61) (DB).

WEST BENGAL LAND DEVELOPMENT AND PLANNING (AMENDMENT) ACT (29 of 1951)

SECTION 3

——S. 3 — Section 3 cannot affect proceedings pending before High Court instituted under Art. 226, Constitution of India.

Whatever might be the effect of S. 3 of the Act on proceedings commenced under other laws and pending before other Courts, it cannot possibly operate to affect proceedings under Art. 226 of the Constitution pending before the High Court. (1956) 60 CWN 962.

WEST BENGAL LAND DEVELOPMENT AND PLANNING RULES (1948)

RULE 5

——R. 5 (1) (2) (3) — Compliance—What constitutes compliance is indicated. See West Bengal Land Development and Planning Act (21 of 1948), S. 5. AIR 1955 NUC (Cal) 2327 (DB).

——R. 5 (2) — Opportunity to make representations against scheme — Substance of Notification under S. 4 published in conspicuous place in locality—Objections invited to what was proposed to be done — Notice not containing trace of proposed scheme — Held, no opportunity was given to make representation against scheme. AIR 1955 NUC (Cal) 2327 (DB).

——R. 5 (2) — Opportunity to make representations against a scheme and not to any part of it, must be given. AIR 1955 NUC (Cal) 2327 (DB).

—R. 5 (2) — Act does require submission of report to Relief and Rehabilitation Department. AIR 1955 NUC (Cal) 2327 (DB).

——R. 5 (3)—"Scheme"—What is.

The various matters described in R. 5 (3) are only illustrations of the descriptive matters to which the main clause of Sub-r. (3) refers. A mere map cannot constitute a scheme and in order that there may be a scheme, there must, at least, be some descriptive matter as will illustrate the proposals involved, namely the constructions, excavations, road layings and other works intended to be carried out on the lands and the manner of their intended disposition. AIR 1955 NUC (Cal) 2327 (DB).

——R. 5 (2) — West Bengal Land Development and Planning Act (21 of 1948), S. 6—Validity of declaration — A declaration under S. 6 without complying with the provisions of R. 5 (2) is invalid. See West Bengal Land Development and Planning Act (21 of 1948), S. 6. AIR 1953 Cal 568.

——R. 5 (2)—Individual notice to interested persons — If necessary — Reasonableness of provision for general or public notice — Constitution of India, Art. 19 (1) (f).

It is clear from a perusal of R. 5 (2) of the Rules, that it does not expressly require any individual notices to be served upon the persons interested in the acquisition. But what the Rule contemplates is some notice, which may be a general or a public notice, should be given but such notice must be a sufficient notice which would enable the persons interested to make their representation against the scheme.

The W. B. Land Development and Planning Act being a legislation which deals with compulsory acquisition of property, the application of Art. 19 (1) (f) of the Constitution is excluded and therefore the question of reasonableness of the provisions cannot be gone into in considering the question of the validity of the Act. Assuming however it is open to go into that question R. 5 (2) is not unreasonable provision. 56 C W N 183 : AIR 1952 Cal 874 (876) (Pts A, B) (Prs 8, 11, 13).

——R. 5 — W. B. Land Development and Planning Act (21 of 1948), S. 6 — Want of opportunity to make representation — There will not be a valid declaration under S. 6. See W. B. Land Development and Planning Act (21 of 1948), S. 6. AIR 1952 Cal 679.

RULE 8

——R. 8—Declaration under — Notice under R. 8 of Rules framed under Act — Validity—The declaration under S. 6 and the notice under R. 8 must be held to have been validly made as there was substantial compliance with the Act and Rules. See West Bengal Land Development and Planning Act (21 of 1948), S. 6. AIR 1952 Cal 874.

——R. 8 — 'May' has compulsory force — Notice must be issued before taking possession — Failure to give notice—Effect.

Although there is the duty upon the Collector to give notice, an omission to give such notice does not vitiate the subsequent proceedings or make the taking of possession illegal, unless it is shown that the Collector's failure to give notice in the case was wilful or perverse. ILR 43 Mad 280; AIR 1938 Sind 100 and 76 C L J 430, Ref. AIR 1952 Cal 870 (873) (Pt E) (Prs 13, 14).

WEST BENGAL LAND REFORMS ACT (10 of 1956)

See under Tenancy Laws.

WEST BENGAL LAND (REQUISITION AND ACQUISITION) ACT (2 of 1948)

PREAMBLE

——Preamble—Constitutional validity — Act not invalid on ground of violation of Art. 19 (1) (f)—Constitution of India, Arts. 19 (1) (f) and 31 (1) and (2)—Authority of law.

It cannot be contended that the expression "authority of law" occurring in Art. 31 (1) and attracting Art. 19 and the doctrine of reasonableness thereunder must equally be applicable to the same expression used in Art. 31 (2) notwithstanding the fact that this sub-article (2) specifically and exclusively refers to requisition or acquisition. AIR 1960 S C 1203 and AIR 1960 S C 1080, Rel. on. AIR 1963 Cal 373 (376, 377) (Pt C) (Pr 11).

SECTION 1

——S. 1 (2) — 'Generally'—Meaning of—West Bengal Land (Requisition and Acquisition) Act, 1948, S. 1 (2) — Act being a general law applies to Chandernagore on its merger with West Bengal. See Chandernagore Merger Act (36 of 1954), S. 17. AIR 1963 Cal 373.

——S. 1 (4) — Extension of life of Act by W. B. Act 12 of 1957 — Validity — Ordinance 5 of 1957 not ignored—Extension held valid. 1962 Cal L J 173 : 66 Cal W N 423.

SECTION 3

——S. 3 (1)—Discrimation—Order of requisition of land under S. 3 (1), West Bengal Land (Requisition

& Acquisition) Act — Not unconstitutional merely because .Government had not chosen to apply the slower procedure under Land Acquisition Act. See Constitution of India, Art. 14. **AIR 1963 Cal 373.**

—S. 3 (1)—Order of requisition of land — Satisfaction of person passing the order and who is duly authorised in that behalf by the State Government is sufficient. It is not essential that he should go through the process of State Government's satisfaction through the Minister-in-charge as required by the Standing Rules of Business and Orders of Government. Section 3 is not unconstitutional on ground of uncontrolled delegation. Constitution of India, Art. 245. **AIR 1963 Cal 373 (378, 379) (Pt D) (Pr 19).**

——S. 3 (1)—Order of requisition of land in Chandernagore passed by Collector, Hoogly in 1954—Notification of State Government No. 3775-L.A. (P. W.), dated 11-5-1948 authorising Collector of Hoogly district to pass orders under S. 3 (1) — Order of requisition cannot be challenged on ground that Hoogly in 1948 is not same Hoogly in 1954 when Chandernagore came within its ambit. **AIR 1963 Cal 373 (379) (Pt E) (Pr 20).**

——S. 3—Constitutionality — Act cannot be held to be ultra vires of Art. 19 (1) (f) of the Constitution—Constitution of India, Arts. 19 (1)(f) and 31—Art. 31 (2) read with Art. 31 (2-A) excludes operation of Art. 19 (1) (f). **ILR (1962) 1 Cal 109 : 65 Cal W N 869 : AIR 1962 Cal 269 (270, 271, 272) (Pt A) (Prs 9, 10, 11, 13, 14, 15).**

——S. 3 (1)—Validity of Act—The Act deals with requisition and acquisition as contemplated in Art. 31 (2) of the Constitution and as such cannot be held to be ultra vires on the ground that it viotates Art. 19 (1) (f) of the Constitution. 63 C W N 101 and AIR 1966 S C 1203, Rel. on. A I R 1960 S C 1089, Expl.; A I R 1960 S C 344 and AIR 1956 Bom 300, Disting. **1962 Cal L J 173 : 66 Cal W N 423.**

——S. 3 (1)—Person authorised by State Government —Collector under the Act does not become ipso facto "Person authorised by the State Government" mentioned in S. 3 (1). **ILR (1961) 1 Cal 577.**

—S. 3 (1)—Powers of Additional Land Acquisition Officer—In ordinary matters, Additional Land Acquisition Officer has the same powers as that of Land Acquisition Officer—Requisition and acquisition of land required for border and strategic roads in the district is a special power—Only Land Acquisition Officer and not Additional Land Acquisition Officer can exercise such powers. **ILR (1961) 1 Cal 577.**

——S. 3 (1) — Opinion of requisitioning authority—Only State Government or person authorised by it under S. 3 (1) can form a certain opinion on the acquisition of land—Where the "person authorised" considers the acquisition unnecessary, opinions of experts like Engineers cannot prevail—Acquisition based on Engineer's opinion invalid. **ILR (1961) 1 Cal 577.**

——S. 3—Validity—To this case what applies is Art. 31 and not Art. 19 of the Constitution. The provisions of S. 3 are intra vires and valid. See Constitution of India, Art. 19 (1) (f). **AIR 1959 Cal 402.**

——S. 3—Applicability—Conditions for Requisition or Acquisition.

It is one of the essential pre-conditions that the Provincial Government or the delegate must form an opinion that the land was necessary for the objects mentioned therein. Where it is the delegate who exercised the power, it is the delegate who must form the opinion. If it can be established that he did not form any opinion but merely acted under orders of the Government, then, indeed, the order would be invalid. A I R 1952 S C 16, Dist. **63 Cal W N 101 : AIR 1959 Cal 402 (406) (Pt B) (Prs 16, 17).**

——S. 3, Proviso—Land used for religious worship—What is.

What is contemplated under the proviso is actual and not contemplated worship, and compulsory acquisition or requsition cannot be avoided by simply transferring the ownership to a deity. **63 Cal W N 101 : AIR 1959 Cal 402 (406) (Pt C) (Pr 18).**

SECTION 6

——S. 6—Defence of India Act (1939), S. 19B—Requisitioning by Goverment of agricultural land during currency of tenancy—Compensation paid to tenant after determination of tenancy by efflux of time—Landlord is not entitled to same. See Defence of India Act (1939), S. 19B. **AIR 1952 Cal 567.**

SECTION 7

——S. 7 (2) (aa) (ii) (as amended by Act 12 of 1957) —Section is mandatory—Notice under—Cannot be substituted by any other notice even one under S. 12 (2) of Land Acquisition Act (1894). **(1962) 66 Cal W N 446 : 1964 Cal L J 114.**

——S. 7 (2) (aa) (ii), (as amended by Act 12 of 1957) —Application for reference — Limitation — Manner for giving notice under S. 7 (2) (aa) (ii) of W. B. Land (Requisition and Acquisition) Act not prescribed—Shorter period of limitation in S. 18 (2) (b) would not operate—Application held within time under last part of S. 18 (2) (b), though notice purporting to be one under S. 12 (2) sent. See Land Acquisition Act (1894), S 18 (2) (b). **(1962) 66 Cal W N 446 : 1964 Cal L J 114.**

——S. 7 (1), Proviso 2 — Validity of — Provision offended S. 299 (2) of Government of India Act (1935) and was ultra vires — Provision not saved by Art. 31 (5) of the Constitution, See Government of India Act (1935), S. 299 (2). **AIR 1961 Cal 112 (DB).**

——S. 7 (1). Proviso 2—Validity—If contravenes S. 299 (2) of Government of India Act and Art. 31 (2) of Constitution — Art. 31 (5).

Article 31 (5) of the Constitution gives no validity or protection to the second proviso to S. 7 (1). The second proviso to S. 7 (1) being in contravention of S. 299 (2), Government of India Act, cannot be regarded as 'existing law' for purposes of Art. 31 (5). **(1960) 64 Cal W N 714 : ILR (1960) 1 Cal 234.**

SECTION 8

——S. 8 (2)—Application for reference to Court—Limitation—Applicabiliy of S. 18 (2) (b) of Land Acquisition Act—(Land Acquisition Act (1894), S. 18 (2) (b)).

Section 8 by itself does not lay down any bar of limitation to an application for reference of the matter to the decision of a Court. The bar of limitation that is attracted is under the provisions of the second part of S. 18 (2) (a) or (b) of the Land Acquisition Act. The application for reference to the Civil Court must therefore be made within six months from the date of the Collector's award. (1962) **64 Cal W N 44.**

——S. 8 (2)—Section 8 (2) does not make S. 18 (2) of Land Acquisition Act applicable to application under S. 8 (1)—There is no limitation for application under S. 8 (1) but yet it must be presented within reasonable time—Land Acquisition Act (1894), S. 18 (2)). **AIR 1955 NUC (Cal) 4511 (DB).**

[Overruled in AIR 1966 S C 1538],

——S. 8 (2)—Time for making a reference — (Land Acquisition Act (1894), S. 18 (2)).

Only so much of Land Acquisition Act, 1894, as bears upon application for reference, the making of a reference and the consideration of it can be held to be incorporated by sub-s. (2) by the Bengal Act even

on the assumption that the legislature intended by its language, to cover not only a reference as made but also the making of it — Application for reference by person not before the Collector and not represented when award was made—Sub-S. (2) (a) of Land Acquisition Act does not regulate period of time for making application—First alternative of sub-s. (2) (b) of that section also does not apply because under the Bengal Act no question of notice by Collector after making award arises as the Act does not require such a notice —Case is governed by the second alternative in sub-s. (2) (b) as the award under the Bengal Act, is made, as in cases under Land Acquisition Act. by the Collector. 57 C W N 283 : AIR 1953 Cal 595 (596) (Prs 5, 6) (DB).

[Overruled in AIR 1966 SC 1538].

WEST BENGAL LEGISLATIVE ASSEMBLY RULES OF BUSINESS

RULE 16

——R. 16 — Governor's address before Legislature — Address must be by delivery of Speech — No deadlock possible if Governor becomes unable to address in view of provisions of Art. 180. See Constitution of India, Art. 176 (1). (1965) 69 Cal W N 484 : AIR 1966 Cal 363.

WEST BENGAL LOCAL BODIES (ELECTORAL OFFENCES AND MISCELLANEOUS PROVISIONS) ACT (10 of 1952)

See under Municipalities.

WEST BENGAL MUNICIPAL ACT (15 of 1932)

See under Municipalities.

WEST BENGAL MUNICIPAL ELECTION RULES (1960)

See under Municipalities.

WEST BENGAL NON-AGRICULTURAL TENANCY ACT (20 of 1949)

See under Tenancy Laws.

(WEST BENGAL) NON-AGRICULTURAL TENANCY (TEMPORARY PROVISIONS) ACT (9 of 1940)

See under Tenancy Laws.

WEST BENGAL ORIENTAL GAS COMPANY ACT (15 of 1960)

SECTION 1

——S. 1—Validity — Act made reasonable classification of the only Gas company and was valid. See Constitution of India, Art. 14. AIR 1961 Cal 267.

[Reversed on another point in AIR 1962 SC 1044].

——S. 1 — Validity — Restrictions put on business of management are reasonable and Act is valid. See Constitution of India, Art. 19. AIR 1961 Cal 267.

[Reversed on another point in AIR 1962 SC 1044].

——S. 1—Validity—Act comes under Sch. 7, List II, Entry 25 and List III, Entry 42 and not under List I, Entry 52, Constitution of India — Act does not come in conflict with Union Act 65 of 1951 and is ultra vires. See Constitution of India, Art. 246. AIR 1961 Cal 267.

[Reversed on another point in AIR 1962 SC 1044].

SECTION 4

●——S 4—Gas and Gas Works are within exclusive field allotted to States. See Constitution of India, Sch. 7, List 1, Entry 52. AIR 1962 SC 1044.

——S. 4 — Constitution of India, Art. 226 — Mandamus — Writ of—Cannot be issued for enforcing contractual rights. See Constitution of India, Art. 226. AIR 1961 Cal 267.

[Reversed in AIR 1962 SC 1044].

WEST BENGAL PANCHAYAT ACT, 1956 (1 of 1957)

See under Panchayats.

WEST BENGAL PANCHAYAT RULES (1958)

See under Panchayats.

WEST BENGAL POLICE ACT (3 of 1952)

SECTION 3

——S. 3—Scope—Effect of application of S. 3—Constitution of India, Art. 311.

Section 3 simply empowers the Government to employ a member of the Calcutta Police to serve in in any area outside the Calcutta area, if and when the public interest so requires. Where S. 3 is applied, a member of the Calcutta Police while so employed, retains his appointment as a member of the Calcutta Police, there is no transfer of his service and there is no change in the emoluments.

The order of Government of West Bengal reverting the petitioner from the post of D. S. P. to that of Inspector, which was his substantive post, without recalling the petitioner from the Bengal Police to Calcutta Police. was without jurisdiction. 15 Fac L R 294 : AIR 1964 Cal 265 (274, 275, 276) (Pt E) (Pr 14).

——S. 3—Member of West Bengal Police Force transferred to Calcutta — Disciplinary measures against— Competency — Disciplinary actions can be taken in accordance with the rules prevailing under the Calcutta Police Act. See Calcutta Police Act (4 of 1866), S. 8. (1958) 62 Cal W N 437.

WEST BENGAL POLICE (TEMPORARY POWERS) ORDINANCE (9 of 1951)

——Member of West Bengal Police Force transferred to Calcutta — Disciplinary measures against — Competency—Disciplinary proceedings can be taken under the Calcutta Police Act. See Calcutta Police Act (4 of 1866), S. 8. (1958) 62 Cal W N 437 : ILR (1958) 2 Cal 623.

WEST BENGAL PREMISES RENT CONTROL RULES (1949)

See under Houses and Rents.

WEST BENGAL PREMISES RENT CONTROL RULES (1950)

See under Houses and Rents.

WEST BENGAL PREMISES RENT CONTROL (TEMPORARY PROVISIOS) ACT (38 of 1948)

See under Houses and Rents.

WEST BENGAL PREMISES RENT CONTROL (TEMPORARY PROVISIONS) ACT (17 of 1950)

See under Houses and Rents.

WEST BENGAL PREMISES RENT CONTROL (TEMPORABY PROVISIONS) AMENDMENT ACT (62 of 1950)

See under Houses and Rents.

WEST BENGAL PREMISES REQUISITION AND CONTROL RULES (1947)

See under Houses and Rents.

WEST BENGAL PREMISES REQUISITION AND CONTROL (TEMPORARY PROVISIONS) ACT (5 of 1947)

See under Houses and Rents.

WEST BENGAL PREMISES TENANCY ACT (12 of 1956)

See under Houses and Rents.

WEST BENGAL PREMISES TENANCY (AMENDMENT) ACT (18 of 1956)

See under Houses and Rents.

WEST BENGAL PREMISES TENANCY RULES (1956)

See under Houses and Rents.

WEST BENGAL PRIVATE FORESTS ACT (14 of 1948)

SECTION 1

——S. 1 (3)—Conviction under S. 6 (1) of the Act — Proof of notification under S. 3 (1)—Necessity—From S. 1 (3), it is clear that the Act has to be brought into life by an appropriate notification. The notification has to be proved that it was duly made. See West Bengal Private Forests Act (14 of 1948), S. 6 (1). **AIR 1955 NUC (Cal) 5337.**

SECTION 2

——S. 2 (13)—'Prescribed,' meaning of—(Words and Phrases—'Prescribed').

The word 'prescribed' is defined in the Act as 'prescribed by the rules' made by the Government. Anything which is not prescribed by the rules, but prescribed by the Regional Forest Officer, does not fall within the definition of 'prescribed' in the Act. **ILR (1956) 2 Cal 16 : 58 C W N 963 : 96 C L J 98 : AIR 1954 Cal 580 (582) (Pt B) (Pr 8) (DB).**

SECTION 3

——S. 3 — Working plans for conservation of private forests— Paragraphs for afforestation added by Forest authorities — Application for deletion of — Refusal by authorities. The refusal was wrong and unjust. The High Court in its power should remove this injustice. See Constitution of India, Art. 227. **AIR 1954 Cal 580 (DB).**

SECTION 6

——Ss. 6 (1) and 1 (3) — Conviction under S. 6 (1)— Proof of notification under S. 3 (1) — Necessity of pointed out. **AIR 1955 N U C (Cal) 5337.**

SECTION 34

——Ss. 34, 37, 41—Conviction set aside:— No finding as to committal of offence — Forfeiture cannot be ordered.

A finding that a forest-offence has been committed is a prerequisite to any power to order confiscation. Where the Sessions Judge on appeal acquits the accused of the forest offence, he has no jurisdiction to make or affirm any order of forfeiture. **(1957) 61 Cal W N 628.**

SECTION 57

——S. 57—Rules under — R. 11 — Working plans for conservation of private forests—Paragraph for afforestation added by forest authorities would be unjust — Should be removed by High Court. See Constitution of India, Art. 227. **AIR 1954 Cal 580 (DB).**

APPENDIX A

——Appendix A to Rules—Working plans for conservation of private forests — Form of. See Constitution of India, Art. 227. **AIR 1954 Cal 580 (DB).**

W. B. PRIVATE FORESTS RULES

RULE 11

——R. 11—Working plans for conservation of private forests—Form of. See Constitution of India, Art. 227. **AIR 1954 Cal 580 (DB).**

WEST BENGAL PUBLIC DEMANDS RECOVERY ACT (3 of 1913) SCH. 2, RULE 22

——Sch. 2. R. 22 — Execution of decree — Sale proceeds held by executing Court — Judgment-debtor in arrears of paying income-tax — Certificate issued under S. 46 (2), Income-tax Act and certificate case started — Certificate Officer issuing notice to Court under R. 11 of Sch. 2 to P. D. R. Act — Court can decide priority of dues — Procedure. See Civil P. C. (1908), S. 151. **AIR 1959 Cal 179.**

——Sch. 2, R. 22, Proviso — Priority of Union — Government Debts. The Union of India is entitled to priority for the realisation of income-tax which has been properly assessed and which remained due. See Income-tax Act (1922), S. 46. **AIR 1959 Cal 179.**

——Sch. 2, R. 22 — Property in custody of Court — Nature of.

Where the attached property is sold under orders of the Court within the Court premises, the sale proceed which is held by the auctioneers, must be deemed to be money held by the Court. **(1959) 37 ITR 487 : 63 Cal W N 79 : AIR 1959 Cal 179 (181) (Pt C) (Pr 8).**

WEST BENGAL RAW JUTE (CENTRAL JUTE BOARD AND MISCELLANEOUS PROVISIONS) ACT (6 of 1951)

——Validity of the Act — (Constitution of India, List II, item 26).

The Act, in its pith and substance, is legislation in respect of 'Trade and Commerce' within the State which belongs to item 26 of List II and, as such, it was within the competence of the State Legislature. **92 Cal L J 48 : 57 C W N 541 : AIR 1953 Cal 458 (460) (Pt A) (Pr 12) (SB).**

SECTION 2

——S. 2 (1)—"Appointed day." See W. B. Raw Jute (Central Jute Board and Miscellaneous Provisions) Act (1951), S. 5. **AIR 1953 Cal 458 (SB).**

SECTION 5

——Ss. 5, 6, 7 and 16 — Notification under S. 2 (1) of Raw Jute (Central Jute Board and Miscellaneous Provisions) Ordinance—Force of—(West Bengal Raw Jute (Central Jute Board and Miscellaneous Provisions) Ordinance (17 of 1950), Ss. 2 (1), 5, 6, and 7). Jute and Gunny Brokers, Ltd. v. M/s. New Central Jute Mills Co., Ltd. **1959 S C J 529: 1959 S C A 356: 1959 Supp (2) S C R 79 : AIR 1959 S C 569 (571, 572) (Pr 7).**

——Ss. 5, 6, 7 and 2 (1)—"Appointed day."

The effect of S. 2 (1) is to require that for the expression "the purpose of this Ordinance," 'the purpose of this Act' should be read and if so read the notification of 29th December, 1950, must be taken as specifying the day mentioned in it as the appointed day for the purposes of Ss. 5, 6 and 7 of the Act and not of the Ordinance. (The 30th December, 1950 held was the appointed day for the purposes of the Act). **57 C W N 541 : 92 Cal L J 48 : AIR 1953 Cal 458 (461) (Pt B) (Pr 14) (SB).**

SECTION 6

——Ss. 6, 5, 7 and 16 — Notification under S. 2 (1) of Raw Jute (Central Jute Board and Miscellaneous Provisions) Ordinance specifying appointed day for purposes of Ss. 5, 6 and 7 of Ordinance— Ordinance replaced by Act 6 of 1951—Notification whether can be read as having brought Ss. 5, 6 and 7 of Act of 1951 into force. See (West Bengal) Raw Jute (Central Jute Board and Miscellaneous Provisions) Act (6 of 1951), S. 5. **AIR 1959 S C 569.**

●——S. 6—"Appointed day." See West Bengal Raw Jute (Central Jute Board and Miscellaneous Provisions) Act (6 of 1951), S. 5. AIR 1953 Cal 458 (SB).

SECTION 7

●——Ss. 7, 5, 6 and 16—Notification under S. 2(1) of Raw Jute (Central Jute Board and Miscellaneous Provisions) Ordinance specifying appointed day for purposes of Ss. 5, 6 and 7 of Ordinance — Ordinance replaced by Act 6 of 1951—Notification whether can be read as having brought Ss. 5, 6 and 7 of Act of 1951 into force. See (West Bengal) Raw Jute (Central Jute Board and Miscellaneous Provisions) Act (6 of 1951), S. 5. AIR 1959 SC 569.

●——S. 7—"Appointed day." See West Bengal Raw Jute (Central Board and Miscellaneous Provisions) Act (1951), S. 5. AIR 1953 Cal 458 (SB).

SECTION 16

●——Ss. 16, 5, 6, 7—Notification under S. 2 (1) of Raw Jute (Central Jute Board and Miscellaneous) Provisions) Ordinance specifying appointed day for purposes of Ss. 5, 6 and 7 of Ordinance — Ordinance replaced by Act 6 of 1951—Notification whether can be read as having brought Ss. 5, 6 and 7 of Act of 1951 into force. See (West Bengal) Raw Jute (Central Jute Board and Miscellaneous Provisions) Act (6 of 1951), S. 5. AIR 1959 SC 569.

WEST BENGAL RAW JUTE (CENTRAL JUTE) BOARD AND MISCELLANEOUS PROVISIONS) ORDINANCE (17 of 1950)

SECTION 2

●——Ss. 2 (1), 5, 6 and 7 — Notification under — Effect and force of after repeal of Ordinance. See West Bengal Raw Jute (Central Jute Board and Miscellaneous Provisions Act (6 of 1951), S. 5. AIR 1959 SC 569.

SECTION 5

●——Ss. 5, 6, 7 and 16—Notification under S. 2 (1) of Raw Jute (Central Jute Board and Miscellaneous Provisions) Ordinance specifying appointed day for purposes of Ss. 5, 6 and 7 of Ordinance — Ordinance replaced by Act 6 of 1951—Notification whether can be read as having brought Ss. 5, 6 and 7 of the Act of 1951 into force. See (West Bengal) Raw Jute (Central Jute Board and Miscellaneous Provisions) Act (6 of 1951), S. 5. AIR 1959 SC 569.

——S. 5 (1)—Applicability — Contract to purchase jute by owner of jute mill for purposes of jute press —Validity—Interpretation of statutes — Emergency legislation 'Owner of jute mill.'

The prohibition or restriction in S. 5 (1) is directed to selling or buying of raw jute in respect of a jute mill and not for other purposes. The expression 'owner of a jute-mill' in S. 5 (1) of the Ordinance means the person who is acting in his capacity as owner of a jute mill. It does not mean any and every contract by the owner of a jute mill but means only such contract by the owner of a jute mill which is for the purpose of his jute mill.

The plaintiff who was an owner of several jute mills and also ran the business of a jute press, contracted to buy jute for the purposes of his jute press, and not jute mills. It was contended that the contract was hit by S. 5 (1) of the Ordinance.

Held, that the contract in suit was not void under S. 5 (1). (1960) 64 Cal W N 992 : ILR (1961) 1 Cal 389.

——S. 5 (1)—Object of.

Section 5 (1) of Ordinance was intended for the particular purpose to ensure adequate supplies of raw jute at maximum prices to the jute mills. Contravention of S. 5 (1) makes the contract not only void but makes the persons contavening liable to punishment. AIR 1954 SC 498 and AIR 1953 SC 278, Rel. on. (1960) 64 Cal W N 992 : ILR (1961) 1 Cal 389.

——S. 5 (2)—Arbitration Act (1940), S. 34—"Matter agreed to be referred" — In the case of an invalid contract an arbitration agreement contained therein is not severable and capable of having independent effect and accordingly it cannot sustain a reference of the dispute to arbitrators. See Arbitration Act (1940), S. 34. AIR 1953 Cal 450 (DB).

——S. 5 (2)—Contract Act (1872), S. 23—"Forbidden by law" — An arbitration agreement regarding an unlawful jute contract would attract the ban imposed by S. 23, Contract Act. See Contract Act (1872), S. 23. AIR 1953 Cal 450 (DB).

(WEST BENGAL) REHABILITATION OF DISPLACED PERSONS AND EVICTION OF PERSONS IN UNAUTHORISED OCCUPATION OF LAND ACT (16 of 1951)

SECTION 3

——Ss. 3 and 4:— Scope — (Criminal P. C. (1898), S. 522).

Neither section affects jurisdiction of Magistrate to order restoration of possession under S. 522, Criminal P. C., by displaced persons, who took possession of land committing offences under Ss. 143, 448 and 453, Penal Code and have been convicted. 1953 Cri L J 723 : AIR 1953 Cal 308 (308) (Pt A) (Prs 1, 2).

SECTION 4

——Ss. 4, 3—Scope—(Criminal P. C. (1898), S 522).

Neither section affects jurisdiction of Magistrate to order restoration of possession under S. 522, Criminal P. C., by displaced persons, who took possession of land committing offences under Ss. 143, 448 and 453, Penal Code and have been convicted. 1953 Cri L J 723 : AIR 1953 Cal 308 (308) (Pt A) (Prs 1, 2).

SECTION 6

——S. 6 — Appeal under, pending — Restoration of possession under S. 522, Criminal P. C., should be directed so as to give effect to order in that appeal. See Criminal P. C. (1898), S. 522. 54 Cri L J 723 : AIR 1953 Cal 308.

WEST BENGAL REVISED LEAVE RULES (1933)

See Revised Leave Rules (West Bengal) (1933).

WEST BENGAL REVISED SCHOOL CODE (1930)

See Revised School Code (West Bengal) 1930.

WEST BENGAL RICE AND PADDY CONTROL ORDER (1957)

CLAUSE 3

——Clause 3, Proviso (a)—"Paddy"—Meaning. Paddy does not include rice in so far as the omission to mention "rice" along with "Paddy" in the first clause of Proviso is intentional as construed from the scheme of Cl. 3. ILR (1961) 1 Cal 430 (DB).

WEST BENGAL RICE MILLS CONTROL ORDER (1949)

CLAUSE 3

——Cl. 3 (a)—Officer purporting to act under Order passing an order—It should be presumed until the contrary is shown that he was so authorised — Evidence Act (1872), S. 114. AIR 1951 Cal 90 (93) (Pt C) (Pr 16).

CLAUSE 4

——Cl. 4—"Obtain"—"Apply" should not be read for "obtain." AIR 1955 NUC (Cal) 799 (DB).

CLAUSE 9

——Cls. 9 and 13—If ultra vires — Constitution of India, Arts. 13 and 19 (1) (g).

An order which arbitrarily or excessively invades the right of an individual cannot be said to contain the quality of reasonableness. Clauses 9 and 13 of the Rice Mills Control Order which empower cancellation or refusal of a license already issued and refusal to issue a new license without assigning any reasons, overstep the limits of reasonableness and must be held to be invalid in the face of the written Constitution of India. **AIR 1951 Cal 90 (92) (Pt A) (Pr 10).**

CLAUSE 11

——Cl. 11—Validity—Constitution of India, Art. 19.

Clause 11 of the order which vests the Commissioner with absolute and unfettered discretion in the matter of granting renewal of licenses is not unreasonable, for, if a discretionary power is hedged round with restrictions or limitations it ceases to be a matter of discretion. The mere fact that the exercise of the discretion cannot be reviewed by the Court is no ground for declaring Cl. 11 as invalid. AIR 1951 Cal 90. Rel. on. **56 Cal W N 302 : AIR 1952 Cal 72 (73) (Pt C) (Prs 12, 13).**

CLAUSE 13

——Cl. 13 (1)—Institution of criminal proceedings.

The only ground on which under clause 13 (1) a licence can be cancelled or suspended is breach of one of the conditions of the licence. But the institution of criminal proceedings against a licensee does not, within the terms of the Clause, entail cancellation or suspension of the licence. **55 C W N 253 : A I R 1952 Cal 206 (206, 207) (Prs 8, 9) (DB).**

——Cls. 13 and 9 — If ultra vires — Constitution of India, Arts. 13 and 19 (1) (g). See West Bengal Rice Mills Control Order (1949), Cl. 9. **AIR 1951 Cal 90.**

——Cl. 13 — Clause does not infringe Art. 14 of the Constitution and is not unconstitutional. **AIR 1951 Cal 90 (92) (Pt B) (Prs 11, 12).**

CLAUSE 15

——Cl. 15—Apprehension of abuse of power — Validity of law.

The fact that the power conferred by Paragraph 15 is liable to be abused is not sufficient to declare it invalid. 13 S C J 328, Foll. **ILR (1954) 2 Cal 281 : 57 C W N 194 : A I R 1953 Cal 187 (188) (Pt C) (Pr 9)** (DB).

——Cl. 15—Validity—Constitution of India, Art. 14.

The system of granting permits as provided by Cl. 15, W. B. Rice Mills Control Order, does not infringe Art. 14 of the Constitution. There is nothing in that clause which makes it inherently unconstitutional. **AIR 1951 Cal 90 (92) (Pt B) (Pr 12).**

WEST BENGAL RULES OF BUSINESS (1951)

RULE 19

——Rr. 19, 20 — Standing orders by Minister in charge in the Department of Land and Land Revenue — Standing Order 2 (18) — Scope. The Standing Order means that where the Land Planning Committee set up under the W. B. L. D. and P. Act takes up a case it should be brought to the notice of the Minister, before the issue of orders. **(1958) 62 Cal W N 640 : A I R 1960 Cal 113 (117, 118) (Pt B) (Pr 12).**

——Rr. 19, 20 — Standing orders by Minister in charge in the Department of Land and Land Revenue—Standing Order 2 (28) — Waste lands—Meaning. "Waste land" means land which was neither developed nor used as arable land. **(1958) 62 Cal W N 640 : AIR 1960 Cal 113 (118) (Pt C) (Pr 15).**

——Rr. 19, 20 — Standing Orders by Minister in charge in the Department of Land and Land Revenue — Standing Order 2 (29) — Acquisition under Land Acquisition Act. It would be absurd to suggest that an acquisition under the Land Acquisition Act was important enough to be placed before the Minister but not an acquisition under the Land Development and Planning Act. **(1958) 62 Cal W N 640 : AIR 1960 Cal 113 (118, 119) (Pt D) (Pr 16).**

RULE 20

——Rr. 20, 19 — Standing Orders by Minister in charge in the department of Land and Land Revenue — Standing Order 2 (28) — Waste lands. See W. B. Rules of Business, R. 19. **AIR 1960 Cal 113.**

——Rr. 20, 19 — Standing Orders by Minister in charge in the department of Land and Land Revenue — Standing Order 2 (18)—Scope. See W. B. Rules of Business, R. 19. **AIR 1960 Cal 113.**

——Rr. 20, 19 — Standing Orders by Minister in charge in the department of Land and Land Revenue — Standing Order 2 (29) — Acquisition under Land Acquisition Act. See W. B. Rules of Business, R. 19. **AIR 1960 Cal 113.**

WEST BENGAL SALARIES AND ALLOWANCES ACT (5 of 1952)

SECTION 4

——Ss. 4, 6 — Deputy Minister — Residence in Calcutta—Right to.

A Deputy Minister of State is not entitled to a house without payment of rent or to a furnished residence in Calcutta. **AIR 1958 Cal 510 (515) (Pt B) (Pr 20).**

SECTION 6

——S. 6—Deputy Minister—Residence in Calcutta — Right to—Not entitled to residence in Calcutta without payment of rent. See W. B. Salaries and Allowances Act (5 of 1952), S. 4. **AIR 1958 Cal 510.**

WEST BENGAL SALES TAX ACT (4 of 1954)

See under Sales Tax.

WEST BENGAL SECONDARY EDUCATION ACT (37 of 1950)

PREAMBLE

——Preamble—Mandatory or directory provisions — Appeal regulations framed under W. B. Secondary Education Act—(Civil P. C. (1908), Pre.) See Interpretation of Statutes. **AIR 1957 Cal 182.**

SECTION 30

——Ss. 30, 36 (2), Regulations 3 to 7 — Constitution of India, Art. 226—Quasi judicial orders—Discretion, exercise of — Alternative reliefs — Granting of lesser relief should be supported by reasons—Non-speaking orders can be interfered with — Orders of Appeal Committee under West Bengal Secondary Education Act. See Constitution of India, Art. 226. **(1965) 10 Fac L R 223 (Cal).**

——Ss. 30 and 36 and Regulation 7 (2) — Procedure for hearing appeals by Appeal Committee — Discretion not arbitrary — Not violative of Art. 14 of the Constitution (Constitution of India, Art. 14 — "Procedure of administrative tribunals.") A I R 1955 S C 191, Foll. **(1965) 10 Fac L R 223 (Cal).**

——S. 30 (3)—Proceedings in appeal are proceedings before administrative tribunal and not before a Judicial Tribunal—Appellant is not entitled to oral hear-

ing apart from any provision made in the Regulations —Regulation 7 conferring discretion on the appellate committee to allow such hearing or not is not invalid — D. P. I.'s report relied on by committee, in favour of appellant — Non-disclosure of same to appellant does not offend principles of natural justice — Constitution of India, Art. 226. **(1962) 66 Cal W N 75.**

SECTION 31

——S. 31 — Constitution of ad hoc committee of school.

Section 31 deals with the framing of committee of the Board itself, viz., the 'Recognitions and grants committee', etc. An ad hoc committee of a school is not a committee of the Board, but a committee appointed by the Board and working under its direction and control. There is no delegation of the Board's powers to any ad hoc committee. It cannot be held that an ad hoc committee has not been properly constituted because such a committee has not got a single member of the Board. **58 Cal W N 617: AIR 1955 Cal 72 (75) (Pt D) (Pr 16).**

SECTION 36

—Ss. 36 (2) (q), 30 and Regulations 3 to 7—Constitution of India, Art. 226—Quasi judicial orders—Discretion, exercise of—Alternative reliefs—Granting of lesser relief should be supported by reasons—Non-speaking orders can be interfered with — Orders of Appeal Committee under West Bengal Secondary Education Act. See Constitution of India, Art. 226. **(1965) 10 Fac L R 223 (Cal).**

——Ss. 36 and 30 and Regulation 7 (2) — Procedure for hearing appeals by Appeal Committee — Discretion not arbitrary — Not violative of Art. 14 of the Constitution. (Constitution of India, Art. 14 — "Procedure of administrative tribunals.")—See West Bengal Secondary Education Act (37 of 1950), S. 30. **(1965) 10 Fac L R 223 (Cal).**

——S. 36—Scope.

Sub-section (1) of S. 36 gives general power to the Board to direct, supervise, develop and control secondary education in general and in that behalf do all such acts as it may consider necessary for the purposes of such direction, supervision, development and control. AIR 1945 P C 156; AIR 1951 S C 201, Foll. **58 Cal W N 617: A I R 1955 Cal 72 (74) (Pt B) (Pr 11).**

——S. 36 (2) (c) — Supervision — Delegation of power.

Under S. 36 (2) (c), the Board has power to issue directions for removing a managing committee of a school which has been, in its opinion, mismanaging the affairs of secondary school and is not properly constituted. Its power can be validly delegated to the Executive Committee. **58 Cal W N 617 : A I R 1955 Cal 72 (75) (Pt C) (Pr 14).**

SECTION 37

——S. 37, Proviso (as amended by Act XXI of 1951) —Appointment of ad hoc committee.

The question about the appointment of an ad hoc committee of a school held was not one relating to recognition at all, but was as to the administration of the school. **58 Cal W N 617 : AIR 1955 Cal 72 (75) (Pt E) (Pr 18).**

WEST BENGAL SECONDARY EDUCATION RULES

——Applicability of W. B. Secondary Education Rules and Orders to managing committee of Government aided schools in Tripura. **AIR 1959 Tripura 27 (30) (Pt C) (Pr 20).**

WEST BENGAL SECURITY ACT (3 of 1948)

See under Public Safety.

WEST BENGAL SECURITY ACT (19 of 1950)

See under Public Safety.

WEST BENGAL SECURITY ORDINANCE (2 of 1949)

See under Public Safety.

WEST BENGAL SECURITY (SECOND AMENDMENT) ORDINANCE (14 of 1950)

See under Public Safety.

WEST BENGAL SERVICE RULES (1941)

RULE 71

——R. 71 — A Government servant under suspension is entitled to subsistence allowance at such rate as suspending authority may direct, but not exceeding one-fourth of the pay of the suspended Government Servant. **(1957) 61 Cal W N 459 : (1957) 2 Lab L J 260 : ILR (1958) 1 Cal 40.**

RULE 72

——R. 72—Grant of full or proportionate pay — Discretion.

Rule 72 makes the matter of granting full pay or proportionate pay as one resting entirely on the discretion of the punishing, appellate or revising authority. **(1957) 61 Cal W N 459 : (1957) 2 Lab L J 260 : ILR (1958) 1 Cal 40.**

RULE 75

——R. 75 (a) — Chief Ministerial Officer of Small Causes Court—R. 75 (a) applies—Age of superannuation is 55 — It is discretionary for Government to retain him in services after age of 55—High Court cannot compel Government to use discretion under rule by issue of writ — (Government of India Act (1935), Ss. 52 (1) and 241) — (Constitution of India, Articles 226 and 313) — (Fundamental Rules, R. 56 (b) (i)). **AIR 1955 N U C (Cal) 2343.**

WEST BENGAL SERVICE RULES (1958)

RULE 5

——R. 5 Item 40 — Typist of Education Directorate in A transferred to School at B as clerk — Records of Directorate not kept at School—School at B was not head quarter station—Transfer held invalid. **(1961) 3 Fac L R 111 (Cal).**

RULE 75

● ——R. 75 (a) — Applicability — Judicial service in West Bengal—Member of—Compulsory retirement — Procedure — West Bengal Service Rules alone apply and Fundamental Rules do not apply. See Constitution of India, Art. 309. **AIR 1961 Cal 1 (SB).**

● ——R. 75 (a) — Fundamental Rules, R. 56 (d)—Extension of service after reaching age of compulsory retirement for conducting departmental enquiry against Government servant—Legality.

Per P. B. Mukharji and P. N. Mukherjee, JJ. — Where a public servant belonging to the judicial service in West Bengal has reached the age of 55 which is the age of compulsory retirement under his conditions of service, his service cannot, under R. 75 (a) of the West Bengal Service Rules (which contains no provision similar to Fundamental Rule 56 (d) be simultaneously extended and suspended as a 'public ground' only for the purpose of departmental enquiry and disciplinary action, especially, when the charges can be publicly tried and determined.

Such extension is illegal and void. Nripendra Nath Bagahi v. Chief Secretary Govt. of West Bengal. 65 Cal W N 361: (1961) 2 Lab L J 312: AIR 1961 Cal 1 (9, 10, 11) (Pt E) (Prs 36, 37, 41, 42) (SB).

RULE 145

——Rr. 145 and 151—Claim for leave or for damages for wrongful rejection of application for leave — Remedy — Issue of writ — Writ will not issue — See Constitution of India, Art. 226. AIR 1961 Cal 164.

RULE 151

——R. 151 — Constitution of India, Art. 226 — Writ under—For claim of leave or for damages for wrongful rejection of application for leave by Government servant— Writ will not issue — See Constitution of India, Art. 226. AIR 1961 Cal 164.

RULE 174

——R. 174 (4) — Promulgated by the Governor on 27th December, 1958 — Rule cannot be utilised for alleged termination of service on 24th November, 1956—Constitution of India, Art. 309. 15 Fac L R 273 : AIR 1963 Cal 638 (642) (Pt B) (Pr 14).

WEST BENGAL SOFT COKE DISTRIBUTION ORDER (1955)

CLAUSE 3

——Cls. 3 (3) and (d) and 5 — Validity — Order is constitutional so far as it confers power upon the "Director" or the "District Magistrate." See Constitution of India, Art. 245. (1960) 64 Cal W N 521.

WEST BENGAL SPECIAL COURTS ACT (10 of 1950)

See under Public Safety.

WEST BENGAL STATE MEDICAL FACULTY RULES AND REGULATIONS

RULE 3

——R. 3—Framed under S. 6—Compliance with rule of natural justice—Rules of natural justice held were satisfied — See Constitution of India, Art. 226. AIR 1954 Cal 193.

WEST BENGAL STATE MEDICAL FACULTY STATUTES

STATUTE 6

——Statute 6.C—Results of university examinations—Power of civil courts to interfere—Suit for declaration or injunctions against university—Maintability. A suit for declaration that a candidate has passed certain examination or for injunction to compel the university to promote him is not maintainable in Civil Court.—See Specific Relief Act (1877), S. 42. AIR 1961 Cal 31.

——Statute 6-C—Scope—Governing Body — Duty to issue certificate of practice.

The Governing Body has no duty cast upon it under Statute 6 C to issue a certificate before the required scrutiny. In fact R. 5 (3) definitely prohibits the grant of such certificate where the special Board finds that the requirements of Statute 6.C are not fulfilled. The Governing Body, therefore, is expressly prohibited in that event and the civil Court on these Special Statutes cannot grant a decree ordering the Governing Body to grant a degree or a Certificate of practice.: 64 Cal W N 842: ILR (1961) 1 Cal 667: AIR 1961 Cal 31 (37) (Pt C) (Pr 31).

WEST BENGAL TRIBUNALS OF CRIMINAL JURISDICTION ACT (14 of 1952)

See under Public Safety.

WEST BENGAL TWENTY FOUR (24) PARGANAS DISTRICT BOARD DISSOLUTION) ORDINANCE (3 of 1948)

SECTION 1

——S. 1 — West Bengal Ordinance (3 of 1948) not ultra vires — See Government of India Act (1935). S. 88 (1). AIR 1952 Cal 907.

——S. 1—Validity of Ordinance—Ordinance and Acts following it are not pieces of discriminatory legislation and do not contravene Art. 14—(Constitution of India, Arts. 13, 14). AIR 1952 Cal 907 (912) (Pt G) (Pr 41).

SECTION 5

——S. 5—Newly constituted District Board — If ceases to exist on expiry of Ordinance.

The newly constituted District Board under the West Bengal Ordinance (3 of 1948), does not cease to exist and the old District Board is not revived on the expiry of that Ordinance. The dissolution of the old District Board is complete and the expiry of the Ordinance cannot have the effect of nullifying the dissolution and reviving the old District Board. All acts completed during the currency of the Ordinance have the same effect as acts done under a permanant statute and they endure permanently notwithstanding the expiry of the Ordinance. AIR 1952 Cal 907 (909, 910) (Pt D) (Prs 23, 25).

——Ss. 5, 6 — Notification constituting District Board—Subsequent notification adding a member—Validity — Bengal General Clauses Acts (1 of 1899), Ss. 15, 22.

When a District Board is constituted by an earlier notification under S. 5 of the West Bengal Ordinance 3 of 1948, a subsequent notification adding a member to the Board does not constitute re-exercise of the powers under S. 5 to constitute a Board. The subsequent notification has the effect of only amending the earlier notification constituting the Poard and it is competent for the Provincial Government to do so under S. 15 read with S. 22 of the Bengal General Clauses Act, 1899. AIR 1951 Nag 181, disting. AIR 1952 Cal 907 (911) (Pt E) (Pr 32).

SECTION 6

——Ss. 6 and 5—Notification constituting District Board—Subsequent notification adding a member—Valid.—See W. B. Twenty Four (24) Parganas District Board (Dissolution) Ordinance (1948), S. 5. AIR 1952 Cal. 907.

——S. 6, Proviso—If ultra vires—Government of India Act, 1935, S. 88.

The provision in the proviso to S. 6 of the West Bengal Ordinance 3 of 1948, that the term of office of members of the District Board may extend up to two years, is not ultra vires, although such provision would endure beyond the life of the ordinance. There is no limitation put upon the ordinance-making power of the Governor under S. 88 of the Government of India Act, 1935, and so he can legislate by ordinance in any manner in which the Provincial Legislature can legislate subject to this that the duration of the ordinance shall be limited as prescribed in that Act. AIR 1952 Cal 907 (909, 910) (Pt C) (Prs 21, 27).

WEST BENGAL UNDESIRABLE ADVERTISEMENTS (CONTROL) ACT (29 of 1948)

SECTION 3

——Ss. 3 and 6 (d) — Prosecution for offence under S. 3 — Accused claiming exception under S. 6 (d)—Burden of proof — S. 6 (d) not part of S. 3 — S. 105, Evidence Act, does not apply — Evidence Act (1872),

S. 105). 60 Cal W N 392 : 1956 Cri L J 513 : A I R 1956 Cal 90 (92) (Prs 16, 18).

SECTION 6

——Ss. 6 (d) and 3 — Prosecution for offence under S. 3 - Accused claiming exception under S. 6 (d) — Burden of proof — S. 6 (d) not part of S. 3 — S. 105, Evidence Act, does not apply. See W. B. Undesirable Advertisements (Control) Act (1948), S. 3. 1956 Cri L J 513 : AIR 1956 Cal 90.

WEST PAKISTAN

Defined.

See (1) Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 2.
(2) Debt Laws — Displaced Persons (Debts adjustment) Act (1951), S. 2.

WHARFAGE

Fees.

See Customs Act (1878), S. 199.

WHIPPING

Sentence of.

See Criminal P. C. (1898), S. 391.

WHIPPING ACT (4 of 1909)

SECTION 3

——S. 3—Accused a history-sheeter convicted under S. 379, Penal Code—Sentence—Punishment with only whipping was not sufficient though one year's R. I. was excessive and was reduced to 6 months. See Penal Code (1860), S. 379. 1953 Cri L J 745 : A I R 1953 All 345.

——S. 3—Offence under S. 378—Whipping imposed in addition to imprisonment—Legality.

In view of S. 3 of the Whipping Act, the punishment of whipping can be awarded only in lieu of the punishment to which the accused is otherwise liable. Imposition of an additional sentence of whipping is therefore illegal. 1952 All W R (HC) 254 : 1952 All L J 264 : 1953 Cri L J 745 : AIR 1953 All 345 (346) (Pt A) (Prs 3, 4).

SECTION 4

——S. 4—A sentence of imprisonment can be inflicted in the case of a juvenile in addition to whipping under S. 4. AIR 1929 All 322, Foll. AIR 1934 All 976 and AIR 1950 All 726, Not foll. 1953 Cri L J 1659 : A I R 1953 All 722 (723) (Pr 8).

SECTION 5

——S. 5—Juvenile offender convicted under S. 376, Penal Code — Sentence of imprisonment in addition to whipping is not legal. A I R 1950 All 726 (727) (Pr 4).

WHOLE BLOOD AND HALF BLOOD

See (1) Custom (Punjab) — Succession.
(2) Hindu law of Inheritance (Amendment) Act (1929), S. 2.
(3) Hindu Succession Act (1956), S. 18.

WIDOW

See (1) Hindu Adoptions and Maintenance Act (1956).
(2) Hindu law.
(3) Hindu Widows Remarriage Act (1856).
(4) Hindu Succession Act (1956), S. 14.

WIDOWED DAUGHTER-IN-LAW

Maintenance of

See (1) Hindu Adoptions and Maintenance Act (1956), S. 19.
(2) Hindu law.

WIFE

See statutory cross references under "Husband and wife".

Competency as witness.

See Evidence Act (1872), Ss. 120, 122.

Maintenance and separate residence of.

See (1) Criminal P. C. (1898), S. 488.
(2) Hindu Adoptions and Maintenance Act (1950), S. 18.
(3) Hindu law.
(4) Hindu Married Women's Right to Separate Residence and Maintenance Act (19 of 1946).
(5) Mahomedan law.

WILD ANIMALS

See (1) Madras Wild Elephants Preservation Act (1873).
(2) Penal Code (1860), S. 289.
(3) Tort.

WILD BIRDS AND ANIMALS PROTECTION ACT (8 of 1912)

SECTION 3

——Ss. 3 and 4—Applicability and scope—Absence of—Notification under S. 4—Offence — No offence can be committed. I L R (1958) 10 Assam 124 : 1961 (1) Cri L J 226 : AIR 1961 Assam 18 (19) (Pt B) (Pr 4).

SECTION 4

——S. 4—No notification under S. 4—No offence can be committed under S. 3. See Wild Birds and Animals Protection Act (8 of 1912), S. 3. 1961 (1) Cri L J 226 : AIR 1961 Assam 18.

WILKINSON'S RULES

——Force and operation of—If repealed by Scheduled Districts Act (1874). Wilkinson's Rules are continued in force. See Scheduled Districts Act (14 of 1874), S. 7. AIR 1958 Pat 366 (DB).

WILL

See also (1) Bengal Will and Intestacy Regulations (5 of 1799).
(2) General Clauses Act (1897), S. 3 (64).
(3) Hindu Law—Will.
(4) Madras Hindu Religions and Charitable Endowments Act (19 of 1951), S. 3.
(5) Mahomedan Law—Will.
(6) Registration Act (1908), S. 18.
(7) Succession Act (1925), Ss. 59, 61, 68, 74, 82 to 89, 131, 172.
(8) Travancore Wills Act (6 of 1074, M. E.) and
(9) Statutory cross-references under "Succession—Wills".

Proof

—Burden of proof.

See Evidence Act (1872), Ss. 101-104.

Registration of.

See Registration Act (1908), S. 41.

WILLS ACT (ENGLISH) 1837 (7 Will IV and 1 Vict, C. 26)

SECTION 18

——S. 18 — Law of Property Act (Eng.), 1925 (15 Geo. V, C 20), S. 117—Administration of Estates Act (Eng.), 1925 (15 Geo. V, C 23)—Testator domiciled in England dying in India — Marriage subsequent to execution of will—Will not in contemplation of marriage—Will stands revoked—Widow entitled to letters of administration and not probate — (Succession Act (1925), S. 69). AIR 1955 N U C (Cal) 750.

WINDING UP

See also Statutory cross-references under (i) "Companies" and (ii) "Insolvency".

Banking company, of.

See Banking Companies Act (1949), Ss. 38, 45-A.

Company, of.

See (1) Companies Act (1913), Ss. 151-247.
(2) Companies Act (1956), Ss. 425-560 and
(3) For statutory cross-references see under "Companies".

Co-operative society, of.

See Co-operative Societies—Co-operative Societies Act (1912), S. 42.

Partnership business, of.

See Partnership Act (1932), S. 46.

WIRELESS TELEGRAPHY ACT (17 of 1933)

SECTION 2

—— Ss. 2(2), 3, 10—Wireless Telegraphy (Possession) Rules (1933), Rr. 2(c), 3 — Radio set not capable of being used without electricity — Absence of electricity in town—Licence—Necessity.

Radio set, which cannot be used without the help of electricity, is a 'complete wireless set within the meaning of R. 2(c) even in a town where there is no electricity and as such, cannot be possessed and held without licence as provided under S. 3 and R. 3(b) framed under the Act. 1960 Pat L R 247 : A I R 1961 Pat 268 (269, 270) (Pt A) (Pr 4).

SECTION 3

——Ss. 3 and 6 — Scope — Essential ingredient is possession and not ownership.

Held, that Ss. 3 and 6, mention 'possession' but do not mention 'ownership'. Admittedly the set was in possession of N and R was only entitled to get back possession after paying the amount of money taken by him from N. While he was not in possession of the radio set, he could not be called upon to hold a licence for the set merely on the ground that he had retained certain ownership rights in the radio set. 1957 All L J 87 : 1957 Cri L J 494 (2) : AIR 1957 All 273 (273, 274) (Prs 2, 3) (DB).

——Ss. 3, 2 (2) and 10—Wireless Telegraphy (Possession) Rules (1933), Rr. 2(c), 3—Radio set not capable of being used without electricity — Absence of electricity in town does not make set incomplete wireless set and cannot be held without licence. See Wireless Telegraphy Act (17 of 1933), S. 2(2). A I R 1961 Pat 268.

—— Ss 3, 5 and 6—Clause (6) of conditions of licence for radio set—Interpretation — Temporary transfer of radio set by licensee to other person—Person if guilty for possessing set without licence — Not guilty if the transfer is for less than 3 months. See Wireless Telegraphy Act (17 of 1933), S. 6. 1957 Cri L J 910 : AIR 1957 Raj 236 (DB).

SECTION 5

——S. 5 — Wireless Telegraphy (Possession) Rules (1933), R. 18 — Possession of wireless receiving set without licence—S. 5 and R. 18 read together provide for realisation of surcharge, besides renewal fee — Realisation of renewal fee and surcharge by Postal Department by simple notice not illegal. 1960 Pat L R 247 : AIR 1961 Pat 268 (270) (Pt B) (Prs 5, 6).

——Ss. 5, 6 and 3—Clause (6) of conditions of licence for radio set—Interpretation — Temporary transfer of radio set by licensee to other person — Person is not guilty for possessing set without licence if the transfer for less than three months. See Wireless Telegraphy Act (17 of 1933), S. 6. 1957 Cri L J 910 : A I R 1957 Raj 236 (DB).

SECTION 6

●——S. 6 (1-A)—Object of Repealing and Amending Acts — Repeal of Amending Act of 1949 by Act of 1952—Effect—S. 6 (1-A) not affected — Section 4 of Act of 1952 not applicable—Case governed by S. 6-A, General Clauses Act (1897)—(Repealing and Amending Act (1952), S. 4)—(Interpretation of Statutes)—(Words and Phrases—Texts)—AIR 1955 Punj 141 and 61 Pun L R 702, Overruled.

The main object of an Amending and Repealing Act is only to strike out the unnecessary Acts. The earlier Act cannot incorporate the later Act, but can only be amended by it. AIR 1955 Punj 141 : 1955 Cri L J 990 and 61 Punj L R 702, Overruled. As, by the amending Act of 1949, the text of the Act of 1933 was amended by the insertion of S. 6 (1-A) therein, the repeal of the amending Act by the 1952 Act did not affect the continuance of the amendment made by the enactment so repealed. It must be held that S. 6 (1-A) of the Act continued to be on the statute book even after the amending Act of 1949 was repealed by Act (48 of 1952), and that it was in force when the offence was committed. Jethanand Betab v State of Delhi, 1960 Cri L J 160 : 1959 Mad W N (SC) 82 : 1960 S C J 68 : 1960 Mad L J (Cri) 23 : (1961) 1 S C R 755 : 26 Cut L T 533 : I L R (1960) Punj 141 : A I R 1960 S C 89 (91, 92, 93) (Prs 6, 7, 8, 10, 11).

——Ss. 6 and 3—Scope—Essential ingredient is possession and not ownership. See Wireless Telegraphy Act (17 of 1933), S. 3. 1957 Cri LJ 494 (2) : AIR 1957 All 273 (DB).

——S. 6—Conviction for being in possession of wireless receiving set without valid broadcast receiver licence — Penalty — Recovery of — If can include amounts due to the department.

There is no provision in the Wireless Telegraphy Act authorising Criminal Courts convicting a person for being in possession of a wireless receiving set without a valid licence to collect any amount due to the Posts and Telegraphs Department as if it were a fine. 1959 Mad W N 80 : (1959) 1 Mad L J 143 : 1959 Mad L J (Cri) 165 : 72 Mad L W 92 : 1959 All W R (Sup) 77 : 1959 All Cri R 343 (1) : 1959 Cri L J 1084 : AIR 1959 Mad 350 (351) (Pr 5).

——S. 6—Applicability—Clause (6) of conditions of licence for radio set — Interpretation — Temporary transfer of radio set by licensee to other person — Offence—Liability of transferee.

Condition 2 of Cl. (6) of the conditions governing the licence for holding a radio set gives discretion to the licensee to change the location of the radio set, provided he does not intend to keep the radio away from the place mentioned in the license for more than three months at a time. I L R (1956) 6 Raj 10 : 1955 Raj L W 424 : 1957 Cri L J 910 : AIR 1957 Raj 236 (236, 237) (Pr 3) (DB).

SECTION 10

——Ss. 10, 2 (2) and 3—Wireless Telegraphy (Possession) Rules (1933), Rr. 2(c), 3—Radio set not capable of being used without electricity—Absence of electricity in town does not make set incomplete wireless set and cannot be held without licence. See Wireless Telegraphy Act (17 of 1933), S. 2(2). AIR 1961 Pat 268.

WIRELESS TELEGRAPHY (POSSESSION) RULES (1933)

RULE 2

——Rr. 2 (c), 3 — Wireless Telegraphy Act (1933), Ss. 2 (2), 3, 10 — Wireless Telegraphy (Possession) Rules (1933), Rr. 2 (c), 3 — Radio set not capable of being used without electricity — Absence of electricity in town does not make set incomeplete wireless

set and cannot be held without licence. See Wireless Telegraphy Act (1933), S. 2 (2). AIR 1961 Pat 268.

RULE 3

——Rr. 3 and 2 (c)—Wireless Telegraphy Act (1933), Ss. 2 (2), 3, 10 — Radio set not capable of being used without electricity — Absence of electricity in town does not make set incomplete wireless set and cannot be held without licence. See Wireless Telegraphy Act (1933), S. 2 (2). AIR 1961 Pat 268.

RULE 18

——R. 18—Wireless Telegraphy Act (1933), S. 5—Possession of wireless receiving set without licence — Section 5 and R. 18 read together provide for realisation of surcharge, besides renewal fee — Realisation of renewal fee and surcharge by Postal Department by simple notice not illegal. See Wireless Telegraphy Act (1933), S. 5. AIR 1961 Pat 268.

WITHDRAWAL OF ACQUISITION UNDER LAND ACQUISITION ACT

See Land Acquisition Act (1894), S. 48.

WITHDRAWAL OF ADJUDICATION PETITION

See Provincial Insolvency Act (1920), S. 14.

WITHDRAWAL OF APPEAL

See Civil P. C. (1908), O. 23, R. 1, O. 41, Rr. 9, 22.

WITHDRAWAL OF CANDIDATURE FROM ELECTION

See Representation of the People Act (1951), S. 37.

WITHDRAWAL OF CHARGE

See Criminal P. C. (1898), S. 240.

WITHDRAWAL OF COMPLAINT

See Criminal P. C. (1898), S. 248.

WITHDRAWAL OF CRIMINAL APPEAL

See Criminal P. C. (1898), S. 423.

WITHDRAWAL OF CRIMINAL CASE

See Criminal P. C. (1898), S. 528.

WITHDRAWAL OF CRIMINAL PROSECUTION

See Criminal P. C. (1898), S. 528.

WITHDRAWAL OF ELECTION PETITION

See Representation of the People Act (1951), Ss. 108, 109, 110.

WITHDRAWAL OF EXECUTION

See Civil P. C. (1908), O. 23, R. 4

WITHDRAWAL OF PROSECUTION

See Criminal P. C. (1898), Ss. 493, 494.

WITHDRAWAL OF SUIT

See Civil P. C. (1908), O. 23, R. 1.

Powers of Appellate Court

See Civil P. C. (1908), S. 107, O. 23, R. 1.

WITNESS

See (1) Civil P. C. (1908), O. 16 and O. 18, Rr. 4, 17.
(2) Evidence Act (1872), Ss. 5, 45-47 and 118-164 and
(3) Statutory cross-references under (i) "Evidence" and (ii) "Practice".

Attendance of, at investigation of crime.
See Criminal P. C. (1898), S. 160.

Credibility of.
See Evidence Act (1872), S. 3.

Demeanour of.
See Criminal P. C. (1898), S. 363.

Duty to answer questions during investigation of crime.
See Criminal P. C. (1898), S. 161.

Examination of.
For statutory cross-references see "Evidence — Witness".

Oath by.
See Oaths Act (1873), S. 5.

WOMAN

See Statutory cross-references under (i) "Husband and wife", (ii) "Maintenance", (iii) Prostitution", (iv) "Widow".

Abduction of.
See Penal Code (1860), S. 366.

Defined.
See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 2.

Employment of, in factories.
See Factories Act (1948), S. 66.

Enticing married woman.
See Penal Code (1860), S. 498.

Examination on commission.
See Civil P. C. (1908), S. 132.

Exemption from arrest.
See Civil P. C. (1908), S. 132.

Exemption from personal appearance.
See Civil P. C. (1908), S. 132.

Kidnapping of.
See Penal Code (1860), S. 366.

WORDS

Interpretation of.
See (1) Interpretation of Statutes.
(2) Words and Phrases.

WORDS AND PHRASES

See also (1) Interpretation of Statutes—Words.
(2) General Clauses Act (1897).

"Abandon".

—Abandonment of interest in partnership — There is not a word in the English language used in a more highly artificial and technical sense than the word "abandon" — The inference whether or not a partner has abandoned his interest in the partnership will depend upon the peculiar facts of the case. See Partnership Act (1932), S. 40. A I R 1963 Madh Pra 155.

"Abandoned".

●—Meaning to be given to word "abandonment" depends upon the context in which it is used—Word "abandoned" used in S. 418(1) of the Delhi Municipal Corporation Act, does not mean that the cattle should be ownerless—Meaning to be given is "let loose" in the sense of being "left unattended" and not "left ownerless". See Municipalities — Delhi Municipal Corporation Act (66 of 1957), S. 418 (1). (1965) (2) Cri L J 1: AIR 1965 S C 871.

'Abandonment'.

—Abandonment when used with reference to a tenant or ryot essentially means the giving up of his right in the property by the person with the intention that he will no longer have any concern with it and that it is to revert to person to whom it ultimately belongs. A I R 1958 All 107 (Pr 6) (DB).

—Abandonment of guardianship — Minor girl who is in keeping of her lawful guardian can discard her guardianship by simply walking out of the home of the guardian — If no one is responsible for the minor girl abandoning the guardianship in that way, no one can be said to have taken her out of the keeping of the lawful guardian. See Penal Code (1860), S. 361. I L R (1964) Mys 486.

—There must be intentional and voluntary relinquishment of right for good without vesting it in any other person — It is not surrender — Onus to prove abandonment is on person alleging it. AIR 1960 Punj 494 (DB).

—Inactivity or passive attitude of a person cannot in law be interpreted as an act of abandonment — Abandonment is voluntary positive act. See Hindu law—Widow. AIR 1956 Punj 143.

'Abhimani—Meaning of.

—'Abhimani' means a well-wisher. It will not be proper to extend the term 'Abhimani' to include 'dharmakartha' or trustee. **(1964) 1 M L J 369.**

'Abide by decision'.

—Parties agreeing to "abide by Court's decision" afte local investigation — The expression without more held did not imply an abandonment or giving up right of appeal against decision of the Court. See Civil P. C. (1908), S. 96. **AIR 1957 Andh Pra 700.**

"Abscond"

—"Absconding" does not necessarily mean absconding from one's residence, though usually when a person is hiding from his place of residence he is said to abscond—Primary meaning is 'hide' — Person may hide in his place of residence or away from it—"Absconded" in S. 512, Criminal P. C. — Meaning of. See Criminal P. C. (1898), S. 512. **1957 Cri L J 477: A I R 1957 Raj 126.**

'Absent'.

—One of the conditions for applicability of S. 241 of Succession Act is that the executor is absent from the province in which the application is made — 'Absent' literally means "not Present"—Present means 'being in the place in question' — There is no implication in word 'absent' that the person should have been at any time present or the person is only temporarily not present. See Succession Act (1939), S. 241. **A I R 1954 Mad 898 (FB).**

——**"Absurd mistake"—What is — Government order G. O. M. S 39, Education, dated 12th January, 1944.**

It is not every mistake in the entry regarding date of birth that can be called an obviously absurd mistake, though it is difficult to lay down a definite test to find out whether a mistake is or is not obviously absurd. Practically there would be no difficulty in the Director of Public Instruction coming to a conclusion in any individual case whether the mistake is or is not obviously absurd.

Merely because the date in the school certificate does not correspond with the certificate of the Registrar of Births there is no obviously absurd mistake. It would depend upon each case. AIR 1944 Mad 187 : (1943) 2 M L J 665, Dissented from. **(1955) 1 M L J 488 : 68 Mad L W 368 : I L R (1956) Mad 17 : A I R 1958 Mad 639 (640, 641) (Pt B) (Prs 6, 9) (DB).**

"Abuse of discretion".

—"Abuse of discretion" by authority vested with discretion — Expression does not necessarily mean a reflection on the authority or carry with it the implication that his conduct was deserving censure — It is not synonymous with censure, perversity of will, passion, prejudice, partiality or moral delinquency — It simply means, that the reasons given by the authority for its action are clearly untenable and unreasonable and that it amounts to denial of justice—Discretion is abused when the action is arbitrary, fanciful or unreasonable. See Civil P. C. (1908), S. 107. **A I R 1957 Punj 312 (DB).**

"A/C"

—Policy of insurance in names of A, B and C — Use of expression 'A/C' against name of 'A'—Meaning and effect of—'A/C' held did not mean 'on account of'—Possible meaning of A/C indicated. See Insurance Act (1938), Preamble. **ILR (1957) 3 Cal 144.**

"Accident".

See Workmen's Compensation Act (1923), S. 3.

"Accidental slip".

—Pure case of error in passing order — Error remediable by proper proceeding either by way of review or by an appeal—Party preferring appeal but not presenting the same but allowing it to be dismissed — Held that in the circumstances, it could not be said that the error of the Court was an "accidental slip or omission" justifying the Court in exercising powers under S. 152. See Civil P. C. (1908), S. 152. **AIR 1952 Cal 577 (DB).**

"Accompany".

—Words "accompanied by a fee of Rs. 100" in S. 66 (1), Income-tax Act (1922), should not be given a too literal interpretation — Ordinary meaning of "accompany" is "go with" — Fee need not be enclosed along with application under S. 66 (1) — Both fee and application need not be delivered together at the same time - Fee should be sent at such time that in ordinary course it should either be received or deemed to be received within time allowed — Application can be sent by registered post with money order for requisite fees, mentioning the fact of the M. O. in the application See Income-tax Act (1922), S. 66 (1). **AIR 1955 Mad 162 (DB).**

"Accommodation".

See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 2 (a).

"Accomplice".

See Evidence Act (1872), S. 133.

"Accounts kept in regular course of business".

See Evidence Act (1872), S. 34.

"Accounts stated".

See Limitation Act (1908), Art. 64.

"Accrue and arise".

See (1) Income-tax Act (1922), S. 4.
(2) Words and Phrases—"Income".

"Accusation."

—Allegations justifying order for public examination under S. 45G, Banking Companies Act (1949), are not "accusations" within Art. 20 (3) of the Constitution of India. See Banking Companies Act (1949), S. 45-G. **AIR 1965 S C 654.**

"Accused."

See (1) Constitution of India, Art. 20 (3).
(2) Evidence Act (1872), S. 24.

"Acknowledgment."

See Limitation Act (1908), S. 19.

"Acquiescence."

See also Evidence Act (1872), S. 115.

—'The word 'acquiescence' is used in two senses; sometimes it is used to denote conduct which is evidence of an intention by a party, conducing himself, to abandon an equitable right; sometimes to denote conduct from which another party would be justified in inferring such an intention' : AIR 1926 Nag 416, Rel. on. **AIR 1964 Him Pra 34 (37) (Pt C) (Pr 11).**

"Acquire."

●—Acquisition of land within meaning of S. 299 (2), Government of India Act, 1935 — Deprivation of the landholder of the right of management and control over the forest without legal title thereto or beneficial enjoyment thereof being affected does not amount to acquisition of land. See Bihar Private Forests Act (9 of 1948). **AIR 1961 S C 1684.**

●—Word 'acquire' may include power to purchase by agreement but is wide enough to enable corporation to request the State Government to acquire property under the Land Acquisition Act. See Bombay Land Requisition Act (33 of 1948), S. 5 (1). **AIR 1956 S C 294.**

—Word 'acquire' in S. 14, Hindu Succession Act means according to the Oxford Dictionary "come into possession of" or "gain by oneself." See Hindu Succession Act (1956), S. 14 (1). **AIR 1961 Andh Pra 241.**

—Word "acquired" appearing in different sub-sections of S. 14, Hindu Succession Act has different connotations. See Hindu Succession Act (1956), S. 14 (1), Explanation and sub-s. (2). **AIR 1962 Cal 438.**

—"Acquired" signifies obtaining of title as a result of positive act by acquirer and will not apply to a case where on account of death right devolves upon heirs of deceased—Heirs are not persons who acquire title within meaning of S. 9 (1) of Cochin Verumpattamdars Act. See Tenancy Laws — Cochin Verumpattamdars Act (8 of 1118) (As amended in 1122). S. 9 (1). **AIR 1953 Trav-Co 397 (DB).**

"Acquisition"

See also (1) Constitution of India, Arts. 31, 31A and 31B and Sch. 7, List 3, Item 42.
(2) Government of India Act (1935), S. 299.
(3) Limitation Act (1908), Art. 17.

—Property of a citizen may either be taken by the State permanantly or temporarily and this is usually termed by calling the former "acquisition" and the latter "requisition" — In the former case title vests in the State — In the latter case the title remains unaffected but the title holder is deprived of its use for the time being. See Income-tax Act (1922), S. 3. **AIR 1963 Punj 411 (DB).**

"Acquisition and requisition."

—"Acquisition" connotes that ownership and title of the owner is transferred to the State or corporation owned and controlled by the State. "Requisition" takes place when right of possession is transferred without transferring the title. Collection of blood for purpose of the test,under S. 129A, Bombay Prohibition Act is not acquisition of property without payment of compensation within meaning of Art. 31 (2) of the Constitution. It is not also requisition. See Prohibition — Bombay Prohibition Act (25 of 1949), S. 129-A. **1964 (2) Cri L J 523 : AIR 1964 Bom 253 (DB).**

"Acquittal."

●—"Acquittal" in Art. 134 (1) (a) of the Constitution includes acquittal of offence changed and conviction for lesser offence. See Constitution of India, Art. 134 (1) (a). **1962 (1) Cri L J 196 : AIR 1962 S C 130.**

—"Acquittal" and "termination of prosecution" within meaning of Limitation Act (1908), Art. 23 — Distinction, pointed out. See Limitation Act (1908), Art. 23, **AIR 1963 All 547.**

—There can be acquittal even in case where no charge has been framed — No charge framed against petitioner — Petitioner discharged under S. 253, Criminal P. C. — He is entitled to benefit of R. 112 of the Assam Jail Manual which applies to acquittal. See Assam Jail Manual, Chap. 8, Sch. 4, R. 112. **AIR 1956 Manipur 34.**

"Acquitted of blame."

—Words "acquitted of blame" in Railway Establishment Code, App. XXXI, S. 3 do not mean the same thing as "acquitted." The Court may neither say that the case against the employee is false nor does it say that he has been acquitted on ground of benefit of doubt — In such a case it is for the officer making the adjustment to read the judgment and come to his own conclusion whether it is a case of honourable acquittal or acquittal of blame or not. See Railway Establishment Code, Appendix XXXI, S. 3. **AIR 1959 Raj 55 (DB).**

"Act."

●—Omission to do an act—'Act done' — Meaning—Omission to do an act is not always incided in 'act done.' See U. P. District Boards Act (10 of 1922), S. 192 (1). **AIR 1965 All 590 (FB).**

—The word "act" in O. 3, R. 1 is not such as would include act of pleading and is intended to cover only such acts as are capable of being done in the act of acting for a litigant — Word 'act' appears to have been used in technical sense and not in ordinary sense. See Civil P. C. (1908), O. 3, R. 1. **AIR 1959 Bom 21.**

—Expression "suit in respect of any act touching the business of the society" in S. 59 of Punjab Co-operative Societies Act — "Act" includes both lawful and unlawful act. See Co-operative Societies — Punjab Co-operative Societies Act (14 of 1955), S. 59. **ILR (1957) Punj 1195.**

"Act and illegal omission."

—An "act" includes an "illegal omission" within the definition of the word given in Rajasthan General Clauses Act. But non-payment of a sum which is due cannot be said an illegal omission as it is not directly forbidden by law. See Municipalities — Rajasthan Municipalities Act (38 of 1959), S. 271. **1963 Raj L W 605.**

"Act done."

—"Act done," if includes illegal omission. See U. P. Industrial Disputes Act (28 of 1947), S. 14. **1958 All L J 17 : 1958 All W R (HC) 146: 1958 All Cri R 130 : (1959) 1 Lab L J 1.**

"Act done under colour of office or duty."

—In order that an act could be said to be done under colour of office or colour of duty, it would at least be necessary that there should be some relationship between act complained of and duties appertaining to the office—Existence of such a nexus is indispensable—Such nexus may not be adequate. See Bombay Police Act (22 of 1951), S. 161. **1965 (2) Cri L J 193 : AIR 1965 Bom 124 (DB).**

"Acting".

●—'Acting' includes applying and pleader who makes an application on behalf of his client acts for him —Presentation of application by him, when no authority in prescribed manner was given to him is an 'irregularity' which can be cured at later stage. See Civil P. C. (1908), O. 3, R. 1. **AIR 1957 Andh-Pra 172 (FB).**

"Acting or pleading".

See Civil P. C. (1908), O. 3, R. 4 (2).

"Action".

—Word "action" in S. 328 (3) of U. P. Municipalities Act ought to be construed as meaning action brought within the United Provinces. See Limitation Act (1908), Art. 52. **AIR 1956 Cal 216 (DB).**

——"Action" — Meaning of — Construction of Insurance Policy—Words "unless the claim is the subject of pending action" — Application under S. 20, Arbitration Act—If amounts to an "action".

One of the conditions contained in an Insurance Policy provided that the Insurance Company would not be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage "unless the claim was the subject of pending action or arbitration." A question arose as to whether a petition under S. 20, Arbitration Act, filed in Court within 12 months of the date of the damage or loss was a "pending action."

Held, that the word "action" was not a word which was used in Indian law and therefore that word must be given the meaning which it had in English law, and that under that law that word was wide enough to cover an application to a Court under S. 20 of the Arbitration Act, for the filing of an agreement to refer to arbitration. **1951 Com Cas (Ins) 40 : ILR (1951) Punj 246 : AIR 1921 Punj 97 (98, 99) (Prs 5, 7) (DB).**

"Actionable wrong"

—Term 'actionable wrong' means an illegal or unauthorised act infringing a legal right of another affording him a ground for action in law — If guarantees given by the Constitution are infringed, it is illegal and unauthorised act infringing a legal right of a citizen and amounts to an actionable claim within meaning of S. 88, States Reorganisation Act. See States Reorganisation Act (1956), S. 88. **AIR 1959 Bom 363 (DB).**

—Expression 'actionable wrong' in Cl. 10 of Indian Independence (Rights, Property and Liabilities) Order 1947, is not limited to tortious acts but includes all 'wrongs' which give right of action to the person wronged. See Indian Independence (Rights, Property and Liabilities) Order, 1947, Cl. 10 (2) (b). **AIR 1955 N U C (Cal) 3850.**

—Consignment of foodstuffs—Seizure and requisition by Assam Government in 1946 under R. 81 (2) (f), D. I. Rules — Claim for compensation is 'actionable wrong' within meaning of cl. 10 (4) of Indian Independence (Rights, Property and Liabilities) Order (1947). See Indian Independence (Rights, Property and Liabilities) Order, 1947, Cl. 8. **AIR 1960 Pat 215 (DB).**

"Act of God".

—Expression "act of God" is a mere short way of expressing the proposition that a common carrier is not liable for any accident as to which he can show that it is due to natural causes directly and exclusively, without human intervention and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected from him. **AIR 1953 Mad 519 (525) (Pt D) (Pr 19) (DB).**

"Act of State".
See (1) Civil P. C. (1908), S. 9.
(2) Constitution of India, Art. 51.

"Act purporting to be done".
See Civil P. C. (1908), S. 80.

"Actually and voluntarily resides."

—"Voluntarily resides" in S. 5 of the Displaced Persons (Debts Adjustment) Act, 1951, the word "actually" excludes the idea of domicile or constructive residence. S. 5 is pari materia with S. 20, Civil P. C. A place where a person has abode and where he ordinarily resides would be a relevant factor — Merely because he leaves that place temporarily for short visits to other places, will not make him a resident of the place which he visits. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 5. **AIR 1965 All 72 (DB).**

"Actually resides."
See Civil P. C. (1908), S. 20.

"Adapted for use."

—Item 295 in Import Trade Control Schedule — Articles "adapted for use" as parts and accessories of motor cycles — Meaning of expression "adapted for use", explained. See Sea Customs Act (1878), S. 167 (8). **AIR 1956 Cal 542.**

"Addict."

—Expression 'addict' is applied to a person who habitually is given to a practice — Three instances when petitioner was known to have taken alcohol—To call him an addict will not be justified. See Bombay Police Act (22 of 1951), S. 33 (1) (w) (i). **AIR 1959 Bom 346.**

"Adhikari, Adhikarini."

—Will—Testator using words adhikari and adhikarini in respect of sons and daughters — Held words denoted full ownership. See Succession Act (1925), S. 86. **AIR 1963 Cal 520 (DB).**

"Administration."

—Word 'Administration' generally, except perhaps in any particular context, includes all normal functions and authority of Government, when the word is not used departmentally but with injunction to general obedience of the subject people — Word also has the meaning of executive part of Government. See Hyderabad Firman, dated 19-9-1948. **AIR 1955 N U C (Hyd) 5624 (DB).**

"Administrative", "Executive," "Judicial" — Meanings of.

The term "administrative" or "executive" is capable of bearing a wide range of meaning. Broadly speaking, however, this term refers to broad areas of Governmental activities in which the repositories of power may exercise every class of statutory function.

The meaning of the term "judicial" varies according to the purpose for which the term has to be defined. Not only do definitions of the term "judicial" vary between different legal contexts, but they will not infrequently vary within one individual legal context. **(1964) 2 Andh L T 94 : AIR 1965 Andh-Pra 69 (72) (Pt E) (Prs 8, 9).**

"Admission."

—"Admitted to possession as raiyat" in S. 6 (1) Madras Estates Lands Act — "Admission" must be conscious and deliberate act and not something which was not intended — Court of Wards merely granting permission to persons to continue cultivation on behalf of Court of Wards until they made up their mind about the person to whom raiyati patta should issue—This does not amount to "admission to possession" so as to confer raiyati right on such person. See Tenancy Laws—Madras Estates Land Act (1 of 1908), S. 6 (1). **AIR 1963 Orissa 121 (DB).**

"Admit," meaning of.

—Words "admits" and "permits" in R. 29 (1) are used in the ordinary sense and to make the proprietor of a theatre responsible for the presence of ticketless spectators in the cinema house, it is essential to prove that he had willingly and knowingly allowed them to get into it or that he was privy to it. See Madras Entertainments Tax Act (10 of 1939), S. 16 — Rules under—Rr. 29 (1) & 53. **1956 Cri L J 575 : AIR 1956 Andhra 100.**

"Admitted in evidence."
See (1) Stamp Act (1849), S. 36.
(2) T. C. Stamp Act (1 of 1125 ME), S. 33.

"Adukuvathu."

—It is fee ordinarily paid at end of every 12 years' occupation for renewing grant for another twelve years —This can be paid at time of original grant itself. **AIR 1955 NUC (Trav-Co) 5086.**

"Adultery."
See also (1) Divorce Act (1869), S. 10.
(2) Hindu Marriage Act (1955), S. 13 (1) (i).

(3) Penal Code (1860), S. 497.
(4) Special Marriage Act (1954), S. 27 (a).

—'Adultery' means consensual sexual intercourse between a married person and another person of the opposite sex during the subsistence of the former's marriage. 1965 M P L J 559 : 1965 Jab L J 663 : AIR 1966 Madh Pra 130 (130) (Pt B) (Pr 3) (DB).

"Advance"

—Advance means literally a payment beforehand; in certain cases it may be a loan but it cannot be said that a sum paid by way of advance is necessarily a loan. But when 'advance' is declared to be 'repayable' (though only conditionally) it will lean to the side of loan. 26 Ch D 107; (1957) A C 697, Rel. on. 1960 Mad W N 74 : (1960) 2 Mad L J 13.

"Advance and deposit"

—Distinction between advance and deposit pointed out. ILR (1961) Mad 955.

"Affairs of State."
See Words and Phrases—"State"

"Affairs of State."—Meaning of
See Evidence Act (1872), S. 123.

"Affected by the order."

—Words "affected by the order" in S. 12, proviso, Kerala Cinemas (Regulation) Act, 1958, in law imply that the order must bring about or produce a change in the petitioner's legal rights. In short, the words affected and aggrieved though not synonymous are analogous. An order may be said to affect a person when it is directed against him or his property in the sense that the enforcement of the decision would involve some special, immediate and in its effect a direct injury to his interests. AIR 1960 Ker 378 (381) (Pt A) (Pr 5).

"After giving not less than 15 days notice."

—Expression "after giving not less than 15 day's notice thereof" in S. 22 (3), Territorial Councils Act, only means that 15 clear days must intervene between the issue of the advertisement or circular calling the meeting and the date of the meeting and the notice so given is effectual though it may not actually reach the holder until some days afterwards. See Territorial Councils Act (1956), S. 22 (3). AIR 1960 Manipur 25.

"After the date"

—One year "after the date" the Act came into force in S. 13, Displaced Persons (Debts Adjustment) Act — 'After' means "later in time than," "subsequent to," "following the expiration of." In legal consideration, where a time is expressed as to be computed or an act as to be done after a certain date, the word 'after' is usually judicially construed as not intended to include the day or the period governed by the word 'after.' See Debt Laws — Displaced Persons (Debts Adjustment) Act (1953), S. 13. AIR 1955 N U C (Pepsu) 2514.

"After which time."

—Expression "after which time" in proviso to S. 99, Bengal Irrigation Act can only mean after one month. See Bengal Irrigation Act (3 of 1876), S. 99. AIR 1956 Pat 482 (Pt B) (Pr 8) (DB).

"Agent."

—For purposes of the Representation of the People Act, 1951, the expression 'agent' has much wider connotation than it is ordinarily understood under the law of contract — Anybody who acts in furtherance of the prospects of the candidate's election is an agent of the candidate, provided he does so with the consent, expressed or implied, of the candidate — Association of persons or a society or a political party and its prominent members who set up the candidate sponsor his cause and work to promote his election, may be called his agent for election purposes. But person who is merely an officer, intermeddler or a mere volunteer is not the agent even though such person may have acted for the candidate's benefit. See Representation of the People Act (1951), S. 123 (1). AIR 1959 Assam 200 (DB).

"Agnate."

—'Agnate' means a person whose relation to the deceased can be traced without intervention of female links. AIR 1951 J and K 21 (23) (Pt D) (Pr 6) (DB).

'Aggrieved party.'

—Offence of bigamy by husband — Wife is the aggrieved party who alone can file complaint, and not any of her relations — Her brother no doubt comes within the definition of the word "relative" specified in the explanation of S. 198, Cr. P. C., who can file complaint on her behalf but the authority conferred on him must be understood as being one that can be exercised only when she is alive and not after her death. See Criminal P. C. (1898), S. 198. 1965 (2) Cri L J 376 : AIR 1965 Mys 235.

"Agraharam."

—Property sold described as 'agraharam' — 'Agraharam' is a word apt to describe property held on inam tenure but not apt to describe property held on ryotwari tenure. 64 Mad L W 1 : AIR 1950 P C 105 (107, 108) (Pt A) (Pr 10).

—An Agraharam is a land granted to Brahmins either rent-free or at a low rate. It is a village or a portion of a village and in some cases even the grant conveyed the kudiwaram interest also. 1959 Andh L T 39 : (1958) 2 Andh W R 134.

"Agrarian reform."

—Words "agrarian reform" are not found in Art. 314 of the Constitution —Courts are not confined to their literal and narrow meaning — If the legislation is meant to improve the standard of living and working in villages it would certainly have agrarian reform as its object, not in a narrow and pedantic sense but in a context in which the general good of the village agricultural community would be covered. See Tenancy Laws — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 2 (bb). AIR 1964 Punj 419 (FB).

"Agricultural income."
See (1) Income-tax Act (1922), S. 2.
(2) Rajasthan Agricultural Income-tax Act (23 of 1953), S. 2.

"Agricultural labourer."

—Though the expression has not been defined in the Act, it can only mean a person who being landless and poor, hired out his labour for agricultural purposes. See Debt Laws—Bombay Agricultural Debtors Relief Act (28 of 1947), S. 24 (2). ILR (1958) Mys 825.

"Agricultural land."

—Land used as an airfield cannot be termed agricultural land though originally it was agricultural land. 'Agricultural land' has not been defined either in the Constitution or in the Wealth Tax Act. Therefore we have to take into consideration the ordinary meaning attached to that expression. Normally an agricultural land means that land which is used or is capable of being used for agricultural purpose. It is not what use it can be put to by changing its character. Therefore, land which was once agricultural land but which, at the relevant time, is being used as an aerodrome for military purposes after its requisition by the Government cannot be termed as an 'agricultural land' within the meaning of that term in the Wealth Tax Act or the Constitution of

India. The question as to how the land ceased to be agricultural land is irrelevant. AIR 1942 F C 27, Rel. on. (1963) 48 I T R 472 : 1963 Mys L J (Supp) 365 : ILR (1962) Mys 926 : AIR 1963 Mys 111 (112) (Pt B) (Prs 4, 5, 6) (DB).

—'Agricultural lands' must be taken to include lands which are used or are capable of being used for raising any valuable plants or trees or for any other purposes of husbandry. See Government of India Act (1935), Sch. VII, List 2, Item 21. AIR 1951 Orissa 11 (DB).

"Agricultural operations."

See Income-tax Act (1922), S. 2 (1).

"Agricultural produce."

— Forest trees of spontaneous growth cannot be regarded as agricultural or horticultural produce grown of land. See Sales-tax — Madras General Sales Tax Act (9 of 1939), S. 2 (1), Proviso. AIR 1957 Andh. Pra 28 (DB).

Term 'agricultural produce' as used in the Civil P. C. is confined to growing crop standing on the land on which it has grown or cut crop lying on the threshing floor or fodder-stack. Once grain is separated from the chaff it ceases to remain agricultural produce and there is no protection against its attachment under O. 30, R. 12. Grain as well as straw can both be attached. AIR 1962 Raj 82 (82) (Pr 3).

"Agricultural purpose."

See Income-tax Act (1922), S. 2.

"Agriculture."

See (1) Debt Laws — Madras Agricultural Debtors Act (5 of 1954), S. 2.
(2) Income-tax Act (1922), S. 2.
(3) Sales Tax — M. B. Sales Tax Act (30 of 1950).

"Agriculturist."

See (1) Bhopal Land Revenue Act (4 of 1932), S. 188 (3).
(2) Civil P. C. (1908), S. 60.
(3) Debt Laws — Jammu and Kashmir Agriculturists Relief Act (1 of 1983), S. 2.
(4) Debt Laws — Mysore Agriculturists Relief Act (18 of 1928), S. 2.
(5) Gwalior Interest Act (1974 Smvt), S. 4.

"Aid."

—In Arts. 29 (2) and 30 (2) of the Constitution cover the 'grant' under Art. 337. See Constitution of India, Art. 29 (2). AIR 1958 S C 956.

"Ala Malik and Adna Malik" — Meaning of.

—Where the proprietary right is divided the superior owner is known in settlement literature as Ala Malik or talukdar, and the inferior owner as Adna Malik. In cases of divided ownership the proprietary profits are shared between the two classes who have an interest in the soil. Long possession with or without a patta or lease from the Raja was the test for recording the ryot as an inferior proprietor (Adna Malik). Raja Rajinder Chand v. Mst. Sukhi. ILR (1957) Punj 819 : 1957 S C J 119 : 1957 S C A 251 : 1956 S C R 889 : AIR 1957 S C 286 (293, 294) (Pt D) (Pr 16).

"Allotment of houses" — Meaning of.

— Mysore Housing Board Act (20 of 1955), Ss. 21, 37, 61, 62, 3 (2) — Allotment of houses — Making of regulations under S. 62 (b) laying down principles to be followed in such allotment is condition precedent for exercise of power under S. 21 (g) or (1) — Allotment in S. 62 (b) includes allotment by way of sale — Requirement of S. 62 (b) cannot be discarded because of provisions in S. 3 (2)—Selection of deserving applicants by Board in contravention of S. 62 (b) not sufficient. See Mysore Housing Board Act (20 of 1955), S. 21. 1963 Mys L J (Supp) 397.

"Allotment of shares in company."

See Companies Act (1956), S. 75.

"Allow"

—Under S. 394 (1) (c), Bombay Municipal Corporation Act (1888) "no person shall . . . . allow to be kept in or upon premises, horses, cattle . . . ." — Word "allow" has extensive meaning and may mean "permit; suffer; to give leave; not to prevent." See Municipalities — Bombay Municipal Corporation Act (3 of 1888), S. 394 (1) (c) (iv). (1960) 62 Bom L R 543.

— Person "allowing" another to dishonestly misappropriate, commits offence under S. 5 (1) (c), Prevention of Corruption Act — Word 'allow' is much wider in import than the word "suffer" — Failure to bring offender to book or gross negligence in detecting fraud that was committed would not by itself lead to inference that the person allowed the fraud to be perpetrated — There must be some evidence to show that the person had known of the misappropriation and that by some act or omission of his he made it possible or easy for another to misappropriate See Prevention of Corruption Act (1947), S. 5 (1) (c). 1960 Ker L J 1056.

"All proceedings."

— Words "all proceedings" in S. 15 of Displaced Persons (Debts Adjustment) Act, mean 'each and every' proceeding in respect of the debt of the displaced debtor — Execution proceedings also come within the purview of the words "all proceedings". See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 5. AIR 1957 Madh Pra 98 (DB).

"All the law in force."

— While "existing law" as defined in Art. 366 (10) of the Constitution is limited to statute law or law embodied in ordinances, orders, bye-laws, rules and regulations, "all the law in force" in Art. 372 (1) is not so limited and extends even to customary law, personal law like Hindu and Mahomedan law, being thus much more comprehensive than "existing law" as defined in Art. 366 (10). "Existing law" is a part of "all the law in force" in Art. 372 (1). See Constitution of India, Art. 372 (1). AIR 1956 Cal 222 (DB).

"All the parties interested."

— Expression "all the parties interested" in S. 21, Arbitration Act, means parties interested in specific dispute referred to arbitration and not in the subject-matter of the whole suit where the two are not identical. See Arbitration Act (1940), S. 21. AIR 1956 Punj 249.

"Alter"

— "Alter" does not mean "abolish". See Bombay Primary Education Act (61 of 1947), S. 8 (2). AIR 1950 Bom 18.

— Power to alter order imposing penalty — Does not include power to enhance penalty. See Constitution of India, Art. 309. 1963 Mys L J (Supp) 219.

"Alterations."

— "Alteration" of premises — Complete re-building also is alteration. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (vii). AIR 1953 Nag 16 (DB).

"Alter the finding."

See Criminal P. C. (1898), S. 423.

"Always."

— The word 'always' as referred to in R. 16 (B) of Mad. Shops & Establishments Rules, means that the registers etc. should be available to be produced or caused to be produced when called for inspection at all reasonable hours — Temporary non-availability for insufficient cause will not constitute breach of the rule. See Madras Shops & Establishments Rules (1948), R. 16. 1962 Mad W N 32.

"Amalgamation."

— "Amalgamation" of holding, in S. 134, Calcutta Municipal Act — Amalgamation means merger — Amalgamation of land and building or premises has to be taken in its general sense, namely the making or the conversion of plots of land or building into one either by erection of one boundary wall or by removal of the marks of separation between them. See Municipalities — Calcutta Municipal Act (3 of 1923), S. 134. (1958) 62 Cal W N 293.

"Amend."

● — Per Gajendragadkar C. J. Wanchoo and Raghubar Dayal JJ. — According to dictionary "amend" means to correct a fault or reform but in the context of Art. 368, this meaning cannot be relied upon because what the Article authorises is the amendment of the provisions of the Constitution, which may include deletion of any one or more of the provisions and substitution in their place new provisions — Power to amend Constitution conferred by Art. 368 includes even power to take away fundamental rights under Part III. See Constitution of India, Art. 368. AIR 1965 S C 845.

[Not good law in view of AIR 1967 S C 1643.]

"Amended."

— Word "amended" in S. 1 (2), Calcutta Thika Tenancy Amendment Act must be construed in its natural meaning as altered by "additions, substitutions and omissions." See Tenancy Laws — Calcutta Thika Tenancy Amendment Act (6 of 1953), S. 1 (2), Proviso. AIR 1954 Cal 119 (DB).

[Overruled on another point in AIR 1960 S C 936.]

"Amend his application."

—Expression "to amend his application" in S. 14 (3) Trade Marks Act (1940) cannot be given a very wide connotation. The proper construction of S. 14 (3) is to equate the discretion exercised by the Registrar under S. 48 (1) of the Act with the discretion conferred upon him under S. 14 (3). He has no power to allow an amendment of a trade mark after the original trade mark has been advertised in a manner affecting the identity of the trade mark. See Trade Marks Act (1940), S. 14 (3). AIR 1958 Bom 47 (DB).

"Amenity."

— Repairs of accommodation are not "amenities". See Houses & Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-D. 1964 All W R (H C) 702.

— Word 'amenities' used in S. 12, Rajasthan Act 17 of 1950 is distinct from cost of maintenance and repairs like replacing of a door and repairs other than connected with the restoration of the amenities mentioned in the section. See Houses and Rents—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 12. ILR (1959) 9 Raj 242.

—"Amnesty".

See Constitution of India, Arts. 72 and 161.

"Amount recoverable as if land revenue".

—The expression means that the amount recoverable, in its proper nature is not land revenue at all — The expression means that the procedure for recovery of land revenue, is made available to the Government for recovery of any amount due as land revenue—See Mysore State Aid to Industries Act (1951) (20 of 1951), S. 19 (1). AIR 1965 Mys 261.

"Amrita Manhi".

—The words Amrita Manhi literally mean food offering, and when property is dedicated as Amrita Manhi, it cannot be said that there is only a partial dedication to the deity or that the property is subject only to a charge and does not constitute absolute devottar. AIR 1951 Orissa 255 (257, 258, 259) (Pt A) (Prs 6, 7, 8, 11, 12) (DB).

"Amusements".

●—"Amusements" include cinema, dramatic performances, sports and the like—See Mysore Cinematograph Shows Tax Act (26 of 1951), S. 3. AIR 1959 S C 894.

'Anadhinam'.

—'Anadhinam' does not imply that it is domain or home farm land of the landholder and therefore private land — It would be ryoti land within meaning of S. 3 (16) Mad. Est. Land Act — See Tenancy Laws—Madras Estates Land Act (1 of 1908), S. 3 (10) (b). AIR 1958 Andh Pra 100.

"An aggrieved person".

—Any trader is, in the sense of the Trade Marks Act aggrieved whenever the registration of a particular trade make operates in restraint of what would otherwise have been legal rights — See Trade Marks Act (1940), S. 46 (2). AIR 1957 All 683.

—"And".

See also Words and Phrases — "Or".

●—The word 'and' joining two parts of S. 29 (2), Limitation Act, 1908 — Second Part is not independent of the first part: AIR 1956 All 273, Overruled.—See Limitation Act (1908), S. 29 (2). A I R 1964 S C 1099.

●—Sub-clause (a) of Cl. (7) of Art. 22 of the Constitution being an enabling provision, the word "and" should be understood in a disjunctive sense — See Constitution of India, Art. 22 (7). 52 Cri L J 1103 : AIR 1951 S C 301.

—Use of the word 'and' in Entry 56, List II of Sch. 7 of the Constitution does not mean that the tax cannot be levied on one to the exclusion of the other —See Constitution of India, Sch. 7, List 2, Entry 56. AIR 1955 Assam 249.

[Reversed on another point in AIR 1961 S C 232.]

—'And' when to be read as 'or' indicated — See Prevention of Food Adulteration Act (1954), S. 2 (1) (j). 1965 (1) Cri L J 445 : AIR 1965 Ker 96.

—To give effect to intention of legislature, it may be sometimes necessary to hold that conjunction 'and' means 'or' or vice versa — 'And' used in expression "maintenance of supplies and services" in S. 3 (a) (iii), Preventive Detention Act, is used in ordinary sense—See Public Safety — Preventive Detention Act (1950), S. 3 (a) (iii). 52 Cri L J 1438 : A I R 1951 Pepsu 164 (DB).

—"Anglo-Indian".

See Constitution of India, Art. 366 (2).

"Annoyance".

—'Annoyance' in S. 53 of C. P. and Berar Municipalities Act, in law, means much the same thing as nuisance—See Municipalities—C. P. and Berar Municipalities Act (2 of 1922), S. 53. AIR 1962 Madh Pra 40 (DB).

—What is 'annoyance or nuisance' in a particular case may not be so in a different case—Each case depends, on its facts—For a landlady or landlord who is ailing from some disease, even the noise or disturbance caused by normal use of premises may amount to annoyance or nuisance—See Houses and Rents—Mysore House Rent and Accommodation Control Act (30 of 1951), S. 8 (2) (vi). AIR 1955 Mys 107.

—"Annual Charge".

See Income-tax Act (1922), S. 9.

—"Annual Value".

See Income-tax Act S. 9.

"An opportunity of explanation".

—The words "an opportunity of explanation" in S. 40 (3) of U. P. Municipalities Act, necessarily imply an opportunity to explain the conduct attributed to the member or any other material before the State

Government on which the State Government has formed its opinion that the member has so flagrantly abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interests — See Municipalities—U. P. Municipalities Act (2 of 1916), S. 40 (3). **1957 All L J 286.**

"Any", meaning of.

—Both under Rr. 7 and 10 of the Bengal Chamber of Commerce Rules of Tribunal of Arbitration, the Registrar is bound to appoint new arbitrators in place of the first Court when one or all its members allowed the time to expire for filing award and therefore neglected to act — In appointing new members, the Registrar must appoint persons other than those constituting the first Court — The word "any" in R. 10 means one or more out of several and includes all — See Arbitration Act (1940), S. 9. **AIR 1955 Cal 225.**

●—Word 'any' in S. 11-A (2) of the Bombay Municipal Boroughs Act, 1925, should be given a meaning as wide as possible in the context — See under Municipalities — Bombay Municipal Boroughs Act (18 of 1925), S. 11-A (2). **AIR 1965 Mys 227 (FB).**

——"Any" means all — See Panchayats — Bihar Panchayat Election Rules (1959), S. 2 (g). **AIR 1965 Pat 446 (DB).**

"Any building".

—"Any building" in S. 1-A of U. P. Act 3 of 1947 as amended by Act 11 of 1951 includes building constructed by either landlord or tenant with his consent—See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 1-A. **1965 All L J 794.**

"Any candidate against whom allegations of any corrupt practice are made".

—Expression "any candidate against whom allegations of any corrupt practice are made" in S. 82 (b) of the Representation of the People Act (1951 as amended by Act 27 of 1956) is to be construed as "any candidate who is alleged to have committed corrupt practices" — There is no scope for importing any concept of vicarious liability under S. 82 (b) as it stands — See Representation of the People Act (1951), S. 82 (b). **AIR 1958 Mad 171 (DB).**

"Any Court".

—"Any Court" in S. 417 (1) means any Court of Criminal jurisdiction, including a special Judge—See Criminal P. C. (1898), S. 417. **1960 Cri L J 917: AIR 1960 Madh Pra 188 (DB).**

"Any Court of appeal".

—Section 520, Criminal P. C, confers certain powers upon certain Courts. "Any Court of appeal may modify order under S. 517" means that it is the power of a Court of appeal to modify such an order —Section does not empower a Court to assume jurisdiction as a Court of appeal etc., to modify the order regarding the disposal of property — See Criminal (1898), S. 520. **1959 Cri L J 123 : AIR 1959 All 96.**

"Any evacuee property" — Meaning.

—Words "any evacuee property" in S. 5 (2) of the Pepsu Ordinance 17 of 2006 B. K. are to be interpreted in the light of the definition of evacuee property in S. 2 (d) of that very Ordinance and not in the light of any definition of that term in S. 2 (e) of the previous and repealed Pepsu Ordinance 13 of 2006 B. K.—See Pepsu Administration of Evacuee Property Ordinance (17 of 2006 B. K.), S. 5 (2). **AIR 1956 Pepsu 54.**

"Any goods".

—Goods include money — Hence presence of money within territorial jurisdiction empowers Magistrate to act under sub-s. (2) of S. 193, Customs Act — See Customs Act (1872), S. 193 (2). **1961 Ker L J 479: 1961 Ker L T 504.**

"Any Income-tax authority."

●—"Any Income-tax Authority" in S. 8 (2), Travancore Taxation on Income (Investigation Commission) Act (14 of 1124) includes Chief Revenue Authority. See Travancore Taxation on Income (Investigation Commission) Act (14 of 1124), S. 8 (2). **A I R 1956 S C 246 (e).**

"Any interest."

—Words "any interest" in O. 22, R. 10 (1) includes right to maintain a suit. See Civil P. C. (1908), O. 22, R. 10. **AIR 1957 Tripura 10.**

"Any local authority."

●—Expression "any local authority" in S 15 (j) of the C. P. and Berar Municipalities Act, 1922, must be given the meaning "each and every local authority" and not "any individual local authority" with special rules of its own. See Municipalities—C. P. and Berar Municipalities Act (2 of 1922), S. 15 (j). **A I R 1957 Madh Pra 67 (FB).**

"Any mode of transfer."

●—Succession to property by operation of law cannot appropriately be described as a mode of transfer which obviously contemplates a transfer inter vivos. See Administration of Evacuee Property Act (1950), S. 2 (f) (i). **AIR 1953 S C 298.**

"Any money due."

—Money claim for which is barred by limitation is not 'any money due' within meaning of S. 469, Companies Act (1956). See Companies Act (1956), S. 469. **AIR 1963 Mad 307.**

"Any one."

●—"Any one" in S. 76, Mines Act, 1952, means every one. See Mines Act (1952), S. 76. **1961 (2) Cri L J 12: AIR 1961 S C 849.**

—Expression "any one of the individual partners or members thereof" in S. 53 (1), M. B Shops and Establishments Act means that only one and not more than one of individual partners or members can be prosecuted — Word "any" connotes indiscrimination and the word 'one' fixes the number. See Madhya Bharat Shops and Establishments Act (7 of 1952), S. 53 (1). **1959 Cri L J 1335: A I R 1959 Madh Pra 382 (DB).**

"Any one of the directors."

●—Expression "any one of the directors" in S. 76, Mines Act (1952, before its amendment by Act 62 of 1959) is ambiguous. In some contexts it means "only one of the directors, does not matter which one" but in other contexts, it is capable of meaning "every one of the directors" which of the two meanings is intended has to be decided upon consideration of the context. See Mines Act (1952), S. 76. **1961 (2) Cri L J 1: AIR 1961 S C 838.**

"Any other cause."

—Expression "any other cause" in para. 2 (q) of Art. 4, in schedule to Carriage of Goods by Sea Act, cannot be interpreted as being ejusdem generis to sub-paras. (a) to (p). The expression should be given wider interpretation. See Carriage of Goods by Sea Act (26 of 1925), Sch. 2, Art. 4, para. 2 (q). **(1951) 55 C W N 10.**

"Any other house"

—'Any other house' in S. 4, M. B Accommodation Control Act, must be reasonably equivalent as regards suitability in all respects to accommodation he is claiming. See Houses and Rents—M. B. Accommodation Control Act (15 of 1950), S. 4. **A I R 1955 N U C (Madh B) 2098 (DB).**

"Any other law for the time being in force."

—The Punjab Laws Act of 1872 is covered by the expression "any other law for the time being in force" in S. 29 (2), Succession Act (1925). See Succession Act (1925), S. 29. **AIR 1956 Him Pra 17.**

"Any other proceedings under the said Act."

●—Per Full Bench — Effect of S. 40 (2) of the West Bengal Premises Tenancy Act, 1950, as substituted by the Amending Act 18 of 1956 is to keep the Act of 1950 alive for purposes of all proceedings pending, on 31.3.1956 and also pending at the date of the amendment, in which application of that Act was called for, whether such proceedings were brought under the Act itself or brought under other laws. See Houses and Rents — W. B. Premises Tenancy (Amendment) Act (18 of 1956), S. 5 (2) (a). **A I R 1957 Cal 257 (FB).**

"Any other reason."

—Reading cls. (a) and (c) of S. 39 (2) of U. P. Town Areas Act, together it is sufficiently clear that "any other reason" will not include the improper rejection of nomination paper of a person other than the petitioner — Ground under the latter part of cl. (a) must be the ground showing that for some reason the petitioner was not duly elected by majority of lawful votes. See Municipalities—U. P. Town Areas Act (2 of 1914), S. 39 (2) (f). **1957 All L J 79.**

"Any other wife living."

See Hindu Adoptions and Maintenance Act (1956), S. 18 (2) (d).

"Any person."

—Words 'any person' in first part of notification No. E (1)/3/54-PWE, D/- 19-8-1955 under Ajmer Excise Regulation (1 of 1915), S. 16 (4) is only substitute for the "public" against whom the Chief Commissioner has no power to issue the notification — But where writ petition was not filed by petitioner in assertion of his individual right or personal right but in vindication of his right as proprietor of a hotel, it was held relief could not be given under the first part of the notification. See Constitution of India, Art. 226. **AIR 1956 Ajmer 50.**

—Unless context otherwise directs, words 'any person' in a statute may include all persons i.e., the public as a whole — But in S. 16 (4) (Ajmer) Excise Regulation, the words are intended to cover only any single individual or specified persons and not the public as a whole. See Ajmer Excise Regulation (1 of 1915), S. 16 (4). **AIR 1955 N U C (Ajmer) 150.**

—One of the requirements of the definition of 'industrial dispute' is that the dispute should be connected with employment or non-employment or with the condition of labour of any person — Words used are "any person" and not a 'workman' — Words 'any person' could only mean those persons in whom the workmen themselves were directly and substantially interested. See U. P. Industrial Disputes Act (28 of 1947), S. 2. **AIR 1958 All 80 (DB).**

—Expression "any person" in S. 142, Calcutta Port Act (1890) — Commissioners for Port not excluded. See Calcutta Port Act (3 of 1890), S. 142. **1964 Cal L J 56.**

—"Any person" in S. 73, Evidence Act includes a person accused of an offence. Section is not limited to persons other than a person accused of an offence. See Evidence Act (1872), S. 73. **1955 Cri L J 790 : AIR 1955 Cal 247 (DB).**

—"Any person" — Undivided Hindu family — Son represented by father in proceeding under Income-tax Act (1922)—'Son' comes within 'any person', contemplated by S 34 (3), Proviso 2 of the Act. See Income-tax Act (1922), S. 34 (3), Proviso 2. **AIR 1965 Mad 422 (DB).**

—Expressions "any person" or "class of persons" in S. 12 (3) (a), Companies Act, 1913, are very general and are applicable not only to the creditors or debenture-holders of a company but also to every person whose interests may be affected. See Companies Act (1956), S. 17. **AIR 1957 Orissa 232.**

— "Any person" in Art. 14 of the Constitution includes Government. See Constitution of India, Art. 14. **AIR 1957 Orissa 56 (DB).**

"Any person claiming under him"

—Expression "any person claiming under him" in S. 53-A, T. P. Act 'means only the person who has derived any interest from or through the transferor, namely assignee or legal representative of the transferor. See Transfer of Property Act (1882), S. 53-A. **AIR 1956 Pat 308 (DB).**

"Any person having an interest"

—"Any person having an interest" in S. 73 (1) Madras Hindu Religious Endowments Act, 1927, is wide enough to include trustees of the institution—See Madras Hindu Religious Endowments Act (2 of 1927), S. 73 (1). **AIR 1957 Andh Pra 498 (DB).**

"Any proceeding under this Act."

—"Any proceeding under this Act", scope of the expression in S. 28 of Hindu Marriage Act, 1955, indicated —See Hindu Marriage Act (1955), S. 24. **A I R 1959 Andh Pra 49 (DB).**

"Any right of succession".

—Expression "any right of succession" in Special Marriage Act (1872), S. 23, does not include right of survivorship—See Special Marriage Act (1872), S. 23. **AIR 1955 Madh Bha 148 (DB).**

"Any share or interest".

—Words "any share" or 'interest' which occur in Cl. (b) of sub-s. (2) of S. 22, in Hyderabad Municipal Corporation Act, 1956 not only covers such cases in which the lessee has some share or interest but also those where a lessee holds the entire lease and not merely a share or interest therein—See Municipalities —Hyderabad Municipal Corporation Act (2 of 1956), S. 22 (2) (b). **AIR 1957 Hyd 27 (DB).**

"Any time"

—Words 'any time' in S. 469 (1), Companies Act (1956) does not mean that the Court can make an order under the section without reference to the limitation prescribed by the law— See Companies Act (1956), S. 469. **AIR 1963 Mad 307.**

"Any vehicle or class of vehicles"

—"Any vehicle or class of vehicles" in R. 131 (2) (gg) of D. I. Rules—Expression is extremely comprehensive and can include classification in the sense of Govt. owned vehicles as contradistinguished from those owned by private persons or vehicles owned by the defence department as opposed to those owned by other departments of the Government—All classes of vehicles whatever be their nature and every vehicle, fall in the ambit of the expression — See. Defence of India Rules (1962), R. 131 (2) (gg). **I L R (1965) 2 All 303 (DB).**

"Apabyabahara"

—Remarks by Chief Minister that in many instances the judgments of the High Court were corrected by the Supreme Court and in many instances the "Supreme Court held that the High Court has abused (apabyabahara) the powers given to it" tend to lower the authority of the High Court to a considerable extent and bring the judges into contempt — Use of the expression "apabyabahara" conveys the idea that the High Court has abused its powers. See Constitution of India, Art. 215. **1958 Cr L J 1055 : AIR 1958 Orissa 168 (DB).**

"A person"

—Presence of words "a person" in singular in S. 27 Evidence Act, does not mean that information should be by a single individual — See Evidence Act (1872), S. 27. **1958 Cri LJ 821 : AIR 1958 All 467 (DB).**

"A person who has been a judge"

—The phrase "a person who has been a judge" in second proviso to S. 86 (3), Representation of the People Act, 1951 means a person who has at some time, held office as a Judge, but it does not necessarily mean that the person must be holding office as a Judge at the time of his appointment as a member of the tribunal. It is immaterial whether that person is a retired Judge. See Representation of the People Act (1951), S. 86 (3). **A I R 1958 All 323 (DB).**

"Appeal"

—The word 'petition' used in Rule 12 (1) of M. B. Nagar Palika Parshid (Nirvachan Evam Chunao) Niyam, 1954, essentially means an 'appeal' where remedy is provided to approach a superior authority to achieve the desired end, i.e. to get the order of an inferior authority tested and varied or reversed if found erroneous that is really an appeal—call it a petition or by whatever other name. **1959 M P L J 1070,**

—The word "appeal" has not been defined anywhere. An appeal in legal parlance is held to mean the renewal of a cause from an inferior or subordinate to a superior tribunal or forum in order to test and scrutinise the correctness of the impugned decision. **ILR (1962) 1 Punj 285 : AIR 1962 Punj 94 (99, 100) (Pt C) (Pr 11).**

—The word "appeal" in proviso to S. 57 (2) Delhi Rent Control Act, 1950 has been used in generic sense and must be taken to include revision also — See Houses and Rents—Delhi Rent Control Act (LIX of 1958), S. 57 (2), Proviso I. **ILR (1962) 1 Punj 558.**

[Impliedly overruled on another point in AIR 1964 S C 1305.]

—The word appeal in S. 115, Civil P. C includes second appeal. See Civil P. C. (1908), S. 115. **A I R 1953 Raj 137 (FB).**

[Overruled on another point in AIR 1964 S C 497.]

"Appealed from."

—See Constitution of India, Art. 133 (1).

"Appearance"

—See Civil P. C. (1908), O. 3, R. 1 and O. 9, R. 3.

"Appearance and act"

—See Civil P. C. (1908), O. 3, R. 1.

"Appearance by pleader"

—Appearance of pleader — Meaning of explained—Counsel appearing but reporting no instructions and not taking part in proceedings — Mere presence does not amount to appearance in case. See Civil P. C. (1908), O. 17, R. 2. **1964 M P L J (Notes) 96.**

"Appertaining"

—Word "appertaining" in S. 2 (b) (1), of Delhi and Ajmer-Mewara Rent Control Act 1947, means something which is usually occupied with the main building and is an adjunct to it. See Houses and Rents—Delhi and Ajmer-Merwara Rent Control Act (19 of 1947), S. 2 (b). **AIR 1955 N U C (Ajmer) 335.**

"Applicant"

—Word 'applicant' in R. 29 in Chapter 23 of Allahabad High Court Rules, means a person who has made an application under R. 28. It does not mean a person who proposes to make an application to the Supreme Court for special leave. See Criminal P. C (1898), S. 426 (2B). **1956 Cri L J 1035 : A I R 1956 All 523 (DB).**

"Application"

—In S. 24, Hindu Marriage Act, words "petition" and 'application' are used interchangeably — See Hindu Marriage Act (1955), S. 24. **AIR 1957 Mys 44.**

"Application is entertained"

—Mere fact that an application is taken on file and numbered is not entertaining of application — Authority must enter into merits of the application and give decision — Application dismissed on ground that the subject matter of the claim did not fall under the Act —There is no adjudication on merits — See Payment of Wages Act (1936), S. 17 (1). **A I R 1957 Mad 68.**

"Appoint"

—The word "appointed" in the sentence " . . . . the authority appointed by general and special order of the Provincial Government shall exercise such jurisdiction to entertain appeals . . . ." in S. 3 (3) of the Assam Revenue Tribunal (Transfer of Powers) Act (4 of 1948) is inappropriate to signify the constitution of any authority but is quite proper to signify the selection of the personnel of the already constituted authority to exercise the appellate powers of that authority. 'Appointed' does not necessarily mean already appointed—It may also mean "to be appointed" at any future time. See Assam Revenue Tribunal (Transfer of Powers) Act (4 of 1948), S. 3 (3). **A I R 1957 S C 414.**

—Word 'engage' has not the same connotation as the word "appoint" — 'Appointment' under S 492, Criminal P. C. by State Government is very much different from an engagement by Public Prosecutor of another person to act under his direction to conduct prosecution — Act of 'appointment' is an executive function of State and requires an order expressed in name of Governor. See Criminal P. C. (1898), S. 4 (1) (t). **1965 (1) Cri L J 150 : AIR 1965 Cal 79.**

—Word "appoint" inter alia means to designate or to nominate. See Civil P. C. (1908), O. 4, R. 1 (1). **AIR 1961 Him Pra 2.**

—The word "appointment" in Art. 309 of the Constitution cannot mean only appointed after the Constitution but means also appointed before the Constitution. See Constitution of India, Art. 309. **A I R 1963 Punj 298 (DB).**

[Reversed on another point in AIR 1964 S C 72].

"Appointment".

See also Words and Phrases —"Employment".

—The word "appointment" in Art. 234 of the Constitution, does not necessarily mean fresh appointments directly from the Bar. Appointments referred to in the Article must be intended to include "appointments by direct recruitment and also by promotions". See Constitution of India, Art. 234. **AIR 1956 Mys 20 (DB).**

—Word "Appointment" in S. 2 of the Public Servants (Inquiries) Act (1850) has been used not in the sense of designation of a person to discharge the duties of a particular office but meaning only the office or post to which one is appointed. It is not synonymous with 'service'. A person may be appointed to a service by the Central Government but if he is employed under a State Government he may be appointed to a post by the State Goverment. See Public Servants (Inquiries) Act (1850), S. 2. **AIR 1956 Punj 58 (DB).**

"Apportionment".

—"Apportionment" has been defined as a division or distribution of the subject-matter in proportionate shares, the act of distributing or allotting in proper shares and division of whole in parts. See Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwuri) Act (26 of 1948), S. 44. **A I R 1957 Andh Pra 523 (DB).**

"Apprehension".
See Words and Phrases — "Arrest".

"Appropriate Government".
See Industrial Disputes Act (1947), Ss, 2, 10.

"Approximate".

—Word "approximate" in S. 7 (iv) (b), proviso Court-fees Act (U. P. Amendment) means, very near, closely resembling or fairly correct. See Court-fees Act (1870), S. 7 (iv) (b). **AIR 1964 All 430 (DB).**

"Aprathishtitha".

—The word "aprathishtitha" must be undetstood only in the literal sense of being "unendowed with wealth". Where of the two daughters the question is who can be said to be unprovided, it must be decided having regard to the circumstances peculiar to each case—Hindu Law—Stridhan—Succession. **AIR 1951 Mad 1047 (1050) (Pt A) (Prs 6, 8) (DB).**

"Arable land".
See also Land Acquisttion Act (1894), S. 17.

●—By "arable land" is meant not only land capable of cultivation but also actually cultivated. It is not arable not because it is cultivated but because it is something else. ILR (1967) Guj 620, Affirmed; A I R 1965 Bom 224, **Overruled. AIR 1968 SC 870 (880) (Pt D) (Prs 23, 25).**

"Area".

●—Word "area" in S. 68.C, Motor Vehicles Act should be read as meaning such "area" in the entire State as the corporation should consider proper and not an area within a circumscribed part of the State determined by outside authority. See Motor Vehicles Act (1939) (as amended in 1956), S. 68.C. **A I R 1964 S C 962.**
—The word "area" in Cl. (e), Item H, List 1 of Sch. (2) of S. 293 of the U. P Municipalities Act, 1916, cannot be restricted to a locality smaller in area than the entire limits of the municipality—The entire limit can come within the expression 'area'. See Municipalities —U P. Municipalities Act (2 of 1916), S. 298. **1957 Cri L J 612 : AIR 1957 All 340 (DB).**

"Are or have been District Judges".

—"Are or have been District Judges" in S. 86 (2) Rep. of the People Act, 1951 — "Have been" refer to retired judges—The expression "are or have been" indicate two different categories, word 'or' clearly shows that persons who are District Judges and persons who have been District Judges, belong to two groups—'Or' is always used to distinguish two subjects preceding it and following it. See Representation of the People Act (1951), S. 86 (2). **AIR 1957 Andh Pra 1007 (DB),**

'Arguable issue'.

—A point raises an "arguable issue" if the Court has some doubt upon the question raised or there are obscure points which require elucidation and upon which two views may reasonably be held. See Constitution of India, Art. 226. **AIR 1964 Cal 506.**

"Ariat".

—A sunni under Hanafi law cannot without consideration convey ownership of the property with limitation for the life of the donee. But where ownership is vested in somebody and only the enjoyment of the property is conveyed or received the rule does not apply. Limitation on enjoyment of property is permissible though it is not allowed on ownership. This separate enjoyment is known as "ariat" — Distinction between hiba and ariat, pointed out — 1956 Andh W R 771, **Overruled. AIR 1658 Andh Pra 751 (753) (Prs 9, 11, 12) (DB).**

"Arises directly or indirectly".

—Accrual of income—"Arises directly or indirectly" in S. 16, Income-tax Act (1922)—Tests indicated. See **Income tax Act (1922), S. 16 (1). AIR 1956 Bom 411 (DB).**

"Arising out of".

—Expression "suits or proceedings relating to or arising out of mortgages of or charges or lien on immovable property", in Item 7 of 1st Schedule of W. B. City Civil Courts Act—Words "relating to" and "arising out of" are phrases of comprehensiveness and suits which directly or indirectly relate to or arise out of mortgages fall within the mischief of Item 7—Similar phrases, from different enactments considered. See W. B City Civil Court Act (21 of 1953), S. 5 (34). **(1962) 66 Cal W N 767.**

"Arising out of and in the course of his employment".
See (1) Employees' State Insurance Act (1948), S. 2, (8).
(2) Workmen's Compensation Act (8 of 1923), S. 3.

"Arrears".

—"Arrears" of rent — Deposit of — Meaning of 'arrears' indicated See Houses and Rents—A. P. Buildings (Lease, Rent and Eviction) Control Act (15 of 1960), S. 11. **(1965) 1 Andh L T 272 : (1965) 1 Andh W R 381.**

—The term arrears involves a twofold notion namely that there is a debt and that the time for its payment has expired, and which remains unpaid though dues. **(1962) 1 Andh W R 260 : (1962) I Andh L T 353 : ILR (1962) Andh Pra 897 (DB).**

"Arrears and due".

—"Arrears" is not a term of art — It describes sums overdue and payable in respect of periods of time; it means something which is behind in payment or which remains unpaid at the due time — Word 'due' has variety of meanings depending on context—In the context of S 13 (2) ( ) Pepsu Urban Rent Restriction Ordinance (2006) it means the amount of rent which has matured or for which the tenant is in arrears—There is thus no distinction between the meanings of words "arrears" and "due". See Houses and Rents — Pepsu Urban Rent Restriction Ordinance (8 of 2006), S. 13 (2) (i), Proviso. **AIR 1959 Punj 578 (DB).**

"Arrears of rent"

—Words "arrears of rent" in the proviso to S. 13 (2) (i) of East Punjab Urban Rent Restriction Act, 1949, means rent due on date of application and not due on the date of deposit. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (2) (i). **ILR (1961) 1 Punj 315.**

"Arrears of rent for more than three months".

—Rent falling due should remain in arrears for more than three months. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) (as amended by Act 17 of 1954) S. 3 (1) (a). **1958 All W R (HC) 62.**

"Arrest".

●—Restraint on abducted person under S. 4, Abducted Persons (Recovery and Restoration) Act (1949) is not arrest within meaning of Art. 22 of the Constitution. AIR 1952 Punj 309, **Reversed.** See Abducted Persons (Recovery and Restoration) Act (1949), S. 4. **AIR 1953 S C 10.**
—Person appearing in response to a summons to answer a charge of offence and executing a bail-bond for future appearance in Court—He cannot be regarded to have been "arrested" at any stage prior or subsequent to grant of bail. See Railway Establishment Code, Vol. I, R, 1711 (a). **AIR 1960 Punj 605.**

●—Expression "arrest" in Art. 22 of the Constitution covers all cases in which a person is apprehended by legal authority and includes apprehension under orders of a civil or criminal Court. It covers punitive as well as preventive detention and also 'protec-

tive' detention. When person is apprehended by legal authority he must be deemed to be arrested—Apprehension of abducted person under S. 4, Abducted Persons (Recovery and Restoration) Act, 1949, for being delivered to the custody of an officer in charge of a camp must be deemed to be arrested. See Constitution of India, Art. 22. **1952 Cri L J 1313 : A I R 1952 Punj 309 (FB).**

[Reversed in A I R 1953 S C 10.]

"Articles ordinarily prepared by Halwais."

—Articles ordinarily prepared by Halwais — Test for determination indicated — Effect of split up of items —Reorie, Phulian and Gajjaks are preparations of halwai. (Obiter). See Sales Tax—E. P. General Sales Tax Act (46 of 1948), S. 6. **(1963) 65 Punj L R 1003.**

"Articles relating to political or other news or to other current topics"—Meaning of.

—Meaning and scope of expression "articles relating to political or other news or to other current topics" in S. 9 (2). Post Office Act, considered. See Post Office Act (1898), S. 9 (2). **A I R 1957 All 662.**

"Artificial silk."

—Prima facie, "artificial silk" denotes what is not genuine or not real — To hold that artificial silk is silk would be tantamount to treating the unreal as real. 'Silk' when qualified by word 'artificial' indicates something which has its appearance and sheen of silk. See Sales Tax — Mysore Sales Tax Act (46 of 1948), S. 6. **A I R 1954 Mys 51 (DB).**

"Artisan"—Meaning of.

See (1) Civil P. C. (1908), S. 60.
(2) Limitation Act (1908), Art. 7.
(3) Minimum Wages Act (1948), S. 3.

"Arulipad", meaning of.

●—There is no office designated as 'arulipad', but that word only describes the duty of the archaka to call their names to ascertain whether the theerthakars are present in the ghoshti. Sri Sinha Ramanuja Jeer v. Sri Ranga Ramanuja Jeer, **(1962) 1 Mad L J (S C) 1 : (1962) 1 Andh W R (S C) 1 : (1962) 1 S C J 17 : (1962) 2 S C R 509 : 1962 S C D 6 : A I R 1961 S C 1720 (1729, 1730) (Pt D) (Pr 19).**

"As a whole."

—Words 'as a whole' in the expression "net value of the assets of the business as a whole" in S. 2 (a), Wealth Tax Act, meaning of, considered. See Wealth Tax Act (1957), S. 2 (m). **A I R 1964 Guj 154 (DB).**

"Ascertain."

●—Word "ascertain" means "to make certain" and "to get to know" — In what sense it is used in R. 43 (b) of the M. P. Co-operative Societies Rules is for Courts to decide. See Co-operative Societies — Co-operative Societies Act (1912), S. 42. **A I R 1960 Nag 183 (FB).**

"As far as possible."

—Section 15, U. P. Consolidation of Holdings Act, lays down principles for guidance of assistant consolidation officer in preparation of the statement of principles which precede consolidation. These principles regulate the powers of the Assistant Consolidation Officer. Each one of the sections contain the qualifying words "as far as possible." The phrase really means that the principles are to be observed unless it is not possible to follow them in the particular circumstances of a case. See Tenancy Laws—U. P. Consolidation of Holdings Act, 1953 (5 of 1954), S. 15. **A I R 1959 All 525.**

—Under S. 19 (2), Rajasthan Town Municipalities Act, the Judge shall follow the Code of Civil Procedure, "as far as possible" to the enquiries on election —Expression "as far as possible" indicate that the provisions of Civil P. C. should not be adopted so as to lead to results not contemplated in connection with the disposal of election petitions. See Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 19 (2). **1961 Raj L W 243.**

"As he deems fit."

●—Words "as he deems fit" in S. 29(3) of the Bombay Tenancy and Agricultural Lands Act, do not warrant the making of any order that the authority concerned thinks in his individual opinion that the justice of the case requires. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act 1948 (Bom. 67 of 1948), S. 29 (3). **A I R 1962 S C 753.**

"As if."

—Words "as if" are used in S. 44-A (1), Civil P. C. to make the whole scheme of O. 21 applicable in respect of execution of decrees of foreign Courts mentioned in sub-s. (1). See Civil P. C. (1908), S. 44-A. **A I R 1961 Bom 156.**

"As if he were a civil Court."

—The expression "as if he were a civil Court" in S. 75 (4), Registration Act, attracts all the provisions of the Civil P. C. in respect of summoning and enforcing attendance of witnesses—Order 16, R. 14 applies with full force to any enquiry before the Sub-Registrar for compulsory registration of documents presented before him. See Registration Act (1908), S. 75 (4). **A I R 1960 Mad 401.**

"As it may judge."

●—The words "as it may judge most for the benefit of the property and the advantage of the ward" in S. 18, Bengal Courts of Wards Act confide in clear and unambiguous terms the authority to judge whether the act is beneficial to the estate, to the Court of Wards and not to any outside authority. See Bengal Court of Wards Act (1879), S. 18. **A I R 1956 S C 446.**

"As nearly as may be."

—The expression "as nearly as may be one-half" in Art. 316 of the Constitution indicates only an approximation—The expression cannot be read as equivalent to "not more than half". See Constitution of India, Art. 316. **A I R 1955 Orissa 113 (DB).**

"Assembly."

See Penal Code (1860), S. 141.

"Assessable income."

See Income-tax Act (1922), S. 23-A.

"Assessable to excess profits tax."

See Finance Act (1942), S. 10 (1), Proviso.

"Assess" and "reassess."

See (1) Income-tax Act (1922), S. 34.
(2) Mysore Income-tax Act (5 of 1928), S. 34.

"Assessed to land revenue."

See Income-tax Act (1922), S. 2 (1) (a).

"Assessed under this Act."

See Income-tax Act (1922), S. 30 (1).

"Assessee."

See (1) Income-tax Act (1922), Ss. 24 (2) and 46 (2).
(2) Sales Tax—M. P. General Sales Tax Act (2 of 1959), S. 22 (4) (a).

"Assessment."

See (1) Andhra Inams (Assessment) Act (7 of 1955), S. 3.
(2) Constitution of India, Art. 265.
(3) Income-tax Act (1922), Ss. 3, 23 (4).
(4) Sales Tax—M. P. General Sales Tax Act (2 of 1959), S. 22 (4) (a).
(5) Taxation Laws (Extension to Merged States and Amendment) Act (1949), S. 7.

"Assessment payable."

—Words 'assessment payable' in S. 4 of Saurashtra Local Development Fund Act must be given natural

meaning, which is assessment payable by the occupant at the moment. See Saurashtra Local Development Fund Act (26 of 1956), S. 4. AIR 1959 Bom 43 (DB).

"Assignment," meaning of.

See Companies Act (1956), S. 312.

"Assigns."

—Explanation IV to S. 8, Madras Agriculturists Relief Act contemplates a splitting up of the debt amongst the heirs, legal representatives or assigns of a debtor where either because of the family partition or as a result of a decree in a partition suit, the debt is allotted to the share of an individual member, such a person could certainly be regarded as an assign. See Debt Laws — Madras Agriculturists Relief Act (4 of 1938), S. 8 Expln. IV. 1956 Andh W R 559.

"Associated with."

●—"Religious charity" in S 6 (13) Madras Hindu Religious and Charitable Endowments Act — It must be a public charity and that charity must be associated with Hindu festival or observance of a religious character. It is not necessary that the charity be connected with a math or temple. See Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), S. 6 (13). AIR 1965 S C 1916.

"Associated with others in subversive activities."

—Meaning of words "associated with others in subversive activities" in R. 3 (iii) Pepsu Civil Services (Safeguarding of National Security) Rules, 1954, simply means that the person be associated with others "in their subversive activities"; his association with persons who are engaged in subversive activities alone would not be sufficient. It is his association in the subversive activities of theirs that is made punishable. See Pepsu Civil Services (Safeguarding of National Security) Rules (1954), R. 3 (iii). AIR 1956 Pepsu 19.

"Association of persons."

See Income-tax Act (1922), S. 3.

"As soon as may be."

See also (1) Public Safety—J and K Preventive Detention Act (4 of 2011 Smt.), S. 8 (1).
(2) Public Safety — Preventive Detention Act (1950), S. 3 (3).

—"As soon as may be" in S. 4 (1) Bihar Maintenance of Public Order (No. 2) Ordinance 1949, does not mean that in all cases grounds of detention should be served within 15 days from the date of the order of detention—Delay of 58 days held not such delay as to render detention illegal. See Public Safety — Bihar Maintenance of Public Order (No. 2) Ordinance (IV of 1949), S. 4 (1). 51 Cri L J 936 : AIR 1950 Pat 228 (DB).

"Assurance of property."

—Expression "assurance of property' is a term of art and a product of the law of England. It is permissible to see the English law on the subject. These words occurring in S. 175 (3) as also S. 30 of the Govt. of India Act, 1915 and Art. 299 (1) of the Constitution mean any document of conveyance or the legal evidence of the transfer of property — Such a document has got to be in writing. There must be a formal document to evidence the transactions. See Government of India Act (1935), S. 175 (3). AIR 1964 All 128.

"At all reasonable times."

—Words "at all reasonable times" in S. 28 (2) A. P. General Sales Tax Act, 1957 — Words indicate not continuous process throughout entire day but only at certain times which, in circumstances of particular case, are reasonable. Sales Tax — Andhra Pradesh General Sales Tax Act (6 of 1957), S. 28 (2). (1962) 1 Andh L T 499 : ILR (1962) Andh-Pra 1036 : (1962) 13 S T C 860 : 1962 Andh W R 96 (DB).

"At any time."

●—Clause in insurance policy. "This insurance may be terminated at any time at the request of the insured"—Insured can terminate policy at any time — Right cannot be read as right to terminate for reasonable cause. AIR 1965 S C 1288.

●—Under S. 34 (4), Income-tax Act, 1922, as amended by Amending Act of 1959, Parliament gave power to issue notice "at any time" in all those cases in which the eight year period under the Act as it stood prior to amendment by 1950 Finance Act had expired. The words "at any time" mean what they say. There is no special meaning attached to them. "Any time" meant action to be taken without any limit of time. See Income-tax Act (1922), (As Amended in 1959), S. 34 (1) (a). AIR 1963 S C 1356.

—Expression "at any time" in S. 10 (2) Madras Pawn-brokers Act, 1943 can only mean at any time when the pawn-broker's premises are normally kept open. See Constitution of India, Art. 19 (1) (g). 1957 Cri L J 962 : AIR 1957 Mad 514.

—Expressions "Extend the time," "at any time" and "void and inoperative" in S. 18 (4) Companies Act 1956, construed. See Companies Act (1956), S. 18 (4). AIR 1963 Punj 239.

"Athivrishti"—Meaning of.

—The expression "athivrishti," means very heavy rains and a cyclone cannot be excluded from the purview of this term. 1956 Andh W R 442 : AIR 1957 Andh-Pra 71 (72) (Pt A) (Pr 4).

"At least."

—When words such as so many "clear days" or so many days "at least" are used, the two terminal days must be excluded. Where a rule says that notice of a motion shall be given "at least ten days before moving it," ten clear days must elapse between the notice of the motion and the motion. See Municipalities — C. P. and Berar Municipalities Act (II of 1922), S. 21. AIR 1955 Nag 35 (DB).

"At least one meeting in every three months."

—Expression "at least one meeting .... in every three months" in S. 22 (7), A. P. Panchayat Samithis and Zilla Parishads Act, 1959, means three months from the date of the last meeting and not that any meeting held shall be deemed to have been held for three calendar months. See Panchayats — Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (XXXV of 1959), S. 22 (7) As Amended on 15th January, 1963. (1964) 2 Andh W R 375.

"At least seven days before the election."

—The expression "at least seven days before the election" in R. 4 of Rajasthan Panchayat Election Rules, 1954, clearly means that seven days period must intervene between the date of the announcement of the notice and the date of the election. Seven days clear interval is required to lapse between the date of the announcement of the notice and the date of election. See Panchayats — Rajasthan Panchayat Election Rules (1954), R. 4. AIR 1957 Raj 388 (DB).

"At least 21 (Twenty-one) days before."

—The expression "at least 21 days before" in Rule 3 (3) of Gujrat Taluka Panchayat (Election) Rules means that an interval of clear 21 days must elapse between publication of preliminary list of voters and the date of election. See Panchayats—Gujarat Taluka Panchavat (Election) Rules (1962), S. 3 (3). ILR (1965) Guj 395.

"Attempt."

See Penal Code (1860), S. 511.

"Attestation"—Meaning of.
See (1) Succession Act (1925), S. 63.
(2) T. P. Act (1882), Ss. 3 and 59.

"Auction sale."

—"Auction sale"—Sale is not necessarily complete as soon as there is an auction—Whether there is transfer or not depends on conditions of the auction. There may be a sale by auction where the sale is not complete till, for example, a document is executed or till there is confirmation by another authority. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 20. **AIR 1958 S C 289.**

"Aulad."

—Word "aulad' is plural of 'walad' which means a son, though the plural has come to include generally both son and daughter—Whole document in which the word in used, has to be considered, to see whether the word includes daughter. **1951 All L J 315, I L R (1952) All 60 : AIR 1953 All 766 (DB).**

"Authority"
See (1) Constitution of India, Art. 12.
(2) Defence of India Act (1962), S. 44.

"Authority of Law".
See Constitution of India, Art. 31.

"Authority which appoints him".
See Constitution of India, Art. 311.

"Avocation" and "Vocation".
See Working Journalists (Conditions of Service) Miscellaneous Provisions Act (1955), S. 2.

"Avyawaharika" Debt.
See Hindu Law—Debts—Son's liability.

"Award".
See also (1) Arbitration Act (1940), S. 2 (b).
(2) Court-Fees Act (1870), Sch 2, Art. 17 (iv).
(3) Industrial Disputes Act (1947), Ss. 2 (b), 17.
(4) Land Acquisition Act (1894), Ss. 11, 12.

—Per Agarwala J—The word "award" in sub-rules (6) and (8) of Rule 23, framed under U. P. Sugar Factories Control Act, 1938 includes both the "award" of the sole arbitrator or Board of Arbitrators and the "decision" of a Cane Commissioner when he acts singly.

Mootham C. J. (contra)—To hold that 'award' would include decision of Cane Commissioner would involve unjustifiable straining of company. See U. P. Sugar Factories Control Act (1 of 1938), S. 30. **A I R 1956 All 725 (DB).**

"Backward class".

—Term 'backward class' has not been defined in the Constitution. It is wide enough to include all kinds of backwardness social, educational, economical or any other kind. Doubtless, the State is the sole authority to classify the communities as "backward classes" —Per Hombe Gouda J. See Constitution of India, Art. 16 (4). **A I R 1956 Mys 20 (DB).**

"Bad character".

—Madras Pawnbrokers Act (23 of 1943), Ss. 3 (2), 4 (2) (a) — "Bad character"—Meaning of — If words are read in the context of the word 'thieves', it may suggest that a person can be called a "bad character" if his character is something like that of a thief and there must be something in the character of the man which is culpable under the criminal law, not only on the abstract principles of general ideas of morals and eithics—Licensee convicted twice for contravening provisions of the Act — Not a "bad character" within the meaning of: S. 4 (2) (a)—Renewal of his license cannot be refused. See Debt Laws—Madras Pawnbrokers Act (23 of 1943) S. 3 (2). **(1962) 75 Mad L W 598.**

"Bad condition".

—Words "bad condition" in Risk note A — Meaning of, considered. See Railways Act (1890), S. 72. **AIR 1957 All 22 (DB).**

"Bagawat".

—In a given context the word "bagawat" may only amount to a threat of alienation of the people from the Government and not in the nature of a violent rebellion. **AIR 1956 Pat 1 (3) (Pt C) (Pr 6) (DB).**

"Bahalat".

—"Bahalat" means "in the case of" or "in the event of". **AIR 1955 NUC (All) 2774 (DB).**

"Bakasht Malik".

—Where the land is recorded as Bakasht Malik but its malik is described as Ghatwal, and the land itself has been recorded as appertaining to Ghatwali Mahal, the sum total of all the entries is to make the land Ghatwali under personal cultivation of the Ghatwal, and not raiyati land. **ILR 36 Pat 439 : 1957 B L J R 461.**

"Bakkhalidar".
See Words and Phrases "Girasdar".

"Balance sheet".

—A "Balance-sheet" is a statement prepared from records kept on the basis of double entry showing, as at a given date, the sources from which an enterprise derived its funds and the various ways in which those funds were invested or applied. It is a statement in a summarised form of the balance of the ledger accounts remaining after all revenue and expense accounts have been closed by transfer to revenue or profit and loss account.

A profit and loss account is an account designed to show the amount of net profit earned or net loss incurred during the financial period covered by the account, also the various headings under which the profits had been earned and expenses incurred. The balance of the profits and loss Account, in case profit, is included in the liabilities column of the Balance-sheet and in case of loss in its asset column. **(1961) 3 Fac L R 189 : (1961-62) 21 F J R 180 : (1962) 1 Lab L J 68 : 65 Cal W N 1029 : A I R 1962 Cal 375 (378) (Pt D) (Prs 19, 20).**

"Bandhani".

—Where the lease merely states that there was no "bandhani", the expression "bandhani" obviously means that the lease was not for a fixed term of years and not that it was without any terms or conditions. See T. P. Act (1882), S. 105. **A I R 1955 N U C (Sau) 983.**

"Banker".

—Large sums of Co-operative Society allowed to remain with person because he possessed extensive properties — That person as Secretary of the Society keeping surplus funds with himself—This would not make him a "banker". See Penal Code (1860), S. 405. **1956 Cri L J 979 : AIR 1956 Bom 524 (DB).**

—No person or body corporate or otherwise can be a "banker" who does not (1) take deposit accounts, (2) take current accounts (3) issue and pay cheques crossed or uncrossed for his customers. He must profess himself to be a "banker" and public must accept him to be such. His main business must be that of banking from which generally he must earn his living. See Banker and Customer. **AIR 1957 Mad 745.**

"Barat".

The word "barat" means assignment. **1955 BLJR 571 : AIR 1955 Pat 505 (509) (Pt E) (Pr 12) (DB).**
[Reversed another point in AIR 1964 S C 1295.]

"Bargadar".

—"Bargadar" — Meaning of — Definition in S. 2 (2) West Bengal Land Reforms Act is not illustrative—

Person cultivating land is labourer of owner does not come within purview of Act – Supposed spirit of law cannot be given effect to in opposition to plain language. See Tenancy Laws—W. B. Land Reforms Act (10 of 1956), S. 2 (2). ILR (1962) 1 Cal 313.

"Basic wage".

See (1) Industrial Disputes Act (1947), Sch. 3, Item 1.
(2) Minimum Wages Act (1948), Ss. 2 (b) and 4.

"Batasa".

—"Batasa", "Chiranji" and "Mishri" though manufactured wholly out of sugar are not sugar as popularly understood—They are not sweetmeats also. See Sales Tax – M. P. General Sales Tax Act (2 of 1959), Sch. I, Item 41; Sch. 3, Item 1. **A I R 1965 Madh Pra 254 (DB).**

"Batta".

—"Batta" is not defined in the Minimum Wages Act—In its ordinary meaning it is an extra payment over and above pay. See Minimum Wages Act (1948), S 4. **AIR 1955 Trav.Co 97 (DB).**

"Bayana and earnest money".

—Contract of sale—Amount paid to vendor as "Bayana" — Whether "Bayana" means "earnest money" which is liable to be forfeited in the event of failure of purchaser to complete the sale or a deposit depends upon the intention of the parties which has to be gathered from the document itself. See Contract Act (1872), S. 74. **(1964) 2 Andh W R 183.**

"Become."

—The words "has become disqualified" in Proviso to Rule 14 of Vindhya Pradesh Gram Panchayats Ordinance, 1949, mean that the disqualification justifying removal of the name of a person must have been incurred after the register had been finalised. See Panchayats — Vindhya Pradesh Gram Panchayat Ordinance (1949), S. 5. **1962 Jab L J 936.**

"Beer"—"Country liquor."

—Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 5 (3) (a), II Sch. Items 38, 39 Explanation II — Beer is liquor for purposes of first part of item 38 – Beer which is not country liquor is taxable under item 38 — Indian beer not flavoured or coloured to resemble foreign liquor is country liquor and taxable under item 39—See Sales Tax—Mysore Sales Tax Act (25 of 1957), S. 5 (3) (a). **(1962) 13 S T C 436 (Mys).**

[Overruled on another point in AIR 1964 Mys 190 (FB).]

"Before the above-mentioned date".

—Notice under S. 106 T. P. Act mentioning that "you are bound to hand over possession before the above mentioned date" — The above mentioned date taken together with "You are bound to ..... before above mentioned date," meant that the tenant was given latitude to handover possession, not on "above mentioned" date but to choose his own time before that date—See T. P. Act (1882), S. 106. **AIR 1956 Bom 113 (DB).**

"Being found in gaming house."

—Rajasthan Public Gambling Ordinance (1949), Ss. 4, 6—"Being found in any gaming house" — Actual physical presence at the time of search arrest not necessaay—Person seen coming out of common gaming house by officer executing search warrant and is apprehended when trying to escape is 'found' in the house within meaning of S. 4 of the Act—See Rajasthan Public Gambling Ordinance (1949), S. 4. **1962 Raj L W 355.**

"Being in charge of."

—Expressions "driving a vehicle," "being in charge of the vehicle" and "Using the Vehicle" used in Motor Vehicles Act — Distinctioo pointed out — See Motor Vehicles Act (1939), S. 42 (1). **1960 Cr L J 923 : AIR 1960 Mad 265.**

"Being the property of the assessee."

—"Being the property of the assessee" in S. 10 (2) (vi) Income-tax Act, 1922 can have only one meaning, namely, that the property, that is, the building in respect of which the assessee is claiming depreciation is the property which belongs to him; the property must be owned by the assessee and not only that the assessee has acquired some equitable interest in it. See Income tax Act (1922), S. 10 (2) (vi). **AIR 1965 Assam 20 (DB).**

"Belagan."

—In the district of Saran, "belagan" in respect of homestead lands means "rent-free" and not merely land in respect of which no rent has been assessed. **AIR 1950 Pat 487 (487, 488) (Pt B) (Pr 2).**

"Belief and knowledge."

—"Belief" and "knowledge" — Distinction — 'Belief' will be inculcated in the mind of a person by various factors. But not so with 'knowledge' which is gained by a person by making use of his perceptional faculties and is clearly distinguishable from belief—See Evidence Act (1872), S. 3. **AIR 1952 J and K 49 (DB).**

"Belonging."

—"Belonging to"—Phrase is capable of connoting interest less their absolute title—It can connote interest of permanent and heritable lessee. See T. P. Act (1882), S. 111 (g). **AIR 1965 S C 1923.**

—Word "belonging" in S. 4, Partition Act (1893), is used in the sense of "pertaining to"—See Partition Act (1893), S. 4. **AIR 1956 Orissa 105.**

—Word "belonging" does not always mean 'owned.' In the popular sense it means that to which a person has a right to use. The word used in Cl. (b) of S. 51 of the Pepsu Tenancy and Agricultural Lands Act, is used in this sense. See Tenancy Laws—Pepsu Tenancy and Agricultural Lands Act (Presidents Act 8 of 1953), S. 51 (b). **AIR 1955 N U C (Pepsu) 1879.**

—The words "belonging to" in S. 2 (d), Punjab Public Premises and Land (Eviction and Rent Recovery) Act 1959, have to be understood not necessarily to mean "owned by" but as indicative of complete control and dominion over the property in dispute. See Houses and Rents — Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), S. 2 (d). **1964 Cur L J 378 : 66 Pun L R 959 : ILR (1965) 1 Punj 19.**

"Belonging to a territory."

—Words 'Belonging to a territory" connote something more than mere birth in the territory. There must be some association or intimate connection with the persons of the State. See Utkal University Act (13 of 1943). S 8 (3) (v). **A I R 1957 Orissa 159 (DB).**

"Belongs to the Government."

—In the expression "belongs to the Government" in S. 15, Easements Act, the word 'belong' is used in the present tense. The expression cannot refer to the time during which the easement is enjoyed. See Easements Act (1882), S. 15. **AIR 1959 Raj 58.**

"Bemiadi lease."

—"Bemiadi lease" means that it is not for a fixed period and therefore has the ordinary incidence of a lease or a tenancy at will. See Tenancy Laws—West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 6. **AIR 1955 N U C (Cal) 2957.**

—Use of the word "bemiadi" would not be taken to negative the permanence of the tenancy, but at the same time the use of this word does not necessarily

convey permanent heritable right to the grantee; yet it may be so. The word itself does not conclude the matter. Meaning should be determined after considering all the provisions of the lease. See T. P. Act (1882), S. 105. AIR 1955 Pat 499 (DB).

"Benami."

See Trusts Act (1882), Ss. 81 and 82.

"Beneficial owner."

—The expression "beneficial owner" is not susceptible of a very clear and precise definition. It means such a right to enjoyment of property as exits where the legal title is in one person and the right to such beneficial use or interest is in another and where such a right is recognized by law and can be enforced by the Court at the suit of such owner or some one on his behalf. One is also said to have the beneficial ownership of land who has done everything to entitle him to a patent from the Govt. and who therefore has the legal right to such patent, and all that remains to be done is for the proper officer to issue it. See Stamp Act (1899), Sch. I, Art. 23. A I R 1957 Punj 261 (DB).

"Beneficiary."

—A "beneficiary" is one who is beneficially entitled to, or interested in, property, i. e., entitled to it for his own benefit, and not merely as trustee or executor, holding it for others. The word is nearly equivalent to "cestui que trust" which on account of its cumbersomeness, "beneficiary" has begun to supersede in modern law. See Bihar Agricultural Income-tax Act (7 of 1938), S. 11. 1958 B L J R 796.

"Benefit."

See Industrial Disputes Act (1947), S. 33-C (2).

"Betel leaves."

—"Betel leaves" are not articles of food. See Cantonments Act (1924), S. 210 (1) (i). 1962 (1) Cri L J 161 (Madh Pra).

—"Betel leaves" include processed pan. Betel leaves to which Chuna and Katha are applied do not fall outside the scope of the term "betel leaves," used in notification No. R. 5 (51) & T/58 D/- April 1, 1958, under S. 4, Rajasthan Sales Tax Act — See Sales Tax—Rajasthan Sales Tax Act (29 of 1954), S. 4 (2). 1965 Raj L W 444 : (1965) 2 Lab L J 398 : I L R (1965) 15 Raj 855.

"Between the parties to any such document."

—Evidence Act (1872), S. 92 — "Between the parties to any such instrument" — Words refer to parties on both sides. 1963 Raj L W 92.

"Bhatamanya land."

—"Bhatamanya lands" are grants and endowments of lands held by Brahmins for their support. AIR 1955 NUC (Mys) 3954.

"Bhayad."

—The word "Bhayad" forms part of a colloquial dialect and therefore should not be given a strict technical or derivative meaning.

Held, that the word 'Bhayad' occurring in the deed of Wakf executed by a Muhammadan lady should be interpreted in a wide sense as including all kindred or blood relations or even relations by affinity through the wakf, having regard to the express intention of the wakf in the earlier part of the deed. ILR (1957) 3 Cal 696 : AIR 1956 Cal 584 (587) (Pt D) (Prs 17, 18) (DB).

"Bias."

See Constitution of India, Arts. 226, 32 and 311.

"Bilti."

—'Bilti" is a Hindi word for a railway receipt. A "Bilticut" rate includes costs of bagging, weighing, transport to railway station, loading in wagons and other station charges till the Bilti is issued — Usual practice of the trade indicated. See Sale of Goods Act (1930), S. 25 (1). AIR 1962 Raj 122.

"Bilticut."

—"Bilticut" means only a contract F. O. R. the price having to be paid against the delivery of the Railway Receipt. AIR 1956 Nag 118, Rel. on. 1960 Ker L J 658 : 1960 Ker L T 574 : (1960) 1 Ker L R 655 : AIR 1961 Ker 21 (22) (Pt A) (Pr 6) (DB).

"Birt Khakrobi."

—"Birt Khakrobi" is scavenging right and is not transferable and cannot be validly leased. See T. P. Act (1882), S. 6. AIR 1961 All 518.

"Bona fide."

—The notion of "bona fides" has nothing to do with the notion of negligence. Bona fides, is a mental state negativing dishonesty and has no relation to negligence or want of care. Expression only means negation of fraud or dishonesty and a real genuine transaction. See Debt Laws — Bombay Agricultural Debtors' Relief Act (28 of 1947), S. 4. (1964) 5 Guj L R 289.

—"Bona fide" means absence of intent to deceive. See Houses and rents — East Punjab Urban Rent Restrictions Act (3 of 1949), S. 13 (a). AIR 1965 Punj 188.

—Nothing is "bona fide" which was not done with due care and attention. ILR (1960) 10 Raj 266 : AIR 1961 Raj 32 (33) (Pt A) (Pr 5).

"Bona fide mistake."

—Civil P. C, O. 1, R. 10 (1) — Suit filed by Receiver for benefit of estate after cessation of receivership — Mistake however foolish or careless was held to be without doubt bona fide. See Civil P. C. (1908), O. 1, R. 10 (1). (1963) 2 Andh W R 138.

"Bona fide practice."

—Words "bona fide practice" in S. 9, Bar Councils Act, meaning explained - Graduate in law working as public prosecutor for more than three years without enrolling himself as a pleader or taking training for being enrolled as advocate — Not entitled to be enrolled as an advocate. See Bar Councils Act (1926), S. 9. AIR 1959 All 341 (DB).

"Bona fide requirement."

—Landlord having several houses — Some of them vacated after application for ejectment and again let to other tenants—Held there was no "bona fide requirement" on part of landlord of premises. See Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act, 1947, S. 9 (1) (e). AIR 1952 Ajmer 35 (1).

—"Bona fide need" of landlord for personal occupation — Expression explained. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Rules (1947), R. 6. AIR 1965 All 366.

—"Bona fide requirement" of landlord need not be judged at the time when cause of action arose; but if there are certain alterations in the situations, they must also be kept in view and it is at the time of the final order that it was to be datermined whether the landlord has a pressing need of the house, i.e. genuinely requires the house for his own occupation. Bona fide means good faith or with sincerity or genuineness. See Houses and Rents — Hyderabad Houses (Rent Eviction and Lease) Control Act (20 of 1954), S. 15 (3) (a). (1963) 2 Andh W R 95.

—Expression "bona fide" cannot apply to a state of circumstances but only to the statements or intentions or actions of human being. All, therefore, that is necessary for a Court to decide; when a landlord demands or asks or sues for any building on the ground that he bona fide requires it himself is whether the statement that he requires it himself is a statement made bona fide. See Houses and Rents—Madras

Buildings (Lease and Rent Control) Act (25 of 1949), S. 7 (3) (a) (iii). AIR 1954 Mad 381.

—Delhi and Ajmer Rent Control Act (38 of 1952) — "Bona fide requirement" — Meaning of, explained. See Houses and Rents—Delhi and Ajmer Rent Control Act (38 of 1952), S. 13 (i) (e). (1962) 64 Pun L R 441.

"Bond."

●—Word "bond" in S. 2 (f), Bihar Money-lenders (Regulation of Transactions) Act is used in its general sense, i.e. deed by which one person binds himself to pay sum to another person. See Debt Laws—Bihar Money-lenders (Regulation of Transactions) Act (7 of 1939), S. 2 (f). AIR 1967 S C 1118.

"Bonus"

See also Industrial Disputes Act (1947), S. 10 and Sch. 3, Item 5.

●—"Bonus" in industrial sense does come out of available surplus of profits and is an addition to the wage whether it is called contingent or supplementary. None the less it is labour's share in the profits and as it is a remuneration which takes the form of a share in profits it comes within the mischief of S. 10, Banking Companies Act. See Banking Companies Act (1949), S. 10 (1) (b) (ii), (Prior to its amendment in 1956). AIR 1960 S C 12,

●—Per V. Bhargava J. — In modern times "bonus" is clearly regarded as deferred wages payable to employees which may be claimed by them as of right under the terms of employment. In the conditions, under which modern industries function, bonus has now come to be recognised as a right of employees which they can claim from their employers under certain circumstances.

Per Sapru J.: — The granting of bonus is not an act of charity but is to be regarded in some measure as a right of the workers to share in the profits of the company. Basti Sugar Mills, Ltd. v. State of Uttar Pradesh, 1954 A L J 452 : 1954 All W R (HC) 428 : ILR (1954) 1 All 457 : A I R 1954 All 538 (542, 547) (Pt G) (Prs 8, 17) (FB).

[Reversed on another point in AIR 1961 SC 420].

—"Wages"—Definition of word 'Wage' as contained in certain special Acts cannot be accepted for ascertaining meaning of "Wages" in S. 60 (1) (h)—"Bonus" is something not included in "Wages". See Civil P. C. (1908). S. 60 (1) (h). ILR (1960) 1 Cal 895.

—"Bonus" is not a regular part of wages, deferred or otherwise. In essence it is ex gratia payment. But by statute or by agreement it can assume permanency and become part of wages. See Civil P. C. (1908), S. 60 (1) (h). AIR 1957 Mad 773.

"Bovine cattle".

●—Words 'Bovine cattle' is wide enough to include and does in ordinary parlance include buffaloes (male or female adults or cattle). See Bihar Preservation and Improvement of Animals Act (15 of 1950), S. 2. AIR 1958 S C 731.

"Bran".

—Husk of paddy is neither cereal nor bran — "Bran" ordinarily means the inner husk of the corn or grain or seed sifted or separated from the flour. See Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941), Schedule Items 1, 2. 1962-66 Cal W N 1.

"Brass scraps".

—"Brass scraps" and "brass utensils bhangar" mean the same thing. (1953) 1 M L J 504 : 1953 Mad W N 178 : 66 Mad L W 1125: ILR (1953) Mad 1159 : AIR 1954 Mad 268 (270) (Pt A) (Pr 11) (DB).

"Breach of contract".

—Expression 'breach of contract' in S. 22, Industrial Disputes Act means breach of contract of service or employment and not a special contract not to go on strike. See Industrial Disputes Act (1947), S. 22. 1958 Cri L J 1018 : AIR 1958 Cal 445 (DB).

"Bread"

—When the term "bread" has not been defined in an Act in which it appears, ordinary dictionary meaning has to be taken into consideration. Dictionary meaning given. 'Bread' has acquired a meaning as to include bread prepared without addition of yeast or leaven. 'Singaras' and 'nimkis' do not fall within ambit of expression 'bread'. The statute is in English and uses english words. The recognised meaning of the expression which it carries in the English speaking world may alone be attributed to it. No extended meaning may be given to it even when used by the Indian legislature. There is no justification for the view that the term 'bread' has come to be used in India in such comprehensive sense as to include all products of cereals which are used in place of or as substitute for bread. They may serve the same purpose but may not be 'bread' in the right sense. A I R 1953 Hyd 252, Dissented from. See Sales Tax—Assam Sales Tax Act (17 of 1947), S. 7. A I R 1957 Assam 31 (DB).

—When legislature uses a term relating to any article of food Court must construe it in the sense in which it is understood in this country and not elsewhere. In fact 'bread' which is commonly labelled as a loaf of bread in European countries, has a particular name in this country and is called "double roti" thereby distinguishing it from ordinary 'roti'. 'Bread' includes all forms or kinds of bread which is prepared by moisting, kneading, baking, frying or roasting meal or flour with or without addition of yeast, leaven or any other substance for puffing or lightening the articles. See Sales Tax—Hyderabad General Sales-tax Act (14 of 1950), Sch. I, Item 3. A I R 1953 Hyd 252 (DB).

'Breaking up or clearing for cultivation".

—Expression 'Breaking up or clearing for Cultivation' does not extend to cultivation of land broken up or cleared before the issuing of notification under S. 30, Forest Act. See Forest Act (1927), S. 33 (1) (c). 1963 (1) Cr L J 605: AIR 1963 Pat 195 (DB).

"Bridges".

—Tariff Act (1934), Sch. 1, Item 63 (9) — "Culvert" would come under expression "bridges" — Even if it did not, it would, on principle of ejusdem generis come under the construction of expression "similar structures" in Item 63 (9)—Road culvert is regarded as bridge structure even in Engineering terminology. See Tariff Act (1934), Sch. I, Item 63 (9). A I R 1958 Cal 630.

"Brother".

—Brother, includes uterine brother. See Workmen's Compensation Act (1923), S. 2 (d). A I R 1958 Madh Pra 133.

"Brought into".

—Term 'brought into' denotes only physical act of shifting a thing from one place to another. The words in S. 4 (1) (b) (iii), Income-tax Act, are qualified or limited under the Act and have no reference to purpose for which the money is brought into British India or to the period for which it is intended to be retained in British India. See Income tax Act (1922), S. 4 (1) (b) (iii). AIR 1954 Nag 221 (DB).

"Building primarily used for collection of rent".

—Under S. 4 (a) of Bihar Land Reforms Act, 1950, a building or a part of it vests in the State only if it is primarily used for collection of rent — Use of the word "primarily" is very significant. See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 4 (a). AIR 1957 Pat 94 (DB).

"Buildings".

See (1) Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act (1947), S. 2.
(2) Houses and Rents—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 2 (1).
(3) Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), Section 2.
(4) Municipalities—Bihar and Orissa Municipal Act (7 of 1922), S. 3 (1).
(5) Penal Code (1860), S. 442.
(6) Tenancy Laws — Madras Estates Abolition and Conversion into Ryotyari Act (26 of 1948), S. 3.
(7) Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 9.

"Buildings used for purpose of factory"

—Expression—'Buildings used for purpose of factory' in Punjab Act (17 of 1940), S. 4 (1) (g) — Connotation of, indicated. See Punjab Urban Immovable Property Tax Act (17 of 1940), S. 4 (1) (g). AIR 1963 S C 1459.

"Bullion"

—Sales-tax — Mysore Sales Tax Act (25 of 1957), S. 5 (3) (a), Second Schedule Entry 74 — Expression 'bullion'—Meaning of, explained — Sovereign gold is bullion. See Sales Tax—Mysore Sales Tax Act (25 of 1957), S. 5 (3) (a), Second Schedule, Entry 74. (1962) 13 S T C 668 (Mys).

'Bunga'

—A Bunga is a hostel where pilgrims coming from various parts of India, to pay a visit to the Golden Temple, stay. Shromoni Gurdwara Parbandhak Committee, Amritsar v. Raja Shiv Rattan Dev Singh, (1955) 2 S C R 67 : I L R (1955) Punj 1108 : A I R 1955 S C 576 (577, 578) (Pt A) (Pr 3).

"Burden of proving"

See Evidence Act, S. 105.

"Business"

See also (1) Bombay Agricultural Produce Markets Rules (1941), R. 65 (1).
(2) Constitution of India, Art. 19 (1) (g).
(3) Excess Profits Tax Act (1940), S. 2 (5)
(4) Expenditure Tax Act (1957), S. 5 (a).
(5) Houses and Rents — Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 6.
(6) Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13.
(7) Income-tax Act (1922), S. 10.
(8) Madras Co-operative Societies Act (6 of 1932), S. 51, under Co-operative Societies.
(9) Presidency Small Cause Courts Act (1882), S. 18 (b).
(10) Sales-tax — Hyderabad General Sales Tax Act (1950), S. 2 (c).
(11) Sales-tax — Madhya Pradesh General Sales Tax Act (2 of 1959), S. 2 (kh).
(12) U. P. District Boards Act (1922), S. 114.
(13) Workmens Compensation Act (1923), S. 2 (1) (n).

—"Business" — Meaning — Forest Department of State Government selling forest produce — Department held carried on business and was "dealer" within S. 2 (c). See Sales-tax—U P. Sales Tax Act (15 of 1948), S. 2 (c). ILR (1964) 2 All 506.

——**'Business' and 'Carrying on business' — [Houses and Rents — Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 7 (3) (a) (ii).]**

The term 'business' includes every trade, occupation and profession. The word "business' has no technical meaning, but is to be read with reference to the object and intent of the Act in which it occurs. The term 'business' means an affair requiring attention and care ; that which business or occupies one's attention and labour as his chief concern ; mercantile pursuits ; that which one does for a livelihood, occupation, employment.

The phrase 'carrying on business' implies a repetition or series of acts. This phrase is in itself one of varying import according to as it is construed with an implied addition, so as to make it mean: the whole business, the principal part of the business, any part of the business or that part of the business which may properly be supposed to have been contemplated. It has in the English Courts been interpreted according to the context and the apparent purpose of the Legislature. Case-law Rel. on.

A constructed an automobile factory at Madras at a cost of several lakhs and erected in a portion thereof some machinery which he had shifted from Calicut where he had been carrying on business in the name and style of Malabar fisheries. A room in front of the premises was under the occupation of B a tenant. When A applied for license to run the factory the Corporation of Madras refused to issue a license on the ground that as per rules no portion of the factory premises should be in occupation of another person. A thereupon applied to the Rent Controller for evicting B on the ground that he required the room for carrying on his business. B resisted the application alleging that A was not seeking accommodation for the purpose of the business which he was carrying on but required it for a business which he intended to carry on in future.

Held, applying the above tests of 'business' and 'carrying on business' to the facts, that A had been carrying on automobile business and towards that end he had been performing several acts like building the factory at a cost of several lakhs of rupees shifting of the machinery from Calicut and applying for the issue of licence to the Corporation of Madras for running the factory, and that in such circumstances the contention of B was devoid of any substance. (1954) 2 M L J 149 : 67 Mad L W 408 : AIR 1954 Mad 892 (893) (Prs 5, 6, 7, 8).

"Business Connection"

See Income-tax Act (1922), S. 42 (1) and (3).

"Business efficiency"—What is.

—Expression "to carry on business more economically and more efficiently" in Cl. (a) of S. 17 (1), Companies Act 1956 — Words "economically" and "efficiently" are designedly vague with large import for obvious purpose of enabling a company to alter its memorandum in respect of its objects with as much freedom as possible. See Companies Act (1956), S. 17 (1) (a). AIR 1957 Cal 234.

"Bus Stand"

—"Bus Stand" means a place where bus services commence or terminate. The words "places at which motor vehicles may stand either indefinitely or for a specified period of time" in S. 79, Motor Vehicles Act cannot be reasonably interpreted to include a "bus stand" in the above sense. See Motor Vehicles Act (1939), S. 64-A. AIR 1965 S C 458.

"Butcher"

—Person selling meat is covered by the word "butcher". See Municipalities — Travancore District Municipalities Act (23 of 1116 M. E.), S. 283. I L R (1960) Ker 1057.

"Bye-laws and Rules"

—"Bye-laws and Rules" under Co-operative Societies Act—Bye-laws made under S. 43 (2) of the Act are quite different from the rules made under the Act and are not part of the Act. See Co-operative

Societies — Co-operative Societies Act (1912), S. 3. AIR 1960 Madh-Pra 273 (DB).

●"By or under this Act or as may be preseribed"

—"By or under this Act or as may be" prescribed in S. 4 of the Forward Contracts (Regulation) Act—"By" an Act mean by provision directly enacted in the Act — 'Under' the Act would mean not directly by the Act itself but under power conferred by the Act i. e. bye-laws under the Act if bye-law framed under S. 11 of the Act would not fall within the phraseology "as may be prescribed", because "prescribed" has been defined to mean "by rules under the Act" i. e, those framed under S. 28—Bye-laws do not fall under that description. See Forward Contracts (Regulation) Act (1952), S. 4. AIR 1963 S C 274.

"Calculated."

—The word "calculated" in S. 20 (2) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 can best be interpreted as "likely" in the context, particularly of the words "gross negligence" which plainly suggest and support an objective interpretation of the said term "calculated" and exclude a subjective interpretation of the same. 64 Cal W N 342 : ILR (1960) 2 Cal 304.

—The word 'calculated' in S. 67 (3) (a), Companies Act (1956), suggests design, forethought or intention to accomplish a purpose. See Companies Act (1956), S. 67 (3). AIR 1959 Punj 196.

"Calendar year."

●—A "calendar year" should not be construed to mean a period of 365 days calculated from any day within the calendar. See Sales Tax—M. P. Sales Tax Act (21 of 1947), S. 11 (5). AIR 1958 Madh Pra 211 (FB).

"Call."

—To "call" a meeting and to "hold" a meeting are not exactly synonymous but convey the same meaning. See Municipalities—Bihar and Orissa Municipal Act (7 of 1922), S. 44 (1). AIR 1956 Pat 367 (DB).

"Calling."

See Industrial Disputes Act (1948), S. 2 (j).

"Cancellation' and 'non-renewal.'

—"Cancellation" and "non-renewal" of license under Arms Act —Cancellation does not cover a case of non-renewal. See Arms Act (1878), S. 18 (a). 1955 Cri L J 1019; AIR 1955 Ajmer 32.

"Cancellation of Examination" and "withdrawal of degree."

—'Cancellation of Examination' and 'withdrawal of degree,' distinction between pointed out. See Agra University Act (U. P. Act 8 of 1926), S. 34 (2). AIR 1961 All 301.

"C. and F. Contract."

—Under C. and F. contract the buyer undertakes to insure the goods while in transit. A C. and F. contract is for all practical purposes and F. O. B. contract. In the case of such contracts property passes not when the goods are ascertained but subsequently. 67 Mad L W 647 : (1955) 6 S T C 47 : AIR 1954 Mad 1030 (1038) (Pt F) (Pr 27).

"Candidate," "candidature," "candidate at election," "candidate who stood for election" "candidate for election."

See (1) Cantonment Act (1924), S. 31.
(2) Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 19 (1).
(3) Representation of the People Act (1951), S. 123 (4).

"Capable of being computed in terms of money."

See Industrial Disputes Act (1947).

"Capable of giving discharge."

—Mere passive act of non-filing of suit cannot be included under the word 'discharge.' The entire expression can only refer to cases where the person attaining majority is capable of giving a discharge of the right by any positive act even including release of a right to sue. See Limitation Act (1908), S. 6. AIR 1959 Orissa 179 (DB).

"Capital."

—It is not necessary to constitute "capital" that it should be only the money collected from the shareholders. "Capital" when used with respect to the property of a Co-operative Society, corporation or a company, means property or means contributed by the members or shareholders as the fund or the basis for the business or enterprise for which the Cooperative Society, corporation or the company is formed. It may be either fixed or circulating — Co-operative Housing Construction Society constructing houses out of money collected from share-holders —Allotment of houses to members on instalment payment — Houses come within ambit of word "capital" used in S. 23, A. P. Co-operative Societies Act (1932). (1965) 1 Andh W R 229.

—"Capital" of a company means subscribed capital. See Companies Act (1913), S. 105-C. AIR 1956 Pepsu 89.

—Income is the fruit of "capital" and "capital" is understood as the source of income. See Land Acquisition Act (1894), S. 34 (as amended by Punjab Act 2 of 1954). AIR 1963 Punj 411 (DB).

"Capital base."

—Words "capital base" in sub-para. 1 of Para 17 of Sch. 6, Electricity (Supply) Act, 1948, construed. See Electricity (Supply) Act (1948), Sch. VI, Para 17, Item (9). ILR (1961) 11 Raj 495.

"Capital employed in business."

—If the funds of the assessee have been used to acquire assets for being used in the business of the assessee, that would be "capital employed in the business" within the meaning of Sch. II, R. 1 (1), Excess Profits Tax Act, 1940. See Excess Profits Tax Act (1940), S. 6 (1). AIR 1959 Mad 376 (DB).

"Capital expenditure" and "Revenue expenditure."

See Income-tax Act (1922), S. 10 (2) (xv).

"Capital gains."

—Tendolkor, J. — "Income" in Entry 54, List I, Sch. VII "Taxes on Income," in Government of India Act, 1935, is income in the widest sense and certainly income which would include "capital gains" as defined in S. 12-B, Income-tax Act, which are gains actually realised as a result of sale, exchange or transfer. See Income-tax and Excess Profits Tax (Amendment) Act (1947). AIR 1952 Bom 261 (DB).

"Capsule."

—Bhuki or poppy husk is not "capsule" of opium. See Opium Act (1878), S. 3 (1). 1956 Cri L J 917 : AIR 1956 Punj 159 (DB).

"Cargo."

●—Word 'cargo' in second proviso in Notification D/- 8.11.1962 of Reserve Bank of India under S. 8 (1) of Foreign Exchange Regulation Act is used as contra-distinguished from personal luggage in the law relating to carriage of goods. See Foreign Exchange Regulation Act (1947), S. 8 (1). 1965 (1) Cri L J 641 : AIR 1965 S C 722.

"Carriage by air."

—Storage of goods after transport awaiting delivery is not included in expression "carriage by air." See Carriage By Air Act (1934), Sch. I, R. 18. AIR 1955 N U C (Bom) 18.

"Carried."

● —Word "carried" in Sch. 7, List 2, Entry 56, has a larger scope. The word does not imply "carried by a common carrier," necessarily — All that the entry requires is that goods should be carried by road or inland waterways. See Constitution of India, Sch. VII, List II, Entry 56. AIR 1955 Assam 249 (SB).

[Reversed on another point in AIR 1961 S C 232.]

'Carrier."

—Word "carrier" in Limitation Act, Art. 30 — Definition in General Clauses Act of "common carrier" cannot be applied — Word should be given popular meaning — Any one doing business of carrying goods as public employment, he is a carrier — Fact that Government does this business, makes no difference. See Limitation Act (1908), Art. 30. AIR 1955 N U C (Mad) 3938.

[Overruled on another point in AIR 1962 Mad 349.]

"Carries on business or personally works for gain."
See (1) Civil P. C. (1908), S. 20.
(2) Displaced Persons (Institution of Suits) Act (57 of 1948), S. 4.
(3) Presidency Towns Insolvency Act (1909), S. 11 (d).

"Carrying away."

—Words "carrying away" in S. 390, Penal Code mean if fear of death, wound, hurt or wrongful restraint is caused after committing theft in order to carry away property obtained by theft, offence would be robbery See Penal Code (1860), S. 390. AIR 1955 NUC (Punj) 3440.

"Carrying on business."
See (1) Debt-Laws — Madras Pawn Brokers Act (1940), S. 16 (7).
(2) Houses and Rents—Madras Buildings, Lease and Rent Control Act (25 of 1949), S. 7 (3) (a) (iii).
(3) Houses and Rents—Mysore House Rent and Accommodation Control Act (30 of 1951), S. 8 (3) (a) (ii).
(4) Income-tax Act (1922), S. 42 (2).
(5) Letters Patent (Cal), Cl. 18.
(6) Sales Tax — Bombay Sales Tax Act (5 of 1946), S. 2 (c).
(7) Sales Tax — M. B. Sales Tax Act (1950), S. 5.

"Carry out purpose of Act."

——"Carry out purpose of Act" in S. 44 (1), U. P. Agricultural Income-tax Act, 1949— Meaning of explained. See U. P. Agricultural Income-tax Act (3 of 1949), S. 44 (1). ILR (1959) 2 All 353.

"Cart stand."

—Meaning of the words "cart stand" explained — Tests indicated — Distinction between private and public "cart stands" pointed out. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 270B. AIR 1957 Mad 781.

"Case."
See also (1) Civil P. C. (1908), S. 115.
(2) Criminal P. C. (1898), S. 429.

—The word "case" in S. 85, U. P. Panchayat Raj Act, 1947, has no wider and different meaning than given in the definition. See U. P. Panchayat Raj Act (26 of 1947), S. 53. AIR 1955 NUC (All) 1753.

—Word "case" in R 4 (vi) of U. P. Zamindari Abolition and Land Reforms Rules, 1952, is wider enough to include appeal and revision and is not confined to suit. 1952 All L J (Rev) 254: 1952 R D (BR) 384: 1952 All W R (Rev) 192.

—Words "there is a case" in S. 12 (5), Industrial Disputes Act, cannot be given the meaning "there is a prima facie case." They mean that there is a case for reference, not only because prima facie case has been made out, but also because of several other reasons, which the Government is entitled to take into consideration. See Industrial Disputes Act (1947), S. 12 (5). AIR 1955 NUC (Bom) 3844 (DB).

—The word "case" in S. 253, Criminal P. C. is not restricted to the complaint. 'Case' should also include case made out at the trial. See Criminal P. C. (1898), S. 253. 1954 Cri L J 1086 : AIR 1954 Kutch 33.

"Case decided."
See (1) Civil P. C. (1908), S. 115.
(2) Provincial Small Cause Courts Act (1887), S. 25.

"Case instituted upon complaint."
See Criminal P. C. (1898), S. 417 (3).

"Cases."

—The word "cases" in S 193 (2), Criminal P. C. — The word has no fixed or universal meaning — It must be construed with regard to the particular context in which it is used and with regard to the scheme and purpose of the measure concerned — The word is broader and wider than the words "trial of offences." See Criminal P. C. (1898), S. 193 (2). 1964 (1) Cri L J 176 : AIR 1964 Andh Pra 59.

"Casual."
See also Income-tax Act (1922), S. 4.

— "Casual" actually means subject to or produced by chance or accidental or fortuitous, all of which suggest absence of any previously entertained object or intention. Where the principal, if not the sole, purpose, of the husband visiting his wife at her father's residence was for purpose of ceremonial consummation of the marriage, the stay of the husband cannot be said to be casual. See Hindu Marriage Act (1955), S. 19. (1965) 2 Law Rep 67 : AIR 1966 Mys 178 (DB).

"Cause of action."
See also (1) Civil P. C. (1908), S. 20, O. 2, R. 2, O. 9, R. 9.
(2) Court fees Act (1870), S. 17.

—Term "cause of action" in S. 88 (b), States Reorganization Act, 1956, means every fact which if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court — Where the cause of action for wrongful dismissal is the fact that the order for termination of services was made, would form part of the cause of action and it would arise at a place where the order is made. See States Reorganization Act (1956), S. 88 (b). AIR 1959 Bom 363 (DB).

"Causing disaffection."

—Omission in S. 5 of Bihar Essential Services Maintenance Act of three explanations to S. 124A, Penal Code, should not lead to any difference in construction of the use of the same expression "causing disaffection towards the Government established by law." See Bihar Essential Services Maintenance Act (1 of 1948), S. 5. AIR 1956 Pat 188 (DB).

"Cease"

—The word "cease" means discontinue or 'put an end to.' There is no scope for importing any notion of suspension into that expression. (1959) 2 Andh W R 53 : ILR (1959) Andh Pra 254 : AIR 1959 Andh Pra 471 (474) (Pt D) (Pr 22) (DB).

"Ceiling area."

—Concept of "ceiling area" is directly and inseparably correlated to the concept of surplus land and what is to be ignored for the one is also to be ignored for the other. See U. P. Imposition of Ceiling on

Land Holding Act, 1960 (1 of 1961), S. 5 (2). 1965 All W R (HC) 491 : 1965 All L J 852 : ILR (1965) 2 All 683.

"Central Government."

●—In the context of the Indian Constitution "Central Government" would mean the President acting through the council of Ministers. See Constitution of India, Art. 226. AIR 1958 Madh Pra 103 (FB).

—"Central Government" in relation to any thing done before the Constitution means the Governor-General or the Governor-General in Council. See Cinematograph Act (1952), S. 17. 1957 Cri L J 1172 : AIR 1957 Punj 243 (DB).

"Cereals."

—'Husk' of paddy is neither 'cereal' nor 'bran.' Paddy and husked paddy i.e., rice both fell under category of cereals. See Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941), Schedule, Items 1, 2. (1962) 66 Cal W N 1.

"Certified copy."

See also Evidence Act (1872), S. 76.

—Words "certified copy" is not defined either in the Representation of the People Act, 1951 or in the Rules. It is an authenticated copy and a certificate issued by an officer is only a written declaration of the fact that the copy is a true copy of the original. See Representation of the People Act (1951), S. 33 (5). AIR 1958 Andh Pra 485 (DB).

"Certifies."

See Constitution of India, Art. 134 (1).

"Cess."

—Word 'cess' according to Encyclopaedia Britanica, is a term formerly more particularly applied to local taxation. In India, it is said to apply with the qualifying word prefixed to any taxation; such as "irrigation cess" and the like. The word is said to be a shorter form of "assess.' According to shorter Oxford Dictionary 'cess' means "an assessment, tax or levy." See U. P. Land Revenue Act (3 of 1901), S. 91. AIR 1955 NUC (All) 4167.

—Word "cess" has a definite legal connotation indicating tax allocated to a particular thing not forming part of the general fund. Art. 277 of the Constitution refers to 'cess' as a special category of taxes. Import of the word 'cess' is only tax and not a mere 'fee'. See Constitution of India, Art. 265. AIR 1960 Mad 160.

"Cess and license fee".

—There is a distinction between 'a cess' and 'a license fee'. A 'cess' is a tax levied for a specific purpose often with a pre-fixed word defining the object. A 'license' on the other hand involves a permission to trade subject to compliance with certain conditions. I L R (1955) Madh-B 75: AIR 1954 Madh-B 196 (201) (Pt B) (Pr 15) (DB).

"Channel".

See Criminal P. C. (1898), S. 133(1). 1961 (2) Cri L J 403 (Raj).

"Charge".

See also (1) Income-tax Act (1922), Ss. 3, 9.
(2) Transfer of Property Act (1882), S. 100.

●—Word "charge" in the expression "charge of misconduct" in Punjab Civil Services Rules (1959), R. 3.26(d) is not to be interpreted narrowly as meaning 'the charges formally framed and communicated to the Government servant concerned' with the intimation that a formal departmental enquiry had been initiated against him on those charges. See Punjab Civil Services Rules (1959), R. 3.26 (d). AIR 1964 S C 72.

●—Word "charge" in S. 35, Police Act (1861), must retain the meaning which it had before the section was amended. See Police Act (1861), S. 35. 1956 Cri L J 174 : AIR 1956 All 96 (SB).

—Amount is "charged" not only when actually ascertained and debited but also when contract is concluded. See Debt Laws—Bombay Money Lenders Act (31 of 1947), S. 25(3). (1956) 58 Bom L R 1037.

—Word "charge" is not defined in the Madras District Police Act or the Criminal P. C.—Ordinary meaning given to it is "to prefer an accusation against one". See Madras District Police Act (25 of 1859), S. 47. 1953 Cri L J 959 : AIR 1953 Mad 507.

—"Charge"—Interpretation of. See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 4(d). I L R (1942) Pat 687 : 1962 B L J R 928.

"Charitable purpose".

See also Income-tax Act (1922), Ss. 4 and 15B.

●—"Charitable purpose" defined in S. 2(c), W. B. Estates Acquisition Act, 1953—Definition is not exhaustive but is only inclusive — Definition cannot comprehend provision for family of wakif or for himself — English authorities on question of what is charitable cannot be taken as guide in interpreting the expression in Indian Statute. See Tenancy Laws—W. B. Estates Acquisition Act (1 of 1953), S. 6(1)(i). AIR 1965 S C 1722.

"Cheruthettam"

—"Cheruthettam" means the right to a share in the properties of deceased towards the performance of the marriage and other ceremonies of minor children. See Marumakkathayam Law — Tarwad — Succession. AIR 1951 Trav-Co 135 (DB).

"Chief Officer".

—"Chief Officer" of a municipality means chief executive officer, whatever his designation. See Municipalities—Bombay District Municipal Act (3 of 1901), S. 183 (d). (1961) 2 Guj L R 189.

"Child".

See also Criminal P. C. (1898), S. 488.

—"Child" as defined in the Bombay Children Act means a boy or girl who has not attained the age of 16 years. See Bombay Children Act (71 of 1948), S. 4 (1)(e). (1960) 1 Guj L R 155.

"Chiranji".

—"Chiranji", "Batasa" and "Misri" are not sugar as popularly understood. They are not sweetmeats. See Sales Tax — M. P. General Sales-tax Act (2 of 1959), Sch. I, Item 41, Sch. 3, Item 1. A I R 1965 Madh Pra 254 (DB).

"Chit fund organisation".

—A "Chit fund organisation" is an organisation of a number of people who join together and subscribe amounts monthly so that that person or the subscriber who is in need of funds may draw the amount less discount. It is an organisation run on a co-operative basis for the benefit of the subscribers, the funds to be utilised by them as and when a particular subscriber needs it. It is to help thrifty persons to invest their savings with good chances of profit. I L R (1958) Andh Pra 409 : (1958) 2 Andh W R 5.

"Choli bangadi" or "Haldi Kunkum".

—Expression "choli bangadi" or "haldi kunkum" is a traditional set of words employed on the occasion of gift made to a woman either at the time of her marriage or under coverture. In such a case the nature of the estate cannot be said to be limited by the purpose for which the estate is given. Estate does not revert to the donor on cessation of the need for 'choli bangadi' or 'haldi kunkum' that is on the woman becoming a widow. See Transfer of Property Act (1882), S. 8. AIR 1952 Nag 55.

"Chosen".

—Word 'chosen' does not necessarily imply that there ought to be a selection out of a larger number. See Criminal P. C. (1898), S. 284. **1954 Cri L J 1350 : AIR 1954 Raj 153 (DB).**

"Choultry".

—Establishment of "choultry" by committee—Buildings situated outside choultry and rented out and income utilised for charity — Such buildings are not 'choultries'. See Municipalities—Madras District Municipalities Act (5 of 1920), S. 83 (1)(b). **(1959) 2 Andh W R 323.**

"Choultry" or "Annasatram".

—The words 'choultry' or 'Annasatram' by themselves should not be considered as endowments for the benefit of a particular community or caste, or religion in the absence of any words to the contrary. **(1963) 2 Andh L T 457 : (1964) 1 Andh W R 150.**

"C. I. F. Contract".

—"C. I. F. and C. F. Contracts"—Contract is C.I F. in most of the cases, which means that the cost price would include the price of goods, insurance and freight and that is paid in advance by the seller which will be paid over to him by honouring of the bills drawn by him on the buyer, where the contract is C. F., the insurance is paid by the purchaser and for any loss in transit, the purchase will be indemnified by the insurers. See Sale of Goods Act (1930), S. 4. **AIR 1956 Mad 695 (DB).**

[Reversed on another point in AIR 1962 S C 1148.]

—The words "C. I. F." stand for costs, insurance and freight. A seller under a contract of sale containing such terms has firstly, to ship at the port of shipment goods of the description contained in the contract, secondly to procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract; thirdly to arrange for an insurance upon the terms current in the trade which will be available, for benefit of the buyer; fourthly, to make out an invoice, and finally, to tender these documents to the buyer so that he may know what freight he has to pay and obtain delivery of the goods if they arrive or recover their loss if they are lost on the way. The essential feature of an ordinary C. I. F. contract for the sale of goods rests in the fact that performance of the bargain is to be fulfilled by delivery of documents and not by the actual physical delivery of the goods by the vendor. All that the buyer can call for is the delivery of the customary documents. This represents the measure of the buyer's right and extent of the vendor's duty. The buyer cannot refuse the documents and ask for actual goods nor can the vendor withhold the documents and tender the goods they represent. It is in short a transfer of symbols rather than physical property. Property passes to the buyer as soon as the documents are delivered to him. Case-law Referred. **(1955) 6 S T C 47 : 67 Mad L W 647 : A I R 1954 Mad 1030 (1038) (Pt E) (Pr 26).**

"Cinema."

—"Cinema"—It is an abbreviated form of cinematograph, which in its ordinary significance includes a film exhibition theatre. **(1965.66) 29 FJR 277 : AIR 1965 Andh Pra 200 (213) (Pt J) (Pr 74) (DB).**

"Circular letter."

—"Circular" means something addressed to a circle of persons and the meaning of 'cicrular letter' or 'circular' is notice, advertisement etc., reproduced for distribution. See Representation of the People Act (1951), S. 125 (3). **AIR 1957 Mad 320 (DB).**

"Circumstances and property."—Meaning of.

●—Tax on "Circumstances and property" is a composite tax—"Circumstances" means financial position, his status as a whole depending among other things on his income from trade or business. See Municipalities. U. P Town Areas Act (2 of 1914), S. 14 (1) (f). **AIR 1957 SC 18.**

"Citizenship."

●—Expressions "nationality" and "citizenship" are not interchangeable terms. Former has reference to jural relationship which may arise under international law while the latter has reference to jural relationship under municipal law—Further distinction pointed out. **(1963) 2 SCJ 605 : AIR 1963 SC 1811 (1819) (Pt B) (Pr 18).**

"Civil."

—"Civil proceeding" has not been defined in the Constitution and has to be given ordinary dictionary meaning — Word "Civil" when used as adjective to 'law' means pertaining to civil rights and remedies of citizen as distinguished from criminal, political etc. See Constitution of India, Art. 133 (1) (c). **AIR 1959 All 607 (DB).**

"Civil commotion."

—"Civil commotion" means an insurrection of the people for general purpose, though it might not amount to rebellion — Civil commotion might, technically speaking also constitute a "riot." **AIR 1965 Madh Pra 32 (34) (Pr 8) (DB).**

"Civil Court."

See also (1) Civil P. C. (1908), S. 115.
(2) Criminal P. C. (1898), S. 146.
(3) Hindu Succession Act (1956), S. 14 (2).

—"Civil Court"—Does not mean Court of District Judge—Suit under S. 8 (1), M. P. Public Trust Act, 1951, can be filed in ordinary Civil Court of competent jurisdiction. See M. P. Public Trust Act (30 of 1951), S. 8 (1). **1961 MPLJ 394.**

—Courts which decide disputed rights between a subject and the State would be "civil Courts" as opposed to criminal Courts where the State vindicates wrongs committed against public. Courts constituted for deciding on purely civil questions between persons seeking their Civil rights must be considered to be civil Courts, notwithstanding that they are created by a special statute and are mentioned in that statue as distinct from Civil Courts. The true import of such a distinction is that while special Courts have jurisdiction over a limited class of suits specified in the statute the jurisdiction of the civil Courts is not limited to any class of suits. **(1953) 1 MLJ 542 : 1953 Mad W N 200 : 66 Mad L W 287 : AIR 1954 Mad 340 (344, 345) (Pt E) (Prs 12, 13).**

"Civil offence."

—"Civil Offences" are those punishable under laws applicable to those not subject to enactments similar to Air Force Act i.e., every offence of which magistrates can take cognizance as trial Courts See Air Force Act (1950), S. 71. **1964 (2) Cri L J 184 : A I R 1964 All 371.**

"Civil post," "Civil service" and "Civil post under a State."

See (1) Constitution of India, 1950, Arts. 310, 311.
(2) India (Provisional Constitution) Order, (1947), Cl. 7.
(3) Kashmir Civil Service Rules.

"Civil proceeding."

See Constitution of India, Art. 133.

"Claim."

—Ordinarily word "claim" is used to mean substantive claim and not any costs when the latter are also intended to be covered the expression used is "claim and costs." See Civil P. C. (1908), S. 145. **A I R 1955 NUC (Cal) 1085.**

—Term "claim" is a word of very extensive signification embracing every species of legal demand. It includes "demand" and "debt". The word has been considered as word of art — It embraces action founded on tort as well as contract. See Banking Companies Act (1949 as amended), S. 45-A. AIR 1958 Mad 403.

[Overruled on another point in AIR 1962 Mad 75.]

●"Class."

In order that persons should form a "class" there must be a number of common attributes which bind them together to form a kind of unit readily and definitely ascertainable. See Press (Emergency Powers) Act (1931), S. 4 (1) (h). ILR (1951) 1 Cal 235 (SB).

—"Class and grade" — Class cannot be read as equivalent to grade. See Mysore Civil Service Commission (Consultation) Regulations (1958), Reg. 3. A I R 1963 Mys 219 (DB).

"Clearing."

—Word "clearing" in Ss. 5 and 26 of Forest Act must be interpreted to mean the act of cutting away and removing of the trees from a piece of forest land. Cutting away trees need not be for purposes of cultivation. See Forest Act (1927), S. 5. 1960 All L J 590 : 1960 All W R (HC) 462 : 1960 All Cri R 293 : 1961 (1) Cri L J 593 (All).

"Clerical error"

See also (1) Civil P. C. (1908), S. 152.
(2) Criminal P. C. (1898), S. 369.
(3) Representation of the People Act (1951) S. 33.

—Per Tek Chand J.:—"Clerical error" is an error which cannot reasonably be attributed to the exercise of judicial consideration or discretion. A "clerical error" is one made in transcribing or otherwise, and it must be apparent on the face of the record; and, therefore, capable of being corrected. It is, in the nature of, an inadvertent omission or mistake. The term "clerical error" is distinguishable from, a "judicial error" which can be corrected only on review or an appeal. I L R (1961) 1 Punj 728 : A I R 1962 Punj 110 (115) (Pt B) (Pr 21) (DB).

"Cloth."

See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 3 (2) and (5) (iii).

"Coal."

—There is a distinction between a grant or reservation of "coal" and a grant or a reservation, as the case may be of a "mine". The word "coal" does not bear a definite meaning and its meaning must be gathered from the document under construction. AIR 1951 Pat 556 (563) (Pt E) (Pr 20) (DB).

"Cognizable."

See also Criminal P. C. (1898), S. 4 (1) (f).

—Word "cognizable" has not been defined in the Mysore Court-fees Act (1900) but 'cognizance' is explained to mean jurisdiction or right to try and determine causes. "The right to take notice of and determine a cause". See Mysore Court-fees Act (3 of 1900) (As amended by Act (18 of 1952), Sch. I, Art. 1 (a). AIR 1954 Mys 121 (DB).

"Cognizance."

—Taking cognizance of a case — Word "cognizance" used in S. 6 of the Hyderabad Jagirdars Debt Settlement Act, 1952, implies that before the Board can exercise specific powers conferred upon it, it should have seisin of the matter. Board will have taken cognizance if it applies its mind to any claim with a view to proceed in the manner provided in Act. See Debt Laws — Hyderabad Jagirdars' Debt Settlement Act (12 of 1952), S. 6. (1957) 2 Andh W R 21.

"Collection" of tax.

—Three expressions "levy", "assessment" and "collection" of tax embrace in their broad sweep all the proceedings which can possibly be imagined for raising money by exercise of the power of taxation.—See Constitution of India, Art. 265. AIR 1957 Punj 5. (DB).

"Collector"

See also General Clauses Act (1897), S. 3 (11).

—Expression "collector of the District" includes Deputy Commissioner. See Cotton Cess Act (1923), S. 2 (a). AIR 1975 Mys 73.

"Collector's office"

—Definition of "collector" in S. 3 (c) Land Acquisition Act discloses any person other than the collector or the Deputy Commissioner of a District can also be appointed to perform the functions of the Collector under the Act and that person will also be deemed to be a 'Collector' for purposes of the Act. That being so the expression "Collector's Office," in S. 12 of the Act includes the office of the Deputy Collector who holds an enquiry as the Land Acquisition officer under S. 11. See Land Acquisition Act (1894), S. 12. AIR 1962 All 61.

"Collusion"

See also (1) Civil P. C. (1908), S. 9.
(2) Divorce Act (1869), S. 12.
(3) Hindu Marriage Act (1955), S. 23.

—"Collusion" is where two or more persons apparently in hostile position or having conflicting interests by arrangement do some act in order to injure a third person or deceive a court. It is a secret concert of action between two or more persons for the promotion of some fraudulent purpose and thereby accomplish a wrong. See Tenancy Law Punjab Village Common Lands (Regulation) Act (18 of 1961), S. 5. ILR (1962) 2 Punj 42.

"Colourable imitation".

See also (1) Penal Code (1860), S. 486.
(2) Trade and Merchandise Marks Act (1958), S. 29.
(3) Trade Marks Act (1940), S. 21.

—A Mark is said to be a "colourable imitation" of another mark when it is not realy an imitation of any other mark but just appears to be so and can pass off as such. 1958 Cri L J 1102: AIR 1958 All 645 (DB).

"Colourable legislation".

See also Constitution of India, Art. 246.

—The idea conveyed by expression "colourable legislation" is that although apparently the legislature in passing the statute purported to act within the limits of its power, yet in substance and reality transgressed those powers, the transgression being veiled by what appears on proper examination, to be a mere pretence or disguise. A dishonest motive cannot be imputed to legislature of the State and it cannot be held that it acted mala fide or maliciously in passing the impugned Act. AIR 1959 S C 308 Rel. on AIR 1960 Andh Pra 461 (464) (Pt C) (Pr 18) (DB).

●—Doctrine of "colourable legislation" does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into a question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act is really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. AIR 1953 S C 375 Relied on. See Tenancy Laws—Assam States Acquisition of Zamindaries Act (18

of 1951) (As amended by Assam Act VI of 1954), S. 1. ILR (1956) 8 Assam 379 (FB).

"Commencement of tenancy"

See also T. P. Act (1882), S. 105.

—The expression "Commencement of tenancy" in S. 73 (1), Berar Land Revenue Code must be held to refer to the original or the first tenancy under which the tenant or his predecessor entered into possession. See Berar Land Revenue Code (1928), S. 73 (1). AIR 1960 Bom 271 (FB).

"Commencing with immediate effect".

—Words "Commencing with immediate effect" in a notice of termination of service, mean commencing from date on which the notice was sevred and not from the date of its issue. AIR 1965 Him Pra 55 (58) (Pt C) (Pr 13).

"Commercial purpose".

—"Commercial purpose" covers an undertaking the object of which is to make a profit out of the undertaking. It is the aim and not the effect which has to be taken into consideration. Water works installed by licensee Municipal Board as part of statutory duty—Energy consumed by Board for water works is not for commercial purpose. See U. P. Electricity (Duty) Act (33 of 1952), S. 3, Expl. I. 1957 All LJ 496.

"Commercial venture".

—"Commercial venture" is a venture where capital is to be laid out on any work and a risk run of profit or loss. See Constitution of India, Arts. 31, 31A and 31B. AIR 1958 Andh Pra 522 (DB).

"Commission"

See (1) Companies Act (1956), S. 76 (1).
(2) Income-tax Act (1922), S. 10.

"Committing Magistrate".

—The words "Committing Magistrate" used in S. 287, Cr. P. C. simply mean the magistrate who commits the accused for trial and not necessarily the magistrate who holds an inquiry under Ch. 18 of the Code. The magistrate who commits the accused under S. 347 is a committing magistrate within meaning of S. 287. There is no justification for sayig that only that magistrate who commits under S. 213 is a committing magistrate. See Criminal P. C. (1898), S. 287. 1956 Cri L J 841: AIR 1956 All 385 (DB).

'Common ancestress".

—"Common ancestress" refered to in proviso (iii) to S. 35 (i) and S. 36 (2) (c) of the Mad. Aliyasanthana Act, 1949, is an ancestress in Kavaru common to all its remaining members and is not necessarily one who is an ancestress common to two or more Kavarus of family. See Madras Aliyasanthana Act (9 of 1949), S. 35 (i). ILR (1960) Mys 251.

"Common gaming house".

See (1) Calcutta Police Act (IV of 1860), S. 3.
(2) Public Gambling Act (1867), S. 1.

"Common object"

See Penal Code (1860), Ss. 34, 141 and 120A.

"Commorientes".

—"Commorientes" are person who perish at the same time in consequence of the same calamity. AIR 1963 Punj 66 (72) (Pt C) (Pr 21).

"Common utility"

—"Common utility" in S. 14 (1) (ee) U. P. Consolidation of Holdings Act (1954) means "Public utility". See Constitution of India, Art 31 (2). AIR 1957 AIR 297 (DB).

"Communal harmony".

—Person speaking in favour of interest of inhabitants of one particular province or State as against interest of those of another province or State cannot said as endangering "communal harmony" irrespective of the question whether such an act is proper or desirable. See Public Safety—W. B. Security Act, 19 of 1950, S. 2 (9) (a) (j). AIR 1951 Cal 424 (DB).

"Communicate."

—Expression "Communicate" in S. 39, Criminal P. C. is not synonymous with the expression "publish" which means "to make public,'. It means "to bestow, convey, make known, recount, to impart as to communicate information to any one." See Criminal P. C. (1928), S. 39 (2). 1956 Cri L J 1430 (1) : AIR 1956 Punj 254.

"Communication".

—"Communication" means bringing home to person communicated, active knowledge of facts. See Constitution of India, Art. 22 (5). 1962 (1) Cri L J 797: AIR 1962 S C 911.

—Word "Communication" in R. 8 of Slum Areas (Improvement and Clearance) Rules (1957) means furnishing of copy of order refusing permission. See Slum Areas (Improvement and Clearance) Rules (1957), R. 8. AIR 1965 Punj 315.

"Community."

See also Representation of the People Act (1951), S. 123 (3).

—Word "Community" is used in S. 10 (1), Cl. (8) Bikaner State Pre-emption Act has not been used in its widest but restricted meaning viz., "people orgnaised into a social unit". Persons belonging to Christian or Muslim religion will form communities by themselves. But in the case of Hindus, the restriction will have to go further because there are four well recognised 'varnas' among Hindus, each of which may be said to consist of a body of persons organised into a social unit. See Bikaner State Pre-emption Act (1 of 1919), S. 10 (1). AIR 1952 Raj 52 (DB).

"Commutation".

—Word "Commutation", in expression "commutation of pension" means interchange of two things or the buying off of an obligation by another obligation. It is in fact in the nature of a present value of a periodical payment expected to last an estimated number of years for which the Government purchases the obligation of having to make the said periodical payment for the said estimated number of years. See Constitution of India, Art, 14. AIR 1963 Mys 247 (DB).

"Company".

—A "Company" necessarily implies a voluntary association of persons who, under certain agreement or Articles of Association bind together to form a body or assamblage of persons for the purpose of carrying on any trade or business and are as such recognised and registered as company or in corporated as such under same statute. Mutual agreement or contract is of the very essence of the composition of a company. Merely because a body is incorporated under a statutory law, it does not become a company. A Board of the nature of Khadi Gram Udyog Board constituted under Rajasthan Khadi and Village Industries Board Act, 1955 is not a "Company" within the meaning of the Land Acquisition Act. See Land Acquisition Act (1894), S. 3 (e). I L R (1961) 11 Raj 486.

"Compelled to answer".

—Witness being "Compelled to answer" — Meaning of words compelled to answer explained. See Penal Code (1860), S. 499. 1962 (2) Cri L J 193 : AIR 1962 Madh Pra 241 (DB).

"Compelled to give".

—'Compulsion' contemplated by the proviso to S. 132, Evidence Act, must arise out of the refusal of his prayer to be excused.' Giving evidence a is mattar of duty and not of compulsion. Duty cannot be treated as compulsion. See Evidence Act (1872), S. 132, Proviso. 1960 Cri L J 1285 : AIR 1960 All 606 (DB).

"Compelling reasons".

—Interference with order of acquittal—There must be "Compelling reasons" to show that the trial Court has grossly misconducted itself in the appreciation of evidence on record — Expression "compelling reasons" is not intended to place any restriction or impose any limitation on the appellate court's power. It has full powers to review the entire evidence. See Cr. P. Code (1898), S. 417. 1963 (2) Cri L J 216 (Ker).

"Compensation".

See (1) Assam Land (Requisition and Acquisition) Act (1948), S. 7.
(2) Constitution of India, Arts. 31, 31-A and 31-B.
(3) J & K. Limitation Act (1995 Smvt.), Art. 86.
(4) Land Acquisition Act (1894), S 34.
(5) Municipalities — U. P. Nagar Mahapalika Adhiniyam (1959), Sch. II.

"Compensation for loss of employment".

Expression "Compensation for loss of employment" used in Explanation 2 to S. 7, Income tax Act refers to any payment made, whether under legal liability or voluntarily to compensate or act as a solatium for the loss of employmet suffered by the employer. See Income-tax Act (1922), S. 7 Expl. 2. AIR 1958 Bom 212 (DB).

"Competency to worship".

—The expression "competency to worship" is to be construed as having reference to actual incompetency according to the directions of the founder or according to the religious persuasion of the person clamining the right. See Hindu Law. AIR 1955 N U C (Orissa) 1111.

"Competent Court".

See Civil P. C. (1908), S. 11.

"Competent to remove him from his office."

—The words "competent to remove him from his office" in S. 6 of the Prevention of Corruption Act, show clearly that the authority contemplated therein is the one competent to remove that public servant from his office and not any public servant holding the office held by the accused person. See Prevention of Corruption Act (1947), S. 6. AIR 1956 Bhopal 36.

"Complaint"

See also Criminal P. C. (1898), Ss. 4 (1) (h), 195, 200, 417.

—Word "Complaint" in S. 48, Madras Prohibition Act is wider than that defined in S. 4 (1) (h) Criminal P. C. and includes a police report. 1960 M W N 317.

—Panchayats—Bombay Village Panchayats Act (6 of 1933), Ss. 87, 75 (a)—Word "Complaint" in S. 87 — Meaning of — Does not include Police report — Charge-sheet presented by Police before Magistrate—Latter returning it for presentation to Nyaya Panchayat — Order set aside See Panchayats — Bombay Village Panchayats Act (6 of 1933), S. 87. 1962 Nag L J 130.

"Complaint of facts constituting such offences".

—The plain meaning of expression "on a complaint of facts constituting such offence" made by person affected thereby" in S. 82, Bombay Industrial Relations Act as adapted in Madhya Bharat is on a complaint of facts constituting such offence made by a person whose position in respect of any of the rights, benefits or privileges conferred by the Act has been altered or injuriously vexed by the alleged offence. See Bombay Industrial Relations Act (11 of 1937), S. 82. 1957 Cri L J 513 : AIR 1957 Madh Pra 26 (DB).

"Component."

—For an article of food to be called a component part within meaning of S. 3 (3), Madras General Sales Tax Act prior to amendment by Madras Act 44 of 1961 it is not necessary that even after it becomes part of another article it should still retain its identity — All that is necessary to make an article a "component part" is that it should go into the composition of another article — Groundnut oil used in manufacture of vanaspati or soap is a component part of vanaspati or soap. See Sales Tax — Madras General Sales Tax Act (1 of 1959), S. (3). (1964) 15 S T C 734 (Mad).

"Compromise".

See Civil P. C. (1908), O. 23, R. 3.

"Compulsory retirement.".

See (1) Constitution of India, Arts. 309-311.
(2) Punjab Civil Service Rules (1959).

"Computation" and "benefit."

—Word "computation" in S. 20 (2), Industrial Disputes (Appellate Tribunal) Act, 1950, might imply that it was a benefit other than a pecuniary benefit that was contemplated — Expression "benefit" in S. 20 (2) is wide enough to include any benefit which has accrued to the worker under the terms of a valid and enforceable award —Scale of wages is a benefit under the award. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 20 (2). (1956) 1 Mad L J 226.

"Computed."

—Word "computed" in S. 33-C (2), Industrial Disputes Act is not to be understood only as involving complex process of arithmetic or calculation — It merely means calculation simple or otherwise. See Industrial Disputes Act (1947), S. 33-C (2). AIR 1965 Mad 450 (DB).

"Concealment."

See (1) Criminal P. C. (1898), S. 109.
(2) Penal Code (1860), Ss. 318, 368.

"Concerned."

See (1) Industrial Disputes Act (1947), S. 33.
(2) Industrial Disputes (Appellate Tribunal) Act (1950), S. 22.
(3) Sea Customs Act (1878), Ss. 167 (8) and (81).

"Conclusive evidence."

See (1) Evidence Act (1872), S. 3.
(2) Land Acquisition Act (1894), S. 6 (3).

"Conclusive proof."

See Evidence Act (1872), S. 3.

"Concubine"

See Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949), S. 5 (1).

"Concur."

—Concurrence is a stronger word than "consult" used in Art. 320, Constitution of India — "Consult" does not mean "concur." See Constitution of India, Art. 320. AIR 1958 Madh Pra 135 (DB).

"Concurrent jurisdiction."

—The expression "concurrent jurisdiction" in S. 3 (1) of Provincial Insolvency Act (1920), only means that even though a Court subordinate to a District Court may be invested with jurisdiction under the Act, the District Court would still continue to possess jurisdiction under the Act. See Provincial Insolvency Act (1920), S. 75 (1). AIR 1959 Bom 74 (DB).

"Conditions of service."
See (1) Constitution of India, Arts. 309-311.
(2) Government of India Act (1935), S. 240.
(3) Industrial Disputes Act (1947), Sch. 2, Item 6.
(4) Industrial Employment (Standing Orders) Act (1946), Sch., Item 5.

"Conduct in the discharge of his public functions."
See Criminal P. C. (1898), S. 198-B.

"Confectionery" and "biscuits."
—"Confectionery" is a sweetmeat, while biscuit is in the nature of dry bread which has the characteristic of being baked. It cannot therefore be said that biscuit and confectionery are identical. **1963 Mad W N 567 : (1963) 2 Mad L J 311: AIR 1963 Mad 460 (463) (Pt C) (Pr 17) (DB).**

"Conferment of power."
—Where power is conferred or a duty imposed by statute or otherwise and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitation or restrictions, it is reasonable to hold that it comes with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. Matajog Dobey v. Bhari, H. C. **1956 Mad W N 313 : (1955) 28 I T R 941 : 1956 Cri L J 140 : 1956 S C A 22 : :1956 S C J 110 : (1956) 1 Mad L J (SC) 79 : 1956 Pat L R (SC) 61 : (1955) 2 S C R 925 : AIR 1956 S C 44 (50) (Pt G) (Prs 21, 23).**

"Confirm."
—The word "confirm", sometimes means verify. The word is commonly used in that sense at meetings of public bodies, which confirm the minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate. **AIR 1966 All 45 (56) (Pt L) (Pr 42).**

"Confirmed."
—Word "confirmed" in S. 126 (3), Calcutta Port Act cannot be construed to mean to "confirm as a whole as it is or not at all." **A I R 1961 Cal 365, Reversed.** See Calcutta Port Act (1890), S. 126. **A I R 1962 Cal 530 (DB).**

"Confiscate."
—"Confiscate" is not synonymous with "forfeit." See Travancore Abkari Act (4 of 1073), S. 51-A. **I L R (1961) 1 Ker 374.**

"Connection by marriage."
—"Connection by marriage" referred to in Explanation in R. 3 framed with reference to S. 156 (1), C. P. Land Revenue Act refers not only to the marriage of ex-kotwar but also to the marriage of his female relative. See C. P. Land Revenue Act (2 of 1917), S. 197. **1951 N L J 572 (Rev).**

"Connivance"
See (1) Divorce Act (1869), S. 14.
(2) Penal Code (1860), S. 497.

"Consent."
—"Consent" in law means an affirmative positive act and "assent" means passivity or inaction; the express "consent" has come to acquire a somewhat peculiar meaning under Hindu Law. See Income-tax Act (1922), S. 6. **AIR 1958 Punj 250 (DB).**
—Consent and connivance — Word "consent" used in S. 100, Representation of the People Act, after its amendment is in no way stronger than the word 'connivance' used before the amendment, 'consent' is a legal term and is wider in import as it includes both express and implied consent. See Representation of the People Act (1951), S. 100 (1) (b). **A I R 1953 Raj 324 (DB).**

"Consent in writing."
—Expression "consent in writing" in S. 153-C (3), Companies Act, 1913 as amended in 1951, implies that the writing itself should indicate that the persons who have fixed their signatures have applied their minds to the question before them and have given their consent to certain action being taken. See Companies Act (1913) as amended by Act (52 of 1951), S. 153-C (3). **AIR 1953 All 326.**

"Consideration."
See Contract Act (1872), S. 2 (d).

"Consolidation."
See Berar Land Revenue Code (1928), S. 184 (2).

"Conspires to overawe."
See Penal Code (1860), S. 121-A.

"Constitute."
See Constitution of India, Sch. 7, List 2, Entry 5. **AIR 1965 Andh Pra 40 (DB).**

"Constituted."
See Income-tax Act (1922), S. 26-A. **A I R 1959 S C 868.**

"Construction."
See (1) Houses and Rents—East Punjab Urban Rent Restriction Act (1949), S. 3.
(2) Houses and Rents — U. P. (Temporary Control of Rent and Eviction) Act (3 of 1947), S. 3 (1) (c).
(3) Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 9 (1) (f).

"Consult."
—Word "consult" in Art. 320 of the Constitution means that a certain statutory preliminary ought to be performed before the act is done. See Constitution of India, Art. 320. **A I R 1958 Madh Pra 135 (DB).**
—"Consult" implies a conference of two or more persons or the impact of two or more minds brought about in respect of a topic with a view to evolve a correct or at least a satisfactory solution. It must be directed to the essential points of the subject under discussion and enable the consultor to consider the pros and cons before coming to a decision. The consultation may be between an uninformed person and an expert or between two experts. **(1953) 1 M L J 88 : 66 Mad L W 53 : A I R 1953 Mad 392 (392, 393) (Pt A) (Pr 2).**

"Consume."
See Prohibition — Bombay Prohibition Act (25 of 1949), S. 66 (1) (b).

"Consumer".
— Words "consumer", "consumed", "consumption" are all cognate and when one is defined, the contents of the definition go into all of them wherever they occur in the same Act. Expressions "supplied to a consumer" or "supplied for consumption" involve the same idea, namely of actually using up the power. Where it comes from is altogether immaterial — It may come from a power plant owned by some body else. See C. P. and Berar Electricity Duty Act (10 of 1949), **S. 3. AIR 1959 Madh-Pra 365 (DB).**

"Consumption".
See Constitution of India, Art. 286 (1), Explanation; Sch. 7, List 1, Entry 84.

"Consumption, use or sale therein".
See Municipalities — Bombay Municipal Boroughs Act (18 of 1925) (As amended by Bombay Act 35 of 1954), S. 73 (1) (iv). **AIR 1963 S C 906.**

"Contempt of Court".
See Contempt of Courts Act (1952), S. 3.

"Contesting candidate".

See Representation of the People Act (1951), S. 82 (a).

"Contiguous".

— Word "contiguous." in S. 24 (1) (b) of W. B. Non-Agricultural Tenancy Act means "touching in close contact, next in place". The secondary and loose meaning "neighbouring or situated in close proximity (though not in actual contact)" should not be given to the word unless there is something compelling in that behalf in the subject or context. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 24 (1). (1956) 98 Cal L J 159.

"Contingency staff".

— Employees on "Contingency staff" are employed not in regular employment but employment merely incidental to an office for the period during which they have actually worked as no bill for any other period can be certified for payment. Such employees cannot claim to remain in employment when the work for which they are employed ceases to exist or they do not actually do the work or job. See Constitution of India, Art. 311. AIR 1955 Pepsu 25.

"Continued ill health".

—A permanent incapacity for work due to old age infirmity is a case of continued ill health as envisaged in Cl. (c) of S. 2 (oo) of Industrial Disputes Act (1947). See Industrial Disputes Act (1947), S. 2 (oo), Cl. (c). AIR 1960 Pat 554 (DB).

"Continuing offence".

— "Continuing offence" means an offence that continues from moment to moment without any interruption or break. Giving daily exhibitions by means of a cinematograph in an unlicensed building is not a continuing offence — The act continues so long as the exhibition lasts. See U. P. Cinemas (Regulation) Act (3 of 1956), S. 3. 1961 (1) Cri L J 202 : AIR 1961 All 88.

— The expression "continuing offence" though not a very happy expression, has acquired a well-recognised meaning in criminal law. If an act committed by an accused person constitutes an offence and if that act continues from day to day, then from day to day a fresh offence is committed by the accused so long as the act continues. Normally and in the ordinary course an offence is committed only once. But there may be offences which can be committed from day to day and it is offences falling in this latter category that are described as continuing offences.

In every case of a continuing offence it may be possible to describe the default as amounting to an omission or to a positive act on the part of the defaulter. Hence the distinction between a default which consists of an omission to do an act and a default which consists in failure to comply with a discretion to do a positive act may not be very helpful in determining the character of a continuing offence. Observations of Bhagwati, J., in AIR 1952 Bom 146, Doubted. 1955 Cri L J 666 : (1956) 2 Lab L J 153 : ILR (1955) Bom 192 : 56 Bom L R 1172 : AIR 1955 Bom 161 (163, 164, 165) (Pt C) (Prs 5, 8) (DB).

— "Cotinuing offence" in Mines Act, S. 73—Meaning explained. See Mines Act (1952), S. 73. 1957 Cri L J 834 : AIR 1957 Cal 483 (DB).

[Overruled on another point in AIR 1961 SC 1543.]

— Concept underlying the word "continuing" is the same whether it is considered in relation to breaches of contract or wrongs independent of contracts, or offences, the concept being that so far as breaches and wrongs are concerned, they give rise to a fresh cause of action de die in diem so long as the wrongful state of affairs subsists and so far as offences are concerned they give rise to a fresh offence de die in diem so long as the omission which has been made Penal is not rectified. S. 23 Limitation Act does not apply in respect of offence. See Criminal Trial — Offence. 1962 (2) Cri L J 485 : AIR 1962 Madh-Pra 311 (DB).

— "Continuing offence" — Meaning of stated. Se Madras Factories Act (1948), S. 6. 1958 Cri L J 524 : AIR 1958 Mad 155.

— The expression "continuing offence" means that, if an act or omission on the part of an accused constitutes an offence, and if that act or omission continues from day to day, then a fresh offence is committed on every day on which the act or omission continues. State v. Kunja Behari Chandra. 1954 Cri L J 1187 : 1954 B L J R 459 : ILR 33 Pat 507 : AIR 1954 Pat 371 (374, 375) (Pt D) (Prs 12) (FB).

"Continuous service".

See also Industrial Disputes Act (1947), S. 25.F.

— "Continuous service" — Gratuity—Award giving gratuity to employees at certain rate upon retirement after 15 years' continuous service — Absence without leave for 8½ months held not a break in continuous service. AIR 1961 S C 1567.

"Contract".

See also Contract Act (1872), S. 10.

— Lease is included in "contract". AIR 1957 Hyd 27 (28) (Pt B) (Pr 3) (DB).

— Word "contract" in proviso to S. 4 (1) of the East Punjab General Sales Tax Act means a contract as defined in the Contract Act and is not limited by the definition under S. 2 (c) of the East Punjab General Sales Tax Act. See Sales Tax — E. P. General Sales Tax Act (46 of 1948), S. 4 (1), Proviso. (1963) 65 Punj L R 24.

"Contract made with committee".

— Words "contract made with committee" in S. 48, Punjab Municipal Act do not include transfer of interest in immovable property. See Municipalities — Punjab Municipal Act (3 of 1911), S. 48. 1964 Cur L J 350 (Punj).

"Contract of service".

There is in law a well-established distinction between a "contract of services" and a "contract of service". In the one case master can order or require what is to be done, while in the other case he cannot only order or require what is to be done but how it shall be done. Test for determining whether contract is one of employment indicated. See Representation of the People Act (1951), S. 123 (7). AIR 1957 S C 444.

"Contract to the contrary."

—A contract to be a "contract to the contrary" within the meaning of the expression in S. 61, T. P. Act, should state that the mortgagor is prevented from exercising his right conferred under S. 61, T. P. Act and is obliged to redeem all the mortgages together. See Transfer of Property Act (1882), S. 61. A I R 1956 Mad 434 (DB).

"Contribution" and "reimbursement."

—There is a clear distinction between claim for "contribution" and a claim for "reimbursement"—The former is based on the payment of common liability of two or more persons by one of them and the latter, on is based on the payment of the liability of one or more persons by another who is interested in making the payment but is not legally bound to pay. See Contract Act (1872), S. 69. A I R 1961 Pat 103.

"Contribution to the assets of society."

—The phrase "Contribution to the assets of society" in S. 42, Co-operative Societies Act refers to the liability of the members of the society to contribute

to the assets in the event of the winding up of the society. See Co-operative Societies — Co-operative Societies Act (1912), S. 42 (4-A). **A I R 1959 All 733.**

"Control."

—The word "control" is not confined to mere regulation. It is more comprehensive and includes dominion or command over inferior. See Cinematograph Act (1918), S. 5 (3). **A I R 1956 All 99 (DB).**

—"Control" under Arms Act means that the accused must have power over the weapon so that he can direct its custody, production, use or disposal in some manner. See Arms Act (1878) S. 19 (f). **1957 Cri L J 1091 : A I R 1957 Andh Pra 758 (DB).**

—Mysore Stamp Act (1900), S. 56 (1) — Word "control" in the section has not only reference to administrative control which may be exercised by the Chief Controlling Revenue Authority but also to the judicial control which he may exercise in his revisional jurisdiction. See Stamp Act (1899) S. 56 (1). **(1963) 1 Mys L J 174.**

—Word "control" in Cls. (23) and (26) of S. 3 (2), Defence of India Act, scope of indicated. See Defence of India Rules (1962), R. 125 (2). **A I R 1964 Punj 307 (DB).**

—Merely because word "control" has been used in S. 5, Punjab Cinemas (Regulation) Act, which is capable of being taken in the wider sense of command or direction, its true meaning and import should not be confined to that sense alone. See Punjab Cinemas (Regulation) Act (11 of 1952), S. 5. **(1961) 63 Punj L R 580 : I L R (1961) 2 Punj 831.**

"Controlling interest."

—"Controlling interest" contemplated by S. 2 (21), Excess Profits Tax Act, means extent to which shareholders have power of controlling the decisions of the company by votes at a general meeting. Fact that beneficial interest in the share is in a third party or the fact that a vote catching share is vested in a director as trustee is immaterial. See Excess Profits Tax Act, S. 2 (21). **(1951) 55 Cal W N 237.**

[Reversed on another point in A I R 1953 S C 473.]

—Words "controlling interest" in the company occurring in the preamble of the Orissa Motor Vehicles (Regulation of Stage Carriage and Public Carriers Services) Act, 1947, has got a definite connotation in Company law. It does not mean controlling interest of the State and the Union Government, in the company is limited to financial interest only. See Orissa Motor Vehicles (Regulation of State Carriage and Public Carriers Services) Act (36 of 1947). **A I R 1952 Orissa 42 (DB).**

"Convene."

—Words "to convene meeting" used in S. 22 (7), A. P. Panchayat Samithis and Zilla Parishads Act, has a definite meaning. Mere fixing of date and issuing notice to members is not enough. See Panchayats — Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (35 of 1959), S. 22 (7). **(1964) 2 Andh W R 375.**

"Conviction."

—Word "conviction" in Constitution of India, Art. 311 (2), Proviso (a) — Proviso (a) contemplates "conviction" finally and not by trial Court. See Constitution of India, Art. 311 (2), Proviso (a). **A I R 1965 Punj 153.**

"Co-opt."

—The word "co-opt" in R. 4, U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, means to elect into a body by the votes of existing members. See U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), R. 4. **A I R 1960 All 754.**

"Coparcenary property."

—Words "coparcenery property" in S. 19, Hindu Adoption and Maintenance Act cannot mean "coparcenery property" as understood in Mitakshara Hindu Law. See Hindu Adoption and Maintenance Act (1956), S. 19. **A I R 1964 Punj 393 (DB).**

"Copy."

—Word "copy" in S. 81 (3), Representation of the People Act does not mean an absolutely exact copy but means that the copy shall be so true that no body can by any possibility misunderstand it. Tests to see whether copy is a true copy is whether any variation from the original is calculated to mislead an ordinary person. Murarka Radhay Sham v. Rup Singh, **(1964) 1 S C A 688 : A I R 1964 S C 1545 (1550, 1551) (Pt D) (Pr 11).**

—Whether a "copy" in a particular section means a plain copy or a certified copy must depend on the subject or the context in which the word is used. In some cases it is intended to serve as a notice. Having regard to the context and the purpose of S. 419, Criminal P. C., the copy to be filed along with the petition of appeal, must be a certified copy. See Criminal P. C. (1898), S. 419. **1958 Cri L J 809 : A I R 1958 S C 414.**

—Word "copy" means nothing more than a true reproduction, it is a transcript or double of an original writing. See Representation of the People Act (1951), S. 33 (5). **A I R 1958 Ker 154 (DB).**

"Corporation."

—One of the tests to see whether an institution is a corporation or a department of the Government, is to enquire whether the undertaking functions as a responsible independent organisation and not as part of any department of State. Another test would be to see whether it is endowed with the capacity to contract obligations and of suing or being sued. Further, the power to possess use and change a seal is incidental to a corporation and a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal. **A I R 1963 Andh Pra 479 (483) (Pr 14) (DB).**

'Corpus delicti."

See Penal Code (1860), S. 300.

''Correctness of order."

—"Correctness of order"—Correctness is compounded of legality and propriety. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 24. **A I R 1965 Punj 318.**

"Correspond."

—"To correspond". Expression does not usually or properly mean "to be identical with" but "to harmonise with" or "to be suitable to." **A I R 1955 N U C (Orissa) 2140 (DB).**

"Corresponding law."

See (1) M. P. Extension of Laws Act (23 of 1958), S. 6.
(2) Merged States (Laws) Act (1949), S. 5.

"Corrupt and illegal practice."

See (1) C. P. and Berar Local Government Act (38 of 1948), S. 182 (2) (vi).
(2) Panchayats — C. P. and Berar Panchayats Rules (1948), R. 2.

"Corruption"

See (1) Constitution of India, Arts. 310 and 311.
(2) Madras Civil Services Disciplinary Proceeding Tribunal Rules (1948).
(3) Prevention of Corruption Act (1947), S. 5(1).

"Corrupt practice"

See Representation of the People Act (1951), S. 123.

"Costs shall abide the event."
See Civil P. C. (1908), S. 35.

"Costs will abide the result".
See Civil P. C. (1908), S. 35.

"Cotton cloth manufactured on hand-looms".

—Literal meaning of 'cotton cloth' would be cloth made of cotton — Embelishments in texture by use of negligible quantity of other fabric such as jari or silk — Cloth would still be cotton cloth — Where embelishment is substantial causing substantial increase in price, it would not be cotton cloth — It is a question of fact as to whether progress with jari border or pallas are cotton cloth or otherwise. This will equally apply to silk or artificial silk. See Sales Tax — Madhya Bharat Sales Tax Act (30 of 1950), S. 4 (2). **AIR 1956 Madh Bha 214 (DB).**

●**"Could" and 'did'.**

—Averment that respondent "could" in furtherance of his election enlist support of Government servant —"Could" can only mean that respondent was in a position to enlist support of Government servants — It does not amount to averment that in fact the respondent enlisted their support — Difference between "could" and "did" is too elementary to be mistaken. See Representation of the People Act (1951), S. 123 (8). **AIR 1957 SC 444.**

'Counterfeit'.

—See Penal Code (1860), Ss. 28, 486.

"Countersign"
See Constitution of India, Arts. 226 and 32.

"Country liquor".

—Indian beer not flavoured or coloured to resemble foreign liquor is "country liquor". See Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 5 (3) (a). **(1962) 13 S T C 436 (Mys).**

[Overruled on another point in AIR 1964 Mys 190 (FB).]

"Course of employment".
See (1) Employees' State Insurance Act (1948), S. 2 (8).
(2) Workmen's Compensation Act (1923), S. 3.

"Court".
See also (1) Arbitration Act (1940), Ss. 21, 37.
(2) Civil P. C. (1908), Ss. 24, 63, 86, 113, 115.
(3) Constitution of India, Art. 227.
(4) Contempt of Courts Act (1926), Ss. 2 and 3.
(5) Contempt of Courts Act (1952), S. 3.
(6) Criminal P. C. (1898), Ss. 6, 195.
(7) Industrial Disputes Act (1947), Ss 27, 36.
(8) Panchayats — Rajasthan Panchayat and Nyaya Panchayat Election Rules (1960), R. 78.
(9) Sales Tax — Madras General Sales Tax Act (1939), S. 9.

●—Tribunal under Displaced Persons (Debts Adjustment) Act, is "court". — See Banking Companies Act (1949), S. 45C. **AIR 1956 SC 614.**

●**"Court established by Royal Charter".**

A High Court established by Royal proclamation in the former state of Bikaner must be taken to be established by a Royal charter within meaning of Art. 183 of Limitation Act (1908). See Rajasthan Limitation Act (Adaptation) Ordinance (6 of 1950), S. 3. **AIR 1962 Raj 43 (FB).**

"Court immediately below"
See Constitution of India, Art. 133 (a).

"Court of competent jurisdiction".
See (1) Civil P. C. (1908) S. 11.
(2) Panchayats—Punjab Gram Panchayat Act (4 of 1953), S. 41, Proviso.

"Court of Session".
See Criminal P. C. (1898), S. 408.

"Court or tribunal".
See (1) Civil P. C. (1908), S. 9.
(2) Constitution of India, Art. 136.

"Cowle".

—Use of the word "Cowle" in a grant is not in any way derogatory to the complete interest being created in favour of the grantee. See Tenancy laws—Madras Estates Land Act (1 of 1908), S. 3 (5). **(1957) 2 An W R 420.**

"Creditor".
See also Tenancy laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S 45.

—Definition of "creditor" in S. 2 (a), Presidency Towns Insolvency Act is inclusive one and not exhaustive. It includes assignee of a decree-holder. See Presidency Towns Insolvency Act (1909), S. 9 (1). **AIR 1955 Bom 77 (DB).**

—Word "creditors" in S. 6 (b), Provincial Insolvency Act means creditors of debtor generally and not some particular creditor or creditors. See Provincial Insolvency Act (1920), S. 6 (b). **AIR 1958 Cal 319 (DB).**

"Criminal charge".
See Constitution of India, Art. 311 (2). Proviso (a).

"Criminal law"—Meaning".

—Item "criminal law" in Entry 1, List 3 of Sch. 7 of the Constitution includes all matters included in the Indian Penal Code at the commencement of the Constitution, some of which offences are against public tranquillity and affecting public safety. Wilfully burning copy of the Indian Constitution or wilfully desecrating or insulting it, is likely to disturb public tranquillity and in a broad sense may affect public safety. On this view S. 5 of the Madras Prevention of Insults to National Honour Act, passed by the State Legislature is within the legislative competence of the state legislature. See Madras Prevention of Insults to National Honour Act (14 of 1957), S. 5. **1965 (1) Cri L J 49 : AIR 1965 Mad 11 (DB).**

"Criminal misconduct."

—A public servant is said to commit an offence of criminal misconduct in the discharge of his duty, if he by corrupt or illegal means or by otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. Dishonest production of a false person before the officer by a public servant in the discharge of his duty and getting him paid certain sum which he was not entitled to receive would amount to "criminal misconduct" and would be covered by the term corruption—See Constitution of India, Art. 311. **ILR (1965) 1 Punj 651 : 67 Pun L R 404 : A I R 1966 Punj 175.**

"Criminal proceeding"

—The expression "criminal proceeding" in S. 211, I P. C. is wide enough to include a proceeding under Chapter 4 of Criminal P. C.—See Penal Code (1860), S. 211. **1965 Ker L T 865 : (1965) 2 Ker L R 117 : 1965 Ker L J 877 : I L R (1965) 2 Ker 329 : 1966 Cri L J 26 : AIR 1966 Ker 11 (FB).**

"Crop or other product raised on land".

—Trees are not crop. What is meant by expression "crop or other product raised on the land" must be what is familiarly known in the law as "emblements. Trees planted on Government land by a trespasser are not "crop". See under Travancore Land Conservancy Act (4 of 1091), S. 9. **1965 Ker L T 666 : (1965) 1 Ker L R 489 : 1965 Ker L J 858 : ILR (1965) 2 Ker 173 : AIR 1966 Ker 72 (DB).**

"Crushing Season"

—The expression "Crushing Season" in relation to Sugar Factory in U. P. has to be construed in its ordinary meaning unless it is shown that in the the industry it has acquired some other sense. It means merely the period during which the crushing operations are carried on and not the period during which the Factory was actually working. The crushing season must deemed to have ended on the date on which the crushing operations in the sugar factory came to an end and not on the date on which the manufacturing process in the factory came to and end — See Industrial Disputes Act (1947), Sch. 3 Item 4. (1963) 2 S C J 488 : (1963) 3 S C R 571 : AIR 1967 S C 161.

"Cultivable land"

—Waste land covered with shrubs and jungle is not uncultivable lands merely on account of that or on account of its not being cultivated for a long time — Land which can be brought under cultivation without undue expenditure of money and labour is cultivable land unless some provision of law provides for holding it otherwise in certain circumstances. AIR 1965 S C 338 (340) (Pt B) (Pr 5).

"Cultivating" and "Agriculture"

—Meaning of words "cultivaling" and "agriculture" in S. 2, Bombay Tenancy and Agricultural Lands Act explained—Grass naturally grown on land— Fencing of land and keeping watchman is not cultivation. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 2. AIR 1955 N U C (Bom) 2318 (DB).

"Cultivating tenant"

—A person who takes on lease for enjoyment of the usufruct of the cashewnut plantation thereon is a cultivating tenant. See Tenancy Laws — Madras Cultivating Tenants Protection Act (25 of 1955), S. 2 (a). (1960) 2 Mad L J 475.

—In order to be a "cultivating tenant" or a 'tenant' a person should not be the owner of the land and he should hold the land under tenancy agreement express or implied. Such agreement need not be directly with the owner of the land. See Tenancy Laws — (Madras) Tanjore Tenants and Pannaiyals Protection Act (4 of 1952), S. 2 (d). A I R 1954 Mad 805.

"Cultivator"

—See Cattle Trespass Act (1871), S. 10. 1960 Cr L J 932 : AIR 1960 Mad 331.

—"Cultivator" means person who tills or produces by tillage or prepares for crop. See Tenancy Laws— Chota-Nagpur Tenancy Act, S. 64. AIR 1955 N U C (Raj) 5001.

"Culvert"

—Tariff Act (1934), Sch. 1, Item 63 (9)—"Culvert" would come under expression "bridges." See Tariff Act (1934), Sch. I, Item 63 (9). AIR 1958 Cal 630.

"Curative statutes" —Meaning explained.

—"Curative statutes" are those which attempt to cure or correct errors and irregularities in judicial or administrative proceedings and which seek to give effect to contracts and other transactions between private persons which otherwise would fail to produce their intended consequence on account of some statutory disability or failure to comply with some technical requirement. 1950 Mad W N 24 : (1950) 1 Mad L J 508 : 1950 Mad W N (Cri) 4 : 51 Cri L J 754 : A I R 1950 Mad 324 (329, 330) (Pt C) (Pr 7) (DB).

"Current reparis"—Meaning of.

—See Income-tax Act (1922), S. 10 (2) (v). AIR 1956 Bom 453 (DB).

"Current repairs to machinery".

—See Income-tax Act (1922), S. 10 (2) (v). AIR 1956 Pat 134 (DB).

"Current topics"—Meaning of.

—See Post Offices Act (1898), S. 9 (2). A I R 1956 All 87.

"Custody"

See (1) Evidence Act (1872), S. 27.
(2) Payment of Wages Act (1936), S. 7 (2) (c).

"Customer"—Meaning.

See Banker and Customer.

"Cut"

—"Cut"—Cuts any electric supply line —Meaning of —See Electricity Act (1940), S. 40. A I R 1955 N U C (Raj) 4060.

"Damage".

—Word "damage" connotes a genus while deterioration and destruction connote bad species. See Railways Act (1890), S. 77. AIR 1962 Madh Pra 301 (DB).

—The word 'Damage' in Item 50 of Iron and Steel Control Price Circular issued by the Government of India, is not to be read by itself but as part of the phrase 'damaged but re-utilisable'. 'Re-utilisable' is a simple word meaning capable of being used again and implies previous use. 60 Punj L R 355: AIR 1958 Punj 270 (273) (Pt B) (Pr 13) (DB).

—The jurisprudential meaning of word "damages" is that it is nothing more than the compensation which the Court determines in the circumstances of each case for the injury or loss which has been sustained by the other party — Claim for damages when becomes "debt" within meaning of S. 2 (6), Displaced Persons (Debt Adjustment) Act, 1951, indicated. See Debt Laws — Displaced Persons (Debt Adjustment) Act (1951), S. 2 (6). AIR 1956 Punj 174 (DB).

"Damdati".

—It does not mean threat but may mean persuasion by sweet talk alternated by rough talk. A I R 1955 NUC (Raj) 525 (DB).

—"Ruinous" or "dangerous" in relation to a house means that the house may come down at any time. It does not mean that it must come down or that the fact that it has not come down for some years makes it less dangerous. See Municipalities — Indore Municipal Act, S. 71. 1960 M P L J 697.

"Dangerous part of a machinery".

See Factories Act (1948), S. 21 (1).

"Darobasthu".

—The word 'darobasthu" in the grant gives an indication as to the character of the grant that was contained in the permanent cowle. See Tenancy Laws —Madras Estates Land Act (1 of 1908), S. 3 (5). (1957) Andh W R 420.

"Date".

—"Date" means "Close of day" — Magistrate passing order under S. 251A (11), Criminal P. C. very soon after taking his seat in Court — Magistrate is in error in doing so. See Criminal P. C. (1898), S. 251A (7). 1965 All Cri R 471: 1965 All W R (HC) 686.

"Date fixed for general election or bye-election."

—"Date fixed for general election" or bye-election", does not mean date fixed for filing nomination papers. See Panchayats—M. P. Gram Panchayats Election and Co-option Rules (1963), R. 11 (6). AIR 1965 Madh Pra 251 (DB).

"Date of award".

See (1) Land Acquisition Act (1894), S. 18 (2), Proviso (b).
(2) Cochin Land Acquisition Act (1070), S. 17.

"Date of order".

—Court passing order in absence of party without having previously informed it of the day on which it was going to be passed — Date of passing the order is not a starting point for limitation — Limitation starts from the date on which the party in question came for the first time to know as to when the order was passed. See Civil. P. C. (1908), S. 115. A I R 1953 Bilaspur 9.

—"Date of the order" — May mean date of receipt of order. See Tenancy Laws — Bombay Tenancy Act (29 of 1939), S. 25. A I R 1955 N U C (Bom) 6056 (DB).

—In case of parties, "date of the order" of adjudication is the date of order, because they would have known of the prononcement—In case of third parties the starting point would be the date of Gazette notification which would fix them with knowledge of the order. See Provincial Insolvency Act (1920), S. 75 (4). AIR 1953 Mad 465.

——Word "Davao" may mean claim—Words "Mahesul adalat" do not include any executive officer collecting revenue — Only express legal provision will make executive authority Revenue Court.

—The word "Davao" may mean claim (and objections) for it cannot properly be said that there were any suits at all before any Revenue Court before the Act came into force. But it cannot be held that the expression "Mahesul adalat" includes any executive officer collecting revenues. When those words are deliberately used they must refer to a Revenue Authority on whom the power of entertaining claims objection and petitions and of investigating into them, in a manner resembling the manner of investigation by Courts and of deciding on them after due consideration, is conferred by any law for the time being in force. The words "Mahesul adalat" cannot refer to any office less than that. Only an express legal authority will make an executive authority a Revenue Court. AIR 1950 Kutch 8 (8) (Pt B) (Pr 3).

"Dawa".

—The Kannada expression 'Dawa' does not mean only the plaint. It actually comprehends the suit itself, or the dispute which is brought to Court for adjudication in a proceeding which is called a suit. (1965) 2 Mys L J 87 : AIR 1967 Mys 147 (150) (Pt C) (Pr 16).

"Day"

—"Day" contemplated by Rr. 1 and 2 of O. 17, Civil P. C., is "day" other than the "day" on which the suit had been taken up before the grant of adjournment. See Civil P. C. (1908), O. 9, R. 9. 1965 All L J 575.

—Order of detention passed on 29th May 1960 — Order would lapse on midnight between 10th and 11th May 1960 — Order of approval by State Government on 11th May 1960 is of no avail — In computation of twelve days, "day" on which order of detention was passed will be included. See Public Safety — Preventive Detention Act (1950), S. 3 (3). ILR (1961) 1 All 427.

"Dealer".

See (1) Madhya Bharat Kerosene Control Order (1949), S. 3 (Kha).
(2) Sales Tax — Bengal Finance Sales Tax Act, S 2 (c) (i).
(3) Sales Tax — Bihar Sales Tax Act (1944), S. 2 (c).
(4) Sales Tax — C. P. & Berar Sales Tax Act (1947), S. 2 (c).
(5) Sales Tax — Central Sales Tax Act (1956), S. 2 (b).
(6) Sales Tax — Madras General Sales Tax Act (1939), S. 2 (b).
(7) Sales Tax — Orissa Sales Tax Act (1947), S. 2 (c).

"Dealing and transport."

—Dealing means engaging in a business of purchase, sale, storage or distribution; distribution in this context means distribution to purchasers. Transport is the taking away from place to place by the owner of the property. It may be that the person transporting is a dealer and really transports the article with a view to distributing it. But the two acts are different. 1953 Cri L J 70 : AIR 1952 Vindh Pra 86 (87) (Pt B) (Pr 5).

"Dealing with offences."

—Words "dealing with offences" in S. 13 (1) of the Suppression of Immoral Traffic in Women and Girls Act, cannot be taken to mean something separate and distinguishabie from the process of investigation though it has been found convenient to give separate labels whenever necessary to the different facets of police activity. See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 13 (1). 1961 (1) Cri L J 361: AIR 1962 Punj 91.

"Debt."

See also (1) Contract Act (1872), S. 59.
(2) Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), Ss. 2 (6) (a) and 13 (3).
(3) Debt Laws — Hyderabad Jagirdars Debt Settlement Act (1952), S. 2 (c).
(4) Debt Laws — Madras Agriculturists Relief Act (1930), Ss. 9 and 13.
(5) Hindu Law.
(6) Provincial Insolvency Act (1920), S. 9 (1) (b).
(7) Succession Act (1925), Ss. 214 (1) (a) and 370.
(8) Wealth Tax Act (1957), Ss. 2 (m) (iii) and 3.

—Trust and debt — Distinction pointed out—Essential quality of "debt" indicated. See Trusts Act (1882), S. 3. AIR 1962 All 376 (DB).

—Debt and liability — There is distinction between them — Dividend when proposed does not become "debt" but becomes "debt" when declared—Case for provision for taxation is a liability. See Companies Act (1956), S. 211. AIR 1961 Cal 649.

[Reversed on another point in AIR 1965 Cal 70].

—Substance of a loan is a right in the creditor to demand payment and the substance of a "debt" is a liability upon the "debtor" to repay the money. See Debt Laws — Bengal Agricultural Debtor's Act (7 of 1937), S. 2 (8). (1952) 56 C W N 728 : AIR 1953 Cal 232.

—The term "debt" is no doubt commonly used to describe liabilities which have an origin in contract but the connotation of that term should not be restricted to such liabilities only. Anything due and payable is a "debt" When money is paid to a person who is not entitled to it, under the mistaken impression that the money was due to him, there is an obligation on him to refund the money and such liability must be deemed to have arisen on the date of the payment itself.

Such a liability to refund if incurred during the Japanese occupation period in Malaya, would fall within the definition of occupation debt in Malayan Ordinance (42 of 1948). 74 Mad L W 145:1961 Mad W N 210 : 1 L R (1961) Mad 427:AIR 1961 Mad 438 (442) (Pt C) (Pr 12) (DB).

—Word "debt" evidently is independent of the liability created by the decree itself. In the absence of any specific definition, it has to be given the ordinary connotation of a loan, which as commonly understood, is an advance of money or in kind at interest. It does not include a claim for damages but a liquidat-

ed money demand. See Civil P. C. (1908), S. 115. AIR 1957 Nag 97 (DB).

"Debt due."

—The expression "a debt due" means that a particular liability is in existence. 'Due' does not emphasise the moment of time when that liability is to be discharged but emphasises the existence of the debt and not the time when the debt is to be discharged. 'Debt due' is not the same as "debt recoverable" or "debt payable". See Debt Laws — Bombay Agricultural Debtors' Relief Act (28 of 1947), S. 17 (1) (b). A I R 1953 Bom 196.

"Debtor."

—Bombay Money-lenders Act (31 of 1947), S. 30(1)—Purchaser of equity of redemption of mortgage at court sale — Not a debtor. See Debt Laws—Bombay Money-lenders Act (31 of 1947), S. 30 (1). (1962) 3 Guj L R 1002.

●—Transferee of equity of redemption, if a debtor. See Debt Laws — Usurious Loans Act (1918), S. 3. AIR 1955 Pat 494 (FB).

"Debt owed'—Meaning of.

See Wealth Tax Act (1957), S. 2 (m).

"Debt payable."

●—Expression "Debt payable" by an agriculturist at commencement of this Act in S. 7, Madras Agriculturists Relief Act, interpreted — AIR 1960 Mad 207, Overruled. See Debt Laws — Madras Agriculturists Relief Act (4 of 1938), S. 7. AIR 1961 Mad 313 (F B).

"Debts provable"

See Provincial Insolvency Act (1920), S. 78 (2). AIR 1960 Andh Pra 257 (DB).

"Decency."

—Words "decency" and 'morality' are not well understood — Their precise meaning might be differently understood—S. 9, Punjab Security of the State Act imposing restriction on freedom of speech and expression in the interest of "decency" and 'morality' without clearly specifying the prohibited acts — Whether restrictions are reasonable or not, cannot be decided — Restrictions are both vague and unreasonable and to this extent S. 9 is invalid. See Public Safety — Punjab Security of the State Act (12 of 1953), S. 9. AIR 1956 Ajmer 52.

"Decides."

—"Decide" does not imply "try or hear" — It means something altogether different which follows after the trial or the hearing is complete. See Debt Laws — Madhya Pradesh Money-lenders Act (13 of 1934), S. 7 (a). 1962 M P C 292.

—Decision involves hearing all parties concerned. See Orissa Education Code, Art. 107. AIR 1959 Orissa 196 (DB).

"Decision."

—Per Agarwala J. — "Decision" of a Cane Commissioner or the 'award' of an arbitrator in sub-rr. (6), (8) under S. 30, U. P. Sugar Factories Control Act, are inter-changeable terms — Both are one and the same thing. Per Mootham J. — To hold that 'award' of arbitrator includes "decision" of Cane Commissioner would involve injustifiable straining of language. See U. P. Sugar Factories Control Act (1 of 1938), S. 30. AIR 1956 All 725 (DB).

—Word "decision" in S. 5A, Land Acquisition Act is not determinative of the question whether act is administrative act or quasi-judicial act. See Land Acquisition Act (1894), S. 5-A. AIR 1963 Guj 50 (DB).

—"Decision" under O. 17, R. 3, Civil P. C. must be on merits. See Civil P. C. (1908), O. 17, R. 3. AIR 1963 Him Pra 30.

●—Word "decision" in Art. 133 (1) of the Constitution is equivalent to word 'decree.' It embraces final determination on all claims put forward in controversy between parties in suit or proceedings. See Constitution of India, Art. 133 (1). AIR 1956 Pat 325 (FB).

"Declaration."

—"Declaration" in S. 75 (1), Railways Act means a written communication by a person delivering the parcel of goods to Railway Administration for carriage by Railway, telling the administration the nature, value and description of goods so delivered so that special freight, if leviable, may be levied. See Railways Act (1890), S. 75 (1). 59 Bom L R 117 : ILR (1957) Bom 321 (328).

"Declares."

—Word "declares" in the context of S. 40 (2A), West Bengal Premises Tenancy Act means "to make known," to 'announce.' In the realm of law, 'to enact' means to 'establish by law.' See Houses and Rents—West Bengal Premises Tenancy Act (12 of 1956), S. 40 (2-A). AIR 1963 Cal 470.

"Decree."

See also (1) Civil P. C. (1908), S. 2 (2) and O. 41, R. 22.
(2) Constitution of India, Art. 133.

—Word "decree" in O. 38, R. 5, Civil P. C. is not limited to decree passed on adjudication. It may relate to decree passed on consent or compromise between parties, provided it is not collusive. See Civil P. C. (1908), O. 38, R. 5. AIR 1957 Assam 71 (DB).

"Decree appealed from."

●—Expression "decree appealed from" in S. 12 (3), Limitation Act (1908) includes a decree against which a person seeks leave to appeal. See Limitation Act (1908), S. 12 (2). AIR 1957 All 334 (FB).

"Deduction."

—It is not appropriate or possible to give to the words "deduct" and "deduction" in S. 64A (b), Sale of Goods Act, a meaning which relates to the physical act of "deduction" at the time of payment of price — In the context the word "deduct" refers and relates to and means the right to subtract and/or take off the duty in the process of calculation of and arriving at the contract price. See Sale of Goods Act (1930), S. 64-A (b). AIR 1962 Bom 222.

—Word "deduction" in S. 15, Payment and Wages Act should be construed in wider sense when applying provisions of S. 15. An amount pertaining to wages which ought to have been paid and which has not been paid should be called a "deduction" from wages. See Payment of Wages Act (1936) (as amended by Act 68 of 1957), S. 15 (2). AIR 1965 Raj 11 (DB).

"Deemed."

See also Interpretation of Statutes.

●—Word "deemed" in S. 4, Income-tax Act within the net of chargeability income not actually accrued but which is supposed notionally to have accrued—In involves a number of concepts. See Income-tax Act (1922), S. 4. AIR 1954 S C 155.

—Whenever the word 'deemed' is used in statute in relation to a person or a thing, it implies that the legislature after due consideration exercised its judgment in conferring that status or attribute to a person or thing. See Criminal Law (Amendment) Act (1952), S. 8. 1958 Cri L J 834 : AIR 1958 All 492 (DB).

—Use of the words "deemed" to be substituted in S. 16, Industrial Disputes (Appellate Tribunal) Act clearly implies that the result of the decision of the Appellate Tribunal is that the award of the Industrial Tribunal for all purposes becomes non-existent and

its place is taken by the decision of the Appellate Tribunal. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 16. AIR 1958 All 80 (DB).

—Where a statute declares that a person or thing shall be "deemed" to be or shall be treated as something which in reality it is not, it shall have to be treated as so during the entire course of the proceeding. See Houses and Rents — Assam Urban Areas Rent Control Act (3 of 1948), S. 9. AIR 1954 Assam 177 (DB).

—It is the normal meaning of use of the word "deemed" in legislation, that by law something or someone is to be taken to be something or someone which in fact it or he is not. AIR 1951 Cal 139 (140) (Pt B) (Pr 5).

—"Deemed" is a word which is apt to include the obvious, the uncertain and impossible. See Estate Duty Act (1953), S. 23. AIR 1965 Guj 9 (DB).

—The word "deemed" is more commonly used for the purpose of creating 'a statutory fiction' that is for the purpose of extending the meaning of some term to a subject-matter which it does not properly designate. When used in that sense, it becomes very important to consider the purpose for which the statutory fiction is introduced. AIR 1956 Manipur 34 (38) (Pt C) (Pr 9).

—Words "deemed to have accrued" in S. 29 (2) of Bombay Tenancy and Agricultural Lands Act suggest a fiction that the right to possession has not in fact accrued to the landlord but it would be "deemed" to have accrued. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29 (2). ILR (1958) Mys 88.

—In statutes, the phrase "deemed to be" is generally used only to extend the application of a provision of law to a clause which would not be otherwise amenable to it. See Municipalities — Orissa Municipal Act (23 of 1950), S. 12 (1). ILR (1965) Cut 705 (Orissa).

"Deemed to be."

●—When a thing is "deemed to be" something the only meaning possible is that whereas it is not in reality that something, the Act directs that it should be treated as if it were that thing. AIR 1957 All 541 (545) (FB).

"De facto guardian."

—A "de facto guardian" is one who is not a legal guardian or a testamentary guardian or a Court guardian but who being interested in the minor, though a stranger, takes charge of the management of the minor's property. This rules out cases of fugitive or isolated act of a person with regard to the minor's property and which would not make him a "de facto guardian" of the minor. There must be continuous course of conduct as guardian of minor in regard to his property, the length of period being dependent upon the circumstances of each case. AIR 1956 Mad 476 (DB).

"Default."

—"Default" envisaged in R. 57 of O. 21, Civil P. C. not confined to non-appearance or non-payment of batta or failure to produce necessary documents. It also includes failure to do things for the successful execution of the decree. See Civil P. C. (1908), O. 21, R. 57 (1), Proviso (Mad). AIR 1957 Andh Pra 991.

"Defaulter".

—"Defaulter" does not mean a person who admits himself to be so. The term also includes a person who contests his liability. See Patiala Recovery of State Dues Act (4 of 2002 B. K.), S. 11. ILR (1961) 2 Punj 823.

"Defeated candidate."

—A candidate cannot be said to have been defeated unless he has an opportunity to enter into a contest with others and solicit votes, of the electors and then lose on account of not being able to get sufficient number of votes. See Constitution of India, Art. 226. AIR 1957 Raj 163.

"Defect."

—Word "defect" in O. 21, R 90 according to its connotation covers any omissions, irregularities or deficiencies but not also a fraudulent suppression or distortion of facts. See Civil P. C. (1908), O. 21, R. 90 AIR 1956 Cal 59 (DB).

"Defence against eviction."

—"Defence against eviction" in S. 13 (4) and (6) M. P. Accommodation Control (Amendment) Act (1961), means "defence against eviction" resting on S. 12 of the Act and when an order under those subsections is made striking out the tenants "defence against eviction", the tenant does not lose his right of putting up a defence to the ejectment suit which does not fall under S. 12. See Houses and Rents — M. P. Accommodation Control (Amendment) Act (8 of 1961), S. 13. 1964 Jab L J 87 : 1964 M P L J 190 : ILR (1963) Madh Pra 669.

"Definite information."

See Income-tax Act (1922), S. 34 (1).

"Definite matter of public importance."

See Commission of Inquiry Act (1952), S. 3 (1).

"Definitions."

See Interpretation of Statutes.

"Delayed wages"

See Payment of Wages Act (1936).

"Delegation."

See Constitution of India, Art. 245.

"Delimit."

——'Delimit' and 'Redelimit.'

—The word 'delimit' in its natural sense means 'to mark out as a boundary, to bound, to mark or determine the limits of; to define as a limit or boundary.' It is used in the sense of adjusting or demarcating the boundaries between two entities belonging to two different persons or countries or bodies. The word 'delimit' or 'redelimit' connotes only the determination of a limit or boundary, specially a frontier of a territory, and is totally inappropriate in its use to annex a territory of a neighbour in such a way as to deprive it altogether so as to bring about its total extinction. (1965) 1 Andh W R 317 : AIR 1965 Andh Pra 40 (47, 48) (Pt B) (Pr 23) (DB).

"Demand."

See also under Limitation Act (1908), Art. 60.

●—Word "demand" ordinarily means something more than what is due; it means something which has been demanded, called for or asked for. But the meaning must take colour from the context in which the word is used. In cl. (g) of S. 13-D, U. P. Municipalities Act, the context in which the word is used has a very obvious and clear reference to the amount of arrears or dues on which the disqualification depends. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 13-D (g). AIR 1957 S C 871.

—Word "demand" in the explanation to S. 48 (1) of Bihar and Orissa Co-operative Societies Act, merely means a legal claim. See Co-operative Societies — Bihar and Orissa Co-operative Societies Act (6 of 1935), S. 48 (1). 1960 B L J R 520 : ILR 40 Pat 7.

[Overruled in AIR 1962 S C 1367.]

—The word "demand" in S. 54, Bombay Co-operative Societies Act, should be given ordinary dictionary meaning which would include "any claim" irrespective of the fact whether it is backed by statute or not. See Co-operative Societies — Bombay Co-operative Societies Act (7 of 1925), S. 54 (as applicable to

Delhi). (1965) 67 Punj L R 566 : ILR (1965) 2 Punj 61.

"Demonstration."

●—Broadly speaking "demonstration" is a visible manifestation of the feelings or sentiments of an individual or a group. It is communication of one's ideas to others to whom it is intended to be conveyed. It is in effect, therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. See Constitution of India, Art. 19 (1) (a). AIR 1962 S C 1166.

—"Demonstration" always means expression of resentment by a number of persons grouped together. See Criminal P. C. (1898), S. 144. 1960 Cri L J 215 : AIR 1960 Assam 20.

"Denial of title of landlord."

See also (1) T. P. Act (1882), S. 111 (g).
(2) Evidence Act (1872), S. 116.

—The lessees deny the title of their landlord within meaning of S. 3 (f), U. P. Temp. Control of Rent and Eviction Act, 1947, when they allege that the person from whom they have taken the lease is not the sole proprietor of the accommodation they are holding but is only a co-sharer along with another person. See Houses and Rents—U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 3 (f). AIR 1958 All 847 (DB).

"Denotes."

●—Use of the word "denotes" in a definition clause shows that the legislature did not intend to put down a cast-iron definition of the word but only sought to describe what the word might mean. A I R 1957 All 541 (545) (FB).

"Department."

—"Department" of Govt. is a particular activity or a branch of Govt. under the political charge or control of minister or a minister of State responsible to the legislature. See Specific Relief Act (1877), S. 56. AIR 1952 All 520 (DB).

"Dependent."

See (1) Houses and Rents — Delhi :Rent Control Act (59 of 1958), S. 14.
(2) Workmen's Compensation Act (1923), S. 2 (1) (d).

"Deposit."

—"Deposit" and loan—Distinction between "deposit" not for a fixed term and loan is that the "deposit" does not impose an immediate obligation on the depositee to seek out the depositor and repay him—He is to keep the money until asked for, whereas in the case of a loan it is the debtor or the person to whom the loan was paid who is to seek the creditor. See Limitation Act (1908), Art. 59. (1958) 2 Andh W R 621.

—"Deposit" does not mean sending money by money order. See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 12 (1) (b). AIR 1955 NUC (Cal) 2942.

●—Money belonging to one can be said to be in "deposit" only with another person or authority. It can never be a "deposit" in the hands of the very person to whom the money belongs. See Provident Funds Act (1925), S. 2 (a). AIR 1956 Mad 283 (FB).

"Deposit and loan."

See Limitation Act (1908), Arts. 59 and 60.

"Deprave" and "Corrupt."

—Words "deprave" and "corrupt" in S. 3 (c), Rajasthan Dramatic Performances and Entertainments Ordinance, 1949, should be understood having regard to the ordinary moral standards of the society. Considered thus, they are not vague. See Rajasthan Dramatic Performances and Entertainments Ordinance (29 of 1949), S. 3 (c). 1953 Cri L J 1283 : AIR 1953 Raj 162 (DB).

"Deprivation."

See Constitution of India, Arts. 31, 31A and 31B.

"Deputy Tahsildar."

—Officer of the Revenue Department (Madras) exercising powers as stationary Sub-Magistrate is a "Deputy Tahsildar" and therefore a member of the Revenue Subordinate Service. See Madras Service Manual Vol. 3. AIR 1956 Mad 613 (DB).

"Derived."

See also Income-tax Act (1922), S. 4 (3).

●—The word "derived" is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. See Income-tax Act (1922), S. 2 (1) (a). AIR 1965 S C 1836.

"Descend."

—Property is said to "descend" when the estate vests by operation of law in the heirs immediately upon the death of the ancestor. When property devolves by rule of hereditary succession on the death of an ancestor, it is said to "descend." By the word "descend" is understood the passing of the property to the heir or heirs without disposition by will or by alienation in the form of gift, sale etc. It is a transmision by inheritance from ancestor to the next heir. AIR 1958 Punj 164 (165, 166) (Pr 7) (Pt C).

"Descriptions."

●—The word "matter" in S. 5, Stamp Act does not convey the same meaning as the word "description" in in S. 6 of the Act. Both these words have different connotations. See Stamp Act (1899), S. 4. AIR 1956 S C 35.

"Desertion."

See (1) Madras Hindu Bigamy Prevention and Divorce Act (6 of 1949), S. 5 (1) (c).
(2) Hindu Marriage Act (1955), S. 10.
(3) Divorce Act (1869), S. 10.
(4) Rajasthan Armed Constabulary Act (12 of 1950), S. 6 (e).

"Despatched"

See Coal Mines (Conservation and Safety) Act (1952), S. 8 (1) (a).

"Detain."

See also (1) Constitution of India, Art. 22.
(2) Penal Code (1860), S. 498
(3) Preventive Detention Act (1950), S. 3.

—Expression "failed to obtain promotion" in Cl. 5 of Chap. XIII of Regulations of under S. 16, M. B. Board Secondary Education Act, 1950, has to be read in the limited meaning which is known as "detaining a student in a class." In the context the word "detain" would apply to a case where a student who seeks to be promoted, is not promoted to the higher class but is detained in the same class either because he does not secuire the requisite marks or because he is held back for adopting foul means at the examination or for some such reason. But "detaining" must be by an authority. A student cannot be told, "since you left the class in September, you are detained in that class." See M. B. Board of Secondary Education Act (51 of 1950), S. 16. AIR 1959 Madh-Pra 367 (DB).

"Deterioration."

—Expression "deterioration" in S. 9 (2) (a) of Bom. Land Requisition Act, 1948, is not used as distinct from "damage"; it merely means "impairment in value." It may be from natural causes as well as from human agencies, except when damage is done intentionally or maliciously. See Bombay Land Requisition Act (33 of 1948), S. 9 (2) (a). ILR (1958) Bom 771.

—Word "deterioration" in S. 72, Railways Act and S. 161, Contract Act is wide enough to include depreciation in value on account of a fall in the price of goods. See Railways Act (1890), S. 72 (1). AIR 1963 Orissa 68.

"Determination."

—The expression "determination" in the definition of "award" in the Industrial Disputes Act, indicates only a coming to an end of a dispute. See Industrial Disputes Act (1947), S. 10 (1) (c). AIR 1960 Ker 31 (34).

—Meaning of word "determination" in 73, Orissa Hindu Religious Endowments Act— Legislative history dealing with new provisions of S. 73 reviewed as guide to proper interpretation. See Orissa Hindu Religious Endowments Act (2 of 1952), S. 73. AIR 1965 Orissa 76 (77-80) (DB).

"Devadayam."

—The word "Devadayam" is not decisive as to whether the grant was to a temple or a personal grant burdened with service. There is no presumption that the grant is one in lieu of wages or one burdened with service. Question turns upon the particular facts of each case. AIR 1957 Andh-Pra 477 (DB).

"Development of land."

—Acquisition "for the development and utilisation of land as an industrial area — "Development of land" means utilisation of potentialities of land by building or mining. See Constitution of India, Art. 31. AIR 1965 Bom 224 (DB).

[Overruled on another point in AIR 1968 S C 870.]

"Devolution."

—Words "devolution or succession" in Entry 47, List II, Sch. VII, of the Constitution, imply passing of property to another on death of person and cannot apply to transfers inter vivos. See Constitution of India, Sch. 7, List II, Entry 47. AIR 1962 Ker 97 (DB).

—Expression "devolution" "succession" or "transfer" in provincial and concurrent lists include partition of joint family property. Chapter VI of Madras Aliyasanthana Act is enacted competently. See Constitution of India, Sch. VII, List, Entry 18. AIR 1956 Mad 642 (DB).

—Word "devolution" in O. 22, R. 10 has been used to connote the accession of a right. See C. P. Code, O. 22. R. 10. AIR 1952 Orissa 64 (DB).

"Dharmila."

—The term "Dharmila" is not a term of art, but is a convenient expression to describe those inams which are post-settlement as distinguished from those that are pre-settlement. Nedunuri Kameswaramma v. Sampati Subba Rao. (1963) 2 S C R 208 : (1963) 2 Mad L J (S C) 49 : (1963) 2 Andh W R (SC) 49 : (1963) 2 S C J 113 : AIR 1963 S C 884 (887) (Pt C) (Pr 10).

"Direction,"

See also Payment of Wages Act (1936), Ss. 15 and 17.

—"Finding" can only be which is necessary for disposal of appeal or case. "Direction" is a direction which the appellate or revisional authority is empowered to give under the enactment. See Income-tax Act (1922), S. 34 (3), Second Proviso. AIR 1965 S C 342.

"Director."

See also Companies Act (1956), S. 2 (13).

—Legal practitioner appointed "director" of company, to enable him to represent company in industrial proceeding circumventing the Industrial Disputes Act — Effect stated — See Industrial Disputes Act (1947), S. 36. AIR 1955 N U C (Bom) 19.

"Discharge."

See (1) Constitution of India, Art. 311.
(2) Employees' State Insurance Act, (1948), S. 73.
(3) Industrial Disputes (Appellate Tribunal) Act (1950), S. 22.
(4) Railways Act (1890), S. 138.
(5) Limitation Act (1908), S. 7.

"Discharged from liability."

—Expression "Discharged from liability', in Cl. 3, Para. 6, Art. III, in Schedule to Carriage of Goods by Sea Act, 1925, does not connote "free from remedy as regards liability" but is more apt to mean a total extinction of the liability following upon an extinction of right—In view of international character of the rules, Courts should be slow to put an interpretation which would produce varying results in different countries. See Carriage of Goods by Sea Act (1925), Sch. Art. III, Para 6, Cl. 3. AIR 1960 S C 1058.

"Discharge from service."

See Constitution of India, Art. 311 (2).

"Discipline."

—"Discipline and misconduct" — Breach of "discipline,' or 'misconduct' — Connotation of — Strictly possible connotation to be attached as "discipline" is the very core of police service. See Bombay Police Act (22 of 1951). S. 25 (1). 1963 (2) Cri L J 743 : AIR 1965 Guj 283 (DB).

"Discovers."

See Income-tax Act (1922) (as amended in 1939), S. 34.

"Discovery."

See Evidence Act (1872), S. 27.

"Discretion."

—"Discretion" means something to be done according to rules of reason and justice, and not according to private opinion — See Income-tax Act (1922), S. 33 (4). AIR 1955 N U C (Pat) 5955 (DB).

"Dishonest concealment of fact."

See Penal Code (1860), S. 415.

"Dishonestly."

See Penal Code (1860), S. 24.

"Dismiss."

—Word "dismiss" in fourth proviso to S. 82, U. P. District Boards Act, 1922, means to determine the appointment. Board which has power to make appointment has also power to unmake it. See U. P. District Boards Act (1922), S. 82. 1959 All L J 197.

"Dismissal from service" and "dispensing with service."

—Consequences of "dismissal" and "dispensing with" services are different. Punishment in the former involves some serious consequences to the person affected and is also a slur on his character. In such a case he should be afforded an opportunity. In the latter case, it is open to the master to dispense with services of a servant unless he was bound by some agreement not to do it. (1959) 1 Lab L J 554 (Andh Pra).

"Dismissal," "removal" and "reduction in rank."

See (1) Civil Services (Classification, Control and Appeal) Rules, R. 55.
(2) Constitution of India, Art. 310-311.
(3) C. P. and Berar Home Guards Act (1947).

"Displaced land-holder."

—A having lands at places X and Y—His death taking place at Y before partition of country — On partition X going to Pakistan and Y to India — A's name continued to be shown in jamabandi as owner of abandoned land in Pakistan—A held was not a "dis-

placed land-holder." ILR 1958 Punj 1090, **Overruled.** See East Punjab Refugees (Registration of Land Claims) Act (12 of 1948), S. 2 (c). **A I R 1964 Punj 246 (249) (DB).**

"Displaced person."
See (1) Debt Laws—Displaced Persons (Debts Adjustment) Act (1951), S. 2 (6) (a).
(2) Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 2 (10).

"Dispossession."
See (1) Criminal P. C. (1898), S. 145.
(2) Limitation Act, Arts. 142 and 144.
(3) Tenancy Laws—Bengal Tenancy Act (1885), Sch. 3, Art. 3.
(4) Tenancy Laws — Bihar Tenancy Act (8 of 1885), Sch. 3, Art. 3.
(5) Tenancy Laws — Pepsu Tenancy and Agricultural Lands Act (13 of 1955), S. 32FF.

"Dispute."
See also (1) Criminal P. C. (1898), S 145.
(2) Industrial Disputes Act (1947), Ss. 2 (K), and 10.

—Word "dispute" in S. 2 (j) of the Bengal Co-operative Societies Act has a limitation. It has to touch the business of the co-operative society — See Co-operative Societies — Bengal Co-operative Societies Act (21 of 1940), S. 2 (j). **AIR 1958 Cal 373.**

"Dispute pertaining to agreement."
See Arbitration Act (1940), S. 2.

"Dispute touching business of society."
See Co-operative Societies — Co-operative Societies Act (1912), S. 43 (2).

"Disqualification attaching to a conviction."

—There is a vital distinction between a "disqualification attaching to a conviction" and the taking of proceedings; consequent upon such a conviction. What S. 12A of Madras Probation of Offenders Act, has in view, when it used the former expression, is an automatic disqualification flowing from a conviction and not an obliteration of the misconduct of the accused. See Madras Probation of Offenders Act (3 of 1937), S. 12 A. **(1956) 2 Mad L J 562.**

"Disqualified by or under any law made by Parliament."
See Constitution of India, Art. 191 (1) (e).

"Disqualify"

—Candidate debarred from appearing at University examination — He does not possess legal capacity to pass the examination—Fact that he actually appeared at and passed the examination or was actually declared to have passed, is wholly immaterial. See University of Saugar Act (M P. Act XVI of 1946), S. 32. AIR 1961 Madh Pra 356 (DB).

"Dissolution of marriage."

●—Word 'dissolved' in S. 28, Travancore Nayar Act (1088) means not only dissolution by act of parties or through Courts of law but includes also a natural termination of the marriage by the death of the wife. See Travancore Nayar Act (1088), S. 4. **AIR 1955 Trav-Co 235 (FB).**

"Dissolution of Parliament."

● —Effect of dissolution and prorogation of Parliament stated. See Constitution of India, Art. 107. AIR 1962 S C 694.

"Distinct matters" and "Descriptions."

● —In popular sense, the expression "distinct matters" would connote something different from distinct 'categories.' The word 'matter' in S. 5, Stamp Act, was not intended to convey the same meaning as the word "description" in S. 6. The expressions "distinct matters" in S. 5 and 'descriptions' in S. 6 have different connotations. See Stamp Act (1899), S. 4. **AIR 1956 S C 35.**

"Distinct offence."
See Criminal P. C. (1898), S. 233.

"Distribute."

—Ordinary and general meaning of the word "distribute" conveys spreading of the goods anywhere by whatever means that may be employed. See Drugs Act (1940), S. 18 (a). **1962 (1) Cri L J 16 : AIR 1962 Bom 21.**

"Distributed as dividends."

—Income-tax Act (1922), S. 23A — "Distributed as dividends"—Meaning of — Declaration of dividends amounts to distribution within meaning of S. 23A — It does not mean actual payment. See Income-tax Act (1922), S. 23A. **1962 M P C 485.**

"Distribution of capital assets."

●—The expression "distribution of capital assets" in the third proviso to sub-s. (1) of S. 12B of the Income-tax Act, 1922, means distribution in specie and not distribution of sale proceeds of capital assets. See Income-tax Act (1922), S. 12-B (1). **AIR 1960 S C 751.**

"District."

—In interpreting the word "district" in S. 488 (8), Criminal P. C. it is not only the word "district" which one must have regard to, but the entire expression 'any district where he resides.' The express use of the word "district" should not be given any meaning different from normal connotation of that word. See Criminal P. C. (1898), S. 488 (8). **1965 (2) Cri L J 73 : AIR 1965 Bom 107.**

"Dividend."

—Ordinary meaning of "dividend" is the receipt by a share-holder by reason of his being a share-holder of a part of profits of the company of which he is a share-holder. See Income-tax Act (1922), S. 2 (6A) (a). **AIR 1956 Bom 381 (DB).**

"District Judge."

—Expression "District Judge" used in S. 7 (3) (b) of the Industrial Disputes Act, 1947, does not include an Additional "District Judge" — AIR 1954 Assam 161, Dissented from. See Industrial Disputes Act (1947), S. 7 (3) (b). **AIR 1956 Madh Bha 183 (DB).**

"Divyadesh."

—"Divyadesh" is a temple of greater religious efficacy where Vaishnavas are enjoined to take charnamrit even in presence of non-Vaishnavas as opposed to other temples where they are avoiding to do so. **1961 B L J R 206.**

"Document."
See also Penal Code (1860), S. 29.

—Any decipherable information which is set down in a lasting form would be a "document" as defined in S. 3 (18), General Clauses Act and as found in the definition of 'paper' in S. 1, Press and Registration of Books Act, as amended in 1955. See Press and Registration of Books Act (1867) (as amended by Act 55 of 1955), S. 1. **AIR 1960 Andh Pra 176 : 1960 Cri L J 452.**

—'Currency' which will include foreign currency comes within the meaning of other "document" in S. 19 (3), Foreign Exchange Regulation Act. Word 'book' will also be included in term "document." It is perhaps to avoid vagueness or doubt that 'book' is specially mentioned in addition to other "documents.' The word "document" is used in the sense in which it is defined in S. 3 (18) of the General Clauses Act. See Foreign Exchange Regulation Act (1947), S. 19 (3). **1962 (2) Cri L J 794 : AIR 1962 Tripura 50.**

"Does not include."

—Words "means," "includes" and "but does not include" in the definition of 'Wages' in S. 2 (vi) of the Payment of Wages Act, clearly shows that the definition is an exhaustive one and no other meaning can be assigned to the term 'wages' than is given in the definition. See Payment of Wages Act (4 of 1936), S. 2 (vi). AIR 1956 Madh Bha 152.

"Domain or homefarm land"

—Alternative expression "homefarm land of the landholder" in S. 3 (10) (b) (i), Madras Estates Land Act is intended to explain the meaning of the word 'domain.' That is what the legislature intended a 'domain' to be — Meaning of 'domain' compared with meaning of words 'domain' 'de mesne' and 'demain' in England. See Tenancy Laws — Madras Estates Land Act (1 of 1908), S. 3 (2) (d). AIR 1958 Mad 95 (DB).

"Domicile."

See (1) Bombay Beggars Act (23 of 1945), S. 5.
(2) Citizenship Act (1955), S. 6.
(3) Constitution of India, Arts. 5, 15 and 51.
(4) Divorce Act (1869), S. 2.
(5) Succession Act (1925), Ss. 9, 15, 16.

"Domiciled in England or Wales."

—The words "domiciled in England or Wales" as applied to India must be interpreted as "domiciled in the Union of India" and not as domiciled within admiralty jurisdiction of the respective Courts of Admiralty in Calcutta, Madras or Bombay. The criterion of domicile is the existence of one system of law and the whole of Indian Union can be regarded as the area of domicil wherein one system of law prevails. See Letters Patent (Calcutta) (1865), Cl. 32. AIR 1954 Cal 415.

"Done or intended to be done."

—The expression "done or intended to be done" in S 111 (2) of the Orissa Gram Panchayats Act would carry the same connotation as the expression "acting or purporting to act" in S. 197, Criminal P. C. See Panchayats — Orissa Gram Panchayats Act (15 of 1948). S. 111 (2). (1965) 31 Cut L T 314 : (1965) 7 O J D 294 : ILR (1965) Cut 255.

"Dried coconuts."

—Distinction between fresh coconuts, "dried coconuts" and tender coconuts pointed out. See Sales Tax — A. P. General Sales Tax Act (6 of 1957), S. 6, Sch. III. Item 5 (1965) 16 S T C 511 (AP) : AIR 1966 Andh Pra 128.

"Drinks."

—Word "drinks" in Entry No. 49, M P. General Sales Tax Act, in Part II, Sch. II, is followed by words 'such as' and ends with 'etc.,' Words 'such as' and 'etc.' are words of limitation. Rule of ejusdem generis must be applied. See Sales Tax — Madhya Pradesh Genersl Sales Tax Act (1958), Sch. II, Part VI, Item 1. AIR 1965 Madh Pra 71 (DB).

"Driving."

—The Motor Vehicles Act makes a distinction between "driving" a motor vehicle and its 'user.' See Motor Vehicles Act (1939), S. 42 (1). 1960 Cri L J 923 : AIR 1960 Mad 265.

"Droit" and "permis."

—The French word 'droit' is a word of general import. By reference to French English Dictionary by Harrap, it is seen that one of its meaning is "right" as known in English. Another meaning which it has acquired in legal parlance is "charge," 'fee due.' Therefore, use of the word 'droits' will not be conclusive as to whether the charge is fee or a tax. But the word 'permis' will provide a clue to the import of the levy. According to the same dictionary, 'permis' means permission and it is used to mean license. The use of the word 'droits' in juxtaposition with the word 'permis' would indicate, that the provision refers to a fee. See Decree of French Republic (D/- 12-3-1880), Art. 44 (6). 1965 Mad W N 328 : ILR (1966) 1 Mad 93.

"Drug."

—The word "drug" should not be confined to medicinal "drug" as defined in Drugs Act. It includes dangerous drugs also. See Constitution of India, Art. 372 (1). 1955 Andh L T (Cr) 205.

"Drunk" — Meaning of.

—Word "drunk" in S. 85 (1) (3), Bombay Prohibition Act is not synonymous with to "drink" defined in S. 2 (12) of the Act. Expression "drunk" in S. 85 (1) (3) must be given its plain natural meaning, viz as overcome by alcoholic liquor or intoxicated. See Bombay Prohibition Act (25 of 1949), S. 85 (1). Cls. (1), (3). 1956 Cri L J 384 : AIR 1956 Bom 173 (DB).

"Due."

—The word "due" in S. 13, Madras Agriculturists Relief Act means "that which one contracts to pay," Meaning 'payable' is also not inappropriate. See Debt laws — Madras Agriculturists Relief Act (4 of 1938), S. 13. AIR 1957 Andh Pra 546 (FB).

—Expressions "due" and "assessed" do not connote the same meaning — Sales Tax — Mysore Sales Tax Act (1948), S 20. (1951) 2 S T C 35 : 29 Mys L J 72 : 52 Cri L J 440 : ILR (1951) Mys 403 : AIR 1951 Mys 37 (38) (Pt B) (Pr 3).

● —"Due"—Meaning of considered. 1962 Cur L J 36: 64 Pun L R 255 : ILR (1962) 1 Punj 211 : AIR 1962 Punj 256 (260, 261) (Pt C) (Pr 16) (FB).

● —"Sums due under this Act" in S. 30, Displaced Persons (Compensation and Rehabilitation) Act would also cover 'sums payable under this Act' or even 'sums recoverable under this Act" and in that case they need not necessarily be 'owned.' See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 30. AIR 1961 Punj 34 (FB).

—A debt or other obligation is "due" when it is legally enforceable i.e., when the creditor has a right to demand payment and to enforce collection. See Administration of Evacuee Property Act (1950), S. 48. AIR 1957 Punj 58 (DB).

"Due and own."

—Ordinarily "due" means payable. As a noun it connotes an existing obligation. As an adjective it means capable of being justly demanded, claimed as of right, payable.

The dictionary meaning of the word "own' is to have a good legal title to or to hold as a property. Owner is one who has an absolute dominion over it. See Debt Laws — Madras Agriculturists Relief Act (4 of 1937), S. 4 (h). ('52) 1952-2Mad L J 36 : AIR 1953 Mad 174.

"Due process of law."

See also Constitution of India, Art. 21.

● —Per B. K. Mukherjea J.— "Due" means "what is just and proper" according to the circumstances of a particular case. The best description of the expression "due process of law" would be to say that it means in each particular case such an exercise of the powers of Government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 SC R 88 : 1950 Mad W N 495 : 1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (99, 102) (Pt ZP) (Prs 185, 192).

"Dukhtar Khana Nishin."

—The term seems to have become more or less a term of art well understood in Jammu and Kashmir State as implying something more than the meaning referred to (that is nearly "resident daughter"). When a daughter is spoken of as Khana Nishin, the conception seems to be that "the father treated such daughter in all respects as a son and that by custom she is entitled in the matter of inheritance to occupy the same position as a son would have done." **('49) 8 J & K L R 117 (DB).**

"Duly."

—The word "duly" appearing in the expression "duly" submitted for examination" in S. 510, Criminal P. C., means 'properly.' The word "only" emphasises the fact that proof of "identity" of the article sent to the Chemical Examiner with articles examined by him must be established. **1965 (1) Cri L J 321 : AIR 1965 Orissa 38 (42) (Pt F) (Pr 8) (DB).**

"Duly authorised agent,"

See Motor Vehicles Act (1939), S. 110-A (1) (c).

"Duly made."

—Word "duly" means "such as ought to be," 'fitting' 'proper,' 'such as is required' etc. The word used in S. 533, Criminal P. C. is 'made' and not "recorded" and the word "duly" governs the making of the confession and not the recording of it. See Criminal P. C. (1898), S. 533. **AIR 1955 NUC (All) 4425 (DB).**

"Duly served."

—Substituted service upon defendants in terms of O. 5, R. 20, Civil P. C., may or may not be "due service" required by O. 9, R. 13. See Civil P. C. (1908), O. 9, R. 13. **AIR 1957 Andh Pra 1 (FB).**

"Duly stamped."

See Stamp Act (1899), S. 35.

"During pendency of the application"

—Words "during pendency of the application" in Proviso to S. 62, Motor Vehicles Act will include any period of time subsequent to the disposal of the application by R. T. A. See Motor Vehicles Act (1939), S. 62, Proviso. **AIR 1958 Ker 140.**

"Duties of excise."

See Constitution of India, Sch. 7, List 1, Entry 84.

"Duty."

—Word "duty" connotes obligation. It connotes that one cannot refuse to perform the act but is bound to do it. 'Discretion' and "duty" have different concepts. See Limitation Act (1908), Art. 182 (5). **AIR 1963 Andh Pra 452 (DB).**

"Dwelling house."

See (1) Partition Act (1893), S. 4.
(2) Income-tax Act (1922), S. 4-A (a) (ii).

"Dying intestate."

See Hindu Succession Act (1956), S. 8.

"Earnest money."

—"Earnest money" is the sum of money paid by the buyer of property under a contract of sale in order to bind the seller to the terms of the agreement for sale. It is a guarantee for the performance of a contract. When the transaction goes forward, the "earnest money" becomes a part of the purchase money. It is forfeited if the transaction falls through by reason of the fault or failure on the part of the buyer and the buyer cannot get it back — Deposit distinguished from "earnest money." **A I R 1956 Vindh Pra 42 (43).**

"Eating house"

—Expression "eating house" is not defined in the Calcutta Municipal Act and as such, referring to the dictionary meaning "eating house" means a restaurant where meals or food taken at one time may be had by the customers and therefore such an "eating house" is distinguished from a place where food is manufactured, sold, stocked, distributed or exhibited for sale. See Municipalities — Calcutta Municipal Act (33 of 1951), S. 442. **1966 Cri L J 525 : AIR 1966 Cal 203.**

"Edible."

—The word "edible" should be interpreted to mean fit to be eaten as food. **(1961) 12 S T C 210 : 1960 All W R (HC) 368 : 1960 All L J 491.**

"Effect of an award."

—Words "effect of an award" in S. 32, Arbitration Act are wide enough to cover a suit to enforce an award. Suit to enforce a claim under an award is hit by S. 34 of the Act. AIR 1944 Nag 24, Dissented from. See Arbitration Act (1940), S. 32. **A I R 1964 Orissa 21.**

"Either."

—Either—Means each and not both. See Land Acquisition Act (1 of 1894), S. 17 (3). **A I R 1965 Bom 224 (DB).**

[Overruled on another point in AIR 1968 S C 870.]

"Either . . . . or."

—Words "either" 'or' in S. 2 (q), M. B. Sales Tax Act are not used in any technical sense, they denote two states of affair in which a turnover would be found. See Sales Tax—M. B. Sales Tax Act, Smt. 2007 (30 of 1950), S. 2 (9). **AIR 1958 Madh Pra 16 (DB).**

"Ejected."

—Word "ejected" in S. 27, M. P. Tenancy (Amendment) Act, 1947, has not been used in the restricted sense of eviction in execution of a decree or order of ejectment. It means that person was dispossessed of his holding as a consequence of a decree or an order passed under either of sections 171 or 180 of the U. P. Tenancy Act. See Tenancy Laws — U. P. Tenancy (Amendment) Act (10 of 1947), S. 27 (1) (c). **AIR 1955 N U C (All) 3303 (DB).**

—Word "ejected" in S. 112, Maihar State Quanoon Mal includes every case of dispossession not made according to provisions of the Act. See Tenancy Laws — Maihar State Quanoon Mal, S. 112. **1962 M P L J 884.**

"Ejectment."

—Word "ejectment" has not been defined in the U. P. Zamindari Abolition and Land Reforms Act, 1951. In Murray's 'New English Dictionary' Vol. 3, the following has been mentioned with regard to 'eject' : "Thrown out; the term was coined by Prof. Clifford on analogy of subject, objection to throw, to throw from within, to turn out, evict (a person) from property or possession esp. in law." See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 7 (b). **1963 All L J 338.**

"Ejusdem generis."

See Interpretation of Statutes.

"Election."

See (1) Constitution of India, Arts. 71 (1), 226.
(2) Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 3 (a).
(3) Municipalities—Rajasthan Town Municipal Board Chairman Election Rules (1951), R. 14.
(4) Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 19.
(5) Municipalities—Travancore District Municipalities Act (23 of 1116 ME), S. 323.
(6) Panchayats — Bihar Municipal Elections and Election Petition Rules, R. 7 (1).
(7) Panchayats—Gujarat Panchayat Act (6 of 1962), S. 24.

(8) Panchayats — M. B. Panchayat Act (58 of 1949).
(9) Panchayats — Madras Village Panchayats Act (10 of 1950), S. 11 (2).
(10) Panchayats — U. P. Panchayat Rai Act (26 of 1947). S. 12 (c) (l).
(11) Representation of the People Act (1951), S. 2 (d).
(12) United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act (1959), S. 5.

"Elector."

—Word "elector" has not been defined in the Madras Village Panchayat Act or the Rules under it—Consequently the word appearing in R. 1 (1) of the Rule for the 'Decision of Election Disputes' under the Act must be given its normal dictionary meaning, namely any person entitled to elect. See Panchayat—Madras Village Panchayat Act (10 of 1950), S. 21. **(1962) 1 Mad L J 422.**

"Electrical and mechanical products."

—An electric torch case is receptacle in which the torch batteries are kept and must be deemed to be an electrical, mechanical or general engineering product within meaning of Sch. 1, Expl., Item 241 of Employees' Provident Funds Act. A I R 1956 All 495, Reversed. **AIR 1959 All 133 (134) (Pt A) (Pr 4) (DB).**

—Electrical product does not mean anything produced through electrical process. Words "electrical and mechanical" have not been used in the schedule in Employees Provident Funds Act only in contradistinction with hand-made products. The words have to be given narrower meaning. Words do not cover all products which are made by means of mechanical or electrical process but means products which are utilised for purposes of producing electricity or implements and other apparatus and machinery or goods like fans, radio and battery cells. A torch case is only an article for purposes of keeping batteries and not for purposes of generating electricity. See Employees Provident Funds Act (1952), S. 1 (3). **AIR 1956 All 495.**
[Reversed in AIR 1959 All 133.]

"Electrical goods."

—Only such articles, the use of which cannot be had except with the application of electric energy can be termed "electrical goods" or appliances. See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 3 (2) (viii). **AIR 1955 Mad 656 (DB).**

"Electrical, mechanical or general engineering products".

See Employees' Provident Funds Act (1952), S. 1 (3) and Sch. I.

"Embezzlement".

See Penal Code (1860), S. 405.

"Emergency."

—Urgency and emergency—Former relates to a situation requiring prompt action while the latter indicates situation suddenly arising and demanding prompt action and is a stronger word. See Land Acquisition Act (1894), S. 4. **AIR 1959 Punj 538.**

"Employed".

See (1) Factories Act (1948), Ss. 2 (1) and 66 (1) (b).
(2) Industrial Disputes Act (1947), S. 2 (s).
(3) Criminal P. C. (1898), S. 4.

"Employed in the construction".

— Expression "employed in the construction" in Sch. II, Cl. (viii), Workmen's Compensation Act, means not necessarily actually employed to construct, but employed in connection with the construction — Building Inspector employed to see that those who are concerned in the construction are building according to the plan, has nothing to do with the construction and is not one "employed in the construction". See Workmen's Compensation Act, S. 2 (n) and Sch. II, Cl. (viii). **(1951) 55 C W N 496.**

"Employee".

—"Employee" does not mean ex-employee or a person whose contract of service has been put an end to. See Companies Act (1956), S. 419. **1962 (1) Cri L J 706 : AIR 1962 Bom 130 (DB).**

— "Employee" does not include an ex-employee. See Constitution of India, Art. 226. **(1965-66) 28 F J R 472 : ILR (1965) 2 Punj 837 (DB).**

— Definition of "employee" as given in S. 2 (b) of the Employees' Provident Funds Act, 1952, must be restricted to such employees who are paid wages and who do not receive compensation or monthly salary exceeding Rs. 200/-. See Employees' Provident Funds Act (1952), S. 2 (b). **AIR 1959 Punj 27.**
[Reversed in AIR 1962 Punj 507.]

"Employer".

— Word "employer" as defined in S. 2 (6) of U. P. Shops and Commercial Establishments Act includes a person having charge of or owning the business of a shop or commercial establishment and is not confined to a person employing some one to assist him in the conduct of his business. (1958) All L J 333, Overruled. **AIR 1961 All 599 (600) (Pt A) (Pr 5) (DB).**

— Word "Employer" used in U. P. Shops and Commercial Establishments Act, 1947, contemplates such an owner of the shop who has engaged some employees to help him in running his business and does not convert an owner of the shop per se into an employer, even when he has no 'employees'. See U. P. Shops and Commercial Eetablishments Act (22 of 1947), S. 10. **1958 All L J 333.**
[Overruled in AIR 1961 All 599.]

— "Employer" in S. 2 (1), Mines Act — Whether person is "employer" is primarily a question of fact. Where a person is entitled to share the profits has a power to check the accounts and is liable to contribute for the construction of structures, he must be called a "owner". See Coal Mines Provident Fund and Bonus Schemes Act (1948), S. 2 (e). **AIR 1959 Cal 208.**

— Word "employer" has been used in a very peculiar sense in S. 2 (7), M. B. Shops and Establishments Act. So far as S. 16 (1) of the Act is concerned, an "employer" would be an owner, whether or not he employs one or more hands in the establishment. See Madhya Bharat Shops and Establishments Act (7 of 1952), S. 2 (3). **1961 M P L J 113.**

— In the absence of definition of "employer" in the Payment of Wages Act, in the case of a private limited company, the Directors are "employers". See Payment of Wages Act (1936), S. 3 (b). **AIR 1964 Pat 292.**

"Employment".

● — The real test for deciding whether contract is one of "employment" is to find out whether the agreement is for the personal labour of the person engaged, and if that is so, the contract is one of "employment" whether the work is time work or peace-work or whether the employee did the whole work himself or whether he obtained the assistance of other persons also for the work. See Representation of the People Act (1951), S. 123 (7). **AIR 1957 S C 444.**

— Word "employment" used in Entry 8, Part I, Sch. A of Minimum Wages Act should be construed, having regard to the intention of the legislature and to its object in the most general sense of "the action of employing or the state of being employed" and not with reference to any particular trade, business

or occupation. See Minium Wages Act (1948), Sch. A, Part I, Entry No. 8. AIR 1958 Bom 332 (DB).

[Reversed on another point in AIR 1960 S C 1068.]

— Per Ramaswami J. — Words "employment" and "appointment" connote two different concepts. Latter obviously, refers to appointment to an office. The term appointment implies conception of tenure, duration, emolument and duties and obligation fixed by law or by some rule having the force of law. These elements are absent in the case of "employment" which is a contract for a temporary purpose.

Per Ahmed J. — "Employment" refers to a condition in which a man is kept occupied in executing any work. It means not only appointment to any office for first time but also continuity of that appointment. See Constitution of India, Art. 16. AIR 1957 Pat 617 (DB).

"Employment injury".

— Employee while going into the factory collaping due to heart failure — It is neither an accident as usually understood nor is it the result of occupational disease — Death is not as the result of "employment injury" as defined in S. 2 (8) Employees' State Insurance Act. See Employees' State Insurance Act (1948), S. 2 (8). AIR 1959 Madh-Pra 338.

"Enactment".

— The expression "enactment" applies not only to a complete Act but also to the various provisions in an Act. AIR 1958 All 109 (110, 111) (Pt B) (Pr 5) (DB).

"Encumbrance"

—"Encumbrance" in its widest sense is a right which limits or derogates from some more general right belonging to some other person in respect of the same subject-matter. It runs with the right encumbered by it and follows the encumbered right into the hands of a new owner, so that a change of ownership will not free the right from the burden imposed on it. AIR 1955 N U C (Orissa) 2472 (DB).

There is no definition of "encumbrance" in Bihar Land Reforms Act, the legislature in using the word in S. 4 (a) of the Act could not have used it in the sense in which it is used in S. 161 (a) of Bihar Tenancy Act read with S. 2 (t) of Bihar Land Reforms Act. The word "encumbrance" in S. 4 has been used in its general or dictionary meaning, that is, in the sense of a burden of charge upon property. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 4 (a). AIR 1959 Pat 589 (DB).

[Overruled on another point in AIR 1963 S C 454].

—Property subject to right of pre emption — Right is not encumbrance. See Punjab Pre-emption Act (1 of 1913), S. 4. ILR (1961) 2 Pun 882.

"Encumbrances."

See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 12.

"Endal"

—The suffix "endal" denotes generally a hamlet of a big village See Tenancy Law—Madras Estates (Abolition and Conversion into Ryotwari Act) (26 of 1948), (1962) 1 Mad L J 170.

"Endorsed".

— "Endorsed" — Means personal signature. See West Bengal Land Acquisition and Requisition Rules (1948), R. 3 (1). AIR 1962 Cal 269.

"Endorsement in blank".

See also Negotiable Instruments Act (1881), S. 16.

— "Endorsement in blank" means writing one's name merely on the back of the instrument without specifying any restrictions as to payee, manner of payment etc., which details may be filled in by the holder thereof in whatever manner he likes. See Railways Act (1899), S. 72. AIR 1959 Pat 438.

"Enforce."

—Word "enforce" in Art. 183, Limitation Act, 1908, is wider in implication than the word 'execute.' See Limitation Act (1908), Art. 183. AIR 1956 All 32.

"Enforcement."

—Word 'enforce' in the expression "enforce the payment of the loan made" in S. 295 (3), Companies Act, 1956, means the taking of such action on the part of the creditor which compels the debtor to effect repayment of the loan, such as institution of a suit, attachment or sale of the latter's properties etc. See Companies Act (1956), S. 295 (3). 1963 (1) Cri L J 61 : AIR 1963 Raj 6.

"Engage."

—Word "engage" has not the same connotation as the word 'appoint'. A person acting under the directions of a Public Prosecutor is obviously a person 'engaged' by the Public Prosecutor. See Criminal P. C. (1898), S. 4 (1) (t). 1965 (1) Cri L J 150 : AIR 1965 Cal 79.

"Engagement."

—Word "engagement" in S. 1, Madras Irrigation Cess Act, is not qualified in any way and is not limited to cases of "engagements" deducible from the circumstances under which the peishcush was determined at the time of permanent settlement but include all "engagements" between the Government and the zamindar that might have been made at any time after the permanent settlement. See Madras Irrigation Cess Act (7 of 1865), S. 1. AIR 1955 N U C (Andhra) 5848.

"Enquiry."

See also under W. & P.—'Inquiry.'

—"Enquiry" within the meaning of S. 202, Cri. P. C. is not limited to and does not necessarily mean an "enquiry" and examining witnesses or by holding investigation into the case, in any particular form. Going to the scene of occurrence and making a local "enquiry" is within the competence of the Magistrate. See Criminal P. C. (1898), S. 202. 1957 Cri L J 504 : AIR 1957 Assam 76.

"Enter."

—Expression "enter" in Rule 3 of Passport Rules, includes travel within territory also—Offence is continuing one within S. 182, Criminal P. C. See Passport Rules (1950), R. 3. 1965 (1) Cri L J 410 : AIR 1965 All 158.

—The connotation of the word "enter" is sufficiently wide to cover even cases where the entry is continued or retained, just as the word 'omitted' would cover the case of the person who is a member of the company being struck out See Companies Act (1913), S. 38 (1) (a). (1953) 23 Com Cas 168 (Mad) : AIR 1955 N U C (Mad) 1004.

"Entered."

—Reasonable interpretation of the words "entered" in the electoral roll contained in S. 2 (i) (e) of the Representation of the People Act, 1951, should be "included in the electoral roll." See Representation of the People Act (1951), S. 2 (1) (e). AIR 1959 Pat 450 (DB).

"Entering into enquiry."

—"Entering into an enquiry" does not necessarily mean following the procedure of physically hearing both sides or taking evidence. It really means applying an enquiring mind to the claim. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Rules (1949), R. 6. 1958 All W R (HC) 752.

"Entering on the reference."
See Arbitration Act (1940), Sch. I, Rule 3.

"Entertain."

—Magistrate holding that he could not "entertain" petition—Use of the word 'entertain' shows that he doubted his own jurisdiction. See Municipalities—Bengal Municipal Act (15 of 1932), S. 529A. **AIR 1956 Cal 393.**

—The word 'entertain" means "to receive and take into consideration" The plain meaning of the expression no Civil Court shall have jurisdiction to "entertain a suit" is that no Civil Court shall have jurisdiction to entertain a suit in its inception. See Motor Vehicles Act (1939), S. 110F. **AIR 1961 Madh Pra 295 (DB).**

—The word "entertain" used in respect of a suit means "to receive and take into consideration." **AIR 1955 Manipur 39 (41) (Pt B) (Pr 6).**

"Entertainment."

—Natural import of the word "entertainment" is amusement and gratification of some sort. It connotes something in the nature of organised "entertainment," such as exhibition, performance, amusement, game or sport for purposes of "entertainment" i.e. for affording some sort of amusement and gratification to those who see or hear it. A place where fabrics are displayed and shown off by mannequins wearing them is no more a place of "entertainment" than a shop establishment where wearing apparels are displayed on dummy models. Nothing turns on the fact that display by mannequins was on a stage or on the fact that there were sealing arrangement inside the dome for having a good view of the display. See C. P. and Berar Entertainments Duty Act (30 of 1936), S. 2 (a). **AIR 1961 Madh Pra 257 (DB).**

"Entertainment and amusement."
See Constitution of India, Sch. 7, List 2, Entries 33 and 62.

"Entitled to benefits of the Act."

—Etymologically meaning of the word 'benefit' is 'advantage' that is provided to a person. It cannot be said that S. 19 of Madras Agriculturists Relief Act does not confer any benefit — Courts have to give liberal construction to the expression "entitled to the benefits of the Act" in S. 23 (a) and not a restricted meaning, namely benefits conferred under Ss. 8, 9 and 9(a) alone. See Debt Laws—Madras Agriculturists Relief Act (4 of 1939), (as amended by Act (23 of 1948), S. 23. **AIR 1955 N U C (Mad) 3170 (DB).**

"Entrustment", "entrusted."
See Penal Code (1860), Ss. 403 and 405.

"Entry."

—"Entry" in India is not synonymous with remaining in India. See Passport Act (1920), S. 3. **1956 Cri L J 20 : AIR 1956 All 69.**

—Word "entry" in S. 3, Passport Act should be given the ordinary interpretation. It can by no stretch of imagination mean continuance of stay. See Passport Act (1920), S. 3. **(1964) 2 Mad L J 301.**

"Equality before law."
See Constitution of India, Art. 14.

"Equity, justice and good conscience."
See also Civil P. C. (1908), S. 151.

—In applying the principles of "equity, justice and good conscience" the Court cannot treat the common law on the subject divorced from the statute law when the established law at the relevant date prevailing on the topic whether in India or in England is the law as modified by the statutes. See Fatal Accidents Act (1855), S. 1. **AIR 1960 Raj 224 (DB).**

"Equally divided in opinion."

●—Per Das, C. J. (Panigrahi, J., concurring). — The "opinion" contemplated by S. 429, Criminal P. C. is nothing more or nothing less than the decision as to the operative order to be passed in the case It is not merely, what may be called the inclination of the Judge as to the view to be taken on the questions arising in the case. It is only when there is any difference as to the disposal of the case, that it can be said that the Judges are divided in opinon. See Criminal P. C. (1898), S. 429. **A I R 1953 Orissa 160 (SB).**

"Error apparent on the face of record."
See (1) Arbitration Act (1940), Ss. 14 and 30.
(2) Civil P. C. (1908), O. 47, R. 1.
(3) Constitution of India, Art. 226.

"Erroneous."

—Word "erroneous" is wide enough to include illegality or impropriety. An illegal or improper order is necessarily "erroneous" order. See Sales Tax —Madhya Bharat Sales Tax Act (30 of 1950), S. 12 (1). **1961 M P L J 775.**

"Escaped assessment."
See also (1) Bihar Agricultural Income-tax Act (7 of 1938), S. 28.
(2) Income-tax Act (1922), S. 34.

●—The expression "escaped assessment" in S. 11-A, C. P. and Berar Sales Tax Act includes a turnover which has not been assessed at all, because for one reason or other no assessment proceedings were initiated and therefore no assessment was made in respect thereof. See Sales Tax—C. P. and Berar Sales Tax Act (21 of 1947) (as amended by C. P. and Berar Act 23 of 1953), S. 11-A. **A I R 1964 S C 766.**

"Especially."

●—The word "especially" in S. 106, Evidence Act means facts that are pre-eminently or exceptionally within the person's knowledge. See Evidence Act (1872), S. 106, Illus. (b). **1956 Cri L J 794 : A I R 1956 S C 404.**

"Established."

—It cannot be said that a factory has been "established" unless in any part of it a manufacturing process is carried on or is ordinarily carried on. See Employees' Provident Funds Act (1952), S. 16. **A I R 1956 All 495.**

"Establishment."

—From the use of the expression "establishment" in the Industrial Disputes Act, it is fairly clear that the 'establishment" must exist in some definite and identifiable form. See Industrial Disputes Act (1947), S. 18 (c). **A I R 1953 Bom 451.**

—"Establishment" referred to in S. 16, Employees' Provident Funds Act is not the same thing as 'employer' or 'employee'. **A I R 1968 Mad 508, Overruled.** See Employees' Provident Funds Act (1952), S. 16 (1). **(1965-66) 28 F J R 279 : A I R 1966 Mad 416 (DB).**

—"Establishment" in the context of S. 16, Employees' Provident Funds Act, means an "organised body maintained for the purpose." See Employees' Provident Funds Act (1952), S. 16 (1). **A I R 1965 Mad 508.**
[Overruled in A I R 1966 Mad 416.]

—"Establishment" means an organisation employing persons between whom and establishment relationship of employer and employee comes to exist. **A I R 1965 Mad 466 (467) (Pt B) (Pr 3).**

—Out agency established by Railway department to collect goods and sent to railway station is an "establishment". See Madras Shops and Establishments Act (36 of 1947), S. 2. **A I R 1953 Mad 376.**

"Estate."

—Interest of landlord in land is an "estate" within meaning of S. 3 (5) of the Bombay Land Revenue Code and therefore within meaning of Art. 31-A (1) (a) of the Constitution. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948) (as amended by Act 13 of 1956), Ss. 32 to 32-R. **A I R 1957 Bom 252 (DB).**

[Overruled on another point in A I R 1959 S C 459.]

—Expression "obtain maintenance from the "estate" of her husband or father or mother" used in proviso (a) to S. 19, Hindu Adoptions and Maintenance Act, construed. See Hindu Adoptions and Maintenance Act (1956), S. 19, Proviso (a). **A I R 1961 Punj 391 (DB).**

"Estate or share therein."

●—Per Majority (Desai, C. J., contra).—Words "estate or share therein" in S. 14 (1) of the U. P. Zamindari Abolition and Land Reforms Act are not confined to fractional share but include specific or isolated sir plot—So mortgage of specific plot is covered by these words. 1962 All L J 612, **Overruled.** See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 3 (8). **A I R 1964 All 311 (FB).**

"Estimated present cost of erecting the building."

—The words "estimated present cost of erecting the building" in S. 140 (1) (a), U. P. Municipalities Act, 1916, connote that the cost of the building should be calculated, if a new building were to be erected on the date of assessment but allowance should be made for depreciation in assessing the value depending upon the condition of the building. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 146 (1) (a). **A I R 1957 All 452 (DB).**

"Etc."

—Where parties jointly appoint an arbitrator to "decide the measurements "etc" of the building newly constructed" it cannot be held that the word "etc" can cover the question of payment. The reference has to be judged on its own facts. See Arbitration Act (1940), S. 3. **A I R 1955 N U C (Ajmer) 2621.**

"Evade."

—Ordinary meaning of the word "evade" is to escape or avoid artfully; to baffle. It may also mean "nothing more than the intentional avoidance of something disagreeable". In the case of penal statutes, it should generally be held to suggest underhand dealing. It is in this sense that the word is used in R. 17 (b) of the Rules for the collection of octroi framed under S. 150 (2) (a) of the C. P. Municipalities Act, 1903. See Municipalities — C. P. and Berar Municipalities Act (1903), S. 150 (2). **1958 M P C 106.**

"Eviction"

●—Section 202, Bombay Land Revenue Code shows that "eviction" requires vacation of land. Words "eviction" and "vacation" do not mean mere physical removal of the occupant from the land. The words mean that on "eviction" the land has to be restored to the original position so as to be used for purposes for which it was given to the occupant. It is not necessary to have any specific power to have the land vacated of all unauthorised structures. See Bombay Land Revenue Code (5 of 1879), S. 68. **A I R 1961 S C 722.**

—Word "eviction" connotes dispossession by process of law; an act of depriving a person of the possession of lands which he has held in pursuance of a judgment of a Court, "eviction" is an actual expulsion of the lessees out of the whole or some parts of the demised premises. See (Kerala) Stay of Eviction Proceedings Act (1 of 1957), S. 4. **1959 Ker L J 34.**

"Evidence"

See Evidence Act (1872), S. 3.

—Word "evidence" in S. 252, Criminal P. C. means all statements which the Court permits or requires to be made before it by witnesses, including statements made by them in cross-examination and re-examination. See Ciminal P. C. (1898), S. 252. **1956 Cri L J 841 : A I R 1956 All 385 (DB).**

"Exceptional depravity."

See Hindu Marriage Act (1955), S. 14.

"Exceptional hardship."

See Hindu Marriage Act (1955), S. 14.

"Excessive."

—"Excessive" rent cannot be equated with 'not reasonable'. There is always a gap between what is reasonable and what is "excessive". What is "excessive" does not begin where what is reasonable necessarily ends. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1946), S. 11 (1) (a). **A I R 1957 Bom 207.**

"Excessive interest."

See Debt Laws—Usurious Loans Act (1918), S. 3.

"Excise duty".

—Term "excise duty" has not been precisely nor authoritatively defined anywhere. It is generally used in contra distinction to the term 'customs duty. See Constitution of India, Art. 369. **AIR 1955 Raj 114 (DB).**

"Ex communication".

—The combined effect of the definition of the word "excommunication" and the provisions of S. 3, Bom. Prevention of "Ex communication" Act, is that what is prohibited by the Act is expulsion of a member of a community from the community itself, which, unless otherwise expressed, would carry with it the deprivation of all legal rights and privileges to which the member expelled was entitled as such. See Bombay Prevention of Ex communication Act (42 of 1949), S. 2 (b). **ILR (1961) Bom 200.**

"Execution".

—To 'execute' a document simply means to perform what is required by law to give validity to a writing as by signing and sealing it. The word 'executed' does suggest that there should be a formal contract between parties. Formality is of the essence. Contract cannot be spelled out of correspondence. It requires "execution" of formal document. See Government of India Act (1935), S. 175 (3). AIR 1964 All 128.

—Drafting of letter is not "Execution". **A I R 1957 A P 584 (587) (Pt A) (Pr 11) (DB).**

"Executive action".

—The expression "executive action" in Art. 116 of Constitution is comprehensive enough and apt to include even orders which emerge after and embody the results of a judicial or quasi-judicial disposal by Government. An order by the State Government under S. 64A, Motor Vehicles Act, is an executive action within meaning of Art. 116. See Constitution of India, Art. 116. **AIR 1957 Mad 48 (DB).**

"Executive", "Administrative".

—Terms 'administrative' or "executive" is capable of bearing a wide range of meaning. Broadly speaking term refers to broad areas of Governmental activity in which repositories of power may exercise every class of statutory function. **(1964) 2 Andh L T 94 : A I R 1965 Andh Pra 69 (72) (Pt E) (Prs 8, 9)**

"Exhibit"

See also Civil P. C. (1908), O. 13, R. 4.

—"Exhibit" means a decument exhibited for the purpose of being taken into consideration in deciding

some question or other in respect of the proceeding in which it is filed. ILR (1957) 3 Cal 660 : AIR 1956 Cal 619 (619) (Pt B) (Pr 4).

"Existing Act".
See Constitution of India, Art. 31 (5).

"Existing law".
See (1) Adaptation of Laws Order (1951) Para 27.
(2) Constitution of India, Arts. 31, 254, 366 (1), 372.

"Existing salary".
—Words "existing salary" in industrial award interpreted. AIR 1956 Bom 573.

"Ex parte".
See also Civil P. C. (1908), O. 9, R. 13.

"Ex parte".
—Even giving to the expression "ex parte" its plain natural meaning, the expression "ex parte" does carry with it the connotation that a Court or a Judge or a Tribunal has proceeded in the absence of the other party when it could have had the other party before it or when it was not prevented by law from having the other party before it. 59 Bom L R 406: ILR (1957) Bom 520 : AIR 1958 Bom 10 (12) (Pt B) (Pr 3) (DB).

"Expense".
See Income tax Act (1922), S. 10 (2) (xv).

"Expenses for the purpose of business"
See Income-tax Act (1922) S. 10 (2) (xv).

"Expenses of commission".
See Civil P. C. (1908), O. 26, R. 15.

'Export"
See (1) Constitution of India, Art. 286.
(2) Essential Supplies (Temporary Powers) Act (1946), Ss 3 and 4.
(3) Jammu & Kashmir Essential Supplies (Temporary Powers) Ordinance (2003), S. 2 (b).
(4) Municipalities—C. P. & Berar Municipalities Act (2 of 1922), S. 66 (1) (o).

"Express contract".
See Sale of Goods Act (1930), S. 35.

"Expression 'within a period of not less than one month".
—Expressions "not less than one month" and "within one month" mean same thing. See Rajasthan Agricultural Produce Markets Act (38 of 1961), S. 3 (2) 1965 Raj L W 358 :ILR (1965) 15 Raj 897: AIR 1966 Raj 142 (DB).

"Expressly".
—"Expressly" entrusted to the employed person for custody" in S. 7 (2) (c), Payment of Wages Act—"Expressly" in the context means clearly. See Payment of Wages Act (1936), S. 7 (2) (c). AIR 1958 Mad 585 (DB).

"Expressly excluded".
See Limitation Act (1908), S. 29 (2) (a).

"Extend".
—"Extend" means to "prolong", "to enlarge". See Motor Vehicles Act (1939), S. 43-A (2) (Mad). AIR 1965 Mad 58 (DB).

"Extend" and "enlarge."
—To extend a certain period is the same thing as to enlarge that period. The words "to extend" and "to enlarge" are synonymous. Whenever any period fixed for doing a certain thing is extended, the extension would commence from the point of time when the earlier period ends. ILR (1954) 2 All 378 : AIR 1953 All 624 (626) (Pt B) (Pr 9) (DB).

"Extension"
—The word "extension" imports the continuance of an existing thing, and must have its effect given to where it occurs. 65 Pun L R 302 : (1963) 1 Com L J 146 : (1963) 33 Com Cas 265 : (1963) Com Cas Rep 49 : ILR (1963) 1 Punj 850 : A I R 1963 Punj 239 (241, 242) (Pt B) (Pr 5).

"External, violent and visible" injuries.
—Meaning of words "external, violent and visible" bodily injury explained. AIR 1956 Bom 633 (637) (Pt C) (Pr 18).

"Extinguishment".
—It is plainly incorrect to interpret Art. 31A of the Constitution in a manner as to render the word 'modification' therein wholly redundant. Both the words "extinguishment" and 'modification' in Art. 31A, must be given their respective meanings and significance Difference in their import lies in degree of the impairment or invasion of the rights in an estate. "Extinguishment" indicates total annihilation of the right. Modification covers a case where a right in the estate is abriged or impaired short of extinguishment". See Constiiution of India, Art. 31-A. AIR 1959 J & K 35 (FB).

"Fact discovered".
See Evidence Act (1872), S. 27.

"Factory"
See (1) C. P. & Berar Industrial Disputes Settlement Act (1947), S. 16.
(2) Employees' Provident Funds Act (1952), S. 2 (g).
(3) Employees' State Insurance Act (1948), S. 2 (12).
(4) Factories Act (1948), S. 2 (k) (m).

—Dictionary meaning of "factory" is "manufactory" or 'workshop' and a weaving concern working twenty handlooms would be a "factory"—Definition of "factory" in Factories Act is artificial. The word "factories" in Items 33 to 35 of the schedule to the notification D/- 1-2-1950, by Cannanore Municipal Council under S. 249, Madras District Municipalities Act, 1920, means not factories as defined in Factories Act but only manufactories or workshops. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 249. ILR (1959) Ker 837.

"Facts".
See Sales tax—Madras General Sales tax Act (IX of 1939), S. 12A.

"Failed to get himself registered"
—A person can be said to have "failed so get himself registered" within meaning of S. 11 (2) Bengal Finance (Sales Tax) Act, 1941, when he does not take any steps whatsoever to obtain a registration certificate; but when has applied for registration and has not thereafter done anything to prevent or obstruct registration but the authorities concerned are unable for some reason or other, to complete registraction before a certain time, the dealer concerned cannot be said to have "failed to get himself registered" within the meaning of S. 11 (2) —See Sales Tax —Bengal Finance (Sales-tax) Act (6 of 1941), S. 7 (3). AIR 1958 Cal 246.

"Fail to elect"
—Expression "fail to elect" in S. 6 (4), Bengal Village Self-Government Act, 1919, does not only embrace a case where electors did not in fact turn up at the election and thereby did not elect any member. The expression means failure to elect according to law—See Bengal Village Self-Government Act (5 of 1919), S. 6 (4). A I R 1958 Cal 287.

"Fails without sufficent cause to comply."
See Criminal P. C. (1898), S. 488 (3).

"Failure"
—Word "failure" in S. 34 (1), Income-tax Act must connote that that is an obligation which has not been carried out and if there was no obligation upon the

assessee to make a return then it would not be a failure on his part to carry out that obligation. The expression "omission," does not connote any obligation as the expression 'failure' does. Omisston is a colourless word which merely refers to not doing of something and if the assessee in fact does not make a return, it is an omission on his part whether the law casts any obligation upon him to make a return or not. See Income-tax Act (1922), S. 34 (1). **AIR 1956 Bom 557 (DB).**

"Failure of justice"

—"Failure of justice" or 'miscarriage of justice' has reference to and has been construed in the light of the substantive or procedural provisions of a particular law in the observance of which there has been some irregularity or error and the Court has to satisfy itself that the same has not led to the failure or miscarriage of justice before interfering with the sentence, order or judgment. See Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 8 (2) (a). **64 Pun L R 213 : ILR (1962) 2 Punj 74.**

"Fair Price"

—"Fair price" has not been defined in D. I. Rules — But it is obvious that it means a price which is neither more nor less but one which is just and appropriate. It does not necessarily mean the price which the market conditions may demand. See Defence of India Rules (1962), R. 125 (3) (e) read with R. 123 (2). **1964 All L J 884.**

"False charge"

—The sense in which the word 'charge' is used in S. 211, I. P. C. is different from that in which it is used in S. 47, Madras District Police Act. Unfounded allegations that a police officer was asking and taking bribes amounts to making a false and frivolous charge within S. 47, Madras District Police Act. See Madras District Police Act (24 of 1859), S. 47. **1960 Mad W N 154.**

"Falsify"

See Penal Code (1860), S. 477-A.

"Family"

See also (1) Houses and Rents—Delhi and Ajmer-Merwara Rent Control Act (29 of 1947) Ss. 9 (1) (d) and 13 (1) (d).
(2) Houses and Rents—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 13 (i) (b) (i).
(3) Partition Act (1893), S. 4.

●—The word "family" in a family settlement is not to be understood in a narrow sense of being a group of persons whom the law recognises of as having a right of succession or having a claim to a share in disputed property — See Hindu Law — Family Settlement. **(1965) 2 S C W R 837 : (1965) 3 S C R 841 : A I R 1966 S C 323.**

●—The word "family" in R. 10 (1) of the Rules for Assessment of Conservancy Tax framed under C. P. and Berar Municipalities Act 1922, has according to the context in which it appears has variable connotation. Even a single person may be regarded as "family". A master and servant may also be regarded as "family". See Municipalities — City of Nagpur Corporation Act 1948 (2 of 1950), S. 114. **AIR 1963 S C 1192.**

●—In its popular sense the word "family" means children and when the settlor recites that he has no children that is an indication that the dedication is not for the benefit of the "family" but for the public. See Hindu Law—Religious Endowment. **A I R 1957 S C 133.**

—The word "family" in the context in which it is used in S. 106, T. P. Act, cannot receive a restricted interpretation given to that word in Hindu law merely because the parties to the litigation are Hindus. It includes all those who are connected by blood relation or by marriage with each other and in that sense would cover married daughters. See T. P. Act (1882), S. 106. **AIR 1964 Bom 96.**

—"Family" includes both agnates and cognates. See Mussalman Wakf Validating Act (1913), S. 3 (a). **AIR 1957 Mad 583 (DB).**

—Meaning of the word "family" in a particular statute must be determined with reference to the context in which it has been used; blood or affinity is not necessarily in all cases, the pre-condition to constitute a "family". Divided members of a "family" do not fall within the expression in exception (1) to S. 2 (1) (j), Orissa Tenants Relief Act that is to say they are not members of the landlord's family and therefore are not excluded from being tenants created by the Act. The exception must be limited to the members of the "family" having joint proprietary interest. See Tenancy Laws—Orissa Tenants Relief Act (5 of 1955), S. 2 (1) (j), Exception (1). **31 Cut L T 608 : ILR (1965) Cut 179.**

—Word 'family' used in S. 10, Bihar Agricultural Income-tax Act, 1948 must be construed with reference to Mahomedan law. The word includes (1) all those persons residing in the same house as the settlor and dependant upon him for maintenance and (2) all those connected with the Settlor through a common progenitor or by ties of common lineage. It is not, however, confined to persons who are dependants for their maintenance on the wakif the settlor and as such the son of a half-brother, the son and grandson of a paternal uncle and the son of a half-sister though not dependants of the wakif for their maintenance and residing separately from him are included in the term "family". See Bihar Agricultural Income-tax Act (32 of 1948), S. 10. **1956 B L J R 663.**

—Widow of husband's cousin and her children not members of "family". See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (27 of 1950), S. 13 (1), (4) (i). **1962 Raj L W 693.**

"Fast dye".

—Per Bhandari J.—A 'fast dye' need not necessarily be a deep dye. Fast colour means a colour which cannot be removed by water or possibly by sun. The colour itself may be light or deep. **1953 Cri L J 1313: 55 Pun L R 145 : I L R (1953) Punj 542 : A I R 1953 Punj 204 (207) (Pt B) (Pr 23) (DB).**

"Feed-oats"

●—Import and Trade Control Schedule, Item 32—'Oats' are 'grains' — Classification of "feed-Oats" as grains by authorities held not perverse — A I R 1957 Mad 19 Reversed—See Sea Customs Act (1878), S. 19. **AIR 1963 S C 1319**

"Fees"

See (1) Constitution of India, Art. 265 and Sch. VII List II, Item 66.
(2) Municipalities—City of Nagpur Corporation Act (2 of 1950), S. 70.
(3) Municipalities—Madras City Municipal Act (4 of 1919), S. 223.
(4) Municipalities — Madras District Municipalities Act (5 of 1920), S. 321 (2).
(5) Panchayats—Madras Panchayats Act (35 of 1958, S. 100 (4).

"Ferari"

—Held that in the context in which the word "ferari" was used in the patta the lotdar intended to mean by it that old tenants had abandoned their holdings; otherwise he could not assert his right of granting a new settlement to defendant—See Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 87. **A I R 1955 N U C (Cal) 2332 (DB).**

"Fictitious"

—In S. 17 (g), Drugs Act, the word "fictitious" means forged — Label declaring that firm A was the manufacturer of the goods, when in fact the firm A was not the a firm of manufacturers, manufacturers being some other company — Firm A held took up "fictitious" role and therefore the name of the manufacturer given on the label was fictitious." See Drugs Act (1940), Section 17 (g). **1956 Cri L J 1453 : AIR 1958 All 865.**

"File an award".

See (1) Arbitration Act (1940), S. 14.
(2) Land Acquisition Act (1 of 1894), S. 12.

"Final".

See also (1) Civil P. C. (1908), S. 2 (2), O. 34, R. 3.
(2) Constitution of India, Arts. 132, 133.
(3) Limitation Act (1908), Art. 182.

●—'Final decision'—Preliminary decree for partition is 'Final decision'. See Provincial Insolvency Act (1920) (As amended in 1948), S. 28 A, Proviso 1. **AIR 1963 SC 992.**

—Word "final" in Gujarat District Panchayats Election Rules (1962), is used in regard to the decision of the Returning Officer in sub-rule (a) of R. 14 in order to eliminate interference at an intermediate stage. See Panchayats—Gujarat Panchayat Act (6 of 1962), S. 24. **ILR (1965) Guj 111 : (1965) 6 Guj L R 200 : AIR 1966 Guj 19 (DB).**

—Speaking generally, when it is said in an enactment that the decision shall be "final", it must mean that the decision is not open to appeal or revision by any Court of correction. In its ordinary signification, the expression "final" means last or that it absolutely puts an end to or concludes a matter. The use of that expression would connote that further controversy on the question is precluded. Or to put the same thing somewhat differently, it connotes that there is to be a finality to the proceeding. **(1960) 1 Guj L R 1 : 1 Guj H C R 1.**

"Final order".

See (1) Constitution of India, Arts. 133, 134.
(2) Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 29.
(3) Limitation Act (1908), Art. 182.

"Financial obligations".

See Indian Independence (Rights, Property and Liabilities) Order (1947), Art. 8.

"Find".

—Word "find" when used in regard to legal proceeding means "to determine and declare an issue of fact by decision". It means to decide after judicial investigation or judicial enquiry. When a Court is to "find" a thing, it means an objective test, which of necessity depends upon an enquiry into the matter. See Tenancy Laws—Madhya Bharat Tenancy Act (66 of 1950), S. 50. **1961 M P L J 963.**

"Finding".

●—The word "finding" in the second proviso to S. 34 (3), Income tax Act, will only cover material questions which arise in a particular case for decision by the authority hearing the case or the appeal which being necessary for passing the final order or giving the final decision in the appeal, has been the subject of controversy between the interested parties or on which the parties concerned have been given a hearing. A 'finding' therefore can be only that which is necessary for the disposal of an appeal. See Income-tax Act (1922), S. 34 (3), Second Proviso. **AIR 1965 SC 342.**

"Firm".

See (1) Civil P. C. (1908), O. 30, R. 1.
(2) Income-tax Act (1922), Ss. 3, 26A.
(3) Partnership Act (1932), S. 44.

"First hearing".

See (1) Civil P. C. (1908), O. 8, R. 1.
(2) Houses and Rents—East Punjab Rent Restriction Act (3 of 1949), S. 13 (2) (i), Proviso.
(3) Houses and Rents—Pepsu Urban Rent Restriction Ordinance (8 of 2009 BK), S. 13 (2) (i).
(4) Houses and Rents—Saurashtra Rent Control Act (22 of 1951), S. 12 (4).
(5) Houses and Rents — West Punjab Urban Rent Restriction Act (23 of 1949), S. 13 (2) (i), Proviso.

"Fit for use as intoxicating liquor".

See Bombay Prohibition Act (25 of 1949), Ss. 6A, 24A.

'Flagrantly abuses".

See (1) Municipalities—Punjab Municipal Act (3 of 1911), S. 16 (1) (e).
(2) Municipalities — U. P. Municipalities (Amendment) Act (7 of 1949), S. 40 (3).

"F. O. B." and "F. O. R."

—The words F. O. B. and F. O. R. stand for Free on Board and Free on Rail respectively. Where the seller agrees to sell goods on F. O. B. or F. O. R. terms it means that the seller will bear all the expenses prior to the putting on board or rail. As soon as the goods are put on board or rail the responsibility of the seller ceases and the risk as well as property vests in the buyer. Prior to the putting on board a ship or rail of the goods the seller alone must bear the damages to the goods. (1922) 1 K B 343 and (1921) 3 K B 302, Ref. to. **(1955) 6 S T C 47 : 67 Mad L W 647 : AIR 1954 Mad 1030 (1038) (Pt D) (Pt 25).**

"Food".

—Constitute 'Food', article must be usable as food — Court not concerned with its actual use. See Prevention of Food Adulteration Act (1954), S. 2 (v). **1964 (2) Cri L J 715 : AIR 1964 Pat 565.**

"Food and Foodstuff".

—Practically there is no distinction between the meaning of the words "food" and "food stuff". A thing may be a food or food stuff even if not directly consumed and has no nutritive value but is only used for culinary purposes in the preparation of food. 'Food stuff' has no special meaning of its own. Wheat and wheat products are food. See Defence of India Rules (1962). R. 35 (5). **1964 (1) Cri L J 662 : AIR 1964 Cal 279 (DB).**

"F. O. R." and "F. O. B."

—F. O. R. means Free on Rail and F. O. B. means Free on Board. See Words and Phrases — "F. O. B." and "F. O. R."

"For".

—Though the word "for" may mean "Concerning", in Art. 15 (3) it means only "in favour of". See Constitution of India, Art. 15 (3). **AIR 1952 Cal 825 (DB).**

"For any other purpose".

—Words "for any other purpose" in Art. 226 have got to be construed in the context of what precedes the same. These words necessarily imply "for the enforcement of any other right". See Constitution of India, Art. 226. **AIR 1956 All 503 (DB).**

—Expression "for any other purpose" — Meaning — Not to be read ejusdem generis — Hut or shed—Used for purpose not analogous to dwelling and stable not excluded. See Municipalities — Bombay Provincial Municipal Corporations Act (59 of 1949), S. 308. **(1961) 2 Guj L R 495.**

"For any other substantial cause".

—Words "for any other substantial cause" in O. 41, R. 27 (b), C. P. C. must be read with the word "requires" in the beginning of the sentence. The words cannot be construed in the narrow sense suggested by the doctrine of ejusdem generis. See under C. P. Code (1908), O. 41, R. 27 (b). **AIR 1965 Punj 494.**

"For any other sufficient cause".

—"For any other sufficient cause" in O. 47, R. 1, Civil P. C. mean a reason sufficient on grounds at least anologous to those specified immediately previously. See C. P. Code (1908), O. 47, R. 1. AIR 1963 Cal 100.

"Force and violence".

—While 'force' has been defined in S. 349, I. P. C., the word 'violence' has not been defined in the Penal Code. 'Violence' must therefore be understood in its ordinary sense. It is a word of wider import than force and includes force used against inanimate objects also. See Penal Code (1860), S. 146. **1955 Cri L J 671: AIR 1955 All 232 (FB).**

"Force majeure".

—Expression "force majeure" is not a mere French version of the latin expression 'Vis major'. It is a term of wider import. Strikes, breakdown of machnery, which though normally not included in 'Vis major' are included in 'force majeure'. See Contract Act (1872), S. 29. **AIR 1961 SC 1285 (c).**

"Foreigner".

—Person who is a citizen of Pakistan and not a citizen of India, is a "foreigner" within meaning of Foreigners Act. See Public Safety — Preventive Detention Act (1950), S. 3 (1) (b). **1957 Cri L J 703: A IR 1957 Andh Pra 143 (DB).**

"Foreign power".

—Pakistan, though a part of Commonwealth must be regarded as "foreign power" within meaning of S. 3, Preventive Detention Act—The expression must be construed in an ordinary way. See Public Safety —Preventive Detention Act (1950), S. 3. **1960 Cri L J 764: AIR 1960 SC 625.**

'Foreign service".

—Permanent Postal employee under Government of India opting provisionally in 1947 for Pakistan — Servant reserving his option and changing it for India finally before prescribed period — **Held** that under Fundamental Rule 26 (9), servant's service in Pakistan should be treated as "foreign service" and will count for increment. See Fundamental Rules.: **A I R 1960 Pat 533.**

"Forest rights".

—Expression "forest rights" in S. 193, Bihar Tenancy Act includes the right to appropriate any kind of forest produce. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 193. **1962 B L J R 774.**

"Forfeiture".

See also Transfer of Property Act (1882), S. 114.

—According to dictionary meaning of the word "forfeiture" the loss or the deprivation of goods has got to be in consequence of a crime, offence, or breach of engagement or has to be by way of penalty of transgression or a punishment for an offence. See High Court Rules and Orders—(Calcutta) Rules of the High Court Pt. 1, Chap. II, R. 9, Proviso. **1953 Cri LJ 1101: AIR 1953 SC 248.**

"Form".

—The word "form" connotes a visible aspect such as shape or mode in which a thing exists or manifests itself, species, kind or variety. Rice in all forms would mean all kinds or varieties of rice or species of rice, such as broken rice, kichidi rice, pichodi rice or rice flour etc. See Sales Tax — Hyderabad General Sales Tax Act (14 of 1950), Sch. I, Item. **AIR 1953 Hyd 252 (DB).**

"Formal defect."

See Civil P. C. (1908), O. 23, R. 1 (2) (a).

"Formal expression".

See Civil P. C. (1908), S. 2 (2).

"Former suit".

See Civil P. C. (1908), S. 11.

"For reasons to be recorded".

—Expression "for the reasons to be recorded" in S. 18 (a) of the Arms Act (1878) — It is not enough when cancelling an arms licence merely to repeat the words in the clause that the authority deems it necessary for the security of the public peace to cancel the licence. Authority must give reasons to be recorded in writing. See Arms Act (1878), S. 18 (a). **AIR 1956 Pepsu 37.**

"For the purpose of growing tea".

—The words "for the purpose of growing tea" in Item 4 of Schedule, in Minimum Wages Act would mean growing tea plants no matter whether for the purpose of collecting leaves or for collecting seeds. The word 'growing' would only mean growing the plants and maintaining and nursing them, which are also the circumstances in case where tea has to be reared up for the purpose of plucking seeds and not leaves. The word 'tea' does not bear any other limited interpretation in the context in which it appears in Item 4. See Minimum Wages Act (1948), Sch., Item No. 4. **AIR 1958 Assam 155 (DB).**

"For the time being in force".

—The expression law: "for the time being in force" in S. 19 (1) (g), Defence of India Act, refer to law actually in force when Act was passed — Expression in S. 46 of Arbitration Act has the same meaning. See Defence of India Act (1939), S. 19 (1) (g). **A I R 1954 Cal 41.**

"For the year in question".

See Income-tax Act (1922), S. 10 (2) (x), Proviso.

"Forthwith".

See also (1) Houses and Rents — U. P. (Temporary) Control of Rents and Eviction Rules (1949), R. 4.
(2) Public Safety — Preventive Detention Act (1950), S. 3 (3).
(3) T. P. Act (1882), S. 55 (1).

—Forthwith means within reasonable period. See Civil P. C. (1908), O. 17, R. 3 (as amended by Allahabad High Court). **1964 All LJ 1085: AIR 1966 All 615.**

"Fortnight".

—The ordinary interpretation and connotation given to English words in the English language and the dictionaries should be adopted in construing English words. Such construction sometimes causes inconvenience and hardship, but in construing a statute or certain expressions, the Court cannot be influenced by such considerations. A "fortnight" is equal only to two weeks and not to fifteen days, (1958) 1 An W R 223, Affirmed. **(1960) 2 Andh W R 213: 1960 Andh L T 783.**

—The expression "fortnight" must be given meaning as stated in the English Dictionaries. It is not open to interprete the English language in a manner different from how it is understood in the English Dictionaries. According to Oxford Dictionary 'fortnight' means 'A period of fourteen nights; two weeks' It is a 'contracted form of O. E. Feowertyne night fourteen nights'. In Webster's New International Dictionary of the English Language the meaning given

is 'the space of fourteen days; two weeks'. The argument that 'fortnight, means fifteen days inasmuch as month has only two pakshams cannot be accepted. (1958) 1 An W R 223.

"For want of prosecution".

—The expression "for want of prosecution" is a dubious expression. It may mean for default on the ground that no one was present on behalf of the plaintiff to prosecute the case and it may also mean for want of evidence on the ground that the plaintiff was present or deemed to be present but took no steps to produce evidence in support of his case. 1956 All W R (HC) 824 : 1956 All L J 827: A I R 1957 All 107 (109, 110) (Pt C) (Pr 14) (DB).

"Forward contract".

See (1) Contract Act (1872), S. 30.
(2) Forward Contracts Regulation Act (1952), S. 2.
(3) Oilseeds Forward Contracts Prohibition Order (1943), S. 2 (ii).

"Fraud".

See Civil P. C. (1908), Ss. 11 and 48 (2) (a).

"Fraudulently."

See Penal Code (1860), S. 25.

"Fraudulently obtained."

See Saurashtra District Police Ordinance (46 of 1948), S. 59-D.

"Fraud upon statute."

—The expression "Fraud upon Statute" is a very high-sounding expression. If the letter of a statute permits a certain course of action, it is difficult to describe it as a fraud upon the statute. If that course of action is no longer desired the statute should be changed. To permit an action and then to call it illegal, cannot be supported. 61 C W N 414 : AIR 1957 Cal 656 (658) (Pt D) (Pr 11).

"Free consent."

See Contract Act (1872), S. 14.

"Freedom of Press."

See Constitution of India, Art. 19 (1) (a).

"Free-hold."

—Though the term "free-hold" has no well defined meaning in Indian law where the term has been used in a contract for sale of land the Court must assign to it a legal meaning as closely resembling the meaning of the term in England as Indian conditions permit.

Free-holds have now come to be recognised in England as practically equivalent to absolute property and having regard to the nature of a "freehold" in England, both from the point of view of its origin and its incidents, it would be appropriate to consider that estate in land as "freehold" in India which is not liable to terminate after a fixed period of time and in which the owner has an estate as nearly as possible equivalent to absolute property. Heritability and transferability are two of the most important attributes of absolute property.

A "freehold" does not mean land held free from payment of assessment or taxes. The liability for payment of land revenue cannot affect the question whether the land is or is not "freehold." So also the fact that an assessment is liable to be revised after fifty years does not make the land lease-hold for fifty years nor is the interest in such land terminable after 50 years. The interest continues indefinitely subject to the payment of assessment as may be levied from time to time. Similarly the fact that restrictions are imposed regarding the building to be put on the land under a town-planning scheme cann ot derogate from its nature as a "free hold." ('50) 52 Bom L R 636 : ILR 1950 Bom 568 (571, 572, 576, 577).

"Free of all encumbrances."

—Term 'encumbrances' of which the revenue auction-purchaser would be free comprehends the claims developed by the adverse possessor in the property possessed and the purchaser gets his title under his revenue sale free from the prescriptive title which had not yet matured but is in the course of acquisition by reason of the adverse possession up to the date of the revenue sale. See Travancore Revenue Recovery Act (1 of 1068), S. 35. AIR 1957 Trav-Co 14 (DB).

"French polish."

—"French polish" is included in the word "Varnishes" in Ch. I, Item 22. 'Varnish' is a generic name given to a homogeneous solution of gums or resins in alcohol, linseed oil or the like which is coated on various articles for protective or decorative purposes. "French polish" is only a species, being a homogeneous solution in alcohol with the result that the volatile solvent evaporates quickly. See Central Excises and Salt Act (1944), Sch. 1, Item 22. AIR 1961 Madh Pra 353 (DB).

"Fresh election."

—Fresh General Election under S. 554 (2) (ii) of Bengal Municipal Act, 1932, must be the general election that is directed by the State Government after the decision to reconstitute the municipality by a fresh general election is made. The election that takes place before the decision to reconstitute the municipality is made, cannot be considered a 'fresh' general election. See Municipalities — Bengal Municipal Act (15 of 1932), S. 554. AIR 1955 N U C (Cal) 2399 (DB).

"Friendly relations with foreign States."

See Public Safety — Punjab Security of the State Act (12 of 1953), S. 9.

"From."

See also General Clauses Act (1897), S. 9.

—In S. 58 (1), Bombay Agricultural Debtors Relief Act, 1947, the word "from" is not used in the sense in which it is indicated in S. 10 (1), Bombay General Clauses Act. See Debt Laws — Dekkhan Agriculturists' Relief Act (1879), S. 1. AIR 1953 Bom 198.

—Word "from" is much akin to 'after,' when used in reference to the computation of time e.g. "from" a stated date, prima facie excludes the day of that date. See Travancore-Cochin Shops and Establishments Rules (1950), R. 9 (1). 1956 Ker L T 609.

—The provisions of S. 9 of the General Clauses Act, although those provisions may be looked into only for the interpretation of the enactments referred to in that section, do afford valuable guidance as to the method to be adopted for the purpose of computation of time even in notifications issued by an authority in the exercise of power conferred on it by law. The word "from" is akin to 'after' and if the word "from" is used for the purpose of and in reference to the computation of time, as for example, from a stated date, date is prima facie excluded from computation. 39 Mys L J 1006 : 1962 (4) F L R 144 : (1963-64) 24 F J R 37 : (LR (1962) Mys 23 : AIR 1962 Mys 117 (123, 124) (Pt C) (Prs 62, 63, 64) (DB).

"From date of order."

—Expression from "the date of such order" in S. 145 (4), Proviso (2), Criminal P. C., explained. See Criminal P. C. (1898), S. 145 (4). 1958 Cri L J 919 : AIR 1958 Orissa 153 (DB).

—In S. 33 A (2), Income-tax Act, 1922, means from date of actual order and not from date of communication of the order. See Income-tax Act (1922), S. 33-A (2). AIR 1953 Punj 16 (DB).

"Fully."

—Word "fully" in S. 28, Evidence Act means "thoroughly," "completely" 'entirely,', so as not to leave any trace of the impression created by the torture or fear. See Evidence Act (1872), S. 28. **1959 Cri L J 48 : AIR 1959 Madh Pra 17.**

"Full time earning."

●—The expression "total full time earning" can only mean the earnings, a worker earns in a day by working full time on that day, full time to be in accordance with the period of time given in the notice displayed in the factory for a particular day. See Factories Act (1948), S. 79 (1). **1962 (1) Cri L J 497 : AIR 1962 S C 517.**

"Function"

—The natural meaning of the word "function" is an activity proper to a thing or person or mode of action by which it or he fulfills its or his purpose. See Madras Commercial Crops Markets Act (20 of 1933), S. 6-A. ILR (1961) Mys 951.

"Functus Officio."

●—Per Golvalker J. — The expression "functus officio" means, "having fulfilled the function," "having discharged the duty," "having discharged the office" or "accomplished the purpose" and therefore no further force or authority. See Stamp Act (1899), S. 33 (1). **AIR 1966 Madh Pra 20 (FB).**

"Fund"

●—Word "fund" may mean actual cash, resources of a particular kind (e.g. money in a drawer or a bank) or it may be a mere accountancy expression used to describe a particular category which a person uses in making up his accounts. The words "payment out of" when used in connection with the word "fund" in its first meaning connote actual payments i. e. by taking money out of the drawer or drawing a cheque on the bank. In its second meaning, they connote that, for the purposes of the account in which the fund finds a place; a payment is debited to that fund. See Penal Code (1860), S. 405. **1962 (2) Cri L J 805 : AIR 1962 S C 1821.**

"Fundamental principles of justice."

—The words "fundamental principles of justice" cannot be interpreted so as to make mere want of jurisdiction or excess of jurisdiction a violation of that principle. See Industrial Disputes (Appellate Tribunal) Act, S. 7. **AIR 1952 Bom 209.**

"Further inquiry."

See Criminal P. C. (1898), S. 436.

"Further or other relief."

See Civil P. C. (1908), S. 92 (h).

"Gaddi".

—The word "gaddi" is used very loosely and in different senses; in one use of the word a "gaddi" appears to be necessary part of the dignity of a religious ascetic of the highest class. AIR 1943 P C 7, Foll. **ILR (1952) Punj 506 : A I R 1952 Punj 361 (364) (Pt B) (Prs 25, 27) (DB).**

"Gain".

—In S. 4 (2). Companies Act (1913) the word "gain" means 'acquisition' and is not limited to mere pecuniary "gain". The word is to be taken as referring to a company which is formed to acquire something or in which the individual members are to acquire something. See Companies Act (1913), S. 4 (2). **A I R 1955 Mys 149.**

—In Cl. (1) of S. 4 of Bengal Alluvion and Diluvion Regulation, the word "gain" has been used in a limited sense, contemplating only those gains which do not give rise to any forfeiture of title or confiscation of any other man's property. See Bengal Alluvion and Diluvion Regulation (1825), S. 4 (i). AIR 1955 **N U C (Pat) 1861 (DB).**

"Gaining wrongfully".

See Penal Code (1860), S. 23.

"Gambling".

See West Bengal Gambling and Price Competition Act (32 of 1957), S. 19 (d).

"Gang".

—The word "gang" means any band or company of persons who go about together or act in concert. The essence of the word in S. 400, Penal Code is that the persons should act in concert and therefore two or more persons can constitute a "gang". See Penal Code (1860), S. 400. **1963 (2) Cri L J 121 : AIR 1963 Andh Pra 314 (DB).**

—The term "gang" is well-known and when we talk of a certain person's gang it is understood that it means the gang organised by that person and constituting that person and others. **1953 Cri L J 1519: ILR (1952) Patiala 445 : AIR 1953 Pepsu 145 (145, 146) (Pt A) (Pr 3).**

"Garbling".

—Process of "garbling" pepper by washing and drying it and packing the dried pepper in gunny bags after winnowing the dried pepper to remove all dust and dirt amounts to manufacturing process as defined in the first part of cl. (k) of S. 2, Factories Act. See Factories Act (1948), S. 2. **1958 Cri L J 1026 : A I R 1958 Ker 237.**

"Gehan" and "Jaine".

—"Gehan" and "Jaine" corrupt form of "Gehna"—Meaning of — Pledge is denoted — "Rehan" denotes mortgage. See Court-fees Act, Ss. 7 (3) and 7 (a). **AIR 1952 Madh-B 196 (DB).**

"General custom".

●—In Punjab the expression "general custom" has really been used in the sense that the custom has been repeatedly recognised by the Courts and therefore requiring no proof. Such a custom is entitled to judicial notice. **AIR 1959 S C 1041 (1045) (DB).**

"General meeting of Company".

—An extraordinary "general meeting" is as much a general meeting as an annual "general meeting" or a statutory meeting and there is nothing in the Companies Act which would justify the restriction of the term "general meeting" to annual "general meeting". :See Company — Articles of Association. **AIR 1964 Ker 273.**

"General public".

—Words "general public" in Art. 19 (6) of the Constitution do not mean all the members of the public in general. They apply to a particular section of the public. See Bihar Shops and Establishments Act, (1953) (8 of 1954), S. 26 (2). **AIR 1958 Pat 442 (DB).**

"Genuine".

—The word "genuine" does not necessarily imply "unreal in point of fact." It may also connote "not legally valid." (1942) L R 69 I A 119, Foll. **ILR (1955) 2 Cal 44.**

—The word "genuine" as defined in the law lexicon means not spurious or counterfeit, or as explained in dictionary 'belonging to, derived from or descended from the original source or stock, authentic, typical, pure'. Where the jewels auctioned were not admittedly imitation stones the mere fact that the quality of those jewels though real, was of an inferior order cannot be ground for holding that they were not 'genuine' at all. It may be that 'Dagi and doshi are less valuable than the real jewels without dagi and doshi, but dagi and doshi cannot make the jewels unreal or any way less genuine.' **AIR 1959 Pat 490 (495, 496) (Pt B) (Pr 9).**

"Genuinely requires".

—There is a distinction between words "genuinely requires" and 'reasonably requires'. The former refers to a state of mind and the latter to an objective standard. "Genuine requirement" would vary according to the idiosyncracy of the individual and the time and circumstances in which he lives and thinks. Reasonable requirement belongs to the knowledge of law and means reasonable not in the mind of the person requiring the accommodation but reasonable according to the actual facts. See Houses and Rents—M. B. Sthan Niyantran Vidhan (15 of 1950), S. 4(g). **AIR 1955 N U C (Madh-B) 2098 (DB).**

"Ghair-maoroosi".

—"Ghair-maoroosi" means a tenant at will and when a person is so recorded along with the original tenants at will the entry in his favour can only by interpreted as a sub-tenancy and it is incorrect to give the entries their natural meaning on the ground that it was never the case of the plaintiff that the person so recorded held the land as his sub-tenant. See Punjab Land Revenue Act (17 of 1887). **AIR 1951 H P 65.**

"Gift".

See (1) Gift Tax Act (1958), S. 2(xii).
(2) T. P. Act (1882), Ss. 122, 129.

"Girasdar".

●—The generic term "Garasia" or "Girasdar" includes Talukdars, Bhagdars, Mulgaresias and Bhagats, who can be generally classed as landholders with proprietary rights as distinguished from ordinary landholders included in the generic term Barkhalidars, which term includes Inamdars, Jiwaidars, Dharmada or kherati grantees and service tenure holders such as chakariatas and pasaitas who are merely entitled to the usufruct of the land granted to them. **AIR 1952 Sau 114 (118, 119) (Pt H) (Pr 12) (SB).**

"Give a satisfactory account of himself".

See Criminal P. C. (5 of 1898), S. 109(b).

"Glassware".

—Words "glassware" includes lenses and object glasses. See Tariff Act (1934), Item 60(9)(4). **(1965) 1 Mad L J 279 : AIR 1965 Mad 312 (DB).**

"Going armed".

See (1) Arms Act (1877).
(2) Mysore Arms Act, S. 14(d).

"Good faith."

See (1) General Clauses Act (1897).
(2) Limitation Act (1908), S. 2 (7).
(3) Penal Code (1860), Ss. 52, 405 and 499-500.
(4) Public Safety — Rajasthan Public Safety Ordinance (9 of 1948), S. 44.
(5) T. P. Act (1882), S. 51.

"Goods"

See (1) Central Excises and Salt Act (I of 1944) (As Amended by Act 38 of 1960), Sch. I, Item 12.
(2) Constitution of India, Sch. 7 List 2 Art. 56.
(3) Limitation Act (1908), Art. 52.
(4) Sales Tax—Assam Sales Tax Act (1947), S. 2 (12).
(5) Sales Tax—C. P. and Berar Sales Tax Act (1947), S. 2 (d) and (g).
(6) Sales Tax—M. B. Sales Tax Act (1950), S. 2 (k).
(7) Sales Tax —M. P. Sales Tax Act (1947), S. 2 (i) (a).
(8) Sea Customs Act (1878), S. 183.

"Goodwill."

■—"Goodwill of a business depends upon a variety of circumstances or a combination of them. The location, the service, the standing of the business, the honesty of those who run it, and the lack of competition and many other factors go individually or together to make up the "good.will" though locality always plays a considerable part. At the same time, locality is not everything. In the case of a theatre or restaurant, what is catered, how the service is run, what the competition is, contribute also to the goodwill. Messrs. S. C. Cambatta and Co. v. Commr. of Excess Profits Tax. **(1961) 41 I T R 500 : (1961) 2 S C R 805 : (1961) 2 S C J 265 : A I R 1961 S C 1010 (1012) (Pr 9).**

—Sale of—What is included in "goodwill." See Companies Act (1913), S. 2(1) and (2). **A I R 1957 Bom 111 (DB).**

—Execution of decree—Order of Court to sell "goodwill" of judgment-debtor's business - What is "goodwill" explained. **AIR 1957 Cal 250 (DB).**

—Meaning of "good will" explained. See Estate Duty Act (1953), S. 36. **AIR 1962 Mad 315 (DB).**

—Nature of — "Goodwill" of business when attaches to premises in which it is carried on—Law relating to explained—(Landlord and tenant.)

"Goodwill" may be either incident to premises or stocktrade. Sometimes it happens that on the sale or transfer of business the purchaser takes a lease of the old premises for a specified period and then removes his business to another site. On the termination of the lease the question arises whether the goodwill of the business continues to be annexed to the premises or is carried away by the purchaser and lessee along with the stock-in-trade and machinery. The answer will depend on the original terms of sale, as well as, on the nature of the business; one or more of the elements going to make up what is called goodwill may be retained, while others may be parted with and all or every such elements may be disposed of without express mention. Where the "goodwill" is incident to the means of production rather than to the place of business as, for instance, a manufacturing business the "goodwill" will pass on with plant and stock to the lessee. On the other hand, where the attribute is the predominant feature as in the business of a hotel or public house, the "goodwill" is generally incident to the premises and, consequently, passes to the reversioner. By an express contract it may, however, pass to the lessee. Thus, we have "cat goodwill." When considering a tenant's claim for "goodwill" it is not permissible to take into account so-called 'cat' "goodwill," which is part of the "goodwill" attributable to the site as distinct from the tenant's own business carried on on the site. The "goodwill" of a solicitor's business cannot adhere to the premises in which it was carried. English case law referred.

Applying these principles to the facts of the case it was held that the "goodwill in the condiment business carried on by plaintiff in the suit premises, was a personal "goodwill" and had not become attached to the premises. **AIR 1955 Mad 350 (356, 357) (Pt B) (Prs 20, 21, 25).**

"Goonda."

—To characterise a person as "goonda' which is well understood term, is per se defamatory. See Penal Code (1860) S. 499. **1962 (2) Cri L J 142 (Ker).**

"Go slow."

—"Go slow" is a picturesque description of deliberately delaying of production by workmen pretending to be engaged in the factory. This is misconduct. **1962 (3) S C R 684.**

"Government."

See also Penal Code (1860), S. 17.

—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 51 —Expression "clamis of the Government" includes all claims which may be made by State Government or by the Central Government of India. See Tenancy Laws — Bombay Tenancy and

Agricultural Lands Act (67 of 1948), S. 51. **AIR 1957 Bom 155 (DB).**

—Per Narasimham J.—"Government" referred to in the expression "appropriate Government" in S. 2 (a), Industrial Disputes Act is the "Government" exercising administrative or executive authority and not the "Government" exercising its powers as an employer in an industry. See Industrial Disputes Act (1947), S. 2 (a). **AIR 1960 Orissa 205 (DB).**

"Government of the Vindhya Pradesh."

—The words "Government of the Vindhya Pradesh" used in an order made by a Secretary to the Chief Commissioner conveys exactly the same meaning, and has the same effect as the words "Chief Commissioner of the Vindhya Pradesh." **AIR 1952 Vin.Pra 18 (19) (Pt B) (Pr 7).**

"Gratification."

See (1) Penal Code (1860), S. 161.
(2) Representation of the People Act (1951), S. 123.

"Gratuity."

—Death-cum-Retirement "Gratuity" in revised Pension Rules — Expression, explained. See Constitution of India, Art. 14. **AIR 1963 Mys 247 (DB).**

—"Gratuity" is a payment in the nature of gift and the donor cannot be compelled to make a gift, the matter being within his sole discretion. "Gratuity" does not rest upon a consideration. Any amount paid over and above what is due for services is "gratuity." "Gratuity" is not synonymous with compensation. A pension which is granted for services previously rendered and which at the time they were rendered gave rise to no obligation is a "gratuity," not giving rise to an action. In certain case "gratuity" is also in the nature of expectacy granted by the donor. See Master and Servant. **AIR 1961 Punj 443.**

"Green Vegetables."

See (1) Sales Tax—Bihar Sales Tax Act (19 of 1947), S. 6.
(2) Sales Tax — U. P. Sales Tax Act (1948), S. 4.

"Gross profits"—Meaning of.

See Companies Act (1913), Table A, Regn. 107.

"Gross rental at which premises may reasonably be expected to let".

—"Gross rental at which premises may reasonably be expected to let" in S. 128 (1), Bengal Municipal Act —Statutory guide to ascertain rent of hypothetical tenant indicated—Expression interpreted. See Municipalities — Bengal Municipal Act (15 of 1932), S. 128 (1). **(1964) 68 Cal W N 949.**

"Groundnut".

See (1) Sales-tax — Hyderabad General Sales Tax Act (14 of 1950), S. 4,
(2) Sales Tax—Madras General Sales Tax (Turnover and Assessment) Rules (1939), R. 4 (a) and (d).

"Grove".

See Tenancy laws — M. B. Zamindari Abolition Act (13 of 1951), S. 5 (iv).

"Growing crops".

See (1) Civil P. C. (1908), S. 60 and O. 21, R. 94.
(2) T. P. Act (1882), S. 3.

"Gnati".

—In mitakshara (Madras) term "gnati" means agnates only and does not include cognates. **AIR 1953 Hyd 275 (276) (Prs 6, 10) (FB).**

"Habi".

See U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), Rr. 2 (e) and 4 (1) (d).

"Hajat kami"

—Hajat kami" when applied to rent would mean relief given to the tenant on account of his want or necessity—Principles stated—Kabuliat not mentioing 'hajat'—'Hajat' granted after creation of tenancy — Held that tenant was not entitled to 'hajat'. **I L R (1951) 1 Cal 133 : AIR 1955 NUC (Cal) 1064 (DB).**

"Hakka" (हक्क) — Meaning and implication.

—The word "Hakka" should not be narrowly interpreted meaning present right or title in the property. It has reference to future title also. By the words "यावर कोणाचा कोणतेही प्रकारचा हक्क व बोझा नाहीं" occurring in the sale deed the vendor must be deemed to have agreed that if the title which he is purporting to convey is at any future point of time displaced by a better title the vendor would reimburse and compensate the vendee and if such contingency occurs full effect must be given to the guarantee contained in these words and the vendee is entitled to enforce his right for the breach of the guarantee. **1963 Mah L J (Notes) 22 (Bom).**

"Haqiyat"

—"Haqiyat" does not include abadi site. **AIR 1952 All 148 (Pr 4) (DB).**

"Harijan".

See Untouchability (Offences) Act (1955), S. 3.

"Has been".

—Plain implication of the words "has been" "incorrectly valued or assessed" in S. 138 (1) (c) of the Bengal Municipal Act is whether having regard to the state of things existing at the time when the original or initial assessment was made, it can be said that the original or initial assessment was incorrect. See Municipalities—Bengal Municipal Act (15 of 1932), S. 138 (i) (c). **AIR 1955 NUC (Cal) 5608.**

—Though the expression "has been" in cl. (f) of S. 10 (1) of Tanjore Tenants and Pannaiyal (Protection) Act (Mad. Act 14 of 1952) may include past conduct also, the proper construction of the clause read along with the other clauses and in the context would be to confine it only to conduct or behaviour of the tenant subsequent to the passing of the Act. See Tenancy Laws—Tanjore Tenants and Pannaiyal (Protection) Act (Madras Act (14 of 1952) S. 10 (1) (f). **AIR 1955 NUC (Mad) 1570 (DB).**

"Has been previously issued".

—The words "has been previously made" in cl. 2 (1) of the schedule to Bihar Town Planning and Improvement Trust Act 1951, do not merely connote the issuing of a notification before the Bihar Act was passed but include all notifications made prior or anterior to the first publication of a notice of an improvement scheme under S. 46. See Land Acquisition Act (1894), S. 4. **AIR 1963 SC 1077.**

"Has fallen vacant".

—Under U. P. (Temp.) Control of Rent and Eviction Act, the power of the District Magistrate to let or not to let any accommodation to any person is only in respect of the accommodation which "has fallen vacant" S. 7-A of the Act gives an indication as to the meaning of the words "has fallen vacant" where the tenancy of the tenant-in-chief is terminated by an ejectment decree, the accommodation falls vacant after the ejectment decree as a whole. (See Houses and Rents —U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. **AIR 1958 All 393.**

"Have regard to".

—Under S. 4 (i) (iv) of the C P. and Berar Accommodation (Requisition) Act, 1948, the Arbitrator in making the award "shall have regard to" the provisions of S. 23 (1) of the Land Acquisition Act, in so far as

the same can be made applicable. The words "shall have regard to" show that S. 4 (1) (iv) is not exhaustive of the matters which the arbitrator should take into consideration in assessment of compensation. See C. P. and Berar Accommodation (Requisition) Act (43 of 1948), S. 4 (1) (iv). 1962 M P L J 109.

"Head of Department".

—For the purposes of S. 123, Evidence Act, the expression "Head of Department" has two distinct meanings. It may be limited to Heads of the various Departments of the secretariat, namely Secretaries of the Departments or else it may also include Heads of Departments of attached offices either under the Union Government or under the State Government. See Evidence Act (1872), S. 123. AIR 1963 Orissa 111.

"Hear".

—Word "hear" used in relation to the complainant in S. 208 (1), Criminal P. C. means granting audience to the complainant that is, has to detail the facts which constitute the offence and to state by what evidence he is going to prove these facts. As the word "hear" means granting audience to the complainant, his counsel is competent to appear on his behalf and detail the facts which constitute the offence and the evidence proposed to be led to prove those facts. See Criminal P. C. (1898), S. 208 (1). 1959 Cri L J 978 : AIR 1959 J & K 77 (DB).

"Hearing"

See (1) Houses and Rents — E. P. Urban Rent Restriction Act (3 of 1949), S. 13 (2) (i), Proviso.
(2) Municipalities — U. P. Municipalities Act (2 of 1916), S. 23.
(3) Panchayats—U. P. Panchayat Raj Act (26 of 1947), Ss. 12 (c), 77-A.
(4) Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 47.

"Hear the parties."

See (1) Constitution of India, Art. 226.
(2) Criminal P. C. (1898), S. 145 (1).

"Heir."

—Word "heir" within meaning of S. 22, Hindu Adoptions and Maintenance Act includes all those on whom the estate of the deceased devolves, whether on intestacy or by means of a testamentary instrument like a will. See Hindu Adoptions and Maintenance Act (1956), S. 22. AIR 1961 Punj 288 (DB).

"Held."

—In S. 9, U. P. Zamindari Abolition and Land Reforms Act, the legislature has deliberately used the word "held" and this word connotes the existence of a right or title in the holder. The other words used are "belonging to" and that expression certainly refers to owner. The word "held" follows the words "belonging to" and also denotes that the person in possession is there because of some right or title to the land. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 9. AIR 1953 All 406 (DB).

—Words 'possessed' and "held" used in S. 14 (1), Hindu Succession Act mean one and the same thing. See Hindu Succession Act (1956), S. 14 (1). AIR 1958 Mad 255 (DB).

"Hereafter."

—The word "hereafter" as an adverb excludes both the present and the past. ILR (1963) 1 Ker 385.

"Hessian"

—The word "hessian" as understood in the trade is a fabric woven in a particular manner, namely, plain weave single yarn and 'sacking' is a fabric woven with double wrapped yarn. See Sea Customs Act (1878), Sch. 2, Cl. 1. (1961) 65 Cal W N 1206.

"High Court."

—"High Court" referred to in Stamp Act, Art. 25 (Mad), Stamp Act, is a "High Court" within the territory to which the Stamp Act applies. See Stamp Act (1899), Sch. 1-A, Madras, Art. 25. AIR 1954 Mad 78 (DB).

"Highway."

—The common definition of 'highway' is that it is a way leading from one marked town or inhabited place to another inhabited place, and which is common to all the subjects of the Sovereign. Public bridges are highways so far as the right of passage is concerned. 1957 Raj L W 541 : I L R (1957) 7 Raj 850 : A I R 1958 Raj 138 (139) (Pt A) (Pr 5) (DB).

"Hindu."

—Word "Hindu" in Ss. 3 and 4, Hindu Women's Rights to Property Act, necessarily means a male and not a female Hindu. See Hindu Women's Rights to Property Act (1937), S. 3 (1). A I R 1958 Pat 600 (DB).

—In general the term "Hindu" does not include those professing the Buddhist religion. It includes only those persons who are governed by Hindu Law. Jains and Sikhs are governed by Hindu Law and they are included in the term "Hindu." See Constitution of India, Art. 14. ILR (1961) 11 Raj 63.

"His own business."

—What is meant by the word 'own' is something in which the landlord or his family have pecuniary interest. Where the wife of the landlord wants to start a maternity home, it is "his own" business. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order, 1949, Cl. 13 (vi) (c). AIR 1951 Nag 51 (DB).

"His own occupation."

—Expression "his own occupation" in S. 11 (3) (a), Bihar Buildings (Lease, Rent and Eviction) Control Act cannot be restricted only to occupation of the landlord himself but should be given a wider and liberal meaning so as to include occupation of persons who are living with him and are economically dependent on him. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11 (3) (a). AIR 1955 Pat 496 (DB).

"Hissedar."

●—"Hissedar" means in Kumaon and Garhwal, a cosharer in Zamindari rights. A I R 1955 All 65 (66, 67) (Prs 8, 10, 12, 15) (FB).

"Hold."

See (1) Bihar Agricultural Income-tax Act (1948), S. 13.
(2) Constitution of India, Art. 19 (1) (f).
(3) Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 9.

"Horticulture."

—Cocoanut whether a horticultural produce—Whether particular produce is horticultural produce or not does not depend upon extent of its cultivation — Mere fact that some tilling has to be done for purposes of raising crop or that watering has to be done, a produce does not cease to be horticultural produce — "Horticulture" means art of gardening and since cocoanuts are raised in gardens they answer definition of horticultural produce. See Sales Tax — Hyderabad General Sales Tax Rules (1950), R. 5 (2) (b). 20 S T C 285 : ILR (1965) Andh Pra 685.

"Hotel."

—In order to constitute a "hotel" two elements viz. (i) access thereto by the public or a section thereof and (ii) supply of articles constituting meals and drinks for a price are necessary. See Municipalities —

Bombay District Municipal Act (1901), S. 59 (1)(xi). **61 Bom L R 52 : I L R (1959) Bom 829.**

—"Hotel" is a place where the proprietor makes it his business to furnish food or lodging or both to travelling public or other persons. The fact that no food or other service is provided by the proprietor does not show that the building is not a "hotel" or a lodging house. So also the mere circumstance that certain persons remained in possession of the rooms for over three years does not prove that the rooms in question were not rooms in a "hotel" or lodging house. See Houses and Rents — Delhi and Ajmer Merwara Rent Control Act (19 of 1947), S. 2 (b). ('51) 53 **Pun L R 75.**

"House."

—Word "house" is an ambiguous word with no common or ordinary meaning so fixed and definite that by the mere use of the word one can determine in what sense the legislature has used it. The word "house" is not defined in T. C. Panchayats Act or the Rules or in Bye-laws of the Panchayats. But looking at the object and the context, the "house" tax imposed is not confined to dwelling houses and will apply to non-residential buildings. See Panchayats — Travancore-Cochin Panchayats Act (2 of 1950), S. 56. **ILR (1957) Kerala 700.**

—"House" means structure intended to be used for human habitation. Stables or outhouses used permanently as dwelling houses are "houses." See Municipalities — Indore District Municipal Act (4 of 1919), S. 21 (ix). **1960 M P L J 72.**

"Household servant."

See Limitation Act (1908), Art. 7.

"Hukamnama."

—"Hukamnama" is clearly a fee charged by the state for the recognition of the successor to the estate (being a scheduled jagir) held by his deceased ancestor. It is a special levy connected with the succession of a jagirdar. See Rajasthan Land Reforms and Resumption of Jagirs Act (4 of 1952), S. 4. **AIR 1955 N U C (Raj) 2539 (DB).**

"Husband and wife"

See Income-tax Act (1922), S. 16 (3) (a) (iii).

"Hut"

—Plain meaning of the word "hut" is a small or mean house or a small temporary dwelling or similar structure. See Tenancy Laws—Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2. **1958 Ker L T 404 : 1958 Ker L J 573 : ILR (1958) Ker 696.**

"Ijaredar"

●—Considering the setting in which the word "ijaredar" has been used in S. 2 (1) (e) U. P. Abolition of Jagirs and Land Reforms Act, it must take colour from it and cannot be held to mean any lease of land of whatever kind. In the setting the word is used, it should be confined to a person holding an Ijara which is a lease or farm of land revenue or other proprietary right as distinguished from other kinds of leases of land. See Tenancy Laws—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 2 (1) (e) **AIR 1961 S C 1204.**

"Illatom"

See Hindu Law—Adoption.

"Illatom son-in-law"

See Hindu Law—Succession.

"Illegal"

See Penal Code (1860), S. 43.

"Illegally and with material irregularity"

See C. P. Code (1908), S. 115.

"Illegal practice".

—"Illegal practice"is not defined in C. P. & Berar Panchayat Act. The term may cover a wide range of subjects. The expression cannot be given a restricted meaning so as to require for its application something done by a candidate at the time of the election, that is to say, some overt act with the result that it will not apply if there is no such overt act, as for instance, where a person incurs a disqualification under S. 14 of the Act. See Panchayats — C. P. and Berar Panchayat Act (1 of 1947), S. 14. **I L R (1958) Bom 801.**

"Immediately"

See (1) High Court Rules and Orders—Nagpur High Court Rules, Chap. 4, R. 10.
(2) Income-tax Act (1922), S. 2 (6-A), (c).
(3) Letters Patent (Nag) Cl. 10.

"Immoral"

—The word "immoral" in S. 11 (1) (c) of West Bengal Premises Rent Control Act (1948), is not limited by the ideas, and notions of brothel as expounded and defined in the Bengal Suppression of Immoral Traffic Act—Living as only one man's mistress stand on the same plane as prostitution and is sufficiently "immoral" to come within the meaning of the Rent Control Act. See West Bengal Premises Rent Control Act (1948), S. 11 (1) (e). **AIR 1951 Cal 164.**

"Immoral purpose"

—Word 'immoral' in S. 11 (1) (e), W. B. Premises Rent Control Act is not limited by the ideas and notions of brothel as expounded and defined in Bengal Suppression of Immoral Traffic Act. Prostitution and living as only one man's mistress differ only in degree but stand on the same plane. The latter is sufficiently immoral to come within the meaning of the Rent Control Act, so as to exclude such person from obtaining the benefit and protection of the Rent Act. See Houses and Rents—West Bengal Premises Rent Control Act (1948), S. 11 (1) (c). **AIR 1951 Cal 164.**

"Immovable property"

See (1) General Clauses Act (1897), S. 3 (26).
(2) Jammu and Kashmir Right to Prior Purchase Act (1993), S. 15.
(3) Madras Revenue Recovery Act (1864), S. 8.
(4) T. P. Act (1882), S. 3.
(5) U. P. District Boards Act (1922), S. 192 (1).

"Impediment"

—The word "impediment" in S. 40, Bengal Wakf Act must mean an "impediment" in law and such impediments are well-known e. g. minority, unsoundness of mind, apostacy etc. The mere fact that two persons are rival claimants for the office cannot be described as an "impediment" to the appointment of a mutawalli. See Bengal Wakf Act (13 of 1934), S. 40. **AIR 1954 Cal 436.**

"Implied contract"

See Contract Act (1872), S. 10.

"Import"

●—By giving to the words "imported into" or "exported from" their derivative meaning without any reference to their ordinary connotation of these terms as used in the commercial sense the decided cases in India have ascribed too general meaning to these words which from the setting, context and history of the clause was not intended. To construe the words "import" or 'export' as meaning 'bring in' or "take out of or away from" and cover the goods in transit by the words 'imported into' or 'exported from' would make rail borne goods passing through a railway station within a municipality liable to imposition of tax on their arrival at railway station

or departure therefrom. This would lead to confusion. See Municipalities—C. P. and Berar Municipalities Act (2 of 1922), S. 66 (1) (o). **A I R 1958 S C 341.**

"Importation"

—"Concerned in illegal "importation" of foreign gold" – Connotation of terms "concerned in" and "importation" indicated. See Sea Customs Act (1878), S. 167 (8). **1962 (1) Cri L J 600 : AIR 1962 Cal 242 (DB).**

"Imported into the area"

—Expression "Imported into the area" in the notification of the Punjab Govt. No. 11992 L D 58/13577A D/-23-4-1959 under Punjab Dist. Boards Act cannot be given its derivative meaning and cannot cover the goods brought in and taken out of the limits of the District Board in the course of transportation without being unloaded there. See Punjab District Boards Act (20 of 1883), S. 30. **AIR 1965 Punj 97.**

"Import into"

●—Words "import into" and 'export out of' in the context of Cl. (1) (b) of Art. 286 of the Constitution do not mean the article or commodity imported or exported. The expressions mean exportation out of the territory and importation into the country. See Constitution of India, Art. 20 (2). **AIR 1953 S C 333.**

"Impose"

●—Word "imosed" in S. 59 (1) of Bombay District Municipal Act means actual levy of tax. See Municipalities—Bombay District Municipal Act (3 of 1901), S. 59 (1). **AIR 1962 S C 988.**

"Impose and levy."

—Sometimes the terms "impose" and 'levy' may only refer to fixing tax liability or assessment or quantification of the liability. These terms are used in various senses sometimes to include also collection of tax from tax payers. Court should therefore be guided by the context, the term 'levy' in S. 21, Rajasthan Motor Vehicles Taxation Act has to be construed widely. See Cantonment Act (1924), S. 60. **AIR 1963 Raj 190 (DB).**

"Impossible"

See Contract Act (1872), S. 56.

"Impotency"

See Hindu Marriage Act (1955), S. 12 (1) (a).

"Impracticable."

—Word "impracticable" in S. 186, Companies Act, 1956, must be given practical meaning. It must be understood to be "impracticable" from the business point of view. It must not be held "impracticable" on the slighest excuse that the directors cannot agree. See Companies Act (1956), S. 186. **A I R 1956 Cal 658.**

—Term "impracticable" implies that it is "impracticable" from reasonable point of view. Court must take common sense view of the matter and must act as prudent person of business. See Companies Act (1913), S. 79 (3). **AIR 1953 Cal 355 (DB).**

"Improvements."

See Transfer of Property Act (1882), S. 51.

"In."

—Preposition "in" does not always mean or is limited to "inside" of a particular thing—The connotation of the word will depend upon the context. The word "in" in the expression "alteration in any building" in S. 131 (2) (c) of the Calcutta Municipal Act, should be taken to mean "in respect of" or "in relation to." The alterations and improvements need not be within four walls under the roof. See Municipalities —Calcutta Municipal Act (3 of 1923), S. 131 (2) (c). **AIR 1954 Cal 20 (DB).**

"In accordance with."

●—Words "in accordance with" in S. 47A (1), U. P. Municipalities Act mean "in conformity with" or "as provided for"—See Municipalities—U. P. Municipalities Act (2 of 1916), S. 47A (1) (a). **A I R 1958 All 374 (FB).**

"In accordance with law."

See Limitation Act (1908), Art. 182 (5).

'In accordance with the form."

—There is no material difference between the expressions "in the form" and "in accordance with the form." Where a statute requires an agreement to be 'in the form' or 'in accordance with the form' prescribed by it, then unless the contrary is clearly expressed, it is sufficient compliance with the statute if the agreement is substantially in the form; any inconsequential variation is immaterial. **AIR 1956 All 725 (728) (Pt B) (Pr 14) (DB).**

"Inam."

See also (1) Government Grants Act (1895), S. 3.
(2) Tenancy Laws—Madras Estates Abolition and Conversion into Ryotwari Act (26 of 1948), S. 9.

—The word "inam" does not necessarily indicate an absolute grant, but has to be understood with reference to the context and the accompanying words. **1952 K L T 436 : A I R 1952 T C 105 (110, 111) (Pt C) (Pr 18) (DB).**

"In any case."

See Motor Vehicles Act (1939), S. 62. **A I R 1957 Raj 162 (DB).**

"In any proceedings under this Act."

—The words "in any proceedings under this Act" in S. 54 (1), Land Acquisition Act reveal that the necessary intendment of that sub-section is that if the proceedings before the Court in which the award was made is a proceeding under the Act on whatever date it might have commenced. See Land Acquisition Act (1894), S. 54 (as amended by Mysore Act (17 of 1961). **AIR 1965 Mys 93.**

'In any reference."

●—"In any reference" in Arbitration Act S. 31 (4) means in the "matter of a reference to arbitration—See Arbitration Act (1940), S. 31 (4). **A I R 1953 S C 313.**

"Incapable of taking care of himself."

—"Incapable of taking care of himself" in S. 85 (1) (i) Bombay Prohibition Act does not include making a nuisance of oneself. It means being in a state in which one cannot do for oneself what one has to do if care has to be exercised. See Bombay Prohibition Act (25 of 1949), S. 85 (1) (i). **AIR 1955 N U C (Bom) 5887.**

"Incidental."

See (1) Industrial Disputes Act (1947), Ss. 10 (1) (c). and 10 (4).
(2) Sales Tax — Orissa Sales Tax Act (14 of 1947), S. 29 (2) (5).

"Incite."

—Words 'instigate' and "incite' should be read to signify something deeper than mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute instigation or incitement. The words convey the meaning 'to goad' or 'urge forward' or 'to provoke' or 'encourage' to do an act. See Industrial Disputes Act (1947), S. 27. **1958 Cri L J 662 : AIR 1958 Pat 259 (DB).**

"Include."

See also (1) Bombay Police Act (22 of 1951), S. 2(10).

(2) Hindu Minority and Guardianship Act (1956), S. 4 (2).
(3) Interpretation of Statutes.
(4) Payment of Wages Act (1936), S. 2 (vi).
(5) Sales Tax — Madhya Bharat Sales Tax Act (30 of 1950), S. 5
(6) Tenancy Laws—Kerala Agrarian Relations Act (4 of 1961), S. 2 (18).
(7) Working Journalists (Industrial Disputes) Act (1955), S. 2 (b).

—"Include" — Word is generally used to enlarge the normal or popular connotation of expression for purposes of statute. **AIR 1955 N U C (Bom) 2319.**

—'Including' is a term of extension. It imports addition. It adds to the subject-matter already comprised in the definition. **55 Bom L R 941 : I L R (1954) Bom 434 : A I R 1954 Bom 204 (205) (Pt D) (Pr 5) (DB).**

"Includes."

● —The expressions "includes" or 'shall be deemed to include' in a definition clause is very generally used in order to enlarge the meaning of the words or phrases occurring in the body of the statute. **A I R 1957 All 541 (545) (FB).**

—Word "include" in an interpretation clause is intended to be enumerative and not exhaustive. When it is intended to exhaust the signification of the words interpreted the word 'means' is used — See Tenancy Laws—M. P. Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act, 1950 (1 of 1951), S. 2 (j) (1). **1958 Nag L J 172.**

● —The effect of a definition clause, beginning with the word "includes" is not to single out for specific mention some of the things comprised within the natural import of the term defined, but the effect is to enlarge that import by the addition of certain things which would not otherwise be regarded as included. In that sense, it is undoubtedly true that a definition clause, so expressed, is ordinarily not exhaustive, but it can be so in certain contexts. Tarak Chandra v. Ratan Lal. **I L R (1958) 1 Cal 153 : 61 C W N 263 : A I R 1957 Cal 257 (270, 271) (Pt L) (Pr 43) (FB).**

● —Per Kaul C. J. — 'Including' is a term employed generally where the scope of the class indicated by the words preceding it is wider than that of the class specified by the terms which follow. Dayabhai Poonambhai Patel v. Regional Transport Authority. **52 Cri L J 1305 : I L R (1952) Madh Bha 454 : AIR 1951 Madh Bha 121 (128) (Pt B) (Pr 42) (FB).**

"Income."

See (1) Excess Profits Tax Act (1940), S. 2 (13).
(2) Expenditure Tax Act (1957), S. 3 (1), Proviso.
(3) Houses and Rents — Jammu and Kashmir Houses and Shops and Rent Control Act (2009), S. 1 (3-A) (iii).
(4) Income-tax Act (1922), S. 4.
(5) Land Acquisition Act (1894), S. 34.

"Income, profits or gains have escaped assessment."

See Income-tax Act (1922), S. 34 (1A).

"Income-tax"

● —Expression "income-tax" as used in Sch. I, R. 2 (2) (c) of M. P. Abolition of Proprietary Rights (Estate, Mahals, Alienated Lands) Act, 1950 (1 of 1951), does not include super-tax. See T. L.—Madhya Pradesh Abolition of Proprietary Rights (Estate Mahals, Alienated Lands) Act, 1950 (1 of 1951), S. 8 (1). **AIR 1965 S C 198.**

—Expression "Income-tax" used in Sch. I, R. 2 (2) (c), M. P. Act 1 of 1951, does not include 'super-tax.' See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (I of 1951), Sch. 1, R. 2 (2) (c). **1960 M P L J 370.**

"Incumbrance."

See also Words and Phrases—"Encumbrance."

—Word "incumbrance" in S. 4 (a) of Bihar Land Reforms Act cannot be understood in the same sense as defined in S. 161, Bihar Tenancy Act. **AIR 1965 Pat 328 (330) (Pr 5).**

—Lease for holding bazar on plots which were orchard on bakasht land of proprietor of zamindari—Lessee not to pay rent to landlord—Petitioner entitled to construct sheds — Settlement held for non-agricultural purposes and amounted to "incumbrance" within meaning of S. 4 (a), Bihar Land Reforms Act. See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 4 (a) (h). **AIR 1953 Pat 48 (DB).**

"Incurred."

—Debt "incurred" — 'Incur' means "render liable or subject to, entail." It means to have liabilities cast upon one by act of parties or operation of law. Liability is "incurred" only when amount is borrowed and not when the accounts are settled or when any document is executed in pursuance of settlement of accounts. See Debt Laws—Madras Agriculturists Relief Act (4 of 1938), S. 13. **(1960) 1 Andh W R 397.**

"Indal-talab."

—Bond under S. 499, Cr. P. C. using words "Indal-talab"—"Indal-talab" means on demand. See Criminal P. C. (1898), S. 499. **(1963) 65 Punj L R 716.**

"Independent contractor."

● —Master, servant and "independent contractor," who are, explained—Master employing servant—Latter authorised to employ persons — Such persons, if servants of master, has to be determined on facts of the case. **AIR 1955 S C 404 (407 to 412).**

"Indian law."

● —The expression "Indian law" in para. 17 (c) of the U. P. High Courts (Amalgamation) Order, 1948, includes not only an Act of the legislature, but also all rules, bye-laws and orders or notifications made thereunder—Vide S. 3 (29), General Clauses Act. See Bar Councils Act (1926), S. 1 (3). **AIR 1955 All 269 (FB).**

"Individuals"

See (1) Constitution of India, Sch. 7 List I Entry 86.
(2) Expenditure Tax Act (1957), S. 3 (1).
(3) Wealth Tax Act (1957), S. 3.

"Industrial disputes."

See (1) C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 2 (13).
(2) Industrial Disputes Act (1947), Ss. 2 (k), 10 (1) (c).
(3) U. P. Industrial Disputes Act (28 of 1947), S. 2.

"Industrial employees."

● —Expression "industrial employees" used in the Notification No. 3754 (LL)/XVIII-894 (L), 1948 issued by U. P. Govt. on 6-12-1948 is not limited to the class of employees who are employed directly or indirectly for purpose of manufacturing process carried on by the factory—Malis (gardeners) employed by the Mills who are workmen within S. 2 of the U. P. Industrial Disputes Act—Notification applies to them See U. P. Industrial Disputes Act (28 of 1947), S. 3 (b). **AIR 1964 S C 737.**

"Industrial matter."

See C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 2 (13). **AIR 1958 S C 311.**

"Industrial undertaking."

—The words "industrial undertaking" are given by the Industries (Development and Regulation) Act, 1951 a meaning which is separate and distinct from the word "industry". To be an 'industrial undertaking', the work of manufacture or production should be carried on in one or more factories by person or authority including Government. See Industries (Development and Regulation) Act (1951), S. 3 (d). AIR 1959 All 80 (DB).

—Expression "industrial undertaking" in Sch. 2 of Bihar Electricity Duty Act must be construed in a wide and comprehensive sense so as to include not only premises within which manufacturing process is carried on, but also premises from which any manufacturing process is controlled and directed. See Bihar Electricity Duty Act (36 of 1948), S. 3 (v) (b). (1960) ILR 39 Pat 296.

"Industry"—Meaning.

See (1) Constitution of India, Art. 246.
(2) Industrial Disputes Act (1947), Ss. 2 (j), 10.
(3) Interpretation of Statutes—Word—Land.
(4) Manipur Land Revenue and Land Reforms Act (1960), S. 14 (2).

"Industry carried on under the authority of Central Government"—Meaning of.

See Industrial Disputes Act (1947), S. 2 (a) (1).

"Inefficiency."

—The word 'inefficiency' means 'want of efficiency; incapacity to produce the desired effect'. Negligence in the performonce of his duty by a public servant over a period obviously indicates his incapacity to show the effect or result desired by the authority employing him. (1958) 60 Punj L R 277.

"Information."

See (1) Criminal P. C. (1898), S. 154.
(2) Evidence Act (1872), S. 27.
(3) Income-tax Act (1922), S. 34.

"In furtherance of common intention of all".

See Penal Code (1860), S. 34.

"In hands of a person."

—Expression "in the hands of a person" in S. 100, T. P. Act, interpreted—Transfer of interest in property by way of mortgage — The property must be regarded to be "in the hands of a "person" to whom it has been transferred. Words "in the hands of" can and must only mean "held by" or "owned by" and cannot mean physical holding of the property. See Transfer of Property Act (1882), S. 100, Para. 2. AIR 1964 Bom 1 (DB).

"In his opinion."

—Words "in his opinion" in Administration of Evacuee Property Act. S. 40 (4) do not mean that his opinion is unrelated to the facts and the cirumstances placed before him at the inquiry—In one sense there is always a subjective element in arriving at a conclusion on the evidence by a Judge or Court. Words do not mean that his conclusion is arbitray or entirely subjective. See Administration of Evacuee Property Act (1950), S. 40 (4). AIR 1955 Mad 75 (DB).

"In his view."

—The expression "in his view" in S. 20, Madras Pawn-brokers Act, 1943 should obviously be construed as in immediate presence of a police officer. See Constitution of India, Art. 19 (1) (g). 1957 Cri L J 962 : AIR 1957 Mad 514.

"Injury."

See also (1) Civil P. C. (1908), O. 39, R. 1.
(2) Constitution of India, Art. 311 (2).
(3) Criminal P. C (1898), Ss. 4 (l) (k), 494.
(4) Workmen's Compensation Act (1923), S. 3.

—"Injury" in S. 53, C. P. and Berar Municipalities Act (1922) means unlawful infringement or privation of a right. See Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 53. AIR 1962 Madh Pra 40 (DB).

"In lieu of payment."

—The expression "in lieu of payment" connotes that payment is outsanding i. e., there is subsisting obligation. See Income-tax Act (1922), S. 49E. AIR 1965 SC 1316.

"In like manner."

—In S. 35 (2), Income-tax Act, 1922, the expression "in like manner" does not mean anything more in the context than "similarly." See Income-tax Act (1922), S. 35(1). AIR 1959 Mad 108 (DB).

"In matters of religion."

See Constitution of India, Art. 26 (b).

"In other cases before the judgment is pronounced."

See Criminal P. C. (1898), S. 494.

"In possession and power."

—The words "in possession and power" in Rr. 1 and 2 of O. 13, Civil P. C, imply that the document in question must be in actual physical possession or control of the plaintiff — The expression does not include a document over which the plaintiff has no control and which can be produced only through the intervention of the Court by calling a witness and asking him to produce the document. See Civil P. C. (1908), O. 13, R. 1. AIR 1964 J & K 59.

"In pursuance of."

—The words "in pursuance of" used in a notification do not mean what would be conveyed by "in exercise of powers conferred by." The words "in pursuance of" have several meanings. Thus, it may appropriately in a particular case mean 'conformable to' or 'in accordance with.' 5 Raj L W 355 : ILR (1954) Raj 861 : AIR (1954) Raj 224 (225) (Pt C) (Pr 6) (DB).

"Inquiries and trials."

See Criminal P. C. (1898), Ss. 4 (1) (k), 337.

"Inquiry."

—"Does not always mean a judicial inquiry. It depends on the content in which it is used. AIR 1957 All 767 (768, 769) (Pt B) (Pr 9) (DB).

"In regard to"

—The words 'in regard to" occurring in statute must be given interpretation justified by the context in which they occur in S. 115 (5). States Reorganisation Act. Those words mean 'for' or 'for the purpose of.' See States Reorganisation Act (1956), S. 115 (5). AIR 1961 Mys 210 (DB).

"In relation to."

See also Criminal P. C. (1898), S. 195 (1) (b).

—The words "with respect to the legislature" and "in relation to the legislature" in Art. 208 of the Constitution have wider significance than words 'in the legislature.' The words include within its scope not only the rules dealing with procedure and conduct of business during the actual session of the legislature but all other incidental or ancillary matters. See Constitution of India, Art. 208 (2). AIR 1953 Orissa 111 (DB).

"In respect of."

—Words "in respect of" in S. 3 (14), Railways Act (1890), are wide enough to permit changes being made as terminals so long as any these things, viz., Stations, Sidings, Wharves, depots, Warehouses, Cranes and other similar matters have been provided and are being maintained and there is no reason to cut down the generality of the language used in the section. The expression "in respect of" may be taken

to mean "for the provision of" and not "for the user of." See Railways Act (1890), S. 3 (14). AIR 1960 SC 695.

●—Giving the words "in respect of" in S. 18 (1), Bombay Rents, Hotels and Lodging House Rates (Control) Act, widest meaning, viz., "relating to" or "with reference to," it is plain that this relationship must be predicated of the grant renewal or continuance of a lease and unless a lease comes into existence simultaneously or near about of time that the money is received, it cannot be said that the receipt was "in respect of" the grant of a lease. See Houses and Rents — Bombay Rent, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 18 (1). 1954 Cri L J 1333 : AIR 1954 SC 496.

—Words "in respect of" in S. 195 (1) (b), Criminal P. C., are wide enough to include even a document which was prepared before proceedings started in Court of law but was produced or given in evidence in that proceeding. See Criminal P. C. (1898), S. 195 (1) (b). 1965 All W R (HC) 82 : 1965 All Cri R 93 : AIR 1966 All 124.

—Words "in respect of" in Art. 212 has wider connotation than the word "in" and so long as the speaker's action is relatable to any of the provisions dealing with his powers of regulating the procedure and conduct of business in the legislature the Courts' jurisdiction would be ousted. See Constitution of India, Art. 226. AIR 1953 Orissa 111.

"Inspection" and "watch"

—A. P. General Sales Tax Act (1957), S. 28 (2)—"Open to inspection"—The words "inspection" and "watch" connote two different meanings. A reference to the Oxford Dictionary would show that "inspection" means the action of inspecting, looking narrowly into, careful scrutiny or survey, close or critical examination; while "watch" would indicate that it is an alert state, being on the look out, vigilant, constant observation, attention to what may come. "Inspection" and "watch" connote two different ideas. A scrutiny for the purpose of inspection may require a reasonable or sufficient time, while a watch would indicate a constant observation irrespective of the time required for careful scrutiny of the particular object to be achieved. (1962) 1 Andh L T 499: ILR (1962) Andh Pra 1036: (1962) 13 S T C 860 : 1962 Andh W R 96 (DB).

"Installation".

—"Installation" of machinery does not mean employment of machinery — Machinery in existence long prior to bye-law requiring license for installations is not machinery installed after the bye-law. See Interpretation of Statutes. AIR 1955 Mys 147 (DB)

"Installed"

See Income-tax Act (1922), S. 10 (2) (vi).

"Instigates"

—Words "instigates" and "incites" should be read to signify something deeper than a mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute instigation or incitement under S. 27, Industrial Disputes Act. The words seem to convey the meaning "to goad or urge forward or to provoke or encourage the doing of an act". Words "instigates" and "incites" appear to be synoymous. See Industrial Disputes Act (1947), S. 27. 1958 Cri L J 662 : AIR 1958 Pat 259 (DB).

"Instituted".

—Word "instituted" in S. 3 (5) Workmen's Compensation Act can be taken as meaning "setting on foot an enquiry" and is more than a mere filing of a claim. See Workmen's Compensation Act (1923), S. 3 (5). AIR 1957 Mad 216.

"Instituted upon a complaint".

See Criminal P. C. (1898), S. 417 (3).

"Institution".

—Ordinarily an individual is not referred to as an "institution". A grant to an individual would not be a grant to an 'institution'. Various meanings of the word 'institution' indicated. See Tenancy Laws—Hyderabad Abolition of Inams Act (8 of 1955) S. 1(2). (1965) 67 Bom L R 815 : 1966 Mah L J 55 (DB).

—Word 'Institution' in Punjab Government Notification No. 186-G. 45/6960 D/- 16-2-1945 means the foundation and not the property attached to the foundation. Property attached to the institution is not the institution itself. See Municipalities—Punjab Municipal Act (3 of 1911), S. 71. AIR 1955 NUC (Punj) 1036.

"Instrument".

●—Award of Industrial Tribunal is an 'instrument". See Payment of Wages Act (1936), S. 2 (vi) (d). (1965-66) 28 F J R 227 : AIR 1966 S C 856.

●—"Instrument" includes Presidents' order under Art. 359 (1) of the Constitution. See General Clauses Act (1897), S. 8 (1). 1964 (1) Cri L J 132 : AIR 1964 S C 173.

—Word "instrument" means legal document. AIR 1956 All 71, Dissented from. See Court-fees Act 1870), S. 7 (IVA) (U. P.). AIR 1956 All 492 (DB).

—Word "Instrument" in S. 26A, I. T. Act means a document of a legal nature, by which any right or liability is or is purported to be created, transferred, limited, extended, extinguished or recorded. The document must be executed by parties. A mere draft of partnership deed, unsigned and undated will not constitute an instrument of partnership for registration of the firm under S. 26A, I. T. Act. 1965 Mah L J 557 : ILR (1965) Bom 610 : (1966) 59 I T R 645 : (1966) 1 I T J 667 : 67 Bom L R 403.

—"Instrument" covers a cheque. See High Court Rules and Orders—(Calcutta) Rules of the High Court, Original Side, Ch. 13, R. 9. AIR 1955 NUC (Cal) 2941.

"Insufficient grounds"

—Words "insufficient grounds" mean without reasonable or probable cause. See Civil P. C. (1908), S. 95. AIR 1953 Madh B 90 (DB).

"Insurer".

—Word "insurer" is used in the Insurance Act to include (a) Person actually carrying on insurance business (b) persons about to commence insurance business and (c) persons who have stopped insurance business but against whom claims and liabilities might be outstanding. See Insurance Act (1938), S. 33. AIR 1959 Mad 181.

"Intangible assets".

—Words 'intangible assets' in Para 17 (4) of Sch. 6, Electricity (Supply) Act, 1948, means underwriter's commission and such preliminary and promotional expenditure shown as a debit in the capital account of the undertaking and has fairly arisen in promoting the business of electricity supply excluding any amount paid on account of good will. See Electricty (Supply) Act (1948) Sch. 6 Para 17, Item (9). ILR (1961) 11 Raj 495.

"Intended execution".

—Words "intended execution" in S. 350 (1), Madras District Municipalities Act would cover a case of a person who though his act may be wrongful, nonetheless is purporting to exercise his power under the Act. See Municipalities—Madras District Municipalities Act (5 of 1920), S. 134 (1) (b). AIR 1964 Andh Pra 360 (DB).

"Intention".
See Income Tax Act (1922), S. 6.

"Intention" and "knowledge".
See Penal Code (1860), Ss. 34, 300 and 441.

"Interest".
See (1) Administration of Evacuee Property Act (1956), S. 2 (f).
(2) Civil P. C. (1908), S. 34 and O. 21, R. 89 (1).
(3) Debt Laws—Usurious Loans Act (1918), S. 1.
(4) Land Acquisition Act (1894), S. 34.
(5) Municipalities — Bengal Municipal Act (1932), S. 22.

"Interest due".
See Debt Laws — Madras Agriculturists' Relief Act (4 of 1938), S. 13.

"Interested person".
See Land Acquisition Act (1894), S. 3 (b).

"Interest in the estate of deceased".
See Succession Act (1925), S. 283 (1) (c).

"Interest in the trust".
See Civil P. C. (1908), S. 92.

"Interest on loan".
See (1) (Burma) Accrual of Interest (War Time Adjustment) Act (Burma Act 11 of 1947), S. 3.
(2) Debt Laws—Interest Act, (1839).
(3) Debt Laws — Usurious Loans Act (1918), S. 1.

"Interest of public generally".

—Motor Vehicles Act (1939), S. 47—Scope—Interest of the public generally—Meaning of—Residence is no criterion for grant or refusal of permit—That the husband of applicant was a political sufferer being main ground for grant of permit — Tribunal's order held illegal and quashed. See Motor Vehicles Act (1939), S. 47. **1962 All L J 269.**

"Intermittent".

—Words "seasonal" and "intermittent" used in S.25-A (2) are not synonymous terms. The word "intermittent" is used in relation to a given period annual or otherwise. See Industrial Disputes Act (1947), S. 25-A (2). **AIR 1957 Mad 410 (DB).**

"Interpretation".
See Interpretation of Statutes—Words.

"In the absence of a contract to the contrary".
See under Sale of Goods Act (1930), S. 61 (1).

"In the course of".
See Constitution of India, Art. 286 (1) (b).

"In the course of employment".
See Workmen's Compensation Act (1923), S. 3 (1).

"In the course of export".
See Constitution of India, Art. 286 (1) (b).

"In the course of same transaction".
See Criminal P. C. (1898), Ss. 235, 239.

"In the exercise of any power exercisable thereunder".

●—Words "in the exercise of any power exercisable thereunder" mean simply 'under that Act'. See U. P. General Clauses Act (1 of 1904), S. 22. **AIR 1957 All 475 (FB).**

"In the form".

—Expressions "in the form" and "in accordance with, the form" — There is no material difference, unless contrary is clearly expressed. See Interpretation of Statutes. **AIR 1956 All 725 (DB).**

"In the interest of general public".
See (1) Constitution of India, Art. 19.
(2) Public Safety — M. P. Public Security Act (1959), S. 3.

"In the interest of public order".
See Constitution of India, Art. 19 (2).

"In the manufacture of goods".

—Goods required in manufacturing process are goods which have gone to the making of it such goods may not be directly contained in the finished goods. A building which merely contains the machinery and in which the whole process is housed or which contains the staff or offices etc. cannot be said to form a part of manufacturing process and the ingredients of the buildings in which the manufactory is housed cannot ordinarily be said to be goods intended for use by the manufacturer in the process of the manufacture of his goods. See Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941), S. 5 (2) (a) (iii). **AIR 1956 Cal 299.**

"In the opinion of".

●—The expression "in the opinion of the Income-tax officer" in the proviso to S. 13, I. T. Act, does not contain merely discretionary power but a statutory duty to examine in every case the method of accounting employed by the assessee. See Income-tax Act (1922), S. 13. **AIR 1964 SC 1843.**

—"In the opinion of" means subjective satisfaction which may not be reached by judicial process. Satisfaction is not amenable to judicial review. See Banking Companies Act (1949), S. 38 (3) (b). **AIR 1961 Ker 268.**

"In the ordinary course of business".

—The expression "in the ordinary course of business" is susceptible to one meaning namely that there should be series of transactions as distinguished from one transaction. A stray transaction does not constitute ordinary course of business. See Central Excises and Salt Act (1944), S. 2 (a). **AIR 1959 Andh Pra 647 (DB).**

"In the performance of functions".

●—Expression "In the performance of functions" in S. 33 Stamp Act means only so long as the function is not performed and completed and not afterwards. See Stamp Act (1899), S. 33 (1). **1965 M P L J 606 : 1965 Jab L J 656 : AIR 1966 Madh Pra 20 (FB).**

"In the trade".

●—Words "in the trade" do not refer to trades people only but may refer also to public. Corn Products Refining Co. v. Shangrila Food Products Ltd. **62 Bom L R 162 : (1960) 1 S C A 536 : (1960) 1 S C R 968 : (1960) Mad L J (Cr) 418 : 1960 S C J 509 : AIR 1960 SC 142 (144, 145) (Pt B) (Pr 9).**

"In the way of his business as agent".

●—Expression, "in the way of his business as agent" in S. 409, Penal Code is not restricted to person who carry on profession of agency. It is enough if a person is entrusted with property in course his duties as agent. See Penal Code (1860), S. 409. **1962 (2) Cri L J 805 : AIR 1962 SC 1821.**

"Intoxicate".
See (1) Prohibition—Bombay Prohibition Act (25 of 1949), S. 6-A.
(2) Prohibition—Madras Prohibition Act (1937) S. 4 (A).
(3) Prohibition — Travancore Prohibition Act S. 9.

"Investment in securities".

—Word 'investment' means nothing more than 'lay out money' — Where a person purchases securities whether as stock in trade or capital investment he is in either case investing in securities. The word 'investment' in sub-clause (1) of the explanation to S. 60, I. T. Act (1922), related to only such securities as did not form stock-in trade. See Income-tax Act (1922), S. 60. **AIR 1958 Bom 443 (DB).**

"Irreparable injury."

See Civil P. C. (1908), O. 39, R. 1.

"Irrigation."

—"Irrigation" means supplying land with water by means of channels or streams, a process which should be considered as very opposite of the dewatering. See Travancore-Cochin Revenue Recovery Act (7 of 1951), S. 2 (a). **1957 Ker L J 386.**

"Iruvaramdar."

—In relation to land in an estate, a claim by a person that he owns both the warams in some particular lands situate in the estate signified nothing more than that, in relation to the lands, he is under no liability to pay any rent, cist or melwaram to the proprietor or the landholder or any other person. The expression 'iruvaramdar' does not necessarily lead to the inference that such person is the owner, proprietor or landholder of the village in which the land is situate. **(1959) 72 Mad L W 767 : (1959) 2 Mad L J 513.**

"Is assessed."

—Words "is assessed" means "bears an assessment" or is under a state of being assessed or "stands assessed." See Income-tax Act (1922), S. 2 (1) (a). **AIR 1956 Cal 48 (DB).**

"Is charging."

●—Words "charging" in cl. (b) and 'levying' in cl. (c) of S. 41, Railways Act, were used in the one and the same sense. But they were not used to include "collecting." They must be construed to mean demanding a price at the present time for services to be rendered. See Railways Act (1890), S. 41 (1) (b). **AIR 1963 S C 217.**

"Is found drunk."

●—Expression "is found drunk" in S. 85 (1), cl. (3) of Bombay Prohibition Act (1949) means is found overcome or intoxicated by liquor or any intoxicating drug. See Prohibition — Bombay Prohibition Act (Bom 25 of 1949), S. 85 (1). **1962 (1) Cri L J 710 : AIR 1962 Guj 84 (FB).**

"Is included."

—When S. 48 (3), Income tax Act says "is included under the provisions of this Act" it means included by the Act, that is to say, includible under its provisions. It is not the actual inclusion in any assessment made which is in contemplation of the section but the includibility under the provisions of the Act. See Income-tax Act (1922), S. 48 (3). **A I R 1958 Cal 350 (DB).**

"Is otherwise invalid."

●—The rule of ejusdem generis cannot be applied in construing the words "is otherwise invalid" in S. 30 (c), Arbitration Act. These words are perfectly general and intended to be so. They cover all forms of invalidity including nullities. See Arbitration Act (1940), S. 30. **AIR 1956 Cal 321 (FB).**

"Is pending."

—Words "is pending" in S. 23-A (1) of Industrial Disputes (Appellate Tribunal) Act, means pending on date of transfer. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 23-A (1). **A I R 1958 Mad 139.**

"Is satisfied."

See also Criminal P. C. (1898), S. 145.

—"Is satisfied" is not equivalent to "it appears." See West Bengal Land Development and Planning Act (21 of 1948), S. 8 (1a). **(1965) 69 Cal W N 1067.**

——**"Issue" (Santhathi) — Meaning—Adopted son — T. P. Act (1882), S. 8 — (Succession Act (1925), S. 74).**

'Issue' or 'Santhathi' is a word of wide connotation and comprehends within its compass an adopted boy. The expression 'does not have in issue' is not synonymous with 'does not beget any children.' It seems that the word is compatible with the view that both natural and adopted sons were contemplated. A I R 1928 Mad 126, Rel. on. Case-law referred. **(1958) 2 Andh W R 25 : 1958 Andh L T 413 : A I R 1958 Andh Pra 447 (449, 450) (Pt B) (Prs 12, 14) (DB).**

—Word "issue" in first proviso to S. 34 (1), Income-tax Act cannot be equated with the expression "serve." Thus notice issued within eight years is valid though served on assessee after expiry of eight years. See Income-tax Act (1922), S. 34 (1), first proviso. **AIR 1960 Guj 27 (DB).**

—The word "issue" has not acquired any technical sense in India. **66 Mad L W 231 : A I R 1954 Mad 19 (37, 38) (Pt H) (Pr 67) (DB).**

"Issued" and "Served."

See Income-tax (Amendment) Act (1959), S. 4.

"Issue" of security.

—Words "issue any security" in R. 94-B (1) (b), in Defence of Travancore Rules (as amended on 17-7-1944) are used in the sense in which they are used in merchantile language. Word 'issued' is used in R. 94-B (1) (a) in the same sense in the case of all the four categories of instruments mentioned in that sub-rule. It is not used in the sense of 'executed' or 'created' but in the same sense in which it is used in relation to shares, stocks, bonds and debentures. See Capital Issues (Continuance of Control) Act (1947), S. 3. **AIR 1957 Trav-Co 6 (DB).**

"Is used."

—Expression "is used" in S. 4 of the Press (Objectionable Matters) Act, 1951 must relate to a time proximate to the time at which the application has been preferred. See Press (Objectionable Matter) Act (1951), S. 4. **1956 Cri L J 864 : A I R 1956 Bom 447 (DB).**

"Its capacity or efficiency."

●—The expression "its capacity or efficiency" occurring in S. 3 (1), Madras Irrigation Tanks (Improvement) Act means the capacity or efficiency of irrigation tank in question. The word 'capacity' in its ordinary dictionary meaning means "holding power" or 'receiving power' and must depend on cubic content of the tank. 'Efficiency' of the tank depends in a large measure upon the quantity of water that is available for irrigation purposes. See Madras Irrigation Tanks (Improvement) Act (Mad. 19 of 1949), S. 3 (1). **AIR 1965 S C 580.**

"It shall be lawful."

See also Prohibition—Bombay Prohibition Act (25 of 1949), S. 11.

—Where the words 'It shall be lawful' are to be found used in the provision of a statute, they should be taken to convey the meaning that if the law had not been enacted, there would have been no authority to do the act, in other words, that the law as it stood without the provision that was being considered did not in fact permit the doing of the act. It does not mean that it is to be inferred from the provision itself that there was in the law as it existed before the provision no authority to do the act. **AIR 1956 Bom 304 (310, 311) (Pt D) (Pr 12).**

"Jagir."

See also (1) Government Grants Act (1895), S. 3.
(2) Rajasthan Cash Jagirs Abolition Act (1958), S. 2.
(3) Rajasthan States Covenant (1949), Art. 7 (3).

●—"Jagir"—Includes Bhoomichara tenure. See Marwar Land Revenue Act (1949), S. 169. **AIR 1954 Raj 291 (FB).**

"Jaine."

See Words and Phrases—"Gehan" and "Jaine."

"Jalkar."

See Easements Act (1882), S. 7.

"Japti Sanadhi."

—Words "Japti Sanadhi" only mean that the watan characters of the property was divested and lost by discontinuance of service and the withdrawal of remuneration which had attached to the performance of the service. See Bombay Hereditary Offices Act (3 of 1874), S. 4. AIR 1952 Bom 387 (DB).

"Jeeryot."

●—Dictum—"The task of this Court, in ascertaining the special meaning which an expression used in the revenue administration and by the residents of a certain area has acquired, is indeed difficult. If the expression "Jeeryot" in "jeroyati ryots" is a local variation of Zeerait used in the revenue administration, especially in northern India, it may mean assessed land, or agricultural land." Sunkavilli Suranna v. Goli Sathiraju, (1962) 3 S C R 653 : (1962) 1 S C J 331 : (1962) 1 M L J (S C) 149 : (1962) 1 An W R (SC) 149: AIR 1962 S C 342 (350) (Pt E) (Pr 16).

"Jewellery."

—Gold ornament containing imitation stones of small value is 'jewellery": within the meaning of item 24 of Orissa Govt Noti. of Finance Dept. No. 5028 D/- 28th July 1947 as amended by No. 8728F D/- 1st July 1949. See Sales-Tax—Orissa Sales-Tax Act (14 of 1947), S. 5. (1961) 12 S T C 135 (Orissa).

"Joint Pattedar."

—"Joint pattedar" and "Pot pattedars" convey different meanings — Terms explained. 33 Deccan L R 367, Dissented from. AIR 1956 Hyd 50 (51) (Pt A) (Prs 3, 4) (DB).

"Joori land."

—"Joori land" used in respect of land described in Sanad means land subject to concessional rate of assessment. 1962 Mys L J (Supp) 290 : AIR 1962 Mys 253 (257) (Pt D) (Pr 12) (DB).

"Jote."

—The word 'jote' has no fixed connotation and is adopted to describe a tenure or a raiyati holding, though often the latter. 'Jote' is a generic term and it is not necessarily equivalent to 'raiyati jote.' The converse of it is not true, namely, that if it is not equal to raiyati jote, it must be equivalent to tenure. In common parlance, however, the raiyati lands are spoken of as jote and tenures as mukarrari. At any rate, it is inconclusive as to a particular land being a tenure or raiyati holding. 1957 Pat L R 288.

"Judge."

See Penal Code (1860), S. 19.

"Judicial."

See also (1) Civil P. C. (1908), S. 24.
(2) Constitution of India, Art. 226.
(3) U. P. General Clauses Act (1 of 1904), S. 21.

—Meaning of the term 'judicial' varies according to purpose for which the term has been defined. Not only do definitions of the term vary between different legal contexts but they will not infrequently vary within one individual legal context. (1964) 2 Andh L T 94 : AIR 1965 Andh Pra 69 (72) (Pt E) (Prs 8, 9).

—Meaning of judicial and quasi judicial discussed. See Civil P. C. (1908), S. 24. AIR 1964 Andh Pra 132 (Prs 2, 17).

●—Per Hidayatullah. J. — The term "judicial" has not been successfully defined. Sometimes it is contrasted with 'administrative,' sometimes with 'ministerial,' sometimes with 'executive' and sometimes with the word 'non-judicial.' Whatever be the meaning it is at least certain that the term 'judicial' extends 'to the acts and orders of a competent authority which has power to impose a liability or to give a decision which determines the rights or property of the affected parties.' The term "judicial" embraces even the acts of special tribunals which though administrative in character perform functions resembling those of Courts. Such tribunals may be subject to certiorari and mandamus. Bhailal Jagadish v. Addl. Deputy Commr., Akola, 1952 Nag L J 613: ILR (1952) Nag 839 : AIR 1953 Nag 89 (92, 93, 94) (Pt A) (Prs 13, 15, 20, 22) (FB).

"Judicial act."

See also Constitution of India, Art. 226.

—Procedure prescribed for disposal of objection to nomination papers by Rules made under Madras Village Panchayats Act is essentially judicial in nature. The Officer has duty to act judicially. If the act of original authority is judicial acts of appellate or revisional authorities would also be judicial. In deciding questions, the authority must hear the parties, and may also make an inquiry. The question decided affects the rights of parties. See Panchayats —Madras Village Panchayats Act, 1950, Rules under R. 40 (1). AIR 1957 Andh Pra 539 (DB).

—A "judicial act" seems to be an act done by a competent authority upon a consideration of facts and circumstances and imposing liability or affecting the rights of others.

Thus, it must be that of a person or persons who have legal authority to determine questions affecting the rights of parties and in a judicial manner. (1878) 2 L R Ir 371 (376), Foll. 1953 Mad W N 200 : (1953) 1 M L J 542 : 66 Mad L W 287: AIR 1954 Mad 340 (343) (Pt C) (Pr 6).

"Judicial experience."

—Chairman of State Transport Authority and the Regional Transport Authority must be a person of "judicial experience." This term is not defined in the Act. It means knowledge or skill gained by person by actually working as a Judge in a court of law. A person who has acted as a Judge or Magistrate and has gained an experience in that capacity alone is qualified to be a Chairman of S. T. A. or R. T. A. Experience acquired as Chairman of S T. A. in deciding about 100 appeals is not judicial experience. Even experience in deciding revenue cases, is not judicial experience, See Motor Vehicles Act (1939) (as amended in 1958), S. 44 (2). AIR 1960 Raj 105 (DB).

"Judicial Office."

See Bar Councils Act (1926), S. 9.

'Judicial Power."

See also (1) Civil P.C (1908), S 24
(2) Constitution of India, Art. 245.

—Meaning of 'Court' 'judicial,' 'judicial power' and 'judicial and quasi judicial' discussed. See Civil P. C. (1908), S. 24. AIR 1964 Andh Pra 132.

"Judicial proceedings"

See also (1) Criminal P. C. (1898), S. 195.
(2) Evidence Act (1872), S. 33.
(3) Income tax Act (1922), S. 37.
(4) Penal Code (1860), S. 228.

●—Per Chari J. — It is settled law that because a proceeding is subject to the confirmation and approval of another authority the proceeding does not cease to be a "judicial proceeding." Ahmad-Un-Nisa Begum v. State. I L R (1952) Hyd 595 : A I R 1952 Hyd 163 (172, 173) (Pt H) (Pr 33) (FB).

"Judicial Revenue matter"

—Words "judicial revenue matter" have not been defined in Rajasthan Appeals and Petitions (Discon-

tinuance) Ordinance, 1949. These words should be given their ordinary meaning according to the purpose for which this ordinance was passed Cl. (b) of S. 4, which deals with revenue judicial matters relates to those appeals, revisions, references or petitions which were pending before the Rulers from the decisions of revenue Courts of the former covenanting States—Order of resumption of certain muafi land, passed by Chief Minister of former Sirohi State in his executive capacity and not as Court cannot be said to be judicial revenue matter. See Rajasthan Appeals and Petitions (Discontinuance) Ordinance (40 of 1949), S. 4 (1) (b). **AIR 1955 N U C (Raj) 1049 (DB).**

"Judgment"

See (1) Civil P. C. (1908), O. 20 R. 1, O. 41 R. 22.
(2) Constitution of India, Art. 133.
(3) Court-fees Act (1870), Sch. 1, Art. 1.
(4) Criminal P. C. (1898), Ss. 145, 337, 349, 419 and 494.
(5) High Court Rules and Orders— Allahabad Rules of Court (1952), Chap. 8-R. 5.
(6) Income-tax Act (1922), S. 66 (5).
(7) Letters Patent (Bom. Cal. & Mad.), Cl. 15.
(8) Letters Patent (J. & K.), Cl. 12.
(9) Letters Patent (Nag.), Cl. 10.
(10) Letters Patent (Pat.), Cl. 10.

"Jurisdiction"

See also Civil P. C. (1908), S. 9.

●—Expression "Jurisdiction" in S. 1, Judicial Officers Protection Act, 1850 does not mean power to do or order the act impugned but generally the authority of judicial officer to act in the matter. See Judicial Officers Protection Act (1850), S. 1. **1965 (2) Cr L J 686 : AIR 1965 S C 1651.**

●—Per Dixit J. — There is a distinction between "jurisdiction" and 'power' in that jurisdiction has reference to the exercise of power and the extent and limits within which such power is exercisable for the administration of justice. But jurisdiction is defined in terms of power. It is the power of a Court to hear and determine a cause, to adjudicate and to exercise any judicial power in relation to it and to award the remedies provided by law upon a state of facts proved or admitted and presented to the Court in a formal way for its decision. The concept of jurisdiction embraces the power to grant the remedies provided by law. Dayabhai Poonambhai Patel v. Regional Transport Authority. **52 Cri L J 1305 : ILR (1952) Madh Bha 454 : A I R 1951 Madh Bha 121 (140, 141) (Pt C) (Pr 116) (FB).**

"Just and convenient"

See Civil P. C. (1908), O. 40 R. 1.

"Just and equitable"

See Companies Act (1913), S. 162 (vi).

"Just cause"

See Succession Act (1925), S. 263,

"Kalabattu"

—From the origin of the word "Kalabattu" it is clear that the correct meaning of kalabattu, is gold or silver thread obtained by twisting gold or silver wire with silk or cotton thread. 'Kalabattu' is also 'thread' and not 'wire' and 'thread' is obtained only by twisting two or more strands of any material or materials together and it does not mean a single thread or wire. See Sales Tax — U. P. Sales Tax Act (15 of 1948), S. 4. **(1963) 14 S T C 88 (All).**

"Kalan"

—"Kalan" though used ordinarily to mean 'encumbrance' it connotes also 'a dispute' in appropriate context. **(1950) 1 Mad L J 499 : 63 Mad L W 399 : AIR 1950 Mad 621 (622, 623) (Pt B) (Pr 3) (DB).**

"Kamat"

●—Word "kamat" used in a deed of transfer has a definite connotation and means "private lands"— See Tenancy Laws — Bihar Tanancy Act (8 of 1885), S. 116. **AIR 1956 S C 305.**

"Kamins"

—"Kamins"—Who are—When the defendants who are indubitably Chamars are not shown to have been doing any menial work for any of the landlords they are not necessarily Kamins in the sense in which the word 'Kamin' is popularly used. The fact that defendants have been since long time past cultivating land under the Biswedars in the village would not bring them in the category of Kamins as the distinction between a tenant and a person rendering menial service is too clear. **I L R (1952) Pepsu 279 : A I R 1953 Pepsu 126 (126, 127) (Pt B) (Pr 1).**

"Karda"

—"Karda" — "Kardadar" — Meaning of — The term "karda", according to the Survey Manual, is synonymous with khata and "kardadar" signifies occupants. **30 Mys L J 115 : I L R (1952) Mys 172 : A I R 1953 Mys 44 (45) (Pr 3d) (DB).**

"Karkun"

—The Urdu word "Karkun" is equivalent of the Hindi word 'karyakarta' and means manager. **A I R 1963 All 194 (199) (Pt G) (Pr 28).**

"Karyalay"

—Word "Karyalay" is wide enough to include the business of armature winding and setting up machinery of the purpose — See Houses and Rents—Madhya Bharat Accommodation Control Act (15 of 1950), S. 4 (g). **1959 M P L J 802.**

"Kashtakar"

—"Kashtakar", means person whose chief source of livelihood is Kashtakari—Mere fact that certain land is recorded in name of judgment debtor does not make him a Kashtakar—Kotah State Council Resolution No. 55 of 1941-42, D/- 27-5-42 and Resolution No. 7 of 1942-43, D/- 1-11-42 — Unrepealed Civil Hidayats of Kotah State, S. 30, Excep. 3. **A I R 1955 N U C (Raj) 5001.**

"Katlai"

—"Katlai" as applied to temple endowment signifies special endowment for specific duty —It is used in contradistinction to denote endowment generally for maintenance and upkeep of temple—Family property dedicated for performance of Kattalai Dharmam in temple — Performance of trust attended to by family as trustee—Lease by manager of family as if property belonged to him absolutely — Suit by member of family for possession without asking for removal of manager is maintainable. **A I R 1955 N U C (T C) 1903 (DB).**

"Katra"

—The word 'Katra' in S. 5 has not been dafined in the Punjab Pre-emption Act (1913). The primary meaning of the word 'Katra' is enclosure and the secondary meaning is market. Generally therefore a katra would be business locality though there might be purely residential katras. A I R 1946 Lah 432, Approved. **(1963) 1 S C A 411 : (1962) Supp 3 S C R 724 : 1962 Jab L J 676 : A I R 1962 S C 1476 (1484) (Pt B) (Pr 14).**

"Kattubadi"

See Tenancy Laws—Madras Estates Land Act (I of 1908), S. 3 (5). **(1957) 2 Andh W R 420.**

"Keeping"

See Penal Code (1860), S. 361.

"Kindheartedly." "Kindheartedly." "Kindheartedly."

"Kindness." "Kindness." "Kindness."

"Kingdom." "Kingdom." "Kingdom."

rules thereunder or in accordance with village customs by an agriculturist or any other person. See Rajasthan Abolition of Lagats Ordinance (13 of 1948), Pre. 1956 Raj L W 271.

"Lahan."

—Term "lahan" means a mixture of any substance which on fermentation is capable of producing alcohol, togather with a fermanting agent, of which there are many. See Punjab Excise Act (1 of 1914), S. 61 (1) (a). ILR (1957) Punj 238.

"Lakhiraj Jagir."

—The word 'lakhiraj' or 'jagir' or the words "lakhiraj jagir" do not necessarily mean private, bakasht or kamat lands of a proprietor of an estate or a holder of a tenure. Lakhiraj jagir is not a peculiar tenure and in common parlance both raiyati lands and proprietor's kamat lands when granted free from rent or revenue are described as 'lakhiraj.' 1957 Pat L R 288.

"Land."

—Word "lands" in Entry 49, List 2, Sch. 7, Constitution of India is wide enough to include all lands, whether agricultural or not and it would be plainly unreasonable to assume that it includes non-agricultural lands but does not include agricultural lands. See Constitution of India, Sch. 7, List 2 Entry 49. **AIR 1962 S C 1563.**

—Word 'land' in S. 78-A (1) does not include structures. It contemplats bare land. See Calcutta Improvement Act (5 of 1911), S. 78-A. **AIR 1957 Cal 578 (DB).**

—The word "land" may mean land together with structure situated on the land. It may also mean the bare land, the ground, the soil or the site of the land exclusive of such structures. **(1956) 60 C W N 642.**

—"Land" includes house. See Limitation Act, (1908), S. 20 (2). **(1965) 6 Guj L R 364 : ILR (1965) Guj 378 : AIR 1966 Guj 59.**

—Word "land" in S. 7 (v) (b), Court-fees Act does not mean only agricultural land. Land capable of being used as building site is also included. See Court-fees Act (1870), S. 7 (v) (b). **AIR 1960 J and K 110.**

—In S. 145 (2), Criminal P. C. "land" is used as synonymous with "immovable property" which includes things attached to earth — Mill which is attached to earth will fall within immovable property or land. **AIR 1951 Mad 722 (723) (Pr 1).**

—'Land"—Does not include crops standing thereon. See Debt Laws — Bihar Money-Lenders (Regulation of Transactions) Act (7 of 1939), S. 15 (1) (f). **1965 B L J R 134.**

"Land appurtenant to building."

—In order that a piece of land may be held to be appurtenant to a building, their existence adjacent to one another is not the only consideration. Before any land can be said to be appurtenant to a building it must further be proved that it is reasonably necessary for the proper enjoyment of the building itself. **ILR (1960) 1 All 232.**

"Land held."

—"Land held by protected tenant" in cl. (1) of S. 34 (2A) of Bombay Tenancy and Agricultural Lands Act can only mean and must mean land in possession of tenant for cultivation. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 34 (2A). **AIR 1957 Bom 68 (DB).**

"Landholder."

—Fact that subsequent to partition A's branch conveyed their kudiwaram rights in favour of alieness subject to collection of Thirava from them every year cannot make them "landholders." See Tenancy Laws—Madras Estates Land Act (1 of 1908). S. 3 (5). **AIR 1958 Mad 91 (DB).**

"Landlord."

See also (1) Houses and Rents — W. B. Premises Tenancy Act (12 of 1956), S. 16.
(2) Tenancy laws — Andhra Tenancy Act (18 of 1956), S. 13.
(3) Tenancy laws — Bihar Tenancy Act (8 of 1885), S. 40 (1).
(4) Tenancy laws — Orissa Tenant's Relief Act (1955), S. 4 (1).

—Word "landlord" in cl. 2 (4) of C. P. and Berar Letting of Houses and Rent Control Order (1949) has wider meaning than that given in a dictionary—The meaning to be given depends on the context—Word includes a person who manages property of some one else and collects rent—But term 'landlord' as used in cl.13 (1) cannot be given this meaning and means only the lessor or person in whom the reversion of the lease actually vested. **AIR 1953 Nag 251 (252) (Pts B, C) (Prs 3, 5) (DB).**

"Land or Building."

See Municipalities — Calcutta Municipal Act (33 of 1951), S. 521 (ii). **(1958) 62 Cal W N 186.**

"Last resided."

See Criminal P. C. (1898), S. 488 (8).

"Launch."

—The word 'launch' in notification authorising Municipal prosecutor to 'launch' prosecution under S. 20, Prevention of Food Adulteration Act, has been used in the sense of 'institute.' See Prevention of Food Adulteration Act (1954), S. 20. **(1964) 66 Pun L R 191.**

"Lavansa."

—Word "lavansa" in view of the provisions of S. 6, Partnership Act, has no particular significance as a mere participation of profits will not make the recipient partner — Payment of 'lavansa' as monthly profits does not make the recipient a partner with the payer. See Partnership Act (1932), S. 6. **(1962) 4 Orissa J D 31.**

"Law" — Meaning of.

See also (1) Bihar Sathi Lands (Restoration) Act (1950).
(2) C. P. and Berar Industrial Disputes Settlement Act (1947), S. 30.
(3) Constitution of India, Arts. 13, 31 (5).
(4) Municipalities — Punjab Municipal Act (1911), S. 61.
(5) Pepsu General Provisions (Administration) Ordinance (2005 BK), S. 3.
(6) Sales Tax — Orissa Sales Tax Act (14 of 1947), S. 14.

—"Law" — Grant maintenance of younger brother by former ruler of Dhenkanal State — Held an executive order and existing "law" within Art. 372 (1) — Modification thereof by successor government held valid. See Constitution of India, Art. 372 (1). **AIR 1964 S C 1793.**

—"Law" — Agreement between Rulers and Company in shape of contract, is not "law." **AIR 1964 S C 888.**

—The word "law" in the expression "in accordance with law" in C. P. and Berar Industrial Disputes Settlement Act, Sch. 2, cl. (3) includes industrial law as evolved by industrial decisions—60 Bom L R 72 and AIR 1959 Bom 61, **Overruled.** See C. P. & Berar Industrial Disputes Settlement Act (23 of 1947), Sch. 2, Cl. (3). **AIR 1963 S C 114.**

—Expression "in accordance with law" in Entry 3 of Sch. 2, Industrial Disputes Settlement Act — The contention that the word "law" in Entry 3 of Sch. 2 must mean Industrial Disputes Settlement Act is not

correct. See C.P. and Berar Industrial: Disputes Settlement Act (1947), S. 30. AIR 1959 Bom 61.

[Overruled in AIR 1963 S C 114.]

—"Law" — Executive orders.

Executive orders made by Government in respect of the administration of its own properties cannot be considered as statutory rules and are not justiciable under Art. 226 of the Constitution. Government can own property and deal with it in any manner that is permissible under the law. If there is any statute which imposes a restriction or if there are any statutory rules which compel a certain procedure to be followed, that is another matter, and Government would have to follow them.

Held, that the procedure for settlement of fisheries in West Bengal is by executive orders issued by the Government of West Bengal in its Department of Irrigation and Waterways and those orders cannot be considered as statutory rules and any violation thereof does not give rise to a legal right which can be agitated in an application under Art. 226 of the Constitution. AIR 1959 S C 898 and AIR 1959 S C 694 and AIR 1959 S C 249 and AIR 1958 S C 398 and AIR 1956 Cal 437 and AIR 1960 Cal 664, Rel. on.; AIR 1952 S C 16, Disting. **65 Cal W N 685 : AIR 1961 Cal 214 (217) (Pr 6).**

—Tharav of Baroda Ruler, is "law". See Baroda State (Application of Laws) Order 1949, para. 5 (1) (c). **AIR 1965 Guj 293 (DB).**

—"Law" if includes administrative instructions.

Entry in appendix merely embodies executive or administrative instructions for general guidance—It has no force of law as it has no statutory authority for its basis, **1965 Cri L J 673 : (1965) 67 Pun L R 867.**

"Law declared."
See Constitution of India, Art. 141.

"Law for the time being administered by the High Court"
See Calcutta City Civil Court Act (21 of 1953), S. 5.

"Law for the time being in force."
See Hindu Succession Act (1956), S. 4 (2).

"Lawful."
See Contract Act (1872), S. 70.

"Lawful excuse."

●—Under R. 5, D. I. Rules any failure without lawful authority or excuse to comply or secure compliance with the order amounts to contravention of the order. "Lawful excuse" mean that there is justification for contravention which is recognised by law. Intentionally or deliberately contravening order is not a justification or excuse. See U. P. Foodgrains (Control, Requisition and Distribution) Order (1963), Cl. 3-B. **1965 All W R (HC) 546 : 1965 All L J 862 : 1965 All Cri R 348 : ILR (1965) 2 All 917 : AIR 1966 All 73 (FB).**

"Lawful guardian."
See Penal Code (1860), S. 361.

"Lawfully."
See (1) Contract Act (1872), S. 70.
(2) Government of India Act (1935), S. 175 (3).

"Law imposing tax."
See Constitution of India, Art. 286 (3).

"Law in force."
See (1) Baroda State (Application of Laws) Order (1949., Para 5 (1) (c).
(2) Constitution of India, Arts. 13, 20 (i), 372.
(3) Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11.

"Law of a state"

●—Connotation of the words "law of a state" in Art. 286 (2) of the Constitution should not be restricted. The words signify in its ordinary acceptation, whatever is an expression of the legislature, as distinguished from executive or judicial power of a state. By the exoression 'law of a state' in Art. 286 (2) and S. 2 of the Sales Tax Law Validation Act is meant whatever operates as law in the state and S. 22, Madras General Sales Tax Act is a law within these enactments. See Sales Tax—Sales Tax Laws Validation Act (1956), S. 2. **AIR 1958 S C 468.**

[Held overruled on another point by AIR 1959 S C 648 as interpreted in AIR 1961 Mys 3].

"Law relating to."
See Constitution of India, Art. 19 (2).

"Lay off."
See also (1) Employees' State Insurance Act (34 of 1948), S. 2 (22).
(2) Industrial Disputes Act (1947), Ss. 2 (kkk) and 25-C.

—A "lay off" order is not the same thing as the order of dismissal — It is more akin to an order of suspension. **AIR 1959 All 664 (669) (Pt E) (Pr 23).**

"Lease."

—"Lease" and "term" — Meaning of the words explained. See Tenancy Laws — Assam Land and Revenue Regulation (1 of 1886), (as applied to Manipur), S. 8 (1) (b). **AIR 1958 Manipur 1.**

●—"Lease and Lend" scheme—Meaning of.

—The scheme known as "Lease and Lend" scheme was introduced by the Government of India somewhere about March-April, 1942, as a war measure to facilitate the import of certain essential goods and to conserve them for the effective prosecution of the war. Oil and lubricants were among the goods which were controlled under this scheme. Under it, the Government prohibited the direct import of oil and lubricants from America through private agencies, whether individuals, firms or companies and took upon itself to import the required quantity. The procedure adopted in the import of goods was this; the importers were to state their requirements to the Committee formed by the Government which sent the same to the Government. Then on intimation given by the Government authorities, the dealers would have to make deposits on account of the price to be paid for the goods. The Government had a purchasing agent in America and he would be required by them to purchase the requisite goods and to arrange to get them transhipped to the destinations in India mentioned by the several dealers. The shipping documents would be taken in the name of the Government and on payment of the bills endorsed over to the importer for clearance at the harbour. The features of the system to be noticed are that it was the Government who was the importer of the goods and the dealers became entitled to the goods only on the shipping documents being endorsed to them by the Government. L. J. Leach & Co. Ltd. v. Messrs. Jardine Skinner & Co., **1957 S C A 318 : 1957 S C J 313 : 1957 B L J R 750 : 59 Bom L R 395 : 1957 M P L J 497 : 1957 Nag L J 321 : 1957 S C C 237 : 1957 M P C 589 : 1957 All L J 794 : 1957 All W R (HC) 779 : 1957 H C R 438 : AIR 1957 S C 357 (361) (Pt C) (Prs 11, 12).**

'Lease" and "licence."
See Transfer of Property Act (1882), S. 105.

"Legal character".
See Specific Relief Act (1877), S. 42.

"Legal cruelty".
See Divorce Act (1869), S. 10.

"Legal entity" and "Legal person".

—"Legal entity" and "legal person"—A "legal entity" means only a thing recognised by the law as real in itself and distinct from its equalities and attributes and while every legal person is necessarily a legal entity the converse is not true. **I L R (1963) 2 Ker 238; AIR 1964 Ker 144 (147) (Pt B) (Pr 8).**

"Legal fiction".

—Fiction is defined as a legal assumption that a thing is true which is neither not true, or which is as probably false as true; an assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place; an allegation in legal proceedings that does not accord with the actual facts of the case, and which may be contradicted for every purpose except to defeat the beneficial end for which the fiction is invented and allowed. Thus fiction in the realm of law has a defined role to play but it cannot be stretched to a point where it loses the very purpose for which it is used and in no case should it be allowed to perpetrate injustice; fiction of law shall not be permitted to work any wrong, but shall be used 'ut res magis valeat quam pereat'. **1958 B L J R 122 : I L R 37 Pat 339: A I R 1958 Pat 589 (594, 595) (Pt D) (Pr 12) (DB).**

[Overruled on another point in AIR 1963 SC 454.]

"Legality" and "regularity".

See Constitution of India, Art. 226.

"Legally authorised to take evidence".

See Evidence Act (1872), S. 3.

"Legally bound to do".

See Penal Code (1860), S. 43.

"Legal proceedings".

See (1) Companies Act (1913), S. 171.
(2) Municipalities — Calcutta Municipal Act (1951), S. 110.
(3) Sales Tax — Bombay Sales Tax Act (1953), S. 34.
(4) Trade Marks Act (1940), S. 24.

"Legal right".

●—The term "Legal right" includes rights conferred by statute as well and not merely rights claimed independently of any statute: Obiter. **1965 M P L J 238: 1965 Jab L J 307: AIR 1965 Madh Pra 237 (242) (Pt B) (Pr 12) (FB).**

"Legislature".

See also Constitution of India, Art. 389.

—Term "legislature" does not include the Governor. See Constitution of India, Art. 368. **A I R 1964 Cal 500.**

"Lekha mukhi".

—"Welsh mortgage" in England and "lekha mukhi" mortgage in Punjab are usufructuary mortgages. See T. P. Act (1882), S. 58, Cl. (d). **AIR 1961 Punj 477.**

"Lend and loan".

See Foreign Exchange Regulation Act (1947), S. 4 (1).

"Letter of cover".

See Stamp Act (1899), S. 35.

"Letter of credit".

—System of payment in international trade, to seller by means of "letter of credit" explained. Letter of credit involves a mandate by the constituent (buyer) and an undertaking by a banker to meet drafts drawn under the credit by the beneficiary of the credit (the seller) in accordance with the conditions laid down therein. **AIR 1961 Mad 442 (DB).**

"Letting".

—The word "letting" in the expression "intended for letting" in S. 98 (2), Bihar and Orissa Municipal Act, 1922, includes not only leasehold interest but also interest of licensees. See Municipalities — Bihar and Orissa Municipal Act (V of 1922), S. 98 (1). **A I R 1965 Pat 288 (DB).**

"Leviable".

—Word "leviable" in S. 86, Bihar and Orissa Municipal Act can have only one meaning, namely imposition of the tax and not collecting of the tax. See Municipalities — Bihar and Orissa Municipal Act (VII of 1922), S. 86. **AIR 1955 NUC (Pat) 3425 (DB).**

"Levy".

See also (1) Constitution of India, Arts. 265, 277.
(2) Income-tax Act (1922), S. 3.
(3) Municipalities — Rajasthan Municipalities Act (1959), S. 104.
(4) Panchayats — Mysore Village Panchayats and Local Boards Act (1959), S. 73 (4).
(5) Penal Code (1860), S. 70.

"Levy" — Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 32.

—In fiscal enactments the word "levy" is generally used in a restricted sense. Ordinarily the expression "levy" in a fiscal statute connotes that an imposition has been made on the party who is called upon to pay the amount in question. **(1962) 40 Mys L J 912 : (1963) 14 S T C 625: 1963 Mad L J (Cri) 521 (Mys).**

"Levy, assessment and collection".

—"Levy, assessment and collection" include "reassessment". See Travancore Income-tax Act (1121), S. 47. **AIR 1957 Trav-Co 303 (DB).**

"Liability".

—Word "liability" in its widest import means an obligation or duty to do something or to refrain from doing something. There is no reason why any restricted meaning should be given to the word 'liability' used in the States Reorganisation Act, S. 87. Parliament intended to include in the word not only a financial objection but also objections of every other kind, including one of reinstating a government servant wrongly dismissed. See States Reorganisation Act (1956), S. 87. **AIR 1959 Bom 363 (DB).**

—Term "liability" is of large and comprehensive significance and when construed in its natural ordinary sense, in which it is commonly employed it expresses the state of being under obligation in law or in justice. See Companies Act (1913), Sch. I, Table A, Regn. 28. **AIR 1959 Punj 328.**

"Liability" and "due from debtor".

—Word "liability" used in the definition of 'debt' in S. 2 (5) of the Saurashtra Agricultural Debtors Relief Act means a civil liability and a liability which will be enforced by a civil Court. The words "due from a debtor" in S. 2 (5) also mean that the debt must be due legally in a civil Court and not merely morally due. See Limitation Act (1908), Preamble. **A I R 1964 Guj 122.**

"Liable"

—The word "liable" in the expression 'shall also be liable to fine' means a future possibility or probability happening which may or may not actually occur. See Penal Code (1860), S. 381. **1957 Cri L J 389; AIR 1957 Punj 55.**

"Liable to assessment".

—Both the expressions "liable to assessment" and "assessable to excess profits tax" emphasise not the fact of assessments but the liability to be assessed. See Finance Act (1942), S. 10 (1), Proviso. **A I R 1958 Bom 23 (DB).**

"Liable to confiscation".

—Words "liable to confiscation" in S. 14, Mysore Prohibition Act, explained. See Mysore Prohibition Act (37 of 1948), S. 14. **AIR 1952 Mys 39.**

"License".

See also Easements Act (1882), S. 52.

●—Word "license" in Art. 17 of Indo French Agreement, dated 21.10-1954 includes permit or authorisation. See Indo-French Agreement, Dated 21-10-1954. **AIR 1961 S C 41.**

"License"—Meaning of.

—In the popular as also in the legal sense, license is a permission to do something which without the 'licence' would not be allowable. In the secondary sense, it denotes a certificate or a document which embodies the permission in question. In the first sense, 'licence' is a franchise or creation of a right, or grant, and in the second sense, it is the instrument evidencing the rights and interests mentioned therein and furnishes the proof of permission to exercise a particular right to engage in a trade or calling. Whether the word 'license' is to be construed a right or an instrument, must perforce depend on the context. In the third sense the word 'license' is sometimes used to mean the license-fee which is the price paid for the privilege conferred. **ILR (1963) 1 Punj 148 : A I R 1963 Punj 76 (80) (Pt A) (Pr 9) (DB).**

"Licensee."

See Electricity Act (1910), S. 42 (b).

"Likely to affect more than one hundred workmen".

—When the proviso to S. 10 (1) Industrial Disputes Act speaks of a dispute which is not "likely to affect more than one hundred workmen", what is meant is not only those who are actually involved in the dispute. All those who are interested in the dispute or concerned with it will also be regarded as persons likely to be affected by the dispute. The words "likely to affect" have the same import and should be understood in the same way as the words "workmen concerned in the dispute" occurring in S. 33 of the Act. See Industrial Disputes Act (1947), S. 10 (1) **78 Mad L W 83 : (1965) 1 Mad L J 387.**

"Limitation."

—Law of "limitation" is not covered by the expression "procedure to be followed" in S. 14 (2), Delhi and Ajmer-Merwara Rent Control Act (1947). See Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act, 1947, S. 14 (2). **AIR 1955 N U C (Ajmer) 1411.**

"Limited estate."

—The expression "limited estate" has been used in various places in the (Mysore) Hindu Law Women's Rights Act and in all those places and by necessary implication it can only mean the limited estate of a woman according to the Hindu Mitakshara law. See (Mysore) Hindu Law Women's Rights Act (10 of 1933), S. 3 (h). **A I R 1954 Mys 179.**

"Lineal descendant."

●—Words "lineal descendant" used in cl. (b), Sch. I, Part 1 (A) (i), Finance Act (1951) have to be interpreted in their natural meaning without any preconceived notion as to whether a Hindu female can form a line of succession. See Finance Act (1951), Sch. I, Part I (A) (i), Condition (B). **A I R 1956 Raj 30 (FB).**

"Lineal male heirs in male descent.".

—"Lineal male heirs in male descent" in S. 2, Bombay Todagiras Allowance Act includes the succession by the rule of primogeniture. See Bombay Todagiras Allowance Act (7 of 1887), S. 3. **A I R 1952 Bom 243 (DB).**

"Line-clear."

●—What is meant by line-clear is not that the lines in the station yard are clear for reception of the train but that there is no obstruction on the track beyond the outermost signals on the down side of the station which the train has to enter. Awadh Behari Sharma v. State of Madhya-Pradesh. **1956 Cri L J 1372 : 1957 Nag L J 1 : 1957 M P L J 49 : A I R 1956 S C 738 (742) (Pt C) (Pr 7).**

"List of voters."

●—The words "the list" in the expression "the list of voters" in S. 11-A (2), Bombay Municipal Boroughs Act, refers to the "lists" pertaining to the wards of any particular Municipal Borough. See under Municipalities — Bombay Municipal Boroughs Act (10 of 1925), S. 11-A (2). **A I R 1965 Mys 227 (FB).**

"Living."

—The word "living" in S. 18 (2) (d) of the Hindu Adoption and Maintenance Act must be given a restricted meaning like, any other "wife living with him". If ordinary interpretation is accepted then all wives that a man had married at such a time when such marriages were legal, can live without him and claim separate residence and maintenance under S. 18 (2) (d) of the Act. See Hindu Adoption and Maintenance Act (78 of 1956), S. 18 (2) (d). **AIR 1965 Mad 139 (DB).**

"Living in adultery."

See (1) Criminal P. C. (1898), S. 488 (4).
(2) Hindu Marriage Act (1955), S. 13 (1) (i).

"Living separately by mutual consent."

See Criminal P. C. (1898), S. 488 (4).

"Loan."

See also (1) Debt Laws—Bombay Money-Lenders Act (1947), S. 24.
(2) Debt Laws—Orissa Money-Lenders Act (1939), S. 2 (i).
(3) Debt Laws—Usurious Loans Act (1918), S. 2 (2).
(4) Income-tax Act (1922), S. 4.
(5) Limitation Act (1908), Art. 59.
(6) Words and Phrases — "Deposit and Loans."

—The fact that the "loan" ripens into a decree does not deprive the decree of its basic characteristic of a loan liability. A decree would come within the definition of 'loan or mortgage' as contemplated in S. 3 of the Burma Act. **(1953) 2 Mad L J 405 : 1953 Mad W N 613 : 66 Mad L W 773 : AIR 1954 Mad 97 (99) (Pt C) (Pr 7).**

●**"Local area."**

See U. P. Sugarcane Cess Act (22 of 1956), S. 3. **A I R 1961 S C 652.**

"Local authority."

See (1) Bihar Prevention of Food Adulteration Act (1948), Ss. 3 (e) (ii) and 21.
(2) Constitution of India, Art. 12.
(3) Motor Vehicles Act (1939), S. 47 (1).
(4) Municipalities — M. B. Municipalities Act (1954), S. 14 (1) (f).
(5) Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 5-A.
(6) Prevention of Food Adulteration Act (1954), S. 2 (viii) (a).

"Local law".

See Penal Code (1860), S. 42.

"Loco parentis."

—A person in "loco parentis" is a person assuming the parental character or discharging parental duty. It is a relationship which a person assumes towards a child not his own and towards whom he discharges parental obligation. By expression 'a person in loco parentis' is meant a person who puts himself in situation of a lawful father of the child with reference to the father's office and duty of making provision for the child. Amongst Hindus the elder brother on the death of the perents has always been in loco parentis. See Contract Act (1872), S. 16. **A I R 1958 Punj 190 (DB).**

[Reversed on facts in AIR 1963 S C 1279 where it was held that finding of the High Court that the elder brother was in loco parentis could not be supported]

"Locus regit actum."

—The maxim "locus regit actum" (the place governs the act) means that the validity of an act depends on the law of the place where the act is done. **(1965) 1 Mys L J 577: AIR 1966 Mys 100 (105) (Pt C) (Pr 29) (DB).**

"Losing wrongfully."

See Penal Code (1860), S. 23.

"Loss."

See also (1) Carriage of Goods By Sea Act (1925), Sch. Art. III, Para. 6, Cl. 3.
(2) Contract Act (1872), S. 32.
(3) Debt Laws — Displaced Persons Debts Adjustment Act (1951), S. 18 (6).
(4) Income-tax Act (1922), S. 12B.
(5) Railways Act (1890), S. 77.

—Bill of Lading providing in respect of liability for "loss" of goods by carrier—Loss held did not include non-delivery. **A I R 1963 Cal 510.**

"Loss and misfortune."

—Total loss of goods insured, included in the term "loss and misfortune" in the marine insurance policy. See Insurance Act, S. 1. **AIR 1955 Mad 602.**

"Loss, destruction or deterioration."

See Railways Act (1890), S. 75 (1).

"Lottery."

See Contract Act (1872), S. 30.

"Lump sum."

—The word "lump sum" used in cl. (a) of sub-s. (1) of S. 30, Worksmen's Compensation Act, has not been used in any narrow or restricted sense so as to cover cases arising under Ss. 6 and 7 of the Act only but is wide enough to cover those cases also where a fixed compensation is ordered to be paid under S. 4 read with Sch. IV in cases of death or permanent disablement. The words "or otherwise" occurring in the clause are clearly intended to include all such cases within the scope of the clause. See Workmen's Compensation Act (1923), S. 4. **A I R 1957 Raj 246.**

"Lunatic."

See Lunacy Act (1912), S. 3 (5).

"Luxuries."

See Constitution of India, Sch. 7, List 2, Entry 62.

"Machhadia Sairat."

—Entry in khewat as "Machhadia Sairat" — This would only include fishery rights and not ferry rights. **AIR 1955 N U C (Oriasa) 1854.**

"Machinery."

See also (1) Factories Act (1948), S. 2 (j).
(2) Income-Tax Act (1922), S. 10 (2) (vi-b).

—Any "machinery" which helps to improve the quality of yarn, to avoid breakages in yarn and to secure smooth functioning of the ring frames would be "machinery" used in the manufacture of cloth and falls within Entry 15 of Sch. C of Bombay Sales Tax Act, 1959. **(1964) 5 Guj L R 742.**

—The word "machinery" when used in ordinary language prima facie means some mechanical contrivances which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. A I R 1922 P C 27 Rel. on. **1961 M P L J 1069.**

"Made at any time after the first day of January 1956."

—Expression "made at any time after the first day of January 1946" in S. 4 (h) of Bihar Land Reforms Act should be construed to mean only those transfers which were uncontroversially made after that date—See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S 4 (h). **AIR 1956 Pat 425 (DB).**

"Made by , ... or on behalf of the Government."

—Grant of land by Cantonment Board is not a grant by Government or on behalf of the Government—See Government Grants Act (15 of 1895), S. 2. **A I R 1957 Andh Pra 859.**

"Maghvia"

—The word "Maghvia" does not connote that the women had been abducted by the accused. It only means an abducted woman. **1954 Cr L J 599 : ILR (1953) Patiala 328 : A I R 1954 Pepsu 72 (74, 75) (Pt B) (Pr 8) (DB).**

"Magistrate."

—Subordinate Judge invested with powers of "magistrate" of the First Class, later on invested with higher powers of Additional Judge of Court of Session—He is not divested of powers of a "Magistrate," First Class, unless those powers are specifically withdrawn—Doctrine of merger does not apply —See Representation of the People Act (1951), S. 33 (3), Proviso. **1956 Cri L J 256 : AIR 1956 Nag 67 (DB).**

"Magistrate and officer exercising powers of."

—There is a vital difference between the phrase "a Magistrate" and the phrase "an officer exercising the powers of a Magistrate" — The former expression includes a person who does not enjoy all the powers of a Magistrate, but enjoys some of them, whereas the expression "an officer exercising powers of a Magistrate' has a technical meaning assigned to it—Meaning of expressions in Ss. 28 and 29. Police Act explained—See Police Act (1861), S. 1. **1956 Cri L J 174 : AIR 1956 All 96 (SB).**

"Mahal of a ferry."

—The word "mahal" used as referring to a local area is one which is capable of being used in more than one sense and an earlier meaning of a franchise or tax is not obsolete—**Held**, on facts that the grant of "mahal of Sultanpur Ferry" meant the grant of only of the right to operate the ferry and appropriate the revenue arising therefrom — See Government Grants Act (1895), S. 3. **1960 All W R (HC) 645 : 1960 All L J 863.**

"Mahesul adalat."

—"Mahesul adalat" does not include any executive officer collecting revenues — It must refer to revenue authorities. **AIR 1950 Kutch 8 (8) (Pt B) (Pr 3).**

"Mahimai."

—A "Mahimai" is a donation for charity consisting of a fixed percentage on the sales or profits on commercial transaction done by the donor. **1961 Mad W N 337 : 74 Mad L W 388 : (1961) 2 Mad L J 231 : AIR 1962 Mad 48 (49) (Pt B) (Pr 2) (DB).**

—By-law 25 (b) framed by Ramanathapuram Market Committee prohibiting deduction on account of "Mahimai" is valid. See Madras Commercial Crops Markets Act (20 of 1933), S. 14. **(1954) 1 M L J 117 : AIR 1954 Mad 621 (DB).**

[Reversed on another point in AIR 1959 S C 300].

"Maintain a dwelling place."

See Income-tax Act (11 of 1922), S. 4-A.

"Maintenance."

See also Criminal P. C. (1898), S. 488.

—"Maintenance" does not only mean food and raiment. It must vary according to status and dignity.

See Part B States (Taxation Concessions) Order, 1950, Para. 15(1)(j). AIR 1960 S C 1343.

●—The words "for requiring the maintenance" in S. 30 (bb), Mines Act, indicate that the Central Government may make rules requiring some other person to construct and maintain a creche. See Mines Act (1923), S. 30 (bb). 1954 Cri L J 1187 : AIR 1954 Pat 371 (FB).

—Word "maintenance" has not been defined in Provincial Small Cause Courts Act. According to dictionary (Oxford) 'maintain' means to provide with means of subsistence of necessaries of life, to pay or furnish the means for keeping up of, to support. See Provincial Small Cause Courts Act (1887), Sch. II, Art. 38. 1958 All L J 876.

—"Maintenance" is a wide word and covers everything which a person may require e. g. means of subsistence, support, livelihood, supplies ot necessaries and convenience. It means more than food, lodging, clothes and other forms of necessaries. But a suit on basis of agreement to pay rent will in itself not amount to suit relating to maintenance. See Provincial Small Cause Courts Act (1881), Sch. II, Art. 38. 1956 M B L J 1218.

—The word "maintenance" referred to in S. 45, Madras Estates (Abolition and Conversion into Ryotwari) Act and the corresponding provisions of the Madras Act 26 of 1948, is to the maintenance payable to the members of the family and not to a sum payable to support charities. See Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 45. (1957) 2 Mad L J 73 : AIR 1958 Mad 105 (DB).

"Maintenance and support".

—Per Malik C. J.—Word 'maintenance' is generally intended to mean lodging, boarding, clothing and other such necessaries of life. Word "support", however, appears to amplify the meaning of the word 'maintenance' and might include expenses not only for the necessaries of life but also for all conveniences. See Mussalman Wakf Validating Act (1913), S. 3. AIR 1952 All 127 (DB).

"Make any order admitting any instrument in evidence, as duly stamped."

—The expression "order admitting any instrument in evidence as duly stamped" in S. 61 Stamp Act means an order dealing with the question of due stamping of the document and not an order formally admitting a document in evidence. See Stamp Act (1899), S. 61. AIR 1960 All 359 (DB).

"Making of order."

—An order may be taken to be made on the date it came into existence, if the nature of the order is such that it is not necessary to communicate it to any one. But where an order is made which affects the right of a person, then the order must be communicated to such person in order to be complete and effective. The date of the order is the date when it is made known to the affected person. To this there are, however, certain exceptions. (Exceptions indicated)—See Municipalities—Calcutta Municipal Act (33 of 1951), S. 87. AIR 1959 Cal 219.

"Making out a prima facie case".

—There is a substantial distinction between "making out a prima facie case" and 'disclosing' a prima facie case. If application does not disclose prima facie case it is liable to be summarily dismissed. 'Making out' a prima facie case means establishing a prima facie case by legally admissible evidence, either oral or documentary or affidavits. See Banking Companies Amendment Act (1953), S. 45-H. AIR 1955 N U C (Cal) 3665 (DB).

"Makkathayam"

—"Makkathayam" means gift by the father. In Ezhava Act, "Makkathayam" property is defined to mean property obtained from husband or father by gift, inheritance or bequest. See Travancore Ezhava Act (3 of 1100), S. 32. AIR 1964 S C 164.

"Malfeasance", "misfeasance" and "non-feasance".

See Limitation Act (1908), Art. 36.

"Malice".

See Tort—Malicious Prosecution.

"Malice in law".

—Mala fide action or "malice in law" are not to be easily presumed. Mere non-adherance by a departmental inquiry committee to the strict procedure followed by a judicial tribunal does not amount to either acting mala fide or acting contrary to natural justice. See Evidence Act (1872), S. 114. AIR 1957 All 671 (DB).

—"Malice in law" denotes absence of legal excuse. (1965) 2 Com L J 152 : 70 Cal W N 280 : AIR 1966 Cal 151 (159) (Pt B) (Pr 18).

"Malicious".

See (1) Penal Code (1860), S. 295-A.
(2) Tort—Malicious Prosecution.

"Malik".

●—The word "malik" when used in a will describes the position of the devisee as owner possessed of full proprietary rights including right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such proprietary rights were not intended to be conferred. See Succession Act (1925), S. 75. AIR 1963 S C 1703.

●—The word "Malik" is of very common use in many parts of India and it cannot certainly be regarded as a technical term of conveyancing. When used in a will or other document as descriptive of the position which a devisee or donee is intended to hold it has been held apt to describe an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred. A I R 1922 P C 63, Rel on. Ram Gopal v. Nand Lal, 64 Mad L W 547 : 88 Cal L J 1 : 1951 All L J 24 : 1950 S C J 575 : 1950 S C R 766 : AIR 1951 S C 139 (141) (Pt C) (Pr 10).

—Hindu Law — Will — Construction — Use of word "malik" (owner) in relation to interest conferred on testator's widow — Not sufficient to confer absolute estate. I L R (1962) 2 All 199.

—The term "malik" is apt to describe an owner possessed of full proprietary rights including a full right ot alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred. A I R 1953 Sau 146 (151) (Pt C) (Pr 15) (DB).

—The literal meaning of the terms Malik and Waris are quite different ; the former means the owner and latter heir, and they are never regarded as synonymous, with each other. When we say that A is the 'Waris' all that we mean is that he is the heir while when we describe him as 'Malik' the idea is to convey that he is the owner having heritable and alienable estate : A I R 1948 Bom 261, Dissented. ('50) 2 Pepsu L R 584 (DB).

"Malikana".

See (1) Bengal Land Revenue Settlement Regulation (7 of 1822), S. 10.
(2) Bihar Agricultural Income Tax Act (1938), S. 2(a).
(3) Bihar Agriculture Income Tax Act (1948), S. 6.

"Malik Kabza".

—"Malik Kabza" means an owner of the estate. **AIR 1955 N U C (Raj) 305 : 1953 Raj L W 43 (DB).**

"Malik Kamil" and "naslan bad naslan".

●—The words "malik kamil" (absolute owner) and "naslan bad naslan" (generation after generation) used in a will are descriptive of a heritable and alienable estate in the donee, and they connote full proprietary rights unless there is something in the context or in the surrounding circumstances which indicate that absolute rights were not intended to be conferred. Raja Bajrang Bahadur Singh v. Thakurain Bakhtrai Kuer, **1952 S C J 655 : 1953 S C A 369 : (1953) 1 Mad L J 108 : 1949 All L J 49 : 1953 All W R (HC) 85 : 1953 S C R 232 : I L R (1953) 1 All 896 : AIR 1953 S C 7 (9) (Pt C) (Pr 11).**

"Malik Kamil Dwami".

—"Malik Kamil Dwami" used in a deed convey an absolute estate. **56 Punj L R 361 : AIR 1955 Punj 49 (49, 50) (Pt B) (Pr 4).**

"Mamul".

—"Mamuls" are in the nature of customary payments made by the khonds to the Oriya headman. See Custom. **AIR 1958 Orissa 15 (DB).**

"Manager".

—Terms "managers", "trustees" and "dharmakarthas" are used loosely in documents which are not written by legally trained persons. It cannot therefore be said that because a sale deed in favour of the then trustees as early as 1884, spoke of the trustees as mere managers of the temple, this description of these trustees as mere managers or dharmakarthas would not entitle them to claim the temple as their private place of workship. See Madras Hindu Religious Endowments Act (2 of 1927), S. 9(12). **A I R 1955 N U C (Mad) 669.**

"Managerial, administrative and supervisory capacity."

—Words such as "supervisory", "managerial" and "administrative" are advisedly loose expressions with no rigid frontiers and too much subtlety should not be used in trying to precisely define where supervision ends, management begins or administration starts. See Industrial Disputes Act (1947), S. 2 (s)(iii). **AIR 1958 Cal 273.**

"Manner".

— Sales Tax — Central Sales Tax Act (1956), Ss. 9 (3) and 10A — Word "manner" in S. 9 (3) — When it is required by S. 9 (3) that the tax payable under the Act shall be paid and collected in the same manner in the tax payable under the general sales tax law of the state is paid, and collected, it means that the provisions of the State Sales Tax Act must also be applicable to payment and collection of tax under the Central Sales Tax Act. See Sales Tax — Central Sales Tax Act (1956), S. 9 (3). **(1963) 14 S T C 587 (Mys).**

"Manner and condition".

—The word 'manner' in S. 202, Companies Act, 1913, refers to the procedure to be followed in the matter of institution and hearing of the appeal. The word 'condition' has reference to the nature, quality, qualification of the order or decision itself against which an appeal is proposed to be filed and the other circumstances touching the right of appeal. See Companies Act (1913), S. 202. **1956 Cri L J 369 : AIR 1956 All 222 (DB).**

"Manufacture".

See (1) Madras Factories Act 63 of 1948), S. 2 (k).
(2) Sales Tax—Bihar Sales Tax Act (1947), S. 2 (g) (c).
(3) Sales Tax — (East) Punjab Sales Tax Act (1948), S. 2 (ff).
(4) Sales Tax — Madhya Pradesh Sales Tax Act (1947), S. 2 (j).
(5) Sales Tax — Orissa Sales Tax Act (1961), S. 2.
(6) Sales Tax — U. P. Sales Tax Act (1948), Ss. 1 and 3.

—"Manufacture" means making an article which is capable of being used and designed to be used in ordinary life and word 'production' means making goods available for human wants. See Employees' Provident Funds Act (1952), S. 2 (1). **AIR 1955 Punj 130 (DB).**

"Manufactured or produced".

— Coal is not 'manufactured' in a colliery as 'coke' is. But it is produced. Word 'produced' is to be taken in widest sense. Coal is not of course produced in a colliery in the sense that fruit is produced in a tree. See Constitution of India, Sch. VII, List I, Entry 54. **AIR 1957 Cal 326.**

"Manufacturer".

See also Sales Tax — Madhya Bharat Sales Tax Act (30 of 1950), S. 2 (k).

— Film producer a manufacturer and hence a 'trader' within S. 2 (18), Bombay Money Lenders Act. See Debt Laws — Bombay Money-Lenders Act (31 of 1947), S. 10 (1). **(1962) 64 Bom L R 549.**

"Manufacturing".

— "Manufacturing" explosives—Preparing containers for storing — No process for "manufacturing" explosives could be said to have commenced. See Explosives Act (1884), S. 5 (3). **1958 Cri L J 487 : AIR 1958 Bom 147 (DB).**

"Manufacturing process".

See Factories Act (1948), S. 2 (k).

"Maral".

●—The question as to what the word "maral" means is one that must depend on the proof in each particular case of usage of that word by the Nattukottai Chetti firms.

Held, that there was no pleading in this case as to the meaning of the word "maral" or that the word 'order' in the context of this case had been used in the sense of 'maral'. The Court was mot prepared to uphold the contention that the word 'order' in this case could be given the meaning which was attributed to the word 'maral' in some of the decided cases. AIR 1929 P C 254 : 57 Mad L J 628 and AIR 1934 Mad 621, Rel. on. Ranganathan Chettiar v. Periakaruppan Chettiar. **1958 S C J 58 : (1958) 1 Mad L J (S C) 36 : (1958) 1 Andh W R (S C) 36 : 1958 S C R 214 : AIR 1957 S C 815 (826, 827, 828, 829) (Pt D) (Pr 14).**

"Market".

See also (1) Bengal Agricultural Income-tax Rules (1944), R. 4.
(2) Madhya Pradesh Food Grains (Restriction on Border Movement) Order (1959), S. 3, Proviso.
(3) Municipalities — Calcutta Municipal Act (1951), S. 451 (i) (d).
(4) Municipalities — Madras District Municipalities Act (1920), S. 262.

— "Market" does not include stall of a person. See Panchayats—Travancore-Cochin Panchayats Act (2 of 1950), S. 70. **1957 Cri L J 105 : AIR 1957 Trav-Co 2 (DB).**

"Market overt".

— "Market overt" means that where goods are sold in "market overt", according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of

the seller. See Sale of Goods Act (1930), S. 27. AIR 1958 Raj 269.

"Marketable title".

— It is very difficult to lay down any hard and fast rule with regard to the requirement of "marketable title" or 'a title free from reasonable doubt'. Generally speaking a 'marketable title' is one which at all times and under all circumstances could be forced on an unwilling purchaser under a contract for sale, made without special conditions. AIR 1938 Bom 77, Rel. on. AIR 1964 Orissa 269 (274) (Pt D) (Pr 10).

"Marketing".

— "Marketing" means "to sell, to buy and sell in the market" "to go to market with produce". There is nothing in the term to imply as to how and in what manner the produce is to be sold. See Coffee Act (1942), S. 25. AIR 1965 Mad 14 (DB).

"Market value".

See Land Acquisition Act (1894), S. 23.

"Market value of estate".

— "Market value of estate" — Application for letters of administrations in respect of shares — Duty on dividends — See Madras Court Fees and Suits Valuation Act (14 of 1955), S. 56 (1) (b). AIR 1956 Mad 200.

"Marries again".

See (1) Hindu Marriage Act (1955), S. 13 (2) (i).
(2) Hindu Married Women's Right to Separate Residence and Maintenance Act (1946), S. 2 (4).

"Marzulmaut".

See Mahomedan Law — Wakf.

"Master".

● — "Master", 'servant' and 'independent contractor' who are, explained — "Master" employing servant — Latter authorised to employ persons — Such persons, if servants of master has to be determined on facts of the case. 1 M L J 247 : 1955 Andh W R 247 : 1955 S C J 407 : AIR 1955 S C 404 (407, 408, 409, 410, 411, 412) (Prs 7, 10, 11, 13, 14, 15, 16).

"Material alteration".

See (1) Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (2 of 1947), S. 3 (1) (c).
(2) Negotiable Instruments Act (1881), S. 87.

"Material facts".

See (1) Civil P. C. (1908), O. 6, R. 2.
(2) Representation of the People Act (1951), S. 83.

"Material irregularity".

See Civil P. C. (1908), S. 115 and O. 21, R. 66 (2) (b).

"Material witness".

See Criminal P. C. (1898), S. 208.

"Materially affected".

See Representation of the People Act (1951), S. 100 (c).

"Mate's receipt".

—"Mate's receipt" is a mere acknowledgment of receipt of goods by the ship owner; the contract of carriage will be contained only in the bill of lading signed by the person who agrees to carry them. This is a document of title to the goods. AIR 1961 Mad 442 (444) (DB).

"Matter"

—The "matter" to which Art. 133 of the Constitution applies is the appellate jurisdiction of the Supreme Court in appeals from the High Courts in regard to civil "matter". See Constitution of India, Art. 135. AIR 1956 All 321 (DB).

"Matters of religion"

See Constitution of India, Arts. 25 (2) (b) and 26 (b).

"Maufidar"

●—Expression "Maufidar" is not necessarily confined to a grantee from a State or a Ruler of a State. "Maufidar" can be a person who is the holder of land which is exempt from payment of rent or tax. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 2 (m) (ii). AIR 1961 S C 775.

"Mawari"

—Expression "gaon sanjayat mawari" is technical and means "common land divisible according to families" — Secondary families are not entitled to equal shares with primary families — Expression is used in Kumaon Division. A I R 1955 N U C (All) 884 (DB).

"May"

See also (1) Criminal P. C. (1898), S. 207-A (4).
(2) Interpretation of Statutes.

●—"May" when to be read as "shall" indicated. See C. P. and Berar Revocation of Land Revenue Exemption Act (37 of 1948), S. 5 (3). AIR 1965 S C 1222.

●—Word "may" may be used as enabling or premissive power and also as compellable duty particularly when it refers to a power conferred on a Court or other judicial authority. See Prbation of Offenders Act (1958), S. 11 (1). 1963 (2) Cri L J 173 : AIR 1963 S C 1088.

●—Industrial Dispute —Wages —Increment —Notification of state minister ordering increments in wages to workers in colliery — Clause in notification that employees not entitled to increase in accordance with the provisions of notification "may" be given 12½ p. c. increase—"May" gives discretion—Dispute regarding applicability of the clause referred to industrial tribunal—Tribunal can decide dispute on merits. (1960) 2 Lab L J 71 (SC).

●—The word "may" in S. 363, Calcutta Municipal Act, is not used in the sense of "shall" — Municipalities — See Calcutta Municipal Act (3 of 1923), S. 363. 1956 Cri L J 285 : AIR 1956 S C 110.

●—By the use of the word "may" in the expression "a subsequent scheme "may" be prepared" in S. 36, East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the Legislature cannot be intended to have granted a mere discretion but rather have imposed a positive and absolute duty. See Constitution of India, Art. 19. AIR 1963 Punj 255 (FB)

—Significance of the word "may" in S. 6B (2) of the U. P. Industrial Disputes Act, indicated. See U. P. Industrial Disputes Act (28 of 1947), S. 6B (2). (1965) 2 Lab L J 598 : (1965) 11 Fac L R 35 : ILR (1965) 2 All 716 (DB).

—Delhi Rent Control Act (59 of 1958), S. 9 (3)— "May" does not mean 'must'—Controller is not bound to fix the standard rent of the part sublet. See Houses and Rents — Delhi Rent Control Act (59 of 1958), S. 9 (3). (1965) 67 Pun L R 491.

—Expression "may" reduce into writing in S. 161 (3) —Use of word "may" cannot always mean that procedure laid down is discretionary and not mandatory. See Criminal P. C. (1898), S. 161 (3). 1964 All W R (HC) 307.

—The word "may" in S. 17 (2), Suppression of Immoral Traffic in Women and Girls Act has been used in imperative and not permissive sense. See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 17 (2). 1963 All L J 894.

—Word "may" in S. 180, U. P. Municipalities Act has reference to sanction and does not control the opening words — Municipality cannot dispense with bye-laws framed and sanction plans not in accordance with bye-laws. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 180. **AIR 1953 All 681 (DB).**

—The word "may" in S. 12 (3) (a), Bombay Rents Hotel and Lodging House Rates Control Act means "shall" or "must". See Houses and Rents — Bombay Rents Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (3) (a). **(1961) 63 Bom L R 855.**

—Usually the word "may" is an enabling word; it gives discretion to the person who is given the option to act in a particular manner mentioned in the section. But it is well recognised that the word "may" in the context can mean "shall". If statutes authorise any specified persons to do acts for the benefit of others, the authority conferred is coupled with an obligation to discharge a duty by the statutes themselves; and in such a case, the intention is to impose an obligation upon the authority to discharge his duty, with the result that the word "may" in the context means "must" or "shall". Whether the authorised person is given a discretion or is under a compulsion or obligation to do a particular act would inevitably depend upon the context in which the word "may" has been used, the scheme of the statute wherein the section using the word "may" occurs, and such other relevant considerations. (1880) 5 A C 214 and AIR 1923 P C 138 and 10 Bom L R 345, Ref. **59 Bom L R 158 : ILR (1957) Bom 314 : AIR 1959 Bom 401 (402, 403) (Pt A) (Pr 4) (DB).**

—The word "may" in S. 12 (5), Industrial Disputes Act has an implication of an obligation. See Industrial Disputes Act (1947), S. 12 (5). **AIR 1956 Bom 273 (DB).**

—The word "may" in Rule 1, framed under the Bengal Wakf Act, even if does not mean must, shows that it must atleast mean that wherever possible the discretion involved in the word should be fairly and reasonably used and the procedure laid down should not be capriciously bypassed. See Bengal Wakf Act (13 of 1934), S. 28. **(1964) 68 Cal W N 509.**

—The word "may" is used in S. 5A, W. B. Estates Acquisition Act for the simple reason that it gives permissive power to enquire on condition that there is a prima facie reason to believe that such transfer is not bona fide. See Tenancy Laws—W. B. Estates Acquisition Act (1 of 1954), S. 5A. **(1963) 67 Cal W N 129.**

—The word "may" in S. 9, Bengal Ferries Act merely incorporates an option between administering a ferry directly and leasing it out. It does not imply any option as regards method of granting lease. See Bengal Ferries Act (1 of 1885), S. 9. **('59) 63 Cal W N 158 : ILR (1959) 2 Cal 768.**

—There can be no question of the corporation itself proceeding to make a compulsory acquisition of land, although the language of both Ss. 310 and 468 of the Calcutta Municipal Act, 1923, is that "Corporation may acquire." See Municipalities — Calcutta Municipal Act (1923), S. 310. **A I R 1956 Cal 122 (DB).**

—Word "may" in S. 237 (1) is used in permissive sense and does not mean 'shall.' See Companies Act (1913), S. 237 (1). **1955 Cri L J 107 : A I R 1955 Cal 29 (DB).**

—In S. 6 of the West Bengal Premises Rent Control (Temporary Provisions) Amendment Act, 1950, the word "may" means 'may' and not 'shall.' See Houses and Rents—W. B. Premises Rant Control (Temporary Provisions) Amendment Act (62 of 1950), S. 6. **A I R 1951 Cal 514 (DB).**

—The word "may" in S. 12 (3) (a) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, means 'must' or 'shall.' See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 12 (3) (a). **A I R 1964 Guj 9 (DB).**

[**Overruled on another point in A I R 1967 S C 1078.**]

—Use of the word "may" in S. 54 (1), M. B. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), does not confer discretionary power on the Deputy Commissioner. The word has the effect of 'shall.' See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 54. **1960 M P C 367.**

—Word "may" is consistent with its being read as compulsive or as 'shall' if the conditions postulated are satisfied. See Co-operative Societies—Madras Co-operative Societies Act (6 of 1952), S. 49 (1). **A I R 1957 Mad 634 (DB).**

—The word "may" without a negative would certainly connote that giving of a discretionary power; but "may" with a negative would amount to a positive prohibition. It expresses the negation of a power and of an inability to exercise it. See Trusts Act (1882), S. 52. **AIR 1955 N U C (Mad) 3934 (DB).**

—The word "may" used in R. 3 (2) (iv) of the Rules of Recruitment by Mysore Government only empowers the Government to choose such officer as it thinks fit. The choosing of an officer is a 'must' but the person to be chosen is at the discretion of the Government. See Constitution of India, Art. 309. **(1965) 2 Mys L J 160 : (1965) 3 Law Rep 333 : A I R 1966 Mys 36 (DB).**

—In the last proviso to S. 4 (1), Mysore House Rent Control Order, 1951, the word "may" means "shall." See Houses and Rents — Mysore House Rent Control Order (1951), S. 4 (1). **AIR 1955 N U C (Mys) 3955.**

—The word "may" in S. 40, C. P. Tenancy Act does not give discretion. See Tenancy Laws — C. P. Tenancy Act, (1920), S. 40. **AIR 1953 Nag 1 (DB).**

—"May" in S. 58 (2), Motor Vehicles Act does not mean "shall." See Motor Vehicles Act (1939), S. 58 (2). **AIR 1957 Orissa 121** (DB).

—"May" in Rule 4 (2) of the Orissa Disciplinary Proceedings (Administrative Tribunals) Rules, 1951 has imperative force. See Constitution of India, Art. 309. **AIR 1957 Orissa 70 (DB).**

—Prima facie the meaning of "may" is permissive, until contrary is established. The word "may" in S. 6, Criminal Law Amendment Act could be read to mean that "it shall be lawful" for the State Government to appoint special Judge. There is nothing to compel Court to give a meaning to the word 'may' other than its ordinary meaning and to interpret it to mean 'shall.' See Criminal Law Amendment Act (1952), S. 6. **1954 Cri L J 139 : AIR 1954 Pat 80.**

—The word "may" used in sub-r. (3) of Rule 70 of Displaced Persons (Compensation and Rehabilitation) Rules (1955) does not mean 'shall' and the Rehabilitation authorities are not bound to sell a garden or grove to person to whom it has been allotted. See Displaced Persons (Compensation and Rehabilitation) Rules (1955), R. 70 (3). **(1960) 62 Punj L R 220.**

—Word "may" in S. 13 (2), East Punjab Urban Rent Restriction Act does not mean 'shall.' It is used in permissive sense. See Houses and Rents — East Punjab Urban Rent Restriction Act (30 of 1949), S. 13 (2). **AIR 1955 N U C (Punj) 738 (DB).**

—Word "may" in S. 207-A (4), Cr. P. C. gives discretion to prosecution and does not mean 'shall.' See Criminal P. C. (1898), S. 207-A (4). **1959 Cri L J 1476 : AIR 1959 Raj 294 (DB).**

—The word "may" in S. 42 (1), Stamp Act has the

force of 'shall.' See Stamp Act (1899), S. 42. **A I R 1937 Raj 211 (DB).**

"May seize any cattle trespassing on such land."

—The expression "may seize any cattle trespassing on such land and doing damage thereto" in S. 10, Cattle Trespass Act does not connote that the seizure must be effected in the process of the trespass and causation of damage on the land. See Cattle Trespass Act (1871), S. 10. **1966 Cri L J 1132 : A I R 1960 Pat 385.**

"Means."

See also (1) Words and Phrases—"Includes."
(2) Interpretation of Statutes—Words.

●—Use of the word "means" in a definition section shows that the definition is a hard and fast definition and that no other meaning can be assigned to the word or the expression defined than is put down in the definition. **AIR 1957 All 541 (545) (FB).**

—Use of the words "means", 'includes' and 'but does not include' in the definition of 'wages' in S. 2 (vi) of the Payment of Wages Act, clearly shows that the definition is an exhaustive one and no other meaning can be assigned to the term 'wages' than is put down in the definition. See Payment of Wages Act (4 of 1936), S. 2 (vi). **AIR 1956 Madh Bha 152.**

—The word "means" in S. 51, Proviso, C. P. C. is not equivalent to cash. The word "means" realisable assets. See Civil P. C. (1908), S. 51, Proviso. **AIR 1964 Mad 233 (DB).**

"Measurement."

—"Measurement" in S. 5, M. B. Identification of Prisoners Act includes finger impressions and foot impressions. See M. B. Identification of Prisoners Act, Smt. 2008 (15 of 1951), S. 2 (a). **1957 Cri L J 855 : AIR 1957 Madh Pra 106 (DB).**

"Meenas Bara Gaon"

—"Meenas Bara Gaon" are only tenure holders. Their estates are heritable and partible and if some of them still render service, they do it in order to save the payment of land revenue in cash. **ILR (1959) 9 Raj 348 : 1959 Raj L W 362 : A I R 1959 Raj 250 (253) (Pt C) (Pr 11) (DB).**

"Meeting"

—Word "meeting" in its individual sense means a "sitting on a particular day" and in its cumulative or collective sense means a conglomeration of meetings held in a particular session and therefore a 'session', in legal parlance, the word in its application to the sittings of a house of legislature, has come to mean a 'session' of the House. The expression as it appears in S. 22 (5), Punjab Pure Food Act, is wide enough to embrace not only one sitting but all the sittings within a particular session, in other words the expression is synonymous with 'session'. See Punjab Pure Food Act (8 of 1929), S. 22 (5). **1953 Cri L J 373 : AIR 1953 Punj 40 (DB).**

"Member"

—Word "member" in S. 21, Chartered Accountants Act, includes past "member" for the purpose of enquiry contemplated by the section. See Chartered Accountants Act (1949), S. 21. **AIR 1955 N U C (Cal) 2891 (DB).**

"Members of the family"

See (1) Houses and Rents—Delhi and Ajmer-Merwara Rent Control Act (1947), S. 9 (1) (e).
(2) Partition Act (1893), S. 4.

"Memorials or petitions"

●—According to strict construction of the words of Art. 320 (3) of the Constitution, an application for review would be covered by the words "memorials or petitions". See Constitution of India, Art. 320 (3) (c). **AIR 1957 S C 912.**

"Mera"

—The word "Mera" in adoption deed by Hindu widow, cannot have the significance that the widow had taken the boy as a son to her own self apart from her husband, where the fact that she had acted for the benefit of both the parents appear clear from her wish as expressed in the document, that the boy would perpetrate the name and fame of not only herself but also of her 'kutumb' meaning the family to which she belonged. **A I R 1958 Madh Pra 287 (289) (DB).**

"Merchant"

●—(Per Weston, C. J.) — The term "merchant" as used in a contract for the supply of piece goods is not restricted to person trading entirely on his own account. A "merchant" is a person who trades in goods that is to say, who buys and sells goods. It may not include a manufacturer of goods but it includes a General Manager of a trading company. The test is whether the person does buy or sell goods on his initiative. It is immaterial whether he was remunerated by a share of the profits or by salary. Parmeshwari Das v. Firm Ram Chand. **('51) 53 Pun L R 432 : A I R 1952 Pun 34 (37) (Pt B) (Pr 12) (FB).**

"Merchantable quality".

—Sale of Goods Act does not define the expression "merchantable" yet the word has by long use become a term of art in commercial law. "Merchantable quality" means that the goods comply with the description in the contract so that to a purchaser buying the goods of that description the goods would be a good tender. See Sale of Goods Act (1930), S. 15. **AIR 1960 Mad 520 (DB).**

"Merpadiyanil" and "Merpaditayappadi"

—The word "merpadiyanil" would mean "in or at the said time or prescribed time". The word "merpaditayapaddi" should be translated "as per or according" and not within. See T. P. Act (1882), S. 60. **AIR 1954 Mad 193.**

"Mesne profits"

See (1) Civil P. C. (1908), S. 2 (12).
(2) T. P. Act (1882), S. 76 (i).

"Metals"

—"Metals" in Sch. 3, Travancore District Municipalities Act does not cover precious metals, gold and silver. See Municipalities — Travancore District Municipalities Act (23 of 1116-M. E.), S. 261. **I L R (1960) Ker 1065.**

—'Metal' in expression "beating of metals" does not cover precious "metals" like gold or silver. See Municipalities — Trivandrum City Municipality Act (4 of 1116 M. E.) S. 295, Sch. 4. **1951 K L T 308 : AIR 1952 Trav-Co 42 (DB).**

"Mica works"

—"Mica works" is a general term of widest possible import and includes all kinds of works in relation to mica including mining. See Minimum Wages Act (1948), Sch. Part I, Item 10. **A I R 1957 Raj 35 (DB).**

"Migrate"

See Constitution of India, Arts. 6 and 7.

"Migration"

See Constitution of India, Art. 7.

"Milkiyat maqbooza"

—The mere use of the words "milkiyat maqbooza" does not necessarily connote that the interest referred to is the zamindari or Biswedari interest. The words may only mean what they say, namely the possessory title of the plaintiff. Recital in the plaint must be taken as a whole. **1961 Raj L W 259 : I L R (1961) 11 Raj 255.**

"Miller"

—The word "miller" in item 3-C of Col. (2), Sch. 4, A. P. General Sales-tax Act, 1957, means both the decorticating miller and the oil "miller" See Sales-tax — Andhra Pradesh General Sales-tax Act (6 of 1957), Sch. 4, Col. 2, Item 3 (c) (as amended by Act 26 of 1961). **(1964) 15 S T C 795 (AP).**

"Millets"

—"Millets" does not include wheat. See Sales-tax —Andhra Pradesh General Sales-tax Act (6 of 1957), S. 5 (3) (b). **(1962) 1 Andh W R 29.**

"Mine"

●—"Mine" in S. 2 (b), Minimum Wages Act includes a "quarry"—AIR 1964 Bom 67, **Reversed.** See Minimum Wages Act (1948), S. 2 (b), Item 8 in Sch. Part 1. **(1965) 2 Lab L J 157 : 1965 M P L J 901 : (1965) 3 S C R 461 : (1965) 2 S C W R 830 : (1965) 11 Fac L R 108 : (1965) 2 S C J 867 : 1965 Mah L J 857 : 1966 Cri L J 176 : AIR 1966 S C 189.**

—Sand from river bed is not included in mines and minerals. See Land Acquisition Act (1 of 1894), S. 6. **AIR 1962 Pat 14 (DB).**

"Mineral"

—Use of word 'mines' in conjunction with 'minerals' does not limit meaning of latter — Brick-earth is mineral. See Constitution of India, Sch. 7, List 1, Item 54. **AIR 1965 Pat 491 (DB).**

—Word "mineral" in S. 231, Marwar Land Revenue Act includes salt wherever produced. See Constitution of India, Sch. 7, List 1, Entry 54. **A I R 1957 Raj 213 (DB).**

"Minimum Wages"

See Minimum Wages Act (1948), S. 3.

"Minjumla"

—Held, that the word "minjumla" in the remarks column in the survey Khatian did not mean 'out of' but in the context, it meant "over and above". **AIR 1953 Pat 358 (362).**

"Minority"

See Constitution of India, Art. 30 (1).

"Minor minerals".

See Mines and Minerals (Regulation and Development) Act (1948), S. 4.

"Misappropriation and conversion to one's own use".

See Penal Code (1860), S. 403.

"Misbehaviour".

See Public Servants' (Inquiries) Act (1850), S. 2.

"Miscarriage of justice".

See under W. and P. — Failure of justice.

"Misconduct".

See also (1) Arbitration Act (1940), S. 30.
(2) Chartered Accountants Act (1949), S. 21.
(3) Constitution of India, Arts. 310-311.
(4) Legal Practitioners Act (1879), Ss. 13 and 14.
(5) Railways Act (1890), Ss. 72, 75, 74C, 77-C.
(6) Travancore Public Servants (Inquiries) Act (11 of 1122), S. 2.
(7) West Bengal Government Servants' Conduct Rules (1959), R. 4.

—The expressions 'malpractice', use of 'unfair means' and "breach of the rules" are all included in and sufficiently expressed by the word "misconduct" used in University Ordinance. The plain meaning of the word is "improper conduct". **1963 Mys L J 408.**

"Misdelivery".

—Word "misdelivery" is restricted to a wrong delivery involving some form of mistake or inadvertence. It may cover delivery to a wrong person by error or inadvertence. See Carriers Act (1865), S. 2. **AIR 1964 Mad 516.**

"Misfeasance".

—The word "misfeasance" in S. 235, Companies Act, 1956, covers every misconduct of an officer of company as such for which he might have been sued apart from the section—Director lending money to a concern of which he is a partner, is guilty of "misfeasance". See Companies Act, 1956, S. 543. **AIR 1956 Cal 648.**

"Misjoinder of charges".

See Criminal P. C. (1898), S. 537.

"Mishri".

—Though manufactured out of sugar, "mishri" is not sugar as popularly understood. See (1) Sales tax—M. P. General Sales-tax Act (2 of 1959), Sch. 1, Item 41. (2) Sales Tax—M. P. General Sales Tax Act (2 of 1959), Sch. III, Item 1. **AIR 1965 Madh Pra 254 (DB).**

"Misrepresentation".

See (1) Contract Act (1872), S. 18.
(2) Evidence Act (1872), S. 114.
(3) Motor Vehicles Act (1939), S. 60 (1).

"Mistake".

See Contract Act (1872), S. 72.

"Mistake apparent from the record".

See (1) Arbitration Act (1940), S. 30.
(2) Constitution of India, Art. 226.
(3) Income-tax Act (1922), S. 35.

"Modesty".

See Penal Code (1860), S. 354.

"Modification".

See under Words and Phrases—"Extinguishment".

●—Even assuming that the introduction of indirect election by the "modification" of Art. 81 of the Constitution, is a radical alteration of the provisions of Art. 81 (1), the "modification" is justified by the word "modification" as used in Art. 370 (1) (d). See Constitution of India, Art. 370 (1) (d). **AIR 1961 SC 1519.**

●—Suspension of the rights of a mine-owner or a lessee of a mine is "modification" within meaning of S. 31A (1) (e), of the Constitution of India. See Coal Bearing Areas (Acquisition and Development) Act (1957), S. 13 (4). **AIR 1961 SC 954.**

—The word "modification" in S. 52, W. B. Estates Acquisition Act means contextual adaptation of Chapters II, III, V and VII of the Act to the case of raiyats and under-raiyats and not amendments of the substantive provisions and effects of those chapters. The contextual adaptation is only intended to make those chapters applicable to the case of raiyats and under-raiyats, which without the modification might not have been applicable to the case of raiyats and under raiyats. See Tenancy Laws—W. B. Estates Acquisition Act (1 of 1954), S. 52. **(1963) 67 Cal W N 129.**

●—The word "modification" also means addition and that power to extend an enactment subject to "modifications" will comprehend the power to add certain provisions to that enactment and extend to area concerned, the enactment so added to. See Constitution of India, Art. 370 (1) (a). **AIR 1959 J & K 35 (FB).**

—Where a reading of the old and new Acts shows that they deal with the same subject matter except that the new Act has made certain addtitional provisions, the new Act is substantially the same as the old one and the word "modification" in S. 24, General Clauses Act, is comprehensive enough to include such additions as have been made in the new Act. See General Clauses Act (1897), S. 24. **1958 Cri L J 767 : AIR 1958 Madh Pra 162 (164) (DB).**

—The word "modification" in S. 8 (1), General Clauses Act means variatton and include sextension also although in ordinary parlance this word may signify restrictions only. General Clauses Act (1897), S. 8 (1). **AIR 1959 Punj 291 (DB).**

"Modify".

See (1) Municipalities—Bombay Municipal Boroughs Act (18 of 1925), S. 60 (1).
(2) Panchayats—Bihar Gram Kutcherry Rules (1949), R. 59 (1).
(3) U. P. Intermediate Education Act (1921), S. 16 (G) 3 (C).

—Word "modify" in S. 89 (2) means either to enhance or reduce sentence or fine, in absence of limiting clause. See Panchayats — U. P. Panchayat Raj. Act (26 of 1947), S. 89 (2). **1964 All L J 989.**

"Mokhasa".

—"Mokhasa" not an Inam village—Tenants on lands in "Mokhasa" not entitled to ryotwari patta under S. 4 (2)(c), of Andhra Inam (Abolition and Conversion in Ryotwari) Act, 1956. See Tenancy Laws –Andhra Inams (Abolition and Conversion in Ryotwari) Act (37 of 1956), S. 2 (c). **(1963) 2 Andh L T 197.**

—"Mokhasa" is not synonymous with ryoti — Means tenure subject to service. **(1959) 2 Andh W R 254.**

"Money had and received".

See Limitation Act (1908), Art. 62.

"Money-lender."

See (1) Debt Laws—C. P. and Berar Money-lenders Act (13 of 1934), S. 11.
(2) Debt Laws — Orissa Money-lenders Act (3 of 1939), S. 2 (j).

"Month."

See also (1) General Clauses Act (1897), S. 3 (35).
(2) Marwar Limitation Act (1945), S. 12.
(3) Penal Code (1860), S. 49.

—Word "month" in its ordinary acceptance, means a calendar month and not a lunar "month," except where in a particular place or business or trade the word "month" has acquired a secondary meaning. In such cases, the accepted interpretation in the particular place, business or trade must govern the rights of the parties. The word "month" used in judicial pronouncements means calendar "month." **AIR 1951 Cal 316 (317, 318) (Pt A) (Pr 5) (DB).**

—"Month" in decree — Meaning — In a suit for ejectment the Court passed a conditional decree that "if within a month of the passing of the decree the judgment-debtors pay the arrears of rent, then the suit for ejectment would be dismissed.' The decree was passed on 4-2-1954 :

Held, that it would be straining the language if it was held that the meaning given to the word "month" in a commercial document was to be extended to decrees. The month in the decree should be read as a calendar month. **58 Punj L R 123 : AIR 1956 Punj 112 (112) (Pr 5).**

"Monthly wages not exceeding Rs. 400."

—Expression "monthly wages not exceeding Rs. 400" means wages which do not exceed on an average Rs. 400 a month. See Workmen's Compensation Act (1923), S. 2 (1) (n). **AIR 1961 Raj 45.**

"Mooris."

—The ordinary meaning of "mooris" is an ancestor from whom inheritance is derived. It means a deceased person from whom another has inherited property. 'Mooris' or ancestral is quite different from a former possessor or predecessor-in-title. See Tenancy Laws — Gwalior Qanoon Mal (Smt. 1993), S. 247, Note 4. **1956 M B L J (H C R) 1557.**

—"Moral delinquency."

—Offence under S. 120B read with Ss. 109, 121, I. P. C. for various offences of criminal conspiracy to set fire and blow up railway bridges and violation of Explosive Substances Act, involves "moral delinquency." See Panchayats—Madras Village Panchayats Act (10 of 1950), S. 16 (1). **(1963) 76 Mad L W 857.**

"Morality."

—The words "morality" and 'decency' are not well understood. There may be wide difference of opinion as to their precise meaning. Restriction imposed with regard to 'decency' or "morality" without clearly specifying the prohibited acts, is both vague and unreasonable and to this extent S. 9 of the Punjab Security of the State Act, 1953 (as appplied to Ajmer) is invalid. See Public Safety — Punjab Security of the State Act (12 of 1953) (applied to Ajmer), S. 9. **AIR 1956 Ajmer 52.**

"Moral Turpitude."

See also (1) Legal Practitioners Act (1879), S. 12.
(2) Panchayats — U. P. Panchayat Raj Act (1947), S. 5A (h).

—Conviction of panch under S. 457, I. P. C. involves moral "turpitude." See Panchayat—Vindhya Pradesh Gram Panchayats Ordinance (1949), S. 5. **1962 Jab L J 936.**

—Constitution of India, Art. 311 — Departmental enquiry — Offence involving moral "turpitude" — Meaning of — Offence under S. 4 (1) (a) of Mysore Prohibition Act (37 of 1948) held involved moral "turpitude" — Omission to specify in notice by disciplinary authority that offence committed by delinquent involved moral "turpitude" — Conviction established under Standing Orders — Punishment held was competent. See Constitution of India, Art. 311. **1962 Mys L J (Sup) 498 (DB).**

—Moral "turpitude" — Connotes conduct inherently base and contrary to accepted rules of morality and may or may not be punishable as crime. See Tenancy Laws — Delhi Land Reforms Act (8 of 1954), S. 153. **AIR 1965 Punj 433.**

—The term "moral turpitude" is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be conduct contray to justice, honesty, modesty or good morals and contrary to what a man owes to a fellowman or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not. **AIR 1957 Punj 97 (98) (Pt C) (Pr 5).**

"Mortgagee".

—Mortgagee for purpose of redemption would include all persons who derive title from him and it is immaterial whether that title is derived by sale in invitum or by private treaty. See Transfer of Property Act (1882), S. 59A. **AIR 1957 Pat 136.**

"Mortgagor".

—Mortgagor—Includes auction purchasers as hislegal representatives. Sse Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 14. **1957 All W R (HC) 850.**

"Motion"

●—A "motion" means a proposal and nothing more. See Municipalities — U. P. Municipalities Act (2 of 1916), S, 87A. **AIR 1958 All 374 (FB).**

"Motor."

—"Motor" is wide enough to include a motor truck. See Municipalities — C. P. and Berar Municipal Act (1922), S. 66. **AIR 1955 N U C (Nag) 1847 (DB).**

"Moveable property."

See also (1) General Clauses Act (1897), S. 3 (36).

(2) Income-tax Act (1922), S. 12-B.
(3) Penal Code (1860), S. 22.

—Electricity is moveable property. See Municipalities —C. P. & Berar Municipalities Act (2 of 1922), S. 44. **AIR 1964 Madh Pra 101 (DB).**

"Mritasanjivani Sura."

—"Mritasanjivani sura" is not a country liquor but a medicated wine. See Sales Tax — Bihar Sales Tax Act (29 of 1947), S. 6. **AIR 1959 Pat 138 (DB).**

"Mukadama."

—A general word like "Mukadama" can mean either a suit or proceeding or a case. For the purposes of a civil suit it means 'suit.' See Civil P. C. (1908), O. 38. R. 2. **AIR 1955 N U C (Raj) 297 (DB).**

"Multifarious suits."
See Court-fees Act (1870), S. 17.

"Municipal election roll."

—The expression "the municipal election roll," in S. 428 (1), City of Nagpur Corporation Act means the person indicated in S. 428 is a person who is enrolled in a particular electoral roll in respect of a particular ward or special constituency from which the particular councillor has been elected and whose election has been challenged under S. 428. See Municipalities — City of Nagpur Corporation Act (2 of 1950), S. 428 (1). **AIR 1959 Bom 2 (DB).**

"Muramat Shakasht rekhat"

—Phrase "Muramat Shakasht rekhat" does not include destruction ot mortgaged property by mortgagee himself, at his own sweet will, irrespective of its nature and condition. The stipulation that the mortgagor shall pay the cost of "shakasht" (breakage) and "rekhat" (destruction) cannot be taken to mean that the mortgagor thereby binds himself to pay expenses which the mortgagee may incur in breaking and demolishing the mortgaged property and then in rebuilding the same. See Transfer of Property Act (1882), S. 63A. **AIR 1955 Pepsu 87 (DB).**

"Mutatis mutandis," interpretation of.
See also (1) Income-tax Act (1922), S. 66 (1).
(2) Interpretation of Statutes.

—Expression "Mutatis mutandis" means with necessary changes in points of details. See Tenancy Laws—W. B. Estates Acquisition Act (I of 1954) (As amended By W. B. Act (35 of 1955), S. 52. **AIR 1964 Cal 552 (DB).**

—The meaning of the words "mutatis mutandis" is "with necessary changes in point of details." See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), S. 5 (A) (6). **(1962) 66 Cal W N 282.**

"Mutilated note."
See Reserve Bank of India Act (1934), S. 28.

"Mutual consent."
See Cr. P. C. (1898), S. 488.

"Mutual dealings."
See Prov. Insol. Act, S. 46.

"Mutual open and current account"
See (1) Limitation Act (1908), Art. 85.
(2) Provincial Insolvency Act (1920), S. 9 (1) (b).

"Naslan bad naslan."

—Expression "naslan bad naslan butnun baad butnun" (generation after generation) when used with respect to succession to office of shebait has been interpreted to mean heritable and heritable only by the lineal male descendants. See Hindu law — Idol. **AIR 1958 All 371 (SB).**

"Nashtansh."

—The expression "Nashtansh" does not mean dying without lineal descendants. But it means the absence of all the known heirs. **AIR 1956 Bom 237 (238) (Pt A) (Pr 4).**

"Nationality."

—"Nationality" and Citizenship—Distinction pointed out. See Constitution of India, Art. 51. **AIR 1963 S C 1811.**

"National symbol"
See Representation of the People Act (1951), S. 123 (3).

"Natural annual produce."

—"Natural annual produce" of trees including fruits and flowers, (phal and phul) — Lessee to enjoy these —Right to draw toddy juice from sindi trees held included. **ILR (1952) Nag 668 : AIR 1953 Nag 205 (209) (Pr 36) (Pt D) (DB).**

"Natural justice."
See Constitution of India, Arts. 226 and 32.

"Near relation"

—Right to inherit the property of another is not the only test of near relationship. It cannot be said that the relationship between persons who have married sisters is not a near relationship in the ordinary sense of the term. See Co-operative Societies—Madras Co-operative Societies Act (6 of 1932), S. 27 (a). **AIR 1953 Mad 542.**

[Reversed on another point in AIR 1954 Mad 738.]

—The term "near relation" in wajib-ul-arz is used in contradistinction with the term relations not connected with the family. See Custom (Rajasthan — Adoption). **AIR 1955 NUC (Raj) 4053.**

"Necessary adaptations."
See Indian Independence Act (1949), S. 18 (3).

"Necessary for disposal of suit"—Meaning of.
See Constitution of India, Art. 228.

"Neglect or refusal to maintain"
See Criminal P. C. (1898), S. 488 (1).

"Neglects."

—Word "neglects" in S. 106 (2) Cantonments Act cannot mean that a person whom a notice has been served can only be prosecuted if he fails to send any reply at all and that any sort of reply to the notice, however inadequate or evasive, is sufficient to avert the prosecution for failure to comply with the terms of the notice. See Cantonments Act (1924), S. 103 (2). **1958 Cri L J 1343 : AIR 1958 Punj 396.**

"Negligence."
See (1) Constitution of India, Art. 311.
(2) Penal Code (1860), S. 405.
(3) Railways Act (1890), S. 74-C.
(4) Tort.

"Neighbouring country."

—The expression "neighbouring country" in S. 7 (1) and (1a) of Bengal Embankment Act (1882), means the country neighbouring the embankment in question. See Bengal Embankment Act (2 of 1882), S. 7. **AIR 1953 Cal 653 (DB).**

"Nerpattom."

—"Nerpattom" means a kanom. **1959 Ker L R 1130 : 1959 Ker L T 1299.**

"Net income."

—In calculating "net income" for purposes of S. 46 (1) read with S. 3 (g) Wakf Act, the expenses of cultivation must be deducted. Net income is the total income defined in S. 3 (g) minus the revenue, cess, rates and taxes payable to the Govt. or any local authority. See Wakf Act (1954), S. 3 (g). **AIR 1964 Ker 310 (DB).**

"Net profits."

—"Net profits" are difference between gross earning and working expenses. See Interpretation of Statutes. **(1963) 67 Cal W N 138.**

"New building."

●—The expression "new building" in the Calcutta Municipal Act does not bear the popular meaning of a building freshly constructed but means and includes, according to the definition given in S. 3 (46) of the Act, any building erected or partially rebuilt or converted into masonry building or convertedt into a place of human habitation after the commencement of the Act of 1923 i.e., the Calcutta Municipal Act. See Municipalities—Calcutta Municipal Act (3 of 1923), S. 3 (46). **1957 Cri L J 722 : AIR 1957 Cal 399 (FB).**

"New machines."

—The word "new" when used with reference with "machine," its meaning is "new made or brought into existence for the first time". "New" as used in S. 10 (2) (vi) does not mean "new to the assessee." The machines must be "new machines." See Income-Tax Act. (1922), S. 10 (2) (vi). **(1963) 49 ITR 310 (Ker).**

"News-paper".

—The essential pre-requisite of a periodical in order to make it a "newspaper" is that it must contain mainly public news or comments on public news.

Law reports, publishing decided cases of High Courts with headnotes, statutes and orders and articles on current legal topics are not "newspaper", even though it is registered as a "newspaper". See Sales Tax—Orissa Sales Tax Act (14 of 1947). **AIR 1960 Orissa 221 (DB).**

"Niskar Bhogdakhal sutra"

—The word "niskar", when it appears in record of rights by itself does not necessarily mean rent free tenancy but only means that the tenant is not in fact paying rent. An entry "Niskar Bhogdakhal sutra" means that a tenant is not actually paying rent to anybody and not that the tenant is not liable to pay rent to any one. It does not mean that the tenant has acquired rent free title by possession and enjoyment. **AIR 1954 Cal 558 (559) (Pt A) (Pr 5) (DB).**

"Niwas" .''निवास"

—"Niwas" means residence and not a shop. See Houses and Rents—Madhya Bharat Sthan Niyantran Vidhan (5 of 1950), S. 4 (g). **AIR 1953 Madh Bha 195.**

"No appeal shall lie".

●—The expression "no appeal shall lie" in proviso to S. 30 (1) I. T. Act, is not that no memorandum of appeal can be presented. All that it means is that the appeal will not be held to be properly filed until tax has been paid. See Income-tax Act (1922), S. 30 (1), Proviso. **AIR 1961 S C 1134.**

"No bill or amendment shall be introduced or moved".

●—Meaning of expression "No bill or amendment shall be introduced or moved" in the proviso to Art. 304 of the Constitution indicated. See Constitution of India, Art. 304, proviso. **1955 Cri L J 844: AIR 1955 Tra-Co 82 (FB).**

"Nomination of candidate and nomination paper".

There is a clear distinction between "nomination of candidate and nomination paper" in the Bombay Municipalities Rules, 1950, particularly: in R. 13 (4)—Distinction pointed out. See Municipalities — Bombay Borough Municipalities Election Rules (1950), R. 15 (3) (ii). **(1964) 5 Guj L R 536.**

"Normal labour" "normal delivery" and "mis-carriage".

●—What is "normal labour" "normal delivery" and "mis-carriage", discussed. See Evidence Act (1872), S. 112. **AIR 1965 S C 364.**

"Normal requirement".

"Normal requirement" may differ from person to person. Normal requirement of a person in possession of cloth must depend not only upon his status in society but also upon his business need. See Orissa Cotton Cloth and Yarn Control Order (1948), Cl. 18 (2). **AIR 1953 Orissa 32 (DB).**

"Noscuntur a sociis".

See Interpretation of Statutes.

"No suit shall be instituted"

—When the law says suits cannot be instituted during the period prescribed and makes an allowance for the consequent loss of time, the institution during the time is bad and the plaint is liable to be rejected on that ground or the suit dismissed. See M. B. Famine (Suspension of Proceedings) Act (12 of 1953) S. 7. **AIR 1955 NUC (Madh B) 3083.**

"Not being earlier than 3 days".

—Words "not being earlier than 3 days" from the date of the service of the order in S. 6 (c), Requisition of Buildings (Andhra Area) Ordinance, mean that three whole days must elapse between the date of the service of the order and the date fixed for delivering possession. Allowing three periods of 24 hours calculated from the hour of the day on which the order was served, before possession is taken or required to be delivered, is not sufficient compliance. See Requisition of Buildings (Andhra Area) Ordinance (1 of 1953), S. 6 (e). **AIR 1957 Andh-Pra 229 (DB).**

[Overruled in AIR 1968 S C 5].

"Not being less than one month"

●—Travancore District Municipalities Act (23 of 1116 Malyalam Year) S. 78 proviso—Requirement that notice in gazette should give reasonable period not being less than one month, for objection — Requirement as to period is not mandatory but only directory —Expression 'not being less than one month' implies the necessity of one clear month's notice excluding the first and the last day of the month. See Municipalities — Travancore District Municipalities Act (23 of 1116 Malyalam Year) S. 78 proviso. **(1961) 3 S C R 609 : AIR 1967 S C 684.**

"Nothing contained in the said Act".

—Expression "Nothing contained in the said Act" in S. 12 of the Bombay Revenue Tribunal Act, interpreted. See Bombay Revenue Tribunal Act (31 of 1958), S. 10. **(1965) 6 Guj L R 391.**

"Notice".

—"Notice" referred to in S. 158 Limitation Act does not mean notice in writing. See Limitation Act (1908), Art. 158. **1961 Raj LW 521.**

"Notice in form XVI".

—Expression "notice in form XVI in M.P. Generel Sales Tax Rules. R. 33 does not mean "notice in accordance with Form XVI". See Sales Tax—M. P. General Sales Tax Rules, R. 33. **AIR 1962 Madh Pra 315 (DB).**

"Notice of the appeal".

—Words "notice of the appeal" in Art. 169, of the Limitation Act, 1908, mean the notice of the day fixed for hearing and disposal of the appeal and not merely notice to the respondent that an appeal has been filed. See Limitation Act (1908), Art. 169. **AIR 1963 All 311.**

"Notification".

—The word "notification" in S. 290 (1) Orissa Municipal Act, bears the same meaning as is given in definition S. 2 (28), Orissa General Clauses Act. See Municipalities—Orissa Municipal Act (23 of 1950), S. 290 (1). **1965 (2) Cri L J 657 : AIR 1965 Orissa 196.**

—Word "notification" in R. 14, Rajasthan Panchayat and Nyaya Panchayat Election Rules has been used in

its general or non-technical sense and does not bear somewhat narrow connotation which has been assigned to it in General Clauses Act. See Panchayat—Rajasthan Panchyat and Nyaya Panchayat Election Rules (1960), R. 14. **1962 Raj L W 32.**

"Notified"

—The word "notified" in S. 357 of the M. P. Panchayat Act does not signify that so long as an election is not notified it can be questioned in proceedings under Art. 226 of the Constitution, but it is that an election petition would be competent only after the election or selection is notified and not before. See Constitution of India, Art. 226. **AIR 1965 Madh Pra 258.**

"Not in accordance with".

●—Expression "not in accordance with" in S. 8, Bombay Cotton Contracts Act, 1932, interpreted against the facts of the case. See Bombay Cotton Contracts Act (4 of 1932), S. 8. **AIR 1958 S C 713.**

"Not later than"

—Section 55 A (2) Representation of the People Act, 1951 does not talk of ten days clear notice but merely says that retirement must be not later than ten days prior to the date of the poll—Date of poll, 10-3-1957—Ten days prior to poll would be 28-2-1957—Retirement by candidate on that day would not be improper or irregular. See Representation of the People Act (1951), S. 55.A (2). **AIR 1958 Punj 483 (DB).**

"Not less than six weeks".

—When expressions 'not less than so many days' occur in enactments there are two terminal points and the period specified must be outside those two terminal points. Expression "not less than six weeks" in S. 57 (2), Motor Vehicles Act means six clear weeks i.e., 42 days, exclusive of the date of the application and the date on which they are desired to take effect. See Motor Vehicles Act (1939), S. 57 (2). **AIR 1962 Andh Pra 462.**

"Not less than ten days."

—Expression, "not less than ten days" means not less than ten clear days. See Municipalities — Punjab Municipal Election Rules (1952), R. 3 (3). **AIR 1964 Punj 135 (DB).**

"Not resident in the territories."

—It is unreasonable to give the words "not resident in the territories" in S. 18 (3-B), I. T. Act, a special meaning different to the definition in S. 4-A (c). See Income-tax Act (1922), S. 18 (3-B). **AIR 1956 Cal 450.**

"Notwithstanding."

—Word "notwithstanding" means without prejudice to. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 7. **1963 All L J 338.**

—"Notwithstanding" means "in spite of the fact," "however," "yet". See Municipalities — Mysore Municipalities Act (7 of 1953), S. 41. **(1965) 4 Law Rep 58 : (1965) 2 Mys L J 365 (DB).**

"Notwithstanding anything contained in any other law or anything having force of law"

—The non-obstante clause "notwithstanding anything contained in any other law or anything having the force of law" in the concluding part of S. 5, Bihar Essential Services Maintenance Act, 1948, does not in any way enlarge the meaning and construction of the three parts of the section, which state the essential ingredients of the offence. See Bihar Essential Services Maintenance Act (1 of 1948), S. 5. **1956 Cri L J 768 : AIR 1956 Pat 188 (DB).**

"Notwithstanding anything contained in the said Act".

See Bombay Revenue Tribunal Act (31 of 1958), S. 10. **(1965) 6 Guj L R 391.**

"Novation"

See Contract Act (1872), S. 62.

"Nuisance"

See also (1) Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (III of 1947), S. 3 (1) (d).

(2) Municipalities— Hyderabad Municipal Corporation Act (1950), S. 338 (1) (d) (ii).

(3) Railways Act (1872), S. 120 (b).

—Non-supply or short supply of water does not amount to "nuisance". See Municipalities — Calcutta Municipal Act (33 of 1951), S. 5 (50). **(1965) 69 Cal W N 674.**

—What is "annoyance" or "nuisance" in a particular case may not be so in a different case. Each case depends on its facts — For a landlady or landlord who is ailing from some disease, even the noise or disturbance caused by normal use of premises may amount to 'annoyance or nuisance'. See Houses and Rents—Mysore House Rent and Accommodation Control Act (30 of 1951), S. 8 (2) (vi). **AIR 1955 Mys 107.**

—Term "nuisance" is incapable of exact and exhaustive definition. The word "nuisance" is derived from french word "nuire" which means "to injure, hurt or harm". Literally anything that causes annoyance or injury, harm or prejudice to an individual or the public or anything wrongfully done or permitted which injures or annoys another in the legitimate enjoyment of his legal rights would constitute nuisance. In short anything done which unwarrantably affects the rights of the others, endangers life or health, gives offence to the senses, violates the laws of decency or obstructs the comfortable and reasonable use of property may amount to nuisance. Every inconvenience, discomfort or annoyance is not, however, sufficient to constitute a nuisance. No precise rule can be laid down as to the degree and every case must be decided on its own particular facts. Generally speaking however, to constitute nuisance the injury caused must be real and not fanciful or imaginary. It must not be such as results only in a trifling inconvenience. A well kept vegetable shop near a costly dwelling house or any other business which is apt to attract large number of orderly customers may constitute an undesirable neighbour but it may in all cases be nuisance even if the value of the property in certain respects, is affected. AIR 1947 Lah 296, Rel. on. **ILR (1965) 2 Punj :609 ; AIR 1966 Punj 509 (311, :312) (Pt B) (Pr 6).**

"Obiter dictum."

—An obiter dictum is an observation which is either not necessary for the decision of the case or does not relate to the material facts in issue. **ILR (1953) Hyd 573 : 1954 Cri L J 464 : AIR 1954 Hyd 56 (64) (Pt J) (Pr 23) (DB).**

"Objectionable matter"

See Press Objectionable Matter Act (1951), S. 3 (6).

"Obligation"

See Specific Relief Act (1877), Ss. 5 (c) and 54.

"Obscene"

See Penal Code (1860), Ss. 292 and 294.

"Obstruction"

See also Penal Code (1860), S. 186.

—It is not necessary that there should be resistance in the sense of some force having been used by the accused. S. 30, U, P. Pure Food Act, 1950, penalises is wilful obstruction of any person acting in performance of a duty under the Act. "Obstruction" need not be by force. See U. P. Pure Food Act (32 of 1950), S. 30. **1957 Cr L J 1384 : AIR 1957 All 829.**

—"Obstruction" means physical obstruction i.e, actual resistance or obstruction put in the way of discharge of the duties of the search party. The word implies the use of criminal force. The word in S. 25, Orissa Sales Tax Act contemplates some overt act and not mere passive conduct. See Sales Tax—Orissa Sales Tax Act (14 of 1947), S. 25 (1) (f). :1962 (1) Cri L J 835 (Orissa).

"Obtain"

—West Bengal Rice Mills Control Order (1949), S. 4 —The word "apply" should not be read in the place where the legislature had used the word "obtain". See West Bengal Rice Mills Control Order (1949), S. 4, AIR 1955 N U C (Cal) 799 (DB).

"Obtain maintenance from."

See Hindu Adoptions and Maintenance Act (1956), S. 19.

"Obtaining or attempting to obtain"

See Penal Code (1860), S. 161.

"Obtains"

●—Word "obtains" in S. 5 (1) (d), Prevention of Corruption Act does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. See Prevention of Corruption Act (1947), S. 5 (1) (d). 1956 Cri L J 837 : AIR 1956 S C 476.

—Word "obtains" in S. 123 (7), Representation of the People Act, 1951 has been used in the sense of the meaning which connotes purpose or effort behind the action of the candidate. The word has not been used in the sense of a mere passive receipt of assistance without the candidate being even conscious of the fact that the assistance has been rendered. See Representation of the People Act (1951), (as amended in 1956), S. 123 (7). AIR 1958 All 794 (DB).

"Occasional or casual visits"

See Income-tax Act (1922), S. 4A (a) (iii).

"Occupant"

See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (I of 1951), Ss. 16 and 20 (b) (i).

"Occupation"

See (1) Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (3) (i) (a).
(2) Houses and Rents —U. P. Temporary Control of Rent and Eviction Rules (1949), R. 7.
(3) Income-tax Act (1922), S. 4 (3) (iii).
(4) Municipalities—Bihar and Orissa Municipal Act (1922), S. 82 (i) (a),
(5) Tenancy Laws — Malabar Tenancy Act (1930), S. 34.

●—Occupation under Cl. (g) of S. 13 (1), Bombay Rents, Hotel and Lodging House Rates (Control) Act includes occupation for demolition to make it fit for residence. See Houses and Rents — Bombay Rents Hotel and Lodging Houses Rates (Control) Act (57 of 1947), S. 13 (1) (g). AIR 1964 S C 1676.

—Study in the University is not "occupation." See Universities Act (1940), S. 25. AIR 1953 Cal 783.

—Word "occupation" is not synonymous with "residence" under Cl. 9 (3) of Mysore House Rent and Accommodation Control Order. See Houses and Rents —Mysore House Rent and Accommodation Control Order, Cl. 9 (3). AIR 1951 Mys 66 (DB).

—Son living with father in Daya Bhaga family—Not joint occupier. See Municipalities—Bihar and Orissa Municipal Act (7 of 1922), S. 82 (1) (a). A I R 1955 N U C (Orissa) 717 (DB).

—"Occupation" of brother-in-law is not occupation of owner. See Houses and Rents — U. P. Control of Rent and Eviction Rules (1949), R. 7. 1958 All L J 915.

"Occupation involving risk of infection to childern"

—A ticket collector of a cinema theatre is engaged in an "occupation involving risk of infection to children" —Tests of such occupation indicated — See Madras Medical Code, R. 536 (2). 78 Mad L W 383 : (1962) 2 Mad L J 129 : (1965) 2 Lab L J 425: (1965-66) 28 F J R 99 : AIR 1966 Mad 39.

"Occupier"

See also Factories Act (1948), S. 2 (n).

—An 'occupier' is a person in use or enjoyment of the land, i. e. a person having the actual use or occupation. See Madras District Boards Act (14 of 1920), S. 78. AIR 1957 Andh Pra 1042.

—"Occupier" of land is not necessarily a cultivator. Term 'cultivator' includes not only a person who actually toils in the land on his own account but also the owner of the land who gets it cultivated through his farm servant or daily labourers. See Cattle Trespass Act (1871), S. 10. 1960 Cr L J 932 : A I R 1960 Mad 331.

"Of."

—"Of" means 'after.' See Houses and Rents—Kerala Buildings (Lease and Rent Control) Act (16 of 1959), S. 4 (3). 1960 Ker L T 456.

"Offence."

See (1) Constitution of India, Art. 20 (3).
(2) Penal Code (1860), S. 40.

"Offence involving moral turpitude."

—It is for the State Government to signify its intention as to whether a particular offence which carries with it the prescribed punishment involves moral turpitude or not. It is the subjective opinion of the Government that matters. Unless the Government has expressed such opinion, it cannot be said that a person has committed an offence which comes under the category referred to in S. 22 (2) of the Bengal Municipal Act, 1932. See Municipalities—Bengal Municipal Act (15 of 1932), S. 22 (2). A I R 1957 Cal 95.

"Offence not punishable with death or transportation for life."

—The plain meaning of the words "offence not punishable with death or transportation for life" is "an offence not punishable with death or an offence not punishable with transportation for life." See U.P. First Offenders' Prohibition Act (6 of 1938), S. 4. 1956 Cri L J 659 : AIR 1956 All 326 (DB).

"Office."

—An "office" is a right to exercise "a public or private employment' or to hold a position which has certain duties attached to it. It means a position or a place to which certain duties are attached more or less of a public character and it is a sort of a permanent position held by successive incumbents. It may be with or without remuneration. See Municipalities—Hyderabad District Municipalities Act (18 of 1956), S. 27 (1) (c). A I R 1964 Andh Pra 421 (DB).

—Word "office" has been judicially construed in several different senses and in each case a meaning has been assigned to it having regard to the language used in the enactment and its object. The word "office" does not necessarily imply that it must have an existence apart from the person who may hold it. See Constitution of India, Art. 191 (1) (a). AIR 1958 Bom 314 (DB).

—Expression "office" in S. 7, Estate Duty Act, has to be understood as a "position to which certain duties are attached." A Sthanam is merely a dignity entitling the sthani to the caste, social or religious privileges or precedence and not an "office." See Estate Duty Act (1953), S. 7 (4), Explanation. A I R 1957 Mad 522 (DB).

"Office of profit."

See also (1) Constitution of India, Arts. 102 (1) (c) and 191 (1) (a).
(2) Municipalities—Mysore Town Municipalities Act (1951), S. 14.
(3) Panchayats — Orissa Panchayat Samiti and Zilla Parishads Act (1960), S. 46 (l) (g).
(4) Panchayats — U. P. Panchayat Raj Act (1947), S. 5-A.

—The expression "office of profit" means that an office must be held under Government or Municipality or local authority to which any pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain, its quantum is immaterial. See Municipalities — Hyderabad District Municipalities Act (18 of 1956), S 27 (1) (c). **AIR 1964 Andh Pra 421 (DB).**

—Expression "office of profit" is not defined in Constitution or Representation of the People Act. But before a person can be held to be disqualified under Art. 191 (1) (a) three things must be proved (1) that he held an office (2) that it was an "office of profit" and (3) that it was an office under Government of India or State Government. See Constitution of India, Art. 19 (1) (a). **AIR 1958 Bom 314 (DB).**

"Office purposes."

—The expression "office purposes" in the 2nd Schedule to the Bihar Electricity Duty Act has been used in the sense of clerical business. See Bihar Electricity Duty Act (36 of 1948), S. 3 (v) (b). **(1960) ILR 39 Pat 296.**

"Officer."

See also Civil P. C. (1908), S. 80.

●—When the State Govt. has under S. 41 (1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its power given under S. 21 (4) to hear appeals to an "officer," an order passed by such officer is an order passed by the State Government itself and not an "order passed by any "officer" under this Act" within the meaning of S. 42. A I R 1959 Punj 157, **Overruled.** See Constitution of India, Art. 32. **AIR 1963 S C 1503.**

●—An individual who is invested with the authority and is required to perform the duties incidental to an office is an "officer." See Motor Vehicles Act (1939), S. 133-A. **AIR 1959 Andh Pra 413 (FB).**

—Word "officer" in S. 2 (d) of the Co-operative Societies Act, and in R. 115 of the Co-operative Societies Rules means a person who is appointed for the supervision of a directory character. It is not synonymous with the word "employee" for all "employees" do not necessarily become officers. See Arbitration Act (1940), S. 30. **A I R 1960 All 500 (DB).**

—The word "officer" in the expression "order passed by any "officer" under this Act" in S. 41, Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act, includes an "officer" to whom the powers of the Government under S. 2 (4) have been delegated. See Tenancy Laws—Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act (5 of 2007, B. K.), S. 41. **AIR 1959 Punj 157 (DB).**

[Overruled in AIR 1953 S C 1503].

'Office under the State."

●—Office of village munsif under the Madras Hereditary Village Offices Act, 1895, is an "office under the State" within the meaning of that term in Art. 16 (1) (2) of the Constitution. See Constitution of India, Art. 16. **AIR 1961 S C 564.**

"Official residence."

—The expression "official residence" includes the gardens of Raj Bhavan. See Government of India (Governor's Allowances and Privileges) Order (1950), Cl. 3 (a). **AIR 1956 Pat 398 (DB).**

"Officiating."

—The word "officiating" is frequently used in more than one sense. "To officiate" means to act, or to discharge an office, but it is sometimes used with the meaning of to act 'for,' or to discharge an office 'on behalf of' some other person : as for example, in the expression "Officiating" Chief Justice. **1953 All L J 405 : 1953 All W R (H C) 420 : I L R (1954) 1 All 280 : AIR 1953 All 664 (665) (Pt B) (Pr 6) (DB).**

"Officiating appoitment."

—The words "officiating appointment" have not been defined in any circulars or notifications nor have they been defined in the Fundamental Rules. They seem to have been used in contradistinction with the words 'substantive appointment' or an appointment that creates a lien in favour of the employee to the post on which he is appointed. See M. B. Fundamental Rules, (1951). **1958 Jab L J 187.**

"Officiating service and substantive service."

●—To 'officiate' is to perform the duties of an office and 'substative' means permanent. 'Substantive service' means service as a permanent holder, 'officiating service' means service rendered by non-permanent holder. See Indian Administrative Service (Appointment by Promotion) Regulations, 1955, Reg. 4. **AIR 1965 Ker 84 (FB).**

"Oil Seeds."

—Only seeds commonly known as "oil seeds" included—Coriander Voma and Sompu held are not "oil seeds." See Sales Tax — Andhra Pradesh General Sales Tax Act (6 of 1957), Sch. IV, Item III. **(1961) 2 Andh W R 291.**

"Omission."

See (1) Income-tax Act (1922), S. 34 (1).
(2) Penal Code (1860), S. 33.
(3) Words and Phrases—"Failure."

"Omits" and "Refuses.

—Word 'omission' in S. 24, Punjab Municipal Act envisages, a prior meeting of the committee in which oath has been taken when no meeting has been convened within three months from the date of notification of the election, the election of the persons cannot be said to be invalid for their 'refusal' or 'omission' to take oath within meaning of S. 24 (2). Words 'omits' and 'refuses' indicates essential element of volition. See Municipalities — Punjab Municipal Act (3 of 1911), S. 24. **ILR (1965) 2 Punj 642 : AIR 1966 Punj 137.**

"On a complaint of facts constituting such offence made by the person affected thereby."

—The plain meaning of expression "on a complaint of facts constituting such offence made by the person affected thereby" is on a comlaint of facts constituting such offence made by a person whose position in respect of any of the rights, benefits and privileges conferred by the Act has been altered or injuriously varied by the alleged offence. See Bombay Industrial Relations Act (11 of 1947), S. 82. **1957 Cri L J 513 : AIR 1957 Madh-Pra 26 (DB).**

"On behalf of."

See Income-tax Act (1922), S. 41 (1).

"On demand."

See (1) Negotiable Instruments Act (1881), S. 19.
(2) Stamp Act (1899), S. 2 (22).

"On or before the expiration of the lease."

See Transfer of Property Act (1882), S. 108 (h).

motion. See Sales Tax—Madras General Sales Tax Act (9 of 1939) as amended by Andhra Amendment Act (1954), S. 11. **AIR 1957 Andh Pra 462 (DB).**

"Order of assessment."

—Andhra Pradesh General Sales Tax Act (6 of 1957), Ss. 20 (3), 23 — "Order of assessment"—Not confined to order of first assessing authority. See Sales Tax — Andhra Pradesh General Sales Tax Act (6 of 1957), S. 20 (3). **(1962) 2 Andh W R 57.**

"Order passed on made in the exercise of its power of superintendence."

●—An order on an application under Art. 226 by a single Judge is not an order passed in exercise of the power of superintendence possessed by the High Court and an appeal from such an order is not barred under Chap. VIII, R. 5 of the Rules of the Allahabad High Court. See High Court Rules and Orders — Allahabad High Court Rules (1952), Chap. 8, R. 5. **AIR 1957 All 414 (FB).**

"Ordersheet."

—"Ordersheet" not defined in Criminal P. C. It is merely the creation of the General Rules (Criminal) framed by the High Court for guidance of Subordinate Courts. Contents of an ordersheet refer neither to a judgment nor to an order as recognised by the Code. It is a mere piece of waste-paper for purposes of S. 419, Criminal P. C. See Criminal P. C. (1898), S. 419. **1956 Cri L J 1179 : AIR 1956 All 633.**

"Orders."

—The word used in Ss. 33 (4) and 33 (6), Income-tax Act is "orders." This does not mean that more than one order can be passed under S. 33 (4). The word "orders" is often used in the sense of 'order.' See Income-tax Act (1922), S. 66 (1). **(1965) I T J (Supp) 195 : (1965) 55 ITR 508 (All).**

"Ordinarily."

●—"Ordinarily" means "in the large majority of cases but not invariably." See Constitution of India, Art. 311 (2). **AIR 1961 S C 1346.**

●—It is in the sense of non-exceptional or usual that the word "ordinarily" is used in S. 2 (v) (a), Prevention of Food Adulteration Act. The word does not mean "primarily" nor does it mean "uninversally" or 'generally.' By the use of this word the legislature intended to provide that if an article enters into or is used even by some persons usually and not as exception, it would be deemed 'food'. See Prevention of Food Adulteration Act (1954), S. 2 (v). **1963 (2) Cri L J 244 : AIR 1963 All 433 (FB).**

●—Per Subba Rao. C. J. — "Ordinarily" means habitually and not casually. It cannot obviously mean 'always.'

Per Chandra Reddy, J.— The plain and popular meaning of the word "Ordinarily" means usually, normally and not exceptionally as contrasted with extraordinarily. Putta Ranganayakalu, In re. **1956 Cri L J 1049 : 1955 Andhra L T (Cri) 335 : 1956 Andhra W R 456 : ILR (1956) Andh 13 : AIR 1956 Andhra 161 (167, 173) (Pt I) (Prs 23, 65) (FB).**

●—The word "Ordinarily" in Kerala Educational Rules, (1959), Chap. 14, Pt. A, R. 44, gave certain amount of elasticity to that rule. See Constitution of India, Art. 30 (1). **AIR 1965 Ker 75 (FB).**

—"Ordinarily" in R. 31 (5) — Indicates an absolute discretion for the Custodian or Custodian-General to extend time on any ground considered fit. See Administration of Evacuee Property (Central) Rules (1950), R. 31 (5). **(1957) 59 Pun L R 52.**

—"Ordinarily" means in the large majority of cases and not invariably. See Indian Railways Establishment Code, Vol. II, R. 2046 (2) (a). **A I R 1954 Punj 245.**

—The word "ordinarily" in S. 177, Criminal P. C., means "except in the cases provided hereinafter to the contrary". See Criminal P. C. S. 177. **1952 Punj Cri L J 775 : AIR 1952 Punj 186 (DB).**

"Ordinarily resides."

See (1) Guardians and Wards Act (1890), Ss. 9 and 25.
(2) Income-tax Act (1922), S. 4.

"Ordinary rate of wages."

—Words "Ordinary rate of wages" used in R. 25 of the Minimum Wages (Central) Rules, 1950 mean minimum rate of normal work fixed under the Act. See Minimum Wages Act (1948), S. 3 (2) (d). **A I R 1963 Bom 54 (DB).**

"Original costs to the assessee."

●—In the case of sale of property the words "original cost thereof to the assessee" in S. 10 (2) (vi), Income-tax Act, mean the cost to the assessee and not to the person who makes the sale. See Income-tax Act (1922), S. 10 (2) (vi). **AIR 1959 S C 1232.**

"Original jurisdiction."

—Term "Original jurisdiction" is well understood and comprises those matters of which the Court takes cognizance as a Court of first instance. See Travancore-Cochin High Court Act (5 of 1125), S. 21 (ii) (b). **ILR (1958) Ker 141.**

"Ornaments."

—As applied to human beings there is a real distinction between a weapon and an "ornament". But in the case of deities like Lord Shiva or Lord Vishnoo, some of the weapons have become such necessary adjuncts of those deities when they are contemplated in human form, that they become their ornaments also. The trishul of Lord Shiva may be considered as his ornament. **A I R 1963 Orissa 115 (117) (Pr 8).**

"Or not."

—The words "or not" in S. 61 Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949, must be construed in the sense "or is not a tenant" and cannot include the determination of every possible relationship between the parties. See Tenancy Laws — Saurashtra Gharked Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 61. **A I R 1955 N U C (Sau) 974 (DB).**

"Or otherwise."

—The general words "or otherwise" in Bihar Land Encroachment Act, is to be construed in such a way as to carry out the object to be accomplished by them; so far as it can be collected from the language used. The words are intended to cover other cases which may not come within the meaning of the preceding words. See Bihar Land Encroachment Act (31 of 1950), S. 2 (ii) (e). **A I R 1957 Pat 666 (DB).**

"Ostensible."

See T. P. Act (1882), S. 58 (c).

"Other allowance."

—Words "other allowance" used in Item 4 of Sch. II, Industrial Disputes Act, is to be interpreted in a broad manner so as to include claim for special allowance also. See Industrial Disputes Act. **(1964) 9 Fac L R 338 : (1965) 1 Lab L J 13 (All).**

"Other authorities."

See Constitution of India, Art. 12.

"Other persons."

—Words "other persons" in Ss. 76 and 77, Electricity Supply Act, are ejusdem generis. See Electricity Supply Act (1948), S. 76 (1). **1961 Jab L J 754.**

"Other proceeding."

See Partnership Act (1932), S. 69 (3).

"Other services and posts."

See Constitution of India, Art. 320 (3) (e), proviso.

owning the vehicle. See Motor Vehicles Act (1939), S. 42 (1). **1957 Mad W N 1.**

"Ownership."

●—Ownership—Meaning discussed. Munsha Singh Dhaman Singh[3] v. State of Punjab. **62 Pun L R 1 : I L R (1960) 1 Punj 589 : A I R 1960 Punj 317** (320, 321) **(Pt C) (Prs 34, 40) (FB).**

"Own occupation."

—The words "own occupation" in S. 11 (1), West Bengal Premises Rent Control (Temporary Provisions) Act (1948) should be interpreted to include all persons who are dependent on the landlord. It is not limited to mean personal occupation by the landlord by or his immediate relations such as wife, son, daughter-in-law and grand children etc. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 11 (1). **ILR (1951) 1 Cal 375 : AIR 1955 N U C (Cal) 1088.**

—"Own occupation" does not exclude occupation by juristic person. 'Own' when used as an adjective is described as of or belonging to oneself or itself. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (3) (a) (i) (a). **(1962) 64 Punj L R 1141.**

"Package."

See (1) Railways Act (1890), S. 75.
(2) Sea Customs Act (1878), S. 168.

"Paditharam" expenses.

—No doubt, "paditharam" means "an allowance made to a temple" (Wilson's Golssary, 1855, at page 286) or "allowances" (Sankaranarayana's Telugu English Dictionary, 1953 at page 668).

When by an agreement between archakas and the trustee "Paditharam" expenses of the temple were to be borne by the trustee and the order of the Assistant Commissioner temporarily fixed "Padithar-man charges" until "dittam" was approved and the archakas filed a suit against the trustee on the basis of the agreement. for the recovery of the "Padithram expenses" incurred by them :

Held, that "Paditharam expenses" indicated that it was an allowance for an expenditure incurred. "Dittam" referred to the scale of expenditure (cf. S. 51 of Madras Act 19 of 1951). The purpose of the expenditure apparently was the performances of the daily rituals of 'Nitya Neivedya Deeparadhana'. The allowance was therefore intended to meet the expense incurred for necessary rituals. It might be that some of the offerings made to the deity during the rituals, such as the cooked food, were ultimately given to the archakas and by the manner of their disposal become perquisites. But this would not be a ground for regarding the ritual itself as being intended for the profit or advantage of the archakas.

The suit did not raise any dispute as to the disposal of the offerings and therefore no question under section 57 (e) of the Act arose. The enforcement of the agreement between the parties was the subject-matter of the suit and therefore the Civil Court had clearly jurisdiction to entertain it. **(1965) 2 Andh W R 183.**

"Paid".

●—So far as the word "paid" in S. 7 (1), Expl. 1, cl. (q), I.. T. Act is concerned, takes in every receipt by the employee from the employer whether it was due to him or not. See Income-tax Act (1922), S. 7(1), Expl. 1, Cl. (v). **AIR 1965 S C 49.**

—Word "paid" carries a varied meaning and is no necessarily confined or limited to actual payment. It includes and may mean payment by adjustment or settlement of accounts. See Limitation Act (1908), Art. 61. **1964 Cur L J 42 (Punj).**

"Paid in full".

—Words 'paid in full' in S. 35, Provincial Insolvency Act (1920), mean payment of the full amount as the creditor would be entitled to, as if no order of adjudication had been passed against the debtor. See Provincial Insolvency Act (1920), S. 35. **AIR 1965 Mys 117.**

"Paimali"—Meaning of.

—"Paimali" as the term connotes, is 'the toll for utilising the lands of khas mahal in course of holding of a mela, transport of goods and the throwing of sacrificial goats in the Ganges. **1958 B L J R 343 : AIR 1959 Pat 72 (74) (Pt C) (Pr 5) (DB).**

"Pairwi".

—Word "pairwi" denotes something more than giving mere information to the police. It means taking of an active part in the prosecution by production of witnesses and during all other things required for the success of the prosecution. See Torts — Malicious prosecution. **AIR 1963 All 580.**

"Pakka adatia".

See Contract Act (1872), S. 182.

"Pakka khaikar".

●—"Pakka khaikar" is a term used in Kumaon and Garhwal in special sense. A kachcha khaikar seems to mean a tenant, while pakka khaikar is in a sense a proprietor. A pakka kharikari village may in course of time become a kachacha khaikari village by reason of pakka khaikars losing their pakka khaikari rights. But kachcha khaikari village can in no case become a "pakka khaikar". **AIR 1955 All 65 (66, 67) (Prs 8-10, 12, 15) (FB).**

"Panch".

—With amendment of S. 2 (3), Rajasthan Panchayat Act by Rajasthan Act 40 of 1958 "panch" means a member of a panchayat other than a sarpanch. See Panchayats — Rajasthan Panchayat Act (21 of 1953), S. 2 (3). **ILR (1962) 12 Raj 609.**

"Panchayat".

—It is not correct to say that the word 'panchayat' in S. 127 (2), Madras Village Panchayats Act meant not the area over which the "Panchayat" Board exercised jurisdiction but only the Board which was constituted to administer the affairs of the area. See Panchayats — Madras Village Panchayats Act (10 of 1950), S. 127 (2). **AIR 1959 Mad 38.**

"Panja land".

—Thottam or garden land would be described in the 'revenue records only as "panja lands". See Succession Act (1925), S. 74. **AIR 1956 Mad 521 (DB).**

"Panth".

●—Held that though the word "panth" by itself has come to indicate the Sikh religion, in the context of the language used in the poster, the word did not mean Sikh religion. The word could properly be interpreted as used for the Akali Dal party. See Representation of the People Act (1951), S. 123 (3). **AIR 1965 S C 141.**

'Paper".

See Press and Registration of Books Act (1867), S. 3.

"Parcel".

—'Parcel' signifies a part of the whole taken separately and has for one of its meaning "a small bundle". See Railways Act (1890), S. 75. **AIR 1955 N U C (Mad) 85.**

"Pardanashin".

See Contract Act (1872), S. 16.

"Parliament may by law provide".

See Constitution of India, Art. 312.

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"Payable" Ex. 20 and 30 (5).

"Payable"

therein, (1962) 2 Andh L T 69 : (1962) 2 Andh W R 123 : I L R (1962) 2 Andh Pra 89.

—Word "pending" in S. 25 (1) of Hyderabad Jagirdar Debt Settlement Act, is not correlated with the date on which the enactment came into force. (1962) 1 An W R 340.

—Word "pending" in regard to suits or proceedings for ejectment mean "pending before a decree was passed by the trial Court." It does not refer to appeals. See Tenancy Laws—Calcutta Thika Tenancy Act (2 of 1949), S. 29. AIR 1955 NUC (Cal) 1070.

—Word "pending" in S. 30 (1) of Kerala Buildings (Lease and Rent Control) Ordinance, 1959 is to be interpreted in a liberal sense so as to take in not only proceedings which have become concluded before Rent Control Court but also those in which the period of appeal had not expired. Proceedings before the Court and in appeal are continuous. See Houses and Rents — Kerala Buildings (Lease and Rent Control) Ordinance (1959), S. 30 (1). 1962 Ker L J 640.

—A cause is said to be "pending" in a Court of justice where any proceedings can be taken in it. 'Pending' does not mean that it has not been tried. It may have been tried years ago. See Houses and Rents — Madras Buildings (Lease and Rent Control) Amendment Act (8 of 1951), S. 20. (1951) 2 Mad L J 477 : 64 Mad L W 905 : 1951 Mad W N 788 : I L R (1952) Mad 308 : AIR 1951 Mad 1044.

"Pending proceeding".

—Words "pending proceedings" in S. 4, of Indian Independence (Legal Proceedings) Order, 1947, should be given liberal and wide interpretation, so as to cover not merely exemption proceedings pending on the appointed day but also decree which has been filed on or before the appointed day but in respect of which execution has not been filed on the appointed day. See Indian Independence (Legal Proceedings) Order (1947), S. 4. AIR 1956 Cal 132 (DB).

"Pending such decision".

—"Pending such decision" in S. 54 (3), Travancore District Municipalities Act, means unless and until a decision is given by the District Judge. See Municipalities—Travancore District Municipalities Act (13 of 1116), S. 54 (3). AIR 1955 N U C (Trav Co) 4697 (DB).

"Pending the completion of inquiry".

—Expression "pending the completion of the inquiry" in S. 117 (3), Criminal P. C. means pending the completion of the inquiry which has been started in pursuance of S. 112 or pending the completion of inquiry which has been ordered under S. 112 but which has not been started. See Criminal P. C. (1898), S. 117 (1). (1963) 4 Guj L R 490 : 1963 (1) Cri L J 663.

"Pension".

See (1) Civil P. C. (1908), S. 60 (1) (g).
(2) Constitution of India, Art. 14.
(3) Pensions Act (1871), S. 4.

—"Pension" is in the nature of a bounty granted by the Government. It cannot be deemed to be property as contemplated in Ss. 33 and 34 Hyderabad Jagirdars Debt Settlement Act — Even if considered property, it is exempt under S. 60 (g) of Civil P C. See Debt Laws — Hyderabad Jagirdars Debt Settlement Act (12 of 1952), S. 33. (1962) 2 Andh W R 82.

"People in general".

—The "people in general" do not connote the inhabitants of any particular village but they signify all members of the public irrespective of any class or community or any place of residence. AIR 1954 Cal 125 (127) (Pt A) (Pr 5).

"Period".

— Word "period" in S. 11 (5) C. P. and Berar Sales Tax Act covers the whole "period" during which a dealer being liable to pay tax had wilfully failed to apply for registration. It does not mean the quarter for which return is to be filed. See Sales Tax — C. P. and Berar Sales Tax Act (21 of 1947), S. 11 (5). AIR 1964 Madh Pra 161 (DB).

"Periodically recurring right".

See Limitation Act (1908), Art. 131

"Period of service".

—Regulating the "period of service" in S. 31 (1) (d) Calcutta Port Act must be read as meaning "controlling by regularising the service of employees during the period of their incumbrancy". See Calcutta Port Act (3 of 1890), S. 31 (1) (d). AIR 1957 Cal 720 (DB).

"Permanent".

—The word "Permanent" in the appointment order is descriptive of the nature of the appointment so as to distinguish it from a mere acting or temporary appointment. AIR 1954 Trav Co 104 (DB).

'Permanent appointment', meaning of—(Master and Servant).

—An appointment as a permanent teacher does not mean that the tenure of office is guaranteed for any definite period. The word 'permanent' in an appointment order is used as a descriptive of the nature of the appointment so as to distinguish it from a mere acting or temporary appointment. A permanent appointment is not so precarious as an acting or a temporary appointment. On the other hand, it has a fixity of tenure though nor for any fixed period. The duration of such a service will depend on the rules and conditions governing such service. 1954 K L T 33 : I L R (1955) T C 482 : AIR 1954 T C 104 (107, 108) (Pt C) (Pr 7) (DB).

"Permanent post".

See Constitution of India, Arts. 310 and 311.

"Permanent structure".

—Permanance of structure depends upon nature of structure itself and not on what tenant intends it to be—Held structure made of bamboos and iron sheets was not permanent structure. See Houses and Rents — Saurashtra Rent Control Act (22 of 1951), S. 13 (1) (b). AIR 1965 Guj 152 (DB).

"Permanent workman".

—Workman engaged on work of permanent nature lasting throughout the year is a permanent workman —Distinction between permanent and temporary worker. See Industrial Employment (Standing Orders) Act (1946), S. 2 (i). (1961) 20 F J R 34 : AIR 1967 S C 513.

"Permis".

See under Words and Phrases — "Droit" and 'Permis'.

"Permission".

—The word "permission" shows that a person is granted leave to act in a particular way. It is a word of wide import. "Permission" in S. 21, Foreign Exchage Regulation Act means only leave to do some act which but for the leave would be illegal. In this sense, exemption is just one way of giving leave. See Foreign Exchange Regulation Act (1947), S. 21. AIR 1961 S C 1285.

—There is no difference in meaning between the words "permission" and 'leave'. ILR (1956) Mys 225 : AIR 1957 Mys 25 (27) (Pt C) (Pr 5).

'Permit".

—Word "permit" in R. 29, made under Madras Entertainment Tax Act, 1939 is used in the ordinary sense. See Madras Entertainments Tax Act (10 of 1939),

Rules under. 1956 Cri L J 575 : AIR 1956 Andhra 100.

—Word "Permit" in S. 42, Motor Vehicles Act carries with it the meaning that a person actually or knowingly allows a thing to be done. Mere negligence such as not locking up his vehicle so that the driver could not take it would not amount to permitting the use of the car. See Motor Vehicles Act (1939), S. 42 (1). 1957 Mad W N 1.

—"Permitted to enter".

—The expression "permitted to enter" in S. 36 (3) explained. See Factories Act (1948), S. 36 (3). 1958 Cri L J 858: AIR 1958 Bom 257 (DB).

"Permitted to retire".

—"Permitted to retire" — The words mean that a Government servant against whom there is a charge of misconduct shall not be allowed to retire on the date of reaching the normal age of compulsory retirement or superannuation — The words are not used with limited meaning given in Rr. 5, 32 (a) (Vol. 2), Punjab Civil Service Rules (1959), which deals with retiring pension to a Government servant permitted to retire after completing qualifying superior service for 25 years. See Punjab Civil Services Rules (1959), Vol. 1, Rr. 3 (26) (d). AIR 1963 Punj 298 (DB).
[Reversed in AIR 1964 S C 72.]

"Permitting any disorderly conduct".

—The codition in the license which renders the "permitting of any disorderly conduct" on the premises a ground for cancelling the license is wide enough to include cases where the premises are used or permitted to be used as a brothel house. 'Disorder' in this context does not mean that there should be rioting or affray. See Madras City Police Act (3 of 1888), S. 36. (1956) 1 Mad L J 220.

"Persistent default".

—"Persistent default" is something more than a casual and inadvertent failure to perform ones duty. It does not imply or require successive defaults of a particular duty in spite of intervening warning. A single default revealing persistent attitude of a series of defaults each in respect of different duties may amount to "persistent default". See Municipalities — U. P. Municipalities Act (2 of 1916), S. 30. ILR (1960) 2 All 539.

—"Persistent default" connotes the idea of successive defaults in spite of warning or protest and opposition. It must be in respect of duties imposed by statute or any other law and not in respect of any and every act or duty. See Municipalities — Bengal Municipal Act (XV of 1932), S. 553. A I R 1955 N U C (Cal) 5591.

"Person".

See also (1) Civil P. C. (1908), O. 39, R. 10; O. 33, R. 1.
(2) Companies Act (1913), S. 153 (2).
(3) Constitution of India, Arts. 14, 226.
(4) Debt Laws — Displaced Persons (Debt Adjustment) Act (1950), S. 2 (10).
(5) General Clauses Act (1897), S. 3 (42).
(6) Income-tax Act (1922), S. 26A.
(7) Industrial Disputes Act (1947), S. 2 (k).
(8) Penal Code (1860), S. 2.
(9) Railways Act (1872), S. 120.

—Word "person" in S. 7 (2), U. P. (Temporary) Control of Rent and Eviction Act by necessary implication means a person who is capable of becoming a tenant. In other words he is a person who is competent to contract for creation of tenancy in his favour. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. 1960 All L J 927.

—There is no sfficient reason for excluding from the ambit of the definition of "person" in S. 3, General Clauses Act, the body of individuals, the Government responsible for the governance of a state — State Government, if person — See Contract Act (1872), S. 2. AIR 1956 All 383 (DB).

—Expression "person" as used in sub-s. (4) read with sub-s. (2) of S. 29, Bombay Tenancy and Agricultural Lands Act must mean a landlord. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29 (2) and (4). 56 Bom L R 638 : A I R 1955 N U C (Bom) 186.

—Port Commissioner, is a "person" within meaning of S. 5 (2), Bengal General Clauses Act. See Calcutta Port Act (3 of 1890), S. 142. A I R 1964 Cal 290 (DB).

—The word "Person" in S. 2 (5) and S. 3 (2), W. B. Non-Agricultural Tenancy Act must be read as a "person other than proprietor or tenure-holder". See Tenancy Laws — W. B. Non-Agricultural Tenancy Act (20 of 1949), S. 21 (1). AIR 1957 Cal 511.

—A member of a Nambudiri Illom governed by the Madras Nambudiri Act is a "person" within the meaning of S. 2 (c), Madras Preservation of Private Forests Act. See Madras Preservation of Private Forests Act (18 of 1946), S. 2. (1956) 2 M L J 452

—"Person" in Displaced Persons (Debts Adjustment) Act, S. 13 — State Government is included. See Debt Laws — Displaced Persons (Debt Adjustment) Act (1951), S. 13. AIR 1956 Pat 91.

—"Person" does not include State. See Public Safety —East Punjab Public Safety Act (5 of 1949), S. 43. AIR 1954 Punj 49 (DB).

—Government is included in the term "person" in S. 44, Rajasthan Public Safety Ordinance, 1948. See Public Safety — Rajasthan Public Safety Ordinance, 1948, S. 44. AIR 1961 Raj 64 (DB).

—Word "person" in S. 293 (Kha), Tripura Municipal Act means natural person as well as holder of office. See Municipalities — Tripura Municipal Act S. 293 (Kha). (1961) (2) Cri L J 807: AIR 1961 Tripura 52.

"Person aggrieved".

—A "person aggrieved" by an order must mean a man against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 21. AIR 1958 Madh Pra 221 (DB).

"Persona designata".

See (1) Civil P. C. (1908), S. 115.
(2) Constitution of India, Art. 226.
(3) Panchayats — Madras Village Panchayat Rules, R. 1 (1) (3).
(4) Panchayats — U. P. Panchayat Raj Act (1947), S. 12C.

●—A "persona designata" is a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character. Ram Milan v. Bansilal Tejsingh, 1958 M P C 302 : 1958 M P L J 446 : 1958 Jab L J 481 : AIR 1958 Madh Pra 203 (205) (Pt B) (Pr 9) (FB).

—The expression "persona designata" connotes a person pointed out by name or other personal description in contra-distinction to one whose identity is to be ascertained by the office which he holds. If a person be a judicial officer and is intended by the statute to act not otherwise than in a judicial capacity or Court of civil jurisdiction he cannot come within the expression "persona designata" so that he may, irrespective of his continuance in office, perform the duty. The question whether such a person is a persona designata or not depends upon the intention to be gathered from the words used, nature of the functions to be performed and object and purpose of the statute. 1961 Andh L T 752 :

(1961) 2 Andh W R 218 : AIR 1962 Andh-Pra 58 (60, 61) (Pt B) (Pr 6).

"Person aggrieved."

See (1) Constitution of India, Art. 226.
(2) J. and K. Evacuees Administration of Property Act (2006 Smt), S. 30.
(3) Motor Vehicles Act (1939), S. 64 (b).
(4) Provincial Insolvency Act (1920), S. 75 (1).

"Person aggrieved by such offence."

See Criminal P. C. (1898), S. 198.

"Personal capacity."

—"Personal capacity" means no more than private capacity. It does not import public capacity. An act of a person of accepting the office of Governor is an act done in his "personal capacity." But after acceptance of office, his acts as Governor are no more acts done by him in his "personal capacity." See Constitution of India, Art. 361 (1). **AIR 1962 Madh-Pra 73 (DB).**

"Personal cultivation."

—Expression "personal cultivation" in S. 54, M. P. Abolition of Proprietary Rights Act indicates not merely bodily possession of the land but constructive possession and also right to possess against a trespasser. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates Mahals Alienated Lands) Act (I of 1951), S. 54. **1961 M P L J 501.**

"Personal hearing."

—"Personal hearing" does not mean that the person cannot be represented by lawyer. See Land Customs Act (1924), S. 7 (1). **AIR 1956 Cal 553.**

"Personal luggage."

—'Personal luggage" means whatever a passenger takes with him for his personal use or convenience, either with reference to his immediate necessities or for his personal needs at the end of his journey. "Personal luggage" is to be distinguished from cargo. See Foreign Exchange Regulation Act (1947), S. 8 (1). **Cr L J 641 : AIR 1965 S C 722. 1965 (1) Cr**

"Personally."

●—Rule requiring application to be signed by partner in person—Signature by agent on his behalf is invalid. See Income-tax Act (1922), S. 26A. **AIR 1956 S C 604.**

"Personally interested"—Meaning.

See Cr. P. C. (1898), S. 556.

"Person employed in the position of management."

See Madras Shops and Establishments Act (36 of 1947), S. 4 (1) (a).

"Person having possession or control of the vehicle.'

—Mere driver of vehicle is not such person. See Madras Motor Vehicles Taxation Act (3 of 1931), S. 6 (1) (2). **(1965) 31 Cut L T 385 : (1965) 7 O J D 174 : ILR (1965) Cut 43.**

"Person in loco parentis."

—A "person in loco parentis" is a person assuming the parental character or discharging parental duty. It is a relationship which a person assumes towards a child not his own and towards whom he discharges parental obligations. By the expression is meant a person who puts himself in the situation of a lawful father of the child with reference to father's office and duty of making provision for the child. See Contract Act (1872), S 16. **AIR 1958 Punj 190 (DB).**

[Reversed on facts in AIR 1963 S C 1279.]

"Person interested."

See also Land Acquisition Act (1894), S. 3 (b).

"Person interested in the objection."

—The phrase "all persons interested in the objection" in S. 20 (e) Land Acquisition Act, does not cover "persons interested in success of the objection." See Land Acquisition Act (1894), S. 18. **A I R 1958 Andh-Pra 226 (DB).**

"Persons aggrieved."

See Administration of Evacuee Property Act (1950), S. 24 (1).

"Persons practising before the Court."

●—Expression "persons practising before the Court" in Art. 145 (1) (a) of the Constitution is narrower than the expression 'persons entitled to practice before the Court' in Entry 77 of List 1, Sch. VII. See Constitution of India, Art. 145 (1) (a). **1964 (1) Cri L J 724 : AIR 1964 S C 855.**

"Peruse."

See Cr. P. Code (1898), S. 145 (4).

"Petition."

See Hindu Marriage Act (1955), S. 24.

"Petitioner."

See Hindu Marriage Act (1955), S. 24.

"Picketing."

●Word "picketing" in cl. (g) of Reg. 236, U. P. Police Regulations, is not used in the sense of offering resistance to the visitor— physical or otherwise — or even dessuading him from entering the house of the suspect but merely of watching and keeping a record of visitors. See U. P. Police Regulations Regn. 236, Cl, (a). **1963 (2) Cri L J 329 : AIR 1963 S C 1295.**

—"Picketing" has been described as "the marching to and fro before the premises of an establishment involved in a dispute, generally accompanied by the carrying and display of a sign, placard or banner bearing statements in connection with the dispute." Such marching to and fro may sometimes be accompanied by a polite request asking persons in the employ of an establishment not to assist in the running of that establishment, or customers not to patronise that establishment. **53 Bom L R 739 : 21 Bom Cr C 232 : 1952 Cri L J 37 : AIR 1951 Bom 459 (462) (E) (Pr 7) (DB).**

"Place."

—Word "place" in S. 17 (b) Drugs Act, is not synonym for country. The word definitely connotes a different meaning from the word 'country.' It means that where the produce of one form is being described as the product of another form. It amounts to a 'misbranding within the meaning of S. 17 (b) of the Act. See Drugs Act (1940), S. 17 (b). **AIR 1958 All 865 : 1958 Cri L J 1453.**

—Word "place"" connotes a particular point or portion of space specifically occupied or belonging to the thing under consideration. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 248. **1958 Mad L J (Cri) 628 : (1958) 2 Mad L J 180.**

—A particular "place" referred to in S. 144 (3), Criminal P. C may be a large area — All that is necessary is that the place should be so sufficiently defined that the public is reasonably notified of its extent. See Criminal P. C., S. 144 (3). **1953 Cri L J 731 : AIR 1953 Orissa 96 (DB).**

"Plaint."

See also (1) Civil P. C. (1908), O. 6, R. 1 and O. 7, R. 1.
(2) Income-tax Act (1922), S. 10 (2) (vi-b).
(3) Sales Tax — Rajasthan Sales Tax Act (1954), Sch. Item 2.

—Even though the dictionary meaning of the word "plaint" is very wide, it has, in legal phraseology come to acquire a more limited meaning and that is a statement in writing of the cause of action in a suit. Every proceeding in suit is not commenced in a plaint, third party notice is not a "plaint." See High Court Rules — Bombay High Court Criminal Side

Rules, Rr. 151-155. 67 Bom L R 644 : AIR 1966 Bom 126 (DB).

—The word "plaint" is not equivalent to 'suit.' See Debt-Laws — Rajasthan Relief of Agricultural Indebtedness Act (28 of 1957), S. 5. I L R (1963) 13 Raj 716.

"Plaintiff."

●—Word "plaintiff" includes his assigns and legal representatives. See Civil P. C. (1908), O. 9, R. 9. AIR 1965 S C 295.

—Word "plaintiff" used in O. 9, R. 9, Civil P. C. includes his heirs and representatives-in-interest. See Civil P. C. (1908), O. 9, R. 9. AIR 1957 Andh Pra 364 (DB).

"Plaint or memorandum of appeal."

See Court-fees Act (1870), Sch. 1, Art. 5.

"Plead."

—Word "plead" means, amongst other meanings, to address the Court as an Advocate on behalf of either party. See Constitution of India, Art. 220. AIR 1963 Cal 178.

"Pledge."

See Contract Act (1872), S. 172.

"Plying for hire."

—There must be soliciting or waiting to secure passengers before a vehicle can be said to ply for hire. There must be general invitation by person in charge of vehicle to the members of the public to make contracts with him for carriage in the vehicle and it is only at the place where such invitation is extended that the vehicle can be said to ply for hire. See Municipalitjes —U. P. Municipalities Act (2 of 1916), S. 298 (2). 1958 All L J 539.

"Playing off."

—"Playing off" is a technical term in industry and means that due to the closure of certain departments some of the employees are asked to work for less hours than they were working before the closure and these employees are paid on the basis of less work done by them. AIR 1955 Bom 369 (372) (Pr 1) (Pt A) (DB).

"Police Officer."

See (1) Civil P. C. (1908), S. 80.
(2) Evidence Act (1872). S. 25.
(3) Madhya Bharat Police Act, S. 2 (d).

"Police report."

See Criminal P. C. (1898), Ss. 170, 207 and 251A.

"Policy of Marine Insurance."

—Marine Insurance policy has not been defined in the Insurance Act, 1938, but 'marine insurance business' has been defined in S. 2 (13-A) — Insurance policy read in the light of the definition, held was marine insurance policy. See Tranasfer of Property Act (1882), S. 135A. (1958) 62 Cal W N 539.

"Political sufferer."

—A "political sufferer" is one who has suffered in the cause of the country may be, by being in a prison. See Motor Vehicles Act (1939), S. 47. 1962 All L J 269.

"Poorer and working classes."

●—Expression "poorer and working classes" contemplated by sub-cl. (c) of Cl. (a) of sub-s. (1) of S. 277, City of Jabalpore Corporation Act, refers to such indigent and working people who need accommodation and cannot on their own make arrangements for reasonable accommodation. The middle classes and the public capable of purchasing houses costing about Rs. 7,500.00 could not come under the expression. See Municipalities — City of Jabalpore Corporation Act (C. P. And Berar Act 3 of 1950), S. 277 (1). AIR 1966 S C 207.

"Possessed."

See (1) Hindu Succession Act (1956), S. 14 (1).
(2) Income-tax Act (1922), S. 12-B (1).

"Possessed by female Hindu."

See Hindu Succession Act (1956), S. 14.

"Possession."

See also (1) Arms Act (1878), S. 19 (f).
(2) Limitation Act (1908), Arts. 142 and 144.

●—"Possession" is quite distinct from title and can be independent of it. Adverse possession which is possession without title, is "possession." All that is required is an intention to use physical power and not a lawful right to use it. 1961 All L J 301, Overruled. See Tenancy Laws — U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 3. AIR 1964 All 213 (FB).

—The word "possession" in S. 10, Evacuee Interest (Separation) Act is not so comprehensive as to include the power of evicting a person already in "possession" and asserting his right. See Evacuee Interest (Separation) Act (1951), S. 10 (iv). (1964) All L J 871.

—"Possession" of incriminating article — Whether it is in "possession" of all members residing in house is a question of fact. See U. P. Excise Act (4 of 1910), S. 60 (a). 1964 All L J 562.

—A person who through force inducts himself over and into some land and also succeeds in continuing his occupation over it cannot be said to be in possession of that land though he has occupation over it. Possession means occupation with the intention of exercising some claim or right in respect of the property occupied. Person having no such claim, but succeeds by show of force in acquiring physical control over the property cannot be treated to be in possession even though he may have physical control over it. See Tenancy Laws — U. P. Land Reforms (Supplementary) Act (XXX of 1952), S. 3. 1961 All L J 301.

[Overruled in AIR 1964 All 213 (FB)].

—Word "possession" in S. 45 (1), M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act includes within its ambit every person who, on the date of vesting, held or was entitled to hold any land as an absolute occupancy or occupancy tenant, even though, on that date, he was not in actual "possession" of such land. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act (1 of 1951), S. 45 (1). 1961 M P L J 493.

—Word "possession" used in English statute and word "keeping" in S. 361, Penal Code — There is no material difference in the two words — "Possession" has some meaning as "keeping" which only means either care, charge or control. See Penal Code (1860), S. 361. ILR (1964) Mys 436.

—Word "possession" implies physical capacity to deal with the thing as one likes to the exclusion of every one and determination to exercise that physical power on one's own behalf. It implies dominion and consciousness in mind. See Madras Prohibition Act (X of 1937), S. 4 (1) (a). 1953 Cri L J 1048 : AIR 1953 Mad 534.

"Possession and occupation"—Meaning.

—The word 'possession' connotes not only physical occupation of a property or a piece of land, but also dominion or control over it. 'Occupation' on the other hand, means the right to occupy or to cultivate or to use the land. The landlord can be in possession of a plot of land even though the same is in the occupation of a tenant. The mere right to cultivate does not and cannot amount to possession. 1965 All W R (H C) 461 : 1965 All L J 777.

"Possession in accordance with law."

—'Possession' cannot be in accordance with law unless it is in conformity with ultimate legal right. See Tenancy Laws — U. P. Zamindary Abolition and Land Reforms Act (1 of 1951), S. 14. **1964 All W R (H C) 224.**

"Possession of wife, clerk or servant."

See Penal Code (1860), S. 27.

"Pot pattedar" and "joint pattedar."

—'Joint pattedar' and "pot pattedar" convey different meanings and are not exchangeable — Meaning explained — 31 Deccan L R 453, Dissented from. **AIR 1956 Hyd 50 (51) (Pt A) (Pr 4) (DB).**

"Power."

See also Words and Phrases – "Jurisdiction."

—There is fundamental distinction between trusts and power. In case of "power" position is quite different from trust—Distinction explained. **AIR 1957 Bom 218 (221) (Pr 8) (Pt A) (DB).**

—"Power" and "jurisdiction" — Distinction between, pointed out. See Constitution of India, Art. 226. **52 Cri L J 1305 : AIR 1951 Madh Bha 121 (Pt A) (Prs 48, 49, 77) (FB).**

"Power of Attorney."

—Words "power of attorney" and "general power of attorney" and "special power of attorney" explained. See Civil P. C. (1908), O. 3, R. 2. **AIR 1959 Bom 386 (DB).**

"Powers."

—The word "powers" used in Sch. 7, List II, Entry 5, Constitution of India, which is unqualified includes "powers" of making laws and imposing taxes. See Constitution of India, Sch. 7, List II, Entry 5. **AIR 1963 Madh Pra 74 (FB).**

"Practicable."

—Word "practicable" in Proviso (g) to S. 126, Constitution of Jammu and Kashmir explained. See Constitution of Jammu and Kashmir, S. 126 (2). **AIR 1965 J & K 53 (DB).**

"Practice."

●—The word "practice" means "exercise of any profession or occupation." See Chartered Accountants Act (1949), S. 22. **AIR 1958 S C 72.**

"Practice and procedure."

●—"Practice" in its larger sense like procedure, denotes the mode of proceeding by which a legal right is enforced as distinguished from the law that gives and defines the right. "Procedure" means the mode in which successive steps in litigation are taken. **1951 S C J 425 : 1951 S C R 474 : AIR 1951 S C 253 (266) (Pt E) (Pr 38).**

"Prajai satta."

—The expression "prajai satta" means the right of the tenant to continue in occupation after the expiry of the original lease. **(1960) 64 Cal W N 448 : ILR (1960) 1 Cal 708.**

"Preceding calendar month."

—Obiter — The words "preceding calendar month" in S. 25.A (1) (a), Industrial Disputes Act, 1947 can have reference only to a claim arising under S 25-C of the Act: a claim for compensation by a workman for having been laid off by his employer. See Industrial Disputes Act (1947), S. 25 A (1) (a). **AIR 1957 Mad 410 (DB).**

"Precincts."

See Factories Act (63 of 1948), S. 2.

"Prefer."

—"Preferred" in S. 77, Railways Act, 1890, means that a written claim has reached the railway administration. See Railways Act (1890), S. 77. **1961 All L J 983.**

"Prejudicial."

●—Words and Phrases should ordinarily be given the same meaning throughout a statute. But this is not invariable rule. The word "prejudicial" in S. 29 (2), Orissa Agricultural Income-tax Act, 1947, should, taking into consideration the context in which it is used, be given a narrower interpretation than the same word used in the proviso to S. 28 (2). See Orissa Agricultural Income-tax Act (24 of 1947), S. 29 (2). **AIR 1953 Orissa 117 (SB).**

"Preliminary objection."

—A "preliminary objection" is one that is raised to the sustainability of an application or action on the basis of the assumption of the truth of all the averments of fact made by the suitor in the application or plaint and is therefore one that can be taken in argument though not raised in the written defence. **ILR (1953) Trav-Co 118 : AIR 1953 Trav-Co 286 (291, 292) (Pt B) (Pr 10).**

"Preliminary point."

See Civil P. C. (1908), O. 41, R. 23.

"Premises."

■—Word 'premises' is a generic term meaning open land or land with building or buildings alone. Expression "premises including precincts" does not necessarily mean that the premises must always have precincts. Even buildings need not have any precincts. Expression "premises" is not restricted to mean building but may cover open land as well. See Factories Act (1948), S. 2 (m). **1962 (1) Cri L J 99 : AIR 1962 S C 29.**

●—"Premises" as defined in West Begal Premises Tenancy Act, 1959, includes market consisting of buildings, sheds, stalls, etc. See Houses and Rents—West Bengal Premises Tenancy Act (12 of 1956), S. 2 (f). **AIR 1961 Cal 398 (SB).**

—Held on facts that the open space of land measuring more than 500 sq. feet between the main building and the outhouses was not "premises" within meaning of S. 2 (b) of the Delhi and Ajmer Merwara Rent Control Act, 1947. See Houses and Rents—Delhi and Ajmer Merwara Rent Control Act (11 of 1947), S. 2 (b). **AIR 1955 N U C (Ajmer) 335.**

—In the context in which the word "premises" is used in the bye-law 6 for installation of oil crusher under S. 298 (1), U. P. Municipalities Act, 1916, the word obviously suggests something wider and more comprehensive than a mere single room or enclosure and would normally be interpreted as referring to the entire building occupied. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 298 (1). **1961 All L J 563.**

—Word "premises" in cl. (m) of S. 2, Factories Act means not only buildings but includes lands as well. See Factories Act (1948), S. 2 (m). **1956 Cri L J 488 : AIR 1956 Bom 219 (DB).**

—Lease of a furnished and well-equipped cinema house, is a lease of "premises". The mere fact that different components belong to different persons who granted the lease as joint lessors, would not affect the position. See Houses and Rents—West Bengal Premises Tenancy Act (12 of 1956), S. 2 (f). **(1964) 68 Cal W N 1136.**

—Word "premises" is wide enough to include any building including any furniture and fittings therein. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 2 (8). **AIR 1953 Cal 149 (DB).**

—Though there may be many things to be done to a building yet if it is a structure it comes within the definition of "premises" in West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. See Houses and Rents — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 2. AIR 1951 Cal 294 (DB).

—Word "premises" is defined in S 4 (3) of the Bombay Land Requisition Act, 1948—Word "premises" in S. 6 (a) (i) of the Act — Meaning explained. See Bombay Land Requisition Act (33 of 1948), S. 6 (4) (a). ILR (1964) Guj 227.

—The Courts have to give to the word "premises" the ordinary interpretation and connotation given to it in the English language and when the dictionaries refer to the word "premises" as building and its adjuncts, there is no reason why the Court should import a different meaning when such a word is used in a statute simply because under certain conditions and circumstances the word 'premises' includes land and everything appurtenant thereto. The word 'premises' in Madras District Municipalities Act and Local Boards Act should be understood as meaning a building with land adjacent to it. Hence installation in an open field will not be installation in the premises, for building is a necessary criterion. See Municipalities - Madras District Municipalities Act (5 of 1920), S. 250 (1). 1954 Cri L J 329 : AIR 1954 Mad 285 (DB).

—In the absence of any qualifying words restricting the meaning of 'land' in the definition of "premises" in the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, the word should be given its natural meaning as land used for any purpose including agricultural land. See Public Premises (Eviction of Unauthorised Occupants) Act (1958), S. 2 (c). (1963) 65 Pun L R 615 : AIR 1964 Punj 304.

—Word "premises" in the context of S. 15 (3), Delhi and Ajmer Rent Control Act, 1952 means the "premises" in dispute, that is those premises, which had been given to the tenant on rent. See Houses and Rents—Delhi and Ajmer Rent Control Act (38 of 1952), S. 15 (3). (1961) 63 Pun L R 852.

—Word "premises" in S. 3, Punjab Instruments (Control of Noises) Act, 1956, covers an open space of land. See Punjab Instruments (Control of Noises) Act (36 of 1956), S. 3. 1960 Cri L J 1371 : AIR 1960 Punj 538 (DB).

—A hotel does not fall within the definition of the word "premises" in Delhi and Ajmer Merwara Rent Control Act, 1947. See Delhi and Ajmer Merwara Rent Control Act (19 of 1947), S. 2 (b). (1951) 53 P L R 75.

"Premises including precincts."

See Factories Act (1948), S. 2 (m).

"Premium"

—The word "premium" used in connection with lease, means a cash payment made to the lessor and representing or supposed to represent the capital value of the difference between the actual rent and the lease rent that might otherwise be obtained. It is in fact the purchase money which the tenant pays for the benefit which he gets under the lease. See West Bengal Premises Rent Control Act, (1948) Ss. 4, 7 and 33. AIR 1952 Cal 56.

"Prescribed."

See also Limitation Act (1908), S. 29 (1).

—Word "prescribed" is defined in W. B. Private Forests Act, 1948 as "prescribed by the rules made by the Govt. Anything which is not "prescribed" by the rules, but "prescribed" by the Regional Forest Officer, does not fall within the definition. See W. B. Private Forests Act (14 of 1948), S. 2 (13). AIR 1954 Cal 580 (DB).

—Use of the word "prescribed" is the normal expression for conferring a power to make a rule. The reference to "prescription" in S. 19 (2) of the Madras General Sales Tax Act, 1939, if read in the eight of the definition of the word "prescribed" in S. 2 (f) of the Act can only mean "by rules made under the Act." See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 5 (vi). AIR 1958 Mad 249.

"Prevention."

See Prevention of Food Adulteration Act (1954), S. 16 (b).

"Previous operation of repealed law."

—Expression "previous operation of repealed law" in S. 58 (3) of Administration of Evacuee Property Act (31 of 1956) explained. See East Punjab Evacuees' Administration of Property Act (14 of 1947), S. 5B. AIR 1956 S C 77.

"Previous year."

See (1) Bhopal State Agricultural Income Tax Act (1953), S. 2 (11).
(2) Income-tax Act (1922), Ss. 2 (6A) (c), 2 (11) (a), 24 (2).

"Prima facie."

—When a superior Court held that an Act is "prima facie" prospective it is not open to subordinate Courts to canvass the import or implication of that dictum. The use of the word "prima facie" would indicate that there is no possibility of an alternative construction being put on the Act for it is on the face of it prospective. See Precedents. AIR 1953 Orissa 240 (DB).

"Private carrier."

See Motor Transport Workers Act (1961), S. 1 (4).

"Private land."

See (1) Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act (1948), S. 12 (a).
(2) Tenancy Laws — Madras Estates Land Act (1908), S. 3 (10).

"Probationer."

See Constitution of India, Arts. 310-311.

"Procedure."

—Law of limitation is not covered by the expression "procedure to be followed" in S. 14 (2), Delhi Ajmer-Merwara Rent Control Act, 1947. A I R 1955 N U C (Ajmer) 1411.

—The word "procedure" in S. 14 (2), Delhi and Ajmer-Merwara Rent Control Act, 1947 does not include 'limitation.' See Houses and Rents—Delhi and Ajmer-Merwara Rent Control Act (19 of 1947), Section 14 (2). AIR 1955 N U C (Ajmer) 1331.

"Proceeding."

See also (1) Civil P. C. (1908), S. 24.
(2) Criminal P. C. (1898), S. 195 (1) (b).

—Word 'proceedings' in S. 48, U. P. Consolidation of Holdings Act, 1954—Meaning of, indicated. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 48. AIR 1965 All 172.

—Word "proceedings" in S. 134 (2), Motor Vehicles Act, means procedure only and does not cover the actual decision of the R. T. A. See Motor Vehicles Act (1939), S. 64. AIR 1961 All 511 (DB).

—Word "proceeding" in S. 171, Companies Act, 1913 includes execution proceedings also. See Companies Act, 1913, S 171. AIR 1956 All 586 (DB).

—The word "proceeding" with reference to a case would imply taking of steps in connection with the further progress of the case, when a case is listed for

hearing and the case is taken up by the Court and an order is made in the case, it would be proceedings in the case. It is not possible to confine the word "proceeding" to the recording of evidence only. See Criminal P. C. (1898), S. 350A. **AIR 1953 All 137.**

—**Held** that "proceedings" under S. 23, Foreign Exchange Regulation Act, could be said to have commenced on the issue of show cause notice under S. 23-D read with R. 3 of the Adjudication "Proceedings" and Appeal Rules, 1957. See Foreign Exchange Regulation Act (1947), S. 19. **1964 (1) Cr L J 643 : AIR 1964 Bom 127.**

—Word "proceeding" in S. 89(2)(b)(ii) Bombay Tenancy and Agricultural Lands Act must in its context mean a suit or a "proceeding" in the nature of a suit and an appeal or appeals which lie under the provisions relating to appeals and execution :proceedings for enforcement of rights declared by the decree or order passed in the suit or appeal must be regarded merely as continuation of a suit. See Tenancy Laws —Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29 (2) and (4). **(1954) 56 Bom L R 638 : AIR 1955 N U C (Bom) 186.**

—The expression "proceeding" in S. 89 (2) (b), Bombay Tenancy and Agricultural Lands Act, 1948, in the context means a suit or proceeding in nature of suit and appeals which lie under the provisions relating to appeals, and execution proceedings for enforcement of rights declared by the decree or order passed in the suit or appeal must be regarded merely as continuation of the suit. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29. **(1963) 4 Guj L R 400.**

—The "proceeding" in S. 87 (2), Kerala Court-fees and Suits Valuation Act, that may 'otherwise' arise from a suit and "proceeding" need not be in the nature of an appeal or revision—Ejusdem generis doctrine has to be kept out in construing S. 87 (2). See Kerala Court-Fees and Suits Valuation Act (10 of 1960), S. 87 (2). **(1962) 1 Ker L R 460.**

—When the question is of the applicability of an amendment made by the Code of Criminal Procedure (Amendment) Act, 1955 and the competency of the proceedings thereunder, the words "proceedings" which first occur in the last para. of S. 116, Cr. P. C. (Amendment) Act, must necessarily refer to proceedings other than those purported to have been taken under the amendment. See Cr. P. Code (1898), S. 417 (3). **1958 Cri L J 383 : A I R 1958 Madh Pra 66.**

—The word "proceedings" has two different meanings. In one sense it means the steps taken by a party. In another sense it means the acts of a person in authority. **AIR 1958 Mad 69 (71) (Pt C) (Pr 8).**

—Word "proceeding" can be given a narrow or a wide meaning depending upon the nature and scope of an enactment in which it is used and in the particular context of the language of the enactment in which it appears. It may mean an action or that which initiates an action. It may also mean a step in an action. A copy application is not a "proceeding" by way of appeal or revision. But in the context of S. 87 (2), Madras Court-fees and Suits Valuation Act, 1955, a copy application arises from a suit or "proceeding" in the sense of its coming out from a suit being in relation to the suit and therefore it can come within the meaning of the word "proceeding"

—See Madras Court Fees and Suits Valuation Act (14 of 1955), S. 87 (2). **AIR 1956 Mad 597.**

—The word "proceedings" in S. 37 of the Gharkhed Ordinance has to be construed to include appeal, there is no such exclusion of the right of appeal by necessary intendment, if not by express words of the section, which affects the appeals pending at the time of issuing notification under S. 35 of the Ordinance, taking over the management of the estate concerned. Such an appeal has therefore either to be stayed or dismissed under S. 37 — See Tenancy Laws—Saurashtra Gharked Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 37. **AIR 1953 Sau 77 (DB).**

"Proceeding recorded," meaning of.

—Recording of proceedings is something different from an order. See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 11. **AIR 1957 Andh-Pra 462 (DB).**

"Proceedings before Court."

In S. 496, Criminal P. C. the words "proceedings before a court" are used in wider sense and not in a restricted sense of judicial proceeding. See Criminal P. C. (1898), S. 496. **1953 Cri L J 1540 : A I R 1953 Cal 661 (DB).**

"Proceedings in the nature of suit".

—Writ proceedings are "proceedings in the nature of a suit" within meaning of the expression as used in R. 6, Chap. VII, Allahabad High Court Rules and Orders and therefore a decree can be prepared in writ matter. See High Court Rules and Orders — Allahabad High Court Rules, Chap. VII, R. 6. **AIR 1956 All 585 (DB).**

"Proceedings pending before a Court".

—Words "proceedings pending before a Court" in S. 12, West Bengal Criminal Law Amendment (Special Courts) Act, 1949, mean judicial proceedings which started with the submission of a charge-sheet or a complaint or taking cognizance thereon. It cannot be argued that since accused is produced before the ordinary magistrate and the question of bail is considered, there is a proceeding before the Court. See West Bengal Criminal Law Amendment (Special Courts) Act (21 of 1949) (as amended in 1952), S. 12. **1953 Cri L J 1540 : AIR 1953 Cal 661 (DB).**

"Proceedings pending before Appellate Tribunal".

—Expression "proceedings pending before Appellate Tribunal" in S. 38, Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, does not mean a proceeding not lawfully disposed of by the Appellate Tribunal. See Industrial Disputes (Amendment and Miscellaneous Provisions) Act (1956), S. 33. **AIR 1957 Bom 142 (DB).**

"Proceed to assess".

—No distinction can be drawn between 'assess' and "proceed to assess." The use of the expression "proceed to assess" does not connote anything different from the word 'assess'. See East Punjab General Sales Tax Act (46 of 1948) (as amended in 1955) S. 11(3). **AIR 1964 Punj 1 (FB).**

"Process".

—Activity contemplated by word "process" is general, requiring only continuous and regular action or succession of action leading to the accomplishment of some result, but it is not one of the requsities that the activity should involve some operation on some material in order to its conversion to some other staff —By converting camphor powder into camphor cubes is processing camphor powder into camphor cubes. See Sales Tax—West Bengal Sales Tax Act (4 of 1954), S. 2(b). **(1965) 16 S T C 935 (Cal).**

—'Processing of goods' — Purchasing old motor cars, and dismantling same and deriving spare parts from them and parts which could not be used as spare parts and selling the spare parts without moulding, repairing or changing them in any way — It is not "processing" any goods or 'producing' or 'manufacturing' any goods. See Sales Tax—Bombay Sales Tax Act (3 of 1953), S. 5(1)(b), Cl. (ii). **AIR 1964 Guj 27 (DB).**

—"Process" means any judicial writ or order issued at the commencement or during the "progress" of an action, as summons, citation, subpoena. This is its restricted sense. In its larger sense, it also means the whole course of proceeding in a cause, civil or criminal from beginning to end. See Civil P. C. (1908), S. 128. **AIR 1955 N U C (Mys) 219.**

"Procession".

—Some element of an organised march according to a system is necessary to constitute a procession. See Public Safety — Bihar Maintenance of Public Order Act, 1949 (3 of 1950), S. 9. **1953 Cri L J 1204 : AIR 1953 Pat 195 (DB).**

"Process of election".

—In view of Rules 20 and 23 of the Rules framed under M. P. Municipalities Act, providing for election of a President, the "process of election" of the President ends with the declaration of the result by the supervising officer. See Municipalities—M P. Municipalities (Amendment) Act (14 of 1958), S. 7. **1959 M P L J 1035.**

"Produced".

—Goods "produced in India" — Word "produced" appearing in Entry 84, List I, Sch. VII, Constitution of India in juxtaposition with the word "manufactured" and used in connection with a duty of excise contemplates some expenditure of human skill and labour in bringing the goods concerned into the condition which would attract the duty. See Constitution of India, Sch. 7, List 1, Entry 84. **AIR 1959 Cal 222 (DB).**

—Producing witnesses in evidence in support of prosecution case—Such persons are brought forward by prosecution before the magistrate for expedious disposal of inquiry. It is in this sense that the word "produced" in sub-s. (4) of S. 207-A, should be interpreted. See Criminal P. C. (1898), S. 207-A (4). **1959 Cri L J 1476 : AIR 1959 Raj 294 (DB).**

"Produced and examined".

See Criminal P. C. (1898), S. 288.

"Producer".

See also C. P. and Berar Electricity Duty Act (10 of 1949), Ss. 2 (a), 3.

—'Producer'—Producer of paddy means, tiller, i. e., lessee who cultivates land and raises crop—Government G. O. R. O. C. 1155/48/ con. D/- 6.2-1948. **AIR 1955 N U C (Trav-Co) 5108 (DB).**

"Profess a religion".

See Constitution—(Scheduled Castes) Order (1950), Para. 3.

"Profession".

See also (1) Constitution of India, Art. 19 (6), Sch. 7, List 2, Item 60.
(2) Income Tax Act (1922), S. 4 (3) (vii).

—Neither the "profit" nor the word "profession" has any fixed meaning and it has to be interpreted in the context in which it is used. These words can be given a wide or a narrow meaning consistent with the context in which they are used. See Punjab Shops and Establishments Act (15 of 1958), S. 2 (i) (iv). **AIR 1962 Punj 280.**

"Profit".

—Neither the "profit" nor the word 'profession' has any fixed meaning and it has to be interpreted in the context in which it is used. These words can be given a wide or a narrow meaning consistent with the context in which they are used. See Punjab Shops and Commercial Establishments Act (15 of 1958), S. 2 (1) (iv). **AIR 1962 Punj 280 (DB).**

"Profit and loss account".

—"Profit and loss account" is an account designed to show the amount of net profit earned or net loss incurred during the financial period covered by the account, also the various headings under which the profits had been earned and expenses incurred. **AIR 1962 Cal 375 (378) (Pt D) (Prs 19, 20).**

"Profits".

See Income-tax Act (1922), S. 2 (6-C) (vii), 10 (1), Sch. R. 6.

"Pro interesse suo."—Meaning.

—The Latin expression "pro interesse suo" means in the English language—for his own interest; these words are used, especially of a party allowed to intervene for his own interest in a proceeding instituted between other parties. The nearest Indian equivalent of a "pro interesse suo" application is the procedure prescribed in Rr. 58 to 63 of Order 21 of the Code of Civil Procedure, dealing with investigation of claims and objections to attachment. **(1961) 65 Cal W N 848 : AIR 1962 Cal 169 (170, 171) (Pt A) (Prs 18, 20) (DB).**

"Projabili Lease."

—'Projabili and Nayakarkite' Lease—Settlement with cultivating rights only. **AIR 1954 Cal 412 (DB).**

"Promiscuous."

—Promiscuous sexual intercourse—The word "promiscuous" has not been defined in the Suppression of Immoral Traffic in Women and Girls Act. According to dictionary meaning it means "without distinction" "indiscriminate." See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 7. **1962 Raj L W 598.**

"Promise."

See Contract Act (1872), S. 2 (b).

"Promisee."

See Contract Act (1872), S. 2 (c).

"Promisor."

See Contract Act (1872), S. 2 (c).

"Promoters."

See Companies Act (1913), S. 100 (5).

"Promulgate,"

—Meaning of. See Penal Code (1860), S. 188.

"Promulgation"

See (1) M.B. Essential Supplies (Temporary Powers) Act (3 of 1948). S. 4.
(2) Penal Code (1860), S. 188.

"Promulgation and publication."

See Tenancy Laws — Rajasthan (Protection of Tenants) Ordinance (9 of 1949), S. 1 (3).

"Pronounce."

—Pronouncing judgment within meaning of S. 12 (2), Limitation Act — Judgment must be pronounced to the parties — Order made behind back of parties is not "pronounced" within meaning of S. 12 (2). Limitation therefore start from the date, the order is communicated to the parties, or when it becomes known to them. See Tenancy Laws — Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (8 of 1953), S. 7 (4). **(1961) 63 Pun L R 225.**

"Properties 'within jurisdiction of different Courts."

See Civil P. C. (1908), S. 17.

"Property."

See also (1) Civil P. C. (1908), S. 60, O. 21 R. 54.
(2) Constitution of India, Arts. 19 (1) (f), 31 (2) and 226.
(3) Court-fees Act (1870), S. 7 (iv) (c).
(4) Criminal P. C. (1898), S. 517.
(5) Estate Duty Act (1953), S. 2 (15).
(6) Guardians and Wards Act (1890), S. 7.
(7) Income-tax Act (1922), Ss. 2 (4-A); 4 (3) (1).
(8) Penal Code (1860), S. 405.

—Lands which form the emoluments of the office are "property". See Madras Hereditary Village Offices Act (3 of 1895), Ss. 5 and 12. **(1964) 1 Andh W R 367 : (1964) 2 Andh L T 321.**

—Electricity is property. See Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 44. **AIR 1964 Madh Pra 101 (DB).**

—The word "property" is large enough to include money. The expression deliver up possession of "property" in S 33 (4), Presidency Towns Insolvency Act does not exclude money. See Presidency Towns Insolvency Act (1909), S. 33 (4). **AIR 1959 Mad 484.**

—The true test in deciding whether the hereditary right to a religious office in a Temple is "property" or not seems to be whether the holder of that office has any personal interest of a beneficial character in the properties of the Temple. If he has no such interest, it is not "property" at all. See Sri Jagannath Temple Act (XI of 1955), S. 1. **AIR 1959 Orissa 5 (DB).**

—Word "property" has very wide significance. Ordinarily it includes both movable and immovable "property". But where a word, capable of being interpreted in a number of different ways, is used in a context which clearly indicates that its use is confined to one particular sense, the statutory provision must be interpreted accordingly. In S. 28, Punjab Co-operative Societies Act, the word 'property' is confined to movable "property". See Punjab Co operative Societies Act (25 of 1961), S. 28. **(1965) 1 Cur L J 584 : ILR (1965) 2 Punj 672.**

—Both according to law in India and Pakistan a 'judgment-debt' is to be treated as "property." See Indian Independence (Legal) Proceedings Order (1947), S. 4 (3). **AIR 1957 Punj 201 (DB).**

—The word "property" in S. 52, C. P. C should be interpreted as meaning property capable of attachment and sale. See Civil P. C. (1908), S. 52 (1) and (2). **(1957) 59 Punj L R 47.**

—Word "property" in Paras 2 and 4 of Cl. 6, of the Order No. 179 of the Governor-General in-Council (1836), is not used in the sense of an article which is the subject-matter of ownership but in the sense of superstructure or in the sense analogous to "houses" or "buildings". **AIR 1956 Punj 116 (117, 118) (Pt A) (Pr 4).**

"Property including any interest in"

See Constitution of India, Art. 31.

"Proprietor"

See Tenancy Laws—M. P Abolition of Proprietary Rights etc. Act (1 of 1951), Ss. 2 (m) and 38 (1).

"Propriety."

—The word "propriety" is of wide import. There might be honest differences of opinion about the "propriety of an order, even though it is in conformity with law and within the powers of the authority making the order. It differs from 'legality' and "regularity". See Constitution of India, Art. 226. **AIR 1957 Andh Pra 55 (DB).**

"Prosecution."

See also (1) Criminal P. C. (1898), S. 132.
(2) Tort—Malicious prosecution.

—Word "prosecution" in S. 161 (1), Bombay Police Act, 1951—Necessary implication of, explained. See Bombay Police Act (22 of 1951), S. 161 (1). **1965 (1) Cri L J 18 : AIR 1965 Bom 9 (DB).**

"Prosecution and punishment."

—Words "prosecution and punishment" in Art 20 (2) of the Constitution have reference to criminal offences and have the effect of limiting the scope of the article to criminal proceedings before a court of law or judicial tribunal competent to deal with criminal cases. See Constitution of India, Art. 20 (2). **1954 Cri L J 691 : AIR 1954 All 319 (DB).**

"Prostitute."

—A "prostitute" would answer the description of a public prostitute unless she be kept by some person exclusively in which case she can be said to be kept by that person and to be not available for the purposes of prostitution to others. The expression "prostitute" itself means a woman who offers her body to indiscriminate sexual intercourse, especially for hire. Such a person would answer the description of a public "prostitute" also. **1957 All L J 343 : 1957 All W R (HC) 321 : 1957 Cri L J 612 : AIR 1957 All 340 (341, 342) (Pt B) (Pr 6) (DB).**

—In common 'parlance' the word "prostitute" connotes a woman who habitually offers her person for sexual intercourse on hire or for monetary consideration or other gain. "Prostitute" might be a public "prostitute" in case she offers herself indiscriminately in such fashion or is open to promiscuous intercourse by members of the public. "Prostitute" may also be in exclusive keeping of some particular individual in which case she might not be a public "prostitute". See Municipalities—U P. Municipalities Act (2 of 1916) S. 298 (1), List 1 (H)(c). **A I R 1955 N U C (All) 2749.**

—'Prostitute" is one who is a harlot or who is having sexual intercoruse indiscriminately with different persons ordinarily for hire. A public "prostitute" is one who comes on the profession of a "prostitute" by letting out her body for hire to all visitors — Connotation of the word as used in Section 5 (1) (b), Madras Hindu Bigamy Prevention and Divorce Act 1949, explained. See Madras Hindu Bigamy Prevention and Divorce Act (6 of 1949), S. 5 (1) (b). **A I R 1955 N U C (Andh) 4456.**

"Protection"

—Word "protection" in Art. 14 of the Constitution cannot be invoked by a person whose claim is not that his rights or liberties be preserved from violation or abridgment but that his obligations be curtailed by abridging another person's rights. See Limitation Act (1908), Art. 183. **AIR 1958 Mad 279.**

"Protocols"

—The expression full "protocols" of tests applied in R. 5 Bengal Drugs Rules, 1946, means an official statement of account of a proceeding as a description of an experiment or a clinical report. When various tests employed by the analyst to test the purity of the drug are in fact embodied in the report itself the report is conclusive evidence of the results stated. See Bengal Drugs Rules (1946), R. 5. **1959 Cri L J 829 : AIR 1959 Cal 427 (DB).**

"Proved"

See Evidence Act (1872), S. 3.

"Proved respectability"

—Words "proved respectability" in Rule 5.17 of the Delhi Excise Rules, do not contemplate any enquiry. Word 'proved' is not used to show that it raises a justiciable issue but in the sense that the licensing authority is satisfied of the applicants' respectability and that satisfaction need not necessarily be the result of any enquiry or evidence produced by parties. See Punjab Excise Act (1 of 1914), S. 26. **A I R 1956 Punj 97 (DB).**

[Reversed on facts in AIR 1959 S C 65.]

"Provide"

—There is nothing in the word "provide" which necessarily suggests futurity. See Constitution of India, Art. 286. **AIR 1957 Bom 71 (DB).**

"Provident Fund"

—Pension, gratuity and "provident fund" are three different and distinct types of retirement benefits although basis for their calculation is furnished by the salary or emoluments drawn by the person. See Constitution of India, Art. 14. **AIR 1963 Mys 247 (DB).**

"Public"

—The Arya Vysyas of the region would constitute the "public" within the scope of the term in S. 6 (13) Madras Hindu Religious and Charitable Endowments Act, 1951. See Madras :Hindu Religious and Charitable Endowments Act (29 of 1951), S. 6 (13). (1960) 1 Mad L J 494.

—'Public auction.' See also Bengal Ferries Act (I of 1885), S. 9. (1959) 63 Cal W N 158.

"Public auction"

—Calling sealed tenders is not equivalent to "public auction" within meaning of S. 9 of the Bengal Ferries Act (1885). See Bengal Ferries Act (1 of 1885), S. 9. AIR 1957 Cal 98.

—Where there is publicity and bids are invited from all the members of the public and not from any particular persons then the auction is clearly public and not private. The essential and necessary element of auction is :competition. See Gwalior State Preemption Act. AIR 1955 N U C (Madh B) 2103.

"Public authority"

See also Special Relief Act (1877), S. 45.

—State Bank of India is a "public authority", a corporation within meaning of S. 45, Specific Relief Act and an 'authority' within meaning of Art. 226 of the Constitution. See Constitution of India, Art. 226. AIR 1964 Mad 335.

"Public carrier"

See Motor Vehicles Act (1939), S. 2 (23).

"Publication"

—Word "publication" in S. 5, United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs :and Headmen) Act, 1959, necessarily implies some act on the part of the authorities to give publicity to the result of election. The mere knowledge of the petitioner about the result cannot be regarded as 'publication' by the authorities concerned. See United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) :Act (1959), S. 5. AIR 1965 Assam 83 (DB).

"Public drain"

—Where in a statute "public drain" has not been defined the words will have their ordinary meaning. A site through which water of the village had been passing is a "public drain". See Panchayats — Pepsu Panchayat Raj Act (8 of 2008), S. 23. (1962) 64 Pun L R 734.

"Public funds"

—Funds administered by an organisation like co-operative education society do not constitute "public funds" within cl. (b) of 1st proviso to S. 66 of the Bombay Municipal Boroughs Act. The term "public fund" is used in the accepted legal sense of funds belonging to or administered by public authority like Government Municipality or a Local Board or other public authority. See Municipalities—Bombay Municipal Boroughs Act (18 of 1925), S. 71 (qq-i). (1964) 1 Mys L J 147.

"Public institution"

—Held, that it was not impossible to hold that a public limited liability company was a 'public institution' within the meaning of by-law No. 5 of co-operative society formed under the Madras Co-operative Societies Act (6 of 1932). The word "institution" might not be very apt but it was general enough to include a public company." 1955 Mad W N 907 : (1956) 1 Mad L J 36.

"Public interest"

See also Penal Code (1860), S. 499 Excep. 1.

—Words "public interest" in S. 47, Motor Vehicles Act, 1939, mean interest of the public which uses the stage carriage and not the public in general. See Constitution of India, Art. 226. AIR 1956 All 594.

"Public nuisance"

See Criminal P. C. (1898), S. 133.

"Public office"

—Government pleader in Madras holds a "public office". See Constitution of India, Art. 226. AIR 1961 Mad 450 (DB).

—Professors and Readers in Mysore university are not holders of "public office". What is 'public office' indicated. See Constitution of India, Art. 226. AIR 1964 Mys 159 (DB).

"Public officer"

—The Judge of the High Court who constitutes the Board and to whom appeals under S. 17, Bihar Land Reforms Act, 1950, lie is a "public officer". See Court Fees Act (1870), S. 6. AIR 1958 Pat 235.

"Public order"

See also (1) Public Safety — Preventive Detention Act (1950), S. 3
(2) Public Safety— Punjab Security of the State Act (12 of 1953), (applied to Ajmer), S. 9

— Activities of single individual do not come within the term. See Defence of India Rules (1962), R. 30. 1965 (1) Cri L J 709 : AIR 1965 Madh Pra 126 (DB).

— Expression "public order" in Entry I of the State Legislative List in Sch. VII of the Constitution, explained. See Madras Prevention of Insults to National Honour Act (14 of 1957), S. 5. 1965 (1) Cri L J 49 : AIR 1965 Mad 11 (DB).

— "Public order" has a comprehensive meaning so as to include public safety in its relation to the maintenance of public order and maintenance of "Public order" involves considerations of public safety. They are closely allied concepts. ILR (1951) Mys 455 : 1952 Cri L J 1526 : AIR 1952 Mys 85.

"Public order and public peace and tranquillity".

See Public Safety—Preventive Detention Act (1950), S. 3.

" 'Public order' and 'Public Safety' ".

See Constitution of India (1950), Art. 246 (3).

'Public place".

See also (1) Bengal Public Gambling Act (2 of 1867), S. 11.
(2) Municipalities—Calcutta Municipal Act (1951), S. 229.

— "Public place" what is stated — Open Chabutara abutting on public street having unrestricted access, is a public place. See Public Gambling Act (1867), S. 13. AIR 1955 N U C (All) 2288.

— "Public place" — Tests — Ladies' Second Class Waiting room on railway station is a public place — Bombay Prevention of Gambling Act (1887), S. 12.

The test of a place being a public place within the meaning of S. 12 is whether it is open to the members of the public or not, even though there may be certain conditions attached to the entry or the use thereof. What is required is that such a place must be open for entry by an indeterminate number of members of the public. AIR 1930 Bom 369, Rel. on. Thus Railway platforms are places to which any member of the public has and is permitted to have access. Waiting rooms at Railway stations are obviously for the facility of the members of the public who travel by Railway. Female passengers of all classes holding Railway tickets of certain classes are entitled to and are permitted to have access to the ladies' waiting rooms. Merely because one of the two rooms has been reserved for a section of the public, namely, females only, does not mean that it is a place to which the public have no access, or are not permitted to have access. AIR 1920 Lah 262; AIR 1936 Sind 90; AIR

1953 Sau 112 and AIR 1938 Bom 484 (FB), Disting. **(1961) 2 Guj L R 501 : 1961 (2) Cri L J 638 : AIR 1961 Guj 182 (183, 184) (Pr 1) (DB).**

"Public policy".
See Contract Act (1872), S. 23.

"Public Premises".
See Houses and Rents — Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), S. 2 (d).

"Public purpose".
See also (1) Bombay Land Requisition Act, Ss. 5, 6.
(2) Constitution of India, Art. 31 (2).
(3) Houses and Rents — U. P. Temporary Accommodation Requisition Act (1947), S. 3.
(4) Houses and Rents — W. B. Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (i).
(5) Land Acquisition Act (1894), Ss. 2 (f), 3 (f), 4 and 6.
(6) Motor Vehicles Act (1939), S. 42 (1).

— Land Acquisition Act (1894), S. 40 (1) (6)—"Public purpose" — Acquisition of land for construction of students' house as part of expansion programme of educational institutions for public education—Acquisition is for "public purpose" and is valid—AIR 1965 S C 646, Disting — AIR 1965 S C 995, Rel. on. **(1965) 69 Cal W N 1073.**

"Public safety".

● —"Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context. **1950 Mad W N 435 : 1950 Mad W N (Cri) 115 : 1950 Rai L W 389 : 1950 All L J 485 : 1950 S C J 418 : (1950) 2 Mad L J 390 : 63 Mad L W 929 : 51 Cri L J 1514 : 1950 S C R 594 : AIR 1950 S C 124 (127, 128) (Pt G) (Pr 8).**

"Public Servant".
See (1) Bombay Land Requisition Act (1948), S. 6 (4) (a).
(2) Criminal P. C. (1898), S. 197.
(3) Panchayats — Punjab Gram Panchayats Act (1953), S. 42.
(4) Penal Code (1860), S. 21.

"Publish".
See Penal Code (1860), S. 499.

"Publisher".
See Press and Registration of Books Act (1867), S. 3.

"Pucca adatiya", who is.
See Contract Act (1872), Ss. 80, 182, 211 and 219.

"Pucca structure".

A "Pucca structure" is defined in S. 2 (7) of W. B. Non-Agricultural Tenancy Act, 1949. It is a structure constructed mainly of brick, stone or concrete or any combination of these materials. See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 2 (7). **(1958) 62 Cal W N 505.**

"Pullimichavaram".

— "Pullimichavaram" is interest on loans advanced to the state or on loans which were recognised by the state as binding on it. **ILR (1952) T C 472.**

"Punishment".
See (1) Constitution of India, Arts. 310-311.
(2) Criminal P. C. (1898), S. 32.
(3) Industrial Disputes (Appellate Tribunal) Act (1950), S. 22 (1).
(4) Penal Code (1860), S. 53.
(5) Probation of Offenders Act (1958), S. 4.

"Purchase".

— Policy holders trust fund — Directors of Insurance Company authorised to invest trust fund in purchase of house property — "Purchase" held included construction of new building. See Insurance Act (1938), S. 27-A (n). **AIR 1956 Mad 316 (DB).**

"Purchaser's advance and deposit".

● — The mere use of the term "purchaser's advance" cannot alter the substance of the transaction any more than the mere use of the words "deposit". The fact that the parties choose to call it this or that is relevant but not conclusive and in order to determine the true nature of a transaction it is necessary to view it as a whole and to consider other factors. See Civil P. C. (1908), O. 6, R. 2. **AIR 1955 S C 590.**

"Purdanashin".
See (1) Contract Act (1872), Ss. 16 and 19A.
(2) Criminal P. C. (1898), Ss. 205, 503.
(3) Evidence Act (1872), Ss. 101-103 and 111.

"Purport".

● — Word "purport" has many shades of meaning. It means fictitious, what appears on the face of the instrument; the apparent and not legal import and therefore any act which purports to be done in exercise of a power is deemed to be done within that power, notwithstanding that the power is not exercisable. See Administration of Evacuee Property Act (1950) (As Amended by Act 1 of 1960), S. 8 (2-A). **AIR 1961 S C 365.**

"Purporting or professing to be done".

— The expression "purporting or professing to be done" in S. 142, Calcutta Port Act, 1890, cannot be interpreted to exclude acts which are either improper or even mala fide. See Calcutta Port Act, S. 142. **AIR 1951 Cal 460.**

"Purporting to act".

— Calcutta Port Act (3 of 1890), Ss. 142, 3, 4, 112 (1) and 135 — Suit for compensation against commissioners for short delivery — Applicability and scope of S. 142 — Expression "any person" in S. 142 — Commissioners for port not excluded — Nature of duty and liability of Commissioners — Expression "purporting to act" — Meaning of explained. See Calcutta Port Act (3 of 1890), S. 142. **1964 Cal L J 56 : 68 Cal W N 814.**

"Purpose".

— The words "purpose" and "objects" have been treated in the Societies Registration Act, 1860, as synonymous words. See Societies Registration Act (1860), S. 12. **AIR 1959 All 598.**

[Reversed on facts in AIR 1962 All 610].

"Purpose and object".

— Distinction between word "purpose" in S. 12 (1) and the word "object" in S. 13, Companies Act, 1956, pointed out. See Companies Act (1956), S. 12 (1). **AIR 1957 Cal 234.**

"Purpose of justice".

— The words "purpose of justice" in Cl. 13, Letters Patent (Cal) are advisedly general and wide so as not to fetter the discretion of the High Court in any way. To attempt to define these words will be to defeat the amplitude of the provision. See Letters Patent (Cal) Cl. 13. **AIR 1951 Cal 129.**

"Putravakasam" right.

— "Putravakasam" property etymoligically means property given to a son but it is not disputed that it includes also property given to children, whether male or female. The words "putravakasam right" is consistent with gift made by father to his children or to all the members of the tavazhi. **AIR 1954 Mad 987 (991) (Pt D) (Pr 12) (DB).**

"Quasi judicial."
See (1) Civil P. C. (1908), S. 24.
(2) Constitution of India, Art. 226.

"Question."
—In S. 16, U. P. (Temp.) Control of Rent and Eviction Act, the word 'question' means called in question as regards its reasonableness or practicability and could not mean "challenging its legality". See Houses and Rents – U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 16. A I R 1959 All 675 (DB).

"Question of private importance."
See Constitution of India, Art. 133 (1) (c).

"Quorum."
—Meaning stated—"Quorum" fixed by Rules or Bye-laws — Stipulated quorum not present — Anything done by committee is not valid — Same applies to adjourned meeting unless there is provision to contrary. A I R 1955 N U C (Raj) 5743 (DB).

"Raised."
—Word "raised" in S. 11A (2), Orissa Tenants Relief Act has to be read in the light of its context and not independent of it. It means "raised before the collector" and not before any authority or tribunal other than the collector. See Tenancy Laws — Orissa Tenants Relief Act (5 of 1955) (as Amended by Orissa Act 29 of 1962), S. 11-A (2). 31 Cut L T 996 : ILR (1965) Cut 219 : AIR 1966 Orissa 1 (DB).

"Rashly."
See Penal Code (1860), S. 336.

"Rate."
—Mysore Village Panchayats and Local Boards Act (10 of 1959), S. 73 (4) — Interpretation — Levy and rate—Meaning of explained. See Panchayats—Mysore Village Panchayats and Local Boards Act (10 of 1959), S. 73 (4). (1962) 40 Mys L J 863 (DB).

"Raw materials."
—The expression "raw materials" in R. 25 (b) of the Rules framed under S. 85, C. P. and Berar Municipalities Act, ought to be construed as used in the sense of those basic materials which are required for the production of the finished articles which the manufacturer, manufactures within municipal limits and not in the sense of the manufactured material in their raw state. See Municipalities—C. P. and Berar Municipalities Act (2 of 1922), S. 85. 1957 M P L J 278 (Nag).

"Ready-made clothing."
—The expression "ready-made clothing" means clothing which is ready for immediate use and which is meant for such use. See Cotton Cloth and Yarn Control Order (1945), Cl. 3 (a). 1953 Cri L J 612 : AIR 1953 All 245 (DB).

"Realise."
—Word "realise" in S. 28, Industrial Finance Corporation Act, 1948, has been used to enable the corporation to recover possession of any portion of its debtor's property which may be in the custody of a third person. The word is not intended to grant the right of making a lease. See Industrial Finance Corporation Act (1948), S. 28. A I R 1956 All 14.

"Reasonable."
See Income-tax Act (1922), S. 6.

"Reasonable and probable cause."
See Tort—Malicious Prosecution.

"Reasonable opportunity."
See Constitution of India, Arts. 226 and 311 (2),

"Reasonable opportunity to show cause."
See Constitution of India, Arts. 226 and 311 (2).

"Reasonable time."
—Words at all reasonable times—Words indicate not continuous process throughout entire day but only at certain times which, in circumstances of particular case, are reasonable. See Sales Tax—Andhra Pradesh General Sales Tax Act (6 of 1957), S. 28 (2). (1962) 1 Andh L T 499 : ILR (1962) Andh Pra 1036 : (1962) 13 S T C 860 : 1962 Andh W R 93 (DB).

"Reason to believe"
See Penal Code (1860), S. 489B.

"Rebate"
See Income-Tax Act (1922), S. 10 (4) (b).
—"Rebate" means relinquishing part of the liability by a person entitled to with a view to persuade a person liable to follow a paticular conduct which such person was not otherwise compelled. See Sales Tax—Travancore-Cochin General Sales Tax Act (11 of 1125), S. 8. 1960 Ker L T 749.

"Rebuilding."
—Meaning of "rebuilding" and 'repairs' explained. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (1950), S. 12 (1) (h). A I R 1957 Cal 227 (DB).

"Receipt."
—Receipt may be actual or constructive. One of the forms of constructive receipt is adjustment of cross-claims. See Bengal Agricultural Income-tax Act (4 of 1944), S. 4. AIR 1958 Cal 579 (DB).

"Receipt of income."
—In S. 7, Bengal Agricultural Income-tax Act, the words "receipt of income" are not used in ordinary sense. See Bengal Agricultural Income-tax Act (4 of 1944), S. 7. A I R 1958 Cal 579 (DB).

"Received."
—Technically and from the point of view of construction the word "received" in O. 21, R. 89 (1) (b) Civil P. C., is not limited to any qualification such as "received through the Court". See Civil P. C. (1908), O. 21, R. 89. A I R 1956 Cal 462.

"Recitals."
—'Recitals' in a deed—The expression 'recitals' in a document means 'statements in a deed, agreement or other formal instrument, introduced to explain or lead upto the operative part of the instrument.' Generally recitals are divided into (1) narrative recitals which set forth the facts on which the instrument is based, and (2) introductory recitals which explain the motive for the operative part. Where the recitals are clear but the operative part is ambiguous, the recitals govern the construction. Normally a recital is evidence as against the parties to the instrument and those claiming under them. In an action on the instrument itself the recitals operate as an estoppel, though that would not be so on a collateral matter. Ram Charan Das v. Girja Nandini Devi, (1965) 3 S C R 841 : (1965) 2 S C W R 837 : (1966) 1 S C J 61 : AIR S C 323 (327, 328) (Pt C) (Pr 9).

"Reconstituted."
—The words "the Gram Panchayat stands reconstituted" in S. 10 (8) of Orissa Gram Panchayats Act, 1948, explained. See Panchayats — Orissa Gram Panchayats Act (15 of 1948), S. 10 (8). I L R (1964) Cut 417.

"Reconstruction."
—Every "reconstruction" is construction. Reconstructed building will fall within ambit of the notification dealing with building constructed during specified years and will give exemption from operation of East Punjab Urban Rent Restriction Act, 1949. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 3. AIR 1962 Punj 204 (DB).

"Record."

—In S. 40 (4) of the U. P. Municipalities Act, the words "and when such action is taken the reasons therefor shall be placed on record" contemplate the existence of a written order and that too a self contained one giving reasons in support of the order. The word 'record' is also used in the sense of order or judgment. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 40 (4). **1961 All L J 467.**

—Calling for record — "Record" means not only the impugned orders and judgments but also all other documents which are relevant for purposes of doing jusiice. See Houses and Rents — U. P Control of Rent and Eviction Act (3 of 1947), S. 7-F. **1959 All L J 263.**

—All proceedings which constitute evidence on which the assessment order is passed must be regarded as 'record' for purposes of S. 35, Income-tax Act, 1922. See Income-tax Act (1922), S. 35. **AIR 1957 Bom 134 (DB).**

"Record of any proceeding."

See Criminal P. C. (1898), S. 435.

"Record of suit."

—Words "record of the suit" in R. 10 of Patna High Court General Rules and Circular Orders (Civil) (1954) contemplate and include three classes of documents namely (i) which have been exhibited as evidence in the case, (ii) which have been filed along with the plaint and (iii) which have been produced under O. 13 of the Civil P. C. See Civil P. C. (1908), O. 13, R. 1. **AIR 1961 Pat 242.**

"Recover."

—Word "recover" in S. 54 (2) does not include equitable set off. See Sale of Goods Act (1930), S. 54 (2). **1964 All W R (HC) 539.**

"Recur" "stay."

—'To recur' simply means 'to occur again' or to repeat; the word connotes distinct and different repetitions of the same act. It is impossible to understand how a man who has overstayed repeats himself every day or every moment in that act of overstay. Overstaying is a continuous idea because stay itself is a continuous idea. In the context 'stay' means 'dwell' which again is a continuous act and not a repetition of several acts. **36 Mys L J 936 : 1959 Cri L J 622 : AIR 1959 Mys 136 (138) (Pt B) (Pr 8).**

"Redelimit."

See under Words and Phrases — "Delimit."

"Redemption."

—"Redemption" is an act of redeeming which in its ordinary meaning is equal to bringing off a charge or obligation by payment. See Income-tax Act (1922), S. 2 (1) (a). **AIR 1961 SC 487.**

"Reduction."

See C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 31 (1). **AIR 1964 S C 1690.**

"Reduction in rank."

See (1) Central Civil Services (Temporary Service) Rules (1949), R. 6 (ii).

(2) Constitution of India, Art. 311 (2).

"Re-erection."

—The word "re-erection" in S. 13, East Punjab Urban Rent Restriction Act, 1949, was not intended to apply to such a contingency as opening of three doors in a wall, within the meaning of S. 13. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13. **AIR 1955 NUC (Punj) 4015.**

'Refreshment."

—Word "refreshment" in S. 35 of the Calcutta Police Act does not have the limitation that the refreshment is only spirituous refreshments which only cheer but do not invigorate. The word would include ordinary refreshment which has nothing to do with alcohol or liquor spirit or any drug which intoxicates. See Calcutta Police Act (4 of 1866), S. 35. **1965 (1) Cri L J 679 : AIR 1965 Cal 312 (DB).**

"Registered dealer."

—Expression "registered deeler" in the Orissa Sales Tax Act, 1947, is defined in S. (f) of the Act, and means a dealer registered under this Act. The word ordinarily means a dealer validly registered under the Act. See Sales Tax — Orissa Sales Tax Act (14 of 1947), S. 2 (f). **AIR 1965 Orissa 44 (DB).**

"Registered document."

—"Registered document" means document registered under the law prevailing in India. See Limitation Act (1908), Art. 116. **AIR 1964 Mad 527 (DB).**

"Regularity."

—'Legality' and "regularity" are well understood terms and well recognised grounds of judicial interference on an appeal or revision. An order is 'irregular' if the procedure followed is in violation of the principles of natural justice and fair play. See Constitution of India, Art. 226. **AIR 1957 Andh Pra 55 (DB).**

"Regulate."

—The expression "regulate" means, according to dictionary "to control by rule,' 'subject to restriction,' 'moderate,' "adapt to requirement." The word 'regulating' occurring in S. 68 (2) (o), Motor Vehicles Act, confers power on State to frame a rule directing the painting of transport vehicles with a particular colour. See Motor Vehicles Act (1939), S. 68 (2) (o). **ILR (1962) 2 Ker 540.**

—It is not correct to contend that S. 48 (c), Motor Vehicles Act relates only to original timings and not to any revision or alteration thereof. The use of the word "regulate" in S. 48 (c) negatives such a contention. See Motor Vehicles Act (1939), S. 48 (c). **AIR 1955 NUC (Trav-Co) 2566.**

"Regularly performed".

—In illustration (e) appended to S. 114, Evidence Act, the words "regularly performed" mean done with due regard to form and procedure. See Prevention of Corruption Act (1947), S. 3. **1955 Cri L J 609 : AIR 1955 Punj 65 (DB).**

"Regulating slaughter house".

—Words "regulating slaughter house" in Cl. (k) of S. 174 (2), U. P. District Boards Act do not mean to include prohibition of slaughter — See U. P. District Boards Act (10 of 1922), S. 174 (2) (k). **1956 Cri L J 661 : AIR 1956 All 335.**

"Regulation".

—Whether or not "regulation" of an activity includes its total prohibition depends upon the nature of the activity and the facts of the case. In the context of S. 5, Opium Act, 1878, the word includes restriction and also prohibition of the opium trade. See Punjab Opium (Restriction on Oral Comsumption) Rules (1957). **AIR 1958 Punj 400.**

"Rehearing".

—It is new consideration of case on pleadings and depositions already in case. **AIR 1955 NUC (Cal) 3323.**

"Re-instatement".

See Constitution of India, Art. 311.

"Relating to".

—The phrases "relating to" or "arising out of" are phrases of comprehensiveness — Suits which either directly or indirectly relate to or arise out of mortgages would come within mischief of Item 7 of First Schedule of the City Civil Courts Act (West Bengal

Act 21 of 1953). See W. B City Civil Courts Act (21 of 1953), S. 5 (4). (1962) 66 Cal W N 767.

—Expression "suits or proceedings relating to or arising out of mortgages of . . . , . , immovable property" in Item 7 of 1st Schedule of W. B. City Civil Courts Act—Words "relating to" and "arising out of" are phrases of comprehensiveness and suits which directly or indirectly relate to or arise out of mortgages fall within the mischief of Item 7—Similar phrases from different enactments considered. See West Bengal City Civil Courts Act (21 of 1953), S. 5 34). (1962) 66 Cal W N 767.

"Relating to or connected with election".

—Words "relating to or connected with the election" in S. 5, United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act are of wider import and the word 'election' covers the entire process. See United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act (1959), S. 5. AIR 1965 Assam 83 (DB).

"Relating to winding up".

See Banking Companies Act (1949, as amended in 1953), S. 45A.

"Release".

See T. P. Act (1882), S. 5.

"Religion".

See Constitution of India, Arts. 25, 26 (b).

—The term "religion" whatever its best definition, clearly refers to certain characteristic types of data (beliefs, practices, feelings, moods, attitudes, etc). It primarily involves some immediate consciousness of transcendent realities of supreme personal worth vitally influencing life and thought, exressing themselves in forms which are conditioned by the entire stage of development reached by an individval and his environments and tending to become more explicit and static in mythologies, theologies, philosopies and scientific doctrines. See Hindu Law—Religious Endowments—Temple. AIR 1961 Mad 265 (DB).

"Religious charity".

—Feeding charity conducted during ten days of Rathothsava in a temple during particular month—Only Brahmins fed-charity having no connection with temple management nor with deity established therein —:Feeding done in separate premises — Held that charity was public charity that it was solely a charitable endowment, that there was no association between the charity and the festival and that therefore the charity was not religious charity. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 6 (13). AIR 1961 Mad 258 (DB).

"Religious feeling".

—Feeling of Hindus against cow-slaughter is "Religious feeling" and not feeling of superstition. See Penal Code (1860), S. 298. 1965 (2) Cri L J 134 : AIR 1965 Tripura 22.

"Remaining witnesses".

See Criminal P. C. (1898), S. 256.

"Remand".

——"Remand" and "dismissed"—Meaning.

—'Remand' implies a termination of the proceedings, so far as the appellate authority is concerned. The term 'dismissed' implies a final disposal by the tribunal, rejecting the case of the suitor. (1960) 39 ITR 159 : AIR 1960 Mad 406 (409, 410) (Pt D) (Pr 13) (DB).

"Remitted".

—When the sentence is remitted, the order assumes correctness of the conviction and only reduces the punishment in part or whole. See Municipalies — U. P. Municipalities Act (2 of 1916), S. 13D (j). ILR (1957) 2 All 235.

"Removal".

See also (1) Constitution of India, Art. 311.
(2) Penal Code (1860), S. 424.

"Removal and dismissal from service".

—"Dismissal" includes removal. Dismissal proper ordinarily disqualifies the servant from future employment but dismissal in shape of removal does not do so. See C P. and Berar Home Guards Act (15 of 1947), AIR 1961 Madh Pra 261 (DB).

"Removal from service".

See Constitution of India, Arts. 226 and 311.

"Remove".

See (1) Public Servants (Inquiries) Act (1850), S. 2.
(2) Railway Establishment Code, Vol. 1, para. 1708, Proviso.

——"Remove" and 'vacate his office'.

In the absence of any definition of the word "remove", the ordinary meaning of that word has to be taken in interpreting S. 197, Criminal P. C. To "remove" means "to take off or away from the place occupied." Taking away from the office of the President or Vice-President may happen by act of removal by the Government or by the act of the President or the Vice-President vacating the office on an appropriate resolution being passed by the Municipal Council. See Criminal P. C. (1898), S. 197. 1965 (2) Cri L J 379 : AIR 1965 Mys 253.

"Remuneration".

●—Word "renumeration" in Art. 314 of the Constitution is not used in any limited sense as mere salary. If a person was in receipt of a payment, or in receipt of a percentage, or any kind of payment, the amount he would receive annually, in respect of this, would be remuneration. Statutory right of passage benefit is in the nature of allowance. Under Indian Independence Act, it is made a part of remuneration earned by members of the Indian Civil Service. See Constitution of India, Art. 314. AIR 1962 S C 505.

●——Bonus in industrial sense is an addition to the wage and is a remuneration. See Banking Companies Act (1949), S. 10 (1) (b) (ii), (Prior to its Amendment in 1956). AIR 1960 S C 12.

"Rendered continuous good service for not less than fifteen years".

—Expression "rendered continuous good service for not less than 15 years"—Meaning of, explained. See Municipalities—Calcutta Municipal Act (1923), S. 56 (d). ILR (1960) 1 Cal 833.

"Rendered illegal".

●—Words "rendered illegal" do not mean "held illegal —Employee participating in illegal strike—Employer is not prohibited from taking action against him before it is declared illegal. See C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 42 (1) (g). AIR 1964 S C 1687.

"Renewal".

—Despite the use of the expression "renewal" in the Rules e. g. R. 7:(1) and R. 11, Madras Cinematograph Rules, 1933, the issue of a certificate in form D would really be a fresh grant each time it is made. See Cinematograph Act (1918), S. 5 (3). 1957 Cri L J 737 : A I R 1957 Mad 684.

"Renewal of permit".

See Motor Vehicles Act (1939), S. 58 (2).

"Rent".

See also (1) Houses and Rents— M. P. Accommodation Control Act (23 of 1955), S. 4 (a).
(2) Houses & Rents—West Bengal Premises

Rent Control (Temporary Provisions) Act (17 of 1950), S. 2 (8)—S. 9.
(3) Municipalities — Bombay Provincial Municipal Corporations Act (59 of 1949), S. 139.
(4) Orissa Agricultural Income-Tax Act (24 of 1947, S. 2 (a) (1).
(5) Punjab Urban Immovable Property Tax Act (17 of 1940), S 4 (1) (g).
(6) Tenancy Laws — Calcutta Thika Tenancy Act (W. B. Act 2 of 1949), S. 6.
(7) Tenancy Laws—Madras Estates (Abolition and Conversion into Roytwari) Act (26 of 1948), S. 23 (a) (ii).

—Acommodation provided rent free to workmen—Collection made from workmen for conservancy and repairs cannot be termed rent. See Punjab Urban Immovable Property Tax Act (17 of 1940) S. 4 (1) (j). ILR (1957) Punj 1840.

—Inclusion of sweeper's charge. See Houses and Rents—West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950) s. 2 (8). **58 Cal W N 607 : AIR 1955 NUC (Cal) 2339 (DB).**

"Rent due".

—Words "rent due" mean rent that shall remain unpaid. See Debt Laws — Madras Agriculturists Relief Act, (4 of 1938), S. 9-A (a) (i) **A I R 1963 Mad 249 (FB).**

"Rent then due".

—Word "due" is used in two different senses. In some statutes it has been held so mean all moneys owed or payable even though their recovery may be barred by law of limitation. In other statutes, a more restricted meaning has been given to this word and that is money legally recoverable or those that can be recovered by legal action. The words "rent then due" in S. 12 (3) (b), Bombay R. H. L. and H. R. C Act, 1947 should be construed to mean all rents in arrears or outstanding, including rent which cannot be recovered through process of the Court owing to the bar of limitation. See Houses and Rents — Bombay Rents Hotel and Lodging House Rates Control Act (57 of 1947), S. 12 (3) (b). **ILR 1956 Bom 365.**

"Repairs".

See also (1) Income-tax Act (1922), S. 10 (2) (v).
(2) T. P. Act (1882), Ss. 72 (b), 108 (l).

—Distinction between "repair' and "reconstruction" pointed out. See Houses and Rents—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 11 (2). **AIR 1958 Mys 77.**

"Repair and and re-erection".

—The expression 'repair' signifies restoration to the original condition. Anything which substantially improves or materially alters a thing from its original condition cannot be said to be merely a repair of that thing; it will be bringing into existence an improved thing, an altered thing, a new thing for all intents and purposes. But it cannot be forgotten that 'repair' involves an element of renewal; yet renewal of the whole or substantially the whole and not a lesser part of the whole cannot be said to be 'repair'.

Where the entire shop building except the verandah in question was materially altered and improved in structure and quality and the verandah was only a subsidiary part of the building, when the rest of the building has been re-erected in the sense of its having been substantially improved and materially altered from its original condition, it cannot be said that the verandah alone was merely repaired. The building as a whole has to be looked at as a single entity and not cut it up into minor parts and each little subsidiary part regarded as an integral whole by itself. (1911) 1 K. B. 905, Foll.; A I R 1933 P C 222, Relied on. **1962 Kash L J 198 : AIR 1963 J & K 18 (18, 19) (Prs 2, 3, 4).**

"Representative".

See Civil P. C. 1908), Ss. 11, 47.

"Repugnant".

See Constitution of India, Art. 254.

—"Repugnant to" really means "inconsistent with" and when two enactments cannot stand together at the same time and one law is inconsistent with another law when the command or power or provision in the one law conflicted directly with the command, or power or provision in the other. See Debt Laws—(Travancore-Cochin) Holding (Stay of Execution Proceedings) Act (8 of 1950), S. 1. **AIR 1953 Trav-Co 327 (DB).**

"Reputed thief".

See Bombay Police Act (22 of 1951), S. 122 (d).

"Required bona fide",

See (1) Houses & Rents—Andhra-Pradesh Buildings (Lease, Rent and Eviction) Control Act (15 of 1960), S. 10 (3).
(2) Houses & Rents—East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (a).
(3) Houses & Rents—W B. Premises Rent Control (Temporary Provisions) Act (1948), S. 11 (1) (f).
(4) Tenancy Laws—Calcutta Thika Tenancy Act (1949), S. 3 (iv).

"Required to be done".

—Word "required" in expression "required to be done" in S. 80, Trade Marks Act, means needed or found needful. See Trade Marks Act (1940, S. 80. **AIR 1959 Bom 21.**

"Requirements of discipline".

—"Reqirements of discipline" means maintenance of discipline. See Punjab Agricultural University Act (32 of 1961), S. 6 (13). **(1965) 67 Punj L R 830.**

"Requisite."

See Limitation Act (1963), S. 12, Explanation.

"Requisition"

See Income-tax Act (1922), S. 3.

—Per Desai J. — Word "requisition" in S. 54 (9), Cr. P. C. is of wide import, but it is doubtful if it includes a verbal order. See Cr. P. Code (1898), S. 54 (9). **1955 Cri L J 1120 : AIR 1955 All 438 (DB).**

—The term "requisition" is used in the sense of taking possession of property for the purpose of the State or for such purposes as may be specified in the statute authorizing a public servant to take possession of private property for a specified purpose for a limited period in contradistinction to acquisition of property by which title to the property gets transferred from the individual to the State or to public body for whose benefit the property is acquired. In 'requisition' the property dealt with is not acquired by the State but is taken out of the control of the owner for the time being for certain specified purposes. Even for this limited purpose, however the owner becomes entitled to compensation because 'requisition' of the property amounts at least to a temporary deprivation of the property. **ILR (1955) Nag 364: AIR 1955 Nag 153 (157) (Pt B) (Pr 9) (DB).**

"Requisitioning" and "Acquisition."

—"Requisitioning and Acquisition" are different concepts in law, requisitioning implying only a temporary deprivation of the owner, of the use and possession of a property, acquisition implying a transference of the property, or all the rights thereto. In requisitioning the title remains with the owner, but he is excluded by State from the right to possession or enjoyment of the property, but the acquisition is the acquiring of the entire title of the

expropriated owner whatever the nature or extent of that title may be. 1960 Ker L J 224 : (1960) 1 Ker L R 364 : ILR (1960) Ker 464 : 1960 Ker L T 181.

"Re-sale."
See Civil P. C. (1908), O. 21, R. 71.

"Rescue."
—"Rescue" within meaning of S. 225, I. P. C. means forcibly liberating or recovering prisoner from custody. There must be intention and use of violence. See Penal Code (1860), S. 225. AIR 1955 N U C (Pepsu) 2508.

"Reservation."
—"Reservation" can be small portion of the main — Seven out of ten appointments going to candidates belonging to different communities coming under the heading 'backward classes' — Appointments are not invalid. See Constitution of India, Art. 16 (4). AIR 1956 Mys 20 (DB).

"Reserves."
See Business Profits Tax Act (1947), Sch. 2, R. 2 (1).

"Reside."
See (1) Criminal P. C. (1898), S. 488.
(2) Divorce Act (1869), S 3 (3).
(3) Hindu Marriage Act (1955), S. 19.
(4) Houses and Rents — Delhi and Ajmer Rent Control Act (1952), S. 13 (1) (d).

"Residence."
See (1) Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 2 (6)
(2) Income-tax Act (1922), S. 4-A.
(3) Hindu Marriage Act (1955), S. 19.
(4) Mysore House Rent and Accommodation Control Order (1941), Cls. 6 (c) and 9 (3).

"Resident."
See (1) Part B States (Taxation Concessions) Order (1950), Para. 6, Proviso 2 (a).
(2) Tenancy Laws—Chota Nagpur Tenancy Act (6 of 1908), Ss. 46 (3), (4).

"Residential."
The word "residential" and other cognate expressions such as, 'reside', 'residing', 'resident', 'residence', 'residences' and 'occupy' occurring in several statutes have variously, shaded but elastic meaning. A person is ordinarily said to "reside" where he lives with his family. The word "residence" connotes two elements (1) actual or physical habitation and (2) the intention to remain there permanently, that is, for an unlimited time. In its ordinary sense the word "reside" carries with it the idea of permanence, that is for any length of time, as well as continuity. The word 'residence' denotes a dwelling house where a person lives in a settled abode. In other sense, residential house is a dwelling house as distinct from a house of business, warehouse, office, shop etc. Residential house is a building used as a place of abode, in which, people reside or dwell in contradistinction to one which is used for commercial or business purposes. ILR (1957) Punj 1558 : 59 Punj L R 325 : A I R 1957 Punj 293 (296, 297) (Pt B) (Prs 17, 18).

"Residential establishment."
See Calcutta Industrial Area Rationing Regulation, 1943, Cl. 10 (2).

"Residential purpose."
See also (1) Delhi Ajmer-Merwara Rent Control Act (1947), S. 9 (1) (e).
(2) Houses and Rents — Delhi and Ajmer Rent Control Act (38 of 1952), S. 13 (1) (e).

—Where a vacant piece of land is being taken up by a person for residential purpose, the only purpose that can be conceived in the circumstances is that the lessee is to put up a building for his residence on that vacant land. See Rules for Grant of Lands in Jammu and Kashmir Provinces for Building purposes. AIR 1961 J & K 66.

"Resides."
See (1) C. P. Code, O. 5, R. 4.
(2) Hindu Marriage Act (1955), S. 19.

"Residing."
—Per Chakravarti J. — Word "residing" in cl. 10 (2), Calcutta Industrial Area Rationing Regulations (1943) cannot possibly mean mere residence but means residence together with taking of meals. See Calcutta Industrial Area Rationing Regulations (1943), S. 10 (2). 1952 Cri L J 1257 : AIR 1952 Cal 565 (DB).

"Residing in commensality."
—For the purposes of sub-s. (3) of S. 13, Delhi and Ajmer Rent Control Act, 1952, a person is said to be "residing in commensality" with the tenant if he is living jointly with him having a common mess without paying for his food, and without paying any rent to him See Houses and Rents — Delhi and Ajmer Rent Control Act, 1952, S. 13 (3). A I R 1962 Punj 474.

"Residing together."
See Divorce Act (1869), S. 3 (3).

"Respectable."
See Criminal P. C. (1898), S. 103.

"Respondent."
See Hindu Marriage Act (1955), Ss. 24, 25.

"Restricted estate."
See Hindu Succession Act (1956), S. 14 (1).

"Restrictions."
See Constitution of India, Arts. 19 (5) and 19 (6).

"Retrospective operation."
See Interpretation of Statutes.

"Resumption."
●—Word connotes taking back what is given—What is resumed is not the property of persons from whom it is taken back by the rightful owner. Raj Rajendra Malojirao Shitole v. State of M. P. A I R 1953 Madh Bha 97 (103, 104, 121) (Pt E) (Prs 16, 75) (FB).

●—Resumption and acquisition — "Resumption" implies taking back of the land by grantor when such taking back is due to breach of some condition of the grant—There is no question of payment of compensation — But when resumption is not due to breach of any condition, it is acquisition within meaning of Art. 31-A of the Constitution. See Constitution of India, Arts. 31, 31-A and 31-B. A I R 1954 Raj 291 (FB).

"Retain."
●—One "retains" only what one already possesses and the word "retain" is wholly inappropriate for the purpose of conferring a fresh right. See Police Act (1861), S. 2. A I R 1965 All 142 (FB).

[Overruled on another point in A I R 1967 S C 1260.]

—Word "retain" in S. 183 (1) (b), U. P. Tenancy Act, carries with it the connotation that the landholder wrongfully supports the right of the person who is in wrongful possession and denies the right of the person who is rightfully entitled to possession and allows the person wrongfully in possession to continue in possession on the basis that he has an established right to continue in possession as against the claimant who has not. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 183 (1) (b). A I R 1958 All 500.

—Dictionary meaning of the word "retain" is to keep possession of or to keep in possession. See Tenancy

Laws — West Bengal Estates Acquisition Act (1954), S. 6. (1956) 60 Cal W N 979.

"Retained."

—Government order stating that "following minimum staff is retained for purposes of civil supplies work . . ." Use of the word "retained" shows that the staff was retained as permanent if it was permanent, and it was retained temporarily, if it was temporary. See Constitution of India, Art. 311. (1964) Raj L W 353.

"Retention."

—"Retention" — "Re-employment" — Retention in service, which means continued employment in the service in which an employee has been serving, is quite a different thing from re-employment of an employee after he has retired. Consequently, a decision not to re-employ is very different from a decision not to retain. 62 Cal W N 765 : A I R 1958 Cal 657 (658) (Pt A) (Pr 5) (DB).

—The word "retention" in S. 6, Bihar Land Reforms Act has been used with a purpose. It contemplates a continuity of the right in the outgoing proprietor or in other words, the right of possession over the lands specified in the section which were in the proprietor from before are allowed to continue as such even after the change was provided therein, namely, the vesting of the estate. See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 6. A I R 1958 Pat 589 (DB).

[Overruled on another point in A I R 1983 S C 454.]

"Retrenched" and "retrenchment."

See Industrial Disputes Act (1947), S. 25-F.

"Retrenchment."

See Industrial Disputes Act (1947), Ss. 2 (oo), 25-F, 25-FF and 25-J.

"Return."

See Sales Tax—M. P. General Sales Tax Act (2 of 1959), S. 22 (4) (a).

"Revaluation.":

See Municipalities—Calcutta Municipal Act (33 of 1951), S. 172 (2).

"Revenue."

See (1) Constitution of India, Art. 266.
(2) Civil P. C. (1908), O. 21, R. 66 (2) (b).

"Revenue Case."

See Madhya Pradesh Land Revenue Code (2 of 1955), S. 41.

"Revenue Court."

See (1) Civil P. C. (1908), S. 9.
(2) Criminal P. C. (1898), S. 195 (2).

"Revenue Officer."

See Representation of the People Act (1951), S. 123 (7) (f).

—The Chief Commissioner or the Administrator as he is called in the Manipur Land Revenue and Land Reforms Act, 1960, has the right of review under S. 96 of the Act. Under the Act he is the highest Revenue Authority. See Manipur Land Revenue and Land Reforms Act (33 of 1960), S. 96. A I R 1965 Manipur 3.

"Review."

—The term review means a judicial re-examination of the case in certain specified and prescribed circumstances. This is the ordinary legal significance of the term. I L R (1957) Punj 1629 : A I R 1958 Punj 63 (67, 68) (Pt C) (Pr 14) (DB).

"Revised valuation."

See Municipalities—Calcutta Municipal Act (33 of 1951), S. 172 (2).

"Revision."

See (1) Civil P. C. (1908), S. 115.
(2) Industrial Disputes Act (14 of 1947), S. 15.
(3) Criminal P. C. (1898), Ss. 435, 439.

"Right."

—A right is an interest which is recognised and protected by law. Immunity is one aspect of right and entitles the possessor to see that none interferes with it. It also furnishes him with a complete answer to any action intended to interfere, with that right. See Civil P. C. (Amendment) Act (1951), S. 20. A I R 1958 All 775 (DB).

"Rightfully paid."

—According to dictionary meaning of the word "rightful", a payment in order to be rightful payment must be one in conformity with what is right or just or fair or equitable. See Contract Act (1872), S. 145. A I R 1959 Madh Pra 297.

"Right to future maintenance."

See (1) Civil P. C. (1908), S. 60 (1) (n).
(2) T. P. Act (1882), S. 6 (dd).

"Right to practice."

See Advocates Act (1961), S. 58 (3).

"Right to sue."

See Limitation Act (1908), Art. 120.

"Riot."

—Meaning of, and distinction between "riot" and a "civil commotion" indicated. A I R 1965 Madh Pra 32 (33, 34) (Prs 7, 8) (DB).

"Rioting."

See Penal Code (1860), S. 146.

"Riparian."

—Word "riparian" is relative to the bank of a natural stream. It means "of, on, river bank". To be a riparian owner, one has to own some land abutting on the natural stream concerned. See Riprian rights. 1962 Ker L J 45.

"Riparian rights" and "Riparian land."

—Riparian land may be described as land which is on the bank of a stream and which extends from that bank to a reasonable depth in land. A I R 1919 Mad 1152 : 34 Mad L J 223, Foll. 1953 B L J R 613: I L R 32 Pat 937 : A I R 1954 Pat 320 (324) (Pt D) (Pr 26) (DB).

"Room in a hotel."

—Room in a hotel must be a part of the hotel and its user must be connected with the general purpose of the hotel of which it is a part — Space in a hotel let out for carrying on business as hairdresser—Barber's shop, one of the amenities provided to lodgers—Room is "a room in hotel." See Houses and Rents — Delhi, Ajmer, Merwara Rent Control Act (9 of 1947), S. 2(b). AIR 1959 S C 1262.

'Royalty.'

—Important features of royalty indicated — Payment is in proportion to quantity of mineral removed—Basis for payment is agreement—Levy, of surcharge from outstill contractors held not to be 'royalty' but tax or cess requiring legislative sanction. See Madhya Pradesh Land Revenue Code, 1954 (2 of 1955), S 143. AIR 1960 Madh Pra 129 (DB).

—"Royalty" on minerals under Bihar Minor Mineral Concession Rules. 1964, is used in secondary sense to signify that part of the reddendum which is variable and depends upon the quantity of minerals taken out. Royalty is a payment made to the landowner by the lessee of the mine in return of the privilege of working it. It differs from rent. It is a kind of levy in proportion to the minerals, worked. It is an impost by the Government though its origin was riveted in the concept of royal prerogative. Royalty under the rules is a compulsory exaction and recoverable in the event of non-payment as arrear of land revenue. See Consti-

tution of India, Art. 366 (29). AIR 1965 Pat 491 (DB).

—"Royalty" is a payment made to an owner for the rights to exploit his property. It is, therefore, indisputable that it would be open to the State as being the owner of the minerals to charge a royalty whether directly by itself or through a contractor. Further, a royalty may be charged as so much per weight or on the value of the produce. See Constitution of India, Sch. 7, List 2, Item 23. AIR 1958 Raj 140 (DB).

—"Royalty" is, inter alia, a charge by the owner of minerals from those to whom he gives the concession to remove them and the charge is on production, the rate being fixed according to weight. Fixation of different rates of royalty depending upon where the mineral extracted is going to be consumed is against the very principle of royalty. See Constitution of India, Art. 14. AIR 1956 Raj 161 (DB).

"Ruinous."

—"Ruinous" or 'dangerous' means that the house may come down any time. It does not mean it must come down or that the fact that it has not come down for some years makes it less dangerous. See Municipalities — Indore Municipal Act, S. 71. 1960 M P L J 697.

"Rule."

—A "rule" after all, is that which prescribes or lays down a general standard or guide to conduct, and when such a general established standard or guide to conduct is made effective from a certain date and has behind it the sanction of a statutory provision, then the general principle of conduct so laid down is a statutory rule, having the force of law from the date fixed for the commencement of its operation. See Constitution of India, Art. 309. AIR 1964 Madh Pra 248 (DB).

[Reversed on facts in AIR 1987 S C 1234].

"Rule of law."

—The term Rule of law in brief connotes the undisputed supremacy of law and envisages a state of things in which every one respects the law and where law has to be followed by every one collectively and individually, by the citizens as well as the State. 1956 Madh B L J 642 : Madh B L R 1956 Civ 413 : ILR (1956) M B 330 : AIR 1956 Madh B 163 (166) (Pt B) (Prs 10, 11) (DB).

"Rules of procedure."

—The expression "rules of procedure" occurring in Art. 208 (2) should be given same meaning given to that expression in the marginal note to cl. (1). The expression means rules relating to procedure and conduct of business of legislature. See Constitution of India, Art. 208 (2). AIR 1953 Orissa 111 (DB).

"Ryot."

See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (27 of 1948), S. 56.

"Sacking."

—Word "sacking" in Sch. 2, Clauses 1 and 11, Sea Customs Act does not ordinarily mean twist, yarn, rope and twine. None the less the word 'sacking' has been given a more extensive meaning by adding the words cloth, bags, twist, yarn, rope and twine in the bracket. See Sea Customs Act (1878), Sch. II, Cls. 1 and 11. (1961) 65 Cal W N 1206.

"Sadachar."

—"Sadachar" according to the cult of Shrimat Chaitanya Mahapravu is not an ordinary sadachar, means good conduct or morals, but it means performing of all rites that are considered proper according to the cult of Srimat Chaitanya Mahapravu. ILR (1954) 1 Cal 207 (DB).

"Sadhu."

—A mahant and a Brahmachari who are persons leading a pious and religious life can very well come within the meaning of the term, "sadhu" in the proviso to S. 8 (1)(a) (ii), Bihar Hindu Religious Trusts Act, 1951. See Bihar Hindu Religious Trusts Act (I of 1951), S. 8 (1) (a) (ii), Proviso. 1959 B L J R 338.

"Sahan Sarak."

—Survey map — Entries in Municipal Khasra prepared under Calcutta Survey Act — Entry 'sahan sarak' — Unless rebutted, the entry would mean that the disputed land is a part of the road since the commencement of the Bihar and Orissa Municipal Act 7 of 1922, and therefore the Municipality has got title to the disputed land. ILR 44 Pat 416.

'Sajhidar.'

—A "Sajhidar" is a partner in cultivation. He is neither a servant nor an employee on wages of the person whose sajhidar he is. The yeild which results from his cultivation is the earning jointly of the two persons. The share that the sajhidar gets is thus his share of the produce and not a substitute for any wage payable to him See U P. Agricultural Income-tax Act (3 of 1949), S. 16 (3). 1961 All L J 149.

"Salami."

—"Salami" is a payment by the tenant as a present or as price for parting by the landlord with his rights under the lease of a holding. It is a lump sum payment as consideration for what the landlord transfers to the tenant. When a tenant pays 'salami' he does so in order to get in return an estate in the land owned by the zamindar. 'Salami' is therefore not rent. It cannot be called 'revenue.' within the meaning of the word used in the definition of agricultural income under S. 2 (1) (a) of the Assam Agricultural Income-tax Act, 1939—AIR 1953 Assam 47, Reversed. AIR 1954 Cal 555, Affirmed. See Assam Agricultural Income-tax Act (9 of 1939), S. 2 (a) (i). AIR 1957 S C 729.

—'Salami' is quite different from rent, whatever may be the figure of standard rent it can always be proved that salami was the amount paid in addition to that rent. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (3 of 1948), S. 9. ILR (1951) 1 Cal 547; AIR 1955 N U C (Cal) 1147.

—Amount paid by lessee towards costs of repairs of premises for purposes of development is not premium or salami. See West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, S. 7. AIR 1952 Cal 56.

"Salary"

See Employees' Provident Funds Act (1952), S. 1.

"Sale."

See also (1) Constitution of India, Art. 286 (1) (b), Sch. 7, List 9, Entry 54.
(2) Income-tax Act, S. 10 (2) (vii).
(3) Prevention of Food Adulteration Act (1954), S. 2 (13).
(4) Punjab Excise Act (1 of 1914), S. 26.
(5) Sale of Goods Act (1930), S. 4.
(6) Sales Tax:— Bengal Finance (Sales Tax) Act (8 of 1941), S. 2 (e).
(7) Sales Tax — Madya Pradesh Sales Tax Act (30 of 1950), S. 5.
(8) Transfer of Property Act (1882), S. 54.

—"Sale"—Transfer of property for valuable consideration, held, was "sale." See Sales tax — Bihar Sales-tax Act (VI of 1944), S. 2 (g). AIR 1951 Pat 197 (DB).

"Sale and transfer."

—The word "transfer" is a larger word and the word "sale" is a specific word. A transfer may be by means of lease, by means of a mortgage or by means of sale or in any other mode. Where it is clear from the document transferring a business that the transferor has not retained any control over the affairs of the business after the transfer, the transfer amounts to a sale. **AIR 1966 Bom 110 (114) (Pt C) (Pr 10).**

"Sale of goods."

See Government of India Act (1935), Sch. 7, List 2, Entry 48.

"Sale or transfer."

—In construing S. 12-B, Income-tax Act, 1922 Court should not give the expression "sale or transfer" its technical meaning, nor must they attribute, to the expression, a transaction clothed with all the legal formalities. A sale or transfer presupposes the existence of property which is sold or transferred. It presupposes transfer from one person to another of the right in the property. See Income-tax Act (1922), S. 12-B. **AIR 1954 Bom 95 (DB).**

"Salisnama."

—Means an agreement to refer— Word is erroneously used for an award. **1950 All L J 277 : 1950 All W R 323 : 1950 All Cri Cas 94 : 51 Cri L J 1346 : AIR 1950 All 501 (501, 502) (Pt. B) (Pr 5).**

"Samaradhanai."

—Though usually equation has been sought to be made of Samaradhanai with Brahmana Bhojana, in the South India, and particularly in the charities established by the Chettiars and Mudaliars, the feeding is not confined only to the Brahmines. It is generally understood as a poor-feeding. See Hindu Law — Religious Endowment — Construction. **AIR 1960 Mad 467 (DB).**

"Same and similar."

—Although the word 'same' is frequently, loosely used in the sense of 'similar,' the word 'similar' never means 'same,' since similarity implies existence of two or more objects for comparison. The word 'similar' in S. 54, Partnership Act does not mean or include 'same.' See Partnership Act (1932), S. 54. **AIR 1956 Punj 49 (DB).**

"Same parties."

See Civil P. C. (1908), S. 10.

"Same transaction,"

See also Criminal P. C. (1898), Ss. 235, 239 (d).

"Santan."

—Ordinarily the word "santanera" means both sons and daughters. But considering circumstances restricted meaning of male issue should be given to the word. **AIR 1955 N U C (Cal) 570.**

"Santan' and 'Nissantan.':

—Though the expression 'santan' connotes all classes of issues or heirs, whether male or female, yet in a particular context it may be restricted to male heirs only.

Held, that the word 'nissantan' used in a village note, a person having no male or famale issue and there was nothing in the context to justify the giving of a narrow meaning to it. **AIR 1961 Orissa 9 (12) (Pt C) (Pr 14) (DB).**

"Santhathi"

—The etymological meaning of "Santhathi" is 'issue of the body.' The expression 'Santhathis Paramparai' used as a word of limitation to define the estate taken by a person has, however, come to acquire the larger significance of 'heirs.' **(1954) 2 MLJ (Andhra) 30 : 1954 Mad W N 713 :67 Mad L W 1205 : 1954 Andh L T (Civil) 27 : AIR 1954 Andhra 2 (4) (Pt C) (Prs 11, 12).**

—The word 'santhathi" in a deed of settlement construed. **AIR 1962 Mad 369 (372) (Pr 9) (DB).**

'Saranjam.'

—Nature of saranjam estate indicated. See Bombay Rent-Free Estates Act (XI of 1852), Sch. B, R. 10. **AIR 1960 S C 1272.**

—By 'saranjam' is meant a political grant made in consideration of political or military service. **AIR 1961 Bom 11 (14) (Pt A) (Pr 5) (DB).**

'Sarvaswathanthiramai.'

—Word "sarvaswathanthiramai" occurring in a settlement or gift deed indicates an absolute estate. **(1958) 1 M L J 335.**

"Satisfied."

See Criminal P. C. (1898), S. 145.

—Word 'satisfied' in S 4 (h), Bihar Land Reforms Act, 1950, must be construed to mean "reasonably" satisfied. It must be on adequate material. It is not capricious satisfaction but must be capable of being tested in an objective manner. See Bihar Land Reforms Act (30 of 1950), S. 4 (h). **AIR 1956 Pat 104 (DB).**

"Satisfied on evidence."

See Divorce Act (1869), S. 14.

'Saunjidari right.'

—Meaning of, stated. **AIR 1955 N U C (Punj) 4601.**

"Sayers."

—'Sayers' would mean large tracts of water which are enclosed by land. **62 Cal W N 49 : AIR 1958 Cal 114 (117, 118) (Pt C) (Pr 14).**

'Scheme of consolidation.'

See Tenancy Laws — U. P. Consolidation of Holdings Act (V of 1954), S. 16-A (2). **AIR 1965 S C 484.**

'Scire facias."

—Writ of 'scire facias' is a Latin phrase meaning that you cause to know— Various meanings indicated. See Constitution of India, Art. 226. **AIR 1960 Andh Pra 123 (DB).**

"Sealed."

—The word 'sealed' in Election Rules in Statute 18, R. 4 (iv) of Nagpur University means "stamped with a seal" and not "closed by gum." See Nagpur University Act (5 of 1923), Statute 18, R. 4 (iv). **AIR 1957 Bom 215 (DB).**

"Seasonal."

See Industrial Disputes Act (1947), S. 25-A (2).

'Second offence.'

See Prevention of Food Adulteration Act (1954), S. 16 (1).

"Secrets."

See Post Office Act (1898), S. 52.

"Secure."

—The verb "to secure" has a wide meaning and the definition most appropriate in the context of S. 7 (iv) (c), Court-fees Act is to make secure or certain or to make safe. See Court-fees Act (1870), S. 7 (iva) (UP). **A I R 1956 All 492 (DB).**

"Securing"

—Word "Securing" in S. 3, U. P. Industrial Disputes Act, 1947, can only be interpreted to mean "to make secure or safe" and not "to get-hold or possession of (something desirable) as the result of effort or contrivance". See U. P. Industrial Disputes Act (23 of 1947), S. 3. **A I R 1955 N U C (All) 1732 (DB).**

—The word "security" in O. 21, R. 90 (Andhra Amendment) should be taken to be comprehensive enough to include a 'surety'. It is not possible having regard to the etymological sense of the word 'security' employed in the Civil Procedure Code that any other particular meaning, as if 'security' is a term of

art could be implied. It does not therefore, exclude the guarantee which can be provided by any surety. (1944) 2 Mad L J 205 : A I R 1945 Mad 13, Rel on. Meaning given in Stroud's Judicial Dictionary quoted. **AIR 1962 Andh Pra 175 (176) (Pt B) (Pr 6).**

"Security."

—Word "security" is a word of general import meaning nothing more than an assurance. Anything that makes the money more assured in its payment or more readily recoverable, is a security and may range from a personal bond or promissory note or guarantee or even a mere pledge of something of no intrinsic value, to a mortgage of property from out of which money can be realised See Companies Act (1956), S. 528. **A I R 1963 Ker 128.**

"Security of State."

See also (1) Constitution of India, Art. 19 (2).
(2) Public Safety — Punjab Security of the State Act (12 of 1953), S. 9.

"Seduction."

See Penal Code (1860), Ss. 366, 366A.

"Seize."

See also (1) Criminal P. C. (1898), S. 550.
(2) Customs Act (1878), S. 178A.

"Seizure."

—"Seizure" is taking possession contrary to the wishes of the owner of the property. See Sales Tax—Kerala General Sales Tax Act (11 of 1125), S. 17. **1962 Ker L J 1075 : 1963 (1) Cri L J 180 : A I R 1963 Ker 68 (DB).**

"Separate property."

See Hindu Women's Rights to Property Act (1937), S. 3 (1)

"Servant."

●—Master, servant and independent contractor, who are, explained — Master employing servant — Later authorised to employ persons — Such persons, if servants of master, has to be determined on facts of the case. **A I R 1955 S C 404 (407, 412).**

—Word "servant" in S. 25, Merchant Shipping Act, means a servant in the constant employ of the owner. A mere engagement of a person to supply seamen does not make that person a servant within meaning of S. 25. See Merchant Shipping Act (21 of 1923), S. 25. **A I R 1952 Cal 339.**

"Served."

—Word "serve" in S. 34 (1), Income-tax Act, is not to be construed as 'issue'. See Income-tax Act (1922), S. 34 (1). **A I R 1956 All 657 (DB).**

"Service."

See Constitution of India, Art. 311 (2).

—Meaning of the word "services" generally is occupation or status of a servant—The word as used in sub-cl. (iii) of S. 3 (a), Preventive Detention Act (1950), merely means "the means and methods necessary for regulating and maintaining supplies" of some general demand. See Public Safety — Preventive Detention Act (1950), S. 3 (a) (iii). **52 Cri L J 1438 : A I R 1951 Pepsu 164 (DB).**

"Service of notice."

●—There is no ground to construe the words "the date of service of notice" in Art. 158, Limitation Act, to mean only a notice in writing served in a formal manner. It means formal as well as informal intimation. See Arbitration Act (1940), S. 14 (2). **A I R 1962 S C 666.**

"Settled accounts"

See also Limitation Act (1908), Art. 85.

—Settled accounts are those which have been agreed between the parties, acceptance of the account by the party to whom they were sent can also be inferred by his conduct. See Civil P. C. (1908), O. 20, R. 16. **1959 M P C 222.**

"Settled jagir lands."

—When the term settled jagir lands is used in the notification, it refers to those jagirs where cash rents have been enforced. See Tenancy Laws — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 21. **1959 Raj L W 408.**

"Settlement."

—The word "settlement" in S. 6, Bihar Land Reforms Act, 1950, does by implication suggests that in the process of vesting the right to porsession in such lands is also vested in the state. See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 6. **A I R 1958 Pat 589 (DB).**

[Overruled on another point in AIR 1963 S C 454.]

"Setting up"

See Wealth Tax Act (1957), S. 5 (1) (xxi). **1964 Ker L T 543 : A I R 1965 Ker 183 (DB).**

"Sexual intercourse."

See (1) Divorce Act (1869), S. 19 (1).
(2) Penal Code (1860), S. 375.

"Shafi khaleet."

—"Khaleet" literally means "mixed up". Shafi Khaleet is a "participator in appendages". See Mahomedan Law—Pre-emption. **A I R 1963 Raj 195.**

"Shall."

—Meaning of.

See (1) Interpretation of Statutes.
(2) Words and Phrases—"May".

●—The use of the word "shall" in S. 56, U. P. Court of Wards Act is not conclusive of the question whether the provision is mandatory, intention has to be gathered from the whole of the statute — Tests to see whether provision is directory or mandatory indicated. See U. P. Court of Wards Act (4 of 1912), S 58. **AIR 1960 S C 444 (a).**

—The word "shall" in S. 183, Sea Customs Act, is to be read as "may". See Sea Customs Act (1878), S. 163. **A I R 1964 Cal 225 (DB).**

—Mere use of the word "shall" does not make a provision imperetive. The nature of the provision must depend upon the context and collocation in which the word is used and must be gathered from the intention of the legislature from the four corners of the Act itself. S. 82, Representation of the People Act, 1951 is merely directory. See Representation of the People Act (1951), S. 82. **A I R 1954 Pat 225 (DB).**

—Word 'shall' in S. 82, Representation of the People Act, 1951, casts on the petitioners a duty to implead all the duly nominated candidates as respondents. However, the prescription provided by the word 'shall' has to be considered as merely directory, the neglect of which does not affect the validity of the petition or involve any other consequence than a liability to a penalty if any were to be imposed by the Tribunal for breach of the prescription. See Representation of the People Act (1951), S. 82. **A I R 1953 Pepsu 133 (DB).**

—Where word 'shall' is used, presumption is that its use is imperative and not merely directory, particularly where it is addressed to a Court or public servant and when a right or benefit depends on its imperative use. There is nothing in the context or manifest purpose of the rule to indicate that the legislature did not intend to use the word 'shall' appearing in R. 2 of O 14 of Civil P. C, as a word of command. A I R 1936 Pat 250, A I R 1934 All 986, Dissented from. See Civil P. C. (1908), O. 14, R. 2. **AIR 1958 Punj 409 (DB).**

—Word 'shall' in contexts similar to the provisions of R. 2, Sch. I, Arbitration Act, has often been interpreted as merely being directory and the criterion for

deciding whether failure to comply with such a provision is a mere irregularity or invalidates the whole proceedings, is whether the statute itself provides any penalty or other consequences for the failure to comply. See Arbitration Act (1940), Sch. 1, R. 2. **A I R 1956 Punj 7.**

"Shall apply accordingly".

—Sales Tax—Central Sales Tax Act (1956), S. 9 (3) — Expression "shall apply accordingly" — Expression means 'shall apply as the stated circumstances suggest' (conceded point). See Sales Tax — Central Sales Tax Act (1956), S. 9 (3). **(1963) 14 STC 587 (Mys).**

"Shall be compelled to be a witness".

See Constitution of India, Art. 20 (3).

"Shall be deemed".

—In S. 441, Companies Act has introduced a statutory fiction. In the section, the legislature has used the words "shall be deemed to commence" instead of "shall commence" and what is signified is that although the winding up of a company does not in fact commence at the time of the presentation of the petition it nevertheless shall be taken to commence from that stage. In this context 'deemed' means 'supposed', 'considered', "construed" 'thought, taken to be' or 'presumed'. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 19 (2). **A I R 1960 Punj 476.**

"Shall be deemed to have been done".

—When a statute enacts that something shall be deemed to have been done which in fact and truth was not done the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. A I R 1953 S C 244, Foll. **55 Punj L R 451 : 24 Com Cas 58; I L R (1954) Punj 566 : A I R 1954 Punj 21 (22) (Pt D) (Pr 19) (DB).**

"Shall be final".

—Use of the words decision "shall be final", when precludes, questioning of the decision, indicated. See Travancore-Cochin Shops and Establishments Act (9 of 1125), S. 41 (3). **1957 Cri L J 637: AIR 1957 Ker 55 (DB).**

"Shall be held".

—Just becuase the words used in S. 14 (1), Hindu Succession Act, are 'shall be held', it does not necessarily follow that merely on that account these words have no reference back to the past. It is well established that when the word 'shall' occurs in a statute, the intention is directed more towards its imperative character, to show command, more than points towards its futility. It is obvious, that although the words are "shall be held" which prima facie may be of a prospective character, yet there are good reasons to give these words also a larger operation. See Hindu Succession Act (1956), S. 14 (1). **AIR 1959 Pat 75.**

[Reversed on facts in AIR 1963 Pat 330.]

"Shall be kept ready for instant use".

—The use of the word "shall" in the expression "shall be kept ready for instant use" in S. 36 (4), Factories Act, casts an obligation upon the manager or occupier of a factory to keep ready at all times besides a confined space the suitable breathing apparatues, reviving apparatus, belts and ropes for instant use whether any person entered the said space or not, whether the entry has been made with permission or not and whether any need for the use of these appliances arises in fact or not. See Factories Act (1948), S. 36 (4). **1958 Cri L J 858; AIR 1958 Bom 257 (DB).**

"Shall be laid before the Parliament".

In the case of a statute directing rules to be laid before the Parliament or the legislature, without any condition attached, the rule is only directory. See Madras Motor Vehicles Rules (1940), R. 134A. **A I R 1956 Andhra 129 (DB).**

"Shall be transferred".

—Words "shall be transferred" in S. 29 (1), Patents and Designs Act, 1911 means "shall stand transferred". See Patents and Designs Act (1911), S. 29 (1). **AIR 1961 All 101 (DB).**

"Shall be written by presiding officer".

See Criminal P. C. (1898), S. 265(1).

"Shall employ".

—'Shall employ' means and includes 'shall continue the employment' of. See Banking Companies Act (1949), S. 10(1) (prior to its amendment in 1956). **AIR 1960 S C 12.**

"Shall have force of law".

—Words "shall have force of law" in S. 31 (3), J. & K. Constitution Act, mean nothing more than "shall become law" or "shall acquire the character and quality or status of law". See Jammu and Kashmir Constitution Act (XIV of 1996 Smt.), S. 31 (3). **1960 Cr L J 62: AIR 1960 J & K 1 (DB).**

"Shall have regard to".

See also (1) Companies Act (1913), S. 12 (3) (a).
(2) Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12 (1) (h).
(3) Motor Vehicles Act (1939), S. 47.

"Shall pay on turnover".

—Words "shall pay on turnover" in S. 3, U. P. Sales Tax Act, 1948 must be interpreted as indicating that an assessee is liable to pay the tax on turnover in each assessment year. It is not to be interpreted to mean that actual payment of the tax to the Government has to be made before the expiry of the assessment year. The liability arises on the first day of an assessment year and is not a liability in respect of each day of that year. See Sales Tax—U. P. Sales Tax Act (15 of 1948), S. 3. **AIR 1956 All 35 (DB).**

"Shall presume".

See (1) Prevention of Corruption Act (1947), S. 4.
(2) Evidence Act (1872), S. 4.

"Shamilat deh".

—The "shamilat deh" is a plot of uncultivated waste land in every village reserved for the purposes of common pasture, for assemblies of the people, for tethering of village cattle and for possible extension of village dwellings. As a rule it is regarded as common property of original settlers and their descendants. See Custom (Punjab). **AIR 1955 NUC (Punj) 1034 (DB).**

'Share'.

—A share is movable property but not in the same sense in which a bolt of cloth or bag of wheet is. A share in a company belongs to a totally different category of property, it is incorporeal in its nature and consists merely of a bundle of rights and obligations. See Constitution of India, Art. 19 (1) (f). (S) AIR 1957 Mad 341.

'Sharer'.

—Where the word 'sharer' is not defined in a wajib ul arz, it should be given its ordinary meaning. The word connotes a person who shared the land or the profits with another. This has relationship with his own and not derivative interest in the holding. See Wajib-Ul-Arz (Sarangarh State), Cl. 18. **1957 M P L J 195.**

'Shares" and "share scrips".

—Shares are not same thing as share scrips. See Court Fees Act (1870), S. 7 (iv) (a). AIR 1965 Punj 314.

"Sharkayan Shikmi".

—The Sharkayan Shikmi means only co-sharers in the property and not relations by blood. See Wajib-Ul-Arz. A I R 1955 NUC (Raj) 298 (DB).

"Shawls".

—Word 'shawl' as used in cl. (m) of Second Schedule of the Railways Act means the Kashmere shawl of special value and not things of inferior quality as that of Alwan, Tushi, or ordinary chadar. See Railways Act (1890), S. 75. AIR 1957 Pat 328 (DB).

"Shop."

See also (1) Bombay Shops and Establishments Act (LXXIX of 1948), S. 2 (27)
(2) Hyderabad Abkari Act (1316F) S. 3 (2) Cl. (h).
(3) U. P. Shops and Commercial Establishments Act (22 of 1947), S. 2 Cl. (3).

"Showing cause."

See Constitution of India, Art. 331.

"Slum dwellers."

—Though in popular parlance the expression "slum dwellers" has acquired some special meaning, namely those who are economically and socially backward and who huddle themselves together in dwellings in unhealthy surroundings, the term as such has no such technical meaning, the expression in its import is wide enough to include within it a crowded place in a city inhabited by the poor and there is nothing wrong in regarding persons belonging to the low and middle income groups who live in crowded place in a city in abodes which are far from healtheir as being slum dwellers in a sense. See Land Acquisition Act (1894), S. 4. AIR 1964 Mad 115 (DB).

"Sampark."

—The word "Sampark" in Hindi means "contact—When it is said that a certain person came in "Sampark" with another, all that is connoted is that he met the person and came in contact with him. The meaning of the word is not altered to the sense of "Sambandha" in Hindi if it is used in relation to a meeting between a man and a woman. The word "Sampark" is so simple and well known that nobody who knows the Hindi language can have the smallest difficulty in understanding it. This word is not suggestive of illicit intimacy. 1963 M P L J 489 : 1963 Jab L J 499 : 1963 (2) Cri L J 521 : ILR (1964) Madh-Pra 694 : A I R 1963 M P 301 (305) (Pt B) (Pr 14) (DB).

"Sign."

See also (1) Bengal General Clauses Act (1 of 1899), S. 3 (41).
(2) Representation of the People Act (1951), S. 33

"Signature."

●—It is quite true that when signature by an agent is permissible, the writing of the name of the principal by the agent is regarded as the signature of the principal himself. But this result only follows when it is permissible for the agent to sign the name of the principal. If on a construction of a statute signature by an agent is not found permissible then the writing of the name of the principal by the agent however clearly he may have been authorised by the principal cannot possibly be regarded as the signature of the principal for the purposes of that statute. If a statute requires personal signature of a person, which includes a mark, the signature or the mark must be that of the man himself. There must be physical contract between that person and the signature or the mark put on the document. 1950 S C J 364 : 1950 S C R 435 : (1950) 18 ITR 569 : ILR (1951) 2 Cal 7 : AIR 1950 S C 265 (271) (Pt C) (Pr 22).

●"Silk."

—In the ordinary sense, "silk" means natural or real silk, or something of which natural or real silk is a component. Without the qualification "artificial" it would not include rayon, and, therefore, a company making rayon yarn cannot be said to manufacture "silk" in its ordinary sense. Travancore Rayons, Ltd. v. Municipal Council, Perumbavoor. 1957 Ker L T 1155 : 1957 Ker L J 1072 : 1958 Mad L J (Cri) 5 : ILR (1958) Ker 119 : AIR 1958 Ker 149 (151) (Pt F) (Pr 8) (FB).

"Sir."

●—Word "Sir" is synonymous with "kamat" and "zirat" and means private lands of the proprietor. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 116. AIR 1956 S C 305 (b).

"Sisyaganakramey."

—"Sisyaganakramey" does not mean from among the disciples. Word "kramey" indicates order. ILR (1954) 1 Cal 207 (DB).

"Site."

—Word "site" can properly be used to describe either the exact extent of land occupied by a building such as a shop in a bazgar or the larger area of which such extent forms part, e.g., a factory, site of a college or site of a hostel. In the latter case the word "site" can properly include not merely the actual extent of land on which the building stands but also the ground surrounding it. In what sense the word is used would depend upon the context. See Madras Cinema (Regulation) Rules (1957), R. 109 (1). 1958 Mad L J (Cri) 460 : (1958) 1 Mad L J 410.

"Six months."

—Under S. 77, Railways Act, the period of six months is to be counted from "the date of delivery of animals or goods for carriage by the railway." The natural meaning of these words can only be that the relevant date is the date on which goods are handed over to the railway for carriage. AIR 1955 Assam 221 Dissented from. See Railways Act (1890), S. 77. AIR 1959 Mys 13.

"Sketchy" and "vague."

—"Sketchy" means incomplete and lacking detail — Vague means not clear, involving element of ambiguity—Distinction however not very real. AIR 1951 Punj 157 (159, 160, 161) (Pt B) (Pr 5) (DB).

"Smuggling"

See Sea Customs Act (1878), S. 167 (81).

"So far as may be."

—Expression "so far as may be" means to the extent it is possible. See Municipalities — Rajasthan Municipalities Act (38 of of 1959), S. 2, Proviso (b). 1962 Raj L W 360.

"Some interest."

—The words "some interest" in O. 21, R. 59 have been interpreted as meaning such interest as would make the possession of the judgment-debtor not on his own account but on account of or in trust for the claimant or the claimant may prove his own possession. See Civil P. C (1908), O. 21, R. 58. AIR 1959 Bom 87.

"Some person executing."

See Registration Act (1908), S. 32.

"Son."

—Does not include step-son. See Hindu Succession Act (1956), S. 15 (1) (a). AIR 1962 Mys 140 (DB).

"Son and daughter."

"Son and daughter" mean ligitimate son and daughter. See Hindu Law — Texts. **AIR 1955 Nag 84 (DB).**

"Son or daughter of such female."

—Words "son or daughter of such female" in S. 15 (2) (h), Punjab Pre-emption Act, 1913 as amended by Act 10 of 1960, mean only legitimate son or legitimate daughter of the female vendor and will not include illegitimate son or daughter. See Punjab Pre-emption Act (1913) As Amended by Act (X of 1960), S. 15 (2) (b). **AIR 1965 S C 698.**

"Sound mind."

See Succession Act (1925), S. 59.

"Space."

—Word "space" does not necessarily mean an enclosed area. The phrase "the space opposite the name of the candidate" used in R. 24 (2), U. P. Municipalities (Conduct of Election of Presidents and Election Petitions) Order, 1955, does not necessarily mean more than that part of the ballot paper which is opposite the name of the candidate. See Municipalities — U. P. Municipalities (Conduct of Election of Presidents and Election Petition) Order (1955), R. 24. **1959 All L J 4.**

"Speaking order."

See Constitution of India, Art. 226.

"Special"

—Special demand notice under R. 7 (g), Punjab Municipal Election Rules, 1952 — Meaning of the word "special" indicated. **(1965) 67 Punj L R 141 : ILR (1965) 1 Punj 447.**

"Special appeal."

—"Special appeal" is the name given by the Rules of the Allahabad High Court to an appeal which lies from the judgment of one judge of that High Court in the circumstances mentioned in Cl. 10 of the Allahabad Letters Patent read with Cl. 7 of the U. P. High Courts (Amalgamation) Order, 1948. **AIR 1961 All 381 (382, 384) (Pt B) (Prs 2, 18) (FB).**

"Special damage."

Special damage need not be of serious kind and need not result in irreparable loss. It is sufficient if the damage is peculiar to the person and is much more than that shared by other people. See Civil P. C. (1908), S. 91. **AIR 1957 Andh-Pra 44.**

"Special Law".

See also (1) Criminal P. C. (1898), S. 417 (3).
(2) Limitation Act (1908), S. 29.
(3) Penal Code (1860), S. 41.

"Specially appointed".

—Correct interpretation of words "specially appointed" in R. 2 (g), Bihar Panchayat Election Rules, 1959, would be taken to refer to appointment for specific purpose and nothing more. See Panchayats — Bihar Panchayat Election Rules (1959), R. 2 (g). **AIR 1965 Pat 446 (DB).**

"Special leave".

See (1) Constitution of India, Art. 136.
(2) Criminal P. C. (1898), S. 426 (2-B).

"Specified".

—Meaning and connotation of the term "specified" in S. 46 (2), Income-tax Act, 1922 indicated. See Income tax Act (1922), S. 46 (2). **(1962) 1 Mad L J 201.**

"Specified place".

—Words "specified place" in S. 69, Negotiable Instruments Act, cannot be used to cover a town or a city. It is a phrase intended to mean a place so described as would enable the holder of a note to go to it with a reasonable certainty or being able in find the drawer of the note to present the note to him. See Negotiable Instruments Act, S. 69. **AIR 1951 Cal 55 (DB).**

"Specify".

—The word "specify" used in S. 36 (3) (iv), A. P. Panchayat Samithis and Zilla Parishad Act, 1959, means "name expressly; mention definitely." See Panchayats — Andhra Pradesh Panchayat Samithis and Zilla Parishad Act (XXXV of 1959), S. 36 (3) (iv). (Before Amendment of 1963). **(1964) 1 Andh W R 118.**

"Spirits".

—Word "spirits" covers only alcoholic liquids which are generally used for beverage purposes and produces intoxication. Absolute alcohol is excluded from the scope of that expression. See Municipalities — Hyderabad Municipal Corporations Act (II of 1956), Sch. 1. **(1960) 1 Andh W R 72.**

"State"

See Constitution of India, Arts. 12 and 13.

—"State" includes Income-tax department. See Constitution of India, Art. 12. **AIR 1956 S C 479.**

—"Affairs of State" in S. 197 (1) (b) — The expression is elastic—Word 'State' itself does not always carry a fixed meaning. For certain purposes "State' means Government—But at times the word 'State' is used in wider sense. In Art. 12 of the Constitution it has been stated that for purposes of Part III of the Constitution, the word 'State' included local authorities also. The expression 'affairs of state' in S. 197 (1) (b), Criminal P. C., has been used in wider sense. In a sense a person engaged in the affairs of a local authority is a person employed in connection with affairs of a State. See Criminal P. C. (1898), S. 197 (1) (b). **1958 All W R (HC) 1.**

"Statement".

See also (1) Criminal P. C. (1898), S. 162.
(2) Evidence Act (1872), S. 157.

"Statement made to Police Officer".

See Criminal P. C. (1898), S. 162.

"Staff".

—An employee who is a pharmacist and designated as dresser in a Tea Garden will not come under the definition of "artisan" but having been engaged on a monthly salary basis discharging the duties of a dresser he comes within the category of "staff". See Minimum Wages Act (1948), S. 3. **AIR 1960 Assam 123 (DB).**

"Status".

See Evidence Act (1872), S. 41.

"Statutory tenancy".

See (1) Houses and Rents—West Bengal Premises Rent Control (Temporary Provisions) Act (XVII of 1950), S. 2 (11).
(2) T. P. Act (1882), S. 105.

"Steps in the proceedings."

See (1) Arbitration Act (1940), S. 34.
(2) Limitation Act (1908), Art. 182.

"Stevedore"

See also (1) Dock Workers (Regulation of Employment) Act (1948), S. 2 (b) (c).
(2) Employee's Provident Funds Act (1952), S. 1 (3) (b).

"Stock witness".

—It is difficult to define what is a "stock witness". But if it appears to the Court that a particular person is always at the beck and call of the police and is too willing to state according to their wishes, or that a particular person has appeared in some Court and disbehaved or some stricturers were passed against

him, or his presentation was ordered for perjury, such person could be said to be a stock witness of the police and his evidence is not entitled to any weight. (1965) 67 Punj L R 260 : 1965 All Cr R 179 : 1965 All W R (Sup) 6 : 1965 Cur L J 189.

"Stone".—Meaning of.

—The word "stone" in Entry 8, Part 1, Sch. A, Minimum Wages Act should be construed in general sense. A small piece of stone, containing some quantity of metal or mineral would not, for that reason, cease to be a stone. The word 'stone' includes pieces of manganese ore. The Act applies to persons employed in stone breaking and stone crushing operations carried on in manganese mines. See Minimum Wages Act (1948), Sch. A, Part I, Entry No. 8. AIR 1958 Bom 332 (DB).

[Reversed in AIR 1960 S C 1068]

"Stoneware"

—The expression 'china ware' occurring in item 23-B of Finance Bill, 10 of 1981 must be understood to have been used in its technical sense in which it is understood in ceramic science. It does not include stoneware articles. See Provisional Collection of Taxes Act (1931), S. 4. AIR 1964 Ker 18.

'Store".

—In Ss. 7 and 16, Prevention of Food Adulteration Act 1954, the word 'store' is not qualified and if ghee is stored, the offence is complete. It is not necessary for prosecution to prove that it is stored with a view to sell in future. See Prevention of Food Adulteration Act (1954), S. 7. 1963 (1) Cri L J 349 : AIR 1963 Assam 28.

"Street".

—Distinction between 'street' and 'private passage' pointed out. See Municipalities — Punjab Municipal Act (III of 1911), S. 3 (13) (a). 68 Pun L R 65 (D) : ILR (1965) 2 Punj 632.

"Strike".

See also C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), Ss. 2 (13), 2 (27).

—The contention that unless a person stops working as a protest it cannot be regarded as a strike has no force. Even if an employee resorts to a strike in sympathy with a particular employee that is nothing but a formal protest lodged against the conduct of an officer. The protest itself may take various forms and although the protest is in sympathy with a particular employee none the less when a concerted action is taken as a resentment against the conduct of an officer it will be covered by the meaning of the word 'strike'. 1957 All L J 480 : 1957 All W R (HC) 445 : (1957) 2 Lab L J 231 : AIR 1959 All 614 (617) (Pt C) (Pr 6).

"Sub-Divisional Officer".

—"Sub-Divisional Officer" is an expresion commonly in use to describe an Assistant Collector of the first class in charge of a sub-division and that is the meaning that should be given to the expression when used in the U. P. Panchayat Raj Act or in the rules made thereunder. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 110. AIR 1957 All 484 (FB).

"Subject."

In some cases subject may be equivalent to cause of action but in others it may not be so. Distinct causes of action cannot form one subject. But the converse is not necessarily true. See Court-fees Act, S. 17. 28 Pat 299 : AIR 1949 Pat 425 (DB).

"Subject-matter of suit."

"Subject matter of suit" is not defined in the Court-fees Act or in the Suits Valuation Act or in the Civil P. C. or in the H. P. (Courts) order — The expression sometimes refers to the concrete property to which the suit relates and sometimes to the title which is asserted and to others to the reliefs claimed — In H. P. Courts order, the expression appears to refer (a) in a money suit to the amount claimed and (b) in a suit relating to property to the right and title of the plaintiff alleged to have been infringed. See Himachal Pradesh (Courts) Order (1948), Para. 32 (1) (b) (2-i). AIR 1963 Him Pra 9.

"Subject to."

—Words 'subject to' in S. 5, Madras General Sales Tax Act, 1939 only means that the exemption under the license is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself. See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 5. AIR 1961 S C 1152.

—Nothing can be made 'subject to' what is discretionary. See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 17 (2). 1963 All L J 894.

—The correct judicial interpretation of the words "subject to" is conditional upon and the introduction of these words in a document or in a statutory provision amounts to a condition or a proviso. See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 5. AIR 1950 Mad 377 (DB).

"Subject to other provisions of this Constitution."

See Constitution of India, Art. 372.

"Subject to the provisions of this Act."

See also (1) Arbitration Act (1940), S. 41.
(2) Representation of the People Act (1951), S. 90 (2).

"Subject to these bye-laws."

—Expression "subject to these bye-law" in Bye-law 80 (4) of the East India Cotton Association Bye-laws, is merely discriptive. The proper interpretation of the expression is that the non-member agrees to be bound down by the bye-laws from time to time. See East India Cotton Association Bye-laws, Bye-law 80 (4). AIR 1956 Bom 518 (DB).

"Sub letting."

See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1) (a).

"Subordinate."

See also (1) Constitution of India, Art. 311 (1).
(2) Contempt of Courts Act (1952), S. 3.
(3) Penal Code (1860), S. 165.
(4) Motor Vehicles Act (1939), S. 133-A.

—U. P. Consolidation of Holdings Act (V of 1954), S. 48 (As amended in 1963) — Words 'subordinate' in S. 48—Meaning of, explained. See Tenancy Laws—U. P. Consolidation of Holdidgs Act (5 of 1954), S. 48. AIR 1965 All 172.

"Subordinate Court,"

See (1) Civil P. C. (1908), S. 115.
(2) Constitution of India, Art. 227.
(3) Contempt of Courts Act (1952), S. 3.

"Subrogation"

See Transfer of Property Act (1882), S. 92.

"Substances"

See Drugs Act (1940), S. 3 (b).

"Substantial"

See Specific Relief Act (1877), S. 54.

"Substantial question of law."

See (1) Constitution of India, Arts. 132, 133.
(2) Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (a).

"Subscribed"

—Use of the word 'subscribed' in Art 219 of the Constitution would show that the oath repeated

orally should be reduced to writing and be signed by the person taking it in token of his adhesion to what is written. The word 'subscribed' is not co-related with the particular form but with what is said in the oath and what is reproduced in writing. Even if a wrong oath is taken and its reproduction is signed by the person making it, it would still be an act of subscribing though not a correct oath. **AIR 1965 All 97 (104) (Pt B) (Pr 24) (DB).**

"Subsisting contract."

—"Subsisting contract" ordinarily connotes an existing contract. See Panchayats—Madras Village Panchayats Act (10 of 1950), S. 16 (2) (c). **(1962) 2 Andh WR 146.**

"Substantive capacity."

—"Substantive capacity" means a capacity other than an officiating or temporary capacity and would imply that the holder thereof had a lien on his post. See Lucknow University Act (1920), S. 23. **AIR 1959 All 618 (DB).**

"Substitute."

The word 'substitute' is not equivalent to the word 'cancel'. In some cases, the word 'substitute' may be employed to mean replacement by cancellation of the previous one. It might also mean the replacement of one by another, which might be equal to it, but differently expressed. **AIR 1960 Assam 11 (15) (Pt D) (Pr 13) (DB).**

"Substituted agent."

See Contract Act (1872), S. 194.

"Succession."

See also Madras Hereditary Village Offices Act (3 of 1895), S. 10 (5).

—Expressions "devolution" "succession" or "transfer" in Provincial and Concurrent Lists include partition of joint family property. See Constitution of India, Sch. 7, List 2, Entry 18. **AIR 1956 Mad 642 (DB).**

"Successor."

—Successor includes successive successors. See Arbitration Act (1940), S. 2 (a). **AIR 1964 Punj 230.**

'Successor-in-interest."

—Words "successor in interest" are wide enough to include all transfers and of course also transfers inter vivos. See Debt Laws — Madras Agriculturists Relief Act (4 of 1938), S. 9-A (10) (6). **(1958) 2 Mad L J 557.**

"Such."

—When the word "such" is used before a noun in the later part of a sentence the proper construction is to hold that the same noun is being used after the word 'such' with all its characteristics which might have been indicated earlier in the same sentence. See Sugar (Futures and Options Prohibition) Order (1949), S. 3 (a). **AIR 1959 All 276 (DB).**

—Word 'such' in sub-s. (2) to S. 6, of Bengal Suppression of Immoral Traffic Act, 1933, is only used to indicate that those "owners, lessors, etc." are meant who have been previously mentioned. See Bengal Suppression of Immoral Traffic Act (6 of 1933), S. 6 (1). **AIR 1955 N U C (Cal) 1100.**

"Such taxes".

—Word "such taxes" used in S. 2 (2), Rajasthan Municipal Boards Validating Act, 1956, indicates what taxes, rules and bye-laws were being validated for the future. See Municipalities — Rajasthan Municipal Boards Validating Act (37 of 1956), S. 2 (2). **AIR 1959 Raj 86 (DB).**

"Sue".

—The words "to sue" signify not only "to prosecute" but also "to defend" or "to do something which the law requires for the better prosecution or defence of the cause". **96 Cal L J 168 : ILR (1957) 1 Cal 316 : AIR 1955 Cal 292 (294) (Pt D) (Pr 11).**

—In the context in which word "sue" has been used in S. 86 (1), Civil P C., it means taking any legal proceeding in accordance with the provisions of the Civil P. C See Civil P. C. (1908), S. 86. **AIR 1963 Raj 22 (DB).**

"Sues for partition".

See Partition Act (1393), S. 4.

"Sufficient cause".

See also (1) Companies Act (1956), S. 155.
(2) Limitation Act (1908), S. 5.

"Sufficient or reasonable grounds".

—The expression "sufficient or reasonable grounds" in S. 8 (2) (1) of Hyderabad House Rent Control Order (1953F) should not be given a restricted meaning as grounds analogous to those stated previously, as the grounds mentioned in S. 8 are enumerative and not exhaustive. **AIR 1953 Hyd 209 (210) (Pt A) (Pr 4).**

"Sufficient reasons".

See also (1) Civil P. C. (1908), O. 47, R. 1 (1) (c).
(2) Land Acquisition Act (1894), S. 25.

"Sufficient reason".

—"Sufficient reason" means reasonable ground. See Bengal Ferries Act (1 of 1885), S. 9. **1956 B L J R 592.**

"Suit".

See Arbitration Act (1940), S. 21.

—"Suit" denotes whole of suit and not part of it. See Civil P. C. (1908), S. 11. **AIR 1962 S C 214.**

—Word "suit" includes appeal. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 6 (1). **AIR 1954 All 639.**

—Although under S. 2 (10), Limitation Act, 'suit' has been defined not to include an appeal or an application yet for the purposes of Art. 163 of the Act, the application for restoration of an application for revocation of a probate dismissed for default, must be deemed to be an application by a plaintiff. See Limitation Act (1908), Art. 163. **AIR 1958 All 149.**

—Word 'suit' in S. 22, Payment of Wages Act does not include any legal proceeding. 'Suit' is a term of art and ordinarily means proceedings instituted in Civil Court by plaint. A proceeding under S. 54, Co-operative Societies Act is not a suit within meaning of S. 22 and S. 22 does not operate as a bar to such a proceeding being taken. See Payment of Wages Act (1936), S. 22. **AIR 1962 Bom 162 (FB).**

—Word 'suit' in S. 2 (3), Usurious Loans Act, is not confined to proceedings commenced with a plaint. See Debt Laws—Usurious Loans Act (1918), S. 2 (3). **(1965) 2 Mad L J 526 : AIR 1966 Mad 322 (DB).**

—'Suit' in S. 2 (5), Orissa House Rent Control Act includes 'appeal'. See Houses and Rents — Orissa House Rent Control Act (31 of 1953), S. 2 (5). **AIR 1962 Orissa 149 (DB).**

—A suit framed under O. 21, R. 63 is not a 'suit' within meaning of that word in S. 80, Civil P. C. See Civil P. C. (1908), O. 21, R. 63. **ILR (1965) Cut 457.**

—Suit ends with a decree and different process starts when execution application is instituted. See Pepsu (General Provisions) Administration Ordinance (16 of 2005 Smt.), S. 3. **AIR 1951 Pepsu 86 (2).**

—Word 'suit' in Cl. 9, Letters Patent (Punjab) has wider significance and includes proceedings of civil nature whether commencing with plaint or not. Proceedings under Companies Act, in the matter of liquidation is "suit" within meaning of Cl. 9. See Letters Patent (Lah), Cl. (9). **AIR 1961 Punj 87.**

"Suit case".

—"Suit cases" — Material used or shape is not determining factor but easy portability — Steel trunks twenty-one or twenty-seven inches long and not more than eight inches in depth held to be covered by entry 12 and not by 22 of Schedule E. See Sales Tax — Bombay Sales Tax Act (52 of 1959), Schedule E, Entry 12. **(1966) 17 STC 133 (Guj).**

"Suits and proceedings".

—Appeals and revisions are excluded from the expression "suits and proceedings" used in Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, S 6 (4). See Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 6 (4). **AIR 1955 NUC (Raj) 1364.**

"Suit for land".

See Letters Patent (Cal), Cl. 12.

"Suit for recovery of money".

See Civil P. C. (1908), O. 8, R. 6.

"Suit is decreed ex parte".

The expression 'the suit is decreed ex parte" is ambiguous. When a party or his counsel does not take part in the proceedings but the party is deemed to be present the Court very often uses the expression 'ex parte' in its order decreeing the suit on merits. In a case where the defendant is present or deemed to be present and the suit is to be decreed on merits, then, although the defendant does not take part in the proceedings an order decreeing the suit ex parte will have to be treated as an order decreeing the suit on merits. The expression 'suit is decreed ex parte' will in such a case be treated as decreeing the suit on merits. **1956 All W R (HC) 824 : 1956 All L J 827 : AIR 1957 All 107 (110) (Pt D) (Pr 15) (DB).**

"Summarily sold".

See Transfer of Property Act (1882), S. 76 (c).

"Summon".

—The ordinary meaning of the word 'summon' is to be demand presence of; call upon a person to appear. 'Power to summon' does not mean power to issue summon. See Sea Customs Act (1878), S. 171-A. **1965 (2) Cri L J 616 : AIR 1965 Bom 195 (DB).**

"Sunwai karna chahiye".

—Correct translation of Hindi words "sunwai karna chahiye" is "should be tried". See Panchayats—Madhya Bharat Panchayat Act (53 of 1949), S. 77. **1960 Jab L J 246.**

"Superintendence".

See Constitution of India, Art. 227.

"Supervise".

—The word 'supervise' and its derivatives are not of precise import. The words must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with power of inspection and superintendence of the manual work of others. The work done in audit department of a bank is not 'supervison' See Industrial Disputes Act (1947), S. 2. **(1965) 2 S C A 733 : AIR 1966 SC 305.**

"Supervisors".

—Bank (Sastri) Award—Construction — Special allowance to supervisor—Workman whether superisor is mixed question of law and fact — Clerks doing work of checking in audit department held not supervisors. See Industrial Disputes Act (1947), S. 15. **(1961) 1 Lab L J 18 (SC) : AIR 1967 SC 428.**

"Supply".

See (1) Sales Tax—Bihar Sales Tax Act (6 of 1944), S. 2 (c).
(2) Sales Tax—Rajasthan Sales Tax Act (25 of 1954), S. 2 (f).

"Surrender".

See (1) Administration of Evacuee Property Act (1950), S. 40.
(2) Hindu Law—Widow.

"Survey and settlement operations".

—It would not be fair to give wide meaning to the words "survey and settlement operations" in S. 49 (1) (i) of Orissa Estates Abolition Act, 1952, so as to include within it the proceedings relating to apportionment of costs under S. 180 (1), Madras Estates Land Act. See Tenancy Laws—Orissa Estates Abolition Act (1 of 1952), S. 49 (1) (i). **AIR 1957 Orissa 263 (DB).**

"Survives".

See Civil P. C. (1908), O. 22, R. 2.

"Suspend".

—Bombay Local Boards Act (6 of 1923), S. 125 — Scope of—Collectors's power to suspend execution of resolution — Expression 'suspend' used as meaning 'annul'. See Bombay Local Boards Act (6 of 1923), S. 125, **(1961) 2 Guj L R 82.**

"Suspension".

See (1) Constitution of India, Art. 311.
(2) Hyderabad Civil Services (Classification Control and Appeal) Rules, R. 17 (d).
(3) Tort—Master and Servant.

"Suspensory award".

—It is essential, when an accident has caused an injury to a workman and the injury, although it does not affect the capacity in future, to make a declaration of the employer's liability when the evidence is fresh and then adjourn the matter, reserving to each of the parties thereto liberty to make such further application as they might be advised to make in future. Such an order, if made (and there is nothing in the Workmen's Compensation Act to bar it) will be called a "suspensory award". See Workmen's Compensation Act (1923), Sch. 1. **AIR 1957 Cal 601 (DB).**

"Systematic".

—Word 'systematic' would involve element of planning, of method, of same continuity or persistence. See Representation of the People Act (1951), S. 123 (3). **AIR 1960 Bom 249 (DB).**

"Tabedari sthitiban".

—A 'tabedar' is the lowest grade of ghatwal and consequently a tabedar tenure is a form of inferior ghatwali tenure. The status of entry of a tabedar as as 'sthitiban' connotes that such a tabedar is a settled raiyat and accordingly "Tabedari sthitiban" means a tabedar who has the status of a settled raiyat. See Government Grants Act (1895), S. 3. **AIR 1958 Pat 243 (DB).**

"Tackle".

—Confession made by accused after being 'tackled' by investigating police officer—It could not be said that any undue influence was exerted so as to render the confession involuntary. See Evidence Act (1872), S. 24. **ILR (1963) Cut 567.**

"Tafawat".

—Tafawat in the case of Meenas Bara Gaon meant a fixed sum which was payable by them in cash in lieu of land revenue if they did not exercise their option which was given to them to pay the land revenue by rendering personal services. This was not a penalty imposed by the Government but a concession given to the tenure holders. **I L R (1959) 9 Raj 348 : 1959 Raj L W 362 : AIR 1959 Raj 250 (252, 253) (Pt B) (Pr 10) (DB).**

"Tah-bazari".

—'Tah-bazari' is really not a tax but is a ground rent of a stall or a site in the market. **AIR 1955 NUC (Raj) 4637.**

"Tahqiquat".

—The word "tahqiquat" as used in S. 240, Hyderabad Criminal P. C. means 'trial' as is meant in S. 233, Cr. P. C. See Criminal P. C. (1898), S. 233. **52 Cri L J 1376 : AIR 1951 Hyd 113 (DB).**

"Take ....out of the keeping of the lawful guardian of such minor".

See Penal Code (1860), S. 361.

"Take or withdraw proceedings".

—Words 'take proceedings" may mean to lodge the complaint oneself. But it also means to do an act by which a prosecution would be lodged similary, in the case of withdrawal, the words "withdraw from proceedings" can also be interpreted to mean to do an act by which withdrawal be lodged. See Municipalities — Bombay Provincial Municipal Corporations Act (59 of 1949), S. 481. **1953 Cri L J 1454 : AIR 1953 Bom 365 (DB).**

[Overruled in AIR 1968 SC 822].

"Takes".

—Word "takes" in S. 361, Penal Code means "causes to go" to escort, "to get into possession"—Prosecution must show that the accused took some active part in the girl leaving her lawful guardians' custody and taking shelter with him. See Penal Code (1860), **S. 361. (1963) 29 Cut L T 602.**

"Taking and retaining possession".

—The dichotomy between taking and retaining in S. 180, U. P. Tenancy Act indicates that they are mutually exclusive and apply to different situations. Word 'taking' applies to a person taking possession of land otherwise than in accordance with the provisions of law, while the word 'retaining' applies to a person taking possession in accordance with the provisions of law but subsequently retaining the same illegally. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 180. **1959 Cri L J 1223 : AIR 1959 SC 960.**

"Taking of possession or acquisition".

See Constitution of India, Art. 31.

"Taking out".

—'Taking out' does not mean 'in the process of taking out.' See Imorts and Exports (Control) Act (18 of 1947), S. 2 (b). **AIR 1951 Assam 17 (DB).**

"Taking to market".

—'Taking to market' must mean taking to a market with the idea of a sale therein. See Madras Plantation Agricultural Income-tax Act (5 of 1955), S. 2 (d). **ILR (1961) 2 Ker 769.**

"Taluqdari and Zamindari settlements".

—A taluqdari settlement differed from a Zamindari Settlement only in this that in the former one qabuliat was taken from the taluqdar for the payment of the entire land revenue of the ilaqa.

A zamindari settlement could be converted into a taluqdari settlement by taking one qabiliat from the settlee in respect of the vlllages comprised in the estate. See Tenancy Laws — Oudh Estate Act (1 of 1869). **AIR 1952 All 6 (FB).**

"Talwarbandi".

—Talwarbandi is a sort of a due which is connected with the recognition of the succession of a Jagirdar to a jagir by the ruler in the former State of Mewar. Ked Nazarana or talwarbandi has its source in history, though there is no statutory sanction as such for leavyng it. See Constitution of India, Art. 265. **AIR 1957 Raj 151 (DB).**

"Tamashuk sarti kebala".

—Translation of the words 'tamashuk sarti kebala" as mortgage by conditional sale does not appear to be correct. In Law Lexicon, P. Ramanatha Iyer gives the following meaning to the word "kebala". "Any deed of conveyance or transfer of right or property, any contract of bargain, or sale, a bond, a bill sale, title deeds and the like". Even accepting the widest meaning given to that term, the expression can only mean a bond or a contract by way of conditional sale. So translated the expression is consistent with a mortgage as well as with a sale and therefore that is a neutral circumstance. See T. P. Act (1882), S. 58. **AIR 1963 S C 1906.**

"Tamliknama".

—"Tamliknama" means document transferring 'Maliki' or ownership rights. Ram Gopal v. Nand Lal. **64 Mad L W 547 : 88 Cal L J 1 : 1951 All L J 24 : 1950 S C J 575 : 1950 S C R 766 : AIR 1951 S C 139 (141) (Pt D) (Pr 8).**

"Tampering".

—Every alteration is not 'tampering'. The interference with document, to amount to tampering, should be one which has been done improperly. Interference with a thing to misuse it or to pervert it or alter it with some design clandestinely is tampering. It is the circumstances and the purpose or rather the manner in which the alteration is effected which will make the alteration tampering with the real thing. See Elections — U P. Panchayat Raj Rules (1947), R 19-F. **1958 All L J 491.**

"Tank".

—A 'tank, or talao, strictly speaking is a piece of land having embankments and used for storage of water. The embankment which keeps the water confined is called bandh or pind, the ditch from which earth is taken for repair of that embankment or bandh or pind is called pet or bed of the tank. All these three together, namely, (i) the underground or the land underneath, on which water is stored, (ii) the embankment or the bandh, which serves the purpose of keeping the water confined within its boundary, and (iii) the bed or pet of the tank, is known as tank. 1937 Pat W N 158, Rel. on. **1957 Pat L R 51 : I L R 36 Pat 471 : AIR 1957 Pat 278 (283) (Pt C) (Pr 45) (DB).**

"Tape",

—In contradistinction with the word 'cloth', the word 'tape' has been defined in Madras General Sales Tax Act, 1939, as material woven in narrow bands. The word 'cloth' cannot take in 'nawar tape'. See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 5 (iii). **AIR 1957 Andh Pra 890 (DB).**

"Taqabzul-badlain".

—The expression taqabzul-badlain or "exchange of equivalents" means that the registration receipt will be handed over to the vendee after he has paid the consideration money. **1953 B L J R 147 : A I R 1953 Pat 330 (333) (Pt B) (Pr 8).**

"Tasfia".

—In certain parts of the country "Tasfia" is used in the sense of private settlement, in certain part it is used in this sense that a Court decides a dispute. The nearest English word would be 'settlement' or 'clear up'. **AIR 1952 Vin Pra 25 (28, 29) (Pt H) (Pr 15).**

"Tavazhi".

See Marumakattayam Law—Tavazhi.

"Tawaif".

—Tawaif' when used with reference to woman does not necessarily mean 'prostitute' or a public prostitute. In case of 'tawaif' emphasis appears to be on the artistic side i, e , on the fact that the woman engages in singing and dancing and gives public exhibitions. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 298(1), List 1(h)(e). **A I R 1955 N U C (All) 2749.**

"Tax".

—Word 'tax' used in S. 21, Rajasthan Motor Vehicles Taxation Act, 1951, has to be read in a wider sense and not in a narrow sense in which it has been defined in S. 2 of the Act. See Rajasthan Motor Vehicles Taxation Act (11 of 1951), S. 21. 1958 Cri L J 219 : AIR 1958 Raj 48.

"Tax and Fee".

See (1) Constitution of India, Art. 265.
(2) Municipalities—Madras District Municipalities Act (5 of 1920), S. 321 (2).

—Though in a broad sense a fee may also be an impost when it is in the nature of a compulsory levy on certain classes of people, the Parliament has maintained a sharp distinction between 'fees' and 'taxes' in its legislative procedure. Where the imposition is in respect of the benefit taken by the person who is required to make the contribution or else where the imposition is for the service rendered by the authorities under an Act and for the purpose of execution of that Act and such contributions are not credited into the general revenues, they are not classified as taxes. The actual names given to the levy in a statute is immaterial. The purpose for which the levy is collected, the amount so collected (whether unduly high or otherwise) and the fund to which the levy is credited (whether to the general revenue or in a separate fund) —these are material factors in determining whether the levy is a 'tax' or a 'fee'. Compulsion is not the distinguishing factor. I L R (1949) 1 Cut 656 : A I R 1950 Orissa 47 (52, 55) (Pt D) (Prs 20, 22, 37) (DB).

"Tax" and "licence fee".

—Meaning of and distinction between a 'tax" and "license fee", pointed out. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 298. A I R 1956 All 185.

"Tax and Rent".

—Tax is a compulsory exaction by the State for purposes of raising revenue. It is distinguished from fee which is levied for some service and is not meant to augment the general revenue. Rent is a periodical payment by tenant to the owner or the landlord for use of his land or building. It is essentially a payment made by a person who uses the land, to the landlord for the use of that land, and is usually the result of a common agreement between the parties. It is not at all compulsory payment rightly understood. See Municipalities — Bikaner Municipal Act (4 of 1923), S. 55-A. AIR 1955 N U C (Raj) 4637.

"Tax has been paid".

—"Tax has been paid" in 1st proviso to S. 30 (1), Income-tax Act—Meaning explained. See Income-tax Act (1922), S. 30(1). AIR 1957 Andh Pra 276 (DB).

"Tax on expenditure".

See Constitution of India, Art. 291.

"Tax on income".

See Constitution of India, Art. 291.

"Tax payable" and "tax due".

—There is a distinction between the expressions "tax payable" and "tax due". Tax is "due" when it becomes a debt owed to the taxing State; it becomes a debt when it has been determined by assessment and qualified and a notice of demand has been issued intimating the amount of tax and demanding payment. See Sales Tax — U. P. Sales Tax Act (15 of 1948), S. 7-E. (1964) 15 S T C 487 (All).

"Taxes on sale of goods".

See Constitution of India, Sch. 7, List 1, Entry 84.

"Tax under this Act".

—Mysore Sales-tax Act (25 of 1957), S. 13—Tax payable under S. 13 (1) includes tax on dealer's admitted turnover—Words "Tax under this Act" in S. 13 (1) — Meaning explained. See Sales Tax—Mysore Sales-tax Act (25 of 1957), S. 5. (1962) 40 Mys L J 428 (DB).

"Tax with previous sanction" and tax with "sanction".

—There is a well understood distinction in law between cases where a tax is imposed with the "sanction" of Government and cases where the tax has to be imposed with "previous sanction", distinction pointed out. See Panchayats — Rajasthan Panchayat Act (21 of 1953), S. 64 (j). AIR 1959 Raj 75 (DB).

"Tea",

—Word "tea" is not used in the Travancore General Sales Tax Act, in the sense it is used in commerce, in Mining lease or a grocer's shop, but in the sense of a product of plant life the resulant crop of man's labour in the culture of land. See Sales Tax—Travancore General Sales-tax Act (18 of 1124), S. 2 (1) (j) (a) and (j). AIR 1955 N U C (Trav-Co) 2563.

"Technical defect."

—It is not always easy to define what the expression "technical defect" means. However, a technical defect in law is one which may come within the four corners of it but in fact it does not affect the merits of the case. It is a mistake which does not go to the core of the matter. See Municipalities — Madhya Bharat Nagar Palika Nigam Parshad Nirwachan Niyam, R. 23 (1). AIR 1958 Madh Pra 182.

"Teera."

—Use of the Malayalam word 'Teera' in a promissory note, held did not indicate that it was necessarily a conveyance of the rights under the document under S. 2 (10) of the Stamp Act. See Negotiable Instruments Act (1881), S. 16. AIR 1955 Mad 53 (DB).

"Telegraph line."

● —Electric lines used for purposes of wireless telegraph are telegraph lines. They mean wires used for the purpose of an appliance or apparatus for receiving telegraphic or other communications by means of electricity. See Electricity Act (1910), S. 34 (2). AIR 1962 S C 159.

"Temple."

● —A religious institution will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is dedicated to or is for the benefit of or is used as of right by, the Hindu community or any section thereof, as a place of religious worship. See Madras Hindu Religious Endowments Act (2 of 1927), S. 9 (12). AIR 1963 S C 510.

"Temporary need."

See Motor Vehicles Act (1939), S. 62 (c).

"Temporary Post" and "Permanent Post."

—Expressions "temporary post" and 'permanent post' are defined in Fundamental Rules, Rr. 9 (22), (30), Financial Hand Book, Vol. II, which are applicable to servants under the State. Distinction between the expressions, pointed out. AIR 1961 All 401 (406, 407) (Pt A) (Prs 15, 16, 17).

"Temporary statute."

—Meaning. See General Clauses Act (1897), S. 6.

"Tenancy-in-common" and 'Joint tenancy.'

—What is tenancy-in-common and joint tenancy, explained—Distinction pointed out. See Administation of Evacuee Property Act (1950), S. 2 (1). AIR 1957 All 561 (DB).

[H-11 overruled by AIR 1991 S C 365 in AIR 1968 All 499.]

"Tenant."

—A person can be said to be a 'tenant' if he holds land for agricultural purposes and if he is liable to pay rent or if he would, but for a contract, be liable

to pay rent for his holding. 'Bataidar' is clearly not a person under any obligation to pay rent. The words 'Batai' and 'Bataidar' have been derived from the word 'Bat.' Now 'Bat' means a partition, a division or a share. 'Batai' denotes a devision of the crop between the cultivator and the landlord or the Government. 'Bataidar' is thus a cultivator who shares the crop or the produce with the proprietor, there is thus no question of payment of any rent by a 'Bataidar' to a proprietor, Likewise the word 'tenant' has no reference whatsoever to the sharing of produce. Tenancy implies the creation of a subordinate interest while a 'Bataidar' cultivates the land for the benefit of the proprietor on certain considerations. Hence the Bataidars cannot become Pakka Krishaks : 1961 Revenue Nirnaya 313, Rel. on. **1962 Jab L J 591 : 1962 M P L J (Notes) 324.**

—Term "tenant" in S. 2 (4), Madras City Tenants Protection Act, 1921 (3 of 1922 as amended by Act 19 of 1955) would include person who continues to be in possession in land after determination of tenancy agreement. See Tenancy Laws — Madras City Tenants Protection Act (1921) (3 of 1922), S. 2 (4). **AIR 1965 Mad 484 (DB).**

—Expression 'tenant' has been defined in S. 2 (5) of the Orissa House and Rent Control Act, 1958. See Houses and Rents — Orissa Houses and Rent Control Act (31 of 1958), **S. 2 (5). ILR (1964) Cut 220.**

"Tender."

See Contract Act (1872), S. 38.

"Tenement."

—Word "tenement" used in Proviso 4 to S. 22, Bombay Finance Act, 1932, means a house or a part of a house which is separately owned or which is occupied separately. It does not mean a house or a part of it which is let. See Bombay Finance Act (2 of 1932), S. 22. **AIR 1956 Bom 89 (DB).**

"Tenure."

—Word "tenure" means only the period of service and it has no reference to the post held by the employee. See Life Insurance Corporation Act (1956), S. 11. **AIR 1964 Mad 24 (DB).**

—Definition of a "tenure" in S. 2 (q), Bihar Land Reforms Act, 1950, includes a Ghatwalli tenure of every description, namely both the Zamindari and Government Ghatwalli. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 2. **AIR 1937 Pat 270 (DB).**

"Terminal."

●—"Terminal" means the point to which motion or action ends, goal, end, finishing point; sometimes that from which it starts; starting point; an end; extremity; the point at which something comes to an end. If 'terminal' besides the above meaning has an additional meaning also and that meaning signifies the termini or the jurisdictional limits of the municipal area even then the construction to be placed on the term should be the one that favours the tax payer. See Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 66 (1) (o). **AIR 1958 S C 341.**

"Terminated under S. 12" in S. 46 (c), Saurashtra Land Reforms Act.

—Words "terminated under S. 12" in S. 46 (e), Saurashtra Land Reforms Act, simply mean that the tenancy may be terminated on grounds stated in S. 12 and not termination is to take place under the said section. See Tenancy Laws — Saurashtra Land Reforms Act (25 of 1951), S. 12. **AIR 1956 Sau 44 (DB).**

Term "maiming."

See Penal Code (1860), S. 429.

"Terms" and "advantages."

—The words 'terms' and 'advantages' are not synonymous. The "terms" of an agreement are not equivalent to the "advantage" which a party might receive under it. In fact that advantage follows from the terms of the agreement. **AIR 1953 Sau 122 (125, 126) (Pt C) (Pr 11) (DB).**

"Terms and conditions."

—The word "term," when used in the habendum clause of a lease means the period of the lease or the term granted to the lessee. The word "condition" used in a lease means a bridle or a restraint on the estate and may be contrasted with the word 'covenant' which imports an agreement. Thus a deed of lease which stipulates that the lessee would not assign the lease to anybody except his wife and children indicates that the lease may be determined for breach thereof and is a condition of this lease. But if a lessee undertakes not to underlet the leasehold premises, without the consent in writing of the landlord, the words of restraint indicate a covenant and the breach of the covenant entitles the landlord to sue for recovering damages or obtaining injunctions. Technical rules of construction of documents are not, however, always the safest guide for construction of statutes. The expression "term and condition," apart from its restricted meaning indicated above, may also have a wider import and may, in a particular context. mean incidents of a tenancy. **68 Cal W N 574 ; AIR 1964 Cal 460 (464) (Pt B) (Pr 18) (DB).**

"Testimonial compulsion."

See Constitution of India, Art. 20 (3).

"Text"

●—Word "Text" in its dictionary meaning means 'subject' or 'theme.' When an enactment amends the text of another, it amends the subject or theme of it, though sometime it may expunge unnecessary words without altering the subject. It must, therefore be held that the word 'text' is comprehensive :enough to take in the subject as well as the terminology used in a statute. See Wireless Telegraphy Act (1933), S. 6 (1-A). **1960 Cri L J 160 : AIR 1960 SC 89.**

"Text book"

—The word "Text book" would involve either some original matter contributed and published by the author or it may even include an intelligent selection of the work of another author or authors for use in schools. It may also include some book which have been copyrighted and if the scheme of the book or books involves a graduated or considered study or training the particular subject like say books of drawing it might be said to be text-book. A copy book cannot however be strictly a text-book in that sense. **ILR (1955) Mys 203 : AIR 1955 Mys 81 (87) (Pt D) (Pr 17) (DB).**

"Textile"

—Textile includes bleaching and dyeing processes — See Industrial Disputes Act (1947), **S. 22. AIR 1960 Mad 131.**

—Word ' textile" will include anything from yarn to woven material which :may be coarse or which may be fine, which may be made of cotton or wool or jute or silk, which may be bleached or unbleached, which may be printed or plain. See Employees' Provident Funds Act (1952), S. 2 (1) and Schedule I. **AIR 1955 Punj 130 (DB).**

"The date of the said order"

—"The date of the said order" within the meaning of Rule 8 of the Payment of Wages (Procedure) Rules (1937), is the date on which :the order is actually made, if it is made in the presence of parties or after previous notice to them of the date on which the order will be made or if it is made in the absence of the parties the date on which it is communicated to them

or on which they acquire actual or constructive knowledge of the order. Civil Appl. No. 2988 of 1956 D/- 3-7-1957 :(Bom.) Dissented from. See Payment of Wages (Procedure) Rules (1957), R. 8. **A I R 1961 Bom 73 (DB).**

"Then due".

—Expression "then due" in S. 12 (3), Bombay Hotel and Lodging Houses Rates Control Order, 1947, means due on the date of the payment. See Houses and Rents — Bombay Hotel and Lodging Houses Rates Control Act :(LVII of 1947), As Applied to Saurashtra, S. 12 (3). **AIR 1955 N U C (Sau) 5045.**

"The first day of hearing"

—"The first day of hearing" in S. 12 (3) (b), Bombay Rents, Hotel and Loding House Rates Control Act, means not the day fixed for return of the summons or what is sometimes called the returnable day but the day on which the judge applies his mind to the case which ordinarily he would do at the time when the issues are determined is the day mentioned and that is the day before which the rent should be paid. AIR 1951 Punj 441 **Dissented from.** See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947., S. 12 (3) (b). **A I R 1959 Bom 471.**

"The liability of such person"

●—The proper meaning of the words "the liability of such person" in O. 21 R. 50 (2) is that primarily the question to try would be whether the person against whom the decree is sought to be executed was a partner of the firm when the cause of action accrued, but he may question the decree on the ground of collusion, fraud or the like but so as not to have the suit tried over again or to raise issues between himself and other partners. See Civil P. C. (1908), O. 30, R. 1. **AIR 1963 S C 243.**

"The said business"

—Words "the said business" occurring in S. 8 (3) (a) (ii), Mysore House Rent and Accommodation Control Act, construed. See Houses and Rents — Mysore House Rent and Accommodation Control Act (30 of 1951), S. 8 (3) (a) (ii). **(1962) 40 Mys L J 871.**

"The said High Courts"

See Court-fees Act (1870), S. 3.

'Thettom'—(Kerala)

—In the case of non-jenmies the meaning of the word 'Thettom' is acquisition. **1957 Ker L T 315 : 1957 Ker L J 32.**

"Think"

—Sapru J. — The word "think" has been used somewhat delibarately in S. 7, Police Act. One of its dictionary meaning is "to judge, to form or hold as an opinion, to consider". The word is milder than the word "found or established" "for it requires a less degree of positive certainly than those words as regards the fact in controversy or dispute. The process however by which the Police officers must 'think' have been indicated by the Police Regulations. See Police Act (1861), S. 7. **1954 Cri L J 874 : AIR 1954 All 438 (DB).**

"Things done and omitted to be done"

See Public Safety—Preventive Detention Act (1950), (As Amended by Preventive Detention (Second Amendment) Act (1952) and Preventive Detention (Amendment) Act (1954), S. 1 (3).

"Thoroughfare"

—See Police Act (5 of 1861), S. 30.

"Time requisite"

—See Limitation Act (1908), S. 12.

"Tindal"

—See Industrial Disputes Act (1947), S. 2 (s) (iii).

"Title"

—See Civil P. C. (1908), O. 21, R. 89.

"Tobacco"

—'Tobacco and all its products—Sales Tax—Andhra Pradesh General Sales Tax Act (6 of 1957), Sch. V (as amended by Act 3 of 1958), Ss. 8, 9 and Statement of objects and reasons—Expression 'Tobaco and all its products'—Connotation—Crushed stalks of tobacco come within purview of expression. See Sales Tax—Andhra Pradesh General Sales Tax Act (6 of 1957), Sch. V (as amended by Act 3 of 1958), S. 8. **(1963) 14 S T C 1 (AP).**

"To be a witness"

—See Evidence Act (1872), S. 27.

"To be a witness against himself"

—See Constitution of India, Art. 20 (3).

"To be concerned in"

—"To be concerned in" in S. 167 (8), Cl. 3, Sea Customs Act, mean to take part in or to be related to. See Sea Customs Act (1878), S. 167 (8). **1960 Cri L J 1441 : AIR 1960 Cal 676.**

"To be paid"

—The expression "to be paid" need not necessarily mean that the amount is to be paid in the future. It may as well mean the compensation 'payable' under S. 10 (h) Telegraph Act. See :Telegraph Act (1885), S. 10. **1963 Ker L T 330.**

"Together"

●—See Municipalities—U. P. Municipalities Act (2 of 1916), S. 87-A (11). **AIR 1958 All 374 (FB).**

"Tolls"

See (1) C. P. and Berar Local Self-Government Act (4 of 1920), S. 23 (1).
(2) Civil P. C. (1908). S. 60.
(3) Municipalities—U. P. Municipalities Act (2 of 1916), S. 128.

"Touching the business of a society."

See (1) Bengal Co-operative Societies Act (21 of 1940), S. 86.
(2) Bombay Co-operative Societies Act (7 of 1925), S. 54.
(3) Madras Co-operative Societies Act (6 of 1932), S. 57.

"To show cause."

See Constitution of India, Art. 226.

"Total sum directed to be paid."

—Words "total sum directed to be paid by way of wages and compensation" in S. 17, Payment of Wages Act are entirely free from ambiguity. They mean on ordinary grammatical construction, the total of all the sums directed to be paid by one single direction, whether the payment is to be to one or more persons. See Payment of Wages Act (1936), S. 17 (1) (d). **AIR 1959 Cal 318 (DB).**

"To withhold service."

See Police (Incitement to Disaffection) Act (1922), S. 3.

"Town."

—In the absence of any definition in the Act the word 'town' has to be understood in the sense in which ordinary people understand it, namely, that it is a place having the main attributes of the existence of houses in clear proximity, concentration of large number of people in a comparatively small area and engagement of the bulk of the population in a non-agricultural pursuits. See Municipalities — Bengal Municipal Act (15 of 1932), S. 6. **AIR 1952 Cal 753 (DB).**

"Trade."

See also (1) Constitution of India, Art. 276.
(2) Industrial Disputes Act (1947), S. 2 (j).
(3) Penal Code (1860), S. 168.

"Trade allowance."

●—"Trade" involves exchange of commodities for money, the business of buying and selling and the transaction involves the seller, the buyer, the commodity sold and the price paid for the sale. 'Allowance' means something given as compensation, rebate or deduction. The question whether a particular payment is a trade allowance within meaning of S. 14, Madras Commercial Crop Markets Act, 1933, or not depends upon the facts of each case. It must be a deduction in any transaction in respect of commercial crops. If it is a deduction out of the price of commodity agreed to be paid or transferred, it would be a trade allowance. On the other hand, if the payment is de hors the terms of the transaction but made towards consideration for the use of the premises or services rendered, it would not be a deduction from the price or in any transaction. See Madras Commercial Crop Markets Act (20 of 1933), S 14. AIR 1959 S C 300.

—The term "trade allowance" in S. 17, Bombay Agricultural Produce Markets Act, 1939, means deductions allowed by custom either in the weight of goods sold or in the purchase price. See Bombay Agricultural Produce Markets Act (22 of 1939), S. 17. (1959) 61 Bom L R 1478.

"Trade, business or commerce."

See Constitution of India, Art. 19 (1) (g).

"Trade debt."

—The connotation and the meaning of words "trade debt" explained. See Excess Profits Tax Act (1940), Sch. II, R. 2. AIR 1960 All 278 (DB).

"Trade Mark"

See Penal Code (1860), S. 486.

"Trade or calling."

—Words "trade or calling" has been used in S. 76, Ajmer Merwara Municipalities Regulation, 1925, in its wide sense so as to include any business carried on with a view to profit. See Municipalities—Ajmer-Merwara Municipalities Regulation (6 of 1925), S. 76 (d). ILR (1958) 8 Raj 195.

"Trading receipt."

See Income-tax Act (1922), S. 4.

"Trafficking."

See Motor Vehicles Act (1939), S. 47.

"Transaction."

See also (1) Debt Laws — Bengal Money-Lenders Act (10 of 1949), S. 2 (12).
(2) Debt Laws — C. P. and Berar Money-Lenders Act (1934), S. 3 (1) (a).
(3) Evidence Act (1872), S. 13.
(4) Excess Profits Tax Act (1940), S. 10-A.

"Transfer" meaning of.

See also (1) Administration of Evacuee Property Act (1950), Ss. 40, 41.
(2) Debt Laws — Madras Agriculturists Relief Act (4 of 1932), S. 9 A (10) (ii) (d).
(3) Income-tax Act (1922), S. 16 (3) (a) (iii).
(4) Panchayats — Bombay Village Panchayats Act (6 of 1933), Rules under R. 13 (d).
(5) T. P. Act (1882), S. 54.

—"Transfer" — Expressions "devolution", "succession" or "transfer" in provincial and Concurrent Lists include partition of joint family property. See Constitution of India, Sch. 7, List 2, Entry 18. AIR 1956 Mad 642 (DB).

"Transfer" and "Sale."

See (1) Administration of Evacuee Property Act (1950), S. 10 (2), Cl. (o).
(2) T. P. Act (1882), S. 54.

—The word "transfer" is a larger word and the word "sale" is a specific word. A transfer may be by means of lease, by means of a mortgage or by means of a sale or in any other mode. Where it is clear from the document transferring a business that the transferor has not retained any control over the affairs of the business after the transfer, the transfer amounts to a sale. A I R 1963 Bom 110 (114) (Pt C) (Pr 10).

"Transfer of property."

See also (1) Gift-tax Act (1958) S. 2 (xii).
(2) T. P. Act (1882), S. 5.

"Transmission by operation of law."

—The phrase "transmission by operation of law' covers those cases where a person or authority acquires an interest in the property by operation of law, without any voluntary act on his part. See Companies Act (1956) S. 108 (1), Proviso 2. AIR 1965 All 135 (DB).

"Transport."

—"Transport" has three conceptions : the conception of two terminii and locomotion. When a person is said to transport goods from one place to another, what is intended to convey is that he moves the goods from the terminus of origin to the terminus of destination. Thus the whole process of moving the goods from the place of origin to the place of destination is included in the concept of transport. Locomotion is asmuch an essential ingredient of the concept of transport as the two terminii. The expression "caused to be transported" is a general expression which would take in its purview not only the causing of transport at the first stage when it leaves the place of origin but at all places intermediate between the place of origin of transport and the terminus of destination. See Gujarat Groundnut (Transport Control) Order (1964), Cl. (2). (1965) 6 Guj L R 282 : ILR (1965) Guj 501.

—Transport is the taking away from place to place by the owner of the property. It may be that the person transporting is a dealer and really transports the article with a view to distributing it. The two acts are different. See V. P. Sugar (Control) Order, 1950—Validity. 1953 Cri L J 70 : AIR 1952 V P 86.

"Traveller."

—The expression "traveller" is applicable to a person while he is travelling from one place to another. The moment he reaches his destination, he ceases to be a traveller. People from various places go to a hill station for a change and they stay there for a shorter or a longer period. Once they reach the hill station and stay there they cease to be travellers. See Municipalities — Bombay District Municipal Act (1901), S. 59 (1) (xi). 61 Bom L R 52 : ILR (1959) Bom 829.

"Trial"

See also Representation of the People Act (1951), S. 90.

●—Word "trial" may be understood in a limited sense as meaning the trial hearing of the petition, consisting of examination of witnesses, filing documents and addressing arguments. It may also connote entire proceeding before the Tribunal from the time that the petition is transferred to it under S. 86, Representation of the People Act, 1951, until the pronouncement of the award. Standing by itself the word 'trial' is susceptible of both the narrow and the wider senses indicated above. But the meaning to be attached to the word in S. 90 (2) of the Act, is the entire proceedings before the Tribunal from the time when the petition is transferred to it under S. 86, until the pronoucement of the award. See Representation of the People Act (1951), S. 90. AIR 1957 S C 444.

●—The words "trial" and 'tried' appear to have no fixed and universal meaning. The meaning to be attached to these words have to be ascertained from

the context. The definition of the word 'inquiry' in Criminal P. C. confirms the view that S. 494 of the Code is wide enough to cover every kind of inquiry and trial and that the word 'trial' in the section has not been used in any limited sense. See Criminal P. C. (1898), S. 494. 1937 Cri L J 567 : AIR 1957 S C 389 (a).

—"Trial" — Meaning of — In the Criminal P. C. the word 'trial' has been used not in one sense. Meaning has to be given to the word according to the context in which it is used. For purposes of S. 540 of the Code, a 'trial' terminates with the pronouncement of the judgment or the charge to the jury and so long as the judgment has not been pronounced or the jury charged, the trial is not terminated See Criminal P. C. (1898), S. 540. 1958 Cri L J 716 : AIR 1958 All 439 (DB).

[Implidly Overruled on another point in AIR 1968 S C 178.]

—The word "try" or "trial" is not restricted to trial of offence but covers a larger area and is used in regard to any legal proceedings and in regard to any issue whether it be civil or criminal. Trial of a petition under S. 528, Criminal P. C. is included within its fold. See Criminal P. C. (1898), S 193 (2). 1964 (1) Cri L J 176 : AIR 1964 Andh Pra 59.

—The definition in S. 4 (l) (k), Criminal P. C. puts it beyond doubt that an 'inquiry' is something different from a 'trial' and that 'inquiry' stops when 'trial' begins. See Criminal P. C. (1898), S. 4 (l) (k). AIR 1957 Andh Pra 472.

—The word "trial" in S. 6 (4) of Bengal Suppression of Immoral Traffic Act, does not mean a criminal trial. There can be civil trial as also a criminal trial. See Bengal Suppression of Immoral Traffic Act (VI of 1933), S. 6 (4). ILR (1951) 1 Cal 404 : AIR 1955 N U C (Cal) 1100.

—Words "for enquiry or trial" in S. 528 (1), Criminal P. C. mean full trial and not a partial trial based on evidence partly recorded by the Magistrate and the evidence recorded by the other Magistrate from whose file the case is transferred. See Criminal P. C. (1898), S. 350. 1961 (2) Cri L J 244 : AIR 1961 Mad 342.

"Tribe."

—Tribe is a group of a simple kind, the members of which speak a common dialect, have a single Government, and act together for such common purposes as warfare. Other typical characteristics include a common name, a continguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities, e.g, bands, villages or neighbourhoods, and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organization in large states but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties. It is no longer used for kin groups in the strict sense, such as clans. AIR 1964 Pat 201 (203) (Pt B) (Pr 14) (DB).

"Tribunal."

See also (1) Civil P. C (1908), S. 9,
(2) Constitution of India, Arts. 136, 226.
(3) Contempt of Courts Act, 1952, S. 3.

"Tributary."

—Expression 'tributary' used in Bombay Government Notification D/- 17-2-1913, under S. 5, Bombay Irrigation Act, 1879, even if read in the sense of wide amplitude cannot embrace any small nullah or stream in the very high reaches of Godavari river. See Bombay Irrigation Act (1879), S. 5. AIR 1960 Bom 490 (DB).

"Tribute."

●—Hukumnama and Patta fees are not tributes. See Tenancy Laws—Rajasthan Land Reforms and Resumption of Jagirs Act (VI of 1952), S. 4 (a). AIR 1961 S C 1338.

"Trippatidanam."

—Where in a document called "Bharamelpupathrow" the word "Trippatidanam" was used, it was held that it was meant to evidence the gift to temple. AIR 1956 Trav-Co 196 (DB)

'Trust"

See Trusts Act (1882), S. 3.

—There is a fundamental distinction between trusts and powers. A trust is an obligation annexed to ownership. Trustee holds the property subject to an obligation which the testator has imposed upon him. Trustee must act within the sphere of the testator's direction and must not deviate from it or modify it. In the case of power, the position is quite different. There is only his wish or recommendation and the wish is that the donee of the power would have absolute discretion and free unfettered choice as to the objects, institutions or persons amongst whom the estate of the testator might be distributed. Powers are never imperative. There is no direction by the testator. AIR 1957 Bom 218 (220, 221) (Pt A) (Pr 8) (DB).

—The word 'trust' in the context of S. 2 (b) (iii) of T. C. Indebted Agriculturists Relief Act, 1958, does not mean strict liability of a trustee. It is used only in the popular sense. See Debt Laws — Travancore-Cochin Indebted Agriculturists Relief Act (III of 1958), S. 2 (b) (iii). 1958 K er L T 436.

"Turnover."

See (1) Sales Tax — Madhya Pradesh General Tax Act (II of 1959), S. 13 (1).
(2) Sales Tax — Madras General Sales Tax Act (9 of 1939), Ss. 2 (i) and 24.

"Two years."

—Berar Regulations of Agricultural Leases Act (24 of 1951), S. 9 (6) read with R. 9 — "Two years" — Does not mean two cultivating seasons. See Tenancy Laws —Berar Regulation of Agricultural Leases Act (24 of 1951), S. 9 (6) read with R. 9. (1959) 61 Bom L R 1156.

"Uberrima" doctrine of.

—Doctrine of "uberrima fides" with special reference to the effect of non-disclosure and misrepresentation on the contract of insurance, expounded by Ramaswami J, in great detail and exhaustively. AIR 1960 Mad 484 (487, 488) (Pr 10) (DB).

"Udashin"

—"Udashin" may mean a 'sanyasi.' Word Udashin used in the arpannama may mean a Baishnava who has taken 'bhek' i e. 'madhukari.' ILR (1954) 1 Cal 207 (DB).

"Ugahi."

—"Ugahi" really means outstandigs or amounts which are to be treated as a person's assets—It does not mean that the amount was a loan given to a debtor. ILR (1960) 1 Punj 895 : AIR 1960 Punj 382 (384) (Pt B) (Pr 6) (DB).

Ultra vires.

See also under Words and Phrases—Void.

—"Ultra vires" only means that something has been done by person or body of persons which was beyond his or their power. 1951 Raj L W 360 : AIR 1951 Raj 23 (24, 25) (Pt C) (Pr 3) (DB).

'Umpire.'

See Arbitration Act (1940), S. 10, Sch. I, Para. 2.

"Unable to pay his debts."

See Provincial Insolvency Act (1920), S. 10.

"Under any law for the time being in force."
See Hindu Marriage Act (1995), Ss. 24 and 28.

"Under colour of duty".

●—When the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right of office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words "under colour" in S. 161 (1), Bombay Police Act, to include this sense. A I R: 1917 Bom 219 and AIR 1928 Bom 352 (FB), Approved; Decision in 63 Bom L R 189, held correct on facts but reasoning disapproved; 1961 Mad L J (Cri) 712 (Mys), **Reversed. Virupaxappa** Veerappa, Kadampur: v. State of Mysore. **(1963) 1 Mys L J (SC) 53 : 1963 S C W R 292 : 1963 Mad W N 441 : (1964) 1 S C J :160 : 1964 Mad L J (Cri 72) : (1963) Supp 2 S C R 6 : 1963 (1) Cri L J 814 : AIR 1963 S C 849 (851, 852) (Pt A) (Prs 9, 10, 11, 14).**

"Undertaking".
See Industrial Disputes Act (1947), S. 2 (j).

—Meaning—In all orders and decrees of the Court, whenever the expression "a party undertakes" is used, it has always borne the meaning that the undertaking has been to the Court. **52 Bom L R 363 : ILR (1951) Bom 125 : A I R 1950 Bom 336 (338) (Pt A) (Pr 7) (DB).**

"Undertaking or calling".
See Industrial Disputes Act (1947), S. 2 (j).

"Under the Act"

●—The words "under the Act" in S. 2, West Bengal Bargadars Act, 1956, refer only to those proceedings which are authorised by this Act only. See West Bengal Bargadars Act (19 of 1956), S. 2. **AIR 1957 Cal 274 (FB).**

"Under the Code of Civil Procedure".
See Limitation Act (1908), Art. 156.

"Undivided share".

—"Undivided" means "not divided and indivisible". If a share of a co-sharer cannot be ascertained and therefore has not been ascertained, it would be a case of undivided share. In tenancy in common the share of a co-sharer though not separated by metes and bounds, is divided, because it has been ascertained. Accordingly composite property does not include a property owned by tenants in common, some of whom are evacuees, though it would include property held by joint tenants some of whom are evacuees. See Evacuee Interest (Separation) Act (64 of 1051), S. 2 (d) (j). **AIR 1957 All 561 (DB).**

[**Held Overruled by AIR 1961 S C 365 in AIR 1966 All 499A.**]

"Unfair".
See U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 5 (4)

"Unless contrary intention appears".

The only possible construction of the words "unless a contrary intention appears by the will" in S. 109, Succession Act, would be that there must be clear unambigous and unequivocal intention by the testator in the will itself before a bequest in favour of a lineal descendant, should he unfortunately die before the testator, can be defeated. See Succession Act (1925), S. 109. **AIR 1955 N U C Bom 22.**

"Unmarried".
See Hindu Marriage Act (1955), S. 25.

"Until".

Word 'until' has both an inclusive and exclusive meaning according to the context. In the light of S. 29, City of Nagpur Corporation Act (M. P. Act 2 of 1950), the word shoul be deemed to have an inclusive meaning. See Municipalities — City of Nagpur Corporation Act (M. P. Act (3 of 1950), S. 20 (1). **A I R 1956 Nag 278 (DB).**

"Untouchability',
See Untouchability Offences Act (1955), S. 3.

"Upto not more than".

●—Promotion from cadre of head constables "up to not more than 30 per cent of cadre"—30 per cent is maximum limit — Words "up to not more than" merely fixes the maximum percentage of promotees from cadre of head constables. See Madras Police Subordinate Service Rules, R. 3. **AIR 1961 S C 779.**

"Urgency".

Urgency and Emergency—'Urgency' relates to a situation requiring prompt action. 'Emergency' indicates situation suddenly arising and demanding prompt action and is a stronger word. See Land Acquisition Act (1894), S. 4. **AIR 1959 Punj 538.**

"Urgent repairs".
See Factories Act (1948), S. 63.

"Urkadai".

"Urkadai signifies a subordinate hamlet in a village group. See Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act, (26 of 1948) **(1962) 1 Mad L J 170.**

"Use".

●—Word "use" must take colour from its context in which it is used. The expression "use in accordance with conditions contained" suggests something done positively, for example, utilisation or disposal, The word 'use' does not include non-use. See under Iron and Steel (Control) Order (1956), Cl. 5. **1965 S C D 885: (1965) 3 Law Rep 766 : (1965) 2 S C W R 801 : (1965) 3 S C R 161 : 1966 Cri L J 79 : AIR 1966 S C 78.**

—"Using any public road" in S. 4 (1), A. P. (Andhra Area) Motor Vehicles Taxation Act, 1931 — To constitute use of public road, it is sufficient, if there is plying of vehicles, even if such plying is casual and not usual. See Andhra Pradesh (Andhra Area) Motor Vehicles Taxation Act (3 of 1931), S. 4 (1). **1965 (2) Cri L J 608 : AIR 1965 Andh Pra 420 (DB).**

"Using a vehicle"—Word 'using' does not mean the same thing as driving or being in charge of the motor vehicle. See Motor Vehicles Act (1939), S. 42 (1), **1960 Cri L J 923 : AIR 1960 Mad 265.**

—Word 'use' is very comprehensive. It means "put to or employ for some purpose". Goods which are being imported within municipal limits must be put to or employed for some purpose and it is only then that it could be said that they are brought in for 'use'. Wool imported for purposes of dyeing, it is being brought in for 'use'. See Municipalities—Punjab Municipal Act (3 of 1911), Octroi Schedule. **(1965) 67 Pun L R 217 : ILR (1965) 1 Punj 606.**

"Used".

—To constitute food within meaning of Prevention of Food Adulteration Act, 1954, the article must be usable as food—Court is not concerned with its actual use—Used means capable of being used or usable as food. See Prevention of Food Adulteration Act (1954) S. 2 (v). **1964 (2) Cri L J 715 : 1964 Pat 565.**

"Useful to the public"..

●—Per Sarkar J. — It would be unduly restricting the meaning of the word 'useful' in S. 40, Land Acquisition Act to say that a work is useful to the public only when it can directly be used by the public. The words are not "work which the public can use" The work contemplated is work from the construction of which the public can in any way

derive benefit whether by direct use of the work or by enjoyment of the fruits of the activities carried on there or may be, otherwise. See Land Acquisition Act (1894), S. 40 (1) (b). AIR 1962 S C 764.

"Use of abbreviations".

Lahiri J —Use of abbreviations in public documents deprecated. They have only the effect of making them utterly unintelligible. Departmental Code is not permissible in public documents. AIR 1957 Cal 466 (468) (Pt H) (Pr 5).

"Uses and allows to be used."

—The use of expression "allow" and "cause" in a Statute, import a requirement of knowledge and the knowledge contemplated thereat is personal knowledge and the knowledge of a servant imputed to the master. See Motor Vehicles Act (1939), S. 112. 1964 M P L J 322 : 1964 Jab L J 432 : 1 L R (1964) Madh Pra 166 : 1964 (2) Cri L J 619.

"Uses any deadly weapon."
See Penal Code (1860), S. 397.

"Using false trade mark."
See Penal Code (1860), S. 482.

"Vacancy."

—"Vacancy" means the state of being not filled or occupied which may arise by death, efflux of time, resignation or removal and office newly created is ipso facto vacant at creation. See Panchayats — Madras Village Panchayat Raj Act (10 of 1950), S. 25 (3). (1960) 2 Mad L J 75.

"Vacant."

—When the original tenant transfers his tenancy rights a vacancy arises under S. 7, U. P. (Temporary) Control of Rent and Eviction Act, 1947. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. 1964 All W R (H C) 614.

"Validity, construction or execution" of agreement.

—Where according to an arbitration clause, "every litigation as to the validity or construction or execution of the present agreement shall be finally decided in Paris .....", the ambit of the clause was wide enough to include the question of limitation. It is included in the words "validity, construction or execution". See Arbitration Act (1940), S. 2 (a). A I R 1956 Cal 644.

"Validly instituted."

—Words "validly instituted" in S. 7, Bengal Land Revenue Sales West Bengal Amendment Act, 1950, do not mean instituted successfully, that is to say, with success in the end. The language used in that section has reference not to the result of the proceeding concerned but to its form and constitution at the date of the commencement. See Bengal Land Revenue Sales West Bengal Amendment Act (7 of 1950 , S. 7. A I R 1955 N U C (Cal) 5334 (DB).

"Valid vote."

—The word "valid" in R. 16 (a) of U. P. Kshettra Samiti (Settlement of Disputes Relating to Membership) Rules, 1962, is used in contra-distinction to the word "invalid" used in R. 17. Thus a ballot paper which does not suffer from any of the defects mentioned in R. 17 is a valid ballot paper and the Returning Officer is bound to treat it as a valid vote. See Panchayats—U. P. Kshettra Samitis and Zila Parishads Adhiniyam (33 of 1961), S. 14 (2). I L R (1965) 1 All 111.

"Valuable security."
See Penal Code (1860), S. 30.

"Value of subject-matter."
See Constitution of India, Art. 133.

"Value of the property."

—Mysore Court-Fees Act (3 of 1900), S. 4 (iv-A)— Expression value of the property — Interpretation of —Value means market value and not value specified in deed. See Mysore Court-Fees Act (3 of 1900), S. 4 (iv-A). (1963) 1 Mys L J 67.

"Vanaspati industry."

—The ordinary and natural meaning of the word "vanaspati" is vegetable and the words "vanaspati industry" as indicated by the words following them viz., 'vegetable oil' in Item 23 of Schedule to the Notification No. 75/7 S. R. 55 (51), Dated 24-11-1953 under Madhya Pradesh Sales Tax Act, 1950, connote 'vegetable oil industry', 'vanaspati industry' cannot be read as meaning an industry engaged only in production of vanaspati ghee or Hydrogenated oil. See Sales Tax—Madhya Bharat Sales Tax Act (30 of 1950), S. 4 (3). A I R 1961 Madh Pra 32 (DB).

"Varam."

—Word "varam" is loosly applied. All kinds of people are called "varamdars" in the country side, though many of them are certainly not cultivating tenants. The word varam is applied to regular varam tenants having normal possession and full custody of the land and a tenancy agreement, and paying varam or guttagai, and constitutes cultivating tenants. See Tenancy Laws—Madras Cultivating Tenants Protection Act (25 of 1950) (as amendnd by Madras Act 14 of 1956), S. 2 (a). (1958) 2 Mad L J 519.

"Varesh, varish."

—The word 'varesh' (or varish), which is a Persian term means an heir and is not restricted to male heirs only but would include female heirs as well. Even in Sanskrit the expression 'Aurasa' is not restricted to male descendants. It would include any issue born of a person, i. e., sprung from the loins of a person (literally 'produced from the breast') whether male or female. A I R 1961 Orissa 9 (11, 12) (Pt A) (Pr 10) (DB).

"Varnish."

—"Varnish" is a generic name given to a homogeneous solution of gums or resins in alcohol, linseed oil or the like which is coated on various articles for protective or decorative purposes, French polish is only a species, being a homogeneous solution in alcohol with the result that the volatile solvent evaporates quickly. See Central Excises and Salt Act (1944), Sch. 1, Item 22. A I R 1961 Madh Pra 353 (DB).

"Vatsaravakasom."

—"Vatsaravakasom" means the right of the wife and children to be in possession and enjoyment of properties of deceased for one year from the date of death without being accountable for the income to the seshakars. "Cheruthettam" means the right to a share in the properties of the deceased towards the performance of the marriage and other ceremonies of minor children. See Malabar Law — Ezhava. A I R 1951 Trav-Co 135 (DB).

"Vegetables."

●—In Item 2 of Sch. 2, Rajasthan Sales Tax Act 1954, the word "vegetable" is used in its popular sense of vegetables grown in kitchen garden for use for the table. It does not include pan (betel leaves). See Sales Tax—Rajasthan Sales Tax Act (29 of 1954), S. 4 (2). A I R 1963 S C 351.

●—Word "vegetable" in C. P. and Berar Sales Tax Act, 1947, Sch. 2, Item 6, must be construed in popular sense, denoting class of vegetables which are grown in kitchen garden or in a farm and are used for the table. The term does not include betel leaves (pan). See Sales Tax—C. P. and Berar Sales Tax Act (21 of 1947) (as amended by C. P. and Berar Act 16 of 1948), S. 6. A I R 1961 S C 1325.

—Pan and betel leaf is not vegetable within meaning of Item 6 of Schedule to Bengal Finance (Sales Tax) Act, 1947. 'Vegetable' in Item 6 should be given a narrow and restricted interpretation. See Sales Tax—Bengal Finance (Sales Tax) Act (6 of 1941), Schedule, Item 6. **A I R 1958 Cal 302.**

—Word "vegetable" cannot be given the comprehensive meaning which it bears in natural history, and has not been given that meaning in taxing statutes, (e. g. Rajasthan Sales Tax Act, 1954). The term is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for table. Betel leaves are neither vegetable nor plant. See Sales Tax—Rajasthan Sales Tax Act (19 of 1954), Schedule, Serial 2. **1957 Raj L W 518.**

"Vehicle."

—Dictionary meaning of word "vehicle" is a conveyance or a carriage. Agricultural tractor is not a vehicle. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 3 (1) (b). **A I R 1954 Mad 884 (DB).**

"Vest."

See (1) Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 38.
(2) Provincial Insolvency Act (1920), S. 28 (2).
(3) Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 3.

● — The word 'vest' has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the U, P. Town Improvement Act, particularly Ss. 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them. The vesting of property in the Trust is only for the purpose of executing any improvement scheme which it has undertaken and not with a view to clothing it with complete title.

That the word 'vest' is a word of variable import is shown by provisions of Indian statutes. For example, under S. 56 of the Provincial Insolvency Act (5 of 1920), the property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but for the purposes of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Ss. 16 and 17 of the Land Acquisition Act (Act 1 of 1894), provide that the property so acquired upon the happening of certain events, shall 'vest absolutely in the Government free from all encumbrances'. In the cases contemplated by Ss. 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust. **1957 S C J 167 : 1957 S C A 373 : 1957 S C R 1 : ILR (1957) Punj 850 : AIR 1957 S C 344 (350, 353) (Pt B) (Prs 11, 19).**

The word "vest" has not a fixed connotation. It does not mean in all cases that the property is owned by the person or authority in whom it vests. Such property may vest in title, or it may vest in possession or it may vest in a limited sense, depending upon the context in which such vesting is enacted. The word "vest", therefore is a word of variable import. AIR 1957 S C 344 : 1957 S C J 167, Rel. on. **(1959) 61 Bom L R 660 : ILR (1959) Bom 1308.**

"Vested in court".

●—Words "vested in court" in S. 108 (1), Government of India Act, 1915, cannot be read as meaning "now vested in court". See Letters Patent (Bom), Cl. 15. **AIR 1953 S C 357.**

"Vested right".

— A right is said to be vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest independent of a contingency. It is a right that cannot be taken away without the consent of the owner. Such rights may arise from contracts, or statutes or the operation of law. No person has vested right in the course of procedure. See Civil P. C. of Bhopal State, S. 49. **1963 M P L J 157.**

— "Vested right" is power to do certain actions or possess certain things lawfully and is substantially a property right which may be erected by common law, by statute or by contract. There is a vested right in accrued cause of action or in a deference to a cause of action. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (3) (a) (iii). **ILR (1958) Punj 1553.**

"Vice-versa".

— Words "vice-versa" means "the order or relation being inverted, the other way round". See Municipalities — J. K. Town Area Act (17 of 2011 as Amended by Act 10 of 1965), S. 14-A. **1965 Kash L J 324 : AIR 1966 J & K 9 (DB).**

"Vicinity".

— The word "vicinity" is a term of relative import and in the absence of any special statutory significance attaching to it, it must be understood in its ordinary dictionary meaning of the neighbourhood of a place different from the place itself. **59 C W N 999 : 1955 Cri L J 1336 : ILR (1957) 2 Cal 351 : AIR 1955 Cal 513 (515) (Pt C) (Pr 17).**

"Victimisation".

See Industrial Disputes Act (1947), S. 2 (k).

"Village".

— "Village" in Notification No. 168 D/. 20-4-1950 of the Director of Civil Supplies, Pepsu, should be understood to mean what in vernacular is known as Mauza, Gaon, or Pind and includes not only the residential portion but also the lands of the villegers residing in it. Besides abadi deb, a village also includes the Gora deh, Shamilat deb, and practically all area owned by the village community. See Patiala Essential Supplies (Temporary Powers) Ordinance (2003 B. K.), S. 3. **1953 Cri L J 1207 : AIR 1953 Pepsu 103 (DB).**

"Violence".

See under W. & P. — 'Force'.

"Viruthi and viruthi lands".

— "Viruthi" is a service inam. It is a grant of an office, the performance of the duties whereof is remunerated by the use of the land "viruthi lands" are lands the bare enjoyment of which is attached to the performance of future services as mere remuneration without any interest in the soil except that of enjoyment and which lands could be resumed on non-performance. See Tenancy Laws — Kerala Stay of Eviction Proceedings Act (1 of 1957), S. 2 (1). **ILR (1960) Ker 1093.**

"Visit".

— A halt of a few hours at a place which falls on the way and from which the foreigner must catch the bus or a train to arrive at place his destination cannot be deemed to be a stay at that place and a visit to that place within the meaning of para 7 (3) (i) of the

Foreigners Order, 1948. See Foreigners Order (1948), Para 7, Sub-para. 3, Cl. (i). (1965) 67 Punj L R 427.

"Vis-major".

— "Vis major" means an act of God. It is a short way of expressing the proposition that a common carrier is not liable for any accident as to which he can show that it is due to natural causes directly and exclusively without human intervention and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected from him. See Contract Act (1872), S. 151. AIR 1959 Pat 442 (DB).

"Viswas Bai" — Meaning of.

— The term 'Viswas Bai' means a sale as a result of good feelings amongst the parties or because of the trust, reliance or confidence that one reposes in the other. In other words, it means a sale which has come about on account of the confidence reposed by the vendor in the purchaser. 1963 Mys L J (Supp) 201 : ILR (1961) Mys 873 : AIR 1962 Mys 246 (248) (Pt A) (Pr 4) (DB)

"Viva voce" examination.

— "Viva voce" examination and "interview" — Interview is not the same thing as viva voce examination. But a reference to interview in the intimation sent to the candidates held was nothing more than misdescription which was of no consequence. See Constitution of India, Art. 234. AIR 1963 Mys 292 (DB).

"Vocation".

See Income-tax Act (1922), S. 4 (3) (v).

"Void".

See also (1) Companies Act (1913), S. 232.
(2) Constitution of India, Art. 254 (1).
(3) Government of India Act (1935), S. 107.
(4) Contract Act (1872), S. 2 (g).

— Person giving away that which is not his own, and which he has no power to give—Gift is void ab initio. AIR 1957 Bom 280 (DB).

●—"Void", "Jurisdiction" and "Ultra vires" — The words "Void", "Jurisdiction" and "Ultra vires" are used in different senses. A thing that is void in the strict sense of the word is a mere nullity and may be ignored even in collateral proceedings as if it never were. In its true sense the word, "jurisdiction" means inherent jurisdiction and yet it is often used, as in S. 115 of the Civil P. C. in a special sense as meaning competency, or, as connoting those quasi jurisdictional facts without allegation of which the court cannot be set in motion, and without proof of which a decree should not be pronounced. The expression, "ultra vires" likewise, which strictly speaking implies an absence of jurisdiction, is often used to imply an absence of competency. Hence the use of expressions such as "void", "nullity", "null and void", "without jurisdiction" and "ultra vires" in cases where the impugned order is under direct attack as in appeal or revision provides no safe guide for holding that the order is void in the strict sense of the word so that it is for all practical purposes non est and may be ignored in collateral proceedings. Madhavan Pillai v. State of Kerala. 1965 Ker L T 983 ; ILR (1965) 2 Ker 576 ; 1965 Mad L J (Cri) 917 ; 1966 Ker L J 11 : 1966 Cri L J 913 ; A I R 1966 Ker 212 (214) (Pt B) (Pr 6) (FB).

"Voidable."

See Contract Act (1872), S. 2 (i).

"Wages."

—Term wages includes pay or salary—Suit to cover arrears of pay—Art. 102 applies. See Limitation Act (1908), Art. 102. ILR (1963) Cut 431.

—See also (1) Civil P. C. (1908), S. 60 (1) (h).
(2) Companies Act (1913), S. 230 (1) (c).
(3) Employee's Provident Funds Act (1952), S. 1.
(4) Employee's State Insurance Act (34 of 1948), S. 2 (22).
(5) Industrial Disputes Act (1947), S. 2 (rr), 2F.
(6) Payment of Wages Act, S. 2 (vi).

"Waging war"

See Penal Code (1860), S. 121.

"Waiver."

See also (1) Evidence Act (1872), S. 115.
(2) Limitation Act (1908), Art. 75.

●—Waiver is contractual and may constitute cause of action—Waiver means agreement to release or not to assert right. A I R 1935 P. C. 79 (82), Rel. on. Mademsetty Satyanarayana v. Yelloji Rao, (1965) 2 S C W R 145 ; (1965) 2 S C J 678 ; (1965) 2 Andh W R (SC) 145 : (1965) 2 Mad L J (SC) 145 ; 1965 S C D 1146 : (1965) 2 S C R 221 ; AIR 1965 S C 1405 (1410) (Pt C) (Pr 11).

—"Waiver" belongs to the realm of contract and depends on the conduct of the parties. It may be express or implied. A party may expressly agree to forego its rights under a contract or under the provisions of a statute. It is also open to a party by his conduct to release his right by implication. See Indian Independence (Rights, Property and Liabilities) Order (1947), Art. 8. A I R 1957 Cal 156.

—"Waiver" — There must be a conscious and intentional relinquishment of an existing right known by the party relinquishing, to exist in his favour. See Income Tax Act (1922), S. 34. ILR (1961) 2 Ker 32.

"Wajib-uj-arz."

—"Wajib-ul-arz" is an official record of the local custom prevailing amongst the various tribes of the village or the estate to which it relates. It is prepared by public servants in discharge of their official duties and is prima facie evidence of the customs stated therein. The presumption raised by it is rebuttable. See Custom (Punjab). A I R 1955 N U C (Punj) 1034 (DB).

"Wakf-alul-Aulad."

—Under S. 10, Bihar Agricultural Income-tax Act, 1948, wakf-alal-Aulad means dedication by means of which the property is tied up, so that the usufruct might be utilised for the benefit of the family. See Mussalman Wakf Validating Act (1913), S. 3. 1956 B L J R 663.

"Waram"

See under Words and Phrases—'Varam'.

"Waris."

—The literal meaning of the terms Malik and Waris are quite different; the former means the owner and latter heir, and they are never regarded as synonymous with each other. When we say that A is the 'Waris' all that we mean is that he is the heir while when we describe him as 'Malik' the idea is to convey that he is the owner having heritable and alienable estate. A I R 1948 Bom 281, dissented. (1950) 2 Pepsu L R 584 (DB).

"Waste land."

— Unoccupied' and 'Waste' are not exactly synonymous neverthelass all 'waste' is unoccupied and though not all 'unoccupied area' can be considered as waste land. 'Fallow' is not regarded as 'waste'. Words "broken up from waste" suggest waste land that is prepared for first time for cultivation. Land once broken up and cultivated and allowed to lie fallow for a while can no longer be regarded as waste. See C. P. Tenancy Act (1 of 1920), S. 87 (1). 1952 Nag L J 168.

—"Waste land" means land which is neither developed nor used as arable land but land which is

undeveloped and unproductive and which in any event could not be made productive unless it was developed. See West Rengal Rules of Business, R. 19. **(1958) 62 Cal W N 640 : A I R 1960 Cal 113.**

"Waste or arable land."
See (1) Land Acquisition Act (1894), S. 17 (1).
(2) Rajasthan Land Acquisition Act (24 of 1953), S. 17 (1).

'Water course."
See Northern India Canal and Drainage Act (8 of 1873), S. 70 (1).

"Week."
See Factories Act (1948), S. 2.

"Welsh mortgage."
See T. P. Act (1882), S. 58, Cl. (d).

"When."
●—Per Narasimham J. — Word 'when' may sometimes be indicative of time factor—But in S. 3 (12), Hindu Women's Rights to Property Act, 1937, the word has been used as indicating a condition and not the time factor and has the same meaning as 'where' to convey the meaning "in cases in which." Per Ray C. J.—The word 'when' in the section cannot force the construction of future death. The word means "if or in the event of" and does not refer to the time when the Hindu dies. See Hindu Women's Rights to Property Act (1937), S. 3 (12). **A I R 1951 Orissa 378 (SB).**

[Overruled in A I R 1955 Orissa 73.]

"When the Court is closed."
—Whether a court is or is not 'closed' within the meaning of S. 4, Limitation Act (1908), is in each case a question of fact and must depend on the practice which prevails in the particular Court. **ILR (1952) 1 Cal 88: 55 Cal W N 127 : A I R 1952 Cal 542 (543) (Pt A) (Prs 5, 7, 8) (DB).**

"Where."
—Word "where" cannot be construed as "until". See Income-tax Act (1922), S. 25-A (3). **A I R 1956 Mad 396 (DB).**

"Where a debt is incurred".
—The clause "where a debt is incurred by a person" occurring in S. 13A, Madras Agriculturists Relief Act, can only refer to present or future liability. Section prima facie refers to monetary transaction coming into existence subsequent to the passing of the Act. See Debt Laws — Madras Agriculturists Relief Act (4 of 1958), S. 13A. **(1956) 2 Mad L J 425.**

[Overruled in AIR 1965 Mad 127 (FB)].

"Where for any reason it is not possible".
—Words "where for any reason it is not possible" in S. 9 (4), Delhi Rent Control Act, 1958, construed. See Houses and Rents—Delhi Rent Control Act (59 of 1958), S. 6 (B) (2) (b). **ILR (1965) 2 Punj 169.**

"Where the right to redeem accrues to the mortgagor".
See Limitation Act (1908), Art. 148.

"Where there has been an appeal".
See Limitation Act (1908), Art. 182 (2).

"Whether acquired before or after the commencement of the Act".
—Clause "whether acquired before or after the commencement of the Act" in S. 14, Hindu Succession Act, 1956, makes it clear that the section applies to property which a Hindu woman had inherited before the commencement of the Act, provided it was in her possession at the commencement of the Act. See Hindu Succession Act (1956), S. 14. **AIR 1958 Mad 255 (DB).**

"Whether in a police diary or otherwise".
—By addition of words "whether in a police diary or otherwise" in sub-s. (2) to S. 162, Criminal P. C., it is now clear that the statements of witnesses during investigation, even though taken down in the special diary, can be used by the accused for the purposes specified in the proviso. See Criminal P. C. (1898) (as amended by Act (18 of 1923). **ILR (1955) Hyd 644.**

"Which is entered into".
●—Words "which is entered into" in S. 15 (1), Forward Contracts (Regulation) Act, 1952—Contract entered into prior to notification issued under the section are also covered. See Forward Contracts (Regulation) Act (1952), S. 15 (1). **AIR 1962 S C 263.**

"While acting or purporting to act in discharging of his official duty".
See Criminal P. C. (1898), S. 197.

"While purporting to act as public servant".
See West Bengal Criminal Law Amendment (Special Courts) Act (21 of 1949), S. 4 (2).

"Wholesale price".
See (1) Central Excise and Salt Act (1944), S. 4 (9).
(2) Sea Customs Act (1878), S. 30.

"Who is not in possession thereof at the commencement of this Act"
—The expression "who is not in possession thereof at the commencement of this Act" in S. 4, Madras Cultivating Tenants Protection Act, 1955, means cultivating tenants who were in possession of their holdings on 1-12-1953 but who ceased to be in possession at the date of the commencement of the Act by reason of an eviction. Voluntary surrender is not eviction. See Tenancy Laws — Madras Cultivating Tenants Protection Act (25 of 1955), S. 4. **AIR 1957 Mad 641 (DB).**

"Whole State".
—"The whole State" — Meaning of — Cannot mean 'the whole State of India'. See Municipalities — Travancore District Municipalities Act (23 of 1116), Sch. II, R. 18 (2), Proviso. **AIR 1956 Trav-Co 174 (DB).**

"Wife".
See Madras Hindu Bigamy Prevention and Divorce Act (6 of 1949), S. 5 (7).

"Wilful".
—"Wilful" means deliberate or intentional and not accidental or by inadvertence. See Penal Code (1860), S. 405. **1965 (1) Cri L J 539 : AIR 1965 All 233.**
—"Wilful" excludes cases of inadvertence or mistake and not cases of ignorance or wrong view of the law. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 15. **(1957) 2 Mad L J 511.**
—Word 'wilful' excludes bona fides. An honest and reasonable but mistaken belief in the existence of circumstances, which if time, would make the act lawful is a good defence, 'Wilful' is a word of description. See Madras General Sales Tax Act (9 of 1939), S. 15, **(1951) 1 M L J 348.**

"Wilful default".
See (1) Houses and Rents—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 7 (2), Proviso.
(2) Tenancy Laws — Hyderabad Houses (Rent, Eviction and Lease) Control Act (20 of 1956), S. 10.

"Wilfully".
—"Wilfully" means "purposely deliberately". See Houses and Rents—U. P. (Temporary) Control of Rent

and Eviction Act (3 of 1947), S. 3 (b). 1951 Rev Dec 294 : 1951 All W R (HC) 294.

●—There is an essential difference between "allowing a person and "wilfully suffering" a person to do a certain thing. 'Wilfully' presupposes a conscious action, while even by negligence one can allow another to do a thing. See Prevention of Corruption Act (1947), S. 5. 1957 Cri L J 575 : AIR 1957 S C 458.

—"Wilfully" does not mean dishonestly or mala fide. It does not mean intentionally or by inadvertence but deliberate where the mind has been brought into play and the man has after taking the facts into consideration, refused to do the act. See Sales Tax — U. P. Sales Tax Act (15 of 1948), S. 14 (b). 1957 Cri L J 167 : AIR 1957 All 88 (DB).

"Wilfully failed".

—Words "wilfully failed" in S. 3 (a). U. P. (Temp.) Control of Rent and Eviction Act, 1947 must mean not an unintentional failure or failure by inadvertence but a deliberate failure, where the mind has been brought into play and a man has after taking the facts into consideration, refused to make the payment. See Houses and Rents — U. P. (Temporary). Control of Rent and Eviction Act (3 of 1947), S. 3 (a). AIR 1952 All 504 (DB).

"Wilfully suffered".

—Charge of embezzlement — Question whether the officer "wilfully suffered" other members of the staff to commit the offence — The expression "wilfully suffered", explained. See Orissa Treasury Code, Vol. 1, Chapter IX, Rules under Rr. 544 and 549. 1958 Cri L J 1071 : AIR 1958 Orissa 194.

"Within".

—Word "within" means on or before the date fixed. See T. P. Act (1882), S. 60. AIR 1957 Andh Pra 30.

—The word "within" in relation to time means "in the limits of" (a period of time), "before the end of" and "after not more than". In S. 428 (1), City of Nagpur Corporation Act, 1948 (2 of 1950), the expression "at any time within 15 days" does not fix both the inward and outward limits of the period during which the election petition can be made. See Municipalities — City of Nagpur Corporation Act (1948) (2 of 1950), S. 428. AIR 1953 Nag 81 (DB).

"Within a period of not less than one month".

—Expression 'within a period of not less than one month' — Meaning — Expressions "not less than one month" and "within one month" mean same thing. See Rajasthan Agricultural Produce Markets Act (38 of 1961), S. 3 (2). 1965 Raj L W 358 : ILR (1965) 15 Raj 897 : AIR 1966 Raj 142 (DB).

"Within a week"

—In computing the period of one week, the date of occurrence must be excluded. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S 3. 1953 Cri L J 1184 : A I R 1953 Mad 602.

"Within fifteen days"

—Expression "within fifteen days" in S. 12A, Bihar & Orissa Motor Vehicles Taxation Act, 1930 means clear fifteen days which would necessarily exclude due date of payment. See Bihar and Orissa Motor Vehicles Taxation Act (2 of 1930), S. 12-A (1) (as amended by Orissa Act 23 of 1962). AIR 1965 Orissa 71 (DB).

"Within jurisdiction of different Courts"

See Civil P. C. (1908), S. 17.

"Within the meaning of"

●—Words "within the meaning of" in S. 2 (b), Orissa Estates Abolition Act, 1951 (1 of 1952), cannot mean that if A is mentioned in one of those documents (viz. wajib-ul-arz or any sanad, deed or other instrument) and is called or referred to as a zamindar that makes him an intermediary, for if that has been the intention, the definition would have said so. See Tenancy Laws — Orissa Estates Abolition Act, 1951 (1 of 1952), S. 2 (h). AIR 1954 S C 139.

"Within three days of sending of communication"

—"Within three days of sending of such communication"—Computation. Three days are to start from the receipt of the communication. See Municipalities —U. P. Municipalities Act (2 of 1916), S. 47A (1) (a). 1957 All L J 205.

"With or without consent of landlord"

—W. B. Premises Tenancy Act (12 of 1956), S. 16 (2) —Lease—Prohibition of sub-letting with or without consent of landlord—Breach of—Sub-letting is without consent of landlord under S. 16 (2). See Tenancy Laws—W. B. Premises Tenancy Act (12 of 1956), S. 16 (2). (1961) 65 Cal W N 1050.

"Without an obligation to pay rent"

—The expression "without any obligation to pay rent" in the definition of "kudikidappukaram" in S. 2 (a), Cochin Verumpattamdars Act, 1113, can only apply to such cases where there is evidence to the effect that when the house site was allowed to be used there was definite agreement on part of the landlord that party so allowed need not pay any rent at all. Absence of agreement will not raise any presumption that the house site was given without any obligation to pay rent. See Tenancy Laws — Cochin Verumpattamdars' Act (8 of 1113), S. 2. 1956 Ker L T 920.

"Without any prejudice"

—The words "without prejudice" import into any transaction that the parties have agreed that as between themselves the receipt of money by one and its payment by the other shall not of themselves have any legal effect on the rights of the parties, but they shall be open to settlement by legal controversy as if the money had not been paid. Hence, where rent was accepted without prejudice by the State from a person who had taken a settlement from the landlord, the State would not be estopped from challenging the genuineness and validity of the settlement under S. 4 (h), Bihar Land Reforms Act. 1956 B L J R 229 : 1956 Pat L R 151 : ILR 35 Pat 385 : AIR 1956 Pat 425 (426, 427) (Pt A) (Pr 5) (DB).
[Reversed on other grounds in A I R 1962 S C 50.]

"Without interruption"

See (1) Easements Act (1882), S. 15.
(2) Limitation Act (1908), S. 26.
(3) T. P. Act (1882), S. 108 (c).

"With regard to"

—Construction. See Bombay Industrial Relations Act (11 of 1947). AIR 1952 Bom 209.

"With respect to' and 'in relation to' 'Legislature'.

See Constitution of India, Art. 208 (2).

"Witness"

See Constitution of India, Art. 20 (3).

"Wood Naptha"

—Wood naptha is a distillation of wood and in its crude stage contains only small percentage of Methyl Alcohol. From this is prepared Methyle Alcohol of different degrees of purity. In other words, from Methyle Alcohol may be prepered from impure Methyle Alcohol containing acetone and other impurity. In any case, whether pure or impure, methyle alcohol is not drinkable or potable and is supposed to be poisonous. In fact it is used as a denaturing agent itself. See Customs Tariff Schedule, S. 4, Item 22 (4). AIR 1958 Cal 694.

"Work"

—The word 'work' has a very wide meaning. The word is really used in two senses of bestowing labour

and that upon which labour has been bestowed. The word gets its colour and complexion from the nature of the work and when used in singular with reference to construction, it is not confined to only big industrial or scientific constructions. Taking the ordinary popular meaning, the construction of ordinary houses for purposes of residence comes within its meaning. See Land Acquisition Act (1894), S. 40. **AIR 1954 All 700.**

—The word "work" in the expression "for the execution of any work" in S. 50 (1), Bombay Municipal Boroughs Act, 1925, is not used in the sense of the work that an officer of the Municipality has to do in the discharge of his duties. The section has no application to the appointment on a contract basis. See Municipalities—Bombay Municipal Boroughs Act (18 of 1925), S. 50 (1). **ILR (1958) Bom 113.**

"Worker"

See Factories Act (1948), S. 2 (k) (l) and (m).

—"Worker" — Includes both casual and permanent workers. See Plantations Labour Act (1951). S. 80 (as stood before amendment by Act (34 of 1960). **I L R (1964) 16 Assam 550.**

"Workman"

See (1) Industrial Disputes Act (1947), S. 2 (S).
(2) Workmen's Compensation Act (8 of 1923), S. 2 (1) (n).

"Workmen concerned in such appeal"

See Industrial Disputes (Appellate Tribunal) Act (1950), S. 22.

"Workman concerned in pending dispute"

See Industrial Disputes Act (1947), S. 33A.

"Workmen concerned in such dispute"

See Industrial Disputes (Appellate Tribunal) Act (1950), S. 22.

"Works"

—Improvements are also "works" in the contemplation of Requisitioned Land (Continuance of Powers) Act, 1947. It is not essential that they should be original constructions. See Requisitioned Land (Continuance of Powers) Act (1947), S. 5 (3). **A I R 1955 Cal 506 (DB).**

"Works contract"

See also Madras General Sales-tax Act (1939), Ss. 2 and 3.

—When a person entrusts a press to print stationery like letter paper or visiting cards and the press itself supplies the material, the transaction is nothing but a works contract. See Sales-tax — Madras General Sales-tax Act (9 of 1939), S. 2 (i) (l). **A I R 1956 Mad 191.**

"Woman's estate"

See (1) Hindu Women's Rights to Property Act (1937), S. 3 (2) and (3).
(2) Hindu Law—Widow.

"Wrong"

—The term 'wrong' in S. 23 (a) Hindu Marriage Act, 1955 means an act causing some injury in the other side. A wife being separated from her husband cannot be considered to cause thereby an injury to her husband. See Hindu Marriage Act (1955), S. 23 (a). **AIR 1958 Raj 71.**

"Wrong done to person"

—"Wrong done to the person" in S. 19, Civil P. C. connotes the same thing which is termed in common law as trespass to the person. Wrong attachment of one's immovable property cannot amount to trespass to the person or wrong done to the person. See Civil P. C. (1908), S. 16. **AIR 1955 N U C (Madh B) 2402.**

"Worship"

—The word 'worship" in English is almost untranslatable into other language. It implied acts prompted by veneration but with stress of time and weight of use it has come to be applied to the whole range of religious behaviour so that one might well say that 'worship' is the active side of religion. **A I R 1961 Mad 265 (270) (Pr 16) (DB).**

"Would be"

—Word "would be" as used in S. 4 (a), Merwar Limitation (Amendment Act, 1949, clearly mean 'is'. See Marwar Limitation (Amendment) Act (32 of 1949), S. 4 (a). **AIR 1955 N U C (Raj) 680.**

"Writing"

—"Writing" — Statement recorded on tape by tape recorder is not writing—It is inadmissible in evidence under S. 145, Evidence Act. **AIR 1956 Punj 173.**

"Wrongful gain"

See Penal Code (1860), S. 23.

"Wrongful loss"

See Penal Code (1860), S. 23.

"Wrongly taking"

—Expression "wrongly taking" in S. 86 (1) (iv) of C. P. & Berar Panchayats Act, 1947, is wide one and it comprises not only of an act which would amount to conversion but also an act which would amount to trespass to goods. It thus includes wrongful impounding of cattle. See C. P. and Berar Panchayats Act (1 of 1847), S. 86 (1) (iv). **A I R 1953 Nag 213 (DB).**

"Wrong person"

See Civil P. C. (1908), O. 1, R. 10 (1).

"Yakjaddis"

—Yakjaddis who have first preference in matters of sale, are relations of the vendor though males only descended from a common ancestor. See Wajib-ul-arz **AIR 1955 N U C (Raj) 298 (DB).**

"Years"

See (1) Assam State Acquisition of Zamindaris Act (18 of 1951), S. 11.
(2) Debt Laws—Bihar Money Lenders Act (3 of 1938), S. 4.
(3) General Clauses Act (1897), S. 3 (66).
(4) Income-tax Act (1922), S. 34 (1).
(5) Penal Code (1860), S. 49.
(6) Tenancy Laws — Bombay Tenancy Act (29 of 1939), S. 2 (12).
(7) Tenancy Laws — C. P. Tenancy Act (1 of 1920), S. 87 (3).

"Year of the tenancy."

—Expression "a year of the "tenancy" in S. 9 (1) (b) (iii) of the West Bengal Non-agricultural Tenancy Act, 1949, in relation to the tenancies from month to month means in the absence of a contract to the contrary, a year or a period of twelve months according to the calender of the particular tenancy, starting with its date of commencement or any ani-

versary thereof. The term year in the provision does not necessarily mean the calender year in every case. See Tenancy Laws — West Bengal Non-agricultural Tenancy Act (20 of 1949), S. 9 (1) (b) (iii). AIR 1961 Cal 515 (SB).

"Zaili"

—The definition of the word "zaili" given in S. 90 of the Circular No. 3 (Sigha Mal) of the former Kotah State, and the subsequent sections does not include trespasser. See Tenancy Laws—(Former) Kotah State in Rajathan Circular No 3 (Sigha Mal) of the former Kotah State, S. 69. AIR 1955 NUC (Raj) 5006 (DB).

"Zamindar"

●—The word "Zamindar" used in a wajib-ul-arz prepared by revenue officers during the course of the settlement must be given the ordinary meaning given to it in revenue proceedings. The word 'zamindari" has a well established connotation. It means "a person" who is the owner or a co-sharer of a mohal and as such has an interest in the common land of the mohal and the management of the mohal, has the right to realise rent from tenants and in the absence of a contract to the contrary is liable to pay land revenue to Government. Ram Kishore v. B. Kavindra 1954 All L J 726 : 1955 All W R (HC) 50 : I L R (1955) 1 All 557 : A I R 1955 All 59 (62) (Pt C) (Pr 19) (FB).

WORKER

Defined.

See Factories Act (1948), S. 2.

WORKERS

Welfare of.

See Constitution of India, Arts. 41, 43.

WORKERS' UNION

——Meeting of executive committee—Notice—It is not essential that each member of the executive committee should receive notice of meeting 48 hours before. AIR 1965 Pat 184 (185) (Pt A) (Pr 2) (DB).

——Executive Committee meeting—Agenda — Notice of amendment — Constitution requiring member intending to move "any resolution, amendment or interpolation on any item of agenda shall submit notice of same clear 24 hours before time fixed for meeting" — Rule does not require that notice of amendment should be given to each and every member—Amendment is not intended to be circulated to all members — "Any resolution" held included no confidence resolution also, in the absence of any other provision in Constitution in this behalf. AIR 1965 Pat 184 (185) (Pt B) (Pr 5) (DB).

WORKING JOURNALISTS (CONDITIONS OF SERVICE AND MISCELLANEOUS PROVISIONS) ACT (45 of 1955)

SECTION 1

●——S. 1—Constitutional validity—Whether violates Arts. 19 (1) (a), 19 (1) (g), 14 and 32 of the Constitution — (Constitution of India, Arts. 14, 19 (1) (a), 19 (1) (g) and 32).

None of the provisions of the Act is violative of the fundamental rights enshrined in Arts. 19 (1) (a), 19 (1) (g), 14 and/or 32 save the provision contained in S 5 (1) (a) (iii) of Act which is violative of the fundamental right guaranteed under Art. 19 (1) (g) of the Constitution and is therefore unconstitutional and should be struck down. S. 5 (1) (a) (iii) being clearly severable from the rest of the provisions can be struck down as unconstitutional without invalidating the other parts of the impugned Act.

The impugned Act does not say that the Wage Board shall not give any reason for its decision. It is left to the discretion of the Wage Board whether it should give the reasons for its decision or not. In the absence of any such prohibition it is impossible to hold that the fundamental right conferred upon the petitioners under Art. 32 was in any manner whatever sought to be infringed. Express Newspapers (Private) Ltd v. Union of India, (1961) 1 Lab L J 339 : (1958-59) 14 F J R 211 : 1958 S C J 1113 : 1958 S C A 952 : 1959 S C R 12 : AIR 1958 S C 578 (619, 620, 621, 622, 623, 624, 625, 627, 628, 629, 631, 632, 633, 634) (Pt I) (Prs 159, 160, 171, 176, 178, 180, 181, 192, 193, 193, 197, 198, 205, 207, 209, 215, 216, 217, 224, 225, 226).

——S. 1 — Applicability — Act applies to working journalist even if Act was not in force when his services were terminated, when at the time of termination Working Journalists (Industrial Disputes) Act, 1955 was in force, which Act was replaced by Working Journalists (Conditions of Service) Miscellaneous Provisions Act. AIR 1961 Andh-Pra 528 (531, 532) (Pt B) (Pr 17) (DB).

[Reversed on another point in AIR 1964 S C 279].

——S. 1, Sch. 2, Item 3 — Power of labour Courts to set aside order of termination of service — Case of termination of service of working journalist — See Industrial Disputes Act (1947), Sch. 2, Item 3. AIR 1959 Mad 343.

——S. 1—Does not exclude applicability of Payment of Wages Act to working journalists. See Payment of Wages Act (1936), S. 15. AIR 1960 Pat 33 (DB).

SECTION 2

●——S. 2 (f)—'Working Journalist' — Part time correspondent — When 'working journalists' within meaning of definition — 'Avocation' meaning of. He must be a journalist by avocation and must be employed as such. The principle gains made by a person are mainly from the career of a journalist, his principal avocation would be that of a working journalist. See Working Journalists Industrial Disputes Act (1 of 1955), S. 2 (b). AIR 1964 S C 279.

——S. 2 (f) — Expression 'Avocation' in definition, does not connote profession or calling — Words and Phrases—"Avocation" and "vocation" — Meaning of. AIR 1961 Andh-Pra 528 (532, 533) (Pt C) (Prs 19, 21, 22, 23, 24, 26) (DB).

[Reversed on another point in AIR 1964 S C 279].

——S. 2 (f)—"Whose principal avocation is that of a journalist"—"Is" has application only to the state of thing which prevailed at the time when action was taken against the journalist—Present tense is indicative of situation as obtaining at the time when question of avocation falls to be adjudged. AIR 1961 Andh-Pra 528 (533) (Pt D) (Pr 27) (DB).

[Reversed in AIR 1964 S C 279.]

——S. 2 (f)—Proof readers—If "working journalists" —Copyholders in newspaper 'Hindu' of Madras — If working journalists.

'Proof readers' are comprehended within the definition of working journalists whether they conform to the description of journalists or not.

Held, on facts, that the copy-holders working in the proof-reading section of the establishment of the news-paper 'Hindu' of Madras were proof-readers within the meaning of S. 2 (f). (1957-58) 13 F J R 68 : (1957) 2 Lab L J 275 (Mad).

——S 2 (g)—Industrial Dispute Act (1947), S 2 (s) —Servant authorised to employ other servants— These other servants become employees of master — (Master and Servant).

If a master employs a servant and authorises him to employ a number of persons to do a particular job, the employees thus appointed by the servant would

become servants of the master. AIR 1955 S C 404, Rel. on. 1959 B L J R 569 : 1960 Cri L J 102 : (1959.60) 17 F J R 307 : (1960) 1 Lab L J 223 : AIR 1960 Pat 10 (13) (Pt C) (Pr 19).

——S. 2 (g) and S. 18 (1) — Industrial Disputes Act (1947), S. 2 (g)—'Employer' means newspaper establishment itself and not its manager.

The definition of the word 'employer' as given in S. 2 (g) of the Industrial Disputes Act, 1947, does not furnish the key to the meaning of the word 'employer' used in S. 18 (1) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act. In the case of a newspaper establishment the word 'employer', used in S. 18 (1) of the Working Journalists Act, means the newspaper establishment only and it does not include or mean also the manager of the said establishment. 1959 B L J R 569 : 1960 Cri L J 102 : (1959.60) 17 F J R 307 : (1960) 1 Lab L J 223 : AIR 1960 Pat 10 (13, 14) (Pt D) (Prs 26, 28).

——S. 2 (g) and S. 18 (1) — Definition of word 'manager' in Companies Act, S. 2 (24) is not useful in fixing meaning of word 'employer' in S. 18 (1).

In view of S. 2 (g) of the Working Journalists Act it is not permissible to look to the Companies Act for the definition of the word 'employer' in the Act. Further the definition of the word 'manager' in S. 2 (24) of the Companies Act, 1956, does not solve the question whether the word 'employer' in S. 18 (1) of the Working Journalists Act includes the manager of the newspaper establishment. 1959 B L J R 569 : 1960 Cri L J 102 : (1959-60) 17 FJR 307 : (1960) 1 Lab L J 223 : AIR 1960 Pat 10 (17) (Pt E) (Pr 55).

——S. 2 (g) and S. 18 (1)—Acts referred to in Ss. 14 and 15 — Definition of word 'employer' given in those Acts:cannot be considered in fixing meaning of the word 'employer' in S. 18 (1).

The definition of and the meaning given to the word 'employer.' referred to in Ss. 14 and 15 of the Working Journalists Act, will not govern the word 'employer' used in S. 18 (1) of the Act. AIR 1958 S C 507 and AIR 1958 Pat 378, Rel. on. 1959 B L J R 569 : 1960 Cri L J 102 : (1959-60) 17 F J R 307 : (1960) 1 Lab L J 223 : AIR 1960 Pat 10 (17, 18) (Pt F) (Prs 59, 61).

——S. 2 (f) and S. 3 (1) — "Working journalist" — Sub-editor of Newspaper. A sub-editor of newspaper is a working journalist. See Industrial Disputes Act (1947), S. 2. AIR 1959 Pat 431 (DB).

SECTION 3

——S. 3 — Claim for notice and notice pay — Extension of service — Effect.

Where a notice to superannuate or to retire was served on the journalists but these persons continued to be in service for a further term of six months, in the light of the correspondence between the parties.

Held, that it was certainly an extension of service or had the legal consequence of such extension, and the statutory right to notice pay from the date determined by such extension, namely, the new date-line, would appear to be incontrovertible. (1964) 2 Lab L J 94 : (1965) 1 Mad L J 609 : ILR (1964) 2 Mad 283 : AIR 1965 Mad 207 (208, 209) (Pt B) (Pr 5) (DB).

——Ss. 3 and 5 — Termination of service of Working Journalist and his voluntary retirement — Submission to termination is not voluntary retirement See Industrial Disputes Act (1947), S. 2 (oo). AIR 1962 Mad 327 (DB).

——Ss. 3 and 5 — Retrenchment — Retirement on superannuation — No age of superannuation fixed — Termination cannot amount to retirement on superannuation. See Industrial Disputes Act (1947), S. 2 (oo). AIR 1962 Mad 327 (DB).

——S. 3 (1) — Industrial dispute ceasing to be such during pendency of proceedings before Labour Court — Effect — Labour Court ceases to have jurisdiction — It can take notice of subsequent events. See Industrial Disputes Act (1947), S. 2 (k). AIR 1960 Mad 196.

[Reversed in AIR 1961 Mad 370].

——S. 3 — Services of workman terminated—Labour Court's jurisdiction to enquire if it is bona fide — Power to order his reinstatement. The Labour Court is justified in acting within its jurisdiction and directing reinstatement of the worker. See Industrial Disputes Act (1947), S. 15. AIR 1959 Mad 501 (DB).

SECTION 5

——Ss. 5 and 3 — Industrial Disputes Act (1947), Ss. 2 (oo), 25-F — Termination of service of working journalist and his voluntary retirement — Submission to termination is not voluntary retirement—Working Journalists (Industrial Disputes) Act (1955), S 3, See Industrial Disputes Act (1947), S. 2 (oo). AIR 1962 Mad 327 (DB).

——Ss. 5 and 3 — Industrial Disputes Act (1947), Ss. 2 (oo), 25F—Retrenchment—Retirement on superannuation — No age of superannuation fixed — Termination cannot amount to retirement on superannuation — Working Journalists (Industrial Disputes) Act (1955), S. 3. See Industrial Disputes Act (1947), S. 2 (oo). AIR 1962 Mad 327 (DB).

SECTION 6

——S. 6 (1)—Working journalists working overtime — Rate of payment.

Section 6 (1) of the Act opens with the words 'subject to any rules that may be made under this Act.' No rules have so far been made under this Act. In the case of manual labour where an employee is required to work overtime the usual rule applied by employers is the payment of double usual wages for the overtime. That also is the basis upon which Industrial Tribunals award compensntion for overtime in cases of disputes, notwithstanding the absence of a specific provision on these lines in the Industrial Disputes Act. (1957-58) 13 F J R 68 : (1957) 2 Lab L J 275 (Mad).

——S. 6 — Contravention of S. 6—Manager of newspaper establishment not being employer cannot be prosecuted under S. 18 (1). See Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (1955), S. 18 (1). 1960 Cri L J 102 : AIR 1960 Pat 10.

SECTION 8

——S. 8 — Wage fixation — Machinery — Wage Board — Practice and procedure—(Minimum Wages Act (1948), S. 5) — (Constitution of India, Arts. 32 and 226 — Wage Boards — Decisions of — When vitiated)—(Industrial Disputes Act (1947), S. 2 (rr) — (Wage Board).

Wage Board relating to a particular trade or industry constituted of equal number of representatives of employers and employees, with an independent member or members one of whom is appointed a Chairman is best calculated to arrive at the proper fixation of wages in that industry. Express Newspapers (Private) Ltd. v. Union of India, (1958-59) 14 F J R 211 : (1961) 1 Lab L J 339 : 1958 S C J 1113 : 1953 S C A 952 : 1959 S C R 12 : AIR 1958 S C 578 (607, 608, 609) (Pt C) (Prs 88, 89, 91, 94, 100).

——Ss. 8, 9 (1) and 29—Wage Board — Practice and procedure — Resignation of member—Reconstitution — Decision by majority — Validity — Rules under Act — Effect — Decision without giving reasons — Validity.

The decision of the Wage Board appointed under the Act, dated 30th April, 1957 was challenged by newspaper owners as illegal and void because: (1) Reconstitution of the Board was ultra vires and unauthorised by the Act as it stood at the time, the rules having been published only on 30th July, 1956; (2) The decision by a majority was unwarranted by the Act and since there was no provision in the Act, the Rules providing for the same went beyond the Act and were therefore ultra vires; (3) The procedure followed by the Board offended the principles of natural justice and was therefore invalid; (4) The decision was invalid, because (a) no reasons were given, (b) nor did it disclose what considerations prevailed with the Board in arriving at its decisions; (5) Classification on the basis of gross revenue was illegal and unathorised by the Act; (6) Grouping into chains or multiple units was unauthorised by the Act; (7) The Board was not authorised by the Act to fix the salaries of journalists except in relation to a particular industrial establishment and not on an All-India basis of all newspapers taken together; (8) The decision was bad as it did not disclose that the capacity to pay of any particular establishment was ever taken into consideration; (9) The Board had no authority to render a decision which was retrospective in operation; (10) The Board had no authority to fix scales of pay for a period of 3 years (subject to review by the Government by appointing another Wage Board at the end of these 3 years), and (11) The Board was handicapped for want of Cost of Living Index.

Held, that the decision of the Wage Board was ultra vires the Act itself as the Board contravened the mandatory requirement of S. 9 of the Act, and must be declared as illegal and void. Express Newspapers (Private) Ltd. v. Union of India, **14 F J R 211: (1961) Lab L J 339 : 1958 S C A 952 : 1953 S C J 1113 : 1959 S C R 12 : AIR 1958 S C 578 (634, 635, 636, 637, 338, 642, 643) (Pt L) (Prs 231, 232, 235, 236, 237, 240, 243, 247, 263, 264, 265, 266, 267, 268).**

SECTION 9

● —S. 9—Wages—Principles of fixation of rates—The capacity of the industry to pay is one of the essential circumstances to be considered. It should be considered on an industry cum-region basis. Further the demand of product, economy in organisation and increase in the efficiency of the lowest paid worker in increasing production have got to be considered. See Industrial Disputes Act (1947), S. 2 (rr). **1958 S C J 1113 : AIR 1958 S C 578.**

SECTION 15

——S. 15—Validity — Act is not ultra vires nor does it amend Provident Funds Act.

The Parliament enacted that the Provident Funds Act would apply to newspaper establishments of the type mentioned in S. 15 of the Working Journalists Act. Therefore, there is no question of vires in this; nor is there any question of amending the Provident Funds Act. **1965 Ker L T 507 : (1965) 10 Fac L R 100 : (1964-65) 27 F J R 502 : (1934) 2 Ker L R 488 : 1965 Ker L J 103 : ILR (1965) 1 Ker 353 : 1965 (1) Cri L J 555 : AIR 1965 Ker 130 (131) (Pt B) (Pr 7) (DB).**

——S. 15—Newspaper establishment falling within S. 15, Working Journalists (Conditions of Service) Etc. Act (1955) can be brought within scope of Act by notification under S. 1 (3) (b), Employees Provident Funds Act. See Employees' Provident Funds Act (1952), S. 1 (3) as Amended by Act XLVI of 1960).: **1965 (1) Cri L J 555 : AIR 1965 Ker 130 (DB).**

——S. 15—Employees' Provident Fund Scheme when became applicable to newspaper establishments. The scheme was made applicable to the newspapers establishments only from 31st December 1956. See Income-tax Act (1922), S. 58-G (2). **AIR 1966 Mad 57 (DB).**

SECTION 17

——S. 17—Validity.

●—With the exception of S. 5 (1) (a) (iii), which deals with the payment of gratuity to employees who voluntarily resign from service, the rest of the Act is valid. Kasturi & Sons (Private), Ltd. v. Salivateswaran, **(1958) 1 Lab L J 527: (1958-59) 14 FLJ 174: 1958 MLJ (Cr) 635: (1958) SCJ 844:(1958) 2 An W R (SC) 130 : (1958) 2 Mad L J (SC) 130: 1959 S C R 1: AIR 1958 S C 507 (509, 510) (Pt A) (Pr 5).**

——S. 17—Scope.

●—The employee's claim against his employer which can form the subject-matter of an enquiry under S. 17 must relate to compensation awardable under S. 4 of the Act, gratuity awardable under S. 5 of the Act, or wages claimable under the decisions of the Wage Board. If the employee wishes to make any other claim against his employer, that would not be covered by S. 17, Kasturi & Sons (Private), Ltd. v. Salivateswaran. **(1958) 1 Lab L J 527 : (1958-59) 14 F J R 174: (1958) M L J (Cr) 635 : (1958) S C J 844: (1958) 2 Andh W R (S C) 130 : (1958) 2 Mad L J (S C) 130 : 1959 S C R 1 : AIR 1958 S C 507 (509, 510, 511, 512) (Pt B) (Prs 5, 7, 9, 12).**

——S. 17—Scope — Claim by working journalist — Jurisdiction of authority. The jurisdiction of the Authoriiy still remains unaffected even in respect of the claims by the working journalists. See Payment of Wages Act (1936), S. 15. **AIR 1960 Guj 10 (DB).**

SECTION 18

——Ss. 18 (1) and 2 (g) — Industrial Disputes Act (1947), S. 2 (g)—"Employer" means newspaper establishment itself and not its manager. See Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955), S. 2 (g). **1960 Cri L J 102 : AIR 1960 Pat 10.**

——Ss. 18 (1) and 2 (g)—Definition of word "manager" in Companies Act, S. 2 (24) is not useful in fixing meaning of word "employer" in S. 18 (1). See Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955), S. 2 (g). **1960 Cri L J 102 : AIR 1960 Pat 10.**

——Ss. 18 (1) and 2 (g)—Acts referred to in Ss, 14 and 15—Definition of word "employer" given in those Acts cannot be considered in fixing meaning of the word "employer" in S. 18 (1). See Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955), S. 2 (g). **1960 Cri L J 102 : AIR 1960 Pat 10.**

——S. 18 (1) and S. 6— Contravention of S. 6—Manager of newspaper establishment not being employer cannot be prosecuted under S. 18 (1).

In the absence of express declaration in S. 18 (1) of the Act that the word "employer" shall include and extend also to a manager of a newspaper establishment, its manager cannot be treated as included in the word 'employer' and cannot be legally prosecuted under S. 18 (1) for contravening the mandatory provisions of S. 6 of the Act ; (1880) 5 A C 857 and 1957 S C J 83 : AIR 1957 S C 121, Rel. on. **1959 B L J R 569 : 1960 Cr L J 102 : (1959-60) 17 F J R 307 : (1960) 1 Lab L J 223 : AIR 1960 Pat 10 (19) (Pt A) (Prs 68, 70).**

SECTION 20

● ——Ss. 20, 8, 9 (1)— Wage Board — Practice and procedure—Resignation of member — Reconstitution —Decision by majority — Validity — Rules made under Act — Effect—Decision without giving reasons

—Wage structure — Fixation of — Grouping of establishments according to gross revenue — Capacity of industry to pay— Ignoring of — Effect on validity of decision — Power to give retrospective effect to decision. See Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955), S. 8. AIR 1958 S C 578.

WORKING JOURNALISTS (FIXATION OF RATES OF WAGES) ACT (29 of 1958)

SECTION 2

——S. 2 (e)—"Wages'—Meaning of — Term includes gratuity payable to a labourer on retirement. See Civil P. C. (1908), S. 60 (1) (h). AIR 1965 Madh Pra 42 (DB).

——S. 2 (f)—Scope and applicability — Copyholders in "Hindu" are proof readers and therefore fall within term "working journalists".

The copyholders in the Hindu establishment are therefore proof readers who will come under group IV of the scheme of wages prescribed under the recommendations of the Wage Committee appointed under the Working Journalists (Fixation of Rates of Wages) Act. (1957) 2 M L J 275, Rel. on. 1963 Mad W N 621 : (1964) 1 M L J 13: (1964) 1 Lab L J 202 : (1964) 8 Fac L R 81 : AIR 1964 Mad 412 (413, 414, 415) (Prs 3, 6, 8, 10) (DB).

SECTION 9

——S. 9 (2) - Jurisdiction—Question of.

The question as to whether a dispute referred to the Labour Court under S 9 (2) can only be with respect to a person in service is a matter which falls properly within competence of the Labour Court to decide in such reference. (1964) 1 Andh L T 333 : (1963) 2 Lab L J 764.

——S. 9 (2) — All provisions of Industrial Disputes Act apply to reference under S. 9 (2) — Industrial Disputes Act (1947), Ss. 10, 7.

Sub-section (2) of S. 9 of the Act clearly, categorically and specifically applies all the provisions of Industrial Disputes Act as if the matter so referred were specified in the Second Schedule to that Act. If the dispute is one which is included in the Second Schedule of that Act, by this deeming provision it cannot be denied that all the provisions of the Industrial Disputes Act apply. (1964) 1 Andh L T 333 : (1963) 2 Lab L J 764.

——S. 9 (2) — Applicability — Satisfaction of Government about the applicability of the Act not necessary.

Sub-section (2) of S. 9 requires that where there is an allegation that under the Act, certain amount is due to the working journalist which demand is denied or which liability is rejected, there would arise a lis under the Act in respect of this contention and the Government is authorized suo motu or on application to refer that lis to the Labour Court. There is no justification for the contention that the Government must be satisfied that the provisions of the Act apply before it can refer the matter for adjudication. (1964) 1 Andh L T 333: (1963) 2 Lab L J 764 (Andh Pra).

WORKING JOURNALISTS (INDUSTRIAL DISPUTES) ACT (1 of 1955)

SECTION 2

● ——S. 2 (b) — Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (XLV of 1955), S. 2 (f) — Part time correspondent — When 'working journalist' within meaning of definition — 'Avocation' meaning of

The first part of definition of 'working journalist' in S. 2 (b) provides for two conditions which must be satisfied by a journalist before he can be held to be a working journalist. The first condition is that he must be a journalist whose principal avocation is that of a journalist and the second condition is that he must be employed as such in, or in relation to, any establishment as there specified. The two conditions thus prescribed by the first part of the definition govern the categories of newspaper employees included in the definition by the artificial extension made by the including clause. (1961) 2 An W R 133 : AIR 1961 Andh Pra 528, Reversed.

The word 'avocation' used in S. 2 (b) means one's vocation, calling or profession. The plain idea underlying S 2 (b) is that if a person is doing the work, say of a correspondent, and at the same time is pursuing some other calling or profession say that of a lawyer, it is only where his calling as a journalist can be said to be his principal calling that the status of a working journalist can be assigned to him.

As to the second requirement of employment which must govern the employee falling under the latter part of S. 2 (b) if they seek the status of working journalists, it is plain that an employment must be proved, because that alone will create a relationship of employer and employee between them and the newspaper establishment.

Normally, employment contemplated by S. 2 (b) would be full time employment, but part time employment is not excluded from S 2 (b) either. On a fair construction of S. 2 (b) it would not be possible to hold that a part time employee who satisfies the test prescribed by S. 2 (b) can be excluded from its purview merely because his employment is part time. Management of Express Newspapers Ltd. v. B. Somayajulu. (1963) 7 Fac L R 246 : (1964) 3 S C R 100 : (1963) 2 Lab L J 385 : (1963-64) 25 F J R 14: (1964) 1 S C A 621 : (1964) 2 Mad L J (S C) 48 : (1964) 2 Andh W R (SC) 48: (1964) 2 S C J 203: AIR 1964 SC 279 (282, 283, 284, 285) (Prs 8, 9, 10).

——S. 2 (b) — Working Journalists (Conditions of Service) Miscellaneous Provisions Act (1955), S. 2(f)—Part time mofussil correspondent is a working journalist—Interpretation of statutes—Interpretation clause —"Includes" is a word of extension—Words and Phrases—"Includes" in definition clause in an Act. (1961) Andh L T 587 : (1961) 2 Lab L J 265 : (1961-62) 21 F J R 169 : (1961) 2 Andh W R 433 : I L R (1962) Andh Pra 561 : A I R 1961 Andh Pra 528 (530, 531) (Pt A) (Prs 8, 10, 11, 15, 16) (DB).

[Reversed in AIR 1964 SC 279.]

SECTION 3

——S. 3 — Retrenchment — Retirement on superannuation—No age of superannuation fixed — Termination cannot amount to retirement on superannuation. See Industrial Disputes Act (1947), S. 2 (oo). A I R 1962 Mad 327 (DB).

——S. 3—Termination of service of Working Journalist and his voluntary retirement — Submission to termination is not voluntary retirement. See Industrial Disputes Act (1947), S. 2(oo). AIR 1962 Mad 327 (DB).

WORKING JOURNALIST'S WAGE BOARD RULES (1956)

RULE 8

● ——R. 8—Wage Board — Practice and procedure—Decision by majority — Validity — Rules made under Act — Effect. See Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (XLV of 1955), S. 8. AIR 1958 S C 578.

WORKING PARTNER

See Business Profits Tax Act (1947), S. 2.

WORKMAN

See (1) Industrial Disputes Act (1947), S. 2 (s).
(2) Industrial Employment (Standing Orders) Act (1946), S. 2 (i .

Accident.

—Compensation for.
See Workmen's Compensation Act (1923).

Right to compensation.
See Industrial Disputes Act (1947), Ss. 25E, 25F.

WORKMEN'S COMPENSATION ACT (8 of 1923)

PREAMBLE

——Pre., Ss. 4, 2 (g) and (l) — Incapacity — When becomes total permanent disability—Test.

If there is such incapacity that he cannot get employment for any work he can undertake it would be total permanent disability. The words 'incapacitates a workman for all work' in S. 2 (l) therefore cannot mean any and every work which he may do but means such work as is reasonably capable of being sold in the market. In other words they do not mean 'incapacitate to work.' The words do not have reference to physical incapacity. 66 Bom L R 450 : 1964 Mah L J 566 : (1964) 9 Fac L R 158 : I L R (1965) Bom 52 : A I R 1965 Bom 32 (33) (Pt B) (Pr 6).

——Joint liability for compensation—Apportionment of compensation—Not permissible. (1961) 1 Lab L J 494 : (1960) 1 Fac L R 508 : (1960-61) 18 F J R 428 : AIR 1960 Punj 573 (575) (Pt E) (Pr 10) (DB).

SECTION 1

——S. 1 — Act to be construed benevolently, not strictly.

The Workmen's Compensation Act should be given a benevolent construction, the same being not a quasi penal statute. It must be interpreted with sympathetic leniency and must not be construed very strictly. 67 Cal W N 728 : (1963) 2 Lab L J 580 : AIR 1964 Cal 217 (219) (Pt C) (Pr 9) (DB).

——Ss. 1, 3 — Stretched construction — (Interpretation of Statutes).

With the progress of the times the conception of the circumstances in which the workman is entitled to compensation has widened and become more and more liberal. Even if, therefore, the view taken by the highest Courts in recent times, on facts which are more or less similar to the facts one has to deal with be a view which only a stretched construction of the Act can bear, it will not be wrong to follow it so long as it is not something violently opposed to fundamental principles. I L R (1953) 2 Cal 239 : 57 C W N 149 : A I R 1953 Cal 516 (519) (Pt D) (Pr 16) (DB).

SECTION 2

(Workmen's Compensation Act (8 of 1923), S. 2)

SYNOPSIS

1. Section 2 (l) (d)—Dependant.
2. Section 2 (l) (e)—Employer.
3. Section 2 (l) (f)—"Managing agent."
4. Section 2 (l) (g)—"Partial disablement."
5. Section 2 (l) (i)—Disability—Evidence—Medical certificate.
6. Section 2 (l) (l)—"Total disablement."
7. Section 2 (l) (m)—"Wages"—Meaning of.
8. Section 2 (l) (n)—Scope.
   (A) "Of a casual nature."
   (B) "For purposes of .... business."
   (C) "Workman"—Nature of employment.
   (D) Person employed for loading and unloading a vehicle.
   (E) Contract of service — Employee and Employer retationship.
   (F) Daily wage earner.
   (G) Other illustrative cases.
9. Section 2 (2)—Local authority exercising power on behalf of Government—Business or trade.

1. Section 2 (l) (d)—Dependant.

——Ss. 2 (d), (i), 8 (5) — Remarriage of widow of deceased workman — Effect — Does not cease to be dependant.

A widow of the deceased workman does not cease to be his dependant after her re-marriage and is not disentitled to receive compensation. A similar conclusion follows by a consideration of S. 8, sub-s. (5). 1961 Andh L T 659 : A I R 1962 Andh Pra 42 (47) (Pt B) (Pr 19).

——Ss. 2 (l) (d), 3, 4 and 8 — Allotment of compensation to a dependant — Dependant dying before withdrawing compensation — Whether the compensation passes to his heirs — S. 9, whether deals with devolution of compensation — Letters of Administration or Succession certificate, if necessary under the Act—Succession Act (1925) S. 306.

When once an allotment of compensation to a dependant or distribution of compensation money among several other dependants is made, the compensation allotted becomes the property of the dependants and if the dependant dies, the said amount being this property would devolve on his or her heirs. A I R 1937 Cal 495; A I R 1938 Mad 402, Rel. on. Section 9 of the Workmen's Compensation Act only refers to the restriction relating to the assignment and attachment of the compensation amount and it has nothing to do with the devolution of the right. There is no provision in the Workmen's Compensation Act which provides that the dependants or legal representatives should obtain either Letters of Administration or a Succession Certificate. (1958) 1 Andh W R 316 : (1958) 1 Lab L J 748 : 1958 Mad L J (Cri) 281.

——S. 2 (l) (d) (iii) — Employee killed in accident involving employer's truck was a boy of sixteen earning Rs. 50 per month — His father a cobbler, sixty years' old, claiming that deceased was maintaining him — Employer pleading deceased must be spending Rs. 50 for himself leaving no balance to maintain father — Plea not sound — Order awarding Rs. 1,800 as compensation upheld. 1965 Mah L J (Notes) 57.

——S. 2 (l) (d) (iii) (b)—'Dependant' — Dependency is a question of fact—Adult members of a joint family — No presumption that they pool their resources. 1964 M P L J (Notes) 176.

——S. 2 (l) (d) — Widowed mother who has remarried — Status and rights of — "The parent other than a widowed mother" — Claim as against grandmother.

The mother, who has remarried, would fall under the category 'the parent other than a widowed mother' in sub-clause (ii) of S. 2 (l) (d). The said sub-clause further provides that paternal grandparents would have a claim, where no parent of the workman is alive. 1959 Jab L J 378 : (1960) 1 Lab L J 184 : 1959 M P L J 819 : 1959 M P C 553 : A I R 1959 Madh Pra 329 (329, 330) (Pt A) (Pr 4).

——S. 2 (l) (d) (i) and (ii) — Distinction between clauses (i) and (ii).

Sub-clause (i) and sub-s. (d) of S. 2 does not lay down that the persons in that sub-clause must be financially dependent on the deceased. Those persons

would have a right to the compensation, irrespective of the fact, whether they were financially dependent on the deceased or not, while the persons mentioned in sub-clause (ii) must be financially dependent, either wholly or in part. 1959 Jab L J 378 : 1959 M P L J 819 : 1959 M P C 553 : (1960) 1 Lab L J 184 : A I R 1959 Madh Pra 329 (329, 330) (Pt B) (Pr 4).

——S. 2 (1) (d) (iii) (d) — "Minor brother", includes uterine brother.

The Act should be given benevolent construction. It is not a quasi penal statute. A I R 1931 Rang 173 (SB), Dissented from; AIR 1931 Lah 752 (2), Rel. on. (1958) 2 Lab L J 89 : 1957 M P C 700 : 1957 Jab L J 1066 : 1958 M P L J 38 : ILR (1957) Madh Pra 596 : AIR 1958 Madh Pra 133 (134, 135) (Prs 2, 6, 7, 9, 10).

——S. 2 (1) (d) — Father of deceased — Whether 'dependant'.

It is necessary for an applicant who is the father of the deceased when he claims compensation, to establish that he is dependant either wholly or in part on the earnings of his deceased son. (1954) 1 M L J 190 : AIR 1954 Mad 804 (804, 805) (Prs 2, 3).

——S. 2 (1) (d)—"Wholly or in part dependent."

Whether a person is partially dependent on the earnings of a deceased workman is a matter essentially of fact to be decided in the circumstances of each case. (1953) 1 M L J 684 : AIR 1953 Mad 766 (766, 767) (Pt A) (Pr 3).

——S. 2 (1) (d)—"Wholly or in part dependant."

Even though the earnings of the deceased workman were hardly sufficient for his maintenance and no balance left which would contribute to the family fund, the parent can be said to be a dependant. AIR 1953 Mad 206 Dissented from. (1953) 1 M L J 684 : AIR 1953 Mad 766 (767) (Pt B) (Pr 6).

——S. 2 (1) (d)—Dependant—Father of infant workman—If dependant.

After the amendment in 1933 of the Workmen's Compensation Act, S. 2 (1) (d), a father could be regarded as a dependant only when he could establish that he was really dependant on the earnings of the workman wholly or partly — Dependancy is with reference to the date of the death of the workman and the fact that at a future date the father might have to depend upon the son is not a relevant consideration. 4 F J R 214 : (1952) 2 Lab L J 294 : 65 Mad L W 897 : (1952) 2 Mad L J 436 : AIR 1953 Mad 206 (207, 208) (Pt B) (Prs 11, 12).

——S. 2 (1) (d) — Step-mother whether dependant within the meaning of the Act. AIR 1955 N U C (Nag) 1580 (DB).

——Ss. 2 (d) and 8— 'Dependant' on the earnings — Compensation claimed by widow — Father and brother claiming share — Father was not dependant on son and in father's lifetime sons and wife could not be held dependants on deceased brother. A I R 1955 N U C (Punj) 1363.

——S. 2 (1) (d) — Father of workman — When a dependant.

A father can only be considered to be a dependant if it is shown that he was wholly or in part dependent on the earning of the workman at the time of his death. (1965) 1 Lab L J 515 : 1965 Raj L W 214 : ILR (1965) 15 Raj 748 : A I R 1966 Raj 36 (37) (Pt B) (Pr 13).

2. Section 2 (1) (e)—Employer.

——Ss. 2 (1) (e), 12 — Municipal Board entrusting electrification work of the town to State—Employee of State suffering injury — State and not Board is liable to pay compensation.

Where the State was executing electrification project of a town on behalf of the Municipal Board and during the construction a workman who was an employee of the State, suffers a permanent partial injury and is awarded compensation under the Act, it is the State which is liable to pay the compensation. AIR 1933 Cal 63 and A I R 1929 Bom 179, Rel. on. 1960 All L J 305 : 1960 All W R (HC) 204 : A I R 1960 All W R 468 (469, 470) (Prs 7A, 10, 13).

——Ss. 2 (1) (e), (f) and (n) and 2 (2) — Claimant, father employed in O. T. Railway — Death by accident—Claim against O. T. Railway through its General Manager — Latter is employer of deceased. 1960 All L J 333 : 1960 All W R (HC) 187 : (1960) 1 Fac L R 44 : ILR (1959) 2 All 609 : A I R 1960 All 362 (364, 365) (Pt A) (Pr 6) (DB).

——S. 2 (1) (e) —Definition is inclusive.

The definition of the word 'employer' is an inclusive definition and therefore the enumerated persons do not constitute the whole body of persons who may be considered to be employers. 1960 All L J 333 : 1960 All W R (HC) 187 : (1960) 1 Fac L R 44 : I L R (1959) 2 All 609 : AIR 1960 All 362 (364, 365) (Pt B) (Pr 6) (DB).

——S. 2 (1) (e) — Application for compensation — Form of — Employer a partnership firm — Names of all partners not necessary in cause title— Firm name sufficient—Interpretation of statutes. See Workmen's Compensation Act (1923), S. 22 (2) (c). AIR 1963 Cal 479 (DB).

——S. 2 (1) (e) and (n) and (2) and Sch. II, Cl. (viii) —Applicability—'Employer' — 'Workmen'— Works Inspector in the Department of Industries and Commerce for construction of building under Assistant Engineer acting under Executive Engineer—Later if 'employer' — Inspector directed to go to office to prepare site plan proceeding on bicycle and meeting with accident on the way — Inspector, if 'workman' —Death if in course of employment — Liability to pay compensation—Appeal—New plea.

Held : The Executive Engineer who was an officer under the State Government and who was in charge of the construction was not immune from the provisions of the Workmen's Compensation Act because the departments of the Government are specifically included in S. 2 (2) of the Act and he was therefore an employer of the deceased T. (2) In the absence of a specific provision in the Statute exempting the State the Act would apply and bind the State. (3) The deceased who was not the holder of any diploma and who was appointed to supervise the labourers actually in charge of the construction, was a "workman" as defined in S. 2 (n). (4) That the question whether the building under construction was more than one storey in height above the ground or 20 feet or more from the ground level to the apex of the roof as laid down in Cl. (viii) of Sch. II to the Act not having been raised in the pleadings or discussed in the judgment, could not be raised for the first time in appeal in the High Court. (5) As the accident took place while the deceased was proceeding to the office to prepare a site plan as directed by his superior it was clear that he died in the course of his employment. (1965) 1 Mad L J 64 : 1964 Mad W N 199 : (1964-65) 26 F J R 159 : 78 Mad L W 131 : (1965) 10 Fac L R 72 : AIR 1965 Mad 372.

3. Section 2 (1) (f) — "Managing agent."

——S. 2 (1) (f)—"Subordinate" means subordinate in law and not in fact.

Although a person looking after the business of another person as manager may not in fact be subordinate to the other person and may be acting on his own initiative, yet if as an individual manager, he is in law subordinate to the employer, namely the other

person he cannot be regarded as the "managing agent" of employer as defined in S. 2 (f), and no order of compensation can be made against him. 1962 All L J 104 : 1962 All W R (H C) 91 : (1962) 1 Lab L J 19 : (1961) 3 Fac L R 445 : (1962-63) 23 F J R 624 : AIR 1962 All 620 (620, 621) (Pr 7).

——S. 2 (1) (f) — 'Employer'. The definition of the word "employer" is an inclusive definition and therefore the enumerated persons do not constitute the whole body of persons who may be considered to be employers. See Workmen's Compensation Act (1923), S. 2 (e). AIR 1960 All 362 (DB).

——Ss. 2 (1) (f) and 2 (2) — Manager of railway — Position of—(Railways Act (1890), S. 3 (6)).

The manager of a railway is according to the definition of a railway administration in S. 3 (6), Railways Act, the administration and the manager is equated to the Government. He can therefore be said to the running the department which is directly concerned with the business of managing the railway. 1960 All L J 333 : 1960 All W R (HC) 187 : (1960) 1 Fac L R 44 : ILR (1959) 2 All 609 : A I R 1960 All 362 (364, 365) (Pt C) (Pr 6) (DB).

4. Section 2 (1) (g)—"Partial disablement."

——S. 2 (1) (j), (c) (ii) and Sch. 1—Crippling of leg—Compensation—Proof—Sch. I mentions loss of leg at or above the knee but not any crippling of leg. But the Act contemplates other instances of permanent or partial disablement. There should be proof that (i) earning capacity of the workman was reduced in every employment and (ii) which the workman was capable of undertaking at the time of accident. See Workmen's Compensation Act (1923), Sch. I. AIR 1959 Assam 10 (DB).

——Ss. 2 (g), (l), Pre— Incapacity — When becomes total permanent disability — Test — If there is such incapacity that he cannot get employment for any work he can undertake it would be total or permanent disability — See Workmen's Compensation Act (8 of 1923), Preamble. AIR 1965 Bom 32.

——Ss. 2 (g), (l), 4, 5—Medicial Certificate—Value of —Whether workman suffered partial or total disablement —Determination — Duty of Court—It is for the Court to find, whether the workman has suffered partial or total disablement having regard to the evidence before it. See Workmen's Compensation Act (1923), S. 4. AIR 1965 Bom 32.

——S. 2 (1) (g) — Workman suffering as result of injury from physical defect — Capacity of workman for work after injury and his eligibility as employee — Effect of injury on these—He can establish a right to compensation, provided he can prove by evidence that even though he applied for employment he could not get any due to result of accident visible on his person. See Workmen's Compensation Act (1923), S. 3. AIR 1957 Cal 601 (DB).

——S. 2 (1) (g), Proviso — Permanent partial disablement — What is — Its effect—Under the proviso to S. 2 (1) (g) read with Sch. I whenever an injury of the kind specifically mentioned in the schedule has been suffered by a workman due to accident, he becomes instantly entitled to compensation prescribed by the schedule without any further investigation. See Workmen's Compensation Act (1923), S. 3. AIR 1957 Cal 601 (DB).

——Ss. 2 (b), 30 — Finding of fact — Nature of disablement, whether total, partial, permanent or temporary is question of fact — Finding cannot be challenged unless there is complete absence of evidence — If there is some evidence, no interference will be made, even if High Court holds another view See Workmen's Compensation Act (8 of 1923), S. 30. AIR 1955 NUC (Madh Bha) 3693.

——S. 2 (g) and Sch. I — Test of permanent partial disablement is whether earning capacity has been reduced in every employment which the claimant was capable of undertaking at time of accident. AIR 1955 NUC (Sau) 5048 (DB).

5. Section 2 (1) (i) — Disability — Evidence — Medical certificate.

——Ss. 2 (1) (i), 11 and 25 — Disability — Evidence — Medical certificate of Civil Surgeon — Examination of Civil Surgeon.

Where, from the other evidence on the record it is established beyond doubt that the applicant was totally disabled by the injury caused to him, it was held not necessary to decide whether it was necessary to produce and examine the Civil Surgeon before admitting in evidence the certificate given by him. 1955 All W R (HC) 177 : (1955) 1 Lab L J 553 : (1955-56) 8 F J R 201 : 1955 All L J 269 : AIR 1955 All 182 (183) (Pt C) (Pr 5) (DB).

——S. 2 — 'Work capable of performing' need not be work actually performed at a particular time—Onus to prove disability or earning capacity is on workman — Difficulty of task to prove cannot shift burden — Employment at a particular place is only relevant consideration and not conclusive proof of the fact. AIR 1950 Nag 201, Foll. 1962 M P L J (Notes) 78.

6. Section 2 (1) (l) — "Total disablement."

——S. 2 (1) (l) — Total disablement — Spinal injury —Workman unable to do work which he used to perform — Effect.

Where a labourer engaged in physical handling of cargo was incapacitated by a spinal injury, and according to the testimony of a Civil Surgeon, he could not do any work which required locomotion, he could not stand or walk but only creep it is a total disablement as defined in S. 2 (1) (l). Incapacity for work is not the same thing as "incapacity to work." 1960 Ker L T 824 : (1960) 2 Ker L R 351 : (1961) 2 Fac LR 410: (1961) 1 Lab L J 75: AIR 1961 Ker 108 (109) (Pt A) (Pr 8) (DB).

——Ss. 2 (1), (l), 4 — Total disablement — Meaning — Loss of one eye and two teeth of railway servant making him unfit for jobs in class A-1 and B—Offer of job in class C-2 — Compensation to be awarded.

The total disablement under cl. (b) of S. 2 (1) must be of such a character that the person concerned is unable to do any work and not only the work which he was doing at the time of the accident. The words "for all work which he was capable of performing at the time of the accident" cannot be read as "for the work which he was performing at the time of the accident."

Held, that there was no total disablement and the workman was entitled to compensation on the basis of partial disablement. 1950 Nag L J 415 : (1950-51) 2 F J R 127 : ILR (1951) Nag 166 : AIR 1950 Nag 201 (202, 203) (Pt A) (Prs 7, 11a, 13).

7. Section 2 (1) (m) — "Wages" — Meaning of.

——Ss. 2 (1) (m), 4 and 5 — Compensation — Monetary value of accommodation provided to employee has to be included.

The words 'privilege or benefit' in the definition in Workmen's Compensation Act includes the benefit of 'free accommodation'. (1955) 1 Lab L J 553 : (1955-56) 8 F J R 201 : 1955 All W R (HC) 177 : 1955 All L J 269 : AIR 1955 All 182 (183) (Pt D) (Prs 6, 7) (DB).

——S. 2 (1) (m) — 'Wages' includes 'bonus'—'Bonus' is a 'benefit within the meaning of S. 2 (1) (m) — It can be included in wages for calculating compensation.

'Bonus' can be included in wages for purposes of calculation of compensation payable to the 'workman' who has suffered permanent disablement either total or partial. AIR 1958 S C 153; AIR 1945 Bom 119 and AIR 1946 Pat 437 and (1911) 1 K B 360, Foll.; AIR 1948 Bom 158 and 63 Cal W N 207 and AIR 1955 S C 170 and AIR 1958 S C 153, Dist. **67 Bom L R 893 : (1966) 1 Lab L J 84 : 1966 Mah L J 150 : ILR (1966) Bom 610 : AIR 1966 Bom 240 (241, 242) (Pt A) (Prs 7, 14) (DB).**

——S. 2 (1) (m) — 'Wages' — Maternity benefit — If wages. The Legislature did not intend that it should be regarded as wages. See Payment of Wages Act (1936), S. 2 (vi). **AIR 1958 Bom 262 (DB).**

——S. 2 (1) (m) — Applicability — Interpretation of, 'wages' in S. 60, Civil P. C. — A contingent payment like profit sharing bonus is not considered as part of wages. See Civil P. C (1908), S. 60. **(1959) 63 Cal W N 207.**

——S. 2 (m) — Wages — Meaning of—Term includes gratuity payable to a labourer on retirement. See Civil P. C. (1908), S. 60 (1) (h). **AIR 1965 Madh Pra 42 (DB).**

——Ss. 2 (m) and 5 (a) — Wages include all other emoluments payable to a workman — Compensation to be calculated on the basis of wages payable and not on actual payments made — Compensation to be equal to sum permissible in law even though the workman claims less.

It is immaterial as to what an employee might claim. The Commissioner or the Court has to grant compensation at the amount permissible under the law, in spite of a lesser claim. AIR 1932 Rang 141, Foll. **1962 M P L J (Notes) 105.**

——S. 2 (1) (m) — 'Wages' — In calculating wages under S. 5-A of the Act, the commissioner is not justified in adding the wages for the period of leave to which he was entitled after working for one year. See Workmen's Compensation Act (1923), S. 5-A. **AIR 1959 Madh Pra 119 (DB).**

——Ss. 2 (1) (m) and 10—Wage — If includes travelling allowance.

The term 'wage' as defined in S. 2 (m) of the Workmen's Compensation Act does not include travelling allowance. **1958 M P L J (Notes) 78.**

——S. 2 (1) (m) — "Wages" — Provision whether analogous to that contained in Factories Act (1948), S. 2 (1).

The sections of the Workmen's Compensation Act are not in any way in 'pari materia' or even analogous to the provisions of the Factories Act. **(1952) 2 Mad L J 917 : 1953 Mad W N 153 : 65 Mad L W 1198 : 1953 Cri L J 532 : ILR (1953) Mad 775 : AIR 1953 Mad 269 (277, 278) (Pt G) (Pr 32) (DB).**

——S. 2 (1) (n) and Sch. II, Cl. (viii)—"Employed in the construction" — Meaning of—Building Inspector employed by Calcutta Corporation—If a "workman."

In coming to the conclusion whether a man is or is not a workman, his ordinary work must be regarded. Persons may on very rare occasions do something that migh bring them within the category of workmen, but the question which has to be decided is, whether the work in which they are substantially employed is work which brings them within the category of workmen. The work which a building Inspector is employed to do is substantially work that would not bring him within that category. **(1951) 55 C W N 496.**

——S. 2 (1) (n) and Sch. II, Cl. (XXVI) — Person employed to load and unload bricks in a lorry — No evidence that loading and unloading took place in a place as required by Sch. II, Cl. (XXVI) — Person is not a workman and cannot claim compensation. **AIR 1950 Cal 261 (262) (Pt A) (Pr 9) (DB)**

——S. 2 (1) (n) and Sch. 2, Cl. (1) — "Workman" — Checker of lorry held workman under S. 2 (n) read with Sch. 2, Cl (1).

A checker of a lorry entrusted with the duty of ensuring that the proper freight for the goods transported was collected and credited to the employer is a workman as defined in S. 2 (n) read with Sch. 2, Cl. (1), both on the ground that the expression "in connection with" in Sch. 2, Cl. (1) is an expression of wide content embracing activities which subserve or are ancillary to 'operation or maintenance' and because of the specific exclusion embodied in the words 'otherwise than in a clerical capacity,' in that clause. 42 C W N 123 and AIR 1938 Mad 485, Rel. on. 55 C W N 498, Distinguished. **1962 Ker L J 21 : (1962) 1 Ker L R 192: (1962) 4 Fac L R 115 : ILR (1962) 1 Ker 649 : 1962 Ker L T 345 : (1962) 2 Lab L J 167.**

——Ss. 2 (1) (n) and 30 — Appeal by employer without certificates of deposit—Construction of building for letting out to tenants—'Employer'— Employment of workman through maistry — Employee is a 'workman.'

Where the construction of building had been going on for quite a long time and on all the days on which there was work the deceased was employed though only as a cooly it cannot be said that the deceased was only employed casually. The employee would be workman within the meaning of S. 2 (n) of the Act **(1959) 2 Lab L J 630 : (1959) 2 M L J 551 : 73 Mad L J 521.**

——S. 2 (1) (n) — "For purposes of business."

Business to purchase and sell oil — Getting and stocking of oil barrels done through clearing agents — Worker employed in course of transport by intermediary clearing agents — Business of transporting oil held virtually connected with principal business — Employee held employed to work in course of principal business. **1953 Mad W N 273 : (1953) 1 M L J 557 : 66 Mad L W 446 : AIR 1954 Mad 218 (220) (Pt B) (Pr 8).**

8. Section 2 (1) (n)—Scope.

(A) "Of a casual nature."

(B) "For purpoess of . . . , . . business."

(C) "Workman" — Nature of employment.

(D) Person employed for loading and unloading a vehicle.

(E) Contract of service — Employee and Employer relationship.

(F) Daily wage earner.

(G) Other illustrative cases.

8. Section 2 (1) (n) — Scope.

——Ss. 2 (1) (n) and 30 — Question of fact— Operations whether agricultural and workers employed in them were not 'workmen' is question of fact. See Workmen's Compensation Act (8 of 1923), S. 30. **AIR 1955 Cal 105 (DB).**

8 (A). "Of a casual nature."

——S. 2 (1) (n)—Of a casual nature—Coolie employed for digging foundation — Employment for two days only — On second day, of employment coolie killed by fall of roof — Employment held was not of casual character. **AIR 1955 N U C (Ajmer) 151.**

——S. 2 (1) (n) — Employment of casual nature — Registers maintained by employer showing that deceased employee was marked absent on particular dates on which he did not attend owing to illness— Held that employment was regular and not of casual nature. **(1960) 1 Lab L J 598 (Andh-Pra).**

——S. 2 (l) (n) — Even pessons employed by day or week or year are workmen – Persons employed in construction work of building on wages — Employment is not of casual nature.

The reference to employment on monthly wages in S. 2 (1) (n) means employment at wages which do not exceed on an average Rs. 400 per month and it is not limited to workmen who are employed by month and even persons employed by day or week or year come within the purview of the definition of workmen in S. 2 (l) (n). AIR 1946 Bom 169 and AIR 1943 Lah 52 and AIR 1960 Madh Pra 287, Rel. on. Whether the employment of a particular workman is of casual nature or otherwise depends upon the nature of employment and onus in such cases is upon the employer to prove the conditions necessary for excluding a person from the category of workman. AIR 1933 Bom 270, Rel. on.

A man employed in construction work of a building at a rate of wages whether determined by the hour, by the week or by the day is in an employment which is not of casual nature. (1926) 19 B W C C 79, Rel. on. 1962 Jab L J 448 : 1962 M P L J 1007 : AIR 1963 Madh Pra 24 (25) (Pt A) (Prs 4, 5, 6).

——S. 2 (1) (n) — Deduction of wages for days of absence does not make workman a casual or a temporary workman. 1962 Jab L J 1082 : 1962 M P L J 454.

——S. 2 (1) (n)—Workman.

The employer was a contractor for the formation of a road. The deceased was employed as a cooly maistri under him on Rs. 2-8-0 per day. The deceased brought four coolies with him, and along with them was engaged in breaking stones. The deceased was being paid a lump sum of money every fortnight. He was a regular and continuous worker and not a casual labourer.

Held, that the deceased was a workman within the meaning of the Act. 1954 Mad W N 729 : 68 Mad L W 882 : ILR (1955) Mad 798 : (1955) 2 M L J 590 : AIR 1954 Mad 1113 (1114) (Pt A) (Pr 3) (DB).

——S. 2 (1) (n) — Employment of casual nature — Burden of proof.

The question whether an employment is casual or not is a question of fact to be determined on the facts and circumstances of the case and diverse consideration must weigh in a proper determination of the question.

The burden of proving the casual nature of the employment is under the scheme of the Act, upon the employer. (1960) 1 Fac L R 590 : 1960 Raj L W 448 : ILR (1960) 10 Raj 993 : AIR 1961 Raj 45 (47) (Pt B) (Prs 12, 13).

8. (B) "For purposes of .....business."

——S. 2 (1) (n) — "Employment for purposes of employer's trade or business" — Employment not of casual nature—Construction work not for employer's business or trade—Employee is still a workman. AIR 1955 N U C (Ajmer) 151.

——S. 2 (1) (n) — Conditions necessary for being workman.

If one of the two conditions which must co-exist in order that a person may be taken out of the category of workman, namely, that the employment of the person was not of causual nature is absent, even if the other condition, namely, that the person had not been employed in the course of the employer's trade or business, is assumed to exist, still the person cannot be taken out of the category of workman. 1962 Jab L J 448 : 1962 M P L J (Notes) 1007 : A I R 1963 Madh Pra 24 (25) (Pt B) (Pr 7).

——S. 2 (1) (n) — Constitution of India, Arts. 226, 227—Interference with findings of fact—Workmen's Compensation Act (1923), S. 2 (1) (n) — Question whether casual labourer is employed for purposes of employer's trade or business is one of fact — No interference under Art. 226 or 227. See Constitution of India, Art. 226. 1963 Jab L J 587 (Madh Pra).

——S. 2 (1) (n) — Employer's trade or business — "Business" — Meaning of — Agriculturist employing casual labourers for digging well — Labourers are "workmen" within S. 2 (1) (n)—Words and phrases.

"Business" means anything which occupies the time and attention and labour of a man for the purpose of profit. It has a more extensive meaning than the word "trade" and includes farming. (1880) 15 Ch. D 247 and (1865) 1 C P 148, Rel. on. Casual labourers employed by agriculturists for digging a well in their lands intending to promote farming in those lands are employed for the purposes of the agriculturists' "trade or business" and are "Workmen" within the meaning of S. 2 (1) (n). A I R 1956 Mad 212, Foll. 1963 M P L J 562 : 1963 Jab L J 587 : (1963) 7 Fac L R 296 : ILR (1963) Madh Pra 222.

——S. 2 (1) (n)—"Workman"—Mason employed for constructing godown for storing grain—Employment for purposes of trade—Employment casual—Effect.

The word 'and' occurring in the definition of workman is used conjunctively and therefore both the limits of the conditions of exclusion have to be satisfied. Hence if a man be employed for the purposes of the trade or business the employer is liable, even though the employment is of a casual nature. 1920 A C 781 : 42 C W N 516, Rel on. ILR (1957) Madh Pra 10 : 1957 Nag L J 37 : 1957 M P C 161 : 1957 Jab L J 250 : 1957 M P L J 61 : A I R 1957 Madh Pra 84 (84, 85) (Pt A) (Pr 4) (DB).

——S. 2 (1) (n) — "Workman" — Employer grain merchant—Mason employed to construct godown, if "workman".

The word "and" in 'whose employment is of a casual nature and who is employed otherwise than for the employer's trade or business' has to be read conjunctively. The mason employed in constructing it is a person employed for the purposes of the trade or business of the employer and therefore a 'workman' although his employment is casual. 1920 A C 781 and 42 C W N 516, Rel. on. (1953) 1 Lab L J 578 : A I R 1957 Madh Pra 49 (50) (Pt A) (Pr 4) (DB).

——S. 2 (1) (n)—Digging of well — Use of dynamite for digging — Injury caused by explosion to one of diggers — Held digger is workman within meaning of S. 2 (1) (n).

A person to be excluded from the definition of 'workman' as defined in S. 2 (1) (n) must not only be one 'whose employment is of a casual nature' but also one 'who is employed otherwise than for the purposes of the employer's trade or business.' (1955-56) 9 F J R 101 : (1955) 2 Lab L J 768 : A I R 1956 Mad 212 (213, 215) (Prs 5, 12).

——Ss. 2 (1) (n) and 3—Employment for purposes of business — Engagement of workmen in subsidiary business—Liability to compensate.

Where a person invests capital in building a number of houses with a view to obtain profits by letting the houses on rent the employment of workmen directly by him in the construction of those houses is for the purpose of his business. He cannot avoid his liability to compensate a workman engaged in the construction merely because construction of houses is only his subsidiary business and his main business is something else. (1953) 1 Lab L J 22 : (1952) 2 Mad L J 774 : 65 Mad L W 1099 : A I R 1953 Mad 432 (432) (Pr 4).

——S. 2 (1) (n) — Employment for employer's trade or business — What amounts to—Employer, working as clerk, owning house let out to others and deriving benefit therefrom — Letting out subsidiary business though not principal business of employer—Employment of workman in construction, in house—Workman is employed for purposes of employer's trade or business. AIR 1953 Mad 432, Rel. on. (1960) 1 Fac L R 590 ; 1960 Raj L W 448 : ILR (1960) 10 Raj 993 : A I R 1961 Raj 45 (47, 48) (Pt C) (Pr 14).

——Ss. 2 (1) (n) and 30—Substantial question of law —Question whether employment is of casual nature or for employer's trade or business, for purposes of S. 2 (1) (n) — Question is essentially one of fact and not of law—It can in no case be considered a substantial question of law — It is, therefore, not open to appellant to contest finding on that question in appeal under S. 30. 1960 Raj L W 448 : (1960) 1 Fac L R 590 : ILR (1960) 10 Raj 993 : A I R 1961 Raj 45 (47, 48) (Pt E) (Prs 13, 14).

——S. 2 (1) (n) and Sch. 2, Cls. (16) and (10) — Agriculturist employing person to excavate old well to increase water supply—Such employee killed by fall of pipe which was being put up while working inside well—Employee held "Workman"—Case held governed by Cl. (16) and also Cl. (10) of Sch. 2.

In order to exclude a person from the category of a workman, it must be shown that his employment was of a casual nature and further that he was employed otherwise than for the purpose of the employer's trade or business. A I R 1952 Sau 74 (74, 75) (Prs 2a, 3) (DB).

8 (C). "Workman"—Nature of employment.

——S. 2 (1) (n), Sch. II, Cl. (ii)—Scope.

It is not necessary for the purpose of satisfying the definition of "workman" that the deceased should be working in the manufacturing process itself. All that is necessary is that he should be working in the premises in which ten or more persons are employed in a manufacturing process and he must be employed in those premises otherwise than in a clerical capacity. 55 Bom L R 924 : I L R (1954) Bom 353 : A I R 1954 Bom 180 (180, 181) (Pt A) (Pr 3) (DB).

——S. 2 (1) (n) (ii) read with second Schedule — Workman—Ten or more persons.

Held that more than nine persons were employed in the workshop and the deceased was a workman within the meaning of the Act. 54 Bom L R 421 : (1952) 1 Lab L J 1 ; (1952-53) 4 F J R 190 : ILR (1952) Bom 1048 ; A I R 1952 Bom 382 (383) (Pt B) (Pr 5) (DB).

——S. 2 (1) (n) (ii) and Sch II, Cl. (ii) — Manufacturing process as defined in S. 2 (g), Factories Act, 1934—Worker employed in printing press—Sch. II, Cl. (ii) if applies.

The definition in the Act of 1948 contains a clause referring specifically to printing which is not found in the Act of 1934. Hence for the applicability of the Workmen's Compensation Act to a printing press, it is necessary to consider whether that fact is sufficient to exclude the case of a workman working in such press from Cl. (ii) of Sch. II of the Workmen's Compensation Act; or whether S. 8, General Clauses Act, made the definition of 1948 applicable. (1955-56) 8 F J R 424 ; A I R 1955 Cal 306 (307) (Pt A) (Pr 4) (DB).

——Ss. 2 (1) (n) (ii) and 4 (1), Proviso (a) — "Workman" in proviso—Meaning — Compensation payable to dependants—Deductions.

The word "workman" in proviso (a) to S. 4 (1) can be read as dependants of a workman. Therefore, a deduction in respect of payments of compensation made to the workman during his lifetime can be made and what should be deposited as compensation payable to dependants is an amount calculated in accordance with Sch. IV of the Act less these payments. 11 Rang 154, Not foll. ('52) 56 Cal W N 189 ; (1952-53) 4 F J R 111 : I L R (1952) 2 Cal 369 ; AIR 1952 Cal 877 (878, 879) (Pt A) (Prs 11, 21) (DB).

——S. 2 (1) (n)—Clause (ii)—"Monthly wages".

In order to answer the question whether the workman under question was employed on monthly wages not exceeding Rs. 400 what one has to see is whether the emoluments which are mentioned do not exceed Rs. 400 a month and not whether the employment was on a monthly basis. (1958) 1 Lab L J 578 ; AIR 1957 Madh Pra 49 (50) (Pt C) (Pr 6) (DB).

——S. 2 (1) (n)—Workman—Definition of—Worker—Master and servant—Relationship of—Test to decide—It is the existence of the right in the master to supervise and control the work done by the servant, and how it should be done and the manner in which it should be executed. See Factories Act (1948), S. 2(1). 78 Mad L W 97 : (1965) 1 Mad L J 391 ; (1965) 1 Lab L J 308 : ILR (1966) 1 Mad 53.

——S. 2 (1) (n), Sch. II, Cl. (ii) (as it stood on 10th February, 1958)—Scope—Power mentioned in Sch. II, Cl (ii) not used—Deceased was not a workman within S. 2 (1) (n).

Schedule II, Cl. (ii) firstly deals with the manufacturing process as such: secondly, it deals with incidental or connected processes; but, be it the manufacturing process or any incidental or connected process, in any case the aid of one or the other kind, of power mentioned in that clause is necessary for the application of that provision. The contention that the expression "and steam, water or other mechanical power or electrical power is used" is only applicable to the later part of Cl. (ii) cannot be accepted. AIR 1955 Cal 105, Rel. on. (1963) 2 Lab L J 720 : (1963) 2 Mys L J 91 ; AIR 1964 Mys 60 (60, 61) (Prs 5, 6, 8) (DB).

——S. 2 (1) (n), Sch. II (ii)—'Workman' — Who is—Person employed in any capacity connected with a manufacturing process is a workman — Person employed for lifting articles and for sweeping in a Mill is a workman. (1961-62) 21 F J R 14 (Punj).

8(D). Person employed for loading and unloading a vehicle.

——Ss. 2 (1) (n) (ii) and 30 and Sch. II, Cl. (xxvi)—Appellant transporting goods of his saw-mills by railway—Work of loading wagons entrusted to contractor — Goods stored in railway siding — Contractor engaging applicant for handling and transporting goods at railway siding — If workman employed by appellant — Finding by Commissioner — High Court cannot go into that question. I L R (1962) 14 Assam 388 ; A I R 1963 Assam 7 (9, 10) (Pt B) (Prs 5, 7) (DB).

——S. 2 (1) (n)—"Workman" — Coolie engaged with help of gangman for loading and unloading coal from motor truck — Proprietor of truck doing business of carrying coal — Such coolie is "workman". 65 Mah L J (Notes) 57 (Bom).

——S. 2 (1) (n) and Sch. II, Cl. (1)—Business of public carriers—Person employed for loading and unloading is not workman.

Where the employer carried on the business of public carriers, a person, whom employment is only that of loading and unloading cannot be said to be concerned with the operation or maintenance of lorries, and hence is not a workman within the meaning of Sch. II, Cl. (1). A I R 1955 Cal 367 (367) (Pt B) (Pr 4) (DB).

——S. 2 (1) (n) and Sch. II, Cl. 12—Railway employed in clearing city's refuse—(Railways Act (1890), S. 3 (4)).

The workman who was employed only in loading the refuse into the railway wagons and who was only walking over the platform for that purpose but was doing nothing to it did not come within the definition of the Workmen's Compensation Act. (1955-56) 8 F J R 439 : A I R 1955 Cal 307 (308, 309) (Pt A) (Pr 5) (DB).

—S. 2 (1) (n) and Sch. II—Person employed to cut sabai grass is not workman.

The definition of "Workman" in S. 2 (1) (a) is exhaustive. If so, in order that a person may claim to be workman within the meaning of the Act, he must, if he is not a railway servant and therefore does not come under Cl (i) of the definition section, prove that he comes under one or other of the clauses set out in Sch. II. On a reference to that Schedule, it is plain that the employee, engaged in cutting 'sabai' grass cannot be brought under any one of its clauses. 58 Cal W N 751 : 94 Cal L J 49 : AIR 1955 Cal 105 (106, 107) (Pt B) (Pr 5) (DB).

—S. 2 (1) (n) (ii), 3 (1), Sch. II, Cl (i) (as amended in 1959) — Cooly or labourer employed by lorry owner for loading and unloading is a "workman". (1964) 2 Mad L J 58 : 1964 (9) Fac L R 95 : (1964) 2 Lab L J 306 (Mad).

—S. 2 (1) (n) — "Workmen" — Cooly or labourer engaged to load and unload sand in lorry — Death due to accident while in lorry—Liability of employer to pay compensation to dependants.

Where a person engaged as a cooly or labourer to load and unload sand in the lorry met with an accident while he was in the lorry and died, he must be held to be a "workman" within the definition in Workmen's Compensation Act and the employer is liable to pay compensation to the dependants of the workman who died in the course of his employment. (1964) 2 Mad L J 58 : 1964 (9) Fac L R 95 : (1964) 2 Lab L J 306 (Mad).

8(E). Contract of service—Employee and Employer relationship.

—S. 2 (1) (n) — "Workman" — Person employed through agency of maistri is "workman".

Even though an employer may employ a workman through the agency of a maistri, the employee would be a 'workman' within the meaning of S. 2 (1) (n) of the Act. AIR 1949 Mad 462 and AIR 1954 Mad 1113, Foll. (1961) 2 Lab L J 260 (Andh Pra).

—S. 2 (1) (n) — Employer-employee relationship—Deceased doing work of transporting goods for appellant — No evidence of any contract in favour of third person through which deceased came to do work for appellant—Held, there was employment. 181 Ind Cas 992 and 192 Ind Cas 723, Disting. (1960) 1 Lab L J 598 (Andh Pra).

—Ss. 2 (1) (n), 3 — Relationship of employer and workman—Test.

Where there is sufficient evidence to hold that the appellant Company was in a position to command and control the respondent in the manner of performing the work when the accident occurred the relationship of employer and workman between the appellant and the respondent must be held to have been established. 67 Cal W N 728 : (1963) 2 Lab L J 580 : AIR 1964 Cal 217 (219) (Pt B) (Prs 7, 8, 9) (DB).

—S. 2 (1) (n) — 'Workman' — Employer-employee relationship—Tests—Divers employed on piece work basis by Government of Madras for chank fishery in Gulf of Mannar are 'workmen'.

Divers, whose services are utilised by the Fisheries Department of the Government of Madras for diving and fishing chanks in the Gulf of Mannar are 'workmen' within the scope of the Workmen's Compensation Act. (1962) 2 Lab L J 467 : 75 Mad L W 539 : (1963-64) 24 F J R 90 : AIR 1963 Mad 9 (10, 11, 12) (Prs 4, 8, 9, 10) (DB).

—S. 2 (1) (n)—Question whether deceased was regular worker—Non-production of rolls of employees goes, against employer — Evidence Act (1872), S. 114, Illus. (g). AIR 1962 Orissa 7 (8) (Pt A) (Pr 5).

—S. 2 (1) (n)—Scope of.

The word 'and' occurring in the definition of 'workman' has been used conjunctively and, therefore, in order to take out a labourer from the category of a workman, both the conditions must be satisfied; (1) that the employment must be casual, (2) that the employment must be otherwise than in the employer's trade or business.

Absence of only one of these conditions will not result in taking out a labourer from the category of a workman. (1960) 1 Fac L R 590 : 1960 Raj L W 448 : I L R (1960) 10 Raj 993 : AIR 1961 Raj 45 (47, 48) (Pt D) (Pr 14).

—S. 2 (1) (n) — Workman — Test to determine — 'Contract of service' and 'contract for service'. The crucial test to determine a contract of service is control by the master over the work of the servant and an obligation on the part of the servant to obey the orders of the master. See Industrial Disputes Act (1947), S. 2 (s). AIR 1955 Sau 33 (DB).

8 (F). Daily wage earner.

—Ss. 2 (1) (n) and 10 — Employee engaged on regular basis—'If workman.'

An employee engaged on a regular or a permanent basis would be workman even though paid on daily wage system provided his wages in any single month did not exceed the limits provided by the section. 1957 M P L J 61, Foll. 1960 M P L J (Notes) 130.

—S. 2 (1) (n)—Daily wage earner, if workman.

A daily wage earner may be regarded as a workman provided he fulfils the other conditions of the definition. AIR 1951 Pat 260 (263, 264) (Pt D) (Pr 9) (DB)

—S. 2 (1) (n)—'Workman'—Daily wage earner.

Section 2 (1) (n) is not limited to workmen who are employed by the month. The expression 'monthly wages not exceeding four hundred rupees' means wages which do not exceed on an average Rs. 400 a month. Thus a daily wage earner may well be a workman under S. 2 (1) (n). AIR 1938 Bom 110, Foll. 1960 Raj L W 448 : (1960) 1 Fac L R 590 : ILR (1960) 10 Raj 993 : AIR 1961 Raj 45 (47) (Pt A) (Prs 10, 11).

8(G). Other illustrative cases.

—S. 2 (1) (n) and Sch. II, Cl. (viii) (c)—Workman—Definition of — Employee taking traffic census before repairs or construction of road — Employee not a workman.

The deceased was not a 'workman' within the meaning of the Workmen's Compensation Act. The deceased could not be said to be a person employed in the construction or repair of the road as required under Sch. 2, Cl. (viii) as the census was taken long before the repairs or construction of the road. 1964 All L J 851 : (1964) 9 Fac L R 278 : (1965) 1 Lab L J 23 (All).

—S. 2 (1) (n) and Sch. 2 — Workman— Definition of—Clerical staff is excluded as far as some sections and not all—Interpretation of Statutes.

The mere fact that an employee was discharging clerical duties is not sufficient to hold that he does not come within the definition of workman. When a term is defined in the enactment Court has to look into that definition and not to its ordinary meaning. A perusal of the second schedule of the Act makes it

clear that clerical staff is excluded as far some sections are concerned and not all. (1964) 9 Fac L R 218 : 1964 All L J 851 : (1965) 1 Lab L J 23 (All).

——S. 2 (1) (n) and Sch. 2, Cl. 26—Workman—Person employed for writing accounts, purchasing stocks and arranging for their export not covered by Sch. 2, Cl. 26.

To see whether an employee is a workman or not one has to turn to Sch. 2 which contains a list of persons who are included in the definition of 'workman'. Where a person was employed for writing accounts and for purchasing stocks and for arranging for their transport, the employment did not fall within the scope of Cl. (xxvi) of Sch. 2. AIR 1962 Andh Pra 177 (177) (Prs 6, 7) (DB).

——Ss. 2 (1) (n) and 3—'Workman'—Deceased a taxi driver driving car on commission basis — Deceased free to take taxi anywhere — Deceased meeting with fatal accident — Claim by widow—Onus is on claimant — Deceased held not 'workman' — (1910) 3 B W C C 371 and 1911 A C 188, Foll. 1963 (6) Fac L R 144 : 67 Cal W N 504 : (1963) 1 Lab L J 593 : AIR 1964 Cal 61 (62, 63) (Prs 8, 10) (DB).

——S. 2 (1) (n), Sch. 2, Cl. (8) — Workman — "Employed in the construction, repair or demolition in Sch. 2, Cl. (8) — Scope of — Building Inspector employed by Corporation to see if there was any breach of any municipal land in connection with construction—Inspector if workman. It cannot be said that he is employed in construction or demolition work, contained in Sch. 2, Cl. (8). 40 Bom L R 12, Disting. (1951) 55 Cal W N 496 (DB).

——S. 2 (1) (n) — Agricultural labourer engaged on yearly basis — Not a workman — Not entitled to any compensation.

Held, that the respondent was working for the appellant as an agricultural labourer engaged on yearly basis. According to the material part of the definition of 'workman' as given in S. 2 (1) (n) of the Act applied only to persons "employed on monthly wages not exceeding four hundred rupees in any such capacity as specified in Sch. 2." None of the items in Sch. 2 applied to the respondent and he being not a 'workman' within the meaning of the Act, was not entitled to any compensation under it. 1963 M P L J (Notes) 8.

——S. 2 (1) (n)—Cleaner of motor bus who is required to accompany the bus is a "workman": AIR 1938 Mad 636; 42 C W N 123; AIR 1950 Orissa 207, Rel. on. 1962 Jab L J 1082 : 1962 M P L J 454.

——S. 2 (1) (n), Sch. 2 (viii) (a) — 'More than one storey'—Meaning of — Minimum number must be at least two complete storeys.

If the number of storeys is to be more than one it must be at least two if measured in number apart from the height of each of the storeys. Where there is some little construction in the form of a parapet to the roof of a one storeyed building it will not be covered by the expression "more than one storey in height above the ground." 1961 M P L J 80 : 1961 Jab L J 259 : ILR (1961) Madh-Pra 396 : AIR 1961 Madh Pra 349 (350, 351) (Pt A) (Pr 14).

——S. 2 (1) (n), Sch. 2 (viii) (a)— Height of building —Burden of proof — Burden is on applicant to show that the building is of the required height.

Since the height of a building could be found out by measurement by any person the burden is on the applicant for compensation to show that the building is twenty feet or more from the ground level to the apex of the roof and the burden does not shift upon the employer on the ground that it is a matter within his special knowledge. 1961 M P L J 80 : 1961 Jab L J 259 : ILR (1961) Madh Pra 396 : AIR 1961 Madh Pra 349 (351) (Pt B) (Pr 15).

——S. 2 (1) (n), Sch. 2, Cl. 16 — 'Workman'—Mason employed to plaster wall of newly dug up agricultural well.

A mason, employed in plastering the wall of a freshly dug up well, which is more than 20 feet deep is a workman employed in the making of an excavation within Cl. 16 of Sch. 2. 1960 M P L J 89 : (1960) 1 Fac L R 366 : 1960 M P C 178 : 1960 Jab L J 252 : (1960) 1 Lab L J 789 : AIR 1960 Madh Pra 267 (268, 269) (Prs 4, 5, 7).

——S. 2 (1) (n)—"Employed on monthly wages not exceeding Rs. 400"—Meaning of.

To determine whether a person is a workman one has not to see that the employment should be on a monthly basis. What has to be seen is that the emoluments which are mentioned do not exceed more than Rs. 400 per month. ILR (1957) M P 10 : 1957 Nag L J 37 : 1957 M P C 161 : 1957 Jab L J 250 : 1957 M P L J 61 : AIR 1957 Madh Pra 84 (85) (Pt C) (Pr 6) (DB).

——S. 2 (1) (n)—Person not holding any diploma but appointed to supervise labourers who are actually in charge of construction of building is a "workman". (1965) 1 M L J 64 : 1964 Mad W N 199 : (1964-65) 26 F J R 159 : 78 Mad L W 131 : (1965) 10 Fac L R 72 : AIR 1965 Mad 372 (373, 374) (Pt B) (Pr 7).

——S. 2 (1) (n), Sch. 2, Item 28 — Case falls under Item 28 only when the vehicle is one mechanically propelled—Clause has no application when vehicle is one driven by bullocks. 1963 Mad W N 77 : (1962) 2 Lab L J 487 : (1962-63) 23 F J R 238 : 76 Mad L W 30 : ILR (1963) Mad 393 : AIR 1963 Mad 188 (189, 190) (Pt A) (Pr 2) (DB).

——S. 2 (1) (n), Sch. 2, Item 26 — It is enough if workman has to work within precincts—Accident taking place outside precincts where his employment takes him—Case falls under Item 26.

Schedule 2, purports to give only the list of persons who, subject to the provisions of S. 2 (1) (n) would be included in the definition of the word 'workman'. In other words, it is part of the definition of that term. As such it is not concerned with the question as to the place of accident. (1962) 2 Lab L J 487 : 1963 Mad W N 77 : (1962-63) 23 F J R 238 : 76 Mad L W 30 : ILR (1963) Mad 620 : AIR 1963 Mad 188 (189, 190) (Pt B) (Pr 2) (DB).

——Ss. 2 (1) (n) and 30 — Divers employed by Government Fisheries Department for chank fishing —If 'workmen'—Appeal on decision as to—Question of fact.

Notwithstanding the fact that the finding as to whether the deceased persons were workmen within the meaning of the Workmen's Compensation Act was a question of fact still an appeal would lie to determine as to whether the finding had been arrived at properly and correctly on the basis of evidence adduced. The divers are 'workmen' within the meaning of the Act, entitled to compensation. (1959) 2 Lab L J 335 : 72 L W 673 : (1959) 2 M L J 451.

——S. 2 (1) (n) and Sch. 2, Cl. (viii) — Person employed for painting premises of shop, dying by electric shock while working — Deceased held was a workman and his widow was entitled to compensation.

A person employed on wages for painting the premises of a shop, is not an employee of a casual nature but, is one employed in the course of the business of the shop as his work falls within the meaning of the word 'repair' occurring in Cl. (viii) of Sch. 2. If such person, while painting the premises, touches a live electric wire and dies on account of electric shock, his widow is entitled to the claim for compensation under the Act. 1963 Cur L J 470 : AIR 1964 Punj 315 (316, 317) (Pt A) (Prs 3, 4).

9. Section 2 (2)—Local authority exercising power on behalf of Government, business or trade.

——Ss. 2 (2) and 2 (1) (e) — Unless there is specific exemption of State in a Statute, Acts would apply and bind the State — Executive Engineer who is an officer under the State Government is not immune from provisions of the Act inasmuch as the departments have been included in section. (1964-65) 26 F J R 159 : (1965) 1 Mad L J 64 : 78 Mad L W 131 : 1964 Mad W N 199 : (1965) 10 Fac I R 72 : A I R 1965 Mad 372 (373) (Pt A) (Pr 6).

——S. 2 (2)—Crown in the right of United Kingdom as distinguished from Government of India if bound by Act—Government of India Act (1935), S. 176.

(i) The application was not maintainable under the Workmen's Compensation Act on the date it was filed inasmuch as the Crown in the right of the United Kingdom was not bound by the Act.

(ii) Even after the Constitution came into force on 26-1-1950 when India became a Sovereign Republic, any claim against the British Admiralty will be really a claim against the British Crown which is a foreign Sovereign entitled to immunity from the jurisdiction of Courts and tribunals of the Indian Republic and therefore the claim could not be proceeded with. 1951 Mad W N 391 : (1951) 2 Mad L J 23 : 64 Mad L W 659 : A I R 1951 Mad 880 (881, 882) (Pt A) (Prs 4, 5) (DB).

——S. 2 (2)—'Business' — Repairs sought to be done to canal embankment must be held to be business. A I R 1960 Punj 119 (122) (Pt B) (Pr 8).

SECTION 3

(Workmen's Compensation Act (8 of 1923), S. 3.)

SYNOPSIS

1. Applicability.
2. Accident—Death or injury from.
3. "Arising out of and in the course of employment."
   - (A) Necessity of proof.
   - (B) Compensation—Right to.
   - (C) Connection between employment and death.
4. Sub-section (1)—Proviso (b).
5. Negligence.
6. Sub-section (2).
7. Sub-section (5) — Suit for damages bars remedy under the Act.
8. Principle governing grant of compensation.
9. Burden of proof.

1. Applicability.

——Ss. 3, 2 (1) (n) — Relationship of employer and workman—Test — An employer is he, who controls the services of the workman or is in a position to command and control the workman in the manner of performing the work. See Workmen's Compensation Act (1923), S. 2 (1) (n). A I R 1964 Cal 217 (DB).

——Ss. 3, 1—Stretched construction—(Interpretation of Statutes) — The stretched construction of the Act should be followed so long as it is not something violently opposed to the fundamental principles. See Workmen's Compensation Act (1923), S. 1. A I R 1953 Cal 516 (DB).

——Ss. 3, 10—Succession of accidents.

Section 10 in no way makes it impossible to hold a succession of accidents to be an accident within the meaning of S. 3. I L R (1953) 2 Cal 239 : 57 Cal W N 149 : A I R 1953 Cal 516 (518) (Pt A) (Pr 14) (DB).

——S. 3—Series of tiny accidents.

A serious of tiny accidents, each producing some unidentifiable result and operating cumulatively to produce the final condition of injury, constitute together an accident within the meaning of S. 3. I L R (1953) 2 Cal 239 : 57 Cal W N 149 : A I R 1953 Cal 516 (518, 519, 520) (Pt B) (Prs 14, 15, 19) (DB).

——S. 3—Employer — Meaning of—Lease of boat—Death of workman on boat—Contract between lessor and lessee if bona fide — Lessor whether liable to pay compensation.

Under the terms of the agreement owner was under no responsibility for the expenses of the trip and the salaries of the crew, etc. The terms of the agreement were wholly inconsistent with either the relationship of partners or the relationship of master and servant or that of agent and principal and that as the contract was a mere demise of the boat, owner could not be made liable for the payment of the compensation. (1913) 2 Ir Rep 385, Dist. (51) 1951 Mad W N 807 : (1951) 2 Mad L J 456 : A I R 1952 Mad 169 (169) (Pr 3).

——S. 3 — Employment for purposes of business. It cannot be contended that construction of houses is only his subsidiary business and his main business is something else and hence not liable to pay compensation. See Workmen's Compensation Act (8 of 1923), S. 2 (1) (n). A I R 1953 Mad 432.

——S. 3—Fatal Accidents Act (1855), S. 1-A—Special provisions under Act of 1923 do not abrogate rights under Act of 1855 — Workman making claim under S. 3 can alternatively file suit under S. 1-A.

A special statute does not derogate from another special statute without express words of abrogation. Special provisions made under the Workmen's Compensation Act do not abrogate the rights arising under the Fatal Accidents Act. (1884) 10 A C 59 and A I R 1937 Rang 451, Rel. on. 1965 B L J R 564 : A I R 1966 Pat 130 (131, 132) (Pt A) (Pr 7) (DB).

——S. 3 — Applicability — Wilful disobedience — Negligence if.

Mere negligence of the worker cannot be regarded as wilful disobedience by the workman to an order expressly given. Contributory negligence on the part of the employee does not exonerate the employer from liability to compensate the employee if the accident could not have been avoided by the exercise of ordinary care and diligence. (1956) 10 F J R 423 : 1956 B L J R 288 : (1957) 2 Lab L J 522 : A I R 1956 Pat 299 (303, 304) (Pt H) (Pr 17) (DB).

——S. 3—Principle of added peril—Applicability of.

The principle of added peril contemplates that if a workman while doing his master's work undertakes to do something which he is not ordinarily called upon to do and which involves extra danger, he cannot hold his master liable for the risks arising therefrom. This doctrine, therefore, comes into play only when the workman is at the time of meeting the accident performing his duty. (1957) 2 Lab L J 522 : (1956) 10 F J R 423 : 1956 B L J R 288 : A I R 1956 Pat 299 (304) (Pt I) (Pr 19) (DB).

——S. 3 — Employees' State Insurance Corporation incurring liability to pay workmen's compensation—Re-imbursement of compensation from employer—Actual payment of compensation by Corporation—Not a pre-condition. See Employees' State Insurance Act (1948), S. 53. (1964-65) 26 F J R 124 (Punjab).

——Ss. 3, 30 — Question of fact — Question whether workman was forbidden to go to site is question of fact—Finding thereon will not be interfered with by High Court. See Workmen's Compensation Act (8 of 1923), S. 30. A I R 1955 N U C (Raj) 4038.

——Ss. 3, 15 — Travancore Workmen's Compensation Act (1114ME) — Scope — Injury to workman caused by accident due to negligent and wrongful act of another — Payment of compensation by master — Right to recover same from wrongful party responsible for accident—Common law — Right under.

Section 3 of the Workmen's Compensation Act imposes a liability on the employers to pay compensation to a workman who sustains personal injury by an accident during the course of his employment under him. When the employer pays such compensation, it cannot be said that it is a voluntary payment by him so as to disentitle him from recovering the same as damages from the party responsible for the accident whose wrongful act caused the accident involving injury to the workman. It is, on the other hand, a statutory obligation, and when he makes a payment in discharge of the statutary obligation under S. 15 of the Act, the employer who makes the payment of compensation is entitled to be indemnified by the person who has been responsible for the cause of the injuries sustained by the workman.

Even apart from the right under the Act, the general law also would enable the employer to claim the amount from the wrongful party, it being a principle of the common law that a master or employer can maintain an action for damages for the loss of service of his servant by the tortious act of another. Such a remedy is available to the Crown as an employer as well as to a subject. AIR 1951 Trav-Co 171 (2) (175) (Pt E) (Pr 9).

2. Accident — Death or injury from.

——S. 3 — Death of workman suffering from heart disease — Death by injury in accident.

Where a workman suffering from heart disease after working for eight hours on a hot day in a mill dies, then it is proper to hold that he died of injury by accident arising out of and in the course of his employment. (1956-57) 10 F J R 117 : (1956) 1 Lab L J 740 : AIR 1956 Bom 424 (425) (Pt C) (Pr 2) (DB).

——S. 3 — Accident arising out of employment.

Where a watchman of a factory on duty who had to take a round of the factory compound, notices a G. I. Pipe in the compound, it would be his duty to lift it up and take it to a safe place. If, while doing so, he receives an injury as a result of an accident, the injury is received as a result of accident arising out of the employment. There is a casual connection between the accident and the employment: AIR 1955 Bom 105, Rel. on. AIR 1956 Bom 115 (117) (Pt B) (Prs 10, 11) (DB).

——S. 3 — "Accident".

The expression 'accident' in S. 3 must be construed in its popular sense. It has been defined as an unlooked for mishap; an untoward event which is not expected or designed. What the Workmen's Compensation Act intends to convey is what might be expressed as an accident injury. 55 Bom L R 924 : ILR (1954) Bom 353 : AIR 1954 Bom 180 (181) (Pt E) (Pr 4) (DB).

——Ss. 3, 2 (1) (n) — Deceased a taxi driver, driving car on commission basis — Deceased free to take taxi anywhere — Deceased meeting with fatal accident — Claim by widow — Onus is on claimant — Deceased held not workman. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1964 Cal 61 (DB).

——S. 3 (1) — 'Accident' — Means mishap or untoward event not expected or designed — Common factor in accident is some concrete happening at a definite point of time and incapacity resulting from happening —AIR 1961 Guj 34, Foll. (1965) 2 Lab L J 636 : (1965) 7 Guj L R 76 : ILR (1965) Guj 1149.

——S. 3 — Accident, meaning of.

The word 'accident' in S. 3 generally means some unexpected event happening without design even though there may be negligence on the part of the workmen. What the Act really intends to convey is not only such occurrences such as collisions, tripping over floor obstacles, falls of roof, but also less obvious ones causing injury, e. g., strain which causes rupture, exposure to a draught causing chill, exertion in a stokehold causing apoplexy and shock causing neurasthenia. But the common factor in all these cases is some concrete happening at a definite point of time and incapacity resulting from the happening. (1961) 2 Guj L R 23 : (1961) 2 Guj H C R 21 : (1962) 4 Fac L R 369 : (1961) 1 Lab L J 585 : (1962) 21 F J R 19 : AIR 1961 Guj 34 (35, 36) (Pt A) (Pr 9).

——S. 3 — Injury caused by accident arising out of and in the course of his employment—Determination of — Principles—Workman having had heart suffering from heart attack while in employment — After cure from such attack workman leaving employment — Subsequent death after 9 months — Liability to pay compensation.

The following principles laid down in decided cases serve as guidance to establish a claim for compensation :—

(1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment. (2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury. (3) It is not necessary that the workman must be actually working at the time of his death or that death must occur while he is working or had just ceased to work. (4) Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed.

Held, in the instant case, that it could not be said that the workman died as a result of injury caused by accident arising out of and in the course of his employment. The burden of proof lay on the petitioner to establish that the heart of the workman had, by the strain of the work he was doing, become weaker and which ultimately collapsed causing his death. (1961) 2 Guj L R 23 : (1961) 2 Guj H C R 21 : (1962) 4 Fac L R 369 : (1961) 1 Lab L J 585 : (1961) 2 F J R 19 : AIR 1961 Guj 34 (38) (Pt B) (Prs 14, 15).

——S. 3 (1) — Cleaner of bus accompanying bus in his capacity as cleaner. He is considered to be on duty — Cleaner meeting with accident — Accident held took place in course of employment. 1962 Jab L J 1082 : 1962 M P L J 454.

——S. 3 (1) — 'Accident' — Meaning of.

— It is well established that the word 'accident' in S. 3 (1) of the Workmen's Compensation Act, has been used in the popular and ordinary sense and means 'mishap' or 'untoward event not expected or designed'. If the injury or death from the point of view of the workman, who dies or suffers the injury is unexpected or without design on his part, then the death or injury would be by accident although it was brought about by a heart attack or some other cause to be found in the condition of the workman himself. 1959 M P C 231 : 1959 Jab L J 295 : 1959 M P L J 548 : (1959) 2 Lab L J 65 : AIR 1959 Madh Pra 281 (283) (Pt B) (Pr 6).

——S. 3 — "Injury by accident" — Ingredients of — Workman already suffering from heart disease — Attack when loading and unloading materials — Death after 2 days — Action for compensation upheld.

The basic and indispensable ingredient of "accident" is unexpectedness. The second ingredient is that injury must be traceable, within reasonable

limits, to a definite time, place and occasion or cause. If death or disability is due to heart attack which resulted from the exertion of the employee in the performance of the duties of his employment, compensation should be awarded. The fact that the injury and the pre-existing disease combined to produce the disability does not prevent the injury being compensable in nature and it is not necessary to prove that the injury accelerated or aggravated the disease or that the accident complained of was a contributory cause to the injury. If the accidental injury suffered in the course of his employment is the proximate cause of the employee's death, the previous physical condition is unimportant. The Act should be broadly and liberally construed, in order to effectuate the evident intent and purpose of the Act.

The workman, who according to the Doctor's report was already suffering from heart disease, met with an attack when loading and unloading material at a dam construction and died in the hospital two days after.

Held, that the workman died of an injury arising out of and in the course of his employment, and the claim for compensation could be upheld. (1965-66) 28 F J R 286 : (1966) 2 Lab L J 12 (Mad).

——S. 3—Death or incapacity from accident.

When death or incapacity of a workman is caused by accleration of disease, already existing, due to an accident, the death or incapacity will be deemed to have resulted from accident. But when the incapacity or death results from the disease itself independent of the accident, the workman or his dependants as the case may be will not be allowed compensation under the Act. ('51) 1951 Nag L J 607 : ILR (1952) Nag 543 : AIR 1952 Nag 20 (22) (Pt B) (Pr 8).

——S. 3 — 'Accident' meaning of word is used in sense of some unexpected mishap — A going to his master's field for carrying on prospecting operations —While on duty A receiving injuries at hands of third persons who contested right to land — Held there was accident from A's point of view — A held was entitled to compensation. AIR 1955 N U C (Raj) 4038.

——S. 3 — Accident arising out of and in the course of employment — Death due to exploded explosives left negligently by third person — Employer held liable to pay compensation. AIR 1955 NUC (Sau) 4077 (DB).

3. "Arising out of and in the course of employment".

(A) Necessity of proof.
(B) Compensation —Right to.
(C) Connection between employment and death.

3. "Arising out of and in the course of employment.

——S. 3 — 'During the course of employment' — Meaning of.

When a person is on leave, he is not at all in the course of his employment. He is not supposed to do any work for the employer and, therefore, by no stretch of the words 'in the course of employment' it could be said that such a case would be covered by S. 3 of the Act. ILR (1959) 2 All 363 : AIR 1960 All 283 (284, 285) (Pt B) (—Injury caused—)

——S. 3 (1)—'Out of and in the course of his employment'—Meaning —(Railways Act (1890), S. 122).

The word employment is of wider import than the word 'work' or 'duty'. The expression 'in the course of employment' means not only the actual work which the man is employed to do but what is incident to it, in the course of his service. The expression is not to be regarded as confined to the 'nature of the employment'. It applies to employment as such i. e., to its nature, its conditions, its obligations, and its incidents. It would thus include not only the period when he is doing the work actually allotted to him but also the time when he is at a place where he would not be but for his employment.

What may be called 'environmental accidents' i. e., accidents resulting from the surroundings in which the workman is employed or through which he has to reach his place of work in order to carry out his obligations to his employer also fall within the scope of the phrase 'arising out of or in the course of employment'.

This rule, of course, is subject to the exception that where the accident occurs in a public place, and the risk faced by the workman is not due to his employment but to his being on the spot as a member of the public. The employer will be liable only if the presence of the workman on the spot can be found traceable to an obligation imposed upon him by the employer. There is no difficulty, however, with cases where the accident takes place while the workman is on the spot in his capacity as an employee. 1953 All W R (H C) 548 : ILR (1953) 2 All 396 : AIR 1954 All 132 (133, 138, 139, 141) (Pt A) (Prs 3, 43, 45, 56, 58) (DB).

——S. 3 (1) — 'Accident arising out of and in the course of his employment'—Meaning of.

The workman was in the employment of the Federation of Labour Co operative Ltd. at the time of accident. He was the driver of the concrete mixer and was in charge of the running of it. In the process of attending to this, his thumb and index finger were caught in the machinery and were cut off :

Held, that the accident arose out of the employment of the workman as driver and occurred in the course of such emoloyment. 1961 Andh L T 259 : (1961) 1 Lab L J 565 : (1961-62) 20 F J R 237 : AIR 1962 Andh Pra 69 (70, 71) (Pt B) (Pr 5).

——S. 3 (1) — Accident arising out of and in the course of employment — Test of — A employed by B to drive lorry carrying goods — A taking his lorry safely across flooded river with help of other drivers —A, while helping other lorry to cross, slipping and being run over by it — Death while carrying him to hospital — Death held arose out of and in course of employment — Order awarding compensation to A's widow as dependent of deceased is in order. 1961 Andh L T 689 : AIR 1962 Andh Pra 42 (46, 47) (Pt A) (Prs 11, 12, 15).

——S. 3 (1) — 'Accident arising out of and in the course of employment'—Test.

In determining whether an accident had arisen out of and in the course of a person's employment, it is enough if it is established that (1) at the time of the accident he was in fact employed on the duties of his employment; (2) that it occurred at the place where he was performing those duties; and (3) that the immediate act which led to the accident is not so remote from the sphere of his duties as to be regarded as something foreign to them. 1912 A C 44 and 1914 A C 62 and 1917 A C 127, Rel. on. AIR 1933 Cal 220 and AIR 1933 Cal 513, Distinguished. (1960) 1 Lab L J 434 : AIR 1961 Andh Pra 15 (17, 18) (Prs 11, 12).

● **——S. 3 (1) — "Accident arising out of and in the course of his employment"—Meaning of—Tests laid down—Workman having a fall while proceeding to a place to perform his duty and dying of heart failure.**

(Per Full Bench).

The word 'accident' has its popular meaning. It denotes or includes unexpected personal injury resulting to the workman in the course of his employ-

ment from any unlooked for mishap or occurrence. 1903 A C 443, Rel. on.

In order to determine whether an accident could be held to have arisen out of the employment of the workman with the employer the following test would require to be fulfilled, namely, (1) that the workman was in fact employed on, or performing the duties of, his employment at the time of the accident; (2) that the accident occurred at or about the place where he was performing these duties, or where the performance of these duties required him to be present; (3) that the immediate act which led to or resulted in the accident had some form of casual relation with the performance of these duties and such casual connection could be held to exist if the immediate act which led to the accident is not so remote, from the sphere of his duties or the performance thereof, as to be regarded as something foreign to them.

(Per Majority S. K. Dutta J., contra).

Held, on facts that the deceased was in fact in the employment of the Company and was performing the duties of such employment at the time of the accident. The accident occurred on the premises of the Company's establishment where the deceased had to perform his duties and the immediate act which constituted the accident was the fall of the deceased on the ground when he was proceeding to the fanhouse to perform the duty of starting the fan which had stopped. The fall was obviously an accident and it was the fall that had caused the physical effect on the deceased which made him cry out. "Mago" and complain of pain in the chest and hard breathing.

This was a case of res ipsa loquitur, the thing speaking for itself. The accident occurred not only in the course of his employment by the company but also on account of the employment. 1933 A C 501; AIR 1961 Andh Pra 15; AIR 1952 Andh Pra 42: 1917 A C 479: 1917 A C 127; AIR 1933 P C 225: AIR 1955 NUC (Assam) 379 and AIR 1959 Madh Pra 281, Rel. on.

Per S. K. Dutta J.—There was no absolute certainty whether the deceased had a fall and consequently had a heart attack, or the heart attack preceded the fall. In such a case it could not be said to have been proved that the accident arose out of the employment of the workman. The heart attack of the deceased could not be associated in any way with his employment. The deceased was not exposed to the risk of a heart attack by the nature of his work. In the result it could not be said that the accident arose out of the employment of the workman. Assam Railways and Trading Co. Ltd. v. Saraswati Devi. **ILR (1963) 15 Assam 216: AIR 1963 Assam 127 (129, 130, 131, 132, 133, 134, 136, 137) (Prs 10, 11, 12, 16, 17, 18, 22, 27, 29, 47, 59, 50, 52) (FB).**

——S. 3 — 'Arising out of the employment' — There should be necessarily some connection between employment and accident — General test for determining whether particular accident has arisen out of employment of workman, cannot be laid down. AIR 1955 NUC (Assam) 379 (DB).

——S. 3 (1)—Merchant Shipping Act (1958), S. 101 —"Arising out of employment"—Meaning—Tests to determine whether accident arose out of employment.

It is open to a Court to find on an inference that the accident arose out of employment though no human being was present who could give direct evidence how and when the accident happened.

If the workman is properly in a place to which some risk attaches and an accident occurs which is capable of being attributed to a risk which is ordinarily inherent in the discharge of his duties, it is legitimate, notwithstanding the absence of evidence as regards the immediate circumstances of the accident, to attribute the accident to the risk and to hold that it arose out of employment.

As the employment of a seaman, by the very nature of it, exposes him to certain dangers, whether at work or not, as for example, the danger of falling overboard or being swept overboard, there is a prima facie presumption, if death by drowning be proved that the death was caused by an accident which arose out of employment.

The presumption thus arising can be rebutted by the employer by leading evidence of facts and circumstances showing that the workman had at or about the time of his death departed from the controlling incidents of his employment or that he had added to the peril by his own imprudent act. **(1965) 67 Bom L R 735: (1965) 1 Lab L J 554: 1966 Mah L J 220: (1966) 12 Fac L R 345 (Bom).**

——S. 3—Arising out of and in the course of employment—Meaning of.

Held, that in the circumstances of the case a legal inference that the accident arose out of and in the course of his employment could be drawn. By reason of the obligations and conditions of his employment to which the deceased was subject in the course of discharging his duties, he was brought within the zone of a special danger, viz., exposure to sudden heat after having been in a low temperature area in the ice room. **58 Bom L R 149: (1956) 2 Lab L J 21: I L R (1956) Bom 239: AIR 1957 Bom 52 (54) (Prs 7, 9) (DB).**

——S. 3—"Arising out and and in the course of employment" — Meaning of—Tests—Type of accident which gives rise to claim for compensation.

On the question of the type of accident which gives the workman a claim to compensation, the well-known definition of accident is "an unlooked for mishap or an untoward event which is not expected or designed". 1903 A C 443, Rel. on. **67 Cal W N 728: (1963) 2 Lab L J 580: AIR 1964 Cal 217 (219, 220) (Pt E) (Prs 12, 13, 14) (DB).**

——S. 3 (1)—In the course of employment—Meaning of—Accident on public road while going to place of employment—Not in course of employment—Accident met with as a member of the public—Proximity of place not relevant. AIR 1958 S C 881, Foll. **(1960) 2 Lab L J 334: (1960) 1 Fac L R 343: I L R (1961) 1 Cal 135: AIR 1961 Cal 310 (313) (Prs 6, 7) (DB).**

——S. 3 — Whether accident arose out of and, in course of employment—Determination of—Test.

In order to find whether the accident had arisen out of and in the course of the workman's employment it is necessary to find what his employment was. Similarly, whether a person was a workman or not would depend upon what his work was and if his very employment was a disputed question and also the nature of the work he did during the time of his admitted employment, it is necessary to find what the post was in which the workman was actually employed at the time of the accident. Before arriving at a finding on that question, there can be no meaning in proceeding to decide whether or not he was a workman within the meaning of the Act. **I L R (1958) 2 Cal 630: AIR 1957 Cal 660 (661, 662) (Pt B) (Prs 7, 8) (DB).** [illegible] L J 65: AI[illegible] (6).

——S. 3 (1) — [illegible]ng out of and in the course of employ[illegible] Interpretation of.

Whether the accident 'arises out of the employment or not' depends on the facts of each case; the accident must be connected with the employment and must arise out of it: there must be a casual connection or association between the employment and the accidental injury. AIR 1959 Bom 424, Disting; AIR 1954 Bom 180, Rel. on. **1959 M P C 231: 1959**

Jab L J 295 ; 1959 M P L J 548 ; (1959) 2 Lab L J 65 ; AIR 1959 Madh Pra 281 (283) (Pt C) (Prs 6, 7).

——S. 3 — "Accident whether arising out of and in course of employment" — Test to determine indicated — Workman appointed as lascar in Port Trust Dredgar—Practice prevalent for Dredge Master to order lascars to bring his food from his house outside Port Trust premises—Lascar returning to Port Trust with dinner of Master during working period and meeting with fatal accident—Held that he died of accident arising out of and in course of his employment. Case law discussed. (1965.66) 28 F J R 338 : (1966) 1 Lab L J 690 : 1966 Mad W N 156 ; 79 Mad L W 257.

——S. 3—"Accident arising out of and in the course of employment"—Meaning—Test.

Where the workman when he met with his death was doing the very thing which he was employed to do the mere fact that he had no right to be working in the place where he was when he met his death, does not mean that the accident did not arise out of and in the course of the employment and the employer would in such cases be liable to compensation under S. 3. (1957) 2 Lab L J 522 : (1956) 10 F J R 423 ; 1956 B L J R 288 : AIR 1956 Pat 299 (303, 304) (Pt G) (Pr 17) (DB).

——S. 3 — 'Employment', meaning of—It extends to all things which workman is entitled by contract of employment expressly or impledly to do—Accident during rest period abount 40 or 50 paces away from mine may arise out of employment. AIR 1955 NUC (Punj) 1603.

——S. 3 (1)—"Injury" and "out of and in the course of employment"—Meaning of.

Injury caused by accident should not be confined to physical injury. The phrase includes a strain which causes exposure to draught or causes a chill.

The accident, in order to give rise to a claim for compensation on the ground of "arising out of and in the course of employment", must have some relation to the workmen's employment and must be due to a risk incidental to that employment as distinguished from a risk to which all members of the public are alike exposed. (51) 53 P L R 241 ; (1951-52) F J R 190 ; ILR (1952) Punj 119 ; AIR 1951 Punj 102 (103) (Prs 7, 10, 12, 13).

3 (A). Necessity of proof.

——S. 3 — Workman injured in course of employment — Workman treated in hospital — Workmen later developing Tetanus and dying—Death whether direct cause of injury—Proof.

A workman was injured while lifting weight for the employer. He was treated as out patient in the hospital for about 10 days. Next day he attended work and thereafter was absent. After 6 days he was again admitted in the hospital for tetanus and remained an inpatient for 5 days. He then left the hospital but died the next day. The question was whether the death was the direct cause of the injuries received in the course of the employment. Employer held liable to pay compensation. (1960) 1 Lab L J 598 (Andh Pra).

——S. 3 (1)—Scope—Injury caused by fellow workman.

A workman, while engaged in carrying out his day to day duties in a department of his employers Mill, was a helpless victim of an assault which was initiated by one of the employees of the Mill, who was assisted by three outsiders. In this assault the workman's hand was fractured.

Held, that the injuries suffered by the workman were incidental to his employment and that the accident must be taken to have arisen out of the employment of the workman. AIR 1955 Bom 105, Rel. on. 62 Bom L R 195 : (1960) 1 Lab L J 439 ; 1960 Nag L J 223 ; (1960) 1 Fac L R 156; I L R (1960) Bom 781 : AIR 1960 Bom 387 (389, 390) (Pt B) (Pr 4).

——S. 3—Accident arising in the course of employment.

In order to bring accident within S. 3 it is not necessary that it should be established that the workman died as result of an exceptional strain or some exceptional work that he did on the day in question.

Held, that the workman died as a result of an accident and died in the course of his employment. 55 Bom L R 924 : ILR (1954) Bom 353 : AIR 1954 Bom 180 (181) (Pt C) (Pr 4) (DB).

——S. 3—Accidents arising in course of employment —Proof — Doctor examining workman personally deposing, referring to report of Leprosy Research Department of School of Tropical Medicine — Value of doctor's evidence is not diminished. AIR 1955 NUC (Cal) 1424 (DB).

——S. 3—"Arising out of and in the course of his employment."

The accident arose in the course of the employment. It was not necessary for the respondent, the mother of the boy, to establish that the death resulted from some special risk to which the boy was exposed. His employment required him to pass a dangerous spot or place and in passing such a place he received injury. That being so it could be said in truth and in fact that the accident arose out of his employment. Case law discussed. ('52) Cal W N 523 : (1952) 1 Lab L J 361 : AIR 1953 Cal 143 (144, 145) (Prs 7, 9, 17) (DB).

——S. 3—Accident arising out of and in the course of employment.

It is not sufficient to prove that the workman died during his employment. It must be shown that he died as a result of an accident that is, there must be some connection between his work and his death. (1910) AC 242 and 122 L T R 162, Ref. 56 Cal W N 481 : AIR 1951 Cal 145 (146) (Prs 8, 11, 14, 15).

——Ss. 3 and 30—Substantial question of law—Finding of Commissioner that accident arose out of and in course of employment and that workman's death was due to strain of work—No question of law is involved—To come under S. 3, it is not necessary to establish that workman died as result of exceptional strain or some exceptional work. (1963) 1 Lab L J 203 ; (1963-64) 24 F J R 219 : 1963 Ker L J 30.

3. (B) Compensation — Right to.

——S. 3 (1) — Nature of liability.

The Workmen's Compensation Act has created a new type of liability inasmuch as it makes an employer liable to pay compensation at a fixed rate to a servant incapacitated by an accident arising out of and in the course of his employment. This liability to pay compensation is independent of any neglect or wrongful act on the part of the master or his servant. 1953 All W R (H C) 546 ; I L R (1953) 2 All 396 : AIR 1954 All 132 (138, 139) (Pt B) (Pr 43) (DB).

——Ss. 3, 12 (1) and (2)—Injury during course of employment to worker emplyed by independent contractor—Principal's liability — Relationship of master and servant established between such worker and principal—Principal does not cease to be liable merely because he had interposed independent contractor—Proceedings for recovery of damages — Contractor not a necessary party — Right of principal to be indemnified. See Workmen's Compensation Act (1923), S. 12 (1). AIR 1964 Cal 217 (DB).

——S. 3 — 'Accident arising out of and in the course of employment'—What constitutes—Seaman employed

on ship—No danger inherent or incident to his work —Becoming mentally deranged and was put in ship's hospital under constant watch — Seaman committing suicide by jumping overboard after using force against watchmen — Shipping company held not liable for compensation. (1930) 23 B W C C 135, Rel. on. (1965) 1 Lab L J 632 : AIR 1964 Cal 94 (98, 99) (Pt A) (Prs 17, 18, 26) (DB).

——S. 3 (1) — Accident arising out of and in the course of employment—Workman in railway workshop — Knocked down by railway engine while crossing railway lines — Claim for compensation.

Held, that the action of the workman in reaching the factory gate by crossing the railway lines instead of using the level crossings took the case out of the main provision of sub. S. (1) of S. 3 of the Workmen's Compensation Act. Hence the personal injury sustained by the workman by the accident could not be said to arise out of and in the course of employment so as to entitle the workman to claim compensation. AIR 1954 All 132, Dist. (1961) 2 Lab L J 467: (1961) 3 Fac L R 5 : AIR 1961 Cal 297 (298, 299) (Prs 3, 4) (DB).

——S. 3 — Injury to workman — Prima facie case giving a right to compensation proved by workman—Shifting of onus.

Where the workman proves that he is a workman and that he has suffered an injury by accident in the course of his emyloyment under the employer company, the liability of the company to pay compensation is established particularly when the injury appears to be one of the scheduled injuries. And if the employer company wants, nevertheless, to prove that it is not bound to compensation, the onus lies on the company to establish affirmatively that circumstances are present in the case which confer on it an immunity against a liability to pay compensation. 61 C W N 352 : ILR (1958) 2 Cal 63 : AIR 1957 Cal 601 (605) (Pt D) (Pr 17) (DB).

——Ss. 3, 6, 17, 19, 22 and 32—Rules under S. 32—R. 48—Forms K, L and M — Compensation payable in respect of particular injury settled either by award or agreement — Second application for compensation on ground of aggravation of same injury is not maintainable—(Interpretation of Statutes). See Workmen's Compensation Act (8 of 1923), S. 22. AIR 1955 Cal 616 (DB).

——S. 3 (1)— Compensation — Right to — Workman should be acting in course of employment—"Employment" includes things belonging to or arising out of it, 1924 A C 59, Rel. on, (1950-51) 2 F J R 95 : AIR 1950 Cal 164 (165) (Pr 3) (DB).

——S. 3 (1)—Accident arising out of and in the course of employment—Cleaner of motor bus accompanying bus on duty in dacoity infested area and meeting with accident in the encounter with dacoits—Cleaner sitting on front seat by side of driver when he was expected to occupy rear seat — Mere negligence in matter of carrying out regulations held did not disentitle cleaner to compensation—Accident held arose in course of cleaners' employment which took him to dacoity infested area. AIR 1937 Nag 397, Rel. on. 1962 Jab L J 1082 : 1962 M P L J 454.

——S. 3 — Scope—Accident during lunch interval — Workmen remaining on premises though forbidden —No compensation.

Where the workmen are specifically forbidden to be on the work spot during the interval, owing to dangerous operations like blasting taking place, and sirens are blown to warn them to leave, and they persist in remaining there foolishly and get involved in accidents, they are not entitled to any compensation. (1959) 1 Lab L J 390 : 72 Mad L W 572.

3 (C). Connection between employment and death.

——S. 3—'Accident arising out of and in the course of his employment'—Notional extension of employer's premises—Drivers of B. E. S. T. Undertaking given free transport facility in buses belonging to the Undertaking from depot to his house and vice versa —Driver meeting with accident while going home from depot—Accident held occurred during course of employment.

Held, that the accident occurred to P during the course of his employment and therefore his wife was entitled to compensation. (1908) 1 K B 469 and 1924 A C 59 and 1937 AC 454 and (1940) 3 All E R 157 and (1947) 1 All E R 446 and (1948) 1 All E R 233 and (1953) 2 All E R 1133 and AIR 1953 S C 881, Rel. on. General Manager, B. E. S. T. Undertaking, Bombay v. Mrs. Agnes, (1964) 3 S C R 930 : (1963) 7 Fac L R 310 : (1963) 2 Lab L J 615 : (1963-64) 25 F J R 66 : 66 Bom L R 367 : (1964) 2 S C A 76 : AIR 1964 S C 193 (199, 200, 201) (Prs 12, 13, 14, 15).

——S. 3(1) — 'In the course of his employment'—Workman drowned while returning home from salt work on a public ferry boat —Liability of employer.

Held, that on the facts of the case the accident could not be said to have arisen out of and in the course of the employment while crossing the creek inasmuch as the theory of notional extension could not extend to the point where the boat capsized. AIR 1955 Sau 20, Reversed. Saurashtra Salt Manufacturing Co. v. Bai Valu Raja. (1958) 2 Lab L J 249 : (1958-59) 14 FJR 351 : AIR 1958 S C 881 (882, 883) (Prs 7, 8).

——S. 3—Accident arising out of and in course of employment — Workman engaged through mate—Death occured in the course of employment and there was no question of negligence on the part of the driver of the roller. AIR 1955 Ajmer 44 (44, 45) (Prs 3, 5).

——S. 3 (1) — Accident arising out of and in the course of his employment — Unskilled worker in oil mill feeding groundnut into crushing machine — Machine worked by belt moved by power driven shaft — Supply of groundnut having been finished worker kicking the belt off the moving pully and meeting with accident — Employer found guilty of negligence in not complying with safety rules under Factories Act — Injury held was employment injury and employer was liable under S. 66. See Employees' State Insurance Act (1948), S. 2 (8). A I R 1963 Andh Pra 210.

——S. 3 — "Accident arising out of and in the course of employment."

The expression "employment" is wider than the actual work or duty which the workman has to do. It is enough if, at the time of the accident, the workman was in actual employment although he may not be actually turning out the work. Even when a workman is resting, or having food, or taking his tea, or coffee, or proceeding from the place of employment to his residence, and an accident occurs, the accident is regarded as arising out of and in the course of the employment. 1924 A C 59 and A I R 1954 Mad 113, Rel. on.

Held, there was casual connection between the new work entrusted to the deceased and his normal employment. The accident, therefore, arose out of and in the course of the employment of the workman. (1961) 2 Lab L J 260 (Andh Pra).

——S. 3 — Accident arising out of and in the course of employment — Case on facts — Workman by his zeal held did not forfeit protection which S. 3 conferred on him. A I R 1955 N U C (Assam) 379 (DB).

——S. 3—'In the course of employment'—Expression refers to time — Workman should be in employment at time of accident. A I R 1955 N U C (Assam) 379 (DB).

——S. 3—Accident arising out of the employment.

There must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. The cause contemplated is the proximate cause and not any remote cause.

Held, that the accident arose out of the employment. 56 Bom L R 509 : I L R (1954) Bom 1051 : AIR 1955 Bom 105 (106, 107) (Prs 2, 5) (DB).

——S. 3—Accident arising out of the employment.

If the workman dies as a natural result of the disease from which he was suffering, then it could not be said that his death was caused out of his employment. 55 Bom L R 924 : ILR (1954) Bom 353 : A I R 1954 Bom 180 (181, 182) (Pt D) (Prs 4, 5) (DB).

——S. 3—"Accident arising out of and in the course of his employment."

The expression "in the course of his employment" suggests the point of time; that is to say, the injury must be caused by accident taking place in the course of the employment, that is, during the currency of the employment. The expression "arising out of his employment" suggests both the time as well as the place of employment. The expression "out of" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of the accident.

Held on facts that there was a circumstance attending his employment because at the time and place at which he was employed an explosion occurred, in consequence of which V received injuries and as a result of which he died. Thus V received personal injury as a result of an accident arising out of his employment. Case law discussed. 54 Bom L R 421 : (1952) 1 Lab L J 1 : (1952-53) 4 F J R 190 : ILR (1952) Bom 1048 : AIR 1952 Bom 382 (383, 385) (Pt A) (Prs 6, 11) (DB).

——S. 3 — Accident arising out of and in the course of employment.

If during the continuance of his employment a workman is required by the conditions of his service to do any particular thing and the act so done involves him in an accident by reason of which he suffers personal injury or death, such accident arises out of and in the course of his employment even if the act done may not be one of the duties attached to his post but some other incidental act, required however to be done or necessitated by reason of the conditions of employment. 96 Cal L J 182 : 60 Cal W N 378 : (1956) 2 Lab L J 35 : 1956 Cal 458 : AIR 1956 Cal 458 (460, 461) (Prs 12, 15) (DB).

——S. 3 (1) — Communal riots in city — Workman going out on employer's business, killed — Workman held killed in course of employment — Risk of being attacked held incidental to employment. A I R 1955 N U C (Cal) 817 (DB).

——S. 3 — Accident whether arising out of employment.

Held that the employee was exposed to the special risks attached to the railway station not as a member of the public but he was still within the sphere of his employment and had not left the employer's premises. Hence, the accident arose out of and in the course of his employment. 147 L T 361, Foll. 55 Cal W N 522 : A I R 1951 Cal 501 (503) (Prs 15, 16) (DB).

——S. 3 (1)—Accident arising out of and in course of employment.

There must be some sort of connection established between the employment and the accident. If there be no connection established, the claimant cannot be entitled to any compensation. It is sufficient if the accident takes place due to some unforeseen event, but during the course of employment and when the employee is actually performing his duty as an employee. AIR 1938 Raj 349; A I R 1953 Cal 143; I L R (1943) Bom 225; A I R 1952 Bom 382; AIR 1955 Bom 105; A I R 1954 All 132; AIR 1956 Bom 424 and AIR 1959 M P 548; (1944) 1 All E R 51, Rel. on. 1962 Jab L J 1082 : 1962 M P L J 454.

——S. 3 (1) — Whether accident arose out of and in course of employment is question of law and depends on facts of case—Civil P. C. (1908), S. 100. AIR 1942 Bom 175; A I R 1933 P C 225, Rel. on. 1962 Jab L J 1082 : 1962 M P L J 454.

——S. 3 — Death of works inspector due to accident occurring on his way to office in pursuance of directions of Executive Engineer to prepare site plan — Held, that he died during the course of his employment. 1964 Mad W N 199 : (1965) 10 Fac L R 72 : (1964-65) 26 F J R 159 : (1965) 1 M L J 64 : 78 Mad L W 131 : A I R 1965 Mad 372 (374) (Pt D) (Pr 8).

——S. 3 — Accident arising out of and in the course of employment—He must be discharging duty which he owed to employer at time when he met accident — Workmen with party of other workers after finishing work moving to other camp to make arrangement for lodging workmen yet to arrive—Lodging arrangement made and workman remaining idle for some day — During this period workman while returning from call of nature going to well to wash himself — Accident—Workman falling into well — Workman taken out and removed to hospital—Death—Accident arises during period of employment. A I R 1955 N U C (Mad) 71.

——S. 3 — Injury while going to work by transport provided by employer.

Held, that the case fell within the scope of the exception to the general rule laid down in 1924 A C 59 and that the injury occurred out of and in the course of employment. 1954 Mad W N 729 : 68 Mad L W 882 : I L R (1955) Mad 798 : (1955) 2 M L J 590 : AIR 1954 Mad 1113 (1117) (Pt B) (Pr 8) (DB).

——S. 3 — Question whether accident arose out of and in the course of the employment of a particular workman would depend upon the facts and circumstances of each case and a general observation made in one case cannot be applied to another case unless the facts and circumstances of both of them are identical—The accident arises both "out of and in the course of employment" — Unless both conditions are present, case would not come within ambit of section — Accident held arose not only in the course of but also out of employment of deceased workman. 1956 Raj L W 355.

——S. 3 — Accident arising out of and in course of employment — Accident while returning home after work.

The employment does not necessarily end when the 'down tools' signal is given, or when the workman leaves the actual workshop where he is working. There may be some reasonable extension both in time and space, as, for instance, where the workman travels to :and from his work by some form of transport provided by his employers, and which he is under a contractual duty to use, or where he is using the means of access to and egress from his place of employment. So the mere fact that the accident arose outside the premises where the workmen were

actually employed is not the final word for deciding whether the accident arose out of and in the course of the employment. AIR 1955 Sau 20 (22, 23, 24, 25) (Prs 5, 8, 9) (DB).

[Reversed in AIR 1958 S C 881].

4. Sub-section (1)—Proviso (b).

——Ss. 3 (1), Proviso (b) (ii), 30 — Instructions in English — Workman not conversant with language — No wilful disobedience — Finding of Commissioner based on misconstruction is not finding of fact that cannot be set aside in appeal.

Held, that the factory could not claim protection of S. 3 (1), Proviso (b) (ii) of the Act in absence of a finding that the workman wilfully and deliberately disobeyed the instructions.

The Commissioner having arrived at such a finding on misconstruction of the provision of the Act, the finding was not a finding of fact, which could not be set aside in appeal under S. 30 of the Act. AIR 1949 Cal 295; AIR 1956 Pat 229, Rel. on. (1965) 1 Lab L J 24: (1964) 9 Fac L R 17 : 1964 All L J 613 (All).

——S. 3 (1) and Proviso (b) (ii) and S. 12 — Applicability and scope — 'Out of and in the course of his employment'

If the workman, even during the lunch interval sustains accidents in the course of the employment, or other work incidental or ancillary thereto, and not because of his own independent and unconnected private adventure or activity, he is usually entitled to compensation under the Workmen's Compensation Act But he will not be entitled to recover compensation for accidents caused by his acting unreasonably or unlawfully or by incurring unnecessary risks.

The contractor's laches in not insuring against risks and relying on false positions in law would not alter the position or render him liable to indemnify the Government. The indemnity would extend only as far as legal liability extends and no futher. It cannot cover acts of charity, magnanimity, special grace, pity or liberality. Willis on Workmen's Compensation Act, 1942, edition page, 112, followed. (1960) 1 M L J 108 : 72 Mad L W 572 : (1959) 1 Lab L J 390.

——S. 3 (1)—Construction and scope — 'Accident'—'Arising out of and in the course of his employment' —Meaning of— Proviso to S. 3 (1) — Applicability — Injuries resulting in death.

Though the term 'accident' has nowhere been defined in the Workmen's Compensation Act, it is settled law that the term means some unexpected event happening without design i.e, an unlooked for mishap or untoward event. Under S. 3 (1) of the Act, the injury must not only arise 'in the course of' but also 'out of' the employment. The proviso to S. 3 (1) of the Act applies only to cases of injuries not resulting in death; where the injury has resulted in death, the proviso will not apply and the question about the disobedience of any rule or order is not material so long as it can reasonably be held that the accident arose out of and in the course of the employment. (1956-57) 10 F J R 282: (1956) 2 Lab L J 233 : (1956) 2 M L J 19.

——S. 3 (1), Proviso (b) (i) — Accident whether due to workman having been under influence of drink — Evidence — Detection of liquor in stomach of deceased in post mortem and by Chemical Examiner — Not enough to outweigh evidence of eye witnesses.

The mere presence of a smell of country liquor on opening the stomach of the deceased, as found in the post-mortem report or detection of some alcohol by the Chemical Examiner, was not enough to outweigh the positive evidence of the eye-witnesses to the accident. AIR 1962 Orissa 7 (8, 9) (Pt B) (Pr 6)

——S. 3 (1), Proviso (b) (ii) — Death of workman — Disobedience of rule or order.

The applicability of cl. (b) of the Proviso to sub-s. (1) of S. 3 is limited to those cases where injury has not resulted in death. Where however, the injury has resulted in death, the question about disobedience of any rule or order is not material so long as it can be reasonably held that the accident arose out of and in the course of the employment. ('49 50) F J R 267 : ILR (1950) Cut 601 : AIR 1950 Orissa 207 (207) (Pt B) (Pr 6) (DB).

——S. 3 (1), Proviso (b) (ii)—Applicability.

In order to bring a case under Proviso (b) (ii) of S. 3 (1) of the Act, the employer has to establish firstly that an order or rule was in fact already in force at the time when the accident happened; secondly that the substantial purpose of the rule or order was that of securing the safety of workman as such; thirdly that the order or rule was couched in words which on their face fairly and clearly indicated that purpose; fourthly that its terms were brought to the notice of the particular workman who was the individual injured in a case; fifthly that the order or rule was disobeyed by that individual; sixthly that the disobedience of the rule or order by that individual was wilful and deliberate and not only the result of mere negligence or due to a mistaken mode of doing a particular task or due to a wrong decision in an emergency; seventhly that the accident was directly attributable to the aforesaid disobedience. (1956) 10 F J R 423 : 1956 B L J R 288 : (1957) 2 Lab L J 522 : AIR 1956 Pat 299 (303) (Pt E) (Pr 16) (DB).

——S. 3 (1), Proviso (b) (ii) — Applicability to cases of death.

Proviso (b) (ii) of S. 3 (1) applies to only those cases of injuries which do not result in death. Where therefore, the injury has resulted in death, the question as to the disobedience of any rule or order is not material at all so long as it can be reasonably held that the accident arose out of and in the couse of the employment. (1956) 10 F J R 423 : 1956 B L J R 288: (1957) 2 Lab L J 522 : AIR 1956 Pat 299 (304, 305) (Pt F) (Pr 17) (DB).

5. Negligence.

——S. 3 — Employee's negligence or rashness — Act within scope of employment — Excess of zeal in its performance or even some rashness or negligence would not put it outside scope of employment — Doctrine of added peril does not apply — Doctrine comes into play, when peril, risk or hazard is added to incidental risks of employment. AIR 1955 N U C (Assam) 379 (DB).

——S. 3 (1) — Negligence resulting in injury is distinct act and constitutes different cause of action than one referred to in S. 3 (5). See Workmen's Compensation Act (1923), S. 3 (5) (a). (1965) 2 Lab L J 630 : ILR (1965) Guj 1149.

——Ss. 3 and 10—Defect in a notice—Question is one of fact—Commissioner is the sole judge for it — Mere negligence of worker is no defence under S. 3 — Wilful disobedience to an express order has to be established. :AIR 1937 Nag 311, Foll. 1964 M P L J (Notes) 173.

——S. 3 and Sch. 1—Contributory negligence.

The Act does not make provision for the reduction of the scheduled compensation on the score of any contributory negligence on the part of a workman who dies in consequence of injuries he receives in the course of his employment, which ordinarily would not be fatal or which in fact are simple. 1953 Mad W N 393 : AIR 1953 Mad 837 (837, 838) (Pt B) (Pr 2).

——S. 3—Accident — Negligence—Effect.

Though the expression 'accident' in S. 3 has not anywhere been defined, it is well-settled that it generally means some unexpected event happening without design even though there may be negligence on the part of the workman who suffers from it.

It cannot be said that the dashing of the vehicle against a tree which caused the accident was brought about by any previous design or a wilful act on the part of the driver and hence once it is proved that the accident was caused in the course of his employment, the question of negligence, great or small is irrelevant. ('49.50) F J R 267 : ILR (1950) Cut 60 : AIR 1950 Orissa 207 (207) (Pt A) (Pr 5) (DB).

6. Sub-section (2).

——S. 3 (2), Sch. III, Part B — First entry in right hand column—'Any process involving the use of lead.'

Held, on facts of the case that in arranging the lead bars and fixing them up in a chest, an impositor does not merely handle lead, but carries not an intelligent operation in the performance of which lead or preparations of lead are used. Although the employment of the appellant consisted in part in handling, the handling was such that it involved use. The appellant had brought himself within S. 3 (2) read with Sch. III. ILR (1956) 2 Cal 700 : 93 C L J 197 : 58 C W N 560 : AIR 1954 Cal 484 (487, 488) (Pt B) (Prs 15, 16, 17, 18) (DB).

——Ss. 3 (2), 4 (1) B and Sch. IV — Workman employed in foundry developing nerosis and insanity—Compensation — Occupational disease — Burden of proof.

The burden of proof lay heavily on the appellant to establish affirmatively that he developed nerosis and insanity as a result of and during the course of his employment. AIR 1942 Bom 175 and AIR 1942 Pat 453 and AIR 1952 Nag 20 and AIR 1955 Bom 105 and AIR 1955 Cal 306, Rel. on. AIR 1957 Him Pra 33 (34) (Pt B) (Pr 6).

7. Sub-section (5)—Suit for damages bars remedy under the Act.

——Ss. 3 (5) (a) and 3 (1)—Bar of remedy of civil suit for damages where claim for compensation under Act is preferred — Useful test for determining bar is whether commissioner under Act had jurisdiction or not to entertain and grant relief claimed in suit—Commissioner can grant relief only in respect of injury caused by accident arising out of and in course of workman's employment — It cannot grant relief in respect of injury caused to workman by personal negligence or wilful act of employer or of some person for whose act or default employer is responsible—Bar is applicable only in respect of former category of cases and not in respect of latter—Negligence resulting in injury is distinct act and constitutes different cause of action than one referred to in S. 3 (5). (1965) 2 Lab L J 636 : (1966) 7 Guj L R 76 : ILR (1965) Guj 1149 (Guj).

——S. 3 (5) — Scope — Alternative remedies open to workman—Effect.

If a workman brings an unsuccessful action for damages against his employer, he would be debarred from claiming compensation under the Act. Conversely, if a workman institutes a claim for compensation under the Act and fails, he is then debarred from commencing an action for damages at common law or under the Employer's Liability Act. 69 Mad L W 896 : (1957) 1 Lab L J 517 : A I R 1957 Mad 216 (219) (Pt A) (Pr 11).

——S. 3 (5) — 'Instituted', meaning of — Proceeding under Act withdrawn — Suit for compensation — Maintainability.

Where the dependent does nothing more than file a claim under this Act and withdraws it before the proceedings are commenced and which commencement is effective with the taking of notice to the opposite side, there is no election as will debar the workmen's dependants from instituting a suit in the civil Court. 69 Mad L W 896 : (1957) 1 Lab L J 517 : A I R 1957 Mad 216 (220, 221) (Pt B) (Prs 14, 15).

——S. 3 (5)—Alternative but overlapping remedies.

The Workmen's Compensation Act will often overlap the remedy of compensation or damages for negligence under the Fatal Accidents Act in the civil Court. The obligation under the Workmen's Compensation Act which is more akin to that of an insurer, is independent of any negligence or breach of duty on the part of the master and is outside the law of torts. 69 Mad L W 896 : (1957) 1 Lab L J 517 : AIR 1957 Mad 216 (220, 221) (Pt C) (Pr 14).

——S. 3, Proviso 5—Institution of suit—Mere filing of application to sue in forma pauperis, does not amount to. 1950 Ker L T 205 : 1950 T C L R 203 : AIR 1950 Trav Co 106 (108, 109) (Pt A) (Pr 9) (D B).

8. Principle governing grant of compensation.

——S. 3 — Simultaneous hearing of petitions — Two petitions by workman on same date for compensation for two injuries out of two different accidents in course of employment—Commissioner passing single award fixing lumpsum compensation — Held, the award was unsustainable. See Workmen's Compensation Rules, (Andhra Pradesh), R. 40. (1965) 1 Andh L T 219 : (1965-66) 29 F J R 62 : A I R 1966 Andh Pra 99.

——S. 3—Civil P. C., O. 1, R. 10 and Motor Vehicles Act (1939), S. 96 (2) — Compensation claimed for death in accident involving truck which was insured — Proceedings between employer and employee's dependant — Insurance Company neither necessary nor proper party. 1965 Mah L J (Notes) 57 (Bom).

——S. 3 — Workmen's Compensation Rules (1924), R. 41 — Ex parte order for compensation — Application to set aside—Limitation not provided under Act or Rules — If Limitation Act is applied, Art. 181 and not Art. 164 of the old Act will govern application—Civil P. C. (1908), O. 9, R. 13—Limitation Act (1908), Arts. 164, 181—Limitation Act (1963), Arts. 123, 137. 1963 Cal L J 192.

——Ss. 3 and 2 (1) (g)—Workmen suffering as result of injury from physical defect — Effect on capacity of workman for work after injury and his eligibility as employee.

If a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work, but at the same time makes his labour unsaleable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch. The capacity of a workman for work may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost. 25 B W C C 573; 26 B W C C 99, Rel. on. 61 Cal W N 352 : ILR (1958) 2 Cal 63 : A I R 1957 Cal 601 (603) (Pt A) (Prs 9, 10) (DB).

——Ss. 3 and 2 (1) (g) — "Permanent partial disablement"—Effect of.

Prima facie, and if the words of the Proviso to S. 2 (1) (g) read with Sch. I are to be taken in a literal sense, the conclusion seems to be inescapable that whenever an injury of the kind specifically mentioned in the Schedule has been suffered by a workman as a workman as a result of an accident, he

becomes instantly entitled to compensation and compensation of the amount prescribed by the Schedule without any necessity for any investigation into further facts. 61 Cal W N 352 : ILR (1958) 2 Cal 63 : A I R 1957 Cal 601 (604) (Pt B) (Pr 13) (DB).

——S. 3—Payment of compensation — Principle and basis of.

When the compensation Court awards compensation to a workman on the ground of partial or complete disability, it does so on the basis that, in future, the workman would not be in a position to earn at the old rate or earn anything at all. A period during which a loss of earning was not actually suffered does not come into the picture at all. (1956) 1 Lab L J 26 : AIR 1956 Cal 604 (606) (Pt B) (Pr 7) (DB).

——S. 3—Essential requisites for claiming compensation under the Act — 'Accident' used in popular sense—Claim permissible only when accident arises in the course of and out of employment.

An applicant claiming compensation under the Act must prove (i) that there was an accident, (ii) that the accident arose in the course of employment and (iii) that it arose out of the employment. The applicant must place evidence on record to show that all these three conditions have been satisfied. 1959 M P C 231, Foll; A I R 1955 Bom 105, Dist. **1963 M P L J (Notes) 163.**

——S. 3—Compensation for worker injured—Test of liability.

The true principle under which an employer is liable to pay compensation for injury sustained by a worker under the Workmen's Compensation Act is not only that the injury should be sustained in the course of the employment but also that it should have arisen out of his employment which means that the injury should have been sustained as a direct result of the discharge of the duties of the workmen. (1954) 57 Bom L R 509 and (1941) 44 Bom L R 285, Distinguished. **71 Mad L W 814 : 1958 Mad W N 715 : (1958) 2 Mad L J 550.**

——S. 3 — 'Compensation more than once in respect of the same accident' — Injury or death in railway accident — Compensatioa received under S. 82-A — Compensation cannot be claimed once again under any other Act. See Railways Act (1890), S. 82-A. A I R 1965 Mys 306 (DB).

——S. 3 — Accident not arising out of and in the course of employment — Employer not liable to pay compensation.

Deceased workman was employed by the employer only to dig earth. Other persons were employed for loading the earth on the truck and for unloading it at the site of the dam after it was transported there. Deceased was sitting on the truck towards the left and he fell down when the truck was in motion.

Held, that the accident did not arise out of and in course of the employment of deceased workman. The employer was therefore not liable to pay compensation to the dependants of the deceased workman. (1965) 1 Lab L J 515 : 1965 Raj L W 214 : ILR (1965) 15 Raj 748 : AIR 1966 Raj 36 (37) (Pt A) (Pr 12).

——S. 3 — Employee murdered by fellow employees on premises of employer during recess — Incident having nothing to do with employment—Employer's not liable for compensation to dependants — A. I. R. 1948 Cal 12, Rel on (1960) 2 Lab L J 369 : 1960 Raj L W 471 : ILR (1960) 10 Raj 535.

——Ss. 3, 4, Sch. IV—Temporary disablement—Compensation.

Held that the demand made could not be treated as anything more than a claim for compensation for temporary disablement. The Commissioner went out of his way and exceeded his jurisdiction in proceeding to hold the enquiry and award compensation as if the injury resulted in permanent total disablement. (1956) 1 Lab L J 43 : 1956 Ker L T 69 : ILR (1955) Trav-Co 935 : A I R 1956 Trav Co 55 (55, 56) (Pt B) (Prs 3, 4) (DB).

9. Burden of proof.

——S. 3—Burden of proof—Injury by accident—Disablement held due to accident and not to disease alone.

Where the finding of the Commissioner was that the accident during the course of the employment accelerated the partial permanent disability in the right eye, on that finding the only conclusion possible was that the disablement was due to the accident and not due to the disease alone. AIR 1954 Bom 180 and AIR 1952 Nag 20, Foll., 1910 A C 242 and 1933 A C 501, Appld. **1963 All L J 630 : (1963) 7 Fac L R 124 : (1964) 1 Lab L J 126 : AIR 1964 All 323 (324, 325) (Pt B) (Prs 6, 12).**

——S. 3 (1), Proviso (b) (i) — Influence of drink — Burden of proof.

If a workman establishes a case for compensation under S. 3 the onus of proving facts which will disentitle him to compensation under the proviso is on the employer. Where some time had elapsed between the accident and workman's medical examination, the doctor's evidence that the workman was drunk at the time of the accident is inadmissible as merely hearsay and cannot he admitted even as part of res gestae. **A I R 1955 S C 271, Foll. A I R 1961 All 89 (90, 91) (Prs 6, 10, 13).**

——S. 3 — Accident arising out of and in the course of employment—Burden of proof—Shifting of onus.

In the present case as there was nothing to show that the deceased was suffering from any disease at the material time nor anything to show that at the time the collapse came he was actually under the strain of work, it was impossible to say that the claimant had discharged her primary onus and that the onus had shifted to the employer Railway. **(1955) 2 Lab L J 522 : 60 Cal W N 249 : A I R 1955 Cal 597 (599) (Prs 8, 9) (DB).**

——S. 3—Determination of cause of death—Evidence insufficient — Inference.

It is most natural inference to draw that when a man suddenly collapses and dies very soon after, and the doctor is not in a position to suggest any reason for this sudden collapse and the death ensuing that he was suffering from heart trouble which could not be discovered on a mere clinical examination. A I R 1956 Bom 424, Rel. on. **1959 M P C 231 : 1959 Jab L J 295 : 1959 M P L J 548 : (1959) 2 Lab L J 65 : AIR 1959 Madh Pra 281 (282) (Pt A) (Pr 4).**

——S. 3 — 'Accident arising out of and in the course of employment'—Burden of proof.

Where the workman is engaged in his employer's work up to his death and the last acts known are consistent with the continuance of that work, the onus is upon the person who alleges a cessation of his work for his employer to prove it. (1911) 1 K B 1036, Rel. on. The presence of the workman on the spot at the time of the accident, if such presence itself was attributable to the discharge of his duty is enough to show that the accident arose out of his employment. AIR 1942 Bom 175, Rel. on. **ILR (1958) Mys 94 : 36 Mys L J 91 : (1958-59) 15 F J R 133 : (1958) 2 Lab L J 764 : AIR 1958 Mys 116 (118, 119, 120) (Pt B) (Prs 6, 7, 11, 12) (DB).**

SECTION 4

SYNOPSIS

(Workmen's Compensation Act (8 of 1923), S. 4.)

1. Loss of earning capacity—Valuation of.
2. Compensation payable to dependants — Deductions.
3. Compensation.
4. Death due to injury during employment.
5. Debts of workman.
6. Burden of proof.
7. Fixed sum—If Lump-sum.
8. Finding of facts—Interference.

1. Loss of earning capacity— Valuation of.

——S. 4 (1) C—Amount of compensation— Injury to right hand—No evidence to indicate complete loss of fingers — Workman held entitled to compensation equal to 15 per cent. of earning capacity. AIR 1955 N U C (Ajmer) 4769.

——S. 4—Workman's hand permanently deformed —Loss of earning capacity—Evaluation of.

It was held that the view of the Commissioner that the injury had resulted in the loss of the left arm below the elbow resulting in 50 per cent. loss of earning capacity was correct even if the injury was not to be regarded as one of the injuries listed in the schedule resulting in a 50 per cent. loss of earning capacity. (1950-51) 2 F J R 134 : ILR (1951) 3 Assam 37 : A I R 1950 Assam 188 (189) (Pt C) (Prs 9, 10) (DB).

——S. 4 (1) (c)—Determination of compensation payable in cases of permanent partial disablement — Medical certificate deals only with physical incapacity — Court should take into account the nature of injury the nature of work which the workman was capable of undertaking and its availability to him— Court need not follow the medical opinion. 67 Bom L R 893 : (1966) 1 Lab L J 84 : 1966 Mah L J 150 : I L R (1966) Bom 610 : A I R 1966 Bom 240 (243) (Pt B) (Pr 15) (DB).

——Ss. 4, 2 (g) and (l), Pre. — Incapacity — When becomes total permanent disability—Test.

The incapacity due to which he cannot get employment for any work that can undertake would be total or permanent disability — See Workmen's Compensation Act (1923), Preamble. AIR 1965 Bom 32.

——Ss. 4, 5, 2 (g) and (l) — Medical Certificate — Value of — Whether workman suffered partial or total disablement—Determination—Duty of Court.

The certificate of a medical expert can only say what the injury is, its effect temporary or total on the limb and to an extent the physical incapacity of the man. It is, however, for the Court to find having regard to the evidence before it whether the workman has suffered partial or total disablement. The Court must take into account the nuture of the injury, the nature of the work which the workman was capable of undertaking and its availability to him. In this connection the employer's willingness to employ him in any other alternative employment may have relevance AIR 1957 Cal 660, Foll. 66 Bom L R 450 : 1964 Mah L J 566 : (1964) 9 Fac L R 158 : ILR (1965) Bom 52 : AIR 1965 Bom 32 (34) (Pt C) (Pr 11).

——S. 4 and Schs. I and IV — Compensation — Test for assessment.

Held, that the real factor for determining loss of earning capacity would be to ascertain the difference in the earning capacity of a fitter and that of a clerk, peon or bobbin cleaner whichever was lowest. A I R 1937 Cal 328, Dist. :1959 Nag L J (Notes) 21 (Bom).

——S. 4 and Sch. IV — Assessment of damages — Registers of monthly payment maintained by employer but not produced — Commissioner can fix monthly wage of injured workman on basis of evidence of co-workers and President of Union of workmen. 1960 Ker L T 824 : (1960) 2 Ker L R 351 : (1961) 2 Fac L R 410 : (1961) 1 Lab L J 75 : A I R 1961 Ker 108 (109) (Pt B) (Pr 3) (DB).

——S. 4—Permanent partial injury.

The leg of the claimant was amputated not above or at the knee but below. Held, that the disablement of the claimant was not proved to be a permanent total disablement; the disablement was partial. Madh A I R 1956 Madh B L R 1955 Civ 376 : Madh B L J 1955 H C R 1794 :B 122 (123) (Pt B) (Pr 13).

——S. 4 (1) (c) (ii) — Amount of compensation in permanent partial disablement — Test for assessing —Loss in earning capacity of injured workman in every employment capable of undertaking at time of accident and not merely in his particular job has to be estimated I L R (1965) 2 Punj 555 : A I R 1966 Punj 397 (398, 399) (Pr 6).

2. Compensation payable to dependants— Deductions.

——Ss. 4 (1), Proviso and 2 (1), (n) (ii)—"Workman" in Proviso — Meaning — Compensation payable to dependants—Deductions.

The word "workman" in Proviso (a) to S. 4 (1) can be read as dependants of a workman. A deduction in respect of payments of compensation made to the workman during his life time can be made. See Workmen's Compensation Act (1923), S. 2 (i) (n) (ii). AIR 1952 Cal 877 (DB).

——Ss. 4 and 8—Amount of compensation payable— —Ascertainment of—Deductions.

Section 8 does not assist the Court in ascertaining what is the compensation payable. When that amount has been ascertained as calculated by S. 4 then by the terms of Section 8 no deduction can be made from that amount except such deductions as are expressly provided for in the section. ('52) 56 Cal W N 189 : (1952-53) 4 F J R 111 : I L R (1952) 2 Cal 369 : AIR 1952 Cal 877 (878, 879) (Pt B) (Pr 19) (DB).

3. Compensation.

——S. 4—Compensation—Monetary value of accommodation granted to employee, has to be included. See Workmen's Compensation Act (1923), S. 2 (l) (m). AIR 1955 All 182 (DB).

——S. 4—Compensation — Amount of—Amount paid to employee not as compensation cannot be taken into account and cannot be deducted while calculating the amount of compensation. (1955) 1 Lab L J 553 : (1955-56) 8 F J R 201 : 1955 All W R (H C) 177 : 1955 All L J 269 : AIR 1955 All 182 (183, 184) (Pt E) (Pr 8) (DB).

——S. 4 (1) (c). Note to Sch. I—Scope—Total loss of use of limb—Compensation can be granted.

The note appended to Sch. I is merely an enabling provision. It is not restrictive in language. Even where there is no total loss of a finger, if its restricted movement and deviation on account of the accident result in total loss of the use of that finger compensation can be granted to the workman. 1961 Andh I T 258 : (1961) 1 Lab L J 565 : (1961-62) 20 F J R 237 : AIR 1962 Andh Pra 69 (71) (Pt D) (Pr 7).

——S. 4 (1) (c) (ii) - Scope — "Suspensory award". An award reserving to each of the parties thereto liberty to make such further application as they might be advised to make in future. See Workmen's Compensation Act (1923), Sch. I. AIR 1957 Cal 601 (DB).

——S. 4 (1) (c) (ii)—Compensation—Assessment of—Must be proportionate to loss of earning capacity resulting from permanent total disablement—Workman receiving full wages and increments after permanent total disablement—No loss of earning capacity—Claim for compensation not maintainable. 66 Pun L R 513 : AIR 1964 Punj 512 (512, 513) (Prs 2, 5).

——Ss. 4, 5—Minimum Wages Act (1948), S. 25—Workman actually drawing Rs. 35 per mensem—Deemed to be getting Rs. 60 for purposes of compensation—Minimum Wages Act (1948), S. 25. (1963) 7 Fac L R 62 : (1963-64) 25 F J R 345 : (1964) 1 Lab L J 658 : I L R (1963) 2 Punj 7 (Punj).

——Ss. 4, 3, Sch. IV—Temporary disablement—Compensation. See Workmen's Compensation Act (1923), S. 3. AIR 1956 Trav-Co 55 (DB).

4. Death due to injury during employment.

——S. 4—Death of employee due to injury caused during employment.

If a workman is felled by heavy bags tumbling down on his spine, if he is removed immediately to a hospital, if the hospital authorities admit him as an indoor patient, if the deceased does not improve sufficiently so as to justify his discharge and if he dies as a result of the injury turning gangrenous while under the most competent treatment, it cannot be alleged or held particularly in the absence of any other suggestion that the death had taken place otherwise than as a result of the accident. A I R 1955 N U C (Cal) 2863 (DB).

——S. 4—Injury resulting in death—Payment of compensation — Appeal lies from such order. See Workmen's Compensation Act (1923), S. 30 (1) (a). AIR 1957 Raj 246.

5. Debts of workman.

——S. 4—Workman owing debt to employer — Commissioner cannot go into question of debt. AIR 1955 N U C (Raj) 4038.

6. Burden of proof.

——Ss. 4 (1) (c) (ii), 2 (l) (j) and Sch. I — Crippling of leg—Compensation—Proof. See Workmen's Compensation Act (1923), Sch. I and S. 2 (l) (j). AIR 1959 Assam 10 (DB).

——Ss. 4 (1) (b), 3 (2) and Sch. IV — Workman employed in foundry developing neurosis and insanity—Compensation for occupational disease — Burden of proof — Burden lay on the appellant — He was not entitled to any compensation under Sch. IV read with Ss. 4 (1) (b) and 3 (2). See Workmen's Compensation Act (8 of 1923), S. 3 (2). AIR 1957 Him Pra 33.

7. Fixed sum—If lump-sum.

——Ss 4, 6, 7 and 30 (1) (a) — Fixed sum — If lump sum—Sch. IV — Order for payment of fixed sum — Appeal. The contention that the amounts are fixed as per Sch. IV but they are not lump sums is not acceptable. 1957 Raj L W 279 : ILR (1957) 7 Raj 653 : AIR 1957 Raj 246 (247, 248) (Pt A) (Pr 5).

8. Finding of facts—Interference.

——Ss. 4 and 30 — Finding of fact — Finding as to nature of injury is one of fact — High Court not to examine evidence. See Workmen's Compensation Act (1923), S. 30. AIR 1963 Assam 7 (DB).

SECTION 5

——Ss. 5, 4 and 2 (1) (m)—Compensation—Compensation to be on basis of 'wages' as interpreted in definition under Act and not as interpreted under definition in Payment of Wages Act—Monetary value of accommodation provided to employee has to be included. See Workmen's Compensation Act (8 of 1923), S. 2 (1) (m). AIR 1955 All 182 (DB).

——Ss. 5, 4, 2 (g) and (l)—Medical Certificate—Value of — Whether workman suffered partial or total disablement—Determination—Duty of Court. See Workmen's Compensation Act (1923), S. 4. A I R 1965 Bom 32.

——Ss. 5 and 14—Motor accident — Insurance Company—Liability of in proceeding started under Workmen's Compensation Act — Does not entitle the applicant to implead the Insurance Company as a person liable to pay compensation. See Motor Vehicles Act (1939), S. 96. AIR 1959 J & K 90 (DB).

——S. 5 (a) — Wages include all other emoluments payable to a workman — Compensation to be calculated on the basis of wages payable and not on actual payments made. See Workmen's Compensation Act (8 of 1923), S. 2 (m). 1962 M P L J (Notes) 105.

——Ss. 5 (a) and 2 (m)—Calculation of wages—Wages for period of leave to which workman was entitled after working for one year whether can be added—(Factories Act (1948), S. 79).

Section 79 of the Factories Act provides for annual leave with wages, which means that if a worker has completed a year's service, he can during the subsequent year go on leave without any deduction from the total amount of the wages to which he would be entitled in the course of the second year. This would make his wages for the second year amount to the same figure as that of the first year. 1958 Jab L J 230 : 1959 M P L J 48 : (1959-60) 16 F J R 115 : AIR 1959 Madh Pra 119 (120) (Prs 6, 8, 9).

——Ss. 5, 4 — Minimum Wages Act (1948), S. 25 — Workman actually drawing Rs. 35 per mensem — Deemed to be getting Rs. 60 for purposes of compensation. See Workmen's Compensation Act (1923), S. 4. I L R (1963) 2 Punj 7.

SECTION 6

——Ss. 6, 3, 17, 19, 22 and 32 — Rules under S. 32—R. 48—Forms K, L and M—Compensation payable in respect of particular injury settled either by award or agreement — Second application for compensation on ground of aggravation of same injury is not maintainable — (Interpretation of Statutes). See Workmen's Compensation Act (8 of 1923), S. 22. AIR 1955 Cal 616 (DB).

——Ss. 6 and 7 — "Lump sum" — Fixed sum paid under S. 4 read with Sch. IV. See Workmen's Compensation Act (1923), S. 4. AIR 1957 Raj 246.

——S. 6—Scope—Injury resulting in death—Payment of compensation whether lump sum. See Workmen's Compensation Act (1923), S. 8 (1). A I R 1957 Raj 246.

SECTION 7

——S. 7—Scope—Injury resulting in death—Payment of compensation, whether lump sum. See Workmen's Compensation Act (1923), S. 8 (1). A I R 1957 Raj 246.

SECTION 8

——Ss. 8 (5), 2 (d) (i) — Remarriage of widow of deceased workman — Effect — Does not cease to be dependent. See Workmen's Compensation Act (8 of 1923), S. 2 (d) (i). A I R 1962 Andh-Pra 42.

——Ss. 8 (6), 8 (7) — Discretion of Commissioner under—No interference in appeal.

In cases where the persons entitled to compensation are women or minors or persons under legal disability, option is given to the Commissioner either to make the payment to them or to take action by way of an investment as provided for in sub-s. (7) of S. 8,

The discretion is vested in the Commissioner and it is not for High Court to tell him how to exercise it, in an appeal from his order. 1961 Andh L T 689 : AIR 1962 Andh Pra 42 (47) (Pt C) (Pr 20).

——S. 8—Mother of deceased workman found dependent on deceased — Mother will be given a share in compensation—It is immaterial whether she had other means of income or not. (1959) 2 Lab L J 270 (Andh Pra).

——S. 8 — Mother of deceased workman awarded share in compensation—Widow and minor children also given shares as dependents—Part of amount of her share paid to mother—Death of mother pending appeal against award — Unpaid balance of mother's share should be transferred to remaining dependents, i. e. widow and minor children. (1959) 2 Lab L J 270 (Andh Pra).

——Ss. 8 and 4—Amount of compensation payable—Ascertainment of—Deductions.

When the amount of compensation payable has been ascertained and calculated as required by S. 4, then by the terms of S. 8 no deductions can be made from that amount, except :those especially provided for in the section. See Workmen's Compensation Act (1923), S. 4. AIR 1952 Cal 877 (DB).

——S. 8 — Ex gratia payment made to dependant of deceased workman—Deduction from actual compensation payable.

Where a payment of a lump sum is made to the widow and other relations of a workman whose injury has resulted in death the payment cannot, by virtue of S. 8, be deducted from the actual amount of compensation payable, because that section says that such payment shall not be deemed to be a payment of compensation. This is more so if the payment is made ex gratia. 55 Cal W N 698 : (1951-52) 3 F J R 304 : AIR 1951 Cal 513 (514) (Pt A) (Pr 3) (DB).

——S. 8—Equity in favour of employer to deduct.

There is no equity in favour of an emp'oyer to allow him to deduct the amount he has already paid to the dependent of a deceased workman from the actual compensation payable, in the face of clear provision of S. 8 to the contrary. 55 Cal W N 698 : (1951-52) 3 F J R 304 : A I R 1951 Cal 513 (514) (Pt D) (Pr 5) (DB).

——Ss. 8 and 31—Compensation for injury resulting in death of workman — Direction to deposit—Payment direct to party claiming—Effect of.

Where the Commissioner for Workmen's Compensation makes an order under the Workmen's Compensation Act, directing an employer to deposit the compensation amount due in respect of an accident caused to a workman resulting in his death is not a sufficient discharge of the liability of the employer if the compensation is paid directly to any person. (1960) 1 M L J 351 : 73 Mad L W 169 : (1960) 1 Lab L J 342 : (1960-61) 18 F J R 10 : I L R (1960) Mad 508 : AIR 1960 Mad 336 (337) (Pr 4) (DB).

—S. 8 — Whether the provisions of section are directory or mandatory — (Quaere). AIR 1957 Mad 255 (256) (Pt B) (Pr 4).

[Reversed on another point in AIR 1960 Mad 336.]

——S. 8 (1)—Deductions—Ex-gratia payment cannot be deducted from amount awarded—Employer is not entitled to set-off in respect of such payment. A I R 1955 N U C (Mad) 3943.

——S. 8 (5) — Discretion of Commissioner to distribute the compensation awarded among the dependants — Widowed mother — That she was actually dependant on deceased, need not be proved. A I R 1955 N U C (Mad) 87.

——S. 8—Compensation to co-widows—Marriage of one not disputed by relations but treated as valid by parties and the caste—Commissioner cannot declare it invalid but must apportion compensation. 32 Mys L J 101 : I L R (1953) Mys 588 : A I R 1954 Mys 38 (38) (Pt A) (Pr 3) (DB).

——S. 8—Order behind back of a claimant—Effect.

If a defendant had been made a party and had been notified and had not pressed her claim, she might not be entitled to re-open the proceedings by means of a fresh application of her own. But an order passed behind the back of a claimant and without her being a party in the earlier proceedings cannot bar her from making an application. 31 Mys L J 15 : ILR (1952) Mys 65 : A I R 1952 Mys 41 (41, 42) (Pt B) (Pr 2) (DB).

——Ss. 8, (2), 30 (1), Proviso 3 — Requisites for appeal—(Workmen's Compensation Rules adopted in Bihar), R. 9).

The third proviso to S. 30 (1) requires that the memorandum of appeal should be accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. This statutory provision should be read along with S. 8 (2) of the Act. Rule 9 of the Workmen's Compensation Rules as adapted in Bihar is also important in this connection. 1958 B L J R 726: A I R 1959 Pat 112 (113, 114) (Pt B) (Pr 4) (DB).

——Ss. 8, 2 (d)— 'Dependent on the earnings'—Compensation claimed by widow — Father and brother claiming share—Father was not dependant on son and in father's lifetime sons and wife could not be held dependents on deceased brother. See Workmen's Compensation Act (8 of 1923), S. 2 (d). A I R 1955 N U C (Punj) 1363.

——S. 8 (1) — Scope — Injury resulting in death — Payment of compensation—If lump sum—Ss. 6 and 7.

The word 'compensation' in the earlier part of S. 8 (1) has not been used in opposition to the expression "lump sum" occurring later. This provision does not lead to the conclusion that the payment of compensation in respect of a workman whose injury has resulted in death is not and cannot be a lump sum compensation. 1957 Raj L W 279 : ILR (1957) 7 Raj 653 : AIR 1957 Raj 246 (248) (Pt C) (Pr 7).

SECTION 10

SYNOPSIS

(Workmen's Compensation Act (1923), S. 10.)

1. Claims.
2. Notice.
3. Limitation—Sufficient cause.
4. Delay in filing claim.
5. Powers of Commissioner.
6. Miscellaneous cases.

1. Claims.

——Ss. 10 and 22—Claim is to be made under S. 10 and not under S. 22.

A claim is required to be made under S. 10, and no particular form is prescribed. Section 22 refers in terms to an application for settlement of any matter, that is, it contemplates an application for settlement after a claim is made under S. 10. (1950-51) 2 F J R 134 : I L R (1951) 3 Assam 37 : A I R 1950 Assam 188 (Pt B) (Pr 6) (DB).

——S. 10—Claim—Notice.

The word 'claim' referred to in S. 10 (1) does not refer to a claim made on the employers but denotes a formal claim made before the Commissioner. A claim

under the Act is not required to be made by an application under S. 22 of the Act. It is to be made under S. 10. The Proviso to Cl. (b) of S. 10 (1) gives jurisdiction to the Commissioner to entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given. **(1959) 1 Orissa J D 122 : I L R (1959) Cut 464 : A I R 1960 Orissa 39 (41, 42) (Pt D) (Pr 6).**

2. Notice.

——S. 10 — Applicability — Accident in presence of employer—No notice required.

The scheme of S. 10, is that a notice of the accident to the employer is necessary before a claim for compensation can be entertained by the Commissioner. But there are exceptions to this general rule. These exceptions are where the employer had knowledge of the accident from any other source at or about the time when it occurred, want of notice will not obstruct the entertainment of a claim. Another exception is where the commissioner is satisfied that the failure to give notice was due to sufficient cause. **1958 All L J 652 : (1958) 2 Lab L J 682 : A I R 1959 All 586 (588) (Pt B) (Prs 8, 9, 10).**

——S. 10, 2nd proviso—Absence of notice — Knowledge of management of accident otherwise than by notice whether removes bar to claim.

Second proviso to S. 10 lays down that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim if any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred. **(1950-51) 2 F J R 134 : I L R (1951) 3 Assam 37 : A I R 1950 Assam 188 (189) (Pt A) (Pr 5) (DB).**

——S. 10 — Notice of accident is unnecessary when employer was aware of accident. A I R 1955 N U C (Cal) 2341 (DB).

——S. 10—Notice of accident—Absence of—Effect.

Section 10 requires notice of the accident and such notice is only rendered unnecessary if the Court is satisfied on evidence that the employer knew from other sources, of the accident at or about the time it took place, or if there were sufficient grounds for failure to give notice. Where the absence of notice cannot be condoned under S. 10, the workman will not be entitled to any compensation. **A I R 1950 Cal 261 (262, 263) (Pt B) (Prs 11, 12, 13) (DB).**

——S. 10—Applicability — Employer having knowledge of accident—Necessity.

Where the employer had knowledge of the accident, it was held that the lack of notice under S. 10 was no bar to entertainment of the application for compensation. **1959 Ker L R 47.**

——S. 10—Employer aware of accident—Notice.

Employer having knowledge of accident to a workman—Want of notice is no bar to entertainment of claim for compensation by workman. **I L R (1953) Madh B 167 : A I R 1954 Madh B 59 (61) (Pt B) (Pr 4).**

——Ss. 10 and 3—Defect in notice—Question is one of fact—Commissioner is the sole judge for it—Mere negligence of worker is no defence under S. 3—Wilful disobedience to an express order has to be established. See Workmen's Compensation Act (1923), S. 3. 1964 M P L J (Notes) 173.

——Ss. 10 and 12—Scope — Employer having notice of accident by reason of his presence—Failure to give notice — If fatal — Failure to give notice cannot be fatal to the proceedings for determination of compensation. 1961 M P L J (Notes) 38.

——Ss. 10 (1), Fourth Proviso, 4 (b)—Finding of fact —Finding as to person being agent of employer and he had notice of accident is finding of fact. A I R 1960 Madh Pra 313 (314) (Pt B) (Pr 5).

——S. 10 (1)—Notice of accident—'As soon as practicable'—Meaning of.

Section 10 requires a notice of the accident to be given 'as soon as practicable' after the happening thereof. No cast iron rule can be laid down in regard to what is meant by 'as soon as practicable'. A notice given two months after the accident may, if the victim of the accident is continuously in the hospital, be held to be one given as soon as practicable. **A I R 1960 Madh Pra 313 (314) (Pt C) (Pr 6).**

——S. 10 — Notice of claim — When to be given—Want of notice whether bars a claim.

Though under S. 10 a workman is required to serve a notice of claim on the employer as soon as practicable after the happening, yet it is also provided therein that the want of notice shall not be a bar to the entertainment of a claim when the employer or any person responsible to him for the management of any branch of the trade or business, in which the injured workman was employed, had knowledge of the accident from any other source at or about the time when it occurred. The Act empowers the Commissioner to entertain and decide a claim, notwithstanding that the notice was not given, if he is satisfied that the failure to serve the notice was due to sufficient cause. **(1961-62) 21 F J R 14 (Punj).**

3. Limitation—Sufficient cause.

——S. 10 (1), Proviso—Limitation—Sufficient cause —Representation of workmen to employer for compensation — Claim for compensation within 12 months of denial of compensation by employer—Claim of workman not barred.

Held, that there was sufficient cause for not preferring claim within 12 months of the accident and that the claim was not barred by limitation. **(1965) 1 Lab L J 24 : (1964) 9 Fac I R 17 : 1964 All L J 613 (All).**

——S. 10—Delay—Condonation.

Where the claim for compensation is filed beyond one year, but the Commissioner finds that there was sufficient cause for delay he can condone the same. (Commissioner held was justified in condoning the delay, on the ground that the applicant was suffering from typhoid fever). **(1955) 1 Lab L J 553 : (1955-56) 8 F J R 201 : 1955 All W R (H C) 177 : 1955 All L J 269 : A I R 1955 All 182 (183) (Pt A) (Pr 3) (DB).**

——S. 10 (1), Proviso 3 —Delay in perferring claim for compensation—Condonation of—Employer promising workman to pay compensation — Workman continuing in employment and drawing more wages than before in spite of disabilities — Workman implicitly believing his employer would settle his claim —After finding that employer was not prepared to settle his claim, filing application for compensation after prescribed period — Held, there was sufficient cause for not preferring claim within prescribed period and delay could be condoned. (1965) 1 Andh L T 219 : (1965-66) 29 F J R 62 : AIR 1966 Andh Pra 99 (101) (Pt A) (Pr 7).

——S. 10—Delay in making application—Sufficient cause for condoning delay.

Whether there is sufficient cause for condoning the delay caused in making an application under S. 10 or not is a question of law. But the facts found by the Commissioner on which he comes to the conclusion that the delay should be condoned must be accepted by the appellate Court. It is on the facts found that a question of law arises whether there was sufficient cause. **(1956-57) 10 F J R 117 : (1956)**

1 Lab L J 740 : AIR 1956 Bom 424 (425, 426) (Pt D) (Pr 3) (DB).

——S. 10 —Limitation —"Sufficient cause" —Determination of—Test—(Limitation Act (1908), S. 5).

Before examining the question of sufficient cause for not making an application within one year from the date of the accident it is necessary to find what the applicant's explanations were and whether those explanations could be accepted. ILR (1958) 2 Cal 630: AIR 1957 Cal 660 (661) (Pt A) (Pr 6) (DB).

——S. 10(1)—Accident on 19th July 1951—Workman though disabled still working and receiving pay till 31st August 1953 when establishment was closed — Application for compensation made on 13th October 1953 — Was not barred. (1956) 1 Lab L J 28 : AIR 1956 Cal 604 (605) (Pt A) (Pr 4) (DB).

——S. 10, Proviso — Limitation — Sufficient cause—(C. P. Code (1908), S. 100).

Whether workman has made a claim within period of limitation is question of law.

The application was beyond one year from the occurrence of the accident. The Commissioner took the view that the workman had sufficient cause not to provoke a conflict with his employers and not to prefer a claim within limitation so long as his interests were not prejudicially affected by dismissal and so long as he was receiving a kind of compensation in the shape of lighter work on the same wages.

Held, that there was no misdirection and the finding was supported by evidence. 57 C W N 435 : AIR 1953 Cal 667 (669) (Pr 9) (DB).

——S. 10, Proviso—Claim not filed within 12 months of accident — Reasonable cause — That he returned to work and earned more wages, is not sufficient cause.

Under S. 10 read with the proviso the circumstance that the workman returned to work after the accident and began to earn higher wages is not a sufficient cause for not filing the claim for compensation within 12 months of the date of accident. (1921) 1 K B 655, Relied on. ('52) 56 Cal W N 311 : (1952) 1 Lab L J 490 : (1952) 4 F J R 123 : AIR 1953 Cal 74 (75) (Pt C) (Pr 11) (DB).

——S. 10 — Workman continuing in service after injury — This is not sufficient cause for not filing claim for compensation within one year of date of accident. ('52) 56 Cal W N 187 (189) : (1952) 1 Lab L J 609 : (1952-53) 4 F J R 110 : AIR 1952 Cal 752 (753) (Pr 3) (DB).

——S. 10—Limitation—Sufficient cause.

If sufficient cause is made out for not filing a claim for compensation within 12 months of the accident, subsequent negligence or improper delay in making a claim will be immaterial. M B L R 1955 Civ 376 : Madh B L J 1955 HCR 1794 : AIR 1956 Madh B 122 (122) (Pt A) (Pr 5).

——S. 10 (1)—Applicability—Suit by father of workman for compensation for injury received by workman—Limitation—Limitation Act, Art. 21.

Where the plaint shows that the suit for compensation brought by the father of a deceased workman is brought under the provisions of the Workmen's Compensation Act and the Fatal Accidents Act, then if the proceedings are taken to have been started under the Workmen's Compensation Act, 1923, as S. 10 (1) of that Act provides a period of limitation for proceedings before the Commissioner under that Act, that being a period provided by a special law, it will prevail over the general provisions of the Limitation Act. However, the proceedings under the Workmen's Compensation Act is not a suit. And if the action brought be taken to one under the Fatal Accidents Act, then it will be governed by one year's limitation provided by Art. 21 of the Limitation Act. The father of the deceased would come within the term 'representative' set out in Art. 21.

Held, that looked at from any point of view the suit was barred by limitation. 69 Mad L W 896 : (1957) 1 Lab L J 517 : AIR 1957 Mad 216 (221) (Pt D) (Pr 16).

——S. 10 (1), Proviso 3 — Claim for compensation filed beyond period prescribed under S. 10 (1) — Workman alleging that he was misled by his bosses who promised to give all compensation, in respect of injury, after retirement — Workman not stating in petition before whom he made such claims — Commissioner, being not satisfied by the allegation and since no evidence was adduced, dismissing claim— Held, that the decision of Commissioner on limitation was correct and was not contrary to law : AIR 1952 Cal 752 and AIR 1953 Cal 74, Rel. on; AIR 1953 Cal 667, Distinguished. AIR 1965 Pat 294 (294, 295) (Pr 4).

——S. 10 (1), Proviso—Sufficient cause—Satisfaction of Commissioner is sufficient to remove bar of limitation—Sufficiency of evidence for such satisfaction is question of law.

The question whether there was any evidence before the Commissioner on the basis of which he could be properly satisfied is undoubtedly a question of law in which the High Court can interfere : AIR 1941 Bom 246, Rel. on. 1950 Ker LT 205 : 1950 T C L R 203 : AIR 1950 Trav-Co 106 (109) (Pt B) (Pr 11) (DB).

——S. 10—Proceedings under — Limitation Act does not apply to. 1950 Ker L T 205 : 1950 Trav-Co L R 203 : AIR 1950 Trav-Co 106 (110) (Pt C) (Pr 16) (DB).

4. Delay in filing claim.

——S. 10, Proviso — That some senior officers in management had promised compensation is sufficient cause for not making claim within 12 months. Obiter. ('52) 56 Cal W N 311 : ('52) 1 Lab L J 490 : (1952) 4 F J R 123 : AIR 1953 Cal 74 (74, 75) (Pt B) (Pr 7) (DB).

——S. 10, Proviso — Sufficient cause established — Subsequent negligence and improper delay is immaterial. (1921) 1 K B 655, Ref. ('52) 56 Cal W N 311 : AIR 1953 Cal 74 (75) (Pt D) (Pr 13) (DB).

——Ss. 10 (1), Provisos, 32 — Rules under S. 32 conflict with Act—Effect—Mysore Workmen's Compensation Act, Ss. 10 (1), Provisos, 31.

If any rule framed by Government to carry out the purposes of the Act, under S. 31 is contrary to the terms of the Act, it would to that extent be ultra vires and without force. Under R. 8 (1) a dependant of a deceased workman may apply to the Commissioner for the issue of an order to deposit compensation in respect of the death of the workman. He is no doubt required to certify in it that he has requested the employer to deposit the compensation and that the employer has refused or omitted to do so. The penalty for not making such a declaration, however, is not that the application should be rejected forthwith. If it is so held in spite of the power given to the Commissioner to entertain a claim even if no notice of it has been given, or even if there is any defect or irregularity in such notice, it would be directly contrary to the provisos contained in the sub-clause to section 10. 31 Mys L J 15 : ILR (1952) Mys 65 : AIR 1952 Mys 41 (42) (Pt A) (Pr 3) (DB).

——S. 10 (1) and Proviso 3 — Sufficient cause — Necessity to explain delay — (Cochin Workmen's Compensation Act (5 of 1111), S. 10 (1).)

When once the workman has shown sufficient cause for not instituting the claim within one year there is nothing in the Act or any other law which debars the Commissioner from entertaining the claim for compensation. It is not necessary that the workman must also give satisfactory explanation for the delay that has occasioned after the period of one year in preferring the claim. A I R 1950 Trav. Co 103, Foll. **(1952) 1 Lab L J 610 : A I R 1952 Trav-Co 427 (428) (Pr 3) (DB).**

——S. 10 (1), Proviso — Sufficient cause — Commissioner satisfied — Further delay in filing claim — Effect.

When there is sufficient cause for not bringing the application within one year as enjoined in sub-s. (1) of S. 10, there is nothing that will bar the workman in applying before the Commissioner when he does. The absence of any satisfactory explanation for any subsequent delay would not be a bar against the maintainability of his application before the Commissioner: (1921) 1 K B 655 and A I R (25) 1938 Cal 348, Rel. on. **1950 Ker L T 205 : 1950 T C L R 203 : AIR 1950 Trav-Co 106 (110) (Pt D) (Pr 18) (DB).**

5. Powers of Commissioner.

——S. 10 (1) third proviso — Satisfaction of Commissioner — Interference in appeal — If the Commissioner has entertained the claim under the third proviso, an appellate Court would not be justified in reversing its decision. ILR (1959) 2 All 663 : A I R 1960 All 283 (284) (Pt A) (Pr 8).

——Ss. 10 and 10-A — Powers of Commissioner — He can determine compensation only on application by dependents of deceased — He cannot initiate proceedings suo motu. 1963 M P L J (Notes) 48.

——S. 10 — Amendment — Power of Commissioner to allow.

The workman was entitled to extension of time under S. 10. The presiding Officer was empowered both as a Commissioner under the Workmen's Compensation Act and as an Authority under the Payment of Wages Act. The Commissioner was clearly wrong in law in finding the appellant's application to be barred by time. The appellate Court could determine this question on appeal, the appeal being a continuation of the original proceedings. **AIR 1960 Punj 119 (120, 121, 122) (Pt A) (Prs 6, 7).**

6. Miscellaneous cases.

——S. 10 — 'Wage' — If includes travelling allowance — Does not include. See Workmen's Compensation Act (1923), S. 2 (m). **1958 N L J (Notes) 78 (Bom).**

——S. 10 — Succession of accidents.

Section 10, in no way makes it impossible to hold a succession of accidents to be an accident within the meaning of S. 3. See Workmen's Compensation Act, (1923), S. 3. **A I R 1953 Cal 516 (DB).**

SECTION 10-A

——S. 10-A — Power of Commissioner to determine compensation and liability of employer.

Where the Commissioner gives notice to the employer under S. 10-A and receives his reply denying this liability to pay compensation, there is no power given to the Commissioner under S. 10-A to determine the amount of compensation and the liability of the employer. **AIR 1959 Assam 9 (10) (Pr 1) (DB).**

——Ss. 10A (4), 19 (1) and 25 — Order by Commissioner holding employer liable to pay compensation — Procedure laid down under S. 10A (4) not followed — Provisions of S. 25 not complied with — Order is liable to be set aside — (Obiter). See Workmen's Compensation Act (1923), S. 19 (1). **AIR 1950 Assam 116 (DB).**

——Ss. 10-A and 10 — Powers of Commissioner — He can determine compensation only on application by dependents of deceased — He cannot initiate proceedings suo motu. 1963 M P L J (Notes) 48.

——Ss. 10-A, 30 — Employer who has in answer to notice under S. 10 has admitted his liability and has refused to be made party to proceedings for distribution of compensation between rival claimants has no right to file appeal against order of Commissioner paying compensation to one claimant. A I R 1955 N U C (Nag) 1580 (DB).

SECTION 11

——S. 11 — Disability — Evidence — Medical certificate of Civil Surgeon — Examination of Civil Surgeon — Held, not necessary. See Workmen's Compensation Act (1923), S. 2 (1) (l). **A I R 1955 All 182 (DB).**

——S. 11 (6) — Aggravation attributable to workman's conduct — Case falling within the ambit of Cl. (6) of S. 11 — Aggravation of injury will not be taken into account in assessing compensation. AIR 1955 N U C (Assam) 379 (DB).

——S. 11 — Evidence Act (1872), S. 3 — Paucity of evidence — Duty of court with respect to necessary issue — Death of workman — Inference of heart disease — That the workman was suffering from heart trouble which could not be discovered on clinical examination can be drawn by the Court. See Evidence Act (1872), S. 3. **A I R 1956 Bom 424 (DB).**

——S. 11 — Applicability — Injury getting aggravated by employee's negligence — He is not entitled to compensation on account of added seriousness caused by negligence. AIR 1955 N U C (Cal) 2341 (DB).

——S. 11 — Medical examination — Workman injured — Burden of proof — Owner has to prove that service of medical practitioner was offered to workman — No proof offered — Employer cannot take advantage of S. 11. (1962) 4 Fac L R 340 : (1962) 3 Guj L R 197 : (1962) 2 Lab L J 187 : AIR 1962 Guj 262 (264) (Pt A) (Pr 2).

SECTION 12

——Ss. 12, 2 (1) (e) — Municipal Board entrusting electrification work of the town to State — Employee of State suffering injury — State and not Board is liable to pay compensation — Execution of electrical projects is not ordinary business of the Board. See Workmen's Compensation Act (8 of 1923), S. 2 (e). **AIR 1960 All 468.**

——S. 12 (4) — Scope — Accident in execution of work — Expression 'on, in or about the premises' — Applicability.

Held, the place at which the workman met with accident can be brought within the meaning of the words 'on, in or about' in S. 12 (4) of the Workmen's Compensation Act, and the workman was rightly awarded compensation. (1899) 1 Q B 157, (1956) 2 L L J 44, Rel. on. **(1964) 1 Andh W R 363 : (1965) 1 Lab L J 48 : AIR 1964 Andh Pra 392 (393) (Prs 5, 6) (DB).**

——S. 12 (1) and (4) — Applicability — Conditions for — Words "on or in or about" in S. 12 (4) — Meaning of — Cartman engaged by Rice Mill to carry rice bags from mill to railway station — Accident occurring on public road while returning back from railway station resulting in his death — No evidence that workman was engaged through contractor — Liability of principal to pay compensation.

Held, that S. 12 was not applicable to the case and that the accident arose out of and in the course of employment of the deceased by the appellants, so that there could be no question of the appellants not being liable to pay any compensation for the death of

the deceased; (ii) that even assuming that the deceased was in the employment of a contractor engaged by the appellants the liability of the appellants to pay compensation was clear from S. 12 (1) and had not been excluded by reason of S. 12 (4). The expression 'premises' where the work is executed would necessarily cover not only the mill premises but also the railway station premises where the unloading takes place and the place or the land in between over which the carts had to pass on the forward and return journeys. It makes no difference whether that place is a public place or a private place or a place belonging to the principal or not. (1962) 2 Lab L J 29 : (1962) 5 Fac L R 186 (Andh Pra).

——S. 12 (2)—Powers of Commissioner.

The section makes it clear that it is only in case of default of agreement that the question as to the right to and the amount of any such indemnity is to be settled by the Commissioner, but when there is an agreement the Commissioner is precluded from entering into the said questions. (1962) 2 Lab L J 19 : (1962) 5 Fac L R 178 (Andh Pra).

——Ss. 12 (1) and (2), 3 — Injury during course of employment to worker employed by independent contractor — Principal's liability — Relationship of master and servant established between such worker and principal — Principal does not cease to be liable merely because he had interposed independent contractor—Proceedings for recovery of damages — Contractor not a necessary party — Right of principal to be indemnified.

Normally, a workman can recover compensation only from his employer. Exception is found in S. 12 (1) of the Act which gives the workman a right to recover from the person who has entered into a contract with the workman's immediate employer and in that case S. 12 (2) becomes operative and the principal who has engaged the contractor has a right to recover from the contractor by way of indemnity. 67 Cal W N 728 : (1963) 2 Lab L J 580 : AIR 1964 Cal 217 (219) (Pt D) (Prs 10, 11) (DB).

——S. 12 (1)—Construction—"In the course of or for the purposes of his trade or business"—Meaning of.

It can be legitimately said that if a company carrying on the business of manufacturing goods in a factory, enters into a contract for the purpose of some repairs to its machinery or the factory building, such contract is entered into in the course of and for the purpose of the company's trade or business. (1957-58) 12 F J R 356 : (1957) 2 Lab L J 440 : 61 C W N 234 : AIR 1957 Cal 613 (616, 617) (Pt A) (Pr 15) (DB).

——S. 12 (1)—Construction — 'Which is ordinarily part of the trade or business of the principal.'

The business of the company is to manufacture the goods which it produces. The manufacture may be done inside a factory and the factory may require a chimney which would occasionally need repairs, but repairing the chimney can in no view be a part of the company's trade or business under S. 12 (1) whether ordinarily or extraordinarily. (1957-58) 12 F J R 356 : (1957) 2 Lab L J 440 : 61 C W N 234 : AIR 1957 Cal 613 (616, 617) (Pt B) (Pr 15) (DB).

——S. 12 — 'Contract of service' and 'contract for service'—Distinction.

If a person wishing to have some pieces of furniture made, enters into a contract with a cabinet-maker for the execution of the work, but makes it a condition that he will supply his own timber the contract does not become on that account any the less a contract of service, as distinguished from a contract for service if it is otherwise so. (1957) 2 Lab L J 440 : (1957-58) 12 F J R 356 : 61 C W N 234 : AIR 1957 Cal 613 (616) (Pt C) (Pr 13) (DB).

——S. 12—Contract of service—Supervision by principal—Effect of.

A person calling in a contractor to do a piece of work will naturally look after the work in the sense of attending to and viewing it so that the work may be properly done. That will not change the nature of contract of service into a contract for service if it is otherwise so. (1957-58) 12 F J R 356 : (1957) 2 Lab L J 440 : 61 C W N 234 : AIR 1957 Cal 613 (616) (Pt D) (Pr 13) (DB).

——S. 12 (2)—Applicability—Liability as principal—When arises. 61 C W N 234 : (1957) 2 Lab L J 440 : (1957-58) 12 F J R 356 : AIR 1957 Cal 613 (614, 615) (Pt E) (Pr 6) (DB).

——S. 12—Liability to indemnify—When arises.

The question of indemnifying the principal under sub s. (2) of S. 12 arises only when the case falls within sub-s. (1). Where the work done by the workman is not the work which ordinarily forms the whole or part of the work of the principal, the case is not governed by S. 12 (1) and right to claim indemnity does not arise. AIR 1929 Bom 179, Rel. on. 54 Cal W N 716 : (1950-51) F J R 237 : ILR (1951) 2 Cal 162 : AIR 1950 Cal 548 (550, 551) (Pt A) (Prs 15, 17).

——S. 12—Liability to indemnify—Onus of proof on contractor.

The onus rests in the first place upon the workman to prove that the work done by the contractor under the contract was work which ordinarily formed the whole or part of the principal's business and on establishing that fact, a right of indemnity would arise. 54 Cal W N 716 : (1950-51) F J R 237 : ILR (1951) 2 Cal 162 : AIR 1950 Cal 548 (550) (Pt B) (Pr 13).

——S. 12—Scope — Employer having notice of accident by reason of his presence—Failure to give notice is not fatal to the proceedings. See Workmen's Compensation Act (1923), S. 10. 1961 M P L J (Notes) 38.

——S. 12—Duty of employee.

There is nothing in S. 12 which obliges the injured employee to prove that in addition to the principal contractor from whom he claims compensation, such and such petty contractor was the person immediately above him. AIR 1960 Madh Pra 313 (314, 315) (Pt D) (Pr 9).

——S. 12 (2) — Accident — Proceeding before Commissioner for Workmen's Compensation — Statement by employee that a certain person was sub-contractor under principal contractor — Compensation paid by contractor — Contractor starting proceedings against sub-contractor for contribution under S. 12 (2) — Employee's statement has no bearing on finding of relationship of principal and subordinate contractor —Such finding has to be given independently. A I R 1960 Madh Pra 313 (315) (Pt E) (Pr 10).

——S. 12—Workmen engaged by Contractor working for Government meeting with accident — Neither contractor nor Government liable for compensation — Government paying compensation — Right to indemnity. See Contract Act (1872), S. 124. (1959) 72 Mad L W 572.

——S. 12 (1)—"Ordinarily part of the trade or business of the principal."

By an agreement A took on lease B's lorry for a period of one month. The lorry was taken on lease for the express purpose of A's business in Kolar District of transporting articles. The deceased was employed by A as a cooly to load and unload the lorry which A was driving.

Held, that the work or business of B was merely to let out his lorry for hire while that of A was quite

different, viz., to use the lorry to convey materials in connection with some trade or business of his own. Thus on the facts and circumstances of the case it had not been shown that B was the principal and A the contractor within the meaning of S. 12 (1) and therefore the mother of the deceased could not have any recourse against B for compensation for injuries sustained by the deceased. AIR 1929 Bom 179; AIR 1950 Cal 548, Rel. on. **1951-52 F J R 377 : (1953) 31 Mys L J 4 : I L R (1952) Mys 32 : A I R 1951 Mys 113 (115) (Prs 6, 7) (DB).**

——S. 12 (1) and (2) — Ordinary business or trade — Irrigation Department of Government—Construction or lining of canal is in ordinary course of business or trade of Department — Work of lining of canal given on contract by Government — Accident in course of work — Payment of compensation by Government — Liability of contractor and sub-contractor to indemnify. **I L R (1962) 2 Punj 810 : A I R 1963 Punj 217 (219) (Prs 5, 9).**

——S. 12 — Contract — Liability of principal—Contractor working with Government — Government as principal will be liable to pay workmen employed in execution of work even by contractor — Proceeding stated under Act — Whether Government can withhold monies from bill of contractor, cannot be decided by Commissioner. **AIR 1955 N U C (Punj) 4976.**

SECTION 13

——S. 13—Master and servant.
——Injury to servant by tort of third party—Master's right of action for damages for loss of service of servant—Master can maintain an action. **A I R 1951 Trav-Co 171 (2) (DB).**

SECTION 14

——Ss. 14, 5 and 22-A — Motor Vehicles Act (1939), S. 96 — Insurance Company whether can be made liable to pay compensation in proceeding started under Workmen's Compensation Act — Does not entitle the applicant to implead the Insurance Company as a person liable to pay compensation. See Motor Vehicles Act (1939), S. 96. **A I R 1959 J and K 90 (DB).**

——S. 14 — Jammu and Kashmir Workmen's Compensation Act (7 of 2000), S. 16 — Liability of Insurance Company to pay compensation in case not covered by S. 16. **A I R 1959 J and K 90 (91) (Pt A) (Pr 4) (DB).**

SECTION 17

——S. 17—Scope — Arrangement relinquishing legitimate rights of workman to compensation is void. 1961 Andh L T 258 : (1961) 1 Lab L J 565 : (1961-62) 20 F J R 237 : AIR 1962 Andh Pra 69 (70) (Pt A) (Pr 4).

——Ss. 17, 19, 21 and 30 (1), Second Proviso—Agreement to abide by decision of Commissioner, thus impliedly excluding appeal from his decision, does not infringe S. 17 of Act. **(1965) 1 Lab L J 632 : AIR 1964 Cal 94 (100) (Pt C) (Pr 30) (DB).**

——Ss. 17, 22, 3, 6, 19 and 32 — Rules under S. 32 — R. 48—Forms K, L and M—Compensation payable in respect of particular injury settled either by award or agreement — Second application for compensation on ground of aggravation of same injury is not maintainable — (Interpretation of Statutes). See Workmen's Compensation Act (8 of 1923), S. 22. **A I R 1955 Cal 616 (DB).**

——S. 17 — Section 17 protects ignorant workman from contracting out.

Section 17 protects the ignorant workman who may be induced by the employer to agree to less compensation or to abandon something which he is entitled under the Act to claim. For S. 17 provides that the workman or his dependant cannot contract himself out. **55 Cal W N 698 : :(1951-52) 3 F J R 304 : AIR 1951 Cal 513 (514) (Pt B) (Pr 4) (DB).**

——S. 17 — Agreement purporting to remove liability of employer — Duty of Commissioner — He should ascertain true object of agreement. **(1962) 3 Guj L R 197 : (1962) 4 Fac L R 340 : (1962) 2 Lab L J 187 : AIR 1962 Guj 262 (264, 265) (Pt B) (Pr 4).**

SECTION 19

——S. 19 (2) — Suit in tort — Accident due to negligence and misconduct—Suit for damages — It is not barred under S. 19 (2).

Section 19 (2) of the Workmen's Compensation Act does not apply unless the question is such as must necessarily be dealt with under the provisions of the Workmen's Compensation Act. In cases of accidents resulting from negligence or misconduct, the provisions of this Act may, if chosen by the person aggrieved, be taken advantage of, but if such a person decides to file a civil suit that suit cannot be deemed to be barred by the provisions of S 19 (2). **(1961) 2 Fac L R 563 : (1961) 2 Lab L J 197 (All).**

——Ss. 19, 23, 30 — Objections when to be taken — Unless objection is taken before the Commissioner and he has an opportunity of considering the same, parties would not be allowed to raise the same at the later stages of the litigation, particularly, objections which are dependent on findings of fact. **1961 Andh L T 258 : (1961) 1 Lab L J 565 : (1961-62) 20 F J R 237 : AIR 1962 Andh Pra 69 (71) (Pt C) (Pr 6).**

——Ss. 19, 23 and 25—Nature and extent of disablement—Evidence—Opinion of Commissioner and that of medical man—Value of.

In the absence of any other evidence the examination of the workman by the Commissioner himself in Court about the condition of the injury cannot be conclusive. But that can certainly be relied upon in support of the other evidence on the record and the circumstances of the case. If the opinion of the Commissioner on examination is opposed to the definite opinion of the medical man, the medical opinion has got to be preferred. AIR 1950 Cal 261 and AIR 1951 Cal 145, Distinguished. **A I R 1962 Assam 115 (117) (Pr 5).**

——Ss. 19 (1), 10 (a) (4) and 25 — Order by Commissioner holding employer liable to pay compensation —Procedure laid down under S. 10A (4) not followed — Provisions of S. 25 not complied with — Order is liable to be set aside—(Obiter). **ILR (1950) 2 Assam 284 : AIR 1950 Assam 116 (117) (Pt B) (Prs 1, 2) (DB).**

——Ss. 19, 17, 21 and 30 (1) second proviso—Agreement to abide by decision of Commissioner, thus impliedly excluding appeal from his decision, does not infringe S 17 of Act—See Workmen's Compensation Act (8 of 1923), S. 17. **AIR 1964 Cal 94 (DB).**

——Ss. 19, 22, 3, 6, 17 and 32—Rules under S. 32 — R. 48—Forms K. L. and M. — Compensation payable in respect of particular injury settled either by award or agreement—Second application for compensation on ground of aggravation of same injury is not maintainable—(Interpretation of Statutes). See Workmen's Compensation Act (8 of 1923), S. 22. **AIR 1955 Cal 616 (DB).**

——S. 19—Commissioner has no power to allow set off in respect of debt owed to employer, against compensation. **AIR 1955 NUC (Cal) 2341 (DB)**

——S. 19—Findings of fact—Duty of Commissioner.

The Commissioner who is charged with the duty of finding facts should not merely lift propositions from the statute itself and put them either in the affirma-

tive or in the negative as its findings. Where he does not even attempt to give his finding on necessary facts, the High Court can go behind his judgment to the evidence in the case. 57 Cal W N 149 : I L R (1953) 2 Cal 239 : AIR 1953 Cal 516 (519) (Pt E) (Pr 17) (DB).

——S. 19—Constitution of India, Art. 226 — Wrong decision on fact condition precedent to jurisdiction—War Injuries Ordinance (1941), S. 4—If the Commissioner is wrong in his findings that the injury was not a War Injury the High Court can interfere with the finding. See Constitution of India, Art. 226. AIR 1952 Cal 112.

——S. 19 — War Injury — Jurisdiction of Commissioner of Workmen's Compensation.

There is complete ouster of jurisdiction of the Commissioner of Workmen's Compensation in case the death was caused by a War Injury. See War Injuries Ordinance (1941) (as amended by Ordinances 1 and 39 of 1942), S. 4. AIR 1952 Cal 112.

——Ss. 19 and 30—Loss of earning capacity of injured workman — Duty of Commissioner to decide — Question referred to referee with consent of parties —Referee's decision—Right to appeal from.

If at the invitation of the parties the Commissioner goes outside his jurisdiction and refers, what should have been properly his decision, to the decision of the Medical Board or some other agency, he acts extra cursum curiae and the parties will be bound by the opinion of the referee. (1896) A C 136, Rel on. 72 Mad L W 482 : (1959) 2 Lab L J 617 : (1959) 2 M L J 492 : 1959 M L J (Cri) 802 : AIR 1959 Mad 559 (560) (Pr 4).

——S. 19 (1)—Question whether person is workman — Commissioner's jurisdiction to decide — If and when ousted.

All that S. 19 means is that if there is an agreement between the parties in regard to the question whether the injured person is or is not a workman, the jurisdiction of the Commissioner to decide it is ousted. But the section does not provide that even if there is no agreement between the parties on this point, and even though the materials might indicate that the employee was not a workman at all as contemplated by the law, yet the Commissioner should assume that he was a workman and proceed to award compensation. AIR 1951 Pat 260 (263) (Pt C) (Pr 8) (DB).

SECTION 20

——S. 20—The Additional Deputy Commissioner in Assam is not ex officio Commissioner under Act. ILR (1950) 2 Assam 284 : AIR 1950 Assam 116 (117) (Pt A) (Pr 1) (DB).

SECTION 21

——Ss. 21, 17, 19 and 30 (1) second proviso—Agreement to abide by decision of Commissioner, thus impliedly excluding appeal from his decision, does not infringe S. 17 of Act. See Workmen's Compensation Act (1923), S. 17. AIR 1964 Cal 94 (DB).

——Ss. 21 (1), Proviso and 30 (1) (e), Second Proviso —Agreement between seaman and shipowner under Merchant Shipping Act — Interpretation of — Commissioner assuming jurisdiction under proviso to S. 21 (1) independently of any agreement between parties—Award of compensation—Agreement held no bar to right of appeal on question whether accident arose out of and in course of employment. (1965) 1 Lab L J 632 : AIR 1964 Cal 94 (101, 102) (Pt D) (Prs 32, 33) (DB).

SECTION 22

——S. 22—Scope — Workmen asking for compensation—Employer avoiding—Effect.

Section 22 does not contemplate any notice to the employer demanding compensation. All that the section requires is that a question actually arose between the parties and was not settled by private agreement. Mere asking of compensation is enough. 1958 All L J 652 : (1958) 2 Lab L J 682 : AIR 1959 All 586 (588) (Pt A) (Pr 6).

——S. 22—Form of application—Defect.

The law does not require that a claim should be thrown out simply on the ground that the claim was not made, when it was originally made, in the prescribed form. This is a defect of procedure which can be rectified with the permission of the Commissioner at any stage, and once it is rectified, the irregularity is cured. (1955) 1 Lab L J 553 : (1955-56) 8 F J R 201 : 1955 All W R (HC) 177 : 1955 A L J 269 : AIR 1955 All 182 (183) (Pt B) (Pr 4) (DB).

——Ss. 22 and 10—Claim is to be made under S. 10 and not under S. 22. See Workmen's Compensation Act (1923), S. 10. AIR 1950 Assam 188 (DB).

——Ss. 22 (2) (c), 2 (1) (e)—Workmen's Compensation Rules (1924), Rr. 19, 41, Provisos (a) and (c) — Application for compensation—Form of—Employer a partnership firm—Names of all partners not necessary in cause title—Firm name sufficient—Construction of Rules. AIR 1963 Cal 479 (480, 481) (Pr 6) (DB).

——Ss. 22, 3, 6, 17, 19 and 32—Rules under S. 32 — R. 48—Forms K. L. and M.—Compensation payable in respect of particular injury settled either by award or agreement—Second application for compensation on ground of aggravation of same injury — Maintainability—(Interpretation of Statutes).

The Workmen's Compensation Act does not provide for a second application for further compensation on the ground of an aggravation of a permanent disability for which compensation has once been fixed and declared, either by settlement or by an award. (Distinction between these forms pointed out). 60 Cal W N 174 : (1956) 1 Lab L J 261 : 97 Cal L J 73 : AIR 1955 Cal 616 (619, 620, 621) (Pt A) (Prs 22, 23, 24, 27, 28, 31) (DB).

——S. 22—Right to make an application—Nature of.

The right under the Workmen's Compensation Act is not something like the common law right to damages. It is a creature of the Act itself and can be claimed only in the manner and to the extent that the Act prescribes and permits. 60 Cal W N 174 : (1956) 1 Lab L J 261 : 97 Cal L J 73 : A I R 1955 Cal 616 (621) (Pt B) (Pr 29) (DB).

——S. 22—Application by workman against partnership is maintainable against one partner—S. 43, Contract Act applies—(Contract Act (1872), S. 43). A I R 1955 U N C (Cal) 2341 (DB).

——S. 22—Additional District Collector not appointed Commissioner—Power to hear application.

He has no jurisdiction to hear and dispose of an application for compensation under S. 22. I L R (1953) Hyd 113 : A I R 1953 Hyd 178 (178, 179) (Pr 1) (DB).

——S. 22 (1)—Attempt at settlement—Necessity.

There is no obligation on the parties to attempt to settle before they can proceed to arbitration and the claim could be made even in default of any such attempt. (1959) 1 O J D 122 : ILR (1959) Cut 464 : A I R 1960 Orissa 39 (41, 42) (Pt C) (Pr 6).

SECTION 22A

See also Workmen's Compensation Act (1923), Ss. 5, 14.

——S. 22-A — Scope of—Insurance Company—Liability to pay compensation in proceeding under Act. See Motor Vehicles Act (1939), S. 96. AIR 1959 J & K 90 (DB).

SECTION 23

——Ss. 23, 19, 30 — Objections when to be taken — Unless objection is taken before the Commissioner and he has an opportunity of considering the same, parties would not be allowed to raise the same at the later stages of the litigation, particularly, objections which are dependent on findings of fact. See Workmen's Compensation Act (8 of 1923), S. 19. **AIR 1962 Andh-Pra 69.**

— Ss. 23, 19 and 25—Nature and extent of disablement — Evidence — Opinion of Commissioner and that of medical man—Value of.

If the opinion of the Commissioner on examination is opposed to the definite opinion of the medical man, the medical opinion has got to be preferred. See Workmen's Compensation Act (8 of 1923), S. 19. **A I R 1962 Assam 115.**

——S. 23—Duty of Commissioner—(Special Tribunal —Duties of).

A tribunal charged with finding what the facts are does not discharge its duty by holding that the facts are consistent with the respective cases of both parties. It has to come to a clear finding in favour of one party or the other. **A I R 1955 Cal 367 (367) (Pt A) (Pr 4) (DB).**

——Ss. 23 and 32—Rules under S. 32, R. 41—Dispute as to apportionment of compensation among alleged dependants of deceased — Order passed without proper inquiry—Validity.

The relevant section of the Workmen's Compensation Act and also the rules framed under the Act made it clear that the enquiry contemplated in the matter of deciding disputes as to apportionment of compensation among dependants of the deceased should be an open enquiry in which the contesting parties may participate. The rules provide for the framing of issues. The enquiry is to be conducted in accordance with the provisions of S. 23 of the Act and also of rule 41. When the claim is contested, there is no meaning in taking ex parte evidence and in arriving at a decision on the basis of such ex parte evidence. **1959 Ker L J 1070 : I L R (1959) Ker 1091 : 1959 Ker L R 1133 : (1959) 2 Lab L J 770 : 1959 Ker LT 1317 : A I R 1960 Ker 223 (224) (Pr 2) (DB).**

——Ss. 23 to 27 — Commissioner's duty — Power to entrust to subordinate officer or police.

The Commissioner would have no power to entrust the enquiry to any subordinate Revenue Officer. Similarly he cannot ask the police to submit a report. Order of the Commissioner based on report by Police and subordinate officer would be one on inadmissible material and would be vitiated. **1961 M P L J (Notes) 48.**

——S. 23—Scope—Duty to examine witnesses.

Section 23 simply deals with the power of the Commissioner and has nothing to do with the so-called duty to examine witnesses in the course of the inquiry conducted before him. **(1956) 10 F J R 423 : 1956 B L J R 288 : (1957) 2 Lab L J 522 : AIR 1956 Pat 299 (302, 303) (Pt D) (Pr 12) (DB).**

SECTION 24

——S. 24—Commissioner's duty—Power to entrust to subordinate officer or Police.

Order of the Commissioner based on report by Police and subordinate officer would be one on inadmissible material and would be vitiated. See Workmen's Compensation Act (1923), S. 23. **1961 M P L J (Notes) 48.**

——S. 24—Who can apply.

Section 24 of the Workmen's Compensation Act permits a registered Trade Union to submit an application on behalf of the injured person. **ILR (1953) Madh B 167 : A I R 1954 Madh B 59 (61) (Pt G) (Pr 10).**

SECTION 24-A

——S. 24-A (as amended by Bengal amendment Act (6 of 1942) — Loss of earning capacity—Assessment of—Proof—Value of medical evidence — (Evidence Act (1872), S. 45.)

Loss of earning capacity or the extent of it is a question of fact. The utmost a medical witness can give by way of a percentage is to give the percentage of the loss of the normal physical capacity or power. The loss of earning capacity is not necessarily co-extensive with the loss of physical capacity and certainly the former does not prove the latter. It is therefore altogether wrong in taking the evidence of the medical witness not only as relevant but as decisive on the question of the loss of earning capacity. **II R (1958) 2 Cal 630 : A I R 1957 Cal 660 (662, 663) (Pt C) (Pr 11) (DB).**

SECTION 25

——S. 25—Depositions recorded not by Commissioner but by his reader—Sufficiency.

Where the depositions of the witnesses in proceedings under the Act were not recorded by the Commissioner but by his reader, but the Commissioner had in fact attached a note at the end of each deposition that it had been recorded at his dictation owing to his inability to do so, if the provisions of the Civil P. C. were applicable they had thus been fulfilled. **1958 All L J 652 : (1958) 2 Lab L J 682 : A I R 1959 All 586 (588, 589) (Pt C) (Pr 11).**

——S. 25—Disability—Evidence—Medical certificate of Civil Surgeon—Examination of Civil Surgeon. See Workmen's Compensation Act (1923), S. 2 (1) (l). **A I R 1955 All 182 (DB).**

——Ss. 25, 19, 23—Nature and extent of disablement — Evidence — Opinion of Commissioner and that of medical man—Value of. See Workmen's Compensation Act (8 of 1923), S. 19. **A I R 1962 Assam 115.**

——Ss. 25, 10 (a) (4) and 19 (1)—Order by Commissioner holding employer liable to pay compensation —Procedure laid down under S. 10A (4) not followed —Provisions of S. 25 not complied with—Order is liable to be set aside—(Obiter). See Workmen's Compensation Act (1923), S. 19 (1). **AIR 1950 Assam 116 (DB).**

——S. 25 — Evidence as to disablement — Medical certificates—Evidence Act (1872), S. 45.

A finding as to incapacity or the extent of incapacity cannot be founded upon mere medical certificates which are the worst form of hearsay evidence. They merely record what somebody who is not a witness has written. Similarly, it is not proper for the Commissioner to base such finding upon his own observation of the injured workman. **A I R 1950 Cal 261 (263) (Pt C) (Pr 14) (DB).**

——S. 25 — Commissioner's duty — Power to entrust to subordinate officer or Police. See Workmen's Compensation Act (1923), S. 23. **1961 M P L J (Notes) 48.**

——S. 25—Medical certificate—Use of.

Without examining the medical officer who issues the medical certificate the Commissioner ought not to make the certificate the basis for his award. A I R 1937 Cal 697 ; A I R 1950 Cal 261 and 54 Cal W N 812, Rel. on. **(1956) 1 Lab L J 43 : 1956 Ker L T 69 : ILR (1955) Trav-Co 935 : A I R 1956 Trav-Co 55 (56) (Pt C) (Pr 5) (DB).**

SECTION 26

——S. 26—Commissioner's duty—Power to entrust to subordinate officer or Police.

Order based on report by Police and subordinate officer would be one on inadmissible material and would be vitiated. See Workmen's Compensation Act (1923), S. 23. 1961 M P L J (Notes) 48.

SECTION 27

——S. 27 –Commissioner's duty—Power to entrust to subordinate officer or Police. See Workmen's Compensation Act (1923), S. 23. 1961 M P L J (Notes) 48.

——S. 27—Reference to High Court — Claim against Crown in respect of a transaction involving the British Navy—It can be proceeded with under the Act.

In December, 1946, at a time when India was still a part of the British Empire, a workman employed by the Admiralty Civil Engineer filed an application before the Commissioner under the Act for the determination of compensation payable to him with respect to an injury caused to him. The Admiralty Civil Engineer to whom notice was issued took up the position that the Indian Act does not bind the Crown in right of the United Kingdom. On a reference to the High Court by the Commissioner.

Held, the case cannot be dealt with under the Act. The Crown is not bound by a statute unless expressly named or bound by necessary implication. The Crown in right of the United Kingdom is not bound by any Indian enactment however valid and binding it might be on the Crown in right of the Federation or Provinces of India. After the Indian Independence Act, the claim is in the nature of a claim against a foreign Sovereign and by the comity of international law cannot be proceeded with, unless the foreign Sovereign voluntarily submits to the jurisdiction of the Court. 1951 Mad W N 391 : 64 Mad L W 659 : (1951) 2 Mad L J 23 : AIR 1951 Mad 880 (881, 882) (Pt A) (Prs 4, 5) (DB).

SECTION 28

——S. 28—Receipt amounting to contract—Registration of.

A receipt obtained from the dependent of a deceased workmau for an amount of lump sum paid by the employer of his own accord should, if it is claimed to amount to a contract, be registered under S. 28. 55 Cal W N 698 : (1951-52) 3 F J R 304 : AIR 1951 Cal 513 (514) (Pt C) (Pr 4) (DB).

——S. 28—Agreement to pay compensation to injured workman—Registration of — Procedure laid down by S. 28 to be followed—No such procedure followed—Jurisdiction of Commissioner—He cannot by-pass the specific procedure. (1962) 4 Fac L R 340 : (1962) 3 Guj L R 197 : (1962) 2 Lab L J 187 : AIR 1962 Guj 262 (265, 266) (Pt C) (Pr 6).

——S. 28 — Workmen's Compensation Rules (1933), R. 51(2)—Scope—Opportunity to show cause—When necessary. See Workmen's Compensation Rules (1933), R. 51 .2). 1956 M B L J (H CR) 783.

——Ss. 28 (1) (d), 30 (1) (e) — Reasons for refusal to register memorandum of agreement must be stated. AIR 1955 N U C (Madh-B) 1316.

SECTION 30

SYNOPSIS

(Workmen's Compensation Act (1923), S. 30.)

1. Powers of High Court.
2. Question of law.
3. Findings of fact.
   (A) Interference in appeal.
4. Appeal.
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6. Sub-section (1) (e).
7. Limitation.
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9. "Otherwise"—Meaning of.

1. Powers of High Court.

——Ss. 30, 2 (1) (n) (ii) and Sch. II, Cl. (xxvi)—Appellant transporting goods of his saw-mills by railway—Work of loading wagons entrusted to contractor — Goods stored in railway siding—Contractor engaging applicant for handling and transporting goods at railway siding — Applicant if workman employed by appellant — Finding by Commissioner — High Court cannot go into that question of fact. See Workmen's Compensation Act (8 of 1923), S. 2(1)(n)(ii). AIR 1963 Assam 7 (DB).

——S. 30 (1), Proviso I — Interference in appeal — Grounds—Judgment of Commissioner suffering from serious and substantial errors of law — Interference held inevitable. ('65) 67 Bom L R 735 : (1965) 1 Lab L J 554 : 1966 Mah L J 220 : 1966 Fac L R 345 (Bom).

——Ss. 30 (1), Second Proviso, 17, 19, 21—Agreement to abide by decision of Commissioner, thus impliedly excluding apoeal from his decision, does not infringe S 17 of Act. See Workmen's Compensation Act (1923), S. 17. AIR 1964 Cal 94 (DB).

——S. 30—Loss of earning capacity of injured workmen — Commissioner's duty to decide it — Reference to Referee —Appeal from decision of referee — There will be no right to appeal. See Workmen's Compensation Act (1923), S. 19. AIR 1959 Mad 559.

——S. 30—Decision of single Judge on appeal against award under Workmen's Compensation Act—Appeal to Division Bench held does not lie. See Letters Patent (Punjab), Cl. 10. (1957-58) 13 F J R 36 (Punj).

——S. 30—Powers of High Court in appeal—It is open to it to examine question of law or whether there is any evidence for Commissioner to come to conclusion that accident did not occur in course of and out of employment. AIR 1955 N U C (Punj) 1603.

——S. 30 (1) (a)—Order for payment of fixed sum—Appeal—Is open to appeal within the meaning of S. 30 of the Act. See Workmen's Compensation Act (1923), S. 4. AIR 1957 Raj 246.

2. Question of law.

——S. 30(1), Proviso—'Substantial question of law'.

The phrase 'substantial question of law' as used in the proviso to sub.s. (1) of S. 30 of the Workmen's Compensation Act must be given a wider construction than what is attributed to it under S. 110, Civil P. C., namely that it would not cover cases of application of well-settled principles of law to a particular set of facts. AIR 1956 All 491, Rel. on 1958 All L J 269 : 1958 All W R (HC) 300 : (1958) 2 Lab L J 18 : (1958-59) 15 F J R 47 : AIR 1958 All 564 (564, 565) (Pr 4) (DB).

——S. 30—Questions of law—Question whether accident arose out of and in course of employment is point of law — It has to be ascertained from facts found and is therefore a mixed question of law and fact — Per Deka, J. AIR 1955 N U C (Assam) 379 (DB).

——S. 30—Question of law — Finding not based on evidence.

The High Court is not entitled to interfere with the findings of fact arrived at by the Commissioner for Workmen's Compensation except on a substantial question of law, and that includes a finding of fact which is not based upon evidence. AIR 1946 Bom 169, Foll. AIR 1954 Him Pra 82 (82, 83) (Pr 3).

——S. 30—Substantial question of law — Finding of Commissioner that accident arose out of and in the

course of employment and that workman's death was due to strain of work—No question of law is involved. See Workmen's Compensation Act (1923), S. 3. (1963) 1 Lab L J 203 (Ker).

——S. 30 (1)—Question of law — Question of legal evidence—Credibility of witnesses—Interference.

The question whether there was any legal evidence in support of the finding arrived at by the Commissioner on the questions of fact would be a substantial question of law. So far as the credibility of the evidence of witness is concerned it is a matter for the Commissioner and not for the High Court sitting in appeal over his order. 1959 K L R 47.

——S. 30 (1), Proviso—Scope of—Interlocutory order of Commissioner—Appeal.

No appeal lies from an interlocutory order of the Commissioner which does not fall within any of the clauses (a) to (e) of S. 30. 1958 Jab L J 260.

——S. 30, First Proviso—Substantial question of law —Non-compliance with provisions of R. 51 (2) of Workmen's Compensation Rules (1933) is substantial question of law. Madh B L R 1956 (Civ) 201 : 1956 M B L J (H C R) 783.

——S. 30, First proviso—Substantial question of law —(Constitution of India, Art. 133) — (C. P. Code (1908), S. 110).

Section 30 provides for an appeal against the order of Commissioner only when there is a substantial question of law involved in it; when no such question is involved the appeal cannot be entertained.

A question of law can be said to be a substantial question of law only when there may be some doubt or difference of opinion. ILR (1953) M B 167 : AIR 1954 Madh B 59 (60, 61) (Pt A) (Pr 3).

——S. 30 (1), Proviso—Substantial question of law—Power to go into questions of fact — (Mysore) Workmen's Compensation Act, S 29.

When once an important point of law arises, points of fact also can be gone into in the appeal. The question whether from the evidence on record, the Commissioner was justified in arriving at the finding as to the wilful disobedience to R. 126 of the Mining Rules with legal effect of depriving the petitioner of compensation is a substantial point of law involved in the appeal and while deciding it questions of fact also could be gone into. Case law discussed. ('49) 29 Mys L J 171 : 54 Mys H C R 486 (DB).

——S. 30 — Whether deceased was a 'workman' is a substantial question of law to the question — Interference in appeal is justified and necessary. AIR 1933 Cal 63, Distinguished. 1963 Cur L J 470 : AIR 1964 Punj 315 (317, 318) (Pt B) (Pr 5).

——S. 30—'Substantial question of law'—Misdirection on question of law is covered by the expression. (1961) 1 Lab L J 494 : (1960) 1 Fac L R 508 : (1960-61) 18 F J R 428 : AIR 1960 Punj 573 (575) (Pt D) (Pr 8) (DB).

——S. 30—Question of law—Ascertainment of meanings of phrases 'arise out of' and 'in course of employment' used in S. 3, is question of law. AIR 1955 N U C (Punj) 1603.

——Ss. 30 and 2 (1) (n)— Substantial question of law —Question whether employment is of casual nature or for employer's trade or business, for purposes of S. 2 (1) (n) — Question is essentially one of fact and not of law — It can in no case be considered a substantial question of law — It is, therefore, not open to appellant to contest finding on that question in appeal under S. 30. See Workmen's Compensation Act (8 of 1923), S. 2 (1) (n). AIR 1961 Raj 45.

——S. 30—Substantial question of law — Finding of fact by Commissioner — In appeal appellate Court will interfere if it is based on no evidence. 1956 Raj L W 355.

——S. 30—Substantial question of law.

A challenge to the legality of the procedure adopted by the Commissioner would constitute a good ground for the appeal. (1956) 1 Lab L J 43 : 1956 Ker L T 69 : ILR (1955) Trav-Co 935 : AIR 1956 Trav-Co 55 (55) (Pt A) (Pr 2) (DB).

3. Findings of fact.

(A) Interference in appeal.

3. Findings of fact.

——Ss. 30, 19, 23 — Objections when to be taken — Unless objection is taken before the Commissioner and he has an opportunity of considering the same, parties would not be allowed to raise the same at the later stages of the litigation, particularly, objections which are dependent on findings of fact — See Workmen's Compensation Act (8 of 1923), S. 19. AIR 1962 Andh-Pra 69.

——S. 30—Question whether person is workman or not is one of fact. (1953) 1 M L J 557 : AIR 1954 Mad 218, Foll. (1961) 2 Lab L J 260 (Andh-Pra).

——S. 30—Question of fact.

Whether the railway which carries the city's refuse is the property of the Corporation or is an independent organisation is a question of fact. (1955-56) 8 F J R 439 : AIR 1955 Cal 307 (309) (Pt C) (Pr 6) (DB).

——Ss. 30 and 2 (1) (n) — Question of fact—Operations whether agricultural.

The plea that the operations were agricultural operations and therefore workers employed in them could not be 'workmen' obviously raises issue of fact which cannot be allowed to be raised for the first time in appeal against the orders of the Commissioner. 58 Cal W N 751 : 94 Cal L J 49 : AIR 1955 Cal 105 (106, 107) (Pt A) (Pr 5) (DB).

——S. 30—Question of fact.

Per Chakravartti, C. J. — It is doubtful whether a question of fact which is one entirely unrelated to the question of law urged is at all admissible in an appeal under S. 30 of the Act. AIR 1955 N U C (Cal) 2863 (DB).

——S. 30 — Appreciation of evidence — Question of fact.

Misappreciation of evidence or insufficiency of evidence is not a question of law, though the absence of evidence is. If the evidence did not appeal to the Commissioner, it can by no means be contended that he was bound as a matter of law to believe that evidence. A I R 1955 N U C (Cal) 2863 (DB).

——S. 30—Finding of fact — Finding as to nature of loss of use of thumb.

The finding of the Commissioner that there is no partial or permanent loss of use of thumb is a finding not involving any substantial point of law but rests upon the conclusion drawn by the assessment of evidence. Madh B L R 1956 Civ 364 : 1956 Madh B L J 938 : A I R 1957 Madh B 176 (177) (Pt B) (Pr 13).

——S. 30 (a) — No final order by Commissioner regarding compensation but only a finding on certain question—Order does not fall under S. 30 (a)—Objection to finding can be taken when appeal is filed against final order of compensation. Madh B L R 1956 Civil 347 : 1956 Madh B L J 968.

——S. 30 (1), Proviso—Question of fact.

No appeal under S. 30 can be admitted because of a wrong finding of fact based on misappreciation of evidence. AIR 1962 S C 1314, Foll. AIR 1949 Mad 462, (1948) 2 Mad L J 639, Rel. on. **(1964) 66 Punj L R 661.**

——Ss. 30, 3 — Question of fact — Question whether workman was forbidden to go to site is question of fact—Finding thereon will not be interfered with by High Court. **AIR 1955 NUC (Raj) 4038.**

4. Appeal.

——S. 30—Appeal—**Finding contrary to evidence.**

It is true that in appeals against the decisions of the Commissioner for Workmen's Compensation the High Court is bound by the findings of fact and the appeal only lies on substantial question of law. But the finding of the Commissioner must be based on evidence, and if the finding is contrary to evidence, then the High Court is not bound by those findings. **ILR (1954) Bom 353 : 55 Bom L R 924 : AIR 1954 Bom 180 (181, 182) (Pt F) (Pr 5) (DB).**

——S. 30—**Principle of S. 30.**

The principle of S. 30 is that if the appeal be such that by it the workman's right to the compensation awarded to him is placed in jeopardy, security for the workman must be provided for by the deposit of the amount of compensation and such a deposit would be essential to the maintainability of the appeal. **58 Cal W N 488 : AIR 1954 Cal 453 (454, 455) (Pt A) (Pr 11) (DB).**

——S. 30 (1) (d)—**Applicability.**

S. 30 (1) (d) contemplates an appeal which raises a question between the person indemnified and the indemnifier without in any way placing the award itself under challenge. If the award itself is brought into issue, the appeal will be an appeal against an order awarding compensation and it will be in part at least an appeal under Cl. (a), although it might be an appeal under Cl. (d) as well. **58 Cal W N 252 : ILR (1956) 2 Cal 530 : AIR 1954 Cal 453 (454, 455) (Pt B) (Prs 11, 12) (DB).**

——S. 30 — Right of employer to file appeal against order of Commissioner paying compensation to one claimant. See Workmen's Compensation Act (1923), S. 10-A. **AIR 1955 NUC (Nag) 1580 (DB).**

——S. 30 (1) (a) — **Appeal — Order for payment of lump sum.**

Held, that order of the Commissioner directing the employer to pay a sum of Rs. 2,000 to the claimant as compensation was one for a lump sum compensation. Therefore, on that ground alone, the order had to be held as appealable under S. 30 (1) (a). **(1956) 10 F J R 423 : 1956 B L J R 288 : (1957) 2 Lab L J 522 : AIR 1956 Pat 299 (301) (Pt A) (Pr 6) (DB).**

——S. 30 (1) (a)—**Defective order—Appeal.**

Although an order of the Commissioner is defective, the appellant cannot be deprived of his statutory right of an appeal on account of this defect. **AIR 1951 Pat 260 (261) (Pt A) (Pr 3) (DB).**

5. Third Proviso.

——S. 30 (1), **Proviso 3 and (3)—Appeal—Certificate of deposit not produced within time — Appeal is barred — Condonation of delay — (Limitation Act (1908), S. 5).**

Having regard to Proviso 3 to S. 30 (1) of the Act a memorandum of appeal by an employer presented within the period of limitation, but unaccompanied by a certificate of deposit issued by the Commissioner, will not save limitation. AIR 1935 P C 5 and AIR 1954 Raj 138, Rel. on. **AIR 1951 Pat 260, Disting. AIR 1957 Him Pra 26 (27) (Prs 8, 11).**

——S. 30, **Third Proviso—Third Proviso is mandatory. (1964) 6 Orissa J D 9 : 30 Cut L T 181 : (1964) 2 Lab L J 527 (Orissa).**

——S. 30 (1), **Third proviso—Deposit—Necessity.**

The principle of S. 30 is that if the appeal be such that by it the workman's right to the compensation awarded to him is placed in jeopardy, security for the workman must be provided for by the deposit of the amount of compensation and such a deposit would be essential to the maintainability of the appeal. The proviso is mandatory and not merely directory:.**(1959) 1 O J D 122 : ILR (1959) Cut 464 : AIR 1960 Orissa 39 (40, 41) (Pt A) (Pr 3).**

——S. 30 (1), **First proviso — Substantial question of law.**

The phrase 'substantial question of law' for the purpose of S. 30 of the Act should be construed to cover even a case in which the Commissioner has clearly misdirected himself on question of law such as where he awards compensation without having a notice of the proceedings served on the employer. **(1959) 1 O J D 122 : ILR (1959) Cut 464 : AIR 1960 Orissa 39 (41) (Pt B) (Pr 5).**

——S. 30 (1), **Proviso 3 and S. 30 (2) and (3)—Delay—Condonation—(Limitation Act (1908), S. 5).**

Held, that there were not sufficient grounds for condonation of delay in filing appeal with the necessary certificate. **1958 BLJR 726 : AIR 1959 Pat 112 (113) (Pt A) (Pr 3) (DB).**

——S. 30 (1), **Proviso 3 and S. 8 (2)**—Appeal must be accompanied by Commissioner's certificate — Certificate must comply with S. 8 (2) and Rules made thereunder — (Workmen's Compensation Rules (Adapted in Bihar) Rule 9). See Workmen's Compensation Act (1923), S. 8 (2). **AIR 1959 Pat 112 (DB).**

——S. 30 (1), **third proviso—Appeal not accompanied with the certificate—Effect.**

Per Ahmad J. — The proviso to S. 30 (1) of the Act on a true construction demands that the certificate should be filed along with the memorandum of appeal as an essential part of it. In other words, an appeal as contemplated by it cannot be said in law to be an appeal unless it is accompanied with the aforesaid certificate of the Commissioner. The filing of a memorandum of appeal cannot by itself amount in law to a formal presentation of an appeal unless the memorandum of appeal is accompanied with the certificate referred to in the proviso. AIR 1951 Pat 260, Not foll. **(1956) 10 F J R 423 : 1956 B L J R 288 : (1957) 2 Lab L J 522 : AIR 1956 Pat 299 (301, 302) (Pt B) (Pr 7) (DB).**

6. Sub-section (1) (e).

——S. 30 (1) (e), **Second Proviso**—Agreement between seaman and shipowner under Merchant Shipping Act — Interpretation of — Commissioner assuming jurisdiction under proviso to S. 21 (1) independently of any agreement between parties — Award of compensation—Agreement held no bar to right of appeal on question whether accident arose out of and in course of employment. See Workmen's Compensation Act (1923), S. 21 (1), Proviso. **AIR 1964 Cal 94 (DB).**

——S. 30 (1) (e) — Reasons for refusal to register memorandum of agreement must be stated. See Workmen's Compensation Act (1923), S. 28 (1) (d). **AIR 1955 NUC (Madh B) 1316.**

7. Limitation.

——S. 30—**Limitation — Starting point — Object of third proviso.**

The purpose of the third proviso to sub-s. (1) of S. 30 is to deny the right of appeal except on compliance with the order before appealing against if and

troversy regarding the main facts and the points at issue were mostly questions of law, no prejudice could be said to have been caused by the failure to frame issues. 1958 All L J 652 : (1958) 2 Lab L J 682 : AIR 1959 All 586 (588, 589) (Pt E) (Pr 11).

——S. 32—Rules under, by Andhra Pradesh—R 40—Simultaneous hearing of petition — Two petitions by workman on same date for compensation for two injuries out of two different accidents in course of employment — Commissioner passing single award fixing lump sum compensation—Held, the award was unsustainable. See Workmen's Compensation Rules (Andhra Pradesh), R. 40. (1965) 1 Andh L T 219 : (1965-66) 29 F J R 62 : AIR 1966 Andh Pra 99.

——Ss. 32, 3, 6, 17, 19 and 22—Rules under S. 32—R. 48—Forms K. L and M—Compensation payable in respect of particular injury settled either by award or agreement—Second application for compensation on ground of aggravation of same injury is not maintainable—(Interpretation of Statutes). See Workmen's Compensation Act (8 of 1923), S. 22. AIR 1955 Cal 616 (DB).

——Ss. 32 and 23—Rules under S. 32, R. 41—Dispute as to apportionment of compensation among alleged dependants of deceased — Mode of inquiry—Order passed without conducting proper inquiry cannot be sustained. See Workmen's Compensation Act (8 of 1923), S. 23. AIR 1960 Ker 223 (DB).

——S. 32—Rules under — Workmen's Compensation Rules, R. 20—Form of application—Irregularity in.

The Legislature did not intend that a claim should not be entertained or enquired into, or that no compensation should be granted, unless the application were in strict form. If, therefore, there be any irregularity in the form of the application the claim for compensation cannot be rejected. ILR (1953) M B 167 : AIR 1954 Madh B 59 (61) (Pt C) (Pr 6).

——S. 32—Rules under—Workmen's Compensation Rules, R. 25—Preliminary inquiry is discretionary.

Rule 25 of the Workmen's Compensation Rules gives a discretion to the Commissioner to hold a preliminary inquiry. The rule does not make it obligatory to hold a preliminary inquiry in every case. ILR (1953) M B 167 : AIR 1954 Madh B 59 (61) (Pt D) (Pr 7).

——S. 32—Rules under.

A failure to send a copy of the application for a claim to the employer is not such an irregularity as to defeat the claim. ILR (1953) M B 167 : AIR 1954 Madh B 59 (61) (Pt E) (Pr 8).

——S. 32—Rules under — Workmen's Compensation Rules, Rr. 28 and 31 — Non-compliance with procedure.

Rule 31. Workmen's Compensation Rules, clearly indicates that the claim is to be decided as far as possible in one hearing. Where the conduct of the employer clearly shows that he wanted to prolong the case and delay the decision there is no justification to interfere with the decision of the lower Court although it has not followed the procedure laid down by R. 28 of the Workmen's Compensation Rules. ILR (1953) M B 167 : AIR 1954 Madh B 59 (61) (Pt F) (Pr 9).

——Ss 32 and 10 (1), Proviso — Rules under S. 32, conflict with Act—Effect—Mysore Workmen's Compensation Act, S. 10 (1), Proviso 31.

It would be to that extent ultra vires and without force. See Workmen's Compensation Act (1923), S. 10 (1), Proviso AIR 1952 Mys 41 (DB).

——S. 32 (2) (c) — Bihar Workmen's Compensation Rules, Rule 28—Scope—Non-compliance—Effect on proceedings.

Where in a workmen's compensation proceeding a show-cause notice is issued to the employer concern and the concern files a written statement challenging the liability claimed by the workman, the proceeding becomes a contested one. In such a case the procedure laid down in Rule 28. Workmen's Compensation Rules should be followed. And if this rule is not followed and the judgment is pronounced without framing any issue, the procedure thus adopted is not in accordance with law and is vitiated. 1958 B L J R 383 : AIR 1958 Pat 540 (541, 542) (Pr 4).

SCHEDULE 1

——Sch. 1, S. 2 (1) (j) (c) (ii) — Crippling of leg — Compensation—Proof.

Schedule 1 mentions loss of leg at or above the knee, but not any crippling of the leg. But it is obvious that the Act contemplates other instances of permanent partial disablement, resulting from injury than those specified in the schedule. This is apparent from sub-Cl. (ii) of S. 4 (1) (c). A strict construction of the rules of course imposes a duty on the Court to find that there should be proof to the effect that as a result of the permanent partial disablement, (i) earning capacity of the workman was reduced in every employment; and (ii) which the workman was capable of undertaking at the time of the accident. But an enquiry of this nature is more or less in the nature of a guesswork. That being so, although the evidence adduced by the workman on the point is not as full as it should have been, it would not be in the interest of justice to send back the case for fresh materials and for reconsideration of the matter by the Commissioner. AIR 1959 Assam 10 (12, 13) (Prs 4, 5) (DB).

——Sch. 1 and S. 4 (7) (c) (ii)—Accident to workman —Injury caused—Loss of organ—"Suspensory award" 61 :Cal W N 352 : ILR (1958) 2 Cal 63 : AIR 1957 Cal 601 (604, 605) (Pt C) (Prs 14, 16) (DB).

——Sch. 1—Loss of 4 fingers, except thumb — Compensation.

If four out of five fingers are lost the presence of thumb alone unaided by any other finger can hardly be said to be of any substantial use. One can appreciate the use of thumb if there be at least one more finger. But when no other finger than the thumb is left the percentage of earning capacity fixed by the schedule at 25 P. C. is hardly just. However that is, the percentage fixed by the statute ought to be followed. AIR 1949 Cal 295, Rel. on. B L R 1956 (Civ) 364 : 1956 Madh B L J 938 : AIR 1957 Madh B 176 (177) (Pt A) (Pr 13).

——Sch. 1—Loss of earning due to loss of one leg in motor accident — Fifty per cent of normal earning is proper measure. See Tort—Damages. 1962 Jab L J 852.

SCHEDULE 2

——Sch. 2—Person employed to cut sabai grass is not workman. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1955 Cal 105 (DB).

SCHEDULE 2, CLAUSE 1

——Sch. 2, Cl. (i) read with S. 2 (n) — "Workman" —Conservancy -coolies doing duties connected with lorry—Test.

Whether or not a particular employee is a workman must be decided by reference to the duties performed by him. There is no genus or species of employees, going by the name of conservancy coolies and having known, ascertainable or invariable duties.

Held, that the expression "in connection with" in Cl. (i) of Sch. 2 was of wide content and that the person being clearly employed in connection with the operation of the vehicle was covered by Cl. (i) of Sch. 2 and was clearly a workman. 55 Cal W N 496 and AIR 1955 Cal 306, Distinguished. (1957-58) 13

F J R 313 : ILR (1958) 2 Cal 563 : AIR 1957 Cal 653 (655) (Pr 8) (DB).

——Sch. 2, Cl. (1) — Business of public carriers — Person employed for loading and unloading is not workman. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1955 Cal 367 (DB).

——Sch. 2, Cl. (1) and S. 2 (n) — "Workman" — Checker of lorry held workman under S. 2 (n) read with Sch. 2, Cl. (1). See Workmen's Compensation Act (1923), S. 2 (n). 1962 Ker L J 21.

——Sch. 2, Cl. (1)—Motor driver.

A driver of a motor bus is a workman within the meaning of the Act. (1949-50) F J R 267 : ILR (1950) Cut 60 : AIR 1950 Orissa 207 (208) (Pt C) (Pr 8) (DB).

SCHEDULE 2, CLAUSE 2

——Sch. 2, Cl. (ii) — Scope — It is not necessary for the purpose of satisfying the definition of "workman" that the deceased should be working in the manufacturing process itself. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1954 Bom 180 (DB).

——Sch. 2, Cl. (ii) —Manufacturing process as defined in S. 2 (g) of Factories Act. 1934 — Worker employed in printing press—Sch. 2, Cl. (ii) if applies. See Workmen's Compensation Act (1923), S. 2 (1) (n) (ii). AIR 1955 Cal 306 (DB).

——Sch. 2, Cl. (ii)—Scope.

All that Cl. (ii) requires is that ten or more persons must have been employed on any day of the preceding twelve months. Hence, it is enough for the application of this clause when the proprietor in his evidence states that he employed eight men in the Press, but occasionally three more men were employed. (1955-56) 8 F J R 424 : AIR 1955 Cal 306 (307) (Pt B) (Pr 5) (DB).

——Sch. 2, Cl. (ii)—Scope — Person to be workman must be working within premises mentioned in the clause.

What Cl. (ii) contemplates are persons employed in the premises where the manufacturing process is carried on. It does not cover persons who may be connected with a concern which carries on a manufacturing process, but who, so far as they themselves are concerned are employed in outdoor work. The governing provision in the clause is that the persons contemplated by it must be employed in premises of a certain kind and the clause then proceeds to say what the premises must be like. Persons working within such premises though not employed in the manufacturing process proper, are within the definition, but persons working outside are not, though they may be serving the concern. 58 Cal W N 751 : 94 Cal L J 49 : AIR 1955 Cal 105 (106, 107) (Pt C) (Pr 5) (DB).

——Sch. 2, Cl. (ii)—Reference to Factories Act 1934 —Manufacturing process — (General Clauses Act (1897), Ss. 6, 8)—(C. P. Code (1908), Pre.) — (Interpretation of Statutes—Repeal).

He was entitled to be regarded as a workman, because the Factories Act of 1934 was repealed and re-enacted by the Act of 1948 and therefore by virtue of S. 8, General Clauses Act, references in the Workmen's Compensation Act to the Act of 1934 must be construed as references to the Act of 1948. 93 Cal L J 197 : 58 Cal W N 560 : 1LR (1956) 2 Cal 700 : AIR 1954 Cal 484 (485, 486) (Pt A) (Prs 6, 7, 8, 9) (DB).

——Sch. 2, Cl. (ii) (as it stood on 10-2-1958), S. 2 (1) (n)—Scope — Power mentioned in Sch. 2, Cl. (ii) not used — Deceased was not a workman within S. 2 (1) (n). See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1964 Mys 60 (DB).

——Sch. 2 (ii) and S. 2 (1) (n) — "Workman" — Who is—Person employed in any capacity connected with a manufacturing process is a workman — Person employed for lifting articles and for sweeping in a mill is a workman. See Workmen's Compensation Act (1923), S. 2 (1) (n). (1961-62) 21 F J R 14 (Punj).

SCHEDULE 2, CLAUSE 8

——Sch. 2, Cl. (viii) (c)—Workman—Definition of—Employee taking traffic census before repairs or construction of road — Employee not a workman. See Workmen's Compensation Act (1923), S. 2 (1) (n). 1964 All L J 851.

——Sch. 2 (viii) (a) and S. 2 (1) (n)—'More than one storey'—Meaning of — Minimum number must be at least two complete storeys. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1961 Madh Pra 349.

——Sch. 2 (viii) (a) and S. 2 (1) (n)—Height of building — Burden of proof — Burden is on applicant to show that the building is of the required height. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1961 Madh-Pra 349.

——Sch. 2 (viii) (a)—Findings of fact.

The mason employed in the construction comes within Sch. 2 of the Act. See Workmen's Compensation Act (1923), S. 30. AIR 1957 Madh-Pra 49 (DB).

——Sch. 2, Cl. (viii) — Application for compensation under Workmen's Compensation Act—Government neither taking plea that the claimant was not a workman under Sch. 2, Cl. (viii) nor placing sufficient materials before Commissioner of Labour — Government cannot urge that point for first time on appeal before High Court against order of Commissioner. See Civil P. C. (1908), S. 96. AIR 1965 Mad 372.

——Sch. 2, Cl. (viii) and S. 2 (1) (n) — Person, employed for painting premises of shop, dying by electric shock while working—Deceased held was a workman and his widow was entitled to compensation. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1964 Punj 315.

SCHEDULE 2, CLAUSE 10

——Sch. 2, Cl. (x), (xvi) and S. 2 (1) (n)—Agriculturist employing person to excavate old well to increase water supply — Such employee killed by fall of pipe which was being put up while working inside well—Employee held "workman" — Case held governed by Cl. (xvi) and also Cl. (x) of Sch. 2. See Workmen's Compensation Act S. 2 (1) (n). AIR 1952 Sau 74 (DB).

SCHEDULE 2, CLAUSE 12

——Sch. 2, Cl. 12 — Railway employed in clearing City's refuse—Workman employed in is not employed upon railway. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1955 Cal 307 (DB).

——Sch. 2, Cl. (xii)—Person fulfilling contract with railway administration.

In order to establish that a workman was employed by the Corporation which could be said to be fulfilling a contract with the Railway Administration, the railway concerned must be a separate administration and not an administration owned by the Corporation itself. (1955-56) 8 F J R 439 : AIR 1955 Cal 307 (309) (Pt B) (Pr 6) (DB).

SCHEDULE 2, CLAUSE 16

——Sch. II, Cl. XVI—"Casual employment"—"Workman"—Mason employed to plaster wall of newly dug up agricultural well — He is a workman. See Workmen's Compensation Act (1923), S. 2 (a). A I R 1960 Madh Pra 267.

——Sch. 2, Cls. (XVI) and (X) and S. 2 (1) (n) — Agriculturist employing person to excavate old well to increase water supply — Such employee killed by fall of pipe which was being put up while working

inside well—Employee held "workman" — Case held governed by Cl. (XVI) and also Cl. (X) of Sch. 2. See Workmen's Compensation Act (1923), S. 2 (1) (n). AIR 1952 Sau 74 (DB).

SCHEDULE 2, CLAUSE 26

——Sch. II, Clause 26 and S. 2 (1) (n)—'Workman'— Person employed for writing accounts purchasing stocks and arranging for their export not covered by by Sch. II, Cl. 26. See Workmen's Compensation Act (1923), S. 2 (1) (n). A I R 1962 Andh Pra 177 (DB).

——Sch. II, Cl. 26 and Ss. 2 (1) (n) (ii) and 30 — Appellant transporting goods of his saw-mills by railway—Work of loading wagons entrusted to contractor—Goods stored in railway siding — Contractor engaging applicant for handling and transporting goods at railway siding — Applicant if workman employed by appellant—Finding by Commissioner — High Court if can go into that question. See Workmen's Compensation Act (1923), S. 2 (1) (n) (ii). AIR 1963 Assam 7 (DB).

——Sch. II. Cl. (xxvi)—Place where goods are stored may be small or big like a warehouse.

If the place in which a person is engaged, in handling goods is a place where goods are stored, the definition contained in clause (xxvi) is satisfied whether such place bears any similarity to a warehouse or not.

No aid to the construction of clause (xxvi) can at all be derived from clause (iii). A I R 1955 N U C (Cal) 2863 (DB).

——Sch. II, Cl. (xxvi), sub-cl. (a)—Workmen.

Where it was found that the deceased was employed in the handling of goods at the shop of the appellant where his merchandise was stored that more than ten persons had been employed at that place within the preceding twelve months and that on the day and at the time of the occurrence the deceased was actually engaged in feeding the weighing scales by dragging bags of oilcake from where they lay stacked there could thus be no doubt that the deceased was a 'workman' within the meaning of sub-clause (a) of clause (xxvi) of Sch. II to the Act. AIR 1955 N U C (Cal) 2863 (DB).

——Sch II Clause 26 and S. 2 (1) (n)—It is enough if workman has to work within precincts — Accident taking place outside precincts where his employment takes him—Case falls under Item 26. See Workmen's Compensation Act (1923), S. 2 (1) (n). A I R 1963 Mad 188 (DB).

——Sch. II, Cl. 26—'Within precincts of', meaning.

The phrase 'within the precincts' does not restrict the area of operation by the workman to the area contained within the four walls of the warehouse. It includes the space that may be required for the loading and unloading of goods within warehouse or without the warehouse. (1953) 1 Mad L J 557 : 1953 Mad W N 273 : 66 Mad L W 440 : A I R 1954 Mad 218 (220) (Pt C) (Pr 9).

SCHEDULE 2, CLAUSE 28

——Sch. II, Cl. 28 and S. 2 (n) — Case falls under Item 28, only when the vehicle is one mechanically propelled:— Clause has no application when vehicle is one driven by bullocks — See Workmen's Compensation Act (1923), S. 2 (n). AIR 1963 Mad 188 (DB).

SCHEDULE 3

——Sch. III — Occupational disease — If includes insanity.

Insanity and allied disorders are not to be found in the list of occupational diseases, enumerated in Sch. III. The expression 'compressed air illness' would not include insanity. A I R 1957 Him Pra 33 (34) (Pt A) (Pr 4).

SCHEDULE 3, PART B

——Sch 3, Part B and S. 3 (2) — First entry in right hand column — "Any process involving the use of lead" —See Workmen's Compensation Act (8 of 1923), S. 3 (2). AIR 1954 Cal 484 (DB).

SCHEDULE 4

——Sch. 4—Workman employed in foundry developing neurosis and insanity — Compensation :— Burden of proof—Burden of proof lay heavily on the appellant. See Workmen's Compensation Act (1923), S. 3 (3). AIR 1957 Him Pra 33.

——Sch. 4 and S. 4—Assessment of damages—Registers of monthly payment maintained by employer but not produced — Commissioner can fix monthly wage of injured workman on basis of evidence of co-workers and President of Union of workmen—See Workmen's Compensation Act (8 of 1923), S. 4. AIR 1961 Ker 108 (DB).

——Sch. 4—Temperory disablement—Compensation.

The applicant entitled to receive the rightful wages of compensation till completely cured, for work, and also Rs. 50/- for medical treatment expenses — See Workmen's Compensation Act (1923), S. 3. AIR 1956 Trav Co 55 (DB).

WORKMEN'S COMPENSATION RULES (1924)

RULE 19

——Rr. 19 and 41 and Provisos (a) and (b) — Application for compensation — Form of — Employer a partnership firm—Names of all partners not necesaary in cause title — Firm name sufficient—Interpretation of statute. See Workmen's Compensation Act (1923), S. 22 (2) (c). AIR 1963 Cal 479 (DB).

RULE 23

——Rr. 23 and 25 — Examination of applicant by Commissioner — Not mandatory but discretionary. AIR 1955 N U C (Madh-Bha) 3693.

RULE 25

——R. 25 — Examination of applicant by Commissioner—Not mandatory but discretionary—See Workmen's Compensation Rules (1924), R. 23. A I R 1955 N U C (Madh-Bha) 3693.

RULE 41

——Rr. 41, Provisos (a) and (b). 19—Workmen's Compensation Act (1923), Ss. 22 (2) (c), 2 (1) (e)—Application for compensation — Form of — Employer a partnership firm—Names of all partners not necessary in cause title—Firm name sufficient — Interpretation of statutes. See Workmen's Compensation Act (1923), S. 22 (2) (c). AIR 1963 Cal 479 (DB).

WORKMEN'S COMPENSATION RULES (1933)

RULE 51

——R. 51 (2)—Scope—Opportunity to show cause — When necessary.

It will be seen from the wording of S. 28 (d) of the Workmen's Compensation Act and R. 51 (2) of the Rules that the question of the payment of any sum or amount over and above the sums specified in the agreement can arise only after the Commissioner has decided to refuse to record the memorandum of agreement. If in order to enable him to come to a conclusion whether he should refuse to record the memorandum of agreement on the ground of the inadequacy of the sums specified in the agreement the Commissioner holds an inquiry into the question whether the amount agreed falls short of the amount payable to the employee under the provisions of the Act and the Rules thereunder and if so to what extent, the inquiry cannot be said to be one held under R. 51 (2). Madh B L R 1956 (Civ) 201 : 1956 M B L J (H C R) 783.

WORKMEN'S COMPENSATION RULES (ADAPTED IN BIHAR)

RULE 9

—R. 9—Appeal—Requirements of validity—Appeal must be accompanied by Commissioner's certificate—Certificate must comply with S. 8 (2) and rules made thereunder. See Workmen's Compensation Act (1923), S. 8 (2). AIR 1959 Pat 112 (DB).

WORKMEN'S COMPENSATION RULES (ANDHRA PRADESH)

RULE 40

—R. 40—Simultaneous hearing of petitions — Two petitions by workman on same date for compensation for two injuries out of two different accidents in course of employment—Commissioner passing single award fixing lump sum compensation — Held, the award was unsustainable—Workmen's Compensation Act (1923), S. 3. (1965-66) 29 F J R 62 : (1965) 1 An L T 219 : AIR 1966 Andh Pra 99 (101, 102) (Pt B) (Prs 10, 12).

WORK OF JOINT AUTHORSHIP

See Copyright Act (1957), S. 2.

WORK ON OR NEAR MACHINERY IN MOTION

See Factories Act (1948), S. 22.

WORKS COMMITEE

See Industrial Disputes Act (1947), S. 3.

WORKS CONTRACT

—Works contract — Agreement for embroidering saries supplied by customer according to his instructions — Jari materials used in embroidery work purchased by concern and embroidered saries returned with consolidated bill including service charges and cost of material — Though property in jari material passed to customer contract was simple contract of work only and implied contract of sale cannot be inferred — Not taxable transaction. See Sales Tax — Bombay Sales Tax Act (3 of 1953), S. 2 (6). AIR 1965 Guj 253 (DB).

WORKS OF DEFENCE ACT (7 of 1903)

SECTION 3

—S. 3 — Supersession of notification by another notification—Supersession is from date of second notification — Obligation and liabilities accrued and incurred under earlier notification are unaffected by withdrawal. (General Clauses Act (1897), S. 6). AIR 1955 NUC (All) 2769 (DB).

SECTION 23

—S. 23—Determination of compensation — Market value, ascertainment of—Sales of similar property in vicinity about same time is guide — If no sales, best method would be to ascertain income and multiply it according to number of year's purchase which Court considers appropriate—(Land Acquisition Act (1894), S. 23). AIR 1955 NUC (All) 2769 (DB).

—S. 23 — Determination of compensation—Market value has to be determined—Land acquired when it was already subject to same restriction as are imposed by notification—It cannot be said that there was any fall in value owing to restrictions and limitations being imposed by new notification. AIR 1955 NUC (All) 2769 (DB).

—S. 23—Expert evidence — Though of great assistance in determining compensation, it has its limitations also — It abounds with uncertainty and gives scope for guess work—(Land Acquisition Act (1894), S. 23). AIR 1955 NUC (All) 2769 (DB).

—S. 23 (d) (e) — Loss of earnings — No earning at date of notification — Notification cannot be said to have caused loss —(Land Acquisition Act (1894), S. 23. AIR 1955 NUC (All) 2769 (DB).

—S. 23 (e)—Scope — Applies where separate business is carried on premises acquired and by reason of fact that business has to be shifted to some new locality loss of income either permanently or temporarily results—(Land Acquisition Act (1894), S. 23). AIR 1955 NUC (All) 2769 (DB).

SECTION 38

—S. 38—Revocation of Notification — Authority to revoke is Governor-in-Council and not Secretary of State—Issue of Notification—Lease of property granted by Nazul Officer acting for Secretary of State — Notification is not impliedly revoked by the grant of lease. AIR 1955 NUC (All) 2769 (DB).

WORLDLY AFFAIRS

Abandonment of.
See Hindu Law—Succession.

WORSHIP

See Specific Relief Act (1877), S. 42.

Place of.
—Injuring or defiling of.
See Penal Code (1860), S. 295.

Suit in respect of.
See Civil P. C. (1908), S. 9.

WRECK AND SALVAGE

See Inland Steam Vessels Act (1917), S. 60.

WRITING

See (1) Evidence Act (1872), S. 47.
(2) General Clauses Act (1897), S. 3 (65).

WRIT OF PREROGATIVE

See Constitution of India, Arts. 32 and 226.

WRIT PETITIONS

See Constitution of India, Arts. 226 and 32.

WRITS

See (1) Constitution of India, Arts. 226 and 32.
(2) Criminal P. C. (1898), S. 491.
(3) Specific Relief Act (1877), S. 45.

Cantravention of fundamental rights.
See Constitution of India, Arts. 32 and 226.

WRITTEN DOWN VALUE

Assessment of business, to income-tax.
See Income-tax Act (1922), S. 10.

WRITTEN STATEMENT

See (1) Civil P. C. (1908), O. 8
(2) Criminal P. C. (1898), Ss. 342 and 364.
(3) Statutory cross-references under "Practice —Pleadings".

Court-fees
See Court-fees Act (1870), Ss. 6, 19, 7 (i), Sch. I, Art. 1, Sch. 2, Art. 1.

Evidentiary value
See Evidence Act (1872), Ss. 3, 5.

Criminal trial
See Criminal P. C. (1898), Ss. 364, 342.

WRONGFUL ARREST, RESTRAINT OR CONFINEMENT — SUIT FOR COMPENSATION

See (1) Provincial Small Cause Courts Act (1887), Art. 35.
(2) Tort.

WRONGFUL ATTACHMENT AND ARREST—COMPENSATION

See (1) Civil P. C. (1908), S. 95.
(2) Tort.

WRONGFUL COMMUNICATION OF OFFICIAL SECRETS

See Official Secrets Act (1923), S. 5.

WRONGFUL CONFINEMENT
See (1) Penal Code (1860), Ss. 340.342.
(2) Tort.

Kidnapping with intent to
See Penal Code (1860), S. 365.

Punishment for
See Penal Code (1860), S. 342.

Search Warrant
See Criminal P. C. (1898), S. 100.

WRONGFUL CONVERSION
See (1) Penal Code (1860), Ss. 403-409.
(2) Tort.
(3) Trusts Act (1882), S. 63.

WRONGFUL DETENTION
See (1) Enactments under "public safety".
(2) Tort.

WRONGFUL GAIN

Defined
See Penal Code (1860), S. 23.

WRONGFUL LOSS

Defined
See Penal Code (1860), Ss. 23, 415.

WRONGFUL RESTRAINT
See (1) Penal Code (1860), Ss. 339, 441.
(2) Tort.

WRONG QUALITY

Delivery of, by seller
See Sale of Goods Act (1930), S. 37.

YAJAMAN VRITTI
See (1) Civil P. C. (1908), S. 9.
(2) Easements Act (1882), S. 4.

YEAR
See Penal Code (1860), S. 49.

Defined
See (1) General Clauses Act (1897), S. 3 (66).
(2) Penal Code (1860), S. 49.
(3) Sales-tax—Central Sales-tax Act (1956).

Meaning of
See Chartered Accountants Act (1949) S. 2.

Previous
See Income-tax Act (1922), S. 2 (11).

YEAR AND MONTH
See Penal Code (1860), S. 49.

YEAR OF ACCOUNTS
See Electricity (Supply) Act (1940), S. 2.

YOUNG OFFENDER
See (1) Criminal P. C. (1898), Ss. 32, 391.
(2) Prisons Act (9 of 1894), S. 3.
(3) Reformatory Schools Act (8 of 1897).
(4) (State) Borstal Schools Acts.

YOUNG PERSON

Defined
See Factories Act (1948), S. 2.

YOUTHFUL OFFENDER
See (1) Criminal P. C. (1898), Ss. 32, 399.
(2) Reformatory Schools Act (1897).

ZABTE SHIKMIDARAN

SECTION 12

——S. 12—Law in Hyderabad State — Zabte Shikmidaran, Ss. 12 and 14—Right of 'Pot pattedar'—Words and phrases—'Pot pattedar' and 'Joint Pattedar' : 33 Deccan L R 367, Dissented from. See Pre-emption. **AIR 1956 Hyd 50 (DB).**

——S. 12—Law of pre-emption—Zabtai Shikmidaran, Ss. 12 and 14 — They do not infringe right under Art. 19 (1) (f) See Constitution of India, Art. 19 (1) (f). **AIR 1956 Hyd 47 (DB).**

SECTION 14

——S. 14 — Law in Hyderabad State—Zabte Shikmidaran, Ss. 12 and 14—Right of 'Pot pattedar'—Words and phrases—'Pot pattedar' and 'Joint Pattedar' : 33 Deccan L R 367, Dissented from. See Pre-emption. **AIR 1956 Hyd 50 (DB).**

——S. 14—Law of pre-emption—Zabtai Shikmidaran, Ss. 12 and 14 — They do not infringe right under Art. 19 (1) (f). See Constitution of India, Art. 19 (1) (f). **AIR 1956 Hyd 47 (DB).**

ZABTA-i-SHIKMIDARAN RULES (1876)

RULE 14

——R. 14 — Tenancy Laws — Hyderabad Land Revenue Act (8 of 1317), Ss. 67-A and 1 (2)—Zabta-i-Shikmidaran Rules (1876), R. 14 — Test of repugnancy between two provisions—Rights conferred on pattadar and shikmidar respectively under R. 14 and S. 67-A—No repugnancy between the two provisions —R. 14 held not repeated by S. 67A — Pattedar has preferential right to purchase shikmidar s right. See Tenancy Laws—Hyderabad Land Revenue Act (8 of 1317), S. 67-A. **(1961) 39 Mys L J 458.**

——R. 14—Tenancy Laws Hyderabad Tenancy and Agricultural Lands Act (21 of 1950), Ss. 47 and 48 — Sanction for alienation—Person having preferential right to buy property opposing — Authority cannot ignore it and sanction alienation — Interpretation of statutes — Construction resulting in transgression of law should be discarded — See Tenancy Laws — Hyderabad Tenancy and Agricultural Lands Act (21 of 1950), S. 47. **(1961) 39 Mys L J 458.**

ZAMINDAR
See (1) Bengal Permanent Settlement Regulation (1793).
(2) Government Grants Act (1895), S. 3—Land tenure.
(3) Madras Permanent Settlement Regulation (1802)
(4) (State) Zamindari Abolition and Land Reforms enactments under "Tenancy Laws".

ZAR-I-PESHGI
See T. P. Act (1882), Ss. 58, 107.

ZILAS OF RAMGAR JUNGLE MAHALS AND MIDNAPORE REGULATION (BENG. REG. 13 of 1833)

SECTION 4

——Ss. 4 and 5—Wilkinson's Rules — Whether Wilkinson's Rules have any statutory force and effect and continue to have any legal validity — (Quaere). **AIR 1955 N U C (Pat) 5701 (DB).**

SECTION 5

——S. 5—Wilkinson's Rules. See Zillas of Ramgar Jungle Mahals and Midnapore Regulation (Beng. Reg. 13 of 1833), S. 4. **AIR 1955 N U C (Pat) 5701 (DB).**

ZILLA PARISHADS
See Enactments under "Panchayats".

ZOROASTRIANS
See (1) Parsi Marriage and Divorce Act (1936) and
(2) Statutory cross references under "Parsis".

SUPPLEMENT

ABDUCTED PERSONS' RECOVERY AND RESTORATION ACT (65 of 1949)

——S. 1 — Applicability — Does not apply to Jammu and Kashmir State — Detention by officer in charge of camp in State not legal —(Criminal P. C. (1898), S. 491). **AIR 1953 J and K 12 (12) (Prs 4, 5, 6).**

● ——Ss. 7, 6 and Preamble — Act is not discriminatory— (Constitution of India, Art 14). See Abducted Persons (Recovery and Restoration) Act (65 of 1949), Pre. **AIR 1953 S C 10.**

ABSOLUTE DISCRETION

See Arbitration Act, S. 13.

ACCOUNT BOOKS

——Faked and genuine—Valuation on — Effect. **AIR 1960 Cal 231.**

——Evidence Act (1872), S. 34— Account books kept in regular course of business — Proof of — Entries of transactions — Transactions can be proved by person having knowledge of transactions — Books of accounts are admissible as corroborative evidence — Entries need not be proved by persons who made them. See Evidence Act (1872), S. 34. **AIR 1961 Raj 52.**

ACCOUNTS

——Suit for — Partnership illegal — Failure of suit for accounts — Amount of capital not recoverable by independent adjudication apart from accounting.

The amounts invested as capital in the partnership business form items of accounts between partners, so that when suit for accounts fails, they cannot be the subject-matter of independent adjudication as amounts recoverable apart from accounting. **(1965) 1 Andh W R 156 : AIR 1966 Andh Pra 209.**

——Suit for accounts — Agreement between parties that rent from tenants of joint property would be realised by one co-sharer (Defendant) and latter would be responsible for taxes and repairs — Suit maintainable — Co-sharer in possession is entitled to claim set off in regard to amount incurred by him towards taxes and repairs — Accounts, suit for—Civil P. C (1903), O 20, R. 16, O. 8, R. 6. See Co-sharers —Suit for accounts. **AIR 1963 Pat 145.**

——Suit on—Separate accounts between same parties — Suit on one account — Adjustments against other can be allowed. **AIR 1963 Punj 479.**

——Suit for — When can be brought — Not confined to cases of partnership or principal and agent or fiduciary relationship—Circumstances of special complication — Necessitating the taking of accounts — Suit for accounts can be brought. **AIR 1960 Punj 415.**

——Settled or stated — Accounts to be settled need not be signed provided it is submitted to party sought to be made liable on it and he has acquiesced in its correctness — Relation between parties was of principal and agent — Account between them was mutual, open and current — Agent accepting as correct unsigned account submitted by principal liable on it — Agent can file suit on the basis of account, notwithstanding there are other unsettled accounts between them—Suit is governed by Art. 115 and not by Arts. 89 or 120 of Limitation Act (1908)— Limitation Act (1908), Arts. 89, 115 and 120—Case law discussed. **1965 Raj L W 523.**

——Limitation Act (1908), Art. 64 — Accounts stated —See Limitation Act (1908), Art. 64. **AIR 1958 Raj 303.**

——Limitation Act (1908), Art. 64 — Contract Act (1872), S. 25—Suit for recovery of money on basis of accounts stated — Defence open to defendant and matter which defendant should prove — Nature of accounts stated in law. See Limitation Act (1908), Art. 64. **AIR 1957 Raj 29.**

ACQUISITION OF LAND FOR PUBLIC PURPOSES ACT (CENTRAL ACT 6 of 1857)

See under Land Acquisition Act (1857)

ADAPTATION OF LAWS ORDER (1950)

● ——Punjab Municipal Act (1911), S. 232 — (Before amendment by Punjab Act, 34 of 1953)— Chief Commissioner, Delhi, can pass orders under S. 232 — He can prohibit municipal committee from doing act which was about to be done, though he cannot prohibit passing of resolution — "About to be done" meaning of — Delhi Laws Act (1912), Sch B — General Clauses Act (1897, Ss. 3 (60), 3 (8). See Municipalities — Punjab Municipal Act (3 of 1911), S. 232 (before amendment by Punjab Act (34 of 1953). **AIR 1965 S C 1275.**

——Extradition Act (1903), S. 7 and first Schedule — Applicability to Rajasthan— Accused extradited from U. P. to take his trial in Rajasthan under Ss. 388 and 420, Penal Code — Addition of charge under S. 161, Penal Code, which is non-extraditable offence — Legality—Criminal P. C (1898), S. 177. See Extradition Act (1903), S. 7. **AIR 1953 Raj 12.**

——Cl. 2—Constitution of India, Arts. 372 and 385— Speaker of Travancore-Cochin Legislative Assembly —If can continue in office after coming into force of Constitution— See Constitution of India, Art. 372. **AIR 1952 Trav.Co 66.**

——Cl. 4 (2)—Extradition Act (1903), Ss. 11 (2) (read with India (Adaptation of Existing Indian Laws) Order, 1947) — Cl. 4 (2) and Adaptation of Laws Order, 1950, Cl. 4 — Surrender of convict to Pepsu State -Suspension of sentence—Jail Manual (Punjab), Para. 450 (4). See Extradition Act (1903), S. 11 (2). **52 Cri L J 142 : AIR 1951 Punj 188.**

● ——Cl. 17 — Constitution of India,, Art. 225 — Adaptation of Laws Order, 1950, it impliedly repeals the Appellate Side Rules of High Court of Madras. See Constitution of India, Art. 225. **AIR 1956 Andh 161 (FB).**

——Cls. 17 21—Madras Motor Vehicles Rules (1940), R. 160C—Continuance of—Effect of S. 93 (4), Government of India Act, 1935 and of Constitution of India —(Government of India Act (1935), S. 93 (4) — Constitution of India, Art. 372— (Motor Vehicles Act (1939), S. 68. See Madras Motor Vehicles Rules (1940), R. 160 (C). **AIR 1956 Andh 129.**

——Cls. 21, 17—Motor Vehicles Rules (1940), R. 160C —Continuance of — Effect of S. 93 (4), Government

of India Act, 1935 and of Constitution of India — (Government of India Act (1935), S. 93 (4) — (Constitution of India, Art. 372) — (Motor Vehicles Act (1939), S. 68.) See Motor Vehicles Rules (1940), R. 160 (C). **AIR 1956 Andh 129.**

——**Cl. 27**—Constitution of India, Art. 372 (2), Pre.—Scope — (Interpretation of Statutes — Constitution statutes)— (Civil P. C. (1908). Pre.). See Constitution of India, Art. 372 (2). **AIR 1956 All 321.**

● ——**Cl. 28** — Fugitive Offenders Act (1881), Ss. 14, 12—Applicability — Sections do no apply in India after 26-1-1950 — (Constitution of India, Art, 372. See Fugitive Offenders Act (1881), S. 14. **AIR 1954 S C 517.**

ADDITIONAL DUTIES OF EXCISE (GOODS OF SPECIAL IMPORTANCE) ACT (1957).

——**S. 2 (c)** — Sales tax — Andhra Pradesh General Sales Tax Act (6 of 1957), Sch. V (as amended by Act 3 of 1958), Ss. 8, 9 and Statement of Objects and Reasons — Expression 'Tobacco and all its products' — Connotation — Crushed stalks of tobacco come within purview of expression. See Sales Tax—Andhra Pradesh General Sales Tax Act (6 of 1957), Sch. V (as amended by Act 3 of 1958), S. 8. **(1963) 14 S T C 1 (Andh Pra).**

ADMINISTRATION OF ESTATES ACT (ENG.) 1925 (15 Geo. V. c. 23)

——Wills Act (Eng.) 1837 (7 Will IV and 1 Vict c. 26), S. 18 — Law of Property Act (Eng), 1925 (15 Geo. V, c. 20), S. 117 — Testator domiciled in England dying in India — Marriage subsequent to execution of will—Will not in contemplation of marriage — Will stands revoked — Widow entitled to letters of administration and not probate — (Succession Act (1925), S. 69). See Wills Act (Eng.) 1837 (7 Will IV and 1 Vict, c. 26), S. 18. **AIR 1955 N U C (Cal) 750.**

ADMINISTRATION OF EVACUEE PROPERTY ACT (31 of 1950)

——**S. 1**—Constitution of India, Art. 19 (1) (f) and (5) —Validity. See Constitution of India, Art. 19 (1) (f) and (5). **AIR 1952 Madh Bha 181 (DB).**

——**S. 1**—Notice under— Validity. **AIR 1963 Pat 11.**

——**S. 1**—Civil P. C., S. 11— Petition under Administration of Evacuee Property Act (1950). See Civil P. C. (1908), S. 11. **AIR 1954 Punj 165.**

——**S. 1** — Constitution of India, Sch. 7, List II, Item 18 and List III, item 41 — Validity. See Constitution of India, Sch. 7, List 2, Item 18. **AIR 1953 Sau 73 (DB).**

● ——**Ss. 2 (c), 7 and 24** — Custodian — Includes all categories of custodians — Expression 'any person aggrieved' in S. 24 — Does not include any custodian — Order declaring certain properties as not evacuee properties — Appeal by Assistant Custodian to Custodian — Not competent — AIR 1957 Pat 235, Reversed. See Administration of Evacuee Property Act (1950), S. 24. **AIR 1961 S C 1312.**

——**Ss. 2 (f), 8 and 11 (2)**—Effect of vesting property of Waqf-alal-aulad in Custodian—Custodian becomes entitled to administer trust in place of mutwalli evacuee — Order for removal of mutwalli should not be passed so long as Custodian is in charge of property. **AIR 1957 All 249.**

——**Ss. 2 and 28, 46** — Notice served alleged to be defective — Jurisdiction of Civil Court to interfere— Civil P. C. (1908), Ss. 9, 115. See Administration of Evacuee Property Act (1950), S. 28. **AIR 1964 Bom 241.**

——**Ss 2 (f), 4, 28**—Evacuee property — Contractual and statutory tenancy rights — Nature of — (Transfer of Property Act (1882), S. 106). See Administration of Evacuee Property Act (31 of 1950), S. 4. **AIR 1954 Bom 56 (57) (Prs 2, 4) (DB).**

——**Ss. 2 (d) (i), 28**—Constitution of India, Art. 226 —Writ of certiorari—Issue of — Grounds — Error of law on face of record. See Constitution of India, Art. 226. **AIR 1959 Madh Pra 256.**

——**Ss. 2 (i), 2 (f), 8, 10 (2) (o)** — "Evacuee property" —Evacuee's right to obtain import quota is also property — Such right also vests in the Custodian who can transfer it under S. 10 (2) (o) — Under R. 78 (a) of the Red Book the right devolves on the transferee —The transferee need not himself be an "established importer'. Order in W. P. 801 of 1959 (Madras) affirmed. (Imports and Exports (Control) Act, 1947, S. 3).

Anantanarayanan J.—An allottee from the Custodian of Evacuee Property, in respect of the rights of an Evacuee firm, is entitled to an import licence notwithstanding the fact he is not per se, an 'established importer'. Such a right cannot also be frustrated merely because the Chief Controller had recognised the transfer only at a later date.

Section 2(i) of the Administration of Evacuee Property Act read with S. 2(f) of the same Act clearly indicates that the right to import a commodity, originally possessed by the Evacuee firm, and the quota right to which it had become qualified, is property of the firm, vesting in the Custodian under S. 8(1), which the custodian can under S. 10(2)(o) transfer. On such a transfer being made transferee gets the right.

Rules 74 and 78(a) and (b) of the Red Book (Edition relating to October 1958 to March, 1959) which sets forth the general principles with regard to the transfers or division of quotas clearly shows that the policy is to recognise the rights of the reconstituted firms, after dissolution of partnership, or the quondam partners, or transferees from established importers to the identical quotas of the predecessors. The recognition being an administrative act cannot be withheld, when the necessary formalities have been complied with. AIR 1961 Bom 244, Diss.: (1959) 2 Mad L J 308 (DB), Rel. on.

Per Ramamurthy J. — By reason of the all embracing vesting provision in S. 8 of Central Act 31 of 1950 there occurs a statutory transfer by operation of law of all the assets, liabilities and goodwill of the evacuee's business in favour of the custodian. There can be no doubt that the outright transfer referred to in R. 78(a) of the Red Book takes in both a transfer by act of parties and one by operation of law. **I L R (1964) 2 Mad 224 (DB).**

——**S. 2 (c)**—Civil P. C. (1908), Ss. 2(17)(h), 80 — "Public Officer"—Custodian under Administration of Evacuee Property Act is public officer — Suit against Custodian — Notice under S. 80 necessary, See Civil P. C. (1908), S. 2 (17) (h). **AIR 1964 Pat 275.**

——**S. 4**—Section 4 does not repeal or in any way make nugatory provisions of Limitation Act—(Limitation Act (1908), S. 29). **AIR 1953 Punj 21 (23) (Pt D) (Pr 24) (DB).**

——**Ss. 4, 48, 7 and 10**—Debt due to evacuee—Recovery of, by custodian — Debt alleged to be barred by limitation—Extent of Custodian's powers. See Administration of Evacuee Property Act (31 of 1950), S. 48. **AIR 1952 Punj 389 (DB).**

——**S. 5 (3) and 12 (1)**—Constitution of India, Art. 226 —Order of Assistant Custodian cancelling lease— Objection on ground of lack of competence — Duty of objector to raise objection expressly in writ petition and of showing that principle of natural justice

was violated, pointed out. See Constitution of India, Art. 226. AIR 1955 Ajmer 41.

——Ss. 7, 8, 9, 10, 48—Powers of Custodian in respect of debt due to evacuee — There is no power on custodian authorising him to adjudge liability to a debt and to recover same. 57 Bom L R 40 : I L R (1955) Bom 84 : AIR 1955 N U C (Bom) 2052.

——Ss. 7 and 7-A (as amended by Act 42 of 1954)—Petitioner's brother leaving for Pakistan prior to 1-3-1947 — Petitioner in possession of property as co-owner — Jurisdiction to start proceedings under S. 7 for declaring property as evacuee property. See Administration of Evacuee Property Act (1950), S. 7-A. AIR 1961 Madh Pra 30.

——Ss. 7, 48, 4 and 10—Debt due to evacuee—Recovery of, by custodian — Debt alleged to be barred by limitation — Extent of Custodian's powers. See Administration of Evacuee Property Act (31 of 1950). S. 48. AIR 1952 Punj 389 (DB).

——S. 7(1)—Constitution of India, Art. 133 (1)(a) — Notice under Administration of Evacuee Property Act —Dispute not of any right to property but of jurisdiction — High Court holding notice within jurisdiction —Certificate could not be granted. See Constitution of India, Art. 133 (1)(a). AIR 1959 Raj 106.

——S. 7—Jurisdiction—Order for delivery of possession of property in possession of mortgagee—Failure to issue notice—Waiver of objection to jurisdiction—Effect — (Civil P. C. (1908), S. 9). AIR 1952 Raj 184 (186, 187) (Pt A) (Prs 2, 5) (DB).

——Ss. 7, 26—Constitution of India, Art, 226—Order without jurisdiction—Consent to order — Petitioner's right to challenge order subsequently — Other remedies—Inadequacy of — Plea inconsistent with allegations in written statement—Tenability—(Evidence Act (1872), S. 115). See Constitution of India, Art. 226. AIR 1952 Raj 184 (DB).

——Ss. 7-A, 7, 2 (f) and 1 (2) (as amended by Act 42 of 1954) — Evacuee property — Shares in company having registered office at Calcutta — Jurisdiction of Custodian in Bihar—Situs of shares—Company having factory in Champaran in territorial limits of Bihar—If this gives jurisdiction to Bihar Custodian—View of Malik C. J. in A I R 1951 All 748 (764, 765), Dissent from, See Administration of Evacuee Property Act (1950) (as amended by Act 42 of 1954), S. 7. AIR 1957 Pat 312.

——Ss. 7-A and 7—Date of commencement of Amendment Act — Interpretation — (Administration of Evacuee Property (Amendment) Act (1954), Ss. 4 and 10). AIR 1958 Punj 78.

——Ss. 8 (4) and 9—Constitution of India, Art. 226—Mandamus — Notice by Custodian to trespassers to surrender possession is valid and legal—Writ against custodian of evacuee property to refrain from taking steps to dispossess petitioners cannot be granted. See Constitution of India, Art. 226. AIR 1955 All 598.

——Ss. 8, 7, 9, 10, 48—Powers of Custodian in respect of debt due to evacuee — There is no power on custodian authorising him to adjudge liability to a debt and to recover same. See Administration of Evacuee Property Act (31 of 1950), S. 7. 57 Bom L R 40 : I L R (1955) Bom 84 : AIR 1955 N U C (Bom) 2052.

——S 8—Constitution of India, Art. 226—Certiorari and Mandamus—Issuance of—Executive act—Futile writ — Manager appointed under S. 10(2)(b) of Administration of Evacuee Property Act — Cancellation of appointment — Cannot be remedied either by Certiorari or Mandamus. See Constitution of India, Art. 226. AIR 1962 Ker 152.

——Ss. 8 (2-A) 7, 7-A—Pepsu Administration of Evacuee Property Ordinance (17 of 2006, Bk.), S. 5 — Property belonging to Muslim evacuee automatically vests in custodian and continues to so vest—Effect of subsequent notification under S. 7(1) of Act — Effect of. See Administration of Evacuee Property Act (31 of 1950), S. 7. AIR 1963 Punj 494.

——Ss. 9, 7, 8, 10, 48—Powers of Custodian in respect of debt due to evacuee — There is no power on custodian authorising him to adjudge liability to a debt and to recover same. See Administration of Evacuee Property Act (31 of 1950), S. 7. I L R (1955) Bom 84 : AIR 1955 N U C (Bom) 2052.

——Ss. 9, 10, 11, 12, 8—Constitution of India, Arts. 19 and 31 and 14 — Validity. See Constitution of India, Art. 19. AIR 1953 Sau 73 (DB).

● ——S. 10—Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954), Ss. 10, 12, 16, 19—Effect of notification under S. 12, Displaced Persons (Compensation and Rehabilitation) Act — Evacuee property vests in Central Government — Allotment under Administration of Evacuee Property Act, cancelled — Property not held by allottee on date of notification under Displaced Persons (Compensation and Rehabilitation) Act—He cannot get benefit of S. 10 of Act 44 of 1954 — Ss. 16 and 19 of the Act prevail. See Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954), S. 10. AIR 1961 S C 1320 (a).

——Ss. 10, 26, 27—Constitution of India, Art. 226—Another remedy open — Order by custodian against fundamental principles of justice — Writ application will be maintainable even though there is another remedy under Administration of Evacuee Property Act — (Tendolkar J.). See Constitution of India, Art. 226. I L R (1955) Bom 84 : A I R 1955 N U C (Bom) 2052,

— S. 10 (27) — Constitution of India, Arts. 133(1) and 226 — Civil proceeding — Meaning of — (Words and Phrases). See Constitution of India, Art. 133(1). AIR 1959 Punj 58.

——Ss. 10 (2) (m) and 17 — Money decree — Execution—Sale of evacuee property not proper—Dismissal of application. AIR 1952 Punj 428 (429) (Pt B) (Pr 3) (DB).

——S. 10—Debt due to evacuee - Recover of, by custodian — Debt alleged to be barred by limitation — Extent of custodian's powers. See Administration of Evacuee Property Act (31 of 1950), S. 48. AIR 1952 Punj 389 (DB).

——Ss. 11, 12, 8, 9 and 10 — Constitution of India, Arts, 19 and 31 and 14—Validity. See Constitution of India, Art. 19. AIR 1953 Sau 73 (DB).

——S. 12 (1) — Order terminating tenancy without giving opportunity to tenant to show cause—Validity — Administration of Evacuee Property (Central) Rules (1950), R 14(4) — Retrospective effect of — (Constitution of India, Art. 226) — (Interpretation of Statutes). A I R 1953 Sau 20 (21) (Pt A) (Prs 3, 4) (DB).

——S. 13 — Scope. A I R 1953 Punj 21 (23) (Pt A) (Pr 14) (DB).

——S. 16 — Who can apply—Right to question constitutionality of law — See Constitution of India, Art. 226. AIR 1956 Punj 19.

——Ss. 17, 16 (3) — Limitation Act (1908), Ss. 15, 9, Art. 182 — Decree for eviction of tenant — Property declared evacuee property — Execution of decree is not suspended — Time during which property is in custody of custodian cannot be deducted—See Limitation Act (1908), S. 15. AIR 1963 Punj 457.

——Ss. 26, 27, 10 — Constitution of India, Art. 226—Another remedy open — Order by Custodian against fundamental principles of justice — Writ application will be maintainable even though there is another

remedy under Administration of Evacuee Property Act — (Tendolkar J.) — See Constituti on of India, Art. 226. I L R (1955) Bom 84 : A IR 1955 N U C (Bom) 2052.

● ——Ss. 26 and 27—Administration of Evacuee Property (Central) Rules (1950), R. 14 (6) — Amendments of R. 14 (6) — Action taken in cancelling allotments in pending cases before amendments — Orders are valid. AIR 1955 Punj 177 (FB).

——Ss. 26, 7 — Constitution of India, Art. 226 — Order without jurisdiction — Consent to order — Petitioner's right to challenge order subsequently — Other remedies — Inadequacy of — Plea inconsistent with allegations in written statement — Tenability — (Evidence Act (1872), S. 115) — See Constitution of India, Art. 226. AIR 1952 Raj 184 (DB).

——Ss. 27, 26, 10 — Constitution of India, Art. 226— Another remedy open — Order by custodian against fundamental principles of justice — Writ application will be maintainable even though there is another remedy under Administration of Evacuee Property Act — (Tendolkar J.) — See Constitution of India, Art. 226. I L R (1955) Bom 84 : A I R 1955 N U C (Bom) 2052.

● ——S. 45 (c) — Civil P. C. (1908), O. 22, R. 6 — Applicability — Proceedings under Administration of Evacuee Property Ordinance (1949) — See Civil P. C. (1908), O. 22, R. 6. AIR 1952 S C 319.

——S. 46 — Constitution of India, Art. 226 — Certiorari — Application for confirmation of sale by evacuees — Rejection by custodian on ground of lack of bona fide— Jurisdiction of Custodian General to dismiss appeal on ground of limitation — Power of High Court to consider correctness of decision — (Saurashtra Administration of Evacuee Property Ordinance (43 of 1949), S. 25—See Constitution of India, Art. 226. AIR 1952 Sau 112 (DB).

——Ss. 48, 7, 8, 9, 10 — Powers of Custodian in respect of debt due to evacuee — There is no power on custodian authorising him to adjudge liability to a debt and to recover same — See Administration of Evacuee Property Act (1950), S. 7. ILR (1955) Bom 84 : AIR 1955 N U C (Bom) 2052.

——S. 48 — Payment of sum in respect of evacuee property—Determination—Power of Custodian.

The Custodian is authorised to determine, after making such enquiry as he deemed fit, whether any sum is payable to the Government or to the Custodian in respect of any evacuee property. Before determining this question, he has of course to give an opportunity to the person by whom such sum is alleged to be payable and the decision of the Custodian on this point is to be final and not liable to be challenged by any Court or other authority except by way of an appeal or revision as provided under Act 31 of 1950. (1965) 67 Pun L R 526 : A I R 1966 Punj 226.

——S. 48 — Sums due to custodian and sums due to evacuee—Distinction. AIR 1953 Punj 21 (23) (Pt B) (Pr 15) (DB).

● ——Ss. 55, 27, 56 — Powers of Deputy Custodian General in revision on 17-7-1952 — Cancellation of allotment—No error on face of record—No certiorari — (Constitution of India, Art. 226 — Error apparent on face of record) — See Administration of Evacuee Property Act (1950), S. 27. AIR 1957 S C 804.

● ——Ss. 55, 12 — Constitution of India, Arts. 19 (1) (f), 31 (1) and 31 (2) — Rights of quasi-permanent allottee do not constitute property within Articles — E. P. Evacuee's (Administration of Property) Act (14 of 1947), Ss. 9A and 22 (2) (f) and (ff) — (Administration of Evacuee Property (Central) Rules (1950), R. 14) — (Displaced Persons (Compensation and Rehabilitation) Act (1954), Ss. 10, 12 and 19) — (Displaced Persons Compensation and Rehabilitation Rules (1957), Rr. 72 (2) and 102)—See Constitution of India, Art. 19 (1) (f). AIR 1957 S C 599.

——Ss. 55, 7, 2 (d) (ii), 8 (2) — Declaration of property as evacuee property — Action not taken either under State law or under Central enactments—There cannot be automatic vesting of property in Custodian —See Administration of Evacuee Property Act (1950), S. 7. AIR 1962 Madh Pra 38.

——Ss. 57, 8 (2), 16 (1) — Rules under S. 57 — Administration of Evacuee Property (Central) Rules, (1950), R. 37 —Person and his property ceasing to be evacuee and evacuee property respectively under Pepsu Ordinance (17 of 2006 Bk.) — Restoration of property — (Pepsu Administration of Evacuee Property Ordinance (17 of 2006 Bk.), Ss. 2 (d), 5 (2)) — (Patiala Evacuees (Administration of Property) Ordinance (19 of 2004 Bk.), S. 5) — See Administration of Evacuee Property Act (31 of 1950), S. 8 (2). AIR 1956 Pepsu 54.

ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) ACT (42 of 1954)

——Ss. 4, 10 — Administration of Evacuee Property Act (1950), S. 7A (added by Administration of Evacuee Property (Amendment) Act, 1954)—Date of commencement of Act — Notice issued on 4-4-1955 if filed beyond six months — See Administration of Evacuee Property Act (1950), S. 7A (added by Administration of Evacuee Property (Amendment) Act (1954). AIR 1958 All 104.

——Ss. 10, 4 — Administration of Evacuee Property Act (1950), S. 7A (added by Administration of Evacuee Property (Amendment) Act, 1954) — Date of commencement of Act — Notice issued on 4-4-1955 if filed beyond six months — See Administration of Evacuee Property Act (1950), S. 7A (added by Administration of Evacuee Property (Amendment) Act (1954). AIR 1958 All 104.

ADMINISTRATION OF EVACUEE PROPERTY (CENTRAL) RULES (1950)

● ——R. 5 (5) — Administration of Evacuee Property Act (1950), S. 24 —"Person aggrieved" - See Administration of Evacuee Property Act (1950), S. 24. A I R 1952 S C 319.

——R. 6 (2) — Administration of Evacuee Property Act (1950), S. 7 (1) — Notice under—Non mention of particulars of property—Mention of wrong section — Validity — See Administration of Evacuee Property Act (1950), S. 7 (1). AIR 1957 Pat 235.

● ——R. 14 (6), Proviso and Ss. 12, 27—Allotment on or before 22-7-1952—Power of Custodian-General to set it aside — See Administration of Evacuee Property Act (1950), S. 12. AIR 1961 S C 1371.

——R. 14 (5) —Scope —No limit to powers of custodian to cancel lease. AIR 1955 N U C (Punj) 5981.

——R. 14 (4) — Administration of Evacuee Property Act (1950), S. 12 (1) — Order terminating tenancy without giving opportunity to tenant to show cause —Validity—Retrospective effect of — (Constitution of India, Art. 226) — (Interpretation of Statutes) — See Administration of Evacuee Property Act (1950), S. 12 (1). AIR 1953 Sau 20 (DB).

——Rr. 22, 43 — Administration of Evacuee Property Act (1950), S. 10 (2) (m) — Suit by plaintiff—Pending suit plaintiff declared evacuee — Custodian continuing suit—Solicitors engaged by plaintiff engaged also by Custodian — Costs incurred by solicitors — Their remedy for recovery of — Pay order if can be made — (High Court Rules and Orders — Bombay High Court Original Side Rules, Rule 1079) — (Civil P. C.

(1908), S. 35) — See Administration of Evacuee Property Act (1950), S. 10 (2) (m). AIR 1959 Bom 162.

——R. 22 — Administration of Evacuee Property Act (1950), Ss. 10 (2) (m) and 17—Prior to its amendment in 1956 — Registration of decretal claim against evacuee does not confer vested right on decree-holder — Department is not bound to discharge the debts due from evacuee in view of R. 22 (3) — Decree cannot be executed against evacuee property in view of S. 17 — Hence amendment of S. 102 (m) and deletion of R. 22 in 1956 cannot be said to be ineffective —See Administration of Evacuee Property Act (1950), S. 10 (2) (m). AIR 1960 Punj 357.

● ——R. 31 (5) and S. 27 — Revision application to Custodian-General—Limitation—Period of sixty days is a rule of guidance — Applicability of S. 5, Limitation Act — Discretion of Custodian-General — Limits of—Limitation Act (1908), S. 5 — See Administration of Evacuee Property Act (1950), S. 27. A I R 1961 S C 1371.

——Rr. 43, 22 — Administration of Evacuee Property Act (1950), S. 10 (2) (m)—Suits by plaintiff—Pending suit plaintiff declared evacuee — Custodian continuing suit—Solicitors engaged by plaintiff engaged also by Custodian — Costs incurred by solicitors — Their remedy for recovery of — Pay order if can be made — (High Court Rules and Orders — Bombay High Court Original Side Rules, Rule 1079) — (Civil P C. (1908), S. 35) — See Administration of Evacuee Property Act (1950), S. 10 (2) (m). AIR 1959 Bom 162.

ADMINISTRATION OF EVACUEE PROPERTY (CHIEF COMMISSIONERS PROVINCES) AMENDMENT ORDINANCE (20 of 1949)

——Validity — Extension of Ordinance to U. P. by Ordinance, 20 of 1949 — Effect — (Government of India Act, 1935, Ss. 42 (3), 99, 100 and 104) — Constitution of India, Arts. 123, 245, 246, 248. See Administration of Evacuee Property (Chief Commissioners Provinces) Ordinance (12 of 1949). AIR 1957 All 561.

ADMINISTRATION OF EVACUEE PROPERTY ORDINANCE (27 of 1949)

——Ss. 10, 12 — Functions of Custodian. A I R 1951 Punj 171 (173) (Pt C) (Pr 7) (DB).

——S. 12 (read with rules framed under S. 53) — Power of Custodian to eject tenant when can be exercised. A I R 1951 Punj 171 (173) (Pt B) (Pr 7) (DB).

——Ss. 41, 55—U. P. Administration of Evacuee Property Ordinance (1 of 1949), S. 5—Vesting of evacuee property in custodian — Administration of Evacuee Property Ordinance (20 of 1949), S. 41—Administration of Evacuee Property Act (31 of 1950), S. 58 (3)—Effect of — Life of Ordinance cannot be extended by another Ordinance—(Government of India Act (1935), S. 88). See U. P. Administration of Evacuee Property Ordinance (1 of 1949), S. 5. A I R 1955 N U C (All) 1412.

——S. 55—Pepsu Administration of Evacuee Property Ordinance (17 of 2006-B.K.), S. 40 (2)—Scope of. See Pepsu Administration of Evacuee Property Ordinance (17 of 2006 B.K.), S. 40 (2). AIR 1956 Pepsu 54.

ADMINISTRATION OF JUSTICE AND POLICE IN (GARO HILLS DISTRICT)

——R. 3 — There is no provision in the rules framed for the administration of justice in the Garo Hills which authorises a Deputy Commissioner to refer the matter again to the Panchayat after the Panchayat's decision has become infructuous, for one reason or another. ILR (1952) 4 Assam 169 : AIR 1953 Assam 106.

——R. 35 — Other remedies open — Decision by Deputy Commissioner in summary proceeding is subject to result of title suit — Revision application will not be encouraged—(Civil P. C. (1908), S. 115). AIR 1955 N U C (Assam) 1303.

ADMINISTRATION OF JUSTICE AND POLICE IN KHASI AND JAINTIA HILLS DISTRICT RULES

——R. 36 — Demarcation of boundaries by Myntries of Mylliem State in conformity with judgment of Dewan — Appeal—Revision—Jurisdiction of Dominion Agent.

The Dominion Agent has no jurisdiction to interfere in the demarcation of the boundaries in conformity with the judgment of the Dewan of Mylliem State arrived at by the Myntries of Mylliem State Court. The request of the parties to the Siem of Mylliem State in the matter of the demarcation of the boundary line, is only a step-in-aid of the execution of the decree passed by the Dewan. There is no provision in the Rules framed for the administratration of justice and Police in the Khasi States area which provides for an appeal against an action taken as a step-in-aid to the execution of a decree. It is also plain from those Rules that the Dominion Agent has no revisional powers. The demarcation of the boundaries by the Myntries is merely in the nature of an interlocutory proceeding, manifestly outside the purview of R. 36. ILR (1950) 2 Assam 200 : A I R 1951 Assam 34 (35) (Pr 6) (DB).

ADMINISTRATION OF ORISSA STATES ORDER (31 of 1948)

● ——Cl. 4 (b)—Constitution of India, Arts. 372 (1), 366 (10), 13 (3)—Foreign Jurisdiction Act (1947), S. 3 (2) — Order by absolute monarch — Jurisprudential distinction between legislative and executive power applies—Main characteristics of law—Sanad granted by absolute monarch—Nature of—How determined—Grant for maintenance of younger brother by former ruler of Dhenkanal State — Held an executive order and not existing law within Art. 372 (1) — Modification thereof by successor government held valid. See Constitution of India, Art. 372 (1). A I R 1964 S C 1793.

——Cl. 4 (b) — Merger of former State in Indian Union — Effect on grant by former Ruler — Grant of land and cash allowance for maintenance to younger brother — Union Government refusing to recognise cash allowance—Act amounts to act of State—Claim by grantee not justiciable—Continuance of allowance till completion of enquiry — Effect — Claim held not based on special family custom. See Constitution of India, Art. 51. A I R 1962 Orissa 60.

ADVOCATES ACT (25 of 1961)

——S. 24 — Art. 17 of Mysore Stamp Act (1957) (as amended in 1962) is not repugnant to S. 24. See Constitution of India, Art. 254. (1965) 2 Mys L J 119 : A I R 1966 Mys 139.

——S. 30 — Rule prohibiting appearance of legal practitioner in arbitration proceedings under U. P. Co-operative Societies Act — Rule, when ceases to operate by virtue of S. 30 of Advocate's Act. See Co-operative Societies — U. P. Co-operative Societies Rules (1936), R. 138. 1965 All W R (HC) 258.

● ——S. 32 — Hyderabad High Court — Power of, to grant permission to any Advocate from outside, not on the rolls of the High Court to appear in particular Civil case — Hyderabad High Court Act (3 of 1337), S. 13 (18) and (24) — Hyderabad Legal Practitioners Act (6 of 1318), S. 3 — Part B States (Laws)

Act (1951), S. 6 — Bar Councils Act (1926), S. 19 (4) —Legal Practitioners Act (1879)—Civil P. C. (1908), Ss. 116, 151—Constitution of India, Art. 225.

Majority opinion of the Full Bench,

(1) (Per Naik, C. J., Sripat Rao, A. M., Ansari, M. A. Ansari, M. S. Ali Khan. Suryanarayana Rao, Srinivasa Chari, JJ.—Manohar Prasad and V. R. Deshpade JJ. Contra.—Even though all the provisions of the Indian Bar Councils Act, 1926 and the Indian Legal Practitioners Act, 1879 have not been made applicable to the Hyderabad State by a proper notification in this regard, the Hyderabad High Court has full power to grant permission to any Advocate from outside the State who is not on the rolls of that High Court to appear and argue in a Civil Case.

Per Naik, C. J.:—Section 3 of the Hyderabad Legal Practitioners Act has been repealed and is no longer in force and at any rate it certainly does not control the exercise of powers of the Hyderabad High Court under sub-section (18) of S. 13 of the High Court Act. Besides, S. 3 of the said Act refers to persons who are entitled to practise as a matter of right. To have a right to appear in a case is one thing and to permit anyone to appear in a special case is quite another thing. In one case it is the right of the individual and in another, it is the discretion of the High Court.

Per M. A. Ansari, J.: — The High Court's powers under S. 13 (18) of the High Court Act are still intact, which has been preserved by Art. 225 of the Constitution and permission can be granted by it to any Advocate from outside who is not on the rolls of this Court.

(2) Per Naik C. J., Sripat Rao, A. M. Ansari, M. A. Ansari, Suryanarayana Rao and V. R. Deshpande, JJ.:

Section 19 (4), Indian Bar Councils Act and S. 6, Part B States (Laws) Act read with S. 16, Hyderabad General Clauses Act do not affect the powers of the Hyderabad High Court to grant such permission.

Per Naik C. J.: — The effect of the application of S. 19 (4) of the Indian Bar Councils Act and S. 6 of the Part B States (Laws) Act, read with S. 16 of the Hyderabad General Clauses Act does not save S. 3 of the Hyderabad Legal Practitioners Act. Section 19 (4) of the Indian Bar Councils Act is the usual provision made in the case of repealed and amended enactments. It has nothing to do with the grant of a permission to on Advocate enrolled in other High Courts in India. If any thing, it supports the contention that whatever prohibition there may have been under S. 3 of the Hyderabad Legal Practitioners Act and the rules made thereunder, they cannot be deemed in force as being repugnant to the context of this Act. Similarly, S. 6 of the Part B States (Laws) Act read with S. 16 of the Hyderabad General Clauses Act provides the saving of the previous operation of the law and treats the acts done thereunder so far as they are not opposed to the provisions of the new law. None of these sections come in the way of the High Court granting permission to a lawyer to appear in a particular case. In the very nature of things, the High Court has the power to grant permission when it deems it necessary in the interests of justice.

Per Manohar Prasad J.: — S. 3 of the Hyderabad Legal Practitioners Act remains in force unrepealed. The effect of the application of S 19 Cl. (4) of the Indian Bar Councils Act of 1926 and S. 6 of Part B States Laws Act read with Ss. 16 and 19 of the Hyderabad General Clauses Act is that only such of the provisions of the Hyderabad Legal Practitioners Act as are inconsistent with the provisions which have come into operation will stand repealed pro tanto leaving unaffected the other provisions of the Hyderabad Legal Practitioners Act.

(3) Per Naik, C. J., Sripat Rao, A. M. Ansari, M. A. Ansari, Srinivasachari, JJ. Surayanarayana Rao and V. R. Deshpande, JJ.:—Irrespective of any enactment the High Court as a court of Record has inherent power to grant permission to Advocates who are not on the rolls of the High Court to appear in particular Civil cases.

Per Manohar Prasad and M. S. Ali Khan, JJ.:—Question of inherent power does not arise when there is specific provision. Ramdayal v. Shankarlal, **A I R 1951 Hyd 140 (141 to 143, 144, 145. 146, 147, 148 to 162) (Pt A) (Prs 7 to 11, 12, 16, 28, 35, to 37, 40 45, 51, 61, 68, 69, 74, 75, 78, 83, 89, 99, 101, 106, 114A, 115, 121 to 123, 125) (FB).**

——Chap. 5—(Ss. 35, 44) — S. 56 contemplates case which is pending before erstwhile Bar Council and not one which is referred to District Judge after consultation with Bar Council — Moreover since Ch. 5 of Act of 1961 had not come into force, provisions of Act 1926 are still available to District Judge to hold enquiry. See Advocates Act (1961), S. 56. **I L R (1964) Andh Pra 168.**

——S. 49 (c) — Rules under S. 1, Cl. (1) — Advocate feeling personally aggrieved by the order of Industrial Tribunal awarding cost against his client a party to the dispute, has to take action under S. 1 Cl. (1) of Rules — He is not entitled to move the High Court for prerogative writ—Constitution of India, Art. 226. **69 Cal W N 860 : (1966) 1 Lab L J 220 : A I R 1966 Cal 250.**

● ——S. 56—Bar Councils Act (38 of 1926), S. 10 (2) —Advocates Act (1961), Ss. 35, 50 and 56 — Professional misconduct by advocate — Complaint made to High Court referred for inquiry to District Court under S. 10 (2), Bar Councils Act—Report of District Court pending before High Court for final orders—Jurisdiction of High Court to deal with complaint after enactment of Advocates Act—Held, not affected. See Bar Councils Act (1926), S. 10 (2). **A I R 1964 Andh Pra 261 (FB).**

——S. 56 and Chap. 5—Bar Councils Act (1926), S. 10 (2)—S. 56 contemplates case which is pending before erstwhile Bar Council and not one which is referred to District Judge after consultation with Bar Council —Moreover since Chap. 5 of Act of 1961 had not come into force, provisions of Act 1926 are still available to District Judge to hold enquiry. **I L R (1964) Andh Pra 168.**

——Ss. 58 (4), 50 (2) and 24 — After 1-12-1961, viz., the date on which S. 50 (2) came into force, the High Court of Mysore not empowered to admit and issue certificates to Pleaders under Legal Practitioners Act —(Legal Practitioners Act (1879), Ss. 6 and 7).

After 1-12-1961, i. e., the date on which S. 50 (2) of the Advocates Act came into force as per notification dated 24-11-1961 issued by the Government of India, the High Court of Mysore could not admit any person as a pleader nor could it issue any certificate to a pleader or renew a certificate already issued. Consequently persons who were admitted as pleaders after this date could not be said to have been validly admitted as pleaders and as such they are not entitled to be enrolled as advocates under S. 24 of the Advocates Act.

Sections 6 and 7 of the Legal Practitioners Act read together show that they provide for (1) prescribing qualifications for admission of persons as pleaders (2) issue of certificates to them and (3) renewal of certificates issued. Although in practice there may not be any formal order admitting a person as a pleader and all that is done is to issue him a pleadership certificate, but in the eye of the law there are two stages under these sections, viz., admission as a pleader and the issue of a certificate though in practice for the sake of convenience that these two acts may be merged into one.

——Ss. 33, 52 — Criminal P. C. (1898), Ss. 247, 4 (1) (f), 4 (1) (h), 190 (1) (b)—Applicability—Warrant case — Cognizance on police report—S. 247 does not apply. See Criminal P. C. (1898), S. 247. AIR 1956 Ajmer 24.

——S. 33 (f) — Possession of fermented 'gur.'

Possession of fermented 'gur' for the purpose of manufacturing any excisable article would fall within S. 33 (f). 1956 Cri L J 1 : AIR 1956 Ajmer 2 (3) (Pt C) (Pr 5).

——S. 33 (b)—Prosecution under, for breach of order under R. 15 (a) of Notification No. E (1)/5/53 D and W dated 7.2-1953— Validity of order cannot be challedged in criminal trial — Proper remedy is by way of appeal under Regulation or under Art. 226 — R. 15 (a) held valid—(Constitution of India, Art. 226). AIR 1955 N U C (Ajmer) 2618.

——Ss. 52, 33 — Criminal Procedure Code (1898), Ss. 247, 4 (1) (f), 4 (1) (h), 190 (1) (b) — Applicability — Warrant case — Cognizance on police report — S. 247 does not apply. See Criminal P. C. (1898), S. 247. AIR 1956 Ajmer 24.

AJMER LAWS REGULATION (3 of 1877)

——S. 9—Plaintiff claiming right to pre-empt property in suit as against vendee-defendant — Plaintiff and defendant both members of village community — Court has no option but to determine right of pre-emption by drawing lot. AIR 1952 Ajmer 57 (58) (Pt B) (Pr 5).

●——Ss. 46, 40—Constitution of India, Arts. 19 (1) (f), 19 (1) (g) — Right to hold fair on one's land — It is a fundamental right under Art. 19 (1) (f) and (g) — It can be restricted in manner permitted by sub cl. (5) of Art. 19 — Rules under R. 1. See Constitution of India, Art. 19 (1). AIR 1955 S C 188.

AJMER-MERWARA AGRARIAN RELIEF ORDINANCE (8 of 1949)

——S. 18 — Whether landholder should personally enter upon land (Quaere). AIR 1951 Ajmer 6 (7) (Pt B) (Pr 4).

AJMER MINIMUM WAGES RULES

——R. 3 — Retrospective extension.

The Chief Commissioner has power to extend the term of the committee even retrospectively. AIR 1953 Ajmer 65 (71) (Pt F) (Pr 38).

——Rr. 8 (3) and 9 (2) — Applicability — Letter of resignation — Failure to attend three consecutive meetings — Action under R. 8 (3).

Where a member of the committee by a letter informed the Chairman that he would be away from India for a certain period and that if the report of the committee was desired before his return the letter might be treated as his resignation and he failed to attend three consecutive meetings.

Held that the Government was justified in treating the letter as a letter of resignation and in procceding to fill up the vacancy under R. 8 (3). AIR 1953 Ajmer 65 (73) (Pt I) (Pr 51).

——R. 15, Proviso — Applicability — Circulation of papers.

Where a meeting of the committee is held and the papers are sent to a member as described by him, it eannot be said that circulation of papers was intended or made and as such the proviso to R. 15 will not apply. AIR 1953 Ajmer 65 (73) (Pt K) (Pr 55).

ALLAHABAD BAR COUNCIL RULES (as amended in 1950 and 1951)

●——R. 1, Proviso 6 — Bar Councils Act (1926), S. 9 —Advocate of Burma coming to India and seeking admission as advocate in Allahabad High Court — He must satisfy rules as amended — Even under Rules not so amended held Proviso 6 to R. 1 was a bar. See Bar Councils Act, 1926, S. 9. AIR 1957 All 536 (FB).

ALLAHABAD UNIVERSITY ACT (3 of 1921)

——Ss. 9, 12 and Ch. XXII of Statutes— Constitution of India, Art. 226 — Writ against statutory authority like Vice-Chancellor of University — Vice-Chancellor expelling student from University for gross misconduct in exercise of disciplinary action— Opportunity to be heard not given — Principles of natural justice if violated. See Constitution of India, Art. 226. AIR 1956 All 503.

——Ss 12, 9 and Ch. XXII of Statute — Constitution of India, Art. 226 — Writ against statutory authority like Vice-Chancellor of University— Vice-Chancellor expelling student from University for gross misconduct in exercise of disciplinary action— Opportunity to be heard not given — Principles of natural justice if violated. See Constitution of India, Art. 226. AIR 1956 All 503.

——S. 42 — Constitution of India, Art. 226 — Error apparent on face of record — Incorrect interpretation of statute—Mere mistake of law and error apparent on face of record — Order passed by Chancellor of University — Writ of certiorari. See Constitution of India, Art. 226. AIR 1956 All 603.

ALLAHABAD UNIVERSITY STATUTES

——Chap. 22—Constitution of India. Art. 226—Writ against statutory authority like Vice-Chancellor of University — Vice-Chancellor expelling student from University for gross misconduct in exercise of disciplinary action—Opportunity to be heard not given—Principles of natural justice if violated. See Constitution of India, Art. 226. AIR 1956 All 503.

ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTE) AWARD

——Paras. 521 (10) (c) (d) and (e) — Industrial Disputes Act (1947), S. 18 — Sastri Bank Award, Paras 521 (e), 521 (10) (c) and 521 (10) (d) — Bank award is binding on State Bank of India and its employee — Discharge of employee not on ground of disciplinary action — Hearing of employee is not necessary — Discharge held not as punishment — No appeal is maintainable. See Industrial Disputes Act (1947), S. 18. AIR 1958 Pat 418.

ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES (1955)

——R. 4 (b)—Disciplinary proceeding against person serving in All India Administrative Service for alleged acts and omissions committed by him during his service under Government of Part B State of Hyderabad — Part B State of Hyderabad ceasing to exist after States Reorganisation Act — Disciplinary proceeding initiated on 4-7-1961 by State of Andhra Pradesh on the opinion of the Central Government— Opinion of Central Government is not final and will not cut down power of Court to construe rule — S. 119 applied to all laws in force in Hyderabad — R. 4 (b) applied to territory merged in State of Andhra Pradesh. See States Reorganisation Act (1956), S. 119. 1965 Pun L R (Supp) 358 : ILR (1966) 1 Punj 668.

——Rr. 5, 3, Explu. (4) — Constitution of India, Art. 311 — Indian Police Service (Recruitment) Rules (1954), R. 4 — Indian Police Service (Cadre) Rules (1954), Rr. 4 (1) and 8 — Indian Police Service (Fixation of Cadre Strength) Regulations (1955)—Right to hold post when is acquired by Government Servant— Promotion to cadre post in Indian Police Service—

acquired for public purpose — Assignment of the land when the purpose ceases — Right of heirs of original owners to priority over other persons.

Certain lands, which originally belonged to the ancestors of the respondents, were acquired by the Government for a public purpose, viz , the excavation of a tank. It was later found that the tank was unnecessary and the project was given up. The Government assigned the lands to certain persons other than the heirs of the original owners, the respondents. In a writ petition preferred to the High Court, the claim of the respondents was upheld and the Government order was quashed. The State preferred a Writ Appeal.

Held, it is manifest from Board's Standing O. 90, R. 32 (vii) that no right is created in any of the heirs of the original owners to claim the lands. It is only as a matter of grace that the assignment of land is made in favour of persons to whom the proprietary rights or the right of occupancy belong or to their heirs. Sub-clause (3) embodies Instructions to the Board of Revenue to offer the land in the circumstances indicated therein to the original proprietors or their heirs. That rule does not interfere with the discretion of the Government envisaged in sub-rule (vii). **(1965) 1 Andh L T 170 : (1965) 1 Andh W R 74.**

ANDHRA PRADESH BUSINESS RULES

——R. 51—Constitution of India, Arts. 200, 168, 212, 226 — Bill passed by Legislative Assembly — Presentation to Governor is essential legislative process — Prayer for injunction against Council of Ministers for preventing such presentation — Courts will not allow it. See Constitution of India, Art. 200. **AIR 1965 Andh Pra 306.**

ANDHRA PRADESH COURT-FEES AND SUITS VALUATION ACT (7 of 1956)

——Constitution of India, Arts. 14, 229 (3), Sch. 7, List I Entry 96, List II Entries 3 and 66 and List III Entry 47—Andhra State law prescribing particular court-fee for writ petitions — Validity. See Constitution of India, Art. 14. **AIR 1959 Andh Pra 271.**

——Ss. 63, 64, 65, 66 — Court has no inherent power to sanction refund of court-fee, apart from matters mentioned in Ss. 63 to 66. **AIR 1965 Andh Pra 395.**

——S. 79 (2)—Appeal in a suit to set aside a claim order arising out of a suit filed prior to the passing of the Act — Claim order passed after Act — Court-fee on appeal memo has to he paid under the new Act— 1959 (2) An. W. R. 330 and S. R. 37021/59 (A. P.) d. 25.11-1959, Applied. **(1962) 1 Andh L T 478.**

ANDHRA PRADESH FOREST LAWS (AMENDMENT) ACT (11 of 1963)

——Ss. 43 and 47 — Consfication of property under S. 43 — Provisions of S. 43 not mandatory — Order of consfication is appealable under S. 47 — Scope of powers of appellate Court stated.

Under S. 43 of the Act, the Magistrate is bound to confiscate to the Government the timber of the forest produce and also any tool, boat, cattle or vehicle which had been used in committing the offence. But his order of consfiscation is appealable and the person interested in the property seized in pursuance of the order under S. 43 can file an appeal under S. 47, to the Sessions Court within the prescribed period. The appellate court is certainly entitled to ascertain whether the property which has been confiscated by the Magistrate really belonged to the accused and whether the rights of third parties have been safeguarded by making the said order. If the scope of the appeal is to be limited to mean that the provisions of S. 43 are mandatory and that the appellate Court must confine itself to the determination of the fact whether the vehicle was used for the commission of the offence and whether the value of the property seized was more or less than Rs. 50, the aggrieved party will be precluded from putting forth any claim whatsoever, in regard to the interests in the property seized under section 43 and his ultimate remedy probably would be a civil suit against the persons who got the vehicle involved in the commission of the offence; but that could not be the object of the Legislature. No doubt the Legislature by amending section 43 of the Act has taken away the discretion of the Magistrate in ordering confiscation of the property employed in the commission of the offence but by retaining the provisions in section 47 the powers of the appellate Court have not been curtailed. **(1965) 2 Andh W R 195 : 1965 Mad L J (Cri) 656 : (1965) 2 Andh L T 219: ILR (1965) Anddh Pra 1259.**

ANDHRA PRADESH LEGISLATIVE ASSEMBLY RULES

——Rr. 35, Proviso, 164-O—Regional Committee Bye-laws under R. 164-O — Bye-law No 4 — Meeting of the committee — Date and place of — Intimation by mode prescribed by R 35 — Proviso held sufficient. **A I R 1965 Andh Pra 306.**

——Rr. 164-O, 35, Proviso—Regional Committee Bye-laws under R. 164-O—Byelaw No. 4—Meeting of the committee—Date and place of — Intimation by mode prescribed by R. 35 — Proviso held sufficient. See Andhra Pradesh Legislative Assembly Rules, R. 35, Proviso. **A I R 1965 Andh Pra 306.**

ANDHRA PRADESH MOTOR VEHICLES RULES (1957)

——R. 4 — Scheme under S. 68C of the Andhra Pradesh Motor Vehicles Act (1939) (as amended in 1956) —Particulars regarding number of vehicles proposed to be operated on each route and their daily trips stated in terms of maximum and minimum numbers instead of stating their exact number—Such specification does not per se offend R. 4. See Motor Vehicles Act (1939) (as amended in 1956), S. 68C. **(1965) 1 Andh W R 471 : A I R 1966 Andh Pra 42.**

●——R. 5 — Motor Vehicles Act (1939), Ss. 68-E, 68 (1) (as amended by Act 100 of 1956) — R. 5 is inconsistent with S. 68-E and is, therefore, void. See Motor Vehicles Act (1939) (as amended by Act 100 of 1956), S. 68-E. **AIR 1961 S C 82.**

——R. 8 — Scheme under S. 68C of the Andhra Pradesh Motor Vehicles Act (1939) (as amended in 1956) —Particulars regarding number of vehicles proposed to be operated on each route and their daily trips stated in terms of maximum and minimum numbers instead of stating their exact number — Such specification does not militate against raising effective objections under S. 68D of the Act and R, 8. See Motor Vehicles Act (1939) (as amended in 1956), S. 68-C. **(1965) 1 Andh W R 471 : A I R 1966 Andh Pra 42.**

——R. 10—Scheme under S. 68C of the Andhra Pradesh Motor Vehicles Act (1939), (as amended in 1956) —Particulars regarding number of vehicles proposed to be operated on each route and their daily trips stated in terms of maximum and minimum numbers instead of stating their exact number—Such specification does not militate against raising effective objections under S. 68D of the Act and R. 10. See Motor Vehicles Act (1939) (as amended in 1956), S. 68-C. **(1965) 1 Andh W R 471 : A I R 1966 Andh Pra 42.**

——R. 11 — Scheme under S. 68C of the Andhra Pradesh Motor Vehicles Act (1939) (as amended in 1956) — Cancellation of permits without notice to existing permit holders is invalid. See Motor Vehicles Act (1939) (as amended in 1956), S. 68-C. **(1965) 1 Andh W R 471 : A I R 1966 Andh Pra 42.**

ANDHRA PRADESH MOTOR VEHICLES (TAXATION OF PASSENGERS AND GOODS) ACT (21 of 1959)

——Constitution of India, Article 14 — Madras Motor Vehicles (Taxation of Passengers and Goods) (Andhra Pradesh Amendment) Act (21 of 1959) — Validity — Act cannot be held to contravene Art. 14 on ground that transport operators in Andhra State plying vehicles on routes lying in Madras and Andhra States are in unfavourable position compared to transport operators in Madras State plying buses on the same routes. See Constitution of India, Art. 14. AIR 1962 Andh Pra 103.

——Constitution of India, Arts. 301, 304 — Madras Motor Vehicles (Taxation of Passengers and Goods) (Andhra Pradesh Amendment) Act (21 of 1959) — Validity — Act attracts Art. 304 (b) Proviso and is invalid for want of previous sanction of President. See Constitution of India, Art. 301. A I R 1962 Andh Pra 103.

ANDHRA PRADESH MOTOR VEHICLES (TAXATION OF PASSENGERS AND GOODS) (AMENDMENT AND VALIDATION) ACT (34 of 1961)

——S. 1—Madras Motor Vehicles (Taxation of Passengers and Goods) Act 16 of 1952), S. 19 (as added by Andhra Pradesh Act 10 of 1958)—Constitution of India, Art. 14—Neither Act 34 of 1961 nor S. 19 of Act 16 of 1952 does infringe Art. 14—Motor Vehicles Act (1939), Ss. 48 and 63 — Conditions contemplated by S. 48 do not include levy of additional tax—R T. A. is therefore not authorised to impose such condition while endorsing permit under S. 63.

The contention that Act 34 of 1961 is opposed to the doctrine of equality of law enunciated in Art. 14 of the Constitution in that the operators with permits from the Madras State are not liable to bear the heavy incidence of taxation to which petitioners are subject, that the public utilise the services of the carriers registered in the Madras State and plying on the routes in this State as their charges are less than those of the petitioners and this adversely affects their business, has no substance. If the operaters of stage carriages registered in Madras State are charged less, it is not due to anything contained in the impugned Act. The difference in the rates of tax is traceable to the difference in laws in operation in both the States. It is not a case of the legislature of this State making different laws for different areas in the State or as applicable to different operators. The advantages and disadvantages are the result of different laws in force in different States. The source of authority for these two statutes being different, no complaint could be made on the ground of denial of equality of treatment. The power of a Court to declare a law void under Art. 14 could be exercised only with reference to the legislation impugned and the laws of two different States could not be compared to show the discriminatory nature of one of them. Moreover, it is open to a State to make a territorial classification even in regard to fiscal measures and in fact it enjoys a greater latitude in that behalf : (1961) 1 Andh W R 351 and (1955) 1 S C R 599 and 13 S T C 679 and 13 S T C 529 and 13 S T C 233, Rel. on.

The petitioners fell back upon the argument that there was no impediment in the way of the transport authorities imposing an additional tax on the operators registered in Madras plying their vehicles on routes in Andhra Pradesh, when they apply to the transport authorities for endorsement of their permits. It is said that the operators of another States could not ply their vehicles in this State without having their permits endorsed and the authorities concerned could avail themselves of this opportunity to levy additional tax in respect of the routes situate in this State to equalise the incidence of taxation between the two sets of operators, so that the petitioners and those similarly situated might not be at a disadvantage. But it has to be borne in mind in this context that it is by mutual arrangement between the two States that permit holders in one State are allowed to ply vehicles on any of the routes in the other State. The permit is granted by the State in which the route commences and the operator could, on the basis of that permit, carry on his business in the other State without paying the additional tax. The necessity for endorsement arises under S. 63 of the Motor Vehicles Act, which, inter alia, provides for the validation of permits, if used outside the region in which they are granted. It postulates that a permit granted in any one State would not be valid in any other State unless countersigned by the Regional Transport Authority of the other State. However, under that section, the counter-signing authority could only attach to the permit any condition which could have been imposed if that authority had granted the permit. It is section 48 that authorises a transport authority to attach conditions to a stage carriage permit. But the conditions contemplated by that section do not include the levy of additional tax. Hence, it is futile to contend that the transport authorities of this State could impose taxes within the contemplation of the impugned Act on the operators of Madras State at the time of the endorsement of the permits under S. 63 of the Act. The contention that S. 19 of Act 16 of 1952 which has to be imported into the Act 34 of 1961 confers absolute powers on Government in the matter of grant of exemption from the operation of Act 34 of 1961, which could be exercised discriminatingly as between two sets of operators has also no substance. S. 19 vests a general power in Government to exempt any person or class of persons without making any distinction between persons of various classes and does not exclude any class or category of operators. So, the section itself is free from challenge and is constitutionally valid. That a general power to grant exemption similar to the one contained in S. 19 conferred on the State Government cannot be impeached and that it is only individual orders of exemption passed by the Government that could be subject of judicial review to find out whether it was discriminatory as to be hit at by Art. 14. Even assuming that S. 19 is not in conformity with Art. 14 that provision alone could be held invalid and it does not touch legality of impugned Act. Even if notification issued under S. 19 is to be nullified, that would not confer any advantage on petitioners, as exemption cannot be claimed as matter of right, it being only a matter of grace: (1962) 1 S C J 194, Rel. on. AIR 1932 S C 723, Disting. ILR (1964) Andh Pra 1333 (DB).

——S. 1—Constitution of India, Arts. 19 (1) (g). 19 (6) and 304 (b)—Act is not repugnant to Art. 19 (1) (g)—It falls within protection of Arts. 19 (6) and 304 (b). A I R 1962 S C 148 and A I R 1962 S C 1563 and (1952) 1 M L J 203, Rel. on. ILR (1964) Andh Pra 1338 (DB).

—S. 1 (3)—Tax due under Act can be collected even after Act ceased to have effect on 1st April 62. ILR (1964) Andh Pra 1338 (DB).

——S. 3—S. 3 does not violate Art. 14 of the Constitution — Constitution of India, Art. 14. ILR (1964) Andh Pra 1338 (DB).

——S. 8—S. 8 is not beyond competence of State Legislature as it validates only the Act which was declared invalid on ground of violation of constitutional provisions and not on ground of lack of legislative competence — (1955) 2 S C R 603 and 1958 S C R 1069 and 1958 S C R 1422, Foll.; AIR 1954 S C 728, Disting. ILR (1964) Andh Pra 1338 (DB).

ANDHRA PRADESH REGIONAL COMMITTEE ORDER (1958)

——Para. 3 — Constitution of India, Arts. 371 (1), 212 (1), 226 — Andhra Pradesh Regional Committee Order (1958), Para. 3 — Regional Committee constituted under Para. 3 — Defect in procedure in holding its meetings — Bill in pursuance of its report passed into an Act — Art. 212 (1) applies — Validity cannot be questioned on ground of irregularity of procedure—Court will not give ineffective declaration as to its validity. See Constitution of India, Art. 371 (1). AIR 1965 Andh Pra 306.

ANDHRA PRADESH URBAN AREAS SURCHARGE ON PROPERTY TAX ACT (13 of 1958)

——S. 3 — Constitution of India, Sch. VII, List 2, Entry 49 and List 1, Entry 92 — Legislative competency — Act is validly enacted. See Constitution of India, Sch. 7, List 2, Entry 49. AIR 1963 Andh Pra 379.

——S. 5—Non-compliance with procedure— Remedy is by way of appeal and not by writ petition. AIR 1963 Andh Pra 379.

ANDHRA STATE ACT (CENTRAL ACT 30 of 1953)

——S. 30—Madras Vexatious Litigation (Prevention) Act (8 of 1949), Ss. 2 (1), 3—Applicability to litigants in Telangana area — Act part of regulatory jurisdiction of Madras High Court inherited by A. P. High Court — Order under the Act can be passed against any litigant within its jurisdiction — Effect of S. 119 of States Reorganisation Act stated. See Madras Vexatious Litigation (Prevention) Act (8 of 1949), S. 2 (1). AIR 1962 Andh Pra 4.

——S. 30—Civil P. C. (1908), S. 151, O. 39, R. 1—No inherent power to issue injunction apart from O. 39. See Civil P. C. (1908), S. 151. AIR 1955 Andh 142.

——S. 32 — Power of High Court — Power to frame rules to regulate its own practice and procedure — Such power is inherent in High Court. See Constitution of India, Art. 225. AIR 1966 Andh Pra 137 : (1965) 2 Andh L T 372 : 1966 Cri L J 512.

——S. 32—Madras Vexatious Litigation (Prevention) Act (8 of 1949), Ss. 2 (1), 3—Applicability to litigants in Telangana area — Act part of regulatory jurisdiction of Madras High Court inherited by A, P. High Court — Order under the Act can be passed against any litigant within its jurisdiction — Effect of S. 119 of States Reorganisation Act stated. See Madras Vexatious Litigation (Prevention) Act (8 of 1949), S. 2 (1). AIR 1962 Andh Pra 4.

——Ss. 32 and 55—Constitution of India, Art. 226—Petition under — Appeal against judgment of single Judge - Limitation—(Limitation Act (1908), Art. 151) —High Court Orders and Rules — Andhra Pradesh Appellate Side Rules, R. 51). See Constitution of India, Art. 226. AIR 1960 Andh Pra 364.

——S. 32—Civil P. C. (1908), S. 122, O. 3, R. 4 — Unstamped memorandum of appearance — (High Court Rules and Orders—Madras High Court Appellate Side Rules, R. 21). See Civil P. C. (1908), S. 122. AIR 1957 Andh Pra 950.

——Ss. 55 and 32—Constitution of India, Art. 226 — Petition under — Appeal against judgment of single Judge—Limitation —(Limitation Act (1908), Art. 151) —(High Court Orders and Rules — Andhra Pradesh Appellate Side Rules, R. 51). See Constitution of India, Art. 226. AIR 1960 Andh Pra 364.

ANDHRA STATE AND SUBORDINATE SERVICE RULES

——R. 2 (3) — Constitution of India, Art. 311 (2) — Applicability — Reduction in rank in garb of transfer —When by way of penalty — Approved probationer awaiting appointment as full member of secretariat service—Order of transfer to District revenue establishment — Transfer involving loss in emoluments and chances of promotions — Order amounts to reduction in rank within Art. 311 (2). See Constitution of India, Art. 311 (2). AIR 1963 Andh Pra 412.

——R. 40—Constitution of India, Art. 311 (2) — Applicability — Reduction in rank in garb of transfer — When by way of penalty — Approved probationer awaiting appointment as full member of secretariat service—Order of transfer to District revenue establishment — Transfer involving loss in emoluments and chances of promotions — Order amounts to reduction in rank within Art. 311 (2). See Constitution of India, Art. 311 (2). AIR 1963 Andh Pra 412.

ARBITRATION ACT (10 of 1940)

——S. 1—Defence of India Act (1939), Ss. 17 and 19 —Suit in respect of compensation for requisition of premises — Maintainability—Applicability of— Arbitration Act to arbitration under Defence of India Act or Rules — (Requisition of Land (Continuance of Powers) Act (1917), S. 6) — (Civil P. C. (1908), S. 9). See Defence of India Act (1939), S. 17. AIR 1956 Cal 71.

——S. 2—Contract Act (1872), S. 62 — Rescission of contract — It need not be express — Mere alteration or modification is not rescission. See Contract Act (1872), S. 62. AIR 1955 Cal 65.

——Ss. 2 (a), 13 — Arbitration agreement — Dispute —Claim for damages for inferiority in quality of goods supplied under contract — Definite demand for certain sum of money after measuring damages by reference to contract not made — Award by arbitrators cannot be challenged as one without jurisdiction—Grounds of decision or basis on which damages were awarded not stated in award — Award cannot be challenged on this ground: 53 Cal W N 873 (876), Not Foll. ILR (1960) 2 Cal 357.

——S. 2 (a) — Claim for definite sum of money not necessary—Arbitrator should determine and assess even prospective damages arising after date of submission. AIR 1955 Cal 65.

● ——S. 2 (a) — Arbitration clause in earlier contract —When can be imported by reference into subsequent contract — Test — Contract—Construction — Incorporation of document by reference. 47 Cal 799; AIR (8) 1921 Cal 767; 60 I C 909, Overruled. AIR 1951 Cal 10 (14, 17, 19, 20) (Pt A) (Prs 37, 49, 67) (FB).

——Ss. 2 (a), 14 (2) — Oral agreement for arbitration — Award — Suit on — Whether lies. AIR 1951 Mad 683 (683) (Pr 2).

——Ss. 2 (a) and 4 — Arbitration clause in contract with Government—Sanctioning authority to arbitrate in case of dispute — Successor of sanctioning authority can decide dispute. AIR 1955 N U C (Punj) 6026.

● ——S. 2 (c)— Definition of 'Court' in S. 2 (c) cannot be imported in S. 34. See Arbitration Act (1940), S. 34. AIR 1966 S C 634 : 1965 Ker L T 1193.

——S. 2 (c)— Consolidation officer is not empowered to refer dispute pending before him to arbitration under Consolidation Act or by S. 205 of Land Revenue Act or by Arbitration Act — Consolidation Officer, even assuming that he is a Court, is not a civil Court within meaning of S. 2 (c) of Arbitration Act. See Tenancy Laws — U. P. Consolidation of

Holdings Act (5 of 1954), S. 41. 1964 All W R (H C) 89.

——S. 2 (c) — Civil Court — Jurisdiction of, barred under C. P. Land Revenue Act to effect partition of Mahal — Civil Court whether can pass decree on award for same. AIR 1951 Nag 297 (298) (Pt C) (Pr 12) (DB).

● ——Ss. 3, 2, 14 and 17 — Reference to arbitration by parties — Fundamental basis of such arbitration —Arbitration without intervention of Court—Award —Its validity — Its nature—Statutory requirement of its being filed in Court — Original cause of action — Its merger in award. See Arbitration Act (10 of 1940), S. 2. AIR 1964 Mad 1 (FB).

——Ss. 5, 21—Proper reference to arbitration—Power of Court to withdraw it. See Arbitration Act (10 of 1940), S. 21. AIR 1958 All 437.

——Ss. 8, 39—Non-appealable orders— Order passed under S. 8 is not appealable. See Arbitration Act (10 of 1940), S. 39. AIR 1965 All 269 (a).

——Ss. 8, 30 and Sch. 1, Para. 2 (2)—Award without appointment of umpire — No illegality but mere irregularity—Party not moving Court under S. 8 (2)— Waiver of right to object — Evidence Act (1872), S. 115. A I R 1964 All 231.

——Ss. 8 and 25 — Arbitrator named unable to act— Object of agreement to refer—Appointment of another arbitrator. A I R 1951 All 335 (337) (Pt C) (Pr 6).

——Ss. 8 (1) (a) and 37 (1) and (3)—Commencement of arbitration proceedings — Proceedings commence on the date on which notice under S. 8 (1) (a) is given —Cause of action on 14-2-1941—Infructuous arbitration proceedings attempted during a period of four months — Notice given on 5-4-1944 is valid. See Arbitration Act (1940), S. 37 (1). I L R (1960) 2 Cal 538 (DB).

——Ss. 8 (1) (b), 20 (5) and S. 47 — Order passed by Court to file agreement — Provision of S. 8 (1) (b) is attracted — Intention not to refer dispute to arbitration—Burden to show lies on objector. See Arbitration Act (1940), S. 20 (5). A I R 1958 Punj 418.

——Ss. 8 (1) (b), 2 (a), 4 — Provision in Arbitration Agreement that named Arbitrator may appoint another Arbitrator in case he is unwilling — Validity of. See Arbitration Act (1940), S. 2 (a). A I R 1964 Tripura 27.

——S. 9 (b) — Dispute between members of Association referred to arbitration—Secretary of Association is agent of all members and therefore notice sent by him should be regarded as a notice from a party for purposes of S. 9 (b): (Per Bind Basni Prasad J.). A I R 1951 All 359 (362) (Pt C) (Pr 14) (DB).

——S. 10 (2) and (3) — In absence of provision that only unanimous decision would be binding, it is majority decision if otherwise valid, that is binding. A I R 1952 Vindh Pra 76 (77) (Pt A) (Pr 4).

——S. 11 — Civil P. C. (1908), S. 115 — Exercise of jurisdiction illegally or with material irregularity— Wrong conclusion does not come under. See Civil P. C. (1908), S. 115. A I R 1955 All 666.

——Ss. 12, 9, 25, 34, 35 and 39 — Suits filed after arbitration agreement and suits pending which arbitration agreement is arrived at—Difference in procedure to be followed — Stay of suit under S. 34 and reference to arbitration—Provisions of Ch. 2 and not Ch. 4 are applicable—Resignation by one of arbitrators—Fresh appointment should be made under S. 9 —Order superseding arbitration — Legality — Interference in revision — Civil P. C. (1908), Ss. 115 and 151. See Arbitration Act (1940), S. 9. A I R 1963 Guj 141.

●——S. 13 — Admissibility of previous evidence by consent of parties—Change in Board of Arbitrators— Evidence recorded by previous Board may with consent of parties be admitted. (1962) 2 Ker L R 212: 1964 Mah L J 174: 65 Bom L R 326: (1963) 2 S C J 176: (1963) 2 Mad L J (SC) 60: (1963) 2 S C R 348: (1963) 2 Andh W R (SC) 60: A I R 1966 S C 1072.

——S. 13—Arbitration proceedings — Acceptance of evidence—Evidense deposed in previous infructuous arbitration proceedings can be accepted in later proceedings—Provisions of Evidence Act not applicable to arbitration proceedings — (Evidence Act (1872), S. 1). I L R (1960) 2 Cal 538 (DB).

——S. 13—Arbitration agreement—Dispute — Claim for damages for inferiority in quality of goods supplied under contract — Definite demand for certain sum of money after measuring damages by reference to contract not made — Award by arbitrators cannot be challenged as one without jurisdiction — Grounds of decision or basis on which damages were awarded not stated in award—Award cannot be challenged on this ground. See Arbitration Act (1940), S. 2 (a). I L R (1960) 2 Cal 357.

——Ss. 13, 2 (a)—Evidence Act (1872), S. 93—Arbitration clause void for uncertainty — (Contract Act (1872), Ss 74, 55). See Evidence Act (1872), S. 93. A I R 1959 Cal 430.

——Ss. 13 (b) and 30 (a) — Parties seeking to apply to Court for statement of case — Arbitrators refusing adjournment—Misconduct. A I R 1951 Cal 230 (231) (Pt A) (Pr 6).

——Ss. 13, 16, 21 — "Any matter in difference"— Matter left undecided. A I R 1954 Nag 306 (310) (Pt A) (Prs 21, 23, 24) (DB).

——Ss. 13 and 34 — Substantial questions of law— Existence of arbitrator disputed. See Arbitration Act (1940), S. 34. A I R 1952 Punj 368.

——S. 13 — Alteration in award before announcement. See Arbitration Act (1940), S. 30. A I R 1950 East Punj 266.

●——S. 14—Filing of award—Court having jurisdiction to entertain application for filing of award has jurisdiction to grant extension of time for making award. A I R 1960 S C 629.

●——Ss. 14 and 2 (b) — Appreciation of effect of words used in award. See Arbitration Act (1940), S. 2 (b). A I R 1960 S C 307.

——Ss. 14, 39—Application under S. 14—Award filed —Objections invited and considered—Application to file award finally rejected — Order held amounted to setting aside award and was appealable. See Arbitration Act (1940), S. 39. A I R 1959 All 777.

——Ss. 14, 16, 17, 22, 23 and 33 — Civil P. C. (1908), S. 115 — "Case decided" — Award — Objection to— Award set aside—Proceeding whether case. See Civil P. C. (1908), S. 115. A I R 1958 All 683.

——S. 14 (1), (2)—Limitation Act (1908), Art. 178— Starting point is date of service of notice — Absence of notice under S. 14 (2), Arbitration Act—Still party can make application for filing award. See Limitation Act (1908), Art. 178. A I R 1955 All 573.

——S. 14—Scope. A I R 1951 All 359 (361) (Pt B) (Pr 11) (DB).

●——Ss. 14, 32—Award not filed — Award does not bar suit on original cause of action. See Arbitration Act (1940), S. 32. A I R 1960 Andh Pra 59 (FB).

——S. 14—Constitution of India, Art. 299 (1)—Contract with Government signed by officer not having authority—Not void—Contract is enforceable against the officer—Ratification by conduct of Government— Effect — Arbitration clause in contract modified— Government taking part in proceedings—Ratification

implied. See Constitution of India, Art. 299 (1). **A I R 1963 Cal 456.**

——S. 14 (2) — Limitation Act (1908), Art. 158 — Starting point—Non-service of notice—Party entering appearance and asking leave to examine award for filing objections. See Limitation Act (1908), Art. 158. **A I R 1952 Cal 226 (DB).**

——S. 14 (2) - Filing of award, if judicial act—Limitation Act (1908). Art. 178. **A I R 1951 Cal 230 (232, 233) (Pt D) (Prs 13, 16).**

——Ss. 14, 31, 32, 40 and 2 (c) — Suit to enforce award—Suit cannot be filed in Small Cause Court—A I R 1944 Nag 24, Dissented from. **A I R 1960 Madh Pra 65.**

——Ss. 14 (2), 2 (a)—Oral agreement for arbitration —Award — Suit on — Whether lies. See Arbitration Act (1940), S. 2 (a). **A I R 1951 Mad 683.**

——S. 14 (1) — Failure to sign award by some of arbitrators — Effect of, on validity of award. **A I R 1952 Pat 461 (463) (Pt C) (Pr 4).**

——S. 14 — Filing of award — Notice — Notice is mandatory—It may be given orally or in writing, but must emanate from Court—Knowledge of party from some private source about filing of award is not sufficient compliance with S. 14—Expression 'date of service of notice' in Col. 2 of Art. 158, Limitation Act (1908) includes date of informal or constructive notice : A I R 1962 S C 666, Foll. Limitation Act (1908), Art. 158. **1965 Punj L R (Sup) 117.**

——Ss. 14, 21 and 17—Reference signed by only one defendant. See Arbitration Act (1940), S. 21. **A I R 1953 Punj 216.**

——S. 14 — Deed - Construction — Decision incorporating terms of award — Terms not recited specifically.

Where the dispute between a jagirdar and his creditor had been referred to the decision of certain arbitrators appointed by Mehakma khas and they gave their opinion as to the amount payable and the mode of payment by instalments on certain due dates and they further awarded interest at 1 per cent. per mensem on any instalment remaining unpaid and the same was considered by the Council who agreed with the opinion of the arbitrators and recommended the same to Mehakma khas, the senior member passed an order that the amount so found due shall be recoverable according to the decision of the Council. The decision of the Council after setting out the substance of the award, stated that it agreed with the opinion of the 'Panches' without making any reference to the provision for interest on instalments not paid on due dates. On a dispute whether interest was payable on instalments in arrears it was,

Held, the council in its decision mentioned only the substance of the award in the recital portion and the recital was followed by the operative part which states that they are in agreement with the opinion of the 'Panches'. It is impossible to cut down by the recital the plain effect of the "operative part of the deed". The council in so far as they said they were in agreement with the panches purported to incorporate in the decision all the terms of the award including the one for payment of interest on overdue instalments. **1952 R L W 250 : I L R (1952) Raj 322 : AIR 1954 Raj 54.**

——Ss. 14 (2) and 17—Travancore Arbitration Act (11 of 1115), S. 11—Arbitration without intervention of Court — Award — Application under repealed provisions of O. 39, R 20, Travancore Civil P.C., for filing award in Court and passing decree thereon—Petition can be treated as a suit for passing decree in terms of award—S. 11 does not affect such right. See Travancore Arbitration Act (11 of 1115), S. 11. **AIR 1952 Trav Co 540 (DB).**

——Ss. 15, 14, 16, 17 and 18—Sub-section (2) of S. 14 is not exhaustive — Umpire dying before filing of award without authorising anyone to file award on his behalf—Order for filing award may be made under S. 151, Civil P. C. — (Civil P. C. (1908), S. 151). See Arbitration Act (10 of 1940), S. 14. **AIR 1959 Cal 84.**

——Ss. 15 to 17 and 30 to 33 — Scope — Application for setting aside award and application for adjudgment of award as nullity — No distinction — All applications for setting aside award irrespective of ground of challenge to be made under S. 33 — Non-existence or invalidity of reference can be a ground for setting aside award—I L R (1949) 1 Cal 245 and 55 Cal W N 147 : A I R 1951 Cal 78, **Overruled.** See Arbitration Act (10 of 1940), S. 30. **AIR 1956 Cal 321.**

——Ss. 15, 30—Limitation Act (1908), Art. 158 — Applicability, when objection is one under S. 15, Arbitration Act. See Limitation Act (1908), Art. 158. **AIR 1957 Pat 447.**

——Ss. 15, 17, 30 and 33—Award — Setting aside of an award for misconduct—Award by arbitrator leaving open a question referred to him to be decided by a stranger to the contract is bad in law — Such conduct of the arbitrator amounts to judicial misconduct within S. 30. **AIR 1964 Punj 424.**

——Ss. 16, 20, 30 and 31—Jurisdiction of Court and that of arbitrator—Incomplete award—Duty of Court. See Arbitration Act (10 of 1940), S. 20. **AIR 1958 All 692.**

——Ss. 16, 14, 17, 22, 23 and 33 — Civil P. C. (1908), S. 115 — "Case decided" — Award — Objection to—Award set aside—Proceeding whether case. See Civil P. C. (1908), S. 115. **AIR 1958 All 683.**

——Ss. 16, 14, 30—Error apparent on face of award. See Arbitration Act (10 of 1940), S. 14. **AIR 1959 Andh Pra 199.**

——Ss. 16, 8 and 30—Appointment of umpire—Power of Court—Objection to legality of award — Death of umpire — Conditions in S. 8 not satisfied — Neither party praying for appointment of new umpire — Proper order—Award can only be set aside. See Arbitration Act (10 of 1940), S. 8. **AIR 1963 Cal 70.**

——Ss. 16 and 17—Procedure to be followed when revised award is received by Court after it was remitted under S. 16 is not clear — Decree passed by Court on basis of revised award—Such award cannot be said to be in excess by reason of order remitting it was bad. See Arbitration Act (10 of 1940), S. 17. **AIR 1960 Mad 43.**

● ——Ss. 16 and 17—Registration Act (1908), Ss. 17 (1) (b). 17 (2) (vi), 49—Award without intervention of Court—Registration of — Unregistered award dealing with property worth Rs. 100 and more — Enforceability by filing in Court—AIR 1948 Pat 320 and AIR 1949 Pat 393, Overruled. See Registration Act (1908), S. 17 (1) (b). **AIR 1958 Pat 252 (FB).**

——Ss. 17 and 39 (1) (vi), 30—Appeals under — Distinction. See Arbitration Act (10 of 1940), S. 39 (1) (vi), **AIR 1958 All 692.**

——Ss. 17, 14, 16, 22, 23 and 33 —:Civil P. C. (1908), S. 115 — "Case decided" — Award — Objection to—Award set aside—Proceeding whether case. See Civil P. C. (1908), S. 115. **AIR 1958 All 683.**

——Ss. 17 and 39—Composite order refusing to set aside award and directing decree to be passed in terms of it — Appeal against order refusing to set aside award is maintainable. See Arbitration Act (10 of 1940), S. 39. **AIR 1955 All 678.**

——Ss. 17 and 30 to 33 — Scope — Application for setting aside award and application for adjudgment of award as nullity—No distinction—All applications for setting aside award irrespective of ground of chal-

lenge to be made under S. 33—Non-existence or invalidity of reference can be a ground for setting aside award—ILR (1949) 1 Cal 245 and 55 Cal W N 147 : AIR 1951 Cal 78, Overruled. See Arbitration Act (10 of 1940), S. 30. AIR 1956 Cal 321.

——Ss. 17, 21 and 30—Reference to arbitration in suit—Award including matters outside suit—Decree excluding that portion of award—Appellate Court again referring matter to arbitration and including matter outside suit in its decree—Validity of appellate decree. AIR 1951 Madh Bha 111 (111, 112) (Prs 3, 4).

——Ss 17 and 14—Award not filed as required by Act—Defendant not fully performing award—Defendant, if can rely upon award in answer to action. See Arbitration Act (10 of 1940), S. 14. AIR 1951 Mad 458.

——Ss. 17. 14, 15, 16 — Error apparent on face of award — Court cannot modify under S. 15 — Award for fresh decision of particular matter can be remitted under S. 16 (1) (c)—Valid part of award need not be remitted. See Arbitration Act (10 of 1940), S. 14. AIR 1963 Pat 71.

——Ss. 17, 30—Civil P. C. (1908), O. 9, R. 13; O. 43, R. 1(d) — Arbitration Act (1940), Ss. 17, 30 — Reference for arbitration by all parties including minor—Decree on award — Application on behalf of minor for setting aside decree—Application rejected—Appeal—Maintainability. See Civil P. C. (1908), O. 9, R. 13. AIR 1956 Pat 28.

——Ss. 17, 39—Limitation Act (1908), S. 5—Sufficient cause — Ignorance of law is not a sufficient cause. See Limitation Act (1908), S 5. AIR 1955 N U:C (Pat) 4577.

——Ss. 17 and 16—Award—Absence of objection by parties — Duty of Court to decide competency of reference and validity of award on face of it. See Arbitration Act (10 of 1940), S. 16. AIR 1952 Pat 461.

——Ss. 17, 14—Decree based on award without complying with mandatory provisions of S. 14 — Decree can be set aside under inherent powers — See Civil P. C. (1908), S. 151. 1965 Pun L R (Sup) 117.

——Ss. 17 and 14 (2) — Party to arbitrrtion applying for award to be made rule of Court — Application is under S. 14. See Arbitration Act (10 of 1940), S. 14(2). AIR 1952 Punj 350.

——Ss 17 and 14 (2) — Travancore Arbitration Act (11 of 1115), S. 11—Arbitration without intervention of Court—Award—Application under repealed provisions of O. 39, R. 20, Travancore Civil P. C, for filing award in Court and passing decree thereon — Petition can be treated as a suit for passing decree in terms of award — S. 11 does not affect such right. See Travancore Arbitration Act (11 of 1115), S. 11. AIR 1952 Trav-Co 540 (DB).

■ ——Ss. 20 (5), 19, 8, 10, 12, 13 (d), 16 and 25 — Scheme of—Passing of award—Arbitrator if becomes functus officio — Award set aside by Court — Discretion of Court to supersede reference or not — Reference not superseded by Court while setting aside award — Question whether arbitration proceedings can continue with respect to same dispute or another depends on terms of arbitration agreement. See Arbitration Act (10 of 1940), S. 19. AIR 1962 S C 1123.

——S. 20—Application under for reference to arbitration—Limitation — Starting point — (Limitation Act (1908), Art. 181). AIR 1959 All 493.

——S. 20 — Limitation Act (1908), : Art. 181—Applicability — Application under S. 20. Arbitration Act—AIR 1933 All 789 (FB), Not foll.—See Limitation Act (1908), Art. 181. AIR 1957 All 206.

——S. 20—Sale of Goods Act (1930), S. 54 (4)—Contract for sale of goods containing arbitration clause providing machinery for settling disputes in respect of contract — Right to resell in case of buyer's default given to seller under contract — Re-sale by seller on buyer's default—Effect on arbitration clause — Arbitration agreement does not cease to be operative by virtue of S. 54 (4) — A I R 1941 Lah 427 and AIR 1943 Lah 295, held Overruled by AIR 1946 Lah 116 (FB) — See Sale of Goods Act (1930), S. 54 (4). AIR 1959 Bom 158.

——Ss. 20, 19 and 13 (b)—Supersession of agreement — Invalid award stating a special case — Order of supersession—Not proper—See Arbitration Act (10 of 1940), S. 19. AIR 1962 Mad 351.

——S. 20 — Limitation Act (1908), Art. 181—Scope—Applications under Arbitration Act—Art. 181 applies — See Limitation Act (1908), Art. 181. A I R 1952 Punj 423.

——S. 21—Civil P. C. (1908), O. 26, R. 10 (2) and (3)—Second commission—If and when should be issued — Party agreeing to issue of such commission if can resile from agreement — Report of commission if tantamounts to award —(Evidence Act (1872), S, 115)—See Civil P. C. (1908), O. 26, R. 10 (2). A I R 1958 Andh Pra 304.

——Chap. IV, (Ss. 21 to 25), Chap. II, (Ss. 3 to 19) — Reference to arbitration in pending suits without order of reference—Legality—Reference before, and award after withdrawal of suit — Validity—See Arbitration Act (10 of 1940), Chap. II (Ss. 3 to 19). AIR 1961 Cal 46.

——Ss. 21, 17 and 30 — Reference to arbitration in suit—Award including matters outside suit — Decree excluding that portion of award — Appellate Court again referring matter to arbitration and including matter outside suit in its decree — Validity of appellate decree — See Arbitration Act (10 of 1940), S. 17. AIR 1951 Madh Bha 111.

——Chaps. IV (Ss. 21 to 25) and II (Ss. 3 to 19) — Applicability — Reference to arbitration in pending suit. AIR 1951 Mad 281 (282) (Pt B) (Pr 3).

——Ss. 21 and 24 — Civil P. C. (1908), O. 32, R. 7 — Reference to arbitration by guardian or pleader on behalf of minor—Leave of Court—Absence of—Effect — See Civil P. C. (1908), O. 32, R. 7. A I R 1952 Pat 461.

——S. 21 — Civil P. C. (1908), O. 23, R. 3 and O. 43, R. 1 (m) 'Has been adjusted' — Agreement to refer dispute to the decision of a referee and to abide by his statement — Referee making statement based on compromise between parties—It constitutes valid adjustment — (Evidence Act (1872), Ss. 20 and 115) — See Civil P. C. (1908), O. 23, R. 3. A I R 1952 Punj 344.

——Ss. 22, 14, 16, 17, 23 and 33 — Civil P. C. (1908), S. 115 — "Case decided" — Award — Objection to — Award set aside—Proceeding whether case—See Civil P. C. (1908), S. 115. AIR 1958 All 683.

——Ss. 23 (2), 41 and 32 — Applicability of Civil Procedure Code — Extent of—Words "subject to the provisions of this Act" in S. 41—Meaning of—(Words and Phrases—"Subject to the provisions of this Act") — (Civil P. C. (1908), O. 6, R. 17) — See Arbitration Act (10 of 1940), S. 41. AIR 1958 All 692.

——Ss. 23, 14, 16, 17, 22 and 33 — Civil P. C. (1908), S. 115 — "Case decided" — Award — Objection to—Award set aside—Proceeding whether case—See Civil P. C. (1908), S. 115. AIR 1958 All 683.

——S. 23 — Civil P. C. (1908), S. 10 — Stay of suit—Jurisdiction of Court thereafter to refer matter to arbitration—See Civil P. C. (1908), S. 10. A I R 1951 All 335.

——Ss. 24 and 21 — Civil P. C. (1908), O. 32 R. 7 — Reference to arbitration by guardian or pleader on behalf of minor—Leave of Court—Absence of—Effect

— See Civil P. C. (1908), O. 32, R. 7. **A I R 1952 Pat 461.**

——Ss. 25 and 8 — Arbitrator named unable to act — Object of agreement to refer — Appointment of another arbitrator — See Arbitration Act (10 of 1940), S. 8. AIR 1951 All 335.

——Ss. 28, 20, Sch 1, R. 3 — Scope—Expiry of time of four months — Party not applying for extension of time — Arbitrator becomes functus officio — But on this account party cannot call in aid S. 20 when he has proceeded under Chapter II— See Arbitration Act (10 of 1940), S. 20. **AIR 1963 Andh Pra 286.**

——Ss. 28 and 3, 23 — Time for making award — Estoppel — Under present law, award has to be made within four months — Time cannot be extended unless Court has agreed to it — Arbitration without intervention of Court — Award made 4 years after reference — Award governed by old and uew law — Party which had taken part in arbitration till a day or two before arbitration held could not challenge award on ground that it was made after such a long time — See Arbitration Act (10 of 1940), S. 3. **A I R 1955 Nag 126.**

——Ss. 28, 23, Sch. I, Para. 3 — Reference by trial Court in pursuance of order of appellate Court — No time for making award fixed—Trial Court cannot fix time — Award has to be made within four months — See Arbitration Act (10 of 1940), Sch. 1, Para. 3. **AIR 1962 Punj 173.**

●——S. 30 — Evidence — Board of Arbitrators — Change in constitution of — Last Board relying on evidence recorded by previous Boards — Consent of parties given to such procedure — No objection can be raised to it by party thereto. See Evidence. **(1963) 2 S C J 176; (1962) 2 Ker L R 212: 1964 Mah L J 174: 65 Bom L R 326: (1963) 2 Mad L J (SC) 60: (1963) 2 S C R 348: (1963) 2 Andh W R (SC) 60: AIR 1966 S C 1072.**

——S. 30—Misconduct—Absence of finding—Failure to express opinion, on reference to Arbitration under S. 12 (4) of U. P. Consolidation of Holdings Act, 1953, whether the applicant was the heir of the recorded occupancy tenant—Error apparent on face of award — Award set aside. U. P. Consolidation of Holdings Act (1953), S. 12 (4). 1965 All W R (HC) 206 (207).

——Ss. 30, 5 and 9—Award by one of two arbitrators. **AIR 1951 All 359 (361) (Pt A) (Prs 12, 13) (DB).**

——Ss. 30, 17 — Application for judgment on award — Order setting aside award and also dismissing application—Award held valid in appeal from former order — No appeal against latter order — Effect on second application under S. 17 — Powers of High Court—See Arbitration Act (10 of 1940), S. 17. **AIR 1961 Cal 118.**

——S. 30 — Forward Contracts (Regulation) Act (1952), S. 17 — Contract found on construction to be transferable specific delivery contract — Contract along with arbitration clause contained therein becomes void — (Contract Act (1872), S. 23)—See Forward Contracts (Regulation) Act (1952), S. 17. **A I R 1960 Cal 86.**

——Ss. 30, 19 and 37 (5) — Setting aside of award — Absence of order superseding reference — Reference and agreement continue to subsist — See Arbitration Act (10 of 1940), S. 19. **AIR 1958 Cal 490.**

——S. 30 (a) — Appraisement of evidence by arbitrators — Court coming to different conclusion on same evidence—Award, if will be set aside. **AIR 1951 Cal 230 (232) (Pt B) (Pr 8).**

——Ss. 30 and 17, 21 — Reference to arbitration in suit—Award including matters outside suit — Decree excluding that portion of award — Appellate Court again referring matter to arbitration and including matter outside suit in its decree—Validity of appellate decree—See Arbitration Act (10 of 1940), S. 17. **AIR 1951 Madh Bha 111.**

——Ss. 30 and 33, 28 — Implied conditions of agreement. A I R 1951 All 711, Dissented from — See Arbitration Act (10 of 1940), S. 33. **AIR 1959 Madh Pra 102.**

——Ss. 30, 15 — Limitation Act (1908), Art. 158 — Applicability, when objection is one under S. 15, Arbitration Act—See Limitation Act (1908), Art. 158. **AIR 1957 Pat 447.**

——Ss. 30, 17 — Civil P. C. (1908), O. 9, R. 13, O. 43, R. 1 (d) — Reference for arbitration by all parties including minor — Decree on award — Application on behalf of minor for setting aside decree — Application rejected — Appeal — Maintainability. See Civil P. C. (1908), O. 9, R. 13. **AIR 1956 Pat 28.**

——S. 30—Parties to reference cannot challenge validity of award on the mere ground that one of the parties to suit was not a party to reference to arbitration. **AIR 1951 Punj 183 (184) (Pt B) (Pr 7).**

——S. 30—Absence of one of arbitrators at stage of evidence — Delegation of powers. **AIR 1952 Vindh Pra 76 (77) (Pt B) (Pr 5).**

●——Ss. 31, 30, 32,33 and 15 to 17—Scope — Application for setting aside award and application for adjudgment of award as nullity — No distinction — All applications for setting aside award irrespective of ground of challenge to be made under S. 33 — Non-existence or invalidity of reference can be a ground for setting aside award — ILR (1949) 1 Cal 245 and 55 C W N 147: AIR 1951 Cal 78, **Overruled.** See Arbitration Act (10 of 1940), S. 30. **AIR 1956 Cal 321 (FB).**

——Ss. 31, 14, 32, 40 and 2 (c) — Suit to enforce award — Suit cannot be filed in Small Cause Court—AIR 1944 Nag 24, Dissented from. See Arbitration Act (10 of 1940), S. 14. **AIR 1960 Madh Pra 65.**

——Ss. 31, 32 and 33 —Award not filed — No decree passed on it —Award fully performed by defendant—If can be put forward in defence. **AIR 1951 Mad 525 (526, 527) (Pt B) (Pr 4).**

[Overruled in AIR 1964 Mad 1 (FB).]

——S. 32—Partition — Partition by award — Validity of partition cannot be challenged by stranger to award even if no decree in terms of award has been passed. See Hindu Law — Partition. **AIR 1964 All 381.**

——Ss. 32, 41 and 23 (2)— Applicability of Civil Procedure Code — Extent of — Words "subject to the provisions of this Act" in S. 41 — Meaning of —(Words and Phrases — "Subject to the provisions of this Act")—(Civil P. C. (1908), O. 6. R. 17.) See Arbitration Act (10 of 1940), S. 41. **AIR 1958 All 692.**

——Ss. 32, 33, 14 — Award not filed if can be relied as defence (Quaere). **AIR 1963 Andh Pra 193.**

——Ss. 32, 4 (1), 9 (a) — Award under S. 32 of Arbitration Act (1940), does not apply. See Arbitration (Protocol and Convention) Act (1937), S. 4 (1). **AIR 1960 Cal 702.**

——Ss. 32, 31 and 33—Award not filed — No decree passed on it—Award fully performed by defendant—If can be put forward in defence. See Arbitration Act (10 of 1940), S. 31. AIR 1951 Mad 525.

[Overruled on another point in AIR 1964 Mad 1 (FB).]

——Ss. 32, 14, 17 and 33 — Award — No judgment or decree in conformity with award under S. 17 — No impediment for suit on the subject-matter of award—Award not acted upon by parties—It cannot be used as defence: AIR 1948 Mad 436; AIR 1962 M P 66; AIR 1952 Nag 65; AIR 1960 Pat 19 Dissented.

An award in conformity with which there is neither a judgment nor a decree under S. 17 of the Arbitration Act does not constitute an impediment to the institution of a suit for the enforcement of a right which formed the subject-matter of the arbitration proceedings. AIR 1960 A P 59 (FB), Foll; AIR 1948 Mad 436; AIR 1962 M P 66; AIR 1952 Nag 65; AIR 1960 Pat 19, Dissented. Case law discussed.

However, an award which was not produced in court and which did not become a judgment or decree under S. 17, if acted upon by the parties, would constitute a defence to a suit brought for the enforcement of the very right settled by arbitration, the principle being that in a case of that kind the plea is not that there was an award which barred the suit, but that there was an arrangement arrived at by consent in consequence of which there was a settlement of the disputes between the parties consequent upon the parties acting upon the award. AIR 1961 S C 1077, foll.

If the plaintiff cannot make use of the award in a suit brought by him for securing any relief which may flow from that award, the defendant cannot use that award for defeating the suit which does not depend upon it. If a suit is not brought upon an award which was not produced in court and if the defendant asks the Court to dismiss the suit on the ground that the controversy in the suit has already been disposed of by the award, the defendant would be using the award for a purpose which is prohibited by S. 32. **(1965) 1 Law Rep 632 : (1965) 1 Mys L J 79 (DB).**

——Ss. 32, 14 and 17 — Award not filed in Court — Cannot be set up in defence in suit. AIR 1960 Pat 19, Not foll. See Arbitration Act (10 of 1940), S. 14. **AIR 1961 Pat 372.**

——Ss. 33, 14, 16, 17, 22 and 23 — Civil P. C. (1908), S. 115—"Case decided" — Award — Objection to — Award set aside — Proceeding whether case. See Civil P. C. (1908), S. 115. **AIR 1958 All 683.**

——Ss. 33, 32 and 14 — Award not filed if can be relied as defence (Quaere). See Arbitration Act (10 of 1940), S. 32. **AIR 1963 Andh Pra 193.**

——Ss. 33, 31 and 32 — Award not filed —No decree passed on it — Award fully performed by defendant —If can be put forward in defence. See Arbitration Act (10 of 1940), S. 31. **AIR 1951 Mad 525.**

[Overruled on another point in AIR 1964 Mad 1 (FB).]

——Ss. 33 and 32 — Suit filed for declaration that award is invalid — Time lost in prosecuting suit — Such suit is barred under S. 32—Party cannot take advantage of wrong advice given by his lawyer — He is not entitled to benefit of Ss. 5 and 14, Limitation Act — Plaint cannot be converted into application under S. 33. AIR 1963 Orissa 19.

——Ss. 33, 2 (c), 32 — Jurisdiction — Applications under Ss. 32, 33 — Jurisdiction of Court — Determination of. See Arbitration Act (10 of 1940), S. 2 (c). **AIR 1959 Punj 614.**

——Ss. 34 and 35 — Sections are complementary.

Sections 34 and 35 are complementary. If S. 34 applies S. 35 will apply, conversely if S. 34 does not apply S. 35 will not apply. An award is not rendered invalid merely by a notice under S. 35 unless the legal proceedings commenced be upon the whole or part of the subject-matter of the reference. Validity or invalidity of the contract could not be referred to arbitration for the arbitrator has no power and authority to decide upon the question of their own jurisdiction. Therefore if the legal proceedings commenced in a Court touch the validity or invalidity of the contract, the subject-matter of the legal proceedings could not be one which could ordinarily be stayed under S. 34 and S. 35 which presupposes a legal proceeding which is capable of being stayed by the Court under S. 34 equally contemplates that if the legal proceedings do not refer to the subject-matter of the reference a notice under S. 35 cannot obviously render arbitration proceedings ineffective and nugatory. ('62) 66 Cal W N 1078.

——S. 34 — Stay of suit —Condition precedent for— Court before ordering stay of suit must be satisfied that the applicant was at the commencement of the proceedings and continued ready and willing till filing of application for stay to abide by the agreement.

In order to have jurisdiction to exercise the discretion vested in the court under section 34 of the Act to stay a suit it is one of the conditions precedent for the court concerned to be satisfied that the applicant for stay was at the time when the proceedings were commenced and continued till filing of the application to be ready and willing to do all things necessary to the proper conduct of the arbitration, On the record of this case there is absolutely no material on the basis of which the trial Court could possibly be satisfied of the existence of this condition precedent. Therefore, the order of the learned senior subordinate Judge under revision is correct and the trial court had no jurisdiction to grant the stay of the suit in this case. AIR 1953 S C 53, 1964 P L R 247 and AIR 1960 Bom 292, Foll. **(1965) 67 Pun L R 1132.**

——S. 34—Setting aside of award — Omission to give reasons — Award cannot be impugned on ground of. AIR 1963 Punj 427.

——S. 34 — Right of appeal — Order refusing stay under S. 34, Arbitration Act. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 40. **A I R 1956 Punj 141.**

——Ss. 34, 39 — Appeal against order setting aside award — Objection to arbitration agreement on the basis that contract containing same did not comply with requirements of S. 175 (3), Government of India Act cannot be raised for first time at time of argument when claimant had no opportunity to adduce evidence upon question — (Government of India Act (1935), S. 175 (3)—(Constitution of India, Art. 299)—(Civil P. C., (1908), O. 41, R. 2). See Arbitration Act (10 of 1940), S. 39 (1). **AIR 1955 Punj 240.**

——S. 34 — Arbitration agreement becoming impossible of performance. A I R 1951 Punj 231 (232) (Pt A) (Pr 6).

——S. 35—Grant of injunction by Civil Court—Notice under S. 35 would not render arbitration ineffective unless order of injunction is removed. ('62) 66 Cal W N 1078.

——Ss. 37 (1) and (3) and 8 (1) (a)—Commencement of arbitration proceedings — Proceedings commence on the date on which notice under S. 8 (1) (a) is given—Cause of action on 14-2-1941 — Infructuous arbitration proceedings attempted during a period of four months — Notice given on 5-4-1944 is valid—(Limitation Act (1908), Art. 115—(Limitation Act (1963), Art. 55).)

Section 37 of the Act attracts the provisions of Limitation Act for purposes of arbitration proceedings as regards the question of limitation. While so applying the provisions of the Limitation Act, S. 37 (3) also indicates that for purposes of that section and the Limitation Act as applicable to arbitration proceedings, the arbitration proceedings must be deemed to have commenced on the day when the initial notice for the same under S. 8 (1) (a) of the Arbitration Act is given.

Consequently where the cause of action arose on 14-2-1941 and thereafter infructuous attempts to complete arbitration proceedings were made for a

period of four months, the proceedings started on a notice issued S. 8 (1) (a) on 5-4-1944 are valid as they would be deemed to have commenced on 5-4-1944 and therefore within limitation under Art. 115 of the Limitation Act. 56 I A 128, Rel. on. **ILR (1960) 2 Cal 538 (DB).**

——S. 37 (1) — Limitation Act (1908), S. 3 and Art. 106 — Date of dissolution of partnership — Fixation of by arbitrators—A I R 1926 Sind 209 and A I R 1929 Sind 55, Dissented from. See Limitation Act (1908), S. 3. **AIR 1956 Punj 125**

——Ss. 39 (5), 34—Civil P. C. (1908), S. 115 — Order refusing to stay proceedings under S. 34, Arbitration Act. See Civil P. C. (1908), S. 115. **A I R 1951 Ajmer 23.**

——Ss. 39, 14 (2) — Award filed — Application for setting it aside—Court setting it aside, dismissing also application for judgment on award — Appeal against order containing both directions, is maintainble — Separate appeal from latter direction is not necessary. See Arbitration Act (10 of 1940), S. 14 (2). **AIR 1955 Cal 465.**

——Ss. 39 (2), 34, 46—Applicability of Ss. 34 and 39 (2) to S. 51, Madras Co-operative Societies Act indicated—(Madras Co-operative Societies Act (4 of 1932), S. 51). See Arbitration Act (10 of 1940), S. 34. **A I R 1955 Mad 694.**

——Ss. 39, 16 — Court cannot add to grounds of remitting award—Remittal irregular — Since no appeal against remittal is provided irregularity can be pleaded in appeal against order upholding award. See Arbitration Act (10 of 1940), S. 16. **A I R 1951 Mad 414.**

——S. 39 (2) — Appellate Court affirming decree of trial Court passed in terms of award after overruling objections as to validity of reference and award—No second appeal lies. **A I R 1952 Pat 461 (462) (Pt A) (Pr 2).**

——Ss. 39 and 34 — Exercise of discretion by trial Court—Interference—(Civil P. C. (1908), S. 107. See Arbitration Act (10 of 1940), S. 34. **A I R 1952 Punj 368.**

——S. 40—Misconduct — Personal knowledge of one of arbitrators — Award based on — Award is vitiated. **AIR 1955 Nag 116.**

——S. 41 (a) — Civil P. C. (1908), Ss. 86 (1), 87B and 141—Institution of proceedings under S. 14 read with S. 17, Arbitration Act, against Ruler of former Indian State—Not a suit — Section 86 (1) by its own force or by reason of S. 141, Civil P. C., or S. 41 (a), Arbitration Act does not apply — Proceedings not barred. See Civil P. C (1908), S. 86 (1). **AIR 1965 SC 1798.**

——Ss. 44, 14, 17, 43 and Rules under—Non-compliance with Ss. 14, 17 — Effect — Civil P. C. (1908), S. 141, O. 5, Rr. 17, 20, O. 9, Rr. 13, 10. See Arbitration Act (10 of 1940), S. 14. **AIR 1952 Cal 10.**

——Ss. 44, 14 and 41 and 42 —Notice of filing award when necessary. ILR 20 All 474; ILR 11 Mad 144; AIR 1925 Lah 619 (1) and A I R 1952 Cal 10, Not foll. See Arbitration Act (10 of 1940), S. 14. **A I R 1957 Nag 57.**

——Ss. 46, 34, 39 (2)—Applicalibity of Ss. 34 and 39 (2) to S. 51, Madras Co-operative Societies Act — (Madras Co-operative Societies Act (4 of 1932), S. 51. See Arbitration Act (10 of 1940), S. 34. **A I R 1955 Mad 694.**

——S. 47 — Civil P. C. (1908), O. 23, R. 3 — Private reference to arbitration pending suit — Award if can be filed under O. 23, R. 3. See Civil P. C. (1908), O. 23, R. 3. **AIR 1951 Mad 281.**

——Sch. I and S. 3—Who is an arbitrator—Arbitrator is person to whose attention matters in dispute are submitted. See Arbitration Act (10 of 1940), S. 3. **AIR 1955 NUC (Mad) 3892.**

——Sch. I, Rule 3 and S. 28 — Award made after expiry of four months—See Arbitration Act (10 of 1940), S. 28. **AIR 1952 All 856 (DB).**

——Sch. I, R. 3 and Ss 20, 28 — Scope — Expiry of time of four months — Party not applying for extension of time—Arbitrator becomes functus officio—But on this account party cannot call in aid S. 20 when he has proceeded under Chapter II. See Arbitration Act (10 of 1940), S. 20. **AIR 1963 Andh Pra 286.**

ARBITRATION (PROTOCAL AND CONVENTION ACT (6 of 1937)

——Ss. 4, 5, 6 and 7—Limitation Act (1908), Art. 178 — Scope and applicability — Application for filing foreign award in Court under Arbitration and Protocol Convention Act—Art. 178 does not apply—Arbitration Act (1940), S. 14. See Limitation Act (1908), Art. 178. **AIR 1960 Bom 91.**

ARBITRATION RULES OF BENGAL CHAMBER OF COMMERCE AND INDUSTRIES TRIBUNAL (1956)

RULE 1

——R. 1—Arbitration — Arbitrator has jurisdiction to entertain one application for arbitration in respect of disputes relating to two contracts each containing arbitration clause, when arbitration agreement is in common form — He can make one award — Distinct contracts referred by one arbitration agreement to Bengal Chamber of Commerce and Industry—Chamber can entertain one application. **A I R 1955 N U C (Cal) 3323.**

——R. 1 — Appointing same persons as second Court —Not valid. See Arbitration Rules—Bengal Chamber of Commerce and Industries (1956), R. 7. **A I R 1954 Cal 111.**

RULE 7

——R. 7—Violation of rule—There can be no waiver. **AIR 1955 N U C (Cal) 2933.**

——Rr. 7, 10 — Applicability—R. 7 presupposes that up to the period of expiry the arbitrators were functioning as arbitrators—(Arbitration Act (1940), S. 33). **AIR 1955 N U C (Cal) 2921.**

——Rr. 7, 1 — Appointing same persons as second Court—Validity—(Arbitration).

The Court has been defined by R. 1 as meaning the arbitrator or arbitrators appointed for determining a particular dispute. When R. 7 says that another Court has to be appointed, it means another set of arbitrator or arbitrators is to be appointed for determining the particular dispute; it cannot mean that the same arbitrator or arbitrators who constituted the first Court would be appointed again. In that case, there would be no significance in the use of the expression 'another' before the word 'Court'.

Held, that the constitution of the second Court which consisted of the same persons, was in contravention of the provision of R. 7. **92 Cal L J 224 : AIR 1954 Cal 111 (112) (Pt A) (Pr 7).**

RULE 10

——R. 10 — Arbitration Act (10 of 1940), S. 16 — Award by Bengal Chamber of Commerce — Order remitting award for consideration by Court to be newly constituted — New Court appointed — One of

appointed arbitrators unwilling to serve on the Court —Re-constitution of Court under rules of Bengal Chamber of Commerce by appointment of somebody in his place — Legality. See Arbitration Act (10 of 1940), S. 16. **AIR 1956 Cal 361**

—Rr. 10 and 7—Applicability— Rule 7 presupposes that up to the period of expiry the arbitrators were functioning as arbitrators — (Arbitration Act (1940), S. 33). See Arbitration Rules of Bengal Chamber of Commerce and Industries Rules (1956), R. 7. **AIR 1955 N U C (Cal) 2921.**

—Rr. 11, 17—Arbitration Act (10 of 1940), S. 30 — Misconduct — No proper hearing — Arbitration by Bengal Chamber of Commerce — One party filing typed list of points of argument — Typed list not written statement — Each point taken from statements already on record—Failure to give opportunity to other party to file reply to such list held no misconduct—(Tribunal of Arbitration of Bengal Chamber of Commerce Rules, R. 11). See Arbitration Act (10 of 1940), S. 30. AIR 1956 Cal 361.

ARBITRATION RULES (CALCUTTA)

See under High Court Rules and Orders —Calcutta High Court Arbitration Rules.

ARBITRATOR

Sole arbitrator with absolute power to decide.

See Arbitration Act, S. 13.

ARMS ACT (11 of 1878)

—S. 18 -Constitution of India, Art. 226 — Natural Justice — Finding of necessity for security of public peace — Cancellation of licence without giving opportunity to licensee of being heard — District Magistrate commits breach of first principle of natural justice.

Under S. 18, the District Magistrate must find it necessary for the security of the public peace to cancel the licence under the Act and then only he can cancel it. The finding that it is necessary for the security of the public peace to cancel the licence involves loss of the right to hold or possess the fire-arms and may, therefore, be treated as a quasi-judicial finding. The fact that the District Magistrate has to give reasons for the order of cancellation means that it has to be a speaking order. The reasons must be found in the presence of the licencee, he must have an opportunity of showing that the reasons on which the District Magistrate proposes to act do not exist at all or are outweighed by other circumstances. The finding of necessity is the fiuding to be given by him after assuming jurisdiction and not one intended to be reached ex parte for assuming jurisdiction. If he cancels the licence without giving an opportunity to the licencee he commits a breach of the first principle of natural justice. It is an order adverse to the licencee depriving him of the right to hold and possess fire-arms. Civil Misc. Writ No. 2499 of 1957 dated 21-4-1960, **Reversed. 1965 All L J 994: 1965 All W R (H C) 768 :1965 All Cri R 518 : AIR 1966 All 265.**

—S. 18 (a)—Order cancelling licence not disclosing any reasons — Validity — Order is without jurisdiction because it does not disclose reasons — It is necessary for security of public peace and must be quashed — (Constitution of India, Art. 226 — Certiorari). **AIR 1955 N U C (Andhra) 4458.**

—S. 18—Constitution of India, Art. 226—Certiorari —Order refusing to renew arms licence — No interference under Art. 226 lies—Order is within jurisdiction of State Government—(Indian Arms Rules (1951), R. 41). See Constitution of India, Art. 226. **1955 Cri L J 1558 : AIR 1955 Assam 278.**

— S. 19 (f)—Procedure— Sub-Inspector who made recovery also recording statements of witnesses during investigation — Held investigation could not be said to have been tainted on that account. **1964 All W R (H C) 207 : 1964 All Cri R 142.**

—Ss. 19 (f), 29 — Prosecution for offence under S. 19 (f)—Sanction under S. 29 obtained after institution of proceedings — Validity of trial. See Arms Act (11 of 1878), S. 29. **AIR 1952 Assam 73.**

—Ss. 19 (f), 14, 15 and 16 — Hyderabad Arms Regulation (13 of 1358 Fasli) Ss. 10, 11 and 14— Possession of spearhead without licence is no offence. See Hyderabad Arms Regulation (13 of 1358 Fasli), S. 10. **AIR 1953 Hyd 204 (DB).**

—Ss. 19 (f) and 29—Prosecution for offence under S. 19 (f)—Sanction for — Validity of — Essentials for — All facts constituting offence should have been placed before sanctioning authority. See Arms Act (11 of 1878), S. 29. **1963 (1) Cri L J 770 : AIR 1963 J and K 30.**

—Ss. 19 (f), 29 — Sanction to prosecute offence under S. 19 (f), Arms Act—Proof of. See Evidence Act (1872), S. 77. **1956 Cri L J 226 : A I R 1956 Madh Bha 50.**

—Ss. 19 (e) and 13 — "Going armed" — Mere carrying muzzle loading-gun without ammunition is no offence under S. 13 — Accused cannot be convicted under S. 19 (e)—(Words and Phrases -"Going armed"). AIR 1937 Nag 213 and AIR 1925 Sind 177 (2), Dissented from. See Arms Act (1878), S. 13. **1956 Cri L J 418 : AIR 1956 Raj 63.**

—Ss. 29, 19 (f) — Evidence Act (1872), S. 77 — Sanction to prosecute offence under S. 19 (f), Arms Act — Proof of — See Evidence Act (1872), S. 77. **1956 Cri L J 226 : AIR 1956 Madh Bha 50.**

—S. 29 — Evidence Act (1872), Ss. 56, 57 (7) — Sanction to prosecute — Proof of signature on. See Evidence Act (1872), S. 56. **1956 Cri L J 102 : AIR 1956 Pepsu 11.**

ARMS ACT (54 of 1959)

—Ss. 1 (3), 46 (2) — Arms Act (1878), S. 19 (f) — Conviction for offence under, before 1-10-1962, when new Act came into force — Subsequent repeal of Arms Act, 1878—Effect—General Clauses Act (1897), Ss. 6, 24. See Arms Act (1878), S. 19 (f). **1964 (1) Cri L J 23 : AIR 1964 All 6.**

—S. 5 — Arms Rules (1951), Rr. 41 (1) and 41-B— Application for granting of licence to sell ammunition — Application dealt with under R. 41 (1) (b) and not under R. 41 (1) (a) — R. 41-B does not apply — Reasons for refusal need not be disclosed. See Arms Act (11 of 1878), S. 5. **1964 (1) Cri L J 329 : AIR 1964 Andh Pra 116.**

—S. 25—Criminal P. C. (1898), Ss. 237 and 423 — Trial under S. 19 (f), Arms Act— Absence of previous sanction — Proceedings are illegal and void — Court cannot pass conviction and sentence under S. 19 (i), Arms Act. See Criminal P. C. (1898), S. 237. **1963 (1) Cri L J 57 : AIR 1963 Punj 8.**

—S. 26—Criminal P. C. (1898), Ss. 237 and 423 — Trial under S. 19 (f), Arms Act — Absence of previous sanction — Proceedings are illegal and void —

Court cannot pass conviction and sentence under S. 19 (i), Arms Act. See Criminal P. C. (1898), S. 237. 1963 (1) Cri L J 57 : AIR 1963 Punj 8.

ARMY ACT (8 of 1911)

——Ss. 13 and 14 — Constitution of India, Art. 310— Army Act (1950), Ss. 18, 22, 23, 24 — Wrongful dismissal of member of defence force—Suit for damages against Union of India— Not maintainable. See Constitution of India, Art. 310. AIR 1956 Bom 601.

ARMY ACT (46 of 1950)

——S. 18—Constitution of India, Art. 310—Army Act (1950), Ss. 18, 22, 23, 24—Army Act (1911), Ss. 13, 14 —Wrongful dismissal of member of defence force — Suit for damages against Union of India — Not maintainable. See Constitution of India, Art. 310. AIR 1956 Bom 601.

——Ss. 22, 23, 24 and 18 — Constitution of India, Art. 310 — Army Act (1911), Ss. 13, 14 — Wrongful dismissal of member of defence force — Suit for damages against Union of India — Not maintainable. See Constitution of India, Art. 310. AIR 1956 Bom 601.

——S. 39 (d)—Member of Territorial Army convicted by Court-martial of offence under S. 39 (d), Army Act (1950) — Member must be deemed to have been convicted on criminal charge by competent tribunal and falls within mischief of proviso (a). See Constitution of India, Art. 311 (2), proviso (a). (1963) 6 Fac L R 134 (Cal).

——Ss. 69 and 3 (ii) and (viii) — Offence under S. 86, (J. and K.) Motor Vehicles Act — Not "civil offence" and not triable by Court-martial but by Criminal Court. See Army Act (1950), S. 3 (ii). 1960 Cri L J 1453 : A I R 1960 J and K 139.

——Ss. 125, 69, 70, Explanation 3 (ii), (viii), (xvii) — —Offences falling under Ss. 392, 448 and 506 Ranbir P. C., committed in State of Jammu and Kashmir— Section 69 applies — Notice under R. 3 framed under S. 549, Criminal P. C., given — Proceedings before.— Magistrate must be stayed. See Army Act (1950), S. 69. 1960 Cri L J 1593 (2) : A I R 1960 J and K 145.

——Ss. 191, 2 (1) (i), 3 (1) and (x), 9—Civilian Officer in Works Engineers, in Defence Services—Amenability to Army Act and Rules thereunder — Civilian Officer attached to Works Engineers, deemed to be on active service by virtue of notification, automatically becomes subject to Army Act and can be tried by a Court of Enquiry set up under R. 177 of Rules under the Army Act. See Army Act (1950), 2 (1) (i). 1964 (1) Cri L J 337 : AIR 1964 J and K 21.

ARMY RULES (1954)

——R. 177 — Army Act (1950), Ss. 2 (1) (i), 3 (1) and (x), 9 — Civilian Officer in Works Engineers, in Defence Services—Amenability to Army Act and Rules thereunder — Civilian Officer attached to Works Engineers, deemed to be on active service by virtue of notification, automatically becomes subject to Army Act and can be tried by a Court of Enquiry set up under R. 177 of Rules under the Army Act. See Army Act (1950), S. 2 (1) (i). 1964 (1) Cri L J 337 : A I R 1964 J and K 21.

ASSAM ASSESSMENT OF REVENUE FREE WASTE LAND GRANTS ACT (24 of 1948)

——S. 3 — Constitution of India, Arts. 31 (2) and 19 (1) (f) — Land held free of land revenue—Such land assessed to land revenue — Right to enjoy interest in such land is not acquisition of property. See Constitution of India, Art. 31 (2). AIR 1956 Assam 33.

ASSAM AUTONOMOUS DISTRICTS (CONSTITUTION ON DISTRICT COUNCILS) RULES (1951)

——R. 29 (2) (a) — Constitution of India, Art. 226 — Mandamus—Other remedy open—Petitioners aggrieved by order of Executive Council — Order held not final but subject to approval of District Council — Petitioner held should take recourse to District Council. See Constitution of India, Art. 226. A I R 1955 Assam 238.

ASSAM COMMISSIONERS' POWERS DISTRIBUTION ACT (1 of 1939)

——S. 2 — Assam Revenue Tribunal (Transfer of Powers) Act (4 of 1948), S. 3 (3) — Eastern Bengal and Assam Excise Act (1 of 1910), S. 9 (before its amendment by Assam Act 23 of 1955) — Notification dated 5-7-1955 constituting Appellate authority to hear appeals in excise cases is not valid. See Assam Revenue Tribunal (Transfer of Powers) Act (4 of 1948), S. 3 (3). A I R 1956 Assam 142.

ASSAM GOVERNMENT FISHERY RULES

——R. 17—Constitution of India, Art. 226 — Mandamus — Who can apply — Temporary appointment of petitioner as Daloi by Executive Committee of District Council — Order terminating service impugned — Petitioner, held had no locus standi — Order, held not in excess of jurisdiction — (Assam Autonomous Districts (Constitution of District Councils) Rules (1951), Rr. 28 and 29 (1) and (2) (c) and (f)). See Constitution of India, Art. 226. AIR 1955 Assam 238.

ASSAM HIGH COURT ORDER (1948)

——S. 4 —Power of High Court to quash proceedings —Administration of Justice and Police in the Naga Hills District Rules, R. 16.

Under R. 16 of the Rules for the Administration of Justice and Police in the Naga Hills District the Governor can set aside a sentence passed or remand the case for retrial—which obviously implies that the Governor could hold a person not guilty and declare that the complaint disclosed no offence and as such no process of the Court should have been issued against a certain individual. Hence in a case arising from Naga Hills the Assam High Court in the exercise of its powers vested under S. 4 of the Assam High Court Order is competent to quash a complaint which discloses no offence and where the examination of the complainant is also silent upon the commission of any offence. ILR 2 Assam 62, Ref. ILR (1952) 4 Assam 28 : 1952 Cri L J 97 : A I R 1952 Assam 1 (2) (Prs 9, 11) (DB).

——S. 6—Civil P. C. (1908), O. 22, R. 4—Sub-rule (4) as added by Calcutta High Court — Applicability of, in Assam State—Order not challenged in first appeal — Objection in second appeal — Maintainability. See Civil P. C. (1908), O. 22, R. 4. A I R 1956 Assam 17 (DB).

ASSAM INDUSTRIAL DISPUTES RULES (1958)

——R. 79—Provisions are not mandatory—Employer's non-compliance neither prejudicing the retrenched workmen nor in any manner affecting their rights — Entire proceedings will not be vitiated by such non-compliance —(Obiter). AIR 1964 Assam 66.

ASSAM JAIL MANUAL

—R. 115 — Constitution of India, Arts. 311 (2) and 226 — Reduction in rank — Right of appeal — Order passed by Local Government—Right cannot be taken away. See Constitution of India, Art. 311 (2). A I R 1956 Manipur 34.

(ASSAM) KHASI STATES (ADMINISTRAION OF JUSTICE) ORDER (1950)

—R. 1—Order is existing law falling within ambit of Constitution of India, Sch. VI, Paras 19 and 20. A I R 1952 Assam 3 (4) (Pt A) (Pr 4) (DB).

—R. 14—"In the spirit of the Code of Criminal Procedure"—Words whether exclude application of Criminal P. C. in terms — Application of transfer under S. 526, Criminal P. C.—Power of High Court to order transfer — Criminal P. C. (1898), S. 526. A I R 1952 Assam 3 (4, 5) (Pt B) (Prs 5, 6, 7) (DB).

ASSAM LAND REVENUE MANUAL

—S. 115, Rules under — Chap. 10, R. 190A and App. IV-A, R. 9 — Settlement of Fisheries. A I R 1953 Assam 137 (140) (Pt A) (Prs 11, 13, 14) (DB).

—S. 155—Rules under Chap. 10, R. 190 — Sale not in accordance with rules nor by order of Sub-divisional Officer — Order is not appealable — Per Ram Labhaya Ag. C. J. AIR 1953 Assam 137 (141) (Pt B) (Pr 16) (DB).

—Chap. 10, Part 6, R. 190—Practice — Interference — Revenue appeal — High Court will not ordinarily interfere with discretion exercised by Deputy Commissioner. AIR 1955 N U C (Assam) 4187.

ASSAM LAND REVENUE RE-ASSESSMENT ACT (8 of 1936).

—Ss. 3, 2 (xi)—Panchayats—Assam Rural Panchayat Act (27 of 1948), S. 1 (2) — Town area — What is — Area declared as own land under Assam Act 8 of 1936—Not town area — (Assam Land Revenue Regulation (1 of 1886), R. 64 (a))—(Municipalities—Assam Municipal Act (1 of 1923), S. 328). See Panchayats—Assam Rural Panchayat Act (27 of 1948), S. 1 (2). A I R 1958 Assam 20.

ASSAM LEGISLATIVE ASSEMBLY RULES (1950)

RULE 158

—R. 158—Constitution of India, Art. 208 — Person in contempt—Speaker has authority to summon such person to appear before Privileges Committee in absence of resolution by House. See Constitution of India, Art. 208. A I R 1958 Assam 160 (DB).

RULE 163

—R. 163—Constitution of India, Art. 208—Person in contempt—Speaker has authority to summon such person to appear before Privileges Committee in absence of resolution by House. See Constitution of India, Art. 208. AIR 1958 Assam 160 (DB).

RULE 175

—Rr. 175 and 176—Constitution of India, Art. 208—Person in contempt — Speaker has authority to summon such person to appear before Privileges Committee in absence of resolution by House. See Constitution of India, Art. 208. AIR 1958 Assam 160 (DB).

RULE 181

—R. 181—Constitution of India, Art. 208 — Person in contempt—Speaker has authority to summon such person to appear before Privileges Committee in absence of resolution by House — Further in view of R. 181 the speaker is not exclusively bound by the procedure laid down in R. 158 and other cognate rules. See Constitution of India, Art. 208. AIR 1958 Assam 160 (DB).

ASSAM LOCAL-SELF GOVERNMENT ACT (25 of 1953)

—S. 103—Limitation Act (1908), Arts. 120, 2, 36—Suit for recovery of Provident Fund Money from Local Board withheld without authority — Art. 120 applies — S. 103, Assam Local Self-Government Act, 1953, has no application. See Limitation Act (1908), Art. 120. AIR 1960 Assam 121.

ASSAM SETTLEMENT OF FISHERIES RULES

(framed under Ss. 155 and 156 of Assam Land and Revenue Regulation (1886) read with S. 6, Fisheries Act (1897)

—Fishery—Settlement—Assam—Settlement exceeding Rs. 5,000 and not exceeding Rs. 25,000—Settlement confirmed by Conservator of Forests — Interference by State Government.

Under para. II of the conditions of fishery, where the tender for settlement exceeds Rs. 5,000 but does not exceed Rs. 25,000 and the Conservator of Forests confirms the tender, the State Government has no right to interfere with the order. Where it does so, the order of the State Government would be illegal. By virtue of the confirmation the person in whose favour it is made acquires a valuable right. AIR 1958 Assam 9.

● —R. 12—State Government can settle without auction. See Assam Land and Revenue Regulation (1 of 1886), S. 16. AIR 1957 S C 377.

—Rr. 12, 43 and 44 — Power of Government to settle fishery rights under R. 12 — No limitations — Government can make direct settlement even while tender procedure is being followed by authorities under Government approval.

There are no words in R. 12 which will show that once the power has been exercised by the Government by directing the fishery to be settled by tender system, the power of the State Government to settle it direct is exhausted. In fact R. 12 does not give a choice to the Government to adopt any of the procedures. What R. 12 says is that ordinarily the settlement will be made by sale and an exception has been created in favour of the Government. The Government can make settlement otherwise than by sale. It is therefore, not a power conferred on the Government at the initial stage to select which particular procedure will be adopted by it for the purposes of the settlement. There is nothing in R. 12 which lays down that the power of the Government for making settlement otherwise than by sale is to be exercised at the initial stage only. Rules 43 and 44 also do not place any fetter on the power of the Government under R. 12. There is no bar to the Government making a direct settlement even though the tender procedure was being adopted by the authorities under the approval of the Government and the order of the Government cannot be said to be without jurisdiction. AIR 1957 S C 377, Rel. on. I L R (1963) Assam 288.

—R. 12—Infringement of legal rights—Settlement of fishery — Bidders invited — Fishery not put up for sale—Bidder applying under Art. 226 of Constitution challenging validity of R. 12 — Relief held could not be refused on ground that he had no locus standi to apply for relief under Art. 226. See Constitution of India, Art. 226. AIR 1956 Assam 48 (DB).

[Overruled in AIR 1957 S C 377.]

● —R. 46—Rule amended after issue of sale notice—Sale notice stating that settlement would be sub-

ject to "rules for the time being in force" — Tenders considered by authorities after amended rule came into force—Amended rule whether can be applied in selection of tenderer for settlement.

Held, (Per Deka, C. J., with whom Mehrotra, J. agreed) that the tenderer who had submitted his tender prior to the amendment, had done nothing under the repealed rules by virtue of which he acquired any right or privilege except the right of having his tender considered. Either the consideration of the tender or the act of settlement did not come at any stage before the new set of rules came into force, and, therefore, it would be only the new set of rules that would govern the settlement and not the old ones at the time of inviting tenders.

Per Dutta, J., contra:- If the authorities after receipt of certain tenders amend the rules so as to prejudice the case of any of those tenders, it will mean that a certain disqualification has been imposed on them by the amendment.

In this view of the matter the words "for the time being in force" must be interpreted to mean as in force at the time of submission of tenders. Raghunath v. Sub-Divisional Officer, **(1960) 1 Assam L R 340 : I L R (1961) 13 Assam 209 : AIR 1962 Assam 1 (14 to 16) (Pt B) (Prs. 44, 45, 52) (SB).**

——R. 69 (a)—Temporary settled estates — Recovery of arrears of revenue—Procedure indicated. **AIR 1955 N U C (Assam) 634.**

——R. 184—Lower bid of person who had given highest bid on ground that it was overbid, accepted—Sale is not in accordance with rules. **AIR 1955 N U C (Assam) 619.**

——R. 186—"Should", not to be interpreted as 'must'. **AIR 1955 N U C (Assam) 605.**

——R. 187—Scope—Sale of fisheries is to be reported to Commissioner for sanction in form No. 100. **A I R 1955 N U C (Assam) 605.**

● ——R. 190 — Deputy Commissioner, according to letter of Government, selling fishery by auction to A —Sanction in favour of A — Subsequently settlement in favour of A cancelled and fishery re-settled in favour of another body — Acts of cancellation and resettlement held were those of Deputy Commissioner—Under R. 190 High Court had jurisdiction to entertain appeal by A against his decision — High Court was right in restoring settlement with A. See Assam Land and Revenue Regulation (1886), S. 16. **AIR 1953 S C 309.**

——R. 190—Appeal against Government order.

The order of the Provincial Government settling a fishery otherwise than by auction is an order against which no right of appeal is given under the Regulation. **I L R (1950) 2 Assam 45 : AIR 1950 Assam 212 (214) (Pt B) (Pr 8).**

● ——R. 190-A—Deputy Commissioner, according to letter of Government, selling fishery by auction to A —Sanction in favour of A—Subsequently settlement in favour of A cancelled and fishery re-settled in favour of another party — Acts of cancellation and re-settlement held were those of Deputy Commissioner — High Court had jurisdiction to entertain appeal by A against his decision — High Court was right in restoring settlement with A. See Assam Land and Revenue Regulation (1886), S. 16. **AIR 1953 S C 309.**

——R. 190-A—Authority to settle fishery — R. 190-A does not enable Provincial Government to settle fisheries in any manner it likes — It is Deputy Commissioner who is to settle fisheries. **AIR 1955 N U C (Assam) 605.**

——R. 190-A—Settlement of fisheries otherwise than by auction — Provincial Government if can order settlement.

When a S. D. O or Deputy Commissioner decides to settle a fishery otherwise than by an auction sale, he is obliged to communicate to Government the name of the person on whom the fishery is proposed to be settled. But that does not mean that the Provincial Government can make a counter proposal as regards the person upon whom the S. D. O. or Deputy Commissioner should settle the fishery. There is no rule which empowers the Provincial Government to name the person upon whom the S. D. O. or the Deputy Commissioner is obliged to settle the fishery.

Where the order of the S. D. O. settling the fishery otherwise than by auction was influnced by the order of the Provincial Government, held that the order could not be upheld. **I L R (1950) 2 Assam 45 : AIR 1950 Assam 212 (213) (Pt A) (Prs 6, 7).**

ASSAM SETTLEMENT RULES (FRAMED UNDER ASSAM LAND AND REVENUE REGULATION (1 of 1886))

——R. 1 (c)—Annual lease — Sub-lessee — Right of, against Government — Order of ejectment of sub-lessee—Writ against order — Maintainability—(Constitution of India, Art. 226).

Rule 1 (c) of the Settlement Rules under the Assam Land and Revenue Regulation definitely says that an annual lease is a lease granted for one year only and confers no right in the soil beyond a right of user for which it is given. It confers no right of transfer or of inheritance beyond the year of issue or of subletting. In view of this rule the petitioner, as a sub-lessee, cannot claim any rights at all against Government and cannot question the cancellation of the settlement even if such a cancellation is not strictly regular and in accordance with law. Hence the sub-lessee who has no right in the land cannot ask the High Court to issue a writ against the order of eviction although such an order is not strictly in accordance with law. **I L R (1954) 6 Assam 422 : A I R 1956 Assam 81 (81, 82) (Pr 4) (DB).**

——R. 1 (c) — Provision in lease deed for renewal does not offend against definition of annual lease. **A I R 1955 N U C (Assam) 5527 (DB).**

——R. 1 (c) framed under Act — Voluntary transfer by annual patta holder from Government—Transferee takes good title to property subject only to paramount title of Government. See Assam Land and Revenue Regulation (1886), S. 11. **A I R 1951 Assam 20 (DB).**

——Pr. 1 (d) and 53—Periodic lease—Meaning of.

It is clear from R. 53 that a periodic lease is intended for a person who has already acquired the status of a landholder. For acquiring the status of a landholder for the first time the lease will have to be for 10 years under S. 8 (1) (b) and once those rights have been acquired then they will not be lost even if the re-settlement is for a shorter period. **A I R 1958 Manipur 1 (4) (Pt C) (Pr 15).**

——R. 4—Settlement order—Appeal—Forum—Settlement officer held had jurisdiction to hear and decide appeal. See Assam Land and Revenue Regulation (1886), S. 133. **A I R 1955 N U C (Assam) 2803.**

——Rr. 5, 9 and 15 — Rules do not confer rights on applicants—Settlement can be made with non-occupants in fit case. **A I R 1955 N U C (Assam) 633.**

——Rr. 9, 5 and 15 — Applicability and scope of the rule — Rules do not confer rights on applicants—Settlement can be made with non-occupants in fit case. **A I R 1955 N U C (Assam) 633.**

——Rr. 13 and 23—Leases by Deputy Commissioner —Government is bound if Deputy Commissioner acts within scope of his authority. **A I R 1955 N U C (Assam) 616.**

——Rr. 15, 9 and 5—Scope of — Rules do not confer rights on applicants — Settlement can be made with

●——Preamble—Constitution of India, Sch. 7, List 2 Entry 56; Art. 366 (12) — 'Goods' means Trade goods and not "luggage" or "personal effects" —Words and Phrases — See Constitution of India, Sch. 7, List 2 Entry 56. AIR 1955 Assam 249 (SB).

●——S. 3 — Constitution of India, Art. 14 — Tests of valid classification indicated — Classification in respect of taxation — Tax only on tea carried in chests and jute in bales—There may be rational basis for classification — Assam Act 13 of 1954 does not violate Art. 14 — See Constitution of India, Art. 14. AIR 1955 Assam 249 (SB).

AUTHENTICATION (ORDER AND OTHER INSTRUMENTS) RULES (1958)

——R. 2(a) — Constitution of India, Arts. 359, 53, 77 (2) —Presidential orders under Art. 359 (1)—Validity —See Constitution of India, Art. 359. (1965) 2 Mys L J 584 : 1966 Cri L J 929 : AIR 1966 Mys 207.

AVOIDANCE OF TAX.

See Income-tax Act (1922), Ss. 44D, 44E and 44F.

BANK

——Co-operative Bank—Bye laws—Board of directors —Powers of—Chairman—Power to convene meetings of Board — Duty of secretary— Meeting of working committee called by Secretary against directions of chairman —Validity.

Guidance of the Chairman. Since there is no bye-law empowering the Secretary to call a meeting of the Board and Byelaw 44 makes it his duty so to do and also to act, in the discharge of that duty, under the guidance and supervision of the Chairman, in this matter, he had to act in accordance with the directions of the Chairman. So also in the absence of any bye-law governing the matter, the power to sommon a meeting of the Board is within the implied powers of the Chairman and inheres in him by virtue of his very position as the Chairman and the chief executive authority in all matters relating to the affairs of the Bank. In this view, when the Secretary took up a defiant attitude, the Chairman was not only justified in calling a meeting of the Board but he was also entitled to do so. Further, the meeting of the Working Committee dated 5th August 1961 called against the Chairman's directions in order to prevent a consideration of the case against the petitioner 1 by the parent body, namely the Board, was clearly unauthorised and bad. 1962 M P L J 554.

BANKER AND CUSTOMER

——A depositing his own money in bank in joint names of A and B:— Deposit payable to either or survivor—Deposit if constitutes gift to B on A's death — Burden of proof — See Gift. A I R 1961 Andh Pra 320.

——Contract Act (1872), Ss. 2 (d), 19, 25 (2) and 70— Customer having Bank account without overdraft concession—His cheque presented through bankers dishonoured but returned to customer instead of to bankers—Meanwhile drawee paid by bankers—Bank making overdraft on customer's account and obtaining letter undertaking to make good overdraft — Letter held was without consideration—Ss. 25 and 70 held did not apply—See Contract Act (1872), S. 2 (d). AIR 1958 Andh Pra 605.

——Penal Code (1860), Ss. 405 and 408 — Amount when can be said to have been entrusted—(Words and Phrases — Banker) — See Penal Code (1860), S. 405. 1956 Cri L J 979 : AIR 1956 Bom 524.

——Negotiable Instruments Act (1881), Ss. 89, 85 (1), 10—Payment of forged cheque involving overdraft— Liability of Bank — Payment in due course—(Words and Phrases) —See Negotiable Instruments Act (1881), S. 89. AIR 1956 Cal 399.

——Branch of a bank is not juridical person—Negotiable Instruments Act (1881), Ss. 30, 31. A I R 1952 Cal 385.

——Bank's action must be in accordance with the ordinary practice of bankers — Plaintiff instructing Bank to take security from second defendant for due payment—No form of security specified—Bank taking personal undertaking from second defendant—Held that it must be deemed that Bank acted in accordance with mandate given by plaintiff and their duty and responsibility came to end. 1924-1 KB 775 and 1920 A C 609 Foll., 1913-109 L T 856 and 1933 A C 201 and 1924-3 K B 356, Ref. I L R (1965) 1 Mad 334 (DB).

——Negotiable Instruments Act (1881), Ss. 20 and 89— Negligence between banker and customer — Question of fact — Duty of banker — Protection to bank under S. 89 — See Negotiable Instruments Act (1881), S. 20. AIR 1959 Mad 119.

——Constitution of India, Art. 300 — Liability of Government for negligence of its servants— (Tort— Master and servant—Vicarious liability)—(Civil P. C. (1908), S. 9) — (Bihar and Orissa Local Self-Government Act (3 of 1885), S. 138) — Rules under—Rr. 22, 23, 25, 27, 38, 40) — See Constitution of India, Art. 300. AIR 1954 Pat 529.

——Contract Act (1872) Ss. 170, 171 —Banker's lien and Bank's right to set off — Distinction — See Contract Act (1872), S. 170. AIR 1960 Punj 632.

——Contract Act (1872), Ss. 182 and 191 — Customer giving bills to bank for collection — Relationship between two — Nature of — Bank passing on bills to another bank for collection—Relation between latter and customer — Arrangement between banks for reduction of amount — Customer whether bound by such arrangement — (Banking Companies Act (1949), S. 45-B)—See Contract Act (1872), S. 182. AIR 1959 Punj 100.

——Contract Act (1872), S. 171 — General Banker's lien—Extent of—Customer having call loan account with bank—Deposit of Government securities by way of securities — Sale of securities by bank and adjustment of amount due to customer on call-loan account — Surplus in hands of bank whether subject to banker's general lien—(Banker's lien)—See Contract Act (1872), S. 171. AIR 1956 Punj 118.

BANKERS' BOOKS EVIDENCE ACT (18 of 1891)

——S. 4 — Banking Companies Act (1949), Ss. 45.F and 2—Scope — Section 45.F is in addition to provisions contained in Evidence Act and Bankers Books Evidence Act — (Evidence Act (1872), S. 65) — See Banking Companies Act (1949), S. 45-F. A I R 1957 Cal 9.

BANKING COMPANIES ACT (10 of 1949)

——S. 22—Companies Act (1956), S. 17 — Alteration of Memorandum — Clauses relating to banking business of company ordered to be deleted by Court — Company if transacts banking business thereafter acts illegally—See Companies Act (1956), S. 17. AIR 1961 Cal 666.

——Ss. 22, 45-A, 45-B, 45-C, Part III-A, (Ss. 45-A to 45-X), (as amended by Act 52 of 1953)—Bank going into voluntary liquidation under S. 207, Companies Act (1913)—No license under S. 22—Part III-A held did not apply — (Companies Act (1913), S. 207) — (Companies Act (1956), S. 488) — See Banking Companies Act (10 of 1949), Part III-A. A I R 1961 Orissa 26.

—S. 23 — Debtor and creditor—Relationship of — What constitutes—Banking company — Relationship between head office and branch — If that of creditor and debtor—Profession tax—Computation— Payment of interest by branch to head office — Deduction of — (Municipalities — Travancore District Municipalities Act (23 of 1116)) — (Income-tax Act (1922), S. 10 (2))—Company—Banking Company).

A Bank vis-a-vis its branch or the branch vis-a-vis all other branches elsewhere, cannot be treated as distinct and different legal entities for the purpose of tax provisions and the relationship of creditor and debtor is not legally possible between them. A mere entry in the account books of the Head Office of the Bank that the branch is a debtor to the former cannot constitute the legal relationship of debtor and creditor between the two offices. Hence, in computing the income of the branch for purpose of assessment to the profession tax, a Municipal Council is right in disallowing the interest averred to be payable on amounts borrowed from the head office. 16 Trav L J 611 and 3 Trav L T 330, Rel. on. 1957 Ker L T 229 : 1957 Ker L J 319: (1957) 32 I T R 439 : (1957) 27 Comp Cas 439 : AIR 1957 Ker 58.

—S. 30 — Chartered Accountants Act (1949), S. 22 — Banking company — Accounts — Auditing of — Duties of auditor — See Chartered Accountants Act (1949), S. 22. AIR 1960 Ker 309.

—S. 30 (3) (b)—Chartered Accountants Act (1949), S. 22, Sch, item (o) (as it stood prior to its amendment by Act 15 of 1959) — Misconduct — Banking company — Omissions in certificate by accountant on profit and loss account-sheet — Failure to state bank's reserve for bad debts — Certificate silent as to cancelled shares being partly paid and what were the amounts of such paid up capital — Silence about paid up capital, on the advice of accountant, being treated as special reserve and liable to be set off towards capital expenditure over loss—No statement by accountant that aforesaid paid amount being treated as reserve for bad debts to be within the power of the bank — Auditor's conduct held covered by item (o) and financial statement misleading — See Chartered Accountants Act (1949), S. 22. A I R 1960 Ker 309.

—S. 35 — Inspection report by Reserve Bank of Scheduled Bank — Government claiming privilege — Court's power to inspect document to decide claim —See Evidence Act (1872), Ss. 123 and 124. (1959) 1 Lab L J 539 : (1958.59) 15 F J R 297 (Punj).

—S. 35-F (as inserted by Act 20 of 1950)—Amending Act of 1950 is not retrospective. A I R 1956 Punj 21.

—S. 45 (as amended by Act of 1950) — Companies Act (1913), S. 153 (2)—Scheme—Sanction of — Procedure — Powers and duties of Court—Effect of— Substantial modification of Scheme by Reserve Bank — Jurisdiction of Court to sanction modified scheme — High Court Rules — Calcutta High Court Rules (Original Side). App. 7, Rr. 40 to 47 — See Companies Act (1913), S. 153 (2). AIR 1952 Cal 133.

—Ss. 45-A and 45-B, 11 (as amended by Act of 1950) — Proceeding arising out of or in course of winding up — Proceeding under O. 21, R. 58, Civil P. C., initiated by liquidator — (Civil P. C. (1908), O. 21, R. 58,—(Companies Act (1913), S. 178) — See Banking Companies (Amendment) Act (1950), S. 11. AIR 1952 Cal 732.

—S. 45-B — Kerala Agriculturist Debt Relief Act (31 of 1958), S. 15 — Application to restrain creditor from executing decree—Creditor, a banking company ordered to be wound-up — S. 446, Companies Act (1956) and S. 45-B, Banking Companies Act (1949) are attracted—See Debt Laws — Kerala Agriculturist Debt Relief Act (31 of 1958), S. 15. 1965 Ker L T 1228 : 1965 Ker L J 1064 : (1965) 2 Ker L R 352 : AIR 1966 Ker 147.

—S. 45-B—Contract Act (1872), Ss. 182 and 191 — Customer giving bills to bank for collection — Relationship between two— Nature of — Bank passing on bills to another bank for collection — Relation between latter and customer—Arrangement between banks for reduction of amount — Customer whether bound by such arrangement—(Banker and Customer) — See Contract Act (1872), S. 182. A I R 1959 Punj 100.

—S. 46 (4) — Companies Act (1956), S. 17—Alteration of Memorandum — Clauses relating to banking business of company ordered to be deleted by Court — Company if transacts banking business thereafter acts illegally—See Companies Act (1956), S. 17. AIR 1961 Cal 666.

BANKING COMPANIES (AMENDMENT) ACT (20 of 1950)

—Ss. 45 (c) and 11 — "Which has arisen out of or in the course of such winding up" — Meaning of — Banking Companies Ordinance (1949), S. 3 — See Banking Companies (Amendment) Act (2 of 1950), S. 11. AIR 1952 All 848.

BAR COUNCILS ACT (38 of 1926)

—S. 10 (2) — S. 56 contemplates case which is pending before erstwhile Bar Council and not one which is referred to District Judge after consultation with Bar Council — Moreover since Ch. V of Act of 1961 had not come into force, provision of Act 1926 are still available to District Judge to hold enquiry. See Advocates Act (1961), S. 56. ILR (1964) Andh Pra 168.

● —S. 10—Complaint against Advocate by private person — Enquiry by Bar Council —Complaint withdrawn — Report by Bar Council to drop enquiry — On facts, High Court refused to stop enquiry and directed Bar Council to continue it.

A complaint was made against an Advocate that he induced the complainant to agree to purchase a property of his client, knowing fully that the client had not title to it, that this misrepresentation the complainant parted with sums of money some of which amount was not paid by the advocate to the client and that a decree against the advocate was obtained for this sum. On this complaint, an enquiry was started by the Bar Council. After some adjournments the complaint was withdrawn on the ground that the complainant could not substantiate the charges. Upon this the Bar Council reported that the proceedings should be dropped :

Held that a mere statement by the complainant that he could not substantiate the charges against the advocate could not be accepted, especially having regard to the considered judgment of the High Court in the suit against the Advocate, in which the Judge had an opportunity of examining the entire evidence on the matter and it was common ground that the present proceedings were intimately connected with the proceedings in that suit. (Complaint was directed to be kept on file and if complainant was unwilling to conduct proceeding the Bar Council Tribunal was asked to appoint advocate to conduct the same.) In the matter of P. Ramanujachari, 1951.2 Mad L J 661 : ILR (1952) Mad 348 : 65 Mad L W 24 : 1952 Mad W N 56 : 1952 Mad W N Cr 4 : AIR 1952 Mad 149 (149) Pr 2) (FB).

—S. 10—Advocate—Re-admission—Considerations.

Punishment under the Legal Practitioner's Act is not to operate as a permanent disability and that the

Court has discretion at any time with due regard to circumstances brought to its notice to re-admit a legal practitioner whose name has been struck off the rolls. The test is whether the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty, and whether, during the period between his expulsion and the date of the application for reinstatement, the applicant's conduct has been such as to satisfy the Court that he might be safely entrusted with the affairs of his clients. Having regard to the age, the assurance of the Petitioner. the representations made on his behalf and the certificates field in support of his application, the Petitioner was re-admitted to the office of the Advocate of the High Court: 51 Mys H C R 42; AIR (24) 1937 Bom 48; 1947-2 M L J 213, Rel. on. (1949) 29 **Mys L J 160 : 54 Mys H C R 425 (DB).**

● ——S. 10—Legal Practitioners Act (1879), S. 13 — Professional misconduct — Standard of proof — See Legal Practitioners Act (1879), S. 13. **AIR 1956 Raj 58 (SB).**

● —S. 12 — Proceedings against — If should be dropped because complainant chooses to withdraw complaint.

It cannot be said that because the complainant chooses to withdraw his complaint against an advocate the proceedings against advocate should be dropped. A mere statement by the complainant that he could not substantiate the charges made in the complaint cannot be accepted especially where there are enough materials. The proceedings should be conducted before the Tribunal of the Bar Council, if necessary by the appointment of an advocate, if the complainant is not willing to conduct the proceedings. In the matter of An Advocate, High Court. **1952 Mad W N 56 : 1952 Mad W N (Cri) 4 : ILR (1952) Mad 348 : 65 L W 24 : (1951) 2 M L J 661 : A I R 1952 Mad 149 (149) (Pr 2) (FB).**

● ——Ss. 14, 9—Supreme Court Advocates (Practice in High Courts) Act (1951), S. 2 — "Entitled to practice as of right" — Meaning of — (High Court Rules and Orders—Calcutta High Court Original Side Rules — Chap. 1. R. 37) : AIR 1952 Cal 178 (SB), **Reversed.** See Supreme Court Advocates (Practice in High Courts) Act (1951), S. 2. **AIR 1952 S C 369.**

——S. 14 — U. P. High Court (Amalgamation) Order (1948), Cl. 8 (2), Second proviso, Cl. 18 — Direction issued by Chef Justice on 25-11-1948 under second proviso to Cl. 8 (2) whether contravened Art. 19 (1) (g) of the Constitution—Proviso to S. 2 of Supreme Court (Advocates Practice in High Courts) Act whether invalidated such direction— After application of Ss. 14 and 19 (2) of Bar Councils Act to new High Court Cl. 8 (2) second proviso to Order of 1948 stood repealed — Direction dated 25-11-1948 could be cancelled by writ of mandamus. See U. P. High Court (Amalgamation) Order (1948), Cl. 8 (2), Second Proviso, Cl. 18. **AIR 1962 All 391.**

——S. 15—Contract Act (1872), S. 23 — Agreements prohibited by law or opposed to public policy — Mortgage in favour of legal practitioner — Validity — Allahabad High Court Rules, Part. II, R. 26 — Legal Practitioners Act (1879 , S. 6 — Letters Patent (All), Cls. 7 and 8. See Contract Act (1872), S. 23. **AIR 1953 All 276.**

——S. 19—U. P. High Courts (Amalgamation) Order (1948), Cl. 8 (2), Second proviso, Cl. 18 — Direction issued by Chief Justice on 25-11-1948 under second proviso to Cl. 8 (2) whether contravened Art. 19 (1) (g) of the Constitution — Proviso to S. 2 of Supreme Court (Advocates Practice in High Courts) Act whether invalidated such direction— After application of Ss. 14 and 19 (2) of Bar Councils Act to new High Court Cl. 8 (2), second proviso to Order of 1948 stood repealed — Direction dated 25-11-1948 could be cancelled by writ of mandamus. See U. P. High Courts (Amalgamation) Order (1948), Cl. 8 (2), Second Proviso. **AIR 1962 All 391.**

——S. 24—Legal Practitioners Act (1879), Ss. 6, 7 — Notification under Bar Councils Act (1926) — Rules under — R. 1 (V-B) — Requirement of University degree— Mere recognition as first grade pleader by virtue of notification does not qualify a person to be recognised as Advocate of Madras High Court. See Legal Practitioners Act (1879), S. 6. **AIR 1964 Mad 390.**

BAR COUNCILS RULES

——R. 1 (V-B)—Legal Practitioners Act (1879), Ss. 6, 7 — Notification under Bar Councils Act (1926) — Requirement of University degree — Mere recognition as first grade pleader by virtue of notification does not qualify a person to be recognised as Advocate of Madras High Court. See Legal Practitioners Act (1879), S. 6. **AIR 1964 Mad 390.**

BARODA STATE (APPLICATION OF LAWS) ORDER (1949)

——Cl. 12 — Limitation Act (1908), Ss. 20, 19—"Before the expiration of the prescribed period"—Effect. See Limitation Act (1908), S. 20. **AIR 1956 Bom 347.**

BASIC WAGE

See Employees' Provident Funds Act (1952), S. 2 (b).

BENEFICIAL ENJOYMENT

See Easements Act (1882), S. 4.

BENGAL, AGRA AND ASSAM CIVIL COURTS ACT (12 of 1887)

——S. 3 — Decree by Second Additional Subordinate Judge — Abolition of his Court — Execution can be taken out in Court of Additional Subordinate Judge. See Civil P. C. (1908), S. 37. **ILR 44 Pat 742 : 1965 B L J R 628.**

——S. 4 — Decree by Second Additional Subordinate Judge — Abolition of his Court — Execution can be taken out in Court of Additional Subordinate Judge. See Civil P. C. (1908), S. 37. **ILR 44 Pat 742 : 1965 B L J R 628.**

——Ss. 8—Hindu Marriage Act (1955), Ss. 3 (b), 13, 21 and 19—Application for dissolution of marriage filed before District Judge — District Judge transferring it to Additional District Judge under S. 8 (2), Bengal, Agra and Assam Civil Courts Act—Latter has jurisdiction to dispose it. See Hindu Marriage Act (1955), S. 3 (b). **A I R 1960 Cal 565.**

——S. 8 (2)—Land Acquisition Act (1894), S. 3 (d)—Principal Civil Court of original jurisdiction — Additional District Judge. See Land Acquisition Act (1894), S. 3 (d). **A I R 1956 Pat 108.**

——S. 13—Decree by Second Additional Subordinate Judge — Abolition of his Court — Execution can be taken out in Court of Additional Subordinate Judge. See Civil P. C. (1908), S. 37. **ILR 44 Pat 742 : 1965 B L J R 628.**

——Ss. 13 (1), 14 (1), 17—Civil P. C. (1908), S. 150—Alteration of local limits — Effect on jurisdiction of old Courts. See Civil P. C. (1908), S. 150. **A I R 1956 Pat 280.**

——Ss. 14, 11 (1) — High Court Rules and Orders — Patna General Rules and Circular Order (Civil), Vol. 1, R. 10 — Order appointing officer to receive execution application need not be in writing — (Civil P. C. (1908), O. 21. R. 10) — Santhal Parganas Justice Regulation (5 of 1893). See High Court Rules and Orders — Patna General Rules and Circular Order (Civil), Vol. 1, R. 10. **A I R 1956 Pat 522.**

——Ss. 14 (1), 13 (1) and 17 — Civil P. C. (1908), S. 150 — Alteration of local limits—Effect on jurisdiction of old Courts. See Civil P. C. (1908), S. 150. **A I R 1956 Pat 280.**

——Ss. 17, 13 (1) 14 (1) — Civil P. C. (1908), S. 150 —Alteration of local limits — Effect on jurisdiction of old Courts. See Civil P. C. (1908), S. 150. **A I R 1956 Pat 280.**

——S. 21 — Suit for recovery of a sum of money of Rs. 3,656 — Appeal lies to District Judge and not to High Court. **A I R 1951 Assam 46.**

——S. 21 (1) — Suits Valuation Act (1887), S. 8 — Court-fees Act (1870), S. 7 (iv) (c) — Partition suit — Valuation for purpose of jurisdiction—First appeal to High Court — Competency. See Suits Valuation Act (1887), S. 8. **AIR 1961 Pat 307.**

——S. 37 (2)—Partition Act (4 of 1893), S. 2 — Power of Court to order sale instead of partition — (Civil P. C. (1908), O. 20, R. 18, O. 26, R. 13). See Partition Act (4 of 1893), S. 2. **A I R 1952 Cal 893.**

BENGAL AGRICULTURAL INCOME-TAX ACT (4 of 1944)

——Ss 4, 7, 2 (14) (16) — Constitution of India, Arts. 246 (3), 366 (1) and Sch. VII, List II, Entry 46—Legislation on matter of taxation in respect of agricultural income—Exclusive right of State—Extension of meaning of agricultural income — S. 7 (1), Bengal Agricultural Income-tax Act—Constitutional validity. See Constitution of India, Art. 246 (3). **A I R 1958 Cal 585.**

——S. 7—Begal Agricultural Income-tax Rules (1944), R. 4 (2) (a)—Commodity not sold in market — Quantum of income for accounting year how to be determined in such case. **AIR 1958 Cal 192.**

BENGAL AGRICULTURAL INCOME-TAX RULES (1944)

——Rr. 4 (1), 4, (2) — Bengal Agricultural Income-tax Act (4 of 1944), S. 7 — "Was sold" in cl. (1) and "has been sold" in cl. (2) — Date to which these expressions indicate. See Bengal Agricultural Income-tax Act (4 of 1944), S. 7. **A I R 1958 Cal 192.**

——R. 4 (2) (a) — Bengal Agricultural Income-tax Act (4 of 1944), S. 7—Commodity not sold in market —Quantum or income for accounting year how to be determined in such case. See Bengal Agricultural Income-tax Act (4 of 1944), S. 7. **A I R 1958 Cal 192.**

BENGAL CESS ACT (BENGAL ACT 9 of 1880)

——Ss. 80, 81—Income-tax Act (1922), Ss. 12 (2) and 10 (2) (xv) and (4)—Amount of road cess received in excess by landlord — Amount is income from other sources. See Income-tax Act (1922), S. 12 (2). **A I R 1955 N U C (Pat) 5960.**

——S. 99—Notification attaching mehal—Suit in respect of rent of lands in mehal after notification but before its publication — Suit held properly filed but Court had no power to proceed with it—Suit remains pending till release of mehal — Decree passed before release is nullity and can be challenged in appeal. **AIR 1955 N U C (Cal) 876.**

(BENGAL) CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES

——Government of India, Act (1935), S. 240 (2) and (3)—Non-compliance with section—Compliance with Civil Services Rules — Effect. See Government of India Act (1935), S. 240 (2) (3). **AIR 1953 Cal 188.**

——Rr. 49 and 55—Constitution of India, Art. 311 (2) —Dismissal or removal—(Compulsory retirement). See Constitution of India, Art. 311 (2). **AIR 1953 Cal 767.**

——Rr. 55, 49 — Constitution of India, Art. 311 (2)—Dismissal or removal — (Compulsory retirement). See Constitution of India, Art. 311 (2)). **AIR 1953 Cal 767.**

——R. 55—Army Instructions (India) (1949). No. 212 — Civilian paid from Defence Services Estimates — (Constitution of India Art. 311 (2)) See Army Instructions (India) (1949), No. 212. **AIR 1953 Cal 763.**

BENGAL COURT OF WARDS ACT (9 of 1879)

——S. 51 — Section is mandatory — Ward cannot initiate proceeding without being represented by manager — Failure nullifies entire proceedings—Subsequent ratification by Court of Wards does not validate proceeding — Orissa Tenancy Act (2 of 1913), S. 252. **AIR 1952 Orissa 176.**

BENGAL EXCISE ACT (5 of 1909)

SECTION 8

——Ss. 8 (3), 11, 15 and 16, 30 to 35 and 36—Applicability—License for manufacturing Pachwai—Commissioner's power to grant license only extends to the place — License to a person for manufacturing Pachwai is not covered by S. 35—Order of Commissioner in this regard is not therefore final — Revision under S. 8 (3) to State Government is competent. **('63) 1963 Cal L J 6.**

——Ss. 8, 42—Constitution of India, Art. 226—Writs of certiorari and mandamus — Essential conditions for issue of—Quasi-judicial and administrative acts—Distinction—Order of Collector under S. 42, Bengal Excise Act cancelling excise licence and appellate order of Excise Commissioner confirming same—Issue of writs against orders. See Constitution of India, Art. 226. **A I R 1952 Cal 808.**

——Ss. 42, 8—Constitution of India, Art. 226—Writs of certiorori and mandamus — Essential conditions for issue of—Quasi-judicial and administrative acts—Distinction—Order of Collector under S. 42, Bengal Excise Act cancelling excise licence and appellate order of Excise Commissioner confirming same—Issue of writs against orders. See Constitution of India, Art. 226. **A I R 1952 Cal 808.**

——Ss. 63, 46—Criminal P. C. (1898), S. 260 (1) (a)—Offence under S. 46, Bengal Excise Act can be tried summarily. See Criminal P. C. (1898), S. 260 (1) (a). **1955 Cri L J 1354 : A I R 1955 Cal 552.**

BENGAL FERRIES ACT (1 of 1885)

SECTION 9

——S. 9—Lease of ferry tolls — Lease can be made only by public auction and not by private settlement. **A I R 1956 S C 640, Foll. (1965) 69 Cal W N 943.**

SECTION 26

——Ss. 26, 24 — Sections do not abrogate rights and obligations of parties—Lease providing for cancellation if lessee charged higher tolls—Lessor can cancel lease. See Bengal Ferries Act (1 of 1885), S. 24. **A I R 1950 Pat 31.**

BENGAL GENERAL CLAUSES ACT (1 of 1899)

——S. 8—Scope—Calcutta Thika Tenancy (Amendment) Act (6 of 1953), S. 1 (2), Proviso and S 8—Effect of. See Tenancy Laws — Calcutta Thika Tenancy (Amendment) Act (6 of 1953), S. 1 (2), Proviso. **A I R 1960 S C 936.**

——S. 8—Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), S. 28 (as amended by Calcutta Thika Tenancy (Amending) Ordinance (15 of 1952) and Calcutta Thika Tenancy (Amending) Act (6 of 1953) —Rights acquired under S. 28 as amended by Ordinance have not been taken away by Amending Act of

1953. See Tenancy Laws—Calcutta Thika Tenancy Act (2 of 1949), S. 28. **A I R 1954 Cal 422.**

——S. 8—Houses and Rents — West Bengal Premises Rent Control Act (17 of 1950), S. 16 — Retrospective operation — Effect of repeal — General Clauses Act (1897), S. 6 (e). See Houses and Rents—West Bengal Premises Rent Control Act (17 of 1950), S. 16. **A I R 1951 Cal 442.**

——S. 13 — Distance between a cinema house and hospital etc. — Distance between the two should be measured in a straight line on a horizontal plane. See W. B. Cinema (Regulation of Public Exhibition) Rules (1956), R. 4 (3). **(1963) 67 Cal W N 590.**

——S. 22 — Commissioner of Division has power to postpone date of general election. See Municipalities —Bengal Municipal Act (15 of 1932), S. 24. **I L R (1955) 2 Cal 477.**

——S. 26 — Sentence of imprisonment in default of payment of fine — (Penal Code (1860), Ss. 40, 42 and 67). Section 26 attracts the provisions of S. 67 of the Penal Code and S. 26 read along with Ss. 67 and 42 of the Penal Code make the position plain that a Court is entitled to pass a defaulting sentence of simple imprisonment in a case under Bengal Municipal Act. See Municipalities — Bengal Municipal Act (15 of 1932), S. 500. **62 Cal W N 812.**

BENGAL GOVERNMENT INDEMNITY REGULATION (11 of 1822)

——S. 38—Liability of Government for wrong orders passed by Courts of justice — (Master and servant). See Torts. **A I R 1956 All 75.**

BENGAL INDUSTRIAL DISPUTES RULES (1947)

——R. 18—Civil P. C. (1908), S. 30 and O. 11, Rr. 12, 13, 15, 17 and 18 — Inspection of documents not to be ordered until affidavit of documents has been directed to be filed — Same procedure applies to Industrial Tribunal (Industrial Disputes Act (1947), S 11 (3)). See Civil P. C. (1908), S. 30. **A I R 1956 Cal 592.**

BENGAL IRRIGATION ACT (3 of 1876)

——S. 74—Water rate — Change. See Bengal Irrigation Act (3 of 1876), S. 78. **A I R 1956 Pat 482.**

——S. 99—Proviso—Compliance with.

All that the proviso requires is that a draft of the rules shall be published in the Official Gazette for one month ; the proviso does not say that in each issue of the Gazette published during the month, whether ordinary or extraordinary, a draft of the rules must be published, and a failure to publish the draft in any one of the issues of the Gazette during the month will invalidate the rules.

Having regard to the words used in the proviso, it cannot be said that there has been a contravention of the proviso by reason of the failure to publish the draft in one of the issues of the Gazette, in the month. **1956 B L J R 383 : A I R 1956 Pat 482 (485) (Pt A) (Pr 7).**

——Rule under R. 48 (3)—Effect—Sub-rule (3) must be read as subject to the provisions of the statute under which the rules have been made. See Bengal Irrigation Act (3 of 1876), S. 99. **A I R 1956 Pat 482.**

BENGAL LAKHARAJ REGULATION (19 of 1793)

See Bengal Revenue-Free Lands (Non-Badshahi Grants) Regulation (19 of 1793).

BENGAL LAND (REDEMPTION AND FORECLOSURE) REGULATION (17 of 1806)

——Ss. 7 and 8 — Notification under — It is merely warning to mortgagor—No adjudication by Court in proceedings under S. 8 on matters such as applicability of Regulation or validity of mortgage, etc. See Bengal Land (Redemption and Foreclosure) Regulation (17 of 1806), S. 8. **A I R 1965 Punj 112.**

——Ss. 8 and 7 — Notification under — It is merely warning to motgagor — No adjudication by Court in proceedings under S. 8 on matters such as applicability of Regulation or validity of mortgage, etc. **A I R 1965 Punj 112.**

BENGAL LAND REGISTRATION ACT (7 of 1876)

●——Ss. 3 (2), 4, 7 and 20—Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), Ss. 3 (1), 2 (g) and (h)—Estate, meaning of — Rajgee or killa of Kanika whether 'estate'. See Tenancy Laws—Orissa Estates Abolition Act (1 of 1952), S. 3 (1). **A I R 1956 S C 346.**

●——Ss. 7, 3 (2), 4 and 20—Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), Ss. 3 (1), 2 (g) and (h)—Estate, meaning of — Rajgee or killa of Kanika whether 'estate'. See Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), S. 3 (1). **AIR 1956 S C 346.**

●——Ss. 20, 3 (2), 4 and 7 — Tenancy Laws—Orissa Estates Abolition Act (1 of 1952), Ss. 3 (1), 2 (g) and (h) — Estate, meaning of — Rajgee or killa of Kanika whether 'estate'. See Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), S. 3 (1). **AIR 1956 SC 346.**

——S. 44 — Mortgagee registered as in possession of land — Proprietor is not entitled to realize rent — Tenant cannot plead payment of rent to mortgagor as long as mortgagee's name stands in Register D — Tenancy Laws—Bihar Tenancy Act (8 of 1885), S. 60. **A I R 1951 Pat 632.**

BENGAL LAND REVENUE SALES ACT (CENTRAL ACT 11 of 1859)

——S. 37—Bengal Land Registration Act (7 of 1876), S. 10 — Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 103-B (5)—Suit for declaration by purchaser at revenue sale that suit land forms part of mal assets of tauzi — Burden of proof — Onus how discharged — The initial onus is upon the purchaser to show that it is part of the mal assets of the said touzi. See Evidence Act (1872), Ss. 101 to 103. **(1956) 60 Cal W N 657.**

——Ss. 37 and 53 — Revenue sale of estate — Repurchase of, by proprietor—His rights under repurchase. **A I R 1951 Pat 502.**

——S. 52 — Encumbrance — What is—Possession of trespassers—Not encumbrance.

Mere trespass against the prior estate-holder, not having matured to any title by possession for statutory period, does not amount to an encumbrance within the provisions of S. 52. **(1962) 28 Cut L T 6.**

——Ss. 53 and 37 — Revenue sale of estate — Repurchase of, by proprietor—His rights under repurchase. See Bengal Land Revenue Sales Act (11 of 1859), S. 37. **A I R 1951 Pat 502.**

——Sch. A, Ss. 7, 8 — Applicability of S. 72, Bengal Tenancy Act, to Revenue Sale — Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 72. See Bengal Land Revenue Sales Act (11 of 1959), S. 7. **AIR 1952 Cal 143.**

BENGAL LAND REVENUE SALES ACT (7 of 1868)

SECTION 37

——S. 37 — Revenue sales purchase — Ejectment — Claim of lekheraj title to disputed land — Onus is on plaintiff to prove his title and show the land form part of estate purchased by him—(Bengal Decennial Regulation (8 of 1793), S. 36).

The revenue sales purchaser of an entire estate acquires, by reason of his purchase, title to the mal assets of the estate, that is, to the lands on which the revenue of the estate is originally assessed and fixed, and also to the invalid lakherajs which form part of such mal assets. Such a purchaser under S. 37 of the Act, gets the estate free from all encumbrances and the claim of invalid lakheraj is also an encumbrance which have been imposed on the estate after the time of settlement. In order to succeed, therefore, in a suit under S. 37 of the Act for ejectment or resumption and assessment of rents, wherein the defence has set up the plea of lakheraj title to the disputed land, the purchaser will have to show that this particular emcumbrance was imposed upon the estate after the time of settlement. In other words, the purchaser must prove his title to the disputed land by showing that it forms part of the estate purchased by him and, therefore, is really within the mal assets of the estate at the time of the settlement.

Where the plaintiff, as the revenue sales purchaser, claimed the disputed land as appertaining to the estate purchased by him, and the defence put up a plea of lakheraj title to the suit land, held that the initial onus was on the plaintiff to prove his title to the disputed land. It was for the plaintiff to prove that the suit land formed part of the estate purchased by him. Since the documents relied on by the plaintiff did not prove his title to the disputed land, his suit for ejectment or resumption and assessment of rents under S. 37 of the Act could not be entertained. 20 C W N 1028; 14 M I A 152; 25 W R 209; 2 W R 205; ILR 8 Cal 230; ILR 9 Cal 813; ILR 12 Cal 182; 2 W R 207 (FB); 3 W R 33; 23 W R 24; 1955 S C A 158; 22 C W N 396; 58 C W N 288; 60 C W N 657, Rel. on. **I L R (1960) 2 Cal 728 (DB).**

BENGAL POLICE REGULATIONS (1817)

——Regns. 8 and 1 (i) and Appendix I — Rank given to Additional Superintendent — Whether identical with that given to Superintendent. See Bengal Police Regulations (1817), Regn. 1 (i). **AIR 1959 Cal 103.**

——Regn. 40—Regulations whether have bearing on question of rank. See Bengal Police Regulations (1817), Regn. 39. **AIR 1959 Cal 103.**

——R. 73 — Criminal P. C. (1898), Ss. 4 (1) (s), 154 — Police station—Beat house is not necessarily a police station — Declaration as required by S. 4 (1) (s) is necessary. See Criminal P. C. (1898), S. 4 (1) (s). **1960 Cri L J 1078=A I R 1960 Cal 519.**

BENGAL PUBLIC DEMANDS RECOVERY ACT (3 of 1913)

——S. 3 (3)—Industrial Disputes Act (1947), Ss. 33C, 29 and 34—Issue of certificate to 'Certificate Officer" and not "Collector" of District—No compliance with S. 36C — Industrial dispute in Aviation Company — Award granting back wages to retrenched employees —Vesting of undertaking in Air Lines Corporation — No declaration of liability under S. 22, Air Corporations Act — Corporation is not liable. See Industrial Disputes Act (1947), S. 33-C. **(1965-66) 28 F J R 443 =AIR 1966 Cal 58.**

——S. 8—Constitution of India, Art. 73—Prerogative —Income tax Act and Public Demands Recovery Act, if limit State to provisions of latter as respects recovery of income-tax—Income-tax Act (1922), S. 46 (2).

The reason why a statute is held in an appropriate case to have replaced the prerogative right to the whole or a part of its extent is that the Crown is an assenting party to a statute and where a statute does provide that the Crown can only do a particular thing under and in accordance with its provisions, the Crown is necessarily taken to have agreed to a curtailment or abolition of its prerogative power.

But the statute must be such that its terms do limit the Crown to its provisions and thereby exclude the prerogative or hold it in suspension, as in the case of temporary statute. It is impossible to read the Income-tax Act, as limiting the State to the provisions of the latter as respects recovery of income tax. 59 Cal WN 1119=96 Cal L J 194=(1955) 28 ITR 797= A I R 1956 Cal 26.

(BENGAL) PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT 7 of 1880)

——S. 23—Civil P. C. (1908), Ss. 144, 151, 34; O. 21, R. 93 — Certificate sale set aside — Right of auction-purchaser to interest on money deposited. See Civil P. C. (1908), S. 144. AIR 1954 Cal 544.

——Ss. 43, 44 — Cancellation of certificate by civil Court—Question whether amount under certificate is due by the debtor within exclusive jurisdiction of special tribunal — No suit lies in civil Court — Civil P. C. (1908), S. 9. **A I R 1953 Orissa 300 (304) (Pt D) (Pr 9) (DB).**

BENGAL PUBLIC DEMANDS RECOVERY (VALIDATION OF CERTIFICATES AND NOTICES) ACT (BENG. ACT 11 of 1961)

SECTION 2

——S. 2—Notice under S. 7 need not be signed on date on which certificate is issued — Date in body of notice incorrect — No prejudice caused to certificate debtor — Notice is not invalid — Defect, if any is cured by Act 11 of 1961. See Bengal Public Demands Recovery Act (3 of 1913), S. 4. **(1963) 67 Cal W N 759=51 ITR 473.**

BENGAL (RURAL) PRIMARY EDUCATION RULES

——R. 7 — Constitution of India, Art. 245 — Subordinate or ancillary legislation — Validity — Power to make rules — Enumeration of particular power does not curtail general power to make rules for carrying out purposes of Statute — Rule 7 framed under Bengal (Rural) Primary Education Act intra vires — Bengal (Rural) Primary Education Act (7 of 1930), Ss. 66 (1) and 23 (1) (g). See Constitution of India, Art. 245. **AIR 1964 Cal 568.**

BENGAL SUBORDINATE SERVICES (DISCIPLINE AND APPEAL) RULES (1936)

——R. 7—Misconduct—Degree of, cannot be defined —Dismissal for misconduct - Writ petition against— Jurisdiction of High Court — (Constitution of India, Arts. 226, 311).

Under R. 7 of the Bengal Subordinate Service (Discipline and Appeal) Rules, 1936, a person may, for good and sufficient reason, be penalised for misconduct and the penalty may be dismissal from service. If the petitioner is really guilty of misconduct the High Court has no power, in the exercise of jurisdiction under Art. 226 of the Constitution, to sit in appeal over the order of penalty. The High Court has nevertheless, jurisdiction to examine two things in that connection, namely, (1) whether the petitioner was bona fide proceeded against in the disciplinary jurisdiction, under the rules of service and (2) whether he was given an opportunity to show cause against the action proposed and whether the procedure adopted at the enquiry against the petitioner was an orderly course of procedure. 1906 A C 122, Rel. on. **(1962) 1 Lab L J 317 = (1961) 3 Fac L R 285 (Cal).**

——R. 10 — Constitution of India, Art. 31 — Suspension by way of punishment and suspension pending departmental inquiry or a criminal

charge — Distinction between pointed out—Order of suspension based on E. I. R.—Discharge of petitioner at subsequent trial ou technical ground— Fresh complaint filed on same day — Order of suspension continues till final disposal of criminal proceeding. See Constitution of India, Art. 311. AIR 1961 Cal 225.

——Schedule and Rr. 4, 5 — Constitution of India, Art. 311—Police Regulations — Regn. 768 (b)—Typist appointed by Special Superintendent of Police in Intelligence Branch and C. I. D. —Not a subordinate clerk within R. 5 — Regulation 768 (b) does not apply — His appointing authority being Special Superintendent of Police, disciplinary action by Superintendent, Government Railway Police not valid. See Constitution of India, Art. 311. AIR 1965 Cal 169.

BENGAL VILLAGE CHAWKIDARI ACT (BENGAL ACT VI of 1870)

SECTION 50

——S. 50 — Tranfer under — Inclusive of income of chowkidari chakran lands — Zamindar cannot claim additional rent. AIR 1953 Cal 328 (329) (Pt B) (Pr 5).

BENGAL VILLAGE SELF GOVERNMENT ACT (5 of 1919)

SECTION 6

——Ss. 6 (4) and 8 (17) (c) — Rules under S. 101, Rr. 28, 32 to 36 — Union Board consisting of nine members — Election of one postponed — Right of others to proceed to function and elect president.

Where the number of members constituting a Union Board was fixed at 9, and 8 out of them were duly elected but the election of one was, due to some contingency postponed. This does not affect the power of the 8 elected members to function and they are entitled to elect their president; such an election would be saved by S. 17 (c). The result of holding that these elected members cannot function or proceed to elect their own president would be to attract the operation of S. 11 which extends the terms of office of the members in the last union board up to the date ol the first meeting of the newly elected members. (1959) 63 Cal W N 969.

SECTION 7

——S. 7 (2)—Eligibility of candidate — Material date for deciding is date of nomination and not date of scrutiny. (1959) 63 CWN 211.

SECTION 8

——Ss. 8 (17) (c) and 6 (4) — Election of one postponed—This does not affect the power of the elected members to function and they are entitled to elect their president. See Panchayats—Bengal Village Self-Government Act (5 of 1919), S. 6 (4). (1959) 63 Cal W N 969.

SECTION 65

——Ss. 65 and 71 — Jurisdiction of Union Bench — Re-trial by Bench — Order for—Legality.

The Bengal Village Self-Government Act, 1919 contemplates the formation of the Union Bench and Union Court under S. 65 of the Act. A Union Bench is constituted for the trial in the whole or any part of the Union, of the offences specified in Schedule 4, if committed within the local limits of its jurisdiction or if the case is transferred to the bench by a District Magistrate or Sub-Divisional Magistrate.

It will be seen from S. 71, that while directing a re-trial, the case should be sent to a Court of competent jurisdiction subordinate to the District Magistrate or the Sub-Divisional Magistrate. It does not provide for a retrial by the Union Bench. In this view the order of the Sub-Divisional Magistrate, so far as it relates to the re-trial by the Union Bench is concerned, is not legal. (1959) 63 Cal W N 519.

——S. 65—'Bench'—Meaning of — Conviction of accused on local inspection and report of only one member of the Bench — Legality — S. 101, Rules under R. 4 —Non-compliance—Effect.

The word 'Bench' has not been defined in the Act but it is clear from S. 65 that the Bench would mean two or more members constituting the Bench.

Where only one member held the local inspection and made a report which was taken into account for the purpose of finding the accused guilty.

Held, that it was not a mere irregularity but the non-compliance of the provisions of R. 4 amounted to an illegality. 1958 Cri L J 572 (573) (Cal) (Pt A) (Pr 4).

SECTION 71

——S. 71 — Jurisdiction of Union Bench — Retrial by Bench — Order for—Legality.

It will be seen from S. 71, that while directing retrial, the case should be sent to a Court of competent jurisdiction subordinate to the District Magistrate or Sub-Divisional Magistrate. It does not provide for a re-trial by the Union Bench. In this view the order of the Sub-Divisional Magistrate, so far as it relates to the re-trial by the Union Bench is concerned, is not legal. See Panchayats — Bengal Village Self Government Act (5 of 1919), S. 65. (1959) 63 Cal W N 519.

SECTION 101

——S. 101, R. 28 — Union Board consisting of nine members — Election of one postponed — Right of others to proceed to function and elect president. The eight elected members have a right to function and they are entitled to elect their president. See Panchayats — Bengal Village Self Government Act (5 of 1919), S. 6 (4). (1959) 63 Cal W N 969.

——S. 101 — Rules under — R. 16 — Object and scope of.

Rule 16 is not a mere technical rule, but it has a purpose which is conducive to justice. As soon as a man is given the particulars of the offence of which he is accused, he may make a statement which might on the face of it be quite convincing so that the Union Bench may not think it necessary to proceed further with the matter. This is indeed a valuable right given to the person accused before a Bench.

Perhaps the accused may not have made a statement when asked to show cause why he should not be convicted but the fact of his having been examined does require to be stated in order to show that there was compliance with R. 16 of the Village Self-Government Rules. It cannot be considered to be a mere technical omission on the part of the Bench, if there is nothing on the record to indicate that the accused was asked any question on his appearance before the Bench. 1958 Cri L J 572 (573) (Pt B) (Pr 5) (Cal).

BENGAL VILLAGE SELF-GOVERNMENT RULES

RULE 11

——R. 11 — Scope of — Duty of Election officer.

Rule 11 of the rules for the election of members, etc., is very limited in its scope, enjoining as it does the duty upon the Election Officer to ascertain whether all the candidates are duly qualified under S. 7 (2) of the Act. The question whether the rule goes far enough or whether it ought to have been framed in a more comprehensive way so as to attract within its mischief Ss. 10, 10-A, etc., is a matter with which Election Officer need hardly concern himself at the preliminary stage. (1959) 63 C W N 211.

BENGAL VILLAGE SELF-GOVERNMENT (WEST BENGAL) ACT (10 of 1947)

—S. 9 (b) — Bengal Village Self-Government Act (5 of 1919), S. 101 — Rules under Rr. 29 to 33 and 37 — Applicability to election under S. 9 (b), Bengal Village Self Government (West Bengal) Act (10 of 1947). See Bengal Village Self-Government Act (5 of 1919), S. 101. AIR 1951 Cal 64.

BERAR INAM RULES (1859)

●—Rr. V, II, VI, VIII and XIV — Berar Land Revenue Code (1928), Ss. 190, 192 — Berar Patels and Patwaris Law (1900), Ss. 10, 11, 20 — Patelki inam lands in Berar — Nature of — Right of revenue authorities to resume and re-grant such lands. See Berar Land Revenue Code (1928), S. 190. AIR 1960 S C 642.

BERAR LAND REVENUE CODE (1928)

—S. 25 — Revenue proceeding to recover arrears of land revenue started against different and dead person — Error. AIR 1951 Nag 155.

—Ss. 74 (1), 73 (1), Proviso and 73-A (4) (as amended by Berar Land Revenue Code Amendment) Act (10 of 1948).

—Annual tenant — Meaning — Res judicata — Tenant of antiquity — (Civil P. C. (1908), S. 11). See Berar Land Revenue Code (1928), S. 73 (1), Proviso. AIR 1953 Nag 40.

—S. 135 — Land Revenue — Person in possession whether liable to pay personally. AIR 1951 Nag 155.

—S. 174 (1) — Limitation Act (1908), Art. 10 — Right of pre-emption under Berar Land Revenue Code — S. 174 (1) of Code adds one more category to first column of Article — Addition does not exclude application of Art. 120 — Limitation Act (1908), Art. 120. See Limitation Act (1908), Art. 10. AIR 1952 Nag 40.

—S. 176 — Sale — Settlement of debt by Debt Conciliation Board — Claim of Rs. 11,000 conciliated for Rs. 6,000 — Debtor executing sale-deed of his fields in favour of creditor for the amount — Sale held voluntary transfer giving rise to right to pre-empt. AIR 1951 Nag 129.

—Ss. 177, 183 — Mortgage by conditional sale if includes — Mortgage conferring foreclosure mortgage. AIR 1952 Nag 40.

—Ss. 179 (1) (a) and (b), 2 (12) — Subdivision — Indicative number — It must be numeral only. See Berar Land Revenue Code (1928), S. 2 (12). AIR 1951 Nag 451.

—Ss. 182 (4) and 183 (2) — Fair consideration fixed in good faith. AIR 1952 Nag 251.

—S. 183 (2) — Fair consideration fixed in good faith. See Berar Land Revenue Code (1928), S. 182 (4). AIR 1952 Nag 251.

—Ss. 183, 176, 177, 178 and 184 — Scheme of — Occupant whose interest in survey number is foreclosed has no right to pre-empt. See Berar Land Revenue Code (1928), S. 176. AIR 1952 Nag 72.

—S. 183 — Limitation Act (1908), Art. 10 — Applicability — One 'H' mortgaging his 8 annas share of property to defendant — Defendant obtaining preliminary decree for foreclosure of only 7 as. 3 pies' share — Decree made final and defendant obtaining possession of undivided share — Plaintiff owning other 8 annas share suing defendant for pre-emption — Art. 120 and not Art. 10 held applied — Limitation Act (1908), Art. 120. See Limitation Act (1908), Art. 10. AIR 1952 Nag 40.

—S. 183 — Fair market value — Conciliation of debt of Rs. 11,000 for Rs. 6,000 — Sale deed of property executed in favour of creditor showing Rs. 6,000 as consideration — Rs. 6,000 and not Rs. 11,000 is the fair market value. AIR 1951 Nag 129.

BERAR PATELS AND PATWARIS LAW (1900)

●—Ss. 20, 10, 11 — Berar Land Revenue Code (1928), Ss. 190, 192—Berar Inam Rules (1859), Rr. II, V, VI, VIII and XIV — Patelki inam lands in Berar — Nature of — Right of revenue authorities to resume and re-grant such lands. See Berar Land Revenue Code (1928), S. 190. AIR 1960 S C 642.

BESTIALITY

See Penal Code (1860), S. 377.

BHAGALPUR UNIVERSITY STATUTES

—Chap. III, Para. 10 (1) — Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act (14 of 1960), Ss. 52, 30 (c)—Statutes under S. 30 (c)—Bhagalpur University Statutes, Ch. III, Para 10 (1)—Petition filed by defeated condidate with a view to preparing grounds for questioning validity of election — Petition not an election petition as contemplated by para 10 (1) of Ch. III of Statutes. See Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act (14 of 1960), S. 52. AIR 1964 Pat 162.

BHARATPUR STATE REVENUE CIRCULAR (No. 24 of 1909)

PARA 3

—Paras 3 and 13 — Construction of — It does not create any right of pre-emption — It gives guidance to Revenue officers in granting sanctions for alienation—Non-compliance makes sale null and void. AIR 1955 NUC (Raj) 1380 (DB).

PARA 13

—Paras 13 and 3—Construction of. Para 3 is a rule for the guidance of the revenue officers in the matter of grant of sanctions for alienation and the consequences of not complying with the rule and makes the sale null and void as provided in Para 13. See Bharatpur State Revenue Circular No. (24 of 1929), Para 3. AIR 1955 NUC (Raj) 1380 (DB).

BHOPAL AND VINDHYA PRADESH (COURTS) ACT (41 of 1950)

—S. 31—Civil P. C. 1908), Ss. 100 to 102 — Applicability. See Civil P. C. (1908), Ss. 100 to 102. AIR 1956 Bhopal 62.

—Ss. 32 and 31—Right of appeal under Civil P. C. is not curtailed — (Civil P. C. (1908), S. 100). See Bhopal and Vindhya Pradesh (Courts) Act (41 of 1950), S. 31. AIR 1958 Madh Pra 326.

BHOPAL TRANSFER OF PROPERTY ACT

—Ss. 58 and 59 — Mortgage by conditional sale — Two separate documents—Registration of both documents, when necessary — Transfer of Property Act (1882), S. 59. AIR 1956 Bhopal 59.

—Ss. 59 and 58 — Mortgage by conditional sale — Two separate documents—Registration of both documents, when necessary — (Transfer of Property Act (1882), S. 59). See Bhopal Transfer of Property Act, S. 58. AIR 1953 Bhopal 59.

BIHAR AGRICULTURAL INCOME-TAX ACT (7 of 1938)

—S. 7 (1) — Option of assessee selecting multiple system cannot be deprived of option merely because he cannot give cess valuation on bakasht basis. AIR 1952 Pat 90.

—Ss. 24, 26, 27 — Sales Tax — Bihar Sales Tax Act (6 of 1944), Ss. 10 (6), Proviso and 20 (4) — Whether

S. 10 (6), Proviso controls S. 20 (4)—Scope—(Income-tax Act (1922), Ss. 33, 34, 35 — Scope). See Sales-Tax —Bihar Sales Tax Act (6 of 1944), S. 10 (6), Proviso. **AIR 1956 Pat 113.**

——Ss. 26, 27, 24 — Sales Tax—Bihar Sales Tax Act (6 of 1924), Ss 10 (6), Proviso and 20 (4) — Whether S. 10 (6), Proviso controls S. 20 (4)—Scope—(Income-tax Act Act (1922), Ss. 33, 34, 35—Scope). See Sales Tax — Bihar Sales Tax Act (6 of 1944), S. 10 (6), Proviso. **AIR 1956 Pat 113.**

——S. 44—Income-tax authorities have no power to demand cess valuation papers. **AIR 1952 Pat 90.**

BIHAR AGRICULTURAL INCOME-TAX ACT (32 of 1948)

——Ss. 28 (3) and 6 (k) — Payment towards debt without appropriation — Presumption — Board of Revenue ordering remand for further findings—Propriety of order — Reference to High Court — Competency of—(Contract Act (1872), Ss. 60 and 61). See Bihar Agricultural Income-tax Act (1948), S. 6 k. **AIR 1952 Pat 453.**

——Ss. 43-A and 43-B — Scope—Assessment of agricultural income becoming final for purposes of agricultural income tax — If final also for purposes of super-tax and with regard to status of assessee.

The finality referred to in S. 43-B refers to the quantum ol assessment of the income-tax for the purpose of assessing super-tax and there is no finality with regard to the status of the assessee. S. 43-B fixes the totality of the income for purposes of super-tax, and that section provides for finality only in regard to quantum of the tax. In order to ascertain the status of the assessee you have to look at S. 43-A which imposes a charge of super-tax, and in order to ascertain the quantum of the super-tax you have to look at S 43-B. **1959 B L J R 683=(1960) 40 ITR 460= ILR 39 Pat 341.**

——S. 43-B — Section 43B fixes the totality of the income for purposes of super tax and that section provides for finality only in regard to quantum of the tax. In order to ascertain the status of the assessee you have to look at S. 43-A which imposes a charge of super-tax and in order to ascertain the quantum of the super-tax you have to look at S. 43-B. See Bihar Agricultural Income-tax Act (32 of 1948), S. 43-A. (1959) **B L J R 683=(1960) 40 ITR 460= ILR 39 Pat 341.**

BIHAR AND ORISSA EDUCATION CODE (1944)

——R. 286 (1-B), R. 182 (e), (f) — Scope of — R. 286 (1-B) does not control R. 182 — Mismanagement by Managing Committee of private recognized High School—Necessity of enquiry and notice to Managing Committee before appointment of ad hoc Committee by Board to assume management. See Bihar and Orissa Education Code (1944), Rule 182 (e), (f). **AIR 1956 PPt 81.**

——R. 286 (5) (ii) — Bihar Secondary Education — Government Resolution No. 11/R-4.01/55 E-5172, dated 7th Sept., 1955—Rr. 14, 15, 16, 17 and 1 and 2 —Dismissal of Headmaster on probatation—President of Board of Secondary Education has no jurisdiction to hear appeal against the decision of the Managing Committee—Order of reinstatement passed by him is ultra vires. **1963 B L J R 858.**

BIHAR AND ORISSA EXCISE ACT (2 of 1915)

——Ss. 19 (1) and (4), (5) and S. 47—Offence under—Notification No. 23-1-51-D/- 14-1-1951 — Validity. See Bihar and Orissa Excise Act 2 of 1915), S. 5. **AIR 1954 Pat 449.**

● ——Ss. 35, 2 (7), 7 (2) (a) and 8—Order of Excise Commissioner demanding additional security—Order set aside on review by him—Order is not one under S. 35 but one under Ss. 8 and 7 (2) (a) read with S. 2 (7) — Order is not final and can be revised by Board of Revenue. See :Bihar and Orissa Excise Act (2 of 1915), S. 2 (7). **1965 B L J R 443=(1965) 1 S C A 837=1965 S C D 673=(1965) 2 S C R 693= AIR 1966 S C 343.**

——S. 42 (1) (c) — Constitution of India, Art. 226 — Writ of certiorari — Principle of audi alteram partem —Order of Deputy Commissioner cancelling licence under S. 42 (1) (c), Bihar and Orissa Excise Act (1915) without hearing licensee—Principle of audi alteram partem is not violated—Writ of certiorari should not be issued. See Constitution of India, Art. 226. **AIR 1956 Pat 212.**

● ——Ss 45, 38 and 91—Renewal of licence—Board of Revenue directing that there should be no change in amount of security during currency of licence but that proper security may be demanded from next licensing year—Legality. See Bihar and Orissa Excise Act (2 of 1915), S. 38. **1965 B L J R 443=(1965) 1 S C A 837=1965 S C D 673=(1965) 2 S C R 693= AIR 1966 S C 343.**

——Ss. 47, 56 and 87 — Sale of liquor at place not specified in license. **AIR 1951 Orissa 29.**

——S. 47 (B)—Opium Laws Amendment Act (1957), S. 3—Prosecution under for possession of contraband articles—What prosecution has to prove—Search and recovery of contraband article from house alleged to be in possession of accused —Seizure list signed by accused — Effect — Confession to Excise Officer — Hit by S. 25, Evidence Act — Opium Act (1878), S. 10

In a prosecution for offences under S. 47 (B), Bihar and Orissa Excise Act and Opium Laws Amendment Act, the prosecution cannot merely rely on the recovery of contraband articles from the house alleged to be in occupation of the accused but has further to prove that the articles were in conscious possession of all or any of the accused persons. No doubt under S. 10 of the Opium Act and under S. 48 of the Bihar and Orissa Excise Act, in the absence of a satisfactory explanation by the accused a presumption of guilt has to be drawn. But the question of such presumption can only arise when it is proved that a particular accused was in conscious possession of the same. That is a rebuttable presumption and even though the accused may be found to be in possession he may give satisfactory explanation about such possession so as to entitle him to an acquittal.

Where a large quantity of contraband opium and ganja was recovered from a house alleged to be in joint occupation of two accused the fact that one of the accused was present in the house at the time of search and had actually signed the seizure list could not by itself be taken as incriminating evidence against him. Even assuming that the mere signature of the accused on the seizure list amounts to an admission that he was in possession of those articles, the admission would be inadmissible in evidence because a confession to an excise officer would be hit by S. 25, Evidence Act. AIR 1964 S C 823, Rel. on. **31 Cut L T 990.**

——S. 57—Sale of liquor at place not specified in licence. See Bihar and Orissa Excise Act (2 of 1915), S. 47. **52 Cri L J 119=AIR 1951 Orissa 29.**

——Ss. 65 and 47 (a) and (f)—Trial of warrant case as summons case—Legality—Plea of guilty—Effect—(Criminal P. C. (1898), S. 537). See Bihar and Orissa Excise Act (2 of 1915), S. 47 (a). **1957 Cri LJ 1155= AIR 1957 Orissa 229.**

—S. 68 — R. 101 (3) of Rules under the Act—Renewal of licence—Breach of licence compounded in previous year—Effect—Fact of breach can be taken into consideration while deciding the renewal of licence for subsequent year.

The mere fact, that a composition fee under S. 68 of the B. and O. Excise Act had been imposed upon the petitioner for breach of a licence, does not debar the Collector from considering the breach of licence which led to the composition in deciding whether the licence of the petitioner for country liquor shop should be renewed or not. The fact that the petitioner for renewal of the licence had paid a composition fee in lieu ot cancellation of the licence in the previous year does not mean that his conduct was satisfactory during the year within the meaning of R. 101 (3) of the Rules framed under the Act. 1964 BLJR 351.

● —Ss. 91, 38 and 45—Renewal of licence—Board of Revenue directing that there should be no change in amount of security during currency of licence but that proper security may be demanded from next licensing year — Legality. See Bihar and Orissa Excise Act (2 of 1915), S. 38. 1965 B L J R 443= (1965) 1 SCA 837 = 1965 SCD 673 = (1965) 2 SCR 693=AIR 1960 SC 343.

—S. 96 — Suit for recovery of amount for price of Ganja taken over by Excise Authorities — Limitation —Ganja found unfit for use —Suit governed by S. 96 —Portion found fit for consumption —Suit governed by Art 62 of Limitation Act, 1908.

If the stock of Ganja is found unfit for use, it cannot be sold or stored by the licensed vendor during the currency of the license. The stock has to be destroyed under the rules. Whether destruction had in fact taken place or not is not material. Title to the stock of Ganja found unfit for use is extinguished the moment the Superintendent of Excise comes to such a conclusion on personal inspection. An article which is destructible under the rule is valueless. Even if such article is not destroyed, the ex-licensee is not entitled to the recovery of its value — The conclusion that the article is unfit for use and is destructible is a thing or act either done or alleged to have been done in pursuance of the Act. Section 96 of the Act would govern such a case.

It must be assumed that the portion of the Ganja which was sold by Excise authorities was fit for consumption. The Ganja which is fit for consumption can be sold by the Excise department under Rule 124 on attachment after the expiry of the license. On sale, the vendor (the ex-licensee) to whom the excisable goods belonged is entitled to the price of the article. Non-payment of such price is not a thing done or alleged to have been done in pursuance of the Act. The limitation for the suit for the recovery of such price would be governed by Art. 62, Limitation Act (1908), and not by S. 96 of the Act. 31 Cut L T 832 = (1965) 7 Orissa J D 262=ILR (1963) Cut 669.

BIHAR AND ORISSA EXCISE RULES

—R. 101 (3)—Renewal of licence—Natural justice —Applicability—Opportunity of presenting his case to the licencee held given.

The Collector is bound as a matter of principle to give a fair opportunity to a licensee to present his case. The Collector should for instance give an opportunity to the licensee to make a relevant statement and to controvert the relevant statement made to his prejudice. But the Collector is not bound to decide the question as if he was sitting as a Court of law. The principle of natural justice, however, cannot be confined within the limits of any fixed formula, the question depends very much on the particular facts of each case.

In the instant case it appears from the report of the Superintendent of Excise that the licensee did not submit any explanation at the time of detection of the irregularity which was compounded, nor did he produce any defence witnesses at the time of detection before the Range Inspector, nor did he give any written statement at that time explaining the reason for the dilution of the liquor. The dilution of the liquor was detected by the Inspector of Excise on the 22nd July 1959, but the petitioner did not submit his explanation till a month later, namely, on the 21st August 1959. The licensee was asked to explain the irregularity on the 5th August 1959, but he did not do so and went on applying for time again and again. In view of this circumstance the Excise Superintendent considered that the explanation of the licensee was an afterthought and no reliance could be placed upon those witnesses whom the licensee named after a pretty long time. Consequently it could not be said that the Superintendent of Excise acted arbitrarily in refusing to examine the three witnesses named by the petitioner ('55) AIR 1955 Pat 345 (V 42)=ILR 34 Pat 254=1964 B L J R 351.

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—R. 29 — Bihar and Orissa Subordinate Services Discipline and Appeal Rules (1935), Rr. 2, 3 (a), (b)— Dismissal of forester—(Constitution of India, Art. 311) —See Bihar and Orissa Subordinate Services Discipline and Appeal Rules (1935), R. 2. AIR 1956 Pat 228.

BIHAR AND ORISSA GENERAL CLAUSES ACT (1 of 1917)

—S. 4 (2) — "Anything done under this Act" — Interpretation of. See Bihar Local Self-Government Act (3 of 1885), S. 146. AIR 1955 Pat 432.

BIHAR AND ORISSA LOCAL SELF-GOVERNMENT ACT (3 of 1885)

—Ss. 124, 120 and 126—Chairman of District Board drawing charges against clerk in respect of allegations made against him — Proceedings drawn up as advised by Government — Order dispensing with clerk's services — Validity of order — See Bihar and Orissa Local Self-Government Act (3 of 1885), S. 120. AIR 1957 Pat 333.

—Ss. 126, 120 and 124—Chairman of District Board drawing charges against clerk in respect of allegations made against him — Proceedings drawn up as advised by Government — Order dispensing with clerk's services — Validity of order — See Bihar and Orissa Local Self-Government Act (3 of 1885), S. 120. AIR 1957 Pat 333.

—Ss. 138 and 29 — Rules under S. 138—Rules 93, 94 and 103 — Lease executed on behalf of Board — Manner of execution — Validity of lease — (T. P. Act (1882), S. 107 — See Bihar and Orissa Local Self-Government Act (3 of 1885), S. 29. A I R 1957 Pat 321.

BIHAR AND ORISSA LOCAL SELF-GOVERNMENT RULES

—Rr. 22, 23, 25, 27, 38 and 40 — Constitution of India, Art. 300 — Liability of Government for negligence of its servants — (Tort — Master and servant—Vicarious liability) — (Banker and customer)— (Civil P. C. (1908), S. 9) — (Bihar and Orissa Local Self-Government Act (3 of 1885), S. 138) — See Constitution of India, Art. 300. AIR 1954 Pat 529.

BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT (4 of 1914)

—Ss. 3 (6), 4, 5, 6 — Income-tax Act (1922), S. 46 (2) — Arrears of income-tax dues specified in certi-

ficate under S. 46 (2) of Income-tax Act — Dues are public demands payable to Collector — Expression "as if it were an arrear of land revenue" in S. 46 (2) is to be read with reference to definitions of 'revenue' given in S. 1 of Bengal Land Revenue Sales Act (7 of 1868) and 'Collector' in S. 3 (11) of General Clauses Act (1897) and S. 1 of Bengal Land Revenue Sales Act (7 of 1868) — Certificate is to be filed under S. 4 and not under S. 5 or 6 of Bihar and Orissa Public Demands Recovery Act — See Income-tax Act (1922), S. 46 (2). **I L R (1965) Cut 653 = (1965) 2 I T J 826=AIR 1966 Orissa 124.**

——Ss. 8 and 7 — Certificate proceedings in respect of under-tenure — Release of under-tenure after receipt of notice under S. 7 — Effect—See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 7. **AIR 1957 Pat 706.**

——S. 11 — Income-tax Act (1922), Ss. 44 and 46 (2) and (6) — Firm discontinuing business — Assessment to income-tax made thereafter — Assessment made on firm in status of unregistered firm — Certificate proceedings — Substitution of partners — Liability of partners — Applicability of Art. 258 (1) of Constitution—(Constitution of India, Art. 258) — See Income-tax Act (1922), S. 44. **AIR 1958 Orissa 280.**

——S. 11 — Certificates against co-sharer tenants — Payment of their proportionate dues by some of them — Their shares temporarily exempted and execution proceeded against others — Fresh notice under S. 7 if necessary. **AIR 1951 Pat 387.**

——S. 26 and Sch. II, R. 24 — Certificate filed on requisition of private landlord — Certificate officer's power to execute it by sale of portion of property — Tenancy laws — Bihar Tenancy Act (8 of 1885), S. 158-A (7). **AIR 1951 Pat 387.**

——Ss. 29 and 45 — Certificate sale—Irregularities in —Jurisdiction of civil Court. **AIR 1951 Pat 387.**

——Ss. 43, 44 — Constitution of India, Art. 226 — Other remedy open—Applicability—See Constitution of India, Art. 226. **AIR 1956 Pat 89.**

——S. 45—Certificate sale — Irregularities in jurisdiction of civil Court — See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 29. **AIR 1951 Pat 387.**

——Ss. 46, 45 — Certificate sale obtained by fraud — Whether can be challenged in collateral proceedings by way of defence — (Evidence Act (1872), S. 44) — See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 45. **AIR 1959 Pat 508.**

——S. 47, Rules under — R, 18 (1)—Order of attachment — Execution of order valid even outside local limits of Certificate Officer's jurisdiction.

From R. 18 it is clear that in order to give effect to the order of the certificate officer attaching the salary of an officer living outside the jurisdiction of the Certificate officer, it is not necessary that either the certificate debtor or the disbursing officer should reside in the local limits of the Certificate Officer's jurisdiction.

The rule cannot be construed in the light of provisions of O. 21, R. 48 of Civil P. C. (1908), as the two statues are altogether different. **I L R (1965) Cut 854 = 32 Cut L T 164.**

——Ss. 52 and 7 — Death of certificate-debtor after notice under S. 7 — Substitution — Under S. 52 it is essential that their legal representative should be substituted — See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 7. **AIR 1950 Orissa 198.**

——S. 62 — Scope—Power of revision against appellate order of Collector—Authority in which power is vested — Power is vested in Board of Revenue under S. 10 of Orissa Board of Revenue Act, 1951 and not in Commissioner — Orissa Revenue Divisional Commissioner's Act (29 of 1957), Ss. 3 and 4 — Orissa Revenue Divisional Commissioner's Rules (1959), Appendix I, (Item) 23).

Section 62 of the Act has, for the purposes of the State of Orissa, to be read along with the provisions made in sections 3 and 4 of the Orissa Revenue Divisional Commissioner's Act, 1957 (Orissa Act 19 of 1957). The sub-section 2 (b) of section 4 of that Act clearly directs that the Revenue Divisional Commissioner, appointed under section 3, shall exercise only such power of the Board of Revenue under the Orissa Board of Revenue Act, 1951 or under any other law for the time being in force as the State Government may by rules prescribe. In exercise of the powers conferred thereunder in 1959 the Orissa Revenue Divisional Commissioner's Rules were framed. In apsendix I (item 23) appended to these Rules power of the Revenue Divisional Commissioner is confined to appeal and revision against all original orders of the Collector. The power of revision, however, against the appellate orders of the Collector continued to remain vested, under the Orissa Board of Revenue Act, 1951 (Orissa Act 23 of 1951) in the Board of Revenue. Those powers which were not given to the Commissioner (after the amendment) under the Orissa Board of Revenue (Amendment) Act, 1957 (Orissa Act 29 of 1957) remained with the Board of Revenue as provided in section 10 of Orissa Act 23 of 1951. That being so, the Bihar and Orissa Public Demands Recovery Act, 1914 must be taken to have been, by necessary implication, repealed to the extent of the provisions made in the aforesaid Orissa Act 23 of 1951 read with Orissa Act 15 of 1957.

Held that the order passed by the Member, Board of Revenue on 11-10-63 in exercise of its revisional jurisdiction against the appellate Order of the Additional District Magistrate and Collector, Balasore, passed on 2-11-62 was valid and legal. **I L R (1965) Cut 653 = (1965) 2 I T J 826=AIR 1966 Orissa 124.**

——Sch. 1, Item 3 and S. 3 (6) — Public demand—Dues under Income-tax Act—(Income-tax Act (1922), S. 46 (2) — (Sales Tax — Bihar Sales Tax Act (19 of 1947), S. 14 (4) and (6)). See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 3 (6). **A I R 1956 Pat 361.**

——Sch. 2, R. 18 — Attachment of salary. See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 47. **32 Cut L T 164=I L R (1965) Cut 854.**

——Sch. 2, R. 24 and S. 26—Certificate filed on requisition of private landlord—Certificate officer's power to execute it by sale of portion of property—Tenancy Laws — Bihar Tenancy Act (8 of 1885) S. 158-A (7). See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 26. **A I R 1951 Pat 387.**

BIHAR AND ORISSA SERVICE CODE (1929)

——R. 55—Bihar Liberalised Pension Scheme (1950), Para. 1 (2) (a) — Paragraph providing for compulsory retirement of public servant after complete qualifying service — Does not offend Art. 14 of the Constitution —Discretion given to State Government, not unfettered. See Bihar Liberalised Pension Scheme (1950). Para. 1 (2) (a). **1965 B L J R 909=A I R 1966 Pat 148.**

——Rr. 73 (a) and 73 (f) — Retention of service of civil servant beyond date of superannuation for purpose of holding departmental enquiry cannot be said to be on public grounds—Such action is permissible under R. 73 (f) only if the civil servant is suspended before his date of compulsory retirement—Constitution of India, Art. 309. **(1965) 1 Lab L J 99 =A IR 1966 Pat 227.**

BIHAR AND ORISSA SUBORDINATE SERVICES (DISCIPLINE AND APPEAL) RULES (1935)

● —Constitution of India, Arts. 14 and 311 — Government servant—Dismissal of—Enquiry for misdemeanour — Two sets of rules under which enquiry could be ordered—Disciplinary Proceedings (Administrative Tribunal) Rules (1951) and Bihar and Orissa Subordinate Services Discipline and Appeal Rules (1935)—Enquiry held under Disciplinary Proceedings (Administrative Tribunal) Rules (1951) — Those rules more drastic than Bihar and Orissa Subordinate Services Discipline and Appeal Rules (1935) — Case of discrimination arises. See Constitution of India, Art. 14. **A I R 1961 S C 1715.**

—R. 2 (iv) (a) — Constitution of India, Art. 311—Bihar Service Code, R. 74 — Appellant retained in service after super-annuation — Extension of service not granted—Appellant ordered to retire under R. 74 —Order does not offend against Art. 311 of Constitution. See Constitution of India, Art. 311. **A I R 1965 Pat 186.**

● —Rr. 2, 4—Constitution of India, Art. 14 — Disciplinary Proceedings (Administrative Tribunal) Rules (1951)—Validity—Rules are not discriminatory when compared to Classification Rules—Rules do not contravene Art. 14. A I R 1960 Orissa 68, Reversed. See Constitution of India, Art. 14. **A I R 1963 S C 779.**

—Rr. 3 (a) and (b), 2—Dismissal of forester—(Bihar and Orissa Forest Manual, V. 2, R. 29)—(Constitution of India, Art. 311). See Bihar and Orissa Subordinate Services Discipline and Appeal Rules (1935), R. 2. **A I R 1956 Pat 228.**

—R. 12 — Collector dropping the proceedings against Government servant, instituted on charge of illegal gratification — Commissioner is authorised to revive the proceedings — Constitution of India, Art. 226.

Where the Collector dropped the proceedings against a subordinate Government servant on charge of illegal gratification, the order of revival of those proceedings made by the Commissioner is valid, as it falls within the power conferred upon him under R. 12. The power conferred upon the State Government and the Heads of the Departments by this rule is a revisional power of wide amplitude, and it enables the authorities mentioned in the rule to call for departmental proceedings against subordinates at any time and "reverse or alter the order passed by a subordinate authority". Article 226 of the Constitution cannot be invoked, when the Commissioner passes order of revival of proceedings under R. 12. **1962 B L J R 852=I L R 42 Pat 521 (DB).**

BIHAR DISTRICT BOARDS ELECTORAL RULES (1937)

—R. 3 (b) — 'Contract' in the rule includes lease : Per Sarjoo Prasad J. **A I R 1951 Pat 209.**

BIHAR DISTRICT BOARDS ELECTION PETITIONS RULES (1939)

—R. 16 (1) (b)—Corruption practice not materially affecting result of election. **A I R 1951 Pat 209.**

BIHAR HIGH SCHOOLS (CONSTITUTION POWERS AND FUNCTIONS OF MANAGING COMMITTEE) RULES (1964)

—Validity — Rules do not offend Art. 14 of the Constitution—Constitution of India, Art. 14.

The rules cannot be struck down as offending Art. 14 of the Constitution on the ground that they give unfettered powers to the authorities concerned and permit discrimination between various schools by imposing an ad hoc committee of officials on some schools by deliberately delaying in taking the various necessary steps to constitute the Managing Committees. Nor can it be said that the rules do not lay down any principles or policy for guiding the exercise of discretion by the officers concerned.

Though the Government officer concerned is conferred with wide discretion to take the various steps for the purpose of constituting the first Managing Committee of a School, nevertheless the rules clearly lay down a policy and principle for the guidance of his discretion by first requiring under R. 37 that the new Committee must be constituted within nine months and then by depriving the officer of any right to vote or to propose a candidate either at the meeting convened for the selection of guardian representatives under Rule 7 or co-option of local educationists under R. 8. Rule 39 does authorise the constitution of an ad hoc Committee until the Managing Committee is constituted in accordance with the rules. The contention that R. 39 encroaches on the power conferred by S. 5 (2) of the Act cannot prevail. **1965 B L J R 844=I L R 45 Pat 411.**

BIHAR HIGH SCHOOLS (CONTROL AND REGULATION OF ADMINISTRATION) ACT (13 of 1960)

—Validity — Does not offend Art. 19 (1) (f) and Art. 31 (1) of the Constitution—Constitution of India, Arts. 19 (1) (f) and 31 (1).

The Act does not offend Arts. 19 (1) (f) and 31 (1) of the Constitution because an interference with the right of bare management of an educational institution does not amount to infringement of the right to property under article. Even if it is held that the first Managing Committee had a vested interest in the properties of the school, such property right can be taken away by the operation of law. The Bihar Act is such a law, and, therefore, such deprivation of property would not offend either Art. 19 or Art. 31 (1) of the Constitution. A I R 1963 S C 540; A I R 1959 S C 249, Ref. **1965 B L J R 844=I L R 45 Pat 411.**

—Ss. 5 (1) and 8 (3) — S. 5 (1) is not invalid as excessive delegation of legislative powers—Constitution of India, Art. 245 — Delegated legislation—Legislative control.

Section 5 (1) does not amount to excessive delegation or abdication of legislative powers by the Legislature, on the ground that it confers wide and excessive powers on the rule making authority to provide for the constitution of Managing Committees. It is true that S. 5 (1) has conferred wide powers on the State Government. But S. 8 (3) requires that the rules should be laid before the Legislature and if any modification is suggested by the Legislature the rules shall have effect only in such modified form. Thus, the Legislature has not completely abdicated its legislative function, but has retained its full control. Section 5 (1), therefore, is not invalid. A I R 1965 Pat 124; 1964 B L J R 722; A I R 1958 S C 578; 1959 S C J 321; 1894 A C 347; 1931 A C 494, Rel. on. **1965 B L J R 844=I L R 45 Pat 411.**

—S. 8 (3)—Section 5 (1) is not invalid as excessive delegation of legislative powers. See Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960), S. 5 (1). **1965 B L J R 844=I L R 45 Pat 411.**

BIHAR HINDU RELIGIOUS TRUSTS ACT (1 of 1951)

—Validity — (Constitution of India, Arts. 19 (1) (f), 25). **A I R 1954 Pat 279.**

● —Ss. 3, 2 (l), 4 (5), 28, 29 — Baidyanath temple in Bihar is public trust — Act applies to the temple—Act is not bad on ground of extra territorial operation because it takes trusts in Bihar out of purview

of S. 92, Civil P. C A I R 1954 Pat 262, Reversed—(Constitution of India, Arts. 245, 254, Sch. 7, List 3, Item 13) — (Civil P. C. (1908), S. 92). See Bihar Hindu Religious Trusts Act (1 of 1951), S. 2 (1). **A I R 1959 S C 1073.**

● ——Ss. 28, 2 (l), 3, 4 (5), 29 — Baidyanath temple in Bihar is public trust — Act applies to the temple—Act is not bad on ground of extra territorial operation because it takes trusts in Bihar out of purview of S. 92, Civil P. C.—A I R 1954 Pat 262, Reversed—(Constitution of India, Arts. 245, 254, Sch. 7, List 3, Item 13) — (Civil P. C. (1908), S. 92). See Bihar Hindu Religious Trusts Act (1 of 1951), S. 2 (1). **A I R 1959 S C 1073.**

● ——Ss. 32, 28 – Constitution of India, Art. 19 (1) (f) and (5) – Bihar Hindu Religious Trusts Act, Ss. 28 and 32—Sections do not violate fundamental right under Article. See Constitution of India, Art. 19 (1) (f). **AIR 1959 S C 942.**

● ——Ss. 43 and 59—Constitution of India, Art. 226—Bihar State Board of Religious Trusts calling upon Mahant of private religious trust to furnish return of income and expenditure under S. 59 — Bihar Hindu Religious Trusts Act (1 of 1951), not applying to private trust — Appropriate writ can be issued : I L R 33 Pat 942, Reversed. See Constitution of India, Art. 226. **AIR 1959 S C 951.**

——S. 43—Civil P. C. (1908), S. 9—Suit for declaration that suit property is personal property of plaintiff and that Bihar Hindu Religious Trusts Act does not apply to it — Section 43 of that Act does not bar suit being directly instituted in the Civil Court. See Civil P. C. (1908), S. 9. **AIR 1965 Pat 3.**

BIHAR LAND ENCROACHMENT ACT (31 of 1950)

——S. 4—Challenge on ground of hardship. See Bihar Land Encroachment Act (31 of 1950), S. 3. **AIR 1957 Pat 666.**

BIHAR LIBERALISED PENSION SCHEME (1950)

——Para. 1 (2) (a)—Bihar Service Code, R. 55—Paragraph providing for compulsory retirement of public servant after completing qualifying service — Does not offend Art. 14 of the Constitution — Discretion given to State Government, not unfettered.

If a statutory provision lays down a policy or principle for the guidance of the exercise of discretion by the authority concerned in the matter of selection or classification of persons to whom the said provision should apply, the statutory provision will not be unconstitutional. AIR 1958 S C 538 (548), Rel. on. While it is true that the impugned sub-paragraph of the Bihar Liberalised Pension Scheme (1950) by itself does not lay down any policy or principle except the minimum requirement of 30 years qualifying service, the fixing of minimum qualifying service for itself, to some extent, prevents the unfettered exercise of the discretionary power. Moreover, the basic principle on which the provisions of the Bihar Service Code and the Bihar Pension Rules have been made seems to be that the services of a Government servant are at the disposal of the Government, which itself is functioning for the benefit of the public. Rule 55 of the Service Code clearly says that the whole time of a Government servant is at the disposal of Government which pays him. Hence, while exercising the discretionary power under the impugned sub-paragraph the authority concerned is required to bear in mind the availability for the whole time of the Government servant for further efficient service. The Government or the authority concerned will necessarily have to consider whether the further retention in service of the public servant is in public interest or not. Hence the impugned sub-paragraph cannot be said to contravene Art. 14.

A police officer must continue to be in high standard of physical fitness throughout his service, and if after 30 years of qualifying service his superior authority is authorised to terminate his services, it is implied in the exercise of the power that public interest, administrative convenience and the efficiency of the service will be the main basis for the exercise of that power. AIR 1964 S C 600 (observations of Shah, J., in Pr. 154, Rel. on). Because of the absence of specific directions in governing the exercise of authority conferred thereby, the power to terminate employment cannot be regarded as an arbitrary power exercisable at the sweet will of the authority. **1965 B L J R 909= AIR 1966 Pat 148.**

BIHAR MICA ACT, 1947 (10 of 1948)

——S. 4 (1) (d)—Income-tax Act (1922), S. 26-A — Partnership carrying on business of dealing in mica in Bihar—License under Bihar Mica Act in the name of partner alone and not in the name of partnership—Partnership is not unlawful and is entitled to registration under S. 26-A. See Income-tax Act (1922), S. 26-A. **AIR 1960 Pat 398.**

——S. 7—Income-tax Act (1922), S. 26-A — Partnership carrying on business of dealing in mica in Bihar—License under Bihar Mica Act in the name of partner alone and not in the name of partnership—Partnership is not unlawful and is entitled to registration under S. 26-A. See Income-tax Act (1922), S. 26-A. **AIR 1960 Pat 398.**

——Ss. 17 (3) and 6 (6)—Validity:— Act if repugnant with Mica Control Order — (Mica Control Order (1940)) — (Bihar Mica Amendment Act (1 of 1949), S. 1)—(Government of India Act (1935), S. 107 (1))—(India (Central Government and Legislature) Act (1946), Ss. 2, 14 and 4) — (Constitution of India, Arts. 246; 254). See Bihar Mica Act, 1947 (10 of 1948), S. 6 (6). **AIR 1958 Pat 496.**

BIHAR MINOR MINERAL CONCESSION RULES (1964)

——R. 30—Rules provide procedure for assessment of royalty — Imposition of royalty is valid. **AIR 1965 Pat 491.**

——Sch. II and R. 20—Rules coming into effect from 18-4-1964 — Notice demanding royalty for use of brick-earth against petitioners for period from 1958 to 1964 — No rate of royalty prescribed for brick-earth by predecessor Rules, i. e., Mining Concession (Bihar) Rules, 1945 — Rate of royalty in Sch. II not having retrospective operation — Petitioners not had taken mineral lease under Rules—Held, notices were without authority of law. See Bihar Minor Mineral Concession Rules (1964), R. 20. **AIR 1965 Pat 491.**

BIHAR PENSION RULES

——R. 132 (b)—Constitution of India, Art. 311—Bihar Service Code, R. 74 — Appellant retained in service after super-annuation — Extension of service not granted — Appellant ordered to retire under R. 74—Order does not offend against Art. 311 of Constitution. See Constitution of India, Art. 311. **AIR 1965 Pat 186.**

BIHAR PRESERVATION AND IMPROVEMENT OF ANIMALS ACT (2 of 1956)

● ——S. 3 and Preamble—Constitution of India, Art. 25 (1) — Scope — Bihar Act 2 of 1956, U. P. Act 1 of 1956 and C. P. and Berar Act 52 of 1949, whether hit by Article — (U. P. Prevention of Cow Slaughter Act (1 of 1956), Preamble and S. 3)—C. P. and Berar Animal Preservation Act (52 of 1949) (as amended by M. P. Acts 23 of 1951 and 10 of 1956), Preamble and

S. 4). See Constitution of India, Art. 25(1). AIR 1958 S C 731.

BIHAR PRIVATE FORESTS ACT, 1947 (9 of 1948)

——Ss. 30 and 49 (c)—Production of gazette in appellate stage not sufficient. See Bihar Private Forests Act, 1947 (9 of 1948), S. 49(c). AIR 1953 Pat 143.
——Ss. 49 (c) and 30 — Production of gazette in appellate stage not sufficient. AIR 1953 Pat 143.

BIHAR PROTECTED FOREST RULES

●——Rr. 1, 2, 3, 4 and 8—Forest Act (1927), S. 32—Scope — Cutting of trees necessary for clearing land for cultivation etc. — R. 8 applies and not R. 4. See Forest Act (1927), S. 32. 1962 B L J R 333=(1962) 1 S C J 607=I L R 41 Pat 566=(1962) 3 S C R 727=AIR 1966 S C 1847 (a).

——Bihar Public Land Encroachment Act (15 of 1956), Ss. 16 and 2 (3) — Civil Court's jurisdiction not barred, if it is shown that the land in question is not public land but private property.

Where the land in question is a "public" land as defined in S. 2(3) of the Bihar Public Land Encroachment Act, the revenue authorities alone have jurisdiction to proceed under the Act and the Civil Court is barred from exercising jurisdiction. However, if it is shown that the land is not a public land but private property, then the Civil Court alone has jurisdiction and the jurisdiction of the revenue authorities is ousted, in the absence of a provision in the Act to the effect that the decision of a revenue officer as to whether a particular piece of land is "public land' is final and conclusive and not liable to challenge in Civil Courts. 1940 P C 105 and (1881) 21 Q B D 313 (319), Ref. (Civil P. C. (1908), S. 9.) 1965 B L J R 744 (DB).

BIHAR RULES OF EXECUTIVE BUSINESS (1952)

——Sch. II, Item 30, Rr. 8, 12, 13, 28 (6) — Constitution of India, Arts. 171 (3) (e) (5), 163 (3), 166 (2) and (3)—Nominations of members to State Legislative Council—Selection of names made by Chief Minister with approval of Council of Ministers — Subsequent publication of notification stating that Governor has nominated those members—Nominations are deemed to have been made by Governor and court cannot enquire into advice, if any, given by council of ministers to Governor. See Constitution of India, Art. 171 (3) (e). AIR 1965 Pat 321.

BIHAR SATHI LAND (RESTORATION) ACT (34 of 1950)

SECTION 2

——S. 2—Law—Meaning of.

Law in its legislative sense is of much wider import than the juristic notion of law as the command of a sovereign or as a rule laying down a general course of conduct. The term 'law' in Art. 245 must be construed so as to include in its scope all legislative Acts enacted in the prescribed manner and from. Sathi Lands (Restoration) Act was therefore 'law' in the strict sense and the declaration contained in it was not in the nature of a mere decree in respect of certain individuals' rights. A I R 1952 Pat 194 (195, 196) (Pt A) (Pr 8) (DB).

[Overruled on another point in AIR 1953 S C 215.]

BIHAR SERVICE CODE

——R. 55 — Services of the Government servants — Whole time at the disposal of the Government—Availability of servant for whole time considered while retiring the servant. Para. 1(2)(a) of Bihar Liberalised Pension Scheme (1950) providing for compulsory retirement of public servant after complete qualifying service—Does not therefore offend Art. 14 of the Constitution. See Bihar Liberalised Pension Scheme (1950), Pr. 1 (2) (a). 1965 B L J R 909=AIR 1966 Pat 148.

——Rr. 73 (a) and 73 (f) — Retention of service of civil servant beyond date of superannuation for purpose of holding departmental enquiry cannot be said to be on public grounds — Such action is permissible under R. 73 (f) only if the civil servant is suspended before his date of compulsory retirement — Constitution of India, Art. 309. (1965) 1 Lab L J 99=A I R 1966 Pat 227.

——R. 74—Constitution of India, Art. 311—Appellant retained in service after superannuation — Extension of service not granted — Appellant ordered to retire under R. 74—Order does not offend against Art. 311 of Constitution. See Constitution of India, Art. 311. AIR 1965 Pat 186.

BIHAR SHOPS AND ESTABLISHMENTS ACT (8 of 1954)

——S. 5 — Suspension of employee — Power not an implied term of contract—Pendency of criminal case against employee — Dismissal on same fact not amounting to contempt of court — Right to suspend employee during the period cannot be implied — Industrial Disputes Act (1947), S. 33. See Master and Servant—Suspension of employee. 1965 B L J R 934 =(1965-66) 29 F J R 274=A I R 1966 Pat 230.

●——S. 26 (1), Proviso—Validity — Section does not suffer from the vice of excessive delegation — Authority has been conferred on State Government and section also gives sufficient guidance for State Government to define misconduct on proof of which no notice would be necessary. (1965-66) 29 F J R 31 =A I R 1966 S C 1729.

BIHAR SUGAR FACTORIES CONTROL RULES, 1938

——Income-tax Act (1922), S. 10 (1), (2) (15)—Profits or gains — Loss incidental to business—Amount sent from one centre to another — Robbery on the way — Loss debited to expense account as revenue expenditure—Despatch of money to and from various centres for payment to workers held essential part of business—Loss sprang from statutory necessity of sending money — Loss therefore arose out of business (sugarcane factory) of assessee and could be taken into account in calculating profits and gains under S. 10 (1) for purposes of computing taxable income. A I R 1938 Pat 159, Not followed. See Income-tax Act (1922), S. 10 (1). A I R 1955 Pat 389.

BIHAR TREASURY CODE

——Art. 231 — Civil P. C. (1908), S. 60 — Dearness allowance is not attachable. See Civil P. C. (1908), S. 60. A I R 1956 Pat 159.

——Art. 233—Civil P. C. (1908), S. 60 (1) (i) and (k)—Provident fund and income-tax deducted at source — Deduction should be made from non-attachable portion of salary—(Income-tax Act (1922), S. 18)—A I R 1939 Rang 432, Dissented from. See Civil P. C. (1908), S. 60 (1) (i) and (k). A I R 1956 Pat 159.

BIHAR UNIVERSITY STATUTES

STATUTE 13, ART. 1

——Statute 13, Art. 1 (2) (a) (x) — Constitution of Governing Body of admitted college — Nomination of tenth member by Syndicate—Absence of consultation with ad-hoc committee formed for starting college—No illegality. 1962 B L J R 740 (DB).

STATUTE 13, ART. 2

——Statute 13, Art. 2—Ad-hoc committee formed for starting a college—Not competent to manage affairs of college after admission to University.

The ad hoc committee constituted for the purpose of starting a college could be recognised by the University only for the purpose of the admission of the college to the University and, when the college is admitted, only the Governing Body constituted in accordance with the provisions of Art. 2 of statute 13 could be competent to manage the affairs of the college. **1962 B L J R 740 (DB).**

STATUTE 13, ART. 5

——Statute 13, Art. 5 (2) and (3) — First meeting of Governing Body of admitted college — Procedure — Provisions of Art. 5 (2) and (3) do not apply.

A reading of statute 13 as a whole gives an impression that so much of sub-article (3) of Art. 5 as relates to the convening of the meetings by the Secretary does not apply to the first meeting of the Governing body. Similarly. sub-article (2) of Art. 5, which lays down that the President of the Governing Body shall preside at the meetings thereof and record the proceedings, applies only after the members have elected a President at the first meeting. In other words, the provisions of sub-articles (2) and (3) of Art. 5 regarding the President and the Secretary apply only when the President and the Secretary have been respectively elected at the first meeting. As the laws of the University are silent as to who shall call the first meeting and preside over it before the election of the President, the ordinary rule relating to the first meeting shall apply, namely, that, one of the members shall take the initiative to call the first meeting and the gentleman elected by the members at the first meeting shall preside. **1962 B L J R 740 (DB).**

BILL OF LADING ACT (1856)

——S. 1—Shipping—Bill of lading — Nature of document — Duties and liabilities of owner of ship — Liability due to loss during voyage distinguished. **AIR 1961 Mad 442 (449, 450) (Pt F) (Prs 21, 22, 24) (DB).**

——Ss. 2, 3, 1—Carriage of Goods by Sea Act (1925), Sch. Art. 4 Paras. 1 and 2 — Negligence in stowing and, carrying goods during voyage—Liability for loss or damage—Burden of proof — (Evidence Act (1872), Ss. 101 to 104). See Carriage of Goods by Sea Act (1925), Sch. Art. 4, Para. 1. **A I R 1959 Cal 479.**

BOMBAY ABKARI ACT (5 of 1878)

——Ss. 10, 3 (10), 19— Levy of additional duty on transport of excisable articles on which duty has already been paid — Case not covered by Explanation to S. 19 — Levy illegal. See Bombay Abkari Act (1878), S. 3 (10). **AIR 1960 S C 898.**

——Ss. 19, 3 (10), 10 — Levy of additional duty on transport of excisable articles on which duty has already been paid— Case not covered by Explanation to S. 19 — Levy illegal. See Bombay Abkari Act (1878), S. 3 (10). **AIR 1960 S C 898.**

——S. 43 (1) — Criminal P. C. (1898), Ss. 103, 367 and 537—Search—Irregularities — Effect — Conviction based on uncorroborated testimony of police officers—Legality. See Criminal P. C. (1898), S. 103. **52 Cri L J 41=AIR 1951 Bom 186.**

BOMBAY AGRICULTURAL PRODUCE MARKETS ACT (22 of 1939)

——Constitution of India, Art. 19 (1) (g) — Bombay Agricultural Produce Markets Act (22 of 1939)—Act does not infringe Art. 19 (1) (g). See Constitution of India, Art. 19 (1) (g). **AIR 1956 Bom 21.**

——S. 2 (1) (ii) — Organisation of agriculturists referred to in S. 6 (1) (i) — Must be one as defined in S. 2 (1) (ii). See Bombay Agricultural Produce Markets Act (22 of 1939), S. 6 (1) (i). **1962 Mys L J (Sup) 272 (DB).**

——Ss. 5A, 4 (2), Proviso — Constitution of India, Arts. 14, 19 (1) (g)—Validity — Provisions are valid. See Constitution of India, Art. 14. **AIR 1960 Punj 439.**

——S. 6 (1) (i)—Scope — If there is no organisation of agriculturists in any area agriculturists have right to vote—Constitution of India, Art. 14.

If in any given area there is any organisation of agriculturists that organisation is the voter, provided the rule made by the Government prescribes that it should be so; if there is an area in which there is no such organisation, agriculturists who have not organised themselves may record their votes.

It cannot be said that S. 6 (1) (i) arbitrarily excludes agriculturists from the voters' lists prepared under R. 10 (1) in any area for which a market committee is established in cases in which there is at least one organisation of agriculturists. **1962 Mys L J (Sup) 272 (DB).**

BOMBAY AGRICULTURAL PRODUCE MARKETS RULES (1941)

——R. 2 (xi)—Bombay Agricultural Produce Markets Act (22 of 1939), Ss. 6 (1) (i); 2 (1) (ii)—Organisation of agriculturists—Must be one as defined in S. 2 (1) (ii). See Bombay Agricultural Produce Markets Act (22 of 1939), S. 6 (1) (i). **1962 Mys L J (Sup) 272 (DB).**

RULE 3

——R. 3—Bombay Agricultural Produce Markets Act (22 of 1939), Ss. 6 (1) (i), 2 (1) (ii)— Organisation of agriculturists—Must be one as defined in S. 2 (1) (ii). See Bombay Agricultural Produce Markets Act (22 of 1939), S. 6 1 (i). **1962 Mys L J (Sup) 272 (DB).**

——R. 10—Expression "four months before the date on which the term of the Market Committee is due to expire" in S. 6 (1) of Bombay Agricultural Produce Markets Act — Period refers to term specified in S. 6 (3) and not in S. 6 (3A) of the Act.

The expression 'the term of the market committee occurring in S. 6 (1) should be understood as the term occurring in S. 6 (3) and not as the period referred to in sub-s. (3A) of that section. The term referred to in R. 10 (1) is not the deemed term specified in sub-s. (3A) but is the real term of office referred to in sub-s. (3) of S. 6. The expression 'four months before the date on which the term of the market committee is due to expire" refers not to the term specified in S. 6 (3A), but to the term specified in S. 6 (3) of the Act. **1962 Mys L J (Sup) 272 (DB).**

BOMBAY BAR ASSOCIATION RULES

——R. 19 — Legal Practitioners (Fees) Act (1926), Ss. 2 (a) and 3 — Barrister enrolled on Original Side of Bombay High Court — Whether can contract for his fees for acting as well as pleading outside Original Side — Right to sue for fees — (High Court Rules and Orders — Bombay High Court Rules (O. S.), Part 1, R. 40). See Legal Practitioners (Fees) Act (1926), S. 2 (a). **AIR 1956 Bom 34.**

BOMBAY BEGGARS ACT (23 of 1945)

——Ss. 6, 5 (5) and 23 — Applicable to beggars not born and domiciled in Bombay Province. See Bombay Beggars Act (23 of 1945), S. 5 (5). **AIR 1952 Bom 451.**

——S. 20—License under—No license granted under the Act can permit begging. **AIR 1952 Bom 451.**

—Ss. 23 and 5 (5) and 6 — Applicable to beggars not born and domiciled in Bombay Province. See Bombay Beggars Act (23 of 1945), S. 5 (5). AIR 1952 Bom 451.

BOMBAY CINEMAS (REGULATION) ACT (11 of 1953)

—S. 3 –Rules under Act — Bombay Cinema Rules (1954), Rr. 104, 106 — Renewal of cinema license of touring cinema cannot be refused on ground that operator was operating his touring cinema at particural place for a long time — Right to operate cinema is fundamental right — Constitution of India, Art. 19 (1) (g).

The right to operate a cinema is a fundamental right guaranteed under Art. 19 (1) (g) of the Constitution. All that the law can do is to impose reasonable restrictions on that right.

Under the Bombay Cinemas (Regulation) Act, 1953 the only restriction that is placed on a person who operates a cinema is that he should obtain a license before operating the cinema in any particular place. Under R. 104 of Bombay Cinema Rules, framed under the Act the Licensing Authority has absolute discretion in refusing a license or in renewing the same if the cinema appears to him likely to cause obstruction, inconvenience, annoyance, risk, danger or damage to residents or passersby in the vicinity of the cinema.

There is no provision of law empowering the licensing authority to refuse to renew a license on the ground that the licensee has been operating his cinema in a particular place for a long time.

Renewal of the license of a touring cinema cannot be refused on the ground that it has been operating in a particular place for a long time, and that if permitted to operate for a long time in the particular place, it would do away with the distinction recognised by law between a permanent cinema and touring cinema are just those set out in the Act and the rules. The licensing authority cannot add to the same. There is no provision which prohibits an operator from operating his touring cinema in a particular place beyond a given period. Renewal cannot therefore be refused on the ground that the operator of a touring cinema was operating the same in a particular place for about a year or more. (1965) 2 Law Rep 244 (Mys).

BOMBAY CINEMA RULES (1954)

—R. 104 — Renewal of cinema license of touring cinema cannot be refused on ground that operator was operating his touring cinema at particular place for a long time. See Bombay Cinema (Regulations) Act (11 of 1953), S. 3. (1965) 2 Law Rep 244 (Mys).

—R. 106—Renewal of cinema license of touring cinema cannot be refused on ground that operator was operating his touring cinema at particular place for a long time. See Bombay Cinema (Regulations) Act (11 of 1953), S. 3. (1965) 2 Law Rep 244 (Mys).

BOMBAY CITY CIVIL COURTS ACT (40 of 1948)

—S. 3 — Letters Patent (Bombay), Cl. 32 — Admiralty jurisdiction of High Court — Scope and nature — Torts committed on high seas — Damage by collision — Suit for damages — High Court on its Admiralty Side has exclusive jurisdiction. See Letters Patent (Bombay), Cl. 32. AIR 1961 Bom 186.

BOMBAY CITY LAND REVENUE ACT (2 of 1876)

—Ss. 3 (4), 8, 9 — Superior holder — Who is — Lessee holding lease directly granted by Governor-General in Council –Provision for renewal of lease— Certificate under S. 173 (1) Government of India Act issued — It was Governor General in Council and not its lessee who was superior holder under Provincial Government — Government of India Act (1935), S 154.

A person in order that he should have the highest title to a land need not necessarily be in actual possession of the land; nor should he have an immediate right to possession thereof. It would be enough if he is entitled to possession of the land on the expiry of term, which may be for any number of years or even in perpetuity. In such a case he would, as between himself and the holder of the estate which he has created, be the person having the highest title to the land.

From the fact that a larger amount of compensation is allowed to the lessee than to the lessor it cannot be said that the lessee had a larger interest in, and consequently title to, land than the lessor. The question as to whether the lessor or the lessee has the highest title to land does not depend upon the amount of compensation to which they may be respectively entitled in proceedings under the Land Acquisition Act.

Certain piece of land in the City of Bombay was held on lease by one X from the Secretary of State for India in Council. The land was subsequently acquired by Government for G. I. P. Railways. Surplus plots out of this land were granted on leases to plaintiffs directly by the Governor-General in Council in about 1939, for a period of 99 years, with a provision that on surrender of the lease within first 49 years a new lease for a period of 999 years would be granted. On the question whether the lessees were superior holders so as to be assessed for land revenue:

Held, that ever since 1st April 1937, on which date the Government of India Act, 1935, came into force, the sovereignty of the crown over the territories which constituted the Province of Bombay became vested in the Provincial Government and ever since that date all the lands situated within those territories came to be held by their respective superior holders under the Provincial Government for the purposes of land revenue. Therefore, it was the Central Government which became the "superior holder" of the plots under the Provincial Government ever since 1st April 1937, but they were not liable to pay any assessment to the Provincial Government by reason of the exemption provided by S. 154 of the Government of India Act, 1935. But they still continued to be superior holders, despite the lease granted by them in favour of the plaintsffs. In any event, the plaintiffs were not "superior holders" within the meaning of S. 3 (4) and, therefore, they were not liable to pay any land revenue to the Provincial Government in respect of the lands held by them on lease from the Central Government. (1897) ILR 24 Cal 440; (1908-9) 36 I A 148, Rel. on. (1942) 44 Bom L R 57; (1956) 60 Bom L R 1208, Disting. 64 Bom L R 311 = ILR (1963) Bom 10 (DB).

BOMBAY CIVIL COURTS ACT (14 of 1869)

—S. 28 (2) (a) — Transfer of suit under—Transfer is to Court of Civil Judge, Senior Division — Principal Judge of that Court can refer case to any other Judge of Court for trial. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 28 (2) (a). AIR 1956 Bom 481 (FB).

BOMBAY CIVIL SERVICES (CONDUCT, DISCIPLINE AND APPEAL) RULES

—R. 55 — Constitution of India, Art. 311 (2) — Probationer — Order of discharge — Opportunity to show cause. See Constitution of India, Art. 311 (2). AIR 1956 Sau 41.

——R. 55 (4) — Constitution of India, Art. 311 — Bombay Police Manual (1950), R. 545 (19)—Evidence heard by inquiring Officer — Orders passed on the report by punishing authority without himself hearing witnesses — Irregularity. See Constitution of India, Art. 311. AIR 1956 Sau 14.

BOMBAY CONDITIONS OF DETENTION ORDER (1951)

RULE 16

——R. 16 (ii) — Power of prison official to refuse delivery of books on ground of suitability — Suitability has reference not to number but must be judged by contents or material in that book — Number of books that may be made available to detenu cannot be restricted. 66 Bom L R 185 = 1964 Mah L J 297 = ILR (1964) Bom 300 (DB).

BOMBAY COURT FEES ACT (36 of 1939)

——S. 6 (iv) (d) and (j) — Suit for declaration that plaintiff-subtenant is entitled to protection under S. 14 of Bombay Rent Act and consequential relief of injunction — Fixed Court Fee of Rs. 30/- to be paid under S. 6 (iv) (j) — S. 6 (iv) (d) not attracted — Suit not for declaration as to the nature of tenancy in respect of immovable property. (Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 14.)

The suit for a declaration that the plaintiff is the lawfully protected sub-tenant of the suit property and for a further injunction restraining the landlords from executing the order of eviction obtained against the head-tenant falls within the purview of S. 6 (iv) (j) and the court-fee payable on the plaint is Rs. 30/-. The prayer in the suit is not for a declaration as to the nature of their tenancy of any immovable property so as to attract the provision under S. 7 (iv) (d) of the Court Fees Act. The plaintiffs want a declaration that they are entitled to the status of statutory tenants and to the protection afforded to them under S. 14 of the Bombay Rent Act and consequent on this declaration they seek an injunction against the landlord. Statutory tenancy under the Rent Act is not tenancy of immovable property and the statutory tenant has no right or interest in the immovable property, but merely a personal right to retain possession. 46 Bom L R 916; 52 Bom L R 627 at 635, Ref. 67 Bom L R 210=1965 Mah L J 473 = ILR (1966) Bom 84.

——S. 6 (iv) (j) — Court-Fees Act (1870), Sch. I, Art. 1—Applicability—Suit for declaration that plaintiff is benamidar of defendant and has no interest in suit transactions—Suit dismissed—Appeal—Court-fee payable on the memorandum — Special provision in S. 6 (iv) (j) of the Bombay Act prevails against Sch. I, Art. 1 of the Court-Fees Act (1870).

Where the plaintiff sought a declaration that he was merely a benamidar in the various suit transactions specified in the plaint paras. 8 to 10 and that he was not interested in any manner whatsoever in the said transactions, which were entered into by the defendants in his name and the plaintiff was, therefore, not liable in that connection and the suit was dismissed, in the appeal against the decree it was contended that the appeal memo. was not properly stamped : on the question of applicability of relevant provisions of the Court Fees Act.

Held that as the plaintiffs claim was not as to the amounts mentioned in paras. 8 to 10 of the plaint but that he had no interest whatsoever in the said transactions, the suit was clearly covered by S. 6 (IV) (j) of the Bombay Court Fees Act, 1959, which came into force when the appeal was filed and therefore the appeal memo. was properly stamped under the said provision. In view of this special provision, Art. 1 of Sch. I of Court Fees Act, 1870 which was a general provision, did not apply. I L R (1965) Guj 971 = (1965) 6 Guj L R 855 = AIR 1966 Guj 159.

——S. 6 (10) (i) — Suit for accounts of property and due administration of estate left by deceased—Valuation made by plaintiff not shown to be wrong—Jurisdiction of Court to determine correct valuation not attracted—Suit filed on Court fees of Rs. 20/ valuing the suit at Rs. 200/- held, to be proper. See Bombay Court-fees Act (36 of 1959), S. 8. (1965) 6 Guj L R 402.

——S. 8—Civil P. C. (1908), S. 115—Revision — Order in a proceeding under S. 8 of the Bombay Court-fees Act in suit for declaration as to protection under S. 14 of the Bombay Rent Act — Even assuming that S. 29 (3) of Bombay Rent Act conferred revisional jurisdiction on the District Court, High Court is not barred from entertaining the revision against the order under S. 115 of Civil P. C. See Civil P. C. (1908), S. 115. 67 Bom L R 210 = 1965 Mah L J 473=ILR (1966) Bom 84.

——Ss. 8 and 6 (10) (i) — Suit for accounts of property and due administration of estate left by deceased—Valuation made by plaintiff not shown to be wrong — Jurisdiction of Court to determine correct valuation not attracted — Suit filed on court-fees of Rs. 20/- valuing the suit at Rs. 200/- held, to be proper—Civil P. C. (1908), O. 20. R. 13 60 B L R 587, Foll. (1965) 6 Guj L R 402=ILR (1965) Guj 495.

——Sch. II, Art. 34 — Applicability — Petitions for winding up under S. 53 (1) of Insurance Act (1938) —Such petitions are not petitions under S. 439 of Indian Companies Act — Article not applicable. 67 Bom L R 901 = 1966 Mah L J 158=ILR (1966) Bom 466.

BOMBAY DISTRICT POLICE ACT (7 of 1867)

——S. 29 — Bombay Police Act (22 of 1957), Ss. 4 and 25—Departmental enquiry—Negligence of duty—Exoneration from charges — Order of State Government for further enquiry on same charges — Validity —State Government is empowered to order further enquiry on the same charges decided in departmental enquiry if the facts involved warrant such an enquiry. (Constitution of India, Art. 20) — (Criminal P. C. (1898), S. 403)— (Civil P. C. (1908), S. 11)—See Bombay Police Act (22 of 1951), S. 4. 67 Bom L R 852 = AIR 1966 Bom 228.

BOMBAY DISTRICT POLICE ACT (4 of 1890)

——S. 3 (b) — Evidence Act (1872), S. 25 — Police officers—Meaning of — Members of C. R. P. Force — (Central Reserve Police Force Act (1949), Ss. 7 (1), 16) —(Police Act (1861), S. 23 — (Words and Phrases) — See Evidence Act (1872), S. 25. AIR 1956 Kutch 1.

BOMBAY ELECTRICITY (EMERGENCY SPECIAL POWERS) ACT (2 of 1946)

——Ss. 11, 6A —Working hours of mills reduced as result of order under S. 6A curtailing supply of electricity—Raising of industrial dispute for sharing loss, not barred — Bombay Industrial Relations Act (11 of 1947), S. 78. AIR 1960 S C 819.

BOMBAY ESSENTIAL COMMODITIES (REGULATION OF DISPOSAL AND ACQUISITION) ORDER (1947)

——Cls. 5, 4 — Clauses are not ultra vires Provincial Government — Re-delegation of delegated powers — (Essential Supplies (Temporary Powers) Act (1946), Ss. 3, 4)—(Constitution of India, Art. 245—Re-delegation of delegated powers) — See Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order (1947), Cl. 4. AIR 1959 Bom 511.

Representative union appearing — It alone represents employees—Union not appearing—Employee or any one authorised by him can appear — Application by employer — Representative union putting in appearance — It alone can reppesent employee—But it will be application by employee — Court will consider matter from his point of view. See Bombay Industrial Relations Act (11 of 1947), S. 27A. **AIR 1955 Bom 369.**

——Ss. 32, 33, 27A — Constitution of India, Art. 19 (1) (a) and (c)—Labour and trade unions — Right of individual worker to conduct his own case before Industrial Court — Validity — Not in conflict with fundamental rights and so are not void. See Constitution of India, Art. 19 (1) (a). **AIR 1956 Madh Bha 199.**

● ——Ss. 42, 40, 73, 78 (1A) and Schs. I, III — Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (b) — Substantial question of law — Dispute involving question of right of workmen to compensation due to loss of working hours as a result of curtailment of electric energy involves substantial question of law. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (b). **AIR 1960 SC 819.**

——Ss. 74 and 68—Application to set aside award—Jurisdiction of Labour Court or Industrial Court to deal with application—(Arbitration Act (1940), Ss. 14, 30, 31) See Bombay Industrial Relations Act, 1946 (11 of 1947), S. 68. **AIR 1956 Bom 746.**

——Ss. 78, 68 and 84 — Labour Court exercising powers under Arbitration Act — Appeal lies not to Industrial Court but to Labour Appellate Court — (Industrial Disputes (Appellate Tribunal) Act (1950), Ss. 2 (c) and 7). See Bombay Industrial Relations Act, 1946 (11 of 1947), S. 68. **AIR 1956 Bom 746.**

● ——Ss. 78 (1A), 40, 42, 73 and Schs. I, III — Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (b) — Substantial question of law — Dispute involving question of right of workmen to compensation due to loss of working hours as a result of curtailment of electric energy involves substantial question of law. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (b). **AIR 1960 SC 819.**

——S. 97 (as adapted in M. B.) — Constitution of India, Arts. 372, 254 — Repeal by implication—Does not stand repealed by reason of the enactment of Ss. 23, 24 of Industrial Disputes Act—(Interpretation of Statutes) — (Civil P. C. (1908), Pre) See Constitution of India, Art. 372. **AIR 1956 Madh Bha 199.**

——Regns. 29 and 30 and S. 84 (2) — Appeal sent to registrar by registered post within period of limitation — There is sufficient compliance with statute. See Bombay Industrial Relations Act (11 of 1947), S. 84 (2). **AIR 1955 NUC (Bom) 5303.**

——Schs. I and III and Ss. 40, 42, 73, 78 (1A) — Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (b) — Substantial question of law — Dispute involving question of right of workmen to compensation due to loss of working hours as a result of curtailment of electric energy involves substantial question of law. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (b). **AIR 1960 SC 819.**

● ——Sch. II, Item 1 and S. 42—Notice terminating services of employees — Validity of, whether can be tested by reference to S. 42. See Bombay Industrial Relations Act, 1946 (11 of 1947), S. 42. **AIR 1959 SC 722.**

● ——Sch. II, Items 9. 2, 10, Sch. III, Item 6, S. 73A —Question regarding abolition of contract labour — Same is to be referred under S. 73A to industrial Court and not to labour Court. See Bombay Industrial Relations Act (11 of 1947), S. 73A. **AIR 1961 SC 1016.**

——Sch. II, Items 11, 9 — Constitution of India, Art. 254 (2) — Government of India Act (1935), S. 107 (2) — Factories Act (1948), Ch. VIII—Validity of Bombay Act — Factories Act and Bombay Act occupy different fields and deal with separate subjects — No repugnancy between them—Provisions as to leave with wages in Bombay Act not void for repugnancy. See Constitution of India, Art. 254 (2). **AIR 1965 Guj 112.**

BOMBAY LABOUR WELFARE FUND ACT (40 of 1953)

● ——Ss. 5 (1), 3 (1), 3 (2) (b) — Effect of — Wages are transferred to Board—No substitution of creditors —Liability of employers continues — Provisions are invalid — (Constitution of India, Arts. 31 (1), 31 (2), 19 (1) (f))—(Limitation Act (1908), S. 28)—(Payment of Wages Act (1936), S. 15) — (Contract Act (1872), Ss. 56, 65). See Bombay Labour Welfare Fund Act (40 of 1953), S. 3 (1). **AIR 1958 SC 328.**

BOMBAY LAND REQUISITION ACT (33 of 1948)

——Ss. 4 (3) and 6 (1) — Statutory tenant protected under Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947) — Whether tenant —Premises whether 'let' — "Intended to be let"— Expression explained — Building let to tenant — Vacancy occurring — Landlord expressing intention not to let — Building still has attribute of "intended to be let" on date of vacancy. **AIR 1951 Bom 175 (176-177) (Prs 4 to 6) (DB).**

● ——S. 6 (4) (a) — Ejusdem generis — Applicability of rule—Rule must be confined within narrow limits —General words should receive full meaning unless they are clearly restrictive — There must be distinct genus which must comprise more than one species —"Any other purpose" in Bombay Act 23 of 1948 should not be read ejusdem generis with "the purposes of the state" — (Civil P. C. (1908), Pre.). AIR 1953 Bom 337, Reversed. See Interpretation of Statutes. **AIR 1955 S C 810.**

——Ss. 8-B and 9—Constitution of India, Art. 226 — Mandamus — Order of derequisition — Contract Act (1872), S. 73). See Constitution of India, Art. 226. **AIR 1956 Bom 614.**

——Ss. 9, 6 — De-requisition order is complete without restoration of possession—Requisition order under S. 6 can be served at the same time de-requisition order is served. See Bomay Land Requisition Act (33 of 1948), S. 6. **AIR 1960 Bom 396.**

BOMBAY LAND REVENUE CODE (1878) (5 of 1879)

——S. 3 (5)—Act is constitutional and valid—"Estate" —It has same meaning as in existing law relating to land tenures in force in that area — Constitution of India, Art. 31A — "Public purpose" justiciability. See Tenancy Laws—Bombay Merged Territories (Baroda Mulgiras Tenure Abolition) Act (45 of 1953). **AIR 1955 NUC (Bom) 1533.**

——S. 3 (11)—Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), Ss. 2 (21) and 34 (1) — Word 'hold' in S. 34 (1)—Word not defined by Act — Section 2 (21) incorporates definitions in Bombay Land Revenue Code (5 of 1879) of words not defined by Act—Word refers to act of possession. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 2 (21). **(1965) 1 Mys L J 442=AIR 1966 Mys 154.**

——S. 10—Tenancy Laws—Bombay Tenancy Act (29 of 1939), S. 24 (3) — District Deputy Collector can hear appeal against order of Mamlatdar under S. 24 (2). See Tenancy Laws—Bombay Tenancy Act (29 of 1939), S. 24 (3). **AIR 1955 NUC (Bom) 4837.**

● ——S. 48 (2), R. 92—Statutory liability. See Interpretation of Statutes. **AIR 1951 SC 180.**

5 of 1879 — Survey and settlement can be under S. 52 of Act 5 of 1879 and under R. 17, Bombay Land Revenue Rules. 1921 — Reduction of annuity without hearing Burkhalidar — No right to property is affected by reduction — R. 17 must be presumed to have received President's assent and hence valid provision. See Tenancy Laws — Saurashtra Burkhali Abolition Act (26 of 1951), S. 18 **I L R (1965) Guj 1039=(1965) 6 Guj L R 978=AIR 1966 Guj 200.**

——**R. 75** - Bombay Land Revenue Code (5 of 1879), Ss. 65, 66 and 48 — Land assessed as land held for agricultural purposes — 'Pot kharab' forming part of land — Land used for non-agricultural purposes and penalty imposed by revenue authorities — Penalty imposed in respect of 'Pot kharab' is not ultra vires— See Bombay Land Revenue Code (5 of 1879), S. 65. **AIR 1955 N U C (Bom) 2054.**

BOMBAY LOCAL BOARDS ACT (6 of 1923)

——**Ss. 93, 96 and 98** — Landlord entitled to recover cess from tenant — Assistance (from Government) for recovery of cess — Assistance can be denied when Collector comes to conclusion that the question is of complicated character and must be decided by Civil Court — (Bombay Land Revenue Code (5 of 1879), Ss. 86 and 87). **AIR 1955 N U C (Bom) 1170.**

BOMBAY LOTTERIES AND PRIZE COMPETITIONS CONTROL AND TAX ACT (54 of 1948)

——S. 1 — Constitution of India, Sch. VII, List II, Entries 34 and 62—Gambling—Meaning of — Covers every activity—Validity of Bombay Act 54 of 1948— See Constitution of India, Sch. VIII, List II, Entry 34. **AIR 1956 Bom 1.**

BOMBAY MAMLATDARS COURTS ACT (2 of 1906)

SECTION 5

——**S. 5 — Question falling under Land Revenue Act —No jurisdiction in Mamlatdar's Court — Person not entitled to possession under Land Revenue Code — Bar of jurisdiction of Civil Court and Mamlatdar's Court does not operate—Tenancy Laws — Saurashtra Land Reforms Act (25 of 1951), Ss. 2, 61, 62 — Bombay Land Revenue Code (Extension to Saurashtra Area) Act (41 of 1959), S. 68.**

The Mamlatdar's Court cannot settle, decide or deal with any question which is by or under the Land Reforms Act required to be settled. decided or dealt with by the Mamlatdar, the Collector or Tribunal or by the Government in exercise of their powers of control. Under S. 61 of the Saurashtra Land Reforms Act, the Collector can summarily evict a person who is not entitled to the occupation or possession of any land under the provisions of the Saurashtra Land Reforms Act. But if a person is not entitled to possession or occupation of any land under the Saurashtra Land Revenue Code, S. 61 of the Saurashtra Land Reforms Act is not applicable and, therefore, the bar of jurisdiction of civil Courts and of the Mamlatdar's Courts does not operate after the issue of an occupancy certificate under the Saurashtra Land Reforms Act because after the issue of an occupancy certificate the rights and obligations are governed by the Saurashtra Land Revenue Code and not by the Saurashtra Land Reforms Act.

Held on considering circumstances that the order of Mahalkari accepting plea of dispossession of Girasdar was restored. **(1963) 4 Guj L R 182.**

——S. 5 (3) - Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 84-A (as amended by Act 13 of 1956), S. 72 — Application under S. 84-A — Dismissal on ground of limitation erroneous — Provisions relating to limitation under Mamlatdars Courts Act not applicable — See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 84-A (as amended by Act 13 of 1956). **40 Mys L J 1005.**

——**S. 5**—S. 5 (4) is mandatory — Mamlatdar cannot take cognizance of cause of action beyond six months of suit. **AIR 1955 N U C (Sau) 5767.**

——**S. 16 and Tenancy Laws**—Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958), S. 102 — Passing of ex parte order not justified except where case decided on merits — Defendant absent at one stage — Not debarred from participation in subsequent proceedings. **1953 Mah L J (Notes) 14.**

——**S. 19** — Applicability — Case compromised by parties — Mamlatdar's Court can only give decision which falls under section. **A I R 1955 N U C (Sau) 5767.**

——**Ss. 21, 23 (2)**—Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 73 (2) — Order of Mamlatdar awarding or restoring possession under S. 73 (2) of Bombay Act 67 of 1948 — Decision to be treated as one under Mamlatdar's Courts Act — Collector has revisional jurisdiction under S. 23 (2) of Mamlatdar's Courts Act — See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 73 (2). **(1962) 3 Guj L R 192.**

——**S. 23** — Civil P. C. (1908), S. 115 — Revisional order under Mamlatdars' Courts Act—Power of High Court to interfere—See Civil P. C. (1908), S. 115. **AIR 1956 Bom 672.**

——**S. 23 (2)—Jurisdiction of revisional Court.**

The revisional powers vesting in the revisional Court under S. 23, sub s. (2) do not justify setting aside of an order passed by the Mamlatdar on the ground that the Mamlatdar has entered upon complicated questions which are outside the province of the Act. **A I R 1924 Bom 352, Foll. A I R 1956 Bom 263.**

——**Ss. 23 (2) and 21** — Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 73 (2)—Order of Mamlatdar awarding or restoring possession under S. 73 (2) of Bombay Act 67 of 1948 — Decision to be treated as one under Mamlatdar's Courts Act — Collector has revisional jurisdiction under S. 23 (2) of Mamlatdars' Courts Act. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 73 (2). **(1962) 3 Guj L R 192.**

——**S. 23** — Civil P. C. (1908), S. 115—Orders passed under Bombay Mamlatdar's Courts Act — Revision is allowed where question of jurisdiction is involved —See Civil P. C. (1908), S. 115. **A I R 1955 N U C (Sau) 5767.**

——S. 23 — Civil P. C. (1908), S. 115 — Collector in revision under S. 23 exercising power of Court of appeal — Order revisable under S. 115, Civil P. C. — See Civil P. C. (1908), S. 115. **A I R 1955 N U C (Sau) 4082.**

BOMBAY MILL OWNERS' ASSOCIATION RULES

——**Rr. 16, 18, 25, 26 and 29** — Commercial Arbitration — Rules of natural justice apply — Rules do not exclude application of rules of natural justice—Rules apply to proceedings before umpire—See Arbitration —Commercial Arbitration. **AIR 1961 Bom 208.**

BOMBAY MINIMUM WAGES RULES (1951)

——**Rr. 6, 15, 16** — Minimum Wages Act (1948), S. 9 — Advisory Board—Constitution of—Secretary is not a member of the Board — See Minimum Wages Act (1948), S. 9. **AIR 1964 Bom 51.**

able. See Bombay Pleaders Act (17 of 1920), S. 25. AIR 1965 Guj 237.

BOMBAY POLICE ACT (22 of 1951)

——Ss. 2 (10), 33 (w) (i), and 131A — "Includes" in S. 2 (11) — It denotes addition to, or extension of, what has gone before—The addition need not possess characteristic mentioned in earlier part —Lodging house not supplying food or drink requires license — License not taken out — It is offence under S. 131A —(Interpretation of Statutes — Words — "Includes") (Words and Phrases — Words — "Includes") — Civil P. C. (1908). Preamble — Interpretation of Statutes— Words—"Includes"). AIR 1955 NUC (Bom) 2051.

——Ss. 4 and 25 — Departmental enquiry — Negligence of duty — Exoneration from charges — Order of State Government for further enquiry on same charges — Validity — State Government is empowered to order further enquiry on the same charges decided in departmental enquiry, if the facts involved warrant such an enquiry — (Bombay District Police Act (7 of 1867), S. 29), (Constitution of India, Art 20)—(Criminal P. C. (1898), S. 403)—(Civil P. C. (1908). S. 11).

The State Government is vested with power of superintendence over the Police Force throughout the State under S. 4 of the Act notwithstanding the fact that police officers are appointed under the District Police Act. Though under S. 25 (2) the power to award punishment against members of the subordinate ranks of Police Force has been given to various officers, the power of superintendence vested in the State Government under S. 4 will always be available. Therefore, in matters of departmental action taken by officers authorised under S. 25 (2) the State Government can at any stage intervene under the powers of superintendence reserved to it under S. 4. In such cases the State Government is empowered to order further fresh departmental enquiry on the same charges against the defaulting officers, if according to the State Government the facts involved warrant such an enquiry. Special Civil App. No. 361 of 1959 dated 25th August, 1959 (Bom) and (1960) 62 Bom L R 1038 Rel. on. 67 Bom L R 852 = 1966 Mah L J 159 = (1966) 1 Lab L J 294 = ILR (1966) Bom 593 = 1966 Cri L J 1239 = AIR 1966 Bom 228 (233, 234) (Pt A) (Prs 22 to 26).

——S. 10 — Evidence Act (1872), S. 114 (e) — Official acts — (Bombay Prevention of Gambling Act 4 of 1887), S. 6. See Evidence Act (1872), S. 114 (e). 1956 Cri L J 382 = AIR 1956 Bom 168.

——Ss. 25 and 4 — Departmental enquiry — Negligence of duty — Exoneration from charges — Order of State Government for further enquiry on same charges — Validity — State Government is empowered to order further enquiry on the same charges decided in departmental enquiry, if the facts involved warrant such an enquiry. (Bombay District Police Act (7 of 1867), S. 29) — (Constitution of India, Art. 20) — (Criminal P. C. (1898) S. 403) — (Civil P. C. (1908), S. 11). See Bombay Police Act (22 of 1951), S. 4. 67 Bom L R 852 = AIR 1966 Bom 228.

——S. 33 (w) — Criminal P. C. (1898), Ss. 173, 4 (l), (h), 155, 247 — Sanction for investigation into crime — Report of Sub-Inspector is not complaint—Absence of Sub-Inspector — Magistrate acquitting accused — Legality. See Criminal P. C. (1898), S. 173. 1956 Cri L J 721 = AIR 1956 Bom 414.

——Ss. 33 (w) (i), 2 (10) and 131A — "Includes" in S. 2 (11) — It denotes addition to, or extension of, what has gone before—The addition need not possess characteristic mentioned in earlier part — Lodging house not supplying food or drink requires license — License not taken out—It is offence under S. 131A (Interpretation of Statutes — Words — "Includes") (Words and Phrases — Words — "Includes") — Civil P. C., (1908), Preamble — Interpretation of Statutes— Words — "Includes". See Bombay Police Act (22 of 1951), S. 2 (10). AIR 1955 NUC (Bom) 2051.

——S. 37 (3) — Constitution of India, Arts. 19, 26, 245 — Validity. See Constitution of India, Art. 19. 1956 Cri L J 598 = AIR 1956 Bom 300.

——Ss. 37 (1) (a) and 135 — Conviction of accused for carrying knife in contravention of S. 37 (1) (a) — Search of accused made without arresting him and by panch and not by police officer is not legal — No witness stating that the knife was recovered from accused — Held, conviction of accused must be set aside. (1965) 6 Guj L R 408.

——Ss. 50 (1) and 50 (1), Proviso — Scope — Interpretation of statutes.

The requirements of S. 50 (1) and its Proviso are different. Under S. 50 (1) before notification can be issued the State Government must be of opinion that the area concerned is in a disturbed or dangerous condition or in that area the conduct of inhabitants or a particular section of inhabitants renders it expedient temporarily to employ additional police whereas under the proviso for the purpose of extension, the Government must be of opinion that it is necessary to do so in the general interest of the public. The provisions being penal and the liability in question being vicarious the provisions must receive strict construction. (1965) 2 Mys L J 656 = 1966 Cri L J 1462 = AIR 1966 Mys 339 (341) (Pt A) (Prs 5, 6) (DB).

——S. 57 (c) — Externment order — Essentials—The order must state that the ordering authority had reason to believe that such a person was likely again to engage himself in the commission of offence similar to that for which he was convicted — Order merely stating that the person has committed the offence on three different occasions within the statutory period is a bad order. See Bombay Police Act (22 of 1951), S. 59 (1). (1965) 2 Mys L J 478 (DB).

● ——S. 59 — Constitution of India, Arts. 19 (1) (d), (e), (5), 226 — S. 59, Bombay Police Act — Validity — (Natural justice). See Constitution of India, Art. 19 (1) (d). 1956 Cri L J 1104 = AIR 1956 S C 559.

——S. 59 — Criminal P. C. (1898), Ss. 344, 435, 439, 561A — Stay of proceedings under S. 59 Bombay Police Act. See Criminal P. C. (1898), S. 344. 1956 Cri L J 486 (2) = AIR 1956 Bom 207.

——Ss. 59 (1) and 57 (c) — Externment order — Essentials — The order must state that the ordering authority had reason to believe that such a person was likely again to engage himself in the commission of offence similar to that for which he was convicted — Order merely stating that the person has committed the offence on three different occasions within the statutory period is a bad order. AIR 1961 S C 307, Rel. on. (1965) 4 Law Rep 330 = (1965) 2 Mys L J 478 (DB).

● ——Ss. 60 and 61 — Validity. See Constitution of India, Art. 19 (1) (d). 1956 Cri L J 1104 = AIR 1956 S C 559.

——S. 122 (d) — Applicability — Expression 'Reputed thief', meaning of, explained—(Words and Phrases — 'Reputed thief'). AIR 1955 NUC (Bom) 903.

——Ss. 131A and 2 (10), 33 (w) (i) — "Includes" in S. 2 (11) — It denotes addition to, or extension of, what has gone before—The addition need not possess characteristic mentioned in earlier part — Lodging house not supplying food or drink requires license — Licence not taken out—It is offence under S. 131A — (Interpretation of Statutes — Words — "Includes") (Words and Phrases —Words —"Includes") — (Civil P. C. (1908), Preamble — Interpretation of Statutes —

Words — "Includes"). See Bombay Police Act (22 of 1951), S. 2 (10). AIR 1955 NUC (Bom) 2051.

—S. 135 — Conviction of accused for carrying knife in contravention of S. 37 (1) (a) — Search of accused made without arresting him and by panch and not by police officer is not legal — No witness stating that the knife was recovered from accused — Held, conviction of accused must be set aside. See Bombay Police Act (22 of 1951), S. 37 (1) (a). (1965) 6 Guj L R 408.

● —S. 161 (1) — "Act done under colour of office" — Test — Reasonable connection between the act and powers and duties of office must exist before the act is said to be done under colour of office—Acceptance of bribe for weakening prosecution is not an act done under colour of office. Cri. Appeal No. 153 of 1963, D/- 11-11-1963 (S Ct), Reversed. (1965) 2 S C A 120 = AIR 1966 S C 1783.

BOMBAY POLICE MANUAL (1950)

—Chap. XV — Bombay Police Manual (1950), Chap. XV — Necessity of requiring defaulter to file written statement before examination of witnesses. See Constitution of India, Art. 311. AIR 1956 Sau 14.

—R. 541 — Constitution of India, Art. 311 — Preliminary enquiry — Presence of defaulter—Necessity of. See Constitution of India, Art. 311. AIR 1956 Sau 14.

—R. 541 A—Constitution of India, Art. 311—Order of suspension passed without observing formalities—Effect. See Constitution of India, Art. 311. A I R 1956 Sau 14.

—R. 545 (19) — Constitution of India, Art. 311—Evidence heard by inquiring Officer — Orders passed on the report by punishing authority without himself hearing witnesses—Irregularity - (Bombay Civil Services (Conduct, Discipline and Appeal) Rules, R. 55 (4)). See Constitution of India, Art. 311. A I R 1956 Sau 14.

—R. 545 (29) — Constitution of India, Art. 311—Opportunity to represent against proposed punishment — Right of personal hearing — (Bombay Civil Services (Conduct, Discipline and Appeal) Rules, R. 55) See Constitution of India, Art. 311. A I R 1956 Sau 14.

BOMBAY PORT TRUST ACT (6 of 1879)

—Ss. 64 and 64-A—Sea Customs Act (1878), Ss. 88, 167 (8), 178, 184 and 190-A—Import of Motor Car in contravention of Imports and Exports (Control) Act —Order of confiscation and penalty — Effect — Car sold by Port Trust authorities under S. 88 of Act read with Ss. 64 and 64-A, Bombay Port Trust Act — Second order of confiscation of same car after its purchase by petitioner without any notice to him—Validity—Prior order of confiscation if can be revised by customs authorities under S. 190 A. See Sea Customs Act (1878), S. 88. A I R 1962 Bom 290.

BOMBAY PREVENTION OF ADULTERATION ACT (5 of 1925)

—S. 19 (1) (c)—Validity of R. 6 (b) (1) of Bombay Prevention of Adulteration of Articles of Food Rules considered — (Bombay Prevention of Adulteration of Articles of Food Rules. R. 6 (b) (e). A I R 1955 N U C (Bom) 906.

BOMBAY PREVENTION OF ADULTERATION OF ARTICLES OF FOOD RULES

—R. 6 (b) (e)—Bombay Prevention of Adulteration Act (5 of 1925), S. 19 (1) (c) — Validity of R. 6 (b) (1) of Bombay Prevention of Adulteration of Articles of Food Rules considered — Bombay Prevention of Adulteration Act (5 of 1925), S. 19 (1) (c). A I R 1955 N U C (Bom) 906

BOMBAY PREVENTION OF GAMBLING ACT (4 of 1887)

—S. 6 — Evidence Act (1872), S. 114 (e) — Official acts — (Bombay Police Act (22 of 1951), S. 10). See Evidence Act (1872), S. 114 (e). 1956 Cri L J 382= A I R 1956 Bom 168.

—S. 12—Place—Room in hotel in exclusive possession of occupier cannot be deemed to be a 'place' within the meaning of S. 12. A I R 1953 Sau 112.

BOMBAY PREVENTION OF HINDU BIGAMOUS MARRIAGES ACT (25 of 1946)

—Constitution of India, Art. 246 (3) — In enacting S. 4 (b) Legislature has not exceeded territorial limits — Provincial Government was competent to enact it. See Constitution of India, Art. 246 (3). 1955 Cri L J 1564=A I R 1955 Bom 439.

BOMBAY PRIMARY EDUCATION ACT (61 of 1947)

—Ss. 4, 5, 6 (2), 6 (7)—Election of person without necessary qualification—Election petition — Jurisdiction not conferred on Collector or State Government —District Judge has jurisdiction by reason of S. 6 (2) to decide whether person had necessary qualification or not. See Bombay Primary Education Act (61 of 1947), S. 6. A I R 1955 N U C (Bom) 4496.

—Ss. 6 (2) (7), 4, 5 — Election of person without necessary qualification—Election petition — Jurisdiction not conferred on Collector or State Government —District Judge has jurisdiction by reason of S. 6 (2) to decide whether person had necessary qualification or not. A I R 1955 N U C (Bom) 4496.

—Ss. 11 and 16—Scope—Body corporate — Authorised municipality and not School Board is body corporate — Suit filed against Chairman of School Board — Authorised municipality not made party—Suit is not maintainable — Civil P. C. (1908), O. 1, R. 9.

The plaintiff was a permanent servant in the clerical establishment of the School Board under the Local Authority Municipality in Dharwar and his services were lent to the Collector of the District for service in the Civil Supplies Department of the Government, keeping his lien in his parent department until his return from deputation. The Government issued instructions to the Collectors of the District to repatriate the servants on deputation to their parent departments but the plaintiff was however retained until his services were finally terminated. The plaintiff sought a decree against the defendant Chairman School Board Municipality. He did not implead the authorized municipality.

Held, the suit was not maintainable.

There could be no doubt from the provisions of the Act that it was the authorized municipality which alone was the corporate body having full control over the primary schools and the entire staff connected with Schools and their administration. The Municipal School Board was more or less in the position of a committee placed by the Government in charge of the management and day-to-day administration of the primary schools working within the municipal area. (1963) 2 Mys L J 532=I L R (1963) Mys 499 (DB).

—S. 63 (1) (b)—Rules under — Rules as to election —Decision of Returning Officer cannot be challenged while election has to take place — It has an ad hoc finality—Proper time to decide on rights of parties is

after the election by an election petition. A I R 1955 N U C (Bom) 4496.

BOMBAY PROBATION OF OFFENDERS ACT (19 of 1938)

——S. 4—Person found guilty of offence punishable under S. 336-A, Penal Code—Provisions of S. 4 cannot be applied. (1963) 2 Mys L J 159.

BOMBAY PUBLIC TRUSTS ACT (29 of 1950)

——Ss. 11 and 9 (4)—Charitable purpose — "Object of general public utility" — Ideas about charity in England and India — English decisions thereon—Held, Kesari-Maratha trust is public trust. See Bombay Public Trusts Act (29 of 1950), S. 9 (4). A I R 1957 Bom 83.

——Ss. 50, 19 — Exclusive jurisdiction of Deputy Charity Commissioner—(Civil P. C. (1908), S. 9). See Bombay Public Trusts Act (29 of 1950), S. 19. A I R 1957 Bom 42.

BOMBAY PUBLIC TRUSTS (UNIFICATION AND AMENDMENT) ACT, 1959 (6 of 1960)

——S. 86—Scope and applicability—Decision under S. 6 of M. P. Public Trusts Act, 1951 that one is not a Public Trust — Decision not challenged by way of suit for 6 months — Decision, held, did not acquire finality — No vested right acquired. (Misc. Petition No. 298 of 1962, dated 15-11-1962 (Madhya Pradesh), Diss.). (Madhya Pradesh Public Trusts Act (30 of 1951), Ss. 6, 7, 8, 35 and Rules 3, 6, 7, 8 of the Rules framed under the Act)—(Civil P. C. (1908), Preamble—Interpretation of Statutes)—(Bombay Public Trusts Act (29 of 1950), S. 19).

An order of the Registrar of Public Trusts under S. 6 of the Madhya Pradesh Public Trusts Act, 1951, since repealed by the Bombay Public Trusts (Unification and Amendment) Act, 1959, holding that a particular trust is not a public trust and which decision has not been challenged by any suit within 6 months as provided for under S. 8 of the M. P. Act, cannot be said to have acquired finality within the meaning of S. 86 of the said Bombay Act of 1959 since the said provision under S. 86 gives finality only to the entries made in the register as required by S. 7 (1) of the M. P. Act of 1951 and not to a finding and hence no vested right can be said to have been acquired.

Hence, an application under S. 19 of the Bombay Trusts Act which is made applicable to the Vidarbha Area relating to the same trust can be enquired into by the Charity Commissioner. However, the question if the order of the Registrar can operate as res judicata has to be considered at such enquiry.

Rules 3, 6, 7 and 8 of the rules framed under the M. P. Act of 1951 make it clear that the Registrar is not bound to maintain any register recording his findings about any particular trust not being a public trust. The 'suit' in S. 8 which has to be read with the other provision of the Act as a whole, in accordance with the well settled principle of construction of a statute, must relate only to such findings that the law requires to be transmitted to the registers required to be maintained under the provision of the Act. Sub-section (3) of S. 8 also indicates that the suit referred to in sub s. (1) of S. 8 relates only where an entry has been made in the register. The suit contemplated is one for the purpose of correction of the entries made in the register and not for getting an entry made in the register. A I R 1927 P C 242, Foll.; A I R 1953 Bom 340, 53 Bom L R 174 and 54 Mad 928, Dist.; Misc. Petn. No. 298 of 1962 (Madhya Pradesh) dated 15-11-1962, Diss. **65 Bom L R 873= 1964 Mah L J 71=I L R (1964) Bom 497 (DB).**

BOMBAY RELIEF UNDERTAKINGS (SPECIAL PROVISIONS) ACT (96 of 1958)

● ——Ss. 3, 4—C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 16—Scope—Reinstatement on wrongful dismissal exists de hors S. 16—Notification granting exemption under — Effect of—S. M. C. A. No. 315 of 1962, D/- 12-8-1963 (Bom. at Nag.). Reversed. See C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 16. (1965-66) 28 F J R 249=AIR 1966 S C 907.

● ——S. 4—See under C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 16. (1965-66) 28 F J R 249=AIR 1966 S C 907.

BOMBAY REORGANISATION ACT (11 of 1960)

● ——Ss. 2 (d), 87 — "Law" — Notification by President under Art. 258(1) of the Constitution held to have force of law — Commissioner appointed under notification D/- 24-7-1959 under Art. 258(1) could appoint Additional Special Land Acquisition Officer as Collector for purposes of S. 5-A, Land Acquisition Act. See Bombay Re-organisation Act (11 of 1960), S. 87. AIR 1964 S C 648.

● ——Ss. 2 (d), 8, 28, 30, 32, 33, 34, 35, 36, 87, 88 and 89 — Decisions of Bombay High Court prior to 1-5-1960—Binding on Gujarat High Court—Scope—Law in force—Connotation of. See Precedents. AIR 1960 Guj 40 (FB).

BOMBAY REVENUE TRIBUNAL ACT (12 of 1939)

——Ss. 5, 4 and 8—Effect of—Power to entertain appeals and revisions in revenue cases can be exercised by Revenue Tribunal only and not by State Government — (Bombay Land Revenue Code (5 of 1879), Ss. 204 and 211) — (Constitution of India, Art. 11). See Bombay Revenue Tribunal Act (12 of 1939), S. 4. AIR 1957 Bom 186.

——Ss. 8, 4, and 5—Effect of—Power to entertain appeals and revisions in revenue cases can be exercised by Revenue Tribunal only and not by State Government — (Bombay Land Revenue Code (5 of 1879), Ss. 204 and 211) — (Constitution of India, Art. 11). See Bombay Revenue Tribunal Act (12 of 1939), S. 4. AIR 1957 Bom 186.

BOMBAY SECURITIES CONTRACT CONTROL ACT (8 of 1925)

——Ss. 6 and 5 — Rules under S. 5 — Bombay Native Share and Stock Brokers' Association Rules, R. 359—Forward contracts effected under ready delivery contract rules — Validity — Contract Act (1872), S. 23. AIR 1953 Bom 98.

BOMBAY SHOPS AND ESTABLISHMENTS ACT (79 of 1948)

——Ss. 2 (27) and 7 (4), (1)—"Shop"—Meaning of—Registration—Office, store-room, godown, warehouse or workplace is liable to be registered as a shop only if it is mainly used in connection with sale of goods or rendering services to customers. AIR 1955 N U C (Bom) 2319.

——Ss. 4, 18 (1), Sch. II, Entry 17—Owner of registered commercial establishment keeping his shop open on closing day and himself transacting regular business—S. 18(1) if contravened. See Bombay Shops and Establishments Act (79 of 1948), S. 18(1). 1956 Cri L J 872=AIR 1956 Bom 473.

——Ss. 7 (4), (1) and 2 (27)—"Shop"—Meaning of—Registration — Office, store room, godown, warehouse or workplace is liable to be registered as a shop only

if it is mainly used in connection with sale of goods or rendering services to customers. See Bombay Shops and Establishments Act (79 of 1948), S. 2(27). AIR 1955 N U C (Bom) 2319.

——Ss. 22, 8, Form F—Omission to show names of workers in Form F before time to notify his employment had expired — No contravention of S. 8 read with S. 52. See Bombay Shops and Establishments Act (79 of 1948), S. 8. 1956 Cri L J 872 = AIR 1956 Bom 473.

——Ss. 63 and 14 and Sch. 2, Item 8 — Effect of — Ss. 14 and 63 —Removal of prohibition under S. 14 — Obligation to pay overtime wages under S. 63. See Bombay Shops and Establishments Act (1948), S. 14. AIR 1957 Bom 64.

——Sch. 2, Entry 17 and Ss. 18 (1), 4—Owner of registered commercial establishment keeping his shop open on closing day and himself transacting regular business—S. 18(1) if contravened. See Bombay Shops and Establishments Act (79 of 1948), S. 18(1). 1956 Cri L J 872=AIR 1956 Bom 473.

——Form F, Ss. 8, 22 — Omission to show names of workers in Form F before time to notify his employment had expired — No contravention of S. 8 read with S. 52. See Bombay Shops and Establishments Act (79 of 1948), S. 8. 1956 Cri L J 872 = AIR 1956 Bom 473.

BOMBAY STAMP ACT (60 of 1958)

——Ss. 31 and 53 (2)—Decision as to proper stamp—Decisions of Collector under S. 31 or of Chief Controlling Revenue Authority under S. 53 (2) are not quasi-judicial but are administrative

The decision of a Collector under S. 31 or in a case referred by the Collector acting under S. 31 the decision of the Chief Controlling Revenue Authority under S. 53 (2) are not quasi-judicial acts. And as the Tribunal is acting merely administratively, there is no obligation on it to give a hearing to a party who might be affected by its decision. The principles of natural justice including the maxim audi alteram partem apply only to a Tribunal performing quasi-judicial functions. (1965) 6 Guj L R 554 = I L R (1965) Guj 811 = AIR 1966 Guj 175 (177, 181, 182, 183) (Pt A) (Prs 4, 9, 10).

——Ss. 53 (2) and 31—Decision as to proper stamp—Decisions of Collector under S. 31 or of Chief Controlling Revenue Authority under S. 53 (2) are not quasi-judicial but are administrative. See Bombay Stamp Act (60 of 1958), S. 31. (1965) 6 Guj L R 554= I L R (1965) Guj 811=AIR 1966 Guj 175.

BOMBAY TENANCY AND AGRICULTURAL LANDS (AMENDMENT) ACT (9 of 1961)

See under Tenancy Laws.

BOMBAY WEIGHTS AND MEASURES ACT (15 of 1932)

——S. 34—"Trade"—Transaction amounting to. See Bombay Weights and Measures Act (15 of 1932), S. 12. 1957 Cri L J 956=AIR 1957 Bom 199.

BOND

See (1) Contract Act (1872), S. 146.
(2) Criminal P. C. (1898), S. 514.
(3) Limitation Act (1908), S. 20 and Arts. 66, 75 and 132.
(4) Limitation Act (1963), S. 19, Arts. 28, 37, 62.
(5) Stamp Act (1899) S. 2(5).

—Administration bond—Suit on—Limitation.
See (1) Limitation Act (1908), Arts. 68 and 120.
(2) Limitation Act (1963), Arts. 30 and 113.

—Appearance—Bond for.
See Criminal P. C. (1898), Ss. 57, 169, 217, 514.

—Attestation.
See Evidence Act (1872), S. 69.

—By witness.
See Criminal P. C. (1898), S. 170.

—Consideration—Proof of.
See Evidence Act (1872), Ss. 101-104.

—Construction.
See Contract Act (1872), S. 146.

—Forfeiture of.
See Criminal P. C. (1898), Ss. 514, 205.

—For good behaviour.
See Criminal P. C. (1898), Ss. 121, 109, 513.

—Instalment—Suit on—Limitation.
See (1) Limitation Act (1908), Arts. 74 and 75.
(2) Limitation Act (1963), Arts. 36, 37.

—Suit on—Admission.
See Civil P. C. (1908), O. 12, R. 6.

—Suit on — Admission of — Execution — Denial of consideration—Duty of Court.
See Civil P. C. (1908), S. 151.

—Suit on—Burden of proof.
See Evidence Act (1872), Ss. 101-103.

—To keep peace.
See Criminal P. C. (1898), S. 121.

BONA FIDE PURCHASE

See (1) Sale of Goods Act (1930), S. 27.
(2) Specific Relief Act (1877), S. 27.
(3) T. P. Act (1882), Ss. 41, 51, 52, 53 and 100.

BONA FIDES

—Bona fide requirement of landlord
See State House Rent Control and Eviction legislation under "Houses and Rents."

—Burden of proof
See Evidence Act (1872), Ss. 101 to 104.

BONUS

See (1) Coal Mines Provident Fund and Bonus Schemes Act (46 of 1948).
(2) Industrial Disputes—Bonus.
(3) Payment of Wages Act (1924), S. 2.

BONUS SHARES

—Valuation of cost—Computation of profits
See Income-tax Act (1922), S. 10 (1).

BOOK

See (1) Copy Right Act (1957).
(2) Penal Code (1860), S. 292.
(3) Press and Registration of Books Act (1867).
(4) Sea Customs Act (1878), S. 181A.

BOOKS

See Press (Objectionable Matters) Act (1951).

—Matters of public and general interest—Presumption
See Evidence Act (1872), S. 87.

BOOKS OF ACCOUNT

See (1) Accounts.
(2) Bankers' Books Evidence Act (1891).
(3) Evidence Act (1872), S. 34.

BORROWING BY STATES

See Constitution of India, Art. 293.

BORROWING BY UNION

See Constitution of India, Art. 292.

BORSTAL INSTITUTION

See (1) Bombay Children Act (1948).

(2) Burma Prevention of Crime (Young Offenders) Act (3 of 1930).
(3) Children Act (1960).
(4) Criminal P. C. (1898), S. 399.
(5) Hyderabad Children's Act (1951).
(6) Madras Borstal Schools Act (5 of 1926).
(7) Prisons Act (1894), S. 3.
(8) Reformatory Schools Act (1897).

BOUNDARIES

See Deed—Construction of.

—Areas and Boundaries
See Evidence Act, 1872, S. 92.

—Recitals in documents—Value of
See Evidence Act (1872), S. 32.

BRAHMOTHAR

See Grant.

BREACH OF CONTRACT

See (1) Contract Act (1872), S. 72.
(2) Tort—Damages.

BREACH OF THE PEACE

See Criminal P. C. (1898), Ss. 106, 107, 145.

—Prevention of
See Criminal P. C. (1898), Ss. 42 (b), 106, 107, 145, 147.

—Security for keeping peace and good behaviour
See Criminal P. C. (1898), Ss. 107 and 109.

—What is
See Criminal P. C., S. 106.

BREACH OF TRUST

See (1) Civil P. C. (1908), S. 92.
(2) Penal Code (1860), Ss. 403, 405, 406, 409, etc.
(3) Trusts Act (1882), S. 23.

BRIBE

See (1) Penal Code (1860), Ss. 161 to 167.
(2) Prevention of Corruption Act (1947).

BRIBERY

—Previous instances of—Admissibility in evidence
See Evidence Act (1872), Ss. 14 and 15.

BRITISH NATIONALITY AND STATUTES OF ALIENS ACT (1914)

——S. 27—Foreigners Act (1946), Ss. 2 (a) and 3 (2)—Foreigner who is—Order of externment under S. 3 (2) — Validity — Naturalisation Act (1926), S. 7. See Foreigners Act (1946), S. 2 (a). **AIR 1954 Bom 505.**

BROKER

—Suit for commission—Limitation
See (1) Limitation Act (1908), Arts. 115, 116.
(2) Limitation Act (1963), Art. 55.

BROTHEL

See (1) Bengal Suppression of Immoral Traffic Act (6 of 1933).
(2) Bombay Prevention of Prostitution Act (1923).
(3) Madras Suppression of Immoral Traffic Act (5 of 1930).
(4) Penal Code (1860), Ss. 366-A, 366-B, 272, 273.
(5) Suppression of Immoral Traffic in Women and Girls Act (1956).

BUILDING

See (1) Co-owners and co-sharers.
(2) Landlord and Tenant.
(3) T. P. Act (1882), S. 51.

—Sites
See State Municipal Legislations.

BUND

See (1) Criminal P. C. (1898), S. 133.
(2) Easements Act (1882), Ss. 31, 33, 35.
(3) Riparian owners.

BURDEN OF PROOF

See (1) Civil P. C. (1908), O. 21, Rr. 59, 63, O. 41, R. 16.
(2) Criminal P. C. (1898), S. 367.
(3) Evidence Act (1872), Ss. 101 to 114.
(4) Prevention of Corruption Act (1947), S. 5 (3).
(5) Public Gambling Act (1867), S. 6

—Appeal
See Civil P. C. (1908), O. 41, R. 16.

—Claim suit
See Civil P. C. (1908), O. 21, R. 63.

—Ex parte decree, suit to set aside
See Civil P. C. (1908), O. 9, R. 13.

—Mortgage suit
See Civil P. C. (1908), O. 34, R. 7.

—Pauper
See Civil P. C. (1908), O. 33, R. 1.

—Summons. want of due service
See Civil P. C. (1908), O. 9, R. 13.

BURIAL GROUND

See (1) Custom (General).
(2) Easements Act (1882), S. 18.
(3) Mahomedan Law—Wakf.
(4) State Municipal Legislations under "Municipalities."

BURMA ACCRUAL OF INTEREST (WAR-TIME ADJUSTMENT) ACT (11 of 1947)

——Judicial notice of—(Evidence Act (1872), S. 57). See International Law (Private). **AIR 1956 Mad 629.**

BURNING GHAT

See Hindu Law—Religious endowment.

BUSINESS CONNECTION

See Income-tax Act (1922), Ss. 40, 42.

BUSINESS EXPENDITURE

See Income-tax Act (1922), Ss. 10 (2) (vi) and 10 (2) (xv).

BUSINESS OR TRADE

—Charity
See Industrial Disputes Act (1947), S. 2 (j). **AIR 1965 Mad 253 (DB).**

BUSINESS PROFITS

See (1) Business Profits Tax Act, 1947.
(2) Income-tax Act (1922), S. 10.

BUSINESS PROFITS TAX ACT (21 of 1947)

——Sch. 1, Rr. 1 and 3 and Ss. 4, 2 (3) and (16) — House properties acquired in course of money-lending business by assessee — Property treated as part of its stock-in-trade by assessee — Assessee assessed to income-tax in respect of such properties under S. 9, Income-tax Act—Income not being within scope of S. 10, Income-tax Act, it could not be charged to business profits tax. See Business Profits Tax Act (21 of 1947), S. 4. **AIR 1961 Mad 72.**

——S. 14—Ss. 14 and 11 — Reconciliation of various provisions of statute—Reconciliation of Ss. 11 and 14 —Notice under S. 11 issued four years after close of chargeable accounting period — Validity of notice —

(Interpretation of Statutes — (Civil P. C. (1908), Preamble). See Business Profits Tax Act (21 of 1947), S. 11. A I R 1957 Bom 1.

BUSINESS PROFITS TAX RULES

——R. 12 — Business Profits Tax Act (1947), S. 17 — Period of limitation is to be computed from the date the order is communicated to Income-tax officer. See Business Profits Tax Act (1947), S. 17. AIR 1955 Bom 404.

BUTTWARA PROCEEDINGS

See Evidence Act (1872), S. 35.

BUYER AND SELLER

—Right and liabilities of
See Transfer of Property Act (1882), S. 55.

BYE-LAW

See (1) Constitution of India, Art. 13.
(2) Municipalities U. P. Municipalities Act (2 of 1916), S. 298.

CALCUTTA IMPROVEMENT ACT (BENGAL ACT 5 of 1911)

●——Ss. 2 (1a), 78A - Tenancy Laws—Calcutta Thika Tenancy Act (W. B. Act 2 of 1949), S. 30 (c)—"Land required for carrying out any of the provisions of the Calcutta Improvement Act, 1911—Meaning of—Land subject to levy of betterment fee is not such land—65 Cal W N 45, Reversed. See Tenancy Laws—Calcutta Thika Tenancy Act (W. B. Act 2 of 1949), S. 30 (c). A I R 1965 S C 1839.

CALCUTTA PORT IMPROVEMENT ACT (3 of 1890)

——Ss. 38 and 39—Assessment—Port Commissioners if trustees of Government. A I R 1951 Cal 271.

CALCUTTA SURVEY ACT (1 of 1887)

——Survey map — Presumption under — Entries in Municipal Khasra prepared under Calcutta Survey Act — Admissible as evidence of possession — Entry 'sahan sarak'—Meaning of—Evidence—Appreciation of. See Evidence Act (1872), S. 36. ILR 44 Pat 416.

CALCUTTA UNIVERSITY ACT (2 of 1857)

——S. 11—Calcutta University Act (18 of 1951), S. 4 (6) - Calcutta University Regulations, Chap 40, R. 14 —Powers of Calcutta University in conferring degree —Candidate not examined in one paper—Allotment of proportionate marks by University — Validity. See Calcutta University Act (18 of 1951), S. 4 (6). A I R 1956 Cal 563.

CANTONMENTS ACT (2 of 1924)

——Preamble — Grant of, for building purposes subject to conditions mentioned in Cl. 6 of Order No. 179 of the Governor-General in Council (1836) —Trees standing on land or subsequently growing upon it whether vests in grantee — Right of grantee to cut tree. A I R 1956 Punj 116.

——Chap. III (Ss. 10 to 55)—Industrial Disputes Act (1947), Ss. 10, 2 (a) — 'Appropriate Government' — Dispute between employees of Cantonment Board and the Board — Central Government and not the State Government is the 'appropriate Government.' See Industrial Disputes Act (1947), S. 10. AIR 1961 Punj 416.

——Ss 20 (3), 52 (1) (b)—'Decision of Board'—Selection of Vice-President is decision of Board. See Cantonments Act (1924), S. 52 (1) (b). A I R 1956 Punj 147.

SECTION 22

——S. 22 Cl. (c) (d) — Regulations framed under S. 44 (1) Clauses (a) to (e), Regn. 20—Powers of Cantonment Board — Not empowered to establish Court of Enquiry. ILR (1965) Andh-Pra 620.

CANTONMENTS (EXTENSION OF RENT CONTROL LAWS) ACT (46 of 1957)

——S. 3—Houses and Rents — M. P. Accommodation Control Act (41 of 1961), Ss. 12 (1) and 52 — M. P. Accommodation Control Act (23 of 1955), Ss. 16 and 17 — M. P. General Clauses Act, 1957 (3 of 1958), S. 10 - General Clauses Act (1897), S. 6—Notification under, applying M. P. Act 41 of 1961 to Mhow Cantonment, omitting S. 52 therefrom — Effect—Suit for eviction instituted prior to 7-5-1958—Suit decreed when Rent Legislation applied to Mhow Cantonment—Decree not on any ground mentioned in S. 12 of M. P. Act 41 of 1961 — Effect — M. P. Act 41 of 1961 and S. 12 thereof if can have retrospective operation — Words 'no suit shall be filed' in S. 12 — Meaning—M. P. Act 23 of 1955 expiring by effux of time—Effect. See Houses and Rents — M. P. Accommodation Control Act (41 of 1961), S. 12 (1). 1965 Jab L J 786=A I R 1966 Madh Pra 171.

CARRIAGE OF GOODS BY SEA ACT (26 of 1925)

●——S. 2 and Sch. Art. 3, Rr. 6, 8, Art. 7—Bill of lading — Condition of notice in writing of every claim—Applicability and validity of condition. 4 Sau L R 192; A I R 1951 Sau 83, Overruled. A I R 1953 Sau 32 (FB).

——S. 4—Deed—Construction—Bill of lading.

Where a shipping company accepted goods for shipping under a bill of lading which stated "the company will not be liable for gold, silver, bullion . . . or beyond the amount of Rs. 500 for any one package unless a declaration of the value of such goods has been made prior to shipment and a special shipping order granted for the same."

Held, that the words "or beyond the amount of Rs. 500 for any one package" were not to be read ejusdem generis with the words 'gold, silver, bullion, etc.', preceding them. Therefore goods of any description would have to be declared before shipment and the special order for shipping had to be obtained if the package exceeded Rs. 500 in value. In the absence of the same the liability of the shipping company could not exceed the amount of Rs. 500. (1957) 100 Cal L J 45.

——S. 4—Bill of lading — Law relating to stated — Bill of lading not drawn up in set, despatched to consignee, but lost—Copy of bill of lading presented to shipowner a long time after period of limitation for preferring adverse claim had elapsed—No adverse claim made during that period—Shipowner's demand for indemnity is unreasonable. A I R 1955 N U C (Cal) 4502=ILR (1956) 2 Cal 600.

——Sch. Arts. 1 and 3 — Mercantile Custom—Bill of lading—Nature of document — Duties and liabilities of owner of ship—Liability due to loss during voyage distinguished. A I R 1961 Mad 442 (DB).

——Sch. Art. 3 — Contract Act (1872), S. 28—Bill of lading incorporating provisions of Carriage of Goods by Sea Act, 1925, is valid and not repugnant to S. 28. See Contract Act (1872), S. 28. 8 Sau L R 179=AIR 1955 N U C (Sau) 5422A.

●——Sch Art. 3, Rr. 6, 8, Art. 7 and S. 2 — Bill of lading — Condition of notice in writing of every claim—Applicability and validity of condition. A I R 1951 Sau 83, Overruled. See Carriage of Goods by Sea Act (26 of 1925), S. 2. A I R 1953 Sau 32 (FB).

—Sch. Art. 3, Art. 7, Rr. 6, 8 and S. 2 — Bill of lading — Condition of notice in writing of every claim—Applicability and validity of condition. A I R 1951 Sau 83, Overruled. See Carriage of Goods by Sea Act (26 of 1925), S. 2. **A I R 1953 Sau 32 (FB).**

—Sch. Art. 3, R. 8, Art. 1 (c) — Plea in written statement that claim for loss by plaintiff should have been made within one month of arrival of steamship as provided in bill of lading—Answer by plaintiff that such condition was void under Art. 2, R. 8 — Held defendant should have countered plaintiff's plea by saying that that rule would not apply because the goods were not goods as fell within the definition of the term 'goods' in cl. (C) of Art. 1. See Carriage of Goods by Sea Act (1925), Sch. Art. 3, R. 8. **AIR 1960 Bom 416.**

—Sch. Art. 4, Rr. 2, 1—Negligence in stowing and carrying goods during voyage — Liability for loss or damage—Burden of proof. See Carriage of Goods by Sea Act (1925), Sch. Art. 4, R. 1. **A I R 1959 Cal 479.**

CARRIERS ACT (3 of 1865)

—Ss. 2, 8, 6 and 9 — Plaintiff purchasing bags of betel nuts from place in Pakistan — Consignment booked with defendants — Goods Forwarding Note executed — Loss in transit on railway other than defendants — Defendants held were common carriers for place falling beyond their transport system and were principals and not agents of other railway—Defendants having failed to lead evidence to rebut presumption under S. 9, suit held must be decreed in full—F. A. No. 166 of 1955 dated 16-10-1962 (All), Overruled. See Carriers Act (1865), S. 8. **I L R (1965) 2 All 150=AIR 1966 All 260.**

—S. 2—Air way—Carrier by air—Indian Air Lines Corporation—Carriage of goods by air inland—Liability for damage to goods — Law applicable — Not governed by Carriers Act, 1865, or Contract Act, 1872, but by English Common Law as administered in India—Exemption from liability for negligence by special contract. **AIR 1961 Cal 383.**

—S. 5—Scope and applicability—Agent of owner is not entitled to benefit of liability of carrier under S. 8 — Suit by agent on basis of S. 8, not maintainable even though no objection to maintainability is raised in written statement—Civil P. C. (1908), O. 8, R. 2. **AIR 1964 Andh-Pra 71 (Pt A).**

—Ss. 6, 8, 2 and 9 — Plaintiff purchasing bags of betel nuts from place in Pakistan — Consignment booked with defendants — Goods Forwarding Note executed—Loss in transit on railway other than defendants — Defendants held were common carriers for place falling beyond their transport system and were principals and not agents of other railway — Defendants having failed to lead evidence to rebut presumption under S. 9, suit held must be decreed in full—F. A. No. 166 of 1955 dated 16-10-1962 (All), Overruled. See Carriers Act (1865), S. 8. **I L R (1965) 2 All 150=AIR 1966 All 260.**

—S. 8—Common carrier — Liabilities of — Goods lost through negligence of carrier—Liable for loss or damage. **AIR 1964 Punj 318.**

—S. 9—Plaintiff purchasing bags of betel nuts from place in Pakistan—Consignment booked with defendants — Goods Forwarding Note executed — Loss in transit on railway other than defendants—Defendants held were common carriers for place falling beyond their transport system and were principals and not agents of other railway — Defendants having failed to lead evidence to rebut presumption under S. 9, suit held must be decreed in full — F. A. No. 166 of 1955 dated 16-10-1962 (All), Overruled. See Carriers Act (1865), S. 8. **I L R (1965) 2 All 150 = AIR 1966 All 260.**

—Ss. 9, 8—Suit for damages to goods entrusted for carriage — Damage due to accident — Destruction of goods—Carrier when agent of necessity due to emergency—Onus of proof—(Evidence Act (1872), Ss. 101-104). See Carriers Act (1865), S. 8. **AIR 1958 Assam 115.**

—S. 9 — Railways Act (1890), S. 75 — Suit for damages for loss of goods in transit — Measure of damages — Remote damages cannot be taken — (Contract Act (1872), S. 73). See Railways Act (1890), S. 75. **AIR 1957 Pat 328.**

—Sch.—Railways Act (1890), S. 75 and Sch. II, Cl. (m)—Suit for damages for loss of goods in transit —Defence that goods were shawls which consignor had not declared — Question whether goods were in fact shawls—Determination of—Meaning of 'shawls' —(Words and Phrases — 'Shawls'). See Railways Act (1890), S. 75. **AIR 1957 Pat 328.**

CASE

Cognizable.
—Meaning of.
See Criminal P. C. (1898), S. 4(1)(f).

Connected case, judgment in.
See Criminal P. C. (1898), S. 67.

Meaning of.
See (1) Civil P. C. (1908), S. 115.
(2) Criminal P. C (1898), S. 528.

Non-cognizable.
—Meaning of.
See Criminal P. (1898), S. 4(1)(n).

Special case.
—Statement of, for opinion of Court.
See Civil P. C. (1908), S. 90 and O. 36.

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—For opinion of High Court, by Income-tax Appellate Tribunal.
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See Civil P. C. (1908), S. 113.

Summons case.
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—Charge.
See Criminal P. C. (1898), Ss. 233, 241, 242, 221.
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See Criminal P. C. (1898), S. 4(1)(b).
—Procedure when case instituted on police report.
See Criminal P. C. (1898), S. 251-A.
—Trial of.
See Criminal P. C. (1898), Ss. 256, 257 and 258.

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See Criminal P. C. (1898), S. 254.
—Commencement of.
See Criminal P. C. (1898), Ss. 252, 350 and 436.
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See Criminal P. C (1898), S. 256.
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See Criminal P. C. (1898), Ss. 253, 259.

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CASTE DISABILITIES REMOVAL ACT (21 of 1850)

——S. 1 — Special Marriage Act (1872), Ss. 22, 23, 24 —Marriage under—Effect on coparceners—Right of survivorship is extinguished. See Special Marriage Act (1872), S. 22. AIR 1955 Madh-Bha 148.

CATTLE TRESPASS ACT (1 of 1871)

——Ss. 10, 22 — Seizure of cattle, conditions for — Mere trespass without damage — Does not justify seizure — However for seizing cattle under S. 10, major damage not necessary — Need for seizure of cattle stressed. See Cattle Trespass Act (1871), S. 22. **ILR (1965) Cut 496=31 Cut L T 1127=A I R 1966 Orissa 191.**

——Ss. 20 and 22—Inquiry under S. 20—Nature of—Result is not acquittal or conviction — Order holding seizure not wrongful—Revision lies — Criminal P. C. (1898), S. 439. **A I R 1951 Nag 287.**

——S. 20—Penal Code (1860), Ss. 96, 97, 378—Illegal seizure of cattle—There is right of private defence of property. See Penal Code (1860), S. 96. **1963 (1) Cri L J 308=AIR 1963 Orissa 52.**

——S. 20—Complaint to Magistrate not competent to receive it—Expiry of period of 10 days—Applicability of S. 14, Limitation Act — Limitation Act (1908), S. 14. **AIR 1951 Orissa 40.**

——S. 22—Criminal P. C. (1898), Ss. 173, 161, 155—Statements of witnesses taken during investigation of non-cognizable offence under S. 22, Cattle Trespass Act—Accused entitled to copies. See Criminal P. C. (1898), S. 173. **1960 Cri L J 1421 = A I R 1960 Bom 476.**

——Ss. 22 and 20—Inquiry under S. 20—Nature of—Result is not acquittal or conviction — Order holding seizure not wrongful — Revision lies—Criminal P. C. (1898), S. 439. See Cattle Trespass Act (1 of 1871), S. 20. **AIR 1951 Nag 287.**

——Ss 22, 10 — Seizure of cattle, conditions for — Mere trespass without damage — Does not justify seizure — However for seizing cattle under S. 10, major damage not necessary — Need for seizure of cattle stressed. **ILR (1965) Cut 496 = 31 Cut L T 1127=A I R 1966 Orissa 191.**

——Ss. 22, 20—Order of compensation by Magistrate not competent to receive complaint under S. 20—Legality — Criminal P. C. (1898), Ss. 529, 537. See Cattle Trespass Act (1 of 1871), S. 20. **52 Cri L J 15 =AIR 1951 Orissa 40.**

——S. 22 — Order under — Panchayat Samiti under Rajasthan Act (21 of 1953) has no jurisdiction to pass order of nature provided under S. 22 See Panchayats—Rajasthan Panchayat Act (21 of 1953). **1965 Raj L W 486.**

——S. 24 — Penal Code (1860), Ss. 323 and 34 — Sentence — (Criminal P. C. (1898), S. 32). See Penal Code (1860), S. 323. **AIR 1953 All 358.**

——S. 24—Order under — Difference in nature. See Cattle Trespass Act (1 of 1871), S. 22. **A I R 1951 Nag 287.**

——S. 24—Penal Code (1860), Ss. 96, 97, 378—Illegal seizure of cattle—There is right of private defence of property. See Penal Code (1860), S. 96. **1963 (1) Cri L J 308=A I R 1963 Orissa 52.**

CAUSE OF ACTION

Absence of.
See Civil P. C. (1908), O. 1, R. 13, O. 2, R. 2.

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—Alternative claims.
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—Immovable property, suit for.
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See Civil P. C. (1908), O. 33, R. 15.

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See Civil P. C. (1908), O. 22, Rr. 2, 11.

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See Civil P. C. (1908), O. 2, R. 2.

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CENTRAL CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES (1957)

——Rr. 15, 18 — Scope — Conviction only for contempt of Court — Dismissal for contempt of Court and also for offence of forgery—R. 15 was attracted. **1965 Pun L R (Supp) 453 = AIR 1966 Punj 447.**

——R. 15 (10)—Constitution of India — Arts. 311 (2) and 309 — Reasonable opportunity to show cause against proposed punishment — Denial of — Non-compliance with sub-r. (10) of R. 15 of Central Civil Services (Classification, Control and Appeal) Rules, 1957—Effect. See Constitution of India, Art. 311 (2). **AIR 1963 Punj 390.**

— R. 15 -Reasonable opportunity to show cause — Petitioner not supplied with copies of first information report. statement of witnesses and not allowed assistance of legal adviser and hand writing expert—Held petitioner was not given reasonable opportunity of showing cause against his removal – Constitution of India, Art. 311 (2). **1965 Pun L R (Supp) 456.**

——R. 15 — Constitution of India, Art. 311 (2) — Central Civil Services (Classification, Control and Appeal) Rules, R. 15—Framing of charge by another officer with approval of disciplinary authority. See Constitution of India, Art. 311 (2). **AIR 1962 Tripura 15.**

——R. 17 — Joint inquiry — Provision is merely enabling one — Does not clothe the servant with any right to insist upon joint enquiry. **(1963) 6 Fac L R 38 (Cal) = (1963) 1 Lab L J 698.**

——Rr. 18, 15 — Scope — Conviction only for contempt of Court — Dismissal for contempt of Court and also for offence of forgery— R. 15 was attracted. See Central Civil Services (Classification, Control and Appeal) Rules (1957), R. 15. **1965 Pun L R (Supp) 453 = AIR 1966 Punj 447.**

——R. 55 — Constitution of India, Art. 311 (2) — Service Rules — Non-compliance with — Effect — Civil Services (Classification, Control and Appeal) Rules, R. 55 — Case to which Art. 311 (2) is held not applicable — Still non-compliance with R. 55 will invalidate discharge. See Constitution of India, Art. 311 (2). **AIR 1961 Pat 339.**

CENTRAL CIVIL SERVICES (SAFEGUARDING OF NATIONAL SECURITY) RULES (1953)

——R. 4—R. 3 requires rational connection between conduct of Government Servant and subversive activity — Such nexus absent — Order of compulsory retirement will be set aside — Compulsory. retirement on ground of association with R. S. S. functions — Ground does not by itself show that Government servant was engaged in association with others in subversive activities. See Central Civil Services (Safeguarding of National Security) Rules (1953), R. 3. **1965 Pun L R (Supp) 219.**

CENTRAL CIVIL SERVICE (TEMPORARY SERVICES) RULES (1949)

——R. 5—Notice terminating the services of employee issued by competent authority — Notice followed by order of discharge from service made by Appellate authority though no appeal was pending before him —Appeal by petitioner for reconsideration of order of discharge — Appeal dismissed — Held the appellate authority by his previous performance rendered himself unworthy as an appellate tribunal and hence his order should not be sustained—Natural Justice. **(1965) 11 F L R 191 (Cal).**

——R. 6—Constitution of India, Art. 311 — Question whether Government servant in temporary service is entitled to safeguard provided by Article — Duty of Court is to enquire whether he is to be deemed to be in quasi-permanent service and not whether he is holding temporary post in substantive capacity. See Constitution of India, Art. 311. **AIR 1955 Punj 229.**

——R. 49—Constitution of India, Art. 311 — Permanent Government servant holding temporary post in substantive capacity—Transfer to post carrying lesser pay without being afforded reasonable opportunity of showing cause — There is no contravention of Fundamental Rules. See Constitution of India, Art. 311. **AIR 1955 Punj 229.**

CENTRAL EXCISE RULES (1944)

——R. 9—Constitution of India, Art. 20 (3) — Protection under — When open — A making admission on date of search — Show cause notice for action under Rr. 9 and 52-A of Central Excise Rules issued after fortnight—Held there was no violation of Art. 20 (3). See Constitution of India, Art. 20 (3), **1963 (2) Cri L J 279 = AIR 1963 Ker 241.**

——R. 10A - Validity — Machinery for collection of duty retrospectively— Provision for. See Dhoties (Additional Excise Duty) Act (1953). **AIR 1956 Pat 131.**

——R. 52—Central Excises and Salt Act (1944), Ss. 3, 6, 7 and 37—Rules under S. 37, Rr. 52, 178 (3-A) — Licence to heir of deceased licensee in actual possession coupled with direction by Excise Authorities stopping clearance of goods — Direction illegal — Scope of proviso to R. 178 (3-A). See Central Excises and Salt Act (1944), S. 3. **AIR 1960 Assam 207.**

——R. 52-A — Constitution of India, Art. 20 (3) — Protection under — When open — A making admission on date of search— Show-cause notice for action under Rr. 9 and 52-A of Central Excise Rules issued after fortnight — Held there was no violation of Art. 20 (3). See Constitution of India, Art. 20 (3). **1963 (2) Cri L J 279 =AIR 1963 Ker 241.**

——Rr. 140 and 215—Sea Customs Act (1878), S. 189 —Appeal against order demanding from P certain duty in respect of tobacco found deficient—Appellate authority directing P to deposit duty within specified period and stating further that failure to do so would result in dismissal of appeal for non-compliance with S. 189 - P filing petition to issue writ directing appellate authority to dispose of appeal without reference to S. 189 and R. 215—Held, on facts, that S. 189 was applicable—Adaptation of S 189 in R. 215 under S. 12 was not in conflict with right of appeal under S. 35 because S. 189 did not prohibit filing of appeal nor made deposit of duty a condition precedent for such filing but merely put limitations thereon. 4 S T C 144, Disting. 40 M L J 308 and (1877) L R 3 Q B D 1, Ref. As S. 189 could not be said to be beyond powers of Legislature, S. 12 adapting S. 189 in R. 215 was also not beyond legislative power — R. 215 was in conformity with provisions of S. 12, same having been incorporated in Rules of 1944 which were duly notified— Contention that as bond was executed by P under R. 140, notice asking him to deposit duty was bad was not tenable because bond was executed to satisfy requirements of R. 140 and P never communicated appellate authority to take proceedings under that security. See Central Excises and Salt Act (1944), S. 12. **ILR (1963) Andh Pra 42 (DB).**

—Rr. 160 and 151 (c)—Central Excises and Salt Act (1944), Ss. 14 and 33 — Superintendent of Central Excise visiting petitioner's warehouse and detecting substitution of crushed leaves of tobacco by stems — Detailed enquiry held by Inspector — Jurisdiction of Superintendent to hold quasi-judicial enquiry against petitioner. See Central Excises and Salt Act (1944), S. 14. 1960 Cri L J 867 = AIR 1960 All 402.

—R. 178 (3A) — Ss. 3, 6, 7 and 37 of the Central Excises and Salt Act — Licence to heir of deceased licensee in actual possession coupled with direction by Excise Authorities stopping clearance of goods — Direction illegal — Scope of proviso to R. 178 (3-A). See Central Excises and Salt Act (1944), S. 3. AIR 1960 Assam 207.

—R. 201 — Central Excises and Salt Act (1944), S. 18—Search under S. 165, Criminal P.C. not complied—Proceedings not invalidated — Hence conviction and sentence under R. 9 (2) were not illegal and void. See Central Excises and Salt Act (1944), S. 18. 1963 (2) Cri L J 279 = AIR 1963 Ker 241.

—R 209—Central Excises and Salt Act (1944), S. 12 —Delegation of legislative power—Principles—Delegation of power under S. 12 — Not invalid — Rules framed under the power are valid. See Central Excises and Salt Act (1944), S. 12. AIR 1961 Ker 93.

—Rr. 215 and 140—Sea Customs Act (1878), S. 189 — Appeal against order demanding from P certain duty in respect of tobacco found deficient — Appellate authority directing P to deposit duty within specified period and stating further that failure to do so would result in dismissal of appeal for non-compliance with S. 189 — P filing petition to issue writ directing appellate authority to dispose of appeal without reference to S. 189 and R. 215 — Held, on facts, that S 189 was applicable — Adaptation of S. 189 in R. 215 under S. 12 was not in conflict with right of appeal under S 35 because S. 189 did not prohibit filing of appeal nor made deposit of duty a condition precedent for such filing but merely put limitations thereon: 4 S T C 144, Disting, 40 Mad L J 808 and (1877) L R 3 Q B D 1, Ref.—As S. 189 could not be said to be beyond powers of Legislature, S. 12 adapting S. 189 in R. 215 was also not beyond Legislative power—R. 215 was in conformity with provisions of S. 12, same having been incorporated in Rules of 1944 which were duly notified—Contention that as bond was executed by P under R. 140, notice asking him to deposit duty was bad was not tenable because bond was executed to satisfy requirements of R. 140 and P never communicated appellate authority to take proceedings under that security. See Central Excises and Salt Act (1944), S. 12. **I L R (1963) Andh Pra 42 (DB).**

—R. 223-A — Central Excises and Salt Act (1944), S. 35 — Scope — Powers of appellate authority under the section are much wider—Finality of order—Order by appellate authority vacating the original order — Absence of specific direction in the order — De novo proceedings cannot be started by Collector after the order — Analogy between powers under the section and under Art. 226 of the Constitution cannot be drawn. See Central Excises and Salt Act (1944), S. 35. AIR 1964 Mad 111.

CENTRAL EXCISES AND SALT ACT (1 of 1944)

— Ss. 2 (a) and 3 (1)—Finance Act (1950), Ss. 13, 11 — Corresponding Law — Robkar issued by Ijlas-i-khas, Patiala State on 6-2-1919 is not law corresponding to Central Excises and Salt Act (1944). See Finance Act (1950), S. 13. (1962) 2 S C R 942=(1963) 1 S C J 337=AIR 1966 S C 805.

—S. 2 (j)—Constitution of India, Sch. VII, List 1, Entries 54 and 58 — Marwar Land Revenue Act (40 of 1949), S. 231 — "Mineral" in S. 231 includes salt wherever produced. See Constitution of India, Sch. VII, List 1, Entry 54. AIR 1957 Raj 213.

— —S. 3 (1)—Corresponding law — The provisions of S. 3 (1) and S. 2 (d) of the Central Excises and Salt Act (1944) read together limit the operation of the excise law to commodities enumerated in the first schedule and salt. See Finance Act (1950), S. 13. (1963) 1 S C J 337 = (1962) 2 S C R 942 = AIR 1966 S C 805.

—Ss. 7, 6 and 8, 9 — Central Excise Rules (1944), R. 178—Tobacco license — Nature of licensee doing business in partnership — Failure to report names of partners — Penalty for breach of rule — Legality of partnership — Test. See Central Excises and Salt Act (1944), S. 6. AIR 1957 Mad 186.

—S. 8—Bihar and Orissa Excise Act (2 of 1915), S. 47 (a) and (f) — "Possesses any excisable article — Excisable article in custody of wife on husband's behalf is not in her possession. See Bihar and Orissa Excise Act (2 of 1915), S. 47 (a). 1961 (2) Cri L J 265 (1)=AIR 1961 Pat 327.

—S. 9 (s)—Bihar and Orissa Excise Act (2 of 1915), S. 47 (a) and (f) — "Possesses any excisable article — Excisable article in custody of wife on husband's behalf is not in her possession. See Bihar and Orissa Excise Act (2 of 1915), S. 47 (a). 1961 (2) Cri L J 265 (1)=AIR 1961 Pat 327.

—Ss. 12 and 35—Central Excise Rules (1944), Rr. 140 and 215 — See Customs Act (1878), S. 189 — Appeal against order demanding from P certain duty in respect of tobacco found deficient — Appellate authority directing P to deposit duty within specified period and stating further that failure to do so would result in dismissal of appeal for non-compliance with S. 189 —P filing petition to issue writ directing appellate authority to dispose of appeal without reference to S. 189 and R. 215—Held, on facts, that S. 189 was applicable — Adaptation of S. 189 in R. 215 under S. 12 was not in conflict with right of appeal under S. 35 because S. 189 did not prohibit filing of appeal nor made deposit of duty a condition precedent for such filing but merely put limitations thereon: 4 S T C 144, Disting; 40 Mad L J 808 and (1877) L R 3 Q B D 1, Ref.—As S. 189 could not be said to be beyond powers of Legislature, S 12 adapting S. 189 in R. 215 was also not beyond legislative power — R. 215 was in conformity with provisions of S. 12, same having been incorporated in Rules of 1944 which were duly notified—Contention that as bond was executed by P under R. 140, notice asking him to deposit duty was bad was not tenable because bond was executed to satisfy requirements of R. 140 and P never communicated appellate authority to take proceedings under that security — Constitution of India, Art. 245. **I L R (1963) Andh Pra 42 (DB).**

—S. 35—Constitution of India, Art. 226—Writ petition — Remedy of appeal and revision available — Absence of good ground for by-passing remedy of appeal — Petition should be dismissed. See Constitution of India, Art. 226. AIR 1965 All 305.

—Ss. 35 and 12—Central Excise Rules (1944), Rr. 140 and 215 — Sea Customs Act (1878), S. 189 — Appeal against order demanding from P certain duty in respect of tobacco found deficient—Appellate authority directing P to deposit duty within specified period and stating further that failure to do so would result in dismissal of appeal for non-compliance with S. 189 — P filing petition to issue writ directing appellate authority to dispose of appeal without reference to S. 189 and R. 215 — Held, on facts, that S. 189 was applicable — Adaptation of S. 189 in R. 215 under S. 12 was not in conflict with right of appeal under S. 35 because S. 189 did not prohibit filing of appeal nor made deposit of duty a condition

precedent for such filing but merely put limitations thereon: 4 S T C 144, Disting; 40 Mad L J 308 and (1877) L R 3 Q B D 1, Ref.—As S. 189 could not be said to be beyond powers of legislature, S. 12 adapting S. 189 in R. 215 was also not beyond Legislative power—R. 215 was in conformity with provisions of S. 12, same having been incorporated in Rules of 1944 which were duly notified — Contention that as bond was executed by P under R. 140, notice asking him to deposit duty was bad was not tenable because bond was executed to satisfy requirements of R. 140 and P never communicated appellate authority to take proceedings under that security. See Central Excises and Salt Act (1944), S. 12. **I L R (1963) Andh Pra 42 (DB).**

——S. 37—Penal Code, Ss. 352, 392—Illegal and unauthorised seizure of account books from factory by Excise Department Officer—Owner does not commit offence under S. 392 in recovering them — If force is used in recovering books case falls under S. 354—Agent's possession is principal's possession. See Penal Code (1860), S. 352. **1965 (2) Cri L J 582= AIR 1965 All 543.**

—— Ss. 37 and 40 (2)—Central Excise Rules, R. 223A—Illegal levy of assessment—Refund—Suit for—Maintainability — Difference in weight of tobacco due to evaporation or dryage — No duty can be collected on the difference—Only percentage of difference allowed by taxing authority — Duty collected not in accordance with R. 223-A — Suit for refund maintainable. See Central Excises and Salt Act (1 of 1944), S. 40 (2). **A I R 1961 Andh-Pra 540.**

——Ss. 37, 3, 6 and 7—Rules under S. 37, Rr. 52, 178 (3-A)—Licence to heir of deceased licensee in actual possession coupled with direction by Excise Authorities stopping clearance of goods—Direction illegal—Scope of proviso to R. 178 (3-A). See Central Excises and Salt Act (1 of 1944), S. 3. **AIR 1960 Assam 207.**

● ——Sch. I, Items 13, 12 (as amended by Act, 38 of 1960)—Excise duty—Chargeability is on manufacture, and not on sale, of goods — Manufacture of Vanaspati — Raw oils purified in process but not deodorised — Not chargeable under item 12 as 'refined oil'—Not also covered by expression "non-essential oils" or by "all sorts" in item 12—'Goods' and 'Manufacture' — Meaning of. See Central Excises and Salt Act (1 of 1944), Sch. 1, Item 12. **AIR 1963 S C 791.**

C. P. AND BERAR ANIMAL PRESERVATION ACT (52 of 1949) (AS AMENDED BY M. P. ACTS 23 of 1951 and 10 of 1956)

● ——S. 4 and Preamble — Constitution of India, Art. 25 (1)—Scope — Bihar Act 2 of 1956, U. P. Act 1 of 1956 and C. P. and Berar Act 52 of 1949, whether hit by Article. See Constitution of India, Art. 25 (1). **A I R 1958 S C 731.**

C. P. AND BERAR COURTS ACT (1 of 1917)

——Ss. 20 (as amended by M. P. Court. (Amendment) Act 2 of 1956) — Right of appeal—Nature of—Retrospective operation of statutes — S. 7 of amending Act whether retrospective — Application of maxim expressio onius est exclusio alterius — Appeals in pending cases whether to be as provided by old S. 20. **AIR 1958 Madh-Pra 197.**

C. P. AND BERAR FOREST MANUAL

● ——Vol. 1, Part 4, Chap. 20, R. 5 — Sale of Goods Act (1930), Ss. 20 and 25 — Applicability — Auction sale of cut timber in forest — Specified goods in deliverable state — Price payable in instalments — First instalment paid at time of provisional acceptance of bid by Divisional Forest Officer — Formal contract signed by both Divisional Forest Officer and purchaser sent for acceptance to Chief Conservator of forests and delivery of goods made to purchaser—Goods destroyed by fire before Chief conservator signed contract — Property in goods when passed to purchaser — Liability of purchaser and surety for remaining instalments. See Sale of Goods Act (1930), S. 20. **(1965) 3 S C R 381=AIR 1966 S C 58.**

C. P. AND BERAR HOME GUARDS ACT (15 of 1947)

——Constitution of India, Art. 311 (2) — Enquiring Officer holding charges proved but upon certain extenuating circumstances recommending lenient punishment—Government agreeing with finding but not with recommendation — Notice to show cause why notice to show cause against proposed punishment should not be given is not necessary. See Constitution of India, Art. 311 (2). **A I R 1961 Madh-Pra 261.**

C. P. AND BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT (23 of 1947)

● ——S. 1 (3) — Notification applying Act to all industries except "mines"—Mines means mining industry — Head Office of industry is exempted from operation of Act — ILR (1963) Bom 260, Reversed. **(1965-66) 28 F J R 269=AIR 1966 S C 925.**

● ——S. 16—Scope—Reinstatement on wrongful dismissal exists de hors S. 16 — Bombay Relief Undertakings (Special Provisions) Act (96 of 1958), Ss. 3, 4 —Notification granting exemption under—Effect of—S. M. C. No. 315 of 1962, dated 12-8-1963 (Bom. at Nag.), Reversed. **(1965-66) 28 F J R 249=A I R 1966 S C 907.**

——Ss. 42, 47 and 57—M. P. Industrial Relations Act (27 of 1960), S. 112 — Scope — Offence committed under Act 33 of 1947—Complaint filed after repeal of the Act — Effect — Jurisdiction of Magistrate. See M. P. Industrial Relations Act (27 of 1960) S. 112. **1962 M P L J 1098.**

——Ss. 47, 42 and 57—M. P. Industrial Relations Act (27 of 1960). S. 112—Scope—Offence committed under Act 33 of 1947 — Complaint filed after repeal of the Act—Effect — Jurisdiction of Magistrate. See M. P. Industrial Relations Act (27 of 1960), S. 112. **1962 M P L J 1098.**

——Ss 57, 42, and 47—M. P. Industrial Relations Act (27 of 1960), S. 112 — Scope — Offence committed under Act 33 of 1947—Complaint filed after repeal of the Act — Effect — Jurisdiction of Magistrate. See M. P. Industrial Relations Act (27 of 1960), S. 112. **1962 M P L J 1098.**

——Sch. II, Item (3), Ss. 16 (2), 31 (1), 42, and 49 — Discharge from service of employee after one month's notice—It does not amount to dismissal within meaning of Sch. II, Item (3) — Reinstatement of employee — Labour Commissioner cannot reinstate employee under S. 16 (2) — Section 42 does not apply — No standing orders framed—Effect of—Actual discharge and not motive behind discharge to be considered. See C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 16 (2). **AIR 1961 Madh-Pra 351.**

C. P. COURT OF WARDS ACT (24 of 1899)

——S. 19 (1) (c)—Damages — Negligence—Evidence and proof — Suit against Court of Wards. See Tort. **A I R 1957 Madh Pra 78.**

C. P. GENERAL CLAUSES ACT (1 of 1914)

——S. 13 — Tenancy Laws — Berar Regulations of Agricultural Leases Act (24 of 1951), S. 8—Power to grant time over and over again. See Tenancy Laws—Berar Regulation of Agricultural Leases Act (24 of 1951), S. 8. **A I R 1956 Nag 174.**

——S. 20 — C. P. and Berar Municipalities Act (2 of 1922), S. 57 — Supersession order—Amendment of —

An order of supersession under S. 57 (2) for a specified period, once passed, cannot be subsequently amended by the Provincial Government. See Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 57. AIR 1951 Nag 181.

● —S. 28 (3) (i) — Houses and Rents — C. P. and Berar Regulation of Letting of Accommodation (Extending) Ordinance (4 of 1947), S. 1 — Date of commencement—Governor-General's assent not published —Effect. See Houses and Rents—C. P. and Berar Regulation of Letting of Accommodation (Extending) Ordinance (4 of 1947), S. 1. AIR 1951 Nag 94 (FB).

C. P. LAND REVENUE ACT (2 of 1917)

—S. 2 (18)—Tenancy Laws — C. P. Tenancy Act (1 of 1920), S. 2 (11) — Village Charaundi, Chandrapur — Padampur tract Sambalpur area—Gaontias of, held are not occupancy tenants of gaonti rayoti lands —See Tenancy Laws—C. P. Tenancy Act (1 of 1920), S. 2 (11). AIR 1951 Nag 361.

—Ss. 3, 33 (2) (c), 47 (1) and 39—Appeal —Competency of—Tests are whether (1) authority passing order is Revenue Court and (2) order appealed against is one passed under Act or rules made thereunder. See C. P. Land Revenue Act (2 of 1917), S. 33 (2) (c). 1954 Nag L J 131 = AIR 1955 NUC (Nag) 987.

—S. 9— Functions of :Deputy Commissioner — Appeal or revision on. AIR 1953 Nag 342.

—S. 9-A — Public Safety — C. P. and Berar Public Safety Act (62 of 1948), S. 29—Exercise of power under S. 14 (1) by Additional Deputy Commissioner. See Public Safety —C. P. and Berar Public Safety Act (62 of 1948), S. 29. AIR 1951 Nag 386.

● —S. 9-A—Debt Laws—C. P. and Berar Relief of Indebtedness Act (24 of 1939), S. 13 (3)—D. C. acting under S. 13 (3) acts as Revenue Officer and not as persona designata — Powers under S. 13 (3) can be exercised by Additional Deputy Commissioner : A I R 1953 Nag 342, Dissented from; Misc. Pet. No. 180 of 1950, D/- 12-7-1951 (Nag) held no longer binding. See Debt Laws — C. P. and Berar Relief of Indebtedness Act (24 of 1989), S. 13 (3). AIR 1958 Madh Pra 203 (FB).

—S. 39—Debt Laws — C. P. and Berar Relief of Indebtedness Act (14 of 1939), S. 13 (3) — Proceeding under S. 13 (3) — Revision on. See Debt Laws — C. P. and Berar Relief of Indebtedness Act (14 of 1939), S. 13 (3). AIR 1953 Nag 342.

—S. 46—Right to have entry in record of rights corrected—The right to have an entry corrected is recognised under this section and also :under S. 104 of the M. P. Land Revenue Act, 1917. See M. P. Land Revenue Code (1954), S. 104. 1958 Nag L J 518 = 61 Bom L R 86=ILR (1959) Bom 585.

—S. 65-A — Thikadari tenure acquired out of joint Hindu family funds — Partition amongst co-sharers of Thikadar — Grant of protected status does not make any change in rights of joint holders 'inter se'— Ejectment of thikadar for non-payment of rent — Rights of co-sharers are not extinguished. AIR 1952 Orissa 99.

—S. 109 (1) (a) —Right to possession by protected thekadar. AIR 1952 Nag 188.

—Ss. 128, 125 and 149—Recovery of dues as arrears of land revenue — Applicability of S. 125—Objection to sale — Bar of suit for possession in civil Court— (Civil P. C. (1908), S. 9). AIR 1957 Nag 84.

—Ss. 149, 128 and 125 —Recovery of dues as arrears of land revenue — Applicability of S. 125— Objection to sale — Bar of suit for possession in civil Court. See C. P. Land Revenue Act (2 of 1917), S. 128. AIR 1957 Nag 84.

—S. 188 (2) (c)— Cultivating profits of sir and khudkast land — Liability of lambardar to render account. AIR 1951 Nag 197.

—S. 220 (n)—Imperfect partition of Mahal— Jurisdiction of civil Court to effect, if exists. AIR 1951 Nag 297.

CENTRAL RESERVE POLICE FORCE ACT (66 of 1949)

—Ss. 7 (1), 16—Evidence Act (1872), S. 25— Police officers — Meaning of — Members of C. R. P. Force. See Evidence Act (1872), S. 25. AIR 1956 Kutch 1.

CHARITABLE AND RELIGIOUS TRUSTS ACT (14 of 1920)

—S. 3 — Charitable trusts — Trustees left with absolute discretion to choose specific charitable objects and to apply fund at such time as they think fit—Trust whether invalid for uncertainty. AIR 1956 Cal 164.

CHARITABLE ENDOWMENTS ACT (6 of 1890)

—Ss. 4, 5, 2, 10—Educational purpose is charitable purpose— Property held by institution for educational purpose—Institution registered under Societies Registration Act, 1860—Effect—Appointment of Treasurer in respect of such property under Charitable Endowments Act — Validity — Arts. 19 (1) (g) and 31 of Constitution not violated. AIR 1958 Andh Pra 773.

CHARTERED ACCOUNTANTS ACT (38 of 1949)

—Ss. 2 (b), 2 (e) — Industrial Disputes Act (1947), Ss. 2 (j) and 10 — Industrial dispute—Dispute arising out of matter relating to firm of chartered accountants —Professional work conducted by chartered accountant—Companies Act (1956), S. 277 — Powers and duties of chartered accountant as auditor— Chartered Accountants Regulations (1949), Regns. 78 and 79 — Engagement of employees to assist chartered accountant in his work — Firm of chartered accountants engaging employees and getting work from them carries on industry —Dispute between employers and employees of firm can validly be referred to Industrial Tribunal. See Industrial Disputes Act (1947), S. 2 (j). AIR 1963 Cal 310.

—Ss. 21, 2 (2) (iii) and (iv), 22 and Sch. Cl. (v) — Misconduct — Misconduct by chartered accountant in discharge of his duties as liquidator— Misconduct is not connected with profession and is not within ambit of Act — No disciplinary action can be taken in respect of it—(Chartered Accountants Regulations (1949), R. 78). See Chartered Accountants Act (38 of 1949), S. 2 (2) (iii) and (iv). 60 Cal W N 91= AIR 1955 NUC (Cal) 4515.

—S. 21 (1) (as amended in 1959) — Forum — Two persons, one being chartered accountant, acting as Official Liquidator appointed by High Court— Chartered Accountant misappropriating funds of a Company in liquidation — Proper forum for action is the High Court under Companies Act and not Disciplinary Committee under Chartered Accountants Act. (1965) 11 Fac L R 167 = AIR 1966 Cal 468.

—S. 21—Chartered Accountants Regulations, Regulations 11, 11-A—Proceedings on information — Procedure. See Chartered Accountants Regulations Regn. 11. AIR 1953 Mad 310.

—Ss. 22, 21 — Companies Act (1913), S. 145 (2), (3)—Duties of auditors — Scope and manner of — Bank audit — Omission to verify cash in hand and accept instead certificate from management — Use of enigmatical language in report about bank's position —Certifying balance sheet before receiving confirmation of cash balance. See Companies Act (1913), S. 145 (2). AIR 1956 Cal 414.

——Schedule, Cl. (m) and S. 22— Fees based on percentage of profits. See Chartered Accountants Act (38 of 1949), S. 22. AIR 1957 Cal 449.

——Sch., Item (o) (as it stood prior to its amendment by Act 15 of 1959), S. 22 — Misconduct — Banking company — Omissions in certificate by accountant on profit and loss account-sheet—Failure to state bank's reserve for bad debts — Certificate silent as to cancelled shares being partly paid and what were the amounts of such paid up capital — Silence about paid up capital, on the advice of accountant, being treated as special reserve and liable to be set off towards capital expenditure over loss — No statement by accountant that aforesaid paid amount being treated as reserve for bad debts to be within the power of the bank — Auditor's conduct held covered by item (o) and financial statement misleading. See Chartered Accountants Act (1949), S. 22. AIR 1960 Ker 309.

——Sch., Cl. (q) and S. 22 — Gross negligence in the conduct of professional duties. See Chartered Accountants Act (1949), S. 22. AIR 1957 Cal 449.

——Sch. II Part I, items (1), (5), (6) and (7) (corresponding to items (g), (o), (p) and (q) of old Schedule) and S. 22 — Misconduct — What is — Auditor appointed by Company to check Provident Fund accounts — Disclosure of irregular transaction to company and trustees of Provident Fund — Non-disclosure in statement of account — No misconduct. See Chartered Accountants Act (1949), S. 22. AIR 1964 Cal 131.

——Sch. 2, Part I, Cl. 10 (as amended in 1959) — "Client"—Meaning of—Company in liquidation is not client of liquidator appointed by Court. (1965) 11 Fac L R 167 = AIR 1966 Cal 468.

CHARTERED ACCOUNTANTS REGULATIONS (1949)

——Regns. 62-A and 62-B and S. 30 (2) (q)—Council has not exceeded its rule-making powers in framing Regns. 62-A and 62-B. See Chartered Accountants Act (1949), S. 30 (2) (q). AIR 1957 Cal 387.

——Regns. 78, 79 — Industrial Disputes Act (1947), Ss. 2 (j) and 10 — Industrial dispute — Dispute arising out of matter relating to firm of chartered accountants — Chartered Accountants Act (1949), S. 2 (b) and (e) — Professional work conducted by chartered accountant — Companies Act (1956), S. 277 — Powers and duties of chartered accountant as auditor — Engagement of employees to assist chartered accountant in his work — Firm of chartered accountants engaging employees and getting work from them carries on industry — Dispute between employers and employees of firm can validly be referred to Industrial Tribunal. See Industrial Disputes Act (1947), S. 2 (j). AIR 1963 Cal 310.

——Regns. 79, 78 — Industrial Disputes Act (1947), Ss. 2 (j) and 10 — Industrial dispute — Dispute arising out of matter relating to firm of chartered accountants — Chartered Accountants Act (1949), S. 2 (b) and (e) — Professional work conducted by chartered accountant — Companies Act (1956), S. 277 — Powers and duties of chartered accountant as auditor — Engagement of employees to assist chartered accountant in his work — Firm of chartered accountants engaging employees and getting work from them carries on industry — Dispute between employers and employees of firm can validly be referred to Industrial Tribunal. See Industrial Disputes Act (1947), S. 2 (j). AIR 1963 Cal 310.

CHILD MARRIAGE RESTRAINT ACT (19 of 1929)

——S. 3 — Alienation — Necessity — Alienation by Karta — Substantial portion of consideration representing expenses of marriage of minor son—Marriage though valid, act punishable under law — Alienation not supported by legal necessity — Not binding on son. AIR 1961 Orissa 104.

——S. 5 — Transfer of Property Act (1882), S. 58 — Mortgage — Legality — Contravention of Child Marriage Restraint Act. See Transfer of Property Act (1882), S. 58 AIR 1958 Andh Pra 145.

——S. 5 — De facto guardian — Alienation — Legal necessity. See Hindu Law — De facto guardian. AIR 1956 Bom 250.

CHIN HILL REGULATION (5 of 1896)

——Ss. 23, 22, 38 (2), 40 — Application of, to frontier tracts by notification — Notification if impliedly repealed by Regulation 1 of 1945. See Chin Hill Regulation (5 of 1896), S. 22. 52 Cri L J 200 = AIR 1951 Assam 47.

CHRISTIAN MARRIAGE ACT (15 of 1872)

——Ss. 5 and 4 — Roman Catholic Christians — Marriage performed by Schismatic priest is valid — Children born out of such marriage are legitimate — Difference between canon law and the Act pointed out. See Christian Marriage Act (1872), S. 4. AIR 1960 Mad 430.

—S. 5 — Maintenance—Syrian Christians—Illegitimate minor children — Right of.

The personal law relating to Christians in Travancore does not make a father legally liable to maintain his children whether they be legitimate or illegitimate. Although the English law, which is applicable in cases which are not governed by either the Hindu or the Mohammedan law, recognises the duty of the father to maintain and educate his children, the Civil Courts have no direct means of enforcing this obligation, so as to compel him to maintain them out of property in which they have no interest. The illegitimate minor children of Christian father have a right to claim maintenance from him under the Criminal P. C., but no civil Court can give them that relief. 32 Cal 479, Dissented from. 1952 Ker L T 595 = ILR (1952) Trav-Co 850 = AIR 1953 Trav-Co 61 (62, 63) (Pt B) (Prs 3, 6) (DB).

——S. 88 — Prohibition under personal law invalidating marriage — Nature of—Roman Catholic husband marrying Jew wife — Marriage is valid — Criminal P. C. (1898), S. 488. AIR 1951 Cal 293.

CINEMATOGRAPH ACT (2 of 1918)

——Ss. 8 and 5—Government orders under S. 5 (3)—Nature of — Power of Government to issue directions at variance with previous orders. See Cinematograph Act (2 of 1918), S. 5. AIR 1957 Andh Pra 513.

CINEMATOGRAPH ACT (37 of 1952)

——S. 5 (4)—Constitution of India, Art. 226 —Territorial jurisdiction of High Court — Order under S. 5 (4), Cinematograph Act by Ministry of Information and Broadcasting, New Delhi, served on petitioner in Bombay — Bombay High Court has no jurisdiction to entertain petition under Art. 226. See Constitution of India, Art. 226. AIR 1955 Bom 381.

CITIZENSHIP ACT (57 of 1955)

——S. 5 — Scope — Person coming to India from Pakistan on the basis of passport — Person can be treated as citizen of Pakistan. See Citizenship Act (1955), S. 2 (1) (b). 1962 (2) Cri L J 166 = AIR 1962 All 383.

——Ss. 8, 9, 10 — Foreigners Act (1946), S. 14 — Foreigners Order (1948), Para. 7—Minor son entering India on passport — Father living in India and an Indian National — Nothing to show that father consented to his son's renouncing Indian citizenship — Deportation of minor and his re-entry — Minor is

1957, D/- 31-7-1957 (All), **Dissent. from.** See Constitution of India, Art. 226. **AIR 1960 All 637.**

——R. 30—Citizenship Act (1955), S. 9 (2)—Citizenship Rules, R. 30—Civil P. C. (1908), S. 9 — Suit for declaration that plaintiff is citizen of India — Civil Court's jurisdiction not barred by virtue of S. 9 (2) read with R. 30 of the Citizenship Act. See Citizenship Act (1955), S. 9 (2). **A I R 1962 Andh Pra 247.**

——R. 30 — Constitution of India, Arts. 5, 6, 7—Citizenship of India—Essentials — Person migrating to Pakistan—Position of—Person returning on temporary visa applying for permission to resettlement—Breach of quit order — Validity of prosecution—(Citizenship Act (1955), Ss. 9, 10 and R. 30; Sch. 3, Cl. (4)) — (Foreigners Act (1946), S. 2 (a) (iii). See Constitution of India, Art. 5. **1959 Cri L J 561= A I R 1959 Andh Pra 241.**

——R. 30—Foreigners Act (1946), Ss. 2 (a), 3, 12 and 14—As amended by Foreigners Laws (Amendment) Act (1957)—Effect of—Person not a foreigner entering India on Pakistani passport under Indian Visa for limited period upto 30-4-1956 — Overstay in India—Order under S. 3 by District Superintendent of Police directing him to leave India — Validity — Non-compliance—Effect. See Foreigners Act (1946), S. 2 (a). **1959 Cri L J 1416=A I R 1959 Bom 525.**

——R. 30—Constitution of India, Art. 226—Foreigners Act (1946), S. 3 (2), Cl. (c) — Citizenship Act (1955), S. 9 (2) — Petitioner coming to India on Pakistani passport and for several years overstaying term of his visa — Deportation imminent — Petition under Art. 226 for writ to postpone deportation for affording him opportunity to move Government under S. 9 (2), Citizenship Act — Not maintainable. See Constitution of India, Art. 226. **A I R 1960 Madh Pra 381.**

——R. 30—Constitution of India, Art. 7—Citizenship Act (1955), Ss. 5, 9—Migration, meaning of — Citizen of India—Going to Pakistan in 1952 during minority—Remaining there after attaining majority—Service in Pakistan — Return to India in 1955 on temporary Pakistani passport and B visa — Application for permanent resettlement in India rejected—He ceases to be Indian citizen — Prosecution under S. 14 Foreigners Act — Accused claiming to be citizen of India cannot ask for stay of prosecution. See Constitution of India, Art. 7. **1961 (2) Cri L J 658 = A I R 1961 Orissa 174.**

——Sch. 3—Constitution of India, Art. 7—Migration is question of fact — Petitioner and his wife held migrated to Pakistan after the Constitution—Citizenship Act did not apply — They could raise dispute which Central Government would consider under Rule 30 of the Citizenship Rules. See Constitution of India, Art. 7. **A I R 1960 Andh Pra 106.**

——Sch. 3, Rules under — Scope — The rules of evidence under Sch. 3 have not a compulsive force, and though the authority normally would take them into account is not strictly bound to do so. **A I R 1961 Mad 129.**

●——Sch. 3, Cl. 3 — Citizenship Act (1955), S. 9—Acquisition of foreign citizenship—Obtaining foreign passport cannot be regarded as conclusive proof of voluntary acquisition of foreign citizenship in all cases—S. 9 (2) and R. 30 (2) contemplate inquiry to decide whether passport is voluntarily obtained—Inquiry can be made by Central Government only and not by Courts—Nature of inquiry — Writ Appeal No. 46 of 1959 dated 17-11-1959 (Mad), Reversed. See Citizenship Act (1955), S. 9. **A I R 1965 S C 1623.**

——Sch. 3, Cls. 3 and 5—Citizenship Act (1955), S. 9 (2)—Clauses 3 and 5 making the obtaining of Pakistani passport, a conclusive proof of acquisition of Pakistani citizenship are null and void, by virtue of Art. 13 (2), read with Art. 19 (1) (e) of the Constitution of India. See Citizenship Act (1955), S. 9 (2). **1961 (2) Cri L J 441=A I R 1961 All 507.**

——Sch. 3, Cl. 3—Citizenship Act (1955), S. 9 (2) and Sch. 3, Cls. 3, 4, 5 (d) — Right of citizenship—Question as to acquisition and termination of — Determining authority—Evidence and proof—(Constitution of India, Arts. 5 (c), 9 and 226). See Citizenship Act (1955), S. 9 (2). **A I R 1958 Andh Pra 761.**

——Sch. 3, Cl. 3—Scope — Obtaining of passpost of foreign country not crucial but its contents and declaration by authorities. **A I R 1961 Mad 129.**

——Sch. 3, Cl. 3 — Constitution of India, Art. 7—Citizenship Act (1955), Ss. 5, 9—Migration, meaning of — Citizen of India — Going to Pakistan in 1952 during minority — Remaining there after attaining majority — Service in Pakistan — Return to India in 1955 on temporary Pakistani passport and B visa—Application for permanent resettlement in India rejected—He ceases to be Indian citizen — Prosecution under S. 14, Foreigners Act—Accused claiming to be citizen of India cannot ask for stay of prosecution. See Constitution of India, Art. 7. **1961 (2) Cri L J 658=A I R 1961 Orissa 174.**

——Sch. 3, Cl. 3—Foreigners Act (1946), Ss. 3 (2) (c), 9—Citizenship Act (1955), S. 9 — Person citizen of India at time of Constitution, going to Pakistan without visa and returning to India on Pakistani passport—No order under S. 9, Citizenship Act — No order under S. 3 (2) (c), Foreigners Act can be passed. See Foreigners Act (1946), S. 3 (2) (c). **1962 (2) Cri L J 99=A I R 1962 Punj 333.**

——Sch. 3, Cl. (4)—Constitution of India, Arts. 5, 6, 7—Citizenship of India—Essentials—Person migrating to Pakistan—Position of—Person returning on temporary visa applying for permission to resettlement—Breach of quit order — Validity of prosecution. See Constitution of India, Art. 5. **1959 Cri L J 561 = A I R 1959 Andh Pra 241.**

——Sch. 3, Cls. 5 and 3, R. 30 — Citizenship Act (1955), S. 9 (2)—Clauses 3 and 5 making the obtaining of Pakistani passport, a conclusive proof of acquisition of Pakistani citizenship are null and void, by virtue of Art. 13 (2), read with Art. 19 (1) (e) of the Constitution of India. See Citizenship Act (1955), S. 9 (2). **1961 (2) Cri L J 441=A I R 1961 All 507.**

CIVILIAN IN DEFENCE SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES (1952)

——Rr. 3, 13, 15 — Constitution of India, Arts. 311, 309, 310, 226—Applicability — Civilian employed in defence service — Termination of service in terms of contract—Art. 311 does not apply. See Constitution of India, Art. 311. **A I R 1956 Cal 532.**

——R. 15—Constitution of India, Arts. 311, 310 and 309 — Scope — Machinist in Ordnance Factory removed from service by General Manager—Protection under Art. 311 is not available to such person—Non-compliance with—Effect—Rules made under Art. 309 cannot abrogate or modify the "tenure at pleasure" under Art. 310 — Person not holding civil post and thus excluded from Art. 311 cannot claim benefit of any rule made under Art. 309. See Constitution of India, Art. 311. **1965 M P L J 881 = 1965 Jab L J 1036=AIR 1966 Madh Pra 82.**

CIVIL MOTOR TRANSPORT VEHICLES CONTROL ORDER (1944)

——Cl. 5—Government of India Act (1935), S. 229—Owner of motor vehicle directed by Government to deliver his vehicle to dealer — Government is liable to pay price. See Government of India Act (1935), S. 299. **AIR 1956 Cal 87.**

CIVIL PROCEDURE CODE (1908)

—Preamble.

●——Pre.—Maxims — Ubi jus ibi remedium—Where there is right there is remedy — Where there is right there is remedy but converse is not necessarily true —Suspension of remedy for enforcement of rights under Part III of Constitution by Presidential order under Art. 359 (1) — Rights under Part III are not suspended. 1964 (1) Cri L J 269=AIR 1964 S C 381.

——Pre. —Maxims — Actus curiae nemini facit injuriam — Act of Court should do no harm to litigant — Pre-emption decree directing decree-holder to make deposit by certain date — Deposit made within time — Deposit less by one rupee — Mistake due to error on part of officers of Court in filing challan — Mistake should be rectified by Court and parties delegated to position on date of deposit. Ex. S. A. No. 586 of 1960 dated 1st December, 1961 (Punj), Reversed. 1963 Cur L J (S C) 11 = 65 Punj L R 834 (SC) =(1963) 1 S C W R 636 = (1964) 2 S C R 145.

■——Pre. — Maxims — Interpretation of Statutes — Contemporanea expositio est optima et fortissima in lege (Contemporaneous exposition is the best and strongest in law) — Rule does not apply to modern statutes. AIR 1962 S C 159.

●——Pre.—Maxims— Exturpi causa non oritur actio — Applicability — Illegality trivial—Plaintiff not required to rest his case on such illegality — Defendant not to be allowed to take advantage of that position —A. F. O. D. No. 273 of 1946 D/. 16-3-1952 (Pat), Reversed. See under Maxims. AIR 1960 S C 213.

——Pre. — Defence of India Rules (1962), R. 131 (2) (gg) and (i)— Order under dated 17-8-1964 — S. 44 is directory—Disregard of directory and mandatory provisions — Difference between — Section not infringed by order. See Defence of India Act (1962), S. 44. ILR (1965) 2 All 303.

——Preamble — Interpretation of Statutes — Statement of objects and reasons when can be resorted to in construing Statute.

The statement of objects and reasons attached to a Bill or to the Act are not aids to the construction of the terms of the statute which have, of course, to be given their plain and grammatical meaning. It is only when the terms of the statute are ambiguous or vague that resort may be had to the objects and reasons for the purpose of arriving at the true intention of the Legislature: AIR 1962 S C 1781 and AIR 1958 S C 578 and AIR 1960 S C 12, Foll. (1963) 2 I T J 556 (All).

——Pre. — Maxims — Expressio unis est exclusio alterius — Principle of, applies only when legislative intent is doubtful and not when it is clear. ILR (1961) 2 All 627 = 1971 All L J 470= 1961 All W R (H C) 361 = 1961 All Cr R 202 = 1962 (2) Cri L J 754 = AIR 1961 All 633.

——Pre. — Scope not restricted to debts incurred before commencement of Act — Interpretation of Statutes — Supplying of omissions. See Debt Laws— Madras Agriculturists' Debt Relief Act (4 of 1938), S. 13-A. (1965) 1 Andh W R 48.

——Pre.—Sales Tax — Andhra Pradesh General Sales Tax Act (6 of 1957), Sch. V (as amended by Act 3 of 1958), Ss. 8, 9 and Statement of objects and reasons —Expression 'Tobacco and all its products'— Connotation — Crushed stalks of tobacco come within purview of expression. (1963) 14 S T C 1 (AP).

——Pre.—Maxims — Actus curiae neminem gravabit. See Panchayats — Andhra Pradesh Panchayat Samities and Zilla Parishads Act (35 of 1959), S. 69 (1). (1962) 2 Andh W R 283.

——Pre. — "Worker" — Includes both casual and permanent workers. See Plantations Labour Act (1951), S. 30 (as it stood before amendment by Act 34 of 1960). ILR (1964) 16 Assam 550.

——Pre.—Fiscal statute — Interpretation of — Incidence of tax, assessment of tax liability, recovery and payment are governed entirely by its provisions. (1965) 67 Bom L R 138= ILR (1965) Bom 458 (DB).

——Pre. — Section being penal must be construed strictly — Word 'give' in sub-s (1) does not mean 'send'—Sub-s. (1) does not contemplate case of tenant remitting rent by money-order — Landlord receiving rent in that manner is not expected to 'send' receipt to tenant by registered post or otherwise. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 26. (1963) 65 Bom L R 836=1964 Mah L J 153=ILR (1964) Bom 273.

——Preamble — Interpretation of statutes — Retrospectivity of Act cannot be presumed.

It is settled law that retrospectivity of Act cannot be presumed unless there is some declared intention of the Legislature — Clear and unequivocal or unless there are some circumstances rendering it inevitable to take the other view, an Act is to be presumed as prospective and not retrospective. (1963) 65 Bom L R 657=1963 Mah L J 860 = ILR (1964) Bom 35 (DB).

——Preamble— Interpretation of Statutes — Mandatory and directory provisions.

Scope and object— Mandatory and directory provisions — Provisions of S. 5 and R. 4 (3) are mandatory and not directory. See W. B. Cinemas (Regulation) Act (39 of 1954), S. 5. (1963) 67 Cal W N 590.

——Pre. — Interpretation ot Statutes — Authoritative lexicon can be passed into service in interpreting statute. (1914) 1 K B 641, Rel. on. (1963) 67 Cal W N 558 (DB).

——Pre. — Maxims — Absoluta sententia expositore non indiget — Legislative intention — How gathered — Every part of statute should have effect. See Interpretation of Statutes. (1963) 4 Guj L R 817.

●——Pre—Extent of binding character of precedents in India — Principle of superiority of numercial strength—Applicability to Full Benches.

Per Bhagwati J. — The doctrine of judicial precedents as it prevails in India removes to a large extent the vice of rigidity in law by accepting the principle of superiority of numerical strength in its application to the High Courts in India. A Division Bench of the High Court is not bound by the previous decision of a Single Judge of the High Court and can in effect overrule such decision by pronouncing it to be incorrect and, similarly, a Full Bench of the High Court is not bound by the previous decision of a Division Bench of the High Court and can examine the correctness of such decision and declare that the law is not correctly laid down in such decision. In these cases, the principle of superiority of numerical strength amongst Benches of co-ordinate jurisdiction is recognized and given effect to.

The same principle of superiority of numerical strength among Benches of co-ordinate jurisdiction prevails so far as Full Benches of the High Court are concerned. It is of course axiomatic that a Full Bench constituted of three Judges of the High Court, which is the minimum strength of a Full Bench, is bound by the previous decision of another Full Bench constituted of three Judges of the High Court. That is clear from the fact that both the Full Benches are Benches of co-ordinate jurisdiction and the

numerical strength of the Judges composing both the Full Benches is the same. But a Full Bench consisting of a larger number of Judges can override the decision of another Full Bench consisting of a lesser number of Judges and declare that the law was not correctly laid down in such decision. State of Gujarat v. Gordhandas Keshavji, (1962) 3 Guj L R 269= AIR 1962 Guj 128 (FB).

——Pre — Legal maxims — Ignorance of law is no excuse — Miscellaneous appeal filed on court-fee of Rs. 2 instead of Rs. 2-8-0—Court-fees Act in force for more than 2 years—Contention that appeal on insufficient court-fee was filed in ignorance cannot be accepted - Ignorance of law is no excuse. A I R 1955 N U C (Madh B) 3064.

——Preamble — Scope — Provision does not prohibit defendant's summoning director and employees of plaintiff-Company — But, this procedure is to be condemned — Preponderance of authority is against such a practice — Provision of law will have to be read along with decided case on the point—See Civil P. C. (1908), O. 16, R. 1. ILR (1965) 2 Mad 650.

—— Pre. — Interpretation of Statutes—Re-enactment of statutes—See Panchayats—Madras Village Panchayats Act (10 of 1950), S. 107. I L R (1965) 2 Mad 325.

——Preamble — Precedents — When the Judges in a case are equally divided on a point, it would not be safe to cull out any guiding principle as constituting an acceptable precedent. (1963) 2 I T J 424=(1963) 2 Mad L J 508 = (1963) 50 ITR 809=I L R (1964) 1 Mad 93.

——Pre—Construction—Precedents— Value of—Precedents are useful guides—Precedents—Deed—Construction.

Precedents in the context of construction of documents will have their own limitations, because rarely the problem of construction is identical. Languages in documents vary and they have also to be read in the context, and surrounding circumstances in order to gather the true intention. Nevertheless, decisions are frequently cited and are looked into as they are of undoubted value and will show how the question of construction is approached and decided. 77 Mad L W 666.

——Preamble — Interpretation of Statutes — General words occurring in statute — They have to be construed in context and not in isolation. (1963) 2 Lab L J 588 (Madras).

● ——Pre.—Maxims—Approbate and reprobate—Rule as to — Different from estoppel — Rule is an application of doctrine of election—Its essentials—Its applicability in respect of an erroneous statement made by party to suit. AIR 1961 Mad 511 (FB).

—— Preamble — Interpretation of Statutes—Act containing interpretation clause — Usage when can be called in to explain words occurring in the Act.

Per G. K. Govind Bhat, J.—When an Act contains an interpretation clause, unless there be something repugnant in the subject or context, that definition furnishes the dictionary for interpreting the expressions employed in the Act. When the meaning of the Act is so clear as to leave no doubt, usage cannot be called in to explain them; when the words of an Act are doubtful, usage may be called in to explain them.

Per K. S. Hegde, J.—It must not be forgotten that a definition given in a statute is a key to open the legislative mind. If one brushes aside that key he may not be able to unlock the legislative mind. Every definition given in statute must hold the field unless it is satisfactorily shown that in a given context that definition is clearly inapplicable. I L R (1964) Mys 697.

——Preamble — Interpretation of Statutes — Special provision.

Notification purported to be issued under S. 17 (b), Mysore Excise Act (5 of 1901) imposing fresh levy, not in continuation of pre-Constitution levy—Levy is not valid—See Constitution of India, Art. 277. ILR (1964) Mys 116.

——Pre—Interpretation of Statutes.

Power given to Mysore State Electricity Board under S. 79 (C) is very wide and method and manner of exercising it is entirely left to 'Board' — Board instead of framing its own regulations adopting State Civil Services Rules as its own regulations to govern service conditions of its emplopees — 'Board' passing order inconsistent with Note 7 to R. 41 — Employees of 'Board' held not entitled to benefit of N. 7 to R. 41—Note should yield place to order in question—Rules do not bind 'Board' on their own force—As 'Board' has power to make regulations, it has also the power to amend any of the provisions contained in 'Rules' — Order clear and unambiguous applying to all selectees — No question of permitting both Note and order to operate in different fields by adopting rule of harmonious construction — See Electricity (Supply) Act (1948), S. 79 (C). (1964) 2 Mys L J 7.

——Preamble—Interpretation of Statutes—Language of statute plain and unambiguous.

When the language of a section is plain and unambiguous, no question of interpretation arises. There is no justification to mutilate the provision on the basis of the supposed intention of the legislature. The legislative command as gathered from the language of the relevant provision must be obeyed. (1964) 1 Mys L J 40-1.

——Preamble — Interpretation of Statutes—Taxing Statute—Provisions clear and validly enacted—Court cannot sit in judgment over soundness of policy enunciated in the provisions. (1964) 52 I T R 987 (Mys).

——Pre — Interpretation of Statutes — Words plain and unambiguous.

The Court is not concerned with the results that might ensue from giving effect to the plain meaning of the words used by the Legislature. If the results are unfortunate, it is for the Legislature to provide for a remedy and not for the Court to usurp the functions of the Legislature by straining the meaning of the words which lend no scope for any ambiguity or alternative construction. (1963) 2 Mys L J 532=ILR (1963) Mys 499 (DB).

——Preamble — Interpretation of Statutes—Meaning of words — Phrases should not be viewed detached from context in Statute.

The key to the opening of every law is the reason and spirit of the law; it is the animus imponentis, the intention of the law-maker expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, the particular phrase is not to be viewed detached from its context in the statute : (1867) L R 2 Q B 144 and 1898 A C 735, Relied on. (1963) 2 Mys L J 495 (DB).

——Preamble — Maxims.

Two maxims have to be borne in mind in construing a deed. Courts are bound so to construe contracts or agreements by deed or parol 'ut res magis valeat quam pereat' (i. e.; that it may be made to operate rather than be inefficient). The other maxim is 'falsa demonstratio non nocet', i. e., a mere false description does not vitiate if there be sufficient certainty as to the object. In order to ascertain this the false description in the instrument should be omitted. Without it, if there is certainty as to the property conveyed, the instrument is valid. AIR 1918 P C 102;

(1850) 117 E R 445 (450), Foll. 1954 Nag L J 573 = ILR (1954) Nag 634 = AIR 1954 Nag 328 (DB).

——Preamble — Construction — For ascertaining intention of parties under one document, decision on construction of another document cannot ordinarily afford any guidance, unless the terms are exactly similar to each other. AIR 1965 Orissa 121.

——Preamble — Legal maxims—Odiosa et inkonesta non sunt in lege presumenda. ILR (1960) Cut 230.

——Preamble — Interpretation of Statutes — Constitution of India, Preamble and Art. 246 — Question of motive of legislature is immaterial where there is no lack of legislative competence to pass an Act: 1954 S C R 1 and 73 C L R 187 and 83 C L R 1, Foll. (1964) ILR 43 Pat 25.

——Preamble — Maxims — 'Actus curiae neminem gravabit' and 'nunc pro tunc'—Not applicable to order passed by Magistrate under S. 145 (4), Criminal P. C. 1962 BLJR 241=1962 (2) Cri L J 396=1962 B L J R 630 = AIR 1962 Pat 352.

——Preamble — Interpretation of Statutes — Pari materia statutes.

Second Proviso — Word 'rent' — It means rent of agricultural land as defined in S. 4 (15) of Bihar Act (14 of 1949). See Santhal Parganas Justice Regulation (Regulation 5 of 1893), S. 9. 1962 B L J R 49 = ILR 41 Pat 561.

——Preamble — Deed — Construction—Principle of falsa demonstratio held applied — Oral evidence held irrelevant. AIR 1955 N U C (Pat) 1591.

——Preamble — Custom—Judicial decisions—Decree on compromise — Evidentiary value of.

A judicial decision can be relied upon as proof of a custom or immemorial usage. Where, however, there has been an appeal from the decree of a Court which ends in a compromise, that is circumstance which deprives the decision of much of its evidentiary value. (1949) 28 Pat 631.

——Preamble — Applicability — Although special provision overrides the general, such overriding is only to the extent of inconsistency between the two —No doubt, S. 15 (2) overrides S. 15 (1) — However, it does not altogether exclude the applicability S. 15 (1) — As such, S. 15 (1) (a) will apply to sales by a female of properties other than those dealt with in S. 15 (2) — Property acquired by wife as gift from her husband — Such acquisition cannot be equated to inheritance by her from her husband and hence S. 15 (2) will not apply — Since S. 15 (1) (a) will apply, her son is entitled to claim superior right of pre-emption. See Punjab Pre-emption Act (1 of 1913) as amended in 1960, S. 15 (1). ILR (1966) 1 Punj 259=67 Punj L R 1108.

——Preamble — Interpretation of Statutes — Use of "shall" and "may."

Delhi Rent Control Act (59 of 1959), S. 9 (3) — "May" does not mean 'must' — Controller is not bound to fix the standard rent of the part sublet. See Houses and Rents — Delhi Rent Control Act (59 of 1958), S. 9 (3). (1965) 67 Pun L R 491.

——Preamble — Payment of Wages Act (1936), S. 15 — Jurisdiction and powers of the authority — Tribunal constituted under the Act has no jurisdiction to determine question of legality and validity of order terminating employee's services. AIR 1962 All 52, Dissent from. See Payment of Wages Act (1936), S. 15. (1963-64) 24 F J R 189 (Punj).

——Preamble — Maxims—Expressio unis est exclusio alterius. See Civil P. C. (1908), S. 9. AIR 1962 Punj 426.

——Preamble — Law to be applied — Limbdi State —British Indian Laws were applied. AIR 1955 N U C (Sau) 5752.

——S. 1, Preamble — Marginal note does not control body of section — Language clear and unambiguous. It is of some assistance inasmuch as it shows drift of section. See Interpretation of Statutes. 1955 Cri L J 171 (2) (Madh-Bha) = AIR 1955 N U C (Madh-Bha) 36 (c).

——S. 1 (4) — Constitution of India, Art. 226—Quasi-judicial orders — Order under Displaced Persons (Verification of Claims) Act. See Constitution of India, Art. 226. AIR 1957 Punj 186.

——S. 2 — Hindu Marriage Act (1955), Ss. 19 and 3 (b) — Suit for declaration of nullity — City Civil Court has exclusive jurisdiction—Suit cannot be filed in High Court. See Hindu Marriage Act (1955), S. 19. AIR 1960 Cal 577.

——S. 2 and O. 23, R. 1 — Concession by counsel on a question of law and abandonment of plea — Distinction.

There is a distinction between a concession made by a counsel on behalf of his client on a question of law and an abandonment of a plea by him on behalf of his client on a question which involves an investigation into questions of fact. If the concession is of the former category, that concession does not bind the client so as to preclude him from urging that plea in a higher Court. But, if, on the contrary the concession is not a concession on a question of law or as to the interpretation of a statute but is really no concession in any sense of the term but what the counsel did was to abandon a part of the case of his client, it is clear that that part of the case which was so abandoned which the counsel had the power to abandon cannot be revised in the higher Court. ILR (1964) Mys 1067.

——Ss. 2 and 80, O. 1, R. 10—Management of enemy concern handed over to defendant firm by Central Government under R. 113A, Defence of India Rules — Suit against defendant firm as representing enemy firm — Parties — Notice. See Civil P. C. (5 of 1908), O. 1, R. 10. AIR 1954 Pat 596.

SECTION 2 (2)

——S. 2 (2) — Religious Endowments Act (1863), S. 14 — Order under for removal of trustees or specific performance — Order is decree and is appealable. See Religious Endowments Act (1863), S. 14. AIR 1961 All 125.

——Ss. 2 (2), 47 — Conversion of application into plaint — Order held amounted to refusal to execute decree — Appeal held lay under S. 47 (2) read with S. 2 (2). See Civil P. C. (5 of 1908), S. 47. AIR 1955 All 686.

——S. 2 (2) — Limitation Act (1908), Art. 182 (2) — Appeal may be against decree or order sought to be executed. AIR 1948 Bom 337, Dissented. See Limitation Act (1908), Art. 182 (2). AIR 1955 All 552.

——Ss. 2 (2) and 47 — Party to decree claiming property sold in execution as his property—No execution sought against such party — Decision of question is one under S. 47 — Decision is open to appeal and second appeal. AIR 1952 All 361.

——Ss. 2 (2), 104 (1), 151 — Order removing supurdar from office — If appealable. See Civil P. C. (5 of 1908), S. 104 (1). AIR 1951 All 564.

●——Ss. 2 (2), 102—Suit of nature of small causes—Execution proceeding arising out of—Second appeal. AIR 1950 All 580 (FB).

——S. 2 (2)—Andhra Court-fees and Suits Valuation Act (7 of 1956), S. 64 — Andhra Pradesh General Sales Tax Act (6 of 1957), S. 23 (1) — Refund of court-fee cannot be granted while remanding tax matter to Board of Revenue—Only proceeding commenced with plaint would amount to suit — Tax

matter not being a suit, section not applicable. See Andhra Court-fees and Suits Valuation Act (7 of 1956), S. 64. AIR 1965 Andh Pra 395.

——S. 2 (2) and O. 20, R. 12 — Decree — Construction — Expression there will be a decree for mesne profits in final decree for mesne profits — Expression cannot be equated to a direction to pass a decree in future. ILR (1963) Andh Pra 560.

——Ss. 2 (2), 107 (2), 104 (2), O. 7, R. 11 — Civil Misc. Appeal rejected as incompetent — Order amounts to decree and is appealable — Appeal not barred by S. 104 (2). See Civil P. C. (5 of 1908), S. 107 (2). AIR 1961 Andh Pra 112.

——Ss. 2 (2), 48, O. 34, R. 6 — After sale of mortgaged properties, personal decree for balance passed under O. 34, R. 6 — Execution of personal decree — Starting point of limitation under S. 48 is the decree. See Civil P. C. (5 of 1908), S. 48. A I R 1955 Andhra 251.

——Ss. 2 (2), 118 — Presidency Towns Insolvency Act (1909), S. 13—Original Side decree without provision for costs — Executability — Can be basis for insolvency notice — Effect of R. 289 — Applicability of S. 118, Civil P. C. — Plea of invalidity of decree—If can be raised at stage of notice — Powers of Insolvency Court. See Presidency Towns Insolvency Act (1909), S. 13. AIR 1959 Bom 357.

——S. 2 (2) — Court-fees Act (1870), Sch. 2, Art. 11 — Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 40 — Decree by Tribunal — Appeal from decree — Court-fee on memorandum of appeal. See Court-fees Act (1870), Sch. 2, Art. 11. AIR 1956 Bom 563.

——S. 2 (2) — Court-fees Act (1870), S. 8B (3) (Bengal Amendment) — Order under, dismissing suit for non-payment of court-fee adjudged — Order amounts to rejection of plaint under O. 7, R. 11 (c), Civil P. C. and is appealable as decree. 56 Cal W N 853 : AIR 1953 Cal 42, Overruled. See Court-fees Act (1870), S. 8B. AIR 1961 Cal 491 (FB).

——S. 2 (2), O. 7, R. 7 — Hindu Succession Act (1956), S. 14 — Retrospective operation—Preliminary decree in partition suit, passed before Act, giving Hindu widow limited estate—Effect of S. 14 coming into force — (Hindu Women's Rights to Property Act (1937), S. 3). See Hindu Succession Act (1956), S. 14. AIR 1958 Cal 472.

——S. 2 (2) — Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (1950), S. 14 (4) — Order under is not appealable — 59 Cal W N 974, Dissented from. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (1950), S. 14 (4). AIR 1956 Cal 311.

——Ss. 2 (2) and 109 — Limitation Act (1908), Art. 179 — Leave to appeal from revisional judgment of High Court — Limitation—Date of signing cost-sheet not material. See Limitation Act (1908), Art. 179. AIR 1953 Cal 13.

——S. 2 (2) — Decision under S. 10 is not decree within meaning of S. 2 (2), Civil P. C. See Hindu Marriage Act (1955), S. 10. ILR (1965) Guj 850 = (1965) 6 Guj L R 714 = AIR 1966 Guj 139.

——S. 2 (2)—Proceeding under S. 11, Kerala Agriculturists Relief Act (1958), is a decree and it follows that an appeal and second appeal will lie against the same under circumstances indicated by Civil Procedure Code for suits. See Debt Laws—Kerala Agriculturists Relief Act (1958), S. 11. 1960 Ker L J 1315 = (1960) 2 Ker L R 451=1960 Ker L T 1177.

——Ss. 2(2), 97, 109—Constitution of India, Art, 133 —"Decree," meaning of — Finality of order — Test — Suit for rendition of accounts and payment of money — Preliminary decree — Appeal to Supreme Court — Maintainability. See Constitution of India, Art. 138. AIR 1956 Madh Bha 151.

——Ss. 2 (2), 109 — Constitution of India, Art. 133 (1) — "Final order" and "decree"—Meaning of—See Constitution of India, Art. 133 (1). AIR 1953 Madh Bha 45.

——S. 2 (2) — Representation of the People Act (1951), S. 90 (1) — "Trial" — Meaning of — (Criminal P. C. (1898), S. 4 (1) (k) — (Words and Phrases — "Trial"). See Representation of the People Act (1951), S. 90 (1). AIR 1958 Madh Pra 168.

——S. 2 (2)—Order under S. 47 (2)—Order is decree within meaning of S. 2 (2) and is appealable. See Civil P. C. (1908), S. 47 (2). (1965) 2 Mad L J 548 = AIR 1966 Mad 308.

——S. 2 (2) — Provincial Insolvency Act (1920), S. 28-A, First Proviso—"Final decision by competent Court"—Preliminary decree is not final decision. See Provincial Insolvency Act (1920), S. 28A, First Proviso. AIR 1956 Mad 413.

——Ss. 2 (2), 47 and 96 — Houses and Rents — Madras Non-residential Buildings Control Order (1945), S. 8 (3) — Order for eviction — Execution before civil Court under S. 8 (3) — Dismissal — Appeal against — Maintainability. See Houses and Rents — Madras Non-residential Buildings Control Order (1945), S. 8 (3). AIR 1951 Mad 640.

——S, 2 (2) and O. 34, R. 7 — Debt Laws — Madras Agriculturists' Relief Act (14 of 1938), Ss. 3 (3), 9A and 19 — Usufructuary mortgage — Preliminary decree for redemption in 1944—Application for scaling down under S. 9A, inserted by Madras Act, 23 of 1948 — Decree can be scaled down — Case comes under S. 16 (2) of amending Act. See Debt Laws — Madras Agriculturists' Relief Act (14 of 1938), S. 3(iii). (1955) 1 Mad L J 215=AIR 1955 NUC (Mad) 3893.

——S. 2 (2), O. 34, Rr. 7, 8 — Decree partly preliminary and partly final—Preliminary decree in redemption suit —Final determination of amount payable by mortgagor — Time fixed for payment — Decree held could not be treated as entirely preliminary. 68 Mad L W 383 = AIR 1955 N U C (Mad) 3888.

——S. 2 (2) — Order refusing to wind-up company has not the force of decree. See Court-fees Act (1870), Sch. 2, Art. 11. (1965) 1 Mys L J 557 = AIR 1966 Mys 150.

——S. 2 (2) — Suit challenging order of retirement based on birth date entered in service sheet of plaintiff — Satisfactory evidence as to correct date of birth not adduced by plaintiff—Suit dismissed, however, Judge expressing a doubt that birth date as entered in service register may not be correct — Appeal — Appellate Court relying on observation of trial Judge directing regular thorough enquiry within four months into date of birth—Held, appellate Court could not have issued order in the nature of writ but should have analysed evidence and come to conclusion whether contention of plaintiff respondent was correct or not. ILR (1963) Mys 961.

——Ss. 2 (2), 144, 151—Order under S. 7, Guardians and Wards Act not decree — Order reversed—Restitution — Inherent power. See Civil P. C. (5 of 1908), S. 144. AIR 1952 Nag 190.

——Ss. 2 (2), 96, 115, O. 22, R. 3 — Other remedy open. AIR 1951 Nag 269.

——Ss. 2 (2), 152, 151, 35 and O. 20, R. 6 (1) — Decree not in conformity with judgment — Amendment must be allowed—Non-mention of costs in judgment — Decree mentioning costs — Amendment of decree. See Civil P. C. (1908), S. 152. (1965) 7 O J D 275 = ILR (1965) Cut 808=AIR 1966 Orissa 225.

——Ss. 2 (2), 144, 115, 96 — Order dismissing application for restitution — Appeal and not revision lies against such order.

A suit was instituted by the plaintiff for a declaration that the trust in dispute was a private trust and not a public trust, and also for recovery of possession of the same. The suit was decreed. Accordingly on the basis of the decree the plaintiff got delivery of possession over the property in suit. The decree was however reversed in appeal. Subsequently an application was filed by the defendant for restitution of the property taken over in delivery of possession by the plaintiff on the basis of the decree passed by the trial Court. The trial Court on hearing the application made for restitution held that "the proper authority for recovering the possession of the suit property from the opposite party is the Assistant Commissioner of Endowments.

Held that the order passed by the trial Court dismissing the application made for restitution was clearly covered by the definition of the word 'decree' as given in S. 2 (2). The order clearly determined the maintainability of the application made before it under S. 144. Hence the remedy of the defendant was to file an appeal against the order passed by the trial Court and not a revision. ILR (1965) Cut 943 = 32 Cut L T 393.

——Ss. 2 (2) (b), 47, 104, 115 and O. 43, R. 1 — Expression 'dismissal for default' in S. 2 (2) (b) — Word 'default' is not confined only to default of appearance and includes other defaults as well—Expression 'dismissed for default' is not confined to dismissal for default in suits or appeals but extends to default on application under S. 47 — Dismissal of execution case for non-production of succession certificate by heirs of decree-holder amounts to dismissal of case for default —Dismissal-order would not be decree — Dismissal-order not being within purview of S. 104 and O. 42, R. 1 would not be appealable order too—Appeal would not lie against dismissal order and revision against order would be competent : A I R 1941 Mad 836 (FB) and AIR 1955 AP 75 (FB) and AIR 1949 All 261, Rel. on. 628 Cut L T 628=ILR (1965) Cut 823.

●——S. 2 (2), O. 47, R. 1, O. 7, R. 11 — Review on ground of subsequent events — Court directing payment of deficit court-fee on memorandum of appeal by certain date, failing which appeal to stand rejected — Default in payment due to failure of lawyer — Date of decree — Application for review — Whether lies. See Civil P. C. (1908), O. 47, R. 1. AIR 1957 Pat 430 (FB).

●——Ss. 2 (2) and 109 — Constitution of India, Art. 133 (1)—Decree—Each matter decided in suit cannot constitute separate decree — AIR 1936 Mad 881, Dissented from. See Constitution of India, Art. 133 (1). AIR 1956 Pat 325 (FB).

——S. 2 (2) — Court-fees Act (1870), Sch. 1, Art. 1 and Sch. 2, Art. 11 — Applicability — Order under S. 9, Displaced Persons (Debts Adjustment) Act—Nature of—(Displaced Persons (Debts Adjustment) Act (1951), Ss. 5 and 9). See Court-fees Act (1870), Sch. I, Art. 1. AIR 1956 Pepsu 53.

——Ss. 2 (2), 152, O. 20, R. 6—Decree not in accordance with judgment — Power of Court to amend — Amendment when allowed. See Civil P. C. (1908), S. 152. AIR 1959 Punj 88.

——S. 2 (2)—Court-fees Act (1870), Sch. I, Art. 1 and Sch. II, Art. 11—Order of Tribunal dismissing application under S. 18 (1) of Act 70 of 1951 — Appeal against—Court-fee on memorandum of appeal—(Debt Laws—Displaced Persons (Debts Adjustment) Act (70 of 1951), S. 18 (1) — AIR 1954 All 672 and A I R 1955 Raj 81, Not followed. See Court-fees Act (1870), Sch. I, Art. 1. AIR 1956 Punj 153.

——S. 2 (2)—Houses and Rents—Punjab Urban Rent Restriction Act (6 of 1947), S. 13 — 'Decree' — Order passed by Rent Controller. See Houses and Rents — Punjab Urban Rent Restriction Act (6 of 1947), S. 13. AIR 1951 Punj 329.

——S. 2 (2)—Court-fees Act (1870), Sch. II, Art. 11 — Order in probate proceedings — Appeal against — Court-fee — (Succession Act (1925), S. 295) — 9 Ind Cas 538 (Mad) and 35 All 448 and 17 All 475, Dissented from. See Court-fees Act (1870), Sch. 2, Art. 11. AIR 1956 Raj 119.

SECTION 2 (4)

●——S. 2 (4) — Trade and Merchandise Marks Act (1958), Ss. 105 and 2 (e)—Suit for passing off goods — District Court of Mysore closed for vacation — Plaintiff instituting suit in High Court of Mysore—High Court if possesses ordinary original civil jurisdiction then alone it would be 'District Court' within S. 2 (e) —High Court, though at apex of Civil Courts, possesses no original jurisdiction in matters not expressly declared within its cognizance — It is not invested with ordinary original jurisdiction of District Court and is not competent to entertain passing off actions under S. 105—Mysore Act 5 of 1962, S. 12 of Mysore Act 1 of 1884 and Ss. 24 (1) (b) (i) and 151 of Civil P. C., are of no avail. See Trade and Merchandise Marks Act (1958), S. 105. AIR 1965 SC 1449.

——Ss. 2 (4) and (8)—Industrial Disputes Act (1947), S. 7 (3) (b) — District Judge includes Additional District Judge — General Clauses Act (1897), S. 3 (15). See Industrial Disputes Act (1947), S. 7 (3) (b). A I R 1954 Assam 161.

SECTION 2 (5)

——Ss. 2 (5), 13, 43, 44—Foreign Court—Submission to jurisdiction — Execution of decree in foreign State —Foreign Court, decree by—No submission to jurisdiction — Decree is a nullity and cannot be executed in India — Country of foreign Court (Gwalior) subsequently becoming part of India — Decree cannot still be executed, since it was a nullity when it was passed. AIR 1955 All 490.

——S. 2 (5)—Constitution of India, Art. 261 (3) — Ex parte decree passed by Bombay High Court against resident of former Hyderabad State — Execution in Hyderabad. See Constitution of India, Art. 261 (3). AIR 1953 Hyd 19.

●——Ss. 2 (5), 13, 14, 20 (c) and 44 — Per majority, Dixit and Chaturvedi JJ. Contra: Decree by Court in British India — Decree passed against foreigner not submitting to Court's jurisdiction — Decree can be executed in Courts of Madhya Bharat after 26-1-50— AIR 1952 Mys 69, AIR 1954 Raj 4 and AIR 1954 Cal 67, Dissented from. AIR 1955 Madh.Pra 1 (FB).

——Ss. 2 (5) and 13 — Decree of foreign Court — Ex parte decree in Mysore on 27-7-1950 can be executed in Part A State. A I R 1954 Mad 1051.

SECTION 2 (6)

●——Ss. 2 (6), 13 (a) — Decree against foreigner — Foreigner not submitting to jurisdiction — Merger of foreign country into India — Decree executable in quondam foreign Court. AIR 1951 Bom 125 (FB).

——Ss. 2 (6), 13 — Foreign judgment. A I R 1956 Orissa 136.

——S. 2 (7) — Government Pleader (Madras) — Appointment of — Rules as to — Appointment held not bona fide — Eligibility of candidate appointed, to be determined as on the date from which the appointment was to take effect rules held had no statutory force — High Court declined to issue writ of quo warranto—Constitution of India, Art. 226; A I R 1955 Mad 305 (FB), Disting. — The Province of the High Court in a quo warranto proceeding is not to search the conscience of the appointing authority to ascer-

tain his motive but to determine whether there is usurpation of public office. **ILR (1961) Mad 553 = AIR 1961 Mad 450.**

——S. 2 (8) — Commissioner under Madras Act 5 of 1955 is only Tribunal and not Court. **1963 Mad W N 359=(1963) 2 Mad L J 131=(1963) 2 I T J 43=ILR (1964) 2 Mad 127.**

SECTION 2 (9)

——S. 2 (9) and O. 47 R. 1 — High Court Rules and Orders—(All) Rules of Court (1952), Chap. 5, R. 12 and R. 13 — Application for modification of an order staying execution of decree is not one for review of judgment—Not required to be placed before a Bench of two Judges. See High Court Rules and Orders—(All) Rules of Court (1952), Chap. 5, R. 12. **AIR 1964 All 530.**

——S. 2 (9)—Constitution of India, Art. 133 — Order on application under S. 34, Arbitration Act is not a "judgment, decree or final order". See Constitution of India, Art. 133. **AIR 1961 Mys 98.**

——S. 2 (9), O. 41, R. 11 — Letters Patent (Nag.), Cl. 10 — Judgment — Order dismissing appeal under O. 41, R. 11, Civil P. C. See Letters Patent (Nag) Clause 10. **AIR 1956 Nag 211.**

—— S. 2 (9)—Constitution of India, Art. 133—Judgment or final order. See Constitution of India, Art. 133. **AIR 1951 Punj 30.**

SECTION 2 (10)

——S. 2 (10) and O. 21, R. 12 — Judgment-debtor — Meaning of. See Civil P. C. (5 of 1908), O. 21, R. 12. **AIR 1952 All 618.**

SECTION 2 (11)

——S. 2 (11) and O. 22, Rr. 3, 9 — Death of one of plaintiffs pending appeal in an ejectment suit—Some only of the legal representatives of deceased joined—Appeal does not abate — Effective decree, however, not possible—Appeal must be dismissed for defect in form. See Civil P. C. (1908), O. 22, R. 3. **A I R 1964 All 233.**

——S. 2 (11)—Transfer of Property Act (1882), S. 55 —Succession Act (1925), S. 167 — Covenant for good title cannot be enforced against persons who are in possession of part of property of deceased vendor as legatees from universal legatee of vendor. See T. P. Act (1882), S. 55. **A I R 1961 Andh-Pra 29.**

——Ss. 2 (11), 50, 52 and O. 22, R. 3—Decree against person in possession—Whether binding on real heir. **A I R 1951 Orissa 212.**

——S. 2 (11)—Scope — H, as representative of other members of family of deceased bringing suit for damages—Held he was competent to bring the suit on their behalf and for their benefit. See Fatal Accidents Act (1855), S. 1. **(1964) 66 Pun L R 804=34 Com Cas 936.**

SECTION 2 (12)

——S. 2 (12), and O. 20, Rr. 12 and 18—R. 18 applies to partition suit and not R. 12: AIR 1923 Mad 19, held not good law in view of A I R 1951 Mad 938 (FB). See Civil P. C. (5 of 1908), O. 20, R. 12. **AIR 1957 Andh-Pra 766.**

——S. 2 (12) and O. 20, R. 12 — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cls. 4 and 6 — Ejectment of tenant after obtaining permission of Rent Control Officer—Ascertainment of mesne profits — Criterion is not what plaintiff might have got had he been in possession but value of user of tenement to defendant after termination of tenancy — Protection of Rent Control Order not available to erstwhile tenant — Held in context of unavailability of houses on rent, value of user of tenement to defendant would necessarily be much more than what defendant paid as rent. A I R 1955 Nag 234, Not Foll. (Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cls. 4 and 6), See Civil P. C. (5 of 1908), O. 20, R. 12. **ILR (1965) Bom 363=1965 Mah L J 688=AIR 1966 Bom 266.**

——S. 2 (12), O. 20, R. 12; O. 2, R. 2 and S. 10—Suit for declaration of title and possession of land decreed in plaintiff's favour — Separate suit for future mesne profits—Suit is not debarred under O. 2, R. 2—O. 20, R. 12 has no application — Fact that area and boundaries of land taken possession of by plaintiff disputed in execution proceedings does not justify stay of suit.

A plaintiff brought a suit for declaration of his title and recovery of possession of a strip of land. There was no prayer in the suit for mesne profits, past or future. After contest the suit was decreed, the plaintiff's title declared and order made that possession be restored. After obtaining the decree and putting it into execution the plaintiff brought a suit for mesne profits for a period subsequent to the filing of the first suit.

Held, (i) that a distinction must be drawn between a suit for recovery of past mesne profits and a suit for mesne profits pendente lite or future mesne profits. If the plaintiff had claimed mesne profits for any period for which he could have claimed in the first suit itself, he would have been barred by O. 2, R. 2, because the cause of action had already arisen. A person who asked for and obtained possession but did not claim mesne profits in the first suit would not be debarred from claiming them in respect of a future period in a future suit: AIR 1963 M P 194 and AIR 1949 P C 78 and AIR 1918 Nag 242, Rel. on. (ii) that O. 20, R. 12 would not have bearing on a suit, in which the plaintiff asked for declaration of title and possession only reserving his right to claim future mesne profits in a separate suit; (iii) that the judgment-debtor had asked for a remeasurement and correction of the boundaries or the area of the strip, possession whereof was already given to plaintiff in execution of the decree of the first suit, was not a proceeding which would call for a stay of the suit under S. 10 of Civil P. C., or as for that matter under any other provision of law. If the area given to the plaintiff was substantially reduced, in further proceedings the defendants could certainly ask for a pro rata restitution out of the mesne profits awarded in the suit. **1965 Jab L J 1012=AIR 1966 Madh Pra 186 (Pt B).**

——S. 2 (12), O. 20, Rr. 12—'Mesne profits'—Suit for specific performance of agreement of reconveyance decreed—Liability of defendant for mesne profits—It arises only when title actually passes to plaintiff.

Until a conveyance is actually executed pursuant to an agreement of sale, the promisee under the agreement is not entitled to any proprietary interest in the property at all. Even upon a decree for specific performance, no title to the property passes until a conveyance is actually executed by the defendant in obedience to the decree or by the Court in execution of the decree. Until the title actually passes to the plaintiff, the defendant continues to be the owner of the property and he cannot be said to be in unlawful possession thereof and therefore liable for mesne profits. **(1965) 1 Mys L J 253 = A I R 1966 Mys 215 (Pt B).**

——S. 2 (12); O. 20, R. 12—Mesne profits—Claim for —Wrongful deprivation not proved—Effect. See Civil P. C. (5 of 1908), O. 20, R. 12. **AIR 1957 Raj 358.**

——Ss. 2 (14), (2), 96 (3), 104; O. 23, R. 3; O. 43, R. 1 (m); O. 47, R. 1—Court-fees Act (1870), Sch. 1, Arts. 4, 5; Sch. II, Art. 1 — Order recording compromise — Review. See Court-fees Act (1870), Sch. 1, Art. 4. **AIR 1957 Pat 143.**

—S. 2(17)—Constitution of India, Art. 311 — Civil Post and Civil Service — They are used in contradistinction to "service in or post under the defence forces" of Government of India — That the holder does not get any remuneration does not make him any the less a holder of a "Civil Post" — (Words and Phrases). See Constitution of India, Art. 311. AIR 1955 Cal 556.

—Ss. 3 and 115—Court subordinate to High Court —Tahsildar and Revenue Divisional Officer acting under S. 16 of Andhra Tenancy Act are not Courts subordinate to High Court—(Tenancy Laws—Andhra Tenancy Act (18 of 1956), S. 16). See Civil P. C. (5 of 1908), S. 115. AIR 1960 Andh Pra 49.

—S. 3—Appeal under—District Court's jurisdiction —Ordinary and not special — Revision in High Court maintainable. See Houses and Rents—Madhya Pradesh Accommodation Control Act (23 of 1955), S. 9(4). I L R (1963) Madh Pra 347.

—Ss. 3 and 115, 5(2)—Subordinate Court—Deemed Courts under S. 23(3) of (Bombay) Mamlatdars' Courts Act (2 of 1906), if 'Civil Courts' and if subordinate to High Court — Determination whether Court under particular enactment is Civil Court—Test for — Expression 'Civil Court' and S. 3 of Civil P. C.—Both to be widely construed — (Bombay) Mamlatdars' Courts Act (2 of 1906), S. 23(3). See Civil P. C. (5 of 1908), S. 115. (1965) 1 Mys L J 223=AIR 1966 Mys 5.

—Ss. 4 (1) and 42 (as amended in U. P. by Act 24 of 1954) — Execution of decree passed by Nyaya Panchayat—Powers of civil Court—S. 93 (2) of U. P. Act 26 of 1947 overrides provisions of S. 42, Civil P. C.—Transferee civil Court empowered to execute decree as if passed by itself — U. P. Panchayat Raj Act (26 of 1947), S. 93(2).

Section 93 of the U. P. Panchayat Raj Act being a special law overrides the provisions of S. 42, Civil P. C. (as amended by U. P. Act 24 of 1954). A Munsif to whom a decree passed by a Nyaya Panchayat is transferred under S. 93(2) for execution can execute the same as if it were passed by itself by attachment or sale of immovable property. 1965 All L J 423= AIR 1966 All 218 (Pt A).

—S. 4—Act stands repealed by Code of Civil Procedure (Amendment) Act, 1951, S. 20 — Hyderabad Act was not special or local law then in force—Hyderabad Act in new set up could not be implemented—Interpretation of Statutes — Repeal by implication — Act ceasing to serve useful purpose. See Hyderabad Suits Against Government Act (5 of 1320, Fasli). AIR 1965 Andh Pra 288.

—S. 4 and Pre. — Merged States (Laws) Act (1949), S. 5 — Whether repeals Para. 35 of Himachal Pradesh (Courts) Order (1948)—Interpretation of Statutes — General Clauses Act (1897), S. 6A. See Merged States (Laws) Act (1949), S. 5. AIR 1951 Him Pra 61.

—S. 4 — Appeal under — District Court's jurisdiction — Ordinary and not special — Revision in High Court maintainable. See Houses and Rents—Madhya Pradesh Accommodation Control Act (23 of 1955), S. 9 (4). ILR (1963) M P 347.

—Ss. 4, 104, O. 43, R. 1, O. 47, R. 7 — Letters Patent (Nagpur), Cl. 10 — Refusal to review—Appeal. See Letters Patent (Nagpur), Cl. 10. AIR 1956 Nag 215.

—Ss. 4 and 104 (2) — Section 104 (2) does not bar appeal from decision of Single Judge to Division Bench — (Letters Patent (Nagpur), Cl. 10). See Civil P. C. (5 of 1908), S. 104 (2). AIR 1956 Nag 211.

—Ss. 4 and 5(4) and (5), Pre. — Nature of commission — Applicability of Civil P. C. and Evidence Act — (Evidence Act (1872), S. 1). See Commissions of Inquiry Act (1952), S. 4. AIR 1960 Punj 86.

—Ss. 4, 3, 1(4)—Constitution of India, Art. 226 — Quasi-judicial orders—Order under Displaced Persons (Verification of Claims) Act — (Displaced Persons (Claims) Act (1950), Ss. 5, 6) — (Displaced Persons (Claims) Supplementary Act (1954)) —(Displaced Persons (Debts Adjustment) Act (1951), Ss. 2 (3) and 32)— (Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 7). See Constitution of India, Art. 226. AIR 1957 Punj 186.

—Ss. 4, 142, 151; O. 45, R. 7, O. 47, R. 1 — Privy Council Rules, 1920, R. 12 — Certificate under — Power of High Court to cancel or withdraw it — F. C. Enlargement of Jurisdiction Act (1948), S. 6 — Constitution of India, Art. 135. See Privy Council Rules, 1920, R. 12. AIR 1951 Punj 43.

—Ss. 4 (1) and O. 11, R. 21 — Constitution of India, Art. 254, Sch. 7, List II, Item 3 and List 3, Item 13 — Repugnancy—Section 12 (4) of Saurashtra Act 22 of 1951 not void on ground of repugnancy to provisions of Civil P. C. — (Houses and Rents) — Saurashtra Rent Control Act (22 of 1951), S. 12 (4). See Constitution of India, Art. 254. AIR 1956 Sau 58.

—S. 5, O. 47, R. 2 — Applicability of O. 47, R. 2 to Revenue Courts — Effect of special provisions — (Hyderabad Land Revenue Act (8 of 1317F.), S. 166) — (Hyderabad Office Order No. 24 of 1354F.) — (Hyderabad Office Order No. 29 of 1357F.). See Civil P. C. (5 of 1908), O. 47, R. 2. AIR 1956 Hyd 164.

—Ss. 5 (2), 115 and 3 — Subordinate Court — Deemed Courts under S. 23(3) of (Bombay) Mamlatdars' Courts Act (2 of 1906), if 'civil Courts' and if subordinate to High Court — Determination whether Court under particular enactment is civil Court — Test for — Expression 'civil Court' and S. 3 of Civil P. C. — Both to be widely construed — (Bombay) Mamlatdars' Courts Act (2 of 1906), S. 23 (3). See Civil P. C. (5 of 1908), S. 115. (1965) 1 Mys L J 223 = AIR 1966 Mys 5.

—S. 6 — Andhra Pradesh Court-fees and Suits Valuation Act (7 of 1956), Ss. 50 (1), 29 — Suit for possession of immovable property — Valuation of subject-matter for jurisdiction — Departure from prescribed mode of provisions in Suits Valuation Act not permissible — Value for purposes of court-fee computed on 3/4th value of lands as enjoined in S. 29 — Same shall be value for jurisdiction — Provision held not in conflict with S. 6, Civil P. C. See Andhra Pradesh Court-fees and Suits Valuation Act (7 of 1956), S. 50 (1). (1965) 1 Andh W R 366 = (1965) 2 Andh L T 106 = AIR 1966 Andh Pra 66.

—S. 6 — Hindu Marriage Act (1955), Ss. 19 and 3 (b) — Suit for declaration of nullity — City Civil Court has exclusive jurisdiction — Suit cannot be filed in High Court. See Hindu Marriage Act (1955), S. 19. AIR 1960 Cal 577.

—Ss. 6, 39, 38, O. 21, R. 8 — Competent Court — Decree transferred for execution to another Court — Pecuniary jurisdiction. See Civil P. C. (5 of 1908), S. 39. AIR 1957 Orissa 177.

—Ss. 6, 15 — Partition suits — Suits Valuation Act (1887), S. 8 — (Court-fees Act (1870), S. 7 (iv) (b)). AIR 1925 Cal 320; 3 Cal L J 257, Dissented from. AIR 1953 Pat 342.

—Ss. 6, 9 and 21 — Determination of value of suit how to be made — Conduct of parties — Effect — Estoppel. AIR 1959 Punj 646.

—S. 7 — Provincial Small Cause Courts Act (1887), S. 17 — Section 47 is not inapplicable to Provincial Small Cause Courts. See Civil P. C. (1908), S. 47. ILR (1960) 1 Cal 895.

—Ss. 7, 47 — Contract Act (1872), S. 70—Compromise decree — Defendant to build wall according to certain specification — Wall built but not according

to specification — Plaintiff completing wall and filing suit for recovery of expenses—Section 70 is attracted — Suit held cognizable by Small Cause Court. See Contract Act (1872), S. 70. **AIR 1961 Madh Pra 107.**

——Ss. 8 and 44 — Presidency Small Cause Court — Jurisdiction to execute foreign decree. AIR 1951 Mad 289.

SECTION 9

SYNOPSIS

1. Scope.
2. Jurisdiction of Courts—General.
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3. "Subject to the provisions herein contained."
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7. Suit expressly barred.
8. The rule does not apply in the case of summary and concurrent remedies.

1. Scope.

——S. 9, O. 18, R. 13—Applicability to Small Cause Courts—Recording of evidence by Provincial Small Cause Courts.

As far as recording of evidence goes neither S. 9 nor O. 1 exempts the operation of R. 13 of O. 18, Civil P. C. which therefore applies to Small Cause Courts because of S. 17 of the Provincial Small Cause Courts Act. **AIR 1955 NUC (Cal) 2075.**

2. Jurisdiction of Courts—General.

——S. 9 — Legislature — Powers of, to take away jurisdiction of Civil Courts.

It cannot be said that it is only when a right is created by a statute and a tribunal is set up for the determination of that right by that statute that the urisdiction of a Civil Court as to a question concerning that right is taken away. A competent legislature may take away a Civil Court's jurisdiction to try other questions also. Akbar Khan Alam Khan v. Union of India, **1962 Jab L J 66 = (1962) 1 SCJ 665 =1962 Nag L J 13=(1962) 1 SCR 779=1962 MPLJ 277 = (1962) 1 Ker L R 229 = 1962 All W R (HC) 163=63 Pun L R 830=(1961) 2 SCA 649=AIR 1962 S C 70.**

——Ss. 9 and 100 — Plea of want of jurisdiction — Neither urged before lower appellate Court, nor made a ground in memorandum of appeal—Plea not allowed to be raised in second appeal. See Civil Procedure Code (5 of 1908), S. 100. **AIR 1965 All 309.**

——S. 9—Limitation—Plea of—Involves question of law alone — Affects jurisdiction of Court. **1962 All W R (HC) 26=1962 All L J 229=ILR (1962) 1 All 343.**

——Ss. 9 and 115 — Court having jurisdiction to decide particular matter — Omission to apply provisions of law — Effect — The decision cannot be said to be completely without jurisdiction. AIR 1958 All 154.

——S. 9—Jurisdiction of Civil Court — Averments in the plaint alone determine whether the Court has jurisdiction or not — Allegations in defence do not determine the question of jurisdiction. 60 M L J 267 and 1960 (1) Andh W R 286, Ref. **(1962) 2 Andh W R 1=ILR (1963) Andh Pra 853 (DB).**

——S. 9—Want of jurisdiction—Plea as to.

If a defendant or judgment-debtor raises any objection to the jurisdiction of the Court, the Court has not only the power but is under obligation to decide that matter. See Civil Procedure Code (5 of 1908), O. 21, R. 90. **AIR 1955 Assam 12.**

——S. 9—Presumption is in favour of jurisdiction of Civil Court.

The ordinary rule is that the jurisdiction of the Civil Court cannot be excluded unless it is specifically barred. Normally, a Civil Court shall be presumed to have jurisdiction to decide all such civil questions. 61 BLR 1087, Foll. **1963 Mah L J 633= ILR (1964) Bom 80.**

——S. 9—Court-Fees Act (1870), S. 7 (iv)—Court-fee and jurisdiction—(Suits Valuation Act (1887), S. 8)—The question of jurisdiction of a Court depends not merely on the nature of relief sought in the prayer, but the relief that the plaintiff would be entitled to if he succeeds in the suit. See Court-fees Act (1870), S. 7 (iv). **AIR 1956 Bom 649.**

——Ss. 9, 100—Plea as to jurisdictton.

A plea as to jurisdiction may be taken at any stage, and if a Court or authority has no jurisdiction, even the fact that the party does not raise the plea of jurisdiction will not confer jurisdiction upon that Court or authority. **AIR 1955 Bom 75.**

——S. 9—Delegated legislation — The principle that whenever power is conferred upon the Legislature to pass laws in a field mentioned, the power carries with it the power to pass laws on matters which may be called subsidiary or ancillary cannot possibly be applied where subordinate powers of legislation are conferred upon a body whether it may be Municipality or the Central Government itself. **52 Cri L J 1381=AIR 1951 Bom 397.**

——S. 9—Jurisdiction of Court—Agreement choosing Court—When valid—Effect of such agreement.

The agreement does not contravene the provisions of S. 28 of Contract Act (1872), if the chosen Court has jurisdiction to try the suit under the ordinary law. **AIR 1955 Cal 161.**

——S. 9—(Letters Patent (Cal), Cl. 12)—Jurisdiction —State carrying on commercial undertaking (like railways) — State does not carry on business—State's liability to be sued in its own Courts — (Constitution of India, Art. 300) — The State in India claims no exemption from liability to be sued in its own Courts. See Letters Patent (Cal), Cl. 12. AIR 1953 Cal 1.

——S. 9 — (Payment of Wages Act (1936), S. 15) — Jurisdiction of Civil Court—It is always open to any Court or Tribunal to investigate the jurisdictional facts, and to decide whether the Court or Tribunal has jurisdiction or not. See Payment of Wages Act (1936), S. 15. **AIR 1964 Guj 22.**

——S. 9 — Jurisdiction of Court is determined by statement in the plaint and not by what is pleaded by the defendant. See Houses and Rents—Hyderabad Rent Control Order (1353F), S. 8. **AIR 1956 Hyd 17.**

——S. 9—Conferment of jurisdiction.

Jurisdiction is not conferred on grounds of natural justice. It has to be specifically conferred by statute and more so in the case of administrative bodies exercising judicial or quasi-judicial functions. See Constitution of India, Art. 226. AIR 1953 Hyd 235.

——S. 9—Suit for partition—Jurisdiction of Court —(Travancore Ezhava Act (3 of 1100), Ss. 28, 29, 30) —The ordinary jurisdiction of a Civil Court to entertain a partition suit by a member or members of Ezhava tarwad, is not in any way barred. See Travan-

Criminal P. C. (1898), S. 423 (1) (b). 1962 (2) Cri L J 727=AIR 1962 Andh-Pra 479 (FB).

——S. 9 — Competent Court — Distinction between decree passed by Court having no inherent jurisdiction and Court irregularly assuming jurisdiction pointed out—See Civil Procedure Code (5 of 1908), S. 11. AIR 1958 Bom 30.

——S. 9 —There is a basic difference between want of jurisdiction and irregular and illegal exercise of jurisdiction. Where there is illegality or irregularity in the exercise of jurisdiction, the defect if any, can be corrected according to the procedure established by law by way of appeal or revision and where the appellate Court has pronounced its decision against the petitioner, the matter having been finally decided, it should not ordinarily be reopened in a proceeding by way of writ. See Constitution of India, Art. 226. AIR 1953 Pat 75.

——S. 9—Existence of jurisdiction is very different from the exercise of jurisdiction. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 18 (2). AIR 1952 Pat 458.

——S. 9, O. 21, R, 91—Setting aside of sale—Conditions.

The Court sale cannot be set aside, on the ground that the judgment-debtor had no saleable interest in the property sold. The order is not null and void or one made without jurisdiction though there is irregular assumption of jurisdiction by the executing Court. The irregularity is one which would be cured by failure to object in good time. AIR 1953 Trav-Co 620.

2 (b). Acquiescence or waiver.

——Ss. 9, 47, 2 (2) and 100 — Execution "consigned for default" in payment of process-fee—No question relating to execution, discharge or satisfaction of decree, held determined —Order held did not amount to decree — Order is not appealable — Acquiescence does not vest lower appellate Court with jurisdiction —Matter held could be agitated in second appeal for first time. See Civil Procedure Code (5 of 1908), S. 47. AIR 1965 All 589.

——S. 9—(Partnership Act (1932), S. 69.)—Duty of Court — Consent of defendant — Effect— No act of defendant can make a suit good which is at its inception bad and, therefore, the consent of the defendant in such a suit cannot enable the Court to pronounce a decree in favour of the plainfiffs-partners who are found to be an unregistered firm. See Partnership Act (1932), S. 69. AIR 1954 Bom 364.

——S. 9—Want of jurisdiction apparent on face of proceedings—Acquiescence by submission to jurisdiction —Proceedings are liable to be quashed by certiorari. See Constitution of India, Art. 226. 1960 Cri L J 75 = AIR 1960 J and K 29.

——S. 9—Absence of inherent jurisdiction — Consent cannot confer jurisdiction — Rule does not apply to Extra Ordinary Original Civil Jurisdiction of High Court. AIR 1961 Punj 87 (91) (Pt D) (Pr 20).

——S. 9—Order for delivery of possession of property in possession of mortgagee —Failure to issue notice— Waiver of no objection to jurisdiction—Effect. When forcible possession of property is taken without notice the proceedings are without jurisdiction. The want of jurisdiction in the Custodian in such a case being of an inherent nature waiver on the part of the mortgagee cannot confer any jurisdiction on the Custodian. See Administration of Evacuee Property Act (1950), S. 7. AIR 1952 Raj 184.

2 (c). Jurisdiction with reference to subject matter.

——S. 9—Trade and Merchandise Marks Act (1958), Ss. 105 and 2 (e) — Suit for passing off goods — District Court of Mysore closed for vacation — Plaintiff instituting suit in High Court of Mysore — High Court if possesses ordinary original civil jurisdiction then alone it would be "District Court" within S. 2 (e)—High Court, though at apex of civil Courts, possesses no original jurisdiction in matters not expressly declared within its cognizance — It is not invested with ordinary original jurisdiction of District Court and is not competent to entertain passing off action. See Trade and Merchandise Marks Act (1958). S. 105. AIR 1965 S C 1449.

——S. 9—Erroneous decisions of inferior tribunal — Error apparent on face of record — High Court has jurisdiction to quash order though subject-matter was one which was within the jurisdiction of tribunal. See Constitution of India, Art. 226. AIR 1953 Nag 148.

——Ss. 9 and 21—Jurisdiction by consent or waiver. When the Court has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent or waiver convert it into proper judicial process. Section 21 has no application to cases of exclusive jurisdiction. AIR 1953 Nag 136.

——S. 9 — Jurisdiction with reference to subject-matter of suit how determined stated, See Houses and Rents—Saurashtra Rent Control Act (22 of 1951), S. 12 (4). AIR 1956 Sau 58.

3. "Subject to the provisious herein contained."

——S. 9—Execution proceedings—Objection to jurisdiction — Rule as to. The objection that the Court passing the decree has no territorial jurisdiction would be barred in execution proceedings by the principle of "res judicata" embodied in S. 11 read with Expl. 4, of the Act. See Civil Procedure Code (5 of 1908), S. 11. AIR 1955 All 569.

4. Suits of civil nature.

——S. 9—Punjab Sikh Gurdwaras Act (8 of 1925), S. 29 (2) — Applicability—Bar of jurisdiction of Civil Court. See Punjab Sikh Gurdwaras Act (8 of 1925), S. 29 (5). AIR 1955 SC 576.

4 (a). Suit relating to property.

——S. 9—Suit in Civil Court for relief of injunction and in alternative for relief of recovery of possession —Relief of injunction found inadmissible and mere suit for possession—Was beyond jurisdiction of Courts —Suit held was liable to be dismissed. See Civil P. C. (1908), O. 7, R. 10. 1965 All L J 549 = AIR 1966 All 367 = 1965 All W R (HC) 474.

——S. 9—Plaint allegations making suit one under S. 54, Specific Relief Act — Facts entitling plaintiff to relief under S. 180, Tenancy Act — Not pleaded — Jurisdiction of Civil Court is not barred. See Tenancy Laws — U. P. Tenancy Act (7 of 1939), S. 242. AIR 1960 All 573.

——S. 9 —Constitution of India (1950), Art. 133 (1) (c) —"Civil Proceedings" — Proceedings arising out of election petition are proceedings of a civil nature and the High Court under Art. 133 (1) of the Constitution can certify such a case to be a fit one for appeal to the Supreme Court. See Constitution of India, Article 133 (1) (c). AIR 1959 All 607.

——S. 9—Government of India Act (1935), S. 241 (3) (b) (iii) — Financial Hand Book, Vol. II, Rr. 12, 14— High Court Rules and Orders (Allahabad) 1946, R. 17 —Servant on leave preparatory to retirement disallowed to return to duty — Right of appeal denied — Suit to declare order invalid is maintainable, and the validity of the order can be challenged. See Government of India Act (1935), S. 241 (3) (b) (iii). AIR 1956 All 439.

—S. 9 — Master and Servant — Suit by servant against master for arrears of salary and bonus — He cannot ask to render accounts. I L R (1954) 2 All 153.

● —S. 9 —Resumption of inam land under Hyderabad Land Revenue Act (8 of 1317-F) — Right to patta under — Suit for, is of civil nature — Hyderabad Land Revenue Act (8 of 1317-F). (1961) Andh L T 836 (Fb).

—Ss. 9, 92 (2), O. 6, R. 17 — Framing scheme for management of High School — Jurisdiction of Civil Courts — Suit before District Munsif — Inclusion of such relief by amendment — Not allowed. See Civil P. C. (5 of 1908), S. 92 (2). A I R 1957 Andh Pra 10.

—S. 9—(Northern India Ferries Act (1878), S. 34) —Suit claiming additional remuneration for plying additional marboat — Section 34 of Northern India Ferries Act (1878) does not apply and jurisdiction of Civil Court to entertain suit is not barred. See Northern India Ferries Act (1878), S. 34. A I R 1952 Assam 147.

—S. 9—"Civil proceedings" — Meaning of — Civil rights—What are—Appeal to High Court from decision of Election Tribunal under S. 116-A, Representation of People Act — Is a civil proceeding within the meaning of Art. 133 (1) of the Constitution. See Constitution of India, Art. 133 (1). A I R 1963 Cal 364.

—S. 9 — Government servant — Suit for arrears of salary—Maintainability—A civil servant can maintain for arrears of salary against the Government. See Constitution of India, Art. 311. A I R 1961 Cal 626.

—S. 9—Civil servant—Suit by, for arrears of pay—Maintainability—A suit is competent in a civil Court. See Constitution of India, Art. 311. A I R 1955 Cal 45.

—S. 9—Administration—Suit for — Private trust—Framing of scheme — Permissibility — Powers of Court.

It is permissible for the High Court in a suit for administration of the trust relating to a private trust to frame a scheme for the proper management of the trust. Further, a suit for a scheme and administration of a private trust is a justiciable claim within the meaning of S. 9, Civil P. C., and therefore the Court has all the relevant and necessary powers to determine a scheme for the proper administration and due management of the trust. 89 Cal L J 224 = A I R 1952 Cal 763.

4 (b). Right of person as member of club or society.

—S. 9—Racing club—Rules of club — Decision by stewards on evidence collected by stipendiary steward — Rules of evidence do not apply — Natural justice—Opportunity to plaintiff or answering charges given — Prayer for interlocutory injunction can be granted when plaintiff made out prima facie case. I L R (1950) 1 Cal 418.

—S. 9—Suit under S. 9, Specific Relief Act—Jurisdiction of Civil Court — Section 99, Hyderabad Tenancy Act—Effect of.

A suit under S. 9, Specific Relief Act is outside the purview of the Hyderabad Tenancy Act. Therefore S. 99, Tenancy Act has no application and does not operate as a bar to the hearing of the suit by civil Court. A I R 1955 Hyd 271.

● —S. 9 — Suit for declaration of plaintiff's exclusive right to perform purohitgiri does not lie. A I R 1953 Hyd 1 (FB).

● —S. 9—(Jammu and Kashmir Contract Act (9 of 1977 Smt.), S. 28, Exception I, Part 2) — If inconsistent with S. 34, Arbitration Act — Whether suit is maintainable. See Jammu and Kashmir Contract Act, S. 28, Exception I, Part 2. A I R 1959 J & K 59 (FB).

—S. 9—Master and servant — Suspension — Order by Sovereign as head of Dharmarth Department—Whether in capacity of Sovereign — Jurisdiction of civil Court to go into validity.

Every order passed by His Highness the Maharaja of Jammu and Kashmir cannot be said to have been passed by him as the sovereign of the State. An order passed by him suspending an employee of Dharmarth Department, held was passed in his capacity as a head of the Dharmarth Department and not as a Sovereign. Such an order if it is in contravention of the provisions of the relevant law or rules, can be certainly impugned in a Court of law. A I R 1958 J & K 41.

—S. 9 — Agreement that suit regarding disputes should be instituted in one only out of two competent Courts—Validity—(Contract Act (1872), S. 28) —The agreement is a valid one and not void under S. 28 of the Contract Act. See Contract Act (1872), S. 28. A I R 1955 J & K 26.

—S. 9—(Companies Act (1956), Ss. 2 (11), 10)—Jurisdiction of Civil Court — There is no provision in the Companies Act excluding the powers of a Civil Court in respect of any matter. See Companies Act (1956), S. 2 (11). A I R 1959 Ker 254.

—Ss. 9, 20 — Agreement to sue only in one of out of several competent Courts — Validity—The agreement is hit by S. 23 (2), Contract Act and being unenforceable thereunder, cannot be pleaded in bar of action in one of such Courts. See Contract Act (1872), S. 23 (2). A I R 1956 Madh Bha 120.

—S. 9—Agreement that suit concerning dissolution of partnership must be brought in Court at Indore—Suit by one party brought in Court at Asansol—Subsequent suit by other party brought at Indore—Subsequently instituted suit at Indore cannot be stayed under S. 10 of the Act. See Civil P. C. (1908), S. 10. A I R 1955 Madh Bha 145.

—S. 9 — Suit of civil nature — Plaintiff claiming along with defendant the right of Yajman Vriti filing suit for declaration of his right to share of income and recovery of amount to be found due on taking account — Suit is for establishing right in property and is of civil nature—Case law referred. A I R 1953 Madh Bha 7.

—S. 9—That a wife in England could not but for the Statute agitate her claim for maintenance against her husband by an action is more or less due to historical development of the law. That rule has not been accepted in America. There is less reason in this country for the acceptance of any such rule where under S. 9 the Court has jurisdiction to try all suits of a civil nature except those the cognisance of which has been either expressly or impliedly barred. See Husband and Wife—Maintenance. I L R (1965) 1 Mad 614=A I R 1966 Mad 225.

—S. 9—Damages for wrongful termination of services—Jurisdiction of authority — The forum for the relief is the civil Court and not the authority. See Payment of Wages Act (1936), S. 4 (vi). A I R 1955 Mad 597.

—S. 9 — (Specific Relief Act (1877), S. 45) — The Government order under S. 45 of Specific Relief Act when can be made — Alteration in date of birth—Government notification G.O. M.S. 39, Education, dated 12th January 1944 — Effect of—The Government order, dated 12th January 1944, cannot empower the High Court or any other Court to make an enquiry as to the correct date of birth of any individual and to direct a correction as a result of such enquiry. See Specific Relief Act (1877), S. 45 (b). A I R 1955 Mad 639.

——S. 9 and O. 1, R. 8 — 'Numerous persons' — Suit on behalf of a fluctuating body—A fluctuating community such as the Sathada Sri Vaishnawa Community can own and possess property and the rights in such property can be established in a Court of law. **A I R 1955 N U C (Mad) 3220.**

4 (c). Right relating to religious and other processions.

——Ss. 9 and 91 — Member of public has right to conduct non-religious procession through public street such as funeral procession. **A I R 1954 Mad 177.**

——S. 9 — (Madras Hereditary Village Offices Act (1895), Ss. 13 and 21 — Plaintiff ousted from office by order of Collector passed on orders of Government — Order without jurisdiction — Suit for declaration is not barred — See Madras Hereditary Village Offices Act (3 of 1895), S. 13. **AIR 1952 Mad 865.**

——S. 9 — Puri Sri Jagannatha Temple (Administration) Act (XIV of 1952), S. 29 — Matter not permissible to be done under Act is open to challenge in civil Court — Puri Sri Jagannatha Temple (Administration) Act (14 of 1952), S. 29. **ILR (1965) Cut 794 =AIR 1966 Orissa 96.**

——S. 9 — Suit for accounts — Agent not entitled to sue principal for accounts — He can sue for specific amount due as commission. **AIR 1960 Orissa 123.**

——S. 9 — Liability of Government for negligence of its servant—(Vicarious liability).—Powers and duties, which are fixed by law, are governmental and not commercial, and acts done in the exercise of these powers or in the purported fulfilment of those duties are not within the rule of vicarious liability — See Constitution of India, Art. 300. **AIR 1954 Pat 529.**

——S. 9—(Provincial Small Cause Courts Act (1887), Ss. 15 (3), 16, 23 and Second Sch., Arts. 8 and 44) — Suit to recover arrears of rent — Question of fixation of standard rent raised by tenant — Jurisdiction of Small Cause Courts is not ousted—(Houses and Rents — Delhi and Ajmer Rent Control Act (38 of 1952), S. 33) — Interpretation of Statutes) — See Provincial Small Cause Courts Act (1887), S. 15 (3). **A I R 1960 Punj 11.**

——S. 9 — Suit for accounts— Liability to account— Circumstances under which arises — Trust defined and distinguished from contract — Principal and Agent relationship explained. **AIR 1959 Punj 92.**

——S. 9 — Lien on Government post—Suit to enforce it is not maintainable — See Constitution of India, Art. 311. **AIR 1956 Punj 42.**

4 (d). Other common law rights—Wrongful dismissal from service.

——S. 9—Master and servant—Termination of service — Military servant—Discharge from service—Suit for declaration that discharge is illegal — Maintainability. **57 P L R 282 =AIR 1953 Punj 166 (DB).**

——S. 9 — Rival claimants for pre-emption — Decree for proportionate share — Further decree for division of property is ultra vires and without jurisdiction — Proper course for separate possession is to file a suit for partition — See Civil Procedure Code (5 of 1908), O. 20, R. 14. **AIR 1959 Raj 136.**

——S. 9 and O. 7, R. 7 — Suit for declaration only — Maintainability — Decree giving present relief—Held on facts that the suit was not barred by S. 42 of Specific Relief Act (1877) as the effect of giving declaration would be to give present relief to the plaintiff—See Specific Relief Act (1877), S. 42. **A I R 1957 Tripura 37.**

5. Suits not of civil nature—No suit lies where there is no such right as that claimed.

——S. 9 — Madras Hereditary Village Offices Act (1895), Ss. 13, 21 — Civil Court has no jurisdiction to try suit relating to partition of shroff service inam lands on ground that plaintiffs and other defendants are entitled to office jointly with the first defendant — See Madras Hereditary Village Offices Act (1895), S. 13. **1953 Andh W R 659.**

——S. 9 — (Pensions Act (1871), S. 4) — Claim for enhanced pension under Indian Army Rules is not enforceable in civil Courts—See Pensions Act (1871), S. 4. **AIR 1965 Ker 185.**

——S. 9—Cancellation of certificate by civil Court — Question whether amount under certificate is due by the debtor within exclusive jurisdiction of special tribunal — No suit lies in civil Court — See Public Demands Recovery Act (Bengal Act 7 of 1880), S. 43. **AIR 1953 Orissa 300.**

6. Suit relating purely to religious rites or ceremonies.

——S. 9—Hindu Marriage Act (1955), S. 9 — Suit for restitution of conjugal rights — Jurisdiction of Munsiffs and civil Judges.—The reliefs sought would be covered by S. 9 of the Hindu Marriage Act (1955), hence the Munsiff and civil Judges will have no jurisdiction to try the suit. It would however be competent to the District Court to grant the relief. See Hindu Marriage Act (1955), S. 9. **A I R 1959 All 7.**

7. Suit expressly barred.

——S. 9—Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 9 (4) (c) and (6) — Question whether inam village is "inam estate" — Determination of — Jurisdiction of Settlement Officer and of tribunal exclusive — Civil Courts barred from trying or re-trying it — See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 9 (4) (c) and (6). **AIR 1964 S C 807.**

——S. 9—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 37 — Not repugnant to S. 9, C. P. C. and is valid—See Tenancy Laws — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 37. **AIR 1960 S C 796.**

——S. 9—Suit for recovery of arrears of "hasil". The suit lies in the civil Courts. **A I R 1955 N U C (Ajmer) 330.**

——S. 9 — U. P. Zamindari Abolition and Land Reforms Act (1951), Ss. 209 and 311 — Suit for possession of land — Civil Court has no jurisdiction to decide such suit — Additional prayer for injunction cannot confer jurisdiction on civil Court — See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 209. **1965 All L J 549=1965 All W R (HC) 474=AIR 1966 All 867.**

——S. 9 and Pre. — Suit for possession by tenant against trespasser—Forum of suit—Effect of amending Act on vested right obtained under decree—A suit filed in 1945 in the Civil Court could rightly be maintained in that Court — The mere fact that the Amending Act 10 of 1947 has added an explanation to S. 180, U. P. Tenancy Act, 1939, does not mean that S. 180 as it originally stood was applicable to a suit by a tenant against a trespasser. **A I R 1957 All 286.**

——S. 9 — Tenant suing trespasser for ejectment in civil Court—Suit triable by revenue Court—Return of plaint to revenue Court — Power of High Court in second appeal—High Court had power to direct the plaint to be returned for presentation to a revenue Court. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 180. **AIR 1957 All 257.**

——S. 9—Jurisdiction to entertain appeal.

The jurisdiction to entertain a suit is quite different from the jurisdiction to entertain an appeal. S. 242, U. P. Tenancy Act and S. 9, Civil P. C., deal with the jurisdiction to entertain a suit and not an appeal—See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 242. AIR 1957 All 257.

——S. 9—(T. P. Act (1882), S. 60) — Void mortgage—Mortgagor's right to recover possession on payment of money received—Question of limitation if arises — Form of suit — Relief claimed in redemption suit—Claim in respect of ex-proprietary tenancy and occupancy tenancy land—Jurisdiction of civil Court—The Court in granting relief adjusts equities between the parties and this can be done only by the civil Court and not by the revenue Court. See T. P. Act (1882), S. 60. AIR 1956 All 639.

——S. 9 — Limitation Act (1908), S. 29 — Limitation under special or local Acts — (U. P. Tenancy Act (17 of 1949), Sch. IV, Group B, Section 138.) Period of limitation prescribed will not apply to suits brought under S. 9 of Civil P. C. See Limitation Act (1908), S. 29. AIR 1954 All 171.

——S. 9—Acquisition proceedings under S. 54 of U. P. Tenancy Act (17 of 1939)—Compromise between the parties—Order of acquisition in terms of compromise passed—Order embracing provisions outside S. 54 — Restoration proceedings purporting to be under S. 54 (5) — Restoration order passed — Suit for declaring restoration order ultra vires — Jurisdiction of civil Court to grant declaration not barred. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 54 (2). AIR 1953 All 578.

——S. 9—Succession Act (1925), S. 300—Question of title—The question should be decided by means of a regular suit in a civil Court. See Succession Act (1925), S. 300. AIR 1953 All 507.

——S. 9—Suit for possession of grove land—Cause of action arising before repeal of Tenancy Act by U. P. Zamindari (Abolition and Land Reforms) Act—Court having jurisdiction.

The suit is cognizable only by the Revenue Court. The suit which was wrongly instituted in the civil Court cannot be allowed to be continued in that Court. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 183. AIR 1953 All 85 (FB).

——S. 9 — (U. P. Tenancy Act (17 of 1939), Ss. 183, 180) — Lease by one co-sharer without consent of other co-sharers — Suit for declaring lease to be invalid and for possession—Jurisdiction of civil Court—Suit is maintainable in the civil Court in the instant case. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 183. AIR 1952 All 650.

——S. 9—(Bundelkhand Alienation of Land Act (2 of 1903), S. 22)—Collector according sanction to alienation which has no existence in the eye of law by virtue of S. 14 of the Bundelkhand Act — Collector acts beyond his powers and the jurisdiction of the civil Court is not barred. See Bundelkhand Alienation of Land Act (2 of 1903), S. 22. AIR 1952 All 273.

——S. 9 — Exclusive jurisdiction of revenue Court — The mere allegation that the defendant was a trespasser is not itself enough to give the civil Court jurisdiction. The revenue Court alone has jurisdiction to entertain the suit. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. AIR 1951 All 611.

——S. 9 — Reliefs for possession and injunction—Where two claims are based on different causes of action, the relief based on the claim for possession and damages is within the jurisdiction of the revenue Court, the relief based on the claim for injunction is within the jurisdiction of the civil Court — The latter relief being dependant on the grant of relief of possession is premature and the civil Court in such a case should dismiss the suit and leave the plaintiff to file a fresh suit for possession and damages in the revenue Court. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 180. AIR 1951 All 611.

——S. 9—Tenancy Laws — Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act (21 of 1950), Ss. 98 and 99 — Deputy Collector rejecting petition on ground that matter was within cognizance of civil Court—Petitioner's plaint rejected by civil Court on ground that defendant's possession was in contravention of S. 98 and that its jurisdiction was barred under S. 99 — Petitioner again approaching Deputy Collector — Deputy Collector has to decide nature of transaction and grant relief. See Tenancy Laws — Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act (21 of 1950), S. 98. (1965) 1 Andh L T 352.

——S. 9—Suit against erstwhile tenant for arrears of rent — Tahsildar has no jurisdiction to pass decree under S. 28—Civil Court can entertain suit—Suit not hit by S. 99. See Tenancy Laws — Andhra Predesh (Telangana Area) Tenancy and Agricultural) Lands Act (21 of 1950), S. 28. (1964) 1 Andh W R 349 = (1964) 1 Andh L T 378=ILR (1965) Andh Pra 419.

——S. 9—"Otherwise invalid"—Hyderabad Stock Exchange Rules imported into contract — Binding on non-member — Appointment of arbitrator in contravention of Rules — Validity of award. Under the circumstances of the case the award passed cannot be said to be legal or valid so as to bind the parties. See Arbitration Act (1940), S. 30 (c). AIR 1958 Andh-Pra 384.

——S. 9—Bar of suit—When can a party pursue his remedy in ordinary civil Court.

If the Government takes over land which a person is entitled to keep by virtue of rights expressly saved by the Act and there is no machinery provided in the Act for the adjudication of such a right, the aggrieved person may seek his remedy in the civil Court. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 65 (1). AIR 1957 Andh-Pra 489.

——S. 9 — (Assam Land and Revenue Regulations (1886), Ss. 154 (b), 99.)

Partition proceedings when no bar. No notice about previous partition on plaintiffs. They have no effect as against plaintiffs. Plaintiffs can sue for declaration of their rights, if order in partition proceeding had adversely affected them on question of title. See Assam Land and Revenue Regulations (1 of 1886), S. 154 (b). AIR 1955 N U C (Assam) 385.

——S. 9—Tenancy Laws—Berar Regulation of Agricultural Leases Act (24 of 1951), Ss. 16, 16B, 2 (f) and 3 (4)—S. 16 does not say that questions like question of plaintiff's status as a person under disability are to be decided by Revenue Officer and S. 16B also does not debar civil Court from deciding such question. See Tenancy Laws—Berar Regulation of Agricultural Leases Act (24 of 1951), S. 16. 1963 Mah L J 633 = ILR (1964) Bom 80.

——S. 9—(Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 74)—Summary dismissal of appeal—Power of Collector—A Collector hearing an appeal cannot dismiss it summarily without giving the appellant a hearing. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 74. AIR 1957 Bom 9.

——S. 9 — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Ss. 6, 7, 12, 70, 85)—Suit for arrears of rent if barred. The Civil Court must stay further hearing of the suit and direct the parties to get the question about the reasonableness of rent determined by the special Court. See Tenancy Laws — Bombay

Tenancy and Agricultural Lands Act (67 of 1948), S. 6. **AIR 1956 Bom 691.**

——S. 9 — (Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 85) — Question regarding nature of tenancy — Whether a person is a tenant or a protected tenant or a permanant tenant is a question which only the Mamlatdar's Court is competent to decide. The Civil Court has no jurisdiction to decide that question. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 85. **AIR 1956 Bom 208.**

——S. 9 — (Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Ss. 70, 85)—Suit for declaration that plaintiff is permanent tenant — Issue whether plaintiff is permanent tenant — Civil Court has no jurisdiction to decide. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 70. **57 Bom L R 272 = ILR 1955 Bom 245.**

——S. 9 — (Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29 (1))—Tenant's remedy against trespasser — Jurisdiction of Mamlatdar — Tenant is entitled to possession under order of Mamlatdar. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29 (1). **57 Bom L R 65 = ILR 1955 Bom 187.**

——S. 9 — (Bombay Tenancy and Agricultural Lands Act (67 of 1948), Ss. 70, 85, 89)—Exclusive jurisdiction of Mamlatdar's Court to decide question referred to in S. 70 of Bombay Tenancy and Agricultural Lands Act (1948)—See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 70. **AIR 1954 Bom 100.**

——S. 9 — (Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 70 (b)) — Party claiming status of protected tenant — Question has to be examined by Revenue Court — Jurisdiction of civil Court is barred. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 70 (b). **AIR 1953 Bom 241.**

——S. 9 — (Bombay Revenue Jurisdiction Act (10 of 1870), S. 4) — (Bombay Hereditary Offices Act (3 of 1874), S. 12) — Watan character of property lost — Prant Officer restoring property to person as being watan property — Validity of order—Suit for possession against such person—Maintainability. The Prant Officer has no jurisdiction at all to pass an order under the Watan Act, and therefore his order is void. A civil Court is competent to entertain suit. See Bombay Revenue Jurisdiction Act (10 of 1876), S. 4. **AIR 1952 Bom 387.**

——S. 9 — Dispute relating to matters mentioned in S. 7 (1) of West Bengal Bargadars Act (2 of 1950) — Civil Court has no jurisdiction to decide even if there is no Board established for the local area. See Tenancy Laws — West Bengal Bargadars Act (2 of 1950), S. 7 (1). **AIR 1956 Cal 497.**

——S. 9, O. 1, R. 10 — Suit for declaration of plaintiff's occupancy rights — The Court would not be justified in granting the declaration. **AIR 1955 N U C (Cal) 2332.**

——S. 9 — (Punjab Tenancy Act (16 of 1887), S. 77 (3) (d) and (e)) — Jurisdiction of Civil Court — The civil Court had jurisdiction to try suit as it did not fall under S. 77 (3), Second Group (d) or (e) Punjab Tenancy Act. See Tenancy Laws — Punjab Tenancy Act (16 of 1887), S. 77 (3) (d) and (e). **AIR 1956 Him-Pra 61.**

——S. 9 — (Punjab Tenancy Act (16 of 1887), Ss. 77 (3) (n) and 14) — Suit for recovery of mesne profits — Jurisdiction of civil Court — If the landlord sues the person in wrongful possession of the land for recovery of mesne profits, the suit would not be one excepted from the cognizance of a civil Court. See Tenancy Laws — Punjab Tenancy Act (16 of 1887), S. 77 (3) (n). **AIR 1953 Him-Pra 89.**

——S. 9 — Suit not under S. 158 (2) (vi) but under S. 45 of the Punjab Land Revenue Act (1887) is cognizable by civil Court. See Punjab Land Revenue Act (17 of 1887), S. 158 (2) (xvi). **AIR 1952 Him-Pra 51.**

——S. 9 — (Hyderabad Tenancy and Agricultural Lands Act (1950), S. 99) — Bar to jurisdiction of civil Court — When applies — Suit for perpetual injunction — Not barred. See Tenancy Lands — Hyderabad Tenancy and Agricultural Laws Act (21 of 1950), S. 99. **AIR 1956 Hyd 192 (DB).**

——S. 9 — (Hyderabad Jagir Abolition Regulation (1358-F), S. 21, Cl. 2, Proviso)—Pending proceedings — It is only the civil Court which is competent to dispose of the petition. See Tenancy Laws—(Hyderabad) Jagir Abolition Regulation (1358F), S. 21, Cl. 2, Proviso. **AIR 1953 Hyd 79.**

[Reversed on another point in AIR 1956 S C 319.]

——S. 9 — Indore Land Revenue & Tenancy Act (1931), Ss. 136 (1), 131 — Suit for damages done by diverting flow of water — Jurisdiction of civil Court. The case is of a tortious liability and as such the civil Court can take cognizance of it. See Tenancy Laws —Indore Land Revenue and Tenancy Act (1 of 1931), S. 136 (1). **AIR 1956 Madh-Bha 209.**

——Ss. 9 and 11 — Section 6 of Madras Cultivating Tenants Act, 25 of 1955 does not take away the jurisdiction of the civil Court to try a suit for recovery of arrears of rent. **AIR 1961 Mad 423.**

——S. 9—Determination of question referred to in S. 11 of the Madras Estates (Supplementary) Act (30 of 1956) only incidental to granting of reliefs and cannot have application to suits in civil Courts. See Madras Estates (Supplementary) Act (30 of 1956), S. 11. **AIR 1959 Mad 199.**

——S. 9 — (Madras Estates (Abolition and Conversion into Ryotwari) Act (1948), Ss. 11 and 3) — Exclusive jurisdistion of Settlement Officer. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 11. **AIR 1955 N U C (Mad) 2436.**

——S. 9 — Mysore Tenancy Act (13 of 1952), S. 1 — Does not offend S. 9 of Civil P. C. — See Tenancy Laws — Mysore Tenancy Act (13 of 1952), S. 1. **AIR 1955 N U C (Mys) 5377 (b) (DB).**

——S. 9 — Mysore Tenancy Act (13 of 1953), S. 1 has no retrospective operation and does not apply to pending actions either in trial Court or in appeal. See Tenancy Laws — Mysore Tenancy Act (13 of 1952), S. 1. **AIR 1955 N U C (Mys) 5377 (DB).**

——S. 9—Recovery of dues as arrears of land revenue — Applicability of S. 125, C. P. Land Revenue Act (2 of 1917) — Objection to sale—Suit was not barred under S. 149 of the Land Revenue Act. See C. P. Land Revenue Act (2 of 1917), S. 128. **AIR 1957 Nag 84.**

——S. 9—(M. P. Abolition of Proprietary Rights etc. Act (1951). Ss. 23, 17)—Powers of claims officer.

The claims officer must be considered as a Tribunal of limited jurisdiction called upon to decide the questions expressly mentioned in Ss. 21 to 27 of the M. P. Abolition of Proprietary Rights etc. Act (1951). See Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1950) (1 of 1951), S. 23. **AIR 1956 Nag 193 (FB).**

——S. 9 — Power of Revenue Courts to determine questions of title, explained. **AIR 1953 Nag 219.**

——S. 9—(Berar Land Revenue Code (1928), Ss. 157 and 192) — Suit to set aside sale — Grounds not covered by Ss. 155, 156 and 157 of Berar Land Revenue Code (1928) — Jurisdiction of civil Court.

tion over suit after enforcement of U. P. Zamindari Abolition and Lands Reforms Act during pendency of trial — Held Civil Court had jurisdiction to entertain suit and it was not affected by U. P. Land Laws, (Second Amendment) Act 28 of 1961. 1965 All L J 413=AIR 1966 All 166.

—— S. 9—Post Office Savings Bank Rules For the Guidance of Depositors, R. 21—P. and T. Manual Vol. VI, R. 445—Irregularity of Postal clerk in allowing withdrawal of deposit — Suit to recover amount — Maintainability.

There being no evidence relating to negligence or to the effect that the person who obtained the passbook through the negligence of A or B was the person who made the withdrawal. Rule 21 of the Post Office Savings Bank Rules for the guidance of depositors could not be a bar to the suit. See Post Office Savings Bank Rules for the Guidance of Depositors, R. 21. (1957) All W R (HC) 19.

——S. 9—U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3—Order under—Nature of —Civil Court if can interfere.

A Civil Court cannot go into the question of suitability of the accommodation decided by the Magistrate under S. 3, Proviso 2 of the U. P. (Temp.) Accommodation Requisition Act (25 of 1947). See Houses and Rents — U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3. A I R 1956 All 232.

——S. 9 — U. P. Temporary Control of Rent and Eviction Act (3 of 1947)—Allotment of accommodation —Jurisdiction of Rent Control Officer. See Houses and Rents—U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 7. AIR 1953 All 458.

——S. 9 — (U. P. Town Improvement Act (8 of 1919), S. 42)—Propriety of scheme—If the scheme made by the trust is sanctioned by the Government, it is not for the Civil Court to say whether the scheme is good or bad. See U. P. Town Improvement Act (8 of 1919), S. 42. AIR 1952 All 346.

——S. 9—U. P. Encumbered Estates Act (1934), Ss. 11 and 47—Transfer by Hindu widow — Suit by daughters after the death of widow — There is no bar. See Debt Laws — U. P. Encumbered Estates Act (25 of 1934), S. 11. AIR 1952 All 333.

——S. 9—U. P. Municipalities Act (2 of 1916), S. 169 — Order under S. 169, U. P. Municipalities Act (2 of 1916)—Aggrieved person is not debarred from approaching Civil Court. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 169. AIR 1951 All 634.

——S. 9 — Madras Co-oprerative Societies Act (6 of 1932), S. 57-A — Rules under S. 65 — Rr. XXII (6 A), XXII (17) — Seizure of movables by officers of Co-operative Society in contravention of Rules — Act amounting to trespass and illegal seizure — Act held not done under provisions of the Act—Jurisdiction of Civil Court not excluded. (1965) 1 Andh W R 233 = AIR 1966 Andh Pra 240.

——S. 9 — Suit by a trustee of a public temple for possession of temple properties from defendant who had been removed from trusteeship by Endowment Board — Suit filed on advice of Board — Suit is not barred. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 93. (1964) 2 Andh L T 270=(1964) 2 Andh W R 457=A I R 1966 Andh Pra 197.

——S. 9 — Central Excises and Salt Act (1 of 1944), S. 40 (2) and R. 223-A of the Rules framed thereunder —Scope of—Suit for refund of illegal levy — If barred —Penalty—When can be imposed. See Central Excises and Salt Act (1 of 1944), S. 40 (2). A I R 1961 Andh Pra 540.

——S. 9 — Part-time employee —Part-time employees are not covered by the Industrial Disputes Act (1947). This objection was not taken on this account does not give jurisdiction to the Tribunal. See Industrial Disputes Act (1947), S. 2 (k). AIR 1960 Andh Pra 371.

——S. 9—Madras District Municipalities Act (1920), S. 82 (1) and (2) — Building and site owned by different persons — If owner of building liable to pay tax on site—Annual value—Mode of determination—Non-compliance—Jurisdiction of Civil Courts if barred.

The Civil Court is bound to interfere with the wrong assessment made by the executive authority or the Municipal Council. See Municipalities — Madras District Municipalities Act (1920), S. 82 (1). (1960) 2 Andh W R 45.

——S. 9 — House Tax Rules, Rr. 9, 10, 18, 22 — Revision of assessment on ground that assessment was inadequate — Suit in Civil Court to challenge — He must establish non-compliance with the essentials of the procedure for getting relief from the Civil Court. See Panchayats — Madras Village Panchayats Act (1950), S. 64 (4). (1960) 1 Andh W R 63=1960 Andh L T 195.

——S. 9 — Madras Hereditary Village Offices Act (3 of 1895), Ss. 13, 21—Jurisdiction of Civil Court—(Specific Relief Act (1877), S. 42 — Suit for declaration — Section 21 of Madras Hereditary Village Offices Act (3 of 1895) bars a suit in Civil Court to set aside the decision of the tribunal. See Madras Hereditary Village Offices Act (3 of 1895), S. 13. A I R 1957 Andh Pra 894.

——S. 9 — Madras Hindu Religious Endowments Act (1927), S. 73 (1) and (5) — Suit by trustee to recover temple property or money from stranger — Consent of Board not essential.

Such a suit should be maintained in the ordinary Civil Courts and the jurisdiction of the Courts to entertain such suits would be governed by the provisions of Civil P. C. See Madras Hindu Religious Endowments Act (2 of 1927), S. 73 (1). A I R 1957 Andh Pra 498.

——S. 9—Jurisdiction of Board—Absence of application — Effect — Bar to jurisdiction to Civil Court. See Debt Laws — Hyderabad (Jagirdars) Debt Settlement Act (12 of 1952), S. 11. 1957 Andh L T 510.

——S. 9 — Co-operative Societies — Maharashtra Co-operative Societies Act, 1960 (24 of 1961), S. 91 — Maharashtra Co-operative Societies Rules (1961), R. 75 — Civil P. C. (1908), S. 9—Application for reference of dispute under R. 75—Question whether dispute exists or not has to be decided by reference to averments made in application. See Co-operative Societies — Maharashtra Co-operative Societies Act 1960 (24 of 1961), S. 91. 1965 Mah L J 523 = I L R (1966) Bom 23=67 Bom L R 306 (DB).

——S. 9—Motor Vehicles Act (1939), S. 110 — Motor Accidents claims tribunal is not a Court. See Motor Vehicles Act (1939), S. 110. 1966 Mah L J 334 = 67 Bom L R 903 (DB).

——S. 9 — Municipalities — Bombay Municipal Boroughs Act (18 of 1925), Ss. 110, 111 and 82 — Magistrate and revisional Court going into question as to validity or otherwise of alteration or amendment of assessment list—Their decision held nullity and could bind Civil Court in subsequent suit — Civil Court had jurisdiction to entertain suit—In view of limitation of appeal under S. 110, Magistrate's Court would not be proper forum to determine questions such as fraud, which is one of reasons or occasions for alteration of an entry — Further, there was nothing in S. 82 limiting the exercise of right in case of mistake of fact only. 57 Bom L R 547 and 58 Bom L R 300, Rel. on. (1962) 64 Bom L R 229.

——S. 9 — Right to specific relief — Rate payer is entitled to bring suit against Municipal Corporation challenging its illegal and ultra vires acts — But no interference by Court for Corporation not following

proper procedure — (Municipalities — Bombay Provincial Municipal Corporation Act (59 of 1949), Ss. 486, 487).

A rate-payer merely on the score that the procedure followed by a Municipal body in certain matters is not proper, if its action falls strictly within the limits of its powers and duties and it has acted in good faith. While the interests of the rate payers are entitled to be safeguarded against misuse or misapplication of public funds and acts which are illegal and ultra vires care must also be taken to see that the day to day administration of a public body is not allowed to be hampered by a rate-payer inspired by a sense of misguided public spirit or worse by ulterior motives of his own. **(1962) 64 Bom L R 29 = 1962 Nag L J 118 = ILR (1962) Bom 278.**

——S. 9 — Bombay Agricultural Debtors' Relief Act (28 of 1947), Ss. 40, 51-A — Application for adjustment of debts — Suit by debtor's son for declaration that sale by debtor was hit by S. 40 of Bombay Agricultural Debtor's Relief Act. See Debt Laws—Bombay Agricultural Debtor's Relief Act (28 of 1947), S. 40. **AIR 1956 Bom 687.**

——S. 9 — Bombay Hotel and Lodging House Rates Control Act (1947), Ss. 14, 28, 29 and 29-A — Jurisdiction of Special Court and Ordinary Court. See Houses and Rents — Bombay Hotel and Lodging House Rates Control Act (57 of 1947), S. 14. **AIR 1956 Bom 656.**

——S. 9 — Decision of Custodian under S. 48 (2) of Administration of Evacuee Property Act — The High Court has the power to examine the decision of the Custodian to decide whether he has acted within jurisdiction. See Constitution of India, Art. 227. **AIR 1956 Bom 652.**

——S. 9 — Bombay Agriculturists' Debtors' Relief Act (28 of 1947), S. 24 — Execution of mortgage decree sent to Collector — Adjustment by sale — Validity — Jurisdiction to decide — The question was outside the jurisdiction of the adjustment proceedings. See Debt Laws — Bombay Agriculturists' Debtors' Relief Act (28 of 1947), S. 24. **AIR 1956 Bom 607.**

——S. 9 — Whether S. 28 of Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) excludes reference to arbitration of a dispute relating to rent and possession of premises — Decree for eviction of tenant passed in terms of award was without jurisdiction as the arbitrators had no jurisdiction to decide the dispute. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 28. **57 Bom L R 261 = ILR (1955) Bom 386.**

——S. 9 — (Public Debt Act (1944), Ss. 19, 11 (2)) — Order of renewal under S. 11 (2) of Public Debt Act (1944) — Jurisdiction of Civil Court to question — An order of the Reserve Bank under S. 11 (2) of Public Debt Act (1944) cancelling an old security note cannot be called in question before the Civil Court. See Public Debt (Central Government) Act (1944), S. 19. **AIR 1953 Bom 209.**

——S. 9 — Decision of Collector under old Act (7 of 1944) — Decision becoming final under S. 14 (3) of that Act — Tenant acquiring valuable right—Right of landlord to re-agitate the question of reasonableness of his bona fide requirements — Small Causes Court has no jurisdiction to go into that question. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates (Control) Act (57 of 1947), S. 13. **AIR 1951 Bom 336.**

——S. 9 — (Bombay Industrial Relations Act (11 of 1947), S. 73) — Finding of Industrial Tribunal on which its jurisdiction depends — Interference by High Court — High Court has jurisdiction to determine whether the finding is correct or not. See Bombay Industrial Relations Act (11 of 1947), S. 73. **AIR 1951 Bom 68.**

——S. 9 — (Trade Marks Act (1940), Ss. 39, 73) — "Or otherwise relating to any right in a trade mark"— A suit filed in the Court of the Subordinate Judge was incompetent. See Trade Marks Act (1940), S. 39. **AIR 1957 Cal 135.**

——S. 9 — (Bengal Municipal Act (1932), S. 529-A)— Jurisdiction — District Magistrate has jurisdiction to entertain appeal and grant relief—See Municipalities — Bengal Municipal Act (15 of 1932), S. 529-A. **AIR 1956 Cal 393.**

——S. 9 — (Defence of India Act (1939), S. 17)—Suit in respect of compensation for requisition of premises — Maintainability—Suit is maintainable. See Defence of India Act (1939), S. 17. **AIR 1956 Cal 71.**

——S. 9 — Special Tribunal — Authority to decide case — Interested party — Competency.

A person who had granted a certificate which has some bearing on the issues that are to be decided and which certificate is being used is evidence in the case should not, under normal circumstances, deal with the case or decide the same. **AIR 1955 NUC (Cal) 2948.**

——S. 9 — (Industrial Disputes Act (1947), S. 29) — Right to enforce award in civil Court — The debt has accrued from the relationship of the master and servant. It is a civil liability and for enforcement of such liability recourse can be had to an action in a civil Court under S. 9 of the Act. See Industrial Disputes Act (1947), S. 29. **AIR 1953 Cal 613.**

——S. 9 — Order on application under S. 34 of West Bengal Premises Rent Control etc. Act (1950) — The fact that on the side of the landlord, the landlord and another witness were examined and on the other side of the tenant, the tenant examined himself alone, does no make the order of the Rent Controller without jurisdiction. See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 34. **AIR 1953 Cal 414.**

——S. 9—Fixation of standard rent — Jurisdiction of Rent Controller to determine incidential questions — Injunction restraining proceedings before him — Power of High Court — High Court cannot restrain. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), Ss. 2, 8, 9. **AIR 1952 Cal 282.**

——S. 9 — Suit for ejectment — Jurisdiction of civil Court is barred. See Houses and Rents — Hyderabad Rent Control Order (1335F.), S. 8. **AIR 1956 Hyd 17.**

——S. 9 — Preamble — Statutes conferring special jurisdiction — Interpretation.

In cases of Courts of Special and Conditional jurisdiction it is an accepted principle that the conditions laid for the exercise of power must be strictly construed. In such cases, there is no presumption of jurisdiction in favour of a Special Tribunal and the necessary condition must be so strictly observed as to cover the pertinent provisions strictly and completely. **AIR 1955 NUC (Hyd) 5624.**

——S. 9 — Judicial or quasi-judicial order — To constitute a judicial or quasi-judicial order, it must be necessary that the tribunal should have to weigh the pros and cons before it can come to a conclusion. See Constitution of India, Art. 226. **AIR 1953 Hyd 235.**

——S. 9—(Debt Laws—Gwalior Agricultural Debtor's Relief Act (S.M. 2002), S. 6) — Duty of Court when there is objection to jurisdiction pointed out. See Debt Laws—Gwalior Agricultural Debtors' Relief Act (Smt. 2002), S. 6. **AIR 1955 NUC (Madh Bha) 1305.**

——Ss. 9, 10 — Suit for recovery of rent in Small Cause Court — Suit for fixation of fair rent instituted in Court of Sub-Judge prior to suit for rent — Small

cause Court has no jurisdiction in the matter — Suit for recovery of rent should be stayed till determination of fair rent. See Houses and Rents — (Gwalior State) Accommodation Control Ordinance (Smt. 2004), S. 5 (4). AIR 1951 Madh Bha 105.

——S. 9 — Order under S. 8 (2), Indore Rent Control Order — Suit to declare order ultra vires — A Civil Court can entertain a suit. AIR 1951 Madh Bha 63.

——S. 9 — (Administration of Evacuee Property Act (1950), S. 8) — Claim by mortgagee — Jurisdiction to decide. The custodian can realise only those debts or manage those properties about which there is no dispute. If there is a dispute it can be resolved only by a civil Court. See Administration of Evacuee Property Act (1950), S. 8. AIR 1958 J and K 51.

——S. 9 — Specific amount not stated in plaint — Vague averment in plaint — Cognizance of suit by civil Court barred. See Co-operative Societies Act (2 of 1912), S. 43 (b). AIR 1961 Ker 258.

——S. 9 — (Motor Vehicles Act (1939), S. 110-F) — Right to obtain relief by suit — Claim for compensation in respect of accidents occurring before constitution of Claims Tribunal — Civil Court has exclusive jurisdiction to decide such claims. See Motor Vehicles Act (1939), S. 110F. AIR 1964 Madh Pra 133.

——S. 9 — (Gwalior State Municipalities Act (Smt. 1993), Ss. 136, 128, 48)—Brick-kiln for constructing one's own house — Permission—Notice under S. 128 of the Gwalior State Municipalities Act — Suit for injunction against Municipality — Jurisdiction of civil Court — The jurisdiction of the civil Court was not ousted in this case. See Municipalities — Gwalior State Municipalities Act (Smt. 1993), S. 136. AIR 1952 Madh Bha 21.

——S. 9 — Bar of suit — Principles. See Municipalities — Madras District Municipalities Act (1920), S. 364. (1957) 70 Mad L W 19.

——S. 9 — (Madras Civil Services Disciplinary Proceedings Tribunal Rules (1948), R. 4 (a) (Prevention of Bribery and Corruption Act (1947), S. 5 (1)) — Jurisdiction of tribunal to make enquiry — Charges found not established — The jurisdiction of the Tribunal is not taken away. See Madras Civil Services Disciplinary Proceedings Tribunal Rules (1948), R. 4 (a). 1956 Cri L J 1330=AIR 1956 Mad 613.

——S. 9 — Civil Court's jurisdiction to grant decree in ejectment not ousted. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 7. AIR 1956 Mad 216.

——S. 9 — (Madras Hindu Religious & Charitable Endowments Act (1951), S. 57 (b))—Dispute respecting right to succession to hereditary office. The Civil Court has jurisdiction to take cognizance of a claim to succeed to the office of hereditary trustee, which is a claim to property. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 57 (b). AIR 1956 Mad 146.

——S. 9 — Orders of Sea Customs Authorities—Even the ordinary civil Courts have jurisdiction to entertain suits and afford relief. AIR 1955 Mad 187.

——S. 9 — Special Tribunal — Character of.

Whether an authority constituted under a special statute is an administrative body or a tribunal discharging the functions of a judicial character or a Court, depends on the nature of the powers conferred on the authority by the statute. AIR 1954 Mad 340 (342) (Pt B) (Pr 3).

——S. 9 — Fixing of emoluments of archakas—This is administrative matter and it is for the Board to fix it and not for the Court, unless invited by both parties to do so or in the 'interest of the temples, archakas or the shipping public. See Madras Hindu Religious Endowments Act (2 of 1927). A I R 1954 Mad 258.

——S. 9 — (Madras Hereditary Village Offices Act (1895), Ss. 13 and 21) — Suit for possession or service inam land — Maintainability in civil Court. The civil Courts are barred from entertaining. See Madras Hereditary Village Offices Act (3 of 1895), S. 13. AIR 1953 Mad 912.

——Ss. 9 and 92—Private trust—Right of members of founder's family to seek redress in a Civil Court where the trustee mismanages — Scheme suit — Maintainability.

Even in the case of private trusts it is open to any member of the founder's family where his rights are impugned to seek redress in Courts of law. The public or beneficiaries have no manner of right at all. The Court cannot refuse to frame a scheme in the matter of a private trust. So far as the members of the family are concerned who are interested in the trust if the trustee for the time being mismanages or acts in breach of trust, it is a civil right which is infringed and under S. 9 of the Civil P. C. they are entitled to seek redress in Court for the purpose of remedying the mischief. 65 L W 368 = (1952) 1 M L J 487 = AIR 1953 Mad 750.

——S. 9—(Madras District Municipalities Act (1920), S. 354 and Sch. 4) — Right of suit — A right of suit does lie where the provisions of the Act have not been complied with. See Municipalities—Madras District Municipalities Act (5 of 1920), S. 354. AIR 1953 Mad 689.

——S. 9—Trustees of a temple borrowing on promissory note — Absence of necessity — Ex parte decree on the promissory note and sale in execution thereof temple property — Suit by succeeding trustees to recover properties without setting aside the sale in execution of the decree — Maintainability.

Where a communal temple was managed by three trustees who executed a promissory note in favour of one K and his assignee brought a suit on the note and obtained an ex parte decree and thereafter the defendant brought the suit properties to sale in execution of the decree and purchased the same and took delivery of possession also, in a suit by the succeeding trustees for recovery of the properties :

Held, (1) that the defendants had to establish justifying necessity for the transaction of borrowing by the trustee, i.e., they had to establish that the promissory note was supported by consideration which was utilised for a justifying necessity.

(2) That the ex parte decree was not valid and binding upon the trust as in the absence of a stipulation in the terms of the transaction making the temple properties liable for the borrowed amount, a decree could not be passed against the devaswom. (1950) 2 M L J 636, Foll.

(3) Thu trustees in suffering a decree against the temple were acting fraudulently and in collusion with the creditor.

(4) That a decree obtained against a limited owner or shebait of a mutt or a manager or trustee of a temple or charity could not bind a reversioner or a succeeding trustee without the necessary and appropriate issues raised, tried and decided in a previous suit on the same subject-matter. The question certainly could be raised or opened in a subsequent suit.

(5) That the suit to recover possession of the properties sold was properly brought and it was not necessary for the plaintiffs to seek to set aside the original sale.

(6) That the suit was not barred by Art. 12 or Art. 95 of the Limitation Act. (1952) 2 M L J 871 = 65 Mad L W 1147 = AIR 1953 Mad 624.

—S. 9—(Madras Hindu Religious Endowments Act (1927), Ss. 84(1), 73, 79 and 79-A)—Suit for declaration that temple belonged to certain community and for injunction—The plaintiff was entitled to maintain a suit for the reliefs sought by him. See Madras Hindu Religious Endowments Act (2 of 1927), S. 84(1). AIR 1952 Mad 767.

—S. 9—Bangalore House Rent and Accommodation Law (1946), Cl. 8—Petition by landlord for eviction of tenant — Tenant not raising objection that tenancy was not determined by notice to quit—Order for eviction—Subsequent civil suit questioning order of House Rent Controller on that ground is barred. See Houses and Rents — Mysore House Rent and Accommodation Control Order (1948), Cl. 9. AIR 1953 Mys 1.

—S. 9—Order in remand, while holding applicant's claim for relief under item (a) of Cl. 13(3) of C. P. and Berar Letting of Houses and Rent Control Order was barred by sub-cl. (9) of that clause, directing Additional Deputy Commissioner to investigate his claim for relief under item (c) of sub-cl (3)(vi)—A. D. C. exceeds in jurisdiction in holding that claim under latter clause was also barred for the same reason as for relief under former clause. See Constitution of India, Art. 226. AIR 1953 Nag 148.

—S. 9—(Payment of Wages Act (1936), Ss. 15 and 22)—Bona fide dispute as to payment—Jurisdiction—Proviso (a) to S. 15(3) of the Payment of Wages Act, does not suggest that 'bona fide' dispute as to the amounts payable are to be tried by the Civil Courts. See Payment of Wages Act (1936), S. 15. AIR 1953 Nag 136.

—S. 9—(C. P. Tenancy Act (1920), S. 106)—Suit by ex-proprietor to recover rental arrears due to him—Proper forum — Civil or Revenue Court — He must seek his relief in an ordinary Civil Court, under S. 9 of the Act. See Tenancy Laws — C. P. Tenancy Act (1 of 1920), S. 106. AIR 1951 Nag 299.

—S. 9—Special Tribunal—Exclusion of jurisdiction of Civil Court — Principles — Special jurisdiction of liquidator under Bihar and Orissa Act 6 of 1935—Remedies under that Act not followed — No suit lies in Civil Court. AIR 1953 Orissa 300.

—S. 9—(Income-tax Act (1922), Ss. 67 and 34) — Assessment under S. 34 of the Income-tax Act cannot be challenged in Civil suit. See Income-tax Act (1922), S. 67. (1964) 51 I T R 596 = I L R 44 Pat 22 = AIR 1966 Pat 305.

—S. 9—(Bihar Panchayat Raj Act (1948), Ss. 68, 73) —Decree passed by Gram Cutcherry — Execution by Civil Court—Legality — Civil Court has no jurisdiction to execute a decree passed by a Gram Cutcherry. See Panchayats—Bihar Panchayat Raj Act (7 of 1948), S. 68. AIR 1958 Pat 370.

—S. 9—Order of Controller valid—Appellate order of Additional Commissioner ultra vires — The House Controller is a Court of limited jurisdiction to whose order finality has been attached, limiting the scope of the Civil Court to the narrow compass of deciding only its ultra vires character and it cannot travel beyond the terms of the statute. If, therefore, there is any order passed by the Court of limited jurisdiction, which is beyond challenge in terms of the provisions of the enactment, the Civil Court is bound to respect it and it is no part of its jurisdiction to go further into that question. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 18(3). AIR 1954 Pat 393.

—S. 9—(Debt Laws—U.P. Encumbered Estates Act (25 of 1934), Ss. 14 and 24)—Execution outside U. P. —Decree passed by Special Judge in U. P. having extra-territorial effect — Consent or acquiescence on the part of judgment-debtor—Effect—No amount of consent or acquiescence can ever confer jurisdiction on the Court of the special Judge. See Debt Laws—U. P. Encumbered Estates Act (25 of 1934), S. 14. AIR 1954 Pat 164.

—S. 9—(Administration of Evacuee Property Act (1950), S. 26)—Review of order made without notice —Custodian's review of an order, by which sale had been confirmed, when made without notice to the purchaser must be held to be without jurisdiction. See Administration of Evacuee Property Act (1950), S. 26. AIR 1954 Pat 43.

—S. 9—(Bihar and Orissa Municipal Act (1922), S. 19(2)—Jurisdiction of Civil Court—Rules 3 and 10 of Bihar Election Petitions Rules, 1941, are valid rules made under S. 19 of the Bihar and Orissa Municipal Act and oust the jurisdiction of the Civil Court in matters of dispute relating to interpretation of R. 12 of the Election Rules. See Municipalities—Bihar and Orissa Municipal Act (7 of 1922), S. 19(2). AIR 1953 Pat 211.

—S. 9—(Administration of Evacuee Property Act (1950), S. 46)—Jurisdiction of Civil Court — It must be construed under S. 46 of the Administration of Evacuee Property Act (1950) that the jurisdiction of the Civil or Revenue Court is ousted even if the Custodian has wrongly decided that any property is an evacuee property under the Act. See Administration of Evacuee Property Act (1950), S. 46. AIR 1953 Pat 112.

—S. 9—Appeal from Rent Controller to Revenue Commissioner — Order by without complying with S. 11(3)(a) of Bihar Building (Lease, Rent and Eviction) Control Act (1947) — Error of law — Effect on jurisdiction—Suit to declare order was without jurisdiction—When the Revenue Commissioner has jurisdiction to decide the question at issue if he decides the question wrongly, that is not a matter affecting his jurisdiction, and his decision cannot on that ground be attacked collaterally by a suit for a declaration in the Civil Court. See Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11(1)(a) and (3)(a), Proviso. AIR 1952 Pat 255.

—S. 9 — (Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), Ss. 5, 9 and 15)—Application made under S. 5 of Displaced Persons (Debts Adjustment) Act (1951)—Its effect on suit pending in Civil Court—Such a matter is taken out of the hands of the Civil Court — If the suit is pending it must be stayed under S. 15(a) of the Displaced Persons (Debts Adjustment) Act. See Debt Laws—Displaced Persons (Debts Adjustment) Act (1951), S. 5. AIR 1956 Pepsu 39.

—S. 9 — Payment of Wages Act (1936), S. 15 — Jurisdiction and powers of the authority — Tribunal constituted under the Act has no jurisdiction to determine question of legality and validity of order terminating employee's services: A I R 1962 All 52, Dissent from. See Payment of Wages Act (1936), S. 15. (1963-64) 24 F J R 189 (Punjab).

—S. 9—Rules under S. 43(1), Co-operative Societies Act (1912), S. 43, R. 18(1) — Suit by member against other members before award has been made in reference—Jurisdiction of Civil Court to entertain suit not barred under R. 18(1)—Remedy of aggrieved party is to obtain stay of suit under Arbitration Act, 1940. See Co-operative Societies Act (1912), S. 43(1). AIR 1961 Punj 133.

—S. 9—(Debt Laws—Displaced Persons (Debts Adjustment) Act (1951), Ss. 15(c), 16 and 32)—Secured creditor electing to retain charge — Suit to enforce charge against property allotted to displaced person—The suit is not barred See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 15(c). AIR 1960 Punj 599.

——S. 9—Jullundur Cantonment Octroi Bye-law 15 —Assessment of Octroi duty not in accordance with provisions of law — Recovery also not in accordance with law—Civil suit for injunction restraining Board from recovering tax is maintainable. See Cantonments Act (1924), S. 90. **AIR 1960 Punj 561.**

——S. 9—(Sea Customs Act (1878), Ss. 182, 188 and 199) — Order by Customs Authorities refusing to release goods unless import licence was produced—Suit challenging order as malicious and illegal not competent. See Sea Customs Act (1878), S. 182. **AIR 1960 Punj 465.**

——S. 9 — (Administration of Evacuee Property Act (1950), S. 46)—Jurisdiction of Custodian and of Civil Court. Whether after the transaction of exchange of land in dispute was the property of one who later became an evacuee can be decided only by the Civil Court and the Custodian has no jurisdiction to adjudicate upon the same. See Administration of Evacuee Property Act (1950), S. 46. **AIR 1958 Punj 384.**

——S. 9 — (Administration of Evacuee Property Act (1950), S. 46)—Purchaser of property becoming evacuee—Suit challenging validity of sale—Civil Court's jurisdiction. The words of S. 46 of the Administration of Evacuee Property Act do not bar any Civil or Revenue Court from entertaining any suit whatever concerning evacuee property. See Administration of Evacuee Property Act (1950), S. 46. **AIR 1956 Punj 163.**

——S. 9—Application under S. 5 or S. 11 (2) of Displaced Persons (Debts Adjustment) Act (1951)—Effect on jurisdiction of Civil Court. The matter cannot be decided by a Civil Court. See Debt Laws—Displaced Persons (Debts Adjustment) Act (1951), S. 2 (12). **AIR 1955 Punj 197.**

——S. 9 — (Arbitration Act (1940), S. 34) — Matter agreed to be referred—Insurance policy—Arbitration clause. See Arbitration Act (1940), S. 34. **AIR 1955 Punj 113.**

——S. 9—Suit expressly barred—(Administration of Evacuee Property Act (1950), S. 46)—(Evacuee Interest (Separation) Act, 1951))—Suit for dissolution or partnership and rendition of accounts between partners some of whom are evacuees and others non-evacuees—Suit is triable by Civil Court. **AIR 1953 Punj 221.**

——S. 9—Suit challenging order of requisition under S. 13 of Delhi Premises (Requisition and Eviction) Act (49 of 1947) — Jurisdiction of Civil Court. See Houses and Rents — Delhi Premises (Requisition and Eviction Act (49 of 1947), S. 13. **AIR 1952 Punj 383.**

——S. 9—Tax under the Punjab Municipal Act (1911), S. 86 (1) — Jurisdiction of Civil Court — The Civil Court has jurisdiction to entertain a suit for the refund of tax. See Municipalities—Punjab Municipal Act (3 of 1911), S. 86 (1). **AIR 1952 Punj 378.**

——S. 9 — Person pleading that he paid large sums of money which covered the debt and that if he has not so paid, the debt was fictitious debt — Such person is not a debtor entitled to apply under the Punjab Relief of Indebtedness Act (7 of 1934)—Civil Court has jurisdiction in such case. See Debt Laws—Punjab Relief of Indebtedness Act (7 of 1934), S. 9. **AIR 1951 Punj 323.**

——S. 9—Rajasthan States Covenant (1949), Art. 7 (3) —Succession to Jagir in former Jaipur State — Effect of integration into State of Rajasthan — Repeal of Jaipur Matni Rules by Covenant and of Covenant by by the Constitution — Procedure under Matni Rules not revived — Suit to establish claim lies in Civil Court. **ILR (1961) 11 Raj 93.**

——S. 9 — Suit pending at the commencement of Rajasthan Relief of Agricultural Indebtedness Act (28 of 1957)—Forum for trial.

Although pending cases have to be determined in accordance with the old law yet they have to be tried by Debt Relief Court and not by a Civil Court. See Debt Laws — Rajasthan Relief of Agricultural Indebtedness Act (28 of 1957), S. 24 (2). **AIR 1960 Raj 215.**

——S. 9 — (Administration of Evacuee Property Act (1950), S. 7-A, Proviso (a)) — Pending proceedings — Defective notice under S. 7 (1) of the Administration of Evacuee Property Act—Effect. See Administration of Evacuee Property Act (31 of 1950), S. 7-A, proviso (a). **AIR 1959 Raj 51.**

——S. 9 — Right to institute separate suit in respect of apportionment of compensation — (Travancore Land Acquisition Act (21 of 1089), S. 28 (2), Third Proviso). See Land Acquisition Act (1894), S. 31 (2), Third Proviso. **AIR 1957 Trav-Co 202.**

——S. 9 — Suit for eviction under S. 7 of Cochin Buildings (Lease and Rent Control) Proclamation (4 of 1122 ME) — When the lease continues the plaintiffs have to apply to Controller for the eviction of the tenant and a suit for the purpose is not maintainable. See Houses and Rents — Cochin Buildings (Lease and Rent Control) Proclamation (4 of 1122), S. 7. **AIR 1953 Trav-Co 462.**

——S. 9 — Assessment of tax beyond competence—Suit for refund of excess tax paid — Jurisdiction of Civil Court is not barred. See C. P. and Berar Motor Vehicles Taxation Act (3 of 1942), S. 18. **AIR 1956 Vindh Pra 26.**

——S. 9 — Assumption of jurisdiction under inherent powers — Effect — If the legal procedure laid down by S. 57 of the Motor Vehicles Act (1939) has been followed properly by the authority the Tribunal cannot in its discretion enlarge its jurisdiction, and give a party a right of appeal in contravention of S. 64 (f) of the Motor Vehicles Act. See Motor Vehicles Act (1939), S. 64 (f). **AIR 1953 Vindh Pra 41.**

●——S. 9—Constitution of India, Arts. 136 and 329(b) —Power of Supreme Court to grant special leave to appeal against decision of Election Tribunal — Representation of the People Act (1951), Ss. 80 and 105. See Constitution of India, Art. 136. **AIR 1954 S C 520.**

●——S. 9 — Tests of Judicial Tribunal — (Special Tribunal) — Explained. See Constitution of India, Art. 226. **AIR 1953 SC 325.**

——S. 9—Arbitration Act (1940), S. 2 (a)—Arbitration agreement — Effect on right to sue—(Domestic Tribunal) — The domestic tribunal alone can deal with the dispute. See Arbitration Act (1940), S. 2 (a). **AIR 1956 Bom 97.**

——S. 9 — Tribunal reviewing its own decision on ground that it had no such jurisdiction — Tribunal found to have jurisdiction — It would be for the tribunal itself acting within its jurisdiction to decide whether a case has been made out for the exercise of its jurisdiction to review its own decision. See Constitution of India, Art. 226. **AIR 1953 Bom 284.**

——S. 9—(Arbitration (Protocal and Convention) Act (1937), Ss. 4 (2), 7) — Suit for declaration that award under Act is void and not enforceable if barred. See Arbitration (Protocal and Convention) Act (1937), S. 4 (2). **AIR 1960 Cal 702.**

——S. 9 — (Arbitration Act (1940), S. 30)—Rules of Tribunal of Arbitration, Bengal Chamber of Commerce, R. 7 - Second Tribunal constituted of same persons—Award is void—Omission to object to jurisdiction—Principle of waiver does not apply — See Arbitration Act (1940), S. 30. **AIR 1955 NUC (Cal) 2924.**

—S. 9 — Order of Election Tribunal — Finality—Jurisdiction of High Court — The order made by the

Election Tribunal cannot be challenged in a civil Court nor can the High Court interfere with it —See Constitution of India, Art. 226. A I R 1955 N U C (Madh-Bha) 2378.

——S. 9—Certiorari can be issued to quash erroneous decision of inferior Tribunal within its jurisdiction—See Constitution of India, Art. 226. AIR 1953 Madh-Bha 197.

——S. 9—Constitution of India, Arts. 226, 227 and 311—Domestic Tribunal — Open-mindedness and detachment is essential in every person charged with duty of holding enquiry and giving opinion against another—Held, there was no evidence that presiding officer at enquiry was biased against petitioner, a dismissed servant, or that he was virtually his prosecutor — See Constitution of India, Art. 226. (1964) I Lab L J 500 (Mad).

——S. 9—Domestic Tribunal—Interference by Court. The principles applicable to Court of Justice are not applicable to domestic tribunals. A I R 1952 Orissa 359.

● ——S. 9—Bar Councils Act (1926), S. 11—Bar Council Tribunal—Constitution of—Validity—Bias—Tests—Proof of actual prejudice not necessary — See Bar Councils Act (1926), S. 11. AIR 1957 S C 425.

——S. 9 — Labour Appellate Tribunal deciding that there is no question of law — Writ application is not maintainable — See Constitution of India, Art. 226. AIR 1953 All 531.

——S. 9 — Jurisdiction of Small Cause Court to be determined on allegations in plaint and not on defence—Suit for damages on allegations of acts constituting offence under S. 379, I. P. C. — Jurisdiction is barred — Proper procedure is to return plaint for presentation to proper Court and not to dismiss suit. See Provincial Small Cause Courts Act (1887), S. 15 (1). AIR 1966 Orissa 84.

——S. 9 —(Arbitration Act (1940), S. 15 (a))—Part of award on matter not referred to arbitration—See Arbitration Act (1940), S. 15 (a). AIR 1954 Pat 336.

● ——S. 9 and O. 9, R. 13 — Ex parte decree — Suit challenging decree as collusive—Collusion, meaning of—Suit by landlord against lessee for ejectment after serving valid notice to quit—Sub-lessee not impleaded — Ex parte decree passed without contest by lessee—Sub-lessee can challenge decree as collusive. AIR 1964 S C 1889.

——S. 9 — Joini family firm — Suit against the firm represented by a junior member — Junior member's name appearing in the first name of the firm, carrying correspondence in the firms' name, and sitting at the shop—No fraud is committed to maintain a separate suit to set aside the decree. AIR 1952 All 923.

——S. 9 — (Arbitration Act (1940), Ss. 31, 32, 33)—Allegation that consent to reference was vitiated by fraud—Bar of separate suit.

A suit in which the existence and validity of the reference to arbitration and the award passed in pursuance of such arbitration is agitated is not maintainable. See Arbitration Act (1940), S. 31. AIR 1953 Mad 544.

——S. 9 — (Bihar and Orissa Public Demands Recovery Act (1914), S. 46) — Applicability — Suit on ground of fraud — Where the proceedings of a Court of law are vitiated by fraud, the Civil Court has complete jurisdiction to impugn any such proceedings on the ground of fraud. See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 46. AIR 1956 Pat 161.

● ——S. 9—Acts of State—"Sovereign" and "Sovereignty" meaning of — Position of Ruler of erstwhile Patiala State — Executive order of Ruler depriving subject of property—Jurisdiction of Civil Court to question legality.

Held, the civil Courts have no jurisdiction to question the legality of that order. A I R 1953 Pepsu 1 (FB).

● ——S. 9—Act of State—Jagir—Succession—Adopted son—Jagir State—Recognition by Raj Pramukh—Necessity after Constitution of India, 1950.

In the times of erstwhile Rules of Jaipur State, before an adopted son could succeed to the Jagir his adoption had to be recognised by the Ruler for purposes of succession. The power of recognising succession vested in the Rajpramukh on the integration of Jaipur in the State of Rajasthan. But this power lapsed on the coming into force of the Constitution, and the question of succession to Jagirs became purely a civil matter justiciable by the ordinary courts of the land. A validly adopted son became entitled to succeed to the Jagir on the coming into force of the Constitution without his adoption being recognised by any authority. By valid adoption is meant an adoption valid in accordance with the personal law of the adopter Jagirdar. Writ Petn. No. 187 of 1956 (Raj), Relied on. Prem Ballab Shebait v. Board of Revenue, Rajasthan. 1961 Raj L W 178 = ILR (1960) 10 Raj 1808 = A I R 1961 Raj 8 (FB).

8. The rule does not apply in the case of summary and concurrent remedies.

——S. 9—Concurrent remedies—Election—Change of remedy not allowed. AIR 1952 Mys 99.

——S. 9 — Bombay City Civil Court — It is a Civil Court within meaning of the section, though it may follow summary procedure as provided in O. 37—It is not a Court of limited jurisdiction. A I R 1963 Pat 398.

——S. 9 — (Pepsu Panchayat Raj Act (2008 B. K.), S. 62)—Jurisdiction of Civil Court — If barred—The Civil Court as well as the Panchayat Courts have concurrent jurisdiction. The jurisdiction of the Civil Courts has not been excluded in such suits. See Panchayats — Pepsu Panchayat Raj Act (8 of 2008 B. K.), S. 62. AIR 1956 Pepsu 78.

SECTION 10

——S. 10 — Single Judge refusing or allowing an application for stay of another suit—Order of refusal—No appeal lies. See Letters Patent (Mad), Cl. 15. AIR 1957 Andh Pra 491.

——Ss. 10, 151—Stay of suit—Bill of lading—Clause providing that disputes arising would be decided by certain foreign Courts — Suit for damages filed in Calcutta High Court—Discretion of Court to stay suit—Relevant considerations—(Contract Act (1872), S. 28)—(International Law (Private). See Civil P. C. (5 of 1908), S. 151. AIR 1960 Cal 45.

——Ss. 10 and 151 — Suit for arrears of rent pending in civil Court — Application by tenant for determination of fair rent to Rent Controller—Civil suit should not be stayed. A I R 1953 Hyd 55.

——S. 10 — Suit by manager of deity for recovery of rent — Suit questioning title of manager already pending — Question in both essentially different—Stay of suit for recovery of rent cannot be granted.

It is well settled that a de facto manager of a deity can always bring a suit for money or for the realisation of rent. A suit filed by the manager of a deity for money or for realisation of rent from the tenants cannot be stayed on the ground that a previously instituted suit, in which the title of the manager is questioned, is already pending. The question involved in both the suits is essentially different. Moreover,

when the tenants are not parties to the previously instituted suit and they have executed rent-deeds in favour of the manager, they cannot be allowed to go behind the terms of the rent-deed and question the title supreme in suit for rent. **1963 Kash L J 10.**

—S. 10 — Suit for declaration of title and possession of land decreed in plaintiff's favour — Separate suit for future mesne profits — Suit is not barred — Stay of suit not justified. See Civil P. C. (5 of 1908), S. 2 (12), O. 20, R. 12, O. 2, R. 2. **A I R 1966 Madh-Pra 186.**

—S. 10 — Section 4 of M. B. Muafi Inam Tenants and Sub-tenants Protection Act (32 of 1954) is not repugnant to Civil P. C See Tenancy Laws — M. B. Muafi and Inam Tenants and Sub-tenants Protection Act (32 of 1954), S. 4. **AIR 1957 Madh-Bha 63.**

—Ss. 10 and 151 — Stay of suit — Powers under S. 151—When can be exercised— In the instant case held, that, exercise of powers under S. 151 was essential for stay of suit. **ILR (1965) Cut 533=A I R 1966 Orissa 53.**

—S. 10—Stay under—What is intended to be stayed is the trial of suit challenging validity of Commissioner's order and not all proceedings—Court can pass interlocutory order of injunction for ends of justice — There is no distinction between stay under S. 10 of Civil P. C. and stay under S. 3 (1) of Orissa Hindu Religious Endowments (Amendment) Act (31 of 1947). See Orissa Hindu Religious Endowments (Amendment) Act (31 of 1947), S. 3 (1). **A I R 1951 Orissa 339.**

—S. 10—Same matter directly and substantially in issue in both suits — Section applies — Suit includes appeal. **A I R 1954 Punj 113.**

—S. 10—Scope—Discretion of Court—Where S. 10 applies the Court has no option but to stay proceedings. **A I R 1954 Punj 113.**

SECTION 11

SYNOPSIS

1. Scope.
2. Directly and substantially in issue.
3. Ex parte decree.
4. Former suit.
5. Might and ought.
6. Parties and Representatives.
7. Litigation must be under the same title.
8. Competency of Court.
9. Heard and finally decided.

1. Scope.

—S. 11—(Arbitration Act (1940), S. 14)—Dismissal of application under S. 14 of Arbitration Act with consent—Review — Applicant seeking decree on the award through a review application—Party cannot, apart from the docrine of res judicata contained in S. 11, be allowed to apply again for a decree. See Arbitration Act (1940), S. 14. **A I R 1958 All 720.**

—S. 11—Applicability of principle of res judicata—Previous decision when can be reopened—Limitation on—(Evidence Act (1872), S. 115). The principle of res judicata or estoppel by record does not strictly apply to the Income-tax authorities in relation to the proceedings before them. See Income-tax Act (1922), S. 5. **1956 Cri L J 712=AIR 1956 Bom 375.**

—S. 11—Assessment proceedings—Principle of res judicata cannot be applied to assessment orders pertaining to different periods and based on different causes of action. **(1965) 2 Mad L J 254=78 Mad L W 662=ILR (1966) 1 Mad 404=A I R 1966 Mad 220.**

—S. 11 — Successive applications—Principle of res judicata— Applicability—The general principle of res judicata apart from S. 11, can be made applicable to writ applications also. See Constitution of India, Art. 226. **AIR 1956 Pat 182.**

—S. 11—No conflict between S. 17 (2) of Administration of Evacuee Property Ordinance (27 of 1949) on the one hand and the law of limitation and the principles of res judicata. See Administration of Evacuee Property Ordinance (27 of 1949), S. 4. **AIR 1960 Punj 354.**

—S. 11—(Criminal P. C. (1898), S. 403)— Principle of res judicata — Applicability — Dacoity — Several persons apprehended, tried, and acquitted—After conclusion of trial two more persons connected with same dacoity and who were absconding arrested and tried separately—Finding given in the previous trial not binding in second. See Criminal Trial—Principle of res judicata. **1964 (1) Cri L J 378 = AIR 1964 All 139.**

—S. 11 — Scope — Applicability—U. P. Industrial Disputes Act (1947)— Reference of dispute to labour Court is purely admininitrative decision—Principles of res judicata do not apply. See U. P. Indistrial Disputes Act (1947). **(1963) 1 Lab L J 340 (All).**

—S. 11— Application of principle of res judicata —Prior suit for redemption decided as time barred—Subsequent suit for redemption —Principle of res judicata will apply. See T. P. Act (1882), S. 60. **AIR 1963 Mad 226.**

—S. 11 — Plea of res judicata. See Evidence Act (1872), S. 44. **ILR (1951) 1 Cal 168 (DB).**

2. Directly and substantially in issue.

—S. 11—Issue framed in former suit not necessary for its decision—Finding on that issue cannot operate as res judicata in second suit raising the point involved in that issue.

The finding on a question in a suit cannot be considerd to be res judicata when the point involved therein arises for determination in a later suit where that decision in the earlier suit is not the basis of the judgment in that suit. A I R 1924 Mad 893 (2) and AIR 1935 Mad 551, Rel. on.

A filed a suit against B for declaration of his title to a land and possession. In that suit B pleaded in defence that the said land had been agreed to be sold to him by A and in pursuance of that agreement certain money had also been paid to A. He also averred that the dispute has been referred to arbitration. The Court therefore framed an issue as to whether there was such an agreement and a valid arbitration proceeding and if so whether they had any bearing on the suit of A and found the issue against B. But it decided the suit in favour of A by finding for him the issue of ownership and occupation on the basis of an admission made on behalf of B during the course of argument, B then brought a suit for the return of the money alleged to have been paid by him under the agreement for sale.

Held, that the finding on the issue in A's suit did not bar B's suit on the ground of res judicata. Although an issue has been framed in A's suit in that regard the suit could have been disposed of merely on the admission of the party without giving a finding whether there was a sale agreement and if so, whether any considerarion had passed between the parties in respect of the said sale agreement. The second suit filed by B for the return of the consideration on the basis of agreement for sale stated to have been executed by A proceeds altogether on a different footing and is therefore not barred by res judicata on the ground of the finding given in A's suit. **(1965) 2 Andh W R 13=AIR 1966 Andh 221.**

—S. 11 — Departmental inquiry—Taking action of two stages — Rule of res judicata — Applicability — The order of the proper authority censuring the public servant and making him pay certain sum in consequence of the inquiry does not operate as res judicata barring the authority taking action against

him under Fundamental Rule 56 (b) (1)—See Fundamental Rules, R. 56 (b) (1). (1956) 60 Punj L R 277.

——Ss. 11, 10 — "Matter in issue" — Meaning of — The words "matter in issue" mean "the entire matter in controversy between the parties" and not one of several issues in the case — See Civil Procedure Code (5 of 1908), S. 10. AIR 1951 Punj 275.

● ——S. 11 — Suit for partition — Interest of one coparcener vesting in Official Receiver in insolvency pending suit — Final decree for partition directing Official Receiver to pay certain sum to another coparcener by way of owelty by sale of insolvent's property — Lien or charge over insolvent's share — Payment by Official Receiver in oursuance of direction — Subsequent decision of High Court holding that no charge was created by decree — Official Receiver was not entitled to claim back those monies — See Hindu Law—Partition. AIR 1957 S C 577.

——S. 11—Matter not in issue. AIR 1954 All 215.

——S. 11 — Reasonable rent previously assessed — Decision cannot be res judicata as regards rent actually payable — Rent actually payable held was known — See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 9. AIR 1953 Cal 782.

——S. 11 — Matters in issue in two suits different—A suit for possession of the plaintiff's share after partition is not barred by dismissal of his prior suit for recovery of specific plot of land based on his exclusive title. AIR 1955 N U C (Mad) 2413.

——S. 11—Res judicata—Former petition for divorce on ground of sodomy — Subsequent petition setting up adultery, desertion and cruelty — Latter petition is barred by res judicata regarding sodomy or attempt at sodomy but not regarding adultery and cruelty — See Divorce Act (1869), S. 10. AIR 1953 Mad 792.

——S. 11 — Annual tenant — Meaning—Decision in previous suit that tenant was annual tenant — Res judicata — Tenant of antiquity — Held on facts that the decision in the previous suit was not res judicata — See Berar Land Revenue Code (1928), S. 73 (1), Proviso. AIR 1953 Nag 40.

——S. 11—No trial of issue—The judgment will not operate as 'res judicata' on that issue in subsequent case. AIR 1953 Trav-Co 450.

——S. 11, O. 22, R. 5—Matters collaterally in issue—Question whether certain person is legal representative of deceased plaintiff under O. 22, R. 5 — Question can operate as res judicata. AIR 1951 Pat 537.

● ——S. 11 — Fixation of standard rent — Second application after change of circumstances — Whether barred — A second application may be barred by res judicata or principles analogous thereto, but for that the material circumstances must remain the same. The bar would not apply in altered or changed circumstances — See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 17 (2). AIR 1961 Cal 432 (FB).

3. Ex parte decree.

——Ss. 11 and 13 — Suit in India on ex parte foreign judgment on promissory note and in alternative on promissory note — Ex parte decree set aside and suit restored — Suit in India allowed to be dismissed — Fresh suit in India on judgment in restored suit in foreign Court—No relief on promissory note—Suit if barred. AIR 1958 Ker 126.

——S. 11 — Ex parte order settling fair and equitable rent—Subsequent suit claiming nishkar right — The ex parte order does not preclude the tenant from proving his nishkar right in subsequent suit for declaration of such right — See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 105. A I R 1951 Cal 45.

——S. 11 and O. 9, R. 13 — Suit to set aside ex parte decree—Decree—Effect of—Prior suit — If revived. It is extremely unreasonable to say that because the plaintiff procured a decree by a trick in not having the summons of the suit served on the defendant, he should not be permitted to establish his case after his fraud has been discovered and the decree obtained by him has been set aside. See Civil Procedure Code (5 of 1908), O. 9, R. 13. A I R 1957 Mad 512.

4. Former suit.

——S. 11 — Interlocutory order — Order of Court holding certain document to be privileged — Order cannot be attacked at subsequent stage of the same proceedings. AIR 1951 Nag 212.

——S. 11 — Any order, either interlocutory or final in its nature passed in the presence of parties should be taken as closing the controversy once for all for the purposes of the proceeding or suit so far as it goes. The order may or may not operate as res judicata but in order to avoid multiplicity of proceedings some sort of finality limited within the scope of the suit or the proceedings in which it is passed has to be attributed to it—See Civil Procedure Code (5 of 1908), O. 33, R. 9. AIR 1951 Orissa 349.

——S. 11 — In writ petition A challenging recovery proceeding taken by Collector — State not pleading that they can or will seek remedy before civil Court — State is not estopped from subsequently instituting suit for recovery against A — When proceeding by Collector was without jurisdiction it was not necessary for State to oppose writ petition—It could leave High Court to quash proceeding and thereafter decide what further action to take — In writ petition High Court cannot be unduly guided by any step which other party may take or can take after decision of writ petition—Constitution of India, Art. 226. (1965) 2 I T J 740 (All).

——S. 11—Decree for ejectment—Execution—Adjustment in appeal—Res judicata —Estoppel. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 3 (1) (a). 1958 All L J 640.

——S. 11, Expl. IV and S. 47 — Attachment before judgment —Failure to raise objection to attachment—Res judicata —Party not barred from raising the same in execution. See Civil Procedure Code (5 of 1908), S. 47. AIR 1964 Andh Pra 99.

——S. 11—Non-deposit of stamp within time — Sale confirmed on compromise — Effect—Judgment-debtor's application to set aside execution sale on ground of failure to deposit amount for stamp for sale certificate — Application dismissed — Matter cannot be re-agitated by judgment-debtor. See Civil Procedure Code (5 of 1908), O. 21, R. 85 (Mad). AIR 1953 Mad 929.

——S. 11—Proceedings under S. 145, Criminal P. C.—Decision on basis of special oath — Conclusive character of — If res judicata in subsequent civil suit on title — Evidence given on special oath — Value of in subsequent suit — The result of the order made on Special Oath does not bar a suit in civil Court, to establish his right to the property concerned in those proceedings. See Oaths Act (1873), S. 8. AIR 1951 Pat 370.

——S. 11 and O. 21, R. 22 — Omission to sign or verify application — Execution application signed by decree-holder's lawyer but not verified is in accordance with law if acted upon by Court— Subsequent application — Notices under O. 21, R. 22, Civil P. C. served on judgment-debtor—No objection that application was barred by limitation — He is precluded from raising such objection in still later execution application. See Limitation Act (1908), Art. 182 (5). AIR 1966 Raj 44.

——Ss. 11, 48—"Fresh application"—Execution petition within 12 years from decree not containing prayer for attachment — Petition for attachment after 12 years for including prayer for attachment—Petition held to be fresh application and barred. See Civil Procedure Code (5 of 1908), S. 48. **AIR 1957 Trav-Co 194.**

●——S. 11—Execution proceedings —Matter in issue different—No res judicata. **AIR 1952 Trav-Co 333 (FB).**

——S. 11 — Compromise decree—One of the parties breaking terms of compromise — Effect on question of res judicata. **AIR 1955 All 665.**

——S. 11 and O. 23, R. 3 — "Lawful agreement"—Decree passed in terms of compromise against B father of deceased defendant — B not objecting to term relating to personal liability or continuation of attachment — No appeal filed against order — B must be deemed to have waived objections and would be estopped from pleading in execution that decree should be construed as one not creating personal liability against him. See Civil Procedure Code (5 of 1908), O. 23, R. 3. **AIR 1953 Mys 153.**

——S. 11—Plea of decree being nullity not having been signed by judge who pronounced judgment raised in second appeal against decree in supplementary grounds—Dismissal of second appeal—Same plea raised in execution second appeal is barred by res judicata. Obiter. (The plea was however decided on merits.) **ILR 44 Pat 742 = 1965 BLJR 628.**

●——S. 11 — Proceedings under S. 488 of Calcutta Municipal Act (1923) — Corporation not asking for demolition but that relief can be claimed under S. 363 of that Act — There is no question of application of constructive res judicata. See Municipalities—Calcutta Municipal Act (3 of 1923), S. 363. **1956 Cri L J 285 = AIR 1956 S C 110.**

●——S. 11, Expl. IV — Mortgage of inalienable property—Decree passed without objection by mortgagor on the ground of inalienability — Plea in execution—It is open to the executing Court, on being satisfied that the lands are service inam lands and therefore not saleable, to stay its hand. See Civil Procedure Code (5 of 1908), S. 47. **AIR 1960 Mad 377 (FB).**

——Ss. 11, 47—Bar of suit — Award decree relating to division of properties of Aliyasanthana family — Award giving directions as to manner in which division should take place — Construction — Suit to enforce directions in award decree — If barred—The order dismissing the execution application of the plaintiff as time-barred did not operate as constructive res judicata against the suit. See Civil Procedure Code (5 of 1908), S. 47. **AIR 1960 Mys 193.**

——Ss. 11 and 47—Judgment-debtor dying pending execution of decree for possession — Legal representative attacking decree as nullity — Res judicata — Remedy—The party's omission to take the objection in the execution proceedings does not bar the separate suit by the principle of constructive res judicata. See Civil Procedure Code (5 of 1908), S. 47. **AIR 1956 Pat 194.**

——S. 11 — Bar of limitation not raised in previous application for execution — Plea in subsequent execution at late stage—Where in a previous execution filed more than six years after the decree, the judgment-debtor did not raise the bar of limitation under S. 11, Punjab Debtors' Protection Act, he would not be precluded by the principle of constructive res judicata or waiver and estoppel to raise that plea in the subsequent execution even at the late stage. See Debt Laws — Punjab Debtors' Protection Act (2 of 1936), S. 11. **AIR 1959 Punj 521.**

——S. 11 and O. 21, R. 46—Execution proceedings—Attachment of debt due to judgment-debtor without any notice to garnishee as contemplated by O. 21, R. 46—No enquiry as contemplated by O. 21, R. 46 instituted in pursuance of such attachment and garnishee not having any opportunity to dispute validity of attachment — Garnishee is not precluded from disputing validity of attachment and sale in a subsequent suit against him for recovery of the debt. **AIR 1952 Trav-Co 508.**

——S. 11—Decision of arbitrators.

The decision of arbitrators pending a small cause suit cannot be strictly likened to a decision of Court. **AIR 1951 Mad 525.**

——S. 11—Decree after commencement of Madras Agriculturists' Relief (Amendment) Act (23 of 1948)—Judgment-debtor's right to relief — Judgment-debtor entitled to benefit of S. 19 (2) of Act and not barred by principle of res judicata. See Debt Laws =Madras Agriculturists' Relief Act (4 of 1938), S. 19 (2). **AIR 1959 S C 275.**

●——S. 11—Passing off action and registration of trade mark — Different considerations. See Trade Marks Act (1940), S. 8. **AIR 1953 SC 357.**

——S. 11 — Nature of proceedings under S. 234 of Ajmer-Merwara Municipalities Regulations — Subsequent civil suit—Bar of—If at all it will bar the subsequent civil suit the bar will be res judicata and not estoppel. See Municipalities —Ajmer-Merwara Municipalities Regulation (6 of 1925), S. 234. **AIR 1956 Ajmer 3.**

——S. 11, O. 9, Rr. 8 and 9—Suit for recovery of money dismissed for default — Subsequent petition for proof of the debt in insolvency —Maintainability, The proceedings before the Official Receiver and the Insolvency Court in regard to proof of debt are not suits within the meaning of the Civil P. C. See Provincial Insolvency Act (1920), S. 34. **(1964) 2 An W R 75.**

——S. 11 — Departmental enquiry — Negligence of duty — Exoneration from charges — Order of State Government for further enquiry on same charges — Validity — State Government is empowered to order further enquiry on the same charges decided in departmental enquiry, if the facts involved warrant such enquiry. See Bombay Police Act (22 of 1951), S. 4. **67 Bom L R 852 = AIR 1966 Bom 228.**

——S. 11 — Madras Agriculturists' Relief Act (4 of 1938), S. 19 — Application is not barred by failure to claim relief in execution proceedings. See Debt Laws —Madras Agriculturists' Relief Act (4 of 1938), S. 19. **AIR 1951 Mad 581.**

——Ss. 11, 92—Refusal of permission under S. 92 — Effect — C. P. and Berar Religious and Charitable Trusts Act (XVIII of 1937), S. 12 — The refusal does not operate as res judicata and is not a bar to the making of an application under S. 12, C. P. and Berar Religious and Charitable Trusts Act. **AIR 1951 Nag 317.**

——Ss. 11, 100— One second appeal against several appeals against one decree—Competency — Separate appeals from one decree— Separate decree drawn up in appeals — Final decree will be all decrees taken together — One second appeal from these separate decrees is maintainable. See Civil P. C. (5 of 1908), S. 100. **AIR 1954 Trav-Co 28.**

5. Might and ought.

——S. 11 — Earlier suit on mortgage bond — Bond admitted by mortgagor — Plea under S. 68, Evidence Act (1872) that none of the attestors had been examined could not be allowed to be raised either by original mortgagor or his legal representatives. See Evidence Act (1872), S. 68. **AIR 1964 Andh-Pra 297.**

——S. 11 — Jurisdiction of Court to refuse stay in appropriate cases — Arbitration clause providing for

reference of dispute to arbitration according to English law — One party obtaining summary judgment in England on basis of bill of exchange accepted by other — Suit by other party in India for damages for breach of warranty — The circumstances do not indicate or establish that arbitration on dispute regarding the true effect of a prior decree is altogether impossible in India. See Arbitration (Protocol and Convention) Act (1937), S. 3. **AIR 1959 Cal 8.**

——S. 11 — Proceedings under S. 105 of Bengal Tenancy Act (8 of 1885) — Principle of constructive res judicata — If applicable — It is not open to the Court to introduce or apply principles of consrtuctive res judicata. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 105. **AIR 1953 Cal 328.**

——S. 11 — Inability to pay debts — Winding up of company — Plea of factual insolvency not taken in previous winding up petition — Plea taken in subsequent petition is barred by constructive res judicata. See Companies Act (1956), S. 434 (1) (c). **(1965) 78 Mad L W 579=(1965) 2 Com L J 272.**

——S. 11—Relief under S. 14 of Madras Agriculturists' Relief Act (1938) — If can be claimed in execution proceedings — Substantive application if necessary — A substantive application is not necessary for a judgment-debtor to obtain the benefit of S. 14 of Madras Agriculturists' Relief Act—It is sufficient if the debtor raises the objection based on S. 14 of the said Act in his counter affidavit in the execution petition and his objection must be upheld. See Debt Laws — Madras Agriculturists' Relief Act (4 of 1938), S. 14. **AIR 1953 Mad 548.**

——S. 11, Expln. 4—Might and ought.

Plaintiff suing in a representative capacity is not bound to include his individual rights. **AIR 1951 Mad 285.**

——S. 11—Might and ought — Identity of subject-matter.

On facts held that the plaintiff as defendant in the previous suit was bound to defend the suit on all the grounds available to him and the present suit was barred by res judicata. **AIR 1953 Nag 19.**

——S. 11, O. 20, R. 12 and O. 34, R. 7 — Defendant purchasing lands including lands given in 'zarpeshgi' to predecessor-in-interest of plaintiffs — Defendant filing suit for redemption and obtaining decree—Before suit plaintiffs kept out of possession of "zarpeshgi" lands by defendant for certain period—Suit by plaintiffs for mesne profits for such period — Suit held was not barred by "res judicata" because of plaintiffs' failure to press their claim for mesne profits in redemption suit as such claim could not have been added to principal amount in redemption suit — Plaintiffs held were entitled to compensation and not mesne profits. **AIR 1953 Pat 220.**

——S. 11, Explanation — Applicability — Suit for possession of premises — Eviction on ground of personal requirement—Essentials—Bar of res judicata — When applies — Houses and Rents — Delhi Rent Control Act (59 of 1958), S. 39.

In order that a plea might be barred on the principle embodied in Expln. 4 to S. 11, it must be one which not only "might" have been raised in the former suit but "ought" to have been raised therein. In the case of a landlord not wanting to occupy the premises for himself at the time of the institution of an earlier suit it cannot be said that he "'ought" to have raised the plea. A landlord may have a very limited accommodation and yet his circumstances may not permit him to shift to his own house or he may not like to shift. It cannot, in those circumstances, be said that the plea of bona fide requirement was one which "ought" to have been raised.

Where a landlord sues for possession on the plea of personal requirement, the basis of the plea is two-fold (1) that the landlord has either insufficient accommodation or no accommodation available and (2) he wants to occupy his house. Unless both the elements are present at the time of the institution of the former suit the applicability of the principle of constructive res judicata does not arise. 1964 P L R 1005, Ref. **1965 Pun L R (Sup) 172.**

● ——S. 11—Amending Act XXII of 1951—Effect of.

As there was no change of law, the applicability of the principle of constructive res judicata to an objection in execution under S. 17 of Administration of Evacuee Property Act (1950) that the property was evacuee property and could not be sold will not be excluded for that reason if on the facts of the case that can be invoked. See Administration of Evacuee Property Act (1950), S. 17. **AIR 1960 Punj 341 (FB).**

——S. 11, Expl. IV — Failure by debtor to apply in time under S. 11 (2) of Displaced Persons (Debts Adjustment) Act (1951)— Fresh application is barred. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 11 (2). **AIR 1956 Punj 189.**

——S. 11, O. 21, Rr. 89 and 90— Previous application under R. 89—Failure to take grounds of attack under R. 90 — Subsequent application under R. 90 for revival is barred because of "res judicata." See Civil Procedure Code (5 of 1908), O. 21, R. 89. **AIR 1954 Cal 202.**

——S. 11 — Retrospective operation of S. 19 (2) of Madras Agriculturists' Relief Act — Subsequent application for relief if barred. A debtor who had opportunity to file an additional written statement and did so claiming cetain other relief, not asking for relief under S. 19 (2) of Act — Held his subsequent application was barred by res judicata. See Debt Laws —Madras Agriculturists' Relief Act (4 of 1938), S. 19 (2). **AIR 1953 Mad 914.**

——S. 11, Expl. IV and S. 97—Preliminary decree — Defendant remaining absent though summons issued —Ex parte decree passed for sale of land offered as security by defendant for loan advanced — Land so offered was inalienable under S. 5, Madras Hereditary Village Offices Act, 3 of 1895 — Application for final decree made by plaintiff — Defendant raising plea of inalienability of land — Held, he was barred by res judicata. **(1964) 2 Andh W R 219=(1964) 2 Andh L T 151=AIR 1966 Andh Pra 210.**

——S. 11 — Plea that S. 47, Chota Nagpur Tenancy Act, was a bar to transfer of any portion of a raiyati holding — Defendant who does not raise such plea will be barred from raising defence in subsequent suit between same parties. See Specific Relief Act (1877), S. 42. **AIR 1955 Pat 449.**

——S. 11 — Separate suit by mortgagee for moneys recoverable under S. 72 (b) of T. P. Act (1882)—Maintainability of — Res judicata — Held (i) that a separate suit was maintainable and the order referring mortgagee to a separate suit operated as res judicata against the mortgagor;

(ii) a separate suit lies for the monies recoverable under S. 72 (b), T. P. Act. See T. P. Act (1882), S. 72 (b). **AIR 1955 Andh Pra 274.**

● ——Ss. 11, 52, O. 20, Rr. 13, 18—Suit for share in deceased person's assets is in the nature of a suit for partition or an administration suit—Suit against legal representative of deceased relating to some assets of deceased—Legal representative found to be in possession of assets of deceased at the stage of execution in addition to those found at the stage of preliminary decree—Power of executing Court to proceed against the additional assets—The question of determination of assets does not arise at the stage of preliminary

decree, there would be no question of res judicata. **A I R 1961 Andh Pra 335 (FB).**

——**S. 11**—Ex parte decree in partition suit by some cosharers — Question whether mother of deceased person as heir was necessary party, directly and substantially in issue, decided — Same question is res judicata in subsequent suit for partition by other cosharers. **A I R 1951 Cal 481.**

——S. 11—Mortgage of joint property—Suit by mortgagee against one of the defendants dismissed and decreed against shares of others—Possession of whole property including moiety of defendant, suit against whom was dismissed, obtained by decree-holder—In claim proceedings possession handed over to this defendant — Suit by decree-holder for partition and possession—Suit held was not barred by constructive res judicata. See Limitation Act (1908), Art. 11-A. **A I R 1956 Nag 93.**

6. Parties and representatives.

——S. 11 — Plaintiffs not parties to judgment which covered dispute as to validity of resumption of certain Tope Inam — Decision is not binding as res judicata but can be relied on as precedent — Civil P. C. (1908), Pre.—Judicial Precedents. **I L R (1963) Andh Pra 517.**

——S. 11—Res judicata—Judicial precedent—Earlier decision in respect of village being held as estate—All ryots not parties to it — Subsequent suit representing all ryots—Earlier decision is not res judicata —However it has binding force as judicial precedent —Civil P. C. (1908), Pre.—Precedent. A I R 1955 S C 481, Foll. **I L R (1962) Andh Pra 1084 (DB).**

——S. 11—(Evidence Act (1872), S. 13) — Judgment not inter partes —Binding effect. See Evidence Act (1872), S. 13. **A I R 1956 Assam 115.**

● ——S. 11 — Res judicata — Application by Textile Labour Association to Registrar—Decision by Registrar against Association — Association not appealing but five elected representatives of concern appealing —Appeal dismissed on ground that such representatives not being party to original petition were not entitled to prefer appeal—Held, such representatives were not precluded from re-agitating the question by making fresh application on ground of res judicata. Fine Knitting Co., Ltd. v. Industrial Court, Bombay, **(1961-62) 22 F J R 41 = (1962) 4 Fac L R 289= (1962) 1 Lab L J 275=1962 Supp 3 S C R 196.**

——S. 11 — As between the same parties or those claiming under them a judgment is admissible as res judicata or as proof of the particular point which it decides but in any case not of the recitals made therein and under certain circumstances and in certain cases a judgment in a previous suit to which one of the parties in the subsequent suit was not a party may be admissible in evidence for certain purposes. See Evidence Act (1872), S. 40. **A I R 1958 Pat 477.**

——S. 11—Res judicata between co-plaintiffs:— Will not apply unless there is a conflict of interest among them. **A I R 1951 Pat 537.**

——S. 11—Claim to office based in prior suit on personal status—Subsequent suit between sons of parties to prior suit—Same claim agitated—Decision in prior suit does not bar subsequent suit as res judicata. **A I R 1953 Assam 57.**

——S. 11—Judgment not inter partes — Admissibility —The judgment is not admissible against the lessee. See Evidence Act (1872), S. 13. **A I R 1959 Cal 195.**

——S. 11—Debts — Father's debts — Son's liability—Money suit against father and sons — Question of pious obligation put in issue and determined—Decree against father alone—Execution against sons—Maintainability — Res judicata. See Hindu Law — Debts. **(1958) 1 Andh W R 313.**

——**S. 11—Decree against limited owner.**

The decree without the necessary and appropriate issues raised, tried and decided cannot bind the reversioner or the succeeding shebait or manager or trustee and can be re-opened in subsequent suit. **A I R 1953 Mad 624.**

——S. 11—Landlord and tenant — Former suit filed by original landlord on ground of genuine need—At appellate stage, subsequent landlord impleaded as a transferee pendente lite — No retrial on question of his genuine need — Suit by subsequent landlord for eviction and arrears of rent on ground of genuine need—Not barred by res judicata. 1965 Jab L J 905 =A I R 1966 Madh Pra 207.

——**S. 11** — Scope of O. 34, R. 1 — Order 34, R. 1 enjoins that all persons interested either in the mortgage security or in the equity of redemption are to be joined as parties to any suit on the mortgage. See Civil P. C. (5 of 1908), O. 34, R. 1. **A I R 1960 Andh Pra 592.**

——**S. 11—Application under S. 235, Companies Act (1913) — Death of respondent during proceedings — Right of suit against legal representatives of deceased.**

In proper cases the Official Liquidator can institute a regular suit against the legal representatives or heirs of a deceased director. The mere fact that the person against whom proceedings have been lawfully taken under S. 235 of the Companies Act of 1913 dies during the proceedings (but who is not exonerated) would not take away the right of the Official Liquidator to proceed against his legal representatives in cases where the right to sue survives. The principle of res judicata will not apply in such cases. Though the principle of actio personalis moritur cum persona has been inflexibly applied in regard to all actions based on tort, the profits arising from a wrong done by a deceased person can be followed against his estate where such profits take the shape of property of the proceeds or value of property withdrawn from the rightful owner and acquired by the wrongdoer. Where a director of a company is guilty of misconduct in sanctioning a loss fraudulently and in violation of the rules, a suit against him by the company for compensation is not one merely for tort committed, but is one for breach of fiduciary obligation towards the company and therefore the right to sue survives on his death against his legal representatives. **(1965) 1 Comp L J 1=A I R 1966 Mad 247.**

——**S. 11 and O. 32, R. 7**—Gross negligence of guardian—What amounts to—Sufficiency for setting aside decree at instance of minor — A minor can avoid a decree passed against him on the ground of gross negligence of the guardian-at-litem, and this is his substantive right and not a mere matter of procedure and does not depend on any rule of evidence. Similarly S. 11 of the Code does not stand in the way. If it is vacated on any ground upon which it can be vacated in law the bar created by S. 11 is automatically removed. See Civil P. C. (5 of 1908), O. 32, R. 7. **A I R 1960 Ker 367.**

——**S. 11 and S. 47**—Ex parte decree set aside against minor sons—Execution against father—Objection by minors to sale and possession — Procedure—The suit was barred by res judicata as it was well established that a decision, even if wrong, in a previous suit between the parties, is barred by res judicata in a subsequent suit. See Civil P. C. (5 of 1908), S. 47. **A I R 1959 Pat 13.**

● ——**S. 11** — Withdrawal of insolvency petition before adjudication as a result of compromise among creditors—Order granting leave does not constitute res judicata so far as question whether compromise is beneficial to minors and binding on them. See Provincial Insolvency Act (1920), **S. 4. A I R 1956 Trav-Co 27 (FB).**

—S. 11 — When a question of title is raised in a suit for specific performance between a vendor and a purchaser, it has got to be decided between the parties to the suit even though this may be in the absence of some other person or persons who may be interested in the title of the property but have not been made parties to the suit and therefore are not before the Court. And the Courts are bound to and should pronounce upon the efficacy or otherwise of the title, though the judgment of the Court in such an action would be only in personam and not in rem. See Specific Relief Act (1877), S. 25. AIR 1961 Raj 196.

—S. 11, Expl. 6 — Joint family — Suit on behalf of minors — Decision in suit operates as res judicata in subsequent litigation by or against any member of family. See Hindu Law. (1965) 78 Mad L W 463.

● —S. 11—'Jus tertii" — Plea of.

The plea of "jus tertii" can effectively be taken in suit for ejectment but is no defence unless the defendant can show that the act complained of was done by the authority of the true owner. AIR 1953 Nag 361 (FB).

7. Litigation must be under the same title.

—S. 11—"Litigating under the same title" — Party sued in his individual capacity—Such capacity cannot be altered by his claiming to hold property in representative capacity. AIR 1960 Madh Pra 250.

—S. 11 — Litigating under the same title.

First suit for possession of property as karnawan of tarwad — Second suit on basis of individual title that property belonged to tavazhi of which he was the sole surviving member — Suit is litigated under different titles. AIR 1951 Mad 285.

8. Competency of Court.

—S. 11 — Competency of Court trying first proceeding.

Where Court trying first proceeding has no jurisdiction to try that proceeding, its orders cannot operate as res judicata. AIR 1951 Cal 490.

—S. 11 — Previous suit in Court X — Suit undervalued — If properly valued suit going beyond X's jurisdiction — Subsequent suit, correctly valued in Court Y and not within jurisdiction of X — Decision in previous suit held did not operate as res judicata. AIR 1951 Mad 788.

—S. 11 — (U. P. Land Revenue Act (3 of 1901), Ss. 33 & 42) — Correction of papers proceedings — Question whether defendant grove-holder—Decision on, does not operate as res judicata. See U. P. Land Revenue Act (3 of 1901), S. 33. AIR 1953 All 398.

—S. 11 — (U. P. Encumbered Estates Act (25 of 1934), Ss. 11 & 47) — Person failing to put forward claim to property specified in notice — Suit to establish title. Orders passed by the Special Judge under S. 11 (of the U. P. Act 25 of 1934) are conclusive on the point of title and barred a separate suit. Although S. 11, Civil P C. did not expressly apply, the principle of "res judicata" was applicable. See Debt Laws —U. P. Encumbered Estates Act (25 of 1934), S. 11. AIR 1952 All 462.

—S. 11—Tenancy Laws—Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act (21 of 1950), Ss. 98 and 99 — Deputy Collector rejecting petition on ground that matter was within cognizance of civil Court — Petitioner's plaint rejected by civil Court on ground that defendant's possession was in contravention of S. 98 and that its jurisdiction was barred under S. 99 — Petitioner again approaching Deputy Collector — Deputy Collector has to decide nature of transaction and grant relief. See Tenancy Laws — Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act (21 of 1950), S. 98. (1965) 1 Andh L T 352.

—S. 11 and O. 41, R. 33 — Suit for partition of service inam lands annexed to office of shroff — Jurisdiction of civil Court.

The matter is exclusively within the competence of Revenue Court and Civil Courts cannot give a decision thereon. (1960) 1 Andh W R 286.

—S. 11 — Bar of civil suit — (Tenancy Laws — Assam Adhiar Protection and Regulation Act (12 of 1948), S. 10) — Jurisdiction to decide status of tenant finally—Competent Court. The suit is maintainable in a Civil Court as it is not barred either expressly or impliedly by S. 10 of the above Assam Act. See Civil P. C. (5 of 1908), S. 9. AIR 1960 Assam 59.

—S. 11—"Court competent to try subsequent suit" — Proceeding for eviction of tenant for arrears of rent under Madras Act 25 of 1955 — Finding of Revenue Divisional Officer that tenant is not in arrears is not res judicata in subsequent suit for arrears of rent. AIR 1961 Mad 423.

—Ss. 11 and 9 — Jurisdiction of Civil Court — Exclusion by Special Tribunal — Decision of Revenue Court — Operation of res judicata. Decision of the Revenue Court on the question whether the tenant is in arrears of rent or not being only incidental to the exercise of its jurisdiction to grant eviction cannot operate as res judicata in subsequent suit for recovery of arrears of rent. See Civil P. C. (5 of 1908), S. 9. AIR 1961 Mad 423.

—S. 11 — Date of lease disputed — Jurisdiction of Collector to act. The decision of the Collector will not be conclusive and may be open to challenge before a superior Court or before a Civil Court. See Tenancy Laws—Orissa Estates Abolition Act (1 of 1952), S. 5 (i). AIR 1958 Orissa 197.

—S. 11—Principle of res judicata — Applicable in a suit before the Rent Control Authority under the M. P. Accommodation Control Act (21 of 1955), S. 9.

The principle of res judicata is much wider than the terms of the section and therefore, recourse may properly be had to the general principles of estoppel by record. Consequently, the judgment and decree of a Civil Court, if given in a suit decided earlier, shall operate as res judicata in the suit before the Rent Control Authority under S. 9 (4) of the M. P. Accommodation Control Act (23 of 1955). 59 I A 247 and ILR 1947 Nag 691, Rel. on. ILR (1963) M P 347.

9. Heard and finally decided.

—S. 11 — Constructive res judicata — The word "decision" covers only matters actually decided and not matters constructively decided by the Civil Court. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 64A (1). AIR 1957 Andh Pra 903.

— S. 11 — Heard and finally decided.

In cases of judgment "inter partes" the later adjudication should be taken as superseding the earlier whether or not the earlier adjudication was pleaded as a bar to the trial of the suit in which the later adjudication was made. AIR 1955 Andhra 194.

—S. 11 — Words "finally decided" in S. 10 of Madras Buildings (Lease & Rent Control) Act (1946) — Meaning — Petition for eviction dismissed for default — Subsequent application on same cause of action is not barred. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 10. AIR 1951 Mad 745.

—S. 11—Issue left undecided in former suit—Decision does not operate as res judicata. AIR 1951 Mad 630.

——S. 11 — Summary enquiry—Decision as to whether disputed property is in possession of minor or third party — Court has initial jurisdiction—Decision does not operate as res judicata. See Guardians and Wards Act (1890), S. 12 (9). **AIR 1965 Orissa 156.**

——S. 11 and O. 23, R. 1 (2) — "May grant permission"—Permission to file second suit on condition—Suit filed without compliance — Dismissal — Bar to third suit. The third suit is not barred by the dismissal of the second suit on the principle of res judicata. Section 11 of the Code has no application to such a case as the second suit cannot be said to have been finally determined and decided by the dismissal. See Civil P. C. (5 of 1908), O. 23, R. 1. **AIR 1958 Punj 469.**

——S. 11 — Refusal by Court to amend decree on ground of conformity with judgment — Decision of Court and not reasons for decision would operate as res judicata — Party is not precluded from asking executing Court to construe decree as it stands. **1965 Mad W N 308 = (1965) 2 Mad L J 551 = AIR 1966 Mad 319.**

● **——S. 11 — Decision of Court having jurisdiction, even if wrong, is binding between parties till it is set aside.**

A wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides. State of West Bengal v. Hemant Kumar, **(1963) 2 S C J 680 = (1963) Mad L J (Cri) 613 = (1963) 2 S C R (Supp) 542 = 1966 Cri L J 805 = AIR 1966 S C 1061.**

——S. 11 — Error or irregularity — Decision as to court-fee — Decision relating to court-fees, even though wrong is not an error or irregularity affecting the decision of the case. See Civil P. C. (5 of 1908), S. 105. **AIR 1953 Madh Bha 151.**

——Ss. 11, 96, 100, 101 — Right of appeal — Conditions — Decree in favour of defendant—Finding adverse to him — Defendant not entitled to appeal on the ground that he is dissatisfied with the findings in the judgment. See Civil P. C. (5 of 1908), S. 96. **AIR 1951 Punj 444.**

——S. 11 — Withdrawal of petition under Constitution of India, Art. 226 — Second petition under Art. 226 — First petition not heard on merits nor Court expressed any opinion on it — Withdrawal of first petition — Held, principles of res judicata would not apply. **ILR (1966) Bom 648 = (1965) 67 Bom L R 911 (DB).**

——S. 11, O. 23, R. 1 (3) — "In respect of the same cause of action" — Distinction. If the suit was not decided but merely withdrawn, no question of res judicata arises and in law the plaintiff is still entitled to agitate the question in Court. The principles of S. 11 and O. 23, R. 1 (3) are different and it is not permissible to apply the principles of res judicata to cases under O. 23, R. 1 (3). See Civil P. C. (5 of 1908), O. 23, R. 1 (3). **AIR 1959 Cal 715.**

——S. 11 — Lessees of land entered as Sirdari in compensation statement prepared under S. 240D — Landholder objecting under S. 240G to such entry on the ground that land in question was not land referred to in S. 240A (1) — Objection dismissed for default—Objection to such entry raised under S. 20 (2) agitating claim for Sirdari rights — Claim not barred by finality of compensation statement under S. 240J. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 20 (2). **1965 All W R (HC) 806.**

——S. 11 — Successive applications — The principles contained in O. 23, R. 1 of the Code cannot be strictly applied to applications for the exercise of the Court's extraordinary jurisdiction under Arts. 226 and 227 of the Constitution. See Constitution of India Art. 226. **AIR 1956 Punj 157.**

——S. 11 — Suit in ejectment founded on plaintiff's title to recover possession from trespasser — Title declared in favour of plaintiff and his prayer for possession granted — Court directing that plaintiff could recover possession only on payment of mortgage money due to defendants — Decree not one for redemption as contemplated in O. 34, R. 7, Civil P. C. — No final decree or order dismissing suit passed on plaintiff's failure to comply with condition — Subsequent suit by plaintiff for redemption — Suit held was not barred by S. 11. **AIR 1953 Orissa 17.**

——S. 11 — Decision not necessary for determination of suit — No res judicata. **AIR 1951 Cal 490.**

——Ss. 11 and 96 — Appeal by successful party against adverse finding — The finding which is not necessary for passing the decree cannot operate as res judicata and hence no appeal against such finding is competent. **AIR 1954 J and K 32.**

——S. 11 — Adverse finding against successful party — Where the appeal succeeds, the adverse finding against the applicant, contained in the judgment does not operate as res judicata. **AIR 1952 Nag 238.**

——S. 11 — Application for eviction of tenant on certain grounds — Order of eviction on one ground rejecting rest — Appeal by tenant only — Finality of adverse findings is taken away. See Houses and Rents —Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 18. **AIR 1952 Pat 458.**

——S. 11 and O. 21, Rr. 58 and 63 — Claim petition not pressed — Dismissal without Court's permission to withdraw petition amounts to adverse order and when not set aside becomes conclusive. **AIR 1955 Mad 446.**

——S. 11 — Compromise by shebait when is illegal—The compromise which is wholly prejudicial to the interest of the deity, the compromise petition and the decree based thereon are void and illegal and cannot operate as res judicata. See Hindu Law — Religious Endowments. **AIR 1952 Pat 438 (DB).**

——S. 11 — Res judicata — Consent decree — Constructive res judicata, plea of — Essentials.

The question in case res judicata is relied upon in such cases is whether the consent decree did not settle the issue between the parties. **ILR (1965) 2 Punj 609 = 1965 Pun L R (Supp) 103 = AIR 1966 Punj 509.**

——S. 11 — Res judicata — Consent decree — Constructive res judicata, plea of — Essentials.

A judgment based on consent is as much intended to put a stop to litigation between the parties as a judgment which results from the decision of the Court after the matter has been fought out to the end in so far as the matter is actually dealt with by the consent decree. The question in case res judicata is relied upon in such cases is whether the consent decree did settle the issue between the parties. **ILR (1965) 2 Punj 609.**

——S. 11 — Protection under East Punjab Urban Rent Restriction Act (1949), Ss. 4, 5 and 6 whether can be waived by agreement—(Evidence Act (1872), S. 115). A consent decree cannot preclude a party from asserting the invalidity of the decree made in contravention of the East Punjab Urban Rent Restriction Act. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 4. **AIR 1956 Punj 95.**

——S. 11 — Proceedings under S. 5 of the Punjab Sikh Gurdwaras Act (1925) — Compromise decree — Subsequent suit under S. 25-A of the said Act between the same parties under S. 37 of the same Act. Even if S. 11 of Civil P. C., does not in terms apply

the principles of res judicata will apply. See Punjab Sikh Gurdwaras Act (8 of 1925), S. 37. AIR 1951 Punj 257.

——S. 11 and O. 23, R. 3 — Compromise decree — Validity — Effect as res judicata. The decree does not operate as res judicata between the parties so far as the question whether the terms of compromise are concerned in a subsequent suit. See Civil P. C. (5 of 1908), O. 23, R. 3. AIR 1954 Trav-Co 7.

——S. 11 — (Income-tax Act (1922), S. 24 (2)) — The previous order of the Income-tax Officer having become final, it was not open to the Income-tax Department to go back on that order. See Income-tax Act (1922), S. 24 (2). AIR 1954 All 53.

——S. 11 — Review application — Rejection for non-payment of court-fee.

The order of rejection does not operate as res judicata. AIR 1955 Andhra 215.

——S. 11—Assessment of income-tax—Finality.

Since the assessee did not prefer an appeal against the original assessment though it was competent, the order had become final. See Constitution of India, Art. 226. AIR 1957 Bom 134.

——S. 11—Finality of appealable decision.

U. P. Consolidation of Holdings Act (5 of 1954), Ss. 12, 20, 23—Objection under S. 20—Appeal against dismissal of earlier objection under S. 12 pending — Held as decision under S. 12 had not attained finality, objection under S. 20 was competent. See Tenancy Laws — U. P. Consolidation of Holdings Act (5 of 1954), S. 12. 1964 All W R (HC) 589.

SECTION 13

● ——S. 13 — Foreign judgments — Enforcement of foreign awards or foreign judgments based upon those awards — Doctrine of merger of original cause of action—Applicability to foreign judgments—Arbitration agreement entered into in Bombay—Award made in New York and confirmed by New York Supreme Court—Suit to enforce award or judgment in Bombay High Court, held, not maintainable. A I R 1959 Bom 414, Reversed. AIR 1964 SC 538.

——Ss. 13 and 44 — Enforcement of foreign judgment — Power of executing Court — It is open to the executing Court to enquire whether the foreign Court had jurisdiction to pass the decree. A I R 1951 Bom 190.

——S. 13—Debt Laws — Bengal Money Lenders Act (10 of 1940), S. 34 (1) (b) — Notary mortgage bond in Chandranagar — Execution proceedings relating to — Application for granting instalments for repayment of loan lies — Document executed under French Law having force of decree — Suit to enforce it is not necessary. AIR 1962 Cal 622.

——S. 13—Foreign decree—Validity — International law.

A decree in a personal action pronounced by a Court of foreign State in absentem, the defendant not having submitted himself to its authority is by international law a nullity. AIR 1951 Mad 289.

——Ss. 13, 14 — Foreign Court — Jurisdiction of — Action in personam.

The fact that the contract was made in foreign country is not sufficient to clothe a Court of that country with jurisdiction in an action in personam if the defendant was not a resident of that country. AIR 1955 Nag 103.

——Ss. 13, 44, 44A — Decree of Pakistan Court — Execution.

A Court in the Union of India has no jurisdiction to entertain an application for execution after 15-8-1947, of a decree passed by a Court in Pakistan before that Court. AIR 1951 Punj 255.

● ——Ss. 13(a), 20 (c), 44—Cause of action arising in native State against non-resident foreigner — Decree—Execution.

The Civil Procedure Code applicable in British India and Vala was the same, therefore the Court at Vala had the jurisdiction to entertain and decide the suit against a non-resident foreigner. The decree passed was valid and executable. A I R 1953 Sau 16 (FB).

——S. 13—Decision of Rangoon High Court — Question of validity of certain transfer not directly adjudicated —Held S. 13 did not apply to make a decision binding. See Evidence Act (1872), S. 41. A I R 1951 Sau 37.

SECTION 14

——Ss. 14, 13—Suit on foreign judgment obtained in Rampur State — That defendants were not Rampur citizens not established—Defendants born in Rampur State—Rules of Citizenship of Rampur not established —Presumption under S. 14 held not rebutted—Plaintiff held not entitled to decree in suit on foreign judgment. See Civil P. C. (5 of 1908), S. 13. A I R 1955 NUC (All) 2733.

——S. 14—Suit on foreign judgment.

The judgment of a foreign Court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the Courts in Hyderabad are bound to enforce, and consequently anything which negatives the duty or forms a legal excuse for not performing it is a defence to the action. See Civil P. C. (5 of 1908), S. 13. AIR 1953 Hyd 29.

——Ss. 14, 13—Hyderabad Civil P. C., S. 8—Suit on award filed in foreign Court—Maintainability.

Where the only document filed along with the plaint is the award which was filed in the foreign Court and is not signed by any presiding Judge but is signed by Prothonotary such an award is not a decree or a judgment or an order of the Court and hence the suit is not maintainable. See Civil P. C. (5 of 1908), S. 13. AIR 1952 Hyd 49.

● ——S. 14—Decree by Court in British India against foreigner not submitting to Court's jurisdiction — If can be executed in Courts in Madhya Bharat after 26-1-1950. See Civil P. C. (5 of 1908), S. 2 (5). A I R 1955 Madh Bha 1 (FB).

——Ss. 14, 13 — Ex parte decree of Bombay High Court in 1946 against resident of former Gwalior State — Execution of decree taken to Gwalior Court after Constitution of India — Decree being a nullity its execution held not maintainable. See Civil P. C. (5 of 1908), S. 13. AIR 1962 Madh Pra 276.

——S. 14—Partition — Suit for—Properties situate in Cochin State — Cohin State alone has jurisdiction — Decree passed—Indian Courts cannot go behind decree. See Civil P. C. (1908), S. 16. AIR 1951 Mad 742.

——Ss. 14, 13 — Ex parte personal decree passed by Calcutta High Court against resident of Mysore State prior to Constitution — Executability in Mysore State after Constitution. See Civil P. C. (5 of 1908), S. 13. AIR 1960 Mys 1.

——Ss. 14, 13 and 44—Enforcement of foreign judgment—Ex parte decree against Mysore resident passed before accession by Madras Court — Decree is not executable in Mysore after accession—Constitution of India, Arts. 261 (3) and 367 (3). See Civil P. C. (5 of 1908), S. 13. AIR 1952 Mys 69.

——Ss. 14, 13—Submission to jurisdiction—Intention of defnedant — Submission to be prior to decree — Effect of Art. 261 of Constitution.

The Plaintiff's instructions to some one to appear on

his behalf in the Court at Indore did not amount to submission to jurisdiction. See Civil P. C. (5 of 1908), S. 13. AIR 1955 Nag 103.

——S. 14—"Foreign judgment" meaning of—Decree of Quetta Court passed before partition is not a foreign judgment. See Civil P. C. (5 of 1908), S. 13. AIR 1955 NUC (Punj) 4602.

——S. 14 — Presumption as to competency. See Civil P. C. (5 of 1908), S. 13. AIR 1959 Raj 47.

——S. 15 — Stay of execution of trial Court's decree by Appellate Court on condition of depositing costs —Petition by decree-holder for payment out of costs after confirmation of decree—Execution levied after three years of appellate decree but within three years from date of petition for payment out of costs — Maintainability--Expression "Proper Court"—Meaning of. See Limitation Act (1908), Art. 182 (5). AIR 1963 Andh Pra 452.

——S. 15 — Suit for declaration of nullity — Jurisdiction of High Court.

The High Court has no jurisdiction to entertain suit. The Hindu Marriage Act (1955) has conferred an exclusive jurisdiction on the City Civil Court without any qualifications. See Hindu Marriage Act 1955), S. 19. AIR 1960 Cal 577.

——S. 15—Suit for declaration.

Where in a suit for declaration the relief asked for by the plaintiff cannot be given without giving finding as to whether there was a valid subsisting mortgage debt of Rs. 21,000 in favour of the plaintiff, a Subordinate Judge exercising pecuniary jurisdiction to try suits up to Rs. 10,000 has no jurisdiction to try the suit. See Suits Valuation Act (1887), S. 8. AIR 1955 Him Pra 50.

——S. 15 — Suit for declaration and consequential relief—Pecuniary jurisdiction.

The market value as stated in the plaint of the property affected determined the question of pecuniary jurisdiction. See Civil Procedure Code (5 of 1908), S. 6. AIR 1951 Mad 661.

——S. 15—Suit for fixation of standard rent—Jurisdiction of District Judge.

A suit for fixation of standard rent can be entertained by the Court of the District Judge as a Court of original jurisdiction. See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 6. ILR (1960) 10 Raj 189.

——S. 16 — "Actually and voluntarily resides" — Meaning of — Applicant having permanent residence at place J — His coming to place D for filing application does not amount to temporary residence at D for purposes of S. 5 of Displaced Persons (Debts Adjustment) Act (1951)—See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 5. AIR 1965 All 72.

——S. 16 (c) — Suit involving property lying outside British India.

The suit in so far as it embraced lands in the Banaras State was not maintainable by Banaras Court. See Debt Laws—U. P. Agriculturists' Relief Act (27 of 1934), S. 12. AIR 1951 All 462.

——S. 16—Suit on mortgages over properties situated outside Greater Bombay — Amount claimed within the limits of the pecuniary limits of the jurisdiction of Civil Court, Bombay — If the latter Court can entertain the suit — Applicability of the section. The application of S. 16 of Civil P. C. is not excluded. See Bombay City Civil Court Act (40 of 1948), S. 3. AIR 1953 Bom 75.

——S. 16 — Consent decree creating charge on property situate outside territorial jurisdiction of Court— Decree is lawful — Court has jurisdiction to appoint receiver of such property—Interference with possession of receiver—Contempt of Court. See Civil Procedure Code (5 of 1908), S. 51. AIR 1961 Cal 422.

——S. 16—"Court having jurisdiction in the matter". See Arbitration Act (1940), S. 20. AIR 1955 NUC (Cal) 5612.

——Ss. 16, 20 — Transfer of Property Act (1882), S. 68—Mortgagee giving up his security—Mortgagee is entitled to seek personal relief against mortgagor in Court within whose jurisdiction mortgagor resides or carries on business. AIR 1964 Mad 527.

——S. 16 — Suit for partition of immovable property outside India — The Indian Courts have no jurisdiction to entertain suit — But account of the income of those foreign properties and payment of share in the income can be asked. See Hindu Law—Joint family —Partition. AIR 1955 Mad 629.

——Ss. 16 and 14—Suit for partition—Properties in Cochin State — Cochin Court alone has jurisdiction —Decree passed — Indian Courts cannot go behind decree. AIR 1951 Mad 742.

——S. 16 — Evacuee property — Shares in company having registered office at Calcutta — Jurisdiction of Custodian in Bihar — Situs of shares — Company having factory in Bihar — Custodian in Bihar has no jurisdiction. See Administration of Evacuee Property Act (1950), S. 7. AIR 1947 Pat 312.

——Ss. 16, 20—Suit by lessee for refund of premium amount on basis of frustration of contract of lease — Suit is governed by S. 20 and not by S. 16 — Civil Court within whose jurisdiction defendant voluntarily resided has jurisdiction. AIR 1961 Punj 143.

——S. 16 — Cause of action arising in Pakistan — Defendant carrying on business in Delhi—Delhi Court could not entertain suit. See Civil Procedure Code (5 of 1908), S. 15. AIR 1955 NUC (Pnnj) 1612.

——S. 16 — Jurisdiction of Civil Courts — Change of — Procedure — Notification under Rajasthan Territorial Divisions Ordinance—Effect of.

The jurisdiction having once been fixed by Government under S. 7 of Rajasthan Civil Courts Ordinance (7 of 1950) can only be altered by another notification under that section, and it cannot be altered by any notification issued under the Rajasthan Territorial Divisions Ordinance, 1949, as the latter Ordinance has nothing to do with the jurisdiction of the Civil Courts. See Rajasthan Civil Courts Ordinance (7 of 1950), S. 7. AIR 1957 Raj 241.

——S. 17 — Mortgage suit — Jurisdiction of — High Court — Test — Doctrine of "notional" property. See Letters Patent (Cal), Cl. 12. AIR 1952 Cal 429.

——S. 19—Right to file affidavits.

An affidavit in reply and rejoinder as the case may be, as also an application for leave to amend are permissible. See Constitution of India, Art. 226. AIR 1953 Trav-Co 146.

——S. 20—Duty of bank—Obligation of bank to pay —Rules as to—Place where money is payable.

The obligation of a bank to pay the cheques of a customer rests primarily on the branch at which he keeps his account and the bank can rightly refuse to cash a cheque at any other branch. See Banker and Customer. AIR 1955 SC 590.

——S. 20 — Plaint must contain facts constituting cause of action — Cause of action must be stated in notice under S. 80 — Notice under S. 80 is valid if cause of action is sufficiently stated in the notice. See Civil P. C (1908), S. 80. ILR (1965) 2 All 127= AIR 1966 All 333.

——S. 20—Forum of suit or application — Jurisdiction of Court — Application or suit commenced duly if affected by S. 59, Displaced Persons (Debts Adjustment) Act, 1951.

Any application or suit duly commenced previously is not affected and the plaintiff could continue it in the same Court in spite of S. 59 — See Displaced Persons (Institution of Suits) Act (1948), S. 4. A I R 1957 All 547.

——S. 20 — Cause of action — It means every fact necessary for plaintiff to prove if traversed—Phrase has reference to facts only — It does not include conclusions of law — Held, both reliefs were asked for on same set of facts—Cause of action was same—Case held fell under S. 17 (2), Court-fees Act (1870). See Court-fees Act (1870), S. 17 (2). AIR 1955 NUC (All) 3559.

——S. 20—Hyderabad Suits Against Government Act (5 of 1320F) stands repealed by S. 20 of the Code—See Hyderabad Suits Against Government Act (5 of 1320F.) AIR 1965 Andh-Pra 288.

■ ——Ss. 20 and 13 — Pre-Constitution personal ex parte judgment by British India Court against subject of Hyderabad State — Decree is nullity and not executable after advent of Constitution—See Constitution of India, Art. 261, Cl. (3). AIR 1962 Andh-Pra 400 (FB).

——S. 20—Rule that debtor to find creditor—Applicability.

The common law rule is reasonable and in conformity with justice and equity and is applicable—See Contract Act (1872), S. 49. AIR 1956 Bom 111.

——S. 20—Scope—Jurisdiction.

The territorial jurisdiction of a Court has to be ascertained by reference to the provisions of Ss. 16 to 20; but by renson of express provision made in S. 120, the provisions of Ss. 16 to 20 do not apply to High Court in the exercise of its ordinary original Civil jurisdiction — See Civil Procedure Code (5 of 1908), S. 16. AIR 1955 Bom 55.

——S. 20—Suit against foreigner. AIR 1951 Bom 190.

——S. 20 (b)—Leave to sue—Revocation—Onus is on the defendant to make out a case for revocation as it is the balance of convenience of the defendant that has to be considered in such a case — But application for revocation of leave granted under Cl. 12 ought to be made at the earliest possible opportunity — Where no such application is made, leave granted cannot be revoked in appeal — See Letters Patent (Calcutta), Cl. 12. AIR 1964 Cal 418.

——S. 20—Vessel of plaintiff requisitioned by Government under Vessel of India Rules.

Liability to pay compensation was statutory and could be enforced against either of the Dominions being a joint liability — See Indian Independence (Rights, Property and Liabilities) Order (1947), Para. 8. AIR 1964 Cal 196.

——Ss. 20, 16 — Suit for rent of premises situated in Pakistan.

A suit for arrears of rent is based on contract, and is therefore, triable by the Small Cause Court at Calcutta, in spite of the fact that the premises were in Pakistan if the parties are within the jurisdiction of the Court. AIR 1958 Cal 700.

——S. 20—"Carry on business"—Meaning of — Business through recognised agents — Sufficiency—The High Court had jurisdiction to entertain the suit—See Letters Patent (Calcutta), Cl. 12. (1957) 99 Cal L J 95.

——S. 20—Carriage by Railway.

Where a railway impleaded as defendant in the suit is owned by the Central Government and is represented by the Governor-General-in-Council the latter cannot be said to voluntarily reside or carry on business or personally work for gain in carrying on the administration of the Railway. See Presidency Small Cause Courts Act (1882), S. 18 (c). AIR 1951 Cal 37.

——S. 20 — Agreement to sue only in one out of several competent Courts—Validity.

Although an agreement confining the parties to have recourse to only one of the several competent Courts may not be within the mischief of S 28 of the Contract Act, yet, it is of such a nature that if permitted, it defeats the provisions of law under S 20, C. P. C. It is therefore, hit by S. 23 (2), Contract Act and being enforceable thereunder cannot be pleaded in bar of action in one of such Courts — See Contract Act (1872), S. 23 (2). A I R 1956 Madh-Bha 120.

——S. 20—Industrial dispute ceasing to be industrial dispute during pendency of proceedings before Labour Court—Labour Court ceases to have jurisdiction — See Industrial Disputes Act (1947), S. 2 (k). A I R 1960 Mad 196.

● ——S. 20 — Suit on foreign contract — Lex fori—Suit for personal relief on a cause of action arising outside India—Absence of defendant from India.

A suit can be instituted for personal relief against a defendant in a Court within the local limits of whose jurisdiction the defendant is residing or carrying on business on the date of institution of the suit, wherever the cause of action for the suit had arisen, and to such a suit, the provisions of the Statute of Limitation in force in the country of the forum, i.e., "lex fori" would apply — See Limitation Act (1908), S. 13. AIR 1955 Mad 96 (FB).

● ——S. 20 — "Distinct subjects," means distinct causes of action — See Court-fees Act (1870), S. 17. AIR 1954 Mad 594 (FB).

——S. 20, O. 3, R. 4—Lien for fees — Jurisdiction of Court — The funds against which lien is claimed are not within jurisdiction and control of Insolvency Court in which the petition is filed. A I R 1952 Mys 141.

——S. 20 — Suit for declaration — Maintainability—Conditions.

Held, that the plaintiff was entitled to bring the suit for a declaration that the defendant was not his adopted son — See Specific Relief Act (1877), S. 42. AIR 1957 Pat 131.

——S. 20—"Displaced person"—If includes corporation—Express exception in case of banking company—Effect of — See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 2 (10). A I R 1958 Punj 57.

——S. 20 — Claim for deduction from salary—Jurisdiction.

The applicant was employed at R and was also paid his wages there, the authority to decide the matter was the authority at R only. See Payment of Wages Act (1936). AIR 1956 Punj 238.

——S. 20 — Debtor to seek his creditor — Rule does not apply to promisory notes. AIR 1951 Punj 128.

——S. 20 — "Carries on business or personally works for gain" — Dominion of India—Words and phrases.

The principle which would be applicable to commercial corporations does not apply to the Government. See Displaced Persons (Institution of Suits) Act (57 of 1948), S. 4. AIR 1951 Punj 92.

——S. 20 — Jurisdiction of Court.

Section 4 of the Indian Independence Pakistan Courts (Pending Proceedings) Act did not expressly bar the jurisdiction of the Court which were otherwise competent to take cognizance of the suit by vtrtue of S. 20, Civil P. C. See Indian Independence Pakistan Courts (Pending Proceedings) Act (9 of 1952), S. 4. AIR 1961 Raj 162.

——S. 20 — Agreement — Acknowledgment to pay interest — Suit if can be dismissed — Maintainability.

If there is a stipulation to pay interest, there is agreement, and a suit based on a document embodying the agreement cannot be dismissed as not maintainable on the ground that it was based only on an acknowledgment. See Contract Act (1872), S. 2 (e). AIR 1958 Raj 260.

●——S. 20 (c) — Cause of action arising in native State against non-resident foreigner — Decree—Execution.

As the cause of action arose in Vala, and the Civil Procedure in Vala and British India was the same Vala Court will have jurisdiction to entertain and decide the suit against non-resident foreigner. — See Civil P. C. (5 of 1908), S. 13 (a). AIR 1953 Sau 16 (FB).

——S. 21 — Want of jurisdiction — Objection—Rule as to — Applicapility to execution proceedings.

The objection that the Court passing the decree had no jurisdiction would be barred in execution proceedings by the principle of res judicata. But the general rule is subject to well defined exceptions, two of them being S. 21 and S. 11, Suits Valuation Act. See Civil P. C. (5 of 1908), S. 11. AIR 1955 All 569.

——S. 21 — Jurisdiction of trial Court — Question raised in appeal — Burden is on appellant to show that he is prejudiced on merits. AIR 1963 Andh Pra 353.

——S. 21 — Jurisdiction of tribunal.

Where a person seeks from a tribunal an adjudication of a dispute, he must allege and, where disputed, prove that the tribunal has jurisdiction to entertain the proceeding in which the dispute is raised. See Railways Act (1890), S. 135 (2). AIR 1960 Bom 141.

——S. 21 — Objection to jurisdiction on grounds of valuation — When can be taken in High Court. See Suits Valuation Act (1887), S. 11. AIR 1957 Madh-Pra 92.

—— S. 21 — Suit not properly valued — No objection to jurisdiction in trial Court — Duty of appellate Court — Return of plaint — Permissibility.

Where the objection as to jurisdiction has not been taken in the Court of the first instance and the merits of the case have not been affected, the appellate Court has to ignore the objection. See Suits Valuation Act (1887), S. 11. AIR 1956 Mad 593.

—— Ss. 21 and 38 — Execution proceedings. AIR 1955 N U C (Mad) 3221.

—— S. 21 — Objection to territorial jurisdiction — It cannot be raised in the execution Court. AIR 1951 Mad 647.

——S. 21 — Procedure laid down in Civil P. C. made applicable to Small Cause suits — Objection as to jurisdiction — Civil P. C. does not lay down that such an objection cannot be taken before filing his written statement by the defendant. See Provincial Small Cause Courts Act (1887), S. 17. AIR 1965 Pat 55.

●——Ss. 21, 24 and 15—Lack of jurisdiction apparent on face and not so apparent — Distinction — Lack of pecuniary jurisdiction — Effect — Suit instituted properly according to valuation in plaint—Valuation subsequently found incorrect — Transfer of case — Legality—Transfer of suit is competent under S. 24 of the Code. See Civil P. C. (5 of 1908), S. 24. AIR 1960 Pat 244 (FB).

——Ss. 21, 38 — Executing Court — Power to go behind decree — Objection relating to territorial jurisdiction.

The executing Court can refuse to execute a decree where want of jurisdiction of a Court is apparent on the face of the record, because such a decree is null and void and incapable of execution. See Civil P. C. (5 of 1908), S. 38. AIR 1959 Pat 484.

●——S. 22—Section 22 of the Code provides for the transfer of a suit to another Court when a suit which could be instituted in any one of two or more Courts is instituted in one of such Courts. In view of the provisions of this section, it was open to the respondent to apply for the transfer of the suit at Asansol to the Indore Court and, if the suit had been transferred to the Indore Court, the two suits could have been tried together. It is clear, therefore, that the Legislature had contemplated the contingency of two suits with respect to similar reliefs being instituted and of the institution of a suit in one Court when it could also be instituted in another Court and it be preferable, for certain reasons, that the suit be tried in that other Court. AIR 1962 S C 527 (536).

●——S. 22 — Suit which can be instituted at places X and Y — Suit instituted at X — Defendant can apply for transfer of the suit to Court at Y. AIR 1962 S C 527.

——Ss. 23, 38 and 47 — Suit by beneficiary against trustee — Decree — Construction — Decree executable against trustee personally — Power of executing Court — (Trusts Act (1882), S. 23).

The executing Court must take the decree as it stands and it is not open to it to give it a different interpretation by going into the question whether the defendant was guilty of breach of trust. See Civil P. C. (5 of 1908), S. 38. AIR 1955 N U C (Cal) 5569.

——Ss. 23 and 22—"Shall determine" — Interpretation of.

Any declaration determining the Court in which the suit shall proceed, is in substance and in effect a direction that suit shall be transferred to that Court. See Civil P. C. (5 of 1908), S. 22. AIR 1958 Ker 82.

——S. 24—Small Cause suit—Munsif having jurisdiction succeeded by Munsif without Small Cause Court powers — Discretion of District Judge to try it as regular suit—Not an order under S. 24—Appeal lies. See Provincial Small Cause Courts Act (1887), S. 35. AIR 1964 All 420.

——S. 24—Transfer of case—Principal District Munsiff cannot transfer a case of which he has seisin to the Additional District Munsiff. See Madras Civil Courts Act (3 of 1873), S. 4-A. (1959) 2 Andh W R 301.

●——S. 24—Right of District Judge under — S. 28 (2) (a) of the Rent Act does not affect the right of the District Judge under the section in the slightest degree. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (1947), S. 28 (2) (a). AIR 1956 Bom 481 (b) (FB).

——Ss. 24, 150 and O. 39, R. 2 (3) — Applicability — Transfer of suit as a mere distribution of work — Section not applicable — Application under O. 39, R. 2 (3) filed in transferor Court — Transferee Court not empowered to act thereon. See Civil P. C. (5 of 1908), S. 150. AIR 1962 Cal 519.

——S. 24—City Civil Court Act (21 of 1953), S. 9—Arbitration Act (1940), S. 34—Transfer of suit sought under S. 24 or S. 9 — If purpose is to apply powers under S. 34 it will be indirect attempt to achieve what is directly forbidden by S. 34.

If a transfer of suit is sought for trial of suit in High Court there is no reason for that course of action. If on the other hand a transfer is contended for the purpose of bringing the suit in the High Court and then applying powers under S. 34 of the Arbitration Act, such an order will be an indirect attempt to achieve what is directly forbidden by the language of S. 34. Furthermore this will be a trans-

fer not for the trial but for stay of suit and that is not the scope and intent of S. 9 of the City Civil Courts Act or S. 24 of the Civil P. C. Law Reports 63 I A 311, Ref. to. ('62) 66 Cal W N 1078.

—S. 24 — Transfer of suit — Although High Court need not give any reasons, it has to use restraint in exercising the power to transfer suit.

In the absence of a properly constituted application High Court should not exercise its supervisory jurisdiction. Although the High Court need not give any reasons for suo motu exercise of its jurisdiction for transferring a case, where the only motive is that the petitioner wants an order under S. 34 of the Arbitration Act the High Court will not use its power as such exercise of power will be abusing the power which the High Court possesses and the strength of power lies in the restraint of use. ('62) 66 Cal W N 1078.

—S. 24—Removal of suits — High Court has very wide discretion. See Letters Patent (Cal), Cl. 13. AIR 1951 Cal 286.

—S. 24—Applicability and scope — Case pending before Atiyat Court — Section 24 not applicable — High Court has no jurisdiction to transfer a case pending before Atiyat Court. AIR 1953 Hyd 105.

● —S. 24—Application for transfer of suit — Affidavit—Language and contents of—Duty of Counsel.

Where aspersions are cast on presiding judicial officers in an affidavit for transfer of a suit, it will be better for an advocate to advise his client to use language, for instance, like 'I suspect' or 'I believe' or 'I have reason to think' or 'I apprehend', but not to use the language of positive assertion like 'I state'. Dr. V. K. John v. G. Vasantha Pai. (1959) Mad L J (Cri) 333=72 Mad L W 325=(1959) 1 Mad L J 329= I L R (1959) Mad 546=AIR 1959 Mad 331 (PB).

● —S. 24—Transfer of suit.

Suits instituted before 1-12-1948 and of the value of Rs. 10,000/- on the original side of the High Court can be transferred to the City Civil Court and the latter Court is competent to try such suits when so transferred. See Madras City Civil Courts Act (1892), S. 3-A. AIR 1951 Mad 93 (FB).

—S. 24, O. 41, R. 21—Court expressing opinion on question of fact in previous case of objection under O. 21, R. 100 — Subsequent objection under O. 21, R. 100, by the same person, in execution sale of same property by another decree-holder—No transfer. AIR 1955 N U C (Pat) 100,

—S. 24—Small cause suit tried as ordinary suit by Court having small cause jurisdiction — Nature of decree—Appealability.

The character of the suit is not altered. The decision given should be deemed to be a decision given by a Court of Small Causes and should be treated as such. The decree passed is not appealable. See Provincial Small Cause Courts Act (1887), S. 15. AIR 1956 Punj 233.

—S. 24 — Scope — Section is not repugnant to Art. 235 of the Constitution. AIR 1955 N U C (Punj) 6028.

—S. 24—Claim against Bank, one of the defendants — Return of plaint for presentation to High Court—Trial of claims against other defendants.

The claim against the bank is exclusively triable by High Court under S. 45-B of Banking Companies Act (1949). The claim against other defendants can also be tried by the High Court. See Banking Companies Act (1949), S. 45-B. AIR 1954 Punj 196.

—S. 24—Decree transferred for execution—Execution cases started in transferee Court transferred to another Court under S. 24 — Transferee Court can still entertain fresh execution applications. See Civil P. C. (5 of 1908), S. 38. AIR 1961 Raj 157.

—S. 24, O 18, R. 12 — Transfer of case — Lower Court making remark about demeanour of witness that "witness struck me as unscrupulous after reading over deposition and signing it" — Occasion held, gave reasonable apprehension in mind of petitioner that he would not get justice — Case held fit for transfer. AIR 1951 Trav-Co 12.

—S. 26—Municipalities — Bombay Municipal Corporation Act (3 of 1888), S. 527 — Interpretation of the word 'suit' — The word 'suit' in the section is restricted to a proceeding commenced in a civil Court by the presentation of a plaint and does not include an application or other legal proceeding — Giving wider meaning to the word is not justified, as the Act itself makes distinction between a suit and a legal proceeding. See Municipalities—Bombay Municipal Corporation Act (3 of 1888), S. 527. ILR (1966) Bom 632=1966 Mah L J 334=67 Bom L R 903 (DB).

—S. 26—Suit commences with making of application for permission to sue in forma pauperis. See Civil P. C. (5 of 1908), O. 39, R. 1. AIR 1955 Nag 259.

—S. 30—Applicability — Summary suit on promissory note executed by trader—Unconditional leave to defend when granted. See Debt Laws — Bombay Money Lenders Act (31 of 1947), S. 23. 60 Bom L R 1371.

—S. 33—Suit for money from debtor of deceased person—Conditional order entailing dismissal of suit if condition was not satisfied within specified time—Propriety — Form of order held not appropriate — Court held had jurisdiction to extend time. See Succession Act (1925), S. 214. AIR 1961 All 86.

—S. 33—Form of decree—Suit under S. 44, Para. 2 of T. P. Act — Declaration of right to joint possession of defendant—Not proper. AIR 1952 Cal 253.

● —Ss. 34, 35 and 110 (3) — Constitution of India, Art. 133 (1)—Decree of affirmance — Appellate decree confirming trial Court decision but making variation in regard to order as to Courts — Character of decree is not affected — Appellate decree is one of affirmance— Appellate decree however making variation in respect of award of interest before date of decree—Character of appellate decree is affected and it is a decree of variance — In former case matter of cost is a matter of discretion but order for interest forms part of dispute and variation in regard to it forms integrant part of decision. AIR 1961 S C 1795.

—Ss. 34 and 107 — Interest for period of pendency of suit. AIR 1963 Andh-Pra 353.

—S. 34—Interest as damages — Person preventing another from having use of his money — Liable to pay interest as damages. See Interest Act (1839), S. 1, Proviso. 1960 Andh L T 524 = (1960) 2 Andh W R 115.

—S. 34 — Interest on decretal amount not claimed in plaint nor in the cross-objection — Such claim cannot be accepted in appeal, for the first time. AIR 1963 Assam 179.

—S. 34—Power of arbitrator to award interest.

Interest can be awarded if there is a debt and if the debt is payable at a certain time and if there has been a demand of interest. See Arbitration Act (1940), S. 13. AIR 1964 Cal 240.

—S. 34 — Interest prior to suit — Suit to recover money for work of contract done — Interest prior to suit cannot be allowed. AIR 1960 Cal 190.

—S. 34 — Contract Act (1872), S. 73 — Breach of contract — Damages — Interest — Where no definite date was fixed for payment of price and no demand was made for the same by plaintiff there is no breach of contract to pay and interest cannot be claimed by

way of damages. See Contract Act (1872), S. 73. AIR 1951 Madh-Bha 110.

——S. 34 (2) — Land acquisition proceedings — Payment of interest—S. 34 of Civil P. C., which controls the general provisions under the Code has no application to cases of land acquisition — Difference between the two provisions — S. 34, Civil P. C. is not mandatory whereas S. 34 of Land Acquisition Act peremptorily provides for interest. See Land Acquisition Act (1894), S. 34. 1965 Jab L J 881 = AIR 1966 Madh Pra 270.

——S. 34—Decree awarding interest exceeding limits — Executing Court has no power to reduce or disallow the interest ordered in a decree on the ground that it is in contravention of S. 3, Madhya Bharat Interest Act (1956). See Debt Laws—Madhya Bharat Interest Act (1956), S. 3. 1958 M P C 315.

——S. 34—(T. P. Act (1882), Ss. 54, 55)—Possession delivered to vendee — Consideration not paid — Vendor is entitled to consideration and interest till its payment — (Contract Act (1872), S. 73. See T. P. Act (1882), S. 54. AIR 1957Mad 630.

——S. 34 (2), O. 34, R. 11 — Awarding subsequent interest in mortgage decrees. Section 34 (2) does not confer on the Court any power to award interest. See Civil P. C. (5 of 1908), O. 34, R. 11. AIR 1953 Mad 948.

——S. 34—Decree awarding interest—Rate not fixed —Power of execution Court — It is not open to the executing Court to fix any reasonable rate of interest. AIR 1951 Mad 409.

——S. 34—"Decree on account of arrears of interest" —Amount allowable—Purpose and object of amending O. 34, R. 11 of the Act. It is to bring R. 11 of O. 34 in line with S. 34 of the Act. See Debt Laws —Mysore Money Lenders Act (13 of 1939), S. 17. AIR 1959 Mys 102.

——S. 34—Breach of contract to sell immovable property — Return of earnest money—Claim for interest —It is discretionary with the Court to allow interest during the pendency of the suit and thereafter till realisation. See Contract Act (1872), S. 73. AIR 1955 Nag 38.

——S. 34 — A's tender for works for water supply to factory under Union Government accepted by State Goverotment—Central Government increasing wages of labourers— Superintending Engineer promising to pay additional sums— Works completed in 1950—A's right to get additional sums denied on 3rd March 1954—Suit for recovery filed on 30th August 1956 — State, held liable for the sum — Art. 120 and not Art. 56 or 115 of Limitation Act held applied—Time ran from 3rd March 1954 — Suit held not barred by time— A was allowed pendente lite and future interest — (Limitation Act (1908), Arts. 120, 56 and 115). See Contract Act (1872), S. 73. AIR 1964 Pat 225.

——S. 34 — Arbitrator — Award of future interest — Validity — The arbitrator cannot be held to possess that power. See Arbitration Act (1940), S. 29. AIR 1960 Punj 623.

——S. 34 — Damages for breach of contract — Interest. The plaintiff was not entitled to interest on that sum which he advanced to the defendant for fulfilment of the contract. See Contract Act (1872), S. 73. AIR 1956 Raj 137.

——S. 34 — Suit commenced under Travancore Civil P. C.—Interest to be decreed — (Travancore Civil P. C. (8 of 1100), S. 31 (1) — (General Clauses Act (1897), S. 6). See Code of Civil Procedure (Amendment) Act (1951), S. 20 (1). AIR 1956 Trav-Co 236.

● ——Ss. 35, 34 and 110 (3) — Constitution of India, Art. 133 (1)—Decree of affirmance —Appellate decree confirming trial Court decision but making variation in regard to order as to Courts — Character of decree is not affected — Appellate decree is one of affirmance—Appellate decree however making variation in respect of award of interest before date of decree —Character of appellate decree is affected and it is a decree of variance — In former case matter of cost is a matter of discretion but order for interest forms part of dispute and variation in regard to it forms integrant part of decision. AIR 1961 S C 1795.

● ——S. 35 — Costs— Advocate ordered to pay costs personally. (Supreme Court Rules, O. 35, Rr. 5 and 10) — (Criminal P. C. (1898), S. 491)— Held, that the advocate should be made to pay the costs personally. See Constitution of India, Art. 32. 1956 Cri L J 283= AIR 1956 S C 108 (b).

——S. 35—Costs shall follow the event. AIR 1955 NUC (Ajmer) 4739.

——S. 35—Separate costs when may be allowed.

Where the defence of two sets of defendants is substantially the same though they are represented by different counsel, only one set of costs should be allowed to the defendants. AIR 1953 Ajmer 37.

——Ss. 35, 115— Discretionary orders — Matter that trial Court did not allow plaintiff his full costs cannot be allowed to be taken in revision. AIR 1951 Ajmer 98 (2).

——S. 35—Award of arbitrator — Interest may be allowed—Discretion is in consonance with principles of equity, justice and good conscience. See Defence of India Act (1939), S. 19 (1) (c) and (g). AIR 1955 NUC (All) 4174.

——S. 35—Separate costs, when may be allowed— Suit against members of Tribunals — On dismissal, latter are not entitled to costs — Award of separate set of costs not justified. (1965) 2 Andh W R 203 = AIR 1966 Andh Pra 123.

——S. 35 — Costs — Computation of — No vested right as to calculation of costs in a particular manner or under particular rules — Rules as to Advocate's fees — Applicability — Whether Hyderabad High Court Rules, 1954 or A. P. High Court Rules (extended to Telangana area by Notification d/- 16-8-1960) would apply while taxing Advocate's fee.

It is manifest that S. 35, Civil P. C., leaves the award of costs entirely to the discretion of the Court, but this discretion which has to be judicially exercised, is however controlled by such condition and limitations as may be prescribed in the Code and also by the provisions of any law for the time being in force. The costs contemplated by section are indeed costs of suits and all applications in suits. In fact, the words "incident to all suits" used in the section are wide enough to cover costs incurred by a party even before the filing of the suit provided they are naturally and intimately connected with the suit. The award of costs being discretionary, which discretion has to be exercised at the time of passing the final order, it cannot be said that a litigant has vested right in matter of costs for a specific amount, unless of course any provision of law for the time being in force confers on him an indefeasible right thereto. This discretion, having regard to its wide amplitude, should be deemed to extend to disallowance of costs to the successful party and even making him to pay to the losing party and to apportion the costs between the parties. This again negatives the theory of vested rights. But the discretion is controlled by the provisions of any law for the time being in force. In other words, if any particular law which is in force at the time makes a provision that the costs should be awarded in a particular manner or should not be awarded at all, that cannot be ignored and the award will be made accordingly.

The expression "any law for the time being in force" contemplates the law which was in force when

the award of costs had to be made by the Court. Such being the case only the Andhra Rules which were in force at the time would be taken into consideration and not the old Hyderabad Rules while taxing the advocate's fee which is included in the costs awarded by the Court. Since there is no provision in the notification extending the Andhra Rules for the continued application of the Telangana Rules to the pending cases, the Andhra Rules extended under notification to the Telangana area would be made applicable and the advocate's fee will be taxed accordingly. **ILR (1965) Andh Pra 68.**

——S. 35—Omission to specify time for satisfaction of decree — Effect — Judgment-debtor when not entitled to execution costs—A decree-holder who files an execution petition before the expiry of the period specified for the satisfaction of the decree or before having necessary alterations made in a case where no time is specified would not be entitled to execution costs. See Civil Procedure Code (5 of 1908), S. 82. AIR 1959 Andh Pra 165.

——S. 35—Costs of reference — Provisions of Civil P. C. relating to costs are relevant — S. 35 of Civil P. C. is, therefore, applicable. See Land Acquisition Act (1894), S. 27. (1962) 64 Bom L R 579 = 1962 Nag L J 669.

——S. 35—Solicitor— Costs — Lien—Costs incurred by Solicitor for his client — Right to recover — Lien and charging order —(High Court Rules and Orders —Bombay High Court Original Side Rules, Rule 1079.)

The principles with regard to the rights of a Solicitor in Bombay as regards recovery of his costs are these : (1) a solicitor is entitled to proceed against his own client for the costs to which the Solicitor is entitled in respect of the work done by him for his client. One of the facilities that the Court affords him is that he need not file a suit against his client to recover his costs but he can get a pay order from the Chamber Judge which he can execute as a decree; (2) the right to what is known as the common law lien. A Solicitor has at common law, and apart from any order of the Court or statute a lien over property recovered or the proceeds preserved of any judgment obtained for the client, by his exertions; and (3) the right to obtain what is in short called a charging order. A solicitor is entitled to apply to the Court for an injunction against his client, restraining the client from receiving payment without notice to himself, or if the fund is in Court for an order for payment there out of his costs. A charging order follows upon a declaration of lien. (S) AIR 1955 Bom 126 and AIR 1927 Bom 542 and ILR 10 Bom 248, Rel. on. **60 Bom L R 999 = AIR 1959 Bom 162.**

——S. 35 — Costs incurred for client — Charging order when can be made.

Normally it is the client who has to pay the cost of his own solicitor even when a judgment or decree has been in favour of that client for his costs of the litigation which resulted in such judgment or decree. But cases arise where the solicitor may apprehend that he may not succeed in recovering costs from his own client, not only from his client's own funds and properties, if any, but even from the amount awarded to his client under the judgment or decree if once the client recovers the same. It is to meet such an eventuality that the necessity of declaring the solicitor's lien or granting a charging order arises. The whole object of the lien is, therefore, to intercept the amount payable under the judgment or decree before it reaches the hands of his client. Such orders are made before the judgment-debtor has actually paid over the amount or if the judgment-debtor has parted with the amount, the amount is a fund in Court or is deemed to be a fund in Court, but if that amount has actually reached the hand of the client, there could not be any question of declaring a lien thereon or giving a charging order thereon. In such an event the solicitor must obtain a pay order and execute the same against his client and attach the said amount in the hands of the client like any other moneys or properties of his client. The use of the word "lien" in the case of a solicitor's particular or common law lien is a misnomer, because such a lien of the solicitor is not based on any possession by the solicitor, but even then such so-called lien, which really is an equitable interference by the Court, must of necessity be applicable only to cases where the fund has not reached the hands of the client. (1872) 7 Q B 499, Rel. on. **60 Bom L R 999 = AIR 1959 Bom 162.**

——S. 35 — Costs—Suit against several defendants—Defence common — Interests same — Separate costs not permissible.

Where a suit against several defendants is dismissed separate costs should not be allowed to defendants if the defence is common to all or the interests are the same. **I L R (1957) Bom 218 = 60 Bom L R 279.**

——S. 35 — Costs—Solicitor's lien on—Enforcement of — Fraud and collusion of parties to deprive plaintiff's solicitor of his costs—Solicitor's remedy. I L R (1954) Bom 1433=56 Bom L R 1136=AIR 1955 Bom 126 (DB).

——S. 35 — Question of jurisdiction arising for the first time — Fair order with regard to costs would be that there will be no order as to costs throughout. AIR 1955 N U C (Bom) 185.

——S. 35 — "Expenses of commission" to examine witness, do not include costs of opponent in going to place of examination — See Civil P. C. (1908), O. 26, R. 15. AIR 1953 Bom 390.

——S. 35 — Land acquisition — Necessary parties — Costs—See Land Acquisition Act (1894), S. 18. AIR 1955 N U C (Cal) 2340.

——S. 35 and O. 34, R. 10 — Mortgage suit—Costs to follow event in absence of special circumstances. AIR 1965 Mad 537.

——S. 35 — Right of contribution for costs payable under joint decree — See Contract Act (1872), S. 43. AIR 1955 Mad 721.

——S. 35 — Conditional order for amendment on payment of costs to opposite party—Order of amendment itself susceptible to revision — High Court can interfere with the order for payment of costs and increase the amount—See Civil Procedure Code (5 of 1908), S. 115. AIR 1953 Mad 12.

——S. 35 (2)—Plaintiff succeeding fully and nothing in this conduct to depart from rule of costs following event — Conduct of defendant was such as to merit strong condemnation — Held it would not be proper exercise of discretion to deprive plaintiff of any portion of his costs. ILR (1963) Mys 1133.

——S. 35—Suit in forma pauperis—Dismissal — Next friend ordered to pay court-fees — Recovery by Collector — Recourse to revenue process held not available — See Civil Procedure Code (5 of 1908), O. 33, R. 14. AIR 1960 Mys 95.

——S. 35 — Practice — Costs — See Constitution of India, Art. 226. AIR 1956 Nag 1.

——S. 35 — Breach of contract to sell immovable property — Return of earnest money — Claim for interest—See Contract Act (1872), S. 73. A I R 1955 Nag 38.

——S. 35 — Successful party at fault — Costs, if can be awarded. AIR 1951 Nag 464.

——S. 35 — Suit discharged under C. P. and Berar Maintenance and Restoration of Order and Collection

of Fines (Indemnity) Act (2 of 1945), S. 4 — Court not to direct one party to pay costs of other. **A I R 1951 Nag 419.**

——S. 35 — Suit for pre-emption — Costs—Suits are not to be encouraged — Parties made to bear their own costs — See Berar Land Revenue Code (1928), S. 183. **AIR 1951 Nag 129.**

——S. 35 — "On such terms as may be just" — Costs — See Civil Procedure Code (5 of 1908), O. 6, R. 17. **AIR 1951 Nag 128.**

——S. 35 — Non-mention of costs in judgment — Decree mentioning costs — Amendment of decree — See Civil Procedure Code (5 of 1908), S. 152. **(1965) 7 O J D 275=AIR 1966 Orissa 225.**

——S. 35 — Forward contracts in respect of groundnut oil in October and November, 1947 — Validity — See Vegetable Oils and Oilseeds (Forward Contracts) Prohibition Order (1944), Cl. 3. **A I R 1955 N U C (Orissa) 3973.**

——Ss. 35, 107—Costs — Power of appellate Court—S. 35 read with S. 107 gives same unfettered power to appellate Court as trial Court, to award costs. **AIR 1955 NUC Pat 4906.**

——Ss. 35, 38—Suit by junior member of sub-tarwad dismissed with costs — Execution for costs against tarwad property — Legality — Powers of executing Court. **AIR 1956 Trav-Co 271.**

——S. 35 — Refusal to tender — Costs of redemption suit—See T. P. Act (1882), S. 84. **A I R 1952 Trav-Co 92.**

— Ss. 35 A, 96 — Party by whom such claim or defence has been put forward—Suit for declaration and injunction against Corporation — Wild allegations against officers of Corporation — Allegation of misapplication of fund not substantiated — No claim for compensatory costs made in written statement — No prayer to that effect made in memo of appeal by Corporation — Unconditional withdrawal of allegations—Compensatory costs against plaintiff not awarded. **1962 Nag L J 118 = (1962) 64 Bom L R 29 = ILR 1962 Bom 278.**

——S. 35A — Frivolous and vexatious suit—Suit requiring strenuous arguments on both sides and elaborate decision is not frivolous—No compensatory costs. **AIR 1952 Mad 609.**

——Ss. 35A, 115 — Order awarding compensatory costs—Interference in revision.

Compensatory costs should be awarded with some caution, but revisional Court is reluctant to interfere with the exercise of any discretion by the lower Court regarding costs, unless it has proceeded on some perverse or, at any rate, some wrong considerations, or has disregarded the ordinary rules of law relating to the awarding of costs. **A I R 1951 Mad 655.**

——Ss. 36, 73—Attachment under order for costs in favour of an attorney—(High Court Rules and Orders—Original Side Rules, Chap. 38, R. 48).

The attorney is entitled to participate in rateable distribution under S. 73. **AIR 1954 Cal 6.**

——S. 36 — Applicability of principle under O. 21, R. 29 to orders.

The execution of an order awarding costs can be stayed under O. 21, R. 29 as under S. 36 the provisions of the Code relating to the execution of the decree shall, so far as they are applicable, be deemed to apply to the execution of orders. **AIR 1956 Madh-Bha 229.**

——S. 37—Stay of execution of trial Court's decree by Appellate Court on condition of depositing costs—Petition by decree-holder for payment out of costs after confirmation of decree — Execution levied after 3 years of appellate decree but within 3 years from date of petition for payment out of costs — Maintainability — Expression "proper Court"—Meaning of—See Limitation Act (1908), Art. 182 (5). **A I R 1963 Andh-Pra 452.**

——S. 37—Judgment-debtor appeals from preliminary decree and pending appeal decree-holder applies for execution of final decree — Execution is dismissed pending appeal — Preliminary decree is modified in cross-objection in the appeal, in favour of the decree-holder by allowing him costs — Decree-holder then applies for second time for execution calculating time from dismissal of his previous execution application—He can claim costs allowed to him by the appellate decree—See Civil Procedure Code (5 of 1908), S. 97. **AIR 1960 Mad 54.**

——S. 37 and O. 21, R. 29 — "Decree of such suit"—Stay of execution of appellate decree—The execution can be stayed under O. 21, R. 29. The expression "the Court which passed the decree" shall be deemed to include, where decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of the first instance — See Civil P. C. (1908), O. 21, R. 29. **AIR 1956 Madh-Bha 229.**

——Ss. 37, 9 and 44-A — Decree of Burmese Court—Execution after Burma became republic — A decree of the Burmese Court cannot be executed in the Indian Courts—See Civil Procedure Code (5 of 1908), S. 44-A. **AIR 1957 Mad 25.**

——Ss. 37, 38—Bengal, Agra and Assam Civil Courts Act (1887), Ss. 3, 4, 13 — Decree by second Additional Subordinate Judge — Abolition of his Court—Execution can be taken out in Court of Additional Subordinate Judge — Bengal, Agra and Assam Civil Courts Act (1887), Ss. 3, 4, 13.

The provisions of Ss. 3, 4, 13 of the Bengal, Agra and Assam Civil Courts Act (1887) provide that all Subordinate Judges having the same territorial jurisdiction are of the same position about their jurisdiction in regard to cases that may arise within their territorial jurisdiction. The position is the same in regard to Additional Subordinate Judges because he is also a Subordinate Judge.

Decree passed by the Second Additional Subordinate Judge can be taken as passed by the Subordinate Judge for purposes of its execution.

After the abolition of Court of the Second Additional Subordinate Judge, the Court of Additional Subordinate Judge was the only Court competent to maintain the execution proceedings. ILR 13 Pat 5, Rel. on; AIR 1952 Pat 4, Expl.

Though suit could not have been filed before the Additional Subordinate Judge, S. 37 of Civil P. C. makes it clear that jurisdiction to try the suit is the point to be taken into consideration for purposes of determining whether the Court would be competent to execute the decree. As the Additional Subordinate Judge had jurisdiction to try the suit it was quite competent to maintain the execution within the meaning of Ss. 37 (b) and S. 38, Civil P. C. **I L R 44 Pat 742=1965 B L J R 628.**

● ——Ss. 38 and 152 and O. 41, Rr. 11 and 17—Order under appeal merges in appellate order whether it is reversed, modified or simply confirmed by the appellate order : AIR 1956 S C 246 and AIR 1958 S C 868, Rel. on. **AIR 1963 S C 1124.**

● ——S. 38—Decree of Special Judge transferred for execution to Court outside U. P.—Transferee Court's jurisdiction to execute — The decree could be transferred under S. 39 of the Code to a Court outside U. P. for execution. It is the duty of the transferee Court to execute it by all methods provided by the Code — See Debt Laws — U. P. Encumbered Estates Act (25 of 1934), S. 14 (7). **AIR 1959 S C 809.**

● ——Ss. 38 and 96 and 152 and O. 41, Rr, 11 and 19 — Statute providing appeal against decision or order

of Court or tribunal—Decision of lower Court merges in that of appellate Court and it is only the appellate decision that is operative in law irrespective of whether it affirms, modifies or reverses the trial Court's decision. AIR 1958 S C 868 (871) (Pr 10).

● ——Ss. 38, 47 — Executing Court, if can go behind decree — Decree imposing reciprocal and interlinked obligations on both sides — Execution of decree unilaterally. See Civil P. C. (5 of 1908), S. 47. AIR 1956 S C 359.

● ——S. 38 — Decree passed without jurisdiction is nullity — Its invalidity can be set up even at the stage of execution. See Civil P. C. (1908), Ss. 9, 21. AIR 1954 S C 340 (342) (Pt A) (Pr 6).

——Ss. 38 and 47 — Decree binding — Compromise in violation of Ajmer Regulation — Compromise decree—Executing Court cannot question its validity — Ajmer Talukdars Loan Regulation (2 of 1911), S. 7 (a). AIR 1951 Ajmer 44.

——S. 38 — Executing Court cannot go behind the terms of the decree. AIR 1955 All 552.

——S. 38 — Stay of execution of trial Court's decree by Appellate Court on condition of depositing costs — Petition by decree-holder for payment out of costs after confirmation of decree — Execution levied after 3 years of appellate decree but within 3 years from date of petition for payment out of costs — Maintainability — Expression "proper Court" — Meaning of. See Limitation Act (1908), Art. 182 (5). AIR 1963 Andh Pra 452.

——Ss. 38 and 47 — Validity of decree — Power of executing Court to enter into question — Extent of.

The executing Court is not competent to permit enquiry or investigation to be made which would require that Court to take evidence pro and contra and to give a finding as if it was a trial Court. AIR 1959 Andh Pra 159.

——S. 38 — Execution transferred before repeal of Independence Act — Transferee Court if loses jurisdiction after repeal—The transferee Court (at Silchar) had jurisdiction, and the execution proceedings transferred before repeal retained validity. See Indian Independence Legal Proceadings Order (1947), S. 4. AIR 1957 Assam 155.

——S. 38 — Decree passed before Assam Co-operative Societies Act (1 of 1950) — Execution proceedings commenced after — Section 88 of the Co-operative Societies Act has no application — Executing Court cannot go behind decree and reopen case annulling or ignoring decree — Pleas of good faith not open. See Co-operative Societies — Assam Co-operative Societies Act (1 of 1950), S. 78. AIR 1956 Assam 166.

——S. 38, O. 23, R. 3 — Houses and Rents — Assam Urban Areas Rent Control Act (13 of 1949), S. 6, Proviso — Compromise decree after passing of Act — Tenant agreeing to vacate by certain date — Objection under S. 6 — Whether can be entertained by executing Court.

The consent decree is not a decree under S. 6 and its operation cannot be controlled by the section. The decree is binding and the executing Court will be exceeding its jurisdiction in going behind such decree, allowing the tenant-defendant to resist its execution. AIR 1951 Assam 27.

——S. 38 — Shall pass a decree in accordance therewith so far as it relates to the suit — Execution of compromise decree passed — Contention not allowed to the judgment-debtor. See Civil P. C. (5 of 1908), O. 23, R. 3. AIR 1958 Bom 471.

——Ss. 38 and 47 — Powers of executing Court.

The executing Court has to execute the decree as it finds it. It cannot question the validity. AIR 1955 NUC (Bom) 2315.

● ——Ss. 38, 11 and O. 8, R. 5 — Absence of territorial jurisdiction of trial Court not apparent on face of decree — Question cannot be raised for first time in execution — Allegation of facts conferring jurisdiction — Non-traverse — Effect — The facts alleged are not traversed by the defendant in his written statement, the question as to the absence to territorial jurisdiction of the trial Court must be deemed to have been decided against the defendant by the Court which passed the decree. See Civil P. C. (5 of 1908), S. 11. AIR 1961 Cal 92 (FB).

——S. 38, O. 23, R. 3 — Power of executing Court to go behind decree.

The executing Court is entitled to refuse the decree on the ground that it was made without jurisdiction. AIR 1955 NUC (Cal) 2939.

——Ss. 38, 47 — Decree — Executability — Declaratory decree — Not executable — Decision of single Judge dated 4-6-1964 Reversed See Civil P. C. (5 of 1908), S. 47. 1965 Kash L J 369 = AIR 1966 J and K 13.

——S. 38 — Objection under Ss. 15 and 19, Bombay Agricultural Debtors Relief Act (1947) — Maintainability by execution Court — Bar of res judicata. See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 15. AIR 1954 Kutch 19.

——S. 38 — Pending suit — Tenanted premises — Agreement to deliver possession — The agreement with the landlord is lawful and the Court is bound to record it and make a decree in accordance with it under O. 23, R. 23. See Houses and Rents — Madhya Bharat Sthan Niyantran Vidhan (S 2006), S. 4. AIR 1954 Madh Bha 89.

——Ss. 38, 47 — Execution Court — Powers of — Objection as to binding nature of debt and property being subject to trust—Maintainability in execution.

Held, that the son could raise an objection in the execution proceedings and that the execution Court had rightly decided that the mortgage was valid and binding on the minor son. AIR 1959 Mad 80.

——S. 38 — (Trade Marks Act (1940), Ss. 73, 20 (2)).

Passing off action with allegations of infringement of registered trade mark — Forum — Decree passed by City Civil Court — Validity — Objection as to — Power of executing Court to decide — The decree passed by the civil Court is nullity and the executing Court when called upon to decide the question, whether the Court had jurisdiction at all to pass the decree is not precluded from looking into the pleadings. Case law reviewed. See Trade Marks Act (1940), S. 73. AIR 1958 Mad 490.

——Ss. 38, 21 — Execution proceedings — The provisions of S. 21 apply to objections regarding want of territorial jurisdiction and such an objection, not taken as provided by the section, must be considered cured for all purposes, and cannot be allowed in execution proceedings. See Civil P. C. (5 of 1908), S. 21. AIR 1955 NUC (Mad) 3221.

——S. 38 — Execution of consent decree — Terms of compromise annexed to decree as schedule-decree is executable as if terms are incorporated into the decree — Executing Court cannot refuse to execute decree on ground that it is not properly drawn up. See Civil P. C. (5 of 1908), O. 23, R. 3. A I R 1953 Mys 153.

——S. 38 — Power to go behind decree. A I R 1953 Mys 62.

——S. 38—Execution of decree of other State — The transferee Court must execute the decree in accordance with the law of procedure obtaining in the place of the transferee Court. See Debt Laws — Mysore Agriculturists' Relief Act (18 of 1928), S. 3. A I R 1953 Mys 37.

——S. 38—Deed—Construction—Decree.

It would be wrong to hold a decree meaningless if a reasonable interpretation can be placed on the language used. A I R 1951 Nag 164.

——S. 38 — Maintenance decree creating charge on certain property of an estate — Vesting of estate in Government—Property charged remaining in possession of judgment-debtor under Ss. 6 and 7 of Orissa Estates Abolition Act—Charge continues to exist and decretal amount can be realised by sale of such property. See Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), S. 6. A I R 1965 Orissa 74.

——S. 38—Competent Court—Decree transferred for execution to another Court—Pecuniary jurisdiction—The amount in decree, for which execution is laid on transfer, does not determine pecuniary jurisdiction of executing Court to which decree is transferred for execution under S. 39 (2). See Civil P. C. (5 of 1908), S. 39. A I R 1957 Orissa 177.

——S. 38—Compromise decree passed in contravention of S. 10 (1) of Orissa Money Lenders Act (1939) —Executing Court can refuse to execute portion of decree which is beyond jurisdiction of decreeing Court. See Debt Laws — Orissa Money-Lenders Act (3 of 1939), S. 10 (1). A I R 1953 Orissa 3.

——S. 38—Maintenance—Nature of — Charge decree for maintenance—Execution—(Hindu Women's Rights to Property Act (17 of 1937)—The rights of the wife remain unaffected. The life of the decree is not limited to the life of the husband. The executing Court has to execute the decree as it stands. See Hindu Law—Wife. A I R 1951 Orissa 306.

——S. 38—Decree by Second Additional Subordinate Judge — Abolition of his Court — Execution can be taken out in Court of Additional Subordinate Judge. See Civil P. C. (5 of 1908), S. 37. I L R 44 Pat 742= 1965 B L J R 628.

——S. 38 and O. 20, R. 6 — Decree for specific performance of contract of sale—Merely because proper form is not adopted, the decree obtained by the plaintiff does not become inexecutable. See Civil P. C. (5 of 1908), O. 20, R. 6. A I R 1964 Pat 525.

●——S. 38—Rent decree—Execution — Sale of portion of plot if void — The High Court has not made any rule declaring the non-applicability of S. 38 and O. 21, R. 64 of the Code to an application for execution of a decree for rent. See Tenancy Laws—Bihar Tenancy Act (8 of 1885), S. 162-A, last proviso. A I R 1961 Pat 279 (FB).

——S. 38 — Application under S. 33 of Arbitration Act (1940) on ground of non-existence of arbitration agreement — It is maintainable even after judgment and decree on basis of such award. See Arbitration Act (1940), S. 17. A I R 1957 Pat 417.

——S. 38—Claims in respect of rent decree—Simultaneous execution—Maintainability — Order putting decree-holder to election of remedy — Legality. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 14. A I R 1956 Pat 223.

——Ss. 38, 11—Objection as to jurisdiction of executing Court—Constructive res judicata—The judgment-debtor is precluded from raising the plea of jurisdiction on a subsequent occasion at a later stage of the execution proceedings on the principle of constructive res judicata. See Civil P. C. (5 of 1908), S. 11. A I R 1956 Pat 4.

——Ss. 38, 47 — Decree-holder's right to execute decree. A I R 1953 Pat 242.

——S. 38—Discharge of insolvent—Decree in respect of debt provable in insolvency in spite of objection that debt ceased to exist because of discharge order—Objection cannot be raised in executing Court, decree though wrong not being void. See Provincial Insolvency Act (1920), S. 44. A I R 1951 Pepsu 46.

●——S. 38 — Decree for possession of property—Transfer of local area in which property is situate to different Court — Application for execution direct to Court to which local area has been transferred—Maintainable. See Civil P. C. (5 of 1908), S. 37. A I R 1962 Punj 394 (FB).

——Ss. 38 and 47 (3) — Representative — Execution petition by decree-holder — Application by stranger for substitution on ground that decree-holder was benamidar—Executing Court cannot enquire into the matter. See Civil P. C. (5 of 1908), S. 47 (3). A I R 1957 Raj 253.

——Ss. 38, 47 — Power of executing Court to go behind decree.

The general rule is that an executing Court cannot go behind the decree. It is a question for consideration in each case whether a decree can be held to be a nullity by the executing Court. It is only within certain very narrow limits that the executing Court has got this power. A I R 1957 Raj 131.

——S. 38—Decree passed without waiting for 30 days —Power of executing Court to question validity—The executing Court cannot go behind a decree passed by a Court which has inherent power to pass it, though it was passed before expiry of 30 days. See Arbitration Act (1940), S. 17. A I R 1953 Sau 129.

——S. 38, O. 21, R. 90—Irregularity in order of sale of different items.

At best it could be said that in conducting the sale in such a manner, a serious irregularity has been committed. The sale would be voidable and not void. A I R 1955 Trav-Co 92.

——S. 38—Quantum of mesne profits—Interest separately allowed on amount designated mesne profits—Validity of provision — Permissibility of objection in execution — It is not open to the judgment-debtor to take objection in execution proceedings, to the quantum which includes the interest also, on the ground of impropriety or mistake in the decree. See Civil P. C. (5 of 1908), O. 20, R. 12. A I R 1953 Trav-Co 32.

●——S. 39—Decree of Special Judge transferred for execution to Court outside U. P.—Transferee Court's jurisdiction to execute — The decree could be transferred under under S. 39 to a Court outside U. P. for execution. It is the duty of the transferee Court to execute it by all methods provided by the Code. See Debt Laws—U. P. Encumbered Estates Act (25 of 1934), S. 14 (7). AIR 1959 S C 809.

——Ss. 39, O. 21, Rr. 11, 30 — Decree against three judgment-debtors — Execution sought against all on transfer certificate against two only—Court not competent to proceed against third judgment-debtor not covered by transfer certificate and orders against him are invalid. AIR 1956 Ajmer 39.

——S. 39 — Transfer of decree for execution under S. 38 (1)—Transferee Court —Jurisdiction —Depends upon actual amount under execution. See Civil Procedure Code (5 of 1908), S. 6. AIR 1962 All 586.

——Ss. 39 and 2 (3) — Decree under S. 14 of U. P. Encumbered Estates Act (1934) — Properties situate outside U. P. — Special Judge can transfer decree under S. 39 on application by Collector. See Debt Laws — U. P. Encumbered Estates Act (25 of 1934), S. 14. AIR 1955 NUC (All) 348.

——S. 39—Transfer of jurisdiction pending execution —Return of execution petition for presentation to proper Court—Presentation of petitions directly—Competency of second Court to execute decree — Second Court had no jurisdiction. See Civil Procedure Code (5 of 1908), S. 37. AIR 1958 Andh Pra 763.

——S. 39 — Execution transferred before repeal of Independence Act — Transferee Court if loses juris-

diction after repeal—The transferee Court (at Silchar) had jurisdiction, and the execution proceedings transferred before repeal retained validity. See Indian Independence Legal Proceedings Order (1947), S. 4. AIR 1957 Assam 155.

——Ss. 39 and 42—Transfer—Order judicial and not ministerial — Ex parte order passed on misleading affidavit — Successor in office finding conduct of decree-holder not bona fide — Judgment-debtor in fact having sufficient property within jurisdiction—Successor in office recalling order of transfer — Discretion held rightly exercised. AIR 1953 Cal 765.

——S. 39 (1) (b) and (c) — Balance order on contributory — Enforcement — Appointment of receiver — Power to transfer case for execution — High Court should exercise exclusive jurisdiction. See Companies Act (1913), S. 199. AIR 1953 Cal 610.

——Ss. 39, 41 and 42—Transferee Court—Powers of —Power to send decree to another Court for execution.

Reading Ss. 39, 41 and 42 together a transferee Court has no power to transfer the decree for execution to another Court. AIR 1956 Madh Bha 255.

——S. 39 — Rules under, Rule 46 (3), Gwalior State Co-operative Societies Act (1997 Smt.) and award under S. 60 of the same Act—Civil or Revenue Court. See Co-operative Societies — Gwalior State Co-operative Societies Act (1997 Smt.), S. 65. AIR 1958 Madh Pra 199.

——S. 39—Execution petition filed before transferee Court within limitation—Order of transmission passed after limitation — Decree-holder would not be saved from the bar of S. 48. See Civil Procedure Code (5 of 1908), S. 48. AIR 1957 Mad 726.

——Ss. 39 and 42 — Power of transferee Court — Objection to executability — Objection held could be decided by transferee Court. AIR 1955 NUC (Mad) 212.

——S. 39 (1) and O. 21, Rr. 6 and 10 — Execution application presented to transferee Court before transfer—Validity of presentation.

The Court to which the decree is being transferred for execution can entertain the execution petition even before the order of transmission is made. AIR 1953 Mad 71.

——S. 39—Small Cause Court decree — Execution—Attachment of immovable property — Jurisdiction—Errors of Court, ordering the attachment of immovable properties without a transfer order will not cure want of jurisdiction. See Civil Procedure Code (5 of 1908), S. 7 (a) (iii). AIR 1951 Mad 491.

——S. 39 — Transfer of decree to Court in another district—Non-compliance with rules 5 and 8 amounts to mere irregularity — Does not affect jurisdiction of transferee Court — Rules 5 and 8 not distinct. See Civil Procedure Code (5 of 1908), O. 21, R. 5. AIR 1963 Pat 461.

——S. 39—Decree passed by Gram Cutchery—Execution by Civil Court — Legality — (Bihar Gram Cutchery Rules (1949), Rr. 35, 38) — No other Court, unless otherwise provided, will have jurisdiction to take cognizance of matters which are within the jurisdiction of Bihar Panchyat Raj Act, 1947. Civil Courts have no jurisdiction to execute a decree passed by Gram Cutchery. The provisions of S. 39, Civil P. C. do not apply. See Panchayats—Bihar Panchayat Raj Act (7 of 1947), S. 68. AIR 1958 Pat 370.

——S. 39 — Decree sent to District Judge at A — Application for attachment and sale made to sub-ordinate Judge at A—The Sub-ordinate Judge has no jurisdiction to entertain the execution application. See Civil Procedure Code (5 of 1908), S. 38. AIR 1957 Pat 654.

● ——S. 39 — Decree transferred for execution, to another Court — Limits of jurisdiction of transferor and transferee Courts — Certificate under S. 41 not received from transferee Court—Jurisdiction of transferor Court to execute decree — The Court which passed the decree has jurisdiction to execute the decree in certain circumstances in spite of the absence of any certificate under S. 41 from the transferee Court. See Civil Procedure Code (5 of 1908), S. 38. AIR 1952 Pat 213 (FB).

——Ss. 39 and 42—Jurisdiction of transferring Court after transfer. AIR 1959 Punj 71.

——S. 41 — Decree transferred for execution to another Court — Powers of transferee Court —Decree modified in appeal.— Transferee Court has power to allow amendment of execution application — It is not necessary to apply again to original Court for fresh certificate. See Civil Procedure Code (5 of 1908), S. 37. AIR 1963 Madh Pra 154.

——Ss. 41 and 42 — Jurisdiction of transferee Court, how long continues — Revival of attachment—(Civil P. C. O. 21, R. 57).

Till a certificate is sent as required by law, the jurisdiction to resume proceedings remains in the transferee Court. The order of attachment is final and cannot be revived. AIR 1951 Nag 270.

——S. 41—Execution case started in transferee Court transferred to another Court under S. 24 — Transferee Court's jurisdiction to entertain fresh execution applications — The Court to which decree is duly transferred for execution under S. 38 continues to have jurisdiction to execute the decree. See Civil P. C. (5 of 1908), S. 38. AIR 1961 Raj 157.

——Ss. 42, 50 — Step-in-aid — Decree transferred for execution — Application to original Court to bring deceased judgment-debtor's legal representatives on record — It must be made to the Court which passed the decree and the application operates as step-in-aid of execution. See Limitation Act (1908), Art. 182. AIR 1951 Ajmer 31.

——Ss. 42, 4 (1) (as amended in U. P. by Act XXIV of 1954).

Section 93 (2) of U. P. Act XXVI of 1947 overrides provisions of S. 42, Civil P. C. See Civil P. C. (1908) S. 4 (1). 1965 All L J 423 = AIR 1966 All 218.

——S. 42 — Collector directing Tahsildar to attach judgment-debtor's property in execution of award — If acts in judicial capacity. See Debt Laws—Hyderabad (Jagirdars) Debt Settlement Act (12 of 1952) S. 42. 1960 Andh L T 93.

——S. 42 — Balance order on contributory—Enforcement — Appointment of receiver — Power to transfer case for execution — High Court should exercise exclusive jurisdiction. See Companies Act (1913) S. 199. AIR 1953 Cal 610.

——S. 42 — Registered decree — Payment of fee for registration of decree, according to practice then prevailing in Kerala — Not sufficient to treat decree passed as registered for execution if Civil P. C. has come into force before decree. See Limitation Act (1908), Art. 182. AIR 1965 Ker 29.

——Ss. 42, 43 — Execution of decree of other State — The transferee Court must execute the decree in accordance with the law of procedure obtaining in the place of the transferee Court. See Debt Laws — Mysore Agriculturists' Relief Act (18 of 1928), S. 3. AIR 1953 Mys 37.

——S. 42 — Jurisdiction of transferee Court, how long continues — Revival of attachment. (Civil P. C. O. 21, R. 57) — Till a certificate is sent as required by law, the jurisdiction to resume proceedings remains in the transferee Court. The order of attachment is final and cannot be revived. See Civil P. C. (5 of 1908), S. 41. AIR 1951 Nag 270.

——Ss. 42, 50 (1) — Execution against legal representatives — Order by transferee Court.

Order of execution against the legal representatives of a deceased judgment debtor is an irregularity in procedure which can be waived. **AIR 1952 Pat 333.**

——S. 43 — Foreign Court — Submission to jurisdiction — Execution of decree in foreign state—A Court can exercise jurisdiction over foreigners if they reside within its jurisdiction or (residing outside) submit to its jurisdiction. See Civil P. C. (5 of 1908), S. 2 (5). **AIR 1955 All 490.**

——S. 44 — Foreign Court — Submission to jurisdiction — Execution of decree in foreign State — A Court can exercise jurisdiction over foreigners if they reside within its jurisdiction or (residing outside) submit to its jurisdiction. See Civil P. C. (5 of 1908), S. 2 (5). **AIR 1955 All 490.**

——S. 44 — Enforcement of foreign judgment — Power of executing Court — It is open to a Court executing a foreign Court's decree to enquire whether the foreign Court had jurisdiction to pass the decree. A decree pronounced by a Court of a foreign State in a personal action in absentem, the absent party not having submitted himself to its authority, is a nullity. See Civil P. C. (5 of 1908), S. 13. **AIR 1951 Bom 190.**

——S. 44 — "Foreign Court" — Ex parte decree passed by Palghat Court on 3-1-1951 — Executability in Perumbavoor in Travancore-Cochin by Part B States (Laws) Act, 1951. See Constitution of India, Art. 261. **AIR 1958 Ker 15 (FB).**

——Ss. 44 and 8 — Presidency Small Cause Court — Jurisdiction to execute foreign decree — Section 44 is not one of the sections included in S. 8, Civil P. C. nor has S. 44 been made applicable to Presidency Small Cause Courts, and it cannot execute a foreign decree. See Civil P. C. (5 of 1908), S. 8. **AIR 1951 Mad 289.**

——S. 44 — Decree of Pakistan Court — Execution. See Civil P. C. (5 of 1908), S. 13. **AIR 1951 Punj 255.**

——S. 44 — Cause of action arising in native state against non-resident foreigner — Decree — Execution — The decree, the execution of which is sought, no longer remains a decree of the foreign Court qua Bhavnagar Courts. See Civil P. C. (5 of 1908), S. 13 (a). **AIR 1953 Sau 16 (FB).**

——S. 44-A — Decree of Pakistan Court—Execution. See Civil P. C. (5 of 1908), S. 13. **AIR 1951 Punj 255.**

——S. 46, O. 38, R. 5, O. 21, R. 46 — Section 46 governs attachment in execution. **AIR 1961 Andh-Pra 417.**

——S. 47 — Application for restitution is an application for execution of decree. See Civil P. C. (5 of 1908), S. 144. **AIR 1965 S C 1477.**

——Ss. 47, 96 and 2 (2) — Order in execution — Appeal — Order in execution directing decree-holder to furnish security before process of Court could issue for compliance with decree by judgment-debtor is final and not appealable. See Civil P. C. (1908), S. 2 (2). **AIR 1955 N U C (Ajmer) 2639.**

——S. 47 and O. 21, R. 1 — Adjustment — Compromise decree.

Decree-holder agreeing under compromise to accept less than decretal amount if paid before fixed date — Delay in depositing amount — Withdrawal of deposit by decree-holder — Decree-holder must be deemed to have condoned delay and accepted payment in full satisfaction of his claim. **AIR 1961 All 91.**

——S. 47 — Liability disputed by garnishee — Issue has to be determined in execution proceedings themselves — Decree-holder cannot be directed under R. 133 to file separate suit to get the point raised by garnishee decided. See Civil P. C. (5 of 1908), O. 21, R. 133 (All). **AIR 1960 All 547.**

——S. 47 — Dismissal of application — Appeal — No appeal lies. See Debt Laws — U. P. Debt Redemption Act (13 of 1940), S. 8. **AIR 1953 All 708.**

——S. 47 and O. 21, Rr. 58, 65 — Proceedings under — Area within boundaries as mentioned in sale certificate — Determination — Right of parties under Ss. 95 and 97 of Evidence Act. **(1965) 2 Andh W R 366 = AIR 1966 Andh-Pra 260.**

——Ss. 47, 96, 104, 115, O. 21, R. 66 — Order allowing application of decree-holder under O. 21, R. 66 for reduction of upset price in sale proclamation — Order does not relate to execution, discharge or satisfaction of decree and does not fall under S. 47 — Order is not appealable — Appeal filed against order treated as revision as it involved a point of law. AIR 1925 Mad 1142, Dist. **(1965) 2 Andh L T 226=(1965) 2 Andh W R 481=AIR 1966 Andh Pra 152.**

——S. 47 — Money decree against insolvent and his sons — Property attached before judgment sought to be sold in execution by decree-holder — Application by receiver who was party to decree for delivery of property to him for administration — Question of title whether property is self-acquired or joint family property—Power of executing Court to decide stated. See Provincial Insolvency Act (1920), S. 52. **AIR 1965 Andh Pra 451.**

——S. 47—Executing Court cannot go behind decree unless it is a nullity. See Civil P. C. (5 of 1908), S. 38. **AIR 1964 Andh Pra 230.**

——S. 47 — Court-fees Act (1870), S. 11 — Scope of first and second para of S. 11 — Determination of mesne profits—Procedure for under Civil P. C., 1908, compared with that under Civil P. C., 1882 — Mode of enforcing payment of additional court-fee under S. 11, para. 1 — Only power which a Court has after passing of final decree is to prevent decree-holder from executing it till court-fee is actually paid and a suit or interlocutory application for passing of final decree cannot be dismissed on ground of non-payment of stamps—Section 149, Civil P. C., 1908, does not come into play in matter of payment of court-fee on a final decree for mesne profits. See Court-fees Act (1870), S. 11. **ILR (1963) Andh Pra 560.**

——S. 47 — Decree obtained before scheme—Execution after scheme — Objection overruled — Order is appealable. See Companies Act (1913), S. 153. **AIR 1953 Assam 107.**

——S. 47 — Order under S. 24 of Bombay Money-lenders Act (1947) — If decree — Appeal—Court-fee —The order cannot be regarded as a determination of question relating to execution, discharge or satisfaction of a decree under the section. See Debt Laws —Bombay Money-lenders Act, 1946 (31 of 1947), S. 24. **AIR 1960 Bom 334.**

——Ss. 47 and 38 — Powers of executing Court — Executing Court cannot question validity, legality or correctness of a decree, and cannot refuse to execute it. But a decree which is a nullity is incapable of execution. See Civil P. C. (5 of 1908), S. 38. **AIR 1955 N U C (Bom) 2315.**

——Ss. 47, 144 — Restitution — Decree reversed in appeal — Grantees from decree-holder cannot resist restitution ordered in favour of judgment-debtor — They are parties within meaning of S. 144. See Civil P. C. (1908), S. 144. **(1965) 69 Cal W N 117.**

——Ss. 47, 148 — Time fixed by decree — Extension by appeal being preferred — Decree reversed in appeal but affirmed on remand — Time runs from appellate decree on remand. **AIR 1961 Cal 643.**

——Ss. 47 and 7 — Provincial Small Cause Courts Act (1887), S. 17 — Section 47 is not inapplicable to

Provincial Small Cause Courts — Provincial Small Cause Courts Act (1887), S. 17. ILR (1960) 1 Cal 895.

——S. 47—Provincial Small Cause Courts Act (1887), Ss. 25 and 27 — Order in execution passed by Small Cause Court in its small cause side — Order is not appealable but revisable. ILR (1960)1 Cal 895.

——S. 47 — Award directing restoration of holding —Application under sub-s. (8) of Bengal Agricultural Debtors' Act (7 of 1936) for possession — Question whether or not award was without jurisdiction on account of lease prior to relevant date, 20th December, 1939 — Separate suit — Maintainability—Death of one of defendants — Effect. See Debt Laws — Bengal Agricultural Debtors Act, 1935 (7 of 1936), S. 37A. AIR 1956 Cal 454.

——S. 47 — Objection in execution of the decree under S. 30 of Bengal Money-lenders Act (10 of 1940) — Burden of proof—The burden lies on the judgment-debtors who seek to defeat the execution of the decree. See Debt Laws—Bengal Money-lenders Act (10 of 1940), S. 30. AIR 1954 Cal 105.

——S. 47 — Ejectment decree — Right of sub-tenant under S. 13 (2) of West Bengal Premises Rent Control (Temporary Provisions) Act (1950)—Jurisdiction of Small Cause Court to convert execution proceedings into suit under S. 47 (2), Civil P. C. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (1950), S. 13 (2). (1954) 58 Cal W N 407=93 Cal L J 175 (DB).

——S. 47—Rent decree—Execution—Decree for rent against some defendants and for costs against all.

Where the claim under execution was one for rent and the defendants who were made liable to pay the same were all the putnidars recorded in the landlord's sherista an execution of the decree for this sum must be regarded as an execution of a decree for rent against all the recorded tenants. The fact that by the same decree some of the recorded tenants were made liable for a prior period did not make this part of the decree under execution nonetheless a decree for rent. No question of splitting up the decree for costs arose. The decree specifically made all the recorded tenants liable for the costs. ILR (1953) 2 Cal 336 = AIR 1953 Cal 398 (399) (Pt A) (Pr 7) (DB).

——S. 47 — Proceedings under Chapter VII of Presidency Small Cause Courts Act (1882) and nature of order for possession under S. 43 — Application for stay of proceedings on the ground that the order for possession has been satisfied or otherwise disposed of is maintainable and cannot be dismissed as premature. See Presidency Small Cause Courts Act (1882), Chap. VII. AIR 1951 Cal 395.

——S. 47, O. 47, Rr. 84 and 90 — Failure to deposit balance of purchase money—Validity of sale.

The sale becomes void and an application to set aside the sale as nullity falls under S. 47 and not under O. 21, R. 90. AIR 1951 Cal 319.

——S. 47 — Stay order — It becomes effective only from the moment of its communication to the Court or authority concerned. See Civil P. C. (5 of 1908), O. 41, R. 5. ILR (1965) Guj 449=(1965) 6 Guj L R 498 = AIR 1966 Guj 281.

● ——S. 47 — Execution proceedings — Power of executing Court to question validity of decree for want of territorial jurisdiction of Court passing decree. See Civil P. C. (5 of 1908), S. 21. AIR 1954 Hyd 190 (FB).

——Ss. 47, 115, O. 21, Rr. 84, 92 — Auction sale by officer of Court — Sale subject to approval of Court —Powers of Court to set aside — Grounds for — Inadequacy of price — The Court has not only ample jurisdiction but also a duty to consider the various objections raised by the parties and decide whether to give or not its approval to the sale conducted by the Commissioner or receiver. See Civil P. C. (5 of 1908), O. 21, R. 84. AIR 1960 Ker 69.

——S. 47 — Order under — Second appeal not accompanied by copy of decree — Copy produced after limitation — Appeal is competent. See Civil P. C. (5 of 1908), O. 41, R. 1. AIR 1951 Madh-Bha 61.

——S. 47—Compromise decree — Defendant to build wall according to certain specification — Wall built but not according to the specification — Plaintiff completing wall and filing suit for recovery of expenses — Right to relief — Suit cognizable by Small Cause Court. See Contract Act (1872), S. 70. AIR 1961 Madh-Pra 107.

——S. 47, O. 22, R. 3—Compromise arrived at during execution proceedings and order passed in terms of compromise — Additional consideration paid also embodied in the order—Additional consideration paid which is extraneous to claim in execution cannot be recovered under S. 47 and except by a separate suit. 1960 M P L J 95, Rel. See Civil P. C. (1908), O. 22, R. 2. 1961 M P L J (Notes) 192.

——S. 47—"Judgment" — Order under — Where the point under consideration was whether the decree satisfied in terms of the agreement between the parties, this question related to the satisfaction or discharge of the decree and accordingly fell within the terms of the section. See Letters Patent (Nag.), Cl. 10. AIR 1958 Madh-Pra 333.

——S. 47 — Correction of entries in suit register — Proceeding for striking out nature of deceased decree-holder not mentioned in register—Effect of.

On the objection that execution application was barred by limitation under Art. 182 of the Limitation Act, the decree-holder pointed out that there was a proceeding to strike off the name of the decree-holders who had died, but as the proceeding was not mentioned in the Civil Suit Register and as the decree-holder did not file certified copies of that proceeding, his application was dismissed as time-barred.

Held, that it was the duty of the Court's clerk to make entries in the Civil Suit Register and his omission could not be allowed to make the decree-holder suffer and the Court should have taken notice of the previous proceedings from the records. 1958 M P L J (Notes) 30.

——Ss. 47 (2), 96 and 107 — Order under S. 47 (2) converting application into suit — Order passed after proper exercise of jurisdiction — Order cannot be interfered with in appeal by considering propriety of order on merits of case. (1965) 2 Mad L J 548 = AIR 1966 Mad 308.

——S. 47, and O. 21, R. 103—Parties to suit — Mortgage suit — Lessee from mortgagor wrongly impleaded as defendant but discharged from suit on his objection — Not a party to suit within S. 47 — Mortgage decree—Mortgagee auction purchaser in execution applying for delivery of possession — Objection by lessee allowed — Second suit by mortgagee for declaration of title and recovery of possession — Maintainability. (1965) 78 Mad L W 606.

——S. 47—Madras Agricultural Income-tax Act (5 of 1955), S. 31 (2) — Interlocutary orders — Order of remand by appellate Assistant Commissioner on some items only — Order is interlocutory — No appeal by assessee against remand — Subsequent appeal by assessee against revised order of assessment to appellate tribunal — Even the correctness of the items confirmed in earlier appeal can be canvassed. See Madras Agricultural Income-tax Act (5 of 1955), S. 31 (2). ILR (1963) 2 Mad 397 (DB).

——S. 47 and O. 21, R. 90 — Application to set aside sale on the ground of illegality of order for sale — Security cannot be demanded from judgment-debtor. AIR 1963 Mad 201.

——S. 47, O. 47, R. 1, O. 21, R. 85 — Auction-purchaser at execution paying balance of 75 P. C. of purchase price — Receipt not deposited in Court — Re-sale ordered — Order may be reviewed. AIR 1961 Mad 409.

——S. 47—Application by tenant for sale of land — Order dismissing — Appeal — An appeal would lie if the adjudication amounts to a decree or if the adjudication has the effect of deciding the question in execution in regard to execution, discharge or satisfaction of the decree. See Tenancy Laws — Madras City Tenants Protection Act (3 of 1922), S. 4. AIR 1959 Mad 191.

——S. 47—Order for eviction — Execution of against legal representative — Applicability — An order for eviction can be executed before a civil Court and therefore all the provisions of S. 47 and O. 21 are attracted. The decree can be executed against the legal representative. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (1949), S. 9. (1956) 2 Mad L J 475.

——S. 47 — Purchaser of undivided share of coparcener of joint Hindu family — Right to delivery of symbolical possession — Purchaser if entitled to benefit of fresh cause of action—There can be no delivery, either symbolical or actual. It is not competent to a Court to pass an order directing delivery of possession — The purchaser cannot get benefit of a fresh cause of action by any symbolical delivery which could not in law have been made to him. See Limitation Act (1908), Art. 144. AIR 1955 Mad 288.

——S. 47—Application for mesne profits by way of restitution against auction purchaser—(Debt Laws — Madras Agriculturists' Relief Act (4 of 1938), Ss. 23, 24). It was held just and equitable to award judgment-debtor's mesne profits estimated by the lower Court. See Civil P. C. (5 of 1908), S. 144. AIR 1953 Mad 930.

——S. 47— Purchase of property by decree-holder — Receiver without sanction of Court — Purchase is not nullity but voidable at instance of judgment-debtors in execution proceedings and not by suit. See Civil P. C. (5 of 1908), O. 21, R. 72. AIR 1953 Mad 822.

——S. 47 — Order for eviction — Execution before civil Court under Cl. 8 (3) of Madras Non-residential Buildings Control Order (1945) — Dismissal— Appeal against— Maintainability—The provisions of Ss. 2 (2) and 47 of Civil P. C. are attracted with the consequential right of appeal given by S. 96 of the Code, notwithstanding the fact that no such right of appeal is given by the Madras Non-residential Buildings Control Order (1945). See Houses and Rents—Madras Non-residential Buildings Control Order (1945), S. 8 (3). AIR 1951 Mad 640.

——S. 47 — Interlocutory orders in execution proceedings—Order under S. 20 of Madras Agriculturist Relief Act (4 of 1938) — Applicability — An appeal from an order under the section would lie only if certain conditions are complied with. See Debt Laws —Madras Agriculturists Relief Act (4 of 1938), S. 20. AIR 1951 Mad 56 (FB).

——S. 47 — Contract of sale — Decree for specific performance — Title passes with execution and registration of sale deed and does not flow from decree — Decision in AIR 1955 Cal 267 must be confined to question of possession only. See T. P. Act (1882), S. 5. (1965) 2 Mys L J 692=AIR 1966 Mys 299.

——S. 47, O. 21, Rr. 10, 11 (2) and 17 — Application for execution—Parties jointly entitled to certain properties under decree — Execution application by one without stating that execution was also for benefit of other - Maintainability of—Other party impleaded to application but not contesting right of applicant to possession of properties—By registered partition deed applicant shown exclusively entitled to properties—Application held maintainable. (1965) 2 Mys L J 103.

——S. 47 and O. 21, R. 10 — Application for execution by one of joint decree-holders — Prayer for delivery of possession of specified portion of land — Opponent's objection that delivery of portion of land not possible unless preceded by partition and separation of that portion — Opponent not in possession of any portion of that land — Objection held not available to opponent. (1965) 2 Mys L J 103.

——S. 47—Decree binding — In absence of exceptional circumstances e.g., touching the jurisdiction of the Court passing the decree, the executing Court cannot go behind the decree. AIR 1952 Mys 94.

——S. 47—Mortgage of joint property—Suit by mortgagee against one of defendants dismissed and decreed against shares of others—Application objecting delivery of possession in favour of decree-holder would come within the purview of S. 47. See Limitation Act (1908), Art. 11-A. AIR 1956 Nag 93.

——S. 47 — Expression 'dismissed for default' in S. 2 (2)(b) is not confined to dismissal for default in suits or appeals but extends to default on application under S. 47. I L R (1965) Cut 823.

——S. 47 — Executing Court fixing order in which property is to be sold—Non-compliance with Court's order renders sale voidable under O. 21, R. 90 of the Code, and not void—Application to set aside sale filed after expiry of 30 days from the date of sale is barred. See Limitation Act (1908), Art. 166. AIR 1964 Orissa 91.

——S. 47—Plaintiffs jointly suing for possession — Shares of plaintiffs specified — Suit dismissed — Dismissal upheld in appeal—Second appeal by plaintiffs —One of appellants dying during pendency — Legal representatives not impleaded—Abatement — No application to set aside—Effect — Appeal held abated as a whole. See Civil P. C. (5 of 1908), O. 22, R. 3. AIR 1959 Orissa 41.

——S. 47—Execution proceedings — Held, not barred by res judicata. See Civil P. C. (5 of 1908), S. 11. AIR 1953 Orissa 59.

——S. 47—Rent—Proceedings for recovery—Decree and execution — If binds person interested but not party to proceedings—Principle of representation—Applicability of.

Jagannadha Das J.—While it is true that no person can be affected by proceedings to which he was not a party, that principle itself is subject to an important exception, namely, that the interest of a person not a party may be fully bound by the result of the proceedings, if, on the facts and the circumstances of the particular case, the party on record may be held or deemed to represent fully the person having an interest but not on the record. This principle applies to and is available in rent proceedings also. Keshab Charan v. Lokenath Jena, I L R (1951) Cut 1=A I R 1951 Orissa 188 (193, 204, 205) (Pt B) (Prs 18, 43, 44, 45) (SB).

——S. 47 and O. 21, R. 92 (3)—Execution sale—Suit to set aside on ground that decree was executed in contravention of S. 48 — Barred by S. 47 and not by O. 21, R. 92(3). AIR 1961 Pat 508.

——S. 47—Compromise decree—Rule of construction —Compromise declaring rights of parties—Execution seeking delivery of possession — Competency—Held, that the compromise decree was not executable at all. See Civil P. C. (5 of 1908), O. 23, R. 3. AIR 1958 Pat 546.

——S. 47—Application under S. 33 of Arbitration Act (1940), on ground of non-existence of arbitration agreement—Maintainability after judgment and decree on basis of such award—It is maintainable. See Arbitration Act (1940), S. 17. AIR 1957 Pat 417.

——Ss. 47 and 11—Constructive res judicata—Objection as to limitation in execution. See Civil P. C. (5 of 1908), S. 11. AIR 1954 Pat 502.

——S. 47—Decree-holder's right to execute decree. See Civil P. C. (5 of 1908), S. 38. AIR 1953 Pat 242.

——S. 47 and O. 21, R. 58 — Question as to which of the parties is legal representative of deceased judgment-debtor — The question is one under S. 47, and hence an appeal lies from the decision of the latter question. AIR 1952 Pat 333.

——S. 47—Question relating to execution, discharge or satisfaction of decree — Execution of mortgage decree — Raiyat's holding sold in contravention of prohibition in Chota Nagpur Tenancy Act — Suit by mortgagor-judgment-debtor for recovery of holding—Question whether holding was or was not liable to be sold in execution on account of prohibition in Chota Nagpur Tenancy Act, held related to execution, discharge or satisfaction of the decree and should have been raised in execution — Suit held not maintainable. AIR 1951 Pat 515.

——S. 47—Discharge of insolvent—Decree in respect of debt provable in insolvency, in spite of objection that debt ceased to exist because of discharge order—Objection cannot be raised in executing Court, decree though wrong not being void. See Provincial Insolvency Act (1920), S. 44. AIR 1951 Pepsu 46.

——S. 47—Husband obtaining ex parte decree for restitution of conjugal rights — Wife willing to live with decree-holder as wife and doing all that lay in her power to obey decree but husband obstructing performance — Wife can be said to have obeyed decree—Wife can maintain application for recording satisfaction of decree without waiting for decree-holder husband to apply for execution and it is District Judge alone who can record satisfaction of decree under the section. See Special Marriage Act (1954), S. 22. I L R (1965) 2 Punj 609 = 1965 Punj L R (Supp) 103=AIR 1966 Punj 506.

——S. 47 — Parties to suit or their representatives — Executing Court passing order under S. 52 of Provincial Insolvency Act directing attached property to be delivered to interim receiver—Receiver appointed under S. 20 of Provincial Insolvency Act cannot be termed as representative of party within meaning of S. 47—Order cannot be said to have determined question arising between parties to suit or their representatives — Appeal under S. 96 of Civil P. C., against such order not competent: AIR 1945 Cal 387, Ref.; (1909) 9 Cal L J 485, Rel. on. I L R (1965) 2 Punj 212=AIR 1966 Punj 479.

——S. 47 — "Representative", who is — Machinery pledged - During pendency of execution proceedings pledged machinery leased by judgment-debtor to his brother — At execution sale part of machinery found missing — Restoration order can be made against brother. AIR 1959 Punj 464.

——Ss. 47, 11, O. 9, R. 9 — Execution proceedings — Objection petition dismissed for default — Fresh objection not barred by constructive res judicata—The rule of constructive res judicata cannot be made applicable when an objection petition under S. 47 has been dismissed for default. See Civil Procedure Code (5 of 1908), S. 11. AIR 1958 Punj 339.

——S. 47—Execution of ejectment decree — Rent of premises Rs. 17 p. m.—Order in execution—Appeal—Forum—Appeal lies to the District Judge. See Houses and Rents —East Punjab Urban Rent Restriction Act (3 of 1949), S. 13. (1957) 59 Punj L R 24 = ILR (1957) Punj 242.

——S. 47—Power of Rent Controller — Order passed on compromise entitling tenant to possession of rebuilt building—Executability —The order was beyond the jurisdiction of the Rent Controller and therefore could not be executed. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13. AIR 1953 Punj 51.

——Ss. 47, 11, 115; O. 21, Rr. 11, 23, 57, 66, 90—Execution proceedings — Constructive res judicata — Limitation Act (1908), Art. 182 (5) — Final order for purposes of limitation — Order passed in revision, held to be final order and proceedings were not barred by limitation. See Civil Procedure Code (5 of 1908), S. 11. AIR 1965 Raj 155.

——Ss. 47, 11 — Execution proceedings — Failure to object that amount realised in, was in excess of decretal amount—Subsequent application for refund under S. 47 not barred. See Civil Procedure Code (5 of 1908), S. 11. AIR 1961 Raj 227.

——S. 47—Order under — Order is not appealable. See Civil Procedure Code (5 of 1908), O. 21, R. 11. AIR 1955 NUC (Raj) 1069.

——S. 47—Mortgage decree — Execution— Question of paramount title set up by legal representative of judgment-debtor—Cannot be enquired into by the execution Court. AIR 1954 Trav-Co 118.

——S. 47 (1) and (2) — Bar of suit — Bar, if absolute —Decree passed in suit negativing bar, if nullity — (Travancore Civil P. C., S. 40.)

Section 47 does not lay down an absolute bar to the maintainability of a suit. The decree passed negativing the bar under S. 47 cannot be said to be nullity or one passed without jurisdiction. AIR 1951 Trav-Co 171.

——S. 47—Direction as to interest on costs in decree —Power of executing Court to circumvent direction.

The executing Court cannot circumvent the directions and pass orders which would go against the directions given by the High Court. AIR 1951 Trav-Co 80.

——S. 48—Decree for ejectment obtained prior to Act becoming inexecutable — Second suit for ejectment—Maintainability—If, before the period of limitaiion, prescribed under Art. 182, Limitation Act or S. 48, Civil P. C. for execution of the decree has expired, any one of the grounds mentioned in S. 3 of U. P. (Temporary) Control of Rent & Eviction Act (1947) has come into existence, the decree-holder can execute his decree for ejectment. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), Ss. 14 and 3. AIR 1954 All 641.

——Ss. 48, 47 and O. 6, R. 17— On objection, steps mentioned in execution application found ineffective —Court must dismiss application—The Court cannot give opportunity to the decree-holder to amend it. AIR 1955 NUC (Madh Bha) 3064.

——Ss. 48 and 11—Execution proceedings—Constructive res judicata — Objection of limitation under Art. 182, Limitation Act — When barred — As per the 12 years rule laid down in S. 48 the judgment-debtor can raise the objection at any time till it is expressly adjudicated upon by the Court, and this particular objection cannot be hit by the principle of constructive res judicata. See Civil Procedure Code (5 of 1908), S. 11. AIR 1952 Madh Bha 9.

——S. 48—Execution application — Application for execution of mortgage decree filed in time returned for amendment of decree — Application for amendment of decree made also in time — Amendment of decree made after 12 years — Decree-holder trying to continue execution is not barred by S. 48. AIR 1953 Mad 205.

——S. 48 (1) — Decree passed by civil Court C— Application for execution to N Court — Application returned for production of copy of decree — Order of transmission and order for return held must be presumed to have been made at first moment of day — Application held valid and in time, not barred under

S. 48. See Civil Procedure Code (5 of 1908), S. 39 (1). AIR 1953 Mad 71.

—— S. 48—Execution petition closed erroneously by Court — Subsequent petition to revive previous one — Limitation—A subsequent petition is to be treated only as a reminder to the Court to revive old execution petition irregularly and erroneously closed and no question of limitation is involved. See Limitation Act (1908), Art. 182. AIR 1951 Mad 429.

——S. 48, O. 21, R. 11 — Presentation of execution by unauthorised person — Presentation of an execution petition by a vakil who has no vakalat from the decree-holder is mere irregularity. AIR 1951 Mad 340.

——S. 48—Constitution of India, Art. 13 (1)— Article is not retrospective — Execution of decree barred under Punjab Debtors' Protection Act by virtue of judgment-debtor being agriculturist under Punjab Alienation of Land Act — Debtor's Protection Act subsequently declared void — On coming into force of Constitution — Limitation is not extended to one under S. 48, Civil P. C. See Constitution of India, Art. 13 (1). AIR 1952 Punj 417.

——S. 48—Redemption decree — Execution application filed beyond time — Applicability of Mewar Civil P. C., S 48 — Held, that the application was barred by limitation, and as the application for execution was not maintainable, S. 48, Mewar Civil P. C. did not apply. See Limitation Act (1908), Art. 148. AIR 1951 Raj 121.

——S. 48—Applicability to S. 15 of Limitation Act— The provisions of the section may be regarded as a period of limitation prescribed by a special law for the purpose of S. 29 (2) (a). See Limitation Act (1908), S. 15. AIR 1957 Trav. Co 215.

● ——S. 48 (2) (a), O. 21, R. 17 — Amendment and limitation — Amendment of execution application beyond 12 years from decree — Application giving fresh list of properties after limitation — Application is fresh application and is barred under S. 48. AIR 1957 Trav-Co 109 (FB).

● ——S. 48—Insolvency proceedings — Proof of debt —Exclusion of time under S. 78 (2) of Provincial Insolvency Act (1920) — Bar under — Where the decree-holder did not give the proof of his claim, he could not claim execlusion of time under S. 72 (2) of the Insolvency Act in order to take out the case out of the bar of S. 48, Civil P. C. See Provincial Insolvency Act (1920), S. 78. AIR 1954 Trav-Co 1 (FB).

——S. 48—Decree for money charged on immovable property giving only personal decree for costs — See Debt Laws — Travancore Debtors' Temporary Relief Proclamation (1110), S. 2. AIR 1953 Trav-Co 435.

——S. 48—Execution posted to specific date without notice to decree-holder — Dismissal on next date is not judicial disposal — Execution must be deemed to be pending — See Limitation Act (1908), Art. 182. AIR 1953 Trav-Co 359.

——S. 48 — The section applies to cases coming under not only Limitation Act but also under S. 30 of Travancore Agriculturists Relief Act (1112 M. E.) — See Debt Laws — Travancore Agriculturists' Relief Act (3 of 1112), S. 30. AIR 1952 Trav-Co 500.

——S. 50 — Step-in-aid—An application to bring the legal representatives of a judgment-debtor on record would be a step-in-aid of execution — See Limitation Act (1908), Art. 182. AIR 1951 Ajmer 31.

——S. 50 — Suit for damages for personal injury against owner of motor vehicle insured against third party risk — Insurance Company impleaded as party — Death of owner pending suit — Cause of action survives against legal representatives of owner and they can be brought on record — Whether there is estate of deceased in hands of legal representative is immaterial at such stage — See Motor Vehicles Act (1939), S. 102. AIR 1957 Mad 236.

——S. 50 — Order under S. 7, of Madras Buildings (Lease and Rent Control) Act (15 of 1946) — Execution — Application to bring legal representative on record. Once the city Court becomes seized of the case for the purpose of execution under S. 9, the application to bring on record a person as legal representative of the person in whose favour the order under S. 7 of the Rent Act has been made by the Rent Controller lies to that Court and not to the Rent Controller — See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 7. AIR 1951 Mad 822.

——Ss. 50, 99 and 141 — Transferee Court impleading legal representatives of judgment-debtor without objection - Interference with order in appeal.

The appellate Court is precluded from interfering with the order of the transferee Court impleading the legal representatives in view of S. 99 read with S. 141, when the objection was not raised at appropriate stage. AIR 1959 Mys 99.

——S. 50 — Decree against person in possession — Whether binding on real heir — The real heir is bound — See Civil Procedure Code (5 of 1908), S. 2 (11). AIR 1951 Orissa 212.

——S. 50 (1)—Execution against legal representative —Order by transferee Court:— It is an irregularity in procedure which can be waived — See Civil Procedure Code (5 of 1908), S. 42. AIR 1952 Pat 333.

●——S. 50 — Decree transferred for execution to another Court — Limits of jurisdiction of transferor and transferee Courts — Certificate under S. 41 not received from transferee Court — Jurisdiction of transferor Court to execute decree—The Court which passed the decree has jurisdiction to execute the decree in certain circumstances in spite of the absence of any certificate under S. 41 from the transferee Court — See Civil Procedure Code (5 of 1908), S. 38. AIR 1952 Pat 213 (FB).

——S. 51—"Public servant"—Commission appointed to execute decree for delivery of possession — Obstruction to is an offence punishable under Ss. 332, I. P. C. read with S. 149, I. P. C. — See Penal Code (1860), S. 21. 1957 All W R (HC) 379 = 1957 All L J 268=ILR (1957) 1 All 187.

——S. 51 — (U. P. Encumbered Estates Act (25 of 1934), S. 7 (3)) — Execution against proprietary rights may be by way of an appointment of receiver—Such appointment comes within disability imposed on execution by S. 7 (3) (of the U. P. Act) — Bar of, against execution against proprietary right continues till declaration by Collector under S. 44 — See Debt Laws — U. P. Encumbered Estates Act (25 of 1934), S. 7 (3). AIR 1952 All 419.

——S. 51 — Decree against receiver — Discharge of insolvent pending appeal — Property ordered to continue to vest in receiver — Executability of decree against property—(Provincial Insolvency Act (1920), S. 59). The decree was executable. AIR 1952 All 399.

——S. 51 and O. 40 — Receivers — Appointment of Receivers by a competent Court cannot be colaterally challenged — However, if the suit in which the receivers were appointed, was not properly instituted then the appointment can be collaterally challenged. If it is not proved that the appointment was by the High Court in the exercise of its ordinary original jurisdiction the appointment cannot sustain and is illegal, and S. 2 of Decrees and Orders Validating Act will not be applicable, since in order to attract the operation of this section it must be established that the order was passed in the exercise of the ordinary original jurisdiction under Cl. 12 of Letters Patent.

46 Cal 70, Disting. (Decrees and Orders Validating Act (5 of 1936), S. 2). **ILR (1960) 2 Cal 282 (DB).**

——S. 51 — Undivided Hindu family assessee—Liability of member to arrest — Before being held liable to arrest or detention for the recovery of the income-tax arrears it must be shown that he was in charge of some part of the joint family property — See Income-tax Act (1922), S. 46 (2). **A I R 1958 Cal 524.**

——S. 51 — Judgment-debtor dying — Receiver be appointed of Provident Fund amount — The amount vests in the dependants and ceases to be part of the assets of deceased judgment-debtor — See Provident Funds Act (1925), S. 3 (2). **AIR 1952 Cal 349.**

——S. 51 — Partial stay of execution of decree — Decree-holder can claim exclusion of time during which injunction was in force — See Limitation Act (1908), S. 15. **AIR 1964 Ker 134.**

——S. 51, Proviso — Provisions are mandatory—Order for arrest—Non-compliance with provisions — Effect —Ex parte order for arrest—Provisions of the section must be complied with even when the order is passed ex parte. **AIR 1957 Mad 761.**

——S. 51 (d) and O. 40, R. 1 (d)—Property in Indian State — Court's power to limit receivership to receipt of rents and profits.

Nothing in law prevents the Court from limiting the receivership to the mere receipt of the rents and profits and ordering the judgment-debtors to hand over those rents and profits to the receiver with an account of the same. **AIR 1951 Punj 277.**

——S. 51 — Decision in 1948 of Jaipur High Court under Bachat Rules was final — Civil Judge cannot refuse to accept deposit. See Rajasthan Civil Procedure Code Amendment Act (2 of 1951), S. 20. **A I R 1955 NUC Raj 358.**

——S. 52 and O. 22, R. 4 — Decree against wrong legal representative—Effect.

If in good faith a person is sued and there is no fraud or collusion in the proceeding, then the decree obtained is binding on the deceased's estate whoever may be the actual representative. **AIR 1951 Cal 228.**

——Ss. 52, 48 and O. 21, R. 17 — Execution against legal representative judgment-debtor—Amendment of execution petition filed on eve of 12 year period of limitation — No amendment of the execution petition could be allowed after the expiry of 12 year period by permitting the decree-holder to introduce a new property from out of which the decree is sought to be satisfied. See Crivil P. C. (5 of 1908), S. 48. **AIR 1958 Mad 395.**

——S. 52 — Decree against person in possession — Whether binding on real heir—The real heir is bound. See Civil P. C. (5 of 1908), S. 2 (11). **AIR 1951 Orissa 212.**

——Ss. 52, 50 — Execution of decree against wrong legal representative — Effect. See Civil P. C. (5 of 1908), S. 50. **AIR 1955 Pat 408.**

——S. 52—Legal representative — Liability to render accounts. **AIR 1951 Punj 277.**

——S. 52—Petition for adjudication—Debt as foundation—Requirements of—Person appointed as administrator — Failure to pay amount—Nature of liability—Liability of legal representative — A legal representative will become personally liable only in the circumstances provided for in the section. See Provincial Insolvency Act (1920), S. 9. **A I R 1956 Trav-Co 88.**

——S. 53—Hindu Law—Debts—Father—Pious obligation of sons—Mortgage by father—Suit against father and sons—Simple money decree against father alone—Decree cannot be executed against son's share in joint family. See Hindu Law—Debts. **AIR 1952 All 337.**

——S. 53 — Debt by Hindu father — Partition after institution of suit — Execution against sons—In the case of debt by Hindu father, if partition takes place after a creditor institutes a suit for its recovery the decree in such a suit cannot be executed under this section, against the sons who were not made parties to the suit. See Hindu Law — Joint family — Debts. **AIR 1965 Andh Pra 285.**

—— Ss. 53, 52; O. 7, R. 5 — Validity of decree against reversioner making assets in his hands liable—Neither the reversioner nor the estate in his hands belonging to the last full owner could be made liable to pay debt in suit which was not framed to make them liable. See Hindu Law — Widow. **A I R 1955 N U C (Madh Bha) 53.**

——S. 53—Suit for damages for personal injury against owner of motor vehicle insured against third party risk — Insurance Company impleaded as party — Death of owner pending suit — Cause of action survives against legal representatives of owner and they can be brought on record — Whether there is estate of deceased in hands of legal representative is immaterial at such stage. See Motor Vehicles Act (1939), S. 102. **AIR 1957 Mad 236.**

——S. 53 — Decree against manager — Execution against family property—It can be executed provided it is proved that the decree was against him in a representative capacity. See Hindu Law—Debts. **A I R 1951 Nag 307.**

——S. 54 — Suit for partition under S. 176 of U. P. Zamindari Abolition and Land Reforms Act (1 of 1951)—Decree passed by Munsiff—Transfer to Collector — Necessity of application to Munsiff — There is nothing in this section or any other law which requires an application to be made. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 176. **AIR 1958 All 673.**

——S. 54—Delivery of warrant—Endorsement on, by revenue authorities—Presumption—It cannot be conclusive evidence that division was effected and possession given. But it may give rise to a presumption that what is stated therein is true, but it is only a rebuttable presumption. See Evidence Act (1872), S. 114. **AIR 1957 Mys 71.**

● ——S. 60 — Money standing to the credit of insolvent in Provident Fund vests in Official Receiver. See Provincial Insolvency Act (1920), S. 2 (d). **A I R 1956 S C 336.**

——S. 60 (1) — Property liable to attachment — 'Belonging to—Meaning of — Movable property in possession of judgment-debtors though not owned by him is attachable when he has disposing power.

The expression "belonging to" in S. 60 (1), Civil P. C., would include property in the possession of the judgment-debtor and the real owner if any has not come forward to claim it. Section 60 further refers to property on which or on the profits of which a person may have a disposing power which he may exercise for his own benefit. It would follow that even where any property is not fully owned by a person and yet he has a disposing power over it for his own benefit then in that case too it could be subjected to attachment. 24 All 157; 27 All 169; 21 All 51, Rel. on. **ILR (1965) 2 All 901.**

——S. 60 (1) (n) — Deed of wakf — Right of beneficiaries to receive certain amount of money periodically for maintenance — (T. P. Act (1882), S. 6 (d) and (dd)).

Such a right was merely "a right to future maintenance" within the meaning of S. 6 (dd), T. P. Act, as also within meaning of S. 60 (1) (n) and was therefore neither attachable nor saleable in execution decree. **AIR 1952 All 662.**

——Ss. 60, 11; O. 21, Rr. 66, 87 — Principle of S. 11 applies to execution proceedings — But party sought to be affected should have notice of question to be raised in the proceedings — Judgment-debtor having notice under O. 21, R. 66 — He is not precluded from raising objection under S. 60 (1), Proviso (c) by principle of constructive .res judicata till actual sale takes place. See Civil P. C. (5 of 1908), S. 11. A I R 1960 Andh Pra 631.

——S. 60 (1) (n) — Property granted to maintenance holder in lieu of maintenance — Relinquishment in favour of grantor in lieu of payment of maintenance — If vests in Official Receiver — The property is not subject to attachment and cannot vest in the Official Receiver having regard to the provisions in S. 28 (5), Provincial Insolvency Act read with S. 60 (1) (n). See Provincial Insolvency Act (1920), S. 28 (5). **AIR 1960 Andh Pra 353.**

——Ss. 60, 53 — Hindu Law — Debts — Liability of sons for pre-partition debts — Separate suit against sons — Sons are liable for pre-partition debts which are not immoral or illegal. Separate suit is necessary for reaching the property allotted to the sons at the partition. See Hindu Law — Debts. **AIR 1959 Bom 141.**

——Ss. 60. 51—"By appointing a receiver"—The appointment of a receiver is one of the modes of execution recognised by S. 51. When there is a legal bar against attaching property belonging to judgment-debtor, that legal bar cannot be got over by resorting to an equitable relief which is as much a mode of execution as attachment itself. See Civil P. C. (5 of 1908), S. 51. **AIR 1955 Bom 450.**

——S. 60 (i) (h) — 'Wages' — Definition of word 'wages' as contained in certain special Acts cannot be accepted for ascertaining meaning of 'wages' in S. 60 (i) (h)—'Bonus' is something not included in 'wages.' Case law discussed. Words and Phrases— 'Bonus.' — Payment of Wages Act (1936), S. 2 (vi). **ILR (1960) 1 Cal 895.**

——S. 60 — Security deposit—When can be attached — It can be attached in execution only as a last resort and where it has been shown by the decree-holder that he could not realise it in any other way. See Insurance Act (1938), S. 8 (1). **A I R 1956 Cal 226.**

——S. 60 (k) — Transfer of Provident Fund account to Miscellaneous account "E"—Attachment — Legality — The section does not stipulate that the sum has to remain in particular account. The amount was therefore immune from attachment. See Civil P. C. (5 of 1908), O. 21, R. 46. **AIR 1955 Cal 509.**

——S. 60 — House of agriculturist specially mortgaged — Decree for sale in the mortgage — No attachment necessary — House is liable to attachment and sale. See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 47 (2). **AIR 1952 Kutch 90.**

——S. 60 (1) (k) — Applicability — Immunity from attachment — Duration of. See Employees' Provident Funds Act (1952), S. 10. **(1961) 1 Mad L J 321 = (1961) 1 Lab L J 279 = 74 Mad L W 336.**

——S. 60 (1) (i) and (l) — Notification under cl. (1) exempting from attachment dearness allowance is not applicable to non-Government servants or decree for maintenance. **AIR 1959 Mad 79.**

——S. 60 — Decree against karnavan before division —Execution against properties allotted to other members — Attachment and sale of such properties—Any attachment and sale of the properties in execution of decree without the person to whom these properties had been allotted being made a party to the execution proceedings would not be valid and binding. See Hindu Law — Partition. **AIR 1956 Mad 445.**

●——S. 60 — Immunity from attachment — Extent of — Compulsory deposit paid over to the subscriber or depositor and when it is so paid to the person who is entitled to receive it ceases to retain its character as Provident Fund and becomes part of the person's ordinary money. See Provident Funds Act (1925), S. 3 (1). **AIR 1956 Mad 283 (FB).**

——S. 60 — Aliyasantanam family — Common ancestress — Decree personally against her — Whether execution petition to attach her share possible — Right to maintenance whether attachable—Held, that right to maintenance, if any, could not be attached under S. 60 of the Code. See Madras Aliyasanthana Act (9 of 1949), S. 35 (1). **(1954) 2 Mad L J 516.**

——S. 60 — Provident Fund standing to the credit of the deceased employee. (Provident Funds Act (1925), S. 3 (2)).

The amount cannot be attached as the same is no part of the assets of the deceased but vests in the dependants. **AIR 1962 Nag 266.**

●——S. 60 (1) (f) — Service tenure —:Liability to attachment — Tenancy Laws — Orissa Tenancy Act (2 of 1913), S. 192.

In a pure service-tenure resumable at the will of the landlord, there can be no saleable interest vested in the tenant, and his interest (if any) will not be attachable under S. 60 (1) (f), Civil P. C. which applies to rent suits also by virtue of S. 192, Orissa Tenancy Act. Brajasundar Deb v. Binode Rou, ('50) ILR (1950) Cut 561 = AIR 1951 Orissa 240 (FB).

——S. 60 (1) (m)—Widow obtaining possession under deed of maintenance — Property not liable to be attached in execution of decree against widow her interest being the right to future maintenance within the meaning of the section. See Hindu Succession Act (1956), S. 14. **AIR 1960 Pat 360.**

——S. 60 — Mining lease — Jurisdiction of executing Court to sell — Mineral Concession Rules (1949), R. 48 — The executing Court has jurisdiction to sell. At the time of sale the executing Court will have to make it clear that only those persons could offer bids who hold certificate of approval as required by R. 48 of the Mineral Concession Rules. See Mines and Minerals (Regulation and Development) Act (1948), S. 5. **AIR 1956 Pat 4.**

——S. 60 (1), Proviso (ccc) and Sub-s. (3) — (Punjab amendment).

Appellant obtaining attachment of house in execution of money decree — Compromise for payment by instalment with condition that default would entitle recovery in lump sum and sale of house — Default — Objection by respondent under cl. (ccc) and also that the compromise was not registered—Held, the appellant could not execute the decree. 1965 Pun L R (Supp) 176=AIR 1966 Punj 412.

——S. 60 (1) (h) — "Wages" — Bonus payable to employee under an agreement is wages. **AIR 1963 Punj 478.**

——S. 60 — (Displaced Persons (Debts Adjustment) Act (1951), Ss. 31 (3) and 2 (6)) — Protection from attachment of property — Debt incurred after coming to India after partition — Protection under S. 31 (3) not available. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 31 (3). **AIR 1961 Punj 164.**

——S. 60 — Sale of mortgaged property in execution of decree—Is barred. See Administration of Evacuee Property Act (1950), S. 17. **AIR 1952 Punj 428.**

——S. 60 (1) (g) — "Political pensions" — Jagir. **AIR 1951 Punj 225.**

——S. 60 and O. 21, R. 46 — "Debts" — Right to future rent cannot be attached. (Travancore Civil P. C., S. 52). **AIR 1952 Trav-Co 508.**

—Ss. 63 (2) and 64 — Attachment before judgment — No bar to same property being sold in execution of decree obtained subsequently in another suit. AIR 1961 Andh Pra 298.

—S. 64 — Private sale of attached property — Vendee allowed to remain in possession for more than 12 years from the date of private sale—Vendee's possession must be regarded as adverse to the debtor and auction-purchaser — Nature of vendor's possession against auction-purchaser—Suit for possession against vendee by auction-purchaser more than 12 years after the date of private sale — Claim held barred by limitation. See Limitation Act (1908), Art. 138. AIR 1958 All 850.

—S. 64—Decree creating—Floating charge—Attachment by seizure of goods of judgment-debtor in execution — Judgment-debtor subsequently adjudicated insolvent—Attached property does not vest in Official Assignee—Subsequent withdrawal of attachment has not the effect of vesting the property in the Official Assignee. See Presidency Towns Insolvency Act (1909), S. 52 (1) (c). AIR 1953 Bom 101.

—S. 64—Damages—Remoteness—Malicious prosecution — Fraud — Voluntary payment — Wrongful detention—The liability was too remote. No question of detention of money by the Secretary of State could at all arise and, no damages could be claimed against him for any wrongful receipt, retention or detention of money. AIR 1957 Cal 617.

—S. 64—Father's power to dispose of son's property —Vesting in Official Receiver—Attachment by creditor before insolvency—Effect—As regards attachment before insolvency it was not correct to read S. 64 as putting an end to the power of sale. So long as there was no dispute rajsed by the attaching creditor regarding the sale, neither the son nor anybody else would have a right to challenge the sales by the Official Receiver on the ground of an attachment by another creditor. See Provincial Insolvency Act (5 of 1920), S. 28A. AIR 1959 Ker 141.

—S. 64, O 38, R. 5, O. 21, R. 54 — Attachment order is effective after due promulgation and not from the time it is made—Formalities complied with —Constructive notice to all can be presumed.

It is well settled that attachment takes effect not from the date of the Court's order, but only from the date of its actual promulgation in the manner prescribed in the Code, and that where the mode prescribed is not complied with S. 64 is not attracted. It is only when both the requirements of an attachment, namely, prohibitory order and its publication in the prescribed mode, are fulfilled that a private transfer of the property attached or any interest therein is void as against all claims enforceable under the attachment.

When a property is attached in the absence of any evidence to contrary, it must be inferred that the required formalities were duly complied with. 61 IA 371, Rel. on. A I R 1961 Orissa 22 and AIR 1931 Cal 763, Foll.

The whole object of insisting on the compliance with the necessary formalities is to give notice to all persons of the attachment. In fact, it is only a constructive notice, when the formalities are complied with, so that a person who accepts a private transfer of the property cannot be heard to say that he has no knowledge of the attachment. AIR 1944 Bom 265, Ref. An attachment before judgment continues to be effective even after a decree is passed and fresh attachment is not necessary in execution before the property can be put to sale. 1963 MPLJ (Notes) 170.

—S. 64—Effect of attachment—Accrual of interest by survivorship—Hindu Law—Joint family property.

If an attachment made during the execution of a decree ceases to subsist, the interest of a coparcener who dies, passes by survivorship to the other coparceners. The property which thus passes can no longer be attached. AIR 1951 Nag 270.

—S. 64 — Decree obtained against father before partition — Attachment also before partition — Fresh suit against sons not necessary to enforce their liability. AIR 1958 Trav-Co 34.

—S. 65 — Joint family property — Alienation — Attachment and sale of undivided share of coparcener —The attachment precludes the accrual of title by survivorship and transfer in favour of decree-holder is effected when the share is actually sold. AIR 1955 Mys 13.

—S. 66 (1), O. 21, R. 15 (2) and O. 2, R. 2 — Mortgage decree — Application for execution under O. 21, R. 15 by one of three legal representatives of decree-holder — Mortgaged land purchased by himself in Court auction with Court's permission — Suit by other legal representatives for partition and possession of their share in property — Not barred under S. 66 (1) or O. 2, R. 2. AIR 1960 Mys 249.

—Ss. 68, 11—Doctrine of constructive res judicata —The fact that validity of sale was not challenged by "A", could bind 'A' only, in his personal capacity. As 'B' was not represented in the prior suit, the doctrine of constructive res judicata did not apply. AIR 1955 NUC (All) 2784.

—S. 68 and Sch. 3, Para. 11 (3) — Before they were deleted by amending Act 66 of 1956 — Applicability.

The benefit of sub-paragraph (3) of Paragraph 11 of the Third Schedule to the Code of Civil Procedure can be claimed in the following cases.

(a) In the case of a decree the execution whereof had been transferred to the Collector under S. 68 of the Code, in respect of every remedy available to the decree-holder for the execution of that decree.

(b) In the case of a decree for the payment of money the execution whereof had not been transferred the Collector under S. 68 of the Code in respect of only the remedy of the issue of process in execution against the immovable property belonging to the judgment-debtor or any part thereof which was subject to the powers of the Collector under the third schedule by virtue of transfer of execution to him of some other decree against the same judgment-debtor. 56 BLR 633 and 42 BLR All 118, Ref. ILR (1963) Mys 1102.

—Ss. 70, 68, 115; O. 21, Rr. 89, 90, 91; Sch. 3, Para. 1 — Power of Civil Court to set aside sale held by Collector — Sale can be set aside when the Collector has not acted in conformity with the orders or directions given by the Court. See Civil Procedure Code (5 of 1908), S. 68. AIR 1955 Bom 337.

—S. 73 — Priority of debts due to Government— Distinction between income tax and sales-tax dues not justifiable—(Income-tax Act (1922), S. 46 (2))—(U. P. Sales-tax Act (15 of 1948), S. 8 (1) and (8)).

Section 73 (3) gives Government priority in respect of its dues. There is no warrant for distinguishing the right of Government to priority in respect of arrears of income-tax and sales-tax. AIR 1963 All 495.

—S. 73—Judgment-creditor receiving money after adjudication—Court has jurisdiction to direct him to refund it. See Presidency Towns Insolvency Act (1909), S. 53. AIR 1956 Cal 636.

—S. 73, O. 22, Rr. 4, 9 and 11 and O. 41, R. 5 — Appeal dismissed against one of respondents as having abated—Effect of, on stay order.

The stay order passed in appeal was no longer operative and stood automatically vacated. AIR 1955 NUC (Hyd) 1191.

——Ss. 73 (2), 115 — Remedy under S. 73 (2) — Effect on powers of revision under S. 115.

It cannot be contended that as the applicant had the remedy of filing a suit under S. 73 (2) his revision petition was not competent. **AIR 1955 NUC (Madh Bha) 3357.**

——S. 73 and O. 21, R, 57 (1) (Madras)—Application for claimant decree-holder must be sustaining and pending at time of receipt of assets—Order dismissing application under O. 21, R. 57 (1) (Madras) — Construction of order — Held application was pending and decree-holder was entitled to share in assets. **(1965) 2 Mad L J 499=AIR 1966 Mad 406.**

——S. 73—Decree-holder purchaser in execution sale —Permission to bid and set off obtained — No preferential claim by Government — Order of Court directing decree-holder to deposit entire sale price in Court — Order held not proper. See Civil Procedure Code (5 of 1908), O. 21, R. 94. **AIR 1964 Mad 120.**

——S. 73 — "In accordance with law" — Application merely asking relief of rateable disiribution is in accordance with law. See Limitation Act (1908), Art. 182 (5). **1958 Raj L W 180.**

——Ss. 75 and 51—"Public Servant"—Commissioner appointed to execute decree for delivery of possession acts as a public servant —Obstruction —Offence under S. 332 read with S. 149 of Penal Code is committed. See Penal Code (1860), S. 21. **1957 All LJ 268.**

——Ss. 75, 132, O. 26, R. 1—Change in mode of life—Prayer for examination on commission—Can be taken into consideration in the grant of a prayer for examination on commission by a particular lady due to change in the mode of her life. See Civil P. C. (5 of 1908), S. 132. **AIR 1951 Mad 311.**

——Ss. 79, 9— Master and Servant — Vicarious liability—State's liability for acts of its officers. **AIR 1957 Cal 617.**

●——Ss. 79, 80— Goods booked on one railway and short delivered on another—Both railways administered by Union of India — Notice delivered only on General Manager of Railway on which goods were short delivered— There is sufficient compliance with S. 80. **AIR 1962 Punj 262 (FB).**

——S. 79—Union territory though centrally administered is separate entity — Suit by or against Union Territory —Must be brought by or against the Government of the Union Territory and not the Central Government. See Constitution of India, Art. 239. **AIR 1959 Tripura 41.**

●——S. 80—Scope — Government cancelling party's permit and asking party to remove its assets from the property — Party filing application for writ of mandamus in High Court — High Court keeping determination of rights of parties in abeyance in suit proposed to be filed by party after complying with provisions of S. 80, Civil P. C. but directing Government to refrain from disturbing party's possession till filing of proposed suit — **Held**, direction by High Court was given only to circumvent provisions of S. 80, Civil P. C. — Such interim relief was not within the scope of Art. 226 of the Constitution. **AIR 1952 S C 12.**

——S. 80, O. 6, Rr. 4 and 10 — Negligence or misconduct — Particulars of — Railways Act (1890), Ss. 74-A and 76 (before amendment of 1961) — Suit for compensation — Negligence on part of Railway Administration alleged — Burden of proof was on plaintiff—Loss due to deviation in agreed route—Held what was in issue was not state of mind but breach of contract and hence mere allegation of negligence or misconduct was not sufficient in notice under S. 80.

In a suit against the Railway Administration for short delivery of the consignment of groundnut oil, the plaintiff alleged misconduct and carelessness on the part of railway staff but in notice delivered under S. 80 of Civil P. C. and also in the plaint as presented, he gave details of one kind of misconduct and negligence but he introduced another instance of negligence and misconduct, viz., deviation from the agreed route, by amendment of plaint. The point for consideration was whether notice under S. 80 which did not contain another instance of negligence and misconduct was a valid notice.

Held, that unless permissible under the law mere allegation of negligence or misconduct was not sufficient. Therefore, it was necessary to consider two questions; firstly, on whom did the burden lie to prove negligence or misconduct on the part of the railway administration or its servants; and secondly whether it was necessary for the plaintiff to give particulars of negligence or misconduct in the notice under S. 80, Civil P. C. and also in the plaint. As the agent of the consignor had mentioned in the forwarding note that the goods were liable to leakage, in view of S. 76 read with S. 74-A of the Railways Act, 1890 (before amendment of sections in 1961) the burden of proof lay on the plaintiff and not on the defendant and mere proof of loss was also not sufficient to grant him compensation. It was, therefore, necessary for the plaintiff to give particulars of negligence or misconduct in the plaint and to sufficiently state such facts in the notice under S. 80 to enable the railway administration to decide whether the plaintiff's claim should be accepted or resisted, negligence, carelessness or misconduct could be of various kinds. Some merely relate to the state of mind and others arise out of a breach of duty or contract. In a case of the present nature where the goods were to be carried by a route not agreed upon, it was not the mental condition which was of importance, but it was the breach of contract. As the loss was caused during the transhipment of tins of groundnut oil, plaintiff's suit could have been decreed if it was alleged in the notice that the goods were carried by a route other than the agreed one. AIR 1938 Pat 556, Not Foll.; AIR 1958 S C 274 and AIR 1960 S C 1309 and AIR 1960 Cal 214, Rel. on. **ILR (1965) 2 All 127 = AIR 1966 All 333.**

——S. 80 — Combined notice under S. 80 and S. 77 of Railways Act — Validity — In essence and substance subject-matter of the two notices is also the same — Under both sections notice is to be given to General Manager of the Railway concerned — Hence combined notice under the two sections is not invalid. See Railways Act (1890), S. 77. **AIR 1961. All 433.**

——S. 80—Notice under the section is not sufficient See Railways Act (1890), S. 77. **AIR 1959 All 732.**

——S. 80—Waiver of notice.

Per Jagan Mohan Reddy (in Order ot Reference): The provisions of S. 80, Civil P.C. are for the protection of the authority concerned and can be waived by the party to whom notice should be given. In the absence of any objection by the party concerned, the absence of notice will not be an impediment to the maintainability of the suit. AIR 1947 P C 197, Rel. on. **ILR (1965) Andh Pra 142.**

——S. 80—Service of notice on one Railway Administration — Sufficiency—Section gives an option to the aggrieved party to sue either the Railway system with which he has entered into a contract of carriage or the Railway Administration over whose lines damages were caused to the goods. There is no scope for creating a fiction that service of notice on one of the Railway Administrations is service on all the Railway Administrations. See Railways Act (1890), S. 77. **AIR 1959 Andh Pra 594.**

——S. 80—Municipalities—Bombay Municipal Corporation Act (3 of 1888), Ss. 527 and 501—Notice — Notice to Municipal Commissioner who is the chief executive head of Municipality is proper notice to the Municipality under S. 527. See Municipalities — Bombay Municipal Corporation Act (3 of 1888), S. 527. 1966 Mah L J 334 = ('65) 67 Bom L R 903 (DB).

——Ss. 80, 20 — Notice under S. 80 does not form part of cause of action for suit against Government. AIR 1960 Cal 513.

——Ss. 80, 20 — Notice under S. 80 is no part of plaintiff's cause of action. See Civil P. C. (5 of 1908), S. 20. AIR 1960 Cal 458.

——S. 80 — Absence of notice — Effect — A suit for money due from a Municipality under a contract for work done and materials supplied cannot be thrown out as bad on ground of absence of notice to the municipality. See Municipalities— Bengal Municipal Act (15 of 1932), S. 535. AIR 1956 Cal 203.

——S. 80—Notice under — Amendment of plaint — Relief under S. 65 of Contract Act claimed — In respect of the cause of action under S. 65, Contract Act, as against Government, a suit will not lie except after service of notice under S. 80, Civil P. C. See Contract (1872), S. 65. AIR 1956 Cal 138.

——S. 80—Cause of action — Posting of notice under the section does not form part of the cause of action. See Civil P. C. (1908), S. 20. AIR 1956 Cal 66.

——S. 80 — Cause of action — (Railways Act (1890), S. 77) — Service of a notice under S. 77 of the Railways Act or under this section can no longer be regarded as part of the plaintiff's cause of action. See Letters Patent (Cal.), Cl. 12. AIR 1954 Cal 59.

——S. 80 — Notice under the section would not dispense with the notice under S. 77 of the Railways Act. See Railways Act (1890), S. 77. AIR 1956 Hyd 62.

——S. 80—Waiver of notice — Plea of want of notice not taken by committee till plaintiff's suit is barred by limitation—Notice is deemed to have been waived. See Municipalities — Jammu and Kashmir Towns Area Act (7 of 1997), S. 38 (1), Proviso. AIR 1952 J and K 47.

——S. 80 — Combined notice under this section and S. 77 of Railways Act is valid. See Railways Act (1890), S. 77. AIR 1959 Madh-Pra 222.

——S. 80 — Suit for non-delivery — A suit for non-delivery of goods is not affected by S. 77 of the Railways Act. See Railways Act (1890), S. 77. AIR 1958 Madh-Pra 314.

——S. 80 — Notice given to Secretary of State and accepted by Governor-General.

When action was taken in the same way on the notice as if it had been addressed to the Governor-General in Council it would be sufficient compliance with the requirement of S. 80. A I R 1951 Mad 327.

——S. 80, O. 1, R. 10 — Notice given to Secretary of State but not to Public Officer—Waiver.

The notice will be deemed to have been waived when no objection was taken at an early stage, and the suit cannot be dismissed in its entirety because it has been dismissed against the Public Officer, for want of notice. A I R 1952 Nag 213.

——S. 80 — Suit for non-delivery of consignment—Failure to state correctly name of Railway station from which consignment is booked is a fatal defect. See Railways Act (1890), S. 77. A I R 1964 Pat 373.

●——S. 80 — Suit against Railway Administration—Notice addressed both to Secretary in charge of Railways, Dominion of India and to General Manager, Railway concerned — If purporting to be notice to Government and notice of suit in respect of missing consignment — List of alleged contents of consignment with their values appended to notice — Notice held satisfied all requirements of S. 80 and was perfectly valid notice. A I R 1953 Punj 184 (FB).

——S. 80—Suit against Union of India—Notice under —Production of copy of notice by plaintiff permissible. See Evidence Act (1872), S. 65. A I R 1959 Raj 231.

——S. 80—Whether the giving of notice under S. 80 is a part of cause of action for suit so as to give jurisdiction to Court at place where it is given. (Quaere.) See Civil P. C. (5 of 1908), S. 20. A I R 1956 Sau 75.

——S. 80 — Unregistered lease by Government in favour of A — Subsequent lease of same land in favour of B — Suit by A against B for declaration of his rights without impleading Government — Suit liable to fail. See Civil P. C. (5 of 1908), O. 1, R. 10. A I R 1956 Tripura 22.

——S. 82 — Civil suit upon contractual obligation against Maharaja is maintainable. See Constitution of India, Art. 291. A I R 1961 Manipur 40.

——Ss. 83 to 87-A — Suit against foreign State as distinguished from ruler of that State — Consent of Central Government under S. 86 not necessary. A I R 1960 Cal 768.

——Ss. 86, 87, Preamble — Code is not exhaustive—Point not covered must be governed by general principles—Foreign Sovereign—Privileges of—Immunity under International Law—Ss. 86, 87 do not deal with this—Claim of immunity by foreign Sovereign in suit to which he is not party — Applicability of doctrine of foreign immunity, extent of — Suit against Nepal Airlines Corporation for damages — Ambassador of King of Nepal, though not a party can claim sovereign immunity on behalf of King of Nepal, if the defendant Corporation can be regarded as Department of State of Nepal Government.

It is true, the Code of Civil Procedure does not contain any express provision laying down the procedure to be followed where a foreign Ruler or a foreign State affected by a claim in a proceeding filed in Courts in this Country, claims immunity in respect of the processes of this Court. There is no provision in the Code for the foreign Government entering a conditional appearance to the suit as is provided for in the Rules of the Supreme Court in England under O. 12, R. 30 nor is there provision in the Civil P. C. for giving notice of motion for an order that the writ should be set aside on the ground that it had impleaded a foreign sovereign State. But the foreign Ruler or the foreign State directly or indirectly impleaded in the proceedings filed in a Court in India will not be left without any remedy by the absence of any specific procedure in the Civil P. C. Since laws are general rules, they cannot regulate all cases that may possibly happen. Since the Civil P. C. is not exhaustive, any particular point not specifically dealt with must be governed by general principles.

The foundation for the application to set aside the writ and all subsequent proceedings thereto is to be found in two propositions of International law. The first is that the Municipal Courts of a country will not implead a foreign sovereign, that is, they will not by their process make him, against his will, a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specitic property or damages. The second proposition of International Law is that the Municipal Courts will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain any property which is his or of which he is in possession or control. There has been some difference in the practice of nations as to possible limitations of this second principle as to whether it extends to properties only used for the commercial purposes

of the sovereign or to personal private property. 1938 A C 485 and (1952) 1 All E R 572 and 1955 A C 72, Rel. on.

A foreign Government is not bound as a condition of obtaining immunity to prove its title to the interest claimed, but it must produce evidence to satisfy the Court that its claim is not merely illusory nor founded on a title manifestly defective. The Court must be satisfied that conflicting rights have to be decided in relation to foreign Government's claim. When the Court reaches that point, it must decline to decide the rights and must stay the action, but it ought not to stay the action before that point is reached. 1955 A C 72 and 1958 A C 379, Rel. on. The doctrine of immunity, extends to the case of a claim for damages. 1952 A C 582 (612) and 1938 A C 485, Rel. on. It has also been extended to an action for breach of promise of marriage. (1894) 1 Q B 149, Rel. on. The doctrine of immunity has also been applied in an action claiming damages for an alleged libel in an article in a weekly newspaper published by a business of news agency. (1949) 2 All E R 274, Rel. on. Sections 86 and 87 of the Code have no relation to the principles of Private International Law based on the independence of a foreign sovereign or of a foreign State but these provisions of the Code afford an additional protection or privilege to a foreign sovereign providing immunity from being sued in the Municipal Courts of this country without previous permission of the Central Government being obtained to the institution of such suits. But this is quite apart from the principles of International law relating to sovereign immunity based on absolute independence of a foreign sovereign. A I R 1938 P C 165, Ref.; A I R 1962 S C 73, Rel. on. After the amendment of the Civil P. C. in 1951 a specific provision has been inserted in S. 86 of the Civil P. C. to the effect that the privilege conferred by the section can be waived. Absence of pleading of S. 86 does not lead to the conclusion that the immunity available under the principle of International Law has been waived by reason of omission of such pleading.

In a suit filed in a Court in India against Nepal Airlines Corporation having offices in Calcutta, for damages on account of the death of the plaintiff's husband who was a pilot, in an accident met by him in Nepal Territory while flying an aircraft, even if the Nepal Airlines Corporation, the defendant in the case had been in fact a corporate body, that would not prevent the defendant or the Ambassador of the King of Nepal from claiming sovereign immunity on behalf of the King of Nepal provided the defendant can be regarded as a Department of the State of the Government of Nepal.

Held, on materials on record that the defendant was a Department of the Government of Nepal and as such was entitled to claim immunity from the process of the Indian Court to exercise its jurisdiction in respect of the claim for damages which had been brought by the plaintiff against the defendant. Held further that there was no waiver of the immunity, or submission to the jurisdiction by the defendant Corporation, and that the Court had no jurisdiction to entertain and try the suit on the ground of sovereign immunity claimed by the defendant and the Ambassador of Nepal to the Government of India and that the Ambassador of Nepal need not necessarily be a party to the suit for the purposes of claiming the immunity. Judgment and order of Mullick, J. in Suit No. 1678 of 1961, dated 26th May 1964 (Cal.), Reversed.

Per Mitter, J. :—A foreign sovereign cannot be impleaded directly in respect of his person and property ; a suit will not lie where damages are claimed against the sovereign personally. A foreign sovereign cannot even be impleaded indirectly, viz., by a proceeding in rem against a public vessel which would include a vessel which was also used for commercial purposes.

A proceeding with the object of seizing or detaining property in the possession or control of a foreign sovereign will not be allowed to go on. A foreign Government will be allowed to intervene in such an action. So far as property used only for commercial purposes of the sovereign is concerned, although there is some difference in the practice of nations immunity is granted by the English Courts.

A suit will not lie against the agent of a foreign State where the act complained of is purported to be done as such agent. A suit will not lie against a department of a State. An incorporated body which is a juristic personality carrying on business in the country where proceedings are started against it, will be outside the "protective umbrella" of immunity.

An immunity can be claimed even when the foreign sovereign does not figure as a defendant. A notice of motion to set aside the writ based on the certificate or affidavit of the Ambassador of the foreign State to the effect that the defendant is a department of State and is not a corporation will be disposed of in favour of the applicant. The effect of incorporation under a foreign law will have to be considered by the Court on the materials presented.

If the title to property, the subject-matter of the suit, is in dispute the claim to immunity will not be given effect to before the Court is satisfied that the claim is not illusory nor founded on a title manifestly defective. **69 Cal W N 767=A I R 1966 Cal 319.**

——S. 86 — Foreign state—Immunity of, from suit—Principle of — No principle of absolute immunity — Plaintiff entering into contract in India with foreign state for supply of tea — Suit for damages for breach of contract — Foreign state cannot claim immunity—Submission to jurisdiction—See Constitution of India, Art. 51. **AIR 1960 Cal 768.**

——S. 86 — Submission to jurisdiction—Sovereign of independent State. The case of a foreign sovereign is not governed by Ss. 86 or 87 — See Constitution of India, Art. 51. **1953 Raj L W 26=ILR (1952) Raj 386 (DB).**

——S. 87 — Preamble—Code is not exhaustive—Point not covered must be governed by general principles —Foreign sovereign—Previleges of—Immunity under International Law — Ss. 86 and 87 do not deal with this—See Civil Procedure Code (5 of 1908), S. 86. **69 Cal W N 767=AIR 1966 Cal 319.**

——S. 87 — Submission to jurisdiction — Sovereign of independent State—The case of a foreign sovereign is not governed by Ss. 86 or 87 — See Constitution of India, Art. 51. **1953 Raj L W 26 = I L R (1952) Raj 386.**

——S. 87-A—Suit against forein state as distinguished from ruler of that State—Consent of Central Government under S. 86 not necessary—See Civil Procedure Code (5 of 1908), S. 83. **AIR 1960 Cal 768.**

——S. 87-B — Suit against Ruler of former Indian State — Consent of Central Government is condition precedent and cannot be waived — See Civil Procedure Code (5 of 1908), S. 86. **A I R 1962 Madh Pra 320.**

——S. 88—Inter-pleader suit —Addition of defendant — Appeal against order — O. 35, R. 4 does not apply — See Civil Procedure Code (5 of 1908), O. 1, R. 10. **AIR 1958 Ker 304.**

——S. 92 — Public Trust — Removal of trustee — Trustee can be removed only by procedure known to law and not by executive fiat — Suit under S. 92 may be brought against persons in possession of trust property even if they claim adversely to the trust,

that is, claim to be owners of property or against persons who deny the validity of trust — See Constitution of India, Arts, 32, 14, 19 and 31. Bishan Das v. State of Punjab, AIR 1961 S C 1570 (1574).

● —S. 92 — Baidyanath Temple in Bihar — Extra territorial operation — The Bihar Hindu Religious Trusts Act (1951) does not take away the jurisdiction of any Court outside Bihar but takes the religious trusts in Bihar out of the operation of S. 92 of the Act — See Bihar Hindu Religious Trusts Act (1 of 1951), S. 2 (1). AIR 1959 S C 1073.

● —S. 92 — Person in de facto possession and management a Asthan — Right to sue. He has sufficient interest to sue — See Hindu Law — Religious Endowments. AIR 1956 S C 382.

● —S. 92 — Cy pres—Doctrine of cy pres and its application to charitable trust — (Hindu Law — Religious endowments.)

When the particular purpose for which a charitable trust is created fails or by reason of certain circumstances the trust cannot be carried into effect either in whole or in part, or where there is a surplus left after exhausting the purposes specified by the settlor, the Court will not when there is a general charitable intention expressed by the settlor, allow the trust to fail but will execute it 'cy pres', that is to say, in some way as nearly as possible to that which the author of the trust intended. In such cases, it cannot be disputed that the Court can frame a scheme and give suitable directions regarding the objects upon which the trust money can be spent. It is well established however, that where the donors' intention can be given effect to, the Court has no authority to sanction any deviation from the intentions expressed by the settlor on the grounds of expediency and the Court cannot exercise the power of applying trust property or its income to other purposes simply because it considers them to be more expedient or more beneficial than what the settlor has directed. Ratilal Panachand Gandhi v. State of Bombay, 1954 S C J 480 = (1954) 1 M L J 718 = 1954 S C A 538 = 56 Bom L R 1184 = 1954 S C R 1055=AIR 1954 S C 388.

●——S. 92—Debutter properties—Permanent lease—Competency of Shebait to grant — Legal necessity — Value of recitals in the document — Lease called in question long after the grant.

If all the original parties to a transaction (in this case, a permanent lease of debutter property) and those who could have given evidence on the points as to the existence of legal necessity for the transaction have passed away, a recital in the relevant document consisting of the principal circumstances of the case assumes greater importance and cannot be lightly set aside.

Where the validity of a permanent lease granted by a shebait is called into question a long time after the grant, although it is not possible to ascertain fully what the circumstances were in which it was made, the Court should assume that the grant was made for necessity so as to be valid beyond the life of the grantor.

The circumstances which could be gathered from the recitals in the permanent lease together with the fact that the document had remained unquestioned for more than half a century was held to be sufficient to support the conclusion that the grant was made for legal necessity and was binding on the deity. Iswar Gopal Jieu Thakur v. Pratapmal Bagaria, 1951 S C R 332 = I L R (1951) 2 Cal 91 = 64 L W 525= 1951 A L J (SC) 74 = 1951 S C J 285 = A I R 1951 S C 214.

——S. 92 — Claim for damages given up — Relief for rendering and explaining accounts cannot be granted — Appointment of Commissioner. See Religious Endowments Act (1863), S. 14. AIR 1961 All 125.

——S. 92 — Religious endowment — Public endowment—Right of worshipper to bring suit for possession on behalf of idol — A mere worshipper has no right to bring a suit for possession but a suit for reliefs which can be granted under S. 92 can be brought after obtaining necessary permission — See Hindu Law. AIR 1956 All 207.

——S. 92—Pucca Khaikari Village — Determination of status — Reports of Patwari and Naib Tahsildar—Value of — Appointment of Ghar Padan by Deputy Commissioner — Interference by Commissioner — Rights of villagers — Order in respect of village in Kumaun Division — Power of Board to interfere in revision.

The Commissioner in second appeal, by the rival candidate and the Malguzar of the village of Bajna, Kumaun Division, set aside the appointment of J as Ghar Padan of the said village of Bajna by the Deputy Commissioner who held on the report of the Patwari and the Naib Tahsildar that the village was a pucca khaikari one and the villagers had a right to demand the appointment of J of their choice as Ghar Padan. On revision to the Board:

Held, appointment of Lambardars and consequently of Ghar Padans and Malguzars are non-judicial proceedings so far as Kumaun Division is concerned. But the Board is empowered to call for the records of a non-judicial proceeding and pass such orders as it deems fit. Hence the Board can entertain the revision.

The question of determination of the status of a village as pucca khaikari is fairly difficult. It involves the determination of many points whether it was so included in the list of pucca khaikari villages, whether it was at the settlement of 1872 in its entirety in the possession of the whole body of khaikars and whether the other incidents were also found. Hence it could not be held to be one such on the mere report of the Patwari that the village was said to be one such and the statement of the Naib Tahsildar.

Even in a pucca khaikari village the appointment of a Ghar Padan is not essential, the villagers have no right to demand the appointment of a Ghar Padan. 1952 All L J (Rev) 219=1952 All W R (Rev) 202 = 1952 R D 357.

——S. 92—Person seeking relief must be person interested in trust and should obtain consent in writing of Advocate-General—Nature of interest required. AIR 1965 Andh Pra 143.

——S. 92—Compromise decree passed by Supreme Court in previous litigation—Beneficiary can file suit under S. 92 for correcting alleged acts of commission and omission. AIR 1965 Andh Pra 143.

——S. 92 and O. 40, R. 1 — Suit under filed with sanction of Advocate-General — Order appointing interim receiver—Appeal — Duty of appellate Court in determining validity of order.

The appellate Court in considering the validity, correctness or propriety of the order should not say anything which would prejudice the issues that might come up for trial in the suit. It would be justified in proceeding on the basis that the suit is prima facie maintainable. AIR 1965 Andh Pra 143.

——S. 92 (1) (h)—Trustee—Meaning of — Prayer for removal of employee of trust who has to discharge fiduciary obligations, can be sustained under the section. AIR 1965 Andh Pra 143.

——S. 92—Suit under — Scope and object of—Power of Court to suspend or remove trustees and appoint receiver pending appointment of fresh trustee. AIR 1965 Andh Pra 143.

——S. 92—Failure of object of charitable inam — Resumption of land and inam by Government — After resumption, trust becomes completely extinguished and there cannot be trustees — Resumed charitable inam when its value is less than Rs. 12/- per annum does not attract doctrine of cy pres in its re-assignment and its assessment can be credited to general revenue under Standing Order No. 54(7) of Board of Revenue Standing Orders, Vol. 2, pp. 41 and 42 — Government as representing public has right to resume land of charitable inam and its assessment and right to grant that land on patta — Whether intention of Government in granting patta after resuming inam land should be held subject to trust or not is question of fact — Simply because land is granted on patta after resumption to ex-trustees of charity it cannot be inferred that regrant was made to them in capacity of trustees and not as individuals, to attract S. 88. See Trusts Act (1882), S. 88. **I L R (1963) Andh Pra 517.**

——S. 92—Trust—Cy pres doctrine—Applies to non-testamentary trusts where general charitable intention be found to exist. **(1959) 1 Andh W R 357=AIR 1960 Andh Pra 35.**

——S. 92—Public trust—Manager of a temple—Position of — Must be deemed to be in the position of trustee vis-a-vis the temple and its properties. I L R 29 Mad 283 (PC) and 41 Mad L J 346 : AIR 1922 P C 123, Rel. on. **62 Bom L R 308 = 1960 Nag L J 353 = AIR 1960 Bom 438.**

——S. 92—Suit for declaration — Although a suit for declaration that a certain property appertains to a religious trust lies outside the scope of the section, still when the existence of the trust is denied, a declaration that the trust does exist might be made as ancillary to the main relief claimed under the section, if the plaintiff is entitled to it. See Civil P. C. (5 of 1908), S. 11. **AIR 1959 Bom 396.**

——S. 92 — Scheme of decree — Executability of — Decree only declaring rights of shebaits — It is not executable. See Civil P. C. (5 of 1908), S. 47. **AIR 1960 Cal 718.**

——S. 92—Right of suit—Suit for damages or mesne profits — If maintainable by transferee of property along with right to recover compensation—Transferee not suing for possession.

By a conveyance a certain property along with all rights to realise arrears of rent, compensation etc., in respect of that property, were transferred to the plaintiff. The plaintiff brought a suit for recovery of damages for use and occupation or alternatively, mesne profits against the defendant on the allegation that he had trespassed into the land before the conveyance. It was contended for the defendant that the plaintiff could not maintain the suit, having been out of possession, without a suit for recovery of possession. Overruling the contention,

Held, that the suit was maintainable as there was sufficient proof of prima facie title in the plaintiff to the suit property.

Held, also that the plaintiff might be said to have waived the trespass and sued for damages, as the claim for mesne profits was only in the alternative. **56 Cal W N 260=AIR 1953 Cal 321.**

——Ss. 92, 93—Whether S. 55 of Wakf Act (1954) impliedly repeals Ss. 92 and 93 of the Act or S. 18, Religious Endowments Act (1863) so far as Wakfs are concerned — Application by any person or authority other than Board for sanction of Collector under S. 93 for institution of suit under S. 92 against trustee of Wakf is maintainable. See Wakf Act (1954), S. 55. **AIR 1962 Ker 343 (FB).**

—— S. 92 and O. 1, R. 8 — Kutch Civil P. C., S. 22 — Suit by certain members of religious sect in their individual capacity for reliefs provided in S. 92 was not maintainable under the Kutch Civil P. C.—Procedure in S. 22, Kutch Civil P. C., must be followed. **AIR 1952 Kutch 92.**

——S. 92—"Public trust" — Church — If public trust—Though the definition of public trust in S. 2(4) of M. P. Public Trusts Act includes a church, unless it is shown that any portion of the money in the hands of the Churchmen was impressed with trust, it cannot be said that officers of church was in position of trustees. See Madhya Pradesh Public Trusts Act (30 of 1951), S. 2 (4). **AIR 1958 Madh Pra 362.**

——S. 92 -Cy pres — Doctrine of — Applicability— Contrary intention expressed by testator — Doctrine does not apply — Suit for recovery of trust-property by settlor's descendant — Question of applicability of doctrine cannot arise — C. S. 20 of 1956 (Mad), D/- 1-11-60 partly Reversed.

If a fund given to charity is not exhausted by the particular purpose specified by the donor the surplus will be applied cy pres if the donor had a general charitable intention. If no such intention is disclosed, the testator must be held to have left the surplus undisposed of. It is well settled that the doctrine of cy pres will not apply where a contrary intention is expressed or implied from the language used by the testator. Halsbury's Laws of England, Vol. 4, (3rd Edn.) p. 324, Ref.; C. S. 20 of 1956 (Mad), D/-1-11-60 partly Reversed.

No direction by a Court by way of application of cy pres doctrine can at all be made in a case where the only relief sought for is recovery of possession of the property from the trustees by the settlor's descendant. The question as to the application of the cy pres doctrine can arise only in suits filed under S. 92, Civil P. C. or in other appropriate proceedings. **ILR (1964) 2 Mad 832 = 73 Mad L W 369 = (1965) 2 Mad L J 173.**

——S. 92 — Sanction of Wakf Board to file suit — Whether judicial act — Interference under Art. 226 of Constitution — Granting of sanction by Advocate General under S. 92 is not a judicial act. See Wakf Act (1954), S. 55 (2). **AIR 1964 Mad 247.**

——S. 92—Religious endowment—De facto trustee —Power to conduct legal proceedings — Appeal by persons ceasing to be trustee — Competency.

In the absence of a 'de jure trustee' a 'de facto' trustee of a religious endowment, who is in possession and management of the institution and its properties is entitled to maintain a suit on behalf of the temple. But where there is a de jure trustee, the de facto trustee cannot be recognised as capable of conducting legal proceedings on behalf of the institution. AIR 1949 Mad 721:(1941) 2 M L J 171 (FB), Rel. on. Thus where a suit is filed on behalf of a religious institution by two persons as its trustees and they subsequently cease to be trustees, they cannot file an appeal against the decree passed in the suit as 'de facto' trustees when some other person is, in fact, appointed as trustee in their place. **69 Mad L W 390 = AIR 1956 Mad 585**

——S. 92 — Mathadhipathi — Liability to be removed by suit — Mathadhipathi is liable to be removed by suit. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 52. **AIR 1956 Mad 491.**

——Ss. 92, 47 — Scheme decree — Executability — A provision in a scheme decree is inexecutable. See Civil P. C. (5 of 1908), S. 47. **AIR 1951 Mad.736.**

——S. 92 — Nature of suit — Suit whether governed by S. 92 to be determined by allegation made in plaint and not written statement. **A I R 1951 Mad 406.**

——S. 92 — Shebait — Alienation — Application for certificate — Applicability of Durbar Resolution.

An application for grant of permission was made

by the shebaits to have the lands of the Deity exchanged.

Held, the laws of the State do not provide for the grant of any such certificate summarily.

According to D. R. 4 of 1917, read with 6 A of 1931, permission of the Court is necessary for the sale of minor's lands by his guardian or in the case of childless widow when she wants to dispose of the property left by her husband. The application of the shebait does not fall within the ambit of those provisions. AIR 1952 Mani 14 (2).

——S. 92 — (Supreme Court Rules (1950), O. 16, Rr. 12 and 13) — Applicability — "For any other reason" — Meaning of. See Supreme Court Rules (1950), O. 16, R. 12. AIR 1961 Mys 102.

——Ss. 92 and 93 — Nature of consent.

Powers vested by Ss. 92 and 93 upon the sanctioning authority are not judicial. An order sanctioning the institution of suit has not the finality of judgments of Courts and the authority can review its original order of sanction. AIR 1951 Nag 394.

——S. 92 — Scheme — Trust partly for public and partly for private charities.

A suit under S. 92 is not competent merely because the trust is partly for public and partly for private charities. If a substantial part of the trust is for public purpose and the matter is otherwise covered by S. 92 a scheme can be framed. AIR 1951 Nag 394.

——S. 92—Refusal of permission under S. 92—Effect — C. P. and Berar Religious and Charitable Trusts Act (18 of 1937), S. 12—The refusal does not act as res judicata. See Civil P. C. (5 of 1908), S. 11. AIR 1951 Nag 397.

——S. 92—Religious endowments — Public or private — Determination — Test—Intention of founder — Recitals in deed of endowment—Effect and value of — Deed — Construction.

Recitals in a deed of endowment executed by a person propagating Vaishnavism were to the following effect. The temple was dedicated with the sole object of propagating Vaishnav cult; the succeeding Shebaits were to be Brahmacharis devoted to the work of God and were enjoined to propagate a particular aspect of Hinduism namely Vaishnavism; the income of the property was to be spent over the deity, entertainment of guests and visitors and maintenance of the Pathashala; Shebaits were restrained from alienating the temple property except for the benefit of the deity; the selection of Shebaits was to be made by thirteen persons from the public authorised in this behalf and the main criterion for the selection was the possession of necessary qualifications laid down in the deed.

Applying the principles of law stated in the decision of the Supreme Court in 1957 S C J 75 : (1957) 1 Mad L J (S C) 28 : (1957) 1 Andh W R (SC) 28: AIR 1957 S C 133 for determination whether an endowment was public or private. Held, that on a reading of the deed as a whole in the light of the history of the institution, its object, profession of the founder and the beneficiaries thereof, there was no doubt that the intention of the founder was to dedicate the temple to the public and not to particular persons: 1957 S C J 75 : (1957) 1 Mad L J (SC) 28 : (1957) 1 Andh W R (SC) 28: AIR 1957 S C 133, Applied. 1961 B L J R 206.

——S. 92 — Public — Essence of public foundation consists in dedication to public. AIR 1955 N U C (Pat) 5963.

——S. 92 — Temple public or private endowment — Considerations.

The question whether the temple is public or otherwise depends upon evidence as to user by public. The character of the endowment is a legal inference to be proved from evidence. on a question of this description, long user by public is a material consideration from which inference of dedication to the public may be drawn. Besides user by public the conduct of the founder and his descendants is also relevant and if in fact they had held out the temple to be a public temple, very strong presumption of dedication would arise. The facts that repairs and additions in temple building are made by public subscriptions and the festivals in the temple are also performed with the aid of public funds certainly lead to the inference of the temple being a public one. 1953 B L J R 656 = AIR 1954 Pat 279 (DB).

——S. 92 — Function of Advocate General under — Nature of — Judicial or administrative—Order refusing permission to sue — Interference under Arts. 226 and 227 — The functions of the Advocate General are judicial in nature. He can refuse permission to sue. Interference under Arts. 226 & 227 is not possible. See Constitution of India, Art. 226. AIR 1956 Pepsu 65.

——S. 92 — Advocate-General acting under S. 92 — Nature of his function—The function of the Advocate-General cannot be called judicial or quasi-judicial function. Hence, there is no question of revising it under Art. 227, or issuing a writ under Art. 226 of the Constitution, compelling him to do anything. See Constitution of India, Art. 226. AIR 1955 Raj 166.

——S. 92—Religious endowment—Public temple.

When no tax is leviable on a public temple under the municipal rules the mere fact that a temple is levied with municipal tax would not show that the temple is a private one but only that the assessing authority has its own opinion on the matter.

Held, that the Jain temple at Nowgong was a public temple raised by subscription. AIR 1953 Vind.Pra 4.

——S. 93 — Nature of consent — Powers vested by Ss. 92 & 93 upon the sanctioning authority are not judicial. See Civil P. C. (5 of 1908), S. 92. AIR 1951 Nag 394.

——S. 94 — (M. B. Muafi and Inam Tenants and Sub-Tenants Protection Act (32 of 1954), S. 4) — Is not repugnant to Civil P. C. See Tenancy Laws — M. B. Muafi and Inam Tenants and Sub-tenants Protection Act (32 of 1954), S. 4. AIR 1957 Madh.Bha 63.

——Ss. 94 (e), 151, O. 21, Rr. 58 (2), 63 — Suit under O. 21, R. 63 — Stay of sale.

A mofussil Court can under O. 21, R. 58 (2) and Ss. 94 (e) and 151 stay a sale in execution of a decree. AIR 1951 Mad 321.

● ——S. 96 — Declaratory decree — Appeal against — Effect. See Constitution of India, Art. 309. AIR 1958 S C 113.

■ ——S. 96 — Departmental enquiry — Order of dismissal passed before Constitution — Proceeding violating natural justice — Appeal against order dismissed before Constitution — Revision dismissed after Constitution — Writ petition, if maintainable. See Constitution of India, Art. 226. AIR 1958 S C 86.

——S. 96 — Appeal — Order under S. 14 of Religious Endowments Act (1863) amounts to decree and is appealable. See Religious Endowments Act (1863), S. 14. AIR 1961 All 125.

——S. 96 — Order by District Judge—Appeal against lies. See Companies Act (1913), S. 202. 1956 Cri L J 869 = AIR 1956 All 222.

——S. 96 — Suit for eviction — Meaning — Suit includes appellate stage also. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 15. AIR 1952 All 654.

——S. 96 — Dismissal order by Government against a sub-engineer — Question whether he has right of appeal to Governor — Right of appeal must be expressly provided by statute or rules and it cannot be implied — Contention that right of appeal to an officer must be provided and its absence affects validity of rules is untenable. See Hyderabad Civil Services (Classification, Control and Appeal) Rules (1955), R. 20. **ILR (1965) Andh-Pra 482.**

——S. 96 — Finding on preliminary issue of jurisdiction — Finding not decree — No appeal lies. See Civil P. C. (1908), S. 2 (2). **(1964) 1 Andh W R 349 = (1964) 1 Andh L T 378=ILR (1965) Andh-Pra 419.**

——S. 96 — Decree for restitution of conjugal rights — Appeal against — Form of — Regular appeal—The decree would be appealable under S. 28 of the Hindu Marriage Act read with S. 96 of Civil P. C. and the appeal against a decree for restitution of conjugal rights under S. 9 (1) of the Hindu Marriage Act would be a regular appeal. See Hindu Marriage Act (1955), S. 9 (1). **AIR 1960 Andh-Pra 66.**

——S. 96 — Rules under R. 27 (before amendment) of Assam Sales Tax Act (1947) — Right of appeal to Commissioner — **Held**, that the assessee were entitled as of right to prefer an appeal to the Commissioner according to the law prevailing at the time of assessment orders and the change in the law subsequently did not deprive them of this right. See Sales tax — Assam Sales Tax Act (17 of 1947), S. 52. **AIR 1956 Assam 66.**

——S. 96 — Party by whom such claim or defence has been put forward — Suit for declaration and injunction against Corporation — Wild allegations against officers of Corporation — Allegation of misapplication of fund not substantiated — No claim for compensatory costs made in written statement — No prayer to that effect made in memo of appeal by Corporation — Unconditional withdrawal of allegations — Compensatory costs against plaintiff not awarded. See Civil P. C. (1908), S. 35. **1962 Nag L J 118 = ILR (1962) Bom 278.**

—— Ss. 96, 100, 101, 104 and 109 — Non-payment of penalty — Institution of appeal — If barred—Letters Patent (Bombay), Clause 15— Income-tax Act (1922), S. 30 (1) — Non-payment does not affect the right of appeal at all but affects merely the hearing and final disposal of the appeal. See Income-tax Act (1922), S. 30 (1). **AIR 1958 Bom 345.**

——S. 96 — Right of appeal — Order under S. 170 of Companies Act (7 of 1913), adjourning winding up petition after hearing it on merits — The order is appealable under S. 202 of the Companies Act. See Companies Act (1913), S. 202. **AIR 1955 Bom 355.**

——S. 96 —Order appointing Commissioner—Appeal lies against such order. See Debt Laws — Bengal Money Lenders Act(1940), S. 38.**(1956) 60 CalWN 31.**

——S. 96 — Application dismissed by Additional District Judge — Appeal. See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), S. 4. **1959 Ker L J 378.**

——S. 96 — Right of appeal (Kerala Civil Courts Act (1957), S. 13) — Right of appeal is a vested right and not a matter relating to practice or procedure. See Kerala Civil Courts Act (1 of 1957), S. 13. **AIR 1958 Ker 251.**

——S. 96, O. 41, R. 1—Appeal — Court-fee — Valuation as that in trial Court — Maintainability. (Court-fees Act (1870), S. 7 (iv)(c))—**Held**, that in view of the basis of valuation put by plaintiff which question was left unadjudicated by trial Court, no objection could be taken to the court-fee paid in second appeal. **AIR 1955 NUC (Madh-Bha) 3095.**

——Ss. 96 & 47—Application by judgment-debtor alleging excessive execution without notice to him — Dismissal of application — Appeal against dismissal competent. See Civil Procedure Code (5 of 1908), S. 47. **1965 MPLJ 627 = 1965 Jab L J 1133 = AIR 1966 Madh Pra 67.**

——Ss. 96, 115—Appeal and revision — (M. B. Sales Tax (Fifth Amendment) Act of 1955, S. 12 (2), Proviso 3.)— Retrospective operation — Applicability to proceedings commenced before amendment. See Sales Tax — M. B. Sales Tax Act (30 of 1950), S. 12 (2), Proviso 3. **AIR 1958 Madh Pra 282.**

——S. 96—Appeal against decision of Tribunal—Effect of — Whether continuation of original proceedings. Though an appeal is a continuation of a suit, yet this is only in a limited sense. See Debt laws —Displaced Persons (Debts Adjustment) Act (1951), S. 5. **AIR 1957 Madh Pra 98.**

——S. 96 — Order converting application into suit — Application within jurisdiction and not barred by limitation — Order cannot be interfered with in appeal by considering propriety of order on merits of case. **(1965) 2 Mad L J 548 = AIR 1966 Mad 308.**

——S. 96—Order under S. 47 (2) — Order is decree within meaning of S. 2 (2) and is appealable. See C. P. Code (1908), S. 47 (2). **(1965) 2 Mad L J 548 = AIR 1966 Mad 308.**

——S. 96 — Application by tenant for sale of land — Order dismissing — Appeal. See Tenancy Laws — Madras City Tenants Protection Act (3 of 1922), S. 4. **AIR 1959 Mad 191.**

——S. 96—De facto trustee —Power to conduct legal proceedings — Appeal by persons after ceasing to be trustee cannot be filed against the decree passed in the suit as "de facto" trustees when some other person is, in fact appointed as trustee in their place. See Religious and Charitable Endowments. **AIR 1956 Mad 585.**

——Ss. 96, 47 and 2 (2) —Order for eviction—Execution before civil Court under cl. 8 (3) of the Madras Non-residential Buildings Control Order, 1945— Dismissal—Appeal against—Maintainability—The provisions of Ss. 2 (2) and 47 are attracted with consequential right of appeal given by S. 96, notwithstanding that no such right of appeal is given by the order of 1945. See Houses and Rents — Madras Non-residential Buildings Control Order (1945), S. 8 (3). **AIR 1951 Mad 640.**

——Ss. 96, 47, 2 (2) — Interlocutory orders in execution proceedings — Order under S. 20, of Madras Agriculturists Relief Act (1938)— On a combined reading of Ss. 47, 2 (2) and 96, it is apparent that an appeal from an order in execution would lie under certain conditions. See Debt Laws —Madras Agriculturists' Relief Act (4 of 1938), S. 20. **AIR 1951 Mad 56 (FB).**

——S. 96—Deposit under S. 31 (2) of the Land Acquisition Act (1894) made but no reference under S. 30 of that Act made by Land Acquisition Officer—Appeal from Order under S. 31 does not lie. See Land Acquisition Act (1894), S. 30. **AIR 1960 Mys 139.**

——S. 96—(Sections 52 and 54 of States Reorganisation Act (1956))—Second appeal from area forming part of old Hyderabad State — Procedure—Single Judge — Jurisdiction to hear — Mysore High Court Rules — Applicability— The second appeal will be governed by the rules of procedure of Mysore High Court and it can be heard by a single judge. See States Reorganisation Act (1956), S. 54. **AIR 1959 Mysore 253.**

——Ss. 96, 11—Finality of appealable decision. See Civil Procedure Code (5 of 1908), S. 11. **AIR 1954 Mys 187.**

——S. 96—Other remedy open — Where the Court rejects an application for making the preliminary decree in a mortgage suit final, the rejection amounts

to a decree and no revision is tenable as an appeal lies. See Civil Procedure Code (5 of 1908), S. 2 (2). AIR 1951 Nag 269.

——S. 90—Order dismissing application for restitution—Appeal and not revision lies against such order. See Civil P. C. (1908), S. 2 (2). ILR (1965) Cut 943= 32 Cut L T 393.

——S. 90—Appeal — Duty of lower Courts.

It is the bounden duty of the lower courts when sending records to the appellate court to make the record complete by calling for the documents taken away and then submit the same to the appellate Court. ILR (1958) Cut 341.

——S. 90 — Suit for redemption — Alternative claim for damages — Alternative claim granted in trial Court — Appeal by plaintiff.

The plaintiff is not estopped from filing appeal for getting a decree for redemption. AIR 1952 Pat 470.

——Ss. 96, 152 and O. 47, R. 1 — Appeal against amended decree — Decree amended under O. 47 and not under S. 152—Pending appeal against the original decree—Dismissal of appeal as incompetent is proper. 67 Pun L R 1223 = AIR 1966 Punj 518.

——Ss 96, 100 & 101—New plea— Duty of appellate Court—Generally, Appellate authority has to consider correctness of order under appeal on existing material and in the light of points actually raised and agitated before and determined by lower tribunal — Fresh questions of law going to root of controversy on admitted or properly established facts, can be allowed to be raised in discretion of the appellate authority, only to promote cause of justice —As such, new question requiring pleading and evidence cannot be permitted to be raised for first time in appeal — Occupants of house for first time in appeal, pleading that their predecessor-in-interest had, after expiry ot tenancy, become statutory tenant — Such statutory tenancy not being heritable occupants claiming adversely to owner of house — Failure to take such plea before Rent Controller is quite clearly calculated to prejudice the owner and hence it cannot be permitted to be raised in appeal for first time. (Houses and Rents — Punjab Urban Rent Restriction Act (3 of 1949), S. 2.) (1965) 67 Pun L R 887.

——S. 96—Decree for ejectment — Execution proceedings — Second appeal against — Ss. 96 and 100 do not apply. (Delhi Rent Control (Procedure) Rules (1947), Rr. 4 and 5.) See Houses and Rents — Delhi and Ajmer Merwara Rent Control Act (19 of 1947), S. 14. AIR 1960 Punj 639.

——S. 96—Burden of proof is on appellant to show why judgment appealed from should be disturbed. See Evidence Act (1872), Ss. 101-104. AIR 1960 Punj 417.

——S. 96—Suit for rendition of accounts—Forum of appeal. (Suits Valuation Act (1877), S. 8.) — The decretal amount determines the forum of appeal; in case of dismissal of the suit, the original value continues to be the value for purposes of determining the forum of appeal. See Suits Valuation Act (1887), S. 8. AIR 1959 Punj 646.

——S. 96—Proceedings of statutory bodies—Jurisdiction of Civil Courts to question (Constitution of India, Art. 226) — Legislature gave them jurisdiction to determine all the facts without any appeal, there is no appeal from such exercise of their jurisdiction. See Constitution of India, Art. 226. AIR 1958 Punj 490.

——Ss. 96, 107 and O. 41, R. 23 — Appellate procedure — Principles of — Remand — Tests to exercise discretion.

In the absence of an error on the face of the record the appellate Court should proceed on the assumption that the lower Court has acted wholly within law. AIR 1957 Punj 312.

——Ss. 96, 35—Subsequent change of law — Consideration of — Subsequent change in law has to be taken into account in appeal. See Civil P. C. (5 of 1908), S. 35. AIR 1957 Punj 310.

——Ss. 96, 100 — Admission of secondary evidence without objection at trial — Objection in appeal not competent. AIR 1951 Punj 223.

——Ss. 96, 148 — Appeal against decree for redemption — Decree made conditional — Condition not fulfilled—Appeal held not maintainable.

A final decree for redemption of a mortgage was passed by the trial Court calling upon the mortgagor to deposit the decretal amount on or before the specified date or by such time as might be extended. The decree contained a condition that if the amount was not deposited within the period fixed or extended, the suit would stand dismissed with costs. The mortgagor did not deposit the amount within the time permitted nor did he apply for extension of time. Upon his preferring the appeal.

Held, (i) that the mortgagor having failed to deposit the decretal amount within the specified time, there was no subsisting decree in his favour and his appeal was not maintainable. A I R 1933 All 113; A I R 1954 S C 50, Applied; A I R 1961 S C 882; A I R 1914 Bom 132, Disting.

(ii) That no application for extension of time having been filed by him either in the trial Court or even in the Court of appeal, no question of extension of time under S. 148 would arise. 1965 Raj L W 520 (DB).

——Ss. 96, 2(2)—Rejection of plaint for non-payment of court-fee — Order amounts to decree — Power of Court rejecting plaint—Proper procedure for restoration. See Civil P. C. (5 of 1908), S. 2(2). AIR 1956 Raj 164.

——Ss. 96, 100—Retrospective operation — Right of appeal — The right of appeal provided for by the Civil P. C., is a vested right that cannot be defeated by subsequent legislation. See Travancore-Cochin High Court (Amendment) Act (1 of 1952), S. 15(4). AIR 1953 Trav-Co 53.

——Ss. 96, 100, 115 and O. 41, Rr. 1 and 11 — Time-barred appeal—Refusal to extend time — Appeal dismissed but decree not drawn up—Revision—Competency—Conversion to appeal—In no case, a party can come up in appeal, unless a formal decree is drawn up. See Civil P. C. (5 of 1908), O. 41, R. 1. AIR 1959 Tripura 6.

——S. 97 — Order refusing to extend time under O. 34, R. 2 and making final decree for foreclosure —Appellate Court setting aside order refusing to extend time — The final decree made on the basis of wrong order, being a dependent one, fell with it. See Civil P. C. (5 of 1908), O. 34, R. 2. AIR 1957 Andh Pra 330.

——S. 97—Suit for rendition of accounts and payment of money — Preliminary decree — Appeal to Supreme Court—Maintainability — The provisions of the section preclude the aggrieved party by a preliminary decree from disputing its correctness in any appeal which may be preferred from the final decree. See Constitution of India, Art. 133. AIR 1956 Madh Bha 151.

——S. 98—(Income-tax Act (1922), S. 66-A)—Questions not arising from facts in statement of case—Right of applicant to ask for answer. See Income-tax Act (1922), S. 66-A. AIR 1953 Orissa 15.

——Ss. 99, 110—Irregularity not affecting jurisdiction—Substantial question of law.

Both the Courts had pecuniary as well as territorial jurisdiction to dispose of the cases, the irregu-

larity in the procedure, if any, is curable under S. 99. There is, in such a case, no substantial question of law involved within the meaning of S. 110. AIR 1951 Ajmer 73.

——Ss. 99, 100—Illegality of procedure — Objection not raised in trial Court and lower appellate Court—High Court in second appeal will not entertain objection. See Civil P. C. (5 of 1908), S. 100. AIR 1960 All 584.

——Ss. 99, 100, 115, 151—Second appeal—New plea as to jurisdiction — High Court has inherent power to refuse to entertain—Analogy to power under Civil P. C., S. 115 and Constitution, Art. 226. See Civil P. C. (5 of 1908), S. 100. AIR 1960 All 573.

● ——S. 99, O. 34, R. 1—Necessary parties — Person having a paramount title—Decree against—Validity—Person having a paramount title is not a necessary party in a mortgage suit and need not be impleaded. The rule as to impleading persons having paramount title, is more a rule of convenience and prudence than a rule affecting the jurisdiction of the Court. See Civil P. C. (5 of 1908), O. 34, R. 1. AIR 1955 All 4 (FB).

——S. 99 and O. 5, R. 5 (Cal.)—Non-compliance of—Effect—Composite writ of summons—Not invalidated under O. 5, R. 5. See Civil P. C. (5 of 1908), O. 5, R. 5. AIR 1959 Cal 231.

——S. 99 and O. 30, R. 3—Alternative modes of service—Direction of Court — Necessity of — Service upon partner as manager — Service at residence. AIR 1952 Cal 781.

——S. 99—(Suits Valuation Act (1887), S. 11) — Principle of — Objection to jurisdiction on grounds of valuation — When can be taken to High Court. See Suits Valuation Act (1887), S. 11. AIR 1957 Madh Pra 92.

——S. 99—Co-tenants—Partition—Suit for.

Plaintiffs instead of claiming partition of two pattis separately bringing one partition suit for entire touzi—Plaintiffs on facts found entitled to decree for partition of two pattis — Suit held could be regarded as maintainable—At any rate, appellate Court would not dismiss suit on ground of misjoinder of cause of action. 1953 B L J R 216=AIR 1953 Pat 326 (DB).

● ——Ss. 100-101—Instalment decree with a default clause—Question whether its benefit is waived by the decree-holder is one of fact and cannot be raised for the first time in second appeal. (1965) 2 Com L J 244 = (1965) 2 S C A 602 = (1965) 2 S C J 790= (1965) 3 S C R 708=A I R 1966 S C 1953.

● ——Ss. 100-101—Single Judge not exercising jurisdiction in second appeal in accordance with law—Special leave under Art. 136 of Constitution not revoked, even though no leave to appeal under Letters Patent was applied for — High Court can be asked to deal with the matter in a normal way in accordance with law. See Constitution of India, Art. 133. A I R 1965 S C 195.

● ——S. 100 — Reference of case to High Court—Appeal to Supreme Court from order of High Court—Additional grounds cannot be taken. See Sales Tax — Bihar Sales Tax Act, 1947 (19 of 1947), S. 25. A I R 1961 S C 440.

● ——Ss. 100-101 — Concurrent finding of fact—Practice of Supreme Court—Persons whether hereditary tenants—Question of fact—When not vitiated by any error of law the Supreme Court accepts it according to usual practice. See Constitution of India, Art. 133. 1959 Cri L J 1223=A I R 1959 S C 960.

● ——S. 100 — Income-tax appeal by special leave—Question of law and question of fact — Finding on question of fact if erroneous or perverse would be open to attack. See Constitution of India, Art. 136. A I R 1959 S C 270.

● ——S. 100—Concurrent findings of fact—The question whether a particular proceeding was collusive or not is one of fact. The negative finding of both the Courts below will not be interfered with in second appeal before the Supreme Court. See Constitution of India, Art. 133. A I R 1956 S C 593.

● ——S. 100—Question of law — There is nothing to preclude a question purely one of law, being reopened before the Supreme Court with its leave if it happens to be of considerable importance. A I R 1955 S C 817.

● ——S. 100 — Second appeal — Question of law—A respondent may rightly be allowed to raise a question even at appellate stage when it is a pure question of law. A I R 1955 S C 604.

● ——Ss. 100-101 — Mixed question of fact and law—Nature of property — Concurrent findings of three Courts, cannot be allowed to be re-opened in an appeal before the Supreme Court. A I R 1954 S C 577.

● ——S. 100—Concurrent finding of fact that alienation by Hindu widow was not a prudent act of management cannot be interfered with by Supreme Court when the view taken by the lower Courts on evidence was proper. See Constitution of India, Art. 133. A I R 1954 S C 505.

——S. 100 and O. 21, R. 90 — Order of execution—Discretion — Court ordering execution proceeding in certain order — It is in the discretion of the Court and it will not be interfered with at the stage of second appeal. See Civil P. C. (5 of 1908), O. 21, R. 90. A I R 1955 N U C (Ajmer) 1987.

——S. 100 — Finding of fact — Finding that certain property acquired by member was not joint family property as nucleus was not sufficient enough to contribute to acquisition of property is one of fact—Finding is binding in second appeal. A I R 1952 Ajmer 52.

——S. 100—Question of limitation is one of law and can be challenged in appeal. A I R 1951 Ajmer 90.

——Ss. 100, 35, 96 and O. 41, R. 22—Appeal, second appeal or cross-objection against order as to cost—Direction in decree allowing parties to bear their own costs—No question of principle involved — No appeal or cross-objection lies on question of costs. See Civil P. C. (5 of 1908), S. 35. A I R 1965 All 228.

——S. 100—New case — Question involving investigation into facts — Cannot be raised for first time in arguments before High Court. 1965 All W R (H C) 569.

——Ss. 100, 115—Failure to consider part of evidence—Revision will not lie. See Civil P. C. (5 of 1908), S. 115. A I R 1960 All 534.

——S. 100—Second appeal under S. 331 (4) of U. P. Zamindari Abolition and Land Reforms Act (1 of 1951)—The Board of Revenue can entertain a second appeal filed under the Zamindari Abolition and Land Reforms Act only on the grounds specified under the section. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 331. A I R 1959 All 13.

——S. 100—Substantial question of law—(Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (a)) —The mere fact that question of law was rightly decided by the Regional Conciliation Board would not take away the jurisdiction of the Labour Appellate Tribunal. A I R 1955 N U C (All) 1690.

——Ss. 100-101—(Income-tax Act Ss. 30, 23 (2) and (4) and 27)—Scope of appeal—An appeal is a creature of the Statute and, if no right of appeal is given, no appeal can be filed. Under the Income-tax Act the

assessee has two rights: (i) to question the validity of a reference, appeal to the Appellate Assistant Commissioner and further to the Appellate Tribunal; (ii) to appeal against the quantum of tax imposed. See Income-tax Act (1922), S. 30. A I R 1953 All 775.

——S. 100—Finding of fact — Finding as to absence of malice is one of fact and must be accepted as correct. A I R 1953 All 302.

——S. 100 — Finding of fact —:Finding that certain persons are owners of only half share in certain property is a finding of fact which cannot be disturbed in second appeal. A I R 1953 All 251.

——Ss. 100-101 — Second appeal — New case in arguments,

An appellant in a second appeal cannot be allowed to change his case at the time of the arguments in the second appeal from what he had stated in the grounds of his appeal and which he had accepted in two lower Courts in spite of what was merely asserted in plaint but never relied upon. 1951 All W R (Rev) 65=1951 R D 42.

——S. 100 — Finding as to date of birth of a person is one of fact — High Court would not ordinarily interfere in second appeal — (Per Division Bench). I L R (1965) Andh Pra 142.

——Ss. 100 and 101 — Finding of lower Appellate Court that the bed of a stream and water therein belong to Government, not only warranted by evidence but the most reasonable and natural inference to be drawn — High Court could not interfere with that finding in second appeal. (1965) 1 Andh W R 361.

——S. 100 — Finding of fact arrived at by single Judge of High Court — Whether can be challenged in Letters Patent Appeal — There is no rule of law under which it is not open to challenge under Cl. 15 of the Letters Patent. See Letters Patent (Andhra), Cl. 15. AIR 1963 Andh Pra 447.

——S. 100 — Interference on a question of fact — When it could not be held that the agent committed any error of law or mistake of fact, direction to review his judgment under R. 48 of the Agency Rules or Art. 227 of the Constitution was not warranted. See Andhra Agency Rules, R. 47. AIR 1957 Andh Pra 1041.

——S. 100 — Temple — Dedication of — Public or private — Question of fact — User — Other circumstances—(Hindu Law — Religious Endowment). See Madras Hindu Religious Endowments Act (2 of 1927), S. 9 (12). AIR 1957 Andh Pra 824.

——S. 100—Concurrent findings of facts—Misrepresentation—The conclusion that no misrepresentation as alleged has been proved and that being only a question of fact, no interference in the judgments of the lower Courts is called for in second appeal. AIR 1957 Andh Pra 781.

——Ss. 100, 115 — Limitation Act (1908), S. 19 — Document whether amounts to acknowledgment—Question of law—Can be raised in revision. AIR 1957 Andh Pra 445.

——S. 100—Tort—Malicious prosecution—Reasonable and probable cause — Question is one of fact. AIR 1956 Andhra 174.

——Ss. 100, 35 — Appeal and second appeal against order as to costs—Appeal lies when the award involves a matter of principle or where there has been no real exercise of discretion in making the order as to costs or where the order is based on a radical misapprehension of the facts or the law. See Civil Procedure Code (5 of 1908), S. 35. AIR 1956 Andhra 113.

——S. 100 — Claiming protection under Assam Act (2 of 1955) — Conditions to be fulfilled enumerated—Non-fulfilment of condition involving question of fact—Grant of protection improper—Tenancy Laws—Assam Non-Agricultural Urban Areas Tenancy Act (12 of 1955), S. 5, ILR (1964) 16 Assam 354.

——Ss. 100-101—Both lower Courts not considering all the evidence — Duty of Court in second appeal—It is necessary for the Second Appellate Court to go into the evidence in details. AIR 1963 Assam 117.

——Ss. 100-101 — Objection whether within time — Mixed question of law and fact. See Arbitration Act (1940), S. 17. AIR 1956 Assam 85.

——S. 100 —Proof —Onus —The question of custom is a mixed question of law and fact, and the burden is on the person asserting a particular custom to establish that it is ancient, invarible and reasonable. AIR 1955 NUC (Assam) 2792.

——Ss. 100, 107, O. 41, R. 31 — Discussion of evidence—Case on facts. AIR 1955 NUC (Assam) 2305.

——S. 100 — Mixed question of law and fact — The question whether there was a bona fide requirement of the plaintiff for the land in suit is a mixed question of law and fact. AIR 1955 NUC (Assam) 1776-77.

——S. 100 — Concurrent findings of fact — Unless there is misappreciation or misapprehension of evidence resulting in serious prejudice to party, High Court will not interfere in second appeal. AIR 1953 Bhopal 5.

——Ss. 100, 101, 104, 109 and 96 — Non-payment of penalty — Institution of appeal — If barred—Letters Patent (Bombay), Cl. 15 — Income-tax Act (1922), S. 30 (1) — Non-payment does not affect the right of appeal at all but affects merely the hearing and final disposed of the appeal. See Income-tax Act (1922), S. 30 (1). AIR 1958 Bom 345.

——Ss. 100-101 — Secondary evidence of document —Objections as to admissibility—Waiver—Secondary evidence of a document can always be given if the failure to produce the original document is supported by proper reasons. Where defendant has waived proof of circumstences which justified the plaintiff in leading secondary evidence, it is not open to him in second appeal to raise a contention that secondary evidence of the contents of the documents was inadmissible. See Evidence Act (1872), S. 65. AIR 1956 Bom 196.

——S. 100 — Power of High Court — Jurisdiction under S. 47 of Parsi Marriage and Divorce Act (1931) is analogous to power under S. 100 of Civil P. C. See Parsi Marriage and Divorce Act (1931), Ss. 40 (1), 47. AIR 1955 Bom 413.

——S. 100, O. 41, R. 2 — New plea—Plea raised for the first time in argument—Plea following as a matter of legal consequence from proved fact — High Court can allow appellant to take up such a plea if he can do so without any prejudice to interest of respondent. AIR 1953 Bom 50.

——Ss. 100-101 — Question whether structure is permanent or not is mixed question of fact and law. See T. P. Act (1882), S. 108 (p). AIR 1965 Cal 408.

——Ss. 100-101 — Suit for ejectment of house premises valued at Rs. 631.50 on 1-2-1957—Suit decreed by Second Court of Small Causes, Calcutta — Special appeal by tenant in said Court — Appeal allowed — Second appeal by landlord in High Court — Held, High Court was proper forum of appeal from decree of trial Court and also for second appeal against decree passed without jurisdiction—Order to be made in such case indicated. 64 C W N 678 and 67 CWN 1092, Ref. (1965) 69 Cal W N 258.

——Ss. 100-101 — New plea — Plea taken in second appeal—Tenability—It would not be proper to allow to raise the question in second appeal. 1958 Cal L J 265.

——S. 100 — Appeal—New plea—Was allowed to be taken as it was a pure question of law. See Constitution of India, Art. 226. AIR 1957 Cal 560.

——S. 100 — Objection to award — Question of fact raised in High Court — Maintainability — That the applicant was not allowed inspection of the account books, or consider the alleged false entries or was not allowed to place his case properly are questions of fact. See Arbitration Act (1940), S. 30. AIR 1956 Cal 593.

——Ss. 100-101, 115 — Rate of salary — Question of fact—No interference in revision. AIR 1955 Cal 290.

——S. 100 and O. 41, R. 23 — Order of remand not strictly under O. 41, R. 23 — Second appeal — Held, that the appeal was competent. AIR 1955 NUC (Cal) 1794.

——Ss. 100-101 — Execution of sale — Finding of fact — The Court will not interfere in second appeal in absence of sufficient reason. AIR 1955 NUC (Cal) 921.

——S. 100 — Change of structural identity — Question is primarily an inference to be drawn from facts — Whether there is any evidence to support particular inference of fact, is matter of law. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 9 (1) (e). AIR 1952 Cal 585.

——Ss. 100-101 — Decision as to fact of partition — Interference in second appeal — Decision of the Court of appeal that there was no partition of the joint family property is a decision on question of fact and cannot be interfered with in second appeal. AIR 1952 Cal 253.

——S. 100 — Finding of fact — Finding that property was joint family property — Finding based on serious misapprehension of position in law — Finding not binding in second appeal. AIR 1951 Cal 320.

——S. 100 — Reasonable notice — What is — It is a question of fact. See T. P. Act (1882), S. 106. AIR 1951 Cal 269.

——S. 100 — Second appeal should be heard and disposed of as if it were first appeal. See Bilaspur (Courts) Order (1949), Para. 34. AIR 1952 Him Pra 51.

——S. 100 and O. 41, R. 31 — Perusal of evidence in second appeal — High Court can peruse the evidence in the case. AIR 1953 Hyd 179.

——Ss. 100-101 — Malicious prosecution — Malice established — Exemplary damages can be awarded—Lower appellate Court reducing damages — Proper legal principle applied — No interference in second appeal. See Tort — Malicious prosecution. AIR 1960 Ker 264.

——S. 100 — Who may appeal — Appeal by defendant disclaiming all interest on his own account — See Civil P. C. (5 of 1908), S. 96. AIR 1955 NUC (Madh Bha) 3361.

——S. 100 — Gwalior Civil P. C., S. 525 — Second appeal on question of fact—The case could be heard on facts even in second appeal, if the decree of the trial Court was reversed by the lower appellate Court. AIR 1955 NUC (Madh-Bha) 3092.

——S. 100 — Possession — Nature of — Mixed question of law and fact — "Possession" under the section — Title, interference of, by possession for a period. See Evidence Act (1872), S. 110. AIR 1951 Madh-Bha 80.

——Ss. 100-101 — Second appeal — Question of fact — Relationship between parties is a question of fact. AIR 1951 Madh-Bha 48.

——S. 100 — Finding of fact — Landlord and tenant — Question of genuine need either for residential or non-residential purposes is finding of fact — In the absence of illegality or misapprehension on the part of Courts below, the finding is not open to challenge in second appeal. 1965 Jab L J 905 = AIR 1966 Madh-Pra 207.

——S. 100 — Right of appeal under Civil P. C. is not curtailed under the provisions of Ss. 31 and 32 of Bhopal and Vindhya Pradesh (Courts) Act (41 of 1950). See Bhopal and Vindhya Pradesh (Courts) Act (41 of 1950), S. 31. AIR 1958 Madh-Pra 326.

——S. 100 — No allegation that girl was confined under circumstances amounting to offence — Issue of search warrant not proper. AIR 1958 Madh-Pra 24.

——Ss. 100-101 — Reference to, on question of fact—It is always risky to appeal to precedents on questions of fact. See Precedents. AIR 1957 Madh-Pra 174.

——S. 100 — Finding of fact if can be challenged — A finding that the building which was being constructed was more than 20ft. in height from the ground to the apex of the building is a finding of fact not open to challenge. See Workmen's Compensation Act (1923), S. 30. AIR 1957 Madh-Pra 84.

——Ss. 100-101 — Question of fact — Interference—Question whether plaintiff was heir of J or not held was question of fact — Finding of Judge not being perverse or obviously wrong, High Court could not interfere on revision side. See Provincial Small Cause Courts Act (1887), S. 25. AIR 1953 Madh-Pra 242.

——Ss. 100-101 — Concurrent findings of fact, supported by sufficient evidence, are binding in second appeal. (1965) 2 Mad L J 113 = AIR 1966 Mad 130.

——Ss. 100, 115 = Remand of case — No decree — Adverse finding against appellant — Second appeal not competent—Revision or miscellaneous appeal may lie. See Civil P. C. (5 of 1908), O. 41, R. 23. AIR 1961 Mad 262.

——Ss. 100-101, 102 — Reliance on inadmissible presumption — Judgment supported by evidence of facts and circumstances — Court will not interfere in second appeal. See Evidence Act (1872), S. 167. (1961) 1 Mad L J 585 = 1961 Mad L J Cri 306.

——S. 100 — Suggestion by Law Commission in its report, of statutory requirement providing that judge, admitting second appeal, should state point of law arising for consideration and, in his discretion, order appellant to be heard only on those points — Suggestion likely to prove detrimental to efficient administration of justice. AIR 1960 Mad 341.

——Ss. 100-101 — (Industrial Disputes Act (1950), S. 7 (1) (a)) — Jurisdiction — Whether substantial question of law — A change in the conditions of service should normally be basically a question of fact and not of law. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (a). AIR 1956 Mad 589.

——Ss. 100-101—Finding of fact— Whether a person is a workman or not is a question of fact on which there can be no appeal. See Workmen's Compensation Act (1923), S. 30. AIR 1954 Mad 218.

——S. 100 — Superstructure, if building — Question of fact or law — The question cannot be said to be purely a question of fact involving no question of law. See Houses and Rents—Madras Buildings (Lease and Rent Control) Act (15 of 1946), S. 2 (1). AIR 1954 Mad 149.

——Ss. 100-101—New plea — Plea by appellant that respondent being representative of vendor must be deemed to hold property as trustee for appellant vendee — Plea neither specifically raised in lower Court nor in memorandum of appeal — Plea not allowed. (1965) 2 Mys L J 692=AIR 1966 Mys 299.

——S. 100 — Concurrent finding that defendant was always willing to perform his part of the contract — Finding being one of fact cannot be challenged in second appeal. See T. P. Act (1882), S. 53A. (1965) 2 Mys L J 229=AIR 1966 Mys 86.

—Ss. 100-101— Objection to admissibility of document as secondary evidence in the absence of proof either of loss of original or of being entitled to lead secondary evidence on grounds mentioned in S. 65, Evidence Act, neither raised in trial Court nor in memorandum of first appeal — Objection cannot be raised in second appeal - Evidence Act (1872), S. 65. (1965) 2 L R 594 (Mys).

—S. 100 — Appeal under S. 38, Proviso of Companies Act (1913) — The appeal has to be treated as equivalent to one filed under this section. See Companies Act (1913), S. 38, Proviso. AIR 1956 Nag 20.

—S. 100 — Question of law— Construction of document of title. A question of construction of an instrument of title or of a document which constitutes direct foundation of the right claimed is a question of law. AIR 1953 Nag 337.

—S. 100 — Finding of fact. As regards adoption finding of two Courts below being against plaintiff finding being one of fact cannot be challenged in second appeal. AIR 1953 Nag 19.

—S. 100—Finding of fact of lower appellate Court, vitiated because it misdirected itself on question of law — It is not binding on second appeal. AIR 1952 Nag 193.

—S. 100 — New plea — Plea of adverse possession cannot be raised for first time in second appeal. AIR 1952 Nag 188.

—Ss. 100-101 — (Orissa Tenancy Act (1913), S. 31-B)— Knowledge of landlord — Finding of fact. See Tenancy Laws — Orissa Tenancy Act (B. and O. Act 2 of 1913), S. 31-B. AIR 1954 Orissa 219.

—S. 100 — New case — The plaintiff cannot be allowed to spring a new case upon the defendants in appeal. AIR 1953 Orissa 105.

—S. 100 — Defendant setting up oral gift of equity of redemption in written statement — It is not open to defendant in second appeal to assert that he had absolute title to property. AIR 1953 Orissa 17.

—S. 100 — Appreciation of evidence by trial Court. The greatest weight should be attached to the trial Court's opinion because he saw and heard the witnesses. AIR 1951 Orissa 291.

—Ss. 100-101—(Income-tax Act (1922), Ss. 66 (5) and 16 (3)— Nature of jurisdiction of High Court —Tribunal's findings as to adequacy of consideration based on facts are not perverse — High Court cannot interfere. See Income-tax Act (1922), S. 66 (5). AIR 1965 Pat 114.

—S. 100—Second appeal — Maintainability. When the appeal is against a decree passed one has to go to S. 41 of the Arbitration Act to determine the forum of appeal. In that view, a second appeal is maintainable. See Arbitration Act (1940), S. 17. AIR 1965 Pat 66.

—S. 100—Finding of fact based on evidence — No interference in second appeal in the absence of any error of law. 16 P L T J 7, Rel. on. 1962 B L J R 258.

—S. 100 — Conclusion arrived at by trial Court without closely reading evidence — First appellate Court without going through evidence accepting trial Court's conclusion—Case liable to be remanded. See Civil P. C. (1908), S. 107. (1962) 20 J D 269 = 1 East L R 177=28 Cut I T 506.

—S. 100—Wrongful arrest— Reasonable and probable cause— Lodging of F. I. R. on advice of counsel —Interference of bona fide belief. If is not a question of law but a circumstance to be taken into consideration in coming to a finding of fact. AIR 1959 Pat 490 (d).

—S. 100 — (Income-tax Act (1922), S. 33 (4))— Appellate tribunal can take into account amendments to the Act made by Amending Act (1948), in disposing of appeal. See Income-tax Act (1922), S. 33 (4). AIR 1955 Pat 179.

—Ss. 100-101 — Findings of fact binding in second appeal. AIR 1955 NUC (Pat) 3239.

—S. 100 — New case — Plea that revenue sale was premature involves question of fact and cannot be raised for first time. AIR 1955 N U C (Pat) 2485.

—Ss. 100, 103—Admission of additional evidence by appellate Court — Whether O. 41, R. 27 (1) (b) contravenes (Quaere). See Civil P. C. (5 of 1908), O. 41, R. 27 (1) (b). AIR 1955 NUC (Pat) 1870.

—Ss. 100-101—Order of remand passed in exercise of inherent powers — No adjudication on rights of parties — Order under O. 41, R. 23 not appealable. See Civil P. C. (5 of 1908), O. 41, R. 23. AIR 1952 Pat 437.

—S. 100 — Finding of fact—Miscondct—The finding though one of fact, is vitiated and the High Court would interfere in second appeal. AIR 1952 Pat 435

—Ss. 100-101 — Registered sale deed—Question as to when title passes — The intention of the parties as to the passing of the title is a question of fact. A I R 1952 Pat 98.

—S. 100 — (Bihar Tenancy Act (1885), S. 153)— Question of fact — Representation of family by particular tenant — See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 153. AIR 1952 Pat 51.

—Ss. 100-101 — Objection under S. 53-A of T. P. Act — Cannot be raised for the first time in second appeal—See T. P. Act (1832), S 53A. A I R 1951 Pat 502.

—Ss. 100-101 — Question whether there is completed agreement between parties — Is a question of fact — See Civil Procedure Code (5 of 1908), S. 107. AIR 1951 Pat 299.

—S. 100—Custom — Pleading and proof—Personal law asserted in plaint and supported by evidence of parties — Concurrent finding of Courts below—Custom not proved.

Where the plaintiffs positively asserted in the plaint that they were governed by their personal law, that assertion was supported by evidence produced by them at the trial, the concurrent finding of fact of the Courts below was in favour of this assertion and the parties being carpenters the initial presumption, also was that they were governed by Hindu law:

Held, that it was not proved that the parties were governed by custom. AIR 1955 Pepsu 79 (DB).

—Ss. 100-101—Question of fact cannot be raised in second appeal. 67 Pun L R 735=ILR (1965) 2 Punj 513=AIR 1966 Punj 310.

—S. 100—Finding of fact—Finding as to encroachment upon land is a finding of fact—Cannot be questioned in second appeal. 1965 Cur L J 665 (Punj)= 68 Pun L R 191=ILR (1966) 1 Punj 291.

—Ss. 100-101—New plea—Duty of appellate Court — Generally, Appellate authority has to consider correctness of order under appeal on existing material and in the light of points actually raised and agitated before and determined by lower tribunal— Fresh questions of law going to root of controversy on admitted or properly established facts, can be allowed to be raised in discretion of the appellate authority, only to promote cause of justice—As such, new question requiring pleading and evidence cannot be permitted to be raised for first time in appeal— Occupants of house for first time in appeal, pleading that their predecessor-in-interest had, after expiry of tenancy, become statutory tenant — Such statutory tenancy not being heritable occupants claiming adversely to owner of house—Failure to take such plea before Rent Controller is quite clearly calculated to prejudice the owner and hence it cannot be permitted

to be raised in appeal for first time. (1965) 67 Pun L R 887.

——Ss. 100-101 — Houses and Rents — Delhi Rent Control Act (59 of 1958), S. 39 — Manner of exercise of discretion on particular facts does not involve substantial question of law especially when it is not improper or perverse—No interference in second appeal. (1965) 67 Punj L R 491.

——S. 100 — Finding of fact given by lower Court—Binding on Court of second appeal. (1962) 64 Pun L R 825.

——Ss. 100-101—Error apparent on face of record—What amounts to — Error of fact — Does not justify interference under Art. 226 of the Constitution — See Constitution of India, Art. 226. AIR 1961 Punj 275.

——S. 100 — Decree for ejectment — Execution proceedings—Second appeal against — Ss. 96 and 100 do not apply. (Delhi Rent Control (Procedure) Rules (1947), Rr. 4 and 5) — See Houses and Rents—Delhi and Ajmer Merwara Rent Control Act (19 of 1947), S. 14. AIR 1960 Pnnj 639.

——S. 100 — Finding of fact by Single Judge—Finding considered erroneous by Letters Patent Bench—Bench can reverse the finding. See Letters Patent (Punjab), Cl. 10. AIR 1960 Punj 573.

——Ss. 100-101 — Right of appeal when accrues — Right of appeal accrues at the time of the suit — See Pepsu Union Judicature Ordinance (10 of 1205 B.K.), S. 49 (2). AIR 1959 Punj 123.

——S. 100—Finding as to when marriage took place is one of fact. AIR 1953 Punj 191.

——S. 100 — (Specific Relief Act (1877), S. 42)—Declaratory suit by collateral in respect of non-ancestral property of Hindu owner during latter's lifetime —Is not maintainable—See Specific Relief Act (1877), S. 42. AIR 1952 Punj 387.

——S. 100—Question of fact — Ratification is a question of fact—See Arbitration Act (1940), S. 39. AIR 1952 Punj 240.

—— S. 100—Order deciding question between parties and relating to execution of order under Ss. 10, 13, 15 of Punjab Urban Rent Restriction Act (6 of 1947) — Appeal and second appeal are maintainable—See Houses and Rents — Punjab Urban Rent Restriction Act (6 of 1947), S. 10. AIR 1952 Punj 159.

——S. 100 — Execution — Second appeal—When no second appeal lay from the original matter under S. 13 of East Punjab Urban Rent Restriction Act (3 of 1949) no second appeal would lie in execution of the order passed under that section — See East Punjab Urban Rent Restriction Act (3 of 1949), S. 13. A I R 1951 Punj 346.

——S. 100 — Defendant conceding in lower Court that land in suit was non-ancestral in hands of deceased qua defendant — Defendant cannot dispute that point in second appeal. AIR 1951 Punj 239.

——S. 100 — Discretionary order — Arbitration Act (1940) S. 34 — Making an order staying proceedings under S. 34 of Arbitration Act is a matter in the discretion of the Court and the appellate Court will not interfere with the exercise of discretion where it has not been shown to have been exercised arbitrarily or capriciously. AIR 1951 Punj 231.

——Ss. 100, 96 — Admission of secondary evidence without objection at trial—Objection in appeal—It is not open to the party to raise an objection in appeal. See Civil Procedure Code (5 of 1908), S. 96. A I R 1951 Punj 223.

——S. 100—The question whether a particular village comprises recognised sub-divisions is a question of fact and is not open to challenge in second appeal. See Punjab Pre-emption Act (1 of 1913), S. 15 (c). AIR 1951 Punj 182.

——Ss. 100-101—Finding of fact—Finding supported by evidence on record cannot be interfered with in second appeal. 1965 Raj L W 346 = ILR (1965) 15 Raj 1035=AIR 1966 Raj 229.

——Ss. 100-101—Finding of fact supported by evidence—Finding cannot be challenged in second appeal. 1965 Raj L W 523.

——Ss. 100-101 — Time at which right of appeal vests in the litigant — The right of appeal vests on the date of institution of suit. See Civil Procedure Code (5 of 1908), S. 96. AIR 1955 NUC (Raj) 1633.

——S. 100—Drawing of presumption is not obligatory. See Evidence Act (1872), S. 90. 1953 Raj L W 153.

——Ss. 100-101 — Questions whether certain right, for being acquired as an easement, has been enjoyed for the statutory period and as of right are questions of fact — It is not proper to allow plea based on easement being made out in second appeal for first time. AIR 1953 Sau 39 (c).

——S. 100—Finding of fact. In second appeal the concurrent finding on a simple question of fact cannot be allowed to be canvassed. AIR 1954 Trav-Co 473 (FB).

——Ss. 100, 101—Entertainment of appeal in non-appealable matter — Right of second appeal—If by a wrong assumption of jurisdiction a Court entertains an appeal in a non-appealable matter, the party aggrieved by the decision has a right of further appeal. AIR 1954 Trav-Co 118.

——S. 100—A right of appeal provided by the Civil P. C. is a vested right that could not be defeated by subsequent legislation, See Travancore-Cochin High Court (Amendment) Act (1 of 1952), S. 15 (4). AIR 1953 Trav-Co 53.

——S. 100—Time-barred appeal — Refusal to extend time — Appeal dismissed but decree not drawn up — Revision — Competency —Conversion to appeal—An appeal is competent. See Civil P. C. (5 of 1908), O. 41, R. 1. AIR 1959 Tripura 6.

—— S. 102—Compromise decree declaring rights of parties — Plaintiff getting right to recover amount of money from defendant—Suit to recover such amount lies in Small Causes Court and is not one for specific performance — Suit tried as regular suit does not change its nature — No appeal. See Provincial Small Cause Courts Act (1887), S. 15. AIR 1961 Bom 221.

——S. 102—Small Cause suit tried as ordinary suit by Court having small cause jurisdiction — Nature of decree — Appealability — The character of the suit is not altered. Decision arrived at should be deemed to be a decision given by a Court of Small Causes and should be treated as such. The decree passed is not appealable. See Provincial Small Cause Courts Act (1887), S. 15. AIR 1956 Punj 233.

●——Ss. 102, 115 — Suit, meaning of — Execution proceedings.

The term suit in S. 102 includes execution proceedings so that if no second appeal lay from the decree, then no second appeal would also lie against an order passed in execution. The appeal can, however, be treated as a revision application. AIR 1953 Sau 16 (FB).

——S. 104—Order by District Judge—Appeal against lies. See Companies Act (1913), S. 202. 1956 Cri L J 369 = AIR 1956 All 222.

——S. 104—Order refusing to grant interim maintenance is not appealable. See Hindu Marriage Act (1955), S. 24. AIR 1960 Andh Pra 30.

——S. 104—Order under S. 24 of Bombay Money-Lenders Act (1947) — If decree —Appeal—The order is a decree, and is appealable. See Debt Laws—Bombay Money-Lenders Act, 1946 (31 of 1947), S. 24. AIR 1960 Bom 334.

—S. 104—"Under any law for the time being in force" — Meaning of — Order under S. 24 of the Marriage Act — No appeal lies. See Hindu Marriage Act (1955), S. 28. AIR 1960 Bom 315.

—Ss. 104, 96, 100, 101 and 109—Non-payment of penalty — Institution of appeal — If barred—Letters Patent (Bombay), Clause 15 —Income-tax Act (1922), S. 30 (1) — Non-payment does not affect the right of appeal at all but affects merely the hearing and final disposal of the appeal. See Income-tax Act (1922), S. 30 (1). AIR 1958 Bom 345.

—S. 104—Right of appeal — Order under S. 170 of the Companies Act (1913) winding up petition after hearing it on merits—The order is appealable. See Companies Act (1913), S. 202. AIR 1955 Bom 355.

—S. 104—Restoration application rejected—Appeal allowed—Revision held not maintainable. See Civil Procedure Code (5 of 1908), O. 11, R. 21. AIR 1955 NUC (Madh Bha) 66.

—Ss. 104, 96—Appeal by person not party to suit—Ordinarily leave to appeal should be granted to persons who, though not parties to the proceeding would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings. See Letters Patent (Madras), Cl. 15. AIR 1953 Mad 485.

—S. 104—(Letters Patent (Nag), Cl. 10)—Refusal to review — Appeal—The bar against appeals contained in C. P. C. does not extend to Letters Patent. See Letters Patent (Nag), Cl. 10. AIR 1956 Nag 215.

—S. 104—Dismissal of execution case for non-production of succession certificate by heirs of decree-holder amounts to dismissal of case for default — Dismissal order would not be decree. Dismissal-order not being within purview of S. 104 and O. 43, R. 1 would not be appealable order too — Appeal would not lie against dismissal-order and revision against order would be competent. See Civil P. C. (1908), S. 2 (2) (b). ILR (1965) Cut 823.

—S. 105 (1)—"Party failed to appear"—Pleader present on the day of hearing—Effect on decree passed —Proper remedy—The proper remedy is by way of an appeal under this section. See Civil Procedure Code (5 of 1908), O. 17, R. 2, Expl. (Allahabad), O. 9, R. 13. AIR 1955 NUC (All) 850.

—Ss. 105, 2 (2)—Representative suit under O. 1, R. 8—Death of plaintiff — No abatement — Application by legal representative for substitution as plaintiff — Limitation—Dismissal — Order declaring suit to have abated — Amounts to decree — Legal representative competent to file appeal against decree challenging propriety of order dismissing his application. See Civil P. C. (1908), S. 2 (2). AIR 1965 Ker 303.

—S. 105—Madras Agricultural Income-Tax Act (5 of 1955), S. 31 (2) — Interlocutary orders —Order of remand by appellate Assistant Commissioner on some items only — Order is interlocutory — No appeal by assessee against remand — Subsequent appeal by assessee against revised order of assessment to Appellate tribunal — Even the correctness of the items confirmed in earlier appeal can be canvassed. See Madras Agricultural Income Tax Act (5 of 1955), S. 31 (2). ILR (1965) 2 Mad 397 (DB).

—S. 105 and O. 41, R. 23 — Mortgage decree — Appeal — Decree set aside and case remanded for disposal according to law—Second appeal—Dismissal — High Court giving directions as to manner in which suit to be disposed by trial Court — The order dismissing the second appeal to gether with the directions given by the High Court formed one integral whole and both had become final so that it was not open to the appellant to show that those directions were erroneous. AIR 1961 Mad 410.

—S. 105 (2) — Appeal against remand order — Remand carried out — Right of appeal and pending appeal not affected. See Civil P. C. (5 of 1908), O. 41, R. 23. AIR 1951 Mad 218.

—Ss. 105, 115 — Revision against order allowing amendment of plaint — No revision is maintainable against an order allowing amendment of the plaint — The order can be challenged in an appeal under S. 105, from a decree that would be finally passed in the case. See Civil P. C. (5 of 1908), S. 115. AIR 1955 N U C (Raj) 1894.

—S. 106 — (Kerala Civil Courts Act (Presidents Act 1 of 1957), S. 13 (2))—Sale of property in execution of decree passed by District Court—District Court transferring judgment-debtor's application under O. 21, R. 90 of the Code to Sub-ordinate Judge's Court — Application allowed by Sub-ordinate Judge—District Court and not High Court can entertain appeal against order. See Kerala Civil Courts Act (1957), S. 13 (2). AIR 1964 Ker 37.

—S. 107 — Power of appellate Court is discretionary matter — Suit for injunction — Discretion of trial Court in refusing temporary injunction not based on mistake of facts — Interference by appellate Court. See Civil P. C. (1908), S. 115. ILR (1965) 2 All 71.

—S. 107 — (Industrial Disputes Act, S. 7 (1) (a)) — Powers of Appellate Tribunal — Consideration of questions of facts — A person whether is a workman or is dismissed wrongfully are questions of fact and can be considered by the Labour Appellate Tribunal. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (a). AIR 1956 All 491.

—S. 107 — Raising of new case in second appeal — Cannot be allowed. See Civil P. C. (5 of 1908), S. 100 and O. 41, R. 1. AIR 1955 N U C (All) 2770.

● —S. 107 — Appeal — Insufficiently stamped memo of appeal — Extension of time to pay deficit — An appellate Court, including High Court, has the same powers in respect of plaints. It will follow the same procedure as a trial Court would have done and grant time for making good the deficiency. But that does not mean that a memo of appeal shall be treated likewise. See Civil P. C. (1908), O. 7, R. 11. AIR 1951 All 64 (FB).

—S. 107 — Interest for period of pendency of suit. Ordinarily interest pendente lite should not be refused except for sufficient reasons. See Civil P. C. (5 of 1908), S. 34. AIR 1963 Andh Pra 353.

—S. 107 — Questions of law and fact — Admissibility — Waiver of formal proof by party against whom evidence tendered—Objections to secondary evidence cannot be allowed at appellate stage — Question of proof is question of procedure and can be waived — Question of relevancy of document however is a question of law and can be raised in appeal. See Evidence Act (1872), S. 64. (1963) 2 Andh W R 307.

—Ss. 107 (2), 2 (2), 104 (2), O. 7, R. 11 — Civil Misc. Appeal rejected as incompetent—Order amounts to decree and is appealable — Appeal not barred by S. 104 (2). AIR 1961 Andh-Pra 112.

—S. 107 — Claiming protection under Assam Act (12 of 1955) — Conditions to be fulfilled enumerated — Non-fulfilment of condition involving question of fact — Grant of protection improper. See Tenancy Laws — Assam Non-Agricultural Urban Areas Tenancy Act (12 of 1955), S. 5. ILR (1964) 16 Assam 354.

—S. 107 — Appeal — Procedure in — Power of remand — High Court can remand where necessary matter to trial Court. See Constitution of India, Art. 226. AIR 1963 Cal 152.

—S. 107 — "Any other Court" means any Court other than the Court which passed the decree under

Cl. 12, Letters Patent and the Court or Courts which may hear appeals from that decree. See Decrees and Orders Validating Act (1936), S. 2. **AIR 1955 N U C (Cal) 2930.**

——S. 107 — Local inspection by appellate Court — Effect on hearing of appeal — **Held**, that the local inspection by the appellate Court did not in any way vitiate the hearing of appeal. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 32 (3). **AIR 1953 Cal 126.**

——**S. 107** — Powers of Appellate Court are the same as that of the trial Court — Appellate Court can extend the time granted by trial Court for payment of deposit. See Jammu and Kashmir Right of Prior Purchase of Property Act (2 of 1993 Smt.) S. 21 (4). **AIR 1964 J and K 54.**

——S. 107 — Withdrawal in appeal — Formal defect — Sufficient grounds — An appellate Court can allow withdrawal from a suit. See Civil P. C. (5 of 1908), S. 92. **AIR 1952 Kutch 94.**

——S. 107 — Remand under inherent power — No appeal lies. See Civil P. C. (5 of 1908), S. 151. **AIR 1953 Madh-Bha 16.**

——S. 107 — Order under S. 47 (2) converting application into suit — Order passed after proper exercise of jurisdiction — Order cannot be interfered with in appeal by considering propriety of order on merits of the case. See Civil P. C. (5 of 1908), S. 47 (2). **(1965) 2 Mad L J 548 = AIR 1966 Mad 308.**

——S. 107 — Inference from facts raises a question of law. **(1963) 14 S T C 947 (Mad) (DB).**

——S. 107 (2) — Power of appellate Court to refer to arbitration — Appellate Court can refer disputes for the decision of arbitration. An appeal has always been held to be continuation of the original suit. See Arbitration Act (1940), S. 2 (c). **AIR 1955 Mad 693.**

——S. 107 — Appeal by election petitioner against order of Tribunal in election petition — Application by appellant for withdrawal of appeal — Withdrawal of appeal amounts to withdrawal of election petition — Order 23, R. 1 of the Code will not apply — Procedure under Ss. 109 & 110 will have to be applied — Matter involving question of fact — Tribunal is appropriate forum. See Representation of the People Act (1951), S. 116A. **AIR 1962 Orissa 177.**

——S. 107 — Power of Municipal Council to reduce tax under S. 150 — Can be exercised by Appellate authority under S. 153. See Municipalities — Orissa Municipal Act (23 of 1950), S. 150. **(1962) 28 Cut L T 414 = (1962) 4 Orissa J D 266 = 1 East L R 174.**

——Ss. 107, 100 — Conclusion arrived at by trial Court without closely reading evidence — First appellate Court without going through evidence accepting trial Court's conclusion — Case liable to be remanded.

It is not open to the second appellate Court to assess the evidence one way or the other and disagree with the assessment of the first appellate Court. But it is wholly within the jurisdiction of the second appellate Court to examine if the first appellate Court keeps itself within its bounds and applies its mind properly and comes to a conclusion on materials on record i.e., if the first appellate Court exercises its jurisdiction properly vested in law under S. 107.

Hence, where the trial Court did not closely read the evidence and the first appellate Court also did not go through the evidence and mentioned that it had arrived at the same conclusion as of trial Court on scrutiny of evidence the case was liable to be remanded to the first appellate Court to go through the entire evidence carefully after hearing the parties. **(1962) 2 O J D 269 = 1 Fac L R 177 = 28 Cut L T 506.**

——S. 107—Finding based on document admitted on record without objection in trial Court — No interference in appeal on ground that mode of proof was irregular or insufficient. See Civil P. C. (5 of 1908), Ss. 100-101. **AIR 1965 Pat 73.**

——S. 107 (2) — Appeal from preliminary decree in partition suit — Death of one of appellants pending appeal—Legal representatives not brought on record within time—Appeal abates against heirs of deceased —O. 22, R. 3 does not apply — Legal representatives cannot be made parties. See Civil P. C. (5 of 1908), O. 22, R. 3. **AIR 1961 Pat 178.**

——S. 107 — Pauper plaintiff partly succeeding and partly failing — There is no provision in the Code which in terms applies in such a case. See Civil P. C. (5 of 1908), S. 35. **AIR 1959 Pat 384.**

——S. 107; O. 41, R. 1 — Question whether there is completed agreement between parties is a question of fact. **AIR 1951 Pat 299.**

——S. 107 — Record of compromise and dismissal of suit on application by defendant — Plaintiff not disputing factum of compromise as distinguished from its validity and not inviting Court to frame issue on that point — Plaintiff cannot dispute factum of compromise in appeal against decree. See Civil P. C. (5 of 1908), S. 96. **AIR 1963 Raj 63.**

——S. 107 —Leave to sue —Appellate Court can grant. See Civil P. C. (5 of 1908), S. 20 (b). **A I R 1961 Raj 187.**

——S. 107 — Relief under S. 24 of Hindu Marriage Act, for temporary alimony granted during pendency of suit enures during pendency of suit only — Appeal against decision of trial Court in suit — Appellant must file fresh application under S. 24 of the Marriage Act read with S. 107, Civil P. C. See Hindu Marriage Act (1955), S. 24. **AIR 1961 Raj 51.**

——S. 107 — 'Suit" and "Court" — Meaning of —An appellate Court should be considered to be a "Court" within the definition of S. 2 (c) of the Arbitration Act (1940), and the term "suit" should be construed as including an appeal within S. 21 of the said Act. See Arbitration Act (1940), S. 21. **AIR 1957 Raj 278.**

——S. 107 — Power to stay execution — Though no order of stay of execution can be made under O. 41, R. 5 yet an order of stay of execution can be made under S. 107 read with O. 21 R. 26. See Civil P. C. (5 of 1908), O. 41, R. 5. **AIR 1956 Raj 49.**

——**S. 107 and O. 21, R. 26 — Stay of execution — Power of appellate Court.**

It is open to the High Court to allow stay of the execution during the pendency of the appeal. **A I R 1955 NUC (Raj) 4666.**

——S. 109—Certificate of fitness—The mere fact that the question involved is of considerable public importance is not sufficient to warrant in granting certificate under Art. 133 (1) (c) of the Constitution when there is no substantial question of law involved. See Constitution of India, Art. 133 (1) (c). **A I R 1956 Ajmer 70.**

——S. 109 — No right of appeal unless rights of parties are finally determined. See Constitution of India, Art. 133. **AIR 1956 Ajmer 16.**

——S. 109—Final order — The question whether decree is executable or not is a preliminary question and does not finally determine the execution case which has to be proceeded with. See Constitutiou of India, Art. 133. **AIR 1953 Ajmer 51.**

——S. 109 — Application for certificate under Art. 133 (1) of the Constitution—Prayer—Prayer must state specific provision under which certificate is asked for—Prayer in general terms not sufficient. See Constitution of India, Art. 133 (1). **AIR 1959 All 572 (FB).**

——S. 109—Final order—What constitutes—Conditions for — In order to make an order a final order

there are three conditions to be satisfied — Conditions stated. See Constitution of India, Art. 133. AIR 1956 All 457 (FB).

——S. 109—Power of High Court to grant leave. See Constitution of India, Art. 133. AIR 1956 All 321.

——S. 109—Right of appeal in criminal matters:held is restricted. See Constitution of India, Art. 134 (1) (c). 1957 Cri L J 1213=AIR 1957 Andh Pra 871.

——S. 109 — "Judgment, decree or final order" — Appeal from judgment in revision — The judgment in the Civil Revision Petition was a final order within the meaning of Art. 133 of the Constitution. See Constitution of India, Art. 133 (1). A I R 1957 Andh Pra 538.

——S. 109 — "Judgment or final order" — Order in appeal against order directing appointment of receiver—The order is neither a judgment nor a final order within the meaning of Art. 133 (1) and no appeal lies to Supreme Court. See Constitution of India, Art. 133 (1). AIR 1956 Andhra 159.

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——S. 109—Final order—An order remanding an application for execution of decree for possession to the lower Court, to be disposed of according to law is not a "final order". See Constitution of India, Art. 133. AIR 1951 Assam 73.

——Ss. 109, 96, 100, 101 and 104—Non-payment of penalty—Institution of appeal — If barred — Letters Patent (Bombay), Clause 15—Income-tax Act (1922), S. 30 (1) — Non-payment does not affect the right of appeal at all but affects merely the hearing and final disposal of the appeal. See Income-tax Act (1922), S. 30 (1). AIR 1958 Bom 345.

——S. 109—Reference to High Court in income-tax proceedings—Decision under Income-tax Act, S. 66 is not "judgment". See Constitution of India, Art. 133 (1). AIR 1952 Bom 479.

——S. 109—Appeal to High Court from decision of Election Tribunal under S. 116-A, Representation of the People Act—Is a "civil proceeding". See Constitution of India, Art. 133 (1). AIR 1963 Cal 364.

——S. 109—Judgment or final order — Test is final determination of proceeding—Order for retrial is not judgment or final order. See Constitution of India, Art. 134 (1). 1962 (1) Cri L J 321=AIR 1962 Cal 417.

——Ss. 109, 110—Right to appeal—Sections 109, 110 lay down in what cases an appeal shall lie. An appeal to the Supreme Court from a judgment, decree, order passed in a civil proceeding is an appeal under the Code. See Constitution of India, Art. 133. AIR 1958 Cal 296.

——S. 109—Leave to appeal from revisional judgment of High Court — Limitation — Date of signing cost-sheet not material. See Limitation Act (1908), Art. 179. AIR 1953 Cal 13.

——S. 109—Substantial question of law — Certificate of fitness—Whether the pleadings as drafted amounted to an admission or not is not a point of great public or private importance which would entitle High Court to certify a case for appeal. The case does not involve a substantive point of law. See Constitution of India, Art. 133 (1). AIR 1951 Cal 409.

——S. 109—Final order—Order of remand—An ordinary order of remand cannot be described as a final order and therefore no appeal lies from it to the Supreme Court. See Constitution of India, Art. 133 (1). AIR 1951 Cal 300.

——S. 109—Certificate of fitness—Principle of natural justice—Supersession of Municipal Committee under S. 238, Punjab Municipal Act, without notice—Validity — Fitness of case for appeal. See Constitution of India, Art. 133. AIR 1956 Him Pra 25.

——Ss. 109 and 110—Value of subject-matter.

As the value of the subject-matter was not Rs. 20,000 or upwards the case was not covered by S. 109(a) or (b). AIR 1954 Him Pra 81.

——S. 109 (c) — Certificate as to fitness — As it was a case of public importance affecting the litigants of the State of Himachal Pradesh, the case should be certified as fit for appeal to the Supreme Court. See Constitution of India, Art. 133 (1) (c). AIR 1952 Him Pra 14.

——S. 109—Order of High Court on a reference under S. 82 of Hyderabad Income-tax Act — Appeal — A "judgment" on a reference under S. 82, Hyderabad Income-tax Act is not meant as a "judgment, decree or final order" within the meaning of Arts. 132 or 133. Hence an appeal is fit to be dismissed in the instant case. See Constitution of India, Art. 132. AIR 1956 Hyd 136.

——S. 109—Certificate under Art. 133 (1)(b) of the Constitution when cannot be granted. See Constitution of India, Art. 133 (1) (a) and (b). A I R 1955 Hyd 209.

——S. 109—"Decree"—Preliminary decree—Finality of order—Appeal to Supreme Court—Under Art. 133 of the Constitution, a preliminary decree as well as a final decree is appealable. The word "decree" which occurs in that Article and S. 109, Civil P. C., is not qualified by the words "preliminary" or "final". See Constitution of India, Art. 133. A I R 1956 Madh Bha 151.

——S. 109—Certificate of fitness for appeal to the Supreme Court under Art. 134 (1) (c) of the Constitution—Necessary conditions. See Constitution of India, Art. 134 (1)(c). 1956 Cri L J 69 = A I R 1956 Madh Bha 20.

——S. 109—Substantial question of law—Decision of single judge in revision — Appeal—Maintainability—The question whether on the language of S. 23, Madhya Bharat High Court of Judicature Act, an appeal can lie to a Division Bench against decision of single judge in revision under S. 115 of the Code is not a substantial question of law, within the meaning of Art. 133 (c). See Constitution of India, Art. 133 (c). AIR 1955 Madh Bha 66.

——S. 109—Application under S. 66 (2) of Income-tax Act (1922) — Dismissal of — Appeal to Supreme Court — Maintainability — No appeal lies to Supreme Court. See Income-tax Act (1922), S. 66 (2). AIR 1955 Mad 624.

——S. 109 (c)—Certificate of fitness under Art. 134 (1) (c) of the Constitution — Considerations involved are the same as those under S. 109 (c), Civil P. C. See Constitution of India, Art. 134 (1) (c). A I R 1953 Mad 66.

——S. 109—Application for leave to appeal to Federal Court filed before commencement of Constitution—Appeal lies to Supreme Court even if value is below Rs. 20,000. See Constitution of India, Art. 133. AIR 1951 Mad 251.

——S. 109—Art. 133 of the Constitution and S. 109 of Civil P. C.—Art 133 (1)(a) is wider in scope than S. 109 (a) under which right of appeal is restricted to a judgment, decree or final order passed on appeal. See Constitution of India, Art. 133. AIR 1955 Nag 287.

——S. 109 (c) — Certificate of fitness for leave to appeal — The interest of the joint family members could not be extinguished by execution of a mere personal decree against the ex-Thikadar and therefore, it was not a fit case where leave could be granted; nor was it a case where any substantial question of law was involved. See Civil P. C. (5 of 1908), S. 110. AIR 1954 Orissa 114.

——S. 109—Judgment written by judge on retirement pronounced by successor — Successor not debarred from hearing appeal against the judgment in the capacity of appellate Court. See Bengal Agra and Assam Civil Courts Act (1887), S. 38(2). AIR 1953 Orissa 298.

● ——S. 109 and S. 2(2)—Decree—Each matter decided in a suit cannot constitute a separate decree. See Constitution of India, Art. 133(1). AIR 1956 Pat 325 (FB).

——S. 109 — Civil proceeding — (Income-tax Act (1922), S. 23)—Final Order — The proceedings were renenue proceedings, and as the order finally determined the rights of the assessees to obtain writs, it was a final order within the meaning of Art. 133 (1) of the Constitution. See Constitution of India, Art. 133 (1). AIR 1956 Pat 175.

——Ss. 109, 110—Question involving right of public servant to sue State for arrears of salary — Leave to appeal to Federal Court. AIR 1951 Pat 439 (1).

● ——Ss. 109, 110—Certificate of fitness— Difference of opinion on interpretation of S. 5 (2) (a) (v), Bihar Sales Tax Act — Leave to appeal to the Supreme Court should be given. See Constitution of India, Art. 133 (1) (c). AIR 1951 Pat 29 (FB).

——S. 109 (c) — Interlocutory order — Certificate of fitness—As the matter was not of great public private importance, the case was not fit for granting leave to appeal under S. 109 (c). AIR 1951 Punj 412.

——Ss. 109, 110 — Appreciation of approver's evidence by High Court. Placing reliance upon the approver's evidence is hardly a matter that could be made the subject of an appeal to the Supreme Court. See Constitution of India, Art. 132. AIR 1951 Trav-Co 45.

● ——S. 110—Supreme Court appeal — Court-fee — Single petition under Art. 226 of Constitution challenging various assessment orders — Appeal to Supreme Court—Court-fee.

The case originated out of one petition under Art. 226 of the Constitution challenging the validity of various assessment orders. There was only one proceeding and it could not be said that there were as many proceedings as there were assessment orders for the petitioner had by a single petition challenged them all together.

Held, that when an appeal was taken to the Supreme Court from the judgment of the High Court in such a petition, it was impossible to contend that there were more appeals than one. Therefore, the appellant before the Supreme Court was liable only to pay one set of court-fee and other charges as in a single appeal. Lajwanti Sial's case, Petition for Special Leave No. 673 of 1959 and Kishinchand Chellaram's Case, Civil Appeals Nos. 462 to 465 of 1960, Distinguished. Chandra Bhan Gosain v. State of Orissa, (1963) 50 I T R 195=(1963) 2 S C J 713= (1963) 2 I T J 467 = 1964 S C D 415 = (1963) 14 S T C 918=(1963) 2 S C W R 342= 30 Cut L T 261 =(1964) 2 S C R 879= (1963) 2 Ker L R 207 = AIR 1967 S C 767.

● ——Ss. 110 (3), 34, 35 — Constitution of India, Art. 133 (1)—Decree of affirmance—Appellate decree confirming trial Court decision but making variation in regard to order as to Costs — Character of decree is not affected— Appellate decree is one of affirmance — Appellate decree however making variation in respect of award of interest before date of decree — Character of appellate decree is affected and it is a decree of variance — In former case matter of cost is a matter of discretion but order for interest forms part of dispute and variation in regard to it forms integrant part of decision. AIR 1961 S C 1795.

● ——S. 110 (3) — Constitution of India, Art. 133 (1) —Appellate Court making variation in decision of trial court either because of concession in that behalf or consent of parties — Variation does not affect character of a ppellate decree — Principle of affirmance on which provision rests postulates either affirmance or variation by appeal Court as an order of adjudication and that necessarily means decision of appeal Court on merits. AIR 1961 S C 1795.

——S. 110—Substantial question of law — Where the question is of great public importance but there is no divergence of views among High Courts, it cannot be held that a substantial question of law is involved. See Constitution of India, Art. 133 (1) (c). AIR 1956 Ajmer 71.

● ——S. 110 — Application for certificate under Art. 133 (1) of the Constitution — Prayer — Prayer must state specific provision under which certificate is asked for — Prayer in general terms not sufficient. See Constitution of India, Art. 133 (1). AIR 1959 All 572 (FB).

——S. 110—Suit instituted in 1940 — Valuation of subject-matter of appeal more than Rs. 10,000/- but less than Rs. 20,000/- — Question of vested right of appeal — No vested right of appeal — No appeal lay as of right to the Supreme Court. See Constitution of India, Art. 133. AIR 1956 All 638.

——S. 110—"Substantial question of law" — Meaning of — The words 'substantial question of law" must be given the same meaning under S. 7 (1) (a), Industrial Disputes (Appellate Tripunal) Act (1950), S. 7 (1) (a) as is given under S. 110 of Civil P. C. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7 (1) (a). AIR 1956 All 491.

——S. 110—Claim for share not involving partition—Question is not one with respect to whole property. See Constitution of India, Art. 133. AIR 1956 All 321.

——S. 110 — Decree of variance — A decree of variance must be one where there is variation in the substantive relief in respect of the whole or part of party's claim. See Constitution of India, Art. 133(1)(b). AIR 1955 All 680.

● ——S. 110 — "Judgment, decree or final order appealed from"—Meaning. It means not in entirety but that part of the judgment, decree or final order of the High Court which is the subject-matter of the proposed appeal. See Constitution of India, Art. 133. AIR 1952 All 942 (FB).

——Ss. 110, 109—Reference under S. 66, Income-tax Act — Decision on, is not judgment within the meaning of Art. 133 of the Constitution—Neither Art. 133 nor Ss. 109 and 110 of Civil P. C. will apply — S. 66-A(2), Income-tax Act is applicable in such cases. See Constitution of India, Art. 133. AIR 1962 Andh Pra 391.

——S. 110 — Leave to appeal — A person desiring to appeal to the Supreme Court under the Constitution in a civil matter must simultaneously make his appeal under the Civil P. C. See Constitution of India, Art. 133. AIR 1958 Cal 296.

——S. 110 — Subject-matter of dispute — Does not mean the property or the matter to which the dispute relates but means the matter over which the parties are in disagreement. See Constitution of India, Art. 133 (1) (a). AIR 1955 NUC (Cal) 4509.

——S. 110 — "Amount or value of subject-matter in appeal".—Means the amount or value of the subject-matter of all disputes between the parties. See Constitution of India, Art. 133 (1). AIR 1953 Cal 509.

——S. 110—Substantial question of law—The arrangements made by the parties whether would be binding on the plaintiff is a substantial question of law. See Constitution of India, Art. 133 (b). AIR 1953 Cal 282.

——S. 110—Value of subject-matter of dispute—The dispute was whehter or not the plaintiff was entitled

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——S. 110 — Suit instituted before Constitution — Vested right of appeal — Effect of coming into force of Constitution — In regard to a judgment which is passed after the Constitution came into force the appeal is governed by Art. 133 (1) (a) and not by S. 110 of the Code — See Constitution of India, Art. 133 (1). AIR 1956 Punj 228.

——S. 110 — Substsntial question of law — Question as to special agricultural custom — No substantial question of law involved in the case for purposes of S. 110, even though the custom may be at variance with the general custom on the question. AIR 1951 Punj 293.

——S. 110 — Constitution of India, Art. 133 (1) — Difference between — Clauses of Article are independent entities — Interpretation — Earlier decisions under S. 110 — Use of — Each clause in Art. 133 (1) is marked separately and begins with "that", and stand as independent entity and not as an alternative to any portion of the next preceding clause. Therefore, many of the observations in the earlier judgments, must be read subject to this vital difference.— See Constitution of India, Art. 133 (1). A I R 1956 Raj 169.

——S. 110 — Certificate of fitness — Appreciation of approver's evidence by High Court — The question whether the High Court went wrong in placing reliance upon the approver's evidence is hardly a matter that could be made the subject-matter of an appeal to the Supreme Court — See Constitution of India, Art. 132. AIR 1951 Trav.Co 45.

——S. 110—Person over 60 years if disqualified from holding office as Judge — There is nothing in the High Court Act or in the Indian Constitution to indicate that a person who is qualified and fit to hold office as a High Court Judge would be deemed to be disqualified and unfit for the place merely because he has passed the age of sixty years — See Constitution of India, Art. 132. AIR 1951 Trav. Co 45.

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——S. 113 — Constitution of India, Art. 133 (1) — 'Court immediately below' — Refers to Court which is subordinate to High Court — Decision of subordinate Judge reversed in appeal by a single Judge of High Court but restored by a Division Bench on Letters Patent appeal — Judgment is one of affirmance. AIR 1962 Mad 490 (DB).

——S. 113 — References under — Distinct from each other — Non-applicability of principles of abatement to reference under S. 113 read with O. 46 — Cannot make these principles non-applicable to reference under S. 18. See Land Acquisition Act (1894), S. 18. ILR (1963) 2 Punj 442.

——S. 114 and O. 47, R. 1 — Grounds — Erroneous view of law on debatable point is not error apparent on face of record and is not ground for review. A I R 1951 Ajmer 84.

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SECTION 115

SYNOPSIS

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1. Applicability and scope.

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——S. 115 — Revision against decision of Appellate Industrial Disputes Tribunal — (Industrial Disputes (Appellate Tribunal) Act (1950), S. 9.) High Court in revision is not exercising an appellate jurisdiction over the decision of the Tribunal. AIR 1958 Cal 68.

——S. 115—Order made in the exercise of revisional jurisdiction — No appeal lies under Cl. 15 of Letters Patent—See Letters Patent (Cal), Cl. 15. A I R 1953 Cal 636.

——S. 115—Revision — Order of the Court of Small Causes on appeal — Revision. The High Court has power to revise the orders of the Court of Small Causes — See Payment of Wages Act (1936), S. 17. AIR 1951 Cal 29.

——S. 115 — Appellate Court cannot make reference —That the reference is made in review proceeding makes no difference—Revision lies against judgment following on such reference — See Arbitration Act (1940), S. 21. AIR 1952 Him Pra 48.

——S. 115—High Court's power in revision—Refusal of—Amendment — Revision. The power of revision under S. 12 of the Hyderabad Small Cause Courts Act is wider than that under this section — See Provincial Small Cause Courts Act (1887), S. 25. A I R 1953 Hyd 212.

——S. 115 — Discretion exercised by lower Court—High Court will interfere in proper case. ILR (1952) Hyd 542 = A I R 1952 :Hyd 139 (140) (Pt B) (Prs 3, 4).

——S. 115—Revision—Suit for permanent injunction on the ground of plaintiff's exclusive possession and enjoyment—Order of remand in—High Court sitting in revision would not interfere with the order. See Civil Procedure Code (5 of 1908), O. 41, R. 23. AIR 1959 J and K 122.

——S. 115—High Court's power of revision not ousted under the section—See Civil Procedure Code (5 of 1908), O. 38, R. 5. AIR 1962 Ker 261.

——Ss. 115, 47 — Auction sale by officer of Court—Sale subject to approval of Court—Power of Court to set it aside — See Civil Procedure Code (5 of 1908), O. 21, R. 84. AIR 1960 Ker 69.

3. Grounds for interference.

——S. 115 — No interference on ground that order was incorrect or unjustified. AIR 1955 Ajmer 6 (2).

——S. 115—Interference by High Court — Decision must result in "grave wrong" and "defect of law" and there must be no other remedy for remedy available is too remote or cumbersome. A I R 1951 Ajmer 90.

——S. 115, O. 33, R. 5 (e) — Order of lower Court rejecting application for permission to sue as pauper — Order found proper and not irregular or illegal — No interference in revision. A I R 1963 Andh-Pra 370.

——S. 115 — Defective issue — Issue framed in the presence of the counsel of the applicant — Applicant cannot subsequently complain that it was defective— It would be no ground for interference in revision. See Civil Procedure Code (5 of 1908), O. 14, R. 1. AIR 1955 NUC (Bilaspur) 4840.

——S. 115 and O. 14, R. 3 — Error of procedure— Disregard of procedural laws by subordinate Courts —Interference in revision permissible notwithstanding that the subordinate Court had jurisdiction to decide the case — Issue not supported by pleadings raised by appellate Court — Revision lies. (1965) 67 Bom L R 352=1965 Mah L J 537 = ILR (1965) Bom 783 (DB).

——S. 115 — Mere error of law — No interference in revision. (1965) 67 Bom L R 352=1965 Mah L J 537 =ILR (1965) Bom 783 (DB).

——S. 115 and O. 9, R. 13 — Revision — If an order is made which cannot be supported, the High Court can interfere in revision. See Civil P. C. (5 of 1908), O. 9, R. 13. (1954) 56 Bom L R 74 = ILR (1954) Bom 371.

——S. 115 — Alternative remedy available — Is not a good reason to refuse to interfere on that account. AIR 1952 Cal 382.

——S. 115 — Illness of witness — Proof of—Medical report is inadmissible as evidence — Order based on report for examination on commission — High Court will not interfere in revision. See Civil P. C. (5 of 1908), O. 26, R. 1. AIR 1961 Mad 158.

——S. 115 — Decision based on sound grounds—No interference. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (1949), S. 12-B. (1956) 1 Mad L J 212.

——S. 115 — Interference by High Court in second appeal or revision. See Civil P. C. (5 of 1908), S. 100. AIR 1952 Mad 323 (FB).

——S. 115 — Decree before expiry of time prescribed by Art. 158 of Limitation Act — Revision — The decree passed is illegal and would be set aside in revision. See Arbitration Act (1940), S. 17. AIR 1951 Mad 658 (1).

——S. 115 — Order awarding compensatory cost — Interference in revision. See Civil P. C. (5 of 1908), S. 35A. AIR 1951 Mad 655.

——S. 115 — Powers of Commissioner — Finding outside scope — Objection rejecjed by lower appellate Court — Revision will lie. See Civil P. C. (5 of 1908), O. 26, R. 10. AIR 1960 Orissa 66.

——S. 115 — Decision as to sufficiency of grounds under O. 23, R. 1 (2) (b) — Revision — It is not open to the High Court to interfere in revision. See C.P.C. (5 of 1908), O. 23, R. 1 (2) (b). AIR 1956 Orissa 77.

——Ss. 115, 151 and 152 — Parties having full knowledge of decree — Setting aside of decree on ground of being erroneous or inequitable. See Civil P. C. (5 of 1908), S. 151. AIR 1952 Pat 478.

——S. 115 — Court subordinate to High Court — Election Commissioner — High Court can interfere in revision with the order of an Election Commissioner. AIR 1951 Pat 209.

——S. 115 — Decision based on insufficient evidence. AIR 1955 NUC (Punj) 5722.

——S. 115 — Addition of parties — Discretion of trial Court — Interference in revision — Where the Court has acted in aid of justice and has added a person to the suit, the High Court will not interfere. See Civil P. C. (5 of 1908), O. 1, R. 10 (2). AIR 1951 Punj 352.

——S. 115—Maintenance pendente lite and expenses of proceedings — Award of — Discretion of Court — Revision — If the discretion is exercised perversely the High Court will be justified in interfering with it. See Hindu Marriage Act (1955), S. 24. AIR 1958 Raj 322.

4. Inherent powers of revision.

——Ss. 115, 151 — Revision dismissed for default — Restoration — Inherent powers — It can be restored by the High Court in the exercise of its inherent jurisdiction. AIR 1957 Nag 83.

——S. 115—Application for stay after taking various steps in suit but before filing written statement — Stay order beyond scope of prayer — Reasons for stay not stated — Ends of justice requiring final adjudication of controversies — Stay held was not proper — Stay under inherent powers — High Court could interfere. See Arbitration Act (1940), S. 34. AIR 1964 Pat 542.

5. New plea.

A. Questions of fact.
B. Questions of law or jurisdiction.

5-A. Questions of fact.

——S. 115 — Material fact — Absence of — Effect. See Civil P. C. (5 of 1908), O. 6, R. 14. AIR 1955 Bhopal 18.

——S. 115 — Question of fact — Whether a certain company is bogus or a real one, is a question of fact and cannot be decided upon a writ petition. See Constitution of India, Art. 226. A I R 1956 Bom 749.

——S. 115 — Question of fact involved in case — No error of jurisdiction — Revision does not lie. AIR 1958 Pat 618.

5-B. Questions of law or jurisdiction.

——S. 115 — Question of jurisdiction — Issue as to — Duty of Court — Nature of suit — Determining factor—See Provincial Small Cause Courts Act (1887), S. 15. AIR 1956 Bom 254.

——S. 115 — Substantial question of law —Decision of single Judge in revision—Appeal—Maintainability — Whether an appeal can lie to a Division Bench against the decision of a single Judge in revision under S. 115 is not a substantial question of law. See Constitution of India, Art. 133. AIR 1955 Madh-Bha 66.

6. Finding of facts — When can be interfered.

——S. 115 — Erroneous finding of fact or law by lower Court does not give rise to any question of jurisdiction. See Himachal Pradesh (Courts) Order (1948), Para. 35. AIR 1953 Him-Pra 19.

——S. 115 — Findings of fact not based on legal evidence but on mere speculation, cannot be upheld in revision. AIR 1955 NUC (Manipur) 4338.

——S. 115 — Applicability to orders erroneous on facts or law — Courts have no jurisdiction to interfere. AIR 1953 Trav-Co 558.

7. "Case decided" —Meaning of.

——S. 115 — Case decided — Order under O. 11, R. 18, Civil P. C. — The order does not amount to a case decided. See Provincial Small Cause Courts Act (1887), S. 25. AIR 1956 Ajmer 32.

——S. 115 — "Case decided" meaning of—Interlocutory order. Where the Court assumes jurisdiction which it does not possess, the order will amount to "case decided" and a revision lies against it. See Provincial Small Cause Courts Act (1887), S. 25. AIR 1956 Ajmer 9.

——S. 115 — "Case decided" — Includes decision on any matter in controversy — Interlocutory orders would not be covered—No line can be drawn between what is "case decided" and what is not. AIR 1951 Ajmer 90.

——S. 115 — Case decided — Stay order under S. 10 — It can be said that there was a case decided within the meaning of this section. AIR 1952 All 940.

——S. 115 — Order rejecting pauper application is case decided — Application rejected on irrelevant consideration — It is a fit case for interference in revision. AIR 1952 All 582.

——S. 115 — Case decided—Interlocutory order.

Where a Court orders that old issues should be reframed and some fresh issues added no case is decided by the Court and no revision lies against the order. AIR 1952 All 355.

——S. 115 — "Case decided" — Mistake in interpretation of law or evidence would be no ground for interference by the revisional Court. See Bhopal and Vindhya Pradesh (Courts) Act (1950), S. 34. AIR 1956 Bhopal 25.

——Ss. 115 and 151 — Case decided — Interference — (Constitution of India, Art. 227).

High Court can interfere if there has been obvious error in procedure. AIR 1953 Sau 30.

8. Interlocutory orders.

——S. 115 — Revision under interlocutory order — Suit finally decided — Maintainability. The right to challenge interlocutory order is not taken away. See Provincial Small Cause Courts Act (1887), S. 25. AIR 1956 Ajmer 9.

——S. 115 — Interlocutory order — Order refusing to admit document in evidence — Order cannot be set aside in revision as it would cause grave injustice to the plaintiff. AIR 1951 Ajmer 72.

——S. 115 — Interlocutory orders — Revision — Court will not interfere unless there is irreparable injury. AIR 1952 Cal 353.

——S. 115 — Interlocutory orders — Word "case" in section can include interlocutory orders—Revision lies against such orders when the three conditions in first part of section are satisfied. AIR 1953 Madh. Bha 9.

——S. 115 — Jurisdiction under — Two interlocutory orders of trial Court of same date in eviction petition — Party filing revision petition against one in first instance — Revision against other order filed after disposal of first revision petition — Party not bringing to notice of Court order in first petition and obtaining interim stay order — Stay order in direct conflict with order in first revision petition — Party disentitled to invoke jurisdiction under S. 115. (Suppression of essential fact by party deprecated.) ILR (1964) Mys 314.

9. In which no appeal lies.

——Ss. 115, 96, O. 2, R. 3 — Decision must be one in which no appeal lies. AIR 1955 N U C (All) 1994.

——S. 115 — Order under O. 32, R. 2 — No appeal lies — Application under S. 115 is maintainable. See Civil P. C. (5 of 1908), O. 32, R. 2. AIR 1952 Cal 381.

10. In which no revision lies.

——S. 115—Appeal dismissed as time-barred—Second appeal lies and not revision. See Civil P. C. (5 of 1908), S. 100. AIR 1953 Ajmer 32.

——S. 115 — No deposit within prescribed time — Sale set aside and re-sale ordered — Auction purchaser can go in appeal against the order — No revision. See Civil P. C. (5 of 1908), S. 47. AIR 1957 All 558.

——S. 115 — Order directing applicant to begin evidence — Revision on — Such an order is not revisable since it is not a judicial final order but is a procedural order. AIR 1953 Bhopal 4.

——S. 115 — While deciding objection, Court can incidently go into question of title — Wrong decision — No revision. See Civil P. C. (5 of 1908), O. 21, R. 61. AIR 1953 Him-Pra 49.

——S. 115 — No revision if appeai lies. AIR 1955 N U C (Mys) 4558.

——S. 115 — Decree passed by Civil Court in its Small Cause jurisdiction — No revision lies. See Civil P. C. (5 of 1908), S. 7. AIR 1953 Trav-Co 41.

11. Other remedy open.

A. By way of separate suit.
B. Appealable orders or decisions.
C. By way of revision.

11-A. By way of separate suit.

——S. 115, O. 21, Rr. 97, 103 — Remedy by suit under O. 21, R. 103 open — Revision.

Court could revise the order under S. 115 although there is remedy by way of suit. AIR 1959 Cal 621.

——S. 115 — Another remedy by way of suit — The fact that there is another remedy by way of suit under O. 21, R. 103 of the Code, is no reason why revision will not be entertained. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 12 (b). AIR 1953 Mad 924.

11-B. Appealable orders or decisions.

——S. 115—Other remedy — No revision is tenable —Appeal lies. See Civil Procedure Code (5 of 1908), S. 2 (2). AIR 1951 Nag 269.

——S. 115—Order dismissing application for restitution —Appeal and not revision lies against such order. See Civil P. C. (1908), S. 2 (2). ILR (1965) Cut 943= 32 Cut L T 393.

——S. 115—Error of law committed by trial Court in matter of right to begin —No interference in revision —Point can be raised in appeal by aggrieved party. See Civil Procedure Code (5 of 1908), O. 18, R. 3. AIR 1955 NUC (Pat) 245.

——S. 115— Other remedy open — (Tripura Courts Order (1950), S. 34) — The only remedy which, if still open, has been specifically laid down as barring revision is the remedy of appeal. See Tripura Courts Order (1950), S. 34. AIR 1956 Tripura 26.

11-C. By way of revision.

——S. 115—Remedy by way of revision—The remedy under the C. P. C. and that by way of issue of writ of certiorari are altogether different. See Constitution of India, Art. 226. AIR 1957 Cal 560.

——S. 115 — Revision —Other remedy open—Effect. If the right of appeal has not been availed of, it is not open to get behind the decree in the guise of a revision petition against an order refusing to stay the proceedings. See Himachal Pradesh (Courts) Order, S. 35. AIR 1956 Him Pra 42.

——S. 115—Dismissal of execution case for non-production of succession certificate by heirs of decree-holder amounts to dismissal of case for default —Dismissal-order would not be decree — Dismissal-order not being within purview of S. 104 and O. 43, R. 1 would not be appeable order too—Appeal would not lie against dismissal-order and revision against

order would be competent. See Civil:P. C. (1908), S. 2 (2) (b). **ILR (1965) Cut 823.**

12. Jursidiction.

●——S. 115—Order rejecting complaint—Jurisdiction of High Court to set aside order exists. See Criminal P. C. (1898), S. 195. **1956 Cri L J 781 = AIR 1956 S C 391.**

——S. 115—Question of jurisdiction—Revision against interlocutory order — Question that trial Court had no jurisdiction to try suit cannot be raised, when suit is pending. **AIR 1951 Ajmer 90.**

——S. 115—Return of award for want of jurisdiction —Appeal — Revision — The order can be challenged by a revision petition. See Arbitration Act (1940), S. 17. **AIR 1956 Assam 85.**

——S. 115—Jurisdiction — Order of Chief Judge— If can be revised by High Court in appeal—Order cannot be revised by High Court. See Limitation Act (1908), S. 3. **ILR (1951) 1 Cal 198.**

——S. 115—Jurisdiction, power and duty of Court — Plaintiff's valuation, though erroneous, accepted on ground of want of proper standard of valuation — High Court can revise decision. See Suits Valuation Act (1887), S. 11 (1) (b). **AIR 1963 Guj 207.**

——S. 115 — Jurisdiction — Irregular exercise — Rejection of evidence.

The section is not directed against conclusions of law and fact in which the question of jurisdiction, to which alone it applies, is not involved. **AIR 1953 Madh-Bha 9.**

——S. 115—Proceeding before High Court is a civil proceeding under S. 115, C. P. Code. See Constitution of India, Art. 133 (1). **1965 Mad W N 319=AIR 1966 Mad 327.**

——S. 115:— Exclusive jurisdiction of Settlement Officer. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (1948), S. 11. **AIR 1955 NUC (Mad) 2436.**

——S. 115, O. 39, R. 1—Injunction restraining municipality from removing structure during the pendency of the suit. **AIR 1955 Punj 112.**

——S. 115—Civil Judge cannot refuse to accept deposit. See Rajasthan Civil Procedure Code Amendment Act (2 of 1951), S. 20. **AIR 1955 NUC (Raj) 358.**

——S. 115—Defence to lead evidence first — Defendant absent on date of hearing and plaintiff asked to produce his evidence — Adjournment granted to plaintiff to produce evidence —Application by defendant before date of hearing to produce evidence — Discretion of Court—The Court had a discretion to allow an opportunity to the defendant to lead his evidence. See Civil Procedure Code (5 of 1908), O. 18, R. 2 (2). **AIR 1951 Raj 166.**

——S. 115 and O. 21, R. 103—Suit filed under O. 21, Rule 103, to establish title to property of plaintiff — Stay of execution of decree sought to be executed should be allowed. **AIR 1963 Tripura 54.**

13. Exercise of jurisdiction illegally or with material irregularity.

——S. 115—Order refusing to join person as party even if erroneous is not revisable, when there is no illegality or material irregularity. **AIR 1952 Ajmer 59.**

——S. 115 — Custodian — Impleading of — Discretion of Court — Interference — The conclusion arrived at by the trial Court even if not correct would not be a sufficient ground for interference since there is no material irregularity in the exercise of jurisdiction. See Administration of Evacuee Property Act (1950), S. 50 (2). **AIR 1959 All 574.**

——S. 115—Order granting or refusing injunction — Appeal — Duty of appellate Court—Revision against appellate order—Interference.

Revisional Courts can interfere with the order of the appellate Court on the ground that jurisdiction was not properly exercised or was exercised with material irregularity. See Civil P. C. (5 of 1908), O. 39, R. 2. **AIR 1956 Bhopal 49 (b).**

——S. 115 (c) — Material irregularity — Omission to consider document in evidence. See Himachal Pradesh (Courts) Order (1948), Para. 35(1) (a). **AIR 1951 Him Pra 16.**

——S. 115—Erroneons decision by subordinate Court —Revision.

Where the trial Court has jurisdiction to decide a question, it cannot be said that it acted illegally or with material irregularity because it decides wrongly the question within its competence. See Kutch (Provice) Courts Order (1948), S. 35. **AIR 1953 Kutch 16.**

——S. 115—Jurisdiction—Material irregularity—Revision.

Where the lower Court can be said to have acted in the exercise of its jurisdiction with material irregularity, an application for the remission of the order is not governed by any law of limitation. See Kutch Province (Courts) Order (1948), S. 35 (1) (b). **A I R 1952 Kutch 31.**

——S. 115 and O. 39 R. 1 — Held, appellate Court ought not to have interfered with discretion exercised properly by trial Court in refusing to grant temporary injunction even though different view was possible on materials on record—Appellate Court, therefore, acted in exercise of its jurisdiction with material irregularity, if not in excess of its jurisdiction : Case law discussed. **(1965) 2 Law Rep 521 (Mys).**

——S. 115 and O. 11, R. 19 — Court having jurisdiction under O. 11, R. 19 to decide question of priviledge claimed by party upholding it after considering nature of documents—No illegality or material irregularity in arriving at conclusion — No interference in revision. **AIR 1951 Nag 212.**

——S. 115 — Words "illegally" and "material irregularity" — Words do not cover either errors of fact or law.

The revisional jurisdiction of High Court is circumscribed by the language of S. 115. The words "illegally" and 'material irregularity' do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with:: A I R 1957 Pat 450, Rel. on.; A I R 1938 Cal 161 and A I R 1934 Lah 563, Ref. **(1964) 66 Pun L R 264.**

——S. 115(c)—"May refer the point"—Failure to refer —Material irregularity. See Soldiers (Litigation) Act (1925), S. 12. **AIR 1951 Punj 235.**

——Ss. 115 and 151 — "Or as to which any question may arise therein" — Account books and other documents having evidentiary value—Order under R. 7(1) (a) of O. 39 in respect of such documents — Material irregularity — Order if can be passed under S. 151. See Civil P. C. (5 of 1908), O. 39, R. 7 (1) (a). **A I R 1958 Raj 218.**

——S. 115—Material irregularity in arriving at decision—What amounts to.

Where the Court totally misunderstands the question which he was to determine in order to come to a decision in the case, there is no material irregularity. See Bhopal and Vindhya Pradesh (Courts) Act (41 of 1950), S. 34 (1) (a). AIR 1955 Vindh Pra 42.

14. Failure to exercise jurisdiction.

——S. 115 and O. 21, R. 90 — Powers of High Court —Where Lower Court properly considers relative evidence and finds that there was no fraud on the part of execution creditor, the High Court cannot interfere — But held on facts that question of fraud was not properly disposed of involving as it did failure to exercise jurisdiction and vested by law (and therefore High Court interfered). 59 C W N 1082, Rel. on. ILR (1962) 2 Cal 210.

——S. 115 — Refusal to exercise jurisdiction — The High Court would interfere in revision. A I R 1953 Cal 94.

——S. 115—Erroneous decision not followed by exercise of jurisdiction—Revision.

No revision can be entertained. See Kutch (Province) Courts Order (1948), S. 35. A I R 1953 Kutch 16.

——S. 115 — Jurisdiction — Failure to exercise. The High Court will be justified in interfering. See Limitation Act (1908), S. 5. (1965) 2 Mad LJ 107=78 Mad L W 250.

15. Objection raised for first time in revision.

——S. 115 — Objection that notice of date of hearing not given raised for first time in revision before High Court — Objection disallowed. See Arbitration Act (1940), S. 30. AIR 1964 All 231.

——S. 115 — Suit for ejectment — It is for defendant tenant to contend and show before the Rent Controller that under the order his lease was extended — Defendant cannot raise the contention for the first time in revision. See Houses and Rents—Kutch Houses Rent Control Order. AIR 1952 Kutch 13.

——S. 115—New plea in revision — Cannot be raised for the first time. See Provincial Small Cause Courts Act (1887), S. 25. AIR 1955 Mad 555.

16. Error of law or fact.

——S. 115 — Cultivatory lessee — Right to redeem — (Debt Laws — U. P. Agriculturists Relief Act (2 of 1939), S. 12) — (Civil P. C. (1908), S. 115 — Error of of law). See T. P. Act (1882), S. 91 (1) (a). A I R 1955 All 610.

——S. 115—Order to deposit rent — Order of Munsif was legal and there was no error of law or jurisdiction—The discretion was correctly exercised in favour of tenant. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11-A. AIR 1958 Pat 103.

——S. 115 — Error of law not affecting the jurisdiction of the Election Commissioner to decide the matter and no revision lies. AIR 1951 Pat 209.

17. Application for revision or appeal.

——S. 115—Application in revision— If vested right. There is no authority for the proposition that an application in revision stands on the same footing as an appeal and that both are vested rights which can be taken away by enactment or necessary intendment. See Provincial Small Cause Courts Act (1887), S. 25. AIR 1958 All 409 (FB).

——S. 115—Time barred appeal — Refusal to extend time — Appeal dismissed but decree not drawn up — Revision — Competency — Conversion to appeal. The revision filed in the High Court cannot be treated as appeal. See Civil P. C. (5 of 1908), O. 41, R. 1. AIR 1959 Tripura 6.

18. Decisions as to court-fee.

——S. 115 — "Marries again" — Suit by second wife for maintenance—Second wife cannot claim separate maintenance because in her case husband has not "married again" — Leave to appeal rightly refused—Order rejecting petition and demanding court-fee held legal. See Hindu Married Women's Right to Separate Residence and Maintenance Act (1946), S. 2 (4). AIR 1955 NUC (All) 3549.

——S. 115—Order demanding additional court-fee—No revision can lie against it. See Court-fees Act (1870), S. 6A. AIR 1952 All 644.

——S. 115— Revision — Order requiring payment of additional court-fee is revisable. See Civil P. C. (5 of 1908), S. 149. AIR 1953 Madh-Bha 81.

——S. 115—Decision as to Court-fee — Interference.

Interference in Civil Revision at the instance of defendant is not permissible if it concerned merely a question of payment of less court-fee. If, however, by a wrong determination of the valuation of the suit a Court illegally exercised jurisdiction which it had not, the order is liable to be quashed under the section, even though as a result of such interference the plaintiff might be called upon to pay higher court-fee. AIR 1961 S C 1299, Foll. (1966) 32 Cut L T 434=ILR (1965) Cut 946.

——S. 115 — Question as to valuation of court-fee cannot be canvassed in revision — S. 12, Court-fees Act (1870) also does not entitle party to invoke High Court's revisional power against decision as to valuation. Court-fees Act (1870), S. 12. AIR 1961 S C 1299 and AIR 1959 Punj 629, Foll. (1964) 66 Pun L R 264.

——S. 115—Order demanding additional court-fee. An order demanding additional court-fees is revivable under S. 115, as in such cases there is a refusal to exercise jurisdiction in the matter and try the case on the merits unless additional court-fee demanded is paid. AIR 1951 Punj 238.

19. High Court's power of superintendence.

——S. 115—Order made in exercise of powers of superintendence — Excludes a judgment pronounced by a single judge. See Letters Patent (Cal), Cl. 15. AIR 1953 Cal 636.

——S. 115—Appeal under — District Court's jurisdiction — Ordinary and not special — Revision in High Court maintainable. See Houses and Rents— Madhya Pradesh Accommodation Control Act (23 of 1955), S. 9 (4). ILR (1963) M P 347.

——Ss. 115, 141 — Revision dismissed for default — Restoration of — High Court has power to restore. See Civil P. C. (5 of 1908), S. 151. AIR 1962 Madh Pra 308.

——S. 115 — Right of plaintiff interfered with by defendants on behalf of locality — Plaintiff can apply under O. 1, R. 8 and make some persons of locality as defendants — Trial Judge arbitrarily dismissing application — Revision lies. See Civil P. C. (5 of 1908), O. 1, R. 8. AIR 1960 Madh Pra 288.

——S. 115—Duty of Court — Failure to discharge — Effect — Revision — (Land Acquisition Act (1894), S. 31 (2))—The order has to be set aside in revision. See Land Acquisition Act (1894), S. 31. AIR 1958 Mad 365.

——Ss. 115, 10 — Decision of trial Court on question of law — Law not quite settled on question — View taken, a possible view — High Court will not interfere in revision. AIR 1962 Mad 447, Rel. on. ILR (1964) Mys 314.

——S. 115—Application for calling expert opinion on suspected document—Application though filed before hearing of suit rejected on ground of delay — Revi-

sion—Order would be interfered with the revision in the interest of justice. See Civil P. C. (5 of 1908), O. 16, R. 1. AIR 1953 Pat 8.

——S. 115—High Court has apart from S. 115, power to examine legality of the order under S. 15, Payment of Wages Act and is competent to interfere. See Constitution of India, Art. 227. **AIR 1960 Punj 375.**

——S. 115 — Interference in judicial matters. The powers of superintendence now enjoyed by the High Court under the present Constitution include interference in both administrative and judicial matters; but that does not mean that the High Court should invoke these powers in every case. See Constitution of India, Art. 227. **AIR 1951 Sau 43.**

——S. 115—Decree passed by civil Court in small cause jurisdiction—Revision against— Power of High Court. Power though very wide under the Constitution Art. 227 cannot be freely used as a general revisary jurisdiction. See Constitution : of India, Art. 227. **AIR 1953 Trav-Co 41.**

20. High Court's revisional powers under other Acts.

——S. 115—Rejection of application under S. 13 (5) of Delhi and Ajmer Rent Control Act (1952) — Remedy—Revision will not lie. See Houses and Rents —Delhi and Ajmer Rent Control Act (1952), S. 13 (5). **AIR 1953 Ajmer 44.**

——S. 115 — Offence under S. 193, Penal Code — Complaint by Court necessary — The order of civil Court cannot ordinarily be interfered with in revision. See Criminal P. C. (1898), S. 195. **AIR 1951 Ajmer 53 (1).**

——S. 115 — Provincial Small Cause Courts Act (1887), S. 25 (as amended by U. P. Act 17 of 1957) — Revisional jurisdiction of High Court under S. 115, C. P. C. against orders of District Court passed under S. 25 of Provincial Small Cause Courts Act — Distinction between revisional jurisdiction under S. 115, Civil P. C. and S. 25, Provincial Small Cause Courts Act, pointed out. **(1965) 2 I T J 740 (All).**

——S. 115 — High Court Rules and Orders—(Allahabad) Rules of Court (1952), Part 1, Chap. VIII, R. 5 — Order passed without jurisdiction — High Court is still not bound to interfere in special appeal unless interference is called for in the interest of equity and justice. **1964 All W R (HC) 589.**

——S. 115 — Revision—Dismissal of petition both as time-barred and on merits — See Wealth Tax Act (1957), S. 25. **AIR 1963 All 498.**

——S. 115 (c) — Decision by Assistant Commissioner as to payment of rent — Interference in revision — Interference is on a question of fact and not on any matter of procedure and is not contemplated by the provisions of S. 275 (c) of the U. P. Tenancy Act — See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 275 (c). **AIR 1955 All 557.**

——S. 115 — Bar of revisional jurisdiction of High Court under — Jurisdiction under Art. 226 or 227 of the Constitution cannot be invoked — See Municipalities — U. P. Municipalities Act (2 of 1916), S. 23. **AIR 1955 N U C (All) 2681.**

——S. 115—Exercise of discretion under S. 5 read with S. 3 of U. P. Agriculturists Relief Act (1934) — Court not exceeding its powers — Discretion cannot be interfered with in revision — See Debt Laws — U. P. Agriculturists' Relief Act (27 of 1934), S. 5. **AIR 1951 All 641 (FB).**

——S. 115 — Jurisdiction of Revenue Tribunal under S. 151 of Assam Land and Revenue Regulation (1886) —Nature of, indicated—Interference when appeal barred by time — Analogy of S. 115, C. P. C. has no application — See Assam Land Revenue Regulation (1 of 1886), S. 151. **AIR 1955 N U C (Assam) 545.**

——S. 115 — Order under S. 9, Specific Relief Act (1877)—Revision when lies.

Order is not appealable and not open to review. However interference by way of remedy is not altogether excluded and the same would depend on circumstances of each case — See Specific Relief Act (1877), S. 9. **AIR 1953 Assam 158.**

——S. 115—Revision — Order in a proceeding under S. 8 of the Bombay Court-fees Act in suit for declaration as to protection under S. 14 of the Bombay Rent Act — Even assuming that S. 29 (3) of Bombay Rent Act conferred revisional jurisdiction on the District Court, High Court is not barred from entertaining the revision against the order under S. 115 of Civil P. C.—(Bombay Court-fees Act (36 of 1959), S. 8) — (Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 29 (3)). A I R 1936 Cal 786; A I R 1944 Cal 309; I L R (1938) All 22, Ref. **('65) 67 Bom L R 210 = 1965 Mah L J 473=ILR (1966) Bom 84.**

——S. 115 — Proceedings for judicial separation by wife — Trial Court passing order granting maintenance pendente lite — Order is appealable — Revision application not maintainable — See Hindu Marriage Act (1955), S. 24. **1965 Mah L J (Notes) 107.**

——S. 115 — "Under any law for the time being in force" — Meaning of — Order under S. 24 of Hindu Marriage Act (1955)—Such an order does not amount to decree and therefore not appealable under the C. P. Code — See Hindu Marriage Act (1955), S. 28. **AIR 1960 Bom 315.**

——S. 115—Revision against order setting aside election — Question affecting jurisdiction of lower Court can be raised — See Municipalities—C. P. and Berar Municipalities Act (2 of 1922), S. 20A (5). **AIR 1958 Bom 507.**

——S. 115—Scope—The revisional jurisdiction under S 53, Dekkhan Agriculturists Relief Act (1879) is wider than the one under this section — See Debt Laws — Dekkhan Agriculturists' Relief Act (1879), S. 53. **AIR 1956 Bom 234.**

——S. 115 — Revision — Limitation — Practice of Himachal Pradesh — Ninety days rule of limitation should be adopted in the case of revision—See Limitation Act (1908), S. 3. **AIR 1951 Him Pra 16.**

——S. 115 — Powers of revision — They are wider under S. 25 of the Provincial Small Cause Courts Act (1887), than under this section—See Provincial Small Cause Courts Act (1887), S. 25. **AIR 1960 Ker 306.**

——S. 115—Payment of Wages Act (1936), S. 15 (3)— Amount of compensation to be awarded — Discretionary with authorities under the Act — Only fraction of amount permissible under Act to be paid as compensation, awarded — Interference in revision is incompetent. **(1964) M P L J (Notes) 210 = 1968 M P W R 745.**

——S. 115 — Powers of revision under S. 12-B of Madras General Sales Tax Act (9 of 1939), are wider than under S. 115 — Error of law is valid ground of interference—Error of law includes error by reason of subsequent retrospective enactment—See Sales Tax — Madras Village Sales Tax Act (9 of 1939), S. 12-B. **AIR 1960 Mad 180.**

——S. 115—(Partition Act (1893), S. 2)—Coparcenary house not impossible of reasonable division — No demand by more than half of coparceners for sale — Order for sale of house was cancelled and direction to divide house was given — See Partition Act (1893), S. 2. **AIR 1955 N U C (Mad) 900.**

—S. 115—Sales Tax — Mysore Sales Tax Act (25 of 1957), Ss. 13 (3) (b), 32, 35 and 20 — Application under S. 13 (3) (b) to Magistrate to recover sales tax due from assessee — S. 32 precludes Magistrate from going into question of validity of assessment: 16 STC 613 (SC) and 14 STC 628 (Mys) and Cr. Revision Petitions 434 and 435 of 1964 (Mys), Rel. on. Even assuming that Magistrate functions as Civil Court and not as Criminal Court and S. 32 is not attracted, S. 35 acts as a bar and precludes Court from going into question of validity of assessment — When assessee has not availed of remedies of appeal and revision under Act to question validity of assessment, he cannot contend that prohibition under S. 32 causes him hardship — Question whether S. 32 infringes fundamental right under Art. 19 (1) (f) of Constitution of India—Question when not raised in grounds of revision and when has no bearing to case must be left as purely academic question—Civil P. C. (1908), S. 115—Constitution of India, Art. 19 (1) (f) — See Sales Tax—Mysore Sales Tax Act (25 of 1957), S. 13 (3) (b). **(1965) 4 L R 444 = (1965) 2 Mys L J 712 = 1965 Kant L J 112=(1966) 18 S T C 94.**

—S. 115—Sale by receiver—The order of the lower Court setting aside sale can be interfered with in revision — See Provincial Insolvency Act (1920), S. 59. **AIR 1951 Nag 388.**

—S. 115 — Court allowing privilege under S. 124, Evidence Act — Correspondence must be in official confidence—Only public officer can claim privilege. See Evidence Act (1872), S. 124. **(1962) 28 Cut L T 591.**

—S. 115 — Final order in civil revision - Grant of leave—Leave to appeal to the Supreme Court can be granted under Art. 133 (1) (a) of Constitution, from the final order of a High Court passed in the exercise of its revisional jurisdiction — See Constitution of India, Art. 133 (1) (a) and (b). **AIR 1952 Pat 450.**

—S. 115—Order under Patiala Co-operative Societies Act (2 of 1912), S. 42 (5) (a) — Competency of revision — Order of the District Judge should be regarded as an order made while executing his own decree and accordingly is open to appeal. Hence revision therefrom is not competent — See Patiala Co-operative Societies Act, S. 42 (5) (a). **A I R 1953 Pepsu 158.**

—S. 115 — Suit for ejectment — Revisional powers of Financial Commissioner—His powers are similar to those which vest in High Court as Court of Revision under Civil P. C. — Financial Commissioner cannot pass an order, while reversing an order, which the Revenue Officer concerned is not competent to make —Revenue Officer under S. 85 enjoys the powers of a civil Court for enforcing an order of ejectment — He has also power to take back possession if wrongly delivered — See Tenancy Laws — Punjab Tenancy (East Punjab Validation of Orders, Proceedings and Acts) Act (E. P. 14 of 1948), S. 84. **1965 Cur L J 133 (Punj).**

—S. 115—Suit for dissolution of marriage—Death of husband pending revision — His legal representatives impleaded after hearing parties—No abatement. See Civil Procedure Code (5 of 1908), O. 22, R. 1. **AIR 1959 Punj 553.**

—S. 115 — Custom (Punjab) — Marriage—Dissolution of — Revision — The decision based on custom would not be interfered with — See Custom (Punjab). **AIR 1959 Punj 553.**

—S. 115 — Decree passed without waiting for 30 days — Revision—Where a decree is passed in terms of an award with the consent of both the parties thereto but without waiting for 30 days the High Court would refuse to interfere in revision — See Arbitration Act (1940), S. 17. **AIR 1953 Sau 129.**

21. Appeal and revision.

—S. 115—Order rejecting review — Appeal—Revision—Order can be brought into question in revision. See Civil Procedure Code (5 of 1908), O. 47, R. 7. **AIR 1957 All 400.**

—S. 115 — High Court can treat appeal as revision if case is fit one for interference. **ILR (1964) Andh Pra 734 (DB).**

—S. 115 — Appeal barred by limitation cannot be treated as revision — See Khasi States Administration of Justice Order (1950), R. 27. **AIR 1953 Assam 207.**

—S. 115—Appeal after rejection of revision—The jurisdiction of the High Court cannot be invoked—See Civil Procedure Code (5 of 1908), S. 100. **A I R 1951 Madh-Bha 60.**

—S. 115 — (M. B. Sales Tax Act (30 of 1950), S. 12 (2) Proviso 3)—Retrospective operation—Applicability to proceedings commenced before amendment — Appeal and revision. The dealer's rights of revision are not affected—See Sales Tax—M. B. Sales Tax Act (30 of 1950), S. 12 (2), Proviso 3. **AIR 1958 Madh-Pra 282.**

—S. 115—Remand case—No decree—Adverse finding against appellant — Second appeal not competent —Revision or miscellaneous appeal may lie—See Civil Procedure Code (5 of 1908), O. 41, R. 23. **AIR 1961 Mad 262.**

—S. 115 — Second appeal and revision petition in the alternative—Must be deprecated — See Civil Procedure Code (5 of 1908), S. 73. **AIR 1954 Mad 66.**

—S. 115—Order on appeal—Revision. In view of Ss. 39 and 41 of the Arbitration Act (1940) the High Court possesses power of entertaining petitions for revision, against an order passed on appeal — See Arbitration Act (1940), S. 39. **AIR 1951 Pepsu 115.**

—S. 115—Order of District Judge in appeal—Revision. Revision cannot be treated as one under this section — See Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act (19 of 1947), S. 7-A. **(1960) 62 Punj L R 161=ILR (1960) Punj 664.**

—S. 115 and O. 41, R. 1—Objection raised in memorandum of appeal or revision—Objection not pressed at time of hearing arguments — Presumption is that they were abandoned. **AIR 1953 Raj 155.**

—S. 115 — Decree — Stay order—Revision is maintainable, since no appeal lies — See Civil Procedure Code (5 of 1908), S. 2 (2). **AIR 1953 Trav-Co 367.**

● —S. 116—Hyderabad High Court—It has power to permit any Advocate to appear in a particular civil case — See Legal Practitioner. **A I R 1951 Hyd 140 (FB).**

—Ss. 120, 21—S. 21 does not apply to original side of High Court—See Civil Procedure Code (5 of 1908), S. 21. **AIR 1960 Cal 331.**

● —S. 122 — Practice — High Court—Procedure—Uniformity—Desirability of.

In a matter of procedure it is desirable that there should be a certain amount of uniformity in all the High Courts. Satyanarayana v. Venkatasubbiah, **(1957) 1 Andh W R 318=1957 Andh L T 319=ILR (1957) Andh Pra 1 = A I R 1957 Andhra Pra 172 (FB).**

—S. 122 — High Court — Practice of Court cannot override statutory mandate. See C. P. Code (1908), S. 30. **69 Cal W N 242.**

—S. 122—Original Side of Calcutta High Court—Orders of amendment made by Judge in suit—Order Department should carry out orders leaving aggrieved party to take up matter on appeal.

The Order Department of the Original Side of the High Court should not prepare notes on the basis that orders of amendment made by a Judge in a suit

filed in the High Court are opposed to long standing practice when there is no such practice. Secondly, the Department is to carry out the orders and if any party is aggrieved by any order the remedy lies in taking up the matter on appeal. **(1963) 67 Cal W N 417.**

——S. 122—Duty of Court—Adherence to rules and practice. See High Court Rules and Orders—Calcutta High Court Original Side Rules, Chap. VI, R. 2. **(1959) 63 Cal W N 877.**

——S. 122 — Paper book — Preparation of in High Court appeal—Duty of Attorneys and Solicitors.

Per Chakravarti C. J.—"For sometime past we have been noticing with a feeling of distress the growing carelessness exhibited by Solicitors of this Court in preparing petitions and paper-books. Petitions are hardly ever revised, with the result that innumerable typing mistakes remain uncorrected and the papers are handed up to the Court in a condition which makes it difficult to follow their contents. Proofs of paper-books are hardly ever read. And if the papers are handed over to the Court in such a condition, the special reason for maintaining a particular class of legal practitioners whose duty and privilege is only or mainly to act would seem to disappear." **60 Cal W N 840=AIR 1956 Cal 630.**

● ——S. 122 — Rules of Court — Effect of non-compliance.

Where the jurisdiction invoked by the Judge to issue the rules is the jurisdiction of the High Court, non-compliance with the rules of practice by itself does not affect that jurisdiction. (1821) 106 E R 918, Rel. on. **1955 Mad W N 1051 (2)=ILR (1955) Mad 1 =(1955) 1 MLJ 375 = 1955 Cri L J 1 = AIR 1955 Mad 1 (FB).**

——Ss. 127, 128, 122 — No common law right in respect of temporary injunction. See Civil Procedure Code (5 of 1908), O. 39, R. 1. **AIR 1962 Orissa 181.**

——Ss. 128, 127, 122 and O. 39, R. 1 (as amended by Patna H. C.) — No common law right in respect of temporary injunction. See Civil Procedure Code (5 of 1908), O. 39, R. 1. **AIR 1962 Orissa 181.**

——S. 133 — Power to exempt from personal appearance — A subordinate Court granting exemption to a party from personal appearance in presenting a pauper petition must be held to have assumed jurisdiction which did not vest in it. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1951 Mad 758(a).**

——S. 133 — Validity of the section and notification thereunder — Section 133, as it stands, is invalid by by virtue of Art. 13 of the Constitution, and the notification thereunder therefore falls. See Constitution of India, Art. 13. **AIR 1954 Raj 233 (d).**

——S. 136 — Properties outside jurisdiction can be attached before judgment. See Civil Procedure Code (5 of 1908), O. 38, R. 5. **AIR 1961 Andh Pra 417(a).**

——S. 141 and O. 9, R. 9 — Application under dismissed for default — Another application to restore it lies under the Rule. See Civil Procedure Code (5 of 1908), O. 9, R. 9. **(1964) 2 Andh W R 315 = AIR 1966 Andh Pra 263 (a).**

——S. 141 — Proceedings in execution — Award in—If adjustment of decree. See Arbitration Act (1940), S. 21. **AIR 1958 Andh Pra 679 (a).**

——S. 141—Ex parte order of adjudication—Setting aside of — Who can apply — An application is permissible in view of O. 9, R. 13, Civil P. C. read with S. 141, Civil P. C. and S. 5 of Provincial Insolvency Act. See Provincial Insolvency Act (1920), S. 5. **1958 Andh L T 925=(1958) 2 Andh W R 316.**

——S. 141 and O. 23, R. 3 — Applicability of O. 23, R. 3 to misfeasance proceedings — (Companies Act (1913). S. 235)—The proceedings under S. 235, Companies Act, are judicial proceedings, which attract the provisions of S. 141. **1953-8 DLR (Bom) 76 = 1953-23 Com Cas 474 = AIR 1955 N U C (Bom) 1422 (a).**

——S. 141 — Power to issue temporary injunction. See Tenancy Laws—West Bengal Estates Acquisition Act, 1953 (1 of 1954), S. 44, **AIR 1959 Cal 386.**

——S. 141 — Application for amendment — If the plaintiff-firm cannot sue a firm, then it cannot apply in the suit as an applicant. Section 141 does not apply. See Civil Procedure Code (5 of 1908), O. 30, R. 1. **AIR 1957 Cal 688.**

——S. 141 — (Constitution of India, Art. 226)—Writ of certiorari — Error on face of record — What is — Appeal against an order — Justification on grounds decided against party not allowed — Statement of wrong law — Effect. See Constitution of India, Art. 226. **AIR 1958 Madh Pra 221.**

——S. 141 and O. 47, R. 1 — The provisions of the Civil P. C. do not apply to proceedings under the Madras Buildings (Lease and Rent Control) Act. **AIR 1953 Mad 236 (b).**

——S. 141 — Revision petition dismissed by Bench of Small Cause Court. See Civil Procedure Code (5 of 1908), O. 9, R. 9. **AIR 1951 Mad 672.**

——S. 141 — (Criminal P. C. (1898), S. 146 (1))—Reference to Civil Court—Nature of—Competency of Civil Court to hear reference — Whether depends on territorial or pecuniary jurisdiction. See Criminal P. C. (1898), S. 146 (1). **1958 Cri L J 796=AIR 1958 Pat 308.**

——S. 141—Application under S. 18—Deemed to be suits—Applicants deemed to be plaintiffs—Procedure laid down in Civil P. C. (1908) for suits applicable to applications under S. 18. See Land Acquisition Act (1894), S. 18, **ILR (1963) 2 Punj 442.**

——S. 141 — Suit in forma pauperies — Appeal from decree based on same cause of action pending — Stay of suit — Application for — Order refusing stay of enquiry into puaperism—Interference in revision. See Civil Procedure Code (5 of 1908), S. 10. **AIR 1962 Punj 16.**

——S. 141—Criminal and civil proceedings—Distinction between — Essential characteristic of offence is that its consequences are penal in nature. See Criminal P. C. (1898), S. 1. **ILR (1962) 2 Punj 114.**

——S. 141 — Error apparent on face of record — Neither Evidence Act nor Civil P. C. applies. See Evidence Act (1872), S. 1. **1964 Raj L W 83 = ILR (1964) 14 Raj 90.**

——S. 144 — Restitution proceedings — Party precluded by orders of Court from applying — Effect — Exclusion of time — The principle of S. 15 of Limitation Act is applicable and the period during which the proceedings were stayed could be excluded from the computation of period of limitation. See Limitation Act (1908), S. 15. **1957 All W R (HC) 563.**

——S. 144 — Proceedings under — Substitution of heirs — Application for — Limitation — There is no prescribed period within which the heirs of the parties to a proceeding should be brought on record. See Limitation Act (1908), Art. 181. **1957 All W R (H C) 563.**

——S. 144—"Suit" in S. 28 of Limitation Act does not include application under this section. See Limitation Act (1908), S. 28. **AIR 1955 All 526.**

——S. 144—Evicted tenant, if can be restored to possession—He can be restored to possession if the order is set aside by an appellate or Superior Court having jurisdiction to consider validity of the order. See Tenancy Laws — Andhra Tenancy Act (18 of 1956), S. 19 (2). **(1965) 2 Andh W R 197 = ILR (1965) Andh Pra 1094 =AIR 1966 Andh Pra 4.**

——S. 144—Order for restitution of costs — It is decree within S. 2 (2) and is attachable under O. 21

R. 53 (1). See Civil Procedure Code (5 of 1908), S. 2 (2). AIR 1960 Andh-Pra 544.

—Ss. 144 and 47 — Restitution — Decree reversed in appeal — Grantees from decree-holder cannot resist restitution ordered in favour of judgment-debtor — They are parties within meaning of S. 144. The grantees pendente lite of the decree-holder are parties within the meaning of S. 144. And it is but right that the decree-holder and the grantees who claim through him should be placed in the position which they would have occupied but for the decree since upset. Section 144 applies to parties or their representatives. 15 I A 12, Disting; 20 C W N 655 and 24 C W N 50, Foll. (1965) 69 Cal W N 117.

—S. 144—Claim for refund of excess amount of rent — When maintainable. See Houses and Rents—West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 7. (1956) 60 Cal W N 867.

—S. 144—"Subject to the result of such suit"—Effect of decision in claim case as to possession — Restitution — Inherent power of Court. See Civil Procedure Code (5 of 1908), O. 21, R. 63. AIR 1956 Madh Bha 226.

—S. 144 and O. 40 R. 1 — Possession of receiver—Nature of.

The possession of a receiver is regarded as possession on behalf of the purchaser from the date on which the purchase ought to have been completed by the execution of the sale deed. This is obviously on the principle founded upon justice and good sense, that a delay on the part of the Court or on the part of any of its officers should not affect or prejudice the rights of parties. Anderson on Receivers P. 816; 16 Wall 196; 1920-1 Ch. 257, Rel. on. I L R (1965) 1 Mad 756 (DB).

—S. 144 — Proceedings under, are in the nature of execution proceedings. AIR 1951 Mad 804.

—S. 144—Restitution — Principle of—Applicability—Inherent jurisdiction to order restitution can be exercised by persona designata entrusted with duties of Court. See Restitution — Principle of. AIR 1960 Mys 337.

—S. 144—Application for restitution as result of order of His Majesty in Council — Application is governed by Art. 181 and not by Art. 183 of Limitation Act. See Limitation Act (1908), Art. 181. AIR 1956 Nag 129.

—S. 144—Order dismissing application for restitution — Appeal and not revision lies against such order. See Civil P. C. (1908), S. 2 (2). ILR (1965) Cut 943 = 32 Cut L T 393.

—S. 144—Property sold in execution of 'ex parte' decree — Restitution against stranger auction-purchaser. AIR 1951 Orissa 148.

—S. 144—Court of first instance — Decree—Appeal—The Court of the Munsiff is the Court of first instance. Order of the Munsiff is a decree and therefore appealable. See Civil Procedure Code (5 of 1908), S. 2 (2). AIR 1953 Trav-Co 318.

—S. 144—Application for restitution. It is governed by Art. 182 (corresponding to Art, 166, Cochin Limitation Act) and not by Art. 181 of the Limitation Act. See Limitation Act (1908), Art. 181. AIR 1952 Trav-Co 40.

—S. 145 — Discharge of surety — Giving time to principal debtor or forbearance to sue. See Contract Act (1872), S. 135. AIR 1952 All 587.

—S. 145 — Execution proceedings — Surety for producing judgment-debtor in Court — Subsequent compromise — Discharge of surety. AIR 1958 Andh Pra 512.

—S. 145—Bond in favour of Court—Surety agreeing to pay decretal amount in case judgment-debtor failed to appeal and obtain stay — Compromise in execution — Decretal amount agreed to be paid in instalments with interest — Discharge of surety—Surety discharged due to substantial variation in the original contract. See Contract Act (1872), S. 128. AIR 1959 Bom 516.

—S. 145, O. 21, Rs. 58, 63 — Security in claim proceedings for "claim of plaintiff" — Recovery of costs. It was held that the deposit being meant to be a securiry against the results of the removal of the attachment was not a security for any claim of the plaintiff for costs against the claimants. AIR 1955 NUC (Cal) 1085.

—Ss. 145, 47, 51(c)—Decree against principal debtor and his property which was secured with creditor — Personal decree against surety also—Point as to when liability will arise not clear — Decree-holder applying for execution by arrest of surety without proceeding against property secured by principal debtor—Application held was premature and therefore not maintainable. See Civil Procedure Code (5 of 1908), S. 51 (c). AIR 1964 Mad 233.

—S. 145—Execution against surety. A surety for the production of movable property belonging to the judgment-debtor attached in execution of a decree and entrusted to his custody and in default to pay the value as recited in the security bond is not a surety who satisfies the requirements of the section. See Limitation Act (1908), Art. 182 (5). AIR 1956 Mad 201.

—S. 145 (4), Proviso (2)—Proviso is discretionary—Magistrate may refuse to take notice of dispossession if he is of opinion that the rightful owner has dispossessed the trespassers within two months of preliminary order. AIR 1965 Pat 261.

—S. 146—Suit by family to set aside alienation — Partition of family—Effect—Right of divided member to continue the suit remains. See Hindu Law—Joint family. AIR 1964 Ker 144.

—S. 146—Continuance of writ proceedings by legal representatives. See Constitution of India, Art. 226. (1965) 2 Mad L J 302 = AIR 1966 Mad 260.

—S. 146—Legal representatives of deceased decree-holder can continue pending execution proceedings. See Civil Procedure Code (5 of 1908), O. 21, R. 16. AIR 1955 Punj 255.

—S. 146, O. 21, R. 16 and O. 22, R. 12 — Death of decree-holder during execution — Substitution of legal representative can be done. AIR 1952 Trav-Co 504.

—Ss. 147, 145— Supurddar returning property to defendant without claiming expenses — Remedy of supurddar — (Contract Act (1872), S. 158). Remedy is by a separate suit and not by an application. See Civil P. C. (5 of 1908), S. 145. AIR 1955 N U C (Madh. Bha) 3018.

—S. 148 — Decree for specific performance of contract for sale — (Specific Relief Act (1877), S. 35 (c) — Rescission). AIR 1955 N U C (All) 3555.

—S. 148 — Decree for specific performance — Extension of time — Not a fit case for extension of time. AIR 1953 All 120.

—Ss. 148, 149 and 151, O. 7, R. 11 (c) — Time granted for re-presentation of plaint under S. 149 — Delay in re-presentation — No order granting time under S. 148 — Court can accept plaint condoning delay under S. 151. See Civil P. C. (5 of 1908), S. 149. AIR 1960 Andh-Pra 602.

—S. 148 (as amended by Calcutta High Court) — The Small Cause Court has power to vary the date in the order for possession under S. 43 of the Presidency Small Cause Courts Act. See Presidency

Small Cause Courts Act (1882), S. 43. **AIR 1956 Cal 425.**

——S. 148 — Applicability — Period fixed by decree — Section 148 has no application when the period is fixed by a final decree of the Court. **AIR 1951 Cal 299.**

——S. 148 — Order to give inspection of documents — Non-compliance — Inability of plaintiff to give inspection within time — Extension of time — Dismissal of suit under O. 11, R. 21—Propriety of. Court ought to have extended time for giving inspection in exercise of its powers under the section. Order of dismissal would be set aside in appeal. See Civil P. C. (5 of 1908), O. 11, R. 21. **AIR 1953 Hyd 32.**

——S. 148 — Extension of time — Application made after expiry of period originally fixed — Power of Court. Time may be extended and S. 148 would apply to insolvency proceedings. See Provincial Insolvency Act (1920), S. 43. **AIR 1956 Madh-Bha 256.**

——S. 148 — Appeal — Merger of Lower Court's order — Appeal merely rejected as being not maintainable — No merger. **AIR 1963 Mad 337.**

——S. 148 — Compromise decree — Draft sale deed to be filed within 15 days of decree — Time cannot be extended. See Contract Act (1872), S. 55. **AIR 1962 Mad 489.**

——S. 148 — Extension of time—Held that payment after period prescribed in decrea would not be valid deposit. See Civil P. C. (5 of 1908), O. 20, R. 14. **AIR 1954 Manipur 4.**

——S. 148 — Rejection of plaint under O. 7, R. 11 (c) — Plaint can be restored under Ss. 151, 148, 149 — Review under O. 47, R. 1 not the only remedy — Sections 148, 149 and 151 do not provide for notice to other side against restoration — Extension of time for filing deficit court-fee — Plaint to be taken as validly presented on date it was filed. See Civil P. C. (1908), S. 151. **(1963) ILR 42 Pat 704 (DB).**

——Ss. 148 and 149 — Final order made — Application for extension of time — Provisions in Ss. 148 and 149 do not apply.

The provisions of Ss. 148 and 149 apply only to proceedings which are not terminated and only to cases where the Court retains control of the proceedings. They do not apply when the order made by a Court is a final order. AIR 1923 Cal 612; AIR 1940 Cal 275; AIR 1938 All 497, Rel. on. **1955 BLJR 621= AIR 1956 Pat 20 (22) (Pt C) (Pr 5) (DB).**

——S. 148 — Decree made conditional — Condition not fulfilled — Appeal held not maintainable — Question of extension of time under S. 148 would not arise. See Civil P. C. (1908), S. 96. **1965 Raj L W 520.**

——S. 149 — Decree accompanying memo of appeal not properly stamped — Court has discretion to get debt remedied by having the deficit made good. See Court-fees Act (1870), S. 28. **AIR 1955 Ajmer 64.**

——S. 149 — Court-fees Act (1870), S. 11 — Scope of first and second para of S. 11 — Determination of mesne profits — Procedure for under Civil P. C. 1908, compared with that under Civil P. C. 1882 — Mode of enforcing payment of additional court-fee under S. 11 para. 1 — Only power which a Court has after passing of final decree is to prevent decree-holder from executing it till court-fee is actually paid and a suit or interlocutory application for passing of final decree cannot be dismissed on ground of non-payment of stamps — Section 149, Civil P. C. 1908, does not come into play in matter of payment of court-fee on a final decree for mesne profits. **ILR (1963) Andh-Pra 560.**

——Ss. 149, 148 — Conditional order for stay of execution — Order ceases to operate on condition not being complied with though order contains no clause providing for effect of default — Application for extension of time for performance of condition and to be allowed to continue in possession made out only after cessation but also after delivery of possession to decree-holder — Application cannot be granted. See Civil P. C. (5 of 1908), S. 148. **AIR 1963 Mad 207.**

——S. 149 — Application for leave to sue in forma pauperis — Leave refused but time granted for payment of court-fee — Court-fee not paid — Petition rejected — Remedy — Appeal or revision. See Civil P. C. (1908), S. 115. **AIR 1959 Mad 14.**

——S. 149 — Rejection of plaint under O. 7. R. 11 (c) — Plaint can be restored under Ss. 151, 148, 149 — Review under O. 47, R. 1 not the only remedy — Sections 148, 149 and 151 do not provide for notice to other side against restoration — Extension of time for filing deficit court-fee — Plaint to be taken as validly presented on date it was filed. See Civil P. C. (1908), S. 151. **(1963) ILR 42 Pat 704 (DB).**

——S. 149—Deficiency in court-fee made good after expiry of limitation for filing appeal — Application to condone delay in depositing court-fee — Each day's delay is not required to be explained unlike the case on application under S. 5, Limitation Act, 1963. **1965 Cut L J 578 = AIR 1966 Punj 332.**

——S. 149 — Payment of court-fees after limitation — Appeal presented within time but slight delay in making up deficiency in court-fees—Delay on account of reasons beyond control of appellant — No want of bona fides on appellant's part — Suit should not be non-suited on technical matter : AIR 1923 All 349 (1) and AIR 1914 Bom 249 and AIR 1938 Lah 361 (FB), Rel. on. **1965 Cur L J 578 = AIR 1966 Punj 332.**

——S. 149 — Power of Court to grant time for payment of court-fees—Non-payment—Effect. See Civil P. C. (5 of 1908), O. 44, R. 1. **AIR 1955 Trav-Co 209.**

——Ss. 149, 115 — Error apparent on face of record —. Rejection of application for review under misapprehension — Failure to exercise jurisdiction. See Civil P. C. (5 of 1908), S. 115. **AIR 1955 Vindh-Pra 46.**

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SECTION 151

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——S. 151 — Claim for refund of excess amount of rent—When maintainable. See Houses and Rents— West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 7. **(1956) 60 Cal W N 867.**

——S. 151 — Order under inherent power by subordinate Court—Order is not appealable—Remedy is to move High Court direct. **A I R 1951 Cal 357.**

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——S. 151—Removal of suits—High Court has very wide discretion — Where the Court comes to a conclusion that the applicant feels that he is not likely to get a fair trial, Court must transfer the case. See Letters Patent (Cal.), Cl. 13. **A I R 1951 Cal 286.**

——S. 151 and O. 39, Rr. 1 and 2 — "Or other injury of any kind"—Execution of decree cannot be held to amount to committing an injury. **A I R 1955 N U C (Madh Bha) 4328.**

——S. 151 — Inherent power — Extent and limit — The section does not confer any new powers on Courts but only saves their inherent powers. These powers cannot be extended to make a new law on the subject. See Companies Act (1956), S. 283. **AIR 1960 Mad 482.**

——Ss. 151, 145 — Inherent powers of Court—Even if S. 145 will not apply, the Court has ample jurisdiction in its inherent power to enforce the bond by way of execution in the same proceeding. See Civil P. C. (5 of 1908), S. 145. **AIR 1960 Mad 324.**

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——S. 151 — (Partition Act (1893), S. 2) — Coparcenary house not impossible of reasonable division— No demand by more than half of coparceners for sale — Order for sale of house was cancelled and direction to divide house was given. See Partition Act (1893), S. 2. **AIR 1955 NUC (Mad) 900.**

——S. 151 — Probate proceedings — Appointment of receiver during pendency. See Succession Act (1925), S. 247. **AIR 1951 Mad 393.**

——S. 151 — Acceptance of next friend and appointment of guardian — Distinction — Continuation of next friend — Rule as to — The Court should act under the inherent powers. See Civil P. C. (5 of 1908), O. 32, R. 3. **AIR 1959 Mys 157.**

——S. 151 — Power of High Court, indicated. See Debt Laws — Mysore Agriculturists' Relief Act (18 of 1928), S. 4. **AIR 1955 NUC (Mys) 1237.**

——S. 151 — Consequential orders to give effect to compromise — Jurisdiction of Court to pass. See Civil P. C. (5 of 1908), O. 23, R. 3. **AIR 1951 Pat 299.**

——S. 151 — Inherent power to restrain party from proceeding before another tribunal. **AIR 1951 Pat 224.**

——S. 151, O. 1, R. 10—Necessary and proper parties. AIR 1951 Punj 318.

——S. 151 — Certificate under R. 12 of the Privy Council Rules — Cannot be cancelled or withdrawn by the High Court under S. 151 or O. 47, R. 1, Civil P. C. See Privy Council Rules, 1920, R. 12. AIR 1951 Punj 43.

——S. 151 — (Jaipur Hindu Law of Inheritance (Amendment) Act (1945), S. 2) — No retrospective effect — Transposing defendant as plaintiff. See Jaipur Hindu Law of Inheritance (Amendment) Act (30 of 1945), S. 2. AIR 1955 NUC (Raj) 293.

——S. 151 and O. 14, R. 2 — Inherent jurisdiction of Court to decide one question first. AIR 1953 Sau 30.

——S. 151 — Power of Court — Exercise of on behalf of defendant is within the jurisdiction of the Court. See Civil P. C. (5 of 1908), O. 39, R. 1. AIR 1957 Trav-Co 286.

——S. 151 — "Possession" meaning of — Application by stranger before dispossession — Maintainability — Inherent power. In the instant case there is no scope for resorting to the inherent powers. See Civil P. C. (5 of 1908), O. 21, Rr. 97 to 100. AIR 1955 Trav-Co 225.

1-B. Who can exercise.

——S. 151 — Order of D. C. directing name of certain person to be entered in Mutation Ragister as "Shebait" — Competency of successor D. C. to vacate order — He would be justified in invoking his inherent powers under the section. See Assam Land and Revenue Regulation (1 of 1886), S. 151. AIR 1951 Assam 45.

——S. 151 — Inherent jurisdiction—The Court would not hesitate to exercise its inherent jurisdiction under S. 151 by restoring possession and allowing mesne profits in the interest of justice. See Civil P. C. (5 of 1908), O. 21, R. 101. AIR 1955 NUC (Cal) 5567.

——S. 151, O. 20, R. 18 — Preliminary decree in partition suit — Delivery warrant returned with shera that warrant was duly executed—Final decree passed — Subsequent application alleging that shera was false — Jurisdiction of the trial Court to enquire into genuineness of shera — Trial Court can enquire into the genuineness of the shera on the warrant. AIR 1957 Mys 71.

——S. 151—Application for stay before filing written statement but after taking various steps in suit — Interference for ends of justice. High Court could interfere with the order passed by the trial Court. See Arbitration Act (1940), S. 34. AIR 1964 Pat 542.

——S. 151 — Appellate authority certifying standing orders — Correction of clerical mistake — Inherent powers — The rule that every Court must be deemed to possess the inherent powers, which applies to all Courts cannot apply to an Appellate authority under the Industrial Employment (Standing Orders) Act. See Industrial Employment (Standing Orders) Act (20 of 1946), S. 6. AIR 1958 Pat 427.

——S. 151 — Compensation money paid in contravention of S. 31 (2), Land Acquisition Act — Jurisdiction of District Judge to order refund of compensation money from claimants before hearing reference — The District Judge has no power either under the Land Acquisition Act or S. 151 of Civil P. C. to direct collector to realise the compensation money. See Land Acquisition Act (1894), S. 18. AIR 1956 Pat 360.

——S. 151 — Commission — Question of law — Application under by party to reference to obtain directions and opinion on question from Court issuing commission does not lie. See Civil P. C. (5 of 1908), O. 26, R. 1. AIR 1960 Punj 430.

——S. 151—Power of Collector.

The Collector to whom a decree is transferred for execution under S. 68 of the Code, or any person to whom such authority may in law be delegated by the Collector, can dismiss an execution petition as well as restore it in the exercise of his inherent powers under the section. AIR 1955 NUC (Raj) 270.

1-C. When can be exercised.

——S. 151; O. 21, R. 100 (1)—"Such property"—Meaning of—Means property covered by the decree—When all the circumstances leading to the dispute are not known the High Court in revision will not be justified in interfering with the order of the lower Court. See Civil P. C. (5 of 1908), O. 21, R. 100(1). AIR 1961 Assam 79.

——S. 151—Practice — Technicalities of procedure—No undue importance should be given. See Practice. AIR 1956 Bhopal 9.

——S. 151—Eviction of tenant — Compensation — Amount determined ex parte by Controller — Appeal by tenant to re-hear question of compensation — Refusal — Validity — Interference by High Court — Controller is not entitled to make his own assessment of the compensation without finding that the landlord and tenant are unable to reach an agreement regarding compensation — Such an assessment being contrary to law, is a fit case for interference by High Court in exercise of its revisional powers. See Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), S. 27. I L R (1962) 1 Cal 125.

——S. 151, O. 39, R. 1—Inherent power—When and how should be exercised—Injunction pending pauper application under inherent powers — Form of — An order restraining step-mother from selling any property without the permission of the Court till the disposal of the suit held was eminently reasonable one. AIR 1951 Cal 357.

——S. 151—Inherent powers cannot be invoked to grant temporary injunction. See Civil P. C. (5 of 1908), S. 94(c). AIR 1959 Ker 45.

——S. 151, O. 14, R. 2, O. 15, R. 3 — Trial of some issues first — The Court has power to determine any particular issue first, if it considers to be convenient and beneficial to the conduct of the case. AIR 1955 N U C (Madh Bha) 3711.

——S. 151—Court has got inherent power to set aside sale on ground of material irregularity or fraud, even though petitioner had locus standi or not to file application for setting aside the sale. 78 Mad L W 498= (1965) 2 Mad L J 197=AIR 1966 Mad 84 (b).

——S. 151—Deliberate withdrawal of application—Applicant cannot be permitted to press it again for no obvious or no clear reason. AIR 1955 N U C (Mys) 1840.

——S. 151 and O. 14, R. 2—Question as to jurisdiction—When can be decided as preliminary issue. AIR 1953 Sau 30.

——S. 151 — Preliminary decree passed — Suit dismissed for default — Legality — The order is without jurisdiction and is, therefore, a nullity. See Civil P. C. (5 of 1908), O. 9, R. 8. AIR 1957 Trav-Co 197.

2. Court cannot override express provisions of law.

——S. 151—Justice, equity and good conscience—Principles of, cannot be invoked by Court when there are statutory provisions governing the matter—(Practice). 1956 Andh W R 1082=I L R (1956) Andh Pra 1076= AIR 1957 Andh Pra 981 (985) (Pt D) (Pr 16) (DB).

——S. 151—Suit—Multiplicity of litigation.

Multiplicity of litigation has to be avoided but this is to be achieved only if possible under the law as it

stands. The Courts cannot go beyond the law in order to achieve the above object. AIR 1955 Bhopal 3 (5) (Pt B) (Pr 8).

——S. 151—Express provision of law — Section 151 can be invoked only in cases where there is no clear provision in the Code. AIR 1955 N U C (Raj) 4666.

3. Setting aside of decree or order.

A. Compromise decree.
B. Ex parte order or decree.
C. Other illustrative cases.

3-A. Compromise decree.

——S. 151—Decree passed under O. 37, R. 2(2) on failure of defendant to comply with conditional order — Court setting aside decree in its inherent powers—Order held without jurisdiction — Scope of S. 151 stated—Proper remedy is to file an appeal. See Civil P. C. (5 of 1908), O. 37, R. 4. AIR 1963 Bom 85.

——S. 151—Compromise recorded when one of parties was minor — No leave obtained — Application under, to set aside order recording compromise can be treated as application for review. See Civil P. C. (5 of 1908). O. 47, R. 1. AIR 1954 J & K 31.

——S. 151—Order recording or refusing to record compromise — Appeal — No appeal lies against an order passed under the section. See Civil P. C. (5 of 1908), O. 43, R. 1(m). AIR 1958 Pat 618.

3-B. Ex parte order or decree.

——S. 151 and O. 9, R. 13—Ex parte decree—Setting aside—Application under O. 9, R. 13 barred—It cannot be set aside under inherent powers. AIR 1951 Ajmer 39 (1).

——S. 151—Ex parte final mortgage decree for sale—Setting aside of — Sufficient cause. See Civil P. C. (5 of 1908), O. 9, R. 13. AIR 1961 Cal 534.

——S. 151 and O. 41, R. 21—Ex parte order passed on revision petition — High Court has power to set aside such order. AIR 1945 Mad 103, Diss. (General Clauses Act (1897), S. 21), (M. P. General Clauses Act (3 of 1953), S. 21), (High Court Rules and Orders (Civil) (Nagpur now M. P.), Part I, Chap. 4, R. 12).

The High Court has power to set aside an ex parte order passed on a revision petition and a petition to set aside such order is therefore tenable. AIR 1957 Nag 83; AIR 1961 Cal 474, Foll. AIR 1962 S C 527; A I R 1953 H P 102; (1962) M P L J 317, Rel. on. AIR 1945 Mad 103, Diss. from; AIR 1943 Mad 260 and AIR 1951 Mad 672, Ref. 1965 Jab L J 997=1966 M P L J 65.

3-C. Other illustrative cases.

——S. 151 — Application for judgment on award — Order setting aside award and also dismissing application — Award held valid in appeal from former order — No appeal against latter order. See Arbitration Act (1940), S. 17. AIR 1961 Cal 118.

——S. 151, O. 41, R. 33 and O. 39, R. 2 (3) — Setting aside order under O. 39, R. 2 (3) against deceased defendant. Held, order can be set aside even against the deceased defendant under O. 41, R. 33 read with S. 151. AIR 1955 NUC (Cal) 2920.

——Ss. 151, 148 and 115 — Time granted by Court for payment of costs while setting aside ex parte decree — S. 148 does not apply — S. 151 however applies — Trial Court not adverting to exercise of power under S. 151—Order liable to be interfered with under S. 115 (b). 31 Cut L J 757 = ILR (1965) Cut 506=AIR 1966 Orissa 44.

——S. 151 — Executing Court fixing order in which property is to be sold—Non-compliance with Court's order renders sale voidable and not void. Application filed after 30 days of date of sale to set it aside is barred by time. See Limitation Act (1908), Art. 166. AIR 1964 Orissa 91.

——S. 151—Controller can set aside or interfere with his previous order where there is fraud practiced by party in obtaining order—Moreover there is inherent power in controller in setting aside ex parte order — Finality does not attach to every order. See Houses and Rents — Pepsu Urban Rent Restriction Ordinance (2008), S. 16 (4). AIR 1955 NUC (Pepsu) 1880.

——S. 151 — Decree based on award without complying with mandatory provisions of S. 14 of Arbitration Act (1940) — Decree can be set aside under inherent powers. See Arbitration Act (1940), S. 17. 1965 Pun L R (Sup) 117.

——S. 151, O. 22, R. 9 (2) — Setting aside abatement —Exercise of inherent powers. As there is a specific provision in O. 22, R. 9 (2) for setting aside abatement, the Court's inherent powers under S. 151 cannot be exercised for this purpose. AIR 1955 NUC (Sau) 4086.

4. Restoration.

——S. 151 — Application for restoration of appeal filed after expiry of period prescribed by Art. 163 of Limitation Act (1908) not maintainable under the section. See Limitation Act (1908), Art. 168. AIR 1964 All 124.

——S. 151 — Dismissal for default — Restoration — Grounds. See Civil P. C. (5 of 1908), S. 115. AIR 1951 Assam 36.

——S. 151—Suit by minor— Dismissal for negligence of guardian — Remedies of minor. Courts have wide powers to restore suits. See Civil P. C. (5 of 1908), O. 9, R. 9. AIR 1954 Bom 214.

——Ss. 151, 12; O. 9, R. 9 and O. 23, R. 1 — Suit dismissed under O. 9, R. 8 — Remedy is under O. 9, R. 9 — Fresh suit is barred. See Civil P. C (5 of 1908), O. 9, R. 9. AIR 1955 NUC (Manipur) 4556.

——Ss. 151, 148 and 149, O. 7, R. 11 (c) and O. 47, R. 1—Rejection of plaint under O. 7, R. 11 (c)—Plaint can be restored under S. 151, 148 or 149 — Review under O. 47, R. 1 not the only remedy—Ss. 148, 149 and 151 do not provide for notice to other side — Remedy of other side against restoration — Extension of time for filing deficit court fee—Plaint to be taken as validly presented on date it was filed. AIR 1955 Pat 370 (FB) and AIR 1949 Pat 36 and AIR 1957 Pat 430 (FB) and AIR 1938 All 497 and 43 C W N 417 and ILR 39 Mad 876 and AIR 1956 Pat 20 held no longer good law in view of decision in AIR 1961 S C 882.

The use of the inherent powers under S. 151 is not restricted to the pendency of an action in Court till final order of disposal one way or the other is passed. Whether the Court ultimately will use such powers in favour of a party will be a different matter and will depend upon the facts and circumstances of the case; but to say that inherent powers cannot be invoked after the disposal of the case in regard to anything of that case, will be to detract from the scope of S. 151 and to defeat the main purpose of a fundamental principle of administration of justice. Exercise of inherent powers does not necessarily depend upon a party moving the Court for such exercise. An application for that purpose does not put the Court in a position different from or less than that where it exercises suo motu such powers in an appropriate case.

An order of the Court passed under S. 151 vacating its order rejecting the plaint for failure to pay the deficit court-fee and restoring the plaint on payment of deficit court-fee is within jurisdiction and discretion of the Court: AIR 1939 Pat 678 (FB) and AIR 1949 Pat 112, Rel. on; AIR 1961 S C 882, Foll.

An application for review under O. 47, R. 1 on payment of requisite court-fee is not the only remedy against rejection of the plaint or the suit: A I R 1955 Pat 370 (FB) and AIR 1949 Pat 366 and AIR 1957 Pat 430 (FB) held no longer good law in view of decision in AIR 1961 S C 882.

The order passed restoring the plaint and granting further time for payment of the deficit court-fee can well be taken to have been made under Ss. 149 and 148. Mere labelling the order to be under S. 151 does not exclude the competency of that order to be under Ss. 148 and 149. It cannot be said that extension of time under S. 148 or 149 can be granted only when a Court has a case before it, in regard to which it has got jurisdiction : AIR 1961 S C 882, Foll.; AIR 1938 All 497 and 43 C W N 417 and ILR 39 Mad 876 and AIR 1956 Pat 20 held no longer good law in view of AIR 1961 S C 882.

Action under S. 151 (or under S. 148 or 149) would not become void in absence of any notice to the other side, when such notice is not provided for in those provisions. It is, however, true that a party who is likely to be adversely affected should be given notice of a proceeding in which a final order may be passed against him; that is, on principles of natural justice, The rejection of the plaint creates a valuable right in favour of the defendants inasmuch as they are relieved of the claim made in the suit and if and when that order is going to be set aside and their valuable right is being revoked, it is proper that they should be noticed and given a chance to raise that objection about the sufficiency of cause for further extension of time for filing the deficit court-fee.

When the defendants find, after notice of the suit is served on them and before they file the written statement, that an order under S. 151 restoring the plaint had been passed behind their back, they can move the higher Court against that, and obtain a direction for reconsideration of the matter by the trial Court. If they fail to avail themselves of that step, it is too late for them to contend that the order ultimately passed under S. 151 was void or ultra vires.

Once the time for filing the deficit court-fee is extended under any of the three Ss. 149, 148 and 151 the plaint will be taken to have been validly presented on the date it was filed in Court, though the deficit court-fee was paid much later, and in that view, there would be no bar of limitation if the plaint had been originally filed within time. **(1963) ILR 42 Pat 704 (DB).**

——**S. 151 and O. 34, R. 3** — Application for making preliminary mortgage decree final, dismissed for default — Subsequent application beyond three years should not be dismissed on ground of limitation but previous application should be restored under S. 151. (Limitation Act (1908), Art. 181). See Civil P. C. (5 of 1908), O. 34, R. 3. **AIR 1955 N U C (Pat) 2493.**

5. Injunction.

——**S. 151, O. 39, Rr. 1, 2** — Suit for refund of deposit and interest by licensed importer on his ceasing to be so —Notice by State to show cause why deposit should not be forfeited for breaches of terms of license — Application for temporary injunction by plaintiff against State — Application rightly refused. See Civil P. C. (5 of 1908), O. 39, R. 1. **AIR 1955 NUC (Ajmer) 4746.**

——S. 151 and O. 39, Rr. 1, 2 and 3 — Ex parte interim injunction—Grant of—Such injunction, if can be granted under inherent powers. **AIR 1951 All 8.**

——S. 151 — Power to issue injunction — Court will have jurisdiction to issue injunction to prevent irreperable injuries in cases where there is no other remedy open to the aggrieved party. See Houses and Rents — West Bengal Premises Tenancy Act (1956), S. 29 (5). **(1959) 63 C W N 246.**

——**S. 151—Temporary injunction—Jurisdiction.**

The Court can grant temporary injunction in the exercise of its inherent jurisdiction. See Civil P. C. (5 of 1908), O. 39, R. 1. **AIR 1953 Cal 377.**

——**S. 151, O. 25, R. 1** — Pauper application — Jurisdiction to grant temporary injunction pending decision.

Court has no jurisdiction to grant injunction under O. 39, R. 1 as there is no pending suit at that time, but has inherent powers to pass an order of such a nature. **AIR 1951 Cal 357.**

——**Ss. 151, 94; O. 39, Rr. 1, 2**—Power of subordinate Court to grant temporary injunction under inherent powers — Subordinate Courts have no such powers, See Civil P. C. (5 of 1908), S. 94. **A I R 1961 J and K 29.**

——**S. 151**—Injunction cannot be granted to restrain decree-holder from executing decree. See Civil P. C. (5 of 1908), O. 39, R. 1. **AIR 1957 Madh Bha 95.**

——**S. 151**—Injunction to restrain execution of decree. No order of injunction can be made. See Civil P. C. (5 of 1908), O. 39, R. 1. **AIR 1956 Madh Bha 75.**

——**S. 151** — Power to grant temporary injunction under inherent powers — Cannot be implied in Court outside the limits of O. 39. See Civil P. C. (5 of 1908), S. 94. **AIR 1953 Madh Bha 154.**

——**Ss. 151 and 94; O. 29, R. 1 and O. 39, Rr. 1 and 2** —Power to grant injunction under S. 151 in the interest of justice — Failure to grant is a failure to exercise jurisdiction — Where the suit is not relating to a property O. 39, R. 1 will not apply — O. 39, R. 2 applies only to cases of breach of contract — In a suit for declaration that the plaintiff is qualified to hold an appointment, an injuction restraining the employer from terminating his services is to be treated an application under S. 151. A I R 1962 S C 527, Rel. on. **I L R (1960) Cut 400.**

6. Interim relief.

——**S. 151 and O. 7, Rr. 7 and 11**—Suit premature—Order becoming mature during pendency of revision — Proper order — High Court can grant relief. See Civil P. C. (5 of 1908), O. 7, R. 11. **A I R 1955 N U C (Hyd) 2965.**

——**Ss. 151 and 152**—Relief under, cannot be granted which falls within scope of appeal or review. **A I R 1951 Mad 406.**

——**S. 151**—Suit for maintenance — Claim hotly contested by husband — Order for interim maintenance before suit is heard on merits is without jurisdiction. See Hindu Law—Maintenance. **AIR 1960 Orissa 157.**

7. Amendment of decree or order.

——**S. 151**—Decree not in conformity with judgment — Amendment must be allowed — Non-mention of costs in judgment—Decree mentioning costs—Amendment of decree. See Civil P. C. (5 of 1908), S. 152. **(1965) 7 O J D 275=ILR (1965) Cut 808=AIR 1966 Orissa 225.**

8. Amendment of plaint, application and pleading.

●——**S. 151** — Amendment of plaint — Interests of justice.

In the interests of justice Court can order amendment. See Civil P. C. (5 of 1908), O. 6, R. 17. **A I R 1957 SC 357.**

——**S. 151** — Amendment of plaint by addition of relief — Grounds for — Powers of appellate Court. See Civil P. C. (5 of 1908), O. 6, R. 17. **AIR 1956 All 439.**

—S. 151 — Revisional Court allowing amendment of plaint — Application for amendment to trial Court — Powers of trial Court to extend time for amendment.

Time could be extended to meet the ends of justice if necessary by the exercise of the inherent powers. See Civil P. C. (5 of 1908), O. 6, R. 18. A I R 1962 Andh Pra 527.

—S. 151 — Amendment of plaint ordered on payment of costs within certain time—Extension of time for filing amended plaint — Expiration of period for paying costs—Amendment whether should be allowed — Under S. 151 time for payment of costs to the defendant could be extended. See Civil P. C. (5 of 1908), S. 148. AIR 1959 J and K 73.

—S. 151 and O. 21, R. 17 — Amendment not relating to matters covered by R. 17 — An application for execution which is defective in some particulars, can be amended under the Court's general powers even if the amendment suggested relates to matters not covered by O. 21, R. 17. AIR 1955 NUC (Madh Bha) 3714.

—S. 151—Amendment of plaint — Tests for allowing amendment — Even time-barred amendment may be allowed under certain circumstances. See Civil P. C. (5 of 1908), O. 6, R. 17. A I R 1965 Madh Pra 85.

—S. 151—Power of amendment apart from Rule — Court can in its general power allow amendment to cure defect in a petition for execution. See Civil P. C. (5 of 1908), O. 21, R. 17 (1). AIR 1957 Orissa 5.

9. Remand.

—S. 151 — Order under sub-section (4) of S. 14 of West Bengal Premises Rent Control (Temporary Provisions) Act (1950)—Decree passed in suit—Effect on order — Suit remanded in appeal — Striking out defence for non-compliance with order — Propriety of — See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (1950), S. 14 (4). (1957) 61 Cal W N 835.

—Ss. 151, 115; O, 41, Rr. 23, 25 — Remand under inherent power — Case covered by O. 41, R. 25 — Setting aside—Revision.

Section 151 does not empower the lower appellate Court to disregard and to depart from the procedure laid down in the Code — See Civil Procedure Code (5 of 1908), S. 115. A I R 1955 N U C (Him Pra) 1426.

—S. 151—Remand under—No material irregularity — No revision lies — See Civil Procedure Code (5 of 1908), S. 115. AIR 1954 Him Pra 73.

—S. 151—Remand under inherent powers—Refund of court-fees.

The plaintiff is entitled to refund of court-fees — See Court-fees Act (1870), S. 13. :A I R 1953 J and K 24.

—Ss. 151 and 107, O. 41, R. 23 and O. 43, R. 1 (a) — Remand under inherent power — No appeal lies. AIR 1953 Madh Bha 16.

—S. 151 — Decree for possession—Reversal in appeal and suit remanded for determining value of suit for court-fee and jurisdiction—Remand is under S. 151 and not O. 41, R. 23 — No appeal but revision lies. See Civil Procedure Code (5 of 1908), S. 2 (2). AIR 1959 Madh Pra 384.

—Ss. 151, 115 and O. 41, R. 23 — Remand order under inherent powers — Only revision lies against such order—Second appeal treated as revision — See Civil Procedure Code (5 of 1908), S. 115. AIR 1963 Orissa 186.

—S. 151 — Appeal — Order of remand silent as to provision under which it is made.

A person aggrieved by an order of remand where no appeal would lie would have a right of appeal merely because the Judge failed to mention that it was an order under S. 151, C. P. C. — See Civil Procedure Code (5 of 1908), O. 41, R. 23. A I R 1956 Raj 43.

—S. 151 — Orders under — An order of remand passed under the section will be revisable — See Civil Procedure Code (5 of 1908), S. 115. A I R 1955 Raj 127.

—S. 151—Remand order under—Competency of — In the instant case under the circumstances the lower appellate Court has no occasion to resort to the provisions of S. 151. A I R 1955 N U C (Raj) 4034.

10. Restitution.

—S. 151—(Limitation Act, S. 28)—"Suit" does not include application for restitution under S. 151 — See Limitation Act (1908), S. 28. AIR 1955 All 526.

—S. 151, O. 17, R. 1 and O. 23, R. 1 — Application under S. 9, Hindu Marriage Act, for restitution of conjugal rights—Petitioner applying for adjournment — Application held not one under O. 23, R. 1—Court ordering that application be closed observing that petitioner could file separate application as and when convenient to him — Order held amounted to adjournment sine die — Subsequent application filed by petitioner not barred—See Civil Procedure Code (5 of 1908), O. 17, R. 1. (1965) 1 Andh L T 276 = A I R 1966 Andh Pra 73.

—S. 151 — Restitution under inherent powers — Decree reversed in another suit—Restitution could be granted — See Civil P. C. (1908), S. 144. A I R 1953 Bilaspur 31.

—S. 151—Certificate sale set aside — Right of auction-purchaser to interest on money deposited — Duty of Court and jurisdiction to grant restitution — See Civil Procedure Code (5 of 1908), S. 144. A I R 1954 Cal 544.

—Ss. 151 and 144 — Restitution can be ordered under inherent jurisdiction — See Civil Procedure Code (5 of 1908), S. 144. AIR 1964 Mad 404.

—Ss. 151, 144—Restitution—Inherent power.

Cases where the injury that has been done has to be repaired consequent not on the variation or reversal of decree, but by other means. In such cases it has been uniformly held that the Court has inherent power to proceed under S. 151 and order restitution — See Civil Procedure Code (5 of 1908), S. 144. AIR 1955 Mad 173.

—S. 151 — Application for mesne profits by way of restitution against auction-purchaser—Each requires to be determined on its own facts — See Civil Procedure Code (5 of 1908), S. 144. AIR 1953 Mad 930.

—S. 151—Inherent power to direct restitution.

The power to direct restitution is inherent in the Court itself — See Civil Procedure Code (5 of 1908), S. 144. AIR 1951 Mad 804.

—S. 151—Restitution—Principle of—Applicability —Inherent jurisdiction—Persona designata entrusted —Power of.

The inherent jurisdiction to order restitution apart from the provisions of S. 144, C. P. Code, can be exercised not only by a Court but also by a persona designata entrusted with the duties and powers normally performed and exercised by a Court of Law. Hence even if the District Munsiff to whom a decree is transferred under S. 66 of the Madras Village Courts Act could be regarded as a persona designata, he has power to order restitution after the reversal of the decree which had been previously executed by him. Though the party has presented the application under S. 144, C. P. Code, it is competent for the District Munsiff to order restitution

under inherent powers. 44 M L J 735; A I R 1922 P C 269, Rel. on. AIR 1960 Mys 337.

——S. 151—Order under S. 7, Guardians and Wards Act not decree—Order reversed — Restitution — Inherent power.

Application for restitution does not lie under S. 144, though the Court can order restitution under S. 151—See Civil Procedure Code (5 of 1908), S. 144. AIR 1952 Nag 190.

——S. 151 — Reversal of decree by same Court — Inherent power to grant restitution—See Civil Procedure Code (5 of 1908), S. 144. AIR 1951 Orissa 148.

11. Power to pass stay orders.

——S. 151 — Suit for possession, arrears of rent and damages after termination of tenancy on obtaining permission of Rent Controller—Mere fact that tenant has filed appeal against order of Rent Controller is no ground for staying suit—Factors to be considered in granting stay of suit — See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13. 1965 Mah L J 823 = AIR 1966 Bom 216.

——S. 151—Order refusing to stay earlier suit—Order is under S. 151 — Not a judgment under Cl. 15 of Letters Patent (Bombay) — Appeal does not lie — See Civil P. C. (1908), S. 10. A I R 1953 Bom 117 (118) (Pt A).

——S. 151—Order refusing to stay suit is a judgment —Appeal lies —See Letters Patent (Cal), Cl. 15. AIR 1957 Cal 727.

——S. 151 — Suit for arrears of rent pending in civil Court — Application by tenant for determination of fair rent to Rent Controller — Civil suit should not be stayed—See Civil Procedure Code (5 of 1908), S. 10. AIR 1953 Hyd 55.

●——S. 151 — Order for stay of suit is not judgment within Cl 15 of Letters Patent (Madras)—No appeal lies: A I R 1948 Mad 371, Overruled. See Letters Patent (Madras), Cl. 15. AIR 1954 Mad 1057 (FB).

——S. 151—Suit under O. 21, R. 63—Stay of sale.

Court can order stay of sale in execution of a decree—See Civil Procedure Code (5 of 1908), S. 94 (e). AIR 1951 Mad 321.

——Ss. 151 and 10 — Stay of suit — Powers under S. 151—When can be exercised—See Civil Procedure Code (5 of 1908), S. 10. ILR (1965) Cut 533 = AIR 1966 Orissa 53.

——S. 151—Inherent power to grant stay—See Civil Procedure Code (5 of 1908), S. 10. AIR 1955 N U C (Pat) 251.

12. Extension of time.

——S. 151—(Limitation Act (1908), S. 5)—Sufficient cause—Appeal presented beyond time — Application for condonation on ground of his confinement to bed —Court not satisfied — No other evidence—Application rejected under S. 5, Limitation Act read with S. 151—See Limitation Act (1908), S. 5. A I R 1955 NUC (Ajmer) 4706.

——S. 151—Period of fifteen days—Extension of.

A Court has no jurisdiction to extend the period of 15 days fixed by the Code in O. 21, R. 85. The period fixed or granted by Court can be enlarged — See Civil Procedure Code (5 of 1908), S. 148. A I R 1957 All 558.

——Ss. 151, 148 and 115—Application under S. 148 to extent time refused—Revision—Inherent power of High Court.

Where the lower Court has no jurisdiction to entertain an application under S. 148, the High Court will not interfere in revision — See Civil Procedure Code (5 of 1908), S. 115. AIR 1961 Bom 254.

——Ss. 151, 148 and O. 26, R. 3—Interlocutory order staying another proceeding or granting injunction—Default clause — Extension of time after default — Position where order is consent order and one party opposes extension of time. See Civil Procedure Code (5 of 1908), S. 148. AIR 1965 Cal 308.

——Ss. 151, 148 — Decree containing direction to make payment within specified time — Default clause —Extension of time after default — Court having no seisin of suit, cannot extend time. See Civil Procedure Code (5 of 1908), S. 148. AIR 1965 Cal 308.

——Ss. 151, 148 — Decree for specific performance—Direction to deposit certain money within certain time as condition—In default suit to stand dismissed —Court has no power thereafter to extend time either under S. 148 or under S. 151. See Civil Procedure Code (5 of 1908), S. 148. AIR 1962 Cal 485.

——Ss. 151, 148 and O. 20, R. 14 — Decree for pre-emption fixing time for payment — Failure to deposit within time — Decree merely affirmed on appeal—Effect — Power of Court to extend time — See Civil Procedure Code (5 of 1908), S. 148. AIR 1955 NUC (Madh Bha) 3084.

——S. 151—Compromise decree — Draft sale deed to be filed within 15 days of decree — Time cannot be extended—See Contract Act (1872), S. 55. AIR 1962 Mad 489.

——Ss. 151 and 148 — Time fixed under decree—Enlargement of — No inherent power—See Civil Procedure Code (5 of 1908), S. 148. AIR 1962 Raj 54.

——S. 151 — Period fixed by decree — Extension—Court cannot extent the time fixed—See Civil Procedure Code (5 of 1908), S. 148. A I R 1957 Trav-Co 43.

13. Enforcement of surety bond or personal liability.

——S. 151—Enforcement of personal liability.

Where the request for enforcement of personal liability of the defendant is made only at the time of final arguments and no amendment of the plaint was sought, such relief cannot be granted under the section. AIR 1955 NUC (Ajmer) 4726.

——Ss. 151, 145, 47 and O. 41, R. 5 (3) (c) — Security bond to Court by judgment-debtor—Bond cannot be enforced under S. 145 but under S. 151 in execution proceedings — See Civil Procedure Code (5 of 1908), S. 145. (1965) 1 Andh L T 245=A I R 1966 Andh-Pra 151.

——Ss. 151 and 145 — Security in favour of Court—Security bond executed by judgment-debtor—Bond imposing personal liability and also hypothecating items of property — Decree-holder can under S. 145 enforce personal liability created by bond—Property can be proceeded in execution by Court in exercise of its inherent powers under S. 151—See Civil Procedure Code (5 of 1908), S. 145. A I R 1964 Andh-Pra 339.

——S. 151—Surety bond — Enforcement in exercise of inherent powers—Appeal.

Even where the surety bond is enforced by the Court in execution in exercise of its inherent powers, the aggrieved party will have the right of appeal. See Civil P. C. (1908), S. 145. AIR 1953 Assam 15.

——Ss. 151, 145 — Surety bond undertaking to pay decretal amount—Principal debtor not party to bond —Bond can be enforced against the surety—See Civil Procedure Code (5 of 1908), S. 145. A I R 1955 Hyd 261.

——Ss. 151, 145—Security bond in favour of Court—Applicability of S. 145—Security bond for stay of execution of mortgage decree in pursuance of order of appellate Court — Enforcement of bond in execution — Inherent powers—See Civil procedure Code (5 of 1908), S. 145. AIR 1955 NUC (Orissa) 2470.

——Ss. 151, 145 — "In any suit or in any proceeding consequent thereon"—Civil Writ Proceeding—Application for leave to appeal to Supreme Court from order refusing writ—Stay of proceedings on furnishing security — Enforcement of security bond on dismissal of appeal by Supreme Court—Applicability of Ss. 145 and 151. See Civil Procedure Code (5 of 1908), S. 145. **AIR 1960 Punj 16.**

14. Consolidation of cases.

——Ss. 151, 115 and O. 2, R. 6 — Consolidation of suits—Consolidation for hearing evidence in common —Validity. Where the issues are different and the parties are not common, an order for the consolidation of two suits for hearing evidence in common without the consent of the parties in both suits is illegal. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1961 Guj 92.**

15. Reconstruction of records.

——Ss. 151, 152, 38 and 47 — Power of executing Court to rectify misdescription of property—(Specific Relief Act (1877), S. 31).

The specific remedy is not under S. 151 or S. 152. See Civil Procedure Code (5 of 1908), S. 38. **A I R 1955 NUC (Raj) 2168.**

——S. 151 and O. 13, Rr. 1 and 2 — Application for admission of certain documents made when arguments in Court were heard — Application headed to be one under O. 13, R 1 and S. 151—No such application could be made at that stage under O. 13, R. 1 — There being specific provision under O. 13, R. 2 for making such application, S. 151, also held would not apply. See Civil Procedure Code (5 of 1908), O. 13, R. 1. **AIR 1955 NUC (Raj) 1630.**

16. Power to take note of subsequent events.

——S. 151—Events happening after suit.

The Judge should take notice of the subsequent events which he is entitled to do under the section to avoid multiplicity of proceedings and endless expenses, inconvenience and preventing miscarriage of justice. See Civil Procedure Code (5 of 1908), O. 7, R. 7. **AIR 1955 NUC (Mad) 211.**

——S. 151 — Rights of parties to be decided on state of facts as it existed at the time of decree. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 2. **AIR 1955 NUC (All) 2663.**

17. Ends of justice.

——S.151—Duty of Court.

Courts cannot encourage private vengeance where a party feels that he has not got justice from the Court. **1951 RD (HC) 354 (DB).**

——S. 151 — Ends of justice — Petition purported to have been made under one provision of law can be sustained by another provision of law in a different enactment : ILR 18 Mad 236 (FB) and 45 MLJ 156 and ILR 47 Mad 325, Rel. on. **ILR (1965) Andh Pra 442 (DB).**

——S. 151 — Scope — Circumstances under which inherent power should be exercised by Courts—Suit for ejectment by landlord — Application by landlord under S. 17 (3) of West Bengal Premises Tenancy Act (12 of 1956) pending the suit — Application dismissed on the ground that the tenant had deposited all arrears up to day with the Rent Controller only after service of summons — Landlord's subsequent application under S. 151, Civil P. C. for reconsideration of the earlier order pursuant to a change of position of law on the point of validity of deposit of arrears of rent subsequent to service of summons as embodied in a later Division Bench decision of the High Court—Lower Court's order allowing the application for reconsideration was held to be without jurisdiction — **Held** on the facts that the circumstances, neither warranting an interference with the earlier order for the ends of justice nor requiring the same for the prevention of any abuse of the process of the Court, did not justify the exercise of power under S. 151, Civil P. C. **ILR (1961) 1 Cal 791.**

——S. 151—Ends of justice — Refund of court-fee—(Court-fees Act (1870), Ss. 13, 14 and 15).

Sections 13, 14 and 15, Court-fees Act not being applicable and there being no other specific provision for refund of court-fees, S. 151 could be invoked to meet the ends of justice. **AIR 1951 Mad 801.**

——S. 151—Judiciary—Duty of Court — Expression 'the act of Court'—Meaning of—Acts of Court—Not to disadvantage of any party — Words and Phrases —'The act of the Court'.

One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to the suitors and when the expression 'the act of the Court' is used it does not mean merely the act of the primary Court or of any intermediate Court of appeal but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter to the highest Court which finally disposes of the case. The acts of the Court should not be construed to the disadvantage of any of the parties. **1962 RLW 406=ILR (1962) 12 Raj 498.**

18. Equity.

——S. 151—Equity—Court will not aid party to earn profit out of breach of his duty — Applicability to case of default in payment under agreement for maintenance in kind with default clause. **AIR 1963 Mys 120 (121) (Pt B) (Prs 4, 5).**

——S. 151 — Justice, equity and good conscience — Co-sharers — Right to claim mesne profits. See Civil P. C. (1908), O. 20, R. 12. **AIR 1957 Nag 12 (DB).**

——S. 151 — Precedents —:Justice equity and good conscience. See Prohibition — C. P. and Berar Prohibition Act (7 of 1938), S. 34. **1957 Nag L J 120.**

19. Other remedy open.

——Ss. 151, 115—Other remedy open—An appeal is provided and as such the exercise of the extra-ordinary jurisdiction under S. 115 was not necessary in the case. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1955 NUC (Ajmer) 4705.**

——S. 151 and O. 21, R. 35 — Execution of decree against third party — Remedies of such person. **AIR 1951 Cal 394.**

——Ss. 151, 115, O. 9, Rr. 7 and 13 — Interlocutory order under O. 9, R. 7 refusing leave to defend suit — Revision against after ex parte decree passed — Maintainability — Remedies open to defendant. See Civil Procedure Code (5 of 1908), S. 11. **AIR 1965 Mys 300.**

20. "Prevent abuse of process of Court."

——S. 151 — Previous suit constituting abuse of process of Court—Stay of subsequent suit not necessary. See Civil Procedure Code (5 of 1908), S. 10. **AIR 1957 Assam 120.**

——S. 151 — (Partnership Act (1932), S. 12)—Power of majority of partners to withdraw suit—Where it will be encouraging abuse of the process of the Court and the ends of justice demand that the suit should be discontinued it should be done so under the inherent powers of the Court under the section. See Partnership Act (1932), S. 12. **AIR 1954 Cal 409.**

21. Mistake of Court.

●——S. 151 — **Negligence of Court or its officers — Right of litigant to be protected.**

The litigant deserves to be protected against the default committed or negligence shown by the Court or its officers in the discharge of their duties. (1871) 3 P C 465, Rel. on. Jagat Dhish Bhargava v. Jawahar Lal Bhargava, **(1961) 1 Ker L R 437 = (1961) 2 SCR 918=(1963) 2 SCJ 11=(1961) 2 SCA 204=AIR 1961 SC 832 (836) (Pt B) (Pr 11).**

——S. 151 — Court has power to recall order made contrary to law. **AIR 1965 Andh Pra 395.**

——S. 151, O. 41, R. 19 — Limitation Act (1908), Art. 168 — Dismissal of appeal for default — Application for restoration contending that applicant was not aware of posting of appeal — Court finding that dismissal of appeal was erroneous as applicant was not aware of posting of appeal :but dismissing application as barred by time holding that applicant had knowledge of dismissal of appeal — Held, Court was not justified in invoking principles of O. 41, R. 19 or Art. 168 while dismissing application — Court should have allowed application under S. 151 — Its not doing so constituted error of law apparent on face of record and could be corrected in writ proceedings. AIR 1949 All 36, Rel. on.—Constitution of India, Art. 226. **ILR (1963) Andh Pra 1022.**

——**Ss. 151, 115**— Appellate Court wrongly disallowing transposition as appellants sought by petitioners to prosecute appeal which was abandoned by appellant — Appeal later dismissed as not pressed — Revision by petitioners against order disallowing transposition — Maintainability — Revision petition not rendered infructuous. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1961 Ker 200.**

——**S. 151**—Mistake of Court — Correction under inherent power. The Court has always got an inherent jurisdiction to rectify its own mistake. **AIR 1955 NUC (Pat) 1598.**

——**S. 151—Case decided—Interference — (Constitution of India, Art. 227).**

High Court can interfere if there has been obvious error in procedure. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1953 Sau 30.**

22. Appeal.

——**S. 151**—Application under — Order — No appeal lies against such order under S. 104 or 105. See Civil Procedure Code (5 of 1908), S. 104. **AIR 1954 Ajmer 10 (1).**

——**Ss. 151, 115—Treatment of appeal as revision.**

Held, that considering that an appeal lay in the case under the law the Court could not permit a revision. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1955 NUC (Raj) 2544.**

23. Revision.

——S. 151—Decree not in existence — Revision—No revision lies under the section. See Civil Procedure Code (5 of 1908), S. 47. **AIR 1954 Ajmer 44.**

——S. 151 — "Orders" — Meaning of — Revision — Where application for stay of further proceedings in a matrimonial action is rejected the order is not one under the Act and is not appealable under Hindu Marriage Act, S. 28—See Hindu Marriage Act (1955), S. 28. **AIR 1962 Cal 88.**

——S. 151—Revision petition — The section does not confer upon the Court the power to exercise jurisdiction which it does not otherwise possess. See Civil Procedure Code (5 of 1908), O. 9, R. 9. **AIR 1951 Mad 672.**

——S. 151—Failure to exercise inherent jurisdiction —Revision — High Court should interfere in its revisional jurisdiction. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1952 Pat 260.**

24. Review.

——**Ss. 151, 114 and O. 47, R. 1**—Order under Article 226 of Constitution —Review maintainable under S. 151. See Civil Procedure Code (5 of 1908), S. 114. **AIR 1960 All 152.**

——**S. 151—(U. P. Land Reforms (Supplementary) Act (31 of 1952))—Power of review.**

Unless authorised by Statute a Court or Judge has no inherent power to set aside or modify a final order once made merely because it is wrong. See Civil Procedure Code (5 of 1908), S. 141. **AIR 1957 All 67.**

——**S. 151, O. 47, R. 1**—Application for review—Court has no inherent power to review suit for fresh hearing. See Civil Procedure Code (5 of 1908), O. 47, R. 1. **AIR 1961 Assam 124.**

——**S. 151 and O. 47, R. 1**—Power to review is not inherent power. **AIR 1953 Mad 236.**

——**S. 151 and O. 47, R. 1—Review application — Requirements of — Inherent powers—When can be exercised—Setting aside ex parte decree by way of review, propriety of.**

Held, that the order of the subordinate Judge was without jurisdiction as in the circumstances of the case the Court could not have invoked the inherent powers in favour of the defendant. See Civil Procedure Code (5 of 1908), **O. 47, R. 1. AIR 1964 Orissa 98.**

——**S. 151**—Minor not properly represented—Decree passed — Remedies of minor — Application under S. 151 treated as one for review. See Civil Procedure Code (5 of 1908), O. 47, R. 1. **AIR 1955 NUC (Pat) 1863.**

——**Ss. 151, 114, O. 47, R. 1**—Tribunal under Motor Vehicles Act — Power of review — Scope — Circumstances for exercise of inherent power — Duty of Tribunal in cases of wrong orders, stated. See Civil Procedure Code (5 of 1908), S. 114. **AIR 1963 Punj 92.**

● ——**Ss. 152, 149 and O. 33, R. 7** — Application to sue in forma pauperies rejected — Court, if and when can allow applicant to pay court-fee. See Civil Procedure Code (5 of 1908), S. 149. **AIR 1955 All 159 (FB).**

——**S. 152**—Power to alter order — He had no jurisdiction to alter his previous order of dismissal — His subsequent order allowing appeal was therefore without jurisdiction and liable to be quashed. See Civil Procedure Code (5 of 1908), O. 20, R. 3. **AIR 1955 NUC (All) 3553.**

——**S. 152**—Suit for partition of joint family property —Preliminary decree silent as to division of a particular item found to be joint family property— Application for review or amendment not disposed of on merits — Second suit for partition of that item— Barred by res judicata — Second application for amendment of decree — Maintainability—The matter could be rectified under S. 152. See Civil Procedure Code (5 of 1908), S. 11. **AIR 1957 Andh Pra 981.**

——**S. 152**—Application for amendment of preliminary partition decree, for inclusion of item left out by mistake — Court-fee. Amendment should have been allowed without further court-fee. See Court-fees Act (1870), Sch. I, Art. 4. **AIR 1955 Andhra 215.**

——**S. 152**—Application for additional written statement —Application allowed without hearing opposite party — Review — Jurisdiction—The order would be an ex parte order and would be subject to just exceptions by the other side. See Civil Procedure Code (5 of 1908), O. 47, R. 1. **AIR 1956 Assam 79.**

——**Ss. 152, 151**—Court correcting its own mistake— Notice to parties — The Court was entitled to correct a mistake which was due to the laches of its own

officer without any notice to the other party. See Civil P. C. (1908), S. 151. AIR 1955 Cal 526.

——S. 152—Who can apply for amendment—Person not party to suit or decree has no right — Proper remedy of third party is by way of suit. A I R 1953 Hyd 3.

——S. 152 — Inherent power of Court to amend decrees. See Civil P. C. (5 of 1908), S. 151. A I R 1954 J & K 23.

——S. 152 — Payment of interest — Remedy where decree is silent as to interest — Where direction as to interest is inadvertantly omitted the decree or order can be amended by adding any appropriate direction under S. 152 of Civil P. C. 1965 Jab L J 881=A I R 1966 Madh Pra 270.

——S. 152—Defective procedure by Court — Powers of Court to correct — The Court could order correction of memorandum of appeal and the decree under Ss. 151, 152 and 153. See Civil P. C. (5 of 1908), S. 153. A I R 1958 Madh Pra 307.

——S. 152 — Relief under, cannot be granted which falls within scope of appeal or review. See Civil P. C. (5 of 1908), S. 151. A I R 1951 Mad 406.

——S. 152—Second appeal — Modification in decree by lower appellate Court—Legality — Order passed during the pendency of the second appeal would not be legally operative. See Civil P. C. (5 of 1908), S. 9. A I R 1954 Manipur 20.

——S. 152 — Amendment of decree on the ground that the pleader's fees is inadequate is not maintainable — Remedy is to appeal against the decree. See Civil P. C. (5 of 1908), S. 151. A I R 1953 Mys 106.

——S. 152 — Appellate authority certifying Standing Orders — Correction of clerical mistake — Inherent powers — The rule that every Court must be deemed to possess the inherent powers, which applies to all Courts cannot apply to an appellate authority under the Industrial Employment (Standing Orders) Act. See Industrial Employment (Standing Orders) Act (20 of 1946), S. 6. A I R 1958 Pat 427.

——Ss. 152, 96 and O. 47, R. 1 — Appeal against amended decree — Decree amended under O. 47 and not under S. 152—Pending appeal against the original decree—Dismissal of appeal as incompetent is proper. See Civil P. C. (5 of 1908), S. 96. 67 Punj L R 1223 =A I R 1966 Punj 518.

——S. 152 — Rejection of plaint for non-payment of court-fee—Order amounts to decree—Power of Court rejecting plaint—Proper procedure for restoration, is on review or under S. 152 if the mistake is covered by that section. See Civil P. C. (5 of 1908), S. 2 (2). A I R 1956 Raj 164.

——Ss. 152, 151, 38 and 47 — Power of executing Court to rectify misdescription of property—(Specific Relief Act (1877), S. 31) — The specific remedy is not under S. 151 or 152. See Civil P. C. (5 of 1908), S. 38. A I R 1955 N U C (Raj) 2168.

——S. 152 — Suit for recovery of money on basis of bond and in alternative on basis of subsequent agreement—Whole tenor of judgment showing that Court passed decree for sum due on basis of agreement—By mistake, however, sum due on basis of bond put down in judgment and decree — Mistake, held, was clerical mistake or at most accidental slip. A I R 1955 N U C (Raj) 357.

——Ss. 152, 115—"Failure to exercise jurisdiction so vested." See Civil P. C. (5 of 1908), S. 115. A I R 1955 N U C (Raj) 357.

——S. 152—Appeal dismissed with costs — Omission of costs in the judgment and decree — Remedy—Proper remedy is by way of amendment under S. 152 and not by way of appeal. See Civil P. C. (5 of 1908), S. 35. A I R 1955 N U C (Raj) 272.

——S. 152 — Application under S. 116, Travancore Civil P. C. for amendment of order rejected—Review —Applicability of Travancore Civil P. C., O. 45, R. 2 to High Court—Error or mistake apparent on face of record or judgment. See Civil P. C. (5 of 1908), O. 47, Rr. 1, 2. A I R 1951 Trav-Co 150.

——Ss. 153, 152, 151 and O. 9, Rr. 8, 7—Amendment of ex parte decree — Amendment can be allowed if the decree is not in conformity with the judgment or there is any mistake due to accidental slip or inadvertence. See Civil P. C. (5 of 1908), S. 151. A I R 1955 Mys 2.

● ——S. 153—Failure to cause legal representative to be brought on record—Effect and remedy. See Civil P. C. (5 of 1908), O. 22, R. 3. A I R 1954 Mys 65 (FB).

——Ss. 153, 151, 107; O. 1, R. 10, O. 41, R. 1—Appeal filed in name of dead person—Power of Court to permit legal representatives to be substituted as appellants — Legal representatives cannot be substituted as appellants. See Civil P. C. (5 of 1908), S. 107. A I R 1961 Punj 57.

——S. 155, O. 14, R. 5 (1)—Failure to exercise jurisdiction. A I R 1953 Bilaspur 33.

——O. 1 (Gen.)—Joint writ petition — Common right — Joint petition not maintainable — O. 1 not applicable. See Constitution of India, Art. 226. A I R 1960 All 366.

——O. 1 (Gen.) — (Constitution of India, Art. 226) — Mandamus to compel Municipality to supply scheduled quantity of water—Joint application by several rate payers—Maintainability.

Where mandamus is sought by several rate payers having different causes of action to compel a municipality to supply scheduled quality of water for domestic purposes, it would be sufficient to follow analogously the provisions of O. 1, Civil P. C. See Constitution of India, Art. 226. AIR 1956 Cal 291.

——O. 1, R. 1—Suit for injunction—Who may file.

A person occupying rooms to which obstruction to light and air is alleged is entitled to claim easement rights. See Easements Act (1882), S. 32. A I R 1958 Assam 83.

——O. 1, R. 1 — (Constitution of India, Art. 226) — Mandamus to compel Municipality to supply scheduled quantity of water — Joint application by several rate-payers — It would be sufficient to follow analogously the provisions of O. 1, Civil P. C. See Constitution of India, Art. 226. AIR 1956 Cal 291.

——O. 1, R. 1—Partition suit—Parties claiming shares are in position of plaintiffs though arrayed as defendants.

In a suit for partition plaintiffs and defendants who claim shares are all to be regarded as plaintiffs on whichever side they may be arrayed on the record. The circumstances that the plaintiff originally claimed only a declaration in respect of some properties is immaterial. The result that would have ensued had they themselves claimed a partition of these properties in the plaint enures to their advantage by the claim for partition not made by them but made against them by the defendants. AIR 1952 Trav-Co 471 (475, 476) (Pt G) (Pr 24) (DB).

——O. 1, Rr. 2, 1 and O. 2, R. 3 — Suit by several plaintiffs against State each claiming prescriptive title by adverse possession to parcel of land in his exclusive possession—Suit bad for multifariousness — There was misjoinder for plaintiffs and causes of action. See Civil P. C. (5 of 1908), O. 1, R. 1. A I R 1964 Orissa 159.

——O. 1, R. 3—Pro forma respondent.

Failure to serve one of the respondents, who was practically a pro forma defendant in the suit and

who had no interest in the appeal, does not bring about abatement of the appeal. AIR 1955 N U C (All) 3563.

——O. 1, Rr. 3, 4, 1 and O. 6, R. 11 — Suit on mortgage by co-heirs — All parties jointly interested as plaintiffs or defendants—Suit is not defective—Judgment can be given in favour of all heirs. See Civil P. C. (5 of 1908), O. 1, R. 1. AIR 1963 Bom 170.

——O. 1, R. 3 — Award directing restoration of holding — Application for possession — Question whether or not award was without jurisdiction on account of lease prior to relevant date 20th December, 1939 — Separate suit—Maintainability—Death of one of defendants— Effect. See Debt Laws — Bengal Agricultural Debtors Act, 1935 (7 of 1936), S. 37-A. AIR 1956 Cal 454.

——O. 1, R. 3 — Partition — Suit for—Benamidars of co-owner joined as defendant — Suit held not incompetent because benamidars asserted paramount title. AIR 1955 NUC (Cal) 5916.

——O. 1, Rr. 3 and 10—Cause of action arising from orders of Revenue officers — Province though not necessary party, held proper party. A I R 1951 Orissa 342.

——O. 1, R. 3 — (Constitution of India, Art. 226) — One application for different writs — There should be separate applications for separate writs. See Constitution of India, Art. 226. AIR 1955 Pepsu 159.

——O. 1, R. 4; O. 6, R. 17, O. 7, R. 7; O. 41, R. 33 and S. 153—Power of Court to grant relief not asked for—Power of amendment:— (Negotiable Instruments Act (1881), S. 78). See Civil P. C. (5 of 1908), S. 153. AIR 1959 Andh Pra 126.

——O. 1, Rr. 4, 3, 1 and O. 6, R. 11 — Suit on mortgage by co-heirs — Judgment can be given in favour of all heirs. See Civil P. C. (5 of 1908), O. 1, R. 1. AIR 1963 Bom 170.

——O. 1, R. 4 — Rights of separated son and grandson. See Hindu Law — Succession — Son. A I R 1955 Madh Bha 148.

——O. 1, Rr. 5, 3; O. 2, R. 3 — Suit for partition — Who can be joined — Joinder of different cases of action — (Co-owners — Partition—Suit for)—(Hindu Law). See Civil P. C. (5 of 1908), O. 1, R. 3. A I R 1955 NUC (Cal) 5916.

——O. 1, R. 6 — Vessel of plaintiff requisitioned by Government under Vessel of India Rules—Joint liability of India and Pakistan—Liability was statutory and not contractual — Cause of action partly in India and partly in Pakistan. See Indian Independence (Rights, Property and Liabilities) Order (1947), Para. 8. A I R 1964 Cal 196.

——O. 1, R. 7—(Limitation Act (1908), S. 18)—Plaintiff having right to sue but not suing for want of knowledge of proper defendant. See Limitation Act (1908), S. 18. AIR 1959 Cal 247.

——O. 1, Rr. 7 and 10 — Applicability — In a suit for damages for injuries sustained by the plaintiff while travelling in a bus as a result of rash driving, against the driver and owner of motor bus, the Insurance Company with whom the bus is insured against third party risk can be impleaded as defendant under the principle underlying O. 1, Rr. 7 and 10 (2). AIR 1951 Nag 280.

●——O. 1, R. 8 and S. 11—Constructive res judicata — Suit by trustees of church for declaration of title and possession of trust property — Matter in issue directly and substantially in issue in previous interpleader suit — If res judicata. See Civil P. C. (5 of 1908), S. 11. AIR 1959 S C 31.

——O. 1, R. 8 — Society registered under particular name — Society can validly adopt different name for institution of suit by and against it—Suit instituted in that different name is maintainable. See Societies Registration Act (1860), S. 6. ILR (1965) 1 All 483 = AIR 1966 All 570.

——O. 1, R. 8 and S. 92 — Right of worshipper to bring suit for possession on behalf of idol.

Mere worshipper has no right to bring a suit for possession of temple properties on behalf of idol. See Hindu Law. AIR 1956 All 207.

——O. 1, R. 8; O. 21, R. 63, S. 11 — Representative suit.

Held that the suit under O. 21, R. 63, was not in representative capacity and did not operate as res judicata. AIR 1959 Andh Pra 280.

——O. 1, R. 8—Right to file suit for all co-owners.

It is settled view that a co-owner can file a suit for recovery of the property from a trespasser on behalf of all the co-owners. (1954) 2 M L J (Andhra) 223 = AIR 1955 Andhra 31.

——O. 1, R. 8 — Election petition under S. 80 of Representation of the People Act (1951)—Allegations of corrupt practices against certain persons—These persons could not be made parties to the proceedings. See Representation of the People Act (1951), S. 80. AIR 1958 Assam 17.

——O. 1, R. 8 and Ss. 11 and 92 — Consent decree in representative suit — Can operate as res judicata. See Civil P. C. (5 of 1908), S. 11. AIR 1959 Bom 396.

——O. 1, R. 8 — (Constitution of India, Art. 226) — Necessary parties — Application to compel Corporation of Calcutta and Commissioner of Police to maintain public streets and foot-paths for unobstructed user by public and for declaration that latter has no right to permit hawker's corners there — Hawkers are not necessary parties to such application. See Constitution of India, Art. 226. AIR 1961 Cal 389.

——O. 1, R. 8, O. 21, R. 32, Ss. 146, 47 — Representative suit — Decree for injunction — Execution against parties not on record — Can be ordered under S. 146 — O. 1, R. 8 of the Code is of no help to the plaintiff decree-holder. See Civil P. C. (5 of 1908), S. 146. AIR 1960 Cal 623.

——O. 1, R. 8 — Proper parties — Since the petitioner can have recourse to O. 1, R. 8 and proceed against only some of the members representing themselves and all other members of the State Medical Faculty, it is not necessary to implead all the members of the faculty. See Constitution of India, Art. 226. AIR 1953 Cal 289.

——O. 1, R. 8; O. 23, R. 1 (2) and Ss. 92, 107—Withdrawal in appeal — Formal defect — Sufficient grounds.

Appellate Court can allow withdrawal from suit. See Civil P. C. (5 of 1908), S. 92. AIR 1952 Kutch 94.

——O. 1, R. 8 and S. 92 — Kutch Civil P. C., S. 22—Suit by certain members of religious sect in their individual capacity for reliefs provided in S. 92 — Maintainability — Procedure in S. 22, Kutch Civil P. C. must be followed. See Civil P. C. (5 of 1908), S. 92. AIR 1952 Kutch 92.

——O. 1, R. 8 (1), O. 41, R. 2 and S. 92 — Suit under S. 92 — Contention as to want of permission under O. 1, R. 8 cannot be raised under O. 41, R. 2 — Contention as to want of consent of Advocate-General can be raised. See Civil P. C. (5 of 1908), S. 92. AIR 1952 Kutch 83.

——O. 1, R. 8—Suit by one alone to eject a trespasser — Maintainable. He can get a decree to the extent of his share. AIR 1952 Madh-Bha 95.

——O. 1, R. 8 — Co-owners — Suit by one alone — Competency.

A co-owner can file a suit for recovery of property from a person in wrongful possession. Such a suit is regarded as one on behalf of all the co-owners. 1960

M P C 501 = 1960 M P L J 962 = 1960 Jab L J 910 = ILR (1960) Madh-Pra 285.

——O. 1, R. 8 — (Constitution of India, Art. 226) — Similar disputes between seven establishments and their workers referred by single notification to Industrial Tribunal — Single petition by establishments for writ of prohibition, maintainability. See Constitution of India, Art. 226. AIR 1957 Mad 616.

——O. 1, R. 8 — Joint application — The provisions of O. 1, R. 8, seeks to obviate the inconveniences arising out of a multiplicity of parties, but neither the rule nor its principle can be extended to writ petitions. The rule does not afford any basis for a joint writ petition. See Constitution of India, Art. 226. AIR 1956 Mad 626.

——O. 1, R. 8, O. 7, R. 5 — Manager — Proceedings even in execution against manager bind joint family including minor members — Acts and omissions of manager both are binding. See Hindu Law — Joint family. AIR 1953 Mad 822.

——O. 1, R. 8 — (Limitation Act (1908), Art. 118) — Suit by Hindu reversioner to set aside adoption — Minority. See Limitation Act (1908), Art. 118. AIR 1951 Mad 824.

——O. 1, R. 8 — Permission to sue in representative capacity obtained — Effect — It is impossible to contend thereafter that the suit was not brought in a representative capacity. AIR 1951 Mad 296.

——O. 1, R. 8 — Religious endowment — De facto manager — Right to represent institution in suits — Can represent institution in absence of de jure manager and if in exclusive possession — Suit not properly instituted — Decree is not binding on deity. See Hindu Law — Religious Endowment. AIR 1961 Orissa 105.

——O. 1, R. 8 — Ejectment of trespasser — Suit by one only — Maintainability — Suit by one only but not for benefit of all or for joint possession — Decree for ejectment — Power of Court to make.

It is only in a properly constituted suit that he can get such possession to the extent of his share. But where his suit is neither for the benefit of the entire body of co-sharers nor for joint possession with the defendant trespasser, he cannot be given a decree for ejectment. AIR 1951 Orissa 359 = 17 Cut L T 298.

——O. 1, R. 8 — (Constitution of India, Art. 226) — Who can apply — Right of Rate-payers Association to apply on behalf of members to restrain Municipal Corporation from realising tax from them—Municipal Corporation cannot be restrained. See Constitution of India, Art. 226. AIR 1956 Pat 182.

——O. 1, R. 8 and O. 22, R. 2 — Abatement.

A suit or appeal does not abate when the Court permits a certain number of persons to institute or defend a suit or appeal in a representative capacity on behalf of others and when some of them either by death or otherwise become incapable to conduct or defend the suit or appeal. AIR 1955 N U C (Pat) 2500.

——O. 1, R. 8 and S. 11, Expl. VI — Representative suit — It is not necessary that suit must have been brought under O. 1, R. 8. See Civil P. C. (5 of 1908), S. 11, Expl. VI. AIR 1956 Pepsu 69.

——O. 1, R. 8—Claim under — Fatal Accidents Act (1855) is essentially on behalf of all i. e., the wife, husband, parent, child representative, executor or administrator. See Fatal Accidents Act (1855), S. 1-A. 67 Pun L R 386 = AIR 1966 Punj 288 (FB).

——O. 1, R. 8 — Provision as to issue of notices of institution of suit is peremptory. (1963) 65 Pun L R 865.

——O. 1, R. 8 — Object of notice.

The object of serving notice on all the persons concerned is that as the judgment in such an action is binding on all the members of the class represented they should all be properly served before some one is allowed to represent them during the proceedings of the suit : AIR 1933 P C 183, Foll. (1963) 65 Pun L R 865.

——O. 1, R. 8 — Decree in representative suit — Advantage of notice of institution of suit not having been served can be derived only by parties who were not served — Decree is binding on person who appears and contests suit and cannot be heard to say that it is not binding on him because all interested persons were not served with notices : AIR 1927 Cal 608, Rel. on. (1963) 65 Pun L R 865.

——O. 1, R. 8 — (T. P. Act (1882), S. 53 (1)) — Suit by creditor to set aside transfer as fraudulent — Section not applicable in Punjab — Suit need not be on behalf of all creditors. See T. P. Act (1882), S. 53 (1). AIR 1961 Punj 398.

——O. 1, R. 8 — Representation — Ordinarily one co-owner cannot represent another in legal proceeding. AIR 1955 NUC (Trav-Co) 2565.

——O. 1, R. 8 — Ejectment of lessee — Suit by one only — Maintainability — Existence of decree for partition among co-sharers — If can be pleaded by lessee as valid defence to suit.

One of several co-sharers of joint property is competent to maintain a suit for eviction of a lessee and to recover from him possession of the whole property on behalf of himself and the other co-sharers provided all the other co-sharers are made parties to the suit. The fact that there is a decree for partition which the plaintiff co-sharer can execute and work out his rights is no ground of defence which the lessee can plead or urge for not surrendering possession of the property according to the terms of the lease deed executed by him. ILR (1951) Trav-Co 585 = 1951 Ker L T 647 = AIR 1952 Trav-Co 258.

——O. 1, R. 8 — Suit by one alone to eject a trespasser is maintainable. 1951 K L T 210 = AIR 1952 Trav-Co 195.

——O. 1, R. 8, O. 2, R. 3 — Joint petition by two or more — Maintainability — The applicants will have to take the risk that there will have to be a joint order. And even if the claim of one is rejected the entire application will stand the risk of being rejected. See Constitution of India, Art. 226. AIR 1962 Tripura 7.

——O. 1, R. 9, O. 31, R. 2 and S. 99 — Suit against managing trustee of temple for his act of negligence — Other co-trustees should be made parties — Effect of non-joinder — Defect is fatal and decree passed cannot be sustained. See Civil P. C. (5 of 1908), S. 99. AIR 1964 Andh Pra 412.

——O. 1, R. 9 — P, student in P. U. C. class filing suit for declaration that his age as entered in S. S. L. C. Register was not correct — P impleading Registrar of University as defendant but Registrar contending that University was not proper party as it had no interest or concern in matter — Despite this, P neither impleading Director of Public Instructions nor Secretary, Secondary Education Board as defendant — Before filing suit, P not making any attempt to have his age corrected in manner specified in G. O. Ms. No. 1263 of 6.5.61 (Education) — After obtaining decree, P applying to University and D. P. I. for correcting his age in concerned registers — University complying with request, while D. P. I. refusing to make corrections — After passing his examination, P applying for admission to pre-professional course — Selection Committee refusing admission on ground that P's age as entered in S. S. L. C.

Register did not qualify him for admission — By petition under Art. 226, Constitution of India, P requesting Court to direct Selection Committee to make corrections in S. S. L. C. Register in relation to his age, as per decree — **Held.** declaration obtained by P would not be effective against persons entrusted with admissions to Pre-Professional Course or the Director of Public Instruction or the Secretary, Secondary Education Board — Before a suit could be brought for declaration as to correct age, concerned student should adopt procedure contemplated by the Government order. ILR (1963) Andh Pra 396.

——O. 1, R. 9 — (Constitution of India, Art. 226) — Parties to writ petition — Misjoinder—The defect is not fatal enough to entitle dismissal of petition. See Constitution of India, Art. 226. **AIR 1956 Bhopal 43.**

——O. 1, R. 9 — Vessel of plaintiff requisitioned by Government under Vessel of India Rules — Joint liability of India and Pakistan — Liability was statutory and not contractual — Cause of action partly in India and partly in Pakistan. See Indian Independence (Rights, Property and Liabilities) Order (1947), Para. 8. **AIR 1964 Cal 196.**

——O. 1, Rr. 9, 10, 1, 3 — Misjoinder, non-joinder — Multifariousness. See Civil P. C. (5 of 1908), O. 1, R. 1. **AIR 1955 NUC (Manipur) 4337.**

——O. 1, Rr. 9 and 10 — Filing of election petition — Elected candidate not impleaded though a necessary party — Petition not maintainable. **(1962) 4 Orissa J D 391 (DB).**

——O. 1, R, 9 — List of nominated candidates prepared only after withdrawal under R. 24 — Person withdrawing under R. 24 not necessary party to election petition against returned candidate — Petition cannot be dismissed for non-joinder of such person. See Panchayats — Bihar Panchayat Raj Act (7 of 1948). **1962 B L J R 260.**

——O. 1, Rr. 9, 10; S. 11—(Specific Relief Act (1877), S. 25) — (T. P. Act (1882), S. 55 (2))—Suit by vendee for return of earnest on ground of want of marketable title in defendant vendor — Question of maketable title can be decided in absence of party in whom title is alleged to reside. See Specific Relief Act (1877), S. 25. **AIR 1961 Raj 196.**

ORDER 1, RULE 10

SYNOPSIS

1. Applicability and scope.
2. Addition of parties — General.
   - A. "Who ought to have been joined."
   - B. Whose presence before the Court may be necessary.
   - C. Partition suit.
   - D. Suit for rent.
   - E. Mortgage suit.
   - F. Government as party.
   - G. Suit for possession.
   - H. Suit for declaration.
   - I. Suit for damages.
   - J. Suit by or against Hindu joint family.
   - K. Suit on promissory note.
   - L. Insolvency proceedings.
   - M. Suits relating to religious trusts.
   - N. Proceedings under Land Acquisition Act.
   - O. Proceedings under Tenancy Laws.
   - P. Other cases.
3. Transposition of parties.
4. Misdescription of parties.

1. Applicability and scope.

——O. 1, R. 10 (2) — Custodian — If necessary or proper party. Custodian is a proper, though not a necessary party to a suit for ejectment of a lessee of half share in a property where the lessee is also an allottee of the other half of the property which has been declared to be evacuee property. See Administration of Evacuee Property Act (1950), S. 50 (2). **AIR 1959 All 574.**

——O. 1, R. 10, O. 23, R. 3 — Pendency of proceedings — By reason of the filing of the compromise petition itself in the second appeal it cannot be regarded as having come to an end. Till a compromise decree is passed, the litigation cannot be regarded to have terminated. **AIR 1960 Andh Pra 32.**

——O. 1, Rr. 10, 8 — Scope — Necessary parties.

Where the suit is brought in the interest of a group of persons for public good the Court should not stick to mere technicalities and dismiss the suit simply because all necessary parties were not before the Court. This defect can be remedied by amendment. **AIR 1955 NUC (Assam) 5525.**

——O. 1, R. 10 — (Constitution of India, Art. 226)— Necessary parties — Application to compel Corporation of Calcutta and Commissioner of Police to maintain public streets and foot-paths for unobstructed user by public and for declaration that latter has no right to permit hawker's corners there — Hawkers are not necessary parties to such applications. See Constitution of India, Art. 226. **AIR 1961 Cal 389.**

——O. 1, R. 10 — Person whose nomination paper has been accepted is necessary party. See Municipalities — Madhya Bharat Municipalities Act (1954), S. 14 (1) (i). **AIR 1955 NUC (Madh Bha) 3701.**

——O. 1, R. 10; O. 22, R. 3 and S. 2 (11) — Suit by benamidar, not in representative capacity — Real owner cannot be brought on record as his legal representative upon his death. See Civil Procedure Code (5 of 1908), S. 2 (11). **AIR 1961 Mad 376.**

——O. 1, R. 10 — Position of co.widows under Hindu Succession Act — Right of co-widow to institute suit for ejectment of trespasser in her own right after coming into force of Hindu Succession Act, 1956— Other co-widows whether necessary parties.

If either of the parties want that during the pendency of the proceedings it would be desirable to implead the other co-widows as parties it may be open to them to apply under O. 1, R. 10 and implead them. But their presence cannot be held to be necessary for the purpose of granting relief in the suit. **AIR 1959 Mad 349.**

——O. 1, Rr. 10, 9, 3, 1 — Misjoinder, non-joinder— Multifariousness. See Civil Procedure Code (5 of 1908), O. 1, R. 1. **AIR 1955 NUC (Manipur) 4337.**

——O. 1, Rr. 10 (2) and 8—Applicability to club — Club — Suit against—Will not apply since a suit against unregistered and non-proprietary club is not a proper suit. See Civil Procedure Code (5 of 1908), O. 1, R. 8. **AIR 1954 Nag 29.**

——O. 1, R. 10 — Applicability.

In a suit for damages against the driver, owner of the bus and the Insurance Company with whom the bus is insured, can be impleaded as defendant. See Civil Procedure Code (5 of 1908), O. 1, R. 7. AIR 1951 Nag 280.

——O. 1, R. 10, O. 22, R. 10 and 43, R. 1 (1) — Devolution of part of interest — Application for being added as party by person on whom interest devolved — Rejection of — Appeal.

Such application cannot be deemed to be one under O. 1, R. 10 and the order rejecting it is appealable

under O. 43, R. 1 (1). See Civil Procedure Code (5 of 1908), O. 22, R. 10. AIR 1952 Pat 323.

—O. 1, R. 10—Suit by vendee for breach of indemnity of title—Property purchased subject to encumberance along with other properties — Effect of non-disclosure — Liability of vendor for damages — Extent of — Liability of other properties for contribution — Form of suit. See T. P. Act (1882), S. 55 (1) (a). AIR 1957 Trav-Co 59.

2. Addition of parties — General.

A. "Who ought to have been joined."
B. Whose presence before the Court may be necessary.
C. Partition suit.
D. Suit for rent.
E. Mortgage suit.
F. Government as party.
G. Suit for possession.
H. Suit for declaration.
I. Suit for damages.
J. Suit by or against Hindu Joint Family.
K. Suit on promissory note.
L. Insolvency proceedings.
M. Suits relating to religious trusts.
N. Proceedings under Land Acquisition Act.
O. Proccedings under Tenancy laws.
P. Other cases.

2. Addition of parties — General.

● —O. 1, Rr. 10, 3, 9—Necessary and proper parties —Who are — Effect of non-joinder. See Civil Procedure Code (5 of 1908), S. 4. AIR 1963 All 549 (FB).

—O. 1, R. 10—Addition or striking out of parties is not governed by considerations of delay. See Debt Laws — Bombay Agricultural Debtors Relief Act (28 of 1947), S. 46, Proviso. AIR 1956 Bom 201.

— O. 1, R. 10—(Limitation Act (1908), S. 22)—Suit for dissolution of partnership — Addition of parties after period of limitation — Effect — Bar of suit— Parties cannot be added. See Limitation Act (1908), S. 22. AIR 1960 Mad 134.

—O. 1, R. 10—Suit in the name of liquidator — Maintainability. The liquidator is empowered to institute a suit "in the name and on behalf of the Company." See Companies Act (1913), S. 179 (a). AIR 1956 Nag 204.

—O. 1, R. 10—Cause of action arising from orders of Revenue Officers — Province though not necessary party, held proper party. See Civil Procedure Code (5 of 1908), O. 1, R. 3. AIR 1951 Orissa 342.

—O. 1, R. 10—List of nominated candidates prepared only after withdrawal under R. 24 — Person withdrawing under R. 24 not necessary party to election petition against returned candidate — Petition cannot be dismissed for non-joinder of such person. See Panchayats — Bihar Panchayat Raj Act (7 of 1948). 1962 B L J R 260.

—O. 1, R. 10—(Limitation Act (1908), S. 22) — Addition of parties on application made for the purpose —Addition must be deemed to take effect from date of presentation of application. AIR 1956 Pepsu 17.

—O. 1, R. 10—Parties to divorce petition —Divorce petition filed by wife against her husband — Female adulteress joined as co-respondent—She is neither necessary nor proper party under Rules 11 and 12 (a) of Rules framed under Act—Her application to remove her name from divorce petition must succeed. See Hindu Marriage Act (1955), S. 13. ILR (1965) 2 Punj 537 = (1966) 68 Punj L R 16D= AIR 1966 Punj 337.

● —O. 1, R. 10—Accident of vehicle of transport company due to negligence of driver—Driver not impleded as party — Transport Company joined as party is sufficient in a claim for compensation. See Tort. 67 Pun L R 386 = AIR 1966 Punj 283 (FB).

● —O. 1, R. 10—Person having no right of pre-emption made co-plaintiff by pre-emptor—Right of pre-emption is not forfeited—Right lawfully created must be respected. See Pre-emption. 1965 Cur L J 598 = 67 Pun L R 849 = ILR (1965) 2 Punj 706= AIR 1966 Punj 36 (FB).

—O. 1, R. 10 (2)— Scope — Addition of parties — Discretion of trial Court — Interference in revision. Where the Court has acted in aid of justice and has added a person to the suit, the High Court will not interfere. AIR 1951 Punj 352.

—O. 1, R. 10—Necessary and proper parties.

Held, in the circumstances of the case, that M could not be regarded as a necessary or proper party. See Civil Procedure Code (5 of 1908), S. 151. AIR 1951 Punj 318.

2-A. "Who ought to have been joined."

● —O. 1, R. 10—Constitution of India, Art. 226 — Petition for writ of certiorari —Necessary and proper parties — Distinction between — Who are necessary and proper parties to the petition — Person in whose favour impugned order is passed not joined as parties — Petition held not competent — See Constitution of India, Art. 226. A I R 1963 S C 786 (788) (Pr 7).

● —O. 1, R. 10; O. 6, R. 17; O. 23, R. 1 and Representation of the People Act (1951), Ss. 38, 55-A, 82, 85, 90 (3) — "Contesting candidate" — Who is — Non-joinder of necessary party — Effect — Defect if can be cured by amendment — Defect of non-joinder of necessary parties to the election petition cannot be cured by amendment — See Representation of the People Act (1951), S. 38. AIR 1958 S C 687.

● —O. 1, R. 10—Joinder of parties after limitation when operates in dismissal of suit — Principle stated. —AIR 1960 Andh Pra 98 (FB).

2-B. Whose presence before the Court may be necessary.

—O. 1, Rr. 10, 9; O. 22, R. 4 — Suit under O. 21, R. 63 — Necessary party — Judgment-debtor is a necessary party and after his death, his sons and widow must be brought on record as his legal representatives. AIR 1951 Ajmer 27.

—O. 1, R. 10; O. 34, R. 1 — Suit for redemption — Parties—Under O. 1, R. 10 only those persons would be regarded as necessary parties without whose presence the matters in controversy could not be effectually and completely adjudicated upon — See Civil Procedure Code (5 of 1908), O. 34, R. 1. A I R 1956 Hyd 172.

—O. 1, R. 10; O. 14, R. 2 — Necessary party not before Court.

So long as necessary parties to a case are not before the Court, it would be ridiculous for the Court to say that the plaintiff's claim is within time or that it is well founded. A decision on the point of jurisdiction also would be equally premature. AIR 1955 N U C (Pepsu) 4001.

2-C. Partition suit.

—O. 1, R. 10 — Partition suit — Preliminasy decree passed:— Joining of creditors of father—If allowed— See High Court Rules and Orders — (Madras) Civil Rules of Practice and Circular Orders. A I R 1956 Mad 288.

—O. 1, R. 10 — Partial partition—Some properties falling to share of one branch — Subsequent suit for partition of such properties between members of that

branch is maintainable — See Hindu Law—Partition. **AIR 1955 Nag 241.**

——O. 1, R. 10—Suit for partition—Necessary parties — In a suit for partition every person who claims an interest in the joint family property is a necessary party — See Hindu Law — Partition. **AIR 1951 Nag 350.**

——O. 1, R. 10 (2) — **Partition suit — Preliminary decree passed — Subsequent application to implead co-sharers as parties to suit — Addition of parties cannot be allowed as it would affect determination in preliminary decree, which has become final.**

There is no dispute that in all suits where only one decree is passed completely disposing of the suits, there cannot be any addition of parties under O. 1, R. 10, Civil P. C., subsequent to the decree. AIR 1963 S C 992, Foll.; AIR 1916 Nag 120 and AIR 1924 Oudh 38 and AIR 1935 Nag 64, Rel. on; (1904) ILR 32 Cal 483, Distinguished; A I R 1964 Andh Pra 260 and A I R 1942 Pat 185 (2) **held no longer good law in view of AIR 1963 S C 992. I L R (1965) Cut 799 = AIR 1966 Orissa 160.**

——O. 1, R. 10; O. 22, Rr. 3, 10, 11; S. 107 (2) — Appeal from preliminary decree in partition suit — Death of one of appellants pending appeal — Legal representative not brought on record within time—Appeal abates against heirs of deceased—O. 22, R. 10, does not apply — Legal representatives cannot be made parties — See Civil Procedure Code (5 of 1908), O. 22, R. 3. **AIR 1961 Pat 178.**

——O. 1, R. 10 — Co-sharers — Partition—Suit for—Parties—Proof.

Where the plaintiff has brought the suit for partition as a co-sharer by impleading all the co-sharers interested in the tauzi there is no defect of parties. In order to succeed in the suit the plaintiff has to prove unity of title and unity of possession. **I L R 30 Pat 213=AIR 1952 Pat 11 (14) (Pt A) (Pr 15) (DB).**

2-D. Suit for rent.

——O. 1, R. 10 — Rent decree — Decree against all recorded tenants.

A decree for rent obtained against all the recorded patnidars would be a rent decree even though the landlord has failed to implead certain part-transferees of an interest in the putni, who were not recognised by the landlord. **I L R (1953) 2 Cal 336 = AIR 1953 Cal 398 (400) (Pt B) (Pr 11) (DB).**

——O. 1, R. 10—Rent suit — Co-sharer's right to sue for his share of rent. **AIR 1953 Nag 25.**

2-E. Mortgage suit.

——O. 1, Rr. 10, 9; O. 34, R. 1—Non-joinder of mortgagor in suit by mortgagee — The suit could not be dismissed on account of the omission to implead the mortgagor as a party — See Civil Procedure Code (5 of 1908), O. 34, R. 1. **AIR 1955 Mad 439.**

2-F. Government as party.

——O. 1, R. 10 and S. 80—Notice given to the Secretary of State but not to public officer—Waiver.

Where no objection is taken at an early stage that the suit is bad for want of notice to the public officer, the notice will be deemed to have been waived — See Civil P. C. (1908), S. 80. **A I R 1952 Nag 213.**

——O. 1, R. 10 and Ss. 80, 99—Government as party.

Government need not be impleaded as a party—See Civil Procedure Code (5 of 1908), S. 80. **A I R 1955 N U C (Raj) 1137.**

2-G. Suit for possession.

——O. 1, R. 10 — Suit for possession — Necessary parties. It is well settled law that one of the several co-owners can maintain an action against a trespasser without joining the other co-owners as parties to the action. **AIR 1955 N U C (Madh B) 3343.**

——O. 1, Rr. 10, 9 and O. 41, Rr. 4 and 33 — Suit for possession and mesne profits against several defendants having distinct and separate interest in suit lands—Decree for possession — Costs awarded jointly against defendants and plaintiff allowed to withdraw amount deposited as past mesne profits — Appeal by some defendants only — Permitted to continue appeal though other defendants were not impleaded — See Civil Procedure Code (5 of 1908), O. 1, R. 9. **A I R 1965 Pat 510.**

2-H. Suit for declaration.

——O. 1, R. 10 and S. 80 — Suit for declaration that grant by State to defendant is illegal — Plaintiff offering payment of Nazarana to State for decree for possession — State is necessary party — Notice under S. 80 is necessary — See Civil Procedure Code (5 of 1908), S. 80. **AIR 1953 Bilaspur 7.**

2-I. Suit for damages.

——O. 1, R. 10 — Accident — Plaintiff injured— Suit for damages against owner of vehicle — Joinder of insurer—See Motor Vehicles Act (1939), S. 96. **A I R 1961 Punj 190.**

2-J. Suit by or against Hindu Joint Family.

●——O. 1, R. 10; O. 34, R. 1 — Hindu Law — Joint family — Manager — Right to sue — Objection as to non-joinder of other adult co-sharers to be taken at early stage — Waiver — Suit by manager to enforce mortgage — Effect of non-joinder — Limitation Act (1908), S. 22 not attracted. See Hindu Law — Joint family. **AIR 1961 SC 1277.**

——O. 1, R. 10 and S. 11—Decree against manager.

The joint family would be bound by a decree properly passed against the manager of the family either in respect of a family property or a family debt. See Civil Procedure Code (1908), S. 11. **AIR 1957 Andh Pra 688.**

——O. 1, R. 10 — Suit by Manager of joint Hindu family — He can sue or be sued in respect of transactions entered into on behalf of the family. **AIR 1955 NUC (Assam) 2809.**

——O. 1, R. 10 and O. 30, R. 1 — (Limitation Act (1908), S. 22) — Joint family trading name — O. 30 of the Code not attracted — Suit instituted in joint family trading name — Plaintiff seeking to bring on record persons forming such names — No addition of new parties. See Limitation Act (1908), S. 22. **AIR 1960 Cal 327.**

——O. 1, R. 10—Hindu Law—Joint family—Status—Nature of—Suit by family to set aside alienation—Partition of family—Effect—Right of divided member to continue suit — O. 1, R. 10 could be properly invoked. See Hindu Law—Joint family. **AIR 1964 Ker 144.**

●——O. 1, R. 10—Joint family property—Alienation—Suit—Representation.

A suit filed against the manager qua manager of a joint Hindu family in a representative character binds all members of the family although not made parties to the proceedings when the debt is due by the whole family. **AIR 1951 Mys 38 (FB).**

2-K. Suit on promissory note.

——O. 1, Rr. 10, 6, O. 8A, R. 1 (Mad) — Suit on promissory note by holder in due course against maker—Third party procedure not applicable against original payee — But original payee proper party and should be impleaded under O. 1, R. 10. See Civil

Procedure Code (5 of 1908), O, I, R. 6. AIR 1962 Mad 202.

——O. 1, R. 10—Right to institute suit — If confined to holder — Right of beneficiary or true owner to sue —Holder if necessary party — Suit by holder on her own behalf and on behalf of minor sons, owners of promissory note — Maintainability. See Negotiable Instruments Act (1881), S. 8. AIR 1956 Raj 174.

2-L. Insolvency proceedings.

——O. 1, R. 10 — Provincial Insolvency Act making adequate provision as to procedure — Civil P. C. will not apply. See Provincial Insolvency Act (1920), S 24. AIR 1957 Andh Pra 603.

——O. 1, R. 10—Suit for accounts of dissolved partnership and recovery of money — One of defendants partners undischarged insolvent — Absence of leave of insolvency Court — Suit not maintainable. See Presidency Towns Insolvency Act (1909), S. 17. AIR 1961 Raj 81.

2-M. Suits relating to religious trusts.

●——O. 1, R. 10 — Suit by managing trustee as representing mutt — Other trustees added as parties after expiry of limitation — Suit is properly constituted even at its inception—Addition of other trustees is not a case of imperative necessity but is only a matter of convenience or expediency — Suit is not barred by limitation. AIR 1960 Andh Pra 98 (FB).

——O. 1, R 10 — Religious endowment — De facto manager — Right to represent institution in suits — Can represent institution in absence of de jure manager and if in exclusive possession—Suit not properly instituted—Decree is not binding. See Hindu Law—Religious Endowment. AIR 1961 Orissa 105.

2 N. Proceedings under Land Acquisition Act.

——O. 1, R. 10—(Land Acquisition Act (1894), Ss. 18, 20, 21)—Person not obtaining reference and allowing application to be time-barred — Right to be added as party to pending reference obtained by other parties and raise new questions. See Land Acquisition Act (1894), S. 18. AIR 1956 Cal 263.

——O. 1, R. 10 — (Land Acquisition Act (1894), S. 6) —Public purpose—Acquisition of land at instance of Municipality for private institution — Validity. See Land Acquisition Act (1894), S. 6. AIR 1954 Mys 171.

2-O. Proceedings under Tenancy Laws.

——O. 1, R. 10—Suit for damages for use and occupation of premises — Person having no interest not included as plaintiff—No misjoinder. AIR 1955 NUC (Ajmer) 775.

——O. 1, R. 10 — Agricultural tenancy — Ejectment proceedings against recorded tenant — Unrecorded tenant is bound by such proceedings. 1941 RD 385, Ref. ('52) 1952 All L J (Rev) 58 : 1952 All W R (Rev) 72 : 1952 RD (BR) 61 (DB).

——O. 1, R. 10—Landlord and tenant—Suit against tenant—All co-owners must join.

As against a trespasser one co-owner on behalf of all the co-owners can maintain an action. But if an action is to be filed against a tenant, then all the co-owners must be joined. Appeal No. 48 of 1952, dated 11th November 1952 (Bom), Foll. AIR 1956 Bom 264.

2-P. Other cases.

——O. 1, R. 10 — (Contract Act (1872), S. 45)—Suit by one of joint promisees. See Contract Act (1872), S. 45. AIR 1957 Andh Pra 688.

——O. 1, R. 10; O. 6, R. 17—Amendment not altering nature of suit or adding new cause of action — Is admissible under O. 6, R. 17. See Civil Procedure Code (5 of 1908), O. 6, R. 17. AIR 1953 Hyd 192.

——O. 1, R. 10 and S. 20 — Suit for restitution of conjugal rights. See Civil Procedure Code (5 of 1908), S. 20. AIR 1955 NUC (Madh Bha) 2978.

——O 1, Rr. 10, 9 and S. 11 — (Specific Relief Act (1877), S. 25)— (T. P. Act (1882), S. 55 (2)) — Suit by vendee for return of earnest on ground of want of marketable title in defendant vendor — Question of marketable title can be decided in absence of party in whom title is alleged to reside. See Specific Relief Act (1877), S. 25. AIR 1961 Raj 196.

——O. 1, R. 10 (2) and Ss. 100 and 101 — New case of mixed questions of law and fact.

Whether a person is a necessary party in the suit or not depends upon the decision of mixed questions of fact and law which, when not raised and decided either in the trial Court or first appellate Court, will not be permitted to be raised in the second appeal for the first time. See Civil Procedure Code (5 of 1908), S. 100. AIR 1954 Raj 17.

3. Transposition of parties.

——O. 1, R. 10 — Applicability to transposition of parties — Ample jurisdiction is bestowed upon the Court to order transposition at any time. See Limitation Act (1908), S. 22. (1958) 2 Andh W R 79= 1958 Andh L T 605=I L R (1958) Andh Pra 383.

——O. 1, R. 10—Transposition of parties — Some of the respondents and petitioner compromising before return of rule — Consent order passed — Appeal by other respondents who were merely pro forma respondents and were not consenting parties — Petitioner entering appearance through advocate who however not appearing—Appeal allowed—To meet the ends of justice and in interest of procedural clarification appellants transposed as petitioner and original petitioner as respondent to that petition—Because in case petitioner does not choose to move rule then appellants being only pro forma respondents in original petition may find ground cut under their feet. (1963) Cal L J 20 (DB).

——O. 1, R. 10—Suit for ejectment — Transposition of defendant — To avoid multiplicity of proceedings transposition was permissible. It would not alter the nature of suit. A I R 1955 N U C (Mad) 3231.

——O. 1, R. 10—(Limitation Act (1908), Art. 158)—Application for filing of award—Transposition of one of respondents as applicant—Effect—Limitation. See Limitation Act (1908), Art. 158. A I R 1961 Punj 355.

4. Misdescription of parties.

——O. 1, R. 10 (2) and O. 7, R. 1—Misdescription of parties—(Limitation Act (1908), S. 22).

Held, that it was a case of mere misdescription in the cause title which should be allowed to be corrected. A I R 1955 N U C (Assam) 3640.

——O. 1, R. 10 and S. 79 — Suit against Government —Mistake in description.

The correction when made after the period of limitation is not fatal to the suit. See Civil P. C. (5 of 1908), S. 79. A I R 1955 N U C (All) 1747.

——O. 1, R. 10 — (Limitation Act (1908), S. 22) — Misdescription.

An amendment bringing the members of the family in place of trading name of the family is merely correcting a misdescription. See Limitation Act (1908), S. 22. A I R 1960 Cal 327.

——O. 1, R. 10—Misdescription — Suit by employee of School Board under local authority Municipality — Chairman of School Board impleaded — Defendant raising objection that local authority municipality was a necessary party to the suit and that Municipal

School Board had no independent existence—Objection taken at the earliest — Opportunity given to plaintiff to implead authorized municipality not availed by him—Held, in the circumstances that there was no misdescription of the defendant in the plaint. (1963) 2 Mys L J 532=I L R (1963) Mys 499 (DB).

——O. 1, R. 11—Minor—Revenue Courts should see that minor is properly represented in a proceeding in which minor's interest appears to be involved. See Civil P. C. (5 of 1908), O. 32, Rr. 3, 4. (1963) Mah L J (Notes) 32.

——O. 2, R. 1, O. 6, R. 2—Plaintiff asking for defendant's eviction on particular grounds—Without considering those grounds Court cannot grant decree for eviction on ground not taken in plaint. A I R 1953 Tripura 11.

——O. 2, R. 2—Different cause of action — Suit held not barred under O. 2, R. 2. A I R 1955 N U C (Ajmer) 775.

——O. 2, R. 2 — Suit for rent due for certain years—Plaintiff not including in suit claim rent for subsequent year which had become due on date of suit—Subsequent suit for recovery of such rent is barred under O. 2, R. 2. A I R 1964 Andh Pra 412.

——O. 2, R. 2, Ss. 11, 114 and 152—Applicability of S. 11 and O. 2, R. 2, to suit for partition between coparceners or co-owners — The principle of res judicata and the principle underlying O. 2, R. 2 are equally applicable to suits for partition between co-owners as they are applicable to suits for partition amongst members of a joint family for partition of the family property. A I R 1957 Andh Pra 981.

——O. 2, R. 2—(T. P. Act (1882), S. 70)—Mortgaged property — Alleged demolition — Suit for compensation.

A subsequent suit for compensation for the alleged demolition of the mortgaged property by the mortgagee while in possession will be barred if such relief is not claimed in a prior suit for redemption. See Transfer of Property Act (1882), S. 76. A I R 1954 Bom 417.

——O. 2, R. 2—Alternative relief—It is not the mere existence of more than one relief only that brings the bar under O. 2, R. 2 into operation. A I R 1951 Bom 167.

——O. 2, R. 2—Scope indicated. A I R 1955 N U C (Cal) 838.

——O. 2, R. 2, O. 21, R. 32 — Suit for specific performance of contract for sale of land.

The plaintiff may join in the same suit two prayers, one for the execution of the deed of transfer and another for recovery of possession of the land in question. A I R 1952 Cal 362.

——O. 2, R. 2, O. 8, R. 6—Defendant pleading set-off —He is bound in view of O. 2, R. 2 to do so in respect of his entire claim. See Civil P. C. (5 of 1908), O. 8, R. 6. A I R 1953 Him Pra 11.

——O. 2, R. 2, S. 11—First suit for partition—Second suit for mesne profits in respect of income received by co-sharer subsequent to partition suit — Second suit not barred. A I R 1963 Mad 402.

——O. 2, R. 2 — (T. P. Act (1882), S. 67-A) — Mortgagor executing two mortgages of different properties in favour of same mortgagee — Mortgagee obtaining decree on prior mortgage without any objection under S. 67-A of T. P. Act from mortgagor—Second suit on subsequent mortgage not barred by S. 67-A, T. P. Act or O. 2, R. 2, Civil P. C. See T. P. Act (1882), S. 67-A. A I R 1956 Mad 467.

——O. 2, R. 2 — Impartible estate — Decree for personal debts against last holder — Suit for declaration that debts are binding on estate not barred. A I R 1951 Mad 242.

——O. 2, R. 2—Breach of contract of reconveyance—Suit for specific performance—Claim for damages or compensation for value of crop harvested during pendency not included — Subsequent suit for such claim barred—Specific Relief Act (1877), S. 19.

Where after the suit for specific performance, filed by the plaintiff on the defendant's refusal to execute the reconveyance of the garden in plaintiff's favour, was decreed, the plaintiff instituted a suit for the amount of the value of the crop harvested by the defendant during the pendency of the earlier suit for specific performance.

Held, that the suit was barred by the provisions of O. 2, R. 2, C. P. C. The breach of the contract had taken place before the institution of the suit for specific performance, which breach entitled the plaintiff not only to a claim for specific performance of the contract but also to a claim in addition thereto for such damages or compensation as he might in the circumstances be entitled to, which may be taken as loss caused or likely to be caused to the plaintiff by the delay of the defendant to perform the contract, from the date of which he should have properly performed it till the date he actually performed it. AIR 1957 Andh Pra 960, Foll.

So far as the claim for damages in substitution for specific performance was concerned, such an alternative prayer was ordinarily or normally made by way of caution for the reason that the granting of a decree of specific performance was discretionary with the Court even if the plaintiff had proved that a breach of contract had arisen in circumstances entitling him to make a prayer for specific performance. The provisions of S. 19 of the Specific Relief Act which enabled a plaintiff to ask for compensation for breach of contract in addition to a prayer for specific performance proceeded upon the legal principle that the cause of action for additional damages was the same as the cause of action for the prayer for specific performance viz., breach of the contract of sale.

The plaintiff could make a claim against the defendant in respect of the loss occasioned subsequent to institution of suit, because the defendant who unlawfully refused to perform the contract entered into by him making it necessary for the plaintiff to go to Court, could not absolve himself of the responsibility for the consequences flowing from the breach. The manner in which the plaintiff could pay court-fee in respect of damages which might accrue subsequent to the filing of the plaint, was that the plaintiff should make a reasonable estimate of the damages which he claimed in the same way as a plaintiff in a suit for any other type of damages would have to. Observations in AIR 1963 Cal 468, Dissented from. (1965) 1 Mys L J 253=AIR 1966 Mys 215.

——O. 2, R. 2 — Partition — Rule that partition suit should comprise all family property is not inflexible —Question whether second suit for partition is or is not permissible depends on reason for institution of incomplete first suit—In first suit for partition certain site not included on account of litigation then pending between members of family and outsider who claimed part of sight as his own — Second suit for partition of site — Held, partition has two-fold concept — Division of right and division by metes and bounds — Since while plaintiff instituted first suit there was obscurity created as regards identity of suit site as well as its extent because of litigation then pending, plaintiff could not have then sought division of site by metes and bounds—In other words omission to claim partition of suit site was ascribable to an acceptable reason, namely, impossibility of partition by metes and bounds — Hence, second suit was maintainable. See Hindu Law — Joint family. ILR (1963) Mys 1016.

—O. 2, R. 2, O. 9; O. 17 Rr. 2, 3; O. 21, R. 10 and S. 141—Procedure in regard to suits—Applicability to execution proceedings—Order dismissing application —No default on part of decree-holder—Order cannot be upheld — See Civil Procedure Code (5 of 1908), S. 141. AIR 1955 Nag 305.

—O. 2, R. 2 — (Contract Act (1872), S. 59)—'Distinct debts'—Test—Appropriation—Right of creditor.

The test to determine whether the dues to the plaintiff was one debt or several distinct debts is whether he could sue for such dues under O. 2, R. 2. See Contract Act (1872), S. 59. A I R 1961 Orissa 148.

—O. 2, R. 2 — Suit by P for permanent injunction restraining D from interfering with his possession in disputed land — Dismissal of, by trial court but appellate court allowing P to withdraw suit with permission to file fresh suit — Subsequent suit by P against D for possession of disputed land on assertion that he was owner and D was trespasser—Suit decreed but till that time order of appellate court allowing P to withdraw suit was not passed—Appeal against decree in subsequent suit — Contention that subsequent suit was barred under O. 2, R. 2 on ground that previous suit did not include claim made in subsequent suit — Held, appellate court was right in taking into consideration order of appellate court in previous suit and disallowing objection under O. 2, R. 2 — Even apart, suit was not barred under O. 2, R. 2 as each encroachment on P's land would give rise to different cause of action and O. 2, R. 2 contemplated inclusion of all claims in respect of same cause of action — See Civil P. C. (1908), O. 41, R. 27. (1963) 65 Pun L R 838.

—O. 2, R. 2 and S. 11 — Malabar Law — Specific Relief Act (1877), Ss. 39, 42 — Tarwad — See Malabr Law. AIR 1955 NUC (Trav-Co) 1099.

—O. 2, R. 2 — Applicability—Provisions of, do not apply to proceedings in execution of decree. A I R 1951 Trav-Co 75.

—O. 2, R. 3 and Ss. 115, 96—Decision must be one in which no appeal lies — See Civil Procedure Code (5 of 1908), S. 115. AIR 1955 NUC (All) 1994.

—O. 2, R. 3—(Court-fees Act (1870), S. 17)—Multifarious suits—Meaning—Single suit on two different mortgages—Decree for consolidated amount—Appeal — Computation of court fee — See Court-fees Act (1870), S. 17. AIR 1957 Andh-Pra 1019.

—O. 2, R. 3—Alienation by one of the coparceners of his share — Suit for partition by alienee—Title of alienee to portion of property alienated found defective—Claim by alienee for reimbursement of proportionate portion of purchase price not maintainable — Separate proceedings should be taken — See Hindu Law—Madras School. AIR 1961 Mad 405.

—O. 2, R. 3 — (Constitution of India, Art. 226) — Single application — Relief sought of composite character, based on distinct causes of action—Identity of points to be decided—Not maintainable—See Constition of India, Art. 226. AIR 1957 Mad 570.

—O. 2, R. 3 — Must be read consistently with sections prescribing rules of jurisdiction — See Civil Procedure Code (5 of 1908), O. 1, R. 3. A I R 1955 Mad 595.

—O. 2, R. 3 — Distinct causes of action—Consolidated suit — Suit beyond pecuniary jurisdiction — Subsequent several suits splitting up causes of action bringing each claim within pecuniary jurisdiction in same Court against same defendant not barred — See Panchayats—Vindhya Pradesh Gram Panchayat Ordinance (1949), S. 64. AIR 1956 Vindh-Pra 6.

—O. 2, R. 6; Ss. 115, 151 — Case decided — Order consolidating suits for hearing evidence — Revision lies — See Civil Procedure Code (5 of 1908), S. 115. AIR 1961 Guj 92.

—O. 3, R. 1—Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 12C — Presentation of election petition — U. P. Panchayat Raj Rules, Chapter I. E. R. 24 (2) and 25 (1) — Election petitions need not be presented personally by the candidate or by the persons filing the same—An authorised agent can present the same — Even if it is necessary it is a curable irregularity — (Civil P. C. (1908), O. 3, R. 1)—See Panchayat — U. P. Panchayat Raj Act (26 of 1947), S. 12C. 1963 All L J 542.

—O. 3 R. 1; O. 32, R. 7 (1)—Counsel duly appointed guardian ad litem of minors and authorised to enter into compromise — Counsel is competent to file application seeking permission of Court to enter into compromise — See Civil Procedure Code (5 of 1908), O. 32, R. 7 (1). AIR 1961 Him-Pra 38.

—O. 3, Rr. 1, 2 and O. 29, R. 1 — Suit by Corporation — Plaint signed and verified by manager — Subsequent ratification — Effect — It would cure the original defect. See Civil P. C. (5 of 1908), O. 29, R. 1. AIR 1954 J and K 45.

—O. 3, Rr. 1, 2, O. 6, R. 14 — Plaintiff residing abroad — Suit instituted on behalf of — Plaint to be signed by recognised agent — Proviso to O. 6, R. 14 does not apply — Plaint signed by non-recognised agent — Defect when can be cured. See Civil P. C. (5 of 1908), O. 6, R. 14. AIR 1962 Ker 19.

—O. 3, R. 1, O. 4, R. 1, O. 5, R. 1 and S. 27 — Presentation of plaint through post — Plaint registered and summous issued — Irregularity should be taken as waived. See Civil P. C. (5 of 1908), O. 4, R. 1. AIR 1955 N U C (Madh-Bha) 3774.

—O. 3, R. 1, O. 17, R. 2 and O. 5, R. 1 — "Appearance" — Hearing of suit adjourned generally — Dependant not appearing but counsel appearing and applying for adjournment — On refusal, Counsel reporting "no instructions" — Court can act under O. 17, R. 2. — See Civil P. C. (1908), O. 17, R. 2. AIR 1956 Nag 179.

—O. 3, R. 1; O. 9, Rr. 8, 9, 12 and S. 115 — Non-compliance with O. 3, R. 1, O. 9, R. 12 and O. 32, R. 15 — Revision.

A revision under S. 115, is competent and the order may directly be challanged in the High Court. See Civil P. C. (5 of 1908), S. 115. AIR 1955 N U C (Pepsu) 1877.

—O. 3, Rr. 2, 1; O. 29, R. 1; O. 6, R. 14—Managing Director having authority under Articles of Association to institute suits — Plaint signed by Managing Director or by person orally authorised by him is valid. See Civil P. C. (5 of 1908), O. 29, R. 1. AIR 1961 Bom 292.

—O. 3, R. 2 and S. 20 — (Letters Patent (Calcutta), Cl. 12) — "Carry on business" — Meaning of —Business through recognised agents — Sufficiency.

In the absence of any evidence to show that they were acting under any power of attorney, the natural presumption was that they were recognised agents within the meaning of O. 3, R. 2 (b). See Letters Patent (Calcutta), Cl. 12. (1957) 99 Cal L J 95.

—O. 3, Rr. 2, 1 and O. 29, R. 1 — Suit by Corporation — Plaint signed and verified by manager — Subsequent ratification — Effect — It would cure the original defect. See Civil P. C. (5 of 1908), O. 29, R. 1. AIR 1954 J and K 45.

—O. 3, Rr. 2, 4, O. 41, R. 1 — Power to present appeal. AIR 1955 N U C (Raj) 1643.

● —O. 3, R. 4—Instructions to counsel by party — Party has to give instructions to his counsel in good time and has not to put that off till the actual date of hearing. Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati. (1965) S C D 95 = (1965) 1

S C J 788 = 1965 M P L J 509 = 1965 Mah L J 365 = (1964) 7 S C R 267 = (1964) 2 S C W R 349 = 66 Bom L R 681 = AIR 1965 S C 364.

——O. 3, R. 4 — Bench and the bar — Relations between the Bench and the bar — Code of conduct —Duty to avoid use of violent language and occasion for clash — Necessity to observe rules of discipline, decorum and decency. **1963 (2) Cri L J 363 = AIR 1963 All 477 (479) (Pt B) (Pr 12).**

● **——O. 3, R. 4** — (Limitation Act (1908), S. 19) — Acknowledgment of liability by pleader on behalf of client — Admission relating to matter falling outside scope of authority of lawyer — His admission is not binding on client. See Limitation Act (1908), S. 19. **AIR 1961 Andh-Pra 467 (FB).**

——O. 3, R. 4 — (Income-tax Act (1922), S. 66) — Application for reference — Signature of advocate only sufficient — Authority to appear in rectification proceedings — **Held** covered further proceedings. See Income-tax Act (1922), S. 66. **AIR 1960 Andh-Pra 422.**

——O. 3, R. 4 — (Evidence Act (1872), S. 18) — Admissions of Counsel — Admissions on facts and on law — Binding effect.

Admissions of facts cannot be resiled on the ground that the party or his counsel were not posted of the facts at the time. Admissions of Counsel on a point of law are, however, not binding on the parties as an estoppel and the Court is free to give effect to its views of the law irrespective of such admissions. See Evidence Act (1872), S. 18. **AIR 1957 Andh-Pra 965.**

——O. 3, R. 4 — (Bombay Municial Boroughs Act (1925), S. 12) — Lawyer engaged by Municipality standing for election — His resignation accepted on 18th January 1954—Nomination filed on 19th January 1954 — Resignation is effective from 18th January 1954. See Municipalities — Bombay Municipal Boroughs Act (18 of 1925), S. 12. **AIR 1955 Bom 159.**

——O. 3, Rr. 4, 1; O. 11, R. 15 — Person entitled to inspect — Pleader without vakalatnama in the case but instructed by another who has filed vakalatnama has no right to have inspection of documents filed in the suit or proceedings. See Civil P. C. (5 of 1908), O. 11, R. 15. **AIR 1955 N U C (Cal) 5577.**

——O. 3, R. 4—(Majority Act (1875), S. 2)—"Capacity to act — Meaning — Suit for dissolution of marriage by Muhammadan girl aged 15 — Order 32, R. 1, Civil P. C. does not apply. See Majority Act (1875), S. 2. **AIR 1952 Cal 381.**

——O. 3, R. 4 — Duties — Maintenance of order and decorum — Pleader having lost temper creating tense scene in Court room — Atmosphere continuing to deteriorate — Judge is justified in asking pleader to withdraw from Court room for a while.

It is true that Courts are open to all, but at the same time it is equally true that it is the presiding Judge who is responsible for maintaining order and decorum in the Court and whenever such order, decorum or dignity of the Court is threatened, the presiding Judge would be right in taking reasonable steps to restore such decorum or order. Therefore, if a Judge feels that a pleader would continue to create an ugly scene in the Court and behave in the manner in which he has so far behaved and believes that the atmosphere in the Court would still deteriorate, he would be justified in asking the pleader to withdraw from the Court room for the time being. **(1965) 6 Guj L R 702 = 1965 (2) Cri L J 491=AIR 1965 Guj 237.**

——O. 3, R. 4 — Vakalatnama filed for purpose of appeal — Case remanded to trial Court — Subsequent appeal filed against decision of trial Court under same Vakalatnama is incompetent. **AIR 1953 Him-Pra 11.**

——O. 3, R. 4 — Legal Practitioner — Solicitor's lien — Extent of — Contract Act, S. 171.

The common law lien on property or funds recovered, known as particular lien, has also been recognised by the Courts in India in cases of solicitors and attorney. The same principle has been applied in India in the cases of advocates and pleaders because they not only plead but, like solicitors in England, also act for their clients. But in order to have the lien the fruits of the litigation must have been recovered by the solicitors' exertions. Where the deposit in Court was made on the application of the judgment-debtor and in the absence, and therefore without any aid or exertion, of the pleader, the pleader is not entitled to recover and retain the deposit towards his fees in exercise of his right of particular lien. Further the particular lien is not available for the general balance of account between the solicitor and the client but extends only to the costs of the proceedings in which the property is recovered. Case law discussed. (Chowdhry R. K. J. C.). **AIR 1952 Him-Pra 11 (13, 14) (Pt A) (Prs 11, 12, 13).**

——O. 3 R. 4 — Income-tax Act (1922), S. 23 (4) — Hyderabad Income-tax Act, S. 31 (4) — Notice under Proviso to S. 31 (4) of Hyderabad Act for cancellation of registration of the assessee firm to auditors — The auditors had no power to represent the firm after the original assessment was concluded—The cancellation of registration of the firm was not valid. See Income-tax Act (1922), S. 23 (4). **A I R 1955 N U C (Hyd) 2970.**

——O. 3, R. 4 —Legal practitioner — Advocate — Has lien for his costs against fruits of decree obtained by him.

A lien is available to an advocate against the fruits of a decree obtained by him for the fees and other expenses due to him.

Advocates of Kerala High Courts are allowed not only to plead but to act as well, and there is no reason why the common law lien of England in favour of solicitors should not be conaidered as available to advocates in this country on grounds of justice, equity and good conscience. AIR 1921 Mad 320; 81 L J Ch 82, Rel. on.; AIR 1927 Bom 542, Ref.; AIR 1955 Ori 102, Dissent. from. **(1961) K L T 968 = (1961) 2 Ker L R 587 = I L R (1962) 1 Ker 101 = (1963) 32 Com Cas 378.**

——O 3, R. 4—Lien for fees — Advocate of Mysore High Court—Right of—Extent of the lien of solicitors and Attorneys — Enforceability in summary jurisdiction—(Legal Practitioners (Fees) Act (1926), S. 3).

An advocate has no "particular lien" for the payment of his fees upon the property recovered for his party by his exertions as is sactioned by the Solicitor's Act in England and allowed in the case of attorneys of the High Court in India and solicitors enrolled as attoryeys; such a lien can only be supported by an express agreement of the client in his favour and the lien of the attorney cannot extend to more than the taxed costs allowable to him. (A I R 1932 Mad 256; AIR 1942 Bom 102, Rel. on). The lien, if it exists, should extend only to the extent of the fees allowed by the Court as in the case of the solicitor in England and it is limited only to the taxed and taxable costs. It cannot extend to any amount agreed to by the client. The ordinary original jurisdiction of the Court is different from the insolvency jurisdiction and the Insolvency Court having become functus officio the Court could not in its ordinary jurisdiction allow a 'lien' claimed in respect of fees due on the insolvency side. Where there is a prior charge known to the person claiming the "particular lien" on the property it cannot be granted. The 'lien' for fees does not subsist when any other security had already been taken from the client. AIR 1932 Mad 256, Foll.

The advocate was found not entitled to the lien in any view of the matter. **I L R (1952) Mys 270 = 31 Mys L J 137=AIR 1952 Mys 141.**

—O. 3, R. 4 — (Constitution of India, Art. 226) — Admissions by counsel — The party must be held bound by the concessions made by his counsel. See Constitution of India, Art. 226. AIR 1956 Nag 27.

—O. 3, R. 4 — Solicitor and client — Authority to bind client—Solicitors are not, in the absence of specific authority, agents of their clients to conclude a contract for them — Contract Act (1872), Ss. 182 and 188. AIR 1952 Nag 220 (225) (Pt G) (Pr 26) (DB).

—O. 3, R. 4 — Rights of pleaders — Termination of appointment—Fees — The Court may grant leave subject to such conditions as it deems fit. A.I.R 1951 Nag 278.

—O. 3, R. 4 — Admissions by pleader — Statements of counsel will be always relied on, however when inaccuracy creeps in and is noticed the pleader may be allowed to withdraw the statement. AIR 1951 Nag 161.

—O. 3, R. 4 — Duty of pleader — Compromise proposed—Illiterate client — Duty to explain terms and to be satisfied that client had understood them before signing petition.

A pleader acting for a party has the duty imposed on him, when a compromise is sought to be filed, to make sure that the terms of the compromise as recited in the fair copy are explained to his client and to be satisfied that the client has understood the terms. When the client is illiterate the responsibility of the pleader signing the petition of compromise is greater. He must explain the terms of the proposed compromise, when they are fair copied, to his client and he must be reasonably satisfied that his client has understood the terms. A mere statement that the terms were read over and explained to the client is not enough. AIR 1952 Pat 48.

—O. 3, R. 4—(Obiter—Power to make admissions — Occupants of a house pleading for first time in appeal that their predecessor in interests had, after expiry of tenancy became statutory tenant—Counsel for owner in an eviction suit conceding that the predecessor-in-interest had so become statutory tenant — A concession of this type by a cousel in the circumstances may not be easily held binding on the client. (1965) 67 Pun L R 887.

—O. 3, R. 4—Power to withdraw — Application by respondent for registration under Trade and Merchandise Marks Act (1952) — Power of Attorney executed by appellant in favour of Advocate to take opposition proceedings — Such power authorises the advocate to enter settlement or compromise by withdrawing the opposition proceedings — (Trade and Merchandise Marks Act (1952), S. 123—Rules framed under the Act, R. 21). A I R 1963 Punj 376, Rel. on. 1965 Pun L R (Sup) 284.

—O. 3, R. 4—Oral request by Counsel—Refusal by Court—Duty of Counsel.

If a counsel feels that any oral request of his, which is material, is being refused, it is his duty to put in an application in writing containing that request, and get an order from the Court on it. It is not proper that the appellate Court should be asked to disbelieve the record of proceeding contained in the order-sheets on the affidavit of counsel, when it is open to counsel to make an application, and get an order in writing. ILR (1956) 6 Raj 23 = 1956 Raj L W 117 = (S) AIR 1956 Raj 1.

● —O. 3, R. 4—Advocate—Power and discretion of, in examining or giving up witnesses — Advocate giving up witnesses summoned by client — Liability to disciplinary action.

An advocate engaged by a litigant to conduct his case is vested with complete discretion as to the conduct and control of the litigation; and cannot be subjected to any action for calling or not examining a particular witness or witnesses or giving up certain witnesses, so long as he acts lawfully in exercise of the power vested in him as advocate, except where circumstances may be shown justifying the attributing of want of bona fides on his part. An Advocate, High Court, Travancore-Cochin, In the matter of, 1952 K L T 177= AIR 1952 T C 165 (167, 168) (Prs 1, 3) (FB).

—O. 3, R. 6 and O. 5, Rr. 9, 16 and 17 (as amended by Calcutta High Court—"Agent" in Rr. 16 and 17 — Meaning of.

On reading of O. 3, R. 6 with O. 5, R. 9 there can be no doubt that the empowering of an agent under O. 5, R. 9 can only be in the manner indicated in O. 3, R. 6 and verbal authority is not enough. A I R 1952 Cal 781.

—O. 4, R. 1; O. 6, Rr. 14, 15—Delegation of duties of office by shebait.

A shebait is not entitled to delegate the duties of his office, though he may appoint a person to carry out his ministerial duties. AIR 1952 Cal 350.

—O. 4, R. 1; O. 33, Rr. 1, 2, 7 — Application to sue as pauper—Death of applicant — Continuance of suit by legal representatives — Legal representatives can be permitted to continue the suit on payment of the requisite court-fee. See Civil P. C. (5 of 1908), O. 33, R. 1. AIR 1953 Trav-Co 67.

—O. 5, R. 1, Proviso; O. 33, R. 8; O. 9, R. 13 — Appearance of defendant at hearing of pauper application —Application registered as suit—Defendant is entitled to service of summons — Admission by defendant of plaintiff's claim in pauper application — Claim subsequently amended — Case does not come under proviso to O. 5, R. 1. See Civil P. C. (5 of 1908), O. 33, R. 8. AIR 1960 Cal 538.

—O. 5, R. 1, O. 17, R. 2 and O. 3, R. 1 — "Appearance" — Hearing of suit adjourned generally — Defendant not appearing but counsel appearing and applying for adjournment—On refusal, counsel reporting "no instructions" — Court can act under O. 17, R. 2. See Civil P. C. (5 of 1908), O. 17, R. 2. A I R 1956 Nag 179.

—O. 5, R. 1 (3), 17, 20 — "In such other manner as Court thinks fit" in R. 20 — Service of summons by registered post — It must however comply with R. 1 (3) of O. 5 and Form 1, App. B — Post-card not containing signature of Court or any officer appointed by Court or seal of Court—It is not valid service of summons—Not only there must be seal of Court but also signature of Court. AIR 1951 Orissa 312.

—O. 5, R. 2 — Expression "first hearing," meaning of. Where the tenant was not supplied with a copy of the application with the summons and he appeared before the Rent Controller and demanded a copy, his appearance before the Rent Controller could not be said to be covered by the term "first hearing." See Houses and Rents—Pepsu Urban Rent Restriction Ordinance (8 of 2006 BK), S. 13 (2) (i). AIR 1955 NUC (Pepsu) 4003.

—O. 5, Rr. 9, 10—Service by post — (Constitution of India, Art. 14).

Provisions of the Code providing for a different method of service of processes (i. e. by Registered Post) on residents of Part "B" States is not inconsistent with the Constitution of India. AIR 1953 Ajmer 40 (1).

—O. 5, R. 9—"Agent" in Rr. 16 and 17—Meaning of.

On reading O. 3, R. 6 with O. 5, R. 9 there can be no doubt that the empowering of an agent under O. 5, R. 9 can only be in the manner indicated in O. 3, R. 6 and verbal authority is not enough. See Civil P. C. (1908), O. 3, R. 6. AIR 1952 Cal 781.

—O. 5, R. 10 — Service by post — (Constitution of India, Art. 14) — Provisions of the Code providing

for a different method of service of processes (i. e. by registered post) on residents of Part "B" States is not inconsistent with the Constitution. See Civil P. C. (5 of 1908), O. 5, R. 9. **AIR 1953 Ajmer 40 (1).**

——O. 5, R. 13—Service through post—Cover returned as refused — Sufficiency—The service is sufficient. **AIR 1955 NUC (Bhopal) 1783.**

——O. 5, R. 13—Servant is not agent. **AIR 1952 Cal 781.**

——O. 5, R. 15 — Bengal Tenancy Act (8 of 1885), S. 167 — Proof of notice — Auction purchaser must prove proper service of notice. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 167. **AIR 1956 Cal 208.**

——O. 5, R. 15 (as amended by Calcutta High Court) —Service under rule — Circumstances under which such service can be effected. In order that service can be made under O. 5, R. 13, the defendant must be absent from his residence, and that there was no likelihood of his being found thereat within a reasonable time. **AIR 1952 Cal 781.**

——O. 5, Rr. 16, 17 — "Due service" — Where notice is refused, it is not due service of notice — In such case there must be substituted service. **AIR 1951 Ajmer 77.**

——O. 5, Rr. 16 and 18; 19A (Cal.) — (Income-tax Act (1922), Ss. 23 (4), 22 (2), 63) — Notice under S. 22 (2) of Income-tax Act — Service of—Procedure under Civil P. C. not followed — Best judgment assessment under S. 23 (4) is without jurisdiction. See Income-tax Act (1922), S. 23 (4). **AIR 1960 Assam 162.**

——O. 5, R. 16—Bengal Tenancy Act (1885), S. 167 —Proof of notice — Auction purchaser must prove proper service of notice. See Tenancy Laws — Bengal Tenancy Act (8 of 1885), S. 167. **AIR 1956 Cal 208.**

——O. 5, Rr. 17, 16 — "Due service" — Where notice is refused it is not due service of notice — In such case there must be substituted service. See Civil P. C. (5 of 1908), O. 5, R. 16. **AIR 1951 Ajmer 77.**

——O. 5, Rr. 17, 16 — Service of notice — Defendant accepting notice without signing acknowledgment—Serving officer not having additional copy — Service is complete without affixation — Failure to affix copy does not render service invalid. See Arbitration Act (1940), S. 14 (2). **AIR 1964 Cal 241.**

——O. 5, R. 17—Bengal Tenancy Act (1885), S. 167—Proof of notice — Auction purchaser must prove proper survice of notice. See Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 167. **AIR 1956 Cal 208.**

——O. 5, Rr. 17, 20, 1 (3)—"In such other manner as Court thinks fit" in R. 20 — Service of summons by registered post — It must however comply with R. 1 (3) of O. 5 and Form 1, App. B — Post-card not containing signature of Court or any officer appointed by Court or seal of Court — It is not valid service of summons — Not only there must be seal of Court but also signature of Court. See Civil P. C. (5 of 1908), O. 5, R. 1 (3). **AIR 1951 Orissa 312.**

——O. 5, R. 17 — Where the defendant cannot be found.

Service on the defendants under O. 5, R. 17 held not valid. **AIR 1955 N U C (Raj) 275.**

● ——O. 5, Rr. 17 and 18 — Sale under Travancore Revenue Recovery Act (1 of 1068), S. 23A — Service of demand is a necessary condition — Notice should be served in the manner prescribed in Civil P. C. — A sale without such service of notice will be a nullity. See Travancore Revenue Recovery Act (1 of 1068), S. 23A. **AIR 1953 Trav-Co 494 (FB).**

——O. 5, Rr. 18 and 16 — (Income-tax Act (1922), Ss. 23 (4), 22 (2), 63) — Notice under S. 22 (2) of Income-tax Act—Service of — Procedure under Civil P. C. not followed — Best judgment assessment under S. 23 (4) is without jurisdiction. See Income-tax Act (1922), S. 23 (4). **AIR 1960 Assam 162.**

● ——O. 5, Rr. 18 and 17 — Sale under Travancore Revenue Recovery Act (1 of 1064), S. 23-A — Service of demand is a necessary condition — Notice should be served in the manner prescribed in Civil P. C. —A sale without such service of notice will be a nullity. See Travancore Revenue Recovery Act (1 of 1068), S. 23-A. **AIR 1953 Trav-Co 494 (FB).**

——O. 5, R. 19 — Notice to opposite party — The serving officer affixes copy of the summons on the outer door of the house of the defendant — Under O. 5, R. 19—It is open to the Court to accept such service as sufficient. See Civil P. C. (5 of 1908), O. 9, R. 14. **AIR 1953 N U C (All) 181.**

——O. 5, Rr. 19, 17—(As amended by Calcutta High Court)—Service by affixation — Affidavit by process server—Contents of.

Facts must be stated in the affidavit to show what enquiries were made and whether it was reasonable under the circumstances to assume that the defendant could not be found at his residence within a reasonable time. See Civil P. C. (1908), O. 5, R. 17. **AIR 1952 Cal 781.**

——O. 5, R. 19—Due service — Object of — Services under O. 5, Rr. 17, 19—Essentials.

The service by affixture under the circumstances could never be due service within the meaning of O. 5, R. 17, besides if the requirements of R. 19 were not satisfied in the case, service of notice is reduced to a meaningless ritual. See Income-tax Act (1922), S. 34. **AIR 1957 Mad 792.**

——O. 5, Rr. 20, 17—(As amended by Calcutta High Court.)

"Reasonable time" — Person absent from residence — Necessity to enquire as to when he would return. There is no hard and fast rule laid down. What was a "reasonable time" must be decided against the background of a particular case. See Civil P. C. (1908), O. 5, R. 17. **AIR 1952 Cal 781.**

——O. 5, R. 20 (2) — Limitation Act (1908), Art. 164 —"Due service of summons" — Meaning of — Substituted service is not "due service." See Limitation Act (1908), Art. 164. **AIR 1955 NUC (Madh-Bha) 58.**

——O. 5, Rr. 20, 17, 1 (3) — "In such other manner as Court thinks fit" in R. 20 — Service of summons by registered post — It must however comply with R. 1 (3) of O. 5 and Form 1, App. B — Post-card not containing signature of Court or any officer appointed by Court or seal of Court — It is not valid service of summons — Not only there must be seal but also signature of Court. See Civil P. C. (5 of 1908), O. 5, R. 1 (3). **AIR 1951 Orissa 312.**

——O. 5, Rr. 20-A, 10—Service of summons by post—Mere endorsement of postman on registered notice that service was refused is not enough for hoiding that service was sufficient. **AIR 1960 Andh Pra 383.**

——O. 5, Rr. 25, 10, 20 and 21—Service by post. See Civil P. C. (5 of 1908), O. 5, R. 10. **AIR 1955 N U C (Pepsu) 1881.**

——O. 6, R. 1—Pleadings should not be discoursive and argumentative — Nor should parties be allowed to put in as many written statements and rejoinders as they want. **AIR 1952 Nag 220.**

——O. 6, R. 1—Contract Act (1872), S. 73—Pleadings not to be examined in pedantic manner — Plaintiff pleading that it suffered loss on resale—What is intended is that loss on resale was criterion for measuring damages.

The pleadings ought not to be scrutinised and examined in a pedantic manner so as to reject them merely because there is want of preciseness and

specification. If the plaint read as a whole can be interpreted as substantially presenting a case before the Court then it is the duty of the Court to find out what that case is.

Thus when it was pleaded by the plaintiff that it suffered a loss on the resale after giving notice to the defendant, what it intended to plead was that loss on resale was the criterion for measuring the damages for the breach of the contact on the part of the defendant. It is well settled what the damages in a particular case for breach of contract would be and the basis of their calculation would not form a part of the cause of action on which a suit for recovery of damages is filed. I L R (1965) 2 All 343.

——O. 6, R. 2 — Contract Act (1872), S. 70 — Work done not covered by contract—Additional constructions to building not done gratuitously — Claim for compensation on oral agreement — Proof of such agreement is not necessary. See Contract Act (1872), S. 70. (1966) 2 S C J 191=AIR 1966 S C 1034.

● —O. 6, R. 2, O. 14, R. 1—Both parties understanding what the issue in the case was—Absence of issue held did not lead to mistrial sufficient to vitiate decision. AIR 1964 S C 164.

●——O. 6, R. 2—Vires of Act challenged—Court is not restricted to pleadings of State—Court will consider whether validity can be sustained under any provisions of Constitution. AIR 1961 S C 954.

——O. 6, R. 2—Pleadings must state material facts and not the law—Provisions of law which determine the rights of parties need not be mentioned in the pleadings—Relief under appropriate provision of law cannot be refused simply because the plaintiff did not plead any right under that particular provision of law — Matters on which both sides are agreed cannot be held to be outside the ambit of the suit. 1963 All L J 1110.

——O. 6, R. 2 — (Constitution of India, Art. 226) — Procedure — Alternative cases on question of nature of proceedings initiated.

The question as to the nature of the proceedings initiated is a question of fact and on such a question no party can be allowed in writ proceedings to put forward alternative cases. See Constitution of India, Art. 226. AIR 1955 All 515.

——O. 6, Rr. 2, 6 — (T. P. Act (1882), S. 43) — Question whether subsequent transferee had "notice of the existence of the option" — Point not raised in pleading — No issue framed — Court cannot assume notice from mere fact that previous transfer was registered. See T. P. Act (1882), S. 43. AIR 1952 All 301.

——O. 6, R. 2—Variance between pleading and proof —Parties knowing that particular question is in issue though no specific issue framed — Evidence relating thereto can be looked into for decision of that question. AIR 1964 Andh Pra 412.

——O. 6, R. 2—Pleadings—Suit for possession—Plaintiff cannot found his case on defects in defendant's title.

In a suit for possession the plaintiff cannot found his case on defects if any in the title of the defendants. The defendants, on the other hand, can avail of the laches which manifest themselves in the plaintiff's case. AIR 1948 P C 59, Rel. on. (1962) 1 Andh L T 442.

——O. 6, R. 2 and O. 7, R. 7—Power of Court to grant relief for which there is no foundation in plaint — Duty of Court. See Civil P. C. (1908), O. 7, R. 7. AIR 1957 Andh Pra 784.

——O. 6, R. 2 — Document, not filed with plaint, admitted in evidence at trial without objection from defendant — Court had power to take documents into consideration. See Civil P. C. (5 of 1908), O. 7, R. 18(1). AIR 1955 N U C (Assam) 2853.

——O. 6, R. 2—Construction of pleadings — Suit for recovery of arrears of rent — Averment in plaint that certain aggregate sum has been paid towards rent is not an admission of the payments not having been appropriated but being kept in suspense—Allegation in the written statement that on the standard rent being fixed, there would be no amount due to the plaintiff also does not amount to a pleading that the payments are kept in suspense. (1965) 67 Bom L R 352=1965 Mah L J 537=I L R (1965) Bom 783 (DB).

——O. 6, R. 2—Mofussil pleadings ought not to be construed very strictly. 1963 Mah L J 633 = I L R (1964) Bom 80.

——O. 6, R 2, S. 11—Suit for possession as owner based on initial title—Subsequent suit for possession as owner based on title acquired by adverse possession — Suit is barred by constructive res judicata. See Civil P. C. (5 of 1908), S. 11. AIR 1958 Bom 152.

——O. 6, R. 2, O. 7, R. 7 and S. 80—Suit against Union of India, solely on basis of contract and on allegation of failure of consideration — Plea for relief under S. 65, Contract Act—Whether can be raised by plaintiff—Plea whether introduces fresh cause of action—S. 80 whether operates as bar. See Civil P. C. (5 of 1908), S. 80. AIR 1959 Cal 585.

——O. 6, R. 2 — New plea — Plea taken in second appeal—Tenability—It would not be proper to allow new plea being raised in second appeal. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 12(1), Proviso (h). 1958 Cal L J 265.

——O. 6, R. 2—Cause of action under S. 65 of Contract Act cannot exist side by side with the cause of action under the contract itself. See Contract Act (1872), S. 65. AIR 1956 Cal 138.

——O. 6, Rr. 2, 4 — Absence of pleadings — A claim must be specially pleaded. See Contract Act (1872), S. 65. AIR 1955 N U C (Cal) 24.

——O. 6, R. 2—(Evidence Act (1872), S. 115) — Both parties proceeding on certain footing — They cannot subsequently change their case — See Evidence Act (1872), S. 115. AIR 1953 Cal 251.

——O. 6, R. 2 — Suit on hundi — Maker himself acceptor — Presentment for payment must be pleaded and proved. AIR 1951 Cal 466.

—O. 6, R. 2 — Road accident by lorry driver defendant, knocking down plaintiff, a lad of 6 years trying to cross road—Driver of lorry found negligent and liable — No specific pleading is necessary for general damages — See Tort — Damages. 1965 Ker L T 1172 = AIR 1966 Ker 172.

——O. 6, R. 2—(T. P. Act (1882), S. 53)—Fraudulent transfer — Gift of large portion of property by father to sons during pendency of suit, retaining very small portion utterly inadequate to satisfy decree that would be passed against him — Finding that transfer was with intent to defeat claim of plaintiff and other creditors — No error of law—Pleadings — Fraudulent and sham transactions—Effect in to cases —Alternative pleadings.— See T. P. Act (1882), S. 53. AIR 1965 Ker 288.

——O. 6, R. 2 — Pleadings — Duty of Court—Court should not construct case not pleaded by parties — Decision cannot be based on grounds outside pleadings.

The decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that is to be found. It is not the function of Court to construct a case not pleaded by the parties as such a procedure would very often amount to a denial of proper opportunity to the opposite

parties to meet the same straight. (M. Madhavan Nair J.) 1962 Ker L T 354 = 1962 Ker L J 273.

——O. 6, R. 2; O. 7, Rr. 7, 8 and S. 115—Alternative reliefs—(Specific Relief Act (1877), Ss. 8, 9).

When a plaintiff chooses to combine in the same suit a summary remedy, under S. 9, Specific Relief Act and regular or alternate remedy under S. 8 of Specific Relief Act, the former is nugatory and ought to be ignored and the case should only be tried as a regular suit — See Civil Procedure Code (5 of 1908), O. 7, R. 7. AIR 1955 N U C (Madh Bha) 2982.

——O. 6, R. 2 — Mixed question of fact and law — Inconsistent pleas — Cannot be called to be set up—See Limitation Act (1908), Art. 75. AIR 1955 N U C (Madh Bha) 2097.

——O. 6, R. 2; O 20, R. 4; O. 41, R. 1; Ss. 100-101 — Contents of judgment — Appeal — New plea—When not allowed—See Civil P. C. (1908), O. 20, R. 4. AIR 1957 Madh Pra 138.

——O. 6, R. 2—Variance between pleading and proof — Plaintiff setting up specific case of marriage in April, 1949 between defendant 2 and defendant 3 — It is not open to plaintiff to adduce evidence to show that marriage took place before 1949 — On admission of plaintiff marriage must be held to have taken place after Madras Act VI of 1949. A I R 1961 Mad 298.

—— O. 6, R. 2 — (Constitution of India, Art. 226) — Bias — An order of an inferior tribunal can be quashed on the ground that it is vitiated by bias — See Constitution of India, Art. 226. AIR 1957 Mad 623.

——O. 6, Rr. 2, 4—Particulars when necessary. AIR 1955 N U C (Mad) 3894.

——O. 6, R. 2 and S. 100 — Plea not raised in pleadings but gone into by lower Court regarding applicability of S. 53-A, of Transfer of Property Act — Held High Court will not be justified in refusing to allow defendant to avail himself of provisions of that section — See Civil Procedure Code (5 of 1908), S. 100. AIR 1959 Mys 173.

——O. 6, R. 2—Defendant contesting will on ground that it is forgery — He cannot subsequently put up alternative case of undue influence. A I R 1953 Nag 316.

——O. 6, R. 2—No pleading about alteration of contract — Evidence regarding it cannot be looked into. AIR 1952 Nag 76.

——O. 6, R. 2; O. 41, R. 2 — Omission to plead material fact — Effect—Trial Court allowing evidence on such point and considering it — Absence of ground in memorandum — Appellate Court can declare such evidence inadmissible. AIR 1952 Nag 60.

——O. 6, R. 2—Inconsistent pleas.

The statement that the plaintiff was dismissed by defendant, is not inconsistent with the admission of the defendant that the services of the plaintiff were terminated by consent. AIR 1951 Nag 412.

——O. 6, R. 2—Matter depending on legal view to be taken on certain undisputed facts — Mere allegations and cross-allegations in the pleadings should not be treated as sufficient to deprive the party to a right to relief if otherwise made out. AIR 1954 Orissa 7.

——O. 6, R. 2 and O. 7, R. 7—Claim suit under O. 21, R. 63 by daughters, that attached property belonged to mother and not father — Defence of benami — Plea of advancement can be taken by plaintiff — It is not a mere alternative case. A I R 1951 Orissa 22.

—— O. 6, R. 2 — Party when can succeed on grounds other than those set up. AIR 1951 Orissa 11.

—— O. 6, R. 2 — Joint family — Handnote executed by Karta — Suit on — Liability of members of joint family under handnote — See Hindu Law — Joint family. (1963) ILR 42 Pat 704 (DB).

——O. 6, R. 2—De facto guardian—Proof—Pleading. A mere averment that a person was a de facto guardian is not adequate. There must be evidence — See Evidence Act (1872), S. 3. AIR 1958 Pat 79.

—— O. 6, R. 2 — Custom — Construction of pleading — Custom. A I R 1955 N U C (Pat) 2500.

——O. 6, R. 2 — Suit by plaintiff on basis of pronote in his name for recovery of loan advanced by him — Plaintiff not a registered money lender — Maintainability — See Debt Laws — Bihar Money-lenders Act (3 of 1938), S. 2 (g). AIR 1953 Pat 194.

——O. 6, R. 2 and O. 7, R. 7 — Suit for ejectment of tenant — Relationship of landlord and tenant not established—Ejectment decree on basis of title — The Court has discretion under O. 7, R. 7 to grant an equitable relief of ejectment on the basis of title — See Civil Procedure Code (5 of 1908), O. 7, R. 7. AIR 1951 Pat 550.

——O. 6, R. 2 — Pre-emption suit—See Evidence Act (1872), Ss. 101 to 103. AIR 1955 NUC (Pepsu) 256.

——O. 6, R. 2 and O. 20, R. 4 — Adjudication should proceed on pleadings and issues—See Civil Procedure Code (5 of 1908), O. 20, R. 4. A I R 1955 N U C (Punj) 4592.

——O. 6, R. 2 and O. 7, R. 7—Material facts stated — Duty of Court to apply correct rule of law. AIR 1955 N U C (Punj) 1616.

——O. 6, R. 2 — Religious endomment — Succession — Office of Mahant — Custom — (Evidence Act (1872), S. 13) — The particular custom of a particular shrine must be alleged and proved. See Religious Endowment. AIR 1951 Punj 365.

——O. 6, R. 2 — Pleading and proof — Publication of false statement in relation to personal conduct of rival candidate — Successful candidate pleading that he believed statement to be true on basis of newspaper reports and pamphlets — Proof of personal enquiries made to ascertain truth of statements adduced during trial — Omission to mention discovery of truth by personal enquiries in written statement — Effect. See Representation of the People Act (1951), S. 123 (4). AIR 1964 Raj 184.

——O. 6, R. 2 — Variance between pleading and proof. AIR 1954 Raj 49.

——O. 6, R. 2 — (Evidence Act (1872), S. 115) — Estoppel by conduct — To found a plea of estoppel by conduct, there should be precise pleadings setting up the facts constituting the estoppel. See Evidence Act (1872), S. 115. AIR 1953 Trav-Co 447.

——O. 6, R. 2; O. 2, R. 1 — Plaintiff asking for defendant's eviction on particular grounds — Without considering those grounds Court cannot grant decree for eviction on ground not taken in plaint. See Civil P. C. (5 of 1908), O. 2, R. 1. AIR 1953 Tripura 11.

——O. 6. Rr. 3 and 2 — Pleadings and proof—Undue influence — Tests stated. See Civil P. C. (5 of 1908), O. 6, R, 2. AIR 1959 Mys 102.

● ——O. 6, Rr. 4, 5 — (Representation of the People Act (1951), S. 83 (2)) — Particulars of corrupt practice — Better particulars — Duty of petitioner.

There is no duty cast upon the Tribunal to direct suo motu the furnishing of better particulars. See Representation of the People Act (1951), S. 83 (2). AIR 1955 S C 610.

——O. 6, R. 4 — Negligence — Negligence not co-related to state of mind — Particulars of negligence are necessary in plaint. See Civil P. C. (1908), S. 80. ILR (1965) 2 All 127 = AIR 1966 All 333.

—O. 6, R. 4 — Undue influence — Pleading and proof — Particulars of deception and nature of undue influence — Necessity for specific statement. See Contract Act (1872), S. 16. AIR 1956 Bom 569.

—O. 6, R. 4 — (Evidence Act (1872), S. 92) — Evidence to vary or modify terms — Necessity of raising plea — There must be proper plea raised which brings the case within any of the provisos to S. 92 of the Evidence Act. See Evidence Act (1872), S. 92. AIR 1956 Bom 165.

—O. 6, Rr. 4, 2 — Absence of pleadings — The claim must be specially pleaded. See Contract Act (1872), S. 65. AIR 1955 NUC (Cal) 24.

—O. 6, R. 4 — (Evidence Act (1872). Ss. 101-104 — Benami — Benami cannot be a matter of mere presumption—It should be averred in the pleadings and proved. See Evidence Act (1872), Ss. 101 to 104. AIR 1957 Hyd 37.

—O. 6. R. 4 — Trade usage.

A usage of trade must be specifically alleged and proved. A Court is not entitled to base its decision on conjectures and surmises, so far as usage of trade is concerned. AIR 1953 Madh Bha 32.

—O. 6, Rr. 4, 2 — Charge of abuse of power — Satisfactory proof necessary — Held charge that interview test under Government order No. PLM/80/MMC/64, D/- 29-6-64, was abused was not proved. See Civil P. C. (1908), O. 6, R. 2. (1965) 2 Mys L J 571 = AIR 1966 Mys 40.

—O. 6, R. 4 — Tort — Defamation and malicious prosecution — Damages — A claim for damages for malicious prosecution is quite separate species of tort from a claim for damages for defamation. Where only a case for malicious prosecution is made out, there cannot be a decree for damages for defamation in favour of the plaintiff. See Tort. AIR 1956 Nag 264.

—O. 6, R. 4 — Admission of parties — It is incumbent to plead the fact of admission in the written statement. Every admission is capable of being explained or withdrawn. See Evidence Act (1872), S. 21. AIR 1953 Nag 154.

—O. 6, R. 4 — Undue influence — Undue influence must be pleaded and proved with the same particularity as fraud. AIR 1951 Nag 394.

—O. 6, R. 4 — (Limitation Act (1908), Arts. 142 and 144) — Adverse possession — Co-owners — Pleadings.

Possession of a co-owner (or of anyone claiming through him) does not become adverse to another co-owner, without pleading and proof of the exclusion of the latter — It is necessary to allege specifically the point of time when the possession became adverse, See Limitation Act (1908), Art. 142. AIR 1951 Nag 355.

—O. 6, R. 4 — (Contract Act (1872), Ss. 196, 197) — Ratification.

Contract by Government Official not complying with provisions of S. 175 (3), Government of India Act (1935) — Objection raised after a very long time — Facts held amounted to ratification of contract — Plea of ratification held involved not only question of law but also question of fact. See Contract Act (1872), S. 196. AIR 1961 Punj 5.

—O. 6, Rr. 5, 4 — (Representation of the People Act (1951), S. 83 (2)—Particulars of corrupt practice — Better particulars — Duty of petitioner.

There is no duly cast upon the Tribunal to direct suo motu the furnishing of better particulars. See Representation of the People Act (1951), S. 83 (2). AIR 1955 S C 610.

—O. 6, R. 5 — (Representation of the People Act (1951), S. 125 (3)) (before amendment) — Election petition—Investigation into illegal practices—Necessity. See Representation of the People Act (1951), S. 125 (3). AIR 1957 Mad 320.

—O. 6, R. 5 — Non-compliance with Rr. 11 and 12 of Orissa Money-Lenders Act (1939). See Debt Laws — Orissa Money-Lenders Act (3 of 1939), S. 7. AIR 1958 Orissa 111.

—O. 6, Rr. 6, 2 — (T. P. Act (1882), S. 43) — Question whether subsequent transferee had "notice of the existence of the option" — Point not raised in pleading — No issue framed — Court cannot assume notice from mere fact that previous transfer was registered. See T. P. Act (1882), S. 43. AIR 1952 All 301.

—O. 6, R. 6 — Condition precedent — Defendant not specifically disputing performance — Effect.

The plaintiff could not be non-suited on the ground that he had not averred and proved such performance. AIR 1953 Bom 61.

—O 6, R. 6 and O. 7, R. 11 (a) — Notice of dishonour of cheque, is a part of cause of action and not condition precedent. AIR 1951 Cal 262.

—O. 6, R. 6 — Kanoon Sood Gwalior — Sections 10 and 11—Reopening of entire account on mere allegation of defendant that he is agriculturist — He must plead and prove facts showing that amount claimed includes illegal amounts — Vague statements are not enough. AIR 1955 NUC (Madh Bha) 40.

—O. 6, R. 6— Absence of allegation as to notice in plaint.

Mere general averment of user without reference to notice or to time is not a sufficient pleading. See Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act (1947), S. 9 (1) (b) (i). AIR 1955 NUC (Punj) 491.

— O. 6, R. 8 and O. 41, R. 2 — Powers of appellate Court—Appellate Court cannot shut its eyes to the illegality of consideration which was proved from the evidence of the plaintiff himself, even though no objection was taken by the defendant and no issue was framed thereon and decided by the trial Court. See Civil Procedure Code (5 of 1908), O. 41, R. 2. AIR 1955 NUC (Raj) 266.

—O. 6, R. 10—Negligence — Negligence not co-related to state of mind—Particulars of negligence are necessary in plaint. See Civil P. C. (1908), S. 80. ILR (1965) 2 All 127 = AIR 1966 All 333.

—O. 6, R. 10—Party alleging mala fides must, in his pleadings, set out particulars and substantiate same by satisfactory evidence —Court would hesitate to attribute mala fieds to any one and particularly to statutory bodies, excepting on convincing grounds. See Constitution of India, Art. 226. (1965) 2 Mys LJ 365 (DB).

—O. 6, R. 13—Custom—Custom only comes in when it is in derogation of Hindu Law. If, therefore, any party relies on Hindu Law, he need not say that the custom is also in accordance with it for in that case it is the law which will prevail. See Hindu Law —Custom. AIR 1955 N U C (Raj) 303.

—O. 6, Rr. 14 and 17—Plaint signed by person not properly authorised — Amendment — Plaintiff can be allowed to sign even after limitation. A I R 1953 Bom 28.

—O. 6. Rr. 14 15, O. 4, R. 1—Delegation of duties of office by Shebait.

A Shebait is not entitled to delegate the duties of his office, though he may appoint a person to carry out his ministerial duties. See Civil P. C. (1908), O. 4, R. 1. AIR 1952 Cal 350.

—O. 6, R. 14—(Income-tax Act (1922), S. 33 (3)) — Failure by assessee to sign memorandum of appeal—It is irregularity that can be cured and not illegality.

See Income-tax Act (1922), S. 33 (3). **AIR 1960 Pat 270.**

——**O. 6, Rr. 14, 15, O. 4, R. 1** — Absence of presentation, signature or verification by some plaintiffs — Effect — Does not affect the jurisdiction of the Court and the suit must be deemed to have been instituted on their behalf as well, if it was filed with their knowledge and authority. See Civil Procedure Code (5 of 1908), O. 4, R. 1. **AIR 1951 Pat 323.**

● —**O. 6, R. 15 (3) (2)** — Representation of the People Act (1951), S. 83 (1) — All allegations based upon information—Absence of enumeration of paragraphs cannot be considered to be a defect. See Representation of the People Act (1951), S. 83 (1). **AIR 1955 S C 610.**

——**O. 6, R. 15** — (Representation of the People Act (1951), S. 83 (as amended by Act 27 of 1956)—Vagueness or lack of particularisation of averments is not to be judged by reading relevant pleadings in petition with counter pleadings in written statement. See Representation of the People Act (1951), S. 83. **AIR 1965 All 552.**

——**O. 6, R. 15**—Application for grant of permit — Form of declaration prescribed by rules — Nature of his declaration — Similarity of first part of declaration to verification of plaint — Failure to sign declaration is matter of substance — Tribunal can in such case refuse granting permit. See Motor Vehicles Act (1939), S. 54. **AIR 1964 All 19.**

——**O. 6, R. 15** — Non-compliance with rules— Election held invalid — Repolling of one centre only cannot be ordered. See Panchayats—U. P. Panchayat Raj Act (XXVI of 1947), S. 12-C. **1958 All L J 522.**

——**O. 6, R. 15** — (Representation of the People Act (1951), S. 83 (1), (2))—Object of verification of election petition and lists. See Representation of the People Act (1951), S. 83 (1). **AIR 1956 All 19.**

——**O. 6, R. 15**—(Representation of the People Act (1951), S. 81 (1) (c), read with R. 94-A of the Conduct of Election Rules)—Allegations of corrupt practice—Election petition not accompanied by affidavit in Form No. 25 — Effect — Omission not fatal to Election Petition — Defect can be cured. See Representation of the People Act (1951), S. 83, Proviso. **AIR 1964 Andh Pra 164.**

——**O. 6, R. 15** — Petition by Company signed and verified by officer — Affidavit of competency to verify filed along with petition — Held, there was proper compliance with the rule of the Court and provisions in Civil P. C. See Constitution of India, Art. 226. **ILR (1962) 2 Cal 187.**

——**O. 6, Rr. 15, 17**—Election petition—Alteration or amendment — Under S. 16 of the Territorial Councils Act, the District Judge is not debarred from permitting alteration or amendment of the election petition under O. 6, R. 17 and verification under O. 6, R. 15. See Territorial Councils Act (1956), S. 16. **AIR 1958 Him Pra 26.**

——**O. 6, R. 15 (1), O. 8, R. 1; O. 2, R. 7 and S. 115** — Objection regarding misjoinder taken in application—No objection by plaintiff—Objection does not involve question of jurisdiction. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1955 NUC (Madh Bha) 5644.**

——**O. 6 R. 15** — (Representation of the People Act (1951), Ss. 85, 90 (4) — It is discretion of Election Commission to dismiss petition for bad verification—The Election Tribunal had exercised a sound discretion in permitting the verification to be amended as required by O. 6, R. 15 and its order was reasonable and just. See Representation of the People Act (1951), S. 85. **AIR 1954 Mad 336.**

——**O. 6, R. 15—Amendment of pleading—Scope.**

Plaintiff cannot raise pleas which would make suit bad for multifariousness or pleas which will embarrass the trial or evidence in support of which would be destructive of other pleas. See Civil Procedure Code (5 of 1908), O. 6, R. 2. **AIR 1955 NUC (Mys) 913.**

● ——**O. 6, Rr. 16, 5**—(Representation of the People Act (1951), S. 83)—Vague allegations of corrupt practices —Some of items not vague — No better particulars—Duty of Tribunal — Order of the Tribunal in dismissing the petition out-right would be erroneous. See Representation of the People Act (1951), S. 83. **AIR 1955 S C 610.**

——**O. 6, R. 16** — (Representation of the People Act (1951), S. 90) — Procedure — Civil P. C. — How far applicable — 'Trial of suits"—Meaning of—Effect of amendment of 1956 — The application of O. 6, R. 16 is not excluded. See Representation of the People Act (1951), S. 90. **AIR 1958 All 858.**

——**O. 6, R. 16—Scandalous remarks in pleading against stranger — Expungement of.**

Stranger can obtain leave of the Civil Judge to make an application for the expunction of the remarks though he cannot claim the expunction as of course. **AIR 1952 All 408.**

——**O. 6, Rr, 16 and 2 — Alternative and inconsistent allegations.**

There is nothing to prevent a plaintiff from basing his claim for relief in the suit on two alternative titles. This power is, however, subject to the provisions contained in O. 6, R. 16. See Civil Procedure Code (5 of 1908), O. 6, R. 2. **AIR 1955 Trav-Co 134.**

● ——**O. 6, R. 17**—Election petition — Amendment—Power of Tribunal. See Representation of the People Act (1951), S. 100 (1) (d) (i). **AIR 1960 S C 368.**

——**O. 6, R. 17 and S. 115**—Interlocutory order— An order allowing an amendment of the plaint does not amount to a "case decided" within the meaning of S. 115. See Civil Procedure Code (5 of 1908), S. 115. **AIR 1955 Ajmer 60.**

——**O. 6, R. 17 — "For purpose of determining real questions in controversy."**

In order to determine the real question in controversy between the parties it was held necessary to allow amendment of plaint. **AIR 1955 NUC (Ajmer) 4755.**

——**O. 6, R. 17—"At any stage of the proceedings."**

An amendment may be applied for at any stage of the proceeding but the Court when exercising its discretion as to whether an amendment will be allowed, can take into consideration whether any unnecessary delay has occurred in preferring the application. **AIR 1955 NUC (Ajmer) 4397.**

——**O. 6, R. 17—Plea not taken up—Consideration of —Procedure.**

A plea which was not taken up cannot be considered by the Court. See Civil Procedure Code (5 of 1908), O. 6, R. 2. **AIR 1955 NUC (Ajmer) 3830.**

——**O. 6, R 17** — Application for standard rent — Form of — Should be in form of plaint and must conform with O. 7. See Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act (1947), S. 7. **AIR 1954 Ajmer 12 (1).**

——**O. 6, R. 17, O. 47, Rr. 1 and 7 — Mistake apparent on face of record—Application for amendment.**

Where the appellate Court fails to take notice of the application for amendment of plaint and the order passed thereon by the trial Court, and dismisses the appeal, there is a mistake apparent on the face of the record and can be rectified under **O. 47, R. 7.** See Civil Procedure Code (5 of 1908), O. 47, Rr. 1 and 7. **AIR 1951 Ajmer 55 (2).**

—O. 6, R. 17 — Suit for possesssion of property by registered society through its President — President's election declared void — Election of P as new President — Plaint of suit amended within limitation and allowed to be signed and verified by P — Defect in plaint held cured and that suit was maintainable. ILR (1965) 1 All 483 : AIR 1966 All 570.

—O. 6, R. 17 — Landlord and Tenant—Ejectment suit—Landlord's ownership denied—It is not necessary for landlord to obtain declaration of title.

In a suit for ejectment of the tenant, it is not necessary for the landlord to obtain a declaration of title that he is the owner of the house. The question of ownership is relevant only to the extent that it enables the landlord to prove a contract of tenancy between himself and the defendant.

Where therefore in a suit for ejectment the defendant denies the title of the plaintiff as the landlord, it is not necessary for the plaintiff to amend his plaint by adding a prayer for declaration of his title and ownership. AIR 1962 All 122.

—O. 6, R. 17 — Applicability — Amendment of election petition—Power of Election Tribunal.

Order 6, R. 17 is applicable to election petitions being tried by an Election Tribunal under the Representation of the People Act (1951). See Representation of the People Act (1951), S. 90 (5). AIR 1958 All 705.

—O. 6, R. 17 — Non-compliance with rules — Election held invalid — Repolling of one centre only cannot be ordered See Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 12-C. 1958 All L J 522.

—O. 6, R. 17 — Error on face of record —Election disputes — Municipal election — Election petition—Application for amendment — Discretion of Tribunal —Refusal to amend—Issue of writ of certiorari. See Constitution of India, Art. 226. AIR 1955 NUC (All) 3542.

—O. 6, R. 17 — Allegation of fact, however, scandalous it may be, cannot be expugned if it is relevant or pertinent. AIR 1952 All 408.

—O. 6, R. 17 and S. 151—Proceedings under S. 87, Madras Hindu Religious and Charitable Endowments Act (19 of 1951) — Civil P. C. does not apply — Principle underlying O. 6, R. 17 will however apply. See Civil P. C. (1908), S. 151. (1965) 2 Andh W R 503 = 1965 Mad L J (Cri) 904 = AIR 1966 Andh Pra 33.

—O. 6, R. 17 — Suit for possession — Possession claimed on exclusive rights — Partition relief not claimed in suit — If suit can be regarded as one for partition—Power of Court to permit amendment of plaint — Amendment seeking alternative relief of partition — Permissibility.

Even without an amendment, in a suit for possession of certain property with sole and exclusive rights therein, a decree for partition could be granted notwithstanding the absence of an alternative prayer, provided such a relief would not result in such prejudice or injustice to the other side. It would be permissible to allow an amendment even if a fresh suit is barred on the amended claim if special circumstances exist. That being the legal position, there cannot be any insuperable difficulty to allow a plaintiff to amend the plaint seeking an alternative relief in furtherance of justice and if it does not involve the other side in real hardship.

In the instant case, the plaintiff's claim to a half share in the property is traceable to his status as the adopted son. The basis of the claim, namely, the adoption remains the same and the alternative claim would not involve a change of cause of action or variation in the nature of the suit. In such a situation, it would be meaningless to drive the plaintiff to another suit to obtain the same relief. Such a direction would entail great hardship and avoidable inconvenience and expense and that would be encouraging unnecessary litigation. Judged in the light of these principles this is a fit case for allowing amendment. (1962) 1 Andh WR 282=(1962) 2 Andh L T 425=AIR 1963 Andh Pra 78.

—O. 6, R. 17, 18 and S. 151 — Revisional Court allowing amendment of plaint — Application for amendment to trial Court — Powers of trial Court to extend time for amendment — Under the inherent powers vested in the High Court, extension of time could be granted. See Civil Procedure Code (5 of 1908), O. 6, R. 18. AIR 1962 Andh Pra 527.

—O. 6, R. 17 — Amendment of pleadings — Hindu Marriage Act (1955), Ss. 10 and 13 — Petition for divorce alleging cruelty and adultery — Alternative prayer for judicial separation, addition of — Can be allowed. AIR 1961 Andh Pra 122.

—O 6, R. 17; O. 20, R. 3 and S. 153 — "At any stage of the proceeding" — Partition suit — Amendment of pleading after preliminary decree — Court has jurisdiction to allow an amendment. AIR 1959 Andh Pra 26.

—O. 6, R. 17; Ss. 92 (2), 9 — Framing scheme for management of High School — Jurisdiction of Civil Courts — Suit before District Munsiff — Inclusion of such relief by amendment — Not allowed. See Civil P. C. (1908), S. 92 (2). AIR 1959 Andh Pra 10.

—O. 6, R. 17—Amendment of plaint. See Railways Act (1890), S. 72. AIR 1955 NUC (Assam) 2305.

—O. 6, R. 17—Amendment of plaint in appeal.

Suit by adopted son in 1957 against the adoptive widow and purchasers of properties left by her deceased husband for possession of properties on basis of his adoption—Suit dismissed by trial Court on the erroneous ground that plaintiff's adoption was invalid under law—Death of adoptive widow pending appeal by plaintiff—Application for amendment of plaint by claiming relief or possession as the reversioner and also as heir of deceased widow — All interested persons who were parties to suit also were parties to appeal—Amendment allowed to avoid multiplicity of suits and further costs to parties. 67 Bom L R 864= 1966 Mah L J 92=A I R 1966 Bom 174.

—O. 6 R. 17 and S. 115—Amendment of pleading introducing a new case — Suit for arrears of rent—Defendant never trying to have standard rent fixed until the suit—No payment made for years—Even at the time of making some payments the defendant failing to state that the payment is on account—Defendant's claim to recover payments made in excess of the standard rent also barred—Amendment of written statement to the effect that the payments made towards rent are kept in suspense and not yet appropriated by the plaintiff cannot be allowed at the stage of revision after 6 years. (1965) 67 Bom L R 352=1965 Mah L J 537=I L R (1965) Bom 783 (DB).

—O. 6, R. 17, S. 151 — Power of Court to take notice of subsequent events — In order to shorten litigation and do complete justice between parties Court can take notice of subsequent events. See Civil P. C. (5 of 1908), S. 151. A I R 1960 Cal 278.

—O. 6, R. 17, O. 23, R. 1 — Suit against joint tortfeasors — Withdrawal against some is permissible—Change of relief affecting nature of suit and jurisdiction of Court — Cannot be allowed without formal amendment. See Civil P. C. (5 of 1908), O. 23, R. 1. A I R 1960 Cal 123.

—O. 6, R. 17—(Contract Act (1872), S. 65)—Cause of action under S. 65 of Contract Act cannot exist side by side with the cause of action under the contract itself. See Contract Act (1872), S. 65. A I R 1956 Cal 138.

——O. 6, R. 17 — Suit for specific performance of contract — Amendment converting suit into one for damages for breach of contract — Whether can be allowed—The amendment is permissible since it does not amount to altering the cause of action or the nature of the suit. **A I R 1952 Cal 78.**

——O. 6, R. 17 — Duty of Court — Fundamental principle.

As a fundamental principle the law strongly favours an amendment where it is necessary in the ends of justice. The making of amendments is not really a matter of power of a Court but its duty. See Civil P. C. (5 of 1908), O. 6, R. 2. **A I R 1951 Cal 262.**

——O. 6, R. 17—Material irregularity — Breach of— Revision lies. See Civil P. C. (5 of 1908), S. 115. **A I R 1963 Guj 195.**

——O. 6, R. 17, O. 1, R. 10—Suit against wrong person—Fresh summons to right defendant — Case is of substitution and suit is barred if out of time at time of substitution. See Civil P. C. (5 of 1908), O. 1, R. 10. **A I R 1958 J & K 20.**

——O. 6, R. 17 — Revision against interlocutory orders.

An order refusing to allow amendment of plaint though interlocutory in nature is a case decided within the meaning of S. 115 and is open to revision. Meaning of "case decided" discussed. See Civil P. C. (5 of 1908), S. 115. **A I R 1954 J & K 26.**

——O. 6, R. 17, O. 9, R. 13 and S. 11 — Ex parte decree—Non-service of summons not found sufficient to prove fraud — Suit to set aside decree — Merits of previous suit may be gone into to see if there was fraud. See Partnership Act (1932), S. 42. **A I R 1960 Ker 38.**

——O. 6, R. 17 — Amendment introducing new case in written statement — It will not be allowed if it is unjust to the opposite side or it will have the effect of displacing plaintiff's suit. **A I R 1955 N U C (Madh Bha) 4884.**

——O. 6, R. 17 — Defendant allowed to add facta probantia—Plaintiff, if prejudiced.

Plaintiff cannot be said to be prejudiced in any way. **A I R 1955 N U C (Madh Bha) 3390.**

——O. 6, R. 17 — Promissory note—Suit on original consideration.

Where there is a pre-existing debt or liability and a promissory note is passed in respect of it, a plaintiff suing upon it can fall back on the original consideration, if the promissory note becomes inadmissible in evidence for want of proper stamp. **A I R 1952 Madh B 45.**

——O. 6, R. 17—Election petition—Amendment.

The plain language of O. 6, R. 17 does not permit a new charge to be added by way of an amendment. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 303. **A I R 1956 Mad 105.**

——O. 6, R. 17—Valuation for purposes of court-fee —Valuation for appeal — Amendment of plaint. See Court-fees Act (1870), S. 7 (4) (b). **A I R 1955 Mad 682.**

——O. 6, R. 17, O. 41, R. 25 and S. 107 — Powers of appellate Court—Remand for amendment of pleadings and taking additional evidence. See Civil P. C. (5 of 1908), S. 107. **A I R 1955 Mad 542.**

——O. 6, R. 17, Ss. 115 and 35 — Conditional order for amendment on payment of costs to opposite party —Order of amendment itself susceptible to revision— High Court can interfere with the order for payment of costs and increase the amount. See Civil P. C. (5 of 1908), S. 115. **A I R 1953 Mad 12.**

——O. 6, R. 17 — Order allowing amendment — Revision.

The discretion of the appellate Court allowing amendment should not be interfered with in revision. See Civil P. C. (5 of 1908), S. 115. **A I R 1951 Mad 668.**

——O. 6, R. 17 — Procedure — Reply affidavit containing allegations not mentioned in affidavit filed in support of writ petition — Opportunity not given to opposite party to counter fresh allegations — Fresh allegations cannot be taken into consideration in proceedings under Art. 226. See Constitution of India, Art. 226. **(1965) 2 Mys L J 404 (DB).**

——O. 6, R. 17 — (Representation of the People Act (1951), S. 83).

Election Tribunal's power to allow amendment of election petition sent to it by Election Commission. See Representation of the People Act (1951), S. 83. **A I R 1954 Mys 102.**

——O. 6, R. 17 — Amendment can be allowed at any stage—Lower Court properly exercising jurisdiction in allowing amendment — No interference by appellate Court. **A I R 1954 Nag 65.**

——O. 6, R. 17—Amendment at late stage.

If the point is material, the party ought to be allowed to urge it. If the application for amendment is late the party may be saddled with costs. **A I R 1951 Nag 412.**

——O. 6, R. 17—Written statement—Amendment.

Amendment involving taking of fresh evidence on both sides and ignoring evidence already recorded not allowed. **AIR 1953 Orissa 315.**

——O. 6, R. 17 and O. 1, R. 10—Remote reversioner cannot challenge when nearer is living unless there is collusion—Collusion has to be alleged in plaint— Fact of existence of nearer reversioner deliberately suppressed — Prayer for amendment seeking to implead nearer reversioner not granted — Suit without impleading him held could not proceed — See Hindu Law—Alienation. **AIR 1953 Orissa 39.**

——O. 6, R. 17(Punj)—Amendment of writ petition— Application for not quoting verbatim words of amendments sought as required by O. 6, R. 17, Civil P. C., as amended by Punjab — Amended copy of writ petition filed along with application for amendment and advance copy of same served on opposite party — Application though not in strict compliance with O. 6, R. 17 allowed — See Constitution of India, Art. 226. **1965 Pun L R (Sup) 703.**

——O. 6, R. 17 — (Representation of the People Act (1951), Ss. 90, 92, 123 (1))—Pleading—Corrupt practice—Bribery—Allegation of actual payment in election petition — Petitioner cannot be allowed to prove mere attempt to bribe — See Representation of the People Act (1951), S. 90. **AIR 1960 Punj 614.**

——O. 6, R. 17 — Amendment based on subsequent event — Amendment seeking to give exclusive jurisdiction—Held, that in the circumstances the amendment should be allowed. **AIR 1952 Punj 266.**

——O. 6, R. 17 — Revision against order under O. 1, R. 10 (2) of trial Court impleading party — Revision dismissed — Petitioner requesting leave to amend plaint consequent upon new circumstances arising from addition of new party — Question whether amendment should be allowed and the nature of amendment held should be left for trial Court to decide. **AIR 1951 Punj 352.**

——O. 6, R. 17—Party guilty of suppressio veri.

Where the party making an application is guilty of suppressio veri in making the application the application is liable to be dismissed on that ground. **A I R 1951 Punj 227.**

——O. 6, R. 17 — (Companies Act (7 of 1913), S. 179 (a))—Company in liquidation — Liquidator's power to sue—Claim petition ought to be made in the name

and on bshalf of the company and not in the name of the liquidators — See Companies Act (1913), S. 179 (a). AIR 1951 Punj 144.

—O. 6, R. 17, O. 41, R. 23, O. 43, R. 1 (w) and S. 151 — Order of remand made under inherent powers — Appeal—It is not appelable under O. 43, R. 1 (w). See Civil Procedure Code (5 of 1908), S. 151. AIR 1955 NUC (Raj) 4047.

—O. 6, R. 17 and O. 7, R. 10 — No jurisdiction—Court not to allow amendment — Plaint to be returned. AIR 1955 NUC (Raj) 1133.

—O. 6, R. 17—Amendment of plaint — Meaning of relation back—Amendment subject to condition relating to limitation. AIR 1955 NUC (Trav-Co) 5430.

—O. 6, R. 17—Application for amendment—Specification of amendment — The application must state precisely the specific words, clauses or sentences to be added or deleted. AIR 1955 NUC (Trav-Co) 1665.

—O. 6, R. 17 and S. 115 — Case decided — Order allowing amendment of plaint — Revision — Amendment necessary for avoiding multiplicity of suits—See Civil Procedure Code (5 of 1908), S. 115. AIR 1955 Tripura 27.

—O. 6, Rr. 18, 17 — How amendments should be made — See Civil Procedure Code (5 of 1908), O. 6, R. 17. AIR 1959 Manipur 9.

—O. 6, R. 17 and S. 115 — Order refusing to allow amendment of plaint—Revision.

The order will not be interfered with in revision—See Civil Procedure Code (5 of 1908), S. 115. AIR 1955 NUC (Ajmer) 4403.

—O. 6, R. 18 — Time granted for incorporating amendment in plaint can be extended in proper cases (Court, held had properly and judicially exercised jurisdiction in granting extension.) AIR 1954 Nag 65.

● —O. 7, R. 1—Maxims—Ex turpi causa non oritur actio—Applicability — Illegality trivial—Plaintiff not required to rest his case on such illegality — Defendant not to be allowed to take advantage of that position — A. F. O. D. No. 273 of 1946 D/- 16-3-1952 (Pat), Reversed—See under Maxims. AIR 1960 S C 213.

— O. 7, Rr. 1, 7 and S. 9 — Suit for possession of land — Civil Court has no jurisdiction to decide suit — Additional prayer for injunction cannot confer jurisdiction on civil Court—See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1951), S. 209. 1965 All L J 549 = 1965 All W R (HC) 474 =AIR 1966 All 367.

—O. 7, R. 1, Cl (e) — Notice under S. 80, is valid if cause of action is sufficiently stated in the notice. See Civil P. C. (1908), S. 80. ILR (1965) 2 All 127=AIR 1966 All 333.

—O. 7, R. 1 — U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, R. 4 (1) (b) and (d) — Averments in the charge-sheet attracting the above rules—Reference to Tribunal valid and Tribunal has jurisdiction to go into the matter — Jurisdiction of Court or Tribunal depends on the averments in the plaint or concerned document and not on the decision reached after enquiry—Single Judge's decision Reversed — See U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, R. 4 (1) (b). I L R (1963) 1 All 432.

■ —O. 7, R. 1—Forum of appeal—Value of subject-matter.

The appellant is bound under S. 21 of the Hindu Marriage Act read with O, 7, R. 1 (i) to state the value of the subject-matter—See Hindu Marriage Act (1955), S. 28. AIR 1961 All 395 (FB).

—O. 7, R. 1—Jurisdiction of Tribunal—The person who seeks from a Tribunal an adjudication of a dispute must prove that the Tribunal has jurisdiction to entertain the proceeding in which the dispute is raised — See Railways Act (1890), S. 135 (2). A I R 1960 Bom 141.

—O. 7, R. 1 — Court-fee and jurisdiction — The plaintiffs cannot by merely so drafting their prayers as to exclude or include reliefs, confer on the Court jurisdiction to try the suit—See Court-fees Act (1870), S. 7 (iv). AIR 1956 Bom 649.

—O. 7, R. 1 — Remote reversioner's suit to declare widow's gift invalid—Contents of plaint.

Nearest reversioner herself being donee from widow is precluded from challenging validity of gift. Remote reversioner is entitled to challenge validity of same.

It is sufficient if he avers in plaint the factum of gift and need not set out any further circumstance to show how he being a remote reversioner is entitled to sue. See Hindu Law — Reversioner. AIR 1953 Him-Pra 73.

—O. 7, R. 1—Income-tax arrears due from father—Issue of certificate under S. 46 (2), Income-tax Act — Suit by sons for declaration that their interests in joint family properties were not bound on the ground that debt was avyaharika debt—Suit is not premature — Sons are not bound to wait till a date for sale was fixed or the sale actually took place. AIR 1959 Mad 71.

● —O. 7, Rr. 1, 10, 11 and O. 8, R. 5 — Forum of appeal — Suit for partition valued at Rs. 5,000/- — Final decree — Appeal from, filed directly to High Court on allegation that valuation of suit exceeds Rs. 5000/- — Maintainability — High Court if can direct enquiry to ascertain real valuation for purpose of admitting appeal. See Civil P. C. (5 of 1908), S. 96. AIR 1958 Pat 430 (FB).

—O. 7, R. 1—(Court-fees Act (1870), S. 7) — Valuation of suit for purposes of court-fees — Considerations stated. See Court-fees Act (1870), S. 7. AIR 1952 Pat 336.

—O. 7, R. 1—Application under S. 13 of Displaced Persons (Debts Adjustment) Act (1951) — Allegation that cause of action arose in place now in Pakistan—Application of maxim secundum allegata et probata. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 13. AIR 1958 Punj 361.

—O. 7, R. 1 — "Amount of money to be paid" — (Court-fees Act (1870), S. 7). See Civil P. C. (5 of 1908), O. 20, R. 10. AIR 1955 NUC (Raj) 758.

—O. 7, R. 2— Vague averment in plaint — Cognizance of suit by civil Court barred. See Co-operative Societies — Co-operative Societies Act (2 of 1912), S. 43 (b). AIR 1961 Ker 258.

—O. 7, R. 5; O. 1, R. 8 — Manager — Proceedings even in execution against manager bind joint family including minor members — Acts and omissions of manager both are binding. See Hindu Law — Joint family. AIR 1953 Mad 822.

—O. 7, R. 6 — Decree for resumption of lakheraj grant—If creates relationship of landlord and tenant — Suit for assessment of rent brought more than 12 years after such decree—Proof required of plaintiff to save bar of limitation. See Bengal Land Revenue Assessment (Resumed Lands) Regulation (2 of 1819), S. 30. AIR 1951 Cal 198.

—O. 7, R. 6—(Limitation Act (1908), S. 14)—Plaint returned for presentation to proper Court re-presented after limitation — Plaint not showing ground for exemption from limitation under S. 14, Limitation Act—Court can give benefit of S. 14, Limitation Act if facts appear on record. See Limitation Act (1908), S. 14. AIR 1956 Madh Bha 97.

——O. 7, R. 6 and O. 6, R. 2 — Plea of waiver must be properly pleaded and proved. See Civil P. C. (5 of 1908). O. 6, R. 2. AIR 1955 Raj 188.

——O. 7, R. 7, O. 41, Rr. 27, 33 — (Companies Act (1 of 1956), Ss. 82, 536)—Transfer of shares — Effect of— Right to dividend — Winding up — Transfer of assets by liquidators for cash and shares in another company— Sanction by Court—Discretion. See Companies Act (1956), S. 82. AIR 1956 S C 655.

——O. 7, R. 7 and S. 9— Jurisdiction of civil Court— Void mortgage—Mortgagor's right to recover possession on payment of money received — Question of limitation if arises. See T. P. Act (1882), S. 60. AIR 1956 All 639.

——O. 7, R. 7, O. 6, R. 17— Suit for possession based on exclusive title — Decree for partition, if can be granted — Amendment seeking alternative relief of partition—Whether can be allowed. AIR 1963 Andh-Pra 78.

——O. 7, R. 7 and O. 6, R. 17 — Power of Court to take notice of subsequent events — Fresh cause of action arising pending suit — Amendment of plaint seeking alternative ground of relief— AIR 1926 Mad 594, held no longer good law. See Civil P. C. (5 of 1908), O. 6, R. 17. AIR 1959 Andh-Pra 9.

——O. 7, R. 7 and O. 6, R, 2—Customary right — Not specifically pleaded in plaint — But sufficient facts to form foundation of a customary right stated in plaint —Customary right could be decreed by Court. See Civil P. C. (5 of 1908), O. 6, R. 2. AIR 1956 Andhra 235.

——O. 7, R. 7—Events happening after suit — Intervening circumstances not effecting any alteration in rights of parties as they existed at the commencement of the suit — Court need not mould its decree according to circumstances prevailing at the time of its passing. AIR 1967 Bom 250.

——O. 7, R. 7 — Court-fee and jurisdiction — (Suits Valuation Act (1887), S. 8).

The plaintiffs cannot by merely so drafting their prayers as to exclude or include reliefs, confer on the Court jurisdiction to try the suit. See Court-fees Act (1870), S. 7 (iv). AIR 1956 Bom 649.

——O. 7, R. 7 and O. 8, R. 8 — Events happening after suit — Statement of case to High Court — New aspect of law arising subsequent to such statement— High Court justified in deciding the question in the light of new law provided under new facts need investigation. AIR 1967 Cal 338.

——O. 7, R. 7, O. 6, R, 2 and S. 80 — Suit against Union of India solely on basis ot contract and on allegation of failure of consideration— Plea for relief under S. 65, Contract Act — Whether can be raised by plaintiff — Plea whether introduces fresh cause of action—S. 80 whether operates as bar. See Civil P. C. (5 of 1908), S. 80. AIR 1959 Cal 585.

——O. 7, R. 7, S. 2 (2) — (Hindu Succession Act, S. 14)—Retrospective operation — Preliminary decree in partition suit, passed before Act, giving Hindu widow limited estate—Effect of S. 14, Hindu Succes- Act (1956) coming into force — Subsequent events — Change of law between preliminary and final decrees. See Hindu Succession Act (1956), S. 14. AIR 1958 Cal 472.

——O. 7, R. 7 — Road accident by lorry driver, defendant knocking down plaintiff, a lad of 6 years, trying to cross road—Driver of lorry found negligent and liable — No specific pleading is necessary for general damages. See Tort—Damages. 1965 Ker L J 1112=1965 Ker L T 1172=AIR 1966 Ker 172.

——O. 7, R. 7 — (C. P. and Berar Municipalities Act (1922), S. 48)—Suit for perpetual injunction — Claim for refund of Octroi duty added subsequently — Notice — There is no inhibition preventing the Court from allowing the plaintiff to claim any other relief which arises as a result of subsequent events. See Municipalities — C. P. and Berar Municipalities Act (1922), S. 48. 1958 M P L J 84 = 1958 M P C 106= 1958 Jab L J 243.

● ——O. 7, R. 7— Court can while disposing of petition take notice of subsequent events by which grounds have ceased to exist. See Presidency Towns Insolvency Act (1909), S. 9 (e). AIR 1963 Mad 217 (FB).

——O. 7, R. 7 — Events happening after suit — Court can take notice. AIR 1954 Mad 381.

——O. 7, R. 7 — Specific Relief Act (1877), S. 19 — Decree for specific performance and damages, in absence of claim for damages — Propriety of. See Specific Relief Act (1877), S. 19. AIR 1951 Mad 282.

——O. 7, R. 7; O. 41, R. 23; O. 43, R. 1 (u) and S. 115 — Suit for ejectment and arrears of rent on basis of tenancy — Decree — Appellate Court remanding case for fresh disposal with a direction to frame issue on question of title and to allow the plaintiff to amend plaint accordingly — Order of remand falls under O. 41, R. 23 and is appealable — Order of remand held was wrong and appellate Court had acted with material irregularity in exercise of jurisdiction. See Civil P. C. (5 of 1908), S. 115. AIR 1960 Manipur 54.

——O. 7, R. 7 — Suit for exclusive possession.

The suit can be turned into one for partition and possession of such share as may be determined to belong to the plaintiff, if the defendants contend or it is found that the plaintiff is not entitled to the whole but only to a part. AIR 1952 Nag 202.

——O. 7, R. 7 — Hindu Married Women's Right to Separate Residence and Maintenance Act (1946), Ss. 2 (6), 2 (4) — Suit for maintenance by wife on specific ground under S. 2 (6) — Cannot take alternative ground under S. 2 (4) — Second marriage by husband proved — Wife held entitled to maintenance as general relief. See Hindu Married Women's Right to Separate Residence and Maintenance Act (1946), S. 2 (6). AIR 1964 Orissa 75.

——O 7, R. 7 and O. 8, R. 8 — Events happening after suit—Hindu Married Women's Right to Separate Residence and Maintenance Act (1946), S. 2 (4). AIR 1957 Orissa 199.

——O. 7, R. 7 — Suit for ejectment without obtaining permission to sue under S. 13 of Orissa House Rent Control Act (1947)—Amendment to S. 13 introduced pending appeal — Effect of amendment — Appellate Court can take note of change of law. See Houses and Rents — Orissa House Rent Control Act (5 of 1947), S. 13. AIR 1956 Orissa 175.

——O. 7, R. 7; O. 6, R. 2 — Claim suit under O. 21, R. 63 by daughters that attached property belonged to mother and not father — Defence of benami — Plea of advancement can be taken by plaintiff — It is not a mere alternative case. See Civil P. C. (5 of 1908), O. 6, R. 2. AIR 1951 Orissa 22.

——O. 7, R. 7 — False imprisonment — General and special damages — Pleading and proof.

Plaintiff need not plead and prove general damage but he has to plead and prove special damage. See Torts — Damages. AIR 1959 Pat 490.

——O. 7, R. 7 and S. 151 — Subsequent legislation.

The Courts are not prevented from granting relief on the basis of a subsequent legislation of which they can take notice for this purpose, especially when it is likely to shorten litigation and do complete justice between the parties. See Civil P. C. (5 of 1908), S. 151. AIR 1958 Pat 613.

——O. 7, R. 7 — Relief under S. 37, Partnership Act (1932), without specific claim in plaint.

The Court has jurisdiction to grant relief. See Partnership Act (1932), S. 37. AIR 1954 Pat 53.

——O. 7, R. 7, O. 20, R. 12; O. 2, Rr. 2 and 4 — Right to apply for ascertainment of future mesne profits, when arises. See Civil P. C. (5 of 1908), O. 20, R. 12. AIR 1953 Pat 289.

——O. 7, R. 7 — Rent suit — Produce rent claimed — Commutation proceedings under S. 40 of Bihar Tenancy Act (8 of 1885), decided pending suit — Decree in rent suit held could be passed on basis of commutation proceedings especially when it was not challenged. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 40. AIR 1952 Pat 454.

——O. 7, R. 7; O. 2, R. 2 — Failure to claim particular relief — Effect — (Specific Relief Act (1877), S. 42).

In a suit for declaration not hit by the provisions of S. 42, Specific Relief Act, if the plaintiff omits to claim all the further reliefs which he might have asked for will not affect the maintainability of the suit. See Civil P. C. (5 of 1908), O. 2, R. 2. AIR 1951 Pat 556.

——O. 7, R. 7 and O. 6, R. 2 — Suit for ejectment of tenant — Relationship of landlord and tenant not established—Ejectment decree on basis of title — The Court has discretion under O. 7, R. 7 to grant an equitable relief of ejectment on the basis of title. AIR 1951 Pat 550.

——O. 7, R. 7 — (Registration Act (1908), Ss. 17 & 49) — Unregistered mortgage — Suit for redemption —Kind of decree which can be passed — A decree for possession can be passed in plaintiff's favour, if he has proved his title to the mortgaged property independently of the mortgage. See Registration Act (1908), S. 17. AIR 1951 Pepsu 109.

——O. 7, R. 7 — Application to determine standard rent — Tenant leaving premises before determination — Effect.

The fact that the tenant ceased to occupy the premises in dispute does not render his interest in the determination merely academic. See Houses and Rents — Delhi and Ajmer Rent Control Act (1952), S. 8 (2). AIR 1956 Punj 190.

——O. 7, R. 7 and O. 41, R. 33 — Subsequent events — Power of appellate Court.

A Court of Appeal can take into consideration subsequent events which have come into existence after the decision of the suit and before the appeal. AIR 1952 Punj 407.

——O. 7, R. 7 and O. 6, R. 2 — Construction of pleadings — Suit on basis of promissory note — Relief on footing of loan can be given. See Civil P. C. (5 of 1908), O. 6, R. 2. AIR 1955 Sau 74.

——O. 7, R. 7 and S. 9 — Decree giving present relief.

Where a decree has the effect of giving present relief, the power to make it will be governed by the general provisions of S. 9 and O. 7, R. 7, Civil P. C. See Specific Relief Act (1877), S. 42. AIR 1957 Tripura 37.

——O. 7, Rr. 9 and 11, O. 9 (Gen.) — Stage for rejection of plaint — Plaint cannot be rejected after issues have been framed. See Civil P. C. (5 of 1908), O. 7, R. 11. AIR 1963 Guj 79.

——O. 7, R. 10 and S. 20 — Debtor to seek creditor — Applicability of rule — Suit by principal for accounts against agent — Place of suit — Return of plaint.

The principle that the debtor shall seek his creditor will apply only where the place of payment cannot be inferred or is not to be found in the contract but payment under the contract is contemplated. See Civil P. C. (5 of 1908), S. 20. AIR 1955 All 669.

——O. 7, R. 10— Limitation Act (1908), S. 14 — Due diligence—(Indian Independence (Rights, Properties and Liabilities) Order (1947), Cls. 8 and 12).

Loss or non-delivery of consignment — Suit at Chittagong—Plaint returned to India, without giving any reasons as required under O. 7, R. 10 (2) — The suit before the Chittagong Court was perfectly good suit and there was no justification for filing same suit on same cause of action at Calcutta and the same was barred by limitation. See Limitation Act (1903), S. 14. AIR 1955 NUC (Cal) 2893.

——O. 7, R. 10 — Jurisdiction of Court inferior to District Court.

The proper course for the plaintiff would be to amend the plaint so as to restrict himself to reliefs which he might properly ask for in a passing-off action. See Hyderabad Trade Marks Act, S. 19. AIR 1956 Hyd 177.

——O. 7, R. 10 and S. 9 — Suit for sale of boat under pledge.

The only order the Court could pass is to return the plaint to the plaintiff and direct him to present it to the proper Court. See J. and K. Restitution of Mortgage Properties Act (2006), S. 4. AIR 1955 NUC (J and K) 27.

——O. 7 R. 10 — Suit for dissolution of partnership and accounts—Mode of valuation—Power of Court to correct valuation put by plaintiff. See Court-fees Act (1870), S. 7 (iv) (f). AIR 1956 Nag 195.

● ——O. 7, Rr. 10, 11, 1 and O 8, R. 5 — Forum of appeal—Suit for partition valued at Rs. 5,000/-—Final decree—Appeal from, filed directly to High Court on allegation that valuation of suit exceeds Rs. 5,000/-— Maintainability—High Court if can direct enquiry to ascertain real valuation for purpose of admitting appeal. See Civil P. C. (5 of 1908), S. 96. AIR 1958 Pat 430 (FB).

——O. 7, R. 10 — Bombay Municipal Boroughs Act (18 of 1925), S. 132)—Bombay Municipal Boroughs Act made applicable to area where suit is pending—Court can take cognizance of law as it stands at time of decision of suit. See Municipalities—Bombay Municipal Boroughs Act (18 of 1925), S. 132. AIR 1953 Sau 97.

——O. 7, R. 10 and O. 6, R. 17 — Amendment taking suit out of jurisdiction — Amendment allowed and plaint returned for presentation to proper Court — The procedure adopted was correct. See Civil P. C. (5 of 1908), O. 6, R. 17. AIR 1955 Tripura 29.

——O. 7, R. 11 and S. 2 (2) — (Representation of the People Act (1951), Ss. 90 (3), 98 and 116-A) — Election petition dismissed after striking off grounds as being vague—Appeal—Maintainability.

The appeal was maintainable. See Representation of the People Act (1951), S. 90 (3). AIR 1958 All 596.

——O. 7, R 11—Election petition—Disposal of—Procedure—It is perhaps permissible to reject an election petition under O. 7, R. 11. See Panchayats — U. P. Panchayat Raj Rules (1947), R. 25 (1). 1958 All W R (HC) 210.

——O. 7, R 11 and S. 151 — Order rejecting plaint for deficiency of stamps when can be recalled and reconsidered. See Civil P. C. (1908), S. 151. AIR 1957 All 825.

——O. 7, R. 11; Ss. 107 (2), 2 (2), 104 (2) — Civil Misc. appeal rejected as incompetent—Order amounts to decree and is appealable — Appeal not barred by S. 104 (2). See Civil P. C. (5 of 1908), S. 107 (2). AIR 1961 Andh Pra 112.

——O. 7, R. 11 and O. 6, R. 17 — Plaint liable to be rejected— Not yet rejected — Application for amend.

ment of plaint — Application should not be thrown out "in limine" or its consideration postponed — The real question is one of propriety of allowing the same in exercise of Courts' jurisdiction. See Civil P. C. (5 of 1908), O. 6, R. 17. AIR 1955 NUC (Cal) 2929.

——O. 7. R. 11 (a); O. 6, R. 6 — Notice of dishonour of cheque is a part of cause of action and not a condition precedent. See Civil P. C. (5 of 1908), O. 6, R. 6. AIR 1951 Cal 262.

——O. 7, R. 11—Object of.

The object of O. 7, R. 11 to is prevent another suit filed on the same cause of action from being barred. AIR 1951 Cal 262.

——O 7, R 11 (a) and O. 6, R. 17—O. 7, R. 11, does not take away power to amend plaints when it discloses no cause of action. See. Civil P. C. (5 of 1908), O. 6, R. 17. AIR 1951 Cal 262.

——O. 7, R. 11 (c); O. 7, R. 13 and Ss. 149-151 — Plaint rejected under O. 7, R. 11 (c) — Restoration under inherent powers. See Civil P. C. (5 of 1908), S. 149. AIR 1959 Ker 406.

——O. 7, R. 11 — Pending suit—Plaint insufficiently stamped—Deficiency ordered to be made good — Private reference to arbitration—Plant rejected — Award held not invalid. See Arbitration Act (1940), S. 21. AIR 1955 NUC (Madh Bha) 29.

——O. 7, R. 11; Ss. 115, 149 — Application for leave to sue in forma pauperis — Leave refused but time granted for payment of Court-fee — Court-fee not paid—Petition rejected—Remedy is by way of appeal. See Civil P. C. (5 of 1908), S. 115. AIR 1959 Mad 14.

——O. 7, R. 11 and O. 6, R. 17 — Application for amendment—Relief clause sought to be amended but not clause stating valuation — Munsiff allowing amendment and returning plaint for presentation to proper Court — Plaint presented to Sub-Judge with second application for amendment — Jurisdiction to order consequential amendment and second amendment — O. 6, R. 17 and O. 7, R. 11 give ample power to Court in this respect. See Civil P. C. (5 of 1908), O. 6, R. 17. AIR 1959 Manipur 9.

——O. 7, R. 11; O. 33, Rr. 5, 7; Ss. 2 (2), 115—Rejection of pauper application—Court-fee not paid within time as ordered — Rejection of plaint — No revision lies but only appeal. See Civil P. C. (5 of 1908), S. 2(2). AIR 1960 Mys 140.

——O. 7, R. 11 — Cause of action — Determination of —Court to consider plaint and not defence. AIR 1951 Nag 419.

——O. 7, R. 11—Suit for declaration with injunction —Mode of valuation. See Court-fees Act (1870), S. 7 (iv) (c). AIR 1957 Orissa 280.

——O. 7, R. 11 (c) — Rejection of plaint under O. 7, R. 11 (c) — Plaint can be restored under Ss. 151, 148, 149—Review under O. 7, R. 1 not the only remedy — Sections 148, 149 and 151 do not provide for notice to other side against restoration — Extension of time for filing deficit court-fee — Plaint to be taken as validly presented on date it was filed. See Civil P. C. (1908), S. 151. (1963) ILR 42 Pat 704 (DB).

——O. 7, R. 11 — Question of court-fee raised by defendant — Procedure — Duty of Court—Order for payment of additional court-fee — Court is not justified in this case in incorporating in the decree its order calling upon the plaintiff to pay additional court-fee. See Court-fees Act (1870), S. 6. A I R 1960 Pat 527.

——O. 7, R. 11 — (Limitation Act (1908), S. 14) — Plaintiffs filing plaint in right Court — Illegal order by Munsiff returning plaint—The plaintiffs cannot be prejudiced by such order. See Limitation Act (1908), S. 14. AIR 1960 Pat 82.

● ——O. 7, Rr. 11, 10, 1 and O. 8, R. 5 — Forum of appeal—Suit for partition valued at Rs. 5,000/-—Final decree — Appeal from, filed directly to High Court on allegation that valuation of suit exceeds Rs. 5000/-—Maintainability — High Court if can direct enquiry to ascertain real valuation for purpose of admitting appeal. See Civil P. C. (5 of 1908), S. 96. A I R 1958 Pat 430 (FB).

——O. 7, R. 11 — Order rejecting plaint under for non-payment of court-fees — Appeal—Court-fee. See Court-fees Act (1870), Sch. 1, Art. 1. A I R 1957 Punj 315.

——O. 7, R. 11—Application to determine standard rent—Tenant leaving premises before determination —Effect.

The fact that the tenant ceased to occupy the premises in dispute does not render his interest in the determination merely academic. See Houses and Rents — Delhi and Ajmer Rent Control Act (1952), S. 8 (2). AIR 1956 Punj 190.

——O. 7, R. 11 (c), O 47, R. 1, Ss. 2 (2), 96, 151 and 152 — Rejection of plaint for non-payment of court fee—Order amounts to decree—Power of Court rejecting plaint—Proper procedure for restoration.

There is no power left to restore the suit under its inherent powers where other remedies are provided by law. See Civil P. C. (1908), S. 2 (2). AIR 1956 Raj 164.

——O. 7, Rr. 13, 11 and S. 149 — Court-fee paid subsequent to date fixed — The Court would treat it as a fresh plaint. See Civil Procedure Code (5 of 1908), S. 149. AIR 1955 Hyd 156.

——O. 7, R. 13; O. 7, R. 11 (c) and Ss. 149, 151— Plaint rejected under O. 7, R. 11 (c) — Restoration under inherent powers. See Civil Procedure Code (5 of 1908), S. 149. AIR 1959 Ker 406.

——O. 7, R. 14 — Scope — Annexures to the plaint ought to be treated as part of the plaint. (1965) 67 Bom L R 352=1965 Mah L J 537=ILR (1965) Bom 783 (DB).

——O. 7, Rr. 18, 14 and O. 13, Rr. 1 and 2 — Production of document not in possession of defendant —O. 13, Rr 1 and 2 do not apply — Defendant is entitled to require its production before closing his evidence. See Civil Procedure Code (5 of 1908), O. 7, R. 14. AIR 1961 Raj 21.

——O. 8, Rr. 19, 10—Applicability—(Quaere).

Whether the penalty prescribed in O. 8, R. 10 applies only to subsequent pleadings mentioned in R. 9 having regard to the juxtaposition of the expression 'so required' in R. 10 or whether it governs equally R. 1 ? AIR 1955 NUC (Andhra) 3617.

——O. 8, R. 1, O. 6, R. 15 (1), O. 2, R. 7 and S. 115 —Objection regarding misjoinder taken in application — No objection by plaintiff — No question of jurisdiction is involved. See Civil Procedure Code (5 of 1908), S. 115. AIR 1955 NUC (Madh Bha) 5644.

——O. 8, R. 1—(Motor Vehicles Act (1939), S. 96 (2)) —Suit for compensation for injury sustained in motor accident—Nature and limits of defence that can be raised by insurer. See Motor Vehicles Act (1939), S. 96 (2). AIR 1955 Punj 187.

——O. 8, R. 1—First hearing—Meaning.

The first hearing means the day on which the Court goes into the pleadings in order to understand the contentions of the parties. See Houses and Rents —Saurashtra Rent Control Act (22 of 1951), S. 12 (4). AIR 1953 Sau 106.

● ——O. 8, R. 2—Extent of revisional powers of High Court — Error of lower Court on question of law—Question not related to question of its jurisdiction—High Court held not justified in interfering with under revisional powers. See Civil P. C. (1908), S. 115.

(1965) 2 S C W R 251 = 1965 Mah L J 764 = 1965 MPLJ 852=1965 SCD 1065=AIR 1966 SC 153.

● —O. 8, R. 2 — Hindu Law — Adoption—Plea of estoppel by conduct raised by adoptive son—Rule of estoppel applicable to adoption—Setting up different case from one in written statement — Held adoptive mother was not estopped. See Hindu Law—Adoption. AIR 1959 SC 504.

—O. 8, R. 2—Plea not taken — Consideration of—Procedure.

A plea which was not taken up cannot be considered by Court. See Civil P. C. (5 of 1908), O. 6, R. 2. AIR 1955 NUC (Ajmer) 3830.

—O. 8, R. 2 — Marriage between parties within prohibited degrees of relationship—Validity—Pleading.

Held, in the circumstances of the case, objection should not be allowed and no argument on the point ought to be entertained without giving plaintiff opportunity to meet new case. See Hindu Law—Marriage. AIR 1955 Cal 612.

—O. 8, R. 2—Plea of limitation.

It was necessary for the defendants to take the plea of limitation so as to enable the plaintiff to lead the evidence. This plea could not be agitated for the first time in second appeal. See Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 184. AIR 1955 NUC (Cal) 5570.

—O. 8, R. 2 and O. 41, R. 1 — Special defences. AIR 1955 NUC (Him Pra) 1804.

—O. 8, R. 2 and Ss. 100, 101—New plea—Waiver of notice—(Transfer of Property Act (1882), S. 113.)

Notice given was or was not waived subsequently is a question of fact and has to be pleaded specifically. If the defendant has not pleaded waiver of notice in his written statement he cannot be allowed to raise the contention in second appeal. See Civil Procedure Code (5 of 1908), S. 100. AIR 1955 NUC (Madh Bha) 3016.

—O. 8, R. 2 —Defective pleadings and issue —Still plaintiff having sufficient notice of fact to be proved —Court can admit evidence and refuse to entertain suit as being barred under S. 69 (2) of Partnership Act (1932). See Partnership Act (1932), S. 69 (2). AIR 1960 Orissa 119.

—O. 8, R. 2 and Ss. 100, 101—New point involving mixed question of law and fact cannot be raised in second appeal. See Civil Procedure Code (5 of 1908), Ss. 100, 101. AIR 1960 Pat 410.

—O. 8, R. 2, O. 6, R. 2—Variance between pleading and proof. See Civil Procedure Code (5 of 1908), O. 6, R. 2. AIR 1955 NUC (Trav-Co) 1659.

—O. 8, Rr. 3, 5 — (Constitution of India, Art. 226) —Procedure — Averments in petition not traversed must be held to be admitted. See Constitution of India, Art. 226. AIR 1956 Nag 27.

—O. 8, Rr. 3, 4 — Proof of notice. See Railways Act (1890), S. 77. AIR 1952 Nag 77.

[Overruled on another point in AIR 1962 SC 1716.]

—O. 8, R. 3 — (Evidence Act (1872), Ss. 90, 65) — Original more than 30 years old, lost—Production of certified copy — It proves contents but not the execution of the original. See Evidence Act (1872), S. 90. AIR 1955 NUC (Pat) 2149.

—O. 8, Rr. 4 and 3—(Railways Act (1890), S. 77)—Proof of notice. See Railways Act (1890). S. 77. AIR 1952 Nag 77.

[Overruled on another point in AIR 1962 SC 1716.]

● —O. 8, R. 5 and Ss. 11, 38 — Absence of territorial jurisdiction of trial Court not apparent on face of decree — Question cannot be raised for the first time in execution — Allegation of facts conferring jurisdiction not traversed—Effect. See Civil Procedure Code (5 of 1908). S. 11. AIR 1961 Cal 92 (FB).

—O. 8, R. 5 — Admission in written statement — Effect.

A pleading must be taken as a whole or left alone altogether. One part cannot be accepted rejecting the other. See Evidence Act (1872), S. 58. AIR 1955 Cal 465.

—O. 8, R. 5 — Use of admission — (Evidence Act (1872), S. 17).

It is not permissible for a party to rely on the first half of an admission and exclude the other half, the whole statement must be read in evidence. AIR 1955 N U C (Madh Bha) 2987.

—O. 8, R. 5—New plea in revision—Plea that landlord had not made out case under Ss. 69 and 70, Contract Act, cannot be raised for first time — See Provincial Small Cause Courts Act (1887), S. 25. AIR 1955 Mad 555.

—O. 8, Rr. 5, 3—(Constitution of India, Art. 226)—Procedure—Averments in petition not traversed must be held to be admitted — See Constitution of India, Art. 226. AIR 1956 Nag 27.

—O. 8, R. 5 — (Patents and Designs Act (1911), S. 29) — Burden of proof — Suit for infringement of patent—Patentee must prove that the patent is being infringed by resorting to a process patented by him — Article seized from defendant and produced in Court — Burden to show that the article is same which was seized and was alleged to have been produced by defendant is on plaintiff — No specific denial by defendant for long time—This fact is to be taken into consideration while considering whether the plaintiff has discharged the burden — See Patents and Designs Act (1911), S. 29. AIR 1953 Nag 154.

● —O. 8, R. 5; O. 7, Rr. 1, 10, 11—Forum of appeal — Suit for partition valued at Rs. 5,000 — Final decree—Appeal from, filed directly to High Court on allegation that valuation of suit exceeds Rs. 5,000 —Maintainability — High Court if can direct enquiry to ascertain real valuation for purpose of admitting appeal—See Civil Procedure Code (5 of 1908), S. 96. AIR 1958 Pat 430 (FB).

—O. 8, R. 5 — Parties admitting fact — Court still has power to frame issue on it and to require it to be proved otherwise than by admission. AIR 1951 Punj 352.

—O. 8, R. 5—Admission in pleadings—Unqualified admission by defendant that plaintiff's account shows some credit balance — Case against defendant is treated as proved by admission — See Evidence Act (1872), S. 18. 1965 Raj L W 523.

● —O. 8, R. 6 — Equitable set-off — Building contract — Loss suffered on account of defective work—Claim for equitable set off — Suit by owner of plot for such claim dismissed by High Court — No appeal from that dismissal — Claim cannot be reagitated in companion suit in absence of plea of equitable set off in written statement. Subramanyam v. Thayappa. 1961 S C D 303 = 1961 Ker L T (SC) 37 = (1961) 2 S C J 191 = (1961) 3 S C R 663 = (1961) 1 All L R 473=AIR 1966 S C 1034.

—O. 8, R. 6 — (Companies Act (1956), S. 529) — (Provincial Insolvency Act (5 of 1926), S. 46) — Claims provable against a bankrupt company — Mutual dealings between company and constituent — Duty of official liquidator to set off amount due to bankrupt company against claim made by creditor — Question of debt being barred by limitation — Relevancy — See Companies Act (1956), S. 529. A I R 1964 Andh Pra 88.

—O. 8, R. 6 and O. 2, R. 2—Set off—Bar of suit.

The suit for recovery of the enhanced tax realised from the plaintiff by the Municipality for the year

previous to that in which the enhanced tax was held to be illegal in the suit by the Municipality was not barred—See Civil P. C. (1908), O. 2, R. 2. **AIR 1957 Andh Pra 896.**

——**O. 8, R. 6 and S. 35** — Solicitor — Solicitor's lien — Costs incurred by solicitor for his client — His rights to recover — Lien and charging order — Bombay High Court Original Side Rules, Rule 1079), See Solicitor. **AIR 1959 Bom 162.**

——**O. 8, R. 6 and S. 35**—Costs—Solicitor's lien on — Enforcement of — Fraud and collusion of parties to deprive plaintiff's solicitor of his costs — Solicitor's remedy —The solicitor can proceed against his own client for the costs he is entitled to for the work done — See Civil Procedure Code (5 of 1908), S. 35. **AIR 1955 Bom 126.**

——O. 8, R. 6 — Omission to claim set-off — Suit for amount of set-off not barred. **AIR 1953 Him Pra 11.**

——O. 8, R. 6 — Suit for declaration of title, possession and mesne profits — Claim by defendant for compensation for improvements as a condition of decree for possession—Not a set-off or counter claim and no court-fee payable on such claim — See Court-fees Act (1870), Sch. I, Art. 1. **AIR 1961 Mad 527.**

——O. 8, R. 6 — Suit for partition—Some properties left out — Application by defendant to include that property and adjudicate upon their claim—Court-fees paid — Plaintiff cannot be compelled to include this property or put forward or meet two totally inconsistent cases — See Civil Procedure Code (5 of 1908), O. 6, R. 17. **AIR 1955 NUC (Mys) 913.**

——O. 8, R. 6 — Suit for rent — Plea of adjustment and satisfaction—Plea held not set-off — No court-fee need be paid — See Court-fees Act (1870), Sch. 1, Art. 1. **AIR 1956 Pat 199.**

——O. 8, R. 6—Suit and cross-suit — Court-fee payable—See Court-fees Act (1870), S. 7 (1). **A I R 1956 Punj 214.**

——**O. 8, R. 6** — Adjustment and set-off—Difference between — **Held** on facts that what was claimed by defendants was adjustment and could be tried by Small Cause Court — See Provincial Small Cause Courts Act (1887), S. 15. **1965 Raj L W 465 = A I R 1966 Raj 177.**

——**O. 8, R. 8; O. 7, R. 7** — Events happening after suit—Statement of case to High Court — New aspect of law arising subsequent to such statement — High Court justified in deciding the question in the light of new law provided under new facts need investigation. **AIR 1967 Cal 338.**

——**O. 8, Rr. 9, 10, 1—Applicability—(Quaere).**

Whether the penalty prescribed in O. 8, R. 10 applies only to subsequent pleadings mentioned in R. 9 having regard to the juxtaposition of the expression "so required" in R. 10 or whether it governs equally R. 1? — See Civil Procedure Code (5 of 1908), O. 8, R. 1. **A I R 1955 N U C (Andhra) 3617.**

——**O. 8, R. 9 and O. 6, Rr. 7, 17—Additional written statement by way of amendment of previous statement — One defendant raising new ground inconsistent with that raised in joint written statement — If and when can be allowed — Payment of costs.**

Even though inconsistent with the original joint written statement, it could be allowed by way of amendment in order to determine the real controversy between the parties. See Civil P. C. (1908), O. 6, R. 7. **ILR (1965) Cut 431 = AIR 1966 Orissa 6.**

——**O. 8-A, R. 1 (Mad)** — Suit by assignee of mortgagee — Defendant mortgagor seeking to implead original mortgagee as party-defendant alleging discharge of debt before assignment — Original mortgagee ordered to be impleaded as party-defendant. See Civil P. C. (5 of 1908), O. 1, R. 10. **AIR 1965 495.**

——**O. 8-A, R. 2 (Mad) — Application to implead third party — When will be granted.**

Held, that the Court at Madras, where the suit was instituted, had no jurisdiction to enquire into the claim and therefore the third party could not be impleaded. See Civil P. C. (5 of 1908), O. 8-A, R. 1 (Mad). **AIR 1961 Mad 367.**

——**O. 8-A, Rr. 5, 1 and O. 1, R. 10 (2)** — Leave of Court to issue notice to third party — Whether Court has option to add such third party — Striking out of party. See Civil P. C. (1908), O. 8A, R. 1. **AIR 1957 Andh Pra 939.**

——**O. 9 (Gen.), O. 9, R. 13 and S. 115** — Revision against dismissal of restoration application in default — Revision did not lie. See Civil P. C. (5 of 1908), S. 115. **AIR 1955 NUC (Ajmer) 4795.**

——O. 9 and **S. 151** — **Execution dismissed for default.**

Where the Court in ignorance of the fact that notice of the date of hearing was not actually served on the decree-holder or his agent dismisses the execution for default it has inherent jurisdiction to restore the application, even though fresh application is barred. See Civil P. C. (5 of 1908), S. 151. **AIR 1954 All 98.**

——O. 9 (Gen.) — Stage for rejection of plaint — Plaint cannot be rejected after issues have been framed. See Civil P. C. (5 of 1908), O. 7, R. 11. **AIR 1963 Guj 79.**

——**O. 9 (Gen.) — Ex parte finding on issue of status — Finality.**

Section 4, Mysore Agriculturists' Relief Act (18 of 1928) does not say that ex parte order based on a finding on the preliminary issue as to the status of the defendant cannot be reopened under O. 9, R. 9 or 13 read with S. 141 of the Code. See Debt Laws—Mysore Agriculturists' Relief Act (18 of 1928). S. 4. **AIR 1955 NUC (Mys) 1237.**

——**O. 9; O. 17, Rr. 2, 3; O. 21, R. 10; O. 2, R. 2 and S. 141** — Procedure in regard to suits — Applicability to execution proceedings — Order dismissing application — No default on part of decree-holder — Order cannot be upheld. See Civil P. C. (5 of 1908), S. 141. AIR 1955 Nag 305.

——**O. 9 (Gen.), O. 9, Rr. 9, 13 and S. 151 — Application under O. 9, R. 13 dismissed for default — Restoration.**

Court can under S. 151, restore an application for rehearing of the suit. See Civil P. C. (5 of 1908), S. 151. **AIR 1958 Pat 107.**

——**O. 9, Rr. 3, 8 — "First hearing"—Meaning of.**

The date of hearing can also mean a date for which the defendant has been summoned and it is not necessary that he should be actually present or should put in a written statement. This appears to be the sense in which the term is used. See Houses and Rents — Patiala and East Punjab States Union Urban Rent Restriction Ordinance (8 of 2006), S. 13 (2), Proviso. **AIR 1952 Pepsu 174.**

——**O. 9, R. 4** — Insolvency — Creditor's application for annulment of fraudulent transfer — Dismissal in default — Subsequent application by his legal representative is not barred. **AIR 1951 Nag 268.**

——**O. 9, Rr. 4, 9, 13 and S. 141** — Section 141 does not make O. 9 applicable to proceedings started under Rr. 4, 9 and 13. See Civil P. C. (5 of 1908), S. 141. **AIR 1959 Pat 121 (FB).**

——**O. 9, R. 4, S. 115 — Order under R. 4 — Revision against.**

An application in revision is maintainable from an order directing the plaintiff to pay special costs as condition precedent to the setting aside under O. 9,

R. 4 of the dismissal of his suit under R. 3. See Civil P. C. (5 of 1908), S, 115. AIR 1953 Vindh-Pra 10.

—O. 9, R. 5 — (Letters Patent (Calcutta), Cl. 15)— "Judgment" — Summons issued to substituted defendant lost — Re-issue of summons — Order for re-issue — Appeal.

The order issuing duplicate writ of summons does not amount to judgment and it is found that O. 9, R. 5 is not applicable to the case. See Letters Patent (Cal), Cl. 15. AIR 1961 Cal 386.

—O. 9, Rr. 5 and 2 — Applicability — Where the correct address of the defendant is furnished by the plaintiff and necessary process fee is paid and summons is issued to the defendant but is returned unserved, O. 9, R. 2 has no applicability. In such a case the Court should call upon the plaintiff to furnish again the address of the defendant and pay the necessary process fee for summoning him. See Civil P. C. (5 of 1908), O. 9, R. 2. AIR 1955 NUC (Madh-Bha) 3393.

—O. 9, R. 6 and O. 17, R. 2 — Suit adjourned for final disposal — Defendant absent on date fixed — Ex parte decree—Held that the Court rightly decreed the suit ex parte. AIR 1951 Ajmer 83 (2).

—O. 9, Rr. 6, 13 and O. 37, R. 4 — Application to set aside decree in summary suit when leave to defend not given — Provisions applicable — The provisions of O. 9, R. 6 do not apply but of O. 37, R. 4 will apply. See Civil P. C. (5 of 1908), O. 37, R. 4. AIR 1958 Bom 10.

—O. 9, Rr. 6, 8, 9 — Sufficient cause for non-appearance — Appearance, meaning of — Physical presence of party engaging a lawyer, after the lawyer lets him down, is not appearance within Rr. 6, 8 — Appearance of party engaging a lawyer means appearance with his pleader.

Where a party is not able to conduct his suit because his lawyers were not ready for the hearing after refusal of adjournment to them by the Court, it is a sufficient cause for non-appearance within the meaning of O. 9, R. 9, Civil P. C. It is not a case of a party pleading the negligence of a lawyer as an excuse for its own default but the case of a party who has suffered because of the refusal of the lawyer or lawyers to conduct the case.

When a petition for adjournment by a lawyer is rejected and he retires from the case, the mere physical presence of the party in the precints of the Court does not constitute an appearance within the meaning of O. 9, Rr. 6 and 8. The word appearance under O. 9 has a technical meaning and does not mean mere physical presence. When a party does not want to conduct his case in person but engages a lawyer, the appearance of such party must be an appearance through that lawyer when the suit in question is called on for hearing. A party who engages a competent lawyer cannot thereafter be held to be in default for the laches or negligence of that lawyer. After the rejection of the lawyer's petition for adjournment, it could not be said that the petitioner had appeared in the suit and that accordingly the petition under O. 9, R. 9 was not maintainable. AIR 1955 Cal 1 and AIR 1959 Cal 173 and AIR 1932 Cal 418 and AIR 1932 Cal 425, Foll. 69 Cal W N 828 = AIR 1966 Cal 307.

—O. 9, R. 6 — (Evidence Act (1872), S. 114) — Ex parte decree.

Where the defendant is absent, it would be open to the Court to hear the evidence of the plaintiff in the absence of the former, and make such order as that evidence justifies. AIR 1955 NUC (Raj) 4621.

—O. 9, Rr. 7, 8— Amendment of ex parte decree.

An amendment can be allowed if the decree is not in conformity with the judgment or there is any mistake due to accidental slip or inadvertence. See Civil P. C. (5 of 1908), S. 151. AIR 1955 Mys 2.

—O. 9, R. 7—Scope of the rule.

Where an absenting party does not wish to challenge any orders passed during his absence he need not make an application under O. 9, R. 7 and may continue to appear and take part in the proceedings as a matter of right. AIR 1957 Punj 63.

—O. 9. R. 7, O. 18, R. 2; O. 20, R. 1— "Hearing of the suit" — Date on which Commissioner has to file report is not date of hearing. See Civil P. C. (5 of 1908), O. 18, R. 2. AIR 1954 Punj 207.

—O. 9, R. 7—Suit for eviction — Ex parte proceedings set aside — Defendant put in a position as if he had actually appeared on the first day of hearing — If arrears of rent paid on that day provision of law concerning deposit of money on the first day of hearing is satisfied. See Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act (1947), S. 9 (1) (a). AIR 1953 Punj 247.

—O. 9, Rr. 8, 9—"Sufficient cause."

A bona fide mistake by counsel in noting the date of hearing is a good ground for restoration of a suit. See Civil P. C. (5 of 1908), O. 9, R. 9. AIR 1955 NUC (All) 4166.

—O. 9, R. 8 and O. 3, R. 4 — Suit dismissed under O. 9, R. 8 — Application for restoration — Necessary to file fresh vakalat— Strictly and technically a fresh vakalat should be filed when an application for restoration of suit dismissed for default for appearance is filed. See Civil P. C. (5 of 1908), O. 3, R. 4. AIR 1958 Andh-Pra 652.

—O. 9, Rr. 8, 6 and O. 17, R. 3—Default in appearance — Proceeding ex parte or dismissal in default in early hours of day—Not desirable. See Civil P. C. (5 of 1908), O. 9, R. 6. AIR 1956 Bhopal 26.

—O. 9, R. 8 — Application under Ss. 4 and 46 of Bombay Agricultural Debtor's Relief Act (28 of 1947) (as applied to Kutch) — Dismissal for default.

Apart from the fact that O. 9, R. 8 will not in terms apply to the proceedings as S. 46 of that Act is not made applicable to the State of Kutch, apparently an order dismissing an application for default is not contemplated. See Debt Laws — Bombay Agricultural Debtors' Relief Act (28 of 1947), S. 4. AIR 1953 Kutch 36.

—O. 9, Rr. 8, 7 and Ss. 151, 152, 153 — Amendment of ex parte decree.

Amendment can be allowed if the decree is not in conformity with the judgment or there is any mistake due to accidental slip or inadvertence. See Civil P. C. (5 of 1908), S. 151. AIR 1955 Mys 2.

—O. 9, R. 8 and Ss. 141, 144 — Proceedings under S. 144—Applicablity of S. 141 and O. 9, R. 8. See Civil P. C. (5 of 1908), S. 141. AIR 1953 Nag 153.

—O. 9, Rr. 8, 3 and O. 5, R. 2 — Expression "first hearing," meaning of. See Houses and Rents— Pepsu Urban Rent Restriction Ordinance (8 of 2006 B. K.), S. 13 (2) (i). AIR 1955 NUC (Pepsu) 4003.

—O. 9, Rr. 8, 9, 6—Sufficient cause for non-appearance—Appearance, meaning of — Physical presence of party engaging a lawyer, after lawyer lets him down, is not appearance within Rr. 6, 8—Appearance of party engaging a lawyer means appearance with his pleader. See Civil P. C. (1908), O. 9, R. 6. 69 Cal W N 828=AIR 1966 Cal 307.

—O. 9, R. 9, O. 17, Rr. 2 and 3—Setting aside order under.

Failure to file affidavit as to whereabouts of certain documents on the fixed date — Suit dismissed for want of prosecution without reference to evidence already adduced by plaintiff—The order is one under

O. 17, R. 2 and not under O. 17, R. 3 and it can be set aside under O. 9, R. 9. See Civil P. C. (5 of 1908) O. 17, Rr. 2 and 3. AIR 1951 Ajmer 47 (2).

——O. 9, Rr. 9, 8 — Same cause of action — Suit for fixation of rent against trespasser — Dismissal in default—Second suit is not barred. AIR 1952 All 427.

——O. 9, R. 9 and S. 141 — Application under dismissed for default — Another application to restore it lies under the rule. (1964) 2 Andh W R 315 = AIR 1966 Andh-Pra 263.

——O. 9, R. 9, S. 141 — Application to make complaint under S. 195 (1) (b) or (c), Criminal P. C. dismissed for default — Setting aside of dismissal. See Civil P. C. (5 of 1908), S. 141. A I R 1957 Andh-Pra 898.

——O. 9, R. 9 — Minor when can be said to have been prevented by sufficient cause from appearing in suit. AIR 1955 NUC (Andhra) 4818.

——O. 9, R. 9, O. 17, Rr. 2 and 3— Suit adjourned at instance of defendant — On adjourned date plaintiff not ready and asking for adjournment — Adjournment refused and suit dismissed for default — Order of dismissal held not under R. 3 but R. 2 — Application for restoration held competent. See Civil P. C. (5 of 1908), O. 17, R. 2. AIR 1953 Assam 91.

——O. 9, R. 9 and S. 151— Insolvency proceedings— Application falling under S, 4, Provincial Insolvency Act, made to Court — Application dismissed for default of appearance of applicant — Applicant not aware of date of hearing — Neither O. 9, R. 9, nor Art. 163, Limitation Act is attracted — Application can be restored under S. 151. See Civil P. C. (5 of 1908), S. 151. AIR 1964 Bom 40.

——O. 9, Rr. 9, 8, 6 — Sufficient cause for non-appearance — Appearance, meaning of — Physical presence of party engaging a lawyer, after lawyer lets him down, is not appearance within Rr. 6, 8 — Appearance of party engaging a lawyer means appearance with his pleader. See Civil P. C. (1908), O. 9, R. 6. 69 Cal W N 828=AIR 1966 Cal 307.

——O. 9, R. 9; O, 41, R. 19, S. 151— Applicability to revision dismissed for default.

As neither O. 9, R. 9 nor O. 41, R. 19 applies to application for restoration of a revision petition dismissed for default, it can be restored by a Court in the exercise of the inherent jurisdiction under S. 151. See Civil P. C. (5 of 1908), S. 151. AIR 1953 Him-Pra 102.

——O. 9, R. 9 and S. 151 — Application to restore suit dismissed for default — Another application to restore the first application — Court has power under S. 151 to restore second application — No appeal lies under O. 43, R. 1 (c). See Civil P. C. (5 of 1908), S. 151. AIR 1963 J and K 12.

——O. 9, R. 9, O. 17, R. 3 and S. 151—Suit dismissed for failure of plaintiff to deposit guardian's fee for minor defendant in presence of other defendants —There is no specific provision for restoration of suit dismissed in such circumstances — Restoration can be only under S. 151 — Restoration application dismissed — Revision and no appeal lies against order of dismissal. See Civil Procedure Code (5 of 1908), S. 151. AIR 1962 J and K 21.

——O. 9, Rr. 9, 8 — (Representation of the People Act (1951), S. 83) — Election petition—Dismissal for non-appearance of petitioner is contrary to law— Subsequent order of restoration will not be quashed in exercise of discretion under Art. 226 of the Constitution. See Representation of the People Act (1951), S. 8. AIR 1960 J and K 25 (FB).

——O. 9, R. 9; S. 151 — There is no legal bar to the restoration of proceedings for execution dismissed for default. See Civil Procedure Code (5 of 1908), S. 151. AIR 1955 NUC (Madh Bha) 3792.

——O. 9, R. 9 and S. 151—Execution dismissed for default of appearance—Restoration — See Civil Procedure Code (5 of 1908), S. 151. AIR 1955 NUC (Madh-Bha) 3387.

——O. 9, R. 9—Revision dismissed for default— High Court has power to restore, See Civil Procedure Code (5 of 1908), S. 151. AIR 1962 Madh Pra 308.

——O. 9, R. 9—Application under — Dismissal for default — Restoration can be made in exercise of inherent powers — No limitation — Party invoking such power must be diligent and not guilty of laches. See Civil Procedure Code (5 of 1908), S. 151. AIR 1962 Madh Pra 64.

——O. 9. Rr. 9, 13; O. 6, R. 17; Ss. 115 (c) and 35 — Awarding of costs — Wrong principle applied—Revision lies. See Civil Procedure Code (5 of 1908), S. 115 (c). AIR 1961 Madh-Pra 169.

——O. 9. R. 9—Madras Agricultural Income Tax Act (5 of 1955), S. 31 (2) — Interlocutary orders — Order of remand by Appellate Assistant Commissioner on some items only — Order is interlocutory — No appeal by assessee against remand — Subsequent appeal by assessee against revised order of assessment to appellate tribunal — Even the correctness of the items confirmed in earlier appeal can be canvassed. See Madras Agricultural Income Tax Act (5 of 1955), S. 31 (2). ILR (1965) 2 Mad 397 (DB).

——O. 9, R. 9; O. 23, R. 1 and S. 151 and S. 12—Suit dismissed under O. 9, R. 8 — Remedy is under O. 9, R. 9 —Fresh suit is barred. AIR 1955 NUC (Manipur) 4556.

——O. 9, Rr. 9, 8 — Petition under S. 10 of Hindu Marriage Act (1955) — Dismissal due to default of petitioner — Applicability of Rules 8 and 9 of O. 9— Order held to be passed under R. 8—Appeal dismissed in view of simultaneous application under R. 9. See Hindu Marriage Act (1955), S. 10. (1965) 1 Mys L J 329 = AIR 1966 Mys 1.

——O. 9, R. 9—Code of Civil Procedure (Amendment) Act (2 of 1951), S. 20 (1) — Rules contained in first schedule to Mysore Civil P. C. (1911) formed part of law corresponding to Civil P. C. (1908) for purposes of S. 20 (1) of Amendment Act — Effect of S. 20 (1) was to repeal O. 9, R. 9 (3), Mysore Civil P. C. from date referred to in S. 20 (1) so that provisions of S. 5, Limitation Act no longer became applicable to applications under. O. 9, R. 9, Civil P. C. See Code of Civil Procedure (Amendment) Act (2 of 1951), S. 20 (1). AIR 1960 Mys 184.

——O. 9, R. 9 — Ex parte finding on issue of status— Finality.

Section 4, Mysore Agriculturist's Relief Act (18 of 1928), does not say that ex parte order based on a finding on the preliminary issue as to the status of the defendant cannot be reopened under O. 9, R. 9 or 13 read with S. 141 of the Code. See Debt Laws—Mysore Agriculturists Relief Act (18 of 1928), S. 4. A I R 1955 NUC (Mys) 1237.

——O. 9, R. 9 and O. 34, R. 5 — Application for final decree — Dismissal for default — Restoration.

An application (made within limitation) for a final decree can be dismissed for default and then there would be no "res judicata" because the right of the decree-holder still remains. See Civil Procedure Code (5 of 1908), O. 34, R, 5. AIR 1952 Nag 177.

——O. 9, R. 9—Decree — Setting aside of—Ex parte decree—Suit to set aside, on ground of suppression of summons — Nature of proof required.

Where a party brings a suit for setting aside an ex parte decree on the ground of fraud the plaintiff must show that the decree was obtained by fraud; he must show that summons was fraudulently suppressed and by fraud of the defendant he was kept ignorant

of the decree; mere non-service of summons is not sufficient. In order to charge a party with fraud, it is essential to prove that the non-service was the result of some active part taken by that party in not having the summons served and thereby keeping the opposite party from the knowledge of the suit. After the Court comes to a finding as to the non-service of summons or notice, the Court may go into the question whether there was a motive for wilful or fraudulent suppression of the notice or summons in order to obtain a decree based on a false claim. Fraud must be specifically proved and cannot be based on mere suspicion. AIR 1922 Pat 291 and AIR 1935 Cal 95 and AIR 1936 Pat 135 and (S) AIR 1955 Sau 28 and ILR (1959) Cut 526, Rel. on.; AIR 1934 Cal 745 and AIR 1935 Lah 129, Dist. **AIR 1961 Orissa 57.**

——O. 9, R. 9—Restoration application — Notices.

The Court must issue notices not only to the contesting defendants but also to those who were not contesting. If restoration were ordered after issuing notices only to those defendants who were contesting, the order would be one passed in contravention of O. 9, R. 9 (2). **AIR 1951 Orissa 266.**

——O. 9. Rr. 9, 13; O. 9 (Gen.) & S. 151—Application under O. 9, R. 13 dismissed for default — Restoration —Provisions of O. 9, R. 9 do not apply. See Civil Procedure Code (5 of 1908), S. 151. **AIR 1958 Pat 107.**

——O. 9, R. 9—Application dismissed in default — Fresh application — Bar — The application for restoration must be presented within 30 days from the date of dismissal. See Debt Laws — Displaced Persons (Debts Adjustment) Act (70 of 1951), S. 10. **ILR (1957) Punj 1777.**

——O. 9, R. 9 — (Letters Patent (Punjab), Cl. 10) — "Judgment" — Meaning of — Order setting asside abatement under O. 22, R. 9 is not judgment. See Letters Patent (Punjab), Cl. 10. **AIR 1961 Punj 424.**

——O. 9, Rr. 9, 13 and O. 17, R. 3 — Case fixed for arguments adjourned on defendant's request—Absence of defendant — Decision on merits — Applicability of O. 17, R. 3 and O. 9, R. 13—O. 9, R. 13 did not apply. See Civil Procedure Code (5 of 1908), O. 17, R. 3. **AIR 1955 NUC (Raj) 128.**

——O. 9, R. 9; O. 17, R. 3 — Applicability of O. 17, R. 3 — Remedy under O. 9 R. 9 — See Civil Procedure Code (5 of 1908), O. 17, R. 3. **AIR 1953 Trav-Co 387.**

——O. 9, R. 11, S. 2 (2)—Preliminary decree against defendants who do not appear — Is open to question whether that can be done in transgression of the express provisions in O. 9, R. 11 — See Civil Procedure Code (5 of 1908), S. 2 (2). **AIR 1953 Trav-Co 220 (FB).**

——O. 9, R. 13, O. 9 (Gen.) and S. 115 — Revision against dismissal of restoration application in default —Revision did not lie — See Civil Procedure Code (5 of 1908), S. 115. **AIR 1955 NUC (Ajmer) 4795.**

——O. 9, R. 13—Sufficient cause. **AIR 1955 NUC (Ajmer) 4147.**

——O. 9, R. 13 — Defendant filing written statement by admitting his liability — He subsequently appearing from time to time without retracting from his position — Subsequent non-appearance — Ex parte decree — Application for setting it aside held could not be allowed. **AIR 1954 Ajmer 6 (1).**

——O. 9, R. 13, S. 151 — Ex parte decree — Setting aside — Application under O. 9, R. 13 is barred—It cannot be set aside under inherent powers—See Civil Procedure Code (5 of 1908), S. 151. **AIR 1951 Ajmer 39 (1).**

——O. 9, R. 13 — Setting aside ex parte decree— Where Court finds that defendant was guilty of negligence in not attending Court on date fixed for hearing of suit and ex parte decree is passed against him, it has no jurisdiction to set aside decree. **1966 All W R (HC) 137.**

——O. 9, R. 13 — Application for permission to furnish security should be previous to application for setting aside ex parte decree—But actual direction of Court need not be previous to such application— Failure of Court to give such direction at proper time — Exercise of inherent powers — Interpretation of Statutes—Principle that party should not be penalised for no fault — See Provincial Small Cause Courts Act (1887), S. 17 (1), Proviso. **AIR 1960 All 612.**

——O. 9, R. 13, O. 5, R. 19—Due service.

Where summonses are served after the date which is fixed for appearance has expired, though the mode of service is perfect, i. e. there is personal service, it can hardly be said that it is "due service." See Limitation Act (1908), Art. 164. **AIR 1957 All 76.**

——O. 9, R. 13 — Fraud — Ex parte decree obtained by fraud—Remedy of party.

Where an ex parte decree is alleged to have been obtained by fraud, the aggrieved person can either get it set aside under O. 9, R. 13, C. P. Code; or have it set aside through a separate action on the ground of fraud. In the latter event, when no further relief is claimed, the Court can simply set aside the decree and need not say anything about the retrial. **A I R 1952 All 424.**

——O. 9, R. 13 — Dismissal for default and ex parte order—Distinction. See Houses and Rents—Andhra Pradesh Buildings (Lease, Rent and Eviction Control) Rules (1961), R. 11 (3). **AIR 1964 Andh Pra 388.**

——O. 9, R. 13 — Sufficient cause — Allegations by defendants—Duty of Court—The Court ought to take evidence as to whether the allegations are true and whether they constitute sufficient cause within the meaning of O. 9, R. 13. **A I R 1955 NUC (Andhra) 3612.**

——O. 9, R. 13 — Limitation Act (1908), Art. 164— "Summons not duly served" — Meaning—Summons served and defendant remaining present on date of hearing — Matter remaining pending for two years— Case taken for hearing without fresh summons — Ex parte decree—Setting aside—Starting point of limitation for setting aside ex parte decree would be the date of the decree — See Limitation Act (1908), Art. 164. **AIR 1961 Assam 80.**

——O. 9, Rr. 13, 12; O. 17, R. 2 — Date fixed for production of accounts by defendant—Defendant absent on date — Court cannot fix date for "ex parte" hearing — The result of non-production would be a presumption that there were no accounts or in case they were produced they would have gone against the defendant — It could not, however, be said to be an act necessary to the further progress of suit to attract O. 17, R. 3 — It is only when defendant is absent on date fixed for hearing that O. 9 and O. 17, R. 2 are attracted—See Civil Procedure Code (5 of 1908), O. 9, R. 12. **AIR 1953 Assam 150.**

——O. 9, R. 13 — Revenue Courts — Partition case— Reopening of proceedings—Order of D. C. as to due service of notice — Reconsideration by successor — Permissibility—C. P. Code, O. 9, R. 13.

The fact that a previous D. C. during the pendency of the partition proceedings had recorded an order, in the absence of the appellant, that notice had not been duly served, is not final, and it does not debar the D. C., from reconsidering the matter on a proper application being filed in the nature of an application under O. 9, R. 13, C. P. Code and the D. C. ought to give the applicant an opportunity of substantiating his case and should then deal with the application on its merits. **AIR 1951 Assam 105.**

——O. 9, R. 13— (Provincial Small Cause Courts Act (1887), S. 17, Proviso)—Compliance when sufficient.

It is sufficient compliance if, when the application under O. 9, R. 13 is taken notice of, the applicant has furnished or deposited the requisite security within 30 days — See Provincial Small Cause Courts Act (1887), S. 17, Proviso. **AIR 1956 Bhopal 10.**

——**O. 9, R. 13 and S. 148** —"Act prescribed or allowed by this Code" — Application for setting aside ex parte decree—Decree set aside subject to terms as to deposit and costs—Non-performance of terms within time mentioned in order of Court — Application to extend time—Applicability of S. 148—Inherent power of Court to extend time—O. 9, R. 13 does not, while setting aside an ex parte decree, refer to any particular act which should be done by the defendant within the time allowed by Court — See Civil Procedure Code (5 of 1908), S. 148. **AIR 1961 Bom 254.**

——**O. 9, R. 13**—Order for vacating premises—Quasi-Judicial order—Ex parte order—Setting aside—If an application to set aside an ex parte order is made on the same on which the ex parte order was made, the ex parte order should be set aside — See Houses and Rents—C. P. and Berar Letting of Houses and Rents Control Order (1947), Cl. 28. **ILR (1958) Bom 563.**

——**O. 9, R. 13 and O. 43 (1) (d) — Order setting aside ex parte decree on condition—Appeal.**

No appeal lay in the case — See Civil Procedure Code (5 of 1908), O. 43 (1) (d). **(1954) 56 Bom L R 74=ILR (1954) Bom 371.**

——**O. 9, R. 13, O. 33, R. 8, O. 5, R. 1, Proviso**—Appearance of defendant at hearing of pauper application—Application registered as suit — Defendant is entitled to summons — Admission by defendant of plaintiff's claim in pauper application—Claim subsequently amended—Case does not come under Proviso to O. 5, R. 1. See Civil P. C. (5 of 1908), O. 33, R. 8. **A I R 1960 Cal 538.**

——O. 9, R. 13 — Ex parte decree — Application for permission to furnish security must be filed previous to the application under O. 9, R. 13. See Provincial Small Cause Courts Act (9 of 1887), S. 17, Proviso. **A I R 1951 Cal 455.**

——O. 9, R. 13 and **S. 11** — Application to set aside ex parte decree dismissed on ground of limitation—Suit to set aside decree on ground of fraud not barred. See Civil P. C. (5 of 1908), S. 11. **A I R 1955 Him Pra 63.**

——**O. 9, R. 13**—(Limitation Act (1908), S. 5)—Application for setting aside an ex parte decree — Neither Civil P. C. nor S. 5, Limitation Act or any other provision in it makes S. 5 applicable. See Limitation Act (1908), S. 5. **A I R 1956 Hyd 29.**

——**O. 9, R. 13 and S. 115 — Order setting aside ex parte decree—Revision—Interference in.**

High Court will not ordinarily interfere in revision. See Civil P. C. (5 of 1908), S. 115. **A I R 1953 J & K 11.**

——**O. 9, Rr. 13, 9; O. 6, R. 17; Ss. 115 (c) and 35**—Awarding of costs — Wrong principle applied—Revision lies. See Civil P. C. (5 of 1908), S. 115 (c). **A I R 1961 Madh Pra 169.**

——**O. 9, R. 13**—(Criminal P. C. (1898), S. 146)—Proceedings before civil Court — Provisions of S. 141 of Criminal P. C. and O. 9, R. 13 do not apply. See Criminal P. C. (1898), S. 146. **1963 (2) Cri L J 381= A I R 1963 Mad 338.**

—— **O. 9, R. 13** — Ex parte order by Civil Court—O. 9, R. 13 applies. See Criminal P. C. (1898), S. 146. **1961 (2) Cri L J 351=A I R 1961 Mad 384.**

——**O. 9, R. 13** — Application for setting aside ex parte decree — In Madras by a rule framed by the High Court, S. 5, Limitation Act has been made applicable to applications for setting aside ex parte decrees. But under S. 5, all that can be done is to condone the delay for a sufficient reason in making the application under O. 9, R. 13. See Limitation Act (1908), S. 5. **A I R 1956 Mad 422.**

——**O. 9, R. 13—Ex parte decree—Setting aside.**

The provisions of O. 9, R. 13 apply to a decree passed ex parte on the original side of the High Court. See High Court Rules and Orders — Madras High Court (Original Side) Rules, O. 6, R. 2. **A I R 1956 Mad 166.**

——**O. 9, R. 13**—(Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949), S. 5—O. 9, R. 13 applies to proceedings under the Act — Ex parte decree—Petition under O. 9, R. 13 to set aside is maintainable. See Madras Hindu Bigamy Prevention and Divorce Act (6 of 1949), S. 5. **A I R 1954 Mad 18.**

——**O. 9, R. 13**—Ex parte order passed on interlocutory application under Cl. 7 (a) of S. 5 of Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949)—Not appealable—Application to set aside that ex parte order rejected—No appealability. See Madras Hindu Bigamy Prevention and Divorce Act (6 of 1949), S. 5. **A I R 1953 Mad 1003.**

——**O. 9, R. 13; O. 3, R. 4** — Counsel reporting no instructions and withdrawing—It amounts to withdrawing vakalat — Without fresh vakalat he cannot file application to set aside ex parte decree. See Civil P. C. (5 of 1908), O. 3, R. 4. **A I R 1951 Mad 686 (2).**

——**O. 9, R. 13—Ex parte finding on issue of status—Finality.**

Section 4, Mysore Agriculturists' Relief Act (18 of 1928) does not say that ex parte order based on a finding on the preliminary issue as to the status of the defendant cannot be re-opened under O. 9, Rr. 9 or 13 read with S. 141 of the Code. See Debt Laws —Mysore Agriculturists' Relief Act (18 of 1928), S. 4. **A I R 1955 N U C (Mys) 1237.**

——**O. 9, R. 13—Fraud on process of Court.**

The plaintiff by not reporting to the Court the fact that the suit filed by him was settled out of Court exercises fraud on the process of the Court in its comprehensive sense and thereby obtains an ex parte decree. **A I R 1955 N U C (Mys) 219.**

——**O. 9, R. 13, O. 34, R. 5** — Final decree, application for—Notice to defendant is necessary. See Civil P. C. (5 of 1908), O. 34, R. 5. **A I R 1952 Nag 177.**

——**O. 9, R. 13 and S. 115** — Exercise of jurisdiction not vested—Application under O. 9, R. 13 for setting aside ex parte decree in title suit, time barred—Trial Court instead of dismissing application, restoring suit—Held, that trial Court acted in exercise of jurisdiction not vested in it by law and High Court could set it aside in revision. See Civil P. C. (5 of 1908), S. 115. **I L R (1965) Cut 555=A I R 1966 Orissa 59.**

——**O. 9, R. 13** — Ex parte decree of 21-12-1955 set aside on 25-10-1956 — Revision against setting aside allowed on 29-8-1957— First execution dismissed on 19-11-1956 — Execution filed on 29-8-1960 — Held barred by time. See Limitation Act (1908), Art. 181. **(1965) 31 Cut L T 627.**

——**O. 9, R. 13** — Word "appeal" in Art. 182 (2) of Limitation Act means appeal against a decree—Review application does not include restoration of applications — Execution case held time-barred. See Limitation Act (1908), Art. 182 (2) and (3). **A I R 1964 Orissa 205.**

——**O. 9, R. 13** — Ex parte decree — Setting aside—Suit to set aside on ground of fraudulent suppression of summons — Question as to service of summons—Burden of proof—Evidence Act, S. 114—Presumption under—Whether can be called in aid for proving fact of service. See Ex parte decree—Setting aside. **A I R 1961 Orissa 73.**

——**O. 9, R. 13** — Setting aside of ex parte decree—Service of summons — Mere knowledge of party of

institution of suit is not sufficient — Effective service of summons must be proved—Ex parte decree would be set aside in absence of proof of service. A I R 1951 Orissa 312.

——O. 9, R. 13, O. 47, R. 1, O. 32, R. 5 (2) and S. 151 —Minor not properly represented — Decree passed—Remedies of minor—Application under S. 151 treated as one for review. See Civil P. C. (5 of 1908), O. 47, R. 1. A I R 1955 N U C (Pat) 1863.

——O. 9, R. 13 and S. 151 — Power of Controller to set aside or interfere with his previous order. See Houses and Rents — Pepsu Urban Rent Restriction Ordinance (2006), S. 16 (4). AIR 1955 NUC (Pepsu) 1880.

——O. 9, R. 13, Proviso—Ex parte preliminary partition decree—Ex parte decree set aside at the instance of one of the defendants—Whole of the case is open up for trial. I L R (1964) 2 Punj 880 (DB).

——O. 9, R. 13, O. 17, Rr. 2, 3 — Order when under O. 17, R. 2 and when under R. 3 stated — Remedies of aggrieved party — Aggrieved party may proceed under O. 9 or file an appeal. See Civil P. C. (5 of 1908), O. 17, R. 2. A I R 1960 Raj 245.

——O. 10, R. 1—Provisions of order—Use of—Obiter. AIR 1952 All 355.

——O. 10, R. 10 — S. 96, Motor Vehicles Act—Scope of—See Motor Vehicles Act (1939), S. 96. AIR 1953 Bom 109.

——O. 11, R. 2 (1) — Tenancy Laws—Punjab Security of Land Tenures Act (10 of 1953), Ss. 14-A (ii) and 10 (2) — Arrears of rent — Eviction — Summary proceedings — Pecuniary jurisdiction of Assistant Collector, 2nd Grade — Basis for determination — Amount claimed and not the amount actually due to the landlord which is the basis for determining the pecuniary jurisdiction — Though entitled to higher amount, the landlord can claim a lesser amount in order to bring the case under S. 14-A (ii). 1965 Cur L J 828 = I L R (1965) 1 Punj 667.

——O. 11, Rr. 12 and 13—Ss. 123 and 124, Evidence Act—Scope—Official communications and unpublished official records—Production of—Claim of privilege — Procedure—See Evidence Act (1872), S. 123. AIR 1953 Mad 228.

——O. 11, R. 12; O. 11, R. 1 and S. 115—S. 72, Railways Act — Risk notes 'A' and 'B' — Rights of consignor before and after filing of suit — See Railways Act (1890), S. 72. AIR 1953 Nag 281.

——O. 11, Rr. 12, 13 and 14 — S. 11 (3) (b) — Power of Industrial Tribunal to compel production of documents — See Industrial Disputes Act, S. 11 (3) (b). AIR 1959 Punj 189.

——O. 11, R. 13 — Defence of India Rules (1962), R. 131 (2) (gg) and (i) — Notification under dated 17-8-1965—Counter-affidavit by persons not connected with Home Department not vague nor containing hearsay information — Government held issued notification after it was satisfied that it was necessary to do so. ILR (1965) 2 All 303.

——O. 11, Rr. 13, 12, S. 18 — Power of Authority to order discovery of documents — See Payment of Wages Act (1936), S. 18. AIR 1959 Bom 181.

——O. 11, R. 13—Inspection of documents not to be ordered until affidavit of documents has been directed to be filed—Same procedure applies to Industrial Tribunal—See Civil P. C. (1908), S. 30. AIR 1956 Cal 592.

——O. 11, R. 15—Inspection of documents not to be ordered until affidavit of documents has been directed to be filed — Same procedure applies to Industrial Tribunal — See Civil P. C. (1908), S. 30. A I R 1956 Cal 592.

——O. 11, R. 15; O. 11, Rr. 18 (2), 18 (1) and 15 — Order for inspection of document — Documents not referred in the pleadings of other party — O. 11, R. 18 (2) of Civil P. C. is applicable — Neither R. 15 nor R. 18 (1) has any application — Possession of documents not disputed by other party — Affidavit regarding possession of documents not necessary — See Civil P. C. (1908), O. 11, R. 18 (2). (1965-66) 28 F J R 194=AIR 1966 Mad 375.

——O. 11, R. 16 — Notice to produce documents — See Evidence Act (1872), S. 163. AIR 1953 All 689.

——O. 11, Rr. 17, 18, S. 30 and O. 11, Rr. 12, 13, 15 — Inspection of documents not to be ordered until affidavit of documents has been directed to be filed — Same procedure applies to Industrial Tribunal — See Civil P. C. (1908), S. 30. AIR 1956 Cal 592.

——O. 11, R. 18, S. 115—S. 25—Case decided—Order under O. 11, R. 18, Civil P. C. — See Provincial Small Cause Courts Act (1887), S. 25. AIR 1956 Ajmer 32.

——O. 11, R. 18 (2) — Order for inspection of documents — Question whether employer was carrying on an industry — Application praying for production by employer of accounts-books etc. — Held, the documents were in the possession of employer and were necessary for determining the question and no further proof of right to inspection was necessary. (1965-66) 28 F J R 194=AIR 1966 Mad 375.

——O. 11, R. 18 (2) — Order for inspection of documents — Tribunal should give reasons for order — Tribunal should apply its mind and determine whether documents sought to be inspected are relevant — Tribunal making order granting inspection — No reasons furnished — Held order was not in compliance with requirements of O. 11, R. 18 (2) and should, therefore, be quashed. (1965-66) 28 F J R 194=AIR 1966 Mad 375.

——O. 11, Rr. 18 (2) and 20 — Inspection of documents filed by party cannot be had as a matter of course'— Stage of inspection. (1960) 1 Mad L J 292 =AIR 1960 Mad 510.

——O. 11, R. 18 — Scope of — Rules under R. 21 — Order for inspection of documents — Duty to comply with O. 11, R. 18, Civil P. C. — See Industrial Disputes Act (1947), S. 11. (1957) 2 Lab L J 287 = (1957-58) 12 F J R 203 (Punj).

——O. 11, R. 19 — Scope—Government party to suit claiming privilege—Affidavit by person authorised to act on behalf of Government is sufficient. AIR 1951 Nag 212.

——O. 11, R. 21 — Striking out defence — Order for when could be made—Propriety of order—(AIR 1957 All 400, Not foll.)

An order striking out the defence is an order of a very drastic nature which very seriously curtails the rights of a party. Such an order is to be made not merely because there has been an accidental default in complying with the order made by the Court, but only in the interest of justice where the Court feels satisfied that the party defaulting had been acting deliberately or had been reticent. This penalty should only be imposed in the case of wilful default and should be applied in extreme cases as a last resort when default is wilful, and not the result of mere negligence. I L R (1954) 2 All 153 (DB), Foll.; AIR 1957 All 400, Not foll. 1963 All L J 505 = ILR (1963) 2 All 230.

——O. 11, R. 21, O. 43, R. 1 (f) and S. 148 — Order to give inspection of documents—Non-compliance—Effect. AIR 1953 Hyd 32.

——O. 11, R. 21; O. 17, R. 3; O. 9, R. 9; O. 43, R. 1; Ss. 115 and 104 — Dismissal under O. 17, R. 3:— Restoration application rejected — Appeal allowed — Revision held not maintainable. AIR 1955 N U C (Madh B) 66.

——O. 11, R. 21 — Compromise decree, breach of — No undertaking given to Court — Breach of terms of

compromise—No contempt. See Contempt of Court. AIR 1960 Madh Pra 280.

——O. 11, R. 21, S. 4, Art. 254, Sch. 7, List II, Item 3 and List 3, Item 13—Constitution of India—Repugnancy — S. 12 (4) of Saurashtra Act 22 of 1951 not void on ground of repugnancy to provisions of Civil P. C. See Constitution of India, Art. 254. AIR 1956 Sau 58.

——O. 11, Rr. 45, 18, 21—Applicability—Documents filed by plaintiff under O. 7, R. 14 (2) are not documents referred to under R. 15, 18 Bom 368 and AIR 1931 Mad 825, Dissent — No order made under R. 18 (2) and steps not taken under O. 11 by defendant, demanding inspection of such documents — Refusal of plaintiff to give inspection will necessitate dismissal of suit under R. 21—Even if conceded that such documents will fall under R. 15 omission to give inspection of them will not result in automatic dismissal of suit. AIR 1955 (NUC) Cal 5577.

● ——O. 12, R. 6; O. 1, R. 10 (2); O. 8, R. 5; Ss. 115 and 11 — Question of addition of parties — Whether of initial jurisdiction of Court or of judicial discretion—Suit for declaration of status—Addition of parties — Rule of direct interest — Grant of declaration on admission of claim — Result of declaratory decree — Rule in S. 43, Specific Relief Act, whether one of res judicata. See Civil P. C. (1908), S. 115. AIR 1958 SC 886.

——O. 12, R. 6—Admission by one party in pleading—Decision inconsistent with such admission—Legality. AIR 1951 Nag 259.

——O. 12, R. 8; O. 11, R. 16, S. 163 — Evidence Act—Notice to produce documents. See Evidence Act (1872), S. 163. AIR 1953 All 689.

● ——O. 12, R. 16 — Equitable assignment—Rule 16 postulates that decree has been passed and it has been transferred by assignment in writing or by operation of law — Equitable assignment of decree—There must be agreement to transfer decree to be passed in future—Equitable principle implements or effectuates agreement of parties — Equity does not make new agreement between parties by filling up lacuna or gap in agreement — In absence of agreement to transfer future decree, equitable principle does not come into play—Pendency of suit on book debt—Plaintiff transferring all book and other debts —That transferor intended to transfer future decree also, cannot be inferred — Transferee of book debt cannot apply for execution of decree as equitable assignee of decree. AIR 1955 SC 376.

——O. 13, R. 1 — Evidence referred to in previous judgments not filed in present suit — Observations in judgments cannot be treated as evidence. AIR 1957 Andh Pra 495.

——O. 13, R. 1—"First hearing of the suit'—Meaning compared with other provisions of the Code.

The first hearing for production of documents contemplated in O. 13, R. 1 is not the first hearing duly mentioned in the summons for appearance of the defendant, if the suit is a contested one. The scheme of the Code is such that interrogation, and discovery, production and inspection of documents should all be completed before a case be taken up for hearing of evidence. The word hearing is a comprehensive word which may be used with a more or less extensive meaning according to the context. In the context in which they are used, the words 'at the first hearing of the suit' in O. 13, R. 1, mean that hearing after the pleadings are completed and before issues are framed under O. 14. Upto that stage, production of documents is permissible without cause being shown, as contemplated by O. 13, R. 2, but thereafter 'good cause' must be shown for late production of documents. AIR 1919 Cal 800, Foll.; AIR 1952 Pat 338, Not foll. 70 Cal W N 729=AIR 1966 Cal 591.

——O. 13, Rr. 1, 2 and S. 115—Filing of documents—Court granting time and several adjournments — Party failing to produce — Application under O. 13, R. 2 rejected—It is not wrong exercise of jurisdiction—No revision. See Civil P. C. (1908), S. 115. AIR 1955 (NUC) Madh B 2109.

——O. 13, R. 2 — Non-production of document through inadvertence — Document important and genuine. AIR 1953 Assam 40.

——O. 13, R. 2, S. 71 — Applicability of Civil P. C., O. 13, R. 2 to reference to Tribunal under Act. See Calcutta Improvement Act (5 of 1911), S. 71. AIR 1951 Cal 246.

——O. 13, R. 2 — S. 114, Evidence Act — Non-production of account book in one's possession — Presumption as to — Non-production by plaintiff or defendant — Presumption when may or may not be drawn. See Evidence Act (1872), S. 114. AIR 1958 Madh Pra 129.

——O. 13, R. 2—Pleadings—Defence under O. 2, R. 2—Defendant must file pleadings in previous suit. See Civil P. C. (1908), O. 2, R. 2. AIR 1959 Mys 227.

——O. 13, R. 3 — Document intrinsically admissible—Objectiou to its admissibility on ground that it was not duly proved must be taken at earliest stage and not in appeal. ILR (1965) 1 All 483 = AIR 1966 All 570.

——O. 13, R. 3—Contract Act (1872), S. 73—Failure of defendant to take delivery on certain date—Plaintiff suing to recover loss from defendant—No pleading that date of delivery was extended — No evidence of extension should be allowed. ILR (1965) 2 All 343.

——O. 13, Rr. 3 and 4, 6 — Scope of — Admission of document in evidence—What constitutes—Court not applying its mind while completing all formalities under O. 13, R. 4 — Rejection at time of judgment — Legality. See Stamp Act (1899), S. 35. AIR 1957 Andh Pra 1022.

——O. 13, Rr. 3 and 4——S. 36, Stamp Act—"Admitted in evidence" — Effect of stamping endorsement on document under O. 13, R. 4, Civil P. C.—Objection to admissibility subsequent to endorsement — AIR 1932 Mad 693, Dissented from. See Stamp Act (1899), S. 36. AIR 1956 Mad 250.

——O. 13, R. 4—S. 61, Stamp Act—"Makes any order admitting any instrument in evidence" — Meaning—Order contemplated is with regard to sufficiency of stamp and not to formally admitting it in evidence. See Stamp Act (1899), S. 61. AIR 1960 All 359.

——O. 13, R. 4 and S 36—Stamp Act (1899)—Stamp Act (1 of 1125, Travancore-Cochin), S. 38—"Where the instrument has been admitted in evidence". See Stamp Act (1899), S. 36. AIR 1957 Ker 105.

——O. 13, R. 4 and S. 36, Stamp Act — Document when can be said to be admitted in evidence for purposes of S. 36. See Stamp Act (1899), S. 36. AIR 1959 Raj 156.

——O. 13, R. 6 & Ss. 35, 36, Stamp Act — Scope of — Admission of document in evidence — What constitutes — Court not applying its mind while completing all formalities under O. 13, R. 4 — Rejection at time of judgment — Legality. See Stamp Act (1899), S. 35. AIR 1957 Andh. Pra 1022.

——R. 14, R. 1—S. 32—Rules under R. 28—Framing of issues. See Workmen's Compensation Act (1923), S. 32. AIR 1959 All 586.

——O. 14, R. 1, O. 50, R. 1 — S. 17, Provincial Small Cause Courts Act — Framing of issues in Small Cause suits — Adducing full and further particulars. See Provincial Small Cause Courts Act (1887), S. 17. AIR 1956 Bhopal 9.

——O. 14, R. 1 — S. 30, Arbitration Act—Misconduct—Acts not amounting to — Framing of issues and

their determination separately — Provisions of Civil P. C., not binding. See Arbitration Act (1940), S. 30. AIR 1956 Cal 470.

——O. 14, R. 1 — Himachal Pradesh — Succession — Daughter's right in Mandi State before merger — Collaterals are not preferential heirs. See Custom (Himachal Pradesh). AIR 1955 N U C (Him-Pra) 4300.

——O. 14, R. 1 — Suit for possession by reversioner. AIR 1952 Nag 60.

——O. 14, R. 1, O. 7, R. 7—Pleadings—Construction of — "General or other relief" — Power of Court to grant—See Civil P. C. (1908), O. 7, R. 7. AIR 1958 Pat 133.

——O. 14, R. 1, O. 6, Rr. 1 and 2, O. 3, R. 4 — Abandonment of plea — Alternative grounds for granting relief set up in plaint — Plaintiff's counsel giving up one ground in his statement — On other ground Court's finding going against plaintiff — Suit must fail — Court cannot consider ground which was given up. See Civil P. C. (1908), O. 6, R. 1. AIR 1960 Punj 209.

——O. 14, R. 1 — Issues in execution proceedings. AIR 1956 Raj 1.

——O. 14, R. 1, S. 99 — Omission to frame issues — If and when vitiates trial. See Civil P. C. (5 of 1908), S. 99. AIR 1951 Raj 56.

——O. 14, R. 2, S. 115 — Ss. 15, 25, Sch. II, Art. 15, Provincial Small Cause Courts Act — Question of jurisdiction — Issues as to — Duty of Court—Nature of suit — Determining factor. See Provincial Small Cause Courts Act (1887), S. 15. AIR 1956 Bom 254.

——O. 14, R. 2 — Art. 226, Constitution of India — Preliminary issue regarding jurisdiction to entertain petition — High Court should try it as preliminary issue. See Constitution of India, Art. 226. AIR 1955 Bom 381.

——O. 14, R. 2 — Question of law depending on question of fact — Latter must be decided first. See Civil P. C. (1908), O. 14, R. 1. AIR 1954 Cal 588.

——O. 14, R. 2 — Proceedings initiated under M. P. General Sales Tax Act (2 of 1959) — Assessee raising preliminary objections—Refusal by revisional authority to decide the objections illegal. (1963) 14 S T C 574 (Madh.Pra) = 1963 M P L J (Notes) 3 (DB).

——O. 14, R. 2, S. 151 — Scope of O. 14, R. 2 — Inherent jurisdiction to decide one question first. See Civil P. C. (5 of 1908), S. 151. AIR 1953 Sau 30.

——O. 14, R. 3 — S. 65, Contract Act — Issue as to when agreement was discovered to be void — Issue when can be allowed to be raised. See Contract Act (1872), S. 65. AIR 1956 Cal 138.

——O. 14, R. 22 — Preliminary issue of res judicata going to root of case, should be decided as preliminary issue. AIR 1955 Madh-Bha 64.

——O. 15, R. 3 — Trial when closes. See Civil P. C. (1908), O. 18, R. 1. (1965) 2 Andh L T 347 = AIR 1966 Andh.Pra 295.

——O. 16, Rr. 1 and 21 (Madras) and Preamble — Scope — Provision does not prohibit defendant's summoning director and employees of Plaintiff-Company — But, this procedure is to be condemned — Preponderance of authority is against such a practice—Provision of law will have to be read along with decided case on the point. AIR 1933 Mad 821 and 5 I C 945, Dist; 31 All 116 (P C); 32 All 104 (P C); 53 M L J 392 (P C); 47 L W 124; 3 I C 45; AIR 1929 Lah 868; AIR 1951 H P 41; AIR 1938 P C 59; AIR 1951 J & K 5, 6; AIR 1956 Bom 251 and AIR 1959 Mys 194, Foll.; 2 C W N (Sh. Notes) XCIX, Ref. ILR (1965) 2 Mad 650.

——O. 16, R. 1 and S. 115 — Application for calling expert opinion on suspected document — Application though filed before hearing of suit rejected on ground of delay — Revision. AIR 1953 Pat 8.

——O. 16, Rr. 8, 3, 12 — Non-attendance for non-payment of expenses is for lawful excuse — Forfeiture of security for non-attendance is wrong. A I R 1955 N U C (Madh.Bha) 5642.

——O. 16, R. 10 — Examination and attendance of witness — Duty of Income-tax officer — Civil P. C. O. 16, Rr. 1 and 10. See Income-tax Act (1922), S. 37 (1). (1963) 49 I T R 561 (All).

——O. 16, R. 14 — S. 75 (4), Registration Act — 'As if he were a Civil Court' — Meaning of — Enquiry before Sub-Registrar for compulsory registration — Order 16, R. 14, Civil P. C. applies—He can summon any witness as court witness. See Registration Act (1908), S. 75 (4). AIR 1960 Mad 401.

——O. 16, R. 14 — S. 165, Evidence Act — Party calling witness but not examining — Court can examine him as Court witness. See Evidence Act (1872), S. 165. AIR 1954 Mad 80.

——O. 16, R. 17 — Amendment at late stage. AIR 1957 Pat 633.

——O. 16, R. 19 — Applicability — Persons summoned under S. 36, Presidency-Towns Insolvency Act — (Presidency-Towns Insolvency Act (1909), S. 36). AIR 1953 Bom 19.

——O. 16, R. 20 — S. 114, Evidence Act — Non-production of relevent document — Presumption does not arise when there is plausible explanation. See Evidence Act (1872), S. 114. AIR 1959 Raj 291.

——O. 16, R. 21 (Madras) — Scope — Provision does not prohibit defendant's summoning director and employees of plaintiff-Company — But, this procedure is to be condemned — Preponderance of authority is against such a practice — Provision of law will have to be read along with decided case on the point. See Civil P. C. (5 of 1908), O. 16, R. 1. ILR (1965) 2 Mad 650.

——O. 16, R. 21 — Opposite party as witness — Practice of calling opposite party as witness should not be countenanced. AIR 1959 Mys 194 (Pt A) (Pr 7).

——O. 17, R. 1—Plaintiff's witness sending telegram from outstation that he missed his train and is not able to attend Court—Plaintiff obtaining adjournment—Telegram found false and fraudulent—Plaintiff not party to fraud—Plaintiff cannot be punished — Legal action may be taken against witness. AIR 1951 Ajmer 88 (2).

——O. 17, R. 1—Ch. VIII, R. 5, High Court Rules and Orders—(Allahabad) Rules of Court (1950) — Constitution of India, Art. 227 — Order of adjournment on furnishing security — Petition under Art. 227 against order rejected by Single Judge — Appeal — Maintainability. See High Court Rules and Orders — (Allahabad) Rules of Court (1950), Ch. VIII, R. 5. AIR 1956 All 672.

——O. 17, R. 1; O. 23, R. 1 and S. 151 — Application under S. 9, Hindu Marriage Act, for restitution of conjugal rights—Petittoner applying for adjournment on ground of his inability to pursue matter deligently as he was transferred to Kashmir — Application held not one under O. 23, R. 1—Court ordering that application be closed observing that petitioner could file separate application as and when convenient to him—Order held amounted to adjournment sine die — Subsequent application filed by petitioner not barred. (1965) 1 Andh L T 276=AIR 1966 Andh Pra 73.

——O. 17, R. 1 — Adjournment in an action on behalf of minor — Discretion of Court — Order for costs — Competency. AIR 1961 Andh Pra 446.

——O. 17, R. 1 (2) — Costs of adjournment. See Civil P. C. (5 of 1908), S. 115. AIR 1953 Bhopal 6.

——O. 17, R. 1 — Chap. 36, R. 35, High Court Rules and Orders — Calcutta High Court Original Side Rules — Adjournment costs — Construction of order. See High Court Rules and Orders — Calcutta High Court Original Side Rules, Chap. 36, R. 35. **AIR 1956 Cal 228.**

——O. 17, R. 1 — Witness not served for want of proper address — Court cannot refuse adjournment unless incorrect address is shown to have been deliberately given to prolong proceedings or proper address is not supplied, Court cannot refuse adjournments — Opportunity to re-summon witness should always be given. **1966 Jab L J 7.**

——O. 17, R. 2 (as amended in Allahabad) — Suit posted for further hearing — Defendant neither summoning witnesses nor present in Court — Decision on merit — Defendant's application under O. 9, R. 13— Court has jurisdiction to entertain — Rejection on ground of want of jurisdiction is wrong. **A I R 1952 All 208.**

——O. 17, Rr. 2, 3; Ss. 115, 151; O. 9, R. 9 — Dismissal for default—Restoration—Grounds. See Civil P. C. (5 of 1908), S. 115. **AIR 1951 Assam 36.**

——O. 17, Rr. 2, 3; O. 9, Rr. 8, 9 — Plaintiff not personally present but his counsel praying for adjournment—Adjournment refused—Defendant though personally present failing to file written statement—Court proceeding 'ex parte' and dismissing suit for failure of plaintiff to prove claim — Nothing to show that plaintiff's counsel had withdrawn from the case or reported no instructions—Order of dismissal must be deemed to have been passed on merits and Court has no power to restore suit. See Civil P. C. (1908), O. 9, R. 8. **A I R 1956 Bhopal 54.**

——O. 17, Rr. 2 and 3 — Applicability — Remedy of party aggrieved by order under O. 17, R. 3 is by way of appeal or review—Application under O. 9, R. 13 is not proper. **AIR 1955 NUC (Madh B) 1207.**

——O. 17, Rr. 2 and 3; S. 141, O. 2, R. 2; O. 9; O. 21, R. 10—Procedure in regard to suits—O. 9, O. 2, R. 2 and O. 17, Rr. 2 and 3, do not apply to execution proceedings — Order dismissing application — No default on part of decree-holder — Order cannot be upheld, more so, if S. 48, Civil P. C. is likely to operate as bar to further application. See Civil P. C. (1908), S. 141. **AIR 1955 Nag 305.**

——O. 17, R. 2 — Failure to pay process fees—Abatement. **AIR 1952 Nag 177.**

——O. 17, R. 2; O. 9, R. 13 — Default under O. 17, R. 3 — Discretion of Court to proceed under O. 17, R. 2 or R. 3. See Civil P. C. (1908), O. 9, R. 13. **A I R 1959 Pat 342.**

——O. 17, R. 2; O. 9, R. 3 — O. 9 applied by virtue of O. 17, R. 2 — Payment of special costs—Discretion of Court. See Civil P. C. (5 of 1908), O. 9, R. 3. **A I R 1953 Vindh Pra 10.**

——O. 17, R. 3 — Ss. 90, 92 and 98, Representation of the People Act — Election Tribunal not competent to dismiss election petition for default — Wrong order of dismissal for default — Subsequent order to proceed with petition valid — No question of restoration can arise. See Representation of the People Act (1951), S. 90. **AIR 1964 All 181.**

——O. 17, R. 3, Proviso (Andhra Pradesh Amendment) — After evidence case posted for arguments — Plaintiff and his lawyer absent on date of argument— Procedure to be followed by Court indicated. **A I R 1965 Andh Pra 479.**

● ——O. 17, Rr. 3, 2—Party granted time to perform some act — Party absent on date of hearing — Rule 2 applies. See Civil P. C. (1908), O. 17, R. 2. **A I R 1961 Andh Pra 201 (FB).**

——O. 17, R. 3 — "Hearing", meaning of. See Civil P. C. (5 of 1908), O. 17, R. 2. **AIR 1953 Hyd 251.**

——O. 17, R. 3; O. 11, R. 21; O. 9, R. 9; O. 43, R. 1; Ss. 115 and 104—Dismissal under O. 17, R. 3 — Restoration application rejected — Appeal allowed — Revision held not maintainable. See Civil P. C. (1908), O. 11, R. 21. **AIR 1955 NUC (Madh B) 66.**

——O. 17, R. 3 — Suit dismissed at adjourned date of hearing. See Civil P. C. (5 of 1908), O. 17, R. 2. **A I R 1951 Mys 52.**

——O. 17, Rr. 3, 2 O. 9, R. 9 — Plaintiff appearing at adjourned hearing but applying for time—Application rejected and suit dismissed—Held O. 17, R. 2 applied — Application under O. 9, R. 9 maintainable. See Civil P. C. (1908), O. 9, R. 9. **AIR 1964 Orissa 246.**

——O. 17, R. 3—Decision not on merits — A I R 1948 Mad 80, Dissented from. See Civil P. C. (1908), O. 17, R. 2. **AIR 1955 NUC (Raj) 1639.**

——O. 18, Rr. 1 to 3, 17; O. 15, R. 3; O. 20, R. 1 — Trial, when closes — Right of party to examine additional witness after close of evidence and when case is posted for argument — Hearing of suit includes both production of evidence as well as arguments — Hearing of suit comes to end only when judgment is delivered or when suit is posted for judgment where it is reserved—Hearing is not concluded when suit is posted for argument though recording of evidence has been finalised — In such case, party can request for examination of additional witnesses or making document. AIR 1954 Punj 207, Rel. on. **(1965) 2 An L T 347=(1966) 1 An W R 22=A I R 1966 Andh Pra 295.**

——O. 18, R. 2—'Case' — Meaning of. See Civil P. C (5 of 1908), S. 115. **AIR 1953 Pepsu 120.**

——O. 18, R. 3 — Trial when closes. See under Civil P. C. (1908), O. 18, R. 1. **(1965) 2 An L T 347 = AIR 1966 Andh Pra 295.**

——O. 18, R. 12—S. 363, Criminal P. C. — Remarks on demeanour of witness. See Criminal P. C. (1898), S. 363. **AIR 1957 Andh Pra 441.**

——O. 18, R. 12 — Remarks respecting demeanour of witness — It should not be subjective impression of Judge. **AIR 1951 Trav-Co 12.**

——O. 18, R. 12; S. 24 — Transfer of case — Lower Court making remark about demeanour of witness that "witness struck me as unscrupulous after reading over deposition and signing it — Occasion held gave reasonable apprehension in mind of petitioner that he would not get justice — Case held fit to be transferred. See Civil P. C. (1908), S. 24. **A I R 1951 Trav-Co 12.**

——O. 18, R. 17; S. 151 — Recalling witness—Power of Court—Right to cross-examine—It is Court which can suo motu or at instance of party recall witness and put question to him—Ordinarily no cross-examination is allowed upon answers without leave of Court — An opportunity to party to recall witness for examination, cross-examination or re-examination cannot be said to be governed by O. 18, R. 17 — If circumstances warrant, Court can grant such opportunity under S. 151. **(1965) 2 An L T 347 = (1966) 1 An W R 22 =AIR 1966 Andh Pra 295.**

——O. 18, R. 17—Trial, when closes. See under Civil P. C. (1908), O. 18, R. 1. **(1965) 2 Andh L T 347 = AIR 1966 Andh Pra 295.**

——O. 18, R. 18 — S. 32 (3)—West Bengal Premises Rent Control (Temporary Provisions) Act — Local inspection by appellate Court — Effect on hearing of appeal. See Houses and Rents—West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 32 (3). **AIR 1953 Cal 126.**

——O. 18, R. 18 — Local inspection — Purpose is to enable Court to understand evidence on record and not to bring fresh evidence on record. **AIR 1951 Pat 550.**

——O. 18, R. 18 — Local inspection cannot take the place of evidence. AIR 1953 Sau 106.

● —O. 19, R. 1, 2—Bonus — Ascertainment of surplus for fixing bonus — Guiding factor — Rehabilitation — Deduction of reserves— Extent of—Ascertainment of deductible reserves — Manner of — Burden of proof. See Industrial Disputes — Bonus. AIR 1960 S C 571.

——O. 19, R. 1—Affidavit — Who should make. AIR 1951 Cal 239.

—O. 19, R. 1 — S. 9, Madras Buildings (Lease and Rent Control) Act (as amended by Act 8 of 1951) — Suits under — Procedure to be followed. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949, as amended by Act 8 of 1951), S. 9. AIR 1953 Mad 924.

——O. 19, R. 1 — S. 1, Evidence Act — Affidavit evidence—Admissibility. See Evidence Act (1872), S. 1. AIR 1953 Nag 288.

——O. 19, R. 1 — Art. 226, Constitution of India — Application for writ — Admissibility of additional affidavits raising new grounds. See Constitution of India, Art. 226. AIR 1956 Tra-Co 35.

——O. 19, R. 2—S. 70, Trade Marks Act — Evidence by affidavit—Cross-examination of deponent— Power of Registrar. See Trade Marks Act (1940), S. 70. AIR 1956 Bom 641.

——O. 19, R. 3 (1)—Art. 226, Constitution of India— Evidence — Everything contained in affidavits need not be of personal knowledge of deponent. See Constitution of India, Art. 226. AIR 1955 NUC (Cal) 4499.

—O. 19, R. 3 — Delay in filing appeal — Affidavit by advocate taking blame on himself giving inadvertence and pressure of work as reasons for delay — Affidavit should ordinarily be accepted unless circumstances are very exceptional. 78 Mad L W 697= (1965) 2 Mad L J 567.

——O. 19, R. 3 — S. 2, Contempt of Courts Act — Complaint for. See Contempt of Courts Act (1926), S. 2. AIR 1952 Nag 259.

——O. 19, R. 3 — S. 491, Criminal P. C. — Petition under — Affidavit — Verification — The verification of the affidavit should invariably be modelled on the lines of O. 19, R. 3 of the Civil P. C. See Criminal P. C. (1898), S. 491. 1964 (1) Cri L J 535 = AIR 1964 Punj 198.

——O. 20, R. 1—Each District Court is supplied with copies of the Government Gazette and it is the duty of a Court to spend a little labour and take a little trouble in finding out the relevant Government notification appearing in the Govenrnment Gazette, even if the party appearing before the Court is not careful enough to place it before the Court. 1960 All W R (H C) 155 = 1960 All L J 216 = 1960 All Cr R 125.

——O. 20, R. 1—Hearing of suit — Trial when closes —Trial closed and matter posted for argument — Party is not precluded from applying for examination of additional witnesses. See Civil P. C. (1908), O. 18, R. 1. (1965) 2 Andh L T 347 = AIR 1966 Andh Pra 295.

——O. 20, R. 1—Practice—Duty of Court—Principles of justice, equity and good conscience—Principles cannot be invoked by Court when there are statutory provisions governing the matter. 1956 Andh W R 1082 = AIR 1957 Andh-Pra 981.

——O. 20, R. 1 — 'Foreign judgment' — Meaning of. See Civil P. C. (5 of 1908), S. 13. AIR 1953 Mad 261.

—O. 20, R. 1; O. 18, R. 2; O. 9, R. 7 — "Hearing of the suit" — Date on which Commissioner has to file report is not date of hearing. See Civil P. C. (1908), O. 18, R. 2. AIR 1954 Punj 207.

——O. 20, R. 3, S. 152 — Court which can make the amendment. See Civil P. C. (1908), S. 152. AIR 1959 Cal 153.

——O. 20, R. 3; O. 6, R. 2—Plaintiff supplying goods to defendant basing his claim for price on alleged contract— Defendant enjoying the benefit — Plaintiff claiming relief on basis of compensation as well— No objection raised and both parties leading all evidence —Contract found not established — Decree can be given on basis of compensation. See Civil P. C. (1908), O. 6, R. 2. AIR 1955 NUC (Cal) 506.

——O. 20, Rr. 3 and 4 (2), S. 2 (9) — Judgment — Its meaning, shape and contents — Signature and date is necessary—Oral judgment is not legal. See Civil P. C. (5 of 1908), S. 2 (9). AIR 1960 Madh-Pra 163.

——O. 20, R. 3, S. 151 — Scope — R. 3 is not exhaustive. See Civil P. C. (5 of 1908), S. 151. AIR 1953 Nag 307.

● ——O. 20, R. 4 — Contents of judgment. See Civil P. C. (5 of 1908), O. 6, R. 2. AIR 1953 S C 295.

——O. 20, R. 4, Ss. 100 and 101 — Finding of fact. AIR 1954 Ajmer 63 (1).

——O. 20, R. 4 (2) — Order not preceded by judgment can be a decree. See Civil P. C. (5 of 1908), S. 2 (2). AIR 1957 All 107b.

——O. 20, Rr. 4 and 6 — Question whether certain construction stood on certain plot — Decree against defendant depending on this question — Nature of decree should be such as can be executed without reference to other document — Main question left undecided — Decree held not proper. AIR 1955 NUC (All) 2731.

—O. 20, R. 4— Duty of Court — Status of party — Court will not be influenced by it. AIR 1955 NUC (Hyd) 3684.

——O. 20, R. 4 — Art. 227, Constitution of India — Rectification of dereliction of duty. See Constitution of India, Art. 227. AIR 1953 Hyd 190.

——O. 20, R. 4, S. 115— Appreciation of evidence — Error in — Interference. See Civil P. C. (5 of 1908), S. 115. AIR 1959 Madh-Pra 26.

——O. 20, R. 4; O. 6, R. 2; O. 41, R. 1; Ss. 100-101— Contents of judgment — Appeal— New plea—When not allowed. AIR 1957 Madh-Pra 138.

——O. 20, R. 4 — Appreciation of evidence — Court impressed with demeanour of plaintiff's witnesses — This is strong circumstance in plaintiff's favour. AIR 1955 NUC (Mad) 3926.

——O. 20, R. 4 — Arts. 142, 144, Limitation Act — Evidnece and proof. See Limitation Act (1908), Arts. 142-144. AIR 1958 Mani 47.

——O. 20, R. 4 — Title. See Evidence Act (1872), Ss. 101-103. AIR 1953 Mys 72.

——O. 20, R. 4 — Appreciation of evidence adduced on both sides — Appraisal of — Evidence Act (1872), S. 5 — Appreciation of evidence — Evidence Act (1872), Ss. 101-104 — Burden of proof — Both sides adducing evidence. See Evidence. 1964 B L J R 701.

——O. 20, R. 4—Judiciary—Judicial officers — Duty of.

The judicial officers must, for one thing, not only refuse to allow themselves to be approached privately but must also take strong steps against any person who makes any effort to influence them outside the Court. Theirs is the duty to discharge their judicial functions in open Court in the presence of the contestants. It is only on realising the ideal just stated that the Indian people can claim to be true to their democratic constitution so far as judicial administration is concerned. 1964 Cur L J 31=66 P L R 331=AIR 1964 Punj 277.

——O. 20, R. 4; O. 2, R. 1; O. 6, R. 2 — Plaintiff asking for defendant's eviction on particular grounds

—Without considering those grounds Court cannot grant decree for eviction on ground not taken in plaint. See Civil P. C. (5 of 1908), O. 2, R. 1. AIR 1923 Tripura 11.

——O. 20, R. 5, S. 2 (2) — Order not preceded by judgment can be a decree. See Civil P. C. (5 of 1908), S. 2 (2). AIR 1957 All 107.

——O. 20, R. 5—Interpretation of statutes — Duty of Court — Court should decide only those questions which directly arise from facts of particular case. ILR (1951) Bom 65 = 53 Bom L R 355 = AIR 1951 Bom 121 (121) (Pt C) (Pr 1) (DB).

——O. 20, R. 5 — Art. 219, Constitution of India — Decision based on weight of authority and not on individual judgment of Judge — Conduct contrary to oath of office taken by Judge. See Constitution of India, Art. 219. AIR 1963 Guj 291.

——O. 20, R. 5 — Settlement deed — Suit to set aside — Grounds that settlor was not in sound disposing state of mind and deed was got executed under undue influence — Evidence adduced to prove only former ground — Lower Court concluding that settlor was not in sound disposing state and deed was executed under undue influence — Incapacity and undue influence are totally different issues — Mixing of issue is error — (Civil P. C. (1908), O. 20, R. 5) : ILR 22 Cal 324 (PC), Rel. on. 1964 Ker L J 724 = 1964 Ker L T 497 = ILR (1964) 2 Ker 259 = AIR 1965 Ker 189.

——O. 20, R. 6, S. 148 — Decree for specific performance of contract for sale — Contents — Power of Court to extend time. See Civil P. C. (1908), S. 148. AIR 1958 All 488.

——O. 20, R. 6 — Decree not in accordance with judgment. See Civil P. C. (5 of 1908), S. 152. AIR 1953 All 485.

——O. 20, R. 6 (1), Ss. 152, 151, 2 (2), 35 — Decree not in conformity with judgment — Amendment must be allowed—Non-mention of costs in judgment — Decree mentioning costs — Amendment of decree. See Civil P. C. (1908), S. 152. (1965) 7 O J D 275 = AIR 1966 Orissa 225.

——O. 20, R. 6, O. 41, R. 1 — Copy of decree filed with appeal not in accordance with O. 20, R. 6 — Effect. See Civil P. C. (5 of 1908), O. 41, R. 1. AIR 1957 Punj 238.

——O. 20, R. 6; O. 14, R. 1; O. 41, R. 25 — Defective judgment of lower appellate Court — No findings given on important question—No issues framed. AIR 1958 Raj 269.

● ——O. 20, R. 6, S. 152 — Amendment of decree. See Civil P. C. (5 of 1908), S. 152. AIR 1953 Trav-Co 220 (FB).

● ——O. 20, R. 7—Section 12 (2) and Art. 156, Limitation Act — 'Time requisite' — Interval between date of pronouncement of judgment and signing of decree can be deducted. AIR 1950 Assam 83 and AIR 1949 Assam 23, Overruled. See Limitation Act (1908), S. 12 (2). AIR 1955 Assam 129 (SB).

——O. 20, R. 7 — Schedule 1, Arts. 4 and 5, Court-fees Act — Period of 90 days — Starting point is date of decree, which is date of judgment and not date when decree is actually drawn. See Court-fees Act (1870), Sch. I, Art. 4. AIR 1955 Raj 165.

——O. 20, R. 8 — Judge proceeding on leave after pronouncing judgment but before signing the decree — Successor signing decree under the designation of the Court which pronounced judgment — No illegality or irregularity. ILR 44 Pat 742 = 1965 B L J R 628.

——O. 20, R. 8 — Suit for — Claim for compensation for value of improvements effected by defendant — Actual amount spent not proved — No compensation will be awarded — At time of partition by metes and bounds, defendant will as far as possible get his share out of new construction. See Partition. AIR 1955 NUC (Raj) 2175.

——O. 20, R. 10 — Direction for value of property to be determined in execution. AIR 1951 All 413.

——O. 20, R. 10; O. 21, R. 31 — Execution of decree for specific movable property, modes of. See Civil P. C. (5 of 1908), O. 21, R. 31. AIR 1953 Cal 717.

——O. 20, R. 10; O. 21, R. 31 — Travancore Civil P. C., O. 21, R. 31 — Decree for delivery of movable property or amount in alternative—Judgment-debtor's option to pay money. AIR 1951 Trav-Co 176.

ORDER 20, RULE 11

——O. 20, R. 11 (2) — Appeal — Competency—Order on application under O. 20, R. 11 (2) does not fall under S. 47 and is not appealable. See ibid, S. 47. 1955 Nag L J (Notes) 130.

[Overruled in 1957 M P L J 191 (Nag)].

——O. 20, R. 11; O. 21, R. 2, S. 47 — Decree, adjustment of — What amounts to — Money decree—Compromise providing for payment of decretal amount in instalments and giving concession in form of rebate on interest — Creation of charge on properties of judgment-debtors — Default clause entitling decree-holder to execute decree — Construction — Compromise held not intended to supersede decree but merely provided mode of executing decree—Decree-holder held entitled to execute decree on default in terms of compromise. See Civil P. C. (1908), S. 47. AIR 1961 Punj 439.

——O. 20, R. 12 — Court-fees Act (1870), S. 11 — Scope of first and second para of S. 11 — Determination of mesne profits —Procedure for, under Civil P. C. 1908, compared with that under Civil P. C. 1882 — Mode of enforcing payment of additional court-fee under S. 11, para. 1 — Only power which a Court has after passing of final decree is to prevent decree-holder from executing it till court-fee is actually paid and a suit or interlocutory application for passing of final decree cannot be dismissed on ground of non-payment of stamps — Section 149, Civil P. C. 1908, does not come into play in matter of payment of court-fee on a final decree for mesne profits. ILR (1963) Andh Pra 560.

——O. 20, R. 12 — Article 181, Limitation Act — Application for ascertainment of mesne profits. See Limitation Act (1908), Art. 181. AIR 1957 Andh Pra 18.

——O. 20, R. 12 and S. 2 (12) — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cls. 4 and 6 — Ejectment of tenant after obtaining permission of Rent Control Officer — Ascertainment of mesne profits — Criterion is not what plaintiff might have got had he been in possession but value of user of tenement to defendant after termination of tenancy — Protection of Rent Control Order not available to erstwhile tenant — Held in context of unavailability of houses on rent, value of user of tenement to defendant would necessarily be much more than what defendant paid as rent. ILR (1965) Bom 363 = 1965 Mah L J 688 = AIR 1966 Bom 266.

——O. 20, R. 12 — Co-operative Societies — Maharashtra Co-operative Societies Act, 1960 (24 of 1961), Ss. 91, 93 and 94 — Application to Registrar by Member of Housing Society — Application for possession of flat given by applicant to some other person and for arrears of compensation — If Registrar is competent to entertain application for possession, he will also have jurisdiction to decide claims of past as well as future mesne profits until possession is given : 55 B L R 271, Foll. See Co-operative Societies — Maharashtra Co-operative Societies Act, 1960 (24 of 1961), S. 91. 1965 Mah L J 523 = ILR (1966) Bom 23 = 67 Bom L R 306 (DB).

—O. 20, R. 12, S. 97 — Preliminary decree in partition suit — Plaintiffs allowed to recover past mesne profits — Matter whether can be agitated in appeal from final decree. See Civil P. C. (1908), S. 97. AIR 1958 Ker 158.

—O. 20, R. 12, S. 144 — Decree for possession reversed in first appeal but upheld in second appeal — Stay of execution by trial Court and continued by first appellate Court — Claim for restitution by way of mesne profits — Whether maintainable under S. 144 although no such claim was made in original suit — Period for which mesne profits could be claimed under S. 144. See Civil P. C. (1908), S. 144. AIR 1961 Madh Pra 200.

—O. 20, R. 12 — Section 7 (i) and Sch. II, Art. 11, Court-fees Act — Mesne profits — Dispute as to — Court-fee in appeal. See Court-fees Act (1870), S. 7 (i). AIR 1958 Mad 414.

—O. 20, R. 12 — Sections 2 (4) and 7 — Houses and Rents — Madras Buildings Lease and Rent Control Act — 'Tenant'—Tenant holding over—Liability to eviction under decree for possession — Liability for mesne profits. See Houses and Rents — Madras Buildings Lease and Rent Control Act (15 of 1946), S. 2 (4). AIR 1953 Mad 473.

—O. 20, R. 12 — Mesne profits — Suit for specific performance of agreement of reconveyance decreed—Liability of defendant for mesne profit — It arises only when title actually passes to plaintiff. See Civil P. C. (1908), S. 2 (12). (1965) 1 Mys L J 253 = AIR 1966 Mys 215.

—O. 20, R. 12 — Mesne profits — Court awarding mesne profits merely stating in judgment that claim made by plaintiff was fair and reasonable — No discussion of evidence on the basis of which it came to the conclusion — Finding is contrary to law. (1965) 1 Mys L J 79 = (1965) 1 Law Rep 632 (DB).

—O. 20, R. 12 — Mesne profits. See Evidence Act (1872), S. 106. AIR 1953 Mys 139.

—O. 20, R. 12, S. 2 (12) — Mesne profits. See Civil P. C. (5 of 1908), S. 2 (12). AIR 1953 Mys 121.

—O. 20, R, 12 — Mesne profits — Claim for profits prior to date of suit — Peculiar circumstances of the case as well as the absence of notice. AIR 1952 Mys 117.

—O. 20, R. 12 — Limited owner — Alienation — Possession of alienee before transfer — Mesne profits — Liability for — Alienee not liable to account for profits after transfer in his favour. AIR 1952 Nag 60.

—O. 20, R. 12 — Joint Hindu family property — Suit for partition — Nature and scope. See Civil P. C. (1908), O. 20, R. 18. AIR 1956 Pat 244.

—O. 20, R. 12, S. 11 and O. 34, R. 7 — Defendant purchasing lands including lands given in 'zarpeshgi,' to predecessor-in-interest of plaintiffs — Defendant filing suit for redemption and obtaining decree — Before suit plaintiff kept out of possession of 'zarpeshgi' lands by defendant for certain period—Suit by plaintiffs for mesne profits for such period — Suit held was not barred by 'res judicata.' See Civil P. C. (5 of 1908), S. 11. AIR 1953 Pat 220.

—O. 20, R. 12, S. 2 (12) — Mesne profits — Co-sharer receiving income from joint property and withholding it from other co-sharers — Claim of latter to share or account is not for mesne profits. See Civil P. C. (1908), S. 2 (12). AIR 1955 N U C (Raj) 4612.

—O. 20, R. 12—Determination of lease—Lease by mortgagee — Effect of redemption — Mesne profits. See Transfer of Property Act (1882), S. 111. AIR 1955 N U C (Trav-Co) 3476.

—O. 20, R. 12, S. 38 — Decree which may be executed. See Civil P. C. (5 of 1908), S. 38. AIR 1953 Trav-Co 385.

—O. 20, R. 12, S. 100 and O. 41, R. 2 — Plaintiff's right to get past and future mesne profits not challenged before lower appellate Court—Even in memorandum of second appeal plaintiff's right to get mesne profits not questioned — Held, it was not open to appellant at stage of argument to disclaim altogether his liability for mesne profits. See Civil P. C. (5 of 1908), S. 100. AIR 1953 Trav-Co 360.

—O. 20, R. 13 — Suit for — Estates of more than one person — Suit maintainable — S. A. No. 6 of 1958, D/- 15-6-1959 (Assam), Reversed. A I R 1960 Assam 183.

—O. 20, R. 13 — Sch. 2, Art. 17B (Madras) and Sch. I, Art. I, Court-fees Act — Applicability — Administration suits and appeals therefrom. See Court-fees Act (1870), Sch. 2, Art. 17B. AIR 1953 Mad 576.

—O. 20, R. 13 (2) — Ss. 323, 360, 307 (1), Succession Act — Insufficiency of assets of deceased to satisfy all creditors in full — Right of creditors under S. 328 — Non-rateable payment to some creditors by administrator — Right of unsatisfied or dissatisfied creditors against administrator and other creditors who have received in excess of their rateable proportion. See Succession Act (1925), S. 323. AIR 1951 Mad 296.

—O. 20, R. 13 and O. 1, R. 10—Administration suit. See Civil P. C. (1908), O. 1, R. 10. AIR 1954 Trav-Co 399.

—O. 20. R.14, Ss. 144 and 151—Order for pre-emption in favour of A on basis of his status as co-sharer — A's status as co-sharer negatived in another suit—Suit by A for refund of pre-emption money from vendee. See Civil P. C. (1908), S. 144. AIR 1956 Cal 241.

—O. 20, R. 14 — Pre-emption—Right of—Demand — No evidence that pre-emptor had made any demands — Suit for pre-emption cannot be decreed. AIR 1955 Manipur 37.

—O. 20, R. 14—Pre-emption — Decree for—Effect of—Pre-emptor becomes bound by conditions of sale — Vendor is entitled to enforce condition of reconveyance as against pre-emptor at price fixed by decree—Berar Land Revenue Code (1928), S. 174 (4).

When pre-emption is allowed what takes place is the substitution of the name of the pre-emptor in the sale deed in place of that of the vendee. Since that is so, the pre-emptor will be deemed to be a party to the document and therefore bound by all the terms thereof including a condition for reconveyance.

The law of pre-emption derogates from the general law inasmuch as it interferes with the right of free transfer of property. It is therefore to be strictly construed. Sub-section (4) of S. 174, Berar Land Revenue Code does not in terms apply to a case where pre-emption has already been decreed. After the claim is decreed the original sale-deed must be regarded as one in favour of the pre-emptor. He must, therefore, be held bound by the terms thereof, whatever they may be. 18 N L R 202, Dissented from.

As regards the consideration for the reconveyance which the vendor wants to enforce against the pre-emptor the sale-deed stands amended by the decree for pre-emption and therefore the vendor will be liable to pay only the pre-emption price determined by the decree and not the consideration mentioned in the sale-deed. 1952 Nag L J 402=ILR (1953) Nag 518 =AIR 1952 Nag 316 (DB).

—O. 20, R. 14 — Nature of right. See Pre-emption. AIR 1957 Pat 545a.

●—O. 20, R. 14—S. 3, Suits Valuation Act—Rules under — R. 2 — Suit for pre-emption of agricultural land — Value for jurisdiction in appeal—Direction to deposit market value — No effect on valuation for jurisdiction—16 Pun Re; 1908 : 146 Pun L R 1908.

Overruled. See Suits Valuation Act (1887), S. 3. AIR 1960 Punj 467 (FB).

——O. 20, R. 14, S. 11—Applicability of res judicata to pre-emption suits. See Civil P. C. (1908), S. 11. AIR 1958 Punj 83.

——O. 20, R. 15, Ss. 2 (12), 144 and Preamble — Mesne profits — Meaning of — Same in S. 144—Criterion for calculation. See Civil P. C. (1908), S. 2 (12). AIR 1959 Andh Pra 182.

——O. 20, R. 15 — Deed of partnership with a clause that in case of dissolution business premises shall belong to plaintiff—Dissolution of partnership and Court proceeding to pass preliminary decree—Court appointing local Commissioner and directing him to take possession of disputed property and give the same to plaintiff. Held the order was proper. See Partnership Act (1932), S. 48. ('65) 67 Pun L R 951.

——O. 20, R. 15 — S. 7 (iv) (f), Court-fees Act — Partnership suit. See Court-fees Act (1870), S. 7 (iv) (f). AIR 1953 Vindh Pra 43.

——O. 20, R. 16; O. 41, R. 1 — Delegation of function by Commissioner to others. AIR 1953 Him Pra 110.

——O. 20, R. 16—S. 213, Contract Act — Suit for accounts by agent against principal—When maintainable —Limitation — Art. 120 applies to such a suit—See Contract Act (1872), S. 213. AIR 1960 Punj 607.

——O. 20, R. 17 — See Civil P. C. (1908), O. 41, R. 23. (1961) 2 S C J 191=AIR 1966 S C 1034.

——O. 20, R. 18—S. 28-A, Proviso 1 (as amended in 1948), Provincial Insolvency Act—"Final decision"—Meaning of—Preliminary decree for partition is 'final decision.' A I R 1956 Mad 413, Reversed—See Provincial Insolvency Act (1920), S. 28-A, Proviso 1. AIR 1963 SC 992.

——O. 20, R. 18 — Ss. 176, 182-A and 182-B — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act—Suit for partition under S. 176—Decree passed by Munsiff—Transfer to Collector—Necessity of application to Munsiff—See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 176. AIR 1958 All 673.

——O. 20, R. 18—Who can apply—Scheme decree—Defendant who is also judgment-debtor given rights under decree can apply — See Execution—Who can apply. AIR 1960 Cal 718.

——O. 20, R. 18 — Suit for — Maintainability—Property in possession of one of co-sharers as tenant.

A suit for partition by a co-sharer is maintainable, although the property which is the subject-matter of partition is in the occupation of one of the co-sharers as a tenant. 25 M 504 and 26 M 78, Rel. on. 56 C W N 679=90 CLJ 237=I L R (1954) 1 Cal 400=AIR 1953 Cal 36.

——O. 20, R. 18—Suit for—Power of Court to order sale—Partition Act, S. 2.

The power of Court to direct a sale in a suit for partition must be held to be limited to the cases provided for within Partition Act. The Court has no inherent power of sale in case it finds that the property cannot be conveniently partitioned or that the partition thereof would affect the intrinsic value of the property. ILR (1953) 2 Cal 228=57 C W N 439 =AIR 1952 Cal 893.

——O. 20, R. 18—Suit for—Joint property capable of being conveniently partitioned — Jurisdiction of Court to direct sale — Co-sharer effecting improvements and repairs—Equitable relief.

In a suit for partition of a joint property (e. g.) a dwelling-house, belonging to certain co-sharers who cannot be considered to be members of a joint Hindu family, the Court has jurisdiction to direct a sale of the property among the co-sharers independently of the Partition Act, if it cannot be reasonably or conveniently partitioned by metes and bounds. A sale amongst the co-sharers subject to valuation made by the Court is the best method of determining which of them should retain the property and what sum should be paid by way of compensation by the co-sharer retaining the property to the other co-sharers. If no offer over the valuation made by the Court is forthcoming from any of the co-sharers, the property can be sold by public auction. (1952) 90 Cal L J 147.

——O. 20, R. 18—Partition — Provision for owelty—Charge — Nature of — Priority between charge of owelty and charge under indemnity clause. 1958 Ker L T 41=1958 Ker L J 230.

——O. 20, R. 18—Co-sharers — Partition — Finding secured by one co-sharer relating to invalidity of malviappa — Finding enures to benefit of other co-sharers.

A decree for partition is a joint decree in favour of all the share-holders so that execution proceedings taken by one of them are sufficient to keep the decree alive in favour of all. Thus the finding secured by one of the share-holders relating to the invalidity of a particular transaction (e. g. Malviappa) would enure to the benefit of the other share-holders also even though that share-holder had paid the Court-fees only for his share. 1949 Ker L T 5 = 1949 Trav-Co L R 1 (DB).

——O. 20, R. 18—Scope and applicability—See Civil Procedure Code (5 of 1908), O. 20, R. 12. AIR 1953 Mad 723.

——O. 20, R. 18 — Ss. 21 and 23, Arbitration Act — "At any time before judgment is pronounced" — "Judgment" means final, not interlocutory judgment — Power to refer after preliminary decree exists—Pending appeal has no effect on power to refer. AIR 1953 Mad 492.

——O. 20, R. 18; S 54 — Wrong directions to Collector under S. 54 — Partition not made or commenced by Collector — Instructions about partition can be recalled and varied by Civil Court and even by appellate Court. AIR 1965 Mys 46.

——O. 20, R. 18, S. 54 — Order under O. 20, R. 18—Nature of—Order directing papers to be transmitted to Collector—Appeal. AIR 1959 Mys 233.

——O. 20, R. 18—Partition—Suit for claim for profits —Nature of, stated. AIR 1955 Nag 241.

——O. 20, Rr. 18, 17—Joint Hindu family property—Suit for partition — Nature and scope. A I R 1956 Pat 244.

——O. 20, R. 18 — Suit for — Maintainability—Pure suit for partition will not lie if there is no unity of title and possession — Suit for partition and recovery of possession held maintainable. AIR 1955 N U C (Pat) 1597.

——O. 20, R. 18, S. 54; O. 26, R. 13—Effect of agreement to exclude certain properties from jurisdiction of Civil Court—See Civil Procedure Code (5 of 1908), S. 54. AIR 1953 Punj 250.

——O. 20, R, 18—Suit for — Claim for compensation for value of improvements effected by defendant—Actual amount spent not proved — No compensation will be awarded — At time of partition by metes and bounds, defendant will as far as possible get his share out of new construction. A I R 1955 N U C (Raj) 2175.

——O. 20, R. 19—Set-off—Nature of—See Civil Procedure Code (5 of 1908), O. 8, R. 6. A I R 1951 Mad 783.

——O. 20, R. 19, O. 8, R. 6 —Equitable set-off. See Civil P. C. (1908), O. 8, R. 6. AIR 1954 Trav-Co 243 (FB).

——O. 20, R. 90, S. 13—Bihar Money Lenders (Regulation of Transactions) Act—Service of notice—Notice

issued to both judgment-debtors who were father and son — Notice served personally on son who was joint with his father — Son accepting both notices as adult male member on his own behalf and on behalf of his father — Service of notice is valid under O. 5, R. 15, Civil P. C. — Even if service of notice is held irregular on father that by itself was not sufficient to vitiate sale as there was no substantial injury on account of sale. See Debt Laws — Bihar Money Lenders (Regulation of Transactions) Act (1939), S. 13. **AIR 1960 Pat 171.**

——O. 21 — Ejectment decree — Decre-holder can apply for execution within time prescribed by law. See Presidency Small Cause Courts Act (1882), S. 48. **AIR 1961 Mad 408.**

——**O. 21, R. 1—Rules of procedure —Duty of Court to observe.**

The Court should not lean towards technicality. It should try to do substantial justice between the parties and determine the dispute finally. The rules of procedure are meant to subserve justice and not to hamper it. **1965 All W R (H C) 209= 1965 All L J 417.**

——O. 21, R. 1 — Payment of decretal amount into Court. Execution taken out—Judgment-debtor alleging that they had deposited decretal amount in Court — Payment held not proved. **AIR 1955 (NUC) Hyd 2358.**

——**O. 21, R. 1**— Sections 59 and 60, Contract Act — Appropriation of payment — Composite judgment-debt—Rule of appropriation in such case. See Contract Act (1872), S. 59. **AIR 1951 Trav-Co 80.**

——**O. 21, R. 2**—Suit on bond — Settlement pleaded in defence — No evidence on settlement — Defence plea held could not be accepted. **AIR 1955 NUC (Ajmer) 4762.**

——**O. 21, R. 2**—Decree for ejectment — Execution—Adjustment in appeal — Effect of. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 3 (1) (a). **1958 All L J 640.**

——**O. 21, R. 2**—Article 182 (5). Explanation II, Limitation Act — Proper Court — Court dismissing appeal from decree — Not 'proper Court' — Court having jurisdiction to entertain execution application — Whether proper Court — Appellate Court if can entertain execution application — Words and Phrases —Duty — Meaning of. See Limitation Act (1908), Art. 182 (5). **AIR 1963 Andh Pra 452.**

——**O. 21, R. 2, S. 47**—Failure to proceed under O. 21, R. 2 (2)—Objection under S. 47. See Civil P. C. (1908), S. 47. **AIR 1956 Him Pra 63.**

——**O. 21, Rr. 2, 15**—Joint decree-holder— Discharge by one — Effect. See Civil Procedure Code (5 of 1908), O. 21, R. 15. **AIR 1953 Hyd 53.**

——**O. 21, R. 21; S. 47** — Adjustment of decree in part — Time given to pay balance — Attachment to continue — Additional sum borrowed —Exection for balance of decretal amount is maintainable — Fresh loan to be recovered by separate suit. See Civil P. C. (1908), S. 47. **AIR 1960 Madh Pra 257.**

——**O. 21, R. 2**—Section 19, Madras Agriculturists Relief Act — Mortgage decree against agriculturist mortgagor and non-agriculturist puisne mortgagee— Decree scaled down against mortgagor alone — Assignee of puisne mortgagee purchasing property in execution of his decree and paying amount under scaled down decree—Full satisfaction held could not be entered unless difference between two decrees was paid — Interest on such difference not allowed in the circumstances. See Debt Laws — Madras Agrioulturists Relief Act (1938), S. 19. **AIR 1956 Mad 433.**

——**O. 21, R. 2**—Duty of Court to enquire into payment alleged — Court held ought to have enquired into truth of payment before dismissing application under O. 21, R. 16. See Civil P. C. (1908), O. 21, R. 16. **AIR 1955 NUC (Mad) 3149.**

——**O. 21, R. 2**—Reference to arbitration in execution followed by award — Award must be treated as adjustment. See Arbitration Act (1940), S. 47, Proviso. **AIR 1955 Sau 88.**

——**O. 21, R. 3, S. 38** — Simultaneous executions — Non-mentioning of result of previous application — Effect indicated. See Civil P. C. (1908), O. 21, R. 11. **AIR 1955 All 382.**

——**O. 21, R. 6, S. 44-A (2)**—Certificate of non-satisfaction of foreign decree — Not same as non-satisfaction memo under O. 21, R. 6—Failure to file such certificate — Execution not maintainable. See Civil P. C. (1908), S. 44-A (2). **AIR 1964 Mad 221.**

——**O. 21, Rr. 6, 10** — Decree passed by C Court — According to terms of decree decree-holder to be paid certain money on 13-7-1934 — Application filed on 22-6-1946 for transmission of decree to N Court for execution—Order for transmission passed on 13-7-1946 —On 12-7-1946 decree-holder presenting application for execution to N Court — On same day N Court returning application for production of copy of decree — Execution application represented on 19-7-1946 — Order of transmission and order for return held must be presumed to have been made at first moment of day — Application held must have been taken back after order for return was passed — Presentation of application, on 12-6-1946 held was valid and application being in time decree was not barred under S. 48. See Civil Procedure Code (5 of 1908), S. 39 (1). **AIR 1953 Mad 71.**

——**O. 21, R. 6**—Article 182 (5), Limitation Act — Final order—Application for transfer of decree — Order directing preparation of certificate is not final order —Starting point of limitation is date on which certificate is prepared and signed. See Limitation Act (1908), Art. 182 (5). **AIR 1960 Pat 209.**

——**O. 21, R. 6**—Federal Court decree — Omission to send copy of decree to transferee Court. See Civil P. C. (1908), S. 38. **AIR 1954 Pat 497.**

——**O. 21, R. 7, Ss 11, 38, 47, 86, 9** —Inherent want of jurisdiction — Decree does not operate as res judicata—Suit against ruling prince without certificate— Decree is nullity—Executing Court can question such decree — Decree transferred for execution — Transferee Court also can question the decree — Distinction between decree passed by Court having no inherent jurisdiction and Court irregularly assuming jurisdiction. See Civil P. C. (1908), S. 11. **AIR 1958 Bom 30.**

——**O. 21, R. 8** — Transfer of decree for execution under S. 38 (1) — Transferee Court — Jurisdiction — Depends upon actual amount under execution. See Civil P. C. (1908), S. 6. **AIR 1962 All 586.**

——**O. 21, R. 8, Ss. 39, 38, 6** — Competent Court — Decree transferred for execution to another Court — Pecuniary jurisdiction. See Civil P. C. (1908), S. 39. **AIR 1957 Orissa 177.**

——**O. 21, R. 10**—Sections 3, 8, T. P. Act— Transfer of debt pending suit in respect of it — Transferor cannot pass any interest in non-existent decree — S. 8 does not assist third party—Transferor of debt can get itself substituted under O. 22, R. 10 as plaintiff in suit — But there is no scope for applying equitable principle—(Per Das J., Bhagwati J. Contra.) Equitable transter of decree. See Transfer of Property Act (1882), S. 8. **AIR 1955 SC 376.**

——**O. 21, R. 10, S. 144, O. 34, R. 8** — Final decree under O. 34, R. 8 granting possession — Decree passed after rejection of application under S. 144 — Application for execution of decree is not barred. See Civil P. C. (1908), S. 144. **AIR 1955 (NUC) Ajmer 156.**

——O. 21, R. 10– Presentation of application for execution—Application signed by counsel having power on behalf of both decree-holders —Vakalatnama conferring power to execute—Application held in accordance with law on behalf of both the decree-holders. AIR 1955 N U C (Ajmer) 4782.

——O. 21, R. 10—Procedure—Execution application —Power to adjourn.

Where a stay of execution has been granted by the appellate Court on furnishing of security and the decree-holder is asked to show cause why the draft security bond filed by the judgment-debtor should not be accepted, it cannot be said that on his failure to appear on that date the execution petition itself should be struck off for default. The Court has power to adjourn the execution case to another date. AIR 1951 Ajmer 47 (1) (47) (Pr 3).

——O. 21, R. 10, S. 11 (6)—Change in the name of company during pendency of suit — Decree in old name — Execution in new name can be allowed. See Companies Act (1913), S. 11 (6). AIR 1955 All 192.

——O. 21, R. 10—Decree in favour of manager of temple—Application for execution by his successor—Succession certificate not necessary. AIR 1955 NUC (Madh Bha) 3815.

——O. 21, R. 10, Ss. 48, 39— Execution petition filed before transferee Court within limitation—Order of transmission passed after limitation—Bar applied. See Civil P. C. (1908), S. 48. AIR 1957 Mad 726.

——O. 21, R. 10—Execution application presented to transferee Court before transfer—Validity of presentation. See Civil P. C. (5 of 1908), S. 39 (1). AIR 1953 Mad 71.

——O. 21, R. 10—Procedure in regard to suits—O. 9, O. 2, R. 2 and O. 17, Rr. 2 and 3, do not apply to execution proceedings — Order dismissing application — No default on part of decree-holder — Order, cannot be upheld, more so, if S. 48, Civil P. C., is likely to operate as bar to further application. See Civil P. C. (1908), S. 141. AIR 1955 Nag 305.

——O. 21, Rr. 10, 11—Execution — Properties exempted in previous execution case — No bar to proceed against. AIR 1965 Pat 296 (296, 297) (Pt B) (Pr 2).

——O. 21, R. 10 — Money decree — Application for execution—Lesser amount than due claimed through error—Waiver. AIR 1951 Trav-Co 75.

——O. 21, R. 10 — Applicability — Provisions of, do not apply to proceedings in execution of decree — See Civil P. C. (1908), O. 2, R. 2. AIR 1951 Trav-Co 75.

——O. 21, R. 11 (1)—Against whom execution is to issue—Case on facts. AIR 1955 (N U C) Ajmer 1978.

——O. 21, R. 11, S. 73—Necessary condition for applicability of S. 73. AIR 1957 Andh Pra 1017.

——O. 21, R. 11—Misdescription of decree—Ex parte decree set aside and new decree passed stating that decree should be same as ex parte decree — Ex parte decree cannot be executed—Application to transferee Court for execution of ex parte decree — New decree not transferred—Execution application is not one for execution of new decree, treating the description of decree as case of misdescription. See Civil P. C. (1908), O. 21, R. 10. AIR 1955 Bom 93.

——O. 21, R. 11 — Execution — Who can apply — Scheme decree — Defendant who is also judgment-debtor given rights under decree. can apply. AIR 1960 Cal 718 (721) (Pt C) (Pr 16) (DB).

——O. 21, Rr. 11(3), 17, O. 41, R. 5 — Appeal from decree—Effect on execution of original decree—Appellate Court affirming original decree—Fresh execution not necessary — Legality of amendment of first application. See Civil P. C. (1908), O. 41, R. 5. AIR 1960 Madh Pra 41.

——O. 21, R. 11, S. 73—Claimant for rateable distribution must have applied for execution to Court by which assets are held before receipt of assets — Application for transfer of decree to Court holding assets is not one for execution. See Civil P. C. (1908), S. 73. AIR 1965 Mad 511.

——O. 21, R. 11—Execution against surety. See Civil P. C. (1908), S. 145. AIR 1956 Mad 201.

——O. 21, R. 11 (2) (j) (iv)—Appointment of receiver in execution. See Civil P. C. (1908), S. 51 (d). AIR 1956 Mad 163.

——O. 21, R. 11, O. 3, R. 4—Appointment of pleader. See Civil P. C. (1908), O. 3, R. 4. AIR 1954 Mad 934.

——O. 21, Rr. 11 to 14 — Encumbrance certificate. AIR 1954 Mad 74.

——O. 21, R. 11, S. 48—Presentation of execution by unauthorised person. See Civil P. C. (5 of 1908), S. 48. AIR 1951 Mad 340.

——O. 21, R. 11—Art. 182 (5), Limitation Act—In accordance with law — Execution for attachment only —Absence of prayer for sale is not fatal—Application is step in aid of execution even if requirements of O. 21, R. 11, Civil P. C., are not satisfied. See Limitation Act (1908), Art. 182 (5). AIR 1951 Mad 274.

——O. 21, R. 11 (2) — Application for execution — Parties jointly entitled to certain properties under decree—Execution application by one without stating that execution was also for benefit of other — Maintainability of — Other party impleaded to application but not contesting right of applicant to possession of properties — By registered partition deed applicant shown exclusively entitled to properties — Application held maintainable. See Civil P. C. (1908), S. 47. (1965) 2 Mys L J 103.

——O. 21, R. 11—Art. 182 (5), Limitation Act—Execution application mentioning deceased judgment-debtor—O. 21, R. 17 (2), Civil P. C., not availed of—Application whether step-in-aid. See Limitation Act (1908), Art. 182 (5). AIR 1956 Orissa 142.

——O. 21, R. 11—S. 3—Decree of Kapurthala State Court sought to be executed after enactment of Ordinance—Law applicable — Power of executing Court to grant instalments. See Pepsu (General Provisions Administration) Ordinance (16 of 2005, Smt.), S. 3. AIR 1951 Pepsu 86 (2).

——O. 21, R. 11—Some of decree-holders already dead when execution taken out—Execution allowed —Appeal — The fact that legal representatives were not brought on record, did not affect the appeal. AIR 1954 Punj 197.

——O. 21, R. 11 — 'In accordance with law' — Application merely asking relief of rateable distribution. See Limitation Act (1908), Art. 182 (5). 1958 Raj L W 180.

——O. 21, Rr. 11, 15, O. 41, R. 20 — Joint decree — Execution—Appeal—Necessary parties indicated. See Civil P. C. (1908), O. 21, R. 15. AIR 1955 Raj 197.

——O. 21, Rr. 11, 97, 99, Ss. 115, 47 — Order under Rule 99—Appeal does not lie but revision is maintainable—Application named as under R. 11—Allegation that brother-in-law of judgment-debtor residing on property, obstructing — Application is under R. 97—Enquiry in manner required under R. 99 — Order is not appealable. AIR 1955 (N U C) Raj 1069.

● ——O. 21, R. 11, Ss. 24, 23-B—Scope—Sale without attachment. See Travancore Revenue Recovery Act (1 of 1068), S. 24. AIR 1953 Trav-Co 494 (FB).

——O. 21, R. 12, S. 48—Moveable property in possession of judgment-debtor—No list of property is necessary — Position of legal representative is the same — Fact that further details are to be provided will not tantamount to fresh application for purpose of S. 48. See Civil P. C. (1908), S. 48. AIR 1960 Madh Pra 187.

——O. 21, Rr. 12, 13 and 14—Art. 182 (5), Limitation Act — Cheque application supported by affidavit — If can be regarded as execution application—Order dismissing application if saves limitation for subsequent execution application. See Limitation Act (1908), Art. 182(5). AIR 1957 Mad 665.

——O. 21, R. 12, Ss. 145 and 47 — Suit for profits — Sureties for past profits—Decree for post and future profits and costs — Sale of Sureties' properties — Appropriation of sale proceeds should not jeopardise rights of sureties — Mode indicated. See Civil P. C. (1908), S. 145. AIR 1955 (N U C) Mad 1821.

——O. 21, Rr. 12. 13, 14 — Encumbrance certificate. See Civil P. C. (1908), O. 21, R. 11. AIR 1954 Mad 74.

——O. 21, R. 12 — S. 6, T. P. Act — Mesne profits — Right to claim—Nature of—Assignment of mere right to claim mesne profits—Validity. See T. P. Act (1882), S. 6. AIR 1951 Trav-Co 180.

——O. 21, Rr. 13, 17, S. 48 — Execution filed within 12 years of decree — Application not stating property sought to be proceeded against — Defect detected after 12 years — Application for amendment within time granted by Court — Amendment if properly allowed under O. 21, R 17—Bar under S. 48 if applies. See Civil P. C. (1908), S. 48. AIR 1959 Assam 25.

——O. 21, R. 15—Decree in favour of two persons—Execution filed by one — Rule does not require explicit statement that it is filed on behalf of all creditors. AIR 1951 Ajmer 73 (1).

——O. 21, Rr. 15, 2 - Joint decree-holder—Discharge by one—Effect. AIR 1953 Hyd 53.

——O. 21, R. 15—Applicability—Conditions essential — Decree ought to be passed in favour of more persons than one — It should be passed jointly in their favour — Decree of the trial Court awarding costs to the defendants to the extent each had incurred — High Court in appeal making the costs jointly payable to all defendants without interfering with the costs of the trial Court — O. 21, R. 15 does not apply — Some of the defendants alone not competent to execute the entire decree. (Held on facts that the decree in question did not impose any condition requiring all the decree-holders to join in the execution, reasoning of the single Judge overruled). 10 I A 4; ILR 11 Pat 445; 13 Weekly Reporter 244; ILR 6 All 69, Ref. 1967 M P L J 740=I L R (1964) Madh Pra 383 (DB).

——O. 21, R. 15—Application for execution — Parties jointly entitled to certain properties under decree — Execution application by one without stating that execution was also for benefit of other — Maintainability of — Other party impleaded to application but not contesting right of applicant to possession of properties—By registered partition deed applicant shown exclusively entitled to properties — Application held maintainable. (1965) 2 Mys L J 103.

——O. 21, R. 15 (2), S 66 (1), O. 2, R. 2 — S. 66 (1), O. 21, R. 15 (2) and O. 2, R. 2 — Mortgage decree — Application for execution under O. 21, R. 15 by one of three legal representatives of decree-holder — Mortgaged land purchased by himself in Court auction with Court's permission — Suit by other legal representatives for partition and possession of their share in property — Not barred under S. 66 (1) or O. 2, R. 2 — See Civil P. C. (1908), S. 66 (1). A I R 1960 Mys 249.

——O. 21, R. 16; O. 40, R. 1 — Office of receivership — No succession — Creditor appointed receiver to realise debtor's debts — Rights cannot be exercised by his legal representative — Necessity of order by Court—See Civil P. C. (1908), O. 40, R. 1. AIR 1959 Mad 209.

——O. 21, R. 16 — Actionable claim — Decretal debt — See Transfer of Property Act (1882), S. 3. A I R 1951 Pat 415.

——O. 20, R. 16—Suit for—When can be brought — Not confined to cases of partnership or principal and agent or fiduciary relationship — Circumstances of special complication — Necessitating the taking of accounts — Suit for accounts can be brought — See Accounts—Suit for. AIR 1960 Punj 415.

——O. 21, R. 16 —Transfer of part of decree. A I R 1951 Punj 324.

——O. 21, R. 16 — Assignee of suit property during pendency of suit is not assignee of decree. A I R 1952 Trav Co 555.

——O. 21, R. 16, S. 49 — Application for execution by transferee—Pleas open—See Civil Procedure Code (5 of 1908), S. 49. AIR 1952 Trav-Co 504.

——O. 21, R. 16 — Death of decree-holder during execution — Substitution of legal representative — See Civil Procedure Code (5 of 1908), S. 146. A I R 1952 Trav-Co 504.

——O. 21, Rr. 17, 11 (2) (l), 10—Defective application — Application purporting to be application for execution under O. 21, R 11—Non-compliance with requirements of O. 21, R. 11—Mode of execution not indicated—Objection not taken in execution Court or at later stage — That application is not maintainable, cannot be contended — See Civil P. C. (1908), O. 21, R. 11 (2) (j). AIR 1955 S C 376.

——O. 21, R. 17 — Decree for maintenance creating a charge on an estate — Decree-holder can proceed not only against the corpus of property charged but against its income as well — By proceeding against the income of the property, maintenance-holder is proceeding against the charged property itself. I L R 56 Madras 917 (927), Foll. I L R (1964) Andh Pra 227.

——O. 21, R. 17—Name of deceaaed judgment-debtor in execution petition — Mistake can be corrected by impleading legal representative. A I R 1955 N U C (Andhra) 4461.

——O. 21, R. 17—Art. 4, Indian Independence (Legal Proceedings) Order—Pending proceedings—Amendment of execution petition — See Indian Independence (Legal Proceedings) Order (1947), Art. 4. A I R 1958 Cal 132.

——O. 21, R. 17 — Amendment of execution. See Civil Procedure Code (5 of 1908), S. 151. AIR 1953 Cal 676.

——O. 21, R. 17 (2) — Amendment and limitation — Execution application within time — Supplementary list of properties filed and accepted when limitation for execution had expired—Supplementary list should be taken as part of original application under O. 21, R. 17 (2) — Fresh supplementary application held should be treated as one in continuation — See Civil P. C. (1908), O. 21, R. 17 (1). A I R 1955 N U C (Cal) 4850.

——O. 21, R. 17 — Appeal from decree — Effect on execution of original decree—Appellate Court affirming original decree—Fresh execution not necessary—Legality of amendment of fresh application—See Civil P. C. (1908), O. 41, R. 5. A I R 1960 Madh Pra 41.

——O. 21, R. 17—Application for execution—Parties jointly entitled to certain properties under decree — Execution application by one without stating that execution was also for benefit of other — Maintainability of — Other party impleaded to application but not contesting right of applicant to possession of properties — By registered partition deed applicant shown exclusively entitled to properties—Application held maintainable — See Civil P. C. (1908), S. 47. (1965) 2 Mys L J 103.

——O. 21, Rr. 17, 10, 11 — Power of Court passing decree to order execution even if decree is not formally drawn up — See Civil P. C. (1908), O. 21, R. 10. AIR 1934 Pat 92.

——O. 21, R. 17—Non-compliance with O. 21, R. 11 (2) (f)—Effect — (Application for execution — Particulars)—See Civil Procedure Code (5 of 1908), O. 21, R. 11. **AIR 1951 Punj 371.**

——O. 21, R. 17 — 'In accordance with law'—Defective application registered by Court — See Limitation Act (1908), Art. 182 (5). **1956 Raj L W 486.**

——O. 21, R. 18; O. 26, R. 13 — S. 2, Partition Act—Power of Court to order sale instead of partition — (Bengal, Agra and Assam Civil Courts Act (1887), S. 37 (2)—See Partition Act (1893), S. 2. **A I R 1952 Cal 893.**

——O. 21, R. 18 — Civil P. C. (Travancore), O. 21, R. 16—Applicability — Set off of claims under cross-decree without filing execution petitions. **AIR 1951 Trav-Co 78.**

——O. 21, R. 20 — R. 765, Travancore Civil Courts Guide—Court passing order for issue of notice under O. 21, R. 20, Civil P. C. on next day of presentation of execution application — Order is in accordance with rule — Decree-holder cannot contend that it is passed without notice to him as he is expected to know of such order — See Travancore Civil Courts Guide (1099) (ME), R. 765. **AIR 1951 Trav-Co 179.**

——O. 21, R. 21, S. 151 — Amendment of execution —See Civil Procedure Code (5 of 1908), S. 151. **AIR 1953 Cal 676.**

——O. 21, R. 22 — Art. 183, Limitation Act—Revivor — Doctrine of—Essentials—Notice under O. 21, R. 22 — Effect of — See Limitation Act (1908), Art. 183. **AIR 1956 All 32.**

——O. 21, R. 22 — Art. 14, Constitution of India—It does not contravene Art. 14 — Principles of natural justice if offended against—See Constitution of India, Art. 14. **AIR 1957 Andh Pra 136.**

——O. 21, R. 22; O. 22, R. 12 and S. 50 — Death of judgment-debtor pending execution — Legal representatives not brought on record — Court should not proceed with execution, though proceedings will not abate—Otherwise S. 50 would be nugatory. See Civil P. C. (1908), S. 50. **AIR 1955 Cal 573.**

——O. 21, R. 22 — Art. 182 (5), Limitation Act — Application for execution made by mistake against judgment-debtor who is dead can be regarded as a step in aid of execution. See Limitation Act (1908), Art. 182 (5). **AIR 1964 Ker 90.**

——O. 21, R. 22—Art. 182 (5), Limitation Act—"Application made in accordance with law"—It is immaterial whether on application, notice is issued or served on judgment-debtor — Notice under O. 21, R. 22 is not condition precedent to filing of execution application. See Limitation Act (1908), Art. 182 (5). **AIR 1955 (NUC) Madh B 32.**

——O. 21, R. 22; O. 32, R. 7 — Adjustment not recorded — Applicability of O. 32, R. 7. **AIR 1958 Madh Pra 333.**

——O. 21, Rr. 22, 66, 90 — Sale in execution within two years of decree — Want of notice under O. 21, R. 66 — Remedy of judgment-debtor is not under O. 21, R. 90 — Suit for declaring the sale void is maintainable. **AIR 1964 Mad 424.**

——O. 21, R. 22 — Order of eviction — Execution of, against legal representatives. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (1949), S. 9. **(1956) 2 Mad L J 475.**

——O. 21, R. 22—Restitution granted without notice to opposite party—No prejudice caused—Absence of notice held immaterial. **AIR 1951 Mad 804.**

——O. 21, R. 22—Decree-holder deliberately treating judgment-debtor as minor — Application to have judgment-debtor declared major and to have notice issued to him resisted by decree-holder—Decree-holder getting guardian-ad-litem appointed — In absence of notice to judgment-debtor, execution sale held illegal. **AIR 1951 Mad 325.**

——O. 21, R. 22 — Failure to issue notice — Reasons for dispensing notice must be recorded—Reasons not recorded — Proceedings are void and without jurisdiction. **AIR 1954 Nag 78.**

——O. 21, R. 22 — No proper attachment — Subsequent sale — Invalidity of. See Berar Land Revenue Code (1928), S. 157 (2). **AIR 1951 Nag 155.**

——O. 21, R. 22 (3) (Patna Amendment)—Execution sale—Omission to issue or serve notice under sub-rule (1) — Not an illegality going to root of jurisdiction of executing court but is a mere irregularity—Sale is not nullity—Judgment-debtor can avoid it by showing that absence of notice has caused him prejudice and loss. **AIR 1961 Pat 508.**

——O. 21, Rr. 22, 16, S. 48 — Application for execution by transferee — Notices under O. 21, R. 16 on original decree-holder and judgment-debtor — No objection—Subsequent execution application—Order to issue notice to original decree-holder is wrong—Dismissal of application on account of non-compliance with order, cannot however, be deemed to be non-judicial — But form of order "struck out" is unsatisfactory. See Civil P. C. (1908), S. 48. **AIR 1955 NUC (Trav-Co) 146.**

——O. 21, R. 23, S. 151 — Order of remand—Appeal to stand dismissed if costs were not paid before a certain date — Order of remand held was under S. 151 and hence no appeal was competent — Appeal treated as revision. See Civil P. C. (5 of 1908), S. 151. **AIR 1953 Pepsu 100.**

——O. 21, R. 23; S. 11, Expl. IV — Execution proceedings—Constructive res judicata—Execution proceedings against A as legal representative of deceased J. D. after notice — Failure to raise objection that he is not legal representative debars him from raising such objection in subsequent execution case even though the first application was dismissed for default. See Civil P. C. (1908), S. 11. **AIR 1960 Raj 280.**

——O. 21, R. 24, O. 39, R. 1, S. 151 — Power to stay proceedings in Court of co-ordinate jurisdiction. See Civil Procedure Code (5 of 1908), S. 151. **AIR 1951 Pepsu 78.**

——O. 21, R. 24 (2)—Illegal warrant of attachment—Resistance. See Penal Code (1860), S. 97. **AIR 1951 Raj 105.**

——O. 21, R. 26, S. 107 — Stay of execution has power to stay after it entertains application for restoration of appeal dismissed for default. See Civil P. C. (1908), S. 107. **AIR 1955 NUC (Raj) 4666.**

——O. 21, R. 28 — Stay order by transferor Court — Transferee Court's power to raise attachment. **AIR 1951 Nag 270.**

——O. 21, R. 31, S. 47 — Decree for possession of immovable property — Damage to property — Claim for compensation — Suit is not necessary. See Civil P. C. (1908), S. 47. **AIR 1955 All 686.**

——O. 21, R. 31, O. 20, R. 10 — Travancore Civil P. C., O. 21, R. 31 — Decree for delivery of movable property or amount in alternative—Judgment-debtor's option to pay money. See Civil P. C. (1908), O. 21, R. 10. **AIR 1951 Trav-Co 176.**

——O. 21, R. 32, O. 39, R. 2(3) — Nature of proceedings under O. 39, R. 2 (3) — Disobedience of an order of temporary injunction by State — Liability to be proceeded in contempt — Constitution of India, Art. 300. See Civil P. C. (1908), O. 39, R. 2 (3). **AIR 1961 S C 221.**

——O. 21, R. 32 (1), O. 39, R. 2 (3) and (4) —Disobedience of interim injunction — Suit for damages —Maintainable. See Civil P. C. (1908), O. 39, R. 2 (3). **AIR 1958 All 326.**

——O. 21, R. 32, S. 47 — Decree for specific performance of contract of sale silent as to delivery of possession — Power of executing Court to grant delivery of possession. See Civil P. C. (1908), S. 47. AIR 1954 All 643.

——O. 21, R. 32, O. 2, R. 2 — Suit for specific performance of contract for sale of land. See Civil Procedure Code (5 of 1908), O. 2, R. 2. AIR 1952 Cal 362.

——O. 21, R. 32 — Contract of sale — Decree for specific performance — Title passes with execution and registration of sale-deed and does not flow from decree — Decision in AIR 1955 Cal 267 must be confined to question of possession only. See T. P. Act (1882), S. 54. (1965) 2 Mys L J 692=AIR 1956 Mys 299.

——O. 21, R. 32 — S. 22, Special Marriage Act — Husband obtaining ex parte decree for restitution of conjugal rights — Wife willing to live with decree-holder as wife and doing all that lay in her power to obey decree but husband obstructing performance —Wife can be said to have obeyed decree—Wife can maintain application for recording satisfaction of decree without waiting for decree-holder husband to apply for execution and it is District Judge alone who can record satisfaction of decree under S. 47 of Civil P. C. (1908)—O. 21, R. 32 is not a bar. See Special Marriage Act (1954), S. 22. 1965 Punj L R (Supp) 135=AIR 1966 Punj 506.

——O. 21, R. 32—Marriage—Restitution of conjugal rights — Wife's failure to make out case of habitual cruelty—Husband's claim for restitution of conjugal rights cannot be resisted. See Hindu Law—Marriage. A I R 1955 N U C Trav-Co 5096.

——O. 21, R. 33—Maintenance compromise decree—Decree made charge on one-third share of judgment-debtor in properties — If maintenance fall in arrears decree executable against any property—Maintenance falling in arrears — Execution against all properties can be taken out — It need not be confined to one-third share. See Civil P. C. (5 of 1908), O. 21, R. 17. A I R 1958 Pat 2.

——O. 21, R. 34 (5)—Scope—Sale deed in respect of immovable property executed by Court in pursuance of decree for specific performance of agreement to sell — Effect of — 'Transaction'. See Debt Laws—Kerala Agriculturists' Debt Relief Act (31 of 1958), S. 9 (3). I L R (1960) Ker 678.

——O. 21, R. 34 (5)—S. 77, Registration Act — Suit filed under S. 77 — O. 21, R. 34 (5) mentioned in plaint—Suit is maintainable in that form. See Registration Act (1908), S. 77. A I R 1953 Manipur 4.

——O. 21, Rr. 35, 36 — Art. 144, Limitation Act—Adverse possession—Delivery of formal possession—Effect. See Limitation Act (1908), Art. 144. A I R 1952 All 313.

——O. 21, R. 35—Art. 144, Limitation Act—Immovable property in possession of judgment-debtor—Delivery of symbolical possession to decree-holder in execution — Operates as a break in continuity of possession of judgment-debtor—Suit for actual possession within two years — Not barred under Art. 144. See Limitation Act (1908), Art. 144. A I R 1961 Assam 120.

——O. 21, R. 35—Applicability. See Civil P. C. (5 of 1908), O. 21, R. 32. A I R 1955 Cal 402.

——O. 21, Rr. 35 and 97 — Decree-holder taking out writ for possession—Obstruction—Fresh writ—Fresh obstruction—Time under Art. 167 begins to run from second obstruction—(Limitation Act (1908), Art. 167). A I R 1953 Cal 499.

——O. 21, R. 35, S. 151—Execution of decree against third party — Remedies of such person. See Civil P. C. (5 of 1908), S. 151. A I R 1951 Cal 394.

——O. 21, R. 35 (5), S. 47 (1) — Sub-rule does not apply to prohibitory injunctions — Decree granting prohibitory injunction in previous suit against defendants — Subsequent suit for possession against same defendants—Suit not hit by S. 47 (1). See Civil P. C. (5 of 1908), S. 47 (1). A I R 1960 Ker 127.

——O. 21, Rr. 35, 97 — Applicability — Obstruction must be actual and not anticipatory—Application for investigation should be made by decree-holder. See Civil P. C. (5 of 1908), O. 21, R. 97. A I R 1955 Kutch 17.

● ——O. 21, R. 35; O. 23, R. 4, S. 47—Compromise of execution proceedings—Enforceability—Joint Hindu family — Money decree against father and sons—House of judgment-debtors sold in execution to two different purchasers, each having purchased a moiety —Right of auction-purchasers to symbolical delivery of possession — Symbolical possession given — One purchaser subsequently acquiring share purchased in execution by other purchaser — Application for delivery of entire property — Compromise of execution governing liability under decree and relating to manner of its enforcement — Court whether can enforce agreement in execution. See Civil P. C. (5 of 1908), O. 23, R. 4. A I R 1964 Mad 53 (FB).

——O. 21, R. 35, S. 114, Illus. (d) — Possession—Presumption from title — When raised — Symbolic or momentary delivery of possession of cultivated land —Effect — Patta and payment of kist — Evidentiary value. See Evidence Act (1872), S. 114, Illus. (d). A I R 1957 Mad 463.

——O. 21, R. 35, S. 47—Dispute relating to delivery of possession — Only formal possession obtained by decree-holder—Remedy for obtaining actual possession. See Civil P. C. (5 of 1908), S. 47. A I R 1953 Nag 236.

——O. 21, R. 35 — Arts. 142 and 144, Limitation Act —Effect of symbolical possession. See Limitation Act (1908), Art. 142. A I R 1953 Pat 110.

——O. 21, Rr. 35, 63, 96 — Failure to file suit under R. 63 — Effect — Delivery of symbolic possession to decree-holder — Effect. See Civil P. C. (5 of 1908), O. 21, R. 63. A I R 1959 Punj 515.

——O. 21, R. 35—S. 145, Criminal P. C. — "Fact of actual possession". See Criminal P. C. (1898), S. 145. A I R 1953 Sau 135.

——O. 21, R. 37 — S. 7, Bihar and Orissa Public Demands Recovery Act — Execution of certificate by arrest of certificate-debtor—Notice under S. 7, necessity of. See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 7. A I R 1953 Pat 313.

——O. 21, R. 37—Art. 183, Limitation Act—Revivor —Order under O. 21, R. 37, Civil P. C. See Limitation Act (1908), Art. 183. A I R 1956 Raj 1.

——O. 21, R. 39, Ss. 47, 4 and Sch. 2, R. 54 (1)—Execution of certificate by arrest of certificate-debtor cannot be bad unless certificate holder has deposited subsistence allowance in Court—Provision is mandatory. See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 47. A I R 1953 Pat 313.

——O. 21, R. 40 — Compliance with. See Civil P. C. (5 of 1908), S. 51. A I R 1953 Ajmer 16 (1).

——O. 21, R. 40 and S. 51—Execution by arrest and detention of judgment-debtor — Decree for money—Proof which decree-holder should give stated. See Civil P. C. (5 of 1908), S. 51. A I R 1955 N U C (Assam) 4240.

——O. 21, Rr. 40, 37 and S. 51—Warrant issued under O. 21, R. 37 (1) or (2)—Section 51 or O. 21, R. 40 not applicable. See Civil P. C. (5 of 1908), S. 51. A I R 1961 Bom 23.

——O. 21, Rr. 40, 37, S. 51 — Scope of Rules 37 and 40 — Applicability of S. 51. See Civil P. C. (5 of 1908), S. 51 (c), Proviso. A I R 1959 Mysore 94.

——O. 21, Rr. 43, 46 and S. 51 (e) — Right to purchase shares — Attachment of right by prohibitory order—Validity. See Civil P. C. (5 of 1908), S. 51 (e). 69 Cal W N 815=A I R 1966 Cal 134.

——O. 21, R. 46—Third party disposing of property in breach of prohibitory order under O. 21, R. 46—Decree cannot be executed against him as a surety. See Civil P. C. (5 of 1908), S. 145. A I R 1961 Assam 121.

——O. 21, R. 46—Right to purchase shares—Attachment of right by prohibitory order — Validity. See Civil P. C. (5 of 1908), S. 51 (e). 69 Cal W N 815= A I R 1966 Cal 134.

——O. 21, R. 46 — Execution proceedings by A — Attachment of movable under O. 21, R. 43 instead of under R. 46 — Same property already attached by B under O 21, R. 46 in his execution case before another Court — Sale of property — Application by A for rateable distribution — Removal of attachment effected by A and dismissal of his execution case for default — Effect of. See Civil P. C. (5 of 1908), S. 73. AIR 1956 Cal 373.

——O. 21, R. 46 and Ss. 100-101 — Plea as to attachment of debts due from garnishee waived before Lower Appellate Court — Plea cannot be pressed before High Court in second appeal. See Civil P. C. (5 of 1908), Ss. 100-101. AIR 1955 N U C (Madh-Bha) 3064.

——O. 21, R. 46 — Property saleable in execution — Debt is chose-in-action and therefore, attachable and saleable property — Movable is attached by actual seizure whereas debt is attached by prohibitory order — Order under S. 52 can be made where money belonging to judgment-debtor is attached. See Provincial Insolvency Act (1920), S. 52. ILR (9165) 2 Punj 212 = AIR 1966 Punj 479.

——O. 21, R. 46 — Set off by garnishee of cross-debt — Attachment of rent due to judgment-debtor from his lessee — Court sale — Decree-holder auction purchaser's right to recover rent in pursuance of such attachment and sale is subject to garnishee's right to set off any cross debt due to him from judgment-debtor — If such rent is already adjusted towards cross-debts, decree-holder has no right to recover same. AIR 1952 Trav-Co 508.

——O. 21, R. 46 — Execution proceedings — Attachment of debt due to judgment-debtor without any notice to garnishee as contemplated by O. 21, R. 46 — No enquiry as contemplated by O. 21, R. 46 instituted in pursuance of such attachment and garnishee not having any opportunity to dispute validity of attachment — Garnishee is not precluded from disputing validity of attachment and sale in a subsequent suit against him for recovery of the debt. See Civil P. C. (5 of 1908), S. 11. AIR 1952 Trav-Co 508.

——O. 21, R. 49 — 'Assets of firm' — Meaning of — Rights of transferee or charge-holder of partner's interest. See Partnership Act (1932), S. 29 (2). AIR 1951 All 601.

——O. 21, Rr. 49, 50 and S. 73 — Partnership Act (1932), R. 49 — "Same judgment-debtor", interpretation of. See Civil P. C. (5 of 1908), S. 73. AIR 1956 Mad 192.

——O. 21, R. 50 (1) and S. 38 — Decree specifically against firm and its assets in hands of partners — Execution against partners personally. See Civil P. C. (5 of 1908), S. 38. AIR 1953 All 710.

——O. 21, R. 50 — Partnership Act (1932), S. 49 — "Same judgment-debtor", interpretation of. See Civil P. C. (5 of 1908), S. 73. AIR 1956 Mad 192.

——O. 21, R. 52 — Order under — Amount realisable as fine by Magistrate — Realisation against immovable property — Execution is to be by Civil Court — Civil Court has power to investigate different claims. See Payment of Wages Act (1936), S. 15 (5). AIR 1961 All 528.

——O. 21, R. 52 and O. 40, R. 1 — Attachment of property in possession of Receiver. See Civil P. C. (5 of 1908), O. 40, R. 1. AIR 1953 All 717.

—O. 21, R. 52 — Provident fund amount due to deceased subscriber — Rival claimants not producing succession certificate as directed — Amount transferred to lapsed deposit account — Creditor of subscriber applying for attachment of fund under O. 21, R. 52, Civil P. C. — Attachment without production of letters of administration by creditor is not legal. See Succession Act (1925), S. 214 (1) (b). AIR 1961 Mad 288.

——O. 21, R. 53 — Step-in-aid — Decree against C in favour of A, attached by B in execution of his decree against A — Attachment whether step in-aid of execution of decree by A against C, See Limitation Act (1908), Art. 182 (5). AIR 1952 All 478.

——O. 21, R 53 (1) and Ss. 2 (2), 144 — Order for restitution of costs — It is decree within S. 2 (2) and is attachable under O 21, R. 53 (1). See Civil P. C. (5 of 1908), S. 2 (2). AIR 1960 Andh-Pra 544.

——O. 21, R. 53 (4) — Money-decree — Decree for partition, mesne profits and costs — Sale of — Validity. AIR 1951 Punj 324.

——O. 21, R. 54 (2) (as amended in Andhra Pradesh) and R. 90 — Failure to affix proclamation in municipality is not material irregularity when there is sufficient publicity — Mere raising objection in argument does not take place of proof of irregularity. AIR 1965 Andh-Pra 334.

——O. 21, Rr. 54 (2), 66, 67 — Object of proclamation of sale under O. 21, R. 54 (2) — Object is to give judgment debtor and others opportunity to raise objections and to enable them to provide suitable purchasers — Mere publication in local newspaper is not sufficient. See Civil P. C. (5 of 1908), O. 21, R. 66. AIR 1965 Andh-Pra 215.

——O. 21, Rr. 54 (2), 66, 67, 90 and S. 47 — Application for setting aside sale — Mandatory provisions of publication of sale not complied with — Sale held void — Matter comes within purview of S. 47 and not under O. 21, R. 90. See Civil P. C. (5 of 1908), S. 47. AIR 1965 Andh-Pra 215.

——O. 21, Rr. 54, 52—Property in hands of receivers — Attachment — Validity. See Civil P. C. (5 of 1908), O. 21, R. 52. AIR 1951 Nag 52.

——O. 21, R. 54 — Decree obtained against father before partition — Attachment also before partition — Fresh suit unnecessary to enforce liability of sons. See Hindu Law — Partition. AIR 1956 Trav-Co 34.

——O. 21, Rr. 55 and 43 — Suit for arrears of rent of house — Suit decreed — Movable property left by defendant in house attached — Decree satisfied by deposit in Court — Order that possession of house besides movables be returned to defendant is without jurisdiction and wholly unenforceable. See Civil P. C. (5 of 1908), O. 21, R. 43. AIR 1953 All 490.

——O. 21, Rr. 57, 54, 55 & 43; O. 38, R. 11, O. 34, R. 11 and S. 64 — Attachment before judgment — Re-attachment of immovable property — Dismissal of application for attachment of movable properties — Effect. ILR (1965) 2 Mad 662.

● ——O. 21, R. 57 (1) (Mad) — Attachment ceasing for reasons mentioned in R. 57 (1) — Cessation of attachment must be recorded by executing Court. AIR 1963 Mad 217 (FB).

——O. 21, R. 57 — Jurisdiction of transferee Court, how long continues — Revival of attachment. See Civil P. C. (5 of 1908), S. 41. AIR 1951 Nag 270.

——O. 21, Rr. 58, 63—S. 53, T. P. Act (1882), is used only as defence—Suit under O. 21, R. 63, Civil P. C.

is defensive — Objection of transferee under O. 21, R. 58 dismissed — Failure to file suit under O. 21, R. 63—Effect of. See T. P. Act (1882), S. 53A. AIR 1956 Ajmer 22.

——O. 21, R. 58—Order under S. 15 (5), Payment of Wages Act (1936) — Amount realisable as fine by Magistrate — Realisation against immovable property —Execution is to be by civil Court — Civil Court has power to investigate different claims. See Payment of Wages Act (1936), S. 15 (5). AIR 1961 All 528.

——O. 21, R. 58 and O. 38, Rr. 5 and 8 — Objection by claimant, to property attached before judgment must be considered on merits — Subsequent decision of insolvency Court holding transfer of property in favour of claimant by defendant as act of insolvency —Objection cannot be thrown out on this ground, when claimant was not party to insolvency proceeding. See Civil P. C. (1908), O. 38, R. 5. AIR 1960 All 615.

——O. 21, R. 58 — Applicability — Same cause of action—Interpretation of. See Limitation Act (1908), S. 14 (1). AIR 1956 All 5.

——O. 21, Rr. 58, 66 and S. 47 — Charge in favour of legal representative of deceased judgment-debtor —Enquiry as to validity is not necessary for sale proclamation. See Civil P. C. (5 of 1908), S. 47. AIR 1953 All 574.

——O. 21, R. 58—Applicability. See Civil P. C. (5 of 1908), O. 21, R. 63. AIR 1953 All 452.

——O. 21, R. 58 and S. 47 — Money decree against insolvent and his sons — Property attached before judgment sought to be sold in execution by decree-holder — Application by receiver who was party to decree for delivery of property to him for administration — Question of title whether property is self-acquired or joint family property:— Power of executing Court to decide. See Provincial Insolvency Act (1920), S. 52. AIR 1965 Andh-Pra 451.

——O. 21, R. 58 — Mortgage suits. See T. P. Act (1882), S. 52. AIR 1958 Andh-Pra 722.

——O. 21, Rr. 58, 63 and S. 47 — Dismissal of suit — Execution — Objection — Separate suit — (Constitution of India, Art. 226). See Civil P. C. (5 of 1908), S. 47. AIR 1956 Bhopal 62.

——O. 21, R. 58 and Ss. 47, 115 — Revision by garnishee. See Civil P. C. (5 of 1908), S. 47. AIR 1954 Bhopal 30.

——O. 21, R. 58 — Pro interesse suo — Meaning of —Nearest Indian equivalent is procedure prescribed in O. 21, Rr. 58 to 61, Civil P. C. See Words and Phrases—"Pro interesse suo." AIR 1962 Cal 169.

——O. 21, R. 58 — (Compulsory deposit in Railway Provident Fund — Payment of amount in manner suggested by subscriber — Debt is discharged — Money deemed to be paid to subscriber — Immunity from attachment ceases — Union Government has no locus standi to object to its attachment. See Provident Funds Act (1925), S. 3. AIR 1962 Cal 169.

——O. 21, R. 58 — Objection by judgment-debtors as Shebaits — Appeal — Objection held really claim under O. 21, R. 58 — Appeal held not maintainable. See Civil P. C. (5 of 1908), S. 47. AIR 1955 NUC (Cal) 2330.

——O. 21, Rr. 58, 63 — Decree in favour of claimant —Effect on order regarding costs in claim proceedings— Order under R. 58 together with order of costs disappears. See Civil P. C. (5 of 1908), O. 21, R. 63. AIR 1955 NUC (Cal) 1085.

——O. 21, Rr. 58, 63—Security in claim proceedings for 'claim of plaintiff' — Costs cannot be recovered from security deposited. See Civil P. C. (5 of 1908), S. 145. AIR 1955 NUC (Cal) 1085.

——O. 21, Rr. 58, 63—Conclusiveness of order under O. 21, R. 58 or decree under O. 21, R. 63. AIR 1957 Madh-Bha 159.

——O. 21, R. 58 — Prayer for attachment under — Court ordering decree-holder to file list of property — List not filed and property not attached — Appeal by person whose property is sought to be attached held premature. AIR 1955 NUC (Madh-Bha) 3025 (DB).

——O. 21, R. 58 — Allowing of objection under — Attachment set aside—Order of recovery of poundage fee from decree-holder — Order is not valid—(Indore Rules for Recovery of Poundage Fees.) AIR 1955 NUC (Madh-Bha) 2115.

——O. 21, R. 58 — Suit decreed before Madras Act of 1955 — Suit under O. 21, R. 58 filed and decided after Act of 1955 — Suit under R. 63 — Court fee is payable under S. 41 (2) and not under Act of 1870. See Madras Court-fees and Suits Valuation Act (14 of 1955), S. 87 (2). (1965) 78 M L W 497.

——O. 21, R. 58 — "Plaintiff whose suit is dismissed and . . . is dismissed" — Explanation. See Civil P. C. (5 of 1908), S. 47. AIR 1953 Mad 916.

——O. 21, Rr. 58 (2), 63 and Ss. 94 (e), 151 — Suit under. O. 21, R. 63—Stay of sale. See Civil P. C. (5 of 1908), S. 94 (e). AIR 1951 Mad 321.

——O. 21, R. 58 — Application under O. 21, R. 58— Dismissal for default — Inherent power to restore — O. 21, R. 63 is no bar. See Civil P. C. (5 of 1908), S. 151. AIR 1955 Nag 297.

——O. 21, R. 58 — Non-objection does not bar suit. AIR 1953 Nag 234.

—O. 21, R. 58—Judgment-debtor not impleaded — Decision is not binding on him. AIR 1953 Nag 132.

——O. 21, Rr. 58 and 100 — Objection under O. 21, R. 58 failing — Claimant, when can object under R. 100. AIR 1951 Nag 183.

——O. 21, R. 58 — Attachment before judgment — Property attached, sold after dismissal of suit — Suit decreed in appeal and another attachment order passed—Sale is not affected by subsequent attachment order. See Civil P. C. (1908), O. 38, R. 9. (1965) 31 Cut L T 486.

——O. 21, R. 58 — Rent decree against wrong person —Claim under O. 21, R. 58—S. 170, Bihar Tenancy Act (1885) is a bar. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 170. AIR 1955 NUC (Pat) 677.

——O. 21, R. 58—Applicability. See Tenancy Laws— Bihar Tenancy Act (8 of 1885), S. 170. AIR 1953 Pat 156.

——O. 21, R. 58 — Question as to which of parties is legal representative of deceased judgment-debtor. See Civil P. C (5 of 1908), S. 47. AIR 1952 Pat 333.

——O. 21, R. 59 — Mortgage suits. See T. P. Act (1882), S. 52. AIR 1958 Andh-Pra 722.

——O. 21, R. 59 — Applicant getting interest in property attached by purchase, can apply. See Civil P. C. (5 of 1908), O. 21, R. 58. AIR 1955 Bom 397.

——O. 21, R. 60 — Limitation Act (1908), Arts. 11 and 120—Attachment before judgment — Claim petition — Suit decreed—Disposal of claim petition subsequently but before filing of execution — Petition dismissed as not pressed but without prejudice to rights of claimant — Suit to set aside order and for raising attachment — Suit is not under O. 21, R. 63— Limitation for suit is not under Art. 11 but under Art. 120. See Civil P. C. (1908), O. 38, R. 5. AIR 1962 Andh Pra 469.

——O. 21, Rr. 61, 58 to 60, 62, 63 and O. 1, Rr. 3, 10 —Claim suit—Parties—Judgment-debtor is necessary party — Claim suit without him is not maintainable. See Civil P. C. (1908), O. 21, R. 58. A I R 1963 Ker 236.

——O. 21, Rr. 62 and 58 to 61 and 63 and O. 38, Rr. 5, 6, 8, 9, 10, 11 — Limitation Act (1908), Arts. 11 and 120—Attachment before judgment — Claim petition—Suit decreed—Disposal of claim petition subsequently but before filing of execution — Petition dismissed as not pressed but without prejudice to rights of claimant — Suit to set aside order and for raising attachment—Suit is not under O. 21, R. 63 — Limitation for suit is not under Art. 11 but under Art. 120. See Civil P. C. (1908), O. 38, R. 5. **A I R 1962 Andh Pra 469.**

——O. 21, Rr. 62, 58 to 61 and 66 — Attachment — Investigation of claim—Claim of mortgage. See Civil P. C. (1908), O. 21, R. 58. **AIR 1952 Kutch 39.**

——O. 21, Rr. 62, 58 to 61 and 63 — Application under O. 21, R. 58, to release property from attachment on ground of sale prior to suit, allowed—Question of possession has to be decided — This can properly be done under R. 63. See Civil P. C. (1908), S. 115. **AIR 1964 Pat 504.**

——O. 21, R. 63 — Section 53-A, T. P. Act (1882), is used only as defence — Suit under O. 21, R. 63, Civil P. C., is defensive — Objection to transferee under O. 21, R. 58 dismissed — Failure to file suit under O. 21, R. 63 — Effect of. See T. P. Act (1882), S. 53A. **AIR 1956 Ajmer 22.**

——O. 21, R. 63 — Limitation Act (1908), S. 14 (1) — Applicability—"Same cause of action" — Interpretation of. See Limitation Act (1908), S. 14 (1). **A I R 1956 All 5.**

——O. 21, Rr. 63, 58 and S. 115 — Dismissal of objection petition—Revision against— Other remedy under O. 21, R. 63 open — High Court may yet entertain revision if conditions of S. 115 are satisfied. See Civil P. C. (1908), S. 115. **AIR 1955 Assam 234.**

——O. 21, R. 63 — Dismissal of suit — Execution — Objection—Separate suit. See Civil P. C. (1908), S. 47. **AIR 1956 Bhopal 62.**

——O. 21, R. 63 — Suits Valuation Act (1887), S. 8 — Value of suit brought under Civil P. C. (1908), O. 21, R. 63 See Suits Valuation Act (1887), S. 8. **AIR 1954 Cal 440.**

——O. 21, Rr. 63, 103—Suit under — Nature of, indicated — Limitation Act (1908), S. 28, See Civil P. C. (1908), O. 21, R. 103. **AIR 1951 Cal 481.**

——O. 21, R. 63 — S. 167, Bengal Municipal Act 1932 — Charge under, when enforceable — Simple money decree for arrears of rates — Subsequent suit to declare it as charge decree—Maintainability. See Municipalities — Bengal Municipal Act (15 of 1932), S. 167. **AIR 1951 Cal 398.**

——O. 21, R. 63 — Suits Valuation Act (1887), S. 8 — Suit under O. 21, R. 63, Civil P. C. — Judgment-debtor and vendor of plaintiff made parties but no allegation made against them—Value of decree being less than value of property will determine jurisdiction. See Suits Valuation Act (1887), S. 8. **A I R 1960 Madh Pra 316.**

——O. 21, R. 63 — Suit decreed before Madras Act of 1955—Suit under O. 21, R. 58 filed and decided after Act of 1955—Suit under R. 63 — Court-fee is payable under S. 41 (2) and not under Act of 1870. See Madras Court-fees and Suits Valuation Act (14 of 1955), S. 87 (2). **(1965) 78 Mad L W 497.**

——O. 21, Rr. 63 and 58 — Claim by third person — Claim disallowed — His remedy is by way of a suit under O. 21, R. 63 and not an appeal. See Civil P. C. (1908), O. 21, R. 58. **AIR 1955 Mad 601.**

——O. 21, Rr. 63, 103 and S. 11—Matter directly and substantially in issue "constructively". See Civil P. C. (1908), S. 11. **AIR 1954 Mad 203.**

——O. 21, R. 63 and O. 1, R. 8 — Suit to set aside fraudulent transfers. See Civil P. C. (1908), O. 1, R. 8. **AIR 1953 Mad 619.**

——O. 21, Rr. 63, 58 and S. 151 — Application under O. 21, R. 58—Dismissal for default — Inherent power to restore — O. 21, R. 63 is no bar. See Civil P. C. (1908), S. 151. **AIR 1955 Nag 297.**

——O. 21, Rr. 63, 58—Suit filed under R. 63 pending — Order under R. 58 is not conclusive and does not operate as res judicata between parties. See Civil P. C. (1908), O. 21, R. 58. **AIR 1951 Nag 183.**

——O. 21, R. 63 — Suit by defeated decree-holder in his individual rights for declaration that transaction in favour of claimant was sham and for setting aside order under O. 21, R. 58 — Suit is not hit by S. 53, T. P. Act, and is maintainable even if decree-holder does not take steps under O. 1, R. 8, Civil P. C. —(T. P. Act (1882), S. 53). **AIR 1956 Orissa 58.**

——O. 21, R. 63 — T. P. Act (1882), S. 53-A — Transferee suing under O. 21, R. 63, Civil P. C. — Transferee if can rely on section. See T. P. Act (1882), S. 53A. **AIR 1952 Orissa 143.**

——O. 21, R. 63—Matters to be taken into account in determining nature of transaction—Burden of proof—Motive is important — Decision must rest on legal evidence and not on suspicion — Circumstances may be considered — Possession of title deed, possession of property and source of purchase money and adequacy of price can be considered — Burden of proof is on him who challenges apparent tenor of document — In suit under O. 21, R. 66 or under S. 25, Public Demands Recovery Act, it is on plaintiff who claims right in property — Transaction held genuine transaction of gift. **AIR 1955 Pat 404.**

——O. 21, Rr. 63, 58—Applicability to order of Rent Controller. See Civil P. C. (1908), O. 21, R. 58. **A I R 1953 Pat 34.**

——O. 21, R. 63 — Representative suit — Suit by one creditor under O. 21, R. 63, Civil P. C. — Permission under O. 1, R. 8 not obtained — Suit cannot be considered to be representative within the scope of S. 53, T. P. Act. See T. P. Act (1882), S. 53. **AIR 1960 Punj 417.**

●——O. 21, Rr. 63, 58 — Claims to debt attached in execution. See Civil P. C. (1908), O. 21, R. 58. **A I R 1954 Trav-Co 243 (FB).**

——O. 21, Rr. 63, 101 — Court giving delivery to decree-holder or auction purchaser in execution — Not only judgment-debtor but others in possession are dispossessed—Their remedy is to ask for redelivery under O. 21 or to file suit for possession. See Civil P. C. (1908), O. 21, R. 101. **AIR 1953 Trav-Co 340.**

●——O. 21, R. 64—Bengal Tenancy Act (1885), Ss. 162-A, last proviso, 65, 143, 158AA and 158-B—Effect of—Rent decree—Execution—Sale of portion of plot in contravention of proviso to S. 162-A—Sale is not void but operates as money sale and not rent sale—AIR 1947 Pat 303 (FB) and ILR 26 Pat 181 : AIR 1947 Pat 334 (FB), Overruled — See Tenancy Laws—Bihar Tenancy Act (8 of 1885), S. 162-A, last proviso. **AIR 1961 Pat 279 (FB).**

——O. 21, Rr. 65, 58 and S. 47—Proceedings under —Area within boundaries as mentioned in sale certificate—Determination—Rights of parties under Ss. 95, 97 of Evidence Act—See Civil P. C. (1908), S. 47. **(1965) 2 Andh W R 366 : AIR 1966 Andh Pra 260.**

●——O. 21, R. 65, 64, 66, 67, 90 and S. 47—Non-service of notice under O. 21, R. 66 (2)—If irregularity in publishing and conducting sale. AIR 1947 Mad 213, Dissented from, AIR 1920 Mad 481 & AIR 1924 Mad 431 **(FB)** and AIR 1925 Mad 1142 and AIR 1930 Mad 489, not Foll—See Civil P. C. (1908), O. 21, R. 64. **AIR 1957 Andh Pra 185 (FB).**

——O. 21, R. 66 and S. 47—Judgment-debtor's application under S. 47 objecting to mode of execution—Order under O. 21, R. 66—Nature of, considered—

Order treated as one under S. 47—See Civil P. C. (1908), S. 47. AIR 1955 (N U C) All 1987.

——O. 21, Rr. 66 and 90—Omission of date and place of sale in publication of proclamation of sale—Mere irregularity—Defect can be enquired into under R. 90. AIR 1961 Andh-Pra 500.

——O. 21. R. 66; Ss. 11, 60; O. 21, Rr. 66, 87—Principle of S. 11 applies to execution proceedings—But party sought to be affected should have notice of question to be raised in the proceedings—Judgment-debtor having notice under O. 21, R. 66—He is not precluded from raising objection under S. 60 (1), Proviso (c) by principle of constructive res judicata till actual sale takes place. See Civil P. C. (1908), S. 11. AIR 1960 Andh-Pra 631.

——O. 21, Rr. 66 and 90—Proceedings to set aside execution sales—See Limitation Act (1908), S. 18. AIR 1954 Cal 604.

——O. 21, Rr. 66 and 90—Specification of property—(Tenancy Laws—Bengal Tenancy Act (8 of 1885), S. 162). AIR 1953 Cal 669.

——O. 21, R. 66—Parties—Absence of vesting order on annulment—Property reverts to debtor—Execution against insolvent judgment-debtor—Official Receiver is not a party. See Provincial Insolvency Act (1920), S. 37. AIR 1955 (N U C) Mad 2435.

——O. 21, Rr. 66, 90—Scope—Time and place of sale has to be notified in sale proclamation not only to notify defaulter about the same but also to notify general public so as to attract as many bidders as possible and thereby have competitive bids—See Mysore Land Revenue Code (1888), S. 184. (1965) 1 Mys L J 153 (DB).

——O. 21, Rr. 66, 13—Execution creditor not specifying judgment-debtor's interest in property—Encumbrance not specified—No 'lis pendens'—See T. P. Act (1882), S. 52. AIR 1953 Pat 58.

——O. 21, R. 66—Execution proceedings—Constructive res judicata—Limitation Act (1908), Art. 182 (5)—Final order for purposes of limitation—Order passed in revision, held to be final order and proceedings were not barred by limitation—See Civil P. C. (1908), S. 11. AIR 1965 Raj 155.

——O. 21, Rr. 67 (2) and 90—Application to set aside sale—Limitation—Complete absence of publication of proclamation of sale—Sale is void—Application for setting aside sale is governed by Art. 181 of Limitation Act—Publication of proclamation of sale in compliance with executing Court's direction under O. 21, R. 67 (2)—Application to set aside under O. 21, R. 90 will be governed not by Art. 181 but by Art. 166 of the Limitation Act. AIR 1961 Andh-Pra 500.

——O. 21, R. 68; O. 21, Rr. 90, 91-A (Bombay. S. 68, Sch. III, Para 11)—Execution transferred to Collector—Application to set aside sale under R. 90 lies in executing Court and not to Collector—Bombay rules under S. 68—Bombay Civil Manual (1950 Edn.), Vol. I, Chap. II, Rr. 15, 16. See Civil P. C. (1908), O. 21, R. 90. AIR 1963 Mys 179.

——O. 21, Rr. 69, 68—Non-compliance—Effect—See Civil P. C. (5 of 1908), O. 21, R. 68. AIR 1952 Pat 244.

——O. 21, Rr. 69 (2), 83—Sale adjourned on condition that no fresh proclamation will be issued—Condition accepted by judgment-debtor—Sale cannot be challenged on ground of absence of fresh proclamation—See Civil P. C. (1908), O. 21, R. 83. AIR 1964 Raj 84.

——O. 21, Rr. 71, 92 — Applicability and scope—"Resale" meaning of—(Words and Pharases—"Resale") AIR 1956 Pat 102.

——O. 21, Rr. 72, 84 (1) (2)—Rule 84 (1) is mandatory even in case of decree-holder-auction purchaser obtaining leave to set off—However it can be dispensed with by Court under R. 84 (2)—See Civil P. C. (1908), O. 21, R. 84 (1) (2). (1964) 2 Andh W R 430: AIR 1966 Andh-Pra 201.

——O. 21, R. 72—Confirmation of execution sale—Decree-holder purchaser setting off purchase money—Decretal debt subsequently reduced below purchase money—Decree-holder not depositing difference—Order confirming sale can be set aside under S. 151—See Civil P. C. (1908), O. 21, R. 92. AIR 1960 Mad 499.

——O. 21, R. 72—Right of the decree-holder to sale proceeds—See Provincial Insolvency Act (1920), S. 51. AIR 1959 Mad 431.

——O. 21, Rr. 72 and 73, O. 40, R. 1 and S. 47—Purchase of property by decree-holder—Receiver without sanction of Court—Purchase is not nullity but voidable at instance of judgment-debtors in execution proceedings and not by suit—(Trusts Act (1882), S. 62). AIR 1953 Mad 822.

——O. 21. Rr. 72 (2) and S. 73—Setting off decretal amount and rateable distribution—See Civil P. C. (5 of 1908), S. 73. AIR 1953 Trav-Co. 213.

——O. 21, Rr. 73, 72—O. 40, R. 1 and S. 47—Purchase of property by decree-holder—Receiver without sanction of Court—Purchase is not nullity but voidable at instance of judgment-debtors in execution proceedings and not by suit. See Civil P. C. (5 of 1908), O. 21, R. 72. AIR 1953 Mad 822.

——O. 21, R. 73—Madras Estates Land Act (1908), S. 107—Nature of sale—See Tenancy Laws—Madras Estates Land Act (1 of 1908), S. 107. AIR 1953 Mad 490.

——O. 21, Rr. 77 (2), 80—Sale of pronote in execution of decree—Endorsement under R. 80 or execution of sale-deed not necessary—See Civil P. C. (1908), O. 21, R. 80. AIR 1953 Him-Pra 11.

——O. 21, R. 82, O. 38, R. 13 and S. 7 (a) (iii)—Small Cause Court decree — Execution — Attachment of immovable property — Jurisdiction. See Civil P. C. (1908), S. 7 (a) (iii). A I R 1951 Mad 491.

——O. 21 Rr. 84 and 90 and S. 47—Failure to deposit balance of purchase money — Validity of sale. See Civil P. C. (1908), S. 47. AIR 1951 Cal 319.

——O. 21, R. 84 — Art. 166, Limitation Act (1908)—Starting point — Sale when complete. See Limitation Act (1908), Art. 166. AIR 1956 Madh B 30.

——O. 21, Rr. 84, 85 and 86 and S. 148—Scope of — Court has no power to extend time for payment—S. 148 has no application. See Civil P. C. (1908), O. 21, R. 86. AIR 1961 Mad 407.

——O. 21, R. 85 and S. 73 — When assets can be said to have been received by Court. See Civil P. C. (1908), S. 73. AIR 1953 Trav-Co 213.

——O. 21, Rr. 87, 66 and S. 11 — Principle of S. 11 applies to execution proceedings — But party sought to be affected should have notice of question to be raised in the proceedings — Judgment-debtor having notice under O. 21, R. 66—He is not precluded from raising objection under S. 60 (1) Proviso (c) by principle of constructive res judicata till actual sale takes place. See Civil P. C. (1908), S. 11. A I R 1960 Andh Pra 631.

——O. 21, Rr. 89, 90 and 91, Sch. 3, Para 1 and Ss. 68, 70 and 151—Power of Civil Court to set aside sale held by Collector — Sale not in accordance with directions — Court has inherent jurisdiction to set it aside though case does not fall under Rr. 89, 90 or 91 of O. 21 — Jurisdiction of Collector must be strictly construed — He has no jurisdiction to sell property other than that ordered to be sold. See Civil P. C. (1908), S. 68. AIR 1955 Bom 337.

——O. 21, Rr. 89 and 90—Previous application under R. 89 — Failure to take grounds of attack under

R. 90 –Subsequent application under R. 90 if barred —Civil P. C. (1908), S. 11. **AIR 1954 Cal 202.**

——**O. 21, Rr. 89 and 90 and S. 115** — Estoppel by mistake—Decree-holder putting up his own property, by mistake, to sale in execution. See Evidence Act (1872), S. 115. **AIR 1953 Cal 125.**

— **O. 21, Rr. 89, 90, 91, 92 and 72 and S. 151**—Confirmation of execution sale—Decree-holder purchaser setting off purchase money — Decretal debt subsequently reduced below purchase money — Decree-holder not depositing difference — Order confirming sale can be set aside under S. 151. See Civil P. C. (1908), O. 21, R. 92. **AIR 1960 Mad 499.**

——**O. 21, R. 89 (Mad)** — Persons having interest in property sold—Judgment-debtor executing registered usufructuary mortgage of other property after sale in execution—Mortgage specifically directing mortgagee to deposit certain amount in executing Court and to take steps to get attachment raised — Mortgagee held entitled to apply under O. 21, R. 89 as person having interest and also as agent of judgment-debtor—Stamp Act (1899), S. 2 (21). **AIR 1951 Mad 790.**

— **O. 21, R. 89** — Strict compliance of — Costs to applicant. **AIR 1951 Mad 790.**

——**O. 21, R. 89** — Bihar Tenancy Act (1885), S. 174 — Essential requisites — Application not containing prayer — Court held was within jurisdiction to set aside sale. See Tenancy Laws — Bihar Tenancy Act (8 of 1885), S. 174. **AIR 1952 Pat 99.**

— **O. 21, R. 89**—Travancore Civil P. C., O. 21, R. 86 — Mistake in calculating the amount to be deposited —Failure to make full deposit in time—Effect. **A I R 1952 Trav-Co 321.**

——O. 21, R. 89—Conditional order for setting aside sale—Non-performance of conditions due to difficulty or mistake arising in terms of judgment — Extension of time for performance. See Civil P. C. (1908), S. 151. **AIR 1951 Trav-Co 150.**

● ——**O. 21, R. 90**—Omission to send certificate. See Civil P. C. (1908), O. 21, R. 6. **AIR 1953 S C 65.**

——**O. 21, R. 90 and S. 47** — Objection to sale disallowed in lower Court — Second appeal if lies. See Civil P. C. (1908), S. 47. **AIR 1952 All 361.**

——**O. 21, R. 90** — Scope—Rule is intended to cover only sales of immovable property and sale of movables fall outside its purview. **(1962) 1 Andh L T 509 (DB).**

— **O. 21, R. 90**—Suit for declaration that order for sale to be made absolute and for delivery of possession, are unsustainable. **AIR 1960 Andh-Pra 397.**

——**O. 21, R. 90** — Powers of High Court — Where lower Court properly considers relative evidence and finds that there was no fraud on the part of execution-creditor, High Court cannot interfere—But held on facts that question of fraud was not properly disposed of involving as it did failure to exercise jurisdiction vested by law, and therefore High Court could interfere. See Civil P. C. (1908), S. 115. **ILR (1962) 2 Cal 210.**

——**O. 21, R. 90**—Proceedings to set aside execution sales — Mere understatement of price in sale proclamation does not amount to fraud. See Limitation Act (1908), S. 18. **AIR 1955 N U C (Cal) 2886.**

——**O. 21, Rr. 90 and 66** — Specification of property. See Civil P. C. (1908), O. 21, R. 66. **A I R 1953 Cal 669.**

——**O. 21, R. 90** — Travancore Civil Courts Act (1084ME), S. 14 (d) — Application for attachment of immoveable property—No affidavit or verified petition as to non-availability of personal property—Sale can be set aside. See Travancore Civil Courts Act (2 of 1084ME), S. 14 (d). **AIR 1957 Ker 74.**

— **O. 21, R. 90** — Application under O. 21, R. 90, Civil P. C. — No fraud alleged against auction-purchaser — S. 18 if can be invoked. See Limitation Act (1908), S. 18. **AIR 1956 Mad 198.**

——**O. 21, R. 90**—Nature of proceeding—Dispute, if can be referred to arbitration—(Quaere)—(Arbitration Act (1940), S. 21). **AIR 1955 N U C (Mad) 3257.**

——**O. 21, Rr. 90, 69**—"May in its discretion adjourn the sale" — Sale within Court precincts — Presiding officer absent — Sale adjourned without his leave to next day—Sale held not nullity but at most an irregularity. See Civil P. C. (1908), O. 21, R. 69. **AIR 1955 N U C (Mad) 2122.**

——**O. 21, R. 90 and S. 47** — Application to set aside sale — Tests to see whether application falls under S. 47 or O. 21, R. 90 — Grounds relating to matter in publishing and conducting sale — Application comes under O. 21, R. 90 and is governed by Art. 166, Limitation Act. See Civil P. C. (1908), S. 47. **A I R 1952 Mad 377.**

——**O. 21, R. 90 and S. 100**— Concurrent findings of fact — Findings on question of substantial injury caused by reason of irregularity in execution sale — No interference in second appeal. on 'a priori' notion of suspicion. See Civil P. C. (1908), S. 100. **AIR 1952 Mad 377.**

——**O. 21, R. 90**—Scope—Time and place of sale has to be notified in sale proclamation not only to notify defaulter about the same but also to notify general public so as to attract as many bidders as possible and thereby have competitive bids. See Mysore Land Revenue Code (1888), S. 184. **(1965) 1 Mys L J 153 (DB).**

— **O. 21, R. 90**—Setting aside sale—Failure to mention place and time of sale in sale proclamation is material irregularity in publishing and conducting sale. See Mysore Land Revenue Code (1888), S. 184. **(1965) 1 Mys L J 153 (DB).**

——**O. 21, R. 90** — Limitation Act (1908), S. 18 and Art. 166 — Application under, to set aside execution sale—Section 18, Limitation Act, can be availed of to extend period of limitation where fraud in question is practised either by decree-holder or by stranger auction purchaser. See Limitation Act (1908), S. 18. **AIR 1960 Mys 297.**

——**O. 21, R. 90, Proviso O. 43, R. 1 (j) and S. 115** — Appeal from order refusing to set aside sale — Decision with material irregularity — Revision. See Civil P. C. (1908), S. 115. **AIR 1957 Nag 97.**

——**O. 21, R. 90 and S. 47**—Execution sale—Application to set aside, on ground that it offended provisions of M. P. Act 1 of 1951—Order on—Appeal. See Civil P. C. (1908), S. 47. **AIR 1957 Nag 97.**

——**O. 21, R. 90 and S. 115** —Execution sale—Application to set aside, on ground of contravention of S. 43 of M. P. Act 1 of 1951—Debt—Meaning—Scope of S. 43—Order held without jurisdiction — Revision lies. See Civil P. C. (1908), S. 115. **A I R 1957 Nag 97.**

——**O. 21, Rr. 90, 22** — Berar Land Revenue Code (1928), S. 157 (2) — No proper attachment — Subsequent sale — Invalidity of. See Berar Land Revenue Code (1928), S. 157 (2). **AIR 1951 Nag 155.**

——**O. 21, R. 90** — Limitation Act (1908), S. 18—Proceedings to set aside execution sale — Details to be furnished — Fraud must be proved against auction-purchaser. See Limitation Act (1908), S. 18. **A I R 1960 Orissa 77.**

——**O. 21, R. 90**—Fraud. See Bihar and Orissa Public Demands Recovery Act (1914), S. 29. **AIR 1956 Pat 161.**

— **O. 21, R. 90** — Evidence Act (1872), Ss. 101 to 103—Non-service or suppression of notice. See Evidence Act (1872), Ss. 101 to 103. **AIR 1956 Pat 161.**

—O. 21, R. 90—Evidence Act (1872), Ss. 101 to 103—Non-service—Effect—Fraud—Proof. See Evidence Act (1872), Ss. 101 to 103. AIR 1956 Pat 161.

—O. 21, Rr. 90, 85 and 92 (3) — Failure to deposit amount within time under R. 85. See Civil P. C. (1908), O. 21, R. 85. AIR 1953 Pepsu 51.

—O. 21, R. 90— Limitation Act (1908), Arts. 12 (a) 95—Applicability — Decree against Hindu father——Sale of joint family property in execution—Suit by sons to set aside sale — Limitation. See Limitation Act (1908), Art. 12 (a). AIR 1956 Punj 139.

—O. 21, Rr. 90, 92 (3) and S. 47—Suit for setting aside auction sale on ground of fraud in publishing sale—Limitation Act (1908), Art. 166. See Civil P. C. (1908), S. 47 (2). AIR 1953 Punj 118.

—O. 21, R. 90—Execution proceedings—Constructive res judicata—Limitation Act (1908), Art. 182 (5)—Final order for purpose of limitation—Order passed in revision held to be final order and proceedings were not barred by limitation. See Civil P. C. (1908), S. 11. AIR 1965 Raj 155.

—O. 21, R. 90 — Travancore Debt Relief Act (1116 ME), S. 19 — Court sale — Setting aside of, being vitiated by material irregularities. See Debt Laws—Travancore Debt Relief Act (2 of 1116 M. E.), S. 19. AIR 1952 Trav Co 393.

—O. 21, Rr. 90 and 6 and S. 144 — Certificate of non-satisfaction—Defect in — Effect — If ground for setting aside execution sale—Certificate subsequently rectified—Case if attracts S. 144. See Civil Procedure Code (5 of 1908), O. 21, R. 6. AIR 1952 Trav Co 72.

—O. 21, Rr. 91, 100, 103 — Sale confirmed and execution dismissed as fully satisfied — Proceedings under R. 100 by person in possession successful—Fresh execution, without getting sale set aside, is barred. AIR 1953 Pat 9.

—O. 21, R. 92 — Amendment of decree. See Civil P. C. (1908), S. 152. AIR 1953 All 485.

—O. 21, R. 92—Suit for declaration that orders for sale to be made absolute and for delivery of possession are unsustainable. See Civil P. C. (1908), O. 21, R. 90. AIR 1960 Andh Pra 397.

● — O. 21, R. 92 — Limitation Act (1908), S. 18—Application for setting aside auction sale — Auction purchaser is not necessary party — Extension of time under S. 18 — Proof of fraud on part of auction purchaser not necessary. A I R 1950 Cal 520 and A I R 1936 Cal 706 and 46 Cal W N 403 and AIR 1954 Cal 604 and ILR 36 Cal 654, view of Lodge J. in 82 Cal L J 9 : AIR 1948 Cal 63, Overruled. See Limitation Act (1908), S. 18. AIR 1961 Cal 81 (SB).

—O. 21, R. 92 — Limitation Act (1908), Art. 138—Adverse possession against auction-purchaser—When runs stated — Effect of S. 28, Limitation Act, stated. See Limitation Act (1908), Art. 138. A I R 1951 Cal 481.

—O. 21, R. 92—Limitation Act (1908), Arts. 96, 62—Court sale—Judgment-debtor having no right, title or interest in property sold — Suit by auction-purchaser for refund of money paid to decree-holder—Maintainability — Limitation — Time when begins to run. See Limitation Act (1908), S. 96. A I R 1964 Mad 9.

—O. 21, Rr. 92, 89, 90, 91 and 72 and S. 151—Confiramation of execution sale — Decree-holder purchaser setting off purchase money — Decretal debt subsequently reduced below purchase money — Decree-holder not depositing difference — Order confirming sale can be set aside under S. 151. A I R 1960 Mad 499.

—O. 21, R. 92 — Application under O. 21, R. 90, Civil P. C. — No fraud alleged against auction purchaser—S. 18, Limitation Act (1908), if can be involved—See Limitation Act (1908), S. 18. AIR 1956 Mad 198.

—O. 21, Rr. 92, 90—Scope—Maintainability of suit questioning validity of sale — See Civil P. C. (1908), O. 21, R. 90. AIR 1953 Mad 683.

—O. 21, Rr. 92, 90—Restoration of petition under R. 90 dismissed for default — See Civil Procedure Code (5 of 1908), O. 21, R. 90. AIR 1953 Mad 587.

—O. 21, Rr. 92, 90 — Setting aside sale without notice to transferee before the commencement of sale — Transferee's title is not affected—See Civil P. C. (1908), O. 21, R. 90. AIR 1958 Pat 312.

—O. 21, Rr. 92, 71—Applicability and scope—"Resale" meaning of—See Civil P. C. (1908), O. 21, R. 71. AIR 1956 Pat 102.

—O. 21, R. 92 (3)—Failure to deposit amount within time under R. 85 — See Civil P. C. (1908), O. 21, R. 85. AIR 1953 Pepsu 51.

—O. 21, R. 92 — Applicability — Decree against Hindu father—Sale of joint family property in execution—Suit by sons to set aside sale—Limitation—See Limitation Act (1908), Art. 12 (9). A I R 1956 Punj 139.

—O. 21, R. 92 (3) — Suit for setting aside auction sale on ground of fraud in publishing sale—See Civil P. C. (1908), S. 47 (2). AIR 1953 Punj 118.

● —O. 21, R. 92 and S. 47 — Sale confirmed—Suit or application by judgment-debtor to avoid sale is not maintainable, except on ground of fraud—See Civil P. C. (1908), S. 47. AIR 1953 Raj 51 (FB).

—O. 21, R. 92—Setting aside sale held in execution of null and void decree — No necessity to avoid sale within one year — Limitation Act (1908), Art. 12. AIR 1955 NUC (Trav-Co) 5088.

—O. 21, Rr. 92, 89 and S. 151—Conditional order for setting aside sale — Non-performance of conditions due to difficulty or mistake arising in terms of judgment — Extension of time for performance—See Civil P. C. (1908), S. 151. AIR 1951 Trav Co 150.

—O. 21, R. 93 and Ss. 144, 151, 47 — Application for mesne profits by way of restitution against auction purchaser — See Civil Procedure Code (5 of 1908), S. 144. AIR 1953 Mad 930.

—O. 21, R. 93 and S. 144 — Return of redemption money to auction-purchaser — When can be a condition precedent—See Civil P. C. (1908), S. 144. A I R 1953 Punj 133.

—O. 21, R. 94 — Sale of fruit-bearing trees in execution — Interest held passed to purchaser. A I R 1952 All 310.

● —O. 21, R. 94 — Hindu Law — Joint family — Partition — Right of a purchaser in court sale in execution of decree against one of the members—See Hindu Law. AIR 1956 Andhra 188 (FB).

—O. 21, R. 94—Title—Proof—Sale certificate cannot prove title—See Evidence Act (1872), S. 3. AIR 1961 Guj 115.

—O. 21, Rr. 94, 95—Application for possession not accompanied by sale certificate — See Limitation Act (1908), Art. 180. AIR 1953 Nag 215.

—O. 21, R. 94 — Rent decree — Execution sale — Holding when passes — All recorded tenants not impleaded—Effect — One tenant put forward and sued as representing all — Decree — Death of defendant—Legal representative impleaded in individual capacity and not as representating all tenants of holding — Execution sale—What passes—See Civil P. C. (1908), S. 50. AIR 1952 Pat 53 (DB).

—O. 21, R. 94—"Rent decree" — Holding transferable by custom — Decree by mortgagee of holding—Execution sale and purchase of holding — Effect—Mortgagee if becomes real tenant without notice to landlord — Decree for rent by landlord without im-

pleading mortgagee-purchaser — Execution — What passes — Holding or only right, title and interest of judgment-debtor — See Tenancy Laws — Bihar Tenancy Act, Sch. III, Art. 3. ILR 29 Pat 1031=A I R 1951 Pat 6 (8) (Pt B) (Pr 11) (DB).

—O. 21, Rr. 94, 95 and S. 151—Misdescription of property in sale certificate — Amendment of, under S. 151—Dismissal of application for possession under O. 21, R. 95 on ground of misdescription—No bar to fresh application after correction — See Civil P. C. (1908), S. 151. AIR 1961 Raj 191.

——O. 21, R. 94 — Suit on mortgage against co-owners without impleading some — Property purchased by mortgagee in execution — Suit by other co-owners for recovery of property — Proper course indicated. AIR 1955 NUC (Trav-Co) 2565.

—O. 21, R. 95—Evacuee Interest (Separation) Rules (1951), R. 11-E—Property sold under S. 10 (a) (iii)—Trespasser in possession — Competent officer has no power to evict him — Civil Writ No. 1507 of 1956 (All), Reversed — See Evacuee Interest (Separation) Act (1951), S. 5. AIR 1960 All 626.

——O. 21, R. 95— Second application — See Limitation Act (1908), Art. 180. AIR 1957 Andh-Pra 73.

——O. 21, Rr. 95, 96 — Provincial Insolvency Act (1920), Ss. 4 and 5—Insolvency Court can invoke, in appropriate cases, provisions of O. 21, Rr. 95 to 102 —See Provincial Insolvency Act (1920), S. 4. A I R 1965 Mad 331.

——O. 21, R. 96 — Suit for declaration that orders for sale to be made absolute and for delivery of possession, are unsustainable — See Civil P. C. (1908), O. 21, R. 90. AIR 1960 Andh-Pra 397.

——O. 21, Rr. 96, 95 and S. 47 — Purchase of undivided share by decree-holder in execution — Section 47 does not bar his suit for partition and possession of his share — Order 21, R. 95 will not apply — Rule 96 also will not apply, when property is not in occupancy of tenant. See Civil P. C. (1908), S. 47. AIR 1955 Andhra 203.

——S. 21, R. 96 — Possession — Presumption from title — When raised — Symbolic or momentary delivery of possession of cultivated land—Effect — Patta and payment of kist—Evidentiary value. See Evidence Act (1872), S. 114, Illus. (d). AIR 1957 Mad 403.

——O. 21, Rr. 96, 95 — Delivery of property with crops — Costs of crops. See Civil P. C. (1908), O. 21, R. 95. AIR 1951 Trav-Co 188.

——O. 21, Rr. 97, 108 and S. 115—Remedy by suit under O. 21, R 103 open — Revision. See Civil P. C. (1908), S. 115. AIR 1959 Cal 621.

——O. 21, R. 97 — Order for police help. AIR 1957 Cal 252.

——O. 21, R. 97 — West Bengal Premises Rent Control (Temporary Provisions) Act (1950), S. 13 (2) — Ejectment decree in favour of landlord against tenant — Landlord applying under O. 21, R. 97, Civil P. C., for delivery of possession from sub-tenant — Objection by sub-tenant under S. 13 (2) of W. B. Premises Rent Control Act claiming to have acquired tenancy directely under landlord — Application of sub-tenant not entertained by Judge proceedings being summary — Held on revision, that while the sub-tenant could not file independent application under S. 13 (2) in the summary proceedings for delivery of possession, his objection to the landlord's application under O. 21, R. 97 could be heard and determined in those summary proceedings. See Houses and Rents—W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 13 (2). AIR 1953 Cal 198.

—O. 21, R. 97 and S. 115 — Mistake of law. See Civil P. C. (1908), S. 115. AIR 1953 Cal 198.

——O. 21, R. 97 — Application by party who is resisted—Necessity of, pointed out—It should be filed within limitation provided by Art. 167—Further proceedings are governed by O. 21, R. 97 to O. 21, R. 103 — (Limitation Act (1908), Art. 167). AIR 1955 N U C (Madh Bha) 4868.

——O. 21, R. 97 — Insolvency Court can invoke, in appropriate cases, provisions of O. 21, Rr. 95 to 102. See Provincial Insolvency Act (1920), S. 4. AIR 1965 Mad 331.

——O. 21, R. 97 — Respondent purchasing property from judgment-debtor prior to auction sale and discharging prior usufructuary mortgage out of his own funds — Rights of respondent — Respondent subrogated to rights of usufructuary mortgagee and could use his possession as shield against attack by auction-purchaser—Doctrine of unjust enrichment—Applicability. See T. P. Act (1882), S. 91 (a). AIR 1960 Mys 289.

——O. 21, R. 98—Evacuee Interest (Separation) Rules (1951), R. 11-E — Property sold under S. 10 (a) (iii) — Trespasser in possession — Competent officer has no power to evict him—Civil Writ No. 1507 of 1956 (All), Reversed. See Evacuee Interest (Separation) Act (1951), S. 5. AIR 1960 All 626.

——O. 21, R. 98 — Against whom restitution can be granted — Transferee pendente lite of a party is his representative — Order for delivery of property can be passed against him even if he is not party to restitution proceedings. See Civil P. C. (5 of 1908), S. 144. AIR 1952 Assam 111.

——O. 21, Rr. 98, 103 —Suit under R. 103—Limitation is under Art. 11A, Limitation Act — Suit not filed within limitation — Whether title has been extinguished, depends on whether S. 28, Limitation Act, applies — Limitation Act (1908), S. 28 and Art. 11A. AIR 1951 Cal 481.

——O. 21, Rr. 98, 97 — Applicability — Property purchased privately by decree-holder or auction purchaser subsequent to date of decree or date of purchase in execution—Order directing possession under O. 21, R. 98 cannot be made in respect of such property. See Civil P. C. (1908), O. 21, R. 97. AIR 1963 Guj 117.

——O. 21, R. 98 — Insolvency Court can invoke, in appropriate cases, provisions of O. 21, Rr. 95 to 102. See Provincial Insolvency Act (1920), S. 4. AIR 1965 Mad 331.

——O. 21, Rr. 98, 103 — Execution of eviction order made under Rent Control Act — Court passing order under O. 21, R. 98—Order set aside in revision under S. 12B of that Act — Suit under R. 103 to set aside revisional order — Maintainability: (1953) 2 Mad:L J 112 : AIR 1953 Mad 924 : 66 Mad L W 428, Overruled. See Civil P. C. (1908), O. 21, R. 103. AIR 1960 Mad 298.

——O. 21, R. 98 — Scope and applicability—Case on facts. AIR 1955 N U C (Mad) 2428.

——O. 21, R. 98 — T. P. Act (1882), S. 65A — Lease created in contravention of — Lease is not binding upon mortgagee — Suit for daclaration is not necessary — Mortgagee may affirm or treat lease as nullity. See T. P. Act (1882), S. 65A. AIR 1955 NUC (Mad) 2428.

——O. 21, R, 99 — Insolvency Court can invoke, in appropriate cases, provisions of O. 21, Rr. 95 to 102. See Provincial Insolvency Act (1920), S. 4. AIR 1965 Mad 331.

——O. 21, R. 100 — Evacuee Interest (Separation) Act (1951), Ss. 5, 10, 17 — Evacuee Interest (Separation) Rules (1951), R. 11E — Property sold under S. 10 (a) (iii) — Trespasser in possession—Competent officer has no power to evict him — Civil Writ No. 1507 of 1956 (All), Reversed. See Evacuee Interest (Separation) Act (1951), S. 5. AIR 1960 All 626.

—O. 21, Rr. 100, 92, 96, 90 — Suits for declaration that orders for sale to be made absolute and for delivery of possession, are unsustainable. See Civil P. C. (1908), O. 21, R. 90. AIR 1960 Andh Pra 397.

—O. 21, R. 100 and S. 144 — W. B. Premises Rent Control (Temporary Provisions) Act (1950), S. 13 (2) — Decree against tenant—Dispossession of sub-tenant — Application of restoration — Maintainability. See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 13 (2). AIR 1953 Cal 598.

—O. 21, Rr. 100, 97 — Decree for possession against tenant — Claim of sub-tenant under Rent Control Acts — Procedure. See Civil P. C. (1908), O. 21, R. 97. AIR 1953 Cal 233.

—O. 21, Rr. 100, 97 — Persons never in possession of suit property cannot maintain application under. See Civil P. C. (1908), O. 21, R. 97. AIR 1952 Mad 671.

—O. 21, R. 100 and Ss. 11, 47 — Limitation Act (1908), Art. 11-A — Applicability—Mortgage of joint property — Suit by mortgagee against one of defendant dismissed and decreed against shares of others—Possession of whole property including moiety of defendant suit against whom was dismissed obtained by decree-holder — In claim proceedings possession handed over to this defendant—Suit by decree-holder for partition and possession — Suit held did not fall within mischief of Art. 11-A — See Limitation Act (1908), Art. 11-A. AIR 1956 Nag 93.

—O. 21, R. 100; O. 9, R. 9 and S. 151 — Application under O. 21, R. 100 dismissed for default — Restoration—Inherent powers—See Civil P. C. (1908), O. 9, R. 9. AIR 1958 Orissa 200.

—O. 21, R. 100 — Sale confirmed and execution dismissed as fully satisfied—Proceedings under R. 100 by person in possession, successful—Fresh execution, without getting sale set aside, is barred — See Civil P. C. (1908), O. 21, R. 91. AIR 1953 Pat 9.

—O. 21, R. 101 — Order passed under R. 98 or R. 99—Revision on. AIR 1953 Bhopal 4.

—O. 21, R. 101 — Insolvency Court can invoke, in appropriate cases, provisions of O. 21, Rr. 95 to 102—See Provincial Insolvency Act (1920), S. 4. AIR 1965 Mad 331.

—O. 21, Rr. 102, 35, 98—Civil P. C. (1908), S. 144 — Against whom restitution can be granted — Transferee pendente lite of a party is his representative — Order for delivery of property can be passed against him even if he is not party to restitution proceedings — See Civil P. C. (1908), S. 144. A I R 1952 Assam 111.

—O. 21, R. 103 — Remedy by suit under O. 21, R. 103 open — Revision — See Civil P. C. (1908), S. 115. AIR 1959 Cal 621.

—O. 21, Rr. 103, 98—Suit under R. 103 — Limitation is under Art. 11-A, Limitation Act — Suit not filed within limitation — Whether title has been extinguished, depends on whether S. 28, Limitation Act, applies — See Civil P. C. (1908), O. 21, R. 98. A I R 1951 Cal 481.

—O. 21, Rr. 103, 63 — Suit under — Nature of, indicated — Limitation Act (1908), S. 28. A I R 1951 Cal 481.

—O. 21, R. 103—Limitation Act (1908), Arts. 11-A and 11 — Orders passed without investigation — Orders not conclusive under O. 21, R. 103, Civil P. C. and Art. 11-A not attracted — Order passed under O. 21, R. 103 and under O. 21, R. 63 — Distinction between — Order under R. 63, though without investigation, is conclusive—See Limitation Act (1908), Art. 11-A. AIR 1965 Ker 110.

—O. 21, R. 103 — Parties to suit—Mortgage suit — Lessee from mortgagor wrongly impleaded as defendant but discharged from suit on his objection — Not a party to suit within S. 47 — Mortgage decree—Mortgagee auction-purchaser in execution applying for delivery of possession — Objection by lessee allowed — Second suit by mortgagee for declaration of title and recovery of possession — Maintainability — See Civil P. C. (1908), S. 47. (1965) 78 Mad L W 606.

—O. 21, R. 103 — Suit decreed before Madras Act of 1955 — Suit under O. 21, R. 58 filed and decided after Act of 1955 — Suit under R. 63 — Court-fee is payable under S. 41 (2) and not under Act of 1870 — See Madras Court-fees and Suits Valuation Act (14 of 1955), S. 87 (2). (1965) 78 M L W 497.

—O. 21, R. 103 — Auction-purchaser in execution of simple mortgage decree—Obstruction to, in taking delivery of possession by third party — Suit for possession — Art. 142, Limitation Act (1908) applies — See Limitation Act (1908), Art. 142. A I R 1960 Mad 312.

—O. 21, R. 103 — Decision of lower Court under O. 21, R. 100 that applicant was actually dispossessed supported by evidence — No interference warranted under S. 115 — Proper remedy was by way of regular suit. AIR 1965 Pat 509.

—O. 21, Rr. 103, 100, 91 — Sale confirmed and execution dismissed as fully satisfied — Proceedings under R. 100 by person in possession, successful — Fresh execution, without getting sale set aside, is barred — See Civil P. C. (1908), O. 21, R. 91. A I R 1953 Pat 9.

—O. 21, R. 106 — Andhra Tenancy Act (1956) S. 19 (2) — Andhra Tenancy Rules (1957), R. 14 — Order for eviction of cultivating tenant by Tahsildar — Confirmation in appeal by Revenue Divisional Officer — Writ petition by tenant to quash order — Tenant evicted in spite of stay — Revenue authorities have power to order restoration of possession if order of eviction is quashed—Civil P. C. (1908), S. 144 and O. 21, R. 106 — Applicability—See Tenancy Laws — Andhra Tenancy Act (18 of 1956), S. 19 (2). (1965) 2 Andh W R 197 = I L R (1965) Andh Pra 1094 = AIR 1966 Andh Pra 4.

■—O. 21, R. 116 (All) — Attachment of moveable property by seizure—Property seized kept in custody of amin or sapurdar — Property remains in possession of Court—See Civil P. C. (1908), O. 21, R. 43. 1961 (1) Cri L J 859=AIR 1961 S C 803.

—O. 22 — Application for substitution in revision —Time limit not fixed — Application should be made within reasonable time — See Civil P. C. (1908), S. 115. AIR 1955 N U C (All) 2648.

—O. 22 — Abatement of reference under — See Income-tax Act (1922), S. 66 (1). AIR 1953 All 414.

—O. 22 — Reference under — Death of assessee during pendency—Failure by Commissioner to bring legal representatives on record within 90 days — Reference does not abate — O. 22, Civil P. C. (1908) — Not applicable — Art. 177, Limitation Act (1908) not applicable — See Income-tax Act (1922), S. 66. (1962) 46 I T R 463=(1962) 2 Andh W R 154=I L R (1962) Andh Pra 1019.

—O. 22 — Succession — Doctrine of representation —Applicability of—Civil P. C. (1908), O. 22 — Addition of some only of the legal representatives — Proceedings binding on all. See Mahomedan Law — Succession. (1959) 1 Andh W R 220.

—O. 22—Application under S. 18 — Deemed to be suits—Applicants deemed to be plaintiffs—Procedure laid down in Civil P. C. (1908) for suits applicable to applications under S. 18 — See Land Acquisition Act (1894), S. 18. ILR (1963) 2 Punj 448.

—O. 22 and Ss. 115, 141 — Applicability of O. 22 to proceedings in revision — See Civil P. C. (1908), S. 115. AIR 1953 Raj 69.

——O. 22 and S. 115 — Revision, abatement of — Want of diligence—Reasonable time—See Civil P. C. (1908), S. 115. AIR 1953 Raj 69.

—— O. 22, R. 1 — Suit by endorsee of promissory note — Subsequent death of endorser — Effect — Suit does not abate. See Negotiable Instruments Act (1881), S. 8. AIR 1963 Andh Pra 343.

——O. 22, R. 1 and O. 1, R. 10 — Appeal by a dead person. See Civil P. C. (5 of 1908), O. 1, R. 10. AIR 1953 Bom 356.

——O. 22, R. 1 — Maintenance — Wife — Death of husband pending suit for separate maintenance — Liability of sons for arrears of maintenance. See Hindu Law — Maintenance. AIR 1956 Mad 578.

——O. 22, R. 1 and S. 153—Suit against dead person — Legal representatives ordered to be brought on record in ignorance of fact that defendant was dead when suit was filed — Suit not barred against legal representatives on date of application for impleading them — Decree passed — Decree held not void ab initio — Suit held should be considered as freshly instituted against legal representatives. See Civil P. C. (1908), O. 1, R. 10. AIR 1955 Mad 644.

——O. 22, Rr. 1 and 10 — Right to sue in personal action — Widow's claim to maintenance — Death of widow pending suit — Survival of claim to legal representative. AIR 1953 Mad 202.

——O. 22, Rr. 1 to 4 and 10 — Failure to send notice to legal representative — Effect. AIR 1952 Nag 177.

——O. 22, R. 1 — Death of applicant for succession certificate — Proceedings lapse. See Succession Act (1925), S. 372. AIR 1961 Pat 304.

——O. 22, Rr. 1, 11 — Appeal — Death of party — Heir not substituted — No abatement when he is not a necessary party. AIR 1955 NUC (Pat) 4574.

——O. 22, R. 1 — Joint Hindu family and legal representatives — Suit by plaintiff not as co-owner but as owner, for ejectment, on ground of bona fide requirements — Shop required for business in which his sons and other members were interested though at law plaintiff alone was owner of business—Decree for ejectment — Death of plaintiff — Heirs impleaded — Decree held did not become incapable of execution — Requirement of plaintiff included requirement of heirs — Heirs could take advantage of decree. See Civil P. C. (1908), O. 22, R. 3. AIR 1955 N U C (Sau) 971.

——O. 22, R. 1 — Representative suit. See Civil P. C. (5 of 1908), S. 92. AIR 1953 Trav-Co 390.

——O. 22, Rr. 2, 3 and 4 — Failure to send notice to legal representative — Effect See Civil P. C. (5 of 1908), O. 22, R. 1. AIR 1952 Nag 177.

——O. 22, R. 2 and O. 1, R. 8 — Abatement — Representatlve suit — No abatement. See Civil P. C. (1908), O. 1, R. 8. AIR 1955 NUC (Pat) 2500.

—— O. 22, R. 3 — Suit by endorsee of promissory note — Subsequent death of endorser — Effect—Suit does not abate. See Negotiable Instruments Act (1881), S. 8. AIR 1963 Andh Pra 343.

——O. 22, R. 3 — Legal representative. See Hindu Women's Right to Property Act (1937), S. 1. AIR 1955 NUC (Assam) 4200.

——O. 22, R. 3 and S. 2 (11) — Legal representative — Keep of deceased does not represent estate of deceased. See Civil P. C. (1908), S. 2 (11). AIR 1955 NUC (J and K) 3686.

——O. 22, R. 3 and S. 2 (11) — Intermeddler, meaning of — There should be intention on part of person sought to be treated as intermeddler, to act as legal representative to represent estate of deceased—Person claiming title in himself adversely to estate is not intermeddler. See Civil P. C. (1908), S. 2 (11). AIR 1955 NUC (J and K) 3686.

——O. 22, Rr. 3, 4 — Bombay Agricultural Debtors Relief Act (1947), Ss. 4 and 46 (as extended to Kutch) — Applicability of O. 22, Rr. 3 and 4, Civil P. C. to proceedings under S. 4 — Effect of omission of S. 46 — Applicability of Arts. 177, 181, Limitation Act. See Debt Laws — Bombay Agricultural Debtors' Relief Act (28 of 1947), S. 4. AIR 1952 Kutch 62.

——O. 22, R. 3 — Criminal P. C. (1898), S. 146 — Scope — Proceeding before Civil Court—Provisions of S. 141 and O. 9, R. 13, Civil P. C. do not apply. See Criminal P. C. (1898), S. 146. 1963 (2) Cri L J 381 = AIR 1963 Mad 338.

——O. 22, R. 3 and Ss. 2 (11) and 50 — Legatees unauthorisedly taking possession—Execution against. See Civil P. C. (5 of 1908), S. 2 (11). AIR 1953 Mad 622.

——O. 22, R. 3 — Partition suit by Hindu father against sons — Death of plaintiff pending suit — Widow if can properly be added as legal representative — Hindu law — Partition. AIR 1951 Mad 654.

——O. 22, R. 3 — Abatement. See Civil P. C. (5 of 1908), S. 92. AIR 1951 Nag 394.

——O. 22, R. 3 — Other remedy open. See Civil P.C. (5 of 1908), S. 2 (2). AIR 1951 Nag 269.

——O. 22, Rr. 3, 4 and 9 — Proceedings for annulment of fraudulent transfer — Death of petitioner pending proceedings — Question of abatement, if arises — Subsequent application of legal representative — Competency — Provincial Insolvency Act (1920), S. 54A. AIR 1951 Nag 268.

——O. 22, R. 3 — Intermeddler. See Civil P. C. (5 of 1908), S. 2 (11). AIR 1951 Nag 145.

——O. 22, Rr. 3, 11, O. 41, R. 4—Order 41, R. 4 does not control O. 22, Rr. 3 and 11 — Whether survivor can appeal alone depends upon whether rights are severable, whether executable decree can be passed in appeal without disturbing rights accrued under lower Court's decree — Suit for maintenance against deceased husband's brothers on ground that they were joint when her husband died — Defendants contending that property was not ancestral—Decree in favour of plaintiff — Defendant appealing — One of them dying during pendency of appeal — Held appeal abated as a whole unless surviving defendants accepted position that family was joint. AIR 1951 Nag 133.

——O. 22, R. 3 and Ss. 50, 52—Decree against person in possession — Whether binding on real heir. See Civil P. C. (5 of 1908), S. 2 (11). AIR 1951 Orissa 212.

——O. 22, R. 3 and S. 47—Compromise decree—Power of executing Court to grant relief against penalty. See Civil P. C. (5 of 1908), S. 47. AIR 1951 Orissa 46.

——O. 22, R. 3 — Abatement of appeal as whole — Tests indicated. AIR 1955 NUC (Pat) 3275.

——O. 22, Rr. 3 and 5 — Death of appellant—Claim by several persons in opposition to each other to be legal representatives — Withdrawal from case by some — Order as to representative character whether one under O. 22, R. 3 or R. 5 — Matter if can be subsequently re-opened. See Civil P. C. (5 of 1908), O. 22, R. 5. AIR 1951 Pat 283.

——O. 22, R. 3 — Scope — H, as representative of other members of family of deceased bringing suit for damages — Held he was competent to bring the suit on their behalf and for their benefit. See Fatal Accidents Act (1855), S. 1. (1964) 66 Pun L R 804 = 34 Com Cas 936.

——O. 22, R. 3 — Reference to Court under S. 18 — Provisions of Civil P. C. (1908) applicable—Order 22, R. 3 of Civil P. C. (1908) not inconsistent with Ss. 20, 21, 23, 26 — Reference can abate for non-compliance with provisions of O. 22, R. 3. See Land Acquisition Act (1894), S. 18. ILR (1963) 2 Punj 442.

—O. 22, R. 3 — References under — Distinction between — Reference under S. 30 by Collector — Not abating for non-compliance with O. 22, R. 3 of Civil P. C. (1908) — Analogy not applicable to reference made by aggrieved party under S. 18 — Abates for non-compliance with O. 22, R. 3 of Civil P. C. See Land Acquisition Act (1894), S. 18. ILR (1963) 2 Punj 442.

—O. 22, R. 3 — References under — Distinct from each other — Non-applicability of principles of abatement to reference under S. 113 read with O. 46 — Cannot make these principles non-applicable to reference under S. 18. See Land Acquisition Act (1894), S. 18. ILR (1963) 2 Punj 442.

—O. 22, R. 3—Proceedings under — Deemed to be suits — Application under O. 22, R. 3 of Civil P. C. (1908) in proceedings under S. 18 — Art. 176 and not Art. 181 of Limitation Act (1908), applies. See Land Acquisition Act (1894), S. 18. I L R (1963) 2 Punj 442.

—O. 22, R. 4 and O. 1 Rr. 9, 10—Suit under O. 21, R. 63—Necessary party—Judgment-debtor. See Civil Procedure Code (5 of 1908), O. 1, R. 9. AIR 1951 Ajmer 27.

—O. 22, R. 4 (4) (Cal)—Exemption order can be made only before abatement has taken place. AIR 1955 N U C (Cal) 4500.

—O. 22, R. 4—Bengal Non-agricultural Tenancy Temporary Provisions Act (1940), S. 3 — Statutory stay—Suspension of Limitation Act—Abatement of suit. See Tenancy Laws—Bengal Non-agricultural Tenancy Temporary Provisions Act (9 of 1940), S. 3. AIR 1954 Cal 16.

—O. 22, R. 4—Death of one of defendants — Legal representatives already on record—Procedure. See Civil Procedure Code (5 of 1908), O. 22, R. 2. A I R 1952 Cal 219.

—O. 22, R. 4—Appeal dismissed against one of respondents as having abated — Stay order obtained pending appeal, is automatically vacated in respect of him—His legal representative is entitled to receive money under rateable distribution order that was stayed. See Civil P. C. (1908), S. 73. AIR 1955 NUC (Hyd) 1191.

—O. 22, R. 4—Competency of appeal — Objection that legal representative of party to suit is not joined within limitation—Competency should be decided before sending notice to legal representative—Question ought to be decided at least at final hearing of appeal —Withdrawal of objection does not relieve Court of its duty—Question goes to the root of jurisdiction. See Civil P. C. (1908), O. 41, R. 1. A I R 1955 N U C (Madh Bha) 3385.

—O. 22, R. 4—Maintenance—Wife — Death of husband pending suit for separate maintenance—Liability of sons for arrears of maintenance. See Hindu Law —Maintenance. AIR 1956 Mad 578.

—O. 22, R. 4 (3)—Partial abatement. A I R 1952 Nag 238.

—O. 22, R. 4—Death of one of the respondents. AIR 1952 Nag 181.

—O. 22, R. 4 (1)—Inaction of legal representative—Admission—Estoppel. AIR 1951 Nag 270.

—O. 22, R. 4 — Proceedings for annulment of fraudulent transfer — Death of petitioner pending proceedings—Question of abatement, if arises—Subsequent application of legal representative—Competency. See Civil Procedure Code (5 of 1908), O. 22, R. 3. AIR 1951 Nag 268.

—O. 22, Rr. 4, 11 and O. 41, R. 4 — One of the appellants dying pending appeal—Legal representative not substituted in time — Whole of the appeal when abates — Applicability of O. 41, R. 4. See Civil P. C. (1908), O. 22, R. 3. AIR 1959 Orissa 148.

—O. 22, R. 4—Applicability. See Civil P. C. (1908), O. 41, R. 4. AIR 1959 Orissa 148.

● —O. 22, Rr. 4 and 6, 10, 11—Appeal from preliminary or final decree—Death of one of appellants or respondents during pendency of appeal—R. 3 or R. 4 and not R. 10 applies — AIR 1956 Patna 376=1956 B L J R 22, Overruled. See Civil P. C. (1908), O. 22, R. 3. AIR 1962 Pat 285 (FB).

—O. 22, R. 4—Limitation Act (1908), Arts. 12, 142 and 144—Redemption by mortgagor — Interference by mortgagee—Suit for declaration and confirmation of possession — Limitation — Necessary parties. See Limitation Act (1908), Art. 12. AIR 1952 Pat 421.

● —O. 22, R. 4—Non-joinder of legal representative —Suit by firm through its partner—Appeal by defendant—Death of partner—Appeal held did not abate though legal representative of deceased partner was not brought on record. See Civil P. C. (1908), O. 30, R. 4. 67 Pun L R 743=ILR (1965)2 Punj 427=A I R 1966 Punj 40 (FB).

—O. 22, Rr. 4, 11—Joint decree in favour of several defendants—Appeal — Death of one of defendants— His legal representative not brought on record in time—Held that appeal abated against all the defendants. AIR 1965 Raj 132.

—O. 22, Rr. 4, 11 — Appeal from preliminary decree in partition suit—Death of one of appellants— Legal representatives not brought on record within time—Right of deceased and remaining appellants joint and indivisible—Right to sue does not survive in remaining appellants alone—Appeal automatically abates qua the deceased appellant — No order of abatement is necessary. See Civil P. C. (1908), O. 22, R. 3. AIR 1961 Raj 72.

—O. 22, Rr. 4, 11, O. 41, Rr. 4, 33—Partition suit —Share of defendants joint and indivisible—Preliminary decree—Appeal by defendants — Death of one of appellants—Legal representative not brought on record—Appeal abates not only qua deceased but as whole—Powers under O. 41, R. 33 could not be exercised—Setting aside abatement—Sufficient cause. See Civil P. C. (1908), O. 22, R. 3. AIR 1961 Raj 72.

—O. 22, R. 4—Suit for arrears of vero—Abatement of. See Civil Procedure Code (5 of 1908), O. 1, R. 10. AIR 1953 Sau 159.

—O. 41, Rr. 4, 33—Decree appealed from, proceeding on ground common to all the appellants — Death of one of several appellants—Effect. AIR 1953 Sau 39.

—O. 22, R. 4—Tarwad properties — Partition— Intention to divide—Death of defendant pending suit —Devolution of interest. See Marumakkathayam Law —Malabar Tarwad. AIR 1953 Trav-Co 241.

—O. 22, R. 4, O 23, R. 1 (2) and S. 151—Permission under O. 23, R. 1 (2) granted after abatement of suit against deceased defendant — Permission whether governs legal representatives of such defendant— S. 151 whether can be invoked. See Civil P. C. (1908), S. 151. AIR 1958 Tripura 24.

—O. 22, R. 5—Order under O. 22, R. 5. See Civil Procedure Code (5 of 1908), S. 2 (2). A I R 1953 Nag 28.

—O. 22, R. 5 and S. 11—Matters collaterally in issue—Question whether certain person is legal representative of deceased plaintiff under O. 22, R. 5— Question if can operate as res judicata. See Civil Procedure Code (5 of 1908), S. 11. AIR 1951 Pat 537.

—O. 22, R. 5—Death of party—Question as to who is legal representative must be determined before proceeding with suit—Final decision between parties to proceedings is conclusive between them so far as those proceedings are concerned—Order passed after notice to parties and hearing them—Question cannot be re-agitated at any subsequent stage of suit. A I R 1953 Trav-Co 158.

——O. 22, R. 6—Rajasthan Revenue Court (Procedure and Jurisdiction) Act (1 of 1951), S. 6 (3) — Case of the nature specified in S. 7 — Analogy of O. 22, R. 6, Civil P. C. (1908) does not apply. See Tenancy Laws —Rajasthan Revenue Court (Procedure and Jurisdiction) Act (1 of 1951), S. 6 (3). **AIR 1955 N U C (Raj) 1035.**

——O. 22, R. 8 — Companies Act (1913), Ss. 155 and 156—Scope—Company going into liquidation during pendency of second appeal — Liquidator if can be brought on record as legal representative of company. See Companies Act (1913), S. 155. **A I R 1956 Mad 448.**

——O. 22, R. 9, O. 1, Rr. 3 and 9—Suit for ejectment of trespassers A and B not alleged to have common cause against plaintiff—A dying just before passing of decree dismissing suit—Appeal by plaintiff — Abatement of appeal against A—Appeal can proceed against B only. AIR 1960 All 379, Overruled. See Civil P. C. (1908), O. 22, R. 4. **AIR 1963 All 496.**

——O. 22, R. 9—Limitation Act (1908), S. 5 — Sufficient cause—Negligence of party's agent—Negligence of clerk of mufassil lawyer in filing substitution application. See Limitation Act (1908), S. 5. **AIR 1956 All 677.**

——O. 22, R. 9—Setting aside abatement—Sufficient cause—Limitation—Limitation Act (1908), S. 5. **AIR 1953 Hyd 167.**

——O. 22, Rr. 9, 4 — Proceedings for annulment of fraudulent transfer — Death of petitioner pending proceedings — Question of abatement, if arises—Subsequent application of legal representative — Competency. See Civil Procedure Code (5 of 1908), O. 22, R. 3. **AIR 1951 Nag 268.**

——O. 22, Rr. 9, 3 and O. 1, R. 10 — Abatement of suit — Death of plaintiff — Heirs to be substituted already on the record — Application for substitution within prescribed time is not necessary—Suit, therefore, does not abate for want of substitution within time. See Civil P. C. (1908), O. 22, R. 3. **AIR 1964 Pat 438.**

——O. 22, Rr. 9, 4 —Application to bring legal representative on record — Delay — Ignorance of death — When good cause. See Civil P. C. (1908), O. 22, R. 4. **AIR 1961 Punj 358.**

——O. 22, R. 9 (2) and S. 100—First Appellate Court in its discretion acting under R. 9 — It would not be proper to reopen question whether application for substitution was within time in second appeal. See Civil Procedure Code (5 of 1908), S. 100. **AIR 1953 Punj 191.**

——O. 22, Rr. 10, 4 and S. 211 — Joint Hindu family and legal representative — O. 22, R. 4 applies where legal representative inherits property from deceased —Person brought on record on death of father and grand-father as person to whom estate passed by survivorship — He can raise plea that estate is not bound to pay debt which was not for legal necessity —He can file written statement to that effect, even though written statement filed by father has not taken up that plea. See Civil P. C. (1908), S. 2 (11). **AIR 1955 NUC (All) 3606.**

——O. 22, R. 10— Constitution of India, Art. 300 (2) (b) — Substitution under — Defence open to substituted State — Civil P. C (1908), O. 22, R. 10 — Principles under — Applicability. See Constitution of India, Art. 300 (2) (b). **AIR 1961 Bom 11.**

——O. 22, R. 10—Companies Act (1913), S. 153-A (2) —Scheme of amalgamation —Property of A company transferred to C company—Suit by a company pending —Application by C company for substitution — Substitution independently of O. 22, R. 10, Civil P. C., allowed — Held, S. 6 (e), T. P. Act, did not apply. See Companies Act (1913), S. 153-A (2). **AIR 1959 Cal 352.**

——O. 22, R. 10—Joint family — Status—Nature of—Suit by family to set aside alienation — Partition of family — Effect — Right of divided member to continue the suit. See Hindu Law — Joint family. **AIR 1964 Ker 144.**

——O, 22, R. 10—T. P. Act (1882), S. 6 (e)—Banking Companies Act (1949), Ss. 45 (5) (e) and 45L (4) — Suit by plaintiff bank for damages against its servants on ground of acts of misfeasance — Plaintiff bank amalgamated with second plaintiff bank during pendency of suit which was also transferred — Second plaintiff held was entitled to continue suit. See T. P. Act (1882), S. 6 (e). **78 Mad L W 569 = (1965) 2 Com L J 210 = (1965) 2 Com L J 443 = 1965 Mad W N 277 = AIR 1966 Mad 26.**

——O. 22, Rr. 10, 1—Right to sue in personal actions —Widow's claim to maintenance — Death of widow pending suit—Survival of claim to legal representative. See Civil Procedure Code (5 of 1908), O. 22, R. 1. **AIR 1953 Mad 202.**

——O. 22, R. 10; O. 34, R. 6 — Applicability — Sale proceeds insufficient to pay off mortgage decree — Application for personal decree — Delivery of property to auction purchaser if condition precedent — Right of assignee from plaintiff. See Civil Procedure Code (5 of 1908), O. 34, R. 6. **AIR 1951 Mad 628.**

——O. 22, R. 10, O. 20, R. 18—Partition suit — Preliminary decree—Adjustment of rights arising after— Subsequent enlargement or dimunition of shares — While passing final decree, Court must take these subsequent events and pass final decree accordingly to avoid multiplicity of suits. See Civil P. C. (1908), O. 20, R. 18. **AIR 1955 Mys 6.**

●——O. 22, R. 10 — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), Ss. 3, 4, 7 and 50—Suit for pre-emption pending when Act came into force will be dismissed — Pre-emption decree cannot be enforced— Government is not assignee of proprietary rights. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 3. **AIR 1953 Nag 361 (FB).**

——O. 22, R. 10—Failure to send notice to legal representative — Effect. See Civil Procedure Code (5 of 1908), O. 22, R. 1. **AIR 1952 Nag 177.**

——O. 22, Rr. 10, 3 — Representative suit by trustees —Death of some of the trustees during pendency of suit — Newly appointed trustees are not representatives of deceased trustees within O. 22, R. 3—New trustees can be added as parties under O. 22, R. 10 notwithstanding question of limitation. See Civil P. C. (1908), O. 22, R. 3. **AIR 1960 Punj 382.**

●——O. 22, R. 11 — Alienation — Widow — Alienation without legal necessity — Declaratory suit by reversioners — Death of widow — Her heirs are not necessary parties — Proviso to S. 42, Specific Relief Act is no bar to the suit—Position in appeal is not altered — AIR 1958 All 304, Reversed. See Hindu Law — Alienation. **(1965) 2 S C W R 628 = 1965 S C D 1047 = AIR 1966 S C 216.**

——O. 22, Rr. 11, 9 and O. 43, R. 1 (k)'— 'Suit' in O. 43, R. 1 (k) — Does not include appeal — Order refusing to set aside abatement of appeal — Noappeal lies under O. 43, R. 1 (k). See Civil P. C. (1908), O. 43, R. 1 (k). **AIR 1961 All 527.**

——O. 22, R. 11 and O. 41, R. 4 — Suit for ejectment — Decree against tenant but dismissed against sub-tenant — Appeal by plaintiffs — Death of one of appellants — Legal representative not brought on record within time — Effect of abatement — Appeal cannot be heard qua surviving appellants. See Civil P. C. (1908), O. 22, R. 3. **AIR 1960 All 741.**

——O. 22, R. 11 and O. 41, R. 4 — Joint decree against defendants for possession — Appeal by them

—Death of one of them — Legal representative not brought on record — Whole appeal abates. See Civil P. C. (1908), O. 22, R. 3. AIR 1955 NUC (All) 2763.

——O. 22, R. 11 and O. 41, R. 4 — Appeal proceeding on common ground — Death of one of appellants —Appeal does not abate — Remaining appellant can get reversal of decree. See Civil P. C. (1908), O. 22, R. 3. AIR 1955 NUC (All) 1692.

—O. 22, R. 11 and O. 41, R. 20 — Failure to apply for substitution deliberately or negligently. See Civil P. C. (1908), O. 22, R. 4. AIR 1954 All 10.

——O. 22, R. 11 and O. 23, R. 3 — Alienee pendente lite added as party not bound by compromise between alienor and opposite party — Entitled to object to such compromise and to claim decision on merits. See Civil P. C. (1908), O. 22, R. 10 (1). AIR 1963 Andh Pra 46.

——O. 22, R. 11—Madras Hindu (Bigamy Prevention and Divorce) Act 6 of 1949, S. 5 (5) — Appeal preferred from decree dissolving marriage — Death of respondent pending appeal—Appeal only abates and not suit. See Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949), S. 5 (5). AIR 1957 Andh Pra 424.

——O. 22, R. 11—Hindu joint family — Two or more legal representatives — Joint Hindu family appellant —Manager on record — Appeal does not abate even though infant is not brought on record. See Civil P. C. (1908), O. 22, O. 3. AIR 1955 NUC (Cal) 822.

——O. 22, R. 11 — Right to sue in personal actions. See Civil P. C. (1908), O. 22, R. 1. AIR 1954 Cal 24.

——O. 22, R. 11 — Declaratory suit by reversioners— Appeal — Death of some reversioners — Appeal does not abate. See Civil P. C. (1908), O. 22, R. 2. AIR 1960 J & K 53.

——O. 22, Rr. 11, 4—Competency of appeal — Objection that legal representative of party to suit is not joined within limitation—Competency should be decided before sending notice to legal representative—Question ought to be decided at least at final hearing of appeal—Withdrawal of objection does not relieve Court of its duty—Question goes to the root of jurisdiction—See Civil P. C. (1908), O. 41, R. 1. AIR 1955 NUC (Madh. Bha) 3385.

——O. 22, Rr. 11, 4—Death of defendant or respondent—One or more legal representatives brought on record—No fraud or collusion — Suit or appeal does not abate—See Civil P. C. (1908), O. 22, R. 4. 1965 Jab L J 795=AIR 1966 Madh-Pra 79.

——O. 22, R. 11 — Abatement of appeal in personal actions. See Civil Procedure Code (5 of 1908), O. 22, R. 1. AIR 1951 Mad 733.

——O. 22, Rr. 11, 10 — Joint Hindu family and legal representatives — Suit against karta alone in his representative capacity — Decree — Death of karta during pendency of appeal — Succeeding karta or all surviving members not brought on record within limitation—Appeal abates—See Civil Procedure Code (5 of 1908), O. 22, R. 3. AIR 1952 Nag 390.

——O. 22, R. 11—O. 22, R. 9 read with R. 11—Abatement of appeal — Order refusing to set aside — See Civil Procedure Code (5 of 1908), O. 22, R. 9. AIR 1952 Nag 181.

——O. 22, R. 11—Suit dismissed — Appeal — During pendency of appeal sole plaintiff dying — Legal representatives substituted in appeal — Appeal allowed —Further substitution of legal representative in suit not necessary. (1965) 7 O J D 229=AIR 1966 Orissa 55.

——O. 22, R. 11—One of plaintiffs dying during progress of suit — Substitution of name of heir allowed but order not implemented — Name of deceased continuing in appeal and second appeal by defendants— Appeal held abated in toto — See Civil P. C. (1908), O. 22, R. 3. AIR 1962 Orissa 128.

——O. 22, R. 11 — Abatement of appeal against one of respondents—When whole appeal abates—Principles indicated—See Civil P. C. (1908), O. 22, R. 4. AIR 1955 Orissa 179.

● ——O. 22, R. 11 and O. 41, Rr. 4, 33— Variation of decree in favour of party not impleaded in appeal— See Civil P. C. (1908), O. 22, R. 3. AIR 1956 Pat 414 (FB).

● ——O. 22, R. 11, O. 1, R. 8 and O. 22, R. 4— Nonjoinder of legal representative —Suit by firm through its partner—Appeal by defendant — Death of partner —Appeal held did not abate though legal representative of deceased partner was not brought on record— See Civil P. C. (1908), O. 30, R. 4. 67 Pun L R 743= ILR (1965) 2 Punj 427=AIR 1966 Punj 40 (FB).

——O. 22, R. 11—Suit by some trustees against co-trustee for accounts decreed—Appeal by defendants —Some of plaintiffs dying during pendency of appeal — Other trustees appointed and continuing as respondents—Appeal does not abate — See Civil P. C. (1908), O. 22, R. 3. AIR 1963 Punj 187.

——O. 22, R 12—Case decided—See Civil Procedure Code (5 of 1908), S. 115. AIR 1953 Ajmer 50 (1).

——O. 22, R. 12—Death of judgment-debtor pending execution — Legal representatives not brought on record — Court should not proceed with execution, though proceedings will not abate — Otherwise S. 50 would be nugatory—See Civil P. C. (1908), S. 50. AIR 1955 Cal 573.

——O. 22, R. 12— Limitation Act (1908), Art. 182 (5) —Application for substitution of legal representative —See Limitation Act (1908), Art. 182 (5). AIR 1954 Pat 192.

——O. 22, Rr. 12, 16 and S. 146 — Legal representatives of deceased decree-holder can continue pending execution proceedings — See Civil P. C. (1908), O. 21, R. 16. AIR 1955 Punj 255.

——O. 22, R. 12 — Death of decree-holder during execution — Application by heirs to continue execution — Succession certificate essential under S. 214, Succession Act (1925) — See Succession Act (1925), S. 214 (1) (b). AIR 1956 Trav-Co. 183.

——O. 22, R. 12; O. 21, R. 16 and S. 146 — Death of decree-holder during execution — Substitution of legal representative — See Civil P. C. (1908), S. 146. AIR 1952 Trav-Co. 504.

——O. 22, Rr. 16, 17 —Assignment of decree — Petition by assignee under O. 22, R. 16, Civil P. C., for recognition and for issue of notice — Mode of execution not indicated — Though defective as execution petition, it amounts to step-in-aid — See Limitation Act (1908), Art. 182 (5). AIR 1963 Andh-Pra 241.

——O. 22, R. 23—Assignment of decree—Petition by assignee under O. 22, R. 16, Civil P. C. for recognition and for issue of notice — Mode of execution not indicated—Though defective as execution petition, it amounts to step-in-aid — See Limitation Act (1908), Art. 182 (5). AIR 1963 Andh-Pra 241.

——O. 22, Rr. 52, 60 (1) (k) — Provident Funds Act, (1925), S. 3 — Compulsory deposit in Railway Provident Fund—Payment of amount in manner suggested by subscriber—Debt is discharged — Money deemed to be paid to subscriber—Immunity from attachment ceases—Union Government has no locus standi to object to its attachments — See Provident Funds Act (1925), S. 3. AIR 1962 Cal 169.

● ——O. 22, R. 55 (c)—Decree reversed or set aside —Attachment effected in execution is deemed withdrawn and does not revive when suit is subsequently decreed—(Travancore Civil P. C., O. 22, R. 53). AIR 1952 Trav-Co 414 (FB).

● ——O. 23, R. 1 and S. 80— Suit filed against Government after notice duly issued under S. 80 — Suit withdrawn with permission of Court to file fresh suit

—Fresh suit filed — Fresh notice under S. 80 before such suit is not necessary — See Civil P. C. (1908), S. 80. AIR 1963 S C 424.

●——O. 23, R. 1; O 1, R. 10; O. 6, R. 17 — Representation of the People Act (1951), Ss. 38, 55-A, 82, 85, 90 (3) - Scope—Contesting candidate — Who is—Non-joinder of necessary party—Effect—Defect if can be cured by amendment of petition — AIR 1958 Mad 261 ; (1958)-1 Mad L J 139, Reversed — See Representation of the People Act (1951), S. 38. AIR 1958 S C 687.

——O. 23, R. 1, O. 17, R. 6 and S. 151 — Application under S. 9, Hindu Marriage Act, for restitution of conjugal rights—Petitioner applying for adjournment on ground of his inability to pursue matter deligently as he was transferred to Kashmir — Application held not one under O. 23, R. 1 — Court ordering that application be closed observing that petitioner could file separate application as and when convenient to him —Order held amounted to adjournment sine die — Subsequent application filed by petitioner not barred —See Civil P. C. (1908), O. 17, R. 1. (1965) 1 Andh L T 276=AIR 1966 Andh. Pra 73.

——O. 23, R. 1, S. 2 (2) and O. 43, R. 1—Orders passed under O. 23, R. 1, awarding costs—Orders are not appealable.

Orders passed under O. 23, R. 1 of the Civil P. C. are not appealable either as a decree within the meaning of S. 2, Civil P. C., or as an order enumerated in O. 43, R. 1, inasmuch as a withdrawal of a suit does not amount to the dismissal of the suit for non-prosecution or to the dismissal of the suit at all. I L R (1964) Andh Pra 734 (DB).

——O. 23, R. 1, and S. 35—R. 1 gives wide discretion to Court to pass orders regarding costs—Costs include counsel's fee also. ILR (1964) Andh Pra 734 (DB).

——O. 23, R. 1—Land Acquisition Act (1894), S. 18 — Reference to Civil Court at instance of claimant—Land Acquisition Officer is in position of defendant —Land Acquisition Officer cannot withdraw it either under O. 23, R. 1 or under S. 151, Civil P. C. See Land Acquisition Act (1 of 1894), S. 18. AIR 1960 Andh Pra 590.

——O. 23, R. 1 and O. 34, R. 4 — Suit for sale by mortgagee — Mortgagor whether entitled to decree in his favour—Withdrawal of suit whether prejudicial to mortgagor. See Civil P. C. (1908), O. 34, R. 4. AIR 1959 Andh Pra 492.

——O. 23, R. 1 — Application for withdrawal of suit allowed—Reasons not stated — Material irregularity. AIR 1953 Assam 44.

——O. 23, R. 1 (2); O. 1, R. 8 and S. 92—Withdrawal in appeal — Formal defect — Sufficient grounds. See Civil P. C. (1908), S. 92. AIR 1952 Kutch 94.

——O. 23, R. 1 (2) and Ss. 92, 107 — Withdrawal in appeal—Right to bring suit depending on consent to be given by statutory authority. See Civil P. C. (1908), S. 92. AIR 1952 Kutch 94.

——O. 23, R. 1—T. P. Act (1882), S. 60—Applicability — Extinguishment of right of redemption by act of parties and act of Court—Right extinguished by act of Court in respect of some properties and by act of parties in respect of other. See T. P. Act (1882), S. 60. AIR 1955 NUC (Mad) 84.

——O. 23, R. 1 and S. 151 and S. 12; O. 9, R. 9—Suit dismissed under O. 9, R. 8 — Remedy is under O. 9, R. 9 — Fresh suit is barred — Plaintiff cannot invoke S. 151 in his favour as there is a clear provision under law which he can avail of. See Civil P. C. (1908), O. 9, R. 9. AIR 1955 NUC (Manipur) 4556.

— O. 23, R. 1 and O. 32, R. 1—Partition suit—Consent decree—Decree not binding on majors—Decree is not binding on minors as well. AIR 1952 Mys 134.

——O. 23, R. 1 and O. 32, R. 7 — Consent decree — Setting aside of—Grounds. AIR 1952 Mys 134.

——O. 23, R. 1 and S. 11 — Constructive res judicata —Defence raised in previous suit—Court erroneously directing second suit — Effect — Second suit barred. See Civil P. C. (1908), S. 11. AIR 1958 Pat 270.

——O. 23, R. 1 — Suit for ejectment of tenant — Defendant raising question of title which Court had no jurisdiction to decide—Suit dismissed as relationship of landlord and tenant not found to exist — Plaintiff allowed to withdraw suit at stage of second appeal with permission to file properly constituted suit in competent Court on payment of entire costs of defendant. AIR 1952 Pat 84.

——O. 23, R. 1 — Ejectment application under S. 14 of Delhi Rent Control Act (59 of 1958) confined to record room upon application by counsel of landlord —Subsequent application on same facts held barred—Previous application having been withdrawn without leave to bring fresh application—Houses and Rents—Delhi Rent Control Act (59 of 1958), S. 14—Evidence Act (1872), S. 115—No misrepresentation—No estoppel. 1965 Pun L R (Suppl) 225.

——O. 23, R. 1 (3) — R. 1 (3) is a rule of procedure and applies to proceedings under S. 14 of the Delhi Rent Control Act (59 of 1958)—Houses and Rents—Delhi Rent Control Act (59 of 1958), S. 14.

Sub-rule (3) of Rule 1 of Order 23 precludes institution of a fresh suit when the party has once come before a Court with a suit and while withdrawing it has not obtained permission of the Court to file a fresh suit. 1965 Pun L R (Supp) 225.

——O. 23, R. 1 and S. 11 — Successive applications. See Constitution of India, Art. 226. AIR 1956 Punj 157.

——O. 23, R. 1 (2); O. 7, Rr. 11 (d), 13 — Permission to withdraw subject to conditions — Non-compliance with conditions — Withdrawal is not without permission — Fresh suit without fulfilling conditions, is mere irregularity—If costs are not paid in accordance with conditions, all that the Court can do is to reject plaint and not dismiss suit—Rejection of plaint means that fresh suit can always be brought after fulfilling conditions. See Civil P. C. (1908), O. 7, R. 11 (d). AIR 1955 Punj 97.

——O. 23, R. 1; O. 6, R. 7 — Withdrawal of suit and not amendment of plaint held proper. See Civil P. C. (1908), O. 6, R. 17. AIR 1955 NUC (Punj) 5721.

——O. 23, Rr. 2, 1 (2); O. 1, R. 10 (2); O. 23 — Suit bad for multifariousness—Plaintiff expressing willingness to continue suit against one defendant only—Order striking out names of other defendants with direction to file fresh plaints against remaining defendants within three days — Order whether comes under O. 1, R. 10 (2) and O. 23, R. 1 (2)—Plaintiff whether entitled to benefit of S. 14. Limitation Act, by virtue of O. 23, R. 2. See Civil P. C. (1908), O. 1, R. 10 (2). AIR 1959 Andh Pra 349.

——O. 23, R. 2 — Compromise decree, breach of—No undertaking given to Court — Breach of terms of compromise—No contempt. See Contempt of Court. AIR 1960 Madh Pra 280.

——O. 23, R. 2 and O. 1, R. 8 — Compromise of representative suit—Permission of Court is not necessary —But compromise by some of proprietors in representative suit for ejectment would not bind other co-sharers in regard to that portion of land which was not subject-matter of dispute. See Civil P. C. (1908), O. 1, R. 8. AIR 1955 NUC (Punj) 4969.

●——O. 23, R. 3 and S. 11—Consent decree—When operates as estoppel by judgment. See Civil P. C. (1908), S. 11. AIR 1956 SC 346.

●——O. 23, R. 3 and S. 11, O. 2, R. 2—Applicability —Consent decree in partition suit — Appeal No. 554

of 1951, D/- 25-3-1952 (Bom), Reversed. See Civil P. C. (1908), S. 11. AIR 1954 SC 352.

● —O. 23, R. 3 — Registration Act (1908), S. 17 (2) (v) (as amended by T. P. (Amendment) Supplementary Act, 1929) — Applicability — Compromise decree before amendment — Amended clause does not apply — Decree is not compulsorily registrable even if immovable property other than subject-matter of suit is comprised therein. See Registration Act (1908), S. 17 (2) (vi). AIR 1951 SC 11.

● —O. 23, R 3 — Registration Act (1908), S. 17 (1) (b), (d) and (2) (vi) — Scope — Compromise decree containing contingent agreement for perpetual underlease. See Registration Act (1908), S. 17 (1) (b) (d) and (2) (vi). AIR 1951 SC 11.

● —O. 23, R. 3; O. 43, R. 1 (m) and Ss. 109, 110— Constitution of India, Art. 133 (1) — "Judgment" or "final order" — Meaning of — Order of High Court in appeal setting aside order of trial Court recording compromise — Order is neither "final order" nor "judgment" within Art. 133. See Constitution of India, Art. 133 (1). AIR 1961 All 245 (FB).

—O. 23, R. 3 and S. 96 (3) — Decree passed on deciding one issue after certain pleas had been given up—Nature of decree—Appeal. See Civil P. C. (1908), S. 96 (3). AIR 1959 All 22.

● —O. 23, R. 3 — Oaths Act (1873), S. 9 — Agreement to be bound by statement of a witness — Party cannot resile without sufficient reason. See Oaths Act (1873), S. 9. AIR 1952 All 890 (FB).

● —O. 23, R. 3 — Oaths Act (1873), S. 9—Offer by party to be bound by special oath by other party or witness — Withdrawal of offer after acceptance — When permitted. ILR 4 All 302; AIR 1930 All 162; AIR 1931 All 557; AIR 1933 All 184=146 Ind Cas 569 and AIR 1935 All 276, Overruled. See Oaths Act (1873), S. 9. AIR 1952 All 882 (FB).

—O. 23, R. 3; O. 1, R. 8 — Suit under O. 1, R. 8 — Compromise. See Civil P. C. (1908), O. 1, R. 8. AIR 1952 All 273.

—O. 23, R. 3 — U. P. Encumbered Estates Act (1934), S. 20 — Right to apply for quashing proceedings—Provisions of O. 23, Civil P. C., if can be relied upon. See Debt Laws — U. P. Encumbered Estates Act (25 of 1934), S. 20. AIR 1951 All 550.

—O. 23, R. 3 — Consent when to be obtained — Award signed before making compromise petition under O. 23, R. 3, Civil P. C. — Proviso is satisfied — Allegation that award was signed without knowing its contents—Enquiry should be made before passing decree. See Arbitration Act (1940), S. 47, Proviso. AIR 1962 Andh Pra 123.

—O. 23, R. 3; O. 21, R. 2 —Arbitration Act (1940), S. 47, Proviso—Award when to be regarded as compromise or adjustment — Consent of parties when to be obtained. See Arbitration Act (1940), S. 47, Proviso. AIR 1958 Andh Pra 679.

—O. 23, R. 3 and S. 96 (3) — Consent decree — Appeal from—Decree imposed by Court — Order 23, R. 3 does not apply. See Civil P. C. (1908), S. 96 (3). AIR 1957 Andh Pra 770.

—O. 23, R. 3 and S. 38—Houses and Rents—Assam Urban Areas Rent Control Act (18 of 1949), S. 6, Proviso — Compromise decree after passing of Act — Tenant agreeing to vacate by certain date—Objection under S. 6—Whether can be entertained by executing Court. See Civil P. C. (1908), S. 38. AIR 1951 Assam 27.

—O. 23, R. 3 and S. 11—Consent decrees—Finality of — Dispute as to standard rent of premises under Rent control legislation — Consent decree fixing standard rent of premises — Subsequent application by some tenant for fixation of standard rent for same premises is barred by res judicata. See Civil P. C. (1908), S. 11. AIR 1958 Bom 1.

—O. 23, R. 3; S. 141 — O. 23, R. 3 applies to misfeasance proceedings under Companies Act (1913), S. 235. See Civil P. C. (1908), S. 141. (1953) 23 Com Cas 474=AIR 1955 NUC (Bom) 1422.

—O. 23, R. 3 — Application for compromise — If must clearly set out compromise to be recorded — It must not be left to be gathered from affidavits. (1953) 23 Com Cas 474 = A I R 1955 N U C (Bom) 1422.

—O. 23, R. 3 and S. 44 — Compromise decree of foreign Court — Nature of such decree—Interference by Court in India in enforcement of such decree. See Civil P. C. (1908), S. 44. AIR 1959 Cal 663.

—O. 23, R. 3 and S. 2 (2)—Calcutta Thika Tenancy Act (1949), S. 28 — Applies to consent decrees. See Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), S. 28. AIR 1955 N U C (Cal) 5610.

—O. 23, R. 3—Power of executing Court to go behind decree. See Civil P. C. (1908), S. 38. AIR 1955 N U C (Cal) 2939.

—O. 23, R. 3 — "So far as it relates to the suit" — Suit for specific performance of agreement to mortgage and also for compensation in addition to or in substitution for the performance of said agreement—Held that the compensation agreed upon by plaintiff and the defendants by their petition of compromise was clearly a term which formed the consideration for the abandonment by the plaintiff of his claim for specific performance in the suit and the agreement to pay the compensation according to instalments did relate to the suit. A I R 1955 N U C (Cal) 2939.

—O. 23, R. 3 and S. 148 — Consent decree — Time for performance of an act provided for in consent decree cannot be extended without consent of parties. See Civil P. C. (1908), S. 148. A I R 1955 N U C (Cal) 828.

—O. 23, R. 3 — Specific Relief Act (1877), S. 21 — Contract to refer to arbitration. See Specific Relief Act (1877), S. 21. AIR 1953 Cal 690.

—O. 23, R. 3 — Arbitration Act (1940), Ss. 17, 30 and 47 — Award in arbitration pending suit without order of reference — Validity and enforcibility. See Arbitration Act (1940), S. 17. AIR 1953 Cal 690.

—O. 23, R. 3—Construction—Consent decreee. See Contract Act (1872), S. 2 (c). AIR 1953 Cal 670.

—O. 23, R. 3 and S. 47 — Hyderabad Civil P. C., S. 261 — Decree passed on compromise embracing subject-matter of suit — Separate suit with respect to same subject matter is barred by S. 47. See Civil P. C. (1908), S. 47. AIR 1955 N U C (Hyd) 2972.

—O. 23, R. 3 and S. 151 — Mode of setting aside compromise decree—Compromise decree obtained by practising fraud on Court — Inherent power to set aside. See Civil P. C. (1908), S. 151. A I R 1953 Hyd 127.

—O. 23, R. 3 — Compromise petition filed by both parties—Subsequent application for setting it aside—Separate suit is necessary. AIR 1953 Hyd 62.

—O. 23, R. 3 — Suit on money bond — Defendant admitting execution but pleading payment and producing receipt—Receipts unstamped and signed after institution of suit — Circumstances showing that defendant did not request Court to record adjustment of whole suit under O. 23, R. 3 and to examine plaintiff, immediately → Held defence was tainted with suspicion. AIR 1955 N U C (Madh-B) 3410.

—O. 23, R. 3 and Ss. 38, 47 — Powers of executing Court where compromise decree contains provision in the nature of penalty—It can refuse to give effect to it. AIR 1955 N U C (Madh-B) 56.

——O. 23, R. 3 and Ss. 11, 38—Madhya Bharat Sthan Niyantran Vidhan, Ss. 4, 12 — Scope of. See Houses and Rents—Madhya Bharat Sthan Niyantran Vidhan (Sm. 2006), S. 4. AIR 1954 Madh-B 89.

——O. 23, R. 3 and O. 9, R. 13—Mode of setting aside compromise decree. AIR 1954 Madh-B 81.

——O. 23, R. 3 and S. 151 — Inherent power to set aside consent decree obtained by fraud. See Civil P. C. (1908), S. 151. AIR 1954 Madh-B 81.

——O. 23, R. 3 and S. 47—Compromise decree—Execution — Decree held inexecutable. See Civil P. C. (1908), S. 47. AIR 1952 Madh-B 104.

——O. 23, R. 3 and S. 151—Consent decree — Mode of setting aside. See Civil P. C. (1908), S. 151. A I R 1958 Madh-Pra 391.

——O. 23, R. 3 and S. 96 (3) — Order recognising compromise out of Court passed separately after contest — Decree following such order — Decree is still consent decree—Appeal from such decree—Bar. AIR 1961 Mad 303.

——O. 23, R. 3 and Ss. 38 and 47 — Compromise decree — Specific performance — Power of executing Court to go behing compromise decree — Delay and hardship. AIR 1954 Mad 870.

——O. 23, R. 3—Evidence Act (1872), S. 115 — Compromise decree—Estoppel. See Evidence Act (1872), S. 115. AIR 1954 Mad 739.

——O. 23, R. 3 — Deed—Construction— Compromise decree — Nature of estate created by. See Hindu Widows Re-marriage Act (1856), S. 5. AIR 1953 Mad 977.

——O. 23, R. 3 — Arbitration Act (1940), S. 47, Proviso — "Consent" to record award as compromise must be after the award. A I R 1945 Mad 294, Overruled. See Arbitration Act (1940), S. 47, Proviso. AIR 1953 Mad 781 (FB).

——O. 23, R. 3 and S. 151—Order setting aside compromise decree under S. 151. See Civil P. C. (1908), S. 151. A I R 1953 Mad 696.

——O. 23, R. 3 — Reference to arbitration not signed by one party — Binding effect — Award regarded as compromise within O. 23, R. 3, Civil P. C. See Arbitration Act (1940), S. 47. AIR 1951 Mad 387.

——O. 23, R. 3 — Private reference to arbitration pending suit — Award if can be filed under O. 23, R. 3—Arbitration Act (1940), S. 47. A I R 1951 Mad 281.

——O. 23, R. 3 and S. 151—Order recording compromise obtained by fraud—Inherent power to set aside order. See Civil P. C. (1908), S. 151. A I R 1958 Pat 618.

——O. 23, R. 3; O. 43, R. 1 (m) and S. 151 — Order recording or refusing to record compromise— Appeal. See Civil P. C. (1908), O. 43, R. 1 (m). A I R 1958 Pat 618.

——O. 23, R. 3; O. 21, Rr. 17 and 30; O. 34, R. 14 — Maintenance compromise decree—Decree made charge on one third share of judgment-debtor in properties —If maintenance fall in arrears, decree executable against any property—Maintenance falling in arrears —Execution against all properties can be taken out —It need not be confined to one-third share. See Civil P. C. (1908), O. 21, R. 17. AIR 1958 Pat 2.

——O. 23, R. 3 and O. 32, R. 7—Compromise of suit —Minor — Guardian of minor must obtain leave of Court to enter into compromise—Court should satisfy itself that compromise is for benefit of minor—Court held did not apply its mind to the question. A I R 1955 N U C (Pat) 1863.

——O. 23, R. 3 — Compromise and consent decrees. See Registration Act (1908), S. 17 (2) (vi). AIR 1953 Pat 340.

——O. 23, R. 3 and S. 11—Shebait — Compromise by shebait when is illegal. See Hindu Law — Religious Endowment. AIR 1952 Pat 438.

——O. 23, R. 3—S. 74, Contract Act (1872), applies to stipulation in compromise decree. See Contract Act (1872), S. 74. A I R 1955 Pepsu 110.

——O. 23, R. 3—T. P. Act (1882), S. 10—Compromise deed—Absolute estate created — Restraint on alienation—Condition is void. See T. P. Act (1882), S. 10. A I R 1955 Punj 49.

——O. 23, R. 3; O. 3, R. 4 — Oaths Act (1873), S. 9—Pleader not specially authorised, has no power to make offer to be bound by special oath. See Oaths Act (1873), S. 9. AIR 1961 Raj 209.

——O. 23, R. 3—Arbitration Act (1940), S. 47—Scope — Reference pending suit without intervention of Court—Award is invalid — It can be recorded as adjustment or compromise if parties to dispute consent to it. See Arbitration Act (1940), S. 47. A I R 1955 Raj 162.

——O. 23, R. 3—Scope of Act — Private reference in pending suit without intervention of Court — Award, filing of. See Arbitration Act (1940), Preamble — Ss. 47, 35. AIR 1955 N U C (Trav-Co) 584.

——O. 23, R. 3 — Unlawful agreement of reference. See Arbitration Act (1940), S. 47, Proviso. AIR 1955 N U C (Trav-Co) 584.

——O. 23, R. 3 and S. 151 — Suit decreed on basis of compromise petition purported to have been signed by plaintiff and defendant—Defendant filing petition under S. 151 to set aside decree — Allegation that defendant had not signed compromise petition—Application held was maintainable. See Civil P. C. (1908), S. 151. AIR 1952 Trav-Co 481.

——O. 24, R. 2; Ss. 38, 47 and O. 20, R. 11—Executing Court allowing payment of decretal amount in instalments—Deposit towards instalment—Judgment-debtor can challenge order allowing payment in instalments. See Civil P. C. (5 of 1908), S. 38. AIR 1955 Ajmer 24.

——O. 26, R. 1; Ss. 132, 75—Change in mode of life —Prayer for examination on commission. See Civil P. C. (5 of 1908), S. 132. AIR 1951 Mad 311.

——O. 26, R. 1—Woman falling under S. 132—Issue of commission. See Civil P. C. (5 of 1908), S. 132. AIR 1951 Mad 311.

——O. 26, Rr. 1 and 18 (1)—Right of party to cross-examine witness examined on commission is preserved. AIR 1955 NUC (Punj) 4010.

——O. 26, R. 1 and Ss. 115, 133 — Case decided — Meaning—Order dismissing application for issue of commission for examination of applicant. See Civil P. C. (5 of 1908), S. 115. AIR 1953 Raj 57.

——O. 26, R. 1; S. 115—Commission for examination of witness—Person named as witness long since dead —Prayer for time to examine other person refused — Revision. See Civil P. C. (5 of 1908), S. 115. AIR 1951 Raj 48.

——O. 26, Rr. 4, 5—Commission for examination of witness. AIR 1953 Ajmer 27.

——O. 26, R. 4—Expert to be examined residing beyond 200 miles from Court-house — When can be examined on commission. See Civil P. C. (1908), O. 16, R. 19. AIR 1963 Andh Pra 429.

——O. 26, R. 4 and S. 115—"May issue" — "May" means "is given authority to"—Commission should issue as a matter of right unless Court is satisfied that party is abusing its authority—Witness living 200 miles away outside Court's jurisdiction—Evidence found necessary by Court—Refusal to issue commission for his examination is tantamount to refusal to examine him — High Court will interfere in revision. AIR 1955 NUC (Madh Bha) 2186.

—O. 26, Rr. 4, 1; S. 133 — Bishop — Order issuing commission to examine him cannot be sustained by reason merely of his rank. See Civil P. C. (1908), S. 133. AIR 1961 Mad 31.

—O. 26, Rr. 5, 4—Resident—Does not mean permanent resident—Man casually making flying visit to place for 10 or 20 days may not come under the term—But person likely to stay for more than six months is "resident." See Civil P. C. (5 of 1908), O. 26, R. 4. AIR 1955 Mad 210.

—O. 26, R. 5—Letter of request or issue of commission in Pakistan. AIR 1951 Punj 227.

—O. 26, Rr. 7, 4; O. 18, R. 12—Inability to observe demeanour—No bar to issue commission — What is "demeanour" explained. See Civil P. C. (5 of 1908), O. 26, R. 4. AIR 1955 Mad 210.

—O. 26, R. 10; S. 115—Scope of S. 115 — Exercise of jurisdiction is one of two alternate manners—Suit for possession of house—Fixation of market value for court-fee at 20 years' rent by Subordinate Courts instead of at current cost of construction less depreciation—Rejection of Commissioner's valuation — No illegality or material irregularity for interference under S. 115. See Civil P. C. (1908), S. 115. AIR 1960 All 590.

—O. 26, R. 10—Houses and Rents—W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), Ss. 9, 31 and 47—Rules under S. 47—Rule 9—Fixation of standard rent—Proper procedure—Matters to be taken into account. See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 9. AIR 1953 Cal 177.

—O. 26 R. 10 — Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 31—Report of Inspector — Inspector not examined as witness—Value of report. See Houses and Rents—W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 31. AIR 1953 Cal 126.

—O. 26, R. 11 and S. 75 (c)—Partition suit—Allegation that arbitrator in former partition suit did not partition all property—Without first deciding which property had been left unpartitioned, Court exceeds its powers in appointing a Commissioner. See Civil P. C. (5 of 1908), S. 75 (c). AIR 1952 Him Pra 65.

—O. 26, Rr. 11, 10 — Commissioner appointed to prepare map of location—Map prepared by another—Value of. See Civil P. C. (1908), O. 26, R. 10. AIR 1959 Ker 358.

—O. 26, R. 13—Power of Court to order sale instead of partition. See Partition Act (1893), S. 2. AIR 1952 Cal 893.

—O. 26, Rr. 13 and 14 and O. 20, R. 18 — Partition suit—Death of some of defendants after preliminary decree—Legal representatives not brought on record—Final decree is null and void. See Civil P. C. (1908), O. 20, R. 18. AIR 1961 Orissa 140.

—O. 26, R. 13—Effect of agreement to exclude certain properties from jurisdiction of Civil Court. See Civil P. C. (5 of 1908), S. 54. AIR 1953 Punj 250.

●—O. 26, R. 14 and O. 20, R. 18—Partition—Decree—Provision for owelty or equality of partition—Nature of—Lien or charge in favour of member to whom owelty is awarded may be express or implied—Charge takes precedence over earlier encrumbrance—(T. P. Act (1882), Ss. 48 and 100—Words and Phrases — Owelty)—(Co-sharers—Partition). See Hindu Law — Partition. AIR 1957 SC 577.

—O. 26, R. 14—Partition—Provision for owelty — Charge — Nature of — Priority between charge of owelty and charge under indemnity clause. See Hindu Law—Partition. 1958 Ker L T 41=1958 Ker L J 230.

—O. 26, R. 14—Allotment of shares—Case on facts. AIR 1955 NUC (Pepsu) 1882.

—O. 26, R. 15—Order as to costs of commission — No common rule to all cases—Costs have to be decided on facts. AIR 1955 Mad 210.

—O. 26, R. 17—Oaths Act (1873), Ss. 4, 8, 9, 10 — Commissioner appointed merely to record evidence and submit a report—Whether Court for purposes of Oaths Act—(Evidence Act (1872), S. 3). See Oaths Act (1873), S. 4. AIR 1957 Nag 47.

—O. 26, Rr. 18 and 10 (2)—Enquiry by Commissioner—Notice to all parties must be given — Failure—Objection in revision is maintainable. See Civil P.C. (1908), O. 26, R. 10 (2). AIR 1960 Orissa 66.

—O. 26, Rr. 19, 15—"Expenses of the commission" in R. 15—Meaning of—Issue of commission for examination of witness whose attendance cannot be compelled by Court—Party cannot be compelled to pay costs of its adversary. See Civil P. C. (1908), O. 26, R. 15. AIR 1963 Pat 213.

—O. 27, R. 1; S. 15—Suit by Government—Person authorised to sign plaint—Plaint signed by D. C., at A presented to District Judge, at N having places of sitting both at N and A—Plaint held valid — That cause of action arose at N, was matter intrinsic to dispute—On such matter, no writ under Art. 226, can be issued—(Constitution of India, Art. 226)—Bengal, Agra and Assam Civil Courts Act (12 of 1887), S. 14). AIR 1955 NUC (All) 3595.

—O. 27, R. 1 and O. 8, R. 1—Written statement by Government—(Constitution of India, Art. 226). See Civil P. C. (5 of 1908), O. 8, R. 1. AIR 1953 Him Pra 95.

—O. 27, R. 78—Scope—Rule 78 presupposes Court's jurisdiction to order sale of movable. AIR 1955 NUC (Raj) 271.

—O. 27A, R. 3—Principle underlying order—Applicability. AIR 1951 Nag 464.

—O. 28, R. 1—Withdrawal of withdrawal application. AIR 1958 Bom 28.

—O. 29, R. 1; O. 6, Rr. 14 and 2; S. 115—Material fact—Absence of—Suit by corporate body — Person signing plaint must be proved to have been duly authorised—It is a material fact—It must be stated in plaint, in order to enable defendant to raise objection—No statemant in plaint—Finding that plaint is properly signed is irregular. See Civil P. C. (5 of 1908), O. 6, R. 14. AIR 1955 Bhopal 18.

—O. 29, R. 1—Petition by Company signed and verified by officer — Affidavit of competency to verify filed along with petition—Held, there was proper compliance with the rule of the Court and provisions in Civil P. C. See Constitution of India, Art. 226. ILR (1962) 2 Cal 187.

—O. 29, R. 1—Suit against—Form of suit—Unregistered society — Loan incurred by secretary on behalf of society — Personal liability of secretary — (Bengal Co-operative Societies Act (21 of 1940), S. 19. See Co-operative Society—Suit against. AIR 1961 Cal 393.

—O. 29, R. 1—Co-operative Societies Act (1912), S. 18—Claim against co-operative society—Members of managing committee impleaded as defendants — Society not impleaded — Maintainability — (Travancore-Cochin Co-operative Societies Act (1951), S. 24). See Co-operative Societies Act (1912), S. 18. AIR 1961 Ker 258.

—O. 29, R. 1—Suits Valuation Act (1887), S. 8—Suit for declaration to an office — Valuation of such suit considered — (Court-fees Act (1870), S. 7 (iv), Sch. II, Art. 17) — Suit by Corporations). See Suits Valuation Act (1887), S. 8. AIR 1955 NUC (Mad) 82.

—O. 29, R. 1 and O. 1, R. 10—Companies Act (1913), Ss. 179 (a) and 212 — Suit in name of liquidator — Maintainability—(Companies Act (1956), S. 457 (1) (a) and 512). See Companies Act (1913), S. 179 (a). AIR 1956 Nag 204.

——O. 29, R. 1 and O. 39, Rr. 1 and 2 and Ss. 151, 94—Power to grant injunction under S. 151 in the interest of justice — Failure to grant is a failure to exercise jurisdiction—Where the suit is not relating to a property O. 39, R. 1 will not apply — O. 39, R. 2 applies only to cases of breach of contract — In a suit for declaration that the plaintiff is qualified to hold an appointment, an injunction restraining the employer from terminating his services is to be treated an application under S. 151. See Civil P. C. (1908), S. 151. I L R (1960) Cut 400.

— O. 29, R. 1—Constitution of India, Art. 226 — Petition by office-holders on behalf of unregistered social class—Legality—Amendment may cure defect. See Constitution of India, Art. 226. AIR 1959 Punj 220.

● ——O. 29, R. 2 — Defence of India Rules (1939), Rr. 75-A (1) and 119—Service of requisition on order —On whom to be made—Mode of service — Requisition against Company—Service on Managing Agent who is principal officer is effective and proper. See Defence of India Rules (1939), R. 75 A(1). AIR 1961 S C 1214.

● —O. 29, R. 2—Defence of India Rules (1939), R. 75-A (2) and (3) — Notice of acquisition — Service on owner essential — Mode of service to be effected in a reasonable manner — Requisitioned goods in possession of company who had issued pucca delivery orders — Ownership in goods when passes by issue of pucca delivery order — Service of notice on Company as owner through its managing agent held valid and effective under R. 75-A (2). See Defence of India Rules (1939), R. 75-A (2). AIR 1961 S C 1214.

——O. 30, R. 1—T. P. Act (1882), S. 106—Notice by firm as landlord. See T. P. Act (1882), S. 106. AIR 1953 Assam 206.

——O. 30, R. 1 and S. 9 — Partnership Act (1932), S. 69—Objection as to non-registration. See Partnership Act (1932), S. 69. AIR 1954 Bom 364.

——O. 30, R. 1—Partnership Act (1932), S. 69 — Suit by unregistered firm is not maintainable — Registration is condition precedent — Registration at later stage does not cure initial defect — Point of non-registration should be raised at earliest opportunity—Plea should not be allowed to be raised without pleading. See Partnership Act (1932), S. 69. AIR 1955 N U C (Cal) 789.

——O. 30, R. 1—Endorsement of hundi by firm in favour of partner—Partner cannot sue firm to enforce that liability — Contract Act (1872), S. 43. AIR 1951 Cal 466.

——O. 30, R. 1—Cause of action after dissolution of firm — Suit against firm in firm name is incompetent. AIR 1951 Cal 460.

——O. 30, R. 1—Partnership Act (1932), S. 69 (2)—Scope and applicability. See Partnership Act (1932), S. 69 (2). AIR 1954 Hyd 172.

——O. 30, R. 1—Limitation Act (1908), S. 22 — Suit by firm — Plaint signed by one of the partners — Another partner signing subsequently — Effect. See Limitation Act (1908), S. 22. AIR 1955 N U C (Madh Bha) 4862.

——O. 30, R. 1—Partnership Act (1932), S. 69 (2)—Suit for benefit and interests of firm. See Partnership Act (1932), S. 69 (2). AIR 1953 Pepsu 37.

——O. 30, R. 1; O. 33, R. 1—Partnership Act (1932), Ss. 4 and 5—Joint Hindu family business and partnership. See Partnership Act (1932), S. 4. AIR 1953 Punj 235.

——O. 30, Rr. 2 and 1—Suit filed by one of partners in name of firm — Incomplete disclosure of names of other partners—Effect — Suit is on behalf of all and not liable to be dismissed on the ground of defect in disclosure of names. See Civil P. C. (1908), O. 30, R. 1. AIR 1962 Raj 144.

——O. 30, R. 3 — Limitation Act (1908), S. 14(1) — Same parties—First suit against firm name—In second suit names of two partners added. See Limitation Act (1908), S. 14(1). AIR 1958 All 166.

——O. 30, Rr. 3, 5, 6 and 8—Scope—Service of summons on one partner—Preliminary decree — Validity of—Other persons served as partners before final decree — Right of such persons to raise personal defence. AIR 1953 Bom 23.

——O. 30, Rr. 4 to 9 and 1 to 3—Applicability to joint family business. See Civil P. C. (1908), O. 30, R. 1. AIR 1956 Orissa 186.

——O. 30, R. 4; O. 30, R. 1, Explanation (Punjab); O. 41, R. 4 — Suit against joint Hindu family firm — Appeal by firm—Death of Karta—Widow not joined—Relief can be given to the widow. See Civil P. C. (1908), O. 30, R. 1, Explanation (Punjab). AIR 1961 Punj 91.

——O. 30, Rr. 5 and 6—Scope—Service of summons on one partner — Preliminary decree — Validity of—Other persons served as partners before final decree —Right of such persons to raise personal defence. See Civil P. C. (5 of 1908), O. 30, R. 3. AIR 1953 Bom 23.

● ——O. 30, R. 8 and O. 30, Rr. 1 to 7, O. 21, R 50 (2) —"The liability of such person"—Meaning of—Person admitting to be partner of the firm—He cannot raise issues between himself and his other partners : AIR 1932 Bom 516 and AIR 1940 Bom 330 and AIR 1940 Cal 28, Overruled. See Civil P. C. (1908), O. 30, R. 1. AIR 1963 S C 243.

— O. 30, R. 9—Partnership Act (1932), S. 46—Suit for money paid for—Defendant pleading partnership —Procedure to be followed by Court indicated. See Partnership Act (1932), S. 46. AIR 1955 N U C (Madh Bha) 41.

——O. 31, R. 2 and S. 99, O. 1, R. 9 — Suit against managing trustee of temple for his act of negligence — Other co-trustees should be made parties — Effect of non-joinder — Defect is fatal and decree passed cannot be sustained. See Civil P. C. (1908), S. 99. AIR 1964 Andh Pra 412.

——O. 31, R. 2—Mussalman Wakf (Bombay Amendment) Act (18 of 1935), S. 6-M(2)(11) — 'Wakf' — Meaning of—Jurisdiction of Court to appoint trustees or Mutawallis—Appointees are necessary parties. See Mussalman Wakf (Bombay Amendment) Act (18 of 1935), S. 6-M(2)(11). AIR 1953 Bom 92.

——O. 32, Rr. 1, 3, S. 11, Expln. VI—Gross negligence of guardian—Suit by next reversioner. See Civil P. C. (5 of 1908), S. 11, Expln. VI. AIR 1952 All 335.

——O. 32, R. 1—Hindu Law—Idol—Private debutter —Suit on behalf of deity by person other than shebait is maintainable where such person has obtained permission from Court — Correct procedure indicated : 51 Cal W N 383, Criticised. See Hindu Law — Idol. AIR 1955 Cal 624.

——O. 32, R. 1; O. 3, R. 4—Majority Act (1875), S. 2 —"Capacity to act"—Meaning — Suit for dissolution of marriage by Muhammadan girl aged 15 — O. 32, R. 1, Civil P. C., does not apply. See Majority Act (1875), S. 2. AIR 1952 Cal 381.

——O. 32, R. 1— Suit on mortgage — Non-joinder of parties — Mortgage by three persons — Two co-mortgagors released — One of subsequent purchasers not made party as claim barred by limitation— Effect —Suit held could proceed for entire mortgage money. AIR 1951 Nag 445.

——O. 32, R. 2 — Order under — No appeal lies — Civil P. C. (5 of 1908), O. 43, R. 1, S. 115. AIR 1952 Cal 381.

—O. 32, Rr. 3, 4 and O. 1, R. 10—Minor—Interests should be safe-guarded — Revenue Courts should see that minor is properly represented in a proceeding in which his interest appears to be involved.

Sale deed of a field stood in the name of a minor, though it was alleged to be so taken by his father. In a proceeding under S. 36 (1) read with S. 21 (3) of the Tenancy Act of 1958 the minor's father was made a party but not the minor. The Tahsildar allowed the tenant's application. The minor's father preferred an appeal to the Sub-Divisional Officer who dismissed it. An application was made on behalf of the minor to the Sub-Divisional Officer that he should be made a party, but no order was passed by him on that application. The Revenue Tribunal in revision observed that the minor was not a necessary party and his application for being joined as a party must be deemed to have been rejected by the Sub-Divisional Officer. The Revenue Tribunal proceeded as if the minor's father was the owner and not the minor, when the sale deed was in his name, though the father stated that he purchased the field benami in the name of the minor. The minor moved the High Court under Art. 227 of the Constitution of India.

Held, that in so far as the father claimed the sale deed to be benami his interest was adverse to that of the minor. The Revenue Authorities should have taken sufficient care to see that the minor was properly represented before them and in fact determined who should be his next friend or guardian. It was incumbent on the Tahsildar himself when the sale deed was produced before him to have taken steps for proper representation of the minor in whose name it stood. 1963 Mah L J (Notes) 32.

—O. 32, Rr. 3, 1 and O. 5, Rr. 9 (1), 12, 15 — Income-tax Act (1961), Ss. 148, 282 (1) — Service of notice on servant is no service in law — Notices served, held, wholly invalid. See Income-tax Act (1961), S. 148. AIR 1965 Mys 255.

● —O. 32, R. 4 (2) and O. 23, R. 3 — Contesting parties to appeal two wards of the same Court of Wards — Compromise petition signed by Deputy Commissioner as representing each of the estates — Compromise decree is not nullity—Failure to appoint another guardian for appellant who was of unsound mind could not affect its validity. See Civil P. C. (5 of 1908), O. 23, R. 3. AIR 1960 S C 444.

—O. 32, R. 4—Minor — Representation— Guardian —Several persons involved in transaction — One of them minor — One of others having no interest in conflict with that of minor, can act as his guardian. AIR 1955 NUC (All) 3290.

—O. 32, R. 4 — Suit by minors for declaration that ex parte rent decree was not binding on them — Ground that minors in rent suit were not represented by natural guardian but by brother — Neither application made to appoint brother as guardian ad litem nor his consent obtained—Minors held were not represented in rent suit under Code. AIR 1965 Cal 562.

—O. 32, Rr. 4 (2) and 9 — Removal of guardian ad litem by implication — Guardian-ad-litem not contesting suit and allowing decree to be passed against minor — Natural guardian of minor who is party to suit representing minor in appeal—Effect. See Civil P. C. (5 of 1908), O. 32, R. 9. AIR 1961 Ker 208.

—O. 32, Rr. 4 and 15 — Suit for partition by plaintiff of unsound mind — Wife's interest not in conflict with his — Plaintiff in the custody of his father who is the defendant—Wife though not living with the plaintiff is, in the circumstances, best suited to be his next friend. See Civil P. C. (5 of 1908), O. 32, R. 15. AIR 1962 Mys 18.

—O. 22, Rr. 4 (4), 3 (as amended by Patna High Court)—Appointment of person other than certificated guardian. See Civil P. C. O. 32, R. 3. AIR 1954 Pat 349.

—O 32, Rr. 4 and 3 — Appointment of guardian-ad-litem or next fried can take effect only from the date on which it is made — But Court has power in such a case under S. 5, Limitation Act, to extend time — Limitation Act (1908), S 5. See Civil P. C. (5 of 1908), O. 32, R. 3. AIR 1952 Pepsu 63.

—O. 32, Rr. 4 (3) and 15 — Appointment of guardian ad litem of person of unsound mind against his will — Effect. 65 Pun L R (Supp) 499 = AIR 1966 Punj 224.

—O. 32, Rr. 4, 3, S. 151—Minor defendant effectively represented by father who was also one of the defendants — No conflict of interest— No formal order appointing father as guardian-ad litem due to inadvertence — No prejudice — Decree cannot be set aside under S. 151. See Civil P. C. (5 of 1908), O. 32, R. 3. AIR 1960 Raj 189 (192).

—O. 32, R. 4 — Appeal by minors — No guardian appointed by Court — Minors' brother acting as their next friend — Brother is competent to conduct appeal on behalf of minors. AIR 1952 Tripura 30.

—O. 32, Rr. 4 A (1), 4 (as amended by the High Court) — Person other than certificated guardian appointed as guardian — Effect—See Civil P. C. (5 of 1908), O. 32, R. 4. AIR 1953 Nag 32.

—O. 32, R. 5—Suit by one next friend— Appeal by another person without getting previous next friend removed—Competency. AIR 1951 Pepsu 3.

● —O. 32 Rr. 6 and 7—Limitation Act (1908), S. 7—Partition decree in favour of manager of joint Hindu family and his minor sons — Execution — Manager can give valid discharge by accepting delivery of possession on behalf of minor sons— Time runs from date of decree — O. 32, Rr. 6 and 7 have no application. See Limitation Act (1908), S. 7. AIR 1961 S C 1074.

—O. 32, Rr. 6 and 7 — Interest of minors not substantially represented—Effect. AIR 1952 Cal 343.

—O. 32, R. 7 — Compromise of suit on execution proceedings by mother for herself and on behalf of her minor son — Leave of Court not obtained—Compromise is not binding on minor and cannot be given effect to. AIR 1951 Assam 46.

—O. 32, R. 7—Arbitration Act (1940), S. 33—Joint Hindu family consisting of father, mother and minor sons—Dispute as to partition of property—Reference to arbitration by minor's mother on behalf of herself and minor sons — Validity of reference — Award filed in Court and Court invited to pass decree in terms thereof—Procedure to be followed stated. See Arbitration Act (1940), S. 33. AIR 1961 Bom 24.

—O. 32, R. 7 — Leave of Court obtained after entering into compromise. AIR 1952 Cal 343.

—O. 32, Rr. 7 and 6 — Interest of minors not substadtially represented — Effect. See Civil P. C. (5 of 1908), O. 32, R, 6. AIR 1952 Cal 343.

—O. 32, R. 7—Oaths Act (1873), S. 11 — Minor — Agreement on behalf of, to be bound by oath. See Oaths Act (1873), S. 11, AIR 1957 Orissa 226.

—O. 32, R. 7 — Compromise in execution proceedings. AIR 1953 Pat 158.

—O. 32, R. 7 (3) — Conditional order allowing applicant to sue as pauper and at the same time calling upon him to file security for payment of court-fee is illegal. A I R 1955 N U C (Raj) 366.

● —O. 32, R. 7 and S. 11 — Provincial Insolvency Act (1920), Ss. 4 and 14 — Scope and applicability— Withdrawal of insolvency petition before adjudication as a result of compromise among creditors— Order granting leave does not constitute res judicata

so far as question whether compromise is beneficial to minors and binding on them—(Travancore Insolvency Act (8 of 1108), Ss. 4 and 14'. See Provincial Insolvency Act (1920), S. 4. **A I R 1956 Trav-Co 27 (FB).**

——O. 32, Rr. 8, 3, 5 and 9 — Guardian ad litem appointed by Court can be removed by Court for proper reasons. See Civil P. C. (5 of 1908), O. 32, R. 3. **A I R 1955 N U C (Pat) 1863.**

—— O. 32, Rr. 12 and 3 — Decree against major treating him as minor. See Civil P. C. (5 of 1908), O. 32, R. 3. **A I R 1959 Ker 387.**

—— O. 32, R. 12—Partition—Filing suit for partition by minor coparcener through next friend—Severance in status—Unilateral act of co-parcener cannot bring about original position—Re-union by all coparceners necessary—Principle applies with greater force when suit is followed by preliminary decree — Fact that final decree is barred does not affect severance in status — Minor's application under O. 32, R. 12 resulting in dismissal of suit — Division in status not affected. See Hindu Law — Partition. **78 Mad L W 409=A I R 1966 Mad 111.**

—— O. 32, Rr. 15 and 4 (3) — Appointment of guardian ad litem of person of unsound mind against his will—Effect. See Civil P. C. (5 of 1908), O. 32, R. 4 (3). **1965 Pun L R (Supp) 409=A I R 1966 Punj 224.**

——O. 33, O. 39, R. 1 and S. 26 — Suit commences with making of application for permission to sue in forma pauperis — While inquiry into pauperism continues. Court can grant injunction—A I R 1936 All 584 (FB) ; A I R 1952 Mys 76 and A I R 1950 Pat 309, Dissented from. See Civil P. C. (5 of 1908), O. 39, R. 1. **A I R 1955 Nag 259.**

——O. 33, R. 1 and S. 115 — "Possessed of sufficient means" — Applicant seeking permission to sue as pauper — Court finding on evidence that applicant has sufficient means—Categorical finding as to value of property held not necessary—Revision. See Civil P. C. (5 of 1908), S. 115. **A I R 1961 Assam 98.**

——O. 33, R. 1—Supreme Court Rules (1950), O. 14, R. 2 and O. 13, R. 7—Pauper — Who is — Appellant able to pay court-fees — Inability to provide security for costs of respondent — Is pauper. See Supreme Court Rules (1950), O. 14, R. 2. **A I R 1962 Guj 63.**

——O. 33, Rr. 1 and 8 and O. 38, R. 5 — Application to sue in forma pauperis — Attachment before judgment. **A I R 1954 Hyd 97.**

——O 33, R. 1—Motor Vehicles Act (1939), S. 110-F —Applicability and scope — Provision is not retrospective—Application filed in Civil Court for leave to sue as pauper for claiming compensation — Tribunal constituted during pendency of enquiry into pauperism — Tribunal held had no jurisdiction to entertain claim—Claim before Civil Court was not affected. See Motor Vehicles Act (1939), S. 110-F. **A I R 1961 Madh Pra 295.**

——O. 33, R. 1, S. 141 and O. 7, R. 10 — Application for leave to sue in forma pauperis—Nature of—Application can be returned for presentation to proper Court. **A I R 1958 Punj 52.**

——O. 33, R. 1—Right of legal representative. **A I R 1954 Trav-Co 130.**

——O. 33, R. 2, S. 2 (2), O. 7, R. 11 — Rejection of application to sue in forma pauperis. See Civil P. C. (5 of 1908), S. 2 (2). **A I R 1956 Hyd 41.**

——O. 33, Rr. 2, 1, 5 — Sufficient means — Proof—Inam lands—Restrictions to transfer must be proved —Court has discretion to refuse to take judicial notice of Act restricting transfer — Application held not in accordance with R. 2 — (Evidence Act (1872), S. 57). See Civil P. C. (5 of 1908), O. 33, R. 1. **A I R 1955 N U C (Madh Bha) 63.**

●——O. 33, Rr. 2 and 1, S. 26 and O. 39, R. 1—Application for permission to sue in forma pauperis—Filing of — Whether commencement of suit so as to attract O. 39—A I R 1917 Cal 852 and A I R 1952 Mys 76, Dissented from. See Civil P. C. (5 of 1908), S. 26. **A I R 1958 Pat 264 (FB).**

——O. 33, R. 2—Non-mention of persons entitled to benefit. See Fatal Accidents Act (1855), S. 1. **A I R 1958 Raj 188.**

●——O. 33, R. 2, O. 44, R. 1, O. 41, R. 1, S. 149—Order rejecting application for leave to appeal as pauper — Memorandum of appeal is not rejected—Court should direct applicant to pay court-fees on memo. of appeal within time fixed — Memo to be numbered and registered on payment of court-fee—For limitation appeal will be deemed to have been filed on date of presentation of application — Unless memo is registered and numbered, there can be no appeal within Art. 182 (2) — Rejection of appeal after registration for non-payment of court-fee or on ground of limitation — It cannot be said that there was no appeal — Appeal wrongly admitted is still an appeal for purposes of Art. 182 (2)—Court-fee not paid within time — Application for extension of time rejected — This is not rejecting appeal since there is no appeal to be rejected—Limitation for execution in such case is governed by Art. 182 (1) and not Art. 182 (2)—(Limitation Act (1908), Art. 182 (2)) — (Travancore Limitation Act (6 of 1100 M.E.), Art, 166 (2))—(16 Cal 250 and A I R 1931 Pat 422, Dissented from). See Civil P. C. (5 of 1908), O. 44, R. 1. **A I R 1955 Trav-Co 209 (FB).**

——O. 33, Rr. 2, 1 and 7 and O. 4, R. 1—Application to sue as pauper—Death of applicant — Continuance of suit by legal representatives — Travancore Civil P. C., O. 33 Rr. 1, 2 and 7 and O. 4, R. 1). See Civil P. C. (5 of 1908), O. 33, R. 1. **A I R 1953 Trav-Co 67.**

——O. 33, Rr. 3 and 5 (a), 2 — Scope — Compliance, meaning of—Non-inclusion of particular property in schedule does not entitle Court to reject an application under R. 5 — Whether schedule includes all the property has to be investigated at later stage — If it finds some property omitted, Court should determine its value and take the same into consideration to determine pauperism—If Court finds the applicant is not a pauper then Court should dismiss application. See Civil P. C. (5 of 1908), O. 33, R. 5 (a). **A I R 1955 Cal 192.**

——O. 33, R. 5 (e) — Rule 5, if exhaustive — Suit for specific performance of contract for resale—Application for leave to sue in forma pauperis—Statement by plaintiff that daughter and son-in-law would pay consideration — If sufficient for dismissal of application. **A I R 1952 All 582.**

——O. 33, Rr. 5 (a), 2 — In favour of manager of temple—Application for execution by his successor—Succession certificate is not necessary. See Civil P. C. (5 of 1908), O. 33, R. 2. **A I R 1955 N U C (Madh Bha) 3815.**

——O. 33, R. 5 (d-1) (Madras amendment)—Application for permission to sue as pauper—Court can consider question whether suit is barred by res judicata. 1948-1 Mad L J 400 and 1956-1 Mad L J 300, Relon. **(1965) 78 Mad L W 463.**

●——O. 33, Rr. 6, 5 and S. 151 — Application for permission to sue as pauper—Application not rejected under R. 5 — Notice to opposite party — Court has jurisdiction to entertain objection by opposite party regarding valuation of relief, jurisdiction of trial Court and limitation and reject application. See Civil P. C. (5 of 1908), O. 33, R. 5. **1965 All W R (H C) 393=1965 All L J 726=A I R 1966 All 84 (FB).**

——O. 33, Rr. 7, 5, S. 149—Limitation when application to sue as pauper is refused—Court-fee permitted to be paid on rejection of application — Suit must be

deemed to have been instituted on date of presentation of application. See Civil P. C. (5 of 1908), S. 149. A I R 1960 Andh Pra 381.

——O. 33, R. 7 and S. 149—Limitation when pauper application is refused—Initial time expired—Further extension if can be granted—(Practice and Procedure — High Court (Madhya Pradesh). A I R 1959 Madh Pra 169.

——O. 33, R. 7 and Ss. 115, 149, O. 7, R. 11 and O. 43, R. 1 (nn) (Mad)—Application for leave to sue in forma pauperis — Leave refused but time granted for payment of court-fee — Court-fee not paid—Petition rejected — Remedy—Appeal or revision—Court-fee—(Madras Court-fees and Suits Valuation Act (14 of 1955), Ss. 50, 52) — (Court-fees Act (1870), Sch. 1, Art. 1, Sch. 2, Arts 11, 17 (vi)) — See Civil P. C. (1908), S. 115. AIR 1959 Mad 14.

——O. 33, Rr. 7, 9 and S. 11—"Means"—Meaning of —See Civil Procedure Code (5 of 1908), O. 33, R. 9. AIR 1951 Orissa 349.

——O. 33, R. 8 — Application for leave to sue as pauper — Separate document as plaint not contemplated. (1959) 61 Bom L R 497.

——O. 33, R. 9—"Means" — Meaning of—Civil P. C. (1908), O. 33, R. 7, S. 11. AIR 1951 Orissa 349.

——O. 33, R. 9 (a)—Concealment or omission. A I R 1951 Orissa 349.

——O. 33, R. 10 and O. 44, R. 1 — Pauper appeal allowed partly — No direction as to who should pay court-fees—Subsequent application by Deputy Commissioner for calaulation of court-fee and direction for payment — Order under O. 33, R. 10 directing respondents to pay court-fee is not nullity—See Civil Procedure Code (5 of 1908), O. 44, R. 1. A I R 1952 All 173.

——O. 33, R. 15 and S. 8 — Presidency Small Cause Courts Act (1882), S. 9—Rules under—Rules of Practice and Procedure (Calcutta) Ch. 23, R. 1 (3) and Ch. 33, R. 1 — Withdrawal of application to sue as poor person without leave of Court to bring fresh application — Second application not barred — See Presidency Small Cause Courts Act (1882), S. 9. AIR 1965 Cal 233.

——O. 33, Rr. 15, 7, 8 (as amended in Rajasthan); O. 7, R. 11; Ss. 148, 149, 115 — Application for permission to sue as pauper rejected and time given to pay court-fee—Failure to pay court-fee — Fresh application for extension of time under S. 148 rejected —Order operates as rejection of plaint under O. 7, R. 11—Being appealable as decree, no revision lies—See Civil P. C. (1908), O. 33, R. 7 (as amended in Rajasthan). AIR 1962 Raj 157.

● ——O. 34, R. 1—T. P. Act (1882), S. 92—Property mortgaged by A with B—Decree in mortgage suit and property purchased by B himself in auction sale—Subsequent private sale by B to C — A forcibly dispossessing C — Suit by C against A for possession—Plea by A that one D had right of subrogation over the property—Held, that A could not raise the question of subrogation on behalf of D — Further as the mortgage by A in favour of D said nothing about earlier mortgage in favour of B and that money was left with D to redeem the earlier mortgage in favour of B an agreement in the mortgage of D that he would be subrogated to the rights of B could not be inferred — In the absence of proof that mortgage in favour of D was subsisting when B brought suit on his mortgage it could not be held that D was necessary party to the suit by B—See T. P. Act (1882), S. 92. AIR 1963 S C 1879.

● ——O. 34, R. 1 and O. 1, R. 10 — Joint family — Manager—Right to sue — Objection as to non-joinder of other adult co-sharers to be taken at early stage—Waiver — Suit by manager to enforce mortgage — Effect of non-joinder — Limitation Act (1908), S. 22 not attracted — See Hindu Law—Joint family. AIR 1961 S C 1277.

——O 34, R. 1 and O. 1, R 10 — Redemption suit—Person claiming certain right in equity of redemption—See Civil P.C., O. 1, R. 10. AIR 1954 Ajmer 30.

— O. 34, R. 1—T. P. Act (1882), Ss. 76, 101—Auction purchaser in execution of prior simple mortgage decree in possession — Liability to account: AIR 1918 Mad 103 and A I R 1937 Mad 769, Dissented from. See T P. Act (1882), S. 76. AIR 1956 All 422.

——O 34, R. 1 — Person setting up paramount title. AIR 1953 All 281.

——O. 34, R. 1 — Debt Laws—Bombay Agricultural Debtors Relief Act (1947), Ss. 4, 2 (4), (5), 7 — Purchaser of equity of redemption retaining amount of mortgage-debt out of price not entitled to apply under S. 4 — (Transfer of Property Act (1882), Ss. 59-A, 60)—See Debt Laws—Bombay Agricultural Debtors Relief Act (1947), S. 4. AIR 1960 Bom 247.

——O. 34, R. 1 — T. P. Act (1882), S. 91—Right of permanent tenant to redeem — Whether necessary party to suit under O. 34, R. 1—See T. P. Act (1882), S. 91. AIR 1953 Bom 315.

——O. 34, R. 1—Pre-emption — Enforcement of contractual right — Remedy — Usufructuary mortgage deed expressly granting such rights to mortgagee—Suit for possession by vendee of mortgagor — Such right cannot be pleaded as valid defence — It can be enforced only by separate suit for specific performance. AIR 1962 Cal 457.

——O. 34, R. 1 and S. 11— Joint Hindu family—Suit against father—Binding effect — (Hindu Law—Joint family — Manager) — 28 Cal 517, Not foll. See Civil P. C. (1908), S. 11. AIR 1956 Hyd 146.

——O 34, R. 1 — Suit for redemption of his share of vatantar by some mortgagors — All Bhayats not parties — Contention in the nature of paramount title cannot be considered in the suit. See Custom (Kutch). AIR 1953 Kutch 8.

——O. 34, R. 1 — Suit for piece-meal redemption of vatantar — Question of rendering accounts — Other co-sharers not necessary parties. See Custom (Kutch). AIR 1953 Kutch 8.

● —O. 34, R. 1—Provincial Insolvency Act (1920), Ss. 28 (2), 28 (7) and 37 — Official receiver not made party to mortgage suit—Effect — Title to property on annulment—(Transfer of Property Act (1882), S. 91): A I R 1929 Mad 480=113 Ind Cas 550, Overruled; A I R 1951 Nag 241, Dissent. from. See Provincial Insolvency Act (1920), S. 28 (2). AIR 1954 Mad 604 (FB).

——O. 34, R. 1 — A mortgaging his property to B, C and again to B for discharge of B's first mortgage—B assigning third mortgage to D — Suit by C to enforce his mortgage — D made party—Decree declaring D's prior rights under first mortgage—E purchasing property in execution — Suit by D to enforce first mortgage against E—E cannot dispute D's right to enforce first mortgage. AIR 1951 Mad 802.

——O. 34, R. 1—T. P. Act (1882), S. 91 (a)—Right to redeem—"Interest in mortgage security" and "interest in mortgaged property"—One of co-owners mortgaging entire property—Right of others to redeem—AIR 1930 Nag 173, Dissented from. See T. P. Act (1882), S. 91 (a). AIR 1959 Mys 39.

——O. 34, R. 1 — T. P. Act (1882), S. 101 — Decree by prior mortgagee — Puisne mortgagee not made party—Suit by latter—Prior mortgage can be used as shield — See T. P. Act (1882), S. 101. A I R 1953 Nag 200.

——O. 34, R. 1—T. P. Act (1882), S. 60 — Mortgage by father on his own behalf and on behalf of his minor son—Suit on mortgage—Minor son's share ex-

cluded from suit — Decree against father—In execution property purchased by mortgagee himself — Minor son cannot redeem mortgage unless and until he sets aside sale—See T. P. Act (1882), S. 60. **A I R 1952 Nag 202.**

——O. 34, R. 1, S. 11, O. 2, R. 2 — Suit for redemption — Subsequent suit for contribution in respect of rent paid—Maintainability — Res judicata. See Civil P. C. (1908), S. 11. **AIR 1957 Pat 446.**

——O. 34, R. 1, S. 11, Expl. IV—Mortgage suit—Execution of three hypothecation bonds by X in favour of A, B and C — Properties sold to A — Bonds in favour of A and B discharged — A then mortgaging property to P — Suit and decree by C on his hypothecation bond — P impleaded but not appearing nor putting any contention — Execution of C's decree—P's objection repelled — Suit by P claiming priority of title against auction purchaser in execution of C's decree —P held bound by C's decree and could not claim priority—(Transfer of Property Act (1882), Ss. 67, 91). See Civil P. C. (5 of 1908), S. 11, Expl. IV. **AIR 1955 NUC (Trav Co) 539.**

—— O. 34, R. 1—Scope. See T. P. Act (1882), S. 101. **AIR 1953 Trav.Co 271.**

——O. 34, R. 2—Accounts from date of application to date of award. See Debt Laws — Bombay Agricultural Debtors Relief Act (1947), S. 22. **AIR 1956 Bom 630.**

——O. 34, Rr. 2, 8—Debt Laws—Bengal Money Lenders Act (1950), S. 34 (1)(a) and (b)—Decree relating to notarial mortgage bond — Nature of such decree—It is not preliminary decree within Rules 2 and 8, Civil P. C. See Debt Laws — Bengal Money Lenders Act (1950), S. 34 (1) (a). **AIR 1962 Cal 622.**

——O. 34, R. 2—Pendente lite interest — Court must allow at contract rate. See Debt Laws—Bihar Money Lenders (Regulation of Transactions) Act (7 of 1939), S. 6. **1963 B L J R 887.**

——O. 34, R. 2 — Mortgage by conditional sale — If 'loan'. See Debt Laws — Bihar Money Lenders Act (3 of 1938). S. 2 (f). **1959 B L J R 145.**

——O. 34, R. 2—Tenancy Laws—Bihar Land Reforms Act (30 of 1950), Ss. 4(d), 14—Decree for costs in mortgage suit — Property vesting in State under Bihar Land Reforms Act — Decree-holder if can execute decree for costs against other properties of the judgment-debtor. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 4 (d). **AIR 1964 Pat 491.**

——O. 34, Rr. 3, 15 — Evacuee Interest (Separation) Act (1951), Ss. 2 (b), 10, 11 (1) — Administration of Evacuee Property Act (1950), Ss. 7, 8 and 17 (1) — T. P. Act (1882), S. 55 (6) (b) — Composite property subject to charge under S. 55 (6) (b), T. P. Act—Sale by competent officer under S. 10 of Separation Act —Charge whether destroyed — "Claim" and "free from encumbrances and liabilities" in S. 11 (1) of Separation Act —Meaning—Custodian of Evacuee Property after vesting of property in him under S. 8 of Administration Act, whether claims through evacuee within S. 55 (6) (b), T. P. Act — Court whether competent to order sale of property in hands of purchaser subject to charge under S. 55 (6) (b)—S. 17 (1), Administration Act, if operates as a bar. See Evacuee Interest (Separation) Act (1951), S. 2 (b). **AIR 1962 Bom 169.**

——O. 34, R. 3—T. P. Act (1882), S. 60—Extinguishment of right to redeem by decree of Court. See T. P. Act (1882), S. 60. **AIR 1956 Hyd 107.**

——O. 34, R. 3—Foreclosure—Right to eject trespasser. **AIR 1953 Nag 4.**

——O. 34, Rr. 4 and 5 — Limitation Act (1908), Arts. 181 and 182 (2) — Right to apply under Art. 181 —When accrues — O. 34, R. 4, Civil P. C., if obligatory. See Limitation Act (1908), Art. 181. **AIR 1957 Madh Pra 85.**

——O. 34, R. 4 — T. P. Act (1882) (as amended in 1929), Ss. 58 (g), 67, 68 and 98 — Mortgagee to enjoy property in lieu of interest — Personal covenant to pay — Possession not given to mortgagee — Mortgage held anomalous — Mortgagee held entitled to decree for sale and profits from date of mortgage to date of suit. See T. P. Act (1882), S. 58(g). **AIR 1953 Mad 13.**

——O. 34, R. 4—Suit to recover mortgage-money filed by Co-operative Bank before Registrar of Co-operative Societies — Interest in respect of period subsequent to suit — Registrar can award such interest. See Co-operative Societies — Bombay Co-operative Societies Act (7 of 1925), Rules framed under, R. 35. **(1965) 2 Mys L J 225.**

● ——O. 34, R. 4; O. 34, R. 2 — Decree for sale in mortgage suit — Appeal by mortgagor — Price of redemption reduced under S. 9, C. P. and Berar Money-lenders Act — It is not obligatory on appellate Court to fix fresh date for payment — (Debt Laws — C. P. and Berar Money-lenders Act (31 of 1947), S. 9. **AIR 1952 Nag 145 (FB).**

——O. 34, R. 4—Pendente lite interest — Court must allow at contract rate. See Debt Laws—Bihar Money Lenders (Regulation of Transactions) Act (7 of 1939), S. 6. **1963 B L J R 887.**

——O. 34, R. 4—Decree for costs in mortgage suit — Property vesting in State under Bihar Land Reforms Act — Decree-holder if can execute decree for costs against other properties of the judgment-debtor. See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 4 (d). **AIR 1964 Pat 491.**

● ——O. 34, Rr. 4, 5, 6 — Decree for sale in mortgage suit — Property vesting in State Government under Bihar Land Reforms Act — Decree-holder to proceed under S. 14 of Bihar Land Reforms Act before applying under O. 34, R. 6. **AIR 1962 Pat 332 (FB).**

——O. 34, Rr. 4 and 5 and S. 38 — T. P. Act (1882), Ss. 56 and 81 — Doctrine of marshalling of securities —Applicability in execution proceedings of mortgage decree—Court's power to direct order in which mortgaged properties should be sold. See Transfer of Property Act (1882), S. 56. **AIR 1960 Pat 378.**

——O. 34, Rr. 4, 1—Simultaneous co-equal mortgages —Suit by one mortgagee to enforce his mortgage, claiming priority — Form of decree to be passed in such cases indicated. See Civil P. C. (5 of 1908), O. 34, R. 1. **AIR 1955 NUC (Trav-Co) 5082.**

——O. 34, Rr. 5 and 1 — Suit for redemption of usufructuary mortgage — Subsequent mortgagee not impleaded — Subsequent mortgagee in possession being purchaser in execution of his decree — Subsequent suit for redemption of subsequent mortgage held not maintainable—Limitation—Effect of stated. See Civil P. C. (5 of 1908), O. 34, R. 1. **AIR 1955 NUC (All) 3597.**

——O. 34, R. 5—Application under O. 34, R. 5, Civil P. C. — Starting point of limitation. See Limitation Act (1908), Art. 181. **ILR (1957) Andh Pra 159.**

——O. 34, R. 5 and O. 21, R. 92, O. 49, R. 3 — Suit for sale on mortgage — Mortgagor when finally and irrevocably loses his equity of redemption — (High Court Rules and Orders — Calcutta High Court Rules (Original Side), Ch. 26, Rr. 89, 90 and 93 and Ch. 27, R. 45). See Civil P. C. (5 of 1908), O. 21, R. 92. **AIR 1956 Cal 510.**

——O. 34, R. 5—T. P. Act (1882), S. 67—Remedies of puisne mortgagee impleaded in prior mortgagee's suit —He has only right to redeem prior mortgage and participate in surplus sale proceeds — Prior mortgagee's claim satisfied and no sale held — He has no right to be substituted as plaintiff and have properties sold in satisfaction of his debt. See T. P. Act (1882), S. 67. **AIR 1955 NUC (Cal) 2083.**

——O. 34, R. 5, S. 97 — Court-fees Act (1870), S. 7 (i) —Appeal from decree in mortgage suit—Court-fee—

See Court-fees Act (1870), S. 7(i). A I R 1956 Hyd 161.

—O. 34, R. 5—(Jammu and Kashmir) Civil P. C. (10 of 1977), S. 60 (1), (c2), O. 34, R. 4 — Mortgage debt — Decree in terms of Agriculturists Relief Act — Default in payment — Final decree for sale is not barred — (Debt Laws—Jammu and Kashmir Agriculturists' Relief Act (1 of Sm. 1983), S. 11)—AIR 1941 Pesh 53 and AIR 1937 Lah 194, Not followed. See (Jammu and Kashmir) Civil P. C. (10 of 1977), S. 60 (1), (c2). AIR 1955 J and K 33.

—O. 34, Rr. 5, 1—T. P. Act (1882), Ss. 91, 92—Prior mortgagee bringing mortgaged property to sale without impleading puisne mortgagee and purchasing property himself — Subsequently pusine mortgagee redeeming prior mortgagee purchaser — Equity of redemption does not revive in mortgagor — Effect of non-joinder. See T. P. Act (1882), S. 91. A I R 1959 Ker 56.

—O. 34, R. 5 and O. 9, R. 9 — Application for final decree—Dismissal for default—Restoration. AIR 1952 Nag 177.

—O. 34, R. 5 and O. 9, R. 13—Final decree, application for — Notice to defendant is necessary. A I R 1952 Nag 177.

— O. 34, Rr. 5, 4, 6—Decree for sale in mortgage suit —Property vesting in State Government under Bihar Land Reforms Act— Decree-holder to proceed under S. 14 of Bihar Land Reforms Act before applying under O. 34, R. 6. See Civil P. C. (1908), O. 34, R. 4. AIR 1962 Pat 332 (FB).

—O. 34, R. 5 and O. 48, R. 3—Notice to judgment-debtor before passing final decree — Notice necessary as matter of prudence and as sound rule of practice — Words "and after hearing the parties" in App. D Form 6 are relevant—Form has statutory force. 1965 Raj L W 479=ILR (1965) 15 Raj 1110=A I R 1966 Raj 261.

—O. 34, R 6—Provable—Mortgage suit—Mortgagee if entitled to deduction of period under S. 78 (2), Provincial Insolvency Act (1920). See Provincial Insolvency Act (1920), S. 78 (2). 1955 Andh W R 626=AIR 1957 Andh Pra 437.

— O. 34, R. 6, S. 48, 2 (2)—After sale of mortgaged properties, personal decree for balance passed under O. 34, R. 6 — Execution of personal decree — Starting point of limitation under S. 48 is from the date of the personal decree. See Civil Procedure Code (5 of 1908), S. 48. A I R 1955 Andhra 251.

— O. 34, R. 6—Applicability—Sale proceeds insufficient to pay off mortgage decree — Application for personal decree — Delivery of property to auction purchaser if condition precedent—Right of assignee from plaintiff — Civil P. C., O. 22, R. 10 — T. P. Act, S. 6 (e). AIR 1951 Mad 628.

—O. 34, R 6 — Decree for costs in mortgage suit—Property vesting in State under Bihar Land Reforms Act — Decree-holder if can execute decree for costs against other properties of the judgment-debtor. See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 4 (d). AIR 1964 Pat 491.

— O. 34, R. 6—Mortgage of undivided share—Subsequent partition—Mortgagee not proceeding against property allotted to share of mortgagor — Mortgagee not entitled to order under O. 34, R. 6.

A co-sharer mortgaged his undivided share in specific item of joint property. After a preliminary decree in the mortgage suit was passed there was a partition and the item of property mortgaged fell to the share of a person other than the mortgagor. In execution proceedings of the final mortgage decree, the person raised the objection that as the item fell to his share, it could not be proceeded against in execution. (1963) ILR 41 Pat 428 (DB).

—O. 34, Rr. 7, 2 — Debt Laws — Bombay Agricultural Debtors Relief Act (1947), S. 22 — Accounts from date of application to date of award. See Debt Laws—Bombay Agricultural Debtors Relief Act (1947), S. 22. AIR 1956 Bom 630.

— O. 34, R. 7—Defendant purchasing lands including lands given in 'zarpeshgi' to predecessor-in-interest of plaintiffs — Defendant filing suit for redemption and obtaining decree — Before suit plaintiffs kept out of possession of 'zarpeshgi' lands by defendant for certain period — Suit by plaintiffs for mesne profits for such period — Suit held was not barred by 'res judicata' because of plaintiffs' failure to press their claim for mesne profits in redemption suit as such claim could not have been added to principal amount in redemption suit on plain reading of O. 34, R 7 and S. 72 of T. P. Act—Plaintiffs held were entitled to compensation and not to mesne profits. See Civil Procedure Code (5 of 1908), S. 11. AIR 1953 Pat 220.

—O. 34, Rr. 7, 8, O. 41, R. 5 — Appeal by one of defendants against preliminary decree in a redemption suit—Application by him for stay of proceedings for final decree. AIR 1951 Punj 203.

—O. 34, R. 7 — T. P. Act (1882), S. 76 — Suit for redemption against mortgagee in possession —Dismissed as premature — Appeal — Cause of action accruing during appeal — Decree for redemption — Mortgagor's right to mesne profits. See T. P. Act (1882), S. 76. AIR 1956 Trav Co 208.

—O. 34, R. 7—Costs — Except for exceptional reasons mortgagor cannot get his costs — Mortgagee usually gets — Sufficient misconduct however disentitles him to costs. AIR 1952 Trav-Co 574.

—O. 34, R. 8—Decree relating to notarial mortgage bond—Nature of such decree — It is not preliminary decree within O. 34, Rr. 2 and 8, Civil P. C. See Debt Laws—Bengal Money Lenders Act (1940), S. 34 (1) (a). AIR 1962 Cal 622.

—O. 34, R. 10 — Mortgage suit — Costs to follow event in absence of special circumstances. AIR 1965 Mad 537.

— O. 34, Rr. 10, 1, O. 1, R. 10—Suit by assignee of mortgagee—Defendant mortgagor alleging discharge of debt before assignment — Original mortgagee ordered to be impleaded as party-defendant. A I R 1965 Mad 495.

—O. 34, R. 10—Decree for costs in mortgage suit—Property vesting in State under Bihar Land Reforms Act — Decree-holder if can execute decree for costs against other properties of the judgment-debtor. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 4 (d). AIR 1964 Pat 491.

—O. 34, R. 11 and S. 34 — Suit on mortgage — Interest pendente lite — Discretion of Court — (Debt Laws — Bengal Money-lenders Act (10 of 1940), Ss. 30 and 31). See Civil P. C. (1908), S. 34. A I R 1957 Cal 140.

—O. 34, R. 11—Usurious Loans Act (1918), S. 3 — Penalty clause in mortgage providing for double enhancement of interest in cases for default—Not illegal when actual rate of interest allowed by Court till date of decree is 12 per cent. p. a., which cannot be regarded as usurious or penal. See Usurious Loans Act (1918), S. 3. AIR 1965 Mad 537.

— O. 34, R. 11—Mortgage decree against agriculturist mortgagor and non-agriculturist pusine mortgagee — Decree scaled down against mortgagor alone — Assignee of puisne mortgagee purchasing property in execution of his decree and paying amount under scaled down decree —Full satisfaction held could not be entered unless difference between two decrees was paid — Interest on such difference not allowed

in the circumstances. See Debt Laws — Madras Agriculturists Relief Act (1938), S. 19. **A I R 1959 Mad 433.**

—O. 34, R. 11, S. 34 — Directions in preliminary decree — Effect of relief under S. 14, Madras Agriculturists' Relief Act — Madras Agriculturists' Relief Act (4 of 1938), S. 14. See Civil Procedure Code (5 of 1908), S. 34. **AIR 1951 Mad 844.**

—O. 34, R. 11 — Suit to recover mortgage-money filed by Co-operative Bank before Registrar of Co-operative Societies—Interest in respect of period subsequent to suit — Registrar can award such interest. See Co-operative Societies — Bombay Co-operative Societies Act (7 of 1925), Rules framed under, R. 35. **(1965) 2 Mys L J 225.**

— O. 34, R. 11—Interest in mortgage suits — Period between date of suit and date fixed for redemption and period between date fixed for redemption and date of realisation — In either case it is discretionary with Court to allow interest—Rule contemplates only principal amount adjudged in respect of first period while for subsequent period total amount due might be taken into consideration. **A I R 1955 N U C (Nag) 2134 (c).**

— O. 34, R. 15 — T. P. Act (1882), S. 100 — Simultaneous charge created in respect of two different sets of parties means two charges — Property sold in auction in enforcement of one charge — Other charge does not get extinguished. See T. P. Act (1882), S. 100. AIR 1956 Mad 67.

—O. 34, Rr. 15 and 14; O. 21, R. 54 and S. 51 — Charge created by compromise decree — Fresh suit to enforce it is not necessary—Charged property can be brought to sale in execution of decree — No fresh attachment is also necessary—T. P. Act (1882). S. 109. See Civil P. C. (1908), O. 34, R. 14. **A I R 1963 Tripura 46.**

—O. 35, R. 4 (1) (a) and S. 88 — Interpleader suit — Plaintiff should claim no interest in subject-matter —Plaintiff need not admit claim in its entirety — To the extent plaintiff admits his liability he may ask rival claimants to interplead. See Civil P. C. (1908), S. 88. **(1965) 2 Andh W R 403 = A I R 1966 Andh Pra 92.**

—O. 37, R. 1 and O. 17, R. 1 — Provincial Small Cause Courts Act (1887), S. 25 — Error of procedure and of law — Suit instituted in Small Cause Court — On date of first hearing defendant applying for adjournment without any affidavit to support application — Defendant unwilling to pay adjournment costs also—Court holding that defendant should have obtained leave under O. 37 to appear and defend suit —Application for adjournment rejected and plaintiff's claim decreed — Provisions of O. 37, Civil P. C., held were inapplicable and it was not incumbent on the defendant to obtain previous leave to appear and defend suit — Nor was it necessary for him to agree to pay adjournment costs—If he did not pay costs he would not have been allowed to file written statement — Order refusing adjournment held erroneous and liable to be set aside. See Provincial Small Cause Courts Act (1887), S. 25. **AIR 1959 Manipur 14.**

— O. 37, Rr. 2 and 3 (as in Bombay) — Ahmedabad City Civil Court Rules (1961), R. 142 (3) — Constitution of India, Art. 14 — Rules 2 and 3 of Code and R. 142 (3) are not violative of Art. 14 or of principles of natural justice. ILR **(1965) Guj 1166.**

— O. 37, R. 3 (as in Bombay).

Ahmedabad City Civil Court Rules (1961), R. 142 (3) — Constitution of India, Art. 14 — Rules 2 and 3 of Code and R. 142 (3) are not violative of Art. 14 or principles of natural justice. See Civil P. C. (1908), O. 37, R. 2. **ILR (1965) Guj 1166=(1966) 7 Guj L R 87.**

● —O. 38, R. 5 — Inherent powers are not powers over substantive right — Civil Court cannot, under inherent powers, appoint Commissioner to seize account books in possession of plaintiff on ground of defendant's apprehention that they would be tampered with — Commissioner so appointed is not a public servant — Offering bribe to him is not offence under S. 165A, Penal Code—AIR 1959 All 707, **Reversed.** See Civil P. C. (1908), S 151. **AIR 1961 S C 218.**

—O. 38, R. 5 — Attachment of deposit lying in District Judge's Court. **AIR 1952 Ajmer 2 (2).**

—O. 38, R. 6 (2), Ss. 95, 115 and O 43, R. 1 (q) — Conditional order under O. 38, R. 5 for attachment before judgment — Security furnished — Attachment not effected — Application to get order set aside and for damages — Damages refused but security discharged — Revision does not lie as order is appealable. See Civil P. C. (5 of 1908), S. 95. **AIR 1952 Bhopal 14.**

—O. 38, Rr. 6 (1), 5; O. 43, R. (1) (q) — Application for attachment before judgment—Court ordering interim attachment when issuing notice to defendant to show cause why he should not furnish security — Defendant showing cause and also praying for release of properties from attachment—Order refusing defendant's prayer falls under O. 38, R. 6 (1) and is appealable. See Civil P. C. (1908), O, 38, R. 5. **AIR 1962 Mad 444.**

—O. 38, R. 6; O. 41, R. 1 — Order under O. 38, R. 5—Appeal. **AIR 1952 Sau 125.**

—O. 38, R. 8 — Applicability. See Civil P. C. (5 of 1908), O. 21, R. 63. **AIR 1953 All 452.**

—O. 38, R. 8 and S. 151 and O. 21, Rr. 46 (1) (c) (iii), 58 to 63—Attachment before judgment of movable property in possession of third party — Claim petition under O. 38, R. 8 by third party by furnishing security — Dismissal as not pressed — Applicability of O. 21, Rr. 58 to 62 — Suit under O. 21, R. 63 not filed — Breach of prohibitory order by sale of attached property—Inherent power of Court to direct third party to pay decretal amount or to bring attached property to Court. See Civil P. C. (1908), S. 151. **AIR 1962 Andh Pra 137.**

—O. 38, R. 8 —There can be attachment befor final decree but after preliminary decree if other conditions are satisfied—Proceedings under O. 21, R. 42 available — It is no bar to proceed under O. 38, R. 5. **AIR 1965 Ker 288.**

—O. 38, R. 9; O. 21, R. 58 —Attachment before judgment — Property attached, sold after dismissal of suit — Suit decreed in appeal and another attachment order passed — Sale is not affected by subsequent attachment order.

Upon the dismissal of the suit, the attachment before judgment ceases under O. 38, R. 9, Civil P. C., even though the Court does not pass an order withdrawing it. Even in case the suit is decreed by the appellate Court, the attachment, originally effected, does not revive.

Where, after the suit was dismissed, property attached before judgment was sold by the defendant, and after the suit was decreed in appeal, another attachment order was passed, the sale is not affected by the subsequent attachment order and, therefore, objection by the purchasers of the property to the subsequent attachment raised under O. 21, R. 58, must be upheld. AIR 1930 Mad 514, Rel. on; AIR 1952 T C 414, Not followed; Case law Ref. **(1965) 31 Cut L T 486.**

● —O. 39, R. 1 — Injunction against a party restraining him from proceeding with his suit—Effect—Order does not bind the Court — Court may ignore the injunction and proceed with suit. AIR 1952 Punj 247, AIR 1950 Mad 373 and AIR 1951 Pepsu 78, Rel. on. **AIR 1962 S C 527.**

●——O. 39, R. 1 (b), Ss. 151, 75; Or. 26, 38, R. 5; O. 39, R. 7 — Inherent powers are not powers over substantive right — Civil Court cannot, under inherent powers, appoint Commissioner to seize account books in possession of plaintiff on ground of defendant's apprehension that they would be tampared with — Commissioner so appointed is not a public servant — Offering bribe to him is not offence under S. 165A, Penal Code — AIR 1959 All 707, Reversed. See Civil P. C. (1908), S. 151. **AIR 1961 S C 218.**

——O. 39, Rr. 1, 2 and 3 and S. 151—Ex parte interim injunction — Grant of — Such injunction, if can be granted under inherent powers of Court. See Civil P. C. (5 of 1908), S. 151. **AIR 1951 All 8.**

——O. 39, R. 1 — Constitution of India, Art. 226 — Application for writ of prohibition — Application for interim relief for temporary injunction—Application is maintainable only if main petition is tenable. See Constitution of India, Art. 226. **AIR 1952 Bhopal 35.**

——O. 39, R. 1 — Arbitration Act (1940), S. 34 — Court which can grant stay — City Civil Court — Power of High Court apart from S. 34 to stay suit by issuing injunction on plaintiff — Petitioner applying for injunction after taking part in City Civil Court suit — Petitioner not entitled to ask for stay—(W. B. City Civil Court Act (21 of 1953), S. 5 (4) and Schedule 1, Item 11). See Arbitration Act (1940), S. 34. **AIR 1959 Cal 583.**

——O. 39, Rr. 1 and 2, S. 141 — Tenancy Laws — W. B. Estates Acquisition Act (1953) (1 of 1954), Ss. 44 and 55 — Tribunal appointed for purpose of S. 44 — Its powers as Civil Court — Power to issue temporary injunction under O. 39, Rr. 1 and 2, Civil P. C. See Tenancy Laws — W. B. Estates Acquisition Act, 1953 (1 of 1954), S. 44. **AIR 1959 Cal 386.**

——O. 39, R. 1, S. 151 — Pauper application — Jurisdiction to grant temporary injunction pending decision. See Civil P. C. (5 of 1908), S. 151. **AIR 1951 Cal 357.**

——O 39, R. 1, S. 151—Inherent power—When and how should be exercised—Injunction pending pauper application under inherent powers — Form of. See Civil P. C. (5 of 1908), S. 151. **AIR 1951 Cal 357.**

——O. 39, R. 1—Proceedings if original proceedings —Application by agriculturists debtor to pay decretal amount in instalments—Provisions of Civil Procedure Code regarding issue of injunction — Applicability. See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), S. 4 (1). **1958 Ker L J 1464.**

——O. 39, R. 1 (a) and O. 38, R. 5 (1) — Property in danger of being damaged, wasted or alienated—Allegations not relevant for obtaining attachment before judgment — They can be made basis of application under O. 39, R. 1. See Civil P. C. (5 of 1908), O. 38, R. 5 (1). **AIR 1952 Kutch 47.**

——O. 39, R. 1 (a) — Order under by itself is not conclusive as regards liability of person to whom order is issued. **AIR 1955 NUC (Madh Bha) 3065.**

——O. 39, Rr. 1 and 2 — Suit under—Jurisdiction of Civil Court to grant injunction—If ousted. See Madras Hindu Religious and Charitable Endowments Act (1951), S. 62 (1). **71 M L W 153=(1953) 1 M L J 258 ILR (1958) Mad 703.**

——O. 39, R. 1—Interim injunction—Power of High Court. **AIR 1951 Mad 279.**

——O. 39, R. 1 — Held, appellate Court ought not to have interfered with discretion exercised properly by trial Court in refusing to grant temporary injunction even though different view was possible on materials on record — Appellate Court, therefore, acted in exercise of its jurisdiction with material irregularity, if not in excess of its jurisdiction: Case law discussed. See Civil P. C. (1908), S. 115. **(1965) 2 Law Rep 521.**

——O. 39, R. 1—Power to stay proceesdings in Court of co-ordinate jurisdiction. See Civil P. C. (5 of 1908), S. 151. **AIR 1951 Pepsu 78.**

——O. 39, R. 1, S. 115—Injunction restraining Municipality from removing structure erected by plaintiff during pendency of suit — Balance of convenience is in favour of plaintiff—See Civil Procedure Code (5 of 1908), S. 115. **AIR 1955 N U C (Punj) 114.**

——O. 39, R. 1 — Criminal P. C. (1898), S. 488 — Award for maintenance — Civil suit to set it aside — Interim injunction—Maintainability — See Criminal P. C. (1898), S. 488. **AIR 1956 Trav-Co 204.**

● ——O. 39, R. 2 (3) — Remedies for disobedience of injunction — Cls. (2) and (3) of O. 21, R. 32 practically reproduce terms of Cls. (4) and (3) of O. 39 respectively — Remedies for disobedience of injunction are: (1) by attachment of property and (2) by detention in civil prison — They are not alternative but cumulative. **AIR 1961 S C 221 (227).**

——O. 39, R. 2 — Contempt of Courts Act (1952), S. 3.

Interim injunction order restraining interference with possession of applicant passed by High Court — On facts held that opposite party had disregarded interim injunction order by cutting standing crop and could be punished under O. 39, R 2-A of Civil P. C.—Separate punishment under S. 3 of Contempt of Courts Act was not necessary — Contemner being woman only fined in the first instance — See Contempt of Courts. **1964 All W R (HC) 127.**

——O. 39, R. 2 — Guardians and Wards Act (1890), Ss. 34 (d), 43 (4) and 45 (1) (b) — Guardian investing minor's money in firm — Order directing guardian to withdraw investment and deposit it in Court — Non-compliance — Imposition of daily recurring fine till compliance — Order is not justified either under S. 43 (4) or S 45 (1) (b) — See Guardians and Wards Act (1890), S. 34 (d). **AIR 1960 All 527.**

——O. 39, R. 2 — Interim order authorising tenant to carry out repairs — Power to pass—See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 7-E. **1958 All L J 853.**

——O. 39, Rr. 2 and 1 — Temporary injunction — Grant of—Principles — See Civil P. C. (1908), O. 39, R. 1. **AIR 1963 Andh Pra 365.**

——O. 39, Rr. 2, 1 — Specific Relief Act (1877), S. 42 — Suit for declaration of right to remain in possession cannot be described as suit for restraining defendant from committing injury of any kind — Defendant cannot be restrained from taking proceedings to recover possession — See Specific Relief Act (1877), S. 42. **AIR 1955 Andhra 142.**

——O. 39, Rr. 2 and 1 — Grant or refusal of injunction — Criterion—See Civil P. C. (1908), O. 39, R. 1. **AIR 1956 Bhopal 49.**

——O. 39, Rr. 2 and 1 and Ss. 94 (c) and 151 — Inherent power cannot be invoked to grant temporary injunction — See Civil P. C. (1908), S. 94 (c). **A I R 1959 Ker 45.**

——O. 39, Rr. 2 and 1 and S. 151 — Injunction cannot be granted to restrain decree-holder from executing decree — See Civil P. C. (1908), O. 39, R. 1. **AIR 1957 Madh Bha 95.**

—O 39, Rr. 2 and 1 — Infringement of trade-mark Temporary injunction — Test to be applied for grant of injunction — Nature of right in trade-mark — Particulars creating confusion amongst consumers — Evidence and proof — Circumstances held not in favour of grant of injunction—See Civil P. C. (1908), O. 39, R. 1. **AIR 1962 Madh Pra 297.**

——O. 39, Rr. 2 and 1 — "Interference with possession" — Does not amount to damage or waste of property—Suit for declaration of title — Application for

injunctions by defendant already in possession — Grant of — Validity — See Civil P. C. (1908), O. 39, R. 1. AIR 1962 Manipur 55.

—— O. 39, R. 2—Disobedience of injunction—Effect. AIR 1951 Orissa 230.

—— O. 39, R. 2 — Dispute regarding bakasht land — Order under S. 145 (4), Criminal P. C. — Reference of dispute to Board under S. 3, Bihar Act (13 of 1947) — Injunction to stay proceedings before Board — Bihar Bakasht Dispute Settlement Act (13 of 1947), S. 3. AIR 1951 Pat 224.

—— O. 39, Rr. 2 (3) and 1 and S. 151 — Temporary injunction — Purpose of — Disobedience during pendency of suit — Relief to aggrieved party — Inherent power under S. 151 can be exercised—See Civil P. C. (1908), S. 151. AIR 1963 Raj 3.

—— O. 39, Rr. 2 and 1 and S. 151 — Power of Court — Exercise of, on behalf of defendant — See Civil P. C. (1908), O. 39, R. 1. AIR 1957 Trav-Co 286.

●—— O. 39, R. 7 — Inherent powers are not powers over substantive right — Civil Court cannot, under inherent powers, appoint Commissioner to seize account books in possession of plaintiff on ground of defendant's apprehension that they would be tampered with — Commissioner so appointed is not a public servant — Offering bribe to him is not offence under S. 165-A, Penal Code. AIR 1959 All 707, Reversed—See Civil P. C. (1908), S. 151. AIR 1961 S C 218.

●— O. 40, R. 1—Companies Act (1913), S. 105C — Receiver not entitled to acquire new shares — See Companies Act (1913), S. 105-C. AIR 1953 S C 385.

—— O. 40, R. 1 and S. 51 (d)—Execution by appointment of receiver—Decree-holder to make out proper case—See Civil Procedure Code (5 of 1908), S. 51 (d). AIR 1955 Ajmer 61.

—— O. 40, R. 1 and S. 51 (d) — Judgment-debtor making application under S. 24, Bombay Money Lenders Act — Fact is no bar to appointment of receiver — (Debt Laws — Bombay Money Lenders Act (31 of 1947), S. 24) — See Civil Procedure Code (5 of 1908), S. 51 (d). AIR 1955 Ajmer 61.

—— O. 40, R. 1, S. 51—Appointment of a Receiver in execution proceedings is exceptional remedy—Strong case must be made out—Appointment is discretionary—Discretion has to be judicially exercised—Judgment-debtor having ample property—There is no good reason for appointment of receiver—See Civil Procedure Code (5 of 1908), S. 51. AIR 1955 Ajmer 58.

—— O. 40, R. 1; O. 43, R. 1 and S. 104 — Companies Act (1913), Ss. 153 (c) (8) and 202 — Order appointing interim receiver—Appeal — (Letters Patent (All), Cl. 10) — See Companies Act (1913), S. 153 (c) (8). AIR 1953 All 647.

—— O. 40, R. 1, S. 151; O. 39, R. 1 and O. 43, R. 1 (r), (s) — Order requiring precautionary directions pending receivership application—Appeal — See Civil Procedure Code (5 of 1908), S. 151. AIR 1952 All 279.

—— O. 40, R. 1 and S. 92 — Suit under, filed with sanction of Advocate-General — Order appointing interim receiver—Appeal—Duty of appellate Court in determining validity of order—See Civil P. C. (1908), S. 92. AIR 1965 Andh Pra 143.

—— O. 40, R. 1 and S. 92 — Appointment of receiver n suit under S. 92. AIR 1965 Andh Pra 143.

—— O. 40, R. 1 (1) (d) and (2) and S. 151 — Power of Court to remove a party to suit from possession of property or to direct receiver to remove him and take possession—Inherent power to appoint receiver. AIR 1965 Andh Pra 143.

—— O. 40, R. 1 and S. 92 — Appointment of receiver pending suit under S. 92 — Discretion of Court — Appointment of trustees as Receiver — Effect of — Interference by appellate Court — Specific Relief Act (1877), S. 44 — See Civil P. C. (1908), S. 92. AIR 1965 Andh Pra 143.

—— O. 40, R. 1—T. P. Act (1882), Ss. 69-A and 72 — Expenses of Receiver appointed in mortgagee's suit at mortgagee's instance — Remuneration paid to him outside Court without sanction or approval of Court cannot be added to mortgage amount—See T. P. Act (1882), S. 69-A. AIR 1955 Andhra 274.

—— O. 40, R. 1 and O. 21, R. 91 — Receiver putting up property of estate to sale to recover his costs etc., — Purchaser can object to title where real and substantial defect exists in the title — Sales will not be upheld—Lack of title cannot be cured by any special condition. AIR 1955 N U C (Assam) 641.

—— O. 40, R. 1 — Grant of inam land to person for expenses of idol — Grant if absolute — Appointment of receiver—(Inam)—(Hindu Law—Religious endowment) — (Trust and Trustee) — (Deed — Construction). See Grant. AIR 1956 Bom 628.

—— O. 40, R. 1 — Limitation Act (1908), Art. 144 — Appointment of receiver — Possession of party to suit thereafter is as custodian for Court and cannot be adverse to other parties to suit during period of receivership. See Limitation Act (1908), Art. 144. AIR 1960 Cal 533.

—— O. 40, R. 1 — Receivers—Appointment of Receivers by a competent Court cannot be colaterally challenged. See Civil P. C. (5 of 1908) S. 51. ILR (1960) 2 Cal 282 (DB).

—— O. 40, R. 1, Ss. 42, 51 and 39 (1) (b) and (c) — Companies Act (1913), S. 199 — Balance order on contributory—Enforcement—Appointment of receiver — Power to transfer case for execution — Exclusive jurisdiction of High Court — (Banking Companies Amendment Act (1950), Ss. 45H, 45A, 45B). See Companies Act (1913), S. 199. AIR 1953 Cal 610.

—— O. 40, R. 1 and S. 51 — Provident Funds Act (1925), S. 3 (2) — Judgment-debtor dying—Receiver, if can be appointed of Provident Fund amount. See Provident Funds Act (1925), S. 3 (2). AIR 1952 Cal 349.

—— O. 40, R. 1 — Arbitration Act (1940), S. 41 — Party to arbitration can move for appointment of receiver but such application must follow arbitration. See Arbitration Act (1940), S. 41. AIR 1955 N U C (Madh Bha) 3355.

—— O. 40, R. 1 — Scope of — Just and convenient — Meaning — Suit for recovery of money by simple creditor — No special equity — Receiver cannot be appointed — (Gwalior Civil P. C. (Smt. 1966), S. 451) — (Words and Phrases — Just and convenient). AIR 1953 Madh-Bha 85.

—— O. 40, R. 1 — Sale by Receiver — Nature of.

A sale by Receiver who is an officer of Court under orders of a Court is no doubt not a sale in execution of a decree so as to attract all the incidents of an execution sale, but at the same time it is not to be regarded as a sale by private treaty in all its aspects. An examination of the case law both in England and in America shows that the view has been taken that when an offer made by the prospective purchaser to the Receiver, or to any other officer conducting the sale, has been confirmed by the Court and the entire sale price had been deposited as per orders of Court, the sale deed, though executed later in point of time will date back and take effect from the anterior date when the offer by the purchaser was accepted and the sale confirmed by the Court after payment of the full purchase price. ILR (1965) 1 Mad 756 (DB).

—— O. 40, R. 1 — Income Tax Act (1922), Ss. 10 (2) (vi) and (vii), 12-B (1) and (2) Second Proviso — Sale of assets of partnership after stopping of business by

Commissioner appointed by Court — Amount realised in excess of written down value — Liability of excess to income-tax — Applicability of Ss. 10 (2) and 12-B. See Income Tax Act (1922), S. 10 (2) (vi) and (vii). AIR 1957 Mad 453.

——O. 40, R. 1—T. P. Act (1882), S. 69-A—Receiver appointed under — Power to sell mortgaged property. See T. P. Act (1882), S. 69A. AIR 1956 Mad 424.

——O. 40, R. 1, S. 51 (d); O. 21, R. 11 (2) (j) (iv); O. 43. R. 1 (S) — Appointment of receiver in execution. See Civil P. C. (1908), S. 51 (d). AIR 1956 Mad 163.

——O. 40, R. 1, S. 151, O. 39, R. 1 — Appointment of receiver instead of temporary injunction can be made only when there is request for this by defendant. See Civil P. C. (5 of 1908), S. 151. AIR 1955 Mad 360.

——O. 40, R. 1; O. 43, R. 1, Cl. (S) — Tenancy Laws — Malabar Tenancy Act (14 of 1930), Ss. 50 and 13 — Order appointing receiver in proceeding under S. 13 — Appealability. See Tenancy Laws — Malabar Tenancy Act (14 of 1930), S. 50. A I R 1951 Mad 591.

——O. 40, R. 1; S. 151 — Succession Act (1925), S. 247 — Probate proceedings — Appointment of receiver during pendency. See Succession Act (1925), S. 247. AIR 1951 Mad 393.

——O. 40, R. 1—Sale of holding in hands of receiver —Want of permission of appointing Court — Effect. See Berar Land Revenue Code (1928). AIR 1951 Nag 52.

——O. 40, R. 1 — Receiver's possession and adverse possession. See Limitation Act, Art. 142. (1965) 31 Cut L T 361.

——O. 40, R. 1; S. 115 — Jurisdiction — Irregularity and illegality in exercise of jurisdiction — Suit for partition — Preliminary decree — Right of plaintiffs to ask for possession of house by dispossessing co-sharer in occupation — First application refused — Second similar application allowed without noticing previous order refusing same and without hearing co-sharer in occupation — Order held suffered from irregularity or illegality in exercise of jurisdiction — (Hindu Law — Partition) — (Co-sharers). See Civil P. C. (1908), S. 115. AIR 1957 Pat 715.

——O. 40, Rr. 1, 3, 4 (b) and O. 43, R. 1 (s) and S. 47 — Order directing receiver's property to be attached and sold on his failure to pay amount due from him — Second appeal. See Civil P. C. (5 of 1908), S. 47. AIR 1951 Pat 451 (1).

——O. 40, R. 1; O. 41, R. 1; Ss. 100-101 and 107 — Question whether there is completed agreement between parties — Question of law or fact. See Civil P. C. (5 of 1908), S. 107. AIR 1951 Pat 299.

——O. 40, R. 1—Administration of Evacuee Property Act (1950), S. 17—Sale of evacuee property in execution of money decree or appointment of receiver. See Administration of Evacuee Property Act (1950), S. 17. AIR 1952 Punj 428.

——O. 40, R. 1 (d) and S. 51 (d) — Property in Indian State — Court's power to limit receivership to receipt of rents and profits. See Civil P. C. (5 of 1908), S. 51 (d). AIR 1951 Punj 277.

——O. 40, R. 1 (d) and S. 51 (d) — Receiver appointed — Mortgage by judgment-debtor — Validity. See Civil P. C. (5 of 1908), S. 51 (d). AIR 1951 Punj 277.

——O. 40, R. 1 — Summary jurisdiction. AIR 1953 Trav-Co 205.

——O. 40, Rr. 2, 1 and 3 and O. 43, R. 1 (s) — Order refusing to remove receiver—Appeal is not maintainable — (General Clauses Act (1897), S. 16). See Civil P. C. (5 of 1908), O. 40, R. 1. AIR 1955 N U C (Trav-Co) 1907.

——O. 40, Rr. 3, 1 (2) — "Any person" — Suit on basis of simple mortgage — Appointment of receiver. See Civil P. C. (5 of 1908), O. 40, R. 1. AIR 1952 Madh-Bha 136.

——O. 40, R. 3 — Order directing receiver's property to be attached and sold on his failure to pay amount due from him — Second appeal. See Civil P. C. (5 of 1908), S. 47. AIR 1951 Pat 451 (1).

——O. 40, Rr. 3, 2 and 1 and O. 43, R. 1 (s) — Order refusing to remove receiver—Appeal is not maintainable — (General Clauses Act (1897), S. 16). See Civil P. C. (5 of 1908), O. 40, R. 1. AIR 1955 N U C (Trav-Co) 1907.

——O. 40, Rr. 4, 1 and O. 43, R. 1 — Mortgage suit — Order preferring plaintiff to one of defendants as receiver — Order stating that he would be appointed receiver if security was furnished — Order is not appealable as the order is neither one appointing or refusing to appoint receiver. See Civil P. C. (1908), O. 40, R. 1. AIR 1960 Ker 57.

——O 40, Rr. 4, 1 — Appointment of Receiver with respect to subject matter of suit — Order not illegal although suit dismissed on ground that Court has no jurisdiction — Court can also compel Receiver to submit accounts. See Civil P. C. (1908), O. 40, R. 1. AIR 1963 Pat 122.

——O. 40, R. 4 — Appeal. See Civil P. C. (5 of 1908) O. 40, R. 1. AIR 1953 Pat 264.

● ——O. 41, R. 1—New plea—Plea depending upon further investigation of facts — Not allowed for first time in appeal before High Court and Supreme Court, Karpagathachi v. Nagarathinathachari. (1966) 2 S C W R 378=(1965) 2 S C J 445=AIR 1965 S C 1752.

■ ——O. 41, R. 1 and S. 107—Appellate Court should not make out new case which was not pleaded by party. S. A. No. 151 of 1958, D/- 13-11-1958 (M. P.), Reversed. See Civil P. C. (1908), S. 107. AIR 1961 SC 1097.

● ——O. 41, R. 1 — Supreme Court Rules (1950), O. 19, R. 4 — New point raised in argument before Supreme Court — Entertainment of. See Supreme Court Rules (1950), O. 19, R. 4. AIR 1956 SC 105.

——O. 41, R. 1 — Variance between pleadings and proof—New point under S. 53A, T. P. Act not allowed. See Civil P. C. (5 of 1908), O. 6, R. 2. AIR 1955 NUC (Ajmer) 4787.

——O. 41, R. 1—Stamp on memorandum of appeal—Objection against order regarding costs — Court-fee not paid on memorandum of appeal—Point cannot be allowed. AIR 1955 NUC (Ajmer) 1331.

——O. 41, R. 1 — New plea. See Civil P. C. (1908), S. 100. AIR 1954 Ajmer 57 (2).

——O. 41, R. 1; O. 13, R. 3—Document intrinsically admissible—Objection to its admissibility on ground that it was not duly proved must be taken at earliest stage and not in appeal. See Civil P. C. (1908), O. 13, R. 3. I L R (1965) 1 All 483=AIR 1966 All 570.

——O. 41, R. 1 and S. 100—Question of fact—Question whether property was damaged after decree for possession, is essentially one of fact. See Civil Procedure Code (5 of 1908), S. 100. A I R 1955 All 223.

——O. 41, R. 1—Evidence Act (1872), Ss. 101 to 103 —Onus in appeal—Lower Court holding party guilty of breach of contract—Burden of proving that decision is wrong is on that party. See Evidence Act (1872), Ss. 101 to 103. AIR 1955 All 24.

——O. 41, R. 1 and Ss. 100, 107—Raising of new case in second appeal which involves investigation of facts cannot be allowed. See Civil Procedure Code (5 of 1908), S. 100. AIR 1955 NUC (All) 2770.

——O. 41, R. 1—Letters Patent (All), Cl. 10—Special appeal, interference with finding of fact is very ex-

ceptional. See Letters Patent (All), Cl. 10. **AIR 1955 NUC (All) 2014.**

—O. 41, R. 1 — Power of attorney — Post-card authorising pleader to present appeal stitched to blank paper bearing Court-fee stamps—Validity. See Civil Procedure Code (5 of 1908), O. 3, R. 4. **AIR 1951 All 451.**

—O. 41 R. 1—Limitation Act (1908), Art. 182 (2) —Appeal rejected for deficiency of court-fee—Whether there is appeal within meaning of Art. 182 (2). See Limitation Act (1908), Art. 182 (2). **AIR 1951 All 79 (FB).**

—O. 41, R. 1 (u) — Remand order under S. 151 — Order is not appealable. See Civil Procedure Code (5 of 1908), S. 151. **AIR 1955 NUC (Assam) 2791.**

—O. 41, R. 1 — Limitation Act (1908), S. 3—Question of limitation raised in pleadings and specific issue framed—Question not argued by the counsel — Appellate Court can determine such question — Remand held not necessary. See Limitation Act (1908), S. 3. **AIR 1953 Assam 30.**

—O. 41, R. 1—Appeal—New plea. See Constitution of India, Art. 226. **AIR 1957 Cal 560.**

—O. 41, R. 1—"Any other Court" means any Court other than the Court which passed the decree under Cl. 12, Letters Patent and the Court or Courts which may hear appeals from that decree. See Decrees and Orders Validating Act (1936), S. 2. **AIR 1955 NUC (Cal) 2939.**

—O. 41, R. 1 and S. 100—Exercise of discretion by lower Court. See Civil P. C. (1908), S. 100. **AIR 1954 Cal 238.**

—O. 41, R. 1 — Special defences — If objection is serious, it should be made by counter-affidavit — Otherwise finding that there were not laches will stand—Question held not one of consideration of delay but of treating appeal as being within time—Plea held failed. See Civil Procedure Code (5 of 1908), O. 8, R. 2. **AIR 1955 NUC (Him Pra) 1804.**

—O. 41, R. 1 — Delegation of function by Commissioner to others. See Civil Procedure Code (5 of 1908), O. 20, R. 16. **AIR 1953 Him Pra 110.**

—O. 41, R. 1 and S. 100—New point of law or constitutional question. See Civil P. C. (1908), S. 100. **AIR 1956 Hyd 120.**

—O. 41, R. 1; O. 9, R. 9; O. 17, Rr. 2, 3 — Suit adjourned not at instance of plaintiff — Plaintiff absent on date of hearing—Court purporting to decide suit on merits — Appeal and application under O. 9, R. 9 by plaintiff—Trial Court can decide application under O. 9, R. 9 after dismissal of appeal. **AIR 1962 Ker 17**

—O. 41, Rr. 1 and 2—New plea. See Civil Procedure Code (5 of 1908), S. 96. **AIR 1953 Kutch 42.**

—O. 41, R. 1—Suit on foreign judgment — Mistake in judgment. See Civil P. C. (1908), S. 13. **AIR 1957 Madh B 74.**

—O. 41, R. 1 and S. 51—Stay of execution of decree — Appointment of receiver for preserving interest of decree-holder can be ordered even after decree. **AIR 1955 NUC (Madh Bha) 3718.**

—O. 41 R. 1 and S. 96—Suit resisted on grounds of sufficiency of court-fee and bar of limitation — Trial Court without adjudicating first the question of court-fee deciding that suit was time-barred—Appeal dismissed — In second appeal objection raised that court-fee paid in second appeal was insufficient—Held that in view of the basis of valuation put by plaintiff which question was left unadjudicated by trial Court, no objection could be taken to the court-fee paid in second appeal. See Civil Procedure Code (5 of 1908), S. 96. **AIR 1955 NUC (Madh Bha) 3095.**

—O. 41, R. 1 — Trusts Act (1882), Ss. 90 and 94—Suit for partition of Hindu joint family business — Defendant appointed receiver of business pendente lite—Defendant purporting to convert family business into personal business without leave of Court—Later on business purchased by defendant in his own right —Right of coparceners to obtain accounting could be founded on S. 90 and S. 94 might also apply—Defendant was accountable upto date of his purchase. See Trusts Act (1882), S. 90. **AIR 1964 Mad 205.**

—O. 41, R. 1—Suits Valuation Act (1887), S. 11 — Objection as to jurisdiction — Over-valuation alleged in appeal—Objection not tenable. See Suits Valuation Act (1887), S. 11. **AIR 1960 Mad 298.**

—O. 41, R. 1 and O. 21, R. 92—Sale in execution—A's bid final — Thereafter T offering higher price — Court asking T to deposit price amount in Court — Deposit by — Sale confirmed in favour of A without notice to T—Effect — Review of confirmation order. See Civil P. C. (1908), O. 21. R. 92. **AIR 1958 Mad 396.**

—O. 41, R. 1—Objection to authority of agent. See Civil Procedure Code (5 of 1908), O. 3, R. 2. **AIR 1953 Mys 89.**

—O. 41, R. 1 — Specific Relief Act (1877), S. 42 — Further relief available but not asked — Right of defendant to call upon appellate Court to dismiss suit on that ground. See Specific Relief Act (1877), S. 42. **AIR 1956 Nag 95.**

—O. 41, Rr. 1, 2 - In maintenance suit defendants contending that family was not joint—In appeal by them defendants compelled by appellate Court to accept position that they were joint—They are entitled to contend for whatever flows from that position. **AIR 1951 Nag 133.**

—O. 41, R. 1; O. 21, R. 11, and S. 48 — Decree obtained in 1929 — Execution application in 1941 — In 1959 decree-holder filing petition praying for attachment of compensation money payable to judgment-debtor under Orissa Estates Abolition Act — Petition held was fresh and barred by S. 48. See Civil P. C. (1908), S. 48. **AIR 1964 Orissa 182.**

—O. 41, R. 1 and S. 96 — New plea — Contention that all the joint family properties had not been brought into hotchpot and the alienees had not been made parties to the suit and the suit for partition must fail—No issue raised on the point and point not agitated before the trial Court — Appellate Court will not allow contention to be raised for the first time at the appellate stage. See Civil P. C. (1908), S. 96. **AIR 1963 Orissa 45.**

—O. 41, R. 1—Debts incurred by receiver in course of business —Court receiver in partition suit executing promissory note — No specific charge created on properties in suit—Suit on promissory note — Form of decree to be passed. **AIR 1957 Orissa 32.**

—O. 41, R. 1 — Interference with finding of fact. See Civil P. C. (1908), S. 100. **AIR 1954 Orissa 40.**

—O. 41, R. 1 — Suit for partition — Plea of self-acquisition rejected by trial Court — Plea not pressed again in first appeal — It is not open to be raised in second appeal. See Civil P. C. (1908), Ss. 100-101. **AIR 1964 Pat 66.**

—O. 41, R. 1—Evidence Act (1872), S. 65 — Objection about admissibility of secondary evidence—Stage for. See Evidence Act (1872), S. 65. **AIR 1964 Pat 45.**

—O. 41, R. 1 and Ss. 21, 96—Plea that Court had no jurisdiction taken up in written statement and issue raised but issue given up before hearing—Defendant-appellant cannot raise the plea in appeal in view of S. 21, See Civil P. C. (1908), S. 96. **AIR 1963 Pat 221.**

—O. 41, R. 1 — Income-tax Act (1922), S. 33 (3) — Failure by assessee to sign memorandum of appeal—It is irregularity that can be cured and not illegality.

See Income-tax Act (1922), S. 33 (3). A I R 1960 Pat 270.

—O. 41, R. 1 and O. 44, R. 1 — Application praying leave to appeal in 'forma pauperis' — Memorandum must be accompanied by copies of judgment and decree. See Civil P. C. (5 of 1908), O. 44, R. 1. AIR 1955 Pat 301.

● —O. 41, Rr. 1 and 2 and Ss. 100-101 — New plea — Plea involving questions of fact — Plea not also specified in grounds of appeal — Plea cannot be allowed. See Civil P. C (1908), Ss. 100-101. 1965 Cur L J 598=AIR 1966 Punj 36 (FB).

—O. 41, R. 1 and S. 107 — Mixed question of fact and law — Question whether or not a mortgage is usufructuary mortgage is a mtxed question of fact and law — Not to be allowed in appeal unless necessary facts are admitted or established by evidence. See Civil P. C. (1908), S. 107. AIR 1961 Punj 477.

—O. 41, R. 1—Arbitration Act (1940), S. 29—Power of appellate Court to award future interest — Discretion — Claim for future interest not allowed for first time in appeal. See Arbitration Act (1940), S. 29. AIR 1960 Punj 623.

—O. 41, R. 1 — Limitation Act (1908), S. 12 (2) — Order awarding compensation under Workmen's Compensation Act — Appeal — Time required for obtaining copy of final order can be excluded. See Limitation Act (1908), S. 12 (2). AIR 1955 Punj 156.

—O. 41, Rr. 1 and 31—Question of custom—Question if not raised in pleadings cannot be considered in appeal. AIR 1955 NUC (Punj) 4022.

—O. 41, R. 1 — Power to present appeal — Power giving power to do "Peravi", authorises counsel to present appeal after signing memo of appeal on behalf of client. See Civil P. C. (5 of 1908), O. 3, R. 2. AIR 1955 NUC (Raj) 1643.

—O. 41, R. 1 — Objections raised in memorandum of appeal or revision — Objections not pressed at time of hearing arguments — Presumption. See Civil P. C. (5 of 1908), S. 115. AIR 1953 Raj 155.

—O. 41, R. 1 — Order under O. 38, R. 5 — Appeal. See Civil P. C. (5 of 1908), O. 38, R. 6. AIR 1952 Sau 125.

■ —O 41, R. 1; O. 44, R. 1; O. 33, R 2, S. 149 — Order rejecting application for leave to appeal as pauper — Memorandum of appeal is not rejected — Court should direct applicant to pay court-fees on memo of appeal within time fixed—Memo to be numbered and registered on payment of court-fee — For limitation, appeal will be deemed to have been filed on date of presentation of application—Unless memo is registered and numbered, there can be no appeal within Art. 182 (2) — Rejection of appeal after registration for non-payment of court-fee or on ground of limitation — It cannot be said that there was no appeal — Appeal wrongly admitted is still an appeal for purposes of Art. 182 (2) — Court-fee not paid within time — Application for extension of time rejected — This is not rejecting appeal since there is no appeal to be rejected — Limitation for execution in such case is governed by Art. 182 (1) and not Art. 182 (2). See Civil P. C. (5 of 1908), O. 44, R. 1. AIR 1955 Trav Co 209 (FB).

—O. 41, R. 1 and S. 107—Appreciation of evidence by Appellate Court—Interference with finding of fact — Opinion of Trial Court on pure question of fact is of importance. See Civil P. C. (5 of 1908), S. 107. AIR 1955 NUC (Trav-Co) 1453.

—O 41, R. 1 and S. 11—One second appeal against several appeals against one decree. See Civil P. C. (1908), S. 100. AIR 1954 Trav-Co 28.

—O. 41, R. 1 — To claim benefit under Act party must plead and establish that he is agriculturist as defined in Act—Such plea cannot be set up in appeal. See Debt Laws — Travancore Agriculturists' Relief Act (3 of 1112). AIR 1951 Trav-Co 39.

—O. 41, R. 1 — Appeal from appellate decree — Failure to file copies of judgment and decree—Effect. See High Court Rules and Orders—(Tripura) Rules of the Judicial Commissioner's Court, R. 7 (2). AIR 1956 Tripura 6.

● —O. 41, R. 2 — New plea — Pure question of law not depending on facts — If can be allowed for first time in grounds of appeal or even as an additional ground at later stage — Discretion of appellate Court —Interference by superior Court. Chittoori Subbanna v. Kudappa Subbanna, (1965) 1 S C A 847 = (1965) 2 S C W R 202 = A I R 1965 SC 1325.

■ —O. 41, R 2—New case in appeal — Question as to true nature of grant. See Civil P. C. (1908), O. 41, R. 1. AIR 1959 SC 24.

—O. 41, R. 2 — New plea — Plea that attestation of will was not duly proved not raised in grounds of appeal — Plea not raised before lower Court even in arguments — Plea cannot be allowed to be raised in appeal. ILR (1965) 1 All 483=AIR 1966 All 570.

—O. 41, R. 2 — Suit on contract by Government — Question of ratification of agreements not stated in notice under S. 80—Government's right to raise question for first time at stage of hearing of appeal. See Civil P. C. (1908), S. 80. AIR 1960 All 420.

—O 41, R. 2 and S. 107— Appreciation of evidence — Powers of appellate Court. See Civil P. C. (1908), S. 107. AIR 1959 All 264.

—O. 41, R. 2—Registration Act (1908), S. 17—Security bond in favour of Court—Bond under O. 41, R. 6, Civil P. C. See Registration Act (1908), S. 17. A I R 1958 All 820.

—O. 41, R. 2 — New point — Point neither raised before trial Court nor raised in grounds of appeal cannot be allowed to be raised for first time in appeal. AIR 1951 Cal 394.

—O. 41, R. 2 — New plea—Suit for possession and rent — Plea regarding sufficiency of notice cannot be raised for first time in appeal — (Transfer of Property Act (1882), S. 116). See Civil P. C. (5 of 1908), O. 41, R. 1. AIR 1955 Him Pra 44.

■ —O. 41, Rr. 2, 7; O. 8. R. 9 and S. 107 — Variance between pleadings and proof — Plaintiff claiming title to property on basis of sale — Alternative case in appeal that he was in possession of property and had valuable rights under S. 53A, T. P. Act, 1882 — No foundation alleged for such case in pleadings—Court declined to investigate the question. See Civil P. C. (1908), O. 6, R. 2. (1965) 2 Ker L R 315 = 1965 Ker L T 1208 = 1965 Ker L J 1085 = AIR 1966 Ker 96 (FB).

—O. 41, R. 2 — Competency of appeal — Objection can be raised for the first time in second appeal. See Civil P. C. (5 of 1908), S. 96. AIR 1953 Kutch 28.

—O. 41, Rr. 2 and 22 — New plea — Respondent may support decree without filing cross objections. AIR 1955 NUC (Madh Bha) 5693.

—O. 41, R. 2 — Two cross-appeals tried together — Appeal from decision in one only, is not barred. See Civil P. C. (5 of 1908), S. 11. AIR 1955 NUC (Madh Bha) 40.

—O. 41, R. 2 — Limitation Act (1908), S. 3—Duty of appellate Court — Suit on face of it appearing as time barred — Point of limitation not raised before, or considered by, lower Courts — Appellate Court not precluded from considering the point — Provisions of S. 3 are mandatory — Provisions contained in Ss. 4 to 25 not available — Suit must be dismissed. See Limitation Act (1908), S. 3. AIR 1965 Madh Pra 102.

—O. 41, R. 2 — New plea — Grounds not taken before single Judge cannot be taken. See Letters

Patent (Madhya Pradesh), Cl. 10. 1960 Jab L J 133= 1960 M P L J 382.

——O. 41, R. 2 — Specific Relief Act (1877), Ss. 14, 15, 16 — Applicability—Part left unperformed forming considerable portion of whole — Section applicable is S. 15 and not S. 14 — Claim to part which cannot be performed, at stage of appeal, can be relinquished at stage of appeal. See Specific Relief Act (1877), S. 14. AIR 1963 Mad 106.

——O. 41, R. 2 — New plea in ground of appeal, not allowed. See Civil P. C. (1908), O. 41, R. 1. AIR 1957 Mad 470.

——O. 41, R. 2 — Omission to plead material fact — Effect — Trial Court allowing evidence on such point and considering it — Absence of ground in memorandum — Appellate can declare such evidence inadmissible. See Civil P. C. (5 of 1908), O. 6, R. 2. AIR 1952 Nag 60.

——O. 41, R. 2 — In maintenance suit defendants contending that family was not joint — In appeal by them defendants compelled by appellate Court to accept position that they were joint — They are entitled to contend for whatever flows from that position. See Civil P. C. (5 of 1908), O. 41, R. 1. AIR 1951 Nag 133.

——O. 41, R. 2 — New point — Question of abatement of suit as widow was not brought on record along with minor son of deceased plaintiff — Question not raised in lower Court or in memorandum of appeal although defendant was aware of presence of widow — Question being mixed question of law and fact defendant will be estopped from raising it in appeal. See Civil P. C. (5 of 1908), O. 41, R. 1. AIR 1965 Pat 300.

——O. 41, R. 2 — Arbitration Act (1940), Ss. 39 (1), 34 — Appeal against order setting aside award — Objection to arbitration agreement on the basis that contract containing same did not comply with requirements of S. 175 (3), Government of India Act cannot be raised for first time at time of argument when claimant had no opportunity to adduce evidence upon question. See Arbitration Act (1940), S. 39 (1). AIR 1955 Punj 240.

——O. 41. R. 2 — New plea not taken even in memorandum of appeal, cannot be allowed. See Civil P. C. (5 of 1908), O. 41, R. 1. A I R 1955 N U C (Punj) 4988.

——O. 41, R. 2 — Plaintiff raising plea of alternative case neither in trial Court nor in grounds of appeal — He is not strictly entitled to urge it for first time in appeal. (The appellate Court, however, considered the alternative case). See Civil P. C. (5 of 1908), O. 41, R. 1. 1965 Raj L W 173 = ILR (1965) 15 Raj 478 = AIR 1966 Raj 14.

——O. 41, R. 2 — Second appeal — Appeal confined to one part — Effect. AIR 1954 Raj 58.

——O. 41, R. 2 — Plantiff's right to get past and future mesne profits not challenged before lower appellate Court — Even in memorandum of second appeal plaintiff's right to get mesne profits not questioned — Held, it was not open to appellant at stage of argument to disclaim altogether his liability for mesne profits. See Civil P. C. (5 of 1908), S. 100. AIR 1953 Trav-Co 360.

——O. 41, R. 3 — Hindu Marriage Act (1955), Ss. 9, 23 (1) (d) — Hindu wife filing suit for restitution of conjugal rights instead of application — Decision in suit is not nullity — Objection to form of proceeding when not raised in trial Court cannot be raised in appeal as also plea of undue delay. See Hindu Marriage Act (1955), S. 9. AIR 1964 Mad 237.

——O. 41, R. 3 — Exercise to discretion if binding on appeal. See Limitation Act (1908), S. 5. AIR 1953 Mys 137.

——O. 41, R. 3 — Limitation Act (1908), Art. 182 (2) — Appeal admitted — Dismissal for non-payment of deficit court-fee — Limitation starts from such date. See Limitation Act (1908), Art. 182 (2). AIR 1952 Trav-Co 493.

——O. 41, R. 4 — Joint decree against defendants for possession — Appeal by them — Death of one of them — Legal representative not brought on record — Whole appeal abates. See Civil P. C. (5 of 1908), O. 22, R. 3. AIR 1955 NUC (All) 2763.

——O. 41, R. 4 — Appeal proceeding on common ground — Death of one of appellants — Appeal does not abate — Remaining appellant can get reversal of decree. See Civil P. C. (5 of 1908), O. 22, R. 3. AIR 1955 NUC (All) 1692.

●——O. 41, R. 4 — Appeals by defendants on common ground — Appeal by one of them abating — Effect on other appeals. See Civil P. C. (5 of 1908), O. 22, R. 3. AIR 1953 All 565 (FB).

——O. 41, Rr. 4 and 20 — Parties — One of appellants not joined in first appeal — Second appeal held was maintainable. AIR 1958 Andh Pra 494.

——O. 41, Rr. 4, 5 — Application for stay by respondent. AIR 1956 Andhra 64.

——O 41, R. 4—Order 41, R. 4, does not control O. 22, Rr. 3 and 11 — Whether survivor can appeal alone depends upon whether rights are severable, whether executable decree can be passed in appeal without disturbing rights accrued under lower Court's decree — Suit for maintenance against deceased husband's brothers on ground that they were joint when her husband died—Defendants contending that property was not ancestral — Decree in favour of plaintiff — Defendant appealing — One of them dying during pendency of appeal — Held appeal abated as a whole unless surviving defendants accepted position that family was joint. See Civil P. C. (5 of 1908), O. 22, R. 11, AIR 1951 Nag 133.

——O. 41, R. 4 — Compromise decree, in suit to set aside adoption, recognising adoption — Adoptive mother and son agreeing to transfer certain items of property — Plaintiff's execution of decree allowed to proceed after dismissal of objection — Appeal against dismissal of objection by natural father, one of defendants on his own behalf and minor. See Civil P. C. (5 of 1908), O. 32, R. 3 (5). AIR 1953 Orissa 343.

——O. 41, R. 4 — Appeal as to part only of decree — Money decree against mother and son — Both taking common plea of absence of consideration — Appeal by son —Appellate Court holding plea established — It can dismiss entire suit — Fact that all grounds adopted by defendants were not common did not matter. See Civil P. C, (5 of 1908), O. 41, R. 33. AIR 1955 NUC (Pat) 1310.

——O. 41, R. 4. — Partition suit — Necessary parties — Non-joinder — Addition of parties — Hindu Law —Partition. See Civil P. C. (5 of 1908), O. 2, R. 2. AIR 1951 Pepsu 68.

——O. 41, R. 5—Stay order by higher Court — Effect —Transfer of case from Nyaya Panchayat under S. 85, U. P. Panchayat Raj Act — Effect — Order of transfer of case and order to stay proceedings — Distinction — Stay order when takes effect. See Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 85. AIR 1963 All 588.

——O. 41, R. 5 — Effect of stay order — Execution petition dismissed after receipt of stay order — Effect on limitation for fresh application for execution. AIR 1958 Andh-Pra 722.

——O. 41, R. 5 — Plaintiffs obtaining decree and in execution obtaining possession by dispossessing defendants — Decree reversed in appeal — Plaintiffs filing second appeal and asking for stay of execution

of decree of first appellate Court— Stay would negative defendants' right to restitution and will not be granted. See Civil P. C. (1908), S. 144. AIR 1959 Bom 490.

——O. 41, R. 5 — Stay of proceedings — Powers of appellate Court and Registrar—High Court Rules—(Bombay) Appellate Side Rules (1938), R. 11 (n). AIR 1951 Bom 288.

— O. 41, R. 5 — Stay of execution on deposit of gold as security — Loss of gold — Executing Court should make proper inquiries and should take steps to recover gold from proper authorities — Matter of execution should be decided thereafter. AIR 1955 NUC (Hyd) 905.

——O. 41, R. 5 (3) — Security for setting aside ex parte decree—Surety bond need not be registered. See Provincial Small Cause Courts Act (1887), S. 17, Proviso. AIR 1961 Madh-Pra 2.

——O. 41, R. 5 — Security to be furnished within time prescribed — Tender of security within time is sufficient compliance. AIR 1952 Mad 601.

——O. 41, R. 5—Notice determining lease on obtaining previous permission of Rent Controller — Effect of filing appeal against Controller's orders. See Houses and Rents — C. P. and Berar House Rent Control Order (1947), Cl. 21. AIR 1951 Nag 203.

——O. 41, R. 5—Appeal by one of defendants against preliminary decree in a redemption suit — Application by him for stay of proceedings for final decree. See Civil P. C. (5 of 1908), O. 34, Rr. 7, 8. AIR 1951 Punj 203.

——O. 41, R. 11—U. P. Tenancy Act (1939), Sch. II, List II, Serial No. 13 — 'Party' — Meaning of. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), Sch. II, List II, Serial No. 13. AIR 1953 All 608.

——O. 41, R. 11—Limitation Act (1908), Art. 182 (2) — Order under O. 41, R. 11, Civil P. C., gives a new starting point for limitation. See Limitation Act (1908), Art. 182 (2). AIR 1953 All 590.

——O. 41, R. 11 — Letters Patent (Nag), Cl. 10 — Judgment — Order dismissing appeal under O. 41, R. 11, Civil P. C. See Letters Patent (Nagpur), Cl. 10. AIR 1956 Nag 211.

——O. 41, R. 11 — Appeal — Dismissal of — Decree of lower Court merges into that of the appellate Court. AIR 1955 Pepsu 91 (96).

— O. 41, R. 11 — Appeal from appellate decree — Failure to file copies of judgment and decree—Effect. See High Court Rules and Orders — (Tripura) Rules of the Judicial Commissioner's Court, R. 7 (2). AIR 1956 Tripura 6.

——O. 41, R. 11 (2) — Order rejecting memorandum of appeal for non-payment of court-fee—Order is nothing but order of dismissal for default and does not amount to decree. See Civil P. C. (5 of 1908), S. 2 (2). AIR 1955 Vindh-Pra 46.

——O. 41, R. 14—Deciding appeal without notice to opposite party is against rules of natural justice. See Motor Vehicles Act (1939), S. 64. AIR 1956 Ajmer 41.

——O. 41, R. 14—Appeal—Notice—Notice served on respondent on address on record — No other address was supplied by respondent to Court — Service of another notice on respondent of actual date, on same address—Notice received back with remark that respondent was not available:—Held, there was sufficient service of notice to respondent of hearing of appeal. 1965 Pun L R (Sup) 117.

——O. 41, R. 14 — Duty of advocates to see cause lists — Fresh notice of hearing—Necessity. See High Court Rules and Orders — Rajasthan High Court Rules (1952), R. 72. 1957 Raj L W 275.

——O. 41, R. 17 — Final order. See Limitation Act (1908), Art. 182 (2). AIR 1951 All 493.

——O. 41, R. 19—Appeal fixed for final hearing— No knowledge of date to parties or their counsel — Dismissal of appeal — Application for restoration filed more than 30 days after dismissal can be allowed in exercise of inherent jurisdiction. See Limitation Act (1908), Art. 168. AIR 1962 All 622.

——O. 41, R. 19—Criminal P. C. (1898), S. 476B — Powers of appellate Court— Proceeding under S. 476 arising out of Civil suit — Order directing complaint — Appeal under S. 476B — Nature of procedure applicable — Dismissal for default — Restoration. See Criminal P. C. (1898), S. 476B. AIR 1956 All 155.

——O. 41, R. 19—Limitatson Act (1908), Art. 168— Dismissal of appeal for default — Application for restoration contending that applicant was not aware of posting of appeal — Court finding that dismissal of appeal was erroneous as applicant was not aware of posting of appeal but dismissing application as barred by time holding that applicant had knowledge of dismissal of appeal — Held, Court was not justified in invoking principles of O. 41, R. 19 or Art. 168 while dismissing application — Court should have allowed application under S. 151— Its not doing so constituted error of law apparent on face of record and could be corrected in writ proceedings. AIR 1949 All 36, Rel. on. See Civil P. C. (1908), S. 151. ILR (1963) Andh Pra 1022.

——O. 41, R. 19 — Evidence Act (1872), S. 115 — Appeal restored on payment of costs — Costs deposited and withdrawn by plaintiff— Plaintiff cannot challenge order of restoration. See Evidence Act (1872), S. 115. AIR 1959 Cal 19.

——O. 41, R. 19 — Appeal dismissed in default — Restoration of. See Civil P. C. (1908), O. 41, R. 15-A (M. P.). AIR 1958 Madh-Pra 257.

——O. 41, R. 19 (i) (Mad) — Revision petition dismissed for default — Power of High Court to restore. See Civil P. C. (1908), S. 115. AIR 1959 Mad 183.

——O. 41, R. 19— Limitation Act (1908), S. 5 — Applicability — Application under O. 41, R. 19 in proceedings under Rajasthan Tenancy Act — Section whether applies. See Limitation Act (1908), S. 5. AIR 1959 Raj 290.

——O. 41, R. 20—Scope of. AIR 1952 Nag 181.

——O. 41, R. 20—Joint decree—Execution — Appeal —Necessary parties indicated. See Civil P. C. (5 of 1908), O. 21, R. 15. AIR 1955 Raj 197.

——O. 41, R. 21 — Allahabad High Court Rules Chapter VIII, R 5 -Scope—Application for rehearing appeal refused—Appeal—Decision by single Judge—Appeal against — Maintainability. See High Court Rules and Orders — (Allahabad) High Court Rules, Chapter VIII, R. 5. AIR 1957 All 261.

——O. 41, R. 21 — Ex parte order passed on revision petition—High Court has inherent power to set aside such order. See Civil P. C. (1908), S. 115. 1965 Jab L J 997.

●——O. 41, R 22 — Held, that the respondent was entitled to canvass the correctness of a finding against him in order to support the decree that has been passed against the appellant. Virdhachalam Pillai v. Chaldean Syrin Bank Ltd., Trichur, (1964) 5 SCR 647=AIR 1964 SC 1425.

——O. 41, R. 22 — Cross-objections against co-respondent cannot be allowed unless decree proceeds on common ground or interest of appellant is intermixed with that of respondent. AIR 1955 Ajmer 19.

——O. 41, R. 22 — Letters Patent appeal from judgment in second appeal — Respondent not entitled to challenge findings of Appellate Court in second appeal—But he can support judgment on any ground other than grounds covered by judgment itself. See Appeal — Letters Patent Appeal from judgment in second appeal. AIR 1960 Assam 183.

—O. 41, R. 22—Powers of Appellate Court—Power to adjudicate on points not canvassed before trial Court — Can be exercised in cases which are clear and free from doubt — Ground to the effect that defendant had admitted plaintiff's claim not raised in trial Court — Appellate Court refused to maintain trial Court's decree on such ground. See Civil P. C. (1908), O. 41, R. 24. **AIR 1965 Cal 369.**

—O. 41, R 22 — Writ of certiorari—Error on face of record — What is — Appeal against an order — Justification on grounds decided against party not allowed — Statement of wrong law — Effect. See Constitution of India, Art. 226. **AIR 1958 Madh Pra 221.**

—O. 41, R 22 — Madras City Municipal Act (4 of 1919), Sch. IV—Taxation Rule, R. 15 (a) (i)—"Within 10 days" — Meaning —Notice before communication of decision of Committee — Validity. See Municipalities — Madras City Municipal Act (4 of 1919), Sch. IV, **AIR 1951 Mad 765.**

—O. 41, R. 22 — Limitation Act (1908), S. 4 — Applies to cross-objections filed under O. 41, R. 22, Civil P. C.—Respondent can also invoke S. 10, General Clauses Act — Cross objection filed on first day after vacation, during which limitation expired is within time. See Limitation Act (1908), S. 4. **AIR 1955 Nag 300.**

—O. 41, R. 22—'Support the decree' — Meaning — Respondent may support lower Court's decision but cannot get rights decided against him adjudicated in absence of cross-objection. **AIR 1952 Nag 60.**

—O. 41, R. 22 — Death of appellant —Abatement of whole appeal — Tests indicated —Held on facts that the Court could not act according to O. 41, R. 4 —Even if decree appealed from proceeded on grounds common to all plaintiffs or all defendants, in case of one or more appellants dying, the matter had to be governed by O. 22, R. 11 — Cross-objection held also abated for failure to substitute widow. See Civil P. C. (5 of 1908), O. 22, R. 3. **AIR 1955 Pat 155.**

—O. 41, R. 22—Cross-objection against co-respondent. **AIR 1951 Pat 539.**

—O. 41, Rr. 23, 25 — Question about validity of notice under S. 106, T. P. Act — Remand should be only on this question—Remand of whole suit held improper. **AIR 1955 NUC (Ajmer) 4734.**

—O. 41, R. 23 — Special appeal — If single Judge had jurisdiction to remand case appellate Bench would also have that power. See High Court Rules and Orders—Allahabad Rules of Court (1952), Chap. VIII, R. 5. **1964 All L J 1050 = 1964 All W R (HC) 625.**

—O. 41, R. 23 — Composite order of remand by High Court giving findings on certain matters and remanding suit on others — Matters decided cannot be reagitated nor can correctness of directions in the order of remand be challenged. **AIR 1965 Andh Pra 474.**

—O. 41, R. 23 — Industrial Disputes Amendment and Miscellaneous Provisions Act (1956), S. 33 — Effect of coming into force of S. 33 on 1st September 1956—Proceeding pending before Appellate Tribunal —Appeal already decided — Application under Art. 227 pending and decided after 1st September 1956 — Appeal, if can be remanded to Appellate Tribunal — Whether powers of High Court curtailed. See Industrial Disputes (Amendment and Miscellaneous Provisions) Act (1956), S. 33. **AIR 1957 Bom 142.**

—O. 41, R. 23—Suit for recovery of rates and taxes in respect of sub-divided premises — Suit remanded —No unequivocal direction to Munsif not to dismiss suit as framed — No similar direction to pass decree against one of sub-divided premises or to pass separate decree — Munsif held was not prevented from dismissing suit on ground of misjoinder. **AIR 1952 Cal 222.**

—O. 41, R. 23 — Order of Federal Court directing suit to be heard on merits — Plea based on admitted fact at re-hearing, though not raised before Federal Court, is not barred. **AIR 1951 Cal 316.**

—.O. 41, R. 23 — Punjab Pre-emption Act (1 of 1913), S. 22 as applied to Himachal Pradesh — Deposit under — Demand after settlement of issues— Plaint rejected on failure to deposit — Order held not disposal on preliminary point—Remand—Second appeal held not maintainable — Matter held could be dealt with under revisional powers—Successor Judge held could not demand deposit under S. 22 (1) after settlement of issues — Previous proceedings should be got quashed — Maintainability. See Punjab Pre-emption Act (1 of 1913), S. 22. **AIR 1955 NUC (Him Pra) 2344.**

—O. 41, R. 23 — Court-fees Act (1870), S. 13 — Remand under inherent powers — Refund of court-fees. See Court-fees Act Act (1870), S. 13. **AIR 1953 J & K 24.**

—O. 41, R. 23 — Remand under inherent power— No appeal lies. See Civil Procedure Code (5 of 1908), S. 151. **AIR 1953 Madh Bha 16.**

—O. 41, R 23 — Powers of appellate Court — Respondent can support decision under appeal on ground decided against him by Tribunal — O. 41, R. 23 is attracted — This does not amount to fresh challenge. See Representation of the People Act (1951), S. 116A (2). **AIR 1961 Madh Pra 127.**

—O. 41, R. 23 and Ss. 115, 151 — Decree for possession — Reversal in appeal and suit remanded for determining value of suit for court-fee and jurisdiction — Remand is one under S. 151 and not O. 41, R. 23 — No appeal but revision lies. See Civil P. C. (1908), 2 (2). **AIR 1959 Madh Pra 384**

—O. 41, R. 23; O. 43, R. 1 (u) and S. 105 (2) — Appeal against remand order — Remand carried out Effect on right of appeal and pending appeal. **AIR 1951 Mad 218.**

—O. 41, R. 23 — Matters decided by order of remand—Finality of—Motor Vehicles Act (1939).

The direction given by an appellate Court or Tribunal may or may not be correct. But, it is not open to the lower Court or Tribunal to question its correctness or legality. It's duty is clear and simple to implicitly carry out the direction, as long as the same is not set aside in any appropriate proceeding. **(1964) 2 Mys L J 373 = (1965) 1 Law Rep 219 (DB).**

—O. 41, R. 23—Possibility of inadmissible material having affected finding — Suit should be remanded. See Evidence Act (1872), S. 167. **AIR 1961 Mys 160.**

—O. 41, R. 23—Berar Land Revenue Code (1928), S. 112 (2)—Applicability—Suit for pre-emption. See Berar Land Revenue Code (1928), S. 112 (2). **AIR 1954 Nag 269.**

—O. 41, R. 23 — Constitution of India, Art. 226 — Nature and scope of jurisdiction of High Court — It cannot convert itself into Court of appeal — Subsequent events—Power to take notice — See Constitution of India, Art. 226. **AIR 1957 Pat 725.**

—O. 41, R. 23—Effect of—Suit by reversioner challenging alienation made by Hindu female prior to Act—Maintainability — See Hindu Succession Act (1956), S. 14. **AIR 1957 Pat 480.**

—O. 41, R. 23—Appeal dismissed and case remanded for consideration of points raised in cross-objection— Effect stated. **AIR 1952 Pat 101.**

—O. 41, R. 23; O. 6, R. 2; O. 7, R. 1 — Plaintiff's failure to make necessary allegations in plaint—Order of remand—See Civil P. C. (5 of 1908), S. 151. **AIR 1953 Pepsu 100.**

——O. 41, R. 23—Scope —Powers under R. 23 are to be exercised in very special circumstances. (1964) 66 Pun L R 804=34 Com Cas 936 (DB).

——O. 41, R. 23—Appeal filed from order of remand —Pending it decree passed by trial Court— Effect — See Civil P. C. (1908), S. 100. AIR 1958 Punj 81.

——O. 41, R. 23 and S. 107—Appellate procedure — Principles of—Remand — Tests to exercise discretion —See Civil P. C. (1908), S. 96. AIR 1957 Punj 312.

——O. 41, R. 23 — Applicability — Suit against joint family firm and its members — One of defendants residing outside jurisdiction — Leave of Court obtained—Rejection of plaint on ground that Court had no jurisdiction — Remand in appeal — See Civil P. C. (5 of 1908), S. 20 (b). AIR 1952 Punj 353.

——O. 41, R. 23-A — Powers of Assistant Commissioner and of Appellate Tribunal to remand case — See Income-Tax Act (1922), S. 31 (3). AIR 1957 Punj 312.

——O. 41, R. 23-A — Remand under — Refund of court-fees—See Civil P. P. (1908), O. 41, R. 23. AIR 1956 Punj 215.

● ——O. 41, R. 25—Superior and subordinate tribunals —Duty of subordinate tribunal to carry out directions given by superior tribunal — Principle when is not applicable.

A subordinate tribunal has to carry out directions given to it by a superior tribunal in the exercise of its appellate powers for if it refuses to do so the result will be chaos in the administration of justice. This is the principle stated in the decision of AIR 1961 S C 182. However, to attract the principle, it is necessary that there should be an order of a superior tribunal clear, certain and definite in its terms and without any ambiguity, to which the subordinate authority or officer to whom it is addressed, could give effect. Thus, where as a result of the order or orders passed by the superior tribunal, the subordinate tribunal is directed to give effect to a particular judgment of the Supreme Court and its interpretation is left to the subordinate tribunal, the principle of the decision in AIR 1961 S C 182: (1961) 1 S C J 191 : (1961) (1) M L J (S C) 35 : (1961) 1 Andh W R (SC) 35 is inapplicable. Tobacco Manufacturers (India) Ltd. v. Commissioner of Sales Tax, Bihar, Patna. (1961) 12 S T C 87 = 1961 B L J R 603=1961 M P C 545=(1962) 2 S C J 554 = ILR 40 Pat 259=(1961) 2 S C R 106=AIR 1961 S C 402.

——O. 41, Rr. 25 and 31 — Duty of Appellate Court to give finding on all issues pointed out. AIR 1955 NUC (Ajmer) 471.

——O. 41, R. 25 — Remand for additional evidence held, could not be granted. AIR 1955 N U C (All) 2770.

——O. 41, Rr. 25, 26 — Unnecessary remission — In deciding appeal finally under R. 26, Court can revise views expressed in remand. AIR 1955 N U C (Cal) 1068.

——O. 41, R. 25—Duty of appellate Court— Fixation of standard rent under S. 9 (1) (f), Proviso—Dismissal of petition for fixation of fair rent by appellate authority on ground that case fell under Cl. (g) and evidence was not produced—Remand — Propriety of — See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 9. AIR 1953 Cal 47.

——O. 41, R. 25—Appellate Court is not justified in ordering rehearing of suit before trial Court. AIR 1955 NUC (Madh-Bha) 3385.

——O. 41, R. 25 — Gift — Delivery of possession — Onus—Recital in deed of gift by deceased that possession is delivered — Onus is on persons claiming under deceased, that no delivery took place — See Muhammadan law. AIR 1958 Mad 527.

——O. 41, R 25 and S. 107—Appreciation of evidence by Appellate Court—High Court in first appeal must give weight to lower Court's appreciation, though it may take different view of evidence—Unless perverse, High Court will not differ from lower Court's appreciation—See Civil P. C. (5 of 1908), S. 107. AIR 1955 Mad 542.

——O. 41, R. 25—Death of plaintiffs pending second appeal—Fact not known — Remand of case to lower appellate Court — Application for substitution of names made there — Jurisdiction of lower appellate Court—See Civil P. C. (1908), O. 22, R. 3. AIR 1958 Pat 278.

——O. 41, R. 25 — Proper order of remand stated —Lower Court should not be directed to dispose of suit on result of its investigation of issue referred. AIR 1952 Pat 101.

——O. 41, R. 25—Powers of Assistant Commissioner and Appellate Tribunal to remand case—See Income-Tax Act (1922), S. 31 (3). AIR 1957 Punj 312.

——O. 41, R. 25 — Appeal — Competency — Issues framed—Issue of limitation only decided—On appeal decision reversed and case remanded for decision on this issue and sending back case to Appellate Court for final decision—Order is interlocutory and comes under O. 41, R. 25 and not O. 41, R. 23 — No second appeal is competent — See Civil P. C. (5 of 1908), O. 41, R. 23. AIR 1955 NUC (Raj) 268.

● ——O. 41, R. 27—Transfer of shares — Effect of — Right to dividend— Winding up — Transfer of assets by liquidators for cash and shares in another company—Sanction by Court—Discretion—See Companies Act (1956), S. 82. AIR 1956 S C 655.

——O. 41, R. 27 (Allahabad Amendment) — Additional evidence in appeal.

The amendment which has been made by the Allahabad High Court to the provisions of O. 41, R. 27 gives the High Court ample power to ask for additional evidence if that would enable it to pronounce judgment in the appeal. ILR (1965) 2 All 343.

——O. 41, R. 27 — New point — Power of appellate Court to take notice of subsequent events—See Civil P. C. (1908), S. 100. AIR 1954 All 751.

——O. 41, R. 27 (1) (c) (Andhra Pradesh Amendment)—S. 12 (3)—Madras Buildings (Lease and Rent Control) Rules (1951) R. 12 (2) — Admission of additional evidence in appeal — Civil P. C. (1908), O. 41, R. 27 (1) (c) (Andhra Pradesh Amendment) to be followed as guiding principle though in terms not applicable—See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 12 (3). (1965) 2 Andh W R 1 = (1965) 2 Andh L T 30=AIR 1966 Andh-Pra 1.

——O. 41, R. 27 — Claiming protection under Assam Act (12 of 1955) — Conditions to be fulfilled enumerated — Non-fulfilment of condition involving question of fact — Grant of protection improper. See Tenancy Laws — Assam Non-Agricultural Urban Areas Tenancy Act (12 of 1955), S. 5. ILR (1964) 16 Assam 354.

——O. 41, R. 27 —Events subsequent to presentation of petition — Court can take notice of, to afford complete relief. See Companies Act (1956), S. 155(3). AIR 1964 Cal 335.

——O. 41, R. 27 — Document coming into existence during pendency of second appeal — Admissibility. AIR 1952 Cal 368.

——O. 41, R. 27— Condition for receiving additional evidence. AIR 1951 Cal 414.

——O. 41. R. 27—Change in law during pendency of appeal. See Civil P. C. (1908), S. 107. AIR 1954 Madh Bha 6.

——O. 41, R. 27 — (as amended by Madras High Court in (1930), and O. 41, R. 97—Appellate Court's powers of remand — Additional evidence necessary in appeal — It is no ground for remand of whole suit for disposal by Trial Court with general liberty to parties to adduce fresh evidence. See Civil Procedure Code (5 of 1908), O. 41, R. 23. **AIR 1955 NUC (Mad) 1830.**

——O. 41, R 27 — Fresh evidence illegally placed — Proper course to adopt is insistence on proper application under O. 41, R. 47. **AIR 1955 NUC (Mad) 1830.**

——O. 41, R 27—Appellate Court — Power to take into consideration subsequent event or legislation. See Civil Procedure Code (5 of 1908), S. 151. **ILR (1965) Cut 219 = 31 Cut L T 996 = AIR 1966 Orissa 1.**

——O 41, R. 27 — Effect of — Suit by reversioner challenging alienation made by Hindu female prior to Act — Maintainability. See Hindu Succession Act (1956), S. 14. **AIR 1957 Pat 480.**

——O. 41, Rr. 27, 33—In exceptional cases Appellate Court has power to take cognizance of subsequent events. **AIR 1955 Pat 375.**

——O. 41, R. 27 (b)—Additional evidence—When can be admitted in appellate Court — For any substantial cause — Meaning of. **AIR 1965 Punj 494.**

——O. 41, R. 27 and O. 2, R. 2—Suit by P for permanent injunction restraining D from interfering with his possession in disputed land — Dismissal of, by trial Court but appellate Court allowing P to withdraw suit with permission to file fresh suit — Subsequent suit by P against D for possession of disputed land on assertion that he was owner and D was trespasser — Suit decreed but till that time order of appellate Court allowing P to withdraw suit was not passed — Appeal against decree in subsequent suit—Contention that subsequent suit was barred under O. 2, R. 2 on ground that previous suit did not include claim made in subsequent suit — **Held**, appellate Court was right in taking into consideration order of appellate Court in previous suit and disallowing objection under O. 2, R. 2, AIR 1957 S C 875, Foll.—Even apart, suit was not barred under O. 2, R. 2, as each encroachment on P's land would give rise to different cause of action and O. 2 R 2 contemplated inclusion of all claims in respect of same cause of action. **(1963) 65 Punj L R 838 = 1963 Cur L J 159.**

——O. 41, R. 27 (1) (b) — Additional evidence in appellate Court. **AIR 1951 Punj 305.**

——O. 41, R. 27— Unstamped document lost while in custody of Court — Secondary evidence — Admissibility of. See Evidence Act (1872), S. 65. **1957 Raj L W 603.**

——O. 41, R. 27—Fresh evidence — Lower Appellate Court held not acted in admitting fresh evidence, contrary to principles laid down in AIR 1951 SC 193. **AIR 1955 NUC (Trav-Co) 5068.**

——O. 41, R. 27 — Scope of—Judgment in previous suit filed at appellate stage of subsequent suit—Taking of judgment on file is not wrong. **AIR 1955 NUC (Trav-Co) 4134.**

——O. 41, R. 28—Remand in second appeal to allow appellant to tender further evidence should not be ordered. See Civil Procedure Code (5 of 1908), O. 41, R. 27. **AIR 1953 Hyd 166.**

——O. 41, R. 28 and S. 107 (1) (d) — Production of additional evidence in appellate Court — Appellate Court setting aside trial Court's decree and remanding suit to enable party to produce additional evidence — Order held not proper — Appellate Court should take recourse to O. 41, R. 28, See Civil P. C. (1908), O. 41, R. 27 (1) (c) (M P). **AIR 1965 Pat 132.**

——O. 41, R. 29—Order of remand whether under R. 23 or under R. 25 — Trial Court deciding only some of the issues —Appeal—Appellate order stating that trial Court was directed to dispose of suit on merits in accordance with law — Trial Court then passing fresh decree —Fresh appeal from such decree —**Held**, that though order of remand did not say in terms that decree of trial Court was reversed, order of remand read as a whole and subsequent events indicated that decree of trial Court was reversed — Order of remand was under O. 41, R. 23 and not under O. 41, R. 25. See Civil P. C. (1908), O. 41, R. 23. **AIR 1960 Bom 543.**

● ——O. 41, R. 30, S. 243—Judgment without hearing parties : 1951 All L J 548 = AIR 1952 All 90, Overruled. See Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 243. **AIR 1953 All 264 (FB).**

——O. 41, R. 30—Power of appellate Court to take notice of proceedings before trial Court — Appellate Court can call for report from trial judge without examining him as witness. See Civil Procedure Code (5 of 1908), S. 107. **AIR 1953 All 97.**

——O. 41, R. 30—Ordinarily executing Court cannot go behind decree — But when decree is nullity and without jurisdiction executing Court can entertain objection—What irregularities will render judgment void depends on facts — One test is to see if there is failure of justice - Case under S. 9, Ratlam Rent Control Order — Presiding officer not hearing parties — Judgment written as piece of paper at instance of secretary—Judgment not one contemplated by law — Irregularity causing failure of justice — Judgment is void — Executing Court can refuse to execute it. See Civil P. C. (1908), S. 38. **AIR 1955 N U C (Madh-B) 201.**

——O. 41, R. 31 (All) — Judgment of High Court in civil case dictated but transcript not signed — There is no final disposal of case. See Civil P. C. (1908), O. 20, R. 3. **AIR 1953 All 416.**

——O. 41, R. 31 — Findings of fact can be assailed only on grounds mentioned in S. 100 — Judgment of affirmance — It is not necessary to re-state evidence which has been fully reproduced in trial Court's judgment. See Civil P. C. (1908), Ss. 100-101. **A I R 1955 N U C (Assam) 4205.**

——O. 41, R. 31 — Rectification of dereliction of duty. See Constitution of India, Art. 227. **A I R 1953 Hyd 190.**

——O. 41, R. 31 — Perusal of evidence in second appeal. See Civil P. C. (1908), S. 100. **AIR 1953 Hyd 179.**

——O. 41, R. 31 — Duty of first appellate Court as final Court of fact (Per Narayan J.). **AIR 1951 Pat 502.**

——O. 41, R. 31—High Court reversing decree under appeal—Formal decree not framed — Application for restitution is maintainable. See Civil P. C. (1908), S. 144. **AIR 1951 Pat 330.**

——O. 41, R. 31 — Question of custom—Question if not raised in pleadings cannot be considered in appeal. See Civil P. C. (1908), O. 41, R. 1. **AIR 1955 NUC (Punj) 4022.**

——O. 41, R. 31—Judgment of affirmance — Concurrent findings — Interference in second appeal. See Civil P. C., S. 100. **AIR 1954 Trav-Co 297.**

● ——O. 41, R. 33 — Taking cognisance of new laws. **AIR 1959 S C 694.**

● ——O. 41, R. 33 — Companies Act (1956), Ss. 82, 536—Transfer of shares — Effect of — Right to dividend—Winding up—Transfer of assets by liquidators for cash and shares in another company — Sanction by Court — Discretion. See Companies Act (1956), S. 82. **AIR 1956 S C 655.**

——O. 41, R. 33—Res judicata and plea of limitation —Duty of appellate Court — Question of limitation

already raised before trial Court and decided against defendant—Plaintiff appealing against part of decree —Defendant submitting to decree and filing no appeal — Appellate Court cannot reverse decision of trial Court on question of limitation — Principle of res judicata prevails. See Limitation Act (1908), S. 3. AIR 1961 All 386.

——O. 41, R. 33 — Appellate Court has however to reverse decree in favour of respondents who did not file appeal or cross-objections—Rule 33 is not mandatory but discretionary. AIR 1955 N U C (All) 886.

——O. 41, R. 33 — Motor Vehicles Act (1939), Ss. 48 and 64 — Constitution of India, Art. 266:— R. T. A. granting pucca stage carriage permit only to two applicants out of 70—Appeal against order of R. T. A. only by 25—Appellate authority remanding case for fresh disposal in accordance with law — On remand, R. T. A. issuing notices to all 70 applicants—Petition by one of appellants praying for issue of writ of prohibition directing R. T. A. to forbear from considering subject relating to grant of permits in pursuance of notices consequent on remand — Held, order of remand must mean and could only mean that direction was to consider 'case' of parties to 25 appeals before appellate authority—Though terms of one statute could not be interpreted with reference to another, by way of analogy, even applying principles of O. 41, R. 33, appeal against order of R. T. A. could not enure to benefit of anybody, except appellant, as each appeal was separate venture—Fact that appeals were considered in batch would make no difference to individuality of appeal — Though on remand, R. T. A. acted without jurisdiction there was no question of any lack of initial jurisdiction in him — Though, therefore, relief (writ of prohibition) could not be granted, petition would not fail for failure to ask appropriate relief—Proper relief would be writ of mandamus. A I R 1954 Mad 848, Rel. on. ILR (1963) Andh Pra 1028.

——O. 41, R. 33—Appellate Court can pass decree in favour of party even though he has not filed an appeal or cross-objection. A I R 1962 Andh Pra 192.

——O. 41, R. 33 — Order of eviction on ground of nuisance—Revision—Subsequent removal of nuisance —Effect — Applicability of principle of O. 41, R. 33. See Houses and Rents — Hyderabad (Rent Eviction and Lease) Control Act (1954), S. 26. (1959) 1 Andh W R 363.

——O. 41, R. 33—Chairman buying shares in names of minor members of his family — Company not apprised of minority—Liability of Chairman for contribution in respect of minors' shares. See Companies Act (1913), S. 184. AIR 1958 Assam 86.

——O. 41, R. 33—Foreign decree—Execution—Relevant date for determining executability — Power of Appellate Court to take notice of subsequent events. See Civil P. C. (1908), S. 44. AIR 1951 Bom 190.

——O. 41, R. 33—Scope of—Power should be exercised with discretion—Alteration made by appellate Court held proper. AIR 1951 Cal 199.

——O. 41, R. 33 — Jurisdiction of Chief Judge as appellate authority—Limits. See Houses and Rents—West Bengal Premises (Rent Control) (Temporary Provisions) Act (38 of 1948), S. 32 (4). (1951) 87 C L J 130.

——O. 41, R. 33—Appeal — Merger of lower Court's decree in decree of appellate Court — Appeal against part of decree — Power of Appellate Court in such appeal—Appeal allowed—Rest of decree, not appealed from nor objected to, is to be taken as confirmed. See Civil P. C. (1908), O. 41, R. 22. A I R 1962 Guj 78.

——O. 41, R. 33—Power of Appellate Court to take notice of subsequent event—See Civil P. C. (1908), S. 107. AIR 1958 Madh Pra 21.

——O. 41, R. 33—Power of appellate Court to take notice of subsequent events—See Civil P. C. (1908), O. 41, R. 27—AIR 1961 Mad 380.

——O. 41, R. 33—Appellate Court—Power to take into consideration subsequent event on legislation—See Civil P. C. (1908), S. 151. ILR (1965) Cut 219=31 Cut L T 996=AIR 1966 Orissa 1.

——O. 41, R. 33 — Remand order under inherent powers—Only revision lies against such order—Second appeal treated as revision—See Civil P. C. (1908), S. 115. AIR 1963 Orissa 186.

——O. 41, R. 33—Exemption under S. 5 (b)—Notice to quit—Suit for ejectment without obtaining permission to sue under S. 13—Amendment to S. 13 introduced pending appeal—Effect of amendment—Appellate Court can take note of change of law—See Houses and Rents—Orissa House Rent Control Act (1947) (as amended by Act 11 of 1951), S. 13. AIR 1956 Orissa 175.

● ——O. 41, R. 33 — Power of appellate Court to take notice of subsequent events—See Civil P. C. (5 of 1908), S. 107. AIR 1951 Orissa 105 (FB).

——O. 41, R. 33—Abatement of appeal—Exercise of inherent powers under R. 33—See Civil P. C. (1908), O. 41, R. 4. AIR 1958 Pat 399.

——O. 41, R. 33—Effect of—Suit by reversioner challenging alienation made by Hindu female prior to Act — Maintainability. See Hindu Succession Act (1956), S. 14. AIR 1957 Pat 480.

——O. 41, R. 33—Subsequent events—Definition of evacuee property amended after first appeal—Law applicable in second appeal is law in force at time of decision of second appeal. See Civil P. C. (1908), S. 100. AIR 1955 Punj 282.

——O. 41, R. 33—Subsequent events—Power of appellate Court—See Civil P. C. (1908), O. 7, R. 7. AIR 1952 Punj 407.

——O. 41, R. 33—Decree appealed from, proceeding on ground common to all the appellants—Death of one of several appellants—Effect—See Civil P. C. (1908), O. 41, R. 4. AIR 1953 Sau 39.

——O. 41, R. 33—Failure to consider effect of O. 41, Rr. 4 and 33 by appellate Court—If sufficient ground for review—See Civil P. C. (1908), O. 41, R. 4. AIR 1952 Sau 32.

——O. 41, R. 35—Appeal against decree—Supersession of by appellate decree—Appellate Court's power to mould relief according to circumstances—See Civil P. C. (1908), S. 107 (2). AIR 1957 All 527.

——O. 41, R. 35—Appellate decree superseding original decree—Effect on execution already started—See Civil P. C. (1908), S. 38. AIR 1959 Cal 73.

——O. 41, R. 35—High Court reversing decree under appeal—Formal decree not framed—Application for restitution is maintainable—See Civil P. C. (1908), S. 144. AIR 1951 Pat 330.

——O. 41, R. 35—Costs. AIR 1954 Trav.Co 104.

——O. 41, R. 46—'Debts'—Right to future rent cannot be attached—See Civil P. C. (1908), S. 60. AIR 1952 Trav.Co. 508.

——O. 41, R. 64—Floating charge— Attachment—Insolvency — Attached property does not vest in Official Assignee—Subsequent withdrawal of attachment—Effect—See Presidency Towns Insolvency Act (1909), S. 52 (1) (c). AIR 1953 Bom 101.

——O. 42, R. 1—Provisions of O. 41, R. 27 do not apply to second appeals—See Civil P. C. (1908), O. 40, R. 27. AIR 1959 Mys 244.

——O. 42 R. 2 (as in Punjab) — Memorandum of appeal unaccompanied by certified copy of judgment —Presentation not valid—Admission of such appeal does not by itself dispense with filing of such copy—

Court entitled to either dismiss the appeal or allow time to file such copy. 1965 Pun L R (Sup) 368.

—— O. 42, R. 2 (Punj)—Application for copy of trial Court's judgment filed week after date of expiry of period of limitation—No indulgence can be shown under section—See Limitation Act (1908), S. 5. AIR 1960 Punj 298.

—— O. 43—Order granting or refusing to grant instalments for payment of decretal amount—Order is not one under S. 47, Civil P. C. but is a decree within meaning of second part of S. 2 (2), Civil P. C. and is appealable—Court-fee on appeal is under Sch. II, item 17 (vii) of Court-fees Act (Bombay Amendment) —See Debt Laws—Bombay Money Lenders Act (1947), S. 24. AIR 1960 Bom 334.

●—— O. 43, R, 1 (m)—"Judgment" or "final order"—Meaning of—Order of High Court in appeal setting aside order of trial Court recording compromise—Order is neither 'final order' nor "judgment" within Art. 133—See Constitution of India, Art. 133 (1). AIR 1961 All 245 (FB),

—— O. 43, R. 1—Order by District Judge—Appeal against — When lies—See Companies Act (1913), S. 202. AIR 1956 All 222.

—— O. 43, R. 1 (a)—Return of plaint by appellate Court—Second appeal—Power of Court to treat appeal as first appeal—See Civil P. C. (1908), O. 7, R. 10. AIR 1951 All 497.

—— O. 43. R. 1 (r) — Order refusing ad interim ex parte injunction — If appealable—See Civil P. C. (1908), O. 39, R. 3. AIR 1951 All 8.

—— O. 43. R. 1—Order refusing to grant interim maintenance is not appealable—See Hindu Marriage Act (1955), S. 24. AIR 1960 Andh-Pra 30.

—— O. 43, R 1 (w)—Order granting review on ground of mistake or error apparent on face of record—Appellate Court acts without jurisdiction in setting aside order—O. 43, R. 1 (w) is subject to O. 47, R. 7. See Civil P. C. (1908), S. 115. AIR 1960 Assam 204.

——O. 43, R. 1—"Under any law for the time being in force"—Meaning of—Appealability under S. 28 is to be determined by provisions of Civil P. C.—Order under S. 24—No appeal lies—See Hindu Marriage Act (1955), S. 28. AIR 1960 Bom 315.

——O. 43, R. 1—Scope and interpretation of S. 202—Order under S. 170 adjourning winding up petition after hearing it on merits, is appealable—First part of S. 202 confers substantive right while second part does not in any way cut it down—See Companies Act (1913), S. 202. AIR 1955 Bom 355.

—— O. 43, R. 1 (d) and O. 9, R. 13—Order setting aside ex parte decree on condition of furnishing security for decretal amount—Order held one under O. 9, R, 13—No appeal held lay. 36 Bom L R 74 = ILR (1954) Bom 371=AIR 1955 N U C (Bom) 909.

——O. 43, R. 1—Order under—No appeal lies—See Civil P. C. (1908), O. 32, R. 2. AIR 1952 Cal 381.

—— O. 43, R. 1 (a)—Order fixing remuneration of receiver—Constitution—Appeal—Letters Patent (Cal), Cl. 15. See Civil P. C. (1908), O. 40, Rr. 1, 2. AIR 1952 Cal 52.

—— O. 43, R. 1 (u)—Deposit under—Demand after settlement of issues—Plaint rejected on failure to deposit—Order held not disposal on preliminary point—Remand—Second appeal held not maintainable—Matter held could be dealt with under revisional powers—Successor Judge held could not demand deposit under S. 22 (1) after settlement of issues—Previous proceedings should be got quashed—Maintainability. See Punjab Pre-emption Act (1 of 1913), S. 22. AIR 1955 NUC (Him-Pra) 2344.

—— O. 43, R. 1 (f)—Order to give inspection of documents—Non-compliance—Inability of plaintiff to give inspection within time — Extension of time—Dismissal of suit under O. 11, R. 21 — Propriety of. See Civil P. C. (1908), O. 11, R. 21. AIR 1953 Hyd 32.

——O. 43, R. 1 (q)—Plaintiff applying for attachment before judgment—Court directing interim attachment of paddy and after hearing parties ordering release of portion of property to the plaintiff—Court further directing that if defendant so desired he could pay value of paddy at nirak rate and get paddy released from attachment—Court further directing defendant to file written statement showing actual quantity of paddy required for cultivation and for maintenance of his family and observing that appropriate orders would be passed on such statement on hearing both sides—Held, it was not clear whether the order passed by the Court would fall under O. 38, R. 5 or under R. 6 Hence benefit of doubt should be given to defendant and he should be allowed to file revision petition against the order and not asked to file appeal under O. 43, R. 1 (q). See Civil P. C. (1908), O. 38, R. 5. AIR 1962 Ker 261.

——O. 43, R. 1(w)—Revision against order of review. See Civil P. C. (1908), S. 115. AIR 1954 Madh-B 3.

——O. 43, R. 1 (u)—Remand under inherent power—No appeal lies. See Civil P. C. (1908), S. 151. AIR 1953 Madh-Bha 16.

—— O. 43, R. 1 (nn) (Madras) and O. 33, Rr. 6 and 7—Application to sue in forma pauperis—Court holding it to be not maintainable on ground that it was not shown that petitioner had not sufficient means to pay court-fee and that plaint did not show cause of action—Court however granting time to pay requisite court-fee—Order not having been complied with, application dismissed—Appeal under O. 43, R. 1 (nn) is competent. AIR 1956 Mad 441.

——O. 43, R. 1 (s)—Appointment of receiver in execution. See Civil P. C. (1908), S. 51 (d). AIR 1956 Mad 163.

—— O. 43, R. 1, Cl. (s)—Order appointing receiver in proceeding under S. 13—Appealability. See Tenancy Laws—Malabar Tenancy Act (14 of 1930), S. 50. AIR 1951 Mad 591.

—— O. 43, R. 1 (u)—Appeal against remand order—Remand carried out—Effect on right of appeal and pending appeal. See Civil P. C. (1908), O. 41, R. 23. AIR 1951 Mad 218.

—— O. 43, R. 1 (u)—Order dismissing application for restoration of another application dismissed for default—Order not appealable—Revision lies. See Civil P. C. (1908), S. 104. AIR 1961 Manipur 35.

——O. 43, R. 1 (u)—Suit for ejectment and arrears of rent on basis of tenancy—Decree—Appellate Court remanding case for fresh disposal with a direction to frame issue on question of title and to allow plaintiff to amend plaint accordingly—Order of remand falls under O. 41, R. 23 and is appealable — Order of remand held was wrong and appellate Court had acted with material irregularity in exercise of jurisdiction. See Civil P. C. (1908), S. 115. AIR 1960 Manipur 54.

——O. 43, R. 1—Refusal to review:—Appeal. See Letters Patent (Nagpur), Cl. 10. AIR 1956 Nag 215.

—— O. 43, R. 1—Dismissal of execution case for non-production of succession certificate by heirs of decree-holder amounts to dismissal of case for default—Dismissal order would not be decree—Dismissal order not being within purview of S. 104 and O. 43, R. 1 would not be appealable order too—Appeal would not lie against dismissal order and revision against order would be competent. See Civil P. C. (1908), S. 2 (2) (b). ILR (1965) Cut 823.

—— O. 43, R. 1—Order under S. 52 of Provincial Insolvency Act—Appeal against — Order not appealable under O. 43, R. 1. See Provincial Insolvency Act

(1920), S. 52. ILR (1965) 2 Punj 212=AIR 1966 Punj 479.

—O. 44, R. 1—Applicability. See Limitation Act (1908), Art. 170. AIR 1955 NUC (Raj) 2544.

—O. 44, R. 1—Sufficient cause—Presentation of pauper appeal—Wrong impression of—Advocate. See Limitation Act (1908), S. 5. AIR 1951 Sau 18.

—O. 45, R. 1—Failure to deposit printing costs—Power of High Court to cancel certificate. See Supreme Court Rules, O. 12, R. 3. AIR 1952 Mad 94.

—O. 45, Rr. 3, 6—Federal Court (Enlargement of Jurisdiction) Act (1947), S. 3—Civil P. C. (1908), Ss. 109, 110 and O. 45, Rr. 3, 6—Application for leave to appeal to Federal Court filed before commencement of Constitution—Appeal lies to Supreme Court even if value is below Rs. 20,000. See Constitution of India, Art. 135. AIR 1951 Mad 251.

—O. 45, R. 7—Rule is not ultra vires. See Supreme Court Rules (1950), O. 12, R. 3. AIR 1956 All 349.

■—O. 45, R. 7 (1) (a), Proviso — Applicability — Grant of special leave to appeal by Supreme Court — Form of security to be furnished not specified—High Court has power to allow party to furnish security other than in cash — Supreme Court Rules (1950), O. 13, Rr. 6 and 8. AIR 1952 All 912 (FB).

—O. 45, R. 7—Extension of time — See High Court Rules and Orders — Calcutta High Court (Appellate Side) Rules, Chap. VI R. 28 (3). (1958) 62 Cal W N 658.

—O. 45, R. 7 (1) (a)—Certificate of fitness granted —Deposit of security — High Court has power to reduce the amount or dispense with it — High Court Rules and Orders (Punjab) Vol. V, Chap. 8-A, R. 3 — Supreme Court Rules (1950), O. 12, R. 1-A — See Constitution of India, Art. 133 (1) (c). A I R 1961 Punj 397.

—O. 45, R. 7 — Certificate under — Power of High Court to cancel or withdraw it — Civil P. C. (1908), Ss. 4, 112, 151, O. 47, R. 7 and O. 47, R. 1 — F. C. Enlargement of Jurisdiction Act (1948), S. 6—Constitution of India, Art. 135. See Privy Council Rules, (1920), R. 12. AIR 1951 Punj 43.

—O. 45, R. 7 — Rule prevails over O. 45, R. 7, Civil P. C.—High Court can extend time for making deposits — See Supreme Court Rules (1950), O. 12, R. 1. AIR 1956 Tripura 20.

■—O. 45, R. 8 — Special leave granted under Art. 133 — Procedure to be followed — Till appeal is finally admitted by Supreme Court, High Court retains full control and jurisdiction over subsequent proceedings—It has to see that its directions regarding furnishing of security and deposit are carried out — Only when conditions are carried out, it has to declare appeal as finally admitted — Then begins the jurisdiction of Supreme Court — Position is different when appeal comes under Special Leave — Granting of special leave itself operates as admission of appeal — It is duty of High Court to see that directions of Supreme Court regarding security etc., are followed. See Supreme Court Rules (1950), O. 13, R. 8. A I R 1955 S C 464.

—O. 46 — References under — Distinct from each other—Non-applicability of principles of abatement to reference under S. 113 read with O. 46 — Cannot make these principles non-applicable to reference under S. 18. See Land Acquisition Act (1894), S. 18. ILR (1963) 2 Punj 442.

●—O. 46, R. 1—Specific question referred to Full Bench—Extent of jurisdiction of that Bench.

Where only a specific question has been referred to a Full Bench by a Division Bench the former Bench has jurisdiction to answer that question only and it is not open to it to enter into a question of fact which is before the Division Bench for decision. State of U. P. v. Sri Abdul Karim, 1963 All L J 368 = I L R (1963) 1 All 983=AIR 1963 All 556 (FB).

●—O. 46, R. 1 — Procedure — Reference to Full Bench—Reference of entire case—Desirability.

Although it is always competent for a Bench of the High Court to refer an entire case to a Full Bench of the Court, yet it is always desirable, whenever possible to refer to a larger Bench only those points on which the decision of a larger Bench is considered to be necessary. Questions of fact or law on which there is no necessity of inviting the opinion of a larger Bench should not be referred to the larger Bench, as firstly, it involves unnecessary waste of time of the larger Bench and secondly, it might also happen that the opinion of the larger Bench on question of law of a controversial nature may be rendered obiter by reason of the ultimate decision of the case, Moradhwaj v. Bhudar Das, 1955 All L J 96=1955 All W R (HC) 163=I L R (1955) 1 All 565 =AIR 1955 All 353 (FB).

● — O. 46, R 1—Procedure—Andhra High Court—Reference to Full Bench by Single Judge — (Precedents).

(Order of Reference):—Whatever may be the practice in Madras, a Single Judge of the Andhra High Court should strictly followed the rules of procedure laid down by the Full Bench of the Andhra High Court, to the effect that if there is a conflict of Bench decisions a Single Judge should refer the case to a Bench of two Judges who may refer it to a Full Bench: A I R 1955 Andh 87=1955 Andh W R 150 (FB), Rel. on. Ordinarily, the unreported judgments of other High Courts should not be a basis for referring points finally decided by a Divisional Bench of the Andhra High Court to a Full Bench. Satyanarayana v. State of Madras, I L R (1957) Andh Pra 643 =(1957) 2 Andh W R 438 = 1957 Andh L T 746= 1957 Mad L J (Cr) 635 = A I R 1957 Andh Pra 1027 (FB).

—O. 46, R. 1 — Reference under—Court must submit its opinion along with record—Court not to submit opinion on merits: Vol 1, Chap. 15, Rules 3 and 15—Civil P. C. (1908), O. 46, R. 1 — See Tenancy Laws—Punjab Tenancy Act (16 of 1887), S. 100 (1). AIR 1953 Him Pra 31.

—O. 46, R. 1—Procedure—Reference by Board of Revenue in violation of statute—Powers of High Court —No opinion on questions referred need be expressed by High Court. (1952) 3 S T C 167=1953 BLJR 196 =ILR 31 Pat 341=AIR 1952 Pat 357.

—S. 47—Surety's liability—Nature and extent of — Surety is not party to decree—Execution against him — Stay does not operate — See Civil P. C. (1908), S. 145. AIR 1953 Hyd 111.

—O. 47 — Word "appeal" in Art. 182 (2) means appeal against a decree—Review application does not include restoration of applications—Execution case held time barred — See Limitation Act (1908), Art. 182 (2). AIR 1964 Orissa 205.

—O. 47, R. 1—Grounds — Discovery of fresh evidence—To be a ground for review, evidence must not have been available at proper time in spite of reasonable care and diligence—Absence of negligence must be proved—See Civil P. C. (1908), S. 114. AIR 1951 Ajmer 84.

—O. 47, R. 1 — Applicability— Compromise memo admittedly signed by both the party and his advocate —Party not able to prove that even with due diligence fraud has not been discovered—Case, held, not made out for review. Order D/- 31-7-64 of G. C. Mathur J., affirmed. 1965 All W R (HC) 581 (DB).

—O. 47, R. 1 — Application for modification of an order staying execution of decree is not one for review of judgment—Not required to be placed before a Bench of two Judges — See High Court Rules and

Orders—(All) Rules of Court (1952), Chap. 5, R. 12. AIR 1964 All 530.

—O. 47, R. 1— Error apparent on face of record—Utility of decisions under O. 47, R. 1, Civil P. C., in deciding question under Art. 226, Constitution of India — See Constitution of India, Art. 226. AIR 1956 All 603.

——O. 47, R. 1 — 'For any other sufficient reason.' AIR 1951 All 250.

——O. 47, R. 1—Mistake or error apparent on the face of the record — Final decree in suit for mesne profits passed and decree-holder directed to deposit requisite stamps by specified date — Interlocutory application for passing of final decree dismissed on endorsement by counsel for decree-holder that application may be dismissed on ground of non-payment of stamp duty — Court commits obvious mistake in dismissing application and hence O. 47, R. 1 is attracted — Fact that error was caused by endorsement of counsel held not material. I L R (1963) Andh Pra 560.

——O. 47, R. 1—Concellation of leave to appeal to Supreme Court—Effect—Neither review of order nor fresh application for leave is competent. See Supreme Court Rules (1950), O. 12. AIR 1962 Andh Pra 245.

——O. 47, R. 1—Applicability and scope—Powers of Appellate Tribunal to review — 'Facts'—Interpretation of. See Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 12-A. (1956) 7 S T C 332 (Andh Pra).

——O. 47, R. 1—Application for amendment of preliminary partition decree, for inclusion of item left out by mistake. See Court-fees Act (1870), Sch. 1, Art. 4. AIR 1955 Andhra 215.

——O. 47, R. 1 — "Decision of High Court" — Order disposing of appeal on withdrawal by appellant—Power of High Court to review its judgment. See Representation of the People Act (1951), S. 116-A. AIR 1961 Bom 21.

——O. 47, R. 1 — Power of High Court to review its decision — Extent of — Error apparent on face of record—What is. AIR 1959 Bom 466.

——O. 47, R. 1—Relative scope of — Nature of suits. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (1950), S. 14(1). (1957) 61 Cal W N 949.

——O. 47, R. 1— Powers of review—Insolvency Court can review its order. See Provincial Insolvency Act (1920), S. 5. (1965) 2 Mad LJ 11=78 Mad LW 442= AIR 1966 Mad 29.

——O. 47, R. 1 — Auction purchaser at execution paying balance of 75 per cent., of purchase price — Receipt not deposited in Court — Re-sale ordered — Order may be reviewed. See Civil P. C. (1908), S. 47. AIR 1961 Mad 409.

——O. 47, R. 1 — Rejection of plaint under O. 7, R. 11(c) — Plaint can be restored under Ss. 151, 148, 149 — Review under O. 47, R. 1 not the only remedy —Sections 148, 149 and 151 do not provide for notice to other side against restoration — Extension of time for filing deficit court-fee — Plaint to be taken as validly presented on date it was filed. See Civil P. C. (1908), S. 151. (1963) I L R 42 Pat 704 (DB).

——O. 47, R. 1 (Pat.)—Review application allowed on grounds other than those of mistake of law or fact — Certificate of refund of court-fee paid on review application cannot be granted—Civil Review No. 64 of 1948 (Pat), Overruled. See Court-fees Act (1870), S. 15. AIR 1961 Pat 390 (FB).

——O. 47, R. 1; O. 32, R. 5(2); O. 9, R. 13 and S. 151 —Minor not properly represented — Decree passed — Remedies of minor are appeal against decree, or application for rehearing under O. 9, R. 13 or by way of review under O. 47, R. 1 or for relief under O. 32, R. 5(2) — Application under S. 151 treated as one for review. AIR 1955 N U C (Pat) 1863.

——O. 47, R. 1—Appeal against amended decree — Decree amended under O. 47 and not under S. 152—Pending appeal against the original decree—Dismissal of the appeal as incompetent is proper. See Civil P. C. (1908), S. 96. 67 Pun L R 1223 = A I R 1966 Punj 518.

——O. 47, R. 1 — Certificate under — Power of High Court to cancel or withdraw it. See Privy Council Rules (1920), R. 12. AIR 1951 Punj 43.

——O. 47, R. 1 — Rejection of plaint for non-payment of court-fee — Order amounts to decree—Power of Court rejecting plaint—Proper procedure for restoration. See Civil P. C. (1908), S. 2(2). AIR 1956 Raj 164.

——O. 47, R. 1—Error apparent on face of record — Rejection of application for review under misapprehension—It is failure to exercise jurisdiction. See Civil P. C. (5 of 1908), S. 115. AIR 1955 Vindh Pra 40.

——O. 47, R. 2—Application under S. 116, Travancore Civil P. C., for amendment of order rejected—Review —Applicability of O. 45, R. 2, Travancore Civil P. C., to High Court—Error or mistake apparent on face of record or judgment. See Civil P. C. (5 of 1908), O. 47, R. 1. AIR 1951 Trav-Co 150.

——O. 47, R. 4—Another remedy open—Respondents' revision application dismissed by Board of Revenue without hearing them — Respondents applying for setting aside order — Order vacated without hearing petitioner—Writ petition by petitioner — Petitioner's proper course held was to approach Board itself and not to approach High Court directly with writ petition. See Constitution of India, Art. 226. AIR 1960 All 93.

——O. 47, R. 4—Order granting review on ground of mistake or error apparent on face of record—Appellate Court acts without jurisdiction in setting aside order — O. 43, R. 1(w) is subject to O. 47, R. 7. See Civil P. C. (5 of 1908) S. 115. AIR 1960 Assam 204.

——O. 47, R. 4(2)(b)—Strict proof — Meaning. AIR 1951 Nag 458.

——O. 47, R. 4 — Error apparent on the face of the record—Error should appear either in the order itself or in any document incorporated in the order—Omission to refer to a Supreme Court decision in the order —Effect. See Civil P. C. (5 of 1908), S. 115. AIR 1963 Orissa 126.

——O. 47, Rr. 5, 7—Judgment by Division Bench—Review application heard by one Judge under R. 5 and dismissed—No appeal. AIR 1963 Andh Pra 277.

——O. 47, R. 5—Scope — Conditions contemplated by R. 5 satisfied — Right of third Judge who had not participated in judgment, decree or order to hear review application. AIR 1953 Trav-Co 1 (FB).

——O. 47, R. 5—Scope — Prohibition contained in R. 5 is absolute and is not limited to first stage of hearing of review application. AIR 1953 Trav-Co 1 (FB).

——O. 47, R. 7—Mistake apparent on face of record. See Civil P. C. (5 of 1908), O. 47, R. 1. A I R 1951 Ajmer 55.

——O. 47, R. 7 — Whether the provisions of O. 47, R. 7, Civil P. C. override the provisions of Cl. 15, Letters Patent, and whether the decision in A I R 1954 Mad 642, requires reconsideration — (Quaere) — Letters Patent (Madras), Cl. 15. A I R 1963 Andh Pra 277.

——O. 47, R. 7—Order granting review on grounds other than those mentioned in provisos to O. 47, R. 4(2) — No appeal lies. 69 Mad L W (Andh) 50, Overruled—See Civil P. C. (1908), O. 47, R. 1. A I R 1961 Andh Pra 201 (FB).

——O. 47, R. 7 — Discretionary order — Appeal provided — Interference with discretionary order — See Civil P. C. (1908), S. 107. AIR 1959 Cal 150.

——O. 47, R. 7 (1) (b) — In contravention of the provisions of R. 4—Meaning of — Order granting review —Appeal against—Grounds — Appeal against decree passed on review — Powers of appellate Court — See Civil P. C. (1908), O. 43, R. 1. A I R 1962 Mys 239.

——O. 47, R. 7 — Letters Patent (Nagpur), Cl. 10 — Refusal to review — Appeal — See Letters Patent (Nagpur), Cl. 10. AIR 1956 Nag 215.

——O. 47, R. 7 — Revision against order refusing review — See Civil Procedure Code (5 of 1908), S. 115. AIR 1952 Nag 248.

——O. 47, R. 7 (1) (a)—Contravention of R. 2 — See Civil P. C. (1908), O. 47, R. 2. AIR 1954 Pepsu 27.

——O. 47, R. 7 — Review rejected — Appeal from decree maintainable — Revision does not lie — See Civil Procedure Code (5 of 1908), S. 115. AIR 1953 Raj 153.

——O 47, R. 7 (1)—Provincial Insolvency Act (1920), Ss. 5 (1) and 75 — Order refusing review — Appeal lies under Act — Civil P. C. applies subject to Insolvency Act. A I R 1935 Pat 177, Not followed — See Provincial Insolvency Act (1920), S. 5 (1). A I R 1955 Trav-Co 49.

——O. 47, R. 7 — Error apparent on face of record—Rejection of application for review under misapprehension — It is failure to exercise jurisdiction — See Civil Procedure Code (5 of 1908), S. 115. AIR 1955 Vindh Pra 46.

——O. 48, R. 1 — Partition Act (1893), S. 7 — Order dismissing objection to sale held under Partition Act — Final decree passed — No appeal lies against order of dismissal. A I R 1929 Lah 245, Dissented from — See Partition Act (1893), S. 7. AIR 1959 Punj 129.

——O. 48, R. 3 — Notice to judgment-debtor before passing final decree — Notice necessary as matter of prudence and as sound rule of practice — Words "and after hearing the parties" in App. D Form 6 are relevant—Form has statutory force — See Civil P. C. (1908), O. 34, R. 5. 1965 Raj L W 479=ILR (1965) 15 Raj 1110=AIR 1966 Raj 261.

——O. 49, R. 3—Suit for sale on mortgage — Mortgagor when finally and irrevocably loses his equity of redemption — See Civil P. C. (1908), O. 21, R. 92. AIR 1956 Cal 510.

——O. 50, R. 1 — Framing of issues in small cause suits — Adducing full and further particulars — See Provincial Small Cause Courts Act (1887), S. 17. AIR 1956 Bhopal 9.

——Appendix D, Form No. 10 — Compromise decree in contravention of O. 34, R. 6 — Effect — Irregularity whether renders whole decree void — Irregularity if can be waived—Failure to object—Mortgagor whether estopped from challenging it — See Civil P. C. (1908), O. 34, R. 6. AIR 1957 Pat 575.

——Appendix E, Forms Nos. 22 and 23 — Andhra Civil Rules of Practice, R. 177 and Forms Nos. 64 and 65 — No inconsistency between these provisions — See Civil P. C. (1908), O. 21, R. 53. AIR 1964 Andh Pra 439.

——Appendix G, Form 9 — Appeal dismissed with costs — Omission to mention cost of first instance — Power of executing Court to refer decree of first Court — See Civil P. C. (1908), S. 38. A I R 1958 Pat 506.

——Appendix G, Form No. 11 — Application for leave to sppeal as pauper — Respondent is not entitled to notice — Notice to respondent issued — Respondent is not entitled to say that decree sought to be appealed against is not contrary to law — He can only contest the fact of pauperism of applicant — See Civil P. C. (1908), O. 44, R. 1. AIR 1961 Ker 309.

——Sch. 1, Appendix F, Form 5 — Attachment before judgment — Proper form to be used — See Civil P. C. (1908), O. 38, R. 5. AIR 1963 Pat 286.

——Sch. 2, Para. 21—Arbitration proceedings ending before Act came into force — Order refusing to file award — If appealable — See Arbitration Act (1940), S. 39. AIR 1952 Vindh Pra 25.

——Sch. 3, Para. 11 — Debt Laws — Bombay Agriculturists Debt Relief Act (1947), S. 24 — Jurisdiction—Execution of mortgage decree sent to Collector — Adjustment by sale —Validity — Jurisdiction to decide — See Debt Laws — Bombay Agriculturists Debt Relief Act (1947), S. 24. AIR 1956 Bom 607.

CIVIL SERVICE REGULATIONS

● ——Art. 465-A—Retirements contemplated by these two Regulations are not same. See Police Regulations, Reg. 214, Expl. II. AIR 1956 Nag 162 (FB).

CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES (1930)

——Constitution of India, Arts. 226, 311 and 313—High Court exercising jurisdiction under Art. 226—Power to go behind order impeached — Violation of rules made by Government — Accrual of cause of action. AIR 1955 Mad 182, Diss. from. See Constitution of India, Art. 226. AIR 1956 Bom 483.

——R. 11, Cl. 5— Constitution of India, Arts. 311 (2) and 22 (1) — Reasonable opportunity — Denial of — Disciplinary enquiry — Permission to engage lawyer denied — Effect — Delinquent Government servant cannot be equated to accused — Right to defend guaranteed by Arts. 22 (1) and 311 distinguished — Restrictions on right of representation in cl. 5, R. 11, Civil Services (Classification, Control and Appeal) Rules are not unreasonable. See Constitution of India, Art. 311 (2). (1964) 1 Mys L J 333 = (1964) 9 Fac L R 98=(1965) 2 Lab L J 515=AIR 1966 Mys 218.

——Rr. 17 (b) (i) and (d) (i) — Constitution of India, Art. 311 (2)—Reasonable opportunity—Punishment of reduction in rank — Enquiry under R. 17 (d) (i) waived — No sufficient reasons for waiver— Order inflicting punishment held violative of provisions of Art. 311 (2) of Constitution and Rule 17 (d) (i) of Civil Services (Classification, Control and Appeal) Rules. See Constitution of India, Art. 311 (2). A I R 1965 Mad 155.

——Rr. 49, 55 — Constitution of India, Art. 311—Petitioner serving in U. P. Public Health Service—Petitioner continuing in service for more than year after completing prescribed period of probation—Subsequent order of discharge on ground that he was physically unfit — Applicability of Rr. 49, Explanation and 55 — Right of notice and hearing. See Constitution of India, Art. 311. AIR 1956 All 330.

——R. 49—Constitution of India, Art. 311—Question whether Government servant in temporary service is entitled to safeguard provided by Article — Duty of Court is to enquire whether he is to be deemed to be in quasi-permanent service and not whether he is holding temporary post in substantive capacity. See Constitution of India, Art. 311. AIR 1955 Punj 229.

● ——R. 52— Constitution of India, Arts. 229 (1), 313 and 367 (1)—Member of High Court staff—Power to dismiss vests in Chief Justice. See Constitution of India, Art. 229 (1). AIR 1956 S C 285.

——Rr. 52, 55—Public Servants (Inquiries) Act (1850), Ss. 2, 23 — Civil servant, employed under State Government—Power of State Government to order public enquiry — Irregularity in ordering inquiry—Effect. See Public Servants (Inquiries) Act (1850), S. 2. AIR 1958 Punj 58.

●——R. 55—Constitution of India, Art. 311 (2) (prior to Constitution (Fifteenth Amendment) Act, 1963) — Reasonable opportunity — Requirement of oral

enquiry under R. 55 of Civil Services (Classification, Control and Appeal) Rules (1930) is mandatory—It is based on considerations of natural justice and fair-play—Failure to hold such enquiry infringes Art. 311 (2)—Enquiry Officer may regulate such enquiry. See Constitution of India, Art. 311 (2). (1965) 2 S C W R 667 = 1965 M P L J 941=AIR 1966 S C 269.

●——R. 55—Constitution of India, Art. 14—Disciplinary Proceedings (Administratve Tribunal) Rules (1951)—Validity—Rules are not discriminatory when compared to Classification Rules —Rules do not contravene Art. 14—AIR 1960 Orissa 68, Reversed. See Constitution of India, Art. 14. AIR 1963 S C 779.

——R. 55 — Constitution of India, Art. 311 (2)—Reasonable opportunity — Opportunity to show cause against proposed punishment — Mere mention of proposed punishment in charge-sheet not sufficient—Second opportunity to show cause against proposed punishment must be given when Authority decides to punish delinquent officer after considering enquiry report. See Constitution of India, Art. 311 (2). AIR 1965 All 492.

——Rr. 55, 49 — Petitioner serving in U. P. Public Health Service — Petitioner continuing in service for more than year after completing prescribed period on probation — Subsequent order of discharge on ground that he was physically unfit — Applicability of R. 49 Explanation and R. 55—Right of notice and hearing. See Constitution of India, Art. 311. AIR 1956 All 330.

——Rr. 55, 49 and 55-A — Regular enquiry under R. 55 to be held before punishment is imposed, except in cases of minor punishments mentioned in R. 49 (i), (ii) and (iv). (1963) 2 East L R 1(DB).

——R. 55 — Constitution of India, Arts. 311 and 226 —Reduction of Government servant— Proceedings in contravention of R. 55, Civil Services (Classification Control and Appeal) Rules — Finding arrived at in violation of natural justice. See Constitution of India, Art. 311. AIR 1957 Orissa 184.

——R. 55 — Constitution of India, Art. 311—Bihar Service Code, R. 74 — Appellant retained in service after superannuation — Extension of service not granted — Appellant ordered to retire under R. 74—Order does not offend against Art. 311 of the Constitution. See Constitution of India, Art. 311. AIR 1965 Pat 186.

——R. 55 — Civil servant employed under State Government—Power of State Government to order public enquiry — Irregularity in ordering inquiry—Effect. See Public Servants (Inquiries) Act (1850), S. 2. AIR 1956 Punj 58.

——R. 55-A — Pecuniary loss caused to State by negligence of servant — Recovery from pay — Adequate opportunity of making representation has to be given — Recovery under R. 49 — Conditions precedent, stated—Grounds on which tentative punishment is proposed to be given should be mentioned while giving opportunity — Unless agreed upon or unless provided by statute, deduction of unliquidated damages cannot be made. See Civil Services (Classification, Control and Appeal) Rules, R. 49. AIR 1955 Vind Pra 21.

●——R. 55-B—Probationer —Termination of service in accordance with terms in lettter of appointment—Term not inserted by virtue of any law for time being in force—R. 55-B applies and is not excluded by R. 3 (a). See Civil Services (Classification, Control and Appeal) Rules (1930), R. 3 (a). A I R 1963 S C 1552.

CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES (1955)

—— Constitution of India, Art. 311—Enquiry by subordinate authority under delegation of power from appointing authority — Supervisor of City Improvement Board—Appointing authority of. See Constitution of India, Art. 311. AIR 1958 Andh Pra 112.

CIVIL SERVICES REGULATIONS AND LIBERALISED PENSION RULES

——R. 474 — Discharge of officer upon abolition of post — Unless he is appointed to another post, he has option of taking any compensation, pension or gratuity to which he may be entitled for service he has rendered—Pension and gratuity are to be calculated in accordance with Rr. 474 and 474 (1) (a). See Civil Services Regulations and Liberalised Pension Rules, R. 436. A I R 1965 All 406.

——Civil Service Rules — Manual for Guidance of Officers of Excise and Salt Department Vol. II, R. 132—Nature of.

Rule 132 of the Manual for Guidance of Officers of Excise and Salt Department is not a statutory rule but merely an executive instruction. That rule applies to officers on duty and not to suspended officers. An officer, on suspension, is not on duty and there cannot be any conceivable reason to keep him confined within limits of the jurisdiction of the district headquarters and thus to restrict his freedom of movement. (1962) 1 Lab L J 317 = (1961) 3 Fac L R 285 (Cal).

CLUBS AND ASSOCIATION

——Chamber of Commerce — Produce section — Managing Committee — Action of, in fixing clearance price — Validity. A I R 1953 Trav-Co 26 (29, 31) (Pt A) (Prs 11, 17).

——Voluntary association — Characteristics. A I R 1953 Trav-Co 26 (30, 31) (Pt D) (Pr 16).

COACHING TRAFFIC RULES

——R. 161—Railways Act (1890), S. 72 — Coaching Traffic Rules, Rule 161 — Agent having authority to take delivery only — Railway cannot re-book goods, on application of such person. See Railways Act (1890), S. 72. A I R 1959 Pat 337.

COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) ACT (20 of 1957)

●——Ss. 1, 3 (4), 4, 5 — No provision for compensation for suspension of mine owners' rights— Validity of Ss. 4 and 5 cannot be challenged—Constitution of India, Arts. 31-A (1) (e) and 31 (2). Burrakur Coal Co. v. Union of India, A I R 1961 S C 954 (961, 962) (Pt E) (Pr 23).

●——S. 3 (4) — No provision for compensation for suspension of mine owners' rights — Validity of Ss. 4 and 5 cannot be challenged — Constitution of India, Arts. 31-A (1) (e) and 31 (2). See Coal Bearing Areas (Acquisition and Development) Act (51 of 1957), S. 1. A I R 1961 S C 954.

COAL MINES (CONSERVATION AND SAFETY) ACT (12 of 1952)

●——S 7 — Coal Mines (Conservation and Safety) Rules (1954), R. 39 — Opening and reopening of coal mines — Rule 39 dealing with — It is authorised by S. 17—It is not invalid. See Coal Mines (Conservation and Safety) Act (12 of 1952), S. 17 (2). A I R 1965 S C 821.

COAL MINES PITHEAD BATH RULES (1946)

——R. 3 (1) — Omission of owner to comply with R. 3 (1) — Liability of agent. See Mines Act (1923), S. 39. A I R 1956 Nag 71.

——Rr. 4, 5 and 6—Nature of. See Mines Act (1923), S. 30. A I R 1956 Nag 71.

COAL MINES PROVIDENT FUND AND BONUS SCHEME ACT (46 of 1948)

——Scheme under — Payment of Wages Act (1936), S. 2 (vi) (before amendment of 1957) and S. 15 (3)— Wages — Bonus scheme under Coal Mines Provident Fund and Bonus Schemes Act—Bonus under, comes within definition of 'wages'—Application for payment of such bonus can be entertained by authority under Payment of Wages Act. See Payment of Wages Act (1936), S. 2 (vi). A I R 1960 Pat 523.

COAL MINES PROVIDENT FUND SCHEME, 1962

●——Paras. 70 (a), (d) and (f), 33-A, 38, 42 and 69-A —Coal Mines Provident Fund and Bonus Scheme Act (1948), S. 2 (b), 2 (e) — 'Coal mine' and employer— Meaning of—Coke plant situated near coal mine not belonging to coal mine but to lessee of land from coal company — Coke plant is not coal mine within S. 2 (b) and owner thereof is not employer within S. 2 (e)—Provisions of Act and scheme do not apply. (1965) 2 Lab L J 522=(1965) 11 Fac L R 275 (FB).

COCHIN ABKARI ACT (1 of 1077 M.E.)

●——S. 22—Contract Act (1872), S. 23—Agreement in contravention of Cochin Abkari Act—Agreement is void — Money due under it cannot be recovered. See Contract Act (1872), S. 23. A I R 1962 Ker 21 (FB).

——S. 69—Constitution of India, Arts. 372, 245, 246 —Validity — There is conflict between S. 69 read with S. 29 of the Act and Arts. 245 (1) and 246 (3) of the Constitution — G. O. Ms. 253/63 Rev. dated 25-3-1963 is illegal and has to be struck down. See Constitution of India, Art. 372. A I R 1965 Ker 8.

COCHIN INCOME-TAX ACT (6 of 1117 M.E.)

——S. 3 (9) (as amended in 1122)—Wrong orders— Error apparent on face of record — Other remedy open. See Constitution of India, Art. 226. A I R 1956 Trav-Co 240.

——S. 5 (3) (iii), (vii) — Constitution of India, Art. 226—Wrong orders — Error apparent on face of record — Other remedy open. See Constitution of India, Art. 226. A I R 1956 Trav-Co 240.

COHIN LAND ACQUISITION ACT (2 of 1070 M.E.)

See also corresponding provisions of Land Acquisition Act (1894).

SECTION 1

——S. 1 — Travancore-Cochin Requisitioning and Acquisition of Property Act (1 of 1956), S. 1—Object and fields of operation of two Acts are different— Cochin Act held not repealed by Act 1 of 1956— Words and Phrases — 'Requisitioning' and 'Acquisition' — Travancore-Cochin Requisitioning and Acquisition of Property Act (1 of 1956), S. 1.

The Cochin Act provides for the acquisition of any property but Act 1 of 1956 provides for the requisitioning of property, and in certain cases, for the acquisition of requisitioned property. Requisitioning and acquisition are different concepts in law, requisitioning implying only a temporary deprivation of the owner, of the use and possession of a property, acquisition implying a transference of the property, or all the rights thereto. In requisitioning, the title remains with the owner, but he is excluded by the State from the right to the possession or enjoyment of the property, but acquisition is the acquiring of the entire title of the expropriated owner whatever the nature or extent of that title may be. 1950 S C R 863, Foll.

Acquisition under the T. C. Act of 1956 is limited only to the property requisitioned and can be made, only on the fulfilment of certain conditions. This is not the object of statutes like the Cochin Act relating to the acquisition of land, under which any land may be acquired, without the need for requisitioning. The two Acts are intended to serve different purposes, and to apply to different situations and can well stand together. There is therefore no repeal of the Cochin Act or any of its provisions by the T. C. Act 1 of 1956. 1960 Ker L T 181 = 1960 Ker L J 224= (1960) 1 Ker L R 364=I L R (1960) Ker 464.

——S. 10 — Land Acquisition Act (1894), Ss. 18 (2), Proviso (b), 11 and 12 — Date of the award—4 Ind Cas 914 (Lah); 22 Ind Cas 652 (Oudh), view of Mukerji J., in A I R 1929 All 769 and 47 Trav L R 1, Dissented from. See Land Acquisition Act (1894), S. 18 (2), Proviso. A I R 1954 Trav-Co 444.

COCHIN LAND ACQUISITION RULES

RULE III

——R, III (6) — Award of compensation — Form of. The award of which knowledge should be brought home can only be an award as prescribed by S. 10, and drawn up in the form given under Rule III (6) of the Rules framed under the Cochin Land Acquisition Act. A communication requesting for payment under protest of the amount awarded for the land acquired, cannot be construed as an application for a reference under S. 17. See Land Acquisition Act (1894), Ss. 11 and 18. 1963 Ker L J 193=ILR (1963) 1 Ker 438.

COCHIN PALIAM TARAWAD PROCLAMATION (8 of 1124 M. E.)

SECTION 8

——S. 8 — Under S. 8 of the Paliam Proclamation the properties of the assignee can be validly attached for the recovery of arrears of revenue under the Revenue Recovery Act. See Cochin Revenue Recovery Act (4 of 1083), S. 6. 1950 T C L R 443 (DB).

COFFEE MARKET EXPANSION ACT (7 of 1942)

——S. 5 — Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 2 (b) — Indian Coffee Board is a dealer. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 2 (b). AIR 1956 Mad 449.

COLLECTIVE BARGAINING

See Trade Unions Act (1926), S. 28F, Chapter III-A, of which S. 28-F is a part — (Note: Was introduced by Amending Act XLV of 1947 which is not yet brought into force. But in various States the Chapter is introduced as State Amendment.)

COLLIERY CONTROL ORDER (1945)

——Cl. 10A — Constitution of India, Art. 286 (1) (a) — Inter-State sale:— Movement of goods outside the State should be under terms of sale — Supply of coal by colliery to allottees under Colliery Control Order, 1945 — Price paid in advance — Coal delivered to railway at the colliery — Consignment 'freight to pay' and at consignees' risk — Sale held complete at colliery — Movement of goods not under contract of sale — Sale held not exempted under Art. 286 (1) (a). See Constitution of India, Art. 286 (1) (a). AIR 1962 Andh-Pra 75.

COMMISSIONS OF INQUIRY ACT (60 of 1952)

——S. 3 — Criminal P. C. (1898), S. 200, Proviso (aa) — District Magistrate appointed Commissioner of inquiry under Act — Government authorising Commissioner to prefer complaint — Complaint preferred — Commissioner held did not purport to act in dis-

charge of his official duty as he had no official duty to prefer complaint as District Magistrate or as Commissioner of Inquiry — Hence, S. 200, Proviso (aa) was not applicable — Procedure prescribed by S. 200 without the proviso, should be adopted for taking cognizance of offence on complaint by examining complainant. See Criminal P. C. (1898), S. 220, Proviso (aa). 1960 Cri L J 1466 = AIR 1960 Ker 350.

——S. 5 (1), (2) — Jammu and Kashmir Commission of Inquiry Act (32 of 1962), Ss. 4, 5 (1) and 5 (2) — Production of documents — Commission has unfettered powers in asking for production of documents — Privilege under S. 123, Evidence Act, cannot be claimed unless S. 5 (2) is made applicable. See Jammu and Kashmir Commissions of Inquiry Act (32 of 1962), S. 4. AIR 1965 J and K 75.

——S. 10 — Criminal P. C. (1898), S. 190 (1) (a) — District Magistrate appointed Commissioner of Inquiry under Commissions of Inquiry Act, 1952 — Commissioner is competent to prefer complaint. See Criminal P. C. (1898), S. 190 (1) (a). 1960 Cri L J 1466 = AIR 1960 Ker 350.

COMMUTATION

Pension of.

See Pensions Act (1871), S. 10.

COMPANIES ACT (7 of 1913)

●——S. 2 (11) — Defence of India Rules (1939), Rr. 75-A (1) and 119—Service of requisition on order — On whom to be made — Mode of service—Requisition against Company—Service on Managing Agent who is principal officer is effective and proper. See Defence of Incia Rules (1939), R. 75-A (1). AIR 1961 S C 1214.

——S. 2 (1) (9) — Excess Profiis Tax Act (1940), S. 2 (10), (19), Sch. I, R. 7 (1), 2 (a) — Directors' remuneration. See Excess Profits Tax Act (1940), S. 2 (10), (19). AIR 1953 All 31.

——Ss. 2, 3 — Jurisdiction of High Court to entertain winding up petition on behalf of Government — If barred by S. 226, Government of India Act—Government of India Act (1935), S. 226. AIR 1952 Cal 323 (327, 328) (Pt A) (Prs 6, 7, 8).

——S. 2 (1) (ii) — Affixing of word 'Company' after firm name — Section 4, if attracted. See Companies Act (1913), S. 4. AIR 1951 Kutch 55.

——S. 2 (9-A) — Hindu Law — Joint family—Acquisition — Presumption — Managing agency agreement by coparcener — Commission earned would be prima facie his individual (and not joint family) income. See Hindu Law — Joint family. AIR 1952 Mad 828.

——S. 3 — Jurisdiction of first class Magistrate to take cognizance of case under S. 282A and try. See Companies Act (1913), S. 282A. AIR 1953 All 715.

——S. 3 — Jurisdiction of High Court to entertain winding up petition on behalf of Government — If barred by S. 226, Government of India Act. See Companies Act (1913), S. 2. AIR 1952 Cal 323.

——S. 3 — Administration of Evacuee Property Act (1950), Ss. 7, 7A, 2 (f) and 1 (2) (as amended by Act 42 of 1954) — Evacuee property—Shares in company having registered office at Calcutta — Jurisdiction of Custodian in Bihar — Situs of shares — Company having factory in Champaran in territorial limits of Bihar — If this gives jurisdiction to Bihar Custodian — Views of Malik C. J. in AIR 1951 All 746 (764, 765), Dissented from. See Administration of Evacuee Property Act (1950), S. 7. AIR 1957 Pat 312.

——S. 4 — Partnership — It is not correct to say that a private limited company is a partnership. AIR 1951 Mad 291.

——S. 4 — Share-holders and Company — Relations between stated. AIR 1955 N U C (Punj) 4994.

——S. 11 — Specific Relief Act (1877), S. 54 — Injunction to restrain registration of society under particular name—Power of Court to grant injunction. See Specific Relief Act (1877), S. 54. AIR 1952 Cal 804.

——Ss. 12, 13, 14 — Alteration of memorandum — Confirmation of — Safeguards to protect interests of creditors, share-holders and public — Discretionary power of Court while confirming alteration. See Companies Act (1956), S. 17. AIR 1961 Cal 666.

——S. 14—Expressions 'any person' or 'class of persons' in S. 12 (3) (a) — Meaning — Expression 'shall have regard to' in S. 14 — Effect — Resolution to change registered office of Company from one State to another — State or any other person is competent to raise objections under S. 12. See Companies Act (1956), S. 17. AIR 1957 Orissa 232.

——S. 21 — Different expressions—Articles of association — Interpretation. See Interpretation of Statutes. AIR 1956 Bom 537.

——S. 27 — Companies Act (1956), Ss. 457, 36 — Power of Official Liquidator to sell properties of Company during winding up — Not limited by Articles of Association. See Companies Act (1913), S. 179. AIR 1963 Mad 409.

●——S. 28 (1) — Transfer of shares — Effect of — Right to dividend — Winding up—Transfer of assets by liquidators for cash and shares in another Company — Sanction by Court — Discretion. See Companies Act (1956), S. 82. AIR 1956 S C 655.

●——S. 30 — S. 2 (16) and Table A, Reg. 18 — "Member," "share-holder" and "holder of a share" are interchangeable words. See Companies Act (1956), S. 2 (46). AIR 1959 S C 775.

● ——S. 34 and Table A, Reg. 18—Transfer of shares — Relationship between transferor and transferee — Obligations of transferor. AIR 1958 S C 385.

——S. 34 — Income-tax Act (1922), Ss. 16 (2), 18 (5) and 49-B— Income from dividends. See Income-tax Act (1922), S. 16 (2). AIR 1953 Nag 187.

● ——S. 60 — Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), Ss. 19 (4) and 3 — Reduction of share capital — Company Judge sanctioning such reduction — Order of Company Judge passed under S. 60, Companies Act, 1913 cannot deprive statutory right of displaced person granted under S. 19. See Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 19 (4). AIR 1963 SC 1707.

——S. 79 — General meeting not convened within period prescribed by S. 76 (3) — Share-holders can convene meeting under Ss. 78 or 79 (2) — Such meeting can ratify acts of directors — Ratification does not bind share-holders — Section 86, protects acts of directors not properly appointed but does not protect acts of directors whose office has terminated. See Companies Act (1913), S. 76 (3). AIR 1959 Cal 715.

——S. 81 (2) and Sch. 1, Table A. Reg. 49 — Period of notice. AIR 1951 Mad 831 (2).

——S. 84 — Directors — Imposition of other than share qualification — Validity. See Companies Act (1913), S. 85. AIR 1951 Mad 520.

——S. 86 (g) — Suit against company — Managing director removed from office — Suit in his own name for declaring removal void — Maintainability. See Companies Act (1913), S. 23. AIR 1951 Mad 542.

●——S. 87-B (f) — Partnership Act (1932), Ss. 7, 8, 43 — Partnership at will — Meaning of — Duration of partnership, and provision for determination, implied in terms of partnership—Partnership is not one at will — Partnership of managing agency of mills— — Partnership terminates when managing agency terminates — Resolution of Board of Directors terminating managing agency agreement — Resolution approved by general body of share-holders of com-

pany — Managing agency terminates on date of resolution of Board of Directors, on which date managing agency partnership is also determined—A. S. No. 623 of 1949, D/- 27-7-1953 (Mad), partly Reversed. See Partnership Act (1932), S. 7. AIR 1961 S C 1225.

——S. 91-A (1) — Borrowing by Company from director. AIR 1951 Nag 255.

——S. 93 — Directors — Imposition of other than share qualification — Validity. See Companies Act (1913), S. 85. AIR 1951 Mad 520.

——S. 103 — Directors — Imposition of other than share qualification — Validity. See Companies Act (1913), S. 85. AIR 1951 Mad 520.

——S. 109 (f)—Floating charge. AIR 1952 Mad 595.

——S. 131(1)—Wilful non-compliance with Ss. 32 (3) and 131 (1) by directors — They are guilty. See Companies Act (1956), S. 161. AIR 1957 Mad 675.

——S. 131-A—Business Profits Tax Act (1947), Sch. 2, R. 2 — "Reserves." See Business Profits Tax Act (1947), Sch. 2, R. 2. AIR 1954 Pat 139.

——S. 133 (3) — Failure to place balance sheet before general body meeting within time—Managing director pleading his own default — Plea of innocence by directors. See Companies Act (1913), S. 13 (1). AIR 1952 Mad 800.

——S. 133 — Limitation Act (1908), S. 19 — Signing of balance sheet by director of company — Acknowledgment of liability. See Limitation Act (1908), S. 19. AIR 1951 Nag 255.

●——S. 148—Defence of India Rules (1939), R. 75A (2) and (3) — Notice of acquisition — Service on owner essential — Mode of service to be effected in a reasonable manner—Requisitioned goods in possession of company who had issued pucca delivery orders — Ownership in goods when passes by issue of pucca delivery order — Service of notice on Company as owner through its managing agent held valid and effective under R. 75A (2). See Defence of India Rules (1939), R. 75A (2). AIR 1961 S C 1214.

■ —Ss. 153 (6) and 276 — Section 153 (6) if provides execution to S. 276—Foreign Company—Scheme of arrangement, if can be sanctioned respecting such company. AIR 1951 Punj 145 (FB).

●——S. 153A — Stamp Act (1899), S. 2 (10), Sch. I, Arts. 23 and 22 — Order under S. 153A, Companies Act, transferring assets of company in liquidation to another company—Transfer by deed in pursuance of such order — Stamp duty — Applicability of Arts. 23 and 22. See Stamp Act (1899), S. 2 (10). A I R 1951 Mad 209 (FB).

——S. 162 — Banking Companies (Amendment) Act (20 of 1950), Ss. 10, 11—Application for winding up — Jurisdiction of District Court — Companies Act (1913), S. 162. See Banking Companies (Amendment) Act (20 of 1950), S. 10. AIR 1951 Bom 274.

——Ss. 162 (v), 163—Debt bona fide disputed. A I R 1952 Cal 323.

——S. 162 — Compulsory winding at instance of Superintendent of Insurance — Effect on contract of employment between company and Secretary—Secretary of Insurance company—Services terminated due to official liquidator taking charge — Right to claim damages for wrongful termination of service — Doctrine of frustration of contract — Applicability. See Insurance Act (1938), S. 53. A I R 1963 Mad 297 (DB).

——S. 162—Company can be wound up even after it had been struck off under S. 247 (5). See Companies Act (1913), S. 247 (5). AIR 1955 N U C (Mad) 3935.

——S. 162—Object of winding up. A I R 1953 Punj 145.

——S. 163—Debt bona fide disputed. See Companies Act (1913), S. 162 (v). AIR 1952 Cal 323.

——S. 163 (1)—Limitation Act (1908), S. 14—"Same cause of action" — Winding up proceedings under S. 163 (1), Companies Act and action for recovery of debts—Companies Act (1913), S. 163 (1). See Limitation Act (1908), S. 14. A I R 1951 Nag 255.

——S. 166 — Foreign Company doing business in India — Winding up in India. See Companies Act (1913), S. 271 (1). AIR 1956 Mad 131.

——Ss. 169, 170—Inherent jurisdiction to stay in case of abuse of process. AIR 1952 Cal 323.

——S. 170 — Inherent jurisdiction to stay in case of abuse of process. See Companies Act (1913), S. 169. AIR 1952 Cal 323.

●——S. 171—Banking Companies Act (1949), S. 2 — Winding up proceedings in respect of Bank — Applicability of Ss. 171 and 232, Companies Act (1913). See Banking Companies Act (1949), S. 2. A I R 1956 S C 614 (a).

——S. 171 — Execution proceedings by company in liquidation—Claim petition by third party—If "other legal proceeding" within S. 171. AIR 1951 Mad 348.

——S. 171—Difference. See Partnership Act (1932), S. 69. AIR 1953 Punj 235.

——S. 171 — Leave to proceed against company in liquidation — Plaintiff a secured creditor — Leave if should be granted and on what terms. A I R 1951 Punj 292.

——S. 171 — Travancore Companies Act, S. 210 — Proceedings against Company — Application for issuing a writ of certiorari to quash certain Government notifications by certain shareholders of a company under liquidation is not a proceeding against Company and S. 210 cannot apply. AIR 1952 Trav-Co 14.

——S. 174 — Winding up proceedings — Wishes of creditors. AIR 1952 Cal 323.

——S. 175—Application under S. 235—Limitation — Computation of — Starting point — Date of appointment of regular liquidator and not of provisional liquidator, is commencement of period of limitation. See Companies Act (1913), S. 235. A I R 1963 Mad 464.

●——S. 179—Sanction of Court for criminal prosecution of managing director — Sanction when not necessary. See Companies Act (1956), S. 457. A I R 1956 S C 575.

——S. 179—Official liquidator—Powers and duties of. AIR 1953 Punj 145.

——S. 179 (c)—Official Liquidator—Powers of—Sale of immovable property situated in foreign territory. AIR 1954 Trav-Co 40.

——S. 183 (5) — Contributory challenging claim of certain creditors included in list drawn up by liquidator — If "person aggrieved" — Act of liquidator whether 'act or decision' within S. 183 (5)—Companies Act (1913), S. 246 — Rules under. A I R 1951 Nag 275.

●——S. 184 — Order under Ss. 183 (3) and 184 according sanction to sale,— Whether administrative or judicial — Order deciding lis between parties and passed after hearing it on merits—Order is judicial — Distinction between administrative and judicial orders stated. See Companies Act (1913), S. 202. AIR 1965 S C 507.

——S. 184 — Leave to sue — Reliefs falling partly under the jurisdiction of winding up the court—Leave in respect of such reliefs cannot be granted. 1967 MP L J 788=ILR (1964) M P 254 (DB).

——Ss. 186, 187 and 21—Scope—Liability of contributory—"Exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act"—Interpretation of — A I R 1942 All 136, Diss. from. AIR 1958 Mad 34.

——S. 187—Scope—Liability of contributory — "Exclusive of any money payable by him on the estate by virtue of any call in pursuance of this Act" — Interpretation of. See Companies Act (1913), S. 186. AIR 1958 Mad 34.

——S. 196—Object in enacting provisions in S. 45-G. See Banking Companies Act (1949), S. 45-G. AIR 1957 Cal 508.

——S. 199—Limitation Act (1908), Arts. 182, 183 — Order by High Court under S. 186, Companies Act. See Limitation Act (1908), Art. 182. AIR 1951 All 362.

——S. 202 — Decision given in the matter of winding up. AIR 1951 Nag 275.

——S. 202—Travancore Companies Act, Ss. 210, 245 —Company in liquidation — Application by shareholders for writs of certiorari for quashing certain notifications by Government—Applicability of Ss. 210 and 245, Travancore Companies Act — Application is maintainable. See Companies Act (1913), S. 171. AIR 1952 Trav-Co 14.

——S. 207—Bank going into voluntary liquidation under S. 207, Companies Act (1913) — No licence under S. 22 — Part III-A held did not apply. See Banking Companies Act (1949), Part. III-A. AIR 1961 Orissa 26.

——S. 216—Dividend — Company — Winding up — Profits from business continued by liquidator — Distribution in the winding up — Whether dividend — Deduction of tax by liquidator from amounts distributed—Whether valid — Company — Winding up — Liquidation and dissolution — Distinction. See Income-tax Act (1961), S. 2 (22) (c). (1965) 35 Com Cas 340 = (1965) 1 Com L J 340 (All).

——S. 216—Court—Meaning of—Court means Court under Companies Act and not ordinary Civil Court. See Companies Act (1913), S. 3. AIR 1965 Punj 24.

——S. 227—Transfer of shares — Effect of — Right to dividend — Winding up — Transfer of assets by liquidators for cash and shares in another company—Sanction by Court — Discretion. See Companies Act (1956), S. 82. AIR 1956 SC 655.

——Ss. 228, 229 — Application governed by Ss. 228 and 229, Companies Act, 1913 — Explanation to S. 3 does not apply to such application. See Limitation Act (1908), S. 3, Explanation. AIR 1959 Cal 646.

——Ss. 229, 230—Interest—Trusts Act (1882), S. 23—Provincial Insolvency Act (1920), S. 48. AIR 1954 All 129.

——S. 229—Provincial Insolvency Act (1920), S. 46 —"Mutual dealings" — Interpretation of — Set-off — Companies Act (1913), S. 229. See Provincial Insolvency Act (1920), S. 46. AIR 1954 Orissa 7.

——S. 231—Petition for winding up — Money paid within three months prior to petition — Payment is not invalid. AIR 1952 Mad 595.

——S. 231—Application by liquidator—Maintainability. AIR 1954 Trav-Co 164.

——S. 232—Winding up proceedings in respect of Bank — Applicability of Ss. 171 and 232, Companies Act (1913). See Banking Companies Act (1949), S. 2. AIR 1956 SC 614.

——S. 232—Companies Act (1956), Ss. 446, 537—Execution of mortgage decree, against property in which company had puisne mortgage, is proceeding against company—Waiver of requirements of S. 171—Effect. See Companies Act (1913), S. 171. AIR 1963 Mad 308.

——Ss. 234 and 235—Power of liquidator to compromise misfeasance proceedings — Proper Court for granting sanction indicated. 1953-23 Com Cas 474= AIR 1955 NUC (Bom) 1422 (b).

——S. 235—Civil P. C. (1908), S. 141 and O. 23, R. 3 — O. 23, R. 3 applies to misfeasance proceedings under Companies Act (1913), S. 235. See Civil P. C. (1908), S. 141. 1953-23 Com Cas 474 = AIR 1955 NUC (Bom) 1422 (a).

——S. 235—Court — Meaning of—Court means Court under Companies Act and not ordinary Civil Court. See Companies Act (1913), S. 3. AIR 1965 Punj 24.

——S. 246—Contributory challenging claim of certain creditors included in list drawn up by liquidator—If "person aggrieved" — Act of liquidator whether 'act or decision' within S. 183 (5). See Companies Act (1913), S. 183 (5). AIR 1951 Nag 275.

——S. 248 (2)—Regulation under, Regn. 14 framed for the State of Delhi—Offence under Companies Act —Complaint by private individual in State of Delhi—Whether competent — AIR 1953 Mad 196 and AIR 1942 Mad 293, Diss. from. See Companies Act (1956), S. 609 (2). AIR 1956 Punj 210.

——S. 253 (i), (ii)—Certificate of approval to company —Registration under Companies Act — If condition precedent — Mineral Concession Rules (1949). See Mines and Mineral (Regulation and Development) Act (1948), S. 5. 1960 B L J R 105=ILR 38 Pat 1160.

——S. 276—Section 153 (6) if provides exception to S. 276—Foreign company — Scheme of arrangement, if can be sanctioned respecting such company. See Companies Act (1913), S. 153 (6). AIR 1951 Punj 145 (FB).

——S. 280—Civil P. C. (1908), O. 33, R. 1 — 'Person' includes juristic person like Corporation — Corporation can be allowed to sue in forma pauperis—S. 280, Companies Act does not affect such right. See Civil P. C. (1908), O. 33, R. 1. AIR 1961 Bom 1.

——S. 281—Application by directors under S. 281 (2) to High Court — Prosecution against them already instituted—High Court cannot relieve directors from liability of pending prosecution. See Companies Act (1956), S. 633. AIR 1956 Orissa 205.

——S. 281 (2)—"Claim" includes criminal prosecution — Companies Act (1956), S. 633 (2). AIR 1960 All 160, Dissented from.

The word "claim" in sub-s. (2) of S. 281 of Companies Act, 1913, must be construed as having been used in a special sense so as to include also criminal prosecution. The High Court has, therefore, power under S. 633 (2) to relieve against an apprehended prosecution. AIR 1956 Orissa 205, AIR 1959 Bom 245; AIR 1960 Kerala 15, (1934) 1 Ch 227, (1940) 1 Ch 495, Rel. on. AIR 1960 All 160, Disst. from. 1965 Pun L R (Sup) 573=ILR (1966) 2 Punj 221 = (1966) 36 Com Cas 144=(1966) 1 Com L J 214.

——S. 281 (2) — Relief can be granted after dissolution of Company—Companies Act (1956), S. 633 (2).

Relief can be granted to liquidator under S. 281 (2) after the Company had been wound up. (1903) 2 Ch 625, Distinguished. 1965 Pun L R (Sup) 573 = ILR (1966) 2 Punj 221=(1966) 36 Com Cas 144= (1966) 1 Com L J 214.

——Sch. I, Regns. 24, 25, 26 — Forfeiture of share — Requirements — Burden of proof — Invalid notice — Effect. AIR 1951 Nag 266.

——Sch. I, Regns. 27, 28 — Sale of invalidly forfeited shares—Remedy of former shareholder is to claim damages from company. AIR 1951 Nag 266.

——Sch. I, Table A, Reg. 20 — Private Company — Articles of association conferring on directors absolute and uncontrolled discretion to refuse to register transfer of share — Interference by Court. See Companies Act (1913), S. 38. AIR 1956 Nag 20.

——Sch. I, Table A, Reg. 18 — Transfer of share in blank — Effect of such transfer on Company—Equities arising between transferor and transferee. See Companies Act (1956), S. 110. AIR 1959 S C 775.

——Sch. I, Table A, Regns. 18, 19, 20, 21, 22 and 23 — Transfer and transmission — Distinction—Pur-

chaser of share at Court auction — If automatically becomes member — Proper procedure for transfer — Discretion of directors to refuse to register such transfer. See Companies Act (1913), S. 34. AIR 1956 Nag 20.

——Sch. I, Table A, Regn. 18 — Income from dividends. See Income-tax Act (1922), S. 16 (2). AIR 1953 Nag 187.

——Sch. I, Table A, Regn. 22 — Transfer and transmission. See Companies Act (1913), S. 18. AIR 1957 Orissa 203.

——Sch. I, Table A, Regn. 49— Period of notice. See Companies Act (1913), S. 81 (2). AIR 1951 Mad 831.

——Sch. I, Table A, Regns. 95, 96 and 97—Income-tax Act (1922), S. 16 (2) (prior to omission by Finance Act, 1959) — Payment of interim dividend by directors — Mere declaration cannot be regarded as payment within S. 16 (2)—AIR 1948 Bom 404, Overruled. See Income-tax Act (1922), S. 16 (2). AIR 1964 S C 1866.

——Sch. I, Table A, Regn. 95—Income-tax Act (1922), Ss. 2 (1), 4 (3) (VIII), 6, 10 and 12—Assessee holding shares in company, whole or part of whose profits are exempt from tax as agricultural income—Income from dividend received by assessee is not agricultural income exempt from tax. See Income-tax Act (1922), S. 2 (i). AIR 1953 Bom 1.

——Sch. I, Table A, Regn. 97 — Income-tax Act (1922), Ss. 2 (6A) (a), 12 — Dividend — Company issuing shares in 1945 at premium and keeping share premiums as capital reserve — Company declaring dividend out of such capital reserve in year 1953—Assessee taxed on such dividend in assessment year 1954-55 — Held S. 78 of Companies Act (1956) did not affect taxability of such dividend. See Income-tax Act (1922), S. 2 (6A) (a). AIR 1964 S C 1800.

——Sch. I, Table A, Regn. 112 — Share-holders of company residing at great distances from company's registered office — Notice of meeting — New articles proposed — Necessity to send copies of proposed articles with notice. See Companies Act (1913), S. 79 (1) (b). AIR 1952 Cal 645.

COMPANIES ACT (1 of 1956)

——S. 2 (18)—Holding office of profit under Government of India — Test to determise — Meaning and object of disqualification — Object is to prevent conflict between interest and duty — Such provisions should receive wide interpretation to prevent mischief which might otherwise follow—There is distinction between holder of office of profit under Government and holder of service under Government — S. 7 (e) read with S. 8 (e) of Representation of the People Act is not an exception under Art. 102—Held on facts that appellant who was partner of firm of auditors of two Government companies and Life Insurance Corporation and Government-nominated director of a company was disqualified from membership of House of People. See Constitution of India, Art. 102 (1) (a). (1963) 67 Cal W N 558.

——Ss. 3, 12 (1), 13— Purpose and object — Distinction between — Object of company to contribute to political fund— Legality. See Companies Act (1956), S. 12 (1). AIR 1957 Cal 234.

——S. 5 — Defence of Travancore Rules (as amended by Notification ROC No. 1131/42/Legis D/- 17-7-1944), R. 94B (1) (a)—"Issue" of security — Meaning of 'issue.' See Capital Issues (Continuance of Control) Act (1947), S. 3. AIR 1957 Trav-Co 6.

——S. 9—Voting rights of deferred shareholders not in conformity with those prescribed by S. 87 — Exemption granted to Company under S. 89 (4)—Old rights remain protected if they are not altered in accordance with provisions of S. 89 — Scheme and object of provisions in Ss. 87 to 90 — Power of exemption created under S. 89 (4) can be exercised once and finally only and there is no right of revocation of exemption once granted. See Companies Act (1956), S. 89 (4). 67 Bom L R 362 = AIR 1966 Bom 218.

——S. 9 (b) — Scope — Amendment of Articles of Association in violation of provisions of Companies Act not contemplated. See Forward Contracts (Regulation) Act (1952), S. 9-A. AIR 1961 Punj 485.

——S. 11—Partners of assessee firm sharing profits with strangers—Whether strangers become partners of assessee-firm. See Income-tax Act (1922), S. 26A. AIR 1957 Andh-Pra 332.

——Ss. 13, 16 and 17 — Alteration in object clause in memorandum of Association to undertake new and additional business— Courts when should sanction such alteration.

Whether a new or additional business is to be undertaken by a company is primarily a matter which concerns its directors, managers and share-holders subject to the wishes of creditors who have lent money to the Company either with or without security. If the directors of the Company approach the share-holders for sanction by a special resolution to the alteration of its memorandum so as to undertake new and additional kinds of business which do not go to destroy the business already carried on by the Company the Court should not take any exception to such alteration. (1923) 2 Ch 222, Foll. ('64) 68 Cal W N 481.

——Ss. 14, 12, 35 — Formation of Company — Declaration contained in Memorandum of Association of Private Company — Person not subscribing his signature to declaration — Person is not a subscriber to Memorandum of Association even though his signature appears elsewhere — Section 35 does not cover this defect. See Companies Act (1956), S. 12. (1965) 2 Mad L J 504 = (1965) 2 Com L J 266 = (1965) 35 Com Cas 930 = AIR 1966 Mad 231.

——S. 16 — Alteration in object clause in memorandum of Association to undertake new and additional business — Courts when should sanction such alteration. See Companies Act (1956), S. 13. (1964) 68 Cal W N 481.

——S. 17 — Confirmation of amendment of object clause — Considerations.

Where an object clause of a company is sought to be amended by incorporating therein some new business the fact that the new business is a departure for the company, having nothing in common with the existing business is not fatal to the petition for amendment. What is to be seen is whether the additional business is one which may conveniently or advantageously be combined with the existing business and whether the new business is in any way inconsistent with or destructive of the existing business. Where this is not so the amendment can be allowed. (1964) 34 Com Cas 86 (All).

——Ss. 17 (d), 41, 85 — Company doing business of manufacture of artificial silk cloth — Company seeking to amend its objects clause so as to authorise it to manufacture industrial and power alcohol — Additional business may be a business wholly different from and bearing no relation to existing business of company and yet may be conveniently and advantageously combined with existing business — Shareholders are persons best entitled to judge questions of convenience and advantage of proposed additional business : 1923 II Chancery Division 222, Rel. on. (1963) 33 Com Cas 901 (All).

——S. 17—Proposed additional business of Company may be entirely different from the existing one — But that by itself is not sufficient to refuse confirma-

tion under S. 17 (2) — Court has to consider whether the new business is not destructive of or inconsistent with the existing one and confirmation cannot be given unless there is a present desire for the Company to carry on the new business in the near future —It is not for the Court to tell the Company but it is for the shareholders, to decide what business should be carried on or how it should be carried. (1923) 2 Ch D 222; 59 Bom L R 738; (1915) 112 L T 232 and AIR 1957 Cal 593, Foll. **(1965) 67 Bom L R 723.**

——S. 17 — Alteration in object clause in memorandum of Association to undertake new and additional business — Courts when should sanction such alteration. See Companies Act (1956), S. 13. **(1964) 68 Cal W N 481.**

——S. 17 (3) (a) — Special resolution for change of registered office of Company — Notice properly served on only two out of three share-holders — Resolution also passed by only two share-holders — Resolution held not valid. **AIR 1961 Orissa 62.**

——S. 28 — Transfer and transmission. See Companies Act (1913), S. 18. **AIR 1957 Orissa 203.**

——S. 33 — Different expressions — Interpretation. See Interpretation of Statutes. **AIR 1956 Bom 537.**

——Ss. 35, 12, 14 — Formation of Company—Declaration contained in Memorandum of Association of Private Company — Person not subscribing his signature to declaration — Person is not a subscriber to Memorandum of Association even though his signature appears elsewhere — Section 35 does not cover this defect. See Companies Act (1956), S. 12. **(1965) 2 Mad L J 504 = (1965) 2 Com L J 266 = (1965) 35 Com Cas 930 = AIR 1966 Mad 231.**

——S. 36 — Power of Official Liquidator to sell properties of Company during winding up — Not limited by Articles of Association. See Companies Act (1913), S. 179. **AIR 1963 Mad 409.**

——S. 36 — Scope — Liability of contributory — "Exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act" — Interpretation of. See Companies Act (1913), S. 186. **AIR 1958 Mad 34.**

——S. 37 (1) — Mutual insurance association — Requirements of — Profits of such association — Real nature of. See Income-tax Act (1922), S. 2 (6-C) (vii). **AIR 1963 Cal 598.**

——S. 41 — 'Any share held by him' — Meaning — Transfer of shares to displaced bank — Transferee's name not entered on register of share-holders — Transferee has no locus standi to apply under S. 19 (2). See Debt Laws — Displaced Persons (Debts Adjustment) Act (70 of 1951), S. 19 (1). **(1964) 1 Com L J 213 = 66 Pun L R 523.**

——S. 47—Scope and applicability—Section cannot be invoked by Company against its bank for making payment on cheques issued by managing agency of company. See Companies Act (1913), S. 89. **AIR 1961 S C 993.**

——Ss. 51, 434 (1) (a) — General Clauses Act (1897), S. 27 — Evidence Act (1872), Ss. 114, 16 — Delivery of letter of demand — Letter sent by registered post returned as refused — Whether there is delivery within S. 434 (1) (a) — Omission of word private in the name of a Private Ltd. company — Effect — Addressee not prejudiced. See Companies Act (1956), S. 434 (1) (a). **AIR 1961 Cal 439.**

——S. 64 — Shares — Situs of — Situs of shares of a Company which are movables may normally be the place where they can be effectively dealt with (i.e., the registered office of the Company). (1925) A C 371 and AIR 1930 P C 10, Rel. on. R. Viswanathan v. Rukn-nul-Mulk Syed Abdul Wajid, **AIR 1963 S C 1.**

——S. 75 (2) — Schedule I-B, Arts. 5 (c), 23 (U. P.), S. 2 (10), Stamp Act—Particulars filed with registrar under S. 104, Companies Act (1913) — Stamp duty payable. See Stamp Act (1899), Sch. 1-B, Art. 5 (c) (U. P.). **AIR 1959 All 595 (SB).**

——S. 81 — Notice for special meeting for purpose of S. 173 (2) — Statement under S. 81 signed by Secretary alone — That the statement was false and to the knowledge of directors not proved—No offence by directors. See Companies Act (1956), S. 628. **(1965) 2 Andh W R 354 = (1965) 2 Com L J 184 = 1965 Mad L J (Cri) 810.**

——S. 82—Shares — Situs of — Situs of shares of a Company which are movables may normally be the place where they can be effectively dealt with (i. e. the registered office of the Company). **AIR 1963 S C 1 (13, 14) (Pt B) (Pr 15).**

——S. 82—Estoppel by negligence — Mercantile custom — Sharescrips entrusted with father by plaintiff with full authority for disposal — Father keeping them with D — Father acting as mercantile agent of plaintiff — D neither servant nor agent of father or plaintiff—Sharescrips missing from D — D held could not be charged with theft—Illus. (d) to S. 378, Penal Code, held did not apply—Plaintiff held estopped by negligence and representation from asserting her title against bona fide purchasers of sharescrips with blank transfer deeds from D, without notice of defect in D's title — Marcantile custom. See Sale of Goods Act (1930), S. 27. **AIR 1965 Cal 355.**

——Ss. 87, 88. 90 — Voting rights of deferred shareholders. See Companies Act (1956), S. 89 (4). **67 Bom L R 362 = AIR 1966 Bom 218.**

——Ss. 88, 89 and 90 — Scope and object — Shares of companies existing at date of commencement of Act carrying voting rights not in conformity with those prescribed by S. 87 — Voting rights to be brought in conformity with S. 87 within one year from commencement of Act — S. 89 applies to all classes of shares whether preference shares or equity shares — Interpretation of Statutes. See Companies Act (1956), S. 87. **AIR 1963 Guj 209.**

——S. 108—Evidence Act (1872), S. 115 — Estoppel by negligence — Mercantile custom — Sharescrips entrusted with father by plaintiff with full authority for disposal — Father keeping them with D — Father acting as mercantile agent of plaintiff — D neither servant nor agent of father or plaintiff — Sharescrips missing from D — D held could not be charged with theft —Illus. (d) to S. 378, Penal Code, held did not apply — Plaintiff held estopped by negligence and representation from asserting her title against bona fide purchasers of sharescrips with blank transfer deeds from D, without notice of defect in D's title — Mercantile custom — Mercantile agent. See Sale of Goods Act (1930), S. 27. **AIR 1965 Cal 355.**

——S, 108—Necessary formalities — Stamp—Transfer deed not duly stamped — Company is justified in refusing registration. See Companies Act (1913), S. 34 (3). **AIR 1957 Cal 709.**

——S. 108—Transfer of shares — Director's discretion to register absolute — Refusal to register by directors — Reason given —Power of Court to rectify register. See Companies Act (1913), S. 34. **AIR 1957 Orissa 203.**

——S. 108 — Transferor and transferee of shares — Relation between—Transferor is trustee of all monies received from company—So long as transferor's name is on company's register it cannot refuse to treat him as shareholder. **(1962) 32 Com Cas 117 (Pun) (DB).**

——S. 110—Transfer of shares cannot be registered without there being a deed to transfer — Article enabling such registration would be ultra vires. See Companies Act (1913), S. 34. **AIR 1959 Cal 715.**

——S. 116 — General meeting under S. 116 not held due to reasons beyond control — Balance-sheet and

profit and loss account not filed—No offence under S. 210. See Companies Act (1956), S. 210. AIR 1963 Andh-Pra 389.

——S. 126—Floating charge— Immovable property acquired after registration of debentures — Charge not effective unless registered both under Companies Act and Registration Act. See Companies Act (1913), S. 109. AIR 1957 Mad 169.

——S. 134—Non-registration of a charge against a company's property in respect of company's debts — Effect — Charge invalid against liquidator only — Surety guarantor who could have got the charge registered under S. 134 of the Companies Act (1956) cannot take advantage of his failure to do so and claim relief under Ss. 139, 141 of the Contract Act. See Contract Act (1872), S. 139. AIR 1964 Mad 134.

——S. 141—Proceedings under S. 141 can be heard by District Court if empowered — Madras City Civil Court is not District Court. See Companies Act (1956), S. 2 (14). AIR 1960 Mad 79.

——S. 146—Reference of dispute to Tribunal —After reference, notices on firm not at its principal place of business but elsewhere — Held, notices could not be accepted as properly addressed. See Industrial Disputes Act (1947), S. 11. (1963) 2 Lab L J 475 (Cal).

——S. 155—Scope of S. 111 (3) — Company refusing to register transfer — Remedy—Transferee may apply under S. 155 — S. 111 (3) is no bar See Companies Act (1956), S. 111 (3). AIR 1961 Cal 528.

—S. 155—Liquidation proceedings — Applications for rectification of share register and list of contributories filed after winding up order—Maintainability. See Companies Act (1956), S. 467. AIR 1963 Mad 287.

——S. 155—Transfer of shares—Director's discretion to register absolute — Refusal to register by directors —Reasons given — Power of Court to rectify register. See Companies Act (1913), S. 34. AIR 1957 Orissa 203.

● ——S. 166—No general meeting held owing to wilful default of Directors—Charge against Directors for offences under Ss. 32 (5) and 133 — Fact that no general meeting was held, no valid defence — Criminal Appeals Nos. 419 and 423 of 1956, D/- 9-4-1956 (Bom), Reversed. See Companies Act (1913), S. 32 (3). AIR 1961 S C 186.

——S. 166—General meeting not convened within period prescribed by S. 76 (3) — Share-holders can convene meeting under S. 78 or 79 (2)—Such meeting can ratify acts of directors—Ratification does not bind a share-holder — Section 86 protects acts of directors not properly appointed but does not protect acts of directors whose office has terminated. See Companies Act (1913), S. 76 (3). AIR 1959 Cal 715.

——S. 169—General meeting not convened within period prescribed by S. 76 (3) — Share-holders can convene meeting under S. 78 or 79(2)—Such meeting can ratify acts of directors —Ratification does not bind a share-holder—Section 86 protects acts of directors not properly appointed but does not protect acts of directors whose office has terminated. See Companies Act (1913), S. 76 (3). AIR 1959 Cal 715.

——S. 170 — Andhra Pradesh Regional Committee Order (1953), Para 3 —Regional Committee constituted under—Nature of — Meetings of the Committee—Procedure as to — Decisions regarding meeting of companies or local authorities not applicable — Precedents. See Constitution of India, Art. 371 (1). AIR 1965 Andh Pra 306.

——S. 173 (2)—Notice for special meeting for purpose of S. 173 (2) — Statement under S. 81 signed by Secretary alone—That the statement was false and to the knowledge of directors not proved—No offence by directors. See Companies Act (1956), S. 628. (1965) 2 Andh W R 354 = (1965) 2 Com L J 184 = 1965 Mad L J (Cri) 810.

——S. 189—Scheme for compromise under S. 153 involving eduction of share capital—Notice of meetings of share-holders to consider such scheme — Length of notice. See Companies Act (1913), S. 153. AIR 1956 Pat 364.

——Ss. 193 and 197—Meeting—Report and minutes distinguished—Minutes not referring to discussion on certain item—Conclusion that there was no discussion on them is wrong. AIR 1965 Mad 107 (110) (Pt B) (Pr 8) (DB).

——S. 197—Meeting—Report and minutes distinguished. See Companies Act (1956), S. 193. AIR 1965 Mad 107.

——S. 204—'Office on employment of profit'—Meaning of Selling Agent of a Company for particular defined area—Holds office of profit though he is not employee of Company. See Income-tax Act (1922), S. 4 (3) (vi). (1964) 5 Guj L R 1041=(1965) 55 ITR 46.

——S. 205—Dividend—Meaning of — Distribution of right to apply for shares — Taxability as dividend. See Income-tax Act (1922), S. 2 (6-A). AIR 1956 Bom 381.

——S. 209—Powers under, may overlap—Order for inspection of books of account may be made in investigation under S. 237. See Companies Act (1956), S. 237. (1965) 2 Com L J 152=AIR 1966 Cal 151.

● ——S. 210 — No general meeting held owing to wilful default of Directors—Charge against Directors for offences under Ss. 32 (5) and 133—Fact that no general meeting was held, no valid defence—Criminal Appeals Nos. 419 and 423 of 1956, D/- 9-4-1956 (Bom), Reversed. See Companies Act (1913), S. 32 (3). AIR 1961 SC 186.

——S. 211—Acknowledgment—Balance Sheet of a company—Authentication—Essentials. See Limitation Act (1908), S. 19. AIR 1963 All 284.

——S. 224—Holding office of profit under Government of India—Test to determine — Meaning and object of disqualification—Object is to present conflict between interest and duty — Such provisions should receive wide interpretation to prevent mischief which might otherwise follow—There is distinction between holder of office of profit under Government and holder of service under Government—Section 7 (e) read with S. 8 (e) of Representation of the People Act is not an exception under Art. 102—Held, on facts that appellant who was partner of firm of auditors of two Government companies and Life Insurance Corporation and Government-nominated director of a company was disqualified from membership of House of People. See Constitution of India, Art. 102 (1) (a). (1963) 67 Cal W N 558.

——S. 227—Industrial dispute—Dispute arising out of matter relating to firm of chartered accountants—Chartered Accountants Act (1949), S. 2(b) and (e)—Professional work conducted by chartered accountant —Companies Act (1956), S. 277—Powers and duties of chartered accountant as auditor — Chartered Accountants Regulations (1949), Regs. 78 and 79—Engagement of employees to assist chartered accountant in his work —Firm of chartered accountants engaging employees and getting work from them carries on industry — Dispute between employers and employees of firm can validly be referred to Industrial Tribunal. See Industrial Disputes Act (1947), S. 2 (j). AIR 1963 Cal 310.

——S. 227—Duties of auditor—Nature of—Neglect in performing duties under S. 132 (3)—What is. See Companies Act (1913), S. 132 (3). AIR 1957 Cal 33.

——S. 230—Liquidator directed to carry on factory and to sell it as going concern—Liquidator is liable to make contribution as employer or occupier. See Employees' Provident Funds Act (1952), S. 2 (e). AIR 1960 Cal 199.

——S. 235—Prosecution by one of directors—Stay of, with certain directions — Fresh prosecution circumventing order of High Court—Maintainability. See Companies Act (1913), S. 278. AIR 1959 Cal 387.

——S. 235—Misfeasance or breach of trust — Mere misconduct of directors will not entitle a winding up order. See Companies Act (1956), S. 543. 78 Mad L W 579=(1965) 2 Com L J 272.

——S. 237 (b) — Order under section — Validity — Section is not a hostile piece of legislation.

By making an order of investigation no one is being subjected to a judicial process and there is no legal grievance which can possibly be said to arise. Article 14 prohibits hostile legislation directed against individuals or groups of individuals, but it does not forbid reasonable classification. Section 237 cannot be said to be a hostile piece of legislation in which any arbitrary discrimination has been made in case of companies. The power of the Central Government has been delegated to the Company Law Board which has to reach its independent conclusion about the existence of circumstances to justify an investigation. A I R 1962 S C 1781, Foll. (1965) Pun L R (Sup) 149 (DB).

——S. 242—Registrar can prefer complaint. See Companies Act (1913), S. 141-A. 1960 Cri L J 597 = AIR 1960 Ker 155.

——S. 274 — Director failing to obtain share qualification— He automatically vacates his office — Board cannot waive that event. See Companies Act (1913), S. 86-I (1) (a). AIR 1956 Pepsu 89.

——S. 283 —:Director failing to obtain share qualification—He automatically vacates his office — Board cannot waive that event. See Companies Act (1913), S. 86-I (1) (a). AIR 1956 Pepsu 89.

——S. 284—Directors—Power of—Suit by, on behalf of company — Authority to sue challenged — Proper course for defendant indicated—Objection cannot be raised by way of defence to suit—Exercise of powers by directors is subject to control of share-holders — Control can be exercised by altering Articles of Association or by refusing to re-elect directors — They cannot, however, usurp powers of directors — Court will not allow defendant to convene general meeting to ascertain wishes of share-holders in the matter of continuing suit. See Companies Act (1956), Sch. 1, Table A, R. 72. AIR 1961 Cal 251.

——S. 290 — Lien and charge of Company on shares scrips—Rights of Company. See Companies Act (1913), S. 86. AIR 1959 Cal 715.

——S. 290—Director taking part in proceedings after ceasing to be a director — Effect. See Companies Act (1913), S. 86. AIR 1956 Pepsu 89.

——S. 293 — Contract by managing director without consent of directors with other private company of which he is member—Contract is not void — Managing director is not liable to make restitution. See Companies Act (1913), S. 86F. AIR 1959 Cal 715.

——S. 293—Consent cannot be general one. See Companies Act (1913), S. 86F. AIR 1956 Pepsu 89.

●——S. 298 —S. 35 read with S. 36 makes provisions of Companies Act — Transfer by insurance company of its business to another insurance company, under express powers given by Memorandum of Association — Transfer cannot be said to be virtual winding up which has to be effected only under Companies Act—Question of corporate power in the sense it arose in Bisgood's case, (1908) 1 Ch 743, does not arise in the case. See Insurance Act (1938), S. 117. AI R 1962 SC 1355.

——S. 299 — Duty of director. See Companies Act (1913), S. 91-A. AIR 1956 Pepsu 89.

——S. 299 — Contract of director with company — There must be full disclosure. See Companies Act (1913), S. 86-F. AIR 1960 Punj 655.

——S. 303 (2)—Prosecution under S. 303 (2) for non-complying with provisions of S. 314—Offender cannot be acquitted by virtue of S. 652. See Companies Act (1956), S. 653. AIR 1959 Punj 22.

——S. 314—'Office or employment of profit'—Meaning of selling agent of a company for particular defined area — Holds office of profit though he is not employee of Company. See Income-tax Act (1922), S. 4 (3) (vi). (1964) 5 Guj L R 1041 = (1965) 55 I T R 46.

——S. 314 — Prosecution under S. 303 (2) for non-complying with provisions of S. 314 — Offender cannot be acquitted by virtue of S. 652. See Companies Act (1956), S. 652. AIR 1959 Punj 22.

——S. 391 — Scheme for compromise under S. 153 involving reduction of share capital—Notice of meetings of share-holders to consider such scheme — Length of notice. See Companies Act (1913), S. 153. AIR 1956 Pat 364.

——S. 395 — Difference in language of Ss. 153B and 208C (3)—Reason for such difference stated. See Companies Act (1913), S. 153B. AIR 1960 Mad 43.

——S. 395—S. 153B, Companies Act (1913)—Validity. See Constitution of India, Art. 19 (1) (f). A I R 1957 Mad 341.

——Ss. 397 and 398 — Notice to Central Government. See Companies Act (1956), S. 400. A I R 1959 Bom 176.

——S. 397—Private Limited Company — Application under S. 153C, Companies Act, filed — Interim Administrator and Commissioner appointed—Remuneration paid to auditors appointed by High Court and also to advocate representing Company in application — Expenditure held could not be regarded as expended wholly and exclusively for purpose of business—Audit expenses and remuneration paid to Commissioner for conducting meetings held were within scope of allowance under S. 10 (2) (xv) — Remuneration paid to Interim Administrator and to Company's advocate held could not come within scope of allowance — Companies Act (1913), S. 158C. See Income-tax Act (1922), S. 10 (2) (xv). AIR 1965 Mad 516.

——Ss. 398, 397 — Application for winding up — — Powers of Court — Court cannot intervene in internal management when application cannot be sustained. See Companies Act (1956), S. 443. AIR 1962 Mad 493.

——S. 402 (b) and (c) — Power of Court to prevent corruption and mismanagement — Nature of — Not arbidged by S. 6 (3). Forward Contracts Regulation Act (1952). See Companies Act (1956), S. 397. AIR 1961 Punj 485.

——S. 426 (1) (g) — Claim for unpaid dividends by share-holders — Provisions of S. 434 (1) (a) can be availed of by the share-holders in respect of unpaid dividends. See Companies Act (1956), S. 434 (1) (a). (1965) 78 Mad L W 579=(1965) 2 Com L J 271.

——S. 426 (1) (g)—Non-payment of disputed debts—Non-payment does not amount to neglect to pay when there is a bona fide dispute regarding amount—Presentation of winding up petition knowing the dispute, amounts to abuse of the process of Court. See Companies Act (1956), S. 433. (1965) 78 Mad L W 579=(1965) 2 Com L J 272.

——S. 426—Liability on winding up — Nature of — Suit by liquidator to enforce liability — Limitation. See Companies Act (1913), S. 179 (a). AIR 1956 Nag 204.

——S. 429—Liability on winding up—Nature of — Suit by liquidator to enforce liability—Limitation. See Companies Act (1913), S. 179 (a). AIR 1956 Nag 204.

●——S. 433—"Just and equitable"—Mismanagement of directors whether ground for winding up. See Companies Act (1913), S. 162 (vi). AIR 1956 SC 213.

——S. 433 — Alteration of memorandum — Requirements—Exercise of discretion by Court—Considerations. See Companies Act (1956), S. 17. AIR 1965 Cal 16.

——Ss. 433 (c) (f), 443 (2), 398—Winding up petition — Grounds for — Primary object of company ceasing — Directors favouring particular group of share-holders — Share-holders as such deriving no benefit—Company held should be wound up. AIR 1961 Cal 144.

——S. 433 (a)—Proposed sale of sole undertaking of company for inadequate price — Sale being tantamount to winding up company, requires consent of company by special resolution — Sale sought to be effected by obtaining consent by ordinary resolution is prejudicial to interests of company — Court can direct under S. 398 that undertaking be not sold for specified period except on strength of special resolution. See Companies Act (1956), S. 398 (1) (a). AIR 1964 Ker 114.

——S. 433 (e)—Inability to pay debts — Winding up of company—Plea of factual insolvency not taken in previous winding up petition — Plea taken in subsequent petition is barred by constructive res judicata. See Companies Act (1956), S. 434 (1) (c). (1965) 78 Mad L W 579=(1965) 2 Com L J 272.

——S. 433—Winding up petition—All material things must be stated in the petition itself—Evidence cannot be adduced after closure of arguments. (1965) 2 Com LJ 272=78 Mad L W 519.

——Ss. 433, 434 (1) (a), 426 (1) (g) and 526 (2) — Non-payment of disputed debts—Non-payment does not amount to neglect to pay when there is a bona fide dispute regarding amount—Presentation of winding up petition knowing the dispute, amounts to abuse of the process of Court. (1965) 2 Com L J 272 =78 Mad L W 579.

——S. 433 (f)—Just and equitable. See Companies Act (1913), S. 162 (6). AIR 1956 Pepsu 89.

——Ss. 434 (1):(a) and 426 (1) (g)—Claim for unpaid dividends by share-holders—Provisions of S. 434 (1)(a) can be availed of by the share-holders in respect of unpaid dividends. O.S.A.18, 37 and 70 of 1962 D/-19.11-1963 (DB), Rel. on. (1965) 2 Com L J 272= 78 Mad L W 579.

——S. 434 (1) (a)—Non-payment does not amount to neglect to pay when there is a bona fide dispute regarding amount—Presentation of winding up petition knowing the dispute, amounts to abuse of the process of Court. See Companies Act (1956), S. 433. (1965) 78 Mad L W 579=(1965) 2 Com L J 272.

——Ss. 434 (1) (c) and 433 (e) — Inability to pay debts—Winding up of company — Plea of factual insolvency not taken in previous winding up petition —Plea taken in subsequent petition is barred by constructive res judicata. (Civil P. C. (1908), S. 11). 1946-1 A.E.R. 435: 1947-2-A.E.R. 104, Ref. (1965) 2 Com L J 272=78 Mad L W 579.

——S. 441 (2)—"Other legal proceeding" — Winding up petition filed during pendency of appeal by Company before Supreme Court — Petition is an abuse of the process of Court. See Companies Act (1956), S. 446. (1965) 78 Mad L W 579=(1965) 2 Com L J 272.

——S. 442—Petition for stay of winding up—Mention of wrong section in. See Companies Act (1956), S. 433. AIR 1965 Cal 98.

——S. 442 — Policy under — Leave under S. 171 — Necessity. See Companies Act (1913), S. 169. AIR 1959 Madh Pra 95.

——S. 443 (2) — Winding up petition—Grounds for — Primary object of company ceasing — Directors favouring particular group of share-holders—Share-holders as such deriving no benefit — Company held should be wound up. See Companies Act (1956), S. 433 (c) (f). AIR 1961 Cal 144.

——S. 443 (2) — Winding up — Fully paid up share-holder is entitled to make petition—Order cannot be made unless he makes out special case on just and equitable grounds—Ground of Company's insolvency is virtually unavailable to him. See Companies Act (1956), S. 439 (3). AIR 1965 Ker 241.

——S. 443 and Rules made thereunder, Rr. 9 and 36 —Winding up petition—Abuse of process application by Company—Main petition can be disposed of without dismissing Company's application as not maintainable. (1965) 3 Com L J 272=78 Mad L W 579.

●——S. 446—Winding up proceedings in respect of Bank — Applicability of Ss. 171 and 232, Companies Act (1913). See Banking Companies Act (1949), S. 2. AIR 1956 SC 614.

——S. 446 — Leave for execution proceedings in another Court. See Companies Act (1913), S. 171. AIR 1956 All 586.

——S. 446 — Policy under — Leave under S. 171 — Necessity. See Companies Act (1913), S. 169. AIR 1959 Madh Pra 95.

——Ss. 446 and 441 (2) — "Other legal proceedings" — Winding up petition filed during pendency of appeal by Company before Supreme Court — Petition is an abuse of the process of Court. (1965) 2 Com LJ 272=78 Mad L W 579.

——S. 449 — Winding up —Investigation into affairs of company necessary. See Companies Act (1956), S. 433. AIR 1965 Cal 98.

——S. 449—Application under S. 235—Limitation—Computation of — Starting point — Date of appointment of regular liquidator, and not of provisional liquidator, is commencement of period of limitation. See Companies Act (1913), S. 235. AIR 1963 Mad 464.

——S. 450 —Scope —"In the winding up" —Refer to point of time subsequent to winding up order — 'First appointment of liquidator' — "Appointment of provisional liquidator" not contemplated. See Companies Act (1913), S. 175 (2). AIR 1962 All 88.

——S. 450—Companies (Court) Rules (1959), Rr. 117, 118 (3) — Winding up order pending suit against company — Absence of leave to continue suit does not deprive Court of jurisdiction to pass decree — Ex parte decree — Application to set aside can be made only by provisional liquidator and not by company—Civil P. C. (1908), O. 9, R. 13. See Companies Act (1956), S. 446. AIR 1962 Cal 192.

——S. 450 — Application under S. 235 — Limitation —Computation of—Starting point—Date of appointment of regular liquidator, and not of provisional liquidator, is commencement of period of limitation. See Companies Act (1913), S. 235. AIR 1963 Mad 464.

●——S. 456 — Head office of banking company in India going into liquidation — Winding up proceedings—Branches in Pakistan—Creditors of branches, when can prove their claims and participate in distribution of assets of bank in liquidation, stated — Effect of non-reciprocity between India and Pakistan, stated. See Companies Act (1913), S. 167. AIR 1959 Cal 672 (SB).

——S. 456 (1) (c) — Transfer by tenant—Meaning— Tenant company ordered to be compulsorily wound up—Tenancy rights sold by public auction by liquidator—Transfer is by operation of law — Provisos (a) and (b) to S. 12 (1) do not apply. See Houses and Rents — W. B. Premises Rent Control (Temporary

Provisions) Act (17 of 1950), S. 12 (1), Proviso (a). AIR 1959 Cal 181.

●——S. 457 —Scope of —Complaint by liquidator — Absence of direction by Court or hearing of accused person — Effect on prosecution. See Companies Act (1913), S. 237 (1). AIR 1959 SC 51.

——S. 457 — Power of official liquidator to sell properties of company during winding up — Not limited by Articles of Association. See Companies Act (1913), S. 179. AIR 1963 Mad 409.

——S. 457 (1) (a) — Suit in name of liquidator — Maintainability. See Companies Act (1913), S. 179(a). AIR 1956 Nag 204.

——S. 458-A — Suit by company in liquidation for price of goods sold and delivered by it — Art. 52 applied—However period under S. 458-A, Companies Act should be excluded. See Limitation Act (1908), Art. 52. (1964) 2 Comp L J 230 (Cal).

——S. 460 (b) — Provincial Insolvency Act (1920) S. 46 — Company — Winding up—Claim by creditor in respect of amount due to him from company — Set off — Duty of creditor to deduct from his claim any sum due by him to company which is legally recoverable—Relevant date for determining whether claim for set off is barred by limitation — Creditor's claim allowed by official liquidator without any deduction — Application by auction purchaser of Company's assets under S. 460 (6) —Plea of set off if can be allowed. See Companies Act (1956), S. 529. AIR 1964 Andh Pra 88.

●——S. 467 — Order under Ss. 183 (3) and 184 according sanction to sale — Whether administrative or judicial — Order deciding lis between parties and passed after hearing it on merits—Order is judicial—Distinction between administrative and judicial orders stated. See Companies Act (1913), S. 202. AIR 1965 SC 507.

——Ss. 467, 155 — Liquidation proceedings—Applications for rectification of share register and list of contributories filed after winding up order — Maintainability. AIR 1963 Mad 287.

——S. 468—Applicability—Money paid by liquidator to directors who were creditors of company — See Companies Act (1913), S. 185. AIR 1959 Bom 474.

——S. 478—Distinction—S. 45-G if supersedes S. 196, Companies Act so far as Banks are concerned — See Banking Companies Act (1949), S. 45-G. AIR 1958 Andh Pra 756.

——S. 478 —Object in enacting provisions in S. 45-G —See Banking Companies Act (1949), S. 45-G. AIR 1957 Cal 508.

——S. 483 — As amended by Bombay Act 12 of 1954 —Appeal against order refusing to wind up company — Court-fee — Companies Act (1956), Ss. 433, 482, 483 and 634—Such order has not the force of decree —See Court-fees Act (1870), Sch. II, Art. 11. (1965) 1 Mys L J 557=AIR 1966 Mys 150.

——S. 488 (2) (b)—Voluntary liquidation—Declaration of solvency presented in office of Registrar of Companies found not in conformity with provisions of S. 488 (2) (b) — Declaration not also drawn up in Form 149 as required by R. 313 of Companies (Court) Rules (1959) — Held declaration was rightly rejected by Registrar of Companies and voluntary winding up initiated was not valid and legal. (1963) 1 Com L J 285=(1963) 33 Com Cas 719 (All).

——S. 488 — Bank going into voluntary liquidation under S. 207, Companies Act (1913) — No license under S. 22 — Part III-A held did not apply — See Banking Companies Act (1949), Part III-A. AIR 1961 Orissa 26.

——S. 512 — Suit in name of liquidation—Maintainability—See Companies Act (1913), S. 179 (a). AIR 1956 Nag 204.

——S. 515—Forum—Two persons one being chartered accountant, acting as Official Liquidator appointed by High Court — Chartered Accountant misappropriating funds of a Company in liquidation — Proper forum for action is the High Court under Companies Act and not Disciplinary Committee under Chartered Accountants Act—Chartered Accountants Act (1949) (as amended in 1959), S. 21 (1). (1965) 11 Fac L R 167=AIR 1966 Cal 468.

——S. 518 (1) — Voluntary winding up — Power of liquidator — He can make calls and institute suit to recover call money — No sanction of Court is necessary. See Companies Act (1913), S. 212 (1) (d). AIR 1963 Mys 61.

——S. 518 (1) — Voluntary winding up — Power of liquidator of making calls without sanction of Court — Suit by liquidator without resort to S. 216 (1) — See Companies Act (1913), S. 216 (1). AIR 1956 Nag 204.

——S. 528 — Rent falling due after date of winding up — See Companies Act (1913), S. 228. AIR 1956 All 586.

——S. 528 — Application governed by Ss. 228 and 229, Companies Act, 1913 — Explanation to S. 3 does not apply to such application — See Limitation Act (1908), S. 3, Explanation. AIR 1959 Cal 646.

●——S. 529 — Scope — Section is subject to Ss. 228 and 229 of Companies Act (1913) — Income-tax officer applying S. 49-E—High Court can exercise its jurisdiction under Art. 226 of the Constitution — See Income-tax Act (1922), S. 49-E. (1965) 2 I T J 132 = (1965) 57 I T R 331 = (1965) 2 Comp L J 71 = (1965) 2 S C J 248=(1965) 35 Com Cas 669=(1965) 2 S C W R 296 = 1965 M P L J 905 = 67 Bom L R 944 = (1965) 2 S C A 763 = 1965 Mah L J 861 = (1965) 3 S C R 679=AIR 1966 S C 35.

——S. 529 — Application governed by Ss. 228 and 229, Companies Act, 1913—Explanation to S. 3 does not apply to such application — See Limitation Act (1908), S. 3, Explanation. AIR 1959 Cal 646.

——S. 530 — Rent falling due after date of winding up — See Companies Act (1913), S. 228. AIR 1956 All 586.

——S. 530 — State obtaining decree for costs against company—Company going into voluntary liquidation —Liquidator applying for stay of execution — Liquidator depositing amount — Court directed the withholding of the payment to the State of this amount and leave it to be available for the creditors of the company to be distributed pari passu in accordance with scheme of S. 511 — State was directed to prove its debt in accordance with law and claim amount out of assets of company rateably — See Companies Act (1956), S. 511. AIR 1963 Madh Pra 201.

——S. 531—Dispositions of property—See Companies Act (1913), S. 227 (2). AIR 1959 Punj 472.

——S. 536 (2) — Non-payment of disputed debts — Non-payment does not amount to neglect to pay when there is a bona fide dispute regarding amount — Presentation of winding up petition knowing the dispute, amounts to abuse of the process of Court — See Companies Act (1956), S. 433. 78 Mad L W 579 =(1965) 2 Com L J 272.

●——S. 537—Winding up proceedings in respect of Bank — Applicability of Ss. 171 and 232, Companies Act (1913)—See Banking Companies Act (1949), S. 2. AIR 1956 S C 614.

——S. 537 — Policy under — Leave under S. 171 — Necessity — See Companies Act (1913), S. 169. AIR 1959 Madh Pra 95.

●——Ss. 538, 539, 478, 541, 545 — Order for public examination under S. 45G — Allegations justifying order for public examination are not accusations within Art. 20 (3) of the Constitution — Applications

for order under S. 545 on allegations under Ss. 538, 539 and 541 of Companies Act also are not accusations — Article 20 (3) of the Constitution is not violated—Constitution of India, Art. 20 (3) — AIR 1961 Ker 14, Reversed — See Banking Companies Act (1949), S. 45G. AIR 1965 S C 654.

——S. 543 (2)—Scope—"In the winding up"—Refer to point of time subsequent to winding up order—'First appointment of 'liquidator' — Appointment of provisional liquidator not contemplated — See Companies Act (1913), S. 175 (2). AIR 1962 All 88.

——Ss. 543 and 235—Misfeasance or breach of trust—Mere misconduct of directors will not entitle a winding up order.

Mere misconduct on the part of the directors is not a ground for winding up, where it had not affected the finances of the Company. After all, a company exists for the benefit of the share-holders and where profits have been earned, notwithstanding mismanagement by the Directors, it will not be fair to the share-holders to kill the company by winding it up, and it is not a proper remedy for redressing the alleged misconduct. An alternative remedy is open under S. 235 by a petition to the Central Government. (1965) 2 Com L J 272 = 78 Mad L W 579 (Mad).

——S. 543—Misfeasance or breach of trust—Writing off of interest by past directors—Winding up petition by past directors for misfeasance against present directors—They cannot file petition on their own act of misfeasance. (1965) 2 Com L J 272 = 78 Mad L W 579 (Mad).

——S. 543—Misfeasance — Proof of—Huge advances made by Managing Director and Secretary in violation of resolutions of Board of Directors — Bulk of advances made to Directors themselves — Total absence of check or supervision by Directors over Managing Director and Secretary — Misfeasance held established. See Companies Act (1913), S. 235. AIR 1963 Mad 464.

● ——S. 545 (1) (6)—Scope of — Complaint by liquidator — Absence of direction by Court or hearing of accused persons — Effect on prosecution — See Companies Act (1913), S. 237 (1). AIR 1959 S C 51.

——S. 545 — Sanction for prosecution of managing agent, for offences under Ss. 409 and 477-A, Penal Code, is not necessary. See Companies Act (1913), S. 179. AIR 1961 Andh-Pra 493.

——S. 555 — Share-holders, suit by, for recovery of property of — Secretary of private company fraudulently enriching himself by selling assets of company—Suit by share-holders for reconveyance of assets maintainable during existence of company as well as after its dissolution — Principle of equitable estoppel—Doctrine of piercing veil of corporate body—Effect of laches on part of plaintiffs — Limitation for suit—See Companies Act (1913), S. 2 (1) (13). AIR 1960 Mad 410.

——S. 565 — Banking — Essential characteristic of—Power to receive deposits repayable in manner indicated in S. 5 (1) (b)—In absence of such power mere power of granting loans does not make company a banking company — See Banking Companies Act (1949), S. 5 (1) (b). AIR 1961 Cal 666.

——S. 617 — Holding office of profit under Government of India — Test to determine — Meaning and object of disqualification — Object is to present conflict between interest and duty — Such provisions should receive wide interpretation to prevent mischief which might otherwise follow — There is distinction between holder of office of profit under Government and holder of service under Government—S. 7 (e) read with S. 8 (e) of Representation of the People Act is not an exception under Art. 102 — Held on facts that appellant who was partner of firm of auditors of two Government companies and Life Insurance Corporation and Government-nominated director of a company was disqualified from membership of House of People — See Constitution of India, Art. 102 (1) (a). (1963) 67 Cal W N 558.

——S. 619 (2) — Holding office of profit under Government of India — Test to determine—Meaning and object of disqualification — Object is to present conflict between interest and duty — Such provisions should receive wide interpretation to prevent mischief which might otherwise follow — There is distinction between holder of office of profit under Government and holder of service under Government—S. 7 (e) read with S. 8 (e) of Representation of People Act is not an exception under Art. 102—Held, on facts that appellant who was partner of firm of auditors of two Government companies and Life Insurance Corporation and Government-nominated director of a company was disqualified from membership of House of People — See Constitution of India, Art. 102 (1) (a). (1963) 67 Cal W N 558.

——S. 621 — Prosecution by one of directors—Stay of, with certain directions — Fresh prosecution circumventing order of High Court—Maintainability—See Companies Act (1913), S. 278. AIR 1959 Cal 387.

——Ss. 622, 624A, 624B, 551 (5) — Scope — Offence punishable under S. 551 (5) — Prosecution under — Trial by first class or Presidency Magistrate is one by ordinary criminal Court and not one by special Court or persona designata — Provisions of Criminal P. C., apply and order of conviction is open to appeal and revision — Criminal P. C. (1898), S. 5 (2). See Companies Act (1956), S. 551 (5). AIR 1965 Mys 274.

——S. 628 — Registrar can prefer complaint — See Companies Act (1913), S. 141-A. 1960 Cri L J 597 = AIR 1960 Ker 155.

——S. 633 (2) — Default in holding annual meeting — Application for extension of time rejected by Registrar — Application under section is not premature though notice of default has not been issued.

Where a default in holding the annual general meeting has been committed and the application made to the Registrar of Joint Stock Companies for extension of time to hold the meeting has also been rejected there is apprehension as contemplated by sub-s. (2) that steps may be taken in respect of that default and hence an application to the Court under this provision for relief against the default will be maintainable even though no notice of default has yet been issued by the Registrar. It is in such cases that the Court has been given the power to relieve a party who is apprehensive of action being taken against him by the Registrar, Joint Stock Companies, for any default or negligence or breach of duty. 1964 Cal L J 53.

——S. 633 — Default of official liquidator in filing statement under S. 551—Conviction under S. 551 (5) on his plea of guilty — Exercise of jurisdiction under S. 633 (1)—Grounds not made out—Sentence—Matters to be considered. See Companies Act (1956), S. 551(5). AIR 1965 Mys 274.

——S. 633 (2)—'Claim" in S. 281 (2) of 1913 Act includes criminal prosecution. See Companies Act (1913), S. 281 (2). I L R (1966) 2 Punj 221 = 1965 Pun L R (Supp) 573 = (1966) 36 Com Cas 144 = (1966) 1 Com L J 214.

——S. 633 (2)—Relief under S. 281 (2) of 1913 Act can be granted after dissolution of Company. See Companies Act (1913), S. 281 (2). ILR (1966) 2 Punj 221 = 1965 Pun L R (Supp) 573 = (1966) 36 Com Cas 144 = (1966) 1 Com L J 214.

——S. 642—Rules made thereunder, Rr. 28 (1) and 31 — Non-compliance with R. 28 (1) — Failure to serve notice accompanied by a copy of petition on the

Company—Court can dismiss the winding up petition under R. 31. (1965) 2 Com L J 272 = 78 Mad L W 579.

——Part VI, Chap. VI—Suit by directors of Company against other directors for injunction restraining them from doing illegal acts—Maintainability—Considerations. See Specific Relief Act (1877), S. 54. AIR 1958 Punj 190.

——Sch. 1, Reg. 13 - Call for share money—Requirements—Time for payment of money—Observation in A I R 1933 Bom 80 held obiter. See Companies Act (1913), Sch. I, Regn. 12. AIR 1956 Bom 537.

COMPANIES (COURT) RULES (1959)

——R. 88—Composite application under, is competent —Scope. See Companies Act (1956), S. 397. AIR 1963 Bom 173.

——Rr. 243 and 244, 360—Ex parte order for examination under S. 477 on application of Official Liquidator — Jurisdiction of Company Court to vary, alter or set aside order — Right to inspect file of proceedings and statements of Official Liquidator accompanying summons in form No. 109. See Companies Act (1956), S. 477. AIR 1961 Cal 405.

——R. 311—"Within one year after its commencement"—Meaning — Commencement is from the date of winding up order and not fictional commencement envisaged by S. 441. See Companies Act (1956), S. 551. AIR 1963 Andh Pra 132.

——Part III, R. 96 and Part I, R. 9 framed by Supreme Court—Winding up petition by contributory — Company substantially a family and private company though nominally a public company—Advertisement of petition should be suspended till petition for rejection of winding up petition on ground of mala fide is disposed of. See Companies Act (1956), S. 443 (2). AIR 1961 Punj 505.

COMPULSORY DEPOSIT SCHEME ACT (21 of 1963)

——Validity—Act does not contravene Art. 19(1)(g). See Constitution of India, Art. 19(1)(g). AIR 1965 All 37.

CONDUCT OF ELECTION RULES (1961)

——Part V, R. 63—Application for recount—Allowing it whole or in part — Exercise of discretion — Interference by Appeal Court. 1965 Pun L R (Supp) 674= AIR 1966 Punj 66.

——R. 36—Entry in electoral roll — Power of Presiding Officer to disregard errors. See Conduct of Election Rules (1961), R. 35. AIR 1965 S C 1424.

——R. 63—Powers of Election Tribunal — Tribunal has power to scrutinise reasons for rejection of votes and order recounting of valid votes if prima facie case is made out — This is however not a matter of right. See Representation of the People Act (1951), S. 98. AIR 1964 Andh Pra 190.

——R. 94-A—Provisions are mandatory—Affidavit filed along with election petition not sworn before authority contemplated by R. 94-A—Tribunal cannot permit filing of another affidavit subsequently in proper form. See Representation of the People Act (1951), S. 83 (1), Proviso. AIR 1965 Madh Pra 15.

——R. 94-A—Affidavit under S. 83 (1), Proviso—Prescribed form of affidavit is not mandatory. See Representation of the People Act (1951), S. 83 (1), Proviso. AIR 1964 Pat 53.

——Form 25—Election petition with affidavit in support of corrupt practices—Affidavit sworn not before first Class Magistrate as required under R. 94-A — Second affidavit in proper form with application to condone delay in that respect — Tribunal has power to excuse delay and to proceed to try election petition on merits. See Representation of the People Act (1951), S. 83, Proviso. AIR 1964 Andh Pra 77.

CONSTITUTION OF INDIA

PREAMBLE

——Preamble—Constitutionality of legislation—Principles—Doctrine of pith and substance to be applied. ILR (1965) Bom 897=67 Bom LR 484 (DB).

——Preamble — Interpretation of statutes — Taxing statutes—Principles.

A taxing statute cannot be interpreted by importing notions of equity or natural justice. Where the terms of the statute are clear, they would have to be given effect to whether harsh or unjust. He who seeks a benefit under a statute by reason of a special provision therein to which he would not otherwise be entitled to must conform to the provision diligently and to the letter of the statute. Equity has its place within or outside the sphere of law, but it wields no influence over the interpretation of statutes which are omnipotent and which speak and operate only through its language, expressed or necessarily implied. Any departure from the terms of the statute into regions of equity which is not a concept of definite or precise import might lead the Court unwarily into the field of legislation. That surely is not the province of Courts. (1964) 1 Mad L J 211=(1964) 15 STC (421)= ILR (1964) 1 Mad 205 (DB).

——Preamble—Interpretation of statutes—Subsequent legislation may be called in aid to interpret ambiguous provisions in an earlier statute on the same subject. ILR (1963) Mad 791=(1964) 53 ITR 683.

——Preamble—Civil P. C. (1908), Preamble — Interpretation of Statutes — Constitution of India, preamble and Art. 246 — Question of motive of legislature is immaterial where there is no lack of legislative competence to pass an Act. See Civil P. C. (1908), Preamble. (1964) ILR 43 Pat 25.

——Preamble — Interpretation of statutes — Initial presumption in favour of its validity—(Interpretation of statutes).

A statute is passed as a whole for the purpose of effectuating the legislative scheme, each section, to some extent, taking colour and content from its associate sections. And then, respect due to the wisdom, integrity, partriotism and loyalty to the Constitution on the part of the legislative body requires an initial presumption in favour of validity of statutory provisions and also calls for a construction if the language permits, to restrict its operation within constitutional bounds to avoid challenge of unconstitutionality. ILR (1964) 2 Punj 589 (DB).

——Preamble—Payment of Wages Act (1936), S. 15—Jurisdiction and powers of the authority — Tribunal constituted under the Act has no jurisdiction to determine question of legality and validity of order terminating employee's services. AIR 1962 All 52, Dissent. See Payment of Wages Act (1936), S. 15. (1963-64) 24 F J R 189 (Punjab)

ARTICLE 5

——Art. 5—Domicile—Minor—Minor cannot acquire domicile different from that of guardian — Minor migrating to Pakistan—Effect. AIR 1960 All 637.

ARTICLE 12

——Part 3 (Arts. 12-35)—Whether citizen of India can waive his fundamental rights conferred by Part 3? (Quaere). ILR (1963) Andh Pra 337 (DB).

ARTICLE 13

——Art. 13—Retrospective effect of the Article. See Madras Hindu Religious and Charitable Endowments Act (1951), S. 64. 1959 Ker L J 671=1959 Ker LT 689=ILR 1959 Ker 728.

——Art. 13 (3) (a)—'Established law'—Meaning of — That the law thus given validity was originally a law in force in what was foreign territory would not affect the question of its being an established law in the territory newly added to the Indian Union. See French Establishments (Administration) Order (1954), Art. 5. (1965) 2 Mad LJ 332 = (1965) Mad L J (Cri) 729.

——Art. 13—Validity. See Municipalities — Madras Town Planning Act (7 of 1920)—Validity. ILR (1956) Mad 262=(1957) 1 Mad L J 45.

——Art. 13—Scope—Bihar Private Forests Act (3 of 1946)—Bihar Private Forests Act (9:of 1948)—Validity of. See Government of India Act (1935), S. 299. (1957) ILR 36 Pat 69.

——Art. 13—Personal grant by ruler of Nabha as a sovereign—It is law—Grant repudiated by new Pepsu State—Repudiation is not act of State and is justiciable in municipal Courts—Act of State. ILR (1959) Punj 2341=AIR 1960 Punj 644 (645, 646) (Prs 4, 5).

ARTICLE 14

——Art. 14—Co-operative Societies—U. P. Co-operative Societies Act (2 of 1962), S. 43 (2) (1)—Validity—Not opposed to Art. 14 of the Constitution. See Co-operative Societies—U. P. Co-operative Societies Act (2 of 1962), S. 43 (2) (1). 1965 All WR (H C) 258.

——Arts. 14 and 16—Discrimination amongst persons in service barred—Seniority cannot be altered at will of the Government. AIR 1962 S C 36, Foll. 1964 All L J 432=(1964) 2 Lab L J 320=9 Fac LR 215.

——Art. 14—Income-tax Act (1922), S. 23A—Distribution of dividend—Specification of percentage—No discrimination can be said to have resulted so as to bring the case within the prohibition of Art. 14. (1957) 31 I T R 107, Rel. on. (1964) 2 I T J 659 = (1965) 56 ITR 322 All (DB).

——Art. 14 — Object of — State Government passing order imposing tax — Effects — Procedure laid in Ss. 131 to 135—Duty to follow. See Municipalities—U. P. Municipalities Act (1916), S. 130-A (3). 1959 All L J 501.

——Art. 14—Scope — Discriminative legislation may be found from two different enactments applicable to same category of persons in regard to same subject-matter — Act which is more rigorous and less advantageous to be struck down — Andhra Pradesh Public Premises (Eviction of Unauthorised Occupants) Act of 1961 is not more rigorous and less advantageous than Madras Land Encroachment Act (III of 1905) and cannot be struck down under Art. 14. (1965) 2 Andh W R 268.

——Art. 14—Dismissal order by Government against a sub-engineer — Question whether he has right of appeal to Governor — Right of appeal must be expressly provided by statute or rules and it cannot be implied—Contention that right of appeal to an officer must be provided and its absence affects validity of rules is untenable. See Hyderabad Civil Services (Classification, Control and Appeal) Rules (1955), R. 20. ILR (1965) Andh Pra 482.

——Art. 14—Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) (Amendment and Validation) Act (1961), S. 3 — Section 3 does not violate Art. 14 of the Constitution — Constitution of India, Art. 14. ILR (1964) Andh-Pra 1338 (DB).

——Art. 14 — Bombay High Court Appellate Side Rules (1960), Chapter XVII, R. 15-A (as added in 1964)—Validity—Rule does not contravene Art. 14.

Rule 15-A does not contravene Art. 14. It is well settled that if there is any reasonable or clear classification, an attack on the ground of discrimination under Art. 14 cannot be available. Different treatments of matters arising out of different Acts dealing with different subjects cannot give rise to any challenge on the ground of discrimination, nor can the fact that the applications from the different Acts decided by different authorities ultimately reach the High Court under its jurisdiction under Art. 227 required all such matters to be treated alike by the High Court in their disposal. 1965 Mah L J 203 = ILR (1966) Bom 243= 67 Bom L R 69 (DB).

——Art. 14—Information—Notice to assessee to produce in assessment proceeding — Amended provision —Officer empowered to call for information in addition to documents and accounts — Procedural provision enabling computation of tax — Applicable to all pending proceedings — Date of commencement or amended provision — No reference to year of assessment subsequent to that date — Equality clause — Amended law—Assessment of persons pending at the commencement of amended provision—Applicable to such persons of a distinct class—No infringement of Equality Clause. See Income-tax Act (1922), S. 22 (4). (1964) 54 I T R 653=(1965) 1 I T J 144 (Bom).

——Art. 14 — Exclusion of certain employees from definition of field officers as provided by Para. 2 (c) of Order, 1957, can neither be discriminatory nor violative of Art. 14 of Constitution of India. See Life Insurance Corporation Act (1956), S. 11. (1964) 68 Cal W N 1075.

——Art. 14—Bengal Co-operative Societies Act (21 of 1940), Ss. 140, 8—Special provision for Railway Co-operative Societies by amendment of rules — Considering magnitude of Railway Co-operative Societies, held societies might be reasonably classified as separate class and hence amendments did not offend provisions of Art. 14. A I R 1958 S C 538, Ref. (1963) 7 Fac L R 13=(1964) 1 Lab L J. 145 (Cal).

——Art. 14 — Income-tax Act (1922), S. 23A—Validity. See Income-tax Act (1922), S. 23A. (1963) 50 I T R 417 (Cal).

——Art. 14 — Houses and Rents — Madras Buildings (Lease and Rent Control) Act (18 of 1960), S. 30—Classification permitted under Art. 14—Basis of S. 30 classifying houses on basis of rent—Does not violate Art. 14. (1964) 1 Mad L J 312=1964 Mad W N 195 =77 Mad L W 339.

——Art. 14 — Notification fixing minimum wage for piece-workers as per unit of work—Validity—Minimum wage for locality—If discrimination. See Minimum Wages Act (1948), S. 3, Schedule, Part I, Item 12. (1959) 1 Lab L J 268 = (1958-59) 15 F J R 285=(1959) 2 Mad L J 132=1959 Mad L J (Cri) 585.

——Art. 14 — Validity. See Municipalities — Madras Town Planning Act (1920), S. 33 (b). (1956) 2 Mad L J 279.

——Art. 14—Scope—Article forbids class legislation but does not forbid reasonable classification for legislation — Test for permissible classification laid down—The principle applies not only to classifications made under statutory provision but also applies to those made under executive orders.

Article 14 forbids class legislation but it does not forbid reasonable classification for the purposes of legislation; in order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. In other words, what is necessary is that there must be a nexus between the basis of classification and the object of classification. This rule applies not only to classifications made under any statutory provision but also those made under executive orders. The refusal to issue a passport on irrelevant grounds

amounts to a hostile discrimination within the meaning of Art. 14. (1939) 307 U. S 325 and A I R 1956 S C 479, Rel. on. **(1965) 4 Law Rep 617 = (1965) 2 Mys L J 605.**

——**Art. 14**—Article is not discriminatory. See Mysore Court Fees and Suits Valuation Act (16 of 1958), Sch. 1, Art. 4. **(1964) 1 Mys L J 248 (DB).**

——**Arts. 14** and 16 — Mysore Government Order No. GAD 46 SRR 59 D/- 29-9-1961 — Local candidates subsequently appointed through P. S. C. and those whose services are regularised—Seniority inter se—In former case relevant date is date of appointment through P. S. C. and in latter case date of regularisation of appointment as per Clauses 4 and 2 (iii) of Order—Order, held, does not violate Art. 14 or Art. 16. **(1964) 2 Mys L J 150 (DB).**

——**Art. 14** — Power to grant or refuse licence — Deputy Commissioner has no unfettered discretion, it is controlled by Rules — Mandamus to compel issuance of licence—When issued— See Mysore Excise Act (5 of 1901), S. 15. **ILR (1964) Mys 697.**

——**Art. 14** — Mysore Excise Act (5 of 1901), Ss. 17, 18 (c)—Mysore Foreign Liquor Rules under the Act, R. 13-A—Distinction made between hotels and boarding houses on one hand and refreshment rooms on the other hand in respect of procedure to dispose of right to sell in retail 'Indian made Foreign liquor' by tender-cum-auction method — It is not violative of Art. 14. **ILR (1964) Mys 697.**

——Art. **14**— Validity — Rules do not offend Art. 14 of the Constitution — See Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules (1964). **1965 B L J R 844=ILR 45 Pat 411.**

——**Art. 14**—S. 1 (3) is intra vires Art. 14 of Constitution and is not discriminatory—It is a conditional legislation and Central Government has authority to implement it. See Employees' State Insurance Act (1948), S. 1 (3). **(1961) ILR 40 Pat 193.**

——**Art. 14**—Discrimination—Some plots of land acquired by Government under S. 3 of Resettlement of Displaced Persons (Land Acquisition) Act (1948) returned to owners except one retained for school building — Retainment whether valid — Necessary latitude as how to achieve best object of the Act has to be given to authorities — Retainment of land for school-building in bona fide exercise of discretion by authorities cannot amount to discrimination. **ILR (1966) 1 Punj 297=1965 Pun L R (Sup) 473.**

——**Art. 14**—Order under section —Validity—Section is not a hostile piece of legislation. See Companies Act (1956), S. 237 (b). **1965 Pun L R (Sup) 149.**

——**Art. 14**—Factories Act (1948), S. 85 (1)—Issuance of notification — Notification challenged—State Government must state in what manner it has by issuance of notification endeavoured to carry out policy and purposes of the Act—Held on facts notification was violative of Art. 14. **(1964-65) 26 F J R 71 (Punj).**

——**Art. 14** — S. 6 (2) does not suffer from vice of excessive delegation nor is it hit by Art. 14 of Constitution—Items 49 and 50 are valid. See Sales-Tax—Punjab General Sales Tax Act (46 of 1948), S. 6 (2). **ILR (1964) 1 Punj 391.**

——**Art. 14**—Question of unconstitutionality — Person whose rights are directly affected by law can raise question — Order under R. 10-A, Punjab Sugarcane (Regulation of Purchase and Supply) (First Amendment) Rules (1963) not specifying any area out of assigned area but cane-growers of assigned area asked to sell their entire cane to factory —Cane-grower is not aggrieved party : 1950 S C R 969, Rel. on. **(1963) 65 Pun L R 750 (DB).**

——**Art. 14** — Proviso — Notification levying double rate of tax—If contravenes Art. 14 of the Constitution—See Sales Tax—East Punjab General Sales Tax Act (XLVI of 1948), S. 5 (1). **(1957) 8 S T C 646 (Punj).**

ARTICLE 16

——Art. 16 — Discrimination amongst persons in service barred—Seniority cannot be altered at will of the Government. AIR 1962 S C 36, Foll. See Constitution of India, Art. 14. **1964 All L J 432= (1964) 2 Lab L J 320=9 Fac L R 215.**

——**Art. 16**—Applicability—Person temporarily asked to discharge duties of any office — Right to apply — See Madras Hereditary Village Offices Act (1895), S. 10(4). **(1959) 2 Andh WR 364=1959 Andh LT 813.**

——**Art. 16 (2)**—Scope and effect — Office of village headmen—Females—If excluded — Daughter of last office holder—Right of succession—See Madras Hereditary Village Offices Act (1895), S. 10 (1) and (2). **(1960) 1 M L J 478=73 Mad L W 333.**

——**Arts. 16 and 226**—Contention that selection made by Public Service Commission violates principle of equality of opportunity — In absence of specific averments contention cannot be permitted to be raised : AIR 1964 S C 1781, Rel. on. **(1965) 2 Mys L J 404 (DB).**

ARTICLE 19

——**Art. 19**—Validity—See Madras Essential Articles Control and Requisitioning (Temporary Powers) Act (29 of 1949) (as amended by Andhra Act, 1 of 1955). **1957 Andh L T 422 = (1957) 2 Andh W R 29.**

——**Art. 19 — If ultra vires — Constitution of India, Art. 19 (1) (a) and (c).**

Section 27 of the Act does not contravene the right conferred by cl. (1) (a) or cl. (1) (c) of Art. 19 of the Constitution and as such is not ultra vires the Constitution. The law which seeks to obtain industrial peace for a limited period by prohibiting strikes cannot be said to be an unreasonable restriction on a right to go on a strike, if such a right was guaranteed by the Constitution. What the Legislature has rendered illegal is to go on a strike during a limited period during which the machinery of conciliation and arbitration is brought into operation and for some time thereafter which is reasonable enough. There has been therefore no abridgment of the right of freedom of expression. **53 Bom L R 333 = 21 Bom Cri Cas 112 = 52 Cri L J 779 = ILR (1951) Bom 318 = AIR 1951 Bom 105, 116, 117, 120 (Pt H) (Prs 23, 24. 38, 39) (DB).**

——**Art. 19** — Validity—If contravenes Art. 19 of the Constitution — Restrictions imposed by Rules are not void on ground of vagueness or uncertainty—'Capable of embarrassing'—Meaning. See Government Servants' Conduct Rules (1926), R. 20 (1). **(1957) 61 Cal W N 459 = (1957) 2 Lab L J 260.**

——**Art. 19**—Validity. See Municipalities — Madras Town Planning Act (7 of 1920)—Validity. **ILR (1956) Mad 262 = (1957) 1 Mad L J 45.**

——**Art. 19**—Guarantee of fundamental rights under the Article is not absolute.

It is well recognised that the guarantee of the fundamental rights under Art. 19 of the Constitution is not absolute. The individual rights which the Constitution safeguards are individual rights in a social organization which requires the protection of laws against the evils which menace the life, safety and welfare of the people. The rights and powers of the Constitution are largely means of protecting important social and individual interests; and because it is necessary that these interests should be balanced, the Articles of the Constitution cannot be construed in an absolute sense. **(1964) ILR 43 Pat 25.**

——**Art. 19 (1)** — Income-tax Act (1922), S. 23-A—Vires of S. 23-A — Incorporated company cannot challenge.

A citizen alone is entitled to the benefit of the fundamental rights guaranteed under Art. 19 (1), and an incorporated company is not a citizen. Therefore an incorporated company cannot challenge the vires of S. 23-A. (1963) 2 S C J 605, Ref. (1964) 2 I T J 659=(1965) 56 I T R 322 (All) (DB).

——Art. 19 (1)—Validity — If repugnant to Arts. 14 and 19 of Constitution. See Sales Tax — Bengal Finance Sales tax Act (VI of 1941), S. 7 (4). (1957) 8 S T C 517 (Cal).

——Art. 19 (1)—Sales tax — Bombay Sales Tax Act (5 of 1946), S. 12-A (4) — Section though it offends cl. (1) (f) is saved by cl. (5).

Though S. 12-A (4) of the Bombay Sales Tax Act which provides for forfeiture of the amount collected by a registered dealer by way of tax from the purchaser in respect of a sale on which no tax is payable by him under the Act, contravenes the provisions of cl. (1) (f) of Art. 19 of the Constitution, its validity is saved by cl. (5) of the Article which authorises imposition of reasonable restriction in the interest of the general public. (1965) 16 S T C 973 (Guj) (DB).

——Art. 19 (a) (f) (g)—Industrial Disputes Act (1947), S. 36 (4) — Right to be represented by legal practitioner — Not part of fundamental right — Restriction imposed by S. 36 not abridgment of any fundamental right—Constitution of India, Art. 19 (a), (f), (g). See Industrial Disputes Act (1947), S. 36 (4). (1964-65) 26 F J R 207 (Mys).

——Art. 19 (1) (c) — Provisions of S. 6 (1) (3), U. P. Industrial Disputes Act and of R. 40 (3), Industrial Dispute Rules are not violative of fundamental rights under Art. 19 (1) (c). See U. P. Industrial Disputes Act (28 of 1947), S. 6 (1) (3). (1964) 9 FLR 340 (All).

——Art. 19 (1) (c)—Sub-s. (3) of S. 6-I, U. P. Industrial Disputes Act, is unreasonable restriction on right to form association. See U. P. Industrial Disputes Act (28 of 1947), S. 6-1 (3). AIR 1960 All 45.

——Art. 19 (1) (d) and 19 (1) (g) — Bye-laws under, for regulation and control of rickshaws — 'Plying for hire'—Meaning—Hiring of rickshaws outside Municipal limits — Applicability of bye-laws — Right of rickshaw driver to use Municipal Roads. See Municipalities — U. P. Municipalities Act (1916), S. 298 (2). 1958 All L J 539.

——Art. 19 (1) (f)—Order for payment of bonus — Contravention of Art. 19 (1) (f). See U. P. Industrial Disputes Act (28 of 1947), S 3. AIR 1954 All 550 (DB).

——Art. 19 (1) (f)—Income-tax Act (1922), S. 23-A—Validity. See Income-tax Act (1922), S. 23-A. (1963) 50 I T R 417 (Cal).

——Art. 19 (1) (f)—Scheme — Abridgment of rights of hereditary trustees — Validity — If violates Art. 19 (1) (f) of the Constitution—Provision for appointment of manager — If bad. See Madras Hindu Religious and Charitable Endowments Act (1951), S. 52 (2) (b). 1958 Ker L T 1095.

——Art. 19 (1) (f) and (g)—Reasonable restriction — Unrestricted power of search and seizure — Offends against cls. (f) and (g).

Power of search and seizure under—Safeguards for its exercise not provided — Sub-sections offend rights of assessees under Art. 19 (1) (f) and (g) and are invalid. See Sales Tax — Madras General Sales Tax Act (1959), S. 41 (2) to (4). (1965) 2 I T J 178 = (1965) 57 ITR 664=(1965) 16 STC 708=ILR (1966) 1 Mad 267.

——Art. 19 (1) (f) — Validity. See Houses and Rents —Madras Buildings (Lease and Rent Control) Act (1949), S. 3 (3). (1956) 69 Mad L W 954 = (1957) 1 Mad L J 161.

——Art. 19 (1) (f)—Validity—Does not offend Art. 19 (1) (f) and Art. 31 (1) of the Constitution. See Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960). 1965 B L J R 844=ILR 45 Pat 411.

——Art. 19 (1) (f) and (g), (5) and (6)—Punjab Sugarcane (Regulation of Purchase and Supply) Act (40 of 1953), S. 14 (4)—Validity — Section does not impose unreasonable restrictions on right of cane-grower to hold property and carry on business.

The provisions of S. 14 (4) of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 do not impose unreasonable restrictions on the right of the cane-grower to hold property and carry on business. As a matter of fact, the restrictions are reasonable and in the interest of the general public. They are intended to aid the economic growth of the country. Besides, the provisions of S. 14 (4) are invoked only in special circumstances, that is, when the sugar mills do not get adequate cane supply for their daily crush and there is an imminent danger of their being closed on account of the non-supply of sugarcane.

Moreover, there is no total prohibition when the cane-grower can make the necessary purchases of sugarcane from the areas, which are outside the assigned area of the factory and, thus, manufacture gur by animal-driven crushers. (1963) 65 Pun L R 750 (DB).

——Art. 19 (1) (f), (g) — Rules under — Mineral Concession Rules (1950), R. 32 — Rule 32 does not violate Art. 14, Constitution of India. See Mines and Mineral (Regulation and Development) Act (1948), S. 5. ILR (1957) Punj 39.

——Art. 19 (1) (g)—Appearance of legal practitioner in arbitration proceedings under U. P. Co-operative Societies Act—Prohibition of contravention of Art. 19 (1) (g) — Contention as to — Who can raise. See Co-operative Societies — U. P. Co-operative Societies Rules (1936), R. 138. 1965 All W R (H C) 258.

——Arts. 19 (1) (g), 19 (6) and 304 (b) — Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) (Amendment and Validation) Act (1961), S. 1 — Act is not repugnant to Art. (19) (1) (g) — It falls within protection of Arts. 19 (6) and 304 (b). I L R (1964) Andh Pra 1338 (DB).

——Art. 19 (1) (g) — Section 394 is not ultra vires Art. 246 of Constitution of India—Provision is within Entry 1 of State List — Section does not violate provisions of Petroleum Act as it occupies a field not occupied by the latter Act — Section imposes only reasonable restrictions and is not, therefore, violative of Art. 19 (1) (f) & (g) of Constitution of India. See Municipalities — Bombay Municipal Corporation Act (3 of 1888), (as amended in 1962), S. 394 (1) (a) (ii). (1965) 67 Bom L R 484=ILR (1965) Bom 899 (DB).

——Art. 19 (1) (g) — Bombay Industrial Relations Act, S. 114 (2) — Validity — If unreasonable restrictions on right to carry on trade — Social Justice. See Bombay Industrial Relations Act (11 of 1947), S. 114 (2). ILR (1958) Bom 176.

[Reversed on another point in AIR 1961 S C 977.]

——Art. 19 (1) (g) — Income-tax Act (1922), S. 23A — Validity. See Income-tax Act (1922), S. 23A. (1963) 50 ITR 417 (Cal).

——Art. 19 (1) (g) — Renewal of cinema license — Right to operate cinema is fundamental right. See Bombay Cinema (Regulations) Act (11 of 1953), S. 3. (1965) 2 Law Rep 244 (Mys).

——Art. 19 (1) (g) — Right to trade in liquor—Whether a fundamental right — American decisions, value of, in interpretation of Indian Constitution — Interpretation of Constitution — Value of American decision. ILR (1964) Mys 697.

——Art. 19 (5) — Bihar State Management of Estates and Tenures Act (21 of 1949)—Constitution of India, Arts. 19 (1) (f) and 19 (5) — Act 21 of 1949 does not violate Art. 19 (1) (f) and restrictions imposed upon

proprietor or tenure-holder are reasonable within meaning of Art. 19 (5). Test of reasonableness cannot be put in straight jacket of a narrow formula. See Bihar State Management of Estates and Tenures Act (21 of 1949)—Constitution of India, Art. 19 (1) (f). **(1964) ILR 43 Pat 25.**

ARTICLE 20

● —Art. 20 — Double jeopardy — Rule as to — —Applies only when both complaints relate to same offence — Offence under S. 409, I. P. C. and that under S. 105, Insurance Act not same — Two trials not barred by Art. 20 (2) of the Constitution or by S. 26, General Clauses Act—ILR (1956) Bom 685 : 58 Bom L R 578, Reversed. **AIR 1961 S C 578.**

——Art. 20—Constitutional validity. See Prevention of Corruption Act (1947), S. 5. **1958 All L J 424 = 1958 All W R (H C) 526=1958 All Cr R 335=(1958) 2 Lab L J 669.**

——Art. 20 (2)—Second enquiry—Principle of autrefois acquit—Applicability. See Madras Civil Services (Disciplinary Proceedings Tribunal) Rules (1948). **(1957) 2 Andh W R 425.**

——Art. 20 (3)—Notice of reassessment under S. 11A and also notice of prosecution — Seizure and detention of assessee's account books — Legality—Art. 20 (3) if violated. See Sales Tax—C. P. and Berar Sales Tax Act (21 of 1947), S. 24. **(1957) 59 Bom L R 851.**

——Art. 20—Validity. See Municipalities — Bengal Municipal Act (1932), S. 330. **(1958) 62 Cal W N 797.**

——Art. 20 — Prosecution when Act declared ultra vires — Act subsequently validated with retrospective operation — No offence. See Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Control Act (1947), S. 11. **1958 B L J R 142.**

—Art. 20 (2) — Punjab Civil Services (Punishment and Appeal) Rules (1952), R. 14.— Departmental enquiry and punishment against Government servant—Power of Government to hold fresh enquiry — Principle of double jeopardy not applicable — (Criminal P. C. (1898), S. 403)—(Double jeopardy). See Punjab Civil Services (Punishment and Appeal) Rules (1952), R. 14. **AIR 1956 Punj 81.**

ARTICLE 21

——Art. 21 —'Personal liberty'—Expression includes right to travel abroad as well as right to travel within the country—A person requires passport in order to enter India—Government not entitled to refuse passport to a citizen travelling abroad without any law—Refusal of the Government on the basis of executive orders amounts to deprivation of personal liberty. **(1965) 2 Mys L J 605=(1965) 4 Law Rep 617.**

ARTICLE 22

——Art. 22—Preventive detention — Satisfaction of detaining authority—Past acts or conduct of detenu —Relevancy of—(Public Safety—Preventive Detention Act (1950), S. 3). **AIR 1959 Andh-Pra 73 (76) (Pt. C) (Pr 8) (DB).**

——Art. 22—Grounds on which detention can be ordered—Preaching of violence whether sine qua non for order for detention—See Public Safety—Preventive Detention Act (1950), S. 3. **1959 Cri L J 160 =AIR 1959 Andh Pra 73 (DB).**

——Art. 22 (5)—Communication of grounds to detenu —AIR 1959 Andh-Pra 73 (78) (Pt E) (Pr 13) (DB).

ARTICLE 25

——Art. 25—Decisions of American Courts—Value of, in interpreting Articles of the Constitution. **(1957) M P L J 1 (Nag).**

——Art. 26 (d)—Public temple owned by section of Hindu Community—Order under S. 65-A of Madras Act (II of 1927)—Validity—Contravention of Art. 26 —Retrospective effect of Art. 13. See Madras Hindu Religious and Charitable Endowments Act (1951), S. 64. **1959 Ker L J 671=1959 Ker L J 689=ILR (1959) Ker 728.**

——Art. 26—Decision of American Courts—Value of, in interpreting Articles of the Constitution. **(1957) M P L J 1 (Nag).**

——Art. 31 (2)—Defence of India Rules (1962), R. 131 (2) (gg)— Order under, dated 17-8-1964—Part of order excluding private owners from specified route—No question of payment of compensation arises.

Complete prohibition is permissible while enforcing regulatory provisions. Inasmuch as R. 131 (2) (gg) clearly permits complete prohibition it would be impossible to hold that complete prohibition is beyond its scope. Besides, so far as the first part of the impugned order dated 17-8-1964 excluding private operators from certain route, is concerned, it is a mistake to think it to be one requisitioning or acquiring property. The real nature, the essential quality, in other words, the pith and substance of that part of the order is preventive, the object being to restrain persons from carrying on activities which may jeopardise national security, and in such a case no question of payment of compensation obviously arises. AIR 1954 S C 728 & AIR 1959 S C 648 Disting. AIR 1954 S C 220, Ref. to. **I L R (1965) 2 All 303.**

——Art. 31 (2)—Andhra Pradesh (Abolition of Cash Grants) Act (14 of 1959), S. 4—Validity—Not invalid though right to receive cash grants is abolished with retrospective effect—Contention that compensation provided by section was merely illusory as it did not confer real benefits on grantee, compensation being far below amount payable as arrears from date of abolishment till 1959—Held grantee had no right to receive grant from date on which right was deemed to have been abolished and, therefore, there was no substance in argument that what grantee received by way of compensation was much less than what he was entitled till 1959 and that what had become his property was taken away without any provision for compensation. See Andhra Pradesh (Abolition of Cash Grants) Act (14 of 1959), S. 4. **1LR (1964) Andh-Pra 607.**

——Art. 31—A. P. Act 15 of 1959, S. 1—Validity of Act—Art. 31 of Constitution of India does not envisage provision for payment of interim compensation and hence A. P. Act 15 of 1959 is not unconstitutional on ground that there is no provision therein for payment of interim compensation: See A. P. Act 15 of 1959, S. 1. **ILR (1964) Andh-Pra 372.**

——Art. 31—Income-tax Act (1922), S. 23-A—Validity — See Income-tax Act (1922), S. 23A. **(1963) 50 ITR 417 (Cal)**

——Art. 31—The fourth Amendment of the Constitution, which amended Art. 31 (2) of the Constitution. had no effect on the second proviso to S. 7 (1) of the West Bengal Land (Requisition and Acquisition) Act (II of 1948). See Government of India Act (1935), S. 299 (2). **(1960) 64 Cal W N 722.**

——Art. 31 (2)—Section is not repugnant to Art. 31 (2). See M. P. Agricultural Produce Markets Act (19 of 1960), S. 14. **1964 Jab L J 569=1965 M P L J 45.**

——Art. 31 — Validity. See Municipalities — Madras Town Planning Act (7 of 1920). **ILR (1956) Mad 262 = (1957) 1 Mad L J 45.**

——Art. 31 (1)—Validity — Does not offend Art. 19 (1) (f) and Art. 31 (1) of the Constitution. See Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960). **1965 B L J R 844 = ILR 45 Pat 411.**

—Art. 31 (6)—Bihar State Management of Estates and Tenures Act (21 of 1949)—Constitution of India, Art. 31 (2) and (6) — Acquisition in Art. 31 (2) means procuring of property or taking it temporarily or permanently—It did not necessarily imply acquisition of legal title by State in property of which possession was taken, therefore effects acquisition of estates within meaning of Art. 31 (2) — But same is not ultra vires under Art. 31 (2), because of certificate under Art. 31 (6). **(1957) ILR 43 Pat 25.**

—Art. 31 — Notifications of the State Government under Ss. 14 and 29 (1) of Bihar Private Forests Act (3 of 1946) were invalid because fundamental rights under Art. 31 had been affected. See Government of India Act (1935), S. 299. **(1957) ILR 36 Pat 69.**

ARTICLES 36, 37

—Arts. 36, 37—Directive principles of State policy —Not enforceable in Court of law. See Civil P. C. (1908), S. 9. **AIR 1964 Madh Pra 231 (DB).**

ARTICLE 51

—Art. 51 —Conquest of territory—Effect on vested rights—Vested rights come to an end unless recognised by agreement by new Sovereign authority.

After a conquest of a territory whatever rights the original owners of the plots had in the lands comprised in that territory come to an end unless by an express or implied agreement the new Sovereign Authority has elected to respect and recognise and be bound by the previous rights: **A I R 1915 P C 59, Rel. on. ILR (1950) All 1188=A I R 1950 All 43 (44) (Pt A) (Pr 2) (DB).**

—Art. 51—International Law—Agreement by Ruler of former native State of India granting certain excise rights exclusively to plaintiffs—Merger of such State with Province of Bombay before Constitution of India —Agreement not recognised or confirmed by Provincial Government — Plaintiffs asked to take out license as required under Bombay Abkari Act — Plaintiffs' suit for damages for breach of contract against Government—Held that plaintiffs' agreement with ruler of native State not having been recognised or confirmed by the successor State of Bombay did not bind the Bombay Government—Further, it was not a license but was only an exemption from taking out license as required under excise law then in force in that State. **(1958) 60 Bom L R 721.**

—Art. 51—International law—Foreign Sovereign—Extent of — Immunity — Ss. 86 and 87, Civil P. C. do not deal with this. See Civil P. C. (1908), S. 86. **69 Cal W N 767=AIR 1966 Cal 319.**

—Art. 51—International Law—Domicile, presumption as to—Change of domicile—Onus of proof.

A person cannot have two domiciles and the domicile of origin prevails until a new domicile has been acquired. There is a presumption in favour of the continuance of an existing domicile. Therefore, the burden of proving a change lies in all cases upon those who allege that the change has occurred: (1870) 7 Cl. & F. 842, Rel. on. **51 Cri L J 817=I L R (1950) Nag 361=1950 Nag L J 308=A I R 1950 Nag 161 (163) (Pt A) (Pr 11).**

—Art. 51 — Domicile. See Citizenship Act (1955), S. 5 (4). **1961 (2) Cri L J 358=AIR 1961 Orissa 150.**

● —Art. 51 — Kathiawar States Union— Covenant entered into between Rulers of States to form United States of Kathiawar — Covenant is act of State— Covenant guaranteeing continuance of services of State servants or payment of compensation— Service conditions not to be less advantageous — Suit for compensation on strength of the terms of covenant— Suit held maintainable — Constitution of India, Art. 363, held did not bar suit—Article does not apply when suit is by third party who is not party to covenant — Legislative power of Rulers of individual States when ceased. State of Saurashtra v. Bholanath. **4 Sau L R 294=AIR 1952 Sau 49 (51, 54, 55, 56, 57) (Prs 3, 15, 17, 18, 19, 22, 24, 25) (FB).**

[Reversed in AIR 1954 S C 680.]

ARTICLE 73

—Art. 73 — Government Prerogative — Prerogative —Income-tax Act and Public Demands Recovery Act if limit State to provisions of latter as respects recovery of income-tax.

The reason why a statute is held in an appropriate case to have replaced the prerogative right to the whole or a part of its extent is that the Crown is an assenting party to a statute and where a statute does provide that the Crown can only do a particular thing under and in accordance with its provisions, the Crown is necessarily taken to have agreed to a curtailment or abolition of its prerogative power.

But the statute must be such that its terms do limit the Crown to its provisions and thereby exclude the prerogative or hold it in suspension, as in the case of temporary statute. It is impossible to read the Income-tax Act, and with it the Public Demands Recovery Act, as limiting the State to the provisions of the latter as respects recovery of income-tax. **59 Cal W N 1119 = 98 Cal L J 194 = (1955) 28 I T R 797 = (S) A I R 1956 Cal 26 (30, 31) (Pt C) (Pr 11) (DB).**

ARTICLE 77

—Art. 77—Departmental Instructions—Publicity—Duty of Government.

There is no statutory requirement that policy decisions of the Government in exceptional circumstances should be published in the Official Gazette.

The Chief Controller of Imports and Exports, New Delhi, informed the Joint Chief Controller of Madras, Bombay and Calcutta that licences may be issued to certain co-operative societies to export quantities of dry chillies which may be sold to the Ceylon Government.

Held, that the departmental instruction need not be published in the Official Gazette. **71 Mad L W 100 = (1958) 1 Mad L J 338 = A I R 1958 Mad 218 (220) (Pt B) (Pr 5) (DB).**

ARTICLE 102

—Art. 102 (1) (a) — Holding office of profit under Government of India—Test to determine — Meaning and object of disqualification—Object is to prevent conflict between interest and duty — Such provisions should receive wide interpretation to prevent mischief which might otherwise follow — There is distinction between holder of office of profit under Government and holder of service under Government. **(1963) 67 Cal W N 558 (DB).**

ARTICLE 132

—Arts. 132 (1), 228 — Relative scope — Necessary condition for application of Art. 132— Interpretation of the Constitution—What amounts to. **(1964) 2 I T J 287 = (1964) 2 M L J 289 = ILR (1964) 2 Mad 704 (DB).**

ARTICLE 133

●—Art. 133 (1)—Decree of affirmance—Appellate decree confirming trial Court decision but making variation in regard to order as to Costs — Character of decree is not affected — Appellate decree is one of affirmance—Appellate decree however making variation in respect of award of interest before date of decree— Character of appellate decree is affected and it is a decree of variance — In former case matter of

costs is a matter of discretion but order for interest forms part of dispute, and variation in regard to it forms integrant part of decision, Civil P. C. (1908), Ss. 34, 35 and 110 (3). T. Rajaram v. Radhakrishnayya, 1961 All L J 841 = (1962) 1 S C A 68=(1962) 1 S C J 568=(1962) 1 M L J (S C) 248=(1962) 1 Andh W R (S C) 248=(1962) 2 S C R 452=AIR 1961 S C 1795 (1797, 1798, 1799, 1800, 1801, 1804) (Prs 4, 7, 10, 14, 19).

——Art. 133 (1) — Fitness for appeal to Supreme Court— Text. See Income-tax Act (1922), S. 66 A (2). 1950 I T R 1 (East Punj).

—— Art. 133 — Proceedings under Income-tax Act — Nature of — Cannot be said to be civil proceedings within the meaning of Art. 133 — Such proceedings partake the character of revenue proceedings — No case, held, made out for reconsideration of the matter — Observations at pp. 29, 31 of 1964-1 M L J 25 (FB) relied on by applicant held proceeded on incorrect appreciation and understanding of the observations explained. 1964 Mad W N 330= (1964) 2 Mad L J 289=(1964) 54 I T R 293= (1964) 2 I T J 287=ILR (1964) 2 Mad 704 (DB).

——Art. 133 (1) (a) — Madras Hindu Religious Endowments Act (2 of 1927), S. 84—Application under, to District Court — Valuation put by applicant as Rs. 25,000 — Memorandum of Appeal to High Court against decision of District Judge also stating it as Rs. 25,000 — Madras Act not requiring applicant to put any value for court-fee or for jurisdiction — Valuation put by party need not be taken into consideration for determining real valuation for leave under Art. 133 (1) (a). ILR (1964) 2 Mad 517 (DB).

—— Art. 133 (1) (a)—Leave to appeal under—Dispute as to joint trusteeship regarding ulthurai kattalai — Subject-matter not capable of valuation — Nature of the right. ILR (1964) 2 Mad 517 (DB).

——Art. 133 (1) (c) — Madras Hindu Religious Endowments Act (2 of 1927), S. 84 —Proceedings under — Claim for joint trusteeship — Right to appeal to Supreme Court — Not a substantial question of law, particularly as the Act itself is repealed and there was no possibility of recurrence of the question in the same form under the Repealing Act. ILR (1964) 2 Mad 517 (DB).

—— Art. 133 (1) (a) and (c) — Pending writ petition interim order passed by High Court directing petitioner to refund registration fee — Direction not carried out—Petitioner applying for certificate under article — Disobedience of interim order held did not impede course of justice — Petitioner held entitled to certificate. 1965 Pun L R (Supp) 145 (DB).

ARTICLE 134

●——Art. 134 — Practice — Finding of High Court based upon evidence — Finding cannot be permitted to be questioned in appeal before Supreme Court. Shiv Nath Rai Ram Dhari v. Union of India, (1965) 2 S C W R 599 = 1965 Pun L R (Supp) 231 = 1965 S C D 831=AIR 1265 S C 1666 (1669) (Pt C) (Pr 7).

●——Art. 134—Supreme Court— Practice—Supreme Court will nor examine evidence at large specially when the High Court and the Court below have drawn identical conclusion from it — Constitution of India, Art. 133, Dwarka Nath v. Lalchand. (1965) Law Rep 749=(1965) 3 S C R 27 = ILR (1965) 2 All 250 = (1965) 1 S C W R 947 = AIR 1965 S C 1549 (1551) (Pt B) (Pr 4).

●——Art. 134 — Supreme Court — Practice — New point — Mixed question of law and fact — Plea not raised in pleadings — Point cannot be raised for first time in Supreme Court. Mademsetty Satyanarayana v. Yelloji Rao, (1965) 2 S C J 678 = (1965) 2 Andh W R (S C) 145=(1965) 2 Mad L J (S C) 145 = 1965 S C D 1146 = (1965) S C R 221 = (1965) 2 S C W R 145=AIR 1965 S C 1405 (1408) (Pt R) (Pr 5).

●——Art. 134 — Supreme Court — Practice — New point— Plea never advanced by assessee at any stage of proceedings for assessment — Plea will not be entertained in appeal before Supreme Court. Government of Andhra Pradesh v. Guntur Tobacco Ltd., 1965 S C D 691= (1965) 2 Andh L T 87 = (1965) 2 S C R 167=(1965) 16 S T C 240=(1965) 1 S C W R 494=AIR 1965 S C 1396 (1403) (Pt B) (Pr 16).

●——Art. 134—Supreme Court — Practice — Mixed question of law and fact — Question not advanced before lower Courts— Question cannot be allowed to be raised for the first time before Supreme Court, Indore Malwa United Mills Ltd., Gwalior v. State of Madhya Pradesh, (1965) 1 S C R 559 = (1965) 55 I T R 736=(1965) 35 Com Cas 274 = (1965) 1 I T J 614=(1965) 1 S C J 670=AIR 1965 S C 1272 (1274) (Pt A) (Pr 5).

●——Art. 134 — Supreme Court—Practice—Petition under Art. 32 of the Constitution — Council of intervener — Normally not allowed a right of reply. Khyerbari Tea Co. Ltd. v. State of Assam, (1964) 5 SCR 975 = (1964) 2 SCA 319 = AIR 1964 S C 925 (930) (Pt L) (Pr 3).

●——Art. 134 — Practice —Supreme Court—Appeal to High Court from order of acquittal — Order of conviction in appeal — Appeal to Supreme Court from conviction — Defects found in judgment of High Court — Supreme Court shall appraise evidence itself in order to find if conclusion reached by High Court is justified. Harbans Singh v. State of Punjab, 1962 (1) Cr L J 479 = 1962 All Cr R 115 = 1962 All W R (HC) 169 = (1962) 1 Andh L T 311= (1962) 2 S C J 662 = AIR 1962 S C 439 (442) (Pt B) (Prs 10, 11).

●——Art. 134—Supreme Court —Practice—Findings of fact—When can be interfered with.

In so far as a conclusion is a pure finding of fact, the Supreme Court will not ordinarily interfere therewith. If, however, the conclusion is apparently vitiated by an error of law it becomes proper and desirable for that Court to consider what the correct finding would be on a correct appreciation of law. Shahdara (Delhi)-Saharanpur Light Railway Company, Ltd. v. Upper Doab Sugar Mills. Ltd., (1961) 1 S C J 377 = (1960) 2 SCR 926 = AIR 1960 SC 695 (699) (Pt A) (Pr 10).

●——Art. 134—Supreme Court —Practice—Proof by affidavits — Reasons, etc , for enacting law.

In the Supreme Court in many cases, affidavits were allowed to be given to show the reasons for the enactment of a law, the circumstances in which it was conceived and the evils it was to cure. Hamdard Dawakhana v. Union of India, (1960) 1 SCA 314 = 1960 Cri L J 735 = 1960 S C J = 611 (1960) 2 Mad L J (SC) 1 = (1960) 2 Andh W R (SC) 1 = 1960 MLJ (Cri) 358 = (1960) 1 Ker L R 746 = (1960) 2 SCR 671 = AIR 1960 S C 554 (562) (Pt B) (Pr 15).

——Art. 134—Supreme Court—Practice — Decision on points not raised.

It is not the practice of the Supreme Court to decide questions which are not properly raised before it or which do not arise directly for decision. State of Madras v. C. G. Menon, 1954 Cri L J 1337 = 1954 Mad W N 673= 1954 All W R (Sup) 90 = 67 Mad L W 1128 = 1954 S C J 621 = 1954 SCA 803 = (1954) 2 Mad L J 197 = 1955 SCR 280 = AIR 1954 SC 517 (519, 520) (Pt B) (Pr 12).

●——Art. 134 — Supreme Court — Practice — New plea — (Civil P. C. (1908), S. 112, O. 8, R. 2; O. 14, R. 1; O. 41, R. 1)—Certain aspect of the case not raised by respondent in his grounds of appeal to High Court or in the case filed for the respondent in

the Supreme Court—When issues were framed in the trial Court counsel for both the parties expressly stating that there was no other point in dispute and that they gave it up if a mention of it was made in the pleadings — Held under the circumstances it was too late to allow the point to be raised in the argument before the Supreme Court. Wali Singh v. Sohan Singh, AIR 1954 SC 263 (266) (Pt B) (Pr 6).

●——Art. 134—Supreme Court — Practice— Concurrent findings — Held, Supreme Court did not find good reason for departing from well-established practice of Supreme Court of not disturbing concurrent finding of the trial Court and the first appellate Court in the present case, held the finding that the parties were Sudras was largely based on the oral evidence, and Judges of High Court in arriving at their conclusion had not overlooked the tests laid down in a series of authoritative decisions for determining the question whether a person belongs to the regenerate community or to the sudra community. Gur Narain Das v. Gur Tahal Das, 65 Mad L W 642 =1952 Mad W N 507 = 1952 SCJ 305 = 90 Cal L J 86 = (1952) 2 Mad L J 251 = (1952) S C A 575 = 1952 S C R 869 = AIR 1952 S C 225 (226) (Pt A) (Pr 6).

●——Art. 134 — Supreme Court — Practice — Concurrent findings on pure question of fact — Supreme Court will not generally interfere. See Civil P. C. (1908), S. 112. AIR 1951 S C 214.

●——Art. 134 — Supreme Court—Powers of—Relief not granted by Constitution — Whether can be granted.

An omission to provide for a relief in the Constitution cannot be remedied by the Supreme Court and assumption of jurisdiction which is not warranted by the clear words of Arts. 134, 135 or 136 will be tantamount to making legislation by the Supreme Court which it is never its function to do. Janardhan Reddy v. The State, 52 Cri L J 391= 1950 SCJ 98 = 1950 SCR 940 = 64 Mad L W 378 =1951 Mad W N 709 = 1951 Mad W N (Cri) 213 = AIR 1951 S C 124 (127) (Pt C) (Pr 9).

——Art. 134 (1) (a) — Death penalty imposed on principal offender — Sentence to be passed against abettor — Powers of appellate Court. See Penal Code (1860), S. 109. 1959 Ker L T 167 =1959 Ker L J 221 =ILR (1959) Ker 319.

ARTICLE 136

●——Art. 136 — Interference by Privy Council in Criminal cases.

Where there was evidence upon which the trial Court could find the appellant guilty of the crime with which he is charged though another tribunal might have come to a different conclusion upon it, it is the established practice of the Privy Council not to interfere with the decision of the Courts in India. Suka v. The King, AIR 1950 P C 72 (72, 73) (Pr 3).

●——Art. 136—Privy Council — Practice—Question as to fault in procedure—Question not argued before High Court nor referred to in petition for special leave to appeal — Board cannot entertain such question.

It is quite contrary to the settled practice of the Board to entertain a question whether there was any fault in procedure in the case when that question was not argued in the High Court and was not referred to in the petition for special leave to appeal. Lumbhardar Zutshi v. The King, AIR 1950 P C 26 (27) (Pt C) (Pr 7).

●——Art. 136—Privy Council — Practice — Point inconsistent with plaint — Point cannot be raised for first time.

Where a point is not merely not raised by, but is inconsistent with the plaint, the plaintiff-appellant cannot be allowed to raise the point for the first time before the Board. Savitri Devi v. Ram Ran Bijoy, AIR 1950 PC 1 (4) (Pt A) (Pr 22).

●——Art. 136—Question whether branch is itself industrial establishment is one of mixed fact and law:— Tests. See Industrial Disputes Act (1947), S. 25-G. (1962) Supp 3 SCR 589 = (1962) 1 Lab L J 409 (SC).

●——Art. 136—Appeal—Appeal to Supreme Court—Question of jurisdiction — Cannot be raised for first time.

The question of jurisdiction is not a pure question of law, it is mingled with facts and hence a party cannot be allowed to raise it for the first time in an appeal to the Supreme Court from the decision of the Appellate Tribunal. United Commercial Bank, Ltd. v. U. P. Bank Employees Union, AIR 1953 S C 437.

ARTICLE 141

●——Art. 141—Reporting rules—Decisions on questions of fact—Reporting deplored—Precedents. 1962 All L J 1119 = 1962 All W R (HC) 880 = 1962 All Cr R 471 (FB).

——Art. 141 — Authority of — Facts stated in report — Proof — Procedure. See Practice — Evidence. AIR 1953 All 378.

——Art. 141 — Law laid down by Supreme Court — Law is binding on every one. Civil P. C. (1908), Pre— Precedents. (1962) 46 ITR 246 DB (Orissa).

ARTICLE 163 (1).

——Art. 163 (1)—Governor when not superior authority to Government—Since in respect of imposition of penalties on civil servants Governor is not required by or under Constitution to act in exercise of his discretion, he is not authority immediately superior to Government which has passed dismissal order against a civil servant. See Hyderabad Civil Services (Classification, Control and Appeal) Rules (1955), R. 27. ILR (1965) Andh-Pra 482.

ARTICLE 166

——Art. 166 (2) — Scope—Dispute referred to Tribunal by order dated 7th August, 1956 — Order signed by joint secretary on 10th August, 1956 — Order when becomes valid and effective—Government subsequently withdrawing dispute and making fresh reference to another Tribunal — Effect — Discharge of workmen not concerned in dispute on 8th August, 1956 — If contravenes S. 33 (a) — Application under S. 33-A by discharged workers — Maintainability — Jurisdiction of Successor Tribunal to entertain. See Industrial Disputes Act (1947), S. 10. (1958) 62 Cal W N 303 = (1958) 2 Lab L J 67 = (1958-59) 14 F J R 157.

——Art. 166 (2) — Presumption as to official acts — Notice of charges and order of supersession of janapada sabha — Authentication of — Presumption. See Evidence Act (1872), S. 114, Illus. (e). 1959 M P C 258 = 1959 Jab L J 191 = 1959 M P L J 407.

——Art. 166 — Government orders — Authentication by Under-Secretary.

Under notification No. 2, dated 20-3-1952 an Under-Secretary is authorised to authenticate the orders of Government. AIR 1955 V P 21 (24) (Pt C) (Pr 15) (DB).

ARTICLE 191

●——Art. 191—Patels and Shanbhogs under Mysore Village Offices Act — Whether holders of offices of profit under Government and as such disqualified from membership. (1958-59) 14 Ele L R 229 (Mys) Reversed—(Mysore Village Offices Act (1918), Ss. 6, 7, 8, 11 — Rules under Act R. 75 XIII).

The cash allowance to the officer concerned is, in spite of the procedure laid down in R. 75 XIII in respect of its payment, a payment by the Government of its moneys. M. Ramappa v. Sangappa, 1959 S C J 167 = AIR 1958 S C 937 (930, 940) (Prs 6, 8, 9, 10, 11).

——Art. 191 — Office of profit under Government— Patel in State of Rajasthan — (Representation of the People Act (1951), S. 7) — Rajasthan Land Revenue Act (15 of 1956), S. 35 — (Rajasthan General Clauses Act (8 of 1955), S. 27) — (Jaipur Land Records Manual (1938), S. 154) — (Jaipur Land Revenue Act (36 of 1947), Ss. 33, 35).

The office of a patel or a lambardar is an office of profit under the Government of Rajasthan and a person appointed as a patel under the Jaipur Land Revenue Act of 1947 continued to be so under the Rajasthan Act of 1956. The Office of patel in the former State of Jaipur was an office of profit ever since the Jaipur Land Record Manual came into force. Under the Jaipur Land Revenue Act of 1947 which came into force in the State of Jaipur later there is no doubt that a patel was the holder of an office of profit under the Government of that State in view of S. 35. Under the Rajasthan Land Revenue Act of 1956 which repealed the Jaipur Land Revenue Act, the office of lambardar under that Act who is a Government servant holding office of profit corresponds to the office of a patel under the Jaipur Land Revenue Act which continues in force under the Rajasthan Act in view of S. 27 of Rajasthan General Clauses Act. 1959 Raj L W 234 = 20 Ele L R 301 = ILR (1959) 9 Raj 389.

ARTICLE 201

——Art. 201 — Functions of the Governor-General — Nature of—Legislative character — Failure to consider Bill — Not rejection. See Government of India Act (1935), S. 76. ILR (1956) 8 Assam 379 (FB).

ARTICLE 207

——Art. 207 — Introduction of Bill — Sanction of Governor not appearing on face—Effect. See Government of India Act (1935), S. 87. ILR (1956) 8 Assam 379 (FB).

ARTICLE 217

——Art. 217 — Muncipal Superannuation Rules, R. 1 (a) — Municipal servant attaining age of 55 years — Appointment for first time in service — Validity. See Municipalities — Bombay Municipal Boroughs Act (8 of 1925), S. 58. 59 Bom L R 1088 = II R (1958) Bom 113.

ARTICLE 225

——Art. 225 — Certiorari — Bench of High Court is not empowered to issue Certiorari against an order passed by a Single Judge on original side. See Constitution of India, Art. 226. (1965) 67 Bom L R 215.

——Arts. 225, 133 and 245 — Bombay High Court Appellate Side Rules (1960), Chapter XVIII, R. 15-A (as added in 1964) — Nature and extent of power of High Court to make rules under Art. 225 — Rules made are rules of procedure — High Court can make rules having retrospective effect — Rule 15-A is not inconsistent with Art. 133 — No vested rights under Art. 133 taken away by the rule. 1952 Punj 103 and 1950 Nag 177 and 1963 Mys 265, Dissented from. 1965 Mah L J 203 = 67 Bom L R 69.

——Art. 225 — Application under article — Inamdars and Government parties—Concession made by Advocate General that inam was estate — Tenants not parties to application — Order does not operate as res judicata against tenants in suit by inamdars that settlement entries were incorrect. See Civil P. C. (1908), S. 11. ILR (1963) Cut 610.

CONSTITUTION OF INDIA (1950)

ARTICLES 226 & 32

SYNOPSIS

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1. Act of State, writ in respect of.

——Art. 226 — Action of Government under S. 53-A of C. P. and Berar Municipalities Act (1922) — Justiciability — Held, on facts that the invocation of the power of the High Court under Art. 226 was not open to the petitioner, and even if it was, the Court should not accede to his request. See Municipalities —C. P. Berar Municipalities Act (1922), S. 53-A. 1958 MPC 197=1958 MPLJ 553 = 1958 Jab L J 637.

2. Administrative authority.

● ——Art. 226 — Administrative tribunal — Duty of.

It is well known that even administrative bodies or authorities which are authorised to deal with matters within their jurisdiction in an adminstrative manner, are required to reach their decisions fairly and objectively; but in reaching their decisions, they would be justified in taking into account considerations of policy. Even so, administrative bodies may, in acting fairly and objectively, follow the principles of natural justice; but that does not make the adminstrative bodies tribunals and does not impose on them an obligation to follow the principles of natural justice. On the other hand, authorities or bodies which are given jurisdiction by statutory provisions to deal with the rights of citizens, may be required by the relevant statute to act judicially in dealing with matters entrusted to them. An obligation to act judicially may, in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, it is easy to hold that the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers; but it is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on such an authority or body. If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal, would depend upon the nature of the power conferred on the authority or body, the nature of the rights of citizens, the decision of which falls within the jurisdiction of the said authority or body, and other relevant circumstances. Shri Bhagwan v. Ramchand, AIR 1965 S C 1767 (1770) (Pt A) (Pr 5).

●——Art. 226 — Administrative orders — Duty of public authorities.

Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order. Commr. of Police, Bombay v. Gordbandas Bhanji, 1951 S C J 803 = 65 Mad L W 212 = 1952 S C R 135 = 54 Bom L R 383 = (1952) S C A 53 = AIR 1952 S C 16.

3. Administrative order.

●——Art. 226 — Administrative orders — Public orders — Construction — Deed, construction — Interpretation of Statutes —Public orders.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 S C J 803 = 65 Mad L W 212 = 1952 S C R 135 = 54 Bom L R 383 = (1952) S C A 53 = AIR 1952 S C 16 (18) (Pt B) (Pr 9).

——Art. 226 — Commissioner's order under — It is administrative order and not subject to certiorari — Earlier order of Income-tax Officer becomes merged in order of Commissioner — Hence even Income-tax Officer's order cannot be quashed. See Income-tax Act (1922), S. 33A (2). ILR (1963) Andh Pra 420.

——Art. 226 — Administrative orders—Order issued not to be vague.

On a representation made by an employee of a Municipal Committee which had ordered recovery of pay paid to the clerk for suspension period after his reinstatement, the Collector informed him "you can take legal recourse in the matter if you so like."

Held, this was hardly an order. The Collector should not have summarily rejected the applicant's petition without obtaining report from the Municipal Committee and without applying his mind to the facts of the case. The Collector's communication was so vague that it left the applicant in a very uncertain position making it difficult for him to know what further course he was expected to follow. 1958 M P L J (Notes) 63 (Rev).

——Art. 226 — Removal of sarpanch by notification for holding office of Lambardar Gountia on ground that he was "holder of office of profit" — Office of Lambardar Gountia abolished by subsequent notifition — Proper remedy for Sarpanch to move Government to cancel prior notification — No interference under Art. 226. (1962) 4 O J D 431 (DB).

——Art. 226 — Collector dropping the proceedings against Government servant, instituted on charge of illegal gratification — Commissioner is authorised to revive the proceedings. 1962 B L J R 852 = ILR 42 Pat 521.

——Art. 226 — Administrative orders — Passed in accordance with rules not materially affecting rights of aggrieved party — Courts not competent to scan the wisdom of such orders. AIR 1963 Punj 345.

4. Against whom writ can issue.

——Art. 226 — Income-tax Act (1922), Ss. 34 (1) (a), 34 (3), second proviso and 34 (4)—Petition challenging jurisdiction to issue notice under S. 34 (1) (a) — Department relying on S. 34 (3) for action under S. 34 (1) (a) and not on S. 34 (4) even in counter-affidavit, but contending during hearing that notice was in accord with S. 34 (4) — Held, department was

entitled to support notice on basis of S. 34 (4) which existed on statue book when notice was issued, particularly, when its validitv could be answered by provisions of S. 34 (4) : AIR 1955 S C 789 and (1963) 49 I T R S C 1, Foll. **(1963) 2 I T J 556 (All).**

——**Art. 226**—Against whom writ can issue—Government owned company registered under Companies Act — Entity of corporation is entirely separate from that of its shareholders — Unless it is shown that all administrative action is controlled by Government, Corporation cannot be said to be 'Public Authority' and no writ can be issued against it. **(1965) 2 Lab L J 672 = 79 Mad L W 165 = (1966) 36 Com Cas 197 = 1966 Mad W N 160 = (1966) 1 Com L J 289 = (1966) 1 Mad L J 468 = (1965-66) 29 F J R 223 = (1966) 13 Fac L R 5 = AIR 1966 Mad 399.**

——Art. 226 — University of Madras — Disciplinary action by entailing serious consequences to the student — Syndicate functions in a quasi-judicial capacity — Findings on facts after enquiry and expression of conclusion necessary — Syndicate, the final authority. **(1963) 1 M L J 24 = I L R (1963) Mad 177 = 75 Mad L W 591=A I R 1963 Mad 31 (31 to 33) (Prs 2, 3, 6).**

——**Art. 226**—Other remedy open — Practice of filing writ petitions against orders of assessments of Income-tax Officers must be deprecated — Income-tax Act (1922), S. 66. **(1963) 2 I T J 371 = (1963) 2 Mad L J 450=(1964) 51 I T R 51.**

——**Art. 226—Mandamus and Certiorari—Writs cannot be issued against private individual — (Employees State Insurance Act (1948), Ss. 74 and 75).**

A writ in the nature of Certiorari or mandamus cannot be issued against a private individual. The remedies which Art. 226 contemplate are public law remedies for the protection and vindication of a public right. All the writs provided for under Art. 226 are granted for the protection of public interest. **(1961) ILR 40 Pat 193 (DB).**

--Art. 226—Certiorari — Award of Tribunal under S. 10 of Industrial Disputes Act — Not only no objection was raised before Tribunal to its jurisdiction but petitioners themselves entering into arrangement before it and award made on basis of that arrangement — Assuming that Tribunal had no jurisdiction to make that award, High Court would not quash it in exercise of its discretion under Art. 226 : 1959 P L R 597, Foll. **(1964-65) 26 F J R 264 (Punj).**

——Art. 226—Scope — Industrial Tribunal's award—Surplus balance calculated for determination of bonus — In computation, Tribunal adding back certain amounts — In writ petition by the employer only a general attack made — Interference not made, as in substance, there was no attack on the addition back of the amounts — Omission to grant a higher deduction for salaries of two partners, was held not to be canvassed in a petition under Art. 226, when the Tribunal had taken into consideration all factors — Accounts were refused to be looked into, to determine the relief in a petition under Art. 226, in the absence of proper allegations, and the proceeding not being an appeal against the award and the matter falling within the jurisdiction of Industrial Tribunal. Civil Writ No. 986 of 1960 D/- 3-10-60, Affirmed; A I R 1959 S C 967, Ref. **(1963-64) 25 F J R 256 (Punj).**

——Art. 226 — Authorities not acting according to circulars issued — Court will not take notice of such failures. 1959 P L R 68 and 1961 P L R 75, Rel. on. **(1962) 64 Pun L R 922.**

5. Aggrieved person.

——**Art. 226** — Exemption under Madras Shops and Establishments Act (1947), S. 6 — (General Clauses Act (1897), S. 6) and (Madras General Clauses Act (1 of 1891), S 8). See Madras Shops and Establishments Act (1947), S. 6. **(1957-58) 12 F J R 158 = (1957) 1 Lab L J 642=(1957) 2 Mad L J 185.**

——**Art. 226** — Aggrieved party in tax matters should normally seek relief from hierarchy created by taxing statute itself and Court should not encourage approach on writ side save in exceptional cases. Case law discussed. **(1963) 65 Pun L R 831.**

6. Alternative remedy.

——**Art. 226** — Alternative and proper remedy available — Extraordinary jurisdiction under the article not invoked — Order in revision by Consolidation Officers attacked on ground of fraud—Proper remedy is by suit under S. 42, Specific Relief Act. Order D/- 31-7-64 of G. C. Mathur, J., Affirmed. **(1965) All W R (HC) 581 (DB).**

——**Art. 226** — Application under S. 30, U. P. Sales Tax Act (15 of 1948) for setting aside ex parte assessment order—Proceedings are quasi judicial — Opportunity of being heard not given to assessee — Principles of natural justice are violated — Alternative remedy by way of appeal under S. 9 held no bar for exercise of writ jurisdiction—Sales Tax — U. P. Sales Tax Act (15 of 1948), Ss. 9. 30. A I R 1992 S C 1217; and A I R 1962 S C 1110, Rel. on. **(1964) 15 S T C 50 (All) (DB).**

——**Art. 226 — Order of allotment without jurisdiction—Issue of certiorari and mandamus.**

When the remedy by way of a regular suit was open, the aggrieved party could not come to the High Court with a request, for a writ of certiorori. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 7. **1967 All W R (HC) 390=1957 All L J 93.**

——**Art. 226**—Alternative remedy not effective—High Court can exercise writ jurisdiction — Tenders of petitioners under S. 4, Hyderabad Abkari Act accepted by Board of Revenue and acceptance intimated to them — Subsequently tenders cancelled without notice to show cause against — Writ petition—Objection that it being breach of contract suit for damages would lie — **Held** that actual damages which petitioners would suffer could not be assessed — Suit for damages would not therefore be effective remedy — Nor was suit for specific performance of any avail to them—In the circumstances High Court can exercise its jurisdiction under Art. 226. A I R 1959 S C 490; (1959) 2 An W R 426, Disting. **I L R (1964) Andh Pra 1141.**

——**Art. 226** — Other remedy open — Remedy by way of suit cannot be regarded as anything like equally efficacious. **(1962) 2 Andh W R 476.**

——**Art. 226—Other remedy open—No bar to writs.**

The High Court does not encourage the practice of filing applications for writs even though specific remedies may be available under the law; but wher the facts in the case are undisputed, and any further delay in the matter is not only, likely to cause serious loss to the petitioner but also result in loss of public revenue and the High Court finds that the condition imposed on the petitioner by the Excise Authorities while granting him permit to manufacture tea is illegal and without jurisdiction, the High Court cannnot allow the condition to stand. **I L R (1958) 10 Assam 65 = A I R 1960 Assam 207 (208, 209) (Pt B) (Pr 6) (DB).**

——**Art. 226** — Existence of alternative remedy—Not availed of — No bar to a writ petition — High Court may in exercise of its discretion entertain petition and grant relief. A I R 1961 S C 1506, Foll. **(1962) M P L J 554 (DB).**

——**Art. 226** — Alternative remedy — Petitioner challenging certain order of respondent Government

affecting his right in respect of State quarries — Both parties asserting right of ownership in quarries — Held that as real dispute was as to title, proper forum was civil Court in regular action and petition was liable to be dismissed. (1965) 67 Pun L R 621.

——Art. 226 — Alternative remedy available — Whether Court will interfere or not depends on facts and circumstances of case. Case law Ref. I L R (1964) 1 Punj 391.

——Art. 226 — Expression 'proceed to assess'—Meaning — Expression means actual assessment — Actual assessment must be done within 3 years—Assessment order beyond period of limitation is beyond jurisdiction of assessing authority and hence questions whether point of limitation was raised or not before Appellate Authority or Revisional Authority do not arise when order is challenged under Writ-Jurisdiction—See Sales Tax—E. P. General Sales Tax Act (46 of 1948), S. 11 (6). (1963) 65 Pun L R 1003 = 1963 Cur L J 521.

7. Appeal from order in.

——Art. 226 — Writ appeal — High Court is not permitted to go behind finding of fact. (1964) Cal L J 78.

8. Application for.

——Art. 226 — Application under — Limitation — Settled practice of Andhra Pradesh High Court is to treat period of six months as reasonable time to enable aggrieved person to file writs — Court has jurisdiction to condone delay but petitioner must make out case for condoning delay — Writ petition filed after delay of over two years must fail. (1957) 2 Andh W R 233, Foll. ILR (1965) Andh Pra 482.

——Art. 226 — Delay in filing writ petition coupled with conduct of petitioner — Disentitles petitioner to invoke extraordinary jurisdiction under Art. 226. (1962) 1 Andh L T 159=(1962) 46 I T R 988.

——Art. 226 — Composite petition not arising out of common interest filed by several persons—Not maintainable — Court instead of directing them to file separate petitions requiring each of them to pay court-fee separately before entertaining and admitting joint petition — Objection as to multifariousness held not fatal to maintainability of such petition. (1962) M P L J 554 (DB).

——Art. 226 — Suppression of material facts — Suppression of fact that civil suit is pending — Writ liable to be dismissed. (1962) 8 L J R 740 (DB).

9. Article 32, scope of.

——Art. 226:— Practice—Disputed question of fact—High Court would not interfere on basis of facts which are in dispute. (1962) M P L J 554.

10. Articles 226 and 227.

——Arts. 226 and 227 — Motor Vehicles Act (1939), S. 60 (1)—Permit in respect of transport vehicle is a valuable right, more or less in nature of property right and any proceeding calculated to affect such right cannot be described as administrative in character — Proceedings under S. 60 (1) are of a quasi-judicial nature. I L R (1964) 1 Mad 979 = (1965) 1 Mad L J 526 (DB).

——Arts. 226, 227—Principle is that an officer cannot sit in judgment over his own order—Order in appeal passed by Assistant Director, Consolidation of Holdings — Revision against disposed by himself who by then became Additional Director — Order in revision was liable to be quashed — East Punjab Holdings (Consolidation and Preservation of Fragmentation) Act (50 of 1948), Ss. 21 (4) and 42. (1963) 65 Pun L R 811.

——Arts. 226, 227 — Proceedings under — Whether evidence before tribunal can be reviewed.

The High Court will not review and reassess, in proceedings under Arts. 226 and 227, the evidence led before the Tribunal and come to its own conclusions on fact as to whether or not the management was mala fide. (1962) Cur L J 364 (Punj).

——Arts. 226, 227—Findings of facts cannot be challenged in proceedings under Arts. 226 and 227. (1962) Cur L J 364 (Punj).

11. Assessment, illegal writ against.

——Art. 226 — Order of assessment under U. P. Large Land Holdings Tax Act—Order based on information obtained behind back of assessee — Order of assessment violated principles of natural justice and was ultra vires, null and void — Orders in appeal and revision also held bad in law — Merger of one order in the other held did not restrict powers under Art. 226 to quash all of them—See U. P. Large Land Holdings Tax Act (31 of 1957), S. 10. (1965) All L J 991.

——Art. 226—Capital gains—Capital assets — Assessability of profits as capital gains — Writ under the Constitution—Assessment orders—Remedies provided by Statute not availed of — No writ issued. See Income-tax Act (1922), S. 2 (1). 1965 Ker L T 190= (1965) 1 Ker L R 104.

12. Bar to.

——Art. 226—(Obiter)—Prohibition — Other remedy open—Existence of such remedy may not be absolute bar—Discretion always lies with High Court in such cases to grant relief under Art. 226—Ground of delay also is always taken into account in granting such relief. A I R 1961 S C 372 and A I R 1961 S C 1506, Ref. (1965) 66 Bom L R 502=I L R (1965) Bom 153 (DB).

13. Board of Revenue.

——Art. 226—Member, Board of Revenue, reversing judgment without obtaining concurrence of another member — Order is liable to be quashed — Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 212—U. P. Revenue Court Manual. (1965) All W R (H C) 515= (1965) All L J 888.

14. Certiorari.

——Arts. 226, 225 and 227 — Certiorari — Bench of High Court is not empowered to issue certiorari against an order passed by a Single Judge on original side—Such order is by the High Court itself—Art. 226 or Art. 227 cannot be invoked—Letters Patent (Bom), Cls. 36, 11 and 12. 50 Bom L R 293, Dist. 1965 Mah L J 414=I L R (1965) Bom 790 (DB).

15. Civil servant, dismissal of.

——Art. 226 — Order of dismissal of public servant after enquiry into his conduct by tribunal — Objection that tribunal which recorded evidence was not tribunal which submitted report of his enquiry—Dismissal of public servant is only administrative act and not judicial act, though order is preceded by proceeding resembling judicial enquiry and hence authority competent to punish servant can very well delegate enquiry to any agency it chooses; delinquent officer can only succeed if he establishes that order challenged was made by punishing authority without directing its mind to evidence in the case. I L R (1965) Andh Pra 482.

——Art. 226—Dismissal of public servant by Government of Andhra Pradesh on report of enquiry into his misconduct — Charges against servant enquired into by tribunal relating to period prior to formation of State of Andhra Pradesh — S. 116 (2) clarifies that

S. 116 (1) would not prevent competent authority after appointed day from passing in relation to a civil servant any order affecting his continuance in his post or office — Held further, that police officer who conducted enquiry into charges was officer within S. 125 and hence subsequent proceedings held by tribunal on strength of his report were in accordance with Act (Obiter). **I L R (1965) Andh Pra 482.**

——Art. 226—(Madras Elementary Education Act (8 of 1920), S. 56)—(Rules for Grant of Recognition and Aid to Elementary Schools, R. 13 (2) (ii), Proviso)—Termination of service for gross insubordination—Previous approval of Deputy Inspector of Schools—Necessity when a charge of gross insubordination is proved, the management is not called upon to get the previous approval of the Deputy Inspector of Schools. See Madras Elementary Education Act (1920), S. 56. **(1959) 1 Andh W R 386.**

——Art. 226—Disciplinary proceedings — Petitioner challenging his dismissal from service inter alia on ground that charge of which he was found guilty was false—Held, writ Court was not Court of appeal and would not go into truth or falsity of charge unless findings on charge was based on no evidence whatever or was highly perverse. **(1963) 1 Lab L J 708=(1963) 6 Fac L R 26 (Cal).**

——Art. 226 — Disciplinary proceedings — Relevant documents asked for by delinquent to enable him to cross-examine witnesses — Documents ordered to be produced by Inquiring Officer but not produced by Department and consequently not supplied to delinquent at any stage of enquiry — Held, principles of natural justice were not observed at enquiry. **(1963) 1 Lab L J 708=(1963) 6 Fac L R 26 (Cal).**

——Art. 226—Disciplinary proceedings—Opportunity to show cause is not matter of form but of substance —To burden a person proceeded against with mass of documentary evidence against him and then in a day or two to call upon him to meet evidence is not giving proper opportunity to show cause. **(1963) 1 Lab L J 708=(1963) 6 Fac L R 26 (Cal).**

——Art. 226—Disciplinary proceedings—Opportunity to show cause—Petitioner's request for short adjournment of inquiry and for supply of copy of deposition of witnesses refused by Inquiring Authority and petitioner asked to cross-examine witnesses at once—Held, petitioner was not given reasonable opportunity to defend himself. **(1963) 1 Lab L J 708=(1963) 6 Fac L R 26 (Cal).**

——Art. 226 — Central Civil Services (Classification, Control and Appeal) Rules (1957), Rr. 13, 16—Disciplinary action against Government Servant—Departmental fact finding inquiry — Resulting in minor penalties — No formal inquiry as is necessary for imposing major penalties required—Where particular procedure is prescribed by rules for disciplinary action, principles of natural justice cannot be imported in such inquiry. **(1963) 6 Fac L R 38 (Cal)=(1963) 1 Lab L J 698.**

——Art. 226—Central Civil Services—Punishment—Imposition of minor penalty — The concerned civil servant given an opportunity to show cause against the imposition of minor penalty — The final order rejecting the representations and imposing a minor penalty, held, not vitiated on ground that the enquiry was not conducted — The delinquent servant could not ask for a joint enquiry as a matter of right. **(1963) 6 Fac L R 38 (Cal) = (1963) 1 Lab L J 698.**

——Art. 226—Departmental enquiry — Purpose and nature of findings based on evidence — High Court will not decide adequacy or reliability of evidence. See Constitution of India, Art. 311. **(1964) 2 Mys L J 65=(1967) 2 Lab L J 156.**

16. Delay in applying.

——**Art. 226** — Writ Petitions — Limitation—Petition filed beyond 90 days of the order without explaining the delay—Petition dismissed. It is settled practice of Allahabad High Court that writ petitions should be filed within 90 days of the order complained against. **(1962) 46 ITR 529 (All).**

——**Art. 226**—Civil P. C. (1908), S. 151, O. 41, R. 19 — Limitation Act (1908), Art. 168 — Dismissal of appeal for default — Application for restoration contending that applicant was not aware of posting of appeal—Court finding that dismissal of appeal was erroneous as applicant was not aware of posting of appeal but dismissing application as barred by time holding that applicant had knowledge of dismissal of appeal—**Held**, Court was not justified in invoking principles of O. 41, R. 19 or Art. 168 while dismissing application—Court should have allowed application under S. 151 — Its not doing so constituted error of law apparent on face of record and could be corrected in writ proceedings. AIR 1949 All 36, Rel. on. Constitution of India, Art. 226. See Civil P. C. (1908), S. 151. **ILR (1963) A P 1022.**

——**Art. 226—Delay or laches.**

If the impugned notification is invalid the delay in filing writ petition is not a ground on which the High Court will refuse to grant any relief to the petitioner. **ILR (1964) 16 Assam 482 (DB).**

——**Art. 226** — Writ petition — Delay in filing — If alleged wrong is a continuing one, delay cannot be ground for rejecting it — Term of Municipal Committee expired — Fresh election not ordered — Term not extended under S. 25 of Bombay Municipal Boroughs Act (1925)—Old committee continuing in a continuous wrong — Delay in filing writ petition is excusable. **(1962) 64 Bom L R 557=ILR (1963) Bom 188 (DB).**

17. Dismissal, removal, discharge or reduction in rank.

——**Art. 226**—(Madras Elementary Education Act (8 of 1920), S. 56; Rules relating to Elementary Schools, R. 13 (2) (ii) (a) and (b))—Non-compliance—Effect of —Issue of writ of ceriorari—Petitioner's employment elsewhere—If bar. The fact that the petitioner is employed elsewhere will not affect the issue of writ of certiorari to quash the illegal order of dismissal of the petitioner. See Madras Elementary Education Act (8 of 1920), S. 56. **(1960) 2 Andh W R 305.**

——**Arts. 226, 227 and 321**—Dismissal of servant for misconduct and negligence in his duties — Domestic enquiry on which servant was dismissed not unfair or violative of principles of natural justice — Writ-Court cannot act as Court of Appeal or review and substitute its own judgment for that of management. **(1964) 1 Lab L J 500 (Mad).**

——**Arts. 226, 311**—Dismissal of Excise Sub-Inspector on charges of giving false deposition and shielding accused in trials conducted by him—Writ petition filed by him two years after order of dismissal—Subsequent petition for starting contempt of Courts proceedings against superior officers — It could be legitimately inferred that he was inspired by mala fides in that he wanted the contempt of Court proceedings as a lever to gain success in the writ petition ultimately—Petition for contempt of Court was liable to be dismissed. **ILR (1964) Andh Pra 811 (DB).**

——**Art. 226**—Madras Shops and Establishments Act (36 of 1947), S. 41 — Appeal by employee on his dismissal on ground of misconduct — Finding no evidence on record as to justify punishment, Commissioner holding order of dismissal as wrong—**Held** no error was committed by Commissioner in exercise of his jurisdiction and Court could not interfere with

his order under Art. 226 : 1958-1-LLJ 280 and 1959-2-LLJ 245, Ref. Madras Shops and Establishments Act (36 of 1947), S. 41. (1963) 1 Lab L J 44 (Mad).

●——Art. 226 — Removal of Panch under—Enquiry essential — Enquiry actually held—Order of removal cannot be challenged in writ petition. See Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 102 (2). 1963 Cur L J 294 (Punj) (FB).

18. Domestic tribunals.

——Art. 226—Domestic Tribunal — Rules of natural justice to be followed.

A domestic tribunal must act honestly and with good faith, and must give a delinquent a chance of explanation and defence. It has been held that so long as a domestic tribunal acts honestly, in good faith, with a sense of responsibility and in consonance with its own rules, its decision cannot be questioned on ground of breach of rules of natural justice, for the reason that in that case the rules of natural justice will be deemed to have been observed. (1915) A C 120; (1929) 1 Ch 602, Foll. 53 Bom L R 754=I L R (1952) Bom 269=AIR 1952 Bom 37 (46, 47, 50) (Pt C) (Prs 18, 20, 26) (DB).

——Art. 226—Tribunal—Power of High Court in considering decision given by domestic tribunal.

The High Court has no power to act as Court of appeal and sit in judgment on the judgment of a domestic tribunal on merits, nor can it go into the matter of appreciation of evidence. 37 Bom L R 261 =47 Bom L R 916, Ref. 53 Bom L R 754=ILR (1952) Bom 269=AIR 1952 Bom 37 (42) (Pt D) (Prs 7) (DB).

——Art. 226—Domestic tribunal—Industrial Disputes Act (1947), S. 33 (2) (b)—Nature of Tribunal's jurisdiction—Workers found guilty by domestic tribunal —Statements of witnesses read over and explained in Hindi to workers—Witnesses produced and questioned by enquiry officer and their answers explained to workers—Opportunity to cross examine witnesses given — Principles of natural justice not violated — Tribunal does not sit as Court of appeal over domestic tribunal—Circumstances under which tribunal may interfere with penalty imposed stated. AIR 1963 SC 375, Foll. (1965) 1 Lab L J 628=(1965) 10 Fac L R 5 (Cal).

——Art. 226 — Contractual domestic tribunal—Procedure — Principles of natural justice including rule of bias, applicability —Cochin Devaswom Board feeling aggrieved by false denials of their statements by Principal of College managed by them, themselves holding inquiry into misconduct and dismissing Principal—Inquiry is by biassed judges in violation of principles of natural justice and dismissal order is illegal. AIR 1961 Ker 282 (DB).

——Art. 226—Against whom writ can issue—Proceedings of domestic tribunal of private body — Proceedings cannot be challenged under Art. 226. (1965-66) 2 Lab L J 672=79 Mad L W 165=(1966) 36 Com Cas 197 = 1966 Mad W N 160 = (1966) 1 Com L J 289=(1966) 1 Mad L J 468=(1965-66) 29 FJR 223= (1966) 13 Fac L R 5=AIR 1966 Mad 399.

——Arts. 226, 227 and 311 — Domestic Tribunal — Open-mindedness and detachment is essential in every person charged with duty of holding enquiry and giving opinion against another — Held, there was no evidence that presiding officer at enquiry was biased against petitioner, a dismissed servant, or that he was virtually his prosecutor. 1932 AC 586, Rel. on. Civil P. C. (1908), S. 9, Master & Servant. (1964) 1 Lab L J 500 (Mad).

——Art. 226—Domestic Tribunals — Discretionary orders—Interference—Not permissible.

Administrative Tribunal holding enquiry against delinquent employee has discretion to allow or reject his belated prayer to examine additional witnesses. High Court cannot, in exercise of its jurisdiction under Art. 226 of Constitution, interfere with that exercise of discretion, even if the discretion is assumed to be exercised wrongly. AIR 1963 404, Rel. on. 1963 East L R 12 Orissa (DB).

——Art. 226—Tribunal—Association — Chamber of Commerce—Produce section—Managing Committee —Action of, in fixing clearance price—Validity.

The normal business of the Produce Section of a Chamber of Commerce was the carrying on of formal transactions in respect of cocoanut oil and pepper. On 24-9-51 day the oil market opened at 10 a.m., at Rs. 700 per candy and came down to Rs. 690. Seeing the downward tendency of the market the Secretary of the Produce Section issued a notice closing the market abruptly at 2-45 P. M. and fixing the price for clearance at Rs. 707 per candy. As many members of the Produce Section resented the action of the Secretary the Committee which managed the Produce Section met on the morning of 25-9-1951 and resolved to fix the price of oil for clearance at Rs. 696 per candy and closed the market for the day. Though under the Bye-laws the Committee could ordinarily fix the rate of settlement for clearance on every Friday after closing the business for that day it could fix any special clearance prices on any day in the week if circumstances warranted such a clearance in the interests of the trade.

Held, that the power to fix the clearance price on any day in the week implied the power to close the market on any day and, therefore, the action of the Committee in fixing the clearance price by the resolution dated 25-9-51 was not ultra vires.

Held, further that the resolution of the Committee, not being vitiated by any malice or dishonesty was not ultra vires, unjust or unfair. 1951 Ker L T 701=ILR (1951) Trav-Co 667=AIR 1953 Trav-Co 26 (29, 31) (Pt A) (Prs 11, 17).

——Art. 226—Tribunal — Association — Voluntary association—Charactristics.

One of the fundamental characteristics of a voluntary society is the notion that it should be autonomous and that its powers of Self-Government should not be interfered with save in exceptional circumstances. 1951 Ker L T 701 = ILR (1951) Trav-Co 667=AIR 1953 Trav-Co 26 (30) (Pt D) (Pr 16).

——Art. 226—Tribunal—Proceedings of—Conditions imposed.

There are two conditions imposed by the Court on the proceedings of a domestic tribunal. The first is that the tribunal must not exceed its jurisdiction, and the second is that the proceedings should not offend the rules of natural justice. ('51) Ker L T 701 = ILR (1951) Trav-Co 667=AIR 1953 Trav-Co 26 (30) (Pt E) (Pr 16).

19. Election dispute.

——Art. 226—Election—Rejection of Ballot papers on grounds that X mark not put in proper column — No uncertainty as regards intention to vote and the candidate—Rejection is illegal—Question of law—Estoppel. See Panchayats — Gujarat Taluka and District Panchayats (President and Vice President) Election Rules 1962, R. 8. (1965) 6 Guj L R 586.

——Arts. 226 and 227—Election disputes — Court to interfere only in case of non-compliance with statutory election rules—Panchayats—Orissa Gram Panchayat Rules (1960)—Rules 10 (1) and 11.

The jurisdiction of High Court under Arts. 226 and 227 is very wide and if there has been failure to comply with statutory rules dealing with the manner of holding election it can interfere. (1962) 4 Orissa J D 387 (DB).

——Art. 226 — Election Commission setting aside election on ground that electoral roli having not been prepared in accordance with rules, there was no electoral roll on basis of which election could be held — Held, though Election Commission was not justified in setting aside election on that ground, yet in view of fact that there was no electoral roll in eye of law on basis of which valid election could be held, result would be same as High Court under Art. 226, would not give effect to such election. 1960 PLR 377 and 1960 PLR 901, Ref. **(1964) 66 Pun L R 602.**

——Art. 226—Irregularities — Effect of — Election whether can be questioned by election petition or writ petition. See Panchayats—Rajasthan Panchayat Election Rules (1954), R. 19. **ILR (1958) 8 Raj 211.**

20. Estoppel against applying.

——Art. 226—Evidence Act (1872), S. 115—Claim for compensation disallowed under R. 65 of Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Petition under—Revival of claim—Withdrawal of petition — Held question of estoppol did not arise since revival of claim was not conditional upon withdrawal of petition and doctrine could only apply if some particular advantage had been obtained by petitioner by revival of his claim. See Evidence Act (1872), S. 115. **ILR (1966) Bom 648 = ILR (1966) Bom 648 (DB).**

21. Executive, writs and orders against.

——Art. 226 — Mala fide — Erroneous conclusion, does not show mala fide. **AIR 1964 S C 155 (d) (159) (Pt D) (Pr 7).**

——Art. 226 — Defence of India Rules (1962), R. 131 (2) (gg) and (i) — Notification under dated 17-8-1964 excluding private operators of vehicles on particular route — Nationalisation or creation of monopoly not motive of notification but interest of State and defence — No mala fide. See Defence of India Rules (1962), R. 131 (2) (gg). **ILR (1965) 2 All 303.**

22. Fundamental rights, suspension of.

——Art. 226 — Railway platform — Licences for sale of articles on platforms cancelled — If an infringement of fundamental rights.

There is nothing illegal in the State, when it took upon itself the Railway Administration in April, 1951, in its act of cancelling licences previously granted to vendors selling articles on the platform of a Railway station. The Railway platform being the private property of the Railways there has been no infringement of the fundamental rights of petitioners by the State in revoking licences granted to them. **65 Mad L W 336 (1)=(1952) 2 Mad L J 28=A I R 1952 Mad 834 (834, 835) (Pr 2) (DB).**

——Art. 226 — Infraction of fundamental rights — Court is bound to interfere even if justice is not on side of petitioner.

Where a petitioner complains of infraction of his fundamental rights, the Court must interfere under Art. 226 to protect such fundamental rights and should not refuse protection on the ground that he has other remedy available to him or that justice is not on his side. 1955-55 Bom LR 246 and observations of Mahajan C. J., in 1954 S C R 1122 at p. 1128, Rel. on. A I R 1961 S C 1457, distinguished. A I R 1955 S C 123 and A I R 1959 S C 149, Rel. on. **(1965) 16 S T C 973 (Guj) (DB).**

23. Government, writ against.

——Arts. 226 and 32—Habeas Corpus—Prior application dismissed by High Court — Subsequent application to Supreme Court can be made directly without leave. See Customs (Garo Hills) — Recovery of fines from relatives. **52 Cri L J 1360=A I R 1951 Assam 143 (1).**

24. High Court, power to issue appropriate writ.

——Art. 226 — Futile Writ — Licence issued under Bengal Excise Act for 1957-58 — Application questioning its validity coming up for hearing before High Court in 1962 — Held it was futile to quash licence which was no longer effective. **(1963) Cal L J 212.**

25. Illegal taxation.

——Arts. 226, 265 and 366 (28) — 'Tax' includes impost—Mysore Forest Act (1900), Ss. 35 (vi) and 37 —Government has no authority to levy and collect remuneration of forest guard or forester posted at private saw mills — Impost made by Government order D/- 6-9-1961 is without authority of law and is illegal. **(1964) 2 Mys L J 123 (DB).**

——Arts. 226 and 265 — Impost collected without authority of law — Power of High Court to order refund—Discretion of High Court—Existence of alternative remedy in civil Courts—Payment made under mistake in pursuance of agreement—Applicability of S. 72, Contract Act.

Where an impost or tax collected by Government is found to be illegal the High Court in appropriate cases will have the competence to make an order or give a direction under Art. 226 for the refund of the same. A I R 1960 Mys 93 Dist. **(1964) 2 Mys L J** 123 (DB).

26. Industrial tribunal.

——Art. 226—Domestic inquiry—Procedure—Record of evidence—Findings on all charges not necessary—Dismissal on finding of misconduct after departmental inquiry — Power of Industrial Tribunal to interfere. **A I R 1961 Mad 359.**

——Art. 226—(Industrial Disputes Act Ss. 20 (1) and 20 (2))—Award published in Gazette—No jurisdiction to Tribunal either to supplement, rectify or interpret the award. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 20 (1). **(1956) 1 Mad L J 226.**

27. Interlocutory orders.

——Arts. 226, 227 — Art. 226 cannot be invoked for the sole purpose of obtaining an interlocutory order such as for stay of proceedings pending before the Tribunal — But stay may be directed under Art. 227. **A I R 1954 Mad 573 (DB).**

28. Judicial and quasi-judicial authorities.

——Art. 226 — Natural justice — Judicial or quasi judicial authority—Duty to act strictly according to rules of natural justice.

In exercise of judicial or quasi judicial powers every Court or Tribunal is required to act strictly in conformity with the rules of natural justice. One of the foremost principles of natural justice, is that party to dispute should have a fair hearing and should have a full opportunity of meeting the case of the opposite party in rebutting its evidence. No party to the litigation should be allowed any chance to influence the mind of the Judge at the back of the other party. **(1965) Pun L R (Sup) 460.**

29. Judicial proceedings, writ in respect of.

——Art. 226—Order by customs authority imposing penalty under Sea Customs Act — Authority not acting in conformity with fundamental principles of judicial procedure—Writ petition for quashing order will lie—Remedy under Sea Customs Act no bar: 67 I A 222, Rel. on; A I R 1961 S C 609, Disting. See Customs Act (1878), Ss. 167, 182, 188, 191. **I L R (1962) 2 Cal 187 (DB).**

30. Jurisdiction and power conferred by Art. 226.

——Art. 226 — Failure of duty — Consequences of—Interpretation of Statutes—Power coupled with duty —Mode of exercise of power — Writ of mandamus — When issued—A writ of mandamus is an appropriate remedy to enforce a plain, positive specific and ministerial duty personally existing and imposed by law upon officers who refuse or neglect to perform duty when there is no other adequate and specific legal remedy and without which there would be a failure of justice — See Municipalities — Madras District Municipalities Act (1920), S. 321 (11). **(1958) 2 Andh W R 187=1958 Andh L T 681.**

——Art. 226—(Income-Tax Act (1922), S. 45)—Effect of appeal in collection on demands—Discretion under S. 45 of Income-tax Act — If there is no failure to exercise the discretion under S. 45, Income-tax Act, or any mal-exercise thereof the jurisdiction of the High Court to interfere is not attracted—See Income-Tax Act (1922), S. 45. **1957 Ker L J 1023=1958 Ker L T 216=(1959) 35 I T R 488.**

——Art. 226 — Powers of Rent Controller — Except where it is alleged and proved that the requisitioning of a building was male fide, it does not lie in the province of the High Court to find out in each particular case whether or not the State Government or the authorised officer was justified in intimating the landlord that the building was required for the purposes specified in S. 3 (3) of Madras Buildings (Lease and Rent Control) Act (1949)—See Houses and Rents —Madras Buildings (Lease and Rent Control) Act (1949), S. 3 (3). **73 Mad L W 187=ILR (1960) Mad 522=(1960) 2 Mad L J 314.**

——Art. 226 — Government officer already in possession of house — Requisition under S. 3 (3) of Madras Buildings (Lease and Rent Control) Act (1946) for residence of—Validity. Under the circumstances the Rent Controller is not authorised to exercise the statutory power vested in him to requisition the premises of an owner and allot it to the officer—See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 3 (3). **(1957) 70 Mad L W 359.**

——Art. 226 — Objection not raised before Labour Court going to root of whole matter and relates to jurisdiction of Labour Court—Such objection may be permitted in Writ proceedings. **(1966-67) 30 F J R 206=(1966) 13 Fac L R 393 = (1965) Pun L R (Sup) 377.**

——Art. 226 — Unless grave injustice is shown to have taken place by order against which writ is sought, Court cannot interfere. **(1964) 66 Pun L R 610.**

——Art. 226 — (Marwar Land Revenue Act (1949), S. 86)—Order under S. 86 of the Marwar Land Revenue Act, by Settlement Officer — Interference by Settlement Commissioner or Revenue Board—Legality — Appeal — Writ petition—Is maintainable—See Marwar Land Revenue Act (40 of 1949), S. 86. **1959 Raj L W 177=ILR (1959) 9 Raj 413.**

31. Jurisdiction of High Court.

——Art. 226—Subordinate Courts—Jurisdiction to go into question of ultra vires.

It is a common fallacy to suppose that the lower Courts can never go into the question of ultra vires : AIR 1947 P C 78=(1947) 2 M L J 16=1947 F L J 45; Foll. **63 Cal W N 147=(1959) 1 Lab L J 567=AIR 1959 Cal 208.**

——Art. 226—Satisfaction of Government—Power of Court to scrutinise—It is open to the Court to scrutinise the satisfaction or to examine whether there were sufficient materials to form the basis of or to justify such satisfaction : A I R 1946 P C 136; AIR 1955 NUC (Cal) 559, Rel. on. See Land Acquisition Act (1894), S. 40. **(1958) 62 Cal W N 73.**

——Art. 226—(Income-tax Act (1922), S. 31 (2-A))—Power of Appellate Assistant Commissioner — When to be exercised—Interference under Art. 226—Held, on facts that even assuming without deciding that an arbitrary exercise of the discretion vested in the Appellate Assistant Commissioner under S. 31 (2-A) of Income-tax Act, could be interfered with even in proceedings under Art. 226 the High Court was not satisfied that the Commissioner had exercised his discretion arbitrarily or capriciously. See Income Tax Act (1922), S. 31 (2-A). **1958 Ker L T 981 = 1958 Ker L J 1038.**

——Art. 226 — (Madras Cinemas Regulation Rules (1957), R. 4 and Madras Places of Public Resort Act (II of 1888), S. 7)—Issue of fresh licence within three months—Bar of — "Site" — Meaning of—Erroneous construction by Board of Revenue — Interference by writ of certiorari — Jurisdiction of High Court—R. 4 of the Rules under Cinemas Act — If binds High Court. High Court is not bound when it exercises its power under Art. 226—See Madras Cinemas Regulation (1955) (as amended by Act 1956), Rules under R. 4. **(1958) 1 Mad L J 410 = (1958) Mad L J (Cr) 460=71 Mad L W 344.**

——Arts. 226, 311 — Findings in departmental enquiry — High Court cannot reappreciate evidence. A I R 1963 S C 404, Foll. **(1965) 2 Lab L J 519=(1964) 2 Mys L J 153.**

——Art. 226 — Proceedings under the Article are of summary nature and are, therefore, normally not suitable for adjudicating upon controversial facts not patent on face of record. **(1963) 65 Pun L R 831.**

——Art. 226—Owner of factory—Right to apply for licence or its renewal—"Occupier"—Who is—Determination by Chief Inspector of factories — Interference by Court — If the Chief Inspector exercises his discretion and ascertains facts and takes a decision then the Court will not interfere with his view. See Factories Act (1948), S. 2 (n). **(1957) 2 Lab L J 501 (Trav-Co).**

32. Laches.

——Art. 226—Estoppel by laches and acquiescence—Notification regarding certain selections published in Gazette by Public Service Commission. Petitioner appearing for examination and interview but not selected — Petitioner challenging selection eight months after declaration of results — **Held**, petitioner could not be permitted to challenge the selection as he had acquiesced in action taken by Public Service Commission in pursuance of Notification and that there were laches on his part. See Evidence Act (1872), S. 115. **(1965) 2 Mys L J 404 (DB).**

33. Mandamus.

——Art. 226—Mandamus—Prior demand for justice —Exception.

When a petitioner asks for a writ in the nature of mandamus, which is generally done against a public officer or a public corporation, the public officer or the corporation concerned, should have an opportunity of setting matters right before the Court is moved. There are, however, several exceptions to this rule, one of them is that a prior demand for justice is excused when it is found that such a demand would be useless. **(1964) 9 Fac L R 275 = (1966) 2 Lab L J 719 (Cal).**

34. Natural justice.

●——Art. 226 — Enquiry by management — Representation — Workmen entitled by standing order to representation only by representative of recognized

Union — Workmen insisting on assistance of representative of their unrecognized Union with a view indirectly to obtain recognition to Union—Principle of natural justice is not violated by refusal of such request. Dunlop Rubber Co. v. Their Workmen, AIR 1965 SC 1392.

● —Art. 226 — Natural justice — Appearances of witnesses—It is for parties to produce them—Refusal to adjourn hearing to enable charge-sheeted workman to call witnesses — It may introduce element of infirmity in enquiry. Tata Oil Mills v. Workmen. AIR 1965 S C 155 (158, 159) (Pt C) (Pr 5).

——Art. 226 — Society — Transitory bye-law authorising Registrar to nominate and cancel nomination of director — Registrar cancelling nomination at behest of Government on confidential communication —Legality—Order quashed since it offends the principles of natural justice. See Co-operative Societies —Madras Co-operative Societies Act (6 of 1932) — Society. (1959) 1 Andh W R 400.

——Art. 226 — (Motor Vehicles Act (1939), S. 64) — Order passed by Secretary without giving opportunity for oral hearing — Legality — Natural justice — It cannot be said that the order of the Secretary passed without hearing is contrary to the principles of natural justice. See Motor Vehicles Act (4 of 1939), S. 64. 1958 Andh L T 627.

——Art. 226—Certiorari—Proceedings of head of college in relation to exercise of his disciplinary jurisdiction and resulting in expulsion or suspension of student —Contention that order was administrative in character and therefore not liable to be corrected by certiorari, not sound — Even if ultimate decision is administrative in character, process of arriving at decision requires quasi-judicial approach at some stage, and if there is failure to conform to principles of natural justice at that stage, Court has right to interfere with decision. AIR 1952 Mad 152, Rel. on; English Case Law Ref. (1964) Ker L J 1201.

——Art. 226 — Principles—Natural justice—Reasonable opportunity — Conduct and admissions by Chief Controller of Imports in issuing licences of certain basic value — Diminution of quotas under Government instructions and in exercise of Rule 25 of Red Book without prior notice to the licensee — Representation by conduct operates as estoppel — Power under Rule 25 must be exercised only on a finding as to the criteria mentioned under Rule 25—Diminution, held, bad. ILR (1964) 2 Mad 224 (DB).

——Art. 226 — Dismissal of workman after holding enquiry and finding him guilty of misconduct — Labour Court when can interfere. AIR 1962 Mad 398.

——Art. 226 — Religious institution — Member of Advisory Board appointed under Scheme — Absence from meetings — Order of removal by District Court without notice — Legality—(Natural justice — Principles of) - (Civil P. C. (1908), S. 92). 72 Mad L W 80=(1959) 2 Mad L J 83=ILR (1958) Mad 1117.

——Art. 226 — Principles of natural justice — By natural justice is meant that which is founded in equity, in honesty and right, and its principles are (i) a person must not be a judge in his own cause; (ii) a person must not be condemed unheard and (iii) the decision must be made in good faith. (1956) 2 Lab L J 347 (Mad).

——Art. 226 — Contention that selection made by Public Service Commission violates principle of equality of opportunity—In absence of specific averments contention cannot be permitted to be raised. See Constitution of India, Art. 16. (1965) 2 Mys L J 404 (DB).

——Art. 226—Departmental enquiry—Bias on part of Enquiry Officer—Objection must be taken at earliest stage of enquiry — It cannot be taken for first time before High Court — Held, belated objection was liable to be rejected on mere ground of waiver. See Constitution of India, Art. 311. (1967) 2 Lab L J 156= (1964) 2 Mys L J 65.

——Art. 226 — Natural justice — Requirements of natural justice depend on circumstance of case, nature of enquiry, rules under which Tribunal is acting, subject-matter under adjudication and so forth : 1 All E R 109 and AIR 1957 S C 232 and 2 All E R 579, Ref. (1967) 2 Lab L J 156 = (1964) 2 Mys L J 65.

——Art. 226—Departmental enquiry—Reasonable opportunity—Mere refusal to be represented by lawyer does not, by itself, offend principles of natural justice — Charge of accepting bribe — Trap laid by Anti-Corruption Department — Evidence in support of charge led by Police Sub-Inspector — Delinquent refused permission to be represented by lawyer but allowed assistance of another police Sub-Inspector of his choice to conduct case for him — Full opportunities given to delinquent to know charge against him and to lead evidence and all witnesses produced in support of charge cross-examined by Sub-Inspector — Held, refusal of permission did not amount to denial of reasonable opportunity for purposes of Art. 311(2). See Constitution of India, Art. 311(2). (1967) 2 Lab L J 156=(1964) 2 Mys L J 65.

——Art. 226—Principle of natural justice — Compliance — Sales tax assessment proceedings — It is enough if the gist of the private information collected by the assessing officer is made known to the assessee so that he may be in a position to rebut it — Persons from whom information obtained need not be produced and examined before assessee. (1963) 14 S T C 642 (Orissa).

——Art. 226—Natural justice—Rules of—Compliance of—Enquiry against examinee for using unfair means in examination—Adequate opportunity to be heard.

In an enquiry against the petitioner examinee on a charge of smuggling written answer book from outside, when the material which went against the petitioner and on the basis of which the petitioner had been disqualified was put to him and he was afforded full opportunity to explain it away, the mere fact that the material is such that it cannot at all be explained away is no ground to hold that the opportunity afforded is not either proper or adequate. (1965) 67 Pun L R 544.

——Arts. 226 and 32—Natural justice — Reasonable opportunity—Essentials indicated.

The requirement of a reasonable opportunity of being heard has two elements. The first is that an opportunity must be given and the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Court to determine both whether an opportunity has in fact been given as well as whether that opportunity was reasonable. There is no invariable standard of "reasonableness" except that the Court's conscience has to be satisfied that the person against whom the prejudicial order is proposed to be made has a fair chance of convincing the authority that the grounds on which the proposed order is sought to be made either do not exist or do not justify the proposed order. This would depend on the facts and circumstances of each case. (1964) 66 Pun L R 351.

——Art. 226—Employees' Provident Funds Act (1952), S. 19-A—Scope of—It does not deal with individual controversy between parties — Order of Central Government under S. 19-A directing that the establishment is new set up, passed at instance of party without hearing the other side — Order is invalid — Order also held as violative of principle of natural justice. See Employees' Provident Funds Act (1952), S. 19-A(iv). (1965) 2 Lab L J 704 (Raj).

35. Nature and scope of proceedings under.:

——Art. 226—Income Tax Act (1922), Ss. 23-A (1) and 30(1)—Alternate remedy—Order made under S. 23-A (1)—Appeal against order provided under S. 30 (1)—Assessee is not entitled to invoke the extra-ordinary jurisdiction under Art. 226 especially when disputed questions of fact are raised. (1964) 2 I T J 659 = (1965) 56 I T R 322 (All) (DB).

——Art. 226—Disputed question of fact—High Court will not go into it in writ petition. I L R (1965) Andh Pra 631.

——Art. 226—Question of fact cannot be considered in writ petition. I L R (1964) Andh Pra 1338 (DB).

——Art. 226—"Workman"—Question of fact—Decision by tribunal — Powers of High Court to interfere. It is well settled that the decision of the Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under the Article, unless at the least it is shown to be fully unsupported by evidence. See Industrial Disputes Act (1947), S. 2 (s). 1959 Ker L J 70=1959 Ker L R 151=(1959) 2 Lab L J 58=1959 Ker L T 611.

——Art. 226—Certiorari or mandamus—When called for — High Court clarifying matter and points of reference — Necessity for writ — As the matter had been clarified by defining the exact scope of the terms of reference there was no need to quash the notification of the Chief Officer by certiorari or to give any direction by way of mandamus. See French Labour Code (1952), S. 209. (1965) 2 Mad L J 57.

——Art. 226—Proceedings under — Nature of — Proceeding takes its colour from the nature of original proceeding—I L R (1958) Mad 117, Foll.

The character of the proceedings under Art. 226, will have to be determined with due regard to the nature of the relief which was asked for and granted or refused. The proceeding under Art. 226 will necessarily take its colour from the nature of the original proceeding before the inferior tribunal. There are several kinds of jurisdictions which have been vested in the inferior tribunals under a variety of special legislations and in all these cases the party aggrieved can invoke the jurisdiction of the High Court under Art. 226 on the ground that there is an infringement of a fundamental right or excess or jurisdiction. (1964) Mad W N 333 = (1964) 2 Mad L J 289 = (1964) 54 I T R 293=(1964) 2 I T J 287=I L R (1964) 2 Mad 704 (DB).

——Art. 226—Findings of fact— Practice is to quash consequential order without saying anything about findings of fact (Obiter).

The rule more commonly followed in writ proceedings is to quash the order without saying anything more about the findings of fact, because it is not the province of the Court in writ proceedings either to confirm the findings of fact or to disturb them, when they are based upon the appreciation of the evidence on the case, which is in the exclusive purview of the Courts below (Obiter). ILR (1964) 2 Mad 22 (DB).

——Art. 226— Errors of law — Houses and Rents — Orissa House Rent Control Act (31 of 1958), Ss. 7 (1) (i), 7 (2), 7 (i), Proviso — Tenancy of shop room from a long time — No willingness of landlord to accept rent tendered — Deposit of rent by tenant in Urban Co-operative Bank — No wilful default by tenant — Landlord taking other premises on rent for his business — Benefits of proviso to S. 7 (1) not available to him — Constitution of India, Art. 226 — Errors of law. See Houses and Rents—Orissa House Rent Control Act (31 of 1958), S. 7 (1) (i). (1965) 31 Cut L T 331.

——Art. 226—Orissa Gram Panchayat Rules—Provisions relating to prepartition of defaulters' list — Whether followed or not while preparing a list — Question of fact — Not to be examined in writ petition under the article. (1962) 4 O J D 424 (DB).

——Art. 226—Question of fact —Question regarding poverty or affluence of person cannot be investigated into. (1962) 28 Cut L T 414 = (1962) 4 Orissa J D 266=1 East L R 174 (DB).

——Art. 226—Discretion of High Court — Not desirable to take evidence on disputed fact regarding age of a person. (1962) B L J R 740 (DB).

——Art. 226—Discretion of Court — As between two unlawful claimants Court will give no remedy.

It is a well settled principle that as between two unlawful claimants, the machinery of the Court will not be used to assist one unlawful claimant against the other and that the Court will allow the existing state of affairs to rest where it is. (1962) B L J R 740 (DB).

——Art. 226—Disputed questions of fact—Cannot be decided in writ. (1965) 67 Pun L R 621.

——Art. 226 — Question whether item imported is gum within I. T. Schedule is one of fact — No interference with decision of authorities concerned. (1965) Pun L R (Sup) 460.

——Art. 226 — Writ jurisdiction — Scope of — Disputed questions of fact—Cannot be gone in a writ petition. (1963) 65 Pun L R 887 = ILR (1963) 2 Punj 765 (DB).

——Art. 226 — Disputed questions of fact not determinable except on evidence — Proper forum is a suit or an election petition under the relevant Act. (Panchayats—Punjab Panchayat Samithis and Zila Parishads Act (3 of 1961), S. 121). ILR (1962) 2 Punj 533.

36. Orders that can be passed.

——Art. 226 — Judicial orders — Arguments heard by Assistant Collector — Order passed by Collector not sustainable.

Where the Assistant Collector hears the argument in a case he alone must pass the final order and not the Collector to whom the papers are sent by the Assistant Collector. 1952 Cri L J 1297= ILR (1952) Hyd 525 = AIR 1952 Hyd 146.

——Art. 226 — Order dividing property sold without determining whether it was divisible and without hearing vendee — Offer to person to whom no compensation was payable— Legality — The order could not be supported and was also liable to be set aside as it was passed without hearing the petitioner. (1961) 63 Pun L R 610.

37. Powers of High Court.

——Art. 226—In writ petition High Court cannot be unduly guided by any step which other party may take or can take after decision of writ petition. See Civil P. C. (1908), S. 11. (1965) 2 I T J 740 (All).

——Art. 226—Notification under S. 6, Land Acquisition Act — Objection as to its validity — Petitioner participating in acquisition proceedings — Petitioner not estopped from approaching High Court and asking for quashing notification — Land Acquisition Act (1894), S. 6—Evidence Act (1872), S. 114. ILR (1964) 16 Assam 482 (DB).

——Art. 226—Notification declaring that S. 5A shall not apply under S. 17 (4) to urgency of certain project — Idea of that project dropped subsequently by Government on account of some defects—Another notification under S. 6 for different purpose issued without declaration under S. 17 (4) — S. 5A held was not properly dispensed with and Notification without resorting to procedure laid down in S. 5A was invalid and therefore liable to be quashed. See Land Acquisition Act (1894), S. 4. ILR (1964) 16 Assam 482.

——Art. 226 — Bombay Municipal Corporation Act (1888), S. 394 is not ultra vires Art. 246 of Constitution of India — Provision is within Entry 1 of State List—Section does not violate provisions of Petroleum Act as it occupies a field not occupied by the latter Act — Section imposes only reasonable restrictions and is not, therefore, violative of Art. 19 (1) (f) and (g) of Constitution of India. See Municipalities—Bombay Municipal Corporation Act (3 of 1888), S. 394 (1) (a) (ii). (1965) 67 Bom L R 484 = ILR (1965) Bom 899 (DB).

——Arts. 226 and 227 — Applicability — High Court will not go into disputed questions of fact, nor entertain a writ petition to decide questions which can well be agitated and decided in a proper forum before which proceedings are pending. (1965) 67 Bom L R 138=ILR (1965) Bom 488 (DB)

——Art. 226 — Power of supervision and superintendence — It is open to the High Court to scrutinize an order of the Panchayat under Arts. 226 or 227 which confer power of supervision and superintendence over all Courts or tribunals throughout the territories within its jurisdiction. See Panchayats — Punjab Gram Panchayats Act (1953), S. 66. ILR (1957) Punj 687.

38. Prerogative writs.

——Art. 226—Certiorari—Recording of evidence in proceedings—Duty of petitioner to prove mala fides.

The object of a prerogative writ under Article 226 is to obtain an expeditious remedy. Undoubtedly, a Court entertaining a prerogative writ can in suitable cases record such evidence as it finds nccessary keeping in view the points for determination. (1965) Pun L R (Supp) 149 (DB).

——Art. 226 — Prerogative writs—Issue of—Power of Travancore-Cochin High Court.

Even apart from the provisions of the Constitution as a Court of Record the High Court of Travancore-Cochin has got the power to issue prerogative writs in appropriate cases. 1949 Trav-Co L R 270 (FB), Relied on. AIR 1955 Trav-Co 46.

39. Procedure.

——Art. 226—Objection that writ petition was not properly presented and that counsel for petitioner could not be heard—Objection not raised in counter affidavit—It is liable to be overruled. 1965 All W R (HC) 515=1965 All L J 858.

——Art. 226—Delay in filing petition—Objection that petition is belated not taken in counter-affidavit—Held, still objection could be allowed to be taken during hearing. (1963) 2 I T J 556 (All).

——Art. 226—Delay in filing petition—No patent error of jurisdiction or no objection to jurisdiction appearing on face of proceedings before lower Court—Held, delay would be fatal, if unexplained. (1963) 2 I T J 556 (All).

——Art. 226—Affidavits—By whom to be sworn—Applicatton for habeas corpus—Counter-affidavit by subordinate official — Propriety — The counter affidavit filed by a subordinate official who has no personal knowledge of the relevant points at issue nor of the authenticity of the papers relied upon by him cannot be acted upon by the Court. See High Court Rules and Orders—Allahabad High Court Rules, Chap. 4, R. 12. 1958 All LJ 267=1958 All WR (HC) 289=1958 All Cr R 231.

——Art. 226 — (Income-tax Act (1922), S. 35 (1), Proviso) — Notice issued to party—Personal right of party to his benefit waived by him—Writ against issue of notice—High Court will not interfere. See Income Tax Act (1922), S. 35. (1959) 35 I T R 483 (Andh-Pra).

——Art. 226 — Petition by Company signed and verified by officer—Affidavit of competency to verify filed along with petition—Held, there was proper compliance with the rule of the Court and provisions in Civil P. C. 31 C W N 1030 and ILR 22 Cal 268 Foll.; Decision of P. B. Mukharji, J., D/- 23-12-1957, Reversed. ILR (1962) 2 Cal 187 (DB).

——Art. 226 — Appeal—New plea — Plea of waiver being a question of fact cannot be allowed to be raised for first time in writ appeal. 60 I A 368, Rel. on. ILR (1962) 2 Cal 187 (DB).

——Art. 226—Order suspending licence of pleader's clerk without hearing him — Order cannot be supported. See High Court Rules and Orders — Calcutta High Court Civil Rules and Orders, R. 987-A. (1956) 60 Cal W N 995.

——Art. 226—Special Tribunal—Authority to decide case—Interested party—Competency — Person granting certificate which has some bearing on the issues to be decided — Certificate used as evidence — Such person should not decide the case—(C. P. Code (1908), S. 9). AIR 1955 N U C (Cal) 2948 (DB).

——Art. 226—Disputed questions of fact—The theory of disputed facts applies to such cases when there is contest about facts between the parties and has no application to a case where bulk of the documents produced by one party indicates a certain state of affairs. See Constitution of Jammu and Kashmir, S. 103. 1965 Kash L J 179.

——Art. 226—Procedure — Reply affidavit containing allegations not mentioned in affidavit filed in support of writ petition—Opportunity not given to opposite party to counter fresh allegations — Fresh allegations cannot be taken into consideration in proceedings under Art. 226. Civil P. C. (1908), O. 6, R. 17. (1965) 2 Mys L J 404 (DB).

——Arts. 226, 311—Departmental enquiry — There is no rule of law nor any principle of justice under which delinquent officer should be presented with copies of statements made by witnesses during preliminary enquiry. (1964) 2 Mys L J 153 = (1965) 2 Lab L J 519.

——Art. 226— New point—New point raised by petitioner in his rejoinder—Respondent having full notice of petitioner's case in his replications and parties understanding each others case as contained in further rejoinders meeting it without objections—Evidence also recorded by the Judge on the basis of pleadings — Respondent has not been prejudiced and hence his objection that the point cannot be raised in rejoinder has no justification. A I R 1964 Punj 90 and AIR 1962 All 187 and A I R 1957 All 475 and A I R 1957 Pat 676, Distinguished. (1965) Punj L R 586.

——Art. 226—New plea—Plea as to violation of rules of natural justice neither raised before authority concerned or in grounds of writ petition — Plea not allowed at hearing in absence of proper material. (1965) Pun L R (Supp) 460.

40. Proceedings under Art. 226.

——Art. 226 — Proceeding subject to confirmation of another authority. AIR 1952 Hyd 163 (172) (Pt H) (Pr 33) (FB).

——Art. 226 — Direction by Central Government to comply with provisions of Employees' Provident Funds Act — Opportunity to employer not given — Remedy of employer. The High Court will not interfere with the direction of the Central Government in proceedings under Art. 226 especially when the petitioner had failed to avail of the repeated opportunities given to it by the Provident Fund Inspector to produce all the relevant books before him. See Employees' Provident Funds Act (1952), S. 19A. (1957-58) 12 F J R 115 (Punj).

41. Quasi-judicial authority.

——Art. 226 — Order for vacating premises — Quasi-judical order — Ex parte order — Setting aside—The order can be set aside. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1947), Cl. 28. ILR (1958) Bom 563.

——Art. 226 — Quasi-judicial authority—Imposition of penalty under Sea Customs Act — Effect of bias: Order of P. B. Mukharji, J., D/- 23-12-1957, Reversed. Sea Customs Act (1878), Ss. 167, 182.

It is a fundamental principle of natural justice that in the case of quasi-judicial proceeding the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. ILR (1962) 2 Cal 187 (DB).

——Art. 226 — Quasi-judicial authority — Tribunal performing quasi-judicial function can allow party to cross-examine his own witness for purpose of assessing his credibility. (1967) 2 Lab L J 156 = (1964) 2 Mys L J 65.

——Art. 226 — Administrative orders—Quasi-judicial and administrative decisions — Citizens' rights and interests in property must be guarded.

When adjudicating upon controversies affecting citizen's rights and interests in property it is necessary to follow the rules of fair play and fundamental justice, and the officer concerned is not free to act without directing his mind to or ignoring the other side of the picture. 67 Pun :L R 134 = AIR 1965 Punj 232.

42. Quo warranto.

——Art. 226 —. Quo warranto — Relief is a discretionary relief—Party acquiescing in the jurisdiction of Labour Court—Writ proceeding challenging the authority of Presiding Officer—Writ not granted. (1963) 1 Lab L J 582 = (1963-64) 24 F J R 383 = (1963) 6 Fac L R 15 = 67 Cal W N 437.

43. Relief, consequential.

——Art. 226 — Repairs — Right of tenant to get at landlord's costs. The petitioner cannot be given any relief, unless he satisfies the Court that some right of his has been violated. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 7E. 1958 All L J 853.

44. Res judicata.

——Art. 226—Civil P. C. (1908), S. 11—Withdrawal of petition under — Second petition under — First petition not heard on merits nor Court expressed any opinion on it — Withdrawal of first petition — Held principles of res judicata would not apply. See Civil P. C. (1908), S. 11. ILR (1966) Bom 648 (DB).

45. Review.

——Art. 226 — Finality of decision — Question of liability under S. 3 of Payment of Wages Act (1936), relates to jurisdictional fact—High Court competent under Art. 226 to review decision. See Payment of Wages Act (1936), S. 3. (1965) 11 Fac L R 224 (Cal).

46. Successive application.

——Art. 226 — Civil P. C. (1908), O. 23, R. 3 — Petitioner obtaining a rule of mandamus and an injunction order against 14 members, 1 to 5 being Board of Secondary Education, its Administrator, Secretary, Inspector of Schools, and State Government and 6 to 14 being members of Managing Committee of a Siksha Niketan as pro forma respondents — Before return of rule petitioner filing another application for extension of period of injunction — Board somehow or other appearing on that ex parte application and accepting service — On hearing of application for extension of period of injunction a consent order was made disposing of the main rule — On appeal by respondents 6 to 14 who were not represented at all and could not give their consent held that they could not be bound by consent which they never gave and their rights could not be disposed of without hearing and giving them a chance to appear and make their submissions. (1963) Cal L J 20 (DB).

47. Suppression of material facts.

——Art. 226—Suppression of material facts.

The suppression of material facts by the petitioner is sufficient for throwing out the writ petition. (1963) Cur L J 294.

48. Administrative orders.

——Art. 226 — (Madras Revenue Board's Standing Orders, R. 155 (12) (ii)) — Power of Government to interfere in revision — Orders of appointment of village officers—If revisable by Government—Orders of Administrative Tribunal — When can be quashed by issue of writ. See Madras Revenue Board's Standing Orders, R. 155 (12) (ii). 72 Mad L W 193 = (1959) 1 Mad L J 201.

49. Co-operative Societies Act, order under.

——Art. 226 — Application for writ of certiorari for quashing order of Registrar setting aside sale—Maintainability. It cannot be said that the Registrar in setting aside the sale acts with any irregularity either in the assumption of jurisdiction or in the exercise thereof, so as to render it liable to be quashed by the issue of a writ of certiorari. See Co-operative Societies — Madras Co-operative Societies Act (1932), S. 57. 69 Mad L W 710=(1956) 1 Mad L J 411.

50. Election authorities, against.

——Art. 226 — Irregularity in holding elections — Defeated candidate's right to challenge—No writ can issue—See Municipalities—Bihar Municipal Elections and Election Petitions Rules, 1953, R. 7 (1). (1958) B L J R 413=ILR 37 Pat 688.

51. Error on face of record.

——Arts. 226 and 227 — Error on face of record — When a Tribunal does not take into consideration material evidence, it fails to exercise jurisdiction vested in it and hence its finding must be quashed. ILR (1963) Andh Pra 500 (DB).

——Art. 226 — Income-tax Act (1922), S. 18-A (6), Proviso 5 (as inserted with retrospective effect) — Charging of penal interest — Jurisdiction of Income-tax Officer and of Commissioner in revision — Error on face of record—In this case the High Court has to see whether the petitioner is able to establish from the records that there is an error of law apparent on the face of record. And it is in the light of the decision in 34 I T R 439 (Bom) that the High Court has to examine the order of the Commissioner of Income-tax, and if that be done, it is difficult to see how it can be said that there is no error of law apparent on the face of record — See Income-tax Act (1922), S. 18-A (6), Proviso 5. (1959) 36 I T R 538 (Bom).

——Art. 226 — Jurisdiction of High Court to issue writs — Existence of other remedy—If a bar — Error apparent on face of order of subordinate Tribunal — If ground for quashing order — Co-operative Societies — Madras Co-operative Societies Act (6 of 1932), S. 51. (1960) 2 Mad L J 392 = 73 Mad L W 437.

——Art. 226 — Contract of tenancy requiring notice of termination — Notice if essential before applying under S. 7 of Rajasthan Buildings (Lease and Rent Control) Ordinance (1948) — Certiorari — Error ap-

parent on face of record — See Houses and Rents:— Rajasthan Buildings (Lease and Rent Control) Ordinance (22 of 1948), S. 7. (1958) Raj L W 121=ILR (1958) 8 Raj 137.

52. Grounds.

——Art. 226 — Certiorari — Writ of — Order of Central Government as final authority under statute — Quashing of — Fact that it does not give detailed reason is not a sufficient ground. (1965) Pun L R (Sup) 460.

——Art. 226—Mala fides—Grounds for—Bias—Test.

No question of mala fides can be raised when the Court has to examine whether the order of a quasi-judiciai Tribunal should be quashed by certiorari. But bias in the Tribunal is certainly a ground for doing so and the Court will quash the determination arrived at by it by certiorari. The test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision. A I R 1957 S C 425, Rel. on. (1962) 64 Pun L R 922.

53. Income-tax Act, orders under.

——Art. 226 — (Income-tax Act (1922), Ss. 30, 33-A and 45) — Refusal to extend time for payment till disposal of appeal under S. 30, Income-tax Act — Power of Court to issue writ of mandamus — See Income-tax Act (1922), S. 45. (1951) 20 I T R 51 (Cal).

——Art. 226—Certiorari—Purpose of, stated — Claim for exemption from tax before actual assessment — Income-tax Officer rejecting it having regard to opinion of Central Board of Revenue — Order was against the statute and must be quashed—Income-tax Act (1922), Ss. 4 (3)(1) and 5 (7-B) and 8. I L R (1964) 1 Mad 700 = (1964) 2 Mad L J 113=(1964) 2 I T J 95 (DB).

54. Industrial disputes, orders in respect of.

——Art. 226 — Domestic Tribunal—Enquiry by — Natural justice—Fnquiry against workman's conduct — Enquiring officer not examining any witness — Only the workman against whom the enquiry was, examined — Report of officers, against workman not read out — Officers though present not examined before workman nor allowed to be examined by the workman — Rules of natural justice held not followed — Industrial Tribunal cannot rely on the finding of the domestic tribunal in order to decide whether permission should be granted to management under S. 33 to dismiss the workman pending the proceedings before the Tribunal — Industrial Disputes Act (1947), S. 33. (1960) 1 S C R 32, Rel. on. M/s Bharat Sugar Mills Ltd. v. Jai Singh, 1962 (3) S C R 684 = (1961-62) 21 F J R 118 = (1961) 2 Lab L J 644 = (1962) 1 S C J 340 = (1961) 3 Fac L R 371 (SC).

——Art. 226 — (Industrial Disputes Act (1947), S. 10 (1))—Powers of Government—When decision is given in the exercise of discretion under S. 10 (1) of the Industrial Disputes Act, it cannot be challenged under the Article—See Industrial Disputes Act (1947), S. 10 (1). (1958) 1 Lab L J 202 (Andh Pra).

——Art. 226—(Industrial Disputes Act (1947), S. 15) — Interim relief — Grant of — Legality—Prima facie case not made out — Certiorari. Held, (i) that the interim award could not stand, (ii) that the mistake being apparent on face of record, a writ of certiorari could be issued — See Industrial Disputes Act (1947), S. 15. 1957 Ker L J 301 = 1957 Ker L T 1006 = (1957) 2 Lab L J 51.

——Art. 226 — Certiorari — Jurisdiction — Industrial Disputes — Award — Powers of High Court under Art. 226. (1963-64) 24 F J R 30 (Punj)

55. Jurisdiction.

——Art. 226 — Property of widow's husband vesting in adopted son—Death of widow — Whether widow had "interest" in such property 'competent to dispose of' that 'passed on her death' — Estate duty — Liability for — Alternative remedy—If bar to issue of writ—Where an authority proposes to exercise jurisdiction which prima facie it lacks, the existence of an alternative remedy is not a bar to the maintainability of a petition under Art. 226 — See Estate Duty Act (1953), S. 3 (1) (2). (1961) 2 Andh W R 108.

——Art. 226 — Collector acting under—If acts judicially or ministerially — Certiorari or mandamus — Issue of — Certiorari will not lie; nor will mandamus to correct something wrongly done—See Debt Laws —Kerala Agriculturists Debts Relief Act (31 of 1958), Rules under, R. 3. (1960) 1 Ker L R 793.

56. Labour Relation Board.

——Art. 226 — Award of labour Court—Quashing of by writ of certiorari — In the circumstances the award of labour Court quashed. (1965) 1 Lab L J 95 (Mad).

57. Land Acquisition proceedings.

——Art. 226—Writ petition by Government against award in Land Acquisition proceedings Maintainability—Award by Collector—Nature of—Award is an offer by Government to person concerned — Award being given by an agent of Government cannot be withdrawn — Writ petition by Government against such an award—Not maintainable — (Land Acquisition Act (1894), S. 11)—Land acquisition proceedings —Special land acquisition — Contract Act (1872), S. 182— Officer — Is an agent of the Government. (1962) 1 S T C 696 and 32 I A 93, Foll. ILR (1964) Andh.Pra 165.

58. Licensing authority, against.

——Art. 226—'Lawful possession of site, building and equipment'—Tenant holding over against desire of landlord—If in lawful possession — Decision of licensing authority — Civil Court jurisdiction to question—Issue of writ.

Barring exceptional cases of prima facie perverse orders of refusal, it is not within the province of the High Court to examine the correctness of the view taken by the licensing authority and unless it is established that the licensing authority is compelled by any statutory provisions to grant or renew the license no writ of mandamus could lie. (1960) 2 Mad L J 50=ILR (1950) Mad 490=73 Mad L W 788.

——Art. 226—Power to grant or refuse license — Deputy Commissioner has no unfettered discretion, it is controlled by Rules—Mandamus to compel issuance of licence — When issued — See Mysore Excise Act (5 of 1901), S. 15. ILR (1964) Mys 697.

59. Mandamus and certiorari.

——Arts. 226 and 227 — Certiorari or mandamus — Failure of Tribunal to restore and deal with an application can only be corrected by mandamus and not by Certiorari—Scope of Art. 226 — High Court can ignore form of relief sought by petitioner and grant him necessary redress by issuing appropriate writ. ILR (1964) 1 Mad 979=(1965) 1 Mad L J 526 (DB).

60. Municipal laws, orders under.

——Art. 226—Statutory Corporations amenable to the principles of ultra vires — Municipality must conform to the objects or purposes of the Act constituting it—Its exercise of powers are subject to Court's scrutiny—(Municipalities— Exercise of powers are subject to Court's scrutiny). (1964) 2 Mys L J 230 (DB).

61. Quasi-judicial orders.

——Art. 226—Certiorari — Quasi-judicial tribunals—Natural justice — Denial of reasonable opportunity—Charge under Rr. 9 (2), 52A and 226 of Central Excise Rules based on reports of Excise officers and seizure of seized documents — Such officers not allowed to be cross-examined—Petition under Art. 226 summarily dismissed — Question whether Assistant Collector of Central Excise ought to give opportunity not finally decided—Summary dismissal of writ petition, held, illegal. Original Order No. 263 of 1962 (Cal) Reversed; 1955 (1) S C R 941 and AIR 1963 S C 375, Ref. **(1964) Cal L J 109 (DB).**

——Art. 226—Quasi-judicial order — In disposing of revision application, against refusal to grant license to prospect minerals Central Government acts in quasi-judicial capacity. See Mineral Concession Rules (1960), R. 54. **(1965) Pun L R (Sup) 212.**

62. Rent Control Acts, Orders under.

——Art. 226—Inconvenience of tenant — Duty of Rent Controller and Eviction Officer to consider — Power of High Court to interfere — Ordinarily if the power has been exercised by the Rent Controller and the Eviction Officer after due considerations the High Court will not interfere with the exercise of discretion under Art. 226. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3. **1958 AllWR (HC) 313=1958 All LJ 234.**

——Art. 226 — Order under S. 7 (1) of U. P. Control of Rent and Eviction Act (1947) — Revision — Writ petition—Maintainability — High Court can interfere if the order passed by an authority which is not competent to do so or is otherwise without jurisdiction. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 7 (1). **1957 All W R (H C) 880=1957 All L J 912.**

63. Statutory bodies, powers and duties of.

——Art. 226—Educational institution — University—University examinations — Resort to unfair means or mal-practices by examinees — Power of University to punish students by rustication — Karnatak University Act (Bom Act 20 of 1949), Ss. 4, 19 and 29 — Ordinances under S. 29, Ordinances 109, 119 and 120 — "Misconduct" — Meaning — Powers of syndicate — "Rules laid down by the syndicate" in Ordinance 109 —Meaning. **(1963) Mys L J 408.**

64. Administrative authorities, proceedings of.

——Art. 226—Mandamus—Superior Tribunal directing refund of amount, paid in excess of sales tax due —Refusal by Sales tax officer to carry out order — Court should direct him to give effect to order even if assessee himself had improperly collected the amount from the purchasers. **(1965) 16 S T C 973 (Guj).**

65. Against whom can be issued.

——Art. 226—Mandamus against University or other educational Authority or other analogous body — Director of Public Instruction has no power to conduct District Level examinations without Government's prior sanction —Students cannot be detained on basis of the result of such unauthorised examination. AIR 1955 Mys 81, Rel. on. **I L R (1963) Mys 933 (DB).**

66. Demand and refusal of relief.

——Art. 226—Mandamus, when can be issued—Previous demand and refusal necessary. **ILR (1961) Mys 1129.**

67. Discretionary matters.

——Art. 226 — Mandamus — Correctness of decision not to be questioned—Jurisdiction of High Court not appellate in character—No review on the sufficiency of materials or the correctness of decision of Government order. **(1964) 2 Lab L J 407 = (1964) 9 Fac L R 383.**

68. Duties that can be enforced.

——Arts. 226 & 21—Mandamus — Refusal of Government to issue passport — Writ of Mandamus can be issued to compel the Government to issue the passport, a duty being cast on the Government to protect the 'personal liberties' granted by Art. 21. **A I R 1962 S C 1210** and Article By A. T. Markose "Judicial Control of Administrative action in India" Rel. on. **(1965) 4 Law Rep 617=(1965) 2 Mys L J 605.**

69. Election, mandamus to elect.

——Art. 226 — Elections:— Irregularities in— Mandamus—When may issue—Principles for guidance.

It is not every irregularity committed by the Returning Officer in the observance of the statutory provisions that vitiates the election process. If there has been a substantial compliance with those statutory provisions which are merely directory no mandamus arresting an election can issue. **ILR (1963) Mys 640= 1963 Mys L J (Supp) 286.**

70. Private right, enforcement of.

——Art. 226—Mandamus— Mandamus is issued only when applicant has right to compel performance of some duty cast on opponent. **I L R (1964) Andh Pra 1338 (DB).**

71. To deliver or to allow inspection of accounts or documents.

——Art. 226—Mandamus— Documents seized under search warrant in connection with offence under S. 5 of Imports and Exports (Control) Act, 1947—Writ of mandamus directed to be issued with certain conditions for return of documents in view of inordinate delay in keeping documents after seizure and without any prospect of the matter coming up before the Court. **(1964) 2 Mad L J 5=1964 Mad L J (Cri) 361.**

72. Certiorari and prohibition.

——Art. 226 — Writ of prohibition — Nature and scope of —Prohibition and certiorari, compared.

A writ of prohibition is an instrument of judicial control to prevent an excess or abuse of jurisdiction by inferior tribunals. Where a tribunal assumes or threatens to assume a jurisdiction which it does not possess prohibition may issue so long as the proceedings are not complete. **(1964) 52 I T R 453 = ILR (1964) 1 Mad 700 = (1964) 2 Mad L J 113=(1964) 2 I T J 95.**

73. Erroneous decision as to jurisdiction.

——Art. 226—Prohibition — Sales Tax Officer issuing notice of proceedings for forfeiture under S. 12A (4), Bombay Sales Tax Act to assessee — Writ of prohibition must issue almost as a matter of course if assessee shows that the notice is not justified by the terms of that section or that section is ultra vires as then the action of sales tax officer would be without jurisdiction. (1960) 1 G L R 260, Rel. on. **(1965) 16 S T C 973 (Guj) (DB).**

74. Mandamus and prohibition, compared.

——Art. 226—R. T. A. granting pucca stage carriage permit only to two applicants out of 70—Appeal against order of R. T. A. only by 25—Appellate authority remanding case for fresh disposal in accordance with law — On remand, R. T. A. issuing notices to all 70 applicants — Petition by one of appellants, praying for issue of writ of prohibition directing

R. T. A. to forbear from considering subject relating to grant of permits in pursuance of notices consequent on remand — **Held**, order of remand must mean and could only mean that direction was to consider 'case' of parties to 25 appeals before appellate authority— Though terms of one statute could not be interpreted with reference to another, by way of analogy even applying principles of O. 41, R. 33, appeal against order of R. T. A. could not enure to benefit of anybody, except appellant, as each appeal was separate venture—Fact that appeals were considered in batch would make no difference to individuality of appeal —Though on remand, R. T. A. acted without jurisdiction there was no question of any lack of initial jurisdiction in him—Though, therefore, relief (writ of prohibition) could not be granted, petition would not fail for failure to ask appropriate relief—Proper relief would be writ of mandamus. A I R 1954 Mad 848, Rel. on. ILR (1963) Andh Pra 1028.

75. Nature and object of writ of prohibition.

——Art. 226 — Alternative remedy available — Writs of certiorari or prohibition whether can be issued — Principle whether applicable in income-tax case.

Unlike in the case of mandamus, there is no rule of law which enjoins that when an alternative remedy is available, a writ of certiorari or prohibition should not issue. Such writs can be issued even in income-tax case : 1958 S C J 242 and (1961) 41 I T R 191, Foll. **(1963) 2 I T J 432 = (1963) 2 Andh W R 427= (1964) 53 I T R 11 (Andh Pra).**

——Art. 226 — Application for writ of prohibition— Competency — Jurisdiction of the High Court cannot be invoked, and apply for a writ of Prohibition prohibiting the election of President. See Panchayats — Madras Village Panchayats Act (1950) (as amended by Act 29 of 1957), S. 21. **(1958) 2 Mad L J 414 = 71 Mad L W 632.**

76. Non-compliance with order.

——Art. 226 — U. P. Gaon Samaj Manual, Para. 131 — Non-compliance with para not fatal to presentation of writ petition or appointment of counsel — Tenancy laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 127-B. **1965 All W R (HC) 515 = 1965 All L J 585.**

77. Against whom can be issued.

——Arts. 226 and 310-311 — Quo-warranto — Writ of — Can it be issued in respect of temporary or non-statutory post? (Quaere). **(1965) 2Mys L J 404 (DB).**

ARTICLE 227

●**——Art. 227** — Administration of — Superior and subordinate tribunals — Duty of subordinate tribunal to carry out directions given by superior tribunal — Principle when is not applicable. Tobacco Manufacturers (India) Ltd. v. Commissioner of Sales Tax, Bihar, **(1961) 12 S T C 87 = 1961 B L J R 603 = 1961 M P C 545 = 1961 (2) S C R 106 = ILR 40 Pat 259 = (1962) 2 S C J 554 = AIR 1961 S C 402 (405, 406) (Pt A) (Prs 11, 14).**

——Art. 227 — Constitution of India, Arts. 226 and 227 — Error on face of record — When a Tribunal does not take into consideration material evidence, it fails to exercise jurisdiction vested in it and hence its finding must be quashed. See Constitution of India, Art. 226. **ILR (1963) Andh Pra 500 (DB).**

——Art. 227 — Order of Magistrate — Power of High Court to revise. See Madras Hindu Religious and Charitable Endowments Act (1951), S. 87. **(1958) 1 Andh W R 263.**

——Art. 227 — Power of superintendence — Extent of — Stay of proceeding before Tribunal.

High Court, in exercise of its power of superintendence under Art. 227, can direct stay of proceedings pending before a Tribunal : AIR 1954 Mad 572, Rel. on. **AIR 1957 Andh Pra 672.**

——Art. 227 — Certiorari — Bench of High Court is not empowered to issue Certiorari against an order passed by a Single Judge on original side. See Constitution of India, Art. 226. **(1965) 67 Bom L R 215.**

——Art. 227 — Concurrent finding of fact — Finding that landlord required lands bona fide for personal cultivation — Finding is one of fact and cannot be interfered with in absence of sufficient grounds. **64 Bom L R 762 = 1962 Nag L J (Notes) 66 = ILR (1963) Bom 193 (DB).**

——Art. 227 — Appeal against order of Rent Controller — Duty of District Judge — Judgment perfunctory — Interference under Art. 227. **1959 Jab L J 75 = 1959 M P C 395.**

——Art. 227 — Scope — Powers of High Court. See Panchayats — M. B. Panchayat Act (2006) (58 of 1949), S. 66. **1958 Jab L J 559=1958 M P C 490.**

——Art. 227 — Domestic Tribunal — Open mindedness and detachment is essential in every person charged with duty of holding enquiry and giving opinion against another — **Held**, there was no evidence that presiding officer at enquiry was biased against petitioner, a dismissed servant, or that he was virtually his prosecutor. See Constitution of India, Art. 226. **(1964) 1 Lab L J 500 (Mad).**

——Arts. 227, 226 — Power of superintendence — Extent of — Stay of proceeding pending before Tribunal — Article 226 not applicable — Stay can be directed under Art. 227. **AIR 1954 Mad 573 (DB).**

——Art. 227 — Election disputed—Court to interfere only in case of non-compliance with statutory election rules. See Constitution of India, Art. 226. **(1962) 4 Ori J D 387.**

——Art. 227 — Notice to interested person—Absence of — Effect. See Municipalities — Patna Municipal Corporation Act (1952), S. 139 (1) (d). **1959 B L J R 811.**

——Art. 227 — Claim under — Order of dismissal for default — Revision — Claims Officer — If "Court" — Jurisdiction of High Court under Art. 227. **1959 Pat L R 297.**

——Art. 227 — Findings of facts cannot be challenged in proceedings under Arts. 226 and 227. **1962 Cur L J 364 (Punj).**

——Art. 227 — Order or sentence under Act — High Court's revisional powers — Section 439, Criminal P. C. and Arts. 227 and 226 of the Constitution — Finality of orders under Act. **ILR (1957) Punj 687.**

ARTICLE 228

——Art. 228 — Article when is applicable. A reading of Art. 228 of the Constitution would reveal that in order to make that article applicable three essential ingredients must exist : (1) a case must be pending in the Court subordinate to the High Court, (2) the High Court must be satisfied that the case involves a substantial question of law as to the interpretation of the Constitution. It should really involve such a question. **I L R (1965) Andh Pra 645.**

ARTICLE 234

——Art. 234 — Disciplinary proceedings against subordinate judicial officer — Authority competent to initiate. See Constitution of India, Art. 235. **(1966) 1 Lab L J 816 = (1965) 3 Law Rep 356 (Mys).**

ARTICLE 235

——Arts. 235, 309, 234 — Disciplinary proceedings against subordinate judicial officer — Authority competent to initiate.

Having regard to Rr. 8 and 11 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 and Arts. 234, 235 and 309 of the Constitution, both the Governor as well as the High Court have competence to initiate disciplinary proceedings against a subordinate Judicial Officer. It cannot be said that it is the High Court and High Court alone that is the sole authority competent to initiate such proceedings. (1965) 3 Law Rep 356 (Mys).

ARTICLE 245

——Art. 245 — Order of dismissal of public servant after enquiry into his conduct by tribunal — Objection that tribunal which recorded evidence was not tribunal which submitted report of his enquiry — Dismissal of public servant is only administrative act and not judicial act, though order is preceded by proceeding resembling judicial enquiry and hence authority competent to punish servant can very well delegate enquiry to any agency it chooses. Delinquent officer can only succeed if he establishes that order challenged was made by punishing authority without directing its mind to evidence in the case. ILR (1965) Andh-Pra 482.

——Art. 245 — Andhra Pradesh (Abolition of Cash Grants) Act (14 of 1959), S. 4 — Validity — Not invalid though right to receive cash grants is abolished with retrospective effect — Contention that compensation provided by section was merely illusory as it did not confer real benefits on grantee, compensation being far below amount payable as arreare from date of abolishment till 1959 — Held grantee had no right to receive grant from date on which right was deemed to have been abolished and, therefore, there was no substance in argument that what grantee received by way of compensation was much less than what he was entitled till 1959 and that what had become his property was taken away without any provision for compensation. ILR (1964) Andh-Pra 607.

——Art. 245 — Practice and procedure.

It is the first principle of law that a delegated authority cannot be further delegated unless he has been given power to delegate such delegated authority.

Thus when an inquiry was directed to be made by the Asistant Registrar of Co-operative Societies he was acting under a delegated authority and he could not delegate that duty to some one else. 1953 All W R (Sup) 99 = 1953 Cri L J 1592 = 57 C W N 716 = 54 Cri L J 1592 = AIR 1953 Cal 689 (689, 690) (Pt C) (Pr 2).

——Art. 245 — Delegation of powers of revision by Custodian General to Deputy Custodian General — Former can still exercise those powers. See Jammu and Kashmir State Evacuees' (Administration of Property) Act (2006), S. 38 (2). AIR 1960 J and K 119.

——Art. 245 — Sanitary Inspector is not competent to launch prosecution under S. 20. See Prevention of Food Adulteration Act (1954), S. 20. (1956) 2 M L J 465.

——Art. 245 — Statutory powers — Delegation of — — Exercise by officers.

The officers on whom statutory powers are conferred should realise that there should be a substantial compliance with the conditions laid down by a statute before they can validly exercise the powers conferred on them. It is not sufficient merely to reproduce the section under which they are acting. There must be something ex facie the order passed by them to show that there are reasons for the order and that the conclusion is based on materials before them.

There is nothing in the Madras Local Boards Act (14 of 1920) which compels the Inspector exercising the powers under S. 45-A delegated to him under S. 233, to make an inquiry before passing an order of supersession. (But the desirability of avoiding a cryptic order which practically reproduces S. 45 (1) and making it more full pointed out). ('51) 1951-1 M L J 285 AIR 1951 Mad 775 (777) (Pt B) (Pr 7) (DB).

——Art. 245 — Constitutional validity of Statutes — Determination of—Facts not attracting the impugned provisions — Question not to be decided. AIR 1960 S C 378, Foll. (1963) Kant L J 207=(1963) 14 S T C 894 (D B) (Mys).

——Art. 245 — Delegation of powers. See Orissa Essential Articles Control and Requisitioning (Tem. Powers) Act (1 of 1947), S. 2A. AIR 1952 Orissa 260.

——Art. 245—Delegated legislation—Legislative control.

Section 5 (1) is not invalid as excessive delegation of legislative powers. See Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960), S. 5 (1). 1965 B L J R 844 = ILR 45 Pat 411.

——Art. 245 — Section 1 (3) is intra vires Art. 14 of Constitution and is not discriminatory — It is a conditional legislation and Central Government has authority to implement it. See Employees' State Insurance Act (1948), S. 1 (3). (1961) ILR 40 Pat 193.

——Art. 245 — Delegation of power—Judicial power — Extent. See Madras Restriction of Habitual Offenders Act (6 of 1948) as applied to Union Terriorty of Delhi, S. 3 (1). (1965) 67 Pun L R 1234.

——Art. 245 — Section 6 (2) does not suffer from vice of excessive delegation nor is it hit by Art. 14 of Constitution — Items 49 and 50 are valid. See Sales Tax — Punjab General Sales Tax Act (46 of 1948), S. 6 (2). ILR (1964) 1 Punj 391.

——Art. 245 — Power to institute or defend suit by or against Municipality — Delegation of — Validity. See Municipalities — Punjab Municipal Act (1911), S. 33. (1957) 59 Punj L R 470 = ILR (1957) Punj 1443.

——Art. 245 — Delegation of power — Excessive delegation—Levy of licence fee by market committee by its bye-law — Rule-making authority fixing maximum fee and leaving each market committee with discretion to fix fees below that maximum — No case of excessive delegation (Obiter). See Rajasthan Agricultural Produce Markets Act (XXXVIII of 1961), S. 37. 1965 Raj L W 358 = ILR (1965) 15 Raj 897 = AIR 1966 Raj 142 (DB).

ARTICLE 246

——Art. 246 — Section 394 is not ultra vires Art. 246 of Constitution of India—Provision is within Entry 1 of State List — Section does not violate provisions of Petroleum Act as it occupies a field not occupied by the latter Act — Section imposes only reasonable restrictions and is not, therefore, violative of Art. 19 (1) (f) & (g) of Constitution of India. ('65) 67 Bom L R 484 = ILR (1965) Bom 899 (DB).

——Art. 246 — Interpretation of legislative entries — Principles — Specific entry takes precedence over general entry—Conflict of jurisdiction of legislatures — Extent of invasion to be looked into to determine pith and substance — Doctrine of pith and substance to be applied. See Constitution of India, Preamble. ('65) 67 Bom L R 484=ILR (1965) Bom 899 (DB).

——Art. 246 — Doctrine of colourable legislation.

The doctrine of colourable legislation is based on the principle that the legislature cannot do indirectly what they have been prohibited from doing directly. 1954 S C R 1, Rel. on. ILR (1965) 899 = 67 Bom L R 484 (DB).

——Art. 246 (3) — Sales tax — Bombay Sales Tax Act (5 of 1946), S. 12A — Section is not void as being beyond competence of State Legislature. (1965) 16 S T C 973 (Guj) (DB).

——Art. 246 and Preamble — Interpretation of legislative entries.

The entries of the three Lists of the Seventh Schedule are not powers but are only fields of legislation and the widest import and significance must be given to the language used by the Parliament in the various entries. AIR 1961 S C 1684. Foll. (1964) ILR 43 Pat 25.

ARTICLE 249

——Art. 249—Carrying on business—Suit for damages for loss of goods by railway — Allegation that Union of India carried on business in the name of East India Railway at Calcutta — Suit instituted without obtaining leave — Maintainability. See Letters Patent (Calcutta), Cl. 12. (1958) 1 Cal L J 67.

ARTICLE 254

——Art. 254 — Motor Vehicles Act (1939), Ss. 43, 44 and 47 — Effect of amendment of Ss. 43 and 44 by Act 100 of 1956 — Does not repeal S. 43A (Madras)— Directions given by State Govt. under that section should be given effect to in granting permits under S. 47. See Motor Vehicles Act (1939), S. 43. I L R (1965) Andh Pra 127.

——Art. 254 — Interpretation of legislative entries — Principles — Specific entry takes precedence over general entry—Conflict of jurisdiction of legislatures — Extent of invasion to be looked into to determine pith and substance — Doctrine of pith and substance to be applied. See Constitution of India, Preamble. 67 Bom L R 484=ILR (1965) Bom 899 (DB).

ARTICLE 256

——Art. 256—Executive instructions—Matter governed by provisions of law— Instructions not to contravene law. Mannalal Jain v. State of Assam, (1962) 2 S C J 93 = (1962) 3 S C R 936=AIR 1962 S C 386 (393) (Pt C) (Pr 12).

ARTICLE 265

——Art. 265—Levy of fees under S. 11—If defendant on establishment of market or on any services to be rendered. See Madras Commercial Crops Markets Act (1933), S. 11. (1957) 2 Andh W R 250.

——Art. 265 — Right to make representation against any proposed tax measure is not a common law right — Such a right where it exists, is a statutory right. (1964) 1 Mys L J 401.

ARTICLE 276

——Art. 276 — Profession tax at the rate of 12 annas per truck load of stone quarried and transported— Demand in respect of 2000 truck loads—Legality. See Panchayats — Rajasthan Panchayats Act (1953), S. 64 (1) (d). ILR (1958) 8 Raj 921=1959 Raj L W 631.

ARTICLE 277

——Arts. 277, 372 — Notification purported to be issued under S. 17 (b), Mysore Excise Act (5 of 1901) imposing fresh levy, not in continuation of pre-Constitution levy—Levy is not valid.

Article 372 is a general provision, whereas Art. 277 is a special provision. A special provision should be given effect to the extent of the scope leaving the general provision to control cases where the special provision does not apply. While Art. 372, saves all pre-Constitutional valid laws, Art. 277 is confined only to taxes, duties, cesses or fees lawfully levied immediately before the Constitution. Therefore, Art. 372 cannot be construed in such a way as to enlarge the scope of the saving of taxes, duties, cesses or fees. ILR (1964) Mys 116.

ARTICLE 296

——Art. 296 — Escheat — Property acquired by commission of crime—State cannot forfeit — Competence of Civil Court to order disposal. 1962 (1) Cri L J 243=AIR 1962 All 153 (154 to 156) (Pt B) (Prs 3, 6).

——Art. 296 — Escheat — Robkars issued by Raja of Bilaspur laying down procedure in escheat cases — Nature of — Power of Chief Commissioner to modify or cancel grants after accession — Power of Civil Court to question grant — (Civil P. C. (1908), S, 9). AIR 1957 Him Pra 61 (64) (Pt A) (Pr 7, 10).

——Art. 296—Escheat — Proceedings — Finding that particular person was heir-at-law — Finding not binding on persons who are not parties to it—Possession of property by State for some time would be only for and on behalf of true owner — Civil Court can adjudicate on question of ownership. 1962 Raj L W 554=ILR (1959) 12 Raj 957.

ARTICLE 301

——Arts. 301, 302, 303 and 304B — Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) (Amendment and Validation) Act (34 of 1961), S. 1 — Constitution of India, Arts. 304 (b), Proviso, 301, 302 and 303 — As statute complies with Proviso to Art. 304 (b) contention that statute is not regulatory or taxes imposed thereunder are not compensatory is not relevant. ILR (1964) Andh Pra 1338 (DB).

ARTICLE 304

——Art. 304 — Bye-laws under, for regulation and control rickshaws — 'Plying for hire' — Meaning — Hiring of rickshaw outside Municipal limits— Applicability of bye-laws—Right of rickshaw driver to use Municipal roads. See Municipalities — U. P. Municipalities Act (1916), S. 298 (2). 1958 All L J 539.

——Art. 304 (b) — Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) (Amendment and Validation) Act (34 of 1961), S. 1 — Constitution of India, Arts. 19 (1) (g), 19 (6) and 304 (b) — Act is not repugnant to Art. 19 (1) (g) — It falls within protection of Arts. 19 (6) and 304 (b). I L R (1964) Andh Pra 1338 (DB).

ARTICLE 309

——Art. 309 — Public servant — There is a contract of service but it contains terms enforceable against the civil servant and not against the Crown. See Constitution of India, Arts. 310-311. A I R 1951 All 205 (Pt B).

——Art. 309 — Validity — If contravenes Art. 19 of the Constitution — Restrictions imposed by Rules are not void on ground of vagueness or uncertainty — 'Capable of embarrassing' — Meaning. See Government Servants' Conduct Rules (1926), R. 20 (1). (1957) 61 Cal W N 459=(1957) 2 Lab L J 260.

——Art. 309 — Transfer from one post to another within the same department — Transfer per se is not punishment unless the step taken amounts to true punishment — Pecuniary losses, like not getting travelling allowances, are not grounds on which the order of transfer can be interfered with by the Administrative Tribunal. ILR (1964) 2 Mad 813 (DB).

——Art. 309—Government pleader — Madras — Appointment of—Rules as to—Appointment held not bona fide—Rules held had no statutory force — High Court declined to issue writ of quo warranto—Constitution of India, Art. 226. I L R (1961) Mad 553 = AIR 1961 Mad 450 (460, 461, 463, 464, 465, 471, 472, 475) (Pt B) (Prs 43, 45, 46, 67, 72, 74, 103, 104, 116, 118) (DB).

—Art. 309 — Disciplinary proceedings against subordinate judicial officer — :Authority competent to initiate. See Constitution of India, Art. 235. (1965) 3 Law Rep 356=(1966) 1 Lab L J 818 (Mys).

—Art. 309—Delegation of power — Rules framed by Governor directing Public Service Commission to set out :Rules for selection of persons for posts of Block Development Officers and Deputy Block Development Officers — Governor in directing Public Service Commission to set out rules has not abdicated his power under Art. 309 when he has been endowed with plenary competence to delegate his power in matter of making Rules, 1962 Mys L J 87, Disting. (1965) 2 Mys L J 404 (DB).

—Art. 309 — Proviso — Mysore Public Service Commission (Functions) Rules (1957) — Rules, in so far as they deal with topic of regulating recruitment to Civil Services under State, must be regarded as having been made in exercise of power under Art. 309, Proviso : AIR 1963 Mysore 265, Foll. :(1965) 2 Mys L J 404 (DB).

—Art. 309—Mysore State Civil Services (General Recruitment) Rules, 1957, R. 4 (2) — Appointment to Civil Service by selection —Recommendations of the Public Service Commission have to be accepted either in full or rejected in full — The State has no power to pick up only a few candidates out of the recommended ones. (1964) 2 Mys L J 462 (DB).

—Arts. 309 & 166 — Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, R. 8, Explanation — Non-promotion due to person being found unsuitable — Junior in the rank promoted on the ground of suitability — No mala fides alleged — Action does not amount to withholding of promotion and is not a penalty — Decision by authorities need not be communicated to the persons concerned — It does not amount to a judicial decision — Action is merely administrative. (1964) 1 Mys L J 226 (DB).

—Art. 309 — Pepsu Civil Servants — Tenure of service — Covenant between Rulers of States, Art. 16 (1)—Guarantee given to permanent servants of covenanting States—Scope and extent.

Article 16 (1) of the covenant entered into by the Rulers of the various States that form the Patiala and East Punjab States union does not give the guarantee that every permanent servant of the covenanting States will continue in service on the conditions under which he has joined service originally, but gives the Government the option either to allow him to continue in service on the same conditions or dispense with his services on payment of compensation or to retire him on payment of proportionate pension. So long as the Government exercises one of the options given to them by the Article, it is not open to any member of service to insist that some course other than the one resorted to by the Government should have been adopted by them. ILR (1952) Pepsu 392= AIR 1652 Pepsu 152 (156, 157) (Pt E) (Prs 18, 19) (DB).

—Art. 309 — Rules under Central Civil Services (Safeguarding of National Security), Rr. 3 and 4. See Central Civil Services (Safeguarding of National Security) Rules (1953), R. 3. 1965 Pun L R (Sup) 219.

ARTICLES 310-311

—Arts. 310-311—Master and Servant — Compulsory retirement — Misconduct or inefficiency of servant how far a ground for compulsory retirement.

The difference between misconduct or inefficiency furnishing the background and its being the basis for termination of service is that in the latter case the connection between it and the order is direct whereas in the former case the connection, if any, is indirect. When a servant can be compulsorily retired in public interest, he can be retired in public interest in exercise of this power on the ground that on account of his misconduct or inefficiency he does not deserve to be retained in further service. The misconduct or inefficiency can be a ground for the exercise of the power of compulsory retirement without converting it into removal. 1964 All L J 791 = 1964 All W R (H C) 467 = (1964) 9 Fac L R 197 = AIR 1965 All 142 (FB).

—Arts. 310-311 — Master and Servant — Dismissal —Local bodies' employees—U. P. Town Improvement Trust Act (8 of 1919), Ss. 16, 19 — Trust has power to dismiss employees —:Ordinary :law of master and servant in matter of dismissal applied in absencee of rules — Neither S. 240, Government of India Act 1935 nor Art. 311 of Constitution applies to employees of local bodies. See U. P. Town Improvement Trust Act (8 of 1919), S. 18. ILR (1962) 1 All 163.

—Arts. 310-311—Master and Servant— Dismissal— Employee of Improvement Trust — Suit for declaration that discharge of plaintiff was illegal and that he continued to be in service cannot be granted —He can only sue for damages. AIR 1937 All 264, Relied on—Amendment of plaint in the appeal for adding relief of damages not allowed, as the claim was barred by limitation. ILR (1962) 1 All 163.

—Arts. 310-311— Suspension of servant pending enquiry.

Suspension is ordinarily of two kinds, namely suspension as a punishment and suspension pending enquiry. Suspension pending enquiry may, however, also be of two kinds, for a distinction must be drawn between suspending an employee from service and suspending him from performing the duties of his post or office. If there is a contract of service in the strict sense, the first kind of suspension involves the suspension of the contract, while the second involves only a suspension of the employee from the performance of his duties on the basis that the contract is subsisting : (S) AIR 1955 Pat 131 (134), Relied on. 1961 All L J 350 = 1961 All W R (HC) 292 = A I R 1961 All 580.

—Arts. 310-311 — Partition of Country — Option to continue service — Construction — Petitioner provisionally opting to serve in Pakistan — Choice of making final choice within 6 months given — Petitioner not making final choice within period — His services in India should be deemed to have terminated. AIR 1955 NUC All 2766 (DB).

—Arts. 310, 311 and 309—Public servant — Right to claim salary from Crown — Contractual right— Existence of—U. P. Civil Service (Executive Branch) Rules (1941), R. 25.

There is no doubt that the relationship between the Crown and the civil servant is contractual. What are the terms of the contract is a different matter. The contract is not with the head of the department but with the Crown because when the head of the department contracts in the public capacity the contract is deemed to be entered into by the Crown : Case law referred.

There is, however, no contract, within the meaning of the Contract Act, by the Crown to pay any salary to a public servant. There is a contract of service but it contains terms enforceable against the civil servant and not against the Crown. The United Provinces Civil Service (Executive Branch) Rules, 1941, are only for the guidance and do not form the terms of the contract between the Crown and the civil servant. The promise by the Crown to pay salary at a certain rate to the civil servant is no more a contract enforceable in a Court of law than a promise to dine with a friend.

Per Dayal J. — Even if it be possible to hold that there was a contract between the Government and the civil servant, in view of public policy the con-

tract should be deemed to have an implied term that the civil servant will not have a right to sue in a Court of law for the recovery of pay. A I R 1951 All 205 (DB).

——Arts. 310, 311—Government Servant—Dismissal and discharge—Petitioner allowed to appear for competitive examination, as being duly qualified — Petitioner successful at examination — His appointment as probationer for two years—Discharge of petitioner after expiry of probationary period on ground that he was not qualified to appear for competitive examination — Negligence of Government — Petitioner becoming over age at time of discharge—Estoppel—Discharge held illegal. (1965) 2 Andh W R 437= A I R 1966 Andh Pra 59.

——Arts. 310, 311 — Governor when not superior authority to Government—Since in respect of imposition of penalties on civil servants Governor is not required by or under Constitution to act in exercise of his discretion, he is not authority immediately superior to Government which has passed dismissal order against a civil servant. I L R (1965) Andh Pra 482.

——Arts. 310, 311 — Writ petition against order of dismissal of civil servant — Scope of interference by High Court. See Constitution of India, Art. 226. I L R (1965) Andh Pra 482.

——Arts. 310, 311—Departmental enquiry — Person competent to impose punishment of dismissal and to hold enquiry — Directing enquiry to be held by another officer—Fact that latter was not competent to hold enquiry is immaterial. (1965) 2 Lab L J 586= (1962) 5 Fac L R 507 (Andh Pra).

——Arts. 310, 311—Railway Servants — Termination of services — Terminating authority — Employees drawing salary of less than Rs. 250/- per month—Services terminable by Head of Department—District Transportation Superintendent, with approval of Chief Commercial Manager, terminating services of passenger guard drawing salary of below Rs. 250/- per month, under his jurisdiction — Termination is valid. (1960) 2 Lab L J 384 (Andh Pra).

——Arts. 311, 310 — Termination of services of employee and 'dispensing with services'—If dismissal. (1959) 1 Lab L J 554 (Andh Pra).

——Arts. 311, 310—Non-compliance — Investigation not conducted by Madras C. I. D., but by Hyderabad C. I. D. — No prejudice. See Madras Civil Services (Disciplinary Proceedings Tribunal) Rules (1948), R. 4. (1957) 2 Andh W R 425.

——Arts. 311, 310—Special Tribunal—Departmental enquiry—Trial when to be held.

Where the charges framed against Sub-Inspector of Police show that they related to offences under S. 29 of the Police Act read with S. 342/161 of the Penal Code for illegal detention and for demanding illegal gratification then as these offences are triable by a Magistrate, a departmental enquiry in regard to such offences is not called for unless the Sub-Inspector has been duly tried and found guilty or otherwise in a Court of law. 1954 Cri L J 31=I L R (1954) Assam 107=A I R 1954 Assam 18 (21) (Pt A) (Pr 7) (DB).

——Arts. 311, 310 — Master and Servant — Servant cannot insist that he must be given work or particular kind of work — Master has right to decide it—Accused guilty of offence under S. 120 of Police Act. 1965 Mah L J (Notes) 86.

——Arts. 310, 311—Rights to salary—Dismissal found void—Nature of declaration. A I R 1954 Bom 351 (356) (Pt D) (Pr 11) (DB).

[Impliedly overruled on another point in A I R 1963 S C 372.]

——Arts. 310, 311—Government Servant—Rights of, in respect of salary—No legal right to have pay fixed at particular rate unless there is statutory right to the same. 1965 (2) Cri L J 471 = A I R 1965 Cal 484 (488) (Pt C) (Pr 20).

——Arts. 310, 311 — Master and Servant — Service conditions—They are variable when they depend on departmental instructions.

Where conditions of service depend not upon statutory rules or contractual conditions but upon departmental instructions then they are variable and will depend on the particular instruction in vogue at the relevant time. (1964) 9 Fac L R 71 = A I R 1965 Cal 298.

——Arts. 310, 311—Master and Servant — Wrongful dismissal—Relief of re-instatement is subject to exceptions. (1965) 10 Fac L R 223 (Cal).

——Arts. 310, 311 (2) — Opportunity to be heard—Decision to terminate services of petitioner taken on the basis of adverse reports by his superiors — Petitioner not given opportunity to show cause why his services should not be terminated — Held, what was done was to penalise the petitioner for misconduct or blameworthy conduct under a pretended order of termination of service, which was not permissible under the law—Order terminating services set aside: A I R 1958 S C 36, Foll. (1965) 11 Fac L R 191 (Cal).

——Arts. 310-311—Master and servant—Railway servant — Disciplinary proceedings—Natural justice—Chairman of inquiry committee replaced in the middle of inquiry by another who had not heard witnesses so far examined — Enquiry is vitiated — Railway Establishment Code, Vol. I, R. 1707 (e).

When an Enquiry Committee has the duty to come to conclusion as to the guilt of a delinquent upon an evaluation or assessment of evidence, then it is absolutely necessary that the members of the Committee should hear the evidence of the witnesses. It is impossible for them to evaluate the evidence of the witnesses taken on proxy or in their absence, because the salient features in such proceeding is to observe the demeanour of the witnesses. (1964) 68 Cal W N 1112=(1964) 9 Fac L R 208.

——Arts. 311-310 and 226—Temporary Government servant — Termination after one month's notice — Allegation of mala fide not proved — Order terminating service issued by the authority other than the appointing authority — Such authority invested with concurrent powers with the appointing authority in respect of certain matters only but not in respect of taking disciplinary action against persons — Order of termination, held, was invalid. (1963) 7 Fac L R 50 (Cal)=(1964) 1 Lab L J 149.

——Arts. 311-310, 226 — Dismissal after enquiry — Plea that opportunity of being heard was not given as the petitioner was unable to follow language in which enquiry was being conducted—Plea raised for first time in writ petition, not allowed. (1963) 6 FLR 214=(1963) 2 Lab L J 174 (Cal).

——Arts. 311-310, 226 — Bengal Subordinate Service (Discipline and Appeal) Rules (1936), Rr. 7 and 24—Dismissal after enquiry under R. 7 — Plea raised in writ petition that opportunity of being assisted by lawyer or agent was not given at enquiry—No special circumstance to justify such assistance shown by petitioner — Contention held was not acceptable in view of R. 24. (1963) 6 FLR 214 = (1963) 2 Lab L J 174 (Cal).

——Arts. 311 (2), 310, Proviso (a)—Members of Territorial Army convicted by Court-martial of offence under S. 39 (d), Army Act (1950) — Member must be deemed to have been convicted on criminal charge by competent tribunal and falls within mischief of

proviso (a). Army Act (1950), S. 39 (d); Criminal P. C. (1908), Ss. 5 (2), 549. (1963) 6 Fac L R 134 (Cal).

—Arts. 311 (2)-310 and 226 — Disciplinary proceedings — Petitioner challenging his dismissal from service inter alia on ground that charge of which he was found guilty was false — Held, Writ Court was not Court of appeal and would not go into truth or falsity of charge unless finding on charge was based on no evidence whatever or was highly perverse. (1963) 6 FLR 26=(1963) 1 Lab L J 708 (Cal).

—Arts. 311 (2)-310 and 226 — Disciplinary proceedings — Relevant documents asked for by delinquent to enable him to cross-examine witnesses — Documents ordered to be produced by Inquiring Officer but not produced by Department and consequently not supplied to delinquent at any stage of enquiry — Held, principles of natural justice were not observed at enquiry: 60 C W N 933 and AIR 1961 SC 1623, Foll. (1963) 6 FLR 26=(1963) 1 Lab L J 708 (Cal).

—Arts. 311 (2)-310 — Disciplinary proceedings — Statement of a person should not form part of record of proceedings unless he is examined as witness. 63 CWN 702, Ref. (1963) 6 FLR 26 = (1963) 1 Lab L J 708 (Cal).

—Arts. 311 (2)-310 and 226 — Disciplinary proceedings — Opportunity to show cause is not matter of form but of substance — To burden a person proceeded against with mass of documentary evidence against him and then in a day or two to call upon him to meet evidence is not giving proper opportunity to show cause. (1963) 6 FLR 26=(1963) 1 Lab L J 708 (Cal).

—Arts. 311 (2)-310 and 226 — Disciplinary proceedings—Opportunity to show cause—Petitioner's request for short adjournment of inquiry and for supply of copy of deposition of witness refused by Inquiring Authority and petitioner asked to cross-examine witness at once — Held, petitioner was not given reasonable opportunity to defend himself. (1963) 6 FLR 26=(1963) 1 Lab L J 708 (Cal).

● —Arts. 311 (2)-310 — Reasonable opportunity — What is — Departmental enquiry — Principles of natural justice —Violation of —Civil Services (Classification, Control and Appeal) Rules, R. 55 — Departmental proceedings under — Right of public servant to be represented by counsel—Denial of opportunity to inspect documents relied on by Tribunal — Right of adjournment for cross-examining material witnesses. See Constitution of India, Art. 311 (2). AIR 1961 Cal 1 (SB).

—Arts. 311-310 —Departmental enquiry —Charge of disobedience—When maintainable.

All lapses are not justifiable on the theory of mistake. Before charging a person with disobedience, a disciplinary authority must be sure of a prima-facie case against such person. To charge a person with disobedience, without being so sure, reveals a fault-finding mind and a mala fide disposition. Further, in a case, where the person charged had not shown cause, it is of utmost necessity that the disciplinary authority examines the case with greater care, before he makes up his mind about the guilt of the person. (1962) 1 Lab L J 317=(1961) 3 Fac L R 285 (Cal).

—Arts. 310, 311 — Promotion to higher post and transfer to another department—Effect—Subsequent return to original department — If continues in higher post.

The petitioner had been promoted to the post of an S.D.O., although it was a temporary post, by the Deputy Secretary of the Works and Buildings Department and had been transferred to another department. Held, that when he came back to his original department, he would continue to be in the temporary post of S.D.O. until and unless he had been reverted by the proper authority to his substantive post as overseer. This had never been done. The Deputy Secretary of the Works and Buildings Department had never passed orders reverting the petitioner to his substantive post of an overseer. What had happened was that the Chief Engineer had taken upon himself to revert the petitioner back to his substantive post and this he could not do. 62 Cal WN 223= (1958) 2 Lab LJ 58=AIR 1958 Cal 623.

—Arts. 311, 310 — Employees of Damodar Valley Corporation—Dismissal of—Applicability of Government Servants Conduct Rules—Order of suspension—Effect. (1956) 60 Cal WN 1023.

—Arts. 310, 311 — Government Servants — Junior given promotion overlooking his senior — Senior should be told grounds therefor.

It is elementary fairness that where a senior is overlooked and his junior given the promotion he should be told the ground therefor, unless it is stated to be in the public interests not to divulge it. I L R (1964) 1 Ker 564=1964 Ker L J 832 = (1964) 2 Lab L J 378=AIR 1965 Ker 108.

—Arts. 310, 311—Government Servant—Administrative Trial—Government servant —Acquittal of offences under Penal Code by a criminal Court—Finding how far binding on Administrative Tribunal enquiring on identical charges upon identical facts. (1965) 1 Lab L J 197=78 Mad L W 433 = AIR 1965 Mad 502.

—Arts. 310, 311—Government Servant — Conduct of—Departmental enquiry conducted by a particular officer — Succeeding Officer deciding the case on the evidence recorded by his predecessor — If opposed to principles of natural justice—Prejudice to the party—When to be pleaded. (1965) 2 M L J 98 = AIR 1965 Mad 316.

—Arts. 311, 310 — Contract of Service — Probation not satisfactory—Probation terminated in accordance with appointment order—No flaw in the order of discharge—Discharge held carried no blemish with it on the part of petitioner. (1964) 2 Lab L J 158 (Mad).

—Arts. 311, 310 — Domestic Tribunal — Open-mindedness and detachment is essential in every person charged with duty of holding enquiry and giving opinion against another —Held, there was no evidence that presiding officer at enquiry was baised against petitioner, a dismissed servant, or that he was virtually his prosecutor. See Constitution of India, Art. 226. (1964) 1 Lab LJ 500 (Mad).

— Arts. 311, 310—Scope—Government Servant removed from service on ground of vulgar and obscene method of expression used by him in private correspondence. If Government servant is removed on charge wholly unconnected with conditions of employment and his official duties that would offend Art. 311, even if procedure prescribed is followed. (1963) 1 Lab L J 512 (Mad).

—Arts. 310, 311 — Master and Servant — Contract service—Statutory bodies—University servant—Power of University to dismiss servant — Office if held at pleasure—Special Tribunal.

In interpreting a contract of service of a university servant, a term that the University should have the power to dismiss the servant on due enquiry into suspected misconduct of the servant in accordance with rules of natural justice, cannot be allowed to be imported. Hence, the question of the honesty and the good faith of the University in regard to such enquiry is irrelevant. ('51) 1951 MWN 309 (2)=1951-1 MLJ 518.

—Arts. 310, 311 — Quo warranto—Writ of—Can it be issued in respect of temporary or non-statutory

post. See Constitution of India, Art. 226. **(1965) 2 Mys L J 404 (DB).**

——**Arts. 311, 310**—Departmental enquiries — Rules contained in Evidence Act have no application—Reliance on testimony of accomplices is not vitiating circumstance. AIR 1963 SC 404, Foll. Evidence Act (1872), Ss. 1, 133. **(1965) 2 Lab L J 519 = (1964) 2 Mys L J 153.**

——**Arts. 311, 310** — Findings in deparmental enquiry — High Court cannot reappreciate evidence. See Constitution of India, Art. 226. **(1965) 2 Lab L J 519=(1964) 2Mys L J 153.**

——**Arts. 311, 310 and 226**—Departmental enquiry—Bias on part of Enquiry Officer — Objection must be taken at earliest stage of enquiry—It cannot be taken for first time before High Court — **Held**, belated objection was liable to be rejected on mere ground of waiver. AIR 1957 SC 425 and AIR 1957 S C 232 and 1964 Mys L J 318, Rel. on. Evidence Act (1872), S. 115. **(1964) 2 Mys L J 65.**

——**Arts. 311, 310** — Departmental enquiry—Official bias — Charge of receiving bribe—Trap laid by Anti-Corruption Department — Mere fact that Enquiry Officer was Deputy Director of Department of Anti-Corruption, held, would not by itself, give rise to assumptions of official bias on part of Enquiry Officer. **(1964) 2 Mys L J 65.**

——**Arts. 311 (2), 310** — Reduction in rank—Passing over of certain persons for promotions due to their non-suitability — Promotions of junior who is found suitable — Subsequent promotions of the passed over persons—Earlier passing over does not amount to reduction in rank—Provisions of Art. 311 not attracted. **(1964) 1 Mys L J 226.**

——**Arts. 310, 311** — Government Servants—Service Rules — Circular of the Government of Bombay (No. 7573/33), D/- 31-10-1950 — Interpretation—Government servant on deputation—Reversion to parent department — Position of — Servant to occupy position and draw salary as that occupied and drawn by his immediate junior colleague in parent department on date of reversion—Order placing him on lower posision held amounting to infraction of right created by circular — Rule 3, Bombay Civil Service Rules not a bar to exercise of jurisdiction under Art. 226 of Constitution. **AIR 1962 Mys 146 (149, 151, 152) (Prs 22, 26, 51, 57 to 59 (DB).**

——**Arts. 310, 311**—Government Servant—State and Public Servant — Authority to purchase on behalf of State—Liability of State — Unauthorised purchase—State not liable. **1962 Mys L J (Supp) 527.**

——**Arts. 310, 311** — Master and Servant — Government employee appointed as cleaner in Civil Personnel of Defence Department — His employment comes under category of Industrial Personnel—His service being of temporary nature it can be terminated by giving notice under R. 75 (a) of Army Instructions—Rule 212 (3) and (6) do not apply. **1962 Mys L J (Sup) 254.**

——**Arts. 311, 310**—Master and Servant—Government servant—Dismissal—Natural justice—Enquiry—Dismissal on ground of disobedience— Finding of appellate authority based on admission in petition of appeal itself—No inquiry is necessary. **(1965) 1 Lab LJ 349 (Orissa).**

——**Arts. 311 (2), 310 and 226—Reasonable opportunity to show cause against proposed action — Notice under Art. 311 (2) to be given only after guilt and proposed punishment is decided.**

A notice under Art. 311 (2) of the Constitution can be issued only after considering the explanation submitted by the employee for the charges against him and coming to a clear finding about his guilt and the punishment proposed to be inflicted upon him has been decided upon. A mere notice asking him to show cause against the charges is no notice under Art. 311 (2). **(1963) 2 East L R 18 (DB) (Orissa).**

——**Arts. 311 (2), 310** — Fresh proceedings against Government servant in respect of same matter — Order of discharge in respect of Government quashed by the High Court—Government not precluded from continuing the departmental proceedings against him and disposing of the same according to law. **(1963) 2 East L R 18 (DB) (Orissa).**

——**Arts. 311, 310** — 'Punishment'—Transfer of employee from one place to another does not amount to 'punishment.' (Civil Services (Classification, Control and Appeal) Rules (1930), R. 49. **(1963) 2 East L R 1 (DB) (Orissa) (FB).**

—— **Arts. 311, 310** — Applicability—Temporary appointment — Termination of service on one month's notice on ground of lack of educational qualification—Validity — See Panchayats—Orissa Gram Panchayat Rules (1949), R. 93. **(1959) 25 Cut L T 167.**

——**Arts. 311, 310**—Master and Servant—Applicant, a temporary Government servant—Services of, transferred to newly established University — Vice-Chancellor authorised to make appointments on temporary basis by notification under S. 46 of Bihar Act (VI of 1960) — Post offered to applicant—Applicant writing to head of department for one year's leave without pay or accept resignation— No reply in spite of reminder—Acceptance of university post and confirmation—Government after considerable time refusing leave and refusing to accept resignation and asking Vice-Chancellor to restore services of applicant to original Government post — Appointment to university post held legal — Vice-Chancellor's order returning services back to Government without hearing applicant held bad as being against natural justice—Order quashed—Declaration held did not contravene S. 14 (b), Specific Relief Act, 1963. AIR 1964 S C 1680 and A I R 1964 Pat 41, Rel. on; A I R 1958 S C 1050, Disting. **AIR 1965 Pat 417.**

——**Arts. 310, 311** — Master and Servant—Services of servant terminated — Subsequent reinstatement by order of superior authority — Servant is entitled to his pay and dearness allowance for period between termination and reinstatement — Bihar Education Code, 1944 (7th Edn.), Cl. 288, Para. 28 has no application: (1865) 2 Weekly Reporter 307, Disting. A I R 1958 S C 12, Rel. on. **1964 B L J R 189.**

——**Arts. 311, 310** — Appellate authority can pass orders which the original authority could have passed — Original authority reverting petitioner though he could order dismissal — Appeal to State Government — State Government can order dismissal—But before doing so, it must give fresh notice to petitioner that it proposed to inflict higher penalty—Civil P. C. (1908), O. 41, R. 33. **A I R 1962 Pat 276 (DB).**

——**Arts. 311, 310** — Final disposal of enquiry — Reopening of — (Constitution of India, Art. 226—Departmental enquiries). **AIR 1954 Pepsu 129.**

——**Arts. 310, 311** — Master and Servant — Government servant — Duties of, in democratic set up. See Constitution of India, Art. 226. **AIR 1965 Punj 455.**

——**Arts. 311, 310** — Termination of services of a probationer within the meaning of R. 9 of Punjab Civil Services (Punishment and Appeal) Rules and not merely of person on probation—Probationer must be given an opportunity to show cause against the termination of his services—R. 23 does not apply to the case of a probationer and he cannot be removed under that Rule read with Rr. 21, 22 and 24. **1965 Pun L R (Sup) 586.**

——**Arts. 310, 311, 14 and 16 (1)** — Indian Administrative Service (Regulation of Seniority) Rules (1954),

Rr. 3, 4, 5 — Recruitment to Indian Administrative Service — Assignment of seniority on ad hoc basis — Classification and differentiation — Test — Classification must be rational — It must also have connection with or relation to object sought to be achieved — Different formulas applied for determining seniority of members of the same list — Differentiation springing up not from merit of application of weighed down N formula to List II but from result of that application — Object defeated in some of the lists — Differentiation held not rational — It is violative of protection under Art. 14—Denial of benefit affecting chances of promotion — It is violative of Art. 16 (1). There being certain measure of overlapping between R. 3 (2) and R. 4 (2) and R. 5, they are to be read together. ILR (1965) 2 Punj 359.

——Arts. 310, 311 — Punjab Government Letter No. 5410-345-63/11926 D/- 28-3-1963, Para. 6—Scope — Appointing authority has absolute right to retire Government employee after he has reached age of 55 without assigning any reason subject to condition that employee is given three months' notice — When three months' notice is not given order compulsorily retiring employee is bad. ('64) 66 Pun L R 818.

——Arts. 311, 310 — Payment of Wages Act (1936), S. 15 — Jurisdiction and powers of the authority — Tribunal constituted under the Act has no jurisdiction to determine question of legality and validity of order terminating employee's services. A I R 1962 All 52, Dissent from—See Payment of Wages Act (1936), S. 15. (1963-64) 24 F J R 189 (Punjab).

——Arts. 310, 311—Gratuity—Gratuity and pension —Nature of—State service—When can be claimed as of right — Service rules embodying rules as to payment of pension — Claim to pension is actionable. AIR 1961 Punj 443.

●——Arts. 310.311—Master and Servant—Contract of service—Rules as to suspension — (Industrial Disputes Act (1947), S. 33).

In the case of a continuing contract like the contract of service between master and servant suspension means that the relationship of master and servant remains in abeyance for a certain period. Suspension, however, need not be complete and it cannot be argued that whenever a contract of service is suspended, the servant is free to go and seek employment elsewhere and the master is free to withhold the wages due to the servant and to employ some other servant to do his work. Suspension is something less than termination of service and therefore a connection, however tenuous, continues between the master and servant. The servant cannot seek employment elsewhere though he does not perform his normal duties for his master. Similarly the master is obliged to give a subsistence allowance to the servant though he may not be obliged to pay him that full wages which are to be paid for specific work done by the servant. Delhi Div. v. Mukund Lal. 59 Punj L R 173=(1957) 2 Lab L J 452=(1957-58) 12 F J R 182 =I L R (1957) Punj 1059=AIR 1957 Punj 130 (FB).

——Arts. 311, 310 — Person appointed as secretary of Small Towns Committee on temporary basis for fixed period, continuing to act even after expiry of period — No order as to confirmation — Subsequent suspension and dismissal — Non-compliance with R. 3 (1) — Validity — Principles of natural justice — Applicability. See Municipalities — Punjab Small Town Appoinment Suspension and Dismissal Rules (1925), R. 3 (1). 59 Punj L R 185=I L R (1957) Punj 731.

● ——Arts. 310-311 — Master and Servant—Crown servants—Contracts of service under Crown — Terminability—Necessity of notice.

All contracts of service under the Crown are terminable without notice on the part of the Crown unless required by any statute and this is so even though there be an express term to the contrary in the contract. (1898) 1 Q B 116; (1918) 34 T L R 589, (1920) 37 T L R 138 and (1821) 3 K B P 500, Ref. to. Sirkar v. Subramania Iyer, ('46) 36 Trav L. Jour 575 (FB).

ARTICLE 320

——Art. 320 (3)(c) and 311—Dismissal of Civil Servant without consulting Public Service Commission — Provisions of Art. 320 (3) (c) are not mandatory and non-compliance with them does not afford a cause of action to Civil Servant in a Court of law—(Obiter). AIR 1967 SC 912 and AIR 1962 SC 1130 and A I R 1962 S C 1344, Rel. on. I L R (1965) Andh Pra 482.

ARTICLE 321

——Art. 321—Constitution of India, Arts. 226, 227 and 321—Dismissal of servant for misconduct and negligence in his duties — Domestic enquiry on which servant was dismissed not unfair or violative of principles of natural justice—Writ—Court cannot act as Court of Appeal or review and substitute its own judgment for that of management. See Constitution of India, Art. 226. (1964) 1 Lab L J 500 (Mad).

ARTICLES 329 (b), 226

——Arts. 329 (b), 226:— Right of membership to legislative bodies — Right is not an ordinary civil right. 1954 A M L J 1=AIR 1954 Ajmer 33 (35) (Pt A) (Pr 5).

ARTICLE 341

——Art. 341—Constitution (Scheduled Castes) Order (1950), Para 3—Effect of — Conversion of a member of scheduled castes to Christianity takes him out of category of Scheduled Castes. See Constitution (Scheduled Castes) Order (1950), Para 3. I L R (1963) Andh Pra 500 (DB).

ARTICLE 348

——Art. 348 (3)—Effect of—Order delegating power of State Government under S. 11-A, U. P. Industrial Disputes Act to Deputy Labour Commissioner — Publication in U. P. Gazette not showing that it was authorised by Governor — Not an authorised text within Art. 348 — Order referring dispute to Labour Court passed by Deputy Labour Commissioner is without jurisdiction. See Constitution of India, Art. 348 (1) (b) (iii). 1961 All L J 506=(1961) 2 Lab L J 187.

●——Arts. 348 (1) (b) (iii) and (3)—Effect of—Order delegating power of State Government under S. 11-A, U. P. Industrial Disputes Act to Deputy Labour Commissioner — Publication of notification in U. P. Gazette not showing that it was authorised by Governor—Not an authorised text within Art. 348—Order referring dispute to Labour Court passed by Deputy Labour Commissioner is without jurisdiction. 1961 All L J 506=(1961) 2 Lab L J 187=1961 All W R (HC) 542=(1961) 2 Fac L R 462 (FB).

ARTICLE 361

——Art. 361 — Appeal to Governor against order passed by State Government—Governor dismissing appeal, without giving reasons—Propriety—Discretion of Governor and Governor acting on advice of Ministers—Distinction—Court cannot question discretion—Effect of Art. 361. (1957) 2 Andh W R 425.

ARTICLE 363

——Art. 363—Merger of Estate (Saurashtra)—Agreement of Merger—Right of estate holder to ijara dues in respect of liquor sale — Agreement construed — (Deed — Construction — Agreement of Merger). AIR 1955 NUC (Sau) 681.

ARTICLE 366

——**Art. 366 (24)** — Constitution (Scheduled Castes) Order (1950), Para 3 — Effect of — Conversion of a member of scheduled castes to Christianity takes him out of category of Scheduled castes. See Constitution (Scheduled Castes) Order (1950), Para 3. **ILR (1963) Andh Pra 500 (DB).**

——**Art. 366, Cl. (10)** — **Meaning of—Departmental regulations are not law.**

The rules in the Bihar and Orissa Education Code are merely departmental regulations which do not create any statutory or legally binding rights and duties. **18 Cut L T 334=AIR 1952 Orissa 259 (259) (Pr 1) (DB).**

ARTICLE 372

——**Art. 372** — Notification purported to be issued under S.17 (b), Mysore Excise Act (5 of 1901) imposing fresh levy, not in continuation of pre-Constitution levy — Levy is not valid. See Constitution of India, Art. 277. **ILR (1964) Mys 116.**

——**Sch. 7, List I** — Interpretation of legislative entries—Principles—Specific entry takes precedence over general entry—Conflict of jurisdiction of legislatures—Extent of invasion to be looked into to determine pith and substance — Doctrine of pith and substance to be applied. See Constitution of India, Preamble. **67 Bom L R 484=I L R (1965) Bom 899 (DB).**

——**Sch. 7, List I, Item 3—Validity of—East Punjab** Urban Rent Restriction Act (3 of 1949). See Houses and Rent—East Punjab Urban Rent Restriction Act (3 of 1949), S. (1) (2). **62 Punj L R 142=ILR (1960) Punj 135.**

——**Sch. VII, List I, Items 13, 14, 15.**

See also Constitution of India, Art. 51.

——**Sch. 7, List I, Entries 53, 93, 95** — Section 394 is not ultra vires Art. 246 of Constitution of India — Provision is within Entry 1 of State List — Section does not violate provisions of Petroleum Act as it occupies a field not occupied by the latter Act—Section imposes only reasonable restrictions and is not, therefore, violative of Art. 19 (1) (f) and (g) of Constitution of India. See Municipalities — Bombay Municipal Corporation Act (3 of 1888), (as amended in 1962), S. 394 (1) (a) (ii). **67 Bom LR 484=ILR (1965) Bom 899 (DB).**

——**Sch. 7, List 2**—Interpretation of legislative entries —Principles — Specific entry takes precedence over general entry—Conflict of jurisdiction of legislatures —Extent of invasion to be looked into to determine pith and substance — Doctrine of pith and substance to be applied. See Constitution of India, Preamble. **67 Bom L R 484=ILR (1965) Bom 899 (DB).**

——**Sch. 7, List 2, Entries 1, 5 and 6—Section 394 is** not ultra vires Art. 246 of Constitution of India—Provision is within Entry 1 of State List — Section does not violate provisions of Petroleum Act as it occupies a field not occupied by the latter Act — Section imposes only reasonable restrictions and is not, therefore, violative of Art. 19 (1) (f) and (g) of Constitution of India. See Municipalities—Bombay Municipal Corporation Act (3 of 1888), (as amended in 1962), S. 394 (1) (a) (ii). **67 Bom LR 484=ILR (1965) Bom 899 (DB).**

——**Sch. 7, List 2, Entry 5** — Provision for minimum wages of employees of local authority is not legislation under Entry 13 but comes within scope of Entry 27 — Provision is not unconstitutional. See Government of India Act (1935), Sch. 7, List 3, Entry 27. **(1963-64) 24 F J R 194 (Punj).**

——**Sch. 7, List 2, Entry 11**—Scope—The power conferred by entry 11 of list 2 to legislate in respect of education includes the power to legislate for control and management of educational institutions, subject of course, to other restrictions on the legislative power contained in part III dealing with fundamental rights, especially Arts. 29, 30 and also 337. AIR 1955 SC 58, Rel. on. **1965 B L J R 844=ILR 45 Pat 411.**

——**Sch. 7, List 2, Item 18** — Validity of East Punjab Urban Rent Restriction Act (3 of 1949). See Houses and Rents—East Punjab Urban Rent Restriction Act (3 of 1949), S. 1 (2). **(62) Punj L R 142 = ILR (1960) Punj 135.**

——**Sch. 7, List 2, Entry 23**—Section 394 is not ultra vires Art. 246 of Constitution of India — Provision is within Entry 1 of State List—Section does not violate provisions of Petroleum Act as it occupies a field not occupied by the latter Act — Section imposes only reasonable restrictions and is not, therefore, violative of Art. 19 (1) (f) and (g) of Constitution of India. See Municipalities — Bombay Municipal Corporation Act (3 of 1888), (as amended in 1962), S. 394 (1) (ii). **67 Bom L R 484 = ILR (1965) Bom 899 (DB).**

——**Sch. 7, List 2, Entry 42** — 'Public purpose' — Requisition of premises for finding shop to facilitate trade and commerce between the State of Assam and the State of West Bengal. See Houses and Rents — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). **64 Cal W N 823.**

——**Sch. 7, State List, Entry 54**—Hire-purchase agreements — Presence of option to buy and an option to return the article to the owner — Terms not conclusive in fixing the nature of the contract— Purpose of the contract to be examined. 7 S T C 587 and 15 S T C 254, Diss. **67 Bom L R 138 = I L R (1965) Bom 458.**

——**Sch. 7, List 3, Entry 24** — Provision for minimum wages of employees of local authority is not legislation under entry 13 but comes within scope of entry 27 — Provision is not unconstitutional. See Government of India Act (1935), Sch. 7, List 3, entry 27. **(1963-64) 24 F J R 194.**

CONSTITUTION OF INDIA (APPLICATION TO JAMMU AND KASHMIR) ORDER (1954)

——**Para. 4 (d)**—Notification under, dated 26-10-1955 —Validity. See Jammu and Kashmir Essential Supplies (Temporary Powers) Ordinance (2003), S. 3. **AIR 1956 J and K 26.**

——**Para. 4 (1) (iii)** — Jammu and Kashmir Preventive Detention Act (2011), S. 8 (1) — Art. 35 (c) is not ultra vires — S. 8 (c), Jammu and Kashmir Preventive Detention Act is competently enacted. See Constitution of India, Art. 35 (c). **AIR 1956 J and K 1 (FB).**

——**Para. 16 (b) (iii)** — Section 3 (1) — Jammu and Kashmir Essential Supplies (Temporary) Powers) Ordinance (2003) — Not hit by Part XIII of the Constitution as being existing law. See Jammu and Kashmir Essential Supplies (Temporary Powers) Ordinance (2003), S. 3 (1). **AIR 1956 J and K 26.**

CONSTITUTION OF INDIA (FOURTH AMENDMENT) ACT (1955)

——S. 2—Abolition of cash grants without compensation held void — Subsequent amendment in Art. 31—Effect of. See Constitution of India, Art. 31. **AIR 1957 Andh Pra 1034.**

——S. 5—Effect of. See U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), S. 11. **AIR 1958 All 154.**

CONSTITUTION OF JAMMU AND KASHMIR

——S. 103—Writ petition against alleged illegal demotion — Only one document showing petitioner as

temporary promotee while others showing him appointed to permanent post—Claim of State that there was dispute about facts and petition should be rejected — Theory of disputed facts applies only to cases where there is contest about facts between parties and not when documents produced by one party indicate certain state of affairs. Constitution of India, Art. 226 — Disputed questions of fact. 1965 Kash L J 179.

——S. 126—Reversion of Civil Servant without show cause notice — Reversion order mentioning ground that servant was not qualified—Facts revealing that servant was qualified — Basis of order held incorrect and reversion illegal — Even temporary servant is eligible for protection of S. 126. AIR 1958 SC 36 and AIR 1962 SC 1711, Rel on. Constitution of India, Art. 311. 1965 Kash L J 179.

CONSTITUTION (SCHEDULED CASTES) ORDER (1950)

——Para. 3—Effect of — Conversion of a member of scheduled castes to Christianity takes him out of category of Scheduled Castes. ILR (1963) Andh Pra 500 (DB).

CONTEMPT OF COURTS ACT (32 of 1952)

●——S. 3 — Any conduct which interferes with or prejudices parties litigants during litigation is contempt of Court—Threat or action amounting to threat held out to person who has approached civil Court for redress, with a view to induce him to forgo the assistance of civil Court, the action amounts to a contempt of Court—(Das and Subba Rao JJ.) Pratap Singh v. Gurbaksh Singh, 1962 (2) Cri L J 262= (1962) 2 S C A 343=1962 Mad W N 628 = (1963) 1 Mad L J (S C) 55 = (1963) 1 Andh W R (S C) 55 = 1962 Supp (2) S C R 838=AIR 1962 S C 1172 (1172) (Pr 11).

—S. 3—Disobedience to orders of Court — Who are liable — Principle — Injunction order issued against President of Panchayat — Vice-President defying it —Vice-President is liable. See Contempt of Courts Act (1952), S. 1. ILR (1964) Andh-Pra 571 (DB).

CONTRACT ACT (9 of 1872)

——Ss. 1, 74 — Scope and applicability — Displaced Persons (Compensation and Rehabilitation) Rules (1955), R. 90 (14) — Forfeiture of deposit under — Validity — Civil Writ Case No. 36-D of 1960 dated 16-2-1961 (Punj), Doubted. 1965 Pun L R (Supp) 170.

——Ss. 2 (d) and 43 — Consideration to one co-promisor—Consideration paid to any of joint promisors would be legally sufficient to support promise of all joint promisors: AIR 1928 Bom 316, Rel. on. (1962) 2 Andh L T 61=ILR (1964) Andh Pra 1400= (1962) 2 Andh W R 276 (DB).

——S. 4 — 'Acknowledgment' — Operation as fresh contract. See Limitation Act (1908), S. 19. (1958) M P L J 347.

——S. 5 — Applicability — Application for allotment under Sugar and Sugar Products Control Order by State Government — If creates contract between Government and producer—If contract of sale within section — Appropriation of contract. See Sales Tax— Bihar Sales Tax Act (VI of 1944), S. 2 (g). (1959) 10 S T C 74 (Pat).

——S. 8 — Applicability—Application for allotment under Sugar and Sugar Products Control Order by State Government — If creates contract between Government and producer—If contract of sale within section —Appropriation of contract. See Sales Tax — Bihar Sales Tax Act (VI of 1944), S. 2 (g). (1959) 10 S T C 74 (Pat).

——S. 10—Deed - Construction - Powers of Attorney —Rules of construction—Principal and Agent.

Powers of attorney must be strictly pursued and are construed as giving only such authority as they confer expressly or by necessary implication. The following are the most important rules of construction: (1) The operative part of the deed is controlled by the recitals. (2) Where authority is given to do a particular act followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts. (3) General words do not confer general powers, but are limited to the purpose for which the authority is given and are construed as enlarging the special powers only when necessary for that purpose. (4) The deed must be construed so as to include all medium powers necessary for its effective execution. 52 P L R 84 and Bowstead's Law of Agency Ref. 1952-22 Com Cas 146 = AIR 1952 Punj 99 (101, 102)(Pt A) (Prs 8, 14).

——S. 11 — Minor — Lease in favour of minor is not void —As it is completed contract, doctrine of mutuality is not applicable — Validity to be judged on the footing that they were completed transfers. AIR 1948 P C 95: 75 I A 115, Rel. on. 1958 M P L J 220, Disting., AIR 1918 Pat 626, Diss. 1965 M P L J (Notes) 2.

——S. 16—Pardanashin Lady—Deed by — Validity— Essentials— Simple transaction—Reading over document without explaining its import—Sufficiency.

The rule that in the case of a document executed by a pardanashin lady it is not sufficient to show that the document was read out to her and that it is further necessary to establish that she understood the nature of the act, applies only where such person transfers property to her disadvantage. It would be necessary to explain the import of the document when the transaction is of a complicated nature, or the document is couched in language which is not simple. Where the transaction is of a simple character and the language used is also simple, reading over the document to her is ordinarily sufficient. To hold that simple transactions entered into by an illiterate and pardanashin woman in the ordinary course of management of her estate ought to be looked at with suspicion and to say that any one dealing with her will be doing so at his peril would well-nigh make it impossile for such a woman to derive any income from her estate. ILR (1951) Nag 516 = 1951 N L J 530 = AIR 1951 Nag 379 (380, 381) (Pt B) (Prs 10, 11).

——S. 16 — Pardanashin lady—Deed by — Validity — Essentials — Independent legal advice— Necessity —(Evidence Act (1872), S. 111).

In the case of transaction by a pardanashin lady, though independent legal advice is not in itself essential for the validity of the same, the disposition made by her must be substantially understood by her and must really be the mental act, as its execution is the physical act of the person who makes it. AIR 1951 Pat 457 (459) (Pt B) (Pr 6) (DB).

——Ss. 18, 19—A representating to B at time of signing partneship agreement that business is joint family business— B signing agreement believing such representation. If business was in fact separate business and then B's assent to agreement on basis of such false representation must be held to be not binding on B. ILR (1964) 1 Mad 872=(1965) 2 Mad L J 65=78 Mad L W 535 (DB).

——S. 19 — Registered document — Plea of non est factum — Executant of deed misled by fraud or misrepresentation — Burden of proof — Illiterate executants other than pardanashin women — Burden is on executant — Rule of protection applicable to pardanashin women does not apply. (1962) 66 Cal W N 254.

——S. 19 — A representating to B at time of signing partnership agreement that business is joint family business — B signing agreement believing such representation. If business was in fact separate business then B's assent to agreement on basis of such false representation must be held to be not binding on B. See Contract Act (1872), S. 18. **ILR (1964) 1** Mad 872.

——S. 23 —T. P. Act (1882), Ss 6 (h) and 8—Alienation of service inam lands relating to Swasthivachakam service is opposed to public policy under S. 23 and is, therefore, illegal under S. 6 (h) : Case law discussed—Held, default clause in maintenance settlement deed was invalid as it amounted to provision, in case of default, for alienation of service inam lands —But default clause being severable, same could be deleted and rest of the deed could be given effect to : AIR 1956 SC 446, Foll. **(1962) 1 Andh L T 479.**

——S. 23—Profits by Manager by contravening Control Order—Liability to Society agent — Extent of. See Co-operative Societies — Madras Co.operative Societies Act (6 of 1932), S. 51· **1957 Andh L T 607= (1957) 2 Andh W R 226.**

——S. 23—Agreement of sale of business — Trifling consideration — Second document stipulating for payment of further sum as maintenance till death and thereafter to his wife till her demise at a fixed sum per mensem was admissible—Sale of business at under value can be a consideration for second document — Evidence to prove further consideration than the one stated in sale deed is admissible — Vendee under obligation to pay maintenance to widow till her death. **(1962) 66 Cal W N 8.**

—S. 23—Notification No. 16, D/- 6th Behman 1352 Fasli issued under R. 72 of Hyderabad Defence Regulation — Forward contract in ground-nuts—Void and unenforceable. **(1962) 40 Mys L J 483 (DB).**

——S. 23—Refund of deposit in execution of option. See Food Grains (Futures and Options) (Prohibition) Order (1942), S. 3 (6). **1953 Raj L W 341.**

——S. 23 (as applied to Jodhpur)—Notification, dated 3rd August, 1943—Forward Contract—Contract was hit by Notification of 3.8.1943—Contract being forbidden by law when it was made was illegal and suit for damages for breach thereof was not maintainable. See Defence of India Rules (1939). R. 90.C. **1953 Raj L W 220.**

——S. 25 (3) — Debts—Pious obligation of sons — Hand-note executed by one of sons as Karta in lieu of father's antecedent debt — Sons' liability for such debt is co-extensive with assets of joint family in their hands—Promissory note held was distinct promise to pay as contemplaled by S. 25, Cl. (3), Contract Act. See Hindu Law. **ILR 42 Pat 704 (DB).**

——Ss. 39 and 75—Repudiation of contract by one party — Other party has option either to accept repudiation and sue for damages for breach or to disregard or refuse to accept it and keep alive the contract with full force and effect. White and Carter v. Mc Gregor, L R 1962 A C 413, Ref. **(1963) 2 Mad L J 153=ILR (1964) 1 Mad 634.**

——S. 43—Consideration to one co-promisor—Consideration paid to any of joint promisors would be legally sufficient to support promise of all joint promisors. See Contract Act, S. 2 (d). **(1962) 2 Andh L T 61=ILR (1964) Andh Pra 1400=(1962) 2 Andh W R 276.**

——S. 44—Debtor and Creditor—Decree against debtors—Liability, joint and several — Release of some debtors does not absolve :others from payment of decretal amount. **1965 Cur L J 485 (Punj).**

- S. 56 — Compulsory winding at instance of Superintendent of Insurances—Effect on, :contract of employment between Company and Secretary — Secretary of Insurance Company—Services terminated due to Official Liquidator taking charge — Right to claim damages for wrongful termination of service—Doctrine of frustration of contract—Applicability — Companies Act (7 of 1913), S. 162. See Insurance Act (1938), S. 53. AIR 1963 Mad 297 **(DB).**

——S. 62—Deed—Material alteration—Test — Altering date of document—Effect.

Alteration of the date of a document such as a bond while it is in possession of the plaintiff would amount to a material alteration because if it does nothing more it at least affects the period of limitation available to a party to sue on that amount.

Where the plaintiff filed a suit on the basis of 'Amount chiti' dated 22nd February, 1955 and it was found that the original date was 19th January, 1955 which was altered to 29th February, 1955. **1959 Nag L J (Notes) 93.**

——S. 63—'Aknowledgment' — Operation as fresh contract. See Limitation Act (1908), S. 19. **(1958) M P L J 347.**

——S. 65—Madras Village Panchayts Act (10 of 1950), Ss. 107 and 124—Limitation under—Starting point—Contract to farm out collection of fees under S. 124 —Plaintiff having knowledge of illegality of levy on 14-6-1956—Defendant not contending that levy was ultra vires—Date of commencement of cause of action for claim under S. 65 of Contract Act is 14.6.1966 and not date of finding by trial Court that levy was ultra vires. **ILR (1955) 2 Mad 324.**

——S. 65—Applicability — Claim for compensation under S. 65 of Contract Act would be out of scope of S. 107 of Panchayats Act. ILR (1947) Bom 860, 869 P. C., Rel. on. (Obiter). See Panchayats — Madras Village Panchayats Act (10 of 1950), S. 107. **ILR (1965) 2** Mad 325.

——S. 65—Suit for cancellation of sale-deed in favour of money-lender by minor — Discretion to allow compension. See Specific Relief Act (1 of 1877), S. 41. **1960 Nag L J (Notes) 59.**

——S. 73—Plaintiff pleading that it suffered loss on resale—What is intended is that loss on resale was criterion for measuring damages. See Civil P. C. (1908), O. 6, R. 1. **ILR (1965) 2 All 343.**

——S. 73—Refusal by defendant to take delivery as per terms of contract—Suit based on breach of contract —Damages on basis of breach of contract — No new cause of action is introduced by plaintiff. See Sale of Goods Act (1930), S. 54 (2). **ILR (1965) 2 All 343.**

——S. 73 — Interest as damages—Person preventing another from having use of his money—Liable to pay interest as damages — See Interest Act (1839), S. 1, Proviso. **1960 Andh L T 524 = (1960) 2 Andh W R 115.**

——S. 73 — Applicability — Omission to pay sum due under contract—Suit for recovery—See Municipalities — C. P. and Berar Municipalities Act (1922), S. 48. **(1957) M P L J (Notes) 191 = 1958 M P C 260 = 1958 M P L J 251=1958 Jab L J 270.**

——Ss. 73, 74 — Deposit and part payment—Distinction.

The difference between an earnest or deposit and an advance part payment of price is now well established in law. "Earnest" is something given by the buyer to the seller to mark the conclusiveness of the contract. This is quite apart from the price. It may also avail as a part payment if the contract goes through. But even so it would not lose its character as earnest if in fact and in truth it was intended as mere evidence of the bargain. An advance is a part payment towards the agreed price of sale to be adjusted at the time of the final payment. If the buyer defaults to carry out the contract, he loses the earnest but may recover the part payment leaving

untouched the seller's right to recover damages. It is characteristic of a deposit to entail forfeiture if the depositor commits breach of his obligation. (1963) 2 Mad L J 153=ILR (1964) 1 Mad 634.

——S. 73 — Breach of contract — Limitation for suit —See Limitation Act (1908), Art. 65. 1959 Raj L W 46 = ILR (1959) 9 Raj 17.

——S. 74 — Income-tax Act (1922) (prior to amendment by Finance Act, 1955), S. 7 (1) and Expln. 2 — Payment whether profit arising from employment or compensation for loss of employment — Test to determine — Assessee employed for definite period — Provision in agreement of employment that if assessee's services were teaminated before expiry of period, assessee would be entitled to compensation — Compensation paid on termination of service held fell within Expln. 2 to S. 7 (1)—See Income-tax Act (1922), prior to amendmeni by Finance Act (1955), S. 7 (1). (1966) 68 Bom L R 15.

——S. 74—Scope and applicability —:Displaced Persons (Compensation and Rehabilitation) Rules (1955), R. 90 (14) — Forfeiture of deposit under — Validity — See Contract Act (1872), S. 1. 1965 Pun L R (Sup) 170.

——S. 135—Surety—Discharge of — Time granted to judgment-debtor by Court with consent of decree-holder but not with consent of surety — Effect of — Contract Act—Applicability.

A surety executed a surety bond on behalf of the defendant judgment-debtor undertaking to pay the decree amount to a particular extent. The judgment-debtor filed an application under O. 20, R. 11 and S. 151, Civil Procedure Code, to order payment of the decree amount in instalments. The decree-holder agreed to give four months' time to the judgment-debtor for paying the balance of the decree amount without the consent of the surety :

Held, the surety was relieved of his liability under the surety bond. Though the provisions of the Contract Act may not, in terms, apply to a case whether the Court gives time to the judgment-debtor the principles underlying the provisions of that Act apply to such a case. I L R (1944) Mad 708; (1944) 1 M L J 234; (1932) 64 M L J 386; I L R 56 Mad 625, Rel. on. (1958) 1 Andh W R 380.

——S. 162—Extent of liability of Port Trust — See Madras Port Trust Act (2 of 1905), S. 40 (1). 70 Mad L W 511 = (1957) 2 Mad L J 98=I L R (1957) Mad 840.

● ——S. 182 — Principal and Agent — Possession of agent or servant—When possession of principal or master — Master and Servant.

In order that the possession of the servant or agent may be juridically regarded as the possession of the master or principal, the servant or agent must be obedient to, and amenable to the directions of, the master or principal. If the master or principal has no hand in the appointment of the servant or agent or has no control over him or has no power to dismiss or discharge him, the possession of such servant or agent can hardly, in law, be regarded as the possession of the principal or master. Charanjit Lal Chowdhury v. Union of India, 64 M L W 47 = AIR 1951 S C 41 (63) (Pt L) (Pr 79).

——S. 182 — Agency — Contract of—Bare allegation of agency is not sufficient — Specific scope of agent's power must be proved — Mere fact that person offers advice or writes letters to another in matters of business does not establish relationship of agency. I L R (1965) 1 Mad 334 (DB).

——Ss. 188 and 227 — Principal and agent — State public servant — Authority to purchase on behalf of State—Liability of State — Unauthorised purchase — State not liable — Contract Act (1872). S. 227—Constitution of India, Art. 300.

The State cannot be made liable for whatever purchases a civil servant makes for the use of the office in which he is working. Before a purchase made by a civil servant can bind the State it should be established that the purchase was authorised by the State or that the purchase is an act which belongs to a class of acts within the actual or apparent authority of the civil servant. 1962 Mys L J (Supp) 527.

——S. 213—Settled account—Essentials—Suit based on such account—Limitation—See Accounts—Settled or stated. 1965 Raj L W 523.

——S 222 — Principal and agent—Suit for accounts against agent — Set off—Claim of agent in respect of losses incurred by him in transactions put through by agent's branch at some other place on behalf of principal — Agent has right to equitable set-off to the extent of losses incurred by him (Obiter relying on). 1965 Raj L W 346=ILR (1965) 15 Raj 1035 = A I R 1966 Raj 229 (230) (Pt E) (Pr 16).

——S. 227—Principal and Agent — State and Public Servant — State cannot be made liable for whatever purchases a civil servant makes for the use of the office in which he is working. See Contract Act (1872), S. 188. 1962 Mys L J (Supp) 527.

CO-OPERATIVE SOCIETIES —BENGAL CO-OPERATIVE SOCIETIES ACT (21 of 1940)

——S. 8 (2)—Restriction imposed by amendment of rules not prejudicial to co-operative society itself — Before passing Rules, authorities need not comply with provisions of S. 8(2). (1963) 7 Fac L R 13 = (1964) 1 Lab L J 145 (Cal).

——Ss. 140 and 8—Amendments to Rules — Amendments are good unless they are shown as bad either on ground of discrimination or denial of opportunity to represent under S. 8(2). (1963) 7 Fac L R 13 = (1964) 1 Lab L J 145 (Cal).

—BIHAR AND ORISSA CO-OPERATIVE SOCIETIES ACT (6 of 1935)

——S. 48—Jurisdiction of Registrar. I L R (1949) 1 Cut 505=AIR 1951 Orissa 271 (272) (Pr 4) (DB).

—BOMBAY CO-OPERATIVE SOCIETIES ACT (7 of 1925)

——S. 7—Scope of section stated—Amendment of by-law restricting membership of society to a section of particular occupation held did not offend the section. AIR 1955 N U C (Bom) 4495.

——Ss. 47, 43, 44 and 46-A (as extended to Delhi)—Registrar's power to order winding up is neither unfettered nor arbitrary — Provision not ultra vires the Constitution—(Constitution of India, Art. 245). I L R (1964) 2 Punj 589 (DB).

——Ss. 47, 43, 44 and 46-A—Order directing winding up of a society — Order being a quasi-judicial one, notice prior to taking action is necessary — (Constitution of India, Art. 226).

The order directing a Co-operative Society to be wound up under S. 47 of the Bombay Co-operative Societies Act is a quasi judicial act and hence a proper notice should be given to the society for showing cause against the proposed action : A I R 1962 S C 1110; A I R 1960 S C 222, Foll. I L R (1964) 2 Punj 589 (DB).

——S. 54 (1) (a) and Preamble — Reference of dispute to Registrar — Requirements for reference — Object of Act and of S. 54 — Dispute need not be in respect of transaction entered into by members in

capacity as a member only: 54 Bom L R 517 (DB), Dissented from., 56 Bom L R 629, Doubted.

Section 54(1)(a) of the Bombay Co-operative Societies Act, 1925, provides for a domestic Tribunal with jurisdiction to decide such of the disputes as fall within its scope. The first paragraph of sub-s. (1) embodies the requirements which necessitate reference of a dispute to the Registrar or his nominee for his decision. These requirements are (1) there should be a dispute; (2) the dispute must touch the constitution or business of the society; and (3) it should arise between the members or past members of the society or between the society or its committee and any officer, agent, member or servant of the society past or present etc. The scope of the business of the society has to be determined by reference to its bye-laws and rules defining the object of the society and the nature of the transactions or dealings which it is required to carry on in furtherance of its object. I L R (1963) Mys 869=(1963) 2 Mys L J 294.

——Ss. 54, 54-A—Arbitration Act (1940), S. 11(2) — Power of Court to remove arbitrator—Scope—Registrar and his nominee under Bombay Co-operative Societies Act — Position of — Court cannot remove them. See Arbitration Act (1940), S. 11(2). AIR 1964 Punj 89.

—BOMBAY CO-OPERATIVE SOCIETIES RULES (1927)

——R. 35—Arbitration Act (1940), S. 11(2) — Power of Court to remove arbitrator—Scope—Registrar and his nominee under Bombay Co-operative Societies Act — Position of — Court cannot remove them. See Arbitration Act (1940), S. 11(2). AIR 1964 Punj 89.

—BOMBAY CO-OPERATIVE TRIBUNAL REGULATIONS (1949)

——Regn. 24—Constitution of Tribunal — Disqualification from being a member of — Any pecuniary interest, however small in matter of dispute disqualifies a person from being a member of the tribunal.

No man can be a judge in his own cause. This applies to a cause in which he has an interest. Any pecuniary interest, therefore, however small, in the matter of dispute wholly disqualifies the person from acting as Judge, unless the disability is removed by a statute or waived by the party. (1962) 64 Bom L R 700=I L R (1962) Bom 660 (DB).

—C. P. AND BERAR CO-OPERATIVE SOCIETIES AMENDMENT AND LIQUIDATORS' ORDERS VALIDATION ACT (10 of 1945)

——S. 4—Effect—See Co-operative Societies — C. P. and Berar Co-operative Societies Amendment and Liquidator' Orders Validation Act (10 of 1945), S. 2. AIR 1956 Nag 183.

—CO-OPERATIVE SOCIETIES ACT (7 of 1925)

——Ss. 3(h)(1) to (5) and 53 (as extended to Delhi)—Classification of society—Registrar classifying a society as "General" pending litigation—Society being really a 'General' one, pendency of controversy does not affect the classificatory order — Main and dominant object of the society must determine the issue. I L R (1964) 2 Punj 589 (DB).

—GWALIOR STATE CO-OPERATIVE SOCIETIES ACT (1997 Smt.)

——S. 77—'Touching the business of a society" — Granting loan to member of society is act touching business of society — Society selling property of the member in realisation of loan — Society does something which has relation to business of society. AIR 1955 N U C (Madh Bha) 3764.

——S. 79—Property belonging to A attached under S. 79 in execution of decree against A — Fact that B was an agriculturist and the property in dispute was occupied by him bona fide for the purpose of agriculture is no ground for exemption from attachment. AIR 1955 N U C (Madh Bha) 3764.

——Ss. 79 and 78 — Rules under S. 78, R. 50(3) — Delegation to Registrar of power to appoint District Inspectors — Validity. See Co-operative Societies — Gwalior State Co-operative Societies Act (Smt. 1997), S. 78. 1960 M P C 195 = 1960 Jab L J 234 = 1960 M P L J 621.

—HIMACHAL PRADESH CO-OPERATIVE SOCIETIES ACT (13 of 1956)

——S. 112 — Constitution of India, Art, 226 — Other remedy open — Election of petitioner as director of Bank held invalid by misinterpretation of bye-law resulting in the miscarriage of justice and the decision of the arbitrator is upheld by the superior authorities, this is a fit case where High Court should exercise its powers conferred by Art. 226 of the Constitution and not drive the petitioner to the necessity of filing a regular civil suit — Remedy of suit under S. 112 of Himachal Pradesh Co-operative Societies Act held not equally efficacious. See Constitution of India, Art. 226. AIR 1959 Him Pra 1.

—HYDERABAD CO-OPERATIVE CREDIT SOCIETIES ACT (2 of 1323F)

——Ss. 42A, 48 — Dispute between a past officer and society — Arbitrator cannot take cognizance. See Co-operative Societies — Hyderabad Co-operative Societies Act (16 of 1952), S. 48. AIR 1956 Hyd 129 (DB).

—HYDERABAD CO-OPERATIVE SOCIETIES ACT (16 of 1952)

——S. 48 — Constitution of India, Art. 226—Error of law—Award under Hyderabad Co-operative Societies Act passed against dismissed servant of society is no ground for issue of writ. See Constitution of India, Art. 226. AIR 1955 Hyd 238 (DB).

——Ss. 56, 57 (1) (as amended) — Scope of — 'Any officer or servant of the society' in—Section 57 (1) — Meaning of Registrar's jurisdiction to refer matter in dispute between the Society and past officer to arbitration. (1958) 2 An W R 362.

—JAIPUR CO-OPERATIVE SOCIETIES ACT (26 of 1943)

——S. 54 — Suit for recovery of advances to the Secretary of the society — Dispute between society and its servant concerning its business — Juridiction of civil Courts is barred impliedly—Civil P. C. (1908), S. 9.

The jurisdiction of the civil Courts to take cognisance of cases involving disputes as are referred to in S. 54, is impliedly barred. The proviso under S. 54 and the provisions of S. 51 do not lead to the inference that the jurisdiction of the civil Courts to try such disputes is not barred. Section 54 is mandatory in terms and the dispute has to be referred to the Registrar for decision. AIR 1938 Cal 327; AIR 1924 Lah 418; AIR 1935 Lah 947; AIR 1937 Lah 268; AIR 1954 H P 63 : 1895 (1) Q B 246 C A, Rel. on; AIR 1940 Rang 145, Distinguished. 1962 Raj L W 41.

——S. 54 — Jurisdiction — Suit regarding advances to its Secretary by Co-operative Society filed in Civil Court — No objection for staying of proceedings in Civil Court raised by defendant — Submission to jurisdiction does not vest jurisdiction; it is barred — Civil P. C. (1908), S. 9. 1962 Raj L W 41.

—J. & K. CO-OPERATIVE SOCIETIES ACT (6 of 1993 Smt.)

——S. 104 (2)—Remedy by petition under S. 104 (2) available—Writ petition not maintainable. See Constitution of India, Art. 226. AIR 1965 J & K 39 (DB).

—MADHYA BHARAT CO-OPERATIVE SOCIETIES ACT (9 of 1955)

——S. 68—Amount received by Chairman of Society for repayment to another body not vouched by pakka receipts of that body treated as advance to Chairman, who asked for time to repay the amount — Claim by society under S. 67—Absence of Chairman to appear before the Assistant Registrar resulting in ex parte award — Writ petition alleging failure of justice for non-framing of issues by Assistant Registrar — Held, in view of admission of liability, non-framing of issues did not cause failure of justice. 1964 M P L J (Notes) 219.

——S. 77 — Suit against Government — Co-operative bank impleaded in order to effectively and finally determine plaintiff's claim — Bank held proper and not necessary party—Suit could not be dismissed for want of notice under S. 77 of M. B. Co-operative Societies Act to the Bank. 1965 Jab L J 734.

—MADHYA PRADESH CO-OPERATIVE SOCIETIES ACT (1960) (17 of 1961)

SECTION 69

——S. 69 — Order under S. 69 (2) (b) — No notice as required by Ss. 69 (2) and 69 (3)—Winding up order is illegal. (1965) Jab L J 1066 = 1965 M P L J 964.

—MADRAS CO-OPERATIVE SOCIETIES ACT (6 of 1932)

——S. 2 (a)—Bye-laws of West Godavari Co-operative Marketing Federation Ltd. — Transitory Bye-law No. 14 invalid and not inconsistent with Bye-law No. 26 — Registrar has got powers to nominate Board of Directors under latter bye-law. I L R (1962) Andh Pra 618 (DB).

——S. 2 (a) — Bye-laws of West Godavari Co-operative Marketing Federation Ltd., Bye-law No. 15 and Transitory Bye law No. 14—Registrar has no power to nominate President, Vice-President and Treasurer for further periods—This should be done by election according to Bye-law No. 15. ILR (1962) Andh Pra 618 (DB).

——S. 2 (a) — Bye-laws of West Godavari Co-operative Markating Federation Ltd., Bye-law No. 13 (a) and Transitory Bye-law No. 14 — Person not possessing qualification of Director as required by bye-law No. 13 (a)—Registrar cannot nominate such person as Director. ILR (1962) Andh Pra 618 (DB).

——S. 12 — Deletion of part of bye-laws amounts to amendment to bye-laws of registered society — It will not be valid until it has been registered. I L R (1962) Andh Pra 618 (DB).

——S. 51 — Scope — Decree of Registrar in a claim under S. 51 — Sale held by Deputy Registrar in execution — If can be challenged in Civil Court — Sanction obtained after filing of suit — Whether cures initial defect. (1963) 1 An W R 323.

——S. 57 — Scope — Decree of Registrar in a claim under S. 51—Sale held by Deputy Registrar in execution — If can be challenged in Civil Court—Sanction obtained after filing of suit — Whether cures initial defect. (1963) 1 An WR 323.

—MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960 (24 of 1961)

——Ss. 2 (13) and 75 — Maharashtra Co-operative Societies Rules (1961), R. 22 — Board of Directors of Society, election of — No provision in Act that election has to be at general meeting — Rule 22 has no application — Tribunal holding R. 22 applicable and setting aside election—Error of law apparent on face of record — Order of Tribunal held liable to be set aside — Constitution of India, Art. 227. 67 Bom L R 197 = 1965 Mah L J 343 = ILR (1965) Bom 379 = AIR 1965 Bom 191 (193, 194, 195) (Prs 4, 5, 6) (DB).

——S. 2 (16) — Dispute between member of Housing Society and person to whom he had given his flat for occupation without consent of society — Dispute is one touching 'business of society' within meaning of S. 91 (1) — It would not change its nature merely because society is not made party to proceeding. 63 BLR 985, Foll. See Co-operative Societies — Maharashtra Co-operative Societies Act, 1960 (24 of 1961), S. 91 (1). 1965 Mah L J 523=ILR (1966) Bom 23=67 Bom L R 306 (DB).

——Ss. 91, 91 (2) and 93 (1)— Satisfaction of Registrar contemplated by S. 93 (1) about existence of dispute within meaning of S. 91 is not provisional satisfaction arrived at after perusal of application for reference of dispute made to him but is one arrived at after hearing parties — Satisfaction so arrived at is equivalent to his decision under S. 91 (2) — Fact that above interpretation may lead to increase in work in office of Registrar and delay in disposal of proceedings before him is for Government to consider. ILR (1966) Bom 23=1965 Mah L J 523=67 Bom L R 306 (DB).

——S. 91—Maharashtra Co-operative Societies Rules (1961), R. 75 — Civil P. C. (1908) S. 9— Application for reference of dispute under R. 75—Question whether dispute exists or not has to be decided by reference to averments made in application : 66 B L R 106 and 66 B L R 205 and 66 B L R 645, Foll. ILR (1966) Bom 23 = 1965 Mah L J 523 = 67 Bom L R 306 (DB).

——S. 91, Expln. 2 (i) — Dispute arising out of loan advanced to member by society otherwise than in his capacity as member—It is still dispute within meaning of S. 91 : 56 B L R 629, Foll. I L R (1966) Bom 23=1965 Mah L J 523=67 Bom L R 306 (DB).

——S. 91 (1) (b) — 'Claiming through a member' — Words mean deriving title or rights through a member by reason of his being a member or in his capacity as a member — Contention that person can be said to claim through a member only when he claims membership rights is not acceptable : 54 B L R 517 and 56 B L R 629, Rel. on. I L R (1966) Bom 23 = 1965 Mah L J 523=67 Bom L R 306 (DB).

——S. 93 (1)—Satisfaction of Registrar contemplated by S. 93 (1) about existence of dispute within meaning of S. 91 is not provisional satisfaction arrived at after perusal of application for reference of dispute made to him but is one arrived at after hearing parties —Satisfaction so arrived at is equivalent to his decision under S. 91 (2)—Fact that above interpretation may lead to increase in work in office of Registrar and delay in disposal of proceedings before him is for Government to consider. 1965 Mah L J 523 =ILR (1966) Bom 23=67 Bom L R 306 (DB).

——S. 93—Co-operative Societies — Maharashtra Co-operative Societies Act, 1960 (24 of 1961) Ss. 91, 93 and 94 — Application to Registrar by Member of Housing Society — Application for possession of flat given by applicant to some other person and for arrears of compensation — If Registrar is competent to entertain application for possession, he will also have jurisdiction to decide claims of past as well as future mesne profits until possession is

given : 55 B L R 271, Foll. 1965 Mah L J 523 = ILR (1966) Bom 23=67 Bom L R 306 (DB).

——S. 166 — Failure of Registrar's nominee to complete case within two months — Nominee does not become functus officio. See Bombay Co-operative Societies Act (VII of 1925), S. 54. 1964 (1) Cri L J 652 = AIR 1964 Bom 147.

—MAHARASHTRA CO-OPERATIVE SOCIETIES RULES (1961)

——R. 22—Board of Directors of Society, election of —No provision in Act that election has to be at general meeting — R. 22 has no application. See Maharashtra Co-operative Societies Act (XXIV of 1961), S. 2 (13). AIR 1965 Bom 191.

——R. 75—Co-operative Societies—Maharashtra Co-operative Societies Act 1960 (24 of 1961), S. 91—Maharashtra Co-operative Societies Rules (1961), R. 75 — Civil P. C. (1908), S. 9 — Application for reference of dispute under R. 75 — Question whether dispute exists or not has to be decided by reference to averments made in application. 66 B L R 106 and 66 B L R 205 and 66 B L R 645, Foll. See Co-operative Societies — Maharashtra Co-operative Societies Act, 1960 (24 of 1961), S. 91. 1965 Mah L J 523=ILR (1966) Bom 23=67 Bom L R 306 (DB).

—MYSORE CO-OPERATIVE SOCIETIES ACT (52 of 1948)

——S. 52 (5) (a), (b) and S. 62 (1) — Mysore Co-operative Societies Act (11 of 1959), Ss. 131 and 105 — Scope — Right of appeal becomes vested when the proceedings are first initiated—Right cannot be taken away without an express provision therefor in the later statute—Right of appeal under the 1948 Act which has become vested, held, was not taken away by the 1959 Act. (1964) 2 Mys L J 433=(1965) 1 Law Rep 444 (DB).

——S. 129 — Mysore Co-operative Societies Rules (1960), R. 5 (1) (k) and Bye law 59-A—'Appointment' in R. 5 (1) (k) does not mean 'election'. (1964) 1 Mys L J 289=ILR (1964) Mys 330 (DB).

—PUNJAB CO-OPERATIVE SOCIETIES ACT, 1954 (14 of 1955)

——S. 60—Punjab Co-operative Societies Rules (1956), Rr. 36, 43—Rules made by Registrar under — "Rules of Election to the Board of Directors of the Co-operative Sugar Mills", R. 8 — R. 8 covering election disputes not in conflict with S. 50 which deals with business carried on by Society — Interpretation of Statutes — Harmonious construction. 1963 Cur L J 321 (Punj).

—PUNJAB CO-OPERATIVE SOCIETIES ACT (25 of 1961)

——S. 54—Amounts due from Directors of society on account of misconduct — Registrar cannot without notice unilateraly determine — Determination of amount without show cause notice— Amount cannot be recovered as land revenue. 1965 Cur L J 162 (Punj).

——S. 59—Amount due from Directors of society on account of misconduct — Registrar cannot without notice unilateraly determine — Determination of amount without show cause notice—Amount cannot be recovered as land revenue. 1965 Cur L J 162 (Punj).

——S. 63—Amount due from Directors of society on account of misconduct — Registrar cannot without notice unilateraly determine — Determination of amount without show cause notice—Amount cannot be recovered as land revenue. 1965 Cur L J 162 (Punj).

—PUNJAB CO-OPERATIVE SOCIETIES RULES (1956)

——R. 43:— Rules made by Registrar under—"Rules of Election to the Board of Directors of the Co-operative Sugar Mills" R. 8—R. 8 covering election disputes not in conflict with S. 50 which deals with business carried on by society — Interpretation of Statutes — Harmonious Construction. 1963 Cur L J 321 (Punj).

—TRAVANCORE CO-OPERATIVE SOCIETIES ACT (5 of 1112, M. E.)

——S. 10 — Society registered under — Bye-laws — Nature of—Authority of secretary—Undertaking to pay debt of member—If binding on society.

The bye-laws are not merely rules of internal management but these govern and regulate dealings of the Society with the outsiders. The Secretary is only an officer of the society and he can bind the Society only when he acts within the scope of his authority as provided by the bye-laws. An undertaking to discharge a debt of a member is not one of the objects of the Society and, even if it were, the Secretary could not under bye-law 27 execute a deed undertaking such a liability. Where a party obtains such an undertaking from the Secretary alone, he acts with gross negligence in the matter and the society cannot be made liable under such an undertaking by the secretary. 1957 Ker L T 1079.

——Ss. 54, 56—Applicability and scope—Society's funds found short—Dispute between member and society.

It is only in the four cases specified in S. 54 that that section applies and if there is a dispute between a member and the society relating to society's funds found short, the 56th is the section that applies. The language of S. 56 is wide enough to take in dispute between the society and a member, however the dispute might have arisen. 1955 Ker L T 280=I L R (1955) Trav-Co 187=AIR 1955 Trav-Co 260 (261) (Pt B) (Pr 5) (DB).

——S. 56—'Dispute touching the business of a registered society'—Dispute between sureties—Nature of —(Travancore-Cochin Co-operative Societies Act (10 of 1952), S. 62).

If there is a dispute among the members of a co-operative society, which has some reference or relation to the business of that society, the requirements of paragraph 1 and clause (a) of S. 56 (1) would be satisfied and the Registrar would be competent to decide the dispute himself or to refer it to an arbitrator under S. 56 (2). A dispute between two members of a co-operative society, who were sureties for a loan taken from the society by another member, as to their rights and liabilities inter se in regard to a claim for contribution on account of the discharge of the debt by one of them, being a dispute about rights and liabilities which came into existence on account of the business of the society, is a dispute 'touching the business of a society' falling under S. 56 (1) (a) : (1953) 2 M L J 340 : AIR 1954 Mad 103 (FB); A I R 1954 Bom 101 ; S. A. No. 520 of 1955 (T C), Rel. on. 1957 Ker L J 286=ILR (1957) Ker 313=1957 Ker L T 362.

——S. 56 (1), Explanation — Scope—(Travancore-Cochin Co-operative Societies Act (10 of 1952), S. 60).

The Explanation does not say that the dispute referred to in S. 56 (1) must be a dispute in respect of an existing debt or demand. All that it says is that a claim for a debt or demand due to the society from a member or other persons mentioned therein, whether it is admitted or not, will also be a dispute touching the business of the society. 1957 Ker L J 286=ILR (1957) Ker 313=1957 Ker LT 362.

—Ss. 56, 57—Arbitration under S. 56—Bar of Civil suit—Remedies of aggrieved party.

Where there is an arbitration and award under S. 56, the prohibition in cl. (2) of S. 57 comes into play and a suit in the Civil Court is barred. The only remedies available to a party aggrieved by the award is that he is entitled to seek a revision thereof before the Registrar under S. 56 and is entitled to a further revision to the Government under the proviso to S. 57 (1). 1955 Ker L T 280=ILR (1955) Trav-Co 187 = A I R 1955 Trav-Co 260 (261) (Pt A) (Pr 5) (DB).

—S. 56—Applicability and scope — Society's funds found short—Dispute between member and society—S. 56 applies. See Co-operative Societies—Travancore Co-operative Societies Act (5 of 1112 M. E.), S. 54. AIR 1955 Trav-Co 260 (DB).

—S. 56—Proceedings under—Rules of evidence and procedure.

The rules of evidence and procedure applicable to civil Courts are not finding upon an arbitrator. If he is satisfied he can pass an award according to his conscience though that decision may not stand the test applicable to strict judicial proceedings. 1955 Ker L T 280=ILR (1955) Trav-Co 187=AIR 1955 Trav-Co 260 (261) (Pt C) (Pr 5) (DB).

—S. 57—Arbitration under S. 56—Bar of Civil suit—Remedies of aggrieved party indicated. See Co-operative Societies—Travancore Co-operative Socities Act (5 of 1112 M.E.), S. 56. AIR 1955 Trav-Co 260 (DB).

—S. 59 (a)—Limitation Act (1908), Arts. 180 and 181—Travancore Limitation Act, Arts. 164 and 165—Property purchased at sale in execution—Certificate issued by Registrar, Co-operative Societies—Application for delivery of possession — Limitation—The application will be governed by Art. 164 if the decision of the Registrar when it is filed in a Civil Court becomes in effect a decree of the Civil Court and, in any case, Art. 165 would clearly apply. See Limitation Act (1908), Art. 180. AIR 1952 Trav-Co 37 (DB).

—S. 65—Order passed by Government in exercise of revisional powers—Validity of order.

The order was passed by the Government in the exercise of revisional jurisdiction vested in it by S. 65 and was not, therefore, invalid or ultra vires. I L R (1951) Tra-Co 609=AIR 1952 Trav. Co 264 (267) (Pt B) (Pr 6).

—S. 74—Rules under R. 38—Reference to single arbitrator—Concurrrence of party not necessary—(Travancore Arbitration Act (11 of 1115), Pre.)—(Interpretation of Statutes—Later Acts) — (Civil P. C (1908), Pre.).

When a statute provides for the forum for adjuication of certain matters and provisions are made regarding the details thereof, a subsequent statute cannot in the absence of inconsistency or express terms in that behalf operate to abrogate any of the provisions of the earlier one.

The Travancore Co-operative Societies Act contained a complete machinery for the adjudication of disputes and there is nothing in the later Act 11 of 1115 abrogating any of those provisions. The contention that the rules have only subordinate importance cannot be accepted in view of the provisions contained in S. 74 (4). In express terms of the Statute, no concurrence of any party is necessary when reference is to a single arbitrator which can be made by the Registrar alone. 1955 Ker L T 280=ILR (1955) Trav-Co 187=AIR 1955 Trav Co 260 (261, 262) (Pt D) (Pr 6) (DB).

—TRAVANCORE-COCHIN CO-OPERATIVE SOCIETIES ACT (10 of 1952)

—S, 10—Registration of Co-operative Societies—Discretionary power vested in Registrar—Delegation to Deputy Registrar on strength of Government Memorandum—Amounts to interference by Government with exercise of judgment by Registrar.

By S. 10 of the Act, the Registrar is called upon to exercise a statutory function in deciding whether a society should be registered or not. Government can exercise only an appellate jurisdiction in a case of refusal to register. The Registrar is not to act under the dictation of some person to whom authority is not given by law.

Thus, where the Registrar has, instead of exercising his discretion, directed the Deputy Registrar of Co-operative Societies on the strength of Government Memorandum, to take steps to register a co-operative society for the collection of white limeshell.

Held, that this amounted to an interference by Government with the exercise of his judgment by the Registrar. (1960) 2 Ker L R 570=1960 Ker L T 1100.

—Ss. 61 and 86—Government cannot review its own order passed in revision. See Travancore-Cochin Interpretation and General Clauses Act (7 of 1125), S. 13(1). 1961 Ker L T 728 = 1961 Ker L J 642 =ILR (1961) 2 Ker 326.

—S. 86—Government cannot review its own order passed in revision. See Travancore-Cochin Interpretation and General Clauses Act (7 of 1125), S. 13 (1). 1961 Ker L J 728 = 1961 Ker L J 642=ILR (1961) 2 Ker 326.

—U. P. CO-OPERATIVE SOCIETIES ACT (2 of 1962)

—S. 43 (2) (1)—Validity—Not opposed to Art. 14 of the Constitution — Constitution of India, Art. 14.

Section 43 (2) (1) which empowers the Rule making authority to frame Rules enabling Registrar in his discretion to either decide the case himself or forward it for arbitration is not opposed to Art. 14 of the Constitution. The powers under it must be exercised for the purpose of the Act, and there is sufficient indication in the object and purpose of the Act to define the scope within which those powers must be exercised. AIR 1961 S C 1602, Ref. 1965 All WR (HC) 258.

—U. P. CO-OPERATIVE SOCIETIES RULES (1936)

—R. 14 — Arbitration Act (1940), Ss. 30 and 33 — Applicant employed by Co-operative Society as payment contractor—Dispute referred to statutory arbitration — Binding nature — Application to declare award unenforceable, is maintainable — (Co-operative Societies Act (1912), S. 2 (d)) — (Words and Phrases—'Officer'). See Arbitration Act (1940), S. 30. AIR 1960 All 500 (DB).

—R. 115—Validity—Does not contravene Art. 14—Constitution of India, Art. 14.

Rule 115 does not contravene Art. 14 of the Constitution. The principle upon which a complaint that Art. 14 is violated must be examined, is that the statute or rule must operate unequally against persons similarly situated. In respect of procedural provisions of the U. P. Co-operative Societies Rules, whether a dispute is decided by the Registrar or is the subject of arbitration proceedings, there is no difference whatever. If an award is given by the arbitrator, the appeal ultimately lies to the Registrar so that in the final analysis the decision even upon a matter referred to arbitration is rendered by the Registrar. 1965 All W R (H C) 258.

—R, 115—Arbitration Act (1940), Ss. 30 and 33 — Applicant employed by Co-operative Society as payment contractor—Dispute referred to statutory arbi-

tration—Binding nature — Application to declare award unenforceable, is maintainable —(Co-operative Societies Act (1912), S. 2 (d))—(Words and Phrases—'Officer')—See Arbitration Act (1940), S. 30. **AIR 1960 All 500 (DB).**

——R. 115 — **Dispute between society and its officer —Validity of reference to arbitrator where past officer is concerned.**

Rule 115 (iii) permits a reference to an arbitrator in respect of any dispute touching the business of a registered society between the society and its officers. It does not contemplate a reference to an arbitrator of any dispute touching the business of the society between the society and a past officer. If therefore, a reference is made when such person has ceased to be an officer of the society, it is not a dispute touching the business of the society between the society and its officer and therefore it cannot be referred to an arbitrator. **1956 All L J 950=1956 All W R (HC) 700.**

——R. 134—Arbitration Act (1940), Ss. 30 and 33—Applicant employed by Co-operative Society as payment contractor — Dispute referred to statutory arbitration—Binding nature — Application to declare award unenforceable, is maintainable—(Co-operative Societies Act (1912), S. 2 (d))—(Words and Phrases—'Officer') — See Arbitration Act (1940), S. 30. **A I R 1960 All 500 (DB).**

——R. 138—Advocates Act (1961), S. 30 — **Appearance of legal practitioner in arbitration proceedings—Prohibition under R. 138 — Rule when ceases to operate by virtue of S. 30 of Advocate's Act.**

Rule 138 cannot be held to have ceased to operate by virtue of S. 30 of Advocates Act, unless it is shown that a notification, appointing a date from which the provisions of S. 30 of the Advocates Act shall come into force, has been issued by the Central Government. **1965 All W R (H C) 258.**

——R. 138— Validity — Is not ultra vires on ground that it discriminates between parties to arbitration in regard to prohibition to be represented by legal practitioner—Constitution of India, Art. 14. **1965 All W R (H C) 258.**

——R. 138—**Validity — Appearance of legal practitioner in arbitration proceedings — Prohibition of — Contravention of Art. 19 (1) (g)—Contention as to—Who can raise—Constitution of India, Art. 19 (1) (g).**

The contention that R. 138 which prohibits the appearance of a legal practitioner in arbitration proceedings, contravenes Art. 19 (1) (g) of the Constitution, is open only to an Advocate who complains that his fundamental right to practise, assuming that there is an untramelled right in that behalf, has been contravened. The party to the arbitration proceedings who is not himself an Advocate but complains that he is entitled to be represented by an Advocate cannot contend that R. 138 which prevented him from doing so contravenes Art. 19 (1) (g). **1965 All W R (H C) 258.**

COURT-FEES ACT (7 of 1870)

——S. 7 — Amount of court-fee depends on plaint allegations and reliefs claimed and for this purpose Court should look beyond mere form and verbiage of plaint and arrive at what is real substance: 21 C W N 375 and 39 C W N 131 and 48 C W N 598, Rel. on. **ILR (1962) 1 Cal 75 (DB).**

——S. 7 (iv) (c) — Suit for getting a right of Mutawalliship of wakf estate and to gain control of management of estate — Held suit was not in effect one for declaration of title and recovery of possession and hence could not be valued ad valorem under S. 7 (iv) (c). **ILR (1962) 1 Cal 75 (DB).**

——S. 7 (iv) (c) — By consequential relief is meant when relief follows directly from declaration given—Suit for declaration of plaintiff's right to mutawaliship and for removal of defendant from that office—Held, relief claimed in second prayer was independent of declaratory relief and could either be granted or refused apart from relief claimed in first prayer. **ILR (1962) 1 Cal 75 (DB).**

——S. 7 Cl. (iv) and (v)—Suit by plaintiffs for possession in respect of property alienated by their father —Held valuation would be governed by provisions of Cl. (v) and not by Cl. (iv) : AIR 1945 Pat 421, Ref. **(1965) ILR 44 Pat 1009.**

——S. 7 (v) Clauses (a) (b), (c) and (d) — Estate in which suit properties were included vesting in Government under Bihar Land Reforms Act, 1950 after suit was instituted — Held after vesting, element of paying revenue to Government could not be fixed upon the 'estates' though they continued to be known as estates and, therefore, none of the cls. of S. 7 (v) were attracted but that did not mean that suiter was completely free from paying any court-fee on his pleadings. A court-fee would be payable according to value of subject matter — How subject-matter would be valued was for Court to decide. Bihar Land Reforms Act (30 of 1950), Ss. 2, 3, 4. **(1965) ILR 44 Pat 1009.**

——**Sch. I Art. 1 and Sch. II Art. 11 — Order of restitution under S. 144 Civil P. C.—Appeal against — Order is not one in execution within meaning of S. 47, Civil P. C.**

Notification No. 4650 of 10-9-1899 will not apply —Court-fee payable will be ad valorem under Sch. I Art. 1 and not fixed fee under Sch. II Art. 11 — Civil P. C. (1908), Ss. 2 (2), 47 and 144. **(1963) 1 Mys L J 531=ILR (1962) Mys 991 (DB).**

——**Sch. II, Art. 17 — Cases falling within Art. 17 — Fixed court-fees are payable and such cases are expressly excluded from purview of S. 8, Suits Valuation Act (1887).**

In cases falling within Sch. II, Art. 17 of the Court-Fees Act fixed court-fees are payable and such cases are expressly excluded from the purview of S. 8 of the Suits Valuation Act. **ILR (1962) 1 Cal 75 (DB).**

——**Sch. II, Art. 17, Cl. VI — Suit for declaratory decree paying reliefs for removal of defendant from mutawaliship and for framing of scheme for proper management of wakf estate—Held both reliefs should be governed by Cl. VI. ILR (1962) 1 Cal 75 (DB).**

——**Sch. II, Art. 17 (1)**— Suit decreed before Madras Act of 1955—Suit under O. 21, R. 58 filed and decided after Act of 1955—Suit under R. 63—Court-fee is payable under S. 41 (2) and not under Act of 1870. See Madras Court-fees and Suits Valuation Act (14 of 1955), S. 87 (2). **78 Mad L W 497.**

——**Sch. II, Art. 17 (vi) — Suit under S. 77, Registration Act—Plaintiff can put his own valuation for purposes of jurisdiction — (Registration Act (1908), S. 77). AIR 1955 NUC (Orissa) 709.**

CRIMINAL PROCEDURE CODE (5 of 1898)

——S. 1 — Criminal and Civil proceedings —Distinction between — Essential characteristic of offence is that its consequences are penal in nature. **I L R (1962) 2 Punj 114=64 Pun L R 892=1962 Cur L J 239.**

——S. 4 (1) (p)—Statement made to officer appointed under S. 38 (1)—Nature of—Admissibility in trial for offence under S. 36 (1) (b). See Sales Tax — Bombay Sales Tax Act (3 of 1953), S. 36 (1) (b). **(1958) 9 STC 681 (Bom).**

——S. 5 (2) — Member of Territorial Army convicted by court-martial of offence under S. 39 (d), Army Act (1950) — Member must be deemed to have been convicted on criminal charge by competent tribunal and falls within mischief of proviso (a). (1963) 6 FLR 134 (Cal).

——S. 14 — "In the service of" — Honorary Magistrate. See Panchayats — Bihar Panchayat Raj Act (1948), S. 79 (b). (1956) B L J R 691 = ILR 35 Pat 1004.

——S. 32—Criminal prosecution — Delay — Effect—Delay in prosecuting person is not desirable, but accused cannot escape punishment merely because prosecution was launched after considerable delay. AIR 1955 All 531 (533, 534) (Pt C) (Pr 5).

——Ss. 32 and 367 (5)—General principles as to sentence — Discretion of Court — Murder cases — Discretion not affected in any way by amendment of S. 367 (5) in 1956. (1961) 2 Guj L R 451 (DB).

——S 87 — Scope — Section 87 of the Code authorises a Court to issue a proclamation against a person against whom a warrant has been issued, if it has reason to believe that, that person has absconded or is concealing himself so that such warrant cannot be executed. 1957 All L J 857 = 1958 Cri L J 324 = AIR 1958 All 214 (222) (Pr 32) (DB).

——S. 88 — Proclamation — Attachment and sale, when to be ordered under S. 88 of the Code, the Court issuing a proclamation under S. 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person, the attached property is liable to be sold as provided by S. 88. 1957 All L J 857= 1958 Cri L J 324 = AIR 1958 All 214 (222) (Pr 32) (DB.)

——S. 89 — Law looks upon absconder with disfavour.

Section 89 makes it clear that the law looks upon the absconder with very great disfavour, for S. 89 which provides for the restoration of attached property in certain cases, makes it perfectly clear that restoration in favour of an alleged absconder is only possible if he satisfies the Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that no notice of the proclamation as to enable him to attend within the time specified therein, 1957 All L J 857 = 1958 Cri L J 324=AIR 1958 All 214 (222) (Pr 32) (DB).

——S. 90 — Order directing delivery of possession — Power to issue search warrant. See Madras Hindu Religious and Charitable Endowments Act (1951), S. 87 (c). (1956) 2 Mad L J 453.

——Ss. 107 and 151 — Scope — S. 107 does not contemplate a cognizable offence for which police can arrest without warrant under S. 151. Criminal Miscellaneous No. 574 of 1964, dated 28-9-1964 (DB), Foll. (1964) BLJR 847 (DB).

——Ss. 117 (3) and 112 — Interim security — Magistrate must record in writing his reasons for satisfaction—Procedure indicated by S. 112 must be adopted before passing an order under S. 107. 1964 BLJR 847 (DB).

——S. 139-A — Order passed by Magistrate under S. 137 (2) — Failure of Magistrate to hold enquiry under S. 139-A (1) — Complainant cannot take advantage of such omission for setting aside order. See Criminal P. C. (1898), S. 137 (2). ILR (1963) 2 Punj 221.

——S. 145 — Preliminary order defective — Notice issued indicating satisfaction of Magistrate about likelihood of breach of peace—Final order held was proper.

Where in a petition under S. 145 the Magistrate passed an order admitting the case and calling for other party and after the appearance of the parties and statements made by them passed an order under S. 145 (6). (1965) 2 Andh W R 122=1965 Mad L J (Cri) 550.

——Ss. 145, 435, 439—Order passed under S. 145—No distinction as judicial order and administrative order—Direction by Magistrate to receiver appointed under S. 145 (1) to hand over possession to party in whose favour final order under S. 145 (6) is passed —Such direction is revisable : (1959) 1 An W R 61 and AIR 1948 Mad 234, Diss. from.

Section 145 does not make any distinction between a judicial order and an administrative order. So long as the order passed by the Magistrate is one under the Criminal P. C. the power of revision under Ss. 435 and 439 extends to such orders. (1964) 2 Mys L J 38.

——S. 145 (4) — Attachment of property and possession of Receiver — Attachment will enure for benefit of person ultimately declared to be in possession and not for one ultimately declared to be true owner of property for computing limitation under Art. 142, Limitation Act (1908) : AIR 1926 Cal 782 and AIR 1964 S C 907, Foll. (1965) 31 Cut L T 1153.

——Ss. 145 and 146 — Preliminary order passed and date fixed for filing written statements, documents and affidavits — Parties appearing on date fixed and applying for time for filing documents — On date adjourned parties again applying for time —Dropping of proceedings by Magistrate — Held, the order was bad as, on the materials on record of the case, it could not be said that the dispute in respect of which the preliminary order was passed had ceased to exist —Further, the question of making reference under S. 146 also did not arise. AIR 1965 Pat 469. Dist., Case law discussed. (1965) 31 Cut L T 955.

——Ss. 145 (1) and (3) and 537 — Effect of noncompliance with the provisions of the section — Failure to make a preliminary order and to publish the same — Failure is a mere irregularity curable by S. 537 and does not affect jurisdiction of Magistrate.

The essential condition for the exercise of jurisdiction by a Magistrate under S. 145 is that information should be laid before him that a dispute likely to cause breach of the peace exists concerning any land or water or boundaries thereof within the local limits of his jurisdiction and he should be satisfied on the basis of that information that he should proceed in the matter. Once he is so satisfied on the basis of the information received by him, he is seized of jurisdiction and the further question as to whether he passes a final order under sub-s. (1) of S. 145 or gets the same published as required by sub-s. (3) thereof, are matters relating to the mode of procedure. (1963) 65 Pun L R 842=ILR (1964) 1 Punj 1.

——S. 146—Preliminary order passed and date fixed for filing written statements, documents and affidavits — Parties appearing on date fixed and applying for time for filing documents—On date adjourned parties again applying for time — Dropping of prosecution by Magistrate—Held the order was bad as, on the materials on record of the case, it could not be said that the dispute in respect of which the preliminary order was passed had ceased to exist—Further, the question of making reference under S. 146 also did not arise. (1965) 31 Cut L T 955.

——Ss. 154 and 367 — Non-mention of names of witnesses in F. I .R.—Credibility of witness—The F. I. R. is not a substantive evidence and is not evidence of the existence of facts which it mentions. It can be used only by way of corroboration or contradiction and not any further. This will show that the omission of the name of a witness in the F. I. R. does

not necessarily discredit him. A I R 1955 NUC (Hyd) 2966 (DB).

——S. 154—First information report given by person subsequently charged with offence — Even portion not self-incriminatory cannot be treated as substantive evidence. 1963 Mad W N 638.

——S. 154 — First information report in cognizable case made during course of investigation — Inadmissible in evidence—But further investigation made on basis of such report, not illegal. See Criminal P. C. (1898), S. 162. (1963) 29 Cut L T 217.

——Ss. 156 (2) and 537—Penal Code (1860), S. 376—Offence under S. 376 committed in Railway area — Contention that Sub-Inspector of Police was not competent to investigate case, as offence was committed within jurisdiction of Railway police — Held, offence being cognizable, S. 156 (2) would stand in way of contention — Proceedings of Court not vitiated. A I R 1956 SC 196, Foll. I L R (1965) Andh Pra 650.

——S. 156 — First information report in cognizable case made during course of investigation — Inadmissible in evidence — But further investigation made on basis of such report, not illegal. See Criminal P. C. (1898), S. 162. (1963) 29 Cut L T 217.

——S. 157—Criminal trial—Evidence — Appreciation of — In fire-arm cases the police should reach the scene post-haste, so that there would be no time for removal of tell-tale marks from the scene. ILR (1959) Andh Pra 797.

——S. 162 — Statements under, can be used under S. 145, Evidence Act (1872), in civil proceedings. See Evidence Act (1872), S. 145. AIR 1964 Andh Pra 198.

——S. 162 — Evidence Act (1872), S. 145 — Variation between statement of witness during investigation and that during cross-examination — His evidence is unacceptable as regards variation. (1965) 4 Law Rep 143 (Mys) (DB).

——S. 162—Scope—District Magistrate — If a Police Officer.

Merely because the District Magistrate is vested with some powers of control over the police in his capacity as a District Magistrate, it cannot be said either that he is a police officer or is in the same position as a police officer. 38 Mys L J 265 = 1962 Mad L J (Cri) 222 = 1960 Cri L J 934 = A I R 1960 Mys 111 (125) (Pt G) (Pr 8) (DB).

——S. 162 — Conviction under S. 279, Penal Code — Reliance on sketch map inadmissible under S. 162, Criminal P. C.—Conviction should be set aside. I L R (1965) Cut 383=31 Cut L T 305.

——Ss. 162, 154, 156 — First information report in cognizable case made during course of investigation —Inadmissible in evidence—But further investigation made on basis of such report, not illegal. A I R 1945 P. C. 18, Rel. on. (1963) 29 Cut L T 217.

——S. 164 — Evidence Act (1872), Ss. 24 and 8—Retracted confession — Corroboration — Sufficiency. See Evidence Act (1872), S. 24. ILR (1964) Andh Pra 780 (DB).

——Ss. 164, 167 — Accused kept in custody of police from time of his arrest without being remanded to judicial custody or without obtaining order of Magistrate under S. 167 nor put up immediately before Magistrate for recording confession under S. 164—Held whatever confession given by accused must be rejected as not being voluntary. (1962) 2 Andh L T 115.

——S. 167 — Accused kept in custody of police from time of his arrest without being remanded to judicial custody or without obtaining order of Magistrate under S. 167 nor put up immediately before Magistrate for recording confession under S. 164. See Criminal P. C. (1898), S. 164. (1962) 2 Andh L T 115.

——Ss. 173 (4), 207A (3), 251A (1), 244 (3), 257 (1), 540—Provision if includes copy of copy.

Section 173 (4), Criminal P. C., speaks of "All other documents or relevant extracts thereof on which the prosecution proposes to rely" and a document so relied on by prosecution may very well be a copy. If prosecution proposes to rely on such a copy, the words in S. 173, Criminal P. C., clearly includes copy of such a copy. ILR (1962) 1 Cal 392.

——Ss. 173, 251A and 540 — Documents produced in Court on summons taken out by accused—Documents and not those referred to in S. 173 of which copies have to be served to accused under S. 251A. 1963 Mad L J (Cri) 217=1964 Mad W N 356.

——Ss. 190, 172 and 173 — Power of Magistrate to order police to charge-sheet any person — Magistrate can so order after accepting the final report of police — Magistrate can also refer to police diary in conjunction with other materials, to summon accused. (1964) ILR 43 Pat 187 (DB).

——S. 190 — Scope and object — Complaint against A — On his statement B proceeded against — Prosecution of B — If without jurisdiction — Section 190 (1) (c), Criminal P. C, held could not be availed of. See Punjab Pure Food Act (8 of 1929) (as amended by Act 1949), S. 19. (1957) 59 Punj L R 86=ILR (1957) Punj 720.

——S. 195 — Applicability — Complaint that the accused in conspiracy with others committed offence of fabricating false evidence and sought to use it in Court of law — Section 193, Penal Code is attracted — Charge under Ss. 109 and 218, Penal Code not sustainable — Bar under S. 195 applies to the facts and the offence is not cognizable without a written complaint from the concerned Court : AIR 1962 All 150, Overruled. 1964 All W R (HC) 232 = 1964 All Cri R 159 = 1964 All L J 467 (DB).

——S. 195 (1) (c) — Process server authorised to recover only process fee — Recovery of excess amounts under false representation — Official counterfoil of receipt book mentioning amounts of only process-fee — Process server is guilty of offences under Ss. 420 and 468, Penal Code — Formal complaint by Court not necessary. See Penal Code (1860), S. 420. (1964) 6 Orissa J D 264.

——S. 197A—Sanction for prosecution—Section 195 (1) (c)—Applicability — Persons accused of offence in respect of document tendered in Court — Accused not party to proceeding wherein document produced — Offence alleged to have been committed jointly with person, party to proceedings — Complaint of Court necessary — If offence is the same as alleged to have been committed by party to proceedings. See Criminal P. C. (1898), S. 195 (1) (c). (1960) 62 Bom L R 527 = 1960 Nag L J 570 = ILR (1960) Bom 888 (FB).

——S. 200 — Complaint against two out of three accused dismissed for want of evidence — During trial of third the two again ordered to face trial — No new evidence on record — Order in disregard to previous order illegal. 1962 B L J R 692 (DB).

——Ss. 201, 346 — Distinction between provisions of two sections—Magistrate who finds that he has no territorial jurisdiction cannot make reference under S. 346 : AIR 1952 Cal 849, Dissented from. 1965 Mad L J (Cri) 167 = (1963) 2 Mys L J 120.

——S. 207-A — Scope — Decision in committed proceedings to be taken by the Court of Session—Before or after amended procedure, no right to accused to examine defence witness — No power to Magistrate to discharge accused after examining the witnesses in the list. ILR (1964) 16 Assam 78.

——S. 210 — Framing of charge — Duty of prosecution.

Where it is the prosecution case that the act of the accused in inflicting the injuries on the person of the deceased caused the death of the deceased, obviously the charge should be under S. 302, Penal Code and not under S. 304 of that Code, unless special circumstances are present which clearly and beyond any doubt indicate that the offence could only be one under S. 304. The prosecution should invariably leave the matter of determining the guilt of the accused under the correct section of the Penal Code that is applicable to the Sessions Court and they should not decide for themselves or prejudice the case by deciding to frame a charge under S. 304. If a charge is framed under S. 302 and the Court ultimately comes to the conclusion that the offence is one under S. 304, it would be open to the Sessions Judge to come to that finding and convict the accused on that charge acquitting him of the charge under S. 302 of the Code. 1964 (1) Cri L J 393 = ILR (1964) 16 Assam 67 = AIR 1964 Assam 53 (54) (Pt B) (Pr 6).

——Ss. 221, 225 and 537 — Charge — Omission to specify details — If curable.

The mere omission to specify the details of how the injuries were caused in the charge cannot in the circumstances of the case have any effect as no prejudice has been alleged or shown. If the trial is conducted substantially in the manner prescribed by the Code but some irregularity occurs in the course of such conduct the irregularity is curable under S. 537 of Criminal P. C. 1960 Ker L T 1116 = 1960 Ker L J 1375 = 1961 Mad L J (Cri) 356 = 1962 (2) Cri L J 135 (139, 140) (Pt C) (Pr 33) (DB) (Ker).

——Ss. 251A, 540 and 173 — Documents produced in Court on summons taken out by accused — Documents not marked by accused but marked by Magistrate — There is no irregularity — Failure to observe procedure contemplated by S. 251A did not vitiate admission of documents. 1966 Mad L J (Cri) 217 = 1964 Mad W N 356.

——S. 251-A — Order sheet — Duty of Magistrate to write order sheet in his own hand and initial it noting therein work done on each date. 1965 (1) Cri L J 602 = AIR 1965 Tripura 20.

——Ss. 252 (2), 204 (1A) and 256 — Word 'otherwise' — Connotation of — Scope of S. 256 — Calling of witnesses not named in petition of complaint or in subsequent applications filed by complainant for citing witnesses — Discretion under S. 252 (2) can be used by Magistrate on more than one occasion.

The word 'otherwise' in S. 252 (2) of Criminal P. C. is significant. For, apart from the complainant, the Magistrate can ascertain the names of the likely witnesses. ILR (1962) 1 Cal 58.

——S. 252 — Examination of witness — Prosecutor has discretion to select witnesses whom he proposes to examine in support of charges — Selection, however, should be fair and honest. See Criminal P. C. (1898), S. 286. (1965) 4 L R 143 (Mys) (DB).

——S. 259 — Acquittal because of wrong procedure — Fresh complaint — Maintainability. See Criminal P. C. (1898), S. 403. 1957 Nag L J 9.

——S. 265 — Provision requiring signature of all members — If mandatory. See Panchayats — Bihar Panchayat Raj Act (1948), S. 61. 1956 B L J R 468 = ILR 35 Pat 628.

——S. 267 — Offence under S. 302, Penal Code — Prosecution prima facie establishing guilt of accused —Plea of alibi by accused, but accused not supporting it by calling defence witnesses on ground that he cannot be called on to prove his innocence — Held, it was for accused to rebut prosecution evidence by pointing out inherent weaknesses in prima facie case established by prosecution. See Evidence Act (1872), S. 3. 1963 Mad W N 633.

——Ss. 286, 509 and 510—Reports of chemical examiner and medical witness— Duty of prosecution — Bombay Criminal Manual (1960), Ch. IV Para 4.

When a Chemical Analyser makes a report about the articles which had been sent to him, the prosecution must prove to what articles which had been attached during the investigation of the case the report of the Chemical Analyser relates. The same remarks apply to substances sent to a medical officer and examined by him. (1961) 2 Guj L R 451 (DB).

——Ss. 286 and 252 — Examination of witness—Prosecutor has discretion to select witnesses whom he proposes to examine in support of charges — Selection, however, should be fair and honest. AIR 1965 S C 328, Foll. (1965) 4 Law Rep 143 (Mys) (DB).

——S. 298—Duty of Court—Duty of Sessions Judges. They should only apply law and not discuss its policy. AIR 1955 NUC (Cal) 4268.

——S. 337 — Specific charge — Necessity. See Penal Code (1860), S. 34. 1960 MPLJ (Notes) 208.

——S. 342 — Penal Code (1860), S. 448 — Non-compliance with the section — Every omission in regard to compliance does not necessarily vitiate trial. 1953 S C A 329; 1952 S C A 69 and 1956 S C A 175, Rel. on. ILR (1962) 1 Cal 82.

——S. 344 — Stay of criminal proceedings. See Criminal P. C. (1898), Ss. 439, 561-A—Stay of proceedings. AIR 1954 S C 397.

——S. 346 — Transfer of case to Magistrate under S. 346—Magistrate should not rely on evidence recorded by his predecessor. See Criminal P. C. (1898), S. 350 (2). ILR (1961) 2 Cal 744.

——S. 346—Distinction between provisions of two sections — Magistrate who finds that he has no territorial jurisdiction cannot make reference under S. 346. See Criminal P. C. (1898), S. 201. (1963) 2 Mys L J 120.

——Ss. 350 (2) and 346 — Transfer of case to Magistrate under S. 346 — Magistrate should not rely on evidence recorded by his predecessor. ILR (1961) 2 Cal 744.

——S. 367— Appreciation of evidence — Credibility of witness — Mere relationship not sufficient to discard evidence. See Evidence Act (1872), S. 5. ILR (1964) Andh Pra 286 (DB).

——S. 367 — Charges under Ss. 147 and 148, Penal Code — Conviction— Failure to consider case against each of several accused—Conviction is illegal. See Penal Code (1860), S. 147. 1958 Andh L T 559.

——S. 367—Order of dismissal for default — Not a judgment under S. 369 for its applicability. See Criminal P. C. (1898), S. 421. ILR (1964) 16 Assam 369.

——S. 367 — Judgment — Court consisting of three members — Opportunity to discuss amongst themselves before final decision must be given—Judgment delivered without giving such opportunity to one member is bad in law. (1962) 4 O J D 421 (DB).

——S. 369 — Order of dismissal for default — Not a judgment under S. 369 for its applicability. See Criminal P. C. (1898), S. 421. ILR (1964) 16 Assam 369.

——Ss. 397 (1), 369 and 561-A— "Unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence"—In absence of such direction and after dismissal of appeals against convictions without such direction, High Court cannot under S. 561-A order distinct sentences to run concurrently. AIR 1961 Pat 138, Overruled; A I R 1927 Lah 139, Dissented. I L R 43 Pat 717 (DB).

——Ss 401, 402 — V, a science graduate, convicted under S. 302 for murder of his wife and sentenced to imprisonment for life—V was affectionate towards his

wife — Due to mistake he suspected her to be unfaithful to him — His infant children rendered helpless — High Court recommended to State Government to exercise power of clemency. **ILR (1962) Andh Pra 496 (DB).**

——S. 401—Penal Code (1860), S. 57—Life imprisonment means imprisonment for 20 years—Term reduced to 15 years under rules framed under S. 59, Prisons Act —Government granting remission under S. 401—Period of 15 years will stand reduced. See Penal Code (1860), S. 57. **1959 Mad L J (Cri) 397 (Mys).**

——S. 402 — Penal Code (1860), S. 57 — Life imprisonment means imprisonment for 20 years — Term reduced to 15 years under rules framed under S. 59, Prisons Act — Government granting remission under S. 401 — Period of 15 years will stand reduced. See Penal Code (1860), S. 57. **1959 Mad L J (Cri) 397 (Mys).**

——S. 403 — Scope — First complaint under S. 403, Penal Code — Accused discharged — Subsequent complaint under S. 14, W. B. Bargadars Act held not barred — See Tenancy Laws—West Bengal Bargadars Act (2 of 1950), S. 14. **1957 Cri L J 671 (Cal).**

——S. 403 — Legal maxim. **1957 MPC 334.**

——S. 403 — Punjab Gram Panchayat Act (4 of 1953), Ss. 42 (3) and 77 (2) — **Conviction or acquittal — Second trial barred only if first trial was by competent Court or Panchayat.**

The very language of S. 403 (1) indicates beyond doubt that it is only the order of conviction or acquittal recorded by a Court of competent jurisdiction that will operate as a bar to a second trial of an accused person. **(1962) 64 Pun L R 1059.**

——S. 417—Charge against accused substantiated by overwhelming evidence such as dying declaration and testimony of four persons out of whom two were independent witnesses — Sessions Court rejecting large body of evidence on fanciful grounds and acquitting accused — Finding of acquittal held was based on wrong approach and was perverse and therefore set aside. See Penal Code (1860), S. 302. **ILR (1964) Andh-Pra 268 (DB).**

——Ss. 417, 423 — Appeal from acquittal — Duty of appellate Court pointed out. AIR 1961 S C 715, AIR 1965 S C 26, Foll. **1965 RL W 328.**

——Ss. 421, 423, 367, 369 — **Order of dismissal for default — Not a 'judgment' under S. 369 for its applicability.**

An order dismissing an appeal for default is not a judgment as it does not comply with the requirements of S. 367, Criminal P. C. (1898). As it cannot be regarded as a judgment under S. 369, the bar under that section cannot apply and therefore such an order can be set aside and the appeal taken back to file and disposed of on merits. AIR 1934 All 206; AIR 1928 Rangoon 288, Foll. **ILR (1964) 16 Assam 369.**

——S. 423— Sessions Judge in appeal discussing prosecution evidence only and omitting to discuss the evidence of defence witness — Court should in its revisional jurisdiction, consider the evidence omitted by the Judge. **1963 All Cri R 370 = 1963 All W R (H C) 639=1963 All L J 966 = 1965 (1) Cri L J 267 =AIR 1965 All 120 (121, 122) (Pt A) (Prs 6, 7, 9).**

——Ss. 423, 367 — Evidence Act (1872), S. 3 — Appreciation of evidence— Prosecution of V for murder of his wife R — On day in question, V was in his house throughout until murder of his wife — At the time R was done to death or immediately afterwards, V was sitting by her side with knife — V did not complain to anybody that some other person committed murder until he was arrested — V actually knew the place where weapons used for committing murder were kept — V had quarrel with R on the same morning and he had injury on his hand — Circumstances held sufficient to establish beyond doubt that V committed murder — (Penal Code (1860), S. 302) — (Evidence Act (1872), S. 3). **ILR (1962) Andh-Pra 496 (DB).**

——S. 423 — Appeal once admitted must be disposed of on merits — Order dismissing for default is not such disposal — Procedure under S. 423 must be followed. See Criminal P. C. (1898), S. 421. **ILR (1964) 16 Assam 369.**

——S. 423— Appeal from acquittal — Duty of appellate Court pointed out. See Criminal P. C. (1898), S. 417. **1965 Raj L W 328.**

——S. 432—Scope — Power is discretionary — Held on facts that discretionary power was not necessary to be exercised.

The discretionary power of the Court under S. 432 of the Criminal P. C. has to be exercised in aid of justice depending on facts and circumstances of each case: AIR 1959 S C 144, Foll. **64 Pun L R 892= 1963 Cur L J 239.**

—S. 435 — Subordinate criminal Courts — Deputy Commissioner's Court is such Court with reference to High Court. See Khashi Siemship (Administration of Justice) Order, 1949, R. 13. **ILR (1964) 16 Assam 369.**

——Ss. 435 (1) and 145 (6) — **Final order passed under S. 145 (6) — Revision against under S. 435 (1) —Not barred on ground that it is declaratory in nature. (1959) 1 Andh W R 61, Dissented from.**

The final order passed in a proceeding under S. 145 can be stayed in revision. It cannot be said that the final order in proceedings under S. 145 is only of a declaratory nature and does not embody any executable judicial order or direction and being declaratory, it is incapable of being stayed under S. 435 (1). **(1964) 2 Mys L J 38.**

● ——Ss. 435 and 439—**Exercise of revisional powers —Single Judge competent.**

A single Judge of the High Court is competent to hear an application in Criminal Revision and is also empowered to issue a notice for setting aside an acquittal of an accused person in the exercise of the revisional jurisdiction of the High Court. It is not necessary that in order to exercise criminal revisional jurisdiction all Judges should sit together. **ILR 43 Pat 367 (FB).**

——S. 439— Subordinate criminal Courts — Deputy Commissioner's Court is such Court with reference to High Court. See Khasi Siemship (Administration of Justice) Order, 1949, R. 13. **ILR (1964) 16 Assam 369.**

——S. 439—Finding that the girl alleged to have been kidnapped was minor by Courts below — Finding fully supported by documentary evidence — Finding being on a question of fact, its correctness held could not be challenged in revision before the High Court—Penal Code (1860), S. 361. **ILR (1964) Mys 486.**

——Chap. 33, (Ss. 443 to 468) — Criminal P. C. (Amendment) Act (XXVI of 1955), S. 116 (d)—Pending proceedings—Trial with aid of assessors pending — Stay of trial — During stay Amending Act coming into force and another Sessions Judge posted — Recommencement of trial before new Sessions Judge— Right of accused to trial with aid of assessors under unamended Act is not taken away. See Criminal P. C. (Amendment) Act (26 of 1955), S. 116 (d). **1961 (1) Cri L J 113=AIR 1962 All 58 (DB).**

——S. 497 (1) — Power of Magistrate to grant bail— Allegations in F. I. R. disclosing offence under S. 302 of Penal Code — Allegations to the same effect also contained in dying declaration of deceased— Investi-

gation not complete — Magistrate from report of police aware of fact that some sort of political pressure was being exerted on investigating agency— Application for bail not opposed by police — Held, material before Magistrate justified rejection of bail and report of police, in fact, should have put Magistrate on enquiry as to motive of police in not opposing bail application: AIR 1931 All 504 (SB), Rel. on; AIR 1962 S C 253, Foll. 1963 Cur L J 380 (Punj) (DB).

● —S. 499—Surety bond—Terms of bond penal in nature — Bond must be strictly construed — Contingencies contemplated by parties held had not occurred. See Criminal P. C (1898), S. 401. AIR 1955 S C 478.

——S. 517 — Police putting complainant X in possession of "Gola" during investigation of case against Y — Door-planks and locks of "Gola" seized by police and produced before Magistrate — Conviction of Y set aside by appellate Court — Application by Y under S. 517 for delivery of possession of "Gola" — Held, (without deciding the question whether immovable property could be dealt with under S. 517), Magistrate was right in dismissing the application and holding that S. 517 did not apply inasmuch as by no stretch of imagination could it be said that "Gola" had been produced before Court or had come in custody of Court. ILR 40 Pat 675 (DB).

——S. 522 — Section comes into play only after accused is convicted and it is proved that offence was attended by criminal force or show of force or by criminal intimidation — On conviction of P under S. 488, Penal Code, complainant obtaining possession of premises from P under S. 522 — Conviction set aside in appeal — Held, possession must be delivered back to P. AIR 1945 All 226 and AIR 1940 Lah 460, Foll. 65 Pun L R 234 = 1963 Cur L J 84.

——S. 531 — Section when attracted.

The terms of S. 531, Criminal P. C. are clear and categorical. The provision is attracted when the inquiry, trial or a proceeding in a wrong sessions division, district etc., has resulted in a finding, sentence or order and not before. Such a finding, order or sentence is liable to be set aside only on proof of failure of justice. ILR (1965) Andh-Pra 650.

——S. 531 — 'Justice' — Expression is wide enough to include well recognised principles of natural justice. AIR 1956 S C 116, Foll. ILR (1965) Andh-Pra 650.

——S. 537 — Effect of non-compliance with the provisions of the section — Failure to make a preliminary order and to publish the same — Failure is a mere irregularity curable by S. 537 and does not affect jurisdiction of Magistrate. See Criminal P. C. (1898), S. 145 (1) and (3). (1963) 65 Pun L R 842.

——S. 549 — Member of Territorial Army convicted by Court-martial of offence under S. 39 (d), Army Act (1950) — Member must be deemed to have been convicted on criminal charge by competent tribunal and falls within mischief of proviso (a). See Constitution of India, Art. 311 (2), proviso (a). (1963) 6 F L R 134 (Cal).

——S. 561-A—Prosecution under S. 420 of the Penal Code — Facts disclosed in the complaint read with the statements of the complainant and his witness disclosing only a civil dispute and not a criminal offence — High Court can under its inherent powers quash the proceedings pending against the accused. AIR 1960 S C 866, Rel. on; AIR 1963 Raj 104, Ref. to. 1964 Kash L J 197.

——S. 561-A — Practice — Duty of Court — Loss of document from records of Court — Duty to make inquiry — (Record of Courts).

It is absolutely necessary in the interests of justice that any Court whether it be a Magistrate's Court or a Sessions Court as soon as it comes to know or is brought to its knowledge that an original document filed in the case is missing should realise it is the bounden duty of the concerned Magistrate or Judge to at once make an enquiry into the matter, failure of which is a serious neglect of duty. 23 Cut L T 410 = 1957 Cri L J 1431 = AIR 1957 Orissa 268.

CUSTOM

● —General — Pre-emption — Non-Muslims — Observance of forms — Muhammadan Law.

When a custom of pre-emption is established by evidence to prevail amongst non-Muslims in a particular locality it must be presumed to be founded on and co-extensive with the Muhammadan Law on that subject unless the contrary is shown; the Court may as between Hindus administer a modification of the law as to the circumstances under which the right may be claimed when it is shown that the custom in that respect does not go to the whole length of the Muhammadan law of pre-emption, but the assertion of right by suit must always be preceded by an observance of the preliminary forms prescribed in the Muhammadan law which forms appear to have been invariably observed and insisted on through the whole of the cases from the earliest time of which we have record. 39 Cal 915 (P C), Relied on. Audh Behari Singh v. Gajadhar Jaipuria, 1955 S C A 132 = 1954 Andh L T (Civil) 40 = 1954 S C J 590 = 1954 A L J 529=1954 B L J R 451=AIR 1954 S C 417 = (1955) 1 S C R 70 (S C).

——General—Pre-emption — Vendee's acquisition of share in the village after suit but before decree — Right of pre-emption is defeated. AIR 1955 N U C (All) 4452.

——General — Pre-emption — Right resting upon custom—It is lex loci. AIR 1955 N U C (All) 2737.

——General—Pre-emption—Customary pre-emption—Requisites stated — Time for making demand indicated — (Muhammadan Law — Pre-emption). AIR 1955 N U C (All) 1498.

——(Delhi) — Pre-emption—Custom—Sabzi Mandi, Delhi.

A custom of pre-emption exists in Sabzi Mandi, Delhi. 54 P L R 255 = AIR 1952 Punj 356.

——(Himachal Pradesh) — Mutation — Voidable transaction — Principle to be followed.

It is a generally accepted principle of Customary Law that a woman has only a life interest in property inherited from her husband, and she can, therefore, only alienate for life and for valid necessity. The sound principle for Revenue Officers to adopt in mutation proceedings is to refuse to give effect to voidable transactions when persons entitled to object, raise objections. It is for the parties who wish to give effect to voidable transactions to get proper order from a civil Court for that course. ('51) 30 Lah L Tim 1 (Rev).

——(Hyderabad) — Pre-emption — Law in Hyderabad State — Zabte Shikmidaran, paras. 12 and 14 — Right of 'Potpattedar' — Words and Phrases — 'Potpattedar' and 'Joint Pattedar'. AIR 1956 Hyd 50 = ILR (1955) Hyd 774.

——(Jaipur)—Pre-emption—Jaipur State—Custom of pre-emption—Custom—Muhammadan Law — Applicability— Muhammadan Law—Pre-emption). I L R (1960) 10 Raj 75.

——(Jaipur)—Pre-emption—Custom—Proof— Wrong decisions of Court—Value of.

Even two or three wrong decisions of the High Court on the question of pre-emption, do not create a custom in variance with Muhammadan Law. I L R (1960) 10 Raj 75.

——(Jaipur)—Pre-emption — Pre-emption decree before date from which right declared void — Appeal decided after such date—Decree cannot be set aside. See Mahomedan Law. **1956 Raj L W 390 = I L R (1956) 6 Raj 197.**

——(Jaipur)—Pre-emption — Decree for pre-emption passed before 26-1-1950—It should be judged on the law as it stood before that date. **1956 Raj L W 390= I L R (1956) 6 Raj 197.**

——(Jammu and Kashmir) — Pre-emption — Rule against partial pre-emption—Applicability—Sale deed containing two separate sale transactions — Consolidated consideration is no bar against pre-empting each transaction separately. **A I R 1961 J & K 36.**

——(Madhya Bharat)—Pre-emption—Delay — Effect of—Delay of 20 months in exercising right of pre-emption would convert right into instrument of torture and would defeat the purpose which is foundation of right. **A I R 1955 N U C (Madh B) 3352.**

——(Madhya Bharat)— Pre-emption — Formalities—Condition precedent — Pre-emptor must prove both demands talab-i-muwasibat and talab-i-ishad had been lawfully and promptly made. **A I R 1955 N U C (Madh B) 2996.**

——(Madhya Bharat)—Pre-emption — Basis of claim —Right of collateral support is not appendage—Claim for pre-emption cannot be founded on it. **A I R 1955 N U C (Madh B) 2996.**

——(Madhya Bharat)—Pre-emption—Plea of waiver by pre-emptor—Proof—Onus—In a suit for pre-emption of a house, to support the plea of waiver of his claim to pre-empt by the plaintiff, it is incumbent on the vendor and the vendee to establish that they had concluded an agreement of sale and the plaintiff was approached and asked to purchase the house for the consideration for which the vendee was going to purchase the house. **1958 M P C 541=1959 M P L J 174=1958 Jab L J 828=A I R 1958 Madh Pra 412.**

——(Madras)—Pre-emption—Otti mortgage in Malabar—Right of pre-emption of mortgagee—Nature and conditions for its enforcement—Right of pre-emption —Distinction between primary or substantive right and secondary or remedial right — Custom as to pre-emption of ottidars in Malabar not different from general law of pre-emption — Rules of Mahomedan law as to pre-emption apply by analogy. **1961 Ker L J 819=I L R (1961) 2 Ker 454=1961 Ker L T 809 =A I R 1962 Ker 122.**

——(Manipur) — Pre-emption — Right of vendor—Vendor himself cannot legally assume role of pre-emptor. **A I R 1955 Manipur 37.**

——(Orissa)—Right to collect toll — Right to collect toll is incidental to ownership of land — Right need neither be specifically mentioned in record of rights nor need be granted by Government — Right is not suspended on days on which villagers have right to hold fair on land in absence of proved custom: A I R 1948 Cal 161, Rel. on. **(1965) 31 Cut L T 549 (Orissa).**

——(Pepsu) — Pre-emption — Nature of right — Per Kesho Ram Passey, J. — The right to pre-emption is not equal to a right of re-purchase. It is no more than a right of substitution in place of the vendee which puts him in his shoes, but does not make him a transferee from him. A pre-emptor who succeeds in his suit stands distinctly different from a purchaser of the vendees' right out of Court in which case there is a regular sale and execution of a conveyance deed. **I L R (1953) Patiala 401=A I R 1954 Pepsu 59.**

[Reversed in A I R 1958 S C 838.]

——(Punjab)—Pre-emption — Suit for — Plea that pre-emptor is benami — Plea must be established by strickest evidence — Question as how plaintiff has raised funds for prosecuting suit — Court is not concerned with the question—61 Punj L R 774, Rel. on. Bachan Singh v. Bhupal Singh, 1965 Cur L J 598= 67 Pun L R 849 = I L R (1965) 2 Punj 706 = A I R 1966 Punj 36 (FB).

——(Punjab)—Pre-emption— Suit for — Waiver— Proof — Acceptance by plaintiff of mortgage money from vendee — Not sufficient to support waiver of plaintiff's right of pre-emption.

In a suit for pre-emption, the mere circumstance that the plaintiff accepted from the vendee the amount of the mortgage deed due to him giving up as a necessary consequence possession of a small area mortgaged to him out of the total area of the land which had been sold by the mortgagor, is not enough to support a plea of waiver of the plaintiff's right to claim pre-emption and does not estop him from asserting it. The mortgagee in accepting the mortgage money from the vendee does nothing more than to recognize that the latter as transferee from the mortgagor has the right to redeem. The mere recognition by the plaintiff of the vendor's right to redeem by taking the mortgage amount from the vendee cannot by itself amount to waiver of the plaintiff's right of pre-emption. 138 Punj Re 1888 and 154 Punj L R 1906, Overruled ; A I R 1924 Lah 159 and A I R 1948 East Punj 5, Approved ; I L R 35 Cal 402 (P C), Rel. on. Teja Singh Woryam Singh v. Bir Singh Lakhu, **65 Punj L R 693=1963 Cur L J 388= I L R (1963) 2 Punj 356=A I R 1963 Punj 483 (FB).**

——(Punjab) — Succession to non-ancestral or self-acquired property — No special custom pleaded by either party—Held, sister was to be preferred to collaterals of sixth degree : 1959 Punj L R 291 (FB) and A I R 1959 S C 1041, Foll. Bhan Singh v. Sham Singh, R S A 50 of 1961 dated 23-4-1962 (Punjab), Disting. ; Case law Referred. **(1963) 65 Punj L R 968.**

——(Punjab)—Pre-emption—Law of — Sale of agricultural land to tenant—Male heirs of tenant, getting status of tenant after date of sale but before filing of suit for pre-emption — Heirs entitled to protection from pre-emption under S. 17-A — Punjab Tenancy Act (16 of 1887), S. 4 (7)—Interpretation of Statutes. See Tenancy Laws—Punjab Security of Land Tenures Act (10 of 1953), S. 17-A. **1963 Cur L J 62 (Punj).**

——(Punjab) — Pre-emption — Suit for—Vendee exchanging part of property sold to him for another land belonging to owner in village — Vendee cannot be held to have acquired a better or equal status with the pre-emptor so as to defeat plaintiff's right of pre-emption. **I L R (1960) Punj 563 = A I R 1961 Punj 160.**

——(Punjab) — Pre-emption — Right of — Minor — Waiver — There can be no waiver of right of pre-emption by minor — Contract Act (1872), S. 11 — Evidence Act (1872), S. 115. **(1960) 62 Punj L R 691.**

——(Punjab) — Pre-emption — Right of—Burden to prove that transaction is sale — Transaction capable of two interpretations — When should be held to be sale. **ILR (1959) Punj 626=AIR 1959 Punj 117.**

——(Punjab)—Pre-emption—Right of — Agricultural land —Determination—Relevant date.

The relevant date for determining whether the land in suit was agricultural or not was the date of the sale. The land which had been used for purposes of running a brick-kiln for more than a year before sale must be held to have ceased to be agricultural land. **('59) 61 Pun L R 869=ILR (1960) Punj 43.**

——(Punjab)—Pre-emption—Pre-emption by vendee's wife in her own right—Suit is not collusive—Source of money is no criterion. **(1959) 61 Pun L R 774.**

——(Punjab) — Pre-emption — Suit for — Duty of Court to look to nature of transaction.

In transactions which become the subject-matter of a suit for pre-emption a duty is cast upon the Court to determine the nature of the transaction — whether it is a sale or exchange—when such a question arises on the pleadings and the Courts cannot be satisfied merely by looking at the cloak which the parties chose to give to the transaction to be entered into. The policy of the law of pre-emption requires that the Courts must look into the nature of the transaction which necessarily must mean the intention of the parties. AIR 1954 Punj 115.

——(Punjab) — Pre-emption — Right of—Waiver — Sale of insolvent's property—Pre-emptor declining to purchase when asked by Official Receiver's clerk — Effect.

Where after a public proclamation for sale of an insolvent's property which had vested in the Special Official Receiver, the pre-emptor was asked by the Special Official Receiver's clerk to purchase the property but he declined to do so in unequivocal language, and thereafter the property was sold to another person, the pre-emptor has by his conduct waived and lost his right of pre-emption. The Special Official Receiver's clerk must be regarded as his authorised agent. In these circumstances, the pre-emptor intentionally permitted, even if he did not intentionally cause, intending purchasers (including the actual purchaser) to believe that he was not buying the property. Having generated this belief, he cannot be allowed to say that he still mentally reserved to himself any pre-emptive right. A I R 1952 Punj 255.

——(Rajasthan)—Pre-emption—Sale by father on his own behalf and as guardian of minor sons — Suit for pre-emption against vendee — Father and sons also impleaded — Sons' objection to validity of sale of their share on ground of want of legal necessity — Objection can be enquired into — Sale of sons' share set aside in another suit by sons to which pre-emptor not made party — Decree is not binding on pre-emptor — Pre-emptor is not representative-in-interest of vendee. I L R (1962) 12 Raj 965, Rel. on. 1964 Raj L W 583 = I L R (1964) 14 Raj 1055 = A I R 1965 Raj 124.

——(Rajasthan) — Pre-emption — Suit for pre-emption — Not defeated by cancellation of sale — Sale cancelled or declared ineffective by Court in a suit — Pre-emptor not a party to suit — Right of pre-emptor not affected.

The right of pre emption accrues to the pre-emptor on the date of the sale. The principle of pre-emption is that the pre-emptor is substituted for the vendee. The pre-emptor takes the property as it is sold to the vendee. The suit of the pre-emptor cannot be defeated if the sale is cancelled by the buyer and the seller. Sutherland Weekly Reports, XIII, Civil P. 332, Rel. on.

Even if the sale is cancelled or declared ineffective by a Court of law in a suit to which pre-emptor is not a party, such declaration would not affect the right of pre-emptor. He has a right to be substituted and takes whatever is conveyed by the sale-deed. 1962 Raj L W 642=ILR (1962) 12 Raj 965.

——(Rajasthan)—Pre-emption—Right of—Vicinage—Material dates — Right subsisting on date of decree of trial Court—Decree set aside in appeal—Effect.

There are three material dates, and the right of pre-emption must exist on all these dates, namely, the date of sale, the date of suit, and the date of decree. Where therefore a right of pre-emption on the ground of vicinage came into existence before the Constitution and was upheld by the decree of the trial Court on 18th October, 1941 which was the crucial date on which the right merged in the decree, it did not matter if the decree was later set aside or the right was not consistent with the provisions of the Constitution which came into force during the pendency of the proceedings after the trial Court's decree. AIR 1954 S C 417 : 1954 S C J 590, Rel. on; AIR 1954 Raj 100, Distinguished. 1959 Raj L W 267.

——(Rajasthan)—Pre-emption—Hindu father selling joint family property—One of sons succeeding partly in challenging sale — Son later on claiming pre-emption — Claim is not maintainable. (Hindu Law — Alienation—Father—Right of son to pre-empt). 1956 Raj L W 381.

● ——(Rajasthan) — Pre-emption—Nature of right—Not an incident of property.

The right of pre-emption is not a right which attaches to the land but is a personal right. The right is not one which is in existence prior to the sale but arises only when there is a valid and complete sale and in case of no other alienation. A I R 1929 Bom 206 and 4 Beng L R 134, (FB), Rel. on.

It is a right which comes into existence in persons who have been described as Shafi Sharik, Shafi-i-khalit or Shafi-i-jar and according to Muhammadan Law this is a personal right of the pre-emptor, which is lost if the pre-emptor dies without enforcing the same by a suit. Panch Gujar v. Amarsingh. 1954 Raj LW 204=I L R (1954) 4 Raj 84 = AIR 1954 Raj 100 (FB).

——(Rajasthan) — Pre-emption — Loss of right — Vendee becoming co-sharer by purchase after suit is filed—Effect.

Right of pre-emption is a very weak right and can be defeated by any legitimate means. The policy underlying this law is that no stranger should be allowed to thrust himself upon the co-sharers in a property against their will. If, therefore, before the First Court's decree the vendee becomes just as much a co-sharer as the pre-emptor, the latter can have no complaint that a stranger has thrust himself upon the property and hence can have no preferential right over the vendee.

No doubt it looks very unsavoury that a defendant by his unilateral and voluntary act should defeat the plaintiff's suit which was perfectly justified when it was brought and it appears to prevent such an undesirable result that recently statutory provisions have been made in the Agra and Punjab Pre-emption Acts. But in the absence of any such statutory safeguards, the general principle shall prevail that the pre-emptor in order to succeed in a suit should prove his subsisting right against the vendee not only on the date of sale but also on the date of suit and the date of the First Court's decree. AIR (7) 1920 All 159, AIR (26) 1939 Lah 481 and AIR (19) 1932 PC 57, Rel. on. 7 All 585; 10 All 472, AIR (23) 1936 Oudh 250 and 36 I C 799, Disting. ILR (1951) 1 Raj 329 = AIR 1952 Raj 5 (Prs 9, 10) (DB).

——(Rajasthan)—Pre-emption—Right of—Possession as mortgagee—Sufficiency.

It is the ownership in a property which gives rise to a right of pre-emption and not possession only as a mortgagee. ILR (1951) 1 Raj 329=AIR 1952 Raj 5.

——(Rajasthan)—Pre-emption—Suit for—Property to be adjacent—Muhammadan law—Pre-emption.

According to the general law of pre-emption, plaintiff, in order to be a shafi-i-khalit, should have his property adjacent to the property which he claims by pre-emption. Where there is a gally between the plaintiff's property on the strength of which she is claiming pre-emption, and the property which is the subject-matter of pre-emption, the existence of the gally would defeat the right of the plaintiff to pre-empt the property in dispute. Case law discussed. 1952 Raj L W 442=ILR (1952) 2 Raj 189.

——(Rajasthan)—Pre emption — Custom of—Recognition in Mewar—Co-extensive with the Mahomedan Law — Talab — Assertion within reasonable time—Necessity—Joinder of strangers to the claim—Effect — Sons, strangers under Muhammadan law until opening of inheritance.

Where a sale-deed of a house was executed by certain Hindu owners of Marwar and a well in the house was jointly owned by the executants and the owners of the adjacent house who were Mahomedans and the same was attested by M one of the co-owners of the adjacent house and a suit for pre-emption was filed by him five months after the deed and the other co-owners (also Mahomedans) along with their sons filed another suit for pre-emption. 1952 Raj L W 245=ILR (1952) 2 Raj 147.

——(Rajasthan)—Pre-emption — Right of—Pre-emptor if should also be resident of the locality.

The law of pre-emption does not lay down that a pre-emptor should also be resident of the place where the property sought to be pre-empted is situated. AIR 1951 Raj 126.

——(Rajasthan)—Pre-emption—Suit for—Person with right of pre-emption joining with himself stranger in the suit — Effect.

Where a person having a right of pre-emption joins with himself strangers in the suit (i.e) persons having no right of pre-emption, he forfeits his right of pre-emption. 52 Cri L J 662 = (1950) 1 Raj L W 93 = 52 Cri L J 662=AIR 1951 Raj 14.

——(Uttar Pradesh)—Pre-emption—Pre-emptor whether bound by agreement to re-sell — Sale and agreement to re-sell forming part of same transaction—Pre-emptor bound by agreement to re-sell.

If the sale and the agreement to re-sell split up into two documents are parts of the same transaction and the pre-emptor had notice of the latter at the time when he exercised his right of pre-emption, he would be as much bound by it as if it were incorporated in the sale deed itself. The splitting up of the transaction into two documents does not release the pre-emptor from the obligation to re-sell if he had notice of it when he exercised his right to pre-empt.

If an agreement to re-sell is incorporated in the sale deed itself, the transaction may be not a sale but a mortgage by conditional sale and there would be no right of pre-emption in such a case. AIR 1963 All 194.

——(Uttar Pradesh)—Kumaun — Pre-emption—Non-residential co-sharer who is relation of vendee within three-degrees — Preference over resident co-sharer who is not a relation.

According to the custom of pre-emption prevailing in Kumaun a resident co-sharer has preference over the person who is a non-resident co-sharer. The fact that the non-residential co-sharer is a relation of the vendee within three degrees does not give him preferential right over the resident co-sharer who is not a relation. 1960 All L J 116 = 1960 All W R (H C) 131.

——(Uttar Pradesh)—Banaras—Pre-emption.

There is custom of pre-emption in city of Banaras. AIR 1955 NUC (All) 2737.

——(Uttar Pradesh) — Pre-emption—Custom as to—Prevalence in a locality—Effect—Effect of instances of refusal of claim.

Once the custom of pre-emption is said to prevail in a certain locality, it will be deemed to prevail in that locality irrespective of that locality assuming a well-known name or its recognition by the Municipality as a separate mohalla, till such time that it could be proved from instances that the people of such a locality actually abandoned the custom. Abandonment of the custom can be proved not merely by the fact that no instance of the enforcement of the right of pre-emption took place, but by the fact that somebody claimed pre-emption but failed because the people of the locality were against the custom. Instances of such refusal will determine the alleged abandonment and not a mere absence of any case of pre-emption. AIR 1951 All 578.

——(Uttar Pradesh)—Pre-emption—Amroha town in U. P.

There is a custom prevailing in the town of Amroha in U. P. whereby a co-sharer who was related, has a preferential right of pre-emption. Making of demands, as required under the Muhammadan law is not necessary. 1951 All L J 482 (DB).

DEBT LAWS

—BENGAL ALIENATION OF AGRICULTURAL LAND (TEMPORARY PROVISIONS) ACT (5 of 1944)

——Ss. 4, 10—Finality of decision under S. 10 — Extent of — Determination of consideration — Decision of Collector on question of consideration is not final—Consideration of Rs. 499 — Collector cannot make order — Civil Court has jurisdiction to try suit. AIR 1955 NUC (Cal) 2071.

——S. 8—Exclusive jurisdiction of Revenue Court — Jurisdiction of Civil Court — Bengal Alienation of Agricultural Land (Temporary Provisions) Act (5 of 1944), Ss. 8 and 10—Vendor's application for restoration of land allowed on compromise—Suit by vendee to challenge it on ground of fraud — Civil Court has jurisdiction to entertain it. See Civil P. C. (1908), S. 9. AIR 1955 Cal 415.

——S. 10—Exclusive jurisdiction of Revenue Court—Jurisdiction of Civil Court — Bengal Alienation of Agricultural Land (Temporary Provisions) Act (5 of 1944), Ss. 8 and 10—Vendor's application for restoration of land allowed on compromise—Suit by vendee to challenge it on ground of fraud — Civil Court has jurisdiction to entertain it. See Civil P. C. (1908), S. 9. AIR 1955 Cal 415.

——S. 10—Finality of decision under S. 10 — Extent of — Determination of consideration—Jurisdiction of Civil Court. See Debt Laws — Bengal Alienation of Agricultural Land (Temporary Provisions) Act (5 of 1944), S. 4. AIR 1955 N U C (Cal) 2071.

—BIHAR MONEY LENDERS (REGULATION OF TRANSACTIONS) ACT (7 of 1939)

——S. 7—Applicability—Liability under original handnote altered from time to time—Defendant executing fresh handnote after accounts had been adjusted—Suit on last handnote—No provision of Act held could wipe out any part of interest on last promissory note. AIR 1942 Pat 138, Foll. ILR 42 Pat 704 (DB).

—BOMBAY AGRICULTURAL DEBTORS' RELIEF ACT (28 of 1947)

——Ss. 4 and 19 — Suit pending under Jamkhandi Agriculturists' Relief Act — Transfer under S. 19 does not violate S. 4 of the Act — S. 4 has no concern with such transfers under S. 19—S. 4 provides for an application for adjustment of debts. (1963) 2 Mys L J 272.

——Ss. 19 and 4—Scope and applicability—B. A. D. R. Court bound to proceed with cases transferred to it under S. 19 (1) treating them as applications under S. 4—The fact that the transferred suit was barred by time on the date it was filed is immaterial. AIR 1953 Bom 260, Foll. (1963) 2 Mys L J 272.

—BOMBAY MONEY LENDERS ACT (31 of 1947)

——Ss. 2 (9), 2 (17), 2 (18), 10 (1), 23 and 25—Loan to trader — Recovery of — Suit for — It is maintainable even if lender does not hold licence as money-lender under the Act.

On reading the provisions of Ss. 2 (9) (g) and 2 (17) together, it is clear that loan to a trader is entirely outside and is not affected by the Act and to a suit to recover such loan provisions of the Act (except Ss. 23 and 25) do not apply. Consequently, lender of such loan does not need a licence as money-lender under the Act and is entitled to a decree in a suit for recovery of the loan inspite of the provisions of S. 10. (1962) 64 Bom L R 549.

——Ss. 25 (1), (2) and (3)—Loan to trader — Lender is bound by rate of interest fixed by State Government under S. 25 (1) — He cannot retain interest recovered in excess of such rate.

Though the case of a loan to a trader is not covered by the provisions of Ss. 25 (1) and 25 (2), by reason of the provisions in S. 25 (3) the act of a lender of such loan of charging interest in excess of rate prescribed by State Government under S. 25 (1), is illegal and the act is liable to be penalised. Having regard to that provision, the interest received in excess of the prescribed rate, cannot be retained by the lender. 64 Bom L R 549.

—DISPLACED PERSONS (DEBTS ADJUSTMENT) ACT (70 of 1951)

——S. 2 (10)—Location of Bank — Test for determination. See Displaced Persons (Institution of Suits) Act (1948), S. 8 (b). (1965) Pun L R (Sup) 83.

——S. 13 — Petition under — Limitation — Petition filed on 8-12-52 to tribunal—Latter transferring it to another tribunal for disposal according to law — Petitioner asked to appear on 17-12-52 — Petition, held, was within time. 1965 Pun L R (Sup) 375.

——S. 19—Scope and applicability — Section also covers a case where call is made before 15-8-1947. (1965) 32 Com Cas 117 (Punj) (DB).

——S. 36 — Location of Bank — Test for determination. See Displaced Persons (Institution of Suits) Act (1948), S. 8 (b). (1965) Pun L R (Sup) 83.

—HYDERABAD AGRICULTURAL DEBTORS' RELIEF ACT (16 of 1956)

——Ss. 15 (b), 15 and 18 — Notice under — General notice has to be served even if debtor has not mentioned names of creditors other than the one against whom relief is claimed — Provisions of two sections are mandatory in character. (1965) 2 Law Rep 525 (Mys).

—HYDERABAD MONEY-LENDERS ACT (5 of 1349)

——Ss. 1, 2 (4) and 2 (9) — Applicability of Act to amount advanced by one trader to another — Definition of loan in S. 2 (4) and of trader in S. 2 (9) indicate that if money is advanced by one trader to another in accordance with practice in trade such loan is exempt from application of Act—But it cannot be presumed that ordinarily when trader advances loan to another, he does so in course of his business and in accordance with practice in trade. AIR 1951 Hyd 76, Disting — Unless there is proof that money advanced by trader was in course of business and in accordance with practice in trade he cannot get benefit of S. 2 (4) (g) and provisions of Act would be applicable to that loan. (1962) 2 Andh L T 61=ILR (1964) Andh Pra 1400 = (1962) 2 Andh W R 276 (DB).

—HYDERABAD PREVENTION OF AGRICULTURAL LAND ALIENATION ACT (3 of 1349-F)

——Preamble—Validity—Action pending when Constitution came into force, if invalidated — (Evidence Act (1872), S. 115)—(Constitution of India, Art. 15).

The Act safeguards the agricultural classes and not a person belonging to a particular community. AIR 1952 SC 196, Relied on. The classification made in the schedule of the Act is not based on the basis of religion but on the avocation in life. AIR 1942 Cal 825, Relied on. As the plaintiffs proceeded on the basis of the impugned Act, they should have challenged it at the very beginning and they should not have submitted themselves to the jurisdiction under the Act. Having not done so, plaintiff cannot challenge the very Act giving them the protection. The plaintiffs cannot challenge the constitutionality of the impugned Act on the ground that it violates or threatens the rights of other persons, in other words the rights of non-protected class. The Constitution has no retrospective effect and does not affect the pending actions, therefore the proceedings for permission of the Collector under the Act, started before the Constitution cannot be invalidated on the coming into force of the Constitution. 37 Mys L J 358 = AIR 1960 Mys 59 (61, 63) (Pt A) (Prs 14, 16, 20 to 23, 25, 26) (DB).

——S. 4—Applicability—Conditions.

One of the conditions necessary for S. 4 to come into force is that the parties, alienor and the alienee, should be agriculturists, specified in the schedule and secondly that they should be of different groups. If they are of different groups of the same class, then sanction of the Collector is not necessary in the cases specified therein. At any rate, the alienations can only be made where the alienor and the alienee are of different groups of the class of agriculturists specified in the schedule unless sanction of the Taluqdar is accorded. (1957) 1 Andh W R 366.

——S. 4—S. 23, Contract Act (1872) — Suit for specific performance of agreement to sell land—No sanction of Collector under S. 4 of Hyderabad Prevention of Agricultural Land Alienation Act — Suit is barred under S. 23. See Contract Act (1872), S. 23. A I R 1960 Mys 59 (DB).

——S. 17 (as amended by Hyderabad Act 19 of 1355F)—S. 47, O. 21. R. 2, Civil P C. (1908)—Hyderabad Civil P. C., (1323F), Ss. 249, 365, 366, 367—"Court executing the decree" — Collector reducing decretal debt — Collector held not Court executing decree—Suit to challenge is maintainable. See Civil P. C. (1908), S. 47. A I R 1955 Hyd 221 (DB).

——S. 18—S. 23, Contract Act (1872)—Suit for specific performance of agreement to sell land — No sanction of Collector under S. 4 of Hyderabad Prevention of Agricultural Land Alienation Act — Suit is barred under S. 23. See Contract Act (1872), S. 23. A I R 1960 Mys 59 (DB).

——S. 20—Jurisdiction of Civil Court.

Where the plaintiffs have submitted to the jurisdiction of the Collector under the Act which is found not to be ultra vires, they cannot reagitate the matter by means of a civil suit. 37 Mys L J 358=AIR 1960 Mys 59.

— INTEREST ACT (32 of 1839)

——S. 1, Proviso—Civil P. C. (1908), S. 144—Madras General Sales Tax Act (9 of 1939), S. 10—Madras General Sales Tax (Amendment) Act (6 of 1951), Ss. 12-A (5), 2nd Proviso and S. 12-B (6) 2nd Proviso — Rules under Rr. 15 and 16-A — Sales-tax collected from assessee declared illegal by Court—Claim for interest on sales tax amount from date of collection to date decree — Claim is not maintainable — As liability to refund arose by reason of the decree, it is the law

prevailing on date of decree that would govern the case: ILR 42 Mad 661 held not good law in view of ILR (1938) 2 Cal 72 (PC) and A I R 1961 S C 908 — Contract Act (1872), S. 73. **(1963) 14 S T C 112 (Andh-Pra).**

——S 1 — Suit for rent — Failure to pay contractual rent in time — Interest—Absence of stipulation as to payment of interest is no bar — Awarding of interest in such a case does not depend upon fixation of standard rent since no attempt to pay even the contractual rent is made — Repudiation of liability by tenant cannot be pleaded as a ground for denying interest because the lease itself provides for the time for payment of rent. AIR 1955 S C 468, Ref. **(1965) 67 Bom L R 352 : 1965 Mah L J 537 = ILR (1965) Bom 783 (DB).**

——S. 1 — Interest — Right to interest—Plaintiff entitled to interest — He should not be debarred from future and pending interest. **(1962) 40 Mys L J 483 (DB).**

——JAMMU AND KASHMIR RESTITUTION OF MORTGAGED PROPERTY ACT (2006) (17 of 2007 Smt.)

——S. 2—Suit for sale of boat under pledge—Jammu & Kashmir. See Debt Laws — J. & K. Restitution of Mortgaged Property Act (2006) (17 of 2007 Smt), S. 4. **AIR 1955 N U C (J. & K) 27 (DB).**

——Ss. 2, 5 — **"To all mortgages of immovable property."**

The Act applies to those mortgages only in which possession has passed from the mortgagor to the mortgagee or in which sale of the mortgaged property is sought, by an order of the Court. If the mortgagee under a simple mortgage does not enforce his right of bringing the property to sale, and seeks only a simple money decree, the provisions of the Act can with no stretch of imagination apply to such a case. **A I R 1954 J & K 14 (15, 16) (Prs 2, 6) : 12 J & K L R 9 (DB).**

——Ss. 4, 5, 6, 16 and 2—Suit for sale of boat under as petition under S. 4—Civil Court has no jurisdiction —Civil Court must return plaint to be filed in proper Court—(Civil P. C. (1908), S. 9 and O. 7, R. 10). **:AIR 1955 N U C (J & K) 27 (DB).**

——Ss. 5, 4, 6, 16 and 2 — Suit for sale of boat under as petition under S. 4— Civil Court has no jurisdiction —Civil Court must return plaint to be filed in proper Court. See Debt Laws—J. & K. Restitution of Mortgaged Properties Act (2006), S. 4. **A I R 1955 N U C (J. & K.) 27 (DB).**

——S. 5—Applicability. See Debt Laws—Jammu and Kashmir Restitution of Mortgaged Property Act (2006) (17 of 2007 Smt.), S. 2. **A I R 1954 J & K 14 (DB).**

——Ss. 6, 4, 5, 16 and 2 — Suit for sale of boat under as petition under S. 4 — Civil Court has no jurisdiction — Civil Court must return plaint to be filed in proper Court. See Debt Laws — Jammu and Kashmir Restitution of Mortgaged Properties Act (2006), S. 4. **AIR 1955 N U C (J & K) 27 (DB).**

——S. 10—No power to fix instalments for payment of mortgage money. **AIR 1955 N U C (J. & K.) 2373 (DB).**

——S. 16 — Suit for sale of boat under pledge. See Debt Laws—Jammu and Kashmir Restitution of Mortgaged Property Act (2006) (17 of 2007 Smt.), S. 4. **AIR 1955 N U C (J & K) 27 (DB).**

——KANOON SOOD GWALIOR STATE

——Ss. 10 and 11 — Reopening of entire account on mere allegation of defendant that he is agriculturist — He must plead and prove facts showing that amount claimed includes illegal amounts — Vague statements are not enough. **M B L J 1954 H C R 863 =A I R 1955 N U C (Madh-B) 40.**

——MADRAS AGRICULRISTS' RELIEF ACT (4 of 1938)

——Ss. 8, 10—Usufruct of entire property mortgaged to be enjoyed as interest thereof and mortgagor agreeing to pay interest in respect of property not handed over to mortgagee — Held, interest agreed to be paid was not in lieu of, but was in addition to, usufruct from property and so it came within exception—Held further that S. 8 had no application in such case. **(1965) 2 L R 639 (Mys).**

——MADRAS INDEBTED AGRICULTURISTS (REPAYMENT OF DEBTS) ACT (1 of 1955)

——Ss. 4 and 7 — Effect of—If makes decree an instalment decree—Limitation for execution.

By reason of S. 4 of the Madras Indebted Argiculturists (Repayment of Debts) Act, 1955, a decree amount due by an agriculturist is payable only in instalments and by force of that statute the decree becomes an instalment decree and limitation has to be computed accordingly. An instalment decree does not necessarily mean only a decree which ex facie makes a provision for its payment in instalments. **(1960) 2 M L J 67=73 Mad L W 290=I L R (1960) Mad 567.**

——S. 7 (1)—Sale of property to one creditor in preference to other — Sale for proper value and no evidence of any benefit reserved for transferor—S. 53 of T. P. Act not applicable—Presumption under S. 7 (1) of Madras Act rebutted—Sale cannot be impugned. See T. P. Act (1882), S. 53. **ILR (1965) 1 Mad 520.**

——(MALAYAN)—DEBTOR AND CREDITOR (OCCUPATION PERIOD) ORDINANCE (42 of 1948)

——S. 6—Occupation debt—Connotation of—Money paid to person under mistaken impression that it was due to him—Obligation to refund such amount is debt. See Words and Phrases—Debt. **AIR 1961 Mad 438 (DB).**

——MYSORE AGRICULTURISTS RELIEF ACT (18 of 1928)

——S. 3 (ii)—Suit for specific performance of agreement of sale, and in alternative, for refund of sale price and also for damages as stipulated — Held, claims for refund of money and for damages were not one which arose out of contract but one which arose by reason of breach of contract—Money which plaintiff would get on basis of claims, therefore, was not 'money due on contract' within meaning of S. 3 (ii). **(1963) 2 Mys L J 467.**

——ORISSA MONEY LENDERS ACT (3 of 1939)

——S. 8—Suit for recovery of loan of Rs. 5,100/- with interest — Maximum capital authorised under certificate of registration issued to plaintiff falling below the amount of suit loan — Suit is rightly dismissed. ILR 1961 Cuttack 21 and ILR 1962 Cuttack 445, Approved and followed. **(1964) 6 O J D 207 (DB).**

——PATIALA REDEMPTION OF MORTGAGES ACT (9 of 2003, B. K.)

——Pre.—Applicability to representatives.

The Patiala Redemption of Mortgages Act applies not only to the original parties to a mortgage but equally applies to their representatives-in-interest either by devolution or assignment. **ILR (1955) Pepsu 539=AIR 1955 Pepsu 145 (147) (Pt C) (Pr 6).**

——S. 4 — Mortgage redeemed by one of mortgagors —Right of co-mortgagors to apply for redemption of their shares.

Where one of the mortgagors redeems the mortgage in its entirety he is subrogated to the position of the mortgagee. Hence where the original mortgage is redeemed in its entirety by one of several mortgagors, the other co-mortgagors are entitled to the benefit of the provisions of the Patiala Redemption of Mortgages Act and may apply under S. 4 of the Act to the Collector for redemption of their share of the land from the redeeming mortgagor. I L R (1955) Pepsu 539=AIR 1955 Pepsu 145 (148) (Pt A) (Pr 7).

——S. 12—Applicability—Mortgaged land less than 50 acres—Principal exceeding Rs. 5,000—Suit—Maintainability.

A mortgage would fall beyond the provisions of the Act only if the area mortgaged exceeds fifty acres and also the amount of money secured exceeds Rs. 5,000. Where one of the conditions is satisfied, a suit under S. 12 of the Act is competent.

A mortgage of land measuring less than 50 acres would be governed by the Act by virtue of S. 1 (4) (a) even though the sum secured exceeded Rs. 5,000. (1960) 62 Punj L R 848.

—PUNJAB REDEMPTION OF MORTGAGES ACT (2 of 1913)

——Ss. 4, 9, 12—Application under S. 4 by mortgagor for redemption—Mortgagee's objections — Collector stating 'controversy too complicated' and directing parties to go to civil Court — Suit by mortgagor — Collector's order is not required to be set aside—Case is not governed by Art. 14, Limitation Act, 1908, S. A. No. 1382 of 1960, dated 14-2-1962 (Punj), Reversed. See Debt Laws — Punjab Redemption of Mortgages Act (2 of 1913), S. 12. AIR 1965 Punj 502.

——S. 12—Scope of—No suit within one year under Art. 14, Limitation Act—Order of Collector becomes final and is binding—Limitation Act (1908), Art. 14. AIR 1955 NUC (Punj) 1604.

——S. 12 — S. 1, Punjab Restitution of Mortgaged Lands Act (15 of 1938)—Scope of the Act—Act gives new remedy but creates no new rights. See Debt Laws—Punjab Restitution of Mortgaged Lands Act (15 of 1938), S. 1. AIR 1955 NUC (Punj) 1604.

—PUNJAB RELIEF OF INDEBTEDNESS ACT (7 of 1934)

——S. 31—Deposit of arrears of rent in Court under S. 31 amounts to valid tender.

Since the law authorises a debtor to pay into Court any money due from him to a creditor, the intention and the purpose is that such payment is to be equivalent to payment to the creditor. This is made clear by the consequence mentioned in S. 31 regarding stoppage of further interest. Hence deposit made under the section in respect of arrears of rent must be taken in law to be at least valid tender of such arrears. 1964 P L R 93, Foll. ('64) 66 Pun L R 755 (DB).

—TRAVANCORE-COCHIN HOLDINGS (STAY OF EXECUTION PROCEEDINGS) ACT (8 of 1950)

——S. 2, Expl.—When the Michavaram of 84 Rupees per annum was equivalent to the mortgage amount itself, that is to say, there was rather a very high pattom and not the low pattom and the term of otti deed was 6 years, the transaction was held be kanom within the meaning of Act 8 of 1950 — Kanom and Otti—Tests. See Transfer of Property Act (1882), S. 58. AIR 1957 Trav-Co 239.

—TRAVANCORE HOLDINGS (STAY OF EXECUTION PROCEEDINGS) ACT (21 of 1124 M. E.)

——S. 4—(as amended by Act 8 of 1950)—Tenant holding over after determination of tenancy—Landlord not entitled to possession unless tenant entails forfeiture under Proviso (a) to S 4 of Act 8 of 1950—Suit for eviction — Tenant will not be ordered to pay mesne profits—He will be liable to pay rent at the specified rent and not mesne profits. See T. P. Act (1882), S. 111 (h). AIR 1956 Trav-Co 86 (DB).

—U. P. ENCUMBERED ESTATES ACT (25 of 1934)

——S. 30—Receipt of transferable U. P. Encumbered Estates Bonds—It amounts to receipt of interest included in full value of bonds on date when bonds were received. See Income Tax Act (1922), S. 3. (1963) 49 ITR 502 (All).

—U. P. TEMPORAY POSTPONEMENT OF EXECUTION OF DECREES ACT (10 of 1937)

——S. 6 (c)—Words 'who has taken'—Meaning of — Interpretation of the section—Applicability.

The language used in the section does not necessarily connote the idea of an express contract between the purchaser and the mortgagor as to the liability for payment of the mortgage money. The words 'who has taken' are equivalent to the words 'who has acquired' and they do not imply an express contract for the payment of encumbrances which may fall on the purchaser by operation of law. The section is applicable in such a case also. AIR 1952 All 645.

—U. P. ZAMINDARS DEBT REDUCTION ACT (15 of 1953)

——S. 4 (3)—Buildings belonging to or held by intermediary excluding the site vest on the owner or intermediary by virtue of S. 9 of the U. P. Zamindari and Land Reforms Act (1 of 1951)—Mortgage partly of estate and partly of house property—Reduction of rent should be calculated on the basis of S. 4 (3) and the amount distributed on the estate and the house, in possession of mortgagors — Amount due on the specified date, viz. 1st July 1952, has to be reduced — Decree inclusive of costs to be reduced. 1965 All WR (HC) 256

—USURIOUS LOANS ACT (10 of 1918)

——S. 3—Scope — Party claiming relief under — Factors to be established.

In order to apply S. 3 of the Usurious Loans Act, two facts have to be proved: The first is that, interest was excessive and the second is that, the transaction was, as between the parties substantially unfair. Both these essentials must be proved to co-exist. The section enacts a number of circumstances which have to be considered by the Court before it exercises any of the powers. The party invoking the relief has to satisfy the conditions necessary for granting the relief under the Act. (1965) 2 Andh W R 510.

——S. 3 (b)—'Any suit'—Meaning of — If would include a claim by a mortgagee for the compesation amount under S. 30 of the Land Acquisition Act — Land Acquisition Act (1 of 1894), S. 30—Proceedings under—Nature of—If a suit — If would attract the provisions of Usurious Loans Act.

In interpreting a statute like the Usurious Loans Act which is a beneficial enactment providing relief to debtors under certain circumstances of oppressive rates of interest, the Court should adopt a generous interpretation and not a narrow or literal interpretation which will not be in consonance with the object the Act or the intention of the Legislature. The term 'suit' is not confined strictly to an action. Any proceeding in a Court of justice to enforce a demand is a suit. When used in statutes it is capable of an extended or restricted interpetation as the context and the intention of the Legislature in enacting the particular statute appears to the Court to require. The

word 'suit' in S. 2 (3) of the Usurious Loans Act cannot be interpreted in a restictive sense of a proceeding commenced by a plaint under the Civil Procedure Code. A proceeding in a Court following a reference under S. 30 of the Land Acquisition Act will be a suit within the meaning of the Usurious Loans Act and a party entitled to the compensation amount deposited can invoke the aid of the Act to get relief against excessive interest against his creditor who claims a right over compensation amount in those proceedings. **(1963) 2 MLJ 526 = AIR 1966 Mad 322.**

——S. 3—Penalty clause in mortgage providing for double enhancement of interest in cases of default —Not illegal when actual rate of interest allowed by Court till date of decree is 12 per cent p. a., which cannot be regarded as usurious or penal. **AIR 1965 Mad 537 (539) (Pt B) (Pr 3) (DB).**

DEFENCE OF HYDERABAD RULES (1348-F)

● ——R. 110 (1)—Directions as to publication of Press Note is not mandatory. See Hyderabad Cotton Cloth and Yarn Control Order (1355-F). **55 Cr L J 1093 = AIR 1954 (Hyd) 129 (FB).**

DEFENCE OF INDIA ACT (51 of 1962)

——Ss. 6 (4) and 43—Defence of India Rules (1962), R. 131 (2) (gg)—Motor Vehicles Act (1939), Chapter IV-A—Effect of S. 6 (4)—Section 43 makes R. 131 (2) (gg) override Chapter IV-A.

The provisions of S. 6 (4) of the Act do not amend Chap. IV-A of the Motor Vehicles Act with the result that the provisions of that Chapter remain intact. But the circumstance that Chap. IV-A remains intact and the further circumstance that the provisions of Chap. IV-A override those of Chap. IV of the Motor Vehicles Act cannot lead to the conclusion that R. 131 (2) (gg) is subject to those provisions and in the case of inconsistency between the two, the former will override the latter. On the other hand, S. 43 of the Defence of ,India Act clearly makes the provisions of R. 131 (2) (gg) override the provisions contained in Chap. IV-A of the Motor Vehicles Act. The effect of S. 6 (4) of the Defence of India Act is not to incorporate the provisions of Chap. IV-A of the Motor Vehicles Act. S. 6 (4) of the Act does not reiterate the force of Chap. IV-A of the Motor Vehicles Act nor does it accord it any special status. All that it does is to allow that Chapter to remain where it is unamended. **ILR (1965) 2 All 303.**

——Ss. 43, 6 (4) — Defence of India Rules (1962), R. 131 (2) (gg)—Motor Vehicles Act (1939), Chap. VI-A —Effect of S. 6 (4)—Section 43 makes R. 131 (2) (gg) override Chap. IV-A. See Defence of India Act (1962), S. 6 (4). **ILR (1965) 2 All 303.**

——S. 44—Defence of India Rules (1962), R. 131 (2) (gg) and (i)—Order under dated 17-8-1964—Section 44 is directory — Disregard of directory and mandatory provisions — Difference between — Section not infringed by order.

Section 44 is directory and not mandatory, even though the word 'shall' and not 'may' has been used. It is well settled that not much depends upon the use of the word 'may' or 'shall,' Even a directory provision has got to be obeyed. The difference between the disregard of a directory provision and a mandatory one is that whereas the infringement of the former is not actionable unless prejudice and injustice has been caused, the violation of the latter is illegal per se. In passing the order dated 17.8-1964 no injustice or prejudice having been caused, and it not having been established that the minimum necessary interference with ordinary avocations of life, has been exceeded and that the conditions prevailing on the route and the exigencies of the the emergency permitted any other order, it cannot be said that S. 44 of the Act has been infringed. **ILR (1965) 2 All 303.**

DEFENCE OF INDIA RULES (1962)

——R. 131 (2) (gg)—"Any vehicle or class of vehicles"—Meaning of.

Rule 131 (2) (gg) envisages classifications of all types and so long as a group of vehicles can fall in a category, it is a class of vehicles within the meaning of the rule. In view of the wide sweep of the words "class of vehicles" and also because these words have got to be read along with the preceding words "any vehicle" the sentence being "any vehicle or class of vehicles," the conclusion necessarily has to be that all classes of vehicles, whatever be their nature and every vehicle, fall in the ambit of the words "any vehicle or class of vehicles" occurring in R. 131(2)(gg). **ILR (1965) 2 All 303.**

—R. 131 (2) (gg)—Defence of India Act (1962), Ss. 6(4) and 43—Motor Vehicles Act (1939), Chap. IVA —Effect of S. 6 (4)—Section 43 makes R. 131 (2) (gg) override Chap. IV-A See Defence of India Act (1962), S. 6 (4). **ILR (1965) 2 All 303.**

——R. 131 (2) (gg)—Order under, dated 17-8-1964—Part of order excluding private owners from specified route — No question of payment of compensation arises. See Constitution of India, Art. 31 (2). **ILR (1965) 2 All 303.**

——Rr. 131 (2) (gg) and (i) — Order under dated, 17-8-1964 — Section 44 is directory — Disregard of directory and mandatory provisions — Difference between — Section not infringed by order. See Defence of India Act (1962), S. 44. **ILR (1965) 2 All 303.**

HOUSES AND RENTS

—DELHI (CONTROL OF BUILDING OPERATIONS) ACT (53 of 1955)

● ——Pre.—Delhi Minor Mineral Rules (1938)—Application for permit for quarrying after 30-6-1957 not granted on ground that the land was in a controlled area under Act 53 of 1955—Suit by person requiring Government to grant him such permit—Pending suit, Act 53 of 1955 ceasing to be operative after 30-12-1957 having been replaced by Delhi Development Act (1957)—Under latter enactment area in question not notified as controlled area—Held there being no application pending before the Collector for the grant of permit change in law in the shape of Act 53 of 1955 ceasing to be operative did not assist the plaintiff to obtain any relief in the suit. See Delhi Minor Mineral Rules (1938). **1962 (3) S C R 62=AIR 1967 S C 46 (48, 49) (Pt C) (Pr 7).**

● ——S. 4—If the land was in a controlled area under Act 53 of 1955 and there was need to prohibit quarrying in the interests of the health of the people inhabiting the residential area adjoining the quarries, and the Collector was appraised of this fact by the Development Authority, the order of the Collector refusing permission for quarrying could not be successfully impugned. Amar Jyoti Stone Crushing Co. v. Union of India. **1962 (3) S C R 62=AIR 1967 SC 46 (48, 49) (Pt B) (Pr 7).**

DELHI SPECIAL POLICE ESTABLISHMENT ACT (25 of 1946)

——S. 3 (2)—Investigation made by Circle Inspector of Special Police Establishment — Legality — Officer who laid the trap—Power to investigate into offence

—Circle Inspector of Special Police Establishment is Station Officer. See Prevention of Corruption Act (1947), S. 5-A. 1959 M L J (Cri) 754=(1959) 2 Andh W R 317.

DISPLACED PERSONS (COMPENSATION AND REHABILITATION) ACT (44 of 1954)

——S. 19 — Displaced Persons (Compensation and Rehabilitation) Rules (1955), R. 102—Cancellation of allotment—Revision — Revisional authority holding that matter of validity of notice could not be re-agitated on account of applicability of rule of res judicata because of the dismissal of writ petition previously filed before High Court of Andhra Pradseh —That writ petition dismissed on ground of existence of alternative remedy which had not been exhausted and not on ground that it was disputed question of fact—Decision of High Court held was not final and binding — Order of revisional authority held was erroneous. 64 Pun L R 922.

——S. 24 (3) — Natural justice— Reasonable opportunity — Essentials indicated. See Constitution of India, Arts. 226 and 32. (1964) 66 Pun L R 351.

—Ss. 29 and 20 — Auction sale of evacuee house— Confirmation of sale in 1957 — Issuance of certificate of sale in 1959 — Petition by auction-purchaser to eject tenant of house in 1960 — Held, sale certificate related back to date when sale was confirmed and auction purchaser was entitled to file petition in 1960 two years after date of confirmation. 1961 P L R 470, Rel. on. (1963) 65 Pun L R 253.

——S. 29—Scope and applicability — Petitioner was a tenant in respect of a shop forming part of compensation pool—A respondent purchased it in a public auction and obtained sale certificate from the concerned authorities— Ordinarily, the tenant could not be ejected before the expiry of 2 years from the date of the certificate— Ejectment could be enforced only under the ordinary law and not by the authority under the Act—Forcible ejectment by the authorities under the Act, held caused injury to the petitioner— The respondent at whose instance the impugned proceedings were taken could be subjected to a writ of mandamus to restore possession of the shop to the petitioner. (1962) Cur L J 351 = I L R (1962) 2 Punj 873.

——S. 29 (2) — Sale in auction of property of class notified under S. 9 (2) — Purchase price not paid by auction purchaser—Sale certificate not issued to him —There can be no transfer of property sold — Benefit of S. 29 not available to auction purchaser even if provisional possession had been transferred to him and allottee had attorned in his favour—Property continued to vest in Government —Title could not be said to have passed to auction purchaser. (1962) 64 Pun L R 922.

——S. 40 (3) — Natural justice — Reasonable opportunity — Essentials iindicated. See Constitution of India, Arts. 226 and 32. (1964) 66 Pun L R 351.

DISPLACED PERSONS (COMPENSATION AND REHABILITATION) RULES (1955)

—R. 65 — Right to receive compensation—When hit — Right is hit if claimant is in possession of agricultural land allotted to him, but not if allotment is cancelled or claim is otherwise withdrawn. ILR (1965) 2 Punj 648.

——R. 90 (14)—Scope and applicability — Forfeiture of deposit under—Validity See Contract Act (1872), S. 1. 1965 Pun L R (Supp) 170.

——R. 102 (d) — "Sufficient reason" — Allottee not using portion allotted is sufficient reason — Cancellation of allotment for giving possession to auction purchaser not sufficient reason— Words and Phrases —"Sufficient reason". (1962) 64 Pun L R 922.

——Rr. 104, 105 — Natural justice — Reasonable opportunity — Essentials indicated —Displaced Persons (Compensation and Rehabilitation) Act (1954), Ss. 24 (3) and 40 (3). See Constitution of India, Arts. 226 and 32. (1964) 66 Pun L R 351.

DISPLACED PERSONS (INSTITUTION OF SUITS) ACT (47 of 1948)

——S. 8 (b) (as amended by Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act (1950)) and S. 3 —Displaced Persons (Debts Adjustment) Act (1951), Ss. 36 and 2 (10)—Location of Bank—Test for determination of — Bank shifted from Lahore to Delhi in May 1947—Came under definition of displaced person. (1965) Pun.L R (Supp) 83 (DB).

DISSOLUTION OF MUSLIM MARRIAGES ACT (8 of 1939)

——S. 2 (viii)—Scope and applicability — Wife entitled to a decree for dissolution of her marriage if her case of cruelty by the husband be accepted. 1962 B L J R 258.

DIVORCE ACT (4 of 1869)

——S. 7—Maintenance —Wife and son—Christians of Travancore — Desertion of wife proved — Wife held entitled to separate maintenance — Son held not so entitled.

Held, (i) that the husband had been guilty of desertion of his wife that is, of abandoning her without her consent or against her wish, and she was, therefore, entitled to separate maintenance. 1949 Ker L T 152, Foll. (ii) that there was no legal right to ask for maintenance for a son from his father. Maintenance could not therefore, be decreed for the son. AIR 1953 Trav-Co 61, Foll. (1964) 1 Ker L R 137.

EASEMENTS ACT (5 of 1882)

——S. 13—Easement of necessity — When can be claimed.

An easement of necessity could be claimed only when it is necessary for the plaintiff to exercise that right for the reasonable enjoyment of his own property which cannot be otherwise enjoyed. So also if the right claimed by way of an easement of necessity is the right of way and there are more ways than one from which the plaintiff could reach his own property, he would not be entitled if he could reach his property by the other way to claim a right of way over the defendent's land. ILR (1963) Mys. 814.

——S. 13 — Party-wall — Meaning of — Rights of adjoining owners — One of such owners raising structure over party-wall increasing or lowering of height of such wall amounts not only to an interference with the right of the other, but it amounts to an exclusion—Remedy of the other is to restore party-wall to its original position by mandatory injunction without proving damage—Only possible exception to the grant of this relief would be in cases where the plaintiff is guilty of laches. See Specific Relief Act (1877), S. 55. AIR 1959 Mys 244.

——S. 13—Party-wall — Construction on party-wall —Removal. The two adjoining owners of a party wall are tenants in common and the wall cannot be treated as a wall divisible longitudenally into two strips, one belonging to one neighbour and the other to the other. If one of them excludes the other from the use of the wall by building upon it, the excluded owner will be entitled to a mandatory injunction for the removal of the obstruction. See Specific Relief Act (1877), S. 55. AIR 1954 Punj 125.

●——S. 18 — Pre-emption—Right of—Decree for—Time at which decree-holder is substituted in place of original vendee.

The right of pre-emption could be effectively exercised or enforced only when the pre-emptor has been substituted by the vendee in the original bargain of sale. A conditional decree whereunder a pre-emptor gets possession only if he pays a specified amount within a prescribed time and which also provided for the dismissal of the suit in case the condition was not complied with, could not obviously bring about the substitution of decree-holder in place of the vendee before the condition was complied with. Such a substitution took place only when the decree-holder complied with the condition and took possession of the land. AIR 1916 P C 179; 32 MLJ 459, Rel. on. Bishan Singh v. Khazan Singh, ILR (1958) Punj 2225 = 1959 S C R 878 = 1958 S C J 1234 = AIR 1958 S C 838.

——S. 18 — Pre-emption—Co-sharer mortgaging his share in property — His right of redemption becoming barred by lapse of period of 60 years—He cannot pre-empt sale of the other share of the property. AIR 1954 Ajmer 51.

——S. 18 — Pre-emption — Right to — Joining of strangers.

The law of pre-emption is technical and has got its rules according to which the law has to be applied. It is a weak right and any infringement of those rules takes away the right and defeats the claim.

A pre-emptor, therefore, loses his right of enforcing pre-emption by joining in his claim persons who are strangers and the fact that the latter get their names removed from the record by an amendment of the plaint does not make any difference, nor can O. 1, R. 9 or R. 10 help the pre-emptor. 5 All 197, Foll. 1953 All L J 536 = 1953 All W R (H C) 609 = A I R 1954 All 94.

——S. 18—Pre-emption — Right of — Original sale being subject to agreement for recovery —Pre-emptor can pre-empt the property and get into the shoes of the vendee subject to the same condition — Vendee reselling property to vendor — Pre-emptor loses his right of pre-emption. 1953 All L J 317 (2)=1953 All W R (H C) 509 = AIR 1953 All 696.

——S. 18 — Pre-emption — Right to — Device to defeat a claim for — Legality — Acquisition by gift from vendor of fractional share — Effect — Matters to be considered by Court.

Though it can be said that in a way it is permissible to resort to a device, if it is not illegal, to defeat a claim for pre-emption, the rule only permits a proposed vendee to improve his position vis-a-vis the likely pre-emptors by acquiring a status equal or superior to theirs. He may do so by acquiring property in the village, mahal or sub-division of the mahal, which he intends to purchase, by a transaction which is not liable to pre-emption (e.g.) exchange or gift. Whenever a proposed vendee, before purchasing the property, acquires a small bit of it by exchange, the only matter that requires investigation is, whether the transaction of exchange is a genuine transaction or only sham or bogus.

Where an intending vendee acquires some little property by gift from a person other than the intending vendor, in order to acquire a status equal or superior to that of likely pre emptors to meet a claim for pre emption, the plaintiff pre-emptor can succeed in his suit only if he can prove that the ostensible gift is sham and bogus or that it is in fact a sale. Where, however, the intending vendee acquires property by an ostensible gift from the intending vendor under similar circumstances, the position is somewhat different. In such a case it cannot be said that the intention of the ostensible donor or of the parties to the transaction is the sole determining factor. The legal effect of a transaction cannot always be controlled by the intention of the parties. ILR (1953) 1 All 374 = AIR 1952 All 149.

——S. 18—Pre-emption — Every villager, if he has right to pre-empt sale of land in village.

Having regard to the common meaning which the law attaches to the word "pre-emption," it cannot be said that every villager has, regardless of the fact whether he has any property or not in the village, a right to pre-emot the sale of land in the village. ('51) 1951 A W R (H C) 230 = AIR 1951 All 850.

——S. 18 — Pre-emption—Mode of exercising right—Foreclosure decree — Person having right of pre-emption taking sale from mortgagees — Judgment-debtor under foreclosure decree cannot pre-empt sale. AIR 1950 All 647.

——S. 18—Pre-emption — Circumvention of — Prior to purchase of property in village, vendee acquiring fractional share from vendor under deed of gift — Right of pre-emption if defeated. 55 Cal W N 113 = AIR 1951 Cal 37 (DB).

[Overruled on another point in AIR 1952 Cal 35 (FB).]

——S. 18—Pre-emption — Right of —Transfer after accrual of pre-emption right — Right saved even though property transferred to first vendor.

Any transfer by the vendee subsequent to the accrual of the right of pre-emption will be subject to the pre-emptor's rights, and his right will not be defeated by the voluntary retransfer by the vendee in favour of the original vendor. 1961 MPLJ (Notes) 161.

——S. 28 — Deed —Construction—Compromise deed —Ownership of rooms on upper floor with S — Approach to rooms only through open roof of rooms of P — Ownership of roof held was with S. AIR 1955 NUC (Ajmer) 1983.

——S. 35—Pre-emption — Customary right — Wajib-ul-arz — Interpretation — Custom of pre-emption — Validity — (Constitution of India, Arts. 19 (1) (f) and 19 (5)). AIR 1955 NUC (All) 2748.

——S. 41—Extinguishment of easement of necessity—Possibility of plaintiff reaching his own land by some route, however circuitous and however long it may be, does not extinguish right to easement of necessity. ILR (1963) Mys 814.

—— S. 56 —Abadi licence is heritable and assignable —Land not settled with the possessor under S. 5 (a) of Abolition of Proprietary Rights Act — There can be no enhancement of assessment of land revenue. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1951), S. 5 (a). 1962 M P L J (Notes) 293.

ELECTRICITY (SUPPLY) ACT (54 of 1948)

——S. 79 (c) — Mysore Civil Services Rules (1958), R. 41, Note 7 — Power given to Mysore State Electricity Board under S. 79 (c) is very wide and method and manner of exercising it is entirely left to 'Board' —Board instead of framing its own regulations adopting State Civil Services Rules as its own regulations to govern service conditions of its employees — 'Board' passing order inconsistent with Note 7 to R. 41 — Employees of 'Board' held not entitled to benefit of Note 7 to R. 41 — Note should yield place to order in question — Rules do not bind 'Board' on their own force — As 'Board' has power to make regulations, it has also the power to amend any of the provisions contained in 'Rules' — Order clear and unambiguous applying to all selectees — No question of permitting both Note and order to operate in different fields by adopting rule of harmonious construction. (1964) 2 Mys L J 7.

EMPLOYEES' PROVIDENT FUNDS ACT (19 of 1952)

—S. 1 (3) — Object of the Act.

The Act is a beneficient measure enacted for the purpose of institution of Provident Fund for employees in factories and other establishments. The provisions have been made for the better future of the industrial worker on his retirement and for the benefit of his dependents in case of his death while in employment. However, to avoid any hardship to new establishments who may not start making profits in their infancy it has been provided that they shall be exempted from the application of the Act for the stated period. 1966 Raj L W 209=ILR (1966) 16 Raj 130=(1965) 2 Lab L J 704 (Raj).

—Ss. 6, 4 - Dismissal of employee for misconduct —Employee is entitled to recover amounts contributed by him towards provident fund with interest thereon. See Provident Funds Act (1925), S. 4. (1964) Lab L J 500 (Mad).

—S. 16 — Scope of S. 19A — It does not deal with individual controversy between parties — Order of Central Government under S. 19A directing that the establishment is new set up, passed at instance of party without hearing the other side — Order is invalid — Order also held as violative of principle of natural jstice — Constitution of India. Art. 226. See Employees' Provident Funds Act (1952), S. 19A (iv). 1966 Raj L W 209 = ILR (1966) 16 Raj 130=(1965) 2 Lab L J 704.

—S. 19A — Employees' Provident Fund Scheme (1952), R. 26B—Relative scope of.

A comparison of R. 26B with S. 19A of the Act reveals that, though both are meant for removal of certain doubts the frame of the two provisions differs in material respects. While S. 19A of the Act contemplates the making of a provision or giving of a direction which should not be inconsistent with the provisions of the Act by the Central Government, R. 26B of the Scheme contemplates a decision by the Regional Commissioner or the State Commissioner. Then while S. 19A does not in terms provide for hearing of the employer and the emplovee, R. 26B makes an express provision for hearing. Then what is significant to note in S. 19A of the Act is that the difficulty or doubt should arise "is giving effect to the provisions of this Act." 1963 Raj L W 209 = ILR (1966) 16 Raj 130=(1965) 2 Lab L J 704.

—Ss. 19A (iv) and 16 — Scope of S. 19A — It does not deal with individual controversy between parties —Order of Central Government under S. 19A directing that the establishment is new set up, passed at instance of party without hearing the other side — Order is invalid - Order also held as violative of principle of natural justice — Constitution of India, Art. 226.

Section 19A is an adjunct only to the administrative machinery provided by the Act for enforcing the several provisions thereof and could be resorted to only for the removal of difficulties or doubts that the officers might experience. It is designed to clothe the Central Government with the power of issuing direction of a general nature or to make provision which may be of a general nature and not for dealing with any individual controversy between the parties. For that they are left to pursue the ordinary remedies under the law particularly when the provisions of the Act do not bar the jurisdiction of the Civil Courts regarding the settlement of disputes between the employer and employee relating to Provident Fund. 1966 Raj L W 209=ILR (1966) 16 Raj 130 = (1965) 2 Lab L J 704.

—Para 26B — Relative scope of. See Employees' Provident Funds Act, (1952), S. 19A. 1966 Raj L W 209=ILR (1966)16 Raj 130 = (1965) 2 Lab L J 704.

EMPLOYEES' STATE INSURANCE ACT (34 of 1948)

—Ss. 1 (3), 61 and 72 — Section 1 (3) is intra vires Art. 14 of Constitution and is not discriminatory — It is a conditional legislation and Central Government has authority to implement it. (1961) ILR 40 Pat 193 (DB).

—S. 2 (9) — "Employee" — Meaning — He is one who is directly or indirectly connected with the manufacturing process. (1965-66) 28 F J R 141 = (1966) 1 Lab L J 687.

—Ss. 53, 66, 75 — E. S. I. Corporation incurring liability to pay workmen's compensation — Re-imbursement of compensation from employer — Actual payment of compensation by Corporation — Not a precondition.

In the context in which the word "re-imbursed" is used in S. 66, it merely means the right to recover from the employer the actuarial present value of the periodical payments which the Employees' State Insurance Corporation is under a liability to make to the dependants of the deceased employer, irrespective of the actual amount which the Corporation may ultimately have to pay. Therefore, it cannot be said that the Corporation is not entitled to call upon the employer to reimburse the amount of compensation, unless the amount is actually paid to the dependents of the deceased worker. (1964-65) 26 FJR 124 (Punj).

—Ss. 61, 72 and 1 (3)—Superior benefits enjoyed by employees under contract of service or standing orders—Such benefits cannot be curtailed on introduction of scheme. (1961) ILR 40 Pat 193.

—S. 66 — E. S. I. Corporation incurring liability to pay workmen's compensation — Re-imbursement of compensation from employer—Actual payment of compensation by Corporation — Not a precondition. See Employees' State Insurance Act (1948), S. 53. (1964-65) 26 F J R 124 (Punj).

—S. 72 — Section 1 (3) is intra vires Art. 14 of Constitution and is not discriminatory—It is a conditional legislation and Central Government has authority to implement it. See Employees' State Insurance Act (1948), S. 1 (3). (1961) ILR 40 Pat 193.

—Ss. 74, 75 — Mandamus and certiorari — Writs cannot be issued against private individual. See Constitution of India, Art. 226. (1961) I L R 40 Pat 193.

—S. 75 — E. S. I. Corporation incurring liability to pay workmen's compensation — Re-imbursement of compensation from employer — Actual payment of compensationn by Corporation — Not a precondition, See Emoloyees' State Insurance Act (1948), S. 53 (1964-65) 26 F J R 124 (Punj).

—S. 78 — Punjab Government Court Rules (1949), R. 47 — Provisions of Act or Rules do not permit employees' insurance Court to review its order — Power to review is not mere matter of procedure nor the Court or Tribunal has inherent right to review its own order even in absence of statutory provisions permitting such a course. (1962-63) 23 F J R 453 (Punj).

EVACUEE INTEREST (SEPARATION) ACT (64 of 1951)

—S. 20 (2) — Stay of suit under — Stay ceases to be operative as soon as proceedings under Act cease to be pending and come to an end — No formal application for revival of stayed suit is necessary—Suit cannot be partially revived but must be disposed of on merits. 1965 Pun L R (Sup) 79.

EVASION OF STATUTE

——For statutory cross references see under:
(1) "Fraud on Constitution".
(2) "Fraud on Law of Registration".

EVIDENCE ACT (1 of 1872)

——**S. 1**—Labour Courts — **Procedure** — Proceedings not governed by the technicalities of Evidence Act — General principles thereof are however applicable. See Industrial Disputes Act (1947), S. 2 (k). **(1964) 2 Lab L J 287 (Mad).**

——**S. 1**—Departmental enquiries—Rules contained in Evidence Act have no application—Reliance on testimony of accomplice is not vitiating circumstance. See Constitution of India, Art. 311. **(1965) 2 Lab L J 519=(1964) 2 Mys L J 153.**

——**S. 3—Criminal trial—Proof of guilt—Circumstantial evidence—Nature of.**

In the case of circumstantial evidence, the circumstances sought to be relied upon must be proved beyond reasonable doubt. The circumstances proved must not be inconsistent with the innocence of the accused and consistent only with his guilt, and they should not be capable of any explanation on any reasonable hypothesis other than the guilt of the accused. **(1961) 2 Guj L R 451 (DB).**

——**S. 3**—Proved — Conditions of temporary appointment under, not existing in P's case — Almost all documents showing that P's appointment was to substantive post — **Held** P's appointment was to substantive post and not to temporary post. See Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules (1956), R. 14. **1965 Kash L J 179.**

——**Ss. 3, 5, 101-104** — Offence under S. 302, Penal Code — Prosecution prima facie establishing guilt of accused — Plea of alibi by accused, but accused not supporting it by calling defence witnesses on ground that he cannot be called on to prove his innocence — **Held** it was for accused to rebut prosecution evidence by pointing out inherent weaknesses in prima facie case established by prosecution — Penal Code (1860), S. 302—Criminal P. C. (1898), S. 267. **1963 Mad W N 638.**

——**S. 3—Will—Proof of – Standard of proof required.**

The English rule laid down by the Ecclesiastical Courts that in the case of inofficious will, the duty of a party propounding a will is to satisfy the conscience of the Court by removing all suspicion about the will has no application in India. In India no higher standard of proof than what is necessary under the statute law viz., S. 3, Evidence Act is required for proof of the will. **('50) 28 Mys L J 124 (DB).**

—— S. 3—Certain event leading to inference both in favour of accused and against him — Inference in favour of accused should be drawn. **ILR (1964) Mys 486.**

——**S. 5 — Appreciation of evidence — Demeanour of witness—What is—Remarks on demeanour.**

Merely because a witness does not state facts which are incriminatory of the accused and which other witnesses have deposed to, it cannot necessarily be inferred that the witness is trying to suppress the truth and to favour the accused. His evidence may be true and that of the other witnesses false. Demeanour of a witness is his bearing or outward behaviour. It is distinct from the impression made on the Judge by the demeanour. Remarks made by a Judge on the demeanour of a witness should relate to the demeanour of the witness. **(1961) 2 Guj L R 451 (DB).**

——S. 5—Offence under S. 302, Penal Code — Prosecution prima facie establishing guilt of accused — Plea of alibi by accused, but accused not supporting it by calling defence witnesses on ground that he cannot be called on to prove his innocence — **Held** it was for accused to rebut prosecution evidence by pointing out inherent weaknesses in prima facie case established by prosecution. See Evidence Act (1872), S. 3. **1963 Mad W N 638.**

——**S. 5** — Evidence of partisan witness cannot be discarded merely because it is given by partisan — However, his evidence must receive corroboration — Measure of corroborative evidence varies from case to case. **(1965) 4 Law Rep 143 (Mys) (DB).**

——**S. 5**—Offence under S. 376, Penal Code—Nature and extent of corroborative evidence — It must support statement of prosecutrix. See Penal Code (1860), S. 376. **(1962) 40 Orissa J D 305 = 1 East L R 213= 28 Cut L T 385.**

——**S. 9** — Having regard to unsatisfactory nature of evidence relating to accused and long delay that took place between time of their arrest and identification parade and also having regard to length of time between occurrence and identification parade, held evidence of identification parade could not be relied upon. **(1962) (2) Andh L T 115.**

——**Ss. 9, 134—Identification evidence — Admissibility—Whether identification by one witness is sufficient is a question of fact.**

The identification evidence is admissible under S. 9 of the Evidence Act. The statement of the identifier in the identification parade is merely a former statement of the identifier and can be used either for contradiction or for corroboration. **(1963) 29 Cut L T 217.**

●——**S. 13—Pre-emption—Custom—Non-Muslims—Proof.**

If the right of pre-emption is set up by non-Muslims on the basis of a custom, the existence of the custom is a matter to be established by proper evidence. But when the existence of a custom under which the Hindus claim to have the same rights of pre-emption as Muhammadans, in any district, is generally known and judicially recognised, it is not necessary to prove it by further evidence. A long course of decisions has established the existence of such custom in Bihar, Sylhet and certain parts of Gujarat. Audh Behari Singh v. Gajadhar Jaipuria, **1955 S C A 132 = 1954 Andh L T (Civil) 40 = 1954 SCJ 590 = 1954 A L J 529=1954 B L J R 451=(1955) 1 S C R 70=A I R 1954 S C 417.**

——**S. 13**— Customary right — Wajib-ul-arz — Interpretation — Custom of pre-emption—(Constitution of India, Art. 19 (1) (f) and 19 (5). **AIR 1955 NUC (All) 2748.**

——**Ss. 13 and 35 — Pre-emption — Custom of pre-emption detailed in Wajib-ul-arz — Muhammadan Law of pre-emption if applies.**

Where in a Wajib-ul-arz details are given to show how the property must be offered to co-sharers, a custom of pre-emption exists not according to the Muhammadan law but in terms of the Wajib-ul-arz and incidents of Muhammadan law do not apply. **('51) 1951 All W (H C) 230=AIR 1951 All 850.**

——**S. 13** — Pre-emption — Endorsement of Sub-Registrar to effect that vendor had heard sale-deed read out and had been identified by pre-emptor— No direct evidence that deed was read out in pre-emptor's presence — That pre-emptor knew contents of deed held could not be inferred. **AIR 1950 All 190.**

——**S. 13**—Wazib-ul-arz — Raigarh State Wazib-ul-arz, Cls. 36, 41—Cutting trees of spontaneous growth —Rights of raiyats — Sal trees could be cut — C. P. States Land Tenure Order (1949), Cls. 21 (1) and 4— Rights in trees — Transferable by raiyats — Matter specifically provided in order — Provisions in Wazib-ul-arz no longer in effect. **1962 Jab L J 1087 = 1962 M P C 238=1962 M P L J 772.**

——S. 13—Custom—Khairagarh Wazib-ul-arz, Cls. 26 and 27 — Maufidar is proprietor only when he recovers revenue — Maufidar Khairati is a tenant and not a proprietor. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, S. 2 (m) (ii). 1961 M P L J (Notes) 101.

——S. 13—Wazib-ul-arz — Construction — Lessee to enjoy natural annual produce of trees including fruits and flowers — Right to draw toddy juice from sindi trees held included—Words and Phrases—Phal, phool natural annual produce. ILR (1952) Nag 668= AIR 1953 Nag 205.

——S. 13—Wazib-ul-arz (Raigarh District), Ss. 28, 30 (a)—Application to minor ryot.

The words "Nabalig ryot" occurring in S. 30 (a) of the Wajib-ul-arz suggests that ryots can be minors also, and that such minors will be deemed to be ryots. There is no reason to suggest that the word 'ryot' occurring in S. 28 refers only to "adult ryots." A "minor ryot" may lease out the holding till he attains the age of 18 years, but he certainly cannot allow the holding to lie fallow. ('51) 1951 N L J 196 (Rev).

——S. 17—Admission as to date of his birth by party —Presumption.

Per Division Bench: Where the plaintiff had at all material times given his date of birth as 30-3-1901, then in the absence of any evidence to the contrary it may be presumed that that was his date of birth on the principle that what a party himself admits to be true may reasonably be presumed to be so. ILR (1965) Andh-Pra 142.

——S. 18—Civil P. C. (1908), O. 8, R. 5— Admissions in pleadings — Unqualified admission by defendant that plaintiff's account shows some credit balance — Case against defendant is treated as proved by admission. 1965 Raj L W 523.

——S. 24—Extra judicial confession—Value of.

The truth of the evidence of an extra judicial confession has to be carefully weighed just like any other evidence in a criminal case. If true it is cogent evidence. The actual words used by the accused are the primary evidence of the confession and if possible they should be ascertained because it is the function of the Court and not of the witness to construe the confessional statement. ILR 1962 Andh-Pra 496 (DB).

——S. 24—Retracted confession — Can be taken into consideration against co-accused if corroborated in material particulars. (1963) 29 Cut L T 217.

——S. 25 — Whether a person is police officer — Criterion for determination is whether the person has been invested with power of investigation under Criminal P. C. — Police patel is not police officer — Proof of confession held not barred under S. 25. ILR 1962 Andh-Pra 496 (DB).

——S. 25 — Bihar and Orissa Excise Act (2 of 1915), S. 47 (B)—Opium Laws Amendment Act (1957), S. 3— Prosecution under for possession of contraband articles — What prosecution has to prove — Search and recovery of contraband article from house alleged to be in possession of accused—Seizure list signed by accused — Effect — Confession to Excise Officer —Hit by S. 25, Evidence Act. See Bihar and Orissa Excise Act (2 of 1915), S. 47 (B). (1965) 31 Cut L T 990.

——S. 27—Accused making statement on 11-4-1958 relating to his having hidden case property and bringing it on 16-4-1958 which was lying on grass in public high-way to which any one could have access — Held, there was already discovery and subsequent recovery could not come within ambit of S. 27. (1962) 2 Andh L T 115.

——S. 27—Word 'custody' — It has a wider meaning than actual arrest — Held, person going to police station and giving report incriminating himself would be deemed to have submitted himself to police custody, from the moment of appearance at police station — Fact that he was formally arrested only after statement was given would make no difference. 1963 Mad W N 638.

——S. 27—Discovery of fact — What it means: AIR 1958 All 293, Explained. 1963 Mad W N 638.

——S. 32—Dying declaration — Declaration in form of answers to questions put by Magistrate — Questions not recorded—Value of such declaration. (1965) 2 Law Rep 620 (DB).

——Ss. 33 and 137 — Averments in affidavit which could not be tested by cross-examination — Held, statement in affidavit could be disregarded. (1964) 52 I T R 756 (All) (DB).

——S. 34 — Khata Bahi — Admissibility in evidence: A Khata Bahi is a book of account and if it is maintained in the regular course of business it can be admitted in evidence under S. 34. It is a different matter, what weight can be attached to the entries in the Khata which have not been supported by the production of the original account books from which the entries in question have been copied. 1965 Raj L W 523.

——S. 35 — Mutation entries — Value of — A fictitious or fraudulent entry secured in collusion with Patwari is, in law, no entry at all and therefore cannot confer any status. 1962 All W R (HC) 861.

——S. 35 — Pre-emption — Custom — Sale of abadi site — Wajib-ul-arz recording right only on a sale of haqiyat — Effect.

Where according to the wajib-ul-arz the right of pre-emption arises only when there is a sale of haqiyat, there can be no right of pre-emption in the case of a sale of abadi site because haqiyat does not include abadi site. 1951 A W R (HC) 207 = AIR 1952 All 148.

——S. 35 — Record of rights — Discrepancy between Wajib-ul-arz and Khasra — Former to be given more weight. AIR 1951 Nag 447 (Pt A).

[Reversed on another point in AIR 1954 Nag 103.]

——S. 36 — Conviction under S. 279, Penal Code — Reliance on sketch map inadmissible under S. 162, Criminal P. C. — Conviction should be set aside. See Criminal P. C. (1898), S. 162. ILR (1965) Cut 383.

——S. 36— Survey map—Presumption under—Entries in Municipal Khasra prepared under Calcutta Survey Act — Admissible as evidence of possession — Entry 'Sahan Sarak' — Meaning of — Evidence — Appreciation of. See Evidence Act (1872), S. 36. (1965) ILR 44 Pat 416.

——S. 45 — Value of expert evidence — Evidence of Foot-print Expert — If evidence establishes the factum probandum, Court can act solely upon expert evidence. (1964) ILR 43 Pat 211 (DB).

——S. 50 — Scope — Evidence of mere general reputation — Admissibility as proof of relationship. (1962) ILR 41 Pat 435 (DB).

——Ss. 83, 36 — Survey map — Presumption under— Entries in Municipal Khasra prepared under Calcutta Survey Act — Admissible as evidence of possession— Entry 'Sahan Sarak' — Meaning of — Evidence — Appreciation of. (1965) ILR 44 Pat 416 (DB).

● ——S. 92 — Deed — Construction — (T. P. Act (1882), S 8).

Where a document has to be construed, the intention must be gathered, in the first place, from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled

out — The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If, however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended. **AIR 1954 S C 345.**

—Ss. 101-104 — Sales Tax — U. P. Sales Tax Act (15 of 1948), S. 4 — Exemptiom from taxation with regard to particular class ot goods — Onus of proof — See Sales Tax — U. P. Sales Tax Act (15 of 1948), S. 4. (1963) 14 S T C 88 (All).

——Ss 101 to 104 — Failure of postal clerk to verify cash-balance daily — Submission of incorrect return — Conversion and not negligence must be inferred. See Penal Code (1860), S. 409. **(1963) Jab L J 142 (Madh Pra)**

——Ss. 101-104 — Burden of proof — Limitation Act (1908), S. 19 (2) — Undated acknowledgment — Oral evidence as to its date — Plaintiff must let in the evidence — It is for plaintiff to make out that his claim is within time. See Limitation Act (1908), S. 19 (2). **(1965) 2 Mad L J 516.**

——Ss. 101-104 — Offence under S. 302, Penal Code —Prosecution prima facie establishing guilt of accused — Plea of alibi by accused, but accused not supporting it by calling defence witnesses on ground that he cannot be called on to prove his innocence— **Held**, it was for accused to rebut prosecution evidence by pointing out inherent weaknesses in prima facie case established by prosecution. See Evidence Act (1872), S. 3. **1963 Mad W N 638.**

——Ss. 101-104 — Hindu Law — Joint family business — No presumption normally arises — Burden of proof on him who claims share from joint family business. See Hindu Law. **ILR (1962) 1 Mad 872.**

——Ss. 101-104 — Minor — Litigation on behalf of — Burden to establish certain facts — Burden not lessened by mere minority — Hindu law — Minor.

It is not open to persons in the position of the minor to plead minority as an excuse for ignorance upon essential matters, upon which they should have necessarily gathered full particulars before litigating in Courts of law. While minors have certain rights in law protecting them, where the burden lies upon them to allege and establish certain facts, that burden is not lessened by virtue of mere minority, so long as they are parties to a suit. **1960 Mad W N 225 = 73 Mad L W 222 = (1960) 1 Mad L J 329.**

——Ss. 101-104 — Transfer of Property Act (1882), S. 105 — Government Grants Act (1895), S. 3 — Service grant — Resumption — Onus — Right to resume would depend upon nature of tenure or terms of grant — It is for the landlord claiming possession to establish that under terms of grant he is entitled to resume it. **(1965) 2 L R 594 (Mys).**

——Ss. 101-104 — Joint family — Partition — Severance of joint status does not necessarily postulate partition of properties by metes and bounds—Burden of proving partition is on party alleging it. See Hindu Law. **(1965) 31 Cut L T 1106.**

——Ss. 101-104—Onus lies upon Income-tax Department to show that assessee is guilty of offence mentioned in section. See Income-tax Act (1922), S. 28 (1). **(1963) 49 I T R 350 (Pat).**

——Ss. 101-103 — Pre-emption — Suit for—Defence that pre-emptor is acting benami for vendee — Burden of proof — Source of pre-emptor's money — Relevancy — Benami. **(1950) 2 Pepsu L R 21 = AIR 1950 Pepsu 27.**

——S. 108—Scope—Not exhaustive.

Section 108 of the Evidence Act is not exhaustive of the circumstances in which death can be inferred. There may be cases in which death cannot be presumed under S. 108, as for example, cases in which a person has not been heard of for less than seven years and yet the fact of death can be inferred from the circumstances of the case. **67 Bom L R 735= (1965) 1 Lab L J 554=1966 Mah L J 220=(1966) 12 Fac L R 345.**

——S. 114, Illus. (e) — Point not dealt with in judgment — Presumption is that point was not argued before Court. **(1964) 52 I T R 201 (All).**

——S. 114, Illus. (f)—Dispatch register showing that certain order was sent by ordinary post to certain officer — Presumption arises that order reached the officer. **ILR (1965) Andh Pra 482.**

——S. 114—Notification under S. 6, Land Acquisition Act—Objection as to its validity — Petitioner participating in acquisition proceedings — Petitioner not estopped from approaching High Court and asking for quashing notification—See Constitution of India, Art. 226. **ILR (1964) 16 Assam 482.**

——S. 114, Illus. (e) — M. P. Public Trusts Act (30 of 1951), S. 5 (vi)—Registration of trust under Act 30 of 1951 — **Held**, presumption could rightly be drawn that registration was and was meant to be only of public religious trust for regulation of which Act 30 of 1951 was passed. **1963 Mah L J 633=ILR (1964) Bom 80.**

——S. 114—Hindu Law—Joint family business—No presumption — Junior member of family starting and carrying on business in his own name—No evidence showing availability of sufficient surplus belonging to family — Even joint status of family on consultation and guidance by senior member will not make separate business as joint — See Hindu Law. **I L R (1964) 1 Mad 872.**

——S. 114, Illus. (e) — Point not mentioned in judgment is ordinarily to be presumed not to have been argued. **(1964) 66 Pun L R 545.**

——S. 115 — Estoppel and election—Family arrangement between widow and her daughters — Not binding on minor sons of daughter, who were not parties to it and were not represented by guardians— Son who was in titulo when succession opened, unequivocally assenting to arragements with full knowledge of facts and accepting benefit under it — He cannot go behind his assent, when it suited his purpose, even though the assent was given when he was not in titulo — F. A. No. 154 of 1934 D/- 20-3-1942 (All), **Reversed**. See Hindu Law—Family arrangement. Sahu Madho Das v. Mukand Ram, AIR 1955 S C 481 (492) (Pr 60).

——S. 115 — Burden of proof — Landlord claiming reservation in grants made must provide it. **I L R (1962) Andh Pra 1084 (DB).**

——S. 115—Landlord and tenant — Alienation—Tenancy of temple property on condition of service to deity—Transfer to non-paik is not absolutely void but voidable — Temple authorities may acquiesce in the transfer. **AIR 1950 Assam 1.**

——S. 115 — Doctrine of approbate and reprobate or election — Two remedies open — Election only when two remedies are not mutually exclusive—Two remedies provided either in one statute or two different statutes—Test is the same. **(1964) 68 Cal W N 601 (DB).**

——S. 115—Appeal—New plea—Plea of waiver being a question of fact cannot be allowed to be raised for first time in writ appeal — See Constitution of India, Art. 226. **ILR (1962) 2 Cal 187.**

——S 115 — Waiver—What is—It is intentional relinquishment of a known right. **AIR 1955 N U C (Cal) 2933.**

——S. 115—Election—Rejection of Ballot papers on grounds that X mark not put in proper column—No

uncertainty as regards intention to vote and the candidate—Rejection is illegal—Question of law—Estoppel — See Panchayats—Gujarat Taluka and District Panchayats (President and Vice-President) Election Rules (1962), R. 8. (1965) 6 Guj L R 836.

——S. 115 — Pre-emption — Doctrine of estoppel, if can be invoked.

In pre-emption cases, the doctrine of estoppel as a substantive rule of law is to be invoked and as a result of it where a pre-emptor refuses to purchase or consents to a sale or acquiesces he is estopped from subsequently asserting his claim of pre-emption. AIR 1950 Madh Bha 85.

——S. 115 — Mysore Foreign Liquor Rules made under the Act, R. 13-A—Provision that "the term of licence shall ordinarily be three years"—Not mandatory but only directory — Licensing Authority has discretion to grant licences for sale of liquor for shorter term — Having accepted and acted upon a licence granted for one year only in 1963, it was held too late, for the licensee to agitate the question and claim that the licence should be deemed to be for three years — See Mysore Excise Act (5 of 1901), S. 29. ILR (1964) Mys 697.

——S. 115—Departmental enquiry — Bias on part of Enquiry Officer — Objection must be taken at earliest stage of enquiry — It cannot be taken for first time before High Court — Held, belated objection was liable to be rejected on mere ground of waiver — See Constitution of India, Art. 311. (1964) 2 Mys L J 65.

——S. 115 — Reference under S. 34 (1) of Bombay Sales Tax Act (1953) — Objection by assessee that reference barred by limitation—At the time of hearing of objection Advocate of the assessee consenting to reference being made — Assessee precluded from raising the contention before the High Court. (1962) 13 S T C 485 (Mys).

——S. 115 — "Charge" — Interpretation of—Suit for Mukarrasi rent not hit by mischief of S. 4 (d) —Decree obtained after vesting of proprietary rights in State — No right to bring tenure to sale under S. 65 Bihar Tenancy Act—See Tenancy Laws—Bihar Land Reforms Act (30 of 1950), S. 4 (d). 1962 B L J R 928 = (1963) ILR 42 Patna 687.

——S. 115—No misrepresentation—No estoppel—See Civil P. C. (1908), O. 23, R. 1. 1965 Pun L R (Supp) 225.

——S. 116—Tenancy Laws — Berar Regulation of Agricultural Leases Act (24 of 1951), S. 3 (4) — Mere fact that plaintiff had previously submitted to jurisdiction of Deputy Commissioner by moving application for terminating lease or by accepting lease money at five times the assessment would not bind him so as to preclude him from asserting that he was exempted from operation of Berar Act of 1951. See Tenancy Laws—Berar Regulation of Agricultural Leases Act (24 of 1951), S. 3 (4). 1963 Mah L J 633 : I L R (1964) Bom 80.

——S. 116 — Ejectment—Denial of landlord's title — Mortgage—Mortgagee in possession of house as mortgagee—House let to mortgagor — Suit by mortgagee for ejectment and arrears of rent—Defence that mortgagor had paid off mortgage money and no relationship of mortgagor and mortgagee existed — No evidence regarding repayment — Mortgage documents still with mortgagee— Allegation of repayment disbelieved and suit decreed. See Mortgage. M B L J 1955 H C R 1063.

——S. 124 — Court allowing privilege under — Correspondence must be in official confidence — Only public officer can claim privilege. (1962) 28 Cut L T 591.

——S. 133—Departmental enquiries—Rules contained in Evidence Act have no application — Reliance on testimony of accomplice is not vitiating circumstance. See Constitution of India, Art. 311. (1965) 2 Lab L J 519=(1964) 2 Mys L J 158.

——Ss. 137 and 138, 148—Right of defence lawyer to cross-examine prosecution witness—Extent of—Court refusing to allow cross-examination in point on which complainant had already made admissions in favour of defence — Propriety of — AIR 1938 Rang 442, Disting. (1965) 6 Guj L R 593 = ILR (1965) Guj 669.

——S. 145—First information report given by person subsequently charged with offence — Even portion not self-incriminatory cannot be treated as substantive evidence. See Criminal P. C. (1898), S. 154. 1963 Mad W N 638.

——S. 148—Right of defence lawyer to cross-examine prosecution witness—Extent of—Court refusing to allow cross-examination on point on which complainant had already made admissions in favour of defence— Propriety of. See Evidence Act (1872), S. 137. (1965) 6 Guj L R 593=ILR (1965) Guj 669.

——S. 157—First information report given by person subsequently charged with offence — Even portion not self-incriminatory cannot be treated as substantive evidence. See Criminal P. C. (1898), S. 154. 1963 Mad W N 638.

EXPENDITURE TAX ACT (29 of 1957)

——Ss. 4 (ii), 2 (g)—Liability to assessment—Hindu undivided family — Partial partition whereby shares held by the family came to be divided amongst coparceners—Incomes derived from such shares—Nature of—Expenditures incurred by coparceners from incomes received from company shares allotted to them —Not liable to inclusion in the Expenditure tax assessment of assessee H. U. F. (1965) 67 Bom L R 664=(1965) 1 I T J 523=(1965) 58 I T R 60 = ILR (1965) Bom 1036=1965 Mah L J 820.

FACTORIES ACT (63 of 1948)

——S. 2 (1) - Worker—Master and servant—Relationship of—Test to decide.

The right of the management to control the workmen not only in respect of what work is to be done but how it should be done, the manner in which it should be executed. is the main test to find whether in a given case there exists the relationship of master and servant, employer and employer management and workmen in industrial establishments —The question whether the relationship exists in a case is one of fact and so long as the test is properly understood and applied, the finding arrived at on that basis should hold good. Case law discussed. 78 Mad L W 97 = (1965) 1 Mad L J 391 = (1965) 1 Lab L J 308=ILR (1966) 1 Mad 53.

——S. 85 (1) — Government issuing notification — Allegation of mala fide against Government without explaining as to how Government acted in bad faith in issuing notification—On facts held allegation was without basis. (1964-65) 28 F J R 71 (Punj) (DB).

FATAL ACCIDENTS ACT (13 of 1855)

——S. 1—Scope—H, as representative of other members of family of deceased bringing suit for damages—Held he was competent to bring the suit on their behalf and for their benefit. (1964) 66 Pun L R 804=34 Com Cas 936 (DB).

FINANCE ACT (18 of 1956)

——Sch. 1, Part II, Para D, Second proviso (1) (b), Explanation — Paid up capital—Calculation of, for purposes of rebate under — Words 'payable' and 'entitled,' and expression "preferred ordinary share" — Meaning of. (1964) 2 I T J 21 (All).

GENERAL CLAUSES ACT (10 of 1897)

——S. 16—Holding office of profit under Government of India—Test to determine — Meaning and object of disqualification — Object is to present conflict between interest and duty — Such provisions should receive wide interpretation to prevent mischief which might otherwise follow—There is distinction between holder of office of profit under Government and holder of service under Government—S. 7 (e) read with S. 8 (e) of Representation of the People Act is not an exception under Art. 1—Held on facts that appellant who was partner of firm of auditors of two Government companies and Life Insurance Corporation and Government-nominated director of a company was disqualified from membership of House of People. See Constitution of India, Art. 102 (1) (a). (1963) 67 Cal W N 558.

——S. 21—Scope—Power to amend reference — Extent of — Combined effect of S. 10 (4) and S. 21, General Clauses Act, 1897—Reference under S. 10 (1) can be amended by way of addition or modification so long as amendment has no effect of withdrawing or superseding reference already made — Second reference having effect of superseding first reference — Second reference held beyond competence of Government. See Industrial Disputes Act (1947), S. 10 (4). **(1964) 1 Mys L J 569.**

GIFT TAX ACT (18 of 1958)

——Ss. 2 (xii), 2 (xxii) and (xxiv) — Settling in trust of fund as charitable fund would be creation of trust in property and would amount to transfer of property. There would be 'gift' within meaning of S. 2 (xii) if there is creation of trust in property for charitable purpose. 67 Bom L R 413=ILR (1965) Bom 1019=(1965) 58 I T R 40 =(1965) Mah L J 640= (1965) 1 I T J 604 (DB).

——Ss. 2 (xii), 2 (xxiv) and 4 (c)—Gift— Meaning of —Gift of coparcenary property by karta in favour of other coparceners — There is no transfer of property —Gift is void—S. 4 (c) is not applicable — Void gift cannot be taxable. (1963) 49 I T R 817= ILR (1963) Mad 1082=(1963) I T J (Sup) 69 (DB).

——S. 26 (6) — Reference under S. 26 (1) — Larger relief claimed by assessee under certain provision of law before tribunal — He can be permitted to argue in reference that he is entitled to lesser relief under same provision. 67 Bom L R 406=(1965) 1 I T J 867 =1965 Mah L J 645=I L R (1965) Bom 1004=(1965) 58 I T R 505 (DB).

GOVERNMENT GRANTS ACT (15 of 1895)

●——S. 3 — Land tenures in Garhwal and Kumaun — Pakka and Kachcha Khaikari rights in villages — — Suit for declaration claiming Pakka Khaikari rights in village — Words and Phrases — "Pakka Khaikari"—"Hissedar."

Pakka Khaikari is a term used in Kumaun and Garhwal in a special sense. A Kachcha Khaikar seems to mean a tenant, while a Pakka Khaikar is in a sense a proprietor. According to Stowell's Manual of Land Tenures of the Kumaun Division, 1954 Edition, a Pakka Khaikar is a sort of ex-proprietor and his right is in reality an under-proprietary right. A 'Hissedar' means in Kumaun and Garhwal 'a co-sharer in the zamindari rights'. A Pakka Khaikari village may, in course of time, become a Kachcha Khaikari village by reason of the Pakka Khaikars losing their Pakka Khaikari rights. But a Kachcha Khaikar can, in no case, become a Pakka Khaikar, nor can a Kachcha Khaikari village be converted into a Pakka Khaikari village. Soham Singh v. Kunwar Tikendra Bahadur, 1955 All W R (HC) 124 = 1955 All L J 180=I L R (1954) 2 All 623=A I R 1955 All 65 (66, 67) (Prs 8, 9, 10, 12, 15) (FB).

——S. 3 — Mutation Rules in ex-State of Baramba, R. 1 — Sanction order passed — Tenant performing condition for recognition—Tenancy is created.

Rule 1 must be construed in the context of accepted juristic theories. Read in that light there can be absolutely no doubt that the moment the sanction order was passed and the tenant performed the condition for getting the recognition, tenancy right was created in his favour. The mutation slip and the rent receipt establish the factum of recognition of tenancy right. The contention that the entry in the mutation slip is not an entry with Register of Mutation as required under the rule is a pure question of fact which should be specifically canvassed in the trial Court. (1965) 31 Cut L T 576 = I L R (1965) Cut 229.

——S. 3 — Ghatwali — Birbhum Ghatwali — Alienability and partibility—If can be held as joint family or ancestral property under Hindu Mitakshara law — Rights of holder and other members of family — Right by birth and survivorship — If exist—Females —If excluded from succession. (1949) 28 Pat 215.

——S. 3—Nawanagar State — "Buta Hak" tenure — Incidents of — Transfer in favour of agriculturist — Sanction is not necessary — Registration completes title of transferee. A I R 1953 Sau 94 (95) (Pt C) (Pr 5).

GOVERNMENT OF INDIA ACT (1935), (26 Geo. V & 1 Edw. VII C 2)

——Sch. 7, List 2, Entry 13—Provision for minimum wages of employees of local authority is not legislation under entry 13 but comes within scope of entry 27 — Provision is not unconstitutional — See Government of India Act (1935), Sch. 7, List 3, Entry 27. (1963-64) 24 F J R 194 (Punj).

——Sch. 7, List 3, Entry 27 and Sch. 7, List 2, Entry 13 — Minimum Wages Act (1948), Preamble, Sch., Item 6, S. 2 (g) — Provision for minimum wages of employees of local authority is not legislation under entry 13 but comes within scope of entry 27—Provision is not unconstitutional. (1963-64) 24 F J R 194 (Punj) (DB).

GOVERNMENT OF INDIA (AUDIT AND ACCOUNTS) ORDER (1936)

——As adapted by India (Provisional Constitution) Order (1947)—Accountant General refusing passage benefit to member of Indian Civil Service — Refusal found arbitrary — Failure of duty imposed by law — Fit case to issue mandamus. See Constitution of India, Art. 226. AIR 1957 Pat 515 (DB).

GOVERNMENT OF JODHPUR ACT (1947)

SECTION 6

——S. 6—Effect of—Validity of proclamation, dated 31st August, 1948.

The words of S. 6 clearly show that the Maharaja of Jodhpur was voluntarily limiting his sovereign powers so long as he allowed the Government of Jodhpur Act, 1947, to continue; but his power to abrogate the Act, still remained with him under the first part of the section, and hence the contention that he had no power to abrogate the Government of Jodhpur Act, 1947, cannot be accepted.

It was thus open to him to suspend the Government of Jodhpur Act, or any part thereof in exercise of his sovereign authority. This is what he actually did by the proclamation of the 31st August, 1948, which was published in the Jodhpur Government Gazette Extraordinary of that date. It cannot therefore be contended that the proclamation was beyond the powers of the Maharaja. 1954 Raj L W 268 = ILR (1954) Raj 274 = AIR 1954 Raj 117 (121) (Pt B) (Pr 9) (DB).

GWALIOR-INDORE AND MALWA (MADHYA BHARAT) REGULATION OF GOVERNMENT ACT (M. B. 1 of 1948)

●——S. 5 (1) and (3) — Power of Government to make amendments to Indore Industrial Tax Rules — Amendments made by notification issued on 28-12-1949 by M B. Government are valid — Government had power to make amendments under S. 5 (1) read with S. 5 (3) of the Act — See Indore Industrial Tax Rules (1927), R. 17. **AIR 1964 SC 1329.**

GUARDIANS AND WARDS ACT (8 of 1890)

——S. 7 — Joint share of minors in house and open site—No guardian can be appointed for joint share to which minors are entitled. **ILR (1964) Mys 405.**

——S. 9—'Ordinarily resides' means usually resides—Held fact that minor was temporarily taken away from place where guardianship proceedings were commenced could not mean that minor had ceased to ordinarily reside in that place. **I L R (1964) Mys 405.**

HIGH COURT RULES AND ORDERS

—CALCUTTA HIGH COURT ARBITRATION RULES

——Rr. 26, 28 — Rules made by Calcutta High Court under S. 44, Arbitration Act (1940) — Civil P. C. (1908), O. 5, Rr. 16, 17—Service of notice — Defendant accepting notice without signing acknowledgment — Serving officer not having additional copy — Service is complete without affixation — Failure to affix copy does not render service invalid. AIR 1952 Cal 10, Overruled — See Arbitration Act (10 of 1940), S. 14 (2). **AIR 1964 Cal 241.**

—CALCUTTA HIGH COURT (ORIGINAL SIDE) RULES

——Ch. 7, R. 8 — Petition by company signed and verified by officer — Affidavit of competency to verify filed along with petition — Held, there was proper compliance with the rule of the Court and provisions in Civil P. C. — See Constitution of India, Art. 226. **ILR (1962) 2 Cal 187.**

——O. 38, R. 48 — Particular lien — Availability — Conditions — Civil P. C. (1908), O. 3, R. 4—Legal Practitioners (Fees) Act (1926), S. 3.

The common law lien on property or funds recovered known as particular lien has also been recognised in Courts in India in case of Solicitors and Attorneys. The fruits of the litigation must have been recovered by the Solicitor's exertions. Further it will not be available for the general balance of account between the Solicitor and client but extends only to the costs of the proceedings in which the property is recovered. **A I R 1952 H P 11 (13, 14) (Pt A) (Prs 11, 12, 13).**

—JAMMU AND KASHMIR GENERAL CRIMINAL RULES

——Ch. 12, R. 10 — Non-compliance with provisions of Ss. 164 and 364, Cr. P. C. and of instructions under R. 10 — Irregularity is of substance and not curable under S. 533 — See Criminal P. C. (1898), S. 164. **('50) 9 J and K L R 137 = A I R 1952 J and K 36 (DB).**

—MADRAS HIGH COURT-FEES RULES (1956)

——O. 5, R. 2 (1) (b) and (c) — Applicability — Mortgage suit — Consent decree passed after filing written statement and framing of issues — Scale of fees.

Rule 2 (1) (b) of O. 5 of the Madras High Court-fees Rules, 1956 will apply only when the suit is decided ex parte. The ex parte decision may be due to the defendant not appearing or after entering appearance does not contest. In a case where the decree is passed by consent of parties R. 2 (1) (b) will have no application and the scale of fees will be governed by R. 2 (1) (c) alone. But cost is however in the discretion of the Court and it can take note of the fact that the decree was passed by consent and the stage of hearing at which the consent was arrived at and fix a reasonable fee irrespective of the rule. **78 Mad L W 43 = (1965) 1 M L J 405 = AIR 1967 Mad 297 (297) (Pr 1).**

—PUJAB HIGH COURT RULES AND ORDERS

——Vol. I, Ch. 1-K, R. 4 — Scope — Case getting automatically adjourned to the next day, the day to which it is posted being declared a holiday—Adjournment is not for 'hearing' of the case — Defendant being absent cannot be set ex parte. **ILR (1964) 2 Punj 880 (DB).**

—SAURASHTRA HIGH COURT RULES (1950)

——S. 22-A (2)—Rule framed under S. 14, Saurashtra High Court Ordinance (2 of 1948) — Suits filed in Saurashtra area decided before 1st November, 1956 — First appeal of Saurashtra High Court — During pendency of appeals, States Reorganisation Act, coming into force and Saurashtra High Court abolished — Area transferred to Bombay High Court—First appeals decided by single Judge of Bombay High Court of Rajkot — Letters Patent Appeals filed — During pendency Bombay Reorganisation Act coming into force and Gujarat High Court established — Letters Patent Appeal transferred to Gujarat High Court — Appeals held not maintainable without certificate as required by S. 22-A of High Court of Judicature Ordinance for the State of Saurashtra. See States Reorganisation Act (1956), S. 49. **AIR 1965 Guj 87 (DB).**

—TRAVANCORE CIVIL COURTS GUIDE (1099 M. E.)

——R. 20 (6) — Appeal dismissed for default—Application for restoration on subsequent date — No fresh vakalat filed — Application was not in accordance with law — Defect cured when fresh vakalat was filed within prescribed period of limitation. See Civil P. C. (1908), O. 3, R. 1. **1951 Ker L T 195.**

——R. 204 — Execution application — Not accompanied with copy of decree as required by R. 204 — Non-compliance does not make it one not in accordance with law. See Civil P. C. (1908), O. 21, R. 11 (3). **1955 Ker L T 675 = ILR (1955) T C 1077.**

——R. 272 — "Final order" — Failure to pay process fee within prescribed time—Order of dismissal passed eight days after expiry of prescribed period not judicial. See Limitation Act (1908), Art. 182. **1959 Ker L T 681 = 1959 Ker L J 750 = 1959 Ker L R 1014.**

——R. 675 — "Final order" — Judicial or a ministerial order — Order giving directions to decree passed under the rule not complied with — Dismissal for default — Order was a judicial one. See Limitation Act (1908), Art. 182 (5). **AIR 1952 Trav-Co 247 (DB).**

——R. 765 — Court passing order for issue of notice under O. 21, R. 20, Civil P. C. on next day of presentation of execution application — Order is in accordance with rule — Decree-holder cannot contend that it is passed without notice to him as he is expected to know of such order. **AIR 1951 Trav-Co 179 (179) (Pt A) (Pr 2) (DB).**

—TRAVANCORE-COCHIN CIVIL RULES OF PRACTICE

——R. 23 — Suit on behalf of Corporation — Plaint signed and verified by its Manager duly authorised

in that behalf by articles of association — Plaint is proper — Plaint cannot be rejected under R. 23, Civil Rules of Practice for non-production of power of attorney — Neither O. 3, R 1 nor R. 23, applies to signing and verification of plaint. See Civil P. C. (1908), O. 3, R. 1. 1963 Ker L J 255.

HINDU ADOPTIONS AND MAINTENANCE ACT (78 of 1956)

——S. 18 (2) (b)—Section neither makes reference to wilful cruelty nor to any co-habitation — What plaintiff has to establish is act of cruelty by husband such as would cause reasonable apprehension that it would be harmful or injurious for her to live with her husband. ILR (1963) Mys 896.

HINDU LAW

——Adoption — Only persons who can give in adoption are the mother and the father — Step mother cannot give a boy in adoption. ILR (1964) Mys 1067.

——Debts—Immoral debts—Debts contracted for intoxicating liquor and gambling—Constitution of India, Art. 19 (1) (g) — Right to trade in liquor — Whether a fundamental right — American decision, value of in interpretation of Indian Constitution — Civil P. C. (1908), Preamble — Precedents — Constitution of India, Preamble — Interpretation of Constitution — Value of American decision. See Constitution of India, Art. 19 (1) (g). ILR (1964) Mys 697.

——Debts — Binding nature — Question of necessity — Determination—Aliyasanthana family—Yejamanthi of family mortgaging house of family — One part of that money used for repaying another debt binding on the family — Another part used to discharge debts under pronotes borrowed to meet family partition suit expenses and liabilities — Such purpose mentioned in those pronotes also — Yet another part of mortgage money used for stamping and registering mortgage deed — Balance used for improvements and repairs to family house — In a case like this, what is important is not the application of that balance for reconstruction or repair of the house but the existence of necessity or the satisfaction in the mind of mortgagee that there was such necessity — Debt under pronotes is binding on family — Entire debt under mortgage is supported by necessity and for purposes binding on family. ILR (1963) Mys 998.

——Debts — Pious obligation of sons — Handnote executed by one of sons as Karta in lieu of father's antecedent debt — Sons' liability for such debt is co-extensive with assets of joint family in their hands — Promissory note held was distinct promise to pay as contemplated by S. 25, Cl. (3), Contract Act — (Contract Act (1872), S. 25 (3)). (1963) ILR 42 Pat 704 (DB).

——Joint family — Right of, to perform Pooja of deity — Income therefrom belongs to joint family.

Where the right to perform the pooja of the deity in the temple belongs to the family whatever income is received from the temple constitutes a joint family income. The family has a right to the income received from the temple which includes the receipts by way of 'Dakshina' or 'Gift'. In such circumstances, it cannot be said that 'Dakshina' or 'Gift' made to the deity is obtained by the poojari, a member of the family for private services rendered by him. It is a service which is being rendered by a member of the family on behalf of the family and not a private service. AIR 1934 All 851 and 1956 (2) Mad L J 551, Disting. (1965) 2 Law Rep 585 (Mys).

——Joint Family — Self-acquisition — Member of family acquiring property through grant — Property becomes his self-acquired unless contrary is mentioned in document of grant.

The grants made to individuals must be held to be individual grants and not grants made for the family of which the grantee constituted a member, unless it appears from the grant that it was intended for the benefit of the family. Mulla's Hindu Law, Para. 230, Ref. (1965) 2 Law Rep 585 (Mys).

——Joint family—Partition—Rule that partition suit should comprise all family property is not inflexible —Question whether second suit for partition is or is not permissible depends on reason for institution of incomplete first suit—In first suit for partition certain site not included on account of litigation then pending between members of family and outsider who claimed part of site as his own — Second suit for partition of site — Held, partition has two-fold concept—Division of right and division by metes and bounds — Since while plaintiff instituted first suit there was obscurity created as regards identity of suit site as well as its extent because of litigation then pending, plaintiff could not have then sought division of site by metes and bounds — In other words omission to claim partition of suit site was ascribable to an acceptable reason, namely, impossibility of partition by metes and bounds — Hence, second suit was maintainable : Case law discussed. Civil P. C. (1908), O. 2, R. 2. I L R (1963) Mys 1016.

——Joint family—Handnote executed by Karta—Suit on—Liability of members of joint family under handnote.

Where in the plaint the plaintiffs stated that the suit was based on the handnote executed by the Karta of the joint family but along with that they had also alleged that the transaction was in lieu of an antecedent debt of the father by which all the members had been benefited.

Held, that reading the plaint as a whole, it could not be said that it was confined to action on a promissory note pure and simple. The circumstances in which the handnote was executed brought in the liability on the members of the joint family. AIR 1933 Pat 687, Distinguished. (1963) I L R 42 Pat 704 (DB).

——Joint family business—No presumption normally arises—Business should grow from joint property or earning should blend with joint estate to become joint family business — If business is joint or separate is a question of fact—Burden of proof on person claiming share to prove it was joint family business. I L R (1964) 1 Mad 872=(1965) 2 Mad L J 65 = 78 Mad L W 535 (DB).

——Joint family business—No presumption — Junior member of family starting and carrying on business in his own name — No evidence showing availability of sufficient surplus belonging to family—Even joint status of family and consultation and guidance by senior member will not make separate business as joint. I L R (1964) 1 Mad 872 = (1965) 2 Mad L J 65=78 Mad L W 535 (DB).

——Family settlement and family arrangement—Right to property obtained under compromise — If right by inheritance.

The theory that every compromise implies the recognition of an antecedent title in every one of the parties taking benefit under the compromise is certainly not universally true. There are many instances when rights are conferred on persons who have admittedly no antecedent title in and to the property to which they become entitled under the compromise, e. g. family settlement. 70 Mad L W 540= (1957) 2 Mad L J 132 = 1957 Mad W N 368=I L R (1957) Mad 861=A I R 1957 Mad 534 (536) (Pt B) (Pr 3) (DB).

——Joint property — Subsequent acquisitions, whether belong to joint family—Onus to prove in suit for partition — On whom lies, explained. (1965) 2 Law Rep 585 (Mys).

——Religious office — Right to perform temple service — Alienation — Succession. (1962) 1 Andh L T 479.

——Succession—Daughters — Daughters jointly succeeding to the estate of their father are joint tenants with rights of survivorship — Right of daughter in such property is a limited one—While they can deal as they please with their life interest any agreement between the daughters or any act of their cannot affect the rights of ultimate reversioners of last male-holder — Succession to property held by them will not open till the last survivor is dead. (1962) I L R 41 Pat 481 (DB).

HINDU MARRIAGE ACT (25 of 1955)

——S. 12 (1) (d) — Child born during fifth or sixth month of pregnancy can be viable, i. e. born alive and capable of being reared—Husband having intercourse with wife on day following day marriage was solemnized and viable child born on 184th day thereafter — Held, fact that child was born in seventh month did not, by itself, justify assumption that conception was before marriage : Medical Jurisprudence by Modi P. 329, Ref.—Special Marriage Act (1954), S. 25 (ii). I L R (1963) Mys 1137.

——S. 12 (1) (d) and S. 12 (2) (b) (iii) — Husband seeking annulment of marriage must plead and establish that he did not have intercourse with wife after he discovered that she was pregnant by another man when he married her — Special Marriage Act (1954), S. 25 (ii) and S. 25 First Proviso (c). I L R (1963) Mys 1137.

——S. 13 (1) (viii)—Scope — Decree of divorce could be made only if injured spouse asks for it (Conceded). I L R (1963) Mys 1086.

——Ss. 25 (1) and 10 (1)—Wife deserting husband—Judicial separation granted to husband — Wife not unchaste nor her conduct flagrantly vicious — Order for alimony made in wife's favour should not be interfered with.

Where the wife has been found to have deserted the husband, there is nothing to show that she is unchaste or is living away because of some ulterior motive and her conduct is also such as can be deemed to be flagrantly vicious or to amount to gross and wilful desertion. An order of the Court granting of alimony to the wife while granting judicial separation to the husband on the ground of wife's desertion should not be interfered with. A I R 1955 Bom 413, Rel. on. (1964) 66 Punj L R 1113=I L R (1964) 2 Punj 732.

——Ss. 28 and 24—Non-compliance with order under S. 24—Stay of proceedings can be ordered by Court in exercise of its inherent power for enforcement of order — S. 28 does not affect such enforcement. See Hindu Marriage Act (1955), S. 24. A I R 1963 Madh Pra 259.

HOUSES AND RENTS

—BIHAR BUILDINGS (LEASE, RENT AND EVICTION) CONTROL ACT (3 of 1947)

——Ss. 11 (1) (d) and 11-A—Suit for eviction under S. 11 (1) (d) for non-payment of rent—Tenant depositing rent under S. 11-A — Court fixing fair rent under S. 8 (3)—Contention that deposit was made on basis of rent due at a rate higher than fair rate of rent and therefore excess be adjusted towards rent held to be due and eviction be not ordered — Held, though contention could be raised in execution of money decree for arrears of rent, excess payment had not the effect of wiping out cause of action of suit, viz., non-payment of rent and suit could be decreed. (1963) I L R 42 Pat 512 (DB).

——S. 11 (1) (c) — Landlord needing house for reconstruction — It is not enough ground to evict a tenant — Bihar Act has no provision similar to West Bengal Act (17 of 1950), for this purpose. 1962 B L J R 579.

—DELHI RENT CONTROL ACT (59 of 1958)

——S. 9 (3)—'May' does not mean 'must'—Controller is not bound to fix the standard rent of the part sublet — Interpretation of Statutes — Use of "sball" and "may" — Civil P. C. (1908), Preamble — Interpretation of Statutes — Use of "shall" and "may" — Words and Phrases—Use of "shall" and "may".

The use of word "may" would not necessarily mean that a discretion is vested in an authority and that the matter is not to be decided by exclusive reference to the use of word "may" or "shall" in deciding as to what meaning should be bestowed on the word "may" or "shall". The context, in which those words are used, has to be borne in mind because it can give the best clue about the exact connotation of those words. (1965) 67 Pun L R 491.

——Ss. 38 (1) and 2 (e) and (i)—Scope—Only orders made under the provisions of the Act are appealable—Order on a preliminary issue about existence of landlord-tenant relationship — Enquiry is one to determine if the petition is entertainable—Order not appealable under S. 38 (1)—Consideration of the definitions under S. 2 of 'landlord' and 'tenant' in deciding the issue notwithstanding. 1962 PLR 65, 1960 P L R 254 and 1960 P L R 451, Rel. on. 1963 PLR 1056, Dist. ILR (1964) 2 Punj 127.

——S. 39—Manner of exercise of discretion on particular facts does not involve substantial question of law especially when it is not improper or perverse — No interference in second appeal—Civil P. C. (1908), Ss. 100 and 101. (1965) 67 Pun L R 491.

——Ss. 50 and 13 — Scope—Excess payments made by tenant to landlord — Claim for refund not entertainable by Civil Courts. 1967 Cur L J 69=I L R (1963) 1 Punj 545.

—EAST PUNJAB URBAN RENT RESTRICTION ACT (3 of 1949)

——S. 13 — Displaced Persons (Rehabilitation and Compensation) Act (1954), S. 29 — Displaced person occupying evacuee property is tenant—Suit for eviction—Jurisdiction of Rent Controller—Not barred by S. 29 of 1954 Act. 1961 Pun L R 716, Overruled. (1962) 64 Pun L R 969 = ILR (1963) 1 Punj 30 = 1962 Cur L J 471 (DB).

—MADHYA PRADESH ACCOMMODATION CONTROL ACT (23 of 1955)

——Ss. 9 (4), 12 — Appeal under — District Court's jurisdiction — Ordinary and not special — Revision in High Court maintainable — Civil Procedure Code (1908), Ss. 3, 4, 115.

Subject to the provisions of S. 4 of Civil P. C., the District Court is subordinate to the High Court. Therefore, the decisions of the Court of District Judge are open to revision by the High Court, unless the power is taken away by any special law. ILR (1963) Madh Pra 347.

——S. 12—Appeal under — District Court's jurisdiction — Ordinary and not special — Revision in High Court maintainable. See Houses and Rents—Madhya Pradesh Accommodation Control Act (23 of 1955), S. 9 (4). ILR (1963) Madh Pra 347.

—MADHYA PRADESH ACCOMMODATION (REQUISITION) ACT (63 of 1948)

——Ss. 2 (d) and 3 — Correlation public purpose,

meaning of — Requisition of godown for storing Government foodgrains collected for distribution to deficit areas — No profit motive — Requisition is for public purpose—Proper approach by Courts in such cases. See Constitution of India, Art. 31 (2). AIR 1962 Madh Pra 146 (FB).

● ——S. 3 — Constitution of India, Arts. 31 (2), 19 (1) (f)—Correlation — Public purpose, meaning of — Requisition of godowns for storing Government foodgrains collected for distribution in deficit areas — No profit motive — Requisition is for public purpose —Proper approach by Courts in such cases indicated —Per Majority — An order passed in exercise of the powers conferred under S. 3 requisitioning certain godowns for storage of Government foodgrains collected under its scheme of fair distribution of foodgrains to deficit areas without any profit motive does not contravene Art. 31 (2) and is valid. See Constitution of India, Art. 31 (2). AIR 1962 Madh Pra 146 (FB).

● ——Ss. 3, 14 — Delegation of powers of State Government to requisition — Order of requisition based upon opinion of delegate as to necessity for requisition—Valid—Constitution of India, Art. 245.

Per Full Bench : Where the State Government has delegated its powers of requisition under S. 3 of the Act to the Collectors under S. 14, the delegation is within the terms of S. 14, and confers on the delegates, viz., the Collectors within their respective jurisdiction, all the powers which the State Government had under the Act and which naturally include the power to form an opinion as to the necessity for the requisition, and the order requisitioning certain godowns for a public purpose, based upon the opinion of the Collector as to the necessity for the requisition, is legal and valid, and will not fail on the ground that it was not based upon the opinion of the State Government.

The formation of the opinion as to the existence of the necessity to requisition and the actual act of requisition form but one composite act and must be performed by the same authority. AIR 1950 SC 222: 1950 S C J 451 : (1950) 2 Mad L J 93 and (1961) 1 All E R 446, Rel. on. Jagdish Narain Babulal Jaiswal v. Collector, Damon, 1962 MPLJ 363=1962 Jab L J 533=1962 MPC 355=AIR 1962 Madh Pra 146 (148, 166) (Pt A) (Prs 7, 8, 116, 118) (FB).

● ——Ss. 14, 3 — Delegation of powers of State Government to requisition — Order of requisition based upon opinion of delegate as to necessity for requisition —Valid — Constitution of India, Art. 245. See M. P. Accommodation (Requisition) Act (1948), S. 3. AIR 1962 Madh Pra 146 (FB).

—MADRAS BUILDINGS (LEASE AND RENT CONTROL) ACT (25 of 1949)

——S. 6-A (2) — Remittance of rent by M. O. in pursuance to landlord's direction—Amounts to compliance of procedure under S. 6-A (2) by tenant.

When the parties agree on a mode of payment of rent, the procedure indicated in S. 6-A (2) is not required to be followed. Where the landlord directs the tenant to remit the monthly rental by money-order, the tenant's duty is to follow that direction. Remittance of rent by money order in such a case amounts to compliance with the procedure under S. 6-A (2). (1962) 1 Andh W R 205.

——S. 7 (2) (ii) (2) — Eviction on the ground of sub-letting without the written consent of landlord — Tenant allowing use of building by partnership of which he himself is a member—Since the tenant does not give away any exclusive possession to other partners, such user does not amount to sub-letting. A I R 1954 Nag 180, Dissented from; (1952) 1 Mad L J 652, Foll.; C R P No. 614 of 1960 (Mysore), Distinguished. (1963) 2 Mys L J 286 (DB).

—MYSORE HOUSE RENT AND ACCOMMODATION CONTROL ACT (30 of 1951)

——S. 8 (3) (a) (ii)—"Carrying on business"—Meaning of — Person can be said to be carrying on business if his activities in that business have element of continuity — Deprivation of premises housing the business cannot result in cessation of business unless consequent on such interruption it is wound up or abandoned. (1963) 2 Mys L J 463.

—ORISSA HOUSE RENT CONTROL ACT (31 of 1958)

——Ss. 7 (1) (i), 7 (2), 7 (1), Proviso —Tenancy of shop room from a long time — No willingness of landlord to accept rent tendered—Deposit of rent by tenant in Urban Co-operative Bank — No wilful default by tenant — Landlord taking other premises on rent for his business—Benefits of proviso to S. 7 (1) not available to him —Constitution of India, Art. 226—Errors of law. (1965) 31 Cut L T 331.

—RAJASTHAN RENT CONTROL ORDER

——S. 3 — Termination of tenancy — Liability for damages at rate mentioned in notice — Transfer of Property Act (1882), S. 106.

Sections 3 and 5 both can be made applicable to the cases where the relationship of the landlord and tenant exists between the parties. These sections do not apply to the cases where a lease has been determined and the relationship of landlord and tenant does not continue between the parties. Once the tenancy has been determined by service of a notice under S. 106 of the Transfer of Property Act, the tenancy cannot be considered to be still existing between the parties, simply because the landlord is debarred from taking the possession of the property from the tenant, by S. 8. The position of the tenant after the determination of the tenancy in such a case would be that of a licensee or a trespasser. The licensee may be liable on such a case to pay damages to the landlord at a rate mentioned in the notice served upon the licensee and impliedly accepted by him. A I R 1952 Raj 111 (112) (Pr 2).

[Overruled in AIR 1953 Raj 88.]

——Ss. 5 and 3—Sections 3 and 5 both can be made applicable to the cases where the relationship of the landlord and tenant exists between the parties. These sections do not apply to the cases where a lease has been determined and the relationship of landlord and tenant does not continue between the parties. See Houses and Rents — Rajasthan Rent Control Order, S. 3. A I R 1952 Raj 111.

[Overruled in A I R 1953 Raj 88.]

——S. 6 (2) —Data existing for fixation of basic rent-fixation of standard rent under S. 6 (2) instead of in accordance with second schedule of order — Held, illegality was committed in the exercise of jurisdiction by the rent authorities and the order was set aside. See Constitution of India, Art. 227 (1). A I R 1952 Raj 3 (DB).

——S. 8—Scope — Once the tenancy has been determined by service of a notice under S. 106, T.P. Act, the tenancy cannot be considered to be still existing between the parties, simply because the landlord is debarred from taking the possession of the property from the tenant by S. 8. See Houses and Rents — Rajasthan Rent Control Order, S. 3. A I R 1952 Raj 111.

Overruled in A I R 1953 Raj 88.]

—RAJKOT STATE BHADUT SAURAKSHAN ACT (1947)

——Ss. 4, 5 (2) and 6 — Repeal — Effect. See Saurashtra (Application of Central and Bombay Acts) Ordinance (25 of 1948), S. 9. AIR 1952 Sau 93.

—U. P. (TEMPORARY) CONTROL OF RENT AND EVICTION ACT (3 of 1947)

●——S. 1—Act is intra vires—Government of India Act (1935), Sch. 7, List II, item 21 and List III, item 8.

The U. P. Temporary Control of Rent and Eviction Act, 1947 is within the legislative competence of the U. P. Legislature as the subject-matter of legislation comes under item No. 21 of List II, Government of India Act, 1935, which gives the Legislature power to enact laws regulating the relationship of landlords and tenants. It is true that the item begins with the word 'Land', that is to say, rights in or over land and land tenures, but the word 'land' in this item is wide enough to include house or house property. Besides this item, it also comes under List III item No. 8 which allows legislation with respect to transfer of property. Raman Das v. State of U. P. 1952 All L J 208=1952 R D (HC) 156 = 1952 All WR (HC) 225 = ILR (1953) All 970 = AIR 1952 All 703 (705) (Pt B) (Pr 5) (FB).

—WEST BENGAL PREMISES TENANCY ACT (12 of 1956)

——S. 13 (1) (f) — Civil P. C. (1908), O. 1, Rr. 1 and 9, O. 2, R. 3—Suit by several landlords for possession on ground of reasonable requirement — Contention that suit was bad for multifariousness—Held though plaintiffs owned different parts of suit premises or their requirements of premises or of its several parts, belonging to them separately, were different, tenancy being one and its termination being a part, at least, of immediate cause of action of suit, there was necessary nexus to avoid multifariousness. ILR (1962) 1 Cal 318 (DB).

——S. 13 (1) (f)—Reasonable requirement — It is not obligatory on landlords, a plurarity of them, to prove joint or common requirement — Several requirements of several plaintiffs, of same character, is sufficient: 64 C W N 29 (Notes) Overruled; Mc Intyre v. Hardcastle, L R 1948 K B 82, Disting. ILR (1962) 1 Cal 318 (DB).

——S. 16 (2) and (3)—Scope — Application by subtenant under S. 16 (2) to the landlord without there being any application by tenant is valid. 67 Cal W N 272=ILR (1961) 1 Cal 420 (DB).

——S. 40—Scope—Ejectment of tenant on ground of building or re-building under Act 17 of 1950 - Failure of the landlord to re-build within statutory period — Act 12 of 1956 intervening—S. 40 protects and preserves the right and remedy of the tenant to restoration of possession. (1962) 66 Cal W N 765.

HYDERABAD ABKARI ACT (1 of 1316-F)

——S. 14—Lessee under the Act entering into partnership with firm without prior approval of Talukdar — Partnership is illegal and unregistrable under S. 26-A, Income Tax Act — The firm however can be regarded as an association of persons under S 3, Income Tax Act and partners are jointly and severally liable for income-tax. See Income Tax Act (1922), S. 3. 46 I T R 784=I L R (1963) Andh Pra 83.

HYDERABAD AGRICULTURAL INCOME TAX ACT (1897)

——S. 6 — Hyderabad General Clauses Act (3 of 1308-F), S. 3—Scope—Repeal of Hyderabad Agricultural Income-tax Act—By reason of S. 3, Hyderabad General Clauses Act taxes due can be recovered. See Hyderabad General Clauses Act (3 of 1308-F), S. 3. (1965) 55 I T R 528 (Andh Pra).

HYDERABAD AGRICULTURAL INCOME TAX ACT (13 of 1950)

——S. 34—Hyderabad General Clauses Act (3 of 1308-F), S. 3 — Scope — Repeal of Hyderabad Agricultural Income-tax Act—By reason of S. 3, Hyderabad General Clauses Act taxes due can be recovered. See Hyderabad General Clauses Act (3 of 1308-F), S. 3. (1965) 55 I T R 528 (Andh Pra).

——S. 34 (5)—Scope — Taxes becoming payable in 1955 — Proceedings started for collection in 1961 are barred as beyond 3 years under S. 34 (5). (1965) 55 I T R 528 (Andh Pra).

HYDERABAD CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES (1955)

——R. 2—Governor when not superior authority to Government—Since in respect of imposition of penalties on civil servants Governor is not required by or under Constitution to act in exercise of his discretion, he is not authority immediately superior to Government which has passed dismissal order against a civil servant. See Hyderabad Civil Services (Classification, Control and Appeal) Rules (1955), R. 27. I L R (1965) Andh Pra 482.

——Rr. 6 (2), 7 and 18, Proviso — Dismissal order by Government against a sub-engineer — Question whether he has right of appeal to Governor — Right of appeal must be expressly provided by statute or rules and it cannot be implied — Contention that right of appeal to an officer must be provided and its absence affects validity of rules is untenable. See Hyderabad Civil Services (Classification, Control and Appeal) Rules (1955), R. 20. I L R (1965) Andh Pra 482.

——Rr. 20, 27, Proviso 6 (2), 7, 18, Proviso, and Sch. I Item 6 — Dismissal order by Government against a sub-engineer — Question whether he has right of appeal to Governor — Right of appeal must be expressly provided by statute or rules and it cannot be implied—Contention that right of appeal to an officer must be provided and its absence affects validity of rules is untenable: AIR 1962 Andh Pra 303 and AIR 1961 S C 1245, Rel. on. Civil P. C. (1908), S. 96; Constitution of India, Art. 14. I L R (1965) Andh Pra 482.

——Rr. 27 and 2—Constitution of India, Arts. 163 (1) and 312 — Governor when not superior authority to Government—Since in respect of imposition of penalties on civil servants, Governor is not required by or under Constitution to act in exercise of his discretion, he is not authority immediately superior to Government which has passed dismissal order against a civil servant—Constitution of India, Arts. 163 (1) and 311. I L R (1965) Andh Pra 482.

——Sch. I, Item 6—Dismissal order by Government against a sub-engineer — Question whether he has right of appeal to Governor—Right of appeal must be expressly provided by statute or rules and it cannot be implied — Contention that right of appeal to an officer must be provided and its absence affects validity of rules is untenable. See Hyderabad Civil Services (Classification, Control and Appeal) Rules (1955), R. 20. I L R (1965) Andh Pra 482.

HYDERABAD GENERAL CLAUSES ACT (3 of 1308-F)

——S. 3—Scope—Repeal of Hyderabad Agricultural Income-tax Act — By reason of S. 3, Hyderabad General Clauses Act taxes due can be recovered.

Though by the time the tax leviable and payable

under Hyderabad Agricultural Income Tax Act, was sought to be collected the Act was repealed, it is manifest from S. 3 of the Hyderabad General Clauses Act that the repeal of the Hyderabad Agricultural Income Tax Act does not stand in the way of the Department pursuing the remedies available to it for the collection of the taxes due. By reason of the provision in the Hyderabad General Clauses Act (3 of 1308-F), the right of the Department to collect the amount is saved and it is competent for the Collector to recover it under S. 52 of the Madras Revenue Recovery Act. (1965) **55 I T R 528 (Andh Pra).**

HYDERABAD LAND ACQUISITION ACT (9 of 1309-F)

——Provisions of Statute in respect of acquisition of lands must be strictly complied with and burden of proving that they have been complied with rests upon those who claim statutory power—Land Acquisition Act (1894), S. 1; Evidence Act (1872), Ss. 101-104. **(1962) 1 Andh L T 1.**

——S. 12—Rules for acquisition of land for City Improvement Board — Act or Rules do not empower Government to make piecemeal acquisition. **(1962) 1 Andh L T 1.**

——Rules under — Rules for acquisition of land for City Improvement Board—R. 5 — Declaration under R. 5 — Held, omission to mention approximate area in declaration as is required under R. 5 had the effect of invalidating declaration. **(1962) 1 Andh L T 1.**

HYDERABAD LAND REVENUE ACT (8 of 1317-F)

——Ss. 1 (2), 67-A — Zabta-i-shikmidaran Rules (1876), R. 14—Test of repugnancy between two provisions—Rights conferred on pattadar and shikmidar respectively under R. 14 and S. 67-A — No repugnancy between the two provisions — R. 14 held not repealed by S. 67-A — Pattedar has preferential right to purchase shikmidar's right — Hyderabad Land Revenue Act (8 of 1317), S. 67-A. **(1961) 39 Mys L J 458.**

HYDERABAD PUBLIC SERVANTS (TRIBUNAL OF ENQUIRY) ACT (23 of 1950)

——S. 9—Order of dismissal of public servant after enquiry into his conduct by Tribunal — Objection of servant that Tribunal which recorded evidence was not tribunal which submitted report of his enquiry—Objection not raised before tribunal even though servant was represented by a Counsel—Even if there is irregularity in procedure, servant cannot be said to be prejudiced thereby (Obiter). **I L R (1965) Andh Pra 482.**

HYDERABAD RESTRAINT ON LANDS ALIENATION ACT (1349-F)

——Preamble—Applicability to sale execution of mortgage decree — Revenue officer setting aside sale on ground that Restraint on Land Alienation Act applied —Suit to set aside order—S. 47, Civil P. C., is no bar. See Civil P. C. (1908), S. 47. **AIR 1955 N U C (Hyd) 2366 (DB).**

HYDERABAD WALI UD. DOWALA SUCCESSION (DECISION OF DISPUTES) ACT (16 of 1950)

——Preamble — Validity of Waliuddowala Succession Act, 1950 — The Act is arbitrary and unreasonable and hence falls within the inhibition of Art. 14, Constitution of India. See Constitution of India (1950), Art. 14. **AIR 1953 S C 91.**

INCOME-TAX ACT (11 of 1922)

——Preamble — Practice — Bombay High Court — Income-tax matters — Interpretation of section by another High Court. See Income-tax Act (1922) S. 24 (2). **(1965) 57 I T R 285 = 1 L R (1966) Bom 200= (1966) 1 I T J 721=68 Bom L R 345 (DB).**

——Ss. 2 (9), 25A—Hindu undivided family—Partition or separation alleged—Hindu undivided family unit for income-tax purposes is different from Hindu Joint family—Family continues to be joint for assessment purposes until separation or partition is recognised as such by the Income Tax Officer. **(1965) 58 I T R 533 (Cal) (DB).**

——Ss. 3, 26A — Hyderabad Abkari Act (1 of 1316F), S. 14—Lessee under the Act entering into partnership with firm without prior approval of Talukdar—Partnership is illegal and unregistrable under S. 26-A Income Tax Act — The firm however can be regarded as an association of persons under S. 3, I. T. Act and partners are jointly and severally liable for income-tax. **46 ITR 784=ILR (1963) Andh Pra 83 (DB).**

——S. 4—Income—Trading receipt — Meaning of—Collection by way of sales tax held to be trading receipt liable to tax. **(1964) 2 I T J 433 = (1965) 58 I T R 752=(1964) 2 Andh WR 353.**

——S. 4 (1) (b) (iii)—Assessee bringing into taxable territory money in shape of bank drafts during previous year — No difference in drafts and cheques — Drafts encashed after closing of accounting period—Draft amount taxable under section for that assessment year. **(1964) 54 ITR 259 (DB).**

——S. 5 (7-A)—Words 'proceedings for assessment' in S. 297 include the power of transfer of case also —Where, therefore, a return has been filed before commencement of new Act by any person for any assessment year, proceedings for assessment of that person for that year could be taken and continued under old Act and proceedings could be transferred under S. 5 (7-A) of old Act. See Income-tax Act (1961), S. 297. **(1964) 52 I T R 217 (Punj) (DB).**

——Ss. 7 (1) Second Explanation and 10 (5A) (b)—Persons falling under Cl. (b) of S. 10 (5A)—S. 7 will not apply to such persons—Interpretation of Statutes.

Section 7 is a general provision relating to the persons who are receiving salary or wages, annuity, pension, or gratuity, etc. S. 10 (5A) is a special provision relating to managers who are managing an Indian company or other companies or managing the business of some other persons. The latter section relates only to this limited class of persons. It is a well settled principle of law that when there is a general provision and a special provision it is the special provision which prevails over the general provision. It would, therefore, follow that even if it may be that some of the persons falling under Clause (b) of S. 10 (5A) also fall under the second explanation of S. 7 (1) they would be governed by the special provision contained in S. 10 (5A) and not by S. 7. **(1965) 2 I T J 498=(1965) 58 I T R 206= 68 Bom L R 122 (DB).**

——Ss. 10 (2) (xi) and 66 (2)—Bad debt—Fact that debt is time-barred or not is not always conclusive of question whether it is good or bad, but it is essentially a finding of fact to be drawn from several circumstances—Assessee advancing money in 1941 and after several unsuccessful attempts to recover it filing suit in 1950 — Suit dismissed in 1952 as time-barred. **ILR (1964) Andh Pra 158 (DB).**

——Ss. 10 (2) (iii), (xv) and 12 (2)—Scope—Assessee borrowing money from Bank and advancing it to certain Corporation at higher rate of interest—Assesee was share-holder and director of Corporation and her relatives were also share-holders—Subsequently assessee waiving interest on amount advanced

to Corporation—Assessee claiming allowance in respect of interest paid to Bank—On facts held that assessee was not carrying on any business in advancing loan and waiver was not actuated by consideration of eventual benefit, hence allowance was not permissible either under S. 10 (2) (iii), (xv) or S. 12 (2). (1962) 46 I T R 837 (Andh-Pra) (DB).

——S. 10 (2) (xv) — Expenditure for business — Contingent or uncertain liability—Expenditure incurred on a contingency is not deductable—Payment of pension to wife of employee — Payment is not deductable as expenditure incurred wholly or exclusively for purposes of business. (1962) 46 I T R 715 (DB) (Cal).

——Ss. 10 (1), (2) (xv)—Loss accrued in the course of business — Mercantile system of accounts — Loss will be admissible during the year in which it is actually accrued—Assessee denying the very contract under which the liability is claimed against him—Loss, quantified subsequently by adjudication of the Court and paid—Loss admissible as deduction in the year in which it was paid. (1962) 46 I T R 638 (Cal) (DB).

——S. 10 — Money-lending business — Properties acquired during money-lending transactions allotted to assessee on partition—Properties cannot be treated as stock-in-trade of money-lending business unless assessee impressed such character on properties. (1962) 46 I T R 797 (Mad) (DB).

——S. 12 (2) — Scope—Assessee borrowing money from Bank and advancing it to certain Corporation at higher rate of interest—Assessee was shareholder and director of Corporation and her relatives were also share-holders — Subsequently assessee waiving interest on amount advanced to Corporation—Assessee claiming allowance in respect of interest paid to Bank —On facts held that assessee was not carrying on any business in advancing loan and waiver was not actuated by consideration of eventual benefit, hence allowance was not permissible either under S. 10 (2) (iii), (xv) or S. 12 (2). 46 I TR 837=ILR (1963) Andh Pra 603.

——Ss. 16 (1) (b), 23 (5) and 24 (1)—Assessee having several sources of income suffering loss in partnership of an unregistered and unassessed firm—Assessee can get his loss set off from his total income. (1962) 46 ITR 755=ILR (1963) Andh-Pra 486 (DB).

——S. 18A (3)—Agent of non-resident — Non-compliance with S. 18A (3)—Not liable to penalty under S. 28. See Income Tax Act (1922), S. 28. (1961) 42 I T R 315 = I T R (1961) 2 Punj 384.

——Ss. 18A (5), 34 (1) (b) — "Excessive relief" — Interest, under S. 18A (5) allowed in accordance with section before amendment—On amendment interest found excessive—Demand for excessive interest does not come under S. 34 (1) (b). (1961) 42 ITR 311 (DB) (Punj).

——S. 23—Acting or not acting upon return does necessarily mean passing or not passing assessment order — Assessment order is final fact in process of assessment but return can be acted upon all the same even though acting on return may not result in passing of assessment order. (1963) 48 ITR 837 (DB) (All).

——Ss. 23 (3) and 34— Proceedings under S. 34 can be taken even though assessment order is made on return under S. 22 (3), or in respect of income shown in it but against another person. (1963) 48 ITR 837 (DB) (All).

——Ss. 23 (5), 24 (1)—Assessee having several sources of income suffering loss in partneship of an unregistered and unassessed firm — Assessee can get his loss set off from his total income. See Income-tax Act (1922), S. 10 (1) (b). 46 ITR 755 = ILR (1963) Andh-Pra 486.

——S. 24 (3) — Second Proviso — Applicability and scope — Best of judgment assessment set aside at instance of assessee and subsequent reassessment — Four years period of limitation — Applicability — The time bar of four years, does not apply to an assessment under S. 27 of the Act. See Income-tax Act (1922), S. 23 (4). (1963) 1 ITJ 193 = (1963) 49 ITR 335 (Mad).

——Ss. 24 (3), 34—Proceedings under S. 34— Power to give relief under S. 24 (3)— A proceeding initiated under S. 34 is confined only to assessing the income which had escaped assessment, etc.; and is not intended for assessing the total income of an assessee. The relief contemplated by S. 24 (3), on the other hand, can be granted only in the course of the assessment of the total income of the assessee. Hence the Income-tax officer, in a proceeding under S. 34, cannot grant relief to the assessee in respect of losses under S. 24 (3). See Income-tax Act (1922), S. 34. AIR 1950 Mad 647 (DB).

——S. 24-B (1) — Petitioner's mother as life estate holder of husband making a will—All interest in the property bequeathed to petitioner's brother — Petitioner not getting anything from mother cannot be regarded as her "legal representative" — Hence not liable for payment of half tax payable by his mother. (1961) 42 ITR 80 (Andh-Pra).

——S. 25A — Hindu undivided family — Partition or separation alleged — Hindu undivided family for income-tax purposes is different from Hindu joint family — Family continues to be joint for assessment purposes until separation or partition is recognised by the Income-tax Officer. See Income-tax Act (1922), S. 2 (9). (1965) 58 ITR (Cal) 533.

——S. 26-A — Unregisterd partnership is liable to be assessed as a single unit. 46 ITR 784 = ILR (1963) Andh-Pra 83 (DB).

——S. 26A — Lessee under the Act entering into partnership withfirm without prior approval of Talukdar— Partnership is illegal and unregisterable under S. 26-A, Income-tax Act — The firm however can be regarded as an association of persons under S. 3, Income-tax Act, and partners are jointly and severally liable for income tax. 46 ITR 784 = I L R (1963) Andh-Pra 83.

——Ss. 28, 18A (3), 43—Agent of non-resident—Non-compliance with S. 18A (3) — Not liable to penalty under S. 28.

In view of the Proviso (c) to S. 28 (1) an agent of a non-resident cannot be visited with any penalties for not making a return, except that if he fails to make a return in spite of a notice under S. 22 (2) or S. 34 a penalty may be imposed on him. By no fiction of law can an agent of a non-resident be deemed to have been served with a notice under S. 22 (2) or S. 34. (1959) 35 I T R 408 (SC), Disting. (1961) 42 ITR 315=ILR (1961) 2 Punj 384 (DB).

——S. 31 (3) — Proviso to S. 34 (3) would apply whether finding of appellate authority in particular case is positive or negative in character. See Income-tax Act (1922), S. 34 (3), Proviso. (1963) 47 ITR 16 (Mad) (DB).

——S. 34 (1) (a) (as amended by Finance Act of 1956, and S. 34 (1A)) (as introduced by S. 2 of Income-tax (Amendment) Act, 1954) — Notice can be issued under S. 34 (1) (a) in spite of the provisions of S. 34 (1A)—Income-tax (1961), Ss. 147-149.

A notice was issued to assessee under S. 34 (1) (a) (as amended by Finance Act of 1956). It was contended that the case fell within the scope of S. 34 (1A), and that a notice under S. 34 (1) (a) could not be issued. (1965) 58 ITR 693 (Cal).

——S. 34 (1) (a)—Income escaping asesssment—Cash contribution towards firm's capital by partner — Full and true disclosure about source of contributed

amount not made during assessment of firm — Re-opening of partner's individual assessment under S. 34 (1) (a) held justified. (1965) 55 ITR 366 (Cal).

——S. 34 — Re-assessment proceedings for 1949-50 and 1950-51—Assessee contending that amount spent for loan and advances and which was found to have escaped assessment came out of additions made by department in computing his income in assessment proceedings for 1947-48 and 1948-49 — Held, once source was shown for advances and loan, it was for department to prove that that source was not available to assessee — As department had failed to discharge its burden, it could not be said that loan and advances were made from unexplained or undisclosed source : 30 ITR 593, Ref. (1964) 51 ITR 757 (Mad) (DB).

——S. 34 (1) (b)— Excessive relief — Interest under S. 18-A (5) allowed in accordance with section before amendment — On amendment interest found excessive—Demand for excess interest does not come under S. 34 (1) (b). See Income-tax Act (1922), S. 18A (5). (1961) 42 ITR 311 (Punj).

——S. 43—Agent of non-resident — Non-compliance with S. 18A (3)—Not liable to penalty under S. 28. See Income-tax Act (1922), S. 28. (1961) 42 ITR 315 =ILR (1961) 2 Punj 384.

——S. 46 — Crown debt — Principle of priority — Applicability after enforcement of constitution.

Prior to the adoption of the Constitution the claim of the Government of India as the representative of the Crown to priority of its debts, was recognised by Courts.

After the enforcement of the Constitution the situation has not undergone any change as to the priority enjoyed by the State for the debts due to it. The common law doctrine, that if the debts due to the Crown are of equal degree to the debts due to a private citizen, then the Crown must have priority against the private citizen, is a part of the law of this country. I L R (1961) 1 Punj 809=A I R 1961 Punj 292 (293) (Pt B) (Pr 3).

——Ss. 47, 28, 24B — Penalty imposed on assessee—Collection from his legal representative is legal. See Income-tax Act (1922), S. 28. AIR 1959 Andh-Pra 391 (DB).

——S. 66 (2) — Bad debt — Fact that debt is time-barred or not is not always conclusive of question whether it is good or bad, but it is essentially a finding of fact to be drawn from several circumstances—Assessee advancing money in 1941 and after several unsuccessful attempts to recover it filing suit in 1950 —Suit dismissed in 1952 as time-barred — His claim filed with Jagir Administration Board in March 1953 also rejected in limine in 1955 though actually it was also liable to be rejected as being time-barred—Claim for deduction for assessment year 1956/57 disallowed by Tribunal which held that debt had become bad even by date of decision of Civil Court—Held, it could not be said that there was no evidence in support of Tribunal's conclusion or that conclusion was perverse and therefore assessee's application for directing Tribunal to state a case must be rejected. ILR (1964) Andh Pra 158.

——S. 66 (2) — Question referred to High Court — Scope of — Matters arising out of the orders of the Income-Tax tribunal can also be considered by the High Court. 46 I T R 784=I L R (1962) Andh Pra 83 (DB).

——S. 66—Reference under—Death of assessee during pendency — Failure by Commissioner to bring legal representatives on record within 90 days—Reference does not abate — O. XXII, Civil P. C. (1908) not applicable — Art. 177, Limitation Act (1908) not applicable. (1962) 46 I T R 463 = (1963) 2 Andh W R 154=ILR (1962) Andh Pra 1019 (DB).

——S. 66 (5)—Reference at the instance of Assessee—Absence of Assessee— High Court, is not bound to answer reference in such a case. 30 ITR 348; 27 ITR 188, Rel. on. (1962) 1 Andh W R 414 = (1962) 46 I T R 703=ILR (1962) Andh Pra 984 (DB).

——S. 66 (1) — Tribunal's findings of fact — Interference by High Court.

Findings of pure fact — If there is evidence, the sufficiency of that evidence or other evidence contra will not justify a refusal to accept the findings of fact arrived at by the Tribunal. 31 I T R 28 Foll. (1965) 55 I T R 366 (Cal).

——Ss. 66, 66A (2)—Constitution of India—Art. 133 (1) (a) and (c)—Appeal to Supreme Court—Order of High Court refusing to direct Income-tax Tribunal to state a case — Not appealable—Reference—Application to refer not included.

The assessee sought to file an appeal to the Supreme Court under S. 66-A (2) of the Income-tax Act against an order of the High Court refusing to direct the Income-tax Tribunal to make a reference under S. 66 (2).

Held the word "reference" in S. 66-A (2) does not include "an application to refer" for the purposes of appeal to the Supreme Court. No appeal lies to the Supreme Court against the order of the High Court refusing to direct the Tribunal to state a case. (1965) 1 I T J 602=78 Mad L W 346=(1965) 1 Mad L J 538.

INCOME-TAX ACT (43 of 1961)

——Ss. 71 and 73 — Income-tax Act (1922), S. 24 (1), Proviso —Speculative losses are not available for being set off against profits and gains earned under other heads—Such lossess can be set off against profit in certain other speculative transaction: 31 I T R 7 Foll. (Observation). 68 Bom L R 345 = ILR (1966) Bom 200=(1966) 1 I T J 721=1966 Mah L J (Notes) 37=(1965) 57 I T R 285.

——Ss. 71, 72, 73, 75 and 77—Income-tax Act (1922), S. 24 (2) and (1)—Registered firm suffering speculative loss in earlier year—Loss whether can be set off against speculative profits of subsequent year — Practice—Bombay High Court — Income-tax matters —Interpretation of section by another High Court. See Income-tax Act (1922), S. 24 (2). 68 Bom L R 345=ILR (1966) Bom 200=(1966) 1 I T J 721=1966 Mah L J (Notes) 37=(1965) 57 I T R 285.

——S. 127 — Words 'proceedings for assessment' in S. 297 includes the power of transfer of case also—Where therefore a return has been filed before commencement of new Act by any person for any assessment year, proceedings for assessment of that person for that year could be taken and continued under old Act and proceedings could be transferred under S. 5 (7-A) of old Act. See Income-tax Act (1961), S. 297. (1964) 52 I T R 217 (Punj) (DB).

——Ss. 147, 148, 149—Income Tax Act (1922), S. 34 (1) (a) (as amended by Finance Act of 1956 and S. 34 (1A) (as introduced by S. 2 of I. T. (Amendment) Act (1954)—Notice can be issued under S. 34 (1)(a) in spite of the provisions of S. 34 (1A). (See Income Tax Act (1922), S. 34 (1A) (as amended by Finance Act of 1956). (1965) 58 I T R 693 (Cal).

——Ss. 147, 148—Notice under, for re-assessment — Specifications about escaped turn-over or basis of information not mentioned—Notice valid. (1964) 54 I T R 308 (Guj) (DB).

——Ss. 147 (b), 148—Assessment of immovable property relying on annual value fixed by Municipality —Valuation by Municipality—Basis concessional and not according to rules—Income-tax Officer learning the same, subsequently — Issue of re-assessment notice—Valid. (1964) 54 I T R 308 (Guj) (DB).

——S. 148 — Notice under, for re-assessment —

Specifications about escaped turn-over or basis of information not mentioned — Notice valid. See Income-tax Act (1961), S. 147. (1964) 54 I T R 308 (Guj).

——S. 148—Assessment of immovable property relying on annual value fixed by Municipality—Valuation by Municipality—Basis concessional and not according to rules — Income-tax officer learning the same subsequently —Issue of re-assessment notice—Valid. See Income-tax Act (1961), S. 147 (b). (1964) 54 I T R 308 (Guj).

——S. 182 (1), (2)—Income-tax Act (1922), S. 23 (5) (a) (ii) read with proviso—Profit and loss sustained by registered firm are both to be distributed and apportioned amongst its partners in proportion to their respective shares. (Observation). See Income-tax Act (1922), S. 23 (5) (a) (ii). 68 Bom L R 345 = I L R (1966) Bom 200= (1966) 1 I T J 721=1966 Mah L J (Notes) 37=(1965) 57 I:T R 285.

——Ss. 297 and 127 — Income-tax Act (1922), S. 5 (7-A) —Words 'proceedings for assessment' in S. 297 includes the power of transfer of case also — Where therefore, a return has been filed before commencement of new Act by any person for any assessment year, proceedings for assessment of that person for that year could be taken and continued under old Act and proceedings could be transferred under S. 5 (7-A) of old Act. (1964) 52 ITR 217 (DB) (Punj).

INCOME-TAX RULES (1922)

——Rr. 2 to 6—Application for registration of firm—Divisible profits not divided between partners according to terms of partnership instrument—Registration held was properly refused. See Income-tax Act, S. 26A (Andh Pra). (1963) 48 I T R 968=(1962) 2 Andh W R 449=ILR (1963) Andh Pra 1155 (DB).

INDUSTRIAL DISPUTE

—Collective bargaining.

See Trade Unions Act (1926), S. 28-F.

[Note: Chapter IIIA of which S. 28-F is a part was introduced by Amendment Act XLV of 1947 which is not yet brought into force. But in various States the chapter is introduced as State Amendment.]

INDUSTRIAL DISPUTES ACT (14 of 1947)

——S. 2 (a) — Workman — Definition of worker — Master and servant—Relationship of—Test to decide. See Factories Act (1948), S. 2 (1). 78 M L W 97 = (1965) 1 Mad L J 391=1 Lab L J 308=ILR (1966) 1 Mad 53.

——Ss. 2 (a), 10 (1-A) — 'Appropriate Government' — Firm having branches in different States—State where dispute arises is the appropriate Government. (1961-62) 22 FJR 75=(1962) 2 Lab L J 294 (Punj) (DB).

——S. 2 (oo)—Retrenchment — Management's failure to give justification for retrenchment—Court ordering re-instatement of the retrenched employee — Absence of a specific finding about existence of mala fides on the part of management, held, did not invalidate the order. (1962-63) 23 F J R 216 (Punj).

——Ss. 2 (p), 10 (as amended by Amending Act, 18 of 1957) — Scope — Settlement in 1955 in respect of matters not referred to tribunal held not binding within machinary of Act.

The amendment has given an enlarged definition of the settlement by including a written agreement between the employer and the workmen arrived at otherwise than in the course of a conciliation proceeding. Any agreement must ex facie embody the terms which may be ascertained with judicial certitude and may not be left vague by references to an agreement which has no binding force within the framework of the Industrial Disputes Act.

Any settlement between the parties in 1955 (prior to amendment) in respect of matters not referred to Tribunal cannot be binding within the machinery of the Industrial Disputes Act. 1961 (2) Andh W R 27, Ref. (1962) 2 Lab L J 591 (Andh Pra).

——S. 2 (rr)—Wages — Fixation of scales of pay — Factory engaged in distillation of alcoholic drinks and carbon dioxide gas and those of textile industry are not comparable industries — Consideration of totally different industries vitiates the award — Management and workers are equally bound to produce evidence—Management cannot be penalised for non-production of evidence. (1962-63) 23 F J R 212 (DB) (Punj).

——S. 2 (rr)—Wages—Tribunal's fixation of scales of pay at a rate higher than that claimed by workers in their written statement, held, improper—Order in Civil Writ No. 263/61 dated 17-8-1961 by Tek Chand J., Affirmed. (1962-63) 23 F J R 212 (DB) (Punj).

——S. 10—Individual dispute—No evidence of collective support of workmen — It cannot be industrial dispute—Nature of proof required indicated. (1962) 2 Lab L J 93 = (1962) 5 Fac L R 144 (Mad).

——S. 10 (2), 18 (3) — Reference to Tribunal under S. 10 (2)—Other parties, other than those mentioned in order of reference — Can be added as parties.

When a reference is made to a Tribunal under S. 10 (2), the Tribunal has jurisdiction under S. 18 (3) (b) to add other parties, other than those who are mentioned in the order of reference, to the proceeding whose presence is necessary in the opinion of the Tribunal for a complete and final determination of the dispute referred to it. AIR 1954 Mad 369 and AIR 1954 Mad 688, Foll. (1961) I L R 40 Pat 566 (DB).

——S. 10 (1-A) — 'Appropriate Government' — Firm having branches in different States — State where dispute arises is the appropriate Government. See Industrial Disputes Act (1947), S. 2 (a). (1961-62) 22 F J R 75 = (1962) 2 Lab L J 294 (Punj).

——S. 10 (1) (c) — Settlement validly arrived at and binding — Reference of a dispute relating to matters embraced by the settlement cannot be supported. See Industrial Disputes Act (1947), S. 12 (3). (1957-58) 12 F J R 208 (Punj).

——S. 15—Special Tribunal — Industrial dispute—Dismissal of workman by manager held to be not in good faith by Industrial tribunal — Supreme Court will not interfere with finding of fact. AIR 1964 SC 719.

——S. 15 — Award by Tribunal increasing rate of dearness allowance payable by employers—Evidence showing that increase was granted without following principles laid down by Supreme Court — Held, award must be set aside and case remanded. (1965) 2 Lab L J 441=(1965) 11 Fac L R 278=(1966) 6 Guj L R 682.

——S. 15—Dismissal of workman for misconduct — Power of Tribunal—Allegation of mala fides—Tribunal does not sit in appeal over the decision of the management — Circumstances under which Tribunal will interfere stated. (1963-64) 25 FJR 209 (Punj).

——S. 15—Award by Tribunal — Merits of the award cannot be gone into in Writ proceedings — High Court will interfere only in the event of there being an error apparent on face of record. 1960 (2) L L J 586, Ref. (1963-64) 24 F J R 30 (Punj).

——S. 15—Jurisdiction of Industrial Tribunals — Tribunal exceeding the scope of reference—Commission of other grave errors by Tribunal apparent on face of record — Award can be set aside. (1962-63) 23 F J R 412 = (1963) 2 Lab L J 29 (Punj).

——S. 18:(3)—Reference to Tribunal under S. 10 (2) —Other parties, other than those mentioned in order

of reference — Can be added as parties. See Industrial Disputes Act (1947), S. 10 (2). (1961) I L R 40 Pat 566.

——Ss. 33 (2), Proviso and 33 (5)—Application under proviso to S. 33 (2), for approval of dismissal of employee, pending — Conciliation proceedings terminated — Subsequent passing of order disapproving dismissal—Without jurisdiction — Order of dismissal by employer stands. I L R (1964) 16 Assam 467 (DB).

——S. 33 (2) (b)—Nature of Tribunal's jurisdiction—Workers found guilty by domestic tribunal — Statements of witnesses read over and explained in Hindi to workers — Witnesses produced and questioned by enquiry officer and their answers explained to workers — Opportunity to cross-examine witnesses given —Principles of natural justice not violated—Tribunal does not sit as Court of appeal over domestic tribunal — Circumstances under which tribunal may interfere with penalty imposed stated. See Constitution of of India, Art. 226. (1965) 1 Lab L J 628 = (1965) 10 Fac L R 5 (Cal).

——S. 33C (2)—Direction with regard to recovery of money due from employer as back wages given by labour Court in a proceedings under section—Alleged non-compliance with the order by the employer—Employee cannot make a second application under section for the same relief that had been granted to him on the earlier occasion—The only manner in which the amount can be recovered is to proceed by moving the appropriate Government which shall issue a certificate for recovery of the amount as arrears of land revenue. (1965-66)29 F J R 515=(1966) 13 Fac L R 418 (Cal).

——Sch. II, Item 2 — Standing Orders of the Madras Board of Revenue, B. S. O. 87, Cl. 11 — Applicability — Order not applicable to works of a major character which are looked after by P. W. D. — Execution of repairs to major tank — Ayacutdars cannot claim right to effect repairs in preference to outside professional contractors. ILR (1964) 2 Mad 567.

——Sch. 3, Item 5—Bonus—Available surplus—Computation.

For arriving at the available surplus for purposes of bonus the profit and loss account as furnished by the management will have to be taken as the basis, and it is only when there is justifiable suspicion about the debit entries or genuineness of the accounts on which the balance sheet has been drawn up, or there is prima facie proof of mala fides that it will be within the purview of a tribunal to go behind the balance sheet and compute the available surplus on a different basis which it may consider to be appropriate and just in the light of the relative facts and circumstances (1959) 1 L L J 644 and (1959) 2 L L J 382, Rel. on. (1962) 2 Lab L J 130 (Mad).

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT (20 of 1946)

● ——S. 13-A—Standing Orders of Dewan Tea Estate, R. 8 (a) (i) — 'Stoppage of supply' — Meaning of — Means stoppage of supply of raw material or other such thing.

Stoppage of supply must in the context, mean stoppage of raw material or other such thing. In regard to the factory, the stoppage of supply may mean the stoppage of tea leaves, or in the case of field work, it may mean the stoppage of supply of other articles necessary for field operations. 'Supply' in the context does not mean money or funds. Award dated 11th December, 1959 of Industrial Tribunal Assam, Reversed. Workmen of Dewan Tea Estate v. Their Management, (1964) 5 S C R 548=(1963-64) 25 F J R 386=(1964) 1 Lab L J 358=(1964) 8 Fac L R 167 = 1964 Cur L J (SC) 97 = A I R 1964 S C 1458 (1462) (Pt B) (Pr 7).

● ——S. 13A—Standing Orders of Dewan Tea Estate, R. 8(a) (i) — 'Other causes beyond his control' — Words do not take in financial difficulties.

'Other causes beyond his control' for one thing should be similar to the causes that have preceded; even otherwise, there is no justification for the argument that the financial difficulty which is alleged to have confronted the employer was beyond its control. Award, dated 11th December, 1959 of Industrial Tribunal, Assam, Reversed. Workmen of Dewan Tea Estate v. Their Management, (1963-64) 25 F J R 386=(1964) 5 S C R 548 = (1964) 1 Lab L J 358 = (1964) 8 Fac L R 167=1964 Cur L J (S C) 97=A I R 1964 SC 1458 (1462) (Pt C) (Pr 8).

——S. 13A — Standing Orders of Dewan Tea Estate, R. 8 (a) (iii) —Scope — Rule 8 (a) (iii) which refers to temporary curtailment of production must obviously be read in the light of R. 8 (a) (i) and if the case of the lay off does not fall under R. 8 (a) (i), R. 8 (a) (iii) would not improve the position. Award dated 11-12-1959 of Industrial Tribunal, Assam, Reversed. Workmen of Dewan Tea Estate v. Their Management, (1964) 5 S C R 548=(1963-64) 25 F J R 386=(1964) 1 Lab L J 358=(1964) 8 Fa0 L R 167=1964 Cur L J (SC) 97=AIR 1964 S C 1458 (1463) (Pt D) (Pr 9).

INTERNATIONAL LAW

—Private.

See under Constitution of India, Art. 51.

—Public.

See under Constitution of India, Art. 51.

INTERPRETATION OF STATUTES

——Dictionary — Value of, in construing meaning of words.

In finding the meaning of words in the Constitution and Statutes, Judges make some use of the layman's crutch—the dictionary. Yet, the value of a dictionary must be considered limited by the fact that in English, as in any other language, the meaning of words are in steady process of change. As an authority on meanings, the dictionary is a man-made institution without pretence of guidance by a higher power, or any basic substratum of natural law, or even by superior wisdom, to all of which jurists sometimes lay claim. The aid from the dictionary might in some cases be useful, but as the meanings of words undergo constant changes, the dictionary cannot be considered as definite guidance in all cases. 12 S T C 286, Rel. on. (1964) 15 S T C 795 = ILR (1965) Andh Pra 720.

——Parliamentary exposition made in subsequent statutes may throw light upon meaning of words used in statute. See Sales Tax — Andhra Pradesh General Sales Tax Act (VI of 1957), Sch. IV, Col. 2, Item 3 (c) (as amended by Act VI of 1961). (1964) 15 S T C 795=ILR (1965) Andh Pra 720.

——Interpretation of Statutes — Speeches in legislature introducing legislation are ordinarily no guide for interpreting statute.

Speeches made in Parliament cannot be taken into account or interpreting a statute, but they may be referred to for the purpose of finding out the background in which a particular statutory provision was enacted. (1965) 58 ITR 693 (Cal).

——Rule framed by President—Interpretation of such rules by him — Interpretation how far binding on Court.

Even though as a general rule, the powers of the Court cannot be fettered by the interpretation of a rule of law by the President, still when the meaning of a word in the rule framed by the President himself

under a statutory power is not clear, the interpretation which has been given by the President, to that word should be accepted and given effect to. (1956) 2 Lab L J 160=59 Cal W N 1050=(1956) 2 Lab L J 160=I L R (1957) 2 Cal 309=A I R 1956 Cal 93 (94) (Pt B) (Pr 7).

——Interpretation of Statutes — Language plain and clear—Words must be given their natural meanings.

Scope and ambit of—Power of entry and inspection etc.—Extent of—Does not include power to search — Such power cannot be imported into the section by reason of the proviso — Proviso cannot take place of main part or substitute it — Interpretation of Statutes — Language plain and clear — Words must be given their natural meanings — Proviso cannot add to main provision what is not there. (1965) 2 I T J 178= (1965) 57 ITR 664=(1965) 16 STC 708= ILR (1966) 1 Mad 267.

——Hard cases — Hard cases should not make bad law. AIR 1956 Pat 501 (505) (Pt D) (Pr 11) (DB).

——Question whether particular enactment is directory only or obligatory with an implied nullification for disobedience — Conclusion has to be arrived at by carfully attending to the whole scope of the statute concerned. (1877) 2 P D 203, Foll. 1965 Pun L R (Supp) 403.

KUTCH STATE—NOTIFICATION NO. 357 D/- 4-2-1944, PUBLISHED IN KUTCH STATE GAZATTE

——Act of Dewan in publishing same presumed to be properly authorised—Notification held legal. AIR 1951 Kutch 50 (51) (Pt C) (Pr 6).

● ——S. 6— Compliance with S. 5A necessary before action is taken under S. 6 — Government making direction only under S. 17 (1) — S. 5A still applies — Government making direction under S. 17 (4) — Action under S. 5A not necessary—Even after S. 17 (1A) inserted by U. P. Act 22 of 1954, S. 17 (4) applies to waste and arable land only. See Land Acquisition Act (1 of 1894), S. 5A. AIR 1964 SC 1217.

——S. 6—Income Tax Act (1922), S. 2 (1) (a)—"Assessed to land revenue". See Income-tax Act (1922), S. 2 (1) (a). AIR 1958 Cal 34.

——S. 23—Test—Market price. AIR 1957 Mad 341 (346) (Pt C) (Pr 22).

——S. 23 — Valuation — Evidence available as to market prices — Resort to method of valuation by capitalisation is not desirable. AIR 1955 NUC (Mad) 3934 (DB).

——S. 23—Reference to Court under S. 18—Provisions of Civil P. C. (1908) applicable—O. 22, R. 3 of Civil P. C. (1908) not inconsistent with Ss. 20, 21, 23, 26—Reference can abate for non-compliance with provisions of O. 22, R. 3. See Land Acquisition Act (1894), S. 28. ILR (1963) 2 Punj 441.

——S. 26—Reference to Court under S. 18 — Provisions of Civil P. C. (1908), applicable—O. 22, R. 3 of Civil P. C. (1908) not inconsistent with Ss. 20, 21, 23, 26 — Reference can abate for non-compliance with provisions of O. 22, R. 3. See Land Acquisition Act (1894), S. 28. ILR (1963) 2 Punj 442.

LEGAL PRACTITIONERS ACT (18 of 1879)

● ——Ss. 6, 7 and 13—Rules made by High Court of Hyderabad under S. 6, Rr. 11 and 12—Scope of — 'Holding a certificate' — Meaning of — Pleader not renewing certificate—Amenability to the disciplinary jurisdiction of the High Court — "Reasonable cause" —Pleader dismissed from Judicial Service for taking illegal gratification and for inefficiency—If can be allowed to practise as a First Grade Pleader—S. 38—Applicability. (1958) 2 Andh W R 170=1958 Andh L T 120=AIR 1958 Andh Pra 209 (210, 211) (SB).

LEGAL PRACTITIONER'S (FEES) ACT (21 of 1926)

——S. 3—Lien for fees — Advacate of Mysore High Court—Right of—Extent of the line of Solicitors and Attorneys — Enforceability in summary jurisdiction. See Civil P. C. (1908), O. 3, R. 4. AIR 1952 Mys 141.

LETTERS PATENT (BOMBAY)

——Cl. 36—Certiorari—Bench of High Court is not empowered to issue certiorari against an order passed by Single Judge on original side. See Constitution of India, Art. 226. (1965) 67 Bom L R 215.

LIMITATION ACT (9 of 1908)

——Arts. 96 and 120 — Suit for declaration as to plaintiff's correct date of birth — Art. 96 and not Art. 120 applies.

Per Division Bench: A suit for declaration that the plaintiffs correct date of birth was 30-3-1910 and not 30-3-1901 as given in the service register and for consequential relief, is governed by Art. 96 and not Art. 120, Limitation Act and the starting point of limitation is the date when the plaintiff came to know about the mistake. The language of Art. 96 is quite general and a mistake whether of fact or law is within its purview. Art. 120 is a residuary Article and could only be called in aid when no specific provision applies. ILR (1965) Andh Pra 142.

——Art. 120—Suit for declaration as to plaintiff's correct date of birth—Art. 96 and not Art. 120 applies. See Limitation Act (1908), Art. 96. ILR (1965) Andh Pra 142.

——Art. 120 — Applicability — Deposit of fees with Transport Authority by way of stamps—Fees becoming unnecessary later on—Failure to mention exact date thereof while returning stamps—Suit for refund of stamp amount—Limitation starts from the date of return of stamps—S. 120 applicable.

Payment was made to the Transport Authorities in the form of stamps in pursuance of an agreement, but later on it transpired that the fee was not payable and accordingly the Transport Authorities returned the stamp on 16-1-46 without giving exact date when the fee became repayable. The revenue department refused to refund the amount of stamps and the suit filed in Civil Court was also dismissed as barred by limitation. 1963 Jab L J 46.

——Art. 142—T. P. Act (1882), S. 105—Non-payment of rent—By itself raises no presumption of adverse possession. See Landlord and Tenant—Adverse possession. AIR 1962 All 604.

——Art. 144—T. P. Act (1882), S. 105—Adverse possession if can be set up by tenant. AIR 1957 All 346.

——Art. 142—T. P. Act (1882), S. 105—Pendency of tenancy—Denial of landlord's title—Adverse possession.

It is an elementary principle of law that a tenant cannot deny the title of a landlord during the pendency of a tenancy and as such he cannot claim the land on the ground of adverse possession. ('50) 8 J & K L R 204 (210) (DB).

——Arts. 142, 144 — Transfer of Property Act (1 of 1882), S. 105—Mere non-payment of rent does not convert the cultivating possession of a tenant into adverse possession against the landlord. (1950) 8 J and K L R 157.

——Arts. 142 and 144 — Adverse possession—What is —Exclusion or ouster is not merely act of person in possession but also implies knowledge of denial of title and intention to deny right to participate in income on the part of person to be ousted—On facts

held evidence did not disclose ouster of plaintiff. ILR (1963) Mys 917.

——Arts. 181, 182 (5) — Ex parte decree of 21-12-1955 set aside on 25-10-1956 — Revision against setting aside allowed on 29-8-1957—First execution dismissed on 19-11-1956 — Execution filed on 29-8-1960 —Held barred by time—Civil P. C. (1908), O. 9, R. 13. (1965) 31 Cut L T 627.

——Art. 182 (5)—Ex parte decree of 21.12-1955 set aside on 25-10-1956—Revision against setting aside allowed on 29-8-1957—First execution dismissed on 19-11-1956 — Execution filed on 29-8-1960 — Held barred by time. See Limitation Act (1908), Art. 181. (1965) 31 Cut L T 627.

MADHYA BHARAT CIVIL COURTS ACT (43 of 1949)

——S. 23 — Sufficient cause — Mistake of counsel — Wrong advice under S 23, M. B. Civil Courts Act—Mistake held not bona fide. See Limitation Act (1908), S. 5. AIR 1958 Madh Pra 96 (DB).

MADHYA BHARAT GAMBLING ACT (51 of 1949)

● ——Ss. 6, 8 — Sections are constitutionally valid. See Constitution of India, Art. 19. 1965 (1) Cri L J 347=AIR 1965 S C 307.

● ——Ss. 8, 6 — Sections are constitutionlly valid. See Constitution of India, Art. 19. 1965 (1) Cri L J 347=AIR 1965 S C 307.

MADHYA BHARAT REGULATION OF GOVERNMENT ACT (1 of 1948)

——Penal Code (1860), Ss. 380, 451 — Offences under, committed in 1948 in Jhabua State which subsequently became part of Madhya Bharat — Law in force in that State was Indian Penal Code which was subsequently continued in force by Regulation of Government Act (14 of 1948) and Part B States (Laws) Act (3 of 1951) after it became part of Madhya Bharat—Accused can be tried and punished in respect of those offences in 1955—See Penal Code (1860), S. 380. 1962 S C D 593.

MADHYA BHARAT VIKRAM UNIVERSITY ACT (18 of 1955)

——S. 19 — The Syndicate and the Results Committee while condemning a student alleged to have used unfair means at the examination act quasi-judicially.

Under the Vikram University Act, the Syndicate under S. 19 of the Act is the executive body of the University. As provided in S. 20 (m), this body exercises the powers and performs duties among others, of making amending and repealing University Ordinances. It is authorised to appoint special committees. It can delegate to such committees power to deal with any subject, subject to subsequent confirmation by the Syndicate. Under an Ordinance framed by the Syndicate for delegating its functions, a special committee known as Results Committee has been formed to deal, among others with the cases of candidates using unfair means at the University examinations. Thus the cases of such candidates have to be formally dealt with by the Results Committee with functions of the Syndicate delegated to it subject to subsequent confirmation of its action by the Syndicate. There is no provision requiring the Results Committee, in dealing with the case of a candidate, to act judicially nor is there any provision requiring it to give opportunity to the candidate to explain the materials and circumstances appearing against him.

On the question whether the Results Committee and the Syndicate in punishing a candidate for the alleged act of using unfair means at the examination is required to act judicially, that is, whether it is required to afford an opportunity to candidate for meeting the circumstances alleged to have been found against him :

Held, (per Newaskar and Tare, JJ.) — That notwithstanding that there is no express provision making it obiigatory upon the Results Committee to call for an explanation from the candidate and give an opportuuity of hearing to him, yet it is implicit in the provision that the Committee must be satisfied that the candidate has in fact used unfair means at the examination. Thus it is its duty to decide objectively and to act quasi-judicially. AIR 1962 S C 1110 and AIR 1950 S C 222 and AIR 1952 Cal 594 and AIR 1953 Cal 212, Rel. on. 1965 Jab L J 912 = 1965 M P L J 16 = AIR 1966 Madh Pra 136.

MADHYA PRADESH EXCISE MANUAL

——Vol. 1, Para. 155-A, R. 4—Constitution of India, Art. 311 (2) — Reasonable opportunity to show cause. See Constitution of India, Art. 311 (2). AIR 1958 Madh Pra 289.

MADHYA PRADESH JANAPADA ELECTION MATTERS VALIDATING ACT (1 of 1955)

● ——S. 3—Constition of India, Arts. 245 and 226—Jurisdiction of High Court is not taken away by M. P. Act, 1 of 1955. See Constitution of India, Art. 245. AIR 1957 Bom 266 (FB).

● ——S. 3 — Exercise of legislative function—Validity of Act.

The Legislature is competent to put an end to the finality of a decision of a Court by an enactment. And such an enactment of law having such effects does not constitute exercise of judicial functions by the Legislature. Thus by enacting M. P. Janapada Election Matters Validating Act (1 of 1955) the Legislature merely declared what was void to be valid and in doing so it was exercising its legislative function. Gulabrao Keshavrao v. Pandurang Bhauji, ILR (1957) Bom 714=60 Bom L R 12 = 1957 Nag L J 419=AIR 1957 Bom 266 (268, 269) (Pt B) (Pr 6) (FB).

MADHYA PRADESH LAND REVENUE CODE (2 of 1955)

——S. 226(1) and (2) — Acquisition of agricultural land — Necessary criteria are insufficiency of abadi and unavailability of unoccupied land — Finding to be given by Deputy Commissioner and not by land acquisition officer.

The provision of S. 226 (1) and (2) require the Deputy Commissioner of the District or any person authorized under the law by him to record, before proceeding to acquire any agricultural land, a finding that the abadi of the village is insufficient and further that there is no other unoccupied land available for the purpose of abadi. This decision is to be taken by the Deputy Commissioner of a District and not by a land acquisition officer. (1962) 64 Bom L R 454=1962 Nag L J 466=ILR (1963) Bom 30 (DB).

MADHYA PRADESH REVENUE CIRCULAR H. S. NO. (13 of 1908)

——Cl. (4) — Succession to agricultural holdings — Holder cannot make bequest—Declaration has to be governed by ordinary law — Transfer in favour of grandson — Clause (4) does not apply — Right devolves by inheritance — There is no survivorship — Correct approach in case of joint family stated. AIR 1955 N U C (Madh B) 1560.

——Cl. (5) — Person wrongly entered in Khata must be treated as sub-tenant — His possession is permissive—He cannot claim adverse possession. See Limitation Act (1908), Art. 144. AIR 1955 N U C (Madh B) 1560.

MADRAS PERMANENT SETTLEMENT REGULATION (25 of 1802)

——Right of joinder — Tank and tank bed in ambit of zamindari—Ownership is with proprietor—Tenant has only grazing and fishing right—He has also right to take water for irrigation — If he claims higher right, onus is on him. AIR 1955 N U C (Orissa) 1851 (DB).

MADRAS REVENUE RECOVERY ACT (29 of 1864)

——S. 52 — Hyderabad General Clauses Act (3 of 1308F), S. 3 — Scope — Repeal of Hyderabad Agricultural Income-tax Act — By reason of S. 3, Hyderabad General Clauses Act taxes due can be recovered. See Hyderabad General Clauses Act (3 of 1308F), S. 3. (1965) 55 I T R 528 (Andh Pra).

MASTER AND SERVANT

—VICARIOUS LIABILITY—GOVERNMENT SERVANT.

——State when liable for act of its servant—Government servant acting under powers conferred by Act, has indemnity against all remedies of injured persons Siate held was not vicariously liable. (1964) 1 Andh W R 253=(1964) 2 Andh L T 310=I L R 1965 Andh Pra 360 (DB).

—PUNISHMENT — SUPERANNUATION RULES UNDER

——Rr. 72, 74 — Superannuation is a condition of service—Domestic enquiry against employee pending —Age of superannuation attained—R. 74 applied. See Municipalities—Calcutta Municipal Act (33 of 1951), S. 532. (1964) 9 Fac L R 275 = (1966) 2 Lab L J 719 (Cal).

MERGED STATES (TAXATION CONCESSION) ORDER (1949)

——Para. 5—Applicability of—Assessee a resident of Raigarh State where Indian Income-tax Act was adopted—Paragraph not attracted.

Paragraph 5 (1) of the Merged States (Taxation Concession) Order, 1949, applied only if the relevant income was assessed under the State law and if the concerned State law was different from the Indian Income-tax Act. (1965) 58 ITR 533 (DB) (Cal).

MINIMUM WAGES ACT (1948)

——Preamble, Sch. Item 6, S. 2 (g) — Provision for minimum wages of employees of local authority is not legislation under entry 13 but comes within scope of entry 27 — Provision is not unconstitutional—See Government of India Act (1935), Sch. 7, List III, entry 27. (1963-64) 24 F J R 194.

MOTOR VEHICLES ACT (4 of 1939)

——Ss. 43, 44 and 47—Effect of amendment of Ss. 43 and 44 by Act 100 of 1956— Does not repeal S. 43-A (Madras) — Directions given by State Government under that section should be given effect to in granting permits under S. 47.

Section 43-A which was added by the Madras Legislature in 1948 and the instruction issued by the State Government under that section do not stand repealed on the ground of any inconsistency between that section and Ss. 43 and 44 as they stand after the amendment of the Act in 1956 and therefore an order of the State Transport Authority directing the Regional Transport Authority to take into account such instructions while granting permits under S. 47 is not wrong. ILR (1965) Andh Pra 127.

——S. 44—Effect of amendment of Ss. 43 and 44 by Act 100 of 1956—Does not repeal S. 43A (Madras)—Directions given by State Government under that section should be given effect to in granting permits under S. 47 — See Motor Vehicles Act (1939), S. 43. ILR (1965) Andh Pra 127.

——Ss. 46, 57 (8) — Object of S. 46—"As far as may be"—Interpretation.

The whole object of S. 46 requiring certain particulars to be stated in the application, is to enable the various persons concerned with the grant or refusal of the permit to be apprised of the various details with a view to enabling them to effectively participate in the consideration of the application. 1965 Pun L R (Supp) 403.

——Ss. 47, 43, 44 — Effect of amendment of Ss. 43 and 44 by Act 100 of 1956 — Does not repeal S. 43A (Madras) — Directions given by State Government under that section should be given effect to in granting permits under S. 47 — See Motor Vehicles Act (1939), S. 43. ILR (1965) Andh Pra 127.

——S. 47 — Inexperience of grantee the ground for cancellation—Ground for cancellation is not extraneous to section.

Where a State Transport Authority cancelled a carriage permit granted by the Regional Transport Authority, taking into account the fact that the grantee had no experience in the field of motor transporting being a new entrant and that certain other applicants were preferable to him as they had gained much experience, it cannot be postulated that the State Transport Authority took into consideration a test which was extraneous or foreign to the tests propounded by S. 47. (1958) 2 Andh W R 85; AIR 1962 Ker 341 (FB), Rel. on; A I R 1962 Ker 34, Diss. from. ILR (1965) Andh Pra 127.

——S. 57 (8) — Section is not confined to conditions set out in S. 48.

The variation envisaged by S. 57 (8) of the Motor Vehicles Act (1939) is not confined to the conditions set out in S. 48 of the Act. It refers to any condition imposed by the State Transport Authority. C.W. 880/1961 D/- 11-9-1961, Reversed. 1965 Pun L R (Supp) 403.

MOTOR VEHICLES RULES (1940)

——Rule not in force when applications were invited and permit was granted by Regional Transport Authority—Case remanded in appeal, by State Transport Authority for consideration to Regional Transport Authority after the rule had come into operation—Rule will not apply to the case when it is disposed of on remand. 1957 A L T 881; AIR 1963 S C 1098, Distinguished; 1905 Appeal Cases 369 (S C) Rel. on. ILR (1965) Andh Pra 127.

MOTOR VEHICLES RULES (RAJASTHAN) (1951)

——R. 76—Prescribed authority. See Motor Vehicles Act (1939), S. 64. AIR 1953 Raj 193 (DB).

●——R. 77—Motor Vehicles Act (1939), S. 44 (2) (as amended by Act 100 of 1956) — Constitution of S. T. A. and R. T. A. — Minimum number of members required 3 or 5 — R. T. A. not including even single non-official — Constitution of R. T. A. is defective. See Motor Vehicles Act (1939), S. 44 (2). AIR 1961 Raj 98 (FB).

MOTOR VEHICLES RULES (TRAV-CO) (1952)

——R. 144—Motor Vehicles Act (1939), S. 48 (3)—Approved time table itself is not a condition of permit but it is the exhibition of it, that is a condition—Alteration of time table is covered by delegation authorised by R. 144, Trav-Co Motor Vehicles Rules, 1952—See Motor Vehicles Act (1939), S. 48 (3). AIR 1960 Ker 359.

——R. 165 — Motor Vehicles Act (1939), S. 57 (3)— Receiving representations — Time limit for —Thirty days limit under S. 57 (3) — Scope of—Outer limit fixed by R. 165 — Representation filed within time limit provided by R. 165 but beyond date fixed held proper — See Motor Vehicles Act (1939), S. 57 (3). AIR 1960 Ker 85.

MUNICIPALITIES

—BENGAL MUNICIPAL ACT (15 of 1937)

——S. 26 — Bengal Municipal Election Rules, Rr. 16, 41, 2 (1-B) and 40 — Fresh election under S. 26 consequent on the electorate failing within the prescribed time to elect the requisite number of commissioners for a particular ward is continuation of old one — Elections under sections specified in R. 16— Revision of election rolls essential — Omission to revise makes the holding of election contrary to law : AIR 1953 Cal 520, Rel. on - Procedure under Special Act — Equitable propositions not applicable—Person already nominated ceases to have the qualification necessary for being elected as Commissioner in a second election — But in such cases, under R. 41 nomination paper held not necessary — Power to fix date for election includes power to postpone it— Mode of computation of time is not on rational basis —When the time lag between the order fixing the election and the holding of the election is in excess of 50 days, there is compliance with R. 2 (1-B)—Person already elected may stand for fresh election—R. 40 attracted. (1961) 65 Cal W N 973.

—BIHAR AND ORISSA MUNICIPAL ACT (7 of 1922)

——S. 3 — "Road" survey map—Presumption under —Entries in Municipal Khasra prepared under Calcutta Survey Act — Admissibe as evidence of possession—Entry 'sahan sarak'— Meaning of—Evidence— Appreciation of — See Evidence Act (1872), S. 36. ILR 44 Pat 416.

——Ss. 196, 197 and 364 — Limitation Act (1908), S. 28 and Art. 146A—Notice by Municipality directing plaintiff to demolish balcony of his house projecting over municipal drain — Suit for declaration that plaintiff had acquired right of projecting balcony over municipal drain by adverse possession for over thirty years — Municipality contending that plaintiff had not acquired right of easement to construction of balcony — Maintainability of suit. I L R 42 Pat 253 (DB).

——Ss. 364, 196 and 197 — Limitation Act (1908), S. 28 and Art. 146A — Notice by Municipality directing plaintiff to demolish balcony of his house projecting over municipal drain — Suit for declaration that plaintiff had acquired right of projecting balcony over municipal drain by adverse possession for over thirty years — Municipality contending that plaintiff had not acquired right of easement to construction of balcony — Suit by municipality how far maintainable discussed. See Municipalities—Bihar and Orissa Municipalities Act (7 of 1922), S. 196. 1962 B L J R 395 = ILR 42 Pat 253 (DB).

—BOMBAY PROVINCIAL MUNICIPAL CORPORATIONS ACT (59 of 1949)

——S. 469 — "Take proceedings" — Expression does not include "causing proceedings to be taken" — Deputy Health Officer must himself file complaint and cannot sanction filing of complaint by Licence Inspector : AIR 1960 S C 576, Foll. and 55 Bom L R 377 and AIR 1964 Guj 223, Ref. (1965) 6 Guj L R 25.

—CALCUTTA MUNICIPAL ACT (33 of 1951)

——S. 532—Rules under Rules 72, 74—Superannuation is a condition of service — Domestic enquiry against employee pending — Age of superannuation attained — Rule 74 applied. (1964) 9 Fac L R 275 = (1966) 2 Lab L J 719 (Cal).

—PUNJAB MUNICIPAL ACT (3 of 1911)

——Ss. 12, 17, 24 — Municipal Election Rules, 1952, Rr. 5, 41 — Municipal Committee cannot function if only part of members have been elected — Notification of results must be made within reasonable time — Government not notifying result because entire election has not been completed — Held it could not be said that Government was acting in illegal or mala fide manner. ILR (1962) 2 Punj 746 = 1968 Cur L J 403.

——Ss. 17, 24 — Municipal Committee cannot function if only part of members have been elected — —Notification of results must be made within reasonable time — Government not notifying result because entire election has not been completed — Held it could not be said that Government was acting in illegal or mala fide manner. ILR (1962) 2 Punj 746 = 1968 Cur L J 403.

—PUNJAB MUNICIPAL ELECTION RULES, 1952

——Rr. 5, 41 — Municipal Committee cannot function if only part of members have been elected — Notification of results must be made within reasonable time—Government not notifying result because entire election has not been completed — Held it could not be said that Government was acting in illegal or mala fide manner. See Municipalities — Punjab Municipal Act (3 of 1911), S. 12. ILR (1962) 2 Punj 746 = 1968 Cur L J 403.

MYSORE AGRICULTURAL PRODUCE MARKET ACT (16 of 1939)

——Bye-laws Nos. 28 and 19 — Academic qualifications for weighmen — Required qualification is germane to nature of work and is not arbitrary or unreasonable. (1963) 2 Mys L J 473 = I L R (1963) Mys 718 (DB).

MYSORE EXCISE ACT (5 of 1901)

——Ss 3, 29, 69 — Mysore Foreign Liquor Rules under the Act, R. 1 — Validity — Mysore General Clauses Regulation (1899), S. 3 (16).

Per G. K. Govinda Bhat, J.:— Rule 1 is a valid law, if it was issued by the Sovereign Rules; the expression 'Foreign liquor' therein is capable of being construed to mean liquors of the foreign type, though they may be manufactured in India. (Obiter).

Per K. S. Hegde, J. (Contra):— There would be some force in the contention that R. 1 having been made by Sovereign Authority was as effective as the provisions contained in the 'Act,' if it is factually correct. But then, while the 'Act' was enacted by Her Highness the Maharani, who was the Regent at that time as seen from the preamble to the "Act," the power to make Rules was conferred on the Government — See S. 29. The Government of Mysore was not the sovereign. The person contemplated in S. 3 (16) of the Mysore General Clauses Regulation, 1899, must necessarily be somebody other than the sovereign. He is somebody authorised by the sovereign "to administer executive Government." Therefore, the Rules in question were not framed by the sovereign. Hence the Rule-Making Authority had no authority to alter the provisions in the "Act." Section 69 of the "Act" does not enlarge the powers of the Rule Making Authority. In view of that provision rules validly made have the force of law and they are to be read as part of the "Act." But that will not be the case if the rules made are invalid for any reason. Hence cls. (a) and (b) of R. 1 of the Foreign

Liquor Rules are ultra vires of the "Act." ILR 1964 Mys 697.

——S. 3 (12), Proviso — Interpretation — Proviso does not enable Government to convert Indian liquor into foreign liquor by a declaration. ILR (1964) Mys 697.

——S. 15 — Power to grant or refuse licence — Deputy Commissioner has no unfettered discretion, it is controlled by Rules — Mandamus to compel issuance of licence — When issued — Constitution of India, Arts. 14 and 226. ILR (1964) Mys 697.

——S. 15 — Words 'no liquor shall be sold without a licence from Deputy Commissioner' — By implication section confers power to grant as well as to refuse licence. ILR 1964 Mys 697.

——Ss. 15, 29 — Mysore Foreign Liquor Rules made under the Act, R. 13-A — Refusal of licences for retail vend of foreign liquors in Ordinary Refreshment Rooms — It is ultra vires the Act. ILR 1964 Mys 697.

——S. 15 — Mysore Foreign Liquor Rules Rule 13A — Renewal of Refreshment Room licences.

Neither the "Act" nor the Foreign Liquor Rules provide for the renewal of Refreshment Room Licenses. Every time a Refreshment Room license is given it is an independent license. It has to be seperately applied for; the applicant must satisfy all the conditions necessary to be satisfied before a fresh license is granted. The contention that because there is power to renew the license granted under the Brewary Rules and the Distillery Rules, such a power should be deemed to exist under the Foreign Liquor Rules also, has no substance. ILR 1964 Mys 697.

——S. 17 — Constitution of India, Art. 14 — Mysore Excise Act (5 of 1901), Ss. 17, 18 (c)—Mysore Foreign Liquor Rules under the Act, R. 13-A — Distinction made between hotels and boarding houses on one hand and refreshment rooms on the other hand in respect of procedure to dispose of right to sell in retail 'Indian made Foreign liquor' by tender-cum-auction method — It is not violative of Art. 14. See Constitution of India, Art. 14. ILR 1964 Mys 697.

——Ss. 17 (b), 18 — Notification No. PHS-HD 198 EDC 59 D/- 31-7-1961 purported to be issued under S. 17 (b)— Duty intended to be imposed under Notification is export duty. ILR (1964) Mys 116.

——S. 17 (b)—Notification purported to be issued under S. 17 (b), Mysore Excise Act (5 of 1901) imposing fresh levy, not in continuation of pre-Constitution levy — Levy is not valid. See Constitution of India, Art. 277. ILR (1964) Mys 116.

——Ss. 17, 18 (c) — Constitution of India, Art. 14 — Mysore Foreign Liquor Rules under the Act, R. 13-A — Distinction made between hotels and boarding houses on one hand and refreshment rooms on the other hand in respect of procedure to dispose of right to sell in retail 'Indian-made Foreign Liquor' by tender-cumauction method — It is not violative of Art. 14. See Constitution of India, Art. 14. ILR 1964 Mys 697.

——S. 18—Notification No. PHS-HD 198 EDC 59 D/- 31-7-1961 purported to be issued under S. 17 (b) —Duty intended to be imposed under Notification is export duty. See Mysore Excise Act (5 of 1901), S. 17 (b). ILR (1964) Mys 116.

——S. 29—Mysore Foreign Liquor Rules made under the Act, R. 13 A —Provision that 'the term of licence shall ordinarily be three years' — Not mandatory but only directory — Licensing Authority has discretion to grant licences for sale of liquor for shorter term— Having accepted and acted upon a licence granted for one year only in 1963, it was held too late, for the licensee to agitate the question and claim that the licence should be deemed to be for three years— Evidence (1872), S. 115. ILR (1964) Mys 697.

——S. 29 — Mysore Foreign Liquor Rules made under the Act, R. 13-A — Refusal of licences for retail vend of foreign liquors in Ordinary Refreshment Rooms—It is ultra vires the Act. See Mysore Excise Act (5 of 1901). S. 15. ILR (1964) Mys 697.

——S. 29—Mysore Foreign Liquor Rules under the Act, R. 1 — Validity. See Mysore Excise Act (5 of 1901), S. 3. ILR (1964) Mys 697.

——S. 69 — Mysore Foreign Liquor Rules under the Act, R. 1 — Validity. See Mysore Excise Act (5 of 1901), S. 3. ILR (1964) Mys 697.

MYSORE FOREIGN LIQUOR RULES

——R. 13-A —Renewal of Refreshment Room Licences. See Mysore Excise Act (5 of 1901), S. 15. ILR (1964) Mys 697.

——R. 14-A—Constitution of India, Art. 14—Mysore Excise Act (5 of 1901), Ss. 17, 18 (c)—Mysore Foreign Liquor Rules under the Act, R. 13-A—Distinction made between hotels and boarding houses on one hand and refreshment rooms on the other hand in respect of procedure to dispose of right, to sell in retail 'Indian-made Foreign liquor' by tender-cum-auction method — It is not violative of Art. 14. ILR (1964) Mys 697.

MYSORE GENERAL CLAUSES REGULATION (1899)

——S. 3 (16)—Mysore Foreign Liquor Rules under the Act, R. 1—Validity. See Mysore Excise Act (5 of 1901), S. 3. ILR (1964) Mys 697.

OPIUM ACT (1 of 1878)

——S. 10 — Bihar and Orissa Excise Act (2 of 1915), S. 47 (B) — Opium Laws Amendment Act (1957), S. 3 — Prosecution under for possession of contraband articles — What prosecution has to prove — Search and recovery of contraband article from house alleged to be in possession of accused — Seizure list signed by accused—Effect—Confession to Excise Officer—Hit by S. 25, Evidence Act. See Bihar and Orissa Excise Act (2 of 1915), S. 47 (B). (1965) 31 Cut L T 990.

OPIUM LAWS AMENDMENT ACT (1957)

——S. 3—Bihar and Orissa Excise Act (2 of 1915), S. 47 (B)—Opium Laws Amendment Act (1957). S. 3 —Prosecution under for possession of contraband articles—What prosecution has to prove—Search and recovery of contraband article from house alleged to be in possession of accused — Seizure list signed by accused — Effect—Confession to Excise Officer— Hit by S. 25, Evidence Act. See Bihar and Orissa Excise Act (2 of 1915), S. 47 (B). (1965) 31 Cut L T 990.

ORISSA GOVERNMENT SUPPLEMENTARY RULES OF BUSINESS

——R. 2 (10) and Appendix II—Head of Department —Meaning of — Should be given not wider but narrower meaning — Reasons for—Thus limiting the expression to the highest official in the State is obvious. Privilege under S. 123, Evidence Act is only claimed in respect of "affairs of State" and it is ordinarily expected that neither the Minister concerned nor the Secretary of the Department would likely make such a claim whereas Heads of Department of subordinate offices may not be so fully alive to their responsibility— National Savings Commissioner and the Collector are not heads of Department. See Evidence Act (1872), S. 123. AIR 1963 Orissa 111.

——Appendix 2—Head of Department — Meaning of —Should be given not wide but narrower meaning—

Reasons for — National Savings Commissioner and the Collector are not Heads of Department. See Evidence Act (1872), S. 123. AIR 1963 Orissa 111.

OSMANIA UNIVERSITY RULES

——R. 11—Interpetation of.

The guiding principle underlying R. 11 in the matter of admission appears to be to grant admission to students strictly in the order of merit having regard to the marks obtained by them in the qualifying examination in one attempt. According to the above principle preference would be given to such students as have come out successful in the examination in the first attempt and among such students the ranking would be according to the marks secured by them. The rule does not contemplate that the candidate should have passed all the subjects in one examination. ILR (1955) Hyd 665 = AIR 1954 Hyd 25 (27) (Pt E) (Pr 4) (DB).

PANCHAYATS

—BIHAR GRAM CUTCHERY RULES (1949)

——R. 2 (b)—Bihar Panchayat Raj Act (7 of 1948), Ss. 73 (3), 70, 67, 2 (f) and 49 — Full Bench decision —Allegation of bias—Power of Sub-divisional Magistrate to interfere with. See Panchayats — Bihar Panchayat Raj Act (7 of 1948), S. 73 (3). 1957 Cri L J 1163 = AIR 1957 Pat 550.

——R. 59—Bihar Panchayat Raj Act (7 of 1948), Ss. 73 (3), 70, 67, 2 (f) and 49—Full Bench decision—Allegation of bias—Power of Sub-divisional Magistrate to interfere with. See Panchayats — Bihar Panchayat Raj Act (7 of 1948), S. 73 (3). 1957 Cri L J 1163 = AIR 1957 Pat 550.

—GUJARAT TALUKA AND DISTRICT PANCHAYATS (PRESIDENT AND VICE PRESIDENT) ELECTION RULES, 1962

——R. 8—Election — Rejection of ballot papers on grounds that X Mark not put in proper column—No uncertainty as regards intention to vote and the candidate — Rejection is illegal — Question of law—Estoppel. (1965) 6 Guj L R 636.

—PUNJAB GRAM PANCHAYAT ACT (4 of 1953)

——Ss. 6 (5) (j) and 6 (5) (g)—Scope.

A candidate standing for election as a Sarpanch should not be in arrears of the tax in regard to that very Panchayat to which he is seeking election and his being in arrears regarding any other Panchayat though constituted under the same Act cannot prevent him from standing for the election. Rejection of nomination paper of a candidate on the ground that he was in arrears of tax regarding some other Panchayat was held to be wrong and that such improper rejection of nomination paper materially affected the results of the election.

The use of the word "the" instead of "any", held significant. The Legislature had used word "any" wherever it wanted to do so as in cl. (g) of S. 6 (5). ILR (1962) 2 Punj 24.

—PUNJAB PANCHAYAT SAMITIS AND ZILA PARISHADS ACT (3 of 1961)

——S. 6 — Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, Rr. 9, 7 and 3 (3)—Scope and applicability.

A nomination paper can be rejected not merely on the grounds of non-eligibility of the candidate mentioned in S. 6 of the Punjab Panchayat Samitis and Zila Parishads Act but also on the ground that it has not been duly completed as provided in Form II and that it has not been signed by two persons as proposer and seconder whose names are included in the electoral rolls published under R. 3 (3). ILR (1962) 2 Punj 533.

——S. 121—Disputed questions of fact not determinable except on evidence — Proper forum is a suit or an election petition under the relevant Act. See Constitution of India, Art. 226. ILR (1962) 2 Punj 533.

—PUNJAB PANCHAYAT SAMITIS (PRIMARY MEMBERS) ELECTION RULES (1961)

——R. 3 (3) — Scope and applicability. See Panchayats—Punjab Panchayat Samitis and Zilla Parishads Act (3 of 1961), S. 6. ILR (1962) 2 Punj 533.

——R. 7—Scope and applicability. See Panchayats—Punjab Panchayat Samitis and Zila Parishads Act (3 of 1961), S. 6. ILR (1962) 2 Punj 533.

——R. 9—Scope and applicability. See Panchayats—Punjab Panchayat Samitis and Zila Parishads Act (3 of 1961), S. 6. ILR (1962) 2 Punj 533.

—RAJASTHAN GRAM PANCHAYAT ORDINANCE (79 of 1948)

——S. 27 — Transfer — Two offences under Ss. 426 and 447, I. P. C., forming part of same transaction—Offence under S. 426 not triable by village panchayat when loss sustained is above Rs. 20—Case under S. 447 cannot be transferred to Gram Panchayat under S. 47 of Ordinance. AIR 1955 N U C (Raj) 498.

—TRAVANCORE COCHIN VILLAGE PANCHAYAT RULES (1951)

——Rr. 75 (2) and (5) and 79 (4) — Trial of election petitions—Order 9, R. 13, Civil P. C., if applies.

Sub-rule (5) of R. 75 is only a specific delineation of some of the powers embodied in the Code of Civil Procedure, 1908, and made available by sub-r. (2) for the trial of election petitions. In other words, the provisions of sub-r. (5) are in effect, to use a familiar statutory expression, "without prejudice to the generality" of the provisions of sub-r. (2). Sub-rule (2) of R. 75 corresponds to sub-s. (2) of S. 90, Representation of the People Act, 1951, (Central Act). The provisions of the Code of Civil Procedure 1908, Act (XLIII of 1951) and sub-r. (5) of R. 75 to S. 92 of that which are made available under S. 90 (2) are not trammelled by the provisions of S. 92 of the enactment. AIR 1954 S C 210=(1954) S C J 257 =(1954) 1 M L J 480, Foll.

The object of O. 9, R. 13 is to ensure, within reasonable limits, that every defendant shall have a hearing and to place the applicant, if successful, in the same position to which he would have been if no decree had been passed against him. Such a provision is necessary in the interests of justice and should be considered as available in view of R. 75 (2) of the Travancore-Cochin Panchayat Rules, 1951. The finality and conclusiveness indicated in R. 79 (4) has nothing to do with the operation of such a provision. 1954 K L T 582=ILR (1954) Trav-Co 1194= A I R 1955 Trav-Co 24 (25) (Pt B) (Prs 7, 8, 9) (DB).

——R. 79 (4)—Trial of election petitions—O. 9, R. 13, Civil P. C., if apply. See Travancore-Cochin Village Panchayat Rules (1951), R. 75 (2). AIR 1955 Trav-Co 24 (DB).

—UNITED STATE OF RAJASTHAN PANCHAYAT RAJ ORDINANCE (VII of 1948)

——S. 24 — Scope — Section relates to the executive powers of the Panchayat and does not relate to judicial powers. See Penal Code (1860), S. 228. A I R 1955 N U C (Raj) 1897 (DB).

—U.P. KSHETRA SAMITIS AND ZILLA PARISHADS ACT (33 of 1961)

—— S. 7 — U. P. K. S. (Elections of Pramukhs, Up-pramukhs and Settlement of Election Disputes), Rules (1962), R. 35 — No delegation of essential legislative functions — Rule 35 not beyond rule-making power of State Government — Election petition lies on ground that counting of votes was not proper. 1964 All L J 180=ILR (1964) 1 All 849.

—U. P. K. S. (ELECTIONS OF PRAMUKHS, UPPRAMUKHS AND SETTLEMENT OF ELECTOIN DISPUTES) RULES (1962)

——R. 35 — No delegation of essential legislative functions — R. 35 not beyond rule-making power of State Government — Election petition lies on ground that counting of votes was not proper. See U. P. Kshetra Samitis and Zilla Parishads Act (33 of 1961), S. 7. 1964 A L J 180.

——R. 35 — Civil Court can entertain an election petition — No writ of prohibition can issue against that Court —Constitution of India, Art. 226.

It is well settled that a writ of prohibition can go only in a case of patent and clear want of jurisdiction and it does not issue where something can be said in support of the jurisdiction of the Court or the tribunal, as the case may be. Rule 35 provides for election petition and there is no patent want of jurisdiction on the part of Civil Judges to entertain such petitions. 1964 All L J 180 = ILR (1964) 1 All 849.

PARTNERSHIP ACT (9 of 1932)

——S. 9—Civil P.C. (1908), O. 40, R. 1, O. 20, R. 15—Partner in possession of partnership property as receiver—Suit for accounts by other partners does not lie. See Civil P. C. (1908), O. 40, R. 1. AIR 1956 All 660 (DB).

[Reversed on another point in AIR 1963 S C 1165.]

——S. 69—Unregistered partnership is liable to be assessed as a single unit. See Income-tax Act (1922), S. 26A. 46 ITR 784=ILR (1963) Andh Pra 83.

PASSPORT ACT (34 of 1920)

——S. 3—'Personal liberty' — Expression includes right to travel abroad as well as right to travel within the country—A person requires passport in order to enter India—Government not entitled to refuse passport to a citizen travelling abroad without any law—Refusal of the Government on the basis of executive orders amounts to deprivation of personal liberty. See Constitution of India, Art. 21. (1965) 4 Law Rep 617=(1965) 2 Mys L J 605.

——S. 3—The Act does not regulate issuance of passports to persons going out of India. (1965) 4 Law Rep 617=(1965) 2 Mys L J 605.

PASSPORT RULES (1950)

——R. 3—'Personal liberty' — Expression includes right to travel abroad as well as right to travel within the country—A person requires passport in order to enter India — Government not entitled to refuse passport to a citizen travelling abroad without any law——Refusal of the Government on the basis of executive orders amounts to deprivation of personal liberty. See Constitution of India, Art. 21. (1965) 4 Law Rep 617=(1965) 2 Mys L J 605.

PAYMENT OF WAGES ACT (4 of 1936)

——Ss. 3, 15—Finality of decision—Question of liability under S. 3 relates to jurisdictional fact — High Court competent under Art. 226 to review decision—Constitution of India, Art. 226.

The question of liability under S. 3 relates to a 'jurisidictional fact' and the Authority under Payment of Wages Act has not been conferred final authority to determine this fact by the statute. It is, therefore, open to High Court, under Art. 226 to review the Authority's determination on this jurisdictional fact. (1965) 11 Fac L R 224.

——S. 15—Finality of decision—Question of liability under S. 3 relates to jurisdictional fact—High Court competent under Art. 226 to review decision—Constitution of India, Art. 226. See Payment of Wages Act (1936), S. 3. (1965) 11 Fac L R 224.

——S. 17-A—Attachment order—Attachment order cannot affect interest of mortgagee.

The attachment under S. 17A cannot affect the mortgagee's interest, in mill factory of mortgagor whose employees have filed an application under S. 15 (2) of the Act, for, the mortgagee could not, in any way, be brought within the purview of S. 3 of the Act. (1965) 11 Fac LR 224.

PENAL CODE (45 of 1860)

——S. 77—Court having no jurisdiction but acting in good faith convicts accused committs no offence. AIR 1934 Nag 123 (124).

——Ss. 96, 99, 100, 300, Exception 2, 304, Part II — Scuffle between accused and deceased—On deceased squeezing testicles of accused, accused inflicting eight khurpi blows to deceased as result of which deceased dying — Held, right of private defence referred to in S. 100 is subject to restrictions mentioned in S. 99 which provides that right in no case extends to inflicting more harm than is necessary — Therefore, contention that no offence was committed at all could not be accepted as there was no material to show that infliction of so many serious injuries was necessary for self-defence ; AIR 1937 Lah 108, Disting—Held, further, that case was covered by Exception 2 to S. 300 and accused was liable to be punished under second part of S. 304. ILR (1963) Mys 1102=(1964) 2 Mys L J 11.

——S. 161—Tender of currency notes smeared with phenolphthalein powder by complainant to accused — Notes recovered from accused as well as from his hands and trouser pocket indicating presence of powder — Held, on appreciation of evidence that accused is guilty of receiving illegal gratification. See Prevention of Corruption Act (1947), S. 5 (1) (d) and (2). ILR 1964 Mys 336.

——S. 361—Word 'Possession' used in English statute and word 'keeping' in the section—There is no material difference in the two words — 'Possession' has same meaning as 'keeping' which only means either care, charge or control. ILR (1964) Mys 486.

——S. 361—"Take . . . . . out of the keeping of the lawful guardian of such minor"—Interpretation.

The well settled rules to interpret the expression "takes . . . . . out of the keeping of the lawful guardian of such minor" are:—

(a) The 'taking' referred to in S. 361 is not necessarily physical removal as removed by force or compulsion;

(b) He who howsoever inspires or aids the decision of the minor girl to leave the home, as much takes her out of the keeping of her guardian, as one who removes or allures her out of such guardianship;

(c) Although the man who does not so influence the will of the minor girl is under no legal duty to restore to her guardian, a determined girl who forces herself on him, his dissuasion which disinclines a wavering penitent girl to go back to her guardian constitutes even at that stage, taking out of the keeping of the guardian;

and (d) but if all that is established by the evidence is that the girl herself left the house of her guardian and went to some one who did not do anything to encourage or incite her to burn the bridges, and, in consequence, she does not return to her guardian there being no conduct on the part of the man such as would amount to 'taking' no offence is committed. ILR (1964) Mys 486.

——S. 361—Abandonment of guardianship — Minor girl who is in keeping of her lawful guardian can discard her guardianship by simply walking out of the home of the guardian—If no one is responsible for the minor girl abandoning the guardianship in that way, no one can be said to have taken her out of the keeping of the lawful guardian—(Words and Phrases —Abandonment. ILR (1964) Mys 486.

——S. 361—Essence of offence of kidnapping is the taking of a minor girl — Question whether there was such taking or not is a question which should be decided in each case on its own facts. ILR 1964 Mys 486.

——S. 361—Finding that the girl alleged to have been kidnapped was minor by Courts below — Finding fully supported by documentary evidence — Finding being on a question of fact, its correctness held could not be challenged in revision before the High Court. See Criminal P. C. (1898), S. 439. ILR 1964 Mys 486.

——Ss. 366, 366-A—Offence under S. 366-A is entirely different kind of offence from that punishable under S. 366 — Offence under S. 366 has for one of its ingredients offence of kidnapping while offence under S. 366-A has not — Ingredients specified in charge were those of offence under S. 366-A while accusation was of offence under S. 366—Accused convicted under S. 363—Held, accused was prejudiced in conduct of his defence and conviction was bad in law. ILR (1964) Mys 486.

——Ss. 366-A — Offence under S. 366-A is entirely different kind of offence from that punishable under S. 366 — Offence under S. 366 has for one of its ingredients offence of kidnapping while offence under S. 366-A has not — Ingredients specified in charge were those of offence under S. 366-A while accusation was of offence under S. 366—Accused convicted under S. 363—Held, accused was prejudiced in conduct of his defence and conviction was bad in law. See Penal Code (1860), S. 366. ILR (1964) Mys 486.

PLANTATIONS LABOUR ACT (69 of 1951)

——S. 2 (k) (as stood before amendment by Act 34 of 1960)—"Worker"—Includes both casual and permanent workers. See Plantations Labour Act (1951). S. 30. ILR (1964) 16 Assam 550.

POWER

See (1) Interpretation of Statutes.
(2) Civil P. C. (1908), Preamble.

PREVENTION OF CORRUPTION ACT (2 of 1947)

——S. 5 (1) (d) and (2) — Penal Code (1860), S. 161—Tender of currency notes smeared with phenolphthalein powder by complainant to accused — Notes recovered from accused as well as his hands and trouser pocket indicating presence of powder—Held on appreciation of evidence that accused is guilty of receiving illegal gratification. I L R (1964) Mys 336.

——S. 7 (1) — Report of Public Analyst — Analysis caused to be done by Public Analyst—Report signed by Public Analyst—Certificate is in form prescribed as subsequently amended. 1965 All Cri R 545 = 1965 All W R (HC) 816=1965 All L J 1053.

PROHIBITION

—BOMBAY SPIRITUOUS MEDICINAL PREPARATIONS (SALES) RULES (1954)

—— Rr. 2, 3 — Ss. 24-A, 6A, 59A, 139 (d), 12, 13 (as amended by Act 26 of 1952)—Act if imposes reasonable restrictions on consumption of spirituous medicinal preparations—Determination under S. 6—Effect—Tests for reasonableness — Act ultra vires due to incompetence of legislature and invalid due to inconsistency with Part III of Constitution — Effect—Validity of Act on latter ground has to be judged by subsequent amendments, notifications, etc. See Bombay Prohibition Act (25 of 1949), S. 24A. 1958 Cri L J 607=AIR 1958 Bom 181.

PROVIDENNT FUNDS ACT (19 of 1925)

——S. 2 (c)—"Prescribed"—Extension of the Act to non-Governmental or quasi-Governmental institution can be made only in the manner laid down in S. 8—Even the principles underlying the provisions cannot be extended in any other manner—Suit by wife of a deceased bank employee for provident fund of her husband — Act not extended by notification to bank—Wife can claim the amount only as heir to her husband and not as his dependent—Succession certificate necessary for obtaining the decree. AIR 1964 Mad 108 (DB).

PUBLIC GAMBLING ACT (3 of 1867)

——Ss. 1, 6 — Common gaming house — "Satta parchas" not mere memoranda of bets but are instruments of gaming — Satta parchas recovered from house — House presumed to be common gaming house.

Satta parchas are not mere memoranda of bets but they are instruments of gaming used for purposes of gaming within the meaning of the term as used in S. 1 of the Act. Consequently by virtue of the first clause of S. 1, the recovery of such slips from a house would give rise to a presumption under S. 6 of the Act that the house in question is being used as a common gaming house. AIR 1959 All 799, Distinguished; AIR 1922 All 61 and AIR 1941 All 330 and AIR 1933 All 554, Foll. 1962 All W R (HC) 826 = AIR 1933 All 554, Foll. 1962 All Cri R 464 = 1962 (2) Cri L J 639 (640) (Pt A) (Prs 4, 5).

——S. 5 — A house was being used as a common gaming house — Information supplied by police — Search warrant issued by Magistrate — Date appearing on the warrant put by clerk and not by Magistrate—Held, it was not necessary for the Magistrate to insert the date on the warrant in his own hand: it was sufficient for him to sign at the foot of it and affix his seal—Warrant was not irregular or illegal. See Public Gambling Act (3 of 1867), S. 6. 1962 All W R (HC) 826=1962 All Cri R 464.

——Ss. 6 and 5— Magistrate issuing search warrant on basis of credible information—Warrant dated by clerk and not by Magistrate—Warrant neither illegal nor irregular.

Where on being satisfied by the information supplied by the police that a house was being used as a common gaming house, the Magistrate issued a search warrant but did not put the date on the same and the date appearing in the warrant was written by some clerk.

Held, that it was not necessary for the Magistrate to insert the date on the warrant in his own hand; it was quite sufficient for him to sign at the foot of the warrant and to affix his seal. There was, therefore, nothing illegal or even irregular in the date on the

warrant being put by someone else, like the clerk. 1962 All W R (HC) 826=1962 All Cri R 464=1962 (2) Cri L J 639 (All).

PUBLIC SAFETY

—BENGAL CRIMINAL LAW (INDUSTRIAL AREAS) AMENDMENT ACT (4 of 1942)

——S. 3—Arts. 14, 19, Constitution of India—Validity —Does not offend Art. 14 or any other Article. See Constitution of India, Art. 14. 1963 (2) Cri L J 498= AIR 1963 Cal 562.

—TRANSFER OF DETAINED PERSONS ACT (48 of 1949)

——S. 2 — Preventive Detention Act (1950), S. 3 — Arrest for activities in another State—Constitution of India, Arts. 162, 245.

The State of Bombay cannot, for the purpose of Preventive Detention Act, pass orders for detaining a person found within its territory for his activities in the State of Madras or direct that such a person be interned in the State of Madras. Therefore, when the Commissioner of Police, Bombay arrested and detained a person as he was wanted by the Madras police for detention, the arrest and detention are illegal. 64 Mad L W 142 = 1951 Mad W N 81 = (1951) 1 Mad L J 174 = 52 Cri L J 294 = AIR 1951 Mad 583 (585, 588, 589) (Prs 6, 13, 14,15) (DB).

—WEST BENGAL CRIMINAL LAW AMENDMENT (SPECIAL COURTS) ACT (21 of 1949) AS AMENDED BY W. B. ACT (5 of 1953)

——Preamble — Offence under S. 165-A, Penal Code —If independent offence — Special Judge appointed under W. B. Criminal Law Amendment (Special Courts) Act, 1949—Taking cognizance without jurisdiction — Proceedings if vitiated — (Criminal Law Amendment Act (46 of 1952), S. 7. See Criminal P. C. (1898), S. 529 (e). 1956 Cri L J 991 = AIR 1956 Cal 385 (DB).

[Reversed in AIR 1959 SC 8.]

RAJASTHAN ADMINISTRATION ORDINANCE (1 of 1948)

——S. 17 — Suit, filed on 28th August 1948, against United State of Rajasthan as it then was—Previous permission of Rajpramukh, to file suit, held, not necessary. ILR (1965) 15 Raj 503.

RAJASTHAN MINOR MINERAL CONCESSION RULES (1955)

——R. 1 — Royalty on stones quarried in Rajasthan State charged at different rates in several parts of State—Royalty also collected on such stones exported out of State—Charge and collection are not valid —See Constitution of India, Art. 14. A I R 1956 Raj 161 (DB).

REGISTRATION ACT (16 of 1908)

——S. 17 — Applicability—Sale, mortgage, exchange or lease — Partition of self-acquired property by father among sons — Nature and effect of transaction —Registration—Necessity. AIR 1951 Bom 4 (DB).

——S. 17 (1) (b) — Kolhapur State Registration Act (1 of 1874), S. 18 — Provisions are in pari materia — Document in question neither creating any interest in praesenti nor amounting to lease—Registration not necessary — Transfer of Property Act (1882), S. 105. (1965) 2 Law Rep 594 (Mys).

SALE OF GOODS ACT (3 of 1930)

——S. 32 — Sale of property — Consideration when is to be paid—It should be simultaneous with and at time when conveyance is executed — Parties may agree to deviate from ordinary rule — See Specific Relief Act (1877), S. 12. AIR 1955 Cal 101 (DB).

SAURASHTRA HIGH COURT ORDINANCE (2 of 1948)

——S. 22-A (2) — Order of remand passed by single Judge of High Court — Appeal on certificate under S. 22 (A) (2) of High Court—Ordinance is competent — See Civil P. C. (1908), S. 104. AIR 1954 Sau 152 (DB).

SEA CUSTOMS ACT (8 of 1878)

——S. 167:— Quasi judicial authority—Imposition of penalty under Sea Customs Act — Effect of bias — See Constitution of India, Art. 226. I L R (1962) 2 Cal 187.

——S. 167 — Order by customs authority imposing penalty under Sea Customs Act — Authority not acting in conformity with fundamental principles of judicial procedure—Writ petition for quashing order will lie — Remedyunder Sea Customs Act no bar — See Constitution of India, Art. 226. I L R (1962) 2 Cal 187.

——S. 182 — Quasi-judicial authority—Imposition of penalty under Sea Customs Act — Effect of bias — See Constitution of India, Art. 226. I L R (1962) 2 Cal 187.

——S. 182 — Order by customs authority imposing penalty under Sea Customs Act:— Authority not acting in conformity with fundamental principles of judicial procedure—Writ petition for quashing order will lie — Remedy under Sea Customs Act no bar — See Constitution of India, Art. 226. I L R (1962) 2 Cal 187.

——S. 188 — Order by customs authority imposing penalty under Sea Customs Act — Authority not acting in conformity with fundamental principles of judicial procedure—Writ petition for quashing order will lie — Remedy under Sea Customs Act no bar — See Constitution of India, Art. 226. I L R (1962) 2 Cal 187.

——S. 191 — Order by customs authority imposing penalty under Sea Customs Act — Authority not acting in conformity with fundamental principles of judicial procedure—Writ petition for quashing order will lie — Remedy under Sea Customs Act no bar — See Constitution of India, Art. 226. I L R (1962) 2 Cal 187.

SODOMY

See Penal Code (1860), S. 377.

SPECIAL MARRIAGE ACT (43 of 1954)

——S. 25 (ii)—Child born during fifth or sixth month of pregnancy can be viable i. e. born alive and capable of being reared — Husband having intercourse with wife on day following day marriage was solemnized and viable child born on 184th day thereafter—Held, fact that child was born in seventh month did not, by itself, justify assumption that conception was before marriage—See Hindu Marriage Act (1955), S. 12 (1) (d). ILR (1963) Mys 1137.

SPECIFIC RELIEF ACT (47 of 1963)

——S. 12 — Suit by vendee for possession — Vendor alleging non-payment of full purchase money — Vendor's lien under equity and statutory charge — Court can pass decree in vendee's favour conditional on payment of balance of consideration money — Vendor's lien — See Transfer of Property Act (1882), S. 55 (4) (b). AIR 1965 Pat 29.

—S. 55—Mandatory injunction — When granted — Laches and acquiescence — Effect. I L R (1963) Mys 905.

STAMP ACT (2 of 1899)

—S. 35 — Suit on original consideration—Applicability — Request by one party to another to do the work not necessary for resort to the section — Claim for compensation on basis of agreement—Agreement not proved — Claim can be decreed under S. 70. See Contract Act (1872), S. 70. AIR 1962 Mad 345.

SUCCESSION ACT (39 of 1925)

—S. 161 — Will — Legacy — Exclusion from — Murder of testator by one of the beneficiaries under the will—Neither he nor any one claiming through him can claim under the will. A I R 1924 P C 209; 47 Mad L J 401, Foll. 1959 Ker L J 1223 = 1959 Ker L T 1302 = 1959 Ker L R 1340 = I L R (1960) Ker 106 = A I R 1960 Ker 195 (196) (Pt B) (Pr 12) (DB).

—S. 63 — Will—Execution—Proof—Person taking benefit under will taking active part in preparing it —Inference—Rule if applies to attestor.

If a person taking an active part in getting a will prepared or executed gets a benefit under the will, the propounder must adduce the best evidence to remove suspicion regarding the will on account of such a circumstance. This principle, however, cannot be extended to the case of attestors, because in the case of a person, who prepares the will and takes a benefit under it, it may reasonably give rise to suspicion that the clause in the will relating to the benefit conferred on him may be his own and may have been surreptitiously introduced into the will without the knowledge of the testator. The same cannot be said of an attestor taking a benefit under the will. He is only a legatee taking benefit under the will and he merely attests it in token of his witnessing its execution. That circumstance cannot at all lead to the inference that he exercised any influence on the mind of the testator. (1950) 28 Mys L J 124 (DB).

—S. 70 — Will — Revocation—What amounts to—Compromise with members of testator's family — Other properties allotted to testator — Effect — Will, if revoked.

Where a testator after execution of a will enters into compromise with other members of his family as a result of which he is allotted properties different from those that were allotted to him at the time of execution of the will, this has not the effect of revocation of the will. Since the will takes effect only after the death of the testator, it will operate only in respect of properties that the testator died possessed of. It is not necessary that there should be identity of the property. AIR 1957 Andh Pra 93 (96) (Pt D) (Pr 12) (DB).

—S. 70—Will—Revocation — Will not re-affirmed in other documents—If can be revoked.

A will should not be deemed to have been cancelled on the ground that it was not re-affirmed in other documents. A will will be effective till it is revoked either expressly or by necessary implication, such as by the execution of another. It does not need to be kept alive by making references to it in other documents. AIR 1957 Andh-Pra 93 (96) (Pt E) (Pr 13) (DB).

—S. 74—Will—Construction—Intention of testator — Value of construction placed on other wills — Bequest to two sisters for life and after their death to their children — Death of one sister — Her share if passes to her children or lapses by survivorship to surviving sister — Sister's children if take per stirpes or per capita. (1963) 1 Andh L T 423=(1963) 2 Andh W R 54=AIR 1964 Andh-Pra 45 (47, 50) (Prs 12, 31, 32) (DB).

—S. 74—Will—Construction — Will dividing property amongst sons and wife—Words employed clear and unambiguous importing absolute estate on wife —Will held conferred absolute estate on wife— S. A. No. 95/2 of 1954-55 (AP), Reversed. AIR 1961 Andh-Pra 390 (392, 393) (Pt B) (Pr 7) (DB).

—S. 74 — Will — Construction — Disposition in favour of wives of testator — Provision in will that "upon her and alone with some born in her womb living shall vest what is bequeathed by this will" — Interpretation of. (1963) 67 Cal W N 870.

—S. 74—Will — Construction— Personal covenant to pay if can be implied.

A case of personal covenant which is a matter of mutual agreement does not at all arise in a will under which the testator bequeaths his properties in a particular manner which is to take effect after his death. To say, therefore, that there was no personal covenant to pay in the will under consideration is to misconceive the very nature and scope of the document. AIR 1931 All 99, Dist. 63 Cal W N 227=ILR (1959) 1 Cal 477 = AIR 1959 Cal 269 (270, 273) (Pt A) (Prs 8, 40) (DB).

—S. 74—Will — Construction—Will or settlement.

Where a will recited that the testatrix would do certain things in her lifetime and that if she was not able to do them, her executors would do them after her death.

Held, that the recital did not make the document a settlement. AIR 1951 Kutch 20 (22) (Pt E) (Pr 43).

—S. 74—Will—Construction— Will providing that testator's wife, C, should enjoy immovable properties and carry on her livelihood from income thereof, pay kist and debts of testator and purchase other lands if possible— No mention that C was entitled to alienate properties — After C's lifetime testator's grandchildren then alive were to take all properties absolutely — Will held conferred life-estate on C. AIR 1960 Mad 391 (391) (Pt A) (Pr 5) (DB).

—S. 74—Will — Construction — Will creating life-estate in favour of testator's wife— After wife's death testator's grandchildren to take properties absolutely —No mention that they were to take per stirpes — They take per capita—Gift to a class bearing same degree of relationship to testator — Presumption is that they share gift equally between them unless testator makes any differentiation between them. 1949 F L J 103 : (1949) 1 M L J 628 : AIR 1949 F C 64, Rel. on. AIR 1960 Mad 391 (391) (Pt B) (Pr 6) (DB).

—S. 74—Will—Construction—Rule.

When the Courts have to construe a will they must look to the terms of that will and the circumstances surrounding the particular will. It would be ordinarily very unsafe to seek to ascertain the wishes of a person who has executed a particular document by referring to the words used by another person in a wholly different context. 72 Mad L W 270 = ILR (1959) Mad 601 = (1959) 1 M L J 335.

—S. 74 — Will — Construction — General rule — Exception.

The general and accepted rule of construction namely, that the express intention of a testator should be gathered from a reading of the entire will is paramount. But if the testator appointed a person as sole trustee without words of limitation and there is no indication in the document to the contrary, the said grant conveys an estate of inheritance. But the rule is not inflexible and in a case where the will contains other directions which are inconsistent with

such intention, the Court should give effect to his real intention. 40 Cal 274 ; (1938) 2 M L J 623 and 49 Cal 459, Rel. on. 1952 Mad W N 100 = 65 Mad L W 154=1952-1 Mad L J 169= AIR 1952 Mad 784 (785) (Pr 4).

——S. 74—Will— Construction — Use of precedents —Not desirable.

It is always dangerous to construe the words of one Will with the aid of construction placed by Courts in another case on more or less similar words in a different Will. The terms and tenor of the Will concerned should in the final analysis be the guiding factors. (1963) 2 Mys L J 437 (DB).

——S. 74— Will — Construction — Subsequent conduct of testator — Not material— Failure to provide for lapse—Does not affect construction of will.

The omissions of the testator to provide against a lapse is not a circumstace which will bear on the construction of a Will. In construing the terms of a Will, subsequent conduct of testator is not very material. While construing a Will the Court is on the search for the intention of the testator on the date of execution of the Will and not at about the time of his death. (1963) 2 Mys L J 437 (DB).

——S. 74 — Will — Validity — Will attacked as inofficious — Recital in will explaining such unnatural disposition—Value of.

Where a will is attacked as inofficious on the ground that the heir-at-law has been deprived of the bulk of the properties, the explanation given by the testator in the will for such unnatural disposition if true and sufficient is entitled to great weight. The recital in a solemn document like a will is very important and sufficient weight should be attached to it, and particularly when in respect of a matter which third parties cannot know and which was within the special means of knowledge of the testator, the only possible evidence is the recital in the will. (1950) 28 Mys L J 124 (DB).

——S. 74—Will — Construction — Terms of will — Interpretation of, in light of terms of another will — Not permissible. 1953 Nag L J 22 = ILR (1953) Nag 170=AIR 1952 Nag 327 (328, 329) (Pt A) (Pr 6) (DB).

——S. 74 — Will — Construction — Property not included in will—Succession to.

The property of the testator not included in the will would after his death go to his nearest heir. Where, therefore, in a will bequest was made to two ladies for life only for their maintenance and the testator did not say what would happen to the shares of these ladies after their death the shares given to these ladies constituted the property left by the testator undisposed of, subject to the life interest of these ladies, and the nearest heir of testator at the time of the will, would be entitled, to the shares given to these two ladies by the will for their maintenance, after their death. AIR 1963 Pat 430 (436) (Pt D) (Pr 16) (DB).

——S. 74 — Construction — Comparison of words of one will with those of another. AIR 1959 Pat 585 (587) (Pt A) (Pr 15).

——S. 74 — Will — Construction — Golden rule in interpreting will stated. AIR 1959 Pat 585 (588) (Pt D) (Pr 23).

——S. 74 — Will — Construction — Words in latter part whether detract from force of earlier part. AIR 1959 Pat 585 (589) (Pt E) (Pr 35).

——S. 74 — Will — Construction—Absolute bequest — Bequest to be first met out of certain assets — In case of deficiency, other property made liable — Charge on assets — If created. AIR 1960 Punj 231 (234) (Pt D) (Pr 7) (DB).

——S. 74 — Will — Construction — Makkavazhi Ezhavas of Cochin — Will executed in 1107 — Share of daughter — Thiyya Act of 1115—Applicability — Daughter who was not heir to father under existing law held could not claim any share in properties disposed of by document by virtue of provisions of Thiyya Act. AIR 1955 N U C (Trav-Co) 1081 (DB).

——S. 82 — Will — Construction — Must be construed as whole.

A Will must be construed as a whole, giving attention to every person therein; intention of the person making the grant must be gathered from the language employed by the grantor; the plain and natural meaning is to be given to the words used; and if there is any doubt, the document is to be construed as to lean to vesting. AIR 1957 S C 255, Foll. 1965 B L J R 410 = ILR 45 Pat 855 = AIR 1966 Pat 40 (41, 42) (Pt A) (Pr 5) (DB).

——S. 87—Will—Construction—Intention of testator — Dispositive words clear and unambiguous — Duty of Court.

If the dispositive words are clear and unambigous, the Court is bound to enforce them. But where they are ambiguous, it is necessary to ascertain the declared intention of the testator having regard to the other clauses of the will and also the surrounding circumstances. 1956 Andh L T 940.

——S. 87 — Will — Construction — Court's power to give effect to hypothetical intention — (Evidence Act (1872), S. 92). AIR 1959 Pat 585 (588) (Pt C) (Pr 26).

——S. 88—Will — Construction — 'Estate of inheritance in the first instance conferred on legatee by dispositive words of will—Subsequent restrictive clauses are inoperative.

It is no doubt the law that where an estate of inheritance in the first instance is conferred upon the legatee by the dispositive words of the will and the subsequent restrictive clauses are not sufficient to displace their effect they should be construed as repugnant to the absolute estate conferred earlier by the will and therefore inoperative and not as limiting either the quantum of the estate that was given by the earlier bequest or making it conditional and liable to be divested on the death of the legatee. Repugnant conditions or conditions inconsistent with the nature of the interest given to the donee are no doubt unenforceable. AIR 1922 P C 193 : 42 M L J 385, Rel. on. 1956 Andh W R 582.

——S. 112 — Will—Construction—Power of appointment — Donee of power gifting to person unborn at time of testator's death — Such exercise of power is void, in case of will coming into effect before Hindu Disposition of Property Act, 1916. AIR 1955 N U C (Cal) 581.

——S. 118 — Will — Bequest to charity for salvation of testator — Bequest held void for vagueness. AIR 1961 Pat 430 (435, 436) (Pt C) (Pr 15) (DB).

——S. 131—Will—Construction—Bequest of entire estate for life to testator's three widows and after their death absolutely to daughter's son, if any, otherwise to daughter absolutely — Bequest of ten villages to testator's nephew R for life after death of three widows and after R's death to his male issue, if any, absolutely or otherwise to daughter — Testator dying leaving his three widows, daughter's son S and nephew R — Suit by S for declaration that he would be absolute owner of entire estate after widow's death including ten villages in case R died without leaving any male issue — On construction held that S would take entire estate after death of three widows subject only to a life interest in ten villages in favour of R and a further defeasance provision in event of R leaving male issue — Declaration claimed could properly be granted under S. 42, Specific Relief Act. 63 Mad L W 255 = 54 Cal W N 484 = 52 Bom L R

485 = ILR (1951) 1 All 237 = AIR 1950 P C 70 (72) (Prs 11, 12).

●——S. 131 — Will — Construction—On construing the provisions of a will held that the testator contemplated that he would be buried as Sanyasi in a Samadhi Matam and that the directions for dharmams in the later clauses of the will were all part of the testator's scheme for keeping alive his memory and did not disclose any independent charitable intent — As the testator never became a Yatra Sanyasi and was not buried in a Samadhi Matam it became impossible to give effect to the scheme of the will and all the trusts declared by the will failed : AIR 1945 Mad 217, Reversed. AIR 1950 P C 37 (38, 39) (Pr 9).

——S. 138 — Will — Construction — Bequest by husband to his wife absolutely of movable and immovable properties — Direction in will that wife "shall" during her life-time give 33 cents of land of her choice to testator's brothers — Direction is not a precatory trust — Direction is imperative and raises trust in favour of brother—Direction is not repugnant to the absolute estate in favour of wife. 1956 Andh W R 582.

●——S. 141 — Will — Construction — Appointment of executor in case he is adopted by testator or his wife — When takes effect. AIR 1960 S C 629 (632) (Pt E) (Pr 7).

●——S. 176 — Will — Construction — Annuitant — He is kind of legatee — Annuity is payable out of income if income is available — Rule however does not exist to limit right of annuitant — Will directing annuities to be charged upon residuary trust income — Rights of annuitants need not necessarily determine when residuary trust ceases to dispose of income and reach date for division of capital. AIR 1950 P C 7 (9, 10) (Prs 10, 13).

——S. 218 — Will — Grant of probate — Long delay in applying for — Effect — Genuineness of will — Onus of proof.

It is true that an application for probate can be made at any time. There is no limitation of time for making such an application. Mere delay itself cannot be a ground against the genuineness of the will. But still the Court is bound to be satisfied with regard to the genuineness of the will that is set up. The burden of proving due execution is upon the person propounding the will. He must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. It is usual to demand an explanation when there is unreasonable delay in applying for probate. Such explanation is necessary to assist the Judge in coming to a finding as to the genuineness of the will propounded.

In the instant case the alleged will is an unregistered one. The testator lived only for five days after the execution of the will. There is no proof of his mental capacity. The will was executed in the house of the propounder and a major portion of the estate is bequeathed to him and his brothers. There is considerable delay of 36 years in coming to the Court for the probate of the will. Its execution is doubtful, the conduct of the parties is not in favour of the existence of the will, the disposal of the properties is unnatural and the attendant circumstances are all of a suspicious nature. In these circumstances the propounder who applied for the probate has to explain the reasons for the delay in coming to the Court and prove due execution of the will to the satisfaction of the Court. He has not done so and is therefore not entitled to the grant of probate of the will. 78 Mad L W 83 = ILR (1965) 2 Mad 131 = (1965) 2 M L J 387.

——Ss. 298, 57 — Expression "to whom S. 57 does not apply" occuring in S. 298 — Interpretation of— Intestate succession — Grant of letters of administration under S. 298 is discretionary. (1964) 1 Mys L J 25.

——S. 323—Executor — Powers of — Distribution of legacy when enforcement is barred by limitation— Validity. A I R 1951 Mad 374 (376) (Pr 5) (DB).

TAX

——Avoidance of. See Income-tax Act (1922), Ss. 44-D, 44-E, 44-F.

TENANCY LAWS

—ANDHRA PRADESH (ANDHRA AREA) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) (SECOND AMENDMENT) ACT (15 of 1959)

——S. 1—Validity of Act—Art. 31 of Constitution of India does not envisage provision for payment of interim compensation and hence A. P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) (Second Amendment) Act 15 of 1959 is not unconstitutional on ground that there is no provision therein for payment of interim compensation. A I R 1956 S C 94, Ref. to.—Constitution of India, Art. 31. I L R (1964) Andh Pra 372 (DB).

—BENGAL TENANCY ACT (8 of 1885)

——Suit for assessment of rent — Suit by purchaser at patni sale for possession and in alternative for assessment of rent—Claim for possession abandoned —Plaintiff held not disentitled to sue for assessment, merely because plaint contained allegation that defendants were trespassers. A I R 1955 N U C (Cal) 2325.

—BIHAR ABOLITION OF ZAMINDARIS REPEALING ACT (9 of 1950)

——Act is ultra vires. A I R 1951 Pat 246.

——Bihar Tenancy Act (8 of 1885)—Suit for adhbatai rent — Landlord not present at time of harvest— Assessment of produce based on rate agreed year before in absence of any other evidence, held reasonable and legal. A I R 1955 N U C (Pat) 3276 (DB).

——S. 112-A (1) (d) — Rent Reduction Officer assuming rent at certain figure and reducing it—Landlord party to proceedings not making any protest— No question of jurisdiction involved.

When the Rent Reduction Officer assumes the rent at a certain figure and reduces it and the landlord who is a party to the rent reduction proceedings and is actually cognizant of them does not make any protest that the rent which the officer is asked to reduce is the rental at the lower figure and not at the higher figure no question of jurisdiction is involved: A I R 1949 Pat 139 (FB), Ref. A I R 1950 Pat 43 (43) (Pr 1) (DB).

—BOMBAY PREVENTION OF FRAGMENTATION AND CONSOLIDATION OF HOLDINGS ACT (62 of 1947)

——S. 11—Notification, D/- 18.5.1950 — Act affects rights of parties retrospectively and outstanding decrees already passed. AIR 1955 NUC (Bom) 5302.

—EAST PUNJAB DISPLACED PERSONS (LAND RESETTLEMENT) ACT (36 of 1949)

——Land Resettlement Manual, Para. 17—Allotment of land — Different grades — "Markedly superior or inferior grade"—Meaning of.

The Land Resettlement Manual by Tarlok Singh bears a stamp of authority and the administrative instructions and rules laid down therein form an essential basis for rehabilitation of displaced persons. A I R 1954 S C 150, Rel. on. (1963) 65 Pun L R 893.

—HYDERABAD TENANCY AND AGRICULTURAL LANDS ACT (21 of 1950)

——S. 19 (1) (a), 2nd Proviso and S. 32 (1) — Joint Hindu family consisting of two brothers A and B—Tenancy originally taken up by A—No evidence that A took tenancy as Karta of joint family or for and on behalf of entire family—Surrender of tenancy by A—B is not entitled to make application for possession under S. 32 (1). (1964) 2 Mys L J 34.

—RAJASTHAN JAGIRDARS (ABOLITION OF POWERS) ORDINANCE (27 of 1948)

●——S. 8-A—(Inserted by Ordinance 10 of 1949 and Amended by Ordinance 15 of 1949) — Validity—(Constitution of India, Art. 14).

A proper classification must always bear a reasonable and just relation to the things in respect of which it is proposed.

When the State of Rajasthan was formed in April and May, 1949, the Jagirdars of only a part of the present State of Rajasthan could not collect their rents while Jagirdars in other areas which were covered by Jaipur, Bikaner, Jaisalmer and Jodhpur and Matsya Union were under no such disability. In the former State of Rajasthan provisions regarding the management by Government of Jagirs and the right to collect rents already existed, whereas there was no such provision in the former States of Jaipur, Bikaner, Jaisalmer and Jodhpur and Matsya Union, but when the integration took place in April and May, 1949, the discrimination exhibited itself not by virtue of anything inherent in the impugned Ordinances but by reason of the fact that Jagirdars of one part of the present State of Rajasthan were already subjected to a disability in the matter of management of their Jagirs while the other parts were wholly unaffected. This discrimination however undesirable, was not open to any exception until the Constitution came into force on 26th January, 1950. Such an obvious discrimination could be supported only on the ground that it was based upon a reasonable classification.

In the absence of any allegation supported by evidence it could not be held that the Jagirdars of the particular area to which category the respondent belonged were differently situated to other Jagirdars. There was no real and substantial distinction why the Jagirdars of a particular area should continue to be treated with inequality as compared with the Jagirdars in another area of Rajasthan. No rational basis for any classification or differentiation had been made out. Section 8-A of the impugned Ordinance as amended was a clear contravention of the respondent's right under Art. 14 of the Constitution and must be declared void. State of Rajasthan v. Rao Manohar Singhji; 1954 S C J 439=1954 S C A 491 =1954 Raj L W 220=1954 S C R 996 = A I R 1954 S C 297 (298, 299) (Prs 5, 7).

—U. P. PUBLIC LAND (EVICTION AND RECOVERY OF RENT AND DAMAGES) ORDINANCE (4 of 1959)

——S. 16—Jurisdiction of High Court and Legislature—Nature and extent of—Validating enactment—Scope and its effect—Legislature cannot validate unconstitutional Act — U. P. Act of 1953 declared unconstitutional—Actions taken or orders passed thereunder cannot be validated by S. 17 of U. P. Ordinance of 1953. See Constitution of India, Art. 245. AIR 1962 All 350.

——S. 16—U. P. General Clauses Act (1 of 1904), Ss. 6, 24 — Applicability — Apply only to valid acts subsequently repealed — Act declared unconstitutional — Has no existence — Sections cannot apply to its repeal by subsequent enactment. See U. P. General Clauses Act (1 of 1904), S. 6. AIR 1962 All 350.

TRANSFER OF PROPERTY ACT (4 of 1882)

——Ss. 67-A and 67—Scope and object of S. 67-A—Requisites — Distinction between S. 67-A and O. 2, R. 2, Civil P. C. — S. 67-A contains principle which is an extension of procedure under O. 2, R. 3, Civil P. C. — "Cause of action" in O. 2, R. 2, Civil P. C.—Meaning — Two mortgages between same mortgagor and mortgagee subsisting — Principal and interest under both falling due—Yet mortgagee filing suit for recovery of only interest due under second mortgage —Suit decreed — Later another suit filed claiming entire principal and interest due under both mortgages—That part of suit relating to second mortgage is clearly barred under O. 2, R. 2, Civil P. C.—Entire suit dismissed on ground of bar under S. 67-A and O. 2, R. 2, Civil P. C., in view ot such earlier suit—Dismissal wrong — First mortgage not included in earlier suit does not perish by reason of such omission. I L R (1963) Mys 998.

——S. 110—Lease for a fixed period commencing from certain date — Notice asking tenant to deliver possession on expiry of lease — Date of termination not mentioned—Tenant receiving notice more than a month before expiry — Notice is valid. See T. P. Act (4 of 1882), S. 106. 1961 Jab L J 311.

WEST BENGAL CITY CIVIL COURTS ACT (21 of 1953)

See also Calcutta City Civil Courts Act (21 of 1953).

WEST BENGAL CITY CIVIL COURTS ACT (W. B. Act 21 of 1953)

——S. 5—Ss. 19 and 3(b), Hindu Marriage Act—Suit for declaration of nullity—City Civil Court has exclusive jurisdiction—Suit cannot be filed in High Court. See Hindu Marriage Act (1955), S. 19. AIR 1960 Cal 577.

WORDS AND PHRASES

——Expression 'date of receipt of records'—Meaning. See Document. I L R (1965) Cut 823.

——'Unable to preside at meeting'.

The words "unable to preside at meeting" in S. 40-A(5), Madras District Municipalities Act, 1920 are quite general and would apply to a case where the Revenue Divisional officer is prevented from holding the meeting by prohibitory order issued by Court. These words are not confined to incapacity of physical character but include legal incapacity. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 40-A. AIR 1957 Andh Pra 891 (DB).

——"Under restraint of Court".

There can be restraint without confinement—Convict released on probation after execution of bond under form C of Probation Rules — He is under restraint of Court within meaning of S. 19(xvii), Court-fees Act. See Court-fees Act (1870), S. 19(xvii). 1964 All L J 665=AIR 1967 All 81.

SUBJECTWISE LIST OF CASES OVERRULED AND REVERSED

Abolition of Privy Council Jurisdiction Act (5 of 1949)
S. 5—AIR 1953 Mad 878
Overruled in AIR 1957 S C 540.

Adaptation of Laws Order (1950)
Cls. 4, 15 and 21—AIR 1954 Kutch 42
Reversed in AIR 1957 S C 517.

Administration of Evacuee Property Act (1950)
S. 7—AIR 1962 Punj 78
Reversed in AIR 1965 S C 951.
S. 8—AIR 1962 Punj 78
Reversed in AIR 1965 S C 951.
S. 17 (1)—AIR 1950 East Punj 312
Reversed in AIR 1951 Punj 434.
S. 17—AIR 1962 Punj 78
Reversed in AIR 1965 S C 951.
S. 24 (1)—AIR 1957 Pat 235
Reversed in AIR 1961 S C 1312.
S. 26—AIR 1955 Punj 158
Overruled in AIR 1961 S C 1425.

All India Services (Discipline and Appeal) Rules (1955)
R. 3, Excp. 4—AIR 1962 Punj 516
Reversed in AIR 1964 S C 423.
R. 5—AIR 1962 Punj 516
Reversed in AIR 1964 S C 423.
R. 20—AIR 1963 Punj 87
Reversed in AIR 1964 S C 787.

Arbitration Act (1940)
S. 3—AIR 1953 Cal 787
Overruled in AIR 1965 Cal 145.
S. 8—AIR 1961 Bom 65
Reversed in AIR 1964 S C 1882.
S. 8—AIR 1951 Pat 196
Overruled in AIR 1964 S C 1882.
S. 11—AIR 1953 Cal 787
Overruled in AIR 1965 Cal 145.
S. 13—AIR 1953 Cal 618
Overruled in AIR 1960 Cal 90.
S. 14—AIR 1952 Cal 10
Overruled in AIR 1964 Cal 241.
S. 14 (1)—ILR (1956) Nag 783
Overruled in AIR 1962 S C 551.
S. 17—AIR 1952 Cal 10
Overruled in AIR 1964 Cal 241.
S. 20 (4)—AIR 1962 Cal 254
Revessed in AIR 1965 Cal 404.
Ss. 21, 14 and 17—AIR 1953 Punj 216
Reversed in AIR 1955 Punj 31 (DB).
S. 28 (1)—AIR 1953 Cal 787
Overruled in AIR 1965 Cal 145.
Ss. 30, Cl. (c), 33—AIR 1962 All 219
Overruled in AIR 1963 All 242.
S. 30—AIR 1951 Cal 78
Overruled in AIR 1956 Cal 321 (FB).
S. 31—AIR 1955 N U C (Mad) 4545
Overruled in AIR 1964 Mad 1.
S. 32—AIR 1951 Cal 147
Overruled in AIR 1962 S C 378.
S. 32—AIR 1955 N U C (Mad) 4545
Overruled in AIR 1964 Mad 1.

Arbitration Act *(contd.)*
S. 32—AIR 1954 Orissa 234
Reversed in AIR 1963 S C 107.
S. 33—AIR 1951 Cal 147
Overruled in AIR 1962 S C 378.
S. 33—AIR 1953 Cal 787
Overruled in AIR 1965 Cal 145.
S. 33—AIR 1955 N U C (Mad) 4545
Overruled in AIR 1964 Mad 1 (FB).
S. 34—AIR 1953 Cal 477
Reversed in AIR 1955 S C 53.
S. 34—AIR 1965 J & K 114
Reversed in AIR 1966 J & K 134.
S. 34—AIR 1951 Pat 157
Reversed in AIR 1953 S C 182.
S. 39 (1)(vi)—AIR 1957 Andh Pra 11
Overruled in AIR 1963 Andh Pra 193.
S. 39 (2)—AIR 1962 Mad 52
Overruled in AIR 1962 S C 256.
S. 39—AIR 1954 Punj 211
Reversed in AIR 1962 S C 256.
S. 43—AIR 1952 Cal 10
Overruled in AIR 1964 Cal 241.
S. 44—AIR 1952 Cal 10
Overruled in AIR 1964 Cal 241.
Sch. I, Para. 3—AIR 1953 Cal 787
Overruled in AIR 1965 Cal 145.

Arms Act (1878)
S. 29—AIR 1959 All 660
Overruled in AIR 1960 All 369 (FB) and AIR 1962 S C 1781.
S. 29—AIR 1960 All 40
Impliedly overruled in AIR 1960 All 369 (FB).

Assam Agricultural Income Tax Act (9 of 1939)
S. 2 (a)(1)—AIR 1953 Assam 47
Reversed in AIR 1957 S C 729.

Assam Aided College Employees Rules (1960)
R. 7—AIR 1963 Assam 46
Reversed in AIR 1965 S C 1196.

Assam Land (Requisition and Acquisition) Act (25 of 1948)
S. 3—AIR 1953 Assam 177
Impliedly overruled in AIR 1963 S C 1811.

Assam Revenue Tribunal (Transfer of Powers) Act (4 of 1948)
S. 3 (3)—AIR 1956 Assam 142
Reversed in AIR 1957 S C 414.

Assam Settlement of Fisheries Rules
R. 12—AIR 1956 Assam 48
Overruled in AIR 1957 S C 377.

Banking Companies Act (1949)
Ss. 45-A and 45-B—AIR 1958 Mad 403
Overruled in AIR 1962 Mad 75.
S. 45-B—(1952) 55 Cal W N 400
Overruled in AIR 1955 S C 213.
S. 45-F—(1952) 55 Cal W N 400
Overruled in AIR 1955 S C 213.

Banking Companies Act *(cont'd.)*
S. 45-G—AIR 1961 Ker 14
Reversed in AIR 1965 S C 654.
S. 45-N—AIR 1961 Ker 14
Reversed in AIR 1965 S C 654 and Overruled in AIR 1963 Ker 72 (FB).

Bar Councils Act (1926)
S. 1—AIR 1954 All 735
Overruled in AIR 1955 All 269 (FB).
S. 3—AIR 1954 All 728
Overruled in AIR 1955 All 269 (FB).

Bengal, Agra And Assam Civil Courts Acts (12 of 1887)
S. 9—AIR 1957 All 495
Overruled in AIR 1962 All 315 (FB).

Bengal Agricultural Income-tax Act (4 of 1944)
Ss. 24 (1), (2), (3) and 4—(1951) 20 ITR 432 (Cal)
Overruled in AIR 1959 S C 1154.
S. 38—(1951) 20 ITR 432 (Cal)
Overruled in AIR 1959 S C 1154.

Bengal Alluvion and Diluvion Regulation.
S. 2—AIR 1943 All 68
Reversed in AIR 1951 S C 210.

Bengal Court of Wards Act
S. 18—AIR 1950 Pat 134
Reversed in AIR 1956 S C 446.

Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950)
S. 7—AIR 1951 Cal 85
Reversed in AIR 1954 S C 92.

Bengal (Rural) Primary Education Rules
R. 12—(1957) 61 Cal W N 880
Overruled in AIR 1966 S C 951.

Berar Land Revenue Code (1928)
S. 174—AIR 1954 Punj 55 (FB)
Overruled in AIR 1962 S C 1476.
S. 174—AIR 1960 Punj 196 (FB)
Overruled in AIR 1962 S C 1476.
S. 176—AIR 1953 Nag 182
Reversed in AIR 1960 S C 1368.

Bhopal State Agricultural Income-tax Act (1953)
AIR 1961 M P 282
Reversed in AIR 1964 S C 1179.

Bihar Administration of Evacuee Property Ordinance (1949)
S. 11—AIR 1951 Pat 434
Reversed in AIR 1955 S C 282.

Bihar and Orissa Co-operative Societies Act (6 of 1935)
S. 48—(1960) ILR 40 Pat 7
Overruled in AIR 1962 S C 1367.

Bihar Government Servants Conduct Rules (1956)
R. 4A—AIR 1959 Pat 187
Reversed in AIR 1962 S C 1166.

Bihar Hindu Religious Trusts Act (1 of 1951)
1953 B L J R 671
Reversed in AIR 1959 S C 1002.
S. 1—ILR 33 Pat 942
Reversed in AIR 1959 S C 951.
Ss. 2 (1), 3, 4 (5)—AIR 1954 Pat 262
Reversed in AIR 1959 S C 1073.

Bihar Hindu Religious Trusts Act *(contd.)*
S. 29—AIR 1954 Pat 262
Reversed in AIR 1959 S C 1073.

Bihar Town Planning and Improvement Trust Act (35 of 1951)
S. 71—AIR 1962 Pat 460
Reversed in AIR 1963 S C 1077.

Bombay City Courts Act (40 of 1948)
S. 4—AIR 1951 Bom 180
Overruled in AIR 1951 S C 69.

Bombay Civil Service Rules
R. 165-A—AIR 1954 Sau 148
Reversed in AIR 1957 S C 892.

Bombay Civil Services Conduct, Discipline and Appeal Rules
R. 55—AIR 1954 Bom 351
Impliedly overruled in AIR 1963 S C 375.

Bombay Court Fees Act (36 of 1959)
S. 36—(1960) 1 Guj L R 208
Overruled in AIR 1961 Guj 144 (FB).

Bombay (Industrial Relations) Act (11 of 1947)
S. 97—AIR 1954 Bom 171
Reversed in AIR 1957 S C 73.
S. 114 (2)—('58) ILR (1958) Bom 176
Reversed in AIR 1961 S C 977.

Bombay Land Requisition Act (33 of 1948)
S. 6—AIR 1952 Bom 476
Reversed in AIR 1955 S C 41.
S. 6 (4), Proviso (1)—AIR 1952 Bom 468
Reversed in AIR 1955 S C 41.
S. 6 (4) (a)—AIR 1953 Bom 337
Reversed in AIR 1955 S C 810.

Bombay Land Revenue Code (5 of 1879)
S. 66—ILR (1955) Bom 375
Reversed in AIR 1961 S C 722.

Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948)
S. 12A—AIR 1956 Bom 1
Reversed in AIR 1957 S C 699.

Bombay Police Act (22 of 1951)
S. 57—AIR 1959 Bom 515
Reversed in AIR 1961 S C 307.
S. 161 (1)—1961 Mad L J (Cri) 712 (Mys)
Reversed in AIR 1963 S C 849.

Bombay Prevention of Adulteration Act (5 of 1925)
Ss. 19 (1) (c)—AIR 1955 NUC (Bom) 906=56 Bom L R 128
Overruled in AIR 1956 Bom 690 (FB).

Bombay Prevention of Adulteration Rules
R. 6 (b) (i)—ILR (1954) Bom 519
Overruled in AIR 1956 Bom 690 (FB).

Bombay Prevention of Excommunication Act (42 of 1949)
AIR 1953 Bom 183
Overruled in AIR 1962 S C 853.

Bombay Prevention of Gambling Act (4 of 1887)
S. 1—AIR 1954 Kutch 42
Reversed in AIR 1957 S C 517.

Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946)
S. 8—AIR 1955 Bom 439.
Overruled in AIR 1958 Bom 68 (FB).

Bombay Public Trusts Act (29 of 1950)
S. 9 (4)—AIR 1957 Bom 83
Reversed in AIR 1962 S C 1589.
S. 11—AIR 1957 Bom 83
Reversed in AIR 1962 S C 1589.

Bombay Securities Contracts Control Act (8 of 1925)
S. 3—AIR 1952 Bom 95
Reversed in AIR 1955 S C 812
S. 5—AIR 1952 Bom 95
Reversed in AIR 1955 S C 812.
S. 6—AIR 1952 Bom 95
Reversed in AIR 1955 S C 812.

Business Profits Tax Act (1947)
Pre.—(1957) 31 ITR 836 (Bom)
Reversed in AIR 1961 S C 812.
S. 5—AIR 1957 Punj 259
Reversed in AIR 1962 S C 1272.
Sch. 2 R. 2 (1)—AIR 1951 Bom 420.
Reversed in AIR 1953 S C 501.

Calcutta Dock Workers (Regulation of Employment) Scheme (1951)
Cl. 10 —AIR 1960 Cal 166
Overruled in AIR 1962 Cal 530.

Calcutta Dock Workers (Regulation of Employment) Scheme (1956)
Cls. 3, 15 (1) (b) (c)—AIR 1960 Cal 166
Overruled in AIR 1962 Cal 530.

Calcutta Port Act (3 of 1890)
S. 126 — AIR 1961 Cal 365
Reversed in AIR 1962 Cal 530.

Central Provinces and Berar Industrial Disputes Settlement Act (23 of 1947)
S. 16 (2) — (1958) 60 Bom L R 72
Overruled in AIR 1963 S C 114.
S. 30 and Sch. 2, Entry 3 — AIR 1959 Bom 61
Overruled in AIR 1963 S C 114.

C. P. & Berar Motor Vehicles (Amendment) Act (3 of 1948)
AIR 1955 S C 781
Held overruled by AIR 1959 S C 648 in AIR 1961 Mys 3.

C. P. and Berar Revocation of Land Revenue Exemption Act (37 of 1948)
S. 3 — AIR 1959 Madh Pra 339 (FB)
Reversed in AIR 1965 S C 1222.
S. 5 — AIR 1959 Madh Pra 339 (FB)
Reversed in AIR 1965 S C 1222.

Cinematograph Act (1918)
S. 8 — AIR 1952 Mad 120
Reversed in AIR 1954 S C 747.

Cinematograph Act (1952)
S. 12 (4) — 1959 Raj L W 662
Reversed in AIR 1963 S C 408.

Citizenship Act (1955)
S. 5 (1) (a) — AIR 1961 Cal 299
Overruled in AIR 1965 Cal 160.
S. 9 — AIR 1960 All 637
Overruled in AIR 1962 S C 1052.

Citizenship Act *(contd.)*
S. 9 (2) — AIR 1957 Andh Pra 1047
Overruled in AIR 1962 S C 1052.
S. 18 — AIR 1957 Andh Pra 1047
Overruled in AIR 1962 S C 1052,

Citizenship Rules (1956)
Sch. III, Cl. (3) — AIR 1960 All 637
Overruled in AIR 1962 S C 1052.
R. 9 — AIR 1961 Cal 299
Overruled in AIR 1965 Cal 160.

Civil Procedure Code (1908)
S. 2 (2) — AIR 1953 Cal 42
Overruled in AIR 1961 Cal 491.
S. 2 (2) — ILR (1954) Hyd 658
Reversed in AIR 1955 S C 352.
S. 2 (2) — 1962 Ker L J 517
Overruled in AIR 1965 Ker 1 (FB).
S. 2 (2) — ILR (1962) Cut 818
Overruled in AIR 1965 Orissa 102.
S. 6 — AIR 1955 Cal 144
Overruled in 65 Cal W N 1 (SB).
S. 9 — AIR 1954 S C 447
Overruled in AIR 1964 S C 1043.
S. 9 — AIR 1951 All 205
Reversed in AIR 1955 S C 600.
S. 9 — AIR 1952 All 496
Overruled in AIR 1953 All 729.
S. 9 — AIR 1956 Mad 680
Overruled in AIR 1962 Mad 450 (FB).
S. 9 — AIR 1958 Mad 80
Reversed in AIR 1965 S C 338.
S. 9 — AIR 1957 Orissa 17
Reversed in AIR 1962 S C 547.
S. 9 — AIR 1951 Pat 529
Overruled in AIR 1963 Pat 79 (FB).
S. 9 — AIR 1957 Pat 564
Reversed in AIR 1962 S C 914.
S. 9 — AIR 1951 Punj 74
Reversed in AIR 1954 S C 207.
S. 9 — AIR 1952 Punj 94
Overruled in AIR 1965 Punj 321 (FB).
S. 9 — AIR 1959 Punj 440
Reversed in AIR 1963 S C 222.
S. 9 — AIR 1952 Sau 49 (FB)
Reversed in AIR 1954 S C 680.
S. 9 — AIR 1952 Sau 49
Reversed in AIR 1954 S C 680.
S. 9 — AIR 1953 Sau 180
Reversed in AIR 1959 S C 1383.
S. 10 — AIR 1954 Bom 176
Overruled in AIR 1962 S C 527.
S. 11 — AIR 1957 All 106
Overruled in AIR 1963 All 210 (FB).
S. 11 — AIR 1953 Hyd 79
Reversed in AIR 1956 S C 319.
S. 11 — AIR 1954 Mad 1
Held overruled by (1958) 2 Mad L J 526 in AIR 1960 Mad 343.
S. 11 — AIR 1952 Punj 252
Reversed in AIR 1953 Punj 103 (DB).
S. 11 — (1963) 65 P L R 945
Overruled in AIR 1965 S C 1153.
S. 13 — AIR 1959 Bom 414
Reversed in AIR 1964 S C 538.
S. 15 — AIR 1956 Punj 30
Overruled in AIR 1963 Punj 208.
S. 20 — AIR 1952 Bom 306
Reversed in AIR 1954 S C 504.
S. 20 — ILR (1950) 2 Cal 551
Overruled in AIR 1960 Cal 391.
S. 30 — AIR 1953 Nag 135
Overruled in AIR 1954 Nag 260.
S. 34 — AIR 1959 Andh Pra 64
Reversed in AIR 1965 S C 1231.

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S. 38 — ILR (1954) Hyd 658
Reversed in AIR 1955 S C 352.
S. 38 — AIR 1957 All 336
Overruled in AIR 1962 All 619.
S. 41 — AIR 1957 All 336
Overruled in AIR 1962 All 619.
S. 47—AIR 1951 Punj 346
Overruled in AIR 1952 Punj 159.
S. 47 and O. 21, R. 92—AIR 1953 Raj 51
Held overruled by AIR 1954 SC 349 in AIR 1959 Raj 135.
S. 47—AIR 1961 Raj 193
Reversed in AIR 1964 Raj 140.
S. 48—AIR 1950 Hyd 15
Overruled in AIR 1963 Andh Pra 1.
S. 48 (2)—AIR 1950 Trav Co 80
Overruled in AIR 1959 Ker 81 (FB).
S. 48 (1) (b)—AIR 1953 Trav-Co 394
Overruled in AIR 1959 Ker 83.
S. 51—AIR 1950 Cal 212
Overruled in AIR 1951 Cal 25.
S. 51—AIR 1956 Pat 223
Overruled in AIR 1958 Pat 630 (FB).
S. 51 (d)—AIR 1950 E P 312
Reversed in AIR 1951 Punj 434.
S. 60 (k)—AIR 1950 Cal 212
Overruled in AIR 1951 Cal 25.
S. 60 (1) (g) —AIR 1962 Andh Pra 320
Reversed in AIR 1965 S C 1798.
S. 60—AIR 1953 Sau 1
Overruled in AIR 1956 Sau 29.
Ss. 63 (2) and 73 and O. 21, R. 72—AIR 1931 Bom 350
Overruled in AIR 1960 Bom 230 (FB).
S. 73—AIR 1931 Bom 350
Overruled in AIR 1960 Bom 230 (FB).
S. 75—AIR 1959 All 707
Reversed in AIR 1961 SC 218.
S. 80—(1957) 1957 All L J 299
Overruled in AIR 1961 SC 1449.
S. 80—AIR 1955 NUC (Cal) 783=ILR (1950) 2 Cal 551 Overruled in AIR 1960 Cal 391.
S. 80; O. 21, R. 63—1961 Jab L J 935
Reversed in AIR 1966 SC 1068.
S. 80—1954 Nag L J 683=AIR 1955 NUC (Nag) 2464
Overruled in AIR 1958 Madh Pra 355.
S. 84—AIR 1962 Cal 387
Reversed in AIR 1966 SC 230.
S. 86—AIR 1960 Cal 768
Reversed in AIR 1962 Cal 387 & AIR 1966 SC 230.
Ss. 86, 87B—AIR 1962 Madh Pra 320
Reversed in AIR 1965 SC 1798.
S. 87—AIR 1962 Cal 387
Reversed in AIR 1966 SC 230.
S. 95 (1) (a) and (b)—AIR 1961 Mad 352
Reversed in AIR 1963 Mad 412.
S. 96—AIR 1951 All 236
Overruled in AIR 1956 All 94.
S. 96—1962 Ker L J 517
Overruled in AIR 1965 Ker 1 (FB).
S. 96—AIR 1954 Mys 152
Reversed in AIR 1961 SC 1087.
S. 96—AIR 1959 Raj 45
Overruled in AIR 1959 Raj 246.
S. 99—(1958) 62 Cal W N 718
Overruled in AIR 1959 Cal 231.
S. 100 AIR 1956 All 660
Reversed in AIR 1963 SC 1165.
S. 100—AIR 1960 All 573
Overruled in AIR 1962 All 248.
S. 100—AIR 1960 Andh Pra 397
Reversed in AIR 1963 SC 1633.
Ss. 100-101—AIR 1952 Pat 393
Reversed in AIR 1954 SC 165.

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S. 100—AIR 1965 Pat 198
Overruled in AIR 1965 Pat 472 (FB).
S. 100—AIR 1951 Punj 346
Overruled in AIR 1952 Punj 159.
S. 102—AIR 1961 All 320
Overruled in AIR 1962 All 299.
Ss. 104 (2) and 4 (i)—AIR 1962 All 543
Held overruled by AIR 1962 SC 256 in AIR 1964 All 235.
S. 107—AIR 1958 Pat 279
Overruled in AIR 1958 Pat 630 (FB).
S. 109—AIR 1950 Raj 39
Overruled in AIR 1954 Raj 138 (FB).
S. 110—AIR 1959 Andh Pra 20
Overruled in AIR 1961 SC 1795.
S. 110 (3)—AIR 1952 Assam 134
Overruled in AIR 1961 SC 1795.
S. 110—AIR 1927 Cal 543
Overruled in AIR 1961 SC 1795.
S. 110—AIR 1954 Cal 289
Overruled in AIR 1957 S C 540.
S. 110—AIR 1954 Cal 618
Overruled in AIR 1961 SC 1795.
S. 110—AIR 1953 Mad 878
Overruled in AIR 1957 S C 540.
S. 110—AIR 1959 Mys 112
Overruled in AIR 1961 SC 1795.
S. 110—AIR 1953 Nag 249
Overruled in AIR 1961 SC 1795.
S. 110, Cl. 3—AIR 1951 Punj 313
Overruled in AIR 1957 Punj 117 (FB).
S. 115—AIR 1950 All 192
Overruled in AIR 1951 All 643 (FB).
S. 115—AIR 1957 All 337
Overruled in AIR 1957 All 402 (FB).
S. 115—AIR 1957 All 495
Overruled in (1) AIR 1962 All 315 (FB);
(2) AIR 1964 All 504 (FB).
S. 115—AIR 1960 All 573
Overruled in AIR 1962 All 248.
S. 115—AIR 1962 All 378
Overruled in AIR 1964 All 504 (FB).
S. 115 and O. 8, R. 2—AIR 1960 Cal 348
Reversed in AIR 1966 S C 1361.
S. 115—AIR 1961 Ker 146 (FB)
Held impliedly overruled by AIR 1961 SC 1299 in AIR 1962 Ker 84.
S. 115—AIR 1962 Ker 26
Overruled in AIR 1962 Ker 233.
S. 115 (c)—AIR 1951 Raj 79
Overruled in AIR 1954 Raj 83.
S. 115—AIR 1951 Raj 82
Overruled in ILR (1951) 1 Raj 645.
S. 115—1951 Raj L W 507
Overruled in AIR 1954 Raj 83 (FB).
S. 115 — AIR 1953 Raj 90
Overruled in AIR 1964 S C 497.
S. 115—AIR 1953 Raj 137 (FB)
Overruled in AIR 1964 S C 497.
S. 115—AIR 1954 Trav-Co 178
Overruled in AIR 1961 Ker 146 (FB).
S. 132—AIR 1950 Mad 151
Overruled in AIR 1951 Mad 311.
S. 141—AIR 1957 Cal 688
Reversed in AIR 1960 Cal 15.
S. 144—AIR 1959 Mad 558
Reversed in AIR 1963 Mad 45 (FB).
S. 144—AIR 1960 Mad 278.
Overruled in AIR 1963 Mad 45 (FB).
S. 144—AIR 1963 Mad 243
Reversed in AIR 1964 Mad 404.
S. 144—AIR 1962 Orissa 11
Reversed in AIR 1966 S C 948.
S. 144—AIR 1953 Punj 132
Overruled in AIR 1965 S C 1477.

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S. 144—AIR 1961 Raj 193
Reversed in AIR 1964 Raj 140.

S. 149—AIR 1956 Pat 20
Reversed in AIR 1961 S C 882.

S. 151—AIR 1959 All 707
Reversed in AIR 1961 S C 218.

S. 151—AIR 1960 All 573
Overruled in AIR 1962 All 248.

S. 151—AIR 1964 All 203
Reversed in AIR 1966 All 109.

S. 151—AIR 1954 Bom 176
Overruled in AIR 1962 S C 527.

S. 151—AIR 1963 Bom 85
Overruled in AIR 1964 Bom 251.

S. 151—AIR 1950 Pat 358
Overruled in AIR 1955 Pat 370 (FB).

S. 151—AIR 1956 Pat 20
Reversed in AIR 1961 S C 882.

S. 151—AIR 1958 Pat 279
Overruled in AIR 1958 Pat 630 (FB).

S. 151—AIR 1959 Punj 457 (FB)
Overruled in AIR 1964 Punj 249 (FB).

S. 151—AIR 1961 Raj 193
Reversed in AIR 1964 Raj 140.

O. 1, R. 3—AIR 1950 Pat 134
Reversed in AIR 1956 S C 446.

O. 1, R. 10—AIR 1957 Cal 688
Reversed in AIR 1960 Cal 15 (DB).

O. 2, R 11 (2)—1955 Nag L J (Notes) 130
Overruled in 1957 M P L J 191 (Nag)

O. 4, R. 2—AIR 1956 Punj 30
Overruled in AIR 1963 Punj 208.

O 5, R. 5 (Cal)—(1958) 62 Cal W N 718
Overruled in AIR 1959 Cal 231.

O. 5, R. 17—AIR 1952 Cal 10
Overruled in AIR 1964 Cal 241.

O. 5, R. 20—AIR 1952 Cal 10
Overruled in AIR 1964 Cal 241.

O. 6, R. 4 — AIR 1958 Punj 190.
Reversed in AIR 1963 S C 1279.

O. 6, R. 17—AIR 1957 Cal 688
Reversed in AIR 1960 Cal 15.

O. 6, R. 17—AIR 1955 Pat 81
Overruled in AIR 1957 S C 444.

O. 7, R. 1 — AIR 1957 Cal 688
Reversed in AIR 1960 Cal 15.

O. 7, R. 11—AIR 1953 Cal 42
Overruled in AIR 1961 Cal 491 (FB).

O. 7, R. 11—ILR (1962) Cut 818
Overruled in AIR 1965 Orissa 102.

O. 8, R. 2—AIR 1960 Cal 346
Reversed in AIR 1966 S C 1361.

O. 9, R. 7—AIR 1952 Raj 12
Overruled in AIR 1955 S C 425.

O. 9, R. 13—AIR 1952 Cal 10
Overruled in AIR 1964 Cal 241.

O. 11, R. 19 (2)—AIR 1950 East Punj 228 (FB)
Held impliedly overruled by AIR 1961 S C 493 in AIR 1963 Orissa 111.

O. 16, R. 1 (i) and (ii)—AIR 1963 Raj 225
Overruled in AIR 1964 Raj 243.

O. 17, R. 2—1954 Raj L W 230
Overruled in AIR 1964 Raj 147 (FB).

O. 17, R. 3—1954 Raj L W 230
Overruled in AIR 1964 Raj 147 (FB).

O. 19, R. 2—(1957) ILR (1957) Andh Pra 165
Overruled in (1961) 1 An W R 212.

O. 19, R. 2—AIR 1953 Nag 135
Overruled in AIR 1954 Nag 260.

O. 20, R. 12—AIR 1959 Andh Pra 64
Reversed in AIR 1965 S C 1231.

O. 20, R. 12—AIR 1959 Andh Pra 607
Reversed in AIR 1965 S C 1325.

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O. 20, R. 12—AIR 1959 Andh Pra 607
Overruled in AIR 1962 Andh Pra 500 (FB).

O. 20, R. 12—AIR 1962 Pat 46
Reversed in AIR 1965 Pat 436.

O. 21, R. 6—AIR 1957 All 336
Overruled in AIR 1962 All 619.

O. 21, Rr. 15 and 11; O. 41, R. 20 — 1953 Raj L W 592=AIR 1955 NUC (Raj) 285
Reversed in AIR 1955 Raj 197.

O. 21, R. 16—AIR 1959 Madh Pra 403
Overruled in AIR 1963 Madh Pra 176 (FB).

O. 21, R. 22—AIR 1954 Mad 1
Held overruled by (1958) 2 Mad L J 526 **in** AIR 1960 Mad 343.

O. 21, R. 23 (1)—AIR 1950 Hyd 15
Overruled in AIR 1963 Andh Pra 1.

O. 21, R. 46-C—AIR 1962 Ker 26
Overruled in AIR 1962 Ker 233.

O. 21, R. 57 and O. 38. R. 11—AIR 1962 Ker 60
Reversed in AIR 1963 Ker 16 (FB).

O. 21, R. 63 — 1961 Jab L J 935
Reversed in AIR 1966 S C 1068.

O. 21. R. 66 (2) (e) & (f)—(1962) 2 Andh L T 75
Overruled in AIR 1966 Andh Pra 152.

O. 21, R. 86—AIR 1961 Andh Pra 480
Reversed in AIR 1962 Andh Pra 271.

O. 21, R. 90, Proviso (b)—AIR 1962 All 42
Overruled in AIR 1962 All 547.

O. 21, R. 90—AIR 1950 Trav-Co 1
Overruled in AIR 1956 Trav-Co 147 (FB).

O. 21, R. 91—AIR 1961 Raj 193
Reversed in AIR 1964 Raj 140.

O. 21, R. 93—AIR 1961 Raj 193
Reversed in AIR 1964 Raj 140.

O. 22, R. 3—AIR 1953 Cal 294
Overruled in AIR 1959 Cal 368.

O. 22, R. 3—AIR 1950 Mad 541
Overruled in AIR 1962 S C 232.

O. 22, R. 3—AIR 1956 Pat 376
Overruled in AIR 1962 Pat 285 (FB).

O. 22, R. 4—AIR 1960 All 379.
Overruled in AIR 1963 All 496.

O. 22, R. 4—AIR 1953 Nag 135
Overruled in AIR 1954 Nag 260.

O. 22, R. 4—AIR 1956 Pat 376
Overruled in AIR 1962 Pat 285 (FB).

O. 22, R. 9—AIR 1953 Nag 135
Overruled in AIR 1954 Nag 260.

O. 22, R. 10—AIR 1956 Pat 376
Overruled in AIR 1962 Pat 285 (FB).

O. 22, R. 10—AIR 1958 Pat 630 (FB)
Held overruled by AIR 1965 S C 524 **in** 1964 B L J R 13.

O. 23, R. 1—AIR 1957 Cal 688
Reversed in AIR 1960 Cal 15.

O. 23, R. 1—AIR 1962 Orissa 177
Reversed in AIR 1963 S C 1566.

O. 26, R. 11—AIR 1959 All 707
Reversed in AIR 1961 S C 218.

O. 26, R. 15—AIR 1955 Mad 179
Overruled in (1955) 2 MLJ 282.

O. 30, R. 1—AIR 1957 Cal 688
Reversed in AIR 1960 Cal 15.

O. 33, R. 1—AIR 1951 Punj 447
Overruled in AIR 1960 Punj 73.

O. 37, R. 3—AIR 1953 Mad 909
Overruled in AIR 1955 Mad 637.

O. 37, R. 4—AIR 1963 Bom 85
Overruled in AIR 1964 Bom 251.

O. 38, R. 11—AIR 1962 Ker 60
Reversed in AIR 1963 Ker 16 (FB).

O. 39, R. 2 (2a)—1951 All W R (HC) 636
Overruled in AIR 1958 All 641.

O. 39, R. 2—AIR 1955 Assam 156
Overruled in AIR 1960 Assam 111 (SB).

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O. 40, R. 1 – AIR 1950 Cal 212
Overruled in AIR 1951 Cal 25.
O. 41, R. 3—ILR (1962) Cut 818
Overruled in AIR 1965 Orissa 102.
O. 41, R. 11—ILR (1962) Cut 818
Overruled in AIR 1965 Orissa 102.
O. 41, R. 20 – AIR 1954 Punj 20
Overruled in AIR 1959 Punj 277 (FB).
O. 41, R. 22—AIR 1954 S C 513
Overruled in AIR 1965 S C 669.
O. 41, R. 22 – AIR 1959 S C 93
Overruled in AIR 1965 S C 669.
O. 43, R. 1 (r)—1951 All W R (HC) 636
Overruled in AIR 1958 All 641.
O. 45, R. 7—AIR 1950 Cal 229
Overruled in AIR 1961 Cal 483 (FB).
O. 45, R. 7—(1950) 54 Cal W N 479
Overruled in AIR 1961 Cal 483 (FB).
O. 45, R. 13—AIR 1955 All.589
Overruled in AIR 1961 All 619 (FB).
O. 47, R. 1 (i)—AIR 1952 Trav-Co 120
Reversed in AIR 1954 S C 526.
O. 47, R. 4 (2) (b) –(1957) 69 Mad L W (Andh) 50
Overruled in AIR 1961 Andh Pra 201.

Civil Services (Classification, Control and Appeal) Rules
R. 55—AIR 1959 All 536
Overruled in AIR 1961 All 450 (FB).
R. 55 (3)—(1959) ILR (1959) 1 All 226
Overruled in AIR 1961 All 450 (FB).
R. 55 (3)—AIR 1961 All 45
Reversed in AIR 1963 All 94.

Civil Service Regulations
R. 465-A—(1958) 1958 M P L J (Notes) 115
Reversed in 1960 M P L J (Notes) 195.

Coal Production Fund Ordinance (39 of 1944)
AIR 1958 Madh Pra 425
Reversed in AIR 1962 S C 1281.

Cochin Nambudiri Act (17 of 1114) (Cochin)
S. 9—1961 Ker L T 1127
Overruled in AIR 1962 Ker 164 (FB).

Commissions of Enquiry Act (1952)
S. 3—(1957) 59 Bom L R 769
Reversed in AIR 1958 S C 538.

Companies Act (1913)
S. 38—AIR 1951 Mad 572
Reversed in AIR 1953 S C 98.
S. 166 – AIR 1950 Bom 375
Overruled in AIR 1958 Bom 100.
S. 168—AIR 1958 Punj 341
Reversed in AIR 1961 Punj 84.
S. 171—AIR 1957 Pat 722
Reversed in AIR 1959 S C 230.
S. 171—AIR 1958 Punj 341
Reversed in AIR 1961 Punj 84.
S. 183 (2)—AIR 1959 Cal 324
Reversed in A I R 1965 S C 507 so far as it proceeds on the basis that Cl. 15 of Letters Patent is attracted.
S. 185—AIR 1953 Pat 390
Reversed in AIR 1955 S C 441.
S. 202—AIR 1959 Cal 324
Reversed in A I R 1965 S C 507 so far as it proceeds on the basis that Cl. 15 of Letters Patent is attracted.
S. 227 (2)—AIR 1958 Punj 341
Reversed in AIR 1961 Punj 84.

Companies Act (1956)
Ss. 2 (13) and 26—AIR 1960 Bom 167
Reversed in AIR 1961 S C 573.

Companies Act (1956) *(contd.)*
S. 9—AIR 1960 Bom 167
Reversed in AIR 1961 S C 573.
S. 81—AIR 1962 Orissa 202
Reversed in AIR 1963 Orissa 189.
S. 159—1962 Raj L W 585
Held impliedly overruled by A I R 1961 S C 186 as interpreted in AIR 1963 Raj 133.
S. 173—AIR 1962 Orissa 202
Reversed in AIR 1963 Orissa 189.
S. 312—AIR 1960 Bom 167
Reversed in AIR 1961 S C 573.
S. 426 (g)—AIR 1964 Mad 519
Reversed in (1965) 35 Com Cas 456 (SC).
S. 441—AIR 1958 Punj 341
Reversed in AIR 1961 Punj 84.
S. 478—AIR 1961 Ker 14
Overruled in AIR 1963 Ker 72 (FB) and Reversed in AIR 1965 S C 654.

Conduct of Elections Rules (1961)
R. 93—AIR 1964 All 86
Reversed in AIR 1964 S C 1249.
R. 94-A—AIR 1964 Madh Pra 273
Reversed in AIR 1966 S C 436.

Constitution of India
Art. 5—AIR 1961 Cal 258
Impliedly overruled in AIR 1963 S C 1811.
Art. 7—AIR 1963 Guj 226
Reversed on facts in AIR 1965 S C 810.
Art. 9—AIR 1957 Andh Pra 1047
Overruled in AIR 1962 S C 1052.
Art. 9—AIR 1963 Guj 226
Reversed on facts in AIR 1965 S C 810.
Art. 10—AIR 1963 Guj 226
Reversed on facts in AIR 1965 S C 810.
Art. 13—AIR 1955 S C 781
Held overruled by AIR 1959 S C 648 in AIR 1961 Mys 3.
Art. 13 (2)—AIR 1954 All 257
Reversed in AIR 1954 S C 728.
Art. 13 (2)—AIR 1957 All 320
Reversed in AIR 1959 S C 648.
Art. 13—AIR 1960 All 1
Reversed in AIR 1960 S C 1125.
Art. 13—AIR 1963 All 71
Reversed in AIR 1964 S C 416.
Art. 13 (1)—AIR 1951 Cal 85
Reversed in AIR 1954 S C 92.
Arts. 13 (1), 19 (1) (f) and 19 (1) (g)—AIR 1962 Pat 125 (FB)
Held overruled by A I R 1962 S C 1476 in A I R 1963 Pat 144.
Art. 13—AIR 1952 Punj 309 (FB)
Reversed in AIR 1953 S C 10.
Art. 14—AIR 1959 All 57
Overruled in AIR 1964 S C 416.
Art. 14—AIR 1959 All 660
Overruled in AIR 1962 S C 1781.
Art. 14—AIR 1959 All 660
Overruled in AIR 1960 All 369 (FB).
Art. 14—1960 All L J 52
Overruled in AIR 1963 All 528 (FB).
Art. 14—AIR 1963 All 71
Reversed in AIR 1964 S C 416.
Art. 14—1963 All W R (HC) 559
Overruled in AIR 1964 S C 381.
Art. 14—AIR 1956 Andhra 14
Overruled in AIR 1963 S C 268.
Art. 14—I L R (1960) 12 Assam 441
Reversed in AIR 1964 S C 600.
Art. 14—AIR 1963 Assam 94 (FB)
Reversed in AIR 1964 S C 600.
Art. 14—AIR 1957 Bom 252
Overruled in AIR 1959 S C 459.

Constitution of India *(contd.)*
Art. 14—1957-59 Bom L R 836
Reversed in AIR 1961 S C 977.
Art. 14—AIR 1962 Cal 590
Reversed in AIR 1966 S C 1206.
Art. 14—AIR 1956 J & K 17 (FB)
Reversed in AIR 1961 S C 1301.
Art. 14—AIR 1961 Madh Pra 282
Reversed in AIR 1964 S C 1179.
Art. 14—AIR 1956 Mad 220
Overruled in AIR 1958 S C 232.
Art. 14—AIR 1962 Mad 379
Overruled in AIR 1964 S C 600.
Art. 14—AIR 1960 Orissa 46
Reversed in AIR 1962 S C 945.
Art. 14—AIR 1960 Orissa 68
Reversed in AIR 1963 S C 779.
Art. 14—AIR 1952 Pat 194
Reversed in AIR 1953 S C 215.
Art. 14—AIR 1959 Raj 102
Reversed in AIR 1963 S C 181.
Art. 14—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.
Art. 14—AIR 1952 Trav-Co 644 (FB)
Overruled in AIR 1953 S C 404.
Art. 15(4)—AIR 1964 Ker 39
Reversed in AIR 1964 Ker 316.
Art. 15—AIR 1953 Punj 30
Overruled in AIR 1963 Punj 9.
Art. 16(2)—AIR 1956 Andhra 14
Overruled in AIR 1963 S C 268.
Arts. 16, 310 and 311—AIR 1959 Bom 134
Reversed in AIR 1962 S C 630.
Art. 16—AIR 1961 Mad 35
Overruled, Reversed in AIR 1962 S C 36.

Art. 19 (1) (g)—AIR 1955 S C 781
Held overruled by AIR 1959 S C 648 in AIR 1961 Mys 3.
Art. 19 (1) (g)—AIR 1957 S C 790
Overruled in AIR 1962 S C 1621.
Art. 19 (5)—AIR 1954 All 257
Reversed in AIR 1954 S C 728.
Art. 19—AIR 1959 All 57
Overruled in AIR 1964 S C 416.
Art. 19 (1) (a) and (2)—AIR 1959 All 101 (FB)
Reversed in AIR 1962 S C 955.
Art. 19—AIR 1960 All 637
Overruled in AIR 1962 S C 1052.
Art. 19 (1) (f)—AIR 1962 All 199
Reversed in AIR 1965 S C 314.
Art. 19 (1) (d) and (e)—AIR 1963 All 71
Reversed in AIR 1964 S C 416.
Art. 19—AIR 1957 Andh Pra 1047
Overruled in AIR 1962 S C 1052.
Art. 19 (1)(f) and (5)—AIR 1958 Andh Pra 173 (FB)
Reversed in AIR 1962 S C 1687.
Art. 19 (1) (g)—(1957) 59 Bom L R 836.
Reversed in AIR 1961 S C 977.
Art. 19 (1) (f) and (5)—AIR 1951 Cal 85
Reversed in AIR 1954 S C 92.
Art. 19—AIR 1954 Cal 248
Reversed in AIR 1961 S C 16.
Art. 19 (1) (g)—AIR 1961 Cal 258
Impliedly overruled in AIR 1963 S C 1811.
Art. 19 (1) (g)—AIR 1961 Cal 365
Reversed in AIR 1962 Cal 530.
Arts. 19 (1) (f) and 7—AIR 1955 J & K 25 (FB)
[Ed. This case was held overruled by AIR 1962 S C 1476 in AIR 1965 J & K 62 (FB)].
Art. 19—AIR 1953 Madh Bha 257 (FB)
Reversed in AIR 1961 S C 298.
Art. 19 (6)—AIR 1952 Mad 120
Reversed in AIR 1954 S C 747.
Art. 19 (1) (J)—AIR 1959 Mad 142.
Reversed in AIR 1962 S C 316.
Art. 19 (1) (f)—ILR (1962) Mad 449
Reversed in AIR 1965 S C 1578.

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Art. 19 (e)—AIR 1951 Pat 434
Reversed in AIR 1955 S C 282.
Art. 19 (6)—AIR 1953 Punj 30
Overruled in AIR 1963 Punj 9.
Art. 19—AIR 1954 Punj 247
Overruled in AIR 1963 Punj 9.
Art. 19 (6)—AIR 1957 Punj 45
Overruled in AIR 1962 Punj 267 (FB).
Art. 19 (1) (f)—AIR 1960 Punj 196
Overruled in AIR 1962 S C 1476.
Arts. 19 (1) (b), 19 (2), 19 (3)—AIR 1962 Punj 482
Reversed in AIR 1963 Punj 336.

Art. 19 (1)—AIR 1953 Raj 188
Impliedly overruled in AIR 1963 S C 1811.
Art. 19 (1) (g)—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.
Art. 20 (2)—(1956) 58 Bom L R 578
Reversed in AIR 1961 S C 578.
Art. 20 (3)—AIR 1951 Cal 101
Overruled in AIR 1965 S C 1251.
Art. 20 (3)—AIR 1960 Cal 32
Reversed in AIR 1961 S C 1808.
Art. 20 (3)—AIR 1960 Ker 392 (FB)
Overruled in AIR 1961 S C 1808.
Art. 20 (3)—(1960) Cri. Revn. No. 240 of 1960 D/-9-8-1960 (Pat)
Overruled in AIR 1962 Pat 255 (FB).
Art. 22 (4), (5) and (7)—1963 All W R (HC) 559
Overruled in AIR 1964 S C 381.
Art. 22—(1960) Cri Mis. Case No. 186 of 1960, D/-28-7-1960 (All)
Reversed in AIR 1962 S C 1506.
Art. 22—AIR 1952 Punj 309 (FB)
Reversed in AIR 1953 S C 10.
Art. 25 (1)—AIR 1959 Raj 177:
Reversed in AIR 1961 S C 1402.
Art. 26—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.
Art. 29 (2)—AIR 1953 All 90.
Overruled in AIR 1966 All 477 (FB).
Arts. 29 (2), 14—AIR 1964 Ker 39
Reversed in AIR 1964 Ker 316 to the extent it held that the reservation for sportsmen was invalid.
Art. 31 (1)—AIR 1954 S C 447
Overruled in AIR 1964 S C 1043.
Art. 31 (2)—AIR 1955 S C 781
Held overruled by A I R 1959 S C 648 in A I R 1961 Mys 3.
Art. 31—AIR 1957 All 549
Overruled in AIR 1963 S C 1019.
Art. 31 (2)—AIR 1953 Cal 223
Overruled in AIR 1954 Cal 171.
Art. 31—AIR 1954 Cal 248
Reversed in AIR 1961 S C 16.
Art. 31—AIR 1953 Madh B 257 (FB)
Reversed in AIR 1961 S C 298.
Arts. 31, 31A and 31B—AIR 1959 Punj 8
Overruled in AIR 1959 S C 519.
Art. 31A—AIR 1959 Punj 8
Overruled in AIR 1959 S C 519.
Art. 32 (2)—AIR 1954 S C 447
Overruled in AIR 1964 S C 1043.
Art. 32—AIR 1957 S C 790
Overruled in AIR 1962 S C 1621
Art. 47—AIR 1956 Punj 97
Reversed on facts in AIR 1959 S C 65
Art. 51—AIR 1960 Cal 768
Reversed in AIR 1962 Cal 387.
Art. 51—AIR 1954 Pat 262
Reversed in AIR 1959 S C 1073.
Art. 131, Proviso—AIR 1954 S C 447
Overruled in AIR 1964 S C 1043.
Art. 132 (1)—AIR 1958 Andh-Pra 642
Overruled in AIR 1964 Andh-Pra 185.

Constitution of India *(contd.)*
Art. 133—AIR 1952 All 942 (FB)
Overruled in AIR 1961 S C 1795.
Art. 133—AIR 1956 All 638
Overruled in AIR 1957 S C 540.
Art. 133 (1)—AIR 1959 All 10
Overruled in AIR 1963 S C 1322.
Art. 133 (1)—See Appeal No. 211 of 1949, D/- 1-1-1958 (Andh-Pra)
Reversed in AIR 1961 S C 1795.
Art. 133 (1)—AIR 1958 Andh Pra 642
Overruled in AIR 1964 Andh Pra 185.
Art. 133 (1)—AIR 1959 Andh Pra 20
Overruled in AIR 1961 S C 1795.
Art. 133 (1)—AIR 1962 Andh Pra 348
Overruled in AIR 1963 S C 1279.
Arts. 133, 135—AIR 1954 Cal 289
Overruled in AIR 1957 S C 540.
Art. 133 (1)—AIR 1954 Cal 618.
Overruled in AIR 1961 S C 1795.
Art. 133 (1) (a)—(1955) 59 Cal W N 681.
Overruled in AIR 1966 Cal 205 (FB).
Art. 133—AIR 1951 Mad 1051
Overruled in AIR 1957 S C 540.
Art. 133—AIR 1952 Mad 771 (FB)
Overruled in AIR 1961 S C 1795.
Art. 133 (1)—AIR 1953 Mad 878
Overruled in AIR 1957 S C 540.
Art. 133—AIR 1959 Mys 112
Overruled in AIR 1961 S C 1795.
Art. 133 (1)—AIR 1953 Nag 249
Overruled in AIR 1961 S C 1795.
Art. 133 (1)—AIR 1951 Pat 628.
Overruled in AIR 1957 Pat 102 (FB).
Art. 133 (1) (a)—AIR 1956 Punj 228
Overruled in AIR 1957 S C 540.
Art. 134 (1) (c)—AIR 1960 All 458
Overruled in AIR 1961 All 630 (FB).
Art. 134 (1) (c)—AIR 1962 Cal 113
Reversed in AIR 1963 S C 316.
Art. 134—AIR 1951 Mad 1051
Overruled in AIR 1957 S C 540.
Art. 135—AIR 1956 All 321
Overruled in AIR 1957 S C 540.
Art. 135—AIR 1951 Mad 1051
Overruled in AIR 1957 S C 540.
Art. 135—AIR 1953 Mad 878
Overruled in AIR 1957 S C 540.
Art. 136—AIR 1954 S C 513
Overruled in AIR 1965 S C 669.
Art. 136—AIR 1959 S C 93
Overruled in AIR 1965 S C 669.
Art. 136—Cri Misc Case No. 186 of 1960, D/-28-7-1960 (All)
Reversed in AIR 1962 S C 1506.
Art. 161—1956 Andh W R 682
Reversed in AIR 1960 Andh-Pra 259 (SB).
Art. 162—AIR 1962 Ker 72 (FB)
Reversed in AIR 1964 S C 207.
Art. 165—AIR 1954 Trav-Co 331
Overruled in AIR 1962 Ker 90 (FB).
Art. 166—1961 Raj L W 182
Reversed in AIR 1963 S C 1332.
Art. 173 (b)—AIR 1964 Pat 2
Reversed in AIR 1965 S C 282.
Art. 194—AIR 1952 Madh B 31
Overruled in AIR 1959 S C 395.
Art. 225—AIR 1951 Punj 74
Reversed in AIR 1954 S C 207.
Art. 226—AIR 1956 Ajmer 63
Reversed in AIR 1961 S C 1743.
Arts. 226 and 29 (2)—AIR 1953 All 90
Overruled in AIB 1966 All 477 (FB).
Art. 226 (1)—AIR 1953 All 477 (FB)
Overruled in AIR 1961 S C 532.
Art. 226—AIR 1953 All 623
Overruled in AIR 1966 All 477 (FB).

Constitution of India *(contd.)*
Art. 226—AIR 1954 All 232
Overruled in AIR 1965 S C 1767.
Art. 226—AIR 1954 All 428
Overruled in AIR 1966 All 57 (FB).
Art. 226—AIR 1956 All 46
Held impliedly overruled by AIR 1962 S C 1110 in AIR 1965 Punj 507.
Art. 226—AIR 1956 All 503
Overruled in AIR 1966 All 477 (FB).
Art. 226—AIR 1957 All 359
Overruled in AIR 1964 All 7 (FB).
Arts. 226 and 311—ILR (1959) 1 All 226
Overruled in AIR 1961 All 450 (FB).
Art. 226—1960 All L J 546
Overruled in AIR 1966 All 57 (FB).
Art. 226—1963 All L J 752
Overruled in AIR 1964 All 148.
Art. 226—AIR 1964 All 203
Reversed in AIR 1966 All 109.
Art. 226—1965 All L J 211
Overruled in AIR 1966 All 57 (FB).
Arts. 226 and 227—(1958) 1 Andh W R 263
Impliedly overruled in AIR 1959 Andh-Pra 129.
Art. 226—(1960) 40 ITR 200 (Andh-Pra)
Overruled in AIR 1966 S C 81
Art. 226—AIR 1961 Andh-Pra 344
Overruled in AIR 1964 Andh Pra 36 (FB).
Art. 226—AIR 1962 Assam 46
Reversed in 1962 Supp 3 S C R 508.
Art. 226—AIR 1963 Assam 46
Reversed in AIR 1965 S C 1196.
Art. 226—AIR 1956 Bhopal 18
Reversed in AIR 1961 S C 182.
Art. 226—AIR 1959 Cal 533
Reversed in AIR 1962 Cal 460.
Art. 226—AIR 1960 Cal 1 (SB)
Reversed in AIR 1963 S C 1124.
Art. 226—AIR 1961 Cal 267
Reversed in AIR 1962 S C 1044.
Art. 226—AIR 1961 Cal 299
Overruled in AIR 1965 Cal 160.
Art. 226—AIR 1964 Cal 399
Overruled in AIR 1966 S C 81.
Art. 226—(1964) 2 Lab L J 172 (Cal)
Reversed in AIR 1966 Cal 31.
Art. 226—ILR (1961) Ker 291
Held overruled by AIR 1963 S C 874 in AIR 1963 Ker 324.
Art. 226—(1962) 2 Ker L R 210
Held overruled by AIR 1963 S C 874 in AIR 1963 Ker 324.
Art. 226—AIR 1950 M B 46
The case was overruled in A I R 1950 M B 60 which itself was overruled in AIR 1951 M P 121.
Arts. 226 and 32—AIR 1950 M B 60 (FB)
Overruled in AIR 1951 M B 121 (FB).
Art. 226—(1958) 1958 M P L J (Notes) 115
Reversed in 1960 M P L J (Notes) 195.
Art. 226—AIR 1959 Madh-Pra 339 (FB)
Reversed in AIR 1965 S C 1222.
Art. 226—AIR 1953 Mad 96
Overruled in AIR 1957 Mad 17.
Art. 226—AIR 1957 Mad 33
Reversed in AIR 1960 S C 1254.
Art. 226—AIR 1960 Mad 425
Reversed in AIR 1965 S C 111.
Art. 226—AIR 1960 Mad 288
Reversed in AIR 1960 Mad 425.
Art. 226—W. P. No. 41 of 1958, D/- 26-3-1959 (Mys).
Reversed in AIR 1963 S C 375.
Art. 226—AIR 1952 Nag 4
Overruled in AIR 1953 Nag 89 (FB).
Art. 226—(1952) 3 S T C 448 (Nag)
Reversed in AIR 1954 S C 403.

Constitution of India *(contd.)*
Art. 226—AIR 1953 Nag 80
Overruled in AIR 1954 Nag 151 (FB).
Art. 226—AIR 1953 Nag 251
Overruled in AIR 1954 Nag 151 (FB).
Arts. 226, 227, 329—AIR 1954 Nag 166 (FB)
Reversed in AIR 1955 SC 233.
Art. 226—ILR (1951) Cut 398
Reversed in AIR 1952 SC 12.
Art. 226—AIR 1956 Orissa 80
Reversed in AIR 1964 SC 685.
Arts. 226 and 227—(1959) ILR (1959) Cut 425
Reversed in AIR 1963 SC 404.
Art. 226—AIR 1951 Pat 434
Reversed in AIR 1955 SC 282.
Arts. 226, 329 (b)—AIR 1953 Pat 47
Held overruled by AIR 1952 SC 64 in AIR 1953 Pat 293.
Art. 226—AIR 1953 Pat 87
Reversed in AIR 1955 SC 661.
Art. 226—(1954) ILR 33 Pat 942
Reversed in AIR 1959 SC 951.
Art. 226—(1958) 9 STC 639 (Pat)
Reversed in AIR 1961 SC 1615.
Arts. 226, 227—AIR 1951 Punj 74
Reversed in AIR 1954 SC 207.
Art. 226—AIR 1956 Punj 235
Reversed in AIR 1960 Punj 82.
Art. 226—AIR 1959 Punj 510
Reversed in AIR 1960 SC 606.
Art. 226—(1960) 62 Pun L R 679
Overruled in AIR 1961 Punj 429 (FB).
Art. 226—(1963) 66 Pun L R 185
Reversed in AIR 1964 Punj 337 (FB).
Art. 226—AIR 1954 T C 55
Overruled in AIR 1954 T C 469 (FB).
Art. 226—AIR 1954 Trav-Co 331
Overruled in AIR 1962 Ker 90 (FB).
Art. 227—AIR 1957 All 495
Overruled in AIR 1962 All 315 (FB).
Art. 227—AIR 1951 Punj 49
Overruled in AIR 1956 SC 66.
Art. 227—AIR 1960 Punj 432
Overruled in AIR 1963 Punj 156.
Art. 228—AIR 1957 All 495
Overruled in AIR 1962 All 315 (FB).
Art. 239—AIR 1954 Kutch 42
Reversed in AIR 1957 SC 517.
Art. 239—AIR 1956 Punj 97
Reversed on facts in AIR 1959 SC 65.
Art. 245—AIR 1956 Assam 48
Overruled in AIR 1957 SC 377.
Art. 245—AIR 1957 Bom 252=59 Bom L R 616
Overruled in AIR 1959 SC 459.
Art. 245—AIR 1957 Ker 146
Overruled in AIR 1958 SC 560.
Art. 245—AIR 1963 Mad 116
Overruled in AIR 1964 SC 922.
Art. 245—AIR 1954 Pat 262
Reversed in AIR 1959 SC 1073.
Art. 245 (1)—AIR 1951 Raj 94 (2)
Reversed in AIR 1954 SC 158.
Art. 246 (3)—AIR 1955 Bom 439.
Overruled in AIR 1958 Bom 68 (FB).
Art. 246—AIR 1962 Guj 88 (FB)
Reversed in AIR 1963 SC 703.
Art. 246—AIR 1957 Ker 146
Overruled in AIR 1958 SC 560.
Art. 246—AIR 1963 Mad 116
Overruled in AIR 1964 SC 922.
Art. 251—AIR 1962 Orissa 24
Reversed in AIR 1964 SC 1284.
Art. 254—AIR 1961 All 320
Overruled in AIR 1962 All 299.
Art. 265—AIR 1959 Andh Pra 352
Reversed in AIR 1965 SC 1773.

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Art. 265—AIR 1957 Punj 45
Overruled in AIR 1962 Punj 267 (FB).
Art. 266—AIR 1957 Punj 45.
Overruled in AIR 1962 Punj 267 (FB).
Art. 276 (2)—1959 Nag L J (N C) 1
(This case was Overruled in AIR 1963 Bom 225 which itself is now Reversed in AIR 1966 SC 249).
Art. 277—AIR 1957 Ker 146
Overruled in AIR 1958 SC 560.
Art. 277—AIR 1962 Ker 72 (FB)
Reversed in AIR 1964 SC 207.
Art. 278—AIR 1953 Raj 145 (FB).
Reversed in AIR 1961 SC 683.
Art. 286 (1) (a), Expl. and (2), Sch. 7, List II, Entry 54—AIR 1953 SC 252
Overruled in AIR 1955 SC 661.
Art. 286 (1) (a)—AIR 1958 SC 468
(This case was held in AIR 1961 Mys 3, to have been Overruled in AIR 1959 SC 648)
Art. 286—AIR 1959 Andh Pra 36
Overruled in (1960) 2 Andh W R 244 (FB).
Art. 286 (1) (a)—AIR 1962 Andh Pra 75
Reversed in AIR 1966 SC 563.
Art. 286 (2)—AIR 1956 Assam 177
Reversed in AIR 1962 SC 107.
Art. 286 (1) (a)—(1960) ILR (1960) Ker 1395
Reversed in AIR 1964 SC 569.
Art. 286 (1) (a)—ILR (1961) 2 Ker 116.
Reversed in AIR 1965 SC 161.
Art. 286—(1960) 11 STC 242 (Pat).
Reversed in AIR 1964 SC 584.
Art. 286 (1) (b)—AIR 1964 Raj 5
Reversed in AIR 1966 SC 142.
Art. 295 (1) (b)—AIR 1960 Madh Pra 330
Reversed in AIR 1964 SC 1903.
Art. 295—AIR 1953 Raj 145 (FB)
Reversed in AIR 1961 SC 683.
Art. 299—AIR 1962 Madh Pra 102 (FB)
Reversed in AIR 1967 SC 203.
Art. 300—AIR 1955 Cal 282
Reversed in AIR 1960 SC 1355.
Art. 301—AIR 1955 Assam 249 (SB)
Reversed in AIR 1961 SC 232.
Art. 301—AIR 1956 Bom 1
Reversed in AIR 1957 SC 699.
Art. 309—AIR 1958 Raj 250
Overruled in AIR 1964 SC 600.
Art. 310—AIR 1963 Assam 94
Reversed in AIR 1964 SC 600.
Art. 310—AIR 1958 Raj 250
Overruled in AIR 1964 SC 600.
Art. 311 (2)—(1960) ILR (1960) 12 Assam 441
Reversed in AIR 1964 SC 600.
Art. 311 (2)—AIR 1962 Assam 88.
Reversed in AIR 1963 SC 1612.
Art. 311—AIR 1963 Assam 94
Reversed in AIR 1964 SC 600.
Art. 311—AIR 1959 Bom 134
Reversed in AIR 1962 SC 630.
Art. 311—AIR 1960 Cal 209
Held overruled by AIR 1962 SC 1704 in AIR 1966 SC 1197.
Art. 311—AIR 1961 Cal 626
Overruled in AIR 1966 SC 951.
Art. 311 (2)—AIR 1957 Madh Bha 15
Reversed in AIR 1961 SC 1017.
Art. 311 (2)—(1958) 1958 MPLJ (Notes) 68
Reversed in 1960 MPLJ (Notes) 186.
Art. 311—AIR 1954 Mad 1155
Reversed in AIR 1955 SC 817.
Art. 311 (2)—AIR 1962 Mad 379
Overruled in AIR 1964 SC 600.
Art. 311 (2)—AIR 1954 Nag 229
Overruled in AIR 1962 SC 794.

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Art. 311—AIR 1956 Nag 113
Overruled in AIR 1958 SC 36.
Art. 311 (2)—AIR 1957 Orissa 184
Overruled in AIR 1963 SC 1612.
Art. 311 (2)—(1958) ILR (1958) Cut 77
Reversed in AIR 1961 SC 177.
Art. 311 (2)—AIR 1960 Orissa 37
Overruled in AIR 1963 SC 1612.
Art. 311—AIR 1956 Pat 221
Overruled in AIR 1964 SC 600.
Art. 311—AIR 1957 Punj 42
Overruled in AIR 1958 SC 36.
Art. 311—AIR 1957 Punj 191
Reversed in AIR 1962 SC 1711.
Art. 311—AIR 1957 Punj 191
Overruled in AIR 1958 SC 36.
Art. 311—(1958) 60 Pun L R 277
Overruled in AIR 1959 Punj 503.
Art. 311—AIR 1962 Punj 516
Reversed in AIR 1964 SC 423.
Art. 311 (2)—AIR 1963 Punj 87
Reversed in AIR 1964 SC 787.
Art. 311—AIR 1957 Raj 81
Overruled in AIR 1958 SC 36.
Art. 311—AIR 1959 Raj 250
Overruled in AIR 1964 SC 600.
Art. 311—ILR (1961) 11 Raj 260
Reversed in AIR 1964 SC 1361.
Art. 311—AIR 1954 Sau 146
Reversed in AIR 1957 SC 892.
Art. 311 (2)—AIR 1960 Tripura 31
Reversed in AIR 1963 SC 601.
Art. 314—AIR 1963 Punj 87
Reversed in AIR 1964 SC 787.
Art. 320—AIR 1957 Punj 191
Reversed in AIR 1962 SC 1711.
Art. 348 (3)—(1961) 1961 All L J 508
Overruled in AIR 1962 All 240.
Art. 359 (1)—(1963) 1963 All W R (HC) 559
Overruled in AIR 1964 SC 381.
Art. 362—AIR 1959 Punj 440
Reversed in AIR 1963 SC 222.
Art. 363—AIR 1954 SC 447
Overruled in AIR 1964 SC 1043.
Art. 363—AIR 1952 Sau 49 (FB)
Reversed in AIR 1954 SC 680.
Art. 367—AIR 1961 Cal 258
Impliedly overruled in AIR 1963 SC 1811.
Art. 372—AIR 1957 Ker 146
Overruled in AIR 1958 SC 560.
Art. 372—AIR 1962 Ker 72 (FB)
Reversed in AIR 1964 S C 207.
Art. 372—AIR 1951 Mad 1051
Overruled in AIR 1957 S C 540.
Sch. 7, List I, Entry 94, List III, Entry 45, Art. 245
—(1957) 59 Bom L R 769
Reversed in AIR 1958 S C 538.
Sch. 7, List 1, Entry 48—AIR 1959 Cal 89
Reversed in AIR 1963 S C 90.
Sch. 7, List 1, Item 97—AIR 1962 Ker 72 (FB)
Reversed in AIR 1964 S C 207.
Sch. 7, List I, Entry 54—AIR 1962 Orissa 24
Reversed in AIR 1964 S C 1284.
Sch. 7, List II, Entry 3—AIR 1956 All 258
Overruled in AIR 1962 All 315 (FB).
Sch. 7 List II Entry 23—AIR 1962 Orissa 24
Reversed in AIR 1964 S C 1284.
Sch. 7, List II, Item 26—AIR 1960 Andh Pra 395
Overruled in AIR 1964 S C 922.
Sch. 7, List II, Entry 54—AIR 1960 Andh Pra 395
Reversed in AIR 1964 S C 922.
Sch. 7, List 2, Entry 54—AIR 1958 Mad 581
Reversed in AIR 1965 S C 1082.
Sch. 7, List 2, Entry 54—AIR 1963 Mad 116
Overruled in AIR 1964 S C 922.

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Sch. 7, List 2, Entry 54—AIR 1957 Raj 104
Overruled in AIR 1958 S C 560
Sch. 7, List 3, Entry 13—AIR 1961 All 320
Overruled in AIR 1962 All 299.

Contempt of Courts Act (1926)
S. 1—AIR 1952 Orissa 215
Reversed in AIR 1960 S C 190.
S. 2—AIR 1950 All 556 (FB)
Reversed in AIR 1954 S C 10
S. 2 (3)—AIR 1955 N U C (Madh B) 3775 = Madh B L J 1955 H C R 666
Reversed in AIR 1959 S C 102.
S. 2—AIR 1951 Punj 49
Overruled in AIR 1956 S C 66.
S. 3—AIR 1956 All 258
Overruled in AIR 1962 All 315 (FB).
S. 3—1962 (2) Cri L J 118 (All)
Reversed in AIR 1963 S C 692.
S. 3—AIR 1954 Nag 71
Impliedly overruled in AIR 1956 S C 66.
S. 3—AIR 1954 Pat 289
Reversed in AIR 1956 S C 66.

Contract Act (1872)
S. 2 (b) and (e)—(1955) 1955 Lab App Cas 140 (All)
Reversed in AIR 1957 S C 95.
S. 2—(1961) 65 Cal W N 441
Reversed in AIR 1964 S C 152.
S. 11—AIR 1958 Pat 177
Overruled in AIR 1961 S C 680.
S. 16—AIR 1958 Punj 190
Reversed in AIR 1963 S C 1279.
S. 16—AIR 1958 Punj 190
Reversed in AIR 1963 S C 1279.
S. 20—AIR 1952 Pat 393
Reversed in AIR 1954 S C 165.
S. 20—AIR 1961 Raj 193
Reversed in AIR 1964 Raj 140.
S. 23—AIR 1961 All 347
Overruled in AIR 1964 All 1 (FB).
S. 23—(1960) 1960 N L J 335
Overruled in (1961) Nag L J (Notes) 27.
S. 23—AIR 1962 Cal 544
Reversed in AIR 1965 Cal 252.
S. 23—AIR 1952 Raj 81
Reversed in AIR 1954 S C 500.
S. 30—AIR 1952 Raj 81
Reversed in AIR 1954 S C 500.
S. 32—AIR 1961 Punj 143.
Overruled in AIR 1963 Punj 49.
S. 49—AIR 1952 Raj 81
Reversed in AIR 1954 S C 500.
S. 55—AIR 1950 Nag 78
Overruled in AIR 1954 Nag 334.
S. 56—AIR 1951 Cal 332
Reversed in AIR 1954 S C 44.
S. 56—AIR 1958 Pat 589
Overruled in AIR 1963 S C 454.
S. 58—AIR 1961 Punj 143
Overruled in AIR 1963 Punj 49.
S. 63—AIR 1957 Assam 133
Reversed in AIR 1965 S C 1679.
S. 64—AIR 1957 Madh B 53
Reversed on another point in AIR 1962 S C 366.
S. 65—AIR 1961 All 347
Overruled in AIR 1964 All 1 (FB).
S. 65—(1957) 2 Andh W R 226
Overruled in (1959) 2 Andh W R 241.
S. 69—AIR 1959 Andh Pra 352
Reversed in AIR 1965 S C 1773.
S. 70—AIR 1959 Andh Pra 352
Reversed in AIR 1965 S C 1773.
S. 70—(1961) 65 Cal W N 441
Reversed in AIR 1964 S C 152.

Contract **Act** *(contd.)*
S. 73—AIR 1957 Madh B 53
Reversed in AIR 1962 S C 366.
S. 74—AIR 1952 Bom 310
Overruled in AIR 1963 S C 1405.
S. 161—AIR 1954 All 747
Overruled in AIR 1956 All 338 (FB).
S. 182—AIR 1952 Bom 306
Reversed in AIR 1954 S C 504.
Ss. 201, 204, 69—AIR 1962 Him Pra 43
Reversed in AIR 1964 S C 1658.
S. 213—(1957) 2 Andh W R 226
Overruled in AIR 1960 Andh Pra 186.

CO OPERATIVE SOCITIES

—Co-operative Societies Act (1912)
S. 43—AIR 1956 Ajmer 63
Reversed in AIR 1961 S C 1743.
S. 43 (2)—AIR 1960 All 294
Overruled in AIR 1966 All 12 (FB).

—Madras Co operative Societies Act (6 of 1932)
Ss. 49 and 51—(1957) 2 Andh W R 226
Overruled in AIR 1960 Andh Pra 186.
S. 51—AIR 1951 Mad 352
Overruled in AIR 1954 Mad 103 (FB).
S. 51—AIR 1961 Mad 217
Reversed in AIR 1964 Mad 703.

Cotton Textile (Control of Movement) Order (1948)
S. 3—AIR 1958 Pat 247
Reversed in AIR 1960 S C 47.

Court-fees Act (1870)
S. 4—AIR 1954 All 812
Overruled in AIR 1955 All 510 (FB).
S. 7 (iv) (b) and (c) and Sch. II, Art. 17 (vi) — AIR 1951 Cal 410
Overruled in AIR 1963 Cal 46 (SB).
S. 7 (iv) (c)—AIR 1951 Cal 410
Overruled in AIR 1963 Cal 46 (SB).
S. 7 (iv) (c) — 1958 Cal L J 262
Overruled in AIR 1963 Cal 46 (SB).
S. 7 (iv) (c) — AIR 1959 Cal 537
Overruled in AIR 1961 Cal 229 (SB).
S. 7 (iv) (c) — AIR 1957 Raj 277
Overruled in AIR 1960 Raj 171.
S. 7 (iv) (e) — AIR 1952 Mys 80
Overruled in AIR 1955 Mys 65 (FB).
S. 7 (iv) (f)—AIR 1949 Nag 4
Overruled in AIR 1956 Nag 195.
S. 7 (iv-A) (U. P.) — AIR 1953 All 550
Overruled in AIR 1956 All 492.
S. 7 (v) — AIR 1957 All 337
Overruled in AIR 1957 All 402 (FB).
S. 7 (v) — AIR 1955 Cal 144
Overruled in AIR 1961 Cal 229 (SB).
S. 7 (v)—AIR 1959 Cal 537
Overruled in AIR 1961 Cal 229 (SB).
S. 8B (3) (Ben)—AIR 1953 Cal 42
Overruled in AIR 1961 Cal 491 (FB).
S. 12—AIR 1961 Ker 146
Held impliedly overruled by AIR 1961 S C 1299 in AIR 1962 Ker 84.
S. 13—AIR 1934 Cal 615
Overruled in AIR 1966 Cal 267 (FB).
S. 28 — (1897) ILR 20 Mad 319
Held overruled by (1909) ILR 32 Mad 305 in AIR 1966 Ker 150.
Sch. II, Art. 17 (vi)—AIR 1951 Cal 410
Overruled in AIR 1963 Cal 46 (SB).

Criminal Law Amendment Act (46 of 1952)
S. 6—ILR (1958) Andh Pra 791=1958 An L T 701
Reversed in AIR 1961 S C 1241.

Criminal Law Amendment Act *(contd.)*
S. 7 — AIR 1956 Cal 385
Reversed in AIR 1959 S C 8.
S. 8 (1) and (3)—AIR 1954 Mad 350
Overruled in AIR 1958 Mad 571.

Criminal Procedure Code (5 of 1898)
S. 4 (1) (k)—AIR 1960 Andh Pra 391
Overruled in AIR 1962 Andh Pra 236
S. 4 (1) (m) — AIR 1954 Pat 289
Reversed in AIR 1958 S C 66.
S. 10 (2)—AIR 1953 All 62
Overruled in AIR 1961 S C 606.
S. 14 (9) — AIR 1959 All 763
Overruled in AIR 1965 All 294.
S. 94—AIR 1951 Cal 101
Overruled in AIR 1965 S C 1251.
S. 94—AIR 1954 Cal 216
Held impliedly overruled by AIR 1961 S C 493 in AIR 1963 Orissa 111.
S. 96—AIR 1951 Cal 101 (FB)
Overruled in AIR 1965 S C 1251.
S. 99A — AIR 1957 All 538 (SB)
Reversed in AIR 1961 S C 1662.
S. 99A—AIR 1959 Andh Pra 572 (SB)
Overruled in AIR 1961 S C 1662.
S. 99A—AIR 1951 Raj 113 (SB)
Overruled in AIR 1961 S C 1662.
S. 99B—AIR 1959 Andh Pra 572 (SB)
Overruled in AIR 1961 S C 1662.
S. 99D—AIR 1957 All 538
Reversed in AIR 1961 S C 1662.
S. 99D — AIR 1959 Andh Pra 572 (SB)
Overruled in AIR 1961 S C 1662.
S. 99D—AIR 1951 Raj 113 (SB)
Overruled in AIR 1961 S C 1662.
S. 107—(1955) Raj L W 532
Overruled in AIR 1958 Raj 180.
S. 144—AIR 1952 Orissa 215
Reversed in AIR 1960 S C 190.
S. 145 (1)—AIR 1959 All 763
Overruled in AIR 1965 All 294.
S. 145 — 1951 Raj L W 55
Overruled in AIR 1954 Raj 217.
S. 145 (1) — AIR 1952 Raj 100
Overruled in AIR 1954 Raj 217.
S. 145 (1)—AIR 1954 Raj 51
Overruled in AIR 1954 Raj 217.
S. 145—AIR 1959 Raj 153 (1)
Overruled in AIR 1961 Raj 216 (FB).
S. 146 (1B)—AIR 1958 Pat 85
Overruled in AIR 1963 Pat 243 (FB).
S. 146 (1)—AIR 1959 Raj 153 (1)
Overruled in AIR 1961 Raj 216 (FB).
S. 146 (1)—AIR 1960 Raj 279
Overruled in AIR 1961 Raj 216 (FB).
S. 154—ILR (1952) 2 Raj 93
Overruled in AIR 1966 SC 119.
S. 156—AIR 1953 Cal 226
Overruled in AIR 1956 Cal 56 (FB).
S. 161—ILR (1961) 2 Cal 544
Overruled in AIR 1962 Cal 135 (FB).
S. 164—AIR 1957 All 184
Overruled in AIR 1966 All 192 (FB).
S. 164—AIR 1959 All 518
Overruled in AIR 1966 All 192 (FB).
S. 169—ILR (1961) 2 Cal 544
Overruled in AIR 1962 Cal 135 (FB).
S. 177—AIR 1959 Cal 500 (FB).
Overruled in AIR 1961 SC 1589.
S. 190 (1) (c)—AIR 1958 Madh Pra 285
Overruled in AIR 1963 Madh Pra 337.
S. 191—AIR 1961 Madh Pra 13
Overruled in AIR 1963 Madh Pra 337.
S. 195 (1) (b)—AIR 1962 All 150
Overruled in 1964 All W R (HC) 232.

Crminal P. C. *(contd.)*
S. 196A—ILR (1958) Andh Pra 791=1958 Andh L T 701
Reversed in AIR 1961 SC 1241.
S. 197—ILR (1954) 4 Raj 464=1954 Raj L W 729
Overruled in AIR 1964 Raj 174.
S. 197—ILR (1959) 9 Raj 38=1959 Raj L W 51
Overruled in AIR 1964 Raj 174.
S. 198—AIR 1958 Bom 196
Overruled in AIR 1961 SC 387.
S. 198B—AIR 1958 Bom 196
Overruled in AIR 1961 SC 387.
S. 198B (13)—AIR 1959 Ker 100
Overruled in AIR 1961 SC 387.
S. 198-B (3) (a)—AIR 1962 Orissa 197
Reversed in AIR 1963 SC 1198.
S. 198-B (1) & (13)—ILR (1960) 10 Raj 1378
Overruled in AIR 1961 SC 387.
S. 200—AIR 1958 Bom 335
Reversed in AIR 1960 SC 1113.
S. 203—AIR 1958 Bom 335
Reversed in AIR 1960 SC 1113.
S. 203—AIR 1961 Cal 461 (FB)
Reversed in AIR 1962 SC 876.
S. 204—AIR 1961 Cal 461=1961 (2) Cri LJ 204(FB)
Reversed in AIR 1962 SC 876.
S. 205—AIR 1958 Cal 431
Overruled in AIR 1962 Cal 203 (FB).
Ss 206-220—60 Cal W N 82
Overruled in AIR 1967 Cal 42.
S. 207 (4)—AIR 1957 Trav-Co 29
Overruled in AIR 1961 Ker 1 (FB).
S. 207A—AIR 1961 All 612
Held overruled by AIR 1963 All 161 (FB) **in** AIR 1964 Orissa 37.
S. 207-A (4)—AIR 1961 All 614
Overruled in AIR 1963 All 161 (FB)
S. 207A—AIR 1959 Andh Pra 651
Overruled in (1960) 1 Andh W. R 305
S. 207A (4) — I L R (1959) Ker 469=1959 Ker L J 454
Overruled in AIR 1961 Ker 1 (FB).
S. 207A (4)—AIR 1957 Mys 61
Overruled in AIR 1961 SC 674.
S. 207-A (4)—AIR 1958 Orissa 241
Overruled in AIR 1961 SC 674.
S. 207A (4)—AIR 1959 Raj 294
Overruled in AIR 1961 SC 674.
S. 209—AIR 1952 All 231 (FB)
Overruled in AIR 1966 SC 911.
S. 222 (2), Proviso—AIR 1960 Bom 205
Reversed in AIR 1962 SC 1153.
S. 233—ILR (1958) Andh Pra 791=1958 Andh L T 701
Reversed in AIR 1961 SC 1241.
S. 233—AIR 1960 Bom 205
Reversed in AIR 1962 SC 1153.
S. 234—I L R (1958) Andh Pra 791=1958 Andh L T 701
Reversed in AIR 1961 SC 1241.
S. 234—AIR 1954 All 501
Overruled in AIR 1963 SC 1850.
S. 234—AIR 1960 Bom 205
Reversed in AIR 1962 SC 1153.
S. 235—AIR 1954 All 501
Overruled in AIR 1963 SC 1850.
S. 235—ILR (1958) Andh Pra 791=1958 Andh L T 701
Reversed in AIR 1961 SC 1241.
S. 235 (1)—AIR 1959 Cal 500 (FB)
Overruled in AIR 1961 SC 1589.
S. 236—AIR 1954 All 501
Overruled in AIR 1963 SC 1850.
S. 239—AIR 1954 All 501 (DB)
Overruled in AIR 1963 SC 1850.
S. 239—AIR 1956 Andh Pra 21
Overruled in AIR 1963 SC 1850.

Criminal P. C. *(contd.)*
S. 239—I L R (1958) Andh Pra 791=1958 Andh L T 701
Reversed in AIR 1961 SC 1241.
S. 239 (d)—AIR 1959 Cal 500 (FB)
Overruled in AIR 1961 SC 1589.
S. 247—AIR 1959 All 425
Overruled in AIR 1961 All 352.
S. 251-A—AIR 1960 Andh Pra 391
Overruled in AIR 1962 Andh Pra 236.
S. 251-A—AIR 1958 Madh Pra 285
Overruled in AIR 1963 Madh Pra 337.
S. 251A—AIR 1961 M P 13
Overruled in AIR 1963 M P 337.
S. 251A—AIR 1963 Madh Pra 337
Overruled in AIR 1966 Madh Pra 1.
S. 252—AIR 1961 M P 13
Overruled in AIR 1963 M P 337.
S. 253—AIR 1952 All 231 (FB)
Overruled in AIR 1966 S C 911.
S. 257—AIR 1954 Cal 216
Held impliedly overruled by A I R 1961 S C 493 **in** AIR 1963 Orissa 111.
S. 285—AIR 1953 Raj 105
Reversed in AIR 1953 S C 174.
S. 342—AIR 1958 Cal 431
Overruled in AIR 1962 Cal 203 (FB).
S. 342—AIR 1960 Cal 32
Reversed in AIR 1961 S C 1808.
S. 342—AIR 1945 Nag 1
Overruled in AIR 1956 S C 238.
S. 347 (1)—1956 All W R (Sup) 5=60 Cal W N 82
Overruled in AIR 1967 Cal 42.
S. 350—AIR 1954 Mad 350
Overruled in AIR 1958 Mad 571.
S. 386—ILR (1958) Ker 291=1957 Ker L J 1136
Reversed in AIR 1961 S C 617.
S. 401—1956 Andh W R 682
Reversed in AIR 1960 Andh Pra 259.
S. 403—AIR 1955 Cal 540
Reversed in AIR 1960 S C 239.
S. 403—AIR 1961 Cal 461 (FB)
Reversed in AIR 1962 S C 876.
S. 417 (3) and (4)—AIR 1958 All 691
Overruled by AIR 1961 All 139 (FB) **which itself is overruled in** AIR 1964 S C 260.
S. 417 (3)—AIR 1961 All 139 (FB)
Overruling AIR 1958 All 691;
Overruled in AIR 1964 S C 260.
S. 417 (3) & (4)—AIR 1957 Andh Pra 406
Overruled in AIR 1964 S C 260.
S. 417 (4)—AIR 1958 Andh Pra 230
Overruled in AIR 1964 S C 260.
S. 431—AIR 1957 Cal 24
Reversed in AIR 1959 S C 144.
S. 435—(1958) 1 Andh W R 263
Impliedly overruled in AIR 1959 Andh Pra 129.
S. 435A—AIR 1960 Andh Pra 391
Overruled in AIR 1962 Andh Pra 236.
S. 436—AIR 1960 Andh Pra 391
Overruled in (1962) 1 Andh W R 69=A I R 1962 Andh Pra 236.
S. 437—AIR 1952 All 231
Overruled in AIR 1966 S C 911.
S. 437—AIR 1954 All 163
Overruled in AIR 1966 S C 911.
S. 437—60 Cal W N 808=ILR (1957) 3 Cal 297
Overruled in AIR 1966 S C 911.
S. 439—AIR 1954 All 163
Overruled in AIR 1966 S C 911.
S. 439—(1958) 1 Andh W R 263
Impliedly overruled in AIR 1959 Andh Pra 129.
S. 439—AIR 1960 Andh Pra 391
Overruled in (1962) 1 Andh W R 69 = AIR 1962 Andh Pra 236.

Criminal P. C. *(contd.)*
S. 439—AIR 1957 Cal 24
Reversed in AIR 1959 S C 144.
S. 439—AIR 1958 Pat 85
Overruled in AIR 1963 Pat 243 (FB).
S. 439—AIR 1962 Pat 468
Overruled in AIR 1963 Pat 243 (FB).
S. 439 (6)—AIR 1953 Raj 17
Overruled in AIR 1955 S C 633.
S. 476—AIR 1960 Bom 483
Overruled in AIR 1963 S C 816.
S. 476—AIR 1959 All 744
Overruled in AIR 1963 S C 816.
S. 476B—AIR 1959 All 529
Overruled in AIR 1963 All 352.
S. 479-A—AIR 1959 All 744
Overruled in AIR 1963 S C 816.
S. 479-A—AIR 1962 All 251
Overruled in AIR 1963 S C 816.
S. 479A (5)—AIR 1959 Assam 197
Reversed in AIR 1960 S C 133.
S. 479-A—AIR 1960 Bom 483.
Overruled in AIR 1963 S C 816.
S. 479-A—AIR 1961 Raj 220
Overruled in AIR 1966 S C 1863.
S. 488—AIR 1955 Punj 141
Overruled in AIR 1960 S C 89.
S. 488—1962 (2) Cri L J 581 (Punj)
Impliedly overruled by AIR 1961 S C 1500.
S. 491—AIR 1950 M B 60 (FB)
Overruled in AIR 1951 M B 121 (FB).
S. 496—AIR 1952 Madh B 161
Overruled in AIR 1954 Madh B 113 (FB).
S. 497—AIR 1960 M P 54
Overruled in AIR 1964 M P 276.
S. 497 (1)—AIR 1952 Madh B 161
Overruled in AIR 1954 Madh B 113 (FB).
S. 497 — AIR 1952 Raj 156
Overruled in AIR 1954 Raj 279.
S. 498 — AIR 1960 Madh Pra 54
Overruled in AIR 1963 Madh Pra 276.
S. 517 — AIR 1959 All 96
Overruled in AIR 1961 All 544.
S. 520 — AIR 1959 All 96
Overruled in AIR 1961 All 544.
S. 526 (1) (d)—AIR 1953 All 698
Overruled in AIR 1962 All 288.
S. 529 (e)—AIR 1956 Cal 385=1956 Cri L J 991
Reversed in AIR 1959 S C 8.
S. 530—AIR 1960 Bom 205
Reversed in AIR 1962 S C 1153.
S. 530—AIR 1956 Cal 385
Reversed in AIR 1959 S C 8.
S. 531—AIR 1952 Trav-Co 56
Overruled in AIR 1956 Trav-Co 29.
S. 537—(1956) 60 Cal W N 82
Overruled in AIR 1967 Cal 42.
S. 537—AIR 1951 Raj 16
Overruled in AIR 1952 Raj 160.
S. 540-A—AIR 1958 Cal 431
Overruled in AIR 1962 Cal 203 (FB).
S. 561A—AIR 1954 Bom 65 (FB).
Overruled in AIR 1964 SC 703.
S. 561A—1963 (1) Cri L J 507
Overruled in AIR 1965 All 263.

Custom (Punjab)
AIR 1952 Punj 79
Overruled in AIR 1959 Punj 339 (FB).
ILR (1955) Punj 469
Reversed in AIR 1961 S C 1374.

DEBT LAWS

—Bengal Money Lenders Act (10 of 1940)
S. 35—AIR 1955 N U C (Cal) 4279
Overruled in AIR 1960 Cal 138.

DEBT LAWS *(contd.)*
—C. P. and Berar Relief of Indebtedness Act (14 of 1939)
S. 15 (2)—AIR 1952 Nag 175
Overruled in AIR 1955 Nag 245.

—Displaced Persons (Debts Adjustment) Act (70 of 1951)
S. 2 (6) (c)—AIR 1958 Punj 420
Overruled in AIR 1958 Punj 456 (FB).
S. 2 (10)—(1955) 57 Pun L R 246
Overruled in AIR 1958 Punj 57 (DB).
S. 4—AIR 1962 All 378
Overruled in AIR 1964 All 504 (FB).
S. 13—AIR 1958 Punj 420
Overruled in AIR 1958 Punj 456 (FB).
S. 17—AIR 1952 Punj 400=ILR (1953) Punj 182
Overruled in AIR 1954 Punj 66 (DB).
S. 25—AIR 1957 All 352
Overruled in AIR 1964 All 504 (FB).

—Hyderabad Money-lenders Act (5 of 1349F)
Preamble — AIR 1952 Hyd 58
Overruled in AIR 1955 Hyd 113 (FB).
S. 3 (5) (a), (b)—AIR 1952 Hyd 58 (Pts D, E)
Overruled in AIR 1955 Hyd 113 (FB).
S. 9—AIR 1952 Hyd 98
Overruled in (1962) 2 Andh W R 137.

—Kerala Agriculturists Debt Relief Act (31 of 1958)
S. 2 (c)—1961 Ker L T 377
Overruled in AIR 1966 Ker 42 (FB).
S. 9 (3)—1963 Ker L J 260
Overruled in AIR 1964 Ker 198 (FB).
S. 11—1960 Ker L T 1207
Overruled in AIR 1965 Ker 128 (FB).
S. 11—1963 Ker L T 100
Overruled in AIR 1965 Ker 128 (FB).
S. 11—1963 Ker L J 260
Overruled in 1963 Ker L J 403.
S. 15—1964 Ker L T 12
Overruled in AIR 1966 Ker 42 (FB).
S. 15 (1)—1961 Ker L T 377
Overruled in AIR 1966 Ker 42 (FB).

—Madras Agriculturists' Relief Act (4 of 1938)
S. 9—AIR 1957 Andh Pra 204
Overruled in (1) (1960) Andh W R 336; (2) AIR 1962 Andh Pra 431 (FB).
S. 9A—AIR 1958 Mad 117
Overruled in AIR 1962 Mad 21 (FB).
S. 9A (10) (ii) (b)—AIR 1955 Mad 245
Overruled in AIR 1962 Mad 21 (FB).
S. 13—AIR 1957 Andh Pra 204
Overruled in (1) 1960 Andh W R 336; (2) AIR 1962 Andh Pra 431 (FB).
S. 13—AIR 1957 Andh Pra 476
Overruled in AIR 1961 Andh Pra 224.
S. 16—AIR 1953 Mad 914
Reversed in AIR 1959 S C 275.
S. 19 (2)—AIR 1953 Mad 914
Reversed in AIR 1959 S C 275.

—Madras Indebted Agriculturists' (Repayment of Debts) Act (1 of 1955)
S. 2 (a) (1)—(1959) 2 Mad L J 420
Overruled in (1962) 2 Mad L J 399.

—Madras Indebted Agriculturists' (Temporary Relief) Act (5 of 1954)
S. 3—AIR 1957 Ker 41
Overruled in AIR 1961 Ker 138 (FB).
S. 4—AIR 1957 Ker 41
Overruled in AIR 1961 Ker 138 (FB).

DEBT LAWS *(contd.)*

—Punjab Relief of Indebtedness Act (7 of 1934)

S. 30—(1959) 61 Pun L R 77
Overruled in (1964) 66 Pun L R 93.

S. 31—(1959) 61 Pun L R 77
Overruled in (1964) 66 Pun L R 93.

—Usurious Loans Act (10 of 1918)

S. 3 (1)—AIR 1950 Pat 379
Overruled in AIR 1955 Pat 494.

S. 3 (3)—AIR 1953 Punj 116
Overruled in AIR 1962 Punj 1 (FB).

—Uttar Pradesh Agriculturists' Relief Act (27 of 1934)

S. 5 (2)—AIR 1952 All 808
Overruled in AIR 1956 All 337 (1) (FB).

S. 12—AIR 1950 All 192=51 Cri L J 1310
Overuled in AIR 1951 All 643 (FB).

S. 23 (1)—AIR 1952 All 808
Overruled in AIR 1956 All 337 (1) (FB).

—U. P. Encumbered Estates Act (25 of 1934)

S. 7 (2) — AIR 1964 All 203
Reversed in AIR 1966 All 109.

S. 14—1959 All L J 211
Overruled in AIR 1963 All 230 (FB).

Ss. 14, 24—AIR 1954 Pat 164
Reversed in AIR 1959 S C 809.

S. 19-A —1959 All L J 211
Overruled in AIR 1963 All 230 (FB).

S. 35—AIR 1964 All 203
Reversed in AIR 1966 All 109.

S. 46 (2)—AIR 1964 All 203
Reversed in AIR 1966 All 109.

—U. P. Encumbered Estates Rules

R. 6—AIR 1964 All 203
Reversed in AIR 1966 All 109.

—U. P. Zamindars' Debt Reduction Act (15 of 1953)

S. 34 — 1959 All L J 211
Overruled in AIR 1963 All 230 (FB).

Defence of India Rules (1939)

R. 81 (4)—AIR 1951 All 44
Held overruled by AIR 1951 S C 332 as interpreted in AIR 1953 Nag 58.

Defence of India Rules (1962)

R. 30—AIR 1965 Punj 113 = 1965 (1) Cri L J 331 (Pts A, B)
Reversed in AIR 1965 S C 1619.

R. 30-A—1964 (2) Cri L Jour 119 (Tripura) (Pt B)
Reversed in AIR 1965 S C 596.

R. 30-A—1964 (2) Cri L J 119 (Tripura) (Pt D)
Revessed in AIR 1965 S C 596.

Delhi Excise Rules

R. 1—AIR 1956 Punj 97.
Reversed on facts in AIR 1959 S C 65.

R. 5.1—AIR 1956 Punj 97.
Reversed on facts in AIR 1959 S C 65.

R. 5.17—AIR 1956 Punj 97
Reversed on facts in AIR 1959 S C 65.

Disciplinary Proceedings (Administrative Tribunal) Rules (1951)

R. 4 (i) (a) and (b)—AIR 1960 Orissa 68
Reversed in AIR 1963 S C 779.

R. 7 (2)—ILR (1959) Cut 425
Reversed in AIR 1963 S C 404.

Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954)

S. 24 (1)—AIR 1962 Raj 112 (FB)
Overruled in AIR 1964 S C 1536.

Displaced Persons (Compensation and Rehabilitation) Rules (1955)

R. 30, Expln. I—(1962) 64 Pun L R 755
Overruled in AIR 1963 Punj 246.

R. 65—AIR 1959 Raj 102
Reversed in AIR 1963 S C 181.

R. 65 (1)—AIR 1960 Bom 528
Overruled in AIR 1963 S C 181.

Displaced Persons (Institution of Suits) Act (47 of 1948)

S. 4—AIR 1954 Punj 181
Overruled in AIR 1958 Punj 456.

Divorce Act (4 of 1869)

S. 14—AIR 1954 Pat 560
Reversed in AIR 1958 S C 441.

S. 16—AIR 1953 Mad 858
Overruled in AIR 1955 Mad 341 (FB).

S. 19—AIR 1953 Mad 858
Overruled in AIR 1955 Mad 341 (FB).

Dock Workers (Regulation of Employment) Act (9 of 1948)

S. 2 (b) (c)—AIR 1960 Cal 166
Overruled in AIR 1962 Cal 530.

S. 3—AIR 1961 Cal 365
Reversed in AIR 1962 Cal 530.

Durga Khawaja Saheb Act (36 of 1955)

S. 2 (d) (v)—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.

S. 5—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.

S. 11 (b)—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.

S. 13 (1) — AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.

S. 14—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.

S. 16—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.

S. 18—AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.

Easements Act (5 of 1882)

S. 5—AIR 1951 Nag 447
Reversed in AIR 1954 Nag 103.

S. 7—AIR 1951 Nag 447
Reversed in AIR 1954 Nag 103.

East Punjab Evacuees' (Administration of Property) Act (14 of 1947)

S. 7 (4-A)—AIR 1955 Punj 158
Overruled in AIR 1961 S C 1425.

East Punjab Requisitioning of Immovable Property (Temporary Powers) Act (48 of 1948)

S. 5—AIR 1955 NUC (Punj) 4596
Overruled in AIR 1961 Punj 128 (FB).

Electricity Act (9 of 1910)

S. 6— AIR 1963 Ker 286
Reversed in AIR 1965 S C 1688.

S. 39—AIR 1956 Bom 354 = 1956 Cri L Jour 701
Overruled in AIR 1965 S C 666.

Ss. 39, 50—AIR 1962 Mad 497=1962 (2) Cri L J 764
Overruled in AIR 1964 Mad 367 which itself is now overruled by AIR 1965 S C 666.

Electricity Act *(contd.)*
S. 39—(1964) 2 Cri L J 303=AIR 1964 Mad 367
Overruled in AIR 1965 S C 666.
S. 39—(1964) 1 Cri L J 468 (Pat)
Reversed in AIR 1966 S C 849.
S. 44 (c)—AIR 1965 Pat 76
Reversed in AIR 1967 S C 947.
S. 50—AIR 1956 Bom 354 = 1956 Cri L J 701
Overruled in AIR 1965 S C 666.
S. 50—AIR 1964 Mad 367 = 1964 (2) Cri L J 303
Overruled in AIR 1965 S C 666.
Ss. 50, 30—1964 (1) Cri L J 472 (Pat)
Overruled in AIR 1965 S C 666.

Employee's Provident Funds Act (19 of 1952)
S. 1 (3)—AIR 1961 All 556
Overruled in AIR 1962 All 227 (FB).
S. 1 (3)—ILR (1963) 1 Punj 44
Reversed in AIR 1964 Punj 85.
S. 2 (b) — AIR 1959 Punj 27
Reversed in AIR 1962 Punj 507.
S. 2 (i)—AIR 1963 Punj 19
Reversed in AIR 1965 S C 1076.
S. 2 (j)—AIR 1963 Punj 19
Reversed in AIR 1965 S C 1076.
S. 14 (2)—AIR 1961 All 556
Overruled in AIR 1962 All 227 (FB).
S. 16 (1)—AIR 1965 Mad 508
Overruled in AIR 1966 Mad 416.
S. 19-A—AIR 1955 Mad 387
Overruled in AIR 1964 Mad 371.
Sch. 1—AIR 1963 Punj 19
Reversed in AIR 1965 S C 1076.

Employees' State Insurance Act (34 of 1948)
S. 73—(1959) 2 Mad L J 493
Reversed in AIR 1962 Mad 478, which itself is now Reversed in AIR 1964 S C 1272.
S. 73—AIR 1962 Mad 478
Reversed in AIR 1964 S C 1272.

Essential Commodities Act (10 of 1955)
S. 16—AIR 1958 Pat 247
Reversed in AIR 1960 S C 47.

Essential Supplies (Temporary Powers) Act (24 of 1946)
S. 7—AIR 1951 Nag 226
Reversed in AIR 1954 S C 23.
S. 7 (1)—AIR 1953 Madh B 84
Overruled in AIR 1956 Madh B 138 (FB).
S. 15—AIR 1951 Nag 226
Reversed in AIR 1954 S C 23.

Estates Duty Act (34 of 1953)
S. 70—AIR 1963 Mad 235
Reversed in AIR 1964 Mad 364.

Evacuee Interest (Separation) Act (64 of 1951)
S. 2 (d) (i)—AIR 1957 All 581
Held overruled by AIR 1961 S C 365 in A I R 1966 All 499.

Evidence Act (1 of 1872)
Preamble—AIR 1953 Nag 135
Overruled in AIR 1954 Nag 260.
S. 1—AIR 1953 Nag 135
Overruled in AIR 1954 Nag 260.
S. 3—AIR 1957 Andh Pra 130
Overruled in AIR 1960 S C 990.
S. 3—AIR 1953 Nag 135
Overruled in AIR 1954 Nag 260.
S. 3—AIR 1954 Pat 289=1954 Cri L J 942
Reversed in AIR 1956 S C 66.
S. 4—AIR 1957 Andh Pra 1047
Overruled in AIR 1962 S C 1052.
S. 5—AIR 1950 Pat 134
Reversed in AIR 1956 S C 446.

Evidence Act *(contd.)*
S. 5—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.
S. 8—AIR 1958 Madh Pra 246
Reversed in AIR 1963 S C 890.
S. 9—AIR 1955 All 138 (Pts L and R)
Overruled in AIR 1966 All 192 (FB).
S. 9—AIR 1956 All 122
Overruled in 1959 All L J 548.
S. 9—AIR 1961 All 153=1961 (1) Cri L J 340
Overruled in AIR 1964 All 290.
S. 9—AIR 1961 All 612
Held overruled by AIR 1963 All 161 (FB) (as interpreted in AIR 1964 Orissa 37).
S. 17—AIR 1959 All 518
Overruled in AIR 1966 All 192.
S. 17—AIR 1964 Pat 210
Overruled in AIR 1966 S C 119.
S. 24—AIR 1957 All 184
Overruled in AIR 1966 All 192.
S. 24—AIR 1959 All 518
Overruled in AIR 1966 All 192.
S. 24—AIR 1964 Pat 210
Overruled in AIR 1966 S C 119.
S. 25—AIR 1953 Cal 219=1953 Cri L J 552
Impliedly overruled in AIR 1962 S C 276.
S. 25—AIR 1964 Pat 210
Overruled in AIR 1966 S C 119.
S. 25—AIR 1959 Punj 113=1959 Cri L J 365
Impliedly overruled in AIR 1962 S C 276.
S. 25—AIR 1959 Punj 287=1959 Cri L J 764
Reversed in AIR 1962 S C 276.
S. 25—ILR (1952) 2 Raj 931
Overruled in AIR 1966 S C 119.
S. 27—AIR 1960 All 1
Reversed in AIR 1960 S C 1125.
S. 27—AIR 1960 Bom 488=1960 Cri L J 1429
Held impliedly overruled by AIR 1961 S C 1808 in AIR 1963 Guj 159.
S. 27—AIR 1964 Pat 210
Overruled in AIR 1966 S C 119.
S. 27—ILR (1964) 14 Raj 715
Overruled in AIR 1966 Raj 741.
Ss. 35, 40, 41 and 42—AIR 1962 Cal 544
Reversed in AIR 1965 Cal 252 (DB).
S. 35—AIR 1964 Pat 2
Reversed in AIR 1965 S C 282.
S. 45—AIR 1950 Trav-Co 5
Overruled in AIR 1952 Trav-Co 482 (FB).
S. 57—Madh B L J 1952 (H C R) 119
Overruled in AIR 1956 Madh B 138 (FB).
S. 57—Madh B L J 1952 (H C R) 271
Overruled in AIR 1956 Madh B 138 (FB).
S. 57—Madh B L J 1952 (H C R) 322
Overruled in AIR 1956 Madh B 138 (FB).
S. 57—AIR 1953 Madh B 84=I L R (1953) Madh B 67
Overruled in AIR 1956 Madh B 138 (FB).
S. 73—AIR 1960 Cal 32
Reversed in AIR 1961 S C 1808.
S. 73—AIR 1950 Trav-Co 5
Overruled in AIR 1952 Trav-Co 482.
S. 74—AIR 1963 Guj 226
Reversed on facts in AIR 1965 S C 810.
S. 91—AIR 1955 Bom 122
Reversed in AIR 1958 S C 448.
S. 91—AIR 1952 Pat 393
Reversed in AIR 1954 S C 165.
S. 92, Proviso (1)—AIR 1955 Bom 122
Reversed in AIR 1958 S C 448.
Ss. 101 to 104—AIR 1953 Ajmer 17
Reversed in AIR 1956 S C 404.
Ss. 101 to 104—AIR 1954 Andhra 17
Overruled in AIR 1957 Andh Pra 557.
Ss. 101 to 104—AIR 1960 Bom 418
Reversed in, on appreciation of facts, AIR 1964 S C 40.

Evidence Act *(contd.)*
Ss. 101 to 104—AIR 1962 Cal 370
Reversed in AIR 1966 S C 955.
Ss. 101 to 104—AIR 1963 Guj 226
Reversed in AIR 1965 S C 810.
Ss. 101 to 104—AIR 1958 Mad 104
Overruled in AIR 1966 S C 681.
Ss. 101 to 104—AIR 1951 Nag 226
Reversed in AIR 1954 S C 23.
Ss. 101 to 104—AIR 1954 Pat 560
Reversed on facts in AIR 1958 S C 441.
Ss. 101 to 104—AIR 1964 Pat 2
Reversed on facts in AIR 1965 S C 282.
Ss. 101 to 104—AIR 1958 Punj 190
Reversed in AIR 1963 S C 1279.
Ss. 101 to 104—ILR (1951) 1 Raj 645
Overruled in AIR 1954 Raj 83 (FB).
Ss. 101 to 104—AIR 1957 Raj 138
Overruled in AIR 1960 S C 548.
S. 105—AIR 1956 Nag 187
Overruled in AIR 1964 S C 1563.
S. 106—AIR 1962 Cal 544
Reversed in AIR 1965 Cal 252.
S. 106—AIR 1957 Pat 145
Overruled in AIR 1960 Pat 162.
S. 111—AIR 1958 Punj 190
Reversed in AIR 1963 S C 1279.
S. 114—1961 (1) Cri L J 595 (All)
Reversed in AIR 1963 S C 822.
S. 114—AIR 1958 Cal 264
Reversed in AIR 1964 S C 529.
S. 114—AIR 1953 Mad 461
Overruled in AIR 1964 S C 136.
S. 114—AIR 1962 Orissa 202
Reversed in AIR 1963 Orissa 189.
S. 115—AIR 1956 All 225 (FB)
Held overruled by AIR 1962 S C 847 as interpreted in AIR 1965 All 504.
S. 115—AIR 1956 Mad 680
Overruled in AIR 1962 Mad 450 (FB).
S. 123—AIR 1957 Andh Pra 486
Held impliedly overruled by AIR 1961 S C 493 in AIR 1963 Orissa 111.
S. 123—AIR 1954 Cal 216
Held impliedly overruled by AIR 1961 S C 493 in AIR 1963 Orissa 111.
S. 123—AIR 1960 Pat 192
Held impliedly overruled by AIR 1961 S C 493 in AIR 1963 Orissa 111.
S. 123—AIR 1950 East Punj 228 (FB)
Held impliedly overruled by AIR 1961 S C 493 in AIR 1963 Orissa 111.
S. 123—AIR 1960 Punj 407
Reversed in AIR 1961 S C 493.
S. 145—AIR 1961 All 153
Overruled in AIR 1964 All 290.
S. 145—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.
S. 155—AIR 1963 Punj 298
Overruled in AIR 1964 S C 72.
S. 155 (3)—AIR 1956 Punj 173
Overruled in AIR 1963 Punj 298.
S. 157—AIR 1951 Pepsu 66
Overruled in AIR 1962 S C 424.
S. 157—AIR 1951 Raj 30
Reversed in AIR 1952 S C 54.
S. 162—AIR 1950 East Punj 228 (FB)
Held impliedly overruled by AIR 1961 S C 493 as interpreted in AIR 1963 Orissa 111.
S. 167—AIR 1958 All 54
Reversed in AIR 1965 S C 920.

Excess Profits Tax Act (15 of 1940)
Ss. 2 (5), 5 and 10A—AIR 1953 Punj 72
Reversed in AIR 1955 S C 176.
S. 2 (21)—(1950) 21 I T R 39 (Cal)
Reversed in AIR 1953 S C 473.

Excess Profits Tax Act *(contd.)*
S. 5—AIR 1957 Punj 259
Reversed in AIR 1962 S C 1272.
S. 10A (1)—AIR 1950 All 648
Reversed in AIR 1953 S C 456.

Expenditure Tax Act (29 of 1957)
Ss. 3 (1) and 18 (1)—AIR 1962 Bom 254
Reversed in AIR 1966 S C 1074.

Explosive Substances Act (6 of 1908)
S. 7—AIR 1960 All 376
Overruled in AIR 1965 All 15.

Extra Provincial Jurisdiction Act (47 of 1947)
S. 5—AIR 1953 Sau 180
Reversed in AIR 1959 S C 1383.

Factories Act (63 of 1948)
S. 2 (1)—AIR 1960 Bom 296
Reversed in AIR 1962 S C 517.
S. 21 (1) (iv)—AIR 1962 Guj 208
Reversed in AIR 1964 S C 779.
S. 59—AIR 1963 Andh Pra 106
Overruled in AIR 1964 S C 1893.
S. 63—AIR 1963 Andh Pra 106
Overruled in AIR 1964 S C 1893.
S. 63—AIR 1963 Guj 105
Reversed in AIR 1964 S C 1893.
S. 79—AIR 1960 Bom 296
Reversed in AIR 1962 S C 517.
S. 80—AIR 1960 Bom 296
Reversed in AIR 1962 S C 517.
S. 92—AIR 1962 Guj 208
Reversed in AIR 1964 S C 779.
S. 101—AIR 1963 Andh Pra 106
Overruled in AIR 1964 S C 1893.
S. 101—AIR 1962 Guj 208
Reversed in AIR 1964 S C 779.
S. 117—AIR 1958 Andh Pra 79
Overruled in AIR 1964 S C 1893.
S. 117—AIR 1963 Andh Pra 106
Overruled in AIR 1964 S C 1893.

Federal Court (Enlargement of Jurisdiction) Act (1 of 1948)
S. 3—AIR 1953 Mad 878
Overruled in AIR 1957 S C 540.

Finance Act (7 of 1946)
S. 11 (11)—AIR 1959 Bom 33
Reversed in AIR 1961 S C 1233.

Finance Act (25 of 1950)
S. 13—AIR 1955 Mys 49
Reversed in AIR 1958 S C 795.
S. 13—AIR 1955 Mys 99
Reversed in AIR 1958 S C 808.

Foreigners Act (31 of 1946)
S. 2 (a)—AIR 1960 All 431
Overruled in AIR 1961 All 428.
S. 2 (a)—AIR 1963 Guj 226
Reversed on facts in AIR 1965 S C 810.
S. 9—AIR 1963 Guj 226
Reversed on facts in AIR 1965 S C 810.
S. 14—AIR 1960 All 431
Overruled in AIR 1961 All 428.

Foreign Exchange Regulation Act (7 of 1947)
AIR 1959 Cal 356
Overruled in AIR 1967 Cal 239.
S. 8 (1) (2)—AIR 1964 Bom 274
Reversed in AIR 1965 S C 722.

Foreign Exchange Regulation Act *(contd.)*
S. 23 (1A) (a) - AIR 1964 Bom 274
Reversed in AIR 1965 S C 722.
S. 23 (1) (a)—AIR 1962 Cal 590
Reversed in AIR 1966 S C 1206.
S. 23-A—AIR 1959 Mad 42
Overruled in AIR 1962 Mad 85.
S. 23-D - AIR 1962 Cal 590
Reversed in AIR 1966 S C 1206.

Forest Act (1927)
S. 82—AIR 1962 Madh Pra 102 (FB)
Reversed in AIR 1967 S C 203.

Forest Contracts Rules
Rr. 28 and 29—AIR 1962 Madh Pra 102 (FB)
Reversed in AIR 1967 S C 203.

Forward Contracts (Regulation) Act (74 of 1952)
S. 2—AIR 1959 Cal 89
Reversed in AIR 1963 S C 90.
S. 2 (f)—AIR 1960 Cal 86
Reversed in AIR 1962 S C 1810.
S. 17—AIR 1959 Cal 89
Reversed in AIR 1963 S C 90.
S. 17—AIR 1960 Cal 86
Reversed in AIR 1962 S C 1810.
S. 18—AIR 1959 Cal 89
Reversed in AIR 1963 S C 90.

Fundamental Rules
R. 56 (b)—(1958) 60 Pun L R 277
Overruled in AIR 1959 Punj 503.

Gashti Hyderabad Circular (10 of 1338 F.)
S. 13—AIR 1953 Hyd 79
Reversed in AIR 1956 S C 319.

Gauhati University Act (1947)
S. 21 (g)—AIR 1963 Assam 46
Reversed in AIR 1965 S C 1196.

General Clauses Act (1 of 1897)
S. 2 (39)—AIR 1961 Cal 258
Overruled in AIR 1963 S C 1811.
S. 3 (23)—AIR 1959 All 101
Reversed in AIR 1962 S C 955.
S. 4-A—AIR 1954 Kutch 42
Reversed in AIR 1957 S C 517.
S. 6—1957 All L J 628
Overruled in AIR 1959 All 659.
S. 6 (b)—AIR 1960 All 117
Overruled in AIR 1960 All 546 (FB).
S. 6 (c)—AIR 1958 Bom 26
Overruled in AIR 1958 Bom 116.
S. 6—AIR 1960 Cal 243
Reversed in AIR 1966 S C 1953.
S. 6—AIR 1958 Madh Pra 425
Partly reversed in AIR 1962 S C 1281.
S. 6—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.
S. 6-A—AIR 1955 Punj 141
Overruled in AIR 1960 S C 89.
S. 16—AIR 1965 Assam 101
Reversed in AIR 1967 S C 459.
S. 24—AIR 1957 Cal 483
Overruled in AIR 1961 S C 1543.
S. 26—(1956) 58 Bom L R 578
Reversed in AIR 1961 S C 528.

Government Grants Act (15 of 1895)
S. 3—AIR 1956 All 564
Reversed in AIR 1963 S C 799.

Government of Jaipur Act (1944)
S. 41—AIR 1951 Raj 25
Reversed in AIR 1951 S C 467.

Government of India Act (1935)
S. 6—AIR 1954 S C 447
Overruled in AIR 1964 S C 1043.
S. 42 (3)—AIR 1957 All 561.
Overruled in AIR 1966 All 499.
S. 99—AIR 1957 All 561
Impliedly overruled by A I R 1961 S C 365 as interpreted in AIR 1966 All 499.
S. 104—AIR 1951 Bom 210
Partly reversed in AIR 1951 S C 318.
S. 175 (3)—AIR 1957 Pat 586
Reversed in AIR 1962 S C 113.
S. 175 (3)—(1956) ILR 35 Pat 1067
Overruled in AIR 1962 Pat 336 (FB).
S. 175 (3)—AIR 1960 Punj 567
Reversed in AIR 1963 S C 1685.
S. 240 (3)—AIR 1954 Bom 351
Impliedly overruled in A I R 1963 S C 372 = (1963) 2 S C J 104.
S. 240 (3)—AIR 1960 Cal 264 (Pt C)
Overruled in AIR 1964 S C 600.
S. 240—AIR 1961 Cal 626
Overruled in AIR 1966 S C 951.
S. 240—AIR 1954 Mad 1155
Reversed in AIR 1955 S C 817.
S. 240—AIR 1957 Orissa 112
Overruled in AIR 1967 S C 884.
S. 290A—AIR 1954 S C 447
Overruled in AIR 1964 S C 1043.
S. 292—AIR 1952 Bom 16
Reversed in AIR 1955 S C 41.
S. 296—AIR 1956 Assam 142
Reversed in AIR 1957 S C 414.
S. 299—AIR 1952 Mad 203
Overruled in AIR 1958 Andh Pra 173 (FB).
S. 299 (2)—AIR 1951 Mad 979
Reversed in AIR 1954 S C 251.
Sch. 7, List 1, Item 33—AIR 1951 Mad 979
Reversed in AIR 1954 S C 251.
Sch. 7, List 1, Item 55—AIR 1954 Bom 188
Reversed in AIR 1963 S C 1742.
Sch. 7, List 2, Item 21—AIR 1952 Mad 203
Overruled in AIR 1958 Andh Pra 173.
Sch. 7, List 2, Item 31—AIR 1951 Bom 210
Partly reversed in AIR 1951 S C 318.
Sch. 7, List 2, Item 42—AIR 1954 Bom 188
Reversed in AIR 1963 S C 1742.
Sch. 7, List 2, Item 48—AIR 1957 Bom 71
Overruled in AIR 1958 S C 468.
Sch. 7, List 2, Item 48—AIR 1958 Mad 561
Reversed in AIR 1965 S C 1082.
Sch. 7, List 3, Item 31—AIR 1951 Mad 979
Reversed in AIR 1954 S C 251.

Government of India (Constitution of Orissa) Order (1936)
Para 23 (2)—AIR 1964 Orissa 65 (A)
Reversed on this point in AIR 1966 S C 1547.

Government of Part C States Act (1951)
S. 36—AIR 1956 Punj 97
Reversed on facts in AIR 1959 S C 65.
S. 38—AIR 1956 Punj 97
Reversed on facts in AIR 1959 S C 65.

Gujarat University Act (50 of 1949)
S. 4 (27)—AIR 1962 Guj 88 (FB).
Reversed in AIR 1963 S C 703.

HIGH COURT RULES AND ORDERS

—(Allahabad) Rules of Court (1952)
Chap. 3, R. 7—AIR 1956 All 273
Overruled in AIR 1964 S C 1099.
Chap. 8, R. 5—1958 All L J 61
Reversed in AIR 1963 S C 946.

HIGH COURT RULES AND ORDERS—(Allahabad)
Rules of Court (contd.)
Chap. 8, R. 5—AIR 1962 All 543
Held Overruled by A I R 1962 S C 253 in A I R 1964 All 235.
Chap. 13, R. 13—AIR 1954 All 812
Overruled in AIR 1955 All 510 (FB).

—Calcutta High Court (Original Side) Rules
Chap. 8—AIR 1950 Cal 217
Overruled in AIR 1954 Cal 352.
Chap. 9—AIR 1950 Cal 217
Overruled in AIR 1954 Cal 352.
Chap. 10, R. 36—AIR 1950 Cal 217
Overruled in AIR 1954 Cal 352.

—Nagpur High Court Rules
Ch. 4, R. 10—AIR 1960 Madh Pra 86 (FB).
Overruled in AIR 1962 Madh Pra 93 (FB).

—Patna High Court Rules
Chap. 2, Rule 1 (i) (a)—AIR 1959 Pat 139
Overruled in AIR 1965 Pat 374.

HINDU LAW

—Adoption
AIR 1955 Bom 291 (FB)
Overruled in AIR 1962 S C 59.

—Alienation
AIR 1955 Andhra 49
Reversed in AIR 1961 Andh Pra 430.
AIR 1956 Bom 129
Reversed in AIR 1964 S C 510
AIR 1953 Mad 404
Reversed in AIR 1957 Mad 330.

—Debts
AIR 1954 Mad 981 (FB)
Overruled in AIR 1967 S C 727.
AIR 1951 Pat 587
Overruled in AIR 1962 Pat 308 (FB).
AIR 1961 Punj 138 (FB)
Overruled in AIR 1967 S C 727.

—Joint family
AIR 1954 Mad 227
Overruled in AIR 1967 S C 272.

—Partition
(1958) 1 Andh W R 85
Overruled in AIR 1959 Andh Pra 523.
AIR 1951 Mad 809
Overruled in AIR 1953 Mad 176.
AIR 1953 Mad 461
Overruled in AIR 1964 S C 136.

—Religious Endowments
(1960) 64 Cal W N 546
Reversed in AIR 1965 S C 1874.
AIR 1952 Punj 301
Reversed in AIR 1954 S C 606.

HINDU LAW (contd.)
—Succession
AIR 1960 Mad 270
Reversed in AIR 1965 S C 1349.

—Widow
AIR 1953 Mad 550
Overruled in AIR 1956 Mad 323.
AIR 1954 Mad 227
Overruled in AIR 1967 S C 272.
AIR 1962 Mad 482
Reversed in AIR 1965 S C 1752.

—Will—Validity
AIR 1953 Mad 461
Overruled in AIR 1964 S C 136, in so far as it had followed AIR 1938 Mad 390.

Hindu Marriage Act (25 of 1955)
S. 3 (b)—AIR 1959 Punj 50
Overruled in AIR 1965 Punj 472 (FB).
S. 10 (1) (f)—AIR 1964 All 486
Reversed in AIR 1967 S C 581.
S. 10 (1)—AIR 1960 Bom 418
Reversed on appreciation of facts in AIR 1964 S C 40.
S. 19—AIR 1959 Punj 50
Overruled in AIR 1965 Punj 472 (FB).
Ss. 24, 28—AIR 1962 Cal 455
Overruled in (1964) 68 Cal W N 316.
S. 29 (2)—AIR 1958 Bom 26
Overruled in AIR 1958 Bom 116.

Hindu Married Women's Right to Separate Residence and Maintenance Act (19 of 1946)
S. 2 (4)—AIR 1950 Mad 321
Overruled in AIR 1958 Mad 337 (FB).
S. 2 (4)—AIR 1954 Mad 713
Overruled in AIR 1958 Mad 337 (FB).

Hindu Succession Act (30 of 1956)
S. 4 (2)—AIR 1959 Bom 78
Overruled in AIR 1966 Bom 64.
S. 6—AIR 1957 Madh Pra 38
Overruled in AIR 1958 Madh Pra 160.
S. 8—AIR 1958 Pat 502
Overruled in AIR 1961 Pat 60.
S. 14—AIR 1958 All 304
Reversed in AIR 1966 S C 216.
S. 14—AIR 1957 Madh Pra 38
Overruled in AIR 1958 Madh Pra 160.
S. 14—AIR 1962 Mad 482
Reversed in AIR 1965 S C 1752.
S. 14—AIR 1957 Pat 480
Overruled in AIR 1958 Pat 581 (FB).
S. 14—AIR 1957 Pat 674
Overruled in AIR 1958 Pat 581 (FB).
S. 14—AIR 1958 Pat 319
Overruled in (1) AIR 1958 Pat 581 (FB);
(2) AIR 1966 S C 216.
—S. 14—ILR (1958) Punj 593
Reversed in AIR 1961 Punj 203.
S. 14 (1)—AIR 1959 Pat 75
Reversed on facts in AIR 1963 Pat 330.
S. 15—AIR 1958 All 304
Reversed in AIR 1966 S C 216.

Hindu Women's Right to Property Act (18 of 1937)
S. 2—AIR 1951 Orissa 378
Overruled in AIR 1955 Orissa 73.
Ss. 3, 4—AIR 1951 Orissa 378
Overruled in AIR 1955 Orissa 73 (FB).
S. 3 (1), Para. 2—AIR 1959 Pat 210
Overruled in AIR 1964 Pat 261 (FB).

Hindu Women's Right to Property Act *(contd.)*

S. 3 (2)—AIR 1957 Madh Pra 29
Overruled in AIR 1967 S C 272.
S. 3 (2), (3) -AIR 1954 Mad 227
Overruled in AIR 1967 S C 272.
S. 3 (2)—AIR 1957 Mad 269
Overruled in AIR 1965 Mad 1 (FB).
Ss. 3 (2) and 3 (3)—AIR 1956 Nag 110
Overruled in AIR 1967 S C 272.
S. 3 (2) and (3)—AIR 1959 Pat 557
Overruled in AIR 1963 Pat 277.

HOUSES AND RENTS

—Andhra Pradesh Buildings (Lease, Rent and Eviction Control) Rules (1961)

R. 11 (3)—AIR 1964 Andh Pra 388
Overruled in AIR 1967 Andh Pra 1.

—Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947)

S. 1—1958 B L J R 359
Overruled in AIR 1959 Pat 133 (FB).
S. 6 (2)—AIR 1957 Pat 168
Overruled in AIR 1959 Pat 133 (FB).
S. 11 (2) (a)—(1960) ILR 39 Pat 85
Overruled in AIR 1966 Pat 144 (FB).
S. 11 (2) (a)—AIR 1961 Pat 254
Overruled in AIR 1966 Pat 144 (FB).
S. 18—AIR 1951 Pat 529
Partially overruled in AIR 1963 Pat 79 (FB).

—Bihar Buildings (Lease, Rent and Eviction) Control Validating Act (22 of 1959)

S. 2—1961 B L J R 212
Overruled in 1962 B L J R 193.

—Bombay Buildings (Control on Erection) Act (31 of 1948)

S. 1—AIR 1951 Bom 263
Reversed in AIR 1953 S C 244.
S. 3 (1)—AIR 1951 Bom 263
Reversed in AIR 1953 S C 244.
S. 15—AIR 1951 Bom 263
Reversed in AIR 1953 S C 244.

—Bombay Buildings (Control on Erection) Ordinance (1 of 1948)

S. 1 (4)—AIR 1951 Bom 263
Reversed in AIR 1953 S C 244.

—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947)

S. 5 (10)—AIR 1951 Bom 320
Overruled in AIR 1962 S C 151.
Ss. 11 (3), 12—(1963) 4 Guj L R 282
Reversed in AIR 1964 S C 1341.
S. 12—(1961) 39 Mys L J 340
Held overruled by AIR 1963 S C 120 in AIR 1965 Mys 65.
Ss. 12 (1), 13, 14, 15—(1962) 3 Guj L R 941.
Reversed in AIR 1965 S C 414.
S. 12 (3) (a)—AIR 1959 Mys 87
Held overruled by AIR 1963 S C 120 in AIR 1965 Mys 65.
S. 18—AIR 1953 Bom 347
Reversed in AIR 1954 S C 496.
Ss. 28, 29—AIR 1951 Bom 294
Overruled in AIR 1951 Bom 390.
S. 28—AIR 1960 Bom 338
Overruled in AIR 1965 Bom 177.

—Calcutta House Rent Control Order (1943)

Cl. 1—AIR 1955 N U C (Cal) 870
Held overruled by AIR 1951 S C 332 as interpreted in AIR 1953 Nag 58 (DB).

HOUSES AND RENTS *(contd.)*

—C. P. and Berar Letting of House and Rent Control Order (1949)

Cl. 1—AIR 1951 Nag 94
Held overruled by AIR 1951 S C 332 in AIR 1953 Nag 58.
Cls. 4, 5—AIR 1953 Nag 146
Overruled in ILR (1956) Nag 589 (FB).
Cl. 22—1960 Nag L J 335
Overruled in 1961 Nag L J (Notes) 27.
Cl. 23—1960 Nag L J 335
Overruled in 1961 Nag L J (Notes) 27.
Cl. 24—1960 Nag L J 335
Overruled in 1961 Nag L J (Notes) 27.

—C. P. and Berar Regulation of Letting of Accommodation Act (11 of 1946)

Preamble—AIR 1951 Nag 94
Overruled by AIR 1951 S C 332 in AIR 1953 Nag 58.

—Delhi and Ajmer-Merwara Rent Control Act (19 of 1947)

S. 7-A—AIR 1955 Punj 5
Reversed in AIR 1962 S C 646.
Sch. 2, Cl. 2—AIR 1955 Punj 5
Reversed in AIR 1962 S C 646.
Sch. 4—AIR 1955 Punj 5
Reversed in AIR 1962 S C 646.

—Delhi and Ajmer Rent Control Act (38 of 1952)

S. 13 (1) (b) (i)—64 Pun L R 372 = I L R (1962) 2 Punj 98
Impliedly overruled in AIR 1964 Punj 363.
S. 15—(1960) 62 Punj L R 403=ILR (1960) 2 Punj 259
Reversed in AIR 1961 S C 104.

—J. and K. Houses and Shops Rent Control Act (14 of 2009)

S. 11 (1) (i), Proviso—1962 Kash L J 176
Overruled in AIR 1964 J & K 67 (FB).

—Madhya Bharat Accommodation Control Act (15 of 1950)

S. 7—AIR 1955 Madh Bha 21
Reversed in AIR 1961 S C 148.

—Madras Buildings (Lease and Rent) Control Act (15 of 1946)

Ss. 4, 6 (c)—AIR 1956 Mad 49
Overruled in AIR 1962 S C 151.
S. 7 (3) (a) (ii)—AIR 1952 Mad 553
Overruled in AIR 1966 S C 1824.
S. 7 (b)—AIR 1952 Mad 283
Held overruled by: AIR 1962 Mad 447 (FB) in AIR 1967 Andh Pra 129(1).

—Madras Buildings (Lease and Rent) Control Act (25 of 1949)

S. 3—(1955) 1 Mad L J 454=AIR 1955 NUC (Mad) 3217
Overruled in AIR 1961 Mad 475.
Ss. 7 (2), 7 (3) (a)—(1962) 1 Andh W R 205
Overruled in AIR 1965 Andh Pra 220.

—Orissa House Rent Control Act (31 of 1959)

S. 2 (5)—(1960) 26 Cut L T 284
Reversed in AIR 1962 Orissa 149.

—East Punjab Urban Rent Restriction Act (3 of 1949)

S. 13—AIR 1951 Punj 346
Overruled in AIR 1952 Punj 159.
S. 13 (2) (ii) (a)—(1958) 60 Pun L R 349
Reversed in AIR 1961 S C 1554.

HOUSES AND RENTS *(contd.)*

—Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959)

S. 1—AIR 1963 Punj 290 (FB)
Reversed in AIR 1967 S C 1581.
S. 4 (2) (b)—AIR 1963 Punj 290 (FB)
Reversed in AIR 1967 S C 1581.

—Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950)

S. 6 (2), Proviso—I L R (1955) 5 Raj 378=1956 Raj L W 3=AIR 1955 N U C (Raj) 4648
Overruled in AIR 1965 Raj 169.
S. 13 (1) (a), Proviso 2 — 1955 Raj L W 378 = AIR 1955 N U C (Raj) 4617
Overruled in AIR 1960 Raj 66 (FB).
S. 13 (4)—1955 Raj L W 379=AIR 1955 NUC (Raj) 1899
Overruled in AIR 1960 Raj 66 (FB).

—(Rajasthan) Rent Control Order

Cl. 3—AIR 1952 Raj 111
Overruled in AIR 1953 Raj 88.
Cl. 5—AIR 1952 Raj 111
Overruled in AIR 1953 Raj 88.
Cl. 8—AIR 1952 Raj 111
Overruled in AIR 1953 Raj 88

—Saurashtra Rent Control Act (22 of 1951)

S. 20—7 Saw L R 83=AIR 1955 NUC (Sau) 1136
Overruled in AIR 1956 Sau 87.

—Travancore-Cochin Building Lease and Rent Control Order (1950)

Cl. 9 (1), Proviso—AIR 1954 Trav-Co 43
Reversed in AIR 1954 Trav-Co 291.

—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947)

S. 2 (a)—1955 All L J 355=AIR 1955 N U C (All) 2299
Overruled in AIR 1961 All 104 (FB).
S. 2 (a)—1962 All L J 553
Overruled in AIR 1966 All 280.
S. 2 (d)—AIR 1953 All 62
Overruled in AIR 1961 S C 606.
S. 3—AIR 1950 All 504
Overruled in AIR 1952 All 500.
S. 3—AIR 1953 All 62
Overruled in AIR 1961 S C 606.
S. 3—AIR 1954 All 232
Overruled in AIR 1965 S C 1767.
S. 3—AIR 1957 All 359
Overruled in AIR 1964 All 7 (FB).
S. 3—1958 All L J 234.
Overruled in AIR 1964 All 7 (FB).
S. 3—AIR 1964 All 210
Overruled in AIR 1965 All 498 (FB).
S. 3 (1)—AIR 1960 All 410
Overruled in 1963 All L J 198.
S. 3 (1) (a)—1960 All L J 147=1960 All W R (HC) 101
Overruled in AIR 1963 All 47.
S. 3 (1), (2), (3)—AIR 1931 All 221
Reversed in AIR 1966 S C 893.
S. 3 (1)—AIR 1964 All 393
Overruled in AIR 1945 All 498 (FB).
S. 3 (1) (e)—1961 All W R (HC) 102=1961 All L J 32=ILR (1961) 1 All 300
Overruled in AIR 1964 All 7 (FB).
S. 3 (3)—AIR 1964 All 148
Overruled in AIR 1965 S C 1767.
S. 3-F—AIR 1957 All 359
Overruled in AIR 1964 All 7.
S. 7—AIR 1957 NUC (All) 2299
Overruled in AIR 1961 All 104 (FB).

HOUSES AND RENTS — U. P. (Temporary) Control of Rent and Eviction Act *(contd.)*

Ss. 7, 7A, Proviso—AIR 1961 All 347
Overruled in AIR 1964 All 1 (FB).
S. 7—1964 All L J 491=1964 All W R (HC) 260
Overruled in AIR 1966 All 269.
S. 7A—1955 All L J 32=AIR 1955 NUC (All) 2666
Overruled in 1963 All L J 180.
S. 7A (4)—1960 All L J 546 = 1960 All W R (HC) 406
Overruled in AIR 1966 All 57 (FB).
S. 7B—1961 All W R (HC) 508=1961 All L J 631
Overruled in AIR 1965 All 345.
S. 7C (1) (2) (6)—AIR 1963 All 581
Overruled in AIR 1967 All 1 (FB).
S. 7E—1958 All L J 853
Overruled in 1963 All L J 691.
S. 7F—AIR 1954 All 232
Overruled in AIR 1965 SC 1767.
S. 7F—AIR 1954 All 428
Overruled in AIR 1966 All 57 (FB).
S. 7F—AIR 1957 All 359
Overruled in AIR 1964 All 7 (FB).
S. 7F—1959 All W R (HC) 192=1959 All L J 263
Overruled in AIR 1962 All 1 (FB).
S. 7F—1959 All L J 897=ILR (1959) 2 All 403
Overruled in AIR 1966 All 57 (FB).
S. 7F—1960 All L J 546=1960 All W R (HC) 406
Overruled in AIR 1966 All 57 (FB).
S. 7F—1963 All L J 752=1963 All W R (HC) 525
Overruled in (1) AIR 1964 All 148 which itself is now Overruled in AIR 1965 SC 1767;
(2) AIR 1965 All 465 (FB).
S. 7F—AIR 1964 All 148
Overruled in AIR 1965 SC 1767.
S. 7F—1965 All L J 211
Overruled in AIR 1966 All 57 (FB).
S. 15—AIR 1950 All 504
Overruled in AIR 1952 All 500.

—U. P. (Temporary) Control of Rent and Eviction Rules (1949)

R. 1—1962 All L J 553=1932 All W R (HC) 455=ILR (1962) 2 All 536
Overruled in AIR 1936 All 280.
R. 3—1959 All W R (HC) 138
Reversed in AIR 1936 All 62.

—West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950)

S. 14—AIR 1951 Cal 422
Overruled in AIR 1952 Cal 879.
S. 14 (1)—AIR 1953 Cal 136
Overruled in so far as it held that pre-Amendment Act defaults were attracted by proviso to S. 14 (3), by AIR 1953 Cal 733 (FB).
S. 14 (3), Proviso—AIR 1952 Cal 898
Overruled in AIR 1953 Cal 733 (FB).
S. 18—(1951) 55 CWN 347
Overruled in AIR 1953 SC 148.
S. 18—(1951) 55 Cal W N 421
Overruled in AIR 1953 SC 148.
S. 18—AIR 1952 Cal 126
Overruled in AIR 1953 SC 148.
S. 18 (1)—AIR 1951 Cal 32
Overruled in AIR 1953 SC 148.
S. 18 (1)—AIR 1952 Cal 199
Reversed in AIR 1953 SC 148.
S. 18 (1)—AIR 1952 Cal 273 (FB)
Overruled in AIR 1953 SC 148.
S. 18 (5)—AIR 1952 Cal 898
Overruled in AIR 1953 Cal 733 (FB).
Sch. A Paras 2 (b) and 3 (b)—AIR 1953 Cal 570
Overruled in AIR 1961 Cal 432 (FB).

HOUSES AND RENTS *(contd.)*

—West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947)

S. 3 (1)—AIR 1953 Cal 223
Overruled in AIR 1954 Cal 171.

S. 3 (1)—AIR 1953 Cal 579
Overruled in AIR 1954 Cal 171.

S. 3 (1)—(1961) 65 Cal WN 794
Reversed in AIR 1964 Cal 175.

—West Bengal Premises Tenancy Act (12 of 1956)

S. 16 (3)—1959 Cal L J 117
Overruled in 64 Cal WN 938=1961 Cal LJ 112=ILR (1961) 2 Cal 232.

S. 17 (1)—(1958) 62 Cal W N 718
Overruled in AIR 1959 Cal 231.

S. 29—1959 Cal L J 117
Overruled in 64 Cal WN 938=1961 Cal LJ 112=ILR (1961) 2 Cal 232.

Hyderabad Abkari Act (1 of 1316F)

S. 3—Rules framed under R. 3—AIR 1953 Andh Pra 332
Reversed in AIR 1964 SC 1870.

S. 5—AIR 1963 Andh Pra 332
Reversed in AIR 1964 SC 1870.

S. 10—AIR 1963 Andh Pra 332
Reversed in AIR 1964 SC 1870.

Hyderabad Atiyat Enquiries Act (10 of 1952)

S. 13, Cl. 2—AIR 1953 Hyd 79
Reversed in AIR 1956 SC 319

Hyderabad Income-tax Act (8 of 1357F)

S. 14 (5) (a), (b)—AIR 1955 Hyd 225 (Pts) (e), (g)
Reversed on facts in AIR 1962 SC 141.

Imports and Exports (Control) Act (18 of 1947)

S. 3—AIR 1961 Bom 244
Overruled in AIR 1966 SC 478.

Imports (Control) Order (1955)

Cl. 6 (e)—AIR 1961 Bom 244
Overruled in AIR 1966 SC 478.

Income-tax Act (11 of 1922)

S. 2 (1)—AIR 1955 Assam 201
Reversed in AIR 1961 SC 1579.

S. 2 (1)—AIR 1953 Mad 223
Reversed in AIR 1956 SC 522.

S. 2 (1) (a)—AIR 1960 All 264
Reversed in AIR 1965 SC 1836.

S. 2 (1) (a)—AIR 1955 Orissa 185
Reversed in AIR 1959 SC 239.

S. 2 (4)—(1963) 50 ITR 350 (Cal)
Reversed in AIR 1965 SC 1898.

S. 2 (6B) —AIR 1956 Bom 321
Reversed in AIR 1961 SC 680.

S. 2 (6B)—AIR 1958 Pat 177
Overruled in AIR 1961 S C 680.

S. 2 (6b)—AIR 1963 Mad 315
Overruled in AIR 1961 S C 680.

S. 2 (6c)—AIR 1963 Cal 598
Reversed in AIR 1965 S C 1902.

S. 2 (6c) (vii)—AIR 1963 Cal 598
Reversed in AIR 1965 S C 1902.

S. 2 (14A), Proviso (b), cl. (iii)—AIR 1951 Raj 94(2)
Reversed in AIR 1954 S C 158.

S. 3—(1961) 41 ITR 175 (AP)
Reversed in AIR 1965 S C 1905.

S. 3—AIR 1956 Bom 436
Reversed in AIR 1960 S C 186.

S. 3—AIR 1958 Bom 239
Partly reversed in AIR 1961 S C 1139.

Income-tax Act *(contd.)*

S. 3—(1962) 45 I T R 275 (Bom)
Reversed in AIR 1963 S C 1484.

S. 3—(1963) 49 ITR 913 (Bom)
Reversed in AIR 1966 S C 30.

S. 3—AIR 1965 Ker 66.
Overruled in AIR 1966 S C 1380.

S. 3 (2)—AIR 1957 Nag 4
Reversed in AIR 1961 S C 1261.

S. 4—(1961) 41 I T R 175 (AP)
Reversed in AIR 1965 S C 1905.

S. 4—AIR 1954 Bom 229
Reversed in AIR 1959 S C 1352.

S. 4—1962-46 ITR 39 (Cal)
Reversed in AIR 1965 S C 65.

S. 4—1962-46 I T R 288=1962 Ker L T 495
Overruled in AIR 1964 S C 1878.

S. 4—AIR 1957 Madh B 64
Reversed in AIR 1959 S C 1394.

S. 4—AIR 1952 Mad 231
Reversed in AIR 1956 S C 492.

S. 4—AIR 1952 Mad 305
Reversed in AIR 1953 S C 527.

S. 4—AIR 1961 Mad 14
Reversed in AIR 1964 S C 1653.

S. 4—AIR 1955 Pat 480
Reversed in AIR 1961 S C 732.

S. 4—AIR 1958 Pat 41
Reversed in AIR 1960 S C 789.

S. 4—AIR 1954 Punj 17
Reversed in AIR 1960 S C 1219.

S. 4—1963 Raj L W 561
Reversed in AIR 1966 S C 1559.

S. 4 (1) (a)—AIR 1952 Bom 306
Reversed in AIR 1954 S C 504.

S. 4 (1) (a)—(1956) 29 I T R 171 (Nag)
Reversed in AIR 1961 S C 426.

S. 4 (1) (a)—1963 Raj L W 561
Reversed in AIR 1966 S C 1559.

S. 4 (1) (b) (i)—AIR 1957 Madh B 64
Reversed in AIR 1959 S C 1394.

S. 4 (1) (b) (iii)—AIR 1954 Bom 249
Reversed in AIR 1961 S C 921.

S. 4 (3) (i)—AIR 1953 Bom 232
Reversed in AIR 1957 S C 846.

S. 4 (3) (vii)—(1961) 41 I T R 175 (AP)
Reversed in AIR 1965 S C 1905.

S. 4 (3) (vii)—AIR 1960 Bom 319
Reversed in AIR 1964 S C 758.

S. 4 (3) (vii)—AIR 1951 Nag 174
Reversed in AIR 1959 S C 291.

S. 4 (3) (vii)—(1952) 21 I T R 303 (Punj)
Reversed in AIR 1955 S C 252.

S. 4 (3) (viii)—AIR 1960 All 264
Reversed in AIR 1965 S C 1836.

S. 4 (3) (viii)—AIR 1954 Assam 113
Reversed in AIR 1958 S C 19.

S. 4 (3) (vii)—AIR 1954 Bom 137
Reversed in AIR 1961 S C 98.

S. 4 (3) (viii)—AIR 1955 Orissa 185
Reversed in AIR 1959 S C 239.

S. 4-A (c) (b)—AIR 1951 Mad 600
Reversed in AIR 1954 S C 198.

S. 5-A (8)—AIR 1955 Mad 39
Overruled in AIR 1965 Mad 62 (FB).

S. 6—AIR 1955 Pat 480
Reversed in AIR 1961 S C 732.

S. 6—AIR 1953 Punj 180
Reversed in AIR 1959 S C 185.

S. 7—(1964) 51 I T R 178
Overruled in AIR 1966 S C 1187.

S. 7 (1), Explanation 2—AIR 1959 Bom 454
Reversed in AIR 1961 S C 946.

S. 9 (1) (iv)—(1958) 33 I T R 390 (Bom)
Reversed in AIR 1961 S C 728.

S. 10—AIR 1958 Bom 239
Reversed in AIR 1961 S C 1139.

Income-tax Act *(contd.)*

S. 10—AIR 1959 Bom 33=60 Bom L R 910
Reversed in AIR 1961 S C 1233.

S. 10—AIR 1963 Cal 598
Reversed in AIR 1965 S C 1902.

S. 10—AIR 1961 Mad 14
Reversed in AIR 1964 S C 1653.

S. 10—(1962) 45 I T R 539 (Punj)
Reversed in AIR 1964 S C 1709.

S. 10 (1)—AIR 1952 Mad 231
Reversed in AIR 1956 SC 492.

S. 10 (1)—ILR (1961) Mad 272
Reversed in AIR 1965 SC 96.

S. 10 (1)—AIR 1952 Pat 106
Reversed in AIR 1954 SC 253.

S. 10 (1)—AIR 1958 Punj 393
Reversed in AIR 1961 SC 892.

S. 10 (2)—(1962) 46 ITR 293 (All)
Reversed in AIR 1967 SC 495.

S. 10 (2) (vi-a)—AIR 1961 Andh Pra 318
Overruled in AIR 1964 SC 1693

S. 10 (2) (vi-b)—AIR 1960 Bom 218
Overruled in AIR 1964 SC 1693.

S. 10 (2) (x)—(1957) 31 ITR 72 (Bom)
Reversed in AIR 1961 S C 701.

S. 10 (2) (x)—AIR 1956 Mad 8
Reversed in AIR 1961 S C 692.

S. 10 (2) (xv)—(1963) 47 ITR 139
Partly overruled in AIR 1966 SC 1053.

S. 10 (2) (xv), (xi)—(1960) 40 ITR 210
Reversed in AIR 1965 SC 1188.

S. 10 (2) (xv)—1963-48 ITR 476 (Bom)
Reversed in 1965 SC 1201.

S. 10 (2) (xv)—AIR 1950 Cal 270
Reversed in AIR 1951 SC 108.

S. 10 (2) (xv)—(1953) 24 ITR 454 (Cal)=AIR 1955 NUC (Cal) 429
Reversed in AIR 1959 SC 1165.

S. 10 (2) (xv)—AIR 1960 Ker 253
Overruled in AIR 1966 SC 1053.

S. 10 (2) (xv)—1961 Ker L J 203
Reversed in AIR 1964 SC 1722.

S. 10 (2) (xv)—AIR 1953 Mad 900 (FB)
Reversed in AIR 1962 SC 680.

S. 10 (2) (xv)—ILR (1962) Mad 818
Reversed in AIR 1966 SC 1053.

S. 10 (2) (xv)—AIR 1956 Nag 43
Reversed in AIR 1958 SC 783.

S. 10 (2) (xv)—AIR 1958 Pat 325
Reversed in AIR 1961 SC 668.

S. 10 (2) (xv)—ILR (1964) 14 Raj 65
Reversed in AIR 1966 SC 1564.

S. 10 (7)—AIR 1963 Cal 598
Reversed in AIR 1965 SC 1902.

S. 10 (7), Sch. R. 3 (b)—(1963) 50 ITR 617 (Mad)
Reversed in AIR 1965 SC 1004.

S. 12—AIR 1959 Bom 33
Reversed in 1961 SC 1233.

S. 12—1962-46 ITR 39 (Cal)
Reversed in AIR 1965 SC 65.

S. 12—AIR 1955 Pat 480
Reversed in AIR 1961 SC 732.

S. 12—AIR 1958 Pat 41
Reversed in AIR 1960 SC 789.

S. 12—AIR 1954 Punj 2
Reversed in AIR 1960 SC 1303 (SC).

S. 12A—AIR 1952 Bom 330
Reversed in AIR 1954 SC 470.

S. 12B—ILR (1968) Andh Pra 702
Reversed in AIR 1966 SC 115.

S. 12B—1961-41 ITR 705
Reversed in AIR 1964 SC 1464.

S. 13—AIR 1952 Mad 305
Reversed in AIR 1953 SC 527.

S. 14 (2) (c)—AIR 1954 Bom 249
Reversed in AIR 1961 SC 921.

Income-tax Act *(contd.)*

S. 14 (2) (c)—AIR 1952 Mad 305
Reversed in AIR 1953 SC 527.

S. 14 (2) (c)—AIR 1957 Punj 259
Reversed in AIR 1962 SC 1272.

S. 16 (3)—AIR 1953 Punj 199
Reversed in AIR 1957 SC 832

S. 16 (3) (a) (ii)—AIR 1951 All 586
Overruled in AIR 1957 SC 832.

S. 16 (3) (a) (ii)—(1952) 23 I T R 345 (All)=AIR 1955 NUC (All) 1410
Overruled in AIR 1957 SC 832.

S. 16 (3) (a) (iii)—AIR 1958 Mad 599
Reversed in AIR 1964 SC 331.

S. 18—AIR 1960 Bom 347
Reversed in AIR 1963 SC 1066.

S. 18A—AIR 1960 Bom 347
Reversed in AIR 1963 SC 1066.

S. 18A (3)—AIR 1956 Punj 39
Reversed in AIR 1959 SC 352.

S. 18A (3)—AIR 1956 Trav Co 124
Reversed in AIR 1961 SC 699.

Ss. 18A (6), 8—(1959) 36 ITR 527 (Bom).
Overruled in (1963) 1 Andh W R (SC) 65=(1963) 1 S C J 243

S. 18A (9)—AIR 1960 Andh Pra 23
Overruled in AIR 1961 SC 609.

S. 21 (1)—AIR 1956 Punj 393
Reversed in AIR 1961 SC 892.

S. 22—AIR 1961 Andh Pra 7
Reversed in AIR 1964 SC 825.

S. 22—(1951) 20 ITR 432 (Cal) (DB)
Overruled in AIR 1959 SC 1154.

S. 22—AIR 1960 Mys 77
Reversed in AIR 1962 SC 478.

S. 22 (1)—AIR 1958 Cal 195
Overruled in AIR 1959 SC 1154.

S. 22 (2)—AIR 1958 Cal 195
Overruled in AIR 1959 S C 1154.

S. 23—ILR (1963) Andh. Pra 184
Reversed in AIR 1965 S C 1238.

S. 23—20 ITR 432 (Cal) (DB)
Overruled in AIR 1959 S C 1154.

S. 23—AIR 1959 Ker 279
Reversed in AIR 1962 S C 974.

S. 23 (3)—AIR 1955 Assam 201
Reversed in AIR 1961 S C 1579.

S. 23 (5)—AIR 1959 Bom 499
Reversed in AIR 1963 S C 1497.

Ss. 23 (5) (a) and 30 (1)—AIR 1958 Cal 394
Overruled in AIR 1967 S C 383.

S. 23A, Proviso 3, Expln.—AIR 1954 Bom 85.
Reversed in AIR 1961 S C 743.

S. 23-A—AIR 1956 Bom 497
Reversed in AIR 1961 S C 1154.

S. 23-A (1)—AIR 1965 Guj 105
Reversed in AIR 1967 S C 823.

S. 24—AIR 1959 Bom 499
Reversed in AIR 1963 S C 1497.

S. 24 (1)—(1963) 2 M L J 571
Overruled in AIR 1966 S C 1187.

S. 24 (2)—AIR 1958 Cal 195
Overruled in AIR 1959 S C 1154.

S. 24 (2)—AIR 1959 Ker 279
Reversed in AIR 1962 S C 974.

S. 24 (2) and (3)—AIR 1953 Mad 340
Overruled in AIR 1959 Mad 488 (FB).

Ss. 24-B (2), (3) and 34—AIR 1935 Bom 167
Overruled in AIR 1966 S C 1074.

S. 24-B (2)—AIR 1956 Mad 517
Reversed in AIR 1962 S C 663.

S. 25 (4)—AIR 1956 Bom 456
Reversed in AIR 1960 S C 186.

S. 25 (4)—AIR 1959 Bom 33
Reversed in AIR 1961 S C 1233.

S. 25-A—AIR 1957 Andh Pra 368
Overruled in AIR 1960 Andh Pra 23 (FB).

Income-tax Act *(cantd.)*

S. 25-A—AIR 1955 Bom 343
Reversed in AIR 1960 S C 910.

S. 25-A—AIR 1954 Mad 315
Overruled in AIR 1961 S C 680.

S. 25-A—(1962) 46 ITR 470 (Andh Pra)
Reversed in AIR 1965 S C 1411.

S. 26A—AIR 1956 Bom 321
Reversed in AIR 1961 S C 680.

S. 26A—AIR 1953 Mad 315
Overruled in AIR 1961 S C 680.

S. 26A—AIR 1953 Mad 336
Overruled in AIR 1961 S C 680.

Ss. 26A and 2 (6-B)—AIR 1958 Pat 177
Overruled in AIR 1961 S C 680.

S. 26A—AIR 1956 Sau 11
Reversed in AIR 1960 S C 278.

S. 28—AIR 1957 Andh Pra 368.
Overruled in AIR 1960 Andh Pra 23 (FB).

S. 28—AIR 1960 Andh Pra 23
Overruled in AIR 1961 S C 609.

S. 28—AIR 1958 Mad 8
Overruled in AIR 1961 S C 609.

S. 28 (1)—AIR 1956 Punj 39
Reversed in AIR 1959 S C 352.

Ss. 28 (1) (c), 33 (2)—(1957) 32 ITR 648 (Ker)
Overruled in AIR 1960 S C 1326.

S. 28 (1) (c)—(1961) 42 ITR 715 = (1961) 2 Mad L J 564
Reversed in (1962) 1 Mad L J 411.

S. 29—AIR 1952 All 249
Overruled in AIR 1964 S C 1473.

S. 29—AIR 1957 Cal 667
Overruled in AIR 1964 S C 1473.

S. 29—AIR 1956 Mad 517
Reversed in AIR 1962 S C 663.

S. 29—AIR 1963 Punj 486
Overruled in AIR 1967 S C 1552.

S. 30 (1)—AIR 1955 All 296
Overruled in AIR 1956 S C 367.

S. 30 (2)—AIR 1952 All 249
Overruled in AIR 1956 S C 367.

S. 30 (2)—AIR 1952 Punj 203
Overruled in AIR 1956 S C 367.

S. 31 (1)—AIR 1952 All 249
Overruled in AIR 1956 S C 367.

S. 31—AIR 1952 Punj 203
Overruled in AIR 1956 S C 367.

S. 33—AIR 1952 Punj 203
Overruled in AIR 1956 S C 367.

S. 33 (2)—(1957) 32 ITR 648 (Ker)
Overruled in AIR 1960 S C 1326.

S. 33—AIR 1952 All 249
Overruled in AIR 1956 S C 367.

S. 33—AIR 1955 All 296=(1955) 27 ITR 268 (Pt B)
Overruled in AIR 1956 S C 367.

S. 33—AIR 1964 Cal 367 (Pt B)
Reversed in (1966) 70 Cal W N 407 (DB).

S. 33 (4)—AIR 1955 Mad 39
Overruled in AIR 1965 Mad 62 (FB).

S. 33A—AIR 1957 Cal 319
Overruled in AIR 1966 S C 81.

S. 33-B—AIR 1954 Bom 161
Reversed in AIR 1958 S C 868.

S. 33-B—AIR 1964 Cal 367
Reversed in (1966) 70 Cal W N 407.

S. 34—AIR 1965 Andh Pra 37
Reversed in AIR 1967 S C 1545.

S. 34, Proviso—AIR 1956 Bom 530
Reversed in AIR 1963 S C 1356.

S. 34—(1951) 20 I T R 432 (Cal)
Overruled in AIR 1959 S C 1154.

S. 34—AIR 1953 Cal 721
Reversed in AIR 1961 S C 372.

S. 34—AIR 1956 Cal 161
Overruled in AIR 1959 S C 1154.

Income-tax Act *(contd.)*

S. 34—(1962) ILR 1962 Madh Pra 511
Reversed in AIR 1966 S C 1113.

S. 34—AIR 1956 Mad 471
Reversed in AIR 1963 S C 1401.

S. 34—(1961) 42 I T R 715
Reversed in (1962) 1 Mad L J 411.

S. 34—AIR 1955 Mys 49
Reversed in AIR 1958 S C 795.

S. 34—AIR 1960 Mys 77
Reversed in AIR 1962 S C 478.

S. 34—1964 Cur L J 523 (Punj)
Reversed in AIR 1967 S C 1552.

S. 34 (1) (a)—AIR 1959 Bom 268
Reversed in AIR 1964 S C 1034.

S. 34 (1) (a) (1A)—AIR 1965 Madh Pra 170 (A)
Overruled in AIR 1966 S C 1342.

S. 34 (1) (a) and (1A)—AIR 1962 Punj 74 (FB)
Reversed in AIR 1966 S C 1342.

Ss. 34 (1) (a) and 66 (1)—1934 Cur L J 523
Reversed in AIR 1967 S C 1552.

S. 34 (1A)—AIR 1962 Punj 74 (FB)
Reversed in AIR 1966 S C 1342.

S. 34 (3)—AIR 1965 Guj 105
Reversed in AIR 1967 S C 823.

S. 35—AIR 1952 All 249
Overruled in AIR 1964 S C 1473.

S. 35—AIR 1955 Bom 80
Reversed in AIR 1958 S C 875.

S. 35—AIR 1953 Trav-Co 124
Reversed in AIR 1961 S C 699.

S. 40—(1962) ILR (1962) 14 Assam 80
Reversed in AIR 1966 S C 899.

S. 40 (1)—(1959) 33 I T R 760
Reversed in AIR 1961 S C 1265.

S. 42—(1957) 31 I T R 72 (Bom)
Reversed in AIR 1961 S C 701.

S. 42 (1) and (3)—AIR 1951 Mad 600
Reversed in AIR 1954 S C 198.

S. 42 (3)—AIR 1951 Mad 600
Reversed in AIR 1954 S C 198.

S. 44—AIR 1957 Andh Pra 368
Overruled in AIR 1960 Andh Pra 23 (FB).

S. 44—AIR 1960 Andh Pra 23 (FB)
Overruled in AIR 1961 S C 609.

S. 44—AIR 1961 Andh Pra 7
Reversed in AIR 1964 S C 825.

S. 44—AIR 1961 Andh Pra 7
Overruled in AIR 1963 Andh Pra 460.

S. 44—AIR 1958 Mad 8
Overruled in AIR 1961 S C 609.

S. 45—AIR 1957 Cal 667
Overruled in AIR 1964 S C 1473.

S. 45—AIR 1956 Mad 517
Reversed in AIR 1962 S C 663.

S. 46—AIR 1951 Cal 430
Reversed in AIR 1952 Cal 601.

S. 46—AIR 1954 Mad 1091
Reversed in AIR 1954 Mad 1091.

S. 46 (1)—AIR 1953 Mad 517
Reversed in AIR 1962 S C 663.

S. 46 (2)—AIR 1950 Bom 33
Overruled in AIR 1956 S C 20.

S. 46 (2)—AIR 1957 Cal 667
Overruled in AIR 1964 S C 1473.

S. 46 (5A)—AIR 1951 Cal 430
Reversed in AIR 1952 Cal 601 (DB).

S. 49-E—1961-42 I T R 249 (Bom)
Reversed in AIR 1965 S C 1316.

S. 55—AIR 1956 Bom 436
Reversed in AIR 1960 S C 186.

S. 60—AIR 1954 Punj 2
Reversed in AIR 1960 S C 1303.

S. 63—AIR 1963 Punj 486
Overruled in AIR 1967 S C 1552.

Income-tax Act *(contd.)*
S. 66—AIR 1957 All 826
Held overruled by A I R 1960 S C 1297 as interpreted in AIR 1967 All 362.
S. 66—AIR 1952 Pat 106
Reversed in AIR 1954 S C 253.
S. 66 (1)—1963 Raj L W 561
Reversed in AIR 1966 S C 1959.
S. 66 (4)—AIR 1956 Bom 442
Reversed in AIR 1959 S C 1177.
Sch., R. 2 (a)—AIR 1953 Cal 299
Reversed in AIR 1955 S C 50.
Sch., R. 3 (b)—(1963) 50 I T R 617 (Mad)
Reversed in AIR 1965 S C 1004.
Sch., R. 3 (b)—AIR 1960 Punj 508
Reversed in AIR 1964 S C 1403.
Sch., R. 6—AIR 1963 Cal 598
Reversed in AIR 1965 S C 1902.

Income-tax Appellate Tribunal Rules (1946)
R. 24—AIR 1955 Mad 39
Overruled in AIR 1965 Mad 62 (FB).

Income-tax Rules (1922)
R. 23—AIR 1955 Assam 201
Reversed in AIR 1961 SC 1579.
R. 24—AIR 1955 Assam 201
Reversed in AIR 1961 SC 1579.

Independence Act (1947)
S. 7—AIR 1953 Pepsu 161
Overruled in AIR 1963 SC 222.
S. 8—AIR 1954 Mad 1155
Reversed in AIR 1955 SC 817.
S. 9—AIR 1954 Mad 1155
Reversed in AIR 1955 S C 817.
S. 10—AIR 1954 Mad 1155:
Reversed in AIR 1955 SC 817.

Independence (Rights, Properties and Liabilities) Order (1947)
Art. 8 (1) (a)—AIR 1952 Cal 140
Overruled in AIR 1963 Cal 87 (FB).
Cl. 8 (1)—AIR 1954 Punj 129
Reversed in AIR 1957 SC 652.
Cl. 9—AIR 1954 Punj 129
Reversed in AIR 1957 SC 652.
Para. 10—AIR 1954 Punj 181
Overruled in AIR 1958 Punj 453.

India (Provisional Constitution) Order (1947)
Cl. 7—AIR 1954 Mad 1155
Reversed in AIR 1955 SC 817.

Industrial Disputes Act (14 of 1947)
Preamble—AIR 1931 Guj 22
Overruled in AIR 1962 SC 1500.
S. 2—AIR 1959 Pat 187
Reversed in AIR 1962 SC 1163.
S. 2 (j)—AIR 1931 Mad 239
Reversed in AIR 1963 Mad 89.
S. 2 (j)—AIR 1962 Mad 284
Reversed in AIR 1965 Mad 253.
S. 2 (k)—(1951) 1 Lab L J 145 (Cal)
Overruled in AIR 1958 SC 353=1958 SCJ 637.
S. 2 (k)—(1953) 1 Lab L J 757 (L A T I) (FB) (Cal)
Overruled in AIR 1957 SC 532.
S. 2 (k)—(1952) 1 Lab L J 122 (Mad)
Overruled in AIR 1958 S C 353=1958 SCJ 637.
S. 2 (oo)—AIR 1955 Bom 294
Reversed in AIR 1957 SC 121.
S. 2 (oo)—AIR 1959 Bom 65
Overruled in AIR 1962 Bom 152 (FB).
S. 2 (oo)—AIR 1959 Bom 70
Overruled in AIR 1962 Bom 152 (FB).

Industrial Disputes Act *(contd.)*
S. 2 (s)—(1954) 1 Lab L J 638
Reversed in AIR 1955 SC 404.
S. 8 (2)—AIR 1958 Cal 208
Overruled in AIR 1958 SC 1018.
S. 10—AIR 1958 Cal 208
Overruled in AIR 1958 SC 1018.
S. 10—(1962) 5 Fac L R 52 (Cal) = 1962-2 Lab L J 452
Overruled in AIR 1965 Cal 454.
S. 10—AIR 1960 Mad 196
Overruled in AIR 1961 Mad 370.
S. 10 (1)—AIR 1957 Pat 722
Reversed in AIR 1959 S C 230.
S. 10 (1) (c)—AIR 1957 Punj 255
Overruled in AIR 1958 SC 1018.
S. 10 A—(1961) 1 Lab L J 81 (Ker)
Held overruled by AIR 1963 SC 874 in AIR 1963 Ker 324.
S. 10-A—1962 Ker L J 865
Held overruled by AIR 1963 SC 874 in AIR 1963 Ker 324.
S. 11—AIR 1950 Mad 839
Held overruled by AIR 1950 SC 188 as interpreted in AIR 1966 Cal 504.
S. 15—AIR 1950 Mad 839
Held overruled by AIR 1950 SC 188 as interpretated in AIR 1966 Cal 504.
S. 15—AIR 1960 Mad 196
Reversed in AIR 1961 Mad 370.
S. 15—AIR 1961 Punj 569
Reversed in AIR 1964 Punj 313.
S. 17—(1963) 2 Lab L J 303 (Mad)
Overruled in AIR 1966 SC 380.
S. 17-A—AIR 1963 Mys 241
Overruled in AIR 1966 S C 380a.
S. 20 (3)—AIR 1963 Mys 241
Overruled in AIR 1966 SC 380.
S. 25-C—(1955) 1 Lab L J 67 (Bom)
Overruled in AIR 1956 SC 628.
S. 25-F—AIR 1955 Bom 294
Reversed in AIR 1957 SC 121.
S. 25-F—AIR 1959 Bom 65
Overruled in AIR 1962 Bom 152 (FB).
S. 25-F—AIR 1961 Mad 217
Reversed in AIR 1964 Mad 103.
S. 25-J—AIR 1959 Bom 65
Overruled in AIR 1962 Bom 152 (FB).
S. 33—AIR 1959 Bom 248
Overruled in AIR 1960 SC 875.
S. 33 (2), Proviso—AIR 1960 Bom 390
Overruled in AIR 1962 S C 1500.
S. 33 (c) (2)—1962-4 Fac L R 169 = 1962-1 Lab L J 613 (Cal)
Overruled in AIR 1965 Cal 454.
Ss. 33 (c) (2)—1962 5 Fac L R 52 = 1962 2 Lab L J 452 (Cal)
Overruled in AIR 1965 Cal 454.
S. 33 (2)—AIR 1961 Guj 22
Overruled in AIR 1962 SC 1500.
S. 33 (2) (b)—(1963) 2 Lab L J 303 (Mad)
Overruled in AIR 1966 S C 380.
S. 33 (2) (b), Proviso—AIR 1963 Mys 241
Overruled in AIR 1966 S C 380.
S. 33-A—AIR 1959 Bom 248
Overruled in AIR 1960 S C 875.
S. 33 B—AIR 1959 Punj 383
Held impliedly overruled by AIR 1967 S C 284 in AIR 1967 Punj 430.

Industrial Disputes Appellate Tribunal Act (48 of 1950)
S. 7—AIR 1954 Bom 171
Reversed in AIR 1957 S C 73.

Industrial Disputes Appellate Tribunal Act *(contd.)*
S. 12—AIR 1959 Bom 248
Overruled in AIR 1960 S C 875.
S. 22—AIR 1959 Bom 248
Overruled in AIR 1960 S C 875.

Industrial Disputes (Bombay) Rules (1957)
R. 63 (2) and Form XVIII—AIR 1960 Bom 390
Overruled in AIR 1962 S C 1500.

Industrial Disputes (Central) Rules (1957)
R. 60 and Form K—AIR 1961 Guj 22
Overruled in AIR 1962 S C 1500.

Industrial Disputes (Madras Amendment) Act (12 of 1949)
S. 5—AIR 1951 Mad 191
Reversed in AIR 1953 S C 53.
S. 6—AIR 1951 Mad 191
Reversed in AIR 1953 S C 53.

Industrial Employment (Standing Orders) Act (20 of 1946)
AIR 1959 Mad 479
Reversed in AIR 1961 Mad 393.

Industries (Development and Regulation) Act (1951)
S. 15—AIR 1961 Guj 73
Reversed in (1962) 1 S C J 718=AIR 1962 S C 588.
S. 18-A (1) (b)—AIR 1961 Guj 73
Reversed in AIR 1962 S C 588.

Insurance Act (4 of 1938)
Preamble—(1963) 67 Cal W N 69
Reversed in AIR 1966 S C 1644.
S. 105—ILR (1956) Bom 685=58 Bom L R 578
Reversed in AIR 1961 S C 578.

Interpretation of Statutes
AIR 1953 S C 252
Overruled in AIR 1655 S C 661.
AIR 1953 All 698
Overruled in AIR 1962 All 288.
AIR 1956 All 35=ILR (1955) 2 All 612=(1955) 6 S T C 287
Impliedly overruled in AIR 1963 S C 274=(1963) 2 S C J 59.
1960 All L J 557
Reversed in AIR 1962 All 590.
(1957) 1 Andh W R 277
Overruled in AIR 1961 Andh Pra 454.
(1957) 2 Andh W R 29
Reversed in AIR 1959 Andh Pra 538.
(1963) 2 Andh W R 257
Reversed in AIR 1964 S C 1027.
55 Bom L R 246 (DB)
Reversed in AIR 1953 S C 252.
AIR 1954 Bom 249 (DB)=55 Bom L R 994
Reversed in AIR 1961 S C 921.
AIR 1957 Bom 130
Reversed in AIR 1963 S C 358.
AIR 1958 Bom 332
Reversed in AIR 1960 S C 1068.
AIR 1960 Cal 243
Reversed in AIR 1966 S C 1953.
AIR 1962 Cal 590
Reversed in AIR 1966 S C 1203.
1958 Mad L J (Cri) 11 (Ker)
Reversed in AIR 1961 S C 617.
AIR 1959 Ker 347
Impliedly overruled in AIR 1963 S C 274.
ILR (1964) 1 Ker 304
Reversed in AIR 1966 S C 1676.

Interpretation of Statutes *(contd.)*
AIR 1950 Madh B 46
Overruled in AIR 1950 Madh B 60.
AIR 1958 Madh Pra 425
Partly reversed in AIR 1962 S C 1281.
AIR 1956 Orissa 185
Reversed in AIR 1959 S C 239.
AIR 1962 Orissa 24
Reversed in AIR 1964 S C 1284.
AIR 1954 Pat 262
Reversed in AIR 1959 S C 1073.
AIR 1957 Pat 235
Reversed in AIR 1961 S C 1312.
AIR 1957 Punj 100
Overruled in AIR 1967 Punj 430.
ILR (1958) Punj 1090
Overruled in AIR 1964 Punj 246.
AIR 1959 Punj 386
Overruled in AIR 1967 Punj 430.

Iron and Steel (Scrap Control) Order (1943)
Cl. 8—AIR 1957 Madh Pra 179=1957 M P C 473
Held reversed by Cri. Appeal No. 162 of 1957, D/- 16-12 1959 (SC) in 1961 (1) Cri L J 674 (M P).

Jaipur General Clauses Act, 1944
S. 3—AIR 1951 Raj 25
Reversed in AIR 1951 S C 467.

Jaipur Opium Act (1924)
S. 1—AIR 1951 Raj 25
Reversed in AIR 1951 S C 467.

J. & K. Right to Prior Purchase Act (1993)
S. 14—AIR 1955 J & K 25 (FB)
Held overruled by AIR 1962 S C 1476 in AIR 1965 J & K 62 (FB).
S. 15—AIR 1955 J & K 25 (FB)
Held overruled by AIR 1962 S C 1476 in AIR 1965 J & K 62 (FB).

Kathiawar States Union
AIR 1952 Sau 49
Reversed in AIR 1954 S C 680.

Kerala High Court Act (5 of 1959)
S. 5—AIR 1961 Ker 14
Overruled in AIR 1963 Ker 72 (FB) and Reversed in AIR 1965 S C 654.

Kutch (Application of Laws) Order (1949)
Para. 4—AIR 1954 Kutch 42
Reversed in AIR 1957 S C 517.

Land Acquisition Act (1 of 1894)
S. 1—AIR 1962 Madh Pra 80
Reversed in AIR 1965 S C 427.
S. 3 (a)—AIR 1963 Cal 534
Overruled in AIR 1965 S C 995.
S. 4—AIR 1958 All 872
Reversed in AIR 1962 S C 764.
S. 4 (1)—AIR 1962 Madh Pra 80
Reversed in AIR 1965 S C 427.
S. 4—AIR 1962 Pat 460
Reversed in AIR 1963 S C 1077.
S. 5A—AIR 1960 All 564
Overruled in AIR 1962 All 221.
S. 12 (2)—AIR 1954 Bom 419
Overruled in AIR 1961 S C 1500.
Ss. 17 (1), 17 (4)—AIR 1960 All 564
Overruled in AIR 1962 All 221.

Land Acquisition Act *(contd.)*
S. 17—AIR 1962 All 221
Reversed in AIR 1965 S C 1768.
S. 18 (2)—AIR 1954 Bom 419
Overruled in AIR 1961 S C 1500.
S. 18 (2)—AIR 1953 Cal 595
Overruled in AIR 1966 S C 1538.
S. 18—AIR 1960 Mad 278
Overruled in AIR 1963 Mad 45.
S. 23—AIR 1959 Ker 8
Overruled in AIR 1961 Ker 222 (FB).
S. 23—AIR 1955 NUC Punj 4593=58 Pun L R 530
Overruled in AIR 1961 Punj 128 (FB).
S. 28—1962 Ker L T 495
Overruled in AIR 1964 S C 1878.
S. 30—(1958) Ker L J 613
Overruled in AIR 1961 Ker 222 (FB).
S. 30—AIR 1959 Ker 8
Overruled in AIR 1961 Ker 222 (FB).
S. 30—AIR 1959 Mys 265
Overruled in AIR 1966 S C 237.
S. 34—('62) 1962 Ker L T 495
Overruled in AIR 1964 S C 1878.
S. 38—AIR 1962 Madh Pra 80
Reversed in AIR 1965 S C 427.
S. 39—AIR 1963 Cal 534
Overruled in AIR 1965 S C 995.
S. 39—AIR 1962 Madh Pra 80
Reversed in AIR 1965 S C 427.
S. 40—AIR 1958 All 872
Reversed in AIR 1962 S C 764.
S. 40 (1) (e)—AIR 1963 Cal 534
Overruled in AIR 1965 S C 995.
S. 40—AIR 1963 Cal 554
Held overruled by A I R 1965 S C 646 in A I R 1966 Ker 187a.
S. 41 — AIR 1958 All 872
Reversed in AIR 1962 S C 764.
S. 41 (5)—AIR 1963 Cal 534
Overruled in AIR 1965 S C 995.
S. 41—AIR 1962 Madh Pra 80
Reversed in AIR 1965 S C 427.
S. 42—AIR 1958 All 872
Reversed in AIR 1962 S C 764.

Land Acquisition (Amendment) Act (1962)
S. 7—AIR 1963 Cal 534
Overruled in AIR 1965 S C 995.

Land Acquisition (U. P. Amendment) Act (21 of 1954)
S. 17—AIR 1960 All 564
Overruled in AIR 1962 All 221.

Land Customs Act (19 of 1924)
S. 5—AIR 1959 Cal 356
Overruled in AIR 1967 Cal 239.
S. 9—AIR 1959 Cal 356
Overruled in AIR 1967 Cal 239.

Land Re-settlement Manual
Chap. 8, Para. 17—(1958) ILR (1958) Punj 1090
Overruled in AIR 1964 Punj 246.

Letters Patent (Calcutta)
Cl. 12—AIR 1960 Cal 430
Held Imoliedly Overruled in AIR 1967 Cal 205.
Cl. 15—AIR 1959 Cal 324
Reversed in AIR 1965 S C 507.

Letters Patent (Lahore)
Cl. 9—AIR 1954 Punj 46
Overruled in AIR 1967 S C 1386.
Cl. 27—AIR 1958 Punj 365.
Reversed in AIR 1962 S C 247.

Letters Patent (Lahore) *(contd.)*
Cl. 37—AIR 1958 Punj 365
Reversed in AIR 1962 S C 247.

Letters Patent (Nagpur)
Cl. 10—AIR 1960 Madh Pra 86 (FB)
Overruled in AIR 1962 Madh Pra 93 (FB).

Letters Patent (Patna)
Cl. 10—AIR 1965 Pat 198
Overruled in AIR 1965 Pat 472 (FB).
Cl. 31—AIR 1951 Pat 626
Overruled in AIR 1957 Pat 102.

Limitation Act (9 of 1908)
AIR 1955 NUC (Mad) 3938
Overruled in AIR 1962 Mad 349.
S. 3—AIR 1956 All 660
Reversed in AIR 1963 S C 1165.
S. 5—AIR 1951 All 614
Overruled in AIR 1967 All 459.
S. 5—AIR 1958 All 691
Overruled in AIR 1961 All 139 (FB).
S 5—AIR 1961 All 139
Overruling AIR 1958 All 691
Overruled in AIR 1964 S C 260
S. 5—AIR 1958 Andh Pra 230
Overruled in AIR 1964 S C 260.
S. 5—AIR 1959 Andh Pra 507
Overruled in AIR 1961 Andh Pra 116.
S. 5—AIR 1950 Cal 217
Overruled in AIR 1954 Cal 352.
S. 5—AIR 1957 Mad 300
Overruled in AIR 1964 S C 260.
S. 5—AIR 1958 Mad 416
Overruled in AIR 1964 S C 260.
S. 5—AIR 1957 Pat 235
Reversed in AIR 1961 S C 1312.
S. 6—(1960) 1 Mad L J 343
Overruled in AIR 1964 Mad 169.
S. 7—AIR 1958 Ker 228
Overruled in AIR 1964 Ker 8 (FB).
S. 7—AIR 1960 Ker 46
Overruled in AIR 1964 Ker 8 (FB).
S. 9—AIR 1958 Punj 341
Reversed in AIR 1961 Punj 84.
S. 12—AIR 1950 All 486
Overruled in AIR 1965 All 443.
S. 12—AIR 1952 All 816
Overruled in AIR 1953 All 305 (FB).
S. 12—AIR 1953 All 558
Overruled in AIR 1958 All 305 (FB).
S. 12 (2)—AIR 1956 All 273 (FB)
Overruled in AIR 1964 S C 1099.
S. 12 (2)—AIR 1950 Assam 83
Overruled in AIR 1955 Assam 129 (SB).
S. 12—AIR 1952 Bhopal 39
Overruled in AIR 1966 S C 1713.
S. 12 (2)—AIR 1951 Him Pra 67
Overruled in AIR 1966 S C 1713.
S. 13—AIR 1944 Mad 437
Overruled in AIR 1955 Mad 98 (FB).
S. 18—AIR 1950 Cal 520
Overruled in AIR 1961 Cal 81.
S. 18—AIR 1954 Cal 604
Overruled in AIR 1961 Cal 81.
S. 18 (2), Proviso—AIR 1958 Ker 272
Overruled in AIR 1961 S C 1500.
S. 19—(1960) 1 Mad L J 346
Overruled in AIR 1964 Mad 169 (FB).
S. 19—AIR 1959 Punj 249
Reversed in AIR 1963 Punj 25.
S. 20—AIR 1962 All 91
Reversed in AIR 1967 S C 1631.
S. 22—AIR 1957 Cal 688
Reversed in AIR 1960 Cal 15 (DB).

Limitation Act *(contd.)*
S. 29—AIR 1952 All 816
Overruled in AIR 1956 All 305 (FB).
S. 29 (2)—AIR 1956 All 273
Overruled in AIR 1964 S C 1099.
S. 29—AIR 1961 All 139 (FB)
Overruling AIR 1958 All 691 **Overruled in** AIR 1964 S C 260.
S. 29 (2)—AIR 1957 Andh Pra 406
Overruled in AIR 1964 S C 260.
S. 29 (2)—AIR 1958 Andh Pra 230
Overruled in AIR 19 4 S C 260.
S. 29 (2) -AIR 1957 Mad 300
Overruled in AIR 19 4 S C 260.
S. 29 (2)—AIR 1958 Mad 416
Overruled in AIR 1964 S C 260.
Art. 12 (a)—AIR 1954 Mad 961
Overruled in AIR 1967 S C 727.
Art. 30—AIR 1955 N U C (Mad) 3938
Overruled in (1961) 2 Mad L J 521.
Art. 31—AIR 1961 Andh Pra 454
Overruled in (1961) 2 Andh W R 49.
Art. 31—AIR 1951 Cal 462
Overruled in AIR 1962 S C 1716.
Art. 31—AIR 1952 Nag 77
Overruled in AIR 1962 S C 1716.
Art. 31—AIR 1955 Punj 83
Overruled in AIR 1957 Punj 49.
Art. 31—AIR 1951 Simla 254
Overruled in AIR 1957 Punj 49.
Art. 48—AIR 1951 Mad 572
Reversed in AIR 1953 S C 98.
Art. 49—AIR 1951 Mad 572
Reversed in AIR 1953 S C 98.
Art. 53—AIR 1954 J & K 49
Reversed in AIR 1959 S C 1349.
Art. 62—AIR 1955 Mad 643
Overruled in AIR 1956 Mad 254.
Art. 85—AIR 1954 J & K 49
Reversed in AIR 1959 S C 1349.
Art. 120—AIR 1961 Andh Pra 279
Reversed in AIR 1966 S C 470.
Art. 120—AIR 1953 Bom 79
Overruled in AIR 1965 S C 1773.
Art. 120—AIR 1951 Mad 572
Reversed in AIR 1953 S C 98.
Art. 120—AIR 1955 Mad 643
Overruled in AIR 1956 Mad 254.
Art. 132—AIR 1960 Bom 411
Reversed in AIR 1967 S C 278.
Art. 132—AIR 1959 Punj 249
Reversed in AIR 1963 Punj 25.
Art. 136—AIR 1961 Andh Pra 279
Reversed in AIR 1966 S C 470.
Art. 142—AIR 1954 Andh Pra 17
Overruled in AIR 1957 Andh Pra 557.
Art. 144—AIR 1961 Andh Pra 279
Reversed in AIR 1966 S C 470.
Arts. 142-144—AIR 1955 NUC (Cal) 5560 (DB)
Overruled in AIR 1963 Cal 209.
Art. 144—AIR 1955 Hyd 3 (FB)
Overruled in AIR 1959 Andh Pra 79.
Arts. 142 and 144—AIR 1959 Mys 227
Overruled in AIR 1963 Mys 1 (FB).
Art. 144—AIR 1950 Pat 134
Reversed in AIR 1956 S C 446.
Art. 144—AIR 1952 Pat 46
Overruled in AIR 1960 Pat 344 (FB).
Art. 142—1955 B L J R 202=AIR 1955 NUC (Pat) 1599
Overruled in AIR 1958 Pat 386 (FB).
Art. 142—AIR 1956 Pat 533
Reversed in AIR 1962 Pat 60.
Arts. 142-144—AIR 1965 Punj 351A
Reversed in AIR 1967 Punj 270.
Arts. 142-144—AIR 1958 Raj 102
Overruled in AIR 1960 Raj 1 (SB).

Limitation Act *(contd.)*
Art. 151—AIR 1958 Punj 365
Reversed in AIR 1962 S C 247.
Art. 158—AIR 1955 Ajmer 47
Overruled in AIR 1967 S C 1233.
Art. 159—AIR 1953 Mad 909
Overruled in AIR 1955 Mad 637.
Art. 162—AIR 1950 Cal 217
Overruled in AIR 1954 Cal 352.
Art. 163 (b)—AIR 1950 Cal 217
Overruled in AIR 1954 Cal 352.
Art. 170—AIR 1959 Andh Pra 507
Overruled in AIR 1961 Andh Pra 116.
Art. 173—AIR 1951 H P 67
Overruled in AIR 1966 S C 1713.
Art. 181—AIR 1962 All 91
Reversed in AIR 1967 S C 1631.
Art. 181—AIR 1953 Cal 294
Overruled in AIR 1959 Cal 368.
Art. 181—AIR 1962 Him Pra 24
Reversed in AIR 1967 S C 990.
Art. 181—AIR 1965 Ker 99
Overruled in AIR 1967 Ker 163.
Arts. 181, 182—AIR 1958 Punj 132
Over. in AIR 1965 S C 1477 = (1965) 2 SCJ 29.
Art. 182 (7)—AIR 1960 Cal 243
Reversed in AIR 1966 S C 1953.
Art. 182 (5)—AIR 1959 Madh Pra 403
Overruled in AIR 1963 Madh Pra 176 (FB).
Arts. 182, 183—AIR 1964 Mad 221
Overruled in AIR 1967 Mad 45 (FB).
Art. 182—AIR 1958 Punj 132 (FB)
Over. in AIR 1965 S C 1477 = (1965) 2 SCJ 29.

M. P. Land Revenue Code (2 of 1955)
S. 50—ILR (1962) Bom 73 = 63 Bom L R 628
Overruled in AIR 1965 Bom 34.
S. 151—AIR 1959 Bom 78
Overruled in AIR 1966 Bom 64.
S. 237—1961 Nag L J 235=ILR (1962) Bom 73 = 63 Bom L R 628
Overruled in AIR 1965 Bom 34.

M. P. Land Revenue Code (20 of 1959)
S. 250—1962 M P L J 738 = ILR (1963) Madh Pra 548
Overruled in AIR 1967 Madh Pra 14.
S. 250—1963 M P L J 292 = 1963 Jab L J 430
Overruled in AIR 1967 Madh Pra 14.
S. 250—1963 M P L J (Notes) 45
Overruled in AIR 1967 Madh Pra 14.
S. 257 (x)—1963 M P L J 292
Overruled in AIR 1967 Madh Pra 14.

M. P. Public Trust Act (30 of 1951)
S. 5—1959 M P L J (Notes) 1
Overruled in 1962 M P L J 799.

Madras Civil Services (Disciplinary Proceedings) Tribunal Rules (1948)
R. 4 (c), Proviso—AIR 1955 Mad 182
Reversed in AIR 1956 Mad 613.

Madras Commercial Crops Markets Act (20 of 1933)
S. 5 (4) (a)—AIR 1954 Mad 621
Reversed in so far as it holds that S. 5 (4) (a) was void in AIR 1959 S C 300.

Madras District Police Act (24 of 1859)
S. 53—AIR 1961 Andh Pra 370
Reversed in AIR 1964 S C 33.

Madras Electricity Supply Undertakings (Acquisition) Act (43 of 1949)
S. 1—AIR 1951 Mad 979 (Pts C, E)
Reversed in AIR 1954 S C 251.

Madras Essential Articles (Control and Requisitioning) (Temporary Powers) Act (29 of 1949)

S. 3—(1957) 2 Andh W R 29 = ILR (1957) Andh Pra 450
Reversed in AIR 1959 Andh Pra 538.

Madras Factories Rules (1950)

R. 103—AIR 1958 Andh Pra 79
Overruled in AIR 1964 S C 1893.

Madras Food Procurement Order (1946)

Cl. 1—AIR 1959 Andh Pra 352
Reversed in AIR 1965 S C 1773.

Madras Hindu Religious and Charitable Endowments Act (19 of 1951)

S. 6 (6)—(1954) 67 Mad L W 767
Overruled in AIR 1955 Mad 378.
S. 6 (13)—AIR 1961 Mad 258
Reversed in AIR 1965 S C 1916.
S. 64 (4)—ILR (1962) Mad 449 = (1962) 2 Mad L J 67=75 Mad L W 546
Reversed in AIR 1965 S C 1578.
S. 78—AIR 1953 Mad 615
Overruled in AIR 1954 Mad 500.
S. 87—(1958) 1 Andh W R 263
Impliedly overruled in AIR 1959 Andh Pra 129.
S. 87—AIR 1953 Mad 615
Held overruled by AIR 1954 Mad 500.
S. 103 (c)—ILR (1962) Mad 449 = (1962) 2 Mad L J 67
Reversed in AIR 1965 S C 1578.
S. 103 (J), Expln.—AIR 1953 Mad 214
Overruled in AIR 1955 Mad 378.

Madras Motor Vehicles Taxation Act (3 of 1931)

S. 11A, Expln.—AIR 1961 Andh Pra 63
Overruled in AIR 1965 Andh Pra 79.

Madras Prevention of Adulteration Act (3 of 1918)

S. 3—(1956) 2 M L J 465
Overruled in AIR 1961 S C 1.
S. 18—(1956) 2 Mad L J 465
Overruled in AIR 1961 S C 1.

Madras Vexatious Litigation (Prevention) Act (8 of 1949)

Ss. 2 (1), 3—AIR 1962 Andh Pra 4
Reversed in AIR 1965 S C 1827.

Mahomedan Law

—Gift

1956 Andh W R 771
Overruled in AIR 1958 Andh Pra 751.

—Minor

AIR 1952 Nag 17
Reversed in AIR 1955 Nag 193.

—Pre-emption

AIR 1962 All 199
Reversed in AIR 1965 S C 314.

—Wakf

AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.

Marumakkathayam Law

—Illom

AIR 1951 Trav-Co 225
Overruled in AIR 1954 Trav-Co 487 (FB).

—Joint family property

1962 Ker L T 99 = I L R (1962) 2 Ker 149 = 1962 Ker L J 943
Overruled in AIR 1963 Ker 354.

Marumakkathayam Act *(contd.)*

—Karnavan

AIR 1959 Ker 403
Overruled in AIR 1964 Ker 8 (FB).

—Partition

1962 Ker L T 99=ILR (1962) 2 Ker 149=1962 Ker L J 943
Overruled in AIR 1963 Ker 354.

—Powers of karnavan

ILR (1959) Ker 902
Reversed in AIR 1963 S C 128.

—Tarwad

AIR 1951 Mad 561
Overruled in AIR 1964 S C 138.

AIR 1953 Mad 425
Held overruled by A I R 1956 Mad 244 as interpreted in AIR 1959 Ker 67 (FB).

Marwar Limitation (Amendment) Act (32 of 1949)

S. 4—1954 Raj L W 403=AIR 1955 NUC (Raj) 680
Overruled in AIR 1955 Raj 97 (FB).

Marwar Pre-emption Act (1922)

S. 3 (3)—AIR 1954 Raj 231
Overruled in AIR 1960 Raj 125 (SB).

Medical and Toilet Preparations (Excise Duties) Act (16 of 1955)

S. 21—AIR 1963 Andh Pra 332
Reversed in AIR 1964 S C 1870.

Merged States (Laws) Act (59 of 1949)

S. 1—AIR 1954 Kutch 42
Reversed in AIR 1957 S C 517.

Mineral Concession Rules (1949)

R. 27—AIR 1959 Punj 570
Reversed in AIR 1960 S C 606.

Mines Act (4 of 1923)

S. 30—AIR 1956 Nag 71
Overruled in AIR 1961 S C 1543.
S. 39—AIR 1956 Nag 71
Overruled in AIR 1961 S C 1543.

Mines Act (35 of 1952)

S. 18—AIR 1957 Cal 483
Overruled in AIR 1961 S C 1543.
S. 23—AIR 1957 Cal 483
Overruled in AIR 1961 S C 1543.
S. 76—AIR 1958 Pat 378
Reversed in AIR 1961 S C 838.

Mines and Minerals (Regulation and Development) Act (53 of 1948)

S. 4 (1)—AIR 1956 Andh 81
Reversed in AIR 1963 S C 264.

Mines Creche Rules (1946)

R. 3—AIR 1957 Cal 483
Overruled in AIR 1961 S C 1543.

Minimum Wages Act (11 of 1948)

—Preamble

AIR 1958 Bom 332
Reversed in AIR 1960 S C 1068.

Minimum Wages Act *(contd.)*
S. 2 (b)—AIR 1964 Bom 67
Reversed in AIR 1966 S C 189.
S. 18—AIR 1964 Bom 67
Reversed in AIR 1966 S C 189.
S. 19—AIR 1964 Bom 67
Reversed in AIR 1966 S C 189.
S. 20 (1)—AIR 1961 Mad 77
Overruled in AIR 1962 S C 481.
S. 22-A—AIR 1964 Bom 67
Reversed in AIR 1966 S C 189.
S. 22-B (1) (b)—AIR 1964 Bom 67
Reversed in AIR 1966 S C 189.
Sch. A, Part I, Entry No. 8—AIR 1958 Bom 332
Reversed in AIR 1960 S C 1068.

Minimum Wages (Madras) Rules (1953)
R. 23—AIR 1961 Mad 77
Overruled in AIR 1962 S C 481.

Motor Vehicles Act (4 of 1939)
S. 2 (19)—AIR 1950 All 234
Overruled in AIR 1958 All 733 (FB).
S. 42—AIR 1950 All 234
Overruled in AIR 1958 All 733 (FB).
Ss. 42 (1) and 123 (1)—AIR 1956 All 27
Reversed in AIR 1959 S C 79.
S. 43-A—(1964) 1 Mad L J 92
Reversed in AIR 1964 S C 1573.
S. 43-A—AIR 1965 Mad 473
Partially reversed in AIR 1966 S C 1366.
Ss. 44 (3) (a), 47 and 57—AIR 1961 Raj 129
Overruled in AIR 1966 Raj 127 (FB).
S. 44-A—AIR 1957 Mad 599 (FB)
Overruled in AIR 1960 S C 1191.
Ss. 46, 48, 64 and 64-A—AIR 1960 Ker 111
Overruled in AIR 1966 Ker 137.
S. 47 (1) and S. 57 (3) and (4) — A I R 1965 Mad 79 (FB)
Partially reversed in AIR 1966 S C 1366.
Ss. 47, 64 and 64-A—AIR 1954 Pat 154
Reversed in AIR 1966 S C 1780.
S. 47—AIR 1961 Raj 129
Overruled in AIR 1966 Raj 127 (FB).
S. 48—AIR 1960 Ker 111
Overruled in AIR 1966 Ker 137.
S. 57—AIR 1952 Nag 353
Overruled in AIR 1956 S C 156.
S. 57—AIR 1961 Raj 129
Overruled in AIR 1966 Raj 127 (FB).
S. 57 (3)—AIR 1965 Mad 79 (FB)
Partly reversed in AIR 1966 S C 1366.
S. 58 (2)—AIR 1957 Andh Pra 470
Overruled in AIR 1957 S C 489.
S. 58 (2)—AIR 1952 Nag 353
Overruled in AIR 1966 S C 156.
S. 60—AIR 1957 Andh Pra 470
Overruled in AIR 1957 S C 489.
S. 62, Proviso 1 — ILR (1958) 8 Raj 946=1959 Raj L W 264
Overruled in AIR 1961 Raj 98.
S. 62 (1) (c)—AIR 1952 Nag 353
Overruled in AIR 1956 S C 156.
S. 62 (c)—AIR 1958 Ker 144
Overruled in AIR 1966 S C 153.
S. 62 (c) and (d)—AIR 1959 Mys 114
Overruled in AIR 1966 S C 156.
S. 64—AIR 1960 Ker 111
Overruled in AIR 1966 Ker 137.
S. 64—AIR 1952 Mad 276
Reversed by AIR 1952 Mad 545.
S. 64—AIR 1959 Raj 121
Overruled in AIR 1963 S C 64.
S. 64A—AIR 1960 Ker 111
Overruled in AIR 1966 Ker 137.
S. 64-A—AIR 1958 Mad 236
Reversed in AIR 1960 S C 1191.

Motor Vehicles Act *(contd.)*
S. 64-B - AIR 1952 Mad 276
Reversed by AIR 1952 Mad 545.
S. 68C—AIR 1961 All 214
Reversed in AIR 1962 All 551.
S. 68-F (2)—AIR 1961 All 214
Reversed in AIR 1962 All 551.
S. 68G—AIR 1961 All 214
Reversed in AIR 1962 All 551.
S. 68H—AIR 1961 All 214
Reversed in AIR 1962 All 551.
S. 96 (1) and (2)—AIR 1961 Mad 208
Overruled in AIR 1966 Mad 244.
S. 123—AIR 1950 All 234
Overruled in AIR 1958 All 733 (FB).
S. 123—AIR 1955 All 618
Overruled in AIR 1958 All 733 (FB).
S. 123—AIR 1956 All 400
Overruled in AIR 1958 All 733 (FB).
S. 123 (1)—AIR 1959 Mys 221
Overruled in AIR 1967 S C 1424.
S. 130—(1961) 2 Cri L Jour 839 (Assam)
Overruled in AIR 1965 S C 1583.
S. 130 (1) (a) and (b)—1962 (1) Cri L Jour 684 (All)
Overruled in AIR 1965 S C 1583.
S. 133-A—AIR 1957 Mad 599 (FB)
Overruled in AIR 1960 S C 1191.

MUNICIPALITIES

— Amalner Municipal Borough General Property (Consolidated Tax) Rules (1947)
R. 1—AIR 1952 Bom 401
Overruled in AIR 1961 S C 1358.

—Bihar and Orissa Municipal Act (7 of 1922)
S. 98 (1) (2)—1959 B L J R 691
Reversed in AIR 1965 Pat 288.
S. 103—1963 B L J R 244
Overruled in AIR 1967 Pat 216.
S. 107—ILR 39 Pat 89
Reversed in AIR 1956 S C 1678.
S. 115—1957 B L J R 577
Overruled in AIR 1967 Pat 216.
S. 116—1957 B L J R 577
Overruled in AIR 1967 Pat 216.
S. 117 (1)—AIR 1958 Pat 114
Overruled in AIR 1967 Pat 96.
S. 119—1957 B L J R 577
Overruled in AIR 1967 Pat 216.

—Bombay District Municipal Act (3 of 1901)
Ss. 10 (2), 13 (2)—(1962) 2 Mys L J 83.
Overruled in AIR 1965 Mys 227 (FB).
S. 167A—AIR 1958 Bom 487
Overruled in AIR 1966 S C 249.

—Bombay Municipal Boroughs Act (18 of 1925)
S. 75, Expl.—AIR 1954 Bom 188
Reversed in AIR 1963 S C 1742.
Ss. 78, 79 to 81—AIR 1952 Bom 401
Overruled in AIR 1961 S C 1358.
S. 82—AIR 1948 Bom 145
Overruled in 64 Bom L R 229=ILR (1962) 2 Bom 463.
S. 206—AIR 1953 Bom 204
Overruled in AIR 1966 S C 249.

—Bombay Municipal Boroughs Rules
R. 350A—AIR 1954 Bom 188
Reversed in AIR 1963 S C 1742.

—Calcutta Municipal Act (3 of 1923)
S. 383 (1) (a)—AIR 1955 Cal 282
Reversed in AIR 1960 S C 1355.

MUNICIPALITIES—Calcutta Municipal Act (1923) *(contd.)*
S. 386 (1) (b)—(1960) 64 Cal W N 572
Reversed in AIR 1962 S C 1691.

—Calcutta Municipal Act (33 of 1951)
S. 437 (1)—AIR 1961 Cal 121
Partially reversed in AIR 1964 S C 1279.

—C. P. and Berar Municipalities Act (2 of 1922)
S. 14 (3)—AIR 1950 Nag 195
Overruled in 1957 M P L J 166 (Nag).
S. 15 (1)—AIR 1953 Nag 125
Overruled in AIR 1961 Madh Pra 274 (FB).
S. 15 (1)—AIR 1954 Nag 255
Overruled in AIR 1961 Madh Pra 274 (FB).
S. 20-A—AIR 1950 Nag 212
Reversed in AIR 1952 Nag 283.
S. 20-A (2)—AIR 1950 Nag 212
Overruled in AIR 1958 Madh Pra 286.
S. 20A—AIR 1954 Nag 255
Overruled in AIR 1961 Madh Pra 274 (FB).
S. 38 (1) (f)—1961 M P L J 797
Reversed in AIR 1966 S C 837.
S. 45—AIR 1954 Nag 255
Overruled in AIR 1961 Madh Pra 274 (FB).
S. 48—1959 Nag L J (Notes) 1
Overruled in AIR 1963 Bom 225 which itself is now Reversed in AIR 1966 SC 249.
Ss. 48, 66 (1) (b)—AIR 1963 Bom 225
Reversed in AIR 1966 SC 249.
S. 57 (2)—ILR (1955) Nag 276
Overruled in AIR 1958 Madh Pra 355.
S. 66—AIR 1950 Nag 169
Reversed in AIR 1958 SC 341.
Ss. 66 and 48—1959 Nag L J (Notes) 1—**This case was Overruled in AIR 1963 Bom 225 which itself is now Reversed in AIR 1966 SC 249.**
S. 176—AIR 1950 Nag 195
Overruled in 1957 M P L J 166 (Nag).
S. 176 (c)—AIR 1950 Nag 195
Overruled in 1957 M P L J 166 (Nag).
S. 176 (e)—AIR 1950 Nag 195
Overruled in 1957 M P L J 166 (Nag).

—C. P. and Berar Municipal Election Petition Rules (1947)
R. 22 (3)—AIR 1950 Nag 212
(1) Reversed in AIR 1952 Nag 283.
(2) Overruled in AIR 1958 Mad Pra 286.

—City of Bombay Municipal Act (3 of 1888)
S. 154 (1)—AIR 1951 Bom 320
Overruled in AIR 1962 SC 151.

—City of Nagpur Corporation Act (2 of 1950)
S. 57—AIR 1959 Bom 458
Reversed in AIR 1963 SC 897.
S. 58—AIR 1959 Bom 458
Reversed in AIR 1963 SC 897.
S. 58-A—AIR 1959 Bom 458
Reversed in AIR 1963 SC 897.
S. 84—AIR 1959 Bom 458
Reversed in AIR 1963 SC 897.

—Madras District Municipalities Act (5 of 1920)
Ss. 8, 82—AIR 1953 Mad 49
Overruled in AIR 1962 SC 151.
Sch. 4, R. 6—AIR 1956 Mad 49
Overruled in AIR 1962 SC 151.
Sch. 4, R. 8—AIR 1956 Mad 49
Overruled in AIR 1962 SC 151.
Sch. 4, R. 28—AIR 1956 Mad 49
Overruled in AIR 1962 SC 151.

MUNICIPALITIES *(contd.)*
—Madras Town Planning Act (7 of 1920)
Ss. 23, 25, 27 and 29—AIR 1954 Mad 454
Overruled in AIR 1962 Mad 7 (FB).

—Orissa Municipal Act (23 of 1950)
S. 375—AIR 1960 Orissa 46
Reversed in AIR 1962 SC 945.

—Orissa Municipal Election Validation Ordinance (1 of 1959)
Ss. 3, 4—AIR 1960 Orissa 46
Reversed in AIR 1962 SC 945.
S. 5 (1)—AIR 1960 Orissa 46
Reversed in AIR 1962 SC 945.

—Punjab Municipal Act (3 of 1911)
Ss. 4 to 7—ILR (1965) 2 Punj 174
Reversed in ILR (1966) 2 Punj 149.
S. 238 (1)—AIR 1957 Punj 100
Overruled in AIR 1967 Punj 430.

—Punjab Municipal Election Rules (1952)
Rr. 8A, 8D—AIR 1961 Punj 105
Overruled in AIR 1961 Punj 429 (FB).

—Rajasthan City Municipal Appeals Regulation Act (3 of 1950)
S. 4 (1). Proviso—ILR (1959) 9 Raj 216
Reversed in AIR 1965 SC 1296.

—Rajasthan Municipalities Act (38 of 1959)
S. 14 (2), (3)—1964 Raj L W 121=I L R (1964) 14 Raj 414
Overruled in AIR 1965 Raj 229.

—Rajasthan Town Municipalities Act (23 of 1951)
S. 19—ILR (1960) 10 Raj 540
Overruled in AIR 1961 Raj 250 (FB).

—Travancore District Municipalities Act (23 of 1116 M E)
Ss. 286, 287—1960 Ker L J 252
Reversed in AIR 1963 SC 1561.

—U. P. Municipalities Act (2 of 1916)
S. 135 (3)—1960 All L J 185
Reversed in AIR 1966 SC 693.
Ss. 160, 164—AIR 1953 All 258
Overruled in AIR 1962 All 315 (FB).

Muslim Personal Law (Shariat) Application Act (6 of 1937)
AIR 1954 Mad 961
Overruled in AIR 1967 SC 727.

Mysore Administration of Evacuee Property (Emergency) Act (47 of 1949)
S. 30—AIR 1954 Mys 152
Reversed in AIR 1961 SC 1087.

(Mysore) Hindu Law Women's Rights Act (10 of 1933)
S. 8 (2) (a) (b)—AIR 1954 Mys 88
Overruled in AIR 1957 Mys 35.

Mysore Income-tax Act (5 of 1923)
S. 34—AIR 1955 Mys 49
Reversed in AIR 1958 SC 795.

Mysore Retroceded Area (Application of Laws) Act (57 of 1948)
Sch. A—AIR 1955 Mys 99
Reversed in AIR 1958 SC 808.

Mysore University Act (23 of 1956)
Ss. 22, 23, 43, Reg. 3 (c)—1963 (1) Mys L J 278
Reversed in AIR 1965 SC 1932.

Negotiable Instruments Act (1881)
Ss. 4, 13—(1963) 4 Guj L R 305
Reversed in AIR 1967 Guj 1.
S. 5—AIR 1956 Mad 695.
Reversed in AIR 1962 SC 1148.
S. 6—AIR 1952 Bom 306
Reversed in AIR 1954 SC 504.
S. 31—AIR 1950 Bom 375
Overruled in AIR 1958 Bom 100.
S. 44—(1955) 2 MLJ 569=AIR 1955 NUC (Mad) 6080
Overruled in AIR 1959 Mad 96.
S. 72—AIR 1950 Bom 375
Overruled in AIR 1958 Bom 100.
S. 85A—AIR 1957 Madh B 64
Reversed in AIR 1959 SC 1394.
S. 118 (a)—AIR 1958 All 54
Reversed in AIR 1965 SC 920.

Northern India Ferries Act (17 of 1878)
S. 8—AIR 1962 Assam 46
Reversed in 1962 (Supp) 3 S C R 508.

Oil Seeds (Forward Contract Prohibition) Order (1943)
AIR 1954 Mad 528
Overruled in AIR 1964 SC 1526.
Cl. 3—AIR 1956 Andh 9
Overruled in AIR 1964 SC 1526.

Opium Act (1878)
Ss. 10, 9— AIR 1958 Madh Pra 285
Overruled in AIR 1963 Madh Pra 337.
S. 20-G—AIR 1963 Madh Pra 337
Overruled in 1966 Madh Pra 1.

Orissa Agricultural Income-tax Act (24 of 1947)
S. 29 (2)—AIR 1952 Orissa 281
Overruled in AIR 1953 Orissa 117 (SB).

Orissa Hindu Religious Endowments Act (4 of 1939)
—ILR (1962) Cut 171
Reversed in AIR 1966 SC 1544.
S. 64 (2)—ILR (1961) Cut 183
Impliedly overruled AIR 1963 SC 1544.

Orissa Merged States (Laws) Act (4 of 1950)
Preamble—AIR 1954 Orissa 101
Reversed in AIR 1958 SC 239.

Orissa Mining Areas Development Funds Act (27 of 1952)
—AIR 1962 Orissa 241
Reversed in AIR 1964 SC 1284.

Orissa Timber and Forest Produce Transit Rules (1958)
—AIR 1963 Orissa 24
Overruled in AIR 1967 SC 1189.

Paddy (Acquisition and Movement) Control Order (1950)
R. 15—1950 Ker L T 617
Reversed in AIR 1951 Trav.Co 241.

PANCHAYATS

—Bihar Gram Cutchery Rules
R. 7—1961 BLJR 65
Overruled in AIR 1966 Pat 286.
R. 8A—1961 BLJR 65
Overruled in AIR 1966 Pat 283.

PANCHAYATS—Bihar Gram Cutchery Rules (*contd.*)
Rr. 11, 14 and 15—1961 BLJR 65
Overruled in AIR 1966 Pat 286.

—Bihar Panchayat Election Rules (1956)
R. 4—1961 BLJR 14
Overruled in AIR 1964 Pat 11.
R. 5—1961 BLJR 14
Overruled in AIR 1964 Pat 11.
R. 11—1961 BLJR 14
Overruled in AIR 1964 Pat 11.
R. 47—1961 BLJR 14
Overruled in AIR 1964 Pat 11.

—Bihar Panchayat Raj Act (1948)
S. 60—1961 BLJR 65
Overruled in AIR 1966 Pat 286.
S. 79—1961 BLJR 14
Overruled in AIR 1964 Pat 11.

—Bombay Village Panchayats Act (6 of 1933)
Ss. 10 (1), 11, 12—(1962) 3 Guj L R 53
Overruled in AIR 1966 Guj 248.

—C. P. and Berar Panchayats Act (1 of 1947)
S. 42 (1) (c)—AIR 1962 Madh Pra 177
Overruled in AIR 1965 M P 219 (FB).

—Maharashtra Zila Parishads and Panchayat Samities Act (5 of 1962)
S. 72 (2) and (4)—66 Bom L R 729
Overruled in AIR 1966 Bom 1 (FB).

—Punjab Panchayat Samitis (Primary Members Election) Rules (1961)
R. 17—64 Punj L R 1110=ILR (1963) 1 Punj 49
Overruled in AIR 1963 Punj 429.

—U. P. Panchayat Raj Act (26 of 1947)
S. 5A, Cl. (h), Proviso first—1959 All L J 477:
Overruled in AIR 1965 All 382 (FB).
Ss. 55 (4) and 56—1956 All L J 934 = 1956 All W R (HC) 855
Overruled in AIR 1963 All 585.
S. 89—1963 (1) Cri L J 507 (All)
Overruled in AIR 1965 All 263.

Part B States (Laws) Act (1951)
S. 6—AIR 1960 Andh Pra 375
Overruled in AIR 1964 Andh Pra 276.

Part B States Taxation Concessions Order (1950)
Para. 6—AIR 1957 Madh Bha 64
Reversed in AIR 1959 SC 1394.

Part C States (Laws) Act (1950)
S. 4, Proviso — 1961 (1) Cri L J 562 (Tripura)
Reversed in AIR 1965 SC 147.

Partition Act (1893)
S. 4—AIR 1953 All 332
Overruled in AIR 1956 All 687.
S. 4—AIR 1953 All 332
Overruled in AIR 1957 All 356 (FB).

Partnership Act (1932)
S. 19—AIR 1952 Punj 373
Overruled in AIR 1959 Punj 617 (FB).
S. 30—AIR 1953 Mad 315
Overruled in AIR 1961 SC 680.
S. 30—AIR 1958 Pat 177
Overruled in AIR 1961 SC 680.

Partnership Act *(contd.)*
Ss. 42 and 69 (2)—66 Cal W N 262=1962 Cal L J 230
Overruled in AIR 1966 SC 24.
S. 42—AIR 1956 Nag 46
Overruled in AIR 1966 SC 24.
S. 69 (3)—AIR 1961 Bom 65
Reversed in AIR 1964 SC 1882.
S. 69 (3) (a)—AIR 1951 Pat 196
Overruled in AIR 1964 SC 1882.
S. 69 (3)—AIR 1957 Punj 159
Overruled in AIR 1964 SC 1882.

Patiala Pre-emption Act
S. 17—AIR 1954 Pepsu 59
Reversed in AIR 1958 SC 838.

Patiala Recovery of State Dues Act (4 of 2002Bk)
S. 3 (1)—(1959) 61 Punj L R 753
Overruled in ILR (1961) 2 Punj 823.
S. 4—(1959) 61 Punj L R 753
Reversed in AIR 1964 SC 1223.
S. 4—(1959) 61 Punj L R 753
Overruled in ILR (1961) 2 Punj 823.
S. 11—(1959) 61 Punj L R 753
(1) **Overruled in** ILR (1961) 2 Punj 823
(2) **Reversed in** AIR 1964 SC 1223.

Patna University Act (3 of 1962)
S. 34—1965 BLJR 513
Reversed in AIR 1966 SC 707.

Payment of Wages Act (1936)
S. 2(vi) (d) and (6)—AIR 1962 Bom 87
Reversed in AIR 1966 SC 856.
S. 2 (vi)—AIR 1951 Cal 29
Overruled in AIR 1964 SC 1699.
S. 15—AIR 1951 Cal 29
Overruled in AIR 1964 SC 1699.
S. 17 (1) (a)—AIR 1955 Bom 283
Overruled in AIR 1960 SC 619.

Penal Code (1860)
S. 21, Cl. (4)—AIR 1959 All 707
Reversed in AIR 1961 SC 218.
S. 21—AIR 1957 Orissa 112
Overruled in AIR 1967 SC 884.
S. 21—AIR 1954 Punj 189
Overruled in AIR 1959 SC 1310.
S. 40—AIR 1964 Bom 274
Reversed in AIR 1965 S C 722.
S. 71—AIR 1954 All 80
Overruled in AIR 1955 All 275 (FB).
S. 84—AIR 1956 Nag 187
Overruled in AIR 1964 S C 1563.
S. 94—AIR 1957 All 184
Overruled in AIR 1966 All 192.
S. 97 (1)—AIR 1957 All 714
Reversed in AIR 1960 S C 67.
S. 100 (5)—AIR 1957 All 714
Reversed in AIR 1960 S C 67.
S. 107—AIR 1957 All 184
Overruled in AIR 1966 All 192.
S. 109—AIR 1957 All 388
Reversed in AIR 1960 S C 409.
S. 120 B—(1958) 2 Andh W R 523 = (1958) Mad L J (Cri) 882
Reversed in AIR 1961 S C 1241.
S. 124-A—AIR 1959 All 101
Reversed in AIR 1962 S C 955.
Ss. 146, 147 and 94—AIR 1957 All 184
Overruled in AIR 1966 All 192.
S. 147—AIR 1953 All 315
Overruled in AIR 1955 All 232 (FB).
S. 149—AIR 1953 All 315
Overruled in AIR 1955 All 232 (FB).

Penal Code *(contd.)*
S. 161—AIR 1957 All 388
Reversed in AIR 1960 S C 409.
S. 161—AIR 1959 Bom 30
Overruled in AIR 1960 S C 548.
S. 161—AIR 1957 Raj 138
Overruled in AIR 1960 S C 548.
S. 165-A—AIR 1957 All 388
Reversed in AIR 1960 S C 409.
S. 165-A—AIR 1956 Cal 385
Reversed in AIR 1959 S C 8.
S. 171-G—AIR 1958 Mad 240
Overruled in AIR 1967 S C 808.
S. 204—AIR 1951 Cal 101
Overruled in AIR 1965 S C 1251.
S. 228—Madh B L R 1955 (Cri) 111 = AIR 1955 N U C (Madh B) 3775
Reversed in AIR 1959 S C 102.
S. 300 (1), (2)—(1955) 57 Punj L R 379
Reversed in AIR 1956 S C 526.
S. 302—AIR 1957 All 184
Overruled in AIR 1966 All 192.
S. 302—(1961) 1 Andh W R 1 (FB)
Reversed in AIR 1964 S C 33.
S. 304, Part 2—AIR 1957 All 714
Reversed in AIR 1960 S C 67.
S. 323—AIR 1953 All 315
Overruled in AIR 1955 All 232.
S. 354—AIR 1963 Punj 443 (FB)
Reversed in AIR 1967 S C 63.
S. 361—AIR 1958 Ker 121
Overruled in AIR 1965 S C 942.
S. 363—AIR 1955 Cal 100
Overruled in AIR 1962 S C 1908.
S. 363—1953 Mad W N 636
Reversed in AIR 1965 S C 942.
S. 366—AIR 1955 Cal 100=1955 Cri L J 347
Overruled in AIR 1962 S C 1908.
S. 366—ILR (1960) Ker 481=1 60 Ker L T 273
Overruled in AIR 1965 S C 942.
S. 366—1962 (1) Cri L J 841 (Punj)
Overruled in AIR 1964 Punj 83.
S. 378—AIR 1959 Andh Pra 530
Reversed in AIR 1962 S C 586.
S. 378—AIR 1964 Mad 367
Overruled in AIR 1965 S C 666.
S. 379—AIR 1962 Mad 497
Overruled in AIR 1964 Mad 367.
S. 405—AIR 1952 Trav-Co 128
Reversed in AIR 1953 S C 478.
S. 409—AIR 1952 Punj 89
Overruled in AIR 1957 S C 458.
S. 409—AIR 1952 Trav-Co 128
Reversed in AIR 1953 S C 478.
S. 441—AIR 1950 All 157
Overruled in AIR 1964 S C 986.
S. 447—AIR 1950 All 157
Overruled in AIR 1964 S C 986.
S. 464—ILR (1960) 2 Punj 424
Reversed in AIR 1963 S C 1572.
S. 498—AIR 1957 Pat 285
Reversed in AIR 1959 S C 436.
S. 499—AIR 1960 Bom 418
Reversed on facts in AIR 1964 S C 40.
S. 499, Expl. 9—AIR 1951 Punj 215
Reversed in AIR 1966 S C 97.
S. 511—AIR 1962 Cal 370
Reversed in AIR 1966 S C 955.

Pepsu Judicature Ordinance (10 of 2005 Smt.)
S. 116—AIR 1951 Pepsu 39
Reversed in AIR 1952 S C 409.

Police Service (Cadre) Rules (1954)
R. 4 (1)—AIR 1962 Punj 516
Reversed in AIR 1964 S C 423.

Police Service (Fixation of Cadre Strength) Regulations (1955)
AIR 1962 Punj 516
Reversed in AIR 1964 S C 423.

Police Service (Recruitment) Rules (1954)
R. 4—AIR 1962 Punj 516
Reversed in AIR 1964 S C 423.

Posts and Telegraphs Manual
Vol. 3, Sch. 1-B, R. 2—AIR 1957 Orissa 112
Overruled in AIR 1967 S C 884.

Post Office Act (6 of 1898)
S. 3 (1)—1961 (1) Cri L J 595 (All)
Reversed in AIR 1963 S C 822.
S. 3-A—1961 (1) Cri L J 595 (All)
Reversed in AIR 1963 S C 822.
S. 52—(1961 (1) Cri L J 595 (All)
Reversed in AIR 1963 S C 822.

Precedents
AIR 1955 Andhra 49
Overruled in AIR 1955 Andhra 87 (FB).

Press and Registration of Books Act (1867)
Ss. 4, 5—AIR 1959 Andh Pra 530
Reversed in AIR 1962 S C 586.

Press Emergency Powers Act (23 of 1931)
S. 4 (1)—AIR 1951 Pat 12
Reversed in AIR 1952 S C 329.

Prevention of Corruption Act (1947)
S. 2—AIR 1954 Punj 189
Overruled in AIR 1959 S C 1310.
S. 3, Proviso—AIR 1953 Cal 226
Overruled in AIR 1956 Cal 56 (FB).
S. 4—AIR 1959 Bom 30
Overruled in AIR 1960 S C 548.
S. 4 (1)—AIR 1957 Raj 138
Overruled in AIR 1960 S C 548.
S. 5 (1) (d)—AIR 1959 S C 847
Overruled in AIR 1962 S C 195.
S. 5 (1) (c)—AIR 1952 Punj 89
Overruled in AIR 1957 S C 458.
S. 5 (2) and (3)—1958 All L J 424=1958 All W R (HC) 526
Reversed in AIR 1961 S C 583.
S. 6 (1)—AIR 1953 Ajmer 17
Reversed in AIR 1956 S C 404.

Prevention of Food Adulteration Act (1954)
S. 2—AIR 1960 All 504
Overruled by AIR 1961 All 590.
S. 2—1960 All L J 94
Overruled in AIR 1963 All 433.
S. 2 (ix) (a)—AIR 1958 Andh Pra 681
Overruled in AIR 1965 Andh Pra 118.
S. 2 (10)—1962 (1) Cri L J 152 (Ker)
Overruled in AIR 1966 S C 128.
S. 7—AIR 1960 All 504
Overruled by AIR 1961 All 590.
S. 7—AIR 1958 Andh Pra 681
Overruled in AIR 1965 Andh Pra 118.
Ss. 7 and 16—AIR 1959 Mad 185
Overruled in AIR 1961 S C 631.
S. 7—AIR 1962 Mad 342
Overruled in AIR 1965 Mad 168.
Ss. 9, 10—AIR 1960 All 117
Overruled in AIR 1960 All 546 (FB).
S. 10—1962 (1) Cri L J 152 (Ker)
Overruled in AIR 1966 S C 128.

Prevention of Food Adulteration Act *(contd.)*
S. 13—1962 (2) Cri L J 579:
Overruled in AIR 1966 Punj 328.
S. 13 (s)—AIR 1960 All 504.
Overruled by AIR 1961 All 590.
S. 16—AIR 1960 All 504
Overruled by AIR 1961 All 590.
S. 16—AIR 1959 Mad 185
Overruled in AIR 1961 S C 631.
S. 16 (1), Rules under, R. 44 (h)—AIR 1958 Andh Pra 681
Overruled in AIR 1965 Andh Pra 118.
S. 16 (1) (a) (ii) - 1962 (1) Cri L J 152 (Ker)
Overruled in AIR 1966 S C 128.
S. 16 (1)—AIR 1962 Mad 342
Overruled in AIR 1965 Mad 168.
S. 20—(1956) 2 Mad L J 465=1957 Cri L J 75
Overruled in AIR 1961 S C 1.
S. 21—AIR 1959 All 778
Reversed in AIR 1960 S C 905.
S. 23—AIR 1960 All 504
Overruled by AIR 1961 All 590.

Prevention of Food Adulteration Rules (1955)
R. 20—1962 All Cr R 65= 64 Punj L R 57 = 1962 (2) Cri L J 579
Overruled in AIR 1966 Punj 328.
R. 44 (h) - AIR 1958 Andh Pra 681
Overruled in AIR 1965 Andh Pra 118.
R. 50 (1)—1962 Ker L T 1012=I L R (1962) 1 Ker 436=1962 Ker L J 240=(1962) 1 Ker L R 294
Overruled in AIR 1966 Ker 184 (FB).
Appendix B, A.11.14 (U.P.)—AIR 1962 All 158
Overruled in AIR 1964 S C 1135.

Presidency Small Cause Courts Act (1882)
S. 18 (a)—AIR 1951 Cal 37
Overruled in AIR 1952 Cal 35 (FB).
S. 18 (b)—AIR 1954 Bom 129
Held impliedly overruled by AIR 1963 S C 1681 in AIR 1967 Cal 205.
S. 41—AIR 1960 Bom 338
Overruled in AIR 1965 Bom 177 (FB).
Ss. 41, 49—AIR 1952 Cal 126
Overruled in AIR 1953 S C 148.
S. 43—AIR 1951 Cal 32
Overruled in AIR 1953 S C 148.
S. 45—AIR 1951 Bom 294
Held overruled in AIR 1951 Bom 390
S. 46—AIR 1960 Bom 338
Overruled in AIR 1965 Bom 177 (FB).
S. 47—AIR 1960 Bom 338
Overruled in AIR 1965 Bom 177 (FB).

PROHIBITION

—Bombay Prohibition Act (25 of 1949)
S. 2 (22)—AIR 1951 Bom 210
Reversed in AIR 1951 S C 318.
Ss. 12 to 17—AIR 1951 Bom 210
Reversed in AIR 1951 S C 318.
S. 39—AIR 1951 Bom 210
Reversed in AIR 1951 S C 318.
S. 52—AIR 1951 Bom 210
Partly reversed in AIR 1951 S C 318.
S. 53—AIR 1951 Bom 210
Reversed in AIR 1951 S C 318.
Ss. 65 (a), 24A, 6A, (6)—AIR 1959 Bom 199
Overruled in AIR 1962 S C 759.
S. 66 (b)—AIR 1952 Bom 327
Overruled in AIR 1955 S C 123.
S. 136 (1)—AIR 1951 Bom 210
Reversed in AIR 1951 S C 318.
S. 139 (c) - AIR 1951 Bom 210
Reversed in AIR 1951 S C 318.

Provident Funds Act (1925)
S. 3 (1)—AIR 1950 Cal 212
Overruled in AIR 1951 Cal 25.
S. 3 (1)—AIR 1951 Cal 25
Reversed in AIR 1952 S C 227.

Provincial Insolvency Act (1920)
S. 2 (d)—AIR 1951 Pat 488
Reversed in AIR 1956 S C 336.
S. 6 (c)—AIR 1962 Andh Pra 346
Overruled in AIR 1963 S C 1279.
S. 6 (g)—AIR 1955 Punj 193
Reversed in AIR 1958 S C 999.
Ss. 27, 28 (2)—AIR 1962 Punj 78
Reversed in AIR 1965 S C 951.
S. 28 (2)—AIR 1951 Pat 488
Reversed in AIR 1958 S C 336.
S. 28 (2)—(1963) 65 Punj L R 641
Overruled in AIR 1967 Punj 53 (FB).
S. 28-A, First Proviso—AIR 1956 Mad 413
Reversed in AIR 1963 S C 992.
S. 49—AIR 1958 All 54
Reversed in AIR 1965 S C 920.
S. 53—AIR 1956 All 68
Overruled in AIR 1965 All 80.
S. 59—AIR 1951 Mad 814
Overruled in AIR 1957 Mad 1.
S. 68—AIR 1963 Andh Pra 293
Overruled in AIR 1967 S C 1780.
S. 75—AIR 1958 All 54
Reversed in AIR 1965 S C 920.

Provincial Small Cause Courts Act (1887)
S. 16—1956 Andh W R 280=1956 Andh L T 683
Overruled in AIR 1957 Andh Pra 133.
S. 25—AIR 1951 Mad 275
Overruled in (1955) 2 M L J 254 (FB).

PUBLIC SAFETY

—J. & K. Preventive Detention Act (11 of 2011)
S. 8—AIR 1955 J & K 7 (FB)
Overruled in AIR 1957 S C 281.

—Preventive Detention Act (1950)
S. 7—AIR 1951 Bom 266
Reversed in AIR 1951 S C 157.

—Special Tribunals Regulation (Hyderabad No. 5 of 1358 Fasli)
S. 1—AIR 1951 Hyd 11 (FB)
Overruled in AIR 1953 Hyd 33 (FB).

—West Bengal Criminal Law Amendment (Special Courts) Act (1949)
S. 4 (1)—AIR 1952 Cal 644
Overruled in AIR 1953 S C 404.

Public Servants (Inquiries) Act (1950)
S. 8—AIR 1954 Pat 289
Reversed in AIR 1956 S C 66.
S. 8—AIR 1951 Punj 49
Overruled in AIR 1956 S C 66.

Punjab Alienation of Land Act (13 of 1900)
AIR 1954 Punj 55
Overruled in AIR 1962 S C 1476.

Punjab Civil Medical Service Class I (Recruitment and Conditions of Service) Rules (1940)
R. 17—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.

Punjab Civil Services Rules (1959)
Vol. 1, R. 3.13 (e)—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.
Vol. 1, R. 3.26 (d)—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.
Vol. 1, R. 7.2—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.
Vol 1, R. 8.15—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.

Punjab Court of Wards Act (2 of 1903)
S. 5—AIR 1953 Punj 30
Overruled in AIR 1963 Punj 9.
S. 18—AIR 1959 Punj 50.
Overruled in AIR 1965 Punj 472 (FB).
S. 21—AIR 1959 Punj 50
Overruled in AIR 1965 Punj 472 (FB).

Punjab Excise Act (1 of 1914)
S. 1—AIR 1959 Punj 97
Reversed on facts in AIR 1959 S C 65.
S. 28—AIR 1956 Punj 97
Reversed on facts in AIR 1959 S C 65
S. 59—AIR 1956 Punj 97
Reversed on facts in AIR 1959 S C 65

Punjab General Clauses Act (1 of 1898)
S. 14—AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.

Punjab Pre-emption Act (1 of 1913)
S. 11—AIR 1958 Punj 44
Overruled in AIR 1960 Punj 196.
S. 15—AIR 1954 Punj 55
Overruled in AIR 1962 S C 1476.
S. 16—AIR 1954 Punj 55
Overruled in AIR 1962 S C 1476.
S. 16 (Sixthly)—AIR 1958 Punj 44
Overruled in AIR 1960 Punj 196 (FB), which is itself now overruled in AIR 1962 S C 1476.
S. 16 (Sixthly)—AIR 1960 Punj 196 (FB)
Overruled in AIR 1962 S C 1476.

Punjab Tobacco Vend Fees Act (12 of 1954)
S. 4—AIR 1957 Punj 45
Overruled in AIR 1962 Punj 267 (FB)

Punjab Trade Employees Act (1940)
S. 2 (d)—ILR (1960) Punj 639
Overruled in AIR 1963 Punj 148 (FB).

Railway Boards Act (4 of 1908)
S. 2 (b)—AIR 1957 Pat 583
Reversed in AIR 1962 S C 113.

Railway Establishment Code
R. 148—AIR 1959 All 439
Overruled in AIR 1964 S C 600.
R. 148—AIR 1962 Mad 379
Overruled in AIR 1964 S C 600.
R. 148—AIR 1958 Raj 250
Overruled in AIR 1964 S C 600.
R. 148 (3)—AIR 1960 Cal 264
Overruled in AIR 1964 S C 600.
R. 148 (3)—AIR 1956 Pat 221
Overruled in AIR 1964 S C 600.
Rr. 148 (3) and (4) and 1708—AIR 1958 Raj 250
Overruled in AIR 1964 S C 600.
R. 149 (3)—AIR 1963 Assam 94
Reversed in AIR 1964 S C 600.
Rr. 1707, 1709—AIR 1960 Cal 284
Overruled in AIR 1964 S C 600.
R. 2046—AIR 1958 Raj 250
Overruled in AIR 1964 S C 600.

Railways Act (9 of 1890)
S. 47—AIR 1957 Pat 586
Reversed in AIR 1962 S C 113.
S. 72—AIR 1954 All 747
Overruled in AIR 1956 All 338 (FB).
S. 72 (2)—AIR 1959 Pat 202
Reversed in AIR 1965 S C 1755.
S. 77—AIR 1952 All 891 (FB)
Overruled in AIR 1961 S C 725.
S. 77—AIR 1952 All 897 (FB)
Reversed in AIR 1961 S C 725.
S. 77—AIR 1956 Cal 390
Reversed in AIR 1962 S C 1879.
Ss. 77, 80, 140—AIR 1955 Mad 151
Overruled in AIR 1960 Mad 58.
S. 137—AIR 1954 Punj 189
Overruled in AIR 1959 S C 1310.
S. 140—AIR 1954 Bom 129
Held impliedly overruled by AIR 1963 S C 1681 as interpreted in AIR 1967 Cal 205.

Rajasthan Business Rules (1955)
R. 31—ILR (1961) 11 Raj 533
Reversed in AIR 1963 S C 1323.

Rajasthan Cinema (Fegulation) Act (30 of 1952)
S. 5—ILR (1962) 12 Raj 44=1962 Raj L W 222
Overruled in AIR 1966 S C 1081.

Rajasthan Civil Courts Laws Extension Act (2 of 1957)
S. 1—ILR (1958) 8 Raj 591=1959 Raj L W 291
Overruled in AIR 1962 Raj 41.

Rajasthan Civil Courts Ordinance (5 of 1950)
S. 21—AIR 1959 Raj 45
Overruled in AIR 1959 Raj 246.

Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1959
R. 14—ILR (1961) 11 Raj 536
Reversed in AIR 1963 S C 1323.

Rajasthan Higher Judicial Service Rules, 1955
AIR 1966 Raj 23
Reversed in AIR 1967 S C 1599.
Rr. 13, 23—AIR 1966 Raj 26
Reversed in AIR 1967 S C 1599.
Rr. 22, 23, 24, 13—AIR 1966 Raj 23
Reversed in AIR 1967 S C 1599.

Rajasthan Nathdwara Temple Act (13 of 1959)
S. 2 (viii)—AIR 1962 Raj 196
Reversed in AIR 1963 S C 1638.
S. 16—AIR 1962 Raj 196
Reversed in AIR 1963 S C 1638.
S. 28 (2)—AIR 1962 Raj 196
Reversed in AIR 1963 S C 1638
S. 30 (2) (a)—AIR 1962 Raj 196
Reversed in AIR 1963 S C 1638.
Ss. 36-37—AIR 1962 Raj 196
Reversed in AIR 1963 S C 1638.

Rajasthan Public Demands Recovery Act (5 of 1952)
S. 20—AIR 1957 Raj 277
Overruled in AIR 1960 Raj 171.

Rajasthan Service Rules
R. 244(2)—ILR (1961) 11 Raj 533
Reversed in AIR 1963 S C 1323.

Rajasthan Stamp Rules, 1955
R. 3—AIR 1961 Raj 43
Overruled in AIR 1965 Raj 114.

Registration Act (16 of 1908)
S. 17—AIR 1962 Andh Pra 443
Overruled in AIR 1965 Andh Pra 274.
S. 17—AIR 1958 Pat 472
Reversed in AIR 1965 S C 1591.
Ss. 49, 17—AIR 1962 Andh Pra 443
Overruled in AIR 1965 Andh Pra 274 (FB).
S. 49—AIR 1958 Pat 472
Reversed in AIR 1965 S C 1591.

Registration of Foreigners Act (16 of 1939)
S. 3—AIR 1963 Guj 226
Reversed in AIR 1965 S C 810.

Religious and Charitable Endowments
Mahant, Succession—AIR 1952 Punj 301
Reversed in AIR 1954 S C 606.

Repealing and Amending Act (1952)
S. 4—AIR 1955 Punj 141
Overruled in AIR 1960 S C 89.
S. 4—(1959) 61 Pun L R 702 = ILR (1959) Punj 2158
Overruled in AIR 1960 S C 89.

Representation of the People Act (43 of 1951)
S. 33 (5)—AIR 1965 Punj 39
Reversed in AIR 1966 S C 1623.
Ss. 80, 81 (3), 83 and 90 -(1963) 2 Andh L T 138
Reversed in AIR 1964 S C 1027.
S. 80—AIR 1954 Nag 166 (FB)
Reversed in AIR 1955 S C 233.
S. 81—(1963) 2 Andh W R 257
Reversed on facts in AIR 1964 S C 1027.
S. 83 (1) (b)—AIR 1958 All 596
Overruled in AIR 1960 S C 770.
S. 83 (1), Proviso—AIR 1964 Madh Pra 273
Reversed in AIR 1966 S C 436.
S. 83—AIR 1958 Mad 261
Reversed in AIR 1958 S C 687.
S. 83—AIR 1955 Pat 81
Overruled in AIR 1957 S C 444.
S. 90 (3)—AIR 1958 All 596
Overruled in AIR 1960 S C 770.
S. 90 (2)—AIR 1955 Pat 81
Overruled in AIR 1957 S C 444.
S. 90 (3)—AIR 1958 Pat 287
Overruled in AIR 1959 S C 837.
S. 92—AIR 1964 All 86
Reversed in AIR 1964 S C 1249.
S. 100—AIR 1964 All 86
Reversed in AIR 1964 S C 1249.
Ss. 100 (1) (c), 123 (7)—AIR 1958 Orissa 230
Reversed in AIR 1959 S C 589.
Ss. 109 and 110—AIR 1962 Orissa 177
Reversed in AIR 1963 S C 1566.
S. 116-A—AIR 1959 S C 93
Overruled in AIR 1965 S C 669.
S. 116A—(1963) 2 Andh W R 257
Reversed in AIR 1964 S C 1027.
S. 116A—AIR 1954 Nag 166 (FB)
Reversed in AIR 1955 S C 233.
Ss. 116-A, 109 and 110—AIR 1962 Orissa 177
Reversed in AIR1963 S C 1566.
S. 116A—AIR 1958 Pat 287
Overruled in AIR 1959 S C 837.
S. 116A—AIR 1958 All 596.
Overruled in AIR 1960 S C 770.
S. 116B—AIR 1961 S C 58
Overruled in AIR 1966 S C 1614.
S. 123 (5)—AIR 1958 All 596
Overruled in AIR 1960 S C 770.
S. 123 (3)—AIR 1963 Guj 315
Reversed in AIR 1965 S C 669.
S. 123 (7)—AIR 1958 Orissa 230
Reversed in AIR 1959 S C 589.

Representation of the Peoples Act *(contd.)*
S. 123 (4)—AIR 1964 Pat 2
Reversed on facts in AIR 1965 S C 282.
S. 123 (7)—AIR 1958 Punj 452
Reversed in AIR 1959 S C 93.

Representation of the People (Conduct of Election and Election Petitions) Rules (1951)
R. 47 (1) (4)—AIR 1954 Nag 166 (FB).
Reversed in AIR 1955 S C 233.

Representation of the People (Conduct of Elections and Election Petitions) Rules (1956)
R. 2 (6)—AIR 1959 Pat 450
Overruled in AIR 1963 Pat 297 (FB).

Representation of the People (Conduct of Elections) Rules, 1961
R. 58—AIR 1965 All 454
Overruled in AIR 1968 S C 300.

Representation of the People (Preparation of Electoral Rolls) Rules (1956)
R. 28 (3)—AIR 1959 Pat 450
Overruled in AIR 1966 Pat 207 (FB).

Requisitioning and Acquisition of Immovable Property Act (30 of 1952)
S. 3—AIR 1953 Bom 337
Reversed in AIR 1955 S C 810.

Requisition of Buildings (Andhra Area) Ordinance (1 of 1953)
AIR 1957 Andh Pra 229
Overruled in AIR 1968 S C 5.
Cl. 4—AIR 1957 Andh Pra 229
Overruled in AIR 1968 S C 5.

Sale of Goods Act (3 of 1930)
S. 2 (4)—AIR 1954 All 747
Overruled in AIR 1956 All 338.
S. 4—1964 Ker L J 81
Reversed in AIR 1968 S C 1178.
S. 4—(1958) 9 S T C 639 (Pat)
Reversed in AIR 1961 S C 1615.
S. 4—AIR 1957 Raj 104
Overruled in AIR 1958 S C 560.
S. 9—(1958) 9 S T C 639 (Pat)
Reversed in AIR 1961 S C 1615.
S. 11—AIR 1957 Pat 586
Reversed in AIR 1962 S C 113.
S. 19—AIR 1959 Andhra Pra 36
Overruled in AIR 1961 Andh Pra 86.
S. 23—AIR 1959 Andh Pra 21
Reversed in AIR 1962 S C 1585.
S. 23 (2)—AIR 1957 Madh Pra 64
Reversed in AIR 1959 S C 1394.
Ss. 23, 24—AIR 1955 Pat 245
Overruled in AIR 1967 S C 1348.
S. 23 (2)—(1958) 9 S T C 639 (Pat)
Reversed in AIR 1961 S C 1615.
S. 23—(1959) 10 S T C 74 (Pat)
Reversed in AIR 1963 S C 1207.
S. 23—1958 B L J R 749
Reversed in AIR 1963 S C 1207.
S. 24—AIR 1955 Pat 245
Overruled in AIR 1967 S C 1348.
S. 25 (3)—AIR 1956 Mad 695
Reversed in AIR 1962 S C 1148.
S. 27—AIR 1962 Pat 140
Reversed in AIR 1968 S C 90.

SALES TAX

—Assam Sales Tax Act (17 of 1947)
S. 3—AIR 1956 Assam 177
Reversed in AIR 1962 S C 107.
S. 15 (1) (as amended by Assam Act 4 of 1951)—AIR 1956 Assam 177
Reversed in AIR 1962 S C 107.

—Assam Sales Tax Rules (1947)
R. 80—AIR 1956 Assam 177
Reversed in AIR 1962 S C 107.

—Bihar Sales Tax Act (6 of 1944)
S. 10 (6), Proviso—AIR 1956 Pat 113
Overruled in AIR 1964 S C 1413.

—Bihar Sales Tax Act (19 of 1947)
S. 2 (g)—(1950) ILR 38 Pat 124
Reversed in AIR 1963 S C 1207.
Ss. 13 (5), 24, 25—AIR 1953 Pat 87
Reversed in AIR 1955 S C 661.
S. 13 (5)—(1958) 9 S T C 639 (Pat)
Reversed in AIR 1961 S C 1615.

—Bombay Sales Tax Act (5 of 1946)
S. 7—AIR 1953 Bom 496
Overruled in AIR 1962 S C 630.
Sch. 2, Item 8—AIR 1956 Bom 496
Overruled in AIR 1962 S C 630.

—Bombay Sales Tax Act (24 of 1952)
S. 2 (14)—(1953) 55 Bom L R 248
Reversed in AIR 1953 S C 252.

—C. P. and Berar Sales Tax Act (21 of 1947)
S. 4 (a)—(1955) 6 S T C 93 (Nag)
Overruled in AIR 1958 S C 560.
S. 4 (2)—(1955) 6 S T C 93 (Nag)
Reversed in AIR 1958 S C 909.
S. 10—AIR 1958 Madh Pra 148
Reversed in AIR 1964 S C 736.
S. 11-A—AIR 1958 Madh Pra 148
Reversed in AIR 1964 S C 736.

—C. P. and Berar Sales Tax Rules, 1947
R. 4—(1955) 6 S T C 93 (Nag)
Overruled in AIR 1958 S C 560.

—Central Sales Tax Act (74 of 1956)
S. 8 (2)—AIR 1962 Mad 457
Held overruled by A I R 1965 S C 1510 **in** A I R 1966 Mad 404.
Ss. 8, 13—(1964) 15 S T C 711 (All)
Reversed in AIR 1965 S C 1310.
Ss. 8 (3) (b) and 13 (1) (c)—AIR 1962 Pat 366
Partly reversed in AIR 1965 S C 891.
S. 13, R. 13—(1964) 15 S T C 711
Reversed in AIR 1965 S C 1310.

—Central Sales Tax Registration and Turnover Rules
R. 13—AIR 1962 Pat 366
Reversed in AIR 1965 S C 891.

—Hyderabad General Sales Tax Act (14 of 1950)
S. 11 (2)—AIR 1960 Andh Pra 395
Reversed in AIR 1964 S C 922.
S. 2 (e)—(1960) 2 Andh W R 108
Reversed in AIR 1965 S C 531.

—Jammu and Kashmir Motor Spirit Taxation of Sales Act (5 of 2005)
S. 3—AIR 1962 J & K 89
Partly reversed in AIR 1966 S C 1350.

SALES TAX *(contd).*

—Kerala General Sales Tax Act (11 of 1125 M E)

S. 1—AIR 1957 Ker 146
Overruled in AIR 1958 S C 560.

S. 2 (j)—ILR (1961) 2 Ker 116
Reversed in AIR 1965 S C 161.

S. 3—1964 Ker L J 81
Reversed in AIR 1966 S C 1178.

—Madras General Sales Tax Act (9 of 1939)

AIR 1959 Andh Pra 36
Overruled in AIR 1961 Andh Pra 86.

S. 2—AIR 1958 S C 468
Held overruled by A I R 1959 S C 648 in A I R 1961 Mys 3.

S. 2 (1)—AIR 1955 Andh 241
Overruled in AIR 1957 Andh Pra 83 (FB).

S. 2 (1)—AIR 1955 Andh 245
Overruled in AIR 1957 Andh Pra 83 (FB).

S. 2 (4)—1956 Andh W R 866
Overruled in (1961) 2 Andh W R 37 (FB).

S. 2 (b), (c), (h)—AIR 1957 Andh Pra 708
Overruled in AIR 1961 Andh Pra 520 (FB).

S. 2 (h)—AIR 1958 Andh Pra 109
Overruled in AIR 1958 S C 468.

S. 2 (h)—AIR 1959 Andh Pra 21
Reversed in AIR 1962 S C 1585.

S. 2 (h)—AIR 1959 Andh Pra 36
Overruled in AIR 1961 Andh Pra 86 (FB).

S. 2 (h), Expln. 2—ILR (1961) 2 Ker 116
Reversed in AIR 1965 S C 161.

S. 2 (h)—AIR 1953 Mad 91
Reversed in AIR 1953 S C 274.

S. 2 (h)—AIR 1956 Mad 695
Reversed in AIR 1962 S C 1148.

S. 2 (b) and (h)—AIR 1958 Mad 561
Reversed in AIR 1965 S C 1082.

S. 3 (1)—AIR 1957 Andh Pra 708
Overruled in AIR 1961 Andh Pra 520.

S. 5 (vi)—AIR 1957 Mad 33
Reversed in AIR 1960 S C 1254.

S. 8 (2)—AIR 1963 Mad 116
Overruled in AIR 1964 S C 922.

Ss. 11 (4), 18-A—AIR 1964 S C 1873
Overruled in AIR 1966 S C 1738.

S. 12-A (6)—1956 Andh L T 446
Overruled in AIR 1957 Andh Pra 130 (FB).

S. 12-A (6) (a)—AIR 1957 Andh Pra 130
Overruled in AIR 1960 S C 990.

S. 12-B (4)—AIR 1957 Andh Pra 130
Overruled in AIR 1960 S C 990.

S. 12 (2)—AIR 1959 Ker 16 (FB)
Reversed in AIR 1963 S C 796.

S. 15—AIR 1954 Mad 833
Overruled in AIR 1958 Mad 544.

S. 16—(1964) 2 Mad L J 508
Overruled in AIR 1967 Mad 72.

S. 16-A—AIR 1954 Mad 833
Overruled in AIR 1958 Mad 544.

S. 18-A—AIR 1961 Mad 322
Reversed in AIR 1966 S C 1089.

S. 22—AIR 1958 Andh Pra 109
Overruled in AIR 1958 S C 468.

—Madras General Sales Tax (Turnover and Assessment) Rules, 1939

R. 4—AIR 1954 Mad 984
Overruled in AIR 1955 Mad 314.

R. 5—AIR 1955 Andh 241
Overruled in AIR 1957 Andh Pra 83 (FB).

R. 5—AIR 1957 Mad 33
Reversed in AIR 1960 S C 1254.

R. 14 (2)—AIR 1959 Ker 16 (FB)
Reversed in AIR 1963 S C 796.

R. 16—AIR 1954 Mad 984
Overruled in AIR 1955 Mad 314.

SALES TAX—Madras General Sales Tax (Turnover and Assessment) Rules, 1939 *(contd.)*

R. 17—AIR 1959 Ker 16=1958 Ker L J 810=1958 Ker L J 950=(1958) 9 S T C 710=ILR (1958) Ker 1302 (FB)
Reversed in AIR 1963 S C 796 = (1963) 2 S C J 663 = (1963) 2 Mad L J (SC) 131 = (1963) 2 Andh W R (SC) 131.

R. 18 (2)—AIR 1955 Andh 257
Reversed in AIR 1961 S C 412.

R. 18 (1)—AIR 1957 Andh Pra 130
Overruled in AIR 1960 S C 990.

—Mysore Sales Tax Act (1948)

AIR 1955 Mys 41
Overruled in AIR 1958 S C 560.

—Orissa Sales Tax Act (14 of 1947)

S. 4—AIR 1956 Orissa 7
Reversed in AIR 1961 S C 284.

S. 11 (1)—AIR 1956 Orissa 7
Reversed in AIR 1961 S C 284.

S. 12 (5) and (7)—AIR 1956 Orissa 7
Reversed in AIR 1961 S C 284.

S. 29 (2) (s) — Rules under — R. 59 — AIR 1956 Orissa 7
Reversed in AIR 1961 S C 284.

—Punjab General Sales Tax Act (46 of 1948)

S. 11 (3) (4) (5) and (6)—(1963) 65 Punj L R 422
Overruled in AIR 1964 Punj 1 (FB).

—Rajasthan Sales Tax Act (29 of 1954)

S. 2 (f)—AIR 1957 Raj 104
Overruled in AIR 1958 S C 560.

S. 2 (f)—AIR 1963 Raj 51
Reversed in AIR 1965 S C 913.

S. 2 (f)—AIR 1964 Raj 5
Reversed in AIR 1966 S C 142.

S. 3—AIR 1964 Raj 5
Reversed in AIR 1966 S C 142.

—Sales Tax Laws Validation Act (1956)

S. 2—AIR 1957 Bom 71
Overruled in AIR 1958 S C 468.

—Travancore-Cochin General Sales Tax Act (1125)

Preamble—AIR 1957 Ker 146
Overruled in AIR 1958 S C 560.

S. 2 (k)—AIR 1957 Ker 146
Overruled in AIR 1958 S C 560.

Ss. 2 (e), 2 (j), 2 (k), 2 (l), 3—AIR 1962 Ker 72 (FB)
Reversed in AIR 1964 S C 207.

S. 3 (2)—AIR 1957 Trav-Co 300
Overruled in AIR 1958 S C 468.

Ss. 13 and 19—(1958) ILR 1958 Ker 291
Reversed in AIR 1961 S C 617.

S. 26—(1956) 7 S T C 731 (Trav-Co)
Overruled in AIR 1958 S C 468.

—Travancore-Cochin General Sales Tax Rules (1950)

R. 4—AIR 1962 Ker 72
Reversed in AIR 1964 S C 207.

—U. P. Sales Tax Act (15 of 1948)

S. 3-A—AIR 1956 All 35
Impliedly overruled in AIR 1963 S C 274.

S. 11 (2) (b)—AIR 1952 All 816
Overruled in AIR 1956 All 305 (FB).

S. 11 (2) (b)—AIR 1953 All 558
Overruled in AIR 1956 All 305 (FB).

—U. P. Sales Tax Rules, 1946

R. 67—(1963) 14 S T C 518 (All)
Overruled in AIR 1968 S C 488.

Saurashtra (Application of Central and Bombay Acts) Ordinance (25 of 1948)
S. 9 (3)—AIR 1953 Sau 1
Overruled in AIR 1956 Sau 29.

Sea Customs Act (1878)
S. 19—AIR 1957 Mad 19
Reversed in AIR 1963 S C 1319.
S. 37—AIR 1960 Cal 1
Reversed in AIR 1963 S C 1124.
S. 167—AIR 1959 Cal 533
Reversed in AIR 1962 Cal 460.
S. 167 (8)—AIR 1960 Cal 1
Reversed in AIR 1963 Cal 1124.
S. 167 (81)—AIR 1962 Cal 370
Reversed in AIR 1966 S C 955.
S. 167 (8)—AIR 1957 Mad 19
Reversed in AIR 1963 S C 1319.
S. 167 (8)—(1964) 66 Punj L R 1029
Reversed in AIR 1965 Punj 181.
S. 171-A—AIR 1958 Cal 682
Overruled in AIR 1962 S C 759.
S. 172—AIR 1956 Cal 253
Overruled in AIR 1962 S C 759.
S. 178-A—AIR 1961 Bom 227
Overruled in AIR 1962 S C 316.
S. 178-A—AIR 1959 Cal 356
Overruled in AIR 1967 Cal 239.
S. 182—(1964) 66 Punj L R 151
Reversed in AIR 1965 Punj 84.
S. 183—AIR 1959 Cal 356
Overruled in AIR 1967 Cal 239.
S. 183—AIR 1959 Mad 142
Overruled in AIR 1962 Mad 85 (FB).
S. 189—AIR 1960 Cal 1 (SB)
Reversed in AIR 1963 S C 1124.

Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance (2 of 1950)
AIR 1951 Bom 86
Reversed in AIR 1954 S C 119.
S. 4 (d)—AIR 1951 Bom 86
Reversed in AIR 1954 S C 119.

Societies Registration Act, (1860)
S. 1—AIR 1963 Cal 554
Held overruled in AIR 1965 S C 648 in A I R 1966 Ker 187.
S. 12—AIR 1959 All 598
Reversed in AIR 1962 All 610.

Soldiers (Litigation) Act (1925)
S. 6 (1), Proviso (b)—AIR 1952 All 974
Reversed in AIR 1962 All 577.

Specific Relief Act (1877)
S. 9—AIR 1958 All 48
Overruled in AIR 1959 All 1 (FB).
S. 9—1962 M P L J 738
Overruled in AIR 1966 M P 14.
S. 9—AIR 1957 Orissa 80
Reversed in AIR 1964 S C 685.
S. 15—AIR 1950 Nag 78
Overruled in AIR 1954 Nag 334.
S. 18 (a)—AIR 1959 Orissa 169
Reversed in AIR 1964 S C 1789.
S. 18—AIR 1952 Pat 393
Reversed in AIR 1954 S C 165.
S. 39—AIR 1951 Cal 147
Overruled in AIR 1962 S C 378.
S. 41—AIR 1952 Nag 17
Overruled in AIR 1955 Nag 193.
S. 42—AIR 1957 Pat 674
Overruled in AIR 1958 Pat 581.
S. 42, Proviso—AIR 1961 Pat 425
Overruled in AIR 1966 S C 359.

Specific Relief Act *(contd.)*
S. 45—(1951) 87 Cal L J 217
Overruled in AIR 1952 Cal 1.

Stamp Act (2 of 1899)
Preamble—AIR 1961 Cal 48
Reversed in AIR 1964 S C 1396.
S. 3—AIR 1961 Cal 48
Reversed in AIR 1964 S C 1396.
S. 5—AIR 1952 Cal 815 (FB)
Reversed in AIR 1956 S C 35.
S. 6—AIR 1952 Cal 815 (SB)
Reversed in AIR 1956 S C 35.
S. 12—AIR 1961 Raj 43
Overruled in AIR 1965 Raj 114.
S. 33—AIR 1961 Cal 48
Reversed in AIR 1964 S C 1396.
S. 35—AIR 1962 Andh Pra 443
Overruled in AIR 1965 Andh Pra 274 (FB).
S. 35—AIR 1957 Assam 133
Reversed in AIR 1965 S C 1679.
S. 36—AIR 1954 Raj 173
Overruled in AIR 1962 Raj 68 (FB).
S. 36—AIR 1955 N U C (Raj) 283 = I L R (1952) 2 Raj 1010
Overruled in AIR 1962 Raj 68 (FB).
S. 36—AIR 1957 Raj 47
Reversed in AIR 1961 S C 1655.
S. 57—AIR 1958 All 320
Overruled in AIR 1968 S C 497.
S. 57—AIR 1960 Cal 340
Overruled in AIR 1968 S C 497.
S. 57—AIR 1951 Mad 276
Impliedly overruled by AIR 1950 S C 218.
S. 61—AIR 1962 All 353
Overruled in AIR 1966 All 392 (FB).

Sch. I, Art. 47—AIR 1961 Cal 48
Reversed in AIR 1964 S C 1396.
Sch. I, Art. 48 (d)—AIR 1952 Cal 815 (SB)
Reversed in AIR 1956 S C 35.

States Re-organisation Act (1956)
S. 115 (7), Proviso—(1961) ILR (1961) 11 Raj 260
Reversed in AIR 1964 S C 1361.
S. 119—AIR 1962 Andh Pra 4
Reversed in AIR 1965 S C 1827.

Succession Act (1925)
Ss. 74, 82, 128—(1959) Andh L T 803
Reversed on facts in AIR 1967 S C 207.
S. 180—AIR 1956 Pat 223
Overruled in 1958 Pat 630 (FB).
S. 265 (1)—AIR 1956 Mad 680
Overruled in AIR 1962 Mad 450 (FB).
S. 276—AIR 1958 Cal 264
Reversed in AIR 1964 S C 529.

Sugar and Sugar Products Control Order (1946)
Cls. 3, 6 and 7—1958 B L J R:749
Reversed in AIR 1963 S C 1207.

Suits Valuation Act (7 of 1887)
S. 3—AIR 1957 All 337
Overruled in AIR 1957 All 402.
S. 8—AIR 1955 Cal 144
Overruled in AIR 1961 Cal 229.
S. 8—AIR 1959 Cal 537
Overruled in AIR 1961 Cal 229.

Supreme Court Advocates (Practice in High Court) Act (1951)
S. 2—AIR 1952 Cal 178 (SB)
Reversed in AIR 1952 S C 369.

TENANCY LAWS *(contd.)*

—Chota Nagpur Tenancy Act (6 of 1908)

S. 46—AIR 1952 Pat 46
Overruled in AIR 1960 Pat 344.

—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948)

S. 14—AIR 1955 Punj 161
Overruled in AIR 1961 S C 1425.
S. 15—AIR 1955 Punj 161
Overruled in AIR 1961 S C 1425.
S. 34—AIR 1955 Punj 161
Overruled in AIR 1961 S C 1425.
S. 38—AIR 1961 Punj 208 (FB)
Reversed in AIR 1967 S C 1568.
S. 42—AIR 1961 Punj 208 (FB)
Reversed in AIR 1967 S C 1568.

—Gwalior State Quanoon Ryotwari (1974 Samwat)

AIR 1957 Madh Bha 79
Reversed in AIR 1968 S C 620.
S. 163—AIR 1957 Madh Bha 79
Reversed in AIR 1968 S C 620.

—(Hyderabad) Jagir Abolition Regulation (1358F)

S. 21, Cl. 2 Proviso—AIR 1953 Hyd 79=I L R 1952 Hyd 791
Reversed in AIR 1956 SC 319.

—Hyderabad Tenancy and Agricultural Lands Act (21 of 1950)

S. 2—AIR 1964 Andh Pra 514
Overruled in AIR 1967 Andh Pra 148.

—Kerala Compensation for Tenants Improvements Act (29 of 1958)

S. 2 (d) (iii)—1959 Ker L T 953
Overruled in ILR (1960) Ker 475.

—M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951)

S. 2 (g)—AIR 1956 Nag 132
Overruled in AIR 1962 SC 1230
S. 3—AIR 1953 SC 108
Held overruled in AIR 1962 SC 1916.
S. 3—AIR 1956 Nag 132
Held overruled by AIR 1962 SC 1230.
S. 4—AIR 1953 SC 108
Overruled in AIR 1962 SC 1916.
S. 4—1959 M P L J 374
Reversed in AIR 1962 SC 1916.
Ss. 4 (2), 38—AIR 1955 NUC (Nag) 5882=1955 Nag L J 678
Overruled in AIR 1967 SC 354.
Ss. 4, 5, 7—AIR 1958 Nag 132
Overruled in AIR 1962 SC 1230.
S. 6—AIR 1953 SC 108
Held overruled in AIR 1962 SC 1916.
S. 7—1959 MPLJ 374
Reversed in AIR 1962 SC 1916.
S. 23—AIR 1954 Nag 248
Overruled in AIR 1956 Nag 193.
S. 87—1959 Jab L J 534
Reversed in AIR 1962 SC 1916.

—Madras City Tenants Protection Act (3 of 1922)

S. 9, Explanation—(1962) 1 Mad L J 113
Overruled in AIR 1963 Mad 369.

—Madras Cultivating Tenants Protection Act (25 of 1955)

S. 2 (i)—(1958) 1 Mad L J 272
Overruled in AIR 1966 SC 469.
S. 6—(1958) 71 Mad L W 521
Overruled in AIR 1961 Mad 423.

TENANCY LAWS *(contd.)*

—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948)

S. 2 (7)—(1958) 1 Andh W R 185=AIR 1957 Andh Pra 166
Overruled in AIR 1962 Andh Pra 37 (FB).
S. 2 (7)—AIR 1953 Mad 246
Overruled in AIR 1954 Mad 415 (FB).
S. 9—(1959) 72 Mad L W 249
Overruled in (1960) 1 Mad L J 232.
S. 12—AIR 1958 Mad 74
Overruled in AIR 1960 Mad 15 (FB).
S. 20 (1)—AIR 1956 Andh 81
Reversed in AIR 1963 SC 264.
S. 20—AIR 1953 Mad 190
Reversed in AIR 1956 SC 94.
S. 64A—(1959) 72 Mad L W 249
Overruled in (1960) 1 Mad L J 232.

—Madras Estates Land Act (1 of 1908)

S. 3—AIR 1957 Andh Pra 166
Overruled in AIR 1962 Andh Pra 37 (FB).
S. 3 (2) (d)—AIR 1957 Andh Pra 632
Reversed in AIR 1966 SC 681.
S. 3 (2) (d)—AIR 1953 Mad 190
Reversed in AIR 1956 SC 94.
S. 3 (2) (d)—AIR 1953 Mad 246
Overruled in AIR 1954 Mad 415 (FB).
S. 3 (2) (d)—AIR 1954 Mad 415 (FB)
Overruled in AIR 1963 SC 1227.
S. 3 (2) (d) & Expln. (1) —AIR 1954 Mad 772
Overruled in AIR 1963 SC 1715.
S. 3 (10) (a) —AIR 1958 Mad 74
Overruled in AIR 1960 Mad 15 (FB).
S. 6—AIR 1957 Andh Pra 632.
Reversed in AIR 1966 SC 681.
S. 6, Expln. (2) and S 8 (5)—AIR 1950 Mad 387
Overruled in AIR 1951 Mad 231.

—Madras Estates Land (Reduction of Rent Act (30 of 1947)

AIR 1953 Mad 190
Reversed in AIR 1956 SC 94.
S. 3—AIR 1958 Mad 104
Overruled in AIR 1966 SC 681.
S. 3—AIR 1950 Mad 104
Overruled in AIR 1959 Mad 40 (FB).

—Malabar Tenancy (Amendment) Act (31 of 1951)

S. 52—1962 Ker L J 517
Overruled in AIR 1965 Ker 1 (FB).

—Malabar Tenancy (Amendment) Act (22 of 1958)

S. 5 (2)—1961 Ker L J 188=ILR (1961) 2 Ker 62
Overruled in AIR 1965 Ker 1 (FB).

—Orissa Estates Abolition Act (1 of 1952)

Ss. 5 and 26 (b) (iii)—ILR (1958) Cut 411
Reversed in AIR 1962 SC 1912.

—Orissa Tenants Protection Act (3 of 1948)

S. 3—AIR 1954 Orissa 101
Reversed in AIR 1958 SC 239.
S. 7 (1)—AIR 1957 Orissa 17
Reversed in AIR 1962 SC 547.
S. 7—AIR 1957 Orissa 17
Reversed in AIR 1962 SC 547.

—Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act (5 of 2007 BK.)

S. 20 (4)—AIR 1959 Punj 157
Overruled in AIR 1963 SC 1503.
S. 40—AIR 1959 Punj 157
Overruled in AIR 1963 SC 1503.
S. 41—AIR 1959 Punj 157
Overruled in AIR 1963 SC 1503.

TENANCY LAWS *(contd.)*

—Pepsu Tenancy and Agricultural Lands Act (13 of 1955)

S. 8-A—1962 Cri L J 227
Overruled in ILR (1963) 1 Punj 97.
S. 43—ILR (1964) 1 Punj 736
Reversed in AIR 1964 Punj 417.

—Punjab Consolidation of Land Proceedings (Validation) Act (6 of 1957)

Preamble—AIR 1959 Punj 8
Overruled in AIR 1959 SC 519.
S. 3—AIR 1959 Punj 8
Overruled in AIR 1959 SC 519.
S. 4—AIR 1959 Punj 8
Overruled in AIR 1959 SC 519.

—Punjab Tenancy Act (16 of 1887)

Ss. 4 (5), 50 and 77 (3) (j)—AIR 1952 Punj 94
Overruled in AIR 1965 Punj 321.
S. 50—AIR 1952 Punj 94
Overruled in AIR 1965 Punj 321.
S. 50 — (1960) 62 Pun L R 410
Overruled in AIR 1965 Punj 321 (FB).
S. 77—AIR 1952 Punj 94
Overruled in AIR 1965 Punj 321.
S. 77 (3) (g)—(1960) 62 Pun L R 410
Overruled in AIR 1965 Punj 321 (FB).

—Travancore Cochin Compensation for Tenants Improvements Act (10 of 1956)

S. 5 (3)—AIR 1958 Ker 105
Overruled in AIR 1963 Ker 179 (FB).

—U. P. Consolidation of Holdings Act (5 of 1954)

S. 49—1961 All W R (HC) 683
Overruled in ILR (1962) 2 All 359.

—U. P. Government Land (Eviction and Rent Recovery) Act (26 of 1953)

1960 All L J 52
Overruled in AIR 1963 All 528.

—U. P. Land Reforms (Supplementary) Act (31 of 1952)

S. 1—AIR 1957 All 549
Overruled in AIR 1963 S C 1019.
S. 3—1961 All W R (HC) 260
Overruled in AIR 1964 All 213 (FB).
S. 3—AIR 1964 All 213 (FB)
Overruled in AIR 1968 S C 466.

—U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order (1952)

Para 2—AIR 1954 All 434
Overruled in AIR 1955 All 432.

—U. P. Land Tenures (Regulation of Transfers) Act (15 of 1952)

S. 1—AIR 1957 All 549
Overruled in AIR 1963 S C 1019.

—U. P. Tenancy Act (17 of 1939)

AIR 1952 All 496
Overruled in AIR 1953 All 729.
S. 63—AIR 1952 All 496
Overruled in AIR 1953 All 729.
Ss. 180 & 242—AIR 1952 All 188
Overruled in AIR 1955 NUC (All) 2689.
S. 180—AIR 1953 All 254
Overruled in AIR 1955 NUC (All) 2689.
S. 180—AIR 1958 All 48
Overruled in AIR 1959 All 1 (FB).
S. 180—AIR 1964 All 213
Overruled in AIR 1968 S C 466.

TENANCY LAWS — U. P. Tenancy Act *(contd.)*

S. 183—AIR 1958 All 48
Overruled in AIR 1959 All 1 (FB).
S. 242—AIR 1952 All 188
Overruled in AIR 1955 NUC (All) 2689.
S. 242—AIR 1953 All 254
Overruled in AIR 1955 NUC (All) 2689.
S. 242—AIR 1958 All 48
Overruled in AIR 1959 All 1 (FB)
S. 273—1954 All L J 628 = AIR 1955 NUC (All) 1517
Overruled in AIR 1956 All 698.
S. 295-A—AIR 1953 All 254
Overruled in AIR 1955 NUC (All) 2689.
Sch. II, List II, Serial No. 5—AIR 1952 All 90
Overruled in AIR 1953 All 264 (FB).

—U. P. Tenancy (Amendment) Act (10 of 1947)

S. 31—AIR 1953 All 219.
Overruled in AIR 1957 All 257.

—U. P. Zamindari Abolition and Land Reforms Act 1950 (1 of 1951)

AIR 1963 All 535
Overruled in AIR 1965 All 221.
S. 4—AIR 1956 All 564
Reversed in AIR 1963 S C 799.
S. 4—AIR 1959 All 179
Reversed in AIR 1951 S C 1790.
S. 6 (b)—AIR 1956 All 564
Reversed in AIR 1963 S C 799.
S. 6—AIR 1958 All 332
Overruled in AIR 1962 All 43 (FB).
S. 6—AIR 1959 All 179
Reversed in AIR 1961 S C 1790.
S. 6 (d)—1960 All L J 532
Reversed in AIR 1965 S C 1919.
S. 6—1962 All L J 612
Overruled in AIR 1964 All 311 (FB).
S. 9—AIR 1958 All 332
Overruled in AIR 1962 All 43 (FB).
S. 9—AIR 1959 All 179
Reversed in AIR 1961 S C 1790.
S. 14 (1)—1962 All L J 612
Overruled in AIR 1964 All 311 (FB).
S. 18—AIR 1959 All 179
Reversed in AIR 1961 S C 1790.
S. 18—AIR 1964 All 213
Overruled in AIR 1968 S C 466
S. 20—AIR 1954 All 434
Overruled in AIR 1955 All 432 (FB).
S. 20 (b)—1963 All L J 190
Overruled in 1963 All L J 288, which itself was Overruled in AIR 1964 All 498 (FB).
S. 20 (b)—1963 All L J 288
Overruled in AIR 1964 All 498 (FB).
S. 20—AIR 1964 All 213 (FB)
Overruled in AIR 1968 S C 466.
S. 45—AIR 1956 All 564
Reversed in AIR 1963 S C 799.
S. 46—1960 All W R (HC) 418
Reversed in AIR 1962 All 590.
Ss. 46 and 343—AIR 1962 All 590
Reversed in AIR 1966 S C 1164.
S. 47—1960 All W R (HC) 418
Reversed in AIR 1962 All 590
S. 47—AIR 1962 All 590
Reversed in AIR 1966 S C 1164.
S. 48—AIR 1957 All 315
Overruled in AIR 1964 All 504 (FB).
S. 48—AIR 1957 All 495
Overruled in AIR 1962 All 315 (FB).
S. 48—1960 All W R (HC) 418
Reversed in AIR 1962 All 590.
S. 50—1960 All W R (HC) 418
Reversed in AIR 1962 All 590.

TENANCY LAWS—U. P. Tenancy Act *(contd.)*

S. 52—1960 All W R (HC) 418
Reversed in AIR 1962 All 590.
S. 70—AIR 1964 All 203
Reversed in AIR 1966 All 109.
S. 200—1961 All LJ 188
Overruled in 1961 All L J 877.
S. 332-B (as amended in 1950)—1959 All L J 681
Overruled in AIR 1962 All 248.
S. 332B (as amended in 1956)—1959 All L J 681
Overruled in 1962 All L J 1039 (FB).
S. 343—1960 All W R (HC) 418
Reversed in AIR 1962 All 590.
S. 343—AIR 1962 All 590
Reversed in AIR 1966 SC 1164.

—U.P. Zamindari (Abolition and Land Reforms) Rules (1952)

R. 4—AIR 1954 All 434
Overruled in AIR 1955 All 432.
R. 5—AIR 1954 All 434
Overruled in AIR 1955 All 432.

—W.B. (Bargadars) Act (2 of 1950)

S. 7 (1)—AIR 1956 Cal 497
Overruled in AIR 1966 Cal 285 (FB).
S. 18—AIR 1956 Cal 497
Overruled in AIR 1966 Cal 285 (FB).

—W.B. Estates Acquisition Act, 1933 (1 of 1954)

S. 46—(1956) 60 Cal W N 1070
Overruled in 63 Cal W N 521.

TORT

—Negligence

AIR 1962 Cal 544
Reversed in AIR 1965 Cal 252.

—Tresspass

AIR 1964 All 213 (FB)
Overruled in AIR 1968 SC 466.

Trade Marks Act (5 of 1940)

S. 2 (1) (l)—AIR 1958 All 823
Reversed in AIR 1963 SC 449.
S. 10 (2)—AIR 1958 All 823
Reversed in AIR 1963 SC 449.

Transfer of Property Act (4 of 1882)

S. 2—AIR 1964 Andh Pra 514
Overruled in AIR 1967 Andh Pra 148.
S. 5—AIR 1959 Ker 235
Overruled in AIR 1963 Ker 66 (FB).
S. 5—AIR 1955 Mad 245
Overruled in AIR 1962 Mad 21 (FB).
S. 8—AIR 1958 Madh Pra 246
Reversed in AIR 1963 SC 890.
S. 8—1963 Cur L J 556 (Punj)
Reversed in AIR 1965 Punj 110.
S. 8—AIR 1953 Sau 180
Reversed in AIR 1959 SC 1383.
S. 35—AIR 1956 Pat 223
Overruled in AIR 1958 Pat 630 (FB).
S. 40—AIR 1958 Pat 467
Reversed in AIR 1962 Pat 193.
S. 43—AIR 1956 All 225 (FB)
Overruled in AIR 1965 All 504.
S. 43—AIR 1959 Orissa 169
Reversed in AIR 1964 SC 1789.
S. 52—(1958) 1 Andh W R 85
Overruled in AIR 1959 Andh Pra 523;

Transfer of Property Act *(contd.)*

S. 53A—AIR 1963 Andh Pra 239
Reversed in AIR 1963 Andh Pra 489.
S. 54—AIR 1963 Andh Pra 239
Reversed in AIR 1963 Andh Pra 489.
S. 54—AIR 1953 Nag 182
Reversed in AIR 1960 SC 1368.
S. 58—AIR 1963 Andh Pra 239
Reversed in AIR 1963 Andh Pra 489.
S. 58 (c)—AIR 1961 Mad 276
Reversed in AIR 1966 SC 902.
S. 58 (d)—AIR 1955 Pat 505
Reversed in AIR 1964 SC 1295.
S. 58 (f)—AIR 1958 Pat 472
Reversed in AIR 1965 SC 1591.
S. 59—AIR 1958 Raj 102
Overruled in AIR 1960 Raj 1 (SB).
S. 60—AIR 1963 Bom 230
Reversed in AIR 1968 SC 86.
S. 60—AIR 1959 Punj 249
Reversed in AIR 1963 Punj 25.
S. 60—AIR 1958 Raj 102
Overruled in AIR 1960 Raj 1 (SB).
S. 60—AIR 1958 Raj 298
Reversed in AIR 1960 Raj 47.
S. 63—AIR 1963 Pat 412 (FB)
Overruled in AIR 1967 SC 801.
S. 65—AIR 1962 Pat 140
Reversed in AIR 1968 SC 90.
S. 67—AIR 1959 Punj 249
Reversed in AIR 1963 Punj 25.
S. 70—AIR 1963 Pat 412 (FB)
Overruled in AIR 1967 SC 801.
S. 73—AIR 1959 All 179
Reversed in AIR 1961 SC 1790.
S. 105—AIR 1963 Andh Pra 239
Reversed in AIR 1963 Andh Pra 489.
S. 105—AIR 1951 Cal 385
Reversed in AIR 1955 SC 228.
S. 106—AIR 1959 Mys 87
Held overruled by AIR 1963 SC 1203 as interpreted in AIR 1965 Mys 65.
S. 108—AIR 1957 Madh Bha 79
Reversed in AIR 1968 S C 620.
S. 108 (l)—(1958) 60 Pun L R 349
Reversed in AIR 1961 S C 1554.
S. 108 (o)—AIR 1931 Punj 143
Overruled in AIR 1963 Punj 49.
S. 111 (g)—(1959) 2 Andh W R 135
Overruled in AIR 1964 Andh Pra 31.
S. 111 (g)—AIR 1957 Bom 283
Overruled in AIR 1953 S C 228.
S. 111—1964 B L J R 59
Overruled in AIR 1964 Pat 401 (FB).
S. 113—AIR 1963 Bom 179
Overruled in AIR 1968 Bom 13 (FB).

Travancore-Cochin Agricultural Income-tax Act (22 of 1950)

S. 2 (a)—ILR (1958) Ker 308
Reversed in AIR 1961 S C 604.
S. 5 (j)—ILR (1958) Ker 308
Reversed in AIR 1961 S C 604.

Travancore-Cochin Court-fees Act (2 of 1125 M. E.)

S. 9—AIR 1954 Trav.Co 178
Overruled in AIR 1961 Ker 146.

Travancore-Cochin Revenue Recovery Act (7 of 1951)

S. 7—ILR (1958) Ker 291
Reversed in AIR 1961 S C 617.

Travancore Criminal Procedure Code (8 of 1117 M.E.)

S. 184—AIR 1952 Trav-Co 56
Overruled in AIR 1956 Trav-Co 29.

Travancore Ezhava Act, 1099 (3 of 1100M.E.)
S. 19—1962 Ker L T 99
Overruled in AIR 1963 Ker 354.

Travancore Land Acquisition Act (11 of 1089M.E.)
S. 6—1964 Ker L J 85
Reversed in AIR 1966 Ker 187.

Travancore Nair Act (1 of 1088M.E.)
S. 19—AIR 1959 Ker 235
Overruled in AIR 1963 Ker 66 (FB).

Travancore Nair Act (2 of 1100M.E.)
S. 31—1955 Ker L T 157=A I R 1955 N U C (T-C) 3473 (DB)
Overruled in AIR 1966 Ker 18 (FB).
S. 39—AIR 1963 Ker 358
Overruled in AIR 1968 Ker 82 (FB).
S. 40—1962 Ker L T 99
Overruled in AIR 1963 Ker 354.

Tripura Forest Act (2 of 1297T.E.)
S. 5—1961 (1) Cri L J 562 (Tripura)
Reversed in AIR 1965 S C 147.

Trusts Act (2 of 1882)
S. 1—AIR 1960 Bom 438
Reversed in AIR 1965 S C 1692.
S. 88—AIR 1959 Andh Pra 352
Reversed in AIR 1965 S C 1773.
S. 88—AIR 1962 Pat 140
Reversed in AIR 1968 S C 90.
S. 94—AIR 1959 Andh Pra 352
Reversed in AIR 1965 S C 1773.

United State of Gwalior, Indore and Malwa (Madhya Bharat) High Court of Judicature Act (8 of 1949)
S. 2—AIR 1951 Madh Bha 1 (FB)
Reversed in AIR 1958 S C 554.

Utkal University Statutes
Chap. IX, Law 3 (2)—AIR 1952 Orissa 1
Reversed in AIR 1954 S C 217.

U. P. Agricultural Income-tax Act (3 of 1949)
S. 14 — I L R (1956) 2 All 643=A I R 1955 N U C (All) 2707
Reversed in AIR 1960 S C 1283.
S. 44 (2) (o) — I L R (1956) 2 All 643=A I R 1955 NUC (All) 2707
Reversed in AIR 1960 S C 1283.

U. P. Civil Service (Executive Branch) Rules (1941)
R. 23 (1)—ILR (1959) 1 All 226
Overruled in AIR 1961 All 450 (FB).

U. P. Deputy Inspector of School Service Rule (1944)
R. 17—AIR 1959 All 536=1959 All L J 79
Overruled in AIR 1961 All 450 (FB).

U. P. District Boards Act (10 of 1922)
S. 40—AIR 1952 All 681
Overruled in AIR 1960 All 473 (FB).
S. 71—AIR 1952 All 681
Overruled in AIR 1960 All 473 (FB).
S. 90—AIR 1952 All 681
Overruled in AIR 1960 All 473 (FB).
S. 192 (1) and (3)—AIR 1952 All 382 (FB)
Overruled in AIR 1965 All 590 (FB).

U. P. General Clauses Act (1 of 1904)
S. 6—AIR 1953 All 254
Overruled in AIR 1955 NUC (All) 2689.

U. P. High Court (Amalgamation) Order (1948)
Cl. 8 (2)—AIR 1954 All 728 (DB)
Overruled in AIR 1955 All 269 (FB).
Cl. 14—AIR 1952 All 550
Overruled in AIR 1958 All 652 (FB).
Cls. 17 (c) and 8 (2)—AIR 1954 All 728
Overruled in AIR 1955 All 269 (FB).

U. P. Industrial Disputes Act (28 of 1947)
S. 3 (b)—AIR 1954 All 538
Reversed in AIR 1961 S C 420
S. 3 (b)—AIR 1954 All 705
Overruled in AIR 1961 S C 420.

U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948)
S 11 (1), Provisos—AIR 1955 All 12
Reversed in AIR 1961 S C 14.

U. P. Revenue Court Manual
R. 170—AIR 1950 All 90
Overruled in AIR 1953 All 264.

U. P. Road Transport Services (Development) Act (9 of 1955)
S. 1—AIR 1957 All 320
Reversed in AIR 1959 S C 648.
S. 3—AIR 1957 All 320
Reversed in AIR 1959 S C 648.
S. 4—AIR 1957 All 320
Reversed in AIR 1959 S C 648.
S. 11—AIR 1957 All 320
Reversed in AIR 1959 S C 648.

U. P. Shops and Commercial Establishments Act (22 of 1947)
S. 2—1958 All W R (HC) 465=1958 All L J 333
Overruled in AIR 1961 All 599.

U. P. State Road Transport Act (2 of 1951)
Preamble and S. 3—AIR 1954 All 257
Reversed in AIR 1954 S C 728.
S. 5—AIR 1954 All 257
Reversed in AIR 1954 S C 728.

U. P. Subordinate Revenue Executive (Tahsildars) Rules (1944)
R. 14—AIR 1963 All 377
Reversed in AIR 1966 S C 1842.

U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947)
S. 3(3)—AIR 1955 NUC (All) 1714=1955 All LJ 498
Overruled in AIR 1964 All 148.

Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order (1944)
Cl. 5—ILR (1951) Mad 723
Overruled in AIR 1964 S C 1526.

Vindhya Pradesh Application of Laws Ordinance (4 of 1948)
S. 2—AIR 1961 Madh Pra 154
Reversed in AIR 1966 S C 820.

Wealth Tax Act (27 of 1957)
S. 2 (m)—AIR 1963 Cal 392
Reversed in AIR 1966 S C 1370.
S. 2 (m)—AIR 1965 Ker 66
Overruled in AIR 1966 S C 1370.
Ss. 4 (1) (a) (iii), 2 (q) and 3—AIR 1966 Mys 27
Reversed in AIR 1967 S C 135.

W. B. Jute Goods Futures Ordinance (5 of 1949)
S. 2 (1) (b) (i)—AIR 1952 Cal 740 (SB)
Reversed in AIR 1955 S C 182.

W. B. Land Development and Planning Act (21 of 1948)
S. 7—AIR 1954 Cal 248
Reversed in AIR 1961 S C 16.

West Bengal Land (Requisition and Acquisition) Act (2 of 1948)
S. 8 (2)—AIR 1953 Cal 595
Overruled in AIR 1966 S C 1538.
S. 8 (1)—(1955) 59 Cal W N 935 = AIR 1955 NUC (Cal) 4511.
Overruled in AIR 1966 S C 1538.

WORDS AND PHRASES

—Arrest and Apprehension
AIR 1952 Punj 309 (FB)
Reversed in AIR 1953 S C 10.

—"Employee"
AIR 1959 Punj 27
Reversed in AIR 1962 Punj 507.

—"Employer"
1958 All L J 333
Overruled in AIR 1961 All 599.

—'Establishment'
AIR 1965 Mad 508
Overruled in AIR 1956 Mad 416.

—"Khas possession"
AIR 1958 Pat 589
Overruled in AIR 1963 S C 454.

—"Officer"
AIR 1959 Punj 157
Overruled in AIR 1963 S C 1503.

—"Permitted to retire"
AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.

Words and Phrases *(contd.)*
—"Possession"
1961 All L J 301
Overruled in AIR 1964 All 213 (FB).

—'Store'—Meaning of
AIR 1958 Bom 332
Reversed in AIR 1960 S C 1068.

—"Take or withdraw from proceedings"
AIR 1953 Bom 365
Overruled in AIR 1968 S C 822.

—"Tenancy in common"—"Joint tenancy"
AIR 1957 All 531
Overruled in AIR 1963 All 499A.

—"Undivided share"—Meaning
AIR 1957 All 561
Held overruled by A I R 1961 S C 365 in A I R 1966 All 499.

—'When'
AIR 1951 Orissa 378 (SB)
Overruled in AIR 1955 Orissa 73.

—"Where a debt is incurred"—Meaning
(1956) 2 Mad L J 425
Overruled in AIR 1965 Mad 127.

Working Journalists (Conditions of Service) Miscellaneous Provisions Act (45 of 1955)
S. 2 (f)—AIR 1961 Andh Pra 528
Reversed in AIR 1964 S C 279.
S. 3—AIR 1960 Mad 196
Reversed in AIR 1961 Mad 370.

Working Journalists (Industrial Disputes) Act (1 of 1955)
S. 2 (b)—AIR 1961 Andh Pra 528
Reversed in AIR 1964 S C 279.

Workmen's Compensation Act (8 of 1923)
S. 3 (1)—AIR 1955 Sau 20
Reversed in AIR 1958 S C 881.
S. 31—AIR 1957 Mad 255
Reversed in AIR 1960 Mad 336.

COURTWISE LIST OF OVERRULED AND REVERSED CASES

Supreme Court

AIR 1953 S C 108
Held Overruled by AIR 1962 S C 1916.
AIR 1953 S C 252
Overruled in AIR 1955 S C 661.
AIR 1954 S C 447
Overruled in AIR 1954 S C 1043.
AIR 1954 S C 513
Overruled in AIR 1965 S C 669.
AIR 1955 S C 781
Held over. by AIR 1959 S C 648 in AIR 1961 Mys 3.
AIR 1956 S C 20
Reversed in AIR 1961 S C 882.
AIR 1957 S C 790
Overruled in AIR 1962 S C 1621.
AIR 1958 S C 468
Held over. by AIR 1959 S C 648 in AIR 1961 Mys 3.
AIR 1959 S C 93
Overruled in AIR 1965 S C 669.
AIR 1959 S C 847
Overruled in AIR 1962 S C 195.
AIR 1961 S C 58
Overruled in AIR 1966 S C 1614.
AIR 1963 S C 354
Overruled in AIR 1966 S C 538.
AIR 1964 S C 1873
Overruled in AIR 1966 S C 1738.

Ajmer

AIR 1953 Ajmer 17
Reversed in AIR 1956 S C 404.
AIR 1955 Ajmer 47
Overruled in AIR 1967 S C 1233.
AIR 1956 Ajmer 63
Reversed in AIR 1961 S C 1743.

Allahabad

AIR 1943 All 68
Reversed in AIR 1951 S C 210.
AIR 1950 All 157
Overruled in AIR 1964 S C 986.
AIR 1950 All 192
Overruled in AIR 1951 All 643 (FB).
AIR 1950 All 234
Overruled in AIR 1958 All 733 (FB).
AIR 1950 All 486
Overruled in AIR 1965 All 443.
AIR 1950 All 504
Overruled in AIR 1952 All 500 (DB).
AIR 1950 All 556 (FB)
Reversed in AIR 1954 S C 10.
AIR 1950 All 648
Reversed in AIR 1953 S C 456.
AIR 1951 All 44
Held overruled by AIR 1951 S C 332 as interpreted in AIR 1953 Nag 58.
AIR 1951 All 205
Reversed in AIR 1955 S C 600.
AIR 1951 All 236
Overruled in AIR 1956 All 94.
AIR 1951 All 586
Overruled in AIR 1957 S C 832.
AIR 1951 All 614
Overruled in AIR 1967 All 459.
(1951) 1951 All W R (H C) 636:
Overruled in AIR 1958 All 641.

Allahabad *(contd.)*

AIR 1952 All 90
Overruled in AIR 1953 All 264 (FB).
AIR 1952 All 188
Overruled in AIR 1955 NUC (All) 2689.
AIR 1952 All 231
Overruled in AIR 1966 S C 911.
AIR 1952 All 249
Overruled in AIR 1956 S C 367 and overruled on another point in AIR 1964 S C 1473.
AIR 1952 All 382 (FB)
Overruled in AIR 1965 All 590 (FB).
AIR 1952 All 496
Overruled in AIR 1953 All 729.
AIR 1952 All 550
Overruled in AIR 1958 All 652 (FB).
AIR 1952 All 681
Overruled in AIR 1960 All 473 (FB).
AIR 1952 All 808
Overruled in AIR 1956 All 337 (1) (FB).
AIR 1952 All 816
Overruled in AIR 1956 All 305 (FB).
AIR 1952 All 891
Overruled in AIR 1961 S C 725.
AIR 1952 All 897
Reversed in AIR 1961 S C 725.
AIR 1952 All 942
Overruled in AIR 1961 S C 1795.
AIR 1952 All 974
Reversed in AIR 1962 All 577.
AIR 1953 All 62
Overruled in AIR 1961 S C 606.
AIR 1953 All 90
Overruled in AIR 1966 All 477 (FB).
AIR 1953 All 219
Overruled in AIR 1957 All 257.
AIR 1953 All 254
Overruled in AIR 1955 NUC (All) 2689.
AIR 1953 All 315
Overruled in AIR 1955 All 232 (FB).
AIR 1953 All 332
Overruled in AIR 1957 All 356 (FB).
AIR 1953 All 332
Overruled in AIR 1956 All 687.
AIR 1953 All 477
Overruled in AIR 1961 S C 532.
AIR 1953 All 550
Overruled in AIR 1956 All 492.
AIR 1953 All 558
Overruled in AIR 1956 All 305 (FB).
AIR 1953 All 623
Overruled in AIR 1966 All 477 (FB).
AIR 1953 All 698
Overruled in AIR 1962 All 288.
AIR 1954 All 80
Overruled in AIR 1955 All 275 (FB).
AIR 1954 All 163
Overruled in AIR 1966 S C 911.
AIR 1954 All 232
Overruled in AIR 1965 S C 1767.
AIR 1954 All 257
Reversed in AIR 1954 S C 728
AIR 1954 All 428
Overruled in AIR 1966 All 57 (FB)
AIR 1954 All 434
Overruled in AIR 1955 All 432.

Allahabad *(contd.)*

AIR 1954 All 501
Overruled in AIR 1963 S C 1850.
AIR 1954 All 538
Reversed in AIR 1961 S C 420.
AIR 1954 All 705
Overruled in AIR 1961 S C 420.
AIR 1954 All 728
Overruled in AIR 1955 All 269 (FB).
AIR 1954 All 735
Overruled in AIR 1955 All 269 (FB).
AIR 1954 All 747
Overruled in AIR 1956 All 338.
AIR 1954 All 812
Overruled in AIR 1955 All 510 (FB).
AIR 1955 All 12
Reversed in AIR 1961 S C 14.
AIR 1955 All 138
Overruled in AIR 1966 All 192 (FB).
AIR 1955 All 296
Overruled in AIR 1956 S C 367.
AIR 1955 All 462
Overruled in AIR 1955 All 521.
AIR 1955 All 589
Overruled in AIR 1961 All 619 (FB).
AIR 1955 All 618
Overruled in AIR 1958 All 733 (FB).
AIR 1955 N U C (All) 1410
Overruled in AIR 1957 S C 832.
AIR 1955 N U C (All) 1517
Overruled in AIR 1956 All 698.
AIR 1955 N U C (All) 1714
Overruled in AIR 1964 All 148.
AIR 1955 N U C (All) 2299.
Overruled in AIR 1961 All 104 (FB).
AIR 1955 N U C (All) 2666.
Overruled in 1963 All L J 180.
AIR 1955 N U C (All) 2707
Reversed in AIR 1960 S C 1283.
1955 Lab App Cas 140 (All)
Reversed in AIR 1957 S C 95.
AIR 1956 All 27
Reversed in AIR 1959 S C 79.
AIR 1956 All 35
Impliedly overruled in AIR 1963 S C 274.
AIR 1956 All 46
Held impliedly overruled on another point by A I R 1962 S C 1110 in AIR 1965 Punj 507.
AIR 1956 All 68
Overruled in AIR 1965 All 80.
AIR 1956 All 122
Overruled in 1959 All L J 548.
AIR 1956 All 225
[This case was Held overruled by AIR 1962 S C 847 as interpreted in AIR 1965 All 504—Ed.]
AIR 1956 All 258
Overruled in AIR 1962 All 315 (FB).
AIR 1956 All 273
Overruled in AIR 1964 S C 1099.
AIR 1956 All 321
Overruled in AIR 1957 S C 540.
AIR 1956 All 400
Overruled in AIR 1958 All 733 (FB).
AIR 1956 All 503
Overruled in AIR 1966 All 477 (FB).
AIR 1956 All 564
Reversed in AIR 1963 S C 799.
AIR 1956 All 638
Overruled in AIR 1957 S C 540.
AIR 1956 All 660
Reversed in AIR 1963 S C 1165.
1956 All L J 934
Overruled in AIR 1963 All 585.
1956 All L J 694
Overruled in AIR 1965 All 866.

Allahabad *(contd.)*

AIR 1957 All 106
Overruled in AIR 1963 All 210 (FB).
AIR 1957 All 184
Overruled in AIR 1966 All 192.
AIR 1957 All 315
Overruled in AIR 1964 All 504 (FB).
AIR 1957 All 320
Reversed in AIR 1959 S C 648.
AIR 1957 All 336
Overruled in AIR 1962 All 619.
AIR 1957 All 337
Overruled in AIR 1957 All 402.
AIR 1957 All 352
Overruled in AIR 1964 All 504 (FB).
AIR 1957 All 359
Overruled in AIR 1964 All 7
AIR 1957 All 388
Reversed in AIR 1960 S C 409.
AIR 1957 All 495
Overruled in AIR 1962 All 315 (FB).
AIR 1957 All 538
Reversed in AIR 1961 S C 1662.
AIR 1957 All 549
Overruled in AIR 1963 S C 1019.
AIR 1957 All 561
Held overruled by AIR 1961 S C 365 in A I R 1966 All 499.
AIR 1957 All 714
Reversed in AIR 1960 S C 67.
AIR 1957 All 826
Held overruled by A I R 1960 S C 1297 in A I R 1967 All 362.
1957 All L J 299
Overruled in AIR 1961 S C 1449.
1957 All L J 628
Overruled in AIR 1959 All 659.
AIR 1958 All 48
Overruled in AIR 1959 All 1 (FB).
AIR 1958 All 54
Reversed in AIR 1965 S C 920.
AIR 1958 All 304
Reversed in AIR 1966 S C 216.
AIR 1958 All 320
Overruled in AIR 1968 S C 497.
AIR 1958 All 332
Overruled in AIR 1962 All 43 (FB).
AIR 1958 All 439
Impliedly overruled on another point in A I R 1968 S C 178.
AIR 1958 All 596
Overruled in AIR 1960 S C 770.
AIR 1958 All 691
Overruled in AIR 1961 All 139 (FB).
AIR 1958 All 823
Reversed in AIR 1963 S C 449.
AIR 1958 All 872
Reversed in AIR 1962 S C 764.
1958 All L J 61
Reversed in AIR 1963 S C 946.
1958 All L J 234
Overruled in AIR 1964 All 7 (FB).
1958 All L J 333
Overruled in AIR 1961 All 599.
1958 All L J 838
Overruled in AIR 1961 All 599.
1958 All L J 853
Overruled in 1963 All L J 691.
1958 All L J 933
Overruled in AIR 1961 All 599.
AIR 1959 All 10
Overruled in AIR 1963 S C 1322.
AIR 1959 All 57
Overruled in AIR 1964 S C 416.

Allahabad *(contd.)*

AIR 1959 All 96
Overruled in AIR 1961 All 544.
AIR 1959 All 101
Reversed in AIR 1962 S C 955.
AIR 1959 All 179
Reversed in AIR 1961 S C 1790.
AIR 1959 All 425
Overruled in AIR 1961 All 352.
AIR 1959 All 439
Overruled in AIR 1964 S C 600.
AIR 1959 All 518
Overruled in AIR 1966 All 192.
AIR 1959 All 529
Overruled in AIR 1963 All 352.
AIR 1959 All 536
Overruled in AIR 1961 All 450 (FB).
AIR 1959 All 598
Reversed in AIR 1962 All 610.
AIR 1959 All 660
Overruled in A I R 1960 All 369 (FB) and A I R 1962 S C 1781.
AIR 1959 All 707
Reversed in AIR 1961 S C 218.
AIR 1959 All 744
Overruled in AIR 1963 S C 816.
AIR 1959 All 763
Overruled in AIR 1965 All 294.
AIR 1959 All 778
Reversed in AIR 1960 S C 905.
ILR (1959) 1 All 226
Overruled in AIR 1961 All 450 (FB).
1959 All L J 211
Overruled in AIR 1963 All 230 (FB).
1959 All L J 263
Overruled in AIR 1962 All 1 (FB).
1959 All L J 477
Overruled in AIR 1965 All 382 (FB).
1959 All L J 681
Overruled in 1962 All L J 1039 (FB).
1959 All L J 897
Overruled in AIR 1966 All 57 (FB).
1959 All W R (HC) 138
Reversed in AIR 1966 All 62.
AIR 1961 All 45
Reversed in AIR 1963 All 94.
AIR 1961 All 139
Overruled in AIR 1964 S C 260.
AIR 1961 All 153
Overruled in AIR 1964 All 290.
AIR 1961 All 214
Reversed in AIR 1962 All 551.
AIR 1961 All 221
Reversed in AIR 1966 S C 893.
AIR 1961 All 320
Overruled in AIR 1962 All 299.
AIR 1961 All 347
Overruled in AIR 1964 All 1 (FB).
AIR 1961 All 556
Overruled in AIR 1962 All 227 (FB).
AIR 1961 All 612
Held overruled in AIR 1963 All 161 (FB) in AIR 1964 Orissa 37.
AIR 1961 All 614
Overruled in AIR 1963 All 161 (FB).
(1961) 1 Cri L J 595
Reversed in AIR 1963 S C 822.
1961 All L J 52
Overruled in AIR 1964 All 7.
1961 All L J 188
Overruled in 1961 All L J 877.
1961 All L J 301
Overruled in AIR 1964 All 213 (FB).
1961 All L J 506
Overruled in AIR 1962 All 240.

Allahabad *(contd.)*

1961 All W R (HC) 102
Overruled in AIR 1964 All 7.
1961 All W R (HC) 260
Overruled in AIR 1964 All 213 (FB).
1961 All W R (HC) 508
Overruled in AIR 1965 All 345.
1961 All W R (HC) 683
Overruled in ILR (1962) 2 All 359.
AIR 1960 All 1
Reversed in AIR 1960 S C 1125.
AIR 1960 All 40
Impliedly overruled in AIR 1960 All 369 (FB).
AIR 1960 All 117
Overruled in AIR 1960 All 546 (FB).
AIR 1960 All 264
Reversed in AIR 1965 S C 1836.
AIR 1960 All 294
Overruled in AIR 1966 All 12 (FB).
AIR 1960 All 376
Overruled in AIR 1965 All 15.
AIR 1960 All 379
Overruled in AIR 1963 All 496.
AIR 1960 All 410
Overruled in 1963 All L J 198.
AIR 1960 All 431
Overruled in AIR 1961 All 428.
AIR 1960 All 458
Overruled in AIR 1961 All 630 (FB).
AIR 1960 All 504
Overruled in AIR 1961 All 590.
AIR 1960 All 564
Overruled in AIR 1962 All 221.
AIR 1960 All 573
Overruled in AIR 1962 All 248
AIR 1960 All 637
Overruled in AIR 1962 S C 1052.
1960 All L J 52
Overruled in AIR 1963 All 528 (FB).
1960 All L J 94
Overruled in AIR 1963 All 433.
1960 All L J 147
Overruled in AIR 1963 All 47.
1960 All L J 185
Reversed in AIR 1966 S C 693.
1960 All L J 532
Reversed in AIR 1965 S C 1919.
1960 All L J 546
Overruled in AIR 1966 All 57 (FB).
1960 All L J 557
Reversed in AIR 1962 All 590.
1960 All W R (HC) 418
Reversed in AIR 1962 All 590.
('60) Cri. Misc. Case. No. 186 of 1960, Dt 28-7-1960 (All)
Reversed in AIR 1962 S C 1506.
AIR 1962 All 42
Overruled in AIR 1962 All 547.
AIR 1962 All 91
Reversed in AIR 1967 S C 1631.
AIR 1962 All 150
Overruled in 1964 All W R (HC) 232.
AIR 1962 All 156
Overruled in AIR 1964 S C 1135.
AIR 1962 All 199
Reversed in AIR 1965 S C 314.
AIR 1962 All 219
Overruled in AIR 1963 All 242.
AIR 1962 All 221
Reversed in AIR 1965 S C 1763.
AIR 1962 All 251
Overruled in AIR 1963 S C 816.
AIR 1962 All 353
Overruled in AIR 1966 All 392 (FB).
AIR 1962 All 376
Overruled in AIR 1964 All 504 (FB).

Allahabad *(contd.)*

AIR 1962 All 543
Overruled by AIR 1962 S C 256 in AIR 1964 All 235.
AIR 1962 All 290
Reversed in AIR 1966 S C 1164.
1962 (2) Cri L J 118
Reversed in AIR 1963 S C 692.
1962 (1) Cri L J 684
Overruled in AIR 1965 S C 1583.
1962 All L J 553
Overruled in AIR 1966 All 280.
1962 All L J 612
Overruled in AIR 1964 All 311 (FB).
(1962) 46 I T R 293 (All)
Reversed in AIR 1967 S C 495.
AIR 1963 All 71
Reversed in AIR 1964 S C 416.
AIR 1963 All 377
Reversed in AIR 1966 S C 1842.
AIR 1963 All 535
Overruled in AIR 1965 All 221.
AIR 1963 All 581
Overruled in AIR 1967 All 1.
1963 (1) Cri L J 507
Overruled in AIR 1965 All 263.
1963 All L J 190
Overruled in 1963 All L J 288, which itself was overruled in AIR 1964 All 498.
1963 All L J 288
Overruled in AIR 1964 All 498.
1963 All L J 752
Overruled in AIR 1964 All 148.
1963 All W R (HC) 559
Overruled in AIR 1964 S C 381.
(1963) 14 S T C 518 (All)
Overruled in AIR 1968 S C 488.
AIR 1964 All 86
Reversed in AIR 1964 S C 1249.
AIR 1964 All 148
Overruled in AIR 1965 S C 1767.
AIR 1964 All 203
Reversed in AIR 1966 All 109.
AIR 1964 All 210
Overruled in AIR 1965 All 498 (FB).
AIR 1964 All 213 (FB)
Overruled in AIR 1968 S C 466.
AIR 1964 All 393
Overruled in AIR 1965 All 498 (FB).
AIR 1964 All 486
Reversed in AIR 1967 S C 581.
1964 All L J 491
Overruled in AIR 1966 All 269.
(1964) 15 S T C 711 (All)
Reversed in AIR 1965 S C 1310.
AIR 1965 All 454
Overruled in AIR 1968 S C 300.
1965 All L J 211
Overruled in AIR 1966 All 57.

Andhra Pradesh

AIR 1954 Andh Pra 17
Overruled in AIR 1957 Andh Pra 557.
AIR 1955 Andh Pra 49
Overruled in AIR 1955 Andh Pra 87.
AIR 1955 Andh Pra 49
Reversed in AIR 1961 Andh Pra 480.
AIR 1955 Andh Pra 215
Reversed in AIR 1957 Andh Pra 981.

Andhra Pradesh *(contd.)*

AIR 1955 Andh Pra 241
Overruled in AIR 1957 Andh Pra 83 (FB).
AIR 1955 Andh Pra 245
Overruled in AIR 1957 Andh Pra 83 (FB).
AIR 1955 Andh Pra 257
Reversed in AIR 1961 S C 412.
AIR 1956 Andh Pra 9
Overruled in AIR 1964 S C 1526.
AIR 1956 Andh Pra 14
Overruled in AIR 1963 S C 268.
AIR 1956 Andh Pra 21
Overruled in AIR 1963 S C 1650.
AIR 1956 Andh Pra 81
Reversed in AIR 1963 S C 264.
1956 Andh L T 446
Overruled in AIR 1957 Andh Pra 130 (FB).
1956 Andh W R 280
Overruled in AIR 1957 Andh Pra 133.
1956 Andh W R 682
Reversed in AIR 1960 Andh Pra 259.
1956 Andh W R 771
Overruled in AIR 1958 Andh Pra 751.
(1956) 7 S T C 486 (Andh Pra)
Overruled in (1961) 2 Andh W R 87 (FB).
AIR 1957 Andh Pra 11
Overruled in AIR 1963 Andh Pra 193.
AIR 1957 Andh Pra 130
Overruled in AIR 1960 S C 990.
AIR 1957 Andh Pra 166
Overruled in AIR 1962 Andh Pra 37 (FB).
AIR 1957 Andh Pra 204
Overruled in AIR 1962 Andh Pra 431 (FB).
AIR 1957 Andh Pra 229
Overruled in AIR 1965 S C 5.
AIR 1957 Andh Pra 368
Overruled in AIR 1960 Andh Pra 23.
AIR 1957 Andh Pra 406
Overruled in AIR 1964 S C 260.
AIR 1957 Andh Pra 470
Overruled in AIR 1957 S C 489.
AIR 1957 Andh Pra 476
Overruled in AIR 1961 Andh Pra 224.
AIR 1957 Andh Pra 486
Held impliedly overruled by AIR 1961 S C 493 in AIR 1963 Orissa 111.
AIR 1957 Andh Pra 632
Reversed in AIR 1966 S C 681.
AIR 1957 Andh Pra 649
Reversed on another point in AIR 1963 S C 754.
AIR 1957 Andh Pra 706
Overruled in AIR 1961 Andh Pra 520.
AIR 1957 Andh Pra 1047
Overruled in AIR 1962 S C 1052.
ILR (1957) Andh Pra 165
Overruled in (1961) 1 Andh W R 212.
(1957) 1 Andh W R 277
Overruled in AIR 1961 Andh Pra 454.
(1957) 2 Andh W R 29
Reversed in AIR 1959 Andh Pra 538.
(1957) 2 Andh W R 226
Overruled in AIR 1960 Andh Pra 186.
(1957) 69 Mad L W (Andh) 50
Overruled in AIR 1961 Andh Pra 201.
AIR 1958 Andh Pra 79
Overruled in AIR 1964 S C 1893.
AIR 1958 Andh Pra 109
Overruled in AIR 1958 S C 468.
AIR 1958 Andh Pra 173
Reversed in AIR 1962 S C 1687.
AIR 1958 Andh Pra 230
Overruled in AIR 1964 S C 260.
AIR 1958 Andh Pra 642
Overruled in AIR 1964 Andh Pra 185.

Andhra Pradesh *(contd.)*

AIR 1958 Andh Pra 681
Overruled in AIR 1965 Andh Pra 118.
AIR 1958 Andh Pra 642
Overruled in AIR 1964 Andh Pra 185.
ILR (1958) Andh Pra 791
Reversed in AIR 1961 S C 1241.
(1958) 1 Andh W R 85
Overruled in AIR 1959 Andh Pra 523.
(1958) 1 Andh W R 263
Overruled in AIR 1959 Andh Pra 129.
(1958) 2 Andh W R 523
Reversed in AIR 1961 S C 1241.
AIR 1959 Andh Pra 20
Overruled in AIR 1961 S C 1795.
AIR 1959 Andh Pra 21
Reversed in AIR 1962 S C 1585.
AIR 1959 Andh Pra 36
Overruled in AIR 1961 Andh Pra 86.
AIR 1959 Andh Pra 64
Reversed in AIR 1965 S C 1231.
AIR 1959 Andh Pra 269
Overruled in AIR 1961 Andh Pra 131 (FB).
AIR 1959 Andh Pra 352
Reversed in AIR 1965 S C 1773.
AIR 1959 Andh Pra 507
Overruled in AIR 1961 Andh Pra 116.
AIR 1959 Andh Pra 530
Reversed in AIR 1962 S C 586.
AIR 1959 Andh Pra 572
Overruled in AIR 1961 S C 1662.
AIR 1959 Andh Pra 607
Overruled in AIR 1962 Andh Pra 500 (FB).
AIR 1959 Andh Pra 651
Overruled in (1960) 1 Andh W R 305.
(1959) Andh L T 803
Reversed on facts in AIR 1967 S C 207.
(1959) 2 Andh W R 135
Overruled in AIR 1964 Andh Pra 31.
AIR 1960 Andh Pra 23
Overruled in AIR 1961 S C 609.
AIR 1960 Andh Pra 375
Overruled in AIR 1964 Andh Pra 276.
AIR 1960 Andhra Pra 391
Overruled in AIR 1962 Andhra Pra 236.
AIR 1960 Andhra Pra 395
Reversed in AIR 1964 S C 922.
AIR 1960 Andhra Pra 397
Reversed in AIR 1963 S C 1633.
1960-1 Andhra W R 75
Overruled in AIR 1966 Andhra Pra 4.
(1960) 2 Andhra W R 108
Reversed in AIR 1965 S C 531.
1960-40 I T R 200 (Andh Pra)
Overruled in AIR 1966 S C 81.
AIR 1961 Andh Pra 7
Overruled in AIR 1963 Andhra Pra 460.
AIR 1961 Andh Pra 7
Reversed in AIR 1964 S C 825.
AIR 1961 Andhra Pra 66
Overruled in AIR 1965 Andh Pra 79.
AIR 1961 Andhra Pra 279
Reversed in AIR 1966 S C 470.
AIR 1961 Andhra Pra 318
Overruled in AIR 1964 S C 1693.
AIR 1961 Andhra Pra 344
Overruled in AIR 1964 Andhra Pra 36 (FB).
AIR 1961 Andhra Pra 480
Reversed in AIR 1962 Andhra Pra 271.
AIR 1961 Andhra Pra 528
Reversed in AIR 1964 S C 279.
AIR 1961 Andhra Pra 370
Reversed in AIR 1964 S C 33.
(1961) 41 ITR 175 (Andh Pra)
Reversed in AIR 1965 S C 1905.

Andhra Pradesh *(contd.)*

AIR 1962 Andh Pra 4
Reversed in AIR 1965 S C 1827.
AIR 1962 Andhra Pra 75
Reversed in AIR 1966 S C 563.
AIR 1962 Andhra Pra 346
Overruled in AIR 1963 S C 1279.
AIR 1962 Andhra Pra 443
Overruled in AIR 1965 Andh Pra 274.
(1962) 2 Andh L T 75
Overruled in AIR 1966 Andh Pra 152.
(1962) 1 Andh W R 205
Overruled in AIR 1965 Andh Pra 220.
(1962) 46 ITR 470 (Andh Pra)
Reversed in AIR 1965 S C 1411.
AIR 1963 Andh Pra 106
Overruled in AIR 1964 S C 1893.
AIR 1963 Andh Pra 239
Reversed in AIR 1963 Andh Pra 489.
AIR 1963 Andh Pra 296
Overruled in AIR 1967 S C 1780.
AIR 1963 Andh Pra 332
Reversed in AIR 1964 S C 1870.
ILR (1963) Andh Pra 184
Reversed in AIR 1965 S C 1238.
ILR (1963) Andh Pra 702
Reversed in AIR 1966 S C 115.
(1963) 2 Andh W R 257
Reversed in AIR 1964 S C 102.
(1963) 47 ITR 139
Partly overruled in AIR 1966 S C 1053.
AIR 1964 Andh Pra 388
Overruled in AIR 1967 Andh Pra 1.
AIR 1964 Andh Pra 514 (DB)
Overruled in AIR 1967 Andh Pra 148.
AIR 1965 Andh Pra 37
Reversed in AIR 1967 S C 1545.

Assam

AIR 1950 Assam 83
Overruled in AIR 1955 Assam 129 (SB).
AIR 1952 Assam 134
Overruled in AIR 1961 S C 1795.
AIR 1953 Assam 47
Reversed in AIR 1957 S C 729.
AIR 1954 Assam 113
Reversed in AIR 1958 S C 19.
AIR 1954 Assam 197
Reversed in AIR 1960 S C 133.
AIR 1955 Assam 156 (DB)
Overruled in AIR 1960 Assam 111 (SB).
AIR 1955 Assam 201
Reversed in AIR 1961 S C 1579.
AIR 1955 Assam 249 (SB)
Reversed in AIR 1961 S C 232.
AIR 1956 Assam 48
Overruled in AIR 1957 S C 377.
AIR 1956 Assam 142
Reversed in AIR 1957 S C 414.
AIR 1956 Assam 177
Reversed in AIR 1962 S C 107.
AIR 1957 Assam 133
Reversed in AIR 1965 S C 1679.
ILR (1960) 12 Assam 441
Reversed in AIR 1964 S C 600.
1961-2 Cri L J 869 (Assam)
Overruled in AIR 1965 S C 1583.
AIR 1962 Assam 46
Reversed in 1962 Supp 3 S C R 508.
AIR 1962 Assam 46 (DB)
Reversed in 1962 Supp 3 S C R 503.
AIR 1962 Assam 88
Reversed in AIR 1963 S C 1612.

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Et harum quidem rerum facilis est et expedita distinctio. Nam libero tempore, cum soluta nobis est eligendi optio cumque nihil impedit quo minus id quod maxime placeat facere possimus, omnis voluptas assumenda est, omnis dolor repellendus. Temporibus autem quibusdam et aut officiis debitis aut rerum necessitatibus saepe eveniet ut et voluptates repudiandae sint et molestiae non recusandae. Itaque earum rerum hic tenetur a sapiente delectus, ut aut reiciendis voluptatibus maiores alias consequatur aut perferendis doloribus asperiores repellat.

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Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum.

Sed ut perspiciatis unde omnis iste natus error sit voluptatem accusantium doloremque laudantium, totam rem aperiam, eaque ipsa quae ab illo inventore veritatis et quasi architecto beatae vitae dicta sunt explicabo. Nemo enim ipsam voluptatem quia voluptas sit aspernatur aut odit aut fugit, sed quia consequuntur magni dolores eos qui ratione voluptatem sequi nesciunt. Neque porro quisquam est, qui dolorem ipsum quia dolor sit amet, consectetur, adipisci velit, sed quia non numquam eius modi tempora incidunt ut labore et dolore magnam aliquam quaerat voluptatem.

Ut enim ad minima veniam, quis nostrum exercitationem ullam corporis suscipit laboriosam, nisi ut aliquid ex ea commodi consequatur? Quis autem vel eum iure reprehenderit qui in ea voluptate velit esse quam nihil molestiae consequatur, vel illum qui dolorem eum fugiat quo voluptas nulla pariatur? At vero eos et accusamus et iusto odio dignissimos ducimus qui blanditiis praesentium voluptatum deleniti atque corrupti quos dolores et quas molestias excepturi sint occaecati cupiditate non provident, similique sunt in culpa qui officia deserunt mollitia animi, id est laborum et dolorum fuga.

Et harum quidem rerum facilis est et expedita distinctio. Nam libero tempore, cum soluta nobis est eligendi optio cumque nihil impedit quo minus id quod maxime placeat facere possimus, omnis voluptas assumenda est, omnis dolor repellendus. Temporibus autem quibusdam et aut officiis debitis aut rerum necessitatibus saepe eveniet ut et voluptates repudiandae sint et molestiae non recusandae. Itaque earum rerum hic tenetur a sapiente delectus, ut aut reiciendis voluptatibus maiores alias consequatur aut perferendis doloribus asperiores repellat.

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Bombay *(contd.)*

AIR 1956 Bom 530
Reversed in AIR 1963 S C 1356.
ILR (1956) Bom 685
Reversed in AIR 1961 S C 578.
(1956) 58 Bom L R 578
Reversed in AIR 1961 S C 578.
AIR 1957 Bom 71
Overruled in AIR 1958 S C 468.
AIR 1957 Bom 83
Reversed in AIR 1962 S C 1589.
AIR 1957 Bom 130
Reversed in AIR 1963 S C 358.
AIR 1957 Bom 252
Overruled in AIR 1959 S C 459.
AIR 1957 Bom 283
Overruled in AIR 1953 S C 228.
(1957) 59 Bom L R 769
Reversed in AIR 1958 S C 538.
(1957) 31 ITR 72
Reversed in AIR 1961 S C 701.
(1957) 31 ITR 836 (Bom)
Reversed in AIR 1961 S C 812.
AIR 1958 Bom 26
Overruled in AIR 1958 Bom 116.
AIR 1958 Bom 196
Overruled in AIR 1961 S C 387.
AIR 1958 Bom 239
Reversed in AIR 1961 S C 1139.
AIR 1958 Bom 332
Reversed in AIR 1960 S C 1068
AIR 1958 Bom 335
Reversed in AIR 1960 S C 1113.
AIR 1958 Bom 487
Overruled in AIR 1966 SC 249.
(1958) ILR 1958 Bom 176
Reversed in AIR 1961 S C 977.
(1958) ILR (1958) Bom 637
Overruled in AIR 1961 S C 1494.
(1958) 60 Bom L R 72
Overruled in AIR 1963 S C 114.
(1958) 33 ITR 349 (Bom)
Reversed in AIR 1960 S C 1343.
(1958) 33 ITR 390 (Bom)
Reversed in AIR 1961 S C 728.
AIR 1959 Bom 13
Overruled in AIR 1959 Bom 425 (FB).
AIR 1959 Bom 30
Overrruled in AIR 1960 S C 548.
AIR 1959 Bom 33
Reversed in AIR 1961 SC 1233.
AIR 1959 Bom 56
Reversed in AIR 1968 SC 1516.
AIR 1959 Bom 61
Overruled in AIR 1963 SC 114.
AIR 1959 Bom 65
Overruled in AIR 1962 Bom 152 (FB).
AIR 1959 Bom 70
Overruled in AIR 1962 Bom 152 (FB).
AIR 1959 Bom 78
Overruled in AIR 1966 Bom 64.
AIR 1959 Bom 134
Reversed in AIR 1962 SC 630.
AIR 1959 Bom 199
Overruled in AIR 1962 SC 759.
AIR 1959 Bom 248
Overruled in AIR 1960 SC 875
AIR 1959 Bom 414
Reversed in AIR 1964 SC 538.
AIR 1959 Bom 268
Reversed in AIR 1964 SC 1034.
AIR 1959 Bom 425 (FB)
Overruled in AIR 1966 SC 1085.
AIR 1959 Bom 454
Reversed in AIR 1961 SC 946.

Bombay *(contd.)*

AIR 1959 Bom 458
Reversed in AIR 1963 SC 897.
AIR 1959 Bom 499
Reversed in AIR 1963 SC 1497.
AIR 1959 Bom 515
Reversed in AIR 1961 SC 307.
(1959) 36 ITR 527
Overruled in AIR 1963 SC 1456.
AIR 1960 Bom 167
Reversed in AIR 1961 SC 573.
AIR 1960 Bom 205
Reversed in AIR 1962 SC 1153.
AIR 1960 Bom 218
Overruled in AIR 1964 SC 1693.
AIR 1960 Bom 296
Reversed in AIR 1962 SC 517.
AIR 1960 Bom 319
Reversed in AIR 1964 SC 758.
AIR 1960 Bom 338
Overruled in AIR 1965 Bom 177.
AIR 1960 Bom 347
Reversed in AIR 1968 SC 1066.
AIR 1960 Bom 390
Overruled in AIR 1962 SC 1500.
AIR 1960 Bom 411
Reversed in AIR 1967 SC 278.
AIR 1960 Bom 418
Reversed in on appreciation of facts in the case AIR 1964 SC 40.
AIR 1960 Bom 438
Reversed in AIR 1965 SC 1692.
AIR 1960 Bom 483
Overruled in AIR 1963 SC 816.
AIR 1960 Bom 488
Held impliedly overruled by AIR 1961 SC 1808 in AIR 1963 Guj 159.
AIR 1960 Bom 528
Overruled in AIR 1963 SC 181.
(1960) 40 ITR 210
Reversed in AIR 1965 SC 1188.
AIR 1961 Bom 65
Reversed in AIR 1964 SC 1882.
AIR 1961 Bom 227
Overruled in AIR 1962 SC 316
AIR 1961 Bom 244
Overruled in AIR 1966 SC 478.
1961 Nag L J 235
Overruled in AIR 1965 Bom 34.
(1961) 42 ITR 249 (Bom)
Reversed in AIR 1965 SC 1316.
AIR 1962 Bom 87
Reversed in AIR 1966 SC 856.
AIR 1962 Bom 254
Reversed in AIR 1966 SC 1074.
(1962) ILR (1962) Bom 73
Overruled in AIR 1965 Bom 34.
(1962) 45 ITR 275 (Bom)
Reversed in AIR 1963 SC 1484.
AIR 1963 Bom 17
Overruled in AIR 1964 SC 416.
AIR 1963 Bom 85
Overruled in AIR 1964 Bom 251.
AIR 1963 Bom 179
Overruled in AIR 1968 Bom 13 (FB).
AIR 1963 Bom 225
Reversed in AIR 1966 SC 249.
AIR 1963 Bom 230
Reversed in AIR 1968 SC 86.
(1963) 48 ITR 476 (Bom)
Reversed in AIR 1965 SC 1201.
(1963) 49 ITR 913 (Bom)
Reversed in AIR 1966 SC 30.
AIR 1964 Bom 67
Reversed in AIR 1966 SC 189.

Bombay *(contd.)*

AIR 1964 Bom 274
Reversed in AIR 1965 SC 722.
(1964) 66 Bom L R 729
Overruled in AIR 1966 Bom 1 (FB).

Calcutta

AIR 1927 Cal 543
Overruled in AIR 1961 SC 1795.
AIR 1934 Cal 615
Overruled in AIR 1966 Cal 267 (FB).
AIR 1938 Cal 439
Overruled in AIR 1956 SC 146.
AIR 1950 Cal 212
Overruled in AIR 1951 Cal 25.
AIR 1950 Cal 217
Overruled in AIR 1954 Cal 352.
AIR 1950 Cal 229
Overruled in AIR 1961 Cal 483 (FB).
AIR 1950 Cal 270
Reversed in AIR 1951 SC 108.
AIR 1950 Cal 520
Overruled in AIR 1961 Cal 81.
ILR (1950) 2 Cal 551
Overruled in AIR 1960 Cal 391.
(1950) 54 Cal W N 479
Overruled in AIR 1961 Cal 483 (FB).
AIR 1951 Cal 25
Reversed in AIR 1952 SC 227.
AIR 1951 Cal 29
Overruled in AIR 1964 SC 1699.
AIR 1951 Cal 32
Overruled in AIR 1953 SC 148.
AIR 1951 Cal 37
Overruled in AIR 1952 Cal 35 (FB).
AIR 1951 Cal 78
Overruled in AIR 1956 Cal 321 (FB).
AIR 1951 Cal 85
Reversed in AIR 1954 SC 92.
AIR 1951 Cal 101
Overruled in AIR 1965 SC 1251.
AIR 1951 Cal 147
Overruled in AIR 1962 SC 378.
AIR 1951 Cal 332
Reversed in AIR 1954 SC 44.
AIR 1951 Cal 385
Reversed in AIR 1955 SC 228.
AIR 1951 Cal 410
Overruled in AIR 1963 Cal 46 (SB).
AIR 1951 Cal 422
Overruled in AIR 1952 Cal 879.
AIR 1951 Cal 430
Reversed in AIR 1952 Cal 601.
AIR 1951 Cal 462
Overruled in AIR 1962 SC 1716.
(1951) 87 Cal L J 217
Overruled in AIR 1952 Cal 1.
(1951) 55 Cal W N 6
Held overruled by as interpreted in A I R 1953 Nag 58.
(1951) 55 Cal W N 237
Reversed in AIR 1953 SC 473.
(1951) 55 C W N 347
Overruled in AIR 1953 SC 148.
(1951) 55 Cal W N 421
Overruled in AIR 1953 SC 148.
(1951) 20 ITR 432 (Cal)
Overruled in AIR 1959 SC 1154.
(1951) 1 Lab L J 145 (Cal)
Overruled in AIR 1956 SC 353.
AIR 1952 Cal 10
Overruled in AIR 1964 Cal 241.
AIR 1952 Cal 126
Overruled in AIR 1958 SC 148.

Calcutta *(contd.)*

AIR 1952 Cal 140
Overruled in AIR 1963 Cal 87 (FB).
AIR 1952 Cal 178
Reversed in AIR 1952 SC 369
AIR 1952 Cal 199
Reversed in AIR 1953 SC 148.
AIR 1952 Cal 273
Overruled in AIR 1953 SC 148.
AIR 1952 Cal 644
Overruled in AIR 1953 SC 404.
AIR 1952 Cal 740
Reversed in AIR 1955 SC 182.
AIR 1952 Cal 815
Reversed in AIR 1956 SC 35 (FB).
AIR 1952 Cal 898
Overruled in AIR 1953 Cal 733 (FB).
(1952) 55 Cal W N 400
Overruled in AIR 1955 SC 213.
AIR 1953 Cal 42
Overruled in AIR 1961 Cal 491 (FB).
AIR 1953 Cal 219
Impliedly overruled in AIR 1962 SC 276.
AIR 1953 Cal 136
Overruled in so far as it held that pre-Amendment Act defaults were attracted by proviso to S. 14 (3) by AIR 1953 Cal 733 (FB).
AIR 1953 Cal 223
Overruled in AIR 1954 Cal 171.
AIR 1953 Cal 226
Overruled in AIR 1956 Cal 56 (FB).
AIR 1953 Cal 294
Overruled in AIR 1959 Cal 368.
AIR 1953 Cal 299
Reversed in AIR 1955 SC 50.
AIR 1953 Cal 477
Reversed in AIR 1955 SC 53.
AIR 1953 Cal 570
Overruled in AIR 1961 Cal 432 (FB).
AIR 1953 Cal 579
Overruled in AIR 1954 Cal 171.
AIR 1953 Cal 595
Overruled in AIR 1966 SC 1538.
AIR 1953 Cal 595
Overruled in AIR 1966 SC 1538.
AIR 1953 Cal 618
Overruled in AIR 1960 Cal 90.
AIR 1953 Cal 721
Reversed in AIR 1961 SC 372.
AIR 1953 Cal 767
Overruled in AIR 1965 Cal 145.
(1953) 24 ITR 454 (Cal)
Reversed in AIR 1959 SC 1165.
(1953) 1 Lab L J 757 (FB) (Cal)
Overruled in AIR 1957 SC 532.
AIR 1954 Cal 119
Overruled in AIR 1960 SC 936.
AIR 1954 Cal 216
Held impliedly overruled by AIR 1961 SC 493 in AIR 1963 Orissa 111.
AIR 1954 Cal 248
Reversed in AIR 1961 SC 16.
AIR 1954 Cal 289
Overruled in AIR 1957 SC 540.
AIR 1954 Cal 604
Overruled in AIR 1961 Cal 81.
AIR 1954 Cal 618
Overruled in AIR 1961 SC 1795.
AIR 1955 Cal 100
Overruled in AIR 1962 SC 1908.
AIR 1955 Cal 144
Overruled in AIR 1961 Cal 229.
AIR 1955 Cal 282
Reversed in AIR 1960 SC 1355.

Calcutta *(contd.)*

AIR 1955 Cal 540
Reversed in AIR 1960 SC 239.
AIR 1955 NUC (Cal) 4279
Overruled in AIR 1960 Cal 138.
AIR 1955 NUC (Cal) 5560
Overruled in AIR 1963 Cal 209.
(1955) 59 Cal W N 681
Overruled in AIR 1966 Cal 205 (FB).
(1955) 59 Cal W N 935
Overruled in AIR 1966 SC 1538.
AIR 1956 Cal 161
Overruled in AIR 1959 SC 1154.
AIR 1956 Cal 253
Overruled in AIR 1962 SC 759.
AIR 1956 Cal 385
Reversed in AIR 1959 SC 8.
AIR 1956 Cal 390
Reversed in AIR 1962 SC 1879.
AIR 1956 Cal 497
Overruled in AIR 1966 Cal 285 (FB).
(1956) 60 Cal W N 82
Overruled in A1R 1967 Cal 42.
(1956) 60 Cal W N 708
Overruled in AIR 1966 SC 911.
(1956) 60 Cal W N 1070
Overruled in 63 Cal W N 521.
AIR 1957 Cal 24
Reversed in AIR 1959 SC 144.
AIR 1957 Cal 319
Overruled in AIR 1966 SC 81.
AIR 1957 Cal 483
Overruled in AIR 1961 SC 1593.
AIR 1957 Cal 667
Overruled in AIR 1964 SC 1473.
AIR 1957 Cal 688
Reversed in AIR 1960 Cal 15.
(1957) 61 Cal W N 880
Overruled in AIR 1966 SC 951.
AIR 1958 Cal 195
Overruled in AIR 1959 SC 1154.
AIR 1958 Cal 208
Overruled in AIR 1958 SC 1018.
AIR 1958 Cal 264
Reversed in AIR 1964 SC 529.
AIR 1958 Cal 394
Overruled in AIR 1967 SC 383.
AIR 1958 Cal 431
Overruled in AIR 1962 Cal 203 (FB).
AIR 1958 Cal 682
Overruled in AIR 1962 SC 759.
1958 Cal L J 262
Overruled in AIR 1963 Cal 46 (SB).
(1958) 62 Cal W N 658
Overruled in AIR 1961 Cal 483 (FB).
(1958) 62 Cal W N 718
Overruled in AIR 1959 Cal 231.
AIR 1959 Cal 356
Overruled in AIR 1967 Cal 239.
AIR 1959 Cal 500
Overruled in AIR 1961 SC 1589.
AIR 1959 Cal 533
Reversed in AIR 1962 Cal 460.
AIR 1959 Cal 537
Overruled in AIR 1961 Cal 229.
1959 Cal L J 117
Overruled in 64 Cal W N 938.
AIR 1960 Cal 1
Reversed in AIR 1963 S C 1124.
AIR 1960 Cal 15
Reversed in AIR 1957 Cal 688.
AIR 1960 Cal 32
Reversed in AIR 1961 S C 1808.
AIR 1960 Cal 86
Reversed in AIR 1962 S C 1810.

Calcutta *(contd.)*

AIR 1969 Cal 166
Overruled in AIR 1962 Cal 530.
AIR 1960 Cal 209
Overruled by AIR 1962 SC 1704 in AIR 1966 SC 1197.
AIR 1960 Cal 243
Reversed in AIR 1966 S C 1953.
AIR 1960 Cal 264
Overruled in AIR 1964 S C 600.
AIR 1960 Cal 340
Overruled in AIR 1968 S C 497.
AIR 1960 Cal 346
Reversed in AIR 1966 S C 1361.
AIR 1960 Cal 430
Held impliedly overruled in AIR 1967 Cal 205.
AIR 1960 Cal 768
Reversed in AIR 1962 Cal 387.
AIR 1960 Cal 768
Reversed in AIR 1962 Cal 387.
(1960) 64 Cal W N 572
Reversed in AIR 1962 S C 1691.
(1960) 64 Cal W N 546
Reversed in AIR 1965 S C 1874.
AIR 1961 Cal 121
Reversed in AIR 1964 S C 1279.
AIR 1961 Cal 258
Impliedly overruled in AIR 1963 S C 1811.
AIR 1961 Cal 267
Reversed in AIR 1962 S C 1044.
AIR 1961 Cal 299
Overruled in AIR 1965 Cal 160.
AIR 1962 Cal 365
Reversed in AIR 1962 Cal 530.
AIR 1961 Cal 461
Reversed in AIR 1962 S C 876.
AIR 1961 Cal 626
Overruled in AIR 1966 S C 951.
ILR (1961) 2 Cal 544
Overruled in AIR 1962 Cal 135 (FB).
(1961) 65 Cal W N 45
Reversed in AIR 1965 S C 1839.
(1961) 65 Cal W N 441
Reversed in AIR 1964 S C 152.
(1961) 65 Cal W N 794
Reversed in AIR 1964 Cal 175.
AIR 1962 Cal 113
Reversed in AIR 1963 S C 316.
AIR 1962 Cal 254
Reversed in AIR 1965 Cal 404.
AIR 1962 Cal 370
Reversed in AIR 1966 S C 955.
AIR 1962 Cal 387
Reversed in AIR 1966 S C 230.
AIR 1962 Cal 455
Overruled in 68 Cal W N 316
AIR 1962 Cal 544
Reversed in AIR 1965 Cal 252.
AIR 1962 Cal 590
Reversed in AIR 1966 S C 1206.
(1962) 66 Cal W N 262
Overruled in AIR 1966 S C 24.
1962-46 I T R 39 (Cal)
Reversed in AIR 1965 S C 65.
(1962) 1962-4 Fac L R 169 (Cal)
Overruled in AIR 1965 Cal 454.
(1962) 1962-5 Fac L R 52 (Cal)
Overruled in AIR 1965 Cal 454.
AIR 1963 Cal 392
Reversed in AIR 1966 S C 1370.
AIR 1963 Cal 534
Overruled in AIR 1965 S C 995.
AIR 1963 Cal 554
Held overruled by AIR 1965 S C 646 in AIR 1966 Ker 187.

Ein Zeichen (Symbol) ist ein Muster, das eine Bedeutung hat. Es kann ein Bild, ein Wort, ein Ton oder eine Geste sein. Zeichen helfen uns, Informationen zu speichern und weiterzugeben. Ohne Zeichen könnten wir nicht miteinander kommunizieren.

Ein Computer kann nur mit Zahlen rechnen. Deshalb müssen alle Zeichen, die wir eingeben, zuerst in Zahlen umgewandelt werden. Diese Umwandlung heißt Codierung. Der Computer speichert dann nur die Zahlen.

Damit alle Computer dieselben Zeichen verstehen, gibt es Zeichensätze. Ein Zeichensatz ordnet jedem Zeichen eine feste Zahl zu. Der bekannteste Zeichensatz heißt ASCII. Er enthält 128 Zeichen.

Die Zahlen im ASCII-Code werden im Dualsystem gespeichert. Das Dualsystem hat nur zwei Ziffern: 0 und 1. Jede Ziffer heißt Bit. Acht Bit zusammen ergeben ein Byte. Ein Byte kann also 256 verschiedene Werte annehmen.

Der Buchstabe A hat im ASCII-Code die Zahl 65. Im Dualsystem ist das 01000001. Der Buchstabe B hat die Zahl 66, also 01000010. Man sieht: Sie unterscheiden sich nur an einer Stelle. Das ist kein Zufall.

Kleine Buchstaben stehen 32 Plätze nach den großen. Das a hat also die Zahl 97. Ziffern beginnen bei 48. Die Zahl 0 hat dort den Code 48. Leerzeichen, Punkt und Komma haben ebenfalls feste Codes.

Steuerzeichen sind unsichtbar. Sie steuern Geräte, zum Beispiel den Zeilenumbruch oder den Ton. Sie stehen im ASCII-Code an den ersten 32 Plätzen. Heute werden sie selten gebraucht.

Für Sonderzeichen reicht ASCII nicht aus. Deshalb gibt es Erweiterungen wie ISO 8859-1. Sie nutzen das neunte Bit und haben 256 Zeichen. Damit lassen sich auch Umlaute darstellen.

Unicode ist heute der wichtigste Zeichensatz. Er enthält fast alle Zeichen der Welt. Jedes Zeichen hat eine Nummer, die mit U+ beginnt. Das A ist U+0041. Das Euro-Zeichen ist U+20AC.

Unicode kann auf verschiedene Arten gespeichert werden. Eine davon heißt UTF-8. Sie braucht für ASCII-Zeichen nur ein Byte. Für andere Zeichen braucht sie zwei, drei oder vier Bytes.

Beim Speichern von Text ist die Codierung wichtig. Wird sie falsch gewählt, erscheinen unlesbare Zeichen. Das passiert oft bei Umlauten. Dann sagt man, der Text ist verstümmelt.

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Beim Übertragen von Daten können Fehler entstehen. Ein Bit kann kippen, also von 0 zu 1 werden. Dann ist das Zeichen falsch. Deshalb gibt es Verfahren, die Fehler erkennen und manchmal sogar beheben.

Ein einfaches Verfahren ist das Paritätsbit. Es wird an ein Byte angehängt. Es sorgt dafür, dass die Anzahl der Einsen gerade ist. Fehlt diese Gerade, weiß der Empfänger, dass ein Bit gekippt ist.

Komprimieren heißt, Daten kleiner machen. Dabei werden Wiederholungen und Muster ausgenutzt. Eine Datei kann danach weniger Platz brauchen. Beim Öffnen wird sie wieder entpackt.

Es gibt verlustfreie und verlustbehaftete Verfahren. Verlustfrei heißt, dass nach dem Entpacken alles genau gleich ist. Verlustbehaftet heißt, dass etwas verloren geht. Bei Bildern merkt man das oft kaum.

Ein Archiv fasst viele Dateien in einer zusammen. Das ist praktisch zum Verschicken. Oft wird dabei auch komprimiert. Bekannte Archivformate sind ZIP und TAR.

Verschlüsseln heißt, Daten unlesbar machen. Nur wer den Schlüssel kennt, kann sie wieder lesen. Das schützt vor fremden Augen. Es ist etwas anderes als Codierung.

Eine Prüfsumme ist eine Zahl, die aus einer Datei berechnet wird. Ändert sich die Datei, ändert sich die Prüfsumme. So kann man leicht sehen, ob eine Datei unverändert ist. Das ist nützlich beim Herunterladen.

Ein Hash ist eine feste Zahl, die aus beliebig vielen Daten entsteht. Er ist wie ein Fingerabdruck der Daten. Aus dem Hash lässt sich die Datei nicht zurückrechnen. Gute Hashes ändern sich stark bei kleinen Änderungen.

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Madhya Pradesh *(contd.)*

AIR 1961 Madh Pra 282
Reversed in AIR 1964 S C 1179.
1961 M P L J 797
Reversed in AIR 1966 S C 837.
1961 Jab L J 935
Reversed in AIR 1966 S C 1068.
1961 Jab L J 1231
Reversed in AIR 1966 S C 1113.
AIR 1962 Madh Pra 80
Reversed in AIR 1965 S C 427.
AIR 1962 Madh Pra 102 (FB)
Reversed in AIR 1967 S C 203.
AIR 1962 Madh Pra 177
Overruled in AIR 1965 Madh Pra 219 (FB).
AIR 1962 Madh Pra 257
Reversed in AIR 1966 S C 704.
AIR 1962 Madh Pra 320
Reversed in AIR 1965 S C 1798.
1962 M P L J 738
Overruled in AIR 1967 Madh Pra 14.
ILR (1962) Madh Pra 511
Reversed in AIR 1966 S C 1113.
AIR 1963 Madh Pra 337
Overruled in AIR 1966 Madh Pra 1.
1963 M P L J (Notes) 45
Overruled in AIR 1967 Madh Pra 14.
1963 M P L J 292
Overruled in AIR 1967 Madh Pra 14.
AIR 1964 Madh Pra 273
Reversed in AIR 1966 S C 436.
AIR 1965 Madh Pra 170
Overruled in AIR 1966 S C 1342.

Madras

(1890) ILR 13 Mad 426
Impliedly overruled in AIR 1956 S C 54.
(1897) ILR 20 Mad 319
Held overruled by (1909) ILR 32 Mad 305 in AIR 1966 Ker 150.
AIR 1931 Mad 580
Overruled in AIR 1966 S C 1300.
AIR 1944 Mad 437
Overruled in AIR 1955 Mad 96 (FB).
AIR 1950 Mad 151
Overruled in AIR 1951 Mad 311.
AIR 1950 Mad 321
Overruled in (1956) 1 Mad L J 366 (FB).
AIR 1950 Mad 387
Overruled in AIR 1951 Mad 231.
AIR 1950 Mad 541
Overruled in AIR 1962 S C 232.
AIR 1950 Mad 839
Held overruled by AIR 1950 S C 188 as interpreted in AIR 1966 Cal 504.
AIR 1951 Mad 191
Reversed in AIR 1953 S C 53.
AIR 1951 Mad 275
Overruled in (1955) 2 Mad L J 254 (FB).
AIR 1951 Mad 276
Impliedly overruled by AIR 1950 S C 218.
AIR 1951 Mad 352
Overruled in AIR 1954 Mad 103 (FB).
AIR 1951 Mad 561
Overruled in AIR 1964 S C 136.
AIR 1951 Mad 572
Reversed in AIR 1953 S C 98.
AIR 1951 Mad 600
Reversed in AIR 1954 SC 198.
AIR 1951 Mad 809
Overruled in AIR 1953 Mad 176.
AIR 1951 Mad 814
Overruled in AIR 1957 Mad 1.

Madras *(contd.)*

AIR 1951 Mad 979
Reversed in AIR 1954 S C 251.
AIR 1951 Mad 1051
Overruled in AIR 1957 S C 540.
(1951) ILR (1951) Mad 723
Overruled in AIR 1964 S C 1526.
AIR 1952 Mad 120
Reversed in AIR 1954 S C 747.
AIR 1952 Mad 203
Overruled in AIR 1958 Andh Pra 173.
AIR 1952 Mad 231
Reversed in AIR 1956 S C 492.
AIR 1952 Mad 276
Reversed by AIR 1952 Mad 545.
AIR 1952 Mad 283
Held overruled by AIR 1962 Mad 447 (FB) in AIR 1967 Andh Pra 129.
AIR 1952 Mad 305
Reversed in AIR 1953 S C 527.
AIR 1952 Mad 553
Overruled in AIR 1966 S C 1824.
AIR 1952 Mad 771
Overruled in AIR 1961 S C 1795.
(1952) 1 Lab L J 122
Overruled in AIR 1958 S C 353.
AIR 1953 Mad 91
Reversed in AIR 1953 S C 274.
AIR 1953 Mad 96
Overruled in AIR 1957 Mad 17.
AIR 1953 Mad 190
Reversed in AIR 1956 S C 94.
AIR 1953 Mad 214
Overruled in AIR 1955 Mad 378.
AIR 1953 Mad 223
Reversed in AIR 1956 S C 522.
AIR 1953 Mad 246
Overruled in AIR 1954 Mad 415 (FB).
AIR 1953 Mad 315
Overruled in AIR 1961 S C 680.
AIR 1953 Mad 336
Overruled in AIR 1961 S C 680.
AIR 1953 Mad 340
Overruled in AIR 1959 Mad 488 (FB).
AIR 1953 Mad 404
Reversed in AIR 1957 Mad 330.
AIR 1953 Mad 425
Held overruled by AIR 1956 Mad 244 in AIR 1959 Ker 67 (FB).
AIR 1953 Mad 461
Overruled in AIR 1964 S C 136.
AIR 1953 Mad 550
Overruled in AIR 1956 Mad 323.
AIR 1953 Mad 615
Held overruled in AIR 1954 Mad 500.
AIR 1953 Mad 858
Overruled in AIR 1955 Mad 341 (FB).
AIR 1953 Mad 878
Overruled in AIR 1957 S C 540.
AIR 1953 Mad 900 (FB)
Reversed in AIR 1962 S C 680.
AIR 1953 Mad 909
Overruled in AIR 1955 Mad 637.
AIR 1953 Mad 914
Reversed in AIR 1959 S C 275.
AIR 1954 Mad 1
Held overruled by (1958) 2 Mad L J 526 in AIR 1960 Mad 343.
AIR 1954 Mad 227 (DB)
Overruled in AIR 1967 S C 272.
AIR 1954 Mad 350
Overruled in AIR 1958 Mad 571.
AIR 1954 Mad 415 (FB)
Overruled in AIR 1963 S C 1227.

Madras *(contd.)*

AIR 1954 Mad 454
Overruled in AIR 1962 Mad 7 (FB).
AIR 1954 Mad 528
Overruled in AIR 1964 S C 1526.
AIR 1954 Mad 621
Reversed in AIR 1959 S C 300.
AIR 1954 Mad 713
Overruled in (1956) 1 M L J 366 (FB).
AIR 1954 Mad 772
Overruled in AIR 1963 S C 1715.
AIR 1954 Mad 833
Overruled in AIR 1958 Mad 544.
AIR 1954 Mad 961 (FB)
Overruled in AIR 1967 S C 727.
AIR 1954 Mad 984
Overruled in AIR 1955 Mad 314.
AIR 1954 Mad 1091
Reversed in AIR 1954 Mad 1091.
AIR 1954 Mad 1155
Reversed in AIR 1955 S C 817.
(1954) 67 Mad L W 767
Overruled in AIR 1955 Mad 378.
AIR 1955 Mad 245
Overruled in AIR 1962 Mad 21 (FB).
AIR 1955 Mad 39
Overruled in AIR 1965 Mad 62 (FB).
AIR 1955 Mad 151
Overruled in AIR 1960 Mad 58.
AIR 1955 Mad 179
Overruled in (1955) 2 M L J 282.
AIR 1955 Mad 182
Reversed in AIR 1956 Mad 613.
AIR 1955 Mad 387
Overruled in AIR 1964 Mad 371.
AIR 1955 Mad 643
Overruled in AIR 1956 Mad 254.
AIR 1955 NUC (Mad) 3938
Overruled in AIR 1962 Mad 349.
AIR 1955 NUC (Mad) 4545
Overruled in AIR 1964 Mad 1 (FB).
(1955) 1 Mad L J 79
Overruled in AIR 1960 Mad 58.
(1955) 1 Mad L J 406
Overruled in (1961) 2 Mad L J 521.
(1955) 1 Mad L J 454
Overruled in AIR 1961 Mad 475.
(1955) 2 M L J 569 = AIR 1955 NUC 6080
Overruled in AIR 1959 Mad 96.
AIR 1956 Mad 8
Reversed in AIR 1961 S C 692.
AIR 1956 Mad 49
Overruled in AIR 1962 S C 151.
AIR 1956 Mad 220
Overruled in AIR 1958 S C 232.
AIR 1956 Mad 413
Reversed in AIR 1963 S C 992.
AIR 1956 Mad 471
Reversed in AIR 1963 S C 1401.
AIR 1956 Mad 517
Reversed in AIR 1962 S C 663.
AIR 1956 Mad 680
Overruled in AIR 1962 Mad 450 (FB).
AIR 1956 Mad 695
Reversed in AIR 1962 S C 1148.
(1956) 2 Mad L J 425
Overruled in AIR 1965 Mad 127.
(1956) 2 Mad L J 465
Overruled in AIR 1961 S C 1.
AIR 1957 Mad 19
Reversed in AIR 1963 S C 1319
AIR 1957 Mad 33
Reversed in AIR 1960 S C 1254.
AIR 1957 Mad 255
Reversed in AIR 1960 Mad 336.

Madras *(contd.)*

AIR 1957 Mad 269
Overruled in AIR 1965 Mad 1 (FB).
AIR 1957 Mad 300
Overruled in AIR 1964 S C 260.
AIR 1957 Mad 699 (FB)
Overruled in AIR 1960 S C 1191.
AIR 1958 Mad 8
Overruled in AIR 1961 S C 609.
AIR 1958 Mad 8
Reversed in AIR 1962 S C 970.
AIR 1958 Mad 74
Overruled in AIR 1960 Mad 15 (FB).
AIR 1958 Mad 80
Reversed in AIR 1965 S C 338.
AIR 1958 Mad 104
Overruled in AIR 1966 S C 681.
AIR 1958 Mad 236
Reversed in AIR 1960 S C 1191.
AIR 1958 Mad 240
Overruled in AIR 1967 S C 808.
AIR 1958 Mad 261
Reversed in AIR 1958 S C 687.
AIR 1958 Mad 403
Overruled in AIR 1962 Mad 75.
AIR 1958 Mad 416
Overruled in AIR 1964 S C 260.
AIR 1958 Mad 561
Reversed in AIR 1965 S C 1082.
AIR 1958 Mad 599
Reversed in AIR 1964 S C 331.
AIR 1958 Mad 117
Overruled in (1961) 2 Mad L J 427 (FB).
1958 Mad L J (Cri) 11
Reversed in AIR 1961 S C 617.
(1958) 1 Mad L W 521
Overruled in AIR 1961 Mad 423.
AIR 1959 Mad 142
Reversed in AIR 1962 S C 316.
AIR 1959 Mad 142
Overruled in AIR 1962 Mad 85.
AIR 1959 Mad 185
Overruled in AIR 1961 S C 631.
AIR 1959 Mad 479
Reversed in AIR 1961 Mad 393.
AIR 1959 Mad 558
Reversed in AIR 1963 Mad 45.
(1959) 2 Mad L J 420
Overruled in (1962) 2 Mad L J 399.
(1959) 2 Mad L J 493
Reversed in AIR 1962 Mad 478.
(1959) 72 Mad L W 249
Overruled in (1960) 1 Mad L J 232.
AIR 1960 Mad 196
Reversed in AIR 1961 Mad 370.
AIR 1960 Mad 279
Reversed in AIR 1965 S C 1349.
AIR 1960 Mad 278
Overruled in AIR 1963 Mad 45 (FB).
AIR 1960 Mad 288
Reversed in AIR 1960 Mad 425.
AIR 1960 Mad 425
Reversed in AIR 1965 S C 111.
(1960) 1 Mad L J 346
Overruled in AIR 1964 Mad 169 (FB).
AIR 1961 Mad 14
Reversed in AIR 1964 S C 1653.
AIR 1961 Mad 35
Reversed in AIR 1962 S C 36.
AIR 1961 Mad 77
Overruled in AIR 1962 S C 481.
AIR 1961 Mad 208
Overruled in AIR 1966 Mad 244.
AIR 1961 Mad 217
Reversed in AIR 1964 Mad 103.

Madras *(contd.)*

AIR 1961 Mad 217
Reversed in AIR 1964 Mad 103.
AIR 1961 Mad 239
Reversed in AIR 1963 Mad 89.
AIR 1961 Mad 258
Reversed in AIR 1965 S C 1916.
AIR 1961 Mad 276
Reversed in AIR 1966 S C 902.
AIR 1961 Mad 322
Reversed in AIR 1966 S C 1089.
AIR 1961 Mad 352
Reversed in AIR 1963 Mad 412.
(1961) 1 Mad L J 464
Reversed in AIR 1965 S C 96.
1961 Mad L J (Cri) 712 (Mys)
Reversed in AIR 1963 S C 849.
(1961) 42 I T R 715
Reversed in (1962) 1 Mad L J 411.
AIR 1962 Mad 52
Overruled in AIR 1962 S C 256.
AIR 1962 Mad 284
Reversed in AIR 1965 Mad 253.
AIR 1962 Mad 342
Overruled in AIR 1965 Mad 168.
AIR 1962 Mad 379
Overruled in AIR 1964 S C 600.
AIR 1962 Mad 457
Held overruled by AIR 1965 S C 1510 in AIR 1966 Mad 404.
AIR 1962 Mad 478
Reversed in AIR 1964 S C 1272.
AIR 1962 Mad 482
Reversed in AIR 1965 S C 1752.
AIR 1962 Mad 497
Overruled in AIR 1964 Mad 367.
(1962) ILR (1962) Mad 449
Reversed in AIR 1965 S C 1578.
ILR (1962) Mad 818
Reversed in AIR 1966 S C 1052.
(1962) 1 Mad L J 116
Overruled in AIR 1963 Mad 369.
AIR 1963 Mad 116
Overruled in AIR 1964 S C 922.
AIR 1963 Mad 235
Reversed in AIR 1964 Mad 364.
AIR 1963 Mad 243
Reversed in AIR 1964 Mad 404.
(1963) 2 Mad L J 571
Overruled in AIR 1966 S C 1187.
1963 Mad W N 636
Reversed in AIR 1965 S C 942.
(1963) 50 I T R 617 (Mad)
Reversed in AIR 1965 S C 1004.
(1963) 2 Lab L J 303 (Mad)
Overruled in AIR 1966 S C 380.
AIR 1964 Mad 221
Overruled in AIR 1967 Mad 45 (FB).
AIR 1964 Mad 367
Overruled in AIR 1965 S C 666.
AIR 1964 Mad 519
Reversed in (1965) 35 Com Cas 456 (SC).
(1964) 1 Mad L J 92
Reversed in AIR 1964 S C 1573.
(1964) 1 Mad L J 92
Reversed in AIR 1964 S C 1573.
(1964) 51 I T R 178 (Mad)
Overruled in AIR 1966 S C 1187.
(1964) 15 S T C 784
Overruled in AIR 1967 Mad 72.
AIR 1965 Mad 79 (FB)
Partly reversed in AIR 1966 S C 1366.
AIR 1965 Mad 478
Partially reversed in AIR 1966 S C 1866.

Madras *(contd.)*

AIR 1965 Mad 508
Overruled in AIR 1966 Mad 416.
ILR (1965) 1 Mad 509
Overruled in AIR 1967 Mad 72 (FB).

Mysore

AIR 1952 Mys 80
Overruled in AIR 1955 Mys 65 (FB).
AIR 1954 Mys 88
Overruled in AIR 1957 Mys 35.
AIR 1954 Mys 152
Reversed in AIR 1961 S C 1087.
AIR 1955 Mys 41
Overruled in AIR 1958 S C 560.
AIR 1955 Mys 49
Reversed in AIR 1958 S C 795.
AIR 1955 Mys 99
Reversed in AIR 1958 S C 808.
AIR 1957 Mys 61
Overruled in AIR 1961 S C 674.
AIR 1959 Mys 87
Held overruled by AIR 1963 S C 120 as interpreted in AIR 1965 Mys 65.
AIR 1959 Mys 112
Overruled in AIR 1961 S C 1795.
AIR 1959 Mys 114
Overruled in AIR 1966 S C 156.
AIR 1959 Mys 221
Overruled in AIR 1967 S C 1224.
AIR 1959 Mys 227
Overruled in AIR 1963 Mys 1.
AIR 1959 Mys 265
Overruled in AIR 1966 S C 237.
AIR 1960 Mys 77
Reversed in AIR 1962 S C 478.
(1961) 39 Mys L J 340
Held Overruled by A I R 1963 S C 120 in A I R 1965 Mys 65.
AIR 1963 Mys 241
Overruled in AIR 1966 S C 380.
(1963) 1 Mys L J 278
Reversed in AIR 1965 S C 1932.
(1963) 2 Mys L J 83
Overruled in AIR 1965 Mys 227 (FB).
AIR 1966 Mys 27
Reversed in AIR 1967 S C 135.

Nagpur

AIR 1945 Nag 1
Overruled in AIR 1956 S C 238.
AIR 1949 Nag 4
Overruled in AIR 1956 Nag 195.
AIR 1950 Nag 78
Overruled in AIR 1954 Nag 334.
AIR 1950 Nag 169
Reversed in AIR 1958 S C 341.
AIR 1950 Nag 195
Overruled in 1957 M P L J 166 (Nag).
AIR 1950 Nag 212
Reversed in AIR 1952 Nag 283.
Overruled in AIR 1958 Madh Pra 286.
AIR 1951 Nag 94
Overruled by AIR 1951 S C 332 in AIR 1953 Nag 58.
AIR 1951 Nag 174
Reversed in AIR 1959 S C 291.
AIR 1951 Nag 226
Reversed in AIR 1954 S C 23.
AIR 1951 Nag 447
Reversed in AIR 1954 Nag 103.
AIR 1952 Nag 4
Overruled in AIR 1953 Nag 89 (FB).
AIR 1952 Nag 17
Reversed in AIR 1955 Nag 193.

Nagpur *(contd.)*

AIR 1952 Nag 77
Overruled in AIR 1962 S C 1716.
AIR 1952 Nag 175
Overruled in AIR 1955 Nag 245.
AIR 1952 Nag 353
Overruled in AIR 1966 S C 156.
AIR 1953 Nag 80
Overruled in AIR 1954 Nag 151 (FB).
(1952) 3 S T C 448 (Nag)
Reversed in AIR 1954 S C 403.
AIR 1953 Nag 125
Overruled in AIR 1961 Madh Pra 274 (FB).
AIR 1953 Nag 135
Overruled in AIR 1954 Nag 260.
AIR 1953 Nag 182
Reversed in AIR 1960 S C 1368.
AIR 1953 Nag 249
Overruled in AIR 1961 S C 1795.
AIR 1953 Nag 251
Overruled in AIR 1954 Nag 151 (FB).
AIR 1954 Nag 71
Impliedly Overruled in AIR 1956 S C 66.
AIR 1954 Nag 196
Reversed in AIR 1955 S C 233.
AIR 1954 Nag 229
Overruled in AIR 1962 S C 794.
AIR 1954 Nag 248
Overruled in AIR 1956 Nag 193.
AIR 1954 Nag 255
Overruled in AIR 1961 Madh Pra 274 (FB).
1954 Nag L J 683
Overruled in AIR 1958 Madh Pra 355.
AIR 1956 Nag 132
Overruled in AIR 1962 S C 1230.
1955 Nag L J 678
Overruled in AIR 1967 S C 354.
1955 Nag L J (Notes) 130
Overruled in 1957 M P L J 191 (Nag).
(1931) 6 ITC 28 (Nag)
Overruled in AIR 1966 S C 1053.
(1955) 6 S T C 93 (Nag)
Overruled in AIR 1958 S C 560.
AIR 1956 Nag 43
Reversed in AIR 1958 S C 783.
AIR 1956 Nag 46
Overruled in AIR 1966 S C 24.
AIR 1956 Nag 71
Overruled in AIR 1961 S C 1543.
AIR 1956 Nag 110
Overruled in AIR 1967 S C 272.
AIR 1956 Nag 113
Overruled in AIR 1958 S C 36.
AIR 1956 Nag 132
Overruled in AIR 1962 S C 1230.
AIR 1959 Nag 187
Overruled in AIR 1964 S C 1563.
AIR 1956 Nag 235
Reversed in AIR 1957 S C 232.
1956 Nag L J 504
Overruled in AIR 1962 S C 551.
(1956) 29 I T R 171 (Nag)
Reversed in AIR 1961 S C 426.
AIR 1957 Nag 4
Reversed in AIR 1961 S C 1261.
1959 Nag L J (Notes) 1
Overruled in AIR 1963 Bom 225.
1960 Nag L J 335
Overruled in 1961 Nag L J (Notes) 27.
1961 Nag L J 644
Reversed in AIR 1966 S C 557.

Orissa

AIR 1951 Orissa 378
Overruled in AIR 1955 Orissa 73.

Orissa *(contd.)*

ILR (1951) Cut 398
Reversed in AIR 1952 S C 12.
AIR 1952 Orissa 1
Reversed in AIR 1954 S C 217.
AIR 1952 Orissa 215
Reversed in AIR 1960 S C 190.
AIR 1952 Orissa 281
Overruled in AIR 1953 Orissa 117 (SB).
AIR 1954 Orissa 101
Reversed in AIR 1958 S C 239.
AIR 1954 Orissa 234
Reversed in AIR 1963 S C 107.
AIR 1955 Orissa 185
Reversed in AIR 1959 S C 239.
AIR 1956 Orissa 7
Reversed in AIR 1961 S C 284.
AIR 1957 Orissa 17
Reversed in AIR 1962 S C 547.
AIR 1957 Orissa 80
Reversed in AIR 1964 S C 685.
AIR 1957 Orissa 112
Overruled in AIR 1967 S C 884.
AIR 1957 Orissa 184
Overruled in AIR 1963 S C 1612.
AIR 1958 Orissa 241
Overruled in AIR 1961 S C 674.
AIR 1958 Orissa 260
Reversed in AIR 1959 S C 589.
(1958) 24 Cut L T 295
Reversed in AIR 1962 S C 1912.
(1958) 24 Cut L T 441
Reversed in AIR 1961 S C 177.
AIR 1959 Orissa 169
Reversed in AIR 1964 S C 1789.
ILR (1959) Cut 425
Reversed in AIR 1963 S C 404.
AIR 1960 Orissa 37
Overruled in AIR 1963 S C 1612.
AIR 1960 Orissa 46
Reversed in AIR 1962 S C 945.
AIR 1960 Orissa 68
Reversed in AIR 1963 SC 779.
(1960) 25 Cut L T 284
Reversed in AIR 1962 Orissa 149.
ILR (1961) Cut 183
Impliedly overruled in AIR 1966 SC 1544.
AIR 1962 Orissa 11
Reversed in AIR 1966 SC 948.
AIR 1962 Orissa 24
Reversed in AIR 1964 SC 1284.
AIR 1962 Orissa 177
Reversed in AIR 1963 SC 1166.
AIR 1962 Orissa 202
Reversed in AIR 1963 Orissa 189.
AIR 1962 Orissa 202
Reversed in AIR 1963 Orissa 189.
ILR (1962) Cut 171
Reversed in AIR 1966 SC 1544.
ILR (1962) Cut 818
Overruled in AIR 1965 Orissa 102.
AIR 1963 Orissa 24
Overruled in AIR 1967 SC 1189.
AIR 1964 Orissa 65
Reversed on this point in AIR 1966 SC 1547.

Patna

AIR 1946 Pat 235
Overrruled in AIR 1956 SC 146.
AIR 1950 Pat 134
Reversed in AIR 1956 SC 446.
AIR 1950 Pat 358
Overruled in AIR 1955 Pat 370 (FB).
AIR 1950 Pat 379
Overruled in AIR 1955 Pat 494.

Patna *(contd.)*

AIR 1950 Pat 392 (SB)
Overruled in (1964) ILR 43 Pat 25 (SB).
AIR 1951 Pat 12
Reversed in AIR 1952 SC 329.
AIR 1951 Pat 196
Overruled in AIR 1964 SC 1882.
AIR 1951 Pat 484
Reversed in AIR 1955 SC 282.
AIR 1951 Pat 488
Reversed in AIR 1956 SC 336.
AIR 1951 Pat 529
Overruled in AIR 1963 Pat 79 (FB).
AIR 1951 Pat 587
Overruled in AIR 1962 Pat 308 (FB).
AIR 1951 Pat 626
Overruled in AIR 1957 Pat 102.
AIR 1952 Pat 46
Overruled in AIR 1960 Pat 344.
AIR 1952 Pat 106
Reversed in AIR 1954 SC 253.
AIR 1952 Pat 194
Reversed in AIR 1953 SC 215.
AIR 1952 Pat 393
Reversed in AIR 1954 SC 165.
AIR 1953 Pat 47
Held overruled by AIR 1952 SC 64 in AIR 1953 Pat 293.
AIR 1953 Pat 87
Reversed in AIR 1955 SC 661.
AIR 1953 Pat 121 (DB)
Overruled in AIR 1968 SC 90.
AIR 1953 Pat 390
Reversed in AIR 1955 SC 441.
1953 BLJR 671
Reversed in AIR 1959 SC 1002.
AIR 1954 Pat 164
Reversed in AIR 1959 SC 809.
AIR 1954 Pat 262
Reversed in AIR 1959 SC 1073.
AIR 1954 Pat 289
Reversed in AIR 1956 SC 66.
AIR 1954 Pat 560
Reversed in AIR 1958 SC 441.
AIR 1955 Pat 81
Overruled in AIR 1957 SC 444.
AIR 1955 Pat 245
Overruled in AIR 1967 SC 1348.
AIR 1955 Pat 480
Reversed in AIR 1961 SC 782.
AIR 1955 Pat 505
Reversed in AIR 1964 SC 1295.
ILR 33 Pat 942
Reversed in AIR 1959 SC 951.
1955 BLJR 202
AIR 1958 Pat 386 (FB).
AIR 1956 Pat 113
Overruled in AIR 1964 SC 1413.
AIR 1956 Pat 221
Overruled in AIR 1964 SC 600.
AIR 1956 Pat 223
Overruled in AIR 1958 Pat 630 (FB).
AIR 1956 Pat 283
Overruled in AIR 1957 Pat 226 (FB).
AIR 1956 Pat 376
Overruled in AIR 1962 Pat 285 (FB).
AIR 1956 Pat 425
Reversed on other grounds in AIR 1962 SC 50.
AIR 1956 Pat 533
Reversed in AIR 1962 Pat 60.
ILR 35 Pat 1067
Overruled in AIR 1962 Pat 336 (FB).
AIR 1957 Pat 145
Overruled in AIR 1960 Pat 162.
AIR 1957 Pat 168
Overruled in AIR 1959 Pat 133 (FB).

Patna *(contd.)*

AIR 1957 Pat 235
Reversed in AIR 1961 SC 1312.
AIR 1957 Pat 285
Reversed in AIR 1959 SC 436.
AIR 1957 Pat 480
Overruled in AIR 1958 Pat 581 (FB).
AIR 1957 Pat 564
Reversed in AIR 1962 SC 914.
AIR 1957 Pat 575
Overruled in AIR 1958 Pat 630 (FB).
AIR 1957 Pat 586
Reversed in AIR 1962 SC 113.
AIR 1957 Pat 674
Overruled in AIR 1958 Pat 581 (FB).
AIR 1957 Pat 722
Reversed in AIR 1959 SC 230.
1957 BLJR 577
Overruled in AIR 1967 Pat 216.
AIR 1958 Pat 31
Reversed in AIR 1961 SC 1649.
AIR 1958 Pat 41
Reversed in AIR 1960 SC 789.
AIR 1958 Pat 85
Overruled in AIR 1963 Pat 243 (FB).
AIR 1958 Pat 114
Overruled in AIR 1967 Pat 96.
AIR 1958 Pat 177
Overruled in AIR 1961 SC 680.
AIR 1958 Pat 247
Reversed in AIR 1960 SC 47.
AIR 1958 Pat 279
Overruled in AIR 1958 Pat 630 (FB).
AIR 1958 Pat 287
Overruled in AIR 1959 SC 837.
AIR 1958 Pat 319
Held overruled in AIR 1966 SC 216.
AIR 1958 Pat 325
Reversed in AIR 1961 SC 668.
AIR 1958 Pat 378
Reversed in AIR 1961 SC 838.
AIR 1958 Pat 467
Reversed in AIR 1962 Pat 193.
AIR 1958 Pat 472
Reversed in AIR 1965 SC 1591.
AIR 1958 Pat 502
Overruled in AIR 1961 Pat 60.
AIR 1958 Pat 589
Overruled in AIR 1963 SC 454.
AIR 1958 Pat 626
Overruled in AIR 1958 Pat 630 (FB).
AIR 1958 Pat 630
Held overruled in AIR 1967 SC 801.
(1958) 1958 BLJR 359
Overruled in AIR 1959 Pat 133 (FB).
1958 B L J R 749
Reversed in AIR 1963 SC 1207.
(1958) 9 STC 639 (Pat).
Reversed in AIR 1961 SC 1615.
AIR 1959 Pat 75
Reversed in AIR 1963 Pat 330.
AIR 1959 Pat 139
Overruled in AIR 1965 Pat 374.
AIR 1959 Pat 187
Reversed in AIR 1962 SC 1166.
AIR 1959 Pat 202
Reversed in AIR 1965 SC 1755.
AIR 1959 Pat 210
Overruled in AIR 1964 Pat 261 (FB).
AIR 1959 Pat 450
Overruled in AIR 1966 Pat 297 (FB).
AIR 1959 Pat 557
Overruled in AIR 1963 Pat 277.
(1959) ILR 38 Pat 124
Reversed in AIR 1963 SC 1204.

Patna *(contd.)*

(1959) 1959 BLJR 691
Reversed in AIR 1965 Pat 288.
(1959) 10 STC 74 (Pat).
Reversed in AIR 1963 SC 1207.
AIR 1960 Pat 192
Held impliedly overruled by AIR 1961 SC 493.
(1960) ILR 39 Pat 85
Overruled in AIR 1966 Pat 144 (FB).
(1960) ILR 39 Pat 89
Reversed in AIR 1966 SC 1678.
(1960) ILR 40 Pat 7
Overruled in AIR 1962 SC 1367.
(1960) 11 STC 242 (Pat).
Reversed in AIR 1964 SC 584.
AIR 1961 Pat 254
Overruled in AIR 1966 Pat 144 (FB).
AIR 1961 Pat 425
Overruled in AIR 1966 SC 359.
(1961) 41 ITR 705 (Pat).
Reversed in AIR 1964 SC 1464.
(1961) 1961 BLJR 14
Overruled in AIR 1964 Pat 11.
(1961) 1961 BLJR 65
Overruled in AIR 1966 Pat 286.
(1961) 1961 BLJR 154
Reversed in AIR 1966 SC 1931.
(1961) 1961 BLJR 212
Overruled in 1962 BLJR 193.
AIR 1962 Pat 46
Reversed in AIR 1965 Pat 436.
AIR 1962 Pat 125
Held overruled in AIR 1962 SC 1476.
AIR 1962 Pat 140
Reversed in AIR 1968 SC 90.
AIR 1962 Pat 366
Reversed in AIR 1965 SC 891.
AIR 1962 Pat 460
Reversed in AIR 1963 SC 1077.
AIR 1962 Pat 468
Overruled in AIR 1963 Pat 243 (FB).
AIR 1963 Pat 412 (FB)
Overruled in AIR 1967 SC 801.
(1963) 1963 BLJR 244
Overruled in AIR 1967 Pat 216.
AIR 1964 Pat 2
Reversed in AIR 1965 SC 282.
AIR 1964 Pat 154
Reversed in AIR 1966 SC 1780.
AIR 1964 Pat 210
Overruled in AIR 1966 SC 119.
(1964) 1 Cri L J 468 (Pat)
Reversed in AIR 1966 SC 849.
(1964) 1 Cri L J 472 (Pat).
Overruled in AIR 1965 SC 666.
(1964) 1964 BLJR 59
Overruled in AIR 1964 Pat 401 (FB).
AIR 1965 Pat 76
Reversed in AIR 1967 SC 947.
AIR 1965 Pat 196
Overruled in AIR 1965 Pat 472 (FB).
(1965) 1965 BLJR 513
Reversed in AIR 1966 SC 709.

Pepsu

AIR 1951 Pepsu 39
Reversed in AIR 1952 SC 409.
AIR 1951 Pepsu 66
Overruled in AIR 1962 SC 424.
AIR 1953 Pepsu 161
Overruled in AIR 1963 SC 222.
AIR 1954 Pepsu 59
Reversed in AIR 1958 SC 838.

Punjab

AIR 1950 East Punj 228
Held impliedly overruled by AIR 1961 SC 493 as interpreted in AIR 1963 Orissa 911.
AIR 1950 East Punj 312
Reversed in AIR 1951 Punj 434.
AIR 1951 Punj 49
Overruled in AIR 1950 SC 66.
AIR 1951 Punj 74
Reversed in AIR 1954 SC 207.
AIR 1951 Punj 313
Overruled in AIR 1957 Punj 117.
AIR 1951 Punj 346
Overruled in AIR 1952 Punj 159.
AIR 1951 Punj 447
Overruled in AIR 1960 Punj 73.
AIR 1952 Punj 79
Overruled in AIR 1959 Punj 339 (FB).
AIR 1952 Punj 89
Overruled in AIR 1957 SC 458.
AIR 1952 Punj 94
Overruled in AIR 1965 Punj 321 (FB).
AIR 1952 Punj 203
Overruled in AIR 1956 SC 367.
AIR 1952 Punj 252
Reversed in AIR 1953 Punj 103.
AIR 1952 Punj 301
Reversed in AIR 1954 SC 606.
AIR 1952 Punj 309 (FB)
Reversed on another point in AIR 1953 SC 10.
AIR 1952 Punj 373
Overruled in AIR 1959 Punj 617 (FB).
AIR 1952 Punj 400
Overruled in AIR 1954 Punj 66 (DB).
(1952) 21 ITR 300 (Punj)
Reversed in AIR 1955 SC 252.
AIR 1953 Punj 30
Overruled in AIR 1963 Punj 9.
AIR 1953 Punj 73
Reversed in AIR 1955 SC 176.
AIR 1953 Punj 116
Overruled in AIR 1962 Punj 1 (FB).
AIR 1953 Punj 180
Reversed in AIR 1959 SC 185.
AIR 1953 Punj 199
Reversed in AIR 1957 SC 832.
AIR 1953 Punj 216
Reversed in AIR 1955 Punj 31 (DB).
AIR 1954 Punj 2
Reversed in AIR 1960 S C 1303.
AIR 1954 Punj 17
Reversed in AIR 1960 S C 1219.
AIR 1954 Punj 20
Overruled in AIR 1959 Punj 227 (FB).
AIR 1954 Punj 46
Overruled in AIR 1967 S C 1386.
AIR 1954 Punj 55 (FB)
Overruled in AIR 1962 S C 1476.
AIR 1954 Punj 129
Reversed in AIR 1957 S C 652.
AIR 1954 Punj 181
Overruled in AIR 1958 Punj 456.
AIR 1954 Punj 189
Overruled in AIR 1959 S C 1310.
AIR 1954 Punj 211
Reversed in AIR 1962 S C 256.
AIR 1954 Punj 247
Overruled in AIR 1963 Punj 9.
AIR 1955 Puni 5 (DB)
Reversed in AIR 1962 S C 646.
AIR 1955 Punj 83
Overruled in AIR 1957 Punj 49.
AIR 1955 Punj 141
Overruled in AIR 1960 S C 89.

Punjab *(contd.)*

AIR 1955 Punj 158
Overruled in AIR 1961 S C 1425.
AIR 1955 Punj 161 (DB)
Overruled in AIR 1961 S C 1425.
AIR 1955 Punj 193
Reversed in AIR 1958 S C 999.
(1954) 56 Punj L R 530=AIR 1955 NUC (Punj) 4596
Overruled in AIR 1961 Punj 128 (FB).
(1955) 57 Pun L R 246
Overruled in AIR 1958 Punj 57 (DB).
(1955) 57 Punj L R 379
Reversed in AIR 1956 S C 526.
(1955) ILR (1955) Punj 469
Reversed in AIR 1961 S C 1374.
AIR 1956 Punj 30
Overruled in AIR 1963 Punj 208.
AIR 1956 Punj 39
Reversed in AIR 1959 S C 352.
AIR 1956 Punj 97
Reversed on fact in AIR 1959 S C 65.
AIR 1956 Punj 173
Overruled in AIR 1963 Punj 298.
AIR 1956 Punj 228
Overruled in AIR 1957 S C 540.
AIR 1956 Punj 235
Reversed in AIR 1960 Punj 82.
AIR 1957 Punj 42
Overruled in AIR 1958 S C 36.
AIR 1957 Punj 45
Overruled in AIR 1962 Punj 267 (FB).
AIR 1957 Punj 100
Overruled in AIR 1967 Punj 430.
AIR 1957 Punj 159
Overruled in AIR 1964 S C 1882.
AIR 1957 Punj 191
Reversed in AIR 1962 S C 1711.
AIR 1957 Punj 191
Overruled in AIR 1958 S C 36.
AIR 1957 Punj 255
Held overruled by AIR 1958 S C 1018 in AIR 1966 Punj 214.
AIR 1957 Punj 255
Overruled in AIR 1958 S C 1018.
AIR 1957 Punj 259
Reversed in AIR 1962 S C 1272.
AIR 1958 Punj 44
Overruled in AIR 1960 Punj 196 (FB).
AIR 1958 Punj 132 (FB)
Overruled in AIR 1965 S C 1477.
AIR 1958 Punj 190
Reversed in AIR 1963 S C 1279.
AIR 1958 Punj 341
Reversed in AIR 1961 Punj 84.
AIR 1958 Punj 365
Reversed in AIR 1962 S C 247.
AIR 1958 Punj 393
Reversed in AIR 1961 S C 892.
AIR 1958 Punj 420
Overruled in AIR 1958 Punj 456 (FB).
AIR 1958 Punj 452
Reversed in AIR 1959 S C 93.
(1958) 60 Pun L R 277
Overruled in AIR 1959 Punj 503.
(1958) 60 Punj L R 349
Reversed in AIR 1961 S C 1554.
(1958) 60 Punj L R 194 = ILR (1958) Punj 593
Reversed in AIR 1961 Punj 203.
(1958) ILR (1958) Punj 1090
Overrueld in AIR 1964 Punj 246.
AIR 1959 Punj 8
Overruled in AIR 1959 S C 519.
AIR 1959 Punj 27
Reversed in AIR 1962 Punj 507.

Punjab *(contd.)*

AIR 1959 Punj 50
Overruled in AIR 1965 Punj 472 (FB).
AIR 1959 Punj 97
Reversed on facts in AIR 1959 S C 65.
AIR 1959 Punj 113
Impliedly overruled in AIR 1962 S C 276.
AIR 1959 Punj 157
Overruled in AIR 1963 S C 1503.
AIR 1959 Punj 249
Reversed in AIR 1963 Punj 25.
AIR 1959 Punj 287
Reversed in AIR 1962 S C 276.
AIR 1959 Punj 386
Overruled in AIR 1967 Punj 430.
AIR 1959 Punj 386
Held impliedly overruled by AIR 1967 S C 284 in AIR 1967 Punj 430.
AIR 1959 Punj 440
Reversed in AIR 1963 S C 222.
AIR 1959 Punj 457 (FB)
Overruled in AIR 1964 Punj 249 (FB).
AIR 1959 Punj 510
Reversed in AIR 1960 S C 606.
(1959) 61 Punj L R 77
Overruled in (1964) 66 Punj L R 93.
(1959) 61 Punj L R 702
Overruled in AIR 1960 S C 89.
(1959) 61 Punj L R 753
Reversed in AIR 1964 S C 1223.
(1959) 61 Punj L R 753
Overruled in ILR (1961) 2 Punj 823.
AIR 1960 Punj 196 (FB)
Overruled in AIR 1962 S C 1476.
AIR 1960 Punj 407
Reveresed in AIR 1961 S C 493.
AIR 1960 Punj 432
Overruled in AIR 1963 Punj 156.
AIR 1960 Punj 508
Reversed in AIR 1964 S C 1403.
AIR 1960 Punj 567
Reversed in AIR 1963 S C 1685.
(1960) 62 Punj L R 377
Overruled in AIR 1961 Punj 429 (FB).
(1960) 62 Punj L R 403
Reversed in AIR 1961 S C 104.
(1960) 62 Punj L R 410
Overruled in AIR 1965 Punj 321 (FB).
(1960) ILR (1960) 2 Punj 424
Reversed in AIR 1963 S C 1572.
(1960) 62 Pun L R 679
Overruled in AIR 1961 Punj 429 (FB).
ILR (1960) Punj 639
Overruled in AIR 1963 Punj 148 (FB).
AIR 1961 Punj 105
Overruled in AIR 1961 Punj 429 (FB).
AIR 1961 Punj 138 (FB)
Overruled in AIR 1967 S C 727.
AIR 1961 Punj 143
Overruled in AIR 1963 Punj 49.
AIR 1961 Punj 208 (FB)
Reversed in AIR 1967 S C 1568.
AIR 1961 Punj 215
Reversed in AIR 1966 S C 97.
AIR 1961 Punj 569
Reversed in AIR 1964 Punj 313.
1962 (1) Cri L J 841
Overruled in AIR 1964 Punj 83.
AIR 1962 Punj 74 (FB)
Reversed in AIR 1966 S C 1842.
AIR 1962 Punj 78
Reversed in AIR 1965 S C 951.
AIR 1962 Punj 482
Reversed in AIR 1963 Pun 836.

Punjab *(contd.)*

AIR 1962 Punj 516
Reversed in AIR 1964 S C 423.
1962 Cur L J 277
Overruled in ILR (1963) 1 Punj 97.
1962 (2) Cri L J 579 (Punj)
Overruled in AIR 1966 Punj 328.
1962 (2) Cri L J 581 (Punj)
Impliedly overruled by AIR 1961 S C 1500.
(1962) 64 Pun L R 372
Impliedly overruled in AIR 1964 Punj 363.
(1962) 64 Pun L R 755
Overruled in AIR 1963 Punj 246.
(1962) 64 Pun L R 1110
Overruled in AIR 1963 Punj 429.
(1962) 45 I T R 539 (Punj)
Reversed in AIR 1964 S C 1709.
AIR 1963 Punj 19
Reversed in AIR 1965 S C 1076
AIR 1963 Punj 87
Reversed in AIR 1964 S C 787.
AIR 1963 Punj 290 (FB)
Reversed in AIR 1967 S C 1581
AIR 1963 Punj 298
Reversed in AIR 1964 S C 72.
AIR 1963 Punj 298
Reversed in AIR 1964 S C 1581.
AIR 1963 Punj 443 (FB)
Reversed in AIR 1967 S C 63.
AIR 1963 Punj 486
Overruled in AIR 1967 S C 1552.
1963 Cur L J 556 (Punj)
Reversed in AIR 1965 Punj 110.
(1964) 66 Pun L R 185
Reversed in AIR 1964 Punj 337 (FB).
(1963) 65 Pun L R 422
Overruled in AIR 1964 Punj 1 (FB).
(1963) 65 Pun L R 641
Overruled in AIR 1967 Punj 53 (FB).
(1963) 65 Pun L R 945
Overruled in AIR 1965 S C 1153.
ILR (1963) 1 Punj 44
Reversed in AIR 1964 Punj 85.
1964 Cur L J 523
Reversed in AIR 1967 S C 1552.
(1964) 66 Pun L R 151
Reversed in AIR 1965 Punj 84.
(1964) 66 Pun L R 1029
Reversed in AIR 1965 Punj 181.
(1964) 66 Pun L R 1964
Reversed in AIR 1965 Punj 181.
ILR (1964) 1 Punj 736
Reversed in AIR 1964 Punj 417.
AIR 1965 Punj 39
Reversed in AIR 1966 S C 1626.
AIR 1965 Punj 113
Reversed in AIR 1965 S C 1619.
AIR 1965 Punj 351
Reversed in AIR 1967 Punj 270.
ILR (1965) 2 Punj 174
Reversed in ILR (1966) 2 Punj 149.

Rajasthan

AIR 1951 Raj 16
Overruled in AIR 1952 Raj 160.
AIR 1950 Raj 39
Overruled in AIR 1954 Raj 138 (FB).
AIR 1951 Raj 25
Reversed in AIR 1951 S C 467.
AIR 1951 Raj 30
Reversed in AIR 1952 S C 54.
AIR 1951 Raj 79
Overruled in AIR 1954 Raj 83 (FB).
AIR 1951 Raj 82
Overruled in ILR (1951) 1 Raj 645.

Rajasthan *(contd.)*

AIR 1951 Raj 94 (2)
Reversed in AIR 1954 S C 158.
AIR 1951 Raj 113
Overruled in AIR 1961 S C 1662.
1951 Raj L W 55
Overruled in AIR 1954 Raj 217.
1951 Raj L W 507
Overruled in AIR 1954 Raj 83 (FB).
AIR 1952 Raj 12
Overruled in AIR 1955 S C 425.
AIR 1952 Raj 81
Reversed in AIR 1954 S C 500.
AIR 1952 Raj 100
Overruled in AIR 1954 Raj 217.
AIR 1952 Raj 111
Overruled in AIR 1953 Raj 88 (DB).
AIR 1952 Raj 156
Overruled in AIR 1954 Raj 279.
ILR (1952) 2 Raj 93
Overruled in AIR 1966 S C 119.
ILR (1952) 2 Raj 1010
Overruled in AIR 1962 Raj 68 (FB).
AIR 1953 Raj 17
Overruled in AIR 1955 S C 633.
AIR 1953 Raj 51
Held overruled by A I R 1954 S C 349 in A I R 1959 Raj 135.
AIR 1953 Raj 90
Overruled in AIR 1964 S C 497.
AIR 1953 Raj 105
Reversed in AIR 1953 S C 174.
AIR 1953 Raj 137
Overruled in AIR 1954 S C 497.
AIR 1953 Raj 145
Reversed in AIR 1961 S C 683.
AIR 1953 Raj 188
Impliedly overruled in AIR 1963 S C 1811.
ILR (1954) 4 Raj 244
Reversed in AIR 1955 Raj 197.
AIR 1954 Raj 51
Overruled in AIR 1954 Raj 217.
AIR 1954 Raj 173
Overruled in AIR 1962 Raj 68 (FB).
AIR 1954 Raj 231
Overruled in AIR 1960 Raj 125 (SB).
1954 Raj L W 230
Overruled in AIR 1964 Raj 147 (FB).
1954 Raj L W 403
Overruled in AIR 1955 Raj 97 (FB).
1954 Raj L W 729
Overruled in AIR 1964 Raj 174.
1955 Raj L W 378=AIR 1955 N U C (Raj) 461
Overruled in AIR 1960 Raj 66 (FB).
1955 Raj L W 379=AIR 1955 NUC (Raj) 1899
Overruled in AIR 1960 Raj 66 (FB).
1955 Raj L W 532
Overruled in AIR 1958 Raj 180.
1956 Raj L W 3=AIR 1955 NUC (Raj) 4648
Overruled in AIR 1965 Raj 169.
AIR 1957 Raj 47
Reversed in AIR 1961 S C 1655.
AIR 1957 Raj 81
Overruled in AIR 1958 S C 36.
AIR 1957 Raj 104
Overruled in AIR 1958 S C 560.
AIR 1957 Raj 138
Overruled in AIR 1960 S C 548.
AIR 1957 Raj 277
Overruled in AIR 1960 Raj 171.
AIR 1958 Raj 102
Overruled in AIR 1960 Raj 1 (SB).
AIR 1958 Raj 250
Overruled in AIR 1964 S C 600.
AIR 1958 Raj 298
Reversed in AIR 1960 Raj 47.

Rajasthan *(contd.)*

AIR 1959 Raj 45
Overruled in AIR 1959 Raj 246.
AIR 1959 Raj 102
Reversed in AIR 1963 S C 181.
AIR 1959 Raj 121
Overruled in AIR 1963 S C 64.
AIR 1959 Raj 163 (1)
Overruled in AIR 1961 Raj 216 (FB).
AIR 1959 Raj 177
Reversed in AIR 1961 S C 1402.
AIR 1959 Raj 294
Overruled in AIR 1961 S C 674.
ILR (1959) 9 Raj 216
Reversed in AIR 1965 S C 1296.
ILR (1958) 8 Raj 946
Overruled in AIR 1961 Raj 98.
ILR (1958) 8 Raj 591
Overruled in AIR 1962 Raj 41.
ILR (1958) 8 Raj 1076
Reversed in AIR 1963 S C 408.
AIR 1960 Raj 279
Overruled in AIR 1961 Raj 216 (FB).
ILR (1959) 9 Raj 38
Overruled in AIR 1964 Raj 174.
ILR (1960) 10 Raj 540
Overruled in AIR 1961 Raj 250 (FB).
ILR (1960) 10 Raj 1378
Overruled in AIR 1961 S C 387.
AIR 1961 Raj 43
Overruled in AIR 1965 Raj 114.
AIR 1961 Raj 129
Overruled in AIR 1966 Raj 127 (FB).
AIR 1961 Raj 193
Reversed in AIR 1964 Raj 140.
AIR 1961 Raj 220
Overruled in AIR 1966 S C 1863.
ILR (1961) 11 Raj 260
Reversed in AIR 1964 S C 1361.
ILR (1961) 11 Raj 536
Reversed in AIR 1963 S C 1323.
AIR 1962 Raj 112 (FB)
Overruled in AIR 1964 S C 1536.
AIR 1962 Raj 196
Reversed in AIR 1963 S C 1638.
ILR (1962) 12 Raj 44
Overruled in AIR 1966 S:C 1081.
1962 Raj L W 585
Held impliedly overruled by A I R 1961 S C 186 as interpreted in AIR 1963 Raj 133.
AIR 1963 Raj 51
Reversed in AIR 1965 S C 913.
AIR 1963 Raj 225
Overruled in AIR 1964 Raj 243.
1963 Raj L W 561
Reversed in AIR 1966 S C 1559.
AIR 1964 Raj 5
Reversed in AIR 1966 S C 142.
1964 Raj L W:121
Overruled in AIR 1965 Raj 229.
ILR (1964) 14 Raj 715
Overruled in AIR 1966 Raj 74.
ILR (1964) 14 Raj 65
Reversed in AIR 1966 S C 1564.
AIR 1966 Raj 26
Reversed in AIR 1967 S C 1599.

Saurashtra

AIR 1952 Sau 49 (FB)
Reversed in AIR 1954 S C 680.
AIR 1953 Sau 1
Overruled in AIR 1956 Sau 29.
AIR 1953 Sau 180
Reversed in AIR 1959 S C 1383.
AIR 1954 Sau 146
Reversed in AIR 1957 S C 892.
(1954) 7 Sau L R 83
Overruled in AIR 1956 Sau 87 (DB).
AIR 1955 Sau 20
Reversed in AIR 1958 S C 881
AIR 1956 Sau 11
Reversed in AIR 1960 S C 278.

Simla

AIR 1951 Simla 254
Overruled in AIR 1957 Punj 49.

Travancore

AIR 1951 Trav-Co 1
Overruled in AIR 1956 Trav-Co 147 (FB).
AIR 1950 Trav-Co 5
Overruled in AIR 1952 Trav-Co 482.
AIR 1950 Trav-Co 80
Overruled in AIR 1959 Ker 81 (FB).
AIR 1951 Trav-Co 225
Overruled in AIR 1954 Trav-Co 487 (FB).
AIR 1952 Trav-Co 56
Overruled in AIR 1956 Trav-Co 29.
AIR 1952 Trav-Co 120
Reversed in AIR 1954 S C 526.
AIR 1952 Trav-Co 128
Reversed in AIR 1953 S C 478.
AIR 1952 Trav-Co 644 (FB)
Overruled in AIR 1953 S C 404.
AIR 1953 Trav-Co 394
Overruled in AIR 1959 Ker 83.
AIR 1954 Trav-Co 43
Reversed in AIR 1954 Trav-Co 291.
AIR 1954 Trav-Co 55
Overruled in AIR 1954 Trav-Co 469 (FJ).
AIR 1954 Trav-Co 178
Overruled in AIR 1961 Ker 146.
AIR 1954 Trav-Co 331
Overruled in AIR 1962 Ker 90 (FB).
AIR 1956 Trav-Co 124
Reversed in AIR 1961 S C 699.
(1956) 7 S T C 731 (Trav-Co).
Overruled in AIR 1958 S C 468.
AIR 1957 Trav-Co 29
Overruled in AIR 1961 Ker 1 (FB).
AIR 1957 Trav-Co 300
Overruled In AIR 1958 S C 468.

Tripura

AIR 1960 Tripura 31
Reversed in AIR 1963 S C 601.
1961 (1) Cri L J 562
Reversed in AIR 1965 S C 147.
1964 (2) Cri L J 119
Reversed in AIR 1965 S C 596.
('62) F. A. No. 16 of 1952 (Vindh Pra)
Reversed in AIR 1962 S C 1476.

COMPARATIVE TABLE

Central Sales Tax Act and other State Sales Tax Acts

Sections		1 Central Sales Tax Act, 1956 (74 of 1956)	2 A. P. Genl. Sales Tax Act, 1957 (6 of 1957)	3 Assam Sales Tax Act, 1947 (17 of 1947)	4 Assam Finance (Sales Tax) Act, 1956 (11 of 1956)	5 Bihar Sales Tax Act, 1959 (19 of 1959)	6 Jammu & Kashmir Genl. Sales Tax Act, 1962 (20 of 1962)	7 Kerala Genl. Sales Tax Act, 1963 (15 of 1963)	8 M P. Genl Sales Tax Act, 1958 (2 of 1959)
1	Short title, Extent and Commencement.	1	1	1	1	1	1	1	1
2	Definitions.	2	2	2	2	2	2	2	2
3	Sale or purchase in-course of inter-state trade or commerce.	38	...	40	4	...	...	...	50
4	Sale or purchase out of state.	38	...	40	4	...	...	...	50
5	Sale or purchase in course of import or export.	38, 7	...	40	4	...	8, 56		50
6	Tax liability.	5, 10	3, 23, 24, 24A, 25, 26, 27, 28, 28A	3, 15, 16, 17, 18	3, 3A, 23, 24, 25, 26, 27, 27A	4, 9, 21	5, 6, 7, 8, 11, 12, 20, 21, 26		4, 5, 7A, 14, 14A, 33, 33A, 34
7	Registration of Dealers.	12, 12A, 12B	9, 10, 11, 12, 13	5, 6, 7	9, 11	6	13, 14, 15		15, 16
8	Rate of tax on inter-state sales.	...	...	...	...	...	...	...	...
8A	Determination of Turnover.	A. P. Genl. Sales Tax Rules, 1957 R. 6.	14, 15	...	7	...	2(xxv)		2(v)
9	Levy and Collection of Tax and penalties.	5, 5A, 5B, 5C, 7, 7A, 14, 15, 16, 17, 18	17, 18, 19, 19A, 19B, 20, 33, 34, 34A, 35, 35A, 36	22, 22A, 23, 24	5, 5A, 6, 6A, 20, 20A, 21, 22	7, 8, 8A, 16	16, 17, 18, 19, 23, 24, 25, 26		6, 7, 18, 18A, 19, 20, 22, 23
9A	Collection of Tax only by registered dealers.	5C	34A	...	20A	...	22		7A
10	Penalties.	30	21, 38, 39	13, 25, 26, 27, 28	38, 39, 40	17	46, 47, 48		43, 46, 47
10A	Imposition of penalty in lieu of prosecution.	32	41	28	38A, 40	18	47		47
11	Cognizance of offences.	31	40	27	38	17	46		46
12	Indemnity.	37	45	34	44	20	51		48
13	Power to make rules.	39	52	39	46	26	57		51
14	Goods of special importance in inter-state trade.	...	...	...	...	...	...		...
15	Restrictions on tax on sales of declared goods within a state.	6	...	...	...	...	6, 56		...
16	Repeal.								

		8	9	10	11	12	13
Sections	Central Sales Tax Act, 1956 (74 of 1956)	Bombay Sales Tax Act, 1959 (51 of 1959)	Mysore Sales Tax Act, 1957 (25 of 1957)	Orissa Sales Tax Act, 1947 (14 of 1947)	Punjab General Sales Tax Act, 1947 (46 of 1948)	Rajasthan Sales Tax Act, 1954 (29 of 1954)	Tamil Nadu General Sales Tax Act, 1959 (1 of 1959)
1	Short title, Extent and Commencement.	1	1	1	1	1	1
2	Definitions.	2	2	2	2	2	2
3	Sale or purchase in course of inter-state trade or commerce.	75	...	...	29	...	6
4	Sale or purchase out of state.	75	...	...	29	...	6
5	Sale or purchase in course of import or export.	75	...	...	29	...	9
6	Tax liability.	3, 4, 6, 14, 15, 16, 18, 19, 34	5, 6, 6A; 7, 15, 17	4, 4A, 19, 19A, 19B, 19C, 19D	4, 4A, 17, 17A, 18	3, 3A, 9, 9A, 9B	3, 4, 4A, 5, 6, 18, 19, 19A, 27
7	Registration of dealers.	22, 23, 26, 27, 29, 31	10, 10A, 11	9, 9A, 10	7, 8	6, 6A, 6B	20, 21, 21A
8	Rate of tax on inter-state sales.	...	...	...	...	...	...
8A	Determination of turnover	7	Mysore Sales Tax Rules, R. 6	5 (2)	5 (2)	2 (s)	2 (p)
9	Levy and collection of tax and penalties.	8, 9, 10, 11. 33, 35, 36, 37, 38, 39	12, 12A, 12B, 13, 14, 16, 18, 18A, 19	12, 12A, 12B, 13, 13A, 13B 13C, 14A, 14B, 14C, 14D	10, 11, 11A 11B	5, 5A, 5B, 5C, 5D, 5E, 5F, 7AA, 10, 10A, 10B, 11, 11A, 12, 12A	7A, 9, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 29
9A	Collection of tax only by registered dealers.	46	18	9B	...	...	22
10	Penalties.	36, 37, 63, 65, 67, 68	29, 30, 31, 31A	25, 26, 16C	23, 24	16, 16A	23, 45, 46
10A	Imposition of penalty in lieu of prosecution.	69	31	26	24	16	46
11	Cognizance of offences.	67, 68, 69	30	25	23	16	47
12	Indemnity.	73	33	27	25	18	49
13	Power to make rules.	74	38, 39	29, 29A	27	26	53
14	Goods of special importance in inter-state trade	...	...	...	...	...	...
15	Restrictions on tax on sales of declared goods within a state.	...	...	14B	...	5C (3)	4, 4A, 5
16	Repeal.	...	...	...	...	...	...

		14	15	16	17	18	19
Sections.	Central Sales Tax Act, 1956 (74 of 1956)	Uttar Pradesh Sales Tax Act 1948 (15 of 1948)	Bengal Finance (Sales Tax) Act, 1941 (6 of 1941)	W. B. Genl. Sales Tax Act 1954 (4 of 1954)	Goa, Daman & Diu Sales Tax Act, 1964 (4 of 1964)	Pondichery Genl. Sales Tax Act, 1967 (6 of 1967)	Himachal Pradesh Genl. Sales Tax Act, 1968 (24 of 1968).
1	Short title, Extent & Commencement.	1	1	1	1	1	1
2	Definitions.	2	2	2	2	2	2
3	Sale or purchase in course of inter-state trade or commmerce.	4B	27	...	37	5	41
4	Sale or purchase out of State.	4B, 5	27	...	37	5	41
5	Sale or purchase in course of import or export.	4B	27	...	37	5	41
6	Tax liability.	3, 3A, 3B, 3C, 3D, 3E, 7C	4, 4A, 7, 7A	4, 15	4, 5, 6, 9, 24, 25, 23	3, 6, 11, 20, 21	4, 5, 6, 26, 27, 28, 36
7	Registration of Dealers.	8A	7, 8, 9	5	11, 12, 13, 14	22, 23, 24	8, 9, 10
8	Rate of tax on inter-state sales.	...	...	...	...	7, 10	...
8A	Determination of turnover.	7	...	5	...	...	...
9	Levy and collection of tax and penalties.	7, 7A, 7B, 7C, 7D, 7E, 8, 33	5A, 10, 11	8, 9, 10	8, 15, 16, 17	8, 12, 13, 14, 15, 16, 17, 18, 26, 27, 28, 29, 30	6, 7, 12, 13, 14, 15, 16
9A	Collection of Tax only by a registered dealer.	8A	...	...	16	25	13
10	Penalties.	13, 13A, 14, 15, 15A	5A, 5B, 22, 23	16, 17	30, 31, 32	26, 49, 50, 51	35
10A	Imposition of penalty in lieu of prosecution.	15	23	...	...	50	...
11	Cognizance of offences.	14	22	16	30	51	35
12	Indemnity.	16	24	18	34	54, 55	38
13	Power to make rules.	24	26	21	36	57	40
14	Goods of Special importance in inter-state trade.	...	...	...	...	...	...
15	Restrictions on tax on sales of declared goods within State.	...	12A	...	...	4, 5, 6	...
16	Repeal						

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A. I. R. Commentaries Judicially Appreciated

A.I.R. 1948 Patna 460 (462) (Pr. 9) [V 35 C 161] (D.B.)—Per *Meredith J.*—"I will make two quotations from Chitaley and Annaji Rao's annotated edition of the Civil Procedure Code, 4th Edn. Vol. III, because those learned commentators have, in my opinion, correctly summed up the position in language which cannot be battered."

CONSTITUTION OF INDIA.

1961 Manipur 1 (4) (Pr. 11) [A.I.R. V 48 C 1]—*Tirumalpad J. C.*—"What is prohibited (in Art. 23 (1)) is begar and other similar forms of forced labour. The A. I. R. Commentaries on the Constitution of India at page 635 define 'begar' as a system under which persons are pressed to carry burdens for individuals or public or to perform other forms of menial service under compulsion".

1961 All. 341 (345) (Pr. 33) [(S) A.I.R. V 43 C 126] (DB).—*Desai J.*—"Shri Jagdish Sahai could not cite any authority in support of his contention that the right given to the Court to draw an adverse inference is equal to compelling the accused to be a witness against himself. We notice that Chitaley in his Commentary on Constitution, Vol. I, pp. 497.498, does not see any conflict between the provisions of Art. 20 (3) and those of S. 342, Cr. P. C."

1956 J. & K. 1 (10) (Pr. 34) [(S) A.I.R. V 43 C 1] (F.B.)—*Kilam J.*—"The learned author Chitaley in his luminous commentary on the Constitution has, after discussing almost the whole case law on the subject, enunciated some principles which I might give more or less in his own language. According to the learned author . . . ." (Points from Note 8 (g) under Art. 21, p. 588 quoted.)

CIVIL PROCEDURE CODE, 1908.

1953 S.C. 23 (27) [A.I.R. V 40 C 7]—[Touching the revisional jurisdiction of the High Court set out in S. 115, Civil P. C.] "A large number of cases have been collected in Edn. 4 of Chitaley & Rao's Code of Civil Procedure (Vol. I) which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section."

1949 P. C. 156 (158) (Pr. 19) [A. I. R. V 36 C 48] — *Sir John Beaumont* — "There have been no doubt, decisions in some High Courts in India which lend support to the view upon which the Judges acted. The cases are collected in Edn. 4 of Chitaley and Rao on the Code of Civil Procedure, Vol. I, p. 1105."

P. L. D. 1965 (W. P.) Lahore 590 (594, 595) (DB). — *Sajjad Ahmad J.*—"There has been a conflict of judicial opinion on the question of the applicability of this section to decrees in appeals under the Letters Patent. The High Courts of Bombay, Punjab, Madhya Pradesh and Madras have held that the section applies. The High Court of Patna took a contrary view (*See* Chitaley's Commentary on S. 114 of the Civil P. C.—headnote 1, at page 1507, Vol. II, 1968, Edition.) In a recent Full Bench decision reported in *Jwala Prasad* v. *Jwala Bank Ltd.*, A. I. R. 1961 All. 881, the Allahabad High Court has held that . . . . and has overruled an earlier decision to the contrary given by another Full Bench of the same Court reported in *Mst. Abhilakhi* v. *Sada Nand*, A. I. R. 1931 All. 244."

1968 J. & K. 13 (14) (Pr. 7) [A. I. R. V 55 C 4] — *J. N. Bhat J.* — "The principle as laid down in certain authorities as summarized in the Commentary on Chitaley's Civil P. C. (7th Edn., Vol. 2, Page 1927) is that the Court has to see whether the suit cannot be determined in the absence of the person who applies to be made party or whether his interests will not be prejudiced by not being joined as a party".

1968 Mad. 1 (21) (Pr. 59) [A. I. R. V 55 C 1] (FB) — *Venkataraman J.*—"Pointing out that S. 105, C. P. C. must be read harmoniously with S. 99, C. P. C., the decisions have held that the phrase 'affecting the decision of the case' in S. 105 must be interpreted to mean 'affecting the decision of the case on merits'. The decision will be found collected in any text book, for example, in the Commentary of A. I. R. Section 105, Note 6. . . . . .

1965 All. 527 (531) (Pr. 28) [A. I. R. V 52 C 148] — *Oak J.* — "Mr. Brij Lal Gupta pointed out that the Court dealing with the matter in April 1947 was a Munsif. The present suit was tried by a Civil Judge. The valuation of the suit was Rs. 85,000. The Munsif had no jurisdiction to try the present suit. Under S. 11, C. P. C., the Court trying the former suit should have been competent to try the subsequent suit itself. (See Chitaley's Commentary on the Code of Civil Procedure Volume I, Page 415). (Now see 1968 (7th Edn.) pp. 879-880)."

1965 Punj. 494 (496) [A.I.R. V 52 C 157 Pr. 7]—*Shamsher Bahadur J.*—"The words 'for any other substantial cause' (in O. 41, R. 27 (b)) must be read with the word 'requires' in the beginning of the sentence and need not be construed in the narrow sense suggested by the doctrine of ejusdem generis ..... Reference may be made to Chitaley's Commentary on the Code of Civil Procedure, Vol. IV, at page 4819".

1965 Kerala 104 (105) (Pr. 3) — *S. Velu Pillai J.* — "The rights inter se of rival purchasers in sales in execution of decrees on mortgages, have been the subject of consideration in several decided cases. The result of these has been summarised as follows in A. I. R Commentaries on Civil Procedure Code, Vol. 3, 1957 (6th) Edn., pp. 3791 and 3792. (Now see 1963 (7th Edn.), pp. 3807, 3808, O. 34, R. 1, N. 39, Pts. 26 to 34) ....."

('64) I. L. R. (1964) 1 Ker. 320 (322) — *Madhavan Nair J.* — "The A. I. R. Commentaries on the Code of Civil Procedure in Note No. 4 to O. 34, R. 7 put the position succinctly thus ....."

COURT-FEES ACT, 1870 & SUITS VALUATION ACT, 1887.

1968 Manipur 52 (53, 54) (Prs. 5, 12) [A. I. R. V 55 C 18]—*C. Jagannadhacharyulu J. C.* — "There is consensus of opinion in most of the High Courts that S. 7 (iv) (b) of the Court-fees Act does not apply to a suit for partition by a person in joint possession for partition of his share but that Art. 17 (vi) of Sch. II of the Court-fees Act applies. Vide pages 111, 112, 113, 114 and 115 of the Court-fees and Suits Valuation Act (A. I. R. Commentaries) Second Edition. ...."

1965 Punj. 1 (11) (Pr. 25) [A. I. R. V 52 C 1] (FB) — *P. C. Pandit J.* — "With regard to this definition (of 'consequential relief'), Chitaley in his Commentaries on the 'Court-fees Act and the Suits Valuation Act (Second Edition)', on page 185 has observed thus—".

CRIMINAL PROCEDURE CODE, 1898.

A.I.R. 1969 Orissa 56 (57) (Pr. 5) [V 56 C 23] — *S. Acharya J.* — "Their Lordships of the Madras High Court in their decision reported in ..... A. I. R. 1954 Mad. 214 in quoting a passage from Chitaley and Annaji Rao's Criminal Procedure Code, observed as follows: 'But a Criminal Court, as well pointed in the exhaustive analysis in Chitaley and Annaji Rao's Criminal Procedure Code, Vol. III, 4th (1950) Edn. at page 2862, is not expected, under the provisions of S. 517 to 'try' civil cases .....' This view has been reiterated in a decision of this Court in ..... (1967) 33 Cut. L. T. 868."

1967 Current L. J. 717 (719) — *Shamsher Bahadur J.*—"Prior to the enactment of this amendment (S. 189-A), the Court had by judicial decisions engrafted a law which, according to Chitaley's Commentary on the Code of Criminal Procedure, Vol. I, Page 590, was this ....."

LIMITATION ACT, 1908.

1968 Mad. 226 (229) (Pr. 5) [A. I. R. V 55 C 50] — *Natesan J.*—"Quoting from Chitaley and K. N. Annaji Rao on Limitation Act, it is observed therein. ...."

1963 Punj. 457 (459) (Pr. 7) [A. I. R. V 50 C 127]—*Grover J.* — "As stated in Chitaley's Limitation Act, (3rd Edition), Volume 1, Page 524, the words 'Stayed by an injunction or order' have reference to an order of a Court and not to a disability to sue or to apply arising from other causes"

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1961 Pat. 134 (137) (Pr. 18) [A.I.R. V 48 C 36]—*Raj Kishore Prasad J.*—"The question under consideration has been thoroughly and clearly dealt with in A.I.R. Commentaries on the Indian Limitation Act, 3rd Edition, Vol. I, Note 11, page 595, Note 18, pages 601-604 and Note 32, page 688."

1960 Kerala 306 (308) (Pr. 17) [A.I.R. V 47 C 144]—*M. S. Menon and T. K. Joseph JJ.* — "As pointed out by Chitaley : 'Where no time is fixed for delivery, if the correspondence between the parties shows that the matter was being enquired into and that there was no refusal to deliver up to well within a year of the suit, this article (Art. 81) cannot be pleaded as a bar . . . . . .' (Limitation Act, Vol. 2, Page 1187)."

REGISTRATION ACT, 1908.

1960 Madh. Pra. 3 (Pr. 8) [A. I. R. V 47 C 2] — *Dixit J.*—"The principle laid down in I. L. R. 4 Bom. 126 has been followed in many cases which have been noted in Chitaley's Registration Act (Second Edition) at page 867. . . . ."

1960 Mad. 244 (Pr. 9) [A.I.R. V 47 C 77] — *Ramaswami J.*—"It is interesting in this connection to note that the A. I. R. Commentaries on the Registration Act (Second Edition) at pages 526 to 530, after an elaborate discussion of the entire case-law and the principles of S. 77 of the Registration Act, mention at p. 530 that the view expressed by Abdur Rahman J. is correct."

STAMP ACT, 1899.

1967 Him. Pra. 29 (31) (Pr. 11) [A. I. R. V 54 C 9]—*Om Prakash J. C.*—"From the language, used in the document, it is capable of falling within the definition of a bond, as defined in sub-s. (5) (b) of S. 2, Stamp Act, and also within the definition of a promissory note, under sub-s. (22) of that section. The maxim being, specialia generalibus derogant, an instrument which satisfies the definition under sub-s. (5) must be held to be taken out of the more general definition in sub-s. (22), vide A. I. R. Commentaries on the Stamp Act, p. 70."

TRANSFER OF PROPERTY ACT, 1882.

1954 Punj. 210 (211) (Pr. 4) [A.I.R. V 51 C 52]—*S. S. Dulat Actg. C. J. and D. K. Mahajan J.* — "It is significant that the provisions of this section (S. 111, T. P. Act) have never been applied as a rule of equity, justice or good conscience by any of the High Courts in the territories to which this provision is not made applicable under S. 1 of the T. P. Act, whereas a number of cases will be found at page 178, Note 4, of Chitaley's Transfer of Property Act, Vol. I, where principles underlying the provisions of the Transfer of Property Act have been so applied . . . . . ."

1961 Mad. 28 (30) (Pr 7) [A. I. R. V 48 C 7] — *Ramaswami J.* — "In this connection the learned District Munsif has pertinently pointed out the implications of the decision in *Gopal Chandra Das* v. *Harendra Nath Datta*, 63 Ind. Cas. 483 (Cal.) . . . . This decision has been cited with approval in the well-known commentaries on the Transfer of Property Act by Chitaley and [illegible] Third Edition (1950) page 1861".

A. I. R. MANUAL (2ND EDN.) JUDICIALLY APPRECIATED

JAGANNADHACHARYULU J. C.—"Article 14 (of the Constitution) protects all persons from discrimination by the legislative as well as executive organs of the State. Vide Note 8, Page 2673 of A. I. R. Manual Vol. 3, 2nd Edn. . . . . ."—*1968 Manipur 58 (63) (Pr. 16) [A. I. R. V 55 C 21].*

P. N. RAMASWAMI J. : — "For an exhaustive citation of the relevant cases (on S. 10, Cattle Trespass Act, 1871), see the most welcome 2nd (1960) Edn. of the A. I. R. Manual Vol. I referring to A. I. R. 1947 Pat. 172 = 47 Cri. L. J. 986 ; A. I. R. 1943 Sind 152 = 44 Cri. L. J. 761 ; A. I. R. 1916 Lah. 281=17 Cri. L. J. 63 ; A. I. R. 1919 Cal. 93=20 Cri. L. J. 398."—*A. I. R. 1960 Mad. 331 (332)=1960 Cri. L. J. 932 (933)*

—See also A. I. R. 1960 Mad. 443 (446) = 1960 Cri. L. J. 1340 (1344) Vol. 4 of the A. I. R. Manual (2nd Edn.) referred to.]